TITLE: FEDERAL REGISTER.

REEL NO: 7 of 9

VOLUME: 53 Issues: 214-230
Pages: 44,585-48,504

DATE: NOVEMBER 4 - NOVEMBER 30, 1988

PUBLICATION NO: 2575

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VOL
53
ISS
214
NO
4
1988
UMI

11-4-88
Vol. 53 No. 214

federal register

Friday
November 4, 1988

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SECOND CLASS NEWSPAPER
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U.S. Government Printing Office
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VOL
53
ISS
214
NO
4
1988
UMI

11-4-88
Vol. 53 No. 214
Pages 44585-44852

federal register

Friday
November 4, 1988

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 638]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 638 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 285,000 cartons during the period November 6 through November 12, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 638 (§ 910.938) is effective for the period November 6 through November 12, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administrative Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on November 1, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.938 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.938 Lemon Regulation 638.

The quantity of lemons grown in California and Arizona which may be handled during the period November 6, 1988, through November 12, 1988, is established at 285,000 cartons.

Dated: November 2, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-25684 Filed 11-3-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88-179]

Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extention of comment period.

SUMMARY: We are extending the comment period for our interim rules that amended the Horse Protection regulations regarding pads, action devices, weights, boots and packing materials used on horses. This notice of extension of the comment periods is effective upon signatrue. This extension will provide interested persons with additional time in which to prepare comments on the interim rules.

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DATES: Consideration will be given only to written comments on Docket No. 88–052, Docket No. 88–079, and Docket No. 88–125 that are postmarked or received on or before November 22, 1988.

ADDRESSES: Send an original and two copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88–052, Docket No. 88–079, or Docket No. 88–125. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833.

SUPPLEMENTARY INFORMATION: On April 26, 1988, we published in the **Federal Register** (53 FR 14778–14782, Docket No. 88–052) an interim rule that amended the Horse Protection Regulations by expanding the list of devices and equipment prohibited for use on any horse at any horse show, exhibition, sale, or auction. Additionally, the interim rule prohibited the use on any horse of weights other than horseshoes, and of horseshoes weighing more than 16 ounces each. The interim rule also clarified which horses are subject to the scar rule.

On May 2, 1988, we published in the **Federal Register** (53 FR 15640–15641, Docket No. 88–079) an interim rule that removed certain restrictions on weights, horseshoes, and boots imposed by the April 26 interim rule, and that reinstated certain restrictions on the placement of lead and other weights on horses.

Comments on both the April 26 and May 2 interim rules were required to be postmarked or received on or before June 27, 1988. On jude 29, 1988, we published in the **Federal Register** (53 FR 24437, Doclet No. 88–111) a notice reopening and extending the comment periods for both interim rules. Comments were required to be postmarked or received on or before July 15, 1988. However, those comment periods were subsquently reopened again, as explained below.

On July 28, 1988, we published in the **Federal Register** (53 FR 28366–28373, Docket No. 88–125) an interim rule that revised the list of devices and equipment prohibited for use on horses at any horse show, exhibition, sale, or auction. We removed provisions established by the Arpil 26 interim rule that would have phased in a miximum pad height of 1 inch, and substituted a prohibition on the use of pads that exceed 50 percent of the horse's natural foot length, or that fail to comply with other specified requirements. We prohibited packing materials between pad and hoof, except for certain approved materials, and expanded the restrictions on the use of weights on horses. We also amended the regulations to allow the use of plastic pliant pads on horses.

Additionally, in the July 28 interim rule, we reopened and extended the comment periods on the April 26 and May 2 interim rules, by inviting comments on those two interim rules for the duration of the comment period established for the July 28 interim rule. Comments on all three interim rules were required to be postmarked or received on or before October 31, 1988.

Shortly before the comment periods closed, we received a request to extend until November 22, 1988, the comment period on the July 28, 1988 interim rule (Docket No. 88–125). In response, we are extending the comment periods on Docket No. 88–052, Docket No. 88–079, and Docket No. 88–125, so that we may consider all written comments postmarked or received on or before November 22, 1988. This notice of extension of the comment periods is effective upon signature. This action will allow the requestor and all other interested persons additional time to prepare comments.

On October 24, 1988, we published in the **Federal Register** (53 FR 41561–41562, Docket No. 88–160) an interim rule that removed language—inadvertently retained in the July 28 interim rule—that would have terminated after October 31, 1988, provisions that prohibit heel buildup in excess of 1 inch on yearling horse. We indicated in the October 24 interim rule that comments on that rule are required to be postmarket or received on or before November 23, 1988. We are making no change to that November 23 deadline.

Done at Washington, DC, this 31 day of October, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–25558 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–AWA–52]

Establishment of Airport Radar Service Areas; Baton Rouge Metropolitan; Ryan Field, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the description of the Baton Rouge Metropolitan, Ryan Field, LA, Airport Radar Service Area (ARSA). An ARSA is operational only during the hours of operation of the control tower and associated radar approach control facility. Baton Rouge Tower and Approach Control Facility provide service only during a portion of the day. The description of these hours was inadvertently omitted from the ARSA description as published on June 28, 1988. This action corrects that description.

EFFECTIVE DATE: 0901 U.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Betty W. Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88–14547 was published on June 28, 1988, establishing the Baton Rouge Metropolitan, Ryan Field, LA, ARSA and two other ARSA's. The legal description of the Baton Rouge ARSA inadvertently omitted a narrative description of the limited hours of operation. An ARSA is operational only during the hours the control tower and approach control facility are operating. This action corrects that omission.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 88–14547, as published in the **Federal Register** on June 28, 1988 (53 FR 24406), is corrected as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Baton Rouge Metropolitan, Ryan Field, LA [Amended]

By adding the following words to the end of the description: "This airport radar service area is effective during the specific days and hours of operation of the Baton Rouge Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory."

Issued in Washington, DC, on October 26, 1988.

Sheldon Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–25517 Filed 11–3–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–ANM–12]

Alteration of Transition Area; Vernal, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adds 1,200 foot transition area at Vernal, Utah, to provide controlled airspace to encompass a new departure procedure for the Vernal Airport. This action does not change the existing 700 foot transition area.

EFFECTIVE DATE: 0901 U.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 88–ANM–12, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2536.

SUPPLEMENTAL INFORMATION:

History

On August 16, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to add 1,200 foot transition area in the vicinity of Vernal, Utah. (53 FR 31366). In that proposal one distance was stated as 14.5 nautical miles. All references should be statute miles, therefore, this rule corrects that oversight to 14.5 miles.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is intended to provide additional controlled airspace in the vicinity of Vernal, Utah. Additional controlled airspace is required to accommodate a new departure procedure for the Vernal Airport to protect aircraft climbing in the Vernal Very High Frequency Omnidirectional Range Station (VOR) holding pattern.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures 44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71181 is amended as follows:

Vernal, Utah (Revised)

That airspace extending upward from 700 feet above the surface within 9.5 miles northeast and 5 miles southwest of the Vernal VOR 157° and 337° radials, extending from 10 miles northwest to 18.5 miles southeast of the VOR; that airspace extending upward from 1,200 feet above the surface within 14.5 miles northeast and 9.5 miles southwest of the Vernal VOR 157° and 337° radials, extending from 13 miles northwest to 22 miles southeast of the VOR; excluding those portions within the VOR Federal airways.

Issued in Seattle, Washington, on October 9, 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88–22515 Filed 11–3–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–AWP–12]

Revision to VOR Federal Airways, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Cancellation of final rule before effective date.

SUMMARY: This action cancels Airspace Docket No. 88–AWP–12 which was published in the **Federal Register** on September 27, 1988, and was to be effective November 17, 1988. This docket was proposed in error and will be resubmitted at a later date.

EFFECTIVE DATE: 0901 UTC, September 27, 1988.

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FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

SUPPLEMENTARY INFORMATION:

History

On September 27, 1988, the FAA published a final rule which amended Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the description of several VOR Federal Airways in Hawaii (53 FR 37543). This docket was proposed in error and will be resubmitted at a later date.

Cancellation of the Final Rule

The final rule issued as Airspace Docket No. 88-AWP-12 and published in the Federal Register on September 27, 1988, (53 FR 37543), is hereby cancelled.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Los Angeles, California on October 24, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division.

[FR Doc. 88-25516 Filed 11-3-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 139

[Docket No. 24812; Amdt. 139-15]

Airport Certification; Extension of Certain Compliance Dates; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; extension of compliance dates; correction.

SUMMARY: FAA is correcting errors in Amendment Number 139-14, "Airport Certification; Extension of Certain Compliance Dates." In FR Doc. 88-23951, published Tuesday, October 18, 1988, on page 40842, please correct the amendment number "139-14 to read "139-15."

FOR FURTHER INFORMATION CONTACT: Mr. Jose Roman, Jr., Safety and Compliance Division (AAS-300), Office of Airport Standards, telephone (202) 267-8724.

Michael D. Triplett,

Docket Section, Program Management Staff, AGC-10.

[FR Doc. 88-25518 Filed 11-3-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

30 CFR Parts 56 and 57

Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and [redacted]metal Mines; Corrections

AGENCY: [redacted] Administration, Labor.

ACTION: Final rule; corrections.

SUMMARY: This notice corrects several typographical errors in the final rule for Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment which appeared in the Federal Register on August 25, 1988, (53 FR 32496).

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On August 25, 1988, the Mine Safety and Health Administration (MSHA) published a final rule to revise its safety standards for Loading, Hauling, and Dumping and Machinery and Equipment in Title 30 of the Code of Federal Regulations (53 FR 32496). This document corrects several typographical errors in this rule.

1. Page 32502, § 56/57.9306, first paragraph, 3rd line, after "and", remove "56/".

2. Page 32509, § 56/57.14107, last line of the first paragraph, remove "above" and add "away from".

3. Page 32513 middle column, last full paragraph, 6th line, "alarms" not "alrams".

4. Page 32518, Derivation Table, first column, under the heading "New No.", add "0" to "56/57.900" to read "56/57.9000".

5. Page 32518, middle column, Distribution Table, 5th line, remove "both" add "this", also, remove "s" on "rules".

6. Page 32518, Distribution Table, under the heading "New No."—

Add "& 56/57.14000" to "56/57.9000".

Remove "56/57.14108" and add "56/57.14109".

Remove "56/57.9302" add "56/57.14217".

Remove "56/57.14105" and add "56/57.14104".

Add "56/" before "57.9306; 57/9310; 57.9310; and 57.9312".

Add "56/" to "57.9101".

7. Remove duplicated material in lines "58-82", Old No. and New No., entries "56/57.9001-57.9115 in the Distribution Table.

8. Page 32519, first column, Old No. add "56/57" before ".14007"; in New No. column, add "56/57.14112". At the end of the table, add in Old No. column, "no existing standard", in New No. column, add "56/57.14131".

§ 56.14101 [Amended]

9. Page 32523, add "M-" before "2" and "1" each time it appears in the heading for Table 2.

§ 56.14115 [Amended]

10. Page 32524, § 56.14115, paragraph (a), add "degree sign" after "270".

§ 56.14130 [Amended]

11. Page 32523 § 56.14130, middle column, should read "(b)" not "(5)" in ROPS construction.

12. Page 32524, § 56.14130, paragraph (f)(2), last line should read "(b) and (h)", not "(b) and (c)".

§ 56.14206 [Amended]

13. Page 32525, § 56.14206, paragraph (b), add "shall" after "blades".

§ 57.14101 [Amended]

14. Page 32580, add "M-" before "2" and "1" each time it appears in the heading for Table 2.

§ 57.14114 [Amended]

15. Page 32531, § 57.14114, second line, change "value" to "valve". Also § 57.14115 in paragraph (a) third line, add "degree sign" after "270".

§ 57.14130 [Amended]

16. Page 32531, § 57.14130, paragraph (f)(2) [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION] should read "October 24, 1988". Also, next to last line of same paragraph, change "(c) to "(h).

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 31, 1988.

[FR Doc. 88-25477 Filed 11-3-88; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

RIN 2125-AB95

Hours of Service of Drivers; Technical Correction

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the paragraph designation for automatic on-board recording device under the "Definitions" section of the rule on hours of service of drivers which appeared in the Federal Register on September 30, 1988 (53 FR 38666).

EFFECTIVE DATE: September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Laska, (202) 366-1383.

The FHWA hereby amends 49 CFR Part 395 as set forth below:

PART 395—[AMENDED]

§ 395.2 [Amended]

In FR Doc. 88-22563, in the issue of Friday, September 30, 1988 on page 38670, in 49 CFR 395.2, paragraph (k) is redesignated as paragraph (i).

(23 U.S.C. 315; 49 CFR 1.48)

Issued on November 1, 1988.

Michael J. Laska,

Acting Chief Counsel, Federal Highway Administration.

[FR Doc. 88-25641 Filed 11-3-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The Fish and Wildlife Service is correcting errors in the rule prescribing the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons in 10 States, the merganser bag and possession limits in the Mississippi Flyway, and the rail season in Kansas, that appeared in the Federal Register on September 28, 1988 (53 FR 37944).

DATE: Effective on September 28, 1988.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Phone (202) 254-3207.

SUPPLEMENTARY INFORMATION: In the September 28, 1988, Federal Register (53 FR 37944) the Fish and Wildlife Service published a final rule prescribing the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons and certain other migratory bird seasons in the conterminous United States. The rule contained errors in the waterfowl season entries for Delaware, Florida, Georgia, New Jersey, North Carolina, South Carolina, Illinois, Minnesota, Kansas, and North Dakota, the merganser bag and possession limits for the Mississippi Flyway, and the sora and Virginia rail season in Kansas, which are discussed briefly below and corrected by this notice.

Public comment was received on proposed rules for the seasons and limits contemplated herein. These comments were addressed in the Federal Register dated August 12, 1988 (53 FR 30622), and September 16, 1988 (53 FR 36033). The corrections are typographical in nature and involve no change in substance in the contents of prior proposed and final rules.

PART 20—[AMENDED]

The following corrections are made in Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States published in the September 28, 1988, Federal Register (53 FR 37944).

§ 20.104 [Corrected]

1. On page 37947 the heading *Kansas* should be followed by "(11)."

2. On page 37948 footnote (11) is corrected to read "In New Mexico and Kansas the limits on sora and Virginia rails are 10 daily and 10 in possession."

3. On page 37949 under the heading *Delaware*, the season dates for Snow (including blue) for Bombay Hook National Wildlife Refuge of "Oct. 17-Oct. 29(9) and Oct. 17-Oct. 29(9)" are corrected to read "Oct. 17-Oct. 29(9) and Nov. 7-Nov. 18"; and Statewide of "Oct. 31-Nov. 5 and Nov. 7-Nov. 18 and Nov. 22-Jan. 31" are corrected to read "Oct. 31-Nov. 5 and Nov. 22-Jan. 31."

4. On page 37949 under the heading *Florida*, subheading Ducks is corrected to add Mergansers, with season dates same as for ducks, and bag and possession limits of 5 and 10, respectively.

5. On page 37949 under the heading *Georgia* the duck season dates of "Nov. 4-Nov. 7 and Dec. 4-Jan. 8" are corrected to read "Nov. 24-Nov. 27 and Dec. 14-Jan. 8."

6. On page 37950 under the heading *New Jersey*, the Gallinules and Moorhens season reads "closed" and is corrected to read "Sept. 1-Nov. 9" with bag and possession limits of 10 and 20, respectively.

7. On page 37951 under the heading *North Carolina*, the duck season dates of "Dec. 13-Jan. 15" are corrected to read "Dec. 15-Jan. 7." The sea ducks season dates of "Oct. 11-Jan. 14" are corrected to read "Oct. 1-Jan. 14." The brant season dates of "Oct. 12-Oct. 15 and Nov. 24-Nov. 26 and Dec. 16-Jan. 7" are corrected to read "Oct. 13-Oct. 15 and Nov. 24-Nov. 26 and Dec. 15-Jan. 7."

8. On page 37952 the first sentence of footnote (12) "In South Carolina see State regulations for further restrictions on black ducks and mottled ducks" is corrected to read "In South Carolina there will be no open season on black ducks or mottled ducks during the period Nov. 19-Nov. 26; during the period Dec. 17-Jan. 7 the daily bag limit may not include more than 1 female mallard or 1 black duck or 1 mottled duck."

9. On page 37952 under the heading *Mississippi Flyway*, subheading *Flywaywide Restrictions*, "The season dates for mergansers and coots are the same as for ducks in the following tables," should be corrected to add "The bag and possession limits for mergansers are 5 and 10, respectively, except for hooded mergansers the bag and possession limits are 1 and 2, respectively."

10. On page 37953 under the heading *Illinois*, the limit for Geese in the Central Zone's Tri-County Zone(1) the daily bag of "1" is corrected to read "2." Under subheading Limits include no more than: the Canada goose possession limit of "3" is corrected to read "4."

11. On page 37954 under the heading *Minnesota*, subheading Limits include no more than: the Pintails season dates of "Oct. 8-Oct. 14" are deleted and will run concurrent with the duck season; the repeat entry for "Pintails" following Redheads is deleted in its entirety.

12. On page 37956 under the heading *Kansas*, subheading Dark Geese(2) in the parentheses during the period Nov. 28-Jan. 8 the daily bag limit will be 1 Canada goose or 1 white-fronted goose; "is corrected to read" during the period Nov. 28-Jan. 8 the daily bag limit will be 1 Canada goose and 1 white-fronted goose; The season dates for Light geese in Unit 2 (remainder of State) of "Oct. 13-Dec. 4 and Dec. 17-Feb. 3" is corrected to read "Oct. 29-Dec. 4 and Dec. 17-Feb. 3."

13. On page 37957 under the heading *New Mexico*, season dates for Light geese in the Rio Grande Valley Unit of "Nov. 4-Feb. 28" are corrected to read "Nov. 14-Feb. 28."

14. On page 37957 under the heading *North Dakota*, season dates for ducks in the Low Plains Area of "Oct. 3-Nov. 13 and Nov. 19-Nov. 20" are corrected to read "Oct. 8-Nov. 13 and Nov. 19-Nov. 20."

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15. On page 37960 under the heading *Colorado* season dates for ducks of "Oct. 8–Oct. 14 and Nov. 14–Jan. 2" are corrected to read "Oct. 8–Oct. 14 and Nov. 12–Jan. 2."

16. On page 37964 under the heading *Central Flyway*, subheading New Mexico, the season dates for ducks of "Oct. 8–Jan. 15" are corrected to read "Ducks: North Zone Sept. 1–Dec. 16; and South Zone Nov. 9–Feb. 23."

17. On page 37964 under the heading *Pacific Flyway*, subheading New Mexico the season dates for ducks of "Oct. 8–Jan. 8" are corrected to read "Oct. 8–Jan. 22." The season dates for Snow, blue and Ross' geese of "Oct. 8–Jan. 8" are corrected to read "Oct. 8–Jan. 15."

For an additional correction of this document see the Corrections Section of this **Federal Register**.

Date: October 25, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife Parks.

[FR Doc. 88–25231 Filed 11–3–88; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 53, No. 214
Friday, November 4, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 34

[AMS–TB–88–018]

Amendment to Regulations for the Export Tobacco Seed and Plant Exportation Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule reduces the maximum quantity of tobacco seeds that may be exported pursuant to the Tobacco Seed and Plant Exportation Act which prohibits the exportation of any tobacco seed and live tobacco plants from the United States unless a written permit has been granted by the Secretary of Agriculture. Permits are issued by the Secretary only upon application containing satisfactory proof that the seeds or plants are to be used for experimental purposes only.

DATE: Comments are due on or before December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Larry L. Crabtree, Chief, Market Information and Program Analysis Branch, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20090–6456, (202) 447–3489.

SUPPLEMENTARY INFORMATION: The Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517) prohibits the exportation of any tobacco seed or live tobacco plants from the United States unless such exportation is in pursuance of a written permit granted by the Secretary of Agriculture. Permits are granted by the Secretary only upon written application containing satisfactory proof that the seeds or plants are to be used for experimental purposes only. The current regulations at 7 CFR 34.4(b) restrict the maximum quantity which may be exported to 14 grams or one-half ounce of seed and 500 live plants of any one variety with the exception of the species Nicotiana Rustica, which is not subject to the restrictions of the Act. The Department is amending these regulations to change the maximum permitted quantity of seed to one-half gram per variety. This reduction should pose no impediment to bonafide experimentation because one-half gram contains at least 5,000 individual seeds, which is an ample amount of seed for experimental purposes. In recent years the Department has not approved any permits in excess of one-half gram of seed. The Department believes that the proposed maximum quantity of seed better reflects the proper amounts of seeds that may be used in conducting agricultural experiments in the course of scientific research.

This proposed rule has been reviewed under U.S.D.A. procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule because it does not meet any of the criteria established for major rules under the executive order.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act, (5 U.S.C. 601 et seq.) full consideration has been given to the potential economic impact upon small entities.

The proposed rule would allow the exportation of a sufficient number of tobacco seeds for bonafide experimental purposes. The proposed change would in no way affect normal competition in the marketplace. The Administrator of the Agricultural Marketing Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 34

Permits, Seeds, Tobacco.

For the reasons set forth in the preamble, 7 CFR Part 34 is proposed to be amended as follows:

PART 34—TOBACCO SEED AND PLANT EXPORTATION ACT

1. The authority citation for 7 CFR Part 34 is revised to read as follows:

Authority: 7 U.S.C. 516–517.

2. Section 34.4(b) is revised to read as follows:

§ 34.4 Restriction upon issuance of permits.

* * * * *

(b) Quantities permitted to be exported will be restricted to not more than one-half gram or 500 live plants of any one variety, with the exception of the species Nicotiana Rustica, to which this restriction will not apply.

Dated: November 1, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–25625 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 948

[FV–88–134]

Irish Potatoes Grown in Colorado Area 2; Proposed Reduction in Minimum Size Requirement for Round Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reduce the minimum diameter for round potato varieties from 2⅛ inches to 2 inches in diameter. The size change would also apply to imported red-skinned round type potatoes. This action is expected to foster increased consumption and have a positive impact on the industry.

DATE: Comments must be received by November 21, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

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SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR Part 948), both as amended, regulating the handling of Irish potatoes grown in designated counties of Colorado Area No. 2. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. Also, there are about 20 potato importers subject to the requirements of the potato import regulation. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes and importers of potatoes may be classified as small entities.

The San Luis Valley Potato Administrative Committee Area 2 estimated that shipments during the 1987–88 season totaled 29,252 loads at about 480 hundredweight (cwt.) per load. Of the total, 97 percent or 13,686,191 cwt., entered the fresh market and two percent (315,857 cwt.) was shipped to processors. Culls approximated 1.4 million cwt., which were utilized for starch.

The breakdown of fresh shipments by variety was 69.2 percent Centennial Russets (9,469,033 cwt.), 23.9 percent Russet Burbanks (3,268,607 cwt.), 6.7 percent reds (927,231 cwt.), and 0.2 percent other varieties (21,318 cwt.).

One percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 63 percent U.S. No. 1, 21 percent U.S. Commercial, 13 percent U.S. No. 2, and two percent U.S. No. 1/ Size B.

The handling requiremetns for fresh market shipments of Colorado Area 2 potatoes are specified in § 948.386 [53 FR 8145, March 14, 1988] and, with the exception of the maturity requirements, are in effect all year long. The current minimum grade, size, and maturity requirements require that fresh potates be shipped under the following conditions. Round variety potatoes must grade at least U.S. No. 2 and be at least 2⅛ inches in diameter. Russet Burbank potatoes must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All other long varieties must be U.S. No. 2 or better grade and 2 inches minimum diameter or 4 ounces minimum weight. All varieties of potatoes may be Size B if they otherwise grade U.S. No. 1. Size B potatoes have a minimum diameter of 1½ inches and maximum diameter of 2¼ inches. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period August 25 through October 31 specify that potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

This proposed rule would reduce the minimum size requirement for round potato varieties from 2⅛ to 2 inches in diameter. This change was recommended by a vote of 10 to two by the San Luis Valley Potato Administrative Committee Area 2 at its August 18 meeting.

The minimum size requirement for round potato varieties was 2 inches in diameter for many years. During the 1987–88 marketing season, the minimum size requirement was increased to 2⅛ inches in diameter. This change was intended to upgrade the pack and thereby foster increased consumption and have a positive impact on the industry. However, this size increase did not satisfy consumer preferences and proved unsatisfactory in the marketplace.

Consumer demand has increased for small round potato varieties. Virtually all round potatoes grown in Colorado's San Luis Valley are red-skinned. Such potatoes typically account for about 6.5 percent of San Luis Valley's total crop. Centennial Russets and Russet Burbanks (long white varieties) are the other dominant varieties. There are minimal shipments of round white potatoes from this area.

The committee concluded the proposed change in the minimum size requirement for round potato varieties would provide handlers the opportunity to ship smaller round potatoes (primarily red skinned) without adversely affecting the market for larger potatoes.

Quality assurance is very important to the Colorado (Area 2) potato industry both within and outside of the State. Providing the public with quality potatoes which are appealing and responsive to consumer trends is necessary in order to maintain market share. This action is expected to foster increased consumption and benefit Colorado Area 2 potato growers and handlers.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for the particular area.

In the case of potatoes, the current import regulation (7 CFR 980.1, 37 FR 8059, April 25, 1972) specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (7 CFR Part 945) during each month of the marketing year. The import requirements for round white types are based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31 (7 CFR Part 953), and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year (7 CFR Part 948).

The quality standards imposed upon imports of red skinned, round type potatoes are based on that type grown in Washington during the months of July and August (7 CFR Part 948). During the remainder of the year, the import requirements are based upon those in effect for potatoes grown in Colorado Area 2 [7 CFR Part 948).

Because this proposed rule would reduce the minimum size requirement for round potato varieties, and virtually all round potatoes grown in Area No. 2 red skinned, this change would be applicable to imports of red-skinned round type potatoes from September 1 to June 30 each season.

No change would be required in the language of § 980.1 or § 948.386(h) Applicability to Imports.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 15 days is deemed appropriate because the shipping season for Colorado Area 2 potatoes has begun, and it is important that any change resulting from this rulemaking be in effect as soon as possible to be of maximum benefit to producers and handlers of potatoes in the production area. Producers and handlers are already aware of the recommended change which would relax current handling requirements.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 948.386 is amended by revising paragraph (a)(1) to read as follows:

§ 948.386 Handling regulation.

* * * * *

(a) *Minimum grade and size requirements.*—(1) Round varieties, U.S. No. 2, or better grade, 2 inches minimum diameter.

* * * * *

Dated: November 1, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–25626 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1106

[DA–88–001]

Milk in the Southwest Plains Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal for the months of November 1988 through August 1989 that would suspend the shipping standards for supply plants under the Southwest Plains order. The action was requested by Kraft, Inc., Associated Milk Porducers, Inc., and Mid-America Dairymen, Inc. The proponents contend that the action is necessary to eliminate costly and inefficient movements of milk from supply plants that would have to be made to assure the continued pricing and pooling of milk of producers who have historically supplied the market's fluid milk needs.

DATE: Comments are due on or before November 14, 1988.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Soutwest Plains marketing area is being considered for the months of November 1988 through August 1989.

1. In § 1106.6, the words "during the month".

1. In § 1106.7(b)(1), the words "of February" and the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include November in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposal for November 1988 through August 1989 would suspend the shipping standards for supply plants that were previously associated with the market. The order defines a supply plant as a plant from which fluid milk products are transferred or diverted to distributing plants during the month. It further provides that in order to be pooled under the order during the months of September through January, 50 percent of a supply plant's receipts must be shipped to distributing plants each month. Also, a supply plant that was pooled during each of the immediately preceding months of September through Janaury shall continue to be pooled during the following months of February through August if 20 percent of its receipts are shipped to distributing plants. The requested action would remove all shipping standards for supply plants during the months of November 1988

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through August 1989 that were pooled under the order during the immediately preceding September through Janaury period.

The suspension was requested by Kraft, Inc., a handler who operates a supply plant that is pooled under the order. The proposed action is supported by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial number of producers who supply the market. The organizations contend that there are ample supplies of direct-ship milk located near to distributing plants that are available to supply the fluid milk needs of such plants during the months of November 1988 through August 1989. Thus, the organizations contend that supplemental shipments from supply plants will not be needed during such months. The organizations contend that in the absence of a suspension action, costly and inefficient movements of milk from supply plants would have to be made to assure the continued pooling of milk of dairy farmers who have historically supplied the market's fluid milk needs.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on October 31, 1988.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 88–25530 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1709

Rural Development

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule: extension of comment period.

SUMMARY: The Rural Electrification Administration (REA) proposes to extend the period to comment on a proposed rule that adds a new Part 1709, Rural Development, and adds a new Subpart B, Rural Economic Development Loan and Grant Program. The proposed rule appeared in the **Federal Register** on October 27, 1988, starting on page 43442.

DATE: Public comments concerning this proposed rule must be received by REA no later than December 28, 1988.

ADDRESS: Comments may be mailed to Blaine Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4083—South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected in Room 4083 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Blaine Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4083—South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9552.

Dated: October 31, 1988.

Jack Van Mark,

Acting Administrator.

[FR Doc. 88–25557 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–15–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21 and 50

Criteria And Procedures for the Reporting of Defects

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations on the reporting of safety defects. The proposed revisions are a result of the Commission efforts to apply the experience gained as a result of the Three Mile Island accident and also reflect Commission experience to date with the existing regulations. The proposed amendments would be applicable to Commission licensees, and to nonlicensees who construct facilities for, or supply components to facilities or activities licensed by the Commission. the amendments would eliminate duplicative reporting of defects, clarify the criteria for reporting defects, and would establish uniform time periods for reporting and uniform requirements for the content of reports of defects.

DATES: Submit comments by January 3, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, MD 20852 between 7:30 a.m. and 4:15 p.m. Federal workdays. Copies of comments received and the regulatory analysis may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: W.R. Jones, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–4442.

SUPPLEMENTARY INFORMATION:

Background

Existing Commission regulations contain several safety deficiency reporting requirements applicable to the construction and operation of nuclear power plants:

—10 CFR Part 21 applies to all NRC licensees, as well as nonlicensees who construct facilities for or supply components to these licensees, and requires the reporting of defects that could create a "substantial safety hazard," as defined in regulations.

—10 CFR 50.55(e) applies solely to the holders of construction permits and currently requires the reporting of "significant deviations" or "significant deficiencies" which could adversely affect safety.

—10 CFR 50.72 and 50.73 establish reporting system that applies uniformly to all operating nuclear power plants. These regulations require the licensee to make prompt telephone notification to NRC and to submit a written report for each significant operating event or adverse plant condition. Section 50.73 replaced previous Licensee Event Report (LER) requirements in § 50.36.

—10 CFR 73.71(c) applies to licensees and establishes a reporting system for security failure, degradations, or discovered vulnerability in a safeguard systems. As stated in § 73.71(c), a report under § 73.71(c) satisfies reporting requirements in both § 50.72 and 10 CFR Part 21.

Task II J.4 of the TMI Action Plan directed the NRC staff to evaluate and revise, if necessary, the existing requirements of 10 CFR Part 21 and § 50.55(e) to ensure prompt and comprehensive reporting. Over several years, the need for revision of these regulations has become apparent. Accordingly, based upon the staff experience with Part 21 and § 50.55(e), the proposed revision would:

1. Eliminate duplicative evaluation and reporting;

2. More clearly and uniformly define the defects that need to be reported under § 50.55(e);

3. Establish consistent time limits for reporting;

4. Establish a time limit for transfer of information to end users when a substantial safety hazard determination is not possible;

5. Establish a uniform content for reporting for § 50.55(e) and Part 21; and

6. Make other more minor changes detailed below.

These revisions will reduce the amount of time and effort expended by industry in complying with existing reporting and evaluation requirements while still ensuring that safety deficiencies are identified and evaluated in a timely manner. The proposed revision is aimed at improving the evaluation and reporting of safety defects from the nuclear industry.

Part 21

Part 21 was intended to implement section 206 of the Energy Reorganization Act of 1974 (42 U.S.C. 5846). Section 206 requires directors and responsible officers of firms constructing, owning, operating, or supplying the components of any facility or activity licensed under the Atomic Energy Act to report to the Commission the discovery of "defects" in "basic components" that could create a "substantial safety hazard." The purpose of section 206 was to ensure that the Commission has prompt information concerning safety defects. In addition to imposing obligations on the directors and responsible officers of NRC licensees, section 206 also imposes obligations on the directors and responsible officers of nonlicensees that construct facilities for or supply components to licensed facilities or activities. Any individual officer or director who knowingly fails to comply with the notification requirements is subject to civil penalties.

On March 3, 1975, the NRC published a proposed rule designed to implement Section 206 (40 FR 8832), and on June 6, 1977, issued the final rule, adding Part 21 to the Commission's regulations (42 FR 28893).

The regulations in 10 CFR Part 21 impose reporting requirements on directors and responsible officers of firms constructing, owning, operating, or supplying components for any facility or activity licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended. Part 21 was amended on October 19, 1978 (43 FR 48721) to exempt "commercial grade items" from Part 21 until the items were "dedicated" for use as a basic component for a nuclear facility.

Approximately 12,000 organizations, licensees, and nonlicensees, are under the scope of Part 21 reporting requirements. Licensees include those granted licenses under the following parts: production and utilization facility licenses issued under 10 CFR Part 50, including nuclear power plants and research and test reactors at various stages in the licensing process; byproduct material licenses issued under Parts 30 through 35; source material licenses issued under Part 40; high-level radioactive waste disposal issued under Part 60; land disposal of radioactive waste issued under Part 61; special nuclear materials licenses issued under Part 70; the packaging of radioactive materials for transport under Part 71; and spent fuel storage under Part 72.

The nonlicensee suppliers covered under Part 21 are firms of many different sizes, supplying many different types of basic components and services to NRC licensees. For example, construction and operation of a nuclear power plant involves a many-level procurement chain. At the top of the chain is the electrical utility and the utility's major contractors such as the nuclear steam system supplier. The next level includes manufacturers who produce components specifically designed for nuclear use such as instrumentation, controls, major piping, pumps, and valves. These manufacturers in turn procure necessary parts, such as resistors, wiring, solid-state devices, and other hardware, from a multitude of sources. For nuclear power reactors, Part 21 applies to all tiers of the supply chain to all activities which could create a substantial safety hazard. Approximately 300 reports are submitted to the NRC annually under Part 21. These reports of potential safety problems have resulted in generic communications such as NRC bulletins, generic letters, and information notices, and have contributed to the overall improved safety of the nuclear industry.

Section 50.55(e)

Section 50.55(e) of 10 CFR Part 50, originally published as a final rule on March 30, 1972 (37 FR 6459), establishes requirements for reporting deficiencies occurring during the design and construction of nuclear power plants. The rule was designed to enable the NRC to receive prompt notification of deficiencies and to have timely information on which to base an evaluation of the potential safety consequences of the deficiency and detemine if further regulatory action is required. Therefore, the holder of a permit for the construction of a nuclear power plant is required to notify the Commission of each significant deficiency found in the processes of design and construction, which if it were to have remained uncorrected, could have adversely affected the safety of operations of the nuclear power plant at any time throughout the expected lifetime of the plant.

Approximately 900 reports are submitted to the NRC annually under § 50.55(e). As with Part 21, these § 50.55(e) reports have formed the basis for generic communications such as NRC bulletins, generic letters, and information notices and have also contributed to the overall improved safety of the nuclear industry.

The Proposed Action

1. *Eliminating Duplicative Evaluation and Reporting Requirements.* As stated above, Commission regulations contain several safety deficiency reporting requirements. Although distinctions exist between these requirements, staff experience indicates a need to eliminate duplication in reporting or evaluation among Part 21, § 50.55(e), and § 50.73. A number of instances have occurred where the same deficiency in a component was evaluated and reported by two different organizations, one attempting to satisfy the criteria of Part 21, and the other attempting to meet the differently worded criteria of § 50.55(e). The fact that the reporting criteria are different for each requirement and the lack of any explicit framework in the regulations to preclude duplicative reporting have led to duplication of both licensee and NRC staff effort.

The proposed revision to § 21.2 would relieve holders of construction permits under § 50.23 from their Part 21 evaluation, notification, and reporting responsibilities if they report a defect under § 50.55(e). The proposed revision to § 50.55(e) establishes the applicable evaluation and reporting procedures, as well as recordkeeping requirements, for construction permit holders. Compliance with these §50.55(e) requirements would be deemed to satisfy the corresponding requirements of Part 21.

In order to make the reporting of defects found during construction consistent for all production or utilization facilities, the scope of § 50.55(e), which formerly covered only the construction of nuclear power plants, is being expanded to include all construction permits issued under § 50.23. Thus, the reporting of defects found during construction at these facilities would be shifted from 10 CFR Part 21 to § 50.55(e). These facilities were previously covered by Part 21. Thus, no increase in reporting

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requirement is being imposed on these facilities.

Likewise, proposed § 21.2 would explicitly relieve the officers and directors of the holders of operating licenses under Part 50 from the Part 21 evaluation, notification, and reporting requirements because defects will be reported by holders of operating licenses under § 50.73 or § 73.71. The reporting procedures and recordkeeping requirements currently in § 50.73, would be deemed to satisfy the corresponding requirements of Part 21.

Thus, the defect reporting requirements of section 206 of the Energy Reorganization Act would be met by Part 50 licensees by reporting under either § 50.55(e) or § 50.73, as appropriate. However, responsible officers and directors of a Part 50 licensee would still be subject to the civil penalty provisions of section 206(b) of the Energy Reorganization Act as set forth in § 21.61 for the failure to notify the NRC of a defect.

In addition, proposed revisions to § 21.21 would relieve vendors subject to the reporting requirements of Part 21 from reporting to the Commission under Part 21 if a defect has been previously reported under §§ 50.55(e), 50.73, or 73.71. That is, in proposed § 21.21(b)(2), for any defect identified, evaluated, and reported by a CP or OL holder pursuant to §§ 50.55(e), 50.73, or 73.71, the related vendor would not be required to provide a report.

Proposed § 50.55(e)(8) will relieve the holders of construction permits under Part 50 from reporting a defect if it has previously been reported under Part 21.

The NRC staff will continue to evaluate notifications made to NRC under Part 21, §§ 50.55(e), 50.72, 50.73 or 73.71. Where necessary, NRC staff will contact the licensee and appropriate vendor to obtain additional information. Additional vendor information obtained by NRC direct contact under the proposed amendment to § 21.21(c) would consist of information on additional locations of basic components containing the defect, corrective actions required, and advice provided to recipients of the basic components. Based on this information, the staff will then determine appropriate regulatory action. For cases in which the vendor notifies NRC and has not notified licensee purchasers, NRC would evaluate the need to notify licensees based on safety significance of the defect or noncompliance. Where warranted, NRC would notify the appropriate licensees, either directly or via a generic communication such as an Information Notice, of the existence of such a defect. NRC staff will evaluate the need to notify vendors of a licensee notification, where warranted by the safety significance and generic aspects of the defect or noncompliance, in order that vendors are aware of the existence of a defect.

Relief for holders of operating licenses from reporting under § 50.73 similar to that in proposed § 50.55(e) outlined above will be implemented in the near future. However, the original intent of NRC defect reporting requirements was that reporting under only one of the requirements would satisfy the other requirements. Additionally, it should be noted that staff experience with reporting under § 50.73 indicates that there is minimal duplication between this section and Part 21 and § 50.55(e). The staff is currently reviewing the reporting experience with § 50.73 since it became effective in January 1984. Changes may be required as a result of this review and this issue will be addressed at that time.

The intent of these revisions is to establish the filing of one report by a vendor, operating license holder, or construction permit holder for each separate defect, with the reporting obligation resting on the entity that discovers the defect. It is intended that § 50.55(e) will be exclusively used for the reporting of defects discovered by construction permit holders (or referred to them by a vendor who is unable to evaluate the defect); and § 50.73 will be exclusively used for the reporting of defects discovered by the holders of operating licensees (or referred to them by a vendor who cannot evaluate the defect). Part 21 will be exclusively used for reporting defects discovered by materials licenses covered under Parts 30, 31, 34, 35, 40, 60, 61, 70, 71, 72; Part 50 licensees other than nuclear power plant licensees and holders of construction permits; and vendors involved in constructing or supplying components for any facility or activity licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended.

In order to facilitate the elimination of duplicate reporting, the proposed revision also establishes § 50.55(e) content similar to that contained in 10 CFR Part 21. It is anticipated that this proposed revision will significantly reduce the reporting burdens on the regulated industry, as well as improve the Commission staff evaluation of these reports, without any loss of relevant safety information.

In addition to the reporting of defects in basic components, Part 21 also requires the reporting of failures to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission related to a substantial safety hazard. To further make reporting more consistent, holders of construction permits would notify the Commission of failures to comply under § 50.55(e) instead of Part 21 under the proposed amendments.

2. *Defining Defects To Be Reported.* Section 206 of the Energy Reorganization Act requires the reporting of "defects which could create a substantial safety hazard." Existing § 21.3(k) defines substantial safety hazard as "a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity licensed, other than for export, pursuant to Parts 30, 40, 50, 60, 61, 70, 71, or 72." In addition, the supplementary information for the original Part 21 final rulemaking, June 6, 1977 (42 FR 2889), contained the following guidance on what constitutes a "substantial safety hazard":

—Moderate exposure to, or release of, licensed material, or
—Major degradation of essential safety-related equipment, or
—Major deficiencies involving design, construction, inspection, test, or use.

Existing § 50.55(e) requires the reporting of deficiencies in design and construction which could adversely affect the safety of operations of a nuclear power plant and which represent the following:

—A significant breakdown in any portion of the quality assurance program, or
—A significant deficiency in a final design, or
—A significant deficiency in the construction of, or significant damage to a structure, system, or component requiring corrective action involving extensive effort, or
—A significant deviation from performance specifications requiring corrective action involving extensive effort.

NRC experience with § 50.55(e) reports has indicated that clarification of the type of deviation that is required to be reported would be advantageous. Accordingly, the reporting criteria in proposed § 50.55(e) are the same as those contained in § 21.3.

This increase in the reporting threshold to all construction permit holders will allow the Commission to obtain the proper level of reporting with no loss of significant safety information, i.e., the proposed amendment raising the § 50.55(e) threshold will facilitate eliminating duplicative reporting by making the definition of defects reported under § 50.55(e) identical to those reported under Part 21. This elimination of duplication will be accomplished with no loss in critical safety information and will reduce unnecessary industry burden.

It should be pointed out that a slight difference exists between the current definition of "deviation" in Part 21 and that in the proposed § 50.55(e). In the current Part 21, "procurement documents" are specifically referred to as determining the requirements of a basic component. However, in § 50.55(e), procurement documents are not mentioned as determining these requirements. The basis for this difference is that in applying § 50.55(e), basic components will have requirements imposed on them not only by their procurement documents, but other licensee documents. In the case of Part 21, application of the regulation to vendors will require the use of procurement documents to determine the requirements which the purchaser placed on the basic component.

3. *Establishing Uniform Time Limits for Reporting.* In the current Part 21, submittal of the required written report within the five day time limit has been difficult to accomplish. In addition, the incremental information available during the subsequent 3 day interval following the initial report does not provide a meaningful addition to the information already available to the Commission. The proposed extension to 30 days for the time limit for submittal of the written followup report would allow submittal of a complete report. Also, addition of time limits for evaluation of defects will further ensure that the staff is informed regarding significant safety hazards. Thus, the proposed rule would change the time limit for submission of the required followup written report from five days to 30 days.

As outlined above, the proposed amendments would establish uniform reporting deadlines for Part 21 and § 50.55(e). Initial notification to the NRC is required within two days of identification of a defect. A difference exists between this requirement and § 50.72 where initial reporting of events or conditions is required within one to four hours depending on the event or condition. The staff believes this difference is justifiable in that § 50.72 reports involve problems at operating facilities for which remedial actions may be needed very quickly. Rapid notification is required because the NRC has a responsibility to respond rapidly to protect the health and safety of the public when there is an event or condition that could pose a potential threat of a release of radiation above normal operating levels.

Part 21 reports by vendors and § 50.55(e) reports by construction permit holders, on the other hand, involve reporting of defects which could create a substantial safety hazard if a specific event or failure should occur. Although Part 21 and § 50.55(e) reports may involve generic substantial safety hazards, the relative risk of potential failures is less than the risks of failures evidenced by actual events or conditions of plants having operating licenses. Finally, the reporting experience with §§ 50.72 and 50.73 versus Part 21 and § 50.55(e) indicates that more issues which directly affect the health and safety of the public are discovered from analyses of operating reactor events than from Part 21 and § 50.55(e) reports. Accordingly, the staff has proposed a two-day initial reporting time limit for Part 21 and § 50.55(e) as an adequate means for providing sufficient warning of potential safety problems.

4. *Establishing Time Limit for Transfer of Information.* Currently, Part 21 (§ 21.21(a)(1)(ii)) does not explicitly address time limits for transfer of information in situations for which vendors or other suppliers of components are unable to evaluate whether deficiencies could create substantial safety hazards. This inability to evaluate may be due to the vendor's or supplier's lack of knowledge of how the component is utilized by the end user or for other reasons. The proposed change to Part 21 would explicitly add a time limit provision to correct this problem. The proposal would require that if, during the evaluation period, the entity which discovers a deviation that could potentially create a substantial safety hazard determines that it is unable, due to insufficient information or other reasons, to evaluate the deficiency, then that entity must notify the purchasers of the "basic component" within five days of this determination.

5. *Reporting Content.* Proposed revisions to § 50.55(e)(6) would require the content of the information reported under § 50.55(e) to be consistent with that required by § 21.21(b)(3). These revisions will ensure that the Commission obtains all the information necessary to evaluate and take corrective action, in reference to a particular defect.

6. *Other Changes.* In addition to these major revisions, minor changes are being proposed to improve the overall quality and coherence of Part 21 and § 50.55(e).

(a) The proposed revision to § 50.55(e) would extend the period for notification of the Commission from one day to two days. In Petition for Rulemaking (PRM) 50–36, filed by the Nuclear Utility Backfitting and Reform Group (48 FR 28282), dated April 20, 1983, petitioners propose revising 10 CFR 50.55(e) reporting requirements to delete the 24 hour initial report entirely (Issue III). Alternatively, the petition recommends adoption of a deadline of five days for an initial report. This proposed rulemaking extends the initial reporting deadline under § 50.55(e) from 24 to 48 hours. The staff believes that the proposed two-day requirement will provide industry with more flexibility while still allowing sufficient warning of safety problems and is consistent with the objective of establishing uniform reporting criteria. The staff agrees that the current § 50.55(e) initial reporting requirement may be restrictive; however, the five-day recommendation proposed by PRM–50–36 is believed to be too long considering staff's need to be provided with early notification of potentially generic conditions at construction permit facilities which could affect operating facilities. This time limit will be consistent with the current Part 21 time limit. Accordingly, the proposed two-day versus 24-hour current reporting requirement addresses and resolves Issue III of PRM 50–36.

(b) Proposed § 50.55(e)(7) and revisions to § 21.51 clarify the specific records that must be maintained and their retention period to ensure compliance. Retention of procurement documents would be retained either by the vendor or the purchaser of the basic component. The vendor would be required to retain a list of the purchasers of the basic component.

(c) For consistency with §§ 50.55(e) and 50.73, Part 21 would be changed to direct correspondence to the Document Control Desk with appropriate copies to regional and headquarters offices. Also, telephone communication has been specifically directed to the NRC Operations Center.

(d) Current § 21.3(a)(3), which clarifies items which are to be considered as "basic components," includes:

"design, inspection, testing, or consulting services important to safety."

That subsection is being modified to further clarify what are intended to be significant items. The proposed subsection would be revised to include:

"safety related design, analysis, inspection, testing, quality assurance, fabrication, training, maintenance, replacement parts, or consulting services that are associated with the

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basic component hardware whether these services are performed by the component supplier or others."

Also, it should be noted that, as stated in the current definition of basic component in § 21.3(a)(1), "systems" are properly considered as "basic components." These would include but not be limited to such "systems" as security and fire protection systems among other systems which can affect the safety of the facility. As an example, for power reactors, the rationale is that a defect or noncompliance in the security system is one which could allow access of an unauthorized individual into a vital area without being detected by the security system. The staff's view is that this represents a major reduction in the degree of protection afforded the health and safety of the public and is, therefore, a substantial safety hazard and would require notification.

These clarifications are consistent with current NRC practice and previous guidance provided in both NUREG 0302, Rev. 1; Remarks Presented at Public Regional Meetings to Discuss Regulations (10 CFR 21) for Reporting of Defects and Noncompliance, October, 1977; and in NRC Office of Inspection and Enforcement Information Notice 85–101; Applicability of 10 CFR 21 to Consulting Firms Providing Training.

(e) Section 21.2, which sets forth the scope of Part 21 coverage has been revised to include Part 60 facilities.

The existing rule already applies to Part 60 licensees (as an entity licensed to possess, use, and/or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel) and to those entities that supply basic components for an activity licensed under Part 60. The proposed extension of Part 21 to organizations *that construct* geologic repositories would complete the Part 21 coverage by extending it to all the major activities or facilities licensed by the Commission.

Timeliness of Evaluations

Under existing § 21.21(b)(2), the initial notification of a defect must be made to the NRC within *two days* of the time a director or responsible officer obtains information on the existence of a reportable defect. However, the existing rule is silent concerning the time period between the discovery of a potential defect and the time when an evaluation of the potential defect should be completed and the NRC notified. Similarly, no deadline is established for when the director or responsible officer must be informed of a potentially reportable defect. The Commission is aware of a number of cases where an inordinate length of time passed between the initial discovery of a potential defect and when the Commission was informed. While no amendment is being proposed to set a time limit for evaluation of deviations, and informing directors or responsible corporate officers, and the NRC, in general, under most circumstances, 30 days is believed to be a reasonable time to evaluate deviations to determine if reportable defects exist. Should a more lengthy evaluation be required, it may indicate the need to report the potential defect.

Existing 10 CFR 50.55(e) (2) and (3) establish time frames only for the reporting of defects. Proposed § 50.55(e) would also require the holder of a construction permit to evaluate deviation within 30 days and extend initial notification of the Commission from 24 from hours to two days. The extension of the initial notification time from 24 hours to 2 days in proposed 10 CFR 50.55(e), provides the industry with more flexibility, while still allowing sufficient warning of potential safety problems. The use of the same initial notification period for both 10 CFR Part 21 and 10 CFR 50.55(e) is consistent with the objective of establishing uniform reporting time frames.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis of the proposed regulation. The analysis identifies and examines the costs and benefits of the proposed regulation and its alternatives. The draft analysis is avaiable for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusions 10 CFR 50.22(c) (1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

Public reporting burden for this collection of information is estimated to average 167 hours per 10 CFR Part 21 response and 28 hours per § 50.55(e) response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestion for reducing this burden to Records and Reports Management Branch, Division of Information Support Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Office of information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed revision to § 50.55(e) applies solely to the holders of construction permits issued under 10 CFR 50.23, none of which can be considered small entities. Although the proposed revision to Part 21 could potentially affect a substantial number of small entities (See NRC size standards published December 9, 1985, 50 FR 50241) who supply components to NRC licensees, the economic impact on these firms is expected to be slight. Approximately 80 percent of the 300 annual nuclear-power-plant-related Part 21 reports have in the past been submitted by licensees; the remaining 20 percent have been submitted by nonlicensed suppliers and vendors. Proposed § 21.2 eliminates duplicative reporting for those organizations subject to the defect reporting requirements, and therefore should reduce the economic impact on these organizations, including small businesses.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The size of their business and how the proposed regulations would result in significant economic burden upon them as compared to larger organizations in the same business community.

(b) How the proposed regulations could be modified to take into account their differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups.

(e) How the propose regulations, as modified, would still adequately protect the public health and safety.

The comments may be submitted to the NRC as indicated under the ADDRESSES heading.

Backfit Analysis

The Commissions has determined that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 21 and 50.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under Secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2242 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 21.6, 21.21(a) and 21.31 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 21.21, 21.41 and 21.51 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 21.2 is revised to read as follows:

§ 21.2 Scope.

(a) The regulations in this part apply, except as specifically provided otherwise in Parts 31, 34, 35, 39, 40, 60, 61, 70, or 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the regulations in this chapter to possess, use, or transfer within the United States source material, byproduct material, special nuclear material, or spent fuel, or to construct, manufacture, possess, own, operate or transfer within the United States, any production or utilization facility or independent spent fuel storage installation, or a geologic repository for the disposal of high-level radioactive waste under Part 60 of this chapter; and to each director and responsible officer of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization, that constructs a production or utilization facility licensed for manufacture, construction, or operation pursuant to Part 50 of this chapter or an independent spent fuel storage installation for the storage of spent fuel licensed pursuant to Part 72 of this chapter, or a geologic repository for the disposal of high-level radioactive waste under Part 60 of this chapter; or who supplies basic components for a facility or activity licensed, other than for export, under Parts 30, 40, 50, 60, 61, 70, 71 or 72 of this chapter.

(b) For persons licensed to construct a facility under a construction permit issued under § 50.23 of this chapter, reporting defects under § 50.55(e) of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects under this part and the responsibility of individual directors and responsible officers of such licensees to report defects under Section 206 of the Energy Reorganization Act of 1974.

(c) For persons licensed to operate a nuclear power plant under Part 50 of this chapter, reporting defects under § 50.73 or § 73.71 of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects under this part and the responsibility of individual directors and responsible officers of such licensees to report defects under Section 206 of the Energy Reorganization Act of 1974.

(d) Nothing in these regulations should be deemed to preclude either an individual, a manufacturer, or a supplier of a commercial grade item (see § 21.3(a–1)) not subject to the regulations in this part from reporting to the Commission a known or suspected defect or failure to comply and, as authorized by law, the identity of anyone so reporting will be withheld from disclosure.

(e) NRC regional offices and headquarters will accept collect telephone calls from individuals who wish to speak to NRC representatives concerning nuclear safety-related problems. The location and telephone numbers of the five regions (answered during regular working hours), are listed in Appendix D to Part 20 of this chapter. The telephone number of the NRC Operations Center (answered 24 hours a day—including holidays) is (202) 951–0550.

3. In § 21.3 paragraphs (a)(3), (c) and (h) are revised to read as follows:

§ 21.3 Definitions.

* * * * *

(a) * * *

(3) In all cases, "basic component" includes safety related design, analysis, inspection, testing, quality assurance, fabrication, training, maintenance, replacement parts, or consulting services that are associated with the component hardware whether these services are performed by the component supplier or others.

* * * * *

(c) "Constructing" or "construction" means the design, manufacture, fabrication, placement, erection, installation, modification, inspection, or testing of a facility or activity which is subject to the regulations in this part and consulting services related to the facility or activity that are safety related.

* * * * *

(h) "Operating" or "operation" means the operation of a facility or the conduct of a licensed activity which is subject to the regulations in this part and consulting services related to operations that are safety related.

* * * * *

4. Section 21.5 is revised to read as follows:

§ 21.5 Communications.

Except where otherwise specified in this part, all written communications and reports concerning the regulations in this part should be addressed to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Additionally, if the communication is related to a nuclear power reactor, non-power reactor, or other utilization facility licensed under Part 50, a copy shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If the communication is related to an activity licensed under Part 50 such as a fuel reprocessing plant or other production facility, a copy of the communication shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington,

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DC 20555. A copy of communications related to activities licensed under Parts 30, 31, 34, 35, 40, 60, 61, 70, 71, or 72 must be sent to the Director, Office of Nuclear Material Safety and Safeguards. In the case of a licensee, a copy shall also be sent to the appropriate Regional Administrator at the address specified in Appendix D to Part 20 of this chapter.

5. In § 21.21, paragraphs (b)(2) through (b)(4) are redesignated (b)(3) through (b)(5); new paragraph (b)(2) is added; and the section heading and paragraphs (a), (b)(1), (b)(3) and (c) are revised to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect and its evaluation

(a) Each individual, corporation, partnership, or other entity subject to the regulations in this part shall adopt appropriate procedures to—

(1) Evaluate deviations to identify defects as soon as practicable. If, during the evaluation period, the organization discovering the deviation determines that it does not have the capability to perform the evaluation, the organization shall notify the purchasers or affected licensees within five working days of this determination so that the purchasers or affected licensees may evaluate the deviation, pursuant to the applicable reporting regulation, and

(2) Ensure that a director or responsible officer is informed as soon as practicable, if the construction or operation of a facility or activity, or a basic component supplied for such facility or activity—

(i) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard, or

(ii) Contains a defect.

(b)(1) A director or responsible officer subject to the regulations of this part or a person designated under § 21.21(b)(5) shall notify the Commission when he or she obtains information reasonably indicating a failure to comply or a defect affecting—

(i) The construction or operation of a facility or an activity within the United States that is subject to the licensing requirements under Parts 30, 40, 50, 60, 61, 70, 71, or 72 of this chapter and that is within his or her organization's responsibility; or

(ii) A basic component that is within his or her organization's responsibility and is supplied for a facility or an activity within the United States that is subject to the licensing requirements under Parts 30, 40, 50, 60, 70, 71, or 72 of this chapter.

(2) The notification to NRC of a failure to comply or of a defect under paragraph (b)(1) of this section, is not required if the director or responsible officer has acutal knowledge that the Commision has been notified of the defect or the failure to comply.

(3) Notification required by paragraph (b)(1) of this section must be made as follows—

(i) Initial notification by telefax, which is the preferred method of notification, to the NRC Operations Center at 301–492–8187 or by telephone at 301–951–0550 within two days following receipt of information by the director or responsible corporate officer under paragraph (b)(1) of this section, on the identification of a defect or a failure to comply. Verification that the telefax has been received should be made by calling the NRC Operations Center.

(ii) Written notification to the NRC at the address specified in § 21.5 within 30 days following receipt of information by the director or responsible corporate officer under paragraph (a)(2) of this section, on the identification of a defect or a failure to comply.

* * * * *

(c) Individuals subject to this part may be required by the Commission to supply additional information related to a defect or failure to comply. Such Commission action to obtain additional information may be based on reports of defects from other reporting entities.

§ 21.41 [Removed]

6. Section 21.41 is removed.

7. Section 21.51 is revised to read as follows:

§ 21.51 Maintenance and inspection of records.

(a) Each individual, corporation, partnership, or other entity subject to the regulations in this part shall prepare and maintain records necessary to accomplish the purposes of this part, specifically—

(1) Retain evaluations of all deviations for a minimum of five years.

(2) Suppliers of basic components shall retain any notifications sent to purchasers and affected licensees for a minimum of five years.

(3) Suppliers of basic components shall retain a record of the purchasers of basic components for the lifetime of the basic component.

(b) Each individual, corporation, partnership, or other entity subject to the regulations in this part shall afford the Commission, at all reasonable times, the opportunity to inspect records pertaining to basic components that relate to the discovery, evaluation, and reporting of deviations and defects, including any advice given to purchasers or licensees on the placement, erection, installation, operation, maintenance, modification, or inspection of a basic component.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

8. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, and amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

9. Section 50.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 50.2 Definitions

* * * * *

"Basic component" means, for the purposes of § 50.55(e) of this chapter:

(1) When applied to nuclear power reactors, any plant structure, system, component, or part thereof necessary to ensure (i) the integrity of the reactor coolant pressure boundary, (ii) the capability to shut down the reactor and maintain it in a safe shutdown condition, or (iii) the capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 100.11 of this chapter.

(2) When applied to other types of facilities or portions of such facilities for

which construction permits are issued under § 50.23 of this chapter, a component, structure, system or part thereof that is directly procured by the construction permit holder for the facility subject to the regulations of this part and in which a defect could create a substantial safety hazard.

(3) In all cases, safety related design, analysis, inspection, testing, quality assurance, fabrication, training, maintenance, replacement parts, or consulting services that are associated with the component hardware, whether these services are performed by the component supplier or others.

* * * * *

"Defect" means, for the purposes of § 50.55(e) of this chapter:

(1) A deviation in a basic component delivered to a purchaser for use in a facility or activity subject to a construction permit under this part, if on the basis of an evaluation, the deviation could create a substantial safety hazard at any time throughout the expected lifetime of the facility, were it to remain uncorrected or,

(2) The installation, use, or operation of a basic component containing a defect as defined in paragraph (1) of this definition; or

(3) A deviation in a portion of a facility subject to the construction permit of this part provided the deviation could, on the basis of an evaluation, create a substantial safety hazard at any time throughout the expected lifetime of the facility, were it to remain uncorrected.

* * * * *

"Deviation" means, for the purposes of § 50.55(e) of this chapter, a departure from the technical, quality assurance, or quality control requirements defined in procurement documents, safety analysis report, construction permit, or other documents provided for basic components installed in a facility subject to the regulations of this part.

"Director" means, for the purposes of § 50.55(e) of this chapter, an individual, appointed or elected according to law, who is authorized to manage and direct the affairs of a corporation, partnership or other entity.

"Discovery" means, for the purposes of § 50.55(e) of this chapter, the first identification of a deviation by any individual within the organization.

* * * * *

"Evaluation" means, for the purposes of § 50.55(e) of this chapter, the process accomplished by or for a construction permit holder to determine whether a particular deviation could create a substantial safety hazard.

* * * * *

"Procurement document" means, for the purposes of § 50.55(e) of this chapter, a contract that defines the requirements which facilities or basic components must meet in order to be considered acceptable by the purchaser.

* * * * *

"Responsible officer" means, for the purposes of § 50.55(e) of this chapter, the president, vice-president, or other individual in the organization of a corporation, partnership, or other entity who is vested with executive authority over activities subject to this part.

* * * * *

"Substantial safety hazard" means, for the purposes of § 50.55(e) of this chapter, a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility of activity authorized by the construction permit issued under this part.

* * * * *

10. In § 50.55, paragraph (e) is revised to read as follow:

§ 50.55 Conditions of construction permits.

* * * * *

(e)(1) Each individual, corporation, partnership, or other entity holding a facility construction permit subject to this part shall adopt appropriate procedures to—

(i) Evaluate deviations as soon as practicable, and in all cases within 30 days discovery, in order to identify a reportable defect that could create a substantial safety hazard at any time throughout the expected lifetime of the plant were it to remain uncorrected.

(ii) Ensure that a director or responsible officer is informed as soon as practicable, and in all cases within the initial 30-day period allowed for evaluation of deviations pursuant to paragraph (e)(1)(i) of this section, if the construction of a facility or activity, or a basic component supplied for such facility or activity—

(A) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard, or

(B) Contains a defect.

(2) The holder of a facility construction permit subject to this part who obtains information reasonably indicating that the facility fails to comply with the Atomic Energy Act of 1954, as amended or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard shall notify the Commission through a director or responsible officer of the failure to comply.

(3) The holder of a facility construction permit subject to this part shall notify the Commission through a director or responsible officer if the holder obtains information reasonably indicating the existence of any defect found in construction or any defect found in the final design of a facility as approved and released for construction.

(4) This notification requirement applies to all defects regardless of whether extensive evaluation, redesign, or repair is required to conform to the criteria and bases stated in the safety analysis report or construction permit. Reporting under this section satisfies the responsibility of individual directors or responsible officers of holders of construction permits issued under § 50.23 of this chapter to report defects under Section 206 of the Energy Reorganization Act and under 10 CFR Part 21.

(5) The notification required by paragraph (e)(3) of this section must consist of—

(i) Initial notification by telefax, which is the preferred method of notification, to the NRC Operations Center at 301–492–8187 or by telephone at 301–951–0550 within two days following receipt of information by the director or responsible corporate officer under paragraph (e)(1)(ii) of this section, on the identification of a defect or a failure to comply. Verification that the telefax has been received should be made by calling the NRC Operations Center.

(ii) Written notification submitted to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate Regional Administrator at the address specified in Appendix D to Part 20 of this chapter, a copy to the appropriate NRC resident inspector within 30 days following receipt of information on the identification of a defect or failure to comply.

(iii) If insufficient information is available for a complete evaluation of a deviation or potential failure to comply within 30 days of discovery of the deviation, prepare and submit an interim report to the Commission that contains all available information, and a statement as to when a complete report will be filed. Submit the interim report within 30 days of discovery of the deviation.

(6) The written notification required by paragraphs (e)(5)(ii) and (iii) of this section must clearly indicate that the notification is being submitted under paragraph (e) of this section and include

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the following information, to the extent known—

(i) Name and address of the individual or individuals informing the Commission.

(ii) Identification of the facility, the activity, or the basic component supplied for such facility or such activity within the United States which contains a defect or fails to comply.

(iii) Identification of the firm constructing the facility or supplying the basic component which fails to comply or contains a defect.

(iv) Nature of the defect or failure to comply and the safety hazard which is created or could be created by such defect or failure to comply.

(v) The date on which the information of such defect or failure to comply was obtained.

(vi) In the case of a basic component which contains a defect or fails to comply, the number and location of all such components in use at the facility subject to the regulations in this part.

(vii) The corrective action which has been, is being, or will be taken; the name of the individual or organization responsible for the action; and the length of time that has been or will be taken to complete the action.

(viii) Any advice related to the defect or failure to comply about the facility, activity, or basic component that has been, is being, or will be given to other entities.

(7) The holder of a construction permit shall prepare and maintain records necessary to accomplish the purposes of this section, specifically—

(i) Retain procurement documents, which define the requirements that facilities or basic components must meet in order to be considered acceptable, for the lifetime of the basic component.

(ii) Retain evaluations of all deviations for a minimum of five years.

(8) The requirements of this § 50.55(e) are deemed to be satisfied when the defect has been previously reported under Part 21 of this chapter or under § 50.73 of this part.

* * * * *

Dated at Rockville, MD, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-25592 Filed 11-3-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Part 785

Class Patent Waiver

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes a rule which would provide for a class waiver of the Government's rights in certain inventions made under contracts, grants, or cooperative agreements of DOE. The purpose of this class waiver is to maximize and expedite, to the extent permitted by law, the retention of rights to inventions made in the performance of federally-funded research and development contracts, grants, or cooperative agreements by the private sector. Generally, pursuant to 42 U.S.C. 2182 (1982) and 42 U.S.C. 5908 (1982), for contracts, grants, agreements or other arrangements with DOE for research, development or demonstration work, with entities other than small business or nonprofits, title in inventions vests in the Government, unless the Government waives its rights in conformity with the provisions of these statutes. This proposed rule provides for a class waiver in two categories:

(1) A class advance waiver (i.e., waiver at the time of contracting) of the Government's rights in inventions arising from contracts with domestic large business contractors, other than management and operating contractors generally referred to as GOCOs; and

(2) A class waiver of the Government's rights in identified inventions arising from contracts with domestic large business contractors, including management and operating contractors.

The proposed class waiver is subject to requirements, limitations, terms and conditions as provided in the proposed rule, and is intended to be implemented by simplified procedures requiring contractor certification of compliance with the requirements, terms and conditions of the class waiver. Where the class waiver is not applicable, contractors may still seek patent waivers on a case-by-case basis in accordance with established practices.

DATES: Written comments must be received on or before January 9, 1989.

A public hearing will be held on December 13, 1988 at 9:00 a.m. Requests to present oral statements must be received no later than November 30, 1988.

ADDRESSES: Written comments (three copies) and requests to speak at a public hearing must be addressed to: Richard E. Constant, Assistant General Counsel for Patents, GC-42, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

The hearing will be held at DOE Headquarters, 1000 Independence Avenue, SW., Washington DC, Room 1E-245.

FOR FURTHER INFORMATION CONTACT: Richard A. Lambert, Office of Assistant General Counsel for Patents, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone (202) 586-2802.

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I. Background

Normally, for contracts, grants, agreements, or other arrangements with DOE for research, development or demonstration work with entities other than domestic small businesses or nonprofit organizations, title in inventions vests in the Government, pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2182 (1982)) and the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908 (1982)), unless the Government waives its rights in inventions in conformity with the provisions of these statutes. Title 35 U.S.C. 202 (1982) (Pub. L. 96-517, as amended by Pub. L. 98-620), generally permits domestic small business firms and domestic nonprofit organizations to elect to retain title in inventions made under funding agreements with the Federal Government. Accordingly, this notice concerns only domestic large, for profit, businesses, not covered by 35 U.S.C. 202, as to which the right to title to inventions is governed by the Atomic Energy and Nonnuclear Acts, subject to the guidance to agencies contained in the President's Memorandum on Government Patent Policy of February 18, 1983, as referenced in Executive Order 12591, dated April 10, 1987.

The Memorandum of Government Patent Policy directs that:

> To the extent permitted by law, agency policy with respect to the disposition of any invention made in the performance of a federally-funded research and development contract, grant, or cooperative agreement

> award shall be the same or substantially the same as applied to small business firms and nonprofit organizations under Chapter 38 of Title 35 of the United States Code.

With the overall goal of incorporating the results of the Department's research, development, and demonstration programs into the mainstream of American commerce consistent with the objectives of the President's patent policy and in accordance with the authority of 42 U.S.C. 2182 (1982) and 42 U.S.C. 5908 (1982), DOE proposes that it is in the best interests of the United States and the general public to grant a class waiver as provided in the proposed regulation.

The proposed rule provides for a class waiver in two categories:

(1) Class advance waiver of the Government's rights in inventions arising from contracts with domestic large business contractors other than Management and Operating Contractors.

(2) Class waiver of the Government's rights in identified inventions arising from contracts with domestic large business contractors including Management and Operating Contractors.

The Department reserves the right to grant additional class waivers as deemed appropriate in the public interest. Consideration was given to granting an additional class waiver covering inventions falling within certain exceptional circumstances technologies, which would have provided an exclusive license to recipients of funding agreements with domestic small businesses and nonprofit organizations for fields of uses outside the specified exceptional circumstances. However, the applicable class of inventions and potential waiver recipients is not deemed to be sufficiently broad to justify at this time the grant of such a class waiver. Requests for waiver of the Government's rights in such technologies may continue to be made, on a case-by-case basis, in accordance with established DOE waiver policies and procedures.

Certain areas in the national interest are excluded from the scope of these waivers. The exclusions are generally as follows: inventions arising under international agreements or treaties; weapons-related inventions; inventions made under agreements funded by DOE's naval nuclear propulsion program; classified or sensitive inventions; uranium enrichment inventions; inventions relating to storage and disposal of civilian high-level nuclear waste or spent nuclear fuel; and inventions falling within other class waivers granted to third parties by DOE.

Inventions arising under international agreements or treaties are excluded from the class waiver in order to avoid conflict with invention rights provisions of such agreements or treaties.

Weapons-related inventions are excluded from the class waivers for reasons involving nonproliferation of weapons, national security, conflicts of interest, management requirements of DOE's unique contractor operated weapons laboratories and in order that DOE may ensure prosecution of patent applications or statutory invention recordings on selected inventions in which the Government has a strong interest in establishing license rights.

Classified and sensitive inventions are also excluded from the scope of the class waivers for the reasons noted above for weapons related inventions. In addition, the restricted status of such inventions usually continues for many years, during which any present plans of a contractor to commercialize the inventions are subject to change.

In the case of uranium enrichment, the technology at present is exclusively under Government control with the Government being the only legal customer for the technology. Therefore, the rationale for establishing private incentives is lessened if not eliminated. Furthermore, DOE currently has a requirement to preserve the transferability of this technology to the private sector. In order to retain a transferable package of intellectual property rights, DOE retains title in this area.

Regarding technology for storage and disposal of civilian high-level nuclear waste or spent nuclear fuel, since the program is funded through special fees levied on the utility industry, Government retention of patent rights preserves the Government's flexibility to grant licenses to utilities as appropriate, or to solicit utility industry participation in rights allocations. Further, since the Government has a statutory mandate to develop the technology to the point of commercialization, incentives inherent in the patent system are not the driving mechanism to promote development of this technology.

However, for one of the excluded technologies, i.e., storage and disposal of civilian high-level nuclear waste or spent nuclear fuel and possibly for excluded technologies that may in the future be so designated, a contractor may elect to retain an exclusive license in all fields of use outside the excluded technology where the contractor can demonstrate that the invention has such an outside use, and specifically identifies such use as one it will commercialize within three years. An example of such an outside use is use of nuclear waste disposal technology for disposal of nonradioactive toxic chemical wastes.

Inventions covered by existing or future class waivers to third parties, e.g., DOE's class waivers covering third party use of DOE facilities, are excluded from the class waiver covering identified inventions for large business contractors, in view of the overriding DOE interest in promoting third party use of such facilities and to avoid invention rights conflicts that might arise from conflicting class waiver provisions.

In addition, similar to DOE's authority to declare "exceptional circumstances" under 35 U.S.C. 202(a) the Secretary of Energy reserves the right to designate further exclusions to this class waiver, as deemed necessary in the national interest.

Of course, contractors may request a waiver of rights to an invention, including those excluded from the scope of this class patent waiver, pursuant to DOE's existing waiver policies and procedures.

Implementation of the class waiver proposed herein is intended to be made using simplified procedures requiring certifications by contractors regarding matters such as its intent to commercialize a particular invention, including submission of general plans for commercialization, (itself or through licensees) within three years (with a right to seek extension of such three-year period, in two year intervals, if contractor can demonstrate to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention), and its willingness to bear patent costs, followed by review and certification by DOE that the conditions of the particular class waiver have been made, e.g., a cost-sharing of 20% (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs). The proposed class waiver will result in significant reductions in the paperwork burdens imposed on contractors seeking a DOE patent waiver as compared to current policies, which require a waiver petitioner to submit considerably greater amounts of information in support of a waiver request.

(1) Class Advance Waiver

Subject to exclusions as noted above, the class advance waiver applies:

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1. To contractors which are domestic large businesses (i.e. not qualifying as small businesses or nonprofit organizations under 35 U.S.C. 202 (1982) engaged in research, development, or demonstration work under a DOE contract, except contracts for management or operation of contractor-operated research, production or weapons facilities (GOCO);

2. Where the contract requires 20% cost sharing by the contractor (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs);

3. Where the contractor agrees to commercialize any elected invention itself or through its licensee(s) within a three-year time period from the date of disclosure of the invention to DOE, subject to extension of the time period for commercialization, in two year intervals, so long as contractor can demonstrate to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention; and

4. Where DOE certifies the application of the waiver to the contract.

Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908 (1982)), in establishing the patent waiver authority, provided four objectives that the Secretary or his designee is to seek to accomplish in making waiver determinations. In addition, eleven specific factors are to be considered at the time of contracting in making such determinations. DOE has harmonized these provisions with section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182 (1982) so that waivers are evaluated under these criteria regardless of the technology under which an invention is made. Within these statutory structures, DOE's waiver policy has been used flexibily. DOE has granted many advance waivers both to large corporations and, prior to the passage of The Patent and Trademark Amendments of 1980, Pub. L. 96–517, section 7, 94 Stat. 3016, to small businesses and universities. Certain consistent fact patterns have formed the basis for granting advance waivers to large businesses on a case-by-case evaluation. These patterns are utilized in this class advance waiver in accordance with the statutes.

DOE has generally granted waivers to large business contractors who cost share a minimum of 20% (not including waived fee) of the contract costs. This level of cost sharing has evolved over several years of waiver experience and has been shown to be an excellent indication of whether a research project fits within a corporations' long range plans and of the corporate interest in commercializing the technology which is the subject of the contract. Cost sharing establishes a corporate commitment by the contractor to commercialize the technology. Establishing a 20% cost sharing standard for this class waiver recognizes the experience gained from previous waivers and will simplify the process by which large business contractors can obtain advance waivers. Further, DOE has found having 20% cost sharing effectively extends its ability to carry out its programmatic mission. The 20% cost sharing requirement has been found to be an effective tool to combine corporation research interest with Government programs, thereby leveraging Government research funds and providing technology transfer into commercial application. This promotes the commercialization of inventions made under these contracts and serves to make the benefits of DOE's energy research, development, and demonstration programs widely available to the public in the shortest practicable time. Over DOE's several years of experience using 20% cost-sharing as a prime consideration for grant of an advance patent waiver, we are not aware of any prospective contractor declining to contract with DOE as a result of 20% cost-share requirement for an advance waiver. To provide flexibility, however, the 20% cost sharing required for this class waiver may be changed to another level if it is determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs. The public is specifically invited to provide comments regarding the appropriateness of the 20% cost-sharing level as a precondition to a class advance waiver. If any member of the public wishes to comment on this point, we would appreciate his or her views on the appropriate cost-share level for an advance waiver, with reasons therefor.

The other requirement of this class waiver, that the contractor agree to commercialize any elected invention (itself or through its licensees) within a three year time period (subject to extension if contractor can show that it or its licensee(s) is actively pursuing commercialization of the invention) serves to foster and assure expeditious pursuit of commercial utilization of waived inventions by the contractor. Three years appears to be a reasonable time period for an entity acting in good faith to proceed to effect commercialization of a typical invention. For those inventions which may require longer time periods for commercialization in view of, for example, the need for extensive development efforts prior to effecting commercialization, the three year time period may be extended, in two year intervals, so long as contractor can demonstrate to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention.

DOE's ten years of experience in granting advance waivers to contractors who have cost shared has resulted in no indication to DOE of an adverse impact on competition. No such adverse impact is foreseen from this class waiver. Waived inventions will be subject to a license to the Government and DOE will have the right to require periodic reports on the contractor's utilization, or efforts at obtaining utilization, of the invention. Further as a condition of this waiver, DOE shall have the right to exercise its march-in rights and require the contractor to license a waived invention if DOE determines that the contractor is not making reasonable efforts to utilize the invention, or alternatively, if the practice of the invention by the contractor or its assignee or licensee has tended substantially to lessen competition or result in undue concentration in any line of commerce to which the technology of the invention relates. An additional march-in right provides for automatic termination of the waiver as it relates to a particular invention and reversion of title in the invention to the Government if the invention is not commercialized within three years (subject however to extension of the three-year period for commercialization if the contractor can demonstrate to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention). Concomitant with this class advance waiver, DOE is also granting a class waiver to identified inventions to large business contractors, including management and operating contractors of DOE Government-owned facilities (GOCOs), where the contractor agrees to commercialize the invention, either itself or through licensees within a three-year time period. These two categories complement each other to permit the large business contractor, including GOCO contractors, to acquire title to all inventions (except for those imbued with the national interest as set forth herein) in which the contactor has plans for commercialization, either itself or through licensees. This class waiver will significantly act to elicit private risk capital and promote commercial utilization of inventions made under DOE's research, development, and

demonstration programs and thereby make the benefits of these programs widely available to the public in the shortest practicable time.

(2) Class Waiver of Identified Inventions

Subject to exceptions as noted above, the class waiver of patent rights to identified inventions applies to inventions made by contractors who are domestic large businesses (i.e., entities not qualifying as small business firms or nonprofit organizations under 35 U.S.C. 202 (1982) engaged in research, development, or demonstration work under a DOE funding agreement, including contractors for the management and operation of DOE research, production or weapons facilities (GOCO), where:

(1) The contractor agrees to commercialize the invention itself or through its licensees within a three-year time period from the date of waiver is effective as to the invention. Three years appears to be a reasonable time period for an entity acting in good faith to proceed to effect commercialization of a typical invention. The three-year time period for commercialization is subject to extension, in two-year intervals, so long as contractor demonstrates to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention. For purposes of this regulation, "commercialize" shall mean to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms;

(2) The contractor reports the invention and elects to retain the rights therein within the times provided in the contract for reporting inventions and requesting greater rights, respectively (however, normally the waiver will not apply to inventions which DOE has advertised as being available for licensing) and agrees to file, prosecute, and maintain any and all patent applications and patents on the invention at its own expense, unless, in the case of GOCO contractors, special contractual provisions are negotiated;

(3) The invention is not, at the time of the request for waiver, developed to the point of commercialization by the Government and further development of the invention is not being funded and is not intended to be funded by the Government. Among DOE's statutory considerations for waivers are consideration of the extent to which the Government intends to further develop to the point of commercial utilization the results of the contract effort, and consideration of the extent to which a waiver is a reasonable and necessary incentive to call forth private risk capital for the development and commercialization of the invention. Limiting the class waiver to inventions not being funded and not intended to be funded by the Government encourages expenditure of private risk capital for development and commercialization of an invention, and affords appropriate weight to the foregoing considerations. For purposes of this waiver, an invention is not further funded if Government funding is not being, and is not intended to be, directed at the further development of the invention or the enhancement of the invention in a manner beneficial to commercial applications of the invention. This does not include insignificant amounts of fnding for minor modification of the invention or use of the invention incidental to other work. On the other hand, further funding would clearly exist where work is directed toward actually reducing an invention to practice or developing the invention in a manner which improves its performance or enhances its value in commercial applications. To implement this class waiver, the contractor is required to certify that the invention has not been developed to the point of commercialization and that, to the best of contractor's knowledge and belief, further development of the invention is not being funded and is not intended to be funded by the Government. Since this information is generally within the knowledge of the requestor, certifying as to such matters should present no undue burden on the contractor; and

(4) The waiver is certified by DOE to be applicable to the invention.

For the purposes of this waiver, 'contractor means either a prime contractor or a subcontractor. The waiver does not give a prime contractor or subcontractor rights in the other's inventions.

Section 9 of the Federal Non-nuclear Energy Research and Development Act of 1974, 42 U.S.C. 5908 (1982), in establishing the patent waiver authority, provided four objective that the Secretary or his designee is to seek to accomplish in making waiver determinations. In addition, specific statutory factors are to be considered in making these determinations with respect to identified inventions. DOE has harmonized these provisions with section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182 (1982), so that waivers are evaluated under these criteria regardless of the technology under which an invention is made. DOE has granted many identified invention waivers over the past ten years and the experience therefrom is applicable to the present class waiver. In general, large business contractors are selected for a research, development, or demonstration contract because of their technical expertise in the subject matter of the contract. Providing the contractor with title to inventions made under DOE contracts should encourage a commitment to commercialization and foster the application of private risk capital for development and manufacture of inventions.

Regarding GOCO contractors, the Department of Energy (DOE), unlike most other Government agencies, employs contractors to manage and operate certain of its major research, production and weapons facilities. The following principles, as set forth by the Secretary of Energy, provide the policy framework for these management and operating (GOCO) contracts:

(1) The Government retains responsibility for overall program management and project technical direction while the contractor is responsible for the day-to-day management of the work;

(2) The Government and contractor have an identity of interest in the mission being pursued;

(3) The parties intend a long-term close relationship;

(4) The Government assumes virtually all financial risk;

(5) The contractor is hired to manage;

(6) The contractor broadly supports the performance of Government functions by executing programs of national significance on behalf of the Government; and

(7) The Government ultimately is responsible for security, health and safety and the proper use of public funds.

These contractor-operated Government facilities have for some forty years benefited DOE and its predecessor agencies in carrying out agency research, development, and demonstration (R,D&D) programs. The GOCO facilities have, in great measure, had a remarkable record of scientific and technical success. This success is due, in part, to the unique contractual relationship that exists between DOE and its GOCOs; viz., the dedication of both technical and administrative skills of a private organization to a significant

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Federal mission in a close, long-term, cooperative relationship.

Most of the inventions made under research and development activities at the GOCO facilities require additional development before they are available in the commercial marketplace. This is because many of the GOCO inventions are founded upon basic or advanced research. Additionally, many of these inventions are conceptual in nature and are on a labortory or proof-of-principle scale. Scale-up to a commercial size demonstration of the inventive concept is often a prerequisite to negotiating royalty-bearing licenses. Finally, many of the inventions arising out of DOE's energy research will require substantial capital in order to translate the invention into commercial reality; such costs, for example, include further engineering, design, start-up and marketing.

A class waiver of the Government's rights in identified inventions as set forth herein will create sufficient exclusive rights in these inventions to bring forth private risk capital expeditiously to promote and move the technology into the commercial marketplace and thereby make the benefits of DOE's programs widely available to the public in the shortest practicable time. This would satisfy the broad objectives of section 9 of the Federal Non-nuclear Act, 42 U.S.C. 5908 (1982), while being in keeping with the ultimate objective of the Presidential Memorandum.

Furthermore, the grant of a class waiver of identified inventions as set forth herein would provide an effective mechanism for achieving technology transfer of energy-related technology into the mainstream of American commerce by bringing a focused attention and stronger commitment on the part of the Department's GOCO contractors to this mission objective. Permitting these contractors to retain title to a broad range of important energy-related technologies should enhance the technology transfer initiative of the Department.

It is recognized that the various GOCO contractors have diverse interests and needs requiring flexibility in the implementation of this class waiver. Therefore, approaches which ensure that the needs of each GOCO contractor are met as well as serving the best interests of the United States and the general public must be tailored for each GOCO contract. Factors to be considered for such alternative approaches may include, for example, the willingness of the GOCO contractor to use all or a portion of royalties received from licensing of waived inventions for further research at the facility, and the willingness to assign over title to waived inventions to a successor contractor upon termination of the contract. Adequate provisions must be included to protect against a potential contractor conflict of interest as well, commensurate with the allocation of patent ownership and use of royalty income. Appropriate contractual provisions reflecting these concerns must be approved by the General Counsel or designee, and must be included in each GOCO contract in order for the GOCO contractor to qualify for this class waiver.

Granting this waiver should have no adverse impact on competition. Making title to inventions available to the contractor in technologies in which the contractor has plans for commercialization, either itself or through licensees, is consistent with DOE's past practices and will not only ensure the commercialization of the invention but enhance competition. The waiver will be subject to a license to the Government and DOE will have the right to require periodic reports of the contractor's utilization, or efforts at obtaining utilization, of the invention. Further as a condition of this waiver, DOE shall have the right to exercise its march-in rights and require the contractor to license a waived invention if DOE determines that the contractor is not making reasonable efforts to utilize the invention, or alternatively, if the practice of the invention by the contractor or its assignee or licensee has tended substantially to lessen competition or result in undue concentration in any line of commerce to which the technology of the invention relates. In addition, the waiver is automatically terminated if the contractor cannot demonstrate to the satisfaction of DOE that the invention has been commercialized within three-years of the disclosure of the invention to DOE, or if no extension of the three year period for commercialization is obtained. Concomitant with this waiver to identified inventions and in accordance with the above statutory authority, DOE is also granting a class advance waiver to domestic large business contractors that are not management or operating contractors, where the contractor agrees to cost share 20% of the contract effort (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs). These two categories complement each other to permit the large business contractor to acquire title to all inventions (except for those inbued with the national interest as set forth herein) in which the contractor has a commitment to commercialization. These two categories will significantly act to elicit private risk capital and promote commercial utilization of inventions made under DOE's research, development, and demonstration programs and management and operating contracts and thereby make the benefits of these programs widely available to the public in the shortest practicable time.

Certain inventions made by the contractor prior to the grant of this class waiver may be important to the contractor's commercialization efforts. While identified waiver requests could be made by the contractor for greater rights, on each of these inventions, it is desirable to reduce the paper work associated with processing waiver requests for these inventions. Additionally, expedited waiver processing would permit the earliest rapid start-up of commercialization and technology transfer programs by contractors by insuring a supply of inventions for these activities immediately upon the grant of the class waiver. Accordingly, the scope of this waiver shall also include inventions made by contractor (or if a GOCO, its predecessor) on which a timely filed identified waiver request is pending as of the effective date of this waiver. As noted earlier, the waiver shall normally not apply to any invention which DOE has advertised as being available for licensing.

As a condition of the waiver, the contractor shall provide to DOE on a DOE-approved form a duly-executed instrument fully confirmatory of all rights retained by the Government for each invention as to which the contractor retains rights pursuant to this waiver. The contractor will bear the costs of patent prosecution and maintenance unless, for a GOCO contractor, special contractual provisions are negotiated.

The waiver to the identified class of inventions is in the best interests of the United States and the general public, in accordance with the objectives to be obtained and the determinations to be made under DOE statutory waiver policy. It should encourage the participation of contractors in DOE programs and provide for the commercialization of DOE developed technology in the shortest practicable time.

Accordingly, in view of the statutory objectives to be obtained and the factors to be considered under DOE's statutory waiver policy, all of which have been considered, it is proposed that a waiver of the class of inventions identified above and under the situations described above will best serve the interests of the United States and the general public.

II Section-by-Section Discussion of Proposed Rule

Section 785.1 of the regulation defines the scope of the class waiver of the Government's U.S. and foreign patent rights in inventions arising from contracts with domestic large business contractors. Section 785.1(b) is directed to a class advance waiver. Generally, this class advance waiver is applicable to recipients of DOE contracts (including grants and cooperative agreements) with domestic large businesses, (other than GOCO contractors) where the contract requires 20% cost sharing by the contractor (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs), and where the contractor agrees to commercialize an elected invention (itself or through licensees) within a three year time period (subject to extension so long as contractor can demonstrate that it or its licensee(s) is actively pursuing commercialization of the invention).

Section 785.1(c) is directed to a class identified invention waiver, which generally applies to large business contractors, including GOCO contractors. The waiver is applicable generally to inventions which the contractor agrees to commercialize within a three-year time period, subject to extension as above, when such inventions have not been developed to the point of commercialization by the Government, and there is no further funding, nor plans for further funding of the invention by the Government.

Section 785.2 provides for exclusion of certain technologies from the class waiver in the national interest. Presently, excluded technologies include uranium enrichment technology, storage and disposal of civilian high-level nuclear waste and spent nuclear fuel technology, classified inventions, and inventions which are sensitive under section 148 of the Atomic Energy Act of 1954, 42 U.S.C. 2168 (1982). In addition, contracts and inventions under international agreements or treaties in existence or to be entered into in the future are also excluded from this waiver, as are all contracts and inventions funded by DOE's naval nuclear propulsion programs or by DOE's weapons programs. However, for inventions related to storage and disposal of civilian high-level nuclear waste and spent nuclear fuel, the contractor may elect to retain an exclusive license in fields of use outside such technology where the contractor specifically identifies such fields of use as uses it will commercialize within three years.

Section 785.3 addresses terms and conditions for class waivers, including a paid-up Government license, march-in rights, and requirements that patent costs be undertaken by the contractor. Section 785.4 provides for implementation of the class waiver by simplified procedures requiring certification by the contractor and DOE as to applicabiliy of the class waiver.

III. Review Under Executive Order 12291

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether a rule is a "major rule," as defined by section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for each major rule. DOE has determined that the proposed rule does not meet the E.O. 12291 definition of a major rule as one likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

Pursuant to section 3(c)(3) of E.O. 12291 these rules were submitted to the Director of OMB for a ten-day review. The Director has concluded his review under that Executive Order.

IV. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612 (1982), requires, in part, that an agency prepare an initial regulatory flexibility analysis for any rule, unless it determines that the rule will not have a "significant economic impact" on a substantial number of small entities. The proposed rule concerns class patent waivers directed primarily at entities that are not small businesses, since there is separate statutory authority governing disposition of invention rights of Government contractors that are small businesses. Therefore, as required by section 603(b), DOE certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

V. Review Under National Environmental Policy Act

DOE has determined that the proposed rule is not a major Federal action with significant environmental impact and does not affect the quality of the environment. Consequently, the proposed rule does not require preparation of an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (1982).

VI. Review Under Paperwork Reduction Act

The reporting requirements contained in this proposed rule have been submitted to OMB for approval under the Paperwork Reduction Act.

VII. Federalism

Executive Order (EO) 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and States, or the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then EO 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The principal impact of today's regulation, when finalized, will be to speed up waivers of government patent rights to private entities. The regulation will not have any effect on the States, the relationship between the States and Federal government, or the distribution of power and responsibilities among various levels of government.

VIII. Opportunities for Public Participation

Section 501(c)(1) of the Department of Energy Organization Act, 42 U.S.C. 7191(c)(1) (1982), provides that if the Secretary determines that a substantial issue of fact or law exists or that a proposed rule is likely to have substantial impact on the Nation's economy or on large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided. To preclude any issue in this regard, such an opportunity will be provided.

A. Written comment procedures. Interested parties are invited to participate in this rulemaking by submitting views, data, or arguments with respect to the proposal set forth in this notice to Richard E. Constant, Assistant General Counsel for Patents,

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Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The comments and the outside of the envelope should be identified with the designation, "Docket No. GC88–2." Three copies of the comments should be submitted.

All comments received by January 9, 1989 and other relevant information will be considered by DOE before final action is taken regarding the proposed regulations.

B. Public hearing. DOE has determined to hold one public hearing on this proposal. The time and place of the public hearing is indicated at the beginning of this notice.

Any person who has an interest in the proposed rulemaking or who is a representative of a group of persons that has an interest in this rulemaking may make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address given at the beginning of the preamble and must be received by the date specified at the beginning of this notice. Requests may be hand-delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Requests should be marked as for written comments, with the additional notation "Request to Speak."

The person making the request should briefly describe the interest concerned and, if appropriate, state why that person is a proper representative of a group with such an interest, give a concise summary of the proposed oral presentation, and provide a phone number where the person or group may be contacted through January 9, 1989.

Each person selected to be heard at the public hearing will be notified by December 6, 1988. Witnesses presenting oral testimony must bring seven copies of their statements to the hearing.

In the event any person wishing to testify cannot provide seven copies, alternative arrangements can be made with the hearing coordinator in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling (202) 586–2802.

C. Conduct of hearing. DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation shall be limited to 20 minutes.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements at the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person wishing to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any additional procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 1–E–152, 1000 Independence Avenue, SW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Any person may purchase a copy of the transcript from the court reporter.

The public hearing may be cancelled if no public testimony is scheduled in advance. In the event the hearing is cancelled, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register.**

List of Subjects in 10 CFR Part 785

Inventions, Licenses, Patents and waivers.

In consideration of the foregoing, Part 785 of Title 10 of the Code of Federal Regulations is proposed to be added as set forth below.

Issued in Washington, DC, October 28, 1988.

Eric J. Fygi,

Acting General Counsel.

PART 785—CLASS PATENT WAIVER

Sec.
785.1 Scope of waiver.
785.2 Limitations.
785.3 Terms and conditions.
785.4 Procedures.

Authority: Department of Energy Organization Act, section 301, 42 U.S.C. 7151 (1982); Federal Nonnuclear Energy Research and Development Act of 1974, section 9, 42 U.S.C. 5908 (1982); Atomic Energy Act of 1954, section 152, 42 U.S.C. 2182 (1982); President's Memorandum on Government Patent Policy (1983).

§ 785.1 Scope of waiver.

(a) The Department of Energy, hereinafter "DOE," waives its rights under section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182 (1982), and section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. 5903 (1982), subject to the limitations and provisions contained herein, (1) in advance, with respect to all inventions and discoveries arising from certain contracts as specified herein, including grants and cooperative agreements, with domestic large business contractors other than Management and Operating Contractors (as defined in 48 CFR 17.601) (hereinafter M&O contractors), and (2) with respect to identified inventions arising from contracts, grants, and cooperative agreements, with domestic large business contractors, including M&O contractors.

(b) The class advance waiver applies to contractors which are domestic large businesses (i.e., not qualifying as small businesses or nonprofit organizations under 35 U.S.C. 202 (1982) engaged in research, development, or demonstration work under a DOE contract, except contracts for management and operation of contractor-operated research, production or weapons facilities, where:

(1) The contract requires 20% cost sharing by the participant (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs);

(2) The contractor agrees to commercialize any elected invention, itself or through its licensees, within a three year time period from the date of disclosure of the invention to DOE, subject to extension of the time period for commercialization, in two year intervals, so long as contractor demonstrates to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention. For purposes of this regulation, "commercialize" shall mean to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system, and, in each case under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms; and

(3) DOE, upon review of the contract and relevant facts, certifies that the wavier applies to the contract.

(c) The class identifed invention waiver applies to inventions made by contractors who are domestic large businesses (i.e. not qualifying as small businesses or nonprofit organizations under 35 U.S.C. 202 (1982)) engaged in research, development or demonstration work under a DOE contract, including a contract for management and operation (M&O contract) of a DOE research, production or weapons facility, where:

(1) The contractor agrees to commercialize the invention itself or through its licensees within a three year time period from the time the waiver is effective as to the invention, subject to extension of the time period from commercialization, in two year intervals, so long as contractor demonstrates to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention;

(2) The contractor reports the invention and elects to retain the rights therein, within the times provided in the contract for reporting inventions and requesting greater rights, and agrees to file, prosecute, and maintain any and all patent applications and patents on the invention at its own expense;

(3) The invention is not, at the time of the request for waiver, developed to the point of commercialization by the Government and the Government is not funding further development of the invention and has no intentions for further funding of the invention; and

(4) Upon review of the invention and relevant facts, DOE certifies the waiver is applicable to the invention.

(d) In order to expedite processing of previously filed waiver requests, the scope of the identified invention waiver shall also include inventions made by the contractor (or, in the case of a Management and Operating Contractor, its predecessor) on which a timely filed identified invention waiver request in accordance with DOE's existing patent waiver regulations is pending as of the effective date of this waiver. However, the class waiver shall normally not apply to any invention which DOE has previously advertised as being available for licensing.

(e) Certain technologies, listed in § 785.2, have been excluded from the scope of this waiver in the national interest. However, with respect to inventions falling within the limitation specified in § 785.2(d), or the limitation specified in § 785.2(j) if so authorized by the Secretary, when the contractor demonstrates that the invention has a commercial use falling outside said limitation the contractor may elect to retain an exclusive license. The exclusive license will apply to all fields of use outside the said limitation where such fields of use are specifically identified by the contractor as uses it intends to commercialize within three years from the date of disclosure of the invention of DOE, (subject to extension of the time period for commercialization, in two year intervals, so long as contractor demonstrates to the satisfaction of DOE that it or its licensee(s) is actively pursuing commercialization of the invention in such field of use) and will include the right to grant sublicenses of the same scope. The exclusive license shall be subject to the same requirements, procedures, terms and conditions as provided herein for application of the waiver (including the royalty free right of the Government to practice inventions by or on behalf of the Government in such fields of use), except that the Government may file a patent application thereon, and retain title to any resulting patent. Upon the contractor's request, DOE may permit the contractor to file a patent application on behalf of the Government. Where the contractor requests the right to file a patent application on behalf of the Government, the contractor normally must bear the cost of preparing and prosecuting the patent application and maintaining any resulting patent at its private expense. Upon timely request by the contractor, DOE will make a determination as to whether an invention reported in accordance with the contract is covered by the limitations specified in § 785.2.

(f) DOE reserves the right to change the scope of rights available to contractors in later-identified exceptions under § 785.2(j).

(g) For purposes of this waiver, contractor means either a prime contractor or a subcontractor. The waiver does not give a prime contractor or subcontractor rights in the other's inventions. The waiver shall not affect any future waiver or any waiver previously granted. The advance waiver shall not apply to any contract which has been modified to reduce the cost share below 20% (or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs).

§ 785.2 Limitations.

The class waiver of this regulation does not include:

(a) Contracts and inventions under international agreements or treaties in existence or to be entered into in the future;

(b) Contracts and inventions funded by DOE's naval nuclear propulsion program or by DOE's weapons programs;

(c) Contracts and inventions relating to uranium enrichment (including isotope separation);

(d) Contracts and inventions relating to storage and disposal of civilian high level nuclear waste or spent nuclear fuel;

(e) Contracts and inventions relating to subject matter that is classified, or sensitive under section 148 of the Atomic Energy Act of 1954, 42 U.S.C. 2168 (1982);

(f) For identified invention waivers, any weapons related inventions;

(g) For identified invention waivers, inventions that occur under or are related to DOE's weapons related programs being conducted under contracts for the management and operation of facilities primarily dedicated to those programs;

(h) For identified invention waivers, inventions that are made under contracts for the management and operation of facilities primarily dedicated to naval nuclear propulsion or defense program production facilities;

(i) For identified invention waivers, those inventions covered by existing or future class waivers granted to third parties by DOE, e.g. the "work for others" class waiver;

(j) Any further exceptions that may, in the national interest, be designated by the Secretary in the future.

§ 785.3 Terms and conditions.

(a) The class advance waiver is conditioned upon the requesting contractor's accepting a Patent Rights clause in accordance with the Federal Acquisition Regulations and any applicable DOE regulations, as modified by DOE for any designated exceptions, including a paid-up Government license and march-in rights; utilization reporting requirements; a requirement of automatic termination of the waiver as it applies to a specific invention and reversion of title to the Government if the contractor cannot demonstrate to the satisfaction of DOE that it or its licensee(s) has commercialized the invention within these years from the date of disclosure of the invention to DOE, or obtained an extension to such three-year period for commercialization; a requirement that the contractor license

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a waived invention if the practice of the invention by the contractor or its assignee or licensee has tended substantially to lessen competition or result in undue concentration in any line of commerce to which the technology of the invention relates; a requirement that prosecution and maintenance of an elected invention shall be at the sole expense of the contractor, regardless of any present or future interest that the U.S. Government may retain, so long as the contractor desires to retain title to the invention; and a requirement that the contractor shall provide DOE on a DOE-approved form a duly executed instrument fully confirmatory of all rights retained by the Government for each invention as to which the contractor retains rights pursuant to this waiver.

(b) The identified invention class waiver is conditioned upon the electing contractor's providing DOE on a DOE-approved form a duly executed instrument fully confirmatory of all rights retained by the Government, similar to the rights enumerated in § 785.3(a), for each invention in which the contractor retains rights pursuant to this waiver. In addition, for contracts for Management and Operation of Government Facilities, appropriate contractual provisions reflecting terms of implementation of this waiver must be approved by the General Counsel or designee, and must be included in each contract for the contractor to qualify for this class waiver. Such provisions may include clauses addressing, for example, conflict of interest matters, disposition of royalties, and willingness to assign title to waived inventions to a successor contractor. Unless special contractual provisions are negotiated, the contractor will normally bear the costs of patent prosecution and maintenance.

§ 785.4 Procedures.

(a) For an advance waiver, implementation of this class waiver is to be by a simple procedure which requires (1) a written request for an advance waiver by a contractor; (2) certification by the contractor regarding its intent to commercialize any elected invention itself or through its licensee(s) within three years from the date of disclosure of the invention to DOE, including a general statement of contractor's plans and intentions to so commercialize; and (3) certification by the contractor that it will bear the costs of patent prosecution and maintenance of waived inventions at its private expense.

(b) For an identified invention waiver, implementation of this class waiver is to be a simple procedure which requires (1) the contractor's reporting the invention with an election to retain rights in accordance with the class waiver (such election is to be within the time for requesting a waiver as provided in the contract and should identify the fields of use for which rights are requested if the invention falls within the scope of limitation § 785.2(d), or § 785.2(j) if applicable; (2) certification by the contractor that to the best of its knowledge the invention does not fall within international agreements or treaties of the U.S. Government; (3) certification by the contractor regarding its intent to commercialize the invention itself or through its licensee(s) within three years from the time this waiver is effective as to the invention, including a general statement regarding contractor's plans and intentions to so commercialize; (4) if the contract involves classified subject matter, certification by the contractors as to whether the invention is classified, or sensitive under section 148 of the Atomic Energy Act of 1954, 42 U.S.C. 2168 (1982); (5) certification by the contractor that the invention has not been developed to the point of commercialization and that to the best of contractor's knowledge and belief, further development of the invention is not being funded and is not intended to be funded by the Government; and (6) certification by the contractor that it will bear the cost of prosecuting and maintaining any patent applications or patents on the invention at its private expense, unless, if a Management and Operating Contractor of a Government facility, otherwise approved by the General Counsel or designee.

(c) For either an advance or identified waiver, the General Counsel or designee must review and certify as to whether the conditions of the waiver have been met. This includes, for an advance waiver, certification of meeting the requirement of 20% cost sharing (not including any waived fee) or such other level as may be determined by the General Counsel or designee to be warranted in view of specific mission, programmatic or statutory needs or, for an identified waiver, certification that the waiver is applicable to the reported invention. This function may be delegated to DOE patent counsel assisting the procuring activity under the direction of the General Counsel or designee.

[FR Doc. 88-25632 Filed 11-3-88; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-33-AD]

Airworthiness Directives; DORNIER Model Do-28 D-1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to DORNIER Model Do-28 D-1 airplanes, which would require a check of the location and relocation, if necessary, of the installed Station Guide Line. The Center of Gravity (C.G.) Station Guide Line has been incorrectly installed on some Do-28 D-1 airplanes, which if used to determine the airplane balance, may result in the airplane being loaded forward or aft of the C.G. limits. Operations of the airplane outside it's design C.G. envelope could cause the loss of control of the airplane. This action would preclude use of an incorrect location reference.

DATES: Comments must be received on or before January 9, 1989.

ADDRESSES: Dornier Service Bulletin (S/B No. 1121-1703, dated may 20, 1988, applicable to this AD may be obtained from Dornier GmbH, D-8000 Munchen 66, Post Office Box 2160, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88-CE-33-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Herman C. Belderok, Project Support Section Foreign Aircraft, Central Region, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88-CE-33-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The manufacturer has become aware that the Model Do-28 D-1 airplane C.G. Station Guide Line (SGL) located in the cabin and used for determining the loading station, does not correspond to the Airplane Flight Manual and the loading station referred to in the loading tables. In certain cases, using the values determined by the C.G. SGL may result in the airplane being loaded to exceed the forward or aft C.G. loading limits, thereby adversely affecting the airplane stability characteristics. To correct such a mislocated C.G. SGL, Dornier issued S/B No. 1121-1703, dated May 20, 1988, requiring an inspection of the C.G. SGL location and replacement if incorrectly installed. The Federal Republic of Germany Civil Aviation Authority, the Luftfahrt Bundesamt (LBA) which has responsibility and authority to maintain the continued airworthiness of these airplanes in Germany, has classified these actions as mandatory. On airplanes operated under LBA registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of LBA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Dornier S/B No. 1121-1703, dated May 20, 1988, and the mandatory classification of this S/B by the LBA. Based on the foregoing, the FAA believes that the condition addressed by Dornier S/B No. 1121-1703, dated May 20, 1988, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require an inspection of the location of the C.G. SGL and replacement if the location Guide is incorrectly installed.

The FAA has determined there are currently three airplanes affected by the proposed AD. The cost of the inspection specified by the proposed AD is estimated to be $20 per airplane. The total cost is estimated to be $60 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

PART 39—[AMENDED]

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

2. By adding the following new AD:

§ 39.13 [Amended]

Dornier: Applies to Model Do-28 D-1 airplanes (all serial numbers) certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude operation of the airplane beyond the approved forward or rear center of gravity limits, accomplish the following

(a) Inspect the installed Center of Gravity Station Guide Line in accordance with Dornier Service Bulletin No. 1121-1703, dated May 20, 1988, and determine its location. Prior to further flight, replace, and correctly locate the Guide Line if necessary.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; or Dornier GmbH, P.O. Box 2160, D-8000 Munchen 66, Federal Republic of Germany; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 25, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 88-25520 Filed 11-3-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ANE-39]

Airworthiness Directives; Facet Aerospace Products, Co.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) applicable to Facet Aerospace Products, Co. (hereinafter called "Facet") carburetor models MA-4-5, MA-5, and MA-6AA manufactured after April 1984. This proposed AD would require replacement of the air metering stop pin, P/N 62-226, within the next 200 hours time in service, or when the carburetor is removed from the engine, whichever occurs first, in accordance with Facet Service Bulletin (SB) A1-88, dated August 1988.

The proposal is prompted by two cases of the air metering stop pin coming loose, and in one case preventing the throttle from being advanced. A total of 189 available carburetors were inspected by Facet and twenty-three (23) units were found to be nonconforming, i.e., the retention fit of the pin to carburetor housing was below design requirements. This manufacturing deviation could be present in any of the subject model carburetors manufactured after April 1984, and these carburetors have been identified by specific serial numbers.

The proposed AD is needed to prevent a potential risk to the safety of flight, due to the possibility of the engine throttle becoming jammed inside the carburetor if the air metering stop pin becomes loose.

DATES: Comments must be received on or before December 5, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 88-ANE-39, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 88-ANE-39".

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable Facet SB A1-88, dated August 1988, may be obtained from Facet Aerospace Products, Co., 1048 Industrial Park Road, Bristol, Virginia 24201.

A copy of the SB is contained in Rules Docket No. 88-ANE-39, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Pat Perrotta, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. Facet estimates that it will require one manhour to perform the modification required by Facet SB A1-88. A modification kit including parts, tool and gage will be supplied at no charge by Facet.

All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 88-ANE-39". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that this condition of a loose air metering stop pin is likely to exist or develop on other Facet carburetors, Models MA-4-5, MA-5, and MA-6AA. Therefore, the proposed AD would require replacement of the pin, P/N 62-226, with another pin, P/N 62-F1, in accordance with Facet SB A1-88, within the next 200 hours time in service, or when the carburetor is removed from the engine, whichever occurs first.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this proposed regulation involves approximately 2,050 carburetors that must be modified at an approximate total cost of $400,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Facet Aerospace Products, Co. (Marvel Schebler): Applies to Facet Models MA-4-5, MA-5, and MA-6AA carburetors manufactured after April 1984, having Part Numbers (P/N) and Serial Numbers (S/N) as listed herein:

Carburetors	Serial No.
Model: MA-4-5:	
P/N 10-3878	G-54-11129 thru G-54-11136 G-55-11500 thru G-55-12064
P/N 10-4164-1.	K-49-9001 thru K-49-9023
P/N 10-4404	R-48-11501 thru R-48-11721
P/N 10-4404-1.	R-45-11005 and R-45-11007 AO-45-11000 thru AO-45-11101
P/N 10-5054	BZ-16-3000 thru BZ-22-3110
P/N 10-5193	CP-5-3500 thru CP-5-3967
P/N 10-4893	BD-5-1000
P/N 10-4893-1.	CL-4-3700 thru CL-7-3776
P/N 10-5284	DV-0-500 thru DV-0-505 DV-1-1000 thru DV-1-1392
Model: MA-5:	
P/N 10-4865	BC-33-5001 thru BC-33-5005
Model: MA-6AA:	
P/N 10-4218-1.	AK-37-3002
P/N 10-4401-1.	AC-38-3278 thru AC-38-3298 AC-40-4001 thru AC-40-4021
P/N 10-4438-1.	AH-29-6000 thru AH-29-6009

The carburetors listed above are used on, but not limited to:

Textron Lycoming Models O-360, O-540, VO-540, and TVO-435 series engines.

Teledyne Continental Model O-470 series engines.

Pezetel (Frankling) Model 6A-350 series engines.

Compliance is required within the next 200 hours time in service, or when the carburetor is removed from the engine, whichever occurs first, unless already accomplished.

To prevent possible jamming of the carburetor throttle, accomplish the following:

(a) Check all Facet (Marvel Schebler) Model MA-4-5, MA-5, and MA-6AA carburetors manufactured after April 1984 to determine the carburetor part number and serial number. These numbers can be found on the carburetor nameplate which is located on the throttle body.

Note: When checking the carburetor serial number for comparison to the above listing, disregard the center number, as this is used for Facet internal blueprint control only. Example: Carburetor P/N 10-3878 would have a serial number like this:

G- 54 (Disregard digits in this area) -11129

Use first letter(s) and number following second dash, only.

(b) If the part number and serial number is one of those listed above, prior to further flight, remove the carburetor, disassemble it, and replace the air metering stop pin, P/N 62-226, with the air metering stop pin, P/N 62-F1, in accordance with the instructions given in Facet Service Bulletin A1-88, dated August 1988.

(c) Stamp or etch a "F" on the lower portion of the carburetor nameplate and make an engine logbook entry to indicate compliance. NOTE: If the serial number is not one of those listed above, corrective action is not required.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, New York Aircraft Certification Office, ANE-170, may adjust the compliance time specified in this AD.

The FAA will request the approval of the **Federal Register** to incorporate by reference the manufacturer's service bulletin identified and described in this document.

Issued in Burlington, Massachusetts, on October 24, 1988.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88-25514 Filed 11-3-88; 8:45 am]

BILLING CODE 4910-13-17

14 CFR Part 71

[Airspace Docket No. 87-AWA-53]

Proposed Alteration of the Portland International Airport, OR, Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to alter the Portland International Airport, OR, Airport Radar Service Area (ARSA). This proposal would adjust the lateral limits of the ARSA core to exclude airspace in an area which does not receive adequate radar and/or communications coverage commensurate with the ARSA program and associated services.

DATE: Comments must be recieved on or before January 3, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-53, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-53." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

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The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Portland International Airport ARSA to eliminate the area in the inner core, west of the east bank of the Willamette River up to 2,300 feet MSL. This airspace is predominantly utilized by helicopters and seaplanes following the river at low altitudes. The altitudes are too low for radar and communications coverage in this sector of the ARSA where the terrain prevents an acceptable degree of coverage. Consequently, aircraft seldom are capable of complying with the ARSA requirement for communicating with air traffic control (ATC) prior to encroachment upon this boundary of the airspace. This forces the pilot either to climb to contact ATC or circumnavigate over densely populated downtown Portland. The elimination of ARSA airspace in the above instance is directly attributable to reduced ATC service capability at altitudes affected by terrain features. Coverage by radar and/or communication equipment is limited to line of sight.

Temporary loss of radio or radar coverage is not an uncommon situation when operating at certain altitudes where the ATC facility is located in close proximity to higher terrain. Normally this is not considered an adverse factor in ATC's ability to provide services, as instrument flight rules (IFR) operations are conducted at altitudes which ensure adequate coverage, and visual flight rules (VFR) operations are advisory in nature with voluntary pilot participation. To the maximum extent practicable, FAA, in the development of regulatory airspace, ensures adequate coverage is provided.

The FAA has determined that this proposed regulation is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, for the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposal is not a "major rule" under Executive Order 12291.

Regulatory Evaluation

The proposed modification to the Portland International Airport ARSA is intended to improve the utility of the affected airspace. The proposal to eliminate a small amount of airspace from the ARSA is not expected to result in any costs associated with a reduction in the controlled airspace. The affected airspace currently is not within sufficient radar and/or communications coverage necessary to provide ARSA services because of terrain features. Adjusting the ARSA boundary will not alter this situation. Reconfiguring the ARSA to more accurately reflect the terrain characteristics will improve the efficiency of its operations, and various users, especially the users of the Willamette River and downtown heliports, will benefit from the restoration of this airspace.

The FAA has determined that the economic impact of this proposal is so minimal as not to require further regulatory evaluation. A copy of the regulatory evaluation for the original Portland International ARSA is available for review in FAA Airspace Docket No. 85-AWA-2.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at one location within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

Throughout the ARSA program the FAA has attempted to eliminate potentially adverse impacts on satellite airports within five-nautical miles of ARSA centers and the small businesses based at these airports, as well as flight training, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations, or in some cases, by providing airspace exclusions. This modification of the Portland International Airport ARSA will reduce the size of the ARSA and exclude an area in the vicinity of the Willamette River which will ease local operations.

For these reasons, the FAA certifies that the proposed amendment, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

Federalism Implications

The regulation proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed under "Regulatory Evaluation Summary," the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Portland International Airport, OR, [Amended]

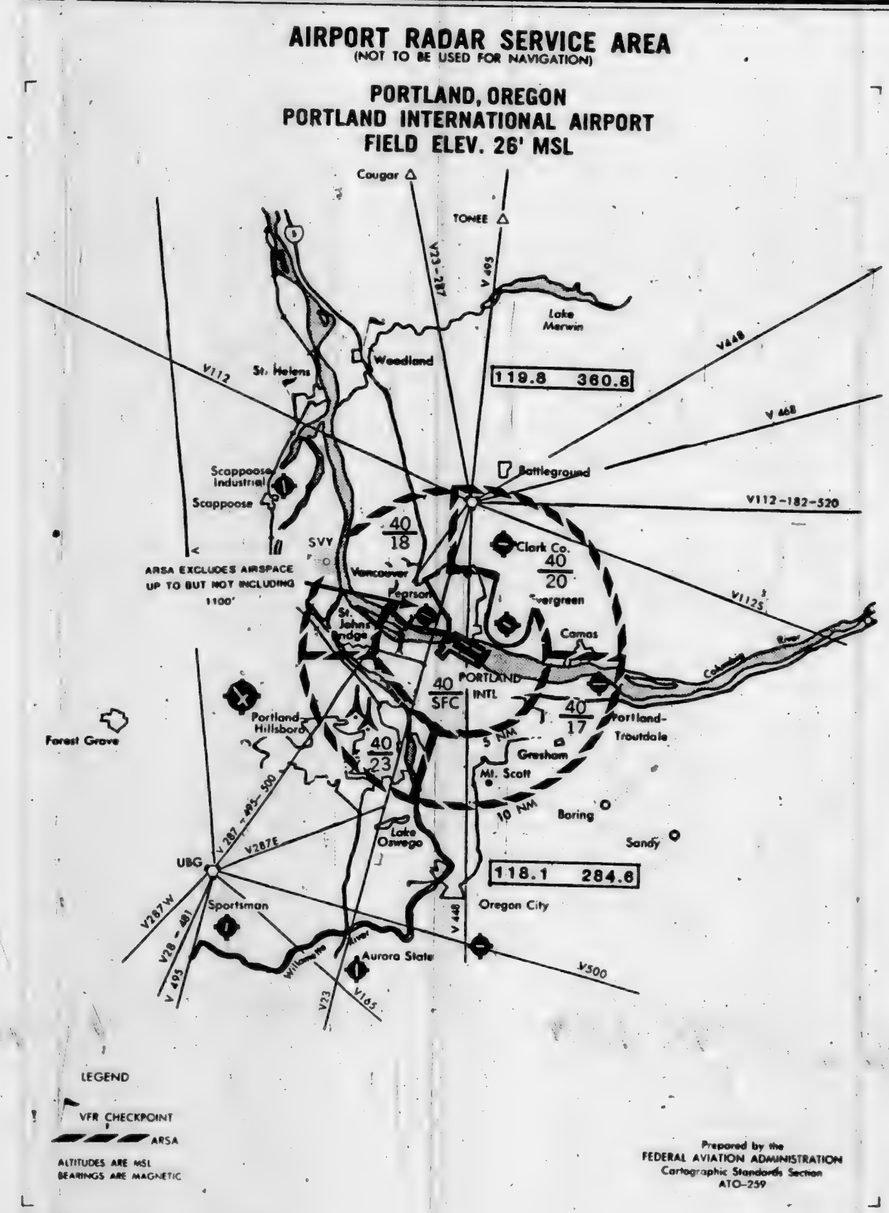
By removing the words "north shore of the Columbia River to the 5-mile arc from Portland International;" and by substituting the words "north shore of the Columbia River to the 5-mile arc from Portland International; and excluding that airspace west of the east bank of the Willamette River;"

Issued in Washington, DC, on October 25, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M



[FR Doc. 88-25519 Filed 11-3-88; 8:45 am]

BILLING CODE 4910-13-C

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-88-1845; FR-2543]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—St. Thomas, Virgin Islands; Special Revisions for Fiscal Years 1986 and 1987

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document proposes to amend the Fiscal Year 1986 and Fiscal Year 1987 Fair Market Rent Schedules to establish new FMRs for the St. Thomas, Virgin Islands market area for those two fiscal years. These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

Comment Due Date: December 5, 1988.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 143f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these progams, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. For the FY 1986 FMRs and FY 1987 FMRs previously promulgated by the Department (see the August 7, 1986 and April 26, 1988 **Federal Register**, 51 FR 28486 and 53 FR 14954, respectively), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document announces a special revision to the Fiscal Year 1986 and Fiscal Year 1987 Fair Market rent schedules applicable to the St. Thomas, Virgin Islands market area. These FMRs reflected data submitted by the Caribbean Office. Because of market conditions, the FMRs for the St. Thomas, Virgin Islands market area dropped between FY 1983 and FY 1984. In addition, these was no change in the published FMRs for this market area between FY 1985 and FY 1986 because the Caribbean Office was late in submitting acceptable schedules of FMRs for FY 1986. Further, where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacany rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The Caribbean Office requested that the Department established new rents for the St. Thomas, Virgin Islands market area. Careful analysis of this request and reanalysis of the FY 1986 and FY 1987 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear there has been compliance with the Department's cost contain guidelines with respect to project design. Therefore, an upward adjustment of the FY 1986 and FY 1987 FMRs for this market area is needed. Accordingly, the Department is proposing a revision of the FY 1986 and FY 1987 schedules applicable to the St. Thomas, Virgin Islands market area. It is intended that when these schedules are published for effect, their applicability will be the same as set forth in the preamble to the original FY 1986 and FY 1987 schedules, published on August 7, 1986, at 51 FR 28486, and April 26, 1988, at 53 FR 14954, respectively.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(l), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Accordingly, the following amendments to the FY 1986 and FY 1987 Fair Market Rent schedules are revised for the St. Thomas, Virgin Islands as set forth below:

PART 888—[AMENDED]

1. The authority citation for 24 CFR Part 888 continues to read as follows:

Authority: Section 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

[Including housing finance and development agencies' programs]

Region 2—New York Regional Office
Market: St. Thomas, Virgin Islands

Structure type	Number of Bedrooms				
	-0-	-1-	-2-	-3-	-4+
Special Revision of FY 1986 FMRs					
Detached			899	961	1107
Semi-Detached/Row	605	666	770	886	1006
Walkup	485	565	695	775	869
Elevator 2-4 STY	510	590	720		

Structure type	Number of Bedrooms				
	-0-	-1-	-2-	-3-	-4+
Special Revision of FY 1987 FMRs					
Detached			926	1010	1140
Semi-Detached/Row	623	688	793	913	1036
Walkup	500	582	716	798	895
Elevator 2-4 STY	525	608	742		

Dated: October 27, 1988.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-25511 Filed 11-3-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151, 155, and 158

46 CFR Part 25

[CGD 88-002]

RIN 2115-AC89

Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78; Correction

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Coast Guard is correcting errors in the preamble and proposed rules which appeared in the Federal Register on October 27, 1988 (53 FR 43622).

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Joel R. Whitehead, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-3), (202) 267-0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published proposed rules on October 27, 1988 (53 FR 43622) which would implement the Act to Prevent Pollution from Ships (33 U.S.C. 1901-1911), as amended by Title II of Pub. L. 100-220, (101 Stat. 1458) and Annex V of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution by Ships, 1973 (MARPOL 73/78). Due to an administrative error in transferring change documents to the **Federal Register**, that proposed rule contained several errors which are corrected by this notice.

The following corrections are made in CGD 88-002, the Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78 published in the **Federal Register** on October 27, 1988 (53 FR 43622).

1. On page 43626, second column, line 48, change the word "third" to "fourth."

2. On page 43627, second column, line 43, the sentence which reads "The proposed rules would require that Annex V COAs be issued to ports and terminals which receive oceangoing ships subject to Annex I or II of MARPOL 73/78 and to those which receive more than 25 port arrivals annually by ships whose last port of call was outside the continental United States or Canada" is correctly revised to read as follows: "The proposed rules would require that Annex V COAs be issued to ports and terminals which receive oceangoing ships subject to Annex I or II of MARPOL 73/78 and to those ports and terminals in which commercial fishing vessels offload more than 500,000 pounds of fish or shellfish products annually."

3. On page 43627, third column, line 6, delete the paragraph beginning with the word "However" and ending with the words "net fragments."

4. On page 43630, third column, line 28, delete the entire paragraph under the heading "33 CFR 158.135 Who Must Have a Certificate of Adequacy?" and in its place add:

"This section would be added to clarify who must have a COA. Adding this section is necessary since all Annex I and II ports and terminals are required to be issued COAs and it is proposed that only a small portion of Annex V ports and terminals would be required to have COAs. Ports and terminals subject to Annex V of MARPOL 73/78 would have to hold COAs if they receive ships subject to Annex I or II of MARPOL 73/78. In addition, commercial fishing facilities where fishing vessels offload more than 500,000 pounds of fish or shellfish products annually would need a COA."

5. On page 43631, second column, add the major heading "VI. Regulatory Evaluation and Environmental Impact" before the subheading "Regulatory Evaluation."

6. On page 43633, third column, line 17, change "fifth" to "sixth."

§ 158.120 [Corrected]

7. On page 43645, first column, in § 158.120, the definition of "Commercial fishing facility" is correctly revised to read as follows: " 'Commercial fishing facility' means a port that includes docks, piers, processing houses or other facilities where commercial fishing vessels offload more than 500,000 pounds of fish or shellfish products annually."

8. Section 158.135(c) on page 43645, second column, is correctly revised to read as follows:

§ 158.135 Who Must Have a Certificate of Adequacy?

* * * * *

(c) A COA for garbage if it receives—

(1) The ships under paragraph (a) or (b) of this section; or

(2) Commercial fishing vessels that offload more than 500,000 pounds of fish or shellfish products annually.

Dated: November 1, 1988.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-25590 Filed 11-3-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3471-8]

Ocean Dumping; Proposed Designation of Site; Port Aransas, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located in the Gulf of Mexico offshore of Port Aransas, Texas for the continued disposal of material dredged from the Corpus Christi Ship Channel. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time.

DATE: Comments must be received on or before December 19, 1988.

ADDRESSES: Send comments to:

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Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. E.P.A., 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region VI (E–FF), 1445 Ross Avenue, 10th Floor, Dallas, Texas 75202–2733

Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Corpus Christi Ship Channel site as an interim site for the disposal of material dredged from the entrance channel. In January 1980, the interim status of the site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region VI address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with its ocean dumping site designations (30 FR 16186, May 7, 1974).

EPA has prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Corpus Christi Ship Channel Ocean Dredged Material Disposal Site Designation." On September 30, 1988, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register.** The public comment period on this Draft EIS closes on November 14, 1988. Limited copies of the Draft EIS are available from the EPA address given above.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers and the analysis was updated in this Draft EIS. The nearest available land disposal area is 48 acres in size and is located 4 miles away from the seaward end of the project. Because of the high costs of transport as well as the limited capacity of the area, this alternative is not feasible. Also since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would result in a significant loss of quality wetlands or bay bottoms.

Four ocean disposal alternatives—two nearshore sites (including the proposed site), a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites involved limited feasibility for monitoring, increased transportation costs and increased safety risks. Because of safety and economic disadvantages, monitoring limits and the lack of environmental benefit, the mid-shelf site and the deepwater site were eliminated from further consideration.

Portions of the interim-designated site are within the navigational buffer zone, the jetty buffer zone and the beach buffer zone. Therefore, the interim-designated site is not being proposed for designation in its entirety. The proposal disposal site includes much of the area of historical impact of the interim site but excludes the three buffer zones referenced above.

EPA is coordinating with the National Marine Fisheries Service in accordance with the requirements of section 7 of the Endangered Species Act. EPA is also coordinating, as a part of the NEPA/EIS process, with the State of Texas regarding any requirements under the Coastal Zone Management Act.

C. Proposed Site Designation

The proposed site is located approximately 1.5 miles from the coast at its closest point. The water depth at the proposed site ranges from 35 to 50 feet. The coordinates of the site are as follows: 27°49'10" N, 97°01'09" W; 27°48'42" N, 97°00'21" W; 27°48'06" N, 97°00'48" W; 27°48'33" N, 97°01'36" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; Section 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met. The characteristics of the proposed site are reviewed below in the terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).) Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is flat with no unique features or relief.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).) Living resources' breeding, spawning, nursery and passage areas in the project area were identified as excluded areas during the siting feasibility process and eliminated from consideration. Approximately 3.5 miles to the southeast and 8 miles to the east southeast of the preferred site, there are fish havens which are excluded, including one mile buffer zones. The pass between the jetties serves as a migratory route for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. This area, including a one-mile buffer zone, is excluded as a migratory passage. Also excluded are lighted platforms and non-submerged shipwrecks which improve fishing.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).) The proposed site is approximately 1.5 miles from Mustang Island and San Jose Island beaches or other amenity areas; e.g., Mustang Island State Park and Caldwell Pier.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).) Only maintenance material from the Corpus Christi Ship Channel will be disposed. Historically, an average of 955,000 cy/yr has been dredged from the channel at roughly 18-month intervals. This material has historically been transported by hopper dredged but could be transported by pipeline. Based on chemical analyses and biological toxicity studies of past maintenance material, it was concluded that no special location or precautions would be necessary for the disposal of the dredged materials.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5).) The proposed site is amenable to surveillance and monitoring. A monioring program, consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses, is proposed for the Corpus Christi Channel site.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).) Physical oceanographic parameters including disersal, horizontal transport and vertical mixing characteristics were used: (1) to develop the necessary buffer zones for the siting feasibility analysis; and (2) to determine the minimum size of the proposed site. Predominant longshore currents, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site.

7. *Existense and effects of current and previous discharges and dumping in the area (including cumulatie effects).* (40 CFR 228.6(a)(7).) Based on the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area, there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean dispoal under 40 CFR Part 227. Studies of the benthos at the interim-designated site and nearby areas have indicated that the composition of the benthos is different from that in nearby "natural bottom" areas. This difference in benthos composition is due primarily to the fact that the substrate at the interim-designated site is almost pure sand versus the mixed grain size of the "natural bottom". Therefore, the proposed disposal site, which emcompasses much of the interim-designated site, was placed as near shore as possible to take advantage of the fact that the nearshore substrate is sandier than that further offshore.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).) Impacts to shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites have been evaluated for the Corpus Christi Ship Channel site designation. The proposed site will not interfere with other legitimate uses of ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Disposal operations in the past have not interfered with other uses.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).) Monitoring studies have shown only short-term water-column pertubations of turbidity, and perhaps increased chemical oxygen demand (COD), which resulted from disposal operations. No short-term sediment quality perturbation, except grain size, have been directly related to disposal operations. In general, the water and sediment quality is good thoughout the disposal area and there have been no long-term adverse impacts on water and sediment quality from disposal operations. However, there has been a long-term impact on the grain size, and thus, on the benthos at the interim-designated site.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).) With a disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. Continued disposal of maintenance material at the proposed site should not attract nor promote the development or recruitment of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11).) Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located near the jetties and is well within the buffer zone surrounding the jetties. Use of the proposed site would not impact any known historical or cultural sites. This determination is being coordinated with the Texas Historical Commission.

E. Proposed Action

Based on the Draft EIS, EPA proposes to designate the Corpus Christi Ship Channel site for continued use for the ocean diposal of dredged material. The site is compatible with the five general criteria and eleven specific factors used for site evaluation.

Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

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List of Subjects in 40 CFR Part 228

Water pollution control.

Date: October 21, 1988.

Robert E. Layton, Jr.,

Regional Administrator of Region VI.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Corpus Christi Ship Channel and adding paragraph b (39) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(39) Corpus Christi Ship Channel, Texas—Region VI.

Location: 27° 49′ 10″ N, 97° 01′ 09″W; 27° 48′ 42″ N, 97° 00′ 21″ W; 27° 48′ 06″N, 97° 00′ 48″W; 27° 48′ 33″N, 97° 01′ 36″W.

Size: 0.63 square nautical miles.

Depth: Ranges from 35–50 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Corpus Christi Ship Channel, Texas.

[FR Doc. 88–25578 Filed 11–3–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 228

[FRL–3471–7]

Ocean Dumping; Proposed Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate an existing dredged material disposal site located in the Gulf of Mexico near the Houma Navigation Canal (HNC) for the continued disposal of dredged material removed from the Cat Island Pass section of the HNC. This proposed site designation is for an indefinite period of time. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material.

DATE: Comments must be received on or before December 19, 1988.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region VI (E–FF), 1445 Ross Avenue, 10th Floor, Dallas, Texas 75202, and

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the HNC site for the disposal of material dredged from the Cat Island Pass section of the HNC. In January 1980, the interim status of the HNC site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region VI address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) have jointly prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Houma Navigation Canal Ocean Dredged Material Disposal Site Designation, Terrebonne Parish, Louisiana." On September 16, 1988, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register.** The public comment period on this Draft EIS closes on October 31, 1988. Limited copies of the Draft EIS are available from the EPA address given above.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Draft EIS baed on information from the COE. Inland disposal sites are currently used for the inland reaches of the Houma Navigation Canal. These inland sites, however, cannot accommodate the dredged material from Cat Island Pass. Use of these upland sites for material which has traditionally been dumped at sea would quickly decrease the lifetime of the sites. Additionally, the nearest land-based sites are about 30 miles away and their use would involve barging material, which is economically impractical.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located west of the existing site was also evaluated. However, no environmental benefits would be gained by its selection. Rather, the potential exists for greater impact to

Isle Dernieres from the turbidity plume at this site.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE is currently coordinating a no adverse effect determination with the National Marine Fisheries Service. EPA is also coordinating with the State of Louisiana under requirements of the Coastal Zone Management Act.

C. Proposed Site Designation

The existing site is located about eight miles south of the Terrebonne Parish mainland and about three miles from Timbalier Island to the east and Isles Dernieres to the west. The site extends approximately four miles offshore. Water depths at the site range from 6 to 30 feet. The coordinates of the site are as follows: 29°05′22.3″ N, 90°34′43″ W; thence following a line 1000 feet west of the channel centerline to 29°02′17.8″ N, 90°34′28.4″ W; thence to 29°02′12.6″ N, 90°35′27.8″ W; thence to 29°05′30.8″ N, 90°35′27.8″ W; thence to the point of beginning.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Site are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft EIS, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the proposed site are reviewed below in terms of the eleven specific factors.

1. Geographical position, depth of water, bottom topography and distance from coast. [40 CFR 228.6(a)(1).]

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is relatively flat and slopes to the south (3.8 feet per mile).

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. [40 CFR 228.6(a)(2).]

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The HNC ocean disposal site represents a small area of the total range of the fisheries resource.

3. Location in relation to beaches and other amenity areas. [40 CFR 228.6(a)(3).]

The HNC ocean disposal site is about three miles from the nearest beaches on the barrier islands. These beaches are sparsely used because they are accessible only by boat. The turbidity plume would be diluted to ambient levels well before reaching these beaches.

4. Types and quantitites of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any. [40 CFR 228.6(a)(4).]

The dredged material to be disposed is from the adjacent area of the HNC and consists of varying amounts of sand, silt and clay. Sediments generally decrease in grain size in the offshore direction, with sands being predominant in the northern portion of the disposal site and 80 to 97 per cent silts existing generally in the southern area. Approximately 400,000 cubic yards of material are disposed in the site annually. About 90 percent of the material is removed with a hydraulic pipeline dredge. The material is released as an uncohesive slurry directly into the water overlying the site. The remaining 10 per cent of the material is removed by hopper dredge and released as a slurry form the hopper. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. Feasibility of surveillance and moinitoring. [40 CFR 228.6(a)(5).]

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is nearshore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any. [40 CFR 228.6(a)(6).]

Mixing processes, current characteriscits, and sediment transport in the nearshore region off Cat Island Pass are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a vertically homogenous water column in the area. Density stratification can occur seasonally. In the summer, bottom waters on the Louisiana shelf are occasionaly oxygen depleted, which causes mass mortalities of benthic organisms. During a site study in December 1980 and June 1981, waters were supersaturated with oxygen at all depths. A westerly surface flow of 0.8 knots predominates during winter and spring. Velocities of 3 to 4 knots may occur during storm events. In non-storm conditions, predominant sediment transport along the barrier islands fronting Terrebonne Bay is toward the west. Suspended sediments associated with tidal discharge or dredged material disposal, may be rafted along with the tidal plumes and eventually influenced by wind-driven, longshore currents.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects). [40 CFR 228.6(a)(7).]

Dredged materials from maintenance of the HNC have been disposed at the site since 1964, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor releases of trace metals, and temporary change in sediment grain size.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean. [40 CFR 228.6(a)(8).]

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In the vicinity of the disposal site the majority of shipping traffic is confined to the HNC. Dredging facilitates shipping; periodic use of the disposal site has some potential for interfering with ship movement in the HNC during dredging and disposal operations. Shoaling immediately after dredging stopped resulted in the grounding of one ship in the disposal site.

Nearshore areas contain a productive "high-use" fishing ground for a numbr of commercial and recreational species. The Houma site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries.

The nearest shellfish culture is the Terrebonne Bay estuarine area; disposal operations at the site would not affect this activity. There are oyster leases in remnant bayous on the north side of Isles Dernieres and the Timbalier Islands. Designation of the disposal site would not impact these lease areas. Desalination and areas of special scientific importance do not occur in the vicinity of the disposal site.

Petroleum and mineral-extracting activities occur offshore within 3.5 miles of the site and are not impacted by use of the site. Intermittent dumping does not interfere with the exploration or production phases of resource development, or with other legitimate uses of the ocean.

9. The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys. [40 CFR 228.6(a)(9).]

Water column concentrations of trace metals and chlorinated hydrocarbons (CHC) were below EPA's water quality criteria during the 1980–1981 study. Concentrations in sediment were strongly related to grain size, with highest levels in silts and clays offshore. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types.

Nutrient concentrations, turbidity, and suspended solids, are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

The benthos at the site is dominated by polychaete worms, ribbon worms, and the little surf clam. Population densities were highest in the late spring. Several of the dominant organisms, inside and outside the site, were small bodied opportunistic species capable of rapid recolonization of disturbed sediments. There was little difference in density or diversity of benthic organisms inside and outside the site. During disposal, however, species density and diversity would decline. Recolonization would start at the cessation of dumping and be essentially complete within two to six months.

10. Potentiality for the development or recruitment of nuisance species in the disposal site. [40 CFR 228.6(a)(10).]

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance. [40 CFR 228.6(a)(11).]

There are no known features of historical or cultural significance on the barrier islands to either side of the site. No known shipwrecks are located within site boundaries.

E. Proposed Action

Based on the Draft EIS, EPA proposes to designate the Houma Navigation Canal ocean dredged material disposal site. The existing site is compatible with the general criteria and specific factors used for site evaluation. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: October 4, 1988.

Robert E. Layton, Jr.,

Regional Administrator of Region VI.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Houma Navigation Canal, Louisiana-Cat Island Pass and adding paragraph (b)(38) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(38) *Houma Navigation Canal, Louisiana—Region VI.*

Location: 29° 05′ 22.3″ N, 90° 34′ 43″ W; thence following a line 1000 feet west of the channel centerline to 29° 02′ 17.8″ N, 90° 34′ 28.4″ W; thence to 29° 02′ 12.6″ N, 90° 35′ 27.8″ W; thence to 29° 05′ 30.6″ N, 90° 35′ 27.8″ W; thence to the point of beginning.

Size: 2.08 square nautical miles.

Depth: Ranges from 6–30 feet.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of Cat Island Pass.

[FR Doc. 88–25577 Filed 11–3–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–21; Notice No. 1]

Bus Window Retention and Release; Advance Notice of Proposed Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice announces that NHTSA is considering the issuance of a proposal to amend Federal Motor Vehicle Safety Standard No. 217, *Bus Window Retention and Release,* by increasing the minimum number of emergency exits on school buses. The agency seeks comments on the extent to which such an amendment would help to speed the evacuation of a bus following a crash, as well as on the costs and operational aspects of additional exits, and on any negative effects (such as reductions in structural integrity or seating capacity).

This notice comprises one part of NHTSA's comprehensive effort to assess the safety need to amend several of the motor vehicle safety standards relating to the crashworthiness and post-crash performance of buses in general and school buses in particular. These issues have received substantial public attention in recent months, following the tragic crash earlier this year of a compact pickup truck driven by a drunken motorist into a crowded church bus. Twenty-seven of the 67 occupants of the bus died, apparently as a result of smoke inhalation, and not from impact trauma resulting from the collision. Even though the Kentucky crash was a unique catastrophe, and the safety record of school buses is extremely positive overall, the agency believes that it should consider whether there are improvements it could propose in its safety standards that might provide a higher level of safety than currently exists.

DATES: Comment closing date is January 3, 1989.

ADDRESSES: Comments should refer to the docket and notice numbers of this proposal, and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590.

Docket Room hours are 8 a.m. to 4 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William Brubaker, NRM–12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4919.

SUPPLEMENTARY INFORMATION: On May 14 of this year, 27 persons died, apparently of smoke inhalation in a Carrollton, Kentucky crash involving a church bus and a compact pickup truck. This catastrophe was unique in that there had been no fire-related fatalities in school bus crashes prior to the Carrollton crash. A number of unusual factors combined to make this crash and its consequences catastrophic. For example, the crash was extremely severe. The two vehicles involved had a closing velocity in excess of 100 mph. During or shortly after the crash, a fire apparently started near or at the front bus entrance and was sustained by fuel from the wreckage. Twenty-seven occupants of the bus died, apparently as a result of smoke inhalation, and not from bodily injuries resulting from the collision. The church bus, a used school bus designed to carry 66 young children, was filled to capacity with children, teenagers, and adults. There was reportedly at least one passenger sleeping on the bus floor and at least one picnic cooler in the aisle.

The bus was manufactured in 1977 shortly before the April 1, 1977 effective date of the school bus safety standards NHTSA issued pursuant to the School-bus and Motor Vehicle Safety Amendments of 1974. The bus was used first as a school bus, and later sold to a church. Thus, the bus was typical of the pre-1977 school bus body type which had been in use for many years, and presumably met Federal Motor Vehicle Safety Standard No. 302 for the flammability of interior materials (which became effective September 1, 1972). The bus was not required to comply with the comprehensive school bus emergency exit requirements of Standard No. 217 (which took effect on April 1, 1977), and apparently did not fully meet all aspects of that Standard.

In the aftermath of the Kentucky crash, NHTSA has initiated a series of efforts to assess the safety need to amend several of the motor vehicle safety standards relating to the crashworthiness of buses in general and that of school buses in particular. (Under NHTSA's regulations, a "bus" is a motor vehicle designed for carrying 11 or more persons (driver included). A "school bus" is a "bus" that is sold for purposes that include carrying students to and from school or related events (common carriers in urban transportation excluded). 49 CFR Section 571.3(b).)

In taking these steps, NHTSA wishes to emphasize that the safety record of these vehicles has been remarkably good. The fatalities in the Kentucky tragedy were the first fire-related fatalities in a school bus on the agency's record since the agency began careful tracking of all traffic fatalities in 1975. Further, over the past 10 years, school bus occupants have sustained an average of 15 fatal injuries each year. While each of those fatalities is tragic, the number of school bus occupant fatalities is small compared to occupant fatalities in all other types of motor vehicles. For example, in 1987, there were 38,544 occupant fatalities in motor vehicles other than school buses, which includes 5,663 deaths among children aged five to 15. (The 1987 fatality statistics are representative of fatality data in recent years.)

In view of the 3.3 billion miles travelled by school buses each year, the school bus is one of the safest means of travel. On a vehicle mile basis, there are 0.5 school bus fatalities per hundred million vehicle miles travelled, compared to 1.9 occupant fatalities per hundred million vehicle miles in passenger cars. On a per-vehicle-mile basis, school buses are about four times safer than passenger cars. And since a school bus carries more occupants than a passenger car, the comparison on a per-passenger-mile basis would be even more favorable for school buses.

The safety record for other types of buses is also extremely good. Between 1977 and 1987, an average of 18 occupant fatalities occurred annually in transit and inter-city buses. In this same period, there was one fire-related occupant fatality in a bus other than a school bus.

As safe as today's buses are, it is incumbent upon NHTSA to inquire whether the bus fleet might be made safer still. NHTSA is issuing this notice to obtain factual information on available technologies, real-world operational and environmental conditions, and other factors that might help the agency decide what further steps should be taken to improve bus safety and what steps could be reasonably taken to reduce the risk of another bus tragedy similar to the Kentucky crash. The agency believes it is important to find out more about the *potential* for fire-related injury and death on buses and school buses, and whether reasonable measures can be taken to reduce that potential.

While NHTSA's review generally encompasses all buses, for Standard

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217, which, among other things, sets out requirements for the number and type of emergency exits in buses, the agency is interested specifically in information that applies to school buses. Under Standard 217, large and small buses other than school buses already must have multiple emergency exits on either side of the vehicle. Given these requirements, NHTSA believes that further inquiry into additional exits for non-school buses is unnecessary at this time.

Standard No. 217: Bus Window Retention and Release. An important factor in minimizing fire-related injury and death on buses is the speed and ease with which occupants can evacuate the vehicle in an emergency. As part of its effort to assess whether there is a need to amend Federal requirements for buses, NHTSA is reviewing Standard No. 217, *Bus Window Retention and Release.* When Standard No. 217 originally became effective on September 1, 1973, it required that buses other than school buses have exits whose square area equaled or exceeded a number which was the function of the number of seating positions. The type of exit used to comply with this requirement was left to the choice of the manufacturer. School buses were excluded from this requirement for the reasons explained in the notice of proposed rulemaking:

> In view of discipline problems associated with mandatory quick-release and exit devices throughout a school bus which may interfere with the school bus driver's task, and the added risk of children falling from moving school buses, push-out windows for school buses would remain optional. 35 FR 13025; August 15, 1970.

The Standard did require that when a school bus was voluntarily equipped with push-out windows or with other emergency exits, those exits must conform to the same requirements specified in the Standard for exits in buses other than school buses.

In response to the School Bus Amendments of 1974, the Standard was amended to include emergency exit requirements for school buses. Instead of simply specifying the total area of all the exits combined, leaving the choice of exit type to the manufacturer, the standard requires that all new school buses have either (1) one rear emergency door, or (2) "one emergency door on the vehicle's left side that is in the rear half of the bus passenger compartment and is hinged on its forward side, and one push-out rear window." Like all of the agency's safety standards for motor vehicles, Standard No. 217 is a minimum safety standard, in this instance setting out the lowest permissible number of emergency exits for a school bus.

In this notice, the agency is exploring the question of whether additional emergency exits may so facilitate exiting a school bus following a crash that a rulemaking is warranted to require additional emergency exits on all new school buses. (In a separate document in this issue of the **Federal Register**, NHTSA is seeking comment on the related issue of the flammability resistance of materials used in bus interiors to help the agency determine whether rulemaking action is warranted, and if so, what regulatory approaches may be viable. In addition, an ANPRM on the Federal Standard for fuel system integrity [FMVSS No. 301] is expected to be issued shortly.)

Any purchaser of a school bus (State, school district, or private school) may use procurement specifications to require that vehicle to meet a higher standard than the Federal standard. (Under Federal law, any State law that requires school buses in the state to meet a higher performance standard can apply only to buses purchased for the State's own use, which NHTSA has interpreted to mean any public school system in that State.) The agency is aware of six states that already require more emergency exits for school buses procured for use by them and their subdivisions than is required under Standard No. 217. They are California, Indiana, New York, Oregon, Washington, and West Virginia. In addition, individual school districts or private schools may be purchasing buses with more exits than the minimum required under Standard 217.

Issues

This notice discusses a range of issues that NHTSA is considering in deciding whether to develop and issue a proposal relating to the emergency exits in school buses, and makes a number of requests for opinions and data. Since this is an advance notice of proposed rulemaking, no rule will be issued on this subject without a notice of proposed rulemaking and further opportunity to comment.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including, but not limited to, statistical and cost data and the source of such information. NHTSA would like commenters to respond to questions concerning the following issues regarding additional emergency exits: (a) the safety need for increasing the number of emergency exits on school buses; (b) requirements concerning additional exits; (c) effects of additional exits on other aspects of safety; (d) costs of additional exits; (e) methods for encouraging correct use of any such exits; and (f) incidental matters that may arise as a consequence of increasing the number of required exits. For easy reference in drafting comments, the requests are numbered consecutively.

Safety Need. The central issue in considering whether to make any safety standard more stringent concerns safety need. State and local school systems and private services that transport students to and from school and school-related activities are uniquely qualified to supply NHTSA with illuminating information on in-service experiences with school bus emergency exits. Therefore, the agency is seeking comment from school boards, counties, States, pupil transportation services, and others on their experiences with use of emergency exits in emergencies. While we encourage commenters to respond with their experiences in any crash mode, the agency is particularly interested in experiences with emergencies involving bus fires.

1. Is it significantly easier and faster to evacuate passengers from buses manufactured in accordance with Standard No. 217's comprehensive school bus emergency exit requirements (which became effective for school buses on April 1, 1977) than in pre-standard buses? What are the experiences of non-school bus operators (such as transit, intercity, charter, and private operators) with evacuating buses that were manufactured before Standard 217 as compared with evacuating those buses manufactured after the Standard became effective (September 1, 1973 for buses other than school buses)?

2. What injury and non-injury data exist regarding real-world experiences with emergency exits on buses? Based on those data or other information, would increasing the number of emergency exits beyond the number currently required by Standard 217 facilitate egress in an emergency? To what extent?

3. What experience or information led to the decisions of various States or local jurisdictions or private operators to order school buses with additional emergency exits beyond the minimum specified by Standard 217?

What has been the effect of that decision on bus occupant safety? What is the experience of companies and school districts that order school buses with additional safety exits? Are these additional exits actually used in accidents? Are they used correctly? Have problems with vehicle maintenance, occupant tampering, or misuse changed as a consequence of having these additional exits? How?

4. Standard No. 217 represents one end of the spectrum in the number of emergency exits required in a school bus (one or two depending depending upon the option selected by the manufacturer), and the State of New York the other (a total of 10 required exits). If NHTSA were to increase the minimum number of required school bus emergency exits, how should the agency determine what number appropriately meets the need for safety? Should the number of exits be related to vehicle passenger capacity, to the time it takes to evacuate the vehicle, or to some other factor? Is there an accurate, objective method for testing evacuation time?

Requirements Concerning Additional Exits. If NHTSA were to propose an amendment to Standard No. 217 increasing the required minimum number of emergency exits, then the agency would have to determine appropriate, objective specifications for those exits. The usual design configurations for emergency exits are standard exit doors, roof hatches, and push-out windows. The agency is considering whether there are other types of exits that may be appropriate for school buses. For example, for larger school buses, the windshield retention system might be modified to make the windshield an avenue of escape in an emergency if it had a configuration similar to a push-out side window. NHTSA is seeking comment on a number of questions relative to the configuration of required exits, and to other specifications the agency might wish to consider if additional emergency exits are required.

5. What specific test procedures and performance requirements are appropriate for side door exits? For push-out window exits? For roof hatch exits?

6. What size should be prescribed for additional door, window, or roof exits?

7. Are the current requirements for emergency release location and operating force appropriate for push-out windows on school buses?

8. To what extent would wider aisles aid in reducing the time needed by occupants to reach emergency exits and leave the vehicle? Are aisle widths adequate to permit occupants to crawl toward an exit, if necessary?

9. Would adding more exits and widening vehicle aisles reduce vehicle passenger capacity? If yes, to what extent and at what cost? Also, if passenger capacity is reduced, would additional buses have to be placed in service adding an increased risk of accident?

Effects of Additional Exits on Other Aspects of Safety. Any proposal for manufacturers to install additional emergency exits should not compromise other aspects of school bus safety. A critical consideration in this review process is what effect requiring more emergency exits would have on the structural integrity and other aspects of the crashworthiness of school buses. Therefore, NHTSA seeks responses to the following questions.

10. What effect will additional cutouts in the main body structure have on the vehicle's capability to withstand crashes? What have the safety impacts been in states and localities that already require more emergency exits than the minimum number currently required under Standard 217?

11. Would additional exits have to be staggered (i.e., located so that side exits on opposite sides of a bus are not directly across from one another) to maintain overall vehicle structural integrity?

12. Would there be a limit on the number of exits that could be provided due to additional weight on wheel axles?

13. If there are additional push-out window exits, would more exits of that type increase the risk of ejection? Would the addition of other types of exits increase that risk? Would the risk of roll-over ejection be particularly increased?

14. Are current retention requirements in Standard 217 adequate to ensure that exits stay closed in a roll-over or other crash mode? If push-out windows frequently are opened and closed during evacuation drills, how would this specific activity affect the in-service life of these windows and their integrity in a roll-over?

15. What other potential adverse safety implications are there for various emergency exit configurations?

Costs Of Additional Exits. This spring, NHTSA obtained information on the cost of retrofitting school buses with push-out window or roof vent emergency exits. Projected costs for aftermarket installation of push-out windows were about $70.00 per window, and for roof hatch escapes about $300.00 per exit. The agency believes that the cost of adding more required emergency exits must be balanced against the possibility that those who purchase school buses and transport children in them might feel compelled to retain an older school bus instead of replacing it with a newer, more expensive one. If a requirement for additional emergency exits so increases the cost of a new school bus that purchasers would extend the in-service life of older vehicles, then school bus passengers may be at risk of riding for a longer time in vehicles that lack beneficial safety improvements. Therefore, the agency poses the following questions for comment.

16. What would be the likely cost to final purchasers per addition of an emergency door, push-out window, or roof hatch to a new school bus?

17. What is the current number and type of new school buses that have been ordered or delivered with additional emergency exits? What was the additional cost for the additional exits? What factors resulted in the decision to add emergency exits despite increased vehicle cost?

18. What are the cost implications if additional exits result in reduced passenger capacity for a vehicle? What practical experience have school bus purchasers and manufacturers had with respect to the subject of this question?

Encouraging Correct Use of Emergency Exits. Regardless of the number of safety features incorporated into a vehicle and how well they perform in the abstract, the effectiveness of these systems would be compromised if occupants did not know how to use the systems correctly. While NHTSA has no authority to regulate vehicle users or operations, part of an effective injury and fatality reduction and prevention program is proper use of safety features under appropriate circumstances. In an effort to promote safe school bus operations in the States, the agency publishes a manual titled "Program Guideline on Pupil Transportation Safety," which provides guidance to State governments on encouraging an maintaining pupil transportation safety. Emergency evacuation guidance is an issue addressed in this manual.

Currently, NHTSA is updating this manual to encompass specific recommendations regarding emergency evacuation drills for school bus drivers and occupants made by the Tenth National Conference on School Transportation. In accordance with these recommendations, NHTSA encourages several evacuation drills per school year that include practice and instruction in exiting from the bus through the emergency doors, and in opening door and window exits in emergencies. The Conference recommendations include detailed instructions for conducting these drills.

NHTSA believes that documented user experience with problems that arise

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in a drill might supply the agency with valuable insight into the safety need for wider aisles, additional exits, more easily operated release mechanisms, clearer operation instructions, and the performance characteristics of various exit configurations.

19. Can school districts or pupil transport services supply documentation on their experiences with conducting emergency evacuation drills? How do push-out windows, standard doors, and rear emergency doors compare with each other for ease of access and egress in these drills?

20. What human factors affect correct use of emergency exits? For example, in a circumstance like the Kentucky crash, what is the likelihood that a young child will jump from a window five or six feet above the ground into surrounding darkness? What other human factors could affect proper use? Are there performance elements that the agency can introduce in a vehicle safety standard that could facilitate proper use?

Other Factors Incident to Requiring More Emergency Exits. There are other factors which, though important, are not easily categorized. Nonetheless, experience and data relating to these issues may provide useful information that will influence the agency's decision whether to propose amending Standard No. 217. Therefore, NHTSA is seeking comment on the following questions.

21. Would the additional weight that would be added to a vehicle by incorporating structures to support the new exits (preventing separation of exits in a crash environment) affect the vehicle's carrying capacity (passenger and equipment capacity)?

22. What new problems would be imposed on the driver to control student tampering with additional exits? Would push-out windows and roof exits increase vandalism? Should there be an alarm for each emergency exit to alert the driver of occupant tampering?

23. Given that in some crash situations there is a greater chance of fire for gas-fueled buses than for diesel-fueled ones, should there be different requirements for diesel-fueled buses? Why? Why not?

24. To what extent is storage space an issue in emergency egress? Do school buses need racks or compartments for storing items such as band equipment, athletic equipment, and picnic coolers so as to avoid blocking aisles and passenger egress in an emergency? What kinds of storage options currently are available in school buses?

Impact Assessments

Executive Order 12291 and Department of Transportation Regulatory Policies and Procedures. NHTSA has considered costs and other factors associated with this advance notice. The agency has determined that Executive Order 12291 is inapplicable because that Order applies to notices of proposed rulemaking and final rules only. However, NHTSA has determined that this advance notice is a significant rulemaking action under the Department of Transportation Regulatory Policies and Procedures because it concerns a matter on which there is substantial public interest.

If the agency determines to propose a rule requiring additional emergency exits on school buses, the approach may be to require additional emergency doors, additional push-out windows on either side of the bus, a windshield that will be the functional equivalent of a push-out window, or a combination of any of these. Before the agency can make a full assessment of the potential benefits of taking such an action, it is appropriate to obtain more detail on school bus accidents in order to ascertain better whether the lack of additional emergency exits is verifiably related to injuries and fatalities. In any event, NHTSA believes that there would be a benefit in requiring changes to Standard 217 if those changes might provide a higher level of safety than that which currently exists.

An approach the agency could take in requiring additional exits is to use the current minimum emergency exit requirements as a baseline, and propose a combination of exits such as those described in the preceding paragraph. Likely approaches the agency might take are adding one push-out window per side, and one roof hatch in the middle of the bus (Enhanced Level 1); or two push-out windows per side, and two roof hatches near the middle of the bus (Enhanced Level 2).

The agency has obtained cost estimates for retrofitting push-out windows (about $70.00 per exit), and roof hatches (about $300.00 per exit) in school buses. However, the cost of installing an exit in a school bus should decrease about 50 percent if the installation is part of the manufacturer's regular production run for new vehicles. The industry's variable cost increase per school bus for Enhanced Level 1 would be ([2 × $70.00] + $300)/2, or $220 per unit. During the last five years, about 30,000 vehicles certified as school buses were sold annually; therefore, the total annual cost would be $220 × 30,000, or $6,600,000. Making the same assumptions for Enhanced Level 2, the cost to the consumer would be about $440 per bus. Compared with the average cost of a new bus (approximately $40,000), these cost increases are minimal, and should not result in a significant negative effect on new school bus sales. (A Preliminary Regulatory Evaluation has been prepared, and is available in the Docket for this ANPRM.)

Executive Order 12612. NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency has determined that this advance notice does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The agency welcomes any comment on this issue.

Regulatory Flexibility Act. The Regulatory Flexibility Act does not apply to advance notices of proposed rulemaking. If the agency decides to issue a proposed rule, Regulatory Flexibility Act issues will be addressed.

Comments

The agency invites comments from interested persons on the questions presented in this advance notice and on any other relevant issues. The agency asks that comments on the proposal be submitted in writing, and requests (but does not require) that there be at least 10 copies of each comment. To encourage commenters to be concise, NHTSA requires that interested persons limit their remarks to no more than 15 pages (49 CFR 553.21). A commenter may attach any necessary supporting document without regard to the 15-page limit. All comments will be filed and available for examination in the Docket Section both before and after the comment closing date.

If a commenter wishes to submit certain information under a claim of confidentiality, then it must send three copies of the complete submission, including purportedly confidential business information, to the Chief Counsel, NHTSA, at the street address given in the "Address" caption. Further, the commenter must send seven copies from which the purportedly confidential information has been deleted to the Docket Section. Submit each request for confidentiality with a cover letter setting out the information specified in the agency's confidential business information regulation (49 CFR Part 512).

NHTSA will consider all comments received before the close of business on the comment closing date indicated in the "Dates" caption of this proposal. To the extent possible, NHTSA also will consider comments filed after the closing date. Comments on the advance proposal will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the Docket as this information becomes available, and recommends that interested persons continue to examine the Docket for new material.

Persons who wish to be notified of the receipt of their comments in the Docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the Docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicle.

(15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 1, 1988.

Barry Felrice,

Associate Administator for Rulemaking.

[FR Doc. 88-25554 Filed 11-1-88; 12:14 pm]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 88-22; Notice 01]
RIN 2127-AA44

Flammability of Interior Materials; Advance Notice of Proposed Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice announces that the National Highway Traffic Safety Administration is considering the issuance of a proposal to upgrade Federal Motor Vehicle Safety Standard No. 302, *Flammability of Interior Materials*, as it applies to large buses (including school buses) over 10,000 pounds gross vehicle weight rating, and requests comments and information to assist the agency in determining whether to issue such a proposal. More specifically, this notice requests comments on possible proposals relating to matters such as self-extinguishing seating materials (i.e., materials which, after being ignited, cease to burn when the source of ignition is removed), toxicity of fumes given off by burning or smoldering seating materials, smoke from burning or smoldering materials and upgraded test procedures. The purpose of such proposals would be to reduce the risk of fire to bus occupants.

This notice comprises one part of NHTSA's comprehensive effort to assess the safety need to amend several of the motor vehicle safety standards relating to the crashworthiness and post-crash performance of buses in general and school buses in particular. These issues have received substantial public attention in recent months, following the tragic crash earlier this year of a compact pickup truck driver by a drunken motorist into a crowded church bus. Twenty-seven of the 67 occupants of the bus died as a result of smoke inhalation, and not from trauma or crash injuries resulting from the collision. Even though the Kentucky crash was a unique catastrophe and the safety record of school buses and buses is extremely positive overall, the agency believes it should consider whether there are improvements NHTSA could propose in its safety standards that might provide an even higher level of safety.

DATE: Comments on this notice must be received by the agency no later than January 3, 1989.

ADDRESS: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-5267. Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Jettner, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone: (202) 366-4917.

SUPPLEMENTARY INFORMATION: On May 14 of this year, a church bus collided head-on with a compact pickup truck in Carrollton, Kentucky. It was an extremely severe crash; the combined velocity of the two vehicles at the moment of impact was in excess of 100 miles an hour. During or shortly after the crash, a fire apparently started near or at the front bus entrance and was sustained by fuel from the wreckage. Twenty-seven occupants of the bus died as a result of smoke inhalation, and not from trauma or crash injuries resulting from the collision. The church bus, a used school bus designed to carry 66 passengers, was filled to capacity with children, teenagers and adults. There was reportedly at least one passenger sleeping on the bus floor and at least one cooler in the aisle.

The bus was manufactured in 1977 shortly before the April 1, 1977, effective date of the school bus safety standards NHTSA issued pursuant to the Schoolbus and Motor Vehicle Safety Amendments of 1974. It was used first as a school bus and later sold to a church. Thus, the bus was typical of the pre-1977 school bus body type which had been in use for many years, and presumably met Federal Motor Vehicle Safety Standard No. 302 for the flammability of interior materials (which took effect in 1972). The bus was not required to comply with the comprehensive school bus emergency exit requirements of Standard No. 217 which took effect on April 1, 1977, and apparently did not fully meet all aspects of that school bus standard.

In the aftermath of the Kentucky crash, NHTSA has initiated a series of efforts to assess the safety need to amend several of the motor vehicle safety standards relating to the crashworthiness of buses in general and that of school buses in particular. (Under NHTSA's regulations, a "bus" is a motor vehicle designed for carrying 11 or more persons (driver included). A "school bus" is a "bus" that is sold for purposes that include carrying students to and from school or related events (common carriers in urban transportation excluded). (49 CFR 571.3(b))

In taking these steps, NHTSA wishes to emphasize that the safety record of these vehicles has been remarkably good. The fatalities in the Kentucky crash were the first fatalities caused by fire in a school bus on the agency's record, since NHTSA began careful tracking of all traffic fatalities in 1975. Further, over the past 10 years, school bus occupants have sustained an average of 15 fatal injuries each year. While each of these fatalities is tragic, the number of school bus occupant fatalities is small compared to occupant fatalities in all other types of motor vehicles. In 1987, for example, there were 38,544 occupant deaths in motor vehicles other than school buses, which includes 5,663 deaths among children aged five to 18. These fatalities for 1987 are similar in number to those of recent years.

In view of the 3.3 billion miles travelled by school buses each year, the school bus is one of the safest means of travel. On a vehicle-mile basis, there are 0.5 school bus fatalities per hundred million vehicle miles travelled, compared to 1.9 occupant fatalities per hundred million vehicle miles in passenger cars—i.e., school buses are about four times safer than passenger cars on a per-vehicle mile basis. Moreover, since a school bus carries more occupants than a passenger car, the comparison on a per-passenger-mile

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basis would be even more favorable for school buses.

The safety record for other types of buses is also extremely good. Occupant fatalities in inter-city and transit buses have average 18 per year over the past 10 years. During 1977–1987, there was one occupant fatality in a bus (other than a school bus) in a crash in which fire was the most harmful event.

As safe as today's buses are, it is incumbent upon NHTSA to inquire whether the bus fleet might be made safer still. NHTSA is issuing this notice to obtain factual information on available technologies, real-world environmental conditions and other factors that might help the agency decide what further steps should be taken to improve school bus safety and the steps that can be reasonably taken to reduce the risk of another Kentucky tragedy. The agency believes it is important to find out more about the *potential* for fire-related injury and death on buses and school buses, and whether reasonable measures can be taken to reduce that potential.

The agency is in the process of determining whether to amend Safety Standard No. 302, *Flammability of Interior Materials*, as it applies to large buses (including large school buses) over 10,000 pounds gross vehicle weight rating (GVWR). This advance notice requests comments to assist the agency in developing viable approaches towards possibly increasing the flammability resistance of materials used in large buses and large school buses. The agency iterates, however, that this advance notice does not intend to signify that a flammability standard different from or more stringent than Standard No. 302 would necessarily have been beneficial in lessening the devastation in the particular circumstances of the Kentucky tragedy. The agency realises that a more stringent flammability standard for the interior materials of that bus may in fact have had little if any effect on the outcome, given the intensity of the fuel fire and combination of other factors in the Kentucky crash which together made that crash catastrophic. For less intense fires, however, it is possible that strengthened flammability requirements could stop or slow the spread of fire to the point of reducing the risk of death or injury to occupants.

Among other issues, the agency is interested in obtaining information on the safety need to amend the current flammability requirements of Standard No. 302. To assess such a need, the agency will consider the magnitude and nature of the risk of fire-related death or injury to vehicle occupants. This risk is related to a variety of factors, including the ability of an occupant to escape from a burning vehicle, the time needed to escape, and the presence and suitability of exits and their ease of use.

Some of these factors are, in turn, related to each other. For example, escape time and effect of emergency exits are related. The amount of time an occupant of a vehicle needs to escape from a burning vehicle depends on the source and magnitude of the fire, the amount of smoke produced, the toxicity of the fumes, the flammability resistance of the vehicle interior materials and the speed and ease with which egress is possible from the vehicle. Factors relating to the latter include the number of passengers carried in the vehicle, and the number and size of doors, windows and other apertures and the ease of opening them.

NHTSA is addressing issues relating specifically to the adequacy of Federal minimum school bus emergency exit requirements in an ANPRM on Standard No. 217 published in today's edition of the **Federal Register**. In addition, an ANPRM to examine possible revisions to the Federal Motor Vehicle Safety Standard for fuel system integrity (FMVSS No. 301) of buses (including school buses) is expected to be issued shortly.

Because every one of the Federal motor vehicle safety standards is premised on a safety need for it, any proposal by the agency to amend Standard No. 302 must be justified by such a need. The agency wishes to explore whether such a need might exist for amending the requirements of this standard as they apply to buses (including school buses) over 10,000 pounds GVWR, and has issued this advance notice to request information pertaining to these vehicles.

The agency has addressed these large buses and school buses in this ANPRM to reduce the likelihood that a tragedy similar to the Kentucky crash can recur. NHTSA notes that exit from those vehicles requires more time than that needed for occupants to exit smaller buses, passenger cars, multipurpose passenger vehicles (MPV's) and trucks, all of which are more likely to have openings (such as doors or windows) for possible egress nearer to every person reasonably foreseen to be within the vehicle than in the case of large buses. The agency has thus limited this advance notice to issues relating to the fire protection of large buses and large school buses only. However, comments are requested below on including buses with GVWR of 10,000 or less in the scope of this notice.

This notice discusses a range of issues that NHTSA is considering in deciding whether to develop and issue a proposal relating to the flammability of materials in buses and makes a number of requests for opinions and data. For easy reference, the requests are numbered consecutively.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to statistical and cost data, and the source of such information.

This is an advance notice of proposed rulemaking, and no rule will be issued on this subject without further notice of proposed rulemaking and opportunity to comment.

Issues

Purpose of the standard

Standard No. 302, which became effective in September 1972, is intended "to reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, *especially those originating in the interior of the vehicle* from sources such as matches or cigarettes." 49 CFR Section 571.302, paragraph S2. (Emphasis added.) The standard seeks to allow the driver time to stop the vehicle, and if necessary for occupants to leave it, before injury occurs. The standard specifies a burn rate of not more than four inches per minute for materials used for certain specified components ("covered" components) in the occupant compartment, such as seat cushions, seat backs, seat belts, trim panels, compartment shelves, curtains, floor coverings and all interior materials that are designed to absorb energy on contact by occupants in the event of a crash. All portions of material from a specified "covered" component that are within one-half inch of the occupant compartment air space are subject to Standard No. 302's burn rate requirements.

To aid the agency in analyzing areas related to developing possible new approaches in addressing vehicle fires, the agency requests responses to the following questions:

1. Are there reasonable, practicable, cost-effective methods or technologies that the standard could incorporate which would make a vehicle interior fire-proof (i.e., non-ignitable) in the face of fuel-fed fires?

2. Do bus fires usually originate in the undercarriage or engine compartment, or in the bus interior? Are bus fires usually consequences of a crash?

3. Should buses with a GVWR of 10,000 pounds or less be excluded from the scope of this advance notice?

4. Should buses other than school buses be treated differently than school buses for the purposes of this ANPRM?

New technology

The four-inch per minute burn rate requirement in Standard No. 302 for passenger cars, MPV's, trucks and buses was based in part on compromises between the goals of flame resistance and energy absorption and between the cost of meeting Standard No. 302 and of meeting the crashworthiness standards that had been issued for those motor vehicles but which were not yet in effect at the time Standard No. 302 was issued. (*See*, FR 289; January 8, 1971.) To aid the agency in analyzing issues relating to a possible change in that requirement, such as the availability of new technology for improved flammability resistance (ignitability; flame spread; smoke emissions; toxicity) *and* injury reduction (energy absorption; shock attenuation; strength and endurance), the agency requests information or comments on the following questions:

5. Are there new products which are used, or are available for use, or would be suitable for use in new bus interiors which would improve the flammability resistance of those interiors in school buses? Have these products been field tested, and if so, what has been the field experience? Have there been adverse experiences? If so, what was the situation, and what is the likelihood that such a situation would recur? What are the costs of these new products?

6. NHTSA believes the most critical area of flame spread in bus interiors would be the seat cushioning material, especially polyurethane foam padding What is the number or percentage of school buses manufactured with polyurethane cushions? What is the number or percentage of buses other than school buses manufactured with polyurethane cushions? How much of a reduction in the burn rate of the cushions would result by use of available materials less flammable than the polyurethane used in those seats?

7. NHTSA believes that any strengthening or broadening of Standard No. 302's requirements must achieve a net safety benefit. The agency requests information on the degree to which fire protection requirements can be revised without compromising other aspects of bus safety. For instance, the agency is concerned about how the toxicity of burning and smoldering materials may be increased by use of flame-retardant substances, and is requesting comments on this issue in the section entitled, "Chemical by-products." Similarly, the agency is concerned about what effect strengthened fire protection requirements could have on passenger crash protection features of school buses, which are mandated by Federal Motor Vehicle Safety Standard No. 222, *School Bus Passenger Seating and Crash Protection*. (Standard No. 222 incorporates a "compartmentalization" concept to provide passenger crash protection on school buses. The standard requires that large school buses protect school bus passengers by providing them with a protective "compartment" between well-padded seats that meet specified spacing and performance requirements.) A critical consideration in NHTSA's review of Standard No. 302 requirements is whether additional or strengthened fire protection requirements would reduce a manufacturer's ability to use materials currently enabling conformance with Standard No. 222, and thereby negatively affect the availability of buses that conform to the latter standard.

What are the flammability resistance characteristics of the interior padding of school bus seat backs and restraining barriers meeting compartmentalization (FMVSS No. 222) requirements? Should the burn rate of this material be reduced, and if so, what should those limits be?

8. Are there materials available for school bus seat padding and seat covers that perform well in terms of both flammability resistance and injury reduction, *and* which are cost and weight effective? Is there any performance or cost advantage in concentrating on either seat covers or cushion material, but not both?

Performance requirements

As already noted, Standard No. 302 specifies a burn rate of not more than four inches per minute for materials used for certain components in the interior passenger compartment. NHTSA determines compliance with the standard through a laboratory procedure, under which a specimen of material is mounted on a test frame, placed in a metal cabinet and exposed to flame from a bunsen burner.

To aid the agency in analyzing issues related to developing possible requirements for improved flammability resistance, the agency requests information or comments on the following questions:

9. It is desirable and feasible to develop new performance requirements, and test procedures to reflect the advances in flame resistant materials and flammability testing equipment since FMVSS No. 302 was first issued?

10. NHTSA believes Standard No. 302's compliance test should replicate real-world crash conditions as closely as reasonably possible. Should Standard No. 302 incorporate a systems approach in compliance testing, under which a complete bus, entire bus seat or a group of seats is tested instead of just specimens of the materials alone or sub-components of the seat alone?

11. Is the use of a horizontal burn rate appropriate, or should other alternatives, such as a vertical burn rate be considered? Should new tests be developed which might better simulate catastrophic fuel-fires? A substantial portion of the school bus materials subject to Standard No. 302 are installed closer to the vertical than the horizontal. Does state-of-the-art in math modelling permit predictions to be made of the burning behavior of various materials under simulated crash conditions?

12. In its consideration of the possible methods of increasing the flammability resistance of interior materials used in buses, NHTSA has examined the guidelines and regulations of other Federal agencies. Currently, the Federal Aviation Administration (FAA) incorporates a "fire blocking layer" concept in its flammability requirements. This concept developed out of the FAA's concern that severe thermal radiation produced in a full-scale aircraft cabin fire can break down a fire-retardent outer upholstery covering and penetrate into the foam (typically polyurethane) cushion material. The flammability of foam cushion material is of concern to FAA because of its determination that such material significantly contributes to the spread of aircraft cabin fire. In response, FAA developed a means of retarding flame spread through the use of "a thin layer of highly fire-resistant material to completely encapsulate and protect the larger mass of foam core seat cushion material from involvement in the cabin fire. This layer of fire-resistant material delays the onset of ignition and retards the involvement of the core in the fire." 49 FR 43188; October 26, 1984. FAA estimates that the use of fire-blocked aircraft seats could provide aircraft passengers with an additional 20 to 60 seconds to exit burning aircraft in impact survivable crashes.

FAA's fire-blocking requirements are performance-oriented, in that installation of fire-blocking materials in aircraft is *not* required by the standard. Instead, the standard specifies two sets of performance criteria for aircraft

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seating materials. First, seat bottom and seat back cushion specimens, when subjected to an oil burner apparatus test, must have a burn length not exceeding 17 inches and average percentage weight loss may not exceed 10 percent. These criteria can be attained by use of fire-blocking materials. (The fire-blocking requirements are found in Appendix F to 14 CFR Part 25.)

Second, the FAA regulations also require seat cushion and padding materials to be self-extinguishing when tested vertically. The average burn length may not exceed eight inches, and flame time after removal of the flame source may not exceed 15 seconds. 14 CFR Section 25.853.

NHTSA requests comments on whether any of FAA's requirements for fire protection of seats and seat cushions would be practicable and effective for buses and school buses. Would typical bus seats, or other components, require design modifications to incorporate FAA's fire blocking layer concept? Are school bus seats vandalized (cut, torn, etc.) to an extent that the fire blocking material would be compromised? What would be the costs associated with the fire blocking layer concept as applied to buses and school buses? What effect, if any, would fire-blocking material have on compliance with the school bus compartmentalization requirements of FMVSS No. 222, under which manufacturers install heavily-padded seat backs and restraining barriers to reduce the likelihood of death and injury resulting from the impact of passengers with structures within the vehicle?

13. The Urban Mass Transportation Administration (UMTA) has in effect several guidelines, or recommended practices, for testing flammability and smoke emission characteristics of rapid rail transit and light rail transit vehicles (49 FR 32482; August 14, 1984). These guidelines specify different tests for various materials, including seat cushion material and floor coverings.

NHTSA requests comments on whether several or all of the UMTA recommended practices could also be effective in eliminating the safety hazards caused by fires in buses, while at the same time enabling seat cushions, padding and other materials used for school bus passenger crash protection to provide their safety benefits?

Burning and smoldering. Standard No. 302 does not address possible problems concerning the toxicity of emissions that are given off by the burning or smoldering of interior materials. Burning is flaming combustion, uniting the organic material with oxygen. Smoldering is nonflaming combustion. Both may propagate by a "front" or "wave" which involves air oxidation. Heat is liberated during either process. Both may be self-sustaining, or may require assistance from an adjacent energy source. Flexible polyurethane foams, even if fire-retardant, can smolder when in contact with a smoldering cotton fabric, and some polyurethane foams will smolder in a self-sustained mode (without help from a cotton fabric).

Some toxic products are produced in dangerous concentrations when the source material is burning and in small concentrations when the source is smoldering (e.g., carbon dioxide, sulphur dioxide). On the other hand, for some products, the inverse is true. For example, carbon monoxide, nitrogen oxides, and hydrogen cyanide are produced in dangerous concentrations during smoldering and in small concentrations during free burning of the source material. Some other products (e.g., halogen acids) are produced in dangerous concentrations during both free burning and smoldering conditions.

To aid the agency in analyzing issues related to developing a possible proposal relating to the toxicity of fumes produced by burning or smoldering materials in bus and school bus interior compartments, the agency requests information or comments on the following questions:

14. What factors determine when smoldering can occur?

15. What governs the propagation rate?

16. Under what conditions will a transition from smoldering to flaming occur?

Chemical by-products. Fires can result in burn injury and tissue destruction, asphyxiation and poisioning by gaseous products of combustion. A broad spectrum of gaseous compounds are typically produced during combustion, many of which are highly toxic to humans. The composition of the compounds is strongly dependent on many variables, such as the composition of the burnable components, the manner that these components are engulfed by the fire, and the gas flow pattern within a burning structure.

Some of the substances are potential asphyxiants (such as carbon monoxide) which displace oxygen from the hemoglobin and thus disturbs the normal oxygen delivery in the body. Other substances (such as hydrogen cyanide) interfere with specific enzymatic reactions. Hydrogen cyanide severely inhibits the body's oxygen transfer mechanism, causing tissues to become unable to remove oxygen from the blood.

There can also be combustion products from burning or smoldering bus and school seats that contain highly toxic agents affecting the central nervous system, and metal-containing soots. For example, foam material generally used in bus and school bus seat cushion construction and for padding may give off toxic fumes, dense smoke, and use oxygen at high rates when burning. Depending on the density and composition of the smoke, asphyxiation can occur in a few minutes, even when the burning or smoldering material burns at a rate within the limits set by Standard No. 302.

At this time, the National Academy of Sciences is working for UMTA to develop guidelines for the detection and prevention of toxic gases when a material burns. The Academy is bringing together a committee of industry and academic experts through the National Materials Advisory Board. These experts will review existing and proposed research technology and industry practice. Work done for other agencies such as the U.S. Navy and the Occupational Safety and Health Administration will be included in the review.

After review, these experts will recommend guidelines on the toxicity of combustion products of materials used in transit applications. They plan to assemble a report by the end of 1989 that contains these guidelines.

NHTS will carefully review the report when it is issued to determine whether and to what extent the guidelines could be incorporated into the Federal motor vehicle safety standards. In the meantime, however, NHTSA requests information or data on the following questions related to developing possible requirements to reduce the toxicity of burning materials on buses and school buses:

17. What are the chemical by-products created by burning or smoldering materials in the interior compartment of buses and school buses? In what amounts are these substances produced?

18. The agency believe that it should not consider more stringent burn rate requirements without also considering whether there is a necessary trade-off between stringency of fire protection requirements and the degree of danger posed by smoke or toxic gases from the burning of the materials used to comply with those requirements. The agency recognizes that, at the time Standard No. 302 was issued, the problem of toxic combustion by-products was closely related to that of burn rate. In an early preamble for the standard, NHTSA said:

> Released of toxic gases is one of the injury-producing aspects of motor vehicle fires, and many of the common ways of treating materials to reduce their burn rates involve chemicals that produce highly poisonous gases such as hydrogen chloride and hydrogen cyanide * * * Until enough is known in this area to form the basis for a standard, and to establish the proper interaction between burn rate and toxicity, this uncertainty constitutes an additional reason for not requiring self-extinguishing materials. 36 FR 289: January 8, 1971.

What materials are currently available that might lessen the flammability of buses and that might also lessen the smoke and toxicity of gases emitted during vehicle fires? How readily available are these materials and what are their costs?

19. If requirements on toxicity were to be proposed, what requirements would be reasonable? What are the carcinogenic and mutagenic properties of fire retardant materials?

20. NHTSA is concerned whether there should be limits placed on the optical density of smoke and fumes from a fire, and if so, what those limits should be. Comments are requested on the ability of occupants of a bus or school bus to see their way to an exit or read instructions for opening an emergency exit in the event of a fire. What is the relationship, if any, between the density of the emissions and their toxicity?

General cost issues: The agency requests that cost estimates be provided on an incremental, per-seat basis. That is, what is the cost to build a bus seat using the new material versus the cost per seat using present materials. In addition to information and data on costs specifically relating to the materials and test procedures discussed in the preceding questions, the agency requests information on the following questions:

21. How would increased cost of new buses affect purchasing decisions? What is the threshold increase in cost above which the owners and operators of older buses (or older school buses) would be induced to retain those buses instead of acquiring new ones? What number or percentage of older buses would be retained, and by whom?

22. Should NHTSA require bus manufacturers to equip their vehicles with one or more fire extinguishers? Or is that subject more appropriately addressed by Federal or State government agencies with responsibility for operational safety and inspections?

If it is believed NHTSA should be require the fire extinguishers, comments are requested to suggest the number, type, and location(s) of the extinguishers NHTSA should consider requiring for buses. What percentage of existing buses and school buses have fire extinguishers? Where and how are such extinguishers mounted? How often have they been used? Are there any problems with vandalism? What are the costs, including maintenance and replacement?

23. Should automatic fire extinguishing systems be required for buses? If so, what type of system(s)?

24. Instead of an overall revision of Standard No. 302's requirements for buses and school buses, should the agency consider proposing new flammability requirements only for specific areas or components of the vehicles interior? For example, should bus seat cushions and seat backs be subject to more stringent requirements than other components of the vehicle, such as compartment shelves? If a targeted approach deserves further consideration by NHTSA, which areas or components should have the highest flammability resistance? How effective would each of these targeted approaches be as a countermeasure to vehicle fires? How would a targeted approach affect the costs associated with a possible upgrade to Standard No. 302?

25. The agency believes that diesel fuel may be less flammable than gasoline in certain types of crash situations. Should the agency consider different performance criteria for fire protection for gasoline-versus diesel-fueled buses based on the differences in the flammablity of their fuels?

Potential Regulatory Impacts

NHTSA has considered the potential burdens and benefits associated with requirements addressing the areas discussed above. This advance notice of proposed rulemaking is not subject to Executive Order 12291, since that order applies to notices of proposed rulemaking and final rules only. However, NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures. The advance notice concerns a matter in which there is substantial public interest. The agency has prepared a Preliminary Regulatory Evaluation (PRE) which addresses preliminary estimates of the costs and benefits of potential countermeasures that the agency is considering in this action. The evaluation is available in the docket.

This action has analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

NHTSA has considered the environmental implications of this action, in accordance with the National Environmental Policy Act. In the event a proposal is issued upgrading the flammability resistance of materials in buses and school buses, an Environmental Assessment or draft Environmental Impact Statement, as appropriate, will be prepared and placed in the public docket.

Comment

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15–page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

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A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued: November 1, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-2555 Filed 11-1-88; 12:14 p.m.]

BILLING CODE 4910-59-M

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49 CFR Part 574

[Docket No. 70-12; Notice 26]

RIN 2127-AB18

Tire Identification and Recordkeeping; Changes to Voluntary Tire Registration Procedures

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates the rulemaking action begun by NHTSA when it published an advance notice of proposed rulemaking (ANPRM) requesting comments on methods that it believed might significantly increase the number of consumers who, having purchased tires from independent dealers and distributors, voluntarily register their names and addresses with the tire manufacturers. This registration information is used by tire manufacturers to contact consumers in the event of a recall of defective or noncomplying tires.

The same law that established the voluntary registration system for independent dealers also directed NHTSA to evaluate the effect that this new system had on tire registration. Based on that evaluation the agency had to determine whether to impose additional requirements to increase the rate of tire registration. Any determination to impose additional requirements must consider the risk to motor vehicle safety and the extent to which those additional requirements would increase the percentage of first purchasers that register their tires, as well as the costs and burdens that would be imposed on manufacturers, independent tire dealers and distributors by additional requirements.

This notice announces the agency's determination that implementation of any of the suggested steps in the ANPRM would not significantly increase the level of registration under the program for voluntary tire registration. Based on this determination, the agency is terminating its pending rulemaking to impose additional requirements in the voluntary tire registration procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Crash Avoidance Division, NHTSA, 400 Seventh Street SW., Washington DC 20590 (202-366-4805).

SUPPLEMENTARY INFORMATION:

I. History of Voluntary Tire Registration

A. Motor Vehicle Safety and Cost Savings Authorization Act of 1982

The Motor Vehicle Safety and Cost Savings Authorization Act of 1982 (96 STAT. 1620, Pub. L. 97-331) amended the National Traffic and Motor Vehicle Safety Act (the "Safety Act", 15 U.S.C. 1381 *et seq.*) by changing the tire registration requirements which apply to independent dealers and distributors. An independent dealer or distributor is one whose business in not owned or controlled by a tire manufacturer. In the committee reports regarding the Authorization Act of 1982, Congress noted that under the then current requirements for mandatory registration by all dealers and distributors, independent dealers registered only about 20 percent of the tires they sold. Those dealers whose business was owned or controlled by a tire manufacturer registered between 80 and 90 percent of the tires they sold. Given the wide disparity in tire registrations, Congress determined that an alternative method of tire registration should be instituted for tires sold by independent dealers.

Accordingly, section 158 of the Safety Act was amended to prohibit NHTSA from requiring independent dealers to comply with the requirements for mandatory registration by dealers. Given the high registration rates for tires sold by non-independent dealers, this amendment did not affect the registration procedures for stores owned or controlled by the tire manufacturers. Under the program for voluntary registration by consumers, the primary responsibility for registering tires sold by independent dealers is borne by the purchaser instead of the dealer. Section 158(b)(2)(B) directs NHTSA to require that independent dealers (1) fill in the tire identification number(s) of the tire(s) sold to a purchaser on a given registration form and then (2) give the form to the purchaser. The purchaser then may decide whether to register the tires by filling in his name and address by affixing a stamp and mailing the form to the tire manufacturer or designee.

Section 158(b)(3) of the Safety Act directed NHTSA to conduct an evaluation after two years of voluntary registration to determine whether the new procedures had increased the registration rate of tires sold by independent dealers. This section further requires the agency to determine whether to impose any additional requirements on the independent dealers or the tire manufacturers to produce higher levels of tire registration.

B. NHTSA's Evaluation Reports on Voluntary Tire Registration

NHTSA prepared a preliminary evaluation report on the voluntary tire registration system. A notice seeking public comment on the preliminary report was published at 50 FR 39214, September 27, 1985. The tentative conclusions of that report were as follows:

1. Registration rates for tires sold by independent dealers dropped from 18.1 percent under mandatory registration to 10.8 percent under voluntary registration. There was no comparable decline in the registration of tires sold by non-independent dealers still subject to mandatory registration procedures.

2. The rate of tires voluntarily registered by consumers may be closer to 6.4 percent than 10.8 percent because many of the registrations of tires sold by independent dealers were due to the use by some independent dealers of computers which automatically registered tires at the same time they recorded sales or due to the decision of other independent dealers to continue following the mandatory procedures.

3. Tire manufacturers and brand name owners provided the independent dealers with a sufficient number of registration forms to enable the dealers to give one to each tire purchaser.

4. There are no records of any registrations for tires sold by more than 70 percent of all independent dealers. Many of the other independent dealers had very low registration rates.

The agency's December 1987 report on voluntary tire registration came to the following conclusions:

1. Since the 1985 study, the registration rate for independent dealers has continued to decline: first to 10.2 percent between July 1985 and June 1986 and then to 9.3 percent between July 1986 and June 1987. Excluding computer assisted registration systems used at a few independent dealers, the registration rate of independent dealers declined to 8 percent.

2. The registration rate for company owned stores remained over 86 percent during this period.

3. Five brands sold by independent dealers achieved registration rates that exceeded 20 percent. Nevertheless, much of this success can be attributed to the use of mandatory procedures instituted by the independent distributors selling these tire brands.

II. Advance Notice of Proposed Rulemaking

A. General Information Concerning ANPRM

In response to public comments concerning NHTSA's preliminary evaluation report on voluntary tire registration (50 FR 39214, September 27, 1985), the agency issued an Advance Notice of Proposed Rulemaking (ANPRM) which appeared at 51 FR 45916 (December 23, 1986). The ANPRM outlined the statutory and regulatory history of mandatory and voluntary tire registration. It also announced the agency's tentative determination that the existing level of voluntary tire registration, which the 1985 preliminary evaluation report estimated to be at 10.8 percent, was unacceptable. The ANPRM stated that the voluntary registration procedures cannot work if the independent dealers do not provide the registration forms which purchasers can complete and return to the tire manufacturers. NHTSA's evaluation showed that only about 22 percent of the consumers purchasing new tires from independent dealers remembered receiving the registration forms from the tire dealer. The evaluation also showed that in the case of 70 percent of all independent tire dealers for the largest tire manufacturer, no tires sold by those dealers have been registered under the voluntary registration procedures. These facts led the agency to conclude that many independent dealers are not routinely providing registration forms to tire purchasers.

In response to the statutory mandate in section 158(3)(B)(i), the ANPRM set forth four suggestions which the agency believed might significantly increase voluntary tire registration. The first suggestion was to amend Part 574 to require that the tire manufacturers include prepaid postage on the registration forms. This theoretically would have encouraged more purchasers to return the registration forms.

The second suggestion was for a public education campaign, which would have required that the Uniform Tire Quality Grading Standards (UTQGS) information pamphlet contain a brief explanation of the purpose of tire registration and instruct consumers to ask the tire dealer for a registration form. The manufacturers currently must publish these information pamphlets pursuant to 49 CFR 575.104. Under this suggestion, the agency was to include information on the purpose and importance of tire registration in its other consumer education activities.

The third suggestion was to establish a central clearing house to receive all registration forms distributed to consumers by independent dealers. All the registration forms provided by the tire manufacturers to independent dealers would have been addressed to this single clearing house, regardless of which manufacturer's tires were being registered. The clearing house then would have forwarded the registration forms it received to the appropriate manufacturer or its designee. The independent dealers were to keep just one form for all brands of tires sold.

The fourth suggestion was to rescind the regulatory requirements of Part 574 related to tire registration by dealers and distributors. In its place, the agency would have directed each tire manufacturer to devise its own method of compliance with the statutory requirements in 156(b)(1) that the tire manufacturers "cause the establishment and maintenance of records of the name and address of the first purchaser of each tire produced by the manufacturer."

The ANPRM asked for comments on each of the agency's four suggestions and ideas for other possible rulemaking actions that would significantly increase the registration rates for tires sold by independent dealers. In changing from a mandatory to a voluntary registration program, the legislative history indicates that Congress intended to increase the return of registration forms from independent tire dealers to a level exceeding 20 percent, which was the rate of registration under the mandatory registration program that Congress rescinded in 1982. (See H.R. No. 97-576, 97th Cong., 2d Sess at 8; S. Rep. No. 97-505, 97th Cong., 2d Sess., at 7 (1982))

Pursuant to section 158(b)(3)(iii) of the Safety Act, the commenters also were informed that NHTSA may order by rule additional requirements to the voluntary registration procedures "only if the (NHTSA) determines that such requirements are necessary to reduce the risk to motor vehicle safety, after considering (I) the cost of such requirements to manufacturers and the burden of such requirements upon dealers and distributors, as compared to the additional percentage of first purchasers of tires with respect to whom records would be established and maintained as a result of the imposition of such requirements; and (II) the extent to which dealers and distributors have encouraged first purchasers to register the tires, and the extent to which dealers and distributors have complied with (the voluntary registration procedures)."

The ANPRM further requested that the commenters provide information on the costs and operating procedures currently used by the tire manufacturers and brand name owners to register tires under the procedures specified in 49 CFR Part 574. The ANPRM sought comments on the following specific topics: 1. The precise process, including each step, used by the manufacturer or brand name owner to register tires, above and beyond the steps specified in 49 CFR Part 574; 2. The cost to the manufacturer or brand name owner for each step in the process listed in number 1; and 3. any problems experienced by the manufacturer or brand name owner in connection with its tire registration process.

NHTSA received 22 written comments from tire manufacturers, industry trade associations, citizens, and others in response to this ANPRM. The commenters addressed the voluntary tire registration program in general as well as the four suggestions expressly outlined in the ANPRM. Several commenters also offered other suggestions concerning methods to improve the rate of voluntary tire registration. The agency has considered all of these comments in reaching its conclusion to terminate the rulemaking. The most significant comments, along with the agency's response are set forth below.

B. General Comments on the ANPRM Concerning Voluntary Tire Registration

Various tire manufacturers, industry trade associations, and other commenters involved in the voluntary tire registration process strongly opposed voluntary tire registration in general and the four suggested additional steps in particular.

Several commenters stated that voluntary tire registration was not needed because the low rate of tire recalls indicated that the risk to motor vehicle safety is very small. In 1983, 98,546 tires were recalled; in 1984, 80,766 tires were recalled, and in 1985, 25,799 tires were recalled. Since 175,000,000 tires are produced annually, the percentage of tires recalled was about

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6/100 of one percent in 1983, 5/100 of one percent in 1984, 1/100 of one percent in 1985, and 4/100 percent over the three year period. Several commenters agreed with the statement in the ANPRM that "This low recall rate indicates that the low tire registration rates have not resulted in the public frequently and unknowingly driving on tires that have been recalled by the manufacturer." 51 FR 45919. For instance, Metzeler Motorcycle Tire Co., which produces 180,000 tires a year, commented that it has never had to recall one of its tires. (NHTSA Docket No. 70–12–N26–008).

Many commenters mentioned that voluntary tire registration was ineffective and a needless cost because only 10.8 percent of those consumers who purchase tires from the independent dealers register their tires. They noted that NHTSA still must conduct a public notice recall campaign under section 153(c)(4) of the Safety Act to contact the other 90% of the tire purchasers. Several tire manufacturers and the National Tire Dealers and Retreaders Association (NTDRA) criticized the large expense required by the voluntary tire registration program. (NHTSA Docket No. 70–12–N26–011).

Cooper Tire also commented that the benefits of the suggested additional steps, based on NHTSA's baseline assumption that the suggested additional steps might increase voluntary tire registration from 10 to 15 percent, were not *significant*, because the mandatory registration program obtained a registration rate of 20 percent. Therefore, it argued that any proposal that only raised voluntary tire registration to 15 percent would not meet the requirement in section 158(b)(3)(B)(i) to significantly increase tire registration. (NHTSA Docket No. 70–12–N26–015).

Four individuals expressed their support for the voluntary tire registration program. Similarly, the American Automobile Association (AAA) "complimented" the agency on its recognition of the importance of the voluntary registration program to further motor vehicle safety.

Some commenters directed their attention to the specifically suggested additional steps highlighted in the ANPRM. The comments on these ideas will be discussed below in the sections which separately address the suggestions on prepaid postage, consumer information, the central clearing house, and the implementation of manufacturer plans to replace Part 574.

C. Suggestion for Requiring Registration Forms to Bear Prepaid Postage

After considering all the comments, surveys, and data, NHTSA concludes that the suggestion for requiring the manufacturers to include prepaid postage on the registration forms would not help to significantly increase the compliance level for the voluntary tire registration program. Additionally, the agency believes that several commenters may have been correct when they indicated that the ANPRM understated the cost of requiring the manufacturers to prepay for postage on the registration forms. Most importantly, NHTSA has determined that this suggestion fails to address the fundamental issue in implementing an effective voluntary tire registration program: i.e., it does not increase the number of first purchasers that are given the registration forms by the independent dealers. The agency's preliminary evaluation concluded that only 22 percent of the first purchasers were given these registration forms. Therefore, assuming that 100 percent of the purchasers who received these forms returned the cards, the rate of registration still would be only 22 percent. (As the agency noted in the ANPRM at 51 FR 45919, the agency does not believe that bringing enforcement actions to ensure that independent dealers are distributing the forms to the public is the best use which the agency can make of its limited enforcement budget. NHTSA concentrates its enforcement efforts under the Safety Act in those areas most directly related to vehicle or equipment safety.)

After extensive study, NHTSA agrees with several tire manufacturers that contended that this assumption of a 100 percent return rate overstates the typical return rate. Uniroyal commented that an unknown percentage of consumers are not knowledgeable or are apathetic about returning the registration cards. (NHTSA Docket No. 70–12–N26–017). The agency determined that the current mail in rate of return without prepaid postage is 40 percent. The agency further has found that only 31 percent of the registration cards typically are returned in tire recall campaigns, situations in which a defect is likely. Therefore, the agency concludes that prepaid postage would not result in a 100 percent response rate. Assuming *arguendo* that prepaid postage encourages half the people who currently do not return the registration card to do so now, then 70 percent of the cards would be returned. However, since only 22 percent of the tire purchasers receive the card, only 15 percent of the tires would be registered based on this assumption. Although a 15 percent return rate is an improvement over current registration rates, this rate falls well below the rate of 20 percent achieved with mandatory registration.

Even if the registration rates for first purchasers of tires increased to 15 percent, few additional owners of defective tires would be reached directly. In the years 1983–1985, only 205,111 tires were recalled. Therefore, assuming a 5 percentage point increase in voluntary tire registration, at most 10,256 additional tire purchasers would have been notified under the voluntary tire registration program. In fact, this potential number of tire purchasers is overstated because many tire purchasers buy their replacement tires at company owned stores which follow different tire registration regulations, some tire recalls involve tires on new motor vehicles, and some tire purchasers learn about a recall through indirect public recall notices. Therefore, the agency concludes that this suggestion would not significantly increase the rate of voluntary tire registration.

Additionally, one commenter stated that before implementing the prepaid postage suggestion, NHTSA should test its effectiveness because this suggestion is overly speculative, and there is no conclusive evidence that the tire purchaser would not put the postage on himself or herself. (NHTSA Docket No. 70–12–N26–013).

Along with the unlikelihood that prepaid postage would significantly increase voluntary registration, studies indicate that the cost of this proposal is fairly substantial. According to the formula in the ANPRM (51 FR 45922, December 23, 1986), total gross costs imposed on the tire manufacturers to require prepaid postage were estimated to be $2,275,000 for the first year, while the gross annual costs thereafter were estimated to be $2,205,000. The $2,275,000 in total gross costs for the first year were broken down as follows: $70,000 for the one time cost of printing new forms; $1,680,000 for the annual cost associated with prepaid postage; and $525,000 for the annual cost of handling and computers. To estimate the total net cost of this proposal, one would have to subtract the costs of postage then borne by consumers to register their tires. At the rates in effect when the ANPRM was written, consumers paid annual postage costs related to voluntary tire registration of $830,000. Therefore, the estimated total annual net cost associated with this option would be

$1,445,000 for the first year and $1,375,000 for subsequent years.

The ANPRM estimated the cost of prepaid postage as follows: Tire manufacturers each year distribute about 70 million voluntary tire registration forms to the independent tire dealers and distributors. The agency assumed a return rate of 15 percent, and prepaid postage would cost the manufacturer 16 cents for each form that is returned. If one multiplied 70 million forms by 15 percent by 16 cents, then the estimated cost of postage would be $1,680,000. The handling and computer costs were estimated to be 5 cents per each returned registration form. If one multiplied 70 million forms by a 15 percent rate of return by 5 cents per form, then the cost of handling would be $525,000.

Several commenters contended that the NHTSA study understates the cost of prepaid postage. For instance, Cooper Tire Co. estimated that the cost of Business Reply Mail (BRM) is 31¼ percent higher than the agency estimated in the ANPRM. First, it calculated that it costs 3/10 of a cent to print each form rather than the 1/10 of a cent that NHTSA estimated in the ANPRM. Second, Cooper's cost for BRM is higher than the agency's estimate because Cooper pays an annual permit and renewal fee of $50, an annual accounting fee of $160 at each post office where mail is to be returned, and the first class postage of 14¢ and a handling charge of 7¢ for each piece of BRM. (NHTSA Docket No.70–12–N26–015). NHTSA had estimated the handling charge to be 5¢ for each piece of returned mail. This translates into a cost differential of $210,000 per year. (70 million forms multiplied by 15 percent estimated rate of return multiplied by 2¢ per piece) Similarly, CMI Inc., a tire registration clearing house, stated that prepaid postage on the registration forms results in an additional cost of 8¢ per tire or 16¢ prepaid postage per form. It declared that this amount is more than double the cost per tire of the actual registration process. (NHTSA Docket No. 70–12–N26–013).

Only two commenters supported this proposal to require the tire manufacturers to pay for prepaid postage on the registration forms. The National Automotive Dealers Association (NADA) stated that "the prepayment of postage enables a greater return rate" and "such a form modification will result in no additional burden for dealers and in only a minuscule additional cost for manufacturers." (NHTSA Docket No. 70–12–N26–005). AAA merely stated that "consumers will be encouraged to mail the card" under the prepaid postage plan.

As explained above, NHTSA has concluded that the proposal to include prepaid postage on the tire registration forms given to voluntary dealers would not significantly increase the rate of registration under the voluntary tire registration plan. Moreover, the agency agrees with the majority of the commenters that the costs involved with prepaid postage exceed the benefits of having only a nominal number of additional first purchasers registered under the voluntary registration program.

D. Suggestion for Requiring References to Tire Registration in Pamphlets and Other Consumer Education Efforts

After considering all the comments, surveys, and data, NHTSA concludes that implementing additional requirements that direct manufacturers to include an explanation of the purpose behind tire registration in the UTQGS pamphlets and other consumer education activities would not significantly increase the level of voluntary tire registration. Moreover, the low registration rates do not constitute a significant safety problem that merits a large expenditure of scarce agency resources, especially since the agency and the tire manufacturers currently inform tire purchasers of the purpose for tire registration in their publications.

As with the prepaid postage proposal, the critical problem is that independent dealers typically do not provide the UTQGS and other consumer information materials to the tire purchaser. In a 1987 field investigation of 20 large private and franchise dealerships, NHTSA's Office of Enforcement discovered that 8 of 20 of the independent dealers did not have these brochures, 2 of 20 only had very limited information, 5 of 20 openly displayed the brochures, and the other 5 dealerships had these brochures available only upon request. (53 FR 16167–16168, May 5, 1988). Therefore, a regulation requiring the UTQGS brochures to contain information about tire registration would not significantly increase the level of first purchasers who register their tires.

As a sidenote, NHTSA's current consumer information brochure concerning tires contains an admonition that tires should be registered. Similarly, nearly all the tire manufacturers commented that they recognize the importance of informing consumers about the need for tire registration; and therefore they include information about tire registration in their sales and marketing material such as wall charts, counter displays, pamphlets, sales receipts, and warranties. In short, the ANPRM's suggestion to expand sources of public information concerning tire registration is not needed because it is already being done by NHTSA and the tire manufacturers.

The ANPRM and several commenters indicated that the cost of consumer education campaigns exceed their benefits. The ANPRM at page 45922 indicated that this suggestion would have annual costs of $30,000 for the agency and $490,000 for the manufacturers (assuming handling charges of 5¢ per item). The NTDRA reported that its own public education plan in 1984 concerning tire registration was "only minimally successful at best" and that any additional expenditures on public education would result in only nominal benefits, which would not provide the optimum use of NHTSA's budget. (NHTSA Docket No. 70–12–N26–011).

The ANPRM and commenters referred to other problems with public information campaigns. First, the ANPRM stated that the time required to inform and educate first purchasers about tire registration was a disadvantage to this suggestion. Second, the ANPRM stated that because some dealers fill in their tire registration forms imppoperly, a manufacturer would not be able to directly notify these first purchasers in the event of a recall, even if the consumer information program were successful and more registration forms were returned by these purchasers to the manufacturers.

As explained above, NHTSA has concluded that an expanded consumer education campaign explaining the benefits of tire registration is not needed. Providing more resources for such a campaign would not get additional information to the consumers without the cooperation of the independent dealers. Moreover, since the ANPRM was published, the agency and tire manufacturers have undertaken extensive public information campaigns to inform the public about tire registration. In short, NHTSA concludes that any expanded public information program would not significantly increase the number of first purchasers who receive the registration forms, without adding unnecessary costs to the agency and manufacturers and burdens on the independent dealers.

E. ANPRM Suggestion to Create a Central Clearing House for Tire Registration Forms

After considering all the comments, surveys, and data, NHTSA concludes

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that requiring the establishment of a central clearing house would not significantly increase the effectiveness of the voluntary tire registration program. Under this suggestion, all registration forms provided by the tire manufacturers to the independent dealers would be addressed to this single clearing house. These identically addressed forms would be used for all sales, regardless of which manufacturer's tires were being registered. The clearing house would then forward the forms it received to the appropriate manufacturer or its designee. This plan would have allowed each independent dealer to keep just one form for all types of tires.

As with the prepaid postage and public information suggestions, there is no reason to believe that establishing a central clearing house would increase the number of first purchasers who receive the registration forms. An independent dealer who currently does not take the time to give a registration form to a purchaser still will not do so under this suggested measure. Moreover, the ANPRM stated that this suggestion was based on "anecdotal suggestions" and on its "intuitive reasonableness" rather than on hard data.

Although this suggested measure would theoretically improve the recordkeeping function, the agency and most commenters agree that this is not a problem. Firestone indicated that it already forwards any misdirected registration forms to the appropriate manufacturer and receives similarly misdirected forms from other manufacturers. (NHTSA Docket No. 70–12–N26–016).

Other commenters indicated that a central clearing house would raise several practical problems. First, this suggestion would increase the possibility of human error in the handling of registration forms and data transmission because it adds an additional step in the registration process. Second, this additional step would increase the time it takes to register tires. Third, such an entity would add needless costs to the voluntary registration program. The ANPRM estimated that aside from the one time start up cost of $70,000, a clearing house would resut in annual costs of $440,000 ($210,000 for cost of forwarding these forms from the clearing house to the manufacturer at 2¢ a form, and $230,000 in additional computer and handling costs).

In the ANPRM, NHTSA also noted that there would be problems in selecting a clearing house among the existing ones. The NTDRA agreed, stating that a federal agency should not grant such a monopoly to a single business, which would then possess much valuable marketing data. (NHTSA Docket No. 70–12–N26–012).

Two commenters, CIMS, an existing tire registration clearing house, and the NADA, favored the establishment of a central clearing house. CIMS stated that a single brand form addressed to a single clearing house would improve the effectiveness of the voluntary tire registration program. CIMS further commented that its experience with its "all brand clearing house form for multi-brand independent tire dealers clearly demonstrates that it eases the dealers' burden to comply and significantly increases the percentage of registration forms provided the purchaser." In the only quantitative data offered to prove the effectiveness of a central clearing house, CIMS wrote that "in a recently completed tire recall for one of CIMS' registration clients, over 50% of the direct notifications mailed were to purchasers who completed and forwarded to the clearing house a CIMS All-Brand form purchased and provided by the selling dealer." (NHTSA Docket No. 70–12–N26–013). Nevertheless, this isolated statistic fails to support the proposition that a central clearing house would significant increase the level of tire registration. In its next line, CIMS wrote that "Had that dealer not provided a CIMS All-Brand form *it is doubtful* that those tires would have been registered, and thus the purchaser not directly notified." (emphasis added). The commenter does not explain why such an assumption is reasonable, nor is it obvious that this assumption is valid. NADA failed to provide any quantitative evidence to support the proposition that establishing a central clearing house would result in a significant increase in tire registration.

CIMS and NADA commented that the cost of the clearing house is nominal. CIMS stated that its operation is 100 percent funded by the independent tire dealers through the purchase of the form. It estimated the cost to the independent dealers was less than 1¢ per each tire that is registered. This charge includes the cost of the form itself; imprinting the dealers name and address; and the sorting, processing and forwarding of the forms. CIMS concluded that the clearing house would impose no additional cost on the manufacturers since they would have to provide a form under any registration system. (NHTSA Docket No. 70–12–N26–013). The NADA concurred with CIMS, stating that "an effective clearinghouse will result in a net cost savings for tire manufacturers" because "the clearing house would be responsible for form printing, distribution, collection and reposition." Moreover, the NADA commented that a "single clearing house would be predictably more cost effective than the fifty existing manufacturer systems." (NHTSA Docket No. 70–12–N26–005). NHTSA is not convinced that the creation of a central clearing house is as cost efficient as CIMS and the NADA contend. Even if it were, NHTSA believes that the activity of a cental clearing house would not signficantly increase the level of first purchasers who register their tires.

As explained above, NHTSA has concluded that the suggestion for establishing a central clearing house which would process all registration forms distributed to first purchasers would not significantly increase the number of first purchasers who comply with the voluntary tire registration program. This suggestion probably would not significantly increase the number of first purchasers who actually receive the registration forms. Supporters of this suggestion did not provide sufficient quantitative data to establish that it would increase significantly the number of purchasers who register their tires. The evidence provided was only a single anecdote rather than a comprehensive study. Moreover, commenters indicated that there would be added inefficiency because a central clearing house would result in an additional layer of bureaucracy. Assuming *arguendo* that a clearing house could be cost effective, the agency nevertheless has decided not to propose this measure in light of these more compelling shortcomings.

F. ANPRM Suggestion To Rescind Part 574 and Require Manufacturers To Design Their Own Compliance Plans

After considering all the comments, surveys, and data, NHTSA has decided not to propose rescission of the regulatory requirements of Part 574 relating to tire registration by dealers and distributors, and in its place require tire manufacturers to devise their own methods of complying with the statuory requirement that the tire manufacturers establish their own voluntary tire registration plans. According to the ANPRM, the agency initially believed that this measure would allow the tire manufacturers greater flexibility in devising registration systems; would be workable because vehicle manufacturers obtain high registration rates, without the need for government regulation; would provide to the tire manufacturers an incentive to ensure an effective tire registration system; and

would decrease substantially the enforcement burden for the agency, since under the new system, it would oversee only 50 manufacturers rather than 50,000 independent dealers. (51 FR 49521; December 23, 1986)

The tire manufacturers and other commenters strongly opposed this suggested measure, while not a single commenter supported it. Most commenters contended that this suggestion would not significantly increase and might even decrease the level of tire registration because requiring the implementation of 50 plans would result in much confusion for the independent dealers and the first purchasers. This was the case in the early 1970s when Part 574 merely required manufacturers and retreaders to provide an unspecified "means" for recording the registration information. The absence of any specified guidelines resulted in registration information often being incorrectly recorded. (51 FR 45918, December 23, 1986, citing 38 FR 6398, March 9, 1973)

In view of the unanimity of the opposing comments and the agency's initial difficulties in establishing an effective registration system, the agency believes that the suggestion to require each tire manufacturer to device its own registration plan for voluntary registration is unlikely to provide any benefit. The combination of some 50 independent plans imposed on independent tire dealers' voluntary registration systems could well result in even lower registration rates than currently exist.

Several commenters argued that the tire manufacturers would be burdened greatly because compliance plans would be difficult to design. Cooper Tire noted that because the development of such compliance plans would require extensive use of attorneys, the costs to develop these plans would be ten to twenty times the estimate in the ANPRM. (NHTSA Docket No. 70–12–N26–015 at 5). Moreover, the independent dealers and distributors would face the additional burden of understanding and following 50 different compliance plans rather than one, with little or no commensurate safety benefit.

This suggestion also would have placed a great burden on NHTSA to review each tire manufacturer's compliance plan. Throughout the history of tire registration, the agency itself has faced many problems in designing an effective tire registration program. For instance, in the rulemaking to establish Part 574, the final rule rejected a requirement that the tire manufacturers include a contractual provision obligating the independent dealers or distributors to record the registration information. The final rule also did not include a provision in which tire manufacturers would be required to keep a record of the tire identification numbers of all tires they sold to dealers that sell tires directly to tire consumers. (35 FR 17257, November 10, 1970) Moreover, this initial rule led to so many different registration forms and techniques that NHTSA proposed that tire manufacturers use a standardized form. (38 FR 6398, March 9, 1973) This proposal was adopted as a final rule on June 3, 1974 (39 FR 19482). The Motor Vehicle Safety and Cost Savings Authorization Act of 1982, which relieved independent tire dealers and distributors of the obligation of adhering to mandatory registration procedures, further illustrates the long and complicated history of the tire registration program and Part 574. Given the agency's past problems in devising tire registration plans, it is reasonable to conclude that the 50 or more compliance plans formulated by the tire manufacturers would cause similar oversight problems for the agency.

The commenters criticized this suggested measure on several other grounds. The most commonly cited problem was that the independent tire dealers are independent businessmen over whom tire manufacturers have no authority. Several commenters further doubted that the tire manufacturers could enforce their registration plans as effectively as the agency. Cooper Tire Co. noted that while NHTSA had the authority to impose serious penalties under section 109(b) of the Safety Act, the tire manufacturers would have no authority to motivate the independent dealers to comply with their registration plans. (NHTSA Docket No. 70–12–N26–015).

Several commenters criticized the statement made in the ANPRM that the high registration rates for motor vehicles could be obtained for tires. They pointed out that unlike tires, motor vehicles are required to be registered by the states and are independently insured.

As explained above, NHTSA has concluded that the suggestion for rescinding Part 574 and in its place requiring each tire manufacturer to develop its own compliance plan would not significantly increase the rate of tire registration by independent dealers. While not one commenter supported this proposal, many commentors strongly denounced it. The agency agrees with their belief that requiring multiple registration plans could lead to a great deal of confusion for the tire manufacturers, the independent dealers, and the first purchasers. Moreover, requiring tire manufacturers to enforce the plan would be ineffective and raise serious legal questions. Therefore, the agency has decided not to propose this change in the voluntary tire registration program.

G. Additional Alternatives and Suggestions To Improve Voluntary Tire Registration

The agency would like to repeat its position regarding the institution of more enforcement actions against independent tire dealers. As the ANPRM (51 FR 45919, December 23, 1986) stated, this is not the best use that NHTSA can make of its limited enforcement budget. The agency focuses its enforcement efforts on those areas most directly and substantially related to motor vehicle or motor vehicle equipment safety. In the area of tires, NHTSA has directed its enforcement efforts toward the actual testing of tires for compliance with the applicable safety standards and examination of reports of tire failure while in service. While the agency believes tire registration is important for motor vehicle safety, its value is realized only after a determination has been made that a group of tires should be recalled.

The ANPRM also sought other suggestions that would help to significantly improve the level of compliance with the voluntary tire registration requirements of Part 574.

Jetzon Tire and Rubber Co. suggested that the tire registration form be incorporated into the tire label that already is required under 49 CFR 575.104(d)(1)(B)(2). The manufacturer could print, at low cost, a peel off form as part of its standard manufacturing procedures. The ultimate consumer could then peel off the registration form, fill it out, and mail it back to the manufacturer. (NHTSA Docket No. 70–12–N26–004) NHTSA notes that the proposal has the following shortcomings: First, because replacement tires are mounted on the vehicle by the tire dealer in most cases, the label is either removed or worn off before the tire purchaser ever sees it. Second, the tire purchaser must crawl under the vehicle to determine the tire registration number once it is mounted. The agency further notes that the tire dealer has little motivation to enter the tire numbers on the standard form as required by 49 CFR 574.8(a)(3). The agency has no knowledge of the cost or feasibility of automatically printing the tire number on the label to match the tire during the manufacturing process. Nor is it aware of the extent to which

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dealers would better utilize that method to get the form to the tire purchaser.

Summit County (Ohio) suggested that the tire dealer could have an additional carbon copy of the sales slip, which could be forwarded to a clearing house or tire manufacturer. (NHTSA Docket No. 70–12–N26–006; see also NHTSA Docket No. 70–12–N26–008A). In order for this idea to be effective, the independent dealer would have to fill in the tire registration number on the sales slip. Such a procedure essentially is equivalent to the original mandatory registration requirements which the Authorization Act of 1982 prohibited by requiring the purchaser rather than the independent dealer to mail the form to the tire manufacturer.

Metzeler Motorcycle Tire Co. proposed that motorcycle tires be exempted from the registration requirements because motorcycle tires have an "extremely low recall rate" and a much shorter life than typical passenger vehicle tires. In arguing for the existence of the authority necessary for its requested exemption, Metzeler relied on the fact that retreaded tires were exempted from the registration requirements for these reasons in 1978. (NHTSA Docket No. 70–12–N26–008). NHTSA notes that it was Congress itself that provided for the exemption of retreaders from the tire registration requirements applicable to tire manufacturers. See 124 Cong. Rec. 32145 (September 28, 1978). There is no provision in section 158 or elsewhere in the Act for exempting anyone else from those requirements. Therefore, NHTSA is powerless to exempt motorcycle tires or any other type of tire from the voluntary tire registration requirements.

The Rubber Manufacturers Association repeated NTDRA's 1985 request for the General Accounting Office (GAO) to conduct a comprehensive study concerning the needs, cost, effectiveness, and practicality of tire registration. (NHTSA Docket No. 70–12–N26–009). NHTSA notes that a request for such a study by GAO can come from Congress only.

NTDRA proposed that the tire manufacturers devise a financial incentive program for the independent dealers which might result in an increase in the level of voluntary tire registration. (NHTSA Docket No. 70–12–N26–011). The agency has no authority to require the tire manufacturers to implement such an incentive program. However, the tire manufacturers may wish to investigate the tire registration incentive programs that some tire distributors currently use

AAA suggested that the tire number be placed on the whitewall side of the tire and that all tires be mounted with the inflation valve side facing out. This greater visibility of the tire number would assist consumers during both registration and in the event of recall. (NHTSA Docket No. 70–12–N26–014). The agency rejected such a proposed regulation in 48 FR 19761, May 2, 1983. It reasoned that while tire manufacturers estimated that this requirement would cost between $4.25 million and $5.9 million, only 0.14% (13 comments out of 9500 received) of the respondents to an agency survey reported that having the tire identification number facing inward on some tires posed a problem. NHTSA concluded that adoption of this proposal would not significantly contribute to motor vehicle safety.

Cooper Tire suggested that NHTSA change the manner in which information about tire registration is disseminated to tire purchasers. It recommended that tire manufacturers place a tire placard on the glove box door or in the glove box of all motor vehicles. (NHTSA Docket No. 70–12–N26–15). The agency believes that this measure would not be very effective. First, the message would have to distinguish between independent and company controlled tire dealers because the voluntary tire registration program only applies to consumers who purchase replacement tires from independent dealers. Second, it is unlikely that a prospective purchaser of replacement tires would refer to a pamphlet or placard in the glove compartment because four or so years typically elapse between the purchase of a new vehicle and the purchase of the replacement tires for that vehicle.

After reviewing these suggestions and any supporting information, the agency concludes that these proposals would not result in a significant increase in the level of compliance with voluntary tire registration.

III. Conclusion

In conclusion, the agency emphasizes the following points. First, this is not a determination that the current level of registration by independent tire dealers is desirable or acceptable. In enacting section 158, Congress determined that a registration rate for the tire registration program of even 20 percent is not desirable or acceptable. Second, tire registration, which helps tire manufacturers notify the first purchasers of the tires about a recall, is an important element of motor vehicle safety if a tire proves to be defective. Third, Congress expressly referred to the "relationship of tire registration to highway safety" in their committee reports.

Therefore, the agency's decision to terminate the rulemaking should not be construed as a rejection of voluntary tire registration. Rather, the decision reflects the fact that the express terms of the Safety Act require that any change in the voluntary tire registration program must result in a significant increase in the level of registration. Several commenters to this rulemaking endorsed suggestions that they believed would increase voluntary tire registration. Nevertheless, after reviewing all the available data for each suggestion to increase the level of voluntary tire registration, NHTSA has determined that no commenter demonstrated that any suggestion would result in a significant increase in the level of voluntary tire registration. However, NHTSA's termination of rulemaking does not end its efforts to find means to increase the rate of voluntary tire registration.

IV. Determination

After reviewing all available data concerning voluntary tire registration, NHTSA has determined that no suggestion has been demonstrated to significantly increase the level of registration under voluntary tire registration. Therefore, this rulemaking action is terminated.

It should be noted, as stated previously, that none of the various registration schemes developed or proposed to date has enabled the agency to address the issue of tire recall effectively without the need for supplementary public announcement of such recall. In fact, the registration rate of consumers who purchase tires from independent dealers has never reached 20 percent—using mandatory or voluntary registration methods. The agency will therefore continue to make use of public announcements in cases of tire recalls.

However, the agency will continue to monitor tire registration rates, and will continue to search for other more effective methods of increasing tire registration rates for independent dealers.

(15 U.S.C. 1392, 1407, 1418; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on November 1, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88–25672 Filed 11–3–88; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 53, No. 214
Friday, November 4, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This document cancels the list of Performance Review Board members published November 10, 1987, 52 FR 43215, and gives notice of new Performance Review Board members.

EFFECTIVE DATE: November 11, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Connelly, Chief, Compensation, Employment and Performance Management Staff, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250, (202/447–2830).

The membership of the U.S. Department of Agriculture's Performance Review Boards include:

Earle J. Bedenbaugh
Orville G. Bentley
Robert Beuley
John Bode
J. Patrick Boyle
Charles R. Brader
Robert L. Buchanan, Jr.
Mary E. Carter
Charles E. Caudill
Naomi D. Churchill
Vance Clark
Keith J. Collins
Samuel J. Cornelius
Lester M. Crawford
Vivian T. Culp-Mann
Stephen B. Dewhurst
James R. Donald
Rosina B. Ducrest
George Dunlop
Richard L. Fowler
J. Robert Franks
John J. Franke, Jr.
James Frazier, Jr.
John Frydenlund
David R. Galliart
Frank Gearde, Jr.
Kenneth A. Gilles
James W. Glosser
John T. Golden
Richard W. Goldberg
Earl C. Hadlock
Suzanne S. Harris
Milton J. Hertz
Christopher Hicks
Joseph H. Howard
William J. Hudnall
Allan S. Johnson
Myron D. Johnsrud
Billy H. Jones
John Patrick Jordan
Thomas O. Kay
James M. Kelly
S. Anna Kondratas
David R. Lane
John E. Lee, Jr.
Sherman L. Lewis
Robert W. Long
John Marshall
Linda P. Massaro
Leo V. Mayer
Robert B. Melland
Walter K. Miller
Wilmer D. Mizell
Peter C. Myers
Patrick M. O'Brien
Ronald D. Plowman
William J. Riley, Jr.
F. Dale Robertson
Bobby H. Robinson
Eldon W. Ross
Jeffrey Rush, Jr.
George W. Scaling
Judith A. Segal
Carol M. Seymour
Robert E. Sherman
Dallas R. Smith
Leon Snead
James E. Springfield
W. Scott Steele
William H. Tallent
Jack Van Mark
Roland R. Vautour
Lawrence Wachs
Ewen Wilson
Larry Wilson, Jr.

Alternates

Richard D. Allen
John H. Arnesen
William Bailey
Louis Bennett
John S. Bottum
Galen S. Bridge
Charles A. Bucy
Thomas J. Clark
Sonia F. Crow
Richard L. Duesterhaus
Gary R. Evans
Raymond R. Hancock
Clare I Harris
Glenn J. Hertzler, Jr.
Dr. Lonnie J. King
Edward B. Knipling
John P. Kraske
Joseph J. Leo
George M. Leonard
Francis Lum
Philip L. Mackie
H. E. Maynard
Kenneth O. McDougall
Diane McIntyre
Everett L. Mosley
LaVern F. Neppl
Floy E. Payton
John W. Peterson
Ronald J. Pruchs
William L. Rice
Robert R. Shaw
Larry B. Slagle
Ronnie O. Tharrington
Ann M. Veneman
Manly S. Wilder
Michael C. Wilkinson

November 1, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–25627 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–96–M

Forest Service

Noxious Weed Management; Lolo National Forest; Missoula, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead, Ravalli, and Lake Counties, MT; Revised Notice of Intent To Prepare an Environmental Impact Statement

Notice of intent to prepare an environmental impact statement on methods for controlling noxious weeds on the Lolo National Forest was published on page 44459 of the November 19, 1987 issue of the **Federal Register** (Vol. 52, No. 223). The expected filing date for the draft environmental impact statement (DEIS) given in that notice has passed.

The DEIS is still under preparation. It is now expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by May 26, 1989. EPA will publish a notice of availability of the DEIS in the **Federal Register**. The final environmental impact statement is scheduled for completion by August 25, 1989.

Questions about this environmental impact statement should be directed to Orville L. Daniels, Forest Supervisor, Lolo National Forest, at telephone number (406) 329–3750.

Date: October 25, 1988.

Orville L. Daniels,

Forest Supervisor.

[FR Doc. 88–25560 Filed 11–3–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on November 16, 1988. Committee meetings will also be held on this date. Public comment is welcome.

Time and Place: Presidential Board of Advisors on Private Sector Initiatives

Full Board Meeting: Wednesday, November 16, 1988, 2:30 p.m.–3:30 p.m., at the American Red Cross, National Headquarters, Board of Governors Room, 17th & E Streets NW., Washington, DC 20006

Committee Meetings: Wednesday, November 16, 1988, 1:15 p.m.–2:15 p.m., at the American Red Cross National Headquarters, Rooms to be Posted, 17th & E Streets NW., Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Date: October 28, 1988.

Robert H. Brumley,

General Counsel.

[FR Doc. 88–25539 Filed 11–3–88; 8:45 am]

BILLING CODE 3510–BW–M

International Trade Administration, Commerce

Export Trade Certificate of Review

AGENCY: Department of Commerce.

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ACTION: Notice of issuance of an Amended Export Trade Certificate of Review, Application #86–A0011.

SUMMARY: The Department of Commerce has issued an amendment to the export trade certificate of review of Millers' National Federation, granted on June 30, 1987 (52 FR 25622, July 8, 1987). The amendment was deemed submitted on August 2, 1988, and a summary of the application was published in the **Federal Register** on August 17, 1988 (53 FR 31076). This notice summarizes the revisions made to the certificate.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b) which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 86–00011, issued on June 30, 1987, is amended by revising the list of "Members" under the caption "Definitions" as follows:

1. Add Dixie Portland Flour Mills, Inc. as a "member."

2. Delete International Multifoods Corporation as a "Member."

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: October 31, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88–25540 Filed 11–3–88; 8:45 am]

BILLING CODE 3510–DR–M

National Institute of Standards and Technology

[Docket No. 80868–8168]

Approval of Five Federal Information Processing Standards (FIPS); Computer-Related Telecommunications Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved five new standards, which will be published as FIPS Publications 134–1, 149, 150, 154, and 155.

SUMMARY: On August 27, 1985 (50 FR 34755), December 27, 1985 (50 FR 53013), July 8, 1986 (51 FR 24749, 24750), and October 13, 1987 (52 FR 38025), notices were published in the **Federal Register** that five computer-related telecommunications standards were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NIST and the National Communications System (NCS). On the basis of this review, NIST recommended that the Secretary approve the standards as Federal Information Processing Standards (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

Each approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of each standard is provided in this notice.

EFFECTIVE DATE: These standards are effective April 21, 1989.

ADDRESS: Interested parties may purchase copies of these new standards, including the technical specifications portions, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies Section of the announcement portion of each standard.

FOR FURTHER INFORMATION CONTACT: Shirley Radack, National Computer and Telecommunications Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2833.

Ernest Ambler,

Director.

Date: October 28, 1988.

Federal Information Processing Standards Publication 134–1, Announcing the Standard for Coding and Modulation Requirements for 4,800 BIT/Second Modems

November 4, 1988.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

1. Name of standard. Coding and Modulation Requirements for 4,800 BIT/Second Modems (FIPS PUB 134–1).

2. Category of standard. Telecommunications Standard.

3. Explanation. This standard establishes coding and modulation requirements for 4,800 bit/s modems owned or leased by the Federal government for use over analog transmission channels. It is based upon techniques described in CCITT Recommendations V.27 bis, V.27 ter, and V.32. This standard supersedes former Federal Telecommunications (FED–STD) 1006 in its entirety.

4. Approving authority. Secretary of Commerce.

5. Maintenance agency. National Communications System, Office of Technology and Standards.

6. Cross index. Former Federal Standard (FED–STD) 1006A, Coding and Modulation Requirements for 4,800 Bit/Second Modems.

7. Related document. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

8. Objectives. This standard is to facilitate interoperability between telecommunication facilities and systems of the Federal government.

9. Applicability. This standard shall be used by all Federal departments and agencies in the design and procurement of 4,800 bit/s modems for use with switched or dedicated nominal 4 kHz channels.

10. Specifications. Affixed.

11. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding, effective April 21, 1989.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause the major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver request and any supporting and accompanying documents, with such deletions as the Agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to obtain copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 134–1 (FIPS PUB134–1), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Copies of the CCITT Recommendations V.27 and V.32 can be obtained from the National Technical Information Service.

Federal Information Processing Standards Publication 149, Accounting the Standard for General Aspects of Group 4 Facsimile Apparatus

November 4, 1988.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, P.L. 100–235.

1. Name of standard. General Aspects of Group 4 Facsimile Apparatus (FIPS PUB149).

2. Category of standard. Telecommunications Standard.

3. Explanation. This standard adopts Electronic Industries Association (EIA) Standard EIA–536–1988, which defines the facsimile coding schemes and their control functions for Group 4 facsimile apparatus.

4. Approving authority. Secretary of Commerce.

5. Maintenance agency. National Communications System, Office of Technology and Standards.

6. Cross index. a. Former Federal Standard (FED–STD) 1064, General Aspects of Group 4 Facsimile Apparatus.

b. EIA–536–1988, General Aspects of Group 4 Facsimile Apparatus.

7. Related documents. a. Federal Information Processing Standards Publication (FIPS PUB) 150, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus.

b. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

c. CCITT Recommendation T.5, General Aspects of Group 4 Facsimile Apparatus, Malaga-Torremolinos, 1984.

d. CCITT Recommendation T.6, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus, Malaga-Torremolinos, 1984.

e. Federal Standard 1037A, Glossary of Telecommunication Terms.

8. Objectives. This standard is to facilitate interoperability between and among facsimile terminals within telecommunication facilities and systems of the Federal government.

9. Applicability. This standard shall be used by all Federal departments and agencies in the design, development, and procurement of facsimile terminals/systems.

10. Specifications. This standard adopts in whole the Electronics Industries Association (EIA) Standard EIA–536–1988, General Aspects of Group 4 Facsimile Apparatus.

11. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding, effective April 21, 1989.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal, computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

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When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Conflict with reference documents. Where the requirements stated in this standard conflict with any requirements in a referenced document, the requirements of this standard shall apply. The nature of the conflict between this standard and a referenced document shall be submitted in duplicate to the Director, National Computer and Telecommunications Laboratory, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

14. Special information. Group facsimile equipment shall conform to the specifications set forth in EIA–538–1988.

Group 4 Facsimile—A mode of black/white facsimile operation as defined in CCITT Recommendations T.5 and T.6. Note: Utilizes bandwidth compression techniques to transmit an essentially error-free 216 x 279 mm (8½ × 11 inches) document at a nominal resolution of 8 lines/mm in less than one minute over a public data network voice-grade circuit.

15. Where to obtain copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Electronic Industries Association.) When ordering, refer to Federal Information Processing Standards Publication 149 (FIPSPUB149), and title. Payment may be made by check, money order, purchase order, credit card or deposit account.

Copies of the CCITT Recommendations T.5 and T.6 (PB85–192631) can be obtained from the National Technical Information Service.

Federal Information Processing Standards Publication 150, Announcing the Standard for Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus

November 4, 1988.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

1. Name of Standard. Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus (FIPS PUB 150).

2. Category of Standard. Telecommunications Standard.

3. Explanation. This standard adopts Electronic Industries Association (EIA) Standard EIA–538–1988, which defines the facsimile coding schemes and their control functions for Group 4 facsimile apparatus.

4. Approving authority. Secretary of Commerce.

5. Maintenance agency. National Communications System, Office of Technology and Standards.

6. Cross index. a. Former Federal Standard (FED–STD) 1065, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus.

b. EIA–538–1988, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus.

7. Related Documents. a. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

b. CCITT Recommendation T.5, General Aspects of Group 4 Facsimile Apparatus, Malaga-Torremolinos, 1984.

c. CCITT Recommendation T.6, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus, Malaga-Torremolinos, 1984.

d. Federal Standard 1037A, Glossary of Telecommunication Terms.

8. Objectives. This standard is to facilitate interoperability between and among facsimile terminals within telecommunication facilities and systems of the Federal government.

9. Applicability. This standard shall be used by all Federal departments and agencies in the design, development, and procurement of facsimile terminals/systems.

10. Specifications. This standard adopts in whole the Electronics Industries Association (EIA) Standard EIA–538–1988, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus.

11. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding, effective April 21, 1989.

12. Waivers.—Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such delegations as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Conflict with referenced documents. Where the requirements stated in this standard conflict with any requirements in a referenced document, the requirements of this standard shall apply. The nature of the conflict between this standard and a referenced document shall be submitted in duplicate to the Director, National Computer and Telecommunications Laboratory, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

14. Special information. Group 4 facsimile equipments shall conform to the specifications set forth in EIA–538–1988.

Group 4 Facsimile—A mode of black/white facsimile operations as defined in CCITT Recommendations T.5 and T.6, which utilizes bandwidth compression techniques to transmit an essentially error-free 215 x 279 mm (8½ x 11 inches) document at a nominal resolution of 8 lines/mm in less than one minute over a public data network voice-grade circuit.

15. Where to obtain copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Electronic Industries Association.) When ordering, refer to Federal Information Processing Standards Publication 150 (FIPSPUB150), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Copies of the CCITT Recommendations T.5 and T.6 (PB85–192631) can be obtained from the National Technical Information Service.

Federal Information Processing Standards Publication 154, Announcing the Standard for High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment

November 4, 1988.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the Natonal Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

1. Name of standard. High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment (FIPS PUB 154).

2. Category of standard. Telecommunications Standard.

3. Explanation. This standard adopts Electronic Industries Association (EIA) Standard EIA–530–1987, which specifies the interconnection of data terminal equipment (DTE) and data circuit-terminating equipment (DCE) employing serial binary data interchange circuits with control information exchanged on separate control circuits. In particular, this standard defines the signal characteristics, interface mechanical characteristics, functional description of interchange circuits, and standard interfaces for selected communication system configurations. The electrical characteristics of the interchange circuits are specified by reference to Electronic Industries Association (EIA) standard EIA–422–A (FED–STD–1020A) and EIA–423–A (FED–STD–1030A).

4. Approving authority. Secretary of Commerce.

5. Maintenance agency. National Communications System, Office of Technology and Standards.

6. Cross index. a. Former Federal Standard (FED–STD) 1032, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment.

b. EIA–530, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment.

7. Related documents. The following documents of the issue in effect on the date of invitation for bids or requests for proposals form a part of this standard to the extent specified herein: a. FIPS PUB 138, Electrical Characteristics of Balanced Voltage Digital Interface Circuits (EIA–422A) (former Federal Standard 1020A).

b. FIPS PUB 142, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits (EIA–423A) (former Federal Standard 1030A).

c. FIPS PUB 143, General Pyrpose 37-Position and 9-Position Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment (EIA–449) (former Interim Federal Standard 001031).

d. EIA–422A, Electrical Characteristics of Balanced Voltage Digital Interface Circuits.

e. EIA–423–A, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits.

f. EIA–449, General Purpose 37-Position and 9-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment Employing Serial Binary Data Interchange.

g. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

8. Objectives. This standard is to facilitate interoperability between telecommunication facilities and systems of the Federal Government and compatibility of these facilities and systems at the computer-communications interface with data processing equipment (systems) of the Federal Government.

9. Applicability. This standard shall be used by all Federal departments and agencies in the design and procurement of telecommunication equipment employing high speed (20,000 to 2,000,000 bits per second) interchange between DTEs and DCEs. This standard may optionally be used at speeds lower than 20 Kb/s. It is highly recommended in the speed range of 10 to 20 Kb/s for new systems that are likely to be upgraded to higher speeds, or when both sides of the interface are covered by one procurement action. This standard will not interoperate with equipment using EIA–232 electrical characteristics. Departments and agencies with a requirement to be compatible with the 37-position and 9-position interface specified in FIPS 143 (former Interim FED–STD–001031) (i.e., EIA–449) may continue to use this Standard, but new systems must conform to FIPS 154 (former FED–STD–1032).

10. Specifications. This standard adopts in whole Electronic Industries Association (EIA) Standard EIA–530–1987, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment.

11. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding, effective April 21, 1989.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard

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cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Conflict with referenced documents. Where the requirements stated in this standard conflict with any requirements in a referenced document, the requirements of this standard shall apply. The nature of the conflict between this standard and a referenced document shall be submitted in duplicate to the Director, National Computer and Telecommunications Laboratory, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

14. Special information. The electrical, mechanical, and functional interface and interchange circuits shall conform to EIA–530–1987.

15. Where to obtain copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Electronic Industries Association.) When ordering, refer to Federal Information Processing Standards Publication 154 (FIPSPUB154), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Copies of the EIA standards can be obtained from the Electronic Industries Association, 2001 Eye Street NW., Washington, DC 20006.

Federal Information Processing Standards Publication 155, Announcing the Standard for Data Communication Systems and Services User-Oriented Performance Measurement Methods

November 4, 1988.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

1. Name of standard. Data Communication Systems and Services User-Oriented Performance Measurement Methods (FIPS PUB 155).

2. Category of standard. Telecommunications Standard.

3. Explanation. This standard adopts American National Standard X3.141–1987, which specifies uniform methods of measuring the performance of data communication services at digital interfaces between data communication systems and their users. These methods may be used to characterize the performance of any data communication service in accordance with the user-oriented performance parameters defined in a companion standard, American National Standard X3.102–1983, which has been adopted as FIPS 144 (former Federal Standard 1033).

4. *Approving authority.* Secretary of Commerce.

5. *Maintenace agency.* National Communications System, Office of Technology and Standards.

6. *Cross index.* a. Former Federal Standard (FED-STD) 1043, Data Communication Systems and Services User-Oriented Performance Measurement Methods.

b. ANSI X3.141–1987, Data Communication Systems and Services—Measurement Methods for User-Oriented Performance Evaluation.

7. *Related documents.* a. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

b. ANSI X3.102–1983, Data Communication Systems and Services User-Oriented Performance Parameters.

8. *Objectives.* This standard is to provide Federal departments and agencies with uniform means of measuring the performance of data communication systems and services as perceived by end users. Performance measurements conducted in accordance with this standard are intended to be used in making communication management decisions concerning Federal acquisition and use of data communication systems and services.

9. *Applicability.* The measurement methods specified in American National Standard X3.141–1987 may be used in achieving a wide variety of measurement objectives, including service of network performance characterization, comparison of observed performance values with specifications, and the determination of system design, operation, or usage effects. They may be used in comprehensive experiments in which values for all standard parameters are determined or, with appropriate simplification, in very selective experiments—for example, the measurement of a single parameter such as Bit Error Probability. They may be applied at any pair of digital interfaces.

10. *Specifications.* This standard adopts in whole the American National Standard X3.141–1987, Data Communication System and Service—Measurement Methods for User-Oriented Performance Evaluation.

11. *Implementation.* The use of this standard by Federal department and agencies is compulsory and binding, effective April 21, 1989.

American National Standard X3.141–1987 shall be used by all Federal depa rtments and agencies in conducting data communication performance measurements intended to determine values for the user-oriented performance parameters defined in American National Standard X3.102–1983.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designate pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Goverment-wide savings.

Agency heads may act upon a written waiver requests containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Conflict with referenced documents.* Where the requirements stated in this standard conflict with any requirements in a referenced document, the requirements of this standard shall apply. The nature of the conflict between this standard and a reference document shall be submitted in duplicate to the Director, National Computer and Telecommunications Laboratory, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

14. *Where to obtain copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 155 (FIPSPUB155), and title. Payments may be made by check, money order, purchase order, credit card, or deposit account.

[FR Doc. 88–25417 Filed 11–3–88; 8:45 am]
BILLING CODE 3510-CN-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Detailing of Coverage of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

October 31, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs listing part and merged categories.

EFFECTIVE DATE: November 7, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: The existing visa requirements cover part and merged categories subject to the bilateral agreement of August 14, 1986, as amended, between the Governments of the United States and Hong Kong.

A copy of the agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 48 FR 2400, published on January 19, 1983, and 51 FR 27235, published on July 30, 1986.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1983, as amended on July 25, 1986, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, solid blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong, for which the Government of Hong Kong has not issued an appropriate visa.

Effective on November 7, 1988, the directive of January 14, 1983, as amended, is amended further to include the following list of part and merged categories established in the bilateral agreement of August 14, 1986, as amended:

Part and Merged Categories

225/317/326	
226/313	
333/334	
338/339 (1) [1]	(tank tops)
338/339 [2]	(shirts and blouses other than tank tops, knit)
347/348	
359 (1) [3]	(coveralls, overalls, jumpsuits)
359 (2) [4]	(Outer vests)
359 [5]	(other than coveralls, overalls, jumpsuits, vests)
369 (1) [6]	(shop towels)
369 [7]	(other than shop towels)
443/643/843 (1)	(made-to-measure suits, men's and boys')
444/644/844 (1)	(made-to-measure suits, women's and girls')
445/446	
447/448	
633/634/635	
633/634	
638/639	
645/646	
659 (1) [8]	(coveralls, overalls, jumpsuits)
659 (2) [9]	(swimsuits)
659 [10]	(other than coveralls, overalls, jumpsuits, swimsuits)
845 (1) [11]	(sweaters made in Hong Kong)
845 (2) [12]	(sweaters assembled in Hong Kong from knit-to-shaper component parts knitted elsewhere)
846 (1) [13]	(sweaters made in Hong Kong)
846 (2) [14]	(sweaters assembled in Hong Kong from knit-to-shape component parts knitted elsewhere)

[1] In Categories 338/339(1), only TSUSA numbers 381.0230, 361.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.2806, 384.2810, 384.2812 and 384.2814.

[2] In Category 338/339, all TSUSA numbers except 381.0230, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.2806, 384.2810, 384.2812 and 384.2814 in Category 338/339(1).

[3] In Category 359(1), only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222.

[4] In Category 359(2), only TSUSA numbers 361.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

[5] In Category 359, all TSUSA numbers except 381.0822, 381.6510, 384.0928 and 384.5222 in Category 359(1); and 381.0258, 381.0554, 381.3949, 381.5800,

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381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422 in Category 359(2).

[6] In Category 369(1), only TSUSA number 366.2840.

[7] In Category 369, only TSUSA numbers except 366.2840.

[8] In Category 659(1), only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[9] In Category 659(2), only TSUSA numbers 381.2340, 381.3170, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9330.

[10] In Category 659, all TSUSA numbers in 659 except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310 in Category 651(1); and 381.2340, 381.3170, 381.9100, 381.9570, 384.1700 384.2339, 384.8300, 384.8400 and 384.9353 in Category 659(2).

[11] In Category 845(1), only TSUSA numbers 381.3583, 381.6688, 381.9987, 384.2736, 384.5317 and 384.9695.

[12] In Category 845(2), only TSUSA numbers 381.3578, 381.6685, 381.9985, 384.2735, 384.5316 and 384.9694.

[13] In Category 848(1), only TSUSA numbers 381.3576, 381.8557 384.2734 and 384.7782.

[14] In Category 848(2), only TSUSA numbers 381.3574, 381.8554, 384.2733 and 384.7781.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25536 Filed 11-3-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 5, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity Index, Elevation 1005-01-134-3621.

Service Commissary Shelf Stocking, Custodial and Warehouse Service, Ellsworth Air Force Base, South Dakota.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-25568 Filed 11-3-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988 Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 5, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 5, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 29511) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

No comments were received concerning the proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1988: Cover, Generator Set 6115-00-941-1655.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-25569 Filed 11-3-88; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a contract market in futures on the Morgan Stanley Capital International United Kingdom Stock Index. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before November 21, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME Morgan Stanley United Kingdom Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW. Washington, DC 20581 (202) 254-7303.

SUPPLEMENTARY INFORMATION: On May 19 and September 2, 1988, the Commission published in the **Federal Register**, for 60-day and 15-day comment periods, respectively, notices of availability of the CME's proposed terms and conditions for the U.K. stock index futures contract (53 FR 17969 and 53 FR 34140). In an October 25, 1988 letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9 Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on November 1, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88-25531 Filed 11-3-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Equal Opportunity Management Institute Board of Visitors; Meeting

AGENCY: Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV), DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV). The purpose of the DEOMI BOV is to serve as an external source of expertise to ensure periodic review of the objectives, policies, and operations of DEOMI. The Board meets semiannually.

DATE: November 18-19, 1988 (Agenda follows).

ADDRESS: Defense Equal Opportunity Management Institute (DEOMI), Bldg 559, Patrick, AFB, Florida, 32925-6685.

AGENDA: Sessions will be conducted as indicated below and will be open to the public.

Friday, November 18, 1988

8:00 a.m.—8:30 a.m. Address to Students and Faculty
8:40 a.m.—10:15 a.m. Presentation of Briefing for New DACOWITS Members
10:15 a.m.—10:45 a.m. Old Business (Review of Report from the Previous Meeting)
11:30 a.m.—12:45 p.m. Luncheon with Students and Staff
1:00 p.m.—4:00 p.m. Presentation of Information Papers

Saturday, November 19, 1988

8:00 a.m.—10:00 a.m. Executive Session
10:15 a.m.—10:45 a.m. Finalize Formal Comments and Recommendations
10:45 a.m.—11:00 a.m. Closing Remarks

FOR FURTHER INFORMATION CONTACT: Colonel E. E. Wiggins, USAF, Commandant, Defense Equal Opportunity Management Institute, Patrick AFB, Florida, 32925-6685; telephone (407) 494-6976.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the Board of Visitors meeting:

(1) Members of the public are permitted to attend all Board sessions conducted in pursuit of the Board's charter.

(2) Interested persons may submit written statements for consideration by the Board and/or make oral presentations of same during the meeting.

(3) Persons desiring to make oral presentations or submit written statements to the Board must notify the point of contact listed above no later than November 14, 1988.

(4) Length and number of oral presentations to be made will depend on the number of such requests received.

(5) Persons submitting written statements only for inclusion in the minutes of the meeting must submit one copy no later than five days after the meeting adjourns.

(6) Other new items from members of the public may be presented in writing to any DEOMI BOV member for transmittal to the BOV Chair or Commandant, DEOMI, to consider.

(7) Members of the public will not be permitted to enter into oral discussions conducted by the Board members at any of the meeting sessions; however, they will be permitted to reply to any questions directed to them by the members of the Board.

(8) Members of the public will be permitted to orally question any scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 1, 1988.

[FR Doc. 88-25623 Filed 11-3-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Physical Optics Corp.; Intent to Grant Exclusive Patent License

Pursuant to the provisions of Part 101-4 of Title 41, Code of Federal Regulations, which implements Pub. L. 96-517, the Department of the Air Force announces its intention to grant to the Physical Optics Corporation, 2525 W. 237th Street, Torrance, California 90505, a corporation of California, an exclusive royalty-bearing license under U.S. Patent No. 4,563,057 issued 7 January 1987 in the names of Jacques W. Ludman, Joseph L. Horner and Henry J. Caulfield for "Fiber Optic Cable Connector."

The license will be granted unless any objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the publication of this notice.

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All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324–1000, Telephone No. (202) 475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–25556 Filed 11–3–88; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

National Board for the Promotion of Rifle Practice; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). Announcement is made of the following committee meeting:

Name of Committee: National Board for the Promotion of Rifle Practice.

Date of Meeting: 6 December 1988.

Place: Ramada Renaissance Hotel, Washington Dulles International Airport, 13869–71 Park Center Road, Herndon, Virginia 22071.

Time: 1345–1600.

Proposed Agenda:

1. Open Prayer and Pledge of Allegiance to the Flag
2. Federal Register Notice of the Meeting
3. Roll Call
4. Approval of previous Board minutes
5. Status of regulations
6. Update of ammunition used in EIC Matches
7. Update on Conduct of the 1988 National Matches
8. Report on revision of the Small Arms Firing School Training
9. Report on the 1989 National Matches
10. Report on the Budget review/presentation
11. Report on transfer of skills from Air Rifles
12. M1 Sales
13. President's 100
14. New Business
15. Closing Prayer

This meeting is open to the public.

Persons desiring to attend the meeting should contact Mr. Dennis W. Galoci or Ms. Rita G. Cooper at (202) 272–0810 prior to 21 November 1988 to arrange admission.

M.S. Gilchrist,

Colonel, Armor, Executive Officer, NBPRP.

[FR Doc. 88–25606 Filed 11–3–88; 8:45 am]

BILLING CODE 3710–06–M

National Board for the Promotion of Rifle Practice Budget Committee; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463), announcement is made of the following committee meeting:

Name of Committee: National Board for the Promotion of Rifle Practice Budget Committee.

Date of Meeting: 6 December 1988.

Place: Ramada Renaissance Hotel, Washington Dulles International Airport, 13869–71 Park Center Road, Herndon, Virginia 22071.

Time: 0390–1130.

Proposed Agenda:

1. Federal Register Notice of the Meeting
2. Roll Call
3. Approval of previous Board minutes
4. Review of Fiscal Year 1988 Budget
5. Expenditure Restrictions
6. Update Support Agreements
7. Fiscal Year 1989 Budget and Obligation Plan
8. Fiscal Year 1990–91 and Out-Year Budgets
9. Purchase of accounterments and supplies
10. Proposed upgrade of Camp Perry and Facilities
11. Realignment of mail cost responsibilities

This meeting is open to the public.

Persons desiring to attend the meeting should contact Mr. Dennis W. Galoci or Ms. Rita G. Cooper at (202) 272–0810 prior to 21 November 1988 to arrange admission.

M. S. Gilchrist,

Colonel, Armor Executive Officer, NBPRP.

[FR Doc. 88–25607 Filed 11–3–88; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With DeMenno-Kerdoon

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with DeMenno-Kerdoon. The agreement proposes to resolve matters relating to DeMenno-Kerdoon's compliance with federal petroleum price and allocation regulations for the period August 19, 1973 through January 27, 1981. If this Consent Order is approved, DeMenno-Kerdoon will pay a minimum of $150,000 plus interest, as well as specified percentages of its annual adjusted net income for the five consecutive fiscal years commencing with the fiscal year beginning November 1, 1989. The maximum amount payable under the Consent Order is $3 million.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this notice. ERA will consider the submissions received from the public in determining whether to reject the settlement, accept the settlement and issue a final Order, or renegotiate the agreement and, if successful, issue the modified agreement as a final Order. DOE's final decision will be published in the Federal Register, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., RG–30, Washington, DC 20585 (202) 586–8900.

Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Resolution of Regulatory Issues
A. Areas of Dispute
B. Determination of Maximum Liability
III. Determination of Reasonable Settlement Amount
IV. Terms and Conditions of the Consent Order

I. Introduction

ERA audited DeMenno-Kerdoon's compliance with the Federal petroleum price and allocation regulations as a refiner engaged in, *inter alia*, the business of purchasing and refining crude oil, and selling refined petroleum products. On the basis of its audit findings, ERA issued a Proposed Remedial Order (PRO) to the firm and another refiner on December 8, 1986. This PRO, which is now pending before OHA, alleges that during the period November 1976 through may 1977 DeMenno-Kerdoon improperly reported volumes of crude oil under the Crude Oil Allocation Program (Entitlements Program), set forth at 10 CFR 211.66 and 211.67, in violation of those regulations and 10 CFR 205.202.

ERA's audit of DeMenno-Kerdoon also indicated that in a number of transactions during the period January 1979 through December 1980 the firm failed to report certain volumes of controlled crude oil which it had processed at its refinery. Further, it was found that DeMenno-Kerdoon had reported certain volumes of uncontrolled crude oil to DOE without having obtained proper certifications. These practices appear to have violated the provisions of 10 CFR 211.66, 212.131 and 205.202. A PRO was issued concerning these matters on December 31, 1986, and following additional analysis by ERA, was subsequently withdrawn on August 16, 1988.

In the negotiation process leading to the proposed settlement, ERA analyzed the results of the audits and the nature of the alleged regulatory violations, but, most importantly, the substantially impaired financial condition of DeMenno-Kerdoon and its secured debt structure and, therefore, its limited ability to pay any judgment which might be rendered at the end of lengthy and complex enforcement proceedings.

The settlement calls for DeMenno-Kerdoon to pay a maximum of $3 million. DeMenno-Kerdoon is required to make minimum payments totalling $150,000, plus interest on those payments, as well as specific percentages of its adjusted net income for five consecutive fiscal years, beginning November 1, 1989, in settlement of its potential liability for violations of DOE regulations.

II. Resolution of Regulatory Issues

A. Areas of Dispute

The disputes resolved by the Consent Order include the alleged improper reporting of crude oil under the Entitlements Program of volumes of crude oil refined pursuant to a processing agreement in violation of the regulations set forth at 10 CFR 205.202, 211.66 and 211.67, addressed in a PRO issued by ERA on December 8, 1986, to DeMenno-Kerdoon and another refiner.

Also resolved is DeMenno-Kerdoon potential liability arising from various crude oil transactions during the period January 1979 through December 1980, in which ERA's audit found that the firm failed to maintain records and to report volumes of crude oil to the Entitlements Program in violation of 10 CFR 205.202, 211.66(b) and (h), 212.131. As indicated, these matters were the subjection of a PRO which was issued on December 31, 1986, and withdrawn on August 16, 1988. The proposed Consent Order would resolve the PRO, currently pending, any remaining issues related to the withdrawn PRO, and all other matters relating to DeMenno-Kerdoon's compliance with the mandatory petroleum price and allocation regulations during the period August 19, 1973, through January 27, 1981.

B. Determination of Maximum Liability

ERA calculated the maximum amount for which DeMenno-Kerdoon might be liable as a result of the violations alleged in the December 8, 1986, PRO, which is now pending before OHA, and other possible violations. ERA determined the firm's maximum potential liability with respect to the PRO by calculating the impact of DeMenno-Kerdoon's inclusion of certain volumes of crude oil in its runs to stills on its Refiners Monthly Reports (Form P102–M–1) resulting in the issuance of excess small refiner bias entitlements to DeMenno-Kerdoon. In this regard, the PRO issued to DeMenno-Kerdoon alleges that DeMenno-Kerdoon and another refiner are jointly and severally liable for excess entitlements benefits in violation of the Entitlements Program. The principal amount of the resulting alleged violations is $2,047,382.48, of which 50% is attributed by ERA to DeMenno-Kerdoon in this settlement. As adjusted, the principal amount of the violation is $1,023,691.24 plus interest. The maximum total potential liability for DeMenno-Kerdoon is approximately $4.2 million, including interest.

The proposed settlement also resolves the pending audit in which DOE found that DeMenno-Kerdoon failed to report certain volumes of controlled crude oil receipts processed at its refinery, and failed to obtain proper certification for other volumes of crude oil. The potential violation amount related to these issues is approximately $8.7 million, plus interest, for a total of approximately $22.6 million.

Thus, the total potential maximum liability of DeMenno-Kerdoon is approximately $26.8 million.

III. Determination of Reasonable Settlement Amount

ERA does not propose to settle based on the litigation risk values of the disputed issues. In determining a reasonable settlement amount for the allegations of regulatory violations discussed above, ERA reviewed several factors. The most significant factor in arriving at this proposed settlement was ERA's consideration of the current and projected economic condition of DeMenno-Kerdoon. DeMenno-Kerdoon made available to ERA extensive financial information, including financial statements, tax returns, copies of instruments of indebtedness encumbering assets, and extensive underlying documents on which the reports, returns and statements were based. As a result of this review, it became apparent to ERA that DeMenno-Kerdoon would not be capable of satisfying a judgment in an amount approaching the potential maximum liability alleged by ERA. ERA also considered that a judgment in DOE's favor, even if obtained, would be greatly in excess of DeMenno-Kerdoon's consolidated net worth, yet that judgment liability might well be subordinate to secured lenders.

Consideration of all the foregoing factors led ERA to the conclusion that this settlement is the best method for ERA to realize any recovery in this case. Based on all these considerations—the financial condition of DeMenno-Kerdoon, the time and expense required for the government to fully litigate every issue in order to obtain any recovery, and the low potential for any significant recovery with litigation success—ERA concluded that the resolution of these matters for the amounts prescribed in the proposed Consent Order is an appropriate settlement and is in the public interest.

IV. Terms and Conditions of the Consent Order.

The Consent Order provides that DeMenno-Kerdoon will pay a maximum of $3 million. DeMenno-Kerdoon will make minimum payments of not less than $150,000. An initial payment of $25,000 will be made within thirty (30) days of the effective date of the Consent Order or on January 1, 1989, whichever occurs later. Further scheduled payments totalling $125,000 will be made in thirty-five (35) equal monthly installments commencing on the first day of the next full month following the due date of the initial payment, plus interest set at 8.61% per annum.

In addition to the foregoing minimum payments, DeMenno-Kerdoon is

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obligated to pay the DOE certain percentages of its adjusted net income for five consecutive fiscal years, commencing with the firm's fiscal year beginning November 1, 1989. The percentages of DeMenno-Kerdoon's adjusted net income which must be paid to the DOE on an annual basis range from 10% for adjusted net income from $.5 million to $999,999.99 to 40% for all amounts of adjusted net income including and in excess of $5 million.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: DeMenno-Kerdoon Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this notice in the **Federal Register**, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent order as a final Order, the proposed Order will be made final and effective by publication of a notice in the **Federal Register**.

Issued in Washington, DC on October 31, 1988.

Robert G. Heiss,

Deputy Chief Counsel for Operations, Economic Regulatory Administration.

[FR Doc. 88–25633 Filed 11–3–88, 8:45 am]

BILLING CODE 6450–01–M

[Docket Nos. OFU–002, 003, 004]

Order Granting Rescission of a Prohibition Order Issued to the Iowa Electric & Power Co. Pursuant to the Energy Supply and Environmental Coordination Act of 1974

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting rescission of prohibition order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) as amended by 15 U.S.C. 792(f) and implemented by 10 CFR 303.130(b), it is granting a request by the Iowa Electric Light & Power Company (the Company) to rescind the prohibition order issued on June 30, 1975, for the following powerplant:

Owner	Docket No.	Generating Station	Unit No.	Location
Iowa Electric Light and Power Company	OFU–002	Sutherland	1	Marshalltown, Iowa.
	OFU–003		2	
	OFU–004		3	

This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations. The basis for ERA's action is provided in the **SUPPLEMENTARY INFORMATION** section below.

EFFECTIVE DATE: This order shall be effective on November 4, 1988, in accordance with 10 CFR 303.10.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Department of Energy, 1000 Independence Avenue, SW., Room 3H–087, Washington, DC 20585, Telephone (202) 586–4708.

Steven J. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A–113, Washington, DC 20585, Telephone (202) 586–6947.

The public file containing a copy of this Order and other documents and supporting materials on this proceeding will be made available, upon request, at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

SUPPLEMENTARY INFORMATION: On June 2, 1975, in accordance with the ESECA, the Federal Energy Administration issued a Prohibition Order to Iowa Electric Light and Power Company prohibiting the burning of natural gas as a primary energy source in Sutherland Generating Station Units 1, 2, and 3. A subsequent Notice of Effectiveness dated January 17, 1978, and an Amended Notice of Effectiveness dated December 21, 1978, also were issued for these units.

Pursuant to 10 CFR 303.10 et seq., Iowa Electric Light and Power Company filed an Application for Rescission of Prohibiton Orders based upon what the company maintains is a substantial change in the facts or circumstances upon which the Prohibition Order was originally issued. Sutherland's Units 1 and 2 went into operation in 1955; Unit 3 was placed in service in 1961. At the time the Prohibition Order became effective, all three units were operated as base load units. Due to their size and the reduction in efficiency of the units over time, Units 1 and 2 currently are used as peaking units and Unit 3 is an intermediate unit.

All three units were designed to burn Iowa coal which has a heat content in the range of 8,500 to 9,500 Btu/lb. and a sulfur content of four to five percent. On October 14, 1987, the state of Iowa's sulfur dioxide emission regulation was changed from 8.0 lbs. of SO_2 per MMBtu of fuel burned to 5.0 lbs. SO_2 per MMBtu. The company contends that while the Sutherland units were being operated as base load units, they easily adapted to burning coal with the characteristics required to meet the more stringent emissions standards. However, as peaking and intermediate units, operation with compliance coal has become more difficult, resulting in additional maintenance of the units. Additionally, Unit 3 is a cyclone unit and its physical configuration increases the difficulty of operation with the different characteristics of low sulfur coal.

Due to the changed circumstances resulting from more stringent sulfur dioxide emission regulations and the conversion of the units from base load to peaking and intermediate operation, the Company states that the future life of the units will be reduced if it must continue to operate them on low sulfur coal rather than on natural gas.

On April 8, 1988, in accordance with the procedural requirements of 10 CFR 303.134(a), the ERA published in the **Federal Register** (53 FR 11699) a Notice of Acceptance of a request by Iowa Electric Light and Power Company to rescind certain prohibition orders issued pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration (FEA) to the Department of Energy.

to it pursuant to the ESECA. This notice also announced the start of a 45-day public comment period. During that period interested persons also were afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed May 23, 1988. No comments were received and no hearing was requested.

Decision and Order

Accordingly, based upon information received from the Company and the entire record of this proceeding, the ERA has determined that, as a result of significantly changed circumstances with respect to the Prohibition Orders issued to Iowa Electric Light and Power Company's Sutherland Generating Units Nos. 1, 2, and 3 set forth in 10 CFR 303.136(b), this powerplant can be operated more effectively, efficiently, practically and reliably by using natural gas rather than coal as a primary energy source. Pursuant to 10 CFR 303.137(a), the ERA hereby grants the rescission request of Iowa Electric Light and Power Company and hereby orders that the Prohibition Orders on these units be rescinded.

Pursuant to 10 CFR 303.100(a) and (b), any person aggrieved by this order has not exhausted the available administrative remedies until an appeal has been filed with the DOE's Office of Hearing and Appeals and an order granting or denying the appeal has been issued. Such appeal must be filed within 30 days of the publication of this order in the **Federal Register** in accordance with the requirements of 10 CFR 303.102, 303.104 and 303.139(b).

Issued in Washington, DC on October 27, 1988.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–25634 Filed 11–3–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–632–000, et al.]

Colstrip Energy Limited Partnership, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 31, 1988.

Take notice that the following filings have been made with the Commission:

1. Colstrip Energy Limited Partnership

[Docket No. ER88–632–000]

Take notice that on September 28, 1988, Colstrip Energy Limited Partnership (Partnership) tendered for filing, pursuant to 18 CFR 35.13, the Power Purchase Agreement Consent and Assignment executed on June 30, 1988 by AEM Corp., Rosebud Energy Corp., the Partnership, the Montana Power Company and Bank of New England, N.A. This agreement relates to the assignment of all of the rights, title and interest of AEM Corp. in the Cogeneration and Small Power Production Long-Term Power Purchase Agreement to the Partnership.

Copies of the instant filing have been served upon the Montana Power Company and the Public Service Commission of the State of Montana.

Comment date: November 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER89–32–000]

Take notice that on October 26, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing an initial rate schedule consisting of a letter agreement (Agreement) with the Bonneville Power Administration (BPA) for the potential sale by PG&E to BPA of firm energy previously furnished by BPA to PG&E.

BPA will supply 1,172 GWh of energy to PG&E between September 1, 1988 and December 31, 1988. From January 1, 1989, to April 15, 1989, all or any of the energy BPA previously supplied PG&E under the Agreement can be recalled by BPA with a refund in an amount PG&E otherwise would have paid BPA, unless PG&E must burn oil to return the energy. In the latter case, PG&E will sell BPA the energy at a price based on its cost of oil.

Copies of this filing were served upon BPA and the Public Utilities Commission of the State of California.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power & Light Company

[Docket No. ER89–30–000]

Take notice that on October 26, 1988, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated July 25, 1988, between the Waushara Electric Cooperative and WPL. WPL states that this new wholesale power agreement supercedes the previous agreement between the two parties which was dated April 2, 1981, and designated Rate Schedule No. 129 by the Commission.

The purpose of this new agreement is to provide for terms of service to W–2 customers on a more similar basis to the terms of service for other wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Waushara Electric Cooperative and the Wisconsin Public Service Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER89–21–000]

Take notice that on October 24, 1988, Niagara Mohawk Power Corporation tendered for filing amendments to the Agreement between Niagara Mohawk Power Corporation and Central Hudson Gas and Electric Corporation dated October 25, 1983, and last amended by letter dated June 5, 1986, for delivery of Blenheim-Gilboa power and energy. Niagara Mohawk Power Corporation proposes the following:

1. The First sentence of Paragraph 2.1 shall be amended to read:

"Central Hudson shall pay Niagara at the rate of Thirteen Thousand, Six Hundred Twenty Seven Dollars ($13,627.00) per month for the use of Niagara's facilities made available under this agreement."

2. Pursuant to Paragraph 2.2, in the event that curtailment of service is required, Central Hudson's charges will be reduced by Nineteen Hundredths Dollars ($0.19) per megawatt of curtailment.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power Company

[Docket No. ER89–22–000]

Take notice that on October 24, 1988, Washington Water Power Company (WWP) tendered for filing a service schedule applicable to what WWP refers to as a Transmission Service Agreement between WWP, Puget Sound Power & Light Company (Puget), and the City of Spokane (Spokane). WWP states that electric power generated by Spokane at the Regional Solid Waste Disposal Project will be wheeled by WWP from the WWP/Project point of interconnection to the WWP/Bonneville Power Administration (Bonneville) point of interconnection near WWP's Westside Substation. Bonneville will in turn wheel such power from Westside to the Bonneville/Puget Kitsap point of interconnection under terms of a separate agreement.

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WWP requests that the requirements of prior notice be waived and the effective date be made retroactive to the execution date, August 10, 1988.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this document.

6. Wisconsin Power & Light Company

[Docket No. ER89-29-000]

Take notice that on October 26, 1988, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated August 24, 1988, between the Adams-Columbia Electric Cooperative and WPL. WPL states that this new wholesale power agreement supercedes the previous agreements between WPL and the Adams-Marquette Electric Cooperative dated November 20, 1975, and between WPL and Columbus Electric Cooperative dated January 29, 1980, which are designated Rate Schedule No. 112 and 128, respectively, by the Commission.

The purpose of this new agreement is to reflect the merger of the two cooperatives and to provide for terms of service to W-2 customers on a more similar basis to the terms of service for other wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Adams-Columbia Electric Cooperative and the Wisconsin Public Service Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Power & Light Company

[Docket No. ER89-27-000]

Take notice that on October 26, 1988, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated August 26, 1988, between the Rock County Electric Cooperative and WPL. WPL states that this new wholesale power agreement supercedes the previous agreement between the two parties which was dated September 25, 1981, and designated Rate Schedule No. 130 by the Commission.

The purpose of this new agreement is to provide for terms of service to W-2 customers on a more similar basis to the terms of service for other wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Rock County Electric Cooperative and the Wisconsin Public Service Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Public Service Company

[Docket No. ER89-23-000]

Take notice that on October 24, 1988, Maine Public Service Company tendered for filing proposed changes in its FERC Wholesale Electric Tariff to become effective without suspension, November 1, 1988, on less than statutory notice. The proposed changes would increase revenues from jurisdictional sales and service by $370,460 based on the twelve month period ending December 31, 1987.

Maine Public Service Company filed these changes in its FERC electric tariff in order to cover a portion of its unrecovered investment in Seabrook Unit No. 1. The three Wholesale Customers have given their written consent to the proposed tariff changes prior to the submission of this filing.

Copies of this filing were served upon the public utility's three jurisdictional customers, the Maine Public Utilities Commission and the Maine Public Advocate.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER89-31-000]

Take notice that on October 26, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Central Hudson Gas & Electric Corporation (CHGE) dated July 1, 1988, providing for certain transmission services to CHGE. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 141. This new agreement is being transmitted as a supplement to the existing agreement.

The February 4, 1987 agreement provides for the addition of the new service of the transmission and delivery to CHGE of energy generated at the Nine Mile Point Unit #2 plant (Nine Mile #2) and for a change in the rate charged CHGE for the transmission and delivery to CHGE of certain power and energy generated at the Nine Mile #2 plant and at the Authority's FitzPatrick Nuclear Plant. CHGE has consented to both changes.

This supplement revised the rates from firm transmission service for deliveries from FitzPatrick and Nine mile #2 and for energy transmission service for delivery of energy by Niagara to CHGE. Niagara requests an effective date of September 1, 1988.

Copies of the filing were served upon CHGE and the New York State Public Service Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this document.

10. Wisconsin Power & Light Company)

[Docket No. ER89-28-000]

Take notice that on October 26, 1988, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated September 27, 1988, between the Central Wisconsin Electric Cooperative and WPL. WPL states that this new wholesale power agreement supersedes the previous agreement between the two parties which was dated May 31, 1983, and designated Rate Schedule No. 133 by the Commission.

The purpose of this new agreement is to provide for terms of service to W-2 customers on a more similar basis to the terms of service for other wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Central Wisconsin Electric Cooperative and the Wisconsin Public Service Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25621 Filed 11-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-2374-000, et al.]

Hugh C. MacKenzie et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 28, 1988.

Take notice that the following filings have been made with the Commission:

1. Hugh C. MacKenzie

[Docket No. ID-2374-000]

Take notice that on September 19, 1988, Hugh C. MacKenzie tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Corporation and Position

The Connecticut Light and Power Company—Vice President—Transmission and Distribution Engineering and Operations
Western Massachusetts Electric Company—Vice President—Transmission and Distribution Engineering and Operations
Holyoke Water Power Company—Vice President—Transmission and Distribution Engineering and Operations
Holyoke Power and Electric Company—Vice President—Transmission and Distribution Engineering and Operations
Northeast Utilities Service Company—Vice President—Transmission and Distribution Engineering and Operations
The Quinnehtuk Company—Vice President—Transmission and Distribution Engineering and Operations
The Rocky River Realty Company—Vice President—Transmission and Distribution Engineering and Operations
Research Park Inc.—Vice President—Transmission and Distribution Engineering and Operations

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Baltimore Gas and Electric Company

[Docket No. ES89-2-000]

Take notice that on October 20, 1988, Baltimore Gas and Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue from time to time no later than December 31, 1989 (a) not more than $425 million outstanding at any one time of short-term unsecured promissory notes and commercial paper with final maturities no later than December 31, 1990, and (b) not more than $100 million outstanding at any one time of unsecured medium-term promissory notes with final maturities no later than December 31, 1990.

Comment date: November 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ES89-4-000]

Take notice that on October 21, 1988, UtiliCorp United Inc. (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue 80,000 shares of common stock, par value $1.00 and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: November 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Fairfield Energy Venture, L.P.

[Docket No. ER89-16-000]

Take notice that on October 20, 1988, Fairfield Energy Venture, L.P. (FEV) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to 18 CFR 35.1 and 35.12, a proposed initial rate schedule applicable to sales at wholesale of electric energy and capacity to Central Maine Power Company (CMP) from a biomass wood-to-energy facility located in Fort Fairfield, Maine (Facility). This initial rate schedule is a negotiated Power Purchase Agreement Between Fairfield Energy Venture and CMP (Agreement) and has been designated FEV Rate Schedule No. 1.[1]

FEV has given notice that the Facility is a biomass-fired small power production facility with a net electric power production capacity of 30 megawatts, although the Facility's output will occasionally exceed that level. The Facility was certified by the Commission as a "qualifying facility" under Section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). *Fairfield Energy Venture,* Docket No. QF84-255-000, 28 FERC ¶ 62,031 (July 9, 1984). The Facility was recertified by the Commission as a qualifying facility on November 7, 1985. Docket No. QF84-255-001, 33 FERC ¶ 62,178 (1985). On November 27, 1985, FEV filed with the Commission a Notice of Qualification As A Small Power Production Facility in Docket Nos. QF84-255-000, *et seq.* As such, FEV states that the Facility is exempt from regulation under the Public Utility Holding Company Act and from certain state laws and regulations, but remains subject to the Commission's jurisdiction under the Federal Power Act.

FEV requests waiver of the Commission's rule requiring that rate schedules be filed not less than sixty (60) days nor more than one hundred-twenty (120) days prior to the date on which service is to commence under an initial rate schedule. This requirement is intended to prevent the use of stale data in developing the test period for cost-of-service based rates. Section 35.3 of the Commission's regulations allows the Commission to waive the notice period in appropriate circumstances. Since the rates are formula rates based on state forecasts and the buyer's costs, and do not involve FEV's costs for a particular test period, this requirement is not applicable.

FEV also seeks waiver of the Commission's regulations regarding cost-of-service documentation. The Commission has recognized, in other cases,[2] that the cost-of-service data requirements contained in section 35.12(b)(5) of its regulations are irrelevant insofar as they would require a small power producer to substantiate its cost-of-service. FEV requests this waiver on the grounds that this information is not relevant because rates are initially based on state-forecasted rates and then on the buyer's costs, and are not dependent upon the seller's costs.

FEV seeks waiver of the Commission's regulations regarding the Uniform System of Accounts prescribed for public utilities and licensees subject to the provisions of the Federal Power Act specified by 18 CFR Parts 101 and 104. Since rates are initially based upon state-forecasted rates and then upon the buyer's costs, this information and the need for uniformity in the seller's accounting systems are unnecessary. Moreover, this requirement imposes a substantial hardship and an undue burden upon FEV as it requires more detailed counting than FEV would otherwise undertake.

FEV seeks waiver of the Commission's regulations regarding certain accounts and reports required by

[1] The original Agreement was between Fairfield Energy Venture and CMP. Under the Agreement Fairfield Energy Venture may assign its rights under the Agreement, subject to CMP's written consent. Fairfield Energy Venture, which subsequently changed its name to U.S. Energy Associates, assigned its rights under the Agreement to FEV pursuant to that certain Assignment and Assumption Agreement executed by U.S. Energy Associates, FEV, and CMP on November 27, 1985.

[2] *See, Wheelabrator Frye, Inc.,* Docket Nos. EL82-7-000 and EL82-12-000, 19 FERC ¶ 61,286 (1982).

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18 CFR Parts 41, 50 and 141. FEV seeks this waiver on the basis that such information and reports are irrelevant because the rates under the contract are not to be determined by FEV's costs. Therefore, it is not necessary to protect the public in general by requiring strict compliance with these sections.

FEV also petitions the Commission to waive Commission rules that the Commission has previously determined not to be necessarily applicable to qualifying facilities such as the FEV Facility. These include regulations regarding accounting practices, reporting requirements, annual charges, dispositions of property and consolidations, securities issuances and assumptions of liability and the holding of interlocking directorate positions as they may apply to a biomass wood-to-energy facility.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25655 Filed 11-03-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1864-003, et al.]

HydroElectric Applications (Upper Peninsula Power Co. et al.); Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: New License (Over 5 MW).

b. Project No.: 1864-003.

c. Date Filed: December 24, 1987.

d. Applicant: Upper Peninsula Power Company.

e. Name of Project: Bond Falls.

f. Location: On the Ontonagon River in Ontonagon, and Gogebic Counties, Michigan, and Vilas County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. Elio Argentati, Upper Peninsula Power Company, 616 Shelden Avenue, Houghton, MI 49931, (906) 482-0220.

i. FERC Contact: Michael Dees (202) 376-9414.

j. Comment Date: December 30, 1988.

k. Description of Project: The Bond Falls Project consists of four developments:

(A) The existing Victoria Development consists of: (1) An earthfill structure (north embankment) 50 feet high and 178 feet long; (2) a reinforced concrete intake structure with a 14-foot-high concrete steel intake gate; (3) an archbuttress dam, 115 feet high and 103 feet long, consisting of four arches; (4) an ogee type concrete spillway 100 feet long, consisting of four bays each 22 feet wide equipped with 22-foot-wide and 13-foot-high steel radial gates; (5) an earth and rockfill structure (south embankment) 68 feet long and 20 feet high; (6) a 250-acre reservoir with a storage capacity of 10,500 acre-feet at a normal maximum surface elevation of 910 feet msl; (7) a 6,300-foot-long, 10-foot-diameter woodstave, steel-banded penstock; (8) a 491,300 gallons surge tank; (9) a brick veneer concrete powerhouse, 30 feet wide, 82 feet long and 50 feet high housing two 6,000-kW turbine-generator units; (10) an excavated tailrace 45 feet wide and approximately 1,300 feet long; (11) two 69-kV transmission lines; (12) a 11.5/69 kV substation; and (13) appurtenant facilities.

(B) The existing Bond Falls Development consists of: (1) An earth-filled main dam approximately 45 feet high and 900 feet long with a central concrete spillway section; (2) an earth-filled control dam approximately 35 feet high and 850 feet long; (3) three earth-filled dikes on the rim of the reservoir; (4) a storage reservoir with a water surface area of 2,160 acres, an effective storage capacity of 39,000 acre-foot, and a normal maximum surface elevation of 1,475.9 msl; (5) a trapezoidal canal 20 feet wide and 7,500 feet long; and (6) appurtenant facilities.

(C) The existing Bergland Storage Development consists of: (1) a wood and steel I beam dam approximaterly 4 feet high and 179 feet long situated between concrete retaining walls; (2) Lake Gogebic storage reservoir with a surface area of 14,080 acres, a gross storage capacity of 276,000 acre-feet, and a normal maximum surface elevation of 1,296.2 feet msl; and (3) appurtenant facilities.

(D) The existing Cisco Lakes Storage Development consists of: (1) A timber decked concrete dam 11 feet high and 21 feet long; (2) a chain of lakes with a water surface area of 4,025 acres, a storage capacity of 4,025 acre-feet, and a water surface elevation of 1,683.5 feet msl; and (3) appurtenant facilities.

The applicant estimated from historical generation that the average annual energy generation will be 72,010 MWh. The applicant is the sole owner of the existing project facilities and has no plans to modify the existing facilities or operation.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. The net investment cost for the project is $4,702.000.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

2a. Type of Application: Surrender of License.

b. Project No.: 2564-001.

c. Date Filed: September 2, 1988.

d. Applicant: Northern States Power Company.

e. Name of Project: Orienta Hydro Project.

f. Location: On the Iron River in Bayfield County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Anthony G. Schuster, Vice President, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702-0008, (715) 839-2424.

i. FERC Contact: Mary Nowak (202) 376-9634.

j. Comment Date: December 2, 1988.

k. Description of Project: The license for this project was issued on October 2, 1968, for an installed capacity of 800 kW. In September 1985, Orienta Project was damaged by a flood that will require extensive redevelopment before resuming operation. The applicant, Northern States Power Company, does not want to reinvest in the project because its facilities are remote from the project, the generation potential at the site is minimal, and the Iron River requires close operational attention because of its flood capabilties.

l. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: Joint Application for Transfer of License.

b. Project No.: 3671-000.

c. Date Filed: September 19, 1988.

d. Applicant: Borough of Central City, Pennsylvania, and Allegheny Hydro Partners, Ltd.

e. Name of Project: Allegheny Lock and Dam No. 5 Hydroelectric Project.

f. Location: On the Allegheny River in Armstrong County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact:

Mr. Bruce J. Wrobel, Allegheny Hydro Partners, Ltd., c/o Allegheny Hydroelectric, Inc., 885 Third Avenue, Suite 3040, New York, NY 10022, (212) 230-2100.

John L. Sachs, Esq., Olwine, Connelly, Chase, O'Donnell & Weyher, 1701 Penn. Ave., NW., Suite 1000, Washington, DC 20006, (202) 835-0500.

i. FERC Contact: Mary Nowak (202) 376-9634.

j. Comment Date: December 2, 1988.

k. Description of Project: The Borough of Central City, Pennsylvania, and Allegheny Hydro Partners, Ltd. propose to transfer the license for Allegheny Lock and Dam No. 5 Hydroelectric Project No. 3671, to Allegheny Hydro Partners, Ltd. The transfer is requested in order to facilitate the financial arrangements of the project and the Borough would like to be removed from the license.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4a. Type of Application: Surrender of License.

b. Project No.: 6588-006.

c. Date Filed: August 30, 1988.

d. Applicant: James M. Rea.

e. Name of Project: Milton Three Pond Project.

f. Location: On the Salmon River in Stafford County, New Hampshire and York County, Maine.

g. Filed Pursuant to: Federal Power Act U.S.C. 791(a)-825(r).

h. Applicant Contact: James M. Rea, Swain Road, Barrington, NH 03825, (603) 664-9318.

i. FERC Contact: Robert Bell (202) 376-9237.

j. Comment Date: December 9, 1988.

k. Description of Project: The project consists of: (1) the existing Milton Three Ponds Dam, 19 feet high and 156 feet long; (2) a reservoir having a storage capacity of 15,000 acre-feet, a surface area of 1,400 acres, and a normal pool elevation of 413.8 feet NGVD; (3) a new 7-foot-diameter steel penstock 60 feet long; (4) a new powerhouse containing 1 unit with a generating capacity of 180 kW; (5) a new trailrace; (6) a new 12.47-kV transmission line 100 feet long; and (7) appurtenant facilities.

The licensee is surrendering because the proposed project is no longer feasible for it. No construction has taken place at this site.

l. This notice also consists of the following standard paragraphs: B, C and D2.

5a. Type of Application: Surrender of License.

b. Project No.: 7048-011.

c. Date Filed: August 26, 1988.

d. Applicant: The Metropolitan District.

e. Name of Project: Collinsville Project.

f. Location: On the Farmington River in Hartford County, Connecticut.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Lawrence J. Golden, Byrne, Slater, Sandler, Shulman and Rouse, 330 Maine Street, P.O. Box 3216, Hartford, CT 06103, (203) 525-4700.

i. FERC Contact: Robert Bell (202) 376-9237.

j. Comment Date: December 9, 1988.

k. Description of Project: The project consists of the following two developments:

The Upper Collins Dam Development consists of: (1) An existing 325-foot-long and 18-foot-high stone masonry dam with a spillway crest elevation of 286.2 feet NGVD; (2) new 3-foot-high flashboards; (3) a small reservoir with a surface area of 55 acres; (4) an existing 200-foot-long canal at the westside of the dam; (5) a new powerhouse with 2 turbine-generator units with a total installed capacity of 1,500 kW; (6) an existing tailrace; (7) a new 23-kV and 100-foot-long transmission line; (8) new fish ladders; and (9) other appurtenances.

The Lower Collins Dam Development consists of: (1) An existing 350-foot-long and 20-foot-high concrete gravity dam with a spillway crest elevation of 264.7 feet NGVD; (2) new 5-foot-high flashboards; (3) a small reservoir with a surface area of 32 acres; (4) an existing 650-foot-long canal at the east side of the dam; (5) a new powerhouse with 2 turbine-generator units with a total installed capacity of 1,500 kW; (6) an existing tailrace; (7) a new 23-kV and 100-foot-long transmission line; (8) new fish ladders; and (9) other appurtenances.

The licensee is surrendering because the proposed project is no longer feasible for it. No construction has taken place at this site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6a. Type of Application: Surrender of Exemption.

b. Project No.: 7257-002.

c. Date Filed: July 22, 1988.

d. Applicant: David B. DuBrul.

e. Name of Project: Lane Shops.

f. Location: North Branch of the Winooski River, Washington County, Vermont.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. David B. DuBrul, 500 Pine Street, 1B, Burlington, VT 05401, (802) 658-3800.

i. FERC Contact: Mary Nowak—(202) 376-9634.

j. Comment Date: December 2, 1988.

k. Description of Project: The project, as exempted, consisted of: (1) A concrete-encased timber crib dam which is 13 feet high, 100 feet long, and has a crest elevation of 524.6 feet above mean sea level; (2) a reservoir with a surface area of 5 acres and a storage capacity of 20 acre-feet; (3) a powerhouse containing 2 generating units having a total installed capacity of 200 kilowatts; and (4) appurtenant facilities. The existing dam is owned by David and Louise DuBrul. The average annual generation was 185,000 kilowatthours. The exemptee has stopped generating and dismantled the project.

l. This notice also consists of the following standard paragraphs: B and C.

7a. Type of Application: Surrender of License.

b. Project No.: 9367-004.

c. Date Filed: August 29, 1988.

d. Applicant: Tultex Corporation.

e. Name of Project: Avalon Dam Hydropower Project.

f. Location: On the Mayo River in Rockingham County, North Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)-825 (r).

h. Applicant Contract: Mr. Willard Harris, Tultex Corporation, P.O. Box 5191, Martinsville, VA 24115, (703) 632-2961.

i. FERC Contract: Mary Nowak (202) 376-9634.

j. Comment Date: December 9, 1988.

k. Description of Project: The license for this project was issued on February 27, 1987, for an installed capacity of 780 kW. The licensee states that it has determined that the project would be economically infeasible as a result of decreased energy rates. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B and C.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 10653-000.

c. Dated Filed: August 29, 1988.

d. Applicant: Jerome A. Olson.

e. Name of Project: Nashua River Project.

f. Location: Nashua River in Middlessex and Worcester Counties, Massachusetts.

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g. Filed Pursuant to: Federal Power Act 17 U.S.C. 791 (a)–825 (r).

h. Applicant Contract: Mr. Jerome A. Olson, 168 Rea Street, Lowell, MA 01852, (508) 453–7951.

i. FERC Contract: Steven H. Rossi (202) 376–9814.

j. Comment Date: December 23, 1988.

k. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 100-foot-long concrete gravity dam; (2) a reservoir with a surface area of 0.7 acre, no usable storage capacity, and a normal water surface elevation of 215 feet m.s.l.; (3) an existing 30-foot-wide concrete intake structure; (4) an existing powerhouse containing two new generating units with a capacity of 250 kW each for a total installed capacity of 500 kW; (5) and existing 50-foot-wide, 400-foot-long concerete tailrace; (6) a new transmission line, 300 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 2,500,000 kWh. The existing dam is owned by John Horgan, Ayer, Massachusetts. The applicant estimates that the cost of the studies under permit would be $25,000.

l. Purpose of Project: Project power would be sold to the Littleton Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10668–000.

c. Dated Filed: August 25, 1988.

d. Applicant: Barbara K. Londergan.

e. Name of Project: Vulcan Hydro Project.

f. Location: On the Fox River near Appleton, Outagamie County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Barbara K. Londergan, 1206 Shipley Road, Wilmington, DE 19803, (302) 762–2967.

i. FERC Contact: Ed Lee, (202) 376–5786.

j. Comment Date: December 23, 1988.

k. Description of Project: The proposed run-of-river project would utilize the existing U.S. Army Corps of Engineers' Upper Dam and Reservoir, and would consist of: (1) An existing 600-foot-long and 50-foot-wide power canal; (2) the Vulcan powerhouse housing six generating units for a total installed capacity of 1,800 kW; (3) a 450-foot-long tailrace; (4) a short transmission line; and (5) appurtenant facilities. The applicant estimates the average annual generation would be 9 GWh. The existing project annual generation would be 9 GWh. The existing project site is owned by Wisconsin Electric Power Company, 231 West Michigan, Milwaukee, Wisconsin 53201. The cost of the work to be performed under the permit by the applicant would be $1,000.

l. Purpose of Project: The applicant anticipates that the power generated will be sold to a local utility company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application, or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intevene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the

National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 1, 1988, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25824 Filed 11–3–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3472–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 17, 1988 through October 21, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–DOE–A84029–00, Rating EO2

Superconducting Super Collider Construction and Operation, Site Selection, Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee and Texas.

Summary

EPA's objections are not to the Superconducting Super Collider (SSC) itself, but to the potential for unmitigated impacts, primarily air and wetland, associated with several of the proposed sites. EPA believes that choice of sites should consider the potential and cost for mitigation of these impacts. Detailed mitigation of these impacts should be described in the final EIS and any site-specific supplemental EIS.

ERP No. D–DOE–K06005–CA, Rating EC2

Lawrence Livermore National Laboratory, Nonactive, Mixed and Radioactive Waste Decontamination and Waste Treatment Facility, Construction and Operation, Implementation, Alameda County, CA.

Summary

EPA expressed environmental concerns because this document did not discuss existing ground water contamination in the Lawrence Livermore National Laboratory vicinity, or how the various waste treatment/decontamination alternatives will affect DOE's compliance with its monitoring and remediation obligations under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (Superfund).

ERP No. D–FHW–D40237–VA, Rating EO2

George P. Coleman Bridge Traffic Congestion Alleviation, York River Crossing Study, Section 10 and 404 Permits, Coast Guard Permits and Funding, York and Gloucester Counties, VA.

Summary

EPA expressed objections in alternatives 1 and 5 due to potential impacts to wetlands, farmland, parkland/open space and historic areas, as well as impacts resulting from secondary development. In addition, alternative 14B has potential impacts to subaqueous beds and a hazardous waste facility. Alternative 12A poses the least threat to the environment. EPA requested additional information be included in the final EIS.

Final EISs

ERP No. F–BLM–G40120–NM

Socorro Resource Area Management Plan, Implementation, Las Cruces District, Socorro and Catron Counties, NM.

Summary

ERP has no objections to the action as proposed.

ERP No. F–FHW–040119–NJ

US 206 (Section 5) Improvement, CR–518 to Routes US 202, NJ–28 and US 206 Intersection/Somerville Circle, Implementation, Funding and 404 Permit, Somerset County, NJ.

Summary

EPA requests further information concerning mitigation of the stream channelization impacts. In addition, EPA stated it will evaluate the detailed wetlands mitigation plan during the Section 404 permit process.

ERP No. F–NPS–L61096–AK

Cape Krusenstern National Monument, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary

Review of this document has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F–SCS–H36101–IA

Soap Creek Watershed Protection and Flood Reduction Plan, Funding and Implementation, Des Moines River, Appanoose, Davis, Monroe and Wapello Counties, IA.

Summary

EPA has no objections to the project as proposed.

Regulations

ERP No. R–AFS–A65157–00

36 CFR Part 222; Grazing and Livestock Use on the National Forest System, (53 FR 30954).

Summary

EPA is concerned that the environmental protection and rehabilitation of range and pasture land are insufficiently addressed. As proposed, the regulation concentrates on rangeland improvements of particular benefit to livestock grazing and management with too little emphasis on environmental benefits. EPA believes that such benefits, for example, to

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riparian areas and water quality, should be encouraged by the regulation.

Dated: November 1, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-25640 Filed 11-3-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3471-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed October 24, 1988 Through October 28, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880354, DSuppl, AFS, WA, Wenatchee National Forest, Land and Resource Management Plan, Additional Information and Management Requirements Analysis, Implementation, Kittitas, Chelan and Yakima Counties, WA, Due: January 26, 1989, Contact: Glenn Hoffman (509) 662-4311

EIS No. 880355, FSuppl, COE, ID, WA, Lower Granite Project, Lower Granite Interim Navigation and Flood Protection Dredging, Implementation, Snake and Clearwater Rivers, Nez Perce County, ID and Asotin, Garfield and Whitman Counties, WA, Due: December 5, 1988, Contact: Robert Palmer (509) 522-6927

EIS No. 880356, Draft, AFS, WV, VA, Appalachian Integrated Pest Management (AIPM) Gypsy Moth Demonstration Project, Implementation, WV and VA, Due: December 19, 1988, Contact: David P. Smith (404) 347-4338

EIS No. 880358, Draft, COE, CA, Dry Creek (Roseville), Northern California Streams Study, Flood Control Plan, Implementation, Sacramento County, CA, Due: December 21, 1988, Contract: Richard Meredith (916) 551-1855

EIS No. 880360, Final, BLM, CA, California Section 202 Wilderness Study Areas (WSAs) Wilderness Recommendations, South Warner Contiguous and Carson Iceberg WSAs, Wilderness Designation Recommendation, Modoc County, CA and Alpine County, NV, Due: December 5, 1988, Contact: C. Rex Cleary (916) 257-5381

EIS No. 880361, Final, BLM, CA, California Section 202 Wilderness Study Areas (WSAs) Wilderness Recommendation, Garcia Mountain, Rockhouse, Domeland, Machesna, Yolla Bolly and Big Butte WSAs, Nonwilderness Designation Recommendations, San Obispo, Tulare, Kern, Tehama, Mendocino, and Trinity Cos., CA, Due: December 5, 1988, Contact: Robert D. Rheiner Jr. (805) 961-4406

EIS No. 880362, Final, AFS, AK, Quartz Hill Molybdenum Project Mine Development, Construction, Operation and Post-Mining Abandonment Section 10 and 404 Permits, Special Use Permit and Leases, Misty Fiords National Monument, Tongass National Forest, AK, Due: December 5, 1988, Contact: J. Michael Lunn (907) 225-3103

EIS No. 880363, Final, FHW, GA, GA-371/I-85 Funding, 404 Permit and USCG Permit, Forsyth and Gwinnett Counties, GA, Due: December 5, 1988, Contact: Louis M. Papet (404) 347-4751

EIS No. 880364, Final, NAS, PRO, Galileo Mission Project, Jovian System Investigation Program and Ulysses Mission Project, Heliosphere Exploration Program, Modifications and Implementation, Due: December 5, 1988, Contact: Dudley G. McConnell (202) 453-1587.

EIS No. 880365, Final, BLM, OR, Brothers/LaPine Planning Area, Resource Management Plan, Implementation, Prineville District, Crook, Deschutes, Harney, Klamath and Lake Counties, OR, Due: December 5, 1988, Contact: Brian Cunninghame (503) 447-4115.

Amended Notices

EIS No. 880305, Final, EPA, FL, MXG, Gulf of Mexico Ocean Dredged Material Disposal Site (ODMDS) Designation for Fine Grained Dredged Material from the Pensacola Navy Homeport Project and Other Future Projects, FL, Due: November 14, 1988, Contact: Reginald Rogers (404) 347-2126. Published FR 9-23-88—Review period extended.

EIS No. 880312, Draft, AFS, CA, Mono Basin National Forest Scenic Area, Comprehensive Management Plan, Implementation, Inyo National Forest, Mono County, CA, Due: January 19, 1989, Contact: John Ruopp (619) 873-5814. Published FR 9-30-88—Review period extended

EIS No. 880347, Draft, COE, CA, Los Angeles Raiders Football Stadium, Parking and Associated Facilities Development, Land Use Change and Implementation, Santa Fe Dam Flood Control Basin and Recreation Area, City of Irwindale, Los Angeles County, CA, Due: December 12, 1988, Contact: Rick Grover (213) 894-7962

Published FR 10-21-88—Review period reestablished. The 45 day NEPA review period is calculated from 10-28-88.

Dated: November 1, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-25639 Filed 11-3-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3471-5]

Science Advisory Board Environmental Engineering Committee, Products of Incomplete Combustion Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Science Advisory Board's Products of Incomplete Combustion Subcommittee (PICS) will meet December 15-16, 1988 in the St. James Hotel, Board Room, 950 24th Street, NW., Washington, DC. The meeting will begin at 9:00 a.m. on Thursday and Friday, and adjourn no later than 5:00 p.m. The purpose of the meeting is to review the Agency's proposed controls for emissions of Products of Incomplete Combustion (PICs) for hazardous waste incineration.

The meeting is open to the public. Any member of the public wishing further information on the meeting, or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, Science Advisory Board (A101-F) U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by December 9, 1988. Seating at the meeting will be on first come basis.

Date: October 28, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-25579 Filed 11-3-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3471-6]

Science Advisory Board Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Science Advisory Board's Environmental Engineering Committee (EEC) will meet December 1-2, 1988 in the Waterside Mall, EPA South Conference Room number 2, 401 M Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. on Thursday and Friday, and adjourn no later than 5:00 p.m.

The purpose of the meeting is to examine topics of interest to the Environmental Engineering Committee that are likely to be reviewed in Fiscal Year 1989. These topics include, but are not limited to the following subjects, ash resulting from the combustion of municipal waste, treatability of toxic materials, a position paper on the use of computer modeling in environmental assessment, a report to Congress on hazardous waste discharge, surface impoundment models, and review of the Agency's research on asbestos. Other topics will be discussed as time permits, such as sludge management, Toxicity Characteristic Leaching Procedure (TCLP), risk reduction strategies, municipal solid waste problems, and engineering responsibilities and controls in the area of global climate change and ozone.

The meeting is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, Science Advisory Board, (A101-F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by November 25, 1988. Seating at the meeting will be on a first come basis.

Date: October 28, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-25580 Filed 11-3-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

1989 Maximum Reimbursement Fee for an Amateur Operator License Examination

October 31, 1988.

The FCC announced today that effective January 1, 1989, the maximum allowable reimbursement fee for an amateur operator license examination will be $4.75. This amount is based upon a 4.2% increase in the Department of Labor Consumer Price Index between September 1987 and September 1988.

Volunteer examiners (VEs) and volunteer-examiner coordinators (VECs) may charge examinees for out-of-pocket expenses incurred in preparing, processing or administering examinations for Technician, General, Advanced and Amateur Extra Class operator licenses. The amount of any such reimbursement fee from any examinee for any one examination session, regardless of the number of elements administered, must not exceed the maximum allowable fee. Where the VEs and the VEC both desire reimbursement, they jointly decide upon a fair distribution of the fee.

No fee is allowed for the Novice Class operator license examination.

This announcement is made pursuant to § 97.36 of the Commission's Rules, 47 CFR 97.36.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-25599 Filed 11-3-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1756]

Petitions for Reconsideration and Applications for Review of Actions in Rule Making Proceedings

November 1, 1988.

Petitions for reconsideration and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC., or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed [Insert date of 16 days after FR Pub date.] See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 2 of the Commission's Rules Regarding the Allocation of the 216-225 MHz Band. (Gen Docket No. 87-14, RM's 4829, 4831 & 4938)

Number of petitions received: Approximately Five Hundred and Fifty.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Oildale, California) (MM Docket No. 87-332, RM-5751)

Number of petitions received: 1.

Applications for Review Filed

Subject: Petition to Amend § 97.61(a) of the Commission's Rules to Permit Emission J3E in the 30 Meter Amateur Band. (RM-6363)

Number of petitions received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-25598 Filed 11-3-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection.

Title: Maintenance and Services equipment inventory and schedule for maintenance, repair and replacement of equipment purchased with Federal funding assistance.

Abstract: State and local government applicants for Federal funding assistance for maintenance, repair and replacement of emergency equipment (purchased with Federal funding assistance), must provide an inventory and schedule for equipment to be included in their funding request. This will provide source data for determining budget estimates for the Maintenance and Services Program.

Type of Respondents: State or local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 300.

Number of Respondents: 150.

Estimated Average Burden Hours per Response: 2 hours.

Frequency of Response: Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: October 28, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-25566 Filed 11-3-88; 8:45 am]

BILLING CODE 6718-01-M

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FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010636–051.
Title: U.S. Atlantic-North Europe Conference.
Parties:
Atlantic Container Line, B.V.
Orient Overseas Container Line (UK) Ltd.
Hapag-Lloyd AG
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification would clarify resigning members' obligations concerning service contracts. The parties have requested a shortened period of review.

Agreement No.: 213–010837–001.
Title: U.S. Pacific Coast/Europe Space Charter and Sailing Agreement by and among Compagnie Generale Maritime, Hapag-Lloyd Aktiengesellschaft and Intercontinental Transport (ICT) B.V.
Parties:
Compagnie General Maritime
Hapag-Lloyd Aktiengesellschaft
Incotrans B.V.

Synopsis: The proposed amendment would incorporate the provisions of another agreement between the parties (Agreement No. 217–010649) into the present agreement. As a result of the incorporation the Agreement's name would be changed to "North American Pacific Coast/Europe Space Charter and Sailing Agreement by and among Compagnie Generale Maritime, Hapag-Lloyd Aktiengesellschaft, and Incotrans, B.V." and the scope of the present agreement would also be expanded to include movements to and from the Pacific Coast of Canada. Modifications would also be made to agreement provisions regarding the number, size, and type of vessels to be operated by the parties as well as a number of administrative-type provisions related to the operation of the Agreement.

Agreement No.: 203–011075–009.
Title: Central America Discussion Agreement.
Parties:
Association Party
United States/Central America Liner Association
Independent Carrier Parties
Nordana Line, Inc.
Tropical Shipping and Construction Co. Ltd.
Maritima Juno, S.A.
Nexos Line
Thompson Shipping Co., Ltd.
Gran Golfo Express
Concorde Shipping Inc.
Norwegian American Enterprises, Inc.
Marine Bulk Carriers, Inc.

Synopsis: The proposed modification would add Central Gulf Lines, and delete Marine Bulk Carriers, Inc., as parties to the agreement. It would also authorize the individual carrier members of the Association to meet and exchange information with the Independent Carrier Parties, and would permit the appointment of administrative officials and the sharing of expenses.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: November 1, 1988.
[FR Doc. 88–25597 Filed 11–3–88; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2341.
Name: Leonard Bros. International, Ltd.
Address: 7060 West Fort St., Detroit, MI 48209.
Date Revoked: October 12, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 1098.
Name: Traffic Dispatch International, Inc.
Address: 31 South Calvert Street, Baltimore, MD 21202.
Date Revoked: October 15, 1988.
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,
Director, Bureau of Domestic Regulation.
[FR Doc. 88–25513 Filed 11–3–88; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

October 28, 1988

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:
Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).
OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340).

Final approval under OMB delegated authority of the extension, with revision, of the following

Report title: Commercial Bank Report of Consumer.
Agency form number: FR 2571.
OMB Docket number: 7100–0080.
Frequency: Monthly.
Reporters: Commercial banks.
Annual reporting hours: 2880.
Number of Respondents: 400.
Average Hours per Response: 0.6.
Small businesses are not affected.
General description of report: This information collection is voluntary [12 U.S.C. 225a and 248(a)(2)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report collects information monthly from a sample of 400 commercial banks on consumer installment credit. On the September report only, respondents provide information on total noninstallment credit. The major proposed revision adds a new section to the report form requesting monthly information on the amounts outstanding of consumer installment credit that have been sold without recourse and included in packages of asset-backed securities.

Final approval under OMB delegated authority of the extension, without revision, of the following reports

1. Report title: Quarterly Gasoline Company Report.
Agency form number: FR 2580.
OMB Docket number: 7100–0009.
Frequency: Quarterly.
Reporters: Gasoline companies.
Annual reporting hours: 7.
Estimated average hours per response: 0.15.
Number of respondents: 11
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 263, 461 and 353 *et seq.*) and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report collects information on the amount outstanding of retail credit card accounts at gasoline companies. These data are included in the installment credit component of total consumer credit which is used by the Federal Reserve in general financial analysis for monetary policy purposes.

2. Report title: Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans.
Agency form number: FR 2835.
OMB Docket number: 7100–0085.
Frequency: Quarterly.
Reporters: Commercial banks.
Annual reporting hours: 175.
Estimated average hours per response: 0.25.
Number of respondents: 175
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)] and is given confidential treatment.

This report collects interest rate information quarterly on selected consumer installment loans from a sample of 175 member banks. This information helps the Federal Reserve to assess interest rate developments and is used in general financial analysis for monetary policy purposes.

Board of Governors of the Federal Reserve System, October 28, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88–25528 Filed 11–3–88; 8:45 am]
BILLING CODE 6210–01–M

[Docket No. R–0651]

Fee Schedules for Federal Reserve Bank Priced Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Approval of a Private Sector Adjustment Factor and fee schedules for Federal Reserve Bank priced services for 1989.

SUMMARY: The Board has approved a Private Sector Adjustment Factor ("PSAF") for 1989 of $89.7 million. This represents a decrease of $6.5 million, or 6.5 percent, from the 1988 target of $76.2 million. The PSAF is a recovery of imputed costs that takes into account the taxes that would have been paid and the return on capital that would have been provided had the Federal Reserve's priced services been furnished by a private business firm. The Board has also approved 1989 fee schedules for the automated clearing house, wire transfer of funds, net settlement, definitive safekeeping, noncash collection, book-entry, and check payor bank services offered by the Federal Reserve System. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires fees for Federal Reserve priced services to be established on the basis of all direct and indirect costs, including the PSAF.

EFFECTIVE DATE: The Private Sector Adjustment Factor and fee schedules are effective January 1, 1989, except for the elimination of night cycle surcharges for ACH return items which will be effective April 10, 1989.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Private Sector Adjustment Factor: Paul Bettge, Program Leader (202/452–3174), Division of Federal Reserve Bank Operations; for questions regarding fee schedules: Christine G. Slater, Senior Analyst, Electronic Payments (202/452–2539), Lisa Kerner, Analyst, Securities (202/452–3437), or Nalini Rogers, Analyst, Check Payments (202/452–3801), Division of Federal Reserve Bank Operations; for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

Copies of the 1989 fee schedules for ACH, wire transfer of funds, net settlement, definitive safekeeping, noncash collection, book-entry securities, and check payor bank services are available from local Federal Reserve Banks.

SUPPLEMENTARY INFORMATION:

Private Sector Adjustment Factor ("PSAF")

The Monetary Control Act of 1980 requires that fee schedules for the Federal Reserve's priced services include an allocation of imputed costs for taxes that would be paid and the return on capital that would be provided had the services been furnished by a private business firm. Using the methodology previously approved by the Board, these imputed costs are based on data developed in part from a model comprised of the nation's 25 largest bank holding companies.

Briefly stated, the methodology first entails determining the value of Federal Reserve assets that will be used directly in producing priced services during the coming year, including the net effect of assets planned to be acquired or disposed of during the year. Short-term assets are assumed to be financed by short-term liabilities; long-term assets are assumed to be financed by a combination of long-term debt and equity.

Imputed capital costs are determined by applying related interest rates and rate of return on equity derived from the bank holding company model to the assumed debt and equity values. These costs, together with imputations for estimated sales taxes, FDIC insurance assessment on clearing balances held with the Federal Reserve to settle transactions, and expenses of the Board of Governors related to priced services, comprise the PSAF.

Details regarding the derivation of the PSAF are as follows:

Asset Base

The estimated value of Federal Reserve assets used in providing priced services in 1989 is reflected in Table 1. Table 2 shows that the value of assets assumed to be financed through debt and equity are projected to total $445.2 million in 1989, an increase of $28.0 million or 6.7 percent from 1988. This increase results largely from capital expenditures for bank premises, furniture, and equipment planned by the Reserve Banks next year.

Cost of Capital and Taxes

Last year the Board approved imputing the cost of equity capital for the PSAF using an average of rates of return on equity derived from the model in each of the last three years in order to reduce the variability of imputed return on equity caused by fluctuations in bank holding company earnings. As a result of abnormally low 1987 bank holding company earnings, however, the Board is using a five-year average of bank holding company data for the 1989 PSAF. Use of three-year average data for the 1989 PSAF would result in a PSAF that is significantly lower than the proposed PSAF. A System Task Force is also revisiting the PSAF methodology to attempt to address the variability and level of the PSAF over the long-term.

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The Task Force proposes to present its recommendations to the Board early next year so that public comment may be requested on a new methodology, if necessary, and final Board action may be taken in time for inclusion in the 1990 price-setting process.

Table 3 shows the interest, equity, and tax rates for 1989 and compares them with the rates used for developing the PSAF for 1988. The sample of 25 bank holding companies used to calculate the rates for 1989 differs slightly from the sample used for the 1988 PSAF in that two bank holding companies replaced others because of changes in relative asset size. One large bank holding company was again removed from the sample because of unique government oversight over bank management decisions during the past few years, and the twenty-sixth largest bank holding company was substituted. The bank holding companies with the highest and lowest rates of return on equity before taxes were also excluded, consistent with the approved methodology for determining the PSAF. Calculations were then based on the remaining 23 bank holding companies.

Other Imputed Costs

As shown in Table 3, other required PSAF recoveries for 1989 for sales taxes, FDIC insurance, and Board expenses total $11.4 million, down $0.4 million from 1988. The reduction is due to lower imputed sales taxes, because of a decline in projected capital expenditures for 1989 from 1988. The decline is also attributable to a reduction in Board staff working directly on the development of priced services, as the Board is anticipating that staff will spend more time on regulatory matters in 1989 as a result of Regulation CC and the Expedited Funds Availability Act.

1989 Fee Schedules

The Monetary Control Act requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs incurred in providing the priced services, including the PSAF. The Board's pricing principles state that fees will be set so that the revenues for major service categories match costs, including the PSAF. The Board may set fees for a service line that do not fully recover costs, in the interest of providing an adequate level of services nationwide. The fees for each service line, however, must recover all operating costs, float costs, and certain imputed costs of providing that service, as well as contribute to the pre-tax return on equity. Total revenue for all Federal Reserve services must, in the aggregate, recover all costs, including the PSAF.

Last year the Board approved fees for priced services that were set to recover 101.8 percent of the cost of providing such services in 1988, including the PSAF and the cost of float. Through the first eight months of 1988, the System recovered 100.8 percent of total costs. The Board estimates that toal costs for 1988, including the PSAF, will be $660.7 million. Total revenue is estimated to be $664.0 million, resulting in a 100.5 percent recovery rate.

In 1989, the total costs of priced services, including the PSAF, are estimated to be $684.9 million. Total revenue is estimated to be $707.6 million, resulting in a 103.4 percent recovery rate. The Board believes that the 1989 recovery rate may be optimistic because costs for check services may be higher than anticipated as a result of the impact of Expedited Funds Availability Act and Regulation CC on Reserve Bank operations. The majority of the 1989 fees that are being proposed are the same as those currently in effect. Since 1984, as the table below shows, the System has made substantial progress in moving closer to its target of a 100 percent recovery.

TOTAL PRICED FINANCIAL SERVICES

[Dollars in millions]

	Total cost	Total revenue	Recovery rate (percent)
1984	$519.1	$559.8	107.8
1985	571.2	603.8	105.7
1986	599.3	627.7	104.7
1987	627.3	649.7	103.5
1988 Est.	660.7	664.0	100.5

The Board has approved expenditures for special research and development efforts for 1988 which could have a major beneficial effect on the payments mechanism. While the magnitude of expenditures may fluctuate significantly from year to year, expenses for these one-time special projects are considered a temporary cost to priced services. Projects are currently underway to improve the reliability of electronic payment services as well as to explore the application of digital image technology to the check service. Special projects associated with the automated clearing house, funds transfer, book-entry, and check services will cost an estimated $2.3 million in 1988 and $4.3 million in 1989. The proposed fees for 1989 are based on total costs, including the PSAF, but excluding special project costs.

The following is a discussion of the estimated 1988 and 1989 financial performance, and 1989 fee schedules for the individual priced services.

Automated Clearing House ("ACH")

The table below shows the Federal Reserve Banks' estimated 1988 and projected 1989 financial performance for the ACH service.

AUTOMATED CLEARING HOUSE

[Dollars in millions]

	Total cost	Total revenue	Recovery rate (percent)
1988	$42.2	$41.9	99.2
1989	46.9	47.1	100.5

The total costs in the table do not include special project costs, which would reduce the 1988 and 1989 recovery rates to 99.1 percent and 99.2 percent respectively. The Board estimates that total commercial costs, including the PSAF, will increase 11.1 percent in 1989, while commercial ACH volume will increase nearly 24 percent. These cost and volume estimates reflect continuing economies of scale in ACH processing.

The Board believes the 1989 volume projection for ACH may be conservative, as actual volume growth has generally exceeded budgeted volumes. For example, through the first eight months of 1988, ACH volume has grown at more than 29 percent, compared to a 24 percent budgeted volume growth rate.

The Board has lowered the surcharges for processing night cycle transactions in 1989 to reflect reductions in float costs and continued improvements in the efficiency of night ACH operations. These improvements would allow the night cycle surcharge on debit transactions to be reduced from 4.5 cents to 3.5 cents, and the night cycle surcharge for next-day credit transactions to be reduced from 2.0 cents to 1.5 cents.

To recover the costs associated with providing labor-intensive services more fully, the Board has increased the nonautomated ACH fees. As these prices continue to reflect the increased cost of providing these labor-intensive services and as additional institutions convert from paper to electronics, the fixed cost base for these nonautomated services will be borne by fewer institutions, resulting in higher prices. Conversely, prices for automated services are expected to decrease in future years as volume grows and the number of Federal Reserve ACH processing sites is reduced.

The Board has approved two additional price changes. First, beginning in 1989, the Treasury has required that government Notifications of Change ("NOCs") be submitted in automated form. Institutions may either automate the NOCs or deposit paper NOCs with Reserve Banks for conversion to electronic form. The Board has approved a fee of $1.00 for each paper NOC deposited.

Second, the Board has eliminated the night cycle surcharges for return items, effective April 10, 1989, because little float cost is associated with processing return items and because of continuing improvements in the efficiency of night operations.

Funds Transfer and Net Settlement

The Federal Reserve Banks project financial performance in the funds transfer and net settlement service for 1988 and 1989 as shown below.

FUNDS TRANSFER AND NET SETTLEMENT

[Dollars in millions]

	Total cost	Total revenue	Recovery rate (percent)
1988	$70.0	$68.2	97.5
1989	74.0	75.3	101.8

The total costs in the table do not include special project costs, which would reduce the 1988 and 1989 recovery rates to 97.3 percent and 100.2 percent respectively. In 1989, the Board estimates that funds transfer costs, including the PSAF, will increase by $4.0 million or about 5.7 percent over 1988. The volume for basic funds transfers originated is expected to increase by four percent in 1989. With the new fee changes discussed below, the projected recovery rate for 1989 is 101.8 percent.

For 1989, the Board has increased the basic funds transfer fee by three cents and returned to its 1987 level of $0.50.[1] The Board anticipates that as Reserve Banks continue to take action to improve contingency and availability of funds transfer operations, similar increases may be necessary in the next one to two years to fund these initiatives.

For net settlement and wire transfer telephone advices, the Board has increased the fee from $3.50 to $4.00, placing the fee on a similar level to that charged for ACH telephone advices.

The Board has approved adjustments to the 1989 fees for electronic connections. The System has conducted an extensive review of the pricing structure and fees for electronic connections and, as part of that study, determined that the current fee structure should be retained; however, fees should be adjusted to recover more accurately the full costs of providing electronic access to depository institutions. The Board has increased the fee for dial connections from $60 to $65 per month, increased the milti-drop leased line fee from $250 to $300 per month, and increased the dedicated leased line fee from $400 to $600 per month.

Definitive Safekeeping and Noncash Collection

The table below shows the estimated 1988 and 1989 financial performance, based on Federal Reserve Bank projections for the definitive safekeeping and noncash collection service.

	Definitive safekeeping and noncash collection		
	($ millions)		Recovery rate (percent)
	Total cost	Total revenue	
1988	$18.8	$18.3	97.3
1989	17.8	17.7	99.2

Definitive safekeeping and noncash collection costs are expected to decrease by 5.4 percent in 1989 as Reserve Banks continue to manage the anticipated declines in volume. Total revenue is expected to decrease 3.6 percent, even with the proposed price increases. Volume declines are expected to continue as remaining bearer securities mature or are called.

In definitive safekeeping, volumes are expected to decline about 13.7 percent in 1989. The Board has approved price increases for six districts to offset volume declines. The Board has increased the current fees by $2.00 to $5.00 for deposits and withdrawals; by $0.25 to $1.00 for receipts/issues maintained; by $1.00 to $10.00 for purchases and sales and reregistrations; and up to $0.001 per month per $1,000 par value maintained.

At the request of the Federal Reserve Bank of Richmond, the Board approved formations of nominee name partnerships so that the Bank may hold registered securities on behalf of institutions in a nominee name. The nominee name permits the Reserve Bank to conduct transactions and collect interest on these securities, as instructed by the depositor, more quickly and without the cumbersome legal documentation necessary for transactions of securities registered in the depositor's or the depositor's customer's name. A similar service is currently offered in some other districts, but their costs are being recovered through the monthly definitive safekeeping account maintenance fee. The Richmond Bank has identified a need for this enhancement in the Fifth District, but finds it necessary to charge an explicit fee for its nominee name component. The Board has approved a change of $2.85 per interest collection transaction for nominee name securities; this fee is the same as the fee that will be charged by Richmond in 1989 to process the payments for coupons clipped from vault securities and forwarded for in-district collection.

For the noncash collection service, the Board has approved price increases for eight districts to offset an anticipated 7.7 percent volume decline. The increases to current fees range from $0.10 to $1.00 per envelope for collection of coupons, and from $2.00 to $9.00 for return item and bond collections.

Book-Entry

The Federal Reserve Banks estimate 1988 and 1989 financial performance in the book-entry securities [2] service as shown below.

	Book-entry		
	($ millions)		Recovery rate (percent)
	Total cost	Total revenue	
1988	$9.1	$8.8	96.6
1989	9.7	9.9	102.5

The total costs in the table do not include special project costs, which would reduce the 1988 and 1989 recovery rates to 96.2 percent and 99.1 percent respectively. For 1989, the Board made no changes to the existing prices, except for a fee to be assessed to receivers of reversals. Reversals of book-entry transfer transactions would be priced on a per-item basis, to distribute costs more equitably among users of the service. The Board has approved a reversal fee because the receiver of a reversal originated the initial securities transfer which

[1] The basic funds transfer fee is assessed to both the originator and receiver of the funds transfer. Currently, both originator and receiver pay $0.47 for a funds transfer. Each will pay $0.03 more under the revised fee schedule.

[2] The financial performance reflects only book-entry transfers of government agency securities, excluding Treasury securities but including securities of international organizations that are held in book-entry form at Federal Reserve Banks.

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prompted the reversal. Reversals account for approximately five percent of securities transfer volume and the per-item fee will provide approximately six percent in additional transfer revenue.

Volume is projected to increase 8.3 percent, resulting in a 12.7 percent gross revenue growth in 1989. Costs are projected to increase about 6.2 percent.

The Federal Reserve Banks, as fiscal agents of the Treasury, also process transfers of Treasury securities for depository institutions. These transactions, which are identical to those for federal agency issues, are subject to a fee assessed by the Treasury. At the Treasury's request, the methodology utilized to determine the detailed costs of these two components of the book-entry service was reviewed and modified, resulting in a projected increase in costs to the Treasury for 1989 of 6.8 percent. Because the Reserve Banks must also provide settlement for these transfers, a funds settlement fee of $0.75 is charged for each transfer. This service, which is ancillary to the Treasury securities transfer, is treated as a non-priced service. As a result of the cost reallocation, the Board has reduced the funds settlement fee associated with Treasury securities transfers by $0.15 to $0.60.

Commercial Check

On June 16, 1988, the Board approved fee and deadline schedules for check collection and returned check services, effective September 1, 1988, through December 31, 1989. The Board revised check prices at that time in response to the new returned check services that were implemented by Federal Reserve Banks on September 1 to facilitate bank compliance with the requirements of the Expedited Funds Availability Act and Regulation CC. Under the revised fee schedules, returned check services were priced explicitly for the first time; previously, the costs of providing return services were incorporated in the Federal Reserve's forward collection fees. Check collection and return fees will be reviewed in the spring of 1989, and the Board will make price adjustments to be effective in mid-1989, if warranted.

Comparison of the estimated cost recovery performance for 1988 and the projected cost recovery performance for 1989 are shown in the table below for the commercial check service. The total costs in the table do not include special project costs, which would reduce the 1988 and 1989 recovery rates to 100.8 percent and 103.6 percent respectively.

	Commercial check ($ millions)		Recovery rate (percent)
	Total cost	Total revenue	
1988	$506.5	$512.4	101.2
1989	522.1	543.1	104.0

The check payor bank fee schedules were not included in the package of check services prices that was approved by the Board in June 1988 because payor bank services were not directly affected by the September implementation of the Expedited Funds Availability Act. The Board has approved fee schedules which would bring all districts into compliance with the standard System price structure for payor bank services. In addition to the price structure changes, the new fee schedule also reflects the expansion of new services either within an office or to other offices within a district, as well as a few adjustments to existing payor bank service prices.

Cash

Financial performance for the cash service is shown in the table below.

	Cash ($ millions)		Recovery rate (percent)
	Total cost	Total revenue	
1988	$14.1	$14.4	102.0
1989	14.5	14.7	101.7

Total costs for cash services are expected to increase by $341 thousand or 2.4 percent in 1989[3] Changes in prices for cash services are approved under delegated authority.

By order of the Board of Governors of the Federal Reserve System, October 28, 1988.

William W. Wiles,

Secretary of the Board.

TABLE 1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—average for year]

	1989	1988
Short-term assets:		
Imputed reserve requirement on clearing balances	$283.3	$268.2
Investment in marketable securities	2,077.9	1,967.0
Receivables [1]	29.6	28.0
Materials and supplies [1]	7.1	6.4
Prepaid expenses [1]	6.2	5.8
Net items in process of collection (float)	432.8	438.3
Total short-term assets	2,836.8	2,713.7
Long-term assets:		
Premises [1, 2]	259.9	245.4
Furniture and equipment [1]	137.9	129.5
Capital leases	1.1	2.5
Leasehold improvements [1]	4.7	2.2
Total long-term assets	403.6	379.6
Total assets	3,240.3	3,093.3
Short-term liabilities:		
Clearing balances	2,361.2	2,235.2
Balances arising from early credit of uncollected items	432.8	436.3
Short-term debt	42.8	40.1
Total short-term liabilities	2,836.8	2,713.6
Long-term liabilities:		
Obligations under capital leases	1.1	2.5
Long-term debt [3]	156.8	136.3
Total long-term liabilities	158.0	138.9
Total liabilities	2,994.7	2,852.5
Equity [3]	245.6	240.7
Total liabilities and equity	3,240.3	3,093.2

[1] Financed through PSAF; other assets are self-financing.

[2] Includes allocations in Board of Governors' assets to priced services of $0.4 million for 1989 and $0.5 million for 1988.

[3] Imputed figures; represent the source of financing for certain priced services assets.

Note.—Details may not add to totals due to rounding.

TABLE 2—DERIVATION OF THE 1989 PSAF

[Millions of Dollars]

A. Assets to be Financed [1]:	
Short-term	$42.8
Long-term [2]	402.4
	$445.2

[3] The major cash services being priced are cash transportation and coin wrapping, nonstandard packaging of currency orders and deposits, and nonstandard frequency of access to cash services.

TABLE 2—DERIVATION OF THE 1989 PSAF—Continued

[Millions of Dollars]

B. Weighted Average Cost:		
1. Capital Structure [3]:		
Short-term Debt	9.6%	
Long-term Debt	35.2%	
Equity	55.2%	
2. Financing Rates/Costs [4] Average rates paid by the bank holding companies included in the sample:		
Short-term Debt	6.6%	
Long-term Debt	9.0%	
Pre-tax Equity [5]	16.9%	
3. Elements of Capital Costs:		
Short-term Debt	$42.8	X6.6% = $ 2.8
Long-term Debt	156.8	X9.0% = 14.0
Equity	245.6	X16.9% = 41.4
		$58.3
C. Other Required PSAF Recoveries:		
Sales Taxes	$8.0	
Federal Deposit Insurance Assessment	1.9	
Board of Governors Expenses	1.4	
	$11.4	
D. Total PSAF Recoveries	$69.7	
As a percent of capital	15.7%	
As a percent of expenses [6]	13.6%	

[1] Priced service asset base is based on direct determination of assets method.

[2] Consists of total long-term assets less capital leases that are self-financing.

[3] All short-term assets are assumed to be financed by short-term debt. Of the total long-term assets, 39 percent are assumed to be financed by long-term debt and 61 percent by equity.

[4] The pre-tax rate of return on equity is based on average after-tax rates of return on equity for the bank holding company sample, adjusted by the effective tax rate to yield the pre-tax rate of return on equity. The 1989 figure for after-tax equity and the tax rate are based upon a five-year average of these rates.

[5] Systemwide 1989 budgeted priced service expenses less shipping were $512.4 million.

TABLE 3—CHANGES BETWEEN 1989 AND 1988 PSAF COMPONENTS

	1989	1988
A. Assets to be Financed (millions of dollars):		
Short-term	$42.8	$40.1
Long-term	402.4	377.1
B. Cost of Capital:		
Short-term Debt Rate	6.6%	7.1%
Long-term Debt Rate	9.0%	9.7%
Pre-tax Return on Equity [1]	16.9%	20.1%
Weighted Average Cost of Capital	13.8%	15.4%
C. Tax Rate [1]	20.5%	32.3%
D. Capital Structure:		
Short-term Debt	9.6%	9.6%
Long-term Debt	35.2%	32.7%
Equity	55.2%	57.7%
E. Other Required PSAF Recoveries (millions of dollars):		
Sales Taxes	$8.0	$8.2
Federal Deposit Insurance Assessment	1.9	1.9
Board of Governors Expenses	1.4	1.7
F. Total PSAF Required Recovery	$69.7	$76.2
As Percent of Capital	15.7%	18.3%
As Percent of Expenses	13.8%	16.3%

[1] The 1989 figures for pre-tax equity and the tax rate are based on a five-year average of those rates:

	1983	1984	1985	1986	1987	Average
Pre-tax equity rate	23.4%	20.7%	21.1%	24.0%	−5.0%	16.9%
Tax rate	33.8%	36.5%	30.8%	39.0%	−36.0%	20.5%

[FR Doc. 88-25620 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

Advance Banc Shares, Inc., Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board

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of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 25, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Advance Banc Shares, Inc., Fairfield, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Wayne County Bank and Trust Company, Fairfield, Illinois.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25522 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

BankAmerica Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a writte presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1988.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. BankAmerica Corporation, San Francisco, California; to engage *de novo* through its subsidiary, BA Futures, Incorporated, San Francisco, California, in providing futures commission merchant services to affiliates and non-affiliates with respect to certain futures contracts and options on futures contracts covering stock indexes and municipal bond indexes in the same manner as provided in § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25523 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 17, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. The Baughman Tile Co., Inc., Paulding, Ohio; to acquire an additional 0.44 percent of the voting shares of Oakwood Deposit Bank, Oakwood, Ohio.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Donald and Frances Parks, North Little Rock, Arkansas, to acquire an additional 17.73 percent of the voting shares of National Banking Corporation, North Little Rock, Arkansas, and thereby indirectly acquire National Bank of Arkansas in North Little Rock, North Little Rock, Arkansas. Donald and Frances Parks will then form a voting trust which will control at least 60.04 percent of the outstanding shares of National Banking Corporation. Stephen F. Smith, Maumelle, Arkansas, and Bobby John Osborne, Sherwood, Arkansas, acting with Donald and Frances Parks will become trustees for the voting trust.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John W. Coots, Platte City, Missouri, to acquire an additional 8.57 percent of the voting shares of Wells Bancshares, Inc., Platte City, Missouri, and thereby indirectly acquire Wells Bank of Platte City, Platte City, Missouri.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25524 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Proposed Acquisition of a State Savings and Loan Association

Citicorp, New York New York, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) for Citicorp Mortgage, Inc., a wholly-owned subsidiary of Citicorp, to acquire all of the voting shares of Glen Ellyn Savings and Loan Association, Glen Ellyn, Illinois.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as general matter, a proper incident to banking under section 4(c)(8) of the BHC Act. *See e.g. Citicorp*, 72 Federal Reserve Bulletin 724 (1986). The Board, however, has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, descreased or unfair competition, conflicts of interests, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

Accordingly, comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2223, Eccles Building, 20th Street and Constitution Avenue NW., Washington, DC 20551, not later than 5:00 p.m. on Monday, November 14, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, October 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25527 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

Mercantile Bankshares Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the office of the Board of Governors not later than November 25, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Mercantile Bankshares Corporation, Baltimore, Maryland; to acquire Benchmark Appraisal Group, Inc., Columbia, Maryland, and thereby engage through its existing subsidiary, Mercantile Mortgage Corporation and New Appraisal Company, an organizing subsidiary of the former, that would hold the assets acquired in real estate property appraisal activities pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25525 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

St. Mary Holding Co.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.32(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.12(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. St. Mary Holding Corporation, Franklin, Louisiana; to engage *de novo* in the business of leasing personal property, including, but not limited to, office equipment, computers, copies and communications equipment pursuant to § 225.25(b)(5) of the Board's Regulation Y. This activity will be conducted throughout the State of Louisiana.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25526 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

West Suburban Bancorp, Inc., Lombard, IL; Proposed Acquisition of a Federal Savings Bank

West Suburban Bancorp, Inc., Lombard, Illinois ("West Suburban"), has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire all of the to-be-issued voting

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shares of Regency Savings Bank, F.S.B., Naperville, Illinois ("Regency"), after its conversion from a mutual to stock form of organization on a voluntary supervisory basis pursuant to regulations of the Federal Home Loan Bank Board.

In connection with this application, West Suburban also proposes to acquire two service corporation subsidiaries of Regency and one second tier subsidiary, which engage in real estate investment and development; invest in collateralized mortgage obligations; conduct general insurance activities; and offer mutual funds and other securities on behalf of a third part securities broker-dealer. West Suburban has requested a four year period to terminate any impermissible activities.

The Board previously has determined by order that the operation of a thrift institution is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the BHC Act. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). The Board, however, has approved several proposals involving the acqusition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

The Board has been requested to act expeditiously upon this application in order to recapitalize and revitalize the thrift institution. Comments regarding this application must be submitted in writing and must be received at the offices of the Board of Governors not later than 5:00 P.M. on November 23, 1988. The application is available for immediate inspection at the office of the Board of Governors.

Board of Governors of the Federal Reserve System, October 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25529 Filed 11-3-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under Office of Management and Budget Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the office of Management and Budget (OMB) to approve a new information collection, General Services Administration Acquisition Regulation Part 516.2, Fixed Price Contracts.

Addresses: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW, Washington, DC 20405.

Annual Reporting Burden: 2914 respondents submit 4371 responses per year (1.5 responses per respondent); each response requires .5 hours. The total reporting burden is 2186 hours per year.

Purpose: This information is used to support adjustments in Multiple Award Schedule (MAS) contract prices. MAS contractors are required to furnish certain pricing information when MAS price increases are requested.

For Further Information Contact: Edward J. McAndrew, (202) 566-1224.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: October 20, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-25609 Filed 11-3-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 7, 1988.

Family Support Administration

(Call Reports Clearance Office on 202-252-5605 for copies of package)

1. FY 1989 Winter Grantee Survey of the Low Income Home Energy Assistance Program (LIHEAP)—0970-0063—This survey obtains estimates of sources and uses of federal and non-federal funds, and households to be assisted in 1989. Data tables are then developed and sent as an informational memorandum to Congress, states and other interested parties. Respondents: State or local governments; Number of Respondents: 51; Average burden per response: 2.5; Frequency of Response: 51; Estimated Annual Burden: 127,500 hours.

2. Monthly "Flash" Report of Selected Program Data—0970-0071—The information is used to monitor program trends and serves as advance indicators of program activity and costs. The affected public is comprised of State and local agencies administering AFDC programs. Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: 648; Average burden per response: 2; Estimated Annual Burden: 1,296 hours.

OMB Desk Officer: Justin Kopca

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Federal Annual Magnetic Tape Reporting—0960-0307—The information collected by these forms is used by SSA to determine if an employer's annual wage reporting system can create a tape that is compatible and can be read by SSA's system. Respondents: State or local governments, Businesses or other for-profit. Number of Respondents: 4,000; Frequency of Response: On occasion; Average burden per response: 12 minutes; Estimated Annual Burden: 800 hours.

OMB Desk Officer: Justin Kopca

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Investigational Device Exemption (IDE) Reports and Records—0910-0078—The IDE regulations establish conditions and procedures under which investigations of medical devices involving human subjects may be exempt from certain requirements of the Federal Food, Drug and Cosmetic Act. The exemption permits the investigational use of medical devices to determine their safety and effectiveness. FDA list the IDE submissions of information collection as indicated below. Respondents: Businesses or other for-profit, Small businesses or organizations.

Total Annual Burden: 45,600.

1st Information Collection

Title: *Original IDE Submission—Reporting*
Number of Respondents—250
Frequency of Response—1
Average Burden per Responses—56

2nd Information Collection

Title: *IDE Supplement Submissions—Reporting*
Number of Responsdents—600
Frequency of Responses—6
Average Burden per Responses—6

3rd Information Collection

Title: *Original IDE Submissions—Record-keeping*
Number of Responsdents—25
Frequency of Responses—1
Average Burden per Responsedents—12

4th Information Collection

Title: *IDE Supplements Submissions—Record-keeping*
Number of Responsdents—3,600
Frequency of Responses—1
Average Burden per Responses—1

5th Information Collection

Title: *Non-significant Investigations—Recordkeeping*
Number of Responsdents—600
Frequency of Response—1
Average Burden per Response—5

2. The National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners—0915-0126—Bank data identifying incompetent, unprofessional, and unethical physicians and health practitioners will be shared with licensing boards, professional societies, and selected health care providers. These data will be used to maintain and improve health care and will be obtained from insurers, licensure boards, peer review committees, hospitals and other providers. The clearance request has been submitted with ten separate information collection itemized burdens. Each collection is listed below and on the following page. Respondents: Individuals and households, State or local governments, Businesses or other for-profit.

1st Information Collection

Title: *Correction of Errors and Omissions—Section 60.6(a)*
Number of Respondents—625
Number of Responses per Respondent—1-10
Average Burden per Response—15 minutes

2nd Information Collection

Title: *Revisions to Report Actions—Section 60.6(b)*
Number of Respondents—6,800
Number of Responses per Respondent—1-4
Average Burden per Response—15 minutes

3rd Information Collection

Title: *Reporting Medical Malpractice Payments—Section 60.7(b)*
Number of Respondents—200
Number of Responses per Respondent—100-600
Average Burden per Response—25 minutes

4th Information Collection

Title: *Licensure Actions by Boards of Medical Examiners—Section 60.8(b)*
Number of Respondents—125
Number of Responses per Respondent—50-150
Average Burden per Response—25 minutes

5th Information Collection

Title: *Adverse Actions on Clinical Privileges—Section 60.9(a)(1)*
Number of Respondents—10,000
Number of Responses per Respondent—1-3
Average Burden per Response—25 minutes

6th Information Collection

Title: *Reporting by Boards to the National Data Base—Section 60.9(b)*
Number of Respondents—54
Number of Responses per Respondent—150-350
Average Burden per Response—5 minutes

7th Information Collection

Title: *Hearings for Health Care Entities Found in Noncompliance—Section 60.9(c)*
Number of Respondents—15
Number of Responses per Respondent—1
Average Burden per Response—480 minutes

8th Information Collection

Title: *Hospital Requests for Information on Applicants—Section 60.10(a)(1)*
Number of Respondents—7,500
Number of Responses per Respondent—5-30
Average Burden per Response—10 minutes

9th Information Collection

Title: *Hospital Requests for Information on Current Staff—Sect. 60.10(a)(2)*
Annual:
Number of Respondents—3,750
Number of Responses per Respondent—1
Average Burden per Response—120 minutes

10th Information Collection

Title: *Procedure for Filing a Dispute—Data Base—Section 60.14(b)*
Annual:
Number of Respondents—1,200
Number of Responses per Respondent—1
Average Burden per Response—30 minutes
Total Annual Burden: 81,997

3. Estimating the Frequency of HIV Exposures Among Emergency Care Providers—NEW—Emergency Care providers are known to be exposed to large volumes of blood. In addition, the populations who receive emergency care are known in some areas to have a particularly high volume of HIV infection. The types of exposures, the precautions and the circumstances will be observed and recorded through an interview in order to determine the risk of infection among emergency care providers. The HIV seroprevalence among the patients receiving care will be determined in a blinded manner. Respondents: Individuals or households; Number of Respondents: 2,500; Number of Responses per Respondent: 2.35; Average Burden Per Response: .136; Estimated Annual Burden: 798.

OMB Desk Officer; Shannah Koss-McCallum

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Evaluation of Social/Health Maintenance Organization (S/HMO) Demonstration—0938-0450—The Social/Health Maintenance Organization Demonstration and evaluation has been Congressionally mandated. The primary data collection will permit HCFA to measure the effects of the S/HMO alternative, and S/HMO on Medicare beneficiaries' health status, beneficiaries' satisfaction with the S/HMO alternative, and S/HMO marketing effectiveness. The S/HMO as an evolving organization will also be studied. Respondents: Individual or households; Number of Respondents: 2991; Frequency of Response: 1; Average burden response: 1 hour; Estimated Annual Burden: 2991 hours.

OMB Desk Officer: Allison Herron

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of package)

1. Withdrawn Clearance Request—"On September 30, 1988, the Department of Health and Human Services published a notice soliciting public

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comment on a proposed information collection, submitted to OMB for approval by the Office of the Secretary, entitled "Physician Ownership of, and Compensation from, Health Care Providers to Whom they Make Patient Referrals." On October 18, 1988, the Department officially withdrew this request for OMB approval. We are hereby making public notification that this request for OMB approval has been withdrawn, and the companion notice soliciting public comments is retracted."

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

Dated: October 31, 1988

James E. Larson,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–25567 Filed 11–3–88; 8:45 am]

BILLING CODE 4110–60–M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 14, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301–9650–4149 for copies of package)

1. Application for Supplemental Security Income—0960–0229—The information collected by this form is used by the Social Security Administration to determine eligibility and amount of benefits payable in claims for supplemental security income (SSI) payments. Respondents: Individuals or households; Number of Respondents: 1,200,000; Frequency of Response: one time; Average burden per response: 34 minutes; Estimated Annual Burden: 680,000 hours.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. International Drug Scheduling; Convention on Psychotropic Substances: Non-barbiturate Sedatives. Voluntary Submission of Data and Comments on the Abuse Potential, Actual Abuse, Illicit Trafficking, and Medical Utility of Twenty-five Drugs of the Non-barbiturate Sedative Class that are Candidates for International Control—NEW—Information collected will be used in compiling an information package to be sent to the World Health Organization. Collection is required by 21 U.S.C. 811 (d)(2)(A), (d)(2)(B) and a treaty. The affected public consists of drug manufacturers and others who wish to comment on the licit and illicit use of these twenty-five drugs. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, and Small businesses or organizations; Number of Respondents: 10; Number of Responses per Respondent: 2; Average Burden Per Response: 30; Estimated Annual Burden: 600 hours.

2. Regulation—Mine Safety and Health Administration 30 CFR Respiratory Protective Devices—0920–0109—Part II prescribes requirement and procedures which must be met in filing applications for joint approval by MSHA and NIOSH of respirators and modifications of respirators. Application contents, quality control plans and quality control records are required (30 CFR 11.11, 11.35, 11.41, and 11.43). Respondents: Businesses or other for-profit; Number of Respondents: 37; Frequency of Response: 13; Average burden per response: 99.23; Estimated Annual Burden: 47,729.

3. Small Business Innovation Research Grant Applications for Phase I and II—0925–0195—The purpose of the Small Business Innovation Research Phase I and II applications is to provide a vehicle by which small businesses can apply for available research funds. This is a request to have the page limitation increased to 30 pages so that the Phase I Final Report may be increased to a recommended 10 pages. Respondents: Small businesses or organizations; Number of Respondents: 2,850; Number of responses per Respondent: 1 Average Burden Per Responses: 13.10; Estimated Annual Burden: 37,350 hours.

4. Color Additive Certification—0910–0216—The information collected is required by FDA for the purpose of responding to request for color certification as required in section 706 of the Food, Drug and Cosmetic Act and the regulations promulgated in 21 CFR Part 80. The activity includes analysis of a representative sample to insure compliance with applicable specifications and issuance of a certificate with an assigned certification lot number. Respondents are any persons requesting certification of a manufactured batch of color additive. The clearance requests reflects information collected in two areas Reporting/Recordkeeping. Respondents: Businesses or other for-profit, Small businesses or organizations.

	Reporting	Record-keeping
Number of response	35	35
Frequency of responses	125	N/A
Average burden	0.25	[1] 31.2
Total annual burden	2,184	

[1] (Hours per respondent.)

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: October 27, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–25424 Filed 11–3–88; 8:45 am]

BILLING CODE 4110–60–M

Food and Drug Administration

[Docket No. 88F–0322]

Nippon Gohsei (U.S.A.) Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nippon Gohsei (U.S.A.) Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a polyester resin prepared from terephthalic acid, isophthalic acid, succinic anhydride, ethylene glycol, diethylene glycol, and 2,2-dimethyl-1-1,3-propanediol as a component of polymeric coatings intended to contact alcoholic foods.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HHF-355), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4017) has been filed by Nippon Gohsei (U.S.A.) Co., Ltd., 747 Third Ave., New York, NY 10017, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of a polyester resin prepared from terephthalic acid, isophthalic acid, succinic anhydride, ethylene glycol, diethylene glycol, and 2,2-dimethyl-1-1,3-propanediol as a component of polymeric coatings intended to contact alcoholic foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 27, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–25543 Filed 11–3–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0097]

Revised Chapter in Regulatory Procedures Manual; Perishable Foods, Including Fresh Fish and Seafood and Fresh Produce; Delayed Effective Date

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is postponing the effective date of revised Regulatory Prodedures Manual Chapter 9–73, "Perishable Foods, Including Fresh Fish and Seafood and Fresh Produce." A notice announcing the availability of this chapter, which provides FDA districts with guidance for uniform handling of sampled import shipments of these products, was published in the **Federal Register** of July 29, 1988 (53 FR 28699). This chapter was to have been effective September 27, 1988. However, because of concerns about the impact of these revised procedures, the agency has decided to delay the effective date of this chapter until further notice.

FOR FURTHER INFORMATION CONTACT: James C. Lyda, Office of Regulatory Affairs (HFC–131), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 1301–443–6553.

SUPPLEMENTARY INFORMATION: Under revised Regulatory Procedures Manual Chapter 9–73, importers would maintain control over all imported perishable food products that FDA has sampled, and that are not believed to violate the Federal Food, Drug, and Cosmetic Act, until at least 5 p.m. local time on the day following FDA sample collection, unless released earlier by the agency. Agreements by importers to retrieve sampled lots that are distributed and later found violative by FDA would no longer be required, because redelivery bonds would remain in force until FDA's analyses are completed and sampled lots are formally released. However, because of concerns about the impact of these revised procedures, the agency has decided to delay the effective date of this chapter until further notice.

Dated: November 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25582 Filed 11–3–88; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

National Toxicology Program; Announcement of Completed Short-Term Toxicology Studies on Six Chemicals; Request for Comments

As part of an effort to inform the public and allow interested parties to comment and provide information on chemicals prior to designing studies for long-term toxicology and carcinogenesis studies, the National Toxicology Program (NTP) will routinely announce in the **Federal Register** the list of chemicals for which short-term toxicology studies have been completed.

Short-term toxicology studies on the chemicals listed in this announcement have been completed and the National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is in the process of evaluating the results. A decision on whether additional studies are needed, including long-term toxicology and carcinogenicity studies, will soon be made by the NTP. If you have relevant information (such as current production, use pattern, exposure levels, toxicological data) to share with the NTP on any of these chemicals, please contact the responsible NTP Scientist within 30 days of the appearance of this announcement. Contact may be made by telephone or mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The information provided will be considered by the NTP in determining which chemicals require additional studies and in designing these studies.

Formic Acid (64–18–6)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Kamal Abdo, telephone 919–541–7819.

2-Mercaptobenzimidazole (583–39–1)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Kamal Abdo, telephone 919–541–7819.

Diethanolamine (111–42–2)—14-day and 90-day skin paint studies and 14-day and 90-day dosed water studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Ron Melnick, telephone 919–541–4142.

1,6-Hexanediamine (6055–52–3)—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. John French, telephone 919–541–7790.

2-Hydroxy-4-methoxybenzophenone (131–57–7)—14-day and 90-day dosed feed studies and 14-day and 90-day skin paint studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. John French, telephone 919–541–7790.

Sodium xylenesulfonate (1300–72–7)—14-day and 90-day skin paint studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Richard Irwin, telephone 919–541–3340.

Please submit all comments and suggestions on chemical(s) by telephone or by mail to the responsible scientist (listed above) within 30 days of publication of this notice. Any submissions received after the above date will be accepted and utilized if possible.

Dated: October 28, 1988.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 88–25581 Filed 11–3–88; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[FES 88-48; (CA-930-09-4332-13)]

Availability of Final Environmental Impact Statement: California Section 202 Wilderness Study Areas, Bakersfield District and Ukiah District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement (EIS) for California section 202 Wilderness Proposals—Garcia Mountain, Rockhouse, Domeland, Machesna, Yolla Bolly and Big Butte WSAs.

SUMMARY: This EIS assesses the consequences of managing six section 202 Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed include: (1) A "no wilderness/no action" alternative for each WSA and (2) an "all wilderness" alternative for each WSA.

The names of the six section 202 WSAs analyzed, their total acreage and the proposed action for each are as follows:

Garcia Mountain WSA—494 acres; nonsuitable
Rockhouse WSA—130 acres; nonsuitable
Domeland WSA—2,209 acres; nonsuitable
Machesna WSA—80 acres; nonsuitable
Yolla Bolly WSA—640 acres; nonsuitable
Big Butte WSA—2,391 acres; nonsuitable

These WSA have been studied in accordance with the general land use planning provisions of section 202 of the Federal Land Policy and Management Act (FLPMA) and policies that provide for wilderness consideration of areas of less than 5,000 acres if they are adjacent to lands with wilderness potential administered by other Federal agencies. For section 202 WSAs not recommended suitable for wilderness designation, the State Director has the authority under FLPMA to release those public lands from wilderness study and retun them to multiple use management in accordance with existing land use plans.

There is a 30-day public review period for the Final EIS. A draft Record of Decision can then be filed for a 60-day Governor's review, after which the Record of Decision is completed. Multiple use management may begin 30 days after the State Director signs the Record of Decision.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the District Managers, Bakersfield District, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, California and Ukiah District, 555 Leslie Street, Ukiah, California 95482-5599. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20240

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT:

District Manager, Bureau of Land Management, Bakersfield District, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301

or

District Manager, Bureau of Land Management, Ukiah District, 555 Leslie Street, Ukiah, CA 95482-55999.

Date: October 3, 1988.

Ed Hastey,

State Director.

[FR Doc. 88-25564 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-40-M

[FES 88-47; (CA-930-09-4332-13)]

Availability of Final Environmental Impact Statement: California Section 202 Wilderness Study Areas, Susanville District, CA, and Carson City District, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement (EIS) for California section 202 Study Areas Wilderness Proposals—South Warner Contiguous WSA and Carson Iceberg WSA.

SUMMARY: This EIS assesses the consequences of managing two section 202 Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) a "partial wilderness" alternative for one of the WSAs

The WSAs addressed in this EIS are the South Warner Contiguous WSA and the Carson Iceberg WSA. The South Warner Contiguous WSA encompasses a total of 4,500 acres of which 1,167 acres of the WSA are recommended suitable for wilderness designation. The Carson Iceberg WSA totals 550 acres and the entire WSA is recommended suitable for wilderness designation.

These WSAs have been studied in accordance with the general land use planning provisions of section 202 of the Federal Land Policy and Management Act (FLPMA) and policies that provide for wilderness consideration of areas less than 5,000 acres if they are adjacent to lands with wilderness potential administered by other Federal agencies. The Bureau of Land Management wilderness proposals for suitable section 202 WSAs will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the District Managers, Susanville District, 805 Hall Street, Susanville, California 96130 and Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20240

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825

or

Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, NV 89520.

FOR FURTHER INFORMATION CONTACT:

District Manager, Bureau of Land Management, Susanville District, 805 Hall Street, Susanville, CA 96130.

District Manager, Bureau of Land Management, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701.

Date: October 27, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-25565 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-40-M

[WY-040-09-4332-09]

Environmental Statements; Availability, etc.: Rock Springs District, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a revised Draft Environmental Impact Statement (DEIS) for Wilderness Study Areas (WSAs) in the Rock Springs District, Wyoming.

SUMMARY: The Revised Draft EIS analyzes the wilderness suitability recommendations for 13 WSAs in the Rock Springs District in southwestern Wyoming. These WSAs cover 219,380 acres. The Proposed Action recommends 105,347 acres in 5 WSAs as suitable for designation as wilderness.

DATES: Written comments will be accepted on the Revised Draft EIS until 90 days after the Environmental Protection Agency publishes their receipt of filing of this DEIS in the **Federal Register**. Two public hearings will be held to accept oral and written comments for the record. The first hearing will be held on January 4, 1989, in Rock Springs, Wyoming, at 7 p.m. at Western Wyoming College, Room 1302. The second hearing will be held on January 5, 1989, in Lander, Wyoming, at 7 p.m. at the Lander Valley High School multipurpose room. Testimony will be limited to 10 minutes with written submission invited at the hearing.

Participants may register prior to the hearing by submitting such requests in writing to the address below. Participants may also register at the registration desk prior to the start of the hearing.

ADDRESSES: Written comments on the document should be addressed to Wilderness EIS Team Leader, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming, 82902-1869.

FOR FURTHER INFORMATION CONTACT: Alan Stein, Team Leader, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming, 82902-1869, phone (307) 382-5350.

SUPPLEMENTARY INFORMATION: A draft EIS on the 13 WSAs was originally published in 1983. Public comments on that original draft EIS were analyzed and revisions made to prepare a final EIS. In the interim, oil and gas leases issued prior to passage of the Federal Land Policy and Management Act of 1976 (FLPMA) expired. No new leases were issued. When the original draft EIS was issued, most of the WSAs were almost totally leased for oil and gas. This affected the potential impacts if the WSA were designated for wilderness because the oil and gas lease was a valid existing right which would allow for oil and gas activities to occur even under wilderness designation.

The change in impacts affected the analysis to the point where some wilderness suitability recommendations were changed. The expiration of oil and gas leases, the changes in wilderness suitability recommendations, and the length of time between the original Draft EIS and now resulted in the decision to issue a Revised Draft EIS and to circulate it for public comment.

Hillary A. Oden,

State Director, Wyoming.

October 31, 1988.

[FR Doc. 88-25595 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-22-M

[MT-930-09-4322-02]

Meeting Notice for Miles City District Grazing Advisory Board, Butte District Grazing Advisory Board, and Lewistown District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that the three Montana District Grazing Advisory Boards will meet December 1, 1988. The meeting will begin at 1:30 p.m. at the Northern Hotel in Billings, Montana. This will be a joint meeting with the Grazing Advisory Boards of the Miles City, Lewistown, and Butte Districts. The agenda includes discussion of a drought policy for livestock grazing, the State Director's Guidance on Access, and prescribed burn policy.

The meeting is open to the public. The public may make oral statements before the boards or file written statements for their consideration. Summary minutes of the meeting will be maintained in each Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following that meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301; or District Manager, Lewistown District, Bureau of Land Management, 80 Airport Road, Lewistown, Montana 59457; or District Manager, Butte District, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702.

Ray Brubaker,

Acting State Director.

October 21, 1988.

[FR Doc. 88-25603 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-DN-M

[Alaska AA-48579-AD]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48579-AD has been received covering the following lands:

Copper River Meridian, Alaska

T. 8 S., R. 1 W.,
Sec. 7, S½SW¼.
(78 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from May 1, 1988, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48579-AD as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1988, subject to the terms and conditions cited above.

Dated: October 24, 1988.

Sue A. Faught,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 88-25561 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-JA-M

[ID-030-08-4212-13]

Realty Action (I-25616); Private Exchange Involving Public Lands in Madison County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Private Exchange Involving Public Lands in Madison County, Idaho.

The surface estate of the following described public land has been found suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1716):

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Boise Meridian, Idaho

T. 6 N., R. 38 E.
Sec. 14, S½SW¼NE¼, N½NW¼SE¼.

The area described contains 40 acres, more or less.

The above described public lands will be segregated from entry under the public land laws and the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent to the State of Idaho or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

In exchange for these lands the United States will acquire the surface estate of the following described lands in Jefferson County, Idaho from Keith Meyers and Sons:

Boise Meridian, Idaho

T. 7 N., R. 38 E.
Sec. 18, NE¼NW¼.

The area described contains 40 acres, more or less.

The exchange proponent does not own the mineral estate of this land.

BLM proposes to exchange public land in Madison County, Idaho for private land in Jefferson County, Idaho located within or adjacent to several areas of special designation. This exchange is consistent with BLM and local planning for the lands involved. The public interest will be well served by completing the exchange.

The value of the lands to be exchanged is equal.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1980, (28 Stat. 391; 43 U.S.C. 945).

2. All mineral deposits in the subject lands so patented pursuant to the Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1719), and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning the exchange, including the environmental assessment is available for review at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Idaho Falls District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: October 28, 1988.

Lloyd H. Ferguson,
District Manager.

[FR Doc. 88-25562 Filed 11-3-88; 8:45 am]
BILLING CODE 4310-84-M

[AZ-020-09-4212-13; AZA-23085-B]

Realty Action; Exchange of Public Lands, Maricopa, Cochise and Yavapai Counties, AZ

The following described federal lands have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Base and Meridian, Maricopa County, Arizona

T. 6 N., Range 2 West,
Section 4, lots 1 to 4, incl., S½N½, S½;
Section 5, lots 1 to 4, incl., S½N½;
Section 6, lots 1 to 5, incl., N½SE¼NE¼, SW¼SE¼NE¼, SW¼NE¼, SE¼NW¼;
Section 9, all;
Section 16, E½SW¼, W½SE¼.

Total acres 2,067.19.

In exchange for the above described public lands, the United States will acquire all or part of the below-described private lands from San Pedro Investment Group, an Arizona General Partnership, or their nominee.

Gila and Salt River Base and Meridian, Cochise County, Arizona

Parcel 1(A)

That portion of the SE quarter of the NE quarter of section 13, T. 21 S., R. 21 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, lying southerly of the Southern Pacific Railroad as it existed on November 28, 1966.

Parcel 1(B)

The NE quarter of the SE quarter of section 13, T. 21 S., R. 21 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Parcel 1(C)

Those portions of the SE quarter of the NW quarter, the NE quarter of the SW quarter and Lot 2 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, lying westerly of the Southern Pacific Railroad as it existed on November 28, 1966.

Except all coal and other minerals as reserve in the patent.

Parcel 1(D)

Lot 3 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Except all coal and other minerals as reserved in the patent.

Except that portion of the SE quarter of the NE quarter and NE quarter of the SE quarter of section 13, T. 21 S., R. 21 E., and the NE quarter of the SW quarter and Lots 2 and 3 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

Beginning at a point on the west line of said section 18, said point being N. 00°01'40" east, a distance of 2,715.21 feet from the SW corner of said section 18;

Thence N. 89°35'50" east, a distance of 203.62 feet;

Thence N. 79°13'50" east, a distance of 708.88 feet to a point on the westerly right-of-way line of the Southern Pacific Railroad;

Thence southerly along the arc of a circular curve to the right, having a central angle of 12°40'40" and a radius of 4,631.60 feet, a distance of 1,024.83 feet along said right-of-way;

Thence S. 26°44'20" E., a distance of 744.76 feet said right-of-way to the south line of said NE quarter of the SW quarter of section 18;

Thence S. 89°47'30" W., a distance of 1,793.36 feet along said line to the west line of said section 18;

Thence N. 89°56'40" W., a distance of 400.00 feet along the south line of the NE quarter of the SE quarter of said section 13;

Thence N. 07°51'40" E., a distance of 364.63 feet;

Thence N. 27°59'20" W., a distance of 314.90 feet;

Thence N. 02°13'20" W., a distance of 150.22 feet;

Thence N. 24°21'40" E., a distance of 302.02 feet;

Thence N. 12°32'40" E., a distance of 436.16 feet;

Thence S. 71°16'00" E., a distance of 297.21 feet to the Point of Beginning.

Parcel 2

T. 9 N., R. 2 W., Gila and Salt River Meridian, Yavapai County, Arizona
Sec. 1, all or part of the following patented mining claims: Campview, Chicago, Cleveland/Boston;
Sec. 2, S½NW¼, N½SW¼;
Sec. 3, lots 1 to 4, incl., S½NE¼, SE¼, S½NW¼, SW¼;
Sec. 4, lots 1 and 2, S½NE¼, SE¼;
Sec. 5, lot 4, SW¼NW¼, W½SW¼;
Sec. 6, lots 6 and 7, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½;
Sec. 10, NE¼;

Sec. 17, W½W½;
Sec. 18, lots 1 to 4, incl. E½W½, E½.

The exchange proposal involves all of the exchange proponent's interest in the surface and mineral estate of the private lands and the surface and mineral estate of the public lands. The exchange is consistent with the Bureau's land use planning objectives.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Local floodplain regulations.

3. All valid existing rights.

The lands to be acquired by the United States from San Pedro Investment Group shall be subject to certain easements, permits, and other encumbrances detailed in Schedule B of Ticor Title insurance policy 88090844 and Cochise Title Policy 30-012,674.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, and from any subsequent land exchange proposals filed by any proponent other than San Pedro Investment Group or their nominee.

The segregation of the described lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of initial publication (November 27, 1987), whichever occurs first.

Upon completion of the official appraisal, acreage adjustments will be made to equalize the values of the offered and selected lands.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: October 31, 1988.

Henri R. Bisson,
District Manager.

[FR Doc. 88-25546 Filed 11-3-88; 8:45 am]
BILLING CODE 4310-33-M

[MTM72921; MT-020-09-4212-12]

Realty Action; Intention To Exchange Lands in Wheatland County et al., MT

AGENCY: Bureau of Land Management, Miles city District Office, Interior.

ACTION: Designation of public lands in Wheatland, Golden Valley, Musselshell and Stillwater Counties, Montana, for transfer out of Federal ownership in exchange for lands owned by the State of Montana.

SUMMARY: BLM proposes to exchange public land with the State of Montana in order to achieve more efficient management of the public land through consideration of ownership.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 9. N., R. 12 E.,
Sec. 20, NW¼SE¼;
Sec. 28, S½NW¼;
Sec. 32, SE¼NE¼, NE¼SE¼.
T. 6 N., R. 15 E.,
Sec. 2, Lots 11 & 12.
T. 9 N., R. 15 E.,
Sec. 6, SE¼NE¼.
T. 8 N., R. 19 E.,
Sec. 6, Lots 4 & 5, SW¼NE¼, SE¼NW¼.
T. 11 N., R. 19 E.,
Sec. 35, E½E½.
T. 4 N., R. 22 E.,
Sec. 6, SE¼NE¼.
T. 10 N., R. 29 E.,
Sec. 12, N½NW¼.

The lands described above comprise 754.34 acres, more or less, in Wheatland, Golden Valley, Musselshell and Stillwater Counties and have been identified for disposal in the Billings Resource Area RMP/EIS. These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the Federal Register. The segregative effect will terminate upon issuance of patent to the State of Montana, upon publication in the Federal Register of termination of the segregation, or 2 years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an environmental assesment. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATES: For a period up to and including December 19, 1988, interested parties may submit comments to the Miles City District Manager, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Billings Resource Area, 810 E. Main, Billings, Montana 59105.

Date: October 26, 1988.

Bruce G. Whitmarsh,
Acting District Manager.

[FR Doc. 88-25602 Filed 11-4-88; 8:45 am]
BILLING CODE 4310-DN-M

[NV-930-08-4212-13; N-46545]

Realty Action; Exchange of Public Lands in Douglas County, NV

The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian

T. 12 N., R. 21 E.,
Sec. 24, SW¼ NW¼ , NE¼ SW¼,
T. 13 N., R. 22 E.,
Sec. 20, N½NW¼ .

The area described contains 160 acres.

In exchange for these and other lands, the federal government will acquire those non-federal lands in Carson City, Nevada, from Bently Nevada Corporation, P.O. Box 157, Minden, NV 89423, described in the Notice of Realty Action published in the **Federal Register**, Vol. 53, No. 150, page 29390, on August 4, 1988.

The purpose of the exchange is to acquire river frontage lands with high recreational and historical values. The exchange is consistent with Bureau of Land Mangement planning and is supported by Carson City. The public interest will be well served by making the exchange.

The exact acreage of federal lands to be transferred or private lands to be acquired will be dependent upon a final fair market appraisal. Both the surface and mineral estates will be exchanged.

In accordance with regulations contained in 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws including the mining laws. This segregation shall terminate upon issuance of patent to the above-described public lands, upon publication in the Federal Register of a termination of the segregation, or upon expiration of 2 years from the date of this publication, whichever occurs, first. Patent of lands to be transferred from Federal ownership will contain the following reservation:

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A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

The patentee, upon receipt of the patent, will be required to effect an easement deed for the continuation of public access along existing Pine Nut Creek Road, as it affects the afore-described lands. This easement deed, to be recorded in Douglas County, will preserve those access rights presently protected by right-of-way grant N-41270, held by Bently Nevada Corporation.

Detailed information concerning the exchange, including the environmental assessment, is available for review at the Carson City District Office.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706.

Dated this 27 day of October, 1988.

Norman L. Murray,

Acting District Manager.

[FR Doc. 88-25601 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Revision of Park Boundary: Harpers Ferry National Historical Park

The Act of June 30, 1944 (58 Stat. 645), provided for the establishment of Harpers Ferry National Historical Park. A subsequent amendment to that Act, approved October 24, 1974 (88 Stat. 1420), provided that the Secretary of the Interior may make minor revisions in the boundary by publication in the **Federal Register** of the revision after advising the Committee on Interior and Insular Affairs of the Congress of the United States.

In order to properly interpret and preserve the historic character of the Harpers Ferry National Historical Park, it is necessary to modify the existing boundary of the park to include approximately 0.47 of an acre of land.

Therefore, notice is hereby given that the exterior boundary of the Harpers Ferry National Historical Park is revised to include the following described land:

All that certain tract or parcel of land lying and being situated in Block "JJ", in said Town of Harpers Ferry.

Containing 0.47 of an acre, more or less.

This parcel of land is depicted as Tract 106-27 on Land Status Map numbered 385/92002, Segment 108, dated June 30, 1975, as revised on June 24, 1988.

The map is on file and available for inspection in the administrative office of the Harpers Ferry National Historical Park, Harpers Ferry, West Virginia 25425; in the office of the National Capital Region, 1100 Ohio Drive, SW., Washington, DC 20242; and in the office of the National Park Service, Department of the Interior, Washington, DC 20013-7127.

Date: October 14, 1988.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 88-25548 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act (Pub.L. 92-463, 86 Stat. 770, 5 U.S.C., app. 1 section 10), that a meeting of the Cape Code National Seashore Advisory Commission will be held Friday, November 18, 1988.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Code National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m. for the following reasons:

Unifinished Business
Superintendent's Report
Bicycle Study
New Business

The meeting is open to the public. It is expected that as many as 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Code National Seashore, South Wellfleet, MA 02663.

Herbert S. Cables, Jr.,

Regional Director.

[FR Doc. 88-25547 Filed 11-3-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-423 (Preliminary)]

Generic Cephalexin Capsules From Canada; Import Investigation

AGENCY: United States Intenational Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-423 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of Generic Cephalexin Capsules, provided for in item 411.76 of the Tariff Schedules of the United States (subheading 3004.20.00 of the Harmonized Tariff Schedule of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 12, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207) (see Commission interim rules (53 FR 33034 (August 29, 1988)), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Lisa Zanetti (202-252-1189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on October 27, 1988, by Biocraft Laboratories, Inc., Elmwood Park, NJ.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all pesons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33034 (August 29, 1988)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary informatin under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on November 16, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Lisa Zanetti (202-252-1189) not later than November 14, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before November 18, 1988, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in section 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtains disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than November 22, 1988. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 2, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-25707 Filed 11-3-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation and address of principal office: Astra Holdings Corporation, 8280 Greensboro Drive, Suite 330, McLean, VA 22102.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Accudyne Corporation, P.O. Box 1429, Janesville, Wisconsin 53547-1429. Incorporated in the State of Wisconsin.

(ii) E. Walters & Company, Inc., 333 North Franklin Street, Elk Grove Village, Illinois 60007. Incorporated in the State of Illinois.

(iii) Kilgore Corporation, Bradford Road, Toone, Tennessee 38381-0099.

B. 1. Parent Company: Bridgestone Corporation, 10-1, Kyobashi 1-Chome, Chuo-ku, Tokyo 104, Japan.

2. Wholly-owned subsidiaries which will participate in the operations:

(i) Bridgestone (U.S.A.), Inc., a Delaware coporation.

(ii) The Firestone Tire & Rubber Company, and Ohio coprporation.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25570 Filed 11-3-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-213 and AB-57; Sub-Nos. 1X and 28X]

Canadian Pacific Limited; Abandonment Exemption in Cook County, IL; Soo Line Railroad Co.; Discontinuance of Service; Exemption in Cook County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Canadian Pacific Limited of and discontinuance of operations by Soo Line Railroad Company over 31,696 track feet of rail line generally between South Canal Street and South Clinton Street in Chicago, Cook County, IL, subject to standard labor protective conditions.

BEST COPY AVAILABLE

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DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 14, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 11527(c)(2) must be filed by November 11, 1988, and petitions for reconsideration must be filed by November 29, 1988. Requests for a public use condition must be filed by November 11, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB–213 (Sub-No. 1X) and Docket No. AB–57 (Sub-No. 28X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives:

Larry D. Starns, Suite 1000, 105 South Fifth Street, Minneapolis, MN 55402, and

Terence M. Hynes, Brian L. Rubin, 1722 Eye Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 775–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

Decided: October 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25571 Filed 11–3–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Village of Endicott and Town of Union, NY

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Village of Endicott and Town of Union,* Civil Action No. 88–1067, was lodged with the United States District Court for the Northern District of New York on October 14, 1988. The action was filed pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The complaint seeks a court order requiring the defendants to abate an endangerment to public health or welfare or the environment and a declaratory judgment for recovery of certain costs to be incurred by the United States in connection with the Endicott Village Wellfield Site (the "Wellfield Site"), in the Village of Endicott, Broome County, New York.

The consent decree provides that the Village of Endicott, New York, and the Town of Union, New York, will fund and implement the remedial action for a cleanup of the Wellfield Site. The remedial action consists of: (1) The installation of a groundwater treatment facility near the "Ranney Well," using air stripping and disinfection processes; (2) continued operation of a purge well at the Wellfield Site as an interim measure aimed at intercepting and removing some of the contaminants flowing toward the Ranney Well; and (3) continued monitoring designed to detect the presence in Ranney Well water of a category of hazardous substances known as volatile organic compounds. The defendants also will pay EPA's costs in overseeing implementation of the remedial action.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Village of Endicott and Town of Union,* DOJ Reference No. 90–11–3–299.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

U.S. Attorney's Office, Northern District of New York, 369 Federal Building, Syracuse, New York 13260, Contact: Craig Benedict, (315) 423–5165.

U.S. EPA, Region II, Office of Regional Counsel, 26 Federal Plaza, New York, New York 10278, Contact: Paul Simon, (212) 264–4710.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $9.40 payable to Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–25613 Filed 11–3–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; H.F. Perkins Insulation Co., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that proposed Consent Decree in *United States v. H.F. Perkins Insulation Co., et al.,* Civil Action No. C–1–88–1239, has been lodged with the United States District Court for the Southern District of Ohio. The complaint filed by the United States alleged that the defendant violated sections 112(c) and 144(a)(1) of the Clean Air Act, 42 U.S.C. 7412(c) and 7414(a)(1), and the National Emission Standards for Hazardous Air Pollutants—asbestos ("the asbestos NESHAPs") promulgaged thereunder, by failing to comply with various notification and work-practice requirements pertaining to owners and operators of building renovation and demolition projects involving the removal of friable asbestos or asbestos-containing materials.

The proposed Decree establishes procedures for ensuring the settling defendants' future compliance with the asbestos NESHAPs by requiring defendants to adopt specified office practices and an employee training program designed to make defendants and their employees better aware of applicable NESHAPs requirements. In addition, the proposed Consent Decree requires defendants R.E. Schweitzer Construction Co. and Second Street Associates to pay a total civil penalty of $10,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to the *United States v. H.F. Perkins Insulation Co., et al.,* D.J. Reference No. 90–5–2–1–1047.

The proposed Consent Decree may be examined at the office of the United States Attorney, 100 E. Fifth Street, Cincinnati, Ohio, 45202, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chcago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 6317, Ninth Street and Pennsylvania, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or my mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $1.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–25612 Filed 11–3–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Judgment; Kearny Steel Container Corp.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on October 7, 1988, a proposed consent decree in *United States v. Kearny Steel Container Corp.,* Civil Action No. 88–438, was lodged with the United States District Court for the District of New Jersey. This consent decree settled a lawsuit filed on January 22, 1988 pursuant to section 113 of the Clean Air Act (the "Act"), 42 U.S.C. 7413, for injunctive relief and for the assessment of civil penalties against Kearny Steel Container Corporation ("Kearny Steel"). The complaint is based on, among other things, Kearny Steel's use of certain surface coating formulations that are applied to the interior of shipping containers which are reconditioned by Kearny Steel at its facility in Newark, New Jersey. The complaint alleged, among other things, that the surface coating formulations used by Kearny Steel emitted volatile organic substances ("VOS") in excess of the applicable emission standards for such surface coating operations required by Title 7, Chapter 27, Subchapter 16, of the New Jersey Administrative Code ("N.J.A.C. 7:27–16"), and that Kearny Steel operated an incinerator beginning on approximately June 1, 1987, until approximately September 30, 1987, that emitted particles of waste and unburned ash large enough to be visible while suspended in the atmosphere in excess of the emission standards for incinerators required by N.J.A.C. 7:27–8.3(e), 7:27–11.3(c) and 7:27–11.5(c).

Under the terms of the proposed consent decree, Kearny Steel shall be required to continue to maintain compliance with the Clean Air Act and all applicable state regulations,including the VOS emission standards at N.J.A.C. 7:27–16, the incinerator regulations at N.J.A.C. 7:27–11, the permit requirements at N.J.A.C. 7:27–8, and the open burning regulations at N.J.A.C. 7:27–2.2. Kearny Steel is also required to pay a civil penalty of $26,000 with respect to violations of the Clean Air Act and state regulations in two installments within sixty (60) days of the date the proposed consent decree is entered by the Court. Kearny Steel is also required to submit quarterly reports, detailing, among other things, the VOS content of any surface coating formulations used in the reconditioning process, along with the dates such surface coating formulations were used.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. All comments should refer to *United States v. Kearny Steel Container Corp.,* D.J. Ref. 90–5–2–1–118.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

EPA Region II

Contact: Alexandra Callam, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278 (212) 264–2211

United States Attorney's Office

Contact: Jerome L. Merin, Assistant United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102 (201) 348–2944

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1250, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044–7611. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural resources Division, United States Department of Justice. When requesting a copy of the proposed consent decree, please enclose a check for copying costs in the amount of $1.40 payable to the Treasurer of the United States.

James L. Byrnes,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–25605 Filed 11–3–88; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Biotechnology Research and Development Corp.

Notice is hereby given that, on September 27, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Biotechnology Research and Development Corporation ("BRDC") filed a written supplemental notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the agreements that have been finalized and executed. The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust damages under specified circumstances. Pursuant to Section 6(b) of the Act, the agreements that have been finalized and executed since the original notification are set out below.

BRDC has entered into a Master Agreement with its shareholders which establishes the procedure of the admission of additional shareholders and governs the research, patent, and technology licensing activities of BRDC. BRDC has also entered into a Shareholder Agreement with its shareholders which places restrictions on the rights of shareholders to transfer their shares, provides for the acquisition by BRDC of the shares of a withdrawing shareholder, and requires each shareholder to vote for members of BRDC's Board of Directors in accordance with the Shareholder Agreement. BRDC has entered into a Master Research and Development Agreement with the Agricultural Research Service ("ARS") which governs all research activities funded by BRDC at the Northern Regional Research Center located in Peoria, Illinois, and other facilities of the ARS. BRDC has entered into a Licensing and Royalty Sharing Agreement with the National Technical Information Service ("NTIS") which governs the patenting

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

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and licensing of all inventions in which BRDC and ARS have a co-ownership interest. BRDC has entered into a Master Research and Development Agreement with the Board of Trustees of the University of Illinois ("Illinois Agreement") which governs all research activities funded by BRDC at the University of Illinois, and the patenting and licensing of all inventions in which BRDC and the University of Illinois have co-ownership interest. The shareholders and objectives remain the same.

On April 12, 1988, BRDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on May 12, 1988, 53 FR 16919.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-25604 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Development of Measurement and Control Technology

Notice is hereby given that on August 31, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Measurement and Control Engineering Center of the University of Tennessee filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project in the Development of Measurement and Control Technology. The notice discloses (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of the parties to the Measurement and Control Engineering Center of the University of Tennessee and its general areas of planned activities are given below.

The parties to the Measurement and Control Engineering Center are as follows:

Aluminum Company of America
Amoco Corporation
Celanese Corporation
DOW Chemical Company, U.S.A.
Martin Marietta Energy Systems
Eastman Kodak Company
Texas Instruments, Inc.

The objectives of the Measurement and Control Engineering Center are to sponsor research which is focused on the theoretical and practical developments in measurement and controls, concentrating on areas that will significantly improve the productivity, reliability, and safety of industrial systems and processes, to serve as a focal point for technology transfer and information exchange for the measurement and control field, and to train graduate level students in the field of measurement and control engineering.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-25610 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* (the "Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") filed written notification with the Attorney General and the Federal Trade Commission on September 13, 1988 concerning the identities of additional members of the NCMS and the change of the NCMS state of incorporation. The written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The NCMS formerly was a nonprofit public benefit corporation organized under the laws of the State of California. As of July 21, 1988, the California corporation changed its state of incorporation by merging into a Delaware shell corporation organized on May 3, 1988. Like the former California Corporation, the Delaware corporation will undertake research in the areas of production equipment design, analysis, testing and control, manufacturing data and factory control, manufacturing processes and materials, manufacturing operations, information and technology transfer and strategic issues. The Delaware corporation as the surviving corporation will continue under the name National Center for Manufacturing Sciences, Inc. with revised Bylaws. The principal place of business continues to be at 900 Victors way, Ann Arbor, Michigan 48108.

The following are additional parties which have become members of the NCMS:

Bresson, Rupp, Lipa & Company
Lehr Precision, Inc.
Prime Technology, Inc.

As of August 10, 1988, due to a change from domestic to foreign ownership, the following companies have ceased to be members of the NCMS:

International Cybernetics Corporation
Raycon Textron, Inc.

No other changes have been made in either the membership or planned activity of the NCMS.

On February 20, 1987, the NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 17, 1987, 52 FR 8375. On April 15 and May 5, 1988, the NCMS filed additional notices identifying its initial membership and the Department of Justice published these notices in the Federal Register pursuant to section 6(b) of the Act of June 2, 1988, 53 FR 20194. On July 11, 1988, the NCMS filed another additional notification of a change in membership, which notice appeared in the Federal Register on August 19, 1988, 53 FR 31771.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88-25611 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

United States Trustee Program; Certification to the United States Court of Appeals for the Ninth Circuit; Alaska, et al

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Ninth Circuit on this date that, in the region specified in paragraph 581(a)(18) of title 28, United States Code, composed of the federal judicial districts for the States of Alaska, Idaho (exclusive of Yellowstone National Park), Montana (exclusive of Yellowstone National Park), Oregon, and Washington, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this dates to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Dated: October 20, 1988

Dick Thornburgh,

Attorney General.

[FR Doc. 88-25617 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

United States Trustee Program; Certification to the United States Court of Appeals for the Eighth Circuit; Arkansas, et al.

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Eighth Circuit on this date that, in the region specified in paragraph 581(a)(13) of title 28, United States Code, composed of the judicial districts established for the States of Arkansas, Nebraska, and Missouri, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: October 20, 1988.

Dick Thornburgh,

Attorney General.

[FR Doc. 88-25616 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

United States Trustee Program; Certification to the United States Court of Appeals for the Ninth Circuit; California and Nevada

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Ninth Circuit on this date that, in the region specified in paragraph 581(a)(17) of title 28, United States Code, composed of the Eastern District of California and the Northern District of California; and the judicial district established for the State of Nevada, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: October 20, 1988.

Dick Thornburgh,

Attorney General.

[FR Doc. 88-25619 Filed 11-3-88; 8:45 am]

BILLING CODE 4410-01-M

United States Trustee Program; Certification to the United States Court of Appeals for the Ninth Circuit; California, et al.

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Ninth Circuit on this date that, in the region specified in paragraph 581(a)(15) of title 28, United States Code, composed of the Southern District of California; and the judicial districts established for the State of Hawaii, and for Guam and the Commonwealth of the Northern Mariana Islands, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days this date as to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

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Date: October 20, 1988.
Dick Thornburgh,
Attorney General.
[FR Doc. 88-25618 Filed 11-3-88; 8:45 am]
BILLING CODE 4410-01-M

United States Trustee Program; Certification to the United States Court of Appeals for the Fifth Circuit; Louisiana and Mississippi

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Fifth Circuit on this date that, in the region specified in paragraph 581(a)(5) of title 28, United States Code, composed of the judicial districts established for the States of Louisiana and Mississippi, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: October 20, 1988.
Dick Thornburgh,
Attorney General.
[FR Doc. 88-25615 Filed 11-3-88; 8:45 am]
BILLING CODE 4410-01-M

United States Trustee program; Certification to the United States Court of Appeals for the Fifth Circuit; Texas

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, 100 Stat. 388 (1986), hereby certifies to the United States Court of Appeals for the Fifth Circuit on this date that, in the region specified in paragraph 581(a)(7) of title 28, United States Code, composed of the Southern District of Texas and the Western District of Texas, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 or title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: October 20, 1988.
Dick Thornburgh,
Attorney General.
[FR Doc. 88-25614 Filed 11-3-88; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Selection of States for Job Corps Centers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Department of Labor requests information to assist in the selection of States for new Job Corps centers. This notice specifies the criteria for selection.

DATE: Comments are requested by December 5, 1988.

ADDRESS: Comments shall be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Room N-4508, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Peter E. Rell Director, Office of Job Corps.

FOR FURTHER INFORMATION CONTACT: Peter E. Rell, Director, Office of Job Corps; Telephone: 202-535-0550.

SUPPLEMENTARY INFORMATION: The Department of Labor intends to open six new Job Corps centers. Congress appropriated $48 million in the 1988/89 appropriations bills to undertake this effort. The Senate Appropriations Committee language specified the following criteria for the Department to take into consideration in its selection of sites for new Job Corps centers, in addition to a general assessment of need. These are "priority consideration to States currently without a Job Corps center; preference to States where existing Government facilities can be used at a nominal cost; preference to States which have demonstrated a commitment to linking a center with other Federal, State, and local employment, training, and education programs; consideration to States which have shown a commitment to utilizing the Job Corps program in conjunction with other training programs to meet the needs of individuals with other barriers to employment, such as single parents; priority consideration to enhancing Job Corps services for persons with disabilities."

Based on previously available information, the Department has selected 2 States which have a demonstrated need as well as explicitly meeting criteria in the Senate Committee language. These are Kansas and Connecticut.

The Department of Labor has received initial expressions of interest from several other States and will follow up with these States. This Notice solicits formal input from all interested States to assist in the selection of the remaining 4 center sites. Information which would be helpful to the Department includes any information related to the factors cited above from the Senate Committee language as well as other information demonstrating particular need.

The Job Corps program is designed and intended to serve severely disadvantaged youth in need of intensive services who typically (1) have not succeeded in the traditional public school setting, (2) have experienced difficulty in channeling their behavior and energies in productive ways, (3) are unemployed and lack requisite education and skills to obtain meaningful employment, and (4) are poor.

The Department hereby requests additional input from interested parties in order to assist in its selection process for the additional sites.

Signed at Washington, DC, this 31st day of October 1988.
Roberts T. Jones,
Assistant Secretary of Labor
[FR Doc. 88-25631 Filed 11-3-88; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA88-1 (Jan. 8, 1988) ..... pp. 376-380, 387.
MA88-2 (Jan. 8, 1988) ..... pp. 392-395, 397.
MA88-3 (Jan. 8, 1988) ..... pp. 406-408.
Rhode Island:
RI88-1 (Jan. 8, 1988) ..... pp. 1016-1020.

Volume II

Illinois:
IL88-1 (Jan. 8, 1988) ..... pp. 68-94.
IL88-7 (Jan. 8, 1988) ..... pp. 138.
IL88-10 (Jan. 8, 1988) ..... pp. 156.
IL88-12 (Jan. 8, 1988) ..... pp. 164-172b.
IL88-16 (Jan. 8, 1988) ..... pp. 204-206.
Indiana:
IN88-1 (Jan. 8, 1988) ..... pp. 234-237, 239.
IN88-2 (Jan. 8, 1988) ..... pp. 248-252.
IN88-3 (Jan. 8, 1988) ..... pp. 266-270.
IN88-4 (Jan. 8, 1988) ..... pp. 278, 280-281.
IN88-5 (Jan. 8, 1988) ..... pp. 290-292.
IN88-6 (Jan. 8, 1988) ..... p. 300.
Missouri:
MO88-1 (Jan. 8, 1988) ..... pp. 584.

Volume III

Idaho:
ID88-1 (Jan. 8, 1988) ..... pp. 143-144.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which incudes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 28th day of October 1988.
Alan L. Moss,
Director, Division of Wage Determinations.
[FR Doc. 88-25400 Filed 11-3-88; 8:45 am]
BILLING CODE 4510-27-M

VOL 53 ISS 214 NO 4 1988 UMI

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-93)]

National Environmental Policy Act; Notice of Availability of Final Environmental Impact Statement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: Notice is hereby given of the public availability of the final Environmental Impact Statement (EIS) for the Galileo and Ulysses Missions (Tier-1). This document addresses National Aeronautics and Space Administration decisionmaking associated with continuing to make modifications to the Galileo and Ulysses spacecraft to preserve the launch opportunity on the Space Transportation System (STS) Shuttle in October 1989 and October 1990, respectively.

Comments on the supplemental draft EIS were previously solicited from State and local agencies and members of the public through a notice in the Federal Register of November 30, 1987.

Copies of the supplemental draft and final Statement have been furnished to the Council on Environmental Quality; the Environmental Protection Agency; the Departments of Air Force, Commerce, Defense, Energy, Health and Human Services, and Transportation; the National Academy of Sciences; the Nuclear Regulatory Commission; the Office of Management and Budget; to appropriate state and local agencies; and to numerous private organizations.

Copies of the final statement may be obtained or examined at any of the following locations:

(a) NASA Headquarters, Public Documents Room (Room 126), 600 Independence Avenue, SW., Washington, DC 20546.

(b) NASA/Ames Research Center, (Building 201, Room 17), Moffett Field, CA 94035.

(c) NASA/Ames Research Center, Dryden Flight Research Facility (Building 4800, Room 1017), P.O. Box 273, Edwards, CA 93523.

(d) NASA/Goddard Space Flight Center (Building 8, Room 150), Greenbelt, MD 20771.

(e) NASA/Johnson Space Center (Building 1, Room 136), Houston, TX 77058.

(f) NASA/Kennedy Space Center (Headquarters Building, Room 1207), Kennedy Space Center, FL 32899.

(g) NASA/Langley Research Center (Building 1219, Room 304), Hampton VA 23365.

(h) NASA/Lewis Research Center (Administration Building, Room 120), 21000 Brookpark Road, Cleveland, OH 44135.

(i) NASA/Marshall Space Flight Center (Building 4200, Room G-11), Huntsville, AL 35812.

(j) NASA/Stennis Space Center (Building 1100, Room A-213), Bay St. Louis, MS 39520.

(k) Jet Propulsion Laboratory (Building 180, Room 600), 4800 Oak Grove Drive, Pasadena, CA 91109.

(l) NASA/Goddard Space Flight Center, Wallops Flight Facility (Library Building, Room E-105), Wallops Island, VA 23337.

October 21, 1988.

C. Howard Robins, Jr.,

Deputy Associate Administrator for Management.

[FR Doc. 88-25573 Filed 11-3-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313]

Arkansas Power & Light Co.; Arkansas Nuclear One, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Operating License No. DPR-51 issued to Arkansas Power & Light Company (AP&L or the licensee) for operation of the Arkansas Nuclear One, Unit 1 (ANO-1) located in Pope County, Arkansas.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would change the plant Technical Specifications (TSs) to reflect the Cycle 9 core reload and to change the variable low pressure trip setpoint. The affected TS Sections are as follows: Section 2.1, Safety Limits, Reactor Core; Section 2.3, Limiting Safety System Settings, Protective Instrumentation; Section 3.5.2, Control Rod Group and Power Distribution Limits; and Section 5.3, Reactor Design Features.

The proposed action is in accordance with the licensee's applications for amendment dated July 20 and August 31, 1988.

Need for the Proposed Action.

The proposed TS changes are needed to support the loading of 60 fresh fuel assemblies (FAs) and 52 burnable poison rod assemblies (BPRAs), the shuffling of 116 FAs, the reinsertion of one previously used FA, and the replacement of 8 black axial power shaping rods (APSRs) with grey APSRs. The core locations of the 68 control rod assemblies (CRAs) are the same as those of the previous cycle, but the group designations are different. In addition other TS changes proposed would permit revised quadrant tilt limits, and a less restrictive variable low pressure trip setpoint.

Environmental Impacts of the Proposed Action

The Commission has evaluated the environmental impact of the proposed amendment and has determined that neither the probability of accidents nor the post-accident radiological plant releases would be greater then previously determined. The proposed amendment does not otherwise affect radiological plant effluents during normal operation. In addition, the proposed amendment does not have any influence upon occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed TS changes involve features located entirely within the restricted area as defined in 10 CFR Part 20. They would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing regarding the proposed changes to the TSs, was published in the Federal Register on September 16, 1988 (53 FR 36141). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would only result in requiring a revised core reload design to operate within the present TS requirements.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's safety analysis and changes to the TSs that support the proposed amendment. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the applications for license amendments dated July 20 and August 31, 1988 which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-25594 Filed 11-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454, 50-455, 50-456, 50-457]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License; Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37 and NPF-66, issued to the Commonwealth Edison (the licensee), for operation of the Byron Station, Units 1 and 2 located in Ogle County, Illinois, and Facility Operating License Nos. NPF-72 and NPF-77, issued to the licensee for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The amendments would change Technical Specifications 4.6.1.3a to be consistent with the Standard Technical Specifications and to allow continuous pressure testing of the containment air lock door seal gaskets.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulation.

By December 5, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petitions for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interst of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permited with particular reference of the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days perior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the peitition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its

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technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 4, 1988, which is available to public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–25653 Filed 11–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–20880, License No. 35–23304–01, EA 88–212]

Hole Truth Inc., Oklahoma City, OK; Order Modifying License, Effective Immediately

I

Hole Truth, Inc. (licensee), is the holder of Material License No. 35–23304–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 30, 1984. The license is due to expire on May 31, 1989. The license authorizes the licensee to process sealed sources of americium-241 and cesium-137; to possess and use any form of iodine-131, iridium-192, gold-198 and silver-110; to possess and use any form except liquids of scandium-46; and to possess and use beads or wires of cobalt-60, in tracer studies in oil and gas wells.

II

On July 14–15, 1988, NRC Region IV conducted an unannounced inspection of the licensee's activities at the licensee's facility in Oklahoma City, Oklahoma. The inspection disclosed numerous apparent violations of NRC and license requirements. The results of the inspection were discussed with the licensee at an Enforcement Conference on August 30, 1988. As a result of information provided by the licensee at the Enforcement Conference, two violations were modified, one violation was withdrawn and one additional violation was identified. The resulting violations are discribed in more detail in the Notice of Violation being issued this date. These violations involve the:

1. Failure to possess material such that the radiation levels in an unrestricted area were not in excess of 100 millirem in any 7 consecutive days as required by 10 CFR 20.105 (b)(2).

2. Failure to keep records of receipt of byproduct material from June 16 to October 4, 1987 in accordance with 10 CFR 30.51(a).

3. Failure to maintain records for each use of licensed material in accordance with 10 CFR 39.39.

4. Failure of an individual to wear personnel dosimetry while working with licensed material in accordance with 10 CFR 39.65.

5. Failure to block and brace radioactive material packages during transport in accordance with 49 CFR 177.842(d) and 10 CFR 71.5(a).

6. Failure to use Specification 7A, Type A packaging for transport of radioactive material not in excess of A–2 limits in accordance with 49 CFR 173.415(a) and 10 CFR 71.5(a).

7. Failure to exchange personnel dosimetry monthly for processing by the supplier from January to June 1988 as required by License Condition 19 and the license application.

8. Failure to maintain records of monthly surveys of the storage bunker in accordance with License Condition 19 and operating procedures.

9. Failure to perform adequate surveys of vehicles used for storing and transporting licensed material and keep records of such surveys in accordance with License Condition 19 and operating procedures. Specifically, the licensee's surveys failed to identify the presence of a vial containing approximately 10 millicuries of iridium-192 which had been present in the locked rear compartment of a pickup truck since July 9, 1988 and emitted measured radiation levels at the rear surface of the truck of 1.5 millirem per hour.

10. Failure to perform adequate surveys of job site operations and keep records of such surveys in accordance with License Condition 19 and operating procedures. Specifically, the licensee's surveys failed to identify unlabeled pipe couplings contaminated with radioactive material which had measured radiation levels of 0.6 mr/hr at 6 inches from the surface of the pipe coupling.

11. Failure to maintain records of surveys of licensed materials upon receipt in accordance with License Condition 19 and operating procedures.

12. Failure to maintain up-to-date records of radiation exposures as measured by TLD personnel dosimeters for 1987 in accordance with License Condition 19 and operating procedures.

13. Failure to return unused radioactive material to the storage bunker in accordance with License Condition 19 and operating procedures.

14. Failure to maintain disposal records of radioactive materials from June 16, 1987 to July 15, 1988 in accordance with License Condition 19 and operating procedures.

15. Failure to label as a radioactive source items which contained fixed contamination from radioactive material in excess of 0.2 mR/hr, as required by License Condition 19 and operating procedures.

III

The president and owner of Hole Truth Inc. (licensee) and his consultant attended the Enforcement Conference held on August 30, 1988. During the Enforcement Conference, the licensee stated that, (1) surveys had been performed, but no records were available; (2) corrective actions had been taken on all items discussed; and (3) that he only lacked duplicate copies of personnel monitoring records to be in full compliance with NRC requirements. Furthermore, the licensee committed to having its consultant inspect its operations on a quarterly basis for at least one year and for the owner's wife who had just finished a radiation safety course given by the consultant to aid in the management of the radiation safety records for the company. The licensee's consultant indicated that the apparent violations were due largely to the pressures brought about by the impact of the economic downturn in the oil industry which led to the bankruptcy of two well logging companies with which the licensee has been associated. The licensee did not dispute the statements of its consultant.

IV

On September 23, 1988, the NRC reinspected the licensee's program and found that all but one of the apparent violations resulting from the July 14–15, 1988, inspection had been corrected. Nonetheless, the fact that these violations occurred remains a significant concern to the NRC because collectively they are indicative of a breakdown of management oversight and control. In addition, the apparent abrupt decline in the quality of the program, when compared to the licensee's previous performance, is also of significant concern. Further, although the licensee maintains that it performed the surveys referenced above, it is clear from the NRC's review that some of the surveys were inadequate, in that the licensee failed to identify during a vehicle survey the presence of a vial containing approximately 10 millicuries of iridium-192 which had been present in the locked rear compartment of a pick-up truck since July 9, 1988 and emitted measured radiation levels at the rear surface of the truck of 1.5 millirem per hour. In another case, surveys did not identify unlabeled pipe couplings having radiation levels in excess of 0.2 mR/hr. The nature and number of the violations identified during the July 14–15, 1988 inspection, including failure to identify radiation levels in an unrestricted area and on unlabeled pipe couplings, raises a question concerning the licensee's commitment and ability to comply with the Commission's requirements in the future. Consequently, without the further action ordered here, I lack the reasonable assurance that licensed activities will be properly conducted such that the health and safety of the public will be adequately protected. Therefore, I have determined, pursuant to 10 CFR 2.204, that the public health, safety, and interest require that the license should be modified, as described below, effective immediately, and that no prior notice is required.

V

Accordingly, pursuant to sections 81, 161b, i, and o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR 2.204 and Parts 30 and 39, IT IS HEREBY ORDERED THAT, EFFECTIVE IMMEDIATELY:

License No. 35–23304–01 is modified to require that:

A. An independent party, qualified in the area of radiation safety, perform quarterly audits of the Radiation Safety Program. The audits shall continue for a period of 2 years. The credentials of the independent party and the proposed audit program shall be submitted to NRC Region IV for review and approval within 30 days of the date of this Order.

Audits shall be conducted for the purpose of evaluating the effectiveness of the radiation safety program in assuring adherence to NRC requirements and safe performance of licensed activities. These audits shall include, at a minimum:

1. Assessment of the effectiveness of management control and oversight of the program in assuring that radioactive material is used safely and that operations are conducted in compliance with NRC requirements.

2. Observation and evaluation of the performance of the licensee while engaged in licensed activities at a well logging field site at least twice during the two year audit period provided that the field site audits are separated by at least 12 months.

3. Assessment of the quality and accuracy of records required to be maintained concerning licensed activities.

The first such independent audit shall be conducted within 1 month of the NRC's notification to the licensee of NRC's approval of the audit program. The results of each audit shall be simultaneously provided to the licensee and the Regional Administrator, NRC Region IV, within 2 weeks of completion of the audit. The licensee shall provide to the Regional Administrator, NRC Region IV, within 30 days of receipt of the results of each audit, a description of the corrective actions taken for each recommendation by the independent party and justification for any recommendation not accepted.

The Regional Administrator, NRC Region IV, may in writing, relax or rescind any of these conditions for good cause shown.

VI

The licensee or any person adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the licensee requests a hearing, that person shall set forth with particularly the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this Order or a request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland, this 24th day of October 1988.

[FR Doc. 88–25593 Filed 11–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–443–OL–1, 50–444–OL–1 (Onsite Emergency Planning and Safety Issues)]

Public Service Company of New Hampshire et al.; (Seabrook Station, Units 1 and 2); Appointment of Adjudicatory Employees

Commissioners: Lando W. Zech, Jr., Chairman; Thomas M. Roberts, Kenneth M. Carr, Kenneth C. Rogers, James R. Curtiss.

In accord with the requirements of 10 CFR 2.4, notice is hereby given that Francis Paul Cardile, a Commission employee in the Office of Nuclear Reactor Research (RES), and Jack E. Rosenthal, a Commission employee in the Office for Analysis and Evaluation of Operational Data (AEOD), have been appointed as Commission adjudicatory employees within the meaning of § 2.4 to advise the Commission on issues in the above-captioned proceeding related to the Applicants' plan for funding decommissioning and commitments under that plan.

Mr. Cardile is a Nuclear Engineer in the Materials Engineering Branch, Division of Engineering, (RES). Mr. Rosenthal is Chief of the Reactor Operations Analysis Branch, Division of Safety Programs, AEOD. Neither Mr. Cardile nor Mr. Rosenthal has been engaged in performance of any investigative or litigating function in connection with the Seabrook facility or in any factually related proceeding.

Until such time as a final decision is issued in the captioned matter, interested persons outside the agency are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Cardile and Mr. Rosenthal.

It is so Ordered.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

Dated at Rockville, Maryland this 31st day of October, 1988.

[FR Doc. 88–25591 Filed 11–3–88; 8:45 am]

BILLING CODE 7590–01–M

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26235; File No. SR-CBOE-88-18]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Automated Submission of Trading Data

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1988, the Chicago Board Options Exchange, Incorporated, ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 15.7 Automated Submission of Trading Data

A member or member organization shall submit the trade data elements specified below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions that are the subject of a particular request for information made by the Exchange:

(a) If the transaction was a proprietary transaction effected or caused to be effected by the member or member organization for any account in which such member or member organization, or any member, allied number, approved person, partner, officer, director, or employee thereof, is directly or indirectly interested, such member or member organization shall submit or cause to be submitted the following information:

1. Clearing house number, or alpha symbol as used by the member or the member organization submitting the data;

2. Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member(s) or member organization(s) on the opposite side of the transaction;

3. Identifying symbol assigned to the security and where applicable for options the month and series symbols;

4. Date Transaction was executed;

5. Number of option contracts for each specific transaction and whether each transaction was an opening or closing purchase or sale; and where applicable the number of shares traded or held by accounts for which option data is submitted; and where applicable the number of shares for each specific transaction and whether each transaction was a purchase, sale or short sale;

6. Transaction Price;

7. Account number; and

8. Market center where transaction was executed.

(b) If the transaction was effected or caused to be effected by the member organization for any customer account, such member organization shall submit or cause to be submitted the following information:

1. Data elements (1) through (8) as contained in paragraph (a) above;

2. Customer name, address (es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s); and

3. If the transaction was effected for a member broker-dealer customer, whether the broker-dealer was acting as a principal or agent on the transaction or transactions that are the subject of the Exchange's request.

(c) In addition to the above trade data elements, a member or member organization shall submit such other information in such automated format as may be prescribed by the Exchange, as may from time to time be required.

(d) The Exchange may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (a) and (b) above be submitted to the Exchange in an automated format.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to require its members and member organizations to submit the customer and propietary trading data that it routinely requests in connection with its market surveillance inquiries (commonly referred to as "blue sheet information") [1] in the universal automated format developed by the Intermarket Surveillance Group ("ISG") and the Securities Industry Association at the request of the Securities and Exchange Commission ("SEC"). The Exchange anticipates that implementation of the automated "blue sheet" format will significantly enhance its regulatory and surveillance capabilities.

The Exchange's review of "blue information" is currently complicated by two factors. First, member organizations often do not submit the information on a timely basis, thus delaying the Exchange's inquiry. Second, in the usual course of an inquiry, a market surveillance analyst manually reviews trading runs submitted by several different firms, each of which may follow a different format and contain somewhat different information. Such a review is time consuming and difficult, particularly where a large number of transactions, firms and accounts are involved in the suspect trading.

The automated format will enable market surveillance analysts to evaluate "blue sheet information" quickly and comprehensively. For example, trading data could be sorted alphabetically (to detect trading by particular individuals or families), geographically (to detect concentrations in certain locations), by size (to identify transactions meriting special attention), chronologically, by price, or in any other manner desired. Information from several members also could be analyzed simultaneously to uncover violative conduct occurring among firms. As an additional benefit, the submission of "blue sheet information" in the automated format may expedite member from responses to information requests, since they will no longer need to produce potentially voluminous "hard copy" records.

The new rule should not impose a significant additional regulatory burden on members. While some firms may have to make initial changes to comply with the rule, ultimately they will be able to make a more cost-effective use of their resources by eliminating an otherwise time-consuming, labor intensive task. In addition, since most member organizations will have to develop automated "blue sheet" capabilities to comply with similar rules at the New York Stock Exchange ("NYSE") and American Stock Exchange ("AMEX") (*infra*, note 2) they could utilize the same systems to comply with the CBOE rule. In recognition of the burden that may be imposed on smaller member organizations, however, paragraph (d) of the proposed rule authorizes the Exchange to grant exceptions on a case-by-case basis to the automated reporting requirement where appropriate.

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it will improve the Exchange's regulatory and surveillance capabilities, enabling it to provide increased investor protection, assist in the prevention of fraudulent and manipulative acts and practices, and promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated effectiveness of this proposed rule change pursuant to section 19(b)(2) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register**. The proposed rule change is virtually identical to proposals submitted by the Amex and the NYSE that were noticed for the full thirty-day period and were recently approved by the Commission.[2] Moreover, accelerated effectiveness of this rule will enable the exchanges to issue a common circular regarding application of the rule to all members.[3]

The Commission finds, as it did with the Amex and NYSE proposals, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that adoption of the universal automated format for blue sheet information under the proposed rule will improve significantly the ability of CBOE's regulatory and surveillance staff to conduct their market surveillance and monitoring responsibilities under section 6(b)(1), 6(b)(2) and other provisions of the Act. Receipt of market surveillance information in an automated format will permit the Exchange's surveillance staff to review and analyze the data more rapidly and effectively by enabling them to directly enter the data into the Exchange's own computer system for analysis. Additionally, in instances where the Exchange refers matters to the Commission for further action, availability of the pertinent blue sheet information in an automated format also will facilitate the Commission's ability to analyze and evaluate relevant trading and market surveillance data. Finally, the Commission believes that adoption of the automated format will make it easier for member firms complying with the proposed rules to gather and submit information in response to requests from the Exchanges in a timely manner and will thus reduce the regulatory burden on those firms.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 25, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 1, 1988.

[FR Doc. 88-25628 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

[1] The term "blue sheet information" is derived from the blue SEC form, which was used by broker-dealers to respond to SEC requests for trading data prior to the widespread use of computers.

[2] *See* Securities Exchange Act Release No. 25859 (June 27, 1988), 53 FR 25029, approving File Nos. SR-Amex-88-4 and SR-NYSE-87-23.

[3] Many members firms have made programming modifications in order to comply with the NYSE and Amex rules and currently are submitting blue sheet information in automated format. Other member firms will be expected to meet the compliance requirement deadline of February 8, 1989 set by the ISG, or to seek an exemption under paragraph (d) of the proposed rule.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 31, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Baltimore Bancorp
Common Stock, $5 Par Value (File No. 7-3977)

Sterling Chemicals, Inc.
Common Stock, $.01 Par Value (File No. 7-3978)

Cypress Semiconductor Corporation
Common Stock, $0.01 Par Value (File No. 7-3979)

Jackpot Enterprises, Inc.
Common Stock, $0.01 Par Value (File No. 7-3980)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 21, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25629 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

VOL 53 ISS 214 NO 4 1988 UMI

[Rel. No. 34-26228; file Nos. SR-Phlx-88-29, SR-CBOE-88-19]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Chicago Board Options Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Changes

On October 3 and 17, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx") and the Chicago Board Options Exchange, Inc. ("CBOE") (collectively the "Exchanges"), respectively, submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder, proposed rule changes to amend, respectively, Phlx rule 1001 and CBOE Rule 4.11 to provide greater flexibility in the establishment of position and exercise limits for stock options.

Currently, position limits for individual stock options are determined in accordance with a three-tiered system established in April 1985.[3] Pursuant to this system, an underlying stock which meets specific standards governing trading volume and/or number of outstanding shares will qualify the overlying option for either an 8,000, 5,500, or 3,000 contract position limit. Under current practices, the Exchanges review the volume and outstanding share information of all underlying stocks every six months (in January and July) to determine which contract limit shall apply for the following six months. If an underlying stock meets the requirements of a higher position limit, the higher limit is effective the first business day following the January or July review period.

The proposed rule changes will revise the current review procedures such that the Exchanges, in their descretion, may increase an option's position limit before the next six-month review date if, subsequent to one six-month review but prior to the next review, and increase in the option's trading volume and/or outstanding shares would make a stock eligible for a higher position limit at the next review period. Nothing in the proposed rule changes, however, shall change the current six-month review process that occurs in January and July. In this regard, even if an option becomes eligible for a higher position limit between review periods, all subsequent calculations of that option's trading volume and/or outstanding shares for position limit purposes will continue to be based upon the six-month period immediately preceding the January or July review period, whichever is appropriate. The proposed rule changes also do not alter the existing position limit criteria relating to outstanding shares and/or trading volume.[4]

The Exchanges state that the proposed rule changes are designed to provide liquidity to certain options without increasing the potential for market manipulation. The Exchanges note that frequently an underlying stock meets or surpasses the eligibility requirements for a higher position limit prior to the next six-month review. The Exchanges note further that, under current rules, an option that qualifies for a higher position limit before the next review period remains at the lower limit until the next semi-annual review is conducted. The Exchanges suggest that limiting an option which is qualified for a higher position limit to the lower limit can discourage market participation by institutions and other market participants with substantial hedging needs.

The Commission finds that the proposed rule changes are consistent with the Act and in particular the requirements of Section 6 and the Rules and Regulations thereunder. More specifically, the Commission believes that the proposed rule changes will help provide additional liquidity to certain options by increasing institutional and individual investor participation in the trading of those options without altering the existing position limit criteria. In addition, because options can be used to hedge existing stock portfolios, the Commission believes that acceleration of the date upon which a qualified option's increased position limit takes effect will provide investors with a useful tool to hedge more effectively underlying stock positions.

The Commission believes further that any increase in an option's position limit before a semi-annual review period will not result in investor confusion. The Exchanges specifically have indicated that they will provide their member firms with adequate notice of any increase so as to ensure the investment community is aware in advance of the changed position limit.[5]

Finally, the Commission believes that the proposed rule changes, along with the recently approved two-year pilot program permitting a position limit exemption for up to twice the existing position limit where equity option positions are hedged on a one-for-one basis with underlying stock,[6] will assist specialists and market makers in adequately meeting their obligations to maintain a fair and orderly market.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication in the **Federal Register** because the Commission recently approved a substantially identical proposal to provide greater flexibility in determining position limits for stock options submitted by the American Stock Exchange, Inc.[7] In addition, because the current position limit criteria for equity options have not changed, the Commission does not believe that the proposed rule changes raise any additional market disruption or manipulation concerns.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of each exchange's filing also will be available for inspection and copying at the principal office of the

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] *See* Securities Exchange Act Release No. 21907 (March 29, 1985), 50 FR 13440.

[4] For example, under current Phlx and CBOE rules, if during the first two months after a six-month review a stock with an options position limit of 5,500 contracts trades 40,000,000 shares, the position limit would remain at 5,500 contracts even through the option would qualify for an 8,000 contract limit at the next six-month review. The Exchanges' proposed rule changes would allow the Exchanges, at their discretion, to raise the limit to 8,000 contracts after the stock had reached the requirements for an 8,000 contract limit.

[5] In this regard, the Commission expects that the Exchanges will exercise judgment in determining whether to raise an option's limit so that the six-month review will remain as the review period for the overwhelming majority of options. For example, it would be more consistent with the Exchanges' discretion under the proposed rules for them to raise the limit for an option with a 5,500 limit if the underlying stock reaches the 40,000,000 share trading threshold two months before a six-month review than if it reached it one week before a six-month review.

[6] *See* Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201.

[7] *See* Securities Exchange Act Release No. 26092 (September 19, 1988), 53 FR 37073.

respective exchange. All submissions should refer to the file numbers in the caption above and should be submitted by November 25, 1988.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

Dated: October 31, 1988.

[FR Doc. 88-25585 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26226; File No. SR-MBS-88-15]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change

On September 1, 1988, the MBS Clearing Corporation ("MBSCC") filed a proposed rule change (File No. SR-MBS-88-15) with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1). The proposal would impose a schedule of penalties on MBSCC participants ("Participants") who fail to make timely payment of their debit balances. On October 26, 1988, MBSCC filed an amendment to the proposal to change the basis of the filing to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). The Commission is publishing this notice to solicit comments on the proposal and is granting accelerated temporary approval of the proposal as described below.

I. Description of the Proposal

The proposed rule change would impose a schedule of penalties on Participants in the MBSCC Depository Division ("Depository Division") who fail to make timely payment of their debit balances. First, if payment of a Participant's debit balance is received after the Depository Division's 4:15 p.m. (EST) cutoff time, under the proposal Participants would be charged one of the following penalties:

Amount of payment	Penalty
(1) $50,000 or less	$50.
(2) $50,001 to $150,000	100.
(3) $150,001 to $1,000,000.	250.
(4) more than $1,000,000.	250 or the amount equal to one day's interest at the rate of 1% per annum, whichever is greater.

Second, if as a result of a late payment or nonpayment of a Participant's debit balance, the Depository Division is required to borrow or advance funds to cover the debit balance, the Depository Division would charge, in addition to interest, but in lieu of the penalty specified above, a penalty equal to the greater of $500 or one day's interest at 250 basis points (2.5%).

II. MBSCC's Rationale for the Proposal

MBSCC states that the proposed penalties are consistent with section 17A of the Act in that they promote an accurate clearance and settlement of securities transactions among Participants and provide appropriate disciplinary action for violation of the provisions of the Depository Division rules.

III. Discussion

The proposed penalties are being adopted pursuant to Article II, Rule 5, section 3(d) and Article VI, Rule 3 of the Depository Division rules, which generally provide that MBSCC may assess Participants a fine for failure to make timely payment of their debit balances. The proposed penalties are subject to appeal under Article VI, Rule 7, section 1(c) of the Depository Division rules, and under Article VI, Rule 3, no penalty becomes effective until five days after notification of the imposition thereof. Penalties are automatically stayed during the pendency of any appeal.

The Commission believes that temporary approval of the proposed penalties is justified. The proposed penalties are adopted from Depository Division rules considered and discussed in the Commission order granting MBSCC temporary registration as a clearing agency.[1] The Depository Division rules provide Participants with an opportunity to appeal the assessment of the proposed penalty, allowing Participants to explain any mitigating circumstances. Finally, the Commission believes that the proposed penalty will encourage Participants to make timely payment of their debit balance and reduce risk of loss to MBSCC and its Participants. Therefore, the Commission believes it appropriate to temporarily approve the proposed rule change, effective September 1, 1988, until January 5, 1989.

IV. Request for Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at MBSCC's principal office. All comments should refer to File No. SR-MBS-88-15 and should be submitted by November 25, 1988.

V. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MBS-88-15) be, and hereby is, temporarily approved effective nunc pro tunc September 1, 1988, until January 5, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 28, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25586 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1988).

[1] *See* Temporary Registration Order (Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

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[Rel. No. 34-26230; File No. SR-NASD-86-34]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Prompt Payment for Investment Company Shares

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on November 21, 1986 (and an amendment thereto on September 8, 1988), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to add a new paragraph to Article III, Section 26 of the NASD Rules of Fair Practice in order to establish time frames within which members must transmit payments for Investment Company shares to investment companies or their agents.

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26097, September 21, 1988) and by publication in the **Federal Register** (53 FR 37380, September 26, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-86-34, be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-(3a)(12).

Dated: October 31, 1988.

Johathan G. Katz,

Secretary.

[FR Doc. 88-25587 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26229; File No. SR-NASD-88-38]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Minimum Number of Persons on Disciplinary Hearing Panels

The National Association of Securities Dealers, Inc. ("NASD") submitted on September 19, 1988, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal amends Article II, Section 8 (a) and (b) of the NASD Code of Procedure to reduce the minimum number of persons on District Business Conduct Committee ("DBCC") and Market Surveillance Committee hearing panels from three to two persons and to reduce the number of persons required to be current DBCC members on DBCC hearing panels from two to one.

Notice of the proposed rule change together with the terms of substance of the proposed rule changes was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26112, September 26, 1988) and by publication in the **Federal Register** (53 FR 38397, September 30, 1988).

One comment letter was received on the proposed rule change.[1] The commentator argues that a minimum of three persons on the panels is necessary to achieve objective and impartial determinations and that if more panel members are needed, the pool of prospective panelists should be increased.

The Commission has reviewed carefully the arguments raised by the commentator, but has determined to approve the proposed rule change based on the NASD's assertion in the proposal that disciplinary cases have become more numerous and complex and have required significant time commitments on the part of DBCC and Market Surveillance Committee members. This has led to increasing difficulty in conducting hearings due to the unavailability of panel members. In addition, the Commission notes that under Article II, section 6(f) of the Code of Procedure, DBCC and Market Surveillance Committee hearing panels present recommended findings and sanctions to the full Committee, which makes the final determination by a majority vote. The Commission is satisfied that the proposed rule change is an appropriate response to a continuing problem in conducting disciplinary hearings.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

[1] Letter from William P. Spinks, Vice President, Consolidated Financial Investments, Inc., to Secretary, SEC (undated).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: October 31, 1988.

[FR Doc. 88-25588 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

Senior Executive Service Performance Review Board, List of Members; Schedule of Bonus Awards

AGENCY: Securities and Exchange Commission.

ACTION: Listing of personnel serving as members of this agency's senior executive service performance review board and announcement of schedule for awarding bonuses.

SUMMARY: Pub. L. 95-454 dated October 13, 1978 (Civil Service Reform Act of 1978) requires that federal agencies publish notification of the appointment of individuals who serve as members of that agency's Performance Review Board (PRB). This notice announces the PRB membership and the schedule for awarding SES bonuses in the Commission. The Securities and Exhange Commission has established a Performance Review Board consisting of:

1. George Kundahl, Executive Director, PRB Chairman.
2. Daniel Goelzer, General Counsel.
3. Linda Fienberg, Executive Assistant to the Chairman.

The Securities and Exchange Commission plans to award bonuses to Senior Executive Service members on or about January 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. McConnell, Office of the Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004 (202) 272-2700.

Jonathan G. Katz,

Secretary.

October 31, 1988.

[FR Doc. 88-5589 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16617; 812-6746]

Kidder, Peabody & Co. Incorporated, Kidder, Peabody Group Inc. and Webster Management Corp.; Application

November 1, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Extension of Time for Comment Based on Reports Filed Pursuant to Order of Temporary Exemption from the Provisions of section 9(a) of the Investment Company Act of 1940 ("1940 Act").

Applicants: Kidder, Peabody & Co. Incorporated ("Kidder"), Kidder, Peabody Group Inc. and Webster Management Corporation ("Webster") (collectively "Applicants").

Relevant 1940 Act Sections: Exemption requested from provisions of section 9(a) of the 1940 Act.

SUMMARY: The Commission is extending the time period during which interested persons may comment on Applicants' request under section 9(c) of the Investment Company Act of 1940 for a temporary and permanent order exempting Applicants from the provisions of section 9(a). The Commission issued a notice on October 6, 1988 (Investment Company Act Release No. 16589), giving interested persons until October 31, 1988, to comment on the application for a permanent section 9(c) order based on the information contained in certain reports filed pursuant to a temporary order issued on June 4, 1987 (Investment Company Act Release No. 15765) ("Temporary Order"). The Commission is extending the time period until November 25, 1988.

Filing Dates: The application was filed on June 4, 1987. The reports submitted pursuant to the Temporary Order were filed on January 29, 1988, and on June 3, 1988.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 20 Exchange Place, New York, N.Y. 10005.

FOR FURTHER INFORMATION CONTACT: Regina Hamilton, Staff Attorney, (202) 272-3024, or Karen L. Skidmore, Branch Chief, (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300). Copies of the filed reports are available for public inspection in the Commission's Public Reference Branch at its Headquarters Office in Washington, DC and its Regional Office in New York. For further information, refer to the Temporary Order

Extension of Time for Comment

Notice is hereby given that the Commission has extended the time period during which interested persons may comment on Applicants' request for a permanent section 9(c) order based on the information contained in the reports described in Investment Company Act Release No. 16589. Interested persons wishing to comment on the application based on information contained in the reports should file such comments with the Secretary of the SEC by 5:30 p.m., on November 25, 1988.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25630 Filed 11-3-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 28, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45895

Date Filed: October 25, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 22, 1988.

Description: Application of Canadian Airlines International Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to serve the Route Toronto-Chicago.

Docket No. 45901

Date Filed: October 28, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 25, 1988.

Description: Application of Holidair Airways Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations requests an initial foreign air carrier permit authorizing foreign charter air transportation of persons and their accompanied baggage, and property and mail between points in the United States and points in Canada.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-25638 Filed 11-3-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Cir.; Public Debt Series—No. 27-88]

Treasury Notes, Series AG-1990

Washington, October 27, 1988.

The Secretary announced on October 26, 1988, that the interest rate on the notes designated Series AG-1990, described in Department Circular—Public Debt Series—No. 27-88 dated October 20, 1988, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-25542 Filed 11-3-88; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Private Sector Annual Meeting

The Annual meeting of the USIA Private Sector Committees will be held on Thursday, November 17, 1988 from 10:30 a.m. to 12:30 p.m.

Location of the meeting will be in the Loy Henderson conference room at the Department of State.

Advisory committees represented at this session are: Book and Library, Radio Engineering, VOA Broadcast, Television Telecommunications, Medical Science.

Please contact Louise G. Wheeler on 202-485-8889 for further information.

Dated: November 1, 1988.

Louise G. Wheeler,

Director, Private Sector Committees.

[FR Doc. 25576 Filed 11-3-88; 8:45 am]

BILLING CODE 8230-01-M

VOL 53 ISS 214 NO 4 1988 UMI

Corrections

Federal Register
Vol. 53, No. 214
Friday, November 4, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control

Correction

In the issue of Tuesday, November 1, 1988, on pages 44144 and 44145, in the correction to rule document 88-22541, a portion of the text was incorrect and is corrected as follows:

§ 773.5 [Corrected]

1. On page 44145, in paragraph 8, 2nd line, "§ 773.5(a)(1)" should read "§ 773.5(a)(2)".

2. On the same page in paragraph 9, in the 3rd line, "director or" should read "or director".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

Correction

In notice document 88-18917 beginning on page 32144 in the issue of Tuesday, August 23, 1988, make the following correction:

On page 32151, some paragraphs were printed out of order. Beginning in the first column with paragraph (k), and up to paragraph (j) in the third column, the text is correctly printed below.

(k) [Reserved]

(1) *Food Safety and Inspection Service.* (1)-(2) [Reserved]

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions for Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) [Reserved]

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) [Reserved]

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) indefinite employment for the duration of each decennial census for key employees located at the Master District offices (MDO) and Processing Offices (PO): *Provided,* That temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)-(h) [Reserved]

(i) *Office of the Under Secretary for International Trade.* (10 Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Season, and Bag Possession Limits for Certain Migratory Game Birds in the United States

Correction

In rule document 88-22121 beginning on page 37944 in the issue of Wednesday, September 28, 1988, make the following correction:

A column of text which should have appeared as the last column of figures on page 37953 inadvertently appeared as the first column of figures on page 37954. The text of pages 37953 and 37954 is correctly printed below.

Note: For a Fish and Wildlife Service correction to this document, see the Rules and Regulations section of this issue.

BILLING CODE 1505-01-D

Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Nov. 12-Jan. 20.	15(5)	15(5)
Geese:	Nov. 23-Jan. 31.	5	5
Limits include no more than:			
Canada or white-fronted		2	4
Snow (including blue) and brant		5	5
Arkansas			
Ducks	Nov. 26-Dec. 18 & Dec. 26-Jan. 1.	3	6
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Sept. 1-Nov. 9.	15(5)	30(5)
Geese:		5	10
Canada	Jan. 14-Jan. 29.	1	2
White-fronted	Nov. 26-Jan. 29.	2	4
Snow (including blue) and brant	Nov. 26-Jan. 29.	5	10
Illinois:			
Ducks:		3	6
North Zone (1)	Oct. 29-Nov. 27.		
Central Zone (1)	Nov. 5-Dec. 4.		
South Zone (1)	Nov. 11-Dec. 10.		
Coots	Same as for ducks	15	30
Geese(2)(3):		5	10
North Zone(1):			
Tri-County Zone(1)	Nov. 5-Dec. 24.	2	4
Remainder of North Zone	Oct. 29-Dec. 17.	2	4
Central Zone (1):			
Tri-County Zone(1)	Nov. 5-Dec. 24.	1	4
Remainder of Central Zone	Nov. 5-Dec. 24.	2	4
South Zone (1):			
Southern Illinois Quota Zone (Alexander, Jackson, Union, and Williamson Counties)	Nov. 21-Jan. 9.	2	4
Rend Lake Quota Zone (Franklin and Jefferson Counties)	Nov. 21-Jan. 9.	2	4
Remainder of South Zone	Nov. 21-Jan. 9.	2	4
Limits include no more than:			
Canada		2	3
White-fronted		2	4
Snow (including blue) and brant		5	10
Indiana			
Ducks:		3	6
North Zone (1)	Oct. 14-Oct. 16 & Nov. 4-Nov. 30.		
South Zone (1)	Oct. 22-Oct. 24 & Nov. 19-Dec. 15.		
Ohio River Zone (1)	Nov. 24-Nov. 27 & Dec. 10-Jan. 4.		
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Sept. 1-Nov. 9.	15(5)	30(5)
Geese:		5	10
Canada(3):		2	4
North Zone (1)	Oct. 14-Oct. 16 & Nov. 4-Jan. 9.		
South Zone (1):			
Posey County (3)	Dec. 13-Jan. 31.		
Remainder of South Zone	Oct. 22-Oct. 30 & Nov. 19-Jan. 18.		
Ohio River Zone(1):			
Posey County	Dec. 13-Jan. 31.		

Remainder of Ohio River Zone	Nov. 12-Jan. 20.		
Other Geese:			
North Zone(1)	Oct. 14-Oct. 16 & Nov. 4-Jan. 9.		
South Zone(1)	Oct. 22-Oct. 30 & Nov. 19-Jan. 18.		
Ohio River Zone(1)	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Iowa			
Ducks:		1	6
North Zone(1)	Oct. 8-Oct. 9 & Oct. 22-Nov. 18.		
South Zone(1)	Oct. 22-Oct. 28 & Nov. 5-Nov. 27.		
Coots	Same as for ducks	15	30
Geese:		5	10
Canada:		2	4
Southwest Zone (1)	Oct. 15-Nov. 28.		
Remainder of State	Oct. 1-Nov. 14.		
Other geese:			
Southwest Zone (1)	Oct. 15-Dec. 23.		
Remainder of State	Oct. 1-Dec. 9.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Kentucky			
Ducks	Nov. 24-Nov. 27 & Dec. 10-Jan. 4.	3	6
Pintails	Nov. 24-Nov. 27.	1	2
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Nov. 24-Jan. 20.	15(5)	30(5)
Geese(2):		5	10
Canada:		2	4
Western Zone (1)(3)	Dec. 10-Jan. 28.		
Remainder of State	Nov. 24-Jan. 31.		
Other geese	Nov. 24-Jan. 28.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Louisiana			
Ducks:		3	6
East Zone (1)	Nov. 19-Nov. 27 & Dec. 19-Jan. 8.		
West Zone (1)	Nov. 19-Dec. 4 & Dec. 26-Jan. 8.		
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Nov. 19-Jan. 20.	15(5)	30(5)
Geese:		-	-
Canada	Closed.	5	10
Other Geese:			
East Zone(1)	Nov. 19-Jan. 27.		
West Zone (1)	Nov. 19-Dec. 7 & Dec. 26-Feb. 14.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10

Michigan			
Ducks:		3	6
North Zone (1)	Oct. 8-Nov. 6.		
Middle Zone (1)	Oct. 8-Nov. 6.		
South Zone (1)	Oct. 15-Nov. 10 & Nov. 25-Nov. 27.		
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Same as for ducks	15(5)	30(5)
Geese:		5	10
Canada(3):			
North Zone (1):			
Superior Counties Goose Management Area (1)	Sept. 26-Nov. 4	2	4
Remainder of North Zone	Sept. 26-Nov. 4.	2	4
Middle Zone (1)	Oct. 8-Nov. 16.	2	4
South Zone (1):			
Allegan County Goose Management Area(1)	Oct. 15-Nov. 27.	1	2
Muskegon Wastewater Goose Management Area (1)	Oct. 15-Nov. 13 & Dec. 1-Dec. 13.	2	4
Saginaw County Goose Management Area (1)	Oct. 1-Nov. 13 & Nov. 25-Nov. 27.	2	4
Fish Point Goose Management Area(1)	Oct. 1-Nov. 13 & Nov. 25-Nov. 27.	2	4
Southern Michigan Goose Management Area(1)	Oct. 25-Nov. 13 & Nov. 25-Dec. 14 & Jan 7-Feb. 5	2	4
Remainder of South Zone	Oct. 15-Nov. 13 & Nov. 25-Dec. 4.	2	4
Other geese: (Seasons are concurrent with Canada goose seasons except in the Southern Michigan Goose Management Area, where the Jan. 7- to Feb. 5 special season is for Canada geese only). Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Minnesota			
Ducks:	Oct. 8-Nov. 6.	3	6
Limits include no more than:			
Mallards (no more than 1 female mallard daily or 2 in possession)		2	4
Pintails	Oct. 8-Oct. 14.	1	2
Black ducks		1	2
Wood ducks		2	4
Redheads		1	2
Pintails	Oct. 8-Oct. 14.	1	2
Mergansers (no more than 1 hooded merganser daily or 2 in possession)		5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens(4)	Oct. 8-Nov. 6.	15(5)	30(5)

Geese:		5	10
Canada:			
West Central Zone(1)			
Lac qui Parle Zone(1)(3)	Oct. 8-Nov. 6.	1	2
Remainder of West Central Zone	Oct. 8-Nov. 6.	1	2
Southeastern Zone (1):			
Metro Goose Management Block(1) and Olmsted County	Oct. 1-Dec. 9 & Dec. 16-Dec. 25.	2	4
Remainder of Southeastern Zone	Oct. 1-Dec. 9.	2	4
Remainder of State	Oct. 1-Nov. 9.	1	2
Other geese:			
West Central Zone(1)	Oct. 8-Nov. 6.		
Southeastern Zone(1)	Oct. 1-Dec. 91.		
Remainder of State	Oct. 1-Nov. 9.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Mississippi			
Ducks	Dec. 10-Jan. 8.	3	6
Coots	Same as for ducks.	15	30
Gallinules/Moorhens(4)	Oct. 15-Dec. 23.	15(5)	30(5)
Geese:		5	10
Canada:		1	2
Sardis Zone (1)	Dec. 5-Dec. 14 & Jan. 12-Jan. 31.		
Remainder of State	Jan. 17-Jan. 31.		
Other geese	Nov. 23-Jan. 31.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Missouri			
Ducks:		3	6
North Zone (1)	Nov. 5-Dec. 4.		
South Zone (1)	Nov. 19-Dec 4 & Dec. 26-Jan. 8.		
Mergansers (except hooded)	Same as for ducks.	3	6
Hooded mergansers	Same as for ducks.	1	2
Coots	Same as for ducks.	15	30
Geese(2):		5	10
Canada:			
North Zone (1):			
Swan Lake Zone (1) (3)	Nov. 5-Nov. 14 & Nov. 25-Dec. 24.	2	4
Southeast Zone(1)	Dec. 4-Jan. 22.	2	4
Remainder of North Zone	Nov. 5-Nov. 14 & Nov. 25-Dec. 24.	1	2
South Zone (1):			
Southeast Zone (1)	Dec. 4-Jan. 22.	2	4
Remainder of South Zone	Nov. 19-Dec. 4 & Dec. 26-Jan. 18.	1	2
Other geese:			
North Zone(1):			
Southeast Zone	Nov. 14-Jan. 22.		
Remainder of North Zone	Nov. 5-Jan. 13.		
South Zone(1)	Nov. 14-Jan. 22.		
Limits include no more than:			
White-fronted		2	4

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federal register

Friday
November 4, 1988

Part II

Office of Management and Budget

Grants and Cooperative Agreements; Proposed Revision of Circulars A-102 and A-110; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Grants and Cooperative Agreements

AGENCY: Office of Management and Budget.

ACTION: Proposed Revision of Circulars A–102 and A–110.

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed circular that would replace Office of Management and Budget Circulars A–102, "Grants and Cooperative Agreements with State and Local Governments," dated March 3, 1988, and A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," dated July 1, 1976. The proposed circular contains guidance to the Federal agencies on grants management issues which are internal to the Federal agencies. Elsewhere in this issue of the **Federal Register**, Federal agencies are proposing a common regulation, "Uniform Administrative Requirements for Grants and Cooperative Agreements," which contains fiscal and administrative requirements for grantees.

DATES: Comments must be received on or before January 3, 1989.

ADDRESS: Comments should be submitted to the Financial Management Division, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jonathan Breul, Financial Management Division, Office of Management and Budget, Washington, DC 20503. (202) 395–3050.

SUPPLEMENTARY INFORMATION: An interagency task force under the President's Council on Management Improvement (PCMI) was established to review existing guidance for managing Federal aid programs. On June 18, 1984, OMB published a Notice in the **Federal Register** (49 FR 24958) announcing the review and seeking public comment on over 50 issues and possible options for each. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress submitted several hundred comments.

Five agency-chaired teams developed two products: a revised OMB Circular A–102—addressed solely to Federal agencies, and a government-wide "common rule"—addressed to State and local grantees. The proposed government-wide common rule stated the fiscal and administrative conditions governing grants to State and local governments and subgrantees which are State and local governments.

On March 12, 1987, the President directed OMB to revise Circular A–102 and all affected Federal agencies to simultaneously propose a common rule to adopt verbatim government-wide grants management terms and conditions. OMB published a proposed revision to Circular A–102 as a Notice in the June 9, 1987 **Federal Register** (52 FR 21816–21818). Simultaneously, in the same issue (52 FR 21820–21852), Federal grant-making agencies proposed a common rule. On March 11, 1988, OMB published the final revised Circular A–102, dated March 3, 1988, in the **Federal Register**, (53 FR 8027–8032). Twenty-four agencies published the final government-wide common rule on the same day (53 FR 8033–8103).

As indicated in the President's Fiscal Year 1989 *Management Report*, the PCMI asked OMB and HHS to co-chair a similar effort to review and issue a common rule and revised circular to conform the grants management requirements for non-governmental grantees, now covered by OMB Circular A–110. OMB issued a Notice in the **Federal Register** on June 24, 1987 announcing this plan and soliciting public suggestions on issues important to business-like management of Federal assistance to universities, hospitals and other nonprofit organizations.

Historically, the differences between Circulars A–102 and A–110 have been few and largely insignificant. In recognition of this, the six departments and agencies (the Departments of Agriculture, Education, Energy, Health and Human Services and Labor and the Environmental Protection Agency), which implemented the two circulars in departmental or agency-wide rules, each did so in a common rule. Since these agencies account for a majority of grantees and grant programs, essentially agencies have been applying a single rule to both governmental and non-governmental grantees for some time.

Three agency-chaired teams were formed to look at: (1) The "differences" between the Circulars A–102 and A–110, (2) "new issues" not presently covered in either circular, and (3) "basic research." Based on a review of the comments to the July 24, 1987 Notice, the existing circulars, and agency implementing rules, the teams drafted amendments to the March 11, 1988 common rule to expand its applicability to non-governmental grantees and make other changes necessary to make it suitable for non-governmental grantees as well as governmental grantees. The proposed amendments to the common rule are published elsewhere in this issue of the **Federal Register**.

Proposed OMB Circular

This Notice presents a proposed, revised OMB Circular to replace Circular A–110, containing guidance to the Federal agencies on those matters not covered in the government-wide grants management common rule. The uniform administrative requirements previously found in Attachments "A–O" of Circular A–110 are now contained in the agencies' proposed common rule. What remains in the revised circular is OMB guidance addressed solely to the Federal agencies on those remaining grants management issues which are internal to the Federal agencies.

Inasmuch as the guidance in the revised Circular is virtually identical to that in the March 3, 1988 revision to Circular A–102, OMB is proposing to combine the two circulars into a single new circular under a new number. The new circular will help distinguish it from the old A–102 and A–110 and be used alongside the agencies' single, government-wide grants management common rule.

Summary of Proposed Changes

The proposed new OMB Circular is based almost entirely upon Circular A–102 issued March 3, 1988 for grants to State, local and Indian tribal governments. The proposed circular departs from Circular A–102 in several significant ways:

1. Universities, Hospitals and Other Non-Profit Organizations

The proposed Circular expands the applicability of the OMB guidance to cover grants to institutions of higher education (i.e., public and private colleges and universities), hospitals, and other non-profit organizations, now covered under OMB Circular A–110.

This expansion means that when awarding or administering grants to these grantees, as well as governmental grantees, Federal agencies will be subject, with one exception, to the same OMB guidance on pre-award, post-award and after-the-grant matters as finalized in the March 3, 1988 Circular A–102. The one exception concerns use of the government-wide standard application forms (SF–424). By its own terms, Circular A–102 requires agencies to use the SF–424 *only for governmental grantees*. The proposed revision continues to require Federal agencies to use the standard application form *only* for applicants which are State, local and Indian tribal governments. The proposed guidance permits Federal agencies to use those forms or develop their own forms and instructions for non-governmental applicants. However, all forms and isntructions are subject to OMB approval under the Paperwork Reduction Act of 1980.

2. Commercial (For-Profit) Organizations

For the first time, an OMB circular would provide guidance on the award and administration of grants to commercial (for-profit) organizations. This proposed change parallels a similar proposal by the agencies in the common rule. Both the proposed OMB Circular and the agencies' proposed common rule would expand the applicability of the fiscal and administrative requirements for grants to cover commercial (for-profit) organizations as well as governmental and non-governmental organizations previously covered by Circulars A–102 and A–110.

3. Special Provisions for Research

The proposed circular would provide guidance to the Federal agencies on circumstances in which they should use the special provisions for research proposed as Subpart F in the common rule. Subpart F is a set of simplified administrative requirements which the agencies are proposing as a result of the "Florida Demonstration Project."

In March 1986, five agencies began the Florida Demonstration Project to test ways to increase research productivity and reduce overhead costs on sponsored research. In March 1988, the Presidential Task Force on Regulatory Relief approved expansion of the project to include research contracts as well as grants and to include universities and research facilities outside of Florida. At the same time, the Interagency Assessment Committee, composed of the senior policy officials of the participating agencies, recommended immediate implementation of the most successful subset of the Demonstration procedures. On May 18, 1988, OMB issued Memorandum M–88–20 authorizing Federal agencies to make routine use of the simplified provisions.

Since most of these provisions require a waiver of provisions of the common rule, the agencies are proposing a new Subpart F to permit routine application of the simplified provisions. The proposed OMB Circular encourages use of these provisions and provides guidance on the circumstance which are appropriate for their use.

4. Miscellaneous

Paragraph 7h., *Pre-screening for Delinquent Federal Debt* and paragraph 8g., *Administrative Offset* reflect credit management policies in OMB Circular A–129, "Managing Federal Credit Programs." The former establishes prescreening procedures for determining the financial responsibility of grantees; the latter concerns use of administrative offset to collect delinquent debt owed to the Federal Government.

[Circular No. A–xxx]

To the Heads of Executive Departments and Establishments

Subject: Grants and Cooperative Agreements

1. *Purpose.* This Circular establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with governmental and non-governmental organizations. This revision supersedes Office of Management and Budget (OMB) Circulars No. A–102, "Grants and Cooperative Agreements with State and Local Governments," dated March 3, 1988, and Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," dated July 1, 1976.

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order 11541. Also included in the Circular are standards to ensure consistent implementation of: sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968; the Office of Federal Procurement Policy Act Amendments of 1983; sections 6301–08, title 31, United States Code; and, the Federal Claims Collection Standards, 4 CFR 102.3 and 102.4.

3. *Background.* On March 12, 1987, the President directed all affected agencies to issue a grants management common rule to adopt government-wide terms and conditions for grants to State and local governments. On March 3, 1988, OMB issued a revised Circular A–102 providing guidance to Federal agencies on business-like management of grant programs to State and local governments and other matters not covered in the common rule. The revision replaced and rescinded Circular A–102, dated January 1981, including Attachments "A"–"P".

The President's Council on Management Improvement directed a similar revision of Circular A–110. Inasmuch as the requirements of A–110 are essentially the same as A–102, this revision combines the two virtually identical requirements into one circular. Accordingly, this revision also replaces and rescinds Circular A–110, dated July 1, 1976, including Attachments "A"–"O".

4. *Coverage.* To the extent permitted by law, all Federal agencies administering programs that involve grants and cooperative agreements with governmental and non-governmental organizations shall follow the policies in this Circular and simultaneously issue a common grants management rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements" (common rule). If the enabling legislation for a specific grant program prescribes policies or requirements that differ from those in this Circular, the provisions of the enabling legislation shall govern.

5. *Definitions.*

a. "Government" means a State or local government or a federally recognized Indian tribal government.

b. "Grant" means an award of Federal financial assistance, including cooperative agreements, in the form of money, or property in lieu of money. The term does not include technical assistance which provides services instead of money or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations.

c. "Non-governmental organization" means a public or private institution of higher education, a public or private hospital, an Indian tribe or an Indian tribal organization which is not a federally-recognized Indian tribal government, a quasi-public or private non-profit organization, or a commercial organization. The term does not include an individual, Federal agency, foreign or international organization (such as an agency of the United Nations), Government-owned contractor operated facility, or research center providing continued support for mission oriented large scale programs that are Government-owned or controlled or are developed as a federally-funded Research and Development Center under Office of Federal Procurement Policy letter 84–1.

6. *Deviations.* The Office of Management and Budget may grant deviations from the requirements of this Circular when permissible under existing law. However, in the interest of uniformity and consistency, deviations will be permitted only in exceptional circumstances.

7. *Pre-Award Policies.*

a. *Use of grants and cooperative agreements.* Sections 6301–08, title 31, United States Code govern the use of grants, contracts and cooperative agreements. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support

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or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is excepted between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreements."

b. *Advance Public Notice and Priority Setting.*

(1) Federal agencies shall provide the public with an advance notice in the **Federal Register**, or by other appropriate means, of intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute. These priorities shall be approved by a policy level official.

(2) Whenever time permits, agencies should provide the public an opportunity to comment on intended funding priorities.

(3) All discretionary grants in excess of $25,000 shall be reviewed for consistency with agency priorities by an agency policy level official.

c. *Application Forms.*

(1) For applicants which are nongovernmental organizations, agencies may use the standard application forms described below or shall develop and use forms and instructions, subject to OMB clearance under the Paperwork Reduction Act (44 U.S.C. 35) and 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public."

(2) For applicants which are governments, agencies shall use the following standard forms and follow the instructions in paragraphs (3)– (7), unless they obtain OMB approval under the Paperwork Reduction Act of 1980:

- SF–424 Facesheet
- SF–424A Budget Information (Non-Construction)
- SF–424B Standard Assurances (Non-Construction)
- SF–424C Budget Information (Construction)
- SF–424D Standard Assurances (Construction)

When different or additional information is needed to comply with legislative requirements or to meet specific program needs, agencies shall also obtain prior OMB approval.

(3) A preapplication shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds $100,000, unless the Federal agency determines that a preapplication is not needed. A preapplication is used to:

(a) Establish communication between the agency and the applicant,

(b) Determine the applicant's eligibility,

(c) Determine how well the project can compete with similar projects from others, and

(d) Discourage any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications.

(4) Agencies shall use the SF–424C, Budget Information (Construction), and SF–424D, Standard Assurances (Construction), when the major purpose of the project or program is construction, land acquisition or land development.

(5) Agencies may specify how and whether budgets shall be shown by functions or activities within the program or project.

(6) Agencies should generally include a request for a program narrative statement which is based on the following instructions:

(a) Objectives and need for assistance. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

(b) Results or benefits expected. Identify results and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public.

(c) Approach. Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

(d) Geographic Location. Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

(e) If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance. Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.

(7) All application forms must include one of the following:

(a) A question to be answered "yes" or "no" asking either "Are you delinquent on any Federal debt?" or "Is the applicant delinquent on any Federal debt?" Where the answer is "yes," the applicant is to provide explanatory information.

(b) A certification statement to be signed by the applicant stating either "I certify that I am not delinquent on any Federal debt" or "This institution certifies that it is not delinquent on any Federal debt."

(8) Generally, the certification statements in (7)(b) will be used only

where the agency has determined, in accordance with applicable procedures, that grant funds will not be awarded to delinquent applicants, regardless of circumstances. In most cases agencies will use the yes/no question to enable grantees to provide the Federal agency information regarding the circumstances surrounding the delinquency. When incorporating either provision (7)(a) or (b), agencies shall add instructions that include examples of debt relevant to the institutions or individual applying for a grant. Examples include delinquent taxes, audit disallowances, guaranteed and direct student loans, housing loans, benefit overpayments or other miscellaneous administrative debts.

(9) Additional assurances shall not be added to those contained on the SF–424B and SF–424D, unless specifically required by statute.

d. *Debarment and Suspension.* Federal agencies shall not award grants in violation of agency regulations implementing Executive Order 12549, "Debarment and Suspension."

e. *Awards and Adjustments.*

(1) Ordinarily grants shall be made at least ten days prior to the beginning of the grant period.

(2) Agencies shall notify grantees immediately of any anticipated adjustments in the amount of a grant. This notice shall be provided as early as possible in the funding period. Reductions in funding shall apply only to periods after notice is provided. Whenever an agency adjusts the amount of a grant, it shall also make an appropriate adjustment to the amount of any required matching or cost sharing.

f. *Carryover Balances.* Agencies shall be prepared to identify to OMB the amounts of carryover balances (e.g., the amounts of estimated, grantee unobligated balances available for carryover into subsequent grant periods). This presentation shall detail the fiscal and programmatic (level of effort) impact in the following period.

g. *Special Terms and Conditions for Research and Other Programs.*

(1) Subpart F of the common rule recognizes the special nature of Federal support of scientific research and other programs where it is desirable to rely upon grantee authority and responsibility for management of projects.

(2) Agencies are strongly encouraged to apply the special terms and conditions in Subpart F of the common rule to research grants when the following conditions are met:

(a) The grantee has administrative and financial systems that meet the standards in the common rule,

(b) The grantee does not meet the definition of "high risk" in § ——.12 of the common rule,

(c) The research is primarily at the direction of the project director or principal investigator and does not ordinarily require significant agency post-award programmatic or administrative oversight.

(d) The requirements of § ——.30 of the common rule provide the agency sufficient project monitoring and control.

(3) When the special terms and conditions in Subpart F are applied, they should be applied in their entirety.

(4) Agencies may elect to apply the terms and conditions in Subpart F to other programs when the grantee meets the conditions in (g)(2) above.

(5) Agencies are encouraged to indicate in program announcements whether or not these conditions may apply.

h. *Pre-screening for Delinquent Federal Debt.*

(1) Consistent with the Privacy Act, agencies shall obtain taxpayer identification numbers (TIN) or Employer Identification Numbers (EIN), as appropriate, from all applicants for grants.

(2) Agencies shall have technically trained staff pre-screen applicants for grants for financial responsibility in accordance with the standards in Circular A–129.

(3) Subject to the following conditions, agencies shall obtain and use credit reports to determine the extent and status of financial dealings between applicants and the Federal Government.

(a) State and local governments: agencies are not required to obtain credit reports on state and local governments.

(b) New grantees: agencies shall obtain credit reports before awarding grants to organizations other than State and local governments. In order to minimize costs, agencies may obtain credit reports after selection but before actual award.

(c) Existing grantees: In those cases where agencies have prior or ongoing relationships with grantees, agencies shall obtain credit reports annually.

(4) Where applications, proposals, credit reports, or other pre-screening information disclose that an applicant is delinquent on debt to the Federal Government, the agency shall:

(a) Take such information into account when determining whether the prospective grantee is responsible with respect to that grant, and

(b) Consider not awarding the grant until payment is made or satisfactory arrangements are made with the agency to which the debt is owed.

i. *Special Conditions or Restrictions.* Agencies may impose special conditions or restrictions on awards to "high risk" grantees in accordance with § ——.12 of the common rule. Agencies shall document use of the "Exception" provisions of § ——.6 and "High-risk" provisions of § ——.12 of the common rule.

j. *Waiver of Single State Agency Requirements.*

(1) Requests to agencies from the Governors, or other duly constituted State authorities, for waiver of "single" State agency requirements in accordance with section 6504, title 31, United States Code, shall be given expeditious handling and, whenever possible, an affirmative response.

(2) When it is necessary to refuse a request for waiver of "single" State agency requirements, the Federal grantor agency shall advise the Office of Management and Budget prior to informing the State that the request cannot be granted. The agency shall indicate to OMB the reasons for the denial of the request.

(3) Legislative proposals embracing grant-in-aid programs shall avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing requirements in present grant-in-aid programs shall be reviewed and legislative proposals developed for the removal of these restrictive provisions.

k. *Patent Rights.* Agencies shall use the standard patent rights clause specified in "Rights to Inventions made by Nonprofit Organizations and Small Business Firms" (37 CFR Part 401), when providing support for research and development.

8. *Post-award Policies.*

a. *Cash Management.* Agency methods and procedures for transferring grant funds shall minimize the time elapsing between the transfer of cash to a grantee and the grantee's need for the funds.

(1) Such transfers shall be made consistent with program purpose, applicable law and Treasury regulations at 31 CFR Part 205.

(2) Where letters-of-credit are used to provide funds, they shall initially be in the same amount as the grant or the projected cash needs for the year. However, agencies are not precluded from adjusting this amount to collect claims, implement sanctions and carry out program purposes consistent with law and regulations.

b. *Grantee Financial Management Systems.* In assessing the adequacy of

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an applicant's financial management system, the Federal agency shall rely on readily available sources of information such as audit reports to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

c. *Financial Status Reports.*

(1) Federal agencies shall require grantees to use the SF–269, Financial Status Report-Long Form, or SF–269A, Financial Status Report-Short Form, to report the status of funds for all non-construction projects or programs. Federal agencies need not require the Financial Status Report when the SF–270, Request for Advance or Reimbursement, of SF–272, Report of Federal Cash Transactions, is determined to provide adequate information.

(2) Federal agencies shall not require grantees to report on the status of funds by object class category of expenditure (e.g., personnel, travel, equipment).

(3) If reporting on the status of funds by programs, functions or activities within the project or program is required by statute or regulation, Federal agencies shall instruct grantees to use block 12, Remarks, on the SF–269 or a supplementary form approved by the OMB under the Paperwork Reduction Act of 1980.

(4) Federal agencies shall prescribe whether the reporting shall be on a cash or an accrual basis. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on an accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

d. *Contracting With Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms.* It is national policy to award a fair share of contracts to small and minority business firms. Grantees shall take similar appropriate affirmative action to support of women's enterprises and are encouraged to procure goods and services from labor surplus areas.

e. *Program Income.*

(1) Agencies shall encourage grantees to generate program income to help defray program costs. However, Federal agencies shall not permit grantees to use grant-acquired equipment to compete unfairly with the private sector.

(2) Federal agencies shall instruct grantees to deduct program income from total program costs as specified in the common rule at paragraph ____ .25(g)(1), unless agency regulations or the terms of the grant award state otherwise. Authorization for grantees to follow the other alternatives in paragraph ____ .25(g) (2) and (3) shall be granted sparingly.

f. *Site Visits and Technical Assistance.* Agencies shall conduct site visits only as warranted by program or project needs. Technical assistance site visits shall be provided only: (1) In response to requests from grantees, (2) based on demonstrated program need, or (3) when grantees are designated "high risk" under under § ____ .12 of the common rule.

g. *Administrative Offset.* Agencies may employ administrative offset to recover delinquent debt from grantees (including State and local governments) in accordance with the Federal Claims Collection Standards, 4 CFR 102.3 and 102.4.

(1) Agencies are not required to use offset in every instance in which there is an available source of funds, but shall make case-by-case determinations whether offset is appropriate.

(2) Recovery of debt by administrative offset shall not be used where offset will substantially interfere with, or defeat the purpose of, the program for which offset is contemplated.

(3) Grants which are paid in advance (e.g., payment is made in advance of performance or before costs are incurred) shall not be subject to offset. However, if it is in the best interest of the Federal Government, agencies shall consider converting the method of payment to a reimbursement basis to enable use of administrative offset.

9. *After-the-grant Policies.*

a. *Closeout.* Federal agencies shall notify grantees in writing before the end of the grant period of final reports that shall be due, the dates by which they must be received, and where they must be submitted. Copies of any required forms and instructions for their completion shall be included with this notification. The Federal actions that must precede closeout are:

(1) Receipt of all required reports,

(2) Disposition or recovery of federally-owned assets, and

(3) Adjustment of the award amount and the amount of Federal cash paid the grantee.

b. *Annual Reconciliation of Continuing Grants.* Federal agencies shall reconcile continuing grants at least annually and evaluate program performance and financial reports. Items to be reviewed include:

(1) A comparison of the grantee's work plan to its progress reports and project outputs,

(2) The Financial Status Report (SF–269),

(3) Request(s) for payment,

(4) Compliance with any matching, level of effort or maintenance of effort requirement, and

(5) A review of federally-owned property (as distinct from property acquired under the grant).

10. *Entitlements* [Reserved].

11. *Policy Review (Sunset).*

The Circular will have a policy review three years from the date of issuance.

12. *Judicial Review.*

This Circular is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

13. *Effective Date.*

The Circular is effective on [effective date of common rule].

14. *Inquiries.* Further information concerning this Circular may be obtained from: Financial Management Division, New Executive Office Building, Room 10225, Office of Management and Budget, Washington, DC 20503, (202) 395–3050.

Joseph R. Wright, Jr.,

Acting Director.

[FR Doc. 88–25361 Filed 11–3–88; 8:45 am]

BILLING CODE 3110–01–M

federal register

Friday
November 4, 1988

Part III

Uniform Administrative Requirements for Grants and Cooperative Agreements; Notice of Proposed Rulemaking

Department of Agriculture
Department of Energy
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Department of State
International Development Cooperation Agency
Agency for International Development
United States Information Agency
Department of Housing and Urban Development
Department of the Treasury
Internal Revenue Service
Department of Justice
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
Department of Education
National Archives and Records Administration
Veterans Administration
Environmental Protection Agency
Department of the Interior
Federal Emergency Management Agency
Department of Health and Human Services
National Science Foundation
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
Institute of Museum Services
ACTION
Commission on the Bicentennial of the United States Constitution
Department of Transportation

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49 CFR PART 18

Uniform Administrative Requirements for Grants and Cooperative Agreements

AGENCY: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, ACTION, Agency for International Development, Commission on the Bicentennial of the United States Constitution, Environmental Protection Agency, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, Institute of Museum Services, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Small Business Administration, United States Information Agency, Veterans Administration.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This action proposes a common rule updating and replacing agencies' implementation of OMB Circular A–110 with a single, government-wide common rule establishing consistency and uniformity among the Federal agencies shown above in the administration of grants and cooperative agreements to institutions of higher education, hospitals, other nonprofit organizations, and commercial or for-profit entities. This result is achieved by amending the common rule for governmental grantees issued by agencies on March 11, 1988. The provisions of the common proposed, amended rule are largely drawn from the existing departmental rules issued by the several agencies which in the past developed a single, comprehensive rule implementing both Circulars A–102 and A–110. This proposed common rule contains fiscal and administrative requirements applicable to all types of grantees. Elsewhere in this issue of the **Federal Register**, the Office of Management and Budget (OMB) is proposing a revision to Circulars A–102 and A–110—addressed solely to Federal agencies—containing guidance on how they manage the award and administration of all types of grants and cooperative agreements.

DATES: To be assured of consideration, comments on these proposed rules must be in writing and must be received on or before January 3, 1989. Comments should refer to specific sections in this regulation.

ADDRESS: Send comments to Gary Houseknecht, Acting Director, Division of Assistance and Cost Policy, Department of Health and Human Services, A–110 rulemaking docket, Room 513D Hubert H. Humphrey Building, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For issues regarding the common rule contact Gary Houseknecht (202) 245–7565. For issues regarding agency-specific amendments to the common rule, see contact persons for individual agencies, below.

SUPPLEMENTARY INFORMATION:

Background

Office of Management and Budget Circular A–102, "Uniform Administrative Requirements for Grants to State and Local Governments," was originally issued in 1971. OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," was issued in 1976. Each established standards for consistency and uniformity among Federal agencies in the administration of grant and cooperative agreements. Each contained "attachments" which covered topics such as cash depositories, bonding and insurance, financial reporting, payment, matching, property and procurement.

After 12–17 years of experience with the circulars, the public, agencies and OMB recognized that while the basic policies and standards established for accountability of grant funds had worked well:

- Some provisions of A–102 and A–110 were "out-of-date," e.g., dollar thresholds for defining equipment are too low;
- A–102 and A–110 needed to be "more readable"—they contained a series of 16 attachments addressed to both grantors and grantees. Many persons suggested reorganizing the policies to reflect the grants management process (pre-award, post-award, after-the-grant) and sort out the roles about who does what to whom, in any particular circumstance;
- There were "gaps" in A–102 and A–110 in some additional important areas where government-wide standardization makes sense, e.g., screening out suspended and debarred organizations and more guidance on prompt closeout;
- Some policies may have needed clarification, e.g., the program income rule, and whether and how the rules apply to subgrantees (known as the "flow-down" policy);
- A–102 and A–110 should be implemented in regulations as a condition of all grants, as OMB Circulars A–102 and A–110 are not codified in the Code of Federal Regulations; and
- Finally, the uniformity A–102 and A–110 originally sought to achieve was undercut to some extent by the many and various agency implementing regulations and noncodified manuals, handbooks, etc. Six agencies have adopted the circulars in departmental regulations (Departments of Agriculture, Education, Energy, Health and Human Services, and Labor, and the Environmental Protection Agency). Three others did so partly or fully in program regulations (Departments of Housing and Urban Development and Interior and the Federal Emergency Management Agency). Others used binding terms and conditions or noncodified manuals and handbooks for all or part of the circulars. Only one agency issued any part of the circulars verbatim in regulations. Many restated parts of the circulars, others modified them, while others cross-referenced parts of them. Most did some combination of all of these approaches.

In November 1983, a 20-agency task force under the President's Council on Management Improvement (PCMI), chaired by the Office of Management and Budget, was established to explore streamlining grants management and to review OMB Circular A–102, "Uniform Administrative Requirements for Grants to State and Local Governments."

On June 18, 1984, OMB published a Notice in the **Federal Register** (49 FR 24958–59) seeking comments on over 50 issues and possible options for each issue. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress, submitted several hundred comments.

Five agency-chaired teams studied the comments, existing Federal agency grants administrative regulations, and noncodified manuals and handbooks implementing OBM Circular A–102 to draft a government-wide "common" rule. The proposed common rule contained fiscal and administrative requirements for grants to State and local governments (grantees) and subrecipients that are State and local governments (subgrantees). At the same time, OMB and the agencies prepared a revised Circular A–102—directed solely to Federal agencies—containing guidance to Federal agencies on how they should manage the award and administration of Federal grants.

On March 12, 1987, the President directed all affected Federal agencies to simultaneously propose and subsequently adopt a verbatim common rule, except where inconsistent with statutory requirements. The President explained that at the time it was issued "Circular A–102 was a significant step toward simplification of grants management." He went on to say, however, that "after 16 years, some of the provisions are out of date, there are gaps where the standards do not cover important areas, and agencies have interpreted the Circular in numerous different ways in their regulations. It is now time for the Circular to be revised to reflect developments consistent with our Federalism policies and State and local regulatory relief objectives and the President's Management Improvement Program."

The agencies proposed a government-wide common rule in the June 9, 1987 **Federal Register** (52 FR 21820–62). In the same issue, OMB proposed a revised Circular A–102 (52 FR 21816–18). On March 11, 1988, the Federal agencies published the final common rule in the **Federal Register** (53 FR 8033–8103) with an effective date of October 1, 1988. The final revision to Circular A–102 appeared in the same issue (53 FR 8027–32).

OMB Circular A–110 Review

In 1987, the PCMI directed that the Department of Health and Human Services (HHS) and OMB jointly chair a follow-on effort to review and issue a common rule and revised circular for nongovernmental grantees covered by Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." In addition, the President's FY 1989 *Management Report* indicated that "In 1988, the agencies will propose amendments to the common rule to adopt cost savings and management improvements for grants and cooperative agreements with the remaining universities, hospitals and nonprofit organizations, now covered by OMB Circular A–110. A final common rule for these nongovernmental grantees will be issued in early 1989." Consequently, OMB and HHS co-chaired an interagency task force which reviewed the current requirements of Circular A–110, compared them with the March 11, 1988 common rule, and considered the need for change to restore uniformity.

Three agency-chaired teams looked at: "Differences" between A–102 and A–110 grantees (chaired by Environmental Protection Agency), "New Issues" that needed to be addressed (chaired by National Science Foundation), and "Basic Research" (chaired by National Institutes of Health). Each team drafted preamble language and regulatory provisions to amend the March 11, 1988 common rule to extend its applicability and make other necessary changes to cover nongovernmental organizations.

Proposed Common Rule

The proposed common rule, which follows, and a proposed revised OMB Circular, published elsewhere in this issue, reflect the result of these efforts. The OMB Circular is addressed solely to Federal agencies, providing OMB guidance on internal grants management practices of the agencies. The proposed common rule, on the other hand, is addressed to governmental and nongovernmental organizations that receive Federal grants or cooperative agreements. The proposed common rule prescribes the government-wide fiscal

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and administraive conditions governing grants to these organizations.

The proposed common rule will be codified in each agency's portion of the Code of Federal Regulations, as indicated in the information provided for individual agencies below. Several agencies' rules reflect differences required by statute (e.g., the five-year record retention requirement for Department of Education programs under the General Education Provisions Act). Such differences are indicated in the text of the appropriate agency-specific amendments to the common rule.

All grants administrative provisions in program regulations that are inconsistent with the common rule will be rescinded, except to the extent they are required by legislation or approved as a deviation by OMB. Each agency will specify in the agency-specific preamble and amendments added to the common rule those agency regulations that are rescinded. Likewise, all grants administrative provisions of noncodified program manuals, handbooks, policy statements, and other materials that are inconsistent with the rule will be superseded, except to the extent that they are required by legislation or approved by OMB.

Summary of Significant Changes

Extension of Regulations to Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

Historically, OMB Circulars A–102 and A–110 have been virtually identical. A–102 was first issued in 1971 with a series of Attachments A through O covering topics ranging from records retention to procurement. A–110 was issued in 1976, and from the standpoint of both format and content, was virtually indistinguishable in substance from A–102.

Each circular instructed Federal agencies responsible for administering grant programs to "issue the appropriate regulations necessary to implement the provisions of the Circular." In doing so, six departments and agencies (Departments of Agriculture, Education, Energy, Health and Human Services and Labor and the Environmental Protection Agency) each issued *one* regulation covering *all* grantees (i.e., covering State and local governments, as well as colleges, universities, hospitals, and other nonprofit organizations.) This approach was not, of course, to say that colleges and universities, for example, operate just like cities or counties. In fact, these organizations do have very real, and sometimes significant, differences in character and purpose. However, from the standpoint of accountability for Federal grant funds, OMB and the Federal agencies have recognized a similar, if not nearly identical, set of minimum requirements applicable to all grantees.

This common set of fiscal and administrative requirements, and the agencies' implementation of them in single departmental or agency rules, have worked quite well. In recognition of this, the proposed rule would extend, with certain exceptions, the applicability of the common rule published on March 11, 1988 to cover nongovernmental organizations.

Effect on States' Nongovernmental Subgrantees

This issue concerns the extent to which these Federal regulations should apply in the administration of subgrants by States. As the March 11, 1988 common rule explained (53 FR 8035–8036), in the past each OMB Circular required that its provisions be applied to subgrantees under Federal grants as well as direct grantees. This "flow-down" of the administrative requirements was to ensure that subgrantees were treated uniformly, regardless of whether the funds came directly from the Federal Government or through a State agency that was administering the program.

In the interest of Federalism, Federal agencies concluded that such restrictions on States in administering subgrants are no longer necessary. As stated in Executive Order 12612, "Federalism," published October 30, 1987 (52 FR 41685–88), States have unique Constitutional authority, resources, and competence. Section (3)(c) states: "With respect to national programs administered by the States, the Federal Government should grant the States the maximum administrative discretion. Intrusive Federal oversight of State administration is neither necessary nor desirable." Further, according to section (3)(d)(1), Federal agencies are to "Refrain, to the maximum extent possible, from establishing uniform, national standards for programs and, where possible, defer to the States to establish standards."

"Flow-down" provisions cannot be reconciled with the goal of placing maximum reliance on the States' own management systems. The March 11, 1988 common rule permits States to manage subgrants to governmental grantees more freely. This proposed rule would extend this flexibility by permitting States to use their own requirements in making subgrants to nongovernmental organizations as well. This would mean that nonprofit organizations will administer *direct* Federal grants according to the standards in the common rule, whereas Federal "pass-through" funds *subgranted* from a State will be administered according to State laws and procedures. The common rule shifts the basis for uniformity of the applicability of this regulation to one which recognizes States' increased role in financing and administering intergovernmental programs.

One exception is that in those few programs where local governments or nongovernmental organizations (as distinct from States) make subgrants, both the grantee and subgrantee must comply with these Federal requirements. There is no change here because nongovernmental grantees will continue (as before under Circular A–110) to require subgrantees to follow the uniform Federal administrative standards.

Extension of Regulations to Commercial Organizations

In enacting laws authorizing the award of financial assistance, Congress has generally excluded for-profit organizations from eligibility. (Federal cost principles and procurement regulations refer to for-profits as "commercial organizations.") Some Federal agencies that had statutory authority to award grants to commercial organizations in limited instances nevertheless elected not to do so as a matter of policy.

In 1982, the Department of Health and Human Services reversed its long-standing policy of not awarding grants or cooperative agreements to commercial organizations and has made a number of such awards. Since some other Federal agencies have similar statutory authorities and either are making or could make awards to commercial organizations, we are proposing to adopt standard government-wide rules for such awards.

Proposed new Subpart G would make commercial organizations subject to the same rules that apply to other nongovernmental grantees—except in two areas:

Real property, equipment and supplies. All acquisitions of real property, equipment and supplies under a grant or subgrant to a commercial organization would be subject to Federal prior approval requirements regardless of type or cost. Property acquired under a grant to a commercial organization would be subject to the same rules the Federal Government uses for property acquired by its contractors under Federal procurements. (Those rules are in the clause entitled "Government Property" at 48 CFR 52.245–5 of the Federal Acquisition Regulation (FAR). If the property is acquired by a commercial organization under a subgrant from a government or a nonprofit organization, the grantee would be permitted to either take title to the property and administer it by the property rules in Subpart C, or require the commercial subgrantee to abide by the FAR clause cited above. Under either a grant or a subgrant, records subject to the FAR clause cited above would be exempt from the records retention requirements in § ____.42 and instead be subject to the records provisions of the FAR clause.

Program Income. Awarding agencies would be prohibited from allowing commercial grantees or subgrantees to use program income in accordance with the "addition" alternative specified in § ____.25.

In addition to the above differences, Subpart G would contain a reminder that § ____.22(a) provides, in effect, that no grant funds may be paid as profit to any grantee or subgrantee, even if the grantee or subgrantee is a commercial organization. "Profit" is defined as any amount in excess of allowable direct and indirect costs of the grantee.

Section-by-Section Analysis

Section ____.3 Definitions.

"Intangible Property and Debt Instruments"

A new paragraph is added to § ____.3 to define the term, "intangible property and debt instruments," to cover a category of property which is not otherwise clearly covered by the common rule. Such property is explicitly covered under the attachments to the previous OMB Circulars A–102 and A–110, and is intended to be covered under the common rule. To avoid any uncertainty, explicit language is necessary. The newly defined term is used in new § ____.38, which prescribed title, use, and disposition rules for that category of property.

"Local Government"

The definition of "local government" is proposed for amendment to clarify that local-controlled institutions of higher education and hospitals are excluded from the definitions of "local government."

"Nongovernmental Organizations"

Consistent with the expansion of scope of the common rule implementing OMB Circular A–102 to cover A–110 organizations, a definition of "nongovernmental organizations" is proposed for addition to the definitions section. The definition picks up all the organizations currently covered by OMB Circular A–110 and adds, for the first time, commercial organizations (for-profit organizations).

"Prior Approval"

The definition of "prior approval" is proposed for revision to make clear that the authorized official must prepare a written approval and that the mere documentation in the grant file of a telephone conversation would be insufficient to provide prior approval for a grant change.

"Share"

The definition of "share" has been revised to include guidance on computing the Federal share of real property which has been acquired on an amortized basis. This guidance is necessary because previous guidance was based only on outright purchase and did not clearly indicate the approporiate result for amortized purchases.

"State"

The definition of "State" is proposed for amendment to clarify that State-controlled institutions of higher education and hospitals are excluded from the definition of "State."

"Subgrant"

During discussions with auditors and officials of States and other organizations which receive Federal grant funds, there has been some concern voiced about the definition of a subgrant. Specifically, the question has been raised about whether contracts awarded under grants are subgrants.

The Federal Government believes that the critical element of whether or not an activity is a subgrant is the intent of the provision of those funds and not the mechanism (i.e., contract, grant, memorandum of agreement, etc.) used to convey those funds. The key issue is that the provision of financial assistance (vs. procurement of goods and services) is a subgrant, regardless of the mechanism used. It is also critical that grantees understand that subgrantees are not vendors providing goods and services.

Comment is requested on whether the definition of "subgrant" should be revised to change the reference to "contractual legal agreement" to "any legal agreement" in order to clarify that regardless of what mechanism is being used, or what name is given to that mechanism by a grantee organization to provide funds to another organization, when we refer to subgranting, we mean the provision of financial assistance.

"Supplies"

To conform the definition of "supplies" with the new definition of the term "intangible property and debt instruments," "supplies" is revised, by excluding from that term the category of personal property that is covered under "intangible property and debt instruments."

Section ____.4 Applicability.

Technical changes are proposed consistent with the expansion of coverage for the common rule.

Section ____.10 Forms for applying for grants.

No change is made to paragraph (a) Scope of this section because the forms prescribed are for use *only* by governmental applicants. However, certain provisions currently in § .10(b)(3) of the common rule implementing Circular A–102 are proposed for removal. These provisions instruct Federal agencies regarding the forms approval process. The provisions are proposed for removal because internal guidance to Federal agencies is inappropriate in regulations that establish requirements for grantees. Federal agencies are required to permit governments to use standard forms unless authorized by OMB to use alternative forms. Nongovernmental organizations must nevertheless use forms developed by Federal agencies and approved by OMB under the regulations implementing the Paperwork Reduction Act of 1980 (5 CFR Part 1320).

Section ____.21 Payment.

The current A–110 rule requiring grantees or subgrantees to place advances of Federal grant funds in interest-bearing accounts has been revised to waive this requirement when the grantee or subgrantee receives Federal advances of less than $120,000, or when the interest to be earned would not be sufficient to justify the expenses entailed by the requirement. We have also raised, from $100 to $250, the amount grantees and subgrantees may retain for expenses.

Section ____.25 Program income.

The common rule recognizes three uses for program income: the deduction method (using program income to reduce the overall costs under the grant); the addition method (using program income to increase the work under the grant over and above that contemplated in the original grant award); and the matching

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method (using program income to meet cost-sharing or matching requirements). Section ____.25(g) prescribes the deduction method unless program regulations or the grant award permits one of the alternative methods.

Section ____.25(g) provides Federal agencies the flexibility to authorize the alternative methods through program regulations or grant award but contains a "default" to the deductive method. This is done largely as an administrative convenience and also for the sake of predictability—as recommended by the General Accounting Office (GAO).

Some Federal agencies are now concerned that a preference for the deduction method would operate as a disincentive to grantees to generate program income, and that such a disincentive would not promote the objectives of Federal grant programs. Sometimes the amount available for a grant is insufficient to meet the needs envisioned by the grantee. Program income used for program purposes can meet part of this need without the expenditure of additional Federal funds. It likewise promotes greater self-sufficiency on the grantee's part. While this applies to all grantees and subgrantees, it is especially true of nongovernmental organizations. Lacking the power to tax, they depend on revenues from many sources, including program income, to accomplish their missions. Comments are invited on this matter.

Section ____.26 Non-Federal audit.

The Single Audit Act of 1984 and OMB Circular A–128, Audits of State and Local Governments, require most State and local governments receiving Federal financial assistance to obtain annual audits. The existing audit requirements for nongovernmental organizations are set forth in OMB Circular A–110, Attachment F, paragraph 2(b).

Audit requirements for nongovernmental organizations are currently being reconsidered as a separate and distinct effort by the Office of Management and Budget and Federal agencies. Until such decisions are made, the agencies propose to retain the current A–110 audit requirements.

Section ____.30 Changes.

The language in § ____.30(c)(1)(ii) of the common rule that requires prior approval for certain budget changes is not changed for governments. However, for nongovernmental organizations, the common rule would now provide in a new § ____.30(c)(1)(iii) that nongovernmental organizations must obtain prior approval for changes that exceed or are expected to exceed 5 percent of the total current approved budget. The 5 percent rule is consistent with the current A–110.

An opportunity for Federal agencies to adopt more restrictive requirements was considered but is not proposed. This would have been permitted by inserting, at the beginning of § ____.30 (a) and (f), the phrase, "Unless the award document otherwise provides," in each place. Under this approach, Federal agencies could require prior Federal agency approval of changes of less than 5 percent of the current total approved budget without obtaining OMB authorization under the exception provisions of § ____.6(b). Comments are solicited on this option.

A new prior approval requirement for the absence for more than 3 months of the approved project director or principal investigator is proposed for paragraph (d)(3) of this section. This is believed to be necessary because the qualifications of the proposed project director or principal investigator are frequently a major factor in the decision to award a discretionary grant, and the absence of that person for a 3-month or greater period may have a serious impact on the satisfactory conduct of the project during that time.

A new prior approval requirement is proposed by adding a paragraph at (d)(5) of this section for situations involving the proposed transfer of a grant to another institution. General Accounting Office decisions have recognized for a long time that, under certain specified conditions, transfer of a grant from the original grantee to a substitute grantee is appropriate. Approval of such a request is contingent on many of the same factors which led to selection of the original grantee.

At paragraph (f)(1) of this section, in order to simplify the burden on grantees, we are proposing that requests for prior approval may be submitted either through revisions of appropriate pages in the application or by letter.

Section ____.31 Real Property.

The current language in § ____.31(b) of the common rule is proposed to be expanded to clarify the existing statement that the grantee or subgrantee shall not dispose of or encumber the real property or interests in such property.

In order to protect the Federal Government's interest in real property which has been acquired in whole or in part with Federal grant funds, a new § ____.31(c) has been added which requires that nongovernmental grantees must obtain certain types of insurance. Though such a safeguard was never previously required under either Circular A–102 or A–110, it is necessary because grantees which are not State and local governments normally do not have the financial resources for self-insurance to protect the Federal Government's investment.

Technical changes are proposed for paragraph (c) of this section to rely on the definition of "share" in § ____.3, rather than restating the rule regarding the computation of the Federal share.

Section ____.32 Equipment.

Technical changes are proposed for this section to rely on the definition of "share" in § ____.3, rather than restating the rule regarding the computation of the Federal share, wherever it appears.

Existing OMB Circular A–110 provides for the grantee to be reimbursed for any reasonable shipping and interim storage costs incurred when the grantee has been instructed to ship to a new location equipment purchased with Federal grant funds. A new paragraph (e)(4) is proposed for addition to the common rule to apply this rule to both governments and nongovernmental organizations.

The current OMB Circular A–110 reflects statutory authority contained in the Federal Grant and Cooperative Agreement Act of 1977 which permits nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research to retain title to equipment without further accountability to the Federal Government for its use or disposition. The common rule is proposed for amendment to add a new § ____.32(h) to include this provision.

Section ____.33 Supplies.

When a grant is transferred from one institution to another, the Federal agency has the right to require the transfer of any equipment purchased under the grant. The Federal agencies considered the option of imposing this requirement on the transfer of supplies when the inventory of unused supplies exceeds $5,000 in total aggregate fair market value. Because this proposal was never in Circulars A–102 or A–110 nor adopted in the common rule, comments on the proposal are solicited.

Section ____.34 Copyrights and patents.

Section ____.34 of the common rule is proposed for revision to clarify the rule regarding ownership of copyrights, and the Federal Government's right to a royalty-free, nonexclusive, and irrevocable license in copyrightable works. The existing section is also

proposed to be redesignated as paragraph (a) and a new paragraph (b) is added to include a cross reference to the Department of Commerce's government-wide regulation regarding patents.

Section ____.36 Procurement.

Section ____.36(b). This section requires grantees and subgrantees to follow applicable State and local laws and regulations, if those laws and regulations ensure that procurements conform to applicable Federal laws and the standards of § 2.36. No change was made to this provision for non-governmental grantees and subgrantees, because these grantees and subgrantees must still follow State and local laws and regulations that may be applicable to them.

In § ____.36(b)(5), the term "multi-organizational" was added to the types of agreements that organizations negotiate for the procurement or use of common goods or services. This will permit organizations other than State and local governments to enter into these types of agreements.

There are a number of provisions in § ____.36 that are not now in Circular A–110 but are nevertheless appropriate for nongovernmental organizations. For example: the provision for the use of excess property in § ____.36(6); § ____.36(b)(7) encourages the use of value engineering; and, a restriction on the use of time and material contracts in § ____.36(b)(10) has been extended to nongovernmental organizations because it is considered good procurement practice for all types of grantees.

Section ____.36(d), Methods of procurement to be followed, contains the procurement methods that are consistent with the methods used by the Federal Government. Nongovernmental organizations had objected to the previous emphasis favoring advertised "low bid" procedures. The common rule merely outlines the different procurement methods, and does not have this emphasis, except for the procurement of construction.

Section ____.36(f)(2) requires grantees and subgrantees to negotiate profit as a separate element of price in certain situations. The common rule has been clarified to note that this is required only when profit or fee is included in the price of a contract.

Sections ____.36(i)(7), (8), and (9) contain awarding agency requirements for grantees and subgrantees to include in contracts. The reference to awarding agency requirements means the requirements imposed on the grantee or subgrantee by the Federal agency. This use of the term awarding agency is in conflict with the definition of "awarding agency" contained in § ____.3, Definitions. These are Federal agency requirements that apply to grantees and could flow though to subgrants. The paragraphs have been revised to change "awarding agency" to "Federal agency."

Sections ____.36(i)(10), (12), and (13) contain contract requirements for grantees and subgrantees to include in contracts that were not contained in previous requirements imposed on nongovernmental grantees and subgrantees. Sections ____.36(i)(12) and (13) are required by the laws cited in those paragraphs. Section ____.36(i)(10) adds access to records of all types of contracts, not just negotiated contracts as had been previously required for nongovernmental grantees and subgrantees.

Several Federal agencies have observed that the numerous provisions contained in this section could be made more accessible to readers if the section were divided into numbered subsections, organized by topics and issues connected with procurement under grants. Comments are invited on renumbering § ____.36 as follows:

Procurement Policies of States

§ ____.xx Procurement Policies of States [(a)]*

Procurement Policies of Other Grantees and Subgrantees

§ ____.xx Procurement policies for other grantees and subgrantees; Purpose of § ____.xx____.xx

General Requirements

§ ____.xx Maintain minimum procurement procedures [(b)(1)]

§ ____.xx Maintain a system of contract administration [(b)(2)]

§ ____.xx Maintain written standards of conduct [(b)(3)]

§ ____.xx Procedures to avoid inefficient procurements [(b)(4)&(5)]

§ ____.xx Contracts with small and minority firms, women's business enterprise, and labor surplus area firms [(e)]

§ ____.xx Use of Federal excess property [(b)(6)]

Competition

§ ____.xx Full and open competition [(c)(1)]

§ ____.xx No State preference permitted [(c)(2)]

The Selection Process

§ ____.xx Maintain standards for selection [(b)(8)]

§ ____.xx Maintain written selection procedures [(c)(3)]

§ ____.xx Maintenance of a prequalification list [(c)(4)]

§ ____.xx Review of proposed procurements by the awarding agency [(g)(1)]

§ ____.xx Documentation of proposed procurements [(g)(2)]

§ ____.xx Waiver of proposed procurement review [(g)(3)]

Costs and Bonding Requirements

§ ____.xx Limitation on estimated cost contracts [(f)(3)]

§ ____.xx Cost and price analysis [(f)(1)]

§ ____.xx Negotiation of profit or fee

§ ____.xx Bonding requirements [(h)]

Methods of Procurement

§ ____.xx Small purchase procedures [(d)(1)]

§ ____.xx Sealed bid standards and requirements [(d)(2)]

§ ____.xx Competitive purchases [(d)(3)]

§ ____.xx Noncompetitive purchases [(d)(4)]

§ ____.xx Limitations on time and material contracts [(b)(10)]

§ ____.xx Limitations on cost-plus contracts [(f)(4)]

Contract Provisions

§ ____.xx Requirements for certain contract clauses and changes by Federal agencies [(i)–intro]

§ ____.xx Clauses for contracts [(i) and (b)(7)]

Contract Monitoring

§ ____.xx Contract monitoring [(b)(2)]

Disputes Resolution

§ ____.xx Maintain disputes resolution process [(b)(11)]

§ ____.xx Disputes subject to Federal agency review [(b)(12)]

Grantee and Subgrantee Records

§ ____.xx Detail significant history of a procurement [(b)(9)]

Section ____.37 Subgrants.

Section ____.37(a) has been revised to permit States to use State laws and procedures when administering subgrants to all types of subgrantees. As explained in Executive Order 12612, "Federalism," States possess unique constitutional authority, resources and competence. In the March 11, 1988 common rule States were given maximum authority to manage subgrants to local and Indian tribal governments. Consistent with Executive Order 12612, this common rule will extend this authority to all types of subgrantees. However, subgrantees will continue to use the Federal cost principles that are applicable to the kind of organizations incurring the costs. Section ____.22, Allowable costs, stipulates that, depending on the kind of organizations, Circular A–21 (educational institutions), A–87 (governments), A–122 (nonprofits), or 48 CFR Part 31 (commercial organizations) will apply. The common rule has been clarified to note that States can still apply the provisions of this regulation,

* Citations in brackets are to paragraph designations in § ____.36 of the proposed common regulations as they appear at the end of this document.

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and that States must inform subgrantees whether State or Federal procedures must be followed.

Sections ____.37(a)(2) and (b)(3) have been revised to clarify that grantees are required to ensure subgrantee compliance with requirements imposed by Federal statutes and regulations. The common rule currently states that grantees must ensure that subgrantees are aware of Federal requirements.

Section ____.37(c) has been revised to note that the common rule does not imply and direct relationship between Federal agencies and subgrantees. Grantees are responsible for ensuring that their subgrantees comply with appropriate requirements.

Section ____.38 Intangible property and debt instruments.

This new section is proposed to establish title, use, and disposition rules for intangible property and debt instruments, defined in § ____.3, previously discussed in this preamble, a category of property which might otherwise appear not covered by the common rule. Neither Circular A–102 nor A–110 contained such a requirement in the past. The common rule establishes requirements that are equivalent to those established for equipment.

Section ____.39 Grant property trust relationship and notices.

This proposed new section is intended to help protect property acquired or improved with Federal grant assistance, from: (a) Inadvertent or deliberate unauthorized encumbrance or other misuse while held by the grantee; (b) improper disposition by the grantee without repayment to the Federal Government of the fair market value of the Federal assistance; or, (c) liquidation in bankruptcy proceedings, for payment of creditors or administrative expenses of the bankrupt estate, without repayment of the Federal assistance.

The first sentence of the proposed new section, stating that grantees and subgrantees hold grant property "in trust," establishes the Federal interest that property should be used for its intended beneficial purposes. For more than 25, years, it has been established Federal policy that "assets in the hands of the grantee are charged with the obligation to be used for the purposes and subject to the conditions of the grant." 42 Comp. Gen. 289, 294 (1962). Nevertheless, without express regulatory language asserting that policy, there is a risk—notably in grantee bankruptcy situations—that grant property will be diverted from its intended purpose, without repayment to the Federal Government. See, for instance, *In Re Joliet-Will County Community Action Agency*, 58 B.R. 973 (N.D. Ill. 1986), *aff'd* 78 B.R. 164 (N.D. Ill. 1987). The first sentence of new § ____.39 asserts the intended policy.

The second sentence of the proposed new section is necessary to confirm the authority of Federal agencies to require nongovernmental grantees to place liens or notices to protect grant property from unauthorized encumbrance or disposition. Liens and notices, reciting that property has been acquired or improved with Federal grant assistance and that use and disposition conditions apply to the property, are placed on record by property owners, i.e., by grantees or subgrantees in the case of Federal grant-assisted property.

With the passage of time after a grant award, grant or subgrant officials may forget that there are prohibitions against unauthorized sale or mortgaging of the grant property, or they may remember that restrictions apply, but believe that circumstances require that the restrictions be ignored. In those cases, a notice placed on record is a useful reminder, to the grantee or subgrantee and to the prospective transferee or mortgagee, that the Federal interest is to be protected. Such notices, including liens where appropriate, involve minimal paperwork, and have no significant adverse consequences to grantees or subgrantees who stay in compliance. Requiring compliance with the conditions of a grant award in these cases is a way to assure those grantees and subgrantees who do comply that they are not doing more than is required of others.

Sometimes, even though liens or notices are placed on record, grant-assisted property may nevertheless be encumbered, foreclosed upon, sold, or otherwise misused. In such cases, the liens or notices can be indispensible for recovering to the Federal Government the Federal share of the value of the property. The second sentence of the proposed new § ____.39, by itself and in conjunction with the first sentence of this section, discussed above, is necessary for all these reasons. Comments are invited on this new section, which was not previously contained in Circular A–110.

Section ____.41 Financial reporting.

The last sentence of paragraph (a)(2) of this section stipulates that grantees shall not impose more burdensome financial reporting requirements on subgrantees. Comments have been received that this provision is appropriate for State and local governments but may not be appropriate for the private, nonprofit sector. Many private, nonprofit grantees may wish to impose additional reporting requirements on their subgrantees as part of their stewardship over Federal grant funds. Since Circular A–110 does not currently permit this and no change has been made to the common rule, comments are solicited on this subject.

Section ____.41(b)(4) has been amended to permit grantees to submit financial reports later than 90 days after the end of the grant year in situations where the Federal agency has extended the deadline for liquidation of obligations.

Section ____.50 Closeout.

Section ____.50(b), Liquidation of obligations, is proposed for addition. This provision repeats § ____.23(b) of the common rule because it is also relevant to the closeout of grants.

Subpart F—Special provisions for research.

The common rule would provide Federal agencies the opportunity to use special terms and conditions for research. Subpart F is a set of simplified administrative requirements which Federal agencies are proposing as a result of the "Florida Demonstration Project."

In March 1986, five Federal agencies began the Florida Demonstration Project to test ways to increase research productivity and reduce overhead costs on sponsored research. In March 1988, the Presidential Task Force on Regulatory Relief approved expansion of the project to include research contracts as well as grants and to include universities and research facilities outside of Florida. At the same time, the Interagency Assessment Committee composed of the senior policy officials of the participating agencies recommended immediate implementation of the most successful subset of the Demonstration procedures.

Since the terms and conditions of the Demonstration research agreements require waivers of provisions of the common rule, the proposed common rule would create a new Subpart F to permit routine application of the simplified provisions.

Impact Analyses

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules, which are defined in the Order as any rule that has an annual effect on the economy of $100 million or more, or certain other specified effects. We intend the rule to result in savings to all organizations receiving grants or subgrants. For example, the increase in the threshold for the definition of equipment would significantly reduce the recordkeeping costs for all organizations. However, we do not believe that the rule will have an annual economic effect of $100 million or more or the other effects listed in the Order. For this reason, we have determined that this rule is not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. 605(b)), Federal agencies generally publish for each rule with "significant economic impact on a substantial number of small entities," an analysis describing the rule's impact on small entities and identifying and significant alternatives to the rule that would minimize the economic impact on small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the covered programs, but rather modifies and updates administrative and procedural requirements.

Paperwork Reduction Act

Sections ____.10(b); ____.20(b); ____.24(b)(6); ____.30(f)(1), (2) and (3); ____.32(d)(1) and (f)(2); ____.36(b)(9), (c)(3), and (i); ____.40(b)(2), (c) and (d); ____.41(b), (c), (d) and (e); ____.42(b); ____.50(c) of this rule contain collection-of-information requirements. As required by the Paperwork Reduction Act of 1980, each agency shall submit a copy of this rule to the Office of Management and Budget for its review of these reporting and recordkeeping requirements. No grantee may be subject to a penalty for failure to comply with these information collection requirements until the requirements have been approved and assigned an OMB control number.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 3015 and 3016

FOR FURTHER INFORMATION CONTACT: Gerald Miske (Branch Chief), (202) 382–1553.

ADDITIONAL SUPPLEMENTARY INFORMATION: USDA's current regulation establishing Departmentwide policies and standards for the administration of grants and cooperative agreements for nongovernmental organizations is found at 7 CFR Part 3015, "Uniform Federal Assistance Regulations." The rule primarily implements OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations"; Circular A–128, "Audits of State and Local Governments"; and Executive Order 12372, "Intergovernmental Review of Federal Programs." Part 3015 also sets forth the Department's policy on competition in awarding discretionary grants and cooperative agreements and identifies the cost principles specified in Circular A–21 for universities, A–87 for State and local governments, A–122 for nonprofit organizations, and 41 CFR 1–15.2 for commercial organizations. In addition, Part 3015 had previously included the administrative requirements for grants and cooperative agreements to State and local governments that were prescribed by OMB Circular A–102. However, on March 11, 1988, USDA joined a "common rule" publication (one common regulation signed and implemented verbatim by all Federal government agencies) and moved those requirements to a new part, 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Through this action, USDA is now proposing to amend the March 11, 1988, common rule to include the administrative requirements for nongovernmental entities that were previously included in Part 3015. Therefore, after amendment, USDA's new Part 3016, with several exceptions, will apply to both governmental and nongovernmental recipients of Federal assistance. Otherwise, the applicability of Part 3016 will be consistent with that adopted on March 11, 1988. There will be no change in the types of transactions that will be covered. Part 3016 applies only to assistance relationships documented by grants and cooperative agreements, and subawards thereunder. Thus, Part 3016 does not apply to transactions entered into under sections 1472(b), 1473A, and 1473C of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by the Food Security Act (7 U.S.C. 3318, 3319a and 3319c).

By joining this common rule publication, Part 3015 will no longer prescribe the general administrative regulations for Federal assistance relationships with nongovernmental entities. However, as indicated above, there will be several exceptions. The common rule, as amended, will not apply to open-ended entitlement programs. Coverage for entitlement programs will be provided in a future Subpart E of 7 CFR Part 3016. Pending the issuance of Subpart E, the open-ended entitlement programs of the Food and Nutrition Service listed below, will remain subject to the requirements of 7 CFR Part 3015, and will not be covered by the amended common rule (7 CFR Part 3016).

(a) State Administrative Matching Grants for Food Stamp Program
(b) National School Lunch Program
(c) School Breakfast Program
(d) Summer Food Service Program
(e) Child Care Food Program
(f) Special Milk Program for Children
(g) State Administrative Expenses Under the Child Nutrition Act (sec. 7 of the Child Nutrition Act)

In addition to the open-ended entitlement programs listed above that will be included in Subpart E when issued, the following subparts of Part 3015 will remain in effect for all governmental and nongovernmental entities:

(a) Subpart I on audits.
(b) Subpart Q, § 3015.158 on competition.
(c) Subpart T on cost principles.
(d) Subpart V on intergovernmental review of Federal Programs.
(e) Subpart W on nonprocurement debarment and suspension (to be issued at a later date).

In addition to the changes referenced above, it will be necessary for USDA to propose three additional changes to its existing regulations. The first change concerns the title of 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." This title will now need to be changed to reflect that the rule no longer covers solely State and local governments, but will also cover nongovernmental and commercial organizations as well. Therefore, USDA is proposing to change the title to, "Uniform Administrative Requirements for Grants and Cooperative Agreements." This title is the same as that given to the governmentwide common rule and this title will also convey to USDA's amended common rule.

The second change necessitated by these revisions concerns amendments to 7 CFR 3015.1 and 3015.2 which will redefine the purpose of this subpart and the recipients to which this amended rule applies. Since the policies that will remain behind in Part 3015 are not being revised, USDA requests that comments be limited to the clarity of the changes in § 3015.1 and 3015.2.

The final change is required to update the reference to the cost principles that are applicable to for-profit organizations from 41 CFR 1–15.2 (Federal Procurement Regulations) to 48 CFR

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Subpart 31.2 (Federal Acquisition Regulations).

List of Subjects

7 CFR 3015

Grant programs (Agriculture), Intergovernmental relations.

7 CFR 3016

Grant programs (Agriculture).

Issued at Washington, DC, October 7, 1988.

Accordingly, it is proposed to amend Title 7 of the Code of Federal Regulations as set forth below.

John J. Franke, Jr.,
Assistant Secretary for Administration.
Richard E. Lyng,
Secretary of Agriculture.

1. It is proposed that Title 7 of the Code of Federal Regulations be amended by revising Part 3016 as set forth at the end of this document.

PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
3016.1 Purpose and scope of this part.
3016.2 Scope of subpart.
3016.3 Definitions.
3016.4 Applicability.
3016.5 Effect on other issuances.
3016.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

3016.10 Forms for applying for grants.
3016.11 State plans.
3016.12 Special grant or subgrant conditions for high-risk grantees.

Sbpart C—Post-Award Requirements

Financial Administration

3016.20 Standards for financial management systems.
3016.21 Payment.
3016.22 Allowable costs.
3016.23 Period of availability of funds.
3016.24 Matching or cost sharing.
3016.25 Program income.
3016.26 Non-Federal audit.

Changes, Property, and Subawards

3016.30 Changes.
3016.31 Real Property.
3016.32 Equipment.
3016.33 Supplies.
3016.34 Copyrights and patents.
3016.35 Subawards to debarred and suspended parties.
3016.36 Procurement.
3016.37 Subgrants.
3016.38 Intangible property and debt instruments.
3016.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

3016.40 Monitoring and reporting program performance.
3016.41 Financial reporting.
3016.42 Retention and access requirements for records.
3016.43 Enforcement.
3016.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

3016.50 Closeout.
3016.51 Later disallowances and adjustments.
3016.52 Collections of amounts due.

Subpart E—Entitlements (Reserved)

Subpart F—Special Provisions for Research and Other Programs

3016.70 Scope of subpart.
3016.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

3016.80 Scope of subpart.
3016.81 Prohibition against fee or profit.
3016.82 Real property and equipment.
3016.83 Program income.

Authority: 5 U.S.C. 301.

Cross Reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 3016 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "USDA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 3016.3 is amended by adding a definition for "USDA" alphabetically to read as follows:

§ 3016.3 Definitions.

* * * * *

"USDA" means the U.S. Department of Agriculture.

* * * * *

PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

3. USDA proposes to amend Subpart A of 7 CFR Part 3015 as follows:

a. The authority citation for Part 3015 continues to read as follows:

Authority: 5 U.S.C. 301.

b. Section 3015.1 is amended by revising paragraphs (a)(1) and (a)(3) as follows:

Subpart A—General

§ 3015.1 Purpose and scope of this part.

(a)(1) This part establishes USDA-wide uniform requirements for the administration of open-ended entitlement programs, and contains rules that specify the set of principles used for determining allowable costs under USDA grants and cooperative agreements to all State and local governments, universities, non-profit and for-profit organizations as set forth in OMB Circulars A–87, A–21, and A–122, and in 48 CFR Subpart 31.2, respectively.

* * * * *

(3) Rules for nonentitlement grants and cooperative agreements to all other governmental and nongovernmental entities are found in Part 3016.

* * * * *

c. Section 3015.2 is amended by adding paragraph (d)(6) as follows:

§ 3015.2 Applicability.

* * * * *

(d) * * *

(6) Nongovernmental entities except open-ended entitlements to nongovernmental entities.

* * * * *

Subpart T—Cost Principles

d. Section 3015.194 is revised to read as follows:

§ 3015.194 For-profit organizations.

The principles to be used when determining the allowable costs of activities conducted by for-profit organizations are contained in the Federal Acquisition Regulation at 48 CFR Subpart 31.2. Exception: Independent research and development costs including any indirect costs allocable to them are unallowable. Independent research and development are defined in the Federal Acquisition Regulation at 48 CFR 31.205–18.

DEPARTMENT OF ENERGY

10 CFR Part 600

FOR FURTHER INFORMATION CONTACT: Edward F. Sharp, Business and Financial Policy Division (MA–422), U.S. Department of Energy, Washington, DC 20585, (202) 586–8192.

ADDITIONAL SUPPLEMENTARY INFORMATION: The proposed common rule that accompanies this preamble combines formerly separate OMB guidances to agencies for use in awarding grants and cooperative agreements to: (1) State and local governments; (2) universities and nonprofit organizations; and (3) commercial organizations. This combination is being proposed as a single common rule because many of the requirements for the administration of financial assistance are not dependent on the nature of the institution to which the award is made. Thus, an economical approach to rulemaking suggests the value of placing standard administrative requirements in one document and having that document specify whatever distinctions are necessary concerning the types of recipients.

While the attached proposal is receiving public review and comment, the Department of Energy (DOE) is considering the adoption of a modification of the following rule to facilitate administration of grants and cooperative agreements. In considering such a modification, the Department would not change the content of the administrative requirements. The procedures would be consistent with those being established by other Executive Departments and Agencies.

Specifically, should DOE follow through with the modification, the Department would, in a final rule, separate the proposed common rule into two separate rules, the first to govern awards to state and local governments and commercial organizations and the second to govern those to universities and nonprofit organizations.

The Department is considering such a separation because DOE transactions affected by the proposed common rule are principally grants and cooperative agreements to academic and nonprofit institutions for the support of research and development related to energy. By including in a single document what had previously been in two documents, as the proposed common rule would do, we believe it may be more difficult for DOE recipients, contracting officers, and financial assistance administrators to determine which rules apply to a particular type of recipient. In the final rulemaking, therefore, the Department would incorporate into 10 CFR Part 600, Subpart F, only those provisions of the rule that are applicable to universities and nonprofit organizations. Provisions of the proposed rule affecting state and local governments and commercial organizations would be incorporated as changes to 10 CFR Part 600, Subpart E, DOE's implementation of the government-wide common rule (issued March 11, 1988) which replaced OMB Circular A–102.

It is recognized that if the approach being suggested here is followed, there will be many identical or nearly identical sections appearing in both subparts. DOE believes that this duplication is not necessarily undesirable, however, if the separated rules simplify understanding and use by recipients and contracting officers. Although the text which would demonstrate DOE's suggested approach is not included as part of today's proposed rule, DOE is interested in public reaction to the idea of separating the subparts. Accordingly, public comment is welcomed on this recommendation, since the Department is considering such a separation in large part because we believe it will be easier on the users of the rules. Further, other agencies may wish to consider this approach to final rulemaking.

Comment is also sought on the requirement in the common rule that, for state and local governments, costs incurred prior to award may not be authorized in advance but only on the award document itself. This is the result of the reliance in § ____.22(b) of the cost principles in OMB Circular A–87.

DOE has concluded that no substantial issue of fact or law exists and the rule is unlikely to have a substantial impact on the nation's economy or large numbers of individuals or businesses. The opportunity to file comments in writing should suffice for those persons interested in responding to today's proposal. Therefore, this notice does not provide for a public hearing.

List of Subjects in 10 CFR Part 600

Accounting, Administrative practice and procedure, Grants/energy, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Part 600 of Title 10 of the Code of Federal Regulations be amended as set forth below.

Issued in Washington, DC October 10, 1988.

Berton J. Roth,
Director, Procurement and Assistance Management Directorate.

PART 600—FINANCIAL ASSISTANCE RULES

The authority citation for Part 600 continues to read as follows and a cross reference is added below the authority citation to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 98 Stat. 1003–1005 (31 U.S.C. 6301–6308).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Subpart E is revised to read as set forth at the end of this document:

Subpart E—Uniform Administrative Requirements for Grants and Cooperative Agreements

General

Sec.
600.400 (____ .1) Purpose and scope of this subpart.
600.401 (____ .2) Scope of §§ 600.400 through 600.405.
600.402 (____ .3) Definitions.
600.403 (____ .4) Applicability.
600.404 (____ .5) Effect on other issuances.
600.405 (____ .6) Additions and exceptions.

Pre-Award Requirements

600.410 (____ .10) Forms for applying for grants.
600.411 (____ .11) State plans.
600.412 (____ .12) Special grant or subgrant conditions for high-risk grantees.

Post-Award Requirements

Financial Administration

600.420 (____ .20) Standards for financial management systems.
600.421 (____ .21) Payment.
600.422 (____ .22) Allowable costs.
600.423 (____ .23) Period of availability of funds.
600.424 (____ .24) Matching or cost sharing.
600.425 (____ .25) Program income.
600.426 (____ .26) Non-Federal audit.

Changes, Property, and Subawards

600.430 (____ .30) Changes.
600.431 (____ .31) Real property.
600.432 (____ .32) Equipment.
600.433 (____ .33) Supplies.
600.434 (____ .34) Copyrights and patents.
600.435 (____ .35) Subawards to debarred and suspended parties.
600.436 (____ .36) Procurement.
600.437 (____ .37) Subgrants.
600.438 (____ .38) Intangible property and debt instruments.
600.439 (____ .39) Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

600.440 (____ .40) Monitoring and reporting program performance.
600.441 (____ .41) Financial reporting.
600.442 (____ .42) Retention and access requirements for records.
600.443 (____ .43) Enforcement.
600.444 (____ .44) Termination for convenience.

After-the-Grant Requirements

600.450 (____ .50) Closeout.
600.451 (____ .51) Later disallowances and adjustments.
600.452 (____ .52) Collections of amounts due.

Entitlements [Reserved]

Special Provisions for Research and Other Programs

600.470 (____ .70) Scope of section.
600.471 (____ .71) Special provisions.

Special Provisions for Commercial Organizations

600.480 (____ .80) Scope of section.
600.481 (____ .81) Prohibition against fee or profit.
600.482 (____ .82) Real property and equipment.
600.483 (____ .83) Program income.

3. Subpart E is further amended as follows:

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a. "[Agency]" and "[agency]" are removed and "DOE" is added wherever "[Agency]" and "[agency]" appear.

b. In newly revised Subpart E, remove the terms "Part", "part", "Subpart" and "subpart" and add "Subpart", "subpart", "Section" and "section" respectively, wherever they appear.

§ 600.401 Scope of §§ 600.400 through 600.405.

c. The heading for § 600.401 is revised to read as set forth above.

d. Section 600.402 is amended by adding a definition for "DOE" alphabetically to read as follows:

§ 600.402 Definitions.

* * * * *

"DOE" means Department of Energy.

* * * * *

SMALL BUSINESS ADMINISTRATION

13 CFR Part 143

FOR FURTHER INFORMATION CONTACT: Karin L. Genis, Attorney-Adviser (202) 653–6649.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is authorized to make grants or enter into cooperative agreements under three provisions of the Small Business Act (15 U.S.C. 631 *et seq.*). Under section 7(j)(1) of that Act (15 U.S.C. 636(j)(1)), the Agency is authorized to enter into grants or cooperative agreements with public or private organizations to finance projects designed to assist businesses eligible to receive assistance under sections 7(i) and 8(a) of the Small Business Act (15 U.S.C. 636(i) and 637(a)). Under section 8(b)(2) of the Act (15 U.S.C. 637(b)(2)), the Agency may enter into grants or cooperative agreements with voluntary organizations to assist the Agency in providing management or technical assistance to small businesses. Finally, the Agency is authorized by section 21(a) of the Act (15 U.S.C. 648(a)) to enter into grants or cooperative agreements with Small Business Development Centers (SBDCs) for the purpose of making available management and technical assistance to small businesses.

As promulgated on March 11, 1988, Part 143 of title 13, Code of Federal Regulations (CFR) covered only grants and cooperative agreements made to State or local governments under section 7(j)(1). The proposed rule, if adopted in final form, would expand the scope of 13 CFR Part 143 to cover all grants and cooperative agreements entered into by the SBA. All affected SBA programs are specifically invited to comment on this proposed rule.

The SBA is proposing a specific addition to the common rule as it applies to SBA's grant and cooperative agreement programs, to be included in 13 CFR Part 143. SBA proposes to exempt grants and cooperative agreements entered into under section 7(j) of the Small Business Act from the common rule's prohibition of fees or profits to grantees or subgrantees. §§ 143.22(a)(2) and 143.81.) SBA currently negotiates a five to ten percent profit in many of its cooperative agreements with commercial organizations under its 7(j) program. It is SBA's position that this profit is necessary to provide sufficient incentive to qualified commercial entities to apply for grants to assist small and small disadvantaged concerns under the 7(j) program. In SBA's view, removal of this incentive will result in a drastic reduction in the number of concerns applying for 7(j) grants and a consequent reduction in the quality of services provided. Full participation of for-profit concerns is essential since those concerns are the prime source of the management and technical skills and expertise needed by the small and small disadvantaged businesses that are the ultimate beneficiaries of the 7(j) program.

SBA is one of the only Federal agencies that provides grants directly to for-profit concerns. Over 90 percent of the cooperative agreements entered into under SBA's 7(j) program are with for-profit concerns. The vast majority of such concerns are small businesses which cannot afford to perform these services without receiving a profit. Moreover, there are insufficient numbers of non-profit concerns which are capable of and interested in performing these services. For all of the above reasons, SBA believes that an exemption from the profit prohibition is warranted in the case of SBA's 7(j) program. Public comment is specifically solicited on this proposal.

List of Subjects in 13 CFR Part 143

Accounting, Administration practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements, Small businesses.

It is proposed that Part 143 of Title 13 of the Code of Federal Regulations be amended as set forth below.

Date: October 7, 1988.

James Abdnor,

Administrator.

1. Part 143 is revised to read as set forth at the end of this document.

PART 143—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
143.1 Purpose and scope of this part.
143.2 Scope of subpart.
143.3 Definitions.
143.4 Applicability.
143.5 Effect on other issuances.
143.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

143.10 Forms for applying for grants.
143.11 State plans.
143.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

143.20 Standards for financial management systems.
143.21 Payment.
143.22 Allowable costs.
143.23 Period of availability of funds.
143.24 Matching or cost sharing.
143.25 Program income.
143.26 Non-Federal audit.

Changes, Property, and Subawards

143.30 Changes.
143.31 Real property.
143.32 Equipment.
143.33 Supplies.
143.34 Copyrights and patents.
143.35 Subawards to debarred and suspended parties.
143.36 Procurement.
143.37 Subgrants.
143.38 Intangible property and debt instruments.
143.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

143.40 Monitoring and reporting program performance.
143.41 Financial reporting.
143.42 Retention and access requirements for records.
143.43 Enforcement.
143.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

143.50 Closeout.
143.51 Later disallowances and adjustments.
143.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

143.70 Scope of subpart.
143.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

143.80 Scope of subpart.
143.81 Prohibition against fee or profit.
143.82 Real property and equipment.
143.83 Program income.

Authority: 15 U.S.C. 634(b)(6).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 143 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "SBA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 143.3 is amended by adding a definition for "SBA" alphabetically to read as follows:

§ 143.3 Definitions.

* * * * *

"SBA" means the Small Business Administration.

* * * * *

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1270

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–8923.

ADDITIONAL SUPPLEMENTARY INFORMATION: The entire body of regulations applicable to NASA grants and cooperative agreements has traditionally appeared in or is incorporated by reference in the NASA Grant and Cooperative Agreement Handbook (14 CFR Part 1260). In the administrative area, the Handbook contains NASA implementation of OMB Circular A–110. With publication as a final rule of this proposed common rule (14 CFR Part 1270), all current Handbook material related to or overlapping the common rule will be superseded. Appropriate revisions will be made in 14 CFR Part 1260 to accommodate 14 CFR Part 1270. In several instances, this accommodation requires the inclusion in the NASA regulatory structure of administrative guidelines for procedures or actions which are not authorized under NASA grants or cooperative agreements. Their publication at 14 CFR Part 1270 does not constitute such authorization. This structure is formally noted in the amendment to § 1270.1.

In particular, guidelines for grants to other than educational institutions or other non-profit organizations, subgrants, construction grants, and transfer of grants are inoperative absent a deviation pursuant to 14 CFR 1260.106. When the common rule specifies that waivers or other direction by NASA is permissible, the regulatory guidance in such matters will be found in the Handbook (14 CFR Part 1260).

NASA's current implementation of OMB Circular A–110 in 14 CFR Part 1260 is not as extensive as in the common rule which combines the regulatory material in OMB Circulars A–102 and A–110. Comment on any anticipated differences in administrative burden or other factors under the current NASA regulations and under the common rule would be of interest. NASA would also be interested in comments on separating the "A–102" and "A–110" components of the common rule as suggested by the Department of Defense and the National Science Foundation in their common rule preambles.

Section 1270.25(a) encourages, without exception, researchers to generate income under grants. Comment is sought on any potential deleterious effects of the requirement on the conduct of research at universities.

List of Subjects in 14 CFR Part 1270

Grant administration.

It is proposed that Title 14 of the Code of Federal Regulations be amended as set forth below.

S.J. Evans,

Assistant Administrator for Procurement.

1. Part 1270 is added to read as set forth at the end of this document.

PART 1270—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
1270.1 Purpose and scope of this part.
1270.2 Scope of subpart.
1270.3 Definitions.
1270.4 Applicability.
1270.5 Effect on other issuances.
1270.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1270.10 Forms for applying for grants.
1270.11 State plans.
1270.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

1270.20 Standards for financial management systems.
1270.21 Payment.
1270.22 Allowable costs.
1270.23 Period of availability of funds.
1270.24 Matching or cost sharing.
1270.25 Program income.
1270.26 Non-Federal audit.

Changes, Property, and Subawards

1270.30 Changes.
1270.31 Real property.
1270.32 Equipment.
1270.33 Supplies.
1270.34 Copyrights and patents.
1270.35 Subawards to debarred and suspended parties.
1270.36 Procurement.
1270.37 Subgrants.
1270.38 Intangible property and debt instruments.
1270.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

1270.40 Monitoring and reporting program performance.
1270.41 Financial reporting.
1270.42 Retention and access requirements for records.
1270.43 Enforcement.
1270.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1270.50 Closeout.
1270.51 Later disallowances and adjustments.
1270.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

1270.70 Scope of subpart.
1270.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

1270.80 Scope of subpart.
1270.81 Prohibition against fee or profit.
1270.82 Real property and equipment.
1270.83 Program income.

Authority: Pub. L. 97–258, 31 U.S.C. 6301 et seq.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1270 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "NASA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 1270.1 is amended by adding paragraph (a) to read as follows:

§ 1270.1 Purpose and scope of this part.

* * * * *

(a) As this is a common rule, applicable to numerous agencies, it contains administrative regulations for some activities or actions not otherwise allowable by NASA. Publication herein of such administrative rules does not constitute authority to enter into transactions which are prohibited or not specifically authorized in NASA's Grant and Cooperative Agreement Handbook (14 CFR Part 1260). Regulations regarding the exercise of permitted waivers or options in this Part 1270 are found in 14 CFR Part 1260.

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c. Section 1270.3 is amended by adding a definition for "NASA" alphabetically to read as follows:

§ 1270.3 Definitions.

* * * * *

"NASA" means National Aeronautics and Space Administration.

* * * * *

d. Section 1270.71(a) is amended by adding paragraph (a)(1) to read as follows:

§ 1270.71 Special provisions.

(a) * * *

(1) Any necessary exceptions will be included in the award instruments.

* * * * *

DEPARTMENT OF COMMERCE

15 CFR Part 24

FOR FURTHER INFORMATION CONTACT: Comments may be mailed to Barbara L. Spithas, Room 6026, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230 (202) 377–5817.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department is proposing to make changes to Part 24 as explained below.

The Department proposes to revise its definition of "grant" in § 24.3 to indicate that it excludes cooperative research and development agreements as defined in section 11 of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502).

The Department proposes to revise § 24.30, paragraphs (c)(1)(ii) and (iii) by replacing the word "waived" with the words "otherwise specified by" in each paragraph. This proposed modification authorizes the Department to provide more restrictive as well as less restrictive requirements for nonconstruction project budget changes for those programs or for those projects, where deemed necessary. The Department contemplates situations, other than those involving high-risk grantees, in which there may be a particular concern that the agency's consent be obtained before a change of even five percent or ten percent of the total approved budget be authorized. And, in the case of paragraph 24.30(c)(ii), there are circumstances in which the Department would not wish governmental grantees to appear to be authorized to change 100 percent of the budget for a grant of under $100,000, without the consent of the grantor agency.

Section 24.30 is further proposed for revision in paragraph (c)(2) by deleting the period and insering, in lieu thereof, the following phrase: "and for other budget revisions as stated in an award document." This proposed modification is required for those construction projects and programs where, in the Department's experience, prior agency consent for budget changes appears necessary to assure completion of all project elements and to help prevent changes in project scope.

A new § 24.39, declaring that grant property is held in trust, and authorizing the recording of liens or notices against property acquired by nongovernmental grantees, is an important addition for all agencies. Nevertheless, for Commerce, it falls short in one respect. Based upon the experience of the Economic Development Agency and the National Telecommunications and Information Administration (NTIA), the Department of Commerce needs the authority to record liens or notices against property acquired by governmental as well as nongovernmental grantees.

Therefore, the Department proposes to revise § 24.39 to delete the word "nongovernmental" before the word "grantees" in the second sentence. This is in support of the existing Department of Commerce practice, and is consistent with the Department's concerns reflected in 15 CFR 24.31(b)(1) published March 11, 1988 (53 FR 8049).

Section 24.71 is proposed for revision by inserting the phrase "or such provisions thereof as specified by the [agency]," between the words "special provisions" and the words "shall apply to grants" in the first sentence. This proposed modification will permit greater use of the subpart, by authorizing the Department to specify that some but not all of the special provisions will apply to grants subject to the subpart.

In addition to the proposed revisions to Part 24 explained above, the Department would like an exception granted in accordance with 15 CFR 24.6(b). This section allows OMB to authorize exceptions for classes of grants or grantees. The exception is requested from Subpart G, Special Provisions for Commercial Organizations. This subpart contains provisions that apply to grants and subgrants to commercial organizations. Section 24.81, Prohibition against profit, of this part prohibits the use of grant funds as profit to any recipient of a grant or subgrant. The Department of Commerce policy has been to allow commercial organizations (for-profit institutions) profits of up to seven percent of the direct costs. Therefore, the proposed exception for the Department of Commerce is in support of current Department policy.

For example, as a result of General Accounting Office and Congressional subcommittee evaluations and recommendations, the Department's Minority Business Development Agency (MBDA) has sought firms and organizations which can provide expert management and technical assistance to minority firms through its Minority Business Development Center (MBDC) program. In 1981, the Department allowed MBDA to award a maximum profit/fee of 7 percent of total direct costs to attract competent profit-making organizations. Currently, there are approximately 100 MBDCs in operation. Of this number, 51 for-profit organizations operate the MBDCs. Some may operate more than one MBDC.

Recipients of MBDC awards must contribute a 15 percent non-federal share to the projects. Additionally, these recipients are required to charge a fee for services to clients; recipients are also held accountable for both the billing and collection of the fees. These requirements pose unusual risk factors for the recipients without the compensation of a profit. Given the proposed elimination of profit, the Department's concern is that the MBDC program will not attract competent for-profit firms into this program which is specifically designed to help minority firms. Therefore, the Department seeks an exemption from the prohibition of profit. The exception is requested for the Department in support of current policy and to provide for consistent and uniform policies among its diverse programs.

Finally, the Department proposes that the National Telecommunications and Information Administration's (NTIA) Public Telecommunications Facilities Program (PTFP) adhere to the non-construction requirements rather than the construction requirements where there are differences between the two. In addition, the Department proposes to apply § 24.32, Equipment, to the PTFP program.

In the first instance, NTIA's authorizing legislation defines "construction" as the acquisition, installation, and modernization of public telecommunications facilities and the planning and preparatory steps incidental to any such acquisition, installation or modernization (47 U.S.C. 397(1)). Notwithstanding this definition, however, the Department does not believe that the activities conducted by NTIA fall under what is commonly referred to as "construction" or the intent of the common rule's distinction between constructionand non-construction programs. Moreover, NTIA has never administered the PTFP program in a manner consistent with § 24.30(c)(2) or 24.40(c). For these reasons, and in order to allow NTIA to properly manage its PTFP grants, the Department proposes to apply § 24.32 to PTFP.

In the second instance, § 24.32, Equipment, sets forth management and disposition requirements for equipment acquired under a grant or subgrant. Equipment is defined as "tangible, nonexpendable personal property having * * * an acquisition cost of $5,000 or more per unit." A significant portion of PTFP funded electronic equipment items do not have such a high acquisition cost and would be considered "supplies." Thus, a large amount of grant-related equipment would fall outside the administrative requirements of § 24.32 of the common rule, which would result in serious grant management problems for NTIA. A radio or television station production studio, for example, consists of an inventory of items falling within and outside the proposed definition. Under current practice, NTIA treats grant-related equipment as a whole, subjecting each item to identical administrative requirements. Under the common rule, however, NTIA must distinguish between two categories of personal property based solely on per unit acquisition cost.

The Department believes that the authorizing legislation for the PTFP requires that all grant-related tangible, nonexpendable personal property be accounted for as "equipment." The rules regarding "supplies" would not permit NTIA to properly carry out its role as manager of PTFP grants. Therefore, the Department advocates an exception from the per unit acquisition cost threshold for the PTFP.

The Department welcomes any comments the public may have on the proposed revisions and the requests for exceptions.

All Commerce reporting and recordkeeping requirements in the Common Rule have current OMB approval.

List of Subjects in 15 CFR Part 24

Accounting, Administration practice and procedures, Grant programs, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 15 of the Code of Federal Regulations be amended as set forth below:

Sonya G. Stewart,

Director, for Finance and Federal Assistance.

1. Part 24 is revised to read as set forth at the end of this document with the Departments revisions as indicated above:

PART 24—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
24.1 Purpose and scope of this part.
24.2 Scope of subpart.
24.3 Definitions.
24.4 Applicability.
24.5 Effect on other issuances.
24.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

24.10 Forms for applying for grants.
24.11 State plans.
24.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

24.20 Standards for financial management systems.
24.21 Payment.
24.22 Allowable costs.
24.23 Period of availability of funds.
24.24 Matching or cost sharing.
24.25 Program income.
24.26 Non-Federal audit.

Changes, Property, and Subawards

24.30 Changes.
24.31 Real property.
24.32 Equipment.
24.33 Supplies.
24.34 Copyrights and patents.
24.35 Subawards to debarred and suspended parties.
24.36 Procurement.
24.37 Subgrants.
24.38 Intangible property and debt instruments.
24.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

24.40 Monitoring and reporting program performance.
24.41 Financial reporting.
24.42 Retention and access requirements for records.
24.43 Enforcement.
24.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

24.50 Closeout.
24.51 Later disallowances and adjustments.
24.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

24.70 Scope of subpart.
24.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

24.80 Scope of subpart.
24.81 Prohibition against fee or profit.
24.82 Real property and equipment.
24.83 Program income.

Authority: 5 U.S.C. 301.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 24 is proposed for further amendment by removing "[Agency]" and "[agency]" and adding "Department of Commerce" wherever "[Agency]" and "[agency]" appear.

DEPARTMENT OF STATE

22 CFR Part 135

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive, Room 227, SA–6, U.S. Department of State, Washington, DC 20520, telephone (703) 875–7046.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State will amend its current regulatory coverage at 22 CFR Part 135 for grants and cooperative agreements with state and local governments to incorporate the proposed rule. The Department has not previously promulgated regulatory coverage for grants and cooperative agreements with nongovernmental entities.

List of Subjects in 22 CFR Part 135

Accounting, Administrative practice and procedure, Grant programs—foreign relations, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 22 of the Code of Federal Regulations be amended as set forth below.

John J. Conway,

Procurement Executive.

1. Part 135 is revised to read as set forth at the end of this document:

PART 135—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
135.1 Purpose and scope of this part.
135.2 Scope of subpart.
135.3 Definitions.
135.4 Applicability.
135.5 Effect on other issuances.
135.6 Additions and exceptions.

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Subpart B—Pre-Award Requirements

135.10 Forms for applying for grants.
135.11 State plans.
135.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

135.20 Standards for financial management systems.
135.21 Payment.
135.22 Allowable costs.
135.23 Period of availability of funds.
135.24 Matching or cost sharing.
135.25 Program income.
135.26 Non-Federal audit.

Changes, Property, and Subawards

135.30 Changes.
135.31 Real property.
135.32 Equipment.
135.33 Supplies.
135.34 Copyrights and patents.
135.35 Subawards to debarred and suspended parties.
135.36 Procurement.
135.37 Subgrants.
135.38 Intangible property and debt instruments.
135.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

135.40 Monitoring and reporting program performance.
135.41 Financial reporting.
135.42 Retention and access requirements for records.
135.43 Enforcement.
135.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

135.50 Closeout.
135.51 Later disallowances and adjustments.
135.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

135.70 Scope of subpart.
135.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

135.80 Scope of subpart.
135.81 Prohibition against fee or profit.
135.82 Real property and equipment.
135.83 Program income.

Authority: 22 U.S.C. 2656.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 135 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "DOS" is added wherever "[Agency]" and "[agency]" appear.

b. Section 135.3 is amended by adding a definition for "DOS" alphabetically to read as follows:

§ 135.3 Definitions.

* * * * *

"DOS" means Department of State.

* * * * *

INTERNATIONAL DEVELOPMENT CORPORATION AGENCY

Agency for International Development

22 CFR Part 226

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Ms. Kathleen J. O'Hara, Room, 1600I, SA–14, Agency for International Development, Washington, DC, (703) 875–1534.

SUPPLEMENTARY INFORMATION: The Agency for International Development (A.I.D.) intends to incorporate the proposed common rule as a new Part 226 of Title 22 of the Code of Federal Regulations. A.I.D. guidance for its grants and cooperative agreements is contained in the Agency's Handbook series—principally Handbook 13. This Agency guidance is being reviewed and amended to ensure consistency with the common rule and revised OMB guidance.

List of Subjects in 22 CFR Part 226

Accounting, Administrative practice and procedure, Grant programs-Foreign aid, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 22 of the Code of Federal Regulations be amended as set forth below.

Dated: October 13, 1988.

John F. Owens,

Associate Assistant to the Administrator for Management.

1. Part 226 is added to read as set forth at the end of this document:

PART 226—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
226.1 Purpose and scope of this part.
226.2 Scope of subpart.
226.3 Definitions.
226.4 Applicability.
226.5 Effect on other issuances.
226.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

226.10 Forms for applying for grants.
226.11 State plans.
226.12 Special grant and subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

226.20 Standards for financial management systems.
226.21 Payment.
226.22 Allowable costs.
226.23 Period of availability of funds.
226.24 Matching or cost sharing.
226.25 Program income.
226.26 Non-Federal audit.

Changes, Property, and Subawards

226.30 Changes.
226.31 Real property.
226.32 Equipment.
226.33 Supplies.
226.34 Copyrights and patents.
226.35 Subawards to debarred and suspended parties.
226.36 Procurement.
226.37 Subgrants.
226.38 Intangible property and debt instruments.
226.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

226.40 Monitoring and reporting program performance.
226.41 Financial reporting.
226.42 Retention and access requirements for records.
226.43 Enforcement.
226.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

226.50 Closeout.
226.51 Later disallowances and adjustments.
226.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

226.70 Scope of subpart.
226.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

226.80 Scope of subpart.
226.81 Prohibition against fee or profit.
226.82 Real property and equipment.
226.83 Program income.

Authority: Section 621, Foreign Assistance Act of 1961 (FAA), 22 U.S.C. 2381; Section 635, FAA, 22 U.S.C. 2395.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 226 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "A.I.D." is added wherever "[Agency]" and "[agency]" appear.

b. Section 226.3 is amended by adding a definition for "A.I.D." alphabetically to read as follows:

§ 226.3 Definitions.

* * * * *

"A.I.D." means the Agency for International Development.

* * * * *

UNITED STATES INFORMATION AGENCY

22 CFR Part 518

FOR FURTHER INFORMATION CONTACT: Darwin Roberts, United States Information Agency, Office of Contracts, Policy and Procedures Staff, Room 1611, 330 C Street, SW., Washington, DC 20547 Telephone: (202) 485–6410.

List of Subjects in 22 CFR Part 518

Accounting, Administration practice and procedures, Grant programs—Grants administration, Contract administration, Financial management, Grant monitoring, Reporting and Recordkeeping requirements.

It is proposed that Title 22 of the Code of Federal Regulations be amended as set forth below.

Philip R. Rogers,

Agency Procurement Executive.

1. Part 518 is revised to read as set forth at the end of this document:

PART 518—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
518.1 Purpose and scope of this part.
518.2 Scope of subpart.
518.3 Definitions.
518.4 Applicability.
518.5 Effect on other issuances.
518.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

518.10 Forms for applying for grants.
518.11 State plans.
518.12 Specials grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

518.20 Standards for financial management systems.
518.21 Payment.
518.22 Allowable costs.
518.23 Period of availability of funds.
518.24 Matching or cost sharing.
518.25 Program income.
518.26 Non-Federal audit.

Changes, Property, and Subawards

518.30 Changes.
518.31 Real Property.
518.32 Equipment.
518.33 Supplies.
518.34 Copyrights and patents.
518.35 Subawards to debarred and suspended parties.
518.36 Procurement.
518.37 Subgrants.
518.38 Intangible property and debt instruments.
518.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

518.40 Monitoring and reporting program performance.
518.41 Financial reporting.
518.42 Retention and access requirements for records.
518.43 Enforcement.
518.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

518.50 Closeout.
518.51 Later disallowances and adjustments.
518.52 Collections of amounts due.

Subpart E—Entitlements (Reserved)

Subpart F—Special Provisions for Research and Other Programs

518.70 Scope of subpart.
518.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

518.80 Scope of subpart.
518.81 Prohibition against fee or profit.
518.82 Real property and equipment.
518.83 Program income.

Authority: 40 U.S.C. 486(c).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 518 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "USIA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 518.3 is amended adding a definition for "USIA" alphabetically to read as follows:

§ 518.3 Definitions.

* * * * *

"USIA" means United States Information Agency.

* * * * *

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 85

[Docket No. R–88–1426; FR–2376]

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Room 5260, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–5294. (This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION: Many nongovernmental organizations receiving financial assistance under HUD grant programs do so as subgrantees of the governmental grantees, *e.g.*, under the Community Development Block Grant program. Other nongovernmental organizations receive financial assistance under HUD grant programs where both governmental and nongovernmental organizations are eligible grantees. Where provisions of the A–102 Common Rule were not made applicable to governmental grantees under HUD grant programs because the provisions were inconsistent with the statutory requirements of the programs or because OMB approved exceptions, the provisions will also not be made applicable, in most cases, to nongovernmental organizations. (See the HUD preamble to the final A–102 Common Rule published March 11, 1988 (53 FR 8034, 8050–56).)

This rule was listed as item 1016 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13889) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 85

Grant administration, State and local governments, Cooperative agreements.

It is proposed that Title 24 of the Code of Federal Regulations be amended as set forth below:

Date: October 6, 1988.

Samuel R. Pierce, Jr.,

Secretary, Housing and Urban Development.

1. Part 85 is revised to read as set forth at the end of this document.

PART 85—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
85.1 Purpose and scope of this part.
85.2 Scope of subpart.
85.3 Definitions.
85.4 Applicability.
85.5 Effect on other issuances.
85.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

85.10 Forms for applying for grants.
85.11 State plans.
85.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

85.20 Standards for financial management systems.
85.21 Payment.
85.22 Allowable costs.
85.23 Period of availability of funds.
85.24 Matching or cost sharing.

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85.25 Program income.
85.26 Non-Federal audit.

Changes, Property, and Subawards

85.30 Changes.
85.31 Real property.
85.32 Equipment.
85.33 Supplies.
85.34 Copyrights and patents.
85.35 Subawards to debarred and suspended parties.
85.36 Procurement.
85.37 Subgrants.
85.38 Intangible property and debt instruments.
85.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

85.40 Monitoring and reporting program performance.
85.41 Financial reporting.
85.42 Retention and access requirements for records.
85.43 Enforcement.
85.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

85.50 Closeout.
85.51 Later disallowances and adjustments.
85.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

85.70 Scope of subpart.
85.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

85.80 Scope of subpart.
85.81 Prohibition against fee or profit.
85.82 Real property and equipment.
85.83 Program income.

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 85 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "HUD" is added wherever "[Agency]" and "[agency]" appear.

b. Section 85.3 is amended by adding a definition for "HUD" alphabetically to read as follows:

§ 85.3 Definitions.

* * * * *

"HUD" means the Department of Housing and Urban Development.

* * * * *

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

FOR FURTHER INFORMATION CONTACT: George H. Bradley, Office of Chief Counsel, Internal Revenue Service, Room 4002, Washington, DC 20224. Telephone 202–343–0231 (not a toll-free number).

ADDITIONAL SUPPLEMENTARY INFORMATION: With respect to the Internal Revenue Service, the only program that would be affected by these proposed rules is the Tax Counseling for the Elderly (TCE) program.

List of Subjects in 26 CFR Part 601

Administration practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Grant programs, Grants administration, Tax counseling for the elderly, taxes.

Proposed Amendments to the Regulations

It is proposed that Title 26 of the Code of Federal Regulations be amended as set forth below.

Michael J. Murphy,

Commissioner of Internal Revenue (Acting).

PART 601—STATEMENT OF PROCEDURAL RULES

Paragraph 1. The authority for Part 601 continues to read in part:

Authority: 5 U.S.C. 301 and 552.

Par. 2. Subpart J is redesignated Subpart K and a new Subpart J is added to read as set forth at the end of this document.

Subpart J—Uniform Administrative Requirements for Grants and Cooperative Agreements

General

Sec.
601.1001 (____.1) Purpose and scope of this subpart.
601.1002 (____.2) Scope of §§ 601.1001 through 601.1005.
601.1003 (____.3) Definitions.
601.1004 (____.4) Applicability.
601.1005 (____.5) Effect on other issuances.
601.1006 (____.6) Additions and exceptions.

Pre-Award Requirements

601.1010 (____.10) Forms for applying for grants.
601.1011 (____.11) State plans.
601.1012 (____.12) Special grant or subgrant conditions for high-risk grantees.

Post-Award Requirements

Financial Administration

601.1020 (____.20) Standards for financial management systems.
601.1021 (____.21) Payment.
601.1022 (____.22) Allowable costs.
601.1023 (____.23) Period of availability of funds.
601.1024 (____.24) Matching or cost sharing.
601.1025 (____.25) Program income.
601.1026 (____.26) Non-Federal audit.

Changes, Property, and Subawards

601.1030 (____.30) Changes.
601.1031 (____.31) Real property.
601.1032 (____.32) Equipment.
601.1033 (____.33) Supplies.
601.1034 (____.34) Copyrights and patents.
601.1035 (____.35) Subawards to debarred and suspended parties.
601.1036 (____.36) Procurement.
601.1037 (____.37) Subgrants.
601.1038 (____.38) Intangible property and debt instruments.
601.1039 (____.39) Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

601.1040 (____.40) Monitoring and reporting program performance.
601.1041 (____.41) Financial reporting.
601.1042 (____.42) Retention and access requirements for records.
601.1043 (____.43) Enforcement.
601.1044 (____.44) Termination for convenience.

After-the-Grant Requirements

601.1050 (____.50) Closeout.
601.1051 (____.51) Later disallowances and adjustments.
601.1052 (____.52) Collections of amounts due.

Entitlements [Reserved]

Special Provisions for Research and Other Programs

601.1070 (____.70) Scope of §§ 601.1070 through 601.1071.
601.1071 (____.71) Special provisions.

Special Provisions for Commercial Organizations

601.1080 (____.80) Scope of §§ 601.1080 through 601.1083.
601.1081 (____.81) Prohibition against fee or profit.
601.1082 (____.82) Real property and equipment.
601.1083 (____.83) Program income.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Subpart J is further amended as follows:

a. Subpart J is amended by removing "[Agency]" and "[agency]" and adding "Department of Treasury" wherever "[Agency]" and "[agency]" appear.

b. Subpart J is amended by removing "Part", "part", "Subpart" and "subpart" and adding "Subpart", "subpart" "Section" and "section" respectively, wherever they appear.

DEPARTMENT OF JUSTICE

28 CFR Part 66

FOR FURTHER INFORMATION CONTACT: Jack A. Nadol, Department of Justice, Office of Justice Programs, 633 Indiana Ave., NW., Room 942, Washington, DC 20531, (202) 724–7608.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice has adopted uniform administrative rules for state and local governments, institutions of higher education, hospitals, other nonprofit organizations, and commercial or for-profit entities which will be applicable to grants and cooperative agreements awarded by components of the Department of Justice. These include: The Bureau of Justice Assistance, Bureau of Justice Statistics, Bureau of Prisons, Community Relations Service, Drug Enforcement Administration, Immigration and Naturalization Service, National Institute of Corrections, National Institute of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Office for Victims of Crime, and U.S. Marshals Service.

Drug Enforcement Administration (DEA) contracts that are issued under 21 U.S.C. 873(a)(7) are exempt. However, in the event DEA is authorized to fund grants to governmental and/or nongovernmental organizations in the future, DEA would be subject to the common grants management regulation.

With respect to grants and cooperative agreements of the Office of Justice Programs (OJP), this regulation replaces Appendixes 3 and 4 of OJP Guideline Manual 7100.1C, Financial and Administrative Guide for Grants.

List of Subjects in 28 CFR Part 66

Accounting, Administration practice and procedures, Grant programs—Law, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 28 of the Code of Federal Regulations be amended as set forth below.

Dick Thornburgh,

Attorney General.

October 20, 1988.

1. Part 66 is revised to read as set forth at the end of this document.

PART 66—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
66.1 Purpose and scope of this part.
66.2 Scope of subpart.
66.3 Definitions.
66.4 Applicability.
66.5 Effect on other issuances.
66.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

66.10 Forms for applying for grants.
66.11 State plans.
66.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

66.20 Standards for financial management systems.
66.21 Payment.
66.22 Allowable costs.
66.23 Period of availability of funds.
66.24 Matching or cost sharing.
66.25 Program income.
66.26 Non-Federal audit.

Changes, Property, and Subawards

66.30 Changes.
66.31 Real property.
66.32 Equipment.
66.33 Supplies.
66.34 Copyrights and patents.
66.35 Subawards to debarred and suspended parties.
66.36 Procurement.
66.37 Subgrants.
66.38 Intangible property and debt instruments.
66.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

66.40 Monitoring and reporting program performance.
66.41 Financial reporting.
66.42 Retention and access requirements for records.
66.43 Enforcement.
66.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

66.50 Closeout.
66.51 Later disallowances and adjustments.
66.52 Collections of amount due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

66.70 Scope of subpart.
66.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

66.80 Scope of subpart.
66.81 Prohibition against fee or profit.
66.82 Real property and equipment.
66.83 Program income.

Authority: The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, et seq. (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, et seq. (as amended); Victims of Crime Act of 1984, 42 U.S.C 10601, et seq. (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351–4353.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 66 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "DOJ" is added wherever "[Agency]" and "[agency]" appear.

b. Section 66.3 is amended by adding a definition for "DOJ" alphabetically to read as follows:

§ 66.3 Definitions.

* * * * *

"DOJ" means Department of Justice.

* * * * *

c. Section 66.32 is amended by adding paragraph (a)(1) to read as follows:

§ 66.32 Equipment.

(a) * * *

(1) This statutory requirement is applicable to the Office of Justice Programs, U.S. Department of Justice. The Omnibus Crime Control and Safe Streets Act of 1968, as amended, Pub. L. 90–351, section 808, requires that the title to all equipment and supplies purchased with sections 403 or 1302 (block or formula funds) shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in sections 408 or 1308 that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

* * * * *

d. Section 66.33 is amended by adding paragraph (a)(1) to read as follows:

§ 66.33 Supplies.

(a) * * *

(1) This statutory requirement is applicable to the Office of Justice Programs, U.S. Department of Justice. The Omnibus Crime Control and Safe Streets Act of 1968, as amended, Pub. L. 90–351, section 808, requires that the title to all equipment and supplies purchased with sections 403 or 1302 (block or formula funds) shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in sections 408 or 1308 that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

* * * * *

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DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 97

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg, Room S–1522, U.S. Department of Labor, Washington, DC 20210. Telephone: (202) 523–8904.

ADDITIONAL SUPPLEMENTARY INFORMATION: As indicated in the previously published DOL specific preamble to the common rule 29 CFR Part 97, for governmental grants (53 FR 8069, March 11, 1988), the Department of Labor had previously published regulations implementing both OMB Circulars A–102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and A–110, Uniform Administrative Requirements for Grants and Cooperative Agreements with Non-profit Institutions, at 41 CFR Part 29–70 (1984). With the adoption of the March 11, 1988 regulations covering governmental grants, 41 CFR Part 29–70 (1984) was no longer applicable to those grants. When this amendment to 29 CFR Part 97 is finalized, 41 CFR Part 29–70 (1984) will no longer be applicable to grants to non-profit institutions.

List of Subjects in 29 CFR Part 97

Accounting, Administration practice and procedures, Grant programs—Governmental and non-governmental, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 29 of the Code of Federal Regulations be amended as set forth below.

Ann McLaughlin,

Secretary of Labor.

1. Part 97 is revised to read as set forth at the end of this document.

PART—97 UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
97.1 Purpose and scope of this part.
97.2 Scope of subpart.
97.3 Definitions.
97.4 Applicability.
97.5 Effect on other issuances.
97.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

97.10 Forms for applying for grants.
97.11 State plans.
97.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

97.20 Standards for financial management systems.
97.21 Payment.
97.22 Allowable costs.
97.23 Period of availability of funds.
97.24 Matching or cost sharing.
97.25 Program income.
97.26 Non-Federal audit.

Changes, Property, and Subawards

97.30 Changes.
97.31 Real Property.
97.32 Equipment.
97.33 Supplies.
97.34 Copyrights and patents.
97.35 Subawards to debarred and suspended parties.
97.36 Procurement.
97.37 Subgrants.
97.38 Intangible property and debt instruments.
97.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

97.40 Monitoring and reporting program performance.
97.41 Financial reporting.
97.42 Retention and access requirements for records.
97.43 Enforcement.
97.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

97.50 Closeout.
97.51 Later disallowances and adjustment.
97.52 Collections of amounts due.

Subpart E—Entitlements (Reserved)

Subpart F—Special Provisions for Research and Other Programs

97.70 Scope of subpart.
97.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

97.80 Scope of subpart.
97.81 Prohibition against fee or profit.
97.82 Real property and equipment.
97.83 Program income.

Authority: 5 U.S.C. 301; OMB Circulars A–102 and A–110.

Cross reference: See also Office of Management and Budget notice published at 52 FR 23729 (June 24, 1987).

2. Part 97 is further amended by removing "[Agency]" and "[agency]" and adding "Department of Labor" wherever "[Agency]" and "[agency]" appear.

Federal Mediation and Conciliation Service

29 CFR Part 1470

FOR FURTHER INFORMATION CONTACT: Lee A. Buddendeck, (202) 653–5320.

List of Subjects in 29 CFR Part 1470

Grants administration, Reporting and recordkeeping requirements.

It is proposed that Title 29 of the Code of Federal Regulations be amended as set forth below.

Kay McMurray,

Director.

1. Part 1470 is revised to read as set forth at the end of this document:

PART 1470—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
1470.1 Purpose and scope of this part.
1470.2 Scope of subpart.
1470.3 Definitions.
1470.4 Applicability.
1470.5 Effect on other issuances.
1470.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1470.10 Forms for applying for grants.
1470.11 State plans.
1470.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

1470.20 Standards for financial management systems.
1470.21 Payment.
1470.22 Allowable costs.
1470.23 Period of availability of funds.
1470.24 Matching or cost sharing.
1470.25 Program income.
1470.26 Non-Federal audit.

Changes, Property, and Subawards

1470.30 Changes.
1470.31 Real property.
1470.32 Equipment.
1470.33 Supplies.
1470.34 Copyrights and patents.
1470.35 Subawards to debarred and suspended parties.
1470.36 Procurement.
1470.37 Subgrants.
1470.38 Intangible property and debt instruments.
1470.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

1470.40 Monitoring and reporting program performance.
1470.41 Financial reporting.
1470.42 Retention and access requirements for records.
1470.43 Enforcement.
1470.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1470.50 Closeout.
1470.51 Later disallowances and adjustments.
1470.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

1470.70 Scope of subpart.
1470.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

1470.80 Scope of subpart.
1470.81 Prohibition against fee or profit.
1470.82 Real property and equipment.
1470.83 Program income.

Authority: 29 U.S.C. 175a.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1470 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "FMCS" is added wherever "[Agency]" and "[agency]" appear.

b. Section 1470.3 is amended by adding a definition for "FMCS" alphabetically to read as follows:

§ 1470.3 Definitions.

* * * * *

"FMCS" means Federal Mediation and Conciliation Service.

* * * * *

DEPARTMENT OF DEFENSE

32 CFR Part 279

FOR FURTHER INFORMATION CONTACT: Dr. Mark Herbst, (202) 694–0205.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense proposes to adopt a modification of the following rule to govern administration of grants and cooperative agreements. In adopting the modification of the government-wide common rule, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will establish uniform procedures that are consistent with those being established by other Executive Departments and Agencies.

The proposed common rule would combine implementation of formerly separate OMB guidance to agencies for grants and cooperative agreements with: (1) State and local governments, (2) universities and nonprofit organizations, and (3) commercial organizations. In making its final rule, the Department of Defense intends to separate the proposed common rule into two separate rules, the first to govern awards to state and local governments and to commercial organizations and the second to govern those to universities and nonprofit organizations.

The Department proposes this separation because DoD transactions subject to the proposed rule principally are grants to academic and nonprofit institutions for the support of research and development related to military needs. There is little other activity subject to the rule. Adopting separately that portion of the rule relevant to research grants is the best way to provide for a clear rule for the use of DoD grantees, grants officers and grants administrators. The rule would be more difficult to understand if it had interwoven, dissimilar provisions for other classes of institutions, those with which DoD does little business subject to the rule.

In final rulemaking, therefore, the Department proposes to incorporate into 32 CFR Part 279 only those provisions of the rule that are applicable to universities and nonprofit organizations. Provisions applicable to state and local governments and commercial organizations will be incorporated as revisions to 32 CFR Part 278, the government-wide common rule adopted on March 11, 1988 (53 FR 8034), to implement the updated OMB Circular A–102. There will be some identical or nearly identical sections appearing in both rules, but this duplication is not undesirable if the separated rules simplify understanding and use of the rules by grantees and grants officers. Public comment is welcomed on this proposal to separate the rules, as other agencies may wish to consider this approach at final rulemaking.

The Department also will make minor amendments to §§ 279.70 and 279.71 at final rulemaking. Under these sections of the proposed common rule, if any agency uses any of the Florida Demonstration Project (FDP) provisions to eliminate unnecessary bureaucratic red tape and streamline funding of university research, it must use *all* of the provisions. The Department will amend these sections to be consistent with current federal-wide policy, which allows agencies to use selected FDP provisions, as appropriate, in university research grants. Amending §§ 279.70 and 279.71 will allow DoD, one of the five original agencies in the demonstration project, to continue to use FDP provisions. Otherwise, the Department likely would have to forego further use of all FDP provisions.

Finally, the Department proposes to add a section to Subpart B to clarify that non-governmental grantees must comply with applicable federal statutes and regulations and that there may be pre-award requirements for them to provide assurances in this regard. Similar statements currently are made in the rule for governmental organizations receiving grants (in § 279.11), for organizations receiving procurement contracts under grants [in § 279.36(i)], and for subgrantees (in § 279.37). The proposed new section would give equal notification within the rule to non-governmental grantees.

List of Subjects in 32 CFR Part 279

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 32 of the Code of Federal Regulations be amended as set forth below.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 31, 1988.

1. It is proposed to add Part 279 to read as set forth at the end of this document.

PART 279—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
279.1 Purpose and scope of this part.
279.2 Scope of subpart.
279.3 Definitions.
279.4 Applicability.
279.5 Effect on other issuances.
279.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

279.10 Forms for applying for grants.
279.11 State plans.
279.12 Special grant to subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

279.20 Standards for financial management systems.
279.21 Payment.
279.22 Allowable costs.
279.23 Period of availability of funds.
279.24 Matching or cost sharing.
279.25 Program income.
279.26 Non-Federal audit.

Changes, Property, and Subawards

279.30 Changes.
279.31 Real property.
279.32 Equipment.
279.33 Supplies.
279.34 Copyrights and patents.
279.35 Subawards to debarred and suspended parties.
279.36 Procurement.
279.37 Subgrants.
279.38 Intangible property and debt instruments.
279.39 Grant property trust relationship and notices.

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Reports, Records, Retention, and Enforcement

279.40 Monitoring and reporting program performance.
279.41 Financial reporting.
279.42 Retention and access requirements for records.
279.43 Enforcement.
279.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

279.50 Closeout.
279.51 Later disallowances and adjustments.
279.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

279.70 Scope of subpart.
279.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

279.80 Scope of subpart.
279.81 Prohibition against fee or profit.
279.82 Real property and equipment.
279.83 Program income.

Authority: 5 U.S.C. 301.

Cross Reference: See also Office of Management and Budget Notice published at 52 FR 23729 (June 24, 1987).

2. It is proposed to further amend the newly added Part 279 by removing "[Agency]" and "[agency]" and adding "the Military Departments and Defense Agencies" wherever "[Agency]" and "[agency]" appear.

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 80

ADDRESS: Comments should be sent to: Mary Hughes, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3122, ROB-3), Washington, DC 20202-4700.

FOR FURTHER INFORMATION CONTACT: Mary Hughes, 732-7400.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Secretary proposes in this document to revise Part 74 to implement the common regulations to be used by all Federal agencies under Office of Management and Budget (OMB) Circulars A-102 and A-110. When the common regulations become effective after a Notice of Final Rulemaking, the revised Part 74 will replace the current Part 74 in its entirety. Part 74 currently implements OMB Circular A-110 and applies to institutions of higher education, hospitals, and nonprofit organizations, and Part 80, published as a final regulation on March 11, 1988, implements OMB Circular A-102 and applies to State and local governments, including federally-recognized Indian tribal organizations. The revised Part 74 will contain a single set of regulations, applicable to all types of organizations currently covered by OMB Circulars A-102 and A-110. In addition, the revised Part 74 will apply to commercial organizations that participate in grants and cooperative agreements.

Until the new Part 74 is published as a final regulation, the current Part 74 and Part 80 apply to their respective groups of organizations for all grants awarded by the Department under programs subject to those Parts.

Section ____.5 of the common regulations indicates that certain documents containing provisions inconsistent with the common regulations are superseded by the common regulations. The Secretary has completed the process of identifying inconsistent program regulations for those programs subject to the current Part 80, and will shortly publish technical amendments in the **Federal Register**. Because the regulations proposed in this document would expand the scope of the common regulations to institutions of higher education, hospitals, nonprofit and commercial organizations, the Secretary is now interested in comment on whether any program regulations to which these entities are subject are inconsistent with the common regulations. The Secretary plans to revoke, in the final rulemaking document, any inconsistent program regulations that are not required by statute or by the nature of a particular program as authorized in the program statute. To assist in this process of identifying inconsistent provisions, the Secretary seeks comments on any program regulations that may be appropriate to revoke.

The Secretary is aware that Parts 75 and 76 contain cross-references to the current Part 74 and Part 80 and that these references should be changed to refer to the revised Part 74. The Secretary will conduct a review of Parts 75 and 76 during the comment period for these regulations. As a result, when the revised Part 74 is published as a final regulation, the Secretary will also publish appropriate amendments to Parts 75 and 76 to include cross-references to Part 74.

The Secretary also proposes two changes to the expanded common regulations that have already been implemented for State and local governments under the rulemaking procedure for Part 80. The first change is necessary under section 412 of the Department of Education Organization Act (DEOA). 20 U.S.C. 3472. Under this section the Secretary may delegate the functions of the Department only to officers and employees of the Department. However, § ____.6(b) of the proposed common regulations would have the effect of delegating one of the Secretary's functions to employees of the Office of Management and Budget—authorizing OMB to grant exceptions to the common regulations as promulgated by the Secretary for the programs administered by the Department of Education. In order to avoid any conflict with the DEOA, the Secretary proposes to revise ____.6(b) so that the Secretary would authorize exceptions to the common regulations after consultation with appropriate officials of OMB.

The second change is necessary to implement the five-year record retention rule required by section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1237f). Section ____.42(b) of the proposed common regulations requires a recipient to maintain a record for only 3 years unless a longer retention period is necessary to resolve issues pursuant to any litigation, claim, negotiation, audit, or other action involving the record. The Secretary proposes to add a paragraph (b)(4) to § ____.42 of the proposed common regulations to clarify that a recipient must maintain a record for a minimum of five years after the completion of the activity for which funds are used under an "applicable program" covered by GEPA.

This proposed amendment would have the effect of establishing a minimum 5-year record retention period under most programs administered by the Department. However, certain programs, such as those programs administered by the Commissioner of the Rehabilitative Services Administration under the Rehabilitation Act of 1973, as amended, would still be subject to the 3-year record retention rule contained in the common regulations.

The Secretary also proposes to add new text, establishing five appendices to Part 74. These appendices include cost principles for certain organizations and audit standards for State and local governments.

- Appendix A—Cost Principles for State and Local Goverments (OMB Circular A-87).
- Appendix B—Cost Principles for Nonprofit Organizations (OMB Circular A-122).
- Appendix C—Cost Principles for Educational Institutions (OMB Circular A-21).
- Appendix D—Cost Principles for Hospitals.

- Appendix E—Audit Requirements for State and Local Governments (OMB Circular A-128).

Finally, the Secretary proposes to add authority citations after every substantive provision of the common regulations. These authority citations are required under section 431(a)(2) of GEPA (20 U.S.C. 1232(a)(2)).

List of Subjects in 34 CFR Part 74

Accounting, Administrative practice and procedure, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number: Not Applicable)

Dated: October 11, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations as set forth below.

1. Part 74 is revised to read as set forth at the end of this document:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
74.1 Purpose and scope of the part.
74.2 Scope of subpart.
74.3 Definitions.
74.4 Applicability.
74.5 Effect on other issuances.
74.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

74.10 Forms for applying for grants.
74.11 State plans.
74.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

74.20 Standards for financial management systems.
74.21 Payment.
74.22 Allowable costs.
74.23 Period of availability of funds.
74.24 Matching and cost-sharing.
74.25 Program income.
74.26 Non-Federal audit.

Changes, Property, and Subawards

74.30 Changes.
74.31 Real property.
74.32 Equipment.
74.33 Supplies.
74.34 Copyrights and patents.
74.35 Subawards to debarred and suspended parties.
74.36 Procurement.
74.37 Subgrants.
74.38 Intangible property and debt instruments.
74.39 Grant property trust relationship and notices.

Reports, Records Retention, and Enforcement

74.40 Monitoring and reporting program performance.
74.41 Financial reporting.
74.42 Retention and access requirements for records.
74.43 Enforcement.
74.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

74.50 Closeout.
74.51 Later disallowances and adjustments.
74.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

74.70 Scope of subpart.
74.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

74.80 Scope of subpart.
74.81 Prohibition against fee or profit.
74.82 Real property and equipment
74.83 Program income.

Appendix A to Part 74—Cost Principles for State and Local Governments (OMB Circular A-87).
Appendix B to Part 74—Cost Principles for Nonprofit Organizations (OMB Circular A-122).
Appendix C to Part 74—Cost Principles for Educational Institutions (OMB Circular A-21).
Appendix D to Part 74—Cost Principles for Hospitals.
Appendix E to Part 74—Audit Requirements for State and Local Governments (OMB Circular A-128).

Authority: 20 U.S.C. 1221e-3(a)(1), 3474; and OMB Circulars A-102 and A-110, unless otherwise noted.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 74 is further amended, as follows.

a. "[Agency]" and "[agency]" are removed and "ED" is added wherever "[Agency]" and "[agency]" appear.

b. Section 74.22 is amended by revising the chart in paragraph (b) to read as follows:

§ 74.22 Allowable costs.

* * * * *

(b) * * *

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	Appendix A to this Part.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) an organization named in Appendix B to this Part as not being subject to that Appendix.	Appendix B to this Part.
Institution of higher education.	Appendix C to this Part.
Hospital	Appendix D to this Part.
For-profit organization other than a hospital and an organization named in Appendix B to this Part as not subject to that Appendix.	48 CFR Part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to ED.

c. In § 74.26 paragraph (a) is amended by removing "Federal agency implementing regulations." and adding "and Appendix E to this Part." and a note is added to the end of the section to read as follows:

§ 74.26 Non-Federal audit.

* * * * *

Note.—Appendix E to this Part contains the audit requirements for State and local governments.

d. Section 74.31 is amended by a adding a new paragraph (e) to read as follows:

§ 74.31 Real property.

* * * * *

(e) The provisions of paragraph (d) of this section do not apply to disaster assistance under subsections (b) and (c) of section 7 of Pub. L. 81-874, as amended (20 U.S.C. 241-1(b)-(c)) and the construction provisions of the Impact Aid program, sections 1-17 of Pub. L. 81-815, as amended (20 U.S.C. 631-647).

e. Section 74.32 is amended by adding a new paragraph (i) to read as follows:

§ 74.32 Equipment.

* * * * *

(i) The provisions of paragraphs (c), (d), and (e) of this section do not apply to disaster assistance under subsections (b) and (c) of section 7 of Pub. L. 81-874, as amended (20 U.S.C. 241-1(b)-(c)) and the construction provisions of the Impact Aid program, sections 1-17 of Pub. L. 81-815, as amended (20 U.S.C. 631-647).

f. Section 74.42 is amended by adding a new paragraph (b)(4) to read as follows:

§ 74.42 Retention and access requirements for records.

* * * * *

(b) * * *

(4) A recipient that receives funds under a program subject to section 437 of the General Education Provisions Act (20 U.S.C. 1232f) shall retain records for a minimum of five years after the

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starting date specified in paragraph (c) of this section.

* * * * *

g. An authority citation is added after each section in Part 74 to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circulars A–102 and A–110.

h. Appendix A to Part 74 is added, to read as follows:

Appendix A to Part 74—Cost Principles for State and Local Governments (OMB Circular A–87)

Attachment A to Appendix A—General Principles

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2. Policy guides
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2. Cost allocation plan
3. Cost
4. Cost objective
5. Federal agency
6. Federally-recognized Indian Tribal governments
7. Grant
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C. *Basic guidelines*
1. Factors affecting allowability of costs
2. Allocable costs
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4. Negotiation and approval of indirect cost proposals for States
5. Negotiation and approval of indirect cost proposals for local governments
6. Negotiation and approval of indirect cost proposals for federally-recognized Indian tribal governments
7. Resolution of problems

A. *Purpose and scope.*

1. *Objectives.* This Attachment sets forth principles for determining the allowable costs of programs administered by State, local, and federally-recognized Indian tribal governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally-assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State, local, and federally recognized Indian tribal governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally-assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied by all Federal agencies in determining costs incurred by State, local, and federally recognized Indian tribal governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly-financed educational institutions subject to Appendix C to this part, and (b) publicly-owned hospitals and other providers of medical care subject to Appendix D to this part.

B. Definitions.

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objective including specific grants, projects, contracts, and other activities.

5. *Federal agency* means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State, local, or federally-recognized Indian tribal governments.

6. *Federally-recognized Indian tribal governments* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

7. *Grant* means an agreement between the Federal Government and a State, local, or federally-recognized Indian tribal government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Circular as applicable to grants in general also apply to any federally-sponsored cost reimbursement-type of agreement performed by a State, local, or federally-recognized Indian tribal government.

8. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

9. *Grantee* means the department or agency of State, local, or federally recognized Indian tribal government which is responsible for administration of the grant.

10. *Local unit* means any political subdivision of government below the State level.

11. *Other State or local agencies* means department or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

12. *Services,* as used herein, means goods and facilities, as well as services.

13. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. *Basic guidelines.*

1. *Factors affecting allowability of costs.* To allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant programs, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State, local or federally-recognized Indian tribal governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.*

a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this Appendix may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in Section J.

3. *Applicable credits.*

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances, recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. *Composition of Cost*

1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow:

E. *Direct Costs*

1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and efforts devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. *Indirect Costs*

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Appendix. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used.

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.*

a. Federal grants may be subject to laws that limit the amount of indirect costs that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix, the amount not recoverable as indirect costs under a grant not be shifted to another federally-sponsored grant program or contract.

G. *Cost Incurred by Agencies Other Than the Grantee*

1. *General.* The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs (Section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in Section F.2.a.

H. *Cost Incurred by Grantee Department for Others*

1. *General.* The principles provided in Section G will also be used in determining the cost of services provided by the grantee department to another agency.

I. *Cost Allocation Plan*

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be

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allocated under plans of other agencies or organizational units which are to be included in the costs of federally-sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally-sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Health and Human Services in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees in preparation of cost allocation plans.

This responsibility applies to both central support services at the State, local, and Indian tribal level and indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.*

a. The Department of Health and Human Services, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single cognizant Federal agency will have responsibility similar to that set forth in a. above, for the negotiation, approval, and audit of the indirect cost proposal. A current list of agency assignments is maintained by the Office of Management and Budget.

c. Questions concerning the cost allocation plans approved under a. and b. above, should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.*

a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is maintained by the Office of Management and Budget.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Negotiation and approval of indirect cost proposals for federally recognized Indian tribal governments.* The Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

7. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with 4 and 5 above, the Office of Management and Budget will lend assistance as required.

Attachment B to Appendix A—Standards for Selected Items of Costs

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A. *Purpose and applicability.*

1. *Objective.* This Attachment provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Attachment A of this Appendix.

B. *Allowable costs.*

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes costs incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or Indian tribal government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. solicitation of bids for the procurement of goods and services required.

c. disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communications costs incurred for telephone calls or service, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.*

a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (Section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered; (2) follows an appointment made in accordance with State, local, or Indian tribal government laws and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally-assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State, local, or Indian tribal government. In cases where the kinds of employees required for the federally-assisted activities are not found in the other activities of the State, local, or Indian tribal government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and provided in accordance with generally accepted practice of the State, local, or Indian tribal government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.*

a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where the title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally-accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally-sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usuable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in Section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system; and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State, local or Indian tribal policy, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State, local or Indian tribal government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither added to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.*

a *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program; (2) the expenditure is for agency membership; (3) the cost of the membership is reasonably related to the value of the services or benefits received; and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The cost of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of

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bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development, which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may by charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally sponsored activities. The difference in cost between first-class air accommodations and less-first-class air accommodations are not is unallowable except when less-than-first-class air accommodations reasonably available. Notwithstanding the provisions of paragraphs D.6, and 8., travel costs of officials covered by those paragraphs, when specifically related to grant programs, are allowable with the prior-approval of grantor agency.

C. *Cost Allowable With Approval of Grantor Agency*

1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipmenmt. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below.

The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately-owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.* The rental cost of space in a privately-owned building is allowable. Similar costs for publicly owned buildings newly occupied on or after October 1, 1980, are allowable where "rental rate" systems, or equivalent systems that adequately reflect actual costs, are employed. Such charges must be determined on the basis of actual cost (including depreciation based on the useful life of the building, interest paid or accrued, operation and maintenance, and other allowable costs). Where these costs are included in rental charges, they may not be charged elsewhere. No costs will be included for purchases or construction that were originally financed by the Federal Government.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (Section C.3) are allowable when specifically approved by the grantor agency.

d. *Depreciation and just allowances on publicly-owned buildings.* The costs are allowable as provided in Section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold; (b) no longer available for use in a federally-sponsored program; or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly-acquired assets is allowable.

4. *Insurance and indemnification.*

a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Cost of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification.* Includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Costs of professional services rendered by individuals or organizations not a part of the grantee department are allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. *Unallowable Costs*

1. Bad debts. Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision, are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs by the chief executive and his staff is allowable. The allowable portion shall be

determined by the Federal cognizant agency and the Indian government representative on a reasonable basis.

7. *Interest and other financial costs.* Interest on borrowing (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation and except as provided for in paragraph C.2.a of this Attachment.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474; OMB Circulars A-102, A-110, and A-87)

i. Appendix B to Part 74 is added, to read as follows:

Appendix B to Part 74—Cost Principles for Nonprofit Organizations (OMB Circular A-122)

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A. *Basic Considerations*

1. *Composition of total costs.* The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. *Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria:*

a. Be reasonable for the performance of the award and be allocable thereto under these principles.

b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.

c. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization.

d. Be accorded consistent treatment.

e. Be determined in accordance with generally accepted accounting principles.

f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.

g. Be adequately documented.

3. *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinzed with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. *Allocable costs.*

a. A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Government award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. *Applicable credits.*

a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost they shall be credited to the Government either as a cost reduction or cash refund as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

(c) For rules covering program income (i.e., gross income earned from federally supported activities) see 34 CFR 74.25.

6. *Advance understandings.* Under any given award the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

B. *Direct Costs*

1. Direct costs are those that can be identified specifically with a particular final cost objective: i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstances, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.

3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fund raising costs in paragraph 19 of Attachment B) to this Appendix. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct cost for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and

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necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

a. Maintenance of membership rolls, subscriptions, publications, and related functions.

b. Providing services and information to members, legislative or administrative bodies, or the public.

c. Promotion, lobbying, and other forms of public relations.

d. Meetings and conferences except those held to conduct the general administration of the organization.

3. Maintenance, protection, and investment of special funds not used in operation of the organization.

f. Administration of group benefits on behalf of members or clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

C. *Indirect Cost*

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in paragraph B.2. above. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of costs which may be classified as indirect cost in all situations. However, typical examples of indirect cost for many nonprofit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

D. *Allocation of Indirect Costs and Determination of Indirect Cost Rates*

1. *General.*

a. Where a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in paragraph 2 below.

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fund raising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in paragraphs 2 through 5 below.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of the costs.

2. *Simplified allocation method.*

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in paragraph B.3. above.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 29 of Attachment B to this Appendix.

d. Except where a special rate(s) is required in accordance with paragraph D.5 below, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

3. *Multiple allocation base method.*

a. Where an organization's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefiting functions by means of a base which best measures the relative benefits.

b. The groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision desired.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefiting functions. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Government and the organization. In general, any cost element or cost related factor associated with the organization's work is potentially adaptable for use as an allocation base provided (i) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like) and (ii) it is common to the benefiting functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph D.5 below, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be total direct costs (excluding capital expenditures and other distorting items such as major subcontracts and subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 29 of Attachment B to this Appendix. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool.

4. *Direct allocation method.*

a. Some nonprofit organizations, treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fund raising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates shall be computed in the same manner as that described in paragraph D.2 above.

5. *Special indirect cost rates.* In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom, should be used provided it is determined that (i) the rate differs significantly from that which would have been obtained under paragraph D.2, 3, and 4 above, and (ii) the volume of work to which the rate would apply is material.

E. *Negotiation and Approval of Indirect Cost Rates.*

1. *Definitions.* As used in this section, the following terms have the meanings set forth below:

a. "Cognizant agency" means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. "Provisional rate" or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a final rate for the period.

f. "Indirect cost proposal" means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. "Cost objective" means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. *Negotiation and approval of rates.*

a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process, but after a rate has been agreed upon it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with paragraph D.5 above, it will, prior to the time the rates are negotiated, notify the cognizant agency.

b. A nonprofit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal to the cognizant agency. The proposal shall be submitted as soon as possible after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if (i) all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Government and non-government work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the nonprofit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the nonprofit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, the Office Management and Budget will lend assistance as required to resolve such problems in a timely manner.

Attachment B to Appendix B—Selected Items of Cost

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Paragraphs 1 through 50 provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable: rather determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. *Advertising costs.*

a. Advertising costs mean the costs of media services and associated costs. Media advertising includes magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are soley for (i) the recruitment of personnel when considered in conjunction with all other recruitment costs, as set forth in paragraph 40; (ii) the procurement of goods and services; (iii) the disposal of surplus materials acquired in the performance of the award except when organizations are reimbursed for disposals at a predetermined amount in accordance with 34 CFR (Subpart O—Property) §§ 74.130—74.145; or (iv) specific requirements of the award.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

3. *Bid and proposal costs.* [Reserved]

4. *Bonding costs.*

a. Bonding costs arise when the financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

6. *Compensation for personal services.*

a. *Definition.* Compensation for personal services includes all compensation paid currently or accured by the organization for services of employees rendered during the period of the award (except as otherwise provided in paragraph g. below). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. *Allowability.* Except as otherwise specifically provided in this paragraph the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Government and non-Government activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. *Reasonableness.*

(1) When the organization is predominantly engaged in activities other than those sponsored by the Government, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in Government-sponsored activities and in cases where the kind of employees required for the Government activities are not found in the organization's other activities, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

e. *Unallowable costs.* Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. *Fringe benefits.*

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see paragraph g. below), and the like, are allowable provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accuring to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3)(a) provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workers' compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

g. *Pension plan costs.*

(1) Cost of the orgfanization's pension plan which are incurred in accordance with the established policies of the organizations are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under the Employee Retirement Income Security Act are unallowable.

h. *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

i. *Overtime, extra pay shift, and multishift premiums.* See paragraph 27.

j. *Severance pay.* See paragraph 44.

k. *Training and education costs.* See paragraph 48.

l. *Support of salaries and wages.*

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports as prescribed in subparagraph (2) below, except when a substitute system has been approved in writing by the congnizant agency. (See paragraph E.2 of Attachment A).

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by nonprofit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an *after-the-fact* determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2) above, must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (29 CFR Part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under the Fair Labor Standards Act.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

7. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see paragraph 6.f.(3) and 18.a.(2)(d)); pension funds (see paragraph 6.(g)); and reserves for normal severance pay (see paragraph 44.(b)(1).

8. *Contributions.* Contributions and donations by the organization to others are unallowable.

9. *Depreciation and use allowances.*

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in paragraph f. below a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquistion cost of the assest involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude.

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching retirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g. plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.) Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds percent equipment use allowance limitation.

e. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under paragraph e. above, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure the assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records

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indicating the amount of depreciation taken each period also be maintained.

10. *Donations*

a. *Services received.*

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the servcies will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in 34 CFR 74.24. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) *Rates for volunteer services.* Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in the other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

(b) *Services donated by other organizations.* When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with subparagraph (a) above.

b. *Goods and space.*

(1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in 34 CFR 74.24. The value of the donations shall be determined in accordance with Attachment E. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

11. *Employee morale, health, and welfare, costs and credits.* The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see paragraphs 11 and 25).

13. *Equipment and other capital expenditures.*

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) "Equipment" means an article of nonexpendable tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. An organization may use its own definition provided that it at least includes all nonexpendable tangible personal property as defined herein.

(2) "Acquisition cost" means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be excluded in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) "Special purpose equipment" means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs provided that items with a unit cost of $5,000 or more have the prior approval of the awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 9 for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 42 for allowability of rental costs for land, buildings, and equipment.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

15. *Fringe benefits.* See paragraph 6.f.

16. *Idle facilities and idle capacity.*

a. As used in this paragraph the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) "Idle facilities" means completely unused facilities that are excess to the organization's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 per cent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multishift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) "Costs of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see paragraphs 47.b. and d.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

17. *Independent research and development* [Reserved.].

18. *Insurance and Indemnification.*

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see paragraph 6.f. and 6.g.(2)).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations.

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Government property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(e) Costs of insurance of the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see paragraph 6). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the organization only to the extent expressly provided in the award.

19. *Interest, fund raising, and investment management costs.*

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however, represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in paragraph B of Attachment A to this Appendix.

20. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

21. *Lobbying.* a. Notwithstanding other provisions of this Appendix costs associated with the following activities are unallowable:

a.(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

a.(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

a.(3) Any attempt to influence: (i) The introduction of Federal or state legislation; or (ii) the enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

a.(4) Any attempt to influence: (i) The introduction of Federal or state legislation; or (ii) the enactment or modification of any pending Federal or state legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

a.(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of subparagraph a:

b.(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

b.(2) Any lobbying made unallowable by section a.(3) to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

b.(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c.(1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of paragraph B3 of Attachment A.

c.(2) Organizations shall submit as part of their annual indirect cost rate proposal a certification that the requirements and standards of this paragraph have been complied with.

c.(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to paragraph B21 complies with the requirements of this Appendix.

c.(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this section during any particular calendar month when: (1) the employee engages in lobbying (as defined in paragraphs (a) and (b) above) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) above are met, organizations are

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not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) above are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

c.(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of paragraph B21. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Appendix; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

22. *Losses on other awards.* Any excess of costs over income on any award is unallowable as a cost any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any underrecoveries through negotiation of lump sums for, or ceilings on, indirect costs.

23. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 13).

24. *Materials and supplies.* The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

25. *Meetings, conferences.*

a. Costs associated with the conduct of meetings and conference, include the cost of renting facilities, meals, speakers' fees, and the like. But see paragraph 12, *Entertainment costs*, and paragraph 30, *Participant support costs*.

b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective. (See paragraph B. of Attachment A.) to this Appendix. These costs are allowable provided that they meet the general tests of allowability, shown in Attachment A to this Appendix.

c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

26. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the organization's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the organization's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of attendance at meetings and conferences sponsored by others when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, and other items incidental to such attendance.

27. *Organization costs.* Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

28. *Overtime, extra-pay shift, and multishift premiums.* Premiums for overtime, extra-pay shifts, and multishift work are allowable only with the prior approval of the awarding agency except:

a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

b. When employees are performing indirect functions such as administration, maintenance, or accounting.

c. In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

d. When lower overall cost to the Government will result.

29. *Page charges in professional journals.* Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by Government-sponsored authors.

30. *Participant support costs.* Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

31. *Patent costs.*

a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extent necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Government to be conveyed to the Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see paragraph 35).

b. Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Government, are unallowable (also see paragraph 44).

32. *Pension plans.* See paragraph 8. g.

33. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements or for facilities protection, including wages, uniforms, and equipment of personnel are allowable.

34. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

35. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to b, c, and d of this paragraph when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Government awards.

(4) The impact of Government awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Government work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Government awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in paragraph b above, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

d. Cost of legal, accounting, and consulting services, and related costs incurred in connection with defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, organization and reorganization, are unallowable unless otherwise provided for in the award (but see paragraph 46e).

36. *Profits and losses on disposition of depreciable property or other capital assets.*

a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions.

(a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under paragraph 9.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in paragraph 18.a. (3).

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph a. above shall be excluded in computing award costs.

37. *Public information service costs.*

a. Public information service costs include the cost associated with pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(1) Inform or instruct individuals, groups, or the general public.

(2) Interest individuals or groups in participating in a service program of the organization.

(3) Disseminate the results of sponsored and nonsponsored activities.

b. Public information service costs are allowable as direct costs with the prior approval of the awarding agency. Such costs are unallowable as indirect costs.

38. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

b. If the costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.

d. The cost of page charges in journals is addressed in paragraph 29.

39. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

40. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Government awards, fair wear and tear excepted, are allowable.

41. *Recruiting costs.* The following recruiting costs are allowable: cost of "help wanted" advertising, operating costs of an employment office, costs of operating an educational testing program, travel expenses including food and lodging of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees (see paragraph 42c). Where the organization uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

42. *Relocation costs.*

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in paragraphs b, c, and d, below, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4) below, are limited to 8 percent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the cost of cancelling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of cancelling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in (1) and (2) of paragraph b. above. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 51 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

43. *Rental costs.*

a. Subject to the limitations described in paragraphs b. through d. of this paragraph, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.

c. Rental costs under less-than-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through

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corporations, trusts, or similar arrangements in which they hold a controlling interest.

d. Rental costs under leases which create a material equity in the leased property are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed; e.g., depreciation or use allowances, maintenance, taxes, insurance but excluding interest expense and other unallowable costs. For this purpose, a material equity in the property exists if the lease in noncancelable or is cancelable only upon the occurrence of some remote contingency and has one or more of the following characteristics:

(1) The organization has the right to purchase the property for a price which at the beginning of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option);

(2) Title to the property passes to the organization at some time during or after the lease period;

(3) The term of the lease (initial term plus periods covered by bargain renewal options, if any) is equal to 75 percent or more of the economic life of the leased property; i.e., the period the property is expected to be economically usable by one or more users.

44. *Royalties and other costs for use of patents and copyrights.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's-length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

45. *Severance pay.*

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

46. *Specialized service facilities.*

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic computers and wind tunnels, are allowable provided the charges for the services meet the conditions of either b. or c. of this paragraph and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under paragraph A.5. of Attachment A to this Appendix.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to paragraph A.6. of Attachment A to this Appendix are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

47. *Taxes.*

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Government and in the latter case when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Government.

48. *Termination costs.* Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Appendix in termination situations.

a. *Common items.* The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Appendix, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. *Loss of useful value.* Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency;

d. *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default. (See 34 CFR 74.43); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced for the award; except when grantees are reimbursed for disposals at a predetermined amount in accordance with 34 CFR (Subpart O property) §§ 74.130–74.145.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs (1) and (2) of this paragraph. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. *Claims under subawards.* Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractor/subgrantees; provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A to this Appendix. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

49. *Training and education costs.*

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or postgraduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a postgraduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in b. and c. above.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 9, 23, and 43.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under paragraphs b. and c. of this paragraph may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

50. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see paragraph 24). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

51. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to paragraphs b. through e. below, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to paragraphs 41 and 42, subject to allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located in foreign countries, the term "foreign travel" means travel outside that country.

Attachment C to Appendix B—Nonprofit Organizations not Subject to this Appendix

Aerospace Corporation, El Segundo, California
Argonne Universities Association, Chicago, Illinois
Associated Universities, Incorporated, Washington, D.C.
Associated Universities for Research and Astronomy, Tucson, Arizona
Atomic Casualty Commission, Washington, D.C.
Battelle Memorial Institute, Headquartered in Columbus, Ohio
Brookhaven National Laboratory, Upton, New York
Center for Energy and Environmental Research (CEER), (University of Puerto Rico) Commonwealth of Puerto Rico
Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
Comparative Animal Research Laboratory (CARL)
(University of Tennessee), Oak Ridge, Tennessee
Environmental Institute of Michigan, Ann Arbor, Michigan
Hanford Environmental Health Foundation, Richland, Washington
IIT Research Insititute, Chicago, Illinois

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Institute for Defense Analysis, Arlington, Virginia
Institute of Gas Technology, Chicago, Illinois
Midwest Research Institute, Headquartered in Kansas City, Missouri
Mitre Corporation, Bedford, Massachusetts
Montana Energy Research and Development Institute, Inc., (MERDI), Butte, Montana
National Radiological Astronomy Observatory, Green Bank, West Virginia
Oak Ridge Associated Universities, Oak Ridge, Tennessee
Project Management Corporation, Oak Ridge, Tennessee
Rand Corporation, Santa Monica, California
Research Triangle Institute, Research Triangle Park, North Carolina
Riverside Research Institute, New York, New York
Sandia Corporation, Albuquerque, New Mexico
Southern Research Institute, Birmingham, Alabama
Southwest Research Institute, San Antonio, Texas
SRI International, Menlo Park, California
Syracuse Research Corporation, Syracuse, New York
Universities Research Association.
Incorporated (National Acceleration Lab), Argonne, Illinois
Universities Corporation for Atmospheric Research, Boulder, Colorado
Nonprofit Insurance Companies such as Blue Cross and Blue Shield Organizations
Other nonprofit organizations as negotiated with awarding agencies.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474; OMB Circulars A-102, A-110, and A-122)

j. Appendix C to Part 74 is added, to read as follows:

Appendix C to Part 74—Cost Principles for Educational Institutions (OMB Circular A-21)

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A. *Purpose and Scope*

1. *Objective.* This Appendix provides principles for determining the costs applicable to research and development, training, and other sponsored work performed by colleges and universities under grants, contracts, and other agreements with the Federal Government. These agreements are referred to as sponsored agreements.

2. *Policy guides.* The successful application of these cost accounting principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for Federal agency and institutional participation in the financing of a research, training, or other project are properly subject to negotiation between the agency and the institution concerned, in accordance with such Government-wide criteria or legal requirements as may be applicable.

b. Each institution, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives.

c. The dual role of students engaged in research and the resulting benefits to sponsored agreements are fundamental to the research effort and shall be recognized in the application of these principles.

d. Each institution, in the fulfillment of its obligations, should employ sound management practices.

e. The application of these costs accounting principles should require no significant changes in the generally accepted accounting practices of colleges and universities. However, the accounting practices of individual colleges and universities must support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to sponsored agreements.

f. Cognizant Federal agencies involved in negotiating indirect cost rates and auditing should assure that institutions are generally applying these cost accounting principles on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments should be fully considered during the rate negotiations and audit.

3. *Application.* These principles shall be used in determining the allowable costs of work performed by colleges and universities under sponsored agreements. The principles shall also be used in determining the costs of work performed by such institutions under subgrants, cost-reimbursement subcontracts, and other awards made to them under sponsored agreements. They also shall be used as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

a. Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees of an institution.

b. Capitation awards.

c. Other awards under which the institution is not required to account to the Government for actual costs incurred.

B. *Definition of Terms*

1. *Major functions of an institution* refers instruction, organized research, other sponsored activities, and other institutional activities as defined below:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in c. below, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a noncredit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) University research means all research and development activities that are separately budgeted by the institution under an internal application of institutional funds. University research, for purposes of this document, may be considered a part of the instruction function, or may be combined with sponsored research under the function, of organized research, or may be treated as a separate major function, as agreed to with the cognizant agency.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects, and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except: (1) instruction, departmental research, organized research, and other sponsored activities, as defined above; (2) indirect cost activities identified in Section F, and (3) specialized service facilities described in Section J38. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartment, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

d. *Other institutional activities* means all activities of an institution except: (1) instruction, departmental research, organized research, and other sponsored activities, as defined above; (2) indirect cost activities identified in Section F, and (3) specialized service facilities described in Section J38. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartment, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

2. *Sponsored agreement*, for purposes of this circular, means any grant, contract, or other agreement between the institution and the Federal Government.

3. *Allocation* means the process of assigning a cost, or a group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship. A cost objective may be a major function of the institution, a particular service or project, a sponsored agreement, or an indirect cost activity, as described in Section F. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate costs objectives.

C. *Basic Considerations*

1. *Composition of total costs.* The cost of a sponsored agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in 5 below.

2. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are: (a) they must be reasonable; (b) they must be allocable to sponsored agreements under the principles and methods provided herein; (c) they must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types and amounts or costs items.

3. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (a) whether or not the cost is of a type generally recognized as necessary for the operation of the institution of the performance of the sponsored agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and sponsored agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, it employees, its students, the Government, and the public at large; and (d) extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including sponsored agreements.

4. *Allocable costs.*

a. A cost is allocable to a particular cost objective (i.e., a specific function, project, sponsored agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a sponsored agreement if (1) it is incurred solely to advance the work under the sponsored agreement; (2) its benefits both the sponsored agreement and other work of the institution, in proportions that can be approximated through use of reasonable methods, or (3) it is necessary to the overall operation of the institution and, in light of the principles provided in this Appendix, is deemed to be assignable in part to sponsored projects. Where the purchase of equipment or other capital items is specifically authorized under a sponsored agreement, the amounts thus authorized for such purchases are assignable to the sponsored agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular sponsored agreement under the standards provided in this Appendix may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the sponsored agreement, or for other reasons of convenience.

5. *Applicable credits.*

a. The term applicable credits refers to those receipts or negative expenditures that operate to offset or reduce direct or indirect cost items. Typical examples of such transactions are: purchase discounts, rebates,

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or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. This term also includes "educational discounts" on products or services provided specifically to educational institutions, such as discounts on computer equipment, except where the arrangement is clearly and explicitly identified as a gift by the vendor.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to sponsored agreements for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See Sections F8, j9a. and J38 for areas of potential application in the matter of direct Federal financing.)

6. *Costs incurred by State and local governments.* Costs incurred or paid by State or local governments on behalf of their colleges and universities for fringe benefit programs such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the institutions are allowable costs of such institutions whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

a. The costs meet the requirements of C1 through 5 above.

b. The costs are properly supported by cost allocation plans in accordance with applicable Federal cost accounting principles

c. The costs are not otherwise borne directly or indirectly by the Federal Government.

7. *Limitations on allowance costs.* Sponsored agreements may be subject to statutory requirements that limit the allowance of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this Appendix, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements.

D. *Direct Costs*

1. *General.* Direct costs are those costs that can be identified specifically with a particular sponsored project, and instructional activity, or any other institutional activity; or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

2. *Application to sponsored agreements.* Identification with the sponsored work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of sponsored agreements. Typical costs charged directly to a sponsored agreement are the compensation of employees for performance of work under the sponsored agreement, including related fringe benefit costs to the extent they are consistently treated, in like circumstances, by the institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of the work; and other items of expense incurred for the sponsored agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of sponsored agreements, provided such items are consistently treated, in like circumstances, by the institution as direct rather than indirect costs, and are charged under a recognized method of computing actual costs, and conform to generally accepted cost accounting practices consistently followed by the institution.

E. *Indirect Costs*

1. *General.* Indirect costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, and instructional activity, or any other institutional activity. At educational institutions such costs normally are classified under the following indirect cost categories: depreciation and use allowances, general administration expenses, sponsored projects administration expenses, operation and maintenance expenses, library expenses, departmental administration expenses, and student administration and services.

2. *Criteria for distribution.*

3. *Base period.* A base period for distribution of indirect costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect cost allocation process is to distribute the indirect costs described in Section F to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect cost categories referred to in E1 above. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in c below. Each such pool or cost grouping should then be distributed individually to the related cost objectives, used the distribution base or method most appropriate in the light of the guides set forth in d below.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within an indirect cost category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in E2b and d.

(2) Where any types of expense ordinarily treated as general administration or departmental administration are charged to sponsored agreements as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect costs allocable to those sponsored agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) Where activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat fringe benefits as indirect charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.*

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

(2) Where a cost grouping can be identified directly with the cost objective benefited, it should be assigned to that cost objective.

(3) Where the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if approporiate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than every two years, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution shall be made in accordance with the appropriate base cited in Section F., unless one of the following conditions is met: (a) it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored agreements, or (b) the institution qualifies for, and elects to use, the simplified method for computing indirect cost rates described in Section H.

e. *Order of Distribution.*

(1) Indirect cost categories consist of depreciation and use allowance, operation and maintenance, general administration and general expenses, departmental administration, sponsored projects administration, library , and student administration and services, as described in Section F.

(2) Depreciation and use allowances, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in (3) below, this order of allocation does not apply.

(3) Normally an indirect cost category will be considered closed once it has been allocated to their cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of cost between two or more indirect cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories described in Section F is required.

F. Identification and Assignment of Indirect Costs

1. *Depreciation and use allowances.*

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with Section J9.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated in the following manner:

(1) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(2) Depreciation or use allowances on buildings, used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwell, and restrooms.

(3) Depreciation or use allowances on buildings and capital improvements where space is used jointly, and on equipment used jointly, shall be allocated to benefiting functions in proportion to the total salaries and wages applicable to the joint functions.

(4) Depreciation or use allowances on buildings, capital improvements, and equipment used predominantly for one function and only incidentally for other(s), may be assigned to the function in which it is used predominantly.

(5) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of students and employees of a full-time equivalent basis. The amount allocated to the student category shall be assigned to the instruction functions of the institution. The amount allocated to the employee category shall be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

2. *Operation and maintenance expenses.*

a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; and care of grounds and maintenance and operation of buildings and other plant facilities. The operation and maintenance expenses category should also include the fringe benefit costs applicable to the salaries and wages included therein, and depreciation and use allowance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated in the same manner as described in Section F1b for depreciation and use allowances.

3. *General administration and general expenses.*

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of operation and maintenance expense, and depreciation and use allowances.

General administration and general expenses shall not include expenses incurred within nonuniversity-wide deans' offices, academic departments, organized research units, or similar organizational units. (See section F.4., departmental administration expenses.)

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be grouped first, according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to serviced or benefited functions on the modified total cost basis. Modified total costs consist of salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to $25,000 each. When an activity included in this indirect cost category provides a service or product to another institution or organization, and appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

4. *Departmental administration expenses.*

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including departmental heads), and other professional personnel conducting research and/or instruction, shall be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance shall be added to the computation of the indirect cost rate for major functions in section G; the expenses covered by the allowance shall be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in (1) and (2) above are allowable, as well as an appropriate share of general administration and general expenses, operation and

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maintenance expenses, and depreciation and/or use allowances.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school shall be allocated in the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in (1) above shall be allocated to the appropriate functions of the department on the modified total cost basis.

5. *Sponsored projects administration.*

(a) The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal) special security, purchasing, personnel administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, stenographic pools and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation/use allowances. Appropriate adjustments will be made for services provided to other functions or organizations.

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment shall be made to eliminate any duplicate charges to sponsored agreements when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect cost items, such as accounting, procurement, or personnel administration.

6. *Library expenses.*

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under Section C5. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation and use allowances. Costs incurred in the purchases of rare books (museum-type books) with no value to sponsored agreements should not be allocated to them.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category shall consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category shall consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis.

(3) The other users category shall consist of all other users of library facilities.

c. Amounts allocated in b above shall be assigned further as follows: (1) The amount in the student category shall be assigned to the instruction function of the institution.

(2) The amount in the professional employee category shall be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category shall be assigned to the other institutional activities function of the institution.

7. *Student administration and services.*

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations.

The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to Student Administration is determined in accordance with Section J.6. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, and use allowances and/or depreciation.

b. In the absence of the alternatives provided for in Section E2d, the expenses in this category shall be allocated to the instruction function, and subsequently to sponsored agreements in that function.

8. *Offset for indirect expenses otherwise provided for by the Government.*

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in F1 through 7 above.

b. The items in this group shall be treated as a credit to the affected individual indirect cost category before that category is allocated to benefiting functions.

G. *Determination and Application of Indirect Cost Rate or Rates*

1. *Indirect cost pools.*

a. Subject to b below, the separate categories of indirect costs allocated to each major function of the institution as prescribed in Section f shall be aggregated and treated as a common pool for that function. The amount in each pool shall be divided by the distribution base described in G2 below to arrive at a single indirect cost rate for each function. The rate for each function is used to distribute indirect costs to individual sponsored agreements of that function. Since a common pool established for each major function of the institution, a separate indirect cost rate would be established for each of the major functions described in Section B1 under which sponsored agreements are carried out.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group or sponsored agreement performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangments used, or any combination thereof. Where a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the regular course of the rate determination process and the separate indirect cost rate resulting therefrom should be utilized; provided it is determined that (1) such indirect cost rate differs significantly from that which would have been obtained under a. above, and (2) the volume of work to which such rate would apply is material in relation to other sponsored agreements at the institution.

2. *The distribution basis.* Indirect costs shall be distributed to applicable sponsored agreements on the basis of modified total direct costs, consisting of salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to $25,000 each. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to G1, above. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the modified total direct costs identified with such pool. Other bases may be used where it can be demonstrated that they produce more equitable results.

3. *Negotiated lump sum for indirect costs.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect services cannot be readily determined. Such negotiated indirect costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. *Predetermined fixed rates for indirect costs.* Public Law 87–638 (76 Stat. 437) authorizes the use of predetermined fixed rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting period.

5. *Negotiated fixed rates and carry-forward provisions.* When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for the year may be included as a adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to sponsored agreements for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements of cost-sharing provisions or prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change, without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

H. Simplified Method for Small Institutions

1. *General.*

a. Where the total direct cost of work covered by this Appendix at a institution does not exceed $3,000,000 in a fiscal year, the use of the simplified procedure described in 2, below, may be used in determining allowable indirect costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable to all sponsored agreements.

b. The simplified procedure should not be used where it produces results which appear inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular prcedure.

2. *Simplified procedure.*

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of cost of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under (1) above have previously been allocated to other institutional activities, they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in a above the amount of salaries and wages included under b above.

d. Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool, b above, by the amount of the distribution base, c above.

e. Apply the indirect cost rate to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

J. General Provisions for Selected Items of Cost

Sections 1 through 44 below provide principles to be applied in establishing the allowability of certain items involved in determining cost. These principles should apply irrespective of whether a particular item of costs is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific sponsored agreement and the provisions below, the agreement shoud govern.

1. *Advertising costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are solely for: (1) The recruitment of personnel required for the performance by the institution of obligations arising under the sponsored agreement, when considered in conjunction with all other recruitment costs, as set forth in Section J32; (2) the procurement of goods and services for the performance of the sponsored agreement; (3) the disposal of scrap or surplus materials acquired in the performance of the sponsored agreement except when institutions are reimbursed for disposal costs at a predetermined amount in accordance with 34 CFR (Subpart 0–Property) §§ 74.130–74.145; or (4) other specific purposes necessary to meet the requirements of the sponsored agreement.

c. Costs of this nature, if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in Sections D and E are observed.

2. *Bad debts.* Any losses, whether actual or estimated, arising from uncollectible accounts and other claims, related collections costs, and related legal costs, are unallowable.

3. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institutions' premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in Section J9. Costs of local civil defense projects not on the institution's premises are unallowable.

4. *Commencement and convocation costs.* Costs incurred for commencements and convocations are unallowable, except as provided for in Section F7.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

6. Compensation for personal services

a. *General.* Compensation for personal services covers all amounts paid currently or accrued by the institution for services of employees rendered during the period of performance under sponsored agreements. Such amounts include salaries, wages, and fringe benefits (See Section J15.) These costs are allowable to the extent that the total

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compensation to individual employees conforms to the established policies of the institution, consistently applied, and provided that the charges for work performed directly on sponsored agreements and for other work allocable as indirect costs are determined and supported as provided below. Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. Incidental work (that in excess of normal for the individual), for which supplemental compensation is paid by an institution under institutional policy, need not be included in the payroll distribution systems described below, provided such work and compensation are separately identified and documented in the financial management system of the institution.

b.(1) *General Principles.* (a) The distribution of salaries and wages whether treated as direct or indirect costs, will be based on payrolls documented in accordance with the generally accepted practices of colleges and universities. Institutions may include in a residual category all activities that are not directly charged to sponsored agreements, and that need not be distributed to more than one activity for purposes of identifying indirect costs and the functions to which they are allocable. The components of the residual category are not required to be separately documented.

(b) The apportionment of employee's salaries and wages which are chargeable to more than one sponsored agreement or other cost objective will be accomplished by methods which will (1) be in accordance with Sections A–2 and C above, (2) produce an equitable distribution of charges for employee's activities, and (3) distinguish the employee's direct activities from their indirect activities.

(c) In the use of any methods for apportioning salaries, it is recognized that, in an academic setting, teaching, research, service, and administration are often inextricably intermingled. A precise assessment of factors that contribute to costs is not always feasible, nor is it expected. Reliance, therefore, is placed on estimates in which a degree of tolerance is appropriate.

(d) There is no single best method for documenting the distribution of charges for personal services. Methods for apportioning salaries and wages, however, must meet the criteria specified in J.6.b.(2) below. Examples of acceptable methods are contained in J.6.c. below. Other methods which meet the criteria specified in J.6.b.(2) below also shall be deemed acceptable, if a mutually satisfactory alternative agreement is reached.

(2) *Criteria for Acceptable Methods.* (a) The payroll distribution system will (i) be incorporated into the official records of the institution, (ii) reasonably reflect the activity for which the employee is compensated by the institution, and (iii) encompass both sponsored and all other activities on an integrated basis, but may include the use of subsidiary records. (Compensation for incidental work described in J.6.a. need not be included.)

(b) The method must recognize the principle of after-the-fact confirmation or determination so that costs distributed represent actual costs, unless a mutually satisfactory alternative agreement is reached. Direct cost activities and indirect cost activities may be confirmed by responsible persons with suitable means of verification that the work was performed. Confirmation by the employee is not a requirement for either direct or indirect cost activities if other responsible persons make appropriate confirmations.

(c) The payroll distribution system will allow confirmation of activity allocable to each sponsored agreement and each of the categories of activity needed to identify indirect costs and the functions to which they are allocable. The activities chargeable to indirect cost categories or the major functions of the institution for employees whose salaries must be apportioned (see J.6.b.1.(b) above). If not initially identified as separate categories, may be subsequently distributed by any reasonable method mutually agreed to, including, but not limited to, suitably conducted surveys, statistical sampling procedures, or the application of negotiated fixed rates.

(d) Practices vary among institutions and within institutions as to the activity constituting a full workload. Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.

(e) Direct and indirect charges may be made initially to sponsored agreements on the basis of estimates made before services are performed. When such estimates are used significant changes in the corresponding work activity must be identified and entered into the payroll distribution system. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period.

(f) The system will provide for independent internal evaluations to ensure the system's effectiveness and compliance with the above standards.

(g) For systems which meet these standards, the institution will not be required to provide additional support or documentation for the effort actually performed.

c. *Examples of Acceptable Methods for Payroll Distribution:*

(1) *Plan—Confirmation:* Under this method, the distribution of salaries and wages of professorial or professional staff applicable to sponsored agreements is based on budgeted, planned, or assigned work activity, updated to reflect any significant changes in work distribution. A plan-confirmation system used for salaries and wages charged directly or indirectly to sponsored agreements will meet the following standards:

(a) A system of budgeted, planned, or assigned work activity will be incorporated into the official records of the institution and encompass both sponsored and all other activities on an integrated basis. The system may include the use of subsidiary records.

(b) The system will reasonably reflect only the activity for which the employee is compensated by the institution (compensation for incidental work described in J.6.a. need not be included). Practices vary among institutions and within institutions as to the activity constituting a full workload. Hence, the system will reflect categories of activities expressed as a percentage distribution of total activities. (But see Section H for treatment of indirect costs under the simplified method for small institutions.)

(c) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable. The system may treat indirect cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in J.6.b.(2)(c).

(d) The system will provide for modification of an individual's salary or salary distribution commensurate with an significant change in the employee's work activity. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term such as an academic period. Whenever it is apparent that a significant change in work activity which is directly or indirectly charged to sponsored agreements will occur or has occurred, the change will be documented over the signature of a responsible official and entered into the system.

(e) At least annually a statement will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed, stating that salaries and wages charged to sponsored agreements as direct charges, and to residual, indirect cost or other categories are reasonable in relation to work performed.

(f) The system will provide for independent internal evaluation to ensure the system's integrity and compliance with the above standards.

(g) In the use of this method, an institution shall not be required to provide additional support or documentation for the effort actually performed.

(2) *After-the-fact Activity Records:* Under this system the distribution of salaries and wages by the institution will be supported by activity reports as prescribed below.

(a) Activity reports will reflect the distribution of activity expended by employees covered by the system (compensation for incidental work as described in J.6.a. need not be included).

(b) These reports will reflect an after-the-fact reporting of the percentage distribution of activity of employees. Charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences are indicated by activity records.

(c) Reports will reasonably reflect the activities for which employees are compensated by the institution. To confirm that the distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the reports will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed.

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable. The system may treat indirect cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in J.6.b.(2)(c).

(e) For professorial and professional staff, the reports will be prepared each academic term, but no less frequently than every six months. For other employees, unless alternate arrangements are agreed to, the reports will be prepared no less frequently than monthly and will coincide with one or more pay periods.

(f) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose provided that they meet the requirements in (a) through (e) above.

(3) *Multiple Confirmation Records:* Under this system the distribution of salaries and wages of professorial and professional staff will be supported by records which certify separately for direct and indirect cost activities as prescribed below.

(a) For employees covered by the system, there will be direct cost records to reflect the distribution of that activity expended which is to be allocable as direct cost to each sponsored agreement. There will also be indirect cost records to reflect the distribution of that activity to indirect costs. These records may be kept jointly or separately (but are to be certified separately see below).

(b) Salary and wage charges may be made initially on the basis of estimates made before the services are performed provided that such charges are promptly adjusted if significant differences occur.

(c) Institutional records will reasonably reflect only the activity of which employees are compensated by the institution (compensation for incidental work as described in J.6.a. need not be included).

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable.

(e) To confirm that distribution of activity represents a reasonable estimate of the work performed by the employee during the period the record for each employee will include:

(1) The signature of the employee or of a person having direct knowledge of the work, confirming that the record of activities allocable as direct costs of each sponsored agreement is appropriate.

(2) The record of indirect costs will include the signature of responsible person(s) who use suitable means of verification that the work was performed and is consistent with the overall distribution of the employee's compensated activities.

These signatures may all be on the same document.

(f) The reports will be prepared each academic term, but no less frequently than every six months.

(g) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose provided they meet the requirements in (a) through (f) above.

d. *Salary rates for faculty members.*

(1) *Salary rates for academic year.* Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. This principle applies to all members of the faculty at an institution. Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.

(2) *Periods outside the academic year.*

(a) Except as otherwise specified for teaching activity in (b) below, charges for work performed by faculty members on sponsored agreements during the summer months or other period not included in the base salary period will be determined for each faculty member at a rate not in excess of the base salary divided by the period to which the base salary relates, and will be limited to charges made in accordance with other parts of this section. The base salary period used in computing charges for work performed during the summer months will be the number of months covered by the faculty member's official academic year appointment.

(b) Charges for teaching activities performed by faculty members on sponsored agreements during the summer months or other periods not included in the base salary period will be based on the normal policy of the institution governing compensation to faculty members for teaching assignments during such periods.

(3) *Part-time faculty.* Charges for work performed on sponsored agreements by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for the part-time assignments; e.g., an institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time to a sponsored agreement. Thus, his additional compensation, chargeable by the institution to the agreement, would be one-half of $5,000, or $2,500.

e. *Noninstitutional professional activities.* Unless an arrangement is specifically authorized by a Federal sponsoring agency, an institution must follow its institution-wide policies and practices concerning the permissible extent of professional services that can be provided outside the institution for noninstitutional compensation. Where such institution-wide policies do not exist or do not adequately define the permissible extent of consulting or other noninstitutional activities undertaken for extra outside pay, the Government may require that the effort of professional staff working on sponsored agreements be allocated between (1) institutional activities, and (2) noninstitutional professional activities. If the sponsoring agency considers the extent of noninstitutional professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

7. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events, the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. (But see also Section J16c.)

8. *Deans of faculty and graduate schools.* The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

9. *Depreciation and use allowances.* Institutions may be compensated for the use of their buildings, capital improvements, and equipment; provided that they are used, needed in the institutions' activities, and properly allocable to sponsored agreements. Such compensation shall be made by computing either depreciation or use allowance. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not computed. The allocation for depreciation or use allowance shall be made in accordance with Section F1. Depreciation and use allowances are computed applying the following rules:

a. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. For this purpose, the acquisition cost will exclude: (1) The cost of land; (2) any portion of the cost of buildings and equipment borne by or donated by the Government, irrespective of where title was originally vested or where it is presently located; and (3) any portion of the cost of buildings and equipment contributed by or for the institution where law or agreement prohibit recovery. For an asset donated to the institution by a third party, its fair market value at the time of the donation shall be considered as the acquisition cost.

b. In the use of the depreciation method, the following shall be observed:

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(1) The period of useful service or useful life established in each case for usuable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straightline method shall be presumed to be the appropriation method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency.

(3) Where the depreciation method is introduced for application to assets for which use allowance was previously charged, the aggregate amount of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets.

(4) When the depreciation method is used for buildings, a building "shell" may be treated separately from other building components, such as plumbing system and heating and air conditioning system. Each component item may then be depreciated over its estimate useful life. On the other hand, the entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life.

(5) Where the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that have outlived their depreciable lives. (But see also c(3), below.)

c. Under the use allowance method, the following shall be observed:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed as an annual rate not exceeding six and two-thirds percent of acquisition cost.

(2) In contrast to the depreciation method, the entire building must be treated as a single asset without separating its "shell" from other building components under the use allowance method. The entire building must be treated as a single asset, and the two-percent use allowance limitation must be applied to all parts of the building. The two-percent limitation, however, need not be applied to equipment or other assets that are merely attached or fastened to the building but not permanently fixed and are used as furnishings, decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, and carpeting). Such equipment and assets will be considered as not being permanently fixed to the building if they can be removed without the need for costly or extensive alterations or repairs to the building to make the space usable for other purposes. Equipment and assets which meet these criteria will be subject to the six and two-thirds percent equipment use allowance.

(3) A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

d. Except as otherwise provided in b and c above, a combination of the depreciation and use allowance methods may not be used, in like circumstances, for a single class of assets (e.g., buildings, office equipment, and computer equipment).

e. Charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, when the depreciation method is used, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

10. *Donated services and property.* The value of donated services and property are not allowable either as a direct or indirect cost, except that depreciation or use allowances on donated assets are permitted in accordance with Section J9a. The value of donated services and property may be used to meet cost sharing or matching requirements, in accordance with 34 CFR 74.24.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, employees, counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

13. *Equipment and other capital expenditures.*

a. For purposes of this paragraph, the following definitions apply:

(1) *Equipment* means an artice of nonexpendable tangible personal property having a useful life of more than one year, and an acquisition cost of $5,000 or more per unit. However, consistent with institutional policy, lower limits may be established.

(2) *Capital expenditure* means the cost of the asset including the cost to put it in place. Capital expenditure for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes duty, protective intransit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the institution's regular accounting practices.

(3) *Special purpose equipment means* equipment which is used only for research, medical, scientific, or other technical activities.

(4) *General purpose equipment* means equipment, the use of which is not limited only to research, medical, scientific or other technical activities. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and the land are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(2) Capital expenditures for special purpose equipment are allowable as direct charges, provided that the acquisition of items having a unit cost of $5,000 or more is approved in advance by the sponsoring agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(4) Capital expenditures are unallowable as indirect costs. But see Section J9 for allowability of depreciation or use allowance on buildings, capital improvements, and equipment. Also see Section J33 for allowability of rental costs on land, buildings, and equipment.

14. *Fines and penalties.* Costs resulting from violations of or failure of the institution to comply with Federal, State, and local laws and regulations are allowable, except when incurred as a result of compliance with specific provisions of the sponsoring agreement, or instructions in writing from the contracting officer or equivalent.

15. *Fringe benefits.*

a. Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable, provided such costs are distributed to all institutional activities in proportion to the relative amount of time or effort actually devoted by the employees, see Section J35 for treatment of sabbatical leave.

b. Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, tuition or remission of tuition for individual employees or their families and the like are allowable, provided such benefits are granted in accordance with established institutional policies, and are distributed to all institutional activities on an equitable basis. See Section J36b for treatment of tuition remission provided to students.

c. Rules for pension plan costs are as follows:

(1) Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided (a) such policies meet the test of reasonableness: (b) the methods of cost allocation are equitable for all activities; (c) the amount of pension cost assigned to each fiscal year is determined in accordance with (2) below; and (d) the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year.

(2) The amount of pension cost assigned to each fiscal year shall be determined in accordance with generally accepted accounting principles. Institutions may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Cost" (4 CFR Part 412).

(3) Premiums paid for pension plan termination insurance pursuant to the Employee Retirement Income Security Act of 1974 (Public Law 93-406) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and prohibited transactions of pension plan fiduciaries imposed under the Employee Retirement Income Security Act are also unallowable.

d. Fringe benefit may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of the salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, if the costs in relationship to salaries and wages differ significantly from different groups of employees. Also fringe benefits related to institutional salaries and wages treated as direct costs may be treated as direct costs.

16. *Insurance and indemnification.*

a. Costs of insurance required or approved, and maintained, pursuant to the sponsored agreement, are allowable.

b. Cost of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice: (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable, except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an empolyee plan which is not unduly restricted.

c. Contributions to a reserve for a self-insurance program are allowable, to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (whether through purchased insurance or self-insurance) are unallowable, unless expressly provided for in the sponsored agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided for in the sponsored agreement, except as provided in d above.

17. *Interest, fund raising, and investment management costs.*

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however, represented, are unallowable, except as indicated in e below.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

c. Cost of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

e. The cost of interest paid to an external party is allowable where associated with the following assets, provided the assets are used in support of sponsored agreements, and the total cost (including depreciation or use allowances, operation and maintenance costs, interest etc.,) does not exceed the rental cost of comparable assets in the same locality.

(1) Buildings acquired or completed on or after July 1, 1982.

(2) Major reconstruction and remodeling of existing buildings completed on or after July 1, 1982.

(3) Acquisition or fabrication of capital equipment (as defined in paragraph J.13, "Equipment and other capital expenditures") completed on or after July 1, 1982, costing $10,000 or more, if agreed to by the Government.

18. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including cost of labor management committees, employees' publications, and other related activities, are allowable.

19. *Losses on other sponsored agreements or contracts.* Any excess of costs over income under any other sponsored agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contribution portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs.

20. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair or upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

21. *Material costs.* Costs incurred for purchased materials, supplies, and fabricated parts directly or indirectly related to the sponsored agreements, are allowable. Purchases made specifically for the sponsored agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the sponsored agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the sponsored agreement. Where Government-donated or furnished material is used in performing the sponsored agreement such material will be used without charge.

22. *Memberships, subscriptions and professional activity costs.*

a. Costs of the institution's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

23. *Patent costs.* Costs of preparing disclosures, reports, and other documents required by the sponsored agreement, and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the sponsored agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also Section J34.)

24. *Plant security costs.* Necessary expenses incurred to comply with security requirements, including wages, uniforms and equipment of personnel engaged in plant protection, are allowable.

25. *Preagreement costs.* Costs incurred prior to the effective date of the sponsored agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless approved by the sponsoring agency.

26. *Professional service costs.*

a. Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable, subject to b and c below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

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Retainer fees to be allowable must be reasonable supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of sponsored agreements; (2) the impact of sponsored agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4) whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the costs, particularly where the services rendered are not of a continuing nature and have little relationship to work under sponsored agreements.

c. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

27. *Profits and losses on disposition of plant equipment or other capital assets.* Profits or losses arising from the sale or exchange of plant, facilities, equipment or other capital assets, including sale or exchange of either short-term or long-term investments, shall not be considered in computing the costs of sponsored agreements except for pension plans as provided in Section J15c. When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with 34 CFR (Subpart O—Property) §§ 74.130–74.145.

28. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential Government and nongovernment sponsored agreements or projects, including the development of data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable to the current period. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

29. *Public information services costs.* Cost of news releases pertaining to specific research or scientific accomplishment are allowable, when they result from performance of sponsored agreements.

30. *Rearrangement and alteration costs.* Cost incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency.

31. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of a sponsored agreement, fair wear and tear excepted, are allowable.

32. *Recruiting costs.*

a. Subject to b, c, and d below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocation costs to the Government.

33. *Rental cost of buildings and equipment.*

a. Rental costs of buildings or equipment are allowable to the extent that the decision to rent or lease is in accord with Section C–3. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed if the institution continued to own the property.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount that would be allowed if the institution owned the property. For this purpose, a "less-than-arms-length" lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other.

d. Where significant rental costs are incurred under leases which create a material equity in the leased property, they are allowable only up to the amount that would be allowed if the institution purchased the property on the date the lease agreement was executed. For this purpose, a material equity in the property exists when the lease:

(1) is noncancelable or is cancelable only upon the occurrence of some remote contingency, and

(2) has one or more of the following characteristics:

(a) Title to the property passes to the institution at some time during or after the lease period.

(b) The term of the lease corresponds substantially to the estimated useful life of the property (i.e., the period of economic usefulness to the legal owner of the property).

(c) The initial term is less than the useful life of the property and the institution has the option to renew the lease for the remaining useful life at substantially less than fair rental value.

(d) The property was acquired by the lessor to meet the special needs of the institution and will probably be usable only for that purpose and only by the institution.

(e) The institution has the right, during or at the expiration of the lease, to purchase the property at a price which at the inception of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option), except for any discount normally given to educational institutions.

34. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto, necessary for the proper performance of the sponsored agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

35. *Sabbatical leave costs.* Costs of leave of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the institution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

36. *Scholarships and student aid costs.*

a. Costs of scholarships, fellowships, and other programs of student aid are allowable only when the purpose of the sponsored agreement is to provide training to selected participants and the charge is approved by the sponsoring agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that (1) there is a bonafide employer-employee relationship between the student and the institution for the work performed, (2) the tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work, and (3) it is the institution's practice to similarly

compensate students in nonsponsored as well as sponsored activities.

b. Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages shall be subject to the reporting requirements stipulated in Section J6, and shall be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis.

37. *Severance pay.*

a. Severance pay is compensation in addition to regular salary and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal recurring turnover and which otherwise meet the conditions of a above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

38. *Specialized service facilities.*

a. The costs of institutional services involving the use of highly complex or specialized facilities such as electronic computers, wind tunnels, and reactors are allowable, provided the charge for the service meets the conditions of b through d below.

b. The cost of each service normally shall consist of both its direct costs and its allocable share of indirect costs with deductions for appropriate income or Federal financing as describing in Section C5.

c. The cost of such institutional services when material in amount will be charged directly to users, including sponsored agreements based on actual use of the services and a schedule of rates that does not discriminate between federally and nonfederally supported activities of the institution, including use by the institution for internal purposes. Charges for the use of specialized facilities should be designed to recover not more than the aggregate cost of the services over a long-term period agreed to by the institution and the cognizant Federal agency. Accordingly, it is not necessary that the rates charged for services be equal to the cost of providing those services during any one fiscal year as long as rates are reviewed periodically for consistency with the longterm plan and adjusted if necessary.

d. Where the costs incurred for such institutional services are not material, they may be allocated as indirect costs. Such arrangements must be agreed to by the institution and the cognizant Federal agency.

e. Where it is in the best interest of the Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

39. *Special services costs.* Costs incurred for general public relations activities, alumni activities, and similar services, are unallowable.

40. *Student activity costs.* Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the sponsored agreements.

41. *Taxes.*

a. In general taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable. Payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government, and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and (2) special assesaments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as sponsored agreement costs, will be credited or paid to the Government in the manner directed by the Government. However, any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such casts can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the sponsored agreement, should be treated as a direct cost.

43. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to c, d, e, and f below, when they are directly attributable to specific work under a sponsored agreement or are incurred in the normal course of administration of the institution or a department or program thereof.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personal movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

e. Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreign trip must be specifically approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located outside Canada and the United States and its territories and possessions, foreign travel means travel outside that country.

f. Domestic travel costs are allowable when permitted by the sponsored agreement. Expenditures for such travel will not be allowed if they exceed the amount specified by more than 25% or $500, whichever is greater, except with an advanced approval of the sponsoring agency.

44. *Termination costs applicable to sponsored agreements.*

a. Termination of sponsored agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items perculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this Appendix in the case of termination.

b. The cost of common items of material reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

c. If in a particular case, despite all reasonable efforts by the institution, certain

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costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Appendix, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (3) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other Government agreements for which the special tooling, special machinery, or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution is reimbursed for disposals at a predetermined amount in accordance with the provisions of 34 CFR (Subpart O—Property) §§ 74.130–74.145.

g. Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

K. *Certification of Charges*

To assure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circulars A–102, A–110, and A–21)

k. Appendix D to Part 74 is added, to read as follows:

Appendix D to Part 74—Cost Principles for Hospitals

I. Purpose and Scope

A. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by hospitals under grants and contracts with the Department of Education. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances of dictate the extent of hospital participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. These principles will be applicable to both proprietary and nonprofit hospitals. No provision for profit or other increment above cost is provided for in these principles. However, this is not to be interpreted as precluding a negotiated fee between contracting parties when a fee is appropriate.

B. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of hospitals and of the Department of Education as to their scope, applicability and interpretation. It is recognized that:

1. The arrangements for hospital participation in the financing of a research and development project are properly subject to negotiation between the agency and the hospital concerned in accordance with such Government-wide criteria as may be applicable.

2. Each hospital, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own institutional philosophies and objectives.

3. Each hospital in the fulfillment of its contractual obligations should be expected to employ sound management practices.

4. The application of the principles established herein shall be in conformance with the generally accepted accounting practices of hospitals.

5. Hospitals receive reimbursements from the Federal Government for differing types of services under various programs such as support of Research and Development (including discrete clinical centers), Health Services Projects, Medicare, etc. It is essential that consistent procedures for determining reimbursable costs for similar services be employed without regard to program differences. Therefore, both the direct and indirect costs of research programs must be indentified as a cost center(s) for the cost finding and step-down requirements of the Medicare program, or in its absence the Medicaid program.

C. *Application.* All operating agencies within the Department of Education that sponsor research and development work in hospitals will apply these principles and related policy guides in determining the costs incurred for such work under grants and cost-reimbursement type contracts and subcontracts. These principles will also be used as a guide in the pricing of fixed-price contracts and subcontracts.

II. Definition of Terms

A. "Organized research" means all research activities of a hospital that may be identified whether the support for such research is from federal, non-federal or internal source.

B. "Departmental research" means research activities that are not separately budgeted and accounted for. Such work, which includes all research activities not encompassed under the term organized research, is regarded for purposes of this document as a part of the patient care activities of the hospital.

C. "Research agreement" means any valid arrangement to perform federally-sponsored research or development including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts.

D. "Instruction and training" means the formal or informal programs of educating and training technical and professional health services personnel, primarily medical and nursing training. This activity, if separately budgeted or identifiable with specific costs, should be considered as a cost objective for purposes of indirect cost allocations and the development of patient care costs.

E. "Other hospital activities" means all organized activities of a hospital not immediately related to the patient care, research, and instructional and training functions which produce identifiable revenue from the performance of these activities. If a non-related activity does not produce identifiable revenue, it may be necessary to allocate this expense using an appropriate basis. In such a case, the activity may be included as an allocable cost (See para. III D below). Also included under this definition is any category of cost treated as "Unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect cost (as defined in para. V. A.) are properly allocable.

F. "Patient care" means those departments or cost centers which render routine or ancillary services to in-patients and/or out-patients. As used in para. IX B.23, it means the cost of these services applicable to patients involved in research programs.

G. "Allocation" means the process by which the indirect costs are assigned as between:

1. Organized research,
2. Patient care including departmental research,
3. Instruction and training, and
4. Other hospital activities.

H. "Cost center" means an identifiable department or area (including research) within the hospital which has been assigned an account number in the hospital accounting system for the purpose of accumulating expense by department or area

I. "Cost finding" is the process of recasting the data derived from the accounts ordinarily kept by a hospital to ascertain costs of the various types of services rendered. It is the determination of direct costs by specific identification and the proration of indirect costs by allocation.

J. "Step down" is a cost finding method that recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered closed and no further costs are apportioned to that center.

K. "Scatter bed" is a bed assigned to a research patient based on availability. Research patients occupying these beds are not physically segregated from nonresearch patients occupying beds. Scatter beds are geographically dispersed among all the beds available for use in the hospital. There are no special features attendant to a scatter bed that distinguishes it from others that could just as well have been occupied.

L. "Discrete bed" is a bed or beds that have been set aside for occupancy by research patients and are physically segregated from other hospital beds in an environment that permits an easily ascertainable allocation of costs associated with the space they occupy and the services they generate.

III. Basic Considerations

A. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the hospital less applicable credits. (See para. III–E.)

B. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are:

1. They must be reasonable.
2. They must be assigned to research agreements under the standards and methods provided herein.
3. They must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances (See para. I–E.5.) and
4. They must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

C. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

1. Whether or not the cost is of a type generally recognized as necessary for the operation of the hospital or the performance of the research agreement,
2. The restraints or requirements imposed by such factors as arm's length bargaining, federal and state laws and regulations, and research agreement terms and conditions,
3. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the hospital, its patients, its employees, its students, the Government, and the public at large, and
4. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established hospital policies and practices applicable to the work of the hospital generally, including Government research.

D. *Allocable costs.* 1. A cost is allocable to a particular cost center (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost center in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the hospital in proportions that can be approximated through use of reasonable methods, or it is necessary to the overall operation of the hospital and, in light of the standards provided in this chapter, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items are specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

2. Any costs allocable to a particular research agreement under the standards provided in these principles may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

E. *Applicable credits.* 1. The term applicable credits refers to those receipts or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs as outlined in para. V–A. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; tuition; adjustments of overpayments or erroneous charges; and services rendered to patients admitted to federally funded clinical research centers, primarily for care though also participating in research protocols.

2. In some instances, the amounts received from the Federal Government to finance hospital activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the hospital in determining the rates or amounts to be charged to government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. Thus, where such items are provided for or benefit a particular hospital activity, i.e., patient care, research, instruction and training, or other, they should be treated as an offset to the indirect costs apportioned to that activity. Where the benefits are common to all hospital activities they should be treated as a credit to the total indirect cost pool before allocation to the various cost objectives.

IV. Direct Costs

A. *General.* Direct costs are those that can be identified specifically with a particular cost center. For this purpose, the term cost center refers not only to the ultimate centers against which costs are finally lodged such as research agreements, but also to other established cost centers such as the individual accounts for recording particular objects or items of expense, and the separate account groupings designed to record the expenses incurred by individual organizational units, functions, projects and the like. In general, the administrative functions and service activities described in para. VI are identifiable as separate cost centers, and the expenses associated with such centers become eligible in due course for distribution as indirect costs of research agreements and other ultimate cost centers.

B. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical of transactions chargeable to a research agreement as direct costs are the compensation of employees for the time or effort devoted to the performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently accorded to all employees and treated by the hospital as direct rather than indirect costs (see para. V. B4b); the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, such as extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only the actual direct and indirect costs of such material or service and conforming to generally accepted cost accounting practices consistently followed by the institution.

V. Indirect Costs

A. *General.* Indirect costs are those that have been incurred for common or joint objectives, and thus are not readily subject to treatment as direct costs of research agreements or other ultimate or revenue producing cost centers. In hospitals such costs normally are classified but not necessarily restricted to the following functional categories: Depreciation; Administrative and General (including fringe

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benefits if not charged directly); Operation of Plant; Maintenance of Plant; Laundry and Linen Service; Housekeeping; Dietary; Maintenance of Personnel; and Medical Records and Library.

B. *Criteria for distribution.*—1. *Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the hospital, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

2. *Need for cost groupings.* The overall objective of the allocation process is to distribute the indirect costs described in para. VI to organized research, patient care, instruction and training, and other hospital activities in reasonable proportions consistent with the nature and extent of the use of the hospital's resources by research personnel, medical staff, patients, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in para. V-A. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost centers to which distribution is appropriate. Each such pool or cost grouping should then be distributed individually to the related cost centers, using the distribution base or method most appropriate in the light of the guides set out in B3 below. While this paragraph places primary emphasis on a step-down method of indirect cost computation, para. VIII provides an alternate method which may be used under certain conditions.

3. *Selection of distribution method.* Actual conditions must be taken into account in selecting the method or base to be used in distributing to related cost centers the expenses assembled under each of the individual cost groups established as indicated under B2 above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Care should be given, however, to eliminate similar or duplicative costs from any other distribution made to this area. Where the expenses under a cost grouping are more general in nature, the distribution to related cost centers should be made through use of a selected base which will produce results which are equitable to both the Government and the hospital. In general, any cost element or cost-related factor associated with the hospital's work is potentially adaptable for use as a distribution base provided:

a. It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and

b. It is common to the related cost centers during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to related cost centers in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

4. *General consideration on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at a hospital is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

a. Where certain items or categories of expense relate solely to one of the major divisions of the hospital (patient care, sponsored research, instruction and training, or other hospital activities) or to any two but not all, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in B2 and B3 above.

b. Where any types of expense ordinary treated as indirect cost as outlined in para. V-A are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must through separate cost grouping be excluded from the indirect costs allocable to research agreements.

c. Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other hospital activities.

d. Where organized activities (including identifiable segments of organized research as well as the activities cited in para. II-E) provide their own purchasing, personnel administration, building maintenance, or housekeeping or similar service, the distribution of such elements of indirect cost to such activities should be accomplished through cost grouping which includes only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

e. Where the hospital elects to treat as indirect charges the costs of pension plans and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to related cost centers, including organized research.

f. Where the hospital is affiliated with a medical school or some other institution which performs organized research on the hospital's premises, every effort should be made to establish separate cost groupings in the Administrative and General or other applicable category which will reasonably reflect the use of services and facilities by such research. (See also para. VII-A.3)

5. *Materiality.* Where it is determined that the use of separate cost groupings and selective distribution are necessary to produce equitable results, the number of such separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

C. *Administration of limitations on allowances for indirect costs.* 1. Research grants may be subject to laws and/or administrative regulations that limit the allowance for indirect costs under each such grant to a stated percentage of the direct costs allowed. Agencies that sponsor such grants will establish procedures which will assure that:

a. the terms and amount authorized in each case conform with the provisions of paragraphs III, V and IX of these principles as they apply to matters involving the consistent treatment and allowability of individual items of cost; and

b. the amount actually allowed for indirect costs under each such research grant does not exceed the maximum allowable under the limitation or the amount otherwise allowable under these principles, whichever is the smaller.

2. Where the actual allowance for indirect costs on any research grant must be restricted to the smaller of the two alternative amounts referred to in C1 above, such alternative amounts should be determined in accordance with the following guides:

a. The maximum allowable under the limitation should be established by applying the stated percentage to a direct cost base which shall include all items of expenditure authorized by the sponsoring agency for inclusion as part of the total cost for the direct benefit of the work under the grant; and

b. The amount otherwise allowable under these principles should be established by applying the current institutional indirect cost rate to those elements of direct cost which were included in the base on which the rate was computed.

3. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under the research agreement involved may not be shifted to other research agreements.

VI. Identification and Assignment of Indirect Costs

A. *Depreciation or use charge.* 1. The expenses under this heading should include depreciation (as defined in para. IX–B.9a) on buildings, fixed equipment, and movable equipment, except to the extent purchased through federal funds. Where adequate records for the recording of depreciation are not available, a use charge may be substituted for depreciation. (See para. IX–B.)

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides set forth in para. V–B, on a basis that gives primary emphasis to (a) space utilization with respect to depreciation on buildings and fixed equipment; and (b) specific identification of assets and their use with respect to movable equipment as it relates to patient care, organized research, instruction and training, and other hospital activities. Where such records are not sufficient for the purpose of the foregoing, reasonable estimates will suffice as a means for effecting distribution of the amounts involved.

B. *Administration and general expenses.* 1. The expenses under this heading are those that have been incurred for the administrative offices of the hospital including accounting, personnel, purchasing, information centers, telephone expense, and the like which do not relate solely to any major division of the institution, i.e., solely to patient care, organized research, instruction and training, or other hospital activities.

2. The expenses included in this category may be allocated on the basis of total expenditures exclusive of capital expenditures, or salaries and wages in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the hospital; otherwise the distribution of Administration and General expenses should be made through use of selected bases, applied to separate cost groupings established within this category of expenses in accordance with the guides set out in para. V–B.

C. *Operation of plant.* 1. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, and provision of utilities (exclusive of telephone expense) and protective services to the physical plant. They include expenses incurred for such items as power plant operations, general utility costs, elevator operations, protection services, and general parking lots.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to space utilization. The allocations should be developed as follows:

a. Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various costs centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume or space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

D. *Maintenance of plant.* 1. The expenses under this heading should include:

a. All salaries and wages pertaining to ordinary repair and maintenance work performed by employees on the payroll of the hospital;

b. All supplies and parts used in the ordinary repairing and maintaining of buildings and general equipment; and

c. Amounts paid to outside concerns for the ordinary repairing and maintaining of buildings and general equipment.

2. The expenses included in this category should be allocated to applicable costs centers in a manner consistent with the guides provided in para. V–B on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows:

a. Where actual space and related cost records are available and can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other basis may be used provided consideration is given to the use of facilities by research personnel, and others, including patients.

E. *Laundry and linen.* 1. The expenses under this heading should include:

a. Salaries and wages of laundry department employees, seamstresses, clean linen handlers, linen delivery men, etc.;

b. Supplies used in connection with the laundry operation and all linens purchased; and

c. Amounts paid to outside concerns for purchased laundry and/or or linen service.

2. The expense included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to actual pounds of linen used. The allocations should be developed as follows:

a. Where actual poundage and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where it can be demonstrated that a poundage basis of allocation is impractical or inequitable other bases may be used provided consideration is given to the use of linen by research personnel and others, including patients.

F. *Housekeeping.* 1. The expenses under this heading should include:

a. All salaries and wages of the department head, foreman, maids, porters, janitors, wall washers, and other housekeeping employees;

b. All supplies used in carrying out the housekeeping functions; and

c. Amounts paid to outside concerns for purchased services such as window washing, insect extermination, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner-consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to space actually serviced by the housekeeping department. The allocations and apportionments should be developed as follows:

a. Where actual space serviced and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space serviced and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts of housekeeping expenses involved; or

c. Where it can be demonstrated that the space serviced basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of housekeeping services by research personnel and others, including patients.

G. *Dietary.* 1. These expenses, as used herein, shall mean only the subsidy provided by the hospital to its employees including research personnel through its cafeteria operation. The hospital must be able to demonstrate through the use of proper cost accounting techniques that the cafeteria operates at a loss to the benefit of employees.

2. The reasonable operating basis of a subsidized cafetaria operation should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to number of employees.

H. *Maintenance (housing) of personnel.* 1. The expenses under this heading should include:

a. The salaries and wages of matrons, clerks, and other employees engaged in work in nurses' residences and other employees' quarters;

b. All supplies used in connection with the operation of such dormitories; and

c. Payments to outside agencies for the rental of houses, apartments, or rooms used by hospital personnel.

2. The expenses included in this catetory should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to employees utilization of housing facilities. The allocation should be developed as follows:

a. Appropriate credit should be given for all payments received from employees or otherwise to reduce the expense to be allocated;

b. A net cost per housed employee may then be computed; and

c. Allocation should be made on a department basis based on the number of housed employees in each respective department.

I. *Medical records and library.* 1. The expenses under this heading should include:

a. The salaries and wages of the records librarian, medical librarian, clerks, stenographers, etc.; and

b. All supplies such as medical record forms, chart covers, filing supplies, stationery, medical library books, periodicals, etc.

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2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to a special time survey of medical records personnel. If this appears to be impractical or inequitable, other bases may be used provided consideration is given to the use of these facilities by research personnel and others, including patients.

VII. Determination and Application of Indirect Cost Rate or Rates

A. *Indirect cost pools.* 1. Subject to (2) below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should be distributed to individual research agreements benefiting therefrom on a single rate basis.

2. In some instances a single rate basis for use on all government research at a hospital may not be appropriate since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of government research at the institution. For this purpose, a particular segment of government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. An example of this differential may be in the development of a separate indirect cost pool for a clinical research center grant. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting thereform should be utilized provided it is determined that:

a. Such indirect cost rate differs significantly from that which would have obtained under (1) above; and

b. The volume of research work to which such rate would apply is material in relation to other government research at the institution.

3. It is a common practice for grants or contracts awarded to other institutions, typically University Schools of Medicine, to be performed on hospital premises. In these cases the hospital should develop a separate indirect cost pool applicable to the work under such grants or contracts. This pool should be developed by a selective distribution of only those indirect cost categories which benefit the work performed by the other institution, within the practical limits dictated by available data and the materiality of the amounts involved. Hospital costs determined to be allocable to grants or contracts awarded to another institution may not be recovered as a cost of grants or contracts awarded directly to the hospital.

B. *The distribution base.* Preferably, indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. However, where the use of salaries and wages results in an inequitable allocation of costs to the research agreements, total direct costs or a variation thereof, may be used in lieu of salaries and wages. Regardless of the base used, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to para. VII–A. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages (or other base selected) for all research agreements identified with such a pool.

C. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained or off-campus research activities where the benefits derived from a hospital's indirect services cannot be readily determine. Such amount negotiated in lieu of indirect costs will be treated as an offset to the appropriate indirect cost pool after allocation to patient care, organized research, instruction and training, and other hospital activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

D. *Predetermined overhead rates.* The utilization of predetermined fixed overhead rates may offer potential advantages in the administration of research agreements by facilitating the preparation of research budgets and permitting more expeditious close out of the agreements when the work is completed. Therefore, to the extent allowed by law, consideration may be given to the negotiation of predetermined fixed rates in those situations where the cost experience and other pertinent factors available are deemed sufficient to enable the Government and the hospital to reach a reasonable consclusion as to the probable level of the indirect cost rate for the ensuing accounting period.

VIII. Simplified Method for Small Institutions

A. *General.* 1. Where the total direct cost of all government-sponsored research and development work at a hospital in a year is minimal, the use of the abbreviated procedure described in para. VIII–B below may be acceptable in the determination of allowable indirect costs. This method may also be used to initially determine a provisional indirect cost rate for hospitals that have not previously established a rate. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for determining the indirect cost rate applicable to research agreements at the institution.

2. The rigid formula approach provided under the abbreviated procedure has limitations which may preclude its use at some hospitals either because the minimum data required for this purpose are not readily available or because the application of the abbreviated procedure to the available data produces results which appear inequitable to the Government or the hospital. In any such case, indirect costs should be determined through use of the regular procedure rather than the abbreviated procedure.

3. In certain instances where the total direct cost of all government-sponsored research and development work at the hospital is more than minimal, the abbreviated procedure may be used if prior permission is obtained. This alternative will be granted only in those cases where it can be demonstrated that the step-down technique cannot be followed.

B. *Abbreviated procedure.* 1. Total expenditures as taken from the most recent annual financial report will be adjusted by eliminating from further consideration expenditures for capital items as defined in para. IX–B.4 and unallowable costs as defined under various headings in para. IX and para. III–E.

2. Total expenditures as adjusted under the foregoing will then be distributed among (a) expenditures applicable to administrative and general overhead functions, (b) expenditures applicable to all other overhead functions, and (c) expenditures for all other purposes. The first group shall include amounts associated with the functional categories, Administration and General, and Dietary, as defined in para. VI. The second group shall include Depreciation, Operation of Plant, Maintenance of Plant, and Housekeeping. The third group—expenditures for all other purposes—shall include the amounts applicable to all other activities, namely, patient care, organized research, instruction and trianing, and other hospital activities as defined under para. II–E. For the purposes of this section, the functional categories of Laundry and Linen, Maintenance of Personnel, and Medical Records and Library as defined in para. VI shall be considered as expenditures for all other purposes.

3. The expenditures distributed to the first two groups in para. VIII–B.2 should then be adjusted by those receipts or negative expenditure types of transactions which tend to reduce expense items allocable to research agreements as indirect costs. Examples of such receipts or negative expenditures are itemized in para. III–E.1.

4. In applying the procedures in para. VIII–B.1 and B.2, the cost of unallowable activities such as Gift Shop, Investment Property Management, Fund Raising, and Public Relations, when they benefit from the hospital's indirect cost services, should be treated as expenditures for all other purposes. Such activities are presumed to benefit from the hospital's indirect cost services when they include salaries of personnel working in the hospital. When they do not include such salaries, they should be eliminated from the indirect cost rate computation.

5. The indirect cost rate will then be computed in two stages. The first stage requires the computation of an Administrative and General rate component. This is done by applying a ratio of research direct costs over total direct costs to the Administrative and General pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base. The second stage requires the computation of an All other Indirect Cost rate component. This is done by applying a ratio of research direct space over total direct space to All Other Indirect Cost pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base.

The total of the two rate components will be the institution's indirect cost rate. For the purposes of this section, the research direct cost or space and total direct cost or space will be that cost or space identified with the functional categories classified under Expenditures for all other purposes under para. VIII–B.2.

IX. General Standards for Selected Items of Cost

A. *General.* This section provides standards to be applied in establishing the allowability of certain items involved in determing cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern. However, in some cases advance understandings should be reached on particular cost items in order that the full costs of research be supported. The extent of allowability of the selected items of cost covered in this section has been stated to apply broadly to many accounting systems in varying environmental situations. Thus, as to any given research agreement, the reasonableness and allocability of certain items of cost may be difficult to determine, particulary in connection with hospitals which have medical school or other affiliations. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective recipients of federal funds particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by the Government. Any such agreement should be incorporated in the research agreement itself. However, the absence of such an advance agreement on any element of cost will not in itself serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

1. Facilities costs, such as;
a. Depreciation
b. Rental
c. Use charges for fully depreciated assets
d. Idle facilities and idle capacity
e. Plant reconversion
f. Extraordinary or deferred maintenance and repair
g. Acquisition of automatic data processing equipment
2. Preaward costs
3. Non-hospital professional activities
4. Self-insurance
5. Support services charged directly (computer services, printing and duplication services, etc.)
6. Employee compensation, travel, and other personnel costs, including;
a. Compensation for personal service, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation
b. Morale, health, welfare, and food service and dormitory costs
c. Training and educations costs
d. Relocation costs, including special or mass personnel movement

B. *Selected items.*—1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for;

a. The recruitment of persons required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs as set forth in para IX–B.34

b. The procurement of scarce items for the performance of the research agreement; or

c. The disposal of scrap or surplus materials acquired in the performance of the research agreement.

Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in paragraph IV and V are observed.

2. *Bad debts.* Losses arising from uncollectible accounts and other claims and related collection and legal costs are unallowable except that a bad debt may be included as a direct cost of the research agreement to the extent that it is caused by a research patient and approved by the awarding agency. This inclusion is only intended to cover the situation of the patient admitted for research purposes who subsequently or in conjunction with the research receives clinical care for which a charge is made to the patient. If, after exhausting all means of collecting these charges, a bad debt results, it may be considered an appropriate charge to the research agreement.

3. *Bonding costs.* a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the hospital. They arise also in instances where the hospital requires similar assurance.

Included are such types as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the research agreement are allowable.

c. Costs of bonding required by the hospital in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

4. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment should be capitalized and are unallowable except as provided for in the research agreement.

5. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

6. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

7. *Compensation for personal service.*—a. *General.* Compensation for personal services covers all remuneration paid currently or accrued to employees of the hospital for services rendered during the period of performance under government research agreements. Such remuneration includes salaries, wages, staff benefits (see para. IX–B.10), and pension plan costs (see para. IX–B.25). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on government research agreements and for other work allocable as indirect costs to sponsored research are determined and supported as hereinafter provided. For non-profit, non-proprietary institutions, where federally supported programs constitute less than a preponderance of the activity at the institution the primary test of reasonableness will be to require that the institution's compensation policies be applied consistently both to federally-sponsored and non-sponsored activities alike, However, where special circumstances so dictate a contractural clause may be utilized which calls for application of the test of comparability in determining the reasonableness of compensation.

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b. *Payroll distribution.* Amounts charged to organized research for personal services, regardless of whether treated as direct costs or allocated as indirect costs, will be based on hosptial payrolls which have been approved and documented in accordance with generally accepted hospital practices. In order to develop necessary direct and indirect allocations of cost, supplementary data on time or effort as provided in (c) below, normally need be required only for individuals whose compensation is properly chargeable to two or more research agreements or to two or more of the following broad functional categories: (1) patient care; (2) organized research; (3) instruction and training; (4) indirect activities as defined in para. V–A; or (5) other hospital activities as defined in para. II–E.

c. *Reporting time or effort.* Charges for salaries and wages of individuals other than members of the professional staff will be supported by daily time and attendance and payroll distribution records. For members of the professional staff, current and reasonable estimates of the percentage distribution of their total effort may be used as support in the absence of actual time records. The term professional staff for purposes of this section includes physicians, research associates, and other personnel performing work at responsible levels of activities. These personnel normally fulfill duties, the competent performance of which usually requires persons possessing degrees from accredited institutions of higher learning and/or state licensure. In order to qualify as current and reasonable, estimates must be made no later than one month (though not necessarily a calendar month) after the month in which the services were performed.

d. *Preparation of estimates of effort.* Where required under (c) above, estimates of effort spent by a member of the professional staff on each research agreement should be prepared by the individual who performed the services or by a responsible individual such as a department head or supervisor having first-hand knowledge of the services performed on each research agreement. Estimates must show the allocation of effort between organized research and all other hospital activities in terms of the percentage of total effort devoted to each of the broad functional categories referred to in (b) above. The estimate of effort spent on a research agreement may include a reasonable amount of time spent in activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues with respect to related research, and attending appropriate scientific meetings and conferences. The term "all other hospital activities" would include departmental research, administration, committee work, and public services undertaken on behalf of the hospital.

e. *Application of budget estimates.* Estimates determined before the performance of services, such as budget estimates on a monthly, quarterly, or yearly basis do not qualify as estimates of effort spent.

f. *Non-hospital professional activities.* A hospital must not alter or waive hospital-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra hospital compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where hospital-wide policies do not adequately define the permissible extent of consultantships or other non-hospital activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as betweeen (1) hospital activities, and (2) non-hospital professional activities. If the sponsoring agency should consider the extent of non-hospital professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis.

g. *Salary rates for part-time appointments.* Charges for work performed on government research by staff members having only part-time appointments will be determined at a rate not in excess of that for which he is regularly paid for his part-time staff assignment.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Depreciation and use allowances.* a. Hospitals may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical mannner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular hospital's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

b. Due consideration will be given to government-furnished research facilities utilized by the institution when computing use allowances and/or depreciation if the government-furnished research facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of accounts, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved.

c. Normal depreciation on a hospital's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of research cost provided that the amount thereof is computed:

1. Upon the property cost basis used by the hospital for Federal Income Tax purposes (See section 167 of the Internal Revenue Code of 1954); or

2. In the case of non-profit or tax exempt organizations, upon a property cost basis which could have been used by the hospital for Federal Income Tax purposes, had such hospital been subject to the payment of income tax; and in either case

3. By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

i. The straight line method;

ii. The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

iii. The sum of the years-digits method; and

iv. Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowance which would have been used had such allowance been computed under the method described in (ii) above.

d. Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

f. Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

g. Hospitals which choose a depreciation allowance for assets purchased prior to 1966 based on a percentage of operating costs in lieu of normal depreciation for purposes of reimbursement under Public Law 89–97 (Medicare) shall utilize that method for determining depreciation applicable to organized research.

The operating costs to be used are the lower of the hospital's 1965 operating costs or the hospital's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966–67, with such percentage being uniformity reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965. However, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the hospital's allowable cost for the current year. After total depreciation has been computed, allocation methods are used to determine the share attributable to organized research.

For purposes of this section, "Operating Costs" means the total costs incurred by the hospital in operating the institution, and includes patient care, research, and other activities. "Allowable Costs" means operating costs less unallowable costs as defined in these principles; by the application of allocation methods to the total amount of such allowable costs, the share attributable to Federal-sponsored research is determined.

A hospital which elects to use this procedure under Public Law 89–97 and subsequently changes to an actual depreciation basis on pre-1966 assets in accordance with the option afforded under the Medicare program shall simultaneously change to an actual depreciation basis for organized research.

Where the hospital desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the Department of Education.

h. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding ten percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent of such estimate.

i. Depreciation and/or use charges should usually be allocated to research and other activities as an indirect cost.

10. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid benefits, recreational activities, employees' counseling services, and other expenses incurred in accordance with the hospital's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the hospital. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

11. *Entertainment costs.* Except as pertains to 10 above, costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

12. *Equipment and other facilities.* The cost of equipment or other facilities are allowable on a direct charge basis where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

13. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with federal, state and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the awarding agency.

14. *Insurance and indemnification.* a. Costs of insurance required or approved and maintained pursuant to the research agreement are allowable.

b. Costs of other insurance maintained by the hospital in connection with the general conduct of its activities are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to government owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks. Such contributions are subject to prior approval of the Government.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations are allowable.

15. *Interest, fund raising and investment management costs.* a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are not allowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

16. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the hospital and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

17. *Losses on research agreements or contracts.* Any excess of costs over income under any agreement or contract of any nature is unallowable. This includes, but is not limited to, the hopsital's contributed portion by reason of cost-sharing agreements, under-recoveries through negotiation of flat amounts for overhead, or legal or administrative limitations.

18. *Maintenance and repair costs.* a. Costs necessary for the upkeep of property (including government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows:

1. Normal maintenance and repair costs are allowable;

2. Extraordinary maintenance and repair costs are allowable, provided they are allocated to the periods to which applicable for purposes of determining research costs.

b. Expenditures for plant and equipment, including rehabilitation thereof, which according to generally accepted accounting principles as applied under the hospital's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

19. *Material costs.* Costs incurred for purchased materials, supplies and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances

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received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the hospital. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where government donated or furnished material is used in performing the research agreement, such material will be used without charge.

20. *Memberships, subscriptions and professional activity costs.* a. Costs of the hospital's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the hospital's subscriptions to civic, business, professional and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

21. *Organization costs.* Expenditures such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers in connection with (a) organization or reorganization of a hospital, or (b) raising capital, are unallowable.

22. *Other business expenses.* Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the hospital, cost of shareholders meetings preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

23. *Patient care.* The cost of routine and ancillary or special services to research patients is an allowable direct cost of research agreements.

a. Routine services shall include the costs of the regular room, dietary and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made.

b. Ancillary or special services are the services for which charges are customarily made in addition to routine services, such as operating rooms, anesthesia, laboratory, BMR–EKG, etc.

c. Patient care, whether expressed as a rate or an amount, shall be computed in a manner consistent with the procedures used by the Health Care Financing Administration, Department of Health and Human Services, to determine reimbursable costs under Public Law 89–97 (Medicare Program). The allowability of specific categories of cost shall be in accordance with those principles rather than the principles for research contained herein. In the absence of participation in the Medicare program by a hospital, all references to the Medicare program in these principles shall be construed as meaning the Medicaid program.

i. Once costs have been recognized as allowable, the indirect costs or general service center's cost shall be allocated (stepped-down) to special service centers, and all patient and nonpatient costs centers based upon actual services received or benefiting these centers.

ii. After allocation, routine and ancillary costs shall be apportioned to scatter-bed research patients on the same basis as is used to apportion costs to Medicare patients, i.e. using either the departmental method or the combination method, as those methods are defined by the Health Care Financing Administration; except that final settlement shall be on a grant-by-grant basis. However, to the extent that the Health Care Financing Administration; has recognized any other method of cost apportionment, that method generally shall also be recognized as applicable to the determination of research patient care costs.

iii. A cost center must be established on Medicare reimbursement forms for each discrete-bed unit grant award received by a hospital. Routine costs should be stepped-down to this line item(s) in the normal course of stepping-down costs under Medicare/Medicaid requirements. However, in stepping-down routine costs, consideration must be given to preventing a step-down of those costs to discrete-bed unit line items that have already been paid for directly by the grant, such as bedside nursing costs. Ancillary costs allocable to research discrete-bed units shall be determined and proposed in accordance with Section 23.c.ii.

d. Where federally sponsored research programs provide specifically for the direct reimbursement of nursing, dietary, and other services, appropriate adjustment must be made to patient care costs to preclude duplication and/or misallocation of costs.

24. *Patent costs.* Costs of preparing disclosures, reports and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also para. IX–B.36.)

25. *Pension plan costs.* Costs of the hospital's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which insure to the benefit of the hospital.

26. *Plan security costs.* Necessary expenses incurred to comply with government security requirements including wages, uniforms and equipment of personnel engaged in plant protection are allowable.

27. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

28. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the hospital are allowable subject to (b) and (c) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of government research agreements on the institution's total activity; (2) the nature and scope of managerial services expected of the institution's own organizations; and (3) whether the proportion of government work to the hospital's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under government reseach agreements.

c. Costs of legal, accounting and consulting services, and related costs incurred in connection with organization and reorganization or the prosecution of claims against the Government are unallowable. Costs of legal, accounting and consulting services, and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the research agreement.

29. *Profits and losses on disposition of plant equipment, or other assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sales or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

30. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential government and non-government research agreements or projects, including the development of technical data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the methods used, the results obtained may be accepted only if found to be reasonable and equitable.

31. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

32. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for a project are allowable only as a direct charge when such work has been approved in advance by the sponsoring agency concerned.

33. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of government research agreement work, fair wear and tear excepted, are allowable.

34. *Recruiting costs.* a. Subject to (b), (c), and (d) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where an institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect) are unallowable.

c. Costs of help wanted advertising, special emoluments; fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocations costs as were charged to the Government.

35. *Rental costs (including sale and lease-back of facilities).* a. Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations comparison of rental costs with the amount which the hospital would have received had it owned the facilities.

b. Charges in the nature of rent between organizations having a legal or other affiliation or arrangement such as hospitals, medical schools, foundations, etc., are allowable to the extent such charges do not exceed the normal costs of ownership such as depreciation, taxes, insurance, and maintenance, provided that no part of such costs shall duplicate any other allowed costs.

c. Unless otherwise specifically provided in the agreement, rental costs specified in sale and lease-back agreements incurred by hospitals through selling plant facilities to investment organizations such as insurance companies or to private investors, and concurrently leasing back the same facilities are allowable only to the extent that such rentals do not exceed the amount which the hospital would have received had it retained legal title to the facilities.

36. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid, or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

37. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by a hospital to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover, and which otherwise meet the conditions of (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate to the extent of its fair share in any specific payment.

38. *Specialized service facilities operated by a hospital.* a. The costs of institutional services involving the use of highly complex and specialized facilities such as electronic computers and reactors are allowable provided the charges therefor meet the conditions of (b) or (c) below, and otherwise take into account any items of income or federal financing that qualify as applicable credits under para. III-E.

b. The costs of such hospital services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities at rates that (1) are designed to recover only actual costs of providing such services, and (2) are applied on a nondiscriminatory basis as between organized research and other work of the hospital including commercial or accommodation sales and usage by the hospital for internal purposes. This would include use of such facilities as radiology, laboratories, maintenance men used for a special purpose, medical art, photography, etc.

c. In the absence of an acceptable arrangement for direct costing as provided in (b) above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with all government users of the facilities in order to assure equitable distribution of the indirect costs.

39. *Special administrative costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services are unallowable.

40. *Staff and/or employee benefits.* a. Staff and/or employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as for annual leave, sick leave, military leave and the like are allowable provided such costs are absorbed by all hospital activities including organized research in proportion to the relative amount of time or effort actually devoted to each.

b. Staff benefits in the form of employer contributions or expenses for Social Security taxes, employee insurance, Workmen's Compensation insurance, the Pension Plan (see para. IX–B.25), hospital costs or remission of hospital charges to the extent of costs for individual employees or their families, and the like are allowable provided such benefits are granted in accordance with established hospital policies, and provided such contributions and other expenses whether treated as indirect costs or an increment of direct labor costs are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

41. *Taxes.* a. In general, taxes which the hospital is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable except for (1) taxes from which exemptions are available to the hospital directly or which are available to the hospital based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, (2) special assessments on land which represent capital improvements, and (3) Federal Income Taxes.

b. Any refund of taxes, interest, or penalties, and any payment to the hospital of interest thereon attributable to taxes, interest or penalties, which were allowed as research agreement costs will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to a hospital

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incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the hospital had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for inbound freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or delivered are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the material received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

43. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the hospital. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to (c) and (d) below when they are directly attributable to specific work under a research agreement or when they are incurred in the normal course of administration of the hospital or a department or research program thereof.

c. The difference in cost between first class air accommodations and less than first class air accommodations is unallowable except when less than first class air accommodations are not reasonably available to meet necessary mission requirements such as where less than first class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

44. *Termination costs applicable to contracts.* a. Contract terminations generally give rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of these principles in the case of contract termination.

b. The cost of common items of material reasonably usable on the hospital's other work will not be allowable unless the hospital submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the hospital's plans for current scheduled work or activities including other research agreements. Contemporaneous purchases of common items by the hospital will be regarded as evidence that such items are reasonably usable on the hospital's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirement of other work.

c. If in a particular case, despite all reasonable efforts by the hospital, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in these principles, except that any such costs continuing after termination due to the negligent or willful failure of the hospital to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the hospital; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and (3) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other government contracts for which the special tooling, special machinery or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and (2) the hospital makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract and the termination and settlement of subcontracts; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the contract.

g. Subcontract claims including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

45. *Voluntary services.* The value of voluntary services provided by sisters or other members of religious orders is allowable provided that amounts do not exceed that paid other employees for similar work. Such amounts must be identifiable in the records of the hospital as a legal obligation of the hospital. This may be reflected by an agreement between the religious order and the hospital supported by evidence of payments to the order.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circulars A–102 and A–110)

1. Appendix E to Part 74 is added, to read as follows:

Appendix E to Part 74—Audit Requirements for State and Local Governments

1. *Purpose.* This appendix is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this appendix.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this appendix, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law, including 34 CFR Part 74.

3. *Definitions.* For the purposes of this appendix the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 9 of this appendix.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audits of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resources use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this appendix.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has government functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

4. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this appendix. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of 34 CFR Part 74.

d. The auditor shall determine whether.

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

5. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

6. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with 34 CFR Part 74, Appendix A, Cost Principles for State and Local Governments and 34 CFR 74.24.

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments,* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

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7. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. determine whether State or local subrecipients have met the audit requirements of this appendix and whether subrecipients covered by 34 CFR Part 74 have met the requirements of that part.

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this appendix, 34 CFR Part 74, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this appendix.

8. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this appendix shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this appendix do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this appendix do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this appendix shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

9. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this appendix.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency, will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this appendix.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, or any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this appendix. In such instances, the recipient with be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this appendix, so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

10. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 11(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

11. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this appendix. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluaton.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 11f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

12. *Audit Resolution.* As provided in paragraph 9, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

13. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

14. *Audit Costs.* The cost of audits made in accordance with the provisions of this appendix are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of 34 CFR Part 74, Appendix A, Cost Principles for State and Local Governments.

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

15. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this appendix. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily.

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

16. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by 34 CFR 74.36. The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

17. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this appendix. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

Attachment to Appendix E—Definition of Major Program as Provided in Pub. L. 98–502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$15 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circulars A–102, A–110, and A–128)

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS [REMOVED]

3. Part 80 is removed.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1206 and 1207

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas at 202–523–3621 (FTS 523–3621).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) program provides grants, when funds are available, to State and local governments, historical societies, archives, libraries and associations for the preservation, arrangement and description of historical records and for a broad range of archival training and development programs.

The Catalog of Federal Domestic Assistance number is 89.001.

NARA proposes to amend Part 1206 to remove provisions in conflict with the common government-wide rule.

List of Subjects

36 CFR Part 1206

Grant programs—Archives and records, Grants administration

36 CFR Part 1207

Accounting, Administrative practice and procedure, Grant programs—Archives and records, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 36 of the Code of Federal Regulations be amended as set forth below.

Dated: October 6, 1988.

Don W. Wilson,

Archivist of the United States.

1. Part 1207 is revised to read as set forth at the end of this document:

PART 1207—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
1207.1 Purpose and scope of this part.
1207.2 Scope of subpart.
1207.3 Definitions.
1207.4 Applicability.
1207.5 Effect on other issuances.
1207.6 Additions and exceptions.

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Subpart B—Pre-Award Requirements

1207.10 Forms for applying for grants.
1207.11 State plans.
1207.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

1207.20 Standards for financial management systems.
1207.21 Payment.
1207.22 Allowable costs.
1207.23 Period of availability of funds.
1207.24 Matching or cost sharing.
1207.25 Program income.
1207.26 Non-Federal audit.

Changes, Property, and Subawards

1207.30 Changes.
1207.31 Real property.
1207.32 Equipment.
1207.33 Supplies.
1207.34 Copyrights and patents.
1207.35 Subawards to debarred and suspended parties.
1207.36 Procurement.
1207.37 Subgrants.
1207.38 Intangible property and debt instruments.
1207.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

1207.40 Monitoring and reporting program performance.
1207.41 Financial reporting.
1207.42 Retention and access requirements for records.
1207.43 Enforcement.
1207.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1207.50 Closeout.
1207.51 Later disallowances and adjustments.
1207.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

1207.70 Scope of subpart.
1207.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

1207.80 Scope of subpart.
1207.81 Prohibition against fee or profit.
1207.82 Real property and equipment.
1207.83 Program income.

Authority: 44 U.S.C. 2104.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1207 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "NARA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 1207.3 is amended by adding a definition for "NARA" alphabetically to read as follows:

§ 1207.3 Definitions.

* * * * *

"NARA" means National Archives and Records Administration.

* * * * *

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

3. Part 1206 is amended as set forth below:

a. The authority citation for Part 1206 is revised to read as follows:

Authority: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506, Pub. L. 100–365.

b. Section 1206.54 is revised to read as follows:

§ 1206.54 Who may apply.

Applications from individuals, nonprofit organizations and institutions and from State and local government agencies will be considered. Proposals under the National Historical Records Program for State projects (but not regional or national projects) will be accepted only from applicants in States in which a State Historical Records Coordinator has been appointed and a State Historical Records Advisory Board nominated and approved. The records program pamphlet "Guidelines and Procedures: Applications and Grants," which is available from the Commission and from State Historical Records Coordinators, provides guidance on determining State Historical Records Coordinators, provides guidance on determining whether a proposed project is considered a State project.

c. Section 1206.72 is revised to read as follows:

§ 1206.72 Grant period and payments.

The grant period begins on the date specified in the grant letter and runs the length of time specified therein. Obligations incurred before the effective date of the grant shall not be charged against the grant.

§§ 1206.60, 1206.86 and 1206.92 [Removed and Reserved]

d. Sections 1206.60, 1206.86, and 1206.92 are removed and reserved.

e. Section 1206.94 is revised to read as follows:

§ 1206.94 Compliance with Government-wide requirements.

In addition to the grant application and grant administration requirements outlined in this Part 1206, grantees are responsible for complying with applicable Government-wide requirements contained in Part 1207 of this Chapter.

VETERANS ADMINISTRATION

38 CFR Part 43

FOR FURTHER INFORMATION CONTACT: Mr. C.G. Verenes, Acting Chief, Directives Management Division (731), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–4244.

List of Subjects in 38 CFR Part 43

Accounting, Administration practice and procedure, Grant programs-State cemeteries and State home facilities, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Part 43 of Title 38 of the Code of Federal Regulations be amended as set forth below.

Approved: October 4, 1988.

By direction of the Administrator.

James E. DeWire,

Chief of Staff.

1. Part 43 is revised to read as set forth at the end of this document:

PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
43.1 Purpose and scope of this part.
43.2 Scope of subpart.
43.3 Definitions.
43.4 Applicability.
43.5 Effect on other issuances.
43.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

43.10 Forms for applying for grants.
43.11 State plans.
43.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

43.20 Standards for financial management systems.
43.21 Payment.
43.22 Allowable costs.
43.23 Period of availability of funds.
43.24 Matching or cost sharing.
43.25 Program income.
43.26 Non-Federal audit.

Changes, Property, and Subawards

43.30 Changes.
43.31 Real property.
43.32 Equipment.
43.33 Supplies.
43.34 Copyrights and patents.
43.35 Subawards to debarred and suspended parties.
43.36 Procurement.
43.37 Subgrants.
43.38 Intangible property and debt instruments.
43.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

43.40 Monitoring and reporting program performance.
43.41 Financial reporting.
43.42 Retention and access requirements for records.
43.43 Enforcement.
43.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

43.50 Closeout.
43.51 Later disallowances and adjustments.
43.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

43.70 Scope of subpart.
43.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

43.80 Scope of subpart.
43.81 Prohibition against fee or profit.
43.82 Real property and equipment.
43.83 Program income.

Authority: 38 U.S.C. 210, 38 U.S.C. 612, E.O. 11541.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 43 is further amended by removing "[Agency]" and "[agency]" and adding "Veterans Administration" wherever "[Agency]" and "[agency]" appear.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 31

[FRL–3449–8]

FOR FURTHER INFORMATION CONTACT: Richard Mitchell, Grants Policy and Procedures Branch (PM–216F), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5297. (This is not a toll free number).

ADDITIONAL SUPPLEMENTARY INFORMATION: On March 11, 1988, as directed by President Reagan, Federal assistance awarding agencies simultaneously promulgated "common regulations [adopting] government-wide terms and conditions" for the administration of grants and cooperative agreements to State, local and Indian tribal governments. The common rule establishes consistency and uniformity among all Federal assistance awarding agencies in the administration of grants and cooperative agreements. The common rule, as part of the President's regulatory relief program, is further designed to reduce the burden of regulation and paperwork for the Environmental Protection Agency's (EPA) grantees. EPA's version of the common rule is at 40 CFR Part 31 and supersedes certain of EPA's general assistance regulations at 40 CFR Parts 30 and 33.

The President's Council on Management Improvement (PCMI) has now directed Federal assistance awarding agencies to amend the common rule to include provisions applicable to institutions of higher education, hospitals, other non-profit organizations, and commercial or for-profit entities (the so-called "A–110" organizations).

The amendatory language drafted by an interagency workgroup chaired by the Office of Management and Budget and the Department of Health and Human Services comprises, in the main, working changes to Part 31 and relatively minor additions of materials applicable to the "A–110" organizations. Two separate drafts of the proposed changes were distributed to some 30 EPA offices; only one comment was received. That comment dealt with § .37(a) which allows States to administer subgrants to "A–110" organizations under State laws and procedures or this rule. The EPA Office of the Inspector General (OIG) is concerned that when States subgrant ("pass-through") Federal funds to "A–110" entities, the States' rules and procedures also will be "passed-through." This will require Federal auditors to gain expertise in a wide variety of financial management requirements. EPA invites comments from its readers on this matter.

Because EPA added Subpart F—"Disputes" to the common rule published on March 11, 1988, it will be necessary to change the designations for Subparts F and G which are noted in the common rule now being proposed to Subparts G and H respectively when EPA's version is published.

List of Subjects in 40 CFR Part 31

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 40 of the Code of Federal Regulations be amended as set forth below.

Lee M. Thomas,

Administrator.

Date: October 14, 1988.

1. Part 31 is revised to read as set forth at the end of this document.

PART 31—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
31.1 Purpose and scope of this part.
31.2 Scope of subpart.
31.3 Definitions.
31.4 Applicability.
31.5 Effect on other issuances.
31.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

31.10 Forms for applying for grants.
31.11 State plans.
31.12 Special grant or subgrant conditions for high-risk grantees.
31.13 Principal environmental statutory provisions applicable to EPA assistance awards.

Subpart C—Post-Award Requirements

Financial Administration

31.20 Standards for financial management systems.
31.21 Payment.
31.22 Allowable costs.
31.23 Period of availability of funds.
31.24 Matching or cost sharing.
31.25 Program income.
31.26 Non-Federal audit.

Changes, Property, and Subawards

31.30 Changes.
31.31 Real Property.
31.32 Equipment.
31.33 Supplies.
31.34 Copyrights and patents.
31.35 Subawards to debarred and suspended parties.
31.36 Procurement.
31.37 Subgrants.
31.38 Intangible property and debt instruments.
31.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

31.40 Monitoring and reporting program performance.
31.41 Financial reporting.
31.42 Retention and access requirements for records.
31.43 Enforcement.
31.44 Termination for convenience.
31.45 Quality assurance.

Subpart D—After-The-Grant Requirements

31.50 Closeout.
31.51 Later disallowances and adjustments.
31.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special provisions for Research and Other Programs

31.70 Scope of subpart.
31.71 Special provisions.

Subpart G—Special provisions for Commercial Organizations

31.80 Scope of subpart.
31.81 Prohibition against fee or profit.

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31.82 Real property and equipment.
31.83 Program income.

Subpart H—Disputes

31.90 Disputes.

Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1401 et seq.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 31 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "EPA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 31.3 is amended by adding a definition for "EPA" alphabetically to read as follows:

§ 31.3 Definitions.

* * * * *

"EPA" means Environmental Protection Agency

* * * * *

c. Amend § 31.6 by adding new paragraphs (c)(1) and (d) to read as follows:

§ 31.6 Additions and exceptions.

* * * * *

(c) * * *

(1) In the Environmental Protection Agency, the Director, Grants Administration Division, is authorized to grant the exceptions.

(d) The EPA Director is also authorized to approve exceptions, on a class or an individual case basis, to EPA program—specific assistance regulations other than those which implement statutory and executive order requirements.

d. Section 31.13 is added to Subpart B to read as follows:

§ 31.13 Principal environmental statutory provisions applicable to EPA assistance awards.

Grantees shall comply with all applicable Federal laws including:

(a) Section 306 of the Clean Air Act, (42 U.S.C. 7606).

(b) Section 508 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1368).

(c) Section 1424(e) of the Safe Drinking Water Act, (42 U.S.C. 300h-3(e)).

e. Amend § 31.36 by ading new paragraphs (c)(5), (j), and (k) to read as follows:

§ 31.36 Procurement.

* * * * *

(c) * * *

(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following "Buy American" requirements in paragraphs (c)(5) (i)–(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following "Buy American" provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

* * * * *

(j) *Payment to consultants.*

(1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS–18. (Grantees may, however, pay consultrants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Public Law 99–591)

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) *Use of the same architect or engineer during construction.*

(1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(i) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(ii) The award official approves noncompetitive procurement under § 31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in § 31.36.

f. Section 31.43 is amended by adding paragraph (a)(3)(i) to read as follows:

§ 31.43 Enforcement.

(a) * * *

(3) * * *

(i) EPA can also wholly or partly annul the current award for the grantee's or subgrantee's program.

g. Add a new § 31.45 to Subpart C to read as follows:

§ 31.45 Quality assurance.

If the grantee's project involves environmentally related measurements or data generation, the grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions.

h. Add a new 40 CFR Part 31, Subpart H, consisting of § 31.90 to read as follows:

Subpart H—Disputes

§ 31.90 Disputes.

(a) Disagreements should be resolved at the lowest level possible.

(b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements.

(c) The disputes decision official's decision will constitute final agency action unless a request for review is filed by registered mail, return receipt requested, within 30 calendar days of the date of the decision.

(1) For final decisions issued by an EPA disputes decision official at Headquarters, the request for review shall be filed with the Assistant Administrator responsible for the assistance program.

(2) For final decisions issued by a Regional disputes decision official, the request for review shall be filed with the Regional Administrator. If the Regional Administrator issued the final decision, the request for reconsideration shall be filed with the Regional Administrator.

(d) The request shall include:

(1) A copy of the EPA disputes decision official's final decision;

(2) A statement of the amount in dispute;

(3) A description of the issues involved; and

(4) A concise statement of the objections to the final decision.

(e) The disputant(s) may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record.

(f) Disputants are entitled to an informal conference with EPA officials.

(g) Disputants are entitled to a written decision from the appropriate Regional or Assistant Administrator.

(h) A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

(i) A decision by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, a petition for discretionary review by the Assistant Administrator responsible for the assistance program may be filed within 30 calendar days of the Regional Administrator's decision. The petition shall be sent to the Assistant Administrator by registered mail, return receipt requested, and shall include:

(1) A copy of the Regional Administrator's decision; and

(2) A concise statement of the objections to the decision.

(j) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise the disputant(s) in writing that the Regional Administrator's decision remains the final Agency action.

(k) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow the disputant(s) to submit briefs in support of the petition for review and may provide an opportunity for an informal conference in order to clarify technical or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written decision which will then become the final Agency action.

(l) Reviews may not be requested of:

(1) Decisions on requests for exceptions under § 31.6;

(2) Bid protest decision under § 31.36(b)(12);

(3) National Environmental Policy Act decisions under Part 6;

(4) Advanced wastewater treatment decisions of the Administrator; and

(5) Policy decisions of the EPA Audit Resolution Board.

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT: Ceceil Coleman, Grants Policy Specialist, Acquisition and Assistance Division, Office of Acquisition and Property Management, Room 5512, Department of the Interior, Washington, DC 20240, Phone: (202) 343–6431.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department published in the February 14, 1985 issue of the **Federal Register** (50 FR 6176), a rule which implemented Governmentwide requirements established by the Office of Management and Budget (OMB) under OMB Circulars for the administration of assistance agreements. This rule included the implementation of OMB Circular A–110, "Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

On March 11, 1988, the Department published an agency-specific preamble and amendments as part of the final common rule which revised the Department's existing regulations at 43 CFR Part 12 which implemented OMB Circular A–102.

Therefore, upon adoption of the final common rule, the Department's existing regulations at 43 CFR Part 12 which implement the March 11, 1988 (53 FR 8032), common rule and OMB Circular A–110, will be revised accordingly.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department Clearance Officer, Office of Management Improvement, Mail Stop 2248, Department of the Interior, Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

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It is proposed that Title 43 of the Code of Federal Regulations be amended as set forth below.

Rick Ventura,

Assistant Secretary-Policy, Budget and Administration.

Date: October 19, 1988.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised and a cross reference is added to the end of the table of contents to read as follows:

Authority: 5 U.S.C. 301; Pub.L. 98-502; OMB Circular A-xxx, OMB Circular A-128.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

Appendix to Subpart B—Definition of Major Program as Provided in Pub. L. 98-502.

2. The heading of the appendix immediately following § 12.31 is revised to read as set forth above.

3. Subpart C of Part 12 is revised to read as set forth at the end of this document:

Subpart C—Uniform Administrative Requirements For Grants and Cooperative Agreements

General

Sec.
12.41 (____.1) Purpose and scope of this subpart.
12.42 (____.2) Scope of §§ 12.41 through 12.46.
12.43 (____.3) Definitions.
12.44 (____.4) Applicability.
12.45 (____.5) Effect on other issuances.
12.46 (____.6) Additions and exceptions.

Pre-Award Requirements

12.50 (____.10) Forms for applying for grants.
12.51 (____.11) State plans.
12.52 (____.12) Special grant or subgrant conditions for "high-risk" grantees.

Post-Award Requirements

Financial Administration

12.60 (____.20) Standards for financial management systems.
12.61 (____.21) Payment.
12.62 (____.22) Allowable costs.
12.63 (____.23) Period of availability of funds.
12.64 (____.24) Matching and cost sharing.
12.65 (____.25) Program Income.
12.66 (____.26) Non-Federal audit.

Changes, Property, and Subawards

12.70 (____.30) Changes.
12.71 (____.31) Real property.
12.72 (____.32) Equipment.
12.73 (____.33) Supplies.
12.74 (____.34) Copyrights and patents.
12.75 (____.35) Subawards to debarred and suspended parties.
12.76 (____.36) Procurement.
12.77 (____.37) Subgrants.
12.78 (____.38) Intangible property and debt instruments.
12.79 (____.39) Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

12.80 (____.40) Monitoring and reporting program performance.
12.81 (____.41) Financial reporting.
12.82 (____.42) Retention and access requirements for records.
12.83 (____.43) Enforcement.
12.84 (____.44) Termination for convenience.

After-the-Grant Requirements

12.90 (____.50) Closeout.
12.91 (____.51) Later disallowances and adjustments.
12.92 (____.52) Collections of amounts due.

Entitlements [Reserved]

Special Provisions for Research and Other Programs

12.100 (____.70) Scope of section.
12.101 (____.71) Special provisions.

Special Provisions for Commercial Organizations

12.110 (____.80) Scope of section.
12.111 (____.81) Prohibition against fee or profit.
12.112 (____.82) Real property and equipment.
12.113 (____.83) Program income.

4. Part 12 is further amended by removing "[Agency]" and "[agency]" and adding "Department" wherever "[Agency]" and "[agency]" appear.

5. In newly revised Subpart C, remove the terms "Part", "part", "Subpart", and "subpart" and add "Subpart", "subpart", "Section" and "section" respectively, wherever they appear.

§ 12.42 Scope of §§ 12.41 through 12.46.

6. The headline for § 12.42 is revised to read as set forth above.

7. Section 12.43 is amended by adding a definition for "Department" alphabetically to read as follows:

§ 12.43 Definitions.

* * * * *

"Department" includes any bureau, office or other unit of the Department of the Interior, whether in Washington, DC or in the field, and any officer or employee thereof.

* * * * *

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 13

FOR FURTHER INFORMATION CONTACT: Michael J. McCausland, Office of the Comptroller, Policy Division (202) 646-3718.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Federal Emergency Managment Agency (FEMA) intends to incorporate the final rule as Part 13 of Title 44 of the Code of Federal Regulations.

List of Subjects in 44 CFR Part 13

Accounting, Administrative practice and procedure, Grant programs—civil defense, Disaster, Hazardous materials and fire training, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 44 of the Code of Federal Regulations be amended as set forth below.

Michael J. McCausland,

Acting Chief Policy Division.

1. Part 13 is revised to read as set forth at the end of this document.

PART 13—UNIFORM ADMINISTRATIVE REQUIREMENT FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
13.1 Purpose and scope of this part.
13.2 Scope of subpart.
13.3 Definitions.
13.4 Applicability.
13.5 Effect on other issuances.
13.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

13.10 Forms for applying for grants.
13.11 State plans.
13.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

13.20 Standards for financial management systems.
13.21 Payment.
13.22 Allowable costs.
13.23 Period of availability of funds.
13.24 Matching or cost sharing.
13.25 Program income.
13.26 Non-Federal audit.

Changes, Property and Subawards

13.30 Changes.
13.31 Real property.
13.32 Equipment.
13.33 Supplies.
13.34 Copyrights and patents.
13.35 Subawards to debarred and suspended parties.
13.36 Procurement.
13.37 Subgrants.
13.38 Intangible property and debt instruments.
13.39 Grant property trust relationships and notices.

Reports, Records, Retention and Enforcement

13.40 Monitoring and reporting program performance.
13.41 Financial reporting.
13.42 Retention and access requirements for records.
13.43 Enforcement.
13.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

13.50 Closeout.
13.51 Later disallowances and adjustments.
13.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

13.70 Scope of subpart.
13.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

13.80 Scope of subpart.
13.81 Prohibition against fee or profit.
13.82 Real property and equipment.
13.83 Program income.

Authority: Reorg Plan No. 3 1978, EO 12127; EO 12148.

Cross reference: See also office of Management and Budget Notice published at 52 FR 23729, June 24, 1987

2. Part 13 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "FEMA" is added wherever "[Agency]" and "[agency]" appear.

b. Section 13.3 is amended by adding a definition for "FEMA" alphabetically to read as follows:

* * * * *

§ 13.3 Definitions.

"FEMA" means Federal Emergency Management Agency.

* * * * *

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 74 and 92

FOR FURTHER INFORMATION CONTACT: Gary Houseknecht, Division of Assistance and Cost Policy, Room 513-D Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Phone (202) 245-7565.

ADDITIONAL SUPPLEMENTARY INFORMATION: Currently, the fiscal and administrative requirements for HHS grants are contained in two primary regulations. 45 CFR Part 92, which became effective October 1, 1988, governs most grants to states, local governments, and federally recognized Indian tribal governments. Open-ended entitlement grants to states (e.g. Aid to Families of Dependent Children, Medicaid, and Child Support Enforcement) and grants to both non-profit and for-profit private organizations are governed by 45 CFR Part 74.

If 45 CFR Part 92 is amended as proposed, it would, for the most part, replace Part 74 for grants to non-governmental organizations. Part 74 would remain in place for two purposes. It would continue to govern HHS's open-ended entitlement grants to states until such time as the Subpart reserved in Part 92 for entitlement grants is added. Part 74 would also preserve the applicability to all HHS grants (except block grants subject to 45 CFR Part 96) of certain long-standing HHS grant rules that are not covered in the government-wide "common rule" to be codified at 45 CFR Part 92.

The Part 74 provisions which will continue to apply to grants subject to Part 92 were made applicable by an amendment to Part 74 adopted simultaneously with the adoption of Part 92, on March 11, 1988 (53 FR 8078-8079). The provisions are:

1. Section 74.62(a) which simplifies submission of audit reports;
2. Section 74.173 which specifies cost principles for hospitals;
3. Section 74.174(b) which establishes certain special cost rules for nonprofit organizations;
4. Section 74.304 which describes grantee responsibilities regarding final decisions in disputes;
5. Section 74.710 which contains property rules for grants to for-profit organizations; and
6. Section 74.715 which contains the rules for use of program income under grants to for-profit organizations.

If Part 92 is adopted essentially as proposed herein, HHS will also make a number of technical and conforming amendments to Part 74. In § 74.4 "Applicability of this part.", the citations in § 74.4(a)(2) that make § 74.710 and 74.715 applicable to Part 92 grantees would be deleted because today's proposed amendments to Part 92 contain equivalent provisions. In addition, HHS would amend 45 CFR Part 74 by removing and reserving any subparts or sections that have no relevance to open-ended entitlement grants to states, and thus will not be needed in Part 74 when other kinds of grants become subject to Part 92. For example, the following subparts and appendix would be removed in their entirety:

1. Subpart J—Monitoring and reporting of program performance;
2. Subpart L—Programmatic changes and budget revisions;
3. Subpart N—Application forms; and
4. Appendix H—Attachment O, "Procurement Standards" of OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

Readers examining the proposed amendments to the common rule as to its effect on HHS grants should also bear in mind that when HHS adopted the common rule on March 11, 1988, we simultaneously amended § 92.30 by adding paragraphs (a)(1) and (d)(5) to read as follows:

Section 92.30 Changes.

(a) * * * (1) Approvals shall not be valid unless they are in writing, and signed by at least one of the following officials of the Department of Health and Human Services:

(i) The responsible Grants Officer or his or her designee;

(ii) The head of the HHS Operating or Staff Division that awarded the grant; or

(iii) The head of the Regional Office of the HHS Operating or Staff Division that awarded the grant.

* * * * *

(d) Programmatic changes * * * *

(5) Providing medical care to individuals under research grants.

* * * * *

This amendment to § 92.30 will appear in Part 92 when it is codified in Title 45 of the Code of Federal Regulations, but it does not appear in this version of the common rule because this is a generic version of the common rule containing the provisions "common" to all the participating federal agencies' rules. Also, when the amended common rule is codified for HHS in 45 CFR Part 92, subsection 92.30(d)(5) will be renumbered as (d)(6) to make room for a new subsection (d)(5) that is being added to the generic version of the common rule.

With respect to the common rule as a whole, readers interested in assessing the effects of the proposed amendments on HHS grants to non-governmental grantees will need to compare individual provisions of proposed Part 92 to language on the same topic in HHS's existing regulations at 45 CFR Part 74 "Administration of Grants." In the case of most grants administration matters presently treated in OMB Circular No. A-110, the cross-comparisons will reveal that proposed Part 92 conforms closely to rules HHS has used for many years.

For example, OMB Circular A-110 currently provides that income earned

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by grantees from grant-supported activities be treated in one of three ways: it is to be deducted from total project costs, used to satisfy matching requirements, or used to finance additional program activities. Circular A–110 requires grantor agencies to specify the alternative or combination of alternatives to be used, but does not dictate a preference. In 1978, when HHS implemented Circular A–110 in 45 CFR Part 74, we designated the "deduction" alternative as the default alternative. We did this as a matter of administrative convenience, so there would be a designated alternative if the terms and conditions of any particular grant award failed for some reason to specify one. This action was not intended to create a preference for the deduction alternative, and in fact most HHS programs that have program income specify the matching alternative or the addition alternative in the terms and conditions of their grants. The government-wide common rule for grants to governmental organizations published on March 11, 1988 adopted the HHS concept of a default rule, and it survives in the proposed amendment to the common rule. (See § ____.25(g).) Thus HHS anticipates that our current requirements with respect to the use of program income will be essentially unchanged.

Likewise, HHS expects there will be little change in our grant requirements concerning rebudgeting. Circulars A–102 and A–110 both contained provision for federal agency prior approval when grantees needed to rebudget grant funds between direct cost object class categories (e.g., salaries, equipment, travel, etc.). In 1978, when HHS implemented A–110 (by amending 45 CFR Part 74 and making it applicable to non-governmental grantees) we waived these restrictions on rebudgeting for both governmental and non-governmental grantees because we had found them to be of limited value as a tool for exercising stewardship over grant funds, and because we wished to place greater reliance on grantees to manage their own projects. If § ____.30 "Changes" is adopted as proposed, HHS would again have percentage limitations on rebudgeting. However, the common rule provides for waiver of these restrictions; and in the case of most HHS grants they would be waived. HHS granting agencies have generally found that requirements for prior approval of selected types of costs (from the applicable cost principles) and for changes in the scope or objectives of projects afford the agency sufficient control over budget changes.

Attention is called to the effect that certain provisions of the common rule have on the way federal agencies issue grant requirements. These are:

1. Section ____.5 of the common rule, "Effect on other issuances," pertains to additional administrative requirements imposed by non-regulatory issuances, such as manuals and program announcements. It provides that they are superseded only if they are inconsistent with the common rule. For example, a non-regulatory issuance that advises grantees of such things as what forms to use to comply with programmatic reporting requirements and where to send all forms would be proper under this regulation. Administrative requirements which are inconsistent with the Common Rule would be authorized where required by a statute, or where approved in accordance with the exception provisions of § ____.6.

2. Section ____.6 of the common rule, "Additions and exceptions," permits additional administrative requirements to be imposed through regulations published in the **Federal Register** for codification, and by other administrative means where the addition or exception is on a case-by-case basis. The additions or exceptions authorized by this regulation for classes of grants or grantees, or on a case-by-case basis, are in addition to the special conditions authorized under § ____.12 for high risk grantees.

3. Section ____.11 concerns provisions applicable to programs requiring state plans. Subsection (b) provides that States need meet only those administrative or programmatic requirements pertaining to the state plan document that are in statutes or regulations published in the **Federal Register** for codification. This does not exempt states from the necessity to comply with proper interpretations of statutes or regulations affecting the administration and operation of a program which are issued in guidelines or manuals, or similar issuances. The use of such issuances is essential to the day-to-day operations of the programs and to provide states with guidance, often at the request of the states. However, any such interpretations must be within the scope of the statutory or regulatory provision they address.

Finally, the proposed common rule's Subpart G "Special Conditions for Grants to Commercial Organizations" is adapted from HHS's current regulations in Subpart AA of 45 CFR Part 74. Thus, although the coverage of grantees that are organized for profit would be newly added to the common rule, HHS's requirements would be preserved substantially as they are now.

List of Subjects in 45 CFR Parts 74 and 92

Accounting, Administrative practices and procedures, Grant programs—health and human services research, training, and service delivery, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

October 18, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

1. Part 92 is revised to read as set forth at the end of this document:

PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
92.1 Purpose and scope of this part.
92.2 Scope of subpart.
92.3 Definitions.
92.4 Applicability.
92.5 Effect on other issuances.
92.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

92.10 Forms for applying for grants.
92.11 State plans.
92.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

92.20 Standards for financial management systems.
92.21 Payment.
92.22 Allowable costs.
92.23 Period of availability of funds.
92.24 Matching or cost sharing.
92.25 Program income.
92.26 Non-Federal audit.

Changes, Property, and Subawards

92.30 Changes.
92.31 Real property.
92.32 Equipment.
92.33 Supplies.
92.34 Copyrights and patents.
92.35 Subawards to debarred and suspended parties.
92.36 Procurement.
92.37 Subgrants.
92.38 Intangible property and debt instruments.
92.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

92.40 Monitoring and reporting program performance.
92.41 Financial reporting.
92.42 Retention and access requirements for records.
92.43 Enforcement.
92.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

92.50 Closeout.
92.51 Later disallowances and adjustments.
92.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research

92.70 Scope of subpart.
92.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

92.80 Scope of subpart.
92.81 Prohibition against fee or profit.
92.82 Real property and equipment.
92.83 Program income.

Authority: 5 U.S.C. 301.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 92 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "HHS" is added wherever "[Agency]" and "[agency]" appear.

b. Section 92.3 is amended by adding a definition for "HHS" alphabetically to read as follows:

§ 92.3 Definitions.

* * * * *

"HHS" means the Department of Health and Human Services.

* * * * *

NATIONAL SCIENCE FOUNDATION

45 CFR Part 603

FOR FURTHER INFORMATION CONTACT: William S. Kirby, Policy Office, Division of Grants and Contracts, (202) 357–7880.

ADDITIONAL SUPPLEMENTARY INFORMATION: The proposed common rule would combine formerly separate OMB guidance to agencies for grants and cooperative agreements with state and local governments with similar guidance covering awards to universities and nonprofit organizations. The National Science Foundation proposes to join with the Department of Defense in adopting a separate rule to govern universities and nonprofit organizations. The National Science Foundation proposes this separation because its grants and cooperative agreements are awarded almost exclusively to academic and nonprofit organizations for the support of research, education, and related activities. While many of the requirements set forth in the proposed common rule are clearly applicable to all types of grantees, there are several areas of coverage with significant differences and which reflect very real differences in the character and purposes of the various organization types. Adopting separately that portion of the proposed rule relevant to research grants, universities, and non-governmental organizations is the best way for NSF to provide clear, consistent guidance for its grantees and grants officials. In final rulemaking, therefore, NSF proposes to adopt only those provisions of the rule that are applicable to universities and nonprofit organizations (nongovernmental entities). In addition, the provisions of the proposed Subpart F will be adopted as standard NSF procedure. We believe this proposed approach will simplify understanding and use of the rules by grantees and grant officials. Public comment is welcomed on this proposal to adopt a separate rule, as other agencies may wish to consider the approach in final rulemaking. Notwithstanding the issuance of any final rule, NSF will continue to rely on and expects grantees to continue following the policies and procedures found in NSF's publications and forms which have received OMB clearance. These policies and procedures, which are consistent with or less restrictive than the common rule, are found in: "Grants for Research and Education in Science and Engineering" which outlines procedures for applying for NSF grants; NSF GC–1, "Grant General Conditions", which contains the terms and conditions applicable to NSF grants; and "NSF Grant Policy Manual", which outlines NSF's grant administration policies. Where existing requirements appear inconsistent with any common rule or other regulation, grantees should consult with NSF.

List of Subjects in 45 CFR Part 603

Accounting, Administration practice and procedures, Grant Administration, Grant Programs—education, Grant Programs—science and technology, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

Jeff Fenstermacher,

Assistant Director for Administration.

1. Part 603 is added to read as set forth at the end of this document:

PART 603—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
603.1 Purpose and scope of this part.
603.2 Scope of subpart.
603.3 Definitions.
603.4 Applicability.
603.5 Effect on other issuances.
603.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

603.10 Forms for applying for grants.
603.11 State plans.
603.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

603.20 Standards for financial management syatems.
603.21 Payment.
603.22 Allowable costs.
603.23 Period of availability of funds.
603.24 Matching or cost sharing.
603.25 Program income.
603.26 Non-Federal audit.

Changes, Property, and Subawards

603.30 Changes.
603.31 Real property.
603.32 Equipment
603.33 Supplies.
603.34 Copyrights and patents.
603.35 Subawards to debarred and suspended parties.
603.36 Procurement.
603.37 Subgrants.
603.38 Intangible property and debt instruments.
603.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

603.40 Monitoring and reporting program performance.
603.41 Financial reporting.
603.42 Retention and access requirements for records.
603.43 Enforcement.
603.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

603.50 Closeout.
603.51 Later disallowances and adjustments.
603.52 Collections of amounts due.

Subpart E—Entitlements (Reserved)

Subpart F—Special Provisions for Research and Other Programs

603.70 Scope of subpart.
603.71 Special Provisions.

Subpart G—Special Provisions for Commercial Organizations

603.80 Scope of subpart.
603.81 Prohibition against fee or profit.
603.82 Real property and equipment.
603.83 Program income.

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Authority: 42 U.S.C. 1870 (a).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, July 24, 1987.

2. Part 603 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "NSF" is added wherever "[Agency]" and "[agency]" appear.

b. Section 603.3 is amended by adding a definition for "NSF" alphabetically to read as follows:

§ 603.3 Definitions.

* * * * *

"NSF" means National Science Foundation.

* * * * *

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1157

FOR FURTHER INFORMATION CONTACT: Arthur Warren, Deputy General Counsel, or Laurence Baden, Grants Officer, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 682–5403.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Program Income

The National Endowment for the Arts (hereinafter "Arts Endowment"), consistent with the provisions of section 25, Program Income, intends to utilize the cost-sharing or matching method of program income in all of its grant awards and cooperative agreements.

Budget Changes

Section 30 sets forth post-award budgetary guidelines that grant recipients must follow. The authority proposed for state and local government recipients to make budgetary changes without agency approval is considerably greater than the authority proposed for nonprofit recipients. The Arts Endowment questions the rationale and appropriateness of having one set of budgetary guidelines for governmental recipients and another for nongovernmental recipients. The Arts Endowment believes that the authority proposed for state and local governments should also apply to nonprofit recipients. The Arts Endowment seeks public comment on these proposals.

The Arts Endowment directs readers to the additional supplemental information section of its preamble to the previous publication of 45 CFR Part 1157 (53 FR 8080, March 11, 1988) for additional information regarding the application of these regulations to its programs.

List of Subjects in 45 CFR Part 1157

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

Peter J. Basso,

Deputy Chairman for Management.

1. Part 1157 is revised to read as set forth at the end of this document:

PART 1157—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
1157.1 Purpose and scope of this part.
1157.2 Scope of subpart.
1157.3 Definitions.
1157.4 Applicability.
1157.5 Effect on other issuances.
1157.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1157.10 Forms for applying for grants.
1157.11 State plans.
1157.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

1157.20 Standards for financial management systems.
1157.21 Payment.
1157.22 Allowable costs.
1157.23 Period of availability of funds.
1157.24 Matching or cost sharing.
1157.25 Program income.
1157.26 Non-Federal audit.

Changes, Property, and Subawards

1157.30 Changes.
1157.31 Real Property.
1157.32 Equipment.
1157.33 Supplies.
1157.34 Copyrights and patents.
1157.35 Subawards to debarred and suspended parties.
1157.36 Procurement.
1157.37 Subgrants.
1157.38 Intangible property and debt instruments.
1157.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

1157.40 Monitoring and reporting program performance.
1157.41 Financial reporting.
1157.42 Retention and access requirements for records.
1157.43 Enforcement.
1157.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1157.50 Closeout.
1157.51 Later disallowances and adjustments.
1157.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

1157.70 Scope of subpart.
1157.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

1157.80 Scope of subpart.
1157.81 Prohibition against fee or profit.
1157.82 Real property and equipment.
1157.83 Program income.

Authority: 20 U.S.C. 959(a)(1).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1157 is further amended by removing "[Agency]" and "[agency]" and by adding "Arts Endowment" wherever "[Agency]" and "[agency]" appear.

National Endowment for the Humanities

45 CFR Part 1174

FOR FURTHER INFORMATION CONTACT: Stephen McCleary, Deputy General Counsel, or David Wallace, Grants Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786–0322.

ADDITIONAL SUPPLEMENTARY INFORMATION: Section ____.25 provides three alternatives for using program income: deduction, addition, and cost sharing or matching. It is consistent with the purposes of the Endowment's legislation that, when specifically approved in the award, grantees may retain program income and use it to support other humanities activities.

Section ____.26 establishes requirements for nonfederal audits of all governmental and nongovernmental grantees and subgrantees without regard to the amount of federal funding provided. Until further guidance is provided the Endowment will determine a threshold of funding below which compliance audits will not be required as a condition of an award.

The Endowment takes exception to the provision in § ____.30 allowing state and local grantees greater authority to make budgetary changes without agency approval than the authority for grantees that are nonprofit organizations. This distinction is not consonant with the purpose of having one common rule apply to both types of grantees and the difference in treatment is not based on any statutory requirement. The Humanities Endowment believes that nonprofit organizations should be allowed the same degree of latitude with respect to budgetary changes as state and local governments.

Sections ____.40(f)(1) ____.41(a)(6) provide that grantor agencies may waive any performance or financial reports required by the common rule if they are not needed. Subsections 10(d)(1) and 10(d)(2)(A) of the Humanities Endowment's authorizing legislation [20 U.S.C. 959(d)] require performance and financial reports. Because of the statutory requirements, the Humanities Endowment would be unable to waive the various provisions of the common rule regarding the performance and financial reports.

The National Endowment for the Humanities directs readers to the additional supplemental information section of its preamble to the previous publication of Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 45 CFR (53 FR 8082, March 11, 1988) for additional information regarding the application of these regulations to its programs.

List of Subjects in 45 CFR Part 1174

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Part 1174 of Title 45 of the Code of Federal Regulations be amended as set forth at the end of this document.

Lynne V. Cheney,

Chairman, National Endowment for the Humanities.

1. Part 1174 is revised to read as set forth at the end of this document:

PART 1174—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
1174.1 Purpose and scope of this part.
1174.2 Scope of subpart.
1174.3 Definitions.
1174.4 Applicability.
1174.5 Effect on other issuances.
1174.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1174.10 Forms for applying for grants.
1174.11 State plans.
1174.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

1174.20 Standards for financial management systems.
1174.21 Payment.
1174.22 Allowable costs.
1174.23 Period of availability of funds.
1174.24 Matching or cost sharing.
1174.25 Program income.
1174.26 Non-Federal audit.

Changes, Property and Subawards

1174.30 Changes.
1174.31 Real Property.
1174.32 Equipment.
1174.33 Supplies.
1174.34 Copyrights and patents.
1174.35 Subawards to debarred and suspended parties.
1174.36 Procurement.
1174.37 Subgrants.
1174.38 Procurement.
1174.39 Grant property trust relationships and notices.

Reports, Records, Retention, and Enforcement

1174.40 Monitoring and reporting program performance.
1174.41 Financial reporting.
1174.42 Retention and access requirements for records.
1174.43 Enforcement.
1174.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1174.50 Closeout.
1174.51 Later disallowances and adjustments.
1174.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

1174.70 Scope of subpart.
1174.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

1174.80 Scope of subpart.
1174.81 Prohibition against fee or profit.
1174.82 Real property and equipment.
1174.83 Program income.

Authority: 20 U.S.C. 959(a)(1).

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729.

2. Part 1174 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "NEH" is added wherever "[Agency]" and "[agency]" appear.

b. Section 1174.3 is amended by adding a definition for "NEH" alphabetically to read as follows:

§ 1174.3 Definitions

* * * * *

"NEH" means the National Endowment for the Humanities.

* * * * *

Institute of Museum Services

45 CFR Part 1184

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Institute of Museum Services, Room 609, 1100 Pennsylvania Avenue, NW. Washington, DC 20506, 202 786–0539.

List of Subjects in 45 CFR Part 1184

Accounting, Administration practice and procedures, Grant programs—Museums, National Boards, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

Lois Burke Shepard,

Director.

1. Part 1184 is added to read as set forth at the end of this document.

PART 1184—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
1184.1 Purpose and scope of this part.
1184.2 Scope of subpart.
1184.3 Definitions.
1184.4 Applicability.
1184.5 Effect on other issuances.
1184.6 Additions and exceptions.

Subpart B—Pre Award Requirements

1184.10 Forms for appliying for grants.
1184.11 State plans.
1184.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post Award Requirements

Financial Administration

1184.20 Standards for financial management systems.
1184.21 Payment.
1184.22 Allowable costs.
1184.23 Period of availability of funds.
1184.24 Matching or cost sharing.
1184.25 Program income.
1184.26 Non-Federal audit.

Changes, Property, and Subawards

1184.30 Changes.
1184.31 Real property.
1184.32 Equipment.
1184.33 Supplies.
1184.34 Copyrights and patents.
1184.35 Subawards to debarred and suspended parties.
1184.36 Procurement.
1184.37 Subgrants.
1184.38 Intangible property and debt instruments.
1184.39 Grant property trust relationship and notices.

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Reports, Records, Retention, and Enforcement

1184.40 Monitoring and reporting program performance.
1184.41 Financial reporting.
1184.42 Retention and access requirements for records.
1184.43 Enforcement.
1184.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1184.50 Closeout.
1184.51 Later disallowances and adjustments.
1184.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

1184.70 Scope of subpart.
1184.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

1184.80 Scope of subpart.
1184.81 Prohibition against fee or profit.
1184.82 Real property and equipment.
1184.83 Program income.

Authority: 20 U.S.C. 961–68.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1184 is further amended as follows:

a. "Agency" and "[agency]" are removed and "IMS" is added wherever "[Agency]" and "[agency]" appear.

b. Section 1184.3 is amended by adding a definition for "IMS" alphabetically to read as follows:

§ 1184.3 Definitions

* * * * *

"IMS" means Institute of Museum Services.

* * * * *

ACTION

45 CFR Part 1234

FOR FURTHER INFORMATION CONTACT: Margaret M. McHale, Acting Chief, Grants Branch, (202) 634–9150.

List of Subjects in 45 CFR Part 1234

Accounting, Administration practice and procedures, Grant programs—Volunteer services, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

Donna M. Alvarado,

Director.

1. Part 1234 is revised to read as set forth at the end of this document:

PART 1234—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
1234.1 Purpose and scope of this part.
1234.2 Scope of subpart.
1234.3 Definitions.
1234.4 Applicability.
1234.5 Effect on other insuances.
1234.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1234.10 Forms for applying for grants.
1234.11 State plans.
1234.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

1234.20 Standards for financial management systems.
1234.21 Payment.
1234.22 Allowable costs.
1234.23 Period of availability of funds.
1234.24 Matching or cost sharing.
1234.25 Program income.
1234.26 Non-Federal audit.

Changes, Property, and Subawards

1234.30 Changes.
1234.31 Real property.
1234.32 Equipment.
1234.33 Supplies.
1234.34 Copyrights and patents.
1234.35 Subawards to debarred and suspended parties.
1234.36 Procurement.
1234.37 Subgrants.
1234.38 Intangible property and debt instruments.
1234.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

1234.40 Monitoring and reporting program performance.
1234.41 Financial reporting.
1234.42 Retention and access requirements for records.
1234.43 Enforcement.
1234.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1234.50 Closeout.
1234.51 Later disallowances and adjustments.
1234.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

1234.70 Scope of subpart.
1234.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

1234.80 Scope of subpart.
1234.81 Prohibition against fee or profit.
1234.82 Real property and equipment.
1234.83 Program income.

Authority: Pub. L. 93–113; 42 U.S.C. 4951, *et seq;* 42 U.S.C. 5060.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 1234 is further amended by removing "[Agency]" and "[agency]" and adding "ACTION" wherever "[Agency]" and "[agency]" appear.

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2015

FOR FURTHER INFORMATION CONTACT: Col. Patrick O'Meara, Director of Administration, (202) 653–5326, Commission on the Bicentennial of the United States Constitution, 808 17th Street NW., Washington, DC 20006

List of Subjects in 45 CFR Part 2015

Accounting, Administration practice and procedures, Grant programs—Constitution Bicentennial, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended as set forth below.

Ronald Trowbridge,

Staff Director.

1. Part 2015 is revised to read as set forth at the end of this document:

PART 2015—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.
2015.1 Purpose and scope of this part.
2015.2 Scope of subpart.
2015.3 Definitions.
2015.4 Applicability.
2015.5 Effect on other issuances.
2015.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

2015.10 Forms for applying for grants.
2015.11 State plans.
2015.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

2015.20 Standards for financial management systems.
2015.21 Payment.
2015.22 Allowable costs.
2015.23 Period of availability of funds.
2015.24 Matching or cost sharing.
2015.25 Program income.
2015.26 Non-Federal audit.

Changes, Property, and Subawards

2015.30 Changes.
2015.31 Real property.

2015.32 Equipment.
2015.33 Supplies.
2015.34 Copyrights and patents.
2015.35 Subawards to debarred and suspended parties.
2015.36 Procurement.
2015.37 Subgrants.
2015.38 Intangible property and debt instruments.
2015.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

2015.40 Monitoring and reporting program performance.
2015.41 Financial reporting.
2015.42 Retention and access requirements for records.
2015.43 Enforcement.
2015.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

2015.50 Closeout.
2015.51 Later disallowances and adjustments.
2015.52 Collection of amount due.

Subpart E—Entitlements [Reversed]

Subpart F—Special Provisions for Research and other Programs

2015.70 Scope of subpart.
2015.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

2015.80 Scope of subpart.
2015.81 Prohibition against fee or profit.
2015.82 Real property and equipment.
2015.83 Program income.

Authority: Pub. L. 98–101, as amended, and Title V of Pub. L. 99–198.

Cross reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. Part 2015 is further amended as follows:

a. "[Agency]" and "[agency]" are removed and "Bicentennial Commission" is added wherever "[Agency]" and "[agency]" appear.

b. Section 2015.3 is amended by adding a definition for "Bicentennial Commission" alphabetically to read as follows:

§ 2015.3 Definitions.

* * * * *

"Bicentennial Commission" means Commission on the Bicentennial of the United States Constitution.

* * * * *

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

49 CFR Part 18

[OST Docket No. 45888; Notice No. 88–16]

ADDRESS: Interested persons should submit comments to Docket Clerk, OST Docket No. 45888, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Charles E. Ventura, Department of Transportation , Office of Acquisition and Grant Management—M–63, 400 Seventh Street, SW., Room 9100, Washington, DC 20590, (202) 366–4286.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Background

Most significant changes are noted in the common preamble. The rule is being revised to add nongovernmental grantees and to make minor revisions to the current common rule that applies to grants and cooperative agreements to State and local governments.

Deviations

Due to existing statutes and the desire to reduce Federal red tape, the Department does not comply with some of the sections of the common rule, and now is proposing deviations from additional provisions of the common rule. Deviations that were issued on March 3, 1988, are listed in amendatory instruction 2, with some subsection numbering revisions to accommodate changes being proposed for the common rule, and minor revisions are being proposed to the deviation regarding matching share eligibility for Federal-aid highway projects in subsection 18.24(h).

Proposed additional deviations are contained in amendatory instruction 3. Comments are requested on the proposed deviations that are not required by statute. A description of new deviations follows:

Section ____.3, Definitions, "Equipment."

Section 9(j) of the Urban Mass Transportation (UMT) Act of 1964, as amended, requires that the definition of equipment include tangible nonexpendable personal property having a useful life of more that 1 year, including items with an acquisition cost of less than $5,000. The Urban Mass Transportation Administration (UMTA) has reserved the authority to establish thresholds in program guidelines concerning the use and disposition of equipment which are lower than the $5,000 threshold provided in the common rule.

Section ____.21, Payment.

Subsection ____.21(d), Reimbursement of the common rule has been revised to add a final sentence that: "The grantees and subgrantees will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement." This requirement is similar to the 30-day payment provision of the Prompt Payment Act. The Prompt Payment Act provision implementation guidelines require Federal agencies to withhold payments to contractors until near the end of the 30-day payment period. We believe that this provision could be interpreted to require a similar type of withholding of reimbursements from grantees and subgrantees. A 30-day delay provision would be inconsistent with the requirement in subsection ____.21(b), Basic standard that requires payment procedures to minimize the time lapsing between transfer of funds and disbursement. We propose to add paragraph (d)(1) to the common rule to eliminate the inconsistencies and to require payments to grantees and subgrantees as soon as practicable.

Section ____.22, Allowable Costs, and Section ____.81, Prohibition Against Profit.

Subsections 3(e), 8(e) and 9(e)(1) of the UMT Act of 1964, as amended, require maximum participation by private providers in the operation of mass transportation facilities and equipment. This provision has been interpreted as requiring, whenever possible, the use of profit-making entities, and to provide profits where they are normally paid under business transactions.

Section ____.26, Non-Federal Audits.

This section would require commercial organizations to obtain organization-wide audits that are similar to those required under the Single Audit Act. We believe that requiring commercial organizations to obtain organization-wide audits is not always the most cost effective technique for protecting the Federal interest. We propose that our grantor agencies be allowed to perform project audits for grants to commercial organizations. In some cases, a single project audit is sufficient to determine that Federal funds were properly expended. Such reviews are less costly to perform than the organization-wide audits.

Also, given the fact that commercial organizations are not normally as stabler as governmental entities and are more likely to go out of business, we propose that, where organization-wide audits are made, they be required on an annual basis rather than on a 2-year cycle.

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Section ____.31, Real Property.

Subsection 3(a)(2)(A)(iii) of the UMT Act of 1964, as amended, imposes requirements on grantees to maintain UMTA-assisted facilities. UMTA enforces these requirements by establishing a method for determining the value of the Federal interest at disposition which differs from the method required in the common rule.

Section ____.32, Equipment.

Subsection 3(a)(2)(A)(iii) of the UMT Act of 1964, as amended, imposes requirements on grantees to maintain UMTA-assisted equipment. UMTA enforces these requirements by establishing a method for determining the value of the Federal interest at disposition which differs from the method in the common rule.

Section ____.37, Subgrants.

Subsection ____.37(a) of the proposed rule allow States the option of applying the provisions of the this part to their subgrantees, but does not require States to notify subgrantees which requirements must be followed. The Preamble notes that States should inform subgrantees of the requirements that they will be required to meet. We propose that a provision be included in the rule to require States to notify subgrantees of the grant administrative requirements that will be imposed on them.

Subpart C—Special Provisions for Commercial Organizations

The rule has been revised to include grants and subgrants to commercial organizations. Assistance awards to commercial organizations are rare in the Department of Transportation, and flow from very specific enabling legislation. In these few instances, the awarding agency should be allowed the flexibility to impose any controls it believes necessary to ensure that the Federal interest is adequately protected. We do not believe that these types of grantees and subgrantees should be covered in this rule. We propose to revise the rule to allow our grantor organizations the ability to impose additional requirements, as necessary, for grants and subgrants to commercial organizations.

Impact Analyses

Executive Order 12291 and DOT Regulatory Policies and Procedures

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We intend the proposed regulations to create savings for grantees by reducing the costs of administering grants. However, we do not believe that the regulations will have an annual economic effect of $100 million or more, or cause any of the other effects listed in the Order. For this reason, we have determined that these regulations are not a major rule within the meaning of the Order.

This amendment to the common rule restates, in regulatory form, most of the provisions of OMB Circular A–110, Grants and Agreements With Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, that had been implemented in our program regulations and directives. In addition, some of the provisions of the regulation that were not in the circular, or are different from the circular, will reduce the red tape burden on our grantees. Because of this, we certify that this regulation is nonsignificant under the Department of Transportation's Regulatory Policies and Procedures.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they do not affect the amount of funds provided in the covered programs, but rather modify and update administrative and procedural requirements.

Paperwork Reduction Act

The additional recordkeeping and information collection requirements included in these regulations have been submitted or are simultaneously being submitted for approval to OMB.

List of Subjects in 49 CFR Part 18

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed to amend Title 49 of the Code of Federal Regulations as set forth below.

Issued this 17th day of October, 1988 at Washington, DC.

Mimi Dawson,

Acting Secretary of Transportation.

1. Part 18 is revised to read as set forth at the end of this document.

PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

18.1 Purpose and scope of this part.
18.2 Scope of subpart.
18.3 Definitions.
18.4 Applicability.
18.5 Effect on other issuances.
18.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

18.10 Forms for apply for grants.
18.11 State plans.
18.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

18.20 Standards for financial management systems.
18.21 Payment.
18.22 Allowable costs.
18.23 Period of availability of funds.
18.24 Matching or cost sharing.
18.25 Program income.
18.26 Non-Federal audits.

Changes, Property, and Subawards

18.30 Changes.
18.31 Real property.
18.32 Equipment.
18.33 Supplies.
18.34 Copyrights and patents.
18.35 Subawards to debarred and suspended parties.
18.36 Procurement.
18.37 Subgrants.
18.38 Intangible property and debt instruments.
18.39 Grant property trust relationship and notice.

Reports, Records, Retention, and Enforcement

18.40 Monitoring and reporting program performance.
18.41 Financial reporting.
18.42 Retention and access requirements for records.
18.43 Enforcement.
18.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

18.50 Closeout.
18.51 Later disallowances and adjustments.
18.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Subpart F—Special Provisions for Research and Other Programs

18.70 Scope of subpart.
18.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

18.80 Scope of subpart.
18.81 Prohibition against fee or profit.
18.82 Real property and equipment.
18.83 Program income.

Authority: 49 U.S.C. 322(a).

Cross Reference: See also Office of Management and Budget Notice published at 52 FR 23729, June 24, 1987.

2. The following amendments are contained in the current Part 18, and are proposed to amend the revised Part 18.

a. Section 18.10 is amended by adding paragraph (a)(4) to read as follows:

§ 18.10 Forms for applying for grants.

(a) * * *

(4) Forms and procedures for Federal Highway Administration (FHWA) projects are contained in 23 CFR Part 630, Subpart B, 23 CFR Part 420, Subpart A, and 23 CFR Part 450.

* * * * *

b. Section 18.20 is amended by adding paragraph (d) to read as follows:

§ 18.20 Standards for management systems.

* * * * *

(d) Certain Urban Mass Transportation Administration (UMTA) grantees shall comply with the requirements of section 15 of the Urban Mass Transportation (UMT) Act of 1964, as amended, as implemented by 49 CFR Part 630, regarding a uniform system of accounts and records and a uniform reporting system for certain grantees.

c. Section 18.21 is amended by adding paragraphs (j) and (k) to read as follows:

§ 18.21 Payment.

* * * * *

(j) 23 U.S.C. 121 limits payments to States for highway construction projects to the Federal share of the costs of construction incurred to date, plus the Federal share of the value of stockpiled materials.

(k) Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

d. Section 18.22 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 18.22 Allowable costs.

* * * * *

(c) The overhead cost principles of OMB Circular A–87 shall not apply to State highway agencies for FHWA-funded grants.

(d) Sections 3(1) and 9(p) of the UMT Act of 1964, as amended, authorize the Secretary to include in the net project cost eligible for Federal assistance, the amount of interest earned and payable on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion thereof. Limitations are established in sections 3 and 9 of the UMT Act of 1964, as amended.

(e) Section 9 of the UMT Act of 1964, as amended, authorizes grants to finance the leasing of facilities and equipment for use in mass transportation services provided leasing is more cost effective than acquisition or construction.

e. Section 18.24 is amended by adding paragraphs (b)(7), and (b)(8), (c)(3), and (h) to read as follows:

§ 18.24 Matching or cost sharing.

* * * * *

(b) * * *

(7) Section 4(a) of the UMT Act of 1964, as amended, provides that the Federal grant for any project to be assisted under section 3 of the UMT Act of 1964, as amended, shall be in an amount equal to 75 percent of the net project costs. Net project cost is defined as that portion of the cost of the project which cannot be reasonably financed from revenues.

(8) Section 18(e) of the UMT Act of 1964, as amended, limits the Federal share to 80 percent of the net cost of construction, as determined by the Secretary of Transportation. The Federal share for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 percent of the net cost of such operating expense projects.

(c) * * *

(3) Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) limits in-kind service contributions under the Local Rail Service Assistance Program to "the cash equivalent of State salaries for State public employees working in the State rail assistance program, but not including overhead and general administrative costs."

* * * * *

(h) 23 U.S.C. 121(a) limits reimbursement to cost incurred by States on Federal-aid projects. Except for private donations of right-of-way, contributions and donations shall not be allowable for matching purposes on Federal-aid projects. 23 U.S.C. 323 permits privates donations of right-of-way to be used for a State's matching share, and establishes procedures for determining the fair market value of such donated right-of-way.

* * * * *

f. Section 18.25 is amended by adding paragraphs (g) (4), (5), (6), and (7) to read as follows:

§ 18.25 Program income.

* * * * *

(g) * * *

(4) Section 3(a)(1)(D) of the UMT Act of 1964, as amended, provides that the Secretary shall establish requirements for the use of income derived from appreciated land values for certain UMTA grants. Specific requirements shall be contained in grant agreements.

(5) UMTA grantees may retain program income for allowable capital or operating expenses.

(6) For grants awarded under section 9 of the UMT Act of 1964, as amended, any revenues received from the sale of advertising and concessions in excess of fiscal year 1985 levels shall be excluded from program income.

(7) 23 U.S.C. 156 requires that States shall charge fair market value for the sale, lease, or use of right-of-way airspace for non-transportation purposes and that such income shall be used for projects eligible under 23 U.S.C.

* * * * * *

g. Section 18.31 is amended by adding paragraph (e) to read as follows:

§ 18.31 Real property.

* * * * *

(e) If the conditions in 23 U.S.C. 103(e)(5), (6), or (7), as appropriate, are met and approval is given by the Secretary, States shall not be required to repay the Highway Trust Fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn.

h. Section 18.36 is amended by adding paragraphs (j) through (t) to read as follows:

§ 18.36 Procurement.

* * * * *

(j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR Part 635, Subpart A.

(k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications.

(l) 46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements on the shipment of foreign made goods.

(m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661 impose Buy

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America provisions on the procurement of foreign products and materials.

(n) Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Part 23 impose requirements for the participation of disadvantaged business enterprises.

(o) Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. section 1608(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

(p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.

(q) 23 U.S.C. 112(d) requires concurrence by the Secretary before highway construction contracts can be awarded, except for projects authorized under the provisions of 23 U.S.C. 117.

(r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension of work, and material changes in the scope of the work for highway construction contracts.

(s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

(t) FHWA, UMTA, and Federal Aviation Administration (FAA) grantees and subgrantees shall extend the use of qualifications-based [e.g., architectural and engineering services) contract selection procedures to certain other related areas and shall award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State (or airport sponsor for FAA) qualifications-based requirements. For FHWA and UMTA programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

i. Section 18.40 is amended by adding paragraph (c)(1) to read as follows:

§ 18.40 Monitoring and reporting program performance.

* * * * *

(c) * * *

(1) Section 12(h) of the UMT Act of 1964, as amended, requires pre-award testing of new buses models.

* * * * *

j. Section 18.41 is amended by adding paragraph (f) to read as follows:

§ 18.41 Financial reporting.

* * * * *

(f) Notwithstanding the provisions of paragraph (a)(1) of this section, recipients of FHWA and National Highway Traffic Safety Administration (NHTSA) grants shall use FHWA, NHTSA or State financial reports.

3. These additional amendments are proposed to be made to Part 18.

a. Part 18 is amended by removing "[Agency]" and adding "Department of Transportation" whenever "[Agency]" and "[agency]" appear.

b. Section 18.3 is amended by adding paragraph (1) to the definition of "equipment":

§ 18.3 Definitions.

* * * * *

"Equipment" * * *

(1) Section 9(j) of the UMT Act of 1964, as amended, imposes use of a definition of equipment to include tangible nonexpendable personal property having a useful life of more than 1-year, including items with an acquisition cost of less than $5,000. The Urban Mass Transportation Administration sets minimum dollar thresholds concerning use and disposition of equipment in published program guidelines.

* * * * *

c. Section 18.21 is amended by adding paragraph (d)(1) to read as follows:

§ 18.21 Payment.

(d) * * *

(1) Notwithstanding the provision above for payments ordinarily within 30 days, Department of Transportation grantees and subgrantees will be paid as promptly as possible, and payments after the receipt of a proper request will not be withheld.

* * * * *

d. Section 18.22 is amended by adding paragraph (a)(3) to read as follows:

§ 18.22 Allowable costs.

(a) * * *

(3) Sections 3(a), 8(e) and 9(e)(1) of the UMT Act of 1964, as amended, require maximum participation by private providers in the operation of mass transportation facilities and equipment and is interpreted as requiring profit as an allowable payment to nongovernmental entities.

* * * * *

e. Section 18.26 is amended by adding paragraph (b)(1) to read as follows:

§ 18.22 Allowable costs.

(b) * * *

(1) Nothing in this part precludes grantor organizations from requiring individual project audits, or requiring organization-wide audits to be conducted on an annual basis.

* * * * *

f. Section 18.31 is amended by adding paragraph (e) to read as follows:

§ 18.31 Real property.

* * * * *

(e) Section 3(a)(2)(A)(iii) of the UMT Act of 1964, as amended, imposes requirements that grantees properly maintain UMTA-assisted facilities. UMTA enforces these use requirements by determining the method for valuing the Federal interest when the property is disposed.

* * * * *

g. Section 18.32 is amended by adding paragraph (i) to read as follows:

§ 18.32 Equipment.

* * * * *

(i) *Mass Transportation Equipment.* Section 3(a)(2)(A)(iii) of the UMT Act of 1964, as amended, imposes requirements that grantees maintain UMTA-assisted equipment. UMTA enforces these use requirements by determining the method for valuing the Federal interest when the property is disposed.

* * * * *

h. Section 18.37 is amended by adding paragraph (a)(5) to read as follows:

§ 18.37 Subgrants.

* * * * *

(a) * * *

(5) Inform subgrantees of the administrative requirements that must be followed.

* * * * *

i. Section 18.80 is amended by adding paragraph (b) to read as follows:

§ 18.80 Scope of this subpart.

* * * * *

(b) Notwithstanding the provisions of this part, grantor organizations are authorized to impose additional requirements, as necessary, for grants and subgrants to commercial organizations.

* * * * *

Text of the Common Rule

The text of the common rule as proposed by the agencies in this document appears below.

PART ____—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

____.1 Purpose and scope of this part.
____.2 Scope of subpart.
____.3 Definitions.
____.4 Applicability.
____.5 Effect on other issuances.
____.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

____.10 Forms for applying for grants.
____.11 State plans.
____.12 Special grant or subgrant conditions for high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

____.20 Standards for financial management systems.
____.21 Payment.
____.22 Allowable costs.
____.23 Period of availability of funds.
____.24 Matching or cost sharing.
____.25 Program income.
____.26 Non-Federal audit.

Changes, Property, and Subawards

____.30 Changes.
____.31 Real property.
____.32 Equipment.
____.33 Supplies.
____.34 Copyrights and patents.
____.35 Subawards to debarred and suspended parties.
____.36 Procurement.
____.37 Subgrants.
____.38 Intangible property and debt instruments.
____.39 Grant property trust relationship and notices.

Reports, Records, Retention, and Enforcement

____.40 Monitoring and reporting program performance.
____.41 Financial reporting.
____.42 Retention and access requirements for records.
____.43 Enforcement.
____.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

____.50 Closeout.
____.51 Later disallowances and adjustments.
____.52 Collection of amounts due.

Subpart E—Entitlement [Reserved]

Subpart F—Special Provisions for Research and Other Programs

____.70 Scope of subpart.
____.71 Special provisions.

Subpart G—Special Provisions for Commercial Organizations

____.80 Scope of subpart.
____.81 Prohibition against fee or profit.
____.82 Real property, and equipment.
____.83 Program income.

Subpart A—General

§ ____.1 Purpose and scope of this part.

The part establishes uniform administrative requirements for Federal grants and cooperative agreements and subawards to governments and nongovernmental organizations.

§ ____.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ ____.3 Definitions.

As used in this part:

"Accrued expenditures" mean the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the grantee for which no current services or performance by the grantee is required.

"Acquisition cost" of an item of purchased equipment means the net invoice unit price of the equipment including the cost of modifications, attachments, accessories or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Administrative" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Awarding agency" means:

(1) With respect to a grant, the Federal agency, and

(2) With respect to a subgrant, the party that awarded the subgrant.

"Cash contributions" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation. Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"Contract" means a procurement contract under a grant or subgrant and means a procurement subcontract under a contract.

"Cost sharing or matching" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee shall use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditure report" means: (1) For nonconstruction grants, the SF–269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF–271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"Funding period" means the period of time when Federal financial assistance is available for obligation by the grantee.

"Government" means a State or local government or a federally-recognized Indian tribal government.

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in

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the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee is not required to account on an actual cost basis.

"Grantee" means the government or nongovernmental organization to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"Intangible property and debt instruments" means:

(a) Intangible property, including trademarks, copyrights, patents and patent applications (except for a "subject invention" as the term is used in 37 CFR Part 401), and

(b) Such property as loans, notes, and other debt instruments, whether considered tangible or intangible.

"Local government" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government. The term does not include institutions of higher education and hospitals.

"Nongovernmental organization" means a public or private institution of higher education, a public or private hospital, an Indian tribe or an Indian tribal organization which is not a federally-recognized Indian tribal government, a quasi-public or private nonprofit organization or a commercial organization. The term does not include an individual, Federal agency, foreign or international organization (such as an agency of the United Nations), Government-owned contractor operated facility, or research center providing continued support for mission oriented large scale programs that are Government-owned or controlled or are developed as a federally funded Research and Development Center under Office of Federal Procurement Policy letter 84–1.

"Obligations" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"OMB" means the United States Office of Management and Budget.

"Outlays" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services, performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"Prior approval" means written approval by the authorized official evidencing prior consent.

"Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Share", when referring to the awarding agency's portion of real property, equipment or supplies, means the percentage of its acquisition cost paid with the Federal funds provided. Ordinarily this will be the same percentage as the awarding agency's portion of the acquiring party's total costs (but not including the value of third party in-kind contributions) recorded under the grant to which the acquisition cost of the property was charged. However, if regulations, applications or grant awards indicate a higher level of Federal participation in the property acquisition than in other activities under the grant, the higher percentage shall apply. For property acquired on an amortized basis over more than one grant funding period, the Federal share of the property will be the percentage of the amount of paid-in equity at time of disposition represented by the sum of the individual amounts of Federal participation during each of the grant funding periods involved.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of institutions of higher education, hospitals and units of local government. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"Subgrantee" means the legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"Supplies" means all personal property excluding "equipment" and "intangible property and debt instruments" as defined in this section.

"Suspension" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from its inception.

"Terms of a grant or subgrant" means all requirements of the grant or subgrant, whether in statute, regulations, or the grant award.

"Third party in-kind contributions" means property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant award.

"Unliquidated obligations" for reports prepared on a cash basis means the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"Unobligated balance" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ ____.4 Applicability.

(a) *General.* This part applies to all grants and subgrants to governments and nongovernmental organizations except where:

(1) A provision is inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § ____.6, or

(2) In the case of:

(i) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant);

(ii) Entitlement grants to carry out the following programs of the Social Security Act:

(A) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)(19)(G); HHS grants for WIN are subject to this part);

(B) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(C) Foster Care and Adoption Assistance (Title IV–E of the Act);

(D) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(E) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(iii) Entitlement grants under the following programs of The National School Lunch Act:

(A) School Lunch (section 4 of the Act),

(B) Commodity Assistance (section 6 of the Act),

(C) Special Meal Assistance (section 11 of the Act),

(D) Summer Food Service for Children (section 13 of the Act), and

(E) Child Care Food Program (section 17 of the Act).

(iv) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(A) Special Milk (section 3 of the Act),

(B) School Breakfast (section 4 of the Act), and

(C) State Administrative Expenses under the Child Nutrition Act (section 7 of the Act).

(v) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act);

(vi) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(2)(ii) of this section;

(vii) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(viii) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children);

(ix) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)); and

(x) Funds awarded under programs of student financial assistance authorized under Subparts 1 and 2 of Part A, and under Parts B, C, D, and E of Title IV of the Higher Education Act of 1965, as amended.

(b) *Entitlement programs.* Entitlement programs enumerated in paragraphs (a)(2)(ii)–(vii) of this section are subject to Subpart E.

§ ____.5 Effect on other issuances.

All other administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § ____.6.

§ ____.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part [agency] shall not impose additional administrative requirements except in regulations published in the **Federal Register** for codification.

(b) Exceptions for classes of grants or grantees may be authorized by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by [agency].

Subpart B—Pre-Award Requirements

§ ____.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section does not apply to formula grant programs that do not require applicants to apply for funds on a project basis.

(2) Subject to approval of OMB under the Paperwork Reduction Act of 1980, Federal agencies may develop forms and instructions to be used by nongovernmental organizations.

(3) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by [agency] with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers.

(4) A grantee applying for additional funding (such as a continuation or

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supplemental award) or amending a previously submitted application needs to subject only the affected pages and does not need to submit pages with information that is still current.

§ ____.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372 "Intergovernmental Review of Federal Programs." States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* For a State plan document, a State needs to meet only Federal administrative or programmatic requirements that are in statutes or regulations published in the Federal Register for codification.

(c) *Assurances.* In each plan the State shall include an assurance that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State shall amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations or

(2) A material change in any State law, organization, policy or State agency operation. The State shall obtain approval for the amendment and its effective date but needs to submit for approval only the amended portions of the plan.

§ ____.12 Special grant or subgrant conditions for high-risk grantees.

(a) A grantee or subgrantee may be considered high-risk if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, then, notwithstanding § ____.6, special conditions and/or restrictions that correspond to the high-risk condition shall be included in the award.

(b) Special conditions or restrictions may include but are not limited to:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

Financial Administration

§ ____.20 Standards for financial management systems.

(a) A State shall expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees shall adequately safeguard all such property and must assure that it is used soley for auhtorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant award. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant awards must be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees shall establish reasonable procedures to ensure the recepit of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee shall make drawdowns as close as possible to the time of making disbursements. Grantees shall monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any time subsequent to award.

§ ____.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which [agency] makes payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment must minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees must be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement is the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, [agency] shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee must be based on the grantee's or subgrantee's actual rate of disbursement. Grantees and subgrantees may submit requests for reimbursement monthly, and submit them more often if authorized by the awarding agency. The grantee and subgrantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(e) *Working capital advances.* If a grantee or subgrantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the awarding agency has determined that reimbursement is not feasible because the grantee or subgrantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee or subgrantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee or subgrantee for its actual cash disbursements. The working capital advance method of payment must not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions; or

(ii) The grantee or subgrantee is delinquent on a debt to the United States.

(2) Cash withheld for failure to comply with grant award conditions but without suspension of the grant, must be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments must be made in accordance with § ____.43(c).

(3) [Agency] shall not make payment to a grantee for amounts that are withheld by the grantee or its subgrantees from payment to contractors to assure satisfactory completion of work. [Agency] shall make payments to a grantee when the grantee or its subgrantee actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). Additional information may be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall not be required to maintain a separate bank account except when required under a "checks-paid" letter of credit.

(i) *Interest earned on advances.* (1) Unless exempted under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j), a grantee and subgrantee shall account for interest earned on advances of Federal funds as required under paragraphs (i)(2) and (3) of this section.

(2)(i) A grantee and subgrantee shall promptly, but at least annually, remit or credit the [agency] interest earned on advances of Federal grant funds.

(ii) A grantee and subgrantee may keep interest earned on all advances of Federal grant funds up to $250 per the fiscal year for the grantee or subgrantee.

(3) A grantee and subgrantee shall maintain advances of Federal grant funds in interest-bearing accounts, unless—

(i) The grantee or subgrantee receives total Federal advances under grants of less than $120,000 per year; or

(ii) The best reasonably available interest-bearing account would—

(A) Not earn interest in excess of $250 per year on Federal cash balances; or

(B) Entail bank service charges totaling more than the amount of interest that would be earned; or

(C) Require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

§ 2.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds must be used only for.

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Federally-recognized Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	Circular A-122.
Educational institutions	OMB Circular A-21.

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For the costs of a—	Use the principles in—
Commercial organization other than a hospital and an organization named in Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ ____.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee shall liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ ____.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor award under the assistance award. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost-sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant awards.* Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *Costs or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of a grant award if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant award, a Federal procurement contract, or any other award of Federal funds.

(3) *Costs financed by program income.* Cost financed by program income, as defined in § ____.25, shall not count towards satisfying a cost-sharing or matching requirement unless they are expressly permitted in the terms of the assistance award [This use of general program income is described in § ____.25(g).]

(4) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost-sharing or matching requirement unless other provisions of the grant award expressly permit this kind of income to be used to meet the requirement.

(5) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of grantees and subgrantees or cost-type contractors. These records must show how the value-placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(6) *Special standards for third party in-kind contributions.* (i) Third party as in-kind contributions may satisfy a cost-sharing or matching requirements only when the payments would be allowable costs if the party receiving the contributions were to pay for them.

(ii) Some third party in-kind contributions are goods and services that would have been an indirect cost if the grantee, subgrantee, or contractor had been required to pay for them. Cost-sharing or matching credit for such contributions may be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost-sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee); or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost-sharing or matching purposes must conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals must be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market, in either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the service must valued at the employee's regular rate of pay. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution must be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution must be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and lands.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property depends upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost-sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In the case of a subgrant, the terms of the grant award may require that the approval be obtained from agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § ____.22 in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction of facilities acquisition project, the current market value of that property may be counted as cost-sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in building. In these cases, agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ ____.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant award and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant award during the funding period.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant award, costs incident to the generation of program income may be deducted, if not already charged to the grant, from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant award or [agency] regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, patent applications, trademarks and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant award or [agency] regulations as program income. (See § ____.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ ____.31 and ____.32.

(g) *Use of program income.* Program income must be deducted from outlays which may be both Federal and non-Federal as described below, unless the [agency] regulations or the grant award specify another alternative (or a combination of the alternatives). In specifying alternatives, [agency] may distinguish between income earned by grantees and income earned by subgrantees and between the sources, kinds, or amounts of income. When [agency] authorizes the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Unless the awarding agency specifies otherwise, program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless [agency] authorizes otherwise. Program income which the grantee did not anticipate at the time of the award must be used to reduce [agency] and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant award by [agency] and the grantee. The program income must be used for the purposes and under the conditions applicable to the use of the grant funds.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost-sharing or matching requirement of the grant award. The amount of the Federal grant award remains the same.

(h) *Income after funding period.* There are no Federal requirements governing the disposition of program income earned after the end of the funding period, unless the terms of the grant award [agency] regulations provide otherwise.

§ ____.26 Non-Federal audit

(a) *Governments.* Governmental grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501–7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Nongovernmental organizations.* Non-governmental grantees and subgrantees shall obtain audits made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions, or judgements. They shall meet the independence criteria along the lines of the U.S. General Accounting Office publication Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the agreements. It is not intended that each agreement awarded to the grantee be examined. Generally, examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grants and other agreements. Such tests would include an appropriate sampling of Federal agreements. Examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than every two years. The frequency of these examinations shall depend upon the nature, size, and the complexity of the activity. These examinations do not relieve Federal agencies of their audit

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responsibilities, but may affect the frequency and scope of such audits.

(c) *Oversight of subgrantee audits.* Grantees shall:

(1) Determine whether subgrantees have met the audit requirements applicable to their kind of organization. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to grantees are not required to have a single audit performed. Grantees should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditures of Federal funds.

(2) Determine whether the subgrantee spent Federal grant funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations:

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to access to the records and financial statements.

(d) *Auditor selection.* In arranging for audit services, § _____.36 shall be followed.

Changes, Property, and Subawards

§ _____.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § _____.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (l) of this section do not.

(c) *Budget changes.* (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities of a grant if—

(A) The grantee or subgrantee is a government;

(B) The cumulative amount of transfers exceeds or is expected to exceed 10% of the current total approved budget; and

(C) The awarding agency's share exceeds $100,000;

(iii) Unless waived by the awarding agency, transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities of a grant if—

(A) The grantee or subgrantee is a nongovernmental organization; and

(B) The cumulative amount of transfers exceeds or is expected to exceed 5% of the current total approved budget.

(iv) Transfer of funds allotted for trainee costs (stipends, tuition and fees) to other expense categories.

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee shall obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award, including the absence of an approved project director or principal investigator for more than 3 months. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § _____.36 but does not apply to the procurement of equipment, supplies, and general support services.

(5) If a grantee or subgrantee wants to transfer a grant to a substitute organization, the grantee or subgrantee shall request the awarding agency to approve the transfer of the grant or subgrant to a substitute grantee or subgrantee.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A grantee may request prior approval of a budget revision by letter or submission of revised pages of the approved application. The request must clearly indicate the activities and/or budget categories affected by the request and include a justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § _____.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee shall promptly review such request and shall approve or disapprove the request in writing. A grantee shall not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee shall obtain the [agency]'s approval before approving the subgrantee's request.

§ _____.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant vests upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property must be used for the originally authorized purpose as long as needed for that purpose. The grantee or subgrantee shall obtain prior approval from [agency] for the use of real property in other projects when the recipient determines that the real property is no longer needed for the purposes of the original project. Use in other projects shall be limited to those under other federally sponsored projects (i.e., grants or other agreements) or

programs that have purposes consistent with those authorized for support by [agency]. The grantee shall not dispose of or encumber its title or other interests without prior written approval from [agency].

(c) *Insurance.* Immediately upon acquiring real property with Federal grant support, a nongovernmental grantee or subgrantee shall obtain the following kinds of insurance:

(1) A title insurance policy that insures the fee interest in the real property for an amount not less than the purchase price of the property. The cost of purchase of title insurance is an allowable charge to the grant in proportion to the amount of Federal participation in the property.

(2) An insurance policy that insures against the partial and total physical destruction the full appraised value at the time of purchase. The nongovernmental organization shall maintain an insurance policy that contains a clause that increases the value of the insurance in proportion to the increase in land values in the area of the insured property. The nongovernmental organization shall maintain the insurance policy for the period of time the property is owned by the grantee, unless there is a limitation on the Government's interest (e.g., 20 years under certain construction grant authorities). Insurance charges are allowable charges to the grant during the period of grant support in proportion to the amount of Federal participation in the property.

(3) Flood insurance as required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4002, 4012a, 4105) as amended.

(4) The awarding agency may waive the requirements of paragraphs (c) (1) and (2) of this section if the nongovernmental organization can show that it has sufficient resources to self-insure against the risks involved, or [agency] has determined that such insurance is not necessary.

(d) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee shall request disposition instructions from the awarding agency. The instructions must provide for one of the following alternatives:

(1) *Retention of title.* The grantee or subgrantee shall retain title after compensating the awarding agency for its share. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* The grantee or subgrantee shall sell the property and compensate the awarding agency for its share after the deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* The grantee or subgrantee shall transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee must be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ _____.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant vests upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State shall use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Subgrantees of States shall follow the equipment requirements imposed upon them by States. Other grantees and subgrantees shall follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment must be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use does not interfere with the work on the projects or programs for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered, and treated as program income to the grant, if appropriate.

(3) Notwithstanding the encouragement in § _____.25(a) to earn program income, the grantee or subgrantee shall not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place must as a minimum, meet the following requirements:

(1) Equipment records must be maintained that include a description of the equipment a serial number or other identification number, the source of equipment, who holds title, the acquisition date, and cost of the equipment, percentage of Federal participation in the cost of the equipment, the location, use and condition of the equipment and any ultimate disposition data including the date of disposal and sale price of the equipment.

(2) A physical inventory of the equipment must be taken and the results reconciled with the equipment records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the equipment in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the equipment, proper sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment must be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency must be compensated

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for its share after the deduction of any actual and reasonable selling expenses.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(4) If the grantee is instructed to ship the equipment to a new location, the awarding agency shall reimburse the grantee for any reasonable shipping and interim storage costs incurred.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title remains vested in the Federal Government.

(2) Grantees or subgrantees shall manage the equipment in accordance with [agency] rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee shall request disposition instructions from the [agency].

(g) *Right to transfer title.* [Agency] reserves the right to transfer title to grant acquired equipment to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers are subject to the following standards:

(1) The equipment must be identified in the grant or otherwsie made known to the grantee in writing.

(2) [Agency] shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the [agency] fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow paragraph (e) of this section.

(3) When title to equipment is transferred, the grantee must be compensated for its share.

(h) *Exempt equipment.* When statutory authority exists (for example P.L. 85–934, 42 U.S.C. 1892), agency may vest title to the grantee in equipment purchased with grant funds by nonprofit institutions of higher education or by nonprofit organizations, whose primary purpose is the conduct of scientific research. When title is vested to the grantee under this authority, the grantee has no further obligation to the Federal Government.

§ _____.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant vests upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unvested supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the grant support and if the supplies are not needed for any other federally sponsored programs or projects the grantee or subgrantee shall compensate the awarding agency for its share.

§ _____.34 Copyrights and patents.

(a)(1) A grantee or subgrantee may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under the grant, subgrant, or contract under a grant or subgrant.

(2) Agency reserves, for Federal Government purposes, a royalty-free, nonexclusive, and irrevocable license to:

(i) Reproduce, publish, or otherwise use the work; and

(ii) Authorize others to reproduce, publish, or otherwise use the work.

(b) Grantees and subgrantees are subject to government-wide regulations governing patents and inventions issued by the Department of Commerce at 37 CFR Part 401.

§ _____.35 Subawards to debarred and suspended parties.

Grantees and subgrantees, including States, shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs in violation of the regulations implementing Executive Order 12549, "Debarment and Suspension."

§ _____.36 Procurement

(a) *States.* When procuring property and services under a grant, a State shall follow the same policies and procedures it uses for procurements from its non-Federal funds. The State shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Subgrantees of States shall follow the procurement requirements imposed upon them by States. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees shall use their own procurement procedures and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees shall maintain a contract administration system which ensures that contractor perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees shall maintain a written code of standards of conduct governing the performances of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in the selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his or her immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State of local law or regulations, such standards or conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's, officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures must provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking our procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental or multi-organizational agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees shall maintain records sufficient to detail the significant history of a procurement. These records must include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees may use time and material type contracts' only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies shall not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees shall have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with [agency] Reviews of protests by the [agency] are limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities); and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by [agency] other than those specified above must be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business.

(ii) Requiring unnecessary experience and excessive bonding.

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts.

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees shall have written selection procedures for procurement transactions. These procedures must ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand that must be met by offerors shall be clearly stated; and

(ii) Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees shall not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (d)(2)(i) of this section apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

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(A) The invitation for bids must be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which must include any specifications and pertinent attachments, and must define the items or services in order for the bidder to properly respond;

(C) All bids must be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals must be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees must have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards must be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services although A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement does not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.* (1) The grantee and subgrantee shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps must include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring the small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees shall perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement situation, but as a starting point, grantees shall make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis is necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis must be used in all other instances to determine the reasonableness of the proposed contract price.

(2) If profit or fee is included in the price, grantees and subgrantees shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Grantees and subgrantees must incur costs or prices based on estimated costs for contracts and grants or subgrants only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §——22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees shall make available, when asked by the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally takes place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications. This kind of review is usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees shall, on request, make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee is exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and procurement contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification must not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Agencies may require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (contracts other than small purchases);

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (all contracts in excess of $10,000);

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60) (all construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (all contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5) (construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5) (construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers).

(7) Notice of agency requirements and regulations pertaining to reporting.

(8) Notice of agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Federal requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, agency the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

§ ——.37 Subgrants.

(a) *States.* Shall follow State law and procedures when awarding and

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administering subgrants (whether on a cost reimbursement or fixed amount basis) However, States are not precluded from applying the provisions of this part to their subgrantees. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees comply with requirements imposed upon them by Federal statue and regulation:

(3) Ensure that a provision for compliance with § ____.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administrating subgrants (whether on a cost reimbursement or fixed amount basis. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees comply with requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* The requirements throughout this part that are imposed on subgrantees do not create any direct relationship between [agency] and a subgrantee, unless explicitly stated. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section ____.10;

(2) Section ____.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § ____.21; and

(4) Section ____.50.

§ ____.38 Intangible property and debt instruments.

Title to intangible property and debt instruments acquired under a grant or subgrant vests upon acquisition in the grantee or subgrantee respectively. The grantee or subgrantee shall use that property for the originally authorized purpose, and the grantee or subgrantee shall not dispose of or encumber the intangible property and debt instruments or interests in the intangible property and debt instruments. When no longer needed for the originally authorized purposes, the grantee or subgrantee shall dispose of the property as provided in section ____.32(e).

§ ____.39 Grant property trust relationship and notices.

Real property, equipment, and intangible property and debt instruments that are acquired or improved with Federal grant funds are held in trust by the grantee or subgrantee as trustee for the beneficiaries of the project or program under which the property was acquired or improved. [agency] may require nongovernmental grantees to place liens or other appropriate notices of record to indicate that property has been acquired or improved with Federal grant funds, and that use and disposition conditions apply to the property.

Reports, Records, Retention, and Enforcement

§ ____.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activites to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* If [agency] decides that performance information found in subsequent applications contains sufficient information to meet its programmatic needs, it may require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by [agency] this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance report must not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance reports are due 90 days after the expiration or termination of grant support. If a grantee submits a request justifying the need for extension of the due date for any performance report [agency] may extend the due date for the report. In addition, [agency] may waive requirements for unnecessary performance reports.

(2) Performance reports must at a minimum contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) The [agency] shall not require grantees to submit more than the original and two copies of performance reports.

(4) Grantees shall adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, Federal agencies rely heavily on certified percentage-of-completion data and on-site technical inspection to monitor progress under construction grants and subgrants. [Agency] may require additional formal performance reports only when considered necessary, but never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee shall inform [agency] as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objectives of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) [agencies] may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) [agencies] may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee is still able to meet its performance reporting obligations to [agency].

§ ____.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section. grantees shall use only the forms

specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to [agency], or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees are not required to apply the forms prescribed in this section in dealing with their subgrantees. However, grantees (other than States) shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. [agency] may issue substantive supplementary instructions only with the approval of OMB. [agency] may shade out or instruct the grantee to disregard any line item that [agency] finds unnecessary for its decisionmaking purposes.

(4) Grantees are not required to submit more than the original and two copies of forms required under this part.

(5) [agency] may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. [agency] may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) [agency] may waive any report required by this section if not needed.

(7) [agency] may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report.*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee shall report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If [agency] requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

(3) *Frequency.* [agency] may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If [agency] does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(4) *Due date.* (i) When reports are required on a quarterly or semiannual basis, they are due 30 days after the reporting period.

(ii) When required on an annual basis, they are due 90 days after the grant year except for cases where [agency] has extended the deadline for liquidation of obligations, as provided in §§ ____.23 and ____.50. In such instances, the report shall be due 90 days after the extended deadline.

(iii) Final reports are due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter of credit, Treasury check advances of electronic funds transfer, the grantee shall submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) [agency] uses these reports to monitor cash advanced to grantees and to obtain from grantees disbursement or outlay information for each grant. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When the [agency] considers such action necessary and feasible, it may require the grantees to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic funds transfer is authorized at an annualized rate of one million dollars or more, the [agency] may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments must be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form must not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants must also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in paragraph (b)(3) of this section.

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants must be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. [agency] may, however, prescribe the Request for Advance or Reimbursement form, specified in paragraph (d) of this section, instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in paragraph (b)(3) of this section.

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee shall report its outlays to the [agency] using Standard Form 271. Outlay Report and Request for Reimbursement for Construction Programs. [agency] shall provide any necessary special instruction. However, frequency and due date are governed by paragraphs (b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances must be requested on the form specified in paragraph (d) of this section.

(iii) [agency] may substitute the Financial Status Report specified in paragraph (b) of this section for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs are to be governed by paragraph (b)(2) of this section.

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§ ____.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant award, or

(ii) Otherwise reasonbly considered as pertinent to program regulations or the grant award.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § ____.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency shall request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintanined by [agency] the 3-year retention requirement does not apply to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In cases where grantees must report income after the period of grant support, the retention period for the records pertaining to the income earned during that period starts at the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation must be submitted to [agency] (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to [agency] (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts at end of the fiscal year (or other accounting period) covered by the proposal, plan or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives has the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records owned and possessed by the grantee. Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ ____.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency.

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program.

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency shall provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a grantee or a subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective data of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a grantee or subgrantee from

"Debarment and Suspension" under E.O. 12549 (see § ____.35).

§ ____.44 Termination for convenience.

Except as provided in § —.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

(b) By the grantee or subgrantee upon sending to the awarding agency written notification, setting forth the reasons for such termination, the effective date, and the portion to be terminated, in the case of partial termination. However, if the awarding agency determines in the case of partial termination that the remaining portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety under either § —.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ ____.50 Closeout.

(a) *General* [agency] shall close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b)(1) Liquidation of obligations. A grantee shall liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or other period specified in a program regulation).

(2) [agency] may extend this deadline at the request of the grantee.

(c) *Reports.* Within 90 days after the expiration or termination of the grant (or as specified in program regulations), the grantee shall submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, [agencies] may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable.)*

(3) *Final request for payment (SF–270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § ____.32(f), a grantee shall submit an inventory of federally owned property (as distinct from property acquired with grant funds) for which it is accountable because of the grant and request disposition instructions from the [agency] of property no longer needed.

(d) *Cost adjustment.* Within 90 days after receipt of reports in paragraph (c) of this section, [agency] shall make upward or downward adjustments to the allowable costs.

(e) *Cash adjustments.* (1) [agency] shall make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee shall immediately refund to [agency] any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

(f) *Continuing awards.* A grantee administering one or more grants on a continuing basis shall make an fiscal year annual accounting of ongoing grant operations which shall include the requirements of paragraphs (b), (c)(1), (c)(3) and (c)(5) of this section.

§ ____.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The right of [agency] to disallow costs and recover funds on the basis of a later audit or other review;

(b) The obligation of the grantee to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § ____.42;

(d) Property management requirements in §§ ____.31 and § ____.32; and

(e) Audit requirements in § ____.26.

§ ____.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other request for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the [agency] shall charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II).

Subpart E—Entitlement [Reserved]

Subpart F—Special Provisions for Research and Other Programs

§ ____.70 Scope of subpart.

This subpart establishes provisions that [agency] applies to some grants for research and other programs. [agency] specifies the application of these provisions in regulations or grant awards.

§ ____.71 Special provisions.

The following special provisions shall apply to grants subject to this subpart:

(a) The requirement for prior approval of expenditures under the applicable cost principles does not apply. (See § ____.22(b)).

(b) Prior approval is required for preagreement costs incurred more than 90 days before the beginning date of the award. The grantee incurs costs at its own risk should Federal funding not occur.

(c) The grantee may extend a project without prior approval for a period not to exceed 12 months after the expiration of the funding period if:

(1) The extension does not require the obligation by [agency] of additional Federal funds;

(2) The extension does not involve any change in the approved objectives or scope of the project; and

(3) The grantee notifies the [agency] in writing at least 10 days before the end of the funding period.

(d) A grantee may carry over from one funding period to the next funding period any unobligated balance of funds. [Agency] may require the grantee to notify [agency] (e.g., on the Financial Status Report) of the amount of the unobligated balance that was carried over.

Subpart G—Special Provisions for Grants and Subgrants to Commercial Organizations

§ ____.80 Scope of subpart.

(a) This subpart contains provisions that apply to grants and subgrants to commercial organizations. These provisions are in addition to other applicable portions of this part, or are exceptions for awards to organizations from other provisions of this part.

§ ____.81 Prohibition against fee or profit.

Attention is directed to § ____.22(a), which provides, in effect, that no grant funds may be paid as fee or profit to grantee or subgrantee.

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§ ____.82 Real property and equipment.

(a) *Scope* (1) This section applies to real property and equipment that are acquired under a grant or subgrant to a commercial organization.

(2) A grantee that is not a commercial organization may take title to property acquired under a subgrant to a commercial organization. If a grantee takes title to such property, the property will be considered as acquired by the grantee under its grant, and this section will not apply to the property.

(b) *Applicable rules.* (1)(i) Property subject to this section is exempt from §§ ____.31, ____.32, ____.38 and ____.39. Instead the clause entitled "Government Property" in 48 CFR 52.245–5 is deemed to be in every grant or subgrant to a commercial organization and property purchased with grant funds is treated as "Government furnished property" under that clause.

(ii) For the purpose of paragraph (b)(1)(i) of this section, the terms "contract" and its derivatives in that clause are considered to refer to the grant or subgrant under which the property is acquired, "subcontract" and its derivatives to refer to any subaward under that grant or subgrant, and "contracting Officer" to refer to the authorized [awarding] official.

(2) Records subject to the Government Property clause are exempt from § ____.42.

(c) *Approval for acquisition.* A grantee or subgrantee shall not acquire property to be subject to this section without the prior approval of the awarding agency.

§ ____.83 Program income.

The additional costs alternative described in § —.25(g) may not be applied to general program income earned by a grantee that is a commercial organization.

[FR Doc. 88–25344 Filed 11–3–88; 8:45 am]

BILLING CODES 3410–01–M; 6450–01–M; 8025–01–M; 7510–01–M; 3610–FE–M; 4710–24–M; 1616–01–M; 8230–01–M; 4210–32–M; 4830–01–M; 4410–10–M; 4510–23–M; 6372–01–M; 3810–01–M; 4000–01–M; 7515–01–M; 8320–01–M; 8560–50–M; 4310–RF–M; 6718–01–M; 4150–04–M; 7555–01–M; 7537–01–M; 7536–01–M; 7536–01–M; 6050–28–M; 6340–01–M; 4910–62–M

federal register

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Part IV

Environmental Protection Agency

TSCA Chemical Substance Inventory; Removal of 45 Incorrectly Reported Chemical Substances From the TSCA Inventory; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-81014A; FRL-3456-7]

TSCA Chemical Substance Inventory; Removal of 45 Incorrectly Reported Chemical Substances From the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA, in an earlier notice published in the **Federal Register** of January 14, 1988 (53 FR 949), announced its intent to remove from the toxic Substances Control Act (TSCA) Chemical Substance Inventory 49 chemical substances which were believed to have been incorrectly reported and listed. Fourteen comments were received in response to the January 14, 1988 notice. EPA has determined that four of the chemical substances mentioned in the January 14, 1988 notice have been in manufacture prior to the date of the notice and the remaining 45 chemical substances were incorrectly reported and listed on the Inventory. Accordingly, the 45 chemical substances are deleted from the TSCA Inventory as of the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistant Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

A. Background

EPA announced in the **Federal Register** of January 14, 1988 (53 FR 949), its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 49 chemical substances which were believed to have been incorrectly reported and listed. Prior to the January 14, 1988 notice, persons who had originally reported the 49 chemical substances informed EPA that the chemical identities they reported to EPA and included on the Inventory were incorrect. The correct identities for these 49 chemical substances have been provided by the original submitters and added to the Agency's Master Inventory File. EPA reviewed each of these 49 chemical substances, as originally reported, to determined whether any other person had also reported the same chemical substance for the Inventory. No other manufacturers were found at the time. Therefore, in accordance with established EPA guidelines stating that an erroneously or incorrectly reported chemical substance should be removed from the Inventory, EPA announced its intent in the **Federal Register** of January 14, 1988.

The **Federal Register** notice of January 14, 1988, solicited public comments on the proposed removal action. The Agency was specifically interested in knowing whether any of the 49 chemical substances had been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulations (40 CFR Part 710.2(p)), by anyone during the period of January 1, 1975 through January 14, 1988. The Agency was also interested to know whether any person could show that any of the 49 chemical substances could have been properly reported for the Inventory. EPA also solicited comments from anyone who believed that any of the chemical substances should not be removed from the TSCA Inventory for any reason.

EPA received 14 comments, including a congressional inquiry, in response to the January 14, 1988 **Federal Register** notice. Except for one of the commenters, all others requested that certain chemical substances not be removed from the Inventory. One comment, contributed by the submitter of six of the chemical substances included in the notice, expressed approval for the deletion of these six chemical substances since these submissions had already been corrected and the chemical substances were not being manufactured by this company.

B. Substances Not To Be Removed

After reviewing the comments received, the Agency has decided not to remove from the Inventory the chemical substances identified by the following Chemical Abstracts Service (CAS) Registry Numbers and Index Names:

12237-62-6	C.I. Pigment Violet 27.
25035-84-1	Propanoic acid, ethenyl ester, homopolymer.
37569-89-4	poly(oxy-1,2-ethanediyl),.alpha.-(3-chloro-2-hydroxypropyl)-.omega.-(3-chloro-2-hydroxypropoxy)-.
68611-64-3	Urea, reaction products with formaldehyde.

The submitters of the comments concerning these four chemical substances provided evidence to indicate that these substances have been in commercial production prior to January 14, 1988. Upon a careful review of the evidence submitted, the Agency has determined that the four chemical substances should remain on the Inventory and premanufacture notifications (PMN) will therefore not be required for the manufacture of these substances.

C. Substances That Are Removed From the Inventory

One of the commenters, requested that the Agency do not delete a specific chemical from the Inventory. The Agency reviewed the information available regarding this chemical substance and the circumstances surrounding its inclusion in the January 14, 1988 notice. It was decided that this substance should be removed from the Inventory since its inclusion in the January 14, 1988 notice was the result of a valid request for Inventory correction from the original submitter, and there was no evidence to show that this chemical substance has been manufactured or imported into the United States since January 1, 1975.

The Agency also concluded that the remaining 44 chemical substances have not been manufactured, imported, or processed for TSCA commercial purposes since January 1, 1975, and thus were not and are not eligible for the Inventory. Effective with the publication of this document, the 45 chemical substances are removed from the Inventory—the presence of their names in any previously published version of the Inventory notwithstanding. PMN requirements of section 5(a) of TSCA would apply to future manufacture or import of any of these 45 chemical substances. The chemical substances that are removed from the Inventory are listed below in ascending CAS Registry Number sequence. Each of the 45 chemical substances is further identified by its corresponding CAS Index Name:

Chemical Substances Removed From the TSCA Inventory

136-83-4	Phenol, 2-nonyl-.
5462-71-5	Benzeneacetic acid, 4-cyano-.
17736-40-2	1,3-Benzenediol, compd. with 1,3,5,7-tetraazatricyclo[3.3.1.1^{3,7}] decane.
18342-69-3	2,4,11,13-Tetraazatetradecane diimidamide, *N,N'*-dihexyl-3,12-diimino-, dihydrochloride.
22573-93-9	2,4,11,13-Tetraazatetradecane diimidamine, *N,N'*-bis(2-ethylhexyl)-3,12-diimino.
24925-59-5	Benzenamine, 4-nonyl-*N*-(4-nonylphenyl)-.
24969-07-1	Oxirane, ethyl-, homopolymer.
31440-49-0	2-Butenedioic acid (*E*)-, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.
35428-64-9	2-Propenoic acid, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.
36089-06-2	Butanedioic acid, methylene-, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.
36089-48-2	2-Propenoic acid, 2-methyl-, polymer with *N*-(butoxymethyl)-2-propenamide, butyl 2-propenoate, ethenylbenzene and methyl 2-methyl-2-propenoate.
38974-68-4	L-Glutamic acid, *N*-(4-iodobenzoyl)-.
40195-82-2	1-Propene,3,3,3-trifluoro-2-(trifluoromethyl)-, polymer with ethene.
51233-77-3	Propanoic acid, 3-methylphenyl ester
51728-14-4	Phenol, 2-[bis(4-hydroxyphenyl) methyl]-.
55157-26-1	1,3-Isobenzofurandione,5,5'-carbonylbis-, polymer with 3-ethynyl benzenamine and 3,3'-[1,3-phenylene bis(oxy)]bis[benzenamine].
55782-90-6	Benzenamine, 4-isononyl-*N*-(4-isononylphenyl)-
57444-70-9	L-Glutamic acid, *N*-(4-chlorobenzoyl)-
63833-88-5	2(3*H*)-Furanone, dihydro-, polymer with *N*-(2-aminoethyl)-*N'*-[2-[(2-aminoethyl)amino]ethyl]-1,2-ethane diamine and *N*-(2-aminoethyl)-1,2-ethanediamine.
66794-58-9	Sorbitan, monoisooctadecanoate, poly(oxy-1,2-ethanediyl) derivs.
67785-90-4	Butanedioic acid, methylene-, polymer with 1,3-butadiene and 1,1-dichloroethene.
67786-03-2	Oxirane,2,2'-[[[2-(oxyranylmethoxy) phenyl]methylene]bis(4,1-phenylene oxymethylene)]bis-.
67859-91-0	1,3-Benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2,2,4-trimethyl-1,3-pentanediol.
67893-13-4	Poly(oxy-1,2-ethanediyl),.alpha.-[[(cyclohexylamino)methyl]-4-isononylphenyl]-.omega.-hydroxy-.
67905-97-9	2-Propenamide, polymer with *N,N*-di-2-propenylcyclohexanamine.
67969-72-6	Oxirane,2,2'-[[[2-(oxiranylmethoxy) phenyl]methylene]bis(4,1-phenylene oxymethylene)]bis-, polymer with 1,3-diisocyanatomethylbenzene.
68003-36-1	Benzenesulfonamide, 2-amino-*N*-ethyl-5-methyl-*N*-phenyl-.
68071-12-5	Nonanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, benzoate.
68214-14-2	1,3-Benzenedicarboxylic acid, bis (2-hydroxyethyl) ester, polymer with tetrahydro-2,5-dioxo-3-furansulfonic acid.
68298-56-6	Hexanedioic acid, polymer with 2-ethylhexyl 2-propenoate, 2,5-furandione and 1,2-propanediol.
68389-96-8*	Soybean oil, polymer with allyl alc., glycerol, isophthalic acid, Me methacrylate, styrene and terephthalic acid.
68458-46-8*	Paraffin waxes and Hydrocarbon waxes, polymers with melamine and methylolated octadecylurea.
68515-66-2*	Cellulose, 2-hydroxypropyl ether, reaction products with ethylenimine.
70210-02-5	2-Naphthalenesulfonic acid, 7-amino-5-[[4-[(2-bromo-1-oxo-2-propenyl) amino]-2-[(4-methyl-3-sulfophenyl) sulfonyl]phenyl]azo]-, disodium salt.
70644-50-7	2-Propen-1-aminium, *N,N*-dimethyl-*N*-2-propenyl-, chloride, polymer with methyl 2-methyl-2-propenoate and 2-propenamide.
70644-52-9	Methanaminium, *N,N,N*-trimethyl-1-[(1-oxo-2-propenyl)amino]-, chloride, polymer with ethenyl benzene and 2-propenamide.
70644-54-1	Methanaminium,*N,N,N*-trimethyl-1-[(1-oxo-2-propenyl)amino]-, bromide, polymer with ethenylbenzene and 2-propenamide.
70644-55-2	2-Propen-1-aminium,*N,N*-dimethyl-*N*-2-propenyl-, chloride, polymer with ethenylbenzene and 2-propenamide.
72845-92-2	Formaldehyde, polymer with 3-methylphenol and nonylphenol.
72854-40-1	Cuprate(3-), [3-hydroxy-4-[[2-hydroxy-5-[[2-(sulfooxy)ethyl] sulfonyl]phenyl]azo]-2,7-naphthalene disulfonato(5-)]-, trisodium.
73297-36-6	Cuprate(1-),[4-[[dihydroxy[(2-hydroxy-3,5-dinitrophenyl)azo]phenyl]azo] benzenesulfonato (3-)]-, hydrogen.
73309-48-5	8,16-Pyranthrenedione,2,10-dichloro.
73758-66-4	2-Butenedioic acid (*E*)-, polymer with 1,3-butadiene, 1,1-dichloro ethene and 2-propenoic acid.
76822-91-8*	Butanamide,2,2'-[(3,3'-dicholoro [1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[3-oxo-,*N,N'-bis(o*-anisyl and phenyl) derivs.
83137-17-1	3-Piperidinemethanesulfonic acid, 5-[[5-[[4-chloro-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-1-ethyl-2-hydroxy-4-methyl-6-oxo-, trisodium salt.

*CAS Registry Numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have non-specific registrations and lack accepted molecular formula representations.

Accordingly, the 45 chemical substances listed above are deleted from the TSCA Inventory as of November 4, 1988.

Dated: September 1, 1988.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 88-22487 Filed 11-3-88; 8:45 am]

BILLING CODE 6560-50-M

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Part V

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 301 et al.
Implementation of Improved Processing Inspection; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 302, 303, 305, 306, 307, 308, 312, 314, 316, 317, 318, 320, 322, 325, 327, 331, 335, and 381

[Docket No. 87-020P]

Implementation of Improved Processing Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend various provisions of the Federal meat inspection regulations and the poultry products inspection regulations to accommodate improvements planned for its system of inspection as applied to establishments that prepare meat food products and/or process poultry products beyond slaughter and evisceration. The changes proposed in the Federal inspection system rely in part on 1986 amendments to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.) and is authorized by the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.). The 1986 amendments permit the exercise of greater discretion by the Secretary of Agriculture, through the Administrator of FSIS, in utilizing inspection program resources to perform inspection in each establishment more closely related to the health and economic risks that establishment presents to the food supply. (21 U.S.C. 455(b) and 606(a)), including the discretion to provide less than daily inspection coverage. Therefore, the Federal meat and poultry products inspection regulations must be amended to reflect a system of inspection in which the frequency and manner of inspection may vary among inspected establishments. These changes include modifications to various rules governing agency organization, procedure and practice, the revision of terminology in existing regulations incompatible with those changes, and the addition of rules describing the essential criteria to be used by FSIS in determining the conditions and methods of inspection coverage in establishments preparing meat food products and/or further processing poultry products. The responsibility of regulated industry members to prepare or process meat food products or poultry products only in compliance with the requirements of the FMIA or PPIA and the prohibitions against transactions in adulterated or misbranded products or products required to be inspected unless they have been inspected and passed (21 U.S.C. 458(a) and 610) is unchanged. The standards for determining whether a meat food product or poultry product is adulterated or misbranded (21 U.S.C. 453 (g) and (h) and 601 (m) and (n)) also are unchanged.

DATE: Comments must be received on or before February 2, 1989.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments to: Judith A. Segal, Director, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6525. (See also "Comments" under "SUPPLEMENTARY INFORMATION.")

FOR FURTHER INFORMATION CONTACT: Dr. Judith A. Segal, (202) 447-6525.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Effect on Small Entities

The Administrator, FSIS, has determined that this proposed rule is not a major rule under Executive Order 12291. It is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Administrator also has made a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, in accordance with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*).

The primary basis for these determinations is the fact that, as indicated above, instituting improved processing inspection in conjunction with the 1986 discretionary inspection amendments fundamentally involves modifications in the utilization of inspection program resources and not changes in the basic responsibilities of regulated industry members. Therefore, FSIS does not expect any costs or other effects of the proposed rule to be major or to have significant adverse impacts on the regulated industries, including small businesses, or others. The types of action provided for by the proposed rule constitute implementation of Congress' direction to the Department to more effectively utilize its resources in inspecting operations subject to an improved processing inspection (IPI) system so that, among other things, it is in a better position to respond to budgetary constraints and industry growth and development.

The Agency believes that no major costs to the regulated industry will be generated by the proposed regulations. In terms of the general costs of doing business, it is true that IPI reflects the proposition that the industry should no longer rely upon inspectors to spot potential problems and require correction of conditions that may lead to production of adulterated or misbranded product, and this means many establishments will have to take greater initiative in spotting and correcting potential problems in their plants to avoid producing noncomplying product. However, since the law already requires that the plant take full responsibility for producing product in compliance with the law and regulations, this result cannot fairly be deemed an increased burden on plants due to the proposed rule. In fact, one of the Agency's reasons for instituting a new type of processing inspection is to avoid having inspection resources used as a substitute for plant initiative. At the same time, the fact that the plant is able to proceed with many of its activities that formerly required the presence of an inspector increases its operational flexibility. FSIS believes that the new system will result in net benefits to the industry.

The Agency does recognize a responsibility for making clear to the industry how inspection will be conducted in plants under the new system. Under IPI, plant management will have greater practical knowledge of the way in which inspection will be performed in its plant than it has had under the traditional system of inspection. Over the past few years, FSIS has developed a catalogue of existing inspection procedures, the Inspection System Guide (ISG), which is to be systematically applied to generate the monitoring plans inspectors will use in individual plants. The ISG outlines the legal requirements set forth in the statutes and/or regulations and shows what inspection personnel look at in the plant to determine compliance with those requirements. Under IPI, the establishment will be provided with a copy of the ISG and, thus, will know in advance what inspection tasks apply to the process and procedures performed in its plant. All inspectors will be tasked under the same plan to inspect that establishment. One of the benefits of this more objective form of inspection is that plants will have more explicit information on what is required to be in compliance and that those requirements will be more uniform and consistently administered across all plants.

In summary, FSIS believes that the more uniform and systematic aspects of the IPI system make it more cost-effective for industry operations as well as for Agency inspections. However, there are certain provisions of the proposed regulations which could generate new costs for the plant. These costs would be minor and are described below.

One proposed provision is that establishments could be charged overtime for inspection services where an inspector arrives at a plant to conduct inspection tasks, in reliance on the approved schedule and in the absence of notice of any changes to that schedule, only to find the tasks cannot be performed because the plant is not operating. However, such a charge is a cost that is easily avoided altogether, and other changes affecting overtime would provide immediate, substantial savings to most establishments. First, it will be easier to avoid unscheduled operations that are subject to overtime because the proposal would provide for inspection coverage without charge for all scheduled operations conducted between 6:00 a.m. to 6:00 p.m., Monday through Friday—up to 60 hours per week compared to the 40 hours per week provided for in the current regulations. Second, when unscheduled operations are unavoidable, many if not most establishments would still not incur overtime costs for inspection coverage provided. This is because inspectors would not necessarily have to be present during overtime operations, as is generally the case now. Instead, it is expected that the frequency of overtime charges for coverage incurred during unscheduled operations would be roughly proportional to the frequency of program employees' inspection visits during regularly scheduled operations.

Another, very minor cost could be that involved in new recordkeeping responsibilities. Certain activities that formerly required inspector presence, such a destruction of product found to be adulterated and use of certain labels, could now be done by the establishment without waiting for an inspector to be present, as long as adequate procedures are followed and/or records are maintained. Thus, establishments could destroy their adulterated product instead of holding it until an inspector could supervise its destruction, if records are kept that will permit monitoring of that activity. Similarly, labels now approved by the inspector-in-charge could be used without prior approval—saving the expense and time involved in obtaining prior approval from FSIS Headquarters—as long as FSIS has available all the information it needs to monitor the establishment in that area. Such records are normally retained in the ordinary course of business and should not involve significant new costs.

Some additional costs could also be attributed to a proposed change in the requirements regarding transportation between establishments of inspected and passed product for further processing. Currently, the conveyance by which such product is transported—e.g., railroad car, truck or other conveyance—must be sealed with an official seal, which must be applied and removed by an inspection program employee. The proposal would do away with that seal requirement for most such products, but would substitute a requirement that the product be shipped in closed containers that are sealed (with unofficial seals) by the transporting establishment to provide the receiving establishment assurance that the shipment has maintained its integrity during transportation. The costs of the new requirement for unofficial seals and closed containers should not be substantial, and would be offset by savings to affected establishments by not having to rely on and wait for Inspection Program employees to seal and open such shipments.

In developing the regulatory changes needed for full implementation of its IPI system, including the Agency's discretionary authority to provide less than daily processing inspection coverage, FSIS has considered the potential impact on all affected businesses, including small entities, as well as on the Federal government and consumers and has sought to minimize any potential negative effects. However, FSIS is interested in getting comments concerning the possibility of negative impacts that might result from this proposed regulation and the improvements planned for processing inspection procedures as outlined hereinafter.

Comments

Interested persons are invited to submit comments concerning this proposal. Such comments should be sent to the FSIS Hearing Clerk. They should refer to the docket number located in the heading of this document. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such a request to Dr. Segal so that arrangements may be made for such views to be presented. A transcript will be made of all views presented orally. All written and oral submissions made pursuant to this notice will be made available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Policy Office, Room 3171, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC.

Background

The Secretary of Agriculture's duties include implementation of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to prevent the preparation or processing and distribution of meat, meat food products, and poultry products which are adulterated or misbranded or not properly marked, labeled, and packaged (21 U.S.C. 453 (g) and (h), 457, 458, 601 (m) and (n), 607, and 610). Responsibility for exercising the functions of the Secretary contained in the FMIA and PPIA has been delegated to the Administrator, FSIS (7 CFR 2.17(g) and 2.55(a)(2)). Among those functions are administration of the inspection requirements for meat food and poultry products and sanitation practices in establishments preparing or processing such products for distribution in commerce or otherwise subject to inspection under the FMIA or PPIA (21 U.S.C. 455, 456, 605, 606, and 608) and the issuance of rules and regulations executing provisions of these Acts (21 U.S.C. 463(b) and 621).

In November 1986, the Congress of the United States amended the inspection requirements for meat food products in section 6 of the FMIA (21 U.S.C. 606), pursuant to the Processed Products Inspection Improvement Act of 1986, Title IV of the Futures Trading Act of 1986 (FTA) (Pub. L. 99-641). Rather than requiring the Secretary to cause inspectors appointed for that purpose to make an examination and inspection of all meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, such examination and inspection is to be:

> • • • conducted with such frequency and in such manner as the Secretary considers necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary considers to be appropriate • • • [FTA, section 403(a)].

Three such factors are specified in the statute: The nature and frequency of processing operations at an

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establishment, the adequacy and reliability of the processing controls and sanitary procedures at an establishment, and the history of compliance with inspection requirements in effect under the FMIA by the operator of an establishment or anyone responsibly connected with the business (i.e., any partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or employee in a managerial or executive capacity) that operates that establishment.

By so amending the FMIA, Congress directed the Department, for a 6-year period, [1] to vary the frequency with which and the manner in which meat food products are examined and inspected based on considerations which are relevant to the effective regulation of meat food products and the protection of the public health and welfare. Among other things, inspection coverage at establishments preparing such products for distribution in commerce no longer must be provided on a daily basis.

The legislation also reflects Congressional recognition that full implementation of a new system of government inspection of post-slaughter processing operations will take time. Title IV and the amendments made thereby became effective on the date of enactment (November 10, 1986), except that sections 6, 9, and 21 of the FMIA (21 U.S.C. 606, 609, and 621), as in effect immediately before that date, "apply with respect to establishments until the Secretary . . . first issues rules and regulations to implement the amendments made by section 403(a)" (FTA, section 406). To assure an orderly transition to improved processing inspection and to encompass the provisions mandated by the 1986 amendments, FSIS's first implementation action was the publication, on March 30, 1987, of an interim final rule with request for comments (52 FR 10028) that, as indicated below, initiated a period of experimentation.[2]

The Department supported the 1986 amendments to the FMIA because it believes that the efficiency and effectiveness with which the meat inspection program utilizes available resources will be improved by its being able to vary the frequency and the manner of inspection.

Although the Congressional action that generated the need for this rulemaking concerned only establishments regulated under the FMIA, the March 1987 rulemaking included similar operations processing poultry products. Under the PPIA, the Department has had the authority to vary the frequency and the manner of government inspection in establishments conducting post-slaughter and evisceration processing of poultry products. In particular, section 6(b) (21 U.S.C. 455(b)) requires the Secretary to cause government inspectors to make:

> * * * post mortem inspection of the carcass of each bird processed, and at any time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as human food in each official establishment processing such poultry or poultry products for commerce or otherwise subject to inspection * * *

To date, however, the rules and regulations and other aspects of inspection coverage under the PPIA have been basically comparable to those prescribed pursuant to the narrower pre-amendment authority in the FMIA.

The Administrator of FSIS believes that the frequency and the manner of reinspection by program employees of further processed poultry products should be based on the same factors as those considered appropriate under the amended FMIA.

Improved processing inspection will fundamentally change how FSIS conducts its inspection-related operations. For this reason, the Administrator has concluded that the actual shift from the current inspection system to IPI must be accomplished carefully and deliberately, over a period of time, to minimize unnecessary disruption of ongoing inspection coverage requirements and to maintain a high level of public health protection throughout the transition. Therefore, before undertaking such fundamental changes to the meat and poultry inspection system, the Administrator has required that pilot programs be set in place and information gathered on the various facets of these changes and their potential effects on the Federal inspection system, the regulated industry, and consumers. Initial pilots tested various aspects of IPI starting with procedures for determining whether and, if so, to what extent the intensity of Federal inspection coverage at some processing establishments exceeds that which is necessary and for determining appropriate coverage of operations in such establishments.

Therefore, the first rules and regulations issued to implement the amendments made by section 403(a) of the FTA to section 6 of the FMIA (21 U.S.C. 606) and to institute a comparable IPI system under the PPIA consisted of provisions for conducting pilot tests in establishments subject to Federal inspection (9 CFR 303.2 and 381.3(c)–(e)).

Although pilot testing under those provisions continues, the Administrator has determined that FSIS now has sufficient information to propose regulations that will permit implementation of its improved processing inspection. The proposed rule would, upon being made final, rescind the provisions previously issued to initiate experimentation with IPI procedures (proposed removal of 9 CFR 303.2 and 381.3(c)–(e)).[3]

Overview of the Regulatory Framework for Improved Processing Inspection

FSIS intends that all of its meat and poultry regulatory activities relating to the processing of meat food and poultry products in official establishments will be carried on under IPI, which will encompass and implement the provisions of the 1986 amendment and will replace the present system of inspection for all processing operations.

Under the present system of inspection, most establishments receive the same relative intensity of inspection regardless of the risk they present to the public. In the FTA, Congress directed the Department to implement a system of inspection under which inspection resources would be allocated to establishments on the basis of the public health and economic adulteration risk presented by those establishments. Under IPI, then, the frequency and/or manner of performing Federal inspection, i.e., the intensity of inspection, will be more closely related to the risk presented by a particular establishment than it is under the current system of inspection.

Although this rulemaking anticipates that changes eventually will be made in both the manner and frequency of inspection, it is concerned primarily with regulation changes that would permit FSIS to vary the *frequency* of inspection visits (and of the in-plant inspection-related tasks performed on such visits) based on the risks posed by the establishment and its products. FSIS is not planning at this time to change the manner in which inspection is performed (that is, the nature of the in-plant inspection-related tasks performed by FSIS personnel).

Under IPI, the plan of inspection developed for each establishment would use only existing inspection methods. Existing inspection methods associated with various processing operations have already been identified as part of the Agency's program to prepare an Inspection System Work Plan (ISWP) for all establishments not operating under an approved total quality control program. These inspection methods have been further defined and catalogued in a recent FSIS publication, the Inspection System Guide (ISG).[4] The ISG is a management tool that provides a uniform structure for the assignment and conduct of all inspections and reviews of establishments. The guide summarizes existing inspection requirements, and lists the specific inspection tasks and activities by which inspection program personnel will monitor or review establishment compliance with such requirements. The ISG identifies specific inspection-related tasks relating to the critical control points (CCPs) that apply to processing operations generally. The ISG also lists the current standards by which each CCP is measured. Therefore, application of ISG-listed inspection methods would not in and of itself require any change in establishment procedures. This includes establishment procedures conducted in conformance with an FSIS-approved total or partial quality control plan. The inspection plan for establishments operating under such a quality control plan will be tailored to conform to the TQC or PQC plan in effect.

Any changes in the manner of performing in-plant inspection tasks that the Department might want to institute in the future, and that would impose any rights or obligations on establishments and/or preclude the exercise of discretion by on-site FSIS personnel, will be the subject of notice and comment rulemaking at that time.

The ISG and a deficiency classification guide will be used to verify controls and document compliance for all processing operations under IPI. An ADP system will collect the results of inspection visits and establish a cumulative record of establishment performance based on an evaluation of its operational control procedures. The frequency at which various inspection tasks are performed at each establishment will be adjusted as needed, based primarily on performance as reflected through ADP-generated inspection plans. However, other factors, such as plant initiated production changes or new scientific or technical information, also may influence the frequency of in-plant inspection tasks.

In addition to the ISG and the deficiency classification guide to be developed, the Agency plans to publish other guidelines that will be used in managing inspection under IPI and to facilitate the application of the regulatory criteria being proposed in this rulemaking. All such guidelines will be available to the public before the inspection activities with which they are concerned are instituted.

Criteria Proposed for Risk Evaluation and Determination of Inspection Intensity

Integral to the Agency's IPI procedures are those regulatory and organizational changes that will permit processing operations to be inspected at different frequencies and intensities.

The core of the regulatory framework is a set of criteria that can be used to (1) evaluate the risk presented by each establishment, and (2) determine the appropriate intensity of inspection for each establishment. The Agency is therefore proposing in this rulemaking criteria that can be used to make these determinations (§§ 302.4; 302.5; 381.4; 381.8). The proposed criteria for evaluating risk and determining intensity will be applied in three procedures as follows:

Procedure 1: Documentation of Compliance History and Establishment Characteristics

The pilot test for improving the Agency's processing inspection utilized a screening document completed by inspectors and their supervisors to collect information on an establishment's objective characteristics, compliance history and effectiveness in controlling its operations. The pilot has demonstrated that this screening process is useful for collecting information on an establishment's objective characteristics, such as size and complexity of its production process, and on its compliance history, but that it is not reliable for making determinations about an establishment's ability to control its operations and sanitation. Therefore, the Agency is proposing to limit use of the screen to document establishment characteristics and compliance history, which will be considerations in determining the appropriate intensity of inspection. This screen would be updated periodically. The screening document and the guidelines used to make determinations based on the information collected in this document will be available to the public before they are put in use.

This screening process will utilize criteria representing two of the three factors included in section 6(a)(2) of the amended FMIA (21 U.S.C. 606(a)(2); section 403(a) of the FTA); history of compliance with inspection requirements (proposed 9 CFR 302.5(b)(1)(i) and 381.8(b)(1)(i)); and nature and frequency of processing operations (proposed 9 CFR 302.5(b)(2) and 381.8(b)(2)).

Procedure 2: Evaluation of Competence to Control Operations

The second procedure is an evaluation, conducted through routine daily inspection visits, of the establishment's ability to control its production, environment and product to meet regulatory requirements. The criteria used to make this evaluation represent the third factor included by Congress in the FTA: adequacy and reliability of processing controls and sanitary procedures (proposed 9 CFR 302.5(b)(1)(ii) and 381.8(b)(1)(i)).

The Agency believes that an examination of the operations at CCPs in each establishment is the best indicator of the adequacy and reliability of that establishment's processing controls and sanitary procedures. For each CCP and the inspection tasks associated with it, the Agency will establish a standard frequency of inspection. This standard frequency will approximate the frequency at which the same CCP inspection tasks are performed under current daily inspection, but will also reflect the Agency's judgment of (1) the public

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[1] Not later than 6 years after the date of enactment, Congress is to evaluate the operation and effects of the amendments made by section 403 of the FTA for the purpose of determining whether to extend or modify the operation of such amendments and enact such legislation as may be necessary to efficiently and effectively carry out the FMIA (FTA, section 407).

[2] On December 16, 1987, FSIS published a final rule, with a minor change in wording for clarification (52 FR 48084). The Federal meat inspection regulations also were amended to provide for the waiver for limited periods of provisions of those regulations in order to permit (1) appropriate and necessary action in the event of a public health emergency or (2) experimentation so that new procedures, equipment, and/or processing techniques may be tested to facilitate definite improvements, where such waivers do not conflict with either the purposes or the provisions of the FMIA (9 CFR 303.1(g)). The poultry products inspection regulations already included such a rule (9 CFR 381.3(b)), but it provided for only those emergency situations that are "national" in scope. Since such waivers also may better enable FSIS to take appropriate and necessary action in response to an emergency in a smaller geographic area and the focus of concern here is assuring adequate public health protection, the words "public health" were substituted for "national."

[3] Further information on the results of pilot testing to date under those provisions is available for public inspection and copying in the Policy Office (see "ADDRESSES"); additional information will be available after that pilot testing is completed.

[4] The ISG is available for review at the office of the FSIS Hearing Clerk, 3171-South Bldg., Washington, DC, between 9:00 a.m. and 4:00 p.m. daily.

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health and/or economic adulteration risks associated with CCP failure, and (2) standard performance levels (SPLs) representing the maximum deficiencies an establishment can have if it is to avoid intensification of inspection of that CCP.

When improved processing inspection is initially implemented, all establishments will be under at least daily inspection and all CCPs will be covered by standard frequencies. Changes in inspection visit schedules for a plant and frequencies for inspecting CCPs in the plant will be based on the results of successive checks of the plant's controls during routine inspection visits. CCPs with similar characteristics may be grouped and moved together to lower or higher intensities. Successive checks of a CCP over an established period of time resulting in a performance record that does not fall below the SPL will result in such checks being less frequent. Successive checks over an established period that result in a performance record that falls below the SPL will result in such checks being more frequent. Minimum and maximum frequencies will be established for all CCPs. No establishment will be on an inspection schedule which does not permit the appropriate frequency to be performed. If intensification of inspection is called for but the maximum frequency is already being performed, the number of inspection tasks performed for the subject CCP may be increased.

In summary, FSIS intends to assign inspection program personnel work to be performed during inspection visits on the basis of the risks inherent in the process and the cumulative performance of the plant in controlling the process.

Procedure 3: Determining Intensity of Inspection for Each Establishment

Determinations of what inspection intensity is appropriate for an establishment will reflect cumulative performance data generated by all inspection visits. The information generated by ADP-scheduled inspection visits reflects an establishment's routine control over its operations and therefore normally will be the most significant element in determining the frequency of future inspection visits. However, inspection program personnel may visit a plant for other reasons as well, and these visits also may produce data affecting the intensity of inspection. The Agency may deploy resources to conduct other inspection-related activities, for example, to spot-check operations and supplement information generated in the ADP system, to deal with establishment deficiencies or noncompliance, and to provide services such as export certification or breaking of official seals.

In addition to performance data generated by inspection visits, other elements will influence the intensity of inspection: compliance history; establishment characteristics such as size, volume of production and other characteristics that affect the difficulty of inspecting the establishment; the significance of potential public health consequences of noncompliance; management competence; and the availability of inspection program employees.

As a result of the pilot, the Agency found that it could not collect reliable information on "management competence" *in vacuo*. Although objective, mechanically applied criteria must be supplemented by an element of subjectivity and reliance on the professional judgment of inspection program personnel, the "management competence" criterion was too difficult to define much less apply reasonably and equitably in evaluating the risk presented by official establishments. Therefore, FSIS will consider management competence to be indicated by the establishment's compliance history and its ability to control its production process, environment and product. In evaluating establishment risk, the Agency will make no judgments on "management competence" outside of the context of the establishment's past and current performance in meeting regulatory requirements.

Changes Proposed in Requirements to Accommodate Improved Processing Inspections

In some cases regulatory requirements must be changed to permit production activities to continue when an inspector is not present to perform a task which under current regulations requires the presence of an inspector. The changes in these proposed requirements are restricted to what is necessary to compensate for the reduction in inspector presence in a way which maintains public protection and does not unduly inhibit industry productivity. The number of these kinds of changes being proposed is small. It is FSIS's intent to propose in this rulemaking only those changes necessary to implement the IPI, most notably those changes required to implement "discretionary inspection" authority under the FTA.

The regulations will continue to require that certain in-plant inspection related activities be conducted only by a program employee, regardless of whether an establishment has been determined to be one not requiring daily inspection. For example, only an inspection program employee may remove a "U.S. Rejected" tag applied to insanitary equipment or rooms under § 308.15 or a "U.S. Retained" tag applied to products suspected to be adulterated or misbranded under § 318.2, and only an inspection program employee may complete an export certificate as provided for under Part 322. Furthermore, other in-plant activities *may* require that an inspection program employee be at the establishment and therefore will require some form of notification be given to FSIS. For example, establishments have to notify FSIS if they wish to conduct operations outside their approved schedules of operations so that Federal inspection coverage can be provided as needed under §§ 307.4(d)(3) and 381.37(d)(3). In addition, establishments would have to notify FSIS of schedule deviations that involve cancelling of scheduled operations to avoid possible overtime costs that may be incurred in providing inspection coverage during the scheduled hours of operation.

Establishments frequently need to communicate with program employees for a variety of reasons. However, as a result of the discretionary inspection element of IPI, establishments will not be able to predict when or if a Federal inspector will visit the plant on a given day. Therefore, FSIS directives will address inspection program employees' responsibilities with regard to establishing and maintaining communications with establishment personnel and guidance will be given to individual establishments regarding whom they should contact and when. In any event, FSIS, in implementing IPI, will make every effort to minimize any burden or inconvenience, including that involved in initiating communication with program employees in various situations.

Proposed Restatement of Requirements

The reduction of Federal inspector presence in plants makes it necessary to re-state some current regulatory requirements that are not expressed in term of, or otherwise associated with, the continual presence of such an inspector. This rulemaking is proposing editorial changes in these regulations to clarify that these requirements, although expressed in terms associated with the daily presence of such an inspector, have not been changed even where inspector presence has been reduced, and, further, to clarify that the responsibility for compliance with these regulations rests on the establishment.

Proposed Conforming and Terminology Changes

Other changes in the regulations have been proposed to broaden organizational terms, e.g., changing "inspector" to "inspection program personnel," to accommodate any changes in the organization of Agency resources that may be needed to support a system of inspection where Federal inspector presence is used less to achieve regulatory compliance. Similarly, the phrase "supervised by Program employees," although it has been subject to interpretation, connotes to most that some physical presence by a program employee is required as an indicia of "supervision." This concept is at odds with IPI where the conditions and methods of inspection coverage will vary and may include "less than daily coverage" where the program has determined that a program employee need not always be present in circumstances where previously "supervision" was required. In such cases, the requirement is more aptly put as conducted under appropriate inspection coverage. (See proposed subparagraph (1) of 9 CFR 307.4(b) and 381.37(b).) These changes conform existing regulations to proposed changes, eliminate obsolete language, and perform similar non-substantive functions.

Program Changes Not Part of This Rulemaking

FSIS is planning to use some new resource configurations under IPI. This is likely to involve changes in staffing procedures, supervisory responsibilities, information processing, and similar changes which do not affect regulatory requirements. For example, the Agency is planning to modify its practice of assigning one employee to an establishment as an inspector-in-charge and plans, when appropriate, to assign inspection visits to one establishment on a random basis to different inspection employees. Also, the Agency plans to collect and store in an ADP system the results of inspection visits. When the exact nature of these changes has been determined through pilot testing, Agency procedures will be set forth, as they are under the current system, in Agency directives. Such directives will concern the procedures by which government allocates its resources.[5] Nonetheless, Agency directives that describe these changes and set forth any new Agency procedures will be available to the public before the inspection procedures with which they are concerned are instituted.

Description of Proposed Regulations

Risk Evaluation and Determination of Inspection Intensity

The Administrator believes that the factors used in assessing the performance of an establishment (9 CFR 303.2(b)(1) and 381.3(d)(1)) and its characteristics (9 CFR 303.2(b)(2) and 381.3(d)(2)) during the period of experimentation should be applied by the meat and poultry inspection program in making determinations as to the appropriate intensity of government inspection of meat food products and/or poultry products processed beyond slaughter and evisceration in all establishments preparing or processing such products. For purposes of both meat food product and poultry product inspection, the criteria specified would take into account the factors included in section 6(a)(2) of the amended FMIA (21 U.S.C. 606(a)(2); section 403(a) of the FTA): (1) Nature and frequency of processing operations (proposed 9 CFR 302.5(b)(2) and 381.8(b)(2)); (2) the adequacy and reliability of processing controls and sanitary procedures (proposed 9 CFR 302.5(b)(1)(ii) and 381.8(b)(1)(ii); and (3) the history of compliance with inspection requirements (proposed 9 CFR 302.5(b)(1)(i) and 381.8(b)(1)(i)).

Proposed §§ 302.5 and 381.8 of the Federal meat and the poultry products inspection regulations (proposed 9 CFR 302.5 and 381.8), respectively, provide generally that the inspection program shall base the frequency and the manner of government inspection of such products on considerations relevant to effective regulation of meat food products and poultry products and protection of the health and welfare of consumers. It is intended that determinations as to the frequency of inspection would be based upon the program's evaluations of the performance and the characteristics of individual establishments in which meat food products and/or poultry products are made from livestock previously slaughtered and/or poultry previously slaughtered and eviscerated in official establishments (proposed 9 CFR 302.5 (a) and (b) 381.8 (a) and (b)). For each such establishment, the inspection program would determine what conditions and methods of inspection coverage of operations are appropriate, based on: (1) Its evaluation of the characteristics of that establishment, (2) the procedures used in that establishment to control the production process, environment, and resulting product in order to assure and monitor compliance, (3) the significance of potential public health consequences of noncompliance, (4) the competence of the person conducting operations at that establishment, and (5) the availability of meat and poultry inspection program employees (proposed 9 CFR 302.5(c)(1)(i)–(v) and 381.8(c)(1) (i)–(v)).

In preparing for the initial experimentation period for improved processing inspection, FSIS drew upon its experience in allocating inspection program resources to provide Federal inspection at a wide variety of establishments, each to some degree unique and different from the others to develop tentative guidelines for use in making determinations about the conditions and methods of inspection coverage of operations in establishments included in pilot tests. Thus, for example, in assessing the complexity of processing operations (see proposed 9 CFR 302.5(b)(2)(i) and 381.8(b)(2)(i)), FSIS has been categorizing operations as involving product preparation or processing that is "simple", "medium", or "complex" by applying FSIS Directive 1030.2.[6] FSIS also has been utilizing a three category approach in assessing certain other establishment characteristics: the volume of resulting product (highest total product volume during any quarter within the preceding year as less than 60,000; 60,000 to 1,000,000; or more than 1,000,000 pounds), the size of the establishment (less than 12,000; 12,000 to 80,000; or more than 80,000 square feet), and the scope of any livestock slaughter or poultry slaughter and evisceration operations (none, part time, or full time) also being conducted (but to which IPI will not apply) at an establishment which prepares meat food and/or processes poultry products beyond slaughter and evisceration (i.e., a "combination" establishment) (see proposed 9 CFR 302.5(b)(2) (iii), (iv), and (vi) and 381.8(b)(2) (iii), (iv), and (vi). FSIS also has been considering the frequency with which operations are conducted and what, if any, food products not regulated under the FMIA or the PPIA also are prepared or processed there (see proposed 9 CFR

[5] Section 553 of the Administrative Procedure Act (APA) exempts from notice and comment rulemaking requirements "interpretative rules, general statements of policy, or rules of agency organization, practice or procedure * * *" (5 U.S.C. 553(b)).

[6] Documentation of Processing and Combination Assignments, 4/22/85, which is available for public inspection and copying in the Policy Office.

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302.5(b)(2) (ii) and (v) and 381.8(b)(2)) (ii) and (v)).

As the Agency gains experience in operating under IPI and the nature and scope of processing operations conducted at inspected establishments continue to change, FSIS expects that these guidelines will undergo further refinement or other modification. FSIS plans to develop a directive that will include, among other things, guidelines for assessing the characteristics of establishments regulated under IPI procedures. FSIS now anticipates that initially the establishment characteristic guidelines will be essentially the same as those used during the experimentation period. FSIS will, however, consider relevant comments submitted in response to this proposal in developing that directive, which will be available to the public by the completion of this rulemaking.

Under fully implemented improved processing inspection, the conditions and methods of inspection coverage would be tailored to the public protection risk presented by a particular official establishment. The inspection program would consider including less than daily coverage by inspection program employees as part of the inspection being performed in a particular establishment if and only if its evaluation of an establishment's performance: (1) Reveals a good compliance history and (2) evidences control procedures adequate to assure and monitor compliance with applicable regulatory requirements under less than daily coverage.

The first performance criterion, compliance history (proposed 9 CFR 302.5(b)(1)(i) and 381.8(b)(1)(i)), would include assessment of both the nature and frequency of noncompliance. It is anticipated that substantial and recent noncompliance would preclude any significant reduction in the frequency of inspection activities in an establishment. Noncompliance would be regarded as substantial when, for example, it involves the preparation of adulterated product that could pose a serious public health threat if distributed to consumers or recurring failures that could be considered indicative of a lack of regard for the public health or welfare; and, within the 10-year time limit on record documentation, the more substantial the violation, the longer it would be regarded as sufficiently recent for consideration.

The second performance evaluation criterion would be an assessment of the procedures used in the establishment to control the production process, environment, and resulting product in order to assure and monitor compliance with requirements of the FMIA or PPIA and rules and regulations thereunder (proposed 9 CFR 302.5(b)(1)(ii) and 381.8(b)(1)(ii)).

FSIS's objective in making this evaluation of risk is to determine whether there are adequate indications that the probability of future noncompliance is low. While the inspection program might modify the conditions and methods of inspection coverage at any establishment (pursuant to proposed 9 CFR 302.5(c)(1) and 381.8(c)(1)), operations requiring inspection would not be conducted under less than daily coverage unless the two performance evaluation criteria are met (proposed 9 CFR 302.5(b)(1) and 381.8(b)(1)).

Clarifying and Terminology Changes

In addition to amending the regulations to include, in proposed §§ 302.5 and 381.8 (proposed 9 CFR 302.5 and 381.8), the factors and criteria to be applied in evaluating the risk and determining the appropriate intensity of government inspection for each establishment, other portions of the regulations must be amended before IPI can be fully implemented.[1] In particular, the Federal meat inspection regulations (9 CFR Chapter III, Subchapter A) and the poultry products inspection regulations (9 CFR Chapter III, Subchapter C) must be amended to accommodate an organizational structure that is appropriate for FSIS management of improved processing inspection which provides for less than daily inspection and to include additional guidance on what is required for compliance with requirements of the FMIA and/or the PPIA and the rules and regulations thereunder. The remainder of this preamble presents the further amendments to the Federal meat inspection regulations (9 CFR Parts 301–303, 305–308, 312, 314, 316–318, 320, 322, 325, 327, 331, and 335) and the poultry products inspection regulations (9 CFR Part 381, Subparts A, B, E–H, M–O, Q, T, V, and X), organized by corresponding parts and subparts of those regulations, that FSIS is proposing in connection with its implementation of IPI in establishments that prepare meat food products and/or process poultry products beyond slaughter and evisceration.

[1] Proposed modifications to the Federal meat inspection regulations would implement amendments to sections 6, 9, and 21 of the FMIA (21 U.S.C. 606, 609, and 621; see sections 403 (e) and (d) of the FTA).

Definitions: Part 301 and Part 381, Subpart A

FSIS is proposing to modify provisions of §§ 301.2 and 381.1(b) of the Federal meat and the poultry products inspection regulations (9 CFR 301.2 and 381.1(b)), respectively, to assure that they include a consistent and accurate set of terms which adequately account for modifications in the structuring of inspection program functions that are anticipated under IPI while continuing to be suitable for the system of ante- and post-mortem inspection, which is not being changed. The regulations now use a variety of terms in referring to the inspection program and personnel performing inspection program functions. The proposed rule would utilize terminology more uniformly and build on the "Inspection Program" as the basic program and personnel unit.

The amendments that would be made by this proposed rule generally use "Inspection Program employee", rather than "Program employee", "Inspection Service employee", "inspector", and "inspector in charge", or "Inspection Program supervisor", rather than "circuit supervisor", terminology when referring to personnel responsible for making various determinations or taking other actions either within or outside of official establishments. These proposed amendments reflect FSIS's expectation that the structure of its field organization will change over time. In particular, for some types of inspection coverage, FSIS intends to move away from the current practice of assigning particular in-plant inspection program personnel to a particular official establishment preparing meat food products or further processing poultry products. Instead, the Agency will begin organizing inspection program employees into units that will perform inspection program functions in a number of official establishments under the supervision of designated inspection program personnel. The inspection program supervisors designated for particular establishments will be identified and such identifications will be kept current. (As indicated below, other inspection program employees also will be designated as having responsibility for certain functions.)

Proposed amendments would clarify that the "Inspection Program" is the organizational unit within the Department having responsibility for carrying out the relevant statutory provisions and the rules and regulations thereunder (proposed amendments to 9 CFR 301.2(f) and 381.1(b)(28)). Because FSIS is not proposing to amend all of the regulations that currently include the terms "Program" and "Inspection Service" (i.e., provisions of the regulations that are not otherwise being amended to reflect the change to improved processing inspection), these terms would be retained in the Federal meat and poultry products inspection regulation definitions (9 CFR 301.2(f) and 381.1(b)(28)), respectively. The regulations would be amended to provide for use of "Inspection Program employee" to describe "any inspector or other individual employed by the Department or any cooperating agency" who is authorized "to perform any function in connection with the Inspection Program" (proposed amendments to 9 CFR 301.2(h) and 381.1(b)(27)(i)), but the terms "Program employee" and "Inspection Service employee" would not be deleted from these provisions.

Meat and poultry inspection program employees include inspectors in charge. The proposed rule would amend the existing definitions to clarify the role of an "inspector in charge" (IIC) as a distinctive type of "Inspection Program employee" (proposed amendments to 9 CFR 301.2(nnn) and 381.1(b)(28)(ii)): one who is "designated as having primary responsibility for Inspection Program functions at a particular official establishment." Among other things, this would delete the description of IIC's as being "in charge of" establishments subject to inspection under the FMIA. FSIS views that phrase as particularly inappropriate with the implementation of a system of inspection which emphasizes the responsibility of industry members to operate in compliance with regulatory requirements.

The proposed rule also would add a definition of "Inspection Program supervisor" to the Federal meat inspection regulations (proposed amendment to 9 CFR 301.2(k)) and would modify the definition of "Inspection Service supervisor" in the poultry products inspection regulations (proposed amendment to 9 CFR 381.1(b)(27)(ii)) to include any "Inspection Program employee who is delegated authority to exercise supervision over one or more phases of the Inspection Program at a designated level," with information identifying such employees available from the Administrator. Inspection program supervisors include, among others, circuit supervisors. The proposed rule would modify the current definitions of "circuit supervisor" by including a functional description of the area of responsibility in the Federal meat inspection regulations (proposed amendment to 9 CFR 301.2(j)), rather than a reference to the "Circuit" definition (see proposed amendment to 9 CFR 301.2(k)) and by improving the description now in the poultry products inspection regulations and integrating it with other "Inspection Program" definitions (proposed amendment to 9 CFR 381.1(b)(51)(ii)): an Inspection Program employee "with responsibility for supervising the carrying out of Inspection Program functions at more than one official establishment." Similarly, the term "area" would be revised in the meat regulations (§ 301.2(mmm)) and would be added to the poultry regulations (§ 381.1(b)(63)) to define "area" as the organizational unit to which "circuit supervisors" and/or other inspection program supervisors report since this definition more clearly describes the inspection structure under improved processing inspection.

The definition of U.S. Retained" (proposed § 301.2(ff)) would be revised to state that disposition of U.S. Retained product requires "further evaluation by an inspection program employee * * *" instead of "further examination by an inspector." This clarifies that disposition of such product may rest upon a physical examination of the product, but also could rest upon an evaluation of factors and circumstances extraneous to the product (e.g., a finding that an insanitary condition did not affect certain lots of product). The change also reflects the change from a system where an inspector is assigned to a specific establishment and is always available for such functions to one where inspection program personnel are assigned a variety of inspection-related tasks at a number of establishments and may not be available at any one time to perform such functions in a given plant.

The only other amendments being proposed for the definitional portions of the regulations involve the scope of the application of improved processing inspection. The proposed amendment to the Federal meat inspection regulations would clarify that "further processing" can include types of manufacturing or processing other than the smoking, cooking, canning, curing, refining, or rendering of product previously "prepared" (including slaughtered (see 9 CFR 301.2(y))) and that such previous preparation may have taken place in one or more official establishments (proposed amendment to 9 CFR 301.2(eee)). The proposed amendment to the poultry products inspection regulations would include, in addition to the current definition of "process" (which includes the conduct of operations whereby poultry is slaughtered or eviscerated), a definition of "further processing" as referring to "* * * the conduct of any processing operation or combination of processing operations other than ones whereby poultry is slaughtered and/or eviscerated" (proposed amendments to 9 CFR 381.1(b)(43)). It is the frequency and manner of reinspection of further processed poultry products that will be varied under IPI.

Application of Inspection Requirements: Part 302 and Part 381, Subpart B

As discussed earlier, FSIS is proposing to amend these portions of the regulations by adding §§ 302.5 and 381.8 (proposed 9 CFR 302.5 and 381.8), which include provisions for determinating the risk presented by different establishments to accommodate changes in the conditions and methods of inspection coverage appropriate under IPI (i.e., for operations other than livestock slaughter and poultry slaughter and evisceration). The poultry products inspection regulations, in § 381.4 (9 CFR 381.4), also address generally the providing of inspection. FSIS is proposing in this section to state generally the principle concept behind IPI, that conditions and methods of inspection will differ among establishments, but that the Administrator will provide written guidelines to inspection program personnel to ensure uniform, efficient assignment and conduct of all appropriate inspection tasks and activities, and that such guidelines will be available to establishments and the public generally (proposed amendments to 9 CFR 381.4). FSIS believes that the Federal meat inspection regulations also should address generally the providing of inspection. Therefore, those provisions as they are currently in § 381.4 would be added to the meat inspection regulations at § 302.4 (proposed 9 CFR 302.4). (As indicated above, Subpart B of Part 381, as well as Part 303, of the regulations also would be amended by rescinding the provisions previously issued to initiate experimentation with improved processing inspection procedures (proposed removal of 9 CFR 303.2 and 381.3(c)-(e)).)

Inspection; Violations: Part 305 and Part 381, Subpart E

Since, under IPI, the inspection program is to consider the history of compliance with applicable regulatory requirements in assessing establishment performance and determining the frequency and the manner of

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government inspection (proposed 9 CFR 302.5 (b)(1)(i) and (c)(2)(i) and 381.8 (b)(1)(i) and (c)(2)(i)). FSIS is proposing to amend §§ 305.6 and 381.28 of the Federal meat and the poultry products inspection regulations (9 CFR 305.6 and 381.28), respectively, to clarify and express consistently their scope. Under the proposed rule, the obligation to report violations would be stated as extending to "Inspection Program employees and other representatives of the Department," taking into account proposed amendments to the "Inspection Program" definitions discussed above (proposed amendments to 9 CFR 301.2 (f) and (h) and 381.1 (b)(26) and (27)(i)). In addition, the scope of misconduct covered by the regulations would be clarified as including all statutory violations and "noncompliance with the rules and" regulations under the FMIA of which such persons have "knowledge or" information (proposed amendment to 9 CFR 305.6) and noncompliance with rules as well as regulations under the PPIA of which they have knowledge "or information" (proposed amendment to 9 CFR 381.28). Also, to provide for greater flexibility in the management of program personnel and anticipated changes in its field structure, FSIS is proposing to amend §§ 305.4 and 381.27 of the regulations (9 CFR 305.4 and 381.27) by replacing references to "the circuit supervisor" and the IIC's "supervisor," respectively, with "an Inspection Program supervisor" as the personnel with responsibility for informing establishment operators of regulatory requirements.

Finally, FSIS is proposing to amend Part 305 of the Federal meat inspection regulations to reflect the current language of section 6(b)(2) of the FMIA (21 U.S.C. 606(b)(2)), which was amended by the FTA (section 403(a)) to provide that operators of official establishments, as well as any government inspectors there, are required to condemn all meat food products found to be adulterated and destroy such products for human food purposes. The proposed rule would amend § 305.5(a) of the regulations (9 CFR 305.5(a)) by including language on failure to condemn and destroy meat food products found to be adulterated among the situations in which the Administrator is authorized to withdraw inspection (also see proposed amendments to 9 CFR 335.11).

Program Personnel Authorities; Appeals: Part 306 and Part 381, Subpart F

In view of the anticipated changes in the structure of its field organization (as discussed above), FSIS is proposing to amend § 306.1 of the Federal meat inspection regulations (9 CFR 306.1) to provide for the designation of "Inspection Program supervisors for specific establishments" (rather than only circuit supervisors to whom assistants may be assigned) and to amend § 381.30 of the poultry products inspection regulations (9 CFR 381.30) to include a provision for the designation of Inspection Program supervisors by the Administrator. Similarly, to provide adequately for the range of personnel who may be performing inspection program functions in an establishment, § 306.2 of the Federal meat inspection regulations (9 CFR 306.2) would be amended to address access by "Inspection Program employees * * * to any official establishment in which they are authorized to perform Inspection Program functions" rather than one "to which they are assigned." (The poultry products inspection regulations (9 CFR 381.32) already provide for access by "[a]ny duly authorized representative of the Secretary.") Section 306.3 of the Federal meat inspection regulations (proposed amendment to 9 CFR 306.3) also would be amended to address admittance in terms of authorization to perform inspection program functions rather than assignment.

In addition, FSIS is proposing to amend §§ 306.5 and 381.35 of the Federal meat and the poultry products inspection regulations (9 CFR 306.5 and 381.35), respectively, to clarify that the provisions for appealing label reviews when an IIC is assigned to the establishment may not be applicable because, under IPI, processing establishments would no longer have their own assigned IIC. Under IPI inspectors-in-charge would no longer be required to approve certain labels before use under §§ 317.4(e) and 381.132(c) (see proposed revisions to those sections hereinafter).

Inspection Facilities; Conduct and Schedule of Operations: Part 307 and Part 381, Subpart G

In view of anticipated changes in the field structure, FSIS is proposing to amend §§ 307.1 and 307.2 of the Federal meat inspection regulations (9 CFR 307.1 and 307.2) by deleting the reference to inspector assignment (proposed amendment to 9 CFR 307.1) and by providing that inspection program supervisors in addition to circuit supervisors will be responsible for making decisions about the adequacy of office space and other facilities for "Inspection Program" use (proposed amendments to 9 CFR 307.1 and 307.2(d), (h), (j), and (k); see also proposed amendments to 9 CFR 381.36(a)). The conditions and methods of inspection coverage in establishments subject to IPI are expected to be taken into account in determining facility needs under § 307.1 of the Federal meat and § 381.36(a) of the poultry products inspection regulations (9 CFR 307.1 and 381.36(a)).

Sections 307.1 and 381.36(a) of the regulations (9 CFR 307.1 and 381.36(a)) also provide the Administrator with the discretion to relieve small plants "requiring the services of less than one full time inspector" of the need to furnish facilities for program employees where adequate facilities are available at a nearby convenient location. FSIS believes that the regulations should continue to provide for small plant relief at the Administrator's discretion, but that the quoted criterion is not appropriate for a system of inspection in which inspection coverage may not be by an inspector assigned to a particular establishment and the frequency and the manner of government inspection will be a function of various considerations (see proposed 9 CFR 302.5 and 381.8). Therefore, FSIS is proposing to delete this criterion from the provision (proposed amendments to 9 CFR 307.1 and 381.36(a)).

Sections 307.4, 307.5 and 307.6 of the Federal meat inspection regulations and their counterparts in the Federal poultry products inspection regulations (§§ 381.37, 381.38 and 381.39) deal with requests for inspection coverage during plant operations, with the relationship between inspectors' tours of duty and establishments' hours of operation, and with distinguishing routine inspection service provided without costs to establishments from non-routine coverage for which the program is to be reimbursed by the establishment. Establishments are required to schedule in advance their hours of operation and have those schedules approved by the program. This permits the program to allocate its resources as may be required to provide needed coverage, and to assure the establishment that the legally required inspection will be provided so that the establishment's operations may be conducted.

FSIS traditionally has attempted to accommodate all reasonable requests for inspection coverage, although in many instances this has resulted in the necessity to pay (and usually to seek reimbursement from establishments for) overtime services provided by inspection program personnel.

The scheduling of inspectors to accommodate establishments' hours of operations has been a comparatively simple task prior to the discretionary inspection provisions. Generally, the

inspectors assigned to an establishment have worked the same hours as the establishment. If that meant the inspector has to work more than 40 hours a week or on a Federal holiday, the inspector is paid overtime. Under §§ 307.5 and 307.6 (and §§ 381.38 and 381.39) the cost of such overtime is billed to the establishment. It should be noted, however, that large plants that routinely schedule and work two full shifts usually are assigned separate inspectors for the second shift, inspectors who incur no overtime and therefore generate no charges to the establishment for overtime reimbursement. This has resulted in an anomalous situation where smaller establishments and those less able to anticipate their hours of operation frequently have to reimburse FSIS for overtime incurred after 8 hours of operation, even though larger establishments operating even more hours (two full shifts—as much as 16 hours per day) get more inspection service at no additional cost.

Under improved processing inspection, of course, inspectors are not assigned just to certain establishments, and inspectors' tours of duty will no longer by synonymous with the hours of operation of the establishments where they conduct their inplant inspection activities. Therefore, FSIS is proposing to amend §§ 307.4 and 381.37 of the Federal meat and the poultry products inspection regulations (9 CFR 307.4 and 381.37, respectively) so that the schedule of operations requirements now in paragraphs (a), (b), and (c) of §§ 307.4 and 381.37 would be redesignated subparagraphs (a)(1), (a)(2) and (a)(3)—and made applicable only to livestock slaughter and poultry slaughter and evisceration operations (proposed 9 CFR 307.4(a) and 381.37(a), respectively).

Proposed §§ 307.4(b) and 381.37(b)—scheduling of operations for establishments *other* than slaughter/slaughter and evisceration—will roughly parallel proposed §§ 307.4(a) and 381.37(a). Each paragraph (a) and (b) will have a subparagraph (1) concerning the general requirement for inspection coverage during operations, a subparagraph (2) reciting the requirement to maintain regularly scheduled operating periods, and a subparagraph (3) stating that FSIS will provide such inspection coverage without charge for 5 consecutive 8-hour days within the administrative workweek Sunday through Saturday, excluding the lunch period. Each subparagraph (3) also will continue to state that the Department will try (in order to facilitate program management and the scheduling of assignments) to adhere to a basic workweek of 5 consecutive 8-hour days Monday through Friday, and that "the Department may depart from the basic workweek in those cases where maintaining such a schedule would seriously handicap the Department in carrying out its function."

However, proposed §§ 307.4(b) and 381.37(b), being tailored to accommodate IPI procedures, will differ from proposed §§ 307.4(a) and 381.37(a) in a number of ways. Subparagraphs (1) of §§ 307.4(b) and 381.37(b) would provide that "No operations other than (slaughter or slaughter and evisceration) requiring inspection shall be conducted except under such coverage by Inspection Program employees as the Inspection Program deems to be appropriate to assure effective regulation of (meat food products or poultry products) in commerce and protection of the public health and welfare." This is consistent with the IPI concepts reflected in proposed §§ 302.5 and 381.8. The existing requirement, to be left in §§ 307.4(a)(1) and 381.37(a)(1), that "No operations requiring inspection shall be conducted except *under the supervision* of a Program employee" would now apply only to slaughter/slaughter and evisceration establishments where an Inspection Program employee still must be present in the plant during all operations.

Subparagraph (2) of proposed §§ 307.4(b) and 381.37(b) would be much more abbreviated than subparagraph (2) of proposed §§ 307.4(a) and 381.37(a). Under IPI, the Program still must rely on each establishment maintaining a regular schedule of operations in order to provide inspection coverage, but the times for lunch periods and rest breaks within shifts no longer need to be dictated because under improved processing inspection individual Inspection Program employees' workdays normally would no longer be tied to those of specific establishments; their work schedules would be dictated by the Inspection Program instead of by individual establishments' hours of operation.

Subparagraph (3) of proposed §§ 307.4(b) and 381.37(b) would provide for significant change in how the Program determines what inspection service will be provided free of charge and what inspection service will be subject to reimbursement from establishments under §§ 307.5 and 381.38. It will continue to provide that inspection will be provided during scheduled operations at no cost to the establishment for any 5 consecutive 8-hour days during the administrative workweek Sunday through Saturday, as is presently the case. However, it also provides that, alternatively, inspection coverage would be provided without cost during operations scheduled between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday—up to 12 hours a day and 60 hours per week. The Program's goal in providing this alternative is to encourage as many establishments as possible to conduct their operations during reasonably normal working hours. The planning for and scheduling of inspection activities among various establishments, and communications between Inspection Program managers and employees, would be more easily accomplished the more establishments keep their operation within that time frame. Nonetheless, if the management of an establishment believed that operations had to be conducted outside that time frame, FSIS would still provide up to 5 consecutive 8-hour days of taxpayer-paid inspection within the administrative workweek, as is now the case.

Furthermore, it is expected that the program's policy of granting two full shifts of inspection coverage would not apply to non-slaughter/evisceration operations under proposed §§ 307.4(b) and 381.37(b). The Program no longer would routinely grant without charge two full shifts (16 hours per day) of inspection service, 8-hours more than is provided for establishments that operate less than two full shifts. The most *any* such establishment would be able to expect under IPI would be 12 hours per day of inspection service, as discussed above. Because inspectors no longer routinely to be assigned to one establishment exclusive of others, and, therefore, because inspectors' tours of duty are to be determined by the Program using variables in addition to establishments' hours of operation, there no longer is any justification to continue disparate, more favorable treatment for some processing establishments simply because they conduct two full shifts of operations.

As proposed, §§ 307.4 and 381.37 would also be amended by deleting the reference to §§ 381.4(h) and 381.145(h). These referenced sections are currently cited in §§ 307.4(c) and 381.37(c) as containing exceptions to the rule on specified hours of operation (during which inspection service would be provided without charge). The referenced sections permit processing establishments operating under an approved Total Quality Control (TQC) system to conduct, if approved by FSIS,

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operations for up to 12 consecutive hours per shift, subject to a charge for overtime if overtime costs are incurred by the program in monitoring operations after the first 8-hours per day. As discussed hereafter with regard to Parts 318, and 381, subpart G, this special exception for TQC hours of operation would be redundant and inappropriate under IPI, and therefore would be deleted from the regulations.

Under IPI, it will be even more important than it is now for establishments to ensure the program has timely and accurate information on any changes to establishment work schedules. Information on all operations must be provided early enough so that the program can assure adequate coverage. Accommodating such changes may or may not result in additional on-site inspection activities being assigned and inspection program employees having tours of duty modified and/or working overtime. Requests for modifications would have to be made as far in advance as possible if FSIS is to make the most effective use of its available resources and if establishments are to minimize overtime situations. The regulations already provide: that official establishments must submit work schedules that specify daily clock hours of operation for approval to area supervisors, who take into account the efficient and effective use of inspection personnel in considering whether such schedules will be approved; that official establishments must maintain consistent work schedules; and that frequent requests for change in such schedules are not to be approved (9 CFR 307.4(d)(1) and (2) and 381.37(d)(1) and (2); proposed §§ 307.4(c)(1) and (2) and 381.37(c)(1) and (2)).

FSIS is proposing that any changes in an establishment's workweek (in addition to work schedule changes involving additions or eliminations of shifts) be considered significant changes in work schedules for which requests must be submitted at least 2 weeks in advance. (The poultry products inspection regulations already so provide (9 CFR 381.37(d)(2)).) The proviso to this subparagraph, regarding approval of minor deviations from daily operating schedules, would be amended to permit authorization by designated Inspection Program supervisors as well as IIC's (proposed amendments to 9 CFR 307.4(c)(2) and 381.37(c)(2)), because there no longer will be IIC's at processing establishments. Note that "deviations" include decreases as well as increases in hours of operation. Program approval also would be required for extensions of an establishment's operations within the same workday or at the start of the next workday, as is now the case, pursuant to proposed §§ 307.4(c)(3) and/or 381.37(c)(3) of the regulations (9 CFR 307.4(c)(3) and 381.37(c)(3)). Requests "to operate outside an approved work schedule," would be made to the "Designated Inspection Program supervisor," and would replace requests for inspection service for "overtime work" or "overtime service."

As discussed, although inspection coverage under IPI must be provided during all operations the timing and frequency of that inspection is governed by FSIS—not by the establishment. "Inspection coverage" under IPI would include any and all inspection activity at an establishment that the Program deems necessary. Implicitly, even though an inspector may not be present during all operations, the Program has to *be able to* have one or more inspectors present to conduct all inplant inspection tasks that may be appropriate during any operations, and therefore must not only have approved the establishment's schedule of operations, but also must have reasonable notice of *any* variations from that schedule.

Proposed §§ 307.4(c)(1) and 381.37(c)(1) will retain the condition found in current §§ 307.4(d)(1) and 381.37(d)(1) that "in consideration of whether the approval of an establishment work schedule shall be given, the area supervisor shall take into account the efficient and effective use of inspection personnel." Although this provision has seldom been invoked, the Department must retain the discretion to deny inspection and thereby preclude operations when inspection resources are not available.

Concomitant amendments to §§ 307.5(a) and 381.38(a) of the regulations (9 CFR 307.5(a) and 381.38(a)), which recite those instances when reimbursement for inspection services is required, would be amended to include costs of inspection service furnished outside the times and days specified in § 305.4(b)(3) or 381.37(b)(3), that is, not within the period between 6:00 a.m. and 6:00 p.m., Monday through Friday. FSIS believes that as a general principle, overtime costs it incurs in accommodating an establishment's special needs—by providing inspection coverage during unscheduled operations as well as in other situations where overtime must be paid to inspectors (e.g., on Federal holidays)—should be recovered from that establishment. Application of this principle to overtime costs incurred by the program under IPI requires an approach somewhat different from the current inspection system. Because of the discretionary authority provided by the 1986 amendment to the FMIA, under IPI inspection program employees' tours of duty no longer would be directly linked to specific establishment's scheduled hours of operations. The tour of duty of an individual inspection program employee instead will reflect the program's scheduling of various tasks to be conducted at various establishments over a period of time. Under IPI, the program alone determines the frequency and intensity of inspection coverage at each establishment. Consequently, the existing overtime billing policies, which are premised on inspectors being present daily in specific establishments during operations (overtime as well as scheduled) would no longer be applicable. The fact that an establishment operates more than 8 hours a day or 40 hours a week would not necessarily mean that inspection program employees charged with covering the plant during such overtime operations will be on overtime pay, nor does the fact that the program must pay overtime to assure adequate coverage in various establishments necessarily lead to the billing of overtime to such establishments.

Therefore §§ 307.5(a) and 381.38(a) would be amended by adding two clauses to provide for two new situations in which overtime costs would be billed to an establishment.

First, these regulations would be amended to expressly provide that inspection program employee overtime will be billed to establishments when such overtime is incurred and is attributable to the program accommodating an establishment's request for inspection coverage outside (1) the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, or (2) the 5 consecutive 8-hour days otherwise requested to be the basic workweek during which inspection coverage is provided without charge. It is important to note that overtime will be billed, as it is now, only when it is actually incurred by the Program. Under IPI, the program will have wider discretion as to when—or if—an inspection program employee must be at the establishment during such operations. However, the individual inspector conducting inspection activities on an overtime basis need not have been in *that* establishment for the preceding 8 hours (see, *Roy Bryant Cattle Co. v. U.S.*, 463 F.2d 418 (5th Cir., 1972)). The criterion for billing overtime would be that FSIS paid overtime to accommodate

establishment operations conducted outside the basic workweek, as that workweek is defined under proposed §§ 307.4(b)(3) and 381.37(b)(3) and incorporated into an approved schedule of operations.

Second, overtime costs would be billed to an establishment when they are incurred during an establishment's scheduled hours of operation when an inspection program employee attempts to conduct inspection-related tasks at the establishment but finds no operations are in fact being conducted. For deviations from approved schedules that involve cancelling of scheduled operations, reasonable advance notice will be required to preclude the charging of overtime to recover costs the Agency incurred in attempting to accommodate the declared schedule.

These provisions and related provisions in §§ 307.6(b) and 381.39(b) of the regulations (9 CFR 307.6(b) and 381.39(b)) also would be amended in accord with changes in the field structure, and these sections and §§ 307.5(a), 307.6(a), 381.38(a), and 381.39(a) of the regulations (9 CFR 307.5(a), 307.6(a), 381.38(a), and 381.39(a)) would be amended to make their terminology consistent with IPI.

Sanitation: Part 308 and Part 381, Subpart H

Existing regulations require that official establishments be maintained in a sanitary condition, and place primary responsibility for that on the official establishments (9 CFR §§ 308.3 and 381.57 and 381.58). However, many establishments have come to rely on inspectors to detect and ensure correction of any insanitary conditions and practices. Under IPI official establishments would no longer be able to rely on program employees continuously being in the plant, and must on their own volition identify and correct potential sanitation problems to prevent the production of adulterated product. Conversely, inspection program personnel will no longer be able to rely on preventative measured. Insanitary conditions and practices may be found only after adulterated product has been produced resulting in the need to use remedial enforcement tools that generally are more onerous to affected establishments.

As is now the case, inspection program employees conducting inspections under the proposed regulations will continue to have broad discretionary authority with regard to the identification of insanitary conditions and practices under these provisions, and in determining whether and to what extent corrective action must be taken by the establishment. Such action may include prohibiting the use of equipment, utensils, rooms or compartments that the inspecting employee finds to be unclean (9 CFR 307.15 and 381.99), or the retention of product suspected of having been adulterated—or condemnation of products determined to have been adulterated—thereby (9 CFR 318.2 and 381.145; also see, §§ 312.6 and 381.99). FSIS recognizes the continuing need for a close, nonadversarial working relationship with all inspected establishments, and will provide assistance as well as enforcement in matters relating to sanitation. To foster increased efficiency and effectiveness, and to ensure a comprehensive, systematic and to the degree possible uniform approach to such inspections, FSIS management will provide through its directive system additional direction and guidance to its personnel regarding specific inspection tasks and procedures that may be applicable. Official establishments are and will continue to be provided copies, and thus actual notice, of any and all such FSIS directives in matters affecting their operations. FSIS will work directly with individual establishments as may be required to develop or strengthen establishment sanitation plans and procedures.

Therefore, FSIS believes that the sanitation regulations need to be amended to accommodate administratively the increased likelihood that inspection program employees may be present relatively infrequently in some establishments. The proposed changes include additional procedures for use in enforcing sanitation requirements and thereby preventing the distribution of product which "* * * has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or * * * may have been rendered injurious to health" (21 U.S.C. 453(g)(4) and 601(m)(4)) or is otherwise adulterated. Under the proposed rule, § 308.15 of the Federal meat inspection regulations (9 CFR 308.15) would be amended and § 381.58(a) would be added to the poultry products inspection regulations (proposed 9 CFR 381.58(a)) to direct program personnel who tag any equipment, utensil, room, or compartment as "U.S. Rejected" pursuant to § 308.15 or § 381.99 of the regulations (9 CFR 308.15 or 381.99) also to place a "U.S. Retained" tag on products at the establishment which were prepared using equipment or utensils or in rooms or compartments which are tagged "U.S. Rejected" if such products are suspected of being adulterated to assure that such products are held and their disposition is in accordance with the regulations.

FSIS also is proposing to amend §§ 308.3 (c) and (d), 308.5(e), and 308.8 (d) and (f), 308.15, 381.50(f), and 381.53(a)(5) of the regulations (9 CFR 308.3 (c) and (d), 308.5(e), 308.8 (d) and (f), 308.15, 381.50(f), and 381.53(a)(5)) to indicate that circuit supervisors or "other designated Inspection Program supervisor[s]" and IIC's "or other Inspection Program employee[s]" may have the responsibilities referred to therein and to include conforming inspection program terminology.

Official Marks and Devices: Part 312 and Part 381, Subpart M

FSIS believes that with full implementation of an IPI system, the importance of specifically providing for use of appropriate official marks in inspecting meat food products will increase (see, e.g., discussion of proposed 9 CFR 308.15(b), 318.6(a)(2)(ii), 381.58a, and 381.146(b)(3)). The provisions of § 312.6(a) (1), (2), (4), and (5) of the Federal meat inspection regulations (9 CFR 312.6(a) (1), (2), (4), and (5)) were designed for use in connection with post-mortem inspection (see 9 CFR Part 310). Under the proposed rule, paragraph (a) would be restricted to these marks as used in post-mortem inspection, and paragraph (c) would address the "U.S. Rejected" mark, which, as provided in § 312.6(a)(3) of the regulations (9 CFR 312.6(a)(3)), is used to identify insanitary buildings, rooms, and equipment (as prescribed in 9 CFR Part 308) and is appropriate for all inspection situations (proposed amendment to and redesignation of 9 CFR 312.6(a)(3)).

In paragraph (b), the proposed rule would establish two official marks for use by Inspection Program employees in connection with meat food product inspection (9 CFR 312.6(b) as proposed to be amended). These would include the "U.S. Retained" mark, applied by a tag (Form MP–35), for identifying meat food product that is held for further evaluation to determine its disposition (proposed paragraph (b)(1) of 9 CFR 312.6) and a "U.S. Inspected and Condemned" mark, to be applied by means of a tag (with the number to be assigned before issuance of a final rule) rather than a brand, for identifying meat food product that has been found to be adulterated (i.e., as to which an inspection program employee has made a final decision) (proposed paragraph (b)(2) of 9 CFR 312.6). (Conforming changes also would be made in the title

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and in paragrpah (b), which would be redesignated as paragraph (d) (proposed amendments to 9 CFR 312.6).)

Sections 381.99 and 381.101 of the poultry products inspection regulations (9 CFR 381.99 and 381.101) already authorize use, as official devices, of such tags as may be approved by the Administrator for the identification and control of poultry products which appear to be not in compliance or are held for further examination, and prescribe "U.S. Condemned" as an official mark, respectively. To provide consistency with the meat inspection regulations, FSIS is proposing to add a new § 381.102 to the regulations (9 CFR 381.102) to provide that a "U.S. Inspected and Condemned" tag (with the number to be assigned before issuance of a final rule) as well as other devices used for applying such mark are official devices that may be used in poultry processing operations. (Conforming changes in inspection program terminology would be made in § 381.99 of the regulations (proposed amendments to 9 CFR 381.99)).

Also, in view of changes being proposed in official sealing under Part 325 of the Federal meat inspection regulations (9 CFR Part 325; see proposed amendments, discussed below), FSIS is proposing to amend § 312.5 of the regulations (proposed amendments to 9 CFR 312.5). As amended, this paragraph would provide an official mark for use in sealing as prescribed by, and any tag as required in, Part 325 of the regulations (9 CFR Part 325), now or in the future (rather than such sealing of means of conveyance and a "Warning Tag").

Finally, in a recent rulemaking (52 FR 41957, November 2, 1987), FSIS added §§ 312.10 and 381.112 to the Federal meat and the poultry products inspection regulations (9 CFR 312.10 and 381.112), respectively, to incorporate an official mark, which is applied with an official device supplied to appropriate Agency personnel by the Department, for use in sealing containers of samples submitted under requirements in the regulations and section 202 of the FMIA (21 U.S.C. 642) or section 11(b) of the PPIA (21 U.S.C. 467b). FSIS believes that these regulations should be clarified in view of the anticipated importance of sampling by inspection program personnel at official establishments under IPI and to utilize regulatory terminology more consistently (see, e.g., §§ 318.9 and 381.146 as proposed to be amended and §§ 320.4 and 381.178). As amended, §§ 312.10 and 381.112 of the regulations (9 CFR 312.10 and 381.112) would specify that the "Sample Seal" mark is to be used in sealing containers of samples "taken by Inspection Program employees, including samples taken by an authorized representative of the Secretary pursuant to section 202" of the FMIA or 11(b) of the PPIA (21 U.S.C. 467b and 642), and that the Department will supply to such personnel the official device for applying this mark.

Disposition of Condemned Products: Part 314

FSIS believes that, in view of amendments to the condemnation-related provisions of section 6 of the FMIA (21 U.S.C. 606; see FTA, section 403(a)) and institution of improved processing inspection procedures in establishments preparing meat food products, the Federal meat inspection regulations should be amended to address the disposition of articles condemned as a result of government inspection at establishments slaughtering livestock (see 9 CFR Parts 309–311) separately from condemnation disposition upon reinspection at establishments preparing meat food products. Therefore, under the proposed rule, the application of §§ 314.1 and 314.3 of the Federal meat inspection regulations (9 CFR 314.1 and 314.3), including their requirements for action by or in the presence of inspection program personnel, would be restricted to the disposition of carcasses and carcass parts condemned "upon ante-mortem or post-mortem inspection or reinspection of slaughtered livestock" at official establishments "slaughtering livestock," and the disposition of products condemned upon government reinspection at official establishments preparing meat food products would be addressed in § 314.13 of the Federal meat inspection regulations (proposed 9 CFR 314.13).

The proposed section (proposed 9 CFR 314.13) includes a set of methods for use by official establishments, under the supervision of inspection program personnel, that have been found effective in preventing use of condemned products as, or as vehicles for adulterating, human food and that are consistent with the requirements for condemned poultry products (9 CFR 381.95). These methods are steam treatment or thorough cooking, incineration or complete destruction by burning, and denaturing as currently prescribed by § 314.3(a) of the regualtions (9 CFR 314.3(a)) or with another material and/or method approved by the Administrator in specific cases (proposed 9 CFR 314.13(a)(1)–(3)).

The proposed amendments to §§ 314.13 and 381.95 also provide that it is the responsibility of the operator of an official establishment to destroy for human food purposes, using one of the approved methods listed, product which it has determined to be adulterated (proposed 9 CFR 314.13 and 381.95). This is in keeping with the essential concept underlying IPI, that the official establishment has the primary responsibility for preventing the distribution of adulterated product to consumers.

Marking Products and Product Containers: Part 316

Part 316 of the Federal meat inspection regulations (9 CFR Part 316) provides exceptions to the general requirements that products and their containers must be marked with the inspection legend before being removed from official establishments. (See also Part 317 of the Federal meat inspection regulations (9 CFR Part 317) regarding the labeling of livestock products and Subpart N of the poultry products inspection regulations (9 CFR Part 381, Subpart N), which requires, among other things, that, except as the Administrator may authorize in specific cases with respect to shipment between official establishments, each shipping and immediate container of any inspected and passed poultry product must bear an approved label at the time it leaves an official establishment (9 CFR 381.115).) Having reevaluated the conditions under which unmarked livestock products may now be moved, and given current industry practices, FSIS believes that these exceptions must be modified to provide for efficient execution of statutory requirements to effectively prevent the distribution of adulterated or misbranded products to consumers (21 U.S.C. 602–607 and 621) once IPI is fully implemented.

The shipping and receiving of unmarked product by establishments is viewed by the inspection program generally as a practice to be carefully controlled to prevent the diversion of unmarked product into commerce in violation of the law. Section 316.8(a) currently permits bulk product that is inspected and passed but unmarked to be shipped from one official establishment to another for further processing, loose in railroad cars, trucks, or other means of conveyance so long as the regulatory control of the product is maintained by placement of an official seal upon the conveyance by an FSIS employee. However, the existing program controls imposed on an unmarked product are premised on the ready availability of inspection program personnel at the official establishment

to oversee the activity, including application of official USDA seals to the container or conveyance prior to the product being transported from the establishment under Part 325, and to that extent would be incompatible with IPI. Under IPI, some establishments might have, among other things, excellent controls over all aspects of their operation and therefore may have program personnel on their premises only infrequently, but still might require the frequent shipping or receiving of unmarked product in the ordinary course of their processing activity.

FSIS is, therefore, proposing to amend § 316.8(a) of the regulations to permit the transport between establishments of unmarked inspected and passed products for further processing without a USDA seal, but with further restrictions. Bulk shipments of unmarked products in railroad cars or trucks would no longer be permitted. This change is designed to preclude loose, bulk shipments inside conveyances that are less easily controlled by the establishments involved, and are likely to be exposed to more handling and other sources of potential contamination. It would permit receiving establishments and FSIS inspection program employees to more easily ascertain the integrity of product entering the establishment. This also comports with the existing provisions of existing paragraph 316.8(b) which prohibits any other movement outside and establishment of unmarked, inspected and passed product unless it is in a closed container. As revised, § 316.8(a) would refer to § 316.8(b) which, as revised, would set forth the only exception to the prohibition of the movement outside or entry into an establishment of unmarked, inspected and passed product.

Section 316.8(b) currently provides that unmarked products that have been inspected and passed but do not bear the official inspection legend may be removed from establishments in closed containers bearing the official inspection legend and all other information required by Parts 316 and 317, but removal of such product from the container must be done under the supervision of a program employee and government reinspection is required before repackaging or remarking. In lieu of the latter provision, § 316.8(b) would adopt the seal requirement currently in § 316.8(a). Thus, all such containerized product would have to be in compliance with Part 325 of the regulations (9 CFR Parts 316, 317, and 325). As discussed later in connection with proposed amendments to § 325.5 of the regulations, all such closed containers would be sealed with unofficial seals, applied by establishments and including their establishment numbers, and would as at present continue to be accompanied by shippers certificates when transported from one official establishment to another for further processing (9 CFR 325.5 as proposed to be amended; see also 9 CFR 325.7 and proposed amendments thereto).

Further proposed amendments to § 316.8(b) of the regulations (9 CFR 316.8(b)) are intended to clarify its requirements and assure that they are in accord with the availability of an inspector under IPI. Thus, the transportation requirements of Part 325 of the regulations (9 CFR Part 325) would be cross-referenced, and the proviso regarding removal of product from containers and its further transportation in commerce under the supervision of an inspector would be modified to eliminate that supervision and to provide that such product is subject to reinspection and that its packing in containers must be as required by Parts 316 and 317 of the regulations (9 CFR Parts 316 and 317). (See also § 325.17 of the regulations (9 CFR 325.17) regarding the unloading and storage in transit at approved warehouses of product transported under § 325.5 of the regulations (9 CFR 325.5).)

FSIS also is proposing to amend § 316.10(b) of the regulations (9 CFR 316.10(b)) to require the use of unofficial seals if the official inspection legend and list of ingredients are only shown twice throughout the contents (rather than on each kilogram) of sausage and other products in casings or link form, of the smaller variety, when shipped in properly labeled closed containers exceeding 5 kilograms capacity to another official establishment for further processing. The current requirement that the IIC at the originating establishment identify such a shipment for further processing to the IIC at the destination establishment (by means of Form MP 408–1) would be eliminated as unnecessary if establishment seals are used and as no longer suitable in view of changes in the field structure anticipated under IPI.

In addition, FSIS is proposing to amend § 316.9(b) of the regulations (9 CFR 316.9(b)), which currently permits the application of additional marks of inspection on primal parts of carcass at other establishments after they leave the establishment where they were first inspected, passed and marked. The proposed revision would delete that provision, restricting the branding of primal parts with the official inspection legend to slaughter facilities, where branding is a routine part of the inspection procedures and is conducted by or under the supervision of an inspection program employee. Under IPI, inspection program personnel may not be available to control and supervise the use of official branding devices in post-slaughter preoperation operations. Such control and supervision is required. Under the current system, brand management and control of branded product has been a source of continuing concern to the Department (see, e.g., 50 FR 21422), and there is no feasible way to permit the application of additional marks of inspection at succeeding establishments conducting post-slaughter preparation operations without exacerbating that concern. Processing establishments have available a variety of alternatives to official branding devices by which to affix the official inspection legend, most notably pre-printed packaging.

Similarly, FSIS is proposing to amend § 316.10(a) of the regulations (9 CFR 316.10(a)) to eliminate the requirement that the official marks must be "branded" on sausage and similar product prepared in casings. As noted, a variety of devices are available to producers of such product for the application of the official mark of inspection and other labeling, and it is both feasible and reasonable for FSIS to avoid the complications involved in the use and control of branding devices in these establishments. Although FSIS would eliminate the branding of meat food products under Subchapter A of the regulations (9 CFR Chapter III, Subchapter A), FSIS recognizes that there may be certain technical difficulties associated with application of official marks to products prepared in natural casings, and manufacturers of these, and perhaps other, meat food products may have further information on potential disadvantages or problems associated with at least the alternatives currently available under the regulations. Therefore, in this rulemaking, FSIS also is considering the option of amending § 316.10 of the regulations (9 CFR 316.10) to include a provision pursuant to which meat food products could continue to be branded with required official marks in an establishment that has an approved partial quality control program (see 9 CFR 318.4(d) and (e)) under which the establishment operator or his or her designee exercises responsibility over the proper use and custody of branding devices. Cases in which the Administrator determines that an

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establishment's program assures adequate control would be exceptions to the requirements for program employee locking or sealing in § 316.4(b) of the regulations (9 CFR 316.4(b)), which, along with § 307.2(k) of the regulations (9 CFR 307.2(k)), would be amended to so indicate. Interested members of the public are encouraged to submit information and views on the feasibility of alternatives to the current requirements and the option of controlling the branding of meat food products under an approved partial quality control program.

Finally, FSIS is proposing to amend § 316.13(g) of the regulations (9 CFR 316.13(g)) to reflect that certain stencils and labels could be used on shipping and immediate containers of properly labeled and marked products based on a presumptive agency approval (see proposed § 317.4(e)), and the reference to § 325.7(b) requirements in § 316.13(e) of the regulations (9 CFR 316.13(e)) would be changed because, as discussed below, FSIS is proposing to include the requirements for product passed for cooking and beef passed for refrigeration in paragraph (a) and modified requirements for pork which has been refrigerated to destroy trichinae in paragraph (b) of § 325.7 of the regulations (9 CFR 325.7(a) and (b) as proposed to be amended). It also should be noted that an FSIS proposal to amend the regulations by eliminating the official sealing requirement for tank cars and trucks used in transporting inspected and passed product to another official establishment or a location operating under voluntary inspection service (which appears to involve only rendered animal fat) was the subject of separate rulemaking proceedings and published as a final rule on July 29, 1988 (53 FR 28632).

Labeling: Part 317 and Part 381, Subpart N

Under the Federal meat and the poultry products inspection regulations (9 CFR 317.4(a) and 381.132(a), respectively), no labeling may be used on any product until it has been approved. Such approval must be obtained by submitting final labeling to the Standards and Labeling Division (SLD), Technical Services, except in those cases in which labeling and labeling modifications may be approved by the establishment's IIC (9 CFR 317.4(e)(3) and 381.132(c)(3)) and where generic approval has been granted for certain modifications of previously approved labeling (9 CFR 317.5(b) and 381.134(b)). Under IPI, IICs would no longer be assigned to processing establishments. However, it is not feasible for the inspection program employees that would conduct inspection at the establishments under IPI to also approve label applications. The establishment's need for review and approval of label applications cannot be anticipated or controlled by the program, and establishments will not be able to predict when program employees will be in the plant. Furthermore, inspection program employees under IPI would rotate among a number of establishments and would be unable to develop the same expertise in product-specific labeling matters as an IIC who routinely reviews label applications. Consequently, FSIS is proposing to permit establishments to use without express prior approval those labels that now may be approved by IICs under §§ 317.4(e)(3) and 381.132(c)(3), based on the theory that such labels could be presumed to be approved under certain conditions. Similar conditions would apply to presumptively-approved labels as now apply to IIC-approved labels; i.e., they may not be false or misleading, and approval must be requested by submission of a formal label application to SLD for filing and periodic audit. However, the establishment would have to designate a specific establishment official to conduct this activity, to better ensure that there is a primary in-plant authority who is familiar with applicable labeling regulations and guidelines and is responsible for assuring such labels are in accord therewith. Also, records of all labels used in the establishment, including related correspondence and documentation, must be maintained at the establishment and made available to inspection program employees upon request. If an audit showed that a labels was in violation of the regulations, the establishment would be notified that the presumption of approval was no longer effective and that until a satisfactory resolution of that labeling issue, the establishment would be ineligible for additional presumptive label approvals, resulting in the necessity to submit future labels to SLD for prior approval in accord with §§ 317.4(a) and 381.132(a).

FSIS also is proposing to amend §§ 317.4(a), (c), and (e), 317.5(a) and (b), 381.132(a) and (c), and 381.134(a) and (b) of the regulations (9 CFR 317.4(a), (c) and (e), 317.5(a) and (b), 381.132(a) and (c), and 381.134(a) and (b)) to provide for the range of inspection program personnel who may be authorized to make other labeling determinations.

Similarly, §§ 317.14 and 381.141 of the Federal meat and the poultry products inspection regulations (9 CFR 317.14 and 381.141), respectively, would be amended to provide for action on obsolete labels by designated inspection program employees rather than "the inspector at" an official establishment, and §§ 317.13 and 381.138(b) of those regulations (9 CFR 317.13 and 381.138(b)) would be amended to provide for authorization of shipments of materials bearing official marks by designated inspection program employees other than IIC's at originating establishments not conducting livestock slaughter or poultry slaughter or evisceration operations (with notifications of other inspection program personnel to be in accordance with instructions issued by the inspection program). Section 381.139(b) of the poultry products inspection regulations (9 CFR 381.139(b)) also would be amended to refer to authorization by an "Inspection Program employee" (rather than an "inspector") to alter, detach, deface, or destroy official identifications.

In addition, FSIS is proposing to amend §§ 317.4(a) and 381.132(a) of the regulations (9 CFR 317.4(a) and 381.132(a)) to specify that a copy of the approval of any labeling, including any labeling upon which generic approval is based, must be maintained by the establishment in which it is to be used and made available for review by inspection program employees. FSIS believes that the only effective means by which an establishment can prevent violations of these sections' prohibition against the use of unapproved labeling is by having documentation that any labeling to be used in the establishment has been approved as prescribed in the regulations. Moreover, by assuring compliance with the labeling regulatory system, manufacturers are executing their responsibility to comply with the statutory requirement that products must bear the information required pursuant to the misbranding provisions of the FMIA or PPIA (21 U.S.C. 453(h) and 601(n)) at the time they leave an establishment (21 U.S.C. 457(a) and 607(b)). (See also sections 7(d) and (e) and 10(b)(1) of the FMIA (21 U.S.C. 607(d) and (e) and 610(b)(1)) and sections 8(c) and (d) and 9(a)(2)(A) of the PPIA (21 U.S.C. 457(c) and (d) and 458(a)(2)(A)).)

Under the proposed rule, an establishment's copies of labeling approvals would be available for review by inspection program employees (proposed amendment to 9 CFR 317.4(a) and 381.132(a)). Since these copies, as well as documentation in the inspection program's own files, could evidence approval of labeling and since program functions may be performed by personnel other than an in-plant inspector assigned to a particular establishment, FSIS is proposing to amend § 381.137 of the poultry products inspection regulations (9 CFR 381.137) by deleting language restricting the basis for authorizing use of labeling or devices to evidence the inspector has "on file" and replacing the reference to an "inspector" with "Inspection Program employee."

Finally, FSIS is proposing to amend § 317.6 of the Federal meat inspection regulations (9 CFR 317.6) by deleting provisions for use of existing stocks of labels approved prior to the effective date of that section for a 1-year period (with the possible extension of that period for good cause shown). Since the effective date was December 1, 1970 (35 FR 15551–15554, October 3, 1970), these provisions are now obsolete.

Entry of Articles; Product Preparation and Processing: Part 318 and Part 381, Subparts O and X

These portions of the regulations include, among other things, requirements for the processing and other handling of products of livestock previously slaughtered and poultry previously slaughtered and eviscerated in official establishments. FSIS is proposing amendments that would provide for tailoring the conditions and methods of inspection coverage to the regulatory situation presented by a particular establishment processing products from articles that have passed post-mortem inspection. FSIS is also proposing to clarify the regulations and include additional guidance on what is required for compliance with requirements of the FMIA and/or the PPIA and the rules and regulations thereunder. (The proposed amendments utilize the "Inspection Program" terminology discussed earlier.)

Under the proposed rule, §§ 318.1(a) and 318.2(a) of the Federal meat inspection regulations (9 CFR 318.1(a) and 318.2(a)) and § 381.145(b) of the poultry products inspection regulations (9 CFR 381.145(b)) would continue to require establishment operators to identify livestock and poultry products at the time of their receipt and subject such products to government reinspection as deemed necessary. FSIS is proposing, however, to amend the provisions of § 318.1(a) of the Federal meat inspection regulations (9 CFR 318.1(a)) in view of changes anticipated under IPI. As amended, this paragraph would clarify that products previously inspected and passed "in accordance with the regulations" must be so identified and are subject to such reinspection "in accordance with § 318.2 * * *" (and the specification that identification must be "in a manner acceptable to the Inspection Program" would be included in paragraph (a) of that section (proposed amendment to 9 CFR 318.2(a)) rather than in this paragraph). However, products received during program employees' absence would no longer have to be held for reinspection under that section. FSIS also is proposing to clarify § 381.145(b) of the poultry products inspection regulations (9 CFR 381.145(b)) by using "reinspection" terminology and specifying that identification of poultry and livestock products must be "in a manner acceptable to the Inspection Program" and to remove the limitation on program personnel who may deem reinspection to be necessary (proposed deletion of "inspector in charge").

In addition, because the daily presence of an inspection program employee can not be assumed under IPI, § 318.1(a) of the Federal meat inspection regulations (9 CFR 318.1(a)) would no longer single out for government reinspection product originally prepared at an official establishment when returned thereto. Instead, this paragraph would make clear that the establishment operators—not FSIS—are responsible for evaluating the condition of such product to assure that entry and any further use thereof accords with the regulations (see 9 CFR 318.4(b) and 318.6(a)), and for assuring that this evaluation takes place before the product is returned to any part of the establishment other than an approved receiving area. This would not apply to alleged off-condition product regulated under § 325.10(a) and (b). All returned product would continue to be "subject to reinspection by a program employee at the official establishment in such manner and at such times (and as often) as may be deemed necessary to assure compliance * * *" (9 CFR 318.2), based on the particular regulatory situation presented. Additionally, § 318.3 of the regulations (9 CFR 318.3) would be amended to authorize inspection program supervisors other than circuit supervisors to approve places at which articles subject to reinspection may be received. (See also proposed substitution of "Inspection Program employees" for "The inspector" in § 318.2(d) of the regulations (9 CFR 318.2(d)).)

Under §§ 318.2(c) and 381.145(b) of Federal meat and the poultry products inspection regulations (9 CFR 318.2(c) and 381.145(b)), respectively, reinspection may be accomplished through use of statistically sound sampling plans that assure a high level of confidence. Proposed amendments would provide for designation of the type of plan by an "Inspection Program supervisor" (rather than the circuit supervisor) (proposed amendment to 9 CFR 318.2(c)) or the IIC (proposed amendment to 9 CFR 381.145(b)) and make further information concerning sampling plans available through such supervisors (rather than only circuit supervisors).

Part 318 of the Federal meat and Subpart Q of the poultry products inspection regulations (9 CFR Part 318 and Part 381, Subpart Q) also include the provisions under which any owner or operator of an official establishment preparing meat food and/or poultry product(s) may request that the Administrator evaluate a TQC system or Partial Quality Control (PQC) program to determine whether or not it is adequate to result in product(s) so controlled being in compliance with the FMIA or PPIA and the regulations thereunder (9 CFR 318.4(c)–(e) and 381.145(c)–(e)). This process would not be changed by the proposed rule.

The TQC system, when properly understood and executed by the plant, can be an asset in assuring that inplant activities and processes are properly and correctly conducted and controlled. FSIS continues to recommend that the regulated industry continue on its course of learning and applying quality control principles, and to the extent desired by the particular plant or company, will continue to receive TQC and PQC applications for evaluation. The continued use of quality control methods by plants will also help to assure that inspection program personnel are less likely to find nonconformances under IPI, and especially those that could cause more severe regulatory action to occur. Moreover, the reverse is true, that is, the fewer nonconformances found during an inspection visit the greater the likelihood the frequency interval for visits will become lengthened.

However, §§ 318.4(c)(4) and 381.145(c)(4) of the regulations (9 CFR 318.4(c)(4) and 381.145(c)(4)) would be amended to provide that determinations about the adequacy of procedures for preparing a new product for test marketing in an establishment operating under an approved TQC system are to be made by "a designated Inspection Program employee" rather than the IIC, since an IIC may not be designated for such an establishment.

In addition, FSIS is proposing to delete paragraph (h) of §§ 318.4 and 381.145 of the regulations (9 CFR 318.4(h) and 381.145(h)), under which an official establishment with an approved TQC system may request that the Regional

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Director approve an operating schedule of up to 12 consecutive hours per shift as an exception to § 307.4(c) or 381.37(c) of the regulations (9 CFR 307.4(c) and 381.37(c)), under which schedules normally are limited to 8-hours per shift. As proposed, §§ 307.4 and 381.37 would provide that any processing establishment could have an operating schedule of up to 12 consecutive hours per day, 6:00 a.m. to 6:00 p.m., Monday through Friday, regardless of whether they were operating under an approved TQC system. Furthermore, FSIS does not wish to encourage the conduct of operations outside those times; the scheduling of inspection assignments under IPI would be made more difficult the more operations are scheduled outside those normal business hours. Therefore, all processing establishments, even establishments operating under approved TQC systems, would be subject to the 8-hour per day limitation on government-paid inspection service unless all operations are to be conducted within the hours of 6:00 a.m. to 6:00 p.m., Monday through Friday. All operations outside those times would require in-plant inspection coverage as may be deemed necessary by the program, and if the inspection activities require the program to pay its employees overtime, the cost would be billed to the establishment, as set forth in §§ 307.5 and 381.38.

Other provisions of Part 318 of the Federal meat and Subparts O and X of the poultry products inspection regulations (9 CFR Part 318 and Part 381, Subparts O and X) address the obligations of establishments and requirements for product processing. As indicated in § § 318.4(b) and 318.6(a) of the Federal meat inspection regulations (9 CFR 318.4(b) and 318.6(a)), certain measures must be taken in order to carry out an establishment operator's responsibility to comply with the FMIA and the regulations thereunder (see, e.g., 21 U.S.C. 610 and 621). Those measures must be subject to Departmental review and inspection program personnel must be furnished with accurate, up-to-date information on product preparation procedures to carry out the Department's duties in implementing the law. FSIS is proposing to clarify these regulations by specifying that the necessary measures include those which assure the acceptability of all articles used in preparing products and Departmental review includes records documenting such measures (proposed amendments to 9 CFR 318.4(b)) and by indicating that information must be furnishing to "Inspection Program employees" when changes in product preparation "may affect" (rather than is "essential for") inspectional control of the product (proposed 9 CFR 318.6(a)(2)(i)).

Operators of establishments processing poultry products have comparable obligations (see, e.g., 21 U.S.C. 458(a), 459, and 463(b)), as does the Department in carrying out its duties in implementing the law. Therefore, FSIS also is proposing to amend the poultry products inspection regulations to include additional guidance on compliance requirements by specifying, in proposed paragraph (b) of § 381.146 (9 CFR 381.146), that such appropriate measures, subject to Department review, are needed and that such accurate information must be furnished on procedures involved in further processing of poultry product (including product composition) and changes therein that may affect inspectional control.

In performing their functions at official establishments, inspection program personnel may take samples of articles pursuant to §§ 318.9 and 381.146 of the Federal meat and the poultry products inspection regulations (9 CFR 318.9 and 381.146), respectively. FSIS expects that such sampling will be of increased importance under IPI. Therefore, the proposed rule would clarify these provisions by specifying that sampling deemed necessary for the efficient conduct of inspection under the FMIA includes sampling "to determine compliance with the regulatory requirements" (proposed amendment to 9 CFR 318.9) and that samples may be taken by inspection program employees as "otherwise deemed necessary for the efficient conduct of inspection" under the PPIA (proposed amendments to 9 CFR 381.146).

In additional, FSIS believes that the Federal meat and the poultry products inspection regulations should be amended to include specific enforcement procedures for use by inspection program employees who determine that establishment procedures are resulting in the preparation of meat food products or further processing of poultry products which are suspected of being adulterated or misbranded. Under proposed §§ 318.6(a)(2)(ii)(A) and (B) and 381.146(b)(3)(i) and (ii) (proposed amendments to 9 CFR 318.6 and 381.146), when an inspection program employee makes such a determination, all product(s) remaining at the establishment that have been prepared or further processed using such a procedure (or procedures) would be held under a "U.S. Retained" tag for disposition in accordance with the regulations, and none of the information required by the Federal meat or the poultry products inspection regulations (9 CFR Parts 316 and 317 and Part 381, Subpart N, respectively) would be placed thereon, or on any product subsequently prepared using such procedure, until the establishment has corrected the problem and an opportunity has been afforded for an inspection program employee to evaluate the adequacy of the corrective action taken. FSIS views this enforcement mechanism as appropriate for use in assuring the correction of problems with establishment procedures and preventing the distribution of adulterated or misbranded meat food and further processed poultry products under IPI.

The proposed rule would make further amendments in regulations addressing various processes, inspection situations, and products. Section 318.4(a) of the Federal meat inspection regulations (9 CFR 318.4(a)) would be amended to require that processes used in curing, pickling, rendering, canning, or other product preparation shall be "conducted under inspection coverage" rather than "supervised by Program employees." Similarly, § 318.15 of the Federal meat inspection regulations (9 CFR 318.15) would be amended to provide that chemicals, preservatives, cereals, spices, and other substances intended for use in official establishments are "subject to examination" by inspection program employees, rather than that they "shall be [so] examined," with decisions about the separation required of such substances which are tagged "U.S. Retained" to be made by inspection program supervisors in addition to circuit supervisors.

Provisions of §§ 318.14 and 381.151 of the Federal meat and the poultry products inspection regulations (9 CFR 318.14 and 381.151), respectively, which prescribe procedures for handling products when there is polluted water in an official establishment, also would be amended to assure that they are adequate for the full range of inspection situations presented, including the various conditions and methods of inspection coverage expected in establishments subject to IPI procedures. Under the proposed rule, the operator would notify the IIC or the inspection program supervisor designated for an establishment preparing meat food products or further processing poultry products as soon as possible (proposed amendments to 9 CFR 318.14(a) and 381.151(a)). The establishment's subsequent cleaning and examination of hermatically sealed product containers which have been contaminated would be under "such Inspection Program supervision as the Inspection Program determines is appropriate," rather than under the "supervision of an inspector" (proposed amendments to 9 CFR 318.14 (b) and (c) and 381.151 (b) and (c)).

In addition, the Federal meat inspection regulations would continue to require, in § 318.10(c)(2)(v) (9 CFR 318.10(c)(2)(v)), that pork products must be kept separate from other products during refrigeration to destroy trichinae, but such products would no longer have to be in the inspection program's custody and secured with a program lock or seal. Instead, an establishment lock or seal would be required and such products would be subject to inspection program supervision, as determined to be appropriate in particular situations, to prevent unauthorized access. By mandating that product be kept separate and as the designated inspection program supervisor may require, rather than under close inspector supervision, the proposed rule would provide for the exercise of increased inspection program discretion after completion of the prescribed freezing until preparation of product covered by § 318.10(b) of the regulations (9 CFR 318.10(b)) in finished form or transportation to another establishment for such preparation. (Transportation must be in compliance with § 325.7 of the regulations (9 CFR 325.7) and, as discussed below, that section would be amended to eliminate shipment loose in "sealed railroad cars, * * * motortrucks, [or] * * * trailers" and require that closed containers be sealed with unofficial seals (proposed amendments to 9 CFR 318.10(c)(2) (v) and (vi)).) Additionally, proposed amendment to § 318.10(d) of the regulations (9 CFR 318.10(d)), would substitute "Designated Inspection Program" for "Circuit" supervisors.

Proposed amendments to §§ 318.5(a)(1) and 318.6(b) of the Federal meat inspection regulations (9 CFR 318.5(a)(1) and 318.6(b)), currently written on the basis that an inspector is present, and would more clearly state that it is the establishment's responsibility to assure compliance with respect to product placed in freezers (see 9 CFR 318.4(b) and 318.6(a)). The proposed rule would make explicit the establishment's obligation to defrost a sufficient quantity of frozen product to determine its actual condition when there is reason to doubt such product's soundness (proposed amendment to 9 CFR 318.5(a)(1)). (Defrosting would be done with the use of facilities acceptable to the "Inspection Program" (proposed amendment to 9 CFR 318.5(a)(2)).)

By revising the provisions regarding casings to be used as meat food product containers and dry milk products intended for use in preparing meat food products, which are requirements for use, and omitting references to program employee inspection and findings of acceptability, the proposed rule would clarify the establishment's obligation to assure that the prescribed conditions are met (proposed amendments to 9 CFR 318.6(b)(2) and (10)). (See also clarification that § 318.6(b)(1) of the regulations (9 CFR 318.6(b)(1)) applies to "meat food" products.)

The inspection and inspector "supervision" requirements of §§ 318.12 and 318.152 of the Federal meat and the poultry products inspection regulations (9 CFR 318.12 and 381.152), relatively, for official establishments preparing pet food or other inedible products also would be amended. The time during which such manufacturing may take place in edible product departments would continue to be restricted, but based on the hours during which the establishment operates under "inspection, in accordance with" § 307.4(a) or 381.37(a) of the regulations (9 CFR 307.4(a) and 381.37(a) as proposed to be amended) and, in establishments subject to the FMIA, its "approved work schedule" (proposed amendments to 9 CFR 318.12(a) and 381.152(a)). Manufacturing in other parts of an establishment would be subject to "inspectional control" (proposed amendments to 9 CFR 318.12(b) and 381.152(b)).

Finally, FSIS is proposing amendments to reflect anticipated changes in the structuring of in-plant and supervisory inspection program functions under IPI. FSIS expects to move away from the current practice of assigning particular in-plant inspection program personnel to particular establishments. Therefore, in §§ 318.302(c) (1) and (2), 318.308(d)(1), and 318.309(d) (1) and (2) of the Federal meat and §§ 381.302(c) (1) and (2), 381.308(d)(1), and 381.309(d)(1) and (2) of the poultry products inspection regulations on canning and canned products (9 CFR Part 318, Subpart G, and Part 381, Subpart X), references to submissions to and notification of the inspector at the establishment would be replaced with "designated Inspection Program employee" references. Paragraph (b) of § 318.6 of the Federal meat inspection regulations (9 CFR 318.8) would require that the preparation and packing of export product (as provided for in paragraph (a)) be done in a manner acceptable to the "Inspection Program" (rather than the IIC). And under § 318.17(f), (h)(1), (i)(3), and (k) of the Federal meat inspection regulations on handling, processing, and storing cooked beef, roast beef, and cooked corned beef (9 CFR 318.17(f), (h)(1), (i)(3), and (k)), reliance would be placed on establishment identification of the processing procedure used and program functions performed by the "designated Inspection Program supervisor" (rather than the IIC or circuit supervisor).

Records and Reports: Part 320 and Part 381, Subpart O

Under IPI, the importance of records in assuring effective regulation of meat food and poultry products will increase. The regulations already require the maintenance of records and availability of various types of information used by the inspection program in preventing the distribution of adulterated or misbranded products to consumers, including the records required to be kept by § 320.1(b) of the Federal meat and § 381.175 of the poultry products inspection regulations (9 CFR 320.1(b) and 381.175(b)). Among these are documentation of transactions involving the purchase, sale, labeling, shipment, receipt, transportation, or other handling of meat food and poultry products in connection with any various businesses subject to the FMIA or PPIA (9 CFR 320.1 (a) and (b)(1) and 381.175 (a) and (b)(1), respectively).

FSIS is proposing to amend these requirements by adding (1) records of the destruction for human food purposes of meat food products and further processed poultry products found by the operator of an official establishment to be adulterated (proposed 9 CFR 320.1(b)(7) and 381.175(b) (4)), and (2) records of all labels used in the establishment (proposed 9 CFR 320.1(b)(8) and 381.115(b)(5)). To the extent official establishments do not already keep records of dispositions of adulterated product, this requirement would complement the existing provisions in §§ 320.1(b) and 381.175(b) (9 CFR 320.1(b) and 381.175(b)) by disclosing the handling of products which, if capable of use as human food, may not be sold, transported, offered for sale, or offered or received for transportation in commerce (21 U.S.C. 458(a)(2)(A) and 610(b)(1)). This is particularly appropriate in view of Congressional action specifically recognizing the responsibility of establishment operators to determine that meat food products either are adulterated or not adulterated (21 U.S.C.

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606(b); FTA, section 403(a)). Similarly, establishment operators are responsible for ensuring their products are not misbranded and are properly labeled (21 U.S.C. 457, 607). Under IPI, operators will be able to use more labels without explicit prior approval from the inspection program than before, but will be responsible for maintaining records at the plant of all labels being used for reference and review as needed by inspection program personnel on their visits to the plant.

FSIS also is proposing to amend the information and reporting provisions in §§ 320.6(a) and (b), 320.7, 381.180(a), and 381.182 of the regulations (9 CFR 320.6(a) and (b), 320.7, 381.180(a), and 381.182) in view of changes anticipated under IPI. These include utilization of less than daily inspection coverage of operations where appropriate and modifications in the inspection program's field structure (e.g., reporting on inspection work by program personnel in addition to IIC's).

Exports: Part 322 and Part 381, Subpart M

FSIS is proposing to amend provisions of the Federal meat inspection regulations regarding the issuance of official export certificates to reflect anticipated changes in the field structure. As amended, § 322.2(a), (f), and (h) of the regulations (9 CFR 322.2(a), (f), and (h)) would provide for the issuance of such certificates by "designated Inspection Program employee[s]" in addition to IIC's, their issuance by "Inspection Program employees" for consignments of establishments, "at which they do not regularly perform Inspection Program functions" (rather than "not under their supervision"), and retention of the triplicate of the certificate in "an appropriate Inspection Program" (rather than the "circuit") file.

The Export Coordination Division (ECD), International Programs, FSIS will coordinate the issuance of export certificates. Exporters will request an authorization to export from ECD and provide full details of the export consignment. ECD will be responsible for determining that all foreign requirements have been satisfied and will subsequently issue the export certificate. Documentation of the export consignment will be filed in appropriate Inspection Program offices. Coordination of this service from FSIS headquarters will better ensure adequate coverage is made available to all requests in a timely manner under IPI.

Transportation: Part 325

Part 325 of the Federal meat inspection regulations (9 CFR Part 325) includes, among other things, requirements for transporting those unmarked inspected and passed products that, pursuant to Part 316 of the regulations (9 CFR Part 316), may be moved from one official establishment to another for further processing. FSIS has reevaluated these requirements, in conjunction with its review of Part 316, and believes that they should be modified in view of changes in the system of inspection to be applied at establishments preparing meat food products.

The principle underlying the statutory discretionary inspection authority, a key element of IPI, is that the frequency and the manner of government inspection should reflect the performance and the characteristics of particular establishments. Therefore, significant variations are anticipated in the conditions and methods of inspection coverage of operations in establishments preparing meat food products from livestock previously slaughtered in official establishments, including coverage by inspection program employees on a less than daily basis when appropriate (see proposed 9 CFR 302.5). Moreover, with the institution of IPI, FSIS expects a decrease in reliance on inspection program personnel by establishments in fulfilling their statutory responsibilities.

Consequently, for the reasons discussed with regard to similar changes proposed for § 316.8, FSIS proposes to change the existing procedure in § 325.5(a) of the regulations (9 CFR 325.5(a)) for transporting unmarked inspected and passed products in railroad cars, motortrucks, or other means of conveyance that are sealed with official seals which may only be affixed or (except in an extraordinary emergency) broken by inspection program employees (see 9 CFR 312.5(a) and 325.16(b)). Under the proposed rule, all such products would be packed in closed containers bearing the official inspection legend and all other required information (9 CFR 316.8(b)), and each such container would be sealed with an unofficial seal that is applied by the establishment from which such product is transported and includes its establishment number (proposed amendments to 9 CFR 325.5(a)). When such products are offered for transportation, they would, as currently required, be accompanied by a certificate, made out in duplicate by the shipper and delivered to the initial carrier, with retention by each 9 CFR 325.5(b); see also 9 CFR Part 320 regarding shippers' records). However, the form of the certificate would be revised by substituting information or specified closed containers and sealing by the official establishment for the information on placement in any official sealing of means of conveyance that is currently required (proposed amendments to 9 CFR 325.5(b)).

FSIS believes that cattle and sheep paunches transported from one official establishment to another for further processing should continue to be subject to the same requirements as are applied to unmarked inspected and passed products so transported under § 325.5(a) of the regulations (9 CFR 325.5(a)). Therefore, § 325.6 of the regulations (9 CFR 325.6) would only be amended to conform with the proposed amendments to that provision by deleting references to official sealing. (Section 325.5(b) of the regulations (9 CFR 325.5(b)) already provides for shipper certification when paunches are offered for transportation.)

The regulations also provide, in § 325.7 (9 CFR 325.7), for the shipment of products passed for cooking, pork that has been refrigerated to destroy trichinae, and beef that is to be refrigerated to destroy cysticerci from one official establishment to another for further handling in accordance with Part 318 of the regulations (9 CFR Part 318). FSIS is not proposing to change the requirement that product passed for cooking and beef that is to be refrigerated to destroy cysticerci may only be shipped between official establishments under official seal. Such meat and meat byproducts have been only conditionally inspected and passed; the handling required before they may be distributed to consumers has not been completed (see 9 CFR 301.2(cc); 301.2(dd); 311.1(a); 311.2(d); (f), and (h); 311.18(b) and (e); 311.20(b); 311.23(a)(2); 311.24; 311.35(c); 315.1; and 315.2). Therefore, inspectional control of these products must be guaranteed. FSIS believes that use of official seals, which if affixed, detached, broken, changed, or tampered with in any way by a person other than an inspection program employee constitutes a criminal offense (9 CFR 325.16(b); 21 U.S.C. 611 and 676), is the only effective means of maintaining such control.

However, pork that has been refrigerated to destroy trichinae already has been treated in accordance with § 318.10(c)(2) of the regulations (9 CFR 318.10(c)(2)). The focus of concern when such product in transferred to another establishment for further preparation into finished products for which treatment to destroy any possible live trichinae is required (instead of being so prepared in the establishment in which it was refrigerated (see 9 CFR 318.10(b) and 318.10(c)(2)(v) as proposed to be amended)) is maintaining its identity as pork which already has been refrigerated, rather than maintaining inspectional control. Consequently, FSIS believes that the procedure for transporting product that has been refrigerated to destroy trichinae should be comparable to the one for products transported for further processing pursuant to § 325.5 of the regulations (9 CFR 325.5).

FSIS also believes that, as with products transported for further processing pursuant to § 325.5 of the regulations (9 CFR 325.5), shipment of products covered by § 325.7 of the regulations (9 CFR 325.7) should be only in closed containers and not loose in railroad cars, trucks, or other means of conveyance (proposed deletion of paragraph (a) of 9 CFR 325.7). Under the proposed rule, pork that has been refrigerated to destroy trichinae would be packed in closed container(s) individually sealed with an unofficial seal that is applied by the establishment from which such product is transported and includes its establishment number, and such containers would bear the official inspection legend and the statement, currently marked thereon, "Pork Product—"F.—Days Refrigeration" (9 CFR 325.7(b) as proposed to be amended). Individual closed containers of product passed for cooking and beef that is to be refrigerated to destroy cysticerci would continue to be sealed with the Department's prescribed official seal and as otherwise already required by the regulations (9 CFR 325.7(a) as proposed to be amended).

In addition, in view of anticipated changes in the field structure, FSIS is proposing to modify the procedure used by inspection program personnel at establishments shipping restricted products to notify inspection program personnel at destination establishments (9 CFR 325.7(b)). The inspection program employee affixing official seal(s) to containers of product passed for cooking or beef that is to be refrigerated to destroy cysticerci would promptly issue and forward to the "Inspection Program supervisor designated for" the destination establishment (rather than the IIC at destination) a report on the consignment, and he or she would forward a duplicate copy to the area office for the area where the establishment from which such product is shipped in located (rather than retaining such copy "in the program files") (9 CFR 325.7(a) as proposed to be amended).

FSIS is not proposing to change the requirement that when products are offered for transportation under § 325.7 of the regulations (9 CFR 325.7), they must be accompanied by a certificate, made out in duplicate by the shipper and delivered to the initial carrier, with retention by each (9 CFR 325.7(c); see also 9 CFR Part 320 regarding shippers' records). However, because the regulations currently require such certificate to be "in the form set out in § 325.5(b)" and that form would be revised to apply to products shipped under unofficial seal, FSIS is proposing to supplement the reference to that form by including an exception for product passed for cooking and beef that is to be refrigerated to destroy cysticerci: the certificates would indicate that the contents are restricted products in specified containers sealed with official seals (proposed amendment to 9 CFR 325.7(c)).

As indicated above, official seals may be broken only by inspection program employees. Under IPI, situations will increase in which no inspection program employee would be present when an establishment preparing meat food products receives products transported pursuant to § 325.7 of the regulations (9 CFR 325.7). Disruptions vis-a-vis carriers would by avoided by application of official seals to product containers rather than the means of conveyance (e.g., a railroad car) used in transporting such products, since such containers could be unloaded at receiving establishments without breaking official seals. To assure that the official seals on such containers are broken in a timely manner, FSIS also is proposing to amend § 325.16(b) of the regulations (proposed amendment to 9 CFR 325.16(b)) to provide that "[i]f no Inspection Program employee is present at an official establishment receiving product transported under official seal, the Inspection Program supervisor designated for such establishment will, when notified by that establishment, arrange for the breaking of such seal(s) by an Inspection Program employee."

In view of these proposed amendments, and FSIS's proposal to eliminate the sealing requirement in § 316.14(b) of the regulations (proposed removal of 9 CFR 316.14(b); 52 FR 45639, December 1, 1987), several further, conforming changes would be made in the regulations. In addition to the previously noted changes to §§ 312.5, 316.13(e), and 318.10(c)(2)(vi) (proposed amendments to 9 CFR 312.5, 316.13(e), and 318.10(c)(2)(vi)), § 325.17 of the regulations (9 CFR 325.17), which addresses the unloading and loading of railroad cars, trucks or other means of conveyance containing unmarked products while en route between official establishments, would be amended to reflect the fact that such means of conveyance would no longer be officially sealed. Section 325.18(b) of the regulations (9 CFR 325.18(b)), which provides an exception (for extraordinary emergencies) to the general prohibition against the breaking of official seals by anyone other than program employees, and the cross-reference to that exception in § 325.16(b) of the regulations (9 CFR 325.16(b)) would be deleted because means of conveyance would no longer be officially sealed.[7] (Paragraph (a) of § 325.16 of the regulations (9 CFR 325.16(a)) also would be amended to reflect the fact that the cited regulation no longer includes a paragraph designation.)

FSIS recognizes that implementation of its proposed changes in the procedures for transporting products under §§ 325.5 amd 325.7 of the regulations (9 CFR 325.5 and 325.7) could increase costs for some industry members. In developing the proposed rule, FSIS has sought to minimize such potential costs. However, options such as permitting the routine breaking of official seals by employees of official establishments or the use of unofficial seals on means of conveyance do not at this time appear to be appropriate or provide adequately for effective regulation of products shipped between official establishments for further processing. Interested members of the public are encouraged to submit additional information regarding methods for assuring the efficient and effective control of such products under the FMIA.

Finally, FSIS is proposing modifications in certain procedural aspects of § 325.10 of the regulations (9 CFR 325.10). This section provides for transportation of products in commerce to an official establishment, after obtaining permission from the area supervisor of the area in which such establishment is located, for a careful inspection and further handling and disposition as appropriate when marked, inspected and passed product is claimed to have become adulterated after being transported from an official establishment. Particularly since an area

[7] FSIS has proposed amendments to §§ 325.1(b)(2), 327.7, and 381.200 of the regulations (9 CFR 325.1(b)(2), 327.7, and 381.200) which would eliminate transportation under official import seal prior to inspection of products offered for importation. (53 FR 17050, May 13, 1988.)

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supervisor may not know when such a shipment will arrive at an establishment preparing meat food products, no inspection program employee may be present. Also, under IPI, different inspectors may be assigned to that establishment at different times. Therefore, under the proposed rule, the area supervisor would provide a copy of his or her record authorizing and identifying the shipment to the "Inspection Program supervisor designated for" (rather than the "inspector at") the receiving establishment (proposed amendment to 9 CFR 325.10(a)); and if no inspection program employee is present upon arrival of the shipment, the receiving establishment must notify the designated supervisor who will, when so notified, arrange for a careful inspection by an inspection program employee (proposed amendment to 9 CFR 325.10(b)). If the article is then found to be not adulterated and is fit for use as human food, it may then be received into the establishment as currently provided.

Imports: Part 327 and Part 381, Subpart T

The proposed rule would not change the conditions for importation of meat or meat food or poultry products. Meat or meat food products or poultry products from a foreign country are eligible for importation into the United States only after the Administrator has determined that the system of meat or poultry inspection maintained by that country with respect to establishments preparing products for export to the United States insures compliance of such establishments and their products with requirements at least equal to all the provisions of the FMIA or the PPIA and the regulations in Parts 301-335 or Part 381 which are applied to official establishments and their products in the United States and that reliance can be placed upon the certificates required from such country's authorities (9 CFR 327.2(a)(1) and 381.196(a)(1), respectively; see also 9 CFR 327.1-327.4 and 381.195-381.197 generally). FSIS is proposing, however, several conforming amendments to reflect the change to IPI for operations preparing meat food products or further processing poultry products. In other words, these amendments are intended only to clarify the regulations by recognizing modifications in certain inspection requirements which are applied to official establishments and their products under the system of Federal inspection in the United States and with respect to which foreign meat and poultry inspection systems must impose "at least equal to" requirements.

The proposed rule would amend subparagraph (2) of §§ 327.2(a) and 381.196(a) of the regulations (9 CFR 327.2(a)(2) and 381.196(a)(2)) to provide that, in determining the acceptability of a foreign meat or poulty inspection system, the legal authority and regulation requirements which must be met include direct and continuous supervision of slaughtering and "official coverage and controls for all other" product preparation or processing (proposed amendment to subparagraph (2) (ii) (*d*)) and offical controls "for assuring that condemned material is" destroyed or removed and thereafter excluded from the establishment (rather than such controls "over condemned material until" it is so destroyed or removed and excluded) (proposed amendment to subparagraph (2) (ii) (*g*)). In addition, § 327.4(b) of the regulations (9 CFR 327.4(b)) would be amended by deleting "continuous supervision of an inspector under" from the foreign-meat-inspection certificate that must accompany meat food product consigned to the United States from a foreign country. (The form of the foreign poultry products inspection certificate does not include comparable language (9 CFR 381.197(b)).)

Designated States: Part 331 and Part 381, Subpart V

The Federal meat and the poultry products inspection regulations include special provisions for "States" (including the Commonwealth of Puerto Rico and organized Territories) designated under section 301(c) of the FMIA or section 5(c) of the PPIA (21 U.S.C. 454(c) and 661(c)). The amendments being proposed to these provisions are intended to reflect anticipated changes in the inspection program's supervisory field structure and a previous change in FSIS's headquarters organization as regards marking and labeling responsibilities. Proposed amendments to subparagraphs (1), (2), and (4) of §§ 331.3(e) and 381.222(d) of the regulations (9 CFR 331.3(e) (1), (2), and (4) and 381.222(d) (1), (2), and (4)) would replace circuit supervisor with Inspection Program supervisor terminology in describing the responsible inspection program personnel. Proposed amendments to subparagraphs (2) and (3) of §§ 331.3(e) and 381.222(d) of the regulations (9 CFR 331.3(e) (2) and (3) and 381.222(d) (2) and (3)) would replace references to the Labeling and Packaging Staff with the Standards and Labeling Division as the organizational unit to which copies of labeling and descriptions of marking devices granted temporary approval are to be sent.

Supplemental Rules of Practice: Part 335

As indicated above, FSIS is proposing to amend § 305.5(a) of the Federal meat inspection regulations (9 CFR 305.5(a)) to reflect the current language of section 6(b)(2) of the FMIA (21 U.S.C. 606(b)(2)), as amended by the FTA (section 403 (a)). That section of the regulations would continue to provide that inspection withdrawal is to be in accordance with the applicable rules of practice. Among those rules are the provisions of § 335.11 of the regulations (9 CFR 335.11). The proposed rule would amend § 335.11 of the regulations (9 CFR 335.11) to address the withdrawal of inspection service when the Administrator has reason to believe that an establishment receiving inspection service has failed to fulfill its statutory responsibility (21 U.S.C. 606(b)) to determine whether or not meat food products are adulterated and to condemn and destroy all products found to be adulterated. This responsibility is the functional and legal equivalent of the responsibility of the operator to destroy for human food purposes product that has been condemned by an inspection program employee (see proposed §§ 314.13 and 381.95).

Proposed rule

List of Subjects

9 CFR Part 301

Meat inspection; Inspection program defintions.

9 CFR Parts, 302, 303, 305, 308, and 312

Meat inspection, Requirements.

9 CFR Parts 306 and 307

Meat inspection, Requirements, Government employees.

9 CFR Part 314

Meat inspection.

9 CFR Parts 316 and 317

Meat inspection, Meat and meat food products, Food packaging, Food labeling.

9 CFR Part 318

Meat inspection, Requirements, Meat and meat food products, Food packaging, Food labeling.

9 CFR Part 320

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 322

Meat inspection, Exports.

9 CFR Part 325

Meat inspection, Requirements, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 327

Meat inspection, Imports.

9 CFR Part 331

Meat inspection, Requirements, State designation.

9 CFR Part 335

Administrative practice and procedure.

9 CFR Part 381

Definitions, Requirements, Government employees, Poultry products inspection, Official marks, Food packaging, Food labeling, Reporting and recordkeeping requirements, Imports, State designations.

For the reasons set forth in the preamble, the following amendments to the Federal meat inspection regulations (9 CFR Parts 301–303, 305–308, 312, 314, 316–318, 320, 322, 325, 327, 331, and 335) and the poultry products inspection regulations (9 CFR Part 381) are proposed:

PART 301—DEFINITIONS

1. The authority citation for Part 301 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Paragraphs (f), (h), (j), (k), (ff), (mmm), and (nnn) of § 301.2 would be revised to read as follows:

§ 301.2 Definitions.

* * * * *

(f) *Program* or *Inspection Program.* The organizational unit within the Department having the responsibility for carrying out the provisions of the Act and the rules and regulations thereunder.

* * * * *

(h) *Program employee* or *Inspection Program employee.* Any inspector or other individual employed by the Department or any cooperating agency who is authorized to perform any function in connection with the Inspection Program.

* * * * *

(j) *Circuit supervisor.* An Inspection Program supervisor with responsibility for supervising the carrying out of Inspection Program functions at more than one official establishment.

* * * * *

(k) *Inspection Program supervisor.* An Inspection Program employee who is delegated authority to exercise supervision over one or more phases of the Inspection Program at a designated level.[1]

* * * * *

(ff) *U.S. retained.* This term means that the carcass, viscera, other part of carcass, or other product, or other article so identified is held for further examination by an inspection program employee to determine its disposal.

* * * * *

(mmm) *Area.* The organizational unit within the inspection program reporting to regional offices and responsible for the supervision of one or more circuit supervisors and/or other inspection program supervisors and for providing inspection coverage for establishments within a designated geographical area.

(nnn) *Inspector in charge.* An Inspection Program employee who is designated as having primary responsibility for Inspection Program functions at a particular official establishment.

* * * * *

3. Paragraph (eee) of § 301.2 would be amended by replacing "or rendering" with "rendering, or otherwise manufacturing or processing" and by replacing "establishments" the second place it occurs with establishment(s)."

PART 302—APPLICATION OF INSPECTION AND OTHER REQUIREMENTS

4. The authority citation for Part 302 would be revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438, 100 Stat. 3556, 3567–72; (21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k); Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*).

5. Part 302 would be amended by adding new §§ 302.4 and 302.5 to read as follows and the Table of Contents would be amended accordingly:

§ 302.4 Inspection of products.

The Administrator will ensure inspection of products is conducted by Inspection Program Employees as is necessary and appropriate under the Act and the regulations. The conditions and methods of inspection will vary among establishments, depending on the nature of operations, compliance history, and other conditions unique to each establishment. The conditions and methods of inspection will necessarily change from time to time to accommodate advances in inspection techniques and/or changes in establishment operations. Consequently, designated Inspection Program employees will determine for each establishment what inspection-related tasks and activities are appropriate, in accordance with guidelines provided by the Administrator that catalogue all current inspection tasks and activities that may apply in various establishments under various circumstances. Such guidelines shall be available for reference and use by the official establishments. Assigned inspection tasks and activities will be conducted by individual program employees as directed by the inspection program.

§ 302.5 Frequency and manner of inspection.

(a) In establishments preparing products at which inspection under the regulations is required, the frequency with which and the manner in which meat food products made from livestock previously slaughtered in official establishments are examined and inspected by Inspection Program employees shall be based on considerations relevant to effective regulation of meat food products and protection of the health and welfare of consumers and be determined in accordance with this section.

(b) The determinations referred to in paragraph (a) of this section shall be made by the Inspection Program and shall reflect its evaluations of the performance and the characteristics of such establishments.

(1) In assessing the performance of an establishment, the following factors are appropriate for consideration:

(i) The history of compliance with applicable regulatory requirements by the person operating at such establishment or by anyone responsibly connected with the business that operates such establishment, as "responsibly connected" is defined in section 401(g) of the Act;

(ii) The procedures used in such establishment to control the production process, environment, and resulting product in order to assure and monitor compliance with the requirements of the Act and the rules and regulations thereunder.

(2) In assessing the characteristics of an establishment, the following factors are appropriate for consideration:

(i) The complexity of the processing operation(s) conducted at such establishment,

[1] Information identifying the employees who have been delegated such authority is available from the Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

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(ii) The frequency with which each such operation is conducted at such establishment,

(iii) The volume of product resulting from each such operation at such establishment,

(iv) Whether and to what extent slaughter operations also are conducted at such establishment,

(v) What, if any, food products not regulated under this Act or the Poultry Products Inspection Act also are prepared at such establishment, and

(vi) The size of such establishment.

(c) The Inspection Program shall base the conditions and methods of inspection coverage of operations other than slaughter in an establishment making meat food products from livestock previously slaughtered in official establishment(s) on:

(1) The history of compliance at the establishment,

(2) The evaluation of the characteristics of such establishment described in paragraph (b)(2) of this section,

(3) The control procedures described in paragraph (b)(1)(ii) of this section,

(4) The significance of potential public health consequences of noncompliance, and

(5) The competence of the person conducting operations at such establishment, as indicated by:

(i) Knowledge of appropriate manufacturing practices and applicable regulatory requirements,

(ii) Demonstrated ability to apply such knowledge in a timely and consistent manner, and

(iii) Commitment to correcting deficiencies noted by Inspection Program employees and otherwise assuring compliance with applicable regulatory requirements; and

(6) The availability of Inspection Program employees.

PART 303—EXEMPTIONS

6. The authority citation for Part 303 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438 (21 U.S.C., 601 *et seq.*, Pub. L. 99–641, Title IV, 100 Stat. 3556, 3567–72, 33 U.S.C. 466–466k); Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*).

§ 303.2 [Removed and Reserved]

7. Part 303 would be amended by removing and reserving § 303.2.

PART 305—OFFICIAL NUMBERS; INAUGURATION OF INSPECTION; WITHDRAWAL OF INSPECTION; REPORTS OF VIOLATION

8. The authority citation for Part 305 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 436, 21 U.S.C., 71 *et seq.*, 33 U.S.C. 466–466k.

§ 305.4 [Amended]

9. The first and last sentences of § 305.4 would be amended by replacing "the circuit supervisor" with "an Inspection Program supervisor."

§ 305.5 [Amended]

10. Paragraph (a) of § 305.5 would be amended by adding "or to condemn and destroy meat food products found to be adulterated" after "condemned products" in the first sentence.

11. Section 305.6 would be revised to read as follows:

§ 305.6 Reports of violations.

Inspection Program employees and other representatives of the Department shall report, in a manner prescribed by the Administrator, all violations of the Act and noncompliance with the rules and regulations of which they have knowledge or information.

PART 306—ASSIGNMENT AND AUTHORITIES OF PROGRAM EMPLOYEES

12. The authority citation for Part 306 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*, 33 U.S.C. 117(b).

13. Section 306.1 would be amended by revising the title and the text to read as follows and the Table of Contents would be amended accordingly:

§ 306.1 Designation of supervisors.

The Administrator shall designate Inspection Program supervisors.

§ 306.2 [Amended]

14. Section 306.2 would be amended by adding "Inspection" before "Program" in the title and in the first sentence and by replacing "to which they are assigned" with "in which they are authorized to perform Inspection Program functions" in the first sentence. The Table of Contents would be amended accordingly.

§ 306.3 [Amended]

15. Section 306.3 would be amended by adding "or she" after "he" each time "he" appears and by adding "or her" after "him" and replacing "to which he is assigned" with "in which he or she is authorized to perform Inspection Program functions" in the second sentence.

§ 306.5 [Amended]

16. Section 306.5 would be amended by adding "Inspection" before "Program," in the first sentence and by replacing "inspector in charge" with "designated program employee" in the second sentence.

PART 307—FACILITIES FOR INSPECTION

17. The authority citation for Part 307 would continue to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695, 7 CFR 2.15(a), 2.92.

§ 307.1 [Amended]

18. Section 307.1 would be amended by adding "Inspection" before "Program" in the title, by replacing "the inspector and other" with "Inspection" and removing "assigned thereto" in the first sentence, by adding "or other designated Inspection Program supervisor" after "circuit supervisor" both times "circuit supervisor" appears and adding "Inspection" before "Program" both times "Program" appears in the second sentence, and by deleting "requiring the services of less than one full time inspector" and adding "Inspection" before "Program" in the third sentence. The Table of Contents would also be amended accordingly.

§ 307.2 [Amended]

19. Section 307.2 would be amended by adding "or other designated Inspection Program supervisor" after "circuit supervisor" in the first sentence of the introductory text and in paragraph (j) and by adding "Inspection" before "Program" in paragraph (d), the first sentence of paragraph (h), and paragraph (k).

20. Section 307.4 would be amended by revising the title and replacing paragraph (a) with paragraph (a)(1) to read as follows and the Table of Contents would be amended accordingly:

§ 307.4 Conduct and schedule of operations.

(a) Slaughter operations.

(1) No slaughter operations requiring inspection shall be conducted except under the supervision of an Inspection Program employee. All slaughtering of animals shall be done with reasonable speed, considering the official establishment's facilities.

* * * * *

21. Section 307.4 would be revised further by redesignating paragraph (b) as paragraph (a)(2), by redesignating paragraph (c) as paragraph (a)(3), and by amending the new paragraph (a)(3) in the first sentence by replacing the words "importers, and exporters" with "conducting slaughter operations" and by removing the last sentence.

22. A new paragraph (b) would be added to § 307.4 to read as follows:

* * * * *

(b) Operations other than slaughter.

(1) No operations, other than slaughter, requiring inspection shall be conducted except under such coverage by Inspection Program employees as the Inspection Program determines to be appropriate to assure effective regulation of meat food products and protection of the public health and welfare. All preparation of products shall be done with reasonable speed, considering the official establishment's facilities.

(2) Official establishments preparing meat food products will establish a regularly scheduled operating period for each workday in the basic workweek. Once established, the scheduled operating period, and mealtimes and rest breaks within the operating period, must remain relatively constant as to time and duration to facilitate the scheduling of inspection activities.

(3) Official establishments, importers and exporters shall not be charged for inspection service that is furnished, up to 12 consecutive hours per day, if provided during scheduled operations conducted between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, subject to the provisions of § 307.5. Alternatively, official establishments, importers and exporters may elect to establish as their basic workweek during which inspection service is provided without charge, subject to the provisions of § 307.5, any 5 consecutive 8-hour days within the administrative workweek Sunday through Saturday, excluding the lunch period; except that, when possible, the Department shall schedule the basic workweek so as to consist of 5 consecutive 8-hour days Monday through Friday, excluding lunch period. The Department may depart from the basic workweek in those cases where maintaining such a schedule would seriously handicap the Department in carrying out its function.

23. Paragraph (d) of § 307.4 would be redesignated "(c) Approval of schedules" and would be amended in subparagraph (2) by adding "changes in the workweek or" after "involving" in the second sentence and by adding "or designated Inspection Program supervisor" after "inspector in charge" in the last sentence, and by revising subparagraph (3) to read as follows:

(c) Approval of schedules. * * *

(3) Requests to operate outside an approved work schedule shall be made to the designated Inspection Program supervisor as early in the day as possible for operations to be conducted within the same workday, or prior to the end of the day's operation for operations to be conducted at the start of the following day: *Provided*, That an Inspection Program employee may be called back to duty after completion of his or her daily tour of duty under the provisions of § 307.6(b) of this subchapter.

§ 307.5 [Amended]

24. Paragraph (a) of § 307.5 would be amended by replacing all text after the word "section;" with the following: "outside the times and days specified in § 307.4(b)(3) of this part; during an approved work schedule when operations are not being conducted and reasonable notice thereof has not been provided to the program; or during any operations conducted outside a work schedule approved under § 307.4 of this part that requires an inspection program employee to work more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday."

25. Section 307.6 would be amended by adding "Inspection" before "Program" in paragraph (a) and by revising paragraph (b) to read as follows:

§ 307.6 Basis of billing for overtime and holiday services.

* * * * *

(b) Official establishments, importers, or exporters requesting and receiving the services of an Inspection Program employee who is called back to duty during any overtime or holiday period after completion of his or her tour of duty shall be billed for a minimum of 2 hours of overtime or holiday inspection service at the established rate.

PART 308—SANITATION

26. The authority citation for Part 308 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*

§ 308.3 [Amended]

27. Section 308.3 would be amended by adding "or other designated Inspection Program supervisor" after "circuit supervisor' each time "circuit supervisor" appears in paragraphs (c) and (d) (1) and (2).

§ 308.5 [Amended]

28. Paragraph (e) of § 308.5 would be amended by replacing "Program inspectors" with "Inspection Program employees."

§ 308.8 [Amended]

29. Section 308.8 would be amended by adding "or other Inspection Program employee" after "inspector in charge" in the second sentence of paragraph (d) and by adding "or other Inspection Program supervisor" after "circuit supervisor" in paragraph (f).

§ 308.15 [Amended]

30. Section 308.15 would be amended and the Table of Contents would be amended accordingly by adding "and tagging products prepared therewith or therein" after "compartments" in the title, by adding "or she" and "he" in the first sentence, and by replacing "a Program" with "an Inspection Program" in the first and third sentences.

31. Section 308.15 would be further amended by designating the second and third sentences as paragraph (a) and by adding paragraph (b) to read as follows:

§ 308.15 Tagging insanitary equipment, utensils, rooms or compartments and tagging products prepared therewith or therein.

* * * * *

(b) When any equipment, utensil, room, or compartment is so tagged by an Inspection Program employee, he or she shall place a "U.S. Retained" tag on product(s) prepared using such equipment or utensil or prepared, packed or held in such room or compartment and remaining at the official establishment if such product(s) is or are suspected of being adulterated. Product(s) so tagged shall be held for further examination and such tag shall not be removed by anyone other than an Inspection Program employee upon disposition in accordance with this subchapter.

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

32. The authority citation for Part 312 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*

§ 312.5 [Amended]

33. Section 312.5 would be amended by removing "railroad cars or other means of conveyance" in the first sentence and by removing "to the means of conveyance", adding "Inspection" before "Program", adding "or she" after "he", and replacing "a 'Warning Tag' (Form MP–408–3)" with "any tag required by Part 325 of this subchapter" in the second sentence.

34. Section 312.6 would be amended and the Table of Contents would be amended accordingly by revising the

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title and revising the portion of paragraph (a) preceding subparagraph (1) to read as follows:

§ 312.6 Official marks and devices in connection with post-mortem inspection and inspection of meat food product preparation; identification of adulterated products and insanitary equipment and facilities.

(a) The official marks required by Part 310 of this subchapter for use in post-mortem inspection are:

* * * * *

35. Paragraph (a)(2) of § 312.6 would be amended by replacing "products and articles" with "carcasses and parts of carcasses."

36. Paragraph (a)(3) of § 312.6 would be amended by deleting "which" and would be redesignated as paragraph (c), and paragraphs (a)(4) and (a)(5) would each be amended by replacing "products" and "carcasses and parts of carcasses" and would be redesignated as paragraphs (a)(3) and (a)(4), respectively.

37. Paragraph (b) of § 312.6 would be amended by replacing "U.S. Retained and U.S. Rejected tags," with "tags" and replacing "paragraph (a)" with "paragraphs (a) through (c)" and would be redesignated as paragraph (d).

38. Section 312.6 would be further amended by adding a new paragraph (b) to read as follows:

* * * * *

(b) The official marks and devices for use by Inspection Program employees in connection with meat food product inspection are:

(1) The "U.S. Retained" mark which is used to identify meat food product that is held for further evaluation to determine its disposition and which is applied by a tag (Form MP–35).

(2) The "U.S. Inspected and Condemned" mark which is used to identify meat food product that has been found to be adulterated and is condemned and which is applied by a tag (Form MP–_____).

39. Section 312.10 would be revised to read as follows:

§ 312.10 Official mark for maintaining the identity and integrity of samples.

The official mark for use in sealing containers of samples taken by Inspection Program employees, including samples taken by an authorized representative of the Secretary pursuant to section 202 of the Act, shall bear the designation "Sample Seal" accompanied by the official USDA logo as shown below. Any seal approved by the Administrator for applying such mark shall be an official device for purposes of the Act. The Department will supply such device to Inspection Program employees and other authorized representatives of the Secretary.



PART 314—HANDLING AND DISPOSAL OF CONDEMNED OR OTHER INEDIBLE PRODUCTS AT OFFICIAL ESTABLISHMENTS

40. The authority citation for Part 314 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*, 33 U.S.C. 466–466k.

§ 314.1 [Amended]

41. Section 314.1 would be amended and the Table of Contents would be amended accordingly by adding "slaughtering livestock and" after "establishments" in the title and by adding "upon ante-mortem or post-mortem inspection or reinspection of slaughtered livestock" before "at official establishments" in the first sentence of paragraph (a).

§ 314.3 [Amended]

42. Section 314.3 would be amended and the Table of Contents would be amended accordingly by adding "slaughtering livestock and" after "establishments" in the title and by adding "upon ante-mortem or post-mortem inspection or reinspection of slaughtered livestock" before "at an official establishment" in the first sentence of paragraph (a).

43. Part 314 would be further amended and the Table of Contents would be amended accordingly by adding a new § 314.13 to read as follows:

§ 314.13 Disposition of products found to be adulterated or condemned upon reinspection at official establishments preparing meat food products.

Products condemned upon reinspection at an official establishment preparing meat food products, shall be disposed of by one of the methods listed in this paragraph, under the supervision of an Inspection Program employee. Any product determined by the operator of an establishment to be adulterated but which has not been condemned shall be destroyed for human food purposes, by the operator, by one of the methods listed in this paragraph. Facilities and materials for carrying out the requirements in this section shall be furnished by the official establishment.

(a) Steam treatment, which shall be accomplished by processing the product in a pressure tank under at least 40 pounds of steam pressure, or thorough cooking in a kettle or vat, for a sufficient time to effectively destroy the product for human food purposes and preclude dissemination of disease through consumption by animals. Equipment used for this purpose shall comply with the requirements of § 314.2 of this subchapter.

(b) Incineration or complete destruction by burning.

(c) Denaturing with a material and by the method prescribed in § 314.3(a) of this subchapter or destruction for human food purposes with another material and/or method approved by the Administrator in specific cases.

PART 316—MARKING PRODUCTS AND THEIR CONTAINERS

44. The authority citation for Part 316 would continue to read as follows:

Authority: 34 Stat. 1284, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k.

45. Section 316.8 would be amended and the Table of Contents revised accordingly by revising the title and paragraph (a) to read as follows:

§ 316.8 Movement of unmarked inspected and passed products.

(a) Except as provided in paragraph (b) of this section, unmarked products which have been inspected and passed but do not bear the official inspection legend shall not be removed from an official establishment and shall not be brought into an official establishment.

* * * * *

46. Paragraph (b) of § 316.8 would be amended by replacing the first word with "Unmarked products," adding "and transported in compliance with Part 325 of this subchapter" before ": *Provided*, That", and replacing the portion of the provision after "unless" and before "required" with "such product is available for reinspection by an Inspection Program employee and is packed in containers bearing all such information, as".

§ 316.9 [Amended]

47. Paragraph (b) of § 316.9 would be amended by deleting the portion of the first sentence after "first inspected and passed", and by adding "as such establishment" after "products" in the second sentence.

§ 316.10 [Amended]

48. Section 316.10 would be amended by replacing "branded" with "marked" in the second sentence of paragraph (a) and by replacing everything after "further processing," and before the period with "each such container is sealed with an unofficial seal applied by the establishment from which such product is shipped and including its establishment number" in the last sentence of paragraph (b).

§ 316.13 [Amended]

49. Paragraph (e) of § 316.13 would be amended by adding "applicable" before "markings" and by replacing "§ 325.7(b)" with "§ 325.7 (a) and (b)."

50. Paragraph (g) of § 316.13 would be amended by revising all text after "*Provided,*" to read: "That the stencils, box dies, labels, and brands are not false or misleading and are approved as provided for in Part 317 of this subchapter."

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

51. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

§ 317.4 [Amended]

52. Paragraph (a) of § 317.4 would be amended in the first sentence by adding at the end before the period ", except as expressly provided otherwise in this part", and in the fourth sentence by replacing "the inspector-in-charge" with "a designated Inspection Program employee" and adding "; and a copy of the approval of any labeling, including any labeling upon which generic approval is based, shall be maintained by the establishment in which it is to be used and made available for review by Inspection Program employees" at the end before the period.

53. Paragraph (c) of § 317.4 would be amended by replacing "inspectors in charge" with "designated Inspection Program employees."

54. The title and paragraph (e) introductory text, (1), and (2) of § 317.4 would be revised to read as follows and the Table of Contents would be revised accordingly:

§ 317.4 Labeling to be approved prior to use.

* * * * *

(e) Approval may be presumed in certain cases.

(1) Certain labeling may be used without express notice of approval by the Standards and Labeling Division if it has been reviewed for compliance with applicable labeling requirements by a responsible establishment official who thereby may authorize use by that establishment of labeling listed in paragraph (e)(3) of this section: *Provided,* that the labeling conforms to all applicable provisions of this Part and is used so as not to be false or misleading; that prior to use the label, together with a transmittal referencing this paragraph and signed by the designated establishment official, is mailed first class to the Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, for filing and audit; that complete records of such label correspondence and any related documentation are maintained at the establishment in accord with § 320.1(b)(8) of this subchapter; and that upon written notice that one or more establishment labels have been found by the Standards and Labeling Division to be false or misleading in some particular, the presumption that such labels are approved fails and all labeling thereafter will require express approval under paragraphs (a) through (d) of this section or under § 317.5 until the cited mislabeling problem(s) is resolved to the satisfaction of the Standards and Labeling Division.

(2) Information concerning previous Standards and Labeling Division label review determinations and approval policies will be made available as guidelines to all official establishments desiring to use unapproved labels under this paragraph (e).

55. Paragraph (e) of § 317.4 would be further amended by revising subparagraph (3) in the opening clause to read "Labeling that may be presumed to be approved under this paragraph (e): "; in subparagraph (3)(iii) to remove from the proviso "in the opinion of the inspector-in-charge" and "sufficiently", in subparagraph (3)(iii)(E) to remove from the proviso "inspector-in-charge is satisfied that sufficient"; in subparagraph (3)(iv) to replace "inspector-in-charge" with "designated program employee", and by removing subparagraph (3)(viii).

§ 317.5 [Amended]

56. Paragraph (a) of § 317.5 would be amended by replacing "the inspector-in-charge" with "a designated Inspection Program employee" each time "the inspector-in-charge" appears in the second and third sentences.

57. Paragraph (b)(11) of § 317.5 would be amended by replacing "the inspector-in-charge assigned to that establishment" with "a designated Inspection Program employee".

§ 317.6 [Amended]

58. Section 317.6 would be amended by replacing all text after "§ 317.3" with a period.

§ 317.10 [Amended]

59. Paragraph (b) of § 317.10 would be amended by removing "under the supervision of a program employee" and replacing it with "under inspection coverage".

§ 317.11 [Amended]

60. Paragraph (b) of § 317.11 would be amended in the last sentence by removing "under the supervision of a program employee" and replacing it with "under inspection coverage".

§ 317.13 [Amended]

61. The first sentence of § 317.13 would be amended by replacing the portion of the first sentence after "inspector in charge at" with "an establishment slaughtering livestock or an Inspection Program employee designated for any other originating establishment. Such inspector in charge or other Inspection Program employee will notify Inspection Program personnel, in accordance with instructions issued by the Inspection Program, concerning the date of shipment, quantity, and type of material to be received by the destination establishment".

§ 317.14 [Amended]

62. Section 317.14 would be amended by replacing "the inspector at" with "an Inspection Program employee designated for" in the first sentence and by replacing "inspector" with "designated Inspection Program employee" each time "inspector" appears in the second, third, and fourth sentences.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

63. The authority citation for Part 318 would continue to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

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64. Paragraph (a) of § 318.1 would be amended by replacing "by a Program employee" with "in accordance with the regulations" in the first sentence and by revising the third, fourth, and fifth sentences as two sentences to read as follows:

§ 318.1 Products and other articles entering official establishments.

(a) * * * Product entering any official establishment shall be identified by the operator of such establishment and subject to reinspection by an Inspection Program employee in accordance with § 318.2 of this subchapter. Any product originally prepared at any official establishment may not be returned to any part of such establishment, other than the receiving area approved under § 318.3 of this subchapter, until the operator of such establishment has evaluated its condition to assure that entry and any further use of such product will be in accordance with §§ 318.4(b) and 318.6(a) of this subchapter.

§ 318.2 [Amended]

65. The first sentence of § 318.2(a) would be amended by adding "in a manner acceptable to the Inspection Program" after "identified" and adding "Inspection" before "Program".

66. Paragraph (c) of § 318.2 would be amended by replacing "The circuit supervisor" with "An Inspection Program supervisor" and replacing "the program employee" with "Inspection Program employees" in the second sentence and by replacing "the Circuit Supervisors of Program circuits" with "Inspection Program supervisors" in the first sentence of the footnote.

67. Paragraph (d) of § 318.2 would be amended by adding "Inspection" before "Program" in the first and second sentences, by replacing "the inspector" with "an Inspection Program employee" each time "the inspector" appears in the third and fourth sentences, and by replacing "The inspector" with "Inspection Program employees" and "his" with "their" in the last sentence.

§ 318.3 [Amended]

68. Section 318.3 would be amended by adding "or other designated Inspection Program supervisor" after "circuit supervisor".

69. The title of § 318.4 would be revised to read as follows and the Table of Contents would be revised accordingly:

§ 318.4 Preparation of products; operator responsibilities; plant operated quality control.

70. The first sentence of § 318.4(a) would be amended by replacing "supervised by Program employees" with "conducted under inspection coverage".

71. Paragraph (b) of § 318.4 would be amended by adding ", the acceptability of all articles used in preparing products," after "maintenance of the establishment" in the second sentence and by adding ", including records documenting such measures," after "measures" in the third sentence.

72. Paragraph (c)(4) of § 318.4 would be amended by replacing "the inspector in charge" with "a designated Inspection Program employee".

73. Paragraph (h) of § 318.4 would be removed.

74. The second sentence of § 318.5(a)(1) would be revised to read as follows:

§ 318.5 Requirements concerning procedures.

(a)(1) * * * When there is reason to doubt the soundness of any frozen product, the official establishment shall defrost a sufficient quantity thereof to determine its actual condition; an Inspection Program employee who doubts the soundness of any frozen product will require the defrosting and reinspect a sufficient quantity thereof to determine its actual condition.

75. The first sentence of § 318.5(a)(2) would be amended by replacing "inspector" with "Inspection Program".

§ 318.6 [Amended]

76. Section 318.6 would be amended by replacing "in" with "and" in the title and the Table of Contents would be revised accordingly.

77. Paragraph (a) of § 318.6 would be amended by redesignating the first sentence as subparagraph (1) and by replacing the second sentence with subparagraph (2) to read as follows:

§ 318.6 * * *

(a) * * *

(2)(i) Official establishments shall furnish accurate information to Inspection Program employees on all procedures involved in product preparation, including product composition, and any changes in such procedures that may affect inspectional control of product.

(ii) If an Inspection Program employee determines that a procedure or procedures involved in meat food product preparation is or are resulting in the preparation of meat food product or products suspected of being adulterated or misbranded,

(A) all meat food product(s) prepared using such procedure(s) and remaining at the official establishment shall be held under a "U.S. Retained" tag for disposition in accordance with this subchapter, and

(B) The official inspection legend and other information required by Parts 316 and 317 of this subchapter shall not be placed on such product(s) or on any meat food product subsequently prepared using such procedure(s) until the official establishment has corrected the problem(s) with such procedure(s) and an opportunity has been afforded for an Inspection Program employee to verify the adequacy of the corrective action taken.

* * * * *

78. Paragraph (b)(1) of § 318.6 would be amended by adding "meat food" before "product."

79. Paragraphs (b) (2) and (10) of § 318.6 would be revised to read as follows:

§ 318.6 * * *

* * * * *

(b) * * *

(2) Casings shall not be used as containers of meat food product unless they have been carefully washed and thoroughly flushed with clean water immediately before stuffing, are clean, and are otherwise suitable for such use, except that preflushed animal casings packed in salt or salt and glycerine solution or in other approved medium which are clean and otherwise suitable may be so used without additional flushing if they are thoroughly rinsed before use.

* * * * *

(10) Dry milk products shall not be used in the preparation of meat food products unless such dry milk products were produced in a plant approved by the Department under the regulations in 7 CFR Part 58 and are otherwise suitable for such use.

80. The first sentence of § 318.8(b) would be amended by replacing "inspector in charge" with "Inspection Program."

§ 318.9 [Amended]

81. Section 318.9 would be amended by adding "Inspection" before "Program" and adding "to determine compliance with the regulatory requirements or otherwise necessary" after "necessary."

§ 318.10 [Amended]

82. Paragraph (c)(2)(v) of § 318.10 would be amended by removing "and in the custody of the Program" and replacing "an official Program lock or seal" with "a lock or seal and subject to such Inspection Program supervision as the Inspection Program determines is appropriate to prevent unauthorized

access thereto" in the first sentence and by replacing "under close supervision of an inspector" with "separate from other product and as the designated Inspection Program supervisor may require", deleting "under Program control", and adding "in compliance with § 325.7 of this subchapter" after "establishment" in the last sentence.

83. Paragraph (c)(2)(vi) of § 318.10 would be amended by removing "sealed railroad cars, sealed motortrucks, sealed trailers, or sealed" in the first sentence, by deleting the period at the end of the first sentence, and by replacing "Such vehicles and containers shall be sealed and transported between official establishments in accordance" with "if such containers and such transportation are in compliance" in the second sentence.

84. The second sentence of § 318.10(d) would be amended by replacing "Circuit" with "Designated Inspection Program."

85. The fourth sentence of § 318.12(a) would be amended by replacing "inspectional supervision" with "inpection, in accordance with § 307.4(a) of this subchapter" and replacing "regular hours of inspection" with "establishment's approved work schedule."

§ 318.12 [Amended]

86. The fourth sentence of § 318.12(b) would be amended by replacing "supervision" with "control."

§ 318.14 [Amended]

87. Paragraph (a) of § 318.14 would be amended by adding "the official establishment shall notify the inspector in charge or, if such establishment prepares meat food products, the designated Inspection Program supervisor as soon as possible, and" after "establishment,".

88. The first sentence of § 318.14(b) would be amended by replacing "the supervision of an inspector," with "such Inspection Program supervision as the Inspection Program determines is appropriate,".

89. The first sentence of § 318.14(c) would be amended by replacing "supervision of an inspector," with "such Inspection Program supervision as the Inspection Program determines is appropriate".

90. The first sentence of § 318.15 would be revised to read as follows:

§ 318.15 Tagging chemicals, preservatives, cereals, spices, etc., "U.S. Retained."

Any chemical, preservative, cereal, spice, or other substance intended for use in an official establishment is subject to examination by an Inspection Program employee and, if found upon such examination to be unfit or otherwise unacceptable for the use intended or if final decision regarding acceptability is deferred pending laboratory or other examination, the Inspection Program employee shall attach a "U.S. Retained" tag to the substance or container thereof. * * *

91. The second sentence of § 318.15 would be amended by replacing "circuit supervisor" with "designated Inspection Program supervisor" and adding "Inspection" before "Program."

§ 318.17 [Amended]

92. Paragraph (f) of § 318.17 would be amended by replacing "inspector-in-charge" with "designated Inspection Program supervisor."

93. Paragraph (h)(1) of § 318.17 would be revised to read as follows:

§ 318.17 Requirements for the production of cooked beef, roast beef, and cooked corned beef.

* * * * *

(h) * * *

(1) The establishment shall identify for each lot the processing procedure to be used, including time and temperature.

94. Paragraph (i)(3) of § 318.17 would be amended by replacing "through the inspector-in-charge to the Circuit Supervisor" with "to the designated Inspection Program supervisor."

95. Paragraph (k) of § 318.17 would be amended by replacing "Circuit Supervisor" with "designated Inspection Program supervisor."

96. Paragraph (c)(1) of § 318.302 would be amended by replacing "the inspector at the establishment" with "a designated Inspection Program employee."

§ 318.302 [Amended]

97. Paragraph (c)(2) of § 318.302 would be amended by replacing "the inspector" with "a designated Inspection Program employee" in the third sentence and by replacing "the inspector at the establishment" with "a designated Inspection Program employee" in the last sentence.

§ 318.308 [Amended]

98. Paragraph (d)(1)(ii) of § 318.308 would be amended by replacing "is filed with the inspector" with "provided to a designated Inspection Program employee."

99. Paragraph (d)(1)(iii) of § 318.308 would be amended by replacing "the inspector" with "a designated Inspection Program employee."

100. Paragraph (d)(1)(v) of § 318.303 would be amended by replacing "is not on file with the inspector" with "has not been provided to a designated Inspection Program employee."

§ 318.309 [Amended]

101. The first full sentence of the Text of § 318.309(d)(1)(vi) would be amended by replacing "the inspector" with "a designated Inspection Program employee."

102. The first full sentence of § 318.309(d)(2)(ii) would be amended by replacing "the inspector" with "a designated Inspection Program employee."

PART 320—RECORDS, REGISTRATION, AND REPORTS

103. The authority citation for Part 320 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 930, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*

104. Paragraph (b) of § 320.1 would be amended by adding subparagraphs (7) and (8) to read as follows:

§ 320.1 Records required to be kept.

* * * * *

(b) * * *

(7) Records of the destruction for human food purposes of meat food products by the operator of an official establishment to be adulterated and destroyed by such operator when not under the supervision of an inspection program employee.

(8) Records of labels used in the establishment under Part 317 of this subchapter.

§ 320.6 [Amended]

105. Paragraph (a) of § 320.6 would be amended by adding "Inspection" before "Program", deleting "daily" before "reports", and replacing "to which they are assigned" with "at which they are performing Inspection Program functions."

106. Paragraph (a) of § 320.6(b) would be amended by replacing "the establishment" with "an establishment slaughtering livestock or the Inspection Program supervisor designated for any other establishment preparing meat food product."

§ 320.7 [Amended]

107. Section 320.7 would be amended by adding "at an official establishment slaughtering livestock or the Inspection Program supervisor designated for an official establishment not slaughtering livestock" after "Agriculture,".

PART 322—EXPORTS

108. The authority citation for Part 322 would continue to read as follows:

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Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, *601 et seq.*

109. The first sentence of § 322.2(a) would be amended by adding "or other designated Inspection Program employee" after "inspector in charge", and the following sentence would be added to the end of paragraph: "Exporters requiring export inspection services provided for under this section should contact their designated program employee or the Export Coordination Division, International Programs, FSIS, U.S. Department of Agriculture, Washington, DC 20250.

110. Paragraph (f) of § 322.2 would be amended by replacing "circuit" with "an appropriate Inspection Program."

111. Paragraph (h) of § 322.2 would be amended by replacing "inspectors" with "Inspection Program employees" and replacing "not under their supervision" with "at which they do not regularly perform Inspection Program functions."

PART 325—TRANSPORTATION

112. The authority citation for Part 325 would continue to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); *76 Stat. 653 (7 U.S.C. 450 et seq.*).

§ 325.5 [Amended]

113. Section 325.5 would be amended by deleting "under official seal" in the title and the Table of Contents would be revised accordingly.

114. Paragraph (a) of § 325.5 would be amended by removing the second sentence and by replacing everything after the comma in the first sentence with "if (1) such product is so transported in a closed container or containers bearing the official inspection legend and all other information required by Parts 316 and 317 of this subchapter and (2) each such container is sealed with an unofficial seal that is applied by the establishment from which such product is transported and includes its establishment number."

115. The form of the certificate required by § 325.5(b) would be amended by replacing the line "Car number and initials _____" with "Container number(s) _____" and removing the line "License number of other means of conveyance _____" and by replacing everything after "Agriculture;" and before the period in the next sentence with "and such product has been placed in the closed container(s) specified above, which has/have been sealed by the official establishment specified above as the consignor."

§ 325.6 [Amended]

116. Section 325.6 would be amended and the Table of Contents would be revised accordingly by deleting "under official seal" in the title and by replacing everything after "processing" in the text with "only if so transported in sealed closed containers with certificates, as prescribed in § 325.5 of this subchapter."

§ 325.7 [Amended]

117. Section 325.7 would be amended and the Table of Contents would be amended accordingly by removing paragraph (a), by deleting "or 'pork product —°F. — days refrigeration' " in the sixth sentence and deleting the third sentence from the end in paragraph (b), by redesignating paragraph (b) as paragraph (a), and by revising the title and the first sentence and last 2 sentences of redesignated paragraph (a) to read as follows:

§ 325.7 Shipment of certain products between official establishments for further handling; seals and certificates.

(a) Product passed for cooking or beef that is to be refrigerated to destroy cysticerci may be shipped from one official establishment to another official establishment for further handling in accordance with Part 318 of this subchapter only if packed in a closed container or containers individually sealed with the official seal of the Department, as prescribed in § 325.16 of this subchapter, and as hereinafter provided. * * * For each consignent of such restricted product, the Inspection Program employee affixing the official seal of the Department shall promptly issue and forward to the Inspection Program supervisor designated for the destination establishment a report in the form of a notice of product shipped in sealed containers which shows that the contents of such container(s) are restricted, and shall forward a duplicate copy to the area office for the area in which the official establishment from which such product is shipped is located.

118. Section 325.7 would be further amended by adding paragraph (b) to read as follows:

* * * * *

(b) Pork that has been refrigerated to destroy trichinae may be shipped from one official establishment to another official establishment for further handling in accordance with §318.10 of this subchapter only if packed in a closed container or containers—

(1) Individually sealed with an unofficial seal that is applied by the establishment from which such product is transported and includes its establishment number and

(2) Bearing the official inspection legend and the statement "Pork Product —°F. — Days Refrigeration."

119. Paragraph (c) of § 325.7 would be amended by removing "in the form set out in § 325.5(b)" in the first sentence and by adding a sentence after that sentence to read as follows:

* * * * *

(c) * * * Such certificate shall be in the form set out in § 325.5(b) of this subchapter, except that for product passed for cooking or beef that is to be refrigerated to destroy cysticerci such certificate shall indicate that the contents are restricted product and that the container(s) has/have been sealed by an Inspection Program employee with official U.S. Government seal(s) and the number(s) of such seals. * * *

§ 325.10 [Amended]

120. The next to last sentence of § 325.10(a) would be amended by replacing "inspector at" with "Inspection Program supervisor designated for."

121. The first sentence of § 325.10(b) would be amended by revising the first portion, ending with "establishment;", to read as follows:

§ 325.10 * * *

* * * * *

(b) A careful inspection shall be made of such product by an Inspection Program employee upon arrival of the shipment at the receiving establishment; if no Inspection Program employee is present, the receiving establishment shall notify the designated Inspection Program supervisor who will, when so notified, arrange for such examination. If it is found that the article is not adulterated, the article may be received into the establishment;* * *

§ 325.16 [Amended]

122. Paragraph (a) of § 325.16 would be amended by replacing "§ 312.5(a)" with § 312.5."

123. Paragraph (b) of § 325.16 would be amended by replacing "Except as provided in § 325.18(b)" with "An" and adding "Inspection" before "Program" in the first sentence, by designating the first sentence as subparagraph (1), by designating the second sentence as subparagraph (2), and by adding a sentence at the end of subparagraph (1) to read as follows:

§ 325.16 Official seals; forms, use, and breaking.

* * * * *

(b)(1) * * * If no Inspection Program employee is present at an official establishment receiving product transported under official seal, the Inspection Program supervisor designated for such establishment will, when notified by that establishment, arrange for the breaking of such seal(s) by an Inspection Program employee.

* * * * *

§ 325.17 [Amended]

124. Section § 325.17 would be amended by removing "sealed" in the title, by replacing "an officially sealed" with "a" before "railroad car" in the first clause, and by replacing "under official seal" with "in sealed closed container(s)" in the last clause.

§ 325.18 [Amended]

125. Section § 325.18 would be amended by removing the designation of the first paragraph as (a) and by removing paragraph (b).

PART 327—IMPORTED PRODUCTS

126. The authority citation for Part 327 would continue to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 601 *et seq.*

§ 327.2 [Amended]

127. Paragraph (a)(2)(ii)(*d*) of § 327.2 would be amended by adding "official coverage and controls for all other" before "preparation of product."

128. Paragraph (a)(2)(ii)(g) of § 327.2 would be amended by replacing "over condemned material until" with "for assuring that condemned material is."

§ 327.4 [Amended]

129. The form of the certificate required by § 327.4(b) would be amended by removing "continuous supervision of an inspector under" in the first full sentence.

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

130. The authority citation for Part 331 would continue to read as follows:

Authority: Secs. 21 and 301, 81 Stat. 584, 588, 592, 593, 595 (21 U.S.C. 621, 661).

§ 331.3 [Amended]

131. Paragraph (e)(1) of § 331.3 would be amended by replacing "the circuit supervisor of the circuit in which the establishment is located" with "a designated Inspection Program supervisor" in the first sentence and by replacing "circuit" with "Inspection Program" and adding "or she" after "he" in the second sentence.

132. Paragraph (e)(2) of § 331.3 would be amended by replacing "circuit" with "Inspection Program", adding "or she" after "he", and replacing "Labeling and Packaging Staff" with "Standards and Labeling Division."

133. Paragraph (e)(3) of § 331.3 would be amended by replacing "circuit" with "Inspection Program" each time "circuit" appears in the first and second sentences and by replacing "Labels and Packaging Staff, Meat and Poultry Inspection" with "Standards and Labeling Division, Technical Services" in the first sentence.

134. Paragraph (e)(4) of § 331.3 would be amended by replacing "circuit" with "Inspection Program" in the first sentence.

PART 335—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE FEDERAL MEAT INSPECTION ACT

135. The authority citation for Part 335 would continue to read as follows:

Authority: 34 Stat. 1264, as amended (21 U.S.C. 621), unless otherwise noted.

§ 335.11 [Amended]

136. The first sentence of paragraph (a) of § 335.11 would be amended and the Table of Contents would be amended accordingly by adding "or meat food product found to be adulterated" after "product" in the title and by removing the comma after "meat food product", adding ", or has failed to condemn and destroy meat food product found to be adulterated as required under section 6 of the Federal Meat Inspection Act (21 U.S.C. 606)," after "(21 U.S.C. 604 and 606)", replacing "he" with "the Administrator" after "subchapter", and adding "or meat food product(s) found to be adulterated" after "condemned articles".

137. Paragraph (b) of § 335.11 would be amended by adding "or any meat food product found to be adulterated" before "as specified" in the first sentence.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

138. The authority citation for Part 381 would continue to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

139. Paragraphs (b)(26), (27), (28)(ii), (51)(ii), and (58) of § 381.1 would be revised to read as follows:

§ 381.1 Definitions.

* * * * *

(b) * * *

(26) *Inspection Service* or *Inspection Program.* "Inspection Service" or "Inspection Program" means the organizational unit within the Department having the responsibility for carrying out the provisions of the Act and the rules and regulations thereunder.

(27)(i) *Inspection Service employee* or *Inspection Program employee.* "Inspection Service employee" or "Inspection Program employee" refers to any inspector or other individual employed by the Department or any cooperating agency who is authorized to perform any function in connection with the Inspection Program.

(ii) *Inspection Service supervisor* or *Inspection Program supervisor.* "Inspection Service supervisor" or "Inspection Program supervisor" refers to an Inspection Program employee who is delegated authority to exercise supervision over one or more phases of the Inspection Program at a designated level.[1]

(28) * * *

(ii) *Inspector in charge.* This term means an Inspection Program employee who is designated as having primary responsibility for Inspection Program functions at a particular official establishment.

* * * * *

(51) * * *

(ii) *Circuit supervisor.* This term refers to an Inspection Program supervisor with responsibility for supervising the carrying out of Inspection Program functions at more than one official establishment.

* * * * *

(58) *U.S. Retained.* This term means that the poultry or carcass, or part or product of a carcass, of poultry so identified is held at an official establishment for further examination by an inspection program employee to determine its disposal.

140. Paragraph (b) of § 381.1 would be further amended by redesignating current subparagraph (43) as subparagraph (43)(i) and adding a subparagraph (43)(ii), and by adding a new subparagraph (63), to read as follows:

§ 381.1 Definitions.

* * * * *

(b) * * *

(43) * * *

[1] Information identifying the employees who have been delegated such authority is available from the Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

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(ii) *Further processing.* The term "further processing" refers to the conduct of any processing operation or combination of processing operations other than ones whereby poultry is slaughtered and/or eviscerated,

* * * * *

(83) *Area.* The organizational unit within the Inspection Program reporting to regional offices and responsible for the supervision of one or more circuit supervisors and for providing inspection coverage for establishments within a designated geographical area.

§ 381.3 [Amended]

141. Section 381.3 would be amended by removing and reserving paragraphs (c) through (e).

142. Section 381.4 would be amended by revising the title and the text to read as follows and by revising the Table of Contents accordingly:

§ 381.4 Inspection of products.

The Administrator will ensure inspection of products is conducted by Inspection Program employees as is necessary and appropriate under the Act and the regulations. The conditions and methods of inspection will vary among establishments, depending on the nature of operations, compliance history, and other conditions unique to each establishment. The conditions and methods of inspection will necessarily change from time to time to accommodate advances in inspection techniques and/or changes in establishment operations. Consequently, designated Inspection Program employees will determine for each establishment what inspection-related tasks and activities are appropriate, in accordance with guidelines provided by the Administrator that catalogue all current inspection tasks and activities that may apply in various establishments under various circumstances. Such guidelines shall be available for reference and use by the official establishments. Assigned inspection tasks and activities will be conducted by individual program employees as directed by the inspection program.

143. Subpart B would be further amended and the Table of Contents would be revised accordingly by adding a new § 381.8 to read as follows:

§ 381.8 Frequency and manner of inspection.

(a) In establishments processing poultry products at which inspection under the regulations is required, the frequency with which and the manner in which poultry products made from poultry previously slaughtered and eviscerated in official establishments are examined and inspected by Inspection Program employees shall be based on considerations relevant to effective regulation of poultry products and protection of the health and welfare of consumers and be determined in accordance with this section.

(b) The determinations referred to in paragraph (a) of this section shall be made by the Inspection Program and shall reflect its evaluations of the performance and the characteristics of such establishments.

(1) In assessing the performance of an establishment, the following factors are appropriate for consideration:

(i) The history of compliance with applicable regulatory requirements by the person operating such establishment or by anyone responsibly connected with the business that operates such establishment, as "responsibly connected" is defined in section 18(a) of the Act;

(ii) The procedures used in such establishment to control the production process, environment, and resulting product in order to assure and monitor compliance with the requirements of the Act and the rules and regulations thereunder.

(2) In assessing the characteristics of an establishment, the following factors are appropriate for consideration:

(i) The complexity of the processing operation(s) conducted at such establishment,

(ii) The frequency with which each such operation is conducted at such establishment,

(iii) The volume of product resulting from each such operation at such establishment,

(iv) Whether and to what extent slaughter and evisceration operations also are conducted at such

(v) What, if any, food products not regulated under this Act or the Federal Meat Inspection Act also are processed at such establishment, and

(vi) The size of such establishment.

(c) The Inspection Program shall base the conditions and methods of inspection coverage of operations other than slaughter and evisceration in an establishment making poultry products from poultry previously slaughtered and eviscerated in official establishment(s) on:

(1) The history of compliance at the establishment.

(2) The evaluation of the characteristics of such establishment described in paragraph (b)(2) of this section,

(3) The control procedures described in paragraph (b)(1)(ii) of this section,

(4) The significance of potential public health consequences of noncompliance, and

(5) The competence of the person operating such establishment, as indicated by:

(i) Knowledge of appropriate manufacturing practices and applicable regulatory requirements;

(ii) Demonstrated ability to apply such knowledge in a timely and consistent manner; and

(iii) Commitment to correcting deficiencies noted by Inspection Program employees and otherwise assuring compliance with applicable regulatory requirements; and

(6) The availability of Inspection Program employees.

§ 381.27 [Amended]

144. The first sentence of the text of § 381.27 would be amended by replacing "his supervisor" with "an Inspection Program supervisor."

145. Section 381.28 would be amended and the Table of Contents would be amended accordingly by revising the title and revising the text to read as follows:

§ 381.28 Reports of violations.

Inspection Program employees and other representatives of the Department shall report, in a manner prescribed by the Administrator, all violations of the Act and noncompliance with the rules and regulations of which they have knowledge or information.

146. Section 381.30 would be amended and the Table of Contents would be revised accordingly by redesignating the current provision as paragraph (a) and by revising the title and adding paragraph (b) to read as follows:

§ 381.30 Licensed or otherwise authorized inspectors; designation of supervisors.

(a) * * *

(b) The Administrator shall designate Inspection Program supervisors.

§ 381.35 [Amended]

147. Section 381.35 would be amended in the last sentence by replacing "inspector in charge" with "designated program employee."

§ 381.36 [Amended]

148. Paragraph (a) of § 381.36 would be amended by removing the heading *"Inspectors Office."*, by replacing "Service" with "Program" and "inspectors" with "Inspection Program employees" in the second sentence, and by deleting "requiring the services of less than one full-time inspector" and adding "Inspection" before "Program" in the third sentence.

149. Section 381.37 would be amended and the Table of Contents would be amended accordingly by revising the title to read as follows:

§ 381.37 Conduct and schedule of operations.

150. Paragraph (a) of § 381.37 would be revised to read as follows:

(a) Slaughter and evisceration operations.

(1) No slaughter or evisceration operations requiring inspection shall be conducted except under the supervision of an Inspection Program employee. All eviscerating of poultry shall be done with reasonable speed, considering the official establishment's facilities.

151. Section 381.37 would be revised further by redesignating paragraph (b) as paragraph (a)(2), by redesignating paragraph (c) as paragraph (a)(3), and by amending the new paragraph (a)(3) in the first sentence by replacing the words "importers and exporters" with "conducting slaughter and eviscerating operations" and by removing the last sentence.

152. A new paragraph (b) would be added to § 381.37 to read as follows:

* * * * *

(b) Operations other than slaughter and evisceration.

(1) No operations other than slaughter and evisceration, requiring inspection shall be conducted except under such coverage by Inspection Program employees as the Inspection Program determines to be appropriate to assure effective regulation of poultry products and protection of the public health and welfare. All further processing of products shall be done with reasonable speed, considering the official establishment's facilities.

(2) Official establishments preparing poultry products will establish a regularly scheduled operating period for each work day in the basic workweek. Once established, the scheduled operating period, and mealtimes and rest breaks within the operating period, must remain relatively constant as to time and duration to facilitate the scheduling of inspection activities.

(3) Official establishments, importers and exporters shall not be charged for inspection service that is furnished, up to 12 consecutive hours per day, if provided during scheduled operations conducted between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, subject to the provisions of § 381.38. Alternatively, official establishments, importers and exporters may elect to establish as their basic workweek during which inspection service is provided without charge, subject to the provisions of § 381.38, any 5 consecutive 8-hour days within the administrative workweek Sunday through Saturday, excluding the lunch period, except that, when possible, the Department shall schedule the basic workweek so as to consist of 5 consecutive 8-hour days Monday through Friday, excluding lunch period. The Department may depart from the basic workweek in those cases where maintaining such a schedule would seriously handicap the Department in carrying out its function.

153. Paragraph (d) of § 381.37 would be redesignated "(c) Approval of schedules"; and would be amended by adding in the last sentence of subparagraph (2) "or designated Inspection Program supervisor" after 'inspector in charge", and by revising subparagraph (3) to read as follows:

(c) Approval of schedules. * * *

(3) Requests to operate outside an approved work schedule shall be made to the designated Inspection Program supervisor as early in the day as possible for operations to be conducted within the same workday, or prior to the end of the day's operations for operations to be conducted at the start of the following day: *Provided,* That an Inspection Program employee may be called back to duty after completion of his or her daily tour of duty under the provisions of § 381.39(b) of this part.

§ 381.38 [Amended]

154. Paragraph (a) of § 381.38 would be amended by replacing the clause after "section;" with the following three clauses: "outside the times and days specified in § 381.37(b)(3) of this part; during an approved work schedule when operations are not being conducted and reasonable notice thereof has not been provided to the program; or during any operations conducted outside a work schedule approved under § 381.37 of this part that requires an inspection program employee to work more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday."

155. Section 381.39 would be amended by replacing "Service" with "Program" in paragraph (a) and by revising paragraph (b) to read as follows:

§ 381.39 Basis of billing for overtime and holiday services.

* * * * *

(b) Official establishments, importers, or exporters requesting and receiving the services of an Inspection Program employee who is called back to duty during any overtime or holiday period after completion of his or her tour of duty shall be billed for a minimum of 2 hours of overtime or holiday inspection service at the established rate.

§ 381.50 [Amended]

156. Paragraph (f) of § 381.50 would be amended by adding "or other designated Inspection Program supervisor" after "circuit supervisor."

§ 381-53 [Amended]

157. Paragraph (a)(5) of § 381.53 would be amended by replacing "Inspection Service inspectors" with "Inspection Program employees".

158. Subpart H would be further amended by adding a new § 381.58a to read as follows and the Table of Contents would be revised accordingly:

§ 381.58a Tagging.

When an Inspection Program employee identifies any equipment, utensil, room, or compartment as "U.S. Rejected" under § 381.99 of this part, he or she also shall, if poultry product(s) processed using such equipment or utensil or processed, packed and held in such room or compartment and remaining at the official establishment is or are suspected of being adulterated, identify such poultry product(s) as "U.S. Retained" under § 381.99 of this part for disposition in accordance with the regulations.

§ 381.95 [Amended]

159. Section 381.95 would be amended by adding to the end of the first paragraph the following sentence: "Carcasses, parts of carcasses or other poultry products not condemned but found to be adulterated by the operator of an establishment also shall be destroyed for human food purposes by one of the following methods."

§ 381.99 [Amended]

160. Section 381.99 would be amended by replacing "inspector" with "Inspection Program employee" in the first and last sentences.

161. A new § 381.102 would be added and the Table of Contents would be revised accordingly to read as follows:

§ 381.102 Official condemnation tag.

An inspection program employee may use such Tags or other devices and methods at an official establishment as may be approved by the Administrator for the identification and control of poultry and poultry products found to be adulterated. The Administrator has approved a paper Tag bearing the legend "U.S. Inspected and Condemned" (Form MP) for use on poultry and poultry products under this section. Such Tags are official devices and shall

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not be removed by anyone other than an Inspection Program employee.

162. A new paragraph (d) would be added to § 381.105 to read as follows:

§ 381.105 Export certification; marking of containers.

* * * * *

(d) Exporters requiring export inspection services provided for under this section should contact their designated program employee or the Export Coordination Division, International Programs, FSIS, U.S. Department of Agriculture, Washington, DC 20250.

163. Section 381.112 would be revised to read as follows: § 381.112 Official mark for maintaining the identity and integrity of samples.

The official mark for use in sealing containers of samples taken by Inspection Program employees, including samples taken by an authorized representative of the Secretary pursuant to section 11(b) of the Act, shall bear the designation "Sample Seal" accompanied by the official USDA logo as shown below. Any seal approved by the Administrator for applying such mark shall be an official device for purposes of the Act. The Department will supply such device to Inspection Program employees and other authorized representatives of the Secretary.



§ 381.132 [Amended]

164. Paragraph (a) § 381.132 would be amended in the first sentence by adding at the end before the period", except as expressly provided otherwise in this part," and in the fourth by replacing "the inspector-in-charge" with "a designated Inspection Program employee" and by adding"; and a copy of the approval of any labeling, including any labeling upon which generic approval is based, shall be maintained by the establishment in which it is to be used and made available for review by Inspection Program employees" at the end before the period.

165. The title and paragraph (c) introductory text, (1), and (2) of § 381.132 would be revised to read as follows and the Table of Contents would be amended accordingly:

§ 381.132 Labeling to be approved prior to use.

* * * * *

(c) Approval may be presumed in certain cases.

(1) Certain labeling may be used without notice of prior approval by the Standards and Labeling Division if it has been reviewed for compliance with applicable labeling requirements by a responsible establishment official who thereby may authorize use by that establishment of labeling listed in paragraph (c)(3) of this section: *Provided,* that the labeling conforms to all applicable provisions of this Part and is used so as not to be false or misleading; that prior to use the label, together with a transmittal referencing this paragraph and signed by the designated establishment official, is mailed first class to the Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, for filing and audit; that complete records of such label correspondent and any related documentation are maintained at the establishment in accord with § 381.175(b)(8) of this subchapter; and that upon written notice that one or more establishment labels have been found by the Standards and Labeling Division to be false or misleading in some particular, the presumption that such labels are approved fails and all labeling thereafter will require express approval under paragraphs (a) through (d) of this section or under § 381.134 until the cited mislabeling problem(s) is resolved to the satisfaction of the Standards and Labeling Division.

(2) Information concerning previous Standards and Labeling Division label review determinations and approval policies will be made available as guidelines to all official establishments desiring to use unapproved labels under this paragraph (c).

166. Paragraph (c) of § 381.132 would be further amended by revising subparagraph (3) in the opening clause to read "Labeling that may be presumed to be approved under this paragraph (c):", in subparagraph (3)(iii) to remove from the proviso "in the opinion of the inspector-in-charge" and "sufficiently", in subparagraph (3)(iii)(E) to remove from the proviso "inspector-in-charge is satisfied that suficient", in subparagraph (3)(iv) to replace "inspector-in-charge" with "designated program employees", and by removing subparagraph (3)(viii).

§ 381.134 [Amended]

167. Paragraph (b)(11) of § 381.134 would be amended by replacing "the inspector-in-charge assigned to that establishment" with "a designated Inspection Program employee."

§ 381.137 [Amended]

168. Section 381.137 would be amended by replacing "inspector" with Inspection Program employee", adding "or she" after "he", and removing "on file."

§ 381.138 [Amended]

169. Paragraph (b) of § 381.138 would be amended by replacing the portion of the first sentence after "inspector in charge at" with "an establishment slaughtering or eviscerating poultry or an Inspection Program employee designated for any other originating establishment. Such inspector in charge or other Inspection Program employee will notify Inspection Program personnel, in accordance with instructions issued by the Inspection Program, concerning the date of shipment, quantity, and type of material to be received by the destination establishment."

§ 381.139 [Amended]

170. Paragraph (b) of § 381.139 would be amended by adding "or she" after "he" and replacing "inspector" with "Inspection Program employee."

§ 381.141 [Amended]

171. Section 381.141 would be amended by replacing "the inspector at" with "an Inspection Program employee designated for" in the first sentence and by replacing "inspector" with "designated Inspection Program employee" each time "inspector" appears in the second, third, and fourth sentences.

§ 381.145 [Amended]

172. The title of § 381.145 would be amended and the Table of Contents would be revised accordingly by replacing "examination and other requirements" with "requirements; plant operated quality control."

173. Paragraph (b) of § 381.145 would be amended by adding "in a manner acceptable to the Inspection Program" after "identified" in the first sentence, by replacing "examination by an inspector" with "reinspection by an Inspection Program employee" and deleting "by the inspector in charge" in the second sentence, by replacing "examination" with "reinspection" in the third and fourth sentences, by replacing "The inspector in charge" with "an Inspection Program supervisor" and replacing "the program employee" with "Inspection Program employees" in the last sentence, and by replacing "the Circuit Supervisor" with "Inspection Program supervisors" in the first sentence of the footnote.

174. Paragraph (c)(4) of § 381.145 would be amended by replacing "the inspector in charge" with "a designated Inspection Program employee."

175. Paragraph (h) of § 381.145 would be removed and reserved.

§ 381.146 [Amended]

176. Section 381.146 would be amended and the Table of Contents would be revised accordingly by adding "and procedures" after "Sampling" in the title, by replacing "Inspectors" with "Inspection Program employees" and adding "or as may otherwise be deemed necessary for the efficient conduct of inspection" after "regulations" in the text, and by designating the current provision as paragraph (a).

177. Section 381.146 would be further amended by adding paragraph (b) to read as follows:

* * * * *

(b)(1) It is the responsibility of the operator of every official establishment to comply with the Act and regulations in this part. To carry out this responsibility effectively, the operator of the establishment shall institute appropriate measures to assure the maintenance of the establishment, the acceptability of all articles used in processing poultry products, and the processing, marking, labeling, packaging and other handling of its poultry products strictly in accordance with the sanitary and other requirements of this part. The effectiveness of such measures, including records documenting such measures, are subject to review by the Department.

(2) Official establishments shall furnish accurate information to Inspection Program employees on all procedures involved in further processing of poultry product, including product composition, and any changes in such procedures that may affect inspectional control of poultry product.

(3) If an Inspection Program employee determines that a procedure or procedures involved in further processing of poultry product is or are resulting in the processing of poultry product or products suspected of being adulterated or misbranded,

(i) All poultry product(s) further processed using such procedure(s) and remaining at the official establishment shall be held under a "U.S. Retained" tag for disposition in accordance with this part, and

(ii) The official inspection legend and other information required by Subpart N of this part shall not be placed on such poultry product(s) or on any poultry product subsequently further processed using such procedure(s) until the official establishment has corrected the problem(s) with such procedure(s) and an opportunity has been afforded for an Inspection Program employee to verify the adequacy of the corrective action taken.

§ 381.151 [Amended]

178. Paragraph (a) of § 381.151 would be amended by adding "the official establishment shall notify the inspector in charge or, if such establishment further processes poultry products, the designated Inspection Program supervisor as soon as possible, and" after "establishment,".

179. The first sentence of § 381.151(b) would be amended by replacing "the supervision of an inspector," with "such Inspection Program supervision as the Inspection Program determines is appropriate,".

180. The first sentence of § 381.151(c) would be amended by replacing "supervision of an inspector" with "such Inspection Program supervision as the Inspection Program determines is appropriate."

§ 381.152 [Amended]

181. The third sentence from the end of § 381.152(a) would be amended by replacing "the supervision of an inspector" with "inspection, in accordance with § 381.37(a) of this part."

182. The last sentence of § 381.152(b) would be amended by replacing "supervision by an inspector" with "inspection coverage."

183. Paragraph (b) of § 381.175 would be amended by adding subparagraphs (4) and (5) to read as follows:

§ 381.175 Records required to be kept.

* * * * *

(b) * * *

(4) Records of the destruction for human food purposes of further processed poultry products found by the operator of an official establishment to be adulterated and destroyed by such operator when not under the supervision of an inspection program employee.

(5) Records of labels approved for use in the establishment under Subpart N of this part.

§ 381.180 [Amended]

184. Paragraph (a) of § 381.180 would be amended by adding "and other Inspection Program employees" after "inspectors", deleting "daily" before "reports", and replacing "to which they are assigned" with "at which they are performing Inspection Program functions."

§ 381.182 [Amended]

185. Section 381.182 would be amended by replacing "the inspector in charge" with "inspectors in charge and other appropriate Inspection Program employees."

§ 381.196 [Amended]

186. Paragraph (a)(2)(ii)(*d*) of § 381.196 would be amended by adding "official coverage and controls for all other" before "processing of poultry products."

187. Paragraph (a)(2)(ii)(*g*) of § 381.196 would be amended by replacing "over condemned material until" with "for assuring that condemned material is."

§ 381.222 [Amended]

188. Paragraph (d)(1) of § 381.222 would be amended by replacing "the Circuit Supervisor in which the establishment is located" with "a designated Inspection Program supervisor" in the first sentence and by replacing "Circuit Supervisor" with "Inspection Program supervisor" and adding "or she" after "he" in the second sentence.

189. Paragraph (d)(2) of § 381.222 would be amended by replacing "Circuit Supervisor" with "Inspection Program supervisor", adding "or she" after "he", and replacing "Labeling and Packaging Staff" with "Standards and Labeling Division."

190. Paragraph (d)(3) of § 381.222 would be amended by replacing "Circuit Supervisor" with "Inspection Program supervisor" each time "Circuit Supervisor" appears in the first and second sentences and by replacing "Labels and Packaging Staff, Meat and Poultry Inspection" with "Standards and Labeling Division, Technical Services" in the first sentence.

191. Paragraph (d)(4) of § 381.222 would be amended by replacing "Circuit Supervisor" with "Inspection Program supervisor" in the first sentence.

§ 381.302 [Amended]

192. Paragraph (c)(1) of § 381.302 would be amended by replacing "the inspector at the establishment" with "a designated Inspection Program employee".

193. Paragraph (c)(2) of § 381.302 would be amended by replacing "the inspector" with "a designated Inspection

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Program employee" in the third sentence and by replacing "the inspector at the establishment" with "a designated Inspection Program employee" in the last sentence.

§ 381.308 [Amended]

194. Paragraph (d)(1)(ii) of § 381.308 would be amended by replacing "is filed with the inspector" with "provided to a designated Inspection Program employee".

195. Paragraph (d)(1)(iii) of § 381.308 would be amended by replacing "the inspector" with "a designated Inspection Program employee".

196. Paragraph (d)(1)(v) of § 381.308 would be amended by replacing "is not on file with the inspector" with "has not been provided to a designated Inspection Program employee".

§ 381.309 [Amended]

197. The first full sentence of § 381.309(d)(1)(vi) would be amended by replacing "the inspector" with "a designated Inspection Program employee."

198. The first full sentence of § 381.309(d)(2)(ii) would be amended by replacing "the inspector" with "a designated Inspection Program employee."

Done at Washington, DC, on October 3, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-25418 Filed 11-3-88; 8:45 am]

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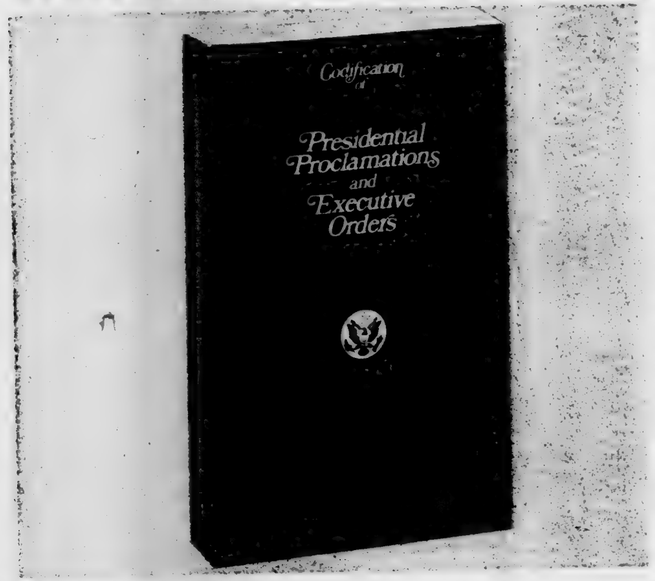
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Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1099

[DA-88-122]

Milk in the Paducah, KY, Marketing Area; Order Suspending Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action suspends certain provisions of the Paducah, Kentucky, order. The suspension increases the amount of milk that may be shipped directly from the farm to nonpool plants and still be priced under the order. The action also permits a cooperative association to divert the milk of producer members of another cooperative association. An indefinite suspension of the provisions pending a hearing to amend the order was requested by Dairymen, Inc., a cooperative association that represents producers supplying the market. Interested parties were invited to comment on the proposed action. No views in opposition to the indefinite suspension were received. The suspension order adapts the order to a recent change in marketing conditions and will permit the efficient marketing of milk of dairy farmers who have historically supplied the market.

EFFECTIVE DATE: November 7, 1988.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Paducah, Kentucky, marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on September 30, 1988 (53 FR 38296) concerning a proposed indefinite suspension of provisions of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon. No views in opposition were received.

Statement of Consideration

This action suspends portions of the producer milk definition of the Paducah, Kentucky, milk order. The suspension allows a cooperative association to divert the milk of another cooperative association to nonpool plants. Also, this action allows more milk to be shipped directly from farms to nonpool plants and still be priced and pooled under the order.

The order currently provides that a cooperative association may divert an amount of milk not in excess of 33 percent of the milk of its member producers that is received at pool plants during April through August and December and 25 percent in other months. The same diversion limits apply to a handler who operates a pool plant. The suspension removes the restriction that limits diversions by cooperative associations to member milk and allows diversions equivalent to as much as 33 percent of the milk received at pool plants during all months.

Dairymen, Inc. (DI), a cooperative association that represents producers supplying the market, requested that the provisions be suspended until such time that a hearing can be held to consider amendments to the order.

This suspension action is needed because of declining sales in recent months by DI to fluid milk plants. This decline in sales means that aditional quantities of milk that have been historically associated with the market will have to be diverted to nonpool plants. Also, this action is necessary to accommodate a recent change in marketing practice whereby another cooperative will be the marketing agent for DI member milk that is pooled under the order. The changes are needed to facilitate the efficient marketing of milk under the new marketing practices and conditions.

The suspension order should be made effective upon publication in the **Federal Register** and applied to milk marketed under the Paducah order on and after October 1, 1988. The request was not received in time to ask for comments on the proposed action and make the amendatory change by September 1, 1988, as initially requested by proponent.

It is hereby found and determined that thirty days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the action will allow a cooperative association to divert the milk of producer members of another cooperative association and permit milk that has been historically associated with the market to continue to be priced under the order.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension. No comments in opposition were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register** for milk marketed under the Paducah order on and after October 1, 1988.

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List of Subjects in 7 CFR Part 1099

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions in § 1099.13 of the Paducah, Kentucky, order are hereby suspended indefinitely pending a hearing to amend the order.

PART 1099—MILK IN THE PADUCAH, KENTUCKY, MARKETING AREA

1. The authority citation for 7 CFR Part 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1099.13 [Amended] (Suspended in part)

2. In § 1099.13, paragraph (c)(2) is suspended.

3. In § 1099.13(c)(3), the words, "in his capacity as the operator of a pool plant,", "milk of a", "who is not a member of a cooperative association diverting", "pursuant to paragraph (c)(2) of this section,", "at such plant", "such nonmember", "in any of the months of April through August and December and 25 percent in other months" and "nonmember" are suspended.

Signed at Washington, DC, on: November 2, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88–25708 Filed 11–4–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–ASW–1; Amdt. 39–6027]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) GmbH Model BK–117 A–1, A–3, and A–4 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to MBB BK–117 A–1, A–3, and A–4 series helicopters, which supersedes AD 85–02–04, Amendment 39–4989, as amended by AD 85–02–04 R1, Amendment 39–5793. The new AD requires the installation of a revised V_{NE} schedule placard. The AD is needed to prevent a conflict between the existing AD requirements and the revised operational limitations.

DATE: *Effective Date:* November 28, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1988.

Compliance: Required within 30 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Messerschmitt-Bolkow-Blohm GmbH, Abt, Drehflugler, Postfach 801140, D–8000 Munchen 80, Federal Republic of Germany, or may be examined in the Office of the Assistant Chief Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth.

FOR FURTHER INFORMATION CONTACT: Samuel E. Brodie, Rotorcraft Standards Staff, ASW–110, FAA, Fort Worth, Texas 76193–0110, telephone number (817) 624–5116, or John Varoli, Manager, Brussels Aircraft Certification Office, FAA, c/o American Embassy, APO New York 09667–1011.

SUPPLEMENTARY INFORMATION: AD 85–02–04, Amendment 39–4989 (50 FR 4198; January 30, 1985), as amended by AD 85–02–04 R1, Amendment 39–5793 (53 FR 495; January 8, 1988) requires the installation of a new V_{NE} placard in place of the existing V_{NE} placard. AD 85–02–04 R1 states that the AD does not apply when the MBB stick position augmentation system (SPAS) is installed in accordance with MBB Helicopter Service Bulletin No. SB–MBB–BK 117–40–7, dated April 14, 1986. After issuing AD 85–02–04 R1, the FAA received Alert Service Bulletin ASB–MBB–BK 117–70–101, dated April 11, 1988, which requires the replacement of the V_{NE} schedule placard on all MBB BK–117 A–1, A–3, and A–4 series helicopters, regardless of whether the SPAS is installed or not. Therefore, the FAA is superseding AD 85–02–04 as amended by AD 85–02–04 R1 by requiring replacement of the existing V_{NE} schedule placard on all MBB Model BK–117 A–1, A–3, and A–4 series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to the rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Messerschmitt-Bolkow-Blohm (MBB) GmbH: Applies to MBB BK–117 A–1, A–3, and A–4 series helicopters certificated in any category. (Docket No. 85–ASW–1)

Compliance is required within 30 days after the effective date of this AD, unless already accomplished.

To prevent possible hazards in flight associated with operation outside of approved operating limits, accomplish the following:

(a) Apply new V_{NE} placards Part Numbers 117–740131.97, 117–740131.98, 117–740131.99, or 117–740131.100, in place of the existing V_{NE} placard in accordance with instructions contained in MBB Alert Service Bulletin MBB–BK 117–70–101, dated April 11, 1988.

(b) The placard required by paragraph (a) may be installed by a pilot who makes the appropriate maintenance record entries required by FAR Parts 43 and 91.

(c) An equivalent method of compliance with this AD may be used when approved by the Manager, Rotorcraft Directorate, Aircraft Certification Service, FAA, Fort Worth, Texas 76193–0100, or by the Manager, Brussels Aircraft Certification Office, AEU–100, c/o American Embassy, Brussels, Belgium, APO New York 09667–1011.

This procedure shall be accomplished in accordance with MBB Helicopter Alert Service Bulletin ASB–MBB–BK 117–70–101, dated April 11, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from MBB, GmbH, Abt, Drehflugler, Postfach 801140, D–8000 Munchen 80, Federal Republic of Germany. Copies may be inspected at the Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment supersedes AD 85–02–04, Amendment 39–4989 as amended by AD 85–02–04 R1, Amendment 39–5793.

This amendment becomes effective on November 28, 1988.

Issued in Forth Worth, Texas, on September 14, 1988.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Services.

[FR Doc. 88–25652 Filed 11–4–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 779

[Docket No. 80855–8155]

Computer Software; Decontrolled LAN Equipment

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends Supplement No. 3 to Part 779, "Computer Software," by reducing the restrictions on software for LAN equipment that has been previously decontrolled for export. This revision has resulted from a review of strategic controls maintained by the U.S. and allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. With the concurrence of the Department of Defense, the Department of Commerce has determined that this rule is necessary to protect U.S. national security interests.

EFFECTIVE DATE: This rule is effective November 7, 1988.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature regarding computer software, call Raj Dheer, Computer Systems Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377–0708.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review and because it does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, Part 779 of the Export Administration Regulations (15 CFR Parts 768 through 799) is amended as follows:

PART 779—[AMENDED]

1. The authority citation for Part 779 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 3, Part 779 [Amended].

2. In Supplement No. 3 to Part 779, "Computer Software," the "List of Software Subject to This Supplement to Part 779" is amended by revising paragraph (a)(3)(ii) to read as follows:

Supplement No. 3 to Part 779

Computer Software

• • • • • •

Technical Notes: • • •

List of Software Subject to This Supplement to Part 779:

(a) • • •

(3) • • •

(ii) One or more of the functions described in ECCN 1565A(h)(1)(i) (A) to (J) and (M) *or* (h)(2)(vi) or for "digital computers" or "related equipment" designed or modified for such functions, *except* the minimum "specially designed software" in machine executable form for "digital computers" and "related equipment" therefore that are freed from export control only by ECCN 1565A(h)(2) (i) or (ii), and only when supplied with the equipment or systems;

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Note: "Software" for equipment that is freed from export control only by ECCN 1565A(h)(2)(vi) may contain file server or printer server functions above layer 2 of the OSI reference model provided the protocols do not contain level 3 of CCITT X .25 or equivalent functions.

* * * * *

Dated: November 1, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-25673 Filed 11-4-88; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to designated members of the Sydney Futures Exchange Limited ("Exchange" or "SFE") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10 (1988), which permits certain persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or David R. Cooper, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Designated Members of the Sydney Futures Exchange Limited from the Application of Certain of the Foreign Futures and Option Rules Thirty Days After Filing of Consents by Such Members and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein.

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987.) These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, the Commission considered the potential extraterritorial impact of such a program and the desirability of avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission rule 30,10, determined to permit persons *located outside the United States* and subject to a comparable regulatory structure in the jurisdiction in which they are located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission rule 30.10. 52 FR at 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) appropriate information-sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, the Commission specifically stated in adopting Commission Rule 30.10 that no exemption of a general nature would be granted unless the person to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to make their books and records available in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.[1]

By letter dated October 13, 1987, the Exchange, which is regulated pursuant to the Futures Industry (New South Wales) Code (the "Code"), petitioned the Commission on behalf of certain of its members for an exemption from the application of the Commission's foreign futures and option rules. In support of its petition, the Exchange states that granting such an exemption with respect to its members would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because the Exchange and its members are subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by the Exchange and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in

[1] 52 FR 28980, 28981 and 29002.

particular, Appendix A thereof, have generally been satisfied and that compliance with applicable Australian law and Exchange rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from: registration with the Commission; the separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7 (1988); and those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30; based upon substituted compliance by such persons with the applicable statutes, regulations and relevant exchange rules in effect in New South Wales, Australia.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in Australia who would be exempted hereunder provides:

(1) A system of qualification or licensing of firms and persons who deal in transactions subject to regulation under Part 30 that includes, for example, "conditions" or criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about licensees;

(2) Financial requirements for licensees including, without limitation, conditions and restrictions on the amount and nature of a licensee's assets, segregation, accounting and limits on the use of customer funds and daily mark-to-market settlement procedures;

(3) A system for the protection of customer funds that applies to all customers and which precludes the use of customer funds to satisfy house obligations, requires separate accounting for such funds and requires covering of deficits within 5 days, augmented by a fidelity fund designed to compensate customers who have suffered a loss as a result of fraud or, at the discretion of the Exchange, insolvency of an Exchange member;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation.

(5) Sales practice standards for licensees which include, for example, required disclosures to prospective customers and prohibitions on (a) certain representations, (b) unapproved advertising, (c) the commingling of customer funds and (d) insider and other improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities which take advantage of customers, the existence of an Exchange Committee for Inspection and Audit with broad powers to investigate, audit, and sanction Exchange members' sales practices and an arbitration program for the resolution of customer disputes; and

(7) Mechanisms for sharing information with the Commission and NFA on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures and options products subject to regulation in Australia, position data, data on firms' standing to do business and financial condition, and mechanisms for cooperating with the Commission and NFA in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission Rule 30.9, 17 CFR 30.9 (1988), or the disclosure provisions of Commission Rules 30.6 and 33.7, 17 CFR 30.6 and 33.7 (1988). Moreover, the relief granted is directed to brokerage activities by firms licensed in Australia on the Exchange and does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See e.g.*, 17 CFR Part 18 (1988). Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See e.g.*, 17 CFR Parts 17 and 21 (1988). The relief herein is inapplicable where the firm solicits United States customers for transactions on United States markets. In that case, the firm must comply with all applicable United States laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards of its place of domicile; such firm is engaged in business with customers located in Australia as well as in the United States; and, such firm would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) All transactions on the Exchange with respect to customers resident in the United States will be made on or subject to the rules of the Exchange and the Commission will receive prompt notice of all material changes in such Code and Regulations;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than Australian customers under all relevant provisions of Australian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A to the Part 30 rules on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information which in its judgment affects the financial or operational viability of an Australian-domiciled firm doing business in the United States under the exemption granted by this Order.[2]

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act and files a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission

[2] In this connection, the Commission notes that the Exchange's petition dated October 13, 1987, already addresses the representations required in paragraphs (1) (c) (d) and (e) of the conditions specified above

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Rule 30.5, 17 CFR 30.5 (1988), unless a currently effective valid and binding agency agreement has previously been filed by or on behalf of such firm in connection with the interim relief granted by the Commission with respect to certain persons on January 29, 1988, 53 FR 3336 (February 5, 1988), as extended on April 4, 1988, 53 FR 11491 (April 7, 1988), and by letter dated July 5, 1988;

(b) Agrees to provide the books and records related to transactions under Part 30 required to be maintained under the applicable statutes, regulations and Exchange rules in effect in Australia upon the request of any representative of the Commission or United States Department of Justice at the place in the United States designated by such representative, within 72 hours, or such lesser period of time as specified by that representative, after service of the request;

(c) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32 (1988);

(d) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(e) Consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30 and consents to notify all customers resident in the United States of the availability of such a program;

(f) Maintains the greater of regulatory capital as required under the Code and Exchange Articles or four percent of funds segregated on behalf of customers resident in the United States; and

(g) Undertakes to comply with the applicable provisions of Australian law and Exchange rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This Order will become effective as to any firm designated under the Commission's interim order or hereinafter designated the later of thirty days after publication of the Order in the **Federal Register** or after filing of the consents hereinabove required. Interim relief will be extended to firms subject thereto for thirty days after the date of publication. Upon filing of the notice required under paragraph (1)(b) as to any firm, the relief granted by this Order will be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and the Exchange and/or any applicable regulatory or self-regulatory organization.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

In the future, the Commission may determine that other considerations and conditions are also relevant to the determination to exempt, or to continue to exempt, specified firms from the application of the Part 30 rules generally. To this end, the Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules.

Issued in Washington, DC, on November 1, 1988.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-25661 Filed 11-4-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM88-2-000]

Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Charges for the Use of Government Lands

Issued October 28, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (52 FR 43320 (Order No. 469, 52 FR 18201 (May 14, 1987)). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with § 11.2(b) (18 CFR 11.2(b) (1988)) of the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adopting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1988 through September 30, 1989, the fees in this notice will become effective October 1, 1988. The fees will apply to fiscal year 1989 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Jewel Poore, Chief, Management Systems Branch, Office of the Controller, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-5640.

SUPPLEMENTARY INFORMATION: In accordance with § 11.2, 18 CFR, the land values included in this document will be published in the **Federal Register**. In addition, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Vincent Mason,

Executive Director.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Accordingly, the Commission, effective October 1, 1988, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142 (1978), unless otherwise noted.

§ 11.2 [Amended]

2. In § 11.2(b), "Schedule A" is revised to read "Appendix A".

§ 11.3 [Amended]

3. In § 11.3(a)(2), "[insert the effective date of this section]" is revised to read "September 16, 1988".

4. In Part 11, the fee schedule is designated as Appendix A to the Part and is revised to read as follows:

Appendix A to Part 11

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR

State	County	Fee per-acre per-year
Alabama	All counties	$18.99
Arkansas	....do	14.24
Arizona	Apache	4.75
	Cochise	
	Gila	
	Graham	
	La Paz	
	Mohave	
	Navajo	
	Pima	
	Yavapai	
	Yuma	
	Coconino North of Colorado River.	
	Coconino South of Colorado River.	18.99
	Greenlee	
	Maricopa	
	Pinal	
	Santa Cruz	
California	Imperial	9.49
	Inyo	
	Lassen	
	Modoc	
	Riverside	
	San Bernardino	
	Siskiyou	14.24
	Alameda	23.74
	Alpine	
	Amador	
	Butte	
	Calaveras	
	Colusa	
	Contra Costa	
	Del Norte	
	El Dorado	
	Fresno	
	Glenn	
	Humboldt	
	Kern	
	Kings	
	Lake	
	Madera	
	Mariposa	
	Mendocino	
	Merced	
	Mono	
	Napa	
	Nevada	
	Placer	
	Plumas	
	Sacramento	
	San Benito	
	San Joaquin	
	Santa Clara	
	Shasta	
	Sierra	
	Solano	
	Sonoma	
	Stanislaus	
	Sutter	
	Tehama	
	Trinity	
	Tulare	
	Tuolumne	
	Yolo	
	Yuba	
	Los Angeles	28.48
	Marin	
	Monterey	
	Orange	
	San Diego	
	San Francisco	
	San Luis Obispo	
	San Mateo	
	Santa Barbara	
	Santa Cruz	
	Ventura	
Colorado	Adams	4.75
	Arapahoe	
	Bent	
	Cheyenne	
	Crowley	
	Elbert	
	El Paso	
	Huerfano	
	Kiowa	
	Kit Carson	
	Lincoln	
	Logan	
	Moffat	
	Montezuma	
	Morgan	
	Pueblo	
	Sedgwick	
	Washington	
	Weld	
	Yuma	
	Baca	9.49
	Dolores	
	Garfield	
	Las Animas	
	Mesa	
	Montrose	9.49
	Otero	
	Prowers	
	Rio Blanco	
	Routt	
	San Miguel	
	Alamosa	18.99
	Archuleta	
	Boulder	
	Chaffee	
	Clear Creek	
	Conejos	
	Costilla	
	Custer	
	Denver	
	Delta	
	Douglas	
	Eagle	
	Fremont	
	Gilpin	
	Grand	
	Gunnison	
	Hinsdale	
	Jackson	
	Jefferson	
	Lake	
	La Plata	
	Larimer	
	Mineral	
	Ouray	
	Park	
	Pitkin	
	Rio Grande	
	Saguache	
	San Juan	
	Summit	
	Teller	
Connecticut	All counties	4.75
Florida	Baker	28.48
	Bay	
	Bradford	
	Calhoun	
	Clay	
	Columbia	
	Dixie	
	Duval	
	Escambia	
	Franklin	
	Gadsden	
	Gilchrist	
	Gulf	
	Hamilton	
	Holmes	
	Jackson	
	Jefferson	
	Lafayette	
	Leon	

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

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FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State	County	Fee per-acre per-year
	Liberty	
	Madison	
	Nassau	
	Okaloosa	
	Santa Rosa	
	Suwannee	
	Taylor	
	Union	
	Wakulla	
	Walton	
	Washington	
	All Other Counties	47.47
Georgia	All counties	28.48
Idaho	Cassia	4.75
	Gooding	
	Jerome	
	Lincoln	
	Minidoka	
	Oneida	
	Owyhee	
	Power	
	Twin Falls	
	Ada	14.24
	Adams	
	Bannock	
	Bear Lake	
	Benewah	
	Bingham	
	Blaine	
	Boise	
	Bonner	
	Bonneville	
	Boundary	
	Butte	
	Camas	
	Canyon	
	Caribou	
	Clark	
	Clearwater	
	Custer	
	Elmore	
	Franklin	
	Fremont	
	Gem	
	Idaho	
	Jefferson	
	Kootenai	
	Latah	
	Lemhi	
	Lewis	
	Madison	
	Nez Perce	
Idaho (cont)	Payette	14.24
	Shoshone	
	Teton	
	Valley	
	Washington	
Kansas	All other counties	4.75
	Morton	9.45
Illinois	All counties	14.24
Indiana	....do	23.74
Kentucky	....do	14.24
Louisiana	....do	28.48
Maine	....do	14.24
Michigan	Alger	14.24
	Baraga	
	Chippewa	
	Dickinson	
	Delta	
	Gogebic	
	Houghton	14.24
	Iron	
	Keweenaw	
	Luce	
	Mackinac	

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State	County	Fee per-acre per-year
	Marquette	
	Menominee	
	Ontonagon	
	Schoolcraft	
	All other counties	18.99
Minnesota	All counties	14.24
Mississippi	....do	18.99
Missouri	....do	14.24
Montana	Big Horn	4.75
	Blaine	
	Carter	
	Cascade	
	Chouteau	
	Custer	
	Daniels	
	McCone	
	Meagher	
	Dawson	
	Fallon	
	Fergus	
	Garfield	
	Glacier	
	Golden Valley	4.75
	Hill	
	Judith Basin	
	Liberty	
	Musselshell	
	Petroleum	
	Phillips	
	Pondera	
	Powder River	
	Prairie	
	Richland	
	Roosevelt	
	Rosebud	
	Sheridan	
	Teton	
	Toole	
	Treasure	
	Valley	
	Wheatland	
	Wibaux	
	Yellowstone	
	Beaverhead	14.24
	Broadwater	
	Carbon	
	Deer Lodge	
	Flathead	
	Gallatin	
	Granite	
	Jefferson	
	Lake	
	Lewis and Clark	
	Lincoln	
	Madison	
	Mineral	
	Missoula	
	Park	
	Powell	
	Ravalli	
	Sanders	
	Silver Bow	
	Stillwater	14.24
	Sweet Grass	
Nebraska	All counties	4.75
Nevada	Churchill	2.37
	Clark	
	Elko	
	Esmeralda	
	Eureka	
	Humboldt	
	Lander	
	Lincoln	
	Lyon	
	Mineral	

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State	County	Fee per-acre per-year
	Nye	
	Pershing	
	Washoe	
	White Pine	
	Carson City	23.74
	Douglas	
	Storey	
New Hampshire	All counties	14.24
New Mexico	Chaves	4.75
	Curry	
	De Baca	
	Dona Ana	
	Eddy	
	Grant	
	Guadalupe	
	Harding	4.75
	Hidalgo	
	Lea	
	Luna	
	McKinley	
	Otero	
	Quay	
	Roosevelt	
	San Juan	
	Socorro	
	Torrance	
	Rio Arriba	9.49
	Sandoval	
	Union	
	Bernalillo	18.99
	Catron	
	Cibola	
	Colfax	
	Lincoln	
	Los Alamos	
	Mora	
	San Miguel	
	Santa Fe	
	Sierra	
	Taos	
	Valencia	
New York	All counties	18.99
North Carolina	....do	28.48
North Dakota	....do	4.75
Ohio	....do	18.99
Oklahoma	All other counties	4.75
	Beaver	9.49
	Cimarron	
	Roger Mills	
	Texas	
	Le Flore	14.24
	McCurtain	
Oregon	Harney	4.75
	Lake	
	Malheur	
	Baker	9.49
	Crook	
	Deschutes	
	Gilliam	
	Grant	
	Jefferson	
	Klamath	
	Morrow	
	Sherman	
	Umatilla	
	Union	
	Wallowa	
	Wasco	9.49
	Wheeler	
	Coos	14.24
	Curry	
	Douglas	
	Jackson	
	Josephine	
	Benton	18.99

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State	County	Fee per-acre per-year
	Clackamas	
	Clatsop	
	Columbia	
	Hood River	
	Lane	
	Lincoln	
	Linn	
	Marion	
	Multnomah	
	Polk	
	Tillamook	
	Washington	
	Yamhill	
Pennsylvania	All counties	18.99
Puerto Rico	All	28.48
South Dakota	Butte	14.24
	Custer	
	Fall River	
	Lawrence	
	Mead	14.24
	Pennington	
	All other counties	4.75
South Carolina	All counties	28.48
Tennessee	All counties	18.99
Texas	Culberson	4.75
	El Paso	
	Hudspeth	
	All other counties	28.48
Utah	Beaver	4.75
	Box Elder	
	Carbon	
	Duchesne	
	Emery	
	Garfield	
	Grand	
	Iron	
	Jeub	
	Kane	
	Millard	
	San Juan	
	Tooele	
	Uintah	
	Wayne	
	Washington	9.49
	Cache	14.24
	Daggett	
	Davis	
	Morgan	
	Piute	
	Rich	
	Salt Lake	
	Sanpete	
	Sevier	
	Summit	
	Utah	
	Wasatch	
	Weber	
Vermont	All counties	18.99
Virginia	All counties	18.99
Washington	Adams	9.49
	Asotin	
	Benton	
	Chelan	
	Columbia	
	Douglas	
	Franklin	
	Garfield	
	Grant	
	Kittitas	
	Klickitat	
	Lincoln	
	Okanagan	
	Spokane	
	Walla Walla	9.49
	Whitman	

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State	County	Fee per-acre per-year
	Yakima	
	Ferry	14.24
	Pend Oreille	
	Stevens	
	Clallam	18.99
	Clark	
	Cowlitz	
	Grays Harbor	
	Island	
	Jefferson	
	King	
	Kitsap	
	Lewis	
	Mason	
	Pacific	
	Pierce	
	San Juan	
	Skagit	
	Skamania	
	Snohomish	
	Thurston	
	Wahkiakum	
	Whatcom	
West Virginia	All counties	18.99
Wisconsin	....do	14.24
Wyoming	Albany	4.75
	Campbell	
	Cargon	
	Converse	
	Goshen	
	Hot Springs	
	Johnson	
	Laramie	
	Lincoln	
	Natrona	
	Niobrara	
	Platte	
	Sheridan	
	Sweetwater	
	Fremont	
	Sublette	
	Uinta	
	Washakie	
	Big Horn	14.24
	Crook	
	Park	
	Teton	
	Weston	
All other zones		6.94

[FR Doc. 88-25328 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 78N-0158]

Uniform Compliance Date for Food Labeling Regulations; Notice to Manufacturers, Packers, and Distributors

AGENCY: Food and Drug Administration.

ACTION: Final rule; uniform compliance date.

SUMMARY: The Food and Drug Administration (FDA) is establishing January 1, 1991, as its new uniform compliance date with all FDA final food labeling regulations that are published in the **Federal Register** after January 1, 1988, and before January 1, 1990.

FDA periodically has announced uniform compliance dates with new food labeling requirements because the economic impact of requiring individual label changes on separate dates would probably be substantial. In addition, industry needs sufficient lead time to make label changes and the current uniform compliance date of January 1, 1989, is less than 1 year away. Therefore, the agency has concluded that a new uniform compliance date should be established.

EFFECTIVE DATES: January 1, 1991, for compliance with food labeling regulations published after January 1, 1988, and before January 1, 1990, except as otherwise provided in individual regulations.

FOR FURTHER INFORMATION CONTACT: Raymond W. Gill, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0162.

SUPPLEMENTARY INFORMATION: FDA periodically issues various regulations requiring changes in labeling for packaged food. If these labeling changes were individually required on separate dates, the cumulative economic impact on the food industry of frequent changes would probably be substantial. Therefore, the agency periodically has announced uniform effective dates for compliance with new food labeling requirements (see e.g., the **Federal Register** of October 19, 1984 (49 FR 41019)). Use of a uniform compliance date also provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. The agency believes that this policy serves consumers' interest as well because the increased cost of multiple short-term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher food prices.

The agency has decided that a new uniform compliance date of January 1, 1991, should be established for future FDA regulations requiring changes in food labels where special circumstances

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do not justify a different compliance date. Action is appropriate now because the current uniform compliance date is less than 1 year away. The agency has selected January 1, 1991, to ensure adequate time for implementation of any changes in food labeling that may be required by FDA final regulations published after January 1, 1988, and before January 1, 1990.

The agency encourages industry, however, to comply with new labeling regulations earlier than the required date wherever this is feasible. Thus, when industry members voluntarily change their labels, FDA believes that it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

The new uniform effective date will apply only to final FDA food labeling regulations published after January 1, 1988, and before January 1, 1990. Those regulations will specifically identify January 1, 1991, as their compliance date. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 1991, the agency will determine for that regulation an appropriate compliance date that will be specified when the regulation is published.

This notice is not intended to change existing requirements. Therefore, all final FDA food labeling regulations previously published in the **Federal Register** that announced January 1, 1989, as their compliance date will still go into effect on that date. Final regulations published in the **Federal Register** with compliance dates earlier than January 1, 1989 (e.g., July 1, 1987), are also unaffected by this notice.

The current uniform effective date of January 1, 1989, for new final regulations affecting the labeling of food products was announced in the **Federal Register** of September 25, 1986 (51 FR 34085). Foods initially introduced or initially delivered for introduction into interstate commerce on or after January 1, 1989, are still required to comply with any final FDA regulations that identify January 1, 1989, as their compliance date.

Dated: November 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-25864 Filed 11-4-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 182 and 184

[Docket Nos. 79N-0141 and 79N-0142]

GRAS Status of Corn Sugar, Corn Syrup, Invert Sugar, and Sucrose

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that corn sugar, corn syrup, invert sugar, and sucrose are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under a comprehensive safety review conducted by the agency. Elsewhere in this issue of the **Federal Register**, FDA is proposing to affirm the GRAS status of the use of high fructose corn syrup as a direct human food ingredient.

DATES: Effective December 7, 1988. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 184.1857 effective on December 7, 1988.

ADDRESS: Background information and references are on display under the docket number found in brackets in the heading of this final rule in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Definitions

This document discusses the agency's evaluation of the safety of sucrose, corn sugar, corn syrup, and invert sugar. To clarify the agency's discussions of the GRAS status of these ingredients, the agency is defining and explaining pivotal terms in this safety review.

FDA will use the term "sugar" to refer to any free mono- and disaccharide present in food such as glucose, fructose, sucrose, maltose, or lactose. It will use the term "sugars" to describe collectively all forms of sugar present in food.

FDA will use the term "sweetener" to refer to any one or more food ingredients containing sucrose, invert sugar, corn sugar, corn syrup and solids, high fructose corn syrup, honey, and other edible syrups. The term "sweetener," as used in the document is not intended to include any other nutritive or nonnutritive sweetener that is added to food.

In discussing intakes of sugars, the agency will use several additional terms. The agency will use the term "added sugars" to describe all sugars that are added to a food, i.e., all sugars from sweeteners added to foods. The term "naturally occurring sugars" is used to refer to all sugars present naturally in a food. The term "total sugars" is used to refer to the total amount of sugars present in a food, that is, the sum of the added and naturally occurring sugars.

The term "sugar" has traditionally been used by consumers and by the agency (see 21 CFR 145.3(f), 146.3(f), and 170.3(n)(41)) as a synonym for the sweetener sucrose. In this document, however, the sweetener sucrose is identified as "sucrose." Because sucrose also occurs naturally, the term "added" is inserted where it is necessary to make a distinction between added and naturally occurring sucrose. The term "complex carbohydrate" is used in this document to describe any carbohydrates other than those defined as sugars or as specific oligo- or polysaccharides.

B. Regulatory History

In the **Federal Register** of November 30, 1982 (47 FR 53917 and 53923), FDA published proposals to affirm that (1) corn sugar, corn syrup, and invert sugar and (2) sucrose are GRAS for use as direct human food ingredients. FDA published these proposals in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature reviews and the reports of the Select Committee on GRAS Substances (the Select Committee) on corn sugar, corn syrup, and invert sugar and on sucrose have been made available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents have also been made available for public purchase from the National Technical Information Service, as announced in the proposals.

The agency's proposals to affirm the GRAS status of corn sugar, corn syrup, invert sugar, and sucrose were based on the safety evaluations of these ingredients by the Select Committee. In its 1976 report entitled "Evaluation of the Health Aspects of Sucrose as a Food Ingredient" (SCOGS-69), the Select Committee concluded (Ref. 1):

> Reasonable evidence exists that sucrose is a contributor to the formation of dental caries when used at the levels that are now current and in the manner now practiced.
>
> Other than the contribution made to dental caries, there is no clear evidence in the available information on sucrose that demonstrates a hazard to the public when used at the levels that are now current and in the manner now prescribed. However, it is not possible to determine, without additional data, whether an increase in sugar consumption—that would result if there were a significant increase in the total of sucrose, corn sugar, corn syrup, and invert sugar added to foods—would constitute a dietary hazard.

In another report entitled "Evaluation of the Health Aspects of Corn Sugar (Dextrose), Corn Syrup, and Invert Sugar as Food Ingredients" (SCOGS-50), also issued in 1976, the Select Committee concluded (Ref. 2):

> Evidence exists that simple sugars, including glucose and fructose [and, therefore, corn sugar (dextrose), corn syrup, including high-fructose corn syrup, and invert sugars] are cariogenic. However, in the quantities that these simple sugars are now consumed in processed foods, their contribution to formation of dental caries should be relatively small. If increased usage should occur, as seems likely, the contribution of these sugars to the occurrence of dental caries might become more important.
>
> Other than the contribution made to dental caries, there is no evidence in the available information on corn sugar (dextrose), corn syrup, and invert sugar that demonstrates a hazard to the public when they are used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether an increase in consumption—that would result if there were a significant increase in the total of corn sugar, corn syrup, invert sugar, and sucrose added to foods—would constitute a dietary hazard.

In its proposals on sucrose and on corn sugar, corn syrup, and invert sugar, FDA concurred with the Select Committee's conclusions and proposed to affirm the GRAS status of these ingredients. Based on the Select Committee's conclusion that the safety of possible expanded consumption of these ingredients could not be ascertained, the agency ordinarily would have proposed to establish specific limitations on the use of these ingredients in food. The agency tentatively decided against establishing such limitations, however, because they would be impractical to enforce and would not effectively prevent an expansion in total dietary sugars consumption from the voluntary selection by consumers of high sugar content foods. The proposals noted that the agency has no authority to regulate an individual's choice among available food products. Nonetheless, the agency stated that it would monitor average dietary consumption of these ingredients, and that it would undertake a new evaluation of the safety of the use of sweeteners if total dietary consumption would increase significantly.

In its proposals, the agency also announced that it had received a letter from the Center for Science in the Public Interest (CSPI) dated July 2, 1981, as well as a letter from the Sugar Association, dated July 13, 1981. CSPI alleged that current sweetener consumption presented a risk to the public health and suggested that an association exists between sucrose consumption and many serious health problems, including heart disease, diabetes, hypertension, nutrient deficiencies, and behavior disorders. Based on these concerns and on new scientific literature on these issues, CSPI requested that the Department of Health and Human Services (HHS) convene a special expert committee to evaluate the impact of sweeteners on health. The letter from the Sugar Association responded to these allegations. In the proposals, the agency invited comments on the issues raised in these letters.

Finally, the proposals requested information on lead and cadmium levels in corn sugar, corn syrup, invert sugar, and sucrose and also the submission of any evidence of prior sanctions for use of these ingredients.

FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than for the proposed conditions of use. Persons asserting additional uses in accordance with approvals granted by the U.S. Department of Agriculture (USDA) or FDA before September 6, 1958, were given notice to submit proof of those sanctions so that the safety of any prior-sanctioned uses could be determined. That notice also provided an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate. FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposals would constitute a waiver of the right to assert that sanction at any future time.

Two comments asserting prior sanctions were received in response to the proposals. Both comments claimed prior sanctions for the use of corn sugar, corn syrup, invert sugar, and sucrose in chewing gum and soft drinks. Each comment submitted published documents to support its claim. One of the comments contained Trade Correspondence No. 63 and No. 65 published by FDA in 1939 and 1940, respectively. The other comment contained excerpts from agency advisory opinion letters written before 1958.

On the basis of documentation submitted in the comments, the agency acknowledges that prior sanctions exist for the use of corn sugar, corn syrup, invert sugar, and sucrose in chewing gum and soft drinks. However, the agency has determined that issuance of prior-sanction regulations in 21 CFR Part 181 is not necessary because the conditions of use for these ingredients set forth in the GRAS affirmation regulations in this final rule include the use of these sweeteners in chewing gum and soft drinks under the conditions identified by these comments. Therefore, the agency is not issuing a prior-sanction regulation based upon these comments. In accordance with the proposals for corn sugar, corn syrup, and invert sugar and for sucrose, prior sanctions for conditions of use other than in chewing gum and soft drinks have been waived.

II. Updated Safety Review of Sweeteners

A. Introduction

CSPI and several of the comments on the agency's GRAS affirmation proposals on corn sugar, corn syrup, and invert sugar and on sucrose, requested an updated safety review of sweeteners. Because of the nature of the health-related issues raised by the comments and the length of time since the issuance of the Select Committee's reports on these sweeteners, the agency decided that such a review was appropriate. FDA decided to conduct one complete review for all sweeteners, and not several separate reviews for different individual sweeteners, because the sweeteners are used interchangeably in food, and these sweeteners are closely related and can be expected to have comparable health effects.

The Select Committee conducted separate safety reviews of corn sugar, corn syrup, and invert sugar and of sucrose. In its conclusions, however, the Select Committee also acknowledged that the safety of these individual sweeteners was related to total sweetener consumption. In addition, although the Select Committee did not specifically address the safety of high fructose corn syrup, it considered high fructose corn syrup consumption as an integral part of the overall safety assessment of sweeteners (Ref. 2).

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The agency recognizes that a safety assessment of corn sugar, corn syrup, invert sugar, and sucrose cannot be separated from a safety assessment of high fructose corn syrup. Therefore, the agency's updated safety review of sweeteners has included high fructose corn syrup, even though the agency is instituting a separate proceeding on that substance.

In the **Federal Register** of February 8, 1983 (47 FR 5716), FDA issued a final rule on high fructose corn syrup that listed that substance as GRAS in 21 CFR Part 182. The agency stated that it would consider whether it could affirm the use of high fructose corn syrup as GRAS upon completion of its safety review of the GRAS status of the use of corn sugar, corn syrup, invert sugar, and sucrose. Elsewhere in this issue on the **Federal Register**, FDA is proposing to affirm that the use of high fructose corn syrup as a direct human food ingredient is GRAS.

B. Description of the Review

In November 1983, the agency established a Sugars Task Force (the Task Force), composed of scientists from FDA's Center for Food Safety and Applied Nutrition (CFSAN), to assess the safety of dietary sugars (excluding lactose) as currently consumed in the American diet. The Task Force initiated its review by undertaking a search of the published literature for safety studies on sucrose, corn sugar, corn syrup, and invert sugar or their component sugars. The Task Force compiled an initial literature update on health effects of sugars consumption from the computer data banks Medline, Toxline, Cancerline, and Biological Abstracts, as well as from other available sources. The Task Force contacted each person that submitted a comment on the proposal and requested that he/she submit a copy of the references supporting his/her comments for evaluation.

The agency also published notices in the **Federal Register** of June 6, 1984 (49 FR 23457), and December 5, 1984 (49 FR 47505), announcing an opportunity for public review and comment on the bibliographic compilation of scientific articles retrieved through its literature search. The notices also solicited copies of any relevant data, published or unpublished, not included in the agency's compilation. In addition, the notices explained that the final rules on the GRAS status of the use of corn sugar, corn syrup, invert sugar, and sucrose would be based on the data evaluated during the Selected Committee's 1976 reviews of the safety of these ingredients, the data submitted in the comments on the proposals published in the **Federal Register** of November 30, 1982 (47 FR 53917 and 53923), and the data and information generated in response to the notices announcing the sugars bibliography. These data, along with the Task Force's estimate of sweetener consumption by the U.S. population, formed the basis for the Task Force's updated safety evaluation of sugars. The Sugars Task Force report was published in the *Journal of Nutrition* (Ref. 3).

The agency has received more than 65 comments including a detailed letter from the Center for Science in the Public Interest (CSPI) and a citizen petition from Maura (Jinny) Zack concerning the Sugars Task Force report. The comments, CSPI's letter, and the citizen petition asked that the Sugars Task Force report be revoked, amended, or clarified to make it clear that sugars consumption may be a health hazard to certain specific segments of the population. The CSPI letter urged the agency to reissue the report with revised sugars intake estimates and to rewrite some of its conclusions regarding the role of sugars in certain disease states. The letter also asked that the revised report include advice for consumers who are interested in eating a nutritious diet that will minimize their risk of health problems.

The citizen petition requested that the Commissioner revoke the Sugars Task Force report and prohibit further advertisements concerning the safety of sugar. The petition also called for a retraction of the advertisements already done by the Sugar Association and urged the Commissioner to make public announcements that processed sugars may have adverse health effects on certain segments of the population. In addition, the petition requested that if, after further investigation by the agency, the alleged harmful effects of sugars are confirmed, labeling should be ordered for the food containing sugars stating: "This product contains processed (or refined) sugar which may be injurious to your health".

The agency has reviewed the comments, the letter from CSPI, and the citizen petition concerning the Sugars Task Force report. The agency finds that the vast majority of the comments restated the allegations made in the citizen petition but provided no data to support their claim.

The issues raised in the CSPI letter relative to the Sugars Task Force report have been addressed in a separate agency action. (See the letter of September 26, 1988, from the Acting Director of CFSAN to CSPI (Ref. 4).) In general, the agency found that CSPI did not provide any scientifically sound data to warrant the revision of the report or of any of the conclusions contained in the report. Similarly, the agency addressed the issues raised in the citizen petition in a separate action. (See the letter of March 4, 1988, from the Associate Commissioner for Regulatory Affairs to Maura (Jinny) Zack (Ref. 5).) The agency found that the petition failed to provide scientifically valid data to support the allegations made in the petition. Moreover, some of the actions requested by the petitioner were either inappropriate under agency regulations or not within the jurisdiction of FDA.

C. Exposure Estimates

As part of its review, the Task Force estimated current intakes of sugars in the United States.

In its reports on sucrose and on corn sugar, corn syrup, and invert sugar, the Select Committee used an estimate of sweetener consumption prepared from the 1970 National Academy of Sciences/National Research Council (NAS/NRC) comprehensive survey of industry on the use of GRAS food ingredients (Ref. 6). Because no recent update of this survey was available and there was a need for an estimate that more accurately reflected the true consumption, the Task Force developed a method to estimate sugars (and thus sweetener) consumption. Under this method, the Task Force integrated food consumption data from the U.S. Department of Agriculture (USDA) Nationwide Food Consumption Survey of 1977–1978 with information on sugars content of food (Ref. 3). The information on the sugars content was compiled in 1984 from reported analytical data, direct laboratory analysis of foods, information obtained from manufacturer or product labels, calculation using recipes developed by USDA for estimating nutrient content of survey foods, and commercial product formula information. From these data, the Task Force estimated current average and the 90th percentile daily intakes of total sugars, adjusted total sugars, and individual sugars (e.g. fructose and sucrose) for the total population and 14 sex/age subgroups of the U.S. population. Adjusted total sugars represent total sugars excluding lactose. Lactose was excluded because it is not a subject of this GRAS review. The Task Force also estimated the relative contributions of added sugars (sugars from sweeteners) and naturally occurring sugars to total sugars intake. The 14 sex/age subgroups used by the Task Force are those used by NAS in its

estimates of the U.S. Recommended Dietary Allowances (Ref. 8).

The Task Force's method for estimating sweetener consumption was different from the method used by the Select Committee. Consequently, the estimates of sweetener consumption by the Task Force and by the Select Committee could not be directly compared. To compare sweetener consumption in 1976 and in 1985, the Task Force relied on a third set of data. The Task Force compared trends in sweetener usage (including a projected usage) based on USDA data on sweetener disappearance (USDA disappearance data) (Ref. 7). Disappearance data for sweeteners represent estimates of domestic shipments (deliveries) by refiners and importers of sweeteners to primary buyers such as food industries, trades, wholesalers, and retailers (Ref. 3). The data represent approximate estimates of the total amount (dry weight) of sweeteners available for consumption by the U.S. population and not the amount of sweeteners actually consumed.

These data tend to exaggerate average consumption levels and thus do not provide realistic estimates of actual sweetener consumption. A more accurate estimate of sweetener consumption, based on these data, would require adjustments to correct for loss and waste that can occur (1) during shipment and handling of the product; (2) during storage at wholesale, retail, and household levels from spillage and damage by insects and pests; (3) during commercial processing and home preparation of food; (4) during consumption at the table (plate waste) or other types of waste in households and food service institutions; and (5) in other miscellaneous usages of sweeteners (Ref. 3).

Nevertheless, because these disappearance data are collected regularly in a consistent and orderly manner, these data provide an appropriate basis to assess trends in sweetener usage. The Task Force used the USDA's disappearance data to determine whether the Select Committee's conclusions on the safety of corn sugar, corn syrup, invert sugar, and sucrose, which were predicated on a stable level of total sweeteners consumption, were still valid for 1985 levels of sweetener consumption.

D. Task Force's Review of Health Effects

During the course of gathering information, the Task Force evaluated approximately 1,500 articles relating to possible effects of dietary sugars on dental caries, glucose tolerance, diabetes mellitus, blood lipids, cardiovascular disease, behavior, obesity, malabsorption syndromes, food allergies, nephrocalcinosis, gallstones, nutrient deficiencies, and carcinogenicity.

The Task Force summarized the critical studies on each of these matters. In reviewing individual studies, the Task Force considered both the experimental design of the study and the observed effects. The Task Force also considered the allegations by CSPI relative to sugars consumption and adverse health effects, and whether the updated data established that adverse health effects were associated with the consumption of sugars. It then evaluated the significance of any adverse effects for the U.S. population or population subgroups at current levels of sugars consumption.

Based on its review, the Task Force developed a report on the health effects of sugars consumption entitled "Evaluation of Health Aspects of Sugars Contained in Carbohydrate Sweeteners" (Ref. 3). The report sets forth, for each matter the Task Force considered, summaries of the relevant studies, a discussion of the significant findings from the studies, and conclusions regarding these findings. The report also includes a final conclusion on the safety of current sugars consumption. A copy of the Task Force report has been placed on file in the Dockets Management Branch (address above). It is also available as the November 1986 supplement to the *Journal of Nutrition* (Ref. 3).

The Task Force concluded from its review of sugars that:

(1) Evidence exists that sugars, as they are consumed in the average American diet, contribute to the development of dental caries.

(2) Other than the contribution to dental caries, there is no conclusive evidence in the available information on sugars that demonstrates a hazard to the general public when sugars are consumed at the levels that are now current and in the manner now practiced (Ref. 3).

E. The Select Committee's Conclusions Compared to the Task Force's Conclusions

In their safety reviews, both the Select Committee and the Task Force recognized the unique toxicological position of sugars and sweeteners as food components and ingredients. Both groups recognized that sugars and sweeteners have low acute toxicity and are macronutrients that have a long history of consumption as major sources of calories in the United States (Refs. 1, 2, and 3). Both groups also recognized that the monosaccharide glucose has a central role in human metabolism (Refs. 2 and 3).

The Select Committee's conclusions on the safety of corn sugar, corn syrup, invert sugar, and sucrose were based on the level of consumption of these ingredients in 1976. To determine the continuing validity of these conclusions, as discussed above, the Task Force assessed the trend in sweeteners availability since the Select Committee issued its reports. These data show that, over this period, total sweetener availability has remained relatively stale (Ref. 3). Accordingly, FDA concludes that the Select Committee's safety conclusions are applicable to the current consumption of these sweeteners, and that the Task Force's findings and conclusions regarding the safety of these ingredients supplement the Select Committee's conclusions.

On the issue of dental caries, both the Task Force report (Ref. 3) and the Select Committee reports (Refs. 1 and 2) concluded that the current level of consumption of sweeteners, and of the sugars they contain, contributes to the incidence of dental caries in the general population, but that this consumption is not the only factor contributing to the incidence of dental caries.

The Task Force also found that dental caries incidence in the United States has declined significantly since the Select Committee issued its report in spite of the fact that sugars consumption has remained unchanged over that period. The Task Force attributed this decline, in part, to preventative dental methods (Ref. 3).

Both the Select Committee and the Task Force have concluded that there is no conclusive evidence that sugars consumption at present levels poses a health hazard to the general public, other than a contribution to dental caries.

III. Comments on the Proposals

A. Introduction

In response to its proposals, the agency received 16 comments from organizations or individuals regarding the proposed GRAS affirmation of corn sugar, corn syrup, invert sugar, and sucrose. The agency received nine comments from food manufacturers and trade organizations, two comments from professional societies, and five comments from individuals. As noted above, the agency had also received, before the publication of the proposals, two letters addressing health effects of

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sweetener consumption. One letter was from CSPI, and the other was from the Sugar Association. FDA combined the letter from the Sugar Association with subsequent letters from that association on the proposal and treated these letters as one comment. Multiple submissions from a single company on the proposal were also combined and considered as a single comment.

Thirteen comments addressed health issues associated with sugars consumption. Six comments addressed the labeling of sugars content of food. Four comments urged a possible educational campaign on sugars and health. Two comments, as mentioned previously, addressed prior sanctions for corn sugar, corn syrup, invert sugar, and sucrose. Three comments discussed lead and cadmium levels in these ingredients. Two comments requested specific changes in the agency's proposed GRAS affirmation regulations for corn sugar, corn syrup, and invert sugar.

B. Comments Raising Health Related Issues

The comments that addressed health issues associated with sugars consumption focused on the allegations made by CSPI. Five comments, including that from CSPI, claimed that consumption of sugars causes one or more adverse health effects. Eight comments, including that from the Sugar Association, generally denied that there is an association between sugars consumption and adverse health effects. Underlying the agency's review of the comments is the view that, given the long history of safe use of sugars in food, and the fact that the statute recognizes that such a history provides a basis for GRAS status (21 U.S.C. 321(s)), the burden of establishing the existence of an adverse health effect of consuming sugars lies with the person asserting that this adverse effect exists. In the absence of such a showing, no change in the GRAS status of the use of the ingredient under review is warranted.

1. Dental Caries

a. Three comments asserted that sucrose consumption is cariogenic, i.e., associated with the incidence of dental caries. Another comment argued that all fermentable sugars are cariogenic, whether they are added to food or occur naturally.

The agency has reviewed these comments and agrees that sugars consumption is a contributing factor in the incidence of dental caries. The agency finds that current data show that sugars that are fermentable by cariogenic bacteria and that are present in normal diets do contribute to the formation of plaque and dental caries.

These findings are consistent with those of the Select Committee, which found that the consumption of sweeteners contributes to the formation of dental caries in the general population.

b. Six comments questioned the role of sugars consumption in the formation of dental caries. One comment cited data (Refs. 9, 10, and 11) showing that there is no correlation between consumption of highly sugared foods and dental caries incidence. Two other comments asserted that the rate of caries formation depends upon a number of variables other than consumption of sugars. Other comments cited epidemiological evidence (Refs. 12 and 13) that showed that there has been a downward trend in caries formation during the past decade, while sugar consumption has remained stale over the same period.

The agency reviewed these comments and agrees that caries formation depends on a number of variables, and that sugars consumption is not the sole causative factor in dental caries. However, the agency does not agree that sugars consumption is not related to dental caries formation.

The Task Force found that the scientific literature and clinical trials do not establish a clear quantitative relationship between sugars consumption and dental caries incidence. The cariogenicity of dietary carbohydrates depends on the duration of food contact with the teeth and on the presence or absence of other food substances that can modify the cariogenic potential of sugars. Thus, there is no apparent simple relationship between the sugars content of food and cariogenic potential (Ref. 3).

The Task Force report confirmed the Select Committee's finding that the etiology of dental caries is multifactorial, with dietary factors being only one of the three major groups of factors that are involved in the development of carious lesions (Refs. 1 and 2). These factors include oral microbial flora (e.g., cariogenic bacteria and dental plaque) and host factors (e.g., resistance to dental decay and hardness of tooth surface), as well as dietary factors such as the residence time of fermentable carbohydrate and plaque acidity (Ref. 3). However, the finding that the etiology of dental caries is multifactorial is not inconsistent with the finding that a relationship exists between sugars consumption and dental caries formation because sugars represent a major source of fermentable carbohydrates in the diet.

c. Having considered the comments and the Task Force report, the agency finds that there is no basis for any more concern about the association between sugars consumption and the incidence of dental caries than that expressed in the Select Committee report. This finding is based on two factors:

(1) The Task Force report shows that total exposure to sweetners has not changed since the Select Committee report.

(2) The Task Force report shows that caries incidence in the United States has declined in the past decade. The data reviewed in the Task Force report suggest that further developments in caries prevention should augment this decline in the future.

Therefore, despite evidence that consumption of sucrose, corn sugar, corn syrup, and invert sugar is associated with dental caries, the agency does not believe it appropriate to modify the GRAS status of these ingredients.

2. Obesity

Two comments claimed that overconsumption of sucrose causes obesity but provided no data to support the assertion. Six comments disagreed with the contention that obesity is related to sugars consumption. Several comments cited data (Refs. 14, 15, and 16) to refute an association between sugars consumption and obesity. Several other comments asserted that obesity can result from overconsumption of any caloric source, and that the most important factor in obesity is the balance between calorie intake and energy expenditure.

The agency has reviewed the comments and the studies cited in the comments.

In one study, Walker studied black and white teenagers in South Africa and determined that sugars consumption by teenagers in the upper percentile for body weight was comparable to sugars intake in the lower percentile (Ref. 16). The agency finds that such studies tend to argue against a specific role for sugars consumption in obesity.

During the course of its review, the Task Force found that dietary manipulations leading to increased caloric intake have a potential for causing increased body weight. The Task Force also found, however, that the available data support the view that sugars do not have a unique role in the etiology of obesity. This finding of the Task Force is in agreement with the finding of the Select Committee, which noted that excessive consumption of sucrose may contribute to obesity as a nonspecific source of calories.

Thus, the agency concludes that the available data indicate that excess sugars consumption may contribute to obesity as a nonspecific source of calories but not because of any special property of sugars.

3. Glucose Tolerance

The agency received several comments related to disease conditions that are characterized by abnormal responses to a glucose tolerance test.

This induction of a permanent disease state as a result of changes in glucose tolerance brought about by sugars consumption would be of concern because, if found, such changes would implicate dietary sugars intake in the etiology of diabetes or hypoglycemia. (Hypoglycemia is a spectrum of disorders resulting in a decline of blood sugar either after fasting or after the ingestion of a meal.) (Ref. 3).

The Select Committee was of the opinion that there was not sufficient evidence to demonstrate that the consumption of sucrose, corn sugar, corn syrup, or invert sugar caused a deterioration of glucose tolerance in humans (Refs. 1 and 2). The Task Force also found no persuasive scientific evidence that supports the contention that current use levels of sugars or sweeteners directly contribute to the development of abnormal glucose tolerance in the general U.S. population (Ref. 3).

4. Hypoglycemia

One comment asserted that there is an association between hypoglycemia and high sugars consumption, and three comments claimed that there is not. Neither group of comments cited any data to support its position.

One comment claims that the incidence of hypoglycemia is increasing but provided no data to support its assertion. Other comments claimed that hypoglycemia is a rare disorder, and that its incidence has been exaggerated. Several comments claimed that the incidence of hypoglycemia is unknown.

The agency has reviewed these comments as well as the reports of the Task Force and the Select Committee and agrees that there is no evidence that suggests that hypoglycemia is other than a rare disorder. The agency can also find no evidence that the incidence of hypoglycemia is increasing.

In its review, the Task Force found a number of reports on human behavior related to "reactive" or postprandial hypoglycemia (decreased blood glucose after eating) (Ref. 3). A review of these reports including one by Harper and Gans (Ref. 17), reveals that there is a lack of scientific experimentation and interpretable data upon which to draw any conclusions about the relationship between sugars consumption and hypoglycemia.

Based on the available safety information, the agency concludes that there is insufficient data to demonstrate an association between sugars consumption and hypoglycemia in the general population.

5. Diabetes

Five comments asserted that there is no relationship between sugars consumption and diabetes. These comments cited other factors in the etiology of diabetes such as genetics, immune factors, and obesity. Several comments cited obesity as a major determinant in the emergency of adult onset diabetes.

Several comments asserted that control of diabetes requires restriction of total calorie intake, and that little scientific basis exists for singling out sugars for restriction in the diet of diabetics (Ref. 18).

One comment suggested that consumption of fructose by adult onset diabetics should be carefully controlled. In support of this suggestion, the comment cited data showing an increase in plasma insulin levels in rats fed fructose (Ref. 19), as well as data showing a decrease in insulin sensitivity in rats fed fructose (Ref. 20). The comment also cited data showing a significant reduction in both insulin binding to isolated monocytes and insulin sensitivity in humans fed 1,000 kilocalories of fructose per day for 1 week (Ref. 21).

Based on the findings of the Task Force, the agency agrees that factors other than sugars consumption (such as genetics and obesity) are important in the etiology of diabetes. The Task Force report reinforced the Select Committee's finding that consumption of sugars is not a causative factor in diabetes and is related to the onset of the disease only as a nonspecific source of calories. Although consumption of a diet with a very high level of sugars may produce adverse effects on glucose tolerance and insulin metabolism, the current level of sugars consumption has not been shown to be an independent risk factor for the development of impaired glucose tolerance (Ref. 3). The agency also agrees that control of diabetes requires careful monitoring of the entire diet and not just the monitoring of the sugars content of the diet.

The Task Force evaluated the data cited by the comment relating to plasma insulin levels and insulin sensitivity after consumption of fructose but did not find that the data supported a limitation of fructose in the diet of diabetics. The Task Force considered the data showing an increase in plasma insulin levels in rats fed fructose (Ref. 19). It found that because of the high level of fructose fed (66 percent of calories), the data did not provide a basis on which to estimate threshold levels of fructose consumption for adverse effects on blood glucose, insulin secretion, and tissue insulin sensitivity. Moreover, the Task Force concluded that, because of the flaws in the design of this study and of the excessive amounts of fructose fed to the animals, the data could not be used to determine the effects of fructose consumption under normal conditions.

With regard to the second study (Ref. 20), the Task Force found that it could not determine the significance of the study's findings because the study only lasted 7 days, and the data did not provide a basis on which to determine whether the observed effects represented normal adaptive mechanisms that are reversible or were effects associated with irreversible pathologic processes.

The Task Force reviewed studies investigating the effects of sugars (including fructose) consumption on blood glucose and insulin level in human diabetics (Ref. 21). However, the Task Force found that these studies did not show a consistent effect from consumption of sugars (or from consumption of a particular sugar). The Task Force noted that these studies emphasize the importance of assessing the glycemic or insulinogenic effects of diets and meal plans as opposed to single dietary components.

The agency concludes that neither the comments nor the Task Force report demonstrated that sugars consumption is associated with the etiology of diabetes in any way other than as a source of calories that can contribute to obesity, which is associated with adult onset diabetes.

6. Hyperlipidemia

Two comments claimed, based on data that they cited (Refs. 22, 23, and 24), that high sucrose consumption produced elevated blood lipid levels (hyperlipidemia) in the general population. One comment also cited data to show that sucrose consumption had a greater effect in elevating blood lipid levels than did consumption of other simple or complex carbohydrates (Refs. 22, 23, and 24).

One comment questioned the significance of the data cited to link sucrose consumption with hyperlipidemia (Refs. 25 and 26).

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One comment asserted that the normal consumption of sucrose had little or no effect on serum triglyceride levels, but the comment provided no data to support this assertion. Another comment questioned the uniqueness of sucrose of fructose in causing hyperlipidemia in humans. This comment discounted the rat model data showing effects of fructose consumption because rats metabolize fructose differently than humans.

The Task Force found that studies in animals demonstrated that the effect of high carbohydrate or high sugars diets (65 to 75 percent of caloric intake) on blood lipids depends on a number of factors, including species, sex, strain, duration of experiment, dietary levels of noncarbohydrate components, physical activity, and meal patterns (Ref. 3). These findings support the Select Committee's finding that the ability of sucrose or fructose to modify serum lipid patterns depends on the animal's strain, sex, age, and species and on the adaptation response of the animal to prolonged exposure to sugars (Ref. 1).

The agency acknowledges that, in some of the animal studies, sucrose and fructose appear to be associated with the elevation of blood lipids. However, the agency finds that it cannot make a definitive conclusion about the significance of this apparent association because of the number of variables that have an impact on the results. Moreover, because of differences in metabolism between experimental animals and humans, it is difficult to extrapolate from animal experiments to humans.

The Task Force evaluated the possible role of dietary carbohydrates in the regulation of blood lipids and lipoprotein levels in humans. It found that dietary manipulations can cause changes in blood lipid levels and in lipoprotein patterns. The Task Force found that both high fat and high carbohydrate diets have been reported to increase serum cholesterol or triglyceride levels. However, the Task Force also reports that these studies were inconsistent. In some studies, high sucrose or high fructose intake did not lead to any changes in serum cholesterol, triglyceride, or lipoprotein patterns, while, in others, all of these parameters were affected by sugars consumption. According to the Task Force, these discrepancies may be the results of differences in experimental protocols, including the composition of the noncarbohydrate components of the diet of the subjects and the duration of the study; in physical activity of the study subjects; in subjects' genetic variability; or in changes in the subjects' body weight during the course of the study. All of these factors have been shown to influence blood lipid levels (Ref. 3). Thus, because of the myriad of factors that influence blood lipid levels and because of inconsistency in the results from different experiments, the agency concludes that the available data are not adequate to demonstrate that a causal relationship exists between levels of sugars consumption and blood lipid levels in the normal population.

7. Carbohydrate Sensitivity

a. Two comments asserted that a subpopulation exists whose serum lipid levels and glucose tolerance parameters are more affected by sugars consumption than are those of the general population. The comments cited studies (Ref. 3) on the effects of diet on glucose tolerance and blood lipid levels in individuals classified as "carbohydrate sensitive."

One comment cited data to support the contention that this carbohydrate-sensitive subpopulation (as defined in the studies) may constitute 9 to 17 percent of the U.S. population (Refs. 27 and 28). Although no comments questioned the existence of this subpopulation, one comment claimed that the size of this population (as defined by the studies cited above) has been exaggerated.

One comment cited studies showing that a small segment of the population is carbohydrate-sensitive, a condition that is characterized by greater serum insulin and glucose response to sucrose load than that occurs in normal individuals (Ref. 29). Based on these studies, the comment suggested that sugars consumption might present an increased risk of diabetes for carbohydrate-sensitive individuals.

Several comments claimed that the consumption of high levels of fructose and sucrose (but not lower levels) caused abnormal serum lipid levels in carbohydrate-sensitive individuals. One comment cited data to support this claim (Refs. 30 and 31).

Two comments suggested a possible association between hyperlipidemia and normal sucrose consumption in carbohydrate-sensitive individuals. The comments claimed that data showing hyperlipidemia in carbohydrate-sensitive individuals after high sucrose consumption are evidence of this association (Ref. 30), and that these individuals are at greater risk than the general population at developing heart disease. However, several other comments claimed that carbohydrate sensitivity has not been shown to be a significant factor in the etiology of coronary heart disease.

The agency has reviewed these comments and the reports of the Task Force and the Select Committee. The agency finds that the significance of "carbohydrate sensitivity" is difficult to assess because various authors use different definitions of "carbohydrate sensitivity" and do not establish any relationship between the "carbohydrate sensitivity" observed in their study and a well-defined disease condition. For example, carbohydrate-sensitive individuals, as defined in the initial studies cited by the comments (Refs. 22 and 27), are individuals without overt disease who have the combination of elevated serum triglyceride levels (above 150–200 milligrams per deciliters) and an exaggerated insulin response (2.5 to 4 times normal) to oral sucrose loads. But the study provided no data to link these individuals with subsequent onset of diabetes.

One study (Ref. 22) cited by a comment associates "carbohydrate sensitivity" with type IV hyperlipoproteinemia. However, the study provides no data to substantiate the connection. This comment also cited data from this study (Ref. 22) to suggest that "carbohydrate sensitive" individuals are at increased risk in developing diabetes. However, the study provided no connection between "carbohydrate sensitivity" with the subsequent development of diabetes. Furthermore while prediabetics may exhibit hyperinsulinemic responses to carbohydrate meals, the subsequent development of diabetes in these individuals has not been linked to the ingestion of carbohydrate but rather to obesity and other factors (Ref. 3).

In its review, the Task Force was unable to confirm the frequency of occurrence of carbohydrate sensitivity in the U.S. population (alleged to be 9 to 17 percent) or the significance of the occurrence of carbohydrate sensitivity to the development of a disease condition. The frequency of occurrence figures (9 and 17 percent) cited by the comment were based on the results of two studies (Refs. 27 and 28, respectively) that investigated the blood lipid patterns of free-living populations without overt disease and identified subgroups within these populations that had blood lipid patterns that fell into one of five types of hyperlipoproteinemia (as defined by the authors of the studies). The populations studied were relatively small (1,118 and 1,301—Refs. 27 and 28, respectively), and the studies provided no data to demonstrate that these populations were representative of the U.S. population as a whole. Furthermore, the blood lipid parameters used to define type IV hyperlipoproteinemia, which the comment identified as "carbohydrate sensitivity," differed between the two studies and also differed from the parameters used in Ref. 22, which was also cited by the comment. Finally, one of the studies (Ref. 27) acknowledged that the relationship between type IV hyperlipoproteinemia as defined in that study and premature coronary atherosclerosis is not well defined.

The Task Force found that carbohydrate sensitive individuals have a genetic predisposition to exaggerated insulin responses and elevated blood lipids with sucrose loading. However, the studies of high sucrose diets included several confounding variables, one of which was use of a gorging pattern of sucrose ingestion (Ref. 3). This pattern appeared to be necessary to elicit the response to sucrose. Furthermore, the Task Force found no evidence to show that prolonged high dietary sugars consumption will result in the development of diabetes mellitus in carbohydrate-sensitive individuals.

The Task Force questioned the relevance of data showing abnormal serum lipid levels in carbohydrate-sensitive individuals after consuming high levels of sucrose and fructose to the evaluation of health effects of normal sugars consumption in healthy individuals. The studies with sucrose had the same major problems as the studies on insulin response, including the gorging pattern of ingestion (Ref. 29).

In contrast, the study with fructose employed a conventional meal pattern. In this study (Ref. 31), plasma triglycerides increased significantly in carbohydrate-sensitive subjects but not in healthy controls after consumption of 7.5 and 15 percent dietary fructose. However, under these conditions, plasma cholesterol and LDL-cholesterol increased in both groups. The Task Force concluded that before the significance of this study could be fully evaluated relative to atherogenic risk, additional studies are needed to compare the observed effects of fructose with those occurring with other dietary sugars. The Task Force said that these studies should be carefully controlling for other dietary variables and for factors such as body mass index.

b. One comment questioned the applicability to humans of the animal model used in some studies to demonstrate carbohydrate sensitivity. The comment also questioned the relevance of data from the experimental animals fed high levels of sucrose to normal human consumption of sugars.

The agency agrees with this comment. Some of the animal data cited by the comment suggest the possibility that consumption of sugars at high dietary levels may result in an elevation of serum cholesterol and low-density lipoprotein and decreased insulin sensitivity. However, the Task Force found that clinical studies involving human subjects show no definitive relationship between sugars consumption and these effects (Ref. 3). Extrapolation of results from animal studies to humans is complicated by the differences that exist in sugar metabolism between some of the animals tested and humans, the lack of a dose-response relationship, and the presence of other factors that influence glycemic responses. Clinical studies that were conducted with normal humans and that were designed to evaluate the effect of current levels of sugars consumption on serum parameters (i.e., cholesterol, low-density lipoproteins, and insulin sensitivity) did not show any effect (Ref. 3).

c. The agency finds that, although there is evidence that a subset of the U.S. population experiences an elevation in serum lipids in response to a sucrose load, the data do not establish the size of this subset. Furthermore, based on the Task Force report, the agency finds that the available data do not demonstrate that sugars (including fructose), at current levels of consumption, had any different effects than other carbohydrates in inducing abnormal insulin and lipid levels in carbohydrate-sensitive individuals. Sugars have not been shown to present an increased risk of diabetes or coronary heart disease in this population.

8. Hypertension

Two comments asserted that high sucrose diets are linked to hypertension. One comment cited studies in humans, spider monkeys, and rats to support this assertion (Refs. 32, 33, and 34).

Four comments asserted that the link between sucrose consumption (either alone or in combination with salt) and hypertension is speculative. Several comments cited other data that showed no association between sucrose consumption and hypertension (Refs. 35 and 36).

The agency does not agree that sugars (including sucrose) consumption is linked to hypertension. In Sprague-Dawley rats, very high levels of sucrose in the diet can cause a slight rise in the systolic blood pressure. This rise in blood pressure is more pronounced when high levels of sodium chloride are also included in the diet. The interactive effects of other potentially important dietary factors, such as calcium, potassium, chloride, or fatty acids intake, have not been systematically examined.

Spontaneously hypertensive rats developed higher blood pressures with consumption of sucrose. The blood pressure increases from dietary sucrose and sodium in these rats were additive. However, in Wistar rats, blood pressure was not affected by ingestion of high levels of sucrose, although it was affected by ingestion of high levels of sodium chloride. These findings support the likelihood that the effect of sucrose on blood pressure is species and strain specific, and that in normal rats, the effect is dependent on high dietary levels of sodium chloride.

There is also some indication that at least some of the effects of sucrose on blood pressure are the result of increased body weight. Two studies in monkeys reported increased blood pressure as a result of consumption of diets with very high sucrose or high sucrose plus sodium chloride contents. In both studies, the body weights also increased during the experimental period, supporting the possibility that the observed effect on blood pressure was related to the body weight increase and not specifically to sucrose.

No data are available concerning the possible influence of long-term high sucrose consumption on blood pressure in humans. In normal human subjects, some sugars seem to have an acute, and possibly transient, effect on natriuresis (excretion of abnormal amounts of sodium in the urine). There is, however, no correlation between the potency of sugars as antinatriuretic agents and sugars' effect on blood pressure.

Based on its review of all the existing data, the Task Force found no convincing evidence to support the contention that current dietary intakes of sugars contribute to the development of hypertension (Ref. 3). The Select Committee, in its report on sucrose, reviewed preliminary data from a human study concerning the relationship between high sucrose diets and elevated blood pressure. The Select Committee found the data inadequate to draw any substantive conclusions (Ref. 1). Based on these findings, the agency concludes that current data are inadequate to establish a causal relationship between sugars consumption and hypertension.

9. Cardiovascular Disease

a. One comment hypothesized that diabetes and atherosclerotic disease are linked by hyperinsulinism. The comment suggested that sucrose consumption may

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affect atherosclerotic disease by raising blood insulin levels and cited data showing effects of sucrose consumption on blood insulin levels (Ref. 37).

The agency does not agree with the comment. The Task Force noted that the major risk factors for cardiovascular disease identified by epidemiological studies include sex, positive family history of hypercholesterolemia, elevated low-density lipoprotein fraction of lipoproteins, hypertension, obesity, diabetes, cigarette smoking, and physical inactivity. Among these, hyperlipidemia, hypertension, obesity, and diabetes have a potential link with dietary practice, including the levels of dietary cholesterol and fat and the ratio of polyunsaturated to saturated fats.

Although some animal data support the contention that dietary manipulations involving sugars may potentiate risk factors for cardiovascular disease such as hypertension, hypercholesterolemia, and insulin resistance, the Task Force found that these relationships are less clear in studies in human populations (Ref. 3). Changes in serum lipids in response to sugars ingestion were reported in short-term animal and clinical experiments (Ref. 3). However, the Task Force considered these changes to be of limited significance because the observed changes were transient and disappeared with prolonged exposure to high sugar diets. The mechanism for this apparent adaptation to changes in dietary composition is poorly understood.

In a 1-year study of pigs (Ref. 38), there were no indications of cardiovascular pathological processes as a result of high sucrose consumption. This finding is important because the pig is generally considered to be an excellent model for dietary requirements and metabolic processes in the human. The dietary levels of sugars in the pig study were substantially higher than the current level of sugars consumption by the general population.

b. Four comments asserted that there is no convincing epidemiological or clinical evidence of a relationship between sucrose consumption and coronary heart disease. Several comments claimed that the known risk factors in the development of heart diseases were unrelated to sugars consumption.

The agency agrees with these comments. The Task Force found that no epidemiological or clinical survey evidence that would establish a link between sugars intake and cardiovascular disease had been reported since the Select Committee review of the safety of sucrose (Ref. 1). Accordingly, the Task Force concluded that there is no credible evidence that dietary sugars are an independent risk factor for coronary artery disease in the general population (Ref. 3).

The Select Committee report did not establish that sugars consumption is a primary dietary factor in the etiology of cardiovascular disease. The Select Committee emphasized that the primary dietary factors involved in the etiology of the disease are the nature and amount of fat in the diet.

c. Based on its review and evaluation of the comments and the reports of the Select Committee and the Task Force, the agency concludes that current data do not support the contention that sugars are a primary or an independent risk factor for cardiovascular disease such that the reduction in current levels of sugars intake in the general population would reduce the risk of this disease.

10. Nutritional Deficiencies

a. One comment asserted that current levels of sucrose consumption may cause nutritional deficiencies and suggested limiting consumption of sweeteners in any form in which they are not combined with significant proportions of other foods of high nutritive value. The comment cited two studies in support of its arguments (Refs. 39 and 40). One study showed thiamine deficiencies in certain populations when diets high in "empty calories" are consumed, and the other study showed riboflavin deficiency in an urban teenage population that relies heavily on snack food.

The agency has considered this comment along with the references cited and the reports of the Task Force and the Select Committee. In its report, the Task Force determined that any serious and sustained disturbance of the dietary balance has the potential to cause nutritional deficiencies, but that sucrose and other sweeteners do not have a unique ability to cause such a disturbance (Ref. 3). The Select Committee found that sucrose intake in excessive amounts could have an effect on intake of other nutrients and could result in a nutrient imbalance (Ref. 1). The agency, however, cannot prevent consumers from adopting poor diets.

The Task Force concluded that the studies cited by the comments to show that sugars consumption caused deficiencies in certain vitamins can also be interpreted as demonstrating the failure of the test population (teenagers) to consume foods that are rich in riboflavin and thiamine (Ref. 3). The vitamin deficiency can be seen not as a result of sucrose consumption per se but as a result of diet selection. Supporting this view is the fact that the Task Force found no firm evidence that sugars interfere with the bioavailability of vitamins, minerals, or trace nutrients (Ref. 3). Thus, under ordinary conditions of use, there is no evidence that sugars cause vitamin deficiencies.

b. Five comments asserted that sugar consumption does not cause nutritional deficiencies. Three comments questioned the validity of the results of the studies cited above because of design deficiencies in those studies. Other comments stated that it is the absence of nutrients in the diet that causes nutritional deficiencies. One comment cited an article that it claimed contained data that suggested that sucrose consumption could have a positive effect on nutrient availability because sucrose can be used as a vehicle for vitamin enrichment (Ref. 41).

The agency evaluated the article cited in the latter comment. This article generally addressed sucrose as a vehicle for fortification but did not provide convincing evidence that sucrose actually enhanced the uptake of these nutrients. Therefore, this article does not provide an adequate basis for concluding that sucrose has a positive effect on nutrient availability.

The Select Committee in its report on sucrose found that overconsumption of sucrose could possibly result in dietary imbalances (Ref. 1). The Select Committee also found that it is possible that some individuals who consume excessive amounts of sucrose may exclude adequate amounts of other foods that furnish required nutrients. However, these individuals do not represent the normal population.

c. The agency concludes that any sustained disruption of dietary balance has the potential to cause nutrient deficiencies, but that sweeteners do not have a unique ability to cause dietary imbalances. This conclusion is in agreement with findings reported in the Select Committee reports. The agency further concludes that neither the comments nor the Task Force report demonstrated that there is a unique relationship between sugars consumption and nutritional deficiencies.

11. Behavior

One comment suggested possible behavioral effects from sugars consumption and suggested that the effects of sugars consumption on hypoglycemia, which may affect behavior, be investigated. This comment, however, did not provide any data to support the suggestion. Five

comments claimed that the available data do not demonstrate an association between sucrose consumption and hyperactive behavior (i.e., attention-deficit disorder) in either hyperkinetic or normal children.

The agency has reviewed the comments relative to sugars consumption and behavior. The agency notes that several scientific conferences on diet and behavior (Refs. 46 and 47) have reviewed the effects of foods on behavior since the Select Committee's reviews in 1976. General scientific concerns have centered on: (1) The effects of sugars consumption on neurotransmitter concentrations in the central nervous system and on behavior in animals; (2) the effects of sugars on human behavior (principally hyperactivity, i.e., attention-deficit syndromes in children); and (3) the influence of sugars consumption on appetite, hunger, and food consumption. Sucrose has been a central focus, although limited data exist for the other sugars.

A number of the reports on human behavior relate to "reactive" of postprandial hypoglycemia, which is marked by decreased blood glucose after eating and is associated with a characteristic group of clinical symptoms (sweating, palpitation, piloerection, trembling, and other stress symptoms) coincident with the low level of plasma glucose and subsiding as glucose levels rise. Reactive hypoglycemia has been reported, particularly in the psychological literature and the lay press, to be correlated with a wide range of behavioral and mood changes in adults, including difficulty in thinking, depression, irritability, and neurological disturbances.

The Task Force reported that there is a paucity of well-controlled scientific studies on this subject (Ref. 3). With respect to the well-controlled studies that do exist, the Task Force concluded that there is no substantial evidence that the consumption of sugars is responsible for adverse behavioral changes in children or in adults (Ref. 3).

Based on the data available to the Task Force, the agency concludes that:

(1) There is no conclusive experimental evidence that sugars consumption causes significant changes in the behavior of children or adults. While some authors have reported a correlation between sugars consumption and behavioral changes such as hyperactivity, restlessness, and distractibility in children, these studies were in many cases poorly controlled. Other investigations, working under more controlled conditions, have failed to demonstrate increased activity or have demonstrated instead drowsiness and decreased activity.

(2) The suggestion that reactive hypoglycemia is correlated with behavioral or mood changes likewise cannot be substantiated by available experimental evidence. The possibility cannot be ruled out that a relatively small group of individuals may react idiosyncratically to sugars consumption. However, there is no scientifically validated evidence demonstrating that current levels of sugars consumption adversely affect behavior.

12. Sucrose and Caffeine

One comment suggested that caffeine and sucrose act synergistically on behavior. Three comments, however, asserted that there are no data that demonstrate that sucrose and caffeine have such an effect on behavior.

The agency has reviewed these comments and notes the absence of data on this subject. The agency finds that there is no scientific basis for suggesting that sugars and caffeine consumption would have synergistic effect on behavior.

13. Brain Neurochemistry

One comment suggested that sucrose may affect behavior by altering neurotransmitter levels in the brain and cited data showing a link between high carbohydrate meals and increased brain serotonin levels (Refs. 42 and 43). Another comment asserted that there are no data that establish a connection between behavior and brain serotonin levels, and that this alleged connection is merely conjectural.

The agency has reviewed these comments. The Task Force determined that some evidence exists from animal studies that high levels of intake of carbohydrates (including sugars) may modify the transport of amino acid precursors of neurotransmitters into the brain and may alter neurotransmitter levels in the brain (Ref. 3). The Task Force also found that the ability of the changes in neurotransmitter levels to modify behavior, although speculated upon, has not been shown by controlled clinical or preclinical experiments (Ref. 3).

The Task Force concluded that the ability of dietary sugars intake to modify behavior through effects on central nervous system neurotransmitter metabolism has not been demonstrated (Ref. 3).

The agency finds that, considered together, the comments and the Task Force report do not provide any basis for substantive health concerns about sugars consumption and behavior that would call into question the GRAS status of the use of corn sugar, corn syrup, invert sugar, and sucrose.

14. Consumption

a. One comment made several assertions regarding the current level of sweetener consumption. The comment stated that the average American consumes 2 pounds of refined sweeteners a week, and that refined sweeteners constitute one-fifth of the American diet. It stated that a study showed that some 10-year-olds consumed up to 48 percent of their total calories as refined sweeteners (Ref. 35).

The agency disagrees with the conclusions that the comment drew from the data on current levels of sweetener consumption by the American population. Specifically, the agency does not agree that the average American consumes 2 pounds of sweeteners per week. This figure appears to be based on USDA disappearance data. It is an overestimate of intake and would be a misuse of these data. The USDA per capita disappearance data represent approximate estimates of the total amount of sweeteners available for consumption by the U.S. population. These data do not account for the losses and wastes of sweeteners that occur between the time the sweeteners are shipped from manufacturers and the time they are actually consumed. However, these data are useful for estimating trends of sugars consumption over the years.

The agency estimates, based on USDA Nationwide Food Consumption Survey data, that the average American consumes less than 1 pound of added sugars per week (Ref. 3). In evaluating the comment's assertion that one-fifth (20 percent) of the American diet consists of sweeteners, the agency noted that this level of calorie intake from sugars added to the diet approximates the 90th percentile intakes in the United States. The Task Force estimated (Ref. 3) that average consumers obtain only 11 percent of total calorie intake from added sugars.

The agency has reviewed the reference (Ref. 35) cited by the comment to support its assertion that some 10-year-olds consume up to 48 percent of calories as refined sweeteners. FDA could not confirm this figure from the reference because the reference reported the amount of calories from total sugars (including both naturally occurring sugars and sugars added to foods) and not the amount from added sweeteners only, as claimed by the comment.

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The agency concludes that the comment did not provide valid evidence to support its claim that the current level of sugars consumption is higher than that estimated by the Task Force. Therefore, the agency finds that there is no basis for modifying the Task Force's estimate of sugars consumption in response to this comment.

b. Three comments addressed changes in sweetener consumption over time. One comment stated that consumption of refined sweeteners has risen 50 percent (from a level of 12 percent to a level of 18 percent of calories) since 1910. However, another comment asserted that a comparison of today's refined sweetener consumption with that of 1910 is without significance because of changes in lifestyles. Two comments presented USDA disappearance data on sweetener availability. One comment asserted that sweetener consumption increased from 1900 to 1920 and remained relatively constant from 1920 to 1980. This comment also argued that recent data showed a downward trend in sucrose consumption and an increase in corn sweeteners consumption (Ref. 44). The other comment asserted that total sweetener intake has been constant from 1970 through 1985.

The agency agrees that per capita disappearance of sweeteners shows a trend toward increased consumption of sweeteners since 1910, the overall increase being about 50 percent. However, the agency finds that there was a relatively steep increase between 1910 and 1930, but that during the period from 1930 to 1970, the availability of sweeteners showed only a small overall increase with considerable yearly fluctuations (Ref. 3). Most importantly, the data show that the availability of sweeteners remained fairly constant from 1970 through 1985 (Ref. 3), suggesting that total sweetener consumption has remained relatively constant since the review by the Select Committee.

The agency concludes that the comments have not presented new data that show a significant increase in sweetener consumption that would call into question the safety of the current use of sweeteners. Therefore, the agency finds that these comments do not provide any reason to modify the Task Froce conclusions on the trends in sweetener usage.

c. One comment asserted that American consumption of sweeteners is excessive and is associated with various health problems. The comment made several allegations and cited the data discussed above on current levels of sweetener consumption and the 50 percent rise in sweetener consumption since 1910 to support its assertions concerning overconsumption of sweetener (Ref. 8). Two comments responded to the allegation of overconsumption of sweeteners by showing (through the trend data on sweetener availability discussed above) that total sweetener consumption has remained relatively constant.

The agency finds that none of the comments provided data that were relevant to proving or disproving the alleged overconsumption of sweeteners by the U.S. population. The two sets of data addressed either some absolute measure of current consumption or trends in consumption. Neither set of data establishes that the current level of sweetener consumption by the U.S. population is associated with a health risk.

d. Based on these assessments, the agency concludes that, with the exception of effects of sweetener consumption on dental caries formation, current levels of sweetener consumption do not constitute "overconsumptions."

Therefore, the agency finds that the comments did not provide a basis to call into question the Select Committee's conclusions on the safety of corn sugar, corn syrup, invert sugar, and sucrose. As a result, FDA finds that these comments do not provide a basis for modifying the GRAS status of the use of these ingredients.

15. Conclusions Regarding GRAS Status

The agency proposed to affirm the GRAS status of corn sugar, corn syrup, and invert sugar and of sucrose based on the safety evaluations and conclusions of the Select Committee. The agency has considered all the comments on these proposals, including those that asserted possible adverse health effects from sweetener consumption. In considering these comments, the agency has assessed whether the information in the comments together with information in the Task Force report provide evidence that raises significant doubts as to the safety of sugars.

The agency finds that, in most cases, the comments raised issues that had been addressed by the Select Committee in its reports on corn sugar, corn syrup, and invert sugar and on sucrose, and that the comments did not provide evidence that would warrant a change in the Select Committee's conclusions. In a few cases the comments provided new data and raised issues that had not been addressed by the Select Committee in its reports. In its review of the safety of sugars consumption, however, the Task Force evaluated these new data and issues, as well as other data on the issues that were available in the published literature. The Task Force found that these data did not provide sufficient evidence of any health concerns from sugars consumption to bring into doubt the Select Committee's conclusions regarding the safety of corn sugar, corn syrup, invert sugar, and sucrose. The agency has reviewed these comments, the Select Committee's report, and the report of the Task Force and agrees with the Task Force for the reasons previously set out. Therefore, the agency is not modifying the GRAS affirmation regulations that it proposed for these ingredients.

C. Comments Requesting Agency Action to Increase Consumer Information on Sugars

1. Sugars Labeling

Five comments supported some form of "sugar" labeling of food. The comments differed in what sugars they wanted labeled. One comment specifically requested that "added sugars" be labeled. Other comments requested declaration of "total sugars" because labeling only "added sugars" would not give a complete picture of the sugars content of the food.

The comments also varied in their concept of sugars labeling. One comment requested mandatory labeling of sugars in food without specifying what the label would say. Other comments wanted a modification of nutrition labeling either to include "sugar" or to separate the carbohydrate portion of nutrition labeling into "simple sugars" and "complex carbohydrates." One comment requested voluntary sugars labeling.

One comment that was opposed to sugars labeling asserted that no reason exists to single out sugars for mandatory declaration, and that more practical methods exist for disseminating information about the sugars content of foods. The comment requested that FDA consider sugars labeling only in the context of a reevaluation of nutrition labeling and the total food label.

The agency acknowledges that the Select Committee recommended that FDA require improved labeling of the sugars content of food. The agency further agrees that to provide useful information to consumers, any labeling system should include both added and naturally occurring sugars. However, because quantitative labeling of sweeteners involves issues beyond the scope of this safety review and is not necessary for the GRAS affirmation of corn sugar, corn syrup, invert sugar, and sucrose, the agency is not taking any action in response to these comments. Individuals who wish to request agency consideration of a specific modification of the ingredient labeling or nutrition labeling regulations to provide for sugars labeling may submit a citzen petition under 21 CFR Part 10.

2. Educational Campaign

Four comments supported an educational program related to sugars and health. One comment specifically requested that HHS mount an educational compaign on health effects of sugars consumption. Two comments supported an educational campaign to disseminate scientific facts about sucrose's role in the diet and to refute popular mythology about sucrose. One comment supported an educational effort to help consumers practice better eating habits.

The agency has reviewed these comments and notes that these comments present differing views about the appropriate focus and content of an educational campaign. One comment wanted the campaign to promote the view that sugar consumption causes adverse health effects. Two comments appeared to want an educational campaign to counteract the view expressed in the first comment. The fourth wanted an educational campagn on total dietary management, with sugars discussed within this broader context.

The agency finds that the last approach is the most appropriate based on the findings both in the Select Committee's reports on corn sugar, corn syrup, and invert sugar and on sucrose and in the Task Force's review of sugars. USDA and HHS recently published "Dietary Guidelines for Americans" (Ref. 45), which contains seven dietary guidelines for staying healthy. One of these guidelines, "Avoid too much sugar," discourages overconsumption of sugars. The agency concludes that the current affects in promoting the dietary guidelines provide an adequate educational campaign on the health effects of sugars consumption.

D. Lead and Cadmium Content of Sweeteners

In the proposals on corn sugar, corn syrup, and invert sugar and on sucrose, FDA announced the results of a survey that the agency conducted in 1974 on heavy metals in food. The analytical results showed that 6 of 71 samples of refined sugar tested contained high levels of cadmium and lead. Because the agency was unable to confirm the results of this survey in a resurvey in 1980, FDA requested the submission of data on cadmium and lead levels in refined and unrefined cane and beet sugars, as well as in corn sugar, corn syrup, and invert sugar. The agency requested that the sugar industry report the levels of heavy metals found at each stage of the manufacturing process.

FDA received three comments in response to this request. One comment noted that a draft paper by the two FDA scientists attributed the occasional high cadmium and lead values in the 1974 survey of sucrose samples to difficulties in the method used to ash the samples. The comment stated that when the agency employed a new dry ashing procedure, the previous results could not be duplicated. Although the comment promised to submit more information on cadmium and lead analysis, the agency has never received this information.

One comment claimed that information on lead and cadmium levels in corn syrups and sucrose during processing is not generally available. As an alternative, the comment suggested that producers be allowed to furnish data on the finished product.

The final comment cited a report in the *Journal of Agriculture and Food Chemistry* (24(1), 1976) by the USDA's Southern Regional Research Center, which listed lead and cadmium levels in raw and refined sucrose at less than 0.1 part per million for lead and 0.01 part per million for cadmium. The comment claimed that its own recent analyses of the lead and cadmium content in refined and unrefined sweetners have confirmed these results.

The agency has reviewed these comments along with other information generated by the scientific literature update on sucrose and corn sugars. The agency has also reviewed results of FDA's 1980 resurvey which showed the estimated lead and cadmium intake levels from sucrose to be less than 0.01 and 0.008 microgram per day, respectively. These levels are much lower than those that were reported in the previous survey.

The agency, after analyzing all the available data, finds that the first survey may have been in error because of the ashing techniques used to prepare the samples. More recent data in which revised sample preparation techniques were used demonstrate that the contribution of lead and cadmium from sugar consumption to the total dietary load for these two contaminants is minimal and represents less than 1.5 percent of total dietary consumption of lead and cadmium. The agency, therefore, concludes that the levels of lead and cadmium in sucrose do not represent a hazard to the public health, and that it is not necessary to set limits for these contaminants in these regulations. Therefore, the agency has not modified the GRAS affirmation regulation for corn sugar, corn syrup, invert sugar, and sucrose to incorporate specifications for lead and cadmium.

E. Comments Regarding Proposed Identity and Specifications

1. Identity and Specifications for Corn Sugar and Corn Syrup

Two comments were received that asked that the proposed GRAS affirmation regulations for corn sugar (§ 184.1857) be made compatible with 21 CFR 168.110 (dextrose anhydrous) and 21 CFR 168.111 (dextrose monohydrate) by modifying the regulation to include the monohydrate form of the sugar. The comments also asked that the proposed regulation for corn syrup (§ 184.1865) be modified to make it consistent with 21 CFR 168.120 (glucose sirup) and 21 CFR 168.121 (dried glucose sirup). One of the comments asked that the title of the corn sugar regulation be changed to "Dextrose." One comment requested that the liquid form of corn sugar be included in the corn sugar regulation.

The agency has reviewed these comments and finds that its safety review covered both the monohydrate and the anhydrous forms of corn sugar, and that it is appropriate for the GRAS affirmation regulation for corn sugar to be modified to include both of these forms of corn sugar. The agency has also reviewed the request that the GAS affirmation regulation for corn syrup (glucose sirup) be made compatible with the descriptions in §§ 168.120 and 168.121. The agency concurs that it is appropriate for the GRAS affirmation regulation for corn syrup to be compatible with the descriptions in §§ 168.20 and 168.21, including use of the synonym "glucose sirup." The agency has modified the final rule to incorporate these changes.

The agency has concluded that no change in the title of the regulation for corn sugar is warranted because corn sugar *is* the name of the ingredient whose safety was reviewed by the Select Committee and evaluated during the GRAS review. The name adequately describes the material covered by the regulation and does not lead to deception of consumers. The agency will, however, include "dextrose" in the regulation as a commonly used synonym for corn sugar. FDA has modified the final rule to incorporate this change.

The agency has also reviewed the comment requesting that the liquid form of corn sugar be included in the corn sugar regulation. The agency finds that

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although liquid corn sugar does not meet the specifications for corn sugar, it does meet the identity and specifications of corn syrup and is covered under that regulation. Accordingly, the agency is not modifying its final rule to incorporate the requested change.

The agency also notes that although the specifications for corn sugar describe a crystalline material, the description of corn sugar in proposed § 184.1857(a) did not describe the material as crystalline. Therefore, to resolve this confusion and to provide consistency between the description of corn sugar in § 184.1857(a) and the specifications for corn sugar in § 184.1857(b), the agency has added a sentence to paragraph (a) specifying that the hydrolyzed corn starch is refined and crystallized.

In addition, the agency notes that the description of sucrose in proposed § 184.1854(a) does not explicitly cover the extraction, by pressing, of sugar cane juice from sugar cane or beet juice from sugar beets and also does not mention the evaporation of the extracted sugar cane juice or beet juice. Therefore, the agency has modified § 184.1854(a) to include "pressing" as a possible extraction procedure and "evaporated" as a step in the refinement of sucrose.

The agency is also aware that glucose syrup and dextrose may be prepared from starch sources other than corn starch. The agency has not included these sources in this regulation because this safety review covered only the product derived from corn. The agency will consider modifying the regulations for corn syrup and corn sugar if adequate information on the possible impurities and the method of manufacture of these food ingredients from starch sources other than corn starch is submitted to the agency for consideration. Interested persons may petition the agency to amend the GRAS regulations for corn syrup and corn sugar by submitting a GRAS affirmation petition in accordance with 21 CFR 170.35.

2. Identity and Manufacture of Invert Sugar

FDA received two comments that requested that hydrolysis with safe and suitable acids be included in the methods of preparing invert sugar, and that the description for invert sugar be modified to include sucrose as a constituent of this substance.

One of the comments also requested that the method of manufacture described in the regulation include the use of ion exchange resins.

The agency has reviewed the comments as well as data in its files on the manufacture of corn sweeteners. The agency notes that safe and suitable acids have been used traditionally to hydrolyze polysaccharides and to manufacture corn sugar and corn syrup. Therefore, the agency is of the opinion that there are no safety reasons why safe and suitable acids should not be used in the manufacture of invert sugar from sucrose. Accordingly, the agency has modified the regulation for invert sugar to include hydrolysis of sucrose with safe and suitable acids in the description of how this substance is manufactured.

However, in the case of ion exchange resins, the agency has no basis to evaluate the safety or suitability of their use in the manufacture of invert sugar. In the past, the agency has listed ion exchange resins as food additives in 21 CFR 173.25 and has required specific food additive approval for their use. Section 173.25 has no listing for use of an ion exchange resin in the manufacture of invert sugar. In addition, the comment provided no information on the identity of the ion exchange resins or on the safety or the suitability of such use. Therefore, the agency has not modified the regulation for invert sugar to inlcude the use of ion exchange resins.

The agency has also reviewed the requests that the description of invert sugar include the presence of sucrose. The agency has confirmed that its definition of invert sugar in 21 CFR 145.3(e) and 146.3(e) provides for the presence of unhydrolyzed sucrose in invert sugar.

FDA is of the opinion that the GRAS regulation for invert sugar should be compatible with the standard of identity for invert sugar in §§ 145.3(e) and 146.3(e). Therefore, the agency has modified § 184.1859(a) to provide for the presence of unhydrolyzed sucrose in the description of invert sugar.

IV. Procedural Issues

In the proposals, FDA stated that it would work with the Committee on Codex Specifications (now known as the Committee on Food Chemicals Codex) of the National Academy of Sciences to develop acceptable specifications for sucrose and invert sugar used as direct human food ingredients. The agency also stated that it would incorporate these specifications into the regulations when they are developed. The date, however, work on the specifications is still incomplete. Until the specifications are developed, sucrose and invert sugar for direct food use must comply with the description in §§ 184.1854 and 184.1859, respectively, and be of food-grade purity in accordance with 21 CFR 182.1(b)(3) and 170.30(h)(1).

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action ws considered under FDA's final rule implementing the National Environmental PolicyAct (21 CFR Part 25).

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Docket Management Branch (address above).

V. References

The following references have been placed on display in the Dockets Management Branch, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Evaluation of the Health Aspects of Sucrose as a Food Ingredient" (SCOGS–69), Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1976.

2. "Evaluation of the Health Aspects of Corn Sugar (Dextrose), Corn Syrup, and Invert Sugar and Food Ingredients" (SCOGS–50), Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1976.

3. Glinsmann, W.H., H. Irausquin, and Y.K. Park, "Evaluation of Health Aspects of Sugars Contained in Carbohydrate Sweeteners," Report of Sugars Task Force, 1986, *Journal of Nutrition*, 116(115):51, 1986.

4. Letter from Acting Director of the Center for food Safety and Nutrition to the Center for Science in the Public Interest, September 26, 1988.

5. Letter from Associate Commissioner for Regulatory Affairs to Maura (Jinny) Zack, March 4, 1988.

6. "Subcommittee on Review of the GRAS List (Phase II). A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)," Committee on Food Protection, Division of Biology and Agriculture, National Research Council, 1972.

7. Barry R.D., "High fructose corn sirup and pure fructose: potential consumption and substitution for sugar by 1990." Presented to the American Medical Association Resource Conference on HFCS and Fructose, Chicago, IL, October 2, 1984.

8. "Recommended Dietary Allowances," 9th Ed., National Research Council, 1980.

9. Burt, B., and S. Eklund, "Sugar Consumption and Dental Caries: Some Epidemiological Patterns in the United States," *in* "American Dental Association Health Foundation, Foods, Nutrition and Dental Health," Chicago, Pathotox, p. 171, 1981.

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11. Walker, A.R.P., et al., "Dental Caries in South African Black and White High School Pupils in Relation to Sugar Intake and Snack Habits," *Community Dentistry and Oral Epidemiology*, 9:37–43, 1981.

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18. Nuttall, F.Q., and M.C. Gannon, "Sucrose and Disease," *Diabetes Care*, 4:305, 1981.

19. Sieder, J., et al., "Hyperinsulinemia in Fructose-Induced Hypertriglyceridemia in the Rat," *Metabolism*, 29:303, 1980.

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21. Beck-Nielsen, H., O. Pedersen, and H.O. Lindskov, "Impaired Cellular Insulin Binding and Insulin Sensitivity Induced by High-Fructose Feeding in Normal Subjects," *American Journal of Clinical Nutrition*, 33:273, 1980.

22. Reiser, S., et al., "Isocaloric Exchange of Dietary Starch and Sucrose in Humans. I. Effects on Levels of Fasting Blood Lipids," *American Journal of Clinical Nutrition*, 32:1659, 1979.

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37. Crapo, P.A., G. Reaven, and J. Olefsky, "Plasma Glucose and Insulin Responses to Orally Administered Simple and Complex Carbohydrates," *Diabetes*, 25:741, 1976.

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42. Wurtman, R.J., "Precursor Control of Transmitter Synthesis," in "Nutrition and the Brain," Vol. 5, New York, Raven Press, 1979.

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44. "Sugar and Sweetener: Outlook & Situation," U.S. Department of Agriculture, December 1982.

45. "Nutrition and Your Health: Dietary Guidelines for Americans," 2d Ed., U.S. Department of Agriculture, U.S. Department of Health and Human Services, 1985.

46. Lieberman, H.R., and R.J. Wurtman, editors, "Research Strategies for Assessing the Behavioral Effects of Foods and Nutrients," Proceedings of a conference at Massachusetts Institute of Technology, Pergamon Press, Elmsford, 1982.

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List of Subjects

21 CFR Part 182

Food ingredients, Food packaging, Spices flavorings.

21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

§ 182.1 [Amended]

2. Section 182.1 *Substances that are generally recognized as safe* is amended in paragraph (a) by removing the word "sugar," from the second sentence.

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§ 182.90 [Amended]

3. Section 182.90 *Substances migrating to food from paper and paperboard products* is amended by removing "Corn sugar (sirup)," "Invert sugar," and "Sucrose" from the list of substances.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

4. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

5. Section 184.1854 is added to Subpart B to read as follows:

§ 184.1854 Sucrose.

(a) Sucrose ($C_{12}H_{22}O_{11}$, CAS Reg. No. 57–50–11–1) sugar, cane sugar, or beet sugar is the chemical β-D-fructofuranosyl-α-D-glucopyranoside. Sucrose is obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated.

(b) FDA is developing food-grade specifications for sucrose in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

6. Section 184.1857 is added to Subpart B to read as follows:

§ 184.1857 Corn Sugar.

(a) Corn sugar ($C_6H_{12}O_6$, CAS Reg. No. 50–99–7), commonly called D-glucose or dextrose, is the chemical α-D-glucopyranose. It occurs as the anhydrous or the monohydrate form and is produced by the complete hydrolysis of corn starch with safe and suitable acids or enzymes, followed by refinement and crystallization from the resulting hydrolysate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 97–98 under the heading "Dextrose," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 1. Copies are available from the National Academy Press, 2101 Constitution Ave., NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

7. Section 184.1859 is added to Subpart B to read as follows:

§ 184.1859 Invert sugar.

(a) Invert sugar (CAS Reg. No. 8013–17–0) is an aqueous solution of inverted or partly inverted, refined or partly refined sucrose, the solids of which contain not more 0.3 percent by weight of ash. The solution is colorless, odorless, and flavorless, except for sweetness. It is produced by the hydrolysis or partial hydrolysis of sucrose with safe and suitable acids or enzymes.

(b) FDA is developing food-grade specifications for invert sugar in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

8. Section 184.1865 is added to Subpart B to read as follows:

§ 184.1865 Corn Syrup.

(a) Corn syrup, commonly called "glucose sirup" or "glucose syrup," is obtained by partial hydrolysis of corn starch with safe and suitable acids or enzymes. It may also occur in the dehydrated form (dried glucose sirup). Depending on the degree of hydrolysis, corn syrup may contain, in addition to glucose, maltose and higher saccharides.

(b) The ingredient meets the specifications as defined and determined in § 168.120(b) or § 168.121(a) of this chapter, as appropriate. FDA, in cooperation with the National Academy of Sciences, is undertaking a study to determine if additional food-grade specifications for corn syrup are necessary.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: October 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25583 Filed 11–4–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904, 905, 913, 960, and 966

[Docket No. R–88–1020; FR–1164]

Tenancy and Administrative Grievance Procedure for Public Housing; Notice Suspending Effective Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice suspending effective date for the Tenancy and Administrative Grievance Procedure for Public Housing.

SUMMARY: A final rule to amend lease and grievance procedures for the public housing program was published on August 30, 1988 (53 FR 33216), Docket No. R–88–1020; FR 1164. On October 14, 1988, HUD published a notice announcing that the final rule would become effective on November 7, 1988 (52 FR 40220, 40221).

Pursuant to a Temporary Restraining Order in National Tenants Organization, *et al.* v. Samuel R. Pierce (United States District Court for the District of Columbia, Civil Action No. 88–3134), HUD hereby withdraws the notice of effective date previously published, to maintain the status quo pending hearing on a motion for preliminary injunction by plaintiffs in this action.

The prior lease and grievance regulations (24 CFR Part 966) remain in effect until publication of further notice by HUD. Accordingly, the effective date as published on October 14, 1988, as it applies to the Tenancy and Administrative Grievance Procedure for Public Housing published August 30, 1988, is suspended.

DATE: Effective date of this Notice: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–7055. (This is not a toll-free number.)

Date: November 3, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88–25767 Filed 11–4–88; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 159

[DoD Directive 5200.1]

DoD Information Security Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This Part updates established policies and procedures of the DoD Information Security Program and implements Executive Order 12356, "National Security Program" and Information Security Oversight Office Directive No. 1, "National Security Information." This Part also delegates authority, assigns responsibilities, and authorizes the development, publication, and maintenance of DoD 5200.1–R, "Information Security Program Regulation" and other issuances that pertain to the DoD Information Security Program. At the present time, 32 CFR Part 159 is a combination of DoD Directive 5200.1, June 7, 1982, and DoD 5200.1–R. This revision separates the two documents. DoD 5200.1–R will be submitted as a separate part (32 CFR Part 159a) at a later date.

EFFECTIVE DATE: June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. F. Cook, Office of the Deputy Under Secretary of Defense for Policy, Directorate for Security Plans and Programs, The Pentagon, Washington, DC 20301–2200.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 159

Classified information, Foreign relations.

Accordingly, 32 CFR Part 159 is revised as follows:

PART 159—DOD INFORMATION SECURITY PROGRAM

Sec.

159.1 Purpose.
159.2 Applicability and scope.
159.3 Policy.
159.4 Procedures.
159.5 Responsibilities.

Authority: E.O. 12356 and 5 U.S.C. 301.

§ 159.1 Purpose.

(a) This part updates policies and procedures of the DoD information Security Program, implements Executive Order 12356 and 32 CFR Part 2001, delegates authority, and assigns responsibilities.

(b) This part authorizes the development, publication, and maintenance of the following documents, consistent with DoD 5025.1–M.

(1) DoD 5200.1–R, "Information Security Program Regulation";

(2) DoD 5200.1–H, "Department of Defense Handbook for Writing Security Classification Guidance";

(3) DoD 5200.1–I, "Index of Security Classification Guides";

(4) DoD 5200.1–PH, "A Guide to Marking Classified Documents"; and

(5) Other DoD 5200.1–PH series issuances necessary to ensure or facilitate compliance with and implementation of DoD 5200.1–R and E.O. 12356 and 32 CFR Part 2001.

§ 159.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

(b) This part covers all information that is owned, produced by or for, or is under the control of the Department of Defense that shall be protected from unauthorized disclosure in the interest of national security under Executive Order 12356 and ISOO Directive No. 1 and all such information received by the Department of Defense from other sources, including that received from or produced pursuant to or as a result of a joint arrangement with a foreign government or international organization.

§ 159.3 Policy.

It is the policy of the Department of Defense to assure that information that warrants protection against unauthorized disclosure is properly classified and safeguarded as well as to facilitate the flow of unclassified information about DoD operations to the public.

§ 159.4 Procedures.

To carry out this policy, there is established a DoD Information Security Program that shall be administered to ensure that:

(a) Information requiring protection in the interest of national security is properly classified and safeguarded.

(b) Overclassification and unnecessary classification are avoided.

(c) Information is classified as long as required by national security considerations.

(d) Unnecessary expense to the Department of Defense, industry, and the U.S. government, resulting from protection of information no longer requiring classification, is eliminated.

(e) Declassified information is made available to the public under 32 CFR Part 285.

(f) Classified inventories are reduced to the minimum necessary to meet operational requirements, thereby affording better protection to that which remains.

(g) DoD military and civilian personnel, who require access to classified information in the conduct of official business, are familiar with the requirements of DoD 5200.1–R and E.O. 12356 and 32 CFR Part 2001, and that they comply with those requirements.

§ 159.5 Responsibilities.

(a) The *Deputy Under Secretary of Defense (Policy)* shall:

(1) Direct and administer the DoD Information Security Program, establish policy, standards, criteria, and procedures to comply with E.O. 12356, except its section 3.4.

(2) Conduct an active oversight program to ensure effective implementation of DoD 5200.1–R, Executive Order 12356, and 32 CFR Part 2001, to include security education and training.

(3) Consider and take action on complaints and suggestions from persons within or outside the government regarding the DoD information Security Program.

(b) The *Assistant Secretary of Defense (Public Affairs)* shall direct and administer a DoD Mandatory Declassification Review Program under section 3.4., E.O. 12356, and establish policies and procedures for processing mandatory declassification review requests, including appeals, under section 3.4(d) of E.O. 12356 and section 2001.32(a)(2)(iii) of Information Security Oversight Office (ISOO) Directive No. 1 [1] that make maximum use of DoD Component resources and systems established to implement 32 CFR Part 285.

(c) The *Head of each DoD Component* shall:

(1) Designate a senior official who shall be responsible for the direction and administration of the Component's Information Security Program, to include

[1] Copies may be obtained, if needed, from the Director, Information Security Oversight, General Service Administration, Washington, DC 20405.

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active oversight, and security education and training programs to ensure implementation of DoD 5200.1–R within the Component.

(2) Ensure that funding and resources are adequate to carry out such oversight, and security education and training programs.

(3) Consider and take action on complaints and suggestions from persons within or outside the government regarding the Component's Information Security Program.

(4) Establish procedures to limit access to classified information to those who need to know.

(5) Develop plans for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, terrorist activities, or enemy action. These plans shall include the treatment of classified information located in foreign countries.

(d) Pursuant to E.O. 12356, the *Director, National Security Agency/Chief, Central Security Service,* as the designee of the Secretary of Defense, is authorized to impose special requirements with respect to the marking, reproduction, distribution, accounting, and protection of and access to classified cryptologic information. The Director, National Security Agency/Chief, Central Security Service, will develop special procedures for the declassification review of cryptologic information. This authority may not be redelegated.

November 2, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–25699 Filed 11–4–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Cleveland Regulation 88–09]

Safety Zone Regulations; Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of emergency rule.

SUMMARY: The Coast Guard is cancelling the safety zone in Lake Erie with its center at 41–31.07' N, 081–44.48' W, and extending for a one thousand yard radius around that point. The zone was needed to protect life and property in connection with the search for a possible unexploded piece of ordnance beginning on September 11, 1988. The search was concluded on September 19, 1988.

FOR FURTHER INFORMATION CONTACT: CDR Patrick A. Turlo, Captain of the Port, (216) 522–4406.

EFFECTIVE DATE: November 7, 1988.

SUPPLEMENTARY INFORMATION: On September 27, 1988 the Coast Guard published an emergency rule in the **Federal Register** for these regulations (53 FR 37558).

Drafting Information

The drafters of this regulation are CDR Patrick A. Turlo, the Captain of the Port, Cleveland, and LCDR Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstance requiring the original regulation resulted from the report of a possible piece of unexploded ordnance in the vicinity of 41–31.07' N, 81–44.48' W. Coast Guard and other designated personnel conducted search activities using divers and underwater equipment deployed from patrol boats. The search yielded negative results. Having exhausted all efforts, the Captain of the Port called off the search on September 19, 1988. Additionally, investigation of the incident led to the conclusion that the object was in all probability a piece of practice ordnance, and presents a very low threat to the public safety. This cancellation serves notice with respect to the effective date, that the Captain of the Port has terminated the Emergency Rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Dated: October 19, 1988.

Patrick A. Turlo,

Captain of the Port, Cleveland, Ohio.

[FR Doc. 88–25725 Filed 11–4–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD1–88–094]

Safety Zone Regulations; Mamaroneck Harbor, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Mamaroneck Harbor, East River, NY. This Zone is needed to protect vessels from the possible dangers and hazards to navigation associated with blasting operations in Mamaroneck Harbor, NY.

EFFECTIVE DATES: This regulation is in effect from 2:00 p.m. to 6:00 p.m. local time Monday through Friday commencing on 28th September 1988 and terminating 27th November 1988.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, New York, (212) 668–7933.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG G. S. Lapsley, Project Officer for the Captain of the Port, New York, and CDR R. A. Brunell, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with blasting operations in Mamaroneck Harbor, NY.

List of Subjects in 33 CFR Part 165

Habors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Part 165 as amended by adding § 165.T194 to read as follows:

§ 165.T194 Safety Zone: Mamaroneck Harbor, Mamaroneck, NY.

(a) *Location.* The following area has been declared a safety zone: The waters within 800 yards of the drill barge Weeks #293 in Mamaroneck Harbor, Mamaroneck, NY. This Zone is only effective during the placing and detonation of explosives. The Weeks #293 will be working in the area seaward of Black Tom Island.

(b) *Effective date.* This regulation is in effect from 2:00 p.m. to 6:00 p.m. local time Monday through Friday commencing on 28th September 1988 and terminating 27th November 1988.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: September 28, 1988.

R.C. North,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 88–25726 Filed 11–4–88; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 88–7]

Service Contracts; "Most-Favored-Shipper" Provisions

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is adopting a Final Rule that prohibits a rate contained in a service contract to be changed during the course of the contract on the basis of unpublished offers made of any shipper of the commodity covered by the contract. However, changes to service contract rates based on published rates of the contract carrier or other carriers, whether in tariffs or service contracts, will continue to be allowed.

DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding in response to a Petition for Rulemaking ("Petition") filed by the International Council of Containership Operators ("ICCO"), an association of several containership operators.[1] The Petition requested that the Commission issue a rule prohibiting: (1) So-called "most-favored-shipper" ("MFS") clauses [2] in service contracts, and (2) the use of *de minimis* liquidated damages provisions in service contracts for a shipper breach of its volume commitment.[3] The Commission published the Petition in the **Federal Register** and invited comments.

After consideration of the forty-one comments received, the Commission published a Proposed Rule prohibiting MFS clauses in service contracts (53 FR 8775, March 17, 1988). The Proposed Rule defined a "most-favored-shipper clause" as:

> • • • a service contract provision that allows a service contract rate or rate schedule(s), or any other essential term(s), to be changed to adopt (by direct match, formula or by any other means) any provision offered to the contracting shipper or another shipper, by tariff filing, other service contract, or any other offering, by any other carrier or conference.

However, the Proposed Rule would have permitted adjustments in service contract rates based upon charges in a carrier's or conference's own tariffs or service contracts. Accordingly, proposed § 581.5(a)(4) stated that the essential terms of a service contract:

> May incorporate by reference additional charges, surcharges, allowances, or adjustment factors as set forth in the service contract carrier's or conference's tariff of general applicability or service contract essential terms publication in the same trade in effect on the date of execution of the service contract. The reference must be made by specific FMC tariff or essential terms publication number to an active publication. The service contract may also provide for adjustments in such charges as effected by adjustments in the carrier's or conference's tariff of general applicability or essential terms publication. Each service contract shall describe any restriction(s) or limitation(s) which apply to such adjustments.

The Commission declined to propose any regulations dealing with the issue of the level of liquidated damages. Although the Commission determined that it had the legal authority to issue rules in this area, it concluded that such action was not warranted at the time.

Comments on the Proposed Rule were received from thirty-eight interested parties. These comments can be divided into two categories: (1) Shippers, shippers' associations and other shipper groups ("Shipper Comments"),[4] and (2) carriers, conferences and other associations ("Carrier Comments").[5] Comments were also received from two members of Congress—the Honorable John B. Breaux, Chairman of the Merchant Marine Subcommittee of the Senate Committee on Commerce, Science, and Transportation and the Honorable Walter B. Jones, Chairman of the House Committee on Merchant Marine and Fisheries.[6]

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[1] The following were members of ICCO at the time the Petition was filed: American President Lines, Ltd; Atlantic Container Line Services Ltd.; The Australian National Line; Ben Line Containers Ltd.; Blue Star Line Ltd.; Compagnie Generale Maritime, CMB S.A.; Crowley Maritime Corporation; the East Asiatic Company Ltd. A/S; Evergreen International Corporation; Societa Finanziari Marittima (Finmare); Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck; Hapag-Lloyd AG; Lykes Bros. Steamship Co., Inc.; A.P. Moller (Maersk Line); Mitsui O.S.K. Lines, Ltd.; Koninklijke Nedlloyd Groep N.V.; Neptune Orient Lines, Ltd.; Nippon Yusen, Kaisha; Orient Overseas Container Line Ltd.; Overseas Containers Limited; Sea-Land Service, Inc.; South African Marine Corporation, Limited; Transatlantic Shipping Company, Limited; Trans Freight Lines, Inc.; Transportacion Maritima Mexicana, S.A. de C.V.; United Arab Shipping Company (S.A.G.); United States Lines, Inc.; and Wilh. Wilhelmsen.

[2] ICCO identified two distinct types of MFS clauses. Under the first, if the contract carrier or conference offers to any other shipper (by service contract or by tariff) a lower rate for that commodity for that service than is offered to the contract shipper under the service contract, the contract shipper will prospectively receive the lower rate. The second type is referred to by ICCO as a "Crazy Eddie" clause. Under this arrangement, if, during the contract term, the contract carrier or any other carrier offers the contract shipper or any other shipper (by service contract, by tariff, or by other means), a lower rate for that commodity for that service than is provided to the contract shipper under the service contract, the contract shipper will prospectively receive that lower rate from the contract carrier.

[3] ICCO would classify as "*de minimis*" damages for cargo shortfall that are less than seventy-five percent of the contract rate.

[4] Shipper Comments were submitted by: (1) American Paper Institute, Inc.; (2) Wine and Spirits Shippers Association, Inc.; (3) First International Shippers Association; (4) National Industrial Transportation League; (5) E. I. Du Pont de Nemours and Company; (6) American Institute for Shippers' Associations, Inc.; (7) Chemical Manufacturers Association; and (8) Subaru of America.

[5] Carrier Comments were submitted by: (1) Associated Container Transportation (Australia) Ltd.; (2) Trans-Pacific Freight Conference of Japan and Japan-Atlantic and Gulf Freight Conference; (3) Inter-American Freight Conference; (4) Gulf-Europe Freight Association, North Europe-U.S. Gulf Freight Association, U.S. Atlantic-North Europe Conference, North Europe-U.S. Atlantic Conference; (5) Mitsui O.S.K. Lines, Ltd.; (6) Nippon Yusen Kaisha; (7) Blue Star Line, Ltd.; (8) Transpacific Westbound Rate Agreement; (9) Asia North America Eastbound Rate Agreement; Israel Eastbound Conference, Mediterranean North Pacific Coast Freight Conference, and South Europe/U.S.A. Freight Conference; (10) Seafarers International Union of North America, AFL–CIO; (11) EAC Lines Transpacific Service, Ltd.; (12) Transportation Institute; (13) United Shipowners of America; (14) Maritime Institute for Research and Industrial Development; (15) Council of European and Japanese National Shipowners' Associations; (16) National Customs Brokers & Forwarders Association of America, Inc.; (17) Atlantic & Gulf/West Coast of South America Conference, United States Atlantic & Gulf/Ecuador Conference, United States Atlantic & Gulf Hispaniola Steamship Freight Association, United States Atlantic & Gulf/Southeastern Caribbean Conference, and United States/Columbia Conference; (18) ICCO; and (19) New York Foreign Freight Forwarders and Brokers Association.

[6] On April 29, 1988, the Commission served notice that it had completed an environmental assessment of this proceeding and had determined that it would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

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Summary of Comments

In light of the number of submissions and the fact that many of the commenters make the same arguments, the position taken by each and every commenter will not be individually summarized. Instead, comments of certain parties representative of the basic carrier or shipper positions will be presented and addressed. Unique comments of the remaining parties will also be noted.

A. Carrier Comments

ICCO recognizes that the Proposed Rule would prohibit that type of MFS clause it characterizes as the "Crazy Eddie" clause, *i.e.*, one that references another carrier's tariffs, service contracts, or other offers. It further recognizes that the Commission has indicated that service contracts containing *de minimis* liquidated damages for breach of a shipper volume commitment violate the proscriptions of the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. 1701–1720. Nonetheless, ICCO continues to argue that *all* MFS clauses should be prohibited (including those that reference a carrier's own tariffs or service contracts) and that the Commission should by rule set the limits on acceptable liquidated damages provisions.

ICCO submits that "Crazy Eddie" clauses are contrary to section 10(b)(1) of the 1984 Act, which prohibits a carrier or conference from charging different compensation than the rates and charges that are shown in "its" tariffs or service contracts.[7] ICCO also contends that, to the extent the legislative history of the 1984 Act indicates that Congress contemplated a carrier incorporating by reference material in its service contract, it did not contemplate reference to any other entity's rates, charges, or allowances. ICCO argues that Congress intended to apply longstanding tariff policy and tariff rate filing requirements to service contracts. Among these requirements are those prohibiting a carrier's tariff from referencing rates in other tariffs, either of another carrier or the same carrier. This leads ICCO to conclude that Congress likewise intended that service contracts not reference rates in other service contracts or tariffs. As a result, ICCO contends that *all* MFS clauses, not simply what it refers to as "Crazy Eddie" clauses, should be prohibited.

ICCO further notes the requirement in section 10(b)(1) that rates be "shown" in tariffs or service contracts. It argues, however, that the rates to be charged under an MFS clause (whatever variety) are, at the time the contract is filed, unknown and, therefore, not "shown."

ICCO also asserts that MFS clauses, as a class, are contrary to section 3(21) of the 1984 Act, because they result in service contracts that do not contain a "certain" rate.[8] ICCO refers to several statements in the legislative history to the 1984 Act that it argues demonstrates a Congressional intent that service contracts include specific numerical rates or rate formulas. In addition, ICCO contends that the Commission's proposal to allow reference to a carrier's own tariff rates or service contract rates results from a misinterpretation of certain language in a Report of the Senate Committee on Commerce, Science, and Transportation that accompanied S. 504, a predecessor to the 1984 Act.[9] ICCO submits that this discussion only contemplates reference to a carrier's "additional charges" or "allowances," and not to the base rate for a commodity. In this regard, ICCO notes that the Commission's service contract rules distinguish between "rates" and "charges and allowances," citing 46 CFR 581.5(a)(3)(iii).

ICCO notes that MFS clauses were never mentioned—by a shipper or a member of Congress—in the legislative history to the 1984 Act. Moreover, ICCO considers a prohibition of MFS clauses to be a modest step, in that service contracts with staged rates for staged volumes would still remain as options. ICCO believes that MFS clauses decrease rate stability and could frustrate the system of common carriage by undercutting the requirement that service contracts be made available to similarly situated shippers. ICCO claims that, at the point when a rate reduction is triggered under a contract, otherwise similarly situated shippers may have shipped different quantities of cargo and will, therefore, receive different rate treatment.

As a technical matter, ICCO suggests that the last six words of proposed § 581.1(f) could be construed as prohibiting only reference to another *ocean common carrier's* rates and might, therefore, allow reference to rates offered by tramps, non-vessel operating common carriers ("NVOCCs") or other entities. ICCO would strike the words and substitute in their place: "by any other carrier, conference, or other person or entity."

ICCO also states that even though the Commission intended to prohibit only "Cracy Eddie" clauses, the wording of proposed § 581.5(a)(4) would appear to proscribe all MFS clauses, consistent with ICCO's position. ICCO, therefore, suggests that the word "only" be inserted before the word "additional" in § 581.5(a)(4).

Finally, ICCO reaffirms its position that *de minimis* liquidated damages clauses should be prohibited by rule. ICCO recognizes that the Commission declined to address the issue of liquidated damages by rule partly because a staff survey indicated that 6% of the contracts in a sample provided liquidated damages of $100 or less. ICCO questions whether $100 per container is an appropriate threshold for declaring damages to be *de minimis*, especially with regard to high rated commodities. In any event, ICCO believes that 6% is a sufficiently high number of service contracts to warrant rulemaking in this area. ICCO further argues that when the level of damages in a service contract for shipper breach is very low, or nothing, the stability which service contracts are intended to provide is lost. *De minimis* liquidated damages provisions also allegedly provide an incentive for unscrupulous shippers to engage in deceptive practices.

ICCO believes that a rule regarding *de minimis* liquidated damages would be more effective than adjudication on a case-by-case basis. It suggests that, at a minimum, such a rule should state that:

service contracts including clauses specifiying damages for cargo shortfall which the Commission finds to be *de minimis* will be rejected.

[7] Section 10(b) states, in part, that: No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—(1) charge, demand, collect, or receive greater, less, or different compensation for the transportation or property or for any service in connection therewith than the rates and charges that are shown in its tariffs or service contracts * * * * 46 U.S.C. app. 1709(b)(1).

[8] Section 3(21) states: "service contract" means a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party. 46 U.S.C. app. 1702(21).

[9] The discussion at issue reads: The "line-haul rate," referred to in paragraph (4) includes all compensation to be paid and must also be disclosed. Many service contracts may provide for charges or allowances for transporting or handling the goods involved that may be different from those published in the otherwise applicable general tariff and, accordingly, any such variance must be identified in the line-haul rate disclosure. To the extent any contract charge or allowance is the same as that in the carrier's or conference's general public tariff, incorporation by reference will suffice. S. Rep. No. 3, 98th Cong., 1st Sess. 31–32 (1983) ("Senate Report").

However, ICCO also supports a more specific rule that would create a rebuttable presumption that, if a contract set less than a specified percentage of freight charges, the parties would have to explain to the Commission why the level is a valid attempt to approximate damages. ICCO indicates that it could accept a percentage of less than 75%, but also notes that the appropriate percentage should be determined after notice and opportunity for comment.

Most of the other Carrier Comments support the Proposed Rule but also urge that it be expended to include all MFS clauses. In addition, most request that the Commission reconsider its decision to treat the level of liquidated damages on a case-by-case basis and propose instead a rule of general applicability in this area. In support of this position, most of the Carrier Comments raise the same or similar arguments as those presented by ICCO and they will not, therefore, be repeated here. Others, however, offer additional insights which warrant specific mention.

Some conferences note that the Commission's service contract rules require that if a service contract does not provide damages for termination or breach, all cargo moving under the contract must be rerated at the otherwise applicable tariff rate—46 CFR 581.7(b)(2). They further point out that this provision was intended to prevent collusive action by the parties to avoid contract commitments. They argue, however, that *de minimis* liquidated damages undercut the purpose of this rule.

The Inter-American Freight Conference requests that if the Commission decides not to prohibit MFS clauses entirely, it should at least require such provisions to state the specific carriers or conferences whose rates may affect the service contract rates and that the rates involved must cover shipments of exactly the same commodity in the same volume as that specified in the service contract.

The New York Foreign Freight Forwarders and Brokers Association ("NYFFBA") questions whether the Commission, as a procedural matter, properly disposed of ICCO's Petition. It contends that ICCO petitioned for a rule prohibiting *all* MFS clauses, and not for the rule the Commission proposed which would allow certain MFS clauses.

NYFFBA also contends that the Proposed Rule is contrary to section 2 of the 1984 Act,[10] in that it would allow large shippers to enjoy an advantage over small shippers. Moreover, NYFFBA submits that, if MFS clauses are allowed, more shippers will choose to use service contracts, thereby eroding the common carriage system and perhaps reducing the effectiveness of the conference system.

B. Shipper Comments

Commenters representing shippers, shippers' associations and related organizations generally support the Commission's decision not to propose rules regarding liquidated damages. They also support that aspect of the Proposed Rule which would allow service contracts to reference a contracting carrier's tariff rates or other service contract rates. However, they oppose any limitation on a service contract referencing other carriers' tariff rates or service contracts.

The National Industrial Transportation League ("NITL") claims that contracts that protect both parties from adverse price consequences based on changing market conditions are an accepted business and contractual practice. Unrestricted "meeting competition" clauses (MFS clauses) are said to allow similarly situated shippers to compete without changing carriers when a foreign competitor can lower its transportation costs from another carrier. NITL argues that such clauses also allow the contracting carrier the choice of claiming the business if it elects to continue at the reduced rate, consistent with normal business practices.

First International Shippers Association believes that all of the matters included in ICCO's Petition are commercial matters subject to negotiation and that the market should not be disrupted to create additional unfair advantage for carriers. If basically contends that carriers will not agree to MFS clauses unless it is to their commercial advantage and that carriers and shippers should have the "right" to negotiate these matters.

The Wine and Spirits Shippers Association ("WSSA") contends that Congress did not intend for the Commisssion to regulate the commercial form and aspects of contract carriage. WSSA also argues that inclusion of MFS clauses will put carriers on notice of the consequences of predatory rate reductions, thereby limiting their use and enhancing revenues for all carriers. Lastly, WSSA asserts that shippers' associations are unique, in that they do not own cargo and cannot compel their members to ship exclusively through them. If a non-contracting carrier or conference undercuts the contract rate, members of the association will allegedly be induced to use those lower rates. WSSA believes that the net effect would be that the association could not meet its commitment, through no fault of its own.

The American Institute for Shippers' Associations ("AISA") advises that it represents two types of shippers' associations—(1) "full service" associations, which, it explains, handle all aspects of the freight movement as cooperatives, and (2) "rate negotiator" associations, which are said to enter into rate arrangements on behalf of their collective memberships. AISA contends that the Commission lacks jurisdiction to regulate the form and substantive content of service contracts, but particularly the pricing terms. AISA believes that the Commission's interpretation of the 1984 Act's initial policy goal, as a general policy exhortation only, is incorrect. It claims that Congress specifically identified service contracts as requiring a minimum of government regulatory interference, citing S. Rep. No. 3, 98th Cong., 1st Sess. 18 (1983). It also avers that the level of rates charged shippers was another area specifically identified as being outside the Commission's jurisdiction. *Id.* at 16, 18. This governmental non-intervention policy is allegedly further underscored by the fact that the exclusive remedy for breach of a service contract is an action in court, unless otherwise agreed. 46 U.S.C. app. 1707(c).

AISA questions the Commission's determination that service contracts are "special" contracts subject to regulation. It argues that the essential terms set forth in section 8(c) of the 1984 Act are not mandatory, but merely examples of terms that may be agreed to.[11] AISA

[10] Section 2 states, in part: The purposes of this Act are—(1) to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs * * *. 46 U.S.C. app. 1701(1).

[11] Section 8(c) states: SERVICE CONTRACTS.—An ocean common carrier or conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act. Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, each contract entered into under this subsection shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—(1) The origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements; (2) The commodity or commodities involved; (3) The minimum volume; (4) The line-haul rate; (5) The

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further contends that a pricing term is not mandatory and that both the common law and the Uniform Commercial Code recognize contracts which do not have specific pricing terms.

AISA also takes issue with the conclusion that the works "certain rate or rate schedule" in sections 3(21) and 8(c) of the Act indicate a requirement that service contract rates be an established, numerical value rate. It argues that "certain" is not limited to previously existing events, but includes items "in law, capable of being identified or made known, without liability to mistake or ambiguity, from data already given." *Black's Law Dictionary* 204 (5th ed. 1979). This definition is said to be consistent with an alternative definition for "certain" in *Webster's New Collegiate Dictionary* 162 (1975). AISA argues that under these definitions, MFS clauses contain certain rates, because the rate can be determined from data which is specified in the contract. This interpretation is allegedly consistent with statements in the Senate Report implying that service contracts need contain no provision concerning prices, on the condition that they provide meaningful commerical disclosure. S. Rep. No. 3, 98th Cong., 1st Sess. 32 (1983).

AISA also submits that the policy of allowing a carrier to reference its own published rates but not the rates of its competitors is arbitrary. If the Commission is attempting to achieve rate certainty in service contracts, AISA claims that it must either uniformly prohibit or uniformly allow *all* MFS clauses.

Further, AISA believes that the Commission's prohibition against cross-referencing of tariffs should not be applied to service contracts. AISA states that the policy against cross-referencing tariffs to reduce the burden on shippers does not apply in the case of a service contract, where the shipper negotiates an MFS clause and voluntarily assumes the burden of ascertaining the market rate. The 1984 Act is said to consistently treat tariff rates and service contracts as distinct systems.

To the extent that rate instability is one of the reasons for prohibiting MFS clauses, AISA contends that no cause and effect relationship has been established. Because AISA views complaints against MFS clauses as complaints with the statute itself, it suggests that these issues await the results of the Commission's section 18(a) study. *See* 46 U.S.C. app. 1717(a).

AISA advises that the Department of Justice prohibits shippers' associations from requiring their members to ship exclusively through the association. As a result, shippers' associations and particularly "rate negotiator" associations are said to be susceptible to having their members raided by a contracting carrier or conference or by competing carriers.

AISA suggests that the Proposed Rule may inhibit the use of service contracts for intermodal transportation. This allegedly may occur because inland transportation contracts do allow MFS clauses. AISA explains that if a shipper can obtain an MFS clause for the domestic portion of its transportation movement but is unable to do so for the foreign portion, it may have no choice but to use a carrier's tariff rates for the ocean transportation rather than enter into an intermodal service contract. This result is argued to be contrary to the policy of the 1984 Act to develop and promote intermodal services.

AISA also maintains that the Proposed Rule is vague and does not clearly permit that which the Commission intended to permit. AISA states, for example, that while proposed § 581.5(a)(4) permits cross-referencing of a contracting carrier's "additional charges, surcharges, allowances, or adjustment factors * * *," this language does not make it clear that "rates" may be cross-referenced. AISA also believes that the Proposed Rule is broader than that requested by ICCO, in that it prohibits incorporation by reference of *any* essential term, not simply a rate term. It suggests, therefore, that the phrase "or any other essential term(s)" be deleted. Lastly, AISA takes issue with certain other wording of the Proposed Rule, in particular the meaning of the phrases "allow to be changed to adopt," "direct match, formula or by any other means," and "any other offering."

The Chemical Manufacturers Association ("CMA") states that the Commission has overstepped its proper statutory role under section 8(c) of protecting the rights of similarly situated shippers and involved itself in second-guessing the business judgments of contracting parties to protect carriers and/or their competitors. It believes that certain statements by the Commission in Docket No. 86-6, *Service Contracts*, 52 FR 23989 (June 26, 1987), delineate its proper role in this regard, and are consistent with the legislative history of the 1984 Act. The requirement in the Commission's rules that similarly situated shippers be notified of a change in essential terms due to the operation of a contingency clause (*e.g.* an MFS clause) is said to be adequate to implement section 8(c) of the 1984 Act.

CMA further contends that the Commission has failed to explain why existing rules will not ensure compliance with section 10(b)(1) of the 1984 Act, which prohibits a carrier from charging a different rate from that shown in *its* tariff or service contract. It argues that a carrier that adjusts a service contract rate in accordance with the terms of its contract is charging a rate as shown in its service contract for purposes of section 10(b)(1).

CMA views the Proposed Rule as designed to protect either the contracting carrier from its own folly or a contracting carrier's competitors from that carrier's competition. Under either case, the rule is alleged to reflect "administrative paternalism." Moreover, to the extent the Proposed Rule is intended to limit competition and stabilize rates, it allegedly could be considered as a form of price support for ocean carriers. CMA notes that section 4(a)(7) of the 1984 Act [12] gives conferences the ability to prohibit or regulate their members' use of service contracts to limit competition, and CMA contends that the Commission should not assume this role.

CMA notes the Commission's statement that, as a practical matter, a carrier signatory to a service contract could meet the rate of a competitor by simply adjusting its own *tariff rates*. It argues, however, that such an approach would make service contracts more restrictive than general tariffs and would discourage the use of service contracts.

The American Paper Institute, Inc. ("API") points out that the Transpacific Westbound Rate Agreement ("TWRA") no longer enters into any service contracts and suggests that this alone is reason enough to deny the Petition. It also questions how MFS clauses can be upsetting any balance between shipper and carrier interests. API claims that carrier opposition to the concept of service contracts was rejected by Congress in enacting the 1984 Act and submits that the Commission should not now "second-guess" Congress.

API further questions the Commission's reliance on a Report of

duration; (6) Service commitments; and (7) The liquidated damages for nonperformance, if any.

The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree. 46 U.S.C. app. 1707(c).

[12] Section 4 states, in part: (a) Ocean Common Carriers—This Act applies to agreements by or among ocean common carriers to—* * * (7) regulate or prohibit their use of service contracts. 46 U.S.C. app. 1703(a)(7).

the House Committee on Merchant Marine and Fisheries ("House Report") [13] for the proposition that Congress intended that the Commission take an active role in regulating service contracts. API suggests, rather, that the controlling legislative history is the Conference Report [14] and then the Senate Report. It reads the Conference Report as indicating that service contracts can be employed in a discriminatory fashion and are not, therefore, constrained in any way by common carriage concepts.

API takes issue with the Commission's interpretation of the statement—"to the extent any contract charge or allowance is the same as that in the carrier's or conference's general public tariff, incorporation by reference will suffice." Senate Report at 32. This language is allegedly not meant "* * * to tie the referenced tariff to any particular carrier or conference's rate, but rather to emphasize that incorporation by reference will be allowed for a 'general public tariff.'" After citing additional language in the Senate Report, API concludes that the concern of Congress was not *whose* rates are referenced, but rather that publicly available rates be referenced.

API furthers suggests that the Commissions reliance on precedent under section 18(b)(3) of the Shipping Act, 1916, 46 U.S.C. 817(b)(3) (repealed 1984), is inapposite to service contracts, which are entirely new under the 1984 Act and are intended to provide certain preferences.

Du Pont claims that the definition set forth in proposed § 581.1(f) is not a "most-favored-shipper" clause, but rather a "meeting competition" clause. It submits that valid "meeting competition" clauses do not result in a lack of mutuality of consideration. To the contrary, Du Pont suggests that the common law recognizes contracts that provide relief from adverse price consequences based on changing market conditions as valid. Du Pont also questions ICCO's references to a lack of balance or the overwhelming market power of shippers over carriers, especially in light of the fact that the TWRA has *no* service contracts, with or without "meeting competition" clauses.

Du Pont further proposes that the Proposed Rule be modified so that shippers could use only written offers from comparable carriers that are firmly committed, in writing, to provide the service, either under a tariff or under a service contract, if the contract carrier elects not to continue to carry the cargo. Moreover, Du Pont proposes to preserve the statutory rights of similarly situated shippers by treating a carrier's decision to meet competition as a new, limited service contract, thereby affording a 30-day period for similarly situated shippers to exercise their "me-too" rights.

Subaru fully supports the Proposed Rule as a fair and equitable solution to the concerns raised by ICCO's Petition. It believes that if carriers are free to adjust rates in a service contract upward (by reference to a general rate increase), they should also be free to allow reductions, when market conditions dictate. In addition, Subaru notes that the proper time for a carrier to address an MFS clause is at the time the contract is negotiated, because such a provision need not be included if a carrier does not desire it.

The National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") likewise supports the Proposed Rule. It notes that, historically, after a shipper executes a service contract, conferences have adjusted rates downward to a point where a non-signatory shipper has a lower rate than a competing signatory. In addition, NCBFAA asserts that after a shipper tenders cargo for a period of time and establishes its ability to generate a certain volume of cargo, carriers, may approach the shipper and seek to deal directly with it by offering a lower than contract rate. The Proposed Rule is seen as preventing this conduct.

C. Other Commenters

Senator Breaux advises that service contracts were not intended to replace the system of common carriage in ocean transportation. He states that they were intended to provide greater stability to ocean freight rates and to enable both shippers and carriers to make mutual commitments which would add greater predictability to rates, volume and service. Senator Breaux further states that the essence of service contracts is the long nature of these commitments as opposed to the unpredictable tendering of cargo under tariff rates that may fluctuate.

Congressman Jones expresses support for the standards in the Proposed Rule that define, by exclusion, what may be considered an acceptable service contract. He also notes the importance of the Commission's reiteration of its policy to require meaningful rate and service commitments for shippers and meaningful service commitments for carriers. Congressman Jones views the Proposed Rule as reducing the burden on the Commission if MSF clauses were allowed and numerous contract amendments were filed with it.

Discussion

MFS clauses are provisions in service contracts that permit the contract rate to vary based on some external activity or event. There are essentially three different types of MFS clauses. The first allows a service contract to meet or adopt any rate offered by the contracting carrier or conference in its tariffs or service contracts. The second allows the contract to meet the rates of other carriers or conferences, whether in tariffs or service contracts. The last category permits changes to the contract rate based on unpublished offers of other carriers.

ICCO originally petitioned the Commission for a rule that would prohibit all three forms of MFS clauses. ICCO also requested a rule establishing a minimally acceptable level for liquidated damages provisions in service contracts for a shipper breach of its volume commitment.

The Proposed Rule would have allowed a carrier's service contract rate to be adjusted based on its own tariff rates or service contract rates. Reference to other carriers' rates or offers would have been prohibited. However, the Commission also suggested that a basis might exist to distinguish and permit MFS clauses referencing other carriers' rates. In addition, the Commission declined to issue a rule addressing the acceptable level of liquidated damages, but instead indicated that it would deal with that issue on a case-by-case basis.

After consideration of all the comments to the Proposed Rule, the Commission has determined to prohibit only those MFS clauses that allow a service contract rate to meet unpublished offers of carriers or conferences. In addition, the Commission notes that the issue of *de minimis* liquidated damages was outside the scope of the Proposed Rule. Nonetheless, because this issue was reargued by some commenters, the Commission will take this opportunity to reaffirm its earlier decision. The reasons for these determinations follow, with the latter subject treated first.

Liquidated damages are sums a party to a contract agrees to pay to the other party in the event a promise is breached, and are good faith efforts to estimate the actual damages which might ensue, taking into account the difficulties in proving actual damages. *See Black's Law Dictionary* 353 (5th ed. 1979). The appropriateness of any given liquidated damages provision is generally judged

[13] H.R. Rep. No. 53, 98th Cong., 1st Sess. (1983).

[14] H.R. Conf. Rep. No. 600, 98th Cong., 2nd Sess. (1984) ("Conference Report").

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on its own unique circumstances. In the area of service contracts for ocean transportation, liquidated damages are most often included to address the situation of a shipper failing to meet its volume commitment. However, given the shipper, carrier, commodity, and trade characteristics that influence the determination of liquidated damages, it may be particularly difficult to quantify in a universally applicable rule, what might be an acceptable level of liquidated damages.

The Commission has never stated, however, that it lacks authority to issue regulations concerning *de minimis* liquidated damages. In fact, in the Supplemental Information to the Proposed Rule, the Commission stated that, although it

> * * * lacks the authority to directly regulate the use of liquidated damages provisions [this] does not necessarily mean that the Commission is without authority to preclude service contract liquidated damages provisions which may permit evasion of the otherwise applicable tariff rate contrary to the 1984 Act and the policies underlying it, regardless of whether both parties to the contract willingly or unwillingly agree to those provisions.

Proposed Rule at 28, 29. In this regard, the Commission noted that it would be extremely difficult to devise "an efficient and appropriate regulatory requirement" and that it would only consider such a course of action if there were a showing that "the use of *de minimis* liquidated damages clauses is widespread and presents a serious problem that threatens the viability of the overall legislative scheme of the 1984 Act."

Although the Commission recognized that there is a potential for illusory contracting through the use of *de minimis* liquidated damages clauses and that such contracting may on occasion have occurred, it did not find such contracting to have been shown to be of sufficient magnitude to warrant the significant restrictions on service contracting that effective regulation would entail. Proposed Rule at 30. In this connection, the Commission also noted a random survey of service contracts by its staff that indicted that only 6% of the contracts reviewed had liquidated damages provisions at less than a level that might be considered clearly *de minimis*. The Commission nevertheless advised that it would closely scrutinize filed service contracts and reject any with potentially low levels of liquidated damages.[15]

[15] As the Commission noted: * * * it is the stated policy of the Commission to require meaningful rate and volume commitments on the part of the shipper and meaningful service commitments on the part of the carrier in all service contracts entered into under the authority of section 8(c) of the 1984 Act. The Commission will scrutinize contracts carefully at the time of filing to ensure that they contain such commitments, pursuant to the requirements of 46 CFR 581.1(n). Failure to comply with the requirements of 46 CFR 581.1(n), as herein interpreted, will result in the rejection of the contract pursuant to 46 CFR 581.8 or other appropriate Commission action. Proposed Rule at 27.

No new facts or arguments have been presented that persuade the Commission to alter its earlier determination. Moreover, more recent Commission staff surveys reveal only about seven to nine percent of the service contracts reviewed having provisions for deadfreight at a level that might be considered clearly *de minimis*. The Commission therefore will treat such matters on a case-by-case basis. The Commission intends to be particularly vigilant in this regard, and intends to require parties to any service contract containing suspect levels of liquidated damages to justify their provisions. It is the Commission's belief that under certain circumstances liquidated damages of an extremely minimal amount could violate section 10(a)(1) of the 1984 Act and may also indicate a failure of consideration on the part of the shipper, calling into question whether the arrangement is indeed a "contract."

ICCO's Petition indicated that MFS clauses may, in certain instances, be triggered not only by some rate offer contained in a tariff or service contract, but also by other means, including telephone quotes. The Commission concluded, in issuing the Proposed Rule, that this type of MFS clause appeared to be contrary to section 8(c) of the 1984 Act. The Commission explained that tying a service contract rate to an unpublished, nonbinding rate "offer," that cannot be readily ascertained by interested third parties, did not appear to provide the "meaningful commercial disclosure" contemplated by Congress. Proposed Rule at 22 and 27.

The only two commenters that directly addressed this type of MFS clause represented shipper interests. Notwithstanding their predeliction in favor of MFS clauses generally, these commenters concede that clauses tied to unpublished offers might be legally prohibited by the Commission. Thus, API states that, to the extent an MFS clause references an unpublished and unknown rate which is not thereafter filed with the Commission, prohibition would constitute a "viable enforcement action designed to provide meaningful commercial disclosure." Likewise, AISA indicates that it could support a regulation prohibiting reference to unpublished offers as being within the Commission's jurisdiction to require rate certainty.

The Commission concludes that service contract provisions that allow a contract rate to match a vague, unwritten and unpublished offer of some other carrier are unlawful and should be, therefore, prohibited. These types of provisions do not provide *any* commercial disclosure to other interested parties, let alone the meaningful commercial disclosure required by section 8(c) of the Act. Accordingly, the Proposed Rule has been modified to clarify that this type of MFS clause will no longer be countenanced. Specific language will be added to 46 CFR 581.5(a)(3)(iii) to indicate that the "contract rate" essential term may not be changed based on rate offers of other carriers not published in a tariff or service contract.[16]

As for the remaining two types of MFS clauses, there is little or no practical difference between them. A service contract that references a carrier's own tariff or service contracts and a contract that references rates contained in other carriers' tarriffs or service contracts both operate in a similar manner. The only question is whether the kinds of materials to which they refer (*i.e.*, one's own rates versus the rates of others) have been somehow distinguished by statute or by Congressional intent.

Upon review of the comments and further consideration of the relevant language, the Commission does not believe that the Senate Report can serve as a sufficient basis to distinguish between these two types of MFS clauses.[17] The language in this Report discussing incorporation by reference to a carrier's general public tariff makes reference only to a carrier's additional "charges" or "allowances" and not the base rate for the commodity covered by the contract. Therefore, because the Senate Report does not distinguish between MFS clauses referencing a carrier's own rates and those referencing other carriers' rates, both types of clauses must be assessed together against other possible restrictions contained in the 1984 Act.

[16] The Final Rule thus amends existing paragraph (a)(3) of § 581.5, rather than adding several new paragraphs to Part 581, as had originally been proposed.

[17] The pertinent section of the Senate Report states: The "line-haul rate," referred to in paragraph (4) includes all compensation to be paid and must also be disclosed. Many service contracts may provide for charges or allowances for transporting and handling the goods involved that may be different from those published in the otherwise applicable general tariff and, accordingly, any such variance must be identified in the line-haul rate disclosure. To the extent any contract charge or allowance is the same as that in the carrier's or conference's general public tariff, incorporation by reference will suffice. Senate Report at 31, 32.

ICCO has argued that service contracts containing MFS clauses do not contain "certain" rates for purposes of section 3(21) of the 1984 Act. The Commission disagrees. As we noted in the Proposed Rule, a contract must be drafted so as to permit a person to ascertain the agreed upon rate from the face of the document or a specified rate schedule. The initial rate to be charged under a contract containing an MFS clause is a specific, numerical rate and is, therefore, "certain" for section 3(21) purposes. Moreover, to the extent that that rate is subsequently adjusted based upon circumstances specifically set forth in the MFS clause, that "adjusted" rate is capable of being ascertained from objective data, although published elsewhere. In fact, when such a contingency is invoked, the Commission's rules already require that this fact must be brought to the Commission's attention. 46 CFR 581.3(a)(3)(viii) and 581.5(b)(1). At all times, the applicable rate under a contract with an MFS clause will be ascertainable and known to the Commission.

ICCO has also argued that MFS clauses that reference other carriers' rates violate section 10(b)(1) of the 1984 Act. The Commission again disagrees, after full consideration of all the comments and reexamination of the applicable statutory language. A carrier that adjusts a service contract rate in accordance with an MFS clause referencing other carriers' rates is charging a rate "shown in its service contract." Although the rate ultimately charged may be affected by another carrier's rates, the method of determining the service contract rate is stated in the contracting carrier's service contract. And, as indicated above, that rate is ascertainable from objective data. The Commission does not therefore believe that section 10(b)(1) can be used to distinguish between acceptable MFS clauses.

One further issue raised in the Supplemental Information to the Proposed Rule is whether MFS clauses are in any way inconsistent with the Commission's past policy and precedent which precluded a carrier's tariff from referencing rates published in any other carrier's tariff.[18] The Commission noted that this policy was designed to lessen the burden on shippers to refer to other carriers' tariffs to determine applicable freight rates. However, given the "greater commercial freedoms service contracts appear to have been intended to provide," the Commission specifically recognized that "a direct application of tariff case law and policy to service contracts may be inappropriate." Proposed Rule at 28. For the reasons stated below, the Commission finds the tariff, no-cross-referencing policy to be not directly applicable to service contracts.

In the process leading up to enactment of the 1984 Act, the issue of whether to require tariff filing at all was thoroughly debated. Ultimately, Congress decided to continue the system of tariff filing and with it the Commission's prior interpretation and rules. However, there is no clear indication that Congress at any time intended that the Commission's practices *vis-a-vis* service contracts were to track its existing tariff filing practices.[19]

Moreover, Congress specifically distinguished service contracts from rates in tariffs. The Conference Report notes that section 8(a) of the Act "* * * does not require service contracts to be filed in tariffs." Conference Report at 29. As a result, conferences are not required to permit their members a right of independent action on service contracts pursuant to section 5(b)(8). *Id.* Tariff rates are open to all and must be employed in a non-discriminatory manner. However, service contracts may favor certain shippers and are expressly exempted from certain statutory prohibitions against discrimination. *See e.g.* 46 U.S.C. app. 1709(b) (6) and (11).

Further support for not applying the tariff, "no cross-referencing" policy to service contracts can be drawn from the policy underlying the rule itself. As the Commission noted in the Supplementary Information, the reason the tariff policy was adopted was to lessen the burden on a shipper to ascertain the applicable rate. However, in the case of an MFS clause, as noted in shipper comments, it is the shipper who negotiates the clause and voluntarily assumes the burden of becoming aware of other rates that might trigger the clause.

Based on the foregoing, the Commission cannot find that MFS clauses that reference published rates of the same or other carriers are *per se* contrary to the Shipping Act of 1984 or otherwise warrant regulation. The Commission will not, therefore, adopt any rules that would prohibit such clauses. The Commission further concludes, however, that MFS clauses referencing unpublished offers are contrary to section 8(c) of the 1984 Act, and will modify its service contract regulations to preclude such provisions.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this Rule will not have a significant economic impact on a substantial number of small organizational units, and small governmental jurisdictions.

List of Subjects in 46 CFR Part 581

Administrative practice and procedure, Contracts, Maritime carriers, Rates and fares.

Therefore, pursuant to 5 U.S.C. 553 and sections 3, 8, and 17 of the Shipping Act of 1984, Part 581, Title 46, Code of Federal Regulations, is amended as follows:

PART 581—[AMENDED]

1. The authority citation to Part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716, and 1718.

2. In § 581.5, paragraph (a)(3)(iii) is revised to read as follows:

§ 581.5 Content of essential terms; contingency clauses.

(a) * * *
(3) * * *

[18] Although the Commission raised the question of the applicability of tariff rules and precedent in the context of MFS clauses that reference other carriers' rates, several commenters have suggested that these arguments apply with equal force to MFS clauses that reference a carrier's own rates. The relevant tariff rules, 46 CFR 580.6(k)(2), 580.5(g), and 580.13(b), allegedly reflect a longstanding Commission policy of prohibiting a carrier from incorporating by reference *any* rates, even its own.

[19] There is language in the Senate Report to the effect that "* * * a service contract must be filed and is subject to the tariff filing requirements and common carrier obligations of the bill." Senate Report at 21. However, the "tariff filing requirement * * * of the bill" to which the Report refers appear to be any requirement that a statement of the essential terms of a service contract be "made available to the general public in tariff format." *See* section 8(c).

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(iii) *The contract, rates or rate schedule(s),* including any additional or other charges [*i.e.*, general rate increases, surcharges, terminal handling charges, etc.] that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges;

Provided, however, that a contract may not permit the contract rate to be changed to meet a rate offer of another carrier or conference not published in a tariff or set forth in a service contract on file with the Commission.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-25606 Filed 11-4-88; 8:45 am]

BILLING CODE 6730-01-M

Proposed Rules

Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1718

Margin Stabilization Plans, Revenue and Expense Deferrals, and Refunds of Previously Recorded Revenues

AGENCY: Rural Electrification Administration (REA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Electrification Administration is proposing to develop a regulation that will set forth the procedures that borrowers must follow to gain REA approval of margin stabilization plans, revenue and expense deferrals, and refunds of previously recorded revenues. The intended effect of this proposed regulation will be to implement the provisions of Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation, to allow such plans to comply with the Uniform System of Accounts Prescribed for Electric Borrowers of the Rural Electrification Administration.

DATE: Public comments must be received by REA no later than: December 7, 1988.

ADDRESS: Submit written comments to Mr. William E. Davis, Director, Borrower Accounting Division, Rural Electrification Administration, Room 2231, South Building, U.S. Department of Agriculture, Washington, DC, 20250. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address:

FOR FURTHER INFORMATION CONTACT: Mr. William E. Davis, Borrower Accounting Division, at the above address, telephone number (202) 382-9450.

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions in the proposal. This proposed regulation will be codified as 7 CFR chapter XVII, REA Regulations, Part 1718, Uniform System of Accounts Prescribed for Electric Borrowers of the Rural Electrification Administration, at a later date. Until a final rule has been adopted, REA will consider requests for approval of margin stabilization plans, revenue and expense deferral plans, and refunds of previously recorded revenues on a case by case basis using the criteria set forth herein.

Discussion

Rapid increases in the consumption of electric energy in the 1960's forced electric utilities to consider their capabilities of providing adquate, dependable service in the 1980's and 1990's. As a result, many utilities entered into long-term construction projects to provide the generating facilities necessary to meet future energy needs. The dramatic increase in the cost of energy in the 1970's, however, resulted in conservation practices on the part of the consumers to such an extent that usage levels have never reached those previously estimated. This reduction in consumption, coupled with a sharp increase in construction costs, has forced the management of today's electric utility cooperatives to consider methods of accounting for income and expense items differently from those considered generally acceptable in other industries.

In 1982, the Financial Accounting Standards Board considered the accounting procedures used by rate-regulated enterprises and issued Statement of Financial Accounting Standard No. 71 (Statement No. 71), Accounting for the Effects of Certain Types of Regulation. The underlying assumption upon which Statement No. 71 was promulgated assumes that current period costs or revenues can be passed on to future consumers if they are included in the utility's rate base, an assurance that is not provided nonregulated industries.

When reviewing a deferral for approval by REA, we will consider deferral plans to fall into two categories:

1. Margin Stabilization Plans (including refunds of previously recorded revenues), and

2. Revenue or Expense Deferral Plans.

Under the provisions of a margin stabilization plan, the cooperative develops a targeted margin, often focusing on a targeted Times Interested Earned Ratio (TIER). All margins realized in excess of the targeted TIER are deducted from current income and recorded as a deferred credit. Conversely, any shortfall in targeted margins is added to current income and recorded as a deferred charge. Therefore, in every year of operation, the cooperative will report a TIER exactly equal to its targeted goal. The deferred credit/charge recorded in the current period is incorporated into the rate structure of future years as either a decrease or increase in rates.

Unlike a margin stabilization plan, the deferral of a specific current period cost usually focuses on an abnormally high expense item which, if taken into income in the current period, would result in a material decrease in current period margins. By building the cost into the rate structure of future periods, recovery is assured without a dramatic impact on current year's margins.

Similarly, if a utility anticipates the current recovery of a material future cost, it may incorporate a specific rate increase in the current period, and defer the recognition of that specific portion of revenue until future periods when the cost is incurred. For example, a cooperative may anticipate a marked increase in its purchased power expense because of a new power plant coming on line. The cooperative may opt to reduce the future rate shock associated with this cost by gradually raising rates and deferring the income until such time as the increase in power cost occurs.

All margin stabilization and revenue or expense deferral plans must receive REA approval prior to implementation. The plan is considered to be specific to the requesting entity and does not, therefore, require similar accounting treatment between generation and transmission borrowers and their distribution cooperatives nor does it imply that a similar plan may be adopted by cooperatives without expressed written consent by REA. To be considered for approval, the following information must be submitted to REA for review:

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1. A detailed description of the plan and the specific accounting journal entries therefor. For a margin stabilization plan, the description must include the targeted margin and the method and the specific future periods in which the margin excess or shortfall will be returned or recovered. For an expense deferral plan, the description must include the nature of the expense item and the specific time period for rate recovery. For a revenue deferral, the description must include the specific mill/kWh to be deferred, the time period during which revenue will be deferred, and the timeframe over which the deferral will be amortized into income.

2. A private letter ruling from the Internal Revenue Service as to the effect of the deferral on the cooperative's tax exempt status (margin stabilization and revenue deferral plans only) and its continued operation as a "cooperative" under the tax law. If the cooperative elects to implement a plan prior to receiving the private letter ruling, REA will accept in lieu thereof, a resolution from the cooperative's board of directors stating that the cooperative is aware of the potential impact on its tax exempt and "cooperative" statuses and that it will accept the responsibility for the early implementation of this plan. Evidence of formal application to the IRS for the private letter ruling must be submitted with the board resolution.

3. A resolution from the cooperative's board of directors stating that the cash equivalent of all margins or revenues deferred will be segregated in a special fund until such time as a like amount is subsequently amortized into revenue (margin stabilization and revenue deferral plans only).

4. A statement from the cooperative's independent certified public accountant as to the plan's compliance with generally accepted accounting principles.

5. Approval from the state regulatory commission in those states in which the Commission has jurisdiction over the cooperative's rate-making activities.

REA will, within 60 days of final receipt of all items detailed above, notify the borrower of its approval or the items which must be revised to gain REA approval. Individual plans previously approved by REA must be resubmitted with the above information.

List of Subjects in 7 CFR Part 1718

Accounting.

Dated: November 1, 1988.

Jack Van Mark,

Acting Administrator, REA.

[FR Doc. 88-25715 Filed 11-4-88; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 881 0120]

Sun Co., Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Radnor, Pa. corporation to divest terminals and related assets and operations of Atlantic Petroleum Corporation (Atlantic) that are located in certain parts of NY and PA and would also require respondent to obtain FTC approval before making any acquisition of any light products terminals or light products pipelines in certain parts of NY or PA. Under a "hold-separate agreement", respondent would also be required to run Atlantic as an independent company until the FTC approves the divestiture.

DATE: Comments must be received on or before January 6, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S-3302, Washington, DC 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Gasoline, Petroleum products, Trade practices.

Agreement Containing Consent Order

In the Matter of Sun Company, Inc., a corporation, File No. 881-0120.

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of shares of Common Stock of Atlantic Petroleum Maatschapij, B.V., ("Atlantic") by Sun Company, Inc. ("Sun"), and Sun having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge Sun with violations of the Clayton Act and Federal Trade Commission Act; and it now appears that Sun is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and between Sun, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Sun is a corporation organized under the laws of Pennsylvania with its executive offices 100 Matsonford Road in Radnor, Pennsylvania 19087. Atlantic is a Netherlands corporation which owns all the outstanding shares of Atlantic Petroleum Corporation, a corporation organized under the laws of Delaware with its executive offices at 1016 West 9th Avenue, King of Prussia, Pennsylvania 19398.

2. Sun admits all jurisdictional facts set forth in the attached draft of complaint.

3. Sun waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Sun, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Sun that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Sun, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Sun's address as stated in this agreement shall constitute service. Sun waives any right it may have to any other manner of service. The draft complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Sun has read the draft of complaint and order contemplated hereby. Sun understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Sun further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

As used in this order (including the Agreement to Hold Separate, annexed to and made a part hereof), the following definitions shall apply:

(a) "Acquisition" means Sun's acquisition of shares of the common stock of Atlantic Petroleum Maatschappij, B.V.

(b) "Light products pipeline" means any pipeline or segment of a pipeline system that is used or that at any time during the two preceding years has been used for transportation of gasoline, diesel fuel, home heating oil, or kerosene-based jet fuel.

(c) "Schedule A Properties" means the assets and businesses listed in Schedule A of this order.

(d) "Sun" means Sun Company, Inc., its predecesors, subsidiaries, divisions, groups and affiliates controlled by Sun and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(e) "Atlantic" means Atlantic Petroleum Maatschappij, B.V. as it was constituted prior to the acquisition, its predecesors, subsidiaries, divisions, groups and affiliates controlled by Atlantic and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(f) "Light products terminal" means a facility having the capacity to store ten thousand (10,000) barrels or more that is used or that at any time during the two preceding years has been used for receiving, storage, and truck distribution of gasoline, diesel fuel, home heating oil, or kerosene-based jet fuel.

(g) "Retail Gasoline Properties" means service stations, "convenience stores," and other real estate, whether owned in fee or leased, from which gasoline is sold to the public.

II

It is ordered that:

(A) Sun shall devest, absolutely and in good faith, within six months of the date this order becomes final, the Schedule A Properties, as well as any additional assets and businesses relating to petroleum transportation and marketing that (i) Sun may at its discretion include as a part of the assets to be divested and are acceptable to the acquiring entity, or (ii) the Commission shall require to be divested to ensure the divestiture of the Schedule A Properties as ongoing, viable enterprises, engaged in the busineses in which the Properties are presently employed.

(B) Sun shall provide prospective acquirers of Schedule A Properties petroleum product exchanges if necessary to insure divestiture of the Properties as ongoing, viable enterprises engaged in the same businesses in which the Properties are presently employed.

(C) The Agreement to Hold Separate, attached hereto and made part hereof as Appendix I, shall continue in effect until such time as the Commission has approved Sun's divestiture of the Schedule A Properties or until such other time as the Agreement to Hold Separate provides, and Sun shall comply with all terms of said Agreement.

(D) Divestiture of the Schedule A Properties shall be made only to a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purposes of the divestiture of the Schedule A Properties is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same businesses in which the Properties are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(E) Sun shall maintain the viability and marketability of the Schedule A Properties and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear that does not affect the viability and marketability of the Schedule A Properties.

III

It is further ordered that, within sixty (60) days after the date of service of this order, and every sixty (60) days thereafter until Sun has fully complied with the provisions of paragraph II of this order, Sun shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with, or has complied with that provision. Sun shall include in compliance reports, among other things that are required from time to time, a full description of the contacts or negotiations for the divestiture of Properties specified in paragraph II of this order, including the identity of all parties contacted. Sun also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

IV

It is further ordered that, for a period commencing on the date of service of this Order and continuing for ten (10) years from and after the date of service of this Order, Sun shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used in (and still suitable for use in), or any interest in, or the whole or any part of the stock or share capital of, any company that is engaged in

(1) The ownership or operation of light products terminals in any part of the states of Pennsylvania or New York (but excluding New York counties south of Orange and Putnam counties in the state of New York); or

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(2) The ownership or operation of any light products pipeline in any part of the states of Pennsylvania or New York (but excluding New York counties south of Orange and Putnam counties in the state of New York), excluding any pipeline or pipeline segment entirely located within a circular area with radius of fifty (50) miles centered on the Sun refinery at Marcus Hook, Pennsylvania and also excluding any light products pipeline assets purchased for less than two million dollars ($2,000,000).

provided, however, that these prohibitions shall not relate to the construction of new facilities or participation in joint ventures in which sun is a participant on the date of service of the order.

V

One year from the date of this Order and annually thereafter for nine years, Sun shall file with the Commission a verified written report of its compliance with paragraph IV.

VI

For the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Sun made to its principal office, Sun shall permit any duly authorized representative of the Commission:

(1) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Sun relating to any matters contained in this order; and

(2) Upon five (5) days' notice to Sun and without restraint or interefence from it, to interview officers or employees of Sun who may have counsel present regarding such matters.

VII

It is further ordered that Sun notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any change that may affect compliance obligations arising out of the order.

Schedule A

Assets to be divested by Sun, as provided above, are the following:

1. All Atlantic light products terminals located in Broome County, New York (at 440 Prentice Road, Vestal, New York 13850, near the city of Binghamton) and in Lycoming County, Pennsylvania (at RD 4 South Williamsport, Pennsylvania 17701), including all associated on-site facilities and petroleum products inventories.

2. All retail gasoline properties owned by Atlantic at the following locations:

522 Hooper Road	Endwell, NY 13760
61 Glenwood Avenue	Binghamton, NY
3808 Vestal Parkway	Vestal, NY
2 Castle Creek Road	Binghamton, NY 13901
2680 Main Street	Whitney Point, NY 13862
1153 Vestal Avenue S Penn.	Binghamton, NY 13903
238–240 Conklin Avenue.	Binghamton, NY 13903
1010 Union Maine Highway.	Endicott, NY 13760
500 Vestal Avenue	Endicott, NY 13760
341–343 Fron Street	Binghamton, NY 13905
110 N. Main Street	Jersey Shore, PA 17740
241–243 Broad Street	Montoursville, PA 17754
261 Washington Blvd	Williamsport, PA 17701
507 Hepburn Street	Williamsport, PA 17701
857 W. Third	Williamsport, PA

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement"), by and between Sun Company, Inc. ("Sun"), a Pennsylvania corporation, with executive offices at 100 Matsonford Road, Radnor, Pennsylvania 19087, and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41 *et seq.*, (collectively, "the Parties").

Premises

Whereas, on July 4, 1988, Sun and Atlantic Petroleum Corporation, N.V. and John C.M.A.M. Deuss entered into a stock purchase agreement, pursuant to which Sun agreed to purchase all issued and outstanding shares of capital stock of Atlantic Petroleum Maatschappij, B.V., which owns all the outstanding shares of Atlantic Refining and Marketing Corporation ("Atlantic"); and

Whereas, the Commission is now investigating the transaction contemplated by the stock purchase agreement (the "Acquisition") to determine if the acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of Atlantic's refining, transportation and marketing assets and business during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of properties described in Schedule A to the Consent Order (the "Schedule A Properties") and the Commission's right to seek to restore Atlantic as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to preserve Atlantic as a viable petroleum company pending the divestiture of the Schedule A Properties as viable, ongoing enterprises, in order to remedy any anticompetitive effects of the acquisition and to preserve Atlantic as a viable petroleum company in the event that divestiture is not achieved; and

Whereas, Sun's entering into this Agreement shall in no way be construed as an admission by Sun that the acquisition is illegal; and

Whereas, Sun understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Sun with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which is it annexed and made a part thereof, and in the event the required divestitures are not accomplished, to seek divestiture of such assets as are held separate pursuant to the Agreement, as follows:

1. Sun agrees to execute and be bound by the attached Consent Order.

2. Sun agrees that, until the first to occur of (i) three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or (ii) if the Commission within 120 days after publication in the **Federal Register** of the Consent Order finally accepts such order, until all of the divestitures required by Schedule A of the Consent Order are approved by the Commission, Sun will hold all of Atlantic's refining, transportation, and marketing assets and business operations, separate and apart on the following terms and conditions:

a. All of Atlantic's refining, transportation, and marketing assets and businesses shall be operated independently of Sun;

b. Sun shall not exercise direction or control over, or influence directly or indirectly, any of Atlantic's refining, transportation, and marketing assets and businesses; provided, however, that Sun may exercise only such direction and control over Atlantic as is necessary to assure compliance with this Agreement.

c. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating an agreement to dispose of assets, Sun shall not receive or have access to, or the use of, any "material confidential information" relating to Atlantic's refining, transportation and marketing assets and businesses not in the public domain, except as such information would be available to Sun in the normal course of business if the acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Sun from sources other than Atlantic, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets).

d. Sun shall not change the composition of the management of Atlantic's refining, transportation and marketing assets and businesss except as provided in subparagraph (e) herein and except that the current Atlantic directors, serving on the "New Board" (as defined in subparagraph (g) shall have the power to remove employees for cause; Sun shall maintain the viability and marketability of Atlantic's refining, transportation and marketing assets and businesses and shall not sell, transfer, encumber, or otherwise impair their marketability or viability (other than in normal course of business).

e. In the event that employees of Atlantic leave or resign from Atlantic prior to the expiration of this Agreement, and such vacancies are required to be filled in order to ensure the viability of Atlantic's operations and business, Sun may fill such vacancies, if any, with Sun employees, on the condition that the employees so appointed shall comply with all terms and conditions of this Agreement and shall enter a confidentiality agreement prohibiting disclosure of confidential information.

f. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 2 (a) through (e) hereof, shall be subject to a majority vote of the New Board (as defined in subparagraph (g)).

g. Sun may adopt new Articles of Incorporation and Bylaws, provided that they are not inconsistent with other provisions of this Agreement, and may elect a new three person board of directors of Atlantic ("New Board") once it is a majority shareholder of Atlantic. Sun may elect the directors to the Board; provided, however, that such Board shall consist of at least two current Atlantic employees and no more than one Sun director, officer, employee, or agent. Except as permitted by this Agreement, the director of Atlantic who is also a Sun director, officer, employee or agent, shall not receive in his or her capacity as director of Atlantic material confidential information relating to Atlantic's refining, transportation and marketing assets and businesses and shall not disclose any such information received under this agreement to Sun or use it to obtain any advantage for Sun. Said director of Atlantic who is also a Sun director, officer, employee or agent, shall enter a confidentiality agreement prohibiting disclosure of confidential information. Such director shall participate in matters that come before the New Board only for the limited purpose of considering a capital investment or oher transactions exceeding $5,000,000 and carrying out Sun's and Atlantic's responsibility to assure that Schedule A Properties and such other properties as the Commission may elect to add under paragraph II of the Consent Order are maintained in such manner as will permit their divestiture as ongoing, viable assets to achieve the remedial purposes of the Consent Order. Except as permitted by this Agreement, such Director shall not paricipate in any matter, or attempt to influence the votes of the other directors with respect to matters that would involve a conflict of interest if Sun and Atlantic were separate and independent entities. Meetings of the Board during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

h. Nothing herein shall prevent the New Board from negotiating or entering into agreements to dispose of Atlantic's assets, provided that any such agreements with respect to refining, transportation and marketing related assets and businesses are conditioned on and not consummated prior to final approval of the Consent Order by the Commission.

i. Nothing contained in this Agreement shall preclude a loan by Sun to Atlantic at closing in an amount sufficient to retire existing bank debt owed by Atlantic. Such loan shall be unsecured and bear interest at prevailing market rates payable to Sun and falling due fourteen (14) days after any denial of final approval of this Consent Order by the Commission.

j. A majority of the New Board may declare a dividend and payment not greater than the amount paid in the same quarter in 1987. Except for such divided payment, all earnings and profits of Atlantic shall be retained separately in Atlantic. Sun shall have the right to borrow monies from Atlantic upon approval by the majority of the New Board on the same terms and conditions described in paragraph (i); provided, however, that Sun shall not borrow funds if the result would be to impair Atlantic's ability to operate its refining, transportation and marketing assets and businesses at its 1987 levels of expenditure on an annualized basis.

k. Whereas Atlantic's refinery has previously been supplied with crude oil by relating companies, and whereas Atlantic's crude oil supply needs to be maintained in order to ensure the viability of Atlantic's operations and businesses, Sun may enter into an agreement to supply crude oil to Atlantic, provided that such agreement shall be negotiated by Sun and the New Board on an arm length basis and that the terms of such agreement shall provide that the purchases be based on the then current fair market value for crude oil.

l. Should the Federal Trade Commission seek in any proceeding to compel Sun to divest itself of the shares of Atlantic Petroleum Maatschappij, B.V. stock it shall acquire, or to compel Sun to divest any refining, transportation and marketing assets or

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businesses that it may hold, or to seek any other injunctive or equitable relief. Sun shall not raise any objection based upon the expiration of the appiicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted Atlantic Petroleum Maatschappij, B.V. stock to be acquired. Sun also waives all rights to contest the validity of this Agreement.

3. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Sun made to its principal office, Sun shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Sun and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Sun relating to compliance with this Agreement;

b. Upon five (5) days notice to Sun, and without restraint or interference from it, to interview officers or employees of Sun, who may have counsel present, regarding any such matters.

No information or documents obtained by the Commission shall be divulged by any representative of the Commission, except in the case of legal proceedings to which the Commission is a party, or for the purpose of securing compliance with the Consent Order, or as otherwise required by law.

If, at any time, information or documents are furnished by Sun and Sun identifies such documents as "Confidential," then the Commission shall provide to Sun ten (10) days notice or, if ten (10) days is not possible, as many days notice as possible prior to duvulging such material in any legal proceeding to which that entity is not a party.

4. This agreement shall not be binding until approved by the Commission.

Analysis to Aid Public Comment on Consent Order Accepted Subject to Final Approval

The Federal Trade Commission ("Commission") has accepted for public comment from Sun Company, Inc. ("Sun"), an agreement containing consent order in settlement of a Complaint challenging a portion of the assets obtained through Sun's acquisition of the voting stock of the Dutch parent of Atlantic Petroleum Corporation ("Atlantic"). Specifically, the Compliant challenges Sun's acquisition of light petroleum products terminals in Williamsport, PA and Binghamton, NY.[1] The Commission is placing the agreement on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The Commission's investigation of this matter concerned Sun's ownership, after purchase of the stock, of the Atlantic refinery in Philadelphia, about 900 miles of light products pipeline in the states of New York and Pennsylvania, 30 distribution terminals in the states of New York and Pennsylvania, and approximately 571 owned retail service stations and convenience stores in New York and Pennsylvania. Sun owns similar assets in these markets.

The Commission has reason to believe that the acquisition of Atlantic terminals in Williamsport, PA and Binghamton, NY is in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The complaint alleges anticompetitive effects in the wholesale distribution and marketing of light petroleum products from terminals in Williamsport, PA and Binghamton, NY.

The proposed Agreement Containing Consent Order ("Order") would, if issued by the Commission, settle the Complaint. The Order contains provisions requiring the divestiture of Atlantic terminals and related assets and operations in Williamsport, PA and Binghamton, NY.

Under the terms of the Order, Sun must divest all Atlantic light products terminals located in Broome County, New York and Lycoming County, Pennsylvania, including all associated on-site facilities and petroleum products inventories. In addition, Sun must divest all retail gasoline properties owned by Atlantic and supplied predominantly from the above terminals.[2]

The Order also requires that, until all divestitures required by the Order are approved by the Commission, Sun must hold all of Atlantic's petroleum assets and operations separate and apart from its own operations and assets.

For a period of ten years from its effective date, the proposed Order prohibits Sun from acquiring without prior Commission approval any light products terminals in the states of New York or Pennsylvania. Sun must also obtain prior Commission approval for its acquisition of any light products pipelines assets and operations in the state of Pennsylvania or New York, the acquisition price of which is over $2,000,000 or not within a 50 mile radius of the Sun Marcus Hook refinery.

It is anticipated that the Order would resolve the violations alleged in the Complaint. The purpose of this analysis is to invite public comment concerning the consent Order, in order to aid the Commission in its determination of whether it should make final the Order contained in the Agreement.

This analysis is not intended to constitute an official interpretation of the agreement and Order, nor is it intended to modify the terms of the agreement and Order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 88-25703 Filed 11-4-88; 8:45 am]

BILLING CODE 6750-01-M

[1] The Complaint charges that the acquisition of terminals in Williamsport, PA and Binghamton, NY violates section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 and that the acquisition of these assets violates section 7 of the Clayton Act, as amended, 15 U.S.C. 18. Atlantic was not named as a respondent in the Commission's Complaint.

[2] A list of retail gasoline properties is included in Schedule A which is appended to the Agreement Containing Consent Order.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1031 and 1032

Commission Participation and Commission Employee Involvement in Voluntary Standards

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Commission is revising its regulations governing the Commission's participation in voluntary standards activities. The revised regulations reflect the policies set forth by Congress in the Consumer Product Safety Amendments of 1981, Pub. L. 97-35, and make several changes in the agency's policies on employee participation in voluntary standards development activities. Also, the proposed revised regulations combine existing Part 1031, Employee Membership and Participation in Voluntary Standards Organizations, and Part 1032, Commission Involvement in Voluntary Standards Activities, into a revised Part 1031, Commission Participation and Commission Employee Involvement in Voluntary Standards Activities.

DATES: Comments must be submitted on or before December 7, 1988.

ADDRESSES: Comments may be mailed to the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone: (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Colin Church, Voluntary Standards Coordinator, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 492-6550.

SUPPLEMENTARY INFORMATION:

Background

Congress enacted the Consumer Product Safety Act in 1972, codified at 15 U.S.C. 2051, et. seq., to protect consumers against unreasonable risks of injury associated with consumer products. In furtherance of that goal, Congress established the Consumer Product Safety Commission as an independent regulatory agency, and granted it broad authority to promulgate mandatory safety standards for consumer products as a necessary alternative to industry self-regulation, 15 U.S.C. 2056(a)(1)(A). The Commission was also given the authority to require manufacturers to provide consumer label warnings or instructions about their products, 15 U.S.C. 2056(a)(2), and to promulgate standards for products falling under the purview of the Refrigerator Safety Act, 15 U.S.C. 1211-1214, the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471-1476, the Flammable Fabrics Act, 15 U.S.C. 1191-1204, and the Federal Hazardous Substances Act, 15 U.S.C. 1261-1274. As originally enacted, neither the Consumer Product Safety Act nor the other statutes administered by the Commission contained any language referring to voluntary standards.

In 1978, the Commission issued regulations describing the extent and form of Commission involvement in the development of voluntary standards, 43 FR 19216, 16 CFR Part 1032—Commission Involvement in Voluntary Standards Activities. In the Background section, the Commission acknowledged the contribution which voluntary standards had made to reducing hazards associated with consumer products, and stated that it supported an effective voluntary standards program. Nonetheless, the Commission asserted that "While there might be circumstances in which a particular voluntary standard can substitute for a mandatory standard, the Commission generally views voluntary standards as complementary to and not a substitute for mandatory standards". It stated, also, its belief that a proper combination of voluntary and mandatory standards can have a higher "payoff" in increased product safety than either mandatory or voluntary activities alone could have.

In 1981, Congress amended the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act, to mandate that the Commission give preference to voluntary standards over promulgating mandatory standards, if it determines that a voluntary standard will eliminate or adequately reduce an injury risk, and that there will be a likelihood of substantial compliance with the standard. 15 U.S.C. 2056(b), 15 U.S.C. 1262(g)(2), 15 U.S.C. 1193(h)(2). The amendments also require the Commission to provide administrative and technical assistance to organizations engaged in voluntary standards development. 15 U.S.C. 2054(a) (3) and (4).

Thereafter, the Commission conducted its activities in accordance with the policies of the 1981 Amendments by deferring to voluntary standards in those cases where a voluntary standard would adequately reduce an unreasonable risk of injury and there was a reasonable likelihood of substantial compliance with the standard. However, the Commission's plicy statement in 16 CFR Part 1032 is inconsistent with the policy stated in the 1981 Amendments. The purpose of this proposed revision is to conform the Commission's policy statement with the 1981 Amendments.

The proposed Part 1031 also incorporates, with changes, the provisions of current 16 CFR Part 1031, the Commission's regulations governing organizations, which were initially promulgated on June 20, 1975. 40 FR 26023. The Part specifies which Commission officers and employees can be members of voluntary standards bodies or can participate in voluntary standards development activities. Each substantive change is explained below.

Explanation of Changes and Additions in Proposed Part 1031

Subpart A, General Policies, is a revision of current 16 CFR Part 1032, Commission Involvement in Voluntary Standards Activities. The proposed Subpart A is substantially the same as existing Part 1032, except as described below.

Section 1031.1(b) has been added to define "voluntary standards bodies" and "voluntary standards development bodies". The definitions are similar to those in OMB Circular A-119 and reflect the language Congress employed in Section 5(s) (3) and (4) of the Consumer Product Safety Act as to which organizations the Commission should assist in voluntary standards activities, i.e., "public and private organizations or groups of manufacturers." The definitions are stated in broad terms so as to encompass any organization that has the capability of developing a voluntary standard.

Section 1031.2, Background, a complete revision of current § 1032.1, explains the policy of the Commission regarding voluntary standards. Section 1031.2(b) explains the statutory requirements of the 1981 Amendments regarding voluntary standards. Section 1031.2(c) describes the policies set forth in Office of Management and Budget Circular No. A-119 pertaining to federal participation in the development and use of voluntary standards. The Circular encourages government participation in the standards-related activities of voluntary standards bodies and standards-developing groups when such participation is in the public interest and is compatible with the agencies' missions, authorities, priorities, and budget resources.

Section 1031.3, Consumer Product Safety Act Amendments, incorporates the text of several sections from the Act, as amended in 1981, which pertain to the Commission's participation in the development and use of voluntary standards. The provisions are provided in the text of the regulation for the reader's convenience.

Section 1031.4(a)(2) modifies current § 1032.6(a)(2), so that one of the criteria for the Commission's determination that a voluntary standard is adequate to eliminate or reduce a risk of injury associated with a consumer product is changed from the language that "there is a sufficiently high degree of conformance to the voluntary standard" to language "it is likely that there will be substantial compliance with the voluntary standard." The proposed new language reflects provisions in the 1981 Amendments that allow the Commission to defer to proposed voluntary standards under appropriate circumstances.

Section 1032.6(b) in the current regulations is deleted since it is inconsistent with the 1981 Amendments.

Section 1031.4(b) is a new provision that provides for the Commission to initiate a proceeding for the

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development of a mandatory standard in the event it determines there is no voluntary standard that will eliminate or adequately reduce a risk of injury.

Section 1031.4(c) revises the language in current 16 CFR 1032.6(d), which requires the Commission to consider the provisions of a voluntary standard when it initiates a development proceeding under "Section 7 of the Consumer Product Safety Act." As originally enacted, section 7, referred to as the "offeror process", provided that the Commission could solicit "offers" from private sector organizations to develop a mandatory standard. However, section 7 was revised by the 1981 Amendments to abolish the "Offeror process"; thus, reference to that section is inappropriate. The proposed § 1031.4(c) references, instead, section 9 of the Consumer Product Safety Act, the current provision prescribing the process for issuing a mandatory consumer product safety rule.

Section 1031.5 sets forth the criteria for Commission participation in voluntary standards activities. It is the same criteria set forth in current 16 CFR 1032.5, except that two new criteria (paragraphs (a) and (b)) have been added to conform to criteria prescribed by the 1981 Amendments.

Section 1031.5(f) provides criteria superseding the criterion set forth in current 16 CFR 1032.5(e) for Commission consideration to determine whether to participate in the development of a voluntary standard. The current provision merely requires that the Commission consider the degree and ascertainability of industry conformance with a voluntary standard once it is issued. The proposed section requires the Commission to consider any reasonable industry arrangements for achieving substantial industry compliance with a voluntary standard once it is issued and the means of ascertaining such compliance based on overall market share of product production. The latter requirements reflects the Congressional direction that, in most instances, compliance should be measured in terms of complying consumer products rather than in terms of the number of complying industry members. See the Conference Report to accompany H.R. 3982, H.R. REP. No 97-208, 97th Cong., 1st Sess. 871 (1981).

Section 1031.6(c)(1) replaces and revises current 16 CFR 1032.(b)(2), which describes examples of Commission participation in voluntary standards activities, by adding language allowing the Commission to provide administrative assistance (e.g., travel costs, hosting meetings, and performing secretarial functions) in support of the development and implementation of voluntary standards. This provision is derived from Section 5 of the Consumer Product Safety Act, as amended in 1981.

Section 1031.6(d) is added to conform to the policy set forth in OMB Circular A-119 that, normally, agencies should not provide greater support to a voluntary standards activity than that of all the non-federal participants.

Section 1031.7(a)(7) replaces and revises 16 CFR 1032.4(b)(7) by adding a clause that indicates that the Commission's support of voluntary standards activities may include encouraging states and local governments to participate in government or industrial model code development activities so as to develop uniformity and to minimize conflicting state and local regulations, as provided by section 2(b)(3) of the Consumer Product Safety Act.

Section 1031.7(a)(8) provides a new example of the type of support the Commission may use in assisting voluntary standards development, i.e., monitoring the number and market share of products conforming to a voluntary safety standard. This will enable the Commission to ascertain industry compliance with a voluntary standard by market share.

Section 1031.7(a)(10) is a new provision. It acknowledges that one form of Commission support for voluntary standards development is providing for the involvement of agency personnel in voluntary standards activities as described in Subpart B of this proposed regulation.

Sections 1031.7 (11) and (12) are new provisions. They indicate that the Commission may provide administrative and financial support to a voluntary standards development activity, as authorized by the 1981 Amendments.

Section 1031.8 is a new provision. It describes the functions of the Voluntary Standards Coordinator, a Commission employee responsible for coordinating agency participation in voluntary standards activities and managing the voluntary standards program.

Subpart B, Employee Involvement in Voluntary Standards Activities, supersedes 16 CFR Part 1031. The Proposed subpart has the same general effect as current Part 1031 except for the changes noted below.

Section 1031.9(c)(1) revises current § 1031.1(a) to state that the Commission's participation in voluntary standards programs is consistent with the federal policy set forth in OMB Circular No. A-119, as well as the Consumer Product Safety Act and other statutes administered by the Commission.

Section 1031.9(c)(4) is a new provision. It states that Commission employee participation in voluntary standards activities should take into account Commission resources and priorities. This provision conforms to language in the legislative history of the 1981 Amendments directing the Commission to consider its resources and priorities when determining what assistance it will provide to voluntary standards development. Conference Report to H.R. 3982, p. 884.

Section 1031.10 is a new section. It defines, for the purpose of Subpart B on employee involvement in voluntary standards activities, the terms membership, participation, monitoring, observation, and communication.

Section 1031.11(b) is a new provision which requires employees, who participate in the development of a voluntary standard and then later advise the Commission regarding that standard, to advise the Commission on the extent of their involvement. Also, the provision requires that evaluations and recommendations by such employees should strive to be as objective as possible and should be reviewed by higher level Commission officials prior to submission to the Commission.

Section 1031.12(a) lists those Commission officials who may not become members of a voluntary standards group because they have the responsibility for making final decisions, or objectively advising those who make final decisions, on whether to rely on a voluntary standard, promulgate a consumer product safety standard, or to take other action to prevent or reduce an unreasonable risk of injury associated with a product. The list is the same as that in current § 1031.4, except that Program Managers in the Office of Program Management and Budget have been deleted because their work and recommendations are reviewed by supervisory officials before being given to the Commission. It has also been revised to reflect the Commission's functions regarding voluntary standards which emanate from the 1981 Amendments, i.e., to determine whether a voluntary standard will adequately address a problem involving an unreasonable risk. The predecessor provision referred to the Commission's functions relating to the "offeror process" which, as noted above, was abolished by the 1981 Amendments.

Section 1031.12(c) is a new provision. It requires employees who have obtained approval from the Executive Director to accept membership in a voluntary standards organization to so inform the General Counsel and the Voluntary Standards Coordinator prior to their acceptance. This will allow the General Counsel and the Voluntary Standards Coordinator to be aware of the membership and an opportunity for them to provide any necessary guidance to the employee.

Section 1031.12(d) is a new provision that requires employees who seek membership in a voluntary standards organization in their individual capacity to seek approval from the Commission's Ethics Official in accordance with the Commission's Employee Standards of Conduct, 16 CFR Part 1030.

Section 1031.13(a), like its predecessor provision § 1031.4(d), provides that Commission employees, except for those who are specifically listed, may participate in or monitor voluntary standards development. The proposed provision differs from its predecessor in that it requires approval for employee participation or monitoring by the employee's supervisor and any other person required to do so by internal agency management procedures, whereas approval under the current unrevised regulations is required to be given by the Executive Director alone.

Section 1031.14, Observation criteria, supersedes current § 1031.5(d). The proposed provision requires employees who wish to attend voluntary standards meetings for the sole purpose of observation to obtain approval from their supervisor and any other person required to approve pursuant to internal agency management procedures. Under the current provision, approval must be provided by the Executive Director. The proposed provision also requires the employee to notify the Voluntary Standards Coordinator prior to observing a voluntary standard meeting.

Section 1031.15, Communication criteria, is a new provision providing the conditions for officials and employees to communicate with voluntary standards groups and representatives.

Commission officials and employees, who are authorized to be members of a voluntary standards group in their official capacity under § 1031.12(b), may communicate with a voluntary standard group or representative incidental to their membership. Likewise, those officials or employees, who are approved to participate in or monitor a voluntary standard development under § 1031.13 (a) and (b), may communicate with the voluntary standard body or its representatives as part of their approved participation in, or monitoring of, a standard under development.

Agency employees and officials who do not fall within either of the above categories, and are not prohibited from membership in a voluntary standards organization by virtue of § 1031.12 (a), may be authorized to communicate with a voluntary standards body or representative on substantive matters, sas defined in § 1031.15 (a) (1). Approval must be given by the person to whom an employee would apply to obtain approval for participation or monitoring pursuant to § 1031.13. Those same employees and officials may communicate with a voluntary standards group or representative on non-substantive matters within the scope of their duties without specific authorization.

Substantive matters are defined in § 1031.15 (a) (1) as those matters that pertain to the formulation of the technical aspects of a specific voluntary standard or the course of conduct for developing a voluntary standard. Non-substantive matters would include those relating to scheduling meetings, obtaining status reports, and other administrative matters.

Section 1031.15(b) is a new provision. It requires that employees communicate with voluntary standards organizations in accordance with any internal agency procedures designed to assure staff review and consensus.

Section 1031.15 (c) is a new provision. It provides that the Commissioners can engage in written communications with voluntary standards bodies or representatives on voluntary standards matters providing they state that any substantive views expressed are only their individual views, and not necessarily those of the Commission acting in its collegial capacity. This provision changes the present regulation in § 1031.5—self-imposed by the Commission in 1978—that precludes the Commissioners for personally communicating with voluntary standards organizations concerning the development of voluntary standards. The new provision permits the Commissioners to activity encourage and support the development and use of voluntary standard to alleviate product hazards. The disclaimer is intended to preclude any misunderstanding on the part of a recipient of a letter as to whether the views expressed therein are those of the individual Commissioner or those of the Commission. Of course, the Commission may always communicate with parties on voluntary standards matters upon which they agree in their official collegial capacity.

Section 1031.15 (d) is a new provision. It requires that Commission officials and employees furnish a copy of each written communication of a substantive nature, and a report of each substantive oral conversation with voluntary standards groups or individuals, to the Voluntary Standards Coordinator. This requirement will enable the Coordinator to monitor all the voluntary standards activities the Commission and its employees are engaged in.

Certification of No Significant Economic Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601, et. seq.) requires that whenever a federal agency publishes a proposal under the Administrative Procedure Act (5 U.S.C. 553), it must give particular consideration to small businesses, small non-profit organizations, and small local governments (collectively called "small entities"). The proposed regulations, if issued on a final basis, will be only for the information of the public and industry. They will not have the force of law, and will not impose any substantive obligation or duty on any person or firm, including any small firm. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, the Commission certifies that the proposed regulations, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

Environmental Considerations

The proposal published below will have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

16 CFR Part 1031

Business and industry, Conflict of interest, Consumer protection, Voluntary standards.

16 CFR Part 1032

Business and industry, Consumer protection, Voluntary standards.

Conclusion and Proposal

For the reasons set out in the preamble, Title 16, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 1032—[REMOVED]

1. Part 1032 is removed.

2. Part 1031 is revised to read as follows:

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PART 1031—COMMISSION PARTICIPATION AND COMMISSION EMPLOYEE INVOLVEMENT IN VOLUNTARY STANDARDS ACTIVITIES

Subpart A—General Policies

Sec.

1031.1 Purpose and scope.
1031.2 Background.
1031.3 Consumer Product Safety Act amendments.
1031.4 Effect of voluntary standards activities on Commission activities.
1031.5 Criteria for Commission participation in voluntary standards activities.
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Authority: 15 U.S.C. 2051–2083, 15 U.S.C. 1261–1276, 15 U.S.C. 1191–1204

Subpart A—General Policies

§ 1031.1 Purpose and scope

(a) This Part 1031 sets forth the Consumer Product Safety Commission's guidelines and requirements on participating in the activities of voluntary standards bodies. Subpart A sets forth general policies on Commission participation, and Subpart B sets forth policies and guidelines on employee involvement in voluntary standards activities.

(b) For purposes of both Subpart A and Subpart B of this Part 1031, voluntary standards bodies are private sector domestic or multinational organizations or groups, or combinations thereof, such as, but not limited to, all non-profit organizations, industry associations, professional and technical societies, institutes, and test laboratories, that are involved in the planning, development, establishment, revision, review or coordination of voluntary standards. Voluntary standards development bodies are voluntary standards bodies, or their sub-groups, that are devoted to developing or establishing voluntary standards.

§ 1031.2 Background.

(a) Congress enacted the Consumer Product Safety Act in 1972 to protect consumers against unreasonable risks of injury associated with consumer products. In order to achieve that goal, Congress established the Consumer Product Safety Commission as an independent regulatory agency, and granted it broad authority to promulgate mandatory safety standards for consumer products as a necessary alternative to industry self regulation.

(b) In 1981, the Congress amended the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act, to require the Commission to rely on voluntary standards rather than promulgate a mandatory standard when voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with the voluntary standards. (15 U.S.C. 2056(b), 15 U.S.C. 1262(g)(2), 15 U.S.C. 1193(h)(2)). The 1981 Amendments also require the Commission, after any notice or advance notice of proposed rulemaking, to provide technical and administrative assistance to persons or groups who propose to develop or modify an appropriate voluntary standard. (15 U.S.C. 2054(a)(3)). Additionally, the amendments encourage the Commission to provide technical and administrative assistance to groups developing product safety standards and test methods, taking into account Commission resources and priorities (15 U.S.C. 2054(a)(4)). Although the Commission is required to provide assistance to such groups, it may determine the level of assistance in accordance with the level of its own administrative and technical resources and in accordance with its assessment of the likelihood that the groups being assisted will successfully develop a voluntary standard that will preclude the need for a mandatory standard.

(c) In 1982, the Office of Management and Budget revised Circular No. A–119, Federal Participation in the Development and Use of Voluntary Standards. The Circular establishes the policy to be followed by executive agencies, including the Commission, in working with voluntary standards bodies and in adopting and using voluntary standards. The Circular encourages government participation in the standards-related activities of voluntary standards bodies and standards-developing groups when such participation is in the public interest and is compatible with the agencies' missions, authorities, priorities, and budget resources. The Circular recognizes, however, that voluntary standards activities, if improperly conducted, can suppress free and fair competition, impede innovation and technical progress, exclude safer and less expensive products, or otherwise adversely affect trade, commerce, health, or safety. Thus, agencies are urged to take full account of the impact on the economy, applicable Federal laws, polices and national objectives, including, for example, laws and regulations relating to antitrust, national security, small business, product safety, environment, technological development, and conflicts of interest.

§ 1031.3 Consumer Product Safety Act amendments.

The Consumer Product Safety Act, as amended, contains several sections pertaining to the Commission's participation in the development and use of voluntary standards.

(a) Section 7(b) provides that the Commission shall rely on voluntary consumer product safety standards prescribing requirements described in subsection (a) whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards. (15 U.S.C. 2056(b)).

(b) Section 5(a)(3) provides that the Commission shall, following publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking for a product safety rule under any rulemaking authority administered by the Commission, assist public and private organizations or groups of manufacturers, administratively and technically, in the development of safety standards addressing the risk of injury identified in such notice. (15 U.S.C. 2054(a)(3)).

(c) Section 5(a)(4) provides that the Commission shall, to the extent practicable and appropriate (taking into account the resources and priorities of the Commission), assist public and private organizations or groups of manufacturers, administratively and technically, in the development of product safety standards and test methods. 15 U.S.C. 2054(a)(4).

§ 1031.4 Effect of voluntary standards activities on Commission activities.

(a)(1) The Commission, in determining whether to begin proceedings to develop mandatory standards under the acts it administers, considers whether mandatory regulation is necessary or whether there is an existing voluntary standard that adequately addressed the problem and the extent to which that voluntary standard is complied with by the affected industry.

(2) The Commission acknowledges that there are situations in which adequate voluntary standards, in combination with appropriate certification programs, may be appropriate to support a conclusion that a mandatory standard is not necessary. The Commission may find that a mandatory standard is not necessary where compliance with an existing voluntary standard would eliminate or adequately reduce the risk of injury associated with the product, contains requirements and test methods that have been evaluated and found acceptable by the Commission, and it is likely that there will be substantial compliance with the voluntary standard. Under such circumstances, the Commission may agree to encourage industry compliance with the voluntary standard and subsequently evaluate the effectiveness of the standard in terms of accident and injury reduction for products produced in compliance with the standard.

(3) In evaluating voluntary standards, the Commission will relate the requirements of the standard to the identified risks of injury and evaluate the requirements in terms of their effectiveness in eliminating or reducing the risks of injury. The evaluation of voluntary standards will be conducted by Commission staff members, including representatives of legal, economics, engineering, epidemiological, health sciences, human factors, other appropriate interests, and the Voluntary Standards Coordinator. The staff evaluation will be conducted in a manner similar to evaluations of standards being considered for promulgation as mandatory standards.

(4) In the event that the Commission has evaluated an existing voluntary standard and found it to be adequate in all but one or two areas, the Commission may defer the initiation of a mandatory rulemaking proceeding and request the voluntary standards organization to revise the standard to address the identified inadequacies expeditiously. In such cases, the Commission may monitor or participate in the development of these revisions.

(b) In the event the Commission determines that there is not existing voluntary standard that will eliminate or adequately reduce a risk of injury the Commission may commence a proceeding for the development of a consumer product safety rule or a regulation in accordance with section 9 of the Consumer Product Safety Act, 15 U.S.C. 2058, section 3(f) of the Federal Hazardous Substances Act, 15 U.S.C. 1262(f), or section 4(a) of the Flammable Fabrics Act, 15 U.S.C. 1193(g), as may be applicable. In commencing such a proceeding, the Commission will publish an advance notice of proposed rulemaking which shall, among other things, invite any person to submit to the Commission an existing standard or portion of an existing standard, or to submit a statement of intention to modify or develop, within a reasonable period of time, a voluntary standard to address the risk of injury.

(c) The Commission will consider those provisions of a voluntary standard that have been reviewed, evaluated, and deemed to be adequate in addressing the specified risks of injury when initiating a mandatory consumer product safety rule or regulation under the Consumer Product Safety Act, the Federal Hazardous Substances Act, or the Flammable Fabrics Act, as may be applicable. Comments will be requested in the advance notice of proposed rulemaking on the adequacy of such voluntary standard provisions.

§ 1031.5 Criteria for Commission participation in voluntary standards activities.

The Commission will consider the extent to which the following criteria are met in considering Commission participation in the development of voluntary safety standards for consumer products:

(a) The likelihood the voluntary standard will eliminate or adequately reduce the risk of injury addressed that that there will be substantial compliance with the voluntary standard.

(b) The likelihood that the voluntary standard will be developed within a reasonable period of time.

(c) Exclusion, to the maximum extent possible, from the voluntary standard being developed, of requirements which will create anticompetitive effects or promote restraint of trade.

(d) Provisions for periodic and timely review of the standard, including review for anticompetitive effects, and revision or amendment as the need arises.

(e) Performance-oriented and not design-restrictive requirements, to the maximum practical extent, in any standard developed.

(f) Industry arrangements for achieving substantial industry compliance with the voluntary standard once it is issued, and the means of ascertaining such compliance based on overall market share of product productions.

(g) Provisions in the standard for marking products conforming to the standard so that future Commission investigation can indicate the involvement of such products in accidents and patterns of injury.

(h) Provisions for insuring that products identified as conforming to such standards will be subjected to a testing and certification (including self-certification) procedure, which will provide assurance that the products comply with the standard.

(i) The openness to all interested parties, and the establishment of procedures which will provide for meaningful participation in the development of such standards by representatives of producers, suppliers, distributors, retailers, consumers, small business and public interests. Meaningful representation by consumers and small business means, at a minimum, that among those representing different points of view are individuals having technical expertise in the areas under consideration.

§ 1031.6 Extent and form of Commission involvement in the development of voluntary standards.

(a) The Commission shall approve agency "participation", as defined below, in the development and support of voluntary safety standards for consumer products. The Executive Director shall approve Commission activities that are defined below as "monitoring." The extent of Commission involvement will be dependent upon the Commission's interest in the particular standards development activity and the Commission's priorities and resources.

(b) The Commission's interest in a specific voluntary standards activity will be based in part on the frequency and severity of injuries associated with the product, the involvement of the product in accidents, the susceptibility of the hazard to correction through standards, and the overall resources and priorities of the Commission. Commission involvement in voluntary standards activities generally will also be guided by the Commission's operating plan and budget.

(c) There are two levels of Commission involvement in voluntary standards activities, each of which reflects a different level of Commission involvement as set forth below:

(1) *Monitoring.* Monitoring involves maintaining an awareness of the voluntary standards development process through oral or written inquiries, receiving and reviewing minutes of meetings and copies of draft standards, or attending meetings for the purpose of observing and commenting during the standards development process in accordance with Subpart B of this part. For example, monitoring may involve responding to requests from voluntary standards organizations, standards development committees, trade associations and consumer

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organizations; by providing information concerning the risks of injury associated with particular products, NEISS data, summaries and analyses of in-depth investigation reports; discussing Commission goals and objectives with regard to voluntary standards and improved consumer product safety; responding to requests for information concerning Commission programs; and initiating contacts with voluntary standards organizations to discuss cooperative voluntary standards activities.

(2) *Participating.* Participating involves regularly attending meetings of a standard development committee or group and taking an active part in the discussions of the committee and in developing the standard, in accordance with Subpart B of this part. Under certain conditions, the Commission will contribute to the deliberations of the committee by expanding resources to provide technical assistance (e.g., research, engineering support, and information and education programs) and administrative assistance (e.g., travel costs, hosting meetings, and secretarial functions) which would support the development and implementation of voluntary standards. Participating may also include Commission support of voluntary standards activities as described in § 1031.7.

(d) Normally, the total amount of Commission support given to a voluntary standards activity shall be no greater than that of all non-Federal participants in that activity, except where it is in the public interest to do so.

(e) In the event of duplication of effort by two or more groups (either inside or outside the Commission) in developing a voluntary standard for the same product or class of products, the Commission shall encourage the several groups to cooperate in the development of a single voluntary standard.

§ 1031.7 Commission support of voluntary standards activities.

(a) The Commission's support of voluntary safety standards development activities may include any one or a combination of the following actions:

(1) Providing epidemiological and health science infromation and explanations of hazards for consumer products.

(2) Encouraging the initiation of the development of voluntary standards for specific consumer products.

(3) Identifying specific risks of injury to be addressed in a voluntary standard.

(4) Performing or subsidizing technical assistance, including research, health science data, and engineering support, in the development of a voluntary standard activity in which the Commission is participating.

(5) Providing assistance on methods of disseminating information and education about the voluntary standard or its use.

(6) Performing staff evaluation of a voluntary standard to determine its adequacy and efficacy in reducing the risks of injury that have been identified by the Commission as being associated with the use of the product.

(7) Encouraging state and local governments to reference or incorporate the provisions of a voluntary standard in their regulations or ordinances and to participate in government or industrial model code development activities, so as to develop uniformity and minimize conflicting State and local regulations.

(8) Monitoring the number and market share of products conforming to a voluntary safety standard.

(9) Listing voluntary standards that adequately address specific hazards associated with the use of consumer products.

(10) Providing for the involvement of agency personnel in voluntary standards activities as described in Subpart B of this Part.

(11) Providing administrative assistance, such as hosting meetings and secretarial assistance.

(12) Providing funding support for voluntary standards development, as permitted by the agency budget.

(13) Taking other actions that the Commission believes appropriate in a particular situation.

(b) [Reserved]

§ 1031.8 Voluntary Standards Coordinator.

(a) The Executive Director shall appoint a Voluntary Standards Coordinator to coordinate agency participation in voluntary standards bodies so that:

(1) The most effective use is made of agency personnel and resources and

(2) The views expressed by such personnel are in the public interest and, at a minimum, do not conflict with the interests and established views of the agency.

(b) The Voluntary Standards Coordinator is responsible for managing the Commission's voluntary standards program, as well as preparing and submitting to the Commission a semiannual summary of its voluntary standards activities. The summary shall set forth, among other things, the goals of each voluntary standard under development, the extent of CPSC activity (monitoring or participation; the current status of standards development and implementation) and, if any, recommendations for additional Commission action. The Voluntary Standards Coordinator shall also compile information on the Commission's voluntary standards activities for the Commission's annual report.

Subpart B—Employee Involvement

§ 1031.9 Scope and purpose.

(a) This subpart sets forth the Consumer Product Safety Commission's criteria and requirements governing membership and involvement by Commission officials and employees in the activities of voluntary standards development bodies.

(b) The Commission realizes there are advantages and benefits afforded by greater involvement of Commission personnel in the standard activities of domestic and international voluntary standards organizations. However, such involvement might present an appearance or possibility of the Commission giving preferential treatment to an organization or group or of the Commission losing its independence or impartiality. Also, such participation may present real or apparent conflict of interest situations.

(c) The purpose of this subpart is to further the objectives and programs of the Commission and to do so in a manner that ensures that such membership and participation:

(1) Is consistent with the intent of the Consumer Product Safety Act and the other actions administered by the Commission and with federal policy as set forth in the current version of OMB circular No. A–119, Federal Participation in the Development and Use of Voluntary Standards;

(2) Is not contrary to the public interest;

(3) Presents no real or apparent conflict of interest and does not result in or create the appearance of the Commission giving preferential treatment to an organization or group or the Commission compromising its independence or impartiality; and

(4) Takes into account Commission resources and priorities.

(d) In general, Commission employees must obtain approval from their supervisor and appropriate agency management to be involved in voluntary standards activities. They should also strive to apprise the Voluntary Standards Coordinator, where practicable, as to their involvement in voluntary standards activities.

(3) All Commission employees involved in voluntary standards activities are subject to any restrictions for avoiding conflicts of interest and for avoiding situations that would present an appearance of bias.

§ 1031.10 Definitions.

For purposes of describing the level of involvement in voluntary standards activities for which Commission employees may be authorized, the following definitions apply:

(a) *Membership.* Membership is the status of an employee who joins a voluntary standards development or advisory organization or subgroup and is listed as a member. It includes all oral and written communications which are incidental to such membership.

(b) *Participation.* Participation is the active, ongoing involvement of an official or employee in the development of a new or revised voluntary standard pertaining to a particular consumer product or to a group of products that is the subject of a Commission hazard project. These projects should be one of those that are approved by the Commission, either by virtue of the agency's annual budget or operating plan, or by other specific agency authorization or decision, and are in accord with Subpart A. Participation includes regularly attending meetings of a standards development committee or group, taking an active part in discussions and technical debates, registering opinions and expending other resources in support of a voluntary standard development activity. It includes all oral and written communications which are part of the participation process.

(c) *Monitoring.* Monitoring is involvement by an official or employee in maintaining an awareness of the voluntary standards development process by attendance at meetings, receiving and reviewing minutes of standards development meetings and copies of draft standards, and commenting during the standards development process. It involves all oral and written communications which are part of the monitoring process. These monitoring activities must be related to general voluntary standards projects set forth in the agency's annual budget or operating plan or otherwise approved by the agency.

(d) *Observation.* Observation is the attendance by an official or employee at a meeting of a voluntary standards developing group for the purpose of observing and gathering information.

(e) *Communication.* Communication is the oral or written contact by an official or employee with a representative or committee of a voluntary standards organization or advisory group.

§ 1031.11 Procedural safeguards.

(a) Subject to the provisions of this subpart and budgetary and time constraints, Commission employees may be involved in voluntary standards activities that will further the objectives and programs of the Commission, are consistent with ongoing and anticipated Commission regulatory programs as set forth in the agency's operating plan, and are in accord with the Commission's policy statement on participation in voluntary standards activities set forth in Subpart A of this part.

(b) Commission employees who are involved in the development of a voluntary standard and who later participate in an official evaluation of that standard for the Commission shall describe in any information, oral or written, presented to the Commission, the extent of their involvement in the development of the standard. Any evaluation or recommendation for Commission actions by such employee shall strive to be as objective as possible and be reviewed by higher-level Commission officials or employees prior to submission to the Commission.

(c) Involvement of a Commission official or employee in a voluntary standards committee shall be predicated on an understanding by the voluntary standards group that participation by Commission officials and employees is on a non-voting basis.

(d) In no case shall Commission employees or officials vote or otherwise formally indicate approval or disapproval of a voluntary standard during the course of a voluntary standard development process.

(e) Commission employees and officials who are involved in the development of voluntary standards may not accept voluntary standards committee leadership positions, e.g., committee chairman or secretary. Subject to prior approval by the Executive Director, a Commission employee or official may accept other committee positions only if it appears to be clearly in the public interest for the employee to carry out the functions of that specific position.

§ 1031.12 Membership criteria.

(a) The Commissioners, their special assistants, and Commission officials and employees holding the positions listed below, may not become members of a voluntary standards group because they either have the responsibility for making final decisions, or advise those who make final decisions, on whether to rely on a voluntary standard, promulgate a consumer product safety standard, or to take other action to prevent or reduce an unreasonable risk of injury associated with a product.

(1) The Commissioners

(2) The Commissioners Special Assistants

(3) The General Counsel and General Counsel Staff

(4) The Executive Director, The Deputy Executive Director, and special assistants to the Executive Director

(5) The Associate Executive Directors and Office Directors

(6) The Director of the Office of Program Management and Budget and any Special Assistants to the Director.

(b) All other officials and employees not covered under § 1031.12(a) may be advisory, non-voting members of voluntary standards development and advisory groups with the advance approval of the Executive Director. In particular, the Commission's Voluntary Standards Coordinator may accept such membership.

(c) Commission employees or officials who have the approval of the Executive Director to accept membership in a voluntary standards organization or group pursuant to paragraph (b) of this section shall apprise the General Counsel and the Voluntary Standards Coordinator prior to their acceptance.

(d) Commission officials or employees who desire to become a member of a voluntary standards body or group in their individual capacity must obtain prior approval of the Commission's Ethics Counselor for an outside activity pursuant to the Commission's Employee Standards of Conduct. (16 CFR Part 1030).

§ 1031.13 Participation and monitoring criteria.

(a) Commission officials, other than those positions listed in § 1031.12(a), may participate in or monitor the development of voluntary safety standards for consumer products, but only in their official capacity as employees of the Commission and if permitted to do so by their supervisor and any other person designated by agency management procedures. Such participation or monitoring shall be in accordance with Commission procedures designed to assure staff review and consensus.

(b) Employees in positions listed in § 1031.12(a) (4), (5), and (6) may, on a case-by-case basis, participate in or monitor the development of a voluntary standard provided that they have the specific advance approval of the Commission.

(c) Except in extraordinary circumstances and when approved in advance by the Executive Director in

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accordance with the provisions of the Commission's meetings policy (16 CFR Part 1012), Commission personnel shall not become involved in meetings concerning the development of voluntary standards that are not open to the public for attendance and observation. Attendance of Commission personnel at a voluntary standard meeting shall be noted in the public calendar in accordance with the Commission's meetings policy.

(d) Generally, Commission employees may become involved in the development of voluntary standards only if they are made available for comment by all interested parties prior to their use or adoption.

(e) Involvement by Commission officials and employees in voluntary standards bodies or standards-developing groups does not, of itself, connote Commission agreement with, or endorsement of, decisions reached, approved or published by such bodies or groups.

§ 1031.14 Observation criteria.

A Commission official or employee may, on occasion, attend voluntary standards meetings for the sole purpose of observation, with the advance approval of his or her supervisor and any other person designated by agency management procedures. Commission officials and employees shall notify the Voluntary Standard Coordinator, for information purposes, prior to observing a voluntary standards meeting.

§ 1032.15 Communication criteria.

(a) Commission officials and employees, who are not in the positions listed in § 1031.12(a), or who are not already authorized to communicate with a voluntary standards group or representative incidental to their approved membership in a voluntary standard organization or group or as part of their participation or monitoring of a voluntary standard, may:

(1) Communicate, within the scope of their duties, with a voluntary standard group or representative on voluntary standards matters which are substantive in nature, i.e., matters that pertain to the formulation of the technical aspects of a specific voluntary standard or the course of conduct for developing the standard, only with the specific advance approval from the person or persons to whom they apply to obtain approval for participation or monitoring pursuant to § 1031.13. The approval may indicate the duration of the approval and any other conditions.

(2) Communicate, within the scope of their duties, with a voluntary standards group or representative concerning voluntary standards activities which are not substantive in nature.

(b) Commission employees may communicate with voluntary standards organizations only in accordance with Commission procedures designed to assure staff review and consensus.

(c) Commissioners can engage in substantive and non-substantive written communications with voluntary standards bodies or representatives, provided a disclaimer in such communications indicates that any substantive views expressed are only their individual views and are not necessarily those of the Commission. Where a previous official Commission vote has taken place, that vote should also be noted in any such communication. Copies of such communications shall thereafter be provided to the other Commissioners, the Office of the Secretary, and the Voluntary Standards Coordinator.

(d) The Voluntary Standards Coordinator shall be furnished a copy of each written communication of a substantive nature and a report of each oral communication of a substantive nature between a Commission official or employee and a voluntary standards organization or representative which pertains to a voluntary standards activity. The information shall be provided to the Voluntary Standards Coordinator as soon as practicable after the communication has taken place.

Date: October 31, 1988.

Sadye E. Dunn,

Secretary.

[FR Doc. 88-25574 Filed 11-4-88; 8:45 am]

BILLING CODE 6355-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Conduct of Complainants Prior to the Institution of Investigations of Unfair Practices in Import Trade; Articulation of Duty of Candor, Procedures for Alleging a Violation of Duty, and Sanctions for Violations

AGENCY: U.S. International Trade Commission.

AGENCY: Notice of proposed rulemaking.

SUMMARY: The proposed rules would amend the Commission's *Rules of Practice and Procedure* to add sections addressing the duty of candor owned by persons who file complaints with the Commission seeking relief under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). The new sections set forth, in particular, the standard of conduct expected of complainants, the procedures for asserting and prosecuting allegations of wrongful conduct, and the sanctions which the Commission may impose upon those who are found to have violated the articulated standard.

Comments are requested on the proposed rules.

DATES: All comments must be received on or before December 22, 1988.

ADDRESSES: All comments concerning the proposed rules should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Comments should conform with Commission rule 201.8 (19 CFR 201.8).

FOR FURTHER INFORMATION CONTACT: Laurie B. Horvitz, Esq., 202-252-1107, or Tim Yaworski, Esq., 202-252-1906, Office of the General Counsel, U.S. International Trade Commission.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties. Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 Stat. 1107), expressly authorizes the Commission to impose by rule certain sanctions for abuse of process.

These proposed rules are being promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), which entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty (30) days prior to their effective date. *See* 5 U.S.C. 553.

The Commission has determined that the proposed rules do not constitute major rules for the purposes of Executive Order 12291, because they do not fall within the categories described in section (b) of the Executive Order.

Explanation of Proposed Rules

This rulemaking is prompted by allegations that certain complainants misrepresent or omit material facts in section 337 complaints. In response to these allegations, the Commission has determined that rules, developed after

the benefit of public comment, may be advisable to articulate the duty of candor owed by complainants to the Commission in the pre-institution phase of section 337 investigations.

The Standard of Conduct

The proposed rules set forth the standard of conduct expected of complainants prior to the institution of section 337 investigations. The standard applies to the conduct of complainants prior to institution because pre-institution representations of complainants are relief upon by the Commission when making institution decisions, there are costly and immediate consequences of institution, and complainants' pre-institution representations are made in the context of an essentially *ex parte* proceeding. As a result of the *ex parte* character of pre-institution proceedings and the limited time frame in which the Commission must make its institution decisions, there is often limited scrutiny of a complainant's submissions by the Commission and by persons with interests adverse to those of complainant. By contrast, submissions by all parties after institution are subjected to greater adversarial scrutiny and, as a result, the Commission often receives additional information which is helpful in evaluating and understanding the submissions of the parties.

The proposed duty of candor is violated when there is clear and convincing evidence of: (1) A failure to disclose material information, or a submission of false material information; and (2) an intent to mislead the Commission. Information is "material" when there is a substantial likelihood that a reasonable decisionmaker would have considered the nondisclosed or false information to be important in deciding whether to institute an investigation, not whether the information would have been dispositive. The "intent to mislead" element includes gross negligence. This standard is patterned after the standard of conduct articulated in 37 CFR 1.56 by the U.S. Patent and Trademark Office (PTO). Because practice before the Commission and the PTO differs in several respects, the Commission would not view PTO and court decisions interpreting the PTO standard as dispositive, or necessarily persuasive authority, in applying the Commission's standard of conduct.

Procedures for Alleging a Violation of the Standard of Conduct

If a section 337 investigation has been instituted by the Commission, the proposed rules provide that any party to the investigation may seek a duty of candor investigation. In addition, if the investigation is still pending before an ALJ, the ALJ may independently commence such an investigation. If the Commission has decided not to institute an investigation, the proposed respondents or the Commission's Office of Unfair Import Investigations (OUII) may seek commencement of a duty of candor investigation. In either event, the Commission may, at its own initiative, direct the Chief Administrative Law Judge to institute a duty of candor investigation.

Under the proposed rules, any duty of candor issue may be raised by motion to investigate during or after a section 337 investigation, provided that it is raised within 90 days after the Commission has issued a final determination on violation or within 90 days of any other final determination terminating the investigation. If no section 337 investigation has been instituted, any motion for investigation of duty of candor issues must be filed within 90 days after the Commission has voted not to institute a section 337 proceeding, provided that no motion to investigate will be entertained prior to the decision not to institute. These time limits are proposed in order to prevent a party from raising claims regarding the pre-institution conduct of a complainant many months or years after a case has terminated and thereby causing such allegations to be litigated on the basis of stale evidence, much of which may be based on the recollection of witnesses. The Commission expects that most facts relevant to a duty of candor issue will be discovered before or during the discovery phase of an investigation and, therefore, that the proposed time limits would not be excessively burdensome or unreasonable. However, the Commission recognizes that a rare case might arise where a complainant's wrongful conduct could not reasonably be discovered until after the prescribed period for raising duty of candor issues. In that event, a firm deadline for raising candor issues would benefit principally the wrongdoing complainant. Therefore, the proposed rules permit motions to investigate after the 90-day deadline if good cause is shown for the late submission. The moving party would be required to submit an affidavit stating that the motion is based on newly discovered evidence that could not have been discovered more expeditiously.

The proposed rules provide that each motion to investigate filed by a private party must be verified. This proposal is intended to discourage the filing of meritless motions. All motions should, at a minimum, be based on information and belief, must not be premised on mere speculation or conjecture, and must set forth the specific sanction sought by the movant. The articulation of a duty of candor is not intended to create merely another litigation tactic which private parties could utilize to harass and intimidate their adversaries or to retry issues of fact which already have been addressed by the ALJ in an initial determination on violation.

The proposed rules further provide that any motion to investigate must include allegations sufficient to warrant an investigation of the complainant's pre-institution conduct and must be specific. A failure to include specific and sufficient allegations in a motion to investigate could result in denial of the motion by an ALJ without the commencement of an investigation into the allegations.

If the motion to investigate is filed when a particular ALJ does not have jurisdiction over the investigation, the proposed rules provide that the motion be directed to the Chief Administrative Law Judge or such ALJ as he may designate. If a motion is filed while an ALJ has jurisdiction over an ongoing section 337 investigation, the motion would be filed with the ALJ. The ALJ presiding over the duty of candor motion would be authorized by the rules (1) to deny the motion if a *prima facie* case of conduct violating the commission's regulations on duty of candor is not alleged or a motion by a private party is not verified, (2) to consider the motion during the course of the ongoing investigation, if any, of complainant's allegations of a section 337 violation and issue a recommended determination (RD) reflecting his findings, or (3) at his discretion, to defer consideration of the duty of candor allegations until after he has issued an initial determination on violation or an initial determination otherwise terminating the investigation, provided that the ALJ would be required to issue an RD resolving all such allegations no later than 180 days after the motion to investigate is filed or an initial determination terminating the investigation is issued, whichever is later.

The proposed rules permit the ALJ to defer consideration of duty of candor issues because of the short statutory time limits that already restrict the amount of time within which ALJs must complete the evidentiary stage of section 337 investigations. To require an ALJ to consider and resolve all candor issues during the pendency of a section 337 hearing would, in many cases, be unduly burdensome and would hamper

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the ALJ's ability to adequately address the violation issues. On the other hand, the Commission recognizes that certain duty of candor issues may be most efficiently addressed during the violation hearing and may be closely related to violation issues. The Commission therefore proposes that the ALJ be accorded discretion to decide when candor issues should be considered. However, recognizing that the Commission and the parties to an investigation have an interest in resolving duty of candor issues in a timely fashion, the Commission proposes a provision which would require ALJs to address such issues within 180 days after issuance of a determination which terminates an investigation, unless the motion to investigate candor issues is filed after such a determination is issued.

Findings of the Administrative Law Judge

Upon completion of any investigation of duty of candor issues, the proposed rules provide that the presiding ALJ is to issue an RD which includes specific findings of fact and a conclusion regarding whether there has been a violation of the duty of candor. If the ALJ finds that there has been a violation of the duty, he is to include in the RD a recommendation with respect to the appropriate sanctions, if any, for the violation. In addition, the proposed rules instruct the presiding ALJ to determine whether, if he has concluded that there has been *no violation* of the duty of candor, the motion to investigate the duty of candor issue was frivolous. The finding regarding frivolous motions is intended to discourage the filing of meritless motions for investigation of candor issues. If the ALJ finds that the motion to investigate the duty of candor issue was frivolous, he is also to recommend appropriate sanctions, if any, for the filing of a frivolous motion.

Sanctions for Violations of the Duty of Candor

The proposed rules list the sanctions available to the Commission when it finds that the duty of candor has been violated. The list of sanctions includes the following: (1) A private or public reprimand by the Commission; (2) temporary or permanent disqualification from practicing or appearing in any capacity before the Commission; (3) notification of appropriate professional associations and/or licensing authorities of the facts underlying the duty of candor investigation; (4) the award of costs and attorneys fees proximately caused by the misrepresentations or omissions which were the basis for the finding of a duty of candor violation; (5) referral to the U.S. Attorney for prosecution pursuant to 18 U.S.C. 1001; and (6) any combination of the listed sanctions. This list is included to provide parties with notice of the kinds of sanctions which could be imposed.

Sanctions for the Filing of Frivolous Motions to Investigate

The proposed rules also include a provision authorizing the award of sanctions when a private party has filed a frivolous motion to investigate allegations that a complainant has violated the duty of candor. These sanctions are set forth to discourage frivolous motions. Included in the list of sanctions is a private or public reprimand, disqualification from practicing or appearing in any capacity before the Commission, and notification of appropriate professional associations or licensing authorities of the facts underlying the duty of candor investigation. These sanctions would not be available against a Commission investigative attorney (IA) for several reasons. First, it is not expected that IAs will file frivolous motions because they lack the incentive to do so. The IAs represent the "public interest" and participate in proceedings in order to ensure that the record upon which the Commission bases its determination is as complete as possible. The legal positions of IAs are not dictated by private interests which are adverse to the interests of complainants and/or respondents. Therefore, frivolous motions to investigate by IAs are unlikely. Second, in the unlikely event that a frivolous motion were filed by an IA, the Commission believes that any sanction should be in the form of a personnel action and should be determined by the attorney's supervisors, not by an administrative law judge.

The proposed rule does not list the award of costs and attorneys fees as a sanction for frivolous motions because the Commission does not want to encourage parties to argue and litigate about the frivolity of motions to investigate simply because of the financial incentive of recovering fees. Instead, the proposed rule expressly includes sanctions which are intended to discourage frivolous claims without opening the floodgates to arguments about frivolous motions. Nonetheless, the Commission encourages comments on the advisability of including fees as a listed sanction for filing a frivolous motion to investigate.

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Business and industry, Candor, Customs duties and inspection, Imports, Investigations

For the reasons set forth in the preamble, the U.S. International Trade Commission proposes to amend 19 CFR Part 210 as follows:

PART 210—[AMENDED]

1. The authority citation for Part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, 1337.

2. Subpart H, consisting of §§ 210.80 through 210.85, is added to read as follows:

Subpart H—Complainants' Pre-Institution Duty of Candor

Sec.

210.80 Purpose and applicability of subpart.
210.81 Standard of conduct.
210.82 Procedures for alleging a violation of standard of conduct.
210.83 Findings of the administrative law judge.
210.84 Sanctions for violations of the duty of candor.
210.85 Sanctions for the filing of frivolous motions to investigate.

Subpart H—Complainants' Pre-Institution Duty of Candor

§ 210.80 Purpose and applicability of subpart.

This subpart defines the duty of candor owed by complainants in section 337 investigations during the pre-institution phase of such investigations. The articulation by rule of such a duty is intended to clarify that complainants cannot misrepresent and/or omit material facts in pre-institution submissions to the Commission and that the Commission will sanction such conduct if it violates the articulated duty.

§ 210.81 Standard of conduct.

(a) *The duty of candor is owed by the following:* (1) The complainant and all individuals who verify the complaint;

(2) Counsel for the complainant who prepares and prosecutes the complaint prior to the institution of a section 337 investigation; and

(3) All other individuals who are substantially involved in the preparation and prosecution of the complaint prior to institution.

(b) *Standard of Conduct.* (1) Such persons shall not, with an intent to mislead the Commission, fail to disclose material information to the Commission during the pre-institution phase of section 337 investigations or submit false material information during that phase of an investigation. Information is "material" when there is a substantial likelihood that a reasonable decisionmaker would have considered the nondisclosed or false information to be important in deciding whether to institute an investigation. The "intent to mislead" element includes gross negligence.

(2) Violation of this duty shall be established with clear and convincing evidence.

§ 210.82 Procedures for alleging a violation of standard of conduct.

(a) *Parties who may request an investigation of complainant's candor.* (1) If a section 337 investigation has been instituted by the Commission, any party to the investigation may seek a duty of candor investigation. In addition, if the investigation is still pending before an administrative law judge, the administrative law judge may independently commense such an investigation.

(2) If the Commission has decided not to institute a section 337 investigation, the proposed respondents or the Office of Unfair Import Investigations may seek commencement of a duty of candor investigation.

(3) In either event, the Commission may, at its own initiative, direct the Chief Administrative Law Judge to institute a duty of candor investigation.

(b) *Timing of motions to commence an investigation.* (1) If a section 337 investigation has been instituted by the Commission, a duty of candor issue may be raised by motion to investigate during or after the section 337 investigation, provided that the motion must be filed on or before the ninetieth (90th) day after the Commission has issued a final determination on violation or on or before the ninetieth (90th) day after any other final determination termining the investigation.

(2) If no investigation has been instituted, any motion for investigation must be filed on or before the ninetieth (90th) day after the Commission has voted not to institute the investigation.

(3) Notwithstanding paragraphs (b)(1) and (2) of this section a motion to investigate a duty of candor issue may be filed after the ninety (90)-day deadlines set forth therein if the motion is accompanied by an affidavit stating that the motion is based upon newly discovered evidence and that the evidence could not have been discovered earlier. Specific facts in support of these statements must be alleged.

(c) *Requirements for motions to investigate.* (1) Each motion by a private party to investigate must be made under oath by the moving party or his duly authorized officer, attorney, or agent, with the name, address, and phone number of the party and any such officer, attorney, or agent.

(2) Each motion must be based on personal knowledge or on information and belief, must include specific allegations sufficient to warrant an investigation of the complainant's pre-institution conduct and submissions, and must set forth the specific sanction requested by the movant.

(d) *Filing of the motion and the timing of Commission consideration.* (1) All such motions, whether brought at any time during an investigation, after the conclusion of an investigation, or after the Commission has decided not to institute an investigation, shall be addressed to and ruled upon by the presiding administrative law judge, or if the investigation is not before a presiding administrative law judge, by the Chief Administrative Law Judge or such administrative law judge as he may designate.

(2) Upon receipt of such a motion, the administrative law judge may deny the motion if it fails to satisfy the requirements of § 210.82(c), consider the motion during the course of the investigation, if any, of complainant's allegations of a section 337 violation and issue a recommended determination regarding the duty of candor issues, or at his discretion, defer consideration of the duty of candor allegations until after he has issued an initial determination on violation or an initial determination otherwise terminating the section 337 investigation, provided that the administrative law judge shall issue a recommended determination resolving all duty of candor allegations no later than one hundred and eighty (180) days after the motion to investigate was filed or the administrative law judge issued a determination terminating the investigation, whichever is later.

§ 210.83 Findings of the administrative law judge

(a) Upon completion of any investigation of duty of candor issue, the administrative law judge is to issue a recommended determination which includes specific findings of fact and an ultimate conclusion regarding whether there has been a violation of the duty of candor owed to the Commission. If the administarative law judge finds that there has been a violation of the duty, he is to include in the recommended determination a recommendation with respect to the appropirate sanctions, if any, for the violation and, if appropriate, any specific findings of fact regarding the sanctions issue.

(b) If he has concluded that there has been no violation of the duty of candor, the administrative law judge's recommended determination is to include a conclusion regarding whether or not the motion to investigate the duty of candor issue was frivolous and specific findings of fact relating to that conclusion. If the administrative law judge finds that the motion to investigate the duty of candor issue was frivolous, he is also to recommend appropriate sanctions, if any, for the filing of the frivolous motion.

§ 210.84 Sanctions for violations of the duty of candor.

The following sanctions may be imposed by the Commission in the event that it determines that the duty of candor, as defined in section 210.81, has been violated:

(a) A private or public reprimand by the Commission;

(b) Temporary or permanent disqualification from practicing or appearing in any capacity before the Commission;

(c) Notification of appropriate professional associations and/or licensing authorities of the facts underlying the duty of candor investigation;

(d) The award of costs and attorneys fees proximately caused by misrepresentations or omissions which resulted in the finding of a duty of candor violation;

(e) Referral to the U.S. Attorney for prosection pursuant to 18 U.S.C. 1001; and

(f) Any combination of the sanctions listed above.

§ 210.85 Sanctions for the filing of frivolous motions to investigate.

The following sanctions are available to the Commission when a private party has filed a frivolous motion to investigate allegations that a complainant has violated the duty of candor;

(a) A private or public reprimand by the Commission;

(b) Temporary or permanent disqualification from practicing or appearing in any capacity before the Commission;

(c) Notification of appropriate professional associations and/or licensing authorities of the facts underlying the duty of candor investigation; and

(d) Any combination of the sanctions listed above.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 31, 1988.

[FR Doc. 88-25559 Filed 11-4-88; 8:45 am]
BILLING CODE 7020-02-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 85N-0543]

Proposed Affirmation of GRAS Status of High Fructose Corn Syrup

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that high fructose corn syrup is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated on the basis of the agency's evaluation of six industry petitioners and of the agency's comprehensive safety review of corn sugar, corn syrup, invert sugar, and sucrose. Published elsewhere in this issue of the **Federal Register** is a final rule affirming the GRAS status of corn sugar, corn syrup, invert sugar, and sucrose.

DATE: Written comments by January 6, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 230857.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Listing of High Fructose Corn Syrup as GRAS in Part 182

In the **Federal Register** of February 8, 1983 (48 FR 5716, FDA published a regulation in 21 CFR Part 182 that listed high fructose corn syrup as GRAS for use in food. FDA published this regulation in response to six industry petitions that requested GRAS status for certain insoluble glucose isomerase enzyme preparations used to make high fructose corn syrup and for the manufactured product itself.

The basis for listing high fructose corn syrup in Part 182 was that (1) this substance is made with enzyme preparations that the agency had affirmed as GRAS, and (2) the saccharide composition (glucose to fructose ratio) of high fructose corn syrup is approximately the same as that of honey, invert sugar, and the disaccharide sucrose. In addition, the minor components (primarily higher saccharides of glucose) of high fructose corn syrup are also found at similar levels in corn syrup and corn sugar which are already on the GRAS list. Therefore, FDA concluded that high fructose corn syrup is as safe for use in food as sucrose, corn sugar, corn syrup, and invert sugar. However,, because the agency had not made a decision on whether it would affirm the latter ingredients as GRAS, it could not make this decision for high fructose corn syrup at that time.

The agency stated that when it completed its comprehensive safety review of corn sugar (dextrose), corn syrup, invert sugar, and sucrose, it would determine whether the data on these substances provided an adequate basis to affirm the GRAS status of high fructose corn syrup.

B. Identity of High Fructose Corn Syrup

Paragraph (a) of 21 CFR 182.1866 describes high fructose corn syrup as "a sweet, nutritive saccharide mixture containing approximately 52 percent (dry weight) glucose, 43 percent (dry weight) fructose, and 5 percent (dry weight) other saccharides. It is prepared as a clear aqueous solution from high dextrose equivalent corn syrup hydrolystate by partial enzymatic conversion of glucose (dextrose) to fructose using an insoluble glucose isomerase enzyme preparation described in § 184.1374 of this chapter."

The proposed regulation applies only to the high fructose corn syrup that meets the description as specified in 21 CFR 182.1866(a). The agency is aware that there are other products on the market that are also called "high fructose corn syrup" but that have fructose contents of greater than 43 percent (dry weight). These products generally contain either 55 percent fructose (HFCS-55) or 90 percent fructose (HFCS-90) on a dry weight basis. FDA is not proposing to affirm these products as GRAS because, as discussed later in this document, their manufacture involves the use of processing materials that are not used in making the 43 percent fructose product, and the agency does not have adequate information on these materials to assess the safety of their residual levels in these products.

C. Definitions

To clarily its discussion of the proposed GRAS affirmation of high fructose corn syrup, the agency is defining and explaining important terms used in this document.

The term "sugar" is used to refer to any of the mono- and disaccharides glucose, fructose, sucrose, and maltose, which are found in sucrose, corn sugar, corn syrup, invert sugar, and high fructose corn syrup. The term "sugar" has traditionally been used by consumers and by the agency (see 21 CFR 145.3(f), 146.3(f), and 170.3(n)(41)) as a synonym for the sweetener sucrose. In this document, however the sweetener sucrose is identified as "sucrose." The agency will use the term "sugars" to describe mixtures of mono- and disaccharides and collectively all forms of sugar present in a food.

FDA will use the term "sweetener" to refer to any one or more of the carbohydrate food ingredients sucrose, corn sugar, corn syrup and solids, invert sugar, high fructose corn syrup, honey, and other edible syrups. The term "sweetener", as used in this document, is not intended to include any other nutritive or nonnutritive sweeteners that are added to food.

High fructose corn syrup, as described earlier, is composed primarily of approximately equimolar amounts of the monosaccharides glucose and fructose with some higher molecular weight saccharides. Sucrose is the disaccharide of glucose and fructose. Invert sugar is composed of glucose, fructose, and sucrose. Corn sugar, commonly referred to as dextrose, is crystalline α-D-glucose. Corn syrup contains glucose and maltose (a disaccharide of glucose), as well as higher molecular weight saccharides. These five ingredients may also contain water and residues from the carbohydrate source material and from processing.

II. The Safety Review of High Fructose Corn Syrup

A. Sources of Information for the Safety Evaluation of High Fructose Corn Syrup

In evaluating the safety of high fructose corn syrup as a GRAS ingredient, the agency used the following sources of information:

1. GRAS Affirmation Petitions on High Fructose Corn Syrup (4G0042, 6G0060, 7G0080, 7G0084, 7G0086, and 1G0271)

These petitions describe high fructose corn syrup as a mixture of sugars, including approximately 52 percent glucose (dextrose), 43 percent fructose, and 5 percent maltose, isomaltose, and other sugars that are natural components of corn syrup. The petitions stated that high fructose corn syrup is made by the action of a glucose isomerase enzyme preparation on high dextrose equivalent corn syrup.

Each of the five petitions requested GRAS affirmation for a specific glucose isomerase preparation derived from one of five microbial species. The identity of the enzyme preparation was based on the identity of the microbial source and the identity of the materials used to produce and immobilize the enzyme preparation.

The petitions provided precise taxonomic classification of each microbial source. The petitions contained information that described the method and materials used to produce and to immobilize the enzyme-containing cellular materials.

The petitions contained general manufacturing information for high fructose corn syrup that provides a basis upon which to determine the residual levels of enzyme preparation that would occur in high fructose corn syrup. This information demonstrated that, under the current methods, only very small amount of enzyme preparation would enter the product. The enzyme preparation is extensively washed to remove processing materials before it is used. In addition, only relatively small amounts of the washed enzyme preparation are used to catalyze the conversion of large quantities of glucose syrup.

The petitions also contained published data on the microbial sources of the enzyme preparation as well as unpublished animal feeding studies that established safe levels of the enzyme preparation in the product. A more detailed discussion of the identity of high fructose corn syrup, of its method of manufacture, and of the rationale for the agency's safety determination for the enzyme preparations used in the manufacture of high fructose corn syrup is found in the final rule published in the **Federal Register** of February 8, 1983 (48 FR 5716).

2. The Select Committee Report: "Evaluation of the Health Aspects of Corn Sugar (Dextrose), Corn Syrup, and Invert Sugar as Food Ingredients" (SCOGS-50) (Ref. 1)

This report is relevant to the safety of high fructose corn syrup because any adverse health effects associated with the consumption of corn sugar, corn syrup, and invert sugar are likely also to be associated with high fructose corn syrup. High fructose corn syrup, corn sugar, and corn syrup all contain glucose, maltose, and higher saccharides, as well as residues from the processing aids and from the corn used to manufacture these sweeteners. Both high fructose corn syrup and invert sugar contain glucose and fructose. Therefore, any adverse health effect of consumption of corn sugar, corn syrup, or invert sugar may also occur from consumption of high fructose corn syrup.

The report of the Select Committee also contains a limited opinion and conclusion regarding the safety of high fructose corn syrup. The report states that the consumption of dextrose and corn syrup has increased markedly in recent years and a major part of the increase resulted from the introduction of high fructose corn syrup. The Select Committee cited predictions that high fructose corn syrup would replace 30 percent of the applications for sucrose and invert sugar. In the opinion of the Select Committee there is no evidence such replacement would have an adverse effect on public health. A more detailed description of the findings and the conclusions of the Select Committee on the safety of corn sugar, corn syrup, and invert sugar was published in the agency's proposal to affirm the GRAS status of these food ingredients (47 FR 53917; November 30, 1982).

3. The Select Committee Report: "Evaluation of the Health Aspects of Sucrose as a Food Ingredient" (SCOGS-69) (Ref. 2)

Sucrose is a disaccharide that is hydrolyzed in the intestine and is absorbed as its component monosaccharides, glucose and fructose. High fructose corn syrup also is essentially a mixture of glucose and fructose in approximately equal proportions. Because of the similarity in sugars composition between these two sweeteners at the time of absorption, any reported adverse health effects of sucrose consumption are likely to occur also from consumption of high fructose corn syrup. Thus, the Select Committee's report on sucrose is relevant to the safety evaluation of high fructose corn syrup. A description of the findings and the conclusions of the Select Committee on the safety of sucrose was published in the agency's proposal to affirm the GRAS status of sucrose as a food ingredient (47 FR 53923; November 30, 1982).

4. The Task Force Report: "Evaluation of Health Aspects of Sugars Contained in Carbohydrate Sweeteners" (Ref. 3)

In November 1983, the agency established the Sugars Task Force composed of scientists from FDA's Center for Food Safety and Applied Nutrition to update the Select Committee's safety reviews of corn sugar, corn syrup, and invert sugar and of sucrose.

In its safety evaluations of these substances, the Select Committee found: (1) That the safety of a specific sweetener can be assessed only as part of a safety assessment of total sweetner consumption (see the Select Committee's conclusions for sucrose and for corn sugar, corn syrup, and invert sugar); and (2) that the safety of an individual sweetener is contingent upon the safety of the "simple sugars" that it contains (see especially the Select Committee's conclusion for corn sugar, corn syrup, and invert sugar). Based on these findings, the agency charged the Task Force to conduct a single safety review of all sweeteners.

The Task Force review focused on the sugars contained in the sweeteners rather than on the sweeteners themselves. It used the conclusions it reached on the safety of the sugars to assess the safety of the sweeteners that contain these sugars.

The Task Force has completed its safety review. FDA has placed a copy of the Task Force's report on file in the Dockets Management Branch (address above) in Docket No. 76N-0141. This report contains safety data on fructose, glucose, maltose, and sucrose that are relevant to a safety assessment of high fructose corn syrup. It also contains an assessment of various sugars intakes and sweetener availability and thereby provides a basis for estimating current consumption of high fructose corn syrup.

A more complete description of the Task Force's safety review and of the conclusions of the Task Force regarding the safety of the dietary sugars (glucose, fructose, sucrose, and maltose) is provided elsewhere in this issue of the **Federal Register** in the final rule that affirms the GRAS status of corn sugar, corn syrup, invert sugar, and sucrose.

B. Findings of the Safety Review for High Fructose Corn Syrup

1. Consumption of High Fructose Corn Syrup

The Task Force, in its report, estimated that in 1984 the average daily intake of sugars from high fructose corn syrup was 19 grams per person per day, and that for the 90th percentile consumers of total sugars, it was 43 grams per person per day (Ref. 3). Because the sugars in high fructose corn syrup (glucose, fructose, and maltose) represent approximately 98 percent of its dry weight, the agency concludes that these values represent appropriate estimates of the average daily intakes of high fructose corn syrup itself on a dry weight basis.

In its report, the Task Force estimated intakes of the sugars glucose, fructose, sucrose, and maltose by combining food consumption data from the U.S. Department of Agriculture (USDA) Nationwide Food Consumption Survey of 1977-1978 with sugars composition data (Ref. 3). For details of how the Task

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Force made its estimate see the final rule, Ref. 2.

It should be noted that the consumer exposure data relating to high fructose corn syrup consumption presented in the Task Force report included current use of HFCS–55. The exposure data, however, did not include HFCS–90 because this product is not currently used in a significant amount, and data required to make intake estimates of this product are not available (Ref. 3).

The Task Force also assessed trends in sweetener availability based on USDA disappearance data. Disappearance data for sweeteners represent estimates of domestic shipments (deliveries) of sweeteners by refiners and importers to primary buyers, such as food industries, trades, wholesalers, and retailers (Ref. 3). The data thus represent approximate estimates of the total amount (dry weight) of sweeteners available for consumptoin by the U.S. population and not the amount of sweeteners actually consumed.

The Task Force's assessment of USDA disappearance data for total sweeteners showed that, since 1970, availability of total sweeteners has been reasonably constant (Ref. 3). The same data show, however, that during this period, there was a significant change in types of sweeteners used. High fructose corn syrup usage increased rapidly, accompanied by a complete decrease in sucrose usage. These data also show that high fructose corn syrup usage has now plateaued, and no further increase is expected in the near future (Ref. 3). Based on this projection, the agency anticipates little future change in exposure to high fructose corn syrup.

2. Safety of High Fructose Corn Syrup

In its reports evaluating the safety of sucrose and the safety of corn sugar, corn syrup, and invert sugar, the Select Committee concluded (Refs. 1 and 2) that sucrose, glucose, and fructose (and therefore corn sugar, corn syrup, high fructose corn syrup, and invert sugar) are cariogenic. However, other than the contribution of dental caries, the Select Committee found no evidence that sucrose, corn sugar, corn syrup, and invert sugar are a hazard to the public when they are used in the manner practiced and at the levels used at the time of the reports. The Select Committee noted, however, that it could not determine whether an increase in total sweetener consumption (the total of sucrose, corn syrup, and invert sugar) would constitute a dietary hazard.

In its report on corn syrup, corn syrup, and invert sugar, the Select Committee also expressed the opinion that (Ref. 1):

High fructose corn syrups are predicted to increase in production and to replace sucrose and invert sugar in up to 30 percent of their applications by 1980–85, based largely on relative costs. There is no evidence that such replacement, *per se*, would have an adverse effect on public health.

This opinion is based on the assumption that high fructose corn syrups will be formulated in the present manner, i.e., approximately equimolar mixture of glucose and fructose. It does not extend to the use of fructose syrups or other types of high fructose corn syrups that are predominantly fructose, because these syrups may have health effects that differ substantially from the types manufactured currently.

In its report evaluating the safety of sugars (glucose, fructose, sucrose, and maltose), the Task Force concluded that (Ref. 3):

(1) Evidence exists that sugars, as they are consumed in the American diet, contribute to the development of dental caries.

(2) Other than the contribution to dental caries, there is no conclusive evidence in the available information on sugars that demonstrates a hazard to the general public when sugars are consumed at the levels that are now curnet and in the manner now practiced.

The agency evaluated the safety issues related to sweetener consumption raised in the Select Committee's reports on sucrose and on corn sugar, corn syrup, and invert sugar and in the Task Force report. In particular, it considered the issue of the association between consumption of these sweeteners (or sugars) and the incidence of dental caries.

The agency recognized that the Task Force's conclusions regarding dental caries reinforce the Select Committee's conclusions and establish more definitely the association between sugars consumption and dental caries incidence. Yet, the agency decided to affirm the GRAS status of the use of sucrose, corn sugar, corn syrup, and invert sugar, despite their contribution to dental caries formation. The agency concluded that while the Task Force's findings on dental caries supported the Select Committee's findings, the Task Force's findings did not show that the association between sugars consumption and dental caries had become a more significant health problem than it had been in 1976. The Task Force report showed that total exposure to sweeteners had not changed since the Select Committee's report. Moreover, it showed that caries incidence in the United States had declined in the past decade. The data reviewed in the Task Force report suggest that further developments in caries prevention should facilitate this decline in the future.

For these reasons, the agency has concluded that the Task Force's review did not provide any basis for modifying the 1982 proposed GRAS affirmation of corn sugar, corn syrup, invert sugar, and sucrose.

3. Effects of Increased Consumption of Fructose

The major change in sugars consumption that has occurred as a result of the introduction of high fructose corn syrup containing approximately equimolar amounts of glucose and fructose is the increased consumption of glucose and fructose as monosaccharides as opposed to their consumption as the disaccharide sucrose.

The agency has no significant safety concern about the increase in glucose consumption and would be concerned only if this increase was so great as to cause a nutritional imbalance. Glucose is a normal body nutrient and is the main source of energy for living organisms, including humans. Glucose in a polymeric form (starch) is a normal macronutrient in the human diet.

Fructose, however, does not occupy a similar place in the human diet and metabolism. Before the introduction of high fructose corn syrup, the major sources of added dietary fructose were sucrose and honey. Thus, the major question that must be answered in a safety evaluation of high fructose corn syrup is the effect of consumption of high fructose corn syrup on total fructose consumption.

The Task Force considered current levels of fructose intake, the trend in high fructose corn syrup intake, and the health problems that are associated with the current and the anticipated levels of fructose intake.

As part of its safety assessment of fructose, the Task Force estimated the level of consumption of this sugar in 1984 (Ref. 3). It found that the average daily intake of added fructose was 10 grams per day, and that the 90th percentile average daily intake of added fructose was 23 grams per day. The Task Force in its safety evaluation of fructose found that these intake levels are safe (except for contributing to dental caries) based on safety data reviewed for its report (Ref. 3).

The Task Force assessed the changes in availability of fructose added to food. Based on the evaluation of USDA disappearance data, the Task Force found that the availability of high fructose corn syrup increased since

1970. This increase in the high fructose corn syrup usage has resulted in an increase in the availability of fructose added to the food supply. However, the true increase in fructose availability is smaller than that which appears from the increase in the high fructose corn syrup usage because two thirds of the high fructose usage replaced the sucrose usage in soft drinks, and most of the sucrose in soft drinks exists as glucose and fructose (invert sugar), not as sucrose. Thus, part of the increase in fructose availability acutally replaced the fructose that was already existing in the food supply (Ref. 3). Further, the increase in the high fructose corn syrup usage has been accompanied by a comparable decline in the availability of sucrose. Because sucrose splits into glucose and fructose before absorption for use by the body, the total body load of fructose has not changed much due to use of high fructose corn syrup as currently practiced.

C. Conclusions on the GRAS Status of High Fructose Corn Syrup

Based on the findings of the safety reviews of both the Select Committee and the Task Force, the agency finds that evidence exists that high fructose corn syrup, as it is consumed in the average American diet, contributes to the formation of dental caries.

The agency also finds that there is no convincing evidence in the available information on high fructose corn syrup that demonstrates a hazard to the public, other than dental caries, when high fructose corn syrup is consumed at the levels that are now current and in the manner now practiced.

This conclusion is based on the following:

(1) Data in the Task Force report that show that use of high fructose corn syrup has not resulted in an increase in the consumption of total sugars in the United States as a result of the substitution of high fructose corn syrup for other sweeteners, primarily sucrose.

(2) The safety of the monosaccharides (i.e., glucose and fructose) in high fructose corn syrup (containing equimolar amounts of glucose and fructose) is comparable to the safety of sugars in invert sugar. It is also related to the safety of sucrose. Consumption of all three sweeteners results in the absorption and metabolism of glucose and fructose in an approximately equimolar ratio. Thus, consumption of high fructose corn syrup (containing equimolar amounts of glucose and fructose) is not expected to alter the identity, level, or ratio of monosaccharides that are available for absorption and metabolism from the food supply.

(3) Insoluable glucose isomerase enzyme preparations used in the manufacture of high fructose corn syrup arre GRAS (§ 184.1372) (48 FR 5716; February 8, 1983).

(4) The safety of the minor components (e.g., the higher saccharides and other residues from corn and corn processing) of high fractose corn syrup is comparable to the safety of these components in corn sugar and corn syrup (which have been affirmed as GRAS for use in food). These marterials are present in the original corn syrup used to make high fructose corn syrup and their presence and concentration (gram per gram dry weight) are not altered by the high fructose corn syrup manufacturing process.

Based on these findings, the agency tentatively concludes that it can affirm that the high fructose corn syrup described in 21 CFR 182.1866 is generally recognized as safe as a direct human food ingredient.

In reaching this tentative conclusion, the agency notes that its proposed GRAS affirmation of high fructose corn syrup does not cover a major commerical product that is 55 percent (dry weight) fructose, HFCS–55. The petitions on which the GRAS affirmation of high fructose corn syrup is based did not include HFCS–55. However, the agency is aware of the product, and that the manufacture of HFCS–55 includes processing procedures and materials that are not used to prepare the 43 percent fructose HFCS (HFCS–43) that is the subject of this action. The agency has no information on which to assess the identity and possible residue levels of these processing materials in the HFCS–55 final product. Therefore, the agency cannot adequately assess the safety of that product.

The agency's exposure estimate for high fructose corn syrup did, however, include exposure to HFCS–55. Furthermore, the agency concedes that most of the components found in HFCS–43 (approximately equimolar mixtures of glucose and fructose, residues from corn syrup, and residues from the enzyme preparations used to make high fructose corn syrup) are also found in HFCS–55. Therefore, the safety evaluation of the major components in HFCS–43 is also applicable to HFCS–55. Accordingly, the agency would consider including HFCS–55 in its final rule affirming the GRAS status of high fructose corn syrup if it receives, as comments on this proposal, adequate information on how HFCS–55 is manufactured to allow the agency to identify possible residues from processing materials and thereby to ensure that the levels of those residues in the final product are safe.

The proposed GRAS affirmation of high fructose corn syrup also does not include the 90 percent fructose HFCS (HFCS–90), which is also a commercially available product. This product contains a substantially different ratio of glucose to fructose than either HFCS–43 or HFCS–55. HFCS–90 is not included in this rulemaking because the agency does not have adequate information on the processing materials used to make this ingredient to assess the safety of residual levels of the processing materials in the final product. Furthermore, FDA did not inlcude HFCS–90 as an ingredient in the agency's exposure estimate for high fructose corn syrup. The agency is aware of only minor uses of HFCS–90 as an ingredient in low calorie foods. Finally, the agency's safety review of the sugars components of high fructose corn syrup does not cover this product because HFCS–90 does not contain approximately equimolar amounts of glucose and fructose. Thus, additional data on the effects of fructose consumption that is not balanced with glucose consumption would be needed to assure the safety of this product. The agency concludes that appropriate consideration of GRAS status of this product would be through the petition process (21 CFR 170.35).

D. Conditions of GRAS Affirmation

The agency is proposing to affirm the GRAS status of high fructose corn syrup in accordance with 21 CFR 184.1(b)(1). The proposed GRAS affirmation regulation is based on the conclusions of the Select Committee's report and Task Force report on sweeteners.

The agency's conclusion on the use of high fructose corn syrup is based, in large part, on the agency's conclusions on the safety of total sweetener consumption. The agency's conclusion that such consumption is GRAS is predicated on the assumption that the consumption and availability of total sugars will remain at current levels.

Usually when the safety of possible expanded consumption of a substance cannot be ascertained, FDA proposes to establish specific limitations on use of the substance. For corn sugar, corn syrup, invert sugar, and sucrose, however, the agency concluded that limitation on their use would not effectively prevent an increase in total dietary sugars consumption for the following reasons:

(1) The concern of the Select Committee (and of the Task Force) relative to sweetener consumption and

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adverse affects was for total sweetener consumption.

(2) The use of these sweeteners is extremely variable within each of the 43 food categories listed in § 170.3(n). Thus, even if the agency were to adopt maximum use levels, it would not prevent manufacturers from increasing the amount of these sweeteners in a particular product in a food category to the level established by the limitation.

(3) Establishment of specific limitations for these sweeteners would not prevent the excessive consumption of these ingredients or other dietary sugars that results from voluntary selection of those foods that have a high sugars content.

For these reasons, the proposed regulations on sucrose, corn sugar, corn syrup, and invert sugar specify that the ingredients are used in food with no limitation other than current good manufacturing practice in accordance with § 184.1(b)(1) (see 47 FR 53917 and 53923; November 30, 1982).

For similar reasons, FDA is proposing to not establish limitations on the use of high fructose corn syrup in food. Given the safety conclusions of both the Select Committee and the Task Force regarding total sweetener consumption, the finding of the Task Force that the level of total sweetener consumption has not changed, and the interchangeability of sweetener use, the agency tentatively concludes that there is no basis for establishing conditions of use for high fructose corn syrup that are different from those established for the other sweeteners. Therefore, the agency is proposing to affirm the GRAS status for the use of high fructose corn syrup in food with no limitation other than current good manufacturing practice. The agency also proposes to amend 21 CFR 184.1372 *Insoluable glucose isomerase enzyme preparations* by removing the Part 182 citation for high fructose corn syrup (21 CFR 182.1866) and replacing this citation with the new Part 184 citation (21 CFR 184.1866).

Food-grade specifications do not exist for high fructose corn syrup at the present time. The agency will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for this ingredient. When acceptable specifications are developed, the agency will incorporate them into this regulation. Until specifications are developed, FDA has determined that the public health will be adequately protected if commercial high fructose corn syrup complies with the description in the proposed regulation and is of food-grade purity in accordance with 21 CFR 170.30(h)(1) and 182.1(b)(3).

III. Impact Analysis

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substance covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assesment which may be seen in the Dockets Management Branch.

IV. Comments

Interested persons may, on or before January 6, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Evaluation of the Health Aspects of Corn Sugar (Dextrose), Cron Syrup, and Invert Sugar as Food Ingredients" (SCOGS–50), Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1976.

2. "Evaluation of the Health Aspects of Sucrose as a Food Ingredient" (SCOGS–69), Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1976.

3. Glinsmann, W. H., Irausquin, H. and Park, Y. K. "Evaluation of Health Aspects of Sugars Contained in Carbohydrate Sweeteners," Report of Sugars Task Force, 1986, *Journal of Nutrition*, 116 (115):51–5216, 1986.

4. Kirk-Othmer Encyclopedia of Chemical Technology, 3d Ed., Vol. 22, p. 510.

List of Subjects

21 CFR Part 182

Food ingredients, Food packaging, Spices and flavorings.

21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

§ 182.1866 [Removed]

2. Section 182.1866 *High fructose corn syrup* is removed from Subpart B.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

4. Section 184.1372 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 184.1372 Insoluable glucose isomerase enzyme preparations.

(a) Insoluable glucose isomerase enzyme preparations are used in the production of high fructose corn syrup as described in § 184.1866 of this chapter. * * *

* * * * *

5. Section 184.1866 is added to Subpart B to read as follows:

§ 184.1866 High fructose corn syrup.

(a) High fructose corn syrup is a sweet, nutritive saccharide mixture containing approximately 52 percent (dry weight) glucose, 43 percent (dry weight) fructose, and 5 percent (dry weight) other saccharides. It is prepared as a clear aqueous solution from high dextrose equivalent corn starch hydrolysate by partial enzymatic conversion of glucose (dextrose) to fructose utilizing an insoluble glucose isomerase enzyme preparation described in § 184.1372.

(b) FDA is developing food-grade specifications for high fructose corn syrup in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

Dated: October 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25584 Filed 11–4–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Application of the Medicare Economic Index

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend Part 199 of Title 32, the regulation which governs CHAMPUS, by implementing Section 8019 of the Department of Defense Appropriation Act for 1989, Pub. L. 100–463. This section limits increases in the CHAMPUS prevailing charges for physician and other authorized individual providers of medical care to the extent justified by economic changes as reflected in appropriate economic index data similar to that used under Medicare. The amended 32 CFR Part 199 would employ the Medicare Economic Index to limit the increases in prevailing charges.

DATE: Written public comments must be received on or before December 7, 1988.

ADDRESS: Send comments to the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Tariq S. Shahid, Office of Program Development, OCHAMPUS, telephone (303) 361–3587.

To obtain copies of this document, see the *"ADDRESS"* section above.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. The 32 CFR Part 199 (DoD 6010.8–R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

I. Background

Currently, for the services of physicians and other authorized individual professional providers, the regulation provides that the allowable charge for covered care shall be the lower of: (1) The billed charge for the service; or (2) the prevailing charge level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period. Section 8019 of the Department of Defense Appropriation Act for Fiscal Year 1989, Pub. L. 100–463, requires that

> None of the funds contained in this Act available for the Civilian Health and Medical Program of the Uniformed Services under the provisions for section 1079(a) of title 10, United States Code, shall be available for reimbursement of any physician or other authorized individual provider of medical care in excess of the lower of: (a) the eightieth percentile of the customary charges made for similar services in the same locality where the medical care was furnished, as determined for physicians in accordance with section 1079(h) of title 10, United States Code; or (b) the allowable amounts in effect during fiscal year 1988 increased to the extent justified by economic changes as reflected in appropriate economic index data similar to that used pursuant to title XVIII of the Social Security Act.

Accordingly, beginning approximately January 1, 1989, increases in the CHAMPUS prevailing charges in effect during fiscal year 1988 for physicians and other authorized individual providers will be limited based on application of the Medicare Economic Index (MEI).

On September 29, 1988, we published in the **Federal Register** (53 FR 38050) a notice to defer update of CHAMPUS prevailing charge levels for professional services originally to be effective October 1, 1988. This notice specified that the deferral of the update will last for 12 months unless CHAMPUS implements the MEI method to limit growth in prevailing charges.

Effective approximately January 1, 1989, this proposed rule will implement the provisions of Pub. L. 100–463, adopting the MEI under CHAMPUS and lifting the freeze on prevailing charge levels. With the adoption of the MEI, the CHAMPUS fee screen year (the 12 month period beginning on the date the profiles are updated) will also be changed from a fiscal year to a calendar year.

II. Medicare Economic Index (MEI)

In 1972, in response to concerns about rising physician fees reimbursed under Part B of the Medicare program, Congress mandated that an additional fee limit be included in the calculation of "reasonable" charges. Under Section 224 of the Social Security Act Amendments of 1972 (Pub. L. 92–603), the prevailing charge—an amount equal to the maximum reasonable charge allowed physicians for a specific procedure in a specific locality—could exceed the July 1972–June 1973 prevailing charge only by an amount reflected by an index of changes in physicians' operating expenses and earnings levels. This index is known as the Medicare Economic Index (MEI). Under Medicare, in the case of physicians' services only, annual increases in prevailing charges are provided to account for inflation, but only to the extent that there are updates in the MEI. The MEI updates have progressively increased the initial prevailing charge level that was established for the (then) fiscal year ending June 30, 1973.

The Omnibus Budget Reconciliation Act of 1987 established the MEI for 1989 at 3.0 percent for primary care services and 1.0 percent for other services. Primary care services were defined in the accompanying Conference Report to be office medical visits, home medical visits, emergency department services, and skilled nursing, intermediate care, long-term care facility, nursing home, boarding home, domiciliary or custodial care visits.

CHAMPUS will be following the Medicare procedure in this regard, subject to changes based on differences in the CHAMPUS and Medicare programs. Under CHAMPUS, we

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propose that the primary care MEI be applied to all maternity care and delivery procedure codes (CPT–4 codes 59000–59899) and well-baby care (CPT–4 codes 90701–90749, 90753–90757, 90763–90764, 54150, and 54160). Our proposed limited deviation from Medicare's procedure is based on the idea that maternity care and delivery services and well baby care services, which are of little relevance to Medicare, are analogous to the Medicare concept of primary care services.

Medicare makes a variety of adjustments to the MEI in order to accommodate various payment policies not relevant for CHAMPUS. For example, physicians who agree to accept assignment on all Medicare claims for the forthcoming year are known as participating physicians. The prevailing charge limit for nonparticipating physicians is set at a portion of that for participating physicians. Nonparticipating physicians are also subject to a limit on their actual charges. CHAMPUS does not distinguish between participating and nonparticipating physicians for payment amount purposes.

Medicare also provides incentive payments for primary care physicians in underserved rural areas, reduces payments for specified procedures, and makes other adjustments as well. These do not apply to CHAMPUS.

III. Application of the MEI under CHAMPUS.

Currently, the CHAMPUS annual base collection period covers the July 1 through June 30 period as does the Medicare period. However, the CHAMPUS fee screen year currently begins on October 1 while the Medicare fee screen year starts on January 1. With the application of the MEI beginning January 1, 1989, the base collection period will remain the same. However, the CHAMPUS fee screen year will be changed from fiscal year to calendar year for 1989 and subsequent years. This will provide conformity with the Medicare procedures and assurance that future year MEI amounts will be available when needed for the CHAMPUS update.

Consistent with Medicare, CHAMPUS will allow accumulation of the annual MEI increases. If the actual increase in a prevailing charge is less than the indexed amount for that charge, the portion of the indexed amount not used will be carried forward as the basis for justifying increases in that charge in future years. For example, if the indexed amount for a given procedure is $100 but the actual prevailing charge calculated for that procedure is $95, the lower amount ($95) shall be used for payment during that fee screen year. The calculated indexed amount ($100) will be retained by the CHAMPUS fiscal intermediary (FI), however, and the following year, the new MEI percentage would be applied to the previous year's indexed amount ($100) even though it was not used for payment purposes. In essence, this will allow the full advantage of the MEI increases to accumulate yearly. Medicare has been doing this since inception of the MEI.

Essentially, CHAMPUS will modify its method of annual updating prevailing charges for individual professional provider services. In addition to its present method of developing prevailing charges from all charges made by providers during a 12-month base period, CHAMPUS will determine what the prevailing charge would be using the MEI. The CHAMPUS allowable charge would then be the lowest of: (1) The billed charge for the service; (2) the prevailing charge level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period; or (3) the fiscal year 1988 prevailing charge adjusted by the MEI.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated with the Department of Defense, with the Department of Health and Human Services, the Department of Transportation and with other interested agencies, so that consideration of both internal and external comments and publication of the final rulemaking document can be expedited. Regulatory Procedures.

Executive Order 12291 requires that a regulatory impact analyses be performed on any major rule. A "major rule" is defined as one which would result in annual effect on the national economy of $100 million or more or have other significant economic impacts.

The Regulatory Flexibility Act requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have significant impact on a substantial number of small entities.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

The changes set forth in this proposed rule, taken as a whole, would have an annual impact on the professional provider community of substantially less than $100 million. The proposed modification in the professional provider payment mechanism is expected to result in government cost savings of only $25 million in 1989.

It is hereby certified that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, it is not a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1096, 5 U.S.C. 301.

§ 199.14 [Amended]

2. Section 199.14 is amended by revising paragraph (g)(1)(i) introductory text and (A), and adding (g)(1)(i)(c) to read as follows):

(g) * * *

(1) * * *

(i) The allowable charge for authorized care shall be the lowest of the amounts identified in paragraphs (g)(1) (A), (B), and (C) of this section.

(A) The billed charge for the service.

(B) * * *

(C) For charges from physicians and other individual professional providers, the fiscal year 1988 prevailing charges adjusted by the Medicare Economic Index (MEI), as the MEI is applied to Medicare prevailing charge levels.

(*1*) In any year in which the Medicare program applies a different MEI to primary care services, CHAMPUS will include maternity care and delivery services and well baby care services as primary care for the purposes of applying the MEI.

(*2*) The Director, OCHAMPUS, shall issue procedural instructions to apply the MEI under CHAMPUS.

* * * * *

October 28, 1988.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–25366 Filed 11–4–88; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3472–3]

Approval and Promulgation of Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA invites public comment on its proposed approval of a technical amendment to the state-wide sulfur dioxide emission limit as a revision to the Washington state implementation plan (SIP). This amendment clarifies the averaging time for the state sulfur dioxide emission limit in WAC 173–400–040(6). EPA is also proposing to rescind two exception provisions to the sulfur dioxide emission limit (WAC 173–400–040(6)(a) (i) and (ii)) from the currently-approved Washington SIP. This revision was submitted on April 28, 1983, by the Washington Department of Ecology to satisfy the requirements of section 110 of the Clean Air Act (hereinafter the Act).

DATE: Comments must be postmarked on or before December 7, 1988.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–88–4), Environmental Protection Agency, 1200 Sixth Avenue AT–082 Seattle, Washington 98101.

State of Washington, Department of Ecology 4224–6th Avenue SE. Rowe Six, Building No. 4, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: David C. Bray Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 1979, the State of Washington Department of Ecology (WDOC) submitted a state-wide emission limitation for sulfur dioxide as a revision to the Washington SIP. On June 5, 1980 (45 FR 37821), EPA approved this emission limit on the condition that WDOE submit source test and compliance procedures for enforcing the emission limit. On July 31, 1980, and January 13, 1981, WDOE submitted source test methods and compliance procedures as revisions to the Washington SIP. EPA approved these revisions to the Washington SIP on September 14, 1981 (46 FR 45607).

On April 28, 1983, WDOE submitted a technical amendment to the sulfur dioxide emission limit as a revision to the Washington SIP. This technical amendment clarified the averaging time for the sulfur dioxide emission limit.

II. Discussion

The 1981 version of the Washington sulfur dioxide emission limit did not specify an averaging time as part of the regulation itself (WAC 173–400–040(6)). However, Section III–D "Description of the Source Test Program for the State Implementation Plan" of the "Washington State Implementation Plan for Compliance with Requirements of the Federal Clean Air Act," set forth the source test methods, minimum sample durations and minimum number of samples to be used for compliance determinations. In accordance with this section, compliance with the sulfur dioxide emission limit was to be determined by a minimum of three Method 6 source samples, each with a minimum sample duration of 15 minutes or one process cycle, whichever was greater.

Because the SIP specified minimum sample durations and minimum number of samples, uncertainties arose with respect to the actual averaging time to be used for compliance with the sulfur dioxide emission limit. In 1983, WDOE decided to clarify the averaging time for the sulfur dioxide emission limit by specifically including it in the regulation. WAC 173–400–040(6) was amended to specify that compliance was based on the average of any period of sixty consecutive minutes. WDOE submitted the amended sulfur dioxide emission limit to EPA as a revision to the Washington SIP on April 28, 1983.

EPA has determined that this 60-minute average is functionally equivalent and as stringent as the current compliance methodology. Furthermore, it is a better approach from both a legal and practicable standpoint since the averaging time is specified in the regulation itself rather than elsewhere in the Washington SIP. EPA, therefore, is proposing to approve this amendment to the sulfur dioxide emission limit as a revision to the Washington SIP.

The April 28, 1983, amendments to the sulfur dioxide emission limit also included changes to the two exception provisions which EPA approved on June 5, 1980, and September 14, 1981. Because these exemption provisions are inconsistent with section 110(i) of the Act, EPA is proposing to take no action on the changes in the April 28, 1983, submittal and to rescind the current exception provisions from the Washington SIP.

Section 110(i) of the Act clearly states that, with certain exceptions, only revisions submitted to, and approved by, the EPA Administrator can change an applicable requirement of a SIP. When EPA approved the two exemption provisions in the WDOE sulfur dioxide emission limit it specifically stated that "Any specific action taken by a State official, even if authorized under procedures approved by EPA, shall not modify the Federally approved SIP unless submitted to and approved by EPA as a separate revision to the SIP * * *. Thus, while EPA may approve the procedures a State employs to modify the SIP, it does not thereby approve individual actions which may be taken under thse procedures." (45 FR 37835, June 5, 1980).

Since there is no requirement for the SIP to contain exception provisions, but rather, any exception must be submitted as an individual SIP revision, EPA is proposing to take no action on the amendments to the two sulfur dioxide exception provisions in WAC 173–400–040(6). In addition, since the current exception provisions are not consistent with the Act's requirements for an approvable SIP revision since they do not address the requirements for prevention of significant deterioration or visibility protection, EPA is hereby proposing to rescind its previous approval of these exception provisions (WAC 173–400–040(6)(a) (i) and (ii)).

III. Summary of Action

In summary, EPA is proposing to approve WAC 173–400–040(6), except paragraphs (a) and (b), as a revision to the Washington SIP. EPA is also proposing to rescind the pre-existing exception provisions (WAC 173–400–040(6)(a) (i) and (ii)) from the Washington SIP.

Interested parties are invited to comment on all aspects of this proposed appoval and rescission. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by December 7, 1988, will be considered in the final rulemaking action take by EPA.

III. Administrative Review

The Ofice of Management and Budget has exempted this rule from the

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requirements of section 3 of Executive Rule 12291.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Authority: 42 U.S.C. 7401–7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particualte matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: August 8, 1988.

Robi G. Russell,

Regional Administrator.

[FR Doc. 88–25691 Filed 11–4–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[FRL 3443–7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 CFR 81.350, for a sub-city area in the City of Racine, Racine County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). The intent of this notice is to discuss the results of USEPA's review of the Wisconsin Department of Natural Resources (WDNR) redesignation request and to provide an opportunity for the public to comment on it and USEPA's proposed action. Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA will continue to process TSP redesignation requests because various regulatory provisions remain tied to an attainment status.

USEPA is proposing to disapprove Wisconsin's redesignation request because the WDNR failed to provide any evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, permanent, and resulted in the decrease in ambient concentrations, and (3) disperson techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Desigantion Policy Summary" from Sheldon Meyers, then Director, Officer of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 7, 1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993, October 5, 1978, and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Racine, Wisconsin, was designated as not attaining the TSP standard. On July 23, 1987, pursuant section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Racine [1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP SIP was required which satisfied the requirements of section 110(a) and Part D of the CAA which involved providing for attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). USEPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682, column 1) described USEPA's transition policy regarding TSP redesignations.

According to USEPA's transition policy, TSP redesignation requests will be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985.

USEPA's specific criteria for TSP redesignatons, as identified in these policies, and USEPA's analysis of Wisconsin's request under these criteria are as follows:

Criterion 1

Violation-free Monitoring Data

Eight consecutive quarters of the most recent representative air quality data must reveal no violations of the TSP NAAQS. Monitors must be placed at the points of expected maximum TSP impact.

WDNR submitted three years of violation-free data for four sites in Racine and two years of data from an additional two sites in Racine. However, the WDNR failed to address the representativess of the monitoring network at expected maximum TSP impact sites. At a minimum, the WDNR should have provided a map showing both emission sources and monitor locations. If monitors are not at worst-case locations, dispersion modeling should have been used to support the redesignation.

[1] The Racine sub-city nonattainment area is defined as follows:

North: Douglas Avenue north from Marquette St. To Rapida Drive, northwest on Rapids Drive to intersection with Forest St. west to intersection with west boundary.

West: North from corner of Grange Avenue and Washington Avenue north to Freres Avenue north to intersection with north boundary.

South: Washington Avenue west from Grange Avenue to Marquette Street.

East: Marquette street north from Washington Avenue to Douglas Avenue.

Criterion 2

Implementation of USEPA-approved Control Strategy

The USEPA-approved control strategy (i.e., Wisconsin State Implementation Plan (SIP)) must have been implemented. The improvement in monitored readings for TSP (since the base year used for the nonattainment designation) must be attributable to enforceable or permanent emission reduction implemented since that year.

WDNR failed to provide any reason for the air quality improvement. The WDNR should have discussed the reasons for the original secondary nonattainment designation; the control strategies implemented which resulted in cleaner air; the federal enforceability of the control strategies; and the complete implementation of the SIP (i.e., no sources out of compliance).

Criterion 3

Permanent Emission Reductions

Emission reductions and improvement in air quality must not be temporary or merely the result of economic downturn. It must be shown that it is highly unlikely that emission rates will increase significantly at any units operating below their allowable emission rates (e.g., because economic, technological or regulatory factors would prevent such increases). There must also be a showing that it is unlikely that production levels will increase significantly.

WDNR failed to disuss how the air quality standards will be maintained in the future. At a minimum, WDNR should have provided historical operating rates and historical actual emissions and discussed why emission increases are unlikely. Current allowable emissions should also have been provided. It sources are emitting at levels significantly below their allowable limits, then a modeled attainment demonstration would be required to demonstrate attainment if sources were to emit at allowable levels in the future. For any permanent source shutdowns, WDNR should have documented that, if such a source were to start up in the future, the source would be required to undergo new source review (NSR) procedures.

Criterion 4

Dispersion Techniques

Dispersion techniques, which are not creditable according to the revised section 123 regulations (50 FR 27892), cannot be responsible for the improvement in air quality.

WDNR failed to address dispersion techniques. WDNR should have reviewed all TSP sources and documented that dispersion techniques were not responsible for the improvement in air quality.

Conclusion

WSEPA proposes to disapprove the redesignation request for a sub-city nonattainment area of Racine, Wisconsin, because the WDNR did not document the reasons for air quality improvement in Racine; nor did it document, or make a finding, as to whether current air quality will be maintained.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. 605(b), I certify that this proposed disapproval of Wisconsin's redesignation request will not have a significant economic impact on a substantial number of small entities because it applies only to a sub-city area of Racine, Wisconsin, and imposes no new requirements on anyone.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: December 16, 1987.

Frank M. Covington,

Acting Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register November 2, 1988.

[FR Doc. 88–25690 Filed 11–4–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

Health Education Assistance Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise existing regulations governing the Health Education Assistance Loan (HEAL) program to identify those allied health disciplines that are eligible for participation in the HEAL-program, in accordance with amendments made to the Public Health Service Act (the Act) by the Health Professions Training Assistance Act of 1985.

DATE: As discussed below, comments are invited. To be considered, comments must be received by January 6, 1989.

ADDRESSES: Written comments should be addressed to J. Jarrett Clinton, M.D., Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301 443–4540.

SUPPLEMENTARY INFORMATION: The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129) amended the HEAL statute to include graduate students in schools of allied health as eligible for HEAL loans. To implement this statutory change, the Secretary is proposing in these regulations to specify the allied health disciplines that would qualify for participation in the HEAL program.

Interested persons are invited to submit written comments on these proposed revisions to the HEAL regulations. Written comments should be directed to the Director of the Bureau of Health Professions at the address given above.

The proposed revisions are summarized below according to the Subparts, section numbers, and headings of the HEAL regulations affected.

Subpart A—General Program Description

Section 60.1 What is the HEAL program?

The Department is proposing to revise paragraph (a) of this section to state that master's and doctoral level students in

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the allied health disciplines listed in § 60.5(b) are eligible for HEAL loans.

Subpart B—The Borrower

Section 60.5 Who is an eligible student borrower?

The Department is proposing to revise paragraph (b) of this section to list the allied health programs in which a student borrower must be enrolled or accepted for enrollment to be eligible to receive HEAL funds. The allied health fields proposed for eligibility are audiology, occupational therapy, physical therapy, physician assistant, and speech-language pathology. An explanation of how the Department determined which allied health disciplines would be eligible for participation in the HEAL program is provided below under § 60.50.

Subpart C—The Loan

Section 60.11 Terms of repayment.

The Department is proposing to revise paragraph (a)(2) to include the approved accrediting agencies for allied health internship or residency programs. This is necessary to determine whether activities engaged in by eligible allied health borrowers qualify for deferment.

Subpart E—The School

Section 60.50 Which schools are eligible to be HEAL schools?

The Department is proposing to redesignate existing paragraph (a)(1) of this section as paragraph (a)(1)(i), and revise this paragraph to state that schools offering degrees in medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, chiropractic, health administration, and clinical psychology are not considered schools of allied health. This is consistent with the Act, which defines "allied health professionals" as excluding individuals who have received a degree in any of these disciplines.

A new proposed paragraph (a)(1)(ii) is also being added to this section which would require that, to qualify for participation in the HEAL program, a school of allied health must be a program in a public or nonprofit private college or university which: (1) Provides a program of education in an allied health discipline eligible to participate in the HEAL program leading to a master's or doctoral degree; (2) provides training for not less than a total of 20 persons in the graduate allied health discipline eligible to participate in the HEAL program; (3) includes or is affiliated with a teaching hospital; and (4) is legally authorized within a State to conduct a course of study leading to a master's or doctoral degree in audiology, occupational therapy, physical therapy, physician assistant, or speech-language pathology.

The first three criteria reflect the definitions of "school of allied health" set forth in sections 737(4) and 701(10) of the Act. Section 701(13) of the Act further defines an "allied health professional" as an individual who: (1) Has received a degree in a science related to health care; (2) shares in the responsibility for the delivery of health care services or related services; and (3) has not received a degree in a discipline already eligible to participate in the HEAL program. As defined in the Act, neither "school of allied health" nor "allied health professional" identifies specific health disciplines that qualify as allied health. However, § 60.50(a)(2)(i) of the existing HEAL regulations requires that a HEAL school must be accredited by a recognized agency approved for that course of study by the Secretary of Education. Accordingly, the fourth criterion identifies those allied health disciplines with master's or doctoral programs which are accredited by approved specialized accrediting agencies and thus have the ability to meet the accreditation requirements of the HEAL program.

Paragraph (a)(2)(ii) is also proposed to be amended by adding those accrediting agencies which are approved for the eligible allied health disciplines.

In addition to the changes proposed above for this section, this NPRM would revise the term "State" by inserting after the "Trust Territory of the Pacific Islands" those entities, for purposes of this loan program, which are viewed as a State—the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia—in accordance with Pub. L. 99–239, the Compact of Free Association Act of 1985, enacted on January 14, 1986.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed requirements in these regulations are minimal in comparison to the overall resources of the lenders and the schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL lenders and schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the proposed rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

This proposed rule does not affect the recordkeeping, reporting, or disclosure/notification requirements for the HEAL program.

List of Subjects in 42 CFR Part 60

Educational study programs, Health professions, Loan programs—education, Loan programs—health, Medical and dental schools, Reporting requirements, Student aid.

Dated: September 23, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: October 19, 1988.

Otis R. Bowen,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.108, Health Education Assistance Loan Program)

Accordingly, 42 CFR Part 60 is proposed to be revised as follows:

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The authority citation for 42 CFR Part 60 continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–739 of the Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 582, 99 State. 529–532 (42 U.S.C. 294–294*l*).

2. Section 60.1, in Subpart A is amended by revising paragraph (a) to read as follows:

Subpart A—General Program Description

§ 60.1 What is the HEAL program?

(a) The Health Education Assistance Loan (HEAL) program is a program of Federal insurance of educational loans to graduate students in the fields of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, chiropractic, health administration, clinical psychology, and the allied health disciplines listed in § 60.5(b). The purpose of the program is to encourage lenders to make loans to students in these fields who desire to borrow money to pay for their educational costs. In addition, certain nonstudents (such as physicians serving as interns or residents) can borrow to pay the current interest charges accruing on previous HEAL loans. By taking a HEAL loan, the borrower is obligated to repay the lender the full amount of the money borrowed, plus all interest which accrues on the loan.

* * * * *

3. Section 60.5, in Subpart B is amended by revising paragraph (b) to read as follows:

Subpart B—The Borrower

§ 60.5 Who is an eligible student borrower?

* * * * *

(b) He or she must be enrolled or accepted for enrollment at a HEAL school in a course of study that leads to one of the following degrees:

Doctor of Medicine.
Doctor of Osteopathic Medicine.
Doctor of Dentistry or equivalent degree.
Doctor of Veterinary Medicine or equivalent degree.
Doctor of Optometry or equivalent degree.
Doctor of Podiatric Medicine or equivalent degree.
Bachelor or Master of Science in Pharmacy or equivalent degree.
Graduate or equivalent degree in Public Health.
Doctor of Chiropractic or equivalent degree.
Doctoral degree of Clinical Psychology or equivalent degree.
Master's or doctoral degree in Health Administration.
Master's or doctoral degree in Audiology.
Master's or doctoral degree in Occupational Therapy.
Master's or doctoral degree in Physical Therapy.
Master's or doctoral degree in Physician Assistant.
Master's or doctoral degree in Speech-Language Pathology.

* * * * *

4. Section 60.11, in Subpart C is amended by adding paragraphs (a)(2)(x), (xi), and (xii) to read as follows:

Subpart C—The Loan

§ 60.11 Terms of repayment.

(a) * * *

(2) * * *

(x) Council on Professional Standards in Speech-Language Pathology and Audiology.

(xi) Committee on Allied Health Education and Accreditation (for occupational therapy and physician assistant).

(xii) Commission of Accreditation in Education of the American Physical Therapy Association.

* * * * *

(5) Section 60.50, in Subpart E is amended by revising paragraph (a)(1), and by adding paragraphs (a)(2)(ii)(L), (M), and (N) to read as follows:

Subpart E—The School

§ 60.50 Which schools are eligible to be HEAL schools?

(a) * * *

(1)(i) If the school is not an allied health school, the school must be legally authorized within a State to conduct a course of study leading to one of the following degrees:

Doctor of Medicine.
Doctor of Osteopathic Medicine.
Doctor of Dentistry or equivalent degree.
Doctor of Veterinary Medicine or equivalent degree.
Doctor of Optometry or equivalent degree.
Doctor of Podiatric Medicine or equivalent degree.
Bachelor or Master of Science in Pharmacy or equivalent degree.
Graduate or equivalent degree in Public Health.
Doctor of Chiropractic or equivalent degree.
Doctoral degree of Clinical Psychology or equivalent degree.
Master's or doctoral degree in Health Administration.

(ii) If the school is an allied health school, it must be a program in a public or nonprofit private college or university which:

(A) Provides a program of education in an allied health discipline eligible to participate in the HEAL program leading to a master's or doctoral degree;

(B) Provides training for not less than a total of 20 persons in the graduate allied health discipline eligible to participate in the HEAL program;

(C) Includes or is affiliated with a teaching hospital; and

(D) Is legally authorized within a State to conduct a course of study leading to one of the following degrees:

Master's or doctoral degree in Audiology.
Master's or doctoral degree in Occupational Therapy.
Master's or doctoral degree in Physical Therapy.
Master's or doctoral degree in Physician Assistant.
Master's or doctoral degree in Speech-Language Pathology.

(iii) For purposes of this section, the term "State" includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

(2) * * *

(ii) * * *

(L) Council on Professional Standards in Speech-Language Pathology and Audiology.

(M) Committee on Allied Health Education and Accreditation (for occupational therapy and physician assistant).

(N) Commission of Accreditation in Education of the American Physical Therapy Association.

* * * * *

[FR Doc. 88–25697 Filed 11–4–88; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA–6941]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of

1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E. O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
COLORADO	
Edgewater (town), Jefferson County	
Upper Sloans Lake Basin Drainageway:	
Approximately 1,515 feet downstream of the intersection of West 20th Avenue and Ingalls Street	*5333
Approximately 80 feet downstream of the intersection of West 20th Avenue and Jay Street	*5351
Approximately 50 feet downstream of West 20th Avenue and Pierce Street	*5384
Approximately 650 feet upstream of Pierce Street	*5409
Maps are available for review at the City Clerk's Office, City Hall, 5845 West 25th Avenue, Edgewater, Colorado. Send comments to The Honorable Keith Daly, Mayor, City of Edgewater, City Hall, 5845 West 25th Avenue, Edgewater, Colorado 80214.	
Gunnison County (unincorporated areas)	
Tomichi Creek:	
At confluence with Gunnison River	*7602
Just upstream of bridge crossing which is located approximately 10,900 feet above the confluence with Gunnison River	*7637
Approximately 14,800 feet upstream of bridge crossing that is located approximately 10,900 feet above the confluence with Gunnison River	*7686
Gunnison River:	
At McCabe Bridge	*7571
Approximately 2,550 feet upstream of Footbridge	*7600
Just upstream of the westbound lane of U.S. Route 50	*7646
At confluence of Antelope Creek	*7662
At confluence of Ohio Creek	*7729
Approximately 50 feet upstream of State Route 135	*7763
North Fork Gunnison River:	
Just upstream of the Delta County Line	*5898
Approximately 4,525 feet downstream of Somerset Bridge	*5955
Approximately 1,570 feet upstream of Somerset Bridge	*6020
Maps are available for review at the Office of County Planning, 200 East Virginia Avenue, Gunnison, Colorado. Send comments to The Honorable David Leinsdorf, Chairman, Gunnison County Board of Commissioners, 200 East Virginia Avenue, Gunnison, Colorado 81230.	
Sedgwick (town), Sedgwick County	
South Platte River:	
Approximately 800 feet upstream of State Highway 59	*3581
Approximately 3,600 feet upstream of State Highway 59	*3585
Maps are available for review at the City Offices, City Hall, 22 McKinstry Avenue, Sedgwick County. Please send comments to The Honorable Robert Saya, Mayor, City of Sedgwick, P.O. Box #27, 22 McKinstry Avenue, Sedgwick, Colorado 80749.	
IDAHO	
Glenns Ferry (city), Elmore County	
Little Canyon Creek:	
Approximately 2,600 feet downstream of Boise Street	*2534
Approximately 225 feet downstream of Boise Street	*2543
Approximately 100 feet downstream of the Union Pacific Railroad Bridge	*2552
Approximately 175 feet upstream of First Avenue	*2580
Approximately 1,200 feet upstream of U.S. Highway 20 & 30	*2562
Maps are available for review at City Hall, 204 E. Second AVenue, Glenns Ferry, Idaho. Send comments to The Honorable Dayle Messerly, Mayor, City of Glenns Ferry, Box 910, Glenns Ferry, Idaho 83623.	
Nezperce (city), Lewis County	
Long Hollow Creek:	
Approximately 1,180 feet downstream of 4th Avenue	*3199
At Fifth Avenue	*3203
Approximately 250 feet upstream of Maple Street	*3208
Maps are available for review at City Hall, 502 Fifth Street, Nezperce, Idaho. Send comments to The Honorable Jerry Elven, Mayor, City of Nezperce, City Hall, 502 Fifth Street, Nezperce, Idaho 83543.	
ILLINOIS	
Sainte Marie (village), Jasper County	
Embarras River:	
About 2.0 miles downstream of County Route 9	*471
About 1300 feet upstream of County Route 9	*474
Maps available for inspection at the Post Office, Sainte Marie, Illinois. Send comments to The Honorable Edward R. Stone, Village President, Village of Sainte, Marie, P.O. Box 57, Sainte Marie, Illinois 62459–0057.	
IOWA	
Williamsburg (city), Iowa County	
Old Mans Creek:	
About 1.2 miles downstream of State Street	*754
About 0.75 miles upstream of Highland Street	*766
Maps available for inspection at City Hall, 210 West State, Williamsburg, Iowa. Send comments to The Honorable Terrance Stone, Mayor, City of Williamsburg, City Hall, 210 West State, Williamsburg, Iowa 52361.	
KANSAS	
Arlington (city), Reno County	
North Fork Ninnescha River:	
About 0.96 mile downstream of Main Street	*1564
Just downstream of State Highway 61	*1573
Just upstream of the St. Louis Southwestern Railway	*1586
Just upstream of Sego Road	*1586
Maps available for inspection at City Offices, Arlington, Kansas. Send comments to The Honorable Donald Moore, Mayor, City of Arlington, P.O. Box 377, Arlington, Kansas 67514	
Pretty Prairie (city), Reno County	
Smoots Creek:	
Just upstream of Pretty Prairie Road	*1562
Just downstream of Dean Road	*1585
Smoots Creek Tributary:	
Just downstream of Main Street	*1566
Just downstream of Pretty Prairie Road	*1562
Maps available for inspection at City Offices, 105 Plum Street, Pretty Prairie, Kansas. Send comments to The Honorable Eric J. Zacherias, Mayor, City of Pretty Prarie, City Offices, 105 Plum Street, Pretty Prairie, Kansas 67570.	
South Hutchinson (city), Reno County	
Arkansas River:	
About 500 feet downstream of Atchison, Topeka, and Santa Fe Railway	*1536
About 900 feet upstream of Atchison, Topeka, and Santa Fe Railway	*1538
Maps available for inspection at City Offices, 2 South Main Street, South Hutchinson, Kansas. Send comments to The Honorable Erwin Leeper, Mayor, City of South Hutchinson, 2 South Main Street, South Hutchinson, Kansas 67505.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Turon (city), Reno County	
Silver Creek Tributary:	
About 1860 feet upstream of Brownlee Road	*1742
About 2450 feet upstream of Brownlee Road	*1745
Maps available for inspection at City Hall, Turon, Kansas. Send comments to The Honorable Vernon Barr, Mayor, City of Turon, City Hall, P.O. Box 366, Turon, Kansas 67583.	
MAINE	
Millinocket (town), Penobscot County	
Millinocket Stream:	
Approximately 150 feet downstream of Granite Street bridge	*346
At upstream corporate limits	*354
Little Smith Brook:	
At confluence with Millinocket Stream	*352
At upstream corporate Limits	*364
Ledge Cut Brook:	
At confluence with Little Smith Brook	*362
At upstream corporate limits	*404
Maps available for inspection at the Planning Department, Town Hall, Millinocket, Maine.	
Send comments to The Honorable William Ayaub, Chairman of the Town of Millinocket Board of Selectment, Penobscot County, P.O. Box 959, Millinocket, Maine 04462.	
MASSACHUSETTS	
Chesterfield (town), Hampshire County	
Westfield River:	
At downstream corporate limits	*810
Approximately 0.53 miles upstream of confluence of Jewel Brook	*897
Maps available for inspection at the Town Selectmen's Office, Town Office Building, Chesterfield, Massachusetts.	
Send comments to The Honorable Arthur Smith, Chairman of the Board of Selectmen, Hampshire County, Town Office Building, P.O. Box 3, Chesterfield, Massachusetts 01012.	
MICHIGAN	
Northport (village), Leelanau County	
Northport Creek:	
At mouth	*584
Just downstream of Pond Street	*593
Just upstream of Pond Street	*598
Just downstream of Third Street	*598
Just upstream of Third Street	*612
About 500 feet upstream of Third Street	*612
Northport Bay: Along shoreline	*584
Maps available for inspection at the Village Hall, 116 West Nagomeba, Northport, Michigan.	
Send comments to The Honorable Edward S. Reinsch, Village President, Village of Northport, Village Hall, Box 336, 116 West Nagomeba, Northport, Michigan 49670.	
Scio (township), Washtenaw County	
Honey Creek:	
At mouth	*808
About 0.85 mile upstream of Liberty Road	*903
Honey Creek Tributary 1:	
At mouth	*852
About 550 feet upstream of Jackson Road	*867
Honey Creek Tributary 2:	
At mouth	*862
About 200 feet downstream of Private Drive	*876
Honey Creek Tributary 3:	
At mouth	*876
About 2,170 feet upstream of Honey Run Drive	*890
Maps available for inspection at the Township Hall, 827 North Zeeb, Ann Arbor, Michigan.	
Send comments to The Honorable Richard A. DeLong, Supervisor, Township of Scio, Township Hall, 827 North Zeeb, Ann Arbor, Michigan 48103.	
MONTANA	
Hamilton (city), Ravalli County	
Bitterroot River:	
Just upstream of U.S. Route 93	*3,514
Approximately 4,950 feet downstream of West Bridge Road	*3,531
At the Cornelius Canal headgate located approximately 1,750 feet downstream of West Bridge Road	*3,540
Approximately 4,250 feet upstream of West Bridge Road	*3,556
Maps available for review at the Hamilton City Office, City Hall, 175 South 3rd Street, Hamilton, Montana.	
Send comments to The Honorable James Whitlock, Mayor, City of Hamilton, 175 South 3rd Street, Hamilton, Montana 59840.	
NEW HAMPSHIRE	
Gilford (town), Belknap County	
Gunstock Brook:	
At upstream side of State Route 11B	*506
Approximately 2,050 feet upstream of Alvah Wilson Road	*749
Gunstock Brook Tributary:	
At confluence with Gunstock Brook	*516
Approximately 175 feet upstream of State Route 11B	*537
Lake Winnipesaukee: Entire shoreline within community	*506
Maps available for inspection at the Town Office, 88 Belknap Mountain Road, Gilford, New Hampshire.	
Send comments to The Honorable David R. Caron, Administrator of the Town of Gilford, Belknap County, 88 Belknap Mountain Road, Gilford, New Hampshire 03246.	
NEW YORK	
Coeymans (town), Albany County	
Coeymans Creek:	
At CONRAIL culvert	*79
At upstream corporate limits	*95
Feuri Spruyt:	
At downstream corporate limits	*408
Approximately 30 feet downstream of County Route 301 culvert	*428
At upstream side of Biera Road culvert	*457
Approximately 0.5 mile upstream of Biera Road culvert	*490
Approximately 1.0 mile upstream of Biera Road culvert	*531
Hannacroix Creek:	
At downstream corporate limits	*306
Approximately 100 feet upstream of the first crossing of State Route 143	*326
At upstream side of County Route 106	*354
At upstream side of second crossing of State Route 143	*398
Approximately 1.1 miles upstream of upstream State Route 143 crossing	*450
At upstream side of first crossing of County Route 111	*504
At upstream side of second crossing of County Route 111	*549
Approximately 990 feet downstream of third crossing of County Route 111	*570
At Alcove Reservoir Dam	*621
Hudson River:	
At downstream corporate limits	*16
AT upstream corporate limits	*18
Maps available for inspection at the Supervisor's Office, Russell Street, Ravena, New York.	
Send comments to The Honorable Winthrop Irwin, Supervisor of the Town of Coeymans, Albany County, Supervisor's Office, Russell Street, Ravena, New York 12143.	
Westerlo (town), Albany County	
Basic Creek:	
At corporate limits	*767
At upstream side of County Route 1	*1,145
Approximately 330 feet downstream of State Route 85	*1,358
Eighmile Creek:	
At corporate limits	*861
At upstream side of Forst County Route 402 coresing	*1,184
Approximately 1,730 feet upstream of the third County Route 402 crossing	*1,267
Hannacroix Creek:	
At downstream corporate limits	*627
At upstream side of Tan Hollow Road	*810
At upstream corporate limits	*886
Maps available for inspection at the Town Hall, Westerlo, New York.	
Send comments to The Honorable Richard Rapp, Supervisor of the Town of Westerlo, Albany County, Box 148, Westerlo, New York 12193.	
OREGON	
Crook County (unincorporated areas)	
Crooked River:	
Approximately 1,600 feet downstream of the confluence with Ochoco Creek	*2,829
Approximately 1,000 feet downstream of Ochoco Highway 41	*2,848
Approximately 325 feet upstream of Ochoco Highway 41	*2,850
Approximately 1,300 feet upstream of the confluence with the Juniper Canyon Constructed Channel	*2,862
Ochoco Creek:	
At the confluence with Crooked River	*2,831
Approximately 350 feet downstream of Harwood Street	*2,852
At Combellet Road	*2,884
Approximately 90 feet downstream of the confluence with Johnson Creek	*2,923
Approximately 50 feet upstream of Wayland Road	*3,001
Maps are available for review at the Crook County Courthouse, 300 East Third, Prineville, Oregon.	
Send comments to The Honorable Dick Hoppes, Chairman, Crook County Board of Commissioners, Crook County Courthouse, 300 East Third, Prineville, Oregon 97754.	
Jefferson County (unincorporated areas)	
Willow Creek:	
Approximately 400 feet upstream of the Burlington Northern Railroad	*2,229
Approximately 1,200 feet upstream of the Burlington Northern Railroad	*2,232
Approximately 1,350 feet upstream of C Street	*2,252
Approximately 1,900 feet upstream of C Street	*2,254
Approximately 3,000 feet upstream of C Street	*2,261
Approximately 40 feet downstream of McTaggert Road	*2,268
Approximately 3,000 feet upstream bl McTaggert Road	*2,287
Unnamed Stream Through Culver: Approximately 2,000 feet south of the intersection of the Burlington Northern Railroad and Highland lane (just east of the Railroad Tracks)	#1
Maps are available for review at the Jefferson County Courthouse, 657 C Street, Madras, Oregon.	
Send comments to The Honorable Herschel Read, Judge, Jefferson County, County Courthouse, 657 C Street, Madras, Oregon 97741.	
Prineville (city), Crook County	
Crooked River:	
Approximately 950 feet downstream of Ochoco Highway 41	*2,848
Approximately 325 feet upstream of Ochoco Highway 41	*2,850
Approximately 5,200 feet upstream of Ochoco Highway 41	*2,856
Ochoco Creek:	
Approximately 1,200 feet upstream of Gardner Road	*2,846
On the upstream side of North Elm Street	*2,867

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Combaflat Road	*2,884
Maps are available for review at City Hall, 400 East Third, Prineville, Oregon.	
Send comments to the Honorable Wallace Boe, Mayor, City of Prineville, 400 East Third, Prineville, Oregon 97754.	
Wheeler County (unincorporated areas)	
Bridge Creek:	
Approximately 1,400 feet downstream of the downstream crossing of U.S. Highway 26	*2,581
Approximately 1,500 feet downstream of the upstream crossing of U.S. Highway 26	*2,650
At western corporate limits of the City of Mitchell	*2,710
Keyes Creek:	
Approximately 500 feet upstream of Prairie Road	*2,861
Approximately 1,500 feet upstream of Prairie Road	*2,895
Maps are available for review at the Wheeler County Courthouse, Fourth and Adams Streets, Fossil, Oregon.	
Send comments to Judge Albert Lee Hoover, Wheeler County Courthouse, Fourth and Adams Streets, Fossil, Oregon 97830.	
PENNSYLVANIA	
Bell (township), Clearfield County	
West Branch Susquehanna River:	
Approximately .4 mile downstream of Mahaffey (Borough) corporate limits	*1,262
Approximately 1,500 feet upstream of State Highway 322	*1,297
Cheat Creek:	
At confluence with West Branch Susquehanna River	*1,271
Approximately 1,250 feet upstream of T-324	*1,276
Bear Run:	
At confluence with West Branch Susquehanna River	*1,290
Approximately 1,140 feet upstream of State Highway 36	*1,322
Maps available for inspection at the home of Twila Peterson, Township Secretary, R.D. 1, Mahaffey, Pennsylvania.	
Send comments to The Honorable Lynn Bouch, Chairman of the Township of Bell Board of Supervisors, Clearfield County, R.D. 1, Mahaffey, Pennsylvania 15757.	
Berwick (borough), Columbia County	
Susquehanna River:	
At downstream corporate limits	*493
At upstream corporate limits	*50C
East Branch Briar Creek:	
At downstream corporate limits	*51C
At North Warren Street	*531
At approximately 0.14 mile upstream from upstream corporate limits	*534
Glen Brook:	
At downstream corporate limits	*546
At approximately 180 feet upstream from upstream corporate limits	*587
Maps available for inspection at the Municipal Building, 344 Market Street, Berwick, Pennsylvania.	
Send comments to The Honorable Kirk Bower, President of the Borough of Berwick Council, Columbia County, 344 Market Street, Berwick, Pennsylvania 18603.	
Coalmont (borough), Huntingdon County	
Shoup Run:	
Approximately 1,530 feet downstream of State Route 913	*1,065
Approximately 640 feet upstream of confluence with unnamed tributary to Shoup Run	*1,124
Coal Bank Run:	
At confluence with Shoup Run	*1,095
Approximately 30 feet upstream of Watson Street culvert	*1,116
Unnamed Tributary to Shoup Run:	
At confluence with Shoup Run	*1,113
Approximately 445 feet upstream of State Route 913 culvert	*1,142
Maps available for inspection at the Coalmont Borough Building, Schell Street, Coalmont, Pennsylvania.	
Send comments to The Honorable S. Gene Buesard, President of the Borough of Coalmont Council, Huntingdon County, R.D. 1, Saxton, Pennsylvania 16678.	
Fishing Creek (township), Columbia County	
Fishing Creek:	
Approximately 500 feet downstream of downstream corporate limits	*607
Upstream side of L.R. 19067	*662
At upstream corporate limits	*723
Huntington Creek:	
At confluence with Fishing Creek	*625
Approximately 560 feet upstream of Mill Dam	*697
Maps available for inspection at the Township Building, Route 47, Pennsylvania.	
Send comments to The Honorable William W. Beishline, Chairman of Fishing Creek Board of Supervisors, Columbia County, R.D. #1, Stillwater, Pennsylvania 17878.	
Hastings (borough), Cambria County	
Brubaker Run:	
At downstream corporate limits	*1,704
At upstream corporate limits	*1,746
Unnamed Tributary to Brubaker Run:	
At confluence with Brubaker Run	*1,712
Approximately 720 feet upstream of Laurel Drive	*1,737
Maps available for inspection at the Hastings Municipal Building, 5th Avenue, Hastings, Pennsylvania.	
Send comments to The Honorable Mary Bakajza, President of the Borough of Hastings Council, Cambria County, P.O. Box 272, Hastings, Pennsylvania 16646.	
Henderson (township), Huntingdon County	
Juniata River:	
At downstream corporate limits	*599
At upstream corporate limits	*618
Maps available for inspection at the residence of Ms. Carolynne Wilson, Township Secretary, F.D. 4, Box 367A, Huntingdon, Pennsylvania.	
Send comments to The Honorable William Snyder, Chairman of the Township of Henderson Board of Supervisors, Huntingdon County, R.D. 3, Box 223, Huntingdon, Pennsylvania 16652.	
Hopewell (township), Huntingdon County	
Shoup Run:	
Downstream corporate limits	*828
Downstream of State Route 913	*881
Upstream corporate limits	*903
Maps available for inspection at the residence of Ms. Sally Giormesto, Township Secretary, 511 10th Street, Saxton, Pennsylvania.	
Send comments to The Honorable Fred Weaver, Chairman of the Township of Hopewell Board of Supervisors, Huntingdon County, Saxton, Pennsylvania 16678.	
Howard (Borough), Centre County	
Lick Run:	
Approximately 500 feet downstream of Mill Street	*672
Approximately 950 feet upstream of CONRAIL	*703
Maps available for inspection at the Borough Building, Howard, Pennsylvania.	
Send comments to The Honorable Philip Winchell, President of the Borough of Howard Council, Centre County, R.D. 1, Howard, Pennsylvania 16841.	
Howard (Township), Centre County	
Lick Run:	
Approximately 1,150 feet downstream of T-948	*704
Approximately 800 feet upstream of T-948	*747
Maps available for inspection at the Township Building, Howard, Pennsylvania, please contact Dan Lyons at (814) 625-2728.	
Send comments to The Honorable Paul J. Gardner, Chairman of the Township of Howard Board of Supervisors, Centre County, R.D. 1, Box 369, Howard, Pennsylvania 16841.	
Huston (Township), Clearfield County	
Bennett Branch:	
Approximately .9 mile downstream of confluence with Moose Run	*1,227
Approximately 400 feet upstream of confluence with Mountain Run	*1,263
Wilson Run:	
At confluence with Bennett Branch	*1,236
Approximately 400 feet upstream of State Route 153	*1,291
Maps available for inspection at the home of Gail Ann Kalgren, Township Secretary, R.D. 1, Box 4181, Penfield, Pennsylvania.	
Send comments to The Honorable Clyde Llewellyn, Chairman of the Township of Huston Board of Supervisors, Clearfield County, Penfield, Pennsylvania 15849.	
Hyndman (Borough), Bedford County	
Wills Creek:	
Approximately 60 feet downstream of CSX Transportation Railroad bridge	*897
Approximately 50 feet upstream of upstream corporate limits	*970
Approximately 0.3 mile upstream of upstream corporate limits	*986
Maps available for inspection at the Hyndman Senior Citizen Building, Water Street, Hyndman, Pennsylvania.	
Send comments to The Honorable Stanley Robinson, President of the Hyndman Borough Council, Bedford County, Hyndman, Pennsylvania 15545.	
Jackson (Township), Huntingdon County	
Standing Stone Creek:	
Approximately 1,600 feet downstream of State Routes 26 and 305	*727
Approximately 2,000 feet upstream of L.R. 31066	*760
East Branch Standing Stone Creek:	
Approximately 100 feet downstream of L.R. 31056	*741
Approximately 900 feet upstream of L.R. 31056	*760
Maps available for inspection at the residence of Leroy J. Koch, Township Secretary, R.D. 1, Box 456, Petersburg, Pennsylvania 16669.	
Send comments to The Honorable Ralph M Weiler, Chairman of the Township of Jackson Board of Supervisors, Huntingdon County, R.D 1, Petersburg, Pennsylvania 16669.	
Lawrence (Township), Clearfield County	
Moose Creek:	
At L.R. 17052	*1,101
Approximately 1,200 feet upstream of U.S. Route 322	*1,259
Montgomery Creek:	
At CSX transportation	*1,112
Approximately 300 feet upstream of T-506	*1,167
West Branch Susquehanna River:	
At downstream corporate limits of Clearfield Borough	*1,097
At upstream corporate limits of Clearfield Borough	*1,106
Maps available for inspection at the Township Building, Clearfield, Pennsylvania.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Daniel Duckett, Chairman of the Township of Lawrence Board of Supervisors, Clearfield County, Box 508, Clearfield, Pennsylvania 16830.	
Logan (township), Huntingdon County	
Juniata River:	
At confluence of Shaver Creek	*675
At confluence of Frankstown Branch Juniata River	*679
Shaver Creek: From the confluence with the Juniata River upstream for approximately 1 mile (backwater from Juniata River)	*675
Little Juniata River:	
At confluence with Frankstown Branch Juniata River and Juniata River	*679
At upstream corporate limits	*702
Maps available for inspection at the residence of Mrs. Peggy L. Harman, Township Secretary, R.D. 1, Box 366, Alexandria, Pennsylvania.	
Send comments to The Honorable Charles R. Metz, Chairman of the Township of Logan Board of Supervisors, Huntingdon County, R.D. 1, Alexandria, Pennsylvania 16611.	
Madison (township), Columbia County	
Little Fishing Creek:	
Downstream corporate limits	*551
Upstream corporate limits	*632
Maps available for inspection at the Township Building, Route 254, Jerseytown, Pennsylvania.	
Send comments to The Honorable Dayton W. Hess, Chairman of the Township of Madison Board of Supervisors, Columbia County, R.D. #9, Box 316, Bloomsburg, Pennsylvania 17815.	
Petersburg (borough), Huntingdon County	
Shaver Creek:	
Downstream corporate limits	*675
Upstream corporate limits	*675
Maps available for inspection at the Petersburg Borough Building, Washington Street, Petersburg, Pennsylvania.	
Send comments to The Honorable Guy C. Cogle, Jr., President of the Borough of Petersburg Council, Huntingdon County, P.O. Box 34, Petersburg, Pennsylvania 16669.	
Pike (township), Clearfield County	
Anderson Creek:	
Approximately .33 mile downstream from downstream corporate limits	*1,161
Approximately .25 mile upstream from T-206	*1,199
Maps available for inspection at the Township Building, Route 879, Curwensville, Pennsylvania.	
Send comments to The Honorable Charles Walker, Chairman of the Township of Pike Board of Supervisors, Clearfield County, P.O. Box 219, Curwensville, Pennsylvania 16833.	
Quemahoning (township), Somerset County	
Stony Creek River:	
At downstream corporate limits	*1,543
Approximately 300 feet upstream of most upstream crossing of T-866	*1,776
Maps available for inspection at the township of Quemahoning, Somerset County, Pennsylvania.	
Send comments to The Honorable Samuel F. Donia, Chairman of the Township of Quemahoning Board of Supervisors, Somerset County, R.D. 2, Box 3, Stoystown, Pennsylvania 15563.	
Shirley (township), Huntingdon County	
Juniata River:	
At downstream corporate limits	*541
At upstream corporate limits	*556
Aughwick Creek:	
Approximately 1.8 miles downstream of U.S. Route 522	*560
Approximately 350 feet upstream of U.S. Route 522	*571
Maps available for inspection at the Shirley Township Building, Route 522, Mt. Union, Pennsylvania.	
Send comments to The Honorable John R. McGarvey, Chairman of the Township of Shirley Board of Supervisors, Huntingdon County, R.D. 1, Box 116, Shirleysburg, Pennsylvania 17260.	
Spangler (borough), Cambria County	
West Branch Susquehanna River:	
At downstream corporate limits	*1,448
At upstream corporate limits	*1,481
Fox Run:	
At confluence with West Branch Susquehanna River	*1,475
At upstream corporate limits	*1,521
Browns Run:	
At confluence with West Branch Susquehanna River	*1,461
At upstream corporate limits	*1,472
Maps available for inspection at the Borough Garage, Spangler, Pennsylvania.	
Send comments to The Honorable William C. Young, Spangler Borough Councilman, Cambria County, 21 North Crawford Avenue, Box 103, Spangler, Pennsylvania 15775.	
Stillwater (borough), Columbia County	
Fishing Creek:	
At most downstream corporate limits	*665
At most upstream corporate limits	*718
Raven Creek:	
At confluence with Fishing Creek	*689
At upstream corporate limits	*712
Maps available for inspection at the Borough Building, McHenry Street, Stillwater, Pennsylvania.	
Send comments to The Honorable John S. Kline, Jr., President of the Borough of Stillwater Council, Columbia County, Box 23, Stillwater, Pennsylvania 17878.	
Todd (township), Huntingdon County	
Yellow Branch:	
At confluence with Great Trough Creek	*1,521
Approximately 0.2 mile upstream of State Highway 994	*1,537
Unnamed Tributary to Great Trough Creek:	
At confluence with Great Trough Creek	$1,123
Approximately 0.3 mile upstream of County Road	*1,126
Maps available for inspection at the residence of Clair C. Rickabaugh, R.D., Todd, Pennsylvania.	
Send comments to The Honorable John M. Leader, Chairman of the Township of Todd Board of Supervisors, Huntingdon County, Box 8A, Robertsdale, Pennsylvania 16674.	
Washington (township), Cambria County	
Bear Rock Run:	
At downstream corporate limits	*1,935
Approximately 860 feet upstream of the confluence of Burgoon Run	*1,980
Burgoon Run:	
At the confluence with Bear Rock Run	*1,966
Approximately 1,100 feet upstream of the confluence with Bear Rock Run	*1,990
Maps available for inspection at the Township Building, Jones Street, Extension, Lilly, Pennsylvania.	
Send comments to The Honorable Earl Smith, Supervisor of the Township of Washington, Cambria County, R.D. 1, Box 736, Lilly, Pennsylvania 15938.	
Westover (borough), Clearfield County	
Chest Creek:	
At downstream corporate limits	*1,349
Approximately 250 feet upstream of CONRAIL	*1,359
Maps available for inspection at the Borough Building, Westover, Pennsylvania.	
Send comments to The Honorable Clifton Nerling, Mayor of the Borough of Westover, Clearfield County, Westover, Pennsylvania 16692.	
TEXAS	
Trophy Club (town), Denton County	
Marshall Branch:	
At downstream corporate limits	*564
Downstream side of State Route 114	*596
Indian Creek:	
At downstream corporate limits	*575
Approximately 730 feet upstream of Greenleaf Drive	*600
Maps available for inspection at 100 Municipal Drive, Trophy Club, Texas.	
Send comments to The Honorable James P. Carter, Mayor of the Town of Trophy Club, Denton County, 100 Municipal Drive, Trophy Club, Texas 75060.	
VIRGINIA	
Caroline County, (unincorporated areas)	
Mattaponi River:	
Approximately 0.4 miles downstream of State Route 647	*52
At confluence with the Matta River and Poni River	*120
Matta River:	
At confluence with the Poni River	*120
At State Road 632	*137
Poni River:	
At confluence with the Matta River	*120
Approximately 375 feet upstream of State Road 606	*128
North Anna River:	
At confluence with Pamunkey River	*61
Approximately 3.4 miles upstream of U.S. Route 1	*103
Maps available for inspection at the County Planning Department, 1098 Enns Street, Bowling Green, Virginia.	
Send comments to The Honorable John A. Anzivino, Administrator of the County of Caroline, Caroline County, County Courthouse, Bowling Green, Virginia 22427.	
WEST VIRGINIA	
Franklin (town), Pendleton County	
South Branch Potomac River:	
Approximately 1,500' east of intersection of Meadow Lane and South Branch Street	*1,682
Approximately 100' east of intersection of South Branch Street and Mill Road	*1,692
Maps available for inspection at the Town Hall, Franklin, West Virginia.	
Send comments to The Honorable Bruce Minor, Mayor of the Town of Franklin, Pendleton County, Box 483, Franklin, West Virginia 26807.	
Grant County (unincorporated areas)	
South Branch Potomac River:	
Approximately 2,000 feet downstream of confluence of Mill Creek	*923
Approximately 2.9 miles upstream of the town of Petersburg corporate limits	*989
Maps available for inspection at the County Assessor's Office, County Courthouse, 5 Highland Avenue, Petersburg, West Virginia.	
Send comments to The Honorable Pauline B. Hyre, President of the Grant County Commission, 5 Highland Avenue, Petersburg, West Virginia 26847.	
Pendleton County (unincorporated areas)	
South Branch Potomac River:	
Approximately 1,100' downstream of U.S. Route 33	*1,647

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 2.4 miles upstream of U.S. Route 33	*1,715
Maps available for inspection at the County Clerk's Office, County Courthouse, Franklin, West Virginia.	
Send comments to The Honorable Harold L. Miller, President of the Pendleton County Commission, Pendleton County, P.O. Box 187, Franklin, West Virginia 26807.	
Petersburg (city), Grant County	
South Branch Potomac River:	
Approximately 0.7 mile downstream of U.S. Route 220	*926
Approximately 1.3 miles upstream of U.S. Route 220	*955
Maps available for inspection at the City Office, 23 Virginia Avenue, Petersburg, West Virginia.	
Send comments to The Honorable Arlyn Arnold, Mayor of the City of Petersburg, Grant County, P.O. Box 669, Petersburg, West Virginia 26847.	
WISCONSIN	
Merton (village), Waukesha County	
Bark River:	
Just upstream of Dorn Road	*930
About 1,750 feet upstream of Mill Pond Dam	*951
Maps available for inspection at the Village Hall, 28343 Sussex Road, Merton, Wisconsin.	
Send comments to The Honorable Marvin Becker, Village President, Village of Merton, Village Hall, 28343 Sussex Road, Merton, Wisconsin 53056.	
Waupaca (city), Waupaca County	
Crystal River:	
About 2,600 feet downstream of Riverside Drive Dam	*808
Just downstream of Riverside Drive Dam	*813
Just upstream of Riverside Drive Dam	*827
Just downstream of U.S. Highway 10	*829
Waupaca River:	
About 1,300 feet downstream of Shearer Street	*825
Just downstream of Washington Street Dam	*836
Just upstream of Washington Street Dam	*865
Just downstream of Harrison Street	*868
Maps available for inspection at the City Hall, 124 South Washington Street, Waupaca, Wisconsin.	
Send comments to The Honorable James W. Boyer, Mayor, City of Waupaca, City Hall, 124 South Washington Street, Waupaca, Wisconsin 54981.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Arizona	Town of Cave Creek, Maricopa County.	Cave Creek	At Carefree Highway	*1,869	*1,869
			At confluence of Andora Hills Wash	*2,007	*2,007
			At confluence of Willow Springs Wash	*2,057	*2,057
			Approximately 300 feet upstream of Cahava Ranch Road.	*2,137	*2,137
		Andora Hills Wash	At confluence with Cave Creek	*2,007	*2,007
			Approximately 50 feet upstream of Basin Road	*2,143	*2,143
			Approximately 400 feet upstream of Piedra Grand Road.	*2,277	*2,277
		Galloway Wash	At confluence with Cave Creek	*2,030	*2,030
			Approximately 60 feet downstream of School House Road.	*2,170	*2,170
			Approximately 170 feet downstream of Scopa Trail.	*2,310	*2,310
		Rowe Wash	At confluence with Galloway Wash	*2,111	*2,111
			Approximately 100 feet downstream of School House Road.	*2,175	*2,175
			Approximately 1,730 feet upstream of Echo Canyon Road.	*3,215	*3,315
		Grapevine Wash	At confluence with Galloway Wash	*2,180	*2,180
			Approximately 2,250 feet upstream of confluence with Galloway Wash.	*2,227	*2,227
			Approximately 5,230 feet upstream of confluence with Galloway Wash.	*2,297	*2,297
		Octillo Wash	At confluence with Cave Creek	*2,039	*2,039
			Approximately 50 feet upstream of Spur Cross Road.	*2,117	*2,117
			Approximately 900 feet upstream of Lone Mountain Road.	*2,244	*2,244
		Willow Spring Wash	At confluence with Cave Creek	*2,057	*2,057
			Approximately 50 feet downstream of Spur Cross Road.	*2,135	*2,135
			Approximately 2,900 feet upstream of Spur Cross Road.	*2,188	*2,188

Maps are available for review at Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona.

Send comments to The Honorable Jacqueline Davis, Mayor, Town of Cave Creek, P.O. Box 330, Cave Creek, Arizona 85331.

Arizona	Pima County, unincorporated areas.	Aqua Caliente Wash	City of Tucson corporate limits at Houghton Road	*2,586	*2,587
			Just downstyream of Fort Lowell Road	*2,641	*2,641
			Just upstream of Soldier Trail	*2,694	*2,692
			At the confluence of Molina Wash	*2,749	*2,748
		Pantano Wash	At the confluence with Rillito Creek, approximately 530 feet downstream of Craycroft Road.	*2,428	*2,428
			Approximately 50 feet upstream of Harrison Road	*2,728	*2,726

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Just upstream of Houghton Road	*2,767	*2,771
			Approximately 100 feet upstream of Los Reales Road.	*2,917	*2,916
			Just downstream of Vail Road	None	*3,134
			Just downstream of the dam at the Limit of Detailed Study.	None	*3,193
		Rincon Creek	At confluence with Pantano Wash	*2,836	*2,834
			Just upstream of of Old Spanish Trail	*2,879	*2,879
			At Camino Loma Alta	*2,986	*2,984
			At the confluence of an unnamed tributary located approximately 1,500 feet east of Township Range R16E/R17E, in Section 17 of Township 15 South.	*3,070	*3,070

Maps are available for review at the Pima County Department of Public Works, Flood Control Division, 1313 S. Mission Road, Tucson, Arizona.

Send comments to The Honorable David Yetman, Chairman, Pima County Board of Supervisors, 130 West Congress, Tucson, Arizona 85726.

Arizona	City of Tucson, Pima County.	Pantano Wash	Just downstream of the city corporate limits located approximately 1,100 feet downstream of Tanque Verde Road.	*2,495	*2,491
			At Speedway Boulevard	*2,541	*2,537
			Approximately 100 feet upstream of East 22nd Street.	*2,608	*2,613
			Approximately 100 feet upstream of Golf Links Road.	*2,670	*2,665
			Just downstream of Harrison Road	None	*2,725
			At an unnamed road located approximately 3,700 feet upstream of Houghton Road extended.	None	*2,786
		Aqua Caliente Wash	At Jones Road	*2,555	*2,566
			At the intersection of Tanque Verde Road and Houghton Road extended.	*2,593	*2,591

Maps are available for review at the City Hall Annex, Third Floor, Tucson, Arizona.

Send comments to The Honorable Thomas Volgy, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726-7210.

Hawaii	Maui County	Kihei Gulch 1	Approximately 300 feet upstream of Mouth	None	*7
			Approximately 150 feet upstream of Kihei Road	None	*8
			Approximately 825 feet upstream of Kihei Road	None	*14
		Waipuilani Gulch	Approximately 660 feet upstream of Mouth	#2	*8
			Approximately 725 feet upstream of Kihei Road	#3	*14
			Approximately 1,350 feet upstream of Kihei Road	#3	*21
		Kulanihakoi Gulch	Approximately 275 feet upstream of Kihei Road	*7	*9
			Approximately 830 feet downstream of Kanakanui Road.	#3	*14
			Just downstream of Kanakanui Road	#3	*16
		Kalialinui Gulch	Approximately 725 feet upstream of Alano Street	None	*14
			Approximately 230 feet downstream of Keolani Road.	None	*18
			Just upstream of Haleakala Highway	None	*34
		Kamiloloa Gulch	Approximately 150 feet downstream of Kapaakeal Loop.	None	*3
			Approximately 180 feet upstream of Kamehameha V Highway.	None	*12
			Approximately 840 feet upstream of Kamehameha V Highway.	None	*25
		Kaunakakai Stream	At Mouth	*3	*3
			Approximately 220 feet upstream of Kamehameha V Highway.	None	*10
			Approximately 1,850 feet upstream of Kamehameha V Highway.	None	*17
		Mile 84 Stream	Approximately 100 feet upstream of Mouth	#3	*2
			Approximately 140 feet upstream of Ena Street	None	*18
			Approximately 200 feet upstream of Haena Street	None	*28
		Pacific Ocean	Approximately 4,700 feet east along Kula Road from the intersection of Kula and Hobron Roads.	*18	*20
			Approximately 400 feet south of a point on Kula Road, 4,700 feet east of the intersection of Kula and Hobron Roads.	*15	*12
			About 800 feet north of where the Kahului Railroad crosses Kalialinui Gulch.	*20	*18
			About 200 feet east of where the Kahului Railroad crosses Kalialinui Gulch.	*18	*12

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the Maui County Department of Public Works, Division of Land Use and Code Administration, 200 South High Street, Wailuku, Hawaii.					
Send comments to The Honorable Hannibal Tavares, Mayor, Maui County, 200 South High Street, Wailuku Hawaii 96793.					
Kansas	City of Nickerson, Reno County.	Bull Creek	About 1,600 feet upstream of Riverton Road	*1,592	*1,592
			About 3,400 feet upstream of Nickerson Road	*1,598	*1,602
		Arkansas River	Just downstream of Nickerson Road	*1,591	*1,591
			About 700 feet downstream of Centennial Road	*1,601	*1,602
Maps are available for inspection at the City Hall, Nickerson, Kansas.					
Send comments to The Honorable Melvin Schreiber Mayor, City of Nickerson, P.O. Box 52, Nickerson, Kansas 67561.					
Kansas	City of Willowbrook, Reno County.	Cow Creek	About 0.9 mile downstream of 50th Avenue	None	*1,556
			About 1,500 feet upstream of 50th Avenue	None	*1,562
Maps are available for inspection at the Home of Mrs. Robert Wiley, Willowbrook, Kansas.					
Send comments to The Honorable Howard J. Carey, Jr., Mayor, City of Willowbrook, 401 Wiley Building, Hutchinson, Kansas 67502.					
Kentucky	City of Barbourville, Knox County.	Cumberland River	About 0.6 mile dowstream of State Route 11	*988	*985
			About 1.2 miles upstream of State Route 11	None	*0988
		Richland Creek	Within Community	*988	*986
Maps are available for inspection at the City Hall, Barbourville, Kentucky.					
Send comments to The Honorable Phillip Connley, Mayor, City of Barbourville, P.O. Box 705, Barbourville, Kentucky 40906.					
Louisiana	St. Tammany Parish, unincorporated areas.	Tchefuncta River	Approximately .9 mile upstream of State Route 21.	None	*16
			At State Route 1077	None	*68
		Bogue Falaya	Approximately 350 feet upstream of State Route 437.	None	*28
			At Hosmer Mill Road	None	*33
			At Camp Covington Bridge	None	*57
		Little Bouge Falaya	Approximately 1.6 mile upstream of confluence with Bogue Falaya.	None	*43
			Just downstream of confluence with East Fork	None	*43
		Abita Creek	At confluence with Abita River	None	*34
			Approximately .8 mile upstream of State Route 435.	None	*46
		English Branch	At confluence with Abita River	None	*34
			Approximately 4.1 miles upstream of confluence with Abita River.	None	*46
		Long Branch	At State Route 59	None	*30
			Approximately .3 mile upstream of Abita Springs corporate limits.	None	*31
		Long Branch Tributary	Approximately 1,950 feet downstream of Abita Springs corporate limits.	None	*33
			At Tarpon Springs Road	None	*38
		Southwind Branch	At confluence with Abita River	None	*21
			At Illinois Central Gulf Railroad	None	*30
		Ponchitolawa Creek	At confluence with Tchefuncta River	None	*9
			Approximately 1.5 miles upstream of Illinois Central Railroad.	None	*32
Massachusetts	Lowell, City, Middlesex County.	Merrimack River	Approximately 3.2 miles upstream of Pawtucket Dam.	*103	*106
			Approximately 1.6 miles downstream of State Routes 38 and 110 (Huntsfalls Bridge).	59	*62
		Black Brook	Upstream side of Boston and Maine Railroad crossing.	None	*103
			Approximately 0.8 miles upstream of Westford Street.	None	*112
		Beaver Brook	Upstream side of Veterans of Foreign Wars Highway.	None	*76
			Approximately 1,050 feet upstream of Veterans of Foreign Wars Highway.	None	*76
		Concord River	Approximately 450 feet downstream of Merrimack Street.	*65	*70
			Approximately 1,200 feet upstream of Interstate Route 495 East.	*105	*104
		River Meadow	Approximately 350 feet downstream of Lawrence Street.	None	*74
			Approximately 200 feet upstream of East Industrial Avenue.	None	*109
		Marginal Brook	Approximately 50 feet upstream of Billerica Street	None	*104

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,000 feet upstream of Hollis Street.	None	*127
		Trull Brook Tributary	Approximately 0.7 mile downstream of Phoenix Avenue.	None	*110
			Approximately 250 feet upstream of Boston and Maine Railroad.	None	*130
Maps are available for inspection at the Building Inspector's Office, City Hall, 375 Merrimack Street, Lowell, Massachusetts.					
Send comments to The Honorable James J. Campbell, Manager of the City of Lowell, Middlesex County, City Hall, 375 Merrimack Street, Lowell, Massachusetts 01852.					
Missouri	City of Lee's Summit, Jackson and Cass County.	Little Blue River	About 1.33 miles downstream of confluence of May Brook.	*777	*765
			Just upstream of View High Drive	*821	*807
		East Fork Little Blue River	Just downstream of U.S. Highway 40	*775	*769
			Just downstream of Blue Springs Lake Dam	*777	*769
		May Brook	At Mouth	*782	*770
			About 1,900 feet downstream of May Brook Road	*784	*784
		Tributary L2	Just upstream of Gregory Boulevard	*863	*873
			About 1,400 feet upstream of Beechwood Drive	*895	*890
		Cedar Creek	At mouth	*818	*805
			About 1,300 feet downstream or Sunset Drive	*883	*883
		Tributary C2	Just upstream of 3rd Street	*936	*936
			Just upstream of U.S. Highway 50	*952	*950
		Longview Lake	Within community	*891	*907
		Blue Springs Lake	Within community	*794	*819
Maps are available for inspection at the City Hall, 207 SW. Market, Lee's Summit, Missouri.					
Send comments to The Honorable Bob Jones, Mayor, City of Lee's Summit, City Hall, 207 SW. Market, Lee's Summit, Missouri					
Virginia	Fairfax County, unincorporated areas.	Pimmit Run	Approximately 520 feet downstream of State Route 694.	None	*275
			At State Route 695	None	*281
			At footbridge, approximately .4 mile downstream of State Route 7 culvert.	None	*322
			Approximately 670 feet upstream of State Route 7.	None	*360
		Little Hunting Creek	At confluence with Potomac River	None	*9
			Approximately 45 feet downstream of U.S. Route 1.	None	*16
			Approximately 440 feet upstream of Janna Lee Avenue.	None	*25
			Approximately 1.17 miles upstream of Janna Lee Avenue.	None	*32
		Tributary 1 to Little Hunting Creek.	Approximately .2 mile upstream of Camden Street	None	*9
		North Branch	At confluence with Little Hunting Creek	None	*9
			At downstream side of State Route 628	None	*12
			Approximately .19 mile upstream of confluence of Paul Spring Branch.	None	*19
		Tributary 1 to North Branch	At confluence with North Branch	None	*12
			Approximately .2 mile upstream of Stacey Road	None	*17
		Paul Spring Branch	At confluence with North Branch	None	*17
			At downstream side of State Route 626 culvert	None	*50
			At downstream side of Paul Spring Road culvert	None	*81
			Approximately 800 feet upstream of University Drive.	None	*153
		Dogue Creek	Approximately 875 downstream of Mount Vernon Road.	None	*9
			Approximately 50 feet downstream of U.S. Route 1.	None	*14
			Approximately 250 feet upstream of State Route 622.	None	*20
			Approximately .34 mile above confluence of Barnyard Run.	None	*35
			At upstream side of State Route 611	None	*68
		North Fork Dogue Creek	At confluence with Dogue Creek	None	*12
			At upstream side of State Route 624 Culvert	None	*22
			Approximately 250 feet upstream of Woodley Drive culvert.	None	*35
		Tributary 1 to North Fork Dogue Creek.	Approximately 295 feet upstream of State Route 623.	None	*15
			At downstream side of State Route 622 culvert	None	*19
			At upstream of Frye Road culvert	None	*23
		Tributary 2 to North Fork Dogue Creek.	At confluence with North Fork Dogue Creek	None	*18

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At upstream side of State Route 235 culvert	None	*24
			Approximately .72 mile above confluence with Fourmile Run.	None	*214
		Long Branch of Fourmile Run	Approximately 82 feet downstream of State Route 714.	None	*255
			Approximately .23 mile upstream of Olin Drive	None	*307
		Trippe Run	Approximately 625 feet downstream of Potterton Drive.	None	*213
			Approximately 540 feet downstream of State Route 613.	226	*226
			Approximately 395 feet downstream of Dashiell Road.	*244	*241
			Approximately 535 feet upstream of State Route 649.	*255	*248
			Approximately 325 feet upstream of Sissler's Bridge.	None	*280
		Holmes Run	Approximately 475 feet downstream of Lakeview Causeway.	None	*210
			Approximately 615 feet upstream of State Route 613.	*226	*226
			Approximately 170 feet downstream of State Route 649.	*258	*255
			At the downstream side of U.S. Route 50	*295	*292
			Approximately 275 feet downstream of U.S. Routes 29 and 211.	*320	*322
			Approximately .21 mile upstream of State Route 703.	None	*341

Maps are available for inspection at the Department of Public Works, Utilities Planning and Design Division, Storm Drainage Branch, 3930 Pender Drive, Fairfax, Virginia.

Send comments to The Honorable J. Hamilton Lambert, Fairfax County Executive, 4100 Chain Bridge Road, Fairfax Virginia 22030.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: November 1, 1988.

[FR Doc. 88-25688 Filed 11-4-88; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-88-127PR]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Administrative Rules and Regulations (Additional Reporting Requirements for Handlers)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend procedures which are contained in the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders. This proposal was recommended by the Navel and Valencia Orange Administrative Committees (committees), the agencies responsible for local administration of the orders.

The proposal would require handlers of navel and Valencia oranges to submit information to the committees reflecting the quantity of oranges harvested on a weekly basis. Receiving this information on a weekly basis would enable the committees to more efficiently carry out their auditing functions to monitor handler compliance with the marketing orders.

DATE: Comments must be received by December 7, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION: Thomas L. Jacobs, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), both as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group actions of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three fiscal years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

This proposed rule invites comments on proposed changes to the administrative rules and regulations of the navel and Valencia orange marketing orders. The proposed changes would require handlers to report information on oranges harvested to the committee on a weekly, rather than periodic, basis.

Sections 907.72 and 908.72 of the navel and Valencia orange marketing orders, respectively, require that upon request of the committees, with the approval of the Secretary of Agriculture, every person subject to regulation under the navel and Valencia orange marketing orders shall furnish to the committees, in such manner and at such times as they may prescribe, such information as will enable the committees to perform their duties. Thus, the committees have the authority to request additional information from handlers to help the committees perform their duties under their respective orders.

Sections 907.142 and 908.142 of the administrative rules and regulations of the orders currently require handlers, at the request of the committees, to submit information on oranges harvested and other information on Handler Report of Picks and Estimates forms (Base Estimate Forms No. 1). The information required on this form must be provided for each grower who delivers oranges to the handler, broken down by individual groves. The proposed weekly reporting requirement requests only gross figures of the number of cartons harvested by all of a handler's growers for the preceding week and cumulatively for the season.

In the past, because of the detailed nature of the report, the committees have requested submission of the Handler Report of Picks and Estimates only three or four times during the marketing year. This periodic information on oranges harvested is used to determine the status of the industry and individual handlers at a given point in the marketing year regarding the quantity of oranges harvested and the quantity remaining for harvest. If information on the quantity of oranges harvested were submitted on a weekly basis, it would improve the data base available to the committees and enable them to more closely monitor the flow of oranges from grower to handler to final disposition. For auditing purposes, this comparison could help identify marketing order violations if discrepancies in the figures occur.

In addition, information on oranges harvested could be included in the weekly handler bulletins to provide information on the relative disposition of the annual crop to all industry handlers. Handlers could then use this information as an aid in making their marketing decisions.

This action would require handlers to submit to the committees additional information on the quantity of oranges harvested on a weekly basis. It is estimated that the additional information would take less than five minutes to complete and this should present no significant burden to the approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders.

Therefore, the committees recommended amending §§ 907.142 and 908.142 of the rules and regulations under the navel and Valencia orange marketing orders, respectively, to require handlers to submit information regarding the quantity of oranges harvested on a weekly basis on new

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N.O.A.C./V.O.A.C. Forms No. 37. This form would be printed on the lower, currently unused, portion of N.O.A.C./V.O.A.C. Forms No. 4, which are weekly reports of orange shipments from handlers. All information reported weekly would then be on one information sheet.

Thus, §§ 907.142 and 908.142 of the navel and Valencia marketing orders are proposed to be amended by redesignating paragraph (a) as paragraph (a)(2) and adding a new paragraph (a)(1). In addition, a revision of paragraph (b) is proposed to provide gender neutral language.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection provisions that are included in §§ 907.142 and 908.142 of this proposed rule will be submitted to the Office of Management and Budget (OMB). They will not be made effective until OMB approval has been obtained.

List of Subjects

7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, Oranges.

7 CFR Part 908

Arizona, California, Marketing agreements and orders, Oranges, Valencias.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are proposed to be amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.142 is revised to read as follows:

Subpart—Rules and Regulations

§ 907.142 Other reports.

(a)(1) Each handler shall, in conjunction with the weekly report specified in § 907.140 of this part, submit to the committee each Friday on N.O.A.C. Form No. 37 a report of oranges harvested showing, from the oranges controlled by the handler, the quantity of oranges harvested during the immediately preceding week together with the cumulative quantity of such oranges harvested from the beginning of the marketing year through the end of such weekly period.

(2) Each handler shall make available to the committee's field department representative, upon request, information as to the quantity of oranges which have been harvested from all groves or portions thereof under such handlers control. When requested, the information shall be supplied in writing on Handler Report of Picks and Estimates (Base Estimate Form No. 1), requiring information on designated individual blocks as to acreage, original tree crop estimate by the handler, actual clean picks, partial picks to date, and oranges remaining to be picked.

(b) Upon request, each handler shall submit to the committee a complete N.O.A.C. Form No. 29—Inventory Report of Navel Oranges Controlled—showing therein: The specified inventory date; variety; field boxes of oranges picked to date; estimated number of field boxes remaining to be picked; field boxes of oranges in the packinghouse; cartons of oranges loaded on trucks and rail cars for Friday shipment; number of cartons of oranges in storage; number of cartons of oranges on the packinghouse floor; loose oranges on hand (converted to cartons); oranges on hand for products (converted to cartons); and the date when the handler plans to complete such handler's orange picking operations. The report shall be signed by the handler or the handler's authorized representative.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Section 908.142 is revised to read as follows:

Subpart—Rules and Regulations

§ 908.142 Other reports.

(a)(1) Each handler shall, in conjunction with the weekly report specified in § 908.140 of this part, submit to the committee each Friday on V.O.A.C. Form No. 37 a report of oranges harvested showing, from the oranges controlled by the handler, the quantity of oranges harvested during the immediately preceding week together with the cumulative quantity of such oranges harvested from the beginning of the marketing year through the end of such weekly period.

(2) Each handler shall make available to the committee's field department representative, upon request, information as to the quantity of oranges which have been harvested from all groves or portions thereof under such handlers control. When requested, the information shall be supplied in writing on Handler Report of Picks and Estimates (Base Estimate Form No. 1), requiring information on designated individual blocks as to acreage, original tree crop estimate by the handler, actual clean picks, partial picks to date, and oranges remaining to be picked.

(b) Upon request, each handler shall submit to the committee a completed V.O.A.C. Form No. 29—Inventory Report of Valencia Oranges Controlled—showing therein: The specified inventory date; variety; field boxes of oranges picked to date; estimated number of field boxes remaining to be picked; field boxes of oranges in the packinghouse; cartons of oranges loaded on trucks and rail cars for Friday shipment; number of cartons of oranges in storage; number of cartons of oranges on the packinghouse floor; loose oranges on hand (converted to cartons); oranges on hand for products (converted to cartons); and the date when the handler plans to complete such handler's orange picking operations. The report shall be signed by the handler or the handler's authorized representative.

Dated: November 2, 1988.

Robert C. Kennedy,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–25712 Filed 11–4–88; 8:45 am]

BILLING CODE 3410-02-M

Notices

Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained for the agency clearance officer.

Need and Use: ACTION needs to differentiate between volunteer support expenses and direct volunteer payments reported by its grantees as well as the amount generated to meet required share within the non-Federal costs under the Domestic Volunteer Services Act. ACTION needs volunteer years and strength in several categories to meet the purposes of the Act.

To Obtain Information About or to Submit Comments on This Proposed Information Collection, Please Contact both:

Melvin E. Beetle, Clearance Officer, ACTION, Room M–600, 806 Connecticut Ave., NW., Washington, DC 20525, Tel: (202) 634–9321; and James Houser, Desk Officer for ACTION, Office of Management and Budget, New Executive Office Bldg., Room 3002, Washington, DC 20503, Tel: (202) 395–7316.

Office of ACTION Issuing the Proposal: Office of Management and Budget.

Title of Form: Supplement to SF–269A.

Type of Request and Respondent's Obligation to Reply: New Mandatory.

General Description of Respondents: State and Local governments; non-profit organizations.

Estimated Response Burden: Overall Figure in Burden Hours—24,000.

Number of respondents by group	Average burden minutes per response	Frequency of response
1,500 grantees....	240	Quarterly

Date: November 1, 1988.

Melvin E. Beetle,

Clearance Officer, ACTION.

[FR Doc. 88–25675 Filed 11–4–88; 8:45 am]

BILLING CODE 6050-28-M

Student Community Service Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds; student community service projects.

Student Community Service Program, ACTION, announces the availability of funds for Fiscal Year 1989 for new VISTA/Student Community Service grants authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part B, 42 U.S.C. 4974.).

Application kits and technical assistance on grant application preparation are available from the ACTION State Office. One completed application form and two copies, with original signatures on all three documents, must be received in the appropriate ACTION State Office no later than 5:00 p.m. local standard time on February 3, 1989. Any application received after that date will not be considered for Fiscal Year 1989 funding. However, applications post-marked 5 days before the deadline date will be accepted for consideration.

Background on Student Community Service Program: The following information sets out the final guidelines under which Student Community Service Projects operate. The Guidelines are divided into seven parts which deal with the overall program philosophy, as well as responsibilities of the sponsor, staff, volunteers and volunteer placement sites. It also includes basic data on the administration of a Student Community Service Project.

DATE: These Guidelines took effect January 11, 1988.

These guidelines are noted in the Catalog of Federal Domestic Assistance, Number 72.005.

I. Introduction

Student Community Service Project guidelines are contained in seven parts:

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions

These guidelines supersede Student Service-Learning Program Guidelines published in the **Federal Register** dated May 22, 1986, and instructions and technical assistance provided to grants previously awarded under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

II. Purpose

Student Community Service Projects are authorized under Title I, Part B, sections 111 and 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory purpose of these projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience, through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve on a part-time, non-stipended basis.

Service opportunities must result in student volunteers gaining learning experiences through service in low-income communities, whether or not they receive academic credit.

The intent of Student Community Service Projects is to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be

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continued and expanded, if needed, after Federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources may be made available to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fundraising, and recruiting will be provided by ACTION as required.

III. Grantee Eligibility and Selection Criteria

The following criteria will be considered by ACTION in the selection and approval of Student Community Service Projects:

A. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student community service project grant.

B. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in Part II.

C. Grant funds must be used to initiate or expand a student volunteer community service project which addresses the needs of the low-income community.

D. The grantee must develop and maintain community support for the Student Community Service Project through a planned program including public awareness and communications.

E. Proposed community representation in the project's planning and operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application.

F. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of student volunteers who will serve in the project and hours of service are to be included in project goals and objectives.

G. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

H. The grantee must identify resources which will permit continuation of the student community service project, if needed, upon the conclusion of Federal funding as outlined in Part II.

I. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government. This does not refer to agreements made with volunteer placement sites as discussed in Part VI.

J. The grantee must ensure compliance with the restrictions outlined in Part VII.

The Director of VISTA/Student Community Service Programs may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;
2. Availability of volunteer activities to students from all segments of society;
3. Applicants' accessibility to alternate resources, both technical and financial;
4. Allocation of Student Community Service resources in relation to other ACTION funds.

IV. Grant Application Procedures

A. Scope of Grant

Student Community Service Project grants are awarded for up to a twelve-month period. Requests for second- or third-year reduced funding can be sought by grantees. Maximum Federal awards over a period of three years are up to $15,000 for the first year, up to $10,000 for the second, and up to $5,000 for the third. The grantee is required to contribute a local share of at least $3,000 each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their Student Community Service Projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. Contact the ACTION State Office for specific instructions on how to fulfill this requirement.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA/Student Community Service Projects.

B. Procedure for New Grantees

Project application forms are available from ACTION State offices, which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which is available from ACTION State or Regional offices.

Applications are to be submitted to the appropriate ACTION State Office for review and subsequently forwarded to the ACTION Regional office for comment prior to their submission to the Director of VISTA/Student Community Service Programs, who will make the final selection of new Student Community Service project grantees.

The Regional Directors will notify all applicants of the final decisions, and the Regional Grants and Contracts Officers will issue Notices of Grant Awards to the grantees upon notification from the Director of VISTA/Student Community Service Programs.

C. Procedures for Renewal Grantees

Applications for renewal projects will be evaluated using the factors identified in selecting initial grantees, as well as the grantee's compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Applications for renewal for second and third years are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the second- or third-year renewal application is denied, the sponsor will be notified that the ACTION Regional Director intends to deny the application for renewal; and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR Part 1206. This regulation is available from ACTION State or Regional Offices.

V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which will be furnished the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project coast for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions

The Student Community Service Project sponsor shall be responsible for providing at least $3,000 in non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements

Sponsors must comply with fiscal reporting requirements as outlined in ACTION Handbook 2650.2 and must maintain records in accordance with generally accepted accounting principles. Records shall be kep available for inspection at the request of ACTION and shall be preserved for at lease three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

A quarterly project progress report shall also be submitted to the ACTION State Office no later than 30 days after the end of each project quarter. The report shall include, but not be limited to, the following items:

1. A comparison of actual accomplishments with the goals and objectives established for the period.
2. The number of volunteers participating in the project during the quarter.
3. The number of volunteer hours generated during the quarter.
4. Problems, delays, or adverse conditions that have affected or will affect the attainment of project objectives.

C. Insurance

Grantees are responsible and must show evidence that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff

Each grantee will designate a person to serve as the project director. A full-time director is desirable. A rationale for less than a full-time project director must be included with the project application. The project director should be hired within 30 days of project start date. Supervision of the project director is the responsibility of the sponsor.

Student Community Service Project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations

1. Community Support

A viable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board. Initial outreach to representatives of these groups, as evidenced by accompanying letters of support, is seen as an effective step toward the development of the application.

2. Volunteer Recognition

With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals. Specific recognition activities should be reflected in the application narrative and budget.

3. Public Awareness

A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and project director should inform community, city and county officials, and the media about development, growth and success of the Student Community Service project.

VI. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement, or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer recruitment, orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

VII. Restrictions

A. Special restrictions on Student Community Service Project grantees:

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or

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proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR Part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and communicate to staff and volunteers, the prohibitions included therein.

3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant from ACTION is a State or local government agency, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, DC 20525.

4. Non-discrimination

No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. Religious Activities

Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. Labor and Anti-Labor Activity

No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. Non-displacement of Employed Workers

A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. Non-compensation for Services

No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested or required to contribute, or to solicit contributions, to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. Volunteer Status

Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. Nepotism

Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

(42 U.S.C. 4974)

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Regional Office, 10 Causeway Street, Room 473, Boston, MA 02222–1039 617/565–7000

ACTION State Office, Abraham Ribicoff Federal Building, 450 Main Street, Room 524, Hartford, CT 06103–3002, 203/240–3237.

ACTION State Office, Federal Building, Room 305,76 Pearl Street, Portland, ME 04101–4288, 207/780–3414.

ACTION State Office, 10 Causeway Street, Room 473, Boston, MA 02222–1038 617/565–7000.

(New Hampshire/Vermont)

ACTION State Office, Federal Post Office and Courthouse, 55 Pleasant Street, Room 316, Concord, NH 03301–3939, 603/225–1450.

ACTION State Office, John E. Fogarty Building, Room 200, 24 Weybosset Street, Providence, RI 02903–2882, 401/528–5424.

Region II

ACTION Regional Office, 6 World Trade Center, Room 758, New York, NY 10048–0206, 212/466–3481.

ACTION State Office, 402 East State Street, Room 422, Trenton, NJ 08608–1507, 609/989–2243.

(Metropolitan New York)

ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048–0206, 212/466–4471.

(Upstate New York)

ACTION State Office, U.S. Courthouse and Federal Building, 445 Broadway, Room 103, Albany, NY 12207–2923, 518/472–3664.

(Puerto Rico/Virgin Islands)

ACTION State Office, Frederico DeGetau Federal Office Building, Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918–2241, 809/766–5314.

Region III

ACTION Regional Office, U.S. Customs House, 2nd and Chestnut Street, Room 108, Philadelphia, PA 19106–2912, 215/597–9972.

ACTION State Office, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202–2230, 502/582–6384.

(Delaware/Maryland)

ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814, 301/962–4443.

ACTION State Office, Federal Building, Room 500, 85 Marconi Boulevard, Columbus, OH 43215–2888, 614/469–7441.

ACTION State Office, U.S. Customs House, Room 108, 2nd and Chestnut Streets, Philadelphia, PA 19106–2998, 215/597–3543.

(Virginia/Dist. of Columbia)

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240–1823, 804/771–2197.

ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301–1409, 304/347–5246.

Region IV

ACTION Regional Office, 101 Marietta Street, NW., Suite 1003, Atlanta, GA 30323–2301, 404/331–2859.

ACTION State Office, 2121 8th Avenue North, Room 722, Birmingham, AL 35203–2307, 205/731–1908.

ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803–3750, 407/648–6117.

ACTION State Office, 75 Piedmont Avenue, NE., Suite 412, Atlanta, GA 30303–2587, 404/331–4646.

ACTION State Office, Federal Building, Room, 1005–A, 100 West Capitol Street, Jackson, MS 39269–1092, 601/965–5664.

ACTION State Office, Federal Building, P.O. Century Station, 300 Fayetteville Street Mall, Room 131, Raleigh, NC 27601–1739, 919/856–4731.

ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430, 803/765–5771.

ACTION State Office, Federal Bldg./U.S. Courthouse, 801 Broadway, Room 246. Nashville, TN 37203–3889, 615/736–5561.

Region V

ACTION Regional Office, 10 West Jackson Boulevard, 6th Floor, Chicago, IL 60604–3964, 312/353–5107.

ACTION State Office, 10 West Jackson Boulevard, 6th Floor, Chicago, IL 60604–3964, 312/353–3622.

ACTION Regional Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204–1922, 317/269–6724.

ACTION State Office, Federal Building, Room 722, 210 Walnut, Des Moines, IA 50309–2195, 515/284–4816.

ACTION State Office, Federal Building, Room 658, 231 West Lafayette Boulevard, Detroit, MI 48226–2799, 313/226–7848.

ACTION State Office, Old Federal Building, Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596, 612/334–4083.

ACTION State Office, 517 East Wisconsin Avenue, Room 601, Milwaukee, WI 53202–4507, 414/291–1118.

Region VI

ACTION Regional Office, 1100 Commerce, Room 6B11, Dallas, TX 75242–0696, 214/767–9494.

ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201–3291, 501/378–5234.

ACTION State Office, Federal Building, Room 248, 444 SE. Quincy, Topeka, KS 66603–3501, 913/295–2540.

ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801–1910, 505/389–0471.

ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106–2009, 816/426–5256.

ACTION State Office, Old Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501–2026, 505/988–6577.

ACTION State Office, 200 NW 5th, Suite 912, Oklahoma City, OK 73102–6093, 405/231–5201.

ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747, 512/482–5671.

Region VIII (No Region VII)

ACTION Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349, 303/844–2671.

ACTION State Office, Columbine Building, Room 301, 1845 Sherman Street, Denver, CO 80203–1167, 303/866–1070.

ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649, 307/772–2385.

ACTION State Office, Federal Office Building, Drawer 10051, 301 South Park, Room 192, Helena, MT 59626–0101, 406/449–5404.

ACTION State Office, Federal Building, Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896, 402/437–5493.

(North & South Dakota)

ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452, 605/224–5996.

ACTION State Office, U.S. Post Office and Courthouse, 350 South Main Street, Room 484, Salt Lake City, UT 84101–2198, 801/524–5411.

Region IX

ACTION Regional Office, 211 Main Street, Room 530, San Francisco, CA 94105–1914, 415/974–0673.

ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190, 602/261–4825.

ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105–1974, 415/974–0690.

ACTION State Office, Federal Building, Room 14218, 11000 Wilshire Boulevard, Los Angeles, CA 90024–3671, 213/209–7421.

(Hawaii/Guam/American Samoa)

ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850–0001, 808/541–2832.

ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–5033, 702/784–5314.

Region X

ACTION Regional Office, Federal Office Building, 909 First Avenue, Ste. 3039, Seattle, WA 98174–1103, 206/442–1558, (Alaska).

ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745, 208/334–1707.

ACTION State Office, Suite 3039, Federal Office Building, 909 First Avenue, Seattle, WA 98174–1103, 206/442–4975.

ACTION State Office, Federal Building, Room 647, 511 NW., Broadway, Portland, OR 97209–3416, 503/221–2261.

(42. U.S.C. 4974)

Dated in Washington, DC, on October 31, 1988.

Donna M. Alvarado,

Director, ACTION.

[FR Doc. 88–25676 Filed 11–4–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Cooperative Forestry Research Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1987 (Pub. L. 92–463, 86 Stat. 770–776), U.S. Department of Agriculture announces the following meeting:

Name: Cooperative Forestry Research Advisory Council.

Date: December 14–15, 1988.

Time: 9:00 a.m.—5:00 p.m..

Place: Department of Agriculture, Room 107–A, Administration Building, Washington, DC.

Type of Meeting: Open to public. Persons may participate in the meeting if time and space permit.

Comments: The public may file written comments before or after the meeting by contacting the person below.

Purpose: The Council will be deliberating the McIntire-Stennis Forestry Research program with particular emphasis on forestry research planning, annual distribution of funds, and administration of McIntire-Stennis Cooperative Forestry Research program.

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Contact Person for Agenda and More Information: Dr. Boyd W. Post, Cooperative State Research Service, Suite 329, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20251–2200; telephone (202) 447–2016.

Dated November 1, 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–25711 Filed 11–4–88; 8:45 am]

BILLING CODE 3410-22-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 7684–01 and 7684–02]

Actions Affecting Export Privileges; Dan Peter Tadmor, Individually and Doing Business as Agentek, Ltd., Respondent

Summary

Pursuant to the October 3, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, the December 22, 1987 Order denying export privileges to Respondents Tadmor and Agentek, Ltd., is hereby amended by deleting Agentek, Ltd. in the caption and wherever it appears in or as a result of that Order, and substituting the following in its stead: Aktis Ltd., Yehoratan Street 32, Zahala, Tel Aviv, Israel.

Order

On October 3, 1988, the Administrative Law Judge (ALJ) entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Upon review and based on the facts in this case, I hereby affirm the recommended Decision and Order of the ALJ.

This constitutes final Agency action in this matter.

Date: November 1, 1988.

Paul Freedenberg,

Under Secretary for the Bureau of Export Administration.

Decision and Order

Appearance for Agency: Daniel C. Hurley, Jr., Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th and Constitution Avenue NW., Washington, DC 20230.

Appearance for Respondent: James W. Schroeder, Esq., Kaplan Russin and Vecchi, 1215 Seventeenth Street NW., Washington, DC 20036.

On December 22, 1987 (52 FR 48057, December 29, 1987), Tadmor and Agentek Ltd., wer denied all privileges of participating, in any manner or capacity, in transactions involving U.S.-origin commodities or technical data, pursuant to Part 388 of the Export Administration Regulations (currently codified at 15 CFR Part 388 (1988)) (Regulations).

Agency Counsel has filed a petition to reopen the proceeding under § 388.16 of the regulations to amend the Order, in which Counsel for Agentek (1987) Ltd., has joined. The record submitted reflects that the denied person Tadmor changed his company's name to Aktis Ltd., as well as its location. Additionally, Counsel have provided representations and documentation concerning the purchase of what have been termed various agency and service agreements formerly held by Agentek Ltd., as well as Agentek's good will, but not the company itself, by persons unrelated to Tadmor, while the administrative proceedings were pending and without his disclosing that fact to the purchasers. It appears that Tadmor retained the shell corporate entity and changed its name to Akis Ltd., while the purchasers acquired the assets, goodwill and name. Pursuant to Israeli law, the purchasers then changed the name of one of their existing corporations to Agentek (1987) Ltd., on December 24, 1987.

Following its review of those documents and after making independent inquiry, the Agency officials concluded that the owners of Agentek (1987) Ltd., had no prior knowledge of the Agency's investigation or proposed action against Tadmor. It also appears that Tadmor has no involvement with or interest in Agentek (1987) Ltd.

Based upon the representations made, I find that modifying the Order of December 22, 1987, as to Agentek Ltd., is warranted, and that such amendment to that Order will not jeopardize its purpose.

I further find that the firm known as "Agentek (1987) Ltd.", while having the same address as Agentek Ltd., is not denied U.S. export privileges under the terms of the Order.

Accordingly, it is hereby Ordered that the order of December 22, 1987 is amended by deleting Agentek Ltd., in the caption and wherever else it appears and substituting the following:

Aktis Ltd., Yehoratan Street 32, Zahala, Tel Aviv, Israel

This amendment as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Date: October 3, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88–25660 Filed 11–4–88; 8:45 am]

BILLING CODE 3510-61-M

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held December 2, 1988, 9:30 a.m., Herbert C. Hoover Building, Room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of parameters for software.
4. Discussion of factory networking and communications.
5. Discussion of machine tools in CCL 1091.
6. Discussion of sensory control systems.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1)

shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Anne Ferrell at (202) 377–2583.

Date: November 2, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–25706 Filed 11–4–88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–588–802]

Postponement of Final Antidumping Duty Determination and Postponement of Antidumping Duty Public Hearing; 3.5" Microdisks and Coated Media Thereof from Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from respondent Fuji Photo Film Company, Ltd. to postpone the final determination as permitted by section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our final determination as to whether sales of 3.5" microdisks and coated media thereof from Japan have occurred at less than fair value until not later than February 6, 1989. We are also postponing our public hearing until December 7, 1988.

EFFECTIVE DATE: November 7, 1988.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Charles Wilson, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–3530 or (202) 377–5288.

SUPPLEMENTARY INFORMATION: On September 29, 1988, we published a preliminary determination of sales at less than fair value of this merchandise (53 FR 38045).

On October 31, Fuji Photo Film Company, Ltd. requested a 60 day postponement of the date of the final determination. If exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following a preliminary affirmative determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than February 6, 1989.

Public Comment

In conjunction with this postponement, a public hearing to afford interested parties an opportunity to comment on the preliminary determination, in accordance with 19 CFR 353.47, will now be held, if requested, at 10:00 a.m. on December 7, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by November 30, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: November 1, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–25704 Filed 11–4–88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Stainless Steel Wire Rod; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, with respect to certain type 430 stainless steel wire rod.

DATE: Comments must be submitted on or before November 17, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the U.S.A. for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for stainless steel wire rod, type 430, in diameters ranging from 0.217 to 0.275 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than November 17, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce at the above address.

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Dated: October 28, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-25705 Filed 11-4-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Modification; Mr. Sherman Jones (P321); Modification No. 2 to Permit No. 461

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 461 issued to Mr. Sherman C. Jones, 702 Cullen Street, Corpus Christi, Texas 78411, on April 5, 1984 (49 FR 14781), as modified on December 31, 1986 (53 FR 567), is further modified as follows:

Section B.8 is replaced with:

8. This Permit is valid with respect to the taking authorized herein until December 31, 1989.

This modification becomes effective upon publication in the **Federal Register**.

The Permit and modification are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702.

Date: October 31, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-25677 Filed 11-4-88; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Assistant Secretary for Communications and Information, Advisory Committee on Advanced Television, Partially Closed Meeting

A meeting of the Commerce Advisory Committee on Advanced Television will be held November 17, 1988, 10:00 a.m. to 12:00 p.m., in the Secretary's Conference Room, U.S. Department of Commerce, Washington, DC. Due to difficulites in scheduling and the requirement that the Advisory Committee meet at least twice in 1988, in order to produce a report to the Secretary of Commerce by January 4, 1989, an abbreviated notice period is being given for this meeting.

The Committee advises the Secretary on the impact of advanced television on the competitiveness of U.S. industry, what policies may be pursued to heighten the development of advanced television in the public interest, and other related issues. The meeting is scheduled to consist of (1) opening remarks; (2) a background briefing; and, (3) preliminary discussion of the impact of advanced television on the competitiveness of U.S. industry and matters related to the development and implementation of advanced television.

The General Session of the meeting will be open to the public and a limited numbers of seats will be available on a first-come first-served basis. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 2, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the Act relating to open meetings and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4), and (c)(9)(B). The discussions are likely to disclose privileged or confidential commercial information and information for which premature disclosure would likely significantly frustrate the implementation of proposed agency actions. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Record Inspection Facility, Room 6628, Department of Commerce.)

FOR FURTHER INFORMATION CONTACT: James Spurlock, Office of the Assistant Secretary for Communications and Information, Room H4898, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202-377-1551.

Date: November 2, 1988.

Charles G. Schott,

Deputy Assistant Secretary for Communications and Information.

[FR Doc. 88-25727 Filed 11-4-88; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commission of Customs adjusting limits.

EFFECTIVE DATE: November 2, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 641 is being increased by application of swing, reducing the limit for Category 341. Categories 347/348, 634 and 635 are being increased for carryforward.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 13115, published on April 21, 1987; and 53 FR 55, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation Of Textile Agreements

November 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in China and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 2, 1988, the directive of December 30, 1987 is being amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category levels in group I	Adjusted 12-month limit [1]
341	454,700 dozen.
347/348	2,272,600 dozen.
634	518,100 dozen.
635	541,200 dozen.
641	1,210,950 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

Also effective on Nov. 2, 1988, you are directed to deduct 1987 overshipment charges of 338,980 pounds from the charges made to the current limit for Category 659-S. This same amount is to be charged to the 1987 limit for Category 659-S established in the directive of April 17, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25672 Filed 11-4-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

November 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 9, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 435 is being increased by application of swing and carryforward. The limit for Categories 445/446 is being reduced to account for the swing applied to category 435.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 50, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, as amended. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Hungarian People's Republic and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 9, 1988 the directive of December 30, 1987 is further amended to include adjustments to the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Hungarian People's Republic:

Category	Adjusted limit [1]
435	11,768 dozen.
445/446	36,863 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25658 Filed 11-4-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 1, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 8, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6498. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for certain cotton and man-made fiber textile products are being adjusted, variously, for carryforward, swing, carryover and special shift.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 51, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1988.

Commissioner of Customs,

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Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 8, 1988, the directive of December 30, 1987 is being amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted 12-mo limit [1]
Levels in Group I:	
226/313	66,072,513 square yards.
315	44,579,312 square yards.
331	744,185 dozen pairs.
334	49,847 dozen.
335	58,643 dozen.
336	151,669 dozen.
338	2,905,674 dozen.
339	698,230 dozen.
340	180,578 dozen.
341	263,102 dozen.
342	88,211 dozen.
347/348	360,431 dozen.
351	45,796 dozen.
352	216,980 dozen.
369–D [2]	2,289,800 pounds of which not more than 858,675 pounds shall be in pile dish towels in TSUSA numbers 366.1720, 366.1740, 366.2020, 366.2040, 366.2420 and 366.2440.
Groups II: 300, 301, 314, 317, 326, 330, 332, 333, 337, 345, 349, 350, 353, 354, 359, 360–362, 369–S [3] and 369–O [4], as a group.	74,371,818 square yeads equivalent.
Level in Group III: 615	17,490,000 square yards.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 369–D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.
[3] In Category 369–S, only TSUSA number 366.2840.
[4] In Category 369–O all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440, 366.2840, and 366.2860.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–25657 Filed 11–4–88; 8:45 am]

BILLING CODE 3510–DR–M

Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United States Arab Emirates

October 28, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: November 7, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: On June 27, 1988, the Government of the United States requested consultations with the Government of the United Arab Emirates regarding Categories 338/339, 340/640, 341/641 and 347/348, produced or manufactured in the United Arab Emirates. The United States has decided, inasmuch as no solution has been reached in consultations with the Government of the United Arab Emirates on mutually satisfactory limits for these categories, to control imports of cotton and man-made fiber textile products in Categories 338/339, 340/640, 341/641 and 347/348, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on June 27, 1988 and extends through June 26, 1989.

The United States remains committed in finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

October 28, 1988

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 7, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the period which began on June 27, 1988 and extends through June 26, 1989, in excess of the following restraint limits:

Category	Restraint limit [1]
338/339	176,565 dozen.
340/640	157,919 dozen.
341/641	121,205 dozen.
347/348	115,942 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 26, 1988.

Textile products in Categories 338/339, 340/640, 341/641 and 347/348 which have been exported to the United States prior to June 27, 1988 shall not be subject to the limits established in this directive.

Textile products in Categories 338/339, 340/640, 341/641 and 347/348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also effective on November 7, 1988 you are directed to charge the following amounts to the limits established in this directive. These charges are for goods imported during the period June 27, 1987 through August 31, 1988.

Category	Amount to be charged
338	13,204 dozen.
339	33,828 dozen.
340	52,344 dozen.
341	29,445 dozen.
347	16,827 dozen.
348	24,008 dozen.
640	492 dozen.
641	2,297 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–25541 Filed 11–4–88; 8:45 am]

BILLING CODE 3510–DR–M

The Correlation; Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States Annotated for 1989

November 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUMMARY: The Committee for the Implementation of Textile Agreements announces that the 1989 CORRELATION, based on the Harmonized Tariff Schedule of the United States Annotated, will be available beginning December 1, 1988.

Copies of the CORRELATION may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue NW., Rm H3100, Washington, DC 20230, ATTN: CORRELATION, at a cost of $30 per copy. Checks or money orders should be made payable to the U.S. Department of Commerce.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–25659 Filed 11–4–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Aerospace Applications of Superconductors will meet on 12–13 December 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting is to review selected applications of superconductors and to begin drafting a report. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–25717 Filed 11–4–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 19–20 December 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting is to review electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–25716 Filed 11–4–88; 8:45 am]

BILLING CODE 3910–01–M

Defense Logistics Agency

Privacy Act of 1974; Amendment of Record System Notice

AGENCY: Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice of an amendment to a DLA system of records for public comment.

SUMMARY: The Defense Logistics Agency of the Department of Defense proposes to amend an existing system of records subject to the Privacy Act of 1974.

DATES: The proposed action will be effective without further notice on December 7, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, DLA–XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, Telephone: 202–274–6234, Autovon: 284–6234.

SUPPLEMENTARY INFORMATION: This existing record system was published at 53 FR 4442, February 16, 1988. The Defense Logistics Agency systems of records as prescribed by the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc 85–10237 (50 FR 22897) May 29, 1985 (DoD Compilation).
FR Doc. 85–30123 (50 FR 51898) December 20, 1985.
FR Doc. 86–17259 (51 FR 27443) July 31, 1986.
FR Doc. 86–19035 (51 FR 30104) August 22, 1986.
FR Doc. 87–21654 (52 FR 35304) September 18, 1987.
FR Doc. 87–22481 (52 FR 37495) October 7, 1987.
FR Doc. 88–03220 (53 FR 04442) February 16, 1988.
FR Doc. 88–06658 (53 FR 09965) March 28, 1988.
FR Doc. 88–12863 (53 FR 21511) June 8, 1988.
FR Doc. 88–15473 (53 FR 26105) July 11, 1988.
FR Doc. 88–19066 (53 FR 32091) August 23, 1988.

This notice is not within the purview of subsection (o) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of a new or altered system report.

November 2, 1988.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DLA–LZ

SYSTEM NAME:

Defense Manpower Data Center Data Base.

CHANGE:

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal Revenue Service (IRS):

Add: "To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filters."

S322.10 DLA–LZ

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: W.R. Church Computer Center, Navy Postgraduates School, Monterey, CA 93920–5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA.

Decentralizes segments-Portions of this file may be maintained by the military personnel and finance centers of the services; selected civilian contractors with research contracts in

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manpower area and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and enlisted personnel who served on active duty from July 1, 1968 and after or who have been a member of reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later. DoD civilian employees of DoD civilian employees separated since January 1, 1971. All veterans who have used GI Bill education and training employment service office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute, all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969. Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services, National Longitudinal Survey. Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Veterans Administration; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors.

Individuals receiving disability compensation from the Veterans Administration or who are covered by a Veterans Administration insurance or benefit program; civilian employees of the Federal Government; dependents of active duty military retirees, selective service registrants. Individuals receiving a security background investigation as identified in the Defense Central index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records consisting of Name, Service Number, Selective Service Number, Social Security Account Number, demographic information such as home town, age, sex, race, and educational level; civilian occupational information, military personnel information such as rank, length of service, military occupation; aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training; programs, military hospitalization records and home and work addresses.

Champus claim records containing enrollee, patient and provided data such as cause of treatment, amount of payment, name and social security or tax ID of providers or potential providers of care, military compensation data, selective service registration data, Veterans Administration disability payment records and credit of financial data as required for security background investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136; Pub. L. 97–252; Pub. L. 97–365; 10 U.S.C. 2358; 10 U.S.C. 2397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the manpower trends, support personnel functions, perform longitudinal statistical analysis, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs and to collect debts owned to the United States Government and state and local governments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Veterans Administration (VA): To administer Veterans Administration and DoD programs for Reserve pay, VA compensation, military retired pay and active duty separation payments. To analyze the cost to the individual of military service connected disabilities, to monitor the amount of coverage under the Veterans' Group Life insurance program, and to provide information on individuals; eligibility for GI Bill education and training benfits. To Veterans Administration and its contractor, the Prudential Insurance Company; to notify members of the individual Ready Reserve (IRR) of their right to apply for Veterans' Group Life Insurance coverage. To the Veterans Administration Management Sciences Division, Statistical Policy and Research Office, Office of Information Management and Statistics, for the purpose of selection samples for surveys asking veterans about the use of veterans benefits and satisfaction with VA services, and to validate eligibility for VA benefits.

Internal Revenue Service (IRS): For the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for debt collection. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

Department of Health and Human Services (DHHS): Disclosure of information from this system may be made to the Office of the Inspector General for the purpose of identification and investigation of DoD employees (military and civilian) who may be improperly receiving funds under the Aid of Families of Dependent Children Program. To the Office of Child Support Enforcement, pursuant to Pub. L. 93–647, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

Social Security Administration (DHHS): To the Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings. To the Bureau of Supplemental Security Income for the purpose of verification and adjustment of payments made by the SSA to the active and retired military members under the Supplemental Security Income Program.

DOD Civilian Contractors: Disclosure of information may be made from this system to contractors for the purpose of performing research on manpower problems for statistical analyses.

Office of Personnel Management (OPM): Disclosure of information may be made for this system for the purpose of OPM carrying out its management functions. Records disclosed concern pay, benefits, retirement deductions, and other information necessary for those management functions.

Selective Service Systems (SSS): Information from this system may be disclosed to the Director of the Selective Service System for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations.

Department of Education (DOE): Disclosure of information may be made from this system to DOE for the purpose of identifying individuals who appear to be in default of their guaranteed student loan so as to permit DOE to take action, where appropriate, to accelerate recoveries of defaulted loans.

Department of Labor (DOL): To reconcile the accuracy of unemployment compensation payments made on behalf of former DOD employees and members.

Federal Government and Quasi-Federal Agencies: To identify military retirees employees in a civilian capacity whose civilian pay must be offset as a result of increases in military retiree pay pursuant to the Budget Reconciliation Act of 1982, Pub. L. 97–252.

To Federal Agencies, Territorial, State, and Local Governments: To support personnel functions requiring data on prior military service credit for their employees or for job applications. To help eliminate fraud and abuse in their benefit programs and to collect debts and overpayments owed to those programs. Information released includes name, social security number and mailing address of individuals.

Other Federal Agencies: To help eliminate fraud and abuse in the program administered by agencies within the Federal government and to collect debts and overpayment owed to the Federal government. Information release may include aggregate data and/or individual records in the record system may be transferred to any other federal agencies having a legitimate need for such information and applying appropriate safeguards to protect data so provided. Records of debtors obligated to DOD, but currently employed by another federal agency may be referred to the employing agency under the provisions of the Debt Collection Act of 1982 for the purpose of the debt.

Consumer Reporting Agencies: Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Area (15 U.S.C. 11681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Credit Bureaus and Debt Collection Agencies: Disclosures may be referred to private contract organizations to comply with the provisions of the Debt Collection of 1982 (10 U.S.C. 136) for non-payment of an outstanding debt, and to comply with requirements to update security clearance investigations.

Defense Contractors: To monitor the employment of former DOD employees and members subject to the provisions of 10 U.S.C. 2397.

Financial Institutions: To contact employees to avoid escheatment of an employee's account or to otherwise benefit employees.

State, Local, or Territorial Government: To return unclaimed property or assets to employees.

Blanket Routine Uses: See also the blanket routine used set forth at the beginning of the Defense Logistics Agency's listing of systems of records which are also applicable to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic computer tape.

RETRIEVABILITY:

Retrievable by name. Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Primary location—At W.R. Church Computer Center, tapes are stored in a locked cage in machine room, which is a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location—tapes are stored in a bank type vault and buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center (DMDC) 550 Camino El Estero, Monterey, CA 93940.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the System Manager.

Written requests for information should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license, or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for access to records and for contesting contents and appealing initial determination are contained in DLA Regulation 5400.12 (32 CFR Part 1286) and may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The Military Services, the Veterans Administration, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, federal and Quasi-federal agencies, Selective Service System, the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–25700 Filed 11–4–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs; Closing Date for Institutions To File "Request for Institutional Eligibility for Programs"

AGENCY: Department of Education.

ACTION: Notice of closing date for Institutions to file "Request for Institutional Eligibility for Programs" to participate in the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs for the 1989–90 Award Year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that wish to participate in the "campus-based programs" in the 1989–90 award year to submit to the Secretary an institutional eligibility application form.

The campus-based programs are the Perkins Loan Program, the College Work-Study Program, and the Supplemental Educational Opportunity Grant Program and are authorized by Title IV of the Higher Education Act of 1965, as amended. The 1989–90 award year is July 1, 1989 through June 30, 1990.

(20 U.S.C. 1087aa–1087ii; 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3)

DATES: *Closing Date for Filing Application.* To participate in a campus-based program in the 1989–90 award year, a currently ineligible institution must mail or hand deliver its "Request for Institutional Eligibility for Programs" form to the address indicated below on or before January 13, 1989.

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ADDRESSES: *Applications Delivered by Mail.* An institutional Eligibility application delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: DEC/DCMAS/OPE, 400 Maryland Avenue SW., Washington, DC 20202–4725.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutions which submit eligibility applications that are received after the closing date will not be considered for funding under the campus-based programs for award year 1989–90.

Applications Delivered by Hand

An institutional eligibility application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center (ACC), Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern Standard Time) daily, except Saturdays, Sundays, and Federal holidays. An application for the 1989–90 award year eligibility that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION:

Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1989–90 to any currently ineligible institution unless the institution files its "Request for Institutional Eligibility for Programs" form (ED Form 1059) by the closing date. If the institution submits its institutional eligibility application after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1990–91 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary.

(2) A location of an eligible institution that is currently not included in the Department's eligibility certification but has been included in the institution's Fiscal Operations Report and Application to Participate (FISAP).

(3) A branch campus that is currently part of an eligible institution but has filed its own FISAP and is seeking elibility as a separate institution of higher education. (ED Form 1059, OMB #1840–0098 approved through December 31, 1989).

The Secretary wishes to advise institutions that the institutional eligibility form "Request for Institutional Eligibility for Programs" (ED Form 1059) should not be confused with the FISAP (ED Form 646–1) that institutions were required to submit by September 16, 1988 for paper FISAP filers and September 30, 1988 for electronic FISAP filers, in order to receive funds under the campus-based programs for the 1989–90 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Perkins Loan Program, 34 CFR Part 674.

(3) College Work-Study Programs, 34 CFR Part 675.

(4) Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

FOR FURTHER INFORMATION CONTACT.

For information concerning designation of eligibility, contact Dr. Joan E. Duval, Director, Division of Eligibility and Certification, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Mail Stop 3329, ROB–3), Washington, DC 20202–5322. Telephone (202) 732–4906.

For technical assistance concerning the FISAP and/or other operational procedures of the campus-based programs, contact: Robert R. Coates, Chief, Campus-Based Programs Branch, Division of Program Operations and Systems, 400 Maryland Avenue, SW., Washington, DC 20202–5455. Telephone: (202) 732–3711.

(20 U.S.C. 1087 *et seq.*; 42 U.S.C. 2751 *et seq.*) and 20 U.S.C. 1070b *et seq.*

(Catalog of Federal Domestic Assistance, Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.038)

Dated: October 28, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–25710 Filed 11–4–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; National Research Council

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) is announcing its intent to make a non-competitive financial assistance award pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2). Congress, recognizing the national need for improved processes and technologies for U.S. production of liquid fuels from unconventional domestic resources, has requested the Department of Energy (DOE) to submit a five year plan for a broad research program to meet the needs of the transportation sector based on plentiful domestic fuels such as coal (Senate Report 100–410). This study is to be conducted by the Energy Engineering Board of the National Research Council, which is an agency organized by the National Academy of Sciences and serves both the National Academy of Sciences and the National Academy of Engineering in the discharge of their responsibilities. The period of performance is expected to be from November 15, 1988 to February 14, 1990 and the estimated cost is $298,000.00.

Noncompetitive award of this grant will be made pursuant to 10 CFR 600.7(b)(2). The Assistant Secretary for Fossil Energy on September 27, 1988 determined that the project is in the public interest because of the national need for improved processes and technologies for U.S. production of liquid fuel from unconventional domestic resources and that the National Research Council, through its Energy Engineering Board can provide an important national service by providing the DOE with independent and credible advice on these technologies. Accordingly, justification for this noncompetitive financial assistance award will be made pursuant to 10 CFR 600.7(b)(2)(i)(G).

PROCUREMENT REQUEST NUMBER:
01–89FE61094.000.

Authority: Department of Energy Organization Act; Pub. L. 95–91.

FOR FURTHER INFORMATION CONTACT:
U.S. Department of Energy, Office of Procurement Operations, Attn: Valerie L. Pastore, MA–452.1, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6388.

Jeffrey Rubenstein,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 88–25713 Filed 11–4–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–56–NG]

Great Lakes Gas Transmission Co.; Interim Order Amending Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of interim order amending authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order authorizing an increase in the volumes of natural gas Great Lakes Gas Transmission Company (Great Lakes) imports from and exports to Canada for a limited term until a final determination is made on its application pending before the ERA in Docket No. 88–56–NG. The interim order authorizes Great Lakes to temporarily increase by 62,500 Mcf the maximum daily volumes of gas it is currently authorized to import and export under a transportation service agreement with TransCanada Pipelines Limited to a total of 987,500 Mcf, thereby providing additional supplies to eastern Canadian markets which are currently threatened with shortfalls during the 1988–89 winter heating season months. None of the gas would be sold or marketed in the United States.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1988.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–25714 Filed 11–4–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. G–7486–000, et al.]

Amoco Production Co., et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

November 1, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G–7486–000, D, Oct. 11, 1988.	Amoco Production Co., P.O. Box 3092, Houston, TX 77253.	El Paso Natural Gas Co., Jalmat Field, Lea County, New Mexico.	(3)
G–11414–004, B, Oct. 11, 1988.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Northern Natural Gas Co., Division of Enron Corp., Tucker #3 well, El Dorado Gas Plant, Schleicher County, TX.	(2)
G–12213–002, B, Oct. 6, 1988.	Conoco Inc., P.O. Box 2197, Houston, TX 77252	El Paso Natural Gas Co., Wemac Field, Andrews County, TX.	(2)
G–17378–002, D, Oct. 7, 1988.	Texaco Inc., P.O. Box 52332, Houston, TX 77052	Transwestern Pipeline Co., Stratford Field, Sherman County, TX.	(4)
G–19127–001, D, Oct. 17, 1988.	Texaco Inc.	Phillips 66 Natural Gas Co., Hugoton Field, Moore and Sherman Counties, TX.	(5)
CI62–569–000, D, Oct. 17, 1988.	Texaco Inc.	Ringwood Gathering Co., Ringwood Field, Major County, OK.	(6)
CI64–1073–001, D, Oct. 12, 1988.	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77252	K N Energy, Inc., Minto, *et al.*, Fields, Logan County, CO.	(7)
CI74–735–001, C, Oct. 11, 1988.	Phillips Petroleum Co., 990-G Plaza Office Building, Bartlesville, OK 74004.	Texas Eastern Transmission Corp., East Cameron Area, Block 321, Offshore, LA.	(8)
CI85–278–001, E, Oct. 17, 1988.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253–3725.	ANR Pipeline Co., West Cameron 560 Field, Offshore, LA.	(9)
CI88–807–000 (CI84–1056), B, Aug. 15, 1988.	Tenneco Oil Co	United Gas Pipe Line Co., Bethany Field, Harrison and Panola Counties, TX.	(10)

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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Docket No. and date filed	Applicant	Purchaser and location	Description
CI88-650-000 (G-18445), D, Sept. 30, 1988.	Chevron U.S.A. Inc.	Florida Gas Transmission Co., Shuteston Field, St. Landry Parish, LA.	(1)
CI89-2-000 (CI73-340), D, Oct. 3, 1988.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	Questar Pipeline Co., Main Creek Field, Garfield County, CO.	(2)
CI89-3-000 (CI61-1791), D, Oct. 3, 1988.	Union Exploration Partners, Ltd., 1201 West 5th St., P.O. Box 7600, Los Angeles, CA 90051.	Texas Eastern Transmission Corp., Vienna Field, Lavaca County, TX.	(3)
CI89-4-000 (CI84-253), D, Oct. 4, 1988.	Tenneco Oil Co	Panhandle Eastern Pipe Line Co., Greenwood Field *et al.*, Meade County, KS.	(4)
CI89-5-000 (CI68-197), B, Oct. 5, 1988.	TXO Production Corp., First City Center, 1700 Pacific Avenue, Dallas, TX 75201.	Southern Natural Gas Co., Bayou Gentilly Field, Plaquemines Parish, LA.	(5)
CI89-6-000 (CI82-80-000), B, Oct. 5, 1988.	TXO Production Corp	Florida Gas Transmission Co., McGill Ranch Field, Kennedy County, TX.	(5)
CI89-8-000 (CI63-463), D, Oct. 6, 1988.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	Southern Natural Gas Co., Felice Bayou Field, Plaquemines Parish, LA.	(6)
CI89-9-000 (CI79-437), B, Oct. 7, 1988.	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Southern Natural Gas Co., Vermilion Block 242, Offshore, LA.	(7)
CI89-10-000, B, Oct. 11, 1988.	Conoco Inc	Phillips 66 Natural Gas Co., NW/4 Section 11, Block A-44, Andrews County, TX.	(8)
CI89-11-000 (CI65-525), F, Oct. 12, 1988.	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Natural Gas Pipeline Co. of America, Indian Basin Field, Eddy County, NM.	(9)
CI89-12-000 (CI84-257), D, Oct. 12, 1988.	Tenneco Oil Co	Panhandle Eastern Pipe Line Co., Greenwood Field, *et al.*, Morton County, KS.	(10)
CI89-13-000, E, Oct. 14, 1988.	Northern Michigan Exploration Co., P.O. Box 1150, Jackson, MI 49204.	Texas Eastern Transmission Corp., Choudrant Field, Lincoln Parish, LA.	(11)
CI89-15-000 (G-3784), D, Oct. 14, 1988.	Sohio Petroleum Co., P.O. Box 4587, Houston, TX 77210.	Tennessee Gas Pipeline Co., Heyser Field, Calhoun County, TX.	(12)
CI89-16-000 (CI78-239), D, Oct. 13, 1988.	Amoco Production Co., P.O. Box 50879, New Orleans, LA 70150.	Columbia Gas Transmission Corp., West Cameron Block 605, Offshore, LA.	(13)
CI89-19-000, B, Oct. 19, 1988.	Har-Ken Oil Co., P.O. Box 626, Owensboro, KY 42302.	Texas Gas Transmission Corp., St. Charles Gas Field, Hopkins County, KY.	(14)
CI89-20-000 (G-8851), D, Oct. 19, 1988.	Tenneco Oil Co	Williams Natural Gas Co., Guyman-Hugoton Field, Texas County, OK.	(15)
CI89-21-000 (CI75-262), B, Oct. 19, 1988.	Tenneco Oil Co	El Paso Natural Gas Co., Cedardale NE, *et al.*, Field, Woodward County, OK.	(16)
CI89-22-000 (CI83-270), D, Oct. 20, 1988.	Texaco Producing Inc	CNG Transmission Corp., Eugene Island Block 196, Offshore, LA.	(17)

FOOTNOTES:

[1] By assignment dated May 19, 1987, Applicant assigned its interest in certain acreage to Doyle Hartman.

[2] Applicant requests authorization to abandon a sale of residue gas from its plant attributable to gas purchased from Lone Wolf Producing Company (Lone Wolf). Applicant states that the percentage-of-proceeds contract dated December 8, 1958, with Lone Wolf which dedicated gas produced from the Tucker #3 well has been terminated.

[3] Applicant's leasehold interest in the NE/4 and S/2 Section 2, Block A-44, PSL Survey, Andrews County, Texas, has expired.

[4] Effective August 1, 1988, Applicant assigned certain interests to Panhandle Pluggers Inc.

[5] Effective July 1, 1988, Applicant assigned certain interests to Richard Battley.

[6] Effective May 1, 1988, Applicant assigned certain interests to Jerry Sanner d/b/a Jerry Sanner Oil Properties.

[7] Four leases were released or surrendered. By assignments executed October 16, 1972, effective May 1, 1972, Applicant assigned its interest in certain acreage to Rex Monahan. By assignments executed January 1967, effective October 1, 1986, Applicant assigned its interest in certain acreage to Skaer Enterprises, Inc.

[8] By letter agreement dated July 1, 1988, Applicant's January 28, 1974, contract was amended to delete the depth limitation.

[9] Effective October 1, 1987, Applicant acquired certain interests from Atlantic Richfield Company.

[10] Applicant requests complete abandonment authorization due to the surrender of all dedicated leases.

[11] Effective October 1, 1987, Applicant assigned certain acreage to Flas Gas and Oil Southwest, Inc.

[12] Effective January 1, 1987, Applicant assigned certain interests to Hondo Oil and Gas Company and Koch Exploration Company.

[13] By sale and purchase agreement effective November 1, 1986, Applicant sold certain leases to Mitchell Energy Corporation. With the sales of these leases Applicant no longer has any interest in the properties dedicated to its August 13, 1979, contract.

[14] Effective August 1, 1986, Applicant assigned certain interests to Beresco Properties, Inc., to Kaiser-Francis Oil Company and to Cities Service Oil & Gas Co. All remaining leases under the contract have expired.

[15] Reserves depleted and well(s) plugged and abandoned.

[16] Effective December 1, 1987, Applicant assigned certain interests to Bay Coquille, Inc.

[17] The lease covering Vermilion Block 242 (OCS-G-3133) terminated September 2, 1988.

[18] Lease expiration.

[19] Effective May 1, 1988, Applicant acquired certain interests from BHP Petroleum Company, Inc.

[20] By assignments dated August 13, 1986, effective August 1, 1986, Applicant assigned its interest in certain acreage to Kaiser-Francis Oil Company and Beresco Properties, Inc.

[21] Effective May 1, 1988, Applicant acquired certain interests from Anderson Oil Company, Goodrich Oil Company, Research Enterprises, Inc., and The Hunter Company, Inc.

[22] By assignment dated September 23, 1988, effective July 1, 1988, Applicant assigned its interests in certain acreage to Sue Ann Oil & Gas Company.

[23] By assignment effective July 1, 1987, Applicant assigned certain acreage to W & T Offshore, Inc.

[24] Effective December 1, 1987, Applicant assigned certain acreage to Maple Properties Corporation.

[25] Effective December 1, 1987, Applicant assigned certain acreage to Meridian Oil Production, Inc. The remaining well was plugged and abandoned and the lease surrendered.

[26] Effective May 1, 1988, and June 1, 1988, Applicant assigned certain interests to Alliance Operating Corporation. Effective June 1, 1988, Applicant assigned certain interests to Amoco Production Company.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-25722 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

S-031999 0016(01)(04-NOV-88-16:32:05)

[Docket Nos. MT88-21-001, et al.]

South Georgia Natural Gas Company, et al., Natural gas pipeline Rate Filings

November 1, 1988.

Take notice that the following filings have been made with the Commission:

1. South Georgia Natural Gas Company

[Docket No. MT88-21-001]

Take notice that on October 27, 1988, South Georgia Natural Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

Substitute First Revised Sheet No. 16P First Revised Sheet No. 34P.1

Comment date: November 8, 1988, in accordance with Standard Paragraph K at the end of this notice.

2. Mid Louisiana Gas Company

[Docket No. MT88-4-002]

Take notice that on October 25, 1988, Mid Louisiana Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

Revised Substitute Original Sheet No. 261
Substitute Original Sheet No. 26m

Comment date: November 8, 1988, in accordance with Standard Paragraph K at the end of this notice.

3. ANR Pipeline Company

[Docket No. MT88-19-002]

Take notice that on October 25, 1988, ANR Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

Third Revised Sheet No. 1
Third Revised Sheet No. 134
Original Sheet No. 134-A
Third Revised Sheet No. 135
Original Sheet No. 136
Third Revised Sheet No. 138
Original Sheet No. 138-A
Substitute Original Sheet No. 164
Substitute Original Sheet No. 165
Substitute Original Sheet No. 166
Second Substitute Original Sheet No. 167

Comment date: November 8, 1988, in accordance with Standard Paragraph K at the end of this notice.

4. Southern Natural Gas Company

[Docket No. MT88-20-002]

Take notice that on October 27, 1988, Southern Natural Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Sixth Revised Volume No. 1:

Substitute First Revised Sheet No. 30CC

Comment date: November 8, 1988, in accordance with Standard Paragraph K at the end of this notice.

Standard Paragraph

K. Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25724 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

Assignment of New Docket Numbers; ANR Pipeline Co. et al.

November 2, 1988.

In the matter of ANR Pipeline Company, Docket No. GP89-2-000, Colorado Interstate Gas Company, Docket No. GP89-3-000, Columbia Gas Transmission Company, Docket No. GP89-4-000, Consolidated Natural Gas Transmission Corporation, Docket No. GP89-4-000, El Paso Natural Gas Company, Docket No. GP89-6-000, Mississippi River Transmission Corporation, Docket No. GP89-6-000, Mountain Fuel Resource, Inc., Docket No. GP89-8-000, Natural Gas Pipeline Corporation of America, Docket No. GP89-9-000, Northwest Pipeline Corporation, Docket No. GP89-10-000, Panhandle Eastern Pipeline Company, Docket No. GP89-11-000, Sea Robin Pipeline Company, Docket No. GP89-12-000, Southern Natural Gas Company, Docket No. GP89-13-000, Texas Eastern Transmission Corporation, Docket No. GP89-14-000, Texas Gas Transmission Corporation, Docket No. GP89-15-000, Transcontinental Gas Pipeline Corporation, Docket No. GP89-16-000, Trunkline Gas Company, Docket No. GP89-17-000, United Gas Pipeline Company, Docket No. GP89-18-000, Williams Natural Gas Company, Docket No. GP89-19-000, Williston Basin Interstate Pipeline Company, Docket No. GP89-20-000.

Notice is hereby given of the assignment of new docket numbers to the protest filings made by the above-referenced pipelines pursuant to Commission Order No. 473. The pipelines filed their protests in Docket No. RM86-7-000. For purposes of convenience and administrative control, each pipeline is being assigned a separate docket number, as set forth above.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25723 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

November 2, 1988.

Take notice that on October 27, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Twelfth Substitute Twenty-First Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on November 1, 1988.

According to Granite State, the revised rates reflect changes in its projected cost of purchased gas since its quarterly purchased gas cost adjustment, effective October 1, 1988 in Docket No. TQ89-1-4-000. It is said that the filing reflects changes in projected gas costs primarily from two sources for the remaining months of the fourth quarter of 1988: purchases of Canadian gas through the medium of Boundary Gas, Inc., and purchases in spot markets. According to Granite State, Boundary Gas purchase costs change seasonally on November 1 and April 1 each year and the costs for its spot market purchases have increased above the levels projected in its October 1, 1988 purchased gas cost filing.

According to Granite State copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine and Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25718 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA89-1-41-001]

Paiute Pipeline Co.; Notice of Filing

November 1, 1988.

Take notice that on October 24, 1988, Paiute Pipeline Company (Paiute) filed Substitute Third Revised Sheet No. 10 to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1988. Paiute also filed supporting schedules to reflect Northwest's amended rates.

Paiute states that this filing amends its filing of September 1, 1988, to reflect a change in rates. Paiute states that, in its initial filing, it reserved the right to submit a substitute sheet to track any Northwest revisions. Paiute states that if the amended rates submitted by Northwest are revised for any reason, Paiute again reserves the right to submit a substitute sheet to track the Northwest revisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before November 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25719 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC89-2-000]

South Georgia Natural Gas Co.; Petition For Waiver

November 2, 1988.

Take notice that on October 11, 1988, South Georgia Natural Gas Company, (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202, tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, a Petition For Waiver of certain provisions of the Stipulation and Agreement dated December 30, 1981 in Docket No. TC81-63-000, all as more fully set forth in the petition which is on file with the Commission and open for public inspection.

By order dated March 18, 1982, the Commission approved the aforementioned Stipulation and Agreement, which established the procedures to be followed in updating the Priority 2.1 Essential Agricultural Use (EAU) requirements of South Georgia's resale and direct sale customers. One provision of the Stipulation and Agreement requires South Georgia to resurvey triennially its customer's EAU requirements in order to update its Index of Requirements to reflect any changes in their EAU requirements. A triennial survey is due to be conducted this year.

Although the triennial update of customer EAU requirements is due this year, South Georgia has not received any information from its customers indicating a need or interest in updating their EAU requirements for 1988. By letter dated September 28, 1988, South Georgia notified its customers that it would be willing to file with the Commission a request for a waiver of the requirement that it update EAU requirements for 1988. The response from South Georgia's customers indicates that they do not desire to undertake a survey of their EAU requirements this year. In fact, every customer has indicated its willingness to forego this year's resurvey. Accordingly, South Georgia has unanimous support from its customers for this request for a waiver of the requirement that it update EAU requirements this year.

As a second basis for not requiring an update of EAU requirements this year, South Georgia submits that the granting of this waiver should not have an adverse impact on any essential agricultural users on South Georgia's system. South Georgia's Form 16 which shows projected supply requirements for the period September 1, 1988–August 31, 1989 does not project any firm curtailments for the upcoming 1988–89 winter period. Finally, the granting of South Georgia's requested waiver would not affect the right to future updates of EAU requirements as provided for in the Stipulation and Agreement and the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or a Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such Motions or Protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25720 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-177-056, CP88-136-001, RP88-67-011]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 31, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 26, 1988 tendered for filing in compliance with the Joint Offfer of Settlement filed on May 27, 1988 (May 27 Settlement) by Texas Eastern and several other parties and in compliance with the Commission's September 29, 1988 Order in Docket Nos. RP85-177-044 through -046 and CP88-136-000 approving the May 27 Settlement, in the captioned dockets as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, six copies of the tariff sheets listed on Appendices A and B. The tariff sheets listed in Appendix A for filing in Docket No. RP85-177, *et al.*, set forth the terms and conditions under which Texas Eastern will operate pursuant to the certificates of public convenience and necessity issued in an order dated September 29, 1988 in Docket No. CP88-136-000, *et al.*, and accepted by Texas Eastern on October 11, 1988. The tariff sheets listed in Appendix B for filing in Docket No. RP88-67, set forth the rates which Texas Eastern proposes to charge commencing on the effective date of the new services.

Texas Eastern states that the tariff sheets listed on Appendix A reflect the addition to its tariff of new Rate Schedules CD-1 and CD-2 and related Forms of Service Agreements and changes to Rate Schedule FT-1 to reflect the transportation certificate issued by the Commission to Texas Eastern pursuant to Subpart G of the Commission's Regulations.

Texas Eastern states that all blanket transportation request received prior to 7:00 a.m., November 1, 1988 will be deemed to have been received by Texas Eastern simultaneously on 7:00 a.m., November 1, 1988. Texas Eastern states that blanket transportation requests received subsequent to 7:00 a.m., November 1, 1988, will be accorded a first-come/first-serve priority based upon the date such requests are received by Texas Eastern. Texas Eastern will continue to process transportation requests pursuant to Section 311 of the Natural Gas Policy Act.

Texas Eastern states that, as approved by the Commission by its September 29 Order, a Gas Supply Inventory Reservation Charge is included in the service agreements underlying new Rate Schedules CD-1 and DC-2 and in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff applicable to Rate Schedules DCQ and GS. The Gas Supply Inventory Reservation Charge is a unit rate equal to Texas Eastern's weighted average cost of gas from time to time (excluding prices paid pursuant to the 1964 Gulf Warranty Contract approved by the Commission in Docket No. CI64-26 and prices paid to existing interstate pipelines who do not have on file as part of their FERC Gas Tariff a similar Gas Supply Inventory Reservation Charge) times 20 percent. The Gas Supply Inventory Reservation Charge proposed to be effective as of November 1, 1988 and reflected on Sheet No. 50 is $0.4307.

Texas Eastern states it is making the following revisions to its Fifth Revised Volume No. 1 and Original Volume No. 2 Gas Tariffs in order to implement the certicates issued by the Commission:

(1) Rate Schedule IT-1 was revised to incorporate the governmental authorization pursuant to the blanket transportation certificate granted to Texas Eastern under which service will be provided.

(2) The filing reflects the termination of the Service Agreements under Rate Schedule TS-1, as of February 1, 1989.

(3) Sheet No. 1284 of Original Volume No. 2 is being filed in order to terminate Rate Schedule X-134 as of November 1, 1988 pursuant to ordering paragraph (B) of the Commission's order issued January 20, 1988 in Docket No. CP87-169.

(4) The remaining tariff sheets reflect changes filed by Texas Eastern on November 16, 1987, as modified by the December 31, 1987 Order, the May 27 Settlement, and tariff changes approved by the Commission subsequent to November 16, 1987.

In compliance with the May 27 Settlement and the September 29 Order, Texas Eastern is submitting the tariff sheets listed in Appendix B to specify the rates Texas Eastern will charge commencing with the effective date of the new services. These rates are based upon the RP88-67 cost of service motioned into effect on September 1, 1988 and accepted subject to refund by the Commission in Docket No. RP88-67 by order dated September 28, 1988. Sheet Nos. 484 and 489 incorporate Rate Schedules DC-1 and DC-2 in the Annual Overrun Penalties specified in Section 32 of Texas Eastern's General Terms and Conditions. Section 32 is in effect subject to refund pursuant to an order dated August 31, 1988 in Docket No. RP88-221.

Texas Eastern requests the Commission to waive all necessary rules and regulations to permit these tariff sheets to become effective November 1, 1988. In particular, Texas Eastern requests the Commission to promptly issue a notice of this filing and to issue on or before October 31, 1988, an order preferably by notational voting, accepting these tariff sheets with an effective date of November 1, 1988, the date Texas Eastern and the Customers desire to commence service pursuant to the certificates granted. Texas Eastern states that expedited approval of these tariff sheets is necessary to permit it to commence service pursuant to the certificates on November 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before November 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25721 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Pick-Sloan Missouri Basin Program; Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power rate adjustment—Pick-Sloan, Missouri Basin Program.

SUMMARY: The power repayment study for the Pick-Sloan Missouri Basin Program (P-SMBP), based on historical data through FY 1987, shows that existing power rates for both the Eastern and Western Divisions of the P-SMBP are not adequate to meet repayment requirements. To meet those requirements, the rates for firm power and peaking power are proposed to be increased as follows:

EASTERN DIVISION

Class of power	Present rate	Proposed rate
Firm capacity (kW)	$1.65/kW-month	$1.90/kW-month.
Firm energy (kWh)	4.41 mills/kWh	5.16 mills/kWh.
Additional charge for firm energy in excess of 60-percent monthly load factor	3.38 mills/kWh	3.38 mills/kWh.
Peaking capcity (kW)	$9.90/kW-season	$11.40/kW-season.
Peaking energy (kWh)	4.41 mills/kWh	5.16 mills/kWh.
Seasonal firm	Same as firm power rate.	

The proposed rate adjustment is to become effective on an interim basis on the first day of the October 1989 billing period.

The system load characteristics utilized in the rate design are based upon a projection of what can be expected 2 years into the future.

Previous rate designs have been based upon a 5-year rolling average of historical data.

The wide diversity of types of load in the service area results in customers with a wide range of monthly load factors. For the average customer, this rate design results in approximately 44 percent of the revenue derived from the capacity charge and approximately 56 percent derived from the energy charge.

The differential between the charge for 60 percent load factor energy and the charge for that above 60 percent load factor has not increased from the existing 3.38 mills/kWh. The purpose of this differential is to offset purchased energy costs associated with the higher load factor portion of the energy load. The cost of energy in this area has remained relatively stable during recent years, and is expected to increase only slightly in the near future. Analysis indicates that the existing rate will be adequate to meet purchase requirements.

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Western Division

With the first day of the October 1989 billing period, the marketing criteria set forth in the "Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western Division" (51 FR 4012, January 31, 1986) (Post-1989 Criteria) become effective. Under the Post-1989 Criteria, the Western Area Power Administration's (Western) Loveland Area Office (LAO) will begin to market the firm resources of the P-SMBP-Western Division (WD) and the Fryingpan-Arkansas Project under one Loveland Area Projects (LAP) "blend rate." Because the effective date to the "blend rate" and the effective date of the P-SMBP-Eastern Division (ED) proposed rate adjustment coincide, the LAO will not develop a P-SMBP-WD rate schedule. However, the revenue requirement of the P-SMBP-WD is set forth in the P-SMBP customer brochure. There will be a public process for the Post-1989 Criteria LAP "blended rate" at a later date.

FOR FURTHER INFORMATION CONTACT: A brochure explaining the need for a rate increase will be distributed to all P-SMBP customers and other interested parties. Public information and public comment forums will be held in accordance with procedures for public participation in general rate adjustments (10 CFR Part 903). Following completion of the consultation and comment period and review of public comments, Western will develop the proposed rates and submit them to the Deputy Secretary to be placed in effect on an interim basis pending final approval by the Federal Energy Regulatory Commission.

Data, studies, reports, and other documents used in developing the proposed rates are available for inspection and/or copying in the Billings Area Office.

Written comments and requests for information may also be submitted to the following address throughout the entire consultation and comment period: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107-5800*Telephone:* (406) 657-6532.

DATES: The consultation and comment period will begin on November 7, 1988, and will end February 6, 1989.

Public information forums, during which Western will explain the need for the rate increase and answer questions, will be held at the following places and times:

December 7, 1988—8:00 a.m.—Doublewood Inn, Fargo, North Dakota.
December 7, 1988—2:00 p.m.—Howard Johnson, Sioux City, Iowa.
December 8, 1988—9:00 a.m.—Holiday Inn, Northglenn, Colorado.
December 9, 1988—9:00 a.m.—Plaza Holiday Inn, Billings, Montana.

Public comment forums, during which comments for the record concerning the proposed rate increase will be accepted, will be conducted at the following places and times:

January 10, 1989—9:00 a.m.—Holiday Inn, Northglenn, Colorado.
January 11, 1989—9:00 a.m.—Holiday Inn Airport, Sioux Falls, South Dakota.

Persons planning to speak at either of the January comment forums should send their names and organization affiliation to the address noted above so that they are received by January 3, 1989, so that a speaker list can be developed. Other persons may also be allowed to comment as time permits.

SUPPLEMENTARY INFORMATION: Power rates for the P-SMBP are established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; the Reclamation Act, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and the Flood Control Act of 1944, 58 Stat. 887; and the other acts specifically applicable to the project system involved.

Delegation Order No. 0204-108 was issued on December 14, 1983 (48 FR 55664, December 19, 1983). The order contains several provisions including delegating to the Administrator, on a nonexclusive basis, the authority to develop power and transmission rates, and delegating to the Deputy Secretary of the Department of Energy (DOE), on a nonexclusive basis, the authority to confirm, approve, and place in effect on an interim basis power and transmission rates. Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR Part 903) were established September 4, 1985 (50 FR 37835, September 18, 1985). Power rate adjustments for P-SMBP are conducted consistent with 10 CFR Part 903.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality Regulation (40 CFR Parts 1500 through 1508), and DOE guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western conducts an environmental evaluation of proposed rate adjustments.

Section D of the DOE guidelines indicates that the level of documentation for NEPA compliance is based on a comparison of the proposed rate adjustment and the rate of inflation since the last adjustment. Western will evaluate the proposed rate adjustment and prepare the appropriate documentation of NEPA compliance.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, each agency, when requried by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for the P-SMBP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered "rules" within the meaning of the Act. Since the rate for P-SMBP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 through 3520, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided pursuant to this **Federal Register** notice for the interested public to participate in the development of the P-SMBP rate. There is no requirement that members of the public participating in the development of the P-SMBP rate supply information about themselves to the Government. It follows that the P-SMBP rates are exempt from the Paperwork Reduction Act.

Determination Under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, November 1, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-25821 Filed 11-4-88; 10:27 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Development

[FRL-3472-2]

Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is:

EQL-1188-069, "Determination of Lead Concentration in Ambient; Particulate Matter by Inductively Coupled Argon Plasma Optical; Emission Spectrometry (Northern Engineering and Testing, Inc.)."

A notice of receipt of application for this method appeared in the **Federal Register**, Volume 53, August 16, 1988, on page 30866.

This method has been tested by the applicant, Northern Engineering and Testing, Inc., in accordance with the test procedures prescribed in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with a mixture of nitric acid and hydrochloric acid, facilitated by heat and ultrasonication. The lead content of the sample is analyzed by inductively coupled argon plasma optical emission spectrometry using the 220.35 nm lead emission line and instrument conditions optimized by the user laboratory. A sample of the extract solution is nebulized to form an aerosol which is excited with high temperature argon gas produced by passing of argon through a powerful radio frequency field. Radiation emitted from the plasma enters a spectrometer where it is separated into selected wavelengths and sensed by separate photomultiplier tubes for each element of interest. The luminous energy thus measured is converted to an output signal which can be related to the concentration of each element of interest in the sample. Technical questions concerning the method should be directed to Northern Engineering and Testing, Inc., P.O. Box 30615, Billings, Montana 59107.

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using inductively coupled argon plasma optical emission spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of section 2.8 of Appendix C to 40 CFR Part 58 (Modification of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR Part 53.

Additional information concerning this action may be obtained by writing to Director, Quality Assurance Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Erich W. Bretthauer,

Acting Assistant Adminstrator for Research and Development.

[FR Doc. 88-25692 Filed 11-4-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3470-3]

Transfer of Data to States

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will transfer to the appropriate state environmental protection office or public health and safety office information which has been, or will be, submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA) in the following surveys:

- National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities;
- National Detailed Survey of Hazardous Waste Treatment, Storage, disposal, and Recycling Facilities;
- National Survey of Hazardous Waste Generators; and
- Hazardous Waste Biennual Report Data.

EPA will transfer the data from these surveys to the state offices for use in State Capacity Assurances as required by the Superfund Amendments and Re-Authorization Act of 1986 (SARA). Some of the information may have a claim of business confidentiality.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than November 14, 1988.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

Transfer of Data

The Superfund Amendments and Re-Authorization Act of 1986 (SARA) requires that each state assure the availability of hazardous waste treatment and disposal capacity to manage hazardous waste expected to be generated over the next 20 years in each state (section 104(k) of SARA).

In order to assist the states in determining the availability of treatment, storage, disposal and recycling capacity in each state for those hazardous wastes generated in that state, EPA may transfer the data from the following surveys to the appropriate state environmental protection office or public health and safety office:

- National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities;
- National Detailed Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities; and
- National Survey of Hazardous Waste Generators.

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Some of the information being transferred may have been claimed as confidential business information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that the state offices require access to CBI submitted to EPA under the authority of section 3007 of RCRA to conduct State Capacity Assurances as required by SARA. EPA is issuing this notice to inform all submitters of CBI that EPA may transfer to the state offices, on a need-to-know basis and upon written request, CBI collected under the authority of RCRA in the above-noted surveys.

The state officials granted access to RCRA CBI are subject to the penalties of section 3007 (b) of RCRA (42 U.S.C. 6927(b)). In accordance with 40 CFR 2.305(h), state offices must assure EPA that the interests of affected businesses will be adequately protected. The state offices will provide EPA with their security procedures for handling CBI. EPA will review and approve the security procedures of the state offices prior to RCRA CBI being transmitted to the state offices. Personnel from the state offices will be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual".

Dated: October 14, 1988.

Jonathan Cannon,

Acting Assistant Administrator.

[FR Doc. 88-25689 Filed 11-4-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Crown Cruise Line of Florida, Inc.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010845-001.

Title: Port of Palm Beach Terminal Agreement.

Parties: Port of Palm Beach District, Crown Cruise Line of Florida, Inc. (Crown).

Synopsis: The agreement provides Crown with non-exclusive, but preferential, use of Berth 14 and a portion of Berth 13 at the Port of Palm Beach for its passenger cruise operations.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 2, 1988.

[FR Doc. 88-25674 Filed 11-4-88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88-25; Agreement No. 217-011177]

Space Charter Agreement Between Ozean Linie GmbH and Euro-Gulf International, Inc.; Filing of Petition for Declaratory Order

Notice is given that a petition for declaratory order has been filed by Ozean Linie GmbH ("Ozean") requesting that the Federal Maritime Commission resolve a controversy between Ozean and Euro-Gulf International, Inc. ("Euro-Gulf") arising from the operation of a space charter agreement (FMC No. 217-011177) between Ozean and Euro-Gulf. Specifically, Ozean seeks a declaratory order from the Commission that the agreement and a space charter protocol included with the agreement, when taken together authorize Ozean to charter space on Euro-Gulf's vessels to San Juan, Puerto Rico and that such activity is exempt from the antitrust laws of the United States.

The petition has been served on Euro-Gulf and that party may file a reply to the petition with the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 on or before December 2, 1988. An original and fifteen copies shall be submitted and a copy thereof served on Nathan J. Bayer, Esq., Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005. The reply shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 11101. Participation by persons other than those named above will be permitted only upon grant of petition to intervene by the Commission pursuant to Rule 72 (46 CFR 502.72). Petitions for leave to intervene shall be submitted on or before the reply date and shall be accompanied by intervenor's complete reply including its factual and legal presentation in the matter.

Joseph C. Polking,

Secretary.

[FR Doc. 88-25654 Filed 11-4-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transactions Granted Early Termination Between: 10/18/88 and 10/28/88

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN Number	Date Terminated
Kerry Co-operative Creameries Limited, Meshulam Riklis, Beatreme Food Ingredients, Inc.	88-2656	10/19/88
Unisys Corporation, Convergent, Inc., Convergent, Inc.	88-2717	10/19/88
ConAgra, Inc., Cook Family Foods, Ltd., Cook Family Foods, Ltd	88-2727	10/19/88

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN Number	Date Terminated
The Equitable Life Assurance Society of the U.S., Dr. Pepper Bottling Company of Texas, Dr. Pepper Bottling Company of Texas	88-2735	10/19/88
R. Stephen Rubin, Parker Pen Plc, Parker Pen Plc	89-0029	10/19/88
Grand Metropolitan Public Limited Company, The Pillsbury Company, The Pillsbury Company	89-0039	10/19/88
The News Corporation Limited, Walter H. Annenberg, Triangle Publications, Inc	88-2695	10/20/88
CoastAmerica Corporation, Jerrold L. Lavine, Powder Hill Group, Ltd., et al	89-0076	10/20/88
Kobe Steel, Ltd., Nortek, Inc., Monogram Industries, Inc. (Glastic Company Division)	88-2659	10/21/88
Cal Fed Income Partner L.P., Transamerica Corporation, Transam One and Transam Two, Limited Partnerships	89-0057	10/21/88
Bridge Oil Limited, H.R. Perot, Petrus Oil Company, L.P	89-0058	10/21/88
Scandinavian Airlines System Denmark-Norway-Sweden	89-0063	10/21/88
Scandinavian Airlines System Denmark-Norway-Sweden, Texas Air Corporation, Texas Air Corporation	89-0063	10/21/88
Blue Cross of Western Pennsylvania, Plan Investment Fund, Inc., Plan Investment Fund, Inc.	89-0066	10/21/88
First Boston, Inc., CS Holding, Financiere Credit Suisse-First Boston	89-0067	10/21/88
Scandinavian Airlines System Denmark-Norway-Sweden, Texas Air Corporation, Texas Air Corporation	89-0068	10/21/88
First Boston, Inc., FBC Acquisition Corp., FBC Acquisition Corp	89-0071	10/21/88
Stifel Financial Corp., Rowland, Simon and Co., L. P., Rowland, Simon and Co., L. P	89-0072	10/21/88
Sumitomo Realty and Development Co., Ltd., Marriott Corporation, Marriott Corporation	89-0080	10/21/88
"Investing in Success" Equities PLC, Mumford, Inc., Mumford, Inc. and World Bazaar, Inc	89-0084	10/21/88
Kobe Steel, Ltd., Joint Venture Newco, Joint Venture Newco	89-0105	10/21/88
Gerald M. Ronson, c/o Heron International N.V., HC Properties U.S.A., Inc., HC Properties U.S.A., Inc.	89-0109	10/21/88
Control Securities plc, HC Properties U.S.A., Inc., HC Properties U.S.A., Inc	89-0111	10/21/88
C. William Carey, Estate of Henry Peterson, Famous Jewelry Corporation, Custom Casting Co., Inc	88-2531	10/24/88
TI Group plc, Thermal Scientific plc, Thermal Scientific plc	88-2704	10/24/88
C. William Carey, Thomas G. Wyman, L.G. Balfour Company, Inc	88-2716	10/24/88
Alberto-Culver Company, Quintessence Holdings, Inc., Quintessence Incorporated and Vitabath, Inc.	88-2746	10/25/88
Prime Computer, Inc., General Electric Company, Calma Company	89-0028	10/25/88
James River Corporation of Virginia, General Occidentale, Diamond Occidental Forest Inc.	89-0034	10/25/88
McCain Inc., The Greyhound Corporation, The Dial Corporation (Ellio's Pizza Division)	89-0065	10/25/88
First Chicago Corporation, CG&T Industries, Inc., CG&T Industries, Inc	89-0070	10/25/88
"Investing in Success" Equities PLC, Tenneco Inc., TOC Retail, Inc	89-0090	10/25/88
Robert W. Plaster, Empire Gas Acquisition Corporation, Empire Gas Acquisition Corporation	88-2710	10/26/88
Marlis S.A., The News Corporation Limited, Elle Publishing, a partnership	89-0055	10/26/88
Marlis, S.A., Marlis S.A., Elle Publishing, a partnership	89-0056	10/26/88
Warburg, Pincus Capital Co., L.P. and Orion Acq. Corp., Orion Research Incorporation, Orion Research Incorporated	89-0108	10/26/88
Emhart Corporation, GardenAmerica Corporation, GardenAmerica Corporation	89-0124	10/26/88
Emhart Corporation, GardenAmerica Corporation, GardenAmerica Corporation	89-0132	10/26/88
Emhart Corporation, GardenAmerica Corporation, GardenAmerica Corporation	89-0133	10/26/88
Wingate Partners, L.P., Gerber Products Company, Gerber Furniture Group, Inc	88-2669	10/27/88
Leonard Tow, Walter K. Mickelson, Jr. and Hazel Mickelson (spouses), Mickelson Media, Inc	88-2685	10/27/88
B. C. Sugar Refinery, Ltd., Kalama Chemical, Inc., Kalama Chemical, Inc	88-2687	10/27/88
ALLTEL Corporation, Advanced Telecommunications Corporation, Advanced Telecommunications Corporation	88-2712	10/27/88
Wolverine Holding Company, Noranda Inc., Noranda Metal Industries Limited	88-2713	10/27/88
Neil M. Chur, Beverly Enterprises, Inc., Beverly Enterprises-Illinois, Inc	88-2715	10/27/88
Sears, Roebuck and Co., H.F. Holdings, Inc., Prince Kuhia Plaza	88-2741	10/27/88
Mr. Ismanto Wanandi, Arvin Industries, Inc., Arvin Industries, Inc	89-0023	10/27/88
Herbert H. Haft, Walgreen Co., Walgreen Co	89-0026	10/27/88
Aktiebolaget Electrolux, Bernard L. Milch, Washex Machinery Corporation	89-0064	10/27/88
Brierley Investments Limited, Associated Hosts, Inc., Associated Hosts, Inc	89-0068	10/27/88
Financial Holding Corporation, CalFed Inc., Beneficial Standard Life Insurance Company	89-0093	10/27/88
RPS Realty Trust, Resources Pension Shares 2, Resources Pension Shares 2	89-0120	10/27/88
International Paper Company, USG Corporation, Masonite Corporation	89-0021	10/28/88
Budget Rent a Car Corporation, E. A. Rodenberg, Jr., Alpha Transport Services, Inc	89-0022	10/28/88
123124 Canada Inc., Intamix Corporation, Intamix Corporation	89-0060	10/28/88
Compagnie de Navigation Mixte, Caulkins Indiantown Citrus Company, Caulkins Indiantown Citrus Company	89-0077	10/28/88
Daniel J. Sullivan, Anheuser-Busch Companies, Inc., Old American Pottery Company, d/b/a Old America Store	89-0083	10/28/88
Western Mining Corporation Holdings Limited, Chevron Corporation, Chevron U.S.A. Inc	89-0092	10/28/88
British Gas plc, Tenneco Inc., 13 subsidiaries	89-0097	10/28/88
Warburg, Pincus Capital Company, L.P., Magma Copper Company, Magma Copper Company	89-0107	10/28/88
RPS Realty Trust, Resources Pension Shares 1, Resources Pension Shares 1	89-0119	10/28/88
RPS Realty Trust, Integrated Resources-Resources Pension Shares 4, Integrated Resources-Resources Pension Shares 4	89-0121	10/28/88
RPS Realty Trust, Resources Pension Shares 3, Resources Pension Shares 3	89-0122	10/28/88
The Penn Central Corporation, Tegas Gas Corporation, Tejas Gas Corporation	89-0137	10/28/88
Oracle Systems Corporation, M. Dendy Young, Falcon Systems, Inc.	89-0147	10/28/88
Occidental Petroleum Corporation, Tenneco Inc., Cathedral Bluffs Shale Oil Company	89-0161	10/28/88
The Prudential Insurance Company of America, Vintage Petroleum, Inc., Vintage Pipeline, Inc	89-0188	10/28/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-25702 Filed 11-4-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0306]

Salt-Cured, Air-Dried, Uneviscerated Fish; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide (CPG) 7108/17 "Salt-Cured, Air-Dried, Uneviscerated Fish (e.g., Kapchunka)" October 27, 1988 which contains the agency's policy statement concerning the manufacture and sale of ready-to-eat, salt-cured, air-dried, uneviscerated

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fish (e.g., "kapchunka"). Since 1981, this fish product has been identified as the source of botulinum toxin that caused three outbreaks of illness, with deaths. This guidance does not limit the agency's enforcement discretion on whether to initiate regulatory action after an evaluation of all relevant facts.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0229.

SUPPLEMENTARY INFORMATION: FDA has issued CPG 7108.17 to set forth the agency's policy on the manufacture and sale of ready-to-eat, salt-cured, air-dried, uneviscerated fish, which may or may not have been smoked. This type of fish product is an ethnic food that is sold under various names, including "kapchunka," "rybetz," and "rostov." In this notice, this fish product will be referred to as "kapchunka."

Kapchunka is prepared by layering whole, raw, uneviscerated fish (usually whitefish) and salt in approximately at 1-to-1 ratio under weighted boards. The layered fish are allowed to cure under refrigeration for a minimum of 25 days, after which the fish are removed from the accumulated brine, rinsed, and hung at ambient temperatures to aid dry for 3 to 7 days. After drying, the fish are stored under refrigeration until distribution and sale.

Since 1981, kapchunka products manufactured in New York City by two firms have been implicated in three outbreaks of illness, with deaths, caused by botulinum toxin. In September 1981, one person in San Francisco became seriously ill from consuming kapchunka that contained botulinum toxin. A second outbreak occurred in August 1985 and resulted in the death of a New York City couple. In both of these cases, the presence of botulinum toxin was confirmed in the uneated portion of the kapchunka. Analysis of the uneated kapchunka also revealed that the salt level was too low (less than 4 percent) to preclude growth of *Clostridium botulinum* and the associated production of botulinum toxin when the fish was not refrigerated, as was the case during the air-drying phase of manufacture.

Following the 1985 outbreak of botulism, manufacture of kapchunka ceased as result of license suspensions by the State of New York and voluntary agreements with the State and FDA. Subsequently, both manufacturers made test batches using modified procedures, with close monitoring primarily by the New York State Department of Agriculture and Markets (NYAM). Very limited sale of kapchunka produced during this period was permitted, but only after anlaysis demonstrated that the aqueous phase salt concentration was high enough to preclude outgrowth of *C. botulinum*.

One of the two firms has not processed kapchunka since September 1986. The other firm, however, based on an agreement finalized in June 1987 with NYAM (countersigned by FDA), resumed commercial production in August 1987. The agreement set forth standard operating and quality control procedures that were intended to ensure the safe processing of kapchunka.

The third outbreak of botulism poisoning occurred in November 1987, less than 2 months after the resumption of commercial distribution of kapchunka. The contaminated kapchunka were traced back to the firm that entered into the June 1987 processing agreement with NYAM. In this outbreak, the agency received reports of eight illnesses, including one eventual death. These illnesses occurred in three separate incidents; One in New York City and two in Israel. (The kapchunka were transported by several consumers from New York City to Israel.)

FDA was able to test the uneaten portion of the kapchunka that was implicated in the illnesses and the death in Israel. In response to an Israeli news alert, two additional whole kapchunka were turned over to Israeli health officials and eventually to FDA for testing. FDA found the three kapchunka to be positive for botulinium toxin. In contrast to the 1981 and 1985 outbreaks, however, the salt levels in tested kapchunka were 18 to 24 percent in the aqueous phase, substantially higher than the minimum 10 percent prescribed in the June 1987 agreement.

FDA inspection of the firm that manufactured the kapchunka revealed that the actual manufacturing procedures deviated significantly from the June 1987 processing agreement. These deviations may have resulted in under-processing some fish or in temporary loss of control of a critical processing parameter, such as temperature, which may have led to production of some kapchunka contaminated with botulinum toxin.

Thus, since 1981, kapchunka contaminated with botulinum toxin have caused three outbreaks of botulism resulting in three reported deaths and numerous reported illnesses, many of which were life-threatening. The last outbreak occurred almost immediately after resumption of commercial production of kapchunka, using a revised process that was intended to correct previous deficiences.

In the United States, kapchunka is manufactured mostly from whitefish. Occurrence in fish of *C. botulinum* Type E, which was responsible for the 1985 and 1987 outbreaks, has been found to be as high at 57 percent. Uneviscerated fish present a much greater hazard than cleaned fish because the *C. botulinum* spores are particularly likely to be in the gut as a result of ingestion by the fish during feeding. The anaerobic nutrient-rich environment of the gut provides a good medium for outgrowth of the bacteria. Therefore, it is critical that uneviscerated fish be handled properly before and during curing to ensure that *C. botulinum* spores to not transform to the active growth phase resulting in multiplication of bacteria and formation of toxin. Proper handling includes uninterrupted refrigeration before and during the salt-curing step. It is critical that the salt-curing process be designed and executed so that each fish in each lot attains an aqueous phase salt level that is high enough to preclude the outgrowth of *C. botulinum* in every portion of the fish, including the viscera, before the air-drying step. Attaining an adequate salt level is critical because the subsequent air-drying step is done without refrigeration, an opportune condition for the outgrowth of *C. botulinum*.

FDA has concluded that kapchunka presents a potential life-threatening acute health hazard from botulinum toxin. There is a documented history of life-threatening health hazards associated with kapchunka. The agency believes that the combination of: (1) The presence of viscera that is likely to contain *C. botulinum* spores; (2) the difficulty in attaining sufficiently high salt levels in all portions of all fish during the salt-curing of whole fish; and (3) the ambient temperature air-drying step creates a situation that may result in the production of hazardous kapchunka with only slight errors in processing.

Further, even after the processors of kapchunka were given substantial assistance in food processing by government and academic experts, the processors have not been able to demonstrate that nonhazardous kapchunka can be produced under commercial conditions. Finally, botulinum toxin may be present in the kapchunka even though there are no clear indications of spoilage to alert consumers to the hazard.

Because of the potential health hazard associated with ready-to-eat, salt-cured, air-dried, uneviscerated fish, which may or may not have been smoked, the agency has determined that it should make available CPG 7108.17 to alert FDA district personnel and other interested persons. The agency considers such a salt-cured, air-dried, uneviscerated fish product to be adulterated within the meaning of section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(4)) in that it has been prepared, packed, or held under insanitary conditions whereby it may have been rendered injurious to health. The agency will consider taking regulatory action against any of this product encountered in interstate commerce.

CPG 7108.17 is intended to provide guidance to FDA's field offices for taking individual enforcement actions. This **Federal Register** document explains FDA's rationale for this guidance and allows the opportunity to bring to the agency's attention facts, previously unknown, that may cause the agency to reconsider this guidance.

Interested persons may submit written comments regarding CPG 7108.17 to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The CPG and any comments submitted are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under 21 CFR 10.85.

Dated: October 27, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25665 Filed 11–4–88; 8:45 am]

BILLING CODE 4160–01–M

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of funds for fiscal year 1989 for awarding grants to support clinical trials on safety and effectiveness of orphan products. FDA intends to award approximately 15 grants ranging from $20,000 to $100,000 in direct costs per annum for up to 3 years. Applications exceeding these limits may be considered nonresponsive.

DATES: There will be two closing dates. Applications must be received by January 3, 1989, or April 14, 1989. The beginning dates for awards are June 30 and September 30, 1989.

ADDRESS: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park Building, Rm. 3–20, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

Note.—Applications hand-carried or commercially delivered should be addressed to Park Building, Room 3–20, 12420 Parklawn Drive, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this notice: Robert L. Robins, address above.

Regarding the programmatic aspects of this notice:

Carol A. Wetmore, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Room 15–61, Rockville, Md 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION: FDA will support the clinical studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 13.103.

I. Background

The Office of Orphan Products Development was established to identify and facilitate the availability of orphan products. Orphan products are drugs, biologics, medical devices (including in vitro diagnostics), and foods for medical purposes that meet the criteria of the Orphan Drug Act. These products may be useful in a rare disease/disorder, but most lack commercial sponsorship because they are not considered commercially attractive for marketing. A subcategory of orphan products are those marketed products in which there is evidence suggesting usefulness in a rare disease/disorder but which are not labeled for that disease/disorder because substantial evidence of safety and effectiveness for that use is lacking.

One way to make orphan products more easily available is to support research to determine whether the products are safe and effective. FDA has allowed funds to support such research since fiscal year 1983. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations promulgated thereunder.

II. Research Goals And Objectives

A. Clinical Studies

In general, FDA will only consider awarding grants to support clinical studies for determining whether the products are safe and effective for premarket approval under the act (21 U.S.C. 301 *et seq.*) or under section 351 of the Public Health Service Act (42 U.S.C. 262). These clinical studies may be designed to assist in the approval of unapproved products or approval of unapproved new uses for products already marketed.

Ordinarily, at least some preliminary clinical research suggesting effectiveness and relative safety should already be available. However, FDA will also consider applications concerning products for which persuasive pharmacologic evidence is available showing that a product has a reasonable possibility of being effective even though no clinical trials have yet been performed.

Applications should be for one discrete clinical trial. The applicant must provide supporting evidence that the product to be investigated is available to the applicant in the form needed for the clinical trial.

The typical study that FDA will consider for support may involve up to several dozen subjects, will be well-controlled, and will be designed to provide substantial evidence of the product's safety and effectiveness.

Because funds are limited, FDA cannot consider large research projects involving many subjects and long-term follow up.

The agency will also consider funding pharmacokinetic studies if such studies are necesary to determine safe and effective doses in subjects with serious organ disease that might affect drug disposition. However, FDA will consider pharmacokinetic studies only if they are parts of studies for determining effectiveness of a product or are proposed to obtain information about products about which there is already a significant amount of evidence showing effectiveness.

FDA's standards for adequate and well-controlled studies (21 CFR 314.126)

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should be followed. In designing a well-controlled study, the investigator should especially keep in mind that historical controls or use of the subject as his or her own control is generally less desirable and reliable than active control or, when ethical, placebo controls. The applicant's proposal should provide a rationale for use of the control method chosen to satisfy consideration of scientific quality and ethical realities.

In addition to FDA's general interest in clinical studies for the safety and effectiveness of orphan products, the agency has recognized the following areas of pediatric research for which applications are encouraged.

1. Studies on marketed drugs currently approved only for adult uses which would provide data to support approving these drugs for pediatric patients.

2. Studies on nutritional products (medical foods) for management of inborn errors of metabolism for which adequate therapies are not currently available.

B. Significance

Each investigator submitting a grant application for a proposed orphan use in response to this request for applications should include a short statement explaining why preliminary evidence suggests that the product meets the objectives of the orphan products development program and why the product to be studied is an orphan product as described in the "Background" section of this notice. This statement should appear in the application under Section 2. B.—"Background and Significance."

C. Statistical Support

Statistical expertise is helpful in the planning, design, execution, and analysis of clinical investigations and clinical pharmacology to ensure the validity of estimates of safety and efficacy obtained from human studies. Applicants are expected to provide a statistical justification for the number of patients chosen for the trial based on the proposed outcome measures. Applicants should also document the appropriateness of the statistical procedures to be used in analysis of the results.

D. Journal Reference

Published reports are necessary and often critical for the review process and can help to support the investigator's research intent. Applicants should include copies of reprints of all relevant references for FDA review. This includes favorable and unfavorable reports.

III. Human Subject Protection And Informed Consent

A. Research Involving Human Subjects

Applicants should carefully review the section on human subjects on pages 4 and 5 of the instructions in the application kit. The Specific Instructions-Section 1, Item 4, Human Subjects, on pages 12 and 13 of the application kit should also be carefully reviewed for the certification of institutional review board (IRB) approval requirements. Applicants must provide information about six items described in Section 2-E of the instructions in the application kit. These six items include: The characteristics of the subjects, the sources of research materials, recruitment plans and consent procedures, any potential risks, and potential benefits to the subjects. Failure to include this information may result in deferral of the application. The goal should be to include enough information in a sufficiently clear fashion so that reviewers will not have to delay action on the application.

B. Informed Consent

Consent and/or assent forms and any additional information to be given to a subject must accompany the Grant Application Form PHS 398 (Rev. 9/86). Failure to include this information may result in deferral of the application. Information that is given to the subject or the subject's representative shall be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

C. Elements of Informed Consent

The elements of informed consent are as stated in the regulations at 45 CFR 36.116 and 21 CFR 50.25 as follows:

1. *Basic Elements of Informed Consent*

In seeking informed consent, the following information shall be provided to each subject:

(a) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

(b) A description of any reasonably foreseeable risks or discomforts to the subject.

(c) A description of any benefits to the subject or to others which may reasonably be expected from the research.

(d) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(e) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained and that notes the possibility that FDA may inspect the records.

(f) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained.

(g) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research' related injury to the subject.

(h) A statement that participation in voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discountinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. *Additional Elements of Informed Consent*

When appropriate, one or more of the following elements of information shall also be provided to each subject:

(a) A statement that the particular treatment or procedure may involve risks to the subject (or the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.

(b) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(c) Any costs to the subject that may result from participation in the research.

(d) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(e) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.

(f) The approximate number of subjects involved in the study. The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that physician is permitted to do so under applicable Federal, State, or local law.

IV. Reporting Requirements

A quarterly Financial Status Report (SF-269) and program progress report are required. An original and two copies of these reports shall be submitted to FDA's Grants Management Officer within 30 days following each Federal fiscal quarter, except the fourth report which shall serve as the annual report and shall be due 90 days after the budget expiration date. The program staff shall advise the grantee of the suggested format at the appropriate time. A final program progress report, Financial Status Report (SF-269), and invention statement must be submitted within 90 days after the expiration date of the approved project period.

V. Mechanism of Support

A. Award Instrument

Support will be in the form of grant awards which will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provisions of 42 CFR Part 52 and 45 CFR Parts 74 and 92. The regulations promulgated under Executive Order 12372 do not apply to the program.

All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 507, 512, and 515 of the act; section 351 of the Public Health Service Act; and regulations promulgated under any of these sections.

B. Eligibility

These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must exclude fees or profit from their request for support.

C. Length of Support

The length of the study will depend upon the nature of the study. FDA anticipates that a majority of the studies can be completed in 1 year. For those studies with an expected duration of more than 1 year, noncompetitive continuation of support beyond the first year will depend on (1) performance during the preceding year, and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Applications will be funded by priority score. However, priority may be given to those applications for studies of the following:

1. Products for rare diseases/disorders.

2. Products for rare disease/disorders where there is no current therapy.

3. Products for rare disease/disorders which would improve the current treatment/therapy.

4. Products for rare diseases/disorders which are currently at a later phase of clinical study.

VI. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this request for applications will be reviewed and evaluated for scientific and technical merit by experts in the subject field of the specific application. The applications will also be subject to a second level of review by a National Advisory Council for concurrence of the recommendations made by the first-level reviewers.

In addition, applications will be reviewed before issuance of an FDA grant award to ensure to the extent practicable that proposed studies are consistent with requirements for investigations and marketing approval under the act and the Public Health Service Act. This would include a review to ascertain whether an investigational new drug (IND) application or an investigational device exemption (IDE) could be obtained (where applicable).

B. Review Criteria

Applications will be reviewed according to the following criteria:

1. Responsiveness to this request for applications with specific emphasis on:

(a) Whether the product is an orphan product whose development and marketing will likely not be profitable.

(b) Whether the proposal contains one discrete clinical trial.

(c) Whether there is supporting evidence that the product is available to the applicant in the form needed for the investigation.

(d) Whether the product is subject to premarket approval by FDA.

(e) Whether the proposed study can be completed within the budget and time limitations as stated in this request for applications.

2. The soundness of the rationale for the proposed study.

3. The appropriateness and quality of the study design.

4. The adequacy of the evidence that the proposed number of subjects can be recruited and the study completed during the proposed project period.

5. The qualifications of the investigator and support staff and resources available to them.

6. The request for financial support is adequately justified and fully documented.

7. The adequacy of plans for complying with regulations for protection of human and animal subjects.

Applications must be responsive to this request for applications. Applications that are judged to be nonresponsive will be returned to the applicant.

VII. Submission Requirements

The original and six copies of the completed Grant Application Form PHS 398 (Rev. 9/86), with sufficient copies of all reprints critical to the review, should be delivered to Robert L. Robins (address above).

The requirement for certification of IRB approval for studies involving the use of human subjects must show the IRB Approval Date (Item 4a) and the Assurance of Compliance number (Item 4b.) on the face page of the application.

A short statement of why the product is appropriate to the objectives of the Orphan Products Grants Program should appear in the application under Section 2. B.—"Background and Significance."

The outside of the mailing package and the top of the application face page should be labeled "Response to FRA-FDA-OP-89-1."

VIII. Method of Application

A Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established closing date(s).

Applications will be considered received on time if sent on or before the closing date(s) as evidenced by a legible U.S. Postal Service postmark or a legible date receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will

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not be considered for funding and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Services does not uniformly provide dated postmarks. Before relying on the method, applicants should check with their local post office.

B. Format for Application

Applications must be submitted on Grant Application Form PHS 398 (Rev. 9/86). The face page of the application must reflect the request for applications number, FRA–FDA–OP–1. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

The collection of information requested on Form PHS 398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: September 29, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25663 Filed 11–4–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–258L]

Prescription Drug Marketing Act of 1987; Supplemental Letter Setting Forth Agency Policies; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a letter to industry on the Prescription Drug Marketing Act of 1987, which supplements a letter previously issued by FDA on August 1, 1988. The letter clarifies agency policy on returns of prescription drugs to wholesalers for reasons of mistake in ordering or delivering these drugs. The agency is soliciting comments on implementation of the new law and its interpretive letters, and plans to initiate rulemaking proceedings.

DATE: Written comments by December 7, 1988.

ADDRESSES: Written requests for copies of this letter to the Division of Regulatory Affairs (HFD–360), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Division in processing your requests.) Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Richard L. Arkin,
or
Sally Maher, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: On August 1, 1988, FDA issued a letter to regulated industry and other interested persons regarding the Prescription Drug Marketing Act of 1987. (See the **Federal Register** of August 8, 1988 (53 FR 29776).) That letter provided general information and guidance to aid industry in complying with the new law. Since the letter was issued, the agency has received numerous comments regarding the return of drug products from a hospital or health care entity to the wholesale distributor.

The new law amended section 503 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353) to prohibit, with certain exemptions, the sale, purchase, or trade (and the offer to sell, purchase, or trade) of prescription drugs by a hospital or health care entity; or the sale, purchase, or trade of prescription drugs donated or sold at reduced cost to charitable institutions operating under section 501(c)(3) of the Internal Revenue Code of 1954 (except for a sale to a nonprofit affiliate of the charitable institution).

The August 1, 1988, letter did not discuss the return of goods to wholesale distributors delivered due to errors made either in placing or in processing orders for prescription drugs. This letter is intended to provide guidance on this issue. Under FDA's new policy, returns made to the wholesale distributor within 10 working days will be exempted from the prohibition of the sale or trade of pharmaceuticals provided that the manufacturer is notified of the return in writing.

The information in this letter and the August 1, 1988, letter may be relied upon with assurance of its acceptability to FDA. The letter, however, does not state legal requirements beyond those found in the statute and existing regulations. Nor does the letter bind FDA should events occur prior to the issuance of a final rule that require a change in FDA policy. Changes in FDA policy will be announced in future letters or notices.

Interested persons may, on or before December 7, 1988, submit to the Dockets Management Branch (address above) written comments regarding implementation of the new law and the information in the letter. Comments should be identified with the docket number found in the heading of this document and on the cover page of the letter, and should be submitted in duplicate, except that individuals may submit one copy. Received comments and other information on this topic may be seen in the office above between 9 a.m., and 4 p.m., Monday through Friday.

Dated: November 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25693 Filed 11–2–88; 3:10 pm]

BILLING CODE 4160–01–M

Public Health Service

Change in Assessment Policy Applicable to Hill-Burton Assisted Facilities' Uncompensated Services Programs

AGENCY: Health Resources and Services Administration (HRSA), PHS, DHHS.

ACTION: Notice.

SUMMARY: This notice announces a change in the Department's approach to assessing the compliance of facilities that receive assistance under Titles VI and XVI of the Public Health Service Act with the uncompensated services assurance which was given as a condition of that assistance. The new approach implements a change in the Department's interpretation of the implementing regulations regarding the effect of noncompliance with the timing requirement for eligibility determinations on the creditability of accounts towards the quota of uncompensated services an assisted facility is required to provide. Under the new interpretation, services provided where an eligibility determination was not made within two working days of a request for uncompensated services may be credited towards satisfying an assisted facility's uncompensated services obligation, as long as all other applicable requirements for credit are met. Assessment procedures have been developed to implement this change for facilities which have been previously assessed, as well as prospectively.

EFFECTIVE DATE: November 7, 1988.

ADDRESS: Written inquiries should be directed to the Division of Facilities Compliance, HRSA, DHHS, 5600 Fishers Lane, Room 11–25, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Charlotte Pascoe, 301–443–5656.

SUPPLEMENTARY INFORMATION: In 1979, the Department of Health and Human Services issued regulations substantially revising the standards for compliance by medical facilities that received assistance under Title VI and Title XVI of the Public Health Service Act (popularly known as the "Hill-Burton" program) with their assurance that they would provide uncompensated services to persons unable to pay therefor. This assurance is now commonly known as the "uncompensated services" assurance, and the regulations implementing it are codified at CFR Part 124, Subpart F. The 1979 regulations required, among other things, that facilities must make determinations of an individual's eligibility for uncompensated services within two working days of a request for such services. Based on this, on related sections of the regulations, and on the case law preceding their adoption, the Department has interpreted the 1979 regulations as not allowing a facility to receive credit toward its Hill-Burton obligation for accounts for which this timing requirement was not met. Pursuant to this interpretation, the Department has, from May, 1979 to the present, consistently disallowed credit for such noncompliance in its assessments of facilities' uncompensated services accounts. For the reasons described below, the Department has now decided to change its policy with respect to this issue.

The interpretation underlying the policy of disallowing for noncompliance with the two-working-day requirement was originally adopted for two reasons. First, the policy underlying the 1979 regulations, as expressed in the preamble to those regulations, was that there should be a disincentive to noncompliance with the regulations. This policy was embodied both in the enforcement provisions of the regulations (42 CFR 124.511) and in the definition of "uncompensated services" in 42 CFR 124.502, which explicitly provided that services for which an eligibility determination was not made were not "uncompensated services" within the meaning of the regulations. Thus, disallowance of accounts where the two-working-day requirement was not met created a substantial incentive for compliance with the requirement, as the effect of the disallowance was, typically, to create a deficit in the amount the facility claimed it had provided towards its Hill-Burton obligation. Second, the Department viewed the decision in *Corum* v. *Beth Israel Medical Center*, 373 F. Supp. 550 (S.D.N.Y., 1974) as requiring disallowance of services for which the timing requirement was not met, as the court in that case had ruled that accounts for which a prior determination of eligibility had not been made could not be considered uncompensated services under the statute. The regulatory "prior determination" requirement adopted in response to that decision evolved, in the 1979 regulations, into the two-working-day requirement.

Two events have caused the Department to revise its prior interpretation. First, on December 3, 1987, the Department issued regulations that, among other things, substantially revised both the timing requirements for eligibility determinations and the enforcement scheme. 52 FR 46022. The timing requirements were more finely tuned to reflect the different need for timeliness inherent in various types of situations, and thus were substantially relaxed for requests made after service is provided and requests for nursing home services. See 42 CFR 124.507 (as in effect on February 1, 1988). The enforcement scheme, which had previously relied principally on the uneven compliance incentives created by disallowance of individual accounts for certain types of procedural noncompliance, was also changed to provide for clearer notice to facilities of compliance problems with their uncompensated services programs, a clearer enforcement focus on the most important programmatic aspects of compliance, clearer authority for the prescription of corrective actions, and a far stronger incentive for complying with the required corrective actions than previously existed. See 42 CFR 124.512 (as in effect on February 1, 1988). As a result of these changes, the issue of future compliance by facilities with the two-working-day requirement was rendered moot for most purposes, while, to the extent the requirement remains, an improved enforcement mechanism exists for assuring compliance with it.

The second event was the decision, on August 3, 1988, by the District Court for the District of Minnesota holding invalid the Department's interpretation of its regulations as requiring disallowance of accounts where the two-working-day requirement was not met but eligibility determinations were otherwise made. The basis for the court's holding was its conclusion that the Department's interpretation is not reflected in the regulatory definition of "uncompensated services," is not required by the *Corum* decision, and is otherwise not provided for by the regulations. *Douglas County, Minnesota, d/b/a Douglas County Hospital, et al. v. Bowen*, No. 6–85–1078 (D. Minn., August 3, 1988). While the court's order in this case applies only to the plaintiff hospital and is binding on the Department only in Minnesota, the Department is of the view that the regulatory interpretation adopted by the court is reasonable. This together with the obvious desirability of consistency in national assessment standards and the changes in compliance standards and incentives created by the revision of the regulations, has led the Department to revise its interpretation of the 1979 regulatory provisions. The new interpretation permits crediting towards a facility's Hill-Burton obligation, during the period for which the 1979 regulations applied to the facility, accounts in which an eligibility determination was made but the two-working-day requirement was not met.

Thus, in performing assessments of assisted facilities for this period, the following procedures and policies will apply:

(1) Facilities Which Have Never Been Assessed

Assessments will be conducted pursuant to the Transition Certification Process (TCP) provided for by 42 CFR 124.511(b)(2) (as in effect on February 1, 1988), with credit being given in accordance with the pre-existing assessment standards, except that credit will not be denied where the sole basis for disallowance would be noncompliance with the two-working-day requirement of 42 CFR 124.508(a) (as in effect on January 31, 1988).

(2) Facilities Which Have Received Transition Certification Process Assessments

TCP certifications will be revised to conform to the policy set out in the preceding paragraph. Facilities that have already received a certification letter and have a remaining obligation will be sent a follow-up letter revising, where applicable, the amount certified

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for the period assessed and the corrective action required.

(3) Facilities With Outstanding Obligations Assessed Prior to the Transition Certification Process

Where an assisted facility was assessed before the initation of the TCP and the facility has a remaining Hill-Burton obligation, the prior assessment data will be reviewed. The Department estimates that in most cases it will be able to determine, because of the way the data was recorded, how much, if any, of any disallowance was due solely to noncompliance with the two-working-day requirement. Where this can be determined based on the prior assessment reports, an appropriate credit will be given and the facility will be advised of the revision in its Hill-Burton obligation. Where the Department's records do not enable it to determine the amount of disallowance due to noncompliance with the two-working-day requirement, the facility will be offered the option of receiving a new assessment under the TCP process for the entire period; if the number of ambiguous accounts is small, the facility may also be offered the option of submitting the necessary documentation for those accounts. If the facility is unable or unwilling to produce documentation for any period previously assessed for which additional documentation is requested, the amount of credit previously established for that period will stand.

Date: October 3, 1988.

John H. Kelso,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 88-25662 Filed 11-4-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-920-09-4120-10]

Coal Management Program; San Juan River Federal Coal Production Region

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice cancelling the San Juan River Federal Coal Production Region and opening the seventeen-county area to lease-by-application.

SUMMARY: On November 9, 1979, the BLM established the San Juan River Federal Coal Production Region for the management of federally owned coal (44 FR 65196-65197). Subsequent assessments indicate that industry interest, based on mining conditions and constrained markets for the region's coal, no longer justifies the Federally initiated coal lease sale program procedures of 43 CFR Part 3420. In accordance with 43 CFR 3400.5, this notice cancels the San Juan River Federal Coal Production Region, allowing the region to lease coal under the lease-by-application process described at 43 CFR Part 3425 (Leasing on Application).

EFFECTIVE DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen, Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504. Mr. Jentgen may be reached by telephone at (505) 476-6109 or FTS 476-6109.

SUPPLEMENTARY INFORMATION: The San Juan River Federal Coal Production Region was established by the BLM on November 9, 1979, together with a number of other regions, to implement competitive coal leasing under regulations contained in 43 CFR Part 3420. The San Juan River Region includes the following counties:

New Mexico	
Bernalillo	Rio Arriba
Catron	Sandoval
Cibola	San Juan
Lincoln	Santa Fe
Los Alamos	Socorro
McKinley	Valencia
Colorado	
Archuleta	Montezuma
Dolores	San Juan
La Plata	

A regional coal environmental impact statement (EIS) that studies several possible regional coal sale tracts was prepared for the San Juan Basin portion of the region in 1984. A regional coal sale, however, was never held, as industry demand for coal from the San Juan Basin has waned since the regional EIS was first begun. The only competitive coal leasing in the region since 1979 has been done using the emergency lease procedures under 43 CFR Part 3425. The continued lack of significant industry interest in Federal coal in the region has led the San Juan River RCT to examine whether the regional coal activity planning process should be replaced by lease-by-application procedures.

At its meetings in November 1987 and August 8, 1988, the RCT discussed region coal markets, industry demand for Federal coal and other related factors that might affect an RCT recommendation on the mode of leasing for the region. Based on the information presented at these meetings, the RCT concluded that sufficient minable coal resources are available in the region to meet industry's needs in the near-term. Consequently, the RCT recommended that the region should be decertified and that lease-by-application procedures should be implemented to more efficiently and effectively handle the limited demand for Federal coal resources over the next few years. The RCT further proposed that, if the San Juan River Federal Coal Production Region is decertified, the RCT should continue to closely monitor the region's leasing activity and reexamine the leasing mode where certain thresholds are exceeded. The thresholds adopted by the RCT that would indicate the need for an RCT meeting are:

- The receipt of two or more applications for Federal coal leases in a calendar year, or
- A single application for 15 percent or more of the total recoverable Federal coal under lease in the region.

The Governors of New Mexico and Colorado were provided with an opportunity to comment on the RCT's recommendation to decertify the region and to implement lease-by-application procedures. The Governor of Colorado provided written support for the RCT recommendation. No written response was received from the Governor of New Mexico.

The expected benefits of using lease-by-application procedures in lieu of regional activity planning are a substantial savings in administrative costs to both the Federal Government and the States of New Mexico and Colorado, while retaining a responsive leasing process for the coal industry. No additional social, economic, or environmental impacts are anticipated as a result of this change in the method of leasing.

In accordance with 43 CFR 3400.5, this notice is to advise the pubic that the San Juan River Federal Coal Production Region is cancelled, thereby declaring that the Federal coal reserves in those countries of New Mexico and Colorado listed above will be leased under 43 CFR Part 3425 (Lease-by-Application), rather than under 43 CFR 3420.3 through 3420.6.

Applications under 43 CFR 3425.1-5 shall be accepted by the BLM to lease Federal coal in the seventeen counties named above. Three copies of the application shall be filed in the Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504 (for applications in New Mexico), or the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215 (for applications in Colorado).

Supporting information on Federal coal reserve areas is available for public inspection at the Bureau of Land Management, Albuquerque District Office, Rio Puerco Resource Area Office, 435 Montano Road NE, Albuquerque, New Mexico 87107 (for all reserve areas in New Mexico); Bureau of Land Management, Farmington Resource Area Office, 1235 La Plata Highway, Farmington, New Mexico 87401 (for San Juan Basin/Gallup areas); Bureau of Land Management, Socorro Resource area Office, 198 Neel Avenue NW, Socorro, New Mexico 87801 (for San Augustine/Fence Lake areas); or Bureau of Land Management, San Juan/San Miguel Resource Area Office, Federal Building, Room 102, 701 Camino del Rio, Durango, Colorado 81301 (for northern San/Juan Basin areas).

Dated: November 1, 1988.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 88-25671 Filed 11-4-88; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

Non-wage Cash Payments Supplement to the Current Employment Statistics Survey.

BLS form	Affected public	Respondents	Frequency	Average time per response
BLS-790 SUP	Business or other for profit; non-profit institutions; small businesses or organizations	3,200	One-time	8 minutes.
BLS-790 SUP CATI	Business or other for profit; non-profit institutions; small businesses or organizations	900	One-time	10 minutes.
BLS-790 SUP RAS	Business or other for profit; non-profit institutions; small businesses or organizations	360	One-time	7 minutes.

The non-wage cash payments supplement is a pilot test to determine the incidence and collectability of non-wage cash payments to employees. The results will indicate whether a supplement is feasible across the entire CES survey as a means to produce a regular annual all cash compensation series.

Revision

Employment and Training Administration

Business Confidential Data Request
1205-0197; ETA 9014
On Occasion
Businesses or other for-profit; Small businesses or organizations
1,162 respondents; 11,625 burden hours; 1 form; 10 hours per response
Statutory requirements under the Trade Act of 1974 as amended require complete and accurate business confidential data in order to make determinations as to whether imports have contributed to worker separation. The Secretary of Labor's determinations decide if petitioning workers are eligible to apply for worker adjustment assistance.

Extension

Mine Safety and Health Administration

Escapeways and Escape Facilities
1219-0052
Weekly
Businesses or other for profit; small businesses or organizations
2,046 respondents; 1 hour per response; 153,041 total burden hours
Requires operators of underground coal mines to keep records of the results of weekly examinations of emergency escapeways.

Extension

Bureau of Labor Statistics

U.S. Export Product information

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1220–0025

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS 2894B	Small, Medium and Large Business Firms	1,500	Annual	45 minutes.
BLS 3008	Small, Medium and Large Business Firms	1,500	Annual	15 minutes.
BLS 2894C	Small, Medium and Large Business Firms	6,885	Quarterly	23.4 minutes.

9,901 total hours

The International Price Program indexes, one of the nation's primary economic indicators, are used as: measures of price movements in international product prices; indicators of inflationary trends in the economy; sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross National Product.

1220–0026

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS 3007B	Small, Medium and Large Business Firms	1,550	Annual	45 minutes.
BLS 3008	Small, Medium and Large Business Firms	1,550	Annual	25 minutes.
BLS 3007C	Small, Medium and Large Business Firms	7,395	Quarterly	25.2 minutes.
BLS 3007E	Small, Medium and Large Business Firms	50	Quarterly	25.2 minutes.

14,058 total hours

The International Price Program indexes, one of the nation's primary economic indicators, are used as: measures of price movements in international product prices; indicators of inflationary trends in the economy; sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross National Product.

Labor Force Questionnaire—CPS–1

Monthly 1220–0100
Individuals and households
Survey universe is 53,000 households
Respondent burden is estimated at approximately 73,500 hours
The labor force questionnaire (CPS–1) contains all the questions used to obtain the monthly information on the labor force status of the population. The most important use of the information is to determine the month-to-month changes in total employment and in the jobless rate and to see how these affect the various components of the population.

Reinstatement

Employment Standards Administration

Homeworker Handbook
1215–0013; WH–75
On occasion
Individuals or households; Businesses or other for-profit; Nonprofit institutions; Small businesses or other organizations
6,600 respondents; 13,420 total hours; ½ hour per response; 1 form
The Homeworker Handbook provides information on hours worked and wages paid to homeworkers covered by the Fair Labor Standards Act. The handbook is used to help insure that such workers receive the minimum and overtime wages to which they are entitled.

Signed at Washington, DC, this 1st day of November 1988.

Terry O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 88–25642 Filed 11–4–88; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.K. Guthrie Drilling, et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 24th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
A.K. Guthrie Drilling (Workers)	Big Spring, TX	10/24/88	10/11/88	21,391	Oil & Gas.
Acid Engineers, Inc. (Workers)	Denver City, TX	10/24/88	9/9/88	21,392	Do.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Acid Engineers, Inc. (Workers)	Andrews, TX	10/24/88	9/9/88	21,393	Do.
Alloy Ball & Seat Co., (Workers)	Corpus, Christi, TX	10/24/88	10/7/88	21,394	Do.
Alloy Tek, Inc., Dept. 124 (UAW)	Grandville, MI	10/24/88	10/7/88	21,395	Steel.
Amazon Technologies, Inc. (Workers)	Longmont, CO	10/24/88	9/26/88	21,396	Drilling Fluid Chemicals.
Arco Oil & Gas Co. (Workers)	Houston, TX	10/24/88	9/13/88	21,397	Oil & Gas.
Armstrong Drilling, Inc. (Company)	Wooster, OH	10/24/88	10/10/88	21,398	Do.
Bomac/Grace Drilling Co. (Workers)	Williston, MD	10/24/88	10/12/88	21,399	Do.
Browder Electric Service Co. (Company)	Big Lake, TX	10/24/88	10/4/88	21,400	Do.
Burgener Services, Inc. (Company)	Olney, IL	10/24/88	10/6/88	2,1401	Do.
C.D. Turner Oil Operator (Workers)	Big Spring, TX	10/24/88	10/6/88	21,402	Do.
Century Data, Inc. (ACTWU)	Anaheim, CA	10/24/88	10/7/88	21,403	Disk Drives.
Chromalloy Drilling Fluids (Workers)	Laredo, TX	10/24/88	10/4/88	21,404	Drilling Chemicals.
Consolidation Coal Co. Robinson Run Mine (UMW).	Fairmont, WV	10/24/88	9/26/88	21,405	Coal.
Core Laboratories, Inc. (Workers)	Dallas, TX	10/24/88	10/14/88	21,406	Oil & Gas.
D&S Industries, Inc. (Workers)	Carthage, TX	10/24/88	10/6/88	21,407	Do.
Diamond M. Drilling, Co. (Workers)	Houston, TX	10/24/88	10/4/88	21,408	Do.
Don Knapp Oil Production (Workers)	Oxford, KS	10/24/88	10/7/88	21,409	Do.
Dranetz Technology, Inc. (Company)	Edison, NJ	10/24/88	9/30/88	21,410	Testing Equipment.
Drilex Systems, Inc. (Workers)	Casper, WY	10/24/88	10/11/88	21,411	Oil & Gas.
Dual Drilling (Workers)	Dallas, TX	10/24/88	10/11/88	21,412	Do.
Dwight Brehm Resources (Workers)	Mt. Vernon, IL	10/24/88	10/13/88	21,413	Do.
Emerald Corp. (Workers)	Denver, CO	10/24/88	10/7/88	21,414	Do.
Emhart Industries-Hardware Div. (Company)	Berlin, CT	10/24/88	10/3/88	21,415	Locks.
Endevco, Inc. (Workers)	Dallas, TX	10/24/88	10/7/88	21,416	Oil & Gas.
Energy Sources, Inc. (Workers)	Lubbock, TX	10/24/88	10/10/88	21,417	Do.
Exeter Drilling Co. (Workers)	Midland, TX	10/24/88	10/3/88	21,418	Do.
Explore Seismic Drilling Inc. (Workers)	Heesmer, LA	10/24/88	10/14/88	31,419	Do.
Fiberglass Systems (Workers)	Big Spring, TX	10/24/88	10/12/88	21,420	Do.
Fivor Drillin Services, Inc. (Workers)	New Orleans, LA	10/24/88	10/13/88	22,421	Do.
Four Flags Drilling Co. Inc. (Workers)	Valley Forge, PA	10/24/88	9/20/88	21,422	Do.
Four Square Excavating Co. (Company)	Carmi, IL	10/24/88	10/7/88	21,423	Do.
G&E Siemens (Workers)	El Paso, TX	10/24/88	9/30/88	21,424	Telecommunication Transmission Systems.
Gas Company of New Mexico-Permian Pipeline Div. (Workers).	Artesia, NM	10/24/88	10/6/88	21,425	Oil & Gas.
General Electric Consumer Products (Company)	Ocean, NJ	10/24/88	9/27/88	21,426	Household Applicances.
Geo. N. Mitchell Drilling Co., Inc. (Workers)	Carmi, IL	10/24/88	10/4/88	21,427	Oil & Gas.
Great North Oil Corp. (Company)	Giddings, TX	10/24/88	10/9/88	21,428	Do.
Guadalupe Oil & Gas Co. (Workers)	Victoria, TX	10/24/88	9/30/88	21,429	Do.
Gulf and Western Oil Corp. (Company)	San Antonio, TX	10/24/88	9/29/88	21,430	Do.
Harold Krueger Co. (Company)	Natoma, KS	10/24/88	10/12/88	21,431	Do.
Health-Tex (ACTWU)	Guin, AL	10/24/88	10/7/88	21,432	Children's Sportswear
Hillside Equities, (Company)	San Antonio, TX	10/24/88	10/5/88	21,433	Oil & Gas.
Howell Drilling, Inc. (Workers)	San Antonio, TX	10/24/88	9/30/88	21,434	Do.
Hughes Texas Petroleum (Company)	Beeville, TX	10/24/88	9/19/88	21,435	Do.
Huthnance Offshore Drilling Co. (Workers)	New Iberia, LA	10/24/88	10/10/88	21,436	Do.
J.F.P Energy Inc. (Company)	Houston, TX	10/24/88	10/5/88	21,437	Do.
J.F.P Offshore, Inc. (Company)	Houston, TX	10/24/88	10/5/88	21,438	Do.
Jack/Wade Drilling, Inc. (Workers)	Lafayette, LA	10/24/88	10/7/88	21,439	Do.
Jeansville Corp. (ILGWU)	Orangeburg, SC	10/24/88	10/7/88	21,440	Ladies' Jeans.
Jet Oilfield Rental, Inc. (Company)	Dickinson, ND	10/24/88	9/12/88	21,441	Oil & Gas.
Joy Manufacturing (Workers)	Wichita Falls, TX	10/24/88	10/11/88	21,442	Do.
Knox Corder Drilling Co. (Workers)	Devine, TX	10/24/88	10/11/88	21,443	Do.
Landis Drilling (Workers)	Midland, TX	10/24/88	10/3/88	21,444	Do.
Loffland Brothers, Co. (Workers)	New Braunfels, TX	10/24/88	8/26/88	21,445	Do.
MI Drilling Fluids (Workers)	Williston, ND	10/24/88	9/30/88	21,446	Do.
M.L. Manfield Co. (Workers)	Eunice, LA	10/24/88	10/11/88	21,447	Do.
Marathon Letourneau (Workers)	Brownsville, TX	10/24/88	10/17/88	21,448	Do.
Martin Drilling Co. Inc. (Company)	Houston, TX	10/24/88	10/10/88	21,449	Do.
Martin Drilling Co., Inc. (Company)	Lafayette, LA	10/24/88	10/10/88	21,450	Do.
Martin West Drilling Co. (Company)	Bakersfield, CA	10/24/88	10/10/88	21,451	Do.
Marine Drilling Co. (Workers)	Corpus Christi, TX	10/24/88	9/30/88	21,452	Do.
Maverick Drilling Co. Inc. (Workers)	Austin, TX	10/24/88	10/15/88	21,453	Do.
Meridian Oil Inc. (Workers)	Billings, MT	10/24/88	9/30/88	21,454	Do.
Metro Well Service Corp. (Workers)	Deville, LA	10/24/88	9/29/88	21,455	Do.
Mid-America Petroleum Inc. (Workers)	Midland, TX	10/24/88	10/27/88	21,456	Do.
Mindard Run Oil Co. (Workers)	Bradford, PA	10/24/88	9/30/88	21,457	Do.
Mobil Producing Texas & New Mexico (Workers)	Houston, TX	10/24/88	9/17/88	21,458	Do.
Moran Corporation (Company)	Houston, TX	10/24/88	10/3/88	21,459	Do.
NL Baroid (Workers)	Laredo, TX	10/24/88	10/11/88	21,460	Do.
Navarro Waterflood Co. (Workers)	Corsicana, TX	10/24/88	10/12/88	21,461	Do.
Newmont Oil Co. (Workers)	Houston, TX	10/24/88	10/14/88	21,462	Do.
Otis Engineering Corp. (Workers)	Carolilton, TX	10/24/88	10/5/88	21,463	Do.
Parker Drilling Co. Gulf Coast Div. (Company)	Tulsa, OK	10/24/88	10/3/88	21,464	Do.
Penrod Drilling Corp. (Company)	Dallas, TX	10/24/88	10/3/88	21,465	Do.
Peterson Drilling Co. (Workers)	Lovington, NM	10/24/88	10/3/88	21,466	Do.
Pitman Moore, Inc. (Company)	Washington Crossing, NJ.	10/24/88	10/11/88	21,467	Pharmaceutical Products.
Power Rig Drilling Co. (Company)	Lafayette, LA	10/24/88	9/21/88	21,468	Oil & Gas.

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APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Prairie Energy, Inc. (Workers)	Minot, ND	10/24/88	10/10/88	21,469	Do.
Precision Exploration Co., Inc. (Workers)	Olney, IL	10/24/88	10/5/88	21,470	Do.
Precision Lease Service, Inc. (Workers)	Carrizo Spring, TX	10/24/88	9/25/88	21,471	Do.
Premium Casing & Tubing Inspection, Co. (Company).	Midland, TX	10/24/88	10/10/88	21,472	Do.
Pride Oil Well Service (Workers)	Kilgore, TX	10/24/88	9/22/88	21,473	Do.
Roth American Co. (Company)	Wilkes-Barre, PA	10/24/88	10/14/88	21,474	Toys.
Saidem Drilling Co. (Workers)	Midland, TX	10/24/88	10/7/88	21,475	Oil & Gas.
Sage Drilling Co., Inc. (Workers)	Wichita, KS	10/24/88	10/6/88	21,476	Do.
Service Acid, Inc. (Workers)	Hays, KS	10/24/88	10/3/88	21,477	Do.
Southland Chemical Corp. (Workers)	Great Meadows, NJ	10/24/88	10/5/88	21,478	Custom Chemicals.
Stroube Oil Co. (Workers)	Corsicana, TX	10/24/88	10/12/88	21,479	Oil & Gas.
Sturgis Newport Business Forms (Workers)	Sturgis, MI	10/24/88	10/1/88	21,480	Sales Books & Receipt Books.
TRW Seat Belt Div. (Workers)	McAllen, TX	10/24/88	10/12/88	21,481	Seat Belts.
Terra Resources, Inc. (Workers)	Casper, WY	10/24/88	10/7/88	21,482	Oil & Gas.
(The) Louisiana Land & Exploration Co. (Workers).	New Orleans, LA	10/24/88	10/5/88	21,483	Do.
(The) Louisiana Land & Exploration Co. (Workers).	Oklahoma City, OK	10/24/88	10/5/88	21,484	Do.
(The) Louisiana Land & Exploration Co. (South Louisiana Div.) (Workers).	New Orleans, LA	10/24/88	10/5/88	21,485	Do.
(The) Louisiana Land & Exploration Co. (Southeastern Dist. (Workers).	New Orleans, LA	10/24/88	10/5/88	21,486	Do.
Tower Drilling Co. (Company)	Northglenn, CO	10/24/88	10/5/88	21,487	Do.
Trident Oilfield Service & Const. Co. (Workers)	Olney, IL	10/24/88	10/6/88	21,488	Do.
Universal Equipment, Inc. (Company)	Lafayette, LA	10/24/88	10/13/88	21,489	Do.
Universal Resources Corp. (Workers)	Denver, CO	10/24/88	10/7/88	21,490	Do.
Utex Industries, Inc. (Company)	Houston, TX	10/24/88	10/10/88	21,491	Do.
Utex Industries, Inc. (Company)	Weimer, TX	10/24/88	10/10/88	21,492	Do.
United Energex, Inc. (Workers)	Cisco, TX	10/24/88	10/4/88	21,493	Do.
Vetco Gray, Inc. (Workers)	Ventura, CA	10/24/88	10/11/88	21,494	Do.
Viking Drilling Fluids	Littleton, CO	10/24/88	9/28/88	21,495	Do.
Von R. Frierson, Inc. (Company)	Houston, TX	10/24/88	10/7/88	21,496	Do.
W.L. Kreider's Sons Mfg. Co., Inc. (Workers)	Palmyra, PA	10/24/88	10/12/88	21,497	Men's-Women's & Children's Footwear.
Walker International (ACTWU)	Detroit, MI	10/24/88	10/7/88	21,498	Fishing Rods.
Ware-Knitters, Inc. (Workers)	Calais, ME	10/24/88	10/7/88	21,499	Children's Sportswear.
Well Tech, Inc. (Workers)	Houston, TX	10/24/88	10/10/88	21,500	Oil & Gas.
Young Exploration Co. (Workers)	Oklahoma City, OK	10/24/88	9/26/88	21,501	Do.
Zapata Offshore Co. (Workers)	Houston, TX	10/24/88	10/8/88	21,502	Do.
Zwicker Knitting Mills (ILGWU)	Appleton, WI	10/24/88	10/13/88	21,503	Knitted Accessories.
Zwicker Knitting Mills (ILGWU)	Waupaca, WI	10/24/88	10/13/88	21,504	Knitted Accessories.

[FR Doc. 88-25687 Filed 11-4-88; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-20,910]

Amistad Fuel Co., Rockwood, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers of Amistad Fuel Company, Rockwood, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-20,910; Amistad Fuel Company, Rockwood, Texas (October 20, 1988).

Signed at Washington, DC, this 25th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-25647 Filed 11-4-88; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; George Ann Fashions Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 3, 1988–October 7, 1988 and October 11, 1988–October 21, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20, 829; George Ann Fashions Co., Swoyersville, PA

TA-W-20, 846; Iselle Mfg. Co., Inc., Philadelphia, PA

TA-W-20, 863; Silly Products, Corona, NY

TA-W-20, 871; Magnetek Universal Mfg, Paterson, NJ

TA-W-20, 902; Mount Vernon Mills, Inc., Fries, VA

TA-W-20, 886; F.H. Lawson Co., Cincinnati, OH

TA-W-20, 890; Reliance Button Co., Inc., New York, NY

TA-W-20, 883; Electronic Molding Corp., Woonsocket, RI

TA-W-20, 884; Precision Automatic Corp., Woonsocket, RI

TA-W-20, Wrapex Corp., Woonsocket, RI

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20, 865; Sumitomo Machinery Corp., Teterboro, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20, 866; Atlantic Fuel Marketing Corp., Montvale, NJ

The workers' form does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20, 867; Biolectron, Inc., Hackensack, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20, 900; Ketchem Distributors, Inc., Cranford, NJ

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20, 857; Gain Electronics, Somerville, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20, 877; Reichhold Chemicals, Inc., Ferndale, MI

U.S. imports of alkyd resins are negligible.

TA-W-20, 946; Fishers Big Wheel, Ellwood City, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20, 954; MND Drilling Corp., Southern Div., Magnolia, TX

Ineligible for retroactive provisions because of one year rule under the Omnibus Trade & Competitiveness Act.

TA-W-20, 955; MND Drilling Corp., Northern Div., Bridgeport, TX

Ineligible for retroactive provisions because of one year rule under the Omnibus Trade & Competitiveness Act.

TA-W-20, 889; Jack Cooper Transport Co., Arlington, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20, 924; Nikki Sportswear, Long Branch, NJ

The investigation revealed that criterion (1) has not been met. Employment did not declined during the relevant period as required for certification.

Affirmative Determinations

TA-W-20, 953; International Shoe Co., Marshall, MO

A certification was issued covering all workers separated on or after September 30, 1987.

TA-W-20, 881; Beehive International Salt Lake, UT

A certification was issued covering all workers separated on or after August 9, 1987.

TA-W-20, 862; Phillips Petroleum, Eastern Div., Houston, TX

A certification was issued covering all workers separated on or after August 2, 1987.

TA-W-20, 875; Phillips Petroleum Western Div., Denver, CO

A certification was issued covering all workers separated on or after August 2, 1987.

TA-W-21, 028; Red Tiger Drilling Co., Rig #9, Wichita, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-20, 944; Dot Togs, Inc., Rockland, MA

A certification was issued covering all workers separated on or after August 31, 1987 and before September 30, 1988.

TA-W-20, 887; ITT Power Systems Corp., Galion, OH

A certification was issued covering all workers separated on or after August 8, 1987.

TA-W-20, 919; International Shoe Co., Broadway, Lemp & Cherokee Streets, St. Louis, MO

A certification was issued covering all workers at Broadway, Lemp & Cherokee Streets engaged in support services operation separated on or after August 23, 1987.

TA-W-20, 872; N&J Originals, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after July 29, 1987 and before August 6, 1988.

TA-W-20, 870; M&D Coat Co., Hoboken, NJ

A certification was issued covering all workers separated on or after July 27, 1987.

TA-W-20, 874; PVS Chemicals, Inc., Copley, OH

A certification was issued covering all workers separated on or after August 3, 1987.

TA-W-20, Universal Optical Co., Beta Optical Co., Inc., North Attleboro, MA

A certification was issued covering all workers separated on or after August 5, 1987.

TA-W-20, 898; Country Counsin's Shoes, Moconaqua, PA

A certification was issued covering all workers engaged in the production of injection molded fabric footwear separated on or after August 12, 1987.

TA-W-20, 922; Larance Engineering Co., Headquarted in Wichita Falls, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before May 1, 1988.

TA-W-20, 922A; Larance Engineering Co., at Various Locations of TX

A certification was issued covering all workers separated on or after October 1, 1985 and before May 1, 1988.

TA-W-20, 922B; Larance Engineering Co., at Various Locations of AR

A certification was issued covering all workers separated on or after October 1, 1985 and before May 1, 1988.

TA-W-20, 922C; Larance Engineering Co., at Various Locations of LA

A certification was issued covering all workers separated on or after October 1, 1985 and before May 1, 1988.

TA-W-20, 859; Maiorisi Marketing, Secaucus, NJ

A certification was issued covering all workers separated on or after July 25, 1987.

TA-W-20, 842; Bennett Petroleum Corp., Denver, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20, 842A; Bennett Petroleum Corp., Reno, PA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20, 858; The Juvenile Shoe Corporation of America, Plant #5, Carthage, MO

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A certification was issued covering all workers separated on or after February 1, 1988.

TA-W-20, 858A; The Juvenile Shoe Corporation of America, Plant #4, Aurora, MO

A certification was issued covering all workers separated on or after February 1, 1988.

TA-W-20, 858B; The Juvenile Shoe Corporation of America, Plant #4, Aurora, MO

A certification was issued covering all workers separated on or after July 27, 1987.

TA-W-20, 854; A.O. Smith Electric Product, Union City, IN (Formerly Westinghouse Elecric Corp)

A certification was issued covering all workers separated on or after March 28, 1988.

TA-W-20, 937; Core Service, Inc., Corpus Christi, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20, 938; Core Services, Inc., Victoria, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20, 939; Core Service, Inc., Hebbronville, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20, 940; Core Service, Inc., Carrizo Spring, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20, 941; Core Service, Inc., San Antonio, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20, 941; Core Service, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20, 793; Dixie Manufacturing Co., Columbia, TN

A certification was issued covering all workers separated on or after August 15, 1987.

TA-W-20, 856; Blue Ridge Shirt Co., Fayetteville, TN

A certification was issued covering all workers separated on or after August 15, 1987.

TA-W-20, 860; Mammoth Cave Garment Co., Cave City, TN

A certification was issued covering all workers separated on or after August 15, 1987.

TA-W-20, 932; National Stores, Div. of Washington Industries, Scotsville, KY

A certification was issued covering all workers separated on or after August 15, 1988.

TA-W-20, 968; Washington Manufacturing Co., Nashville, TN

A certification was issued covering all workers separated on or after August 15, 1988.

TA-W-20, 972; Dee Cee Apparel Inc., Hohenwald, TN

A certification was issued covering all workers separated on or after August 15, 1988.

TA-W-20, 973; Elkton Apparel Co., Elkton, KY

A certification was issued covering all workers separated on or after August 15, 1987.

TA-W-20, 974; Haywood Male, Inc., Franklin, KY

A certification was issued covering all workers separated on or after August 15, 1987.

TA-W-20, 975; Haywood Male, Inc., Gamaliel, KY

A certification was issued covering all workers separated on or after August 15, 1987.

TA-W-20, 976; Haywood Male, Inc., Red Boiling Springs, TN

A certification was issued covering all workers separated on or after August 15, 1987.

TA-W-20, 977; Heavy Duty Manufacturing Co., Gainsboro, TN

A certification was issued covering all workers separated on or after August 15, 1987.

I hereby certify that the aforementioned determination were issued during the period October 3, 1988—October 7, 1988 and October 11, 1988—October 21, 1988. Copies of these determinations are available for inspection in Room 6434. U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: October 25, 1988.

[FR Doc. 88-25645 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20, 734]

JM Apparel Companies, Inc., Norwich, CT; Negative Determination Regarding Application for Reconsideration

By an application dated September 22, 1988 the petitioners requested administrative reconsideration on the subject petition for trade adjustment assistance. The denial notice was signed on August 23, 1988 and published in the **Federal Register** on September 7, 1988 (53 FR 34596).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners state that JM Apparel exported production from the Norwich facility after its purchase in June, 1987 from the Jones Apparel Group. It also claimed that the customers responses were not accurate.

Workers at the Norwich facility were employed by two different firms during the one year period prior to the June 2, 1988 date of the petition. The subject firm, JM Apparel, was in business for only 11 months during this period ceasing all operations on May 13, 1988. JM Apparel is not an affiliate or in any way related to the Jones Apparel Group.

Investigation findings show that the worker petition did not meet the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974. The Department's surveyed the major customers of JM Apparel for their domestic and foreign purchases of women's sportswear in the first six months period of 1988 compared to the same period in 1987. Respondents to the survey showed that they did not increased their foreign purchases.

Investigation findings also show that on June 23, 1987 two lines of women's sportswear were sold to JM Apparel by the Jones Apparel Group. After the sale, the Jones Apparel Group immediately moved the remaining lines from the Norwich facility to other domestic contractors. A corporate sale and transfer of production to other domestic contractors would not form a basis for a worker group certification.

The findings also show that JM Apparel was a manufacturer. JM Apparel purchased and cut fabric and shipped the material out to domestic and foreign contractors for sewing. Sewing operations were not performed at Norwich except for samples. All cutting not performed at Norwich went to domestic contractors. According to company officials the impact of imports on worker separations was negligible.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly the application is denied.

Signed at Washington, DC, this 19th day of October 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-25648 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,018]

Mulberry Circle Fashions, Perth Amboy, NJ; Termination of Investigation

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by Pub. L. 100-418, the Department of Labor herein presents the results of an investigation regarding certification of eligiblity to apply for worker adjustment assistance.

The investigation was initiated in response to a petition received on September 19, 1988 by the International Ladies' Garment Workers' Union on behalf of workers at Mulberry Circle Fashions in Perth Amboy, New Jersey. The workers at Mulberry Circle Fashions produced sportswear.

Numerous attempts were made to contact an official of Mulberry Circle Fashions in order to obtain the necessary data to determine whether the petitioning group of workers meet the eligibility requirements of the Trade Act of 1974. The subject firm is closed and, since the Department of Labor has been unable to reach a former official of the firm, the investigation has been terminated.

Signed at Washington, DC, this 17th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-25649 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,927 and TA-W-20,928]

Ray Holifield and Associates, Oklahoma City, OK and Irving, TX; Termination of Investigations

Pursuant to section 221 of the Trade Act of 1974, investigations were initiated on September 6, 1988 in response to worker petitions which were filed on behalf of workers and former workers at Ray Holifield and Associates, Oklahoma City, Oklahoma (TA-W-20,927) and Irving, Texas (TA-W-20,928).

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) do not apply to workers who were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

No layoffs occurred in either facility since August 1, 1987, one year prior to the date of the petitions, which was August 1, 1988, and the earliest possible impact date. Consequently, further investigations have been terminated.

Signed at Washington, DC, this 25th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-25651 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,930]

Rig Supply , Inc., Houston, TX; Termination of Investigations

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 6, 1988 in response to worker petition which was filed on behalf of workers at Rig Supply, Incorporated, Houston, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 26th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-25650 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,407-9]

Schaper Manufacturing Co., Lakeville, Minnesota Plant, Lakeville, Minnesota Distribution Center Plymouth, MN; Negative Determination on Remand

Pursuant to to the U.S. Court of International Trade remand, dated August 26, 1988, in *Former Employees of Tyco Toys, Inc.*, v. *Secretary of Labor* (USCIT 87-09-00945), the Department makes the following negative determination on remand.

This matter was remanded to the Secretary to seek relevant information from Tyco Toys and to perform a customer survey, if possible.

Workers at Schaper Manufacturing produced accessories for the Stompers toy, games and Cosom sport toys. Schaper Manufacturing also imported the Stompers toy. The Department denied the Schaper workers initially on May 13, 1987. This decision was published in the **Federal Register** on May 27, 1987 (52 FR 19784). The Department dismissed an application for administrative reconsideration on July 14, 1987 since it did not present evidence that the Department erred or new facts of a substantive nature bearing on the determination. This dismissal was published in the **Federal Register** on July 28, 1987 (52 FR 28206).

Investigation findings show that the Stompers toy was always imported and never produced at Lakeville. Schaper produced the accessories which accounted for only a small part of the Stompers toy sales. In September 1986 Schaper's Manufacturing was sold to a domestic firm—Tyco Toys.

Investigation findings on remand show that after the Schaper purchase, Tyco Toys continued to sell the imported Stompers toy but did not include the accessories. Other investigation findings show that Tyco did not outsource the accessory production to foreign sources but permitted that line of production to cease. With respect to the Cosom sport toys, Tyco contracted this production to other domestic manufacturers. The games part of the business was sold to another domestic manufacturer.

On remand the Department conducted a customer survey. The respondents indicated that they did not import accessories for the Stompers toy in 1985 or in 1986.

Conclusion

After reconsideration on remand, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers of Schaper Manufacturing Company, Lakeville and Plymouth, Minnesota.

Signed at Washington, DC, October 25, 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-25643 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

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Federal-State Unemployment Compensation Program; Certifications Under the Federal Unemployment Tax Act for 1988

On October 31, 1988, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., thereby enabling employers who make contributions to State unemployment funds to obtain certain credits against their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and the certifications are printed below.

Dated: October 31, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. Department of Labor,
Secretary of Labor, Washington, D.C.

October 31, 1988.

The Honorable Nicholas F. Brady,
Secretary of the Treasury, Washington, DC 20220

Dear Mr. Secretary:

Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending October 31, 1988. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986, and the other is required with respect to additional tax credit by section 3303 of the Code.

The certification pursuant to Section 3303 omits Puerto Rico because the unemployment compensation law of this jurisdiction contains no experience rating provisions and permits no reduced rates of contributions.

Please note that the State of Minnesota and its unemployment compensation law is not included in the two certifications because conformity proceedings have been commenced to determine if the law of Minnesota contains provisions consistent with those required for State unemployment compensation laws by Section 3304(a) of the Internal Revenue Code of 1986. I am, therefore, constrained to omit this State and its law from the present certifications. However, omitting this State from the certifications does not constitute a present withholding of the certifications with respect to that State because my decision has not yet been made. I will let you know when the proceedings with Minnesota have been completed.

Sincerely,

Ann McLaughlin.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1988, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida.

Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine.

Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma.

Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, Wyoming.

This certification is for the maximum normal credit allowable under section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 1988.

Ann McLaughlin,
Secretary of Labor.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1988.

Alabama	Nebraska
Alaska	Nevada
Arizona	New Hampshire
Arkansas	New Jersey
California	New Mexico
Colorado	New York
Connecticut	North Carolina
Delaware	North Dakota
District of Columbia	Ohio
Florida	Oklahoma
Georgia	Oregon
Hawaii	Pennsylvania
Idaho	Rhode Island
Illinois	South Carolina
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
Kentucky	Utah
Louisiana	Vermont
Maine	Virginia
Maryland	Virgin Islands
Massachusetts	Washington
Michigan	West Virginia
Mississippi	Wisconsin
Missouri	Wyoming
Montana	

This certification is for the maximum additional credit allowable under section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-25686 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 And 10582; Addition to the List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The addition to the list of labor surplus areas is effective November 1, 1988.

SUMMARY: The purpose of this notice is to announce an addition to the list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation Part 20 (48 CFR Part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation Part 25 (48 CFR Part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation Part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas of October 6, 1988, (53 FR 39367).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary of Labor as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is effective November 1, 1988.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on October 20, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

Addition to the Annual List of Labor Surplus Areas.

(November 1, 1988)

Labor surplus area	Civil jurisdiction included
Georgia:	
Fannin County	Fannin County

[FR Doc. 88-25644 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-11-M]

Anvil Mining Inc., JV; Petition for Modification of Application of Mandatory Safety Standard

Anvil Mining Inc., JV, P.O. Box 1369, Nome, Alaska 99762 has filed a petition to modify the application of 30 CFR 56.9003 (mobile equipment brakes) to its Anvil Mine (I.D. No. 50-01452) located in Seward Peninsula, Alaska. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that powered mobile equipment be provided with adequate brakes.

2. Petitioner operates a Caterpillar 631B to haul coarse tailings away from the screening plant, and Terex scrapers to haul fine supersaturated tailings from the plant and raw materials to the plant for sizing and segregation. The scrapers operate 75% of the time in wet, soft, and muddy conditions. The materials are deleterious in nature and become unstable and unsupportive when wet and worked.

3. Due to continuous operation of the equipment under these types of conditions, application of the standard would result in a diminution of safety.

4. As an alternate method, petitioner proposes that operators would travel with the scraper bowl slightly above the ground surface and have one hand ready to drop the scraper bowl to the ground at all times in the case of deceleration on a grade or in the case of an emergency stop.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 267, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 7, 1988. Copies of the petition are available for inspection at that address.

Date: October 31, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-25646 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-94]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATE AND TIME: November 22, 1988, 8:30 a.m. to 5 p.m., November 23, 1988, 8:30 a.m. to 2 p.m.

ADDRESS: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald White, Code EB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1470).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, and work in progress on, and accomplishments of NASA's Space Sciences and Applications programs. The Life Science Subcommittee provides advise to the Life Sciences Division concerning all of its programs in the space life sciences. The Subcommittee will meet to develop a science strategy for the Life Sciences Division by assessing the science plans and by helping to integrate them into a cohesive Division plan. The Subcommitee is chaired by Dr. Francis J. Haddy and is composed of 17 members. The meeting will be open to the public up to the capacity of the room (approximately 45 including Subcommittee members).

Type of Meeting: Open.

Agenda

Tuesday, November 22

8:30 a.m.—Introduction and Chairman's Remarks.

9 a.m.—NASA Advisory System and Office of Space Science and Applications (OSSA) Status.

10:30 a.m.—Life Sciences Overview.

1 p.m.—Space Medicine and Biology Overview.

2:30 p.m.—Biological Systems Research Overview.

3:45 p.m.—Space Flight Program Projecture, Structure and Process.

5 p.m.—Adjourn.

Wednesday, November 23

8:30 a.m.—Space Station Planning Overview.

9:30 a.m.—Robbins Committee Recommendations.

10:45 a.m.—Life Sciences Initiative and Strategy.

1 p.m.—Development of Committee Strategy.

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2 p.m.—Adjourn.

November 1, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-25689 Filed 11-4-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-259, 50-260, 50-296]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact; Correction

53 FR 40979 published on October 19, 1988, contained an "Environmental Assessment and Finding of No Significant Impact" related to Browns Ferry, Units 1, 2, and 3. In the section of "Finding of No Significant Impact," paragraph 3, line 3, the date of the exemption request should have read:" * * * January 31, 1988 as revised by letters dated November 21, 1986, May 26, 1987, September 14, 1987, and April 4, 1988, * * *"

Dated at Rockville, Maryland, this 28th day of October 1988.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-25678 Filed 11-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company (the licensee), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would change the Technical Specifications (TS) in accordance with the guidance provided in Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The general requirements in TS 3.0.4, applicable to each Limiting Condition for Operation (LCO) within Section 3.0, would be changed to allow operational condition changes without meeting the LCO requirements provided the remedial actions in the associated action statements do not require reactor shutdown if the Loc is not met in a specified time. For those TS which presently have an exception to TS 3.0.4, the exception would be deleted because the change in TS 3.0.4 would achieve the same effect by itself. For applicable TS which do not presently have an exception to TS 3.0.4, the change in TS 3.0.4 provides increased operational flexibility. TS 4.0.3 would be changed to allow up to 24 hours additional time to run missed surveillance tests. TS 4.0.4 would be changed to clarify that it does not prevent changing operational conditions to comply with action requirements. The Bases for TS 3.0 and 4.0 would be changed to reflect the changes in the TS.

Prior to issuance of the license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 7, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene became parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missiouri 1-800-342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Jose A. Calvo: Petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 30, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate-IV, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25679 Filed 11-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station Unit No. 1); Exemption

I

Niagara Mohawk Power Corporation (the licensee) is the holder of Facility Operating License No. DPR-63, which authorizes operation of the Nine Mile Point Nuclear Station Unit No. 1 (NMP-1 or the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

By letter dated September 14, 1988, the licensee requested an exemption from the requirements of 10 CFR 50.62(c)(4), which establishes the minimum injection flow rate and the boron concentration for the standby liquid control system, (SCLCS).

Specifically, 10 CFR 50.62(c)(4) requires that each boiling water reactor must have an SLCS with a minimum flow capacity and boron content equivalent in control capacity to 86 gallons per minute (gpm) of 13 weight percent sodium pentaborate solution. The licensee requests an exemption from this requirement to permit use of an equivalency formula considering sodium pentaborate concentration, pump flow rate, boron enrichment and the requirements for the liquid poison system which performs the function of the SLCS.

The requirement established by the regulation was intended to provide for prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an anticipated transient without scram (ATWS) event. The reactor vessel size used to establish the required flow rate of 86 gpm and the sodium pentaborate concentration of 13 weight percent was the large 251-inch diameter vessel used in the BWR/5 and BWR/6 designs. The NMP-1 reactor has a much smaller, 213-inch diameter, vessel. For the NMP-1 reactor, a lesser rate of injection of sodium pentaborate and/or a smaller concentration will provide adequate shutdown margin in an ATWS event, equivalent to that called for by the regulation for the larger 251-inch diameter boiling water reactor vessel. Refer to Generic Letter 85-03, "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," January 28, 1985.

III

The purpose of the rule is to reduce the risk from ATWS events by ensuring adequate shutdown margin. In this case, the injection flow rate, increased enrichment, and boron concentration will provide the equivalent level of control capacity for the smaller NMP-1 reactor pressure vessel as that called for by ATWS rule based on larger reactor pressure vessels. Requiring NMP-1 to provide the flow rate-boron concentration capacity specified by the rule would not, in these particular circumstances, serve the underlying purpose of the rule. Thus, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii). As set forth in the safety evaluation for Amendment No. 101, issued concurrently with this Exemption.

IV

The licensee provided a determination that special circumstances exist under 10 CFR 50.12(a). As discussed above, the underlying purpose of the requirements of paragraph (c)(4) of 10 CFR 50.62 is to ensure adequate shutdown margin in an ATWS event. The underlying purpose is achieved and served by using the equivalency formula discussed in the licensee's application for a Technical Specification amendment concerning the liquid poison system dated March 7, 1988.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the Exemption, as described in Section III, is authorized by law and will not present an undue risk to the public health and safety and is consistent with common defense and security, and special circumstances are present for the Exemption, in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of 10 CFR 50.62(c)(4). Therefore, the Commission hereby grants the Exemption from paragraph (c)(4) of 10 CFR 50.62 to allow the consideration of the smaller vessel size in determining the equivalent control capacity of 13 weight percent sodium pentaborate at 86 gpm for the liquid poison system at NMP-1.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will have no significant impact on the environment (53 FR 43297).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25680 Filed 11-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-410]

Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Station Unit No. 2); Exemption

I

Niagara Mohawk Power Corporation (the licensee) is the holder of Facility Operating License No. NPF-69, which authorizes operation of the Nine Mile Point Nuclear Station Unit 2 (NMP-2 or the facility). The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

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The facility is a boiling water reactor at the licensee's site in Oswego County, New York.

II

10 CFR 50.71(e)(3)(i) requires, in part, that licensees submit a revision of the Final Safety Analysis Report (FSAR) containing those original pages that are still applicable plus new replacement pages within 24 months of July 22, 1980 or the date of issuance of the operating license, whichever is later, and this revision shall bring the FSAR up to date as of a maximum of 6 months prior to the date of filing the revision. This regulation would have required submittal of the revised FSAR by October 31, 1988.

III

By letter dated September 16, 1988, the licensee requested an exemption from certain requirements of 10 CFR 50.71(e). Specifically, the licensee requested that it be permitted (1) to delay the submittal of the revised FSAR from the required date of no later than October 31, 1988 to no later than April 30, 1989; (2) to update the FSAR to April 30, 1988, up to a full year prior to the revised submittal date, and (3) to submit revised pages only and not resubmit the original pages.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia,*

The Commission will not consider granting an exemption unless special cricumstances are present. Special circumstances are present whenever * * * (ii) Application of the regulation in the particular circumstances would not serve the underlying propose of the rule or is not necessary to achieve the underlying purpose of the rule; or (iii) Compliance would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated, or * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

IV

The requested exemption is administrative and would not affect plant equipment, operations or procedures. Moreover, in response to an NRC request the licensee provided an additional FSAR update in May 1987, seven months after the operation license was issued, to incorporate a large volume of commitments made by letter subsequent to Amendment No. 27 and to reflect changes resulting from the replacement of main steam isolation valves. Thus, some of the changes that would have been required to be in the update to be submitted within 24 months after issuance of the operating license have already been incorporated.

The FSAR update will be up to date as of April 30, 1988 which is the date six months prior to the original required date of October 31, 1988. Therefore, this date will be unaffected by the later submittal. Furthermore, the licensee has stated that the next revision would be filed within 12 months of the original date for submittal (i.e., October 31, 1989) so future submittal dates would remain unaffected.

The extension of time for the submittal is needed because of the unusually large size of the FSAR for NMP–2, the large volume of changes that need to be processed for this initial update, and the unexpected delays in the power ascension program The licensee estimates that over 55,000 person hours of effort will be required to complete the process in which about 80 individuals are involved. In addition, the licensee has assigned persons familiar with the plant to review the changes, therefore, the number of people available to perform this function is limited. In addition, the licensee has indicated in discussions with the staff that it will be exploring ways to streamline the FSAR update process for future updates. Therefore, the Commission has determined that the licensee has made a good faith effort to comply with the regulation but, because of the unexpected complexity of the task and the delays in the power ascension program, will be unable to complete the effort by the required date of October 31, 1988. Therefore special circumstances exist that warrant a temporary delay in the submittal of the undated FSAR.

Because of the large size of the FSAR for NMP–2 (35 volumes vs. 2 volumes for Unit 1), reprinting and shipping complete sets of the FSAR would result in costs that are significantly in excess of what was typically incurred for other plants when updating the FSAR. The licensee has stated that a complete, new set of updated FSARs would cost $150,000, whereas the proposed alternative (i.e., replacement pages) would cost only $66,000. As a comparison the most recent update for Nine Mile Point Unit 1 cost approximately $10,000 to produce.

The purpose of having the licensee submit a complete copy of the FSAR with original pages was to ensure that the NRC had an updated copy of the FSAR from licensees that had not updated the FSAR in some time. The original NMP–2 FSAR was submitted in April 1983 and has been updated 28 times since then. Each time replacement pages were submitted to the Commission. In addition, the licensee will be requested to submit a list which identifies the current page of the FSAR following page replacement as is required when FSARs are updated using the replacement page method. This has already been the licensee's practice in recent FSAR amendments. As these lists will identify the current effective pages in the FSAR, and the Commission already has a copy of the unaffected pages of the FSAR, resubmital of the unaffected pages is not necessary to achieve the underlying purpose of the rule. Therefore, special circumstances exist that warrant the granting of an exemption to allow the initial FSAR update to be accomplished by the replacement page method.

V

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) an exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section IV. Therefore, the Commission hereby grants the following exemption:

Accordingly, the Commission hereby grants an exemption, as described in Section III above from 10 CFR 50.71(e)(3)(i) from the requirement to file a separate and new updated FSAR for NMP–2 by October 31, 1988. The initial FSAR update is to be submitted by April 30, 1989, may be up-to-date as of April 30, 1988, and may be submitted by the replacement page method.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 43952).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Division Director, Division of Reactor Projects, I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–25681 Filed 11–4–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–220]

Niagara Mohawk Power Corp.; Partial Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by the licensee for an amendment to Facility Operating License No. DPR–63 issued to Niagara Mohawk Power Corporation for operation of the Nine Mile Point Nuclear Station Unit No. 1 (the facility), located in Oswego County, New York.

The denied portion of the proposed amendment would have revised Figure 3.1.2b, "Minimum Allowable Solution Temperature" in the Technical Specifications. The revised curve would have extended the curve to lower temperatures (from 40° F to 30° F) to define the weight percent sodium pentaborate in solution at temperatures as low as 30° F. Notice of consideration of issuance of the amendments was published in the **Federal Register** on June 1, 1988 (53 FR 20044). The licensee's application for amendment was dated March 7, 1988, as supplemented April 13, 1988.

During the review, the staff determined that the revised curve for Figure 3.1.2b had been shifted in the non-conservative direction as well as extended. This was discussed with the licensee's staff who stated that the shift was made in error. The licensee further stated that the revised curve was independent of the other changes requested in the amendment and was not necesary for operation with the other proposed changes for the Liquid Poison System. The staff determined that operation with the revised curve was not acceptable but that operation with the existing Figure 3.1.2b with the other changes in the amendment request was acceptable.

By December 7, 1988 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Troy B. Conner, Jr., Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, DC 20006, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 7, 1988, as amended April 13, 1988, and (2) the Commission's letter to Niagara Mohawk Power Corporation dated October 31, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Reference and Document Department, Penfield Library, State University of New York, Oswego, New York 13126. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Mary F. Haughey,

Project Manager, Project Directorate I–1, Division of Reactor Projects, I/II.

[FR Doc. 88–25682 Filed 11–4–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–311]

Public Service Electric and Gas Co. (Salem Generating Station, Unit 2); Exemption

I

The Public Service Electric & Gas Company (the licensee) is the holder of Facility Operating License No. DPR–75 which authorizes operation of the Salem Generating Station, Unit 2, at a power level not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Salem County, New Jersey. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Section 50.46(a)(1)(i) of 10 CFR Part 50 requires that Emergency Core Cooling System (ECCS) cooling performance be calculated with an acceptable evaluation model and the results conform to the criteria set forth in § 50.46(b) of 10 CFR Part 50. Generic Letter 88–16, Westinghouse ECCS Evaluation Models, dated October 22, 1988, requires that plants using the 1978 version of the Westinghouse ECCS Evaluation Model be reanalyzed using a corrected evaluation model if an ECCS analysis is used to support a future licensing action. Salem Unit 2 currently uses the 1978 Westinghouse Evaluation Model.

During the fourth refueling outage at Salem Unit 2, 2.7% of the steam generator tubes were plugged and some unrecoverable loose parts were left in the Reactor Coolant System (RCS). A safety evaluation has been performed, including an estimate of the effect of such change on the Large Break LOCA analysis. The safety evaluation found that the proposed exemption is acceptable. However, the requirement exists to revise the Large Break LOCA analysis to accurately reflect and document the current plant configuration in the ECCS Appendix K model. The licensee has proposed a one-time exemption from the requirements of § 50.46(a)(1)(i) to allow Salem Unit 2 to operate while the ECCS analysis is being performed. Submittal of the ECCS reanalysis is scheduled for March 31, 1989. The staff has found that approval of the proposed exemption is warranted and should be granted so that Salem Unit 2 may return to power operation without encountering any unnecessary delay.

III

The NRC staff has evaluated the licensee's basis for requesting the schedular exemption in providing the revised ECCS analysis and finds that not granting this exemption would require Salem Unit 2 to remain shutdown for a period of about five months while the analysis is being done. The staff reviewed the licensee's safety evaluation of a Large Break LOCA for both steam generator tube plugging and unrecovered loose parts in the reactor coolant system.

Based on the licensee's Large Break LOCA sensitivity study, a conservative estimate of the penalty would be 28°F associated with 3.5% tube plugging and 22°F associated with loose parts in the RCS of Salem Unit 2. However, the licensee indicated that the licensing basis Large Break LOCA analysis for Salem was performed using fuel performance parameters which are now overly conservative. Using the lower rod internal back fill pressure of the fuel currently in Salem Unit 2, results in a peak clad temperature (PT) benefit larger than the combined penalty of the approximately 50°F due to the steam generator tube plugging and the loose parts in the RCS. Thus, the net effect will result in no increase to the current calculated PCT of 2130°F for a Large Break LOCA. This PCT is low enough to assure that the other criteria for a Large Break LOCA will be met. The staff considers that the licensee evaluation is

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reasonable and conservative. This is also discussed in the attached Safety Evaluation. Based on the above information, provided by the licensee, and the staff's evaluation of the licensee's submittal, the staff concludes that the licensee has provided an adequate basis for the conclusion, that granting the exemption will not result in operation of Salem Unit 2 outside the acceptance criteria of § 50.46(b) of 10 CFR Part 50.

The regulations in 10 CFR 50.12 state that the Commission will not consider granting an exemption unless special circumstances are present. In its letter of October 21, 1988, the licensee addressed three of those special circumstances which are applicable to this request for exemption. The licensee states that special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that submittal of the formally amended ECCS analysis prior to restart of Salem Unit 2 versus the requested five-month exemption is not necessary to achieve the underlying purpose of 10 CFR 50.46. 10 CFR 50.46(a)(1)(i) requires that the calculated cooling performance of the ECCS conform to the acceptance criteria of § 50.46(b). The licensee has provided safety evaluations which indicate that sensitivity studies performed on the current ECCS analysis assure that the calculated peak clad temperature value is bounding and in compliance with the acceptance criteria of § 50.46(b).

The licensee states that the special circumstances of 10 CFR 50.12(a)(2)(iii) are present in that extending the current outage for the five months necessary to complete the reanalysis would result in a severe financial penalty and the associated costs of replacement power. Also, similar requests have been granted to the Tennessee Valley Authority for Sequoyah Unit 1 and Pacific Gas and Electric for Diablo Canyon Unit 2, which is not extended to Salem Unit 2, would result in costs well in excess of those incurred by others.

The licensee also states that the special circumstances of 10 CFR 50.12(a)(2)(v) are present in that the exemption would provide only temporary relief from the applicable regulation and became necessary as a result of the unanticipated plugging of all row 1 steam generator tubes and the unrecoverable loose parts in the reactor coolant system. The licensee has provided the bases for its conclusion, that operation of Salem Unit 2 until March 31, 1989 while the ECCS reanalysis is being performed will not result in conditions such that criteria of § 50.46(b) will be exceeded, and the staff agrees. These bases are discussed in more detail in the enclosed Safety Evaluation and the licensee's submittals.

Prior history of the operation of the Salem, Unit 2 steam generators has shown an excellent record of performance with minimal tube degradation. These row 1 failures have followed a classic pattern of onset, i.e., a prolonged period of operation with no apparent degradation followed by an abrupt occurrence of multiple defects. Also, Salem, Unit 1 has not experienced the same type of failure even though it has been in operation about five years longer than Salem, Unit 2. At the time of discovery the licensee promptly contacted Westinghouse for the ECCS reanalysis. Because the reanalysis requires significant engineering manpower expenditures by Westinghouse (i.e., inputting amended parameters into computer codes, running lengthy computer codes, verifying output results and generating a final report) the reanalysis will take about five months to complete. The licensee has shown a good faith effort to comply with the regulations and will be in compliance as promptly as is reasonable.

Based on the staff's findings, as discussed above, the staff has determined that operation of Salem Unit 2, while the ECCS reanalysis is being performed, would not result in a situation wherein the peak clad temperature would exceed 2200°F. Therefore, the staff concludes that special circumstances of 10 CFR 50.12(a)(2)(v), in that the exemption is temporary and a good faith effort by the licensee to comply has been deomonstrated. Accordingly, the NRC staff finds that operation of Salem Unit 2 during the proposed exemption period is acceptable. Therefore, the staff finds the proposed exemption from 10 CFR 50.46(a)(1)(i) until March 31, 1989, to be acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the proposed exemption is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants the exemption as follows:

An exemption is granted from the requirement to have the ECCS cooling performance calculated in accordance with an acceptable evaluation model. This exemption is granted for the period ending on March 31, 1989 and is applicable to Salem Unit 2 as indicated in the Safety Evaluation Report issued in support of this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (53 FR 44134, November 1, 1988).

This exemption is effective on November 1, 1988, and is to expire on March 31, 1989.

Dated at Rockville, Maryland, this 1st day of November 1988.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25683 Filed 11-4-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Petition by Rice Council for Market Development and Rice Millers' Association for Action Under Section 301; Decision Not To Initiate an Investigation; Reasons Therefor

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative has determined not to initiate an investigation at this time under section 302 of the Trade Act of 1974, as amended (19 U.S.C. 2412), with respect to a petition filed September 14, 1988 by the Rice Council for Market Development and the Rice Millers' Association. However, if Japan does not permit progress toward opening its rice market at the Midterm Review of the Uruguay Round trade negotiations in Montreal, Canada, December 5 through 7, 1988, and does not appear committed to solving the rice issue in the Uruguay Round, then the Trade Representative will entertain an immediate resubmission of the petition.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, Senior Economist for Agricultural Affairs, Office of U.S. Trade Representative, (202) 395-5006, or Glen Fukushima, Deputy Assistant U.S. Trade Representative for Japan and China, (202) 395-5070.

SUPPLEMENTARY INFORMATION: On September 14, 1988, the Rice Council for Market Development and the Rice Millers' Association filed a petition with the United States Trade Representative under section 302 of the Trade Act of 1974, as amended, with respect to Japanese market barriers to U.S. rice exports. Although sympathetic to the concerns of the petitioners, the Trade Representative determined not to initiate an investigation because he believes the Uruguay Round of multilateral trade negotiations provides a more effective way to open the Japanese rice market to U.S. exports.

The Trade Representative gave the following additional reasons for declining to initiate an investigation under section 302. The United States is still in the middle of Uruguay Round multilateral negotiations scheduled to conclude in 1990. Acceptance of the petition would have triggered a dispute settlement process under the General Agreement on Tariffs and Trade (GATT) which would take easily a year to complete. If the United States prevailed in the GATT dispute, Japan could refuse to implement the GATT decision, which would likely result in responsive action by the United States under section 301. Such action would "level the playing field" but would not expand the Japanese market for rice exports. In constrast, the Trade Representative believes that the multilateral round of trade negotiations will expand the Japanese market for rice exports. Thus, the United States can achieve a more favorable outcome through multilateral negotiations than section 301 action, with a delay of only one additional year.

The Japanese government will have the opportunity to demonstrate its commitment to resolving the rice issue in the context of the multilateral agricultural negotiations in early December 1988, when trade ministers of the 96 GATT nations meet in Montreal for the Midterm Review of the Uruguay Round. The Trade Representative has called upon Japan to assert its willingness at Montreal to negotiate and implement, in cooperation with its trading partners, long overdue reforms in policies affecting agricultural trade. He will not accept arguments in Montreal that basic foodstuffs should be exempt from market access rules in agriculture, or that Japan cannot accede to short-term measures that might be agreed upon as a down-payment on long-term reform.

The Trade Representative has announced that if representatives of the Japanese government are not helpful and supportive in the agricultural discussions in Montreal, and if it becomes apparent that Japan is not committed to solving the rice issue in the Uruguay Round, the Trade Representative will entertain an immediate resubmission of the Rice Council and Rice Millers' petition. If such a petition is submitted, the Trade Representative will make a determination whether to initiate an investigation under section 302 prior to January 20, 1989.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 88-25685 Filed 11-4-88; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26237; File No. SR-MBS-88-7, MBS-88-9, and MBS-88-11]

Self-Regulatory Organizations; MBS Clearing Corp.; Order Temporarily Approving Proposed Rule Changes on Depository Division Rules

On April 11, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Commission three proposed rules changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposals would amend various MBSCC Depository Division rules including those pertaining to participant accounts, transfers or mortgage-backed securities, the MBSCC participant fund, and the MBSCC certificate withdrawal policy. The Commission published notice of the proposals in the **Federal Register** on May 11, 1988.[2]

The Commission preliminarily believes that the proposals are consistent with the Act and is approving the proposals on a temporary basis. The Commission believes that the proposals are designed appropriately to clarify MBSCC's rules and to strengthen MBSCC's procedures, thereby enhancing MBSCC's ability to safeguard securities and funds and promote prompt and accurate clearance and settlement. The Commission, however, intends to continue to analyze the proposals and to discuss with MBSCC the actual operation of the proposals and the need for any refinements or enhancements to the proposals. In that regard, MBSCC has indicated to the Commission that it will file an amendment to the proposals in the near future. For those reasons, the Commission is temporarily approving the proposals through December 31, 1988.

It is therefore ordered, pursuant to section 19(b) of the Act, that MBSCC's proposed rule changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) be, and thereby are approved temporarily through December 31, 1988.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release Nos. 25660 (May 4, 1988) 53 FR 16812; 25662 (May 4, 1988) 53 FR 16808; 25659 (May 4, 1988) 53 FR 16818.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan Katz,

Secretary.

Dated: November 1, 1988.

[FR Doc. 88-25686 Filed 11-4-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26236; File No. SR-MSE-88-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Changes in its Fees and Assessments Scheduled.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 21, 1988, the Midwest Stock Exchange Incorporated filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below which Items have been prepared by the Self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated ("Exchange" or "MSE") proposes to change its Fees and Assessments schedule regarding Regulation "T" Extensions and Buy-In Extensions as follows:

(*Addition italicized;* [Deletions Bracketed])

(h) Regulation "T" Extension.

$2 per extension request form [processed] *for manual processing and $1 per extension request for electronic transmission media processing.*

(i) Buy-In Extension (SEC Rule 15c3-3).

$2 per [request form processed, pursuant to S.E.C. Rule 15c3-3.] *extension request form for manual processing and $1 per extension request for electronic transmission media processing.*

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

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and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The revised fees more accurately reflect the lower actual cost of processing Regulation "T" and Buy-in Extension requests submitted electronically by Exchange members and member organizations as well as non-Exchange members who submit electronically Extension request for processing by the Exchange.

The proposed rule change is consistent with Section 6(b)(4) of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of dues, fees and other changes among Exchange members and other persons using the Exchange's facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

Dated: November 1, 1988

[FR Doc. 88-25667 Filed 11-4-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Metro North Commuter Railroad Co.; Public Hearing

The Metro North Commuter Railroad Company (MNRC) has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed modification of certain signal systems. These proceedings are identified as the following Block Signal Application Numbers: BS-Ap-No. 2785; BS-Ap-No. 2786; BS-Ap-No. 2787; BS-Ap-No. 2788; and BS-Ap-No. 2789.

BS-Ap-No. 2785

In this proceeding, the MNRC is seeking approval to remove the wayside automatic signals in traffic control territory and operate trains by signal indications of the cab signal system between controlled points from Stamford, milepost 0.2, to New Canaan, Connecticut, milepost 7.6, on the New Canaan Branch of the New Haven Line.

BS-Ap-No. 2786

In the proceeding, the MNRC is seeking approval to remove the wayside automatic signals in traffic control territory and operate trains by signal indications of the cab signal system between interlockings from CP 35, milepost 34.3, to CP 75, milepost 75.5, on the Hudson Line.

BS-Ap-No. 2787

In the proceeding, the MNRC is seeking approval to remove the wayside automatic signals in traffic control territory and operate trains by signal indications of the cab signal system between interlockings from Mount Vernon, milepose 12.2, to Rye, New York, milepost 24.2, on the New Haven Line.

BS-Ap-No. 2788

In this proceeding, the MNRC is seeking approval to remove the wayside automatic signals and operate trains by signal indications of the cab signal system in traffic control territory between interlockings from Greenwich, milepost 26.1, to New Haven, Connecticut, milepost 72.3, on the New Haven Line.

BS-Ap-No. 2789

In the proceeding, the MNRC is seeking approval to remove the wayside automatic signals in traffic control territory and operate trains by signal indications of the cab signal system between interlockings from North White Plains, milepost 24.0, to Brewster, New York, milepost 52.0, on the Harlem Line.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on December 15, 1988, in Room 305-A, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designate by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FAA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on October 31, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-25709 Filed 11-4-88; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

[Docket S-837]

Waterman Steamship Corp.; Application To Provide Trade Route 18/17 Service

Waterman Steamship Corporation (Waterman), by application dated October 20, 1988, as amended on November 3, 1988, has requested an amendment to Appendix B of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-115 for necessary approvals to provide Trade Route (TR) 18/17 (U.S. Atlantic and Gulf/Red Sea-Indonesia-Malaysia-Singapore) service with a C9-S81d LASH type vessel named *Green Valley* to be bareboat chartered from Central Gulf Lines, Inc. If granted, the vessel will be on berth mid to end December and will make a voyage to the full range of TR 18. Waterman proposes to operate the vessel for one subsidized voyage with options for up to six additional voyages.

Under the ODSA, Waterman is authorized to make a minimum/maximum of 30/40 sailings per year on TR 18/17.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590. Comments must be received no later than 5:00 p.m. on November 21, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Subsidy Board.

Date: November 2, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-25701 Filed 11-4-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 1, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Opinion Survey on IRS Publication 2
Description: The data collected will be used to determine if Publication 2 is a viable alternative for Publication 17. The sample will be selected from all taxpayers who have requested Publication 17
Respondents: Individual or households, Businesses or other for-profit
Estimated Number of Respondents: 1,578
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,578 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-25695 Filed 11-4-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 2, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: New
Form Number: TD F 90-21.4
Type of Review: New collection
Title: Survey of Depreciation of Scientific Equipment
Description: The purpose of this study is to collect data that will allow the determination of the class life for scientific instruments. The study will affect businesses that use scientific instruments.
Respondents: Businesses and other for-profit
Estimated Number of Respondents: 300
Estimated Burden Hours Per Response: 6 hours
Frequency of Response: Other (unless changes in technology required otherwise, reporting will be required only once.)
Estimated Total Reporting Burden: 2,160 hours
Clearance Officer: Dale A. Morgan (202) 343-0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue, NW., Washington, DC 20220
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-25696 Filed 11-4-88; 8:45 am]

BILLING CODE 4810-25-M

VOL 53 ISS 215 NO 7 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 43967, October 31, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: November 8, 1988.

CHANGE: Addition of the following item to the open meeting agenda:

"Officer Compensation"

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 88–25761 Filed 11–3–88; 11:16 am]

BILLING CODE 7710-12-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1410]

TIME AND DATE: 10 a.m. (c.s.t.), November 9, 1988.

PLACE: Fifth Floor Board Room, Memphis Light, Gas and Water Division, 220 South Main Street, Memphis, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on October 19, 1988.

Action Items

New Business

C—Power Items

C1. Revision to 5-Percent Interruptible Power Arrangements.

E—Real Property Transactions

E1. Acquisition of Approximately 0.45-Acres of Beech River Watershed Development Authority (BRWDA) Land in Henderson County, Tennessee.

E2. Reconveyance of a Public Access Tract From the State of Tennessee Affecting 7.1 Acres of Kentucky Reservoir Land in Decatur County, Tennessee.

E3. Grant of Easement to Alabama Department of Conservation and Natural Resources Affecting Approximately 13,000 Acres of Guntersville Reservoir Land in Jackson County, Alabama.

F—Unclassified

F1. Revised TVA Code II Accounting, Accounts Receivable.

F2. Contract No. TV–76563A with Walker College, Jasper, Alabama; and Contract No. TV–75668A with the Appalachian Regional Commission for the Establishment of an Industrial Incubation Center.

F3. Supplement 2 to Personal Services Contract No. TV–74314A with NUS Corporation.

F4. Supplement 11 to Personal Services Contract No. TV–53532A with Hartford Steam Boiler Inspection and Insurance Company.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: November 1, 1988.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 88–25742 Filed 11–3–88; 11:02 am]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Solicitation of Graduate Fellowships Grants Proposals

Correction

In notice document 88-24373 beginning on page 41391 in the issue of Friday, October 21, 1988, make the following corrections:

1. On page 41391, in the second column, in the third line from the botton., "$48,00" should read "$48,000".

2. On the same page, in the third column, in the tenth line from the top, "$1,00" should read "$1,000".

BILLING CODE 1505-01-DS4734

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Pennsylvania State University et al.

Correction

In notice document 88-24876 beginning on page 43462 in the issue of Thursday, October 27, 1988, make the following corrections:

1. On page 43462, in the third column, in the seventh line, "*Commission*" should read "*Commissioner*".

2. On page 43463, in the first column, in the tenth line from the bottom, "Joel" should read "JEOL".

3. On the same page, in the third column, in the second paragraph, in the fourth line, "*Intended Use*" should read "*Instrument*" and in the seventh line, "*Instrument*" should read "*Intended Use*".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of Dallas et al.

Correction

In notice document 88-24877 beginning on page 43464 in the issue of Thursday, October 27, 1988, make the following corrections:

1. On page 43464, in the third column, in the last paragraph, in the third line, "Instrument" should read "Institute".

2. On page 43465, in the first column, in the 15th line from the bottom, "*Commission*" should read "*Commissioner*".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 81017-8217]

Snapper-Grouper Fishery of the South Atlantic

Correction

In proposed rule document 88-24659 beginning on page 42985 in the issue of Tuesday, October 25, 1988, make the following corrections:

1. On page 42985, in the second column, in the 6th and 7th lines from the bottom, the date "August 3, 1983" should read "August 31, 1983".

§ 646.2 [Corrected]

2. On page 42988, in the third column, under § 646.2, in the eighth line, "work" should read "word".

§ 646.4 [Corrected]

3. On the same page, in the same column, under § 646.4, in the fourth line, "work" should read "word".

§ 646.22 [Corrected]

4. On page 42989, in the third column, under § 646.22(c)(1), the 10th line should read "fishery aboard is considered to be in a directed snapper-grouper fishery. It is a rebuttable presumption".

5. On the same page, in the same column, under § 646.22(c)(2)(ii), in the first line, "EES" should read "EEZ".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery

Correction

In proposed rule document 88-23402 beginning on page 39627 in the issue of Tuesday, October 11, 1988, make the following correction:

On page 39623, in the third column, in the first complete paragraph, in the fourth line, "years" should read "days".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

Federal Acquisition Regulation Supplement; Patents, Data, and Copyrights

Correction

In rule document 88-24416 beginning on page 43698 in the issue of Friday, October 28, 1988, make the following correction:

On page 43698, in the second column, under **DATES**, the second paragraph should read: *Comments:* Comments on the interim rule should be submitted to the address shown below no later than November 28, 1988.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Education Appeal Board

Correction

In notice document 88-19488 beginning on page 32643 in the issue of Friday, August 26, 1988, make the following corrections:

1. On page 32643, in the second column, under **FOR FURTHER INFORMATION CONTACT:**, in the fourth line, the ZIP code "20202" should read "20202-3724" and, in the fifth line, the

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phone number "732-1754-3724" should read "732-1754".

2. On the same page, in the same column, in the tenth line from the bottom, "withholding" was misspelled.

3. On page 32644, in the first column, in the eighth line from the top, "Cancer" should read "Center".

4. On the same page, in same column, in the 18th line from the bottom, "programs" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3451-4]

Ocean Dumping; Site Designation for Georgetown Harbor et al.

Correction

In the issue of Wednesday, October 19, 1988, on page 41013-41023, in the first column, in the correction to rule document 88-21771, a portion of the text that appeared was inaccurate and is corrected as follows:

§ 228.12 [Corrected]

In paragraph one, in the sixth line, "18.3" should read "16.3".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL-UST-3; 3419-3]

Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective

Correction

In rule document 88-24395 beginning on page 43322 in the issue of Wednesday, October 26, 1988, make the following correction:

On page 43330, in the second column, in the second complete paragraph, in the first and second line, "January 24, 1988" should read "January 24, 1989".

BILLING CODE 1505-01-D

RAILROAD RETIREMENT BOARD

20 CFR Part 365

Enforcement of Nondiscrimination on the Basis of Handicap in Railroad Retirement Board Programs

Correction

In rule document 88-24561 beginning on page 43429 in the issue of Thursday, October 27, 1988, make the following correction:

On page 43434, in the second column, in the 13th line from the bottom, in the authority citation for Part 365, "9 U.S.C. 794" should read "29 U.S.C. 794".

BILLING CODE 1505-01-D

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federal register

Monday
November 7, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 14, 100, 103, 104, 105, 106, 109, 110, 115 and 121

Fair Housing; Implementation of the Fair Housing Amendments Act of 1988; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 14, 100, 103, 104, 105, 106, 109, 110, 115 and 121

[Docket No. R-88-1425; FR-2565]

Fair Housing; Implementation of the Fair Housing Amendments Act of 1988

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: Title VIII of the Civil Rights Act of 1968 prohibits discrimination in the sale, rental, or financing of dwellings based on race, color, religion, sex, or national origin. The Fair Housing Amendments Act of 1988, which was enacted September 13, 1988 and will become effective on March 12, 1989, expands the coverage of Title VIII to prohibit discriminatory housing practices based on handicap and familial status, establishes an administrative enforcement mechanism for cases where discriminatory housing practices cannot be resolved informally, and provides for monetary penalties in cases where housing discrimination is found.

The Fair Housing Amendments Act also created design and construction requirements for certain new multifamily dwellings for first occupancy on or after March 13, 1991 (30 months after the enactment date of the law) and establishes an exemption from the prohibitions against discrimination on the basis of familial status for housing for older persons.

In addition, the Fair Housing Amendments Act authorizes the Secretary of Housing and Urban Development to issue regulations to carry out the Act. Section 13 of the Fair Housing Amendments Act states that "[I]n consultation with other appropriate Federal agencies, the Secretary shall, not later than 180th day after the date of enactment of this Act, issue rules to implement Title VIII as amended by this Act."

This proposed rule is intended to implement the responsibility of the Secretary of Housing and Urban Development to publish rules required in the Fair Housing Amendments Act. Several rulemaking actions are proposed:

The regulatory material previously contained in Part 100 is proposed to be redesignated, as revised, as a new Part 121. A new Part 100 is proposed to be added, describing the nature of conduct made unlawful with respect to the sale, rental or financing of dwellings or in the provision of services and facilities in connection therewith.

The Department further is proposing to add a new Part 103 establishing procedures relating to the investigation of complaints of discriminatory housing practices made unlawful under Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act (hereinafter referred to as the Fair Housing Act) and a new Part 104 establishing procedures for the conduct of formal administrative enforcement proceedings involving discriminatory housing practices.

As part of this rulemaking the Department is also proposing to revise other existing regulations issued under Title VIII to reflect the expanded coverage of the Fair Housing Act. Specifically, the Department is proposing technical revisions to the Fair Housing Poster regulation (24 CFR Part 110), and the Fair Housing Advertising regulation (24 CFR Part 109) as well as its Fair Housing Administrative Meetings under Title VIII of the Civil Rights Act of 1968 regulation (24 CFR Part 106). Revisions to the regulations providing for the recognition of state and local fair housing laws as providing rights and remedies which are substantially equivalent to those in Title VIII (24 CFR Part 115) are also being proposed. In addition, the Department is proposing to redesignate and revise the existing Racial, Sex, and Ethnic Data regulation (24 CFR Part 100) as a new Part 121.

DATE: Comments must be received by December 7, 1988.

ADDRESSES: Interested persons are invited to submit comments on the Proposed Rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For Part 100, Subparts D and E, David Enzel ((202) 755-6207); for Parts 103 and 104, Karen Osterloh ((202) 755-7084); for all other parts, Charles Farbstein ((202) 755-5570), Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410-0500. (The above listed numbers are not toll-free numbers.) The toll-free TDD number is 1-800-543-8294. This proposed rule will be available on tape for persons with vision impairments in the Office of the Rules Docket Clerk, Room 10276, at the above address.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.** Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and competing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development , Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503..

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3619) made it unlawful to discriminate in any aspect relating to the sale, rental or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, or national origin. Under the provisions of Title VIII, persons who believed that they had been subjected to, or were about to be subjected to a discriminatory housing practice could file a complaint with the Secretary of Housing and Urban Development. Title VIII required the Department of Housing and Urban Development to investigate each complaint and, where the Department determined to resolve the matters raised in a complaint, to engage in informal efforts to conciliate the issues in the complaint.

However, where these informal efforts to conciliate a case were unsuccessful, Title VIII did not provide the Secretary with any administrative mechanism for redressing acts of discrimination against an individual. In addition, while the Secretary could refer a case involving a pattern or practice of discrimination to the Attorney General for the initiation of a civil action, Federal courts did not award individual relief to the victims of discrimination in such cases.

The Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) was enacted to strengthen the administrative enforcement provisions of Title VIII, to add prohibitions against discrimination in housing on the basis of handicap and familial status, and to provide for the award of monetary damages where discriminatory housing practices are found. The amended law will become effective on March 12, 1989.

The provisions in the Fair Housing Act describing the nature of conduct which constitutes a discriminatory housing practice have been revised to extend the protections of the Fair Housing Act to persons with handicaps and families with children. In this respect sections 804, 805, and 806 of the Fair Housing Act prohibit discrimination in any aspect relating to the sale or rental of dwellings, in the availability of residential real estate-related transactions or in the provision of services and facilities in connection therewith because of race, color, religion, sex, handicap, familial status, or national origin.

In addition to prohibiting discrimination against persons with handicaps, the Fair Housing Act makes it unlawful to refuse to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises (section 804(f)(3)(A)). With respect to rental housing, the Fair Housing Act provides that a landlord may, where reasonable, condition permission for a modification on the renter's agreeing, on vacating the unit, to restore the interior or the premises to the condition that existed before the modification, reasonable wear and tear excepted. The Act also makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services to afford a handicapped person equal opportunity to use and enjoy a dwelling.

Further, the Fair Housing Act makes it unlawful to design and construct certain multifamily dwellings, for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with handicaps. All premises within such dwelling also are specifically required to contain several features of adaptive design so that dwellings are readily accessible to and usable by persons with handicaps.

With respect to familial status the Fair Housing Act provides an exemption from the prohibitions against discrimination because of familial status for housing for older persons.

Section 805 of the Fair Housing Act as revised prohibits discrimination related to "residential real estate-related transactions" rather than merely referring to "financing". In addition, the definition of the term residential real estate-related transaction specifically indicates that the Fair Housing Act applies to the selling, brokering and appraising of dwellings and secondary mortgage market activities with respect to securities affected or supported by dwellings as well as the making and purchasing of loans and other financial assistance for dwellings. The Act, however, does not prohibit a person engaged in the business of furnishing appraisals from taking into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

Section 810 of the Fair Housing Act provides that any person who believes that he or she has been, or will be, subjected to a discriminatory housing practice because of race, color, religion, sex, handicap, familial status, or national origin may file a complaint with the Secretary of Housing and Urban Development. This section also authorizes the Secretary of Housing and Urban Development to file complaints on the Secretary's own initiative and to investigate housing practices in order to determine whether a complaint should be filed. Complaints must be filed not later than one year after an alleged discriminatory housing practice has occurred or terminated.

Upon the filing of a complaint the Secretary is required to notify any respondent named in the complaint of the acceptance of the complaint and the discriminatory housing practices alleged in the complaint. The respondent may file not later than 10 days after receipt of the notice of a complaint, an answer to the complaint. The Secretary is required to make an investigation of the alleged discriminatory housing practice and to complete the investigation within 100 days after the filing of the complaint, unless it is impracticable to do so.

At the end of each investigation the Secretary is required to prepare a final investigation report. Under section 810(d) the final investigation report will be available to an aggrieved person or a respondent, upon request, at any time after the investigation is complete.

Section 810(b) of the Act directs the Secretary, to the extent feasible, to engage in efforts to conciliate the matters raised in the complaint at any time after the filing of the complaint.

Section 810(e) of the Act empowers the Secretary to authorize the Attorney General to file a civil action seeking appropriate preliminary or temporary relief pending final disposition of a complaint if, at any time after the filing of such complaint, the Secretary concludes that such action is necessary to carry out the purposes of the Act.

Whenever a complaint alleges a discriminatory housing practice within a State or locality which has a Fair Housing law or ordinance which has been certified by the Secretary as being substantially equivalent to the Fair Housing Act, the Secretary must refer the complaint to the agency administering such law or ordinance before taking any action with respect to the complaint. Except with the consent of a certified agency, or in other limited situations such as where a complaint is not being processed in a timely fashion or the State or local law or ordinance is found to no longer be substantially equivalent, the Secretary may not take any further action with respect to complaints referred to such agencies.

Section 810(f) of the Act permits the Secretary to certify an agency only where the Secretary determines the rights protected by the agency, the procedures followed by the agency, the remedies available to the agency, and the availability of judicial review of the agency's actions are substantially equivalent to those created in the Fair Housing Act.

This section also provides that agencies which the Secretary has determined administer State and local fair housing laws which provided rights and remedies for discriminatory housing practices that were substantially equivalent to those contained in Title VIII of the Civil Rights Act of 1968 or which had been recognized for interim referral of complaints under Title VIII would be considered certified for a period not to exceed 48 months for the purpose of referring complaints under the Fair Housing Act with respect to matters for which they had been certified on the day before the date of enactment of the Fair Housing Act (*i.e.*, September 12, 1988).

Section 810(g) of the Act requires the Secretary, in cases where the matters raised in a complaint cannot be resolved by conciliation, to determine, based upon the facts, whether reasonable cause exists to believe a discriminatory housing practice has occurred or is

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about to occur. Such a finding must be made by the Secretary within 100 days after the filing of a complaint or within 100 days after the Secretary has commenced action on a complaint which had been referred to a certified agency, unless it is impracticable to do so. Where the Secretary makes a determination that reasonable cause exists the Secretary immediately issues a charge on behalf of the aggrieved person commencing a formal administrative proceeding before an administrative law judge.

Section 812(a) of the Act provides a complainant, an aggrieved person, and the respondent with an opportunity to elect not to proceed before an administrative law judge but to move the case to an appropriate Federal district court. Such an election must be made within 20 days after the receipt of the service upon such person of the charge filed by the Secretary. Upon notification that a person has elected to proceed to Federal district court the Secretary is directed to authorize the Attorney General to file a civil action on behalf of the aggrieved person or complainant. Such civil actions authorized by the Secretary must be brought within 30 days after the election is made.

Where no election is made, the case will be heard by the administrative law judge. Under section 812(c) of the Act the Federal Rules of Evidence will apply to the presentation of evidence in the same manner that they apply to evidence presented in a civil action in Federal district court. Section 812(g) requires the administrative law judge to issue findings of fact and conclusions of law within 60 days after the end of a hearing.

Where the administrative law judge finds that a respondent has engaged in a discriminatory housing practice the Fair Housing Act provides for the issuance of an order for such relief as is appropriate, which may include actual damages and injunctive or other equitable relief. In order to vindicate the public interest the order of an administrative law judge may assess a civil penalty against the respondent.

The decision of the administrative law judge can be reviewed by the Secretary. However, this review must be completed within 30 days after the decision is issued. Any final agency decision on the issue of discrimination is subject to review on appeal by the United States Courts of Appeal.

The Fair Housing Amendments Act directs the Secretary of Housing and Urban Development to issue regulations implementing the Fair Housing Act. Section 13 of the Fair Housing Amendments Act provides that "[I]n consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the enactment of this Act, issue rules to implement Title VIII as amended by this Act." That section also requires the Secretary to give notice and opportunity for comment with respect to such rules.

This Notice of Proposed Rulemaking provides the interpretation of the Secretary of Housing and Urban Development on the scope of the coverage provided and the nature of activities made unlawful by the Fair Housing Act. The Notice of Proposed Rulemaking also contains the procedures which will be applicable to the receipt and processing of complaints and the initiation and conduct of formal enforcement proceedings.

Specifically, the Department is proposing to add three new Parts to Subtitle B of Title 24 of the Code of Federal Regulations. A new Part 100 would describe the conduct made unlawful under the Fair Housing Act. A new Part 103 would set forth the procedures for the receipt, investigation and conciliation of complaints and for the issuance of charges commencing formal administrative proceedings. A new Part 104 would establish rules for the conduct of administrative hearings before administrative law judges and would provide rules of discovery in connection with such administrative proceedings.

The existing departmental regulations authorizing the Secretary to collect racial, sex and ethnic data in departmental programs, currently located at 24 CFR Part 100, would be redesignated as 24 CFR Part 121. This regulation would be revised to reflect the additional data requirements for HUD programs to meet the Department's responsibility to provide reports to Congress and to make available to the public data on persons eligible to participate and who are participating in HUD programs.

This Notice of Proposed Rulemaking also would make revisions in four existing departmental regulations implementing the Fair Housing Act to reflect the expansion of the coverage of the law to include provisions regarding handicap and familial status. Regulations affected by these changes are; Fair Housing Administrative Meetings under Title VIII of the Civil Rights Act of 1968 (24 CFR Part 106), Fair Housing Advertising (24 CFR Part 108), Fair Housing Poster (24 CFR Part 110) and for the Recognition of Substantially Equivalent Fair Housing Laws (24 CFR Part 115).

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

Part 100 would be retitled "Unlawful Housing Practices Under The Fair Housing Act" and revised.

The new Part 100 would:

—Indicate the conduct which is made unlawful under the Fair Housing Act;

—Include guidance as to the responsibility of persons to permit reasonable modifications to dwellings and to make reasonable accommodations to rules and practices for persons with handicaps and further provide information as to the design and construction requirements applicable to certain new construction multifamily housing for first occupancy after March 13, 1991; and

—Describe the requirements which must be met for housing to be exempted from the prohibitions against discrimination based on familial status because it is housing for older persons.

Subpart A—General

Section 100.1 Authority.

The Fair Housing Amendments Act authorizes the Secretary of Housing and Urban Development to issue regulations implementing the provisions of the Fair Housing Act (42 U.S.C. 3600–3620). This section indicates that the regulations contained in Part 100 are being issued under the Secretary's authority for the administration and enforcement of the Fair Housing Act.

Section 100.5 Scope.

The Fair Housing Act provides, within constitutional limitations, for fair housing throughout the United States. It provides that no person shall, on the basis of race, color, religion, sex, handicap, familial status, or national origin be subject to discrimination in the sale, rental or advertising for sale or rental of dwelling, in the provision of brokerage services, or in residential real estate-related transactions. Section 100.5 (a) and (b) indicates that this part provides guidance as to the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of real estate-related transactions.

The provisions of this part generally reflect the language of the statutory prohibitions against discrimination under the Fair Housing Act. The specific prohibitions in each section are amplified by examples of unlawful conduct under the provision. Many of

the practices identified in these sections of the proposed rule have been the subject of court decision since the passage of Title VIII of the Civil Rights Act of 1968. In other cases, the examples reflect the interpretation of HUD based on its experience in the investigation of complaints of discriminatory housing practices since 1968. However, it must be noted that the illustrations in Part 100 are only examples of the conduct made unlawful under the Fair Housing Act.

Although the prohibitions against discrimination because of handicap and familial status are new, the Department believes that it is appropriate to interpret the protections afforded these new classes in the same manner as the protections provided to others under provisions of the Fair Housing Act. However, the Fair Housing Act prohibitions against discrimination because of handicap provide protection only to persons who are handicapped. A housing provider does not violate the Fair Housing Act by restricting occupancy in dwellings to persons with handicaps and the exclusion of non handicapped persons from such dwellings would not constitute a discriminatory housing practice.

The determination to treat the new protected classes in the same manner also is supported by the development of fair housing law in the area of discrimination because of sex. In enacting the Housing and Community Development Act of 1974 Congress amended sections 804, 805, and 806 by adding sex to the classes of persons protected under Title VIII. (See section 808(b)(1) of the Housing and Community Development Act of 1974. Pub. L. 93–383.) Although there was no legislative history regarding this expansion of the coverage of the law, courts in deciding cases involving discriminatory housing practices because of sex have held that conduct found to be unlawful when based on race, color, religion or national origin was also unlawful when based on sex.

As discussed earlier in this preamble, Congress not only added the protections of the existing law to persons with handicaps but provided additional requirements with respect to the treatment of persons with handicaps. In the Fair Housing Amendments Act, in addition to the general prohibition against discrimination Congress further made it unlawful to refuse to permit reasonable modifications, to make reasonable accommodations or to design and construct certain new construction multifamily dwellings in a manner to make dwellings accessible to and usable by handicap persons. In this regard Subpart D of this rule provides guidance on the additional practices made unlawful under the Fair Housing Act.

Section 100.5(c) indicates that nothing in this part relieves persons participating in a Federal or Federally assisted program or activity from complying with other requirements applicable to buildings and dwellings under those programs or activities.

Section 100.10 Exemptions.

The Fair Housing Act exempts certain types of housing from the coverage of the law. Section 807 of the Fair Housing Act provides that under certain circumstances religious organizations and private clubs may limit the sale, rental or occupancy of housing, owned or operated for other than a commercial purpose, to their members. Section 807 also provides that nothing in the provisions regarding familial status applies to housing for older persons. Section 803 of the Fair Housing Act provides that nothing in the Fair Housing Act, other than the prohibitions against discriminatory advertising, applies to the sale or rental by an owner of certain single family houses or to the rental of rooms in dwellings containing living quarters occupied by no more than four families, provided that the owner actually occupies one of the units. Section 100.10 of this part reflects these exemptions to the coverage of the law.

Section 100.10(a)(3) states that nothing in this regulation limits the applicability of any reasonable local, State or Federal restrictions on the maximum number of occupants permitted to occupy a dwelling unit. This paragraph incorporates into the regulation the revisions to section 807 of the Fair Housing Act contained in section 6(d) of the Fair Housing Amendments Act of 1988. That provision is intended to allow reasonable governmental limitations on occupancy to continue as long as they are applied to all occupants, and do not operate to discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin. H.R. Rep. No. 711, 100th Congress, 2d Sess. 31 (1988) ("House Report").

Section 100.10(a)(4) provides that nothing in this part prohibits the refusal to sell or rent a dwelling or to otherwise make unavailable or deny a dwelling to a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). This exemption was intended to allow landlords to protect tenants by refusing to provide housing to persons convicted of distributing or manufacturing illegal drugs. The exemption must be based upon a conviction. It does not apply to those who are not convicted of a drug offense. One conviction is sufficient for the exemption. However, as in the case of the exemption for governmental restrictions on the number of persons occupying dwellings, this exemption cannot be applied in a selective of different manner to exclude persons because of race, color, religion, sex, handicap, familial status, or national origin. (134 Cong. Rec. S10468–9 (daily ed. August 1, 1988) (colloquy between Sen. Thurmond and Sen. Kennedy)).

This section also provides that the prohibitions against discrimination based on familial status do not apply to housing for older persons and indicates that the definition of housing for older persons is set forth in Subpart E of this part. Section 100.10 also contains the limited exemption from the applicability of the provisions of the Fair Housing Act, other than the prohibitions against discriminatory advertising, for the sale or rental of certain single family houses by an owner and for rentals of rooms in dwellings in which the owner also occupies a room (Mrs. Murphy housing).

Section 100.20 Definitions.

Section 100.20 proposes definitions to be used for terms in this part.

The term "aggrieved person" means any person who claims to have been injured by a discriminatory housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur. (Aggrieved person includes a fair housing organization as well as a tester or other person who seeks information about the availability of dwellings to determine whether discriminatory housing practices are occurring.)

A "broker" or "agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any real estate related transactions.

A "discriminatory housing practice" is defined as an act that is unlawful under section 804, 805, 806, or 818. The definition of discriminatory housing practices reflects the addition of unlawful interference, coercion or intimidation in connection with housing under section 818 of the Fair Housing Act (formerly section 817 of Title VIII of the Civil Rights Act of 1968) as a discriminatory housing practice which

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can be a basis for a complaint under the Fair Housing Act.

A "dwelling" means any building, structure or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof, including mobile home parks, trailer courts, condominiums, cooperatives, and time-sharing properties.

"Fair Housing Act" means Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600–3620).

"Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or indivduals, or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The definition would also indicate that the protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

"Handicap" means any person defined as handicapped under § 100.201 of Subpart D of this part.

The term "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, fiduciaries, governmental entities, banks, building and loan associations, or other firms or enterprises.

A "person in the business of selling or renting" is any person who:

(1) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) Within the preceding twelve months, has participated as agent, other than in the sale of their own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Section 100.20 also contains definitions of the terms "Secretary", "State" and "Department".

Subpart B—Discriminatory Housing Practices

Section 100.50 Real estate practices prohibited.

This section of the rule indicates that Subpart B contains the Department's interpretation of the conduct made unlawful under section 804 and section 806 of the Fair Housing Act. In general, these provisions describe conduct made unlawful with regard to any aspect related to the sale, rental, or advertising of dwellings and to the provision of brokerage services and facilities in connection with the sale or rental of dwellings.

Section 100.50(b) enumerates the specific conduct made unlawful in relation to the sale or rental of dwellings. The conduct described in this section forms the basis for the subsequent sections in this subpart. Each of the following sections provides illustrations of the scope and applicability of the rule to specific sales, rental and brokerage activities.

While the illustrations are set forth under the section of this subpart which is most applicable to the discriminatory conducted described, § 100.50 indicates that an action described in one section can constitute a violation under other sections as well. In addition, it should be noted that the illustrations of discriminatory conduct in this subpart are only examples of discriminatory conduct which violates the Fair Housing Act and are not intended to limit the scope of discrimination in housing made unlawful under the Fair Housing Act.

Section 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.

This section of the rule describes the activities which constitute a refusal to sell or rent to a *bona fide* homeseeker or a refusal to negotiate with persons for the sale or rental of dwellings and which are unlawful when they are taken because of race, color, religion, sex, handicap, familial status, or national origin.

The illustrations in § 100.60(b)(3) through (6) are intended to indicate the Department's position that certain activities in which different treatment is provided to persons because of race, color, religion, sex, handicap, familial status, or national origin also can be tantamount to an unlawful refusal to negotiate under this section.

Section 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

Section 100.65 indicates that differences in the treatment of persons in connection with the provision of services and facilities or in the terms or conditions relating to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin constitute a discriminatory housing practice.

The illustrations in § 100.65(b) indicate that the coverage of this section extends beyond restrictions or differences in a lease or sales contract and the provision of different maintenance. This section would provide that denials of, or limitations on the amount of discounts, rebates or gifts, or on the use of privileges, services or facilities relating to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin are also discriminatory housing practices.

Section 100.70 Other prohibited sale and rental conduct.

This section would indicate that restricting or attempting to restrict the housing choices of persons as well as engaging in any conduct relating to the sale or rental of a dwelling that otherwise makes unavailable or denies dwellings because of race, color, religion, sex, handicap, familial status, or national origin, is a discriminatory housing practice.

Section 100.70(c) describes actions which result in limitations of housing choice which would violate the Fair Housing Act. These practices, which are commonly referred to as "steering", include practices designed to discourage persons from seeking housing in a particular community, neighborhood, or development in addition to those used to direct or assign persons to a particular community, neighborhood, or development because of race, color, religion, sex, handicap, familial status, or national origin.

With respect to practices which otherwise make unavailable or deny a dwelling, the illustrations focus primarily on activities with respect to the sale or rental of dwellings which may not be taken against a specific person but nonetheless result in housing being made unavailable to persons because of race, color, religion, sex, handicap, familial status, or national origin. This section indicates, for example, that a policy of encouraging or rewarding discriminatory housing practices or of taking adverse actions against employees refusing to participate in such discriminatory practices would violate the Fair Housing Act. In these cases, the actions taken will result in a limitation on the housing opportunities and choices available to persons.

This section also states that the denial of the approval of an otherwise qualified person by a cooperative association because of race, color, religion, sex, handicap, familial status, or national origin which results in the inability of a person to complete a sale or rental transaction constitutes a violation of the Fair Housing Act. This example illustrates the broad reach of the "otherwise make unavailable" language in the Fair Housing Act which covers the denial of benefits essential to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

In view of the broad reach of the "otherwise make unavailable" language in the Fair Housing Act, it is especially important to note that the illustrations in this subpart are only examples of discriminatory conduct and are not intended to limit the scope of discrimination in housing made unlawful under the Act. For instance, although not set forth as an example in this subpart, discrimination in the provision of services and facilities which are prerequisites to obtaining dwellings, including discriminatory refusals to provide municipal services or adequate property or hazard insurance as well as discriminatory appraisal and financing practices, has been interpreted by the Department and by courts to render dwellings unavailable under the "otherwise make unavailable" in the Fair Housing Act.

The language regarding the "otherwise make unavailable" provisions of the Fair Housing Act has not been interpreted to impose upon private individuals an affirmative obligation to construct or offer housing of a particular type or cost. Rather, a private individual's decisions based solely on legitimate business reasons other than race, color, religion, sex, handicap, familial status or national origin will not violate the Act. Thus, for example, a private developer's market-based decision to include only efficiency apartments in a development would not violate the Act solely because, as a practical matter, such housing would be unavailable to families with children. For that reason, the unlawful conduct described in this section does not include such actions. The obligations of developers to make new multifamily housing accessible to handicapped persons are addressed in § 100.205.

Section 100.75 Discriminatory advertisements, statements, and notices.

Although the Fair Housing Advertising Regulation (24 CFR Part 109) applies to all advertising for dwellings, the Department believes it is appropriate in connection with regulations describing prohibited conduct related to the sale or rental of housing to include additional guidance as to prohibited conduct in the making of advertising, notices and statements regarding this specific area. Section 100.75 describes prohibited conduct related to advertisements, notices and statements, by persons engaged in the sale or rental of housing or in the printing and publishing of such advertisements, notices and statements.

Section 100.80 Discriminatory representations on the availability of dwellings.

Section 100.80 indicates that the provision of inaccurate or untrue information about the availability of dwellings for sale or rent because of race, color, religion, sex, handicap, familial status, or national origin constitutes a violation of the Fair Housing Act. In this regard, it should be noted that a person who receives the inaccurate or untrue information need not be an actual seeker of housing in order to be the victim of a discriminatory housing practice under this section.

Section 100.85 Blockbusting.

Blockbusting consists of any effort, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into a neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

Section 100.85(b) indicates it is not necessary that there be in fact a profit realized as a result of blockbusting as long as the availability of profit was a factor involved in the blockbusting activity. In addition, the illustrations of unlawful blockbusting activity include uninvited solicitations for listings in a neighborhood which are different than uninvited solicitations in other neighborhoods because of the race, color, religion, sex, handicap, familial status, or national origin of the neighborhood.

Section 100.90 Discrimination in the provision of brokerage services.

This section reflects the prohibition in the Fair Housing Act against denying any person access to, or membership or participation in, any multiple listing service, real estate brokers' organization or facility relating to the business of selling or renting dwellings. This section also indicates that it is unlawful to discriminate against any person in the terms or conditions of such access, membership or participation because of race, color, religion, sex, handicap, familial status, or national origin.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

Section 100.110 Discriminatory practices in residential real estate-related transactions.

Section 100.110 indicates the general prohibition against discrimination in the availability of, or in the terms or conditions imposed in any residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin. The prohibitions against discrimination in this subpart apply to any person or other entity whose business includes engaging in residential real estate-related transactions.

Section 100.115 Residential real estate-related transactions.

This section incorporates into this part the definition of the term "residential real estate transaction" contained in section 6(c) of the Fair Housing Amendments Act of 1988.

Section 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

This section indicates that it is unlawful for a person or entity engaged in residential real estate transactions to discriminate against persons because of race, color, religion, sex, handicap, familial status, or national origin in making available loans and other financial assistance relating to dwellings. The prohibitions against discrimination in the making of loans and in the provision of other financial assistance reflects the language relating to discrimination in the financing of housing under Title VIII of the Civil Rights Act of 1968.

In connection with the development of the illustrations of activities which would constitute discriminatory practices under the Fair Housing Act relating to the making available of loans and other assistance the Department has been guided by its experiences in connection with the administration and enforcement of the current law.

The definition of the term residential real estate-related transactions includes

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loans and other financial assistance which are secured by residential real estate. This revision expands the types of financing transactions which are covered by the nondiscrimination requirements of Title VIII of the Civil Rights Act of 1968. However, there is nothing in the legislative history of the Fair Housing Amendments Act of 1988 which indicates that the Congress intended that loans and other assistance secured by a dwelling be treated any differently than loans for the purchase, construction, improvement, repair, or maintenance of a dwelling. Thus, the illustrations in this section apply equally to both types of loans.

The illustrations of unlawful conduct under this section include the making of statements, notices and advertisements which indicate a preference of an intention to make a preference because of race, color, religion, sex, handicap, familial status, or national origin. Although the Fair Housing Advertising Regulation (24 CFR Part 109) applies to all advertising for dwellings, the Department has determined that it is appropriate in connection with regulations describing prohibited conduct related to residential real estate-related transactions to include additional guidance as to prohibited conduct in the making of advertising, notices and statements regarding this specific area. Section 100.120(b)(3) describes prohibited conduct related to advertisements, notices and statements in connection with residential real estate-related transactions.

Section 100.125 Discrimination in the purchasing of loans and other financial assistance.

The principal change in the nature of the conduct made unlawful regarding loans and other assistance with respect to dwellings is the inclusion of activities relating to the purchase of such loans. In prohibiting discrimination in the purchasing of loans Congress extended the coverage of the Fair Housing Act to conduct in the secondary mortgage market. The House Report on the Fair Housing Amendment Act of 1988 states, with regard to this expanded coverage however, that "[T]he Committee does not intend that those purchasing mortgage loans be precluded from taking into consideration factors justified by business necessity (including requirements of Federal law) which relate to the financial security of the transaction or the protection against default or diminution in the value of the property." (House Report at 30).

Section 100.125 indicates the new coverage of secondary mortgage market activities under the Fair Housing Act. Since the protections provided under this section are new, the illustrations of discriminatory housing practices in this section focus on general areas of unlawful conduct under the Act. In this respect, the illustrations indicate that conduct made unlawful with regard to secondary mortgage market activities include actions taken with respect to the purchase and pooling of loans as well as the terms and conditions of the sale of securities issued based on such loans.

Section 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

Section 100.130 indicates that it is unlawful to impose different terms or conditions for the availability of a loan or other financial assistance for a dwelling or which is, or will be secured by a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

The illustrations of the unlawful activities indicate that requirements, procedures, policies or practices relating to loans or other financial assistance which are different or imposed in a different manner because of race, color, religion, sex, handicap, familial status, or national origin are discriminatory housing practices. This section also indicates that imposing different loan provisions (such as the interest rate or the duration of the loan), or providing different types of loans because of race, color, religion, sex, handicap, familial status, or national origin are unlawful.

In addition, § 100.130(b)(4) indicates it is unlawful to fail to make available a loan or other assistance because of the race, color, religion, sex, handicap, familial status, or national origin of the present or prospective residents or occupants of dwellings in the area of the dwelling for which the loan or other financial assistance is sought, or in the area in which the dwelling which is provided as security for the loan or other assistance is located.

The practice of refusing to make loans or certain types of loans or other assistance for dwellings in particular areas has been generally referred to as "redlining". However, the determination of the nature and types of loans and other financial assistance to be offered by a person or entity engaged in residential real estate-related transactions in many cases involves legitimate business judgments and complex financial, economic and social issues and problems. Unless the failure to provide loans or other assistance to a particular area is because of the race, color, religion, sex, handicap, familial status, or national origin of persons, it does not violate the Fair Housing Act. In order to avoid confusion as to the nature of conduct prohibited under the Fair Housing Act the term redlining has not been used in this section of the rule.

Section 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

The prohibitions against discrimination because of race, color, religion, sex, handicap, familial status, or national origin in connection with residential real estate-related transaction apply to the selling, brokering and appraising of residential real property. Section 100.135 states that it is unlawful for any person whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such activities, or in the terms or conditions of such activities because of race, color, religion, sex, handicap, familial status, or national origin.

For the purpose of this rule the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a commercial context in connection with the sale, rental, financing or refinancing of a dwelling or with any other residential real estate-related transactions, whether the appraisal is oral or written, or transmitted formally or informally.

While the Fair Housing Act provides a specific exemption for appraisals stating that nothing in the Act prohibits a person in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin, the illustrations of unlawful conduct make clear that consideration of any factor because of race, color, religion, sex, handicap, familial status, or national origin *does* constitute a discriminatory housing practice.

Section 100.135(d)(3) would provide that it is unlawful, in a commercial context, by either statements or conduct, to instruct or encourage any person, or to impose standards requiring such person, to consider any factor in making an appraisal of a dwelling which relates to race, color, religion, sex, handicap, familial status or national origin. This illustration is intended to cover, among other activities, instruction or training of appraisers by professional appraiser associations, or the adoption of discriminatory appraisal standards by governmental agencies providing home mortgage financing. By limiting its application to activities undertaken in a commercial context, the Department intends to indicate that activities which may be subject to First Amendment protections, such as the publication of treatises, articles, etc., regarding appraisal theory or practices, are excluded from coverage.

In addition, § 100.135(d)(4) provides that it is unlawful for any person to (a) use any appraisal or appraisal report if such person knows or reasonably should know that the appraisal takes into account a factor or factors based on race, color, religion, sex or national origin, or (b) use any information relating to race, color, religion, sex, handicap, familial status or national origin which is contained in an appraisal report. This rule is intended primarily to prohibit lenders or other persons who engage in residential real estate-related activities from utilizing a discriminatory appraisal, or information relating to race, color, religion, sex, handicap, familial status, or national origin contained in an appraisal report, in determining the eligibility or the terms and conditions for financing. This illustration would also relate to other persons, such as real estate brokers, who might use an appraisal report in establishing the sales price of a dwelling.

Subpart D—Prohibitions Against Discrimination Because of Handicap

The Fair Housing Amendments Act of 1988 extended the principle of equal housing opportunity to persons with handicaps. The Act makes "a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals." House Report at 18. The Act makes it unlawful to discriminate or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that individual, someone associated with that individual, or of a resident or potential resident (section 804(f)(1)). It also prohibits discrimination against the same person in the terms, conditions, or privileges of sale or rental, or provision of services or facilities (section 804(f)(2)). It requires that persons with handicaps be permitted to make reasonable modifications, at their expense, to existing premises to afford them full enjoyment of the premises (section 804(f)(3)(A)). It also requires that after March 13, 1991, new multifamily dwellings of four or more units be designed and constructed to allow ready access to and use by persons with handicaps (section 804(f)(3)(C)).

Section 100.200 Purpose.

Section 100.200 explains that the purpose of Subpart D is to effectuate the provisions concerning handicap in the Fair Housing Amendments Act of 1988.

Section 100.201 Definitions.

Section 100.201 proposes definitions to be used for terms used only in subpart D. The definitions in subpart A also apply to subpart D.

"Accessible", when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1 or another standard that affords handicapped persons access essentially equivalent to or greater than that required by ANSI A117.1 is "accessible" within the meaning of this definition.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1 is an "accessible route". This definition is consistent with the definition of "accessible route" in ANSI A117.1.

"ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. The American National Standards Institute, Inc. (ANSI) is a private, national organization that publishes standards on a wide variety of subjects. The Secretariat that developed the 1986 edition of the ANSI standard was composed of the National Easter Seal Society, the President's Committee on Employment of the Handicapped, and HUD. The current version of these standards was published in 1986 and is referred to as "ANSI A117.1–1986". Whenever ANSI A117.1 is used in subpart D, the reference is to the most recently published edition of ANSI A117.1 as of the date bids for construction of a particular building are solicited.

"Building" means a structure, facility or the portion thereof that contains or serves one or more dwelling units. For example, a structure that serves one or more dwelling units includes a structure containing recreational facilities for residents of an apartment complex.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route within the boundary of the site accessible to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 complies with the requirements of this definition.

"Common use areas" means rooms, spaces or elements inside or outside a building that are made available for the use of residents of a building or the guests thereof. Examples of common use areas include hallways, lounges, lobbies, laundry rooms, refuse rooms and passageways among and between buildings.

"Controlled substance" means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units. A single structure consisting of 5 two-story townhouses is not a "covered multifamily dwelling" if the units do not have elevators because the entire dwelling unit is not on the ground floor.

"Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person or family. Examples of dwelling units include single family detached houses, townhouses, apartments, and condominiums.

"Entrance" means any access point to a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit. The term exterior is used in the definition of "premises".

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

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"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of having such an impairment; or being regarded as having such an impairment. However, this term does not include current, illegal use of or addiction to a controlled substance. The term also does not include an individual solely because that individual is a transvestite. Paragraphs (a), (b), (c) and (d) of the definition clarify the key phrases in the definition: "physical or mental impairment"; "major life activities"; "has a record of such an impairment"; and "is regarded as having an impairment".

With the exception of current, illegal use of or an addiction to a controlled substance, the definition of "handicap" in the Act is very similar to the definition of the term "individual with handicaps" in the Rehabilitation Act of 1973. 29 U.S.C. 706. Congress intended that the definition of "handicap" in the Fair Housing Amendments Act to be interpreted in a manner that is consistent with regulations interpreting the meaning of the similar provision found in section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. House Report at 22; 134 Cong. Rec. S10492 (daily ed. August 1, 1988) (statement of Sen. Chafee); 134 Cong. Rec. H4689 (daily ed. June 23, 1988) (statement of Rep. Pelosi); 134 Cong. Rec. H4612 (daily ed. June 22, 1988) (statement of Rep. Schroeder).

Section 504 of the Rehabilitation Act prohibits discrimination against otherwise qualified individuals with handicaps in programs or activities receiving federal financial assistance as well as in federally conducted programs and activities. The Department of Justice section 504 coordination regulation for federally assisted programs is at 28 CFR Part 41. HUD's section 504 regulation for federally assisted programs is at 24 CFR Part 8. Paragraphs (a), (b), (c) and (d) of the definition of "handicap" closely follow the definitions of these key phrases used in regulations interpreting section 504.

Paragraph (a) of the definition of "handicap" in § 100.201 closely follows the definition in HUD's section 504 regulation for federally assisted programs and activities (24 CFR 8.3), except that this rule's definition does not include drug addiction caused by current illegal use of a drug that is a controlled substance. Section 5(b) of the Fair Housing Amendments Act expressly excludes from the definition of "handicap" current, illegal use of or addiction to a controlled substance, as defined by the Controlled Substances Act (21 U.S.C. 802). The legislative history of the Fair Housing Amendments Act demonstrates that the Act does not exclude from protection persons who take controlled substances for a medical condition under the care of, or by prescription from, a physician. Use of a medically prescribed drug does not constitute illegal use of a controlled substance. Similarly, individuals who have a record of drug use or addiction but do not currently use illegal drugs would continue to be protected if they fell within the definition of "handicap." It is not the intent of the Act to exclude from protection individuals who have recovered from an addiction or are participating in a self-help group. House Report at 22; 134 Cong. Rec. S10553 (daily ed. August 2, 1988) (statement of Sen. Domenici). However, individuals who are participating in a self-help group (*e.g.*, Narcotics Anonymous) are not automatically thereby included within the definition of "handicap." Rather, they are protected only if they fall within the definition of "handicap," *i.e.*, they are not illegally using controlled substances.

Paragraph (b) defines the term "major life activities" the same way the concept is defined in regulations implementing section 504. A major life activity includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Paragraph (c) defines the phrase "has a record of such an impairment" as that phrase is used in the definition of handicap. A person who has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities is a handicapped person under the Fair Housing Act.

Paragraph (d) defines the phrase "is regarded as having an impairment" to mean a person who:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) but is treated by a person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit. The term "interior" is used in § 100.203 relating to modifications of existing premises and in the definition of "premises". The kitchen and bathroom of an apartment are examples of elements of a dwelling unit and are also part of the "interior" of the premises.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Premises" means the interior or exterior spaces, parts, components or elements of a building or a dwelling unit, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

Section 100.202 General prohibitions against discrimination because of handicap.

Section 100.202 contains the general prohibitions against discrimination because of handicap and serves as the analytical foundation for the remaining sections of the subpart. The remaining sections of Subpart D explain in greater detail what conduct is discriminatory. Thus, whenever a person has violated any of the subsequent sections of Subpart D, that person has also violated § 100.202.

Paragraph (a) restates the Fair Housing Amendments Act's mandate of nondiscrimination in the sale or rental of dwellings. Under paragraph (a), it is unlawful to discriminate against any person in the sale or rental of or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of that buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made unavailable, or any person associated with that buyer or renter. Under this provision, a landlord may not, for example, refuse to rent to an individual solely because the applicant uses a wheelchair or has a history of physical or mental illness.

Paragraph (b) restates the Act's ban of discrimination in the terms, conditions, or privileges of the sale or rental of a dwelling. Paragraph (b) makes it unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling because of a handicap of that buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or any person associated with that person. This provision is intended to prohibit special restrictive covenants or other terms or conditions, or denials of service because of an individual's handicap and which have the effect of excluding, for example, congregate living arrangements for persons with handicaps. Under this provision it is unlawful to bar discriminatorily a person with handicaps from access to recreation facilities, parking privileges, cleaning and janitorial services and other facilities, uses of premises, benefits and privileges made available to other tenants, residents, and owners. House Report at 23.

Paragraphs (a) and (b) prohibit not only discrimination against the primary purchaser or named lessee, but also prohibit denials of housing opportununities to applicants because they have children, parents, friends, spouses, roommates, patients subtenants or other associates who have disabilities. House Report at 24.

The legislative history of the Fair Housing Amendments Act makes it clear that the Act was intended to prohibit landlords and owners for asking prospective tenants and buyers blanket questions about the individuals' disabilities. The House Report explains that the approach taken in section 504 regulations dealing with pre-employment inquiries should apply also to the Fair Housing Amendments Act. House Report at 30. Under section 504 regulations, employers may not inquire, as part of pre-employment inquiries, whether an applicant is a handicapped person. Employers may only make preemployment inquires into an applicant's ability to perform job-related functions. *See* 45 CFR 84.14; 24 CFR 8.13.

Paragraph (c) is an adaptation of the "pre-employment inquiries" provisions in section 504 regulations; it prohibits inquiries to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person has a handicap or to make inquiry as to the nature or severity of a handicap of such person.

Paragraph (c) also states that it does not prohibit five types of inquires, provided these inquiries are made of all applicants, whether or not they have handicaps.

Paragraph (c)(i) clarifies that a housing provider may inquire into an applicant's ability to meet the requirements of ownership or tenancy. Thus, in assessing an application for tenancy, a landlord or owner may ask an individual the question that he or she asks of all other applicants that relate directly to the tenancy (*e.g.*, questions relating to rental history or a targeted inquiry as to whether the individual has engaged in acts that would pose a direct threat to the health or safety of other tenants), but may not ask an applicant blanket questions with regard to whether the individual has a disability. A housing provider may also not ask an applicant questions which would require the applicant to waive his or her right to confidentiality concerning his or her medical condition or history. House Report at 30.

Paragraph (c) (ii) states that paragraph (c) does not prohibit inquiry to determine whether an applicant is qualified for a dwelling that is available only to persons with handicaps or to persons with a particular type of handicap. The Fair Housing Amendments Act does not prohibit the exclusion of non-handicapped persons from dwellings. A housing facility may lawfully restrict occupancy to persons with handicaps. For example, some Federal and State housing programs are designed for, and occupied by, persons with handicaps. Only persons with handicaps are eligible to live in such dwellings. The owner or operator of such a housing facility may inquire of applicants to determine whether they have a handicap for the purpose of determining eligibility.

Paragraph (c)(iii) provides that paragraph (c) does not prohibit an inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap. A housing provider may choose to offer some or all of its units to persons with handicaps on a priority basis and may inquire whether applicants qualify for such a priority. For example, a housing provider may offer accessible units to persons with mobility impairments on a priority basis and may ask applicants whether they have a mobility impairment which would qualify them for such a priority.

Paragraph (c)(iv) provides that paragraph (c) does not prohibit inquiring whether an applicant for a dwelling is a current illegal abuser of or addict to a controlled substance. The definition of "handicap" in the Fair Housing Amendments Act does not include current, illegal use of or addiction to a controlled substance. *See* House Report at 30.

Paragraph (c)(v) provides that paragraph (c) does not prohibit inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance. Section 807(b)(4) of the Fair Housing Act states that nothing in the Act prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.

Paragraph (d) restates new section 804(f)(9) of the Fair Housing Act which provides that nothing in section 804(f) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. This provision was included "to allay the fears of those who believe that the non-discrimination provisions of this Act could force landlords and owners to rent or sell to persons whose tenancies could pose such a risk." House Report at 28 (footnote omitted). However, this provision was not intended to create or permit a presumption that individuals with handicaps generally pose a greater threat to the health or safety of others than do individuals without handicaps.

In adopting this provision, the House Committee on the Judiciary affirmed that all individuals with handicaps, with the exception of current illegal abusers of or addicts to controlled substances, are entitled to the protections under the Act. *Id.* This approach differs in one significant respect from that taken in the Rehabilitation Act of 1973. The definition of "individuals with handicaps" in the Rehabilitation Act does not *per se* exclude persons who currently, illegally use or are addicted to a controlled substance. The Rehabilitation Act's definition of "individuals with handicaps" excludes, with regard to employment, "any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others." 29 U.S.C. 706(8)(B).

With respect to individuals with contagious diseases and infections, section 804(f)(9) is, however, parallel to the corresponding provision of the Civil Rights Restoration Act of 1988 (CRRA) (Pub. L. 100–259, 102 Stat. 28 (March 22, 1988)). Section 9 of the CRRA amended the Rehabilitation Act's definition of "individuals with handicaps" further to exclude, for purposes of section 504 as it relates to employment, "an individual who has a currently contagious disease

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or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job."

The provision was added to the CRRA in order to codify the decision of the Supreme Court in *School Board of Nassau County v. Arline*, 107 S. Ct. 1123 (1987). House Report at 29.

In *Arline*, a case involving an allegation of employment discrimination under section 504, the Supreme Court held that a person who has the contagious disease of tuberculosis can be an "individual with handicaps" within the meaning of section 504. 107 S.Ct. at 1132. The Court in *Arline* further explained that an employee "who poses a significant risk of communicating a contagious disease to others in the workplace will not be otherwise qualified for his or her job if reasonable accommodation will not eliminate that risk." 107 S.Ct. at 1131, n. 16.

The legislative history of the Fair Housing Amendments Act indicates that the "direct threat" language restated in paragraph (d) should be interpreted consistently with *Arline*. House Report at 29.

The House Report states that "[w]hile *Arline* dealt with employment in the context of section 504, the Committee intends that same standard to apply in the context of housing under this Act. Thus, the direct threat requirement incorporates the *Arline* standards, and a dwelling need not be made available to an individual whose tenancy can be shown to constitute a direct threat and a significant risk of harm to the health or safety of others." *Id.* However, if a reasonable accommodation could eliminate the risk, entities covered by the Act are required to provide such accommodation under § 100.203. *Id.*

The provision concerning direct threat posed by an individual's tenancy is formulated to require that the landlord or property owner establish a nexus between the fact of the particular individual's tenancy and the asserted direct threat. Any claim that an individual's tenancy poses a direct threat and substantial risk of harm must be established on the basis of objective evidence, *e.g.*, a history of overt acts or current conduct. Generalized assumptions, subjective fears, and speculation are insufficient to prove the requisite direct threat. For instance, if a landlord determines, by objective evidence that is sufficiently recent to be credible, and not from unsubstantiated inferences, that the applicant will pose a direct threat to the health or safety of others, the landlord may reject the applicant as a tenant. In assessing information, the landlord may not infer that a history of a physical or mental illness or disability, or treatment for such illnesses or disabilities, constitutes proof that an applicant will be unable to fulfill his or her tenancy obligations. House Reports at 29–30.

Paragraph (d) also states that nothing in subpart D requires that a dwelling be made available to an individual whose tenancy would result in "substantial physical damage to the property of others." The legislative history of this provision makes it clear that this provision was intended to be read in conjunction with the other provisions in the Act providing access for persons in wheelchairs. 134 Cong. Rec. S 1064 (daily ed. August 1, 1988) (statement of Sen. Harkin). Thus, this provision should not be construed to allow a landlord to exclude a person in a wheelchair because of effects of using a wheelchair upon property. For example, the normal wear and tear to a dwelling unit that might be expected on the part of an individual who uses a wheelchair, such as the nicking of doorframes or of walls, would *not* constitute "substantial" physical damage within the meaning of paragraph (d). 134 Cong. Rec. H4932 (daily ed. June 29, 1988) (statement of Rep. Edwards); 134 Cong. Rec. S1064 (daily ed. August 1, 1988) (statement of Sen. Harkin). In addition, the individual's tenancy would have to be shown to cause substantial physical harm to significant pieces of property. Thus, the fact that a person might damage some piece of property would also not be sufficient to trigger this provision. *Id.*

Section 100.203 Reasonable modifications of existing premises.

Paragraph (a) implements section 804(f)(3)(A) of the Fair Housing Act, as amended. Under paragraph (a), it is illegal to refuse to permit tenants with disabilities to make reasonable modifications, at their expense, of existing premises if the proposed modifications are necessary for their full enjoyment of the premises. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter ageeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The premise of § 100.203 is that a housing provider's refusal to allow reasonable modifications "operates, at worst, to deny housing to handicapped persons, and, at least, to deny them the opportunity to enjoy their premises safely and fully." House Report at 25. The term "full enjoyment" was used because Congress recognized "that the nature of individual handicaps, and therefore the potential need for environmental modifications varies greatly." *Id.* The Department wishes to stress that any modifications protected by this section must be reasonable and must be made at the expense of the individual with handicaps.

Paragraph (a) allows reasonable modifications at the expense of the individual with handicaps to existing "premises". "Premises" is defined in § 100.201 to mean the interior or exterior parts, components or elements of a building or a dwelling unit, including the public and common use areas of a building. Thus, an individual with handicaps would be able, at his or her own expense, to make reasonable accommodations to lobbies, main entrances of apartment buildings, laundry rooms and other common and public use areas necessary to the full enjoyment of the premises. The Department has proposed to define the term "premises" to encompass the public and common use areas because it appears that this is what Congress intended. The Act allows reasonable modifications of "existing premises" if necessary to afford the handicapped person full enjoyment of the premises. If the laundry room is not accessible, for example, a person with a mobility impairment will not have "full enjoyment" of the premises.

Beyond this, section 15 of the Fair Housing Amendments Act provides that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the *interior* of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The use of the word "interior" in the language of the Act dealing with the restoration of modifications, but not in the language allowing reasonable modifications of existing "premises" further indicates that Congress intended that the term "premises" encompass public and common use areas as well as individual dwelling units. Of course, modifications to public and common use areas must be reasonable and must be made at the expense of the individual with handicaps.

It also follows from the language of section 15 of the Fair Housing Amendments Act that landlords may not condition approval of modifications to the premises on the renter agreeing to restore the "exterior" of the premises to the condition that existed before the modification. Since the term "interior" is not defined in the Fair Housing Amendments Act the distinction between "interior" and "exterior" must be addressed in this subpart.

The term "interior of the premises" in section 15 of the Fair Housing Amendments Act may have two possible meanings. The term "interior" might be interpreted to refer to any area "inside" existing premises (*i.e.*, not out-of-doors), whether the area is an individual dwelling unit or a public or common use area. If the term is interpreted in this way then a landlord would be able to condition permission for a modification on the renter agreeing to restore any area located "inside" existing premises to the condition that existed before the modification, where it is reasonable to do so. For example, under this possible interpretation a landlord could, where it is reasonable to do so, condition permission for modifications to a lobby on the renter agreeing to restore the lobby to the condition that existed before the modification. However, under this interpretation the landlord would not be able to condition permission on the renter agreeing to restore a public or common use area located in the exterior portion of existing premises (*e.g.*, a curb cut or ramp to a building entrance) to the condition that existed before the modification.

In the alternative, the word "interior" might refer to the interior space of an individual dwelling unit but not to public and common use areas, whether located on the "inside" or "outside" of existing premises. Under this interpretation, the landlord would not be able to condition permission for making a modification on the renter agreeing to restore any public or common use area to the condition that existed before the modification.

The Department proposes to adopt the second interpretation of the term "interior" discussed above because the Department believes that the phrase "interior of the premises" in section 15 of the Fair Housing Amendments Act was intended to distinguish between individual dwelling units and public and common use areas rather than between elements of premises that happen to be in or out of doors. Section 15 was added to the Fair Housing Amendments Act on the Senate floor near the end of the legislative process. As a result, there is little legislative history on section 15. Nonetheless, the examples of modifications that a landlord may require that a tenant restore that were discussed during the Senate debate of section 15 all concern the restoration of modifications made to elements of individual dwelling units. 134 Cong. Rec. S10548 (daily ed. August 2, 1988) (statements of Sens. Kennedy and Specter).

Further, the examples in the legislative history indicate that it would not be reasonable for a landlord to condition permission for modifications on the tenant agreeing to restore the premises to the condition that existed before the modifications, where the modifications will not interfere with the use and enjoyment of the dwelling unit by future occupants. Some modifications to an individual dwelling unit might interfere with or detract from the use and enjoyment of the dwelling unit by future occupants. For example, if a tenant with a handicap seeks permission to modify the bathroom walls in order to install grab bars it would be reasonable for the landlord to require that the walls to which the grab bars are to be attached be restored to their original condition, reasonable wear and tear excepted. The grab bars might interfere with or detract from the next tenant's use and enjoyment of the bathroom. However, if it is necessary to add blocking behind the walls to affix the grab bars, it would be unreasonable for the landlord to require the tenant to remove the blocking since the reinforced walls will not interfere with the use and enjoyment of the premises by future occupants. *Id.* (statement of Sen. Kennedy).

The Department does not believe that *reasonable* modifications to public and common use areas would detract significantly from the public and common use areas modified and indeed may be of benefit to other persons with and without handicaps. Moreover, this should be the case whether the public or common use area is on the inside or on the outside of a structure. For example, an accessible building entrance, laundry room or curb would not significantly detract from, and indeed may enhance, the use and enjoyment of the lobby, laundry room or curb by persons with and without handicaps. An accesible element may be easier and more convenient for everyone to use. Furthermore, if a specific modification to a public or common use area proposed by a tenant with a handicap can reasonably be expected to interfere significantly with the use or enjoyment of the public or common use area in question by persons without handicaps then the proposed modification would not be reasonable.

For the foregoing reasons, "interior" is defined in § 100.201 as the spaces, parts, components or elements of an individual dwelling unit. Thus, the "interior of the premises" *excludes* all public and common use areas, including lobbies, laundry rooms, party rooms, as well as curbs and outside elements of a premises. It follows that under § 100.203(a) of the proposed rule a landlord could, where it is reasonable to do so, condition approval of modifications to an individual dwelling unit on the renter agreeing to restore the dwelling unit to the condition that existed before the modification. However, a landlord would *not* be able to condition approval of modifications to public or common use areas on the tenant agreeing to restore the public or common use area to the condition that existed before the modification and would *not* be permitted to charge such tenants an additonal security deposit. The Department specifically invites public comment on these issues.

Paragraph (b) contains two examples that illustrate the application of paragraph (a). The first example involves a tenant who seeks the permission of a landlord to install grab bars in the bathroom. The second example relates to an applicant for rental housing who has a child who uses a wheelchair and seeks the permission of the landlord to widen the bathroom door. Both examples are close adaptations of the examples specifically discussed by Senators Kennedy and Specter during Senate debate of the Fair Housing Amendments Act. 134 Cong. Rec. S10548 (daily ed. August 2, 1988). These examples are illustrative and not exhaustive.

Section 100.204 Reasonable accommodations.

Section 100.204 implements section 804(f)(3)(B) of the Fair Housing Act which makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services if necessasry to afford a person with handicaps equal opportunity to use and enjoy a dwelling. The concept of "reasonable accommodation" is also used in regulations and case law interpreting section 504 of the Rehabilitation Act of 1973. *See*, 28 CFR 41.53; 24 CFR 8.11 and 8.33; *Southeastern Community College v. Davis*, 442 U.S. 397 (1979); *Alexander v. Choate*, 469 U.S. 287 (1985). The legislative history of the Fair Housing Amendments Act indicates that this was the source from which the concept of "reasonable accommodation" was drawn. House Report at 25; 134 Cong. Rec. H4923 (daily ed. June 29, 1988) (statement of Rep. Owens). The term "reasonable" means that "feasible, practical modifications" must be made,

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"but that extreme, infeasible modifications are not required." 134 Cong. Rec. H4923 (daily ed. June 29, 1988) (statement of Rep. Owens).

Paragraph (b) illustrates the application of paragraph (a) with two examples of reasonable accommodations.

Section 100.205 Design and construction requirements.

Section 100.205 implements section 804(f)(3)(C) of the Fair Housing Act which places "modest accessibility requirements on 'covered multifamily dwellings' designed and built for first occupancy 30 months after enactment." House report at 25.

The term "covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if the building has one or more elevators and "ground floor" dwelling units in other buildings consisting of 4 or more dwelling units. The ground floor is any floor of a building with a building entrance on an accessible route. A building may have more than one ground floor. A "building" is a structure, facility or the portion thereof that contains one or more dwelling units.

Paragraph (a) requires that "covered multifamily dwellings" for first occupancy after March 13, 1991 be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The legislative history makes it clear that Congress "was sensitive to the possibility that certain natural terrain may pose unique building problems." House Report at 27. For example, some sites cannot be made accessible because of hilly terrain. In some locales it is common to construct housing on stilts because of flooding problems. A requirement that housing on such sites have an accessible entrance on an accessible route would be tantamount to prohibiting the construction of covered multifamily housing on such sites. This is not what Congress intended. Thus, paragraph (a) requires that a "covered multifamily dwelling" for first occupancy after March 13, 1991 have an accessible entrance on an accessible route unless it would be impractical to do so. The Department expects that it will be feasible and practical for the vast majority of covered multifamily dwellings to have at least one accessible building entrance on an accessible route. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed and constructed the housing facility. Residents of such buildings would, of course, be able to make reasonable modifications at their own expense to accommodate any other disabilities, as permitted under §100.203(a).

An "entrance" means any access point to a building or portion of a building used by residents for the purpose of entering. Thus, a service entrance would not qualify as an entrance under the proposed rule because it is not used by residents. Handicapped persons should be able to enter a newly constructed building through an entrance used by persons who do not have handicaps.

Paragraph (b) contains three examples that illustrate the application of paragraph (a). The first two examples are drawn from examples in the Report of the House Committee on the Judiciary. *See* House Report at 27.

Paragraph (c) requires that all covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route satisfy certain accessibility requirements set forth in paragraph (c). If, in accordance with paragraph (a), a covered multifamily dwelling does not have an accessible entrance on an accessible route because it is impractical to do so because of the terrain or unusual characteristics of the site then none of the units in the building are required to meet the accessibility requirements in paragraph (c). Since, in these relatively infrequent cases, persons with mobility impairments will not be able to enter the building there is no reason to require that the building and the dwelling units therein satisfy the accessibility requirements of paragraph (c).

The accessibility requirements of paragraph (c) apply to all "covered multifamily dwellings" for first occupancy after March 13, 1991 with an accessible entrance on an accessible route. Thus, all of the dwelling units in elevator buildings consisting of 4 or more dwelling units must be accessible. Furthermore, the "ground floor" dwelling units in non-elevator buildings with 4 or more units must be accessible. The definition of ground floor is functional: The ground floor is any floor that has an accessible entrance. That is, if persons with mobility impairments are able to enter a floor of a building through an accessible route, then the dwelling units on that floor must be designed and constructed in accordance with the accessibility requirements of paragraph (c).

The remainder of paragraph (c) sets forth the sepcific accessibility requirements for covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route. The Department intends to publish proposed accessibility guidelines to help builders understand and comply with the specific accessibility requirements of the Fair Housing Act. The guidelines would, of course, not be mandatory. Rather, they would provide technical assistance to persons who must comply with paragraph (c).

Paragraph (c)(1) requires that the public and common use areas be readily accessible to and usable by handicapped persons. A common use area, as that term is defined in § 100.201, means interior and exterior rooms, spaces or elements of a building that are made available for the use of residents of a building or the guests thereof. This provision means that hallways, lounges, lobbies, laundry rooms, refuse rooms and passageways among and between buildings and other common areas and facilities not contain barriers to entrance and use by persons with disabilities. House Report at 26. Public use areas include interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned. Paragraph (c)(1) further requires that one regular entrance to public and common use areas be accessible to persons with handicaps for the same purpose for which it is used by others. Thus, paragraph (c)(1) does not require that all entrances be made accessible to handicapped persons. Moreover, in a building without an elevator, only the public and common use areas on the "ground floor" of the building need be made accessible. At least one of each type of public and common use area available to residents of the building, however, must be accessible from the dwelling units on the ground floor.

Paragraph (C)(2) requires that all of the doors "designed to allow passage" into and within all covered premises be sufficiently wide to allow passage by handicapped persons in wheelchairs. This requirement does not apply to doorways not designed to allow passage, such as into a linen closet, but does apply to a walk-in closet since such a doorway is designed to allow passage. House Report at 26.

Paragraph (c)(3) requires that all premises within covered multifamily dwelling units contain four features of adaptive design.

Under paragraph (c)(3)(i), there must be an accessible route into and through the covered dwelling unit. An "accessible route" is defined in § 100.201 to mean a continuous unobstructed path

connecting accessible elements and spaces in a building that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities.

Under paragraph (c)(3)(ii) light switches, electrical outlets, thermostats and other environmental controls must be provided in accessible locations. That is, the controls must neither be too high or too low. This provision is not intended to increase the risk of danger to others or necessarily to require waist high controls. House Report at 26–27.

Under paragraph (c)(3)(iii), bathroom walls must be reinforced to allow later installation of grap bars around the toilet, tub, shower stall and shower seat, where such facilities are provided.

Under paragraph (c)(3)(iv), the kitchens and bathrooms in covered dwelling units must be "usable * * * such that an individual in a wheelchair can maneuver about the space." Paragraph (c)(3)(iv) would *not* require that fixtures, cabinetry or plumbing be adjustable. *Id.* 134 Cong. Rec. S10535 (daily ed. August 2, 1988) (statement of Sen. Harkin). The legislative history of this provision indicates that design of standard sized kitchens and bathrooms can be done in such a way as to assure usability by persons with handicaps without necessarily increasing the size of the space. House Report at 27. The provision requires that such space be usable by persons with handicaps, but does not require that a turning radius be provided "in every situation." *Id.* The Department will address this requirement in greater detail in accessibility guidelines to be published in the near future. These guidelines are expected to contain examples of kitchens and bathrooms that meet the "usability" requirement of paragraph (c)(3)(iv).

Paragraph (d) provides two examples that illustrate the application of paragraph (c).

Paragraph (e) states that compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of paragraph (c)(3). Paragraph (e) implements section 804(f)(4) of the Fair Housing Act. This section does not require that designers and builders follow ANSI A117.1 exclusively. However, if designers and builders do follow ANSI A117.1 then they will have satisfied the requirements of paragraph (c)(3). House Report at 27.

A dwelling unit that complies fully with ANSI A.117.1 goes beyond what is required by the Fair Housing Act. For example, under ANSI A117.1 the kitchen cabinets either must be at the proper height for a person in a wheelchair or must be capable of being adjusted to the proper height. Ranges and cooktops must have controls which are accessible to a person in a wheelchair. All rooms and spaces must meet minimum space allowances which allow for wheelchair turning space. As previously explained, the language of the Fair Housing Act and its legislative history make it plain that the Act does not require these features of accessibility or adaptability.

Paragraphs (f) and (g) implement the provisions of the Fair Housing Amendments Act designed to encourage enforcement by the States and local governments of the provisions of the Act regarding adaptability and accessibility requirements for newly constructed multifamily dwellings. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Senators Kennedy and Specter Regarding Their Substitute Amendment).

Paragraph (f) states that compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) satisfies the requirements of paragraphs (a) and (c).

Paragraph (g)(1) explains that it is the policy of HUD to encourage States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c). HUD will provide technical assistance to States and localities, and to private individuals to assist them in interpreting the new construction requirements. The accessibility guidelines which the Department intends to propose in the near future will provide technical assistance.

Paragraph (g)(2) states that a State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) are met.

Paragraph (h) states that determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

Paragraph (i) states that subpart D does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart. Many states and localities have enacted accessibility and equal opportunity requirements for persons with disabilities. The Fair Housing Act establishes minimum standards for accessibility, and does not supplant or replace State or local laws which impose higher standards. House Report at 28.

Subpart E—Housing for Older Persons

Section 100.300 Purpose.

The Fair Housing Amendments Act exempts "housing for older persons" from the prohibitions against discrimination because of familial status. The purpose of the prohibitions against discrimination because of familial status and the housing for older persons exemption is to protect families with children from discrimination in housing without unfairly limiting housing choices for elderly persons. 134 Cong. Rec. S10465–66 (daily ed. August 1, 1988) (statement of Sen. Karnes). Section 100.300 explains that the purpose of subpart E is to effectuate the housing for older persons exemption in the Fair Housing Amendments Act.

Section 100.301 Housing for older persons exemption.

Section 100.301 provides the analytical framework for subpart E. Paragraph (a) implements the second sentence of section 807(b)(1) of the Fair Housing Act, as amended. It states that the prohibitions against discrimination because of familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302 (*"State and Federal Elderly Housing Programs"*), 100.303 (*"62 or Over Housing"*), or 100.304 (*"55 or Over Housing"*).

Paragraph (b) states that nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Paragraph (b) implements the first sentence section 807(b)(1) of the Fair Housing Act. Many jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit; HUD also enforces occupancy standards in its assisted housing programs. Reasonable limitations do not violate the Fair Housing Act as long as they apply equally to all occupants.

Section 100.302 State and Federal elderly housing programs.

Section 100.302 implements section 807(b)(2)(a) of the Fair Housing Act. Section 100.302 exempts housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to

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assist elderly persons, as defined in the State or Federal program from the prohibitions against discrimination because of familial status in this part.

For example, section 202 of the Housing Act of 1959, 12 U.S.C. 1701 ("section 202"), provides Federal financial assistance to private sponsors who provide housing for elderly or handicapped persons. There are three distinct categories of eligible handicapped persons in the section 202 program, those who are physically handicapped; developmentally disabled; and chronically mentally ill. Thus, including elderly persons (age 62 or over) there are actually four separate groups of persons eligible for section 202 assistance, and each group has distinct needs. Accordingly, section 202 developments are custom-tailored to the specific client population or populations the sponsor was approved by HUD to serve. For instance, many section 202 projects are lawfully limited to elderly (62 years of age or older) and physically handicapped persons. It follows that persons who are not elderly or physically handicapped are not eligible for projects designed and approved for elderly and physically handicapped persons and cannot be admitted to them. Section 100.302 makes it clear that such a policy does not violate the Fair Housing Act because the housing is a Federal program specifically designed and operated to assist elderly persons. State programs determined by the Secretary to be specifically designed and operated to assist elderly persons are also exempt from the prohibitions against discrimination in this part.

Section 100.303 62 or over housing.

Section 807(f)(2)(B) exempts housing intended for, and solely occupied by, persons 62 years of age or older. If *all* of the persons occupying a housing facility are 62 or older, then that housing facility is exempt from the prohibitions against discrimination because of familial status in this part, regardless of what other features the housing may or may not have. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Sens. Kennedy and Specter Regarding Their Substitute Amendment). *See also,* 134 Cong. Rec. S10466 (daily ed. August 1, 1988) (statement of Sen. Karnes) ("Elderly housing is . . . exempted . . . from the requirement to admit families with children if no one in the building is under 62 years of age . . .").

Paragraph (a)(1) contains a transition provision to ensure that the interests of current residents of housing that excludes children will not be unduly disturbed by the Fair Housing Amendments Act. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Sens. Kennedy and Specter Regarding Their Substitute Amendment). It provides that housing satisfies the requirements of § 103.303 even though three persons residing in such housing on September 13, 1988 who are under 62 years of age, *provided that* all new occupants thereafter are persons 62 years of age or older.

Section 6(d) of the Fair Housing Amendments Act provides that housing shall not fail to meet the requirements for housing for older persons by reason of "persons residing in such housing *as of the date of enactment of this Act* [*i.e.,* September 13, 1988]" who do not meet the age requirements of the housing for older persons exemption, provided that all new occupants meet the age requirements of the housing for older persons exemption. Section 13(a) of the Fair Housing Amendments Act provides that "[t]his Act and the Amendments made by this Act shall take effect on the 180th day beginning after the date of enactment of this Act." The date described in section 13(a) of the Fair Housing Amendments Act is March 12, 1989. This presents a question as to whether the appropriate date for the transition provision in § 100.303(a)(1) is September 13, 1988 or March 12, 1989. If section 6(d) of the Fair Housing Amendments Act is applied literally then housing providers, in order to avail themselves of this transition provision, had to begin filling units in accordance with the age requirements of the housing for older persons exemption on September 13, 1988, which is before the effective date of the Act.

The proposed rule follows the plain meaning of section 6(d) of the Fair Housing Amendments Act. Thus, paragraph (a)(1) of §100.303 provides that housing satisfies the requirements of the housing for older persons exemption even though there were persons on September 13, 1988 who did not meet the age requirements, provided that new occupants after September 13, 1988 satisfy the applicable age requirements. The Department has proposed this date instead of the effective date in section 13(a) of the Fair Housing Amendments Act (March 12, 1989) because the Department believes that the general language in section 13(a) was not intended to render the more specific language in section 6(d) a nullity. Moreover, under this interpretation of the Act there is not inconsistency between sections 6(d) and 13(a) of the Fair Housing Act. The Act will take effect on March 12, 1989 and, by its terms, the housing for older persons exemption will be satisfied even though, on September 13, 1988, there were persons in the housing facility who did not meet the age requirements, provided that all new occupants concepts after September 13, 1988 meet the age requirements. The same date (September 13, 1988) is, for the same reasons, referenced in §100.304(d)(1) ("*55 or Over Housing*").

This interpretation of the Act may seem unduly restrictive because, since the date of enactment, some owners may have already filled vacant units in a manner which substantially restricts them from converting their property to housing for older persons within the meaning of the Act. Such an interpretation is driven by the statutory language. The transition provision in Section 805(b)(3) of the statute relating to persons residing in a housing facility who do not meet the age restrictions for housing for older persons is expressly limited to "persons residing in such housing as of the date of enactment of this Act." In view of the consequences of this interpretation of the Act, the Department invites public comment on this issue.

Paragraph (a)(2) states that housing satisfies the requirements of §100.303 even though there are occupied units (at any time), provided that such units are reserved for occupancy by persons 62 years of age or over.

Paragraph (b) contains two examples that illustrate the application of paragraph (a). The purpose of the first example is to show that all persons occupying the housing in question must be 62 years of age or older. The presence of one person per unit 62 years of age or older is not sufficient to qualify a housing facility for this exemption to the prohibition of discrimination against families with children. However, a housing facility that does not qualify for the "62 or over" exemption in § 100.303 may nonetheless qualify for the "55 or over exemption" in § 100.304. The second example in paragraph (b) illustrates the application of paragraphs (a)(1) and (a)(2).

Section 100.304 55 or over housing.

Section 100.304 implements section 807(b)(2)(C) of the Fair Housing Act which exempts housing communities intended and operated for occupancy by at least one person 55 years of age or over per unit that satisfy certain criteria.

Paragraph (a) exempts from the prohibitions against discrimination because of familial status in this part housing intended and operated for occupancy by at least one person 55 years of age or older per unit *provided* the housing satisfies the requirements of

§ 100.304(b)(1) *or* (b)(2) *and* the requirements of § 100.304(c).

Paragraph (b)(1) is satisfied if the housing facility has significant facilities and services specifically designed to meet the physical and social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include an accessible physical environment, congregate dining facilities, social and recreational programs, emergency and preventive health care or programs, continuing education, welfare, information and counseling, recreational, homemaker, outside maintenance and referral services, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them.

The physical environment of the housing facility is one factor the Department may consider in determining whether a housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. While residents of a housing facility for persons 55 years old or older may generally be of good health when they enter a development, they are likely to experience a diminution of physical capacity as the years pass. A physical environment designed to accommodate the changing needs of its residents might include hand rails along steps and interior hallways to reduce the risk of falls, reinforcement for grab bars in bathrooms, routes that allow the use of wheelchairs, canes and walkers, lever type doorknobs and single lever faucets. House Report at 32. All of these features need not be present for a housing facility to be considered as having been designed to accommodate the changing needs of its residents.

The list of significant facilities and services designed to meet the social needs of older persons in the proposed rule is drawn from section 202(f) of the Housing Act of 1959, 12 U.S.C. 1701q, listing examples of facilities and services for older persons. The House Report (at p. 32) relies heavily upon the listing in section 202(f) of the Housing Act of 1959 in its discussion of such facilities. The provision of significant facilities and services designed to meet the social needs of older persons may extend the period of independence of older persons and enhance the quality of their lives. House Report at 31–32.

The facilities and services designed to meet the physical and social needs of older persons must be "significant" in order to satisfy paragraph (b)(1). For example, the installation of a ramp at the front entrance of a housing facility would not constitute a "significant" facility designed to meet the physical needs of older persons. Similarly, the provision of minor amenities, such as putting a couch in a laundry room and labeling it a recreation center would not constitute a "significant" facility designed to meet the social needs of older persons. House Report at 32.

The listing of facilities and services in paragraph (b)(1) is not exclusive nor is a facility required to have all of the items listed.

A housing facility may qualify for the "55 or over" exemption even if it does not satisfy the requirements of paragraph (b)(1). Under paragraph (b)(2), a housing facility that does not provide significant facilities and services specifically designed to meet the physical or social needs of older persons may nonetheless qualify for the "55 or over" exemption. Such a housing facility must demonstrate that it is not practicable for it to provide significant facilities and services designed to meet the physical and social needs of older persons and also demonstrate that the housing facility is necessary to provide important housing opportunities for older persons.

The following factors, among others, are relevant in determining whether a housing facility satisfies the requirements of paragraph (b)(2)—

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical and social needs of older persons.

(ii) The cost of providing such services, including the availability of such services at little or no cost to the owners or managers of the facility.

(iii) The amount of rent charged, if the dwellings are rented. The price of the dwellings, if they are offered for sale.

(iv) The income range of the residents of the housing facility.

(v) The demand for housing for older persons in the relevant geographic area.

(vi) The range of housing choices for older persons in the relevant geographic area.

(vii) The availability of other similarly priced housing for older persons in the relevant geographic area.

(viii) The vacancy rate of the housing facility. For example, a housing facility satisfies paragraph (b)(2) if the housing facility can demonstrate that the cost of providing significant facilities and services designed to meet the physical or social needs of older persons would result in depriving low- and moderate-income persons of needed and desired housing. 134 Cong. Rec. S10549 (daily ed. August 2, 1988) (statement of Sen. Kennedy).

In order to qualify for the "55 or over" exemption a housing facility, in addition to satisfying the requirements of paragraph (b)(1) *or* (b)(2) must also satisfy the requirements of paragraph (c)(1) and (c)(2).

Paragraph (c)(1) requires that at least 80% of the units in the housing facility be occupied by at least one person 55 years of age or older per unit *except that* a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with paragraph (c)(1) of this section until 25% of the units in the facility are occupied. The exception for partially occupied newly constructed housing facilities is designed to deal with the practical problem of filling units in a new and unoccupied housing facility in a reasonable manner, consistent with the "55 or over" exemption. For example, a large newly constructed housing facility that intends to qualify for the exemption should not lose its right to claim the exemption simply because the first unit happens to be filled with persons all of whom are under 55 years of age. However, once a reasonable percentage of units has been filled the housing facility can reasonably be expected to comply with the percentage requirement in paragraph (c)(1). The proposed rule would require a housing facility to comply with the 80% requirement in paragraph (c)(1) once 25% of the units in the housing facility have been filled. The Department invites comment on the question of whether the 25% point is too high or too low.

Under paragraph (c)(2), the owner or manager of a housing facility must also publish and adhere to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of paragraph (c)(2):

(i) The manner in which the housing facility is described to prospective residents.

(ii) The nature of any advertising designed to attract prospective residents.

(iii) Age verification procedures.

(iv) Lease provisions.

(v) Written rules and regulations.

(vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

Paragraph (d)(1) states that housing satisfies the requirements of this section even though on September 13, 1988,

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under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are newly occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Paragraph (d)(1), like paragraph (a)(1) of § 100.303, is a transition provision to ensure that the interests of current residents of housing that excludes children will not be be unduly disturbed by the Fair Housing Amendments Act.

Under paragraph (d)(2), housing satisfies the requirements of $100.304 even though there are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age of over.

Paragraph (e) contains three examples that illustrate the application of § 100.304.

Subpart F—Interference, Coercion or Intimidation

Section 100.400 Prohibited interference, coercion or intimidation.

The Fair Housing Amendments Act revises the statutory definition of discriminatory housing practices in the Fair Housing Act to include actions to intimidate, coerce or interfere with persons engaged in activities protected under the Fair Housing Act. Under Title VIII of the Civil Rights Act of 1968 such actions were violations of the law, but vindication of these rights could be obtained only through the initiation of a private civil action or through an action brought by the Attorney General in Federal district court.

The inclusion of interference, coercion and initimidation as discriminatory housing practices means that allegations that such conduct has occurred, or is about to occur because of race, color, religion, sex, handicap, familiar status, or national origin can be the subject of an administrative complaint under the Fair Housing Act. This subpart provides the interpretation of the Department as to the conduct which constitutes a discriminatory housing practice in this area.

Section 100.400(b) states that the Fair Housing Act makes it unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

The illustrations in this section indicate any type of activity can constitute a discriminatory housing practice. Threatening or intimidating actions include acts against the possessions of persons such as damage to automobiles or vandalism which limits a person's ability to have full enjoyment of a dwelling. Threatening or intimidating actions include acts against the possessions of persons such as damage to automobiles or other acts of vandalism which limit a person's ability to have full enjoyment of a dwelling. In addition, the protections against discrimination reach any person, including persons selling or renting dwellings and persons engaged in activities promoting fair housing. Further, persons who are not involved in any aspect of the sale or rental of a dwelling are nonetheless prohibited from engaging in conduct to coerce, intimidate, threaten or interefere with persons in connection with protected activities or to retaliate against any person involved in any way in proceeding under the Fair Housing Act.

PART 103—FAIR HOUSING COMPLAINT PROCESSING

Subpart A—Purpose and Definitions

Section 103.1 Purpose and applicability.

Proposed Part 103 would contain the procedures established by the Department for the investigation and conciliation of complaints under section 810 of the Act, as amended by the 1988 Amendments. Part 105 would be retained to govern the investigation and conciliation of complaints under section 810 of the Act as it existed before the 1988 Amendments. (§§ 103.1 and 105.1)

Except for complaints that involve allegations of discriminatory housing practices that occur before and continue after the effective date of the 1988 Amendments (March 12, 1989), the proposed rule provides that:

—Complaints alleging discriminatory housing practices that occurred before the effective date of the 1988 Amendments would be governed by the procedures in Part 105.
—Complaints alleging discriminatory housing practices that occur on or after the effective date of the 1988 Amendments would be governed by the procedures in Part 103.

To the extent that complaints allege violations that occur before and continue after the effective date of the 1988 Amendments, complainants should be accorded the full range of remedies provided under the 1988 Amendments. (For example, an applicant for rental housing who was unlawfully excluded before the effective date of the Act may continue to be unlawfully excluded after the effective date.) Accordingly, § 103.1(b)(1)(i) provides that complaints filed after March 12, 1989 alleging such continuing discriminatory housing practices would be processed under Part 103. The proposed rule at § 105.81 would ensure that complainants who filed complaints before March 12, 1989 alleging such continuing discriminatory housing practices will have an opportunity to have their complaints processed under the new Part 103 procedures. While such complaints initially would be processed under Part 105, if during the investigation or conciliation of the complaint the Department determines that the complaint involves an alleged discriminatory housing practice that continues after March 12, 1989, the Department will provide the complainant with a reasonable opportunity to elect to have the complaint processed under Part 103 in lieu of the Part 105 procedures. This notice would describe the procedures available to the complainant under each part. If the complainant makes the election, HUD would notify the respondent of the election and process the complaint under Part 103. (Also see §§ 103.1 and 105.1.)

This section would also include a provision requiring HUD to conduct investigations and conciliations in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A related amendment to existing Part 105 is also proposed.

Section 103.9 Definitions.

The proposed rule would adopt the definitions currently contained in Part 105 with the following major changes:

—The proposed definition of "discriminatory housing practice" would include acts that are unlawful under section 818 of the Act. Section 818 makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 804, 805 or 806 of the Act. Before the 1988 Amendments, this section could only be enforced by an appropriate civil action. This expanded definition of discriminatory housing practice would permit the enforcement of this section through complaints filed with HUD.
—"Complainant", as defined under the proposed rule, would implement sections 802(j) and 810(a)(1)(A)(i) of the Act by clarifying that any person, *including HUD*, may file a complaint under Part 103.
—New definitions added to section 802 of the Act by the 1988 Amendments including "aggrieved person", "conciliation", "conciliation agreement" and "respondent" would be added and other miscellaneous definitions including "substantially equivalent State or local agency", "Attorney General", and "General Counsel" would be included for clarity.

Subpart B—Complaints

Subpart B of Part 103 would contain the procedures for the filing of complaints and answers. These procedures reflect the current requirements for the filing of complaints and answers described in Part 105 with the following major revisions:

Section 103.15 Who may file complaints.

As required by section 810(a)(1)(A)(i) of the Act, complainants may submit complaints not later than one year after an alleged discriminatory housing practice has occurred or terminated. This language is intended to reaffirm the concept of continuing violations, under which the statute of limitations is measured from the date of the last asserted occurrence of the unlawful practice. The one-year limitation represents an increase from the pre-1988 Amendment limitation of 180 days, but is less than the two-year period provided for civil cases. See H. R. Rep. No. 711, 100th Cong., 2d Sess. 33 (1988).

Section 103.45 Service of notice on aggrieved person.

Proposed § 103.45 implements section 810(a)(1)(B)(i) of the Act which requires the Secretary to serve notice upon the aggrieved person acknowledging the filing of a complaint and advising the person of the time limits and choice of forums provided under Title VIII. In accordance with this statutory requirement, the proposed rule would require the Assistant Secretary to notify each aggrieved person on whose behalf the complaint was filed. The notice would: (1) Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing; (2) include a copy of the complaint; (3) advise the person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under Parts 103 and 104; (4) advise the aggrieved person of the right to commence a civil action under section 813 of the Act, not later than two years after the occurrence or termination of the alleged discriminatory housing practice; and (5) advise the aggrieved person that retaliation against a person because he or she made a complaint, or testified, assisted, or participated in an investigation or conciliation under Part 103 or an administrative proceeding under Part 104, is a discriminatory housing practice prohibited under section 818 of the Fair Housing Act.

Section 103.50 Notification of respondent; joinder of additional or substitute respondents.

Section 810(a)(1)(B)(ii) of the Act requires the Secretary to serve a notice on the respondent within 10 days of the filing of the complaint (or within 10 days of the identification of a substitute or additional respondent). In accordance with these provisions, proposed § 103.50 would require the Assistant Secretary to serve a notice on the respondent. The notice would: (1) Identify the alleged discriminatory housing practice upon which the complaint is based and include a copy of the complaint; (2) state the date that the complaint was accepted for filing; (3) advise the respondent of the time limits applicable to complaint processing under Part 103 and of the procedural rights and obligations of the respondent under Parts 103 and 104, including the opportunity to submit an answer; (4) notify the respondent of the aggrieved person's right to commence a civil action under section 813 of the Act; (5) if the respondent was not named in the complaint, but is being joined as an additional or substitute respondent, explain the basis for HUD's belief that the joined person is properly joined (see section 810(a)(2) of the Act); and (6) advise the respondent that retaliation against a person because he or she made a complaint, or testified, assisted or participated in an investigation or conciliation under Part 103 or an administrative proceeding under Part 104, is a discriminatory housing practice under section 818 of the Fair Housing Act.

Section 103.55 Answer to complaint.

Under existing procedures, respondents are given only seven days to answer a complaint. Section 810(a)(1)(B)(iii) of the Act provides that each respondent may file an answer to the complaint not later than 10 days from the date of receipt of the notice. Proposed § 103.55 reflects this increased time period.

Subpart C—Referral of Complaints to State and Local Agencies

Section 103.100 Notification and referral to substantially equivalent State or local agencies.

Section 810(f)(1) of the Act provides: "whenever a complaint alleges a discriminatory housing practice—(A) Within the jurisdiction of a State or local public agency; and (B) as to which such agency has been certified by the Secretary under this subsection; the Secretary shall refer the complaint to that cetified agency before taking any action with respect to the complaint." Proposed § 103.100 would state the procedures for the notification and referral of complaints to substantially equivalent State and local agencies; and would provide for the notification of the aggrieved person and the respondent of the referral, including a notification of the right to file a civil action under section 813 of the Act.

Under § 103.9, HUD is permitted to file complaints alleging discriminatory housing practices. To ensure that HUD-initiated complaints will be investigated and conciliated by HUD, the memorandum of understanding executed by HUD and the substantially equivalent State or local agency will include the agency's consent to HUD's processing of the complaint.

Section 103.105 Cessation of action on referred complaints.

Proposed § 103.105 would address HUD's responsibilities regarding referred complaints. As required under section 810(f)(2) of the Act, after a complaint is referred, the Assistant Secretary shall not take any further action with respect to the complaint, except reactivation as described below. The proposed rule would provide, however, that the referral of the complaint to a substantially equivalent State or local agency would not prohibit the Assistant Secretary from taking appropriate actions under other civil rights authorities applicable to departmental programs.

Section 103.110 Reactivation of referred complaints.

In accordance with section 810(f)(2) of the Act, proposed § 103.110 would permit HUD to reactivate a complaint referred to a substantially equivalent State or local agency if:

—The substantially equivalent State or local agency consents to the reactivation.
—The Assistant Secretary determines that the agency no longer qualifies for recognition as a substantially

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equivalent State or local agency and may not accept interim referrals with respect to the alleged discriminatory housing practice.

—The substantially equivalent State or local agency has failed to commence proceedings with respect to the complaint within 30 days of the date that the agency received the notification and referral of the complaint, or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness. HUD would not reactivate a complaint under these conditions, however, until the appropriate HUD Regional Office has conferred with the agency to determine the reason for the delay in the processing of the complaint. If the Assistant Secretary believes that the agency will proceed expeditiously following the conference, HUD may leave the complaint with the agency for a reasonable time.

Before the 1988 Amendments, section 810(d) of the Act permitted the reactivation of complaints where the Secretary certifies that "in his judgment, under the circumstance of the particular case, the protection of the rights of the parties or the interests of justice requires such actions." This statutory basis for reactivation of complaints was not retained in the new act. Accordingly, reactivation on this basis would not be permitted under Part 103.

The 1988 Amendments permit HUD to make referrals for up to 48 months following the date of enactment to agencies that are certified (including agencies that are certified for interim referrals under Part 115) on the day before enactment of the 1988 Amendments. It is unlikely that such agencies will immediately provide the full range of remedies accorded complainants under the 1988 Amendments. However, given the limited statutory authorization for reactivation provided under section 810(f)(2) of the Act, it does not appear that HUD has the authority to reactivate such complaints to provide the complainant with the full range of remedies available under the 1988 Amendments. However, where an agency consents, HUD may resume processing of a complaint.

Section 103.115 Notification upon reactivation.

Proposed § 103.115 would require the Assistant Secretary to notify the substantially equivalent of State or local agency, the aggrieved person and the respondent of the reactivation of a complaint. The notification would advise the aggrieved person and the respondent of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person and respondent under Parts 103 and 104. The notification would also describe the aggrieved person's right to commence a civil action under section 813 of the Act.

Subpart D—Investigation Procedures

Section 103.200 Investigations.

Under § 103.200 of the proposed rule, investigations would be initiated upon the filing of a complaint (see section 810(a)(1)(B)(iv) of the Act). The purposes of such investigations would be to obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint; to document the policies and practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint; and to develop factual data necessary for the General Counsel to make a determination whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions under Part 103.

In addition to investigations initiated by complaints, the 1988 amendments permit HUD to initiate an investigation of housing practices to determine whether a complaint should be filed under Subpart B (see section 810(a)(1)(A)(iii) of the Act). The proposed rule would permit such investigations upon the written direction of the Assistant Secretary.

Section 103.205 Systemic processing.

Three specialized types of investigations are available under existing Part 105. These include: systemic processing, accelerated processing, and rapid response processing. Rapid response and accelerated processing were developed to enable HUD to expeditiously resolve certain types of recurring complaints without first conducting an extensive investigation. Since the 1988 Amendments permit HUD to begin conciliation upon the filing of a complaint without first completing an investigation, a specific reference to these two procedures in the regulation is not necessary. Provisions permitting systemic processing, however, would be retained.

Section 103.215 Conduct of investigations.

Proposed § 103.215 would continue HUD's existing practice of seeking the voluntary cooperation of persons to obtain access to information necessary to further the investigation. Additionally, this rule would implement section 811 of the Act which addresses the issuance of subpoenas and the conduct of discovery in aid of investigations. The proposed rule would state that the Assistant Secretary and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative hearing under Part 104, except that the Assistant Secretary would have the power to issue subpoenas as described in § 104.590 in support of the investigation or at the request of the respondent. Subpoenas issued by the Assistant Secretary would require the approval of the General Counsel before issuance.

Section 103.220 Cooperation of Federal, State and local agencies.

Proposed § 103.220 reflects provisions currently contained in Part 105 which permit the Assistant Secretary, in processing Fair Housing Act complaints, to seek the cooperation and utilize the services of State and local agencies and of other appropriate Federal agencies. To ensure that other Federal agencies are aware of their responsibility under section 808(d) and (e) of the Act and under Executive Order No. 12259, the proposed rule would add that Federal agencies, including agencies having regulatory or supervisory authority over financial institutions, are responsible for ensuring that their programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing, and for cooperating with the Assistant Secretary in furthering the purposes of the Fair Housing Act, including investigations.

Section 103.225 Completion of investigation.

The Assistant Secretary is required to complete investigations within 100 days after the filing of the complaint (or, when the Assistant Secretary reactivates a complaint referred to a substantially equivalent State or local agency, within 100 days after service of the notification of reactivation), unless it is impracticable to do so. If the investigation cannot be completed within this time limit, HUD is required to notify the aggrieved person and the respondent of the reasons for the delay (see section 810(a)(1)(B)(iv) and (C) of the Act). These requirements are included in the proposed rule at § 103.225.

Section 103.230 Final investigative report.

Section 810(b)(5)(A) of the Act requires the Secretary to prepare a final investigative report at the end of the investigation. This section also includes specific requirements for the contents of the investigative report. These requirements are included in the proposed rule at § 103.230. Under the proposed rule, the report shall contain:

—The names and dates of contacts with witnesses. The proposed rule would provide for the nondisclosure of the names of witnesses that request anonymity, but notes that HUD may be required to disclose the names of such witnesses during the course of an administrative hearing under Part 104 or in a civil action under Title VIII.

—A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent.

—A summary description of other pertinent records.

—A summary of witness statements.

—Answers to interrogatories.

The proposed rule, in accordance with section 810(d)(2) of the Act, would provide that the Assistant Secretary shall make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent, upon request, at any time following the completion of the investigation.

Subpart E—Conciliation Procedures

The 1988 Amendments provide for the continuation of conciliation procedures as a primary feature of fair housing enforcement. Thus, while HUD is investigating the complaint, HUD will also seek to resolve the complaint and issues raised during the investigation of the complaint through informal negotiations involving the aggrieved person, the complainant and the respondent (see definition of "conciliation" at § 103.9).

Section 103.300 Conciliation.

Proposed § 103.300 provides that the Assistant Secretary shall, to the extent feasible, attempt to conciliate the complaint during the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the General Counsel. In conducting conciliation, HUD would attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy violations of the rights of the aggrieved person and take such action as will assure the elimination of discriminatory housing practices in the future.

Proposed § 103.300(c) would prohibit officers, employees, and agents of HUD engaged in the investigation of the complaint under Part 103 from participating or advising in the conciliation of the same complaint or in any factually related complaint. The purpose of this prohibition is to ensure that information gathered during the conciliation process is not used in the investigation of the complaint. HUD recognizes, however, that there may be circumstances where a dual role for the HUD employee may be necessary. Accordingly, § 103.300(c) states that the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation where the rights of the aggrieved person and the respondent can be protected and the prohibitions with respect to the disclosure of information obtained during conciliation can be observed. (These prohibitions are discussed below at § 103.330.)

Section 103.310 Conciliation agreement; Section 103.315 Relief sought for aggrieved persons; and Section 103.320 Provisions sought for the public interest.

If conciliation is successful, the terms of the settlement of a complaint would be reduced to a written conciliation agreement (see § 103.310 and definition of conciliation agreement at § 103.9). The agreement would seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought are described at §§ 103.315 and 103.320 and are the same as those permitted under existing Part 105, except that the proposed rule would also permit binding arbitration of the dispute arising under the complaint (see section 810(b)(3) of the Act).

Section 810(b)(2) of the Act provides that a conciliation agreement shall be an agreement between the respondent and the complainant, and shall be subject to the approval of the Secretary. The proposed rule at § 103.310(b) would incorporate these requirements. In addition, this rule would state that the Assistant Secretary will indicate HUD approval of the conciliation agreement by signing the agreement. The assistant Secretary would execute (as a complainant) or approve a conciliation agreement only if: The complainant and the respondent agree to the relief accorded the aggrieved person; the agreement will adequately vindicate the public interest; and, where the Assistant Secretary is the complainant, the aggrieved person is satisfied with the relief provided to protect his or her interest. Propsed § 103.310(b)(2) would preserve the General Counsel's ability to issue a charge under § 103.405, where the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Assistant Secretary.

Section 103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.

Section 810(d) of the Act contains prohibitions and requirements with respect to the disclosure of information. Under this section, nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under Title VIII without the written consent of the persons concerned. This section would be implemented at § 103.330 with the clarifying statement that information disclosed during conciliation would not be used in the investigation of the complaint.

Section 810(b)(4) recognizes an exception to the prohibition against disclosure of conciliation information. To encourage enforcement and compliance with the law, this section provides that conciliation agreements will be made public, unless the aggrieved person and the respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act. This statutory provision is implemented at § 103.330(b). This proposed rule would also permit the publication of tabulated descriptions of the results of *all* conciliation efforts.

Section 103.335 Review of compliance with conciliation agreements.

Proposed § 103.335 would permit HUD to continue its current practice of monitoring and reviewing compliance with the terms of conciliation agreements, and would implement section 810(c) of the Act. Section 810(c) provides that whenever HUD has reasonable cause to believe that a respondent has breached a conciliation agreement, HUD shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 814(b)(2) of the Act for the enforcement of the terms of the conciliation agreement.

Subpart F—Issuance of Charge

While conciliation will continue to be a primary feature of fair housing enforcement, the 1988 Amendments provide for a new enforcement mechanism when conciliation fails. This

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mechanism permits the Act to be enforced by HUD in an administrative proceeding under Part 104 or, if the complainant, the aggrieved person or the respondent elects, through a civil action commenced and maintained by the Attorney General under section 812(o) of the Act.

Section 103.400 Reasonable cause determination.

If a conciliation agreement has not been executed by the complainant and the respondent and approved by the Assistant Secretary, section 810(g)(1) of the Act requires HUD to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. Under the proposed rule at § 103.400, the responsibility for this determination would be delegated to the General Counsel of HUD. As indicated in section 810(g)(1), this determination is to be based on the totality of the factual circumstances concerning the alleged discriminatory housing practice. Inasmuch as this determination will in the case of an election to proceed in Federal court under § 103.410 form the basis for the civil action, in making this determination the general Counsel would apply the same standard that is appropriate for a determination of when to proceed with a civil action of this kind in federal court.

This determination would be made within 100 days after the filing of the complaint (or where the Assistant Secretary has reactivated a complaint referred to a substantially equivalent State or local agency, within 100 days after service of the notice of reactivation), unless it is impracticable to do so. If the determination cannot be made within this time period, HUD would notify the aggrieved person and the respondent of the reasons for the delay (see section 810(g)(1) of the Act).

The proposed rule provides that the investigation would remain open until a reasonable cause determination is made (see § 103.225). This permits the General Counsel to request that the Assistant Secretary make a further investigation, where the investigative report is insufficient to determine whether reasonable cause exists. Where appropriate, the General Counsel may make direct inquiries to supplement the investigation.

If the General Counsel determines that reasonable cause exists, section 810(g)(2)(A) of the Act requires the immediate issuance of a charge on behalf of the aggrieved person. The charge forms the basis for further administrative proceedings or a civil action under section 812(o) of the Act. A charge would not, however, be issued if the matter involves the legality of a State or local zoning or other land use law or ordinance, since HUD is required to refer such matters to the Attorney General for appropriate action under section 814(b)(1) of the Act (see the proposed rule at § 103.400(a)(1)). Furthermore, section 810(g)(4) of the Act prohibits the issuance of a charge after the beginning of a trial in a civil action commenced by the aggrieved person under an Act of Congress or a State law, seeking relief with respect to the discriminatory housing practice (see proposed rule at § 103.400(b)).

If the General Counsel determines that no reasonable cause exists, section 810(g)(3) of the Act requires the dismissal of the complaint and public disclosure of the dismissal. The proposed rule at § 103.400(a)(2) would state that HUD shall notify the aggrieved person and the respondent of such a dismissal and shall make public disclosure of the dismissal. The Department notes that the dismissal of a complaint under this section would not preclude the filing of a new complaint based on newly discovered or previously unavailable information, provided the statutory one-year time limit for the filing of the complaint is met.

Section 103.405 Issuance of charge.

Section 810(g)(2)(B) of the Act provides that the charge: Shall consist of a short and plain statement of the facts upon which HUD has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur; shall be based on the final investigative report; and need not be limited to the facts or grounds alleged in the complaint. This statutory language is reflected in § 103.405(a).

Within three days of the issuance of the charge, the General Counsel would: (1) Obtain a time and a place for an administrative hearing from the Chief Docket Clerk in the Office of Administrative Law Judges; (2) file and serve the charge along with notifications concerning the rights of the complaint; the respondent, and the aggrieved person to elect to have the claims asserted in the charge decided in an administrative hearing or civil action (the contents of the notification and requirements for service of the charge are more fully described below); and (3) notify the Assisant Secretary of the filing of the charge (see proposed § 103.405(b)).

Section 103.410 Election of administrative hearing or civil action.

The claims asserted in the charge will be decided either in a civil action under section 812(o) of the Act or in an administrative proceeding under Part 104. In accordance with section 812(a) of the Act, proposed § 103.410 provides that upon the issuance of a charge, the complainant (including the General Counsel, if HUD filed the complaint), the respondent, or the aggrieved person on whose behalf the complaint was filed may elect the civil action. If none of the parties elects the civil action, the General Counsel would maintain an administrative proceeding under Part 104 based on the charge. If an election is made, the General Counsel would promptly notify and authorize the Attorney General to commence and maintain a civil action under section 812(o) of the Act on behalf of the aggrieved person in an appropriate United States District Court. The notification and authorization would include the transmission of the file in the case, including a copy of the final investigative report and the charge, to the Attorney General.

The election must be made not later than 20 days after the receipt of service of the charge, or in the case of the General Counsel, not later than 20 days after service. The notice of the election must be filed with the Chief Docket Clerk in HUD's Office of Administrative Law Judges and served on the General Counsel, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification shall be filed and served in accordance with the procedures established under Part 104.

The General Counsel would be available for consultation concerning any legal issues raised by the Attorney General regarding how best to proceed in the event that commencement of a civil action would implicate Rule 11 of the Federal Rules of Civil Procedure.

Subpart C—Other Actions by the Department

Section 103.500 Prompt judicial action.

Proposed § 103.500 would implement section 810(e) of the Act. If at any time following the filing of a complaint, the General Counsel concludes that prompt judicial action is necessary to carry out the purposes of Part 103 or 104, the General Counsel would request that the Attorney General commence a civil action for appropriate temporary or preliminary relief pending the final disposition of the complaint. Before making the determination to request

such action the proposed rule also requires the General Counsel to consult with the Assistant Attorney General for the Civil Rights Division. Inasmuch as under section 810(e) of the Act it is incumbent upon the Attorney General to promptly commence an action upon receipt of such a request and in view of the Assistant Attorney General's prior experience in seeking such relief in different factual situations and before different forums, such prior consultation is appropriate and desirable. The commencement of the civil action would not affect the initiation or administrative proceedings under Part 103 or 104.

Paragraph (b) of this proposed rule would require the General Counsel to transmit information to the Attorney General and to State and local governmental licensing or supervisory authorities, as appropriate, whenever the General Counsel has a reason to believe that a basis exists for the commencement of proceedings under section 814(a) of the Act (Pattern or Practice Cases), proceedings under section 814(c) of the Act (Enforcement of Subpoenas), or proceedings by any governmental licensing or supervisory authority.

Section 103.510 Other action by HUD.

Proposed § 103.510 would address other actions that HUD may take with respect to matters asserted in a complaint. These would include: (1) The referral of matters to the Attorney General for appropriate action (e.g., enforcement of criminal penalties, under section 811(c) of the Act); the initiation of debarment proceedings or other action leading to the imposition of administrative sanctions; the initiation of proceedings under other civil rights authorities; or the provision of information to other Federal agencies with an interest in the enforcement of respondent's obligations with respect to nondiscrimination in housing.

PART 104—ADMINISTRATIVE PROCEEDINGS UNDER SECTION 812 OF THE FAIR HOUSING ACT

Part 104 would contain the rules of practice and procedure for administrative proceedings before an administrative law judge (ALJ) adjudicating the claims asserted in a charge issued under Part 103.

Subpart A—General Information

Subpart A would contain general information concerning administrative proceedings before an ALJ. This subpart would include provisions addressing: The scope of the rules (§ 104.10(a)); the requirement that hearings under the rules should be conducted as expeditiously and inexpensively as possible consistent with the needs and rights of the parties to obtain a fair hearing and a complete record (see section 812(d)(2) of the Act) (§ 104.10(b)); a statement that the Department would reasonably accommodate persons with disabilities who are participants in the hearing or interested members of the public (§ 104.10(c)); the definitions used in the part (§ 104.20); the computation of time periods (including provisions permitting the ALJ to modify any time period, except for time periods required by statute) (§ 104.30); and the service and filing of documents by the parties and by the ALJ (§ 104.40).

Subpart B—Administrative Law Judge

Subpart B would prescribe provisions governing the designation of the presiding administrative law judge and the powers of the ALJ. As required by section 812(b) of the Act, the conduct of administrative proceedings under Part 104 is delegated to an ALJ appointed under 5 U.S.C. 3105. The presiding ALJ in a proceeding would be appointed by HUD's Chief ALJ (see proposed § 104.100).

This subpart would also: Prescribe the powers of the ALJ in the administrative hearing (§ 104.110); contain provisions for the disqualification of the ALJ (§ 104.120); prohibit ex parte communications (§ 104.130); and provide for the separation of all investigative, conciliatory and prosecutorial functions from the decision-making function of the ALJ (§ 104.140).

Subpart C—Parties

Subpart C would describe the parties to the proceeding. The parties would include: HUD, the respondent named in the charge and against whom relief is sought, and any intervenors. In accordance with section 812(c) of the Act, the proposed rule would permit the intervention by any aggrieved person. No other intervention is permitted in the proceedings, although briefs of amicus curiae may be permitted at the discretion of the ALJ (§ 104.200 (a) and (c)).

The rights of the parties to the proceeding are addressed in section 812(c) of the Act and would be implemented at § 104.200(b). These include the right to appear in person, to be represented by counsel, to examine and crossexamine witnesses, to introduce documentary or other relevant evidence into the record, and to request the issuance of subpoenas. The representation of the parties (including notice of appearance and withdrawal of representation) is described at proposed § 104.210. Standards of conduct for parties and their representatives are addressed at proposed § 104.220.

Subpart D—Pleadings and motions

Provisions governing pleadings and motions in an administrative proceeding are included at Subpart D. The requirements for the filing, service and contents of the charge are found at § 104.410. This rule would require filing with the Chief Docket Clerk in the Office of the Administrative Law Judges, and service upon the respondent and the aggrieved person on whose behalf the complaint was filed. The charge would consist of a short and plain statement of the facts upon which the General Counsel has reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The charge would be served with a notice of the rights of the complainant, the respondent and the aggrieved person on whose behalf the complaint was filed, to elect to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, in lieu of an administrative hearing under Part 104. The notice would also state that if an administrative proceeding under Part 104 is elected: The parties would have an opportunity for a hearing at a date and place specified in the notice; the respondent would have a right to submit an answer to the charge within 30 days of the service of the charge; the aggrieved person may intervene as a party within 30 days of the service of the charge; and all discovery must be concluded 15 days before the date set for hearing.

Proposed § 104.420 would govern the contents and the submission of the respondent's answer to the charge. This rule would require the submission of an answer if the respondent contests material facts alleged in a charge or contends that the respondent is entitled to judgment as a matter of law. Answers would be required to include: A statement that the respondent admits, denys or does not have sufficient information to admit or deny, each allegation made in the charge; and a statement of each affirmative defense (and a statement of facts in support of each affirmative defense) claimed by the respondent.

This subpart also would contain: Provisions governing requests for intervention (§ 104.430); amendments and supplemental pleadings (§ 104.440); motions (§ 104.450); and general requirements for the form, signature and timely filing of all pleadings, motions, briefs and other documents. (§ 104.400).

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Subpart E—Discovery

Section 811(a) of the Act states, in part, that the Secretary may order discovery in aid of administrative hearings under Title VIII. In accordance with this statutory authority, discovery procedures are included in Subpart E of the proposed rule. Consistent with section 812(d) of the Act, the procedures were designed to permit the parties to conduct discovery as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence (see § 104.500(b)). Except for the time periods stated in the rule, to the extent that the rules prescribed in Subpart E conflict with discovery procedures in aid of civil actions in the United States District Court for the district in which the investigation took place, § 104.500 would provide that the rules of the District Court apply.

Specific discovery methods would include: Deposition upon oral examination and written interrogatories (§§ 104.510 and 104.520); written interrogatories (§ 104.530); requests for the production of documents or other evidence, entry upon land for inspection and other purposes, and physical and mental examinations (§ 104.540); and requests for admissions (§ 104.550). The frequency and sequence of these methods is not limited, except that discovery must be completed 15 days before the date scheduled for the hearing (§ 104.500 (d) and (e)). The proposed rule would also include provisions governing the supplementation of responses (§ 104.560); the issuance of protective orders (§ 104.570); and motions to compel discovery and the imposition of sanctions (§ 104.580).

Subpart F—Subpoenas

In accordance with the authorization contained in section 811(a) of the Act, Subpart F would provide for the issuance of subpoenas in aid of administrative hearings. Consistent with this statutory authority, the subpart would provide that the rules of the United States District Court for the district in which the investigation of the discriminatory housing practice took place would apply to the extent that Subpart F conflicts with procedures for the issuance of subpoenas in civil actions in that district court (except for time periods stated in the rules).

Under proposed § 104.590, the Chief ALJ or the presiding ALJ would be permitted to issue subpoenas upon the written request of a party. The subpoena could require: The attendance of a witness for the purpose of giving testimony at a deposition; the attendance of a witness for the purpose of giving testimony at a hearing; or the production of relevant books, papers, documents, or tangible things. As required by section 811(b) of the Act, witnesses summoned by subpoenas issued under Part 104 would be entitled to the same witness and mileage fees as witnesses in proceedings in United States District Courts. Witness and mileage fees would be paid by the party requesting the subpoena or, where the party is unable to pay the fees, by HUD. Proposed § 104.590 would also address the time of the request for issuance of subpoena; the service of subpoenas; motions to quash or limit subpoenas; and referral to the Attorney General for enforcement under section 814(c) of the Act where a person fails to comply with a subpoena.

Subpart G—Prehearing procedures

Subpart G would permit the ALJ to direct the parties to file prehearing statements (§ 104.600) and to participate in prehearing conferences (§ 104.610). These proposed procedures are designed to aid in the clarification of the issues and facts in dispute and to promote the orderly and expeditious disposition of the proceeding.

Subpart G would also provide for settlement negotiations before a settlement judge. The ALJ conducting the settlement negotiations would be appointed by the Chief ALJ and would not be the ALJ presiding at the hearing.

Subpart H—Hearing Procedures

Procedures for the conduct of the hearing are described at Subpart H. Under this subpart:

—The hearing would be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur (see section 812(b) of the Act). This requirement is included in the proposed rule at § 104.700(b).

—The hearing would commence not later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the ALJ would be required to notify HUD, the aggrieved person on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay (see section 812(g) of the Act). This requirement is included in the proposed rule at § 104.700(a).

—The hearing would be conducted in accordance with the Administrative Procedure Act (5 U.S.C. 551–59) (§ 104.710).

—The Federal Rules of Evidence would apply to the presentation of evidence at the hearing, as required by section 812(c) of the Act (§ 104.730).

—The parties may waive the right to an oral hearing and present the matter for decision on a written record (§ 104.720).

—The ALJ may hear oral arguments following the submission of all evidence at the oral hearing and may permit the submission of written briefs (§ 104.790).

Part H would also include provisions governing: Notification and change of time and place of hearing (§ 104.700(c)); the issuance of in camera and protective orders (§ 104.740); the submission, identification and exchange of exhibits (§ 104.750); the authenticity of documents (§ 104.760); stipulations of the parties (§ 104.770); the record of the hearing (§ 104.780); the end of the hearing (§ 104.800); and the receipt of evidence following the end of the hearing (§ 104.810).

Subpart I—Dismissals and Decisions

Section 104.900 Dismissal.

Under § 104.900 of the proposed rule, the ALJ would be required to dismiss the proceeding: (1) Where the complainant, the respondent, or the aggrieved person on whose behalf the complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act; or (2) where an aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the discriminatory housing practice and the trial of the civil action has commenced.

Section 104.910 Initial decision of administrative law judge.

Proposed § 104.910 describes the initial decision of the ALJ. Under this proposed rule, the ALJ would be required to issue an initial decision containing findings of fact and conclusions of law upon each material issue of fact or law presented on the record. The decision must be issued within 60 days after the end of the hearing, unless it is impracticable to do so. If the ALJ is unable to issue the decision within this time period (or within a succeeding 60-day period), the ALJ would be required to notify HUD, the aggrieved person on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay (see section 812(g)(2) of the Act).

Proposed § 104.910(b) would require the ALJ to issue an initial decision against the respondent and to order appropriate relief, if the ALJ determines that the respondent has engaged, or is about to engage in a discriminatory housing practice. Relief that may be ordered includes:

—Damages to the aggrieved person (including damages caused by humiliation or embarassment).

—Injunctive or such other equitable relief as may be appropriate. No such relief, however, may affect any contract, sale, encumbrance, or lease consummated before the issuance of the initial decision that involves a bona fide purchaser, encumbrancer, or tenant without actual knowledge of the charge (see sections 810(g) (3) and (4) of the Act)).

—Civil penalties subject to ceilings of $10,000 to $50,000. The ceiling on the civil penaly will depend on the number of previous discriminatory housing practices the respondent has been adjudged to have committed within designated time periods in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency. In determining the number of previous adjudications, the ALJ would consider adjudications that occurred before the effective date of the Act. Determinations to resolve issued under § 105.55 would not be included as an adjudication of a previous discriminatory housing practice. If the ALJ determines that more than one respondent has been engaged or is about to engage in a discriminatory housing practice, the ALJ would be permitted to assess the civil penalty, up to the maximum permitted under the rule, against each respondent. (See section 812(g)(3) of the Act.)

Proposed § 104.910(c) would provide that the ALJ will make an initial decision dismissing the charge if the ALJ finds that the respondent has not engaged and is not about to engage in a discriminatory housing practice (see section 812(g)(7) of the Act).

Section 104.920 Service of initial decision.

Simultaneously with the issuance of the initial decision, the ALJ would be required to serve the decision on the respondent, the aggrieved person on whose behalf the charge was filed any intervenors, the General Counsel, and the Secretary of HUD. The initial decision would state that it will become the final decision of the Department unless the Secretary issues a final decision within 30 days (see § 104.920).

Section 104.925 Resolution of the charge.

Section 812(e) of the Act provides that any resolution of the charge before the issuance of a final decision by the Secretary requires the consent of the aggrieved person on whose behalf the charge is filed. Proposed § 104.925 would permit the parties to submit an agreement resolving the charge at any time before the issuance of the final decision. The agreement must be signed by the respondent, all aggrieved persons on whose behalf the charge was issued, and the General Counsel. The ALJ would accept the agreement by issuing an initial decision based on the agreed findings. The submission of an agreement resolving the charge would waive any right to challenge or contest the validity of a decision based on the agreement.

Section 104.930 Final decision.

In accrodance with section 812(h) of the Act, proposed § 104.930 would permit the Secretary to review findings of fact, conclusions of law, or orders contained in the ALJ's initial decision, and issue a final decision. The Secretary may affirm, modify or set aside, in whole or in part, the initial decision, or remand the initial decision for further proceedings. Such a final decision would be served on the respondent, the aggrieved person on whose behalf the charge was filed, intervenors, and the General Counsel no later than 30 days from the date of issuance of the initial decision. If no final decision is issued by the Secretary within this time period, the initial decision of the ALJ would become the final decision of the Department. Such a final decision would be considered to have been issued 30 days following the date of issuance of the initial decision.

Under section 812(g)(7), HUD is required to make public disclosure of orders dismissing charges based on findings that the respondent has not engaged and is not about to engage in a discriminatory housing practice. The proposed rule at § 104.930 provides that HUD would make public disclosure of all final decisions, including those based on finding in favor of or against a respondent.

Section 104.935 Action upon issuance of a final decision.

Where a final decision includes a finding that the respondent engaged or is about to engage in a discriminatory housing practice in the course of a business subject to licensing or regulation by a Federal, State or local governmental agency, section 812(g)(5) requires HUD within specified time limits, to send copies of the findings of fact, conclusions of law, and decision to the governmental entity, and to recommend appropriate disciplinary action (including the suspension or revocation of the license of the respondent). This statutory requirement is implemented at § 104.935(a) of the proposed rule.

Where a final decision includes a finding that a respondent is engaged or about to engage in a discriminatory housing practice and another final decision including such a finding was issued under Part 104 within five years preceding the date of the issuance of the final decision, section 812(g)(6) requires HUD to send the Attorney General copies of the decisions. This requirement is contained in § 104.935(b).

Section 104.940 Attorney's fees and costs.

Section 812(p) of the Act provides that the ALJ may allow the prevailing party, other than HUD, reasonable attorney's fees and costs, and that HUD shall be liable for such fees and costs to the extent provided in 5 U.S.C. 504 (Equal Access to Justice Act). Section 802(o) provides that prevailing party has the same meaning as this term has under 42 U.S.C. 1988 (Civil Rights Attorney's Fees Awards Act).

Proposed § 104.940 would provide that any prevailing party, except HUD, may apply to the ALJ for attorney's fees and costs following the issuance of the final decision under § 104.940. The initial decision on fees and costs would become the final decision of HUD unless the Secretary reviews the decision and issues a final decision within 30 days.

The recovery of fees and costs would be permitted as follows:

If the respondent is the prevailing party, HUD shall be liable for reasonable attorney's fees and costs to the extent provided under the Equal Access to Justice Act and HUD's regulations at 24 CFR Part 14; and intervenors shall be liable for reasonable attorney's fees and costs to the extent that the intervenor's participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

To the extent that an intervenor is a prevailing party, the respondent shall be liable for reasonable attorney's fees and costs unless special circumstances make the recovery of such fees and costs unjust.

Subpart J—Judicial Review and Enforcement of Final Decision

Judicial review of the final decision is addressed in § 104.950. This proposed rule is based on section 812(i) and (1) of the Act and would provide that:

—Any party adversely affected by a final decision under § 104.930 may file a

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petition for review of the decision in the appropriate United States Court of Appeals within 30 days of the date of issuance of the final decision.

—If no such petition for review is filed within 45 days of the date of issuance of the final decision, the findings of fact and final decision would be conclusive in connection with any petition for enforcement filed thereafter.

Enforcement of the final decision would be addressed in § 104.955. Under this rule, HUD may petition the appropriate United States Court of Appeals for enforcement of the final decision and for appropriate temporary relief or restraining orders under section 812(j) of the Act at any time following the issuance of the final decision. Any person entitled to relief under the final decision may petition the appropriate United States Court of Appeals for enforcement under section 812(m) of the Act if before the expiration of 60 days from the date of issuance of the final decision, no petition for judicial review of the final decision has been filed and the General Counsel has not sought enforcement of the final decision.

Section 812 of the Act contains references to judicial proceedings involving the ALJ's initial decision and to judicial proceedings involving the final decision of the Secretary. For example, section 812(i) of the Act provides for judicial review of the "final order for relief under this section"; section 812(j) of the Act provides for the enforcement by HUD of "the order of the administrative law judge"; section 812(1) of the act describes the effect of the "administrative law judge's findings of fact and order" where a petition for review under section 812(i) of the Act has not been filed; and section 812(m) of the Act describes the enforcement of "the administrative law judge's order" by parties other than HUD. The provisions for Secretarial review of the initial decision of the administrative law judge were added as an amendment on the floor of the House of Representatives and were clearly intended to provide for review and enforcement of the final rather than the initial HUD decision. (E.g., 134 Cong. Rec. H4676–77 (daily edition June 23, 1988) (remarks of Rep. Fish). Accordingly, HUD has interpreted the statutory references to the administrative law judge's order to be references to the final decision of the Department.

PART 106—FAIR HOUSING ADMINISTRATIVE MEETINGS UNDER TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968

Part 106 was adopted in 1972 to establish procedures for the scheduling of public meetings or conferences to gather information to assist the Assistant Secretary for Equal Opportunity (now the Assistant Secretary for Fair Housing and Equal Opportunity) in achieving the aims and objectives of title VIII of the Civil Rights Act of 1968 for the promotion and assurance of equal opportunity in housing with regard to race, color, religion, or national origin. Part 106 was amended in 1975 to add "sex" as a basis of equal opportunity in housing.

The Department proposes to revise the heading of 24 CFR Part 106 and §§ 106.1, 106.2(b) and 106.2(c) to reflect the new short title of Title VIII of the Civil Rights Act of 1968, now known as the Fair Housing Act. "Handicap" and "familial status" would be inserted in § 106.1 as additional protected classes, and appropriate editorial modifications would be made for clarification purposes and for consistency in terminology.

PART 109—FAIR HOUSING ADVERTISING

The Fair Housing Advertising Regulations (Part 109) would be revised to reflect the expansion of the classes of persons protected under the Fair Housing Act from discriminatory advertising.

General

The purpose of the HUD Fair Housing Advertising Regulations is to assist all advertising media, advertising agencies and advertisers in complying with the requirements of the Fair Housing Act with respect to advertisements for the sale, rental or financing of housing. These regulations also describe the matters which the Department will consider in evaluating compliance with the Fair Housing Act in connection with the investigation of complaints alleging discrimination in advertising.

Section 804(c) of the Fair Housing Act has been amended to expand the prohibitions on discrimination in advertising for the sale or rental of a dwelling. The amendment added "handicap" and "familial status" to the existing prohibitions of discrimination on the basis of race, color, religion, sex, or national origin.

The Department is proposing to revise the Fair Housing Advertising Regulations to reflect the expanded coverage of the Fair Housing Act with respect to discrimination in advertising. Following is a section-by-section description of the proposed changes.

Section 109.5 Policy.

This section describes the statutory provisions on which the Fair Housing Advertising Regulations are based. The two new protected coverages of the amended statute—"handicap" and "familial status"—would be added in two places to the existing list of bases on which discrimination is prohibited. In addition, a reference to appraisal services would be inserted in the list of discriminatory practices specifically made unlawful under the Fair Housing Act. Because of the exemption in section 807(b) of the Fair Housing Act for "housing for older persons", it is also proposed to add a sentence to § 109.5 to explain that the prohibitions of the act regarding familial status do not apply with respect to such housing.

In addition, references to Title VIII of the Civil Rights Act of 1968 would be changed to the new short title of the statute, the "Fair Housing Act", both in this section and throughout the regulations.

Section 109.10 Purpose.

The Department is proposing only editorial changes to this section.

Section 109.15 Definitions.

This section contains definitions of the major terms used in Part 109. The Department proposes to add definitions of the terms "handicap" and "familial status" in paragraph (g) and (h), respectively. These new definitions are the same as the definitions contained in the Fair Housing Act. In addition, the definition of "Secretary" would be eliminated since the term is not used in the regulations, and the definitions of "person" and "discriminatory housing practice" would be revised to reflect statutory changes.

Section 109.16 Scope.

This section explains the use of the criteria contained in Part 109 by the Assistant Secretary with regard to action on complaints alleging discriminatory advertising with respect to advertising media and persons placing advertisements. The Department has proposed changes in the introductory language of paragraph (a) and in the language of paragraphs (a)(1) and (a)(2) to reflect the changes in complaint processing brought about by the Fair Housing Act amendments. Under the new procedure, the Assistant Secretary will make determinations as to whether there is reasonable cause to

believe that a discriminatory housing practice (or a violation of section 804 of the Fair Housing Act) has occurred or is about to occur.

Section 109.20 Use of words, phrases, symbols, and visual aids.

This section discusses how certain words, phrases, symbols and forms have been used in residential real estate advertising to convey either overt or tacit discriminatory intent.

In the undesignated introductory paragraph, it is proposed that the Assistant Secretary will consider whether, in a particular case, there is a need for "further proceedings on" the complaint, rather than a need for "seeking resolution of" the complaint. This change would reflect the new complaint processing procedures under the amended act.

In paragraph (a), which provides examples of words descriptive of dwelling, landlord, and tenants which should not be used in advertising, the Department proposes to add the phrase "adult building".

In paragraph (b), which lists examples of words indicative of persons in the protected groups covered by the Fair Housing Act, the Department proposes to add specific provisions on words relating to handicap and familial status. In proposed paragraph (b)(6), the rule would provide that nothing in the part restricts the inclusion of information about the availability of accessible housing in advertising of dwellings. In proposed paragraph (b)(7), concerning familial status, the Department would include a statement making it clear that nothing in Part 109 would restrict advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in section 807(b) of the Fair Housing Act.

In paragraphs (c) and (d), the words "handicap" and "familial status" would be added to the list of protected groups.

Section 109.25 Selective use of advertising media or content.

This section indicates examples of how the selective use of advertising media or content can be used exclusively with respect to particular housing developments or sites, with discriminatory results.

In paragraph (c), which concerns selective use of human models when conducting an advertising campaign, the Department is proposing changes in the last two sentences of the paragraph to provide an example of selective advertising with respect to familial status.

Section 109.30 Fair housing policy and practices.

This section discusses actions that advertisers can take which would be considered as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

The Department proposes to add the words "handicap" and "familial status" where appropriate in paragraphs (a) and (b). In addition, the Department proposes to add language in paragraph (c), concerning use of human models, to indicate that models used in display advertising should represent families with children, when appropriate, as well as both majority and minority groups in the metropolitan area and both sexes.

Appendix to Part 109

The appendix to Part 109 contains three tables intended to serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising. The Department proposes to add the words "handicap" and "familial status" where appropriate in the three tables.

PART 110—FAIR HOUSING POSTER

Part 110 sets forth the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of the Civil Rights Act of 1968, 42 U.S.C. 3604–3606.

The Department proposes to amend Part 110 to comply with the requirements of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, approved September 13, 1988). The major changes are in § 110.25, Description of Posters. The proposal would change the legend of the poster to add "handicap" and "familial status" to the bases of illegal discriminatory acts. The legend would also be revised to show that discrimination in the appraising of housing is illegal. In addition to the above amendments, editorial modification would be made for clarification purposes and for consistency in terminology.

PART 115—RECOGNITION OF JURISDICTIONS WITH SUBSTANTIALLY EQUIVALENT LAWS

On August 9, 1984 the Department published 24 CFR Part 115 as a final rule (49 FR 32042) with an effective date of October 8, 1984. Part 115 sets forth the procedures and criteria used to determine whether a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in Title VIII of the Civil Rights Act of 1968. The Department proposes to revise Part 115 to comply with the requirements of the Fair Housing Act (the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, enacted September 13, 1988). The principal changes proposed would: (1) Provide for than a recognition process as provided in the current Part 115; (2) define the requirements for certification with the specificity required by the Act; (3) define the effect of the Act on agencies recognized as substantially equivalent under current Part 115; (4) require that in order to become certified agencies must provide protection against discrimination based on "handicap" and "familial status"; and (5) provide a prohibition against coercion, intimidation and threats.

To obtain certification, State and local agencies must administer laws which prohibit all discriminatory housing practices which are prohibited by the Act and must include as protected classes all classes protected by the Act. Discrimination on the basis of handicap is described in the statutory language and only those provisions of section 804(f) of the Act which clearly do not apply to State or local agencies may be omitted from the law or ordinance the agency administers if certification is to be granted. Further the remedies available to a certified agency must be substantially equivalent to the remedies available under the Act. Final agency actions must be subject to judicial review and aggrieved persons must have the right of access to a State or local court. The Act also requires that the procedures followed by a certified agency be shown to be substantially equivalent to those created by the Act. Such procedures as: Filing of complaints by the agency; acknowledgment of receipt of complaints and notice of procedural rights and obligations, completion of investigation and investigative report within 100 days and notice of cause for delay; provision for conciliation and a conciliation agreement which shall be made public under certain conditions; are examples of procedural matters which must be included in the law or ordinance administered by a certified agency.

The regulations require that the law or ordinance provide for resolution of a complaint by a body empowered to grant relief substantially equivalent to the relief which mat be granted by the Secretary under the Act.

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The following revisions to Part 115 are proposed:

Section 115.1 Purpose.

Paragraph (a) is amended to permit the Secretary to take further action with regard to a complaint referred to a certified agency when the agency has consented; or the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral; or having commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or when the Secretary has determined that the agency no longer qualifies for certification with respect to the relevant jurisdiction. It is further amended to remove the provision permitting the Secretary to take further action with regard to a referred complaint on certification that the protection of the rights of the parties or the interests of justice require such action. This reflects the removal of comparable language from the statute.

Only technical changes are required in paragraph (b) to accommodate the change from "recognition" to "certification."

Section 115.2 Basis of determination.

The Fair Housing Amendments Act of 1988, section 810(f)(3)(A), makes it clear that the Secretary may certify a State or local agency for the purpose of referral of complaints of housing discrimination "* * * only if the Secretary determines that: (i) The substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made; (ii) the procedures followed by such agency; (iii) the remedies available to such agency; and (iv) the availability of judicial review of such agency's action are substantially equivalent to those created by and under this title." The language of Title VIII, before the Fair Housing Amendments Act of 1988, required only that a State or local law provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in Title VIII.

As revised the section retains the current two-phase determination process for recognition. Paragraph (a) requires a determination that the law administered by the agency, on its face, provides that: (1) The substantive rights protected by the agency; and (2) the procedures followed by the agency; (3) the remedies available to the agency; and (4) the availability of judicial review of such agency's action; are substantially equivalent to those created by and under the Act.

Paragraph (b) requires a determination that the current practices and past performance of the agency demonstrate that in operation the law in fact porvides rights and remedies which are substantially equivalent to those provided in the Act.

Section 115.3 Criteria for adequacy of law.

This section is retained in substantial part. However, extensive revisions are proposed.

Paragraph (a)(1) is expanded to show that the law or ordinance of a certified agency must provide that (1) complaints must be in writing, (2) the agency must serve notice on complainant acknowledging receipt of the complaint and advising the complainant of the time limits and choice of forums provided, (3) the agency promptly serve notice of the filing of a complaint on the respondent or person charged advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint, and (4) that a respondent may file an answer.

Paragraph (a)(2) is expanded to show that a certified agency must, as adjunct to its authority to investigate complaints, have subpoena power. The subsection codifies the longtime practice of the Department to require that, with few exceptions, a certified agency have subpoena power. Title VIII of the Civil Rights Act granted the Department subpoena power and the Department found it an effective and necessary adjunct in the investigative process. When the department had no authority beyond conciliation, it was thought that an agency that could grant relief might have more power to assure the cooperation of respondents than did HUD. Since the Act empowers HUD to grant relief this reasoning is no longer suasive and the exception to the requirement of subpoena power no longer valid.

Paragraph (a)(2) is further expanded to show that a certified agency must administer a law or ordinance which requires that: (1) The agency commence proceedings with respect to a complaint within thirty days of receipt of the complaint; (2) the agency investigate the complaint and complete its investigation within 100 days of receipt of the complaint; (3) the agency notify the complainant and respondent in writing if it is unable to complete the investigation within the 100 day period; (4) the agency make final administrative disposition of a complaint within one year of date of receipt of a complaint, unless it is impractical to do so, and notify the complainant and respondent in writing of the reasons for not doing so.

Although the one year time limitation within which the agency must make final administrative disposition of a complaint is not verbatim from the Act the requirement is consonant with the provisions of the Act. The Act (section 810(g) requires that the Secretary, within 100 days after the filing of a complaint, make a reasonable cause determination and when appropriate, issue a charge. Section 812 provides for a hearing before an administrative law judge to commence no later than 120 days following the issuance of the charge; the administrative law judge to make findings of fact and conclusions of law within 60 days after the hearing. The Secretary has 30 days thereafter to review the administrative law judge's findings. This completes the administrative disposition of the complaint. The approximate time allotted by the Act from date of receipt of complaint to final disposition is 310 days. The requirement that a certified agency make final disposition of a complaint within one year from date of receipt of a complaint, unless it is impractical to do so, is reasonable and within the time limitations prescribed in the Act. Paragraph (a)(2) also requires that a criterion for certification be the power to conciliate and that conciliation agreements must, under certain conditions, be made public as does the Act.

Paragraph (a)(3) is retained and examples of improper burdens on complainant are given: (1) A provision that a complaint must be filed within less than 180 days after the alleged discriminatory housing act (The Act provides one year to file a complaint. No complaint would be referred if filed with HUD within the one year period provided in the Act but after a lesser time for filing required by a certified agency.); (2) anti-testing provisions (courts have held that testing is a protected activity under Title VIII; (3) provisions that could subject a complainant to costs, criminal penalties or fees in connection with the filing of complaints, since they would have a chilling effect on prospective complainants.

Paragraph (a)(4) is retained verbatim.

Paragraph (a)(5) is expanded to include "familial status" to reflect the statutory change.

Paragraph (a)(5) is further expanded by substituting the term "discrimination in residential real estate related transactions" for the term discrimination in financing and the prohibition of such practices is practically verbatim from the Act. A new subsection is added describing certain coercion, intimidation, threats or interference as acts which must be prohibited by the law administered by a certified agency.

The proviso to paragraph (a)(5) which permitted recognition even if the law did not contain adequate prohibitions with respect to blockbusting, discrimination in financing and access to or membership in brokers' organizations, has been removed. A certified agency should be able to process these types of complaints as well as other paragraph (a)(5) complaints. These rights created by Title VIII in 1968 should by now be fully protected by any certified agency.

Paragraph (b) is a substitute section and requires that the law administered by a certified agency grant that agency authority to: (1) Seek prompt judicial relief pending final disposition of a complaint; (2) issue subpoenas; (3) grant actual damages, or arrange to have adjudicated in court at agency expense the award of actual damages to an aggrieved person; (4) grant injunctive or other equitable relief; and (5) assess a civil penalty against the respondent or arrange to have adjudicated in court at agency expense the award of punitive damages against the respondent. The Act grants this authority to the Secretary and a substantially equivalent agency must include this authority in its arsenal of remedies to combat housing discrimination effectively.

Paragraph (b) provides that actions by certified agencies must, under the law or ordinance the agency administers, be subject to judicial review. The agency must provide administrative and judicial remedies substantially equivalent to those required by the Act. The Act requires that a State or local agency administer a law which provides remedies which are substantially equivalent to those provided by the Act; it does not require that they be identical to those provided by the Act.

Paragraph (c) codifies section 807(b)(1) of the Act.

Paragraph (d) requires that the State or local law assure that no prohibition based on familial status applies to housing for older persons. Previously we have not required States or localities to include in their laws or ordinances those exceptions or exemptions pertaining to unfair housing practices which the Federal law contains. However, Congress exhibited serious concern that the prohibition against discrimination because of familial status not impinge on housing for older persons. The Congressional concern is reflected in this requirement.

Paragraph (e), formerly paragraph (c), is adopted and expanded to show that an analysis of the adequacy of a State or local fair housing law "on its face" must take into account regulations, directives and rules of procedure of a State or local agency as well as other relevant matters of State or local law or interpretations by competent authorities.

Paragraph (f) provides that a law administered by a certified agency may not permit it to contract out or delegate to a non-governmental authority its decision making authority, including the dismissal of a complaint and any action specified in §§ 115.3(a)(2)(iv) or 115.3(b)(1). This provision is considered to be necessary since some agencies appear to have relinquished their responsibilities and obligations under the law by entering into contracts with private organizations. The Department would have no authority to monitor such organizations and could not assure that a complaint filed with the Department would, when referred, receive the attention required by the Act.

Paragraph (g) provides for civil action by an aggrieved person and is based on section 813 (Enforcement by Private Persons) of the Act. The State or local agency must administer a law or ordinance which provides for such civil enforcement and the court should be empowered to: award actual and punitive damages; grant temporary or permanent injunctions; and allow reasonable attorney's fees and costs.

Section 115.3a Criteria for adequacy of the law—prohibition of discrimination because of handicap.

This section codifies the provisions of law prohibiting discrimination on the basis of handicap which must be included in a fair housing law administered by a certified agency. The uniqueness of the handicap prohibitions justifies this separate section. The prohibition against discrimination because of a handicap also provides that the law must contain certain provisions relating to design and construction of covered multifamily dwellings (as defined in Part 100) for first occupancy after March 13, 1991. While this date is 30 months after enactment of the regulations, it is important for a State or locality that desires to have its law certified in the near future to enact these provisions at or before the time it enacts the other provisions required by this section, so as to allow sufficient lead time for persons to have sufficient notice to include the necessary considerations in the design and construction phases of their development efforts.

Section 115.4 Performance standards

This section is retained in substantial part with editorial changes. The subsections of § 115.4(b) have been rearranged for clarity. Time limits for the commencement and processing of complaints are imposed and § 115.4(b)(3) requires that compliance reviews be conducted.

Section 115.5 Request for recognition.

This section only required editorial changes.

Section 115.6 Procedure for certification.

This section has been retained with editorial changes. A new paragraph (d) has been added (other paragraphs have been relettered) describing the effect of the act on agencies recognized prior to enactment.

The paragraph delineates the time period during which certification under this section is effective, *i.e.*, March 12, 1988 (effective date of the law) through January 13, 1992 unless the Secretary determines in an individual case that the State or local agency has not been able to meet the certification requirements because of exceptional circumstances and the Secretary extends the period to no later than September 13, 1992.

The States and localities which were recognized as substantially equivalent on September 12, 1988 (and whose agencies are therefore deemed certified for a limited period) are:

States

Alaska
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oklahoma
Oregon

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Pennsylvania
Rhode Island
South Dakota
Tennessee
Virginia
Washington
West Virginia
Wisconsin

Localities

ALASKA
Anchorage
ARIZONA
Phoenix
CONNECTICUT
New Haven
DISTRICT OF COLUMBIA
Washington
FLORIDA
Broward County
Clearwater
Dade County
(Metropolitan)
Escambia County
Gainesville
Hillsborough Cty.
Jacksonville
Orlando
Pensacola
Pinellas County
St. Petersburg
Tallahassee
Tampa
ILLINOIS
Bloomington
Danville
Elgin
Evanston
Hazel Crest
Park Forest
Springfield
Urbana
INDIANA
Columbus
East Chicago
Ft. Wayne
Gary
Hammond
Marion
South Bend
IOWA
Des Moines
Dubuque
Iowa City
KANSAS
Kansas City
Lawrence
Olathe
Saline
KENTUCKY
Jefferson County
Lexington-Fayette
MARYLAND
Howard County
Montgomery Cty.
Prince Georges Cty.
MASSACHUSETTS
Boston
Cambridge
MINNESOTA
Minneapolis
St. Paul
MISSOURI
Kansas City
St. Louis
NEBRASKA
Lincoln
Omaha
NEW YORK
New York
Rockland County
NORTH CAROLINA
Asheville
Charlotte
Mecklenburg Cty.
New Hanover Cty.
Raleigh
Winston-Salem
OHIO
Dayton
PENNSYLVANIA
Allentown
Harrisburg
Philadelphia
Pittsburgh
Reading
York
SOUTH DAKOTA
Sioux Falls
TENNESSEE
Knoxville
TEXAS
Fort Worth
VIRGINIA
Arlington County
WASHINGTON
King County
Seattle
Tacoma
WEST VIRGINIA
Beckley
Charleston
Huntington
WISCONSIN
Beloit
Madison

The States and localities which had entered into an agreement for interim referrals on September 12, 1988 (and whose agencies are therefore deemed cetified for a limited period) are:

States

Georgia
Ohio

Localities

Lee County, FL
St. Joseph, MO
Albany, NY
Durham, NC
Greensboro, NC

It is made clear that certification under this paragraph does not permit referral of complaints alleging discrimination based on "familial status" or "handicap." Since these are new protected classes, HUD has not analyzed the laws of these jurisdictions to determine whether "on its face" the law of any of these jurisdictions protects these classes in a manner substantially equivalent to the protection provided by the Act.

Similarly it is made clear that no State or locality certified under this paragraph is to be considered certified for the purpose of processing complaints alleging coercion, intimidation or threats as described in § 115.3(a)(5)(vii). HUD did not previously have authority to process such complaints and therefore HUD has not analyzed the laws of these jurisdictions to make the appropriate determination.

Further, the proposed regulation makes it clear that certification under this paragraph does not imply that the administrative or judicial remedies provided are substantially equivalent to those provided by the Act. This is a required conclusion since HUD could provide no administrative remedies before the Act and the current regulation, § 115.3(b), specifically excludes a determination concerning judicial protection and enforcement.

The requirement for publication of annual lists has been retained.

Section 115.7 Denial of certification, section 115.8 withdrawal of certification, and section 115.9 conferences.

These sections are retained with editorial changes.

Section 115.10 Consequences of certification.

This section is retained with editorial changes. A paragraph has been added to reinforce the principle that currently recognized agencies do not become certified with regard to complaints alleging discrimination on the basis of "handicap" or "familial status." A paragraph has been added to provide for action by the Secretary before referral to a certified agency in certain instances, as mandated by statute.

Section 115.11 Interim referrals.

Section 115.11 is retained. A time limitation of two years in interim status has been imposed. It was felt that two years was a sufficient time for an agency to show that it could conform to the performance standards of § 115.4. It is made clear that this does not apply to agencies that are certified under §115.8(d) since these agencies entered this status with no foreknowledge of such limitation.

PART 121—COLLECTION OF DATA

The Department is proposing to recodify the provisions of 24 CFR Part 100, entitled "Racial, Sex, and Ethnic Data", as a new Part 121 of Title 24. Part 100 was originally adopted in 1971 under the heading "Racial and Ethnic Data", to enable the Secretary of Housing and Urban Development to obtain information concerning minority-group identification to assist the Secretary in carrying out responsibility for administering the national policies prohibiting discrimination and providing for fair housing. In 1975, in light of the 1974 amendment of Title VIII to prohibit discrimination on the basis of sex, Part 100 was amended to provide for obtaining information on sex, as well as minority-group, identification.

Section 562 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) requires the Secretary of Housing and Urban Development to collect data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefitting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by the Secretary, and to include a summary and evaluation of such data in the Secretary's annual report to the Congress.

Section 808(e)(6) of the Fair Housing Act, 42 U.S.C. 3608(e)(6), as added by section 7(b)(1)(D) of the Fair Housing Amendments Act of 1988, requires the Secretary to collect data on the race, color, religion, sex, national origin, age, handicap and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department, to the extent that such persons and households are within the coverage of the civil rights laws and executive orders referred to in section 808(f) of the Fair Housing Act or specified by the Secretary by publication in the **Federal Register** and to the extent that the Secretary determines the data to be necessary or appropriate.

The existing provisions of Part 100 are not adequate for the purpose of enabling the Secretary to carry out the new responsibilities mandated by the legislation described above. Accordingly, the Department proposes to revise those provisions to provide appropriate regulatory authority for this purpose.

Since Part 100 would be used for other regulations under this proposed rule, the Department proposes to move the revised provisions of that part to a new Part 121—Collection of Data.

Section 121.1 would describe the purpose of the new Part 121—to enable the Secretary to carry out his or her responsibilities under the Fair Housing Act, Executive Order 11063, Title VI of the Civil Rights Act of 1964, and section 562 of the Housing and Community Development Act of 1987. These authorities prohibit discrimination in housing and in programs receiving financial assistance from the Department, and they direct the Secretary, among other things, to collect certain data to assess the extent of compliance with these policies.

Section 121.2 would provide for the furnishing of data by HUD program participants concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department. The language proposed for this section is drawn largely from that contained in section 808(e)(6) of the Fair Housing Act, described above.

Legislative Review Under Section 7(o) Of the Department of Housing and Urban Development Act and Comment Period Applicable to the Proposed Rule

The proposed rule was not submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate of the Committee on Banking, Finance and Urban Affairs of the House of Representatives for prepublication review as described in section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)). Section 7(o)(2) requires certain rules to be transmitted to both Committees at least 15 calendar days of continuous session before their publication for comment in the **Federal Register**. The last date for submission of a proposed rule to the committees for the 15-day prepublication review during 1988 was the first week of October 1988. The next period of 15 days of continuous session of Congress will not occur until early 1989.

Section 13 of the Fair Housing Amendments Act of 1988 provides that the Secretary shall issue rules to implement the amendments not later than 180 days after the enactment of the Act (*i.e.*, 180 days from September 13, 1988 or March 12, 1989). Section 13 of the 1988 Amendments also requires HUD to consult with other appropriate Federal agencies and to give public notice and an opportunity for comment on the rules. (Also see section 812(d) and 815 of the Act.)

Given the statutory 180-day time limit for the production of a final rule, the statutory requirements for public notice and comment, and the 1988 congressional schedule, the Department has interpreted the statutory rulemaking schedule as an expression of congressional intent to exempt this rulemaking from the legislative review requirements under section 7(o)(2).

As noted above, section 13 of the 1988 Amendments requires the Department to provide an opportunity for public notice and comment. For proposed rules, it is HUD's usual policy to afford the public not less than 60 days for the submission of public comments (see 24 CFR 10.1). However, based on the 180-day production schedule and the requirement that a final rule be effective by March 19, 1989, the Department has provided 30 days for public comment on this proposed rule.

Other Matters

This rule constitutes a "major rule" as defined in section 1(b) of Executive Order 12291. Analysis of the proposed rule indicates that it would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions or have a significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. However, analysis of the rule indicates that it may have an impact of $100 million or more. The Director of the Office of Management and Budget in accordance with section (6)(a)(4) of the Executive Order has waived the requirement for the preparation of a preliminary Regulatory Impact Analysis under section 3 of the Executive Order. This waiver is based on the Director's determination that compliance with the requirement for a preliminary Regulatory Impact Analysis may unduly delay the rule and may prohibit the issuance of a final rule effective by March 12, 1989. A final Regulatory Impact Analysis, however, will be prepared before the publication of the final rule.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the

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Office of General Counsel, Rules Docket Clerk, at the address listed above.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the rule will require all entities, including small entities, to comply with certain accessibility standards in the design and construction of certain multifamily buildings, compliance with these standards will require a minimal expenditure of funds. In "The Estimated Cost of Accessible Buildings," a study prepared for HUD by Edward Steinfeld, Department of Architecture, State University of New York at Buffalo, the cost of redesigning a high rise tower to comply with ANSI A117.1 standards was estimated to be 0.98 percent of the total cost of the structure. The increase was 0.59 percent for garden style apartments. These estimates are based on compliance with the ANSI A117.1 standards which are more rigorous than the accessibility standards in the Fair Housing Act and are based on the redesign rather than a new design of a structure. HUD, therefore, believes that the figures overstate the economic burden of compliance. Moreover, HUD notes that the accessibility requirements will have no impact on many entities since such compliance with equal or more rigorous standards is already required under many State and local laws.

The information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 100.304(c)(2), 103.30, 115.3(a)(i), 115.5, 115.7 and 115.9 of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements are provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—FAIR HOUSING AMENDMENTS ACT OF 1980

Description of information collection	Section No. 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual response	Hours per response	Total hours
Policy and Procedures-Housing for Persons 55 years and older.	§ 100.304(c)(2)	1,231	1	1,231	1	1,231
Housing Discrimination Complaint Forms HUD-903 & 903A Spanish Version (2529-0011).	§§ 103.30 & 115.3(a)(i)	8,400	1	8,400	1	8,400
Certification Request Documentation (2529-0025)	§§ 115.5, 115.7 & 115.9	30	1	30	17	510
Total Annual Burden						10,141

Collections of information conducted or sponsored by HUD during the conduct of an administrative action or investigation against specific individuals or entities after a case file is opened are not covered by 5 CFR Part 1320—Controlling Paperwork Burdens on the Public (see 5 CFR 1320.3(c)). Accordingly, the tabulation above, does not include the information collection hours associated with §§ 104.420, 104.530, 104.540(b)(4), 104.540(c), 104.550(a), 104.550(b), 104.590, 104.600(b), 104.620(b)(2), 104.700(a), 104.720, 104.790(b), 104.910(d), 115.3(a) (ii), (iii) and (iv), and 115.4(b)(2)(i). No burden hours are reported for Part 110 since public disclosure of information originally supplied by the Federal Government to the recipient for the purposes of disclosure is not a collection of information. (See 5 CFR 1230.7(c)(2)). No burden hours are included for § 121.2 because information collection requirements on race, color, religion, sex, national origin, age, handicap, and family characteristics will be imposed under the regulations applicable to the specific HUD program.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that this rule, if implemented, may have a significant impact on family formation, maintenace and general well-being because the rule provides Federal law enforcement assistance to families confronting housing discrimination based on race, color, religion, national origin, familial status or handicap. However, review under the Order is not required because the statutory mandate leaves little effective discretion in the Department to lessen the family impact. In any event, the purpose of the statute is to have a positive impact on family values by offering a measure of protection to persons confronting illegal discrimination.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612—Federalism, has determined that the policies contained in this rule would, if implemented, have federalism implications and are subject to review under the Order. Specifically, the amended statute continues to provide for referral to State and local fair housing enforcement agencies. However, in the future the determination of substantial equivalency will depend upon State and local enforcement machinery that matches up with the much-strengthened Federal law. Accordingly, the effect of the amended Fair Housing Act will be to encourage States and localities to amend their laws to match the Federal enforcement machinery, or suffer the eventual loss of recognition as substantially equivalent State or local agencies and possible loss of function if citizens of the jurisdiction do not choose to file complaints with State or local officials. Additionally, jurisdictions losing equivalency status will lose eligibility for grant funds available to co-enforcers of fair housing laws.

While the rule would have federalism impacts, review under the Federalism Executive Order is not required because the implementation of the statute leaves little discretion with HUD to lessen these impacts. HUD's statutory mandate is clear—it must accept complaints nationwide, and refer complaints for processing (after the initial grandfather period) only to jurisdictions with substantially equivalent laws. Moreover, since the statute addresses the Federalism issue by declaring that certain conduct will be illegal and by providing machinery for referral to State and local authority under appropriate circumstances, further study of Federalism implications could not appreciably affect the approach taken in the implementing regulations.

This rule was not listed in the Department's Semiannual Agenda of Regulations published April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program number and title is 14.400 Equal Opportunity in Housing.)

List of Subjects

24 CFR Part 14

Equal access to justice, Lawyers, Claims.

24 CFR Part 100

Fair housing, Incorporation by reference, Nondiscrimination.

24 CFR Part 103

Administrative practice and procedure, Fair housing.

24 CFR Part 104

Administrative practice and procedure, Fair housing.

24 CFR Part 105

Administrative practice and procedure, Fair housing.

24 CFR Part 106

Administrative practice and procedure, Fair housing.

24 CFR Part 109

Advertising, Fair housing, Signs and symbols.

24 CFR Part 110

Fair housing, Signs and symbols.

24 CFR Part 115

Fair housing, Intergovernmental relations.

24 CFR Part 121

Fair housing, Statistics, Reporting and Recordkeeping requirements.

Accordingly, Title 24 of the Code of Federal Regulations would be amended to read as follows.

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

1. The authority citation for Part 14 continues to read as follows:

Authority: Sec. 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 504(c)(1)); sec 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 14.115, the phrase "or" at the end of paragraph (a)(8) would be deleted, the period at the end of paragraph (a)(9) would be deleted and in its place the phrase "; or" would be added, and a new paragraph (a)(10) would be added to read as follows:

§ 14.115 Proceedings covered.

(a) * * *

(10) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3600–3620) and 24 CFR Part 104.

* * * * *

3. Part 100 would be redesignated as Part 121, and a new Part 100 would be added to read as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

Subpart A—General

Sec.
100.1 Authority.
100.5 Scope.
100.10 Exemptions.
100.20 Definitions.

Subpart B—Discriminatory Housing Practices

100.50 Real estate practices prohibited.
100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.
100.65 Discrimination in terms, conditions and privileges and in services and facilities.
100.70 Other prohibited sale and rental conduct.
100.75 Discriminatory advertisements, statements and notices.
100.80 Discriminatory representations on the availability of dwellings.
100.85 Blockbusting.
100.90 Discrimination in the provision of brokerage services.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

100.110 Discriminatory practices in residential real estate-related transactions.
100.115 Residential real estate-related transactions.
100.120 Discrimination in the making of loans and in the provision of other financial assistance.
100.125 Discrimination in the purchasing of loans.
100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.
100.135 Unlawful practices in the selling, brokering or appraising of residential real property.

Subpart D—Prohibitions Against Discrimination Because of Handicap

100.200 Purpose.
100.201 Definitions.
100.202 General prohibitions against discrimination because of handicap.
100.203 Reasonable modifications of existing premises.
100.204 Reasonable accommodations.
100.205 Design and construction requirements.

Subpart E—Housing for Older Persons

100.300 Purpose.
100.301 Exemption.
100.302 State and Federal elderly housing programs.
100.303 62 or over housing.
100.304 55 or over housing.

Subpart F—Interference, Coercion or Intimidation

100.400 Prohibited interference, coercion or intimidation.

Authority: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3600–3620; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart A—General

§ 100.1 Authority.

This regulation is issued under the authority of the Secretary of Housing and Urban Development to administer and enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act).

§ 100.5 Scope.

(a) It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in residential real estate related transactions.

(b) This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of real estate related transactions.

(c) Nothing in this part relieves persons participating in a Federal or Federally Assisted program or activity from other requirements applicable to buildings and dwellings.

§ 100.10 Exemptions.

(a) This part does not:

(1) Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin;

(2) Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members; or

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(3) Limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or

(4) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(b) Nothing in this part regarding familial status applies with respect to housing for older persons as defined in Subpart E of this Part.

(c) Nothing in this part, other than the prohibitions against discriminatory advertising, applies to:

(1) The sale or rental of any single family house by an owner provided the following conditions are met:

(i) The owner does not own or have any interest in more than three single family houses at any one time; and

(ii) The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this paragraph (c)(1) applies to only one such sale in any 24-month period.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

§ 100.20 Definitions.

As used in this Part:

"Aggrieved Person" includes any person who—

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Broker" or "Agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any real estate related transactions.

"Department" means the Department of Housing and Urban Development.

"Discriminatory Housing Practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

"Dwelling" means any building, structure or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof, including mobile home parks, trailer courts, condominiums, cooperatives and time-sharing properties.

"Fair Housing Act" means Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600–3620).

"Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(a) A parent or another person having legal custody of such individual or individuals; or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is the process of securing legal custody of any individual who has not attained the age of 18 years.

"Handicap" is defined in § 100.201.

"Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers fiduciaries, governmental entities, banks, building and loan associations, or other firms or enterprises.

"Person in the business of selling or renting" means any person who:

(a) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(b) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(c) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

"Secretary" means the Secretary of the Department of Housing and Urban Development.

"State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Subpart B—Discriminatory Housing Practices

§ 100.50 Real estate practices prohibited.

(a) This subpart provides the Department's interpretation of conduct that is unlawful housing discrimination under section 804 and section 806 of the Fair Housing Act. In general the prohibited actions are set forth under sections of this subpart which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under other sections in the subpart. For example, the conduct described in § 100.60(b)(3)–(5) would constitute a violation of § 100.65(a) as well as § 100.60(a).

(b) It shall be unlawful to:

(1) Refuse to sell or rent a dwelling after a *bona fide* offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.

(2) Discriminate in the terms, conditions or privileges of sale or rental, or in the provision of services or facilities in connection with sales or rentals because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status or national origin.

(4) Make, print or publish, or cause to be made, printed or published, any advertisement, notice or statement that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin or an intention to make any such preference, limitation or discrimination.

(5) Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.

(6) Engage in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(7) Deny access to or membership or participation in, or to discriminate against any person in his or her access to or membership or participation in,

any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions of membership or participation, because of race, color, religion, sex, familial status, or national origin.

(c) The application of the Fair Housing Act with respect to persons with handicaps is discussed in Subpart D of the Part.

§ 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.

(a) It is unlawful for a person to refuse to sell or rent a dwelling to a person who has made a *bona fide* offer, because of race, color, religion, sex, familial status, or national origin, or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin or to discriminate against any person in the sale or rental of a dwelling because of handicap.

(b) Prohibited actions under this section include, but are not limited to:

(1) Failing to accept or consider a *bona fide* offer because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Providing different information, promotional activity, encouragement or salesmanship because of race, color, religion, sex, handicap, familial status, or national origin or operating a business in a manner that conveys that housing is available only to persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(6) Evicting any tenants because of race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

§ 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

(a) It shall be unlawful because of race, color, religion, sex, handicap, familial status, or national origin to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

(b) Prohibited actions under this section include, but are not limited to:

(1) Using different provisions in leases or contracts of sale such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Denying or limiting discounts, rebates, gifts or any other incentives, benefits or privileges available to persons in connection with the sale or rental of dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Failing or delaying maintenance or repairs of sale or rental dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her.

§ 100.70 Other prohibited sale and rental conduct.

(a) It shall be unlawful because of race, color, religion, sex, handicap, familial status, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighorhood or development.

(b) It shall be unlawful to because of race, color, religion, sex, handicap, familial status, or national origin to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

(c) Prohibited actions under paragraph (a), which are generally referred to as unlawful steering practices, include, but are not limited to:

(1) Directing any person to dwellings in a particular community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin or referring because of race, color, religion, sex, handicap, familial status, or national origin any purchaser or renter to persons in the business of selling or renting dwellings who sell or rent dwelling or provide sales or rental services principally in areas predominantly or increasingly inhabited by persons of the prospect's race, color, religion, sex, handicap, familial status, or national origin.

(2) Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin or because of race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood or development.

(3) Exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development in order to discourage the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Communicating to any prospective purchaser or renter that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Assigning any person to a particular section of a community, neighborhood or development or to a particular floor of a building because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Prohibited sales and rental activities under paragraph (b) include, but are not limited to:

(1) Employing policies, procedures or activities with respect to the sale or rental of dwellings to encourage, permit or reward discriminatory housing practices, such as assigning employees, brokers or agents to a sales or rental office because of race, color, religion, sex, handicap, familial status, or national origin of persons residing in the area of that office, or varying compensation provided to sales and rental employees, brokers or agents because of race, color, religion, sex, handicap, familial status, or national origin.

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(2) Engaging in conduct which limits information available to a prospective purchaser or renter, such as showing a prospective purchaser or renter less desirable units in a project, providing different or more limited tours of a subdivision, neighborhood or community, refusing to deal with persons who cannot speak English or who cannot see or hear, when there is a means to do so or using different listing books in order to discourage persons from purchasing or renting dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

(4) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin or refusing to deal with certain brokers or agents because one more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origins.

(5) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(6) Publishing advertisements displaying the equal housing opportunity slogan, logotype or statement selectively because of race, color, religion, sex, handicap, familial status, or national origin, such as by using such fair housing advertising techniques in predominantly minority areas and integrated areas, but not using these techniques for dwellings located in primarily nonminority areas.

§ 100.75 Discriminatory advertisements, statements and notices.

(a) It shall be unlawful to make, print or publish or cause to be made printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin or an intention to make any such preference, limitation or discrimination.

(b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.

(c) Discriminatory notices, statements and advertisements include, but are not limited to:

(1) Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons based on race, color, religion, sex, handicap, familial status, or national origin.

(2) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter based on race, color, religion, sex, handicap, familial status, or national origin of such persons.

(3) Selecting media or locations for advertising the sale or rental of dwellings in order to deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Part 109 of this Title 24 provides information to assist persons to advertise dwellings in a nondiscriminatory manner and describes the matters the Department will review in evaluating compliance with the Fair Housing Act in investigating complaints alleging discriminatory housing practices involving advertising.

§ 100.80 Discriminatory representations on the availability of dwellings.

(a) It shall be unlawful because of race, color, religion, sex, handicap, familial status, or national origin to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

(b) Prohibited actions under this section include, but are not limited to:

(1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale or rental of a dwelling to a person.

(3) Enforcing covenants or other deed, trust or lease provisions in order to preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.85 Blockbusting.

(a) It shall be unalwful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

(b) In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

(c) Prohibited actions under this section include, but are not limited to:

(1) Engaging, for profit, in conduct to convey to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it in order to encourage the person to offer a dwelling for sale or rental.

(2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin or with handicaps can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior or a decline in the quality of schools or other services or facilities.

(3) Engaging in uninvited solicitations for listings in a neighborhood which are different or more intense than uninvited solicitation activity in other neighborhoods, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.90 Discrimination in the provision of brokerage services.

(a) It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation on account of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to:

(1) Setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, handicap, familial status, or national origin.

(2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different standards or criteria for membership in real estate sales or rental organization based on race, color, religion, sex, handicap, familial status, or national origin.

Subpart C—Discrimination In Real Estate-Related Transactions

§ 100.110 Discriminatory practices in real estate-related transactions.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful housing discrimination under section 805 of the Fair Housing Act.

(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status or national origin.

§ 100.115 Residential real estate-related transactions.

(a) The term "real estate-related transactions" means:

(1) The making or purchasing of loans or providing other financial assistance—

(i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(ii) Secured by residential real estate, or

(2) The selling, brokering or appraising of residential real estate property.

§ 100.120 Discrimination in the availability of loans and other financial assistance.

(a) It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited practices under this section include, but are not limited to:

(1) Refusing to provide a loan or other financial assistance to any person for the purchase, construction, repair or maintenance of a dwelling or refusing to provide a loan or other financial assistance which is or would be secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Making or causing to be made any advertisement or any oral or written notice or statement, as described in § 100.75(b) of this Part, with respect to loans or other financial assistance for dwellings or which are secured by residential real estate indicating any preference, limitation, condition, or distinction, or an intention to make any preference, limitation, condition, or distinction, because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Denying or limiting services, facilities or privileges in connection with a loan or other financial assistance for a dwelling, or, in connection with a loan or other financial assistance which is or would be secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Discouraging any person from inquiring about or making an application for a loan or other financial assistance for a dwelling, or in connection with a loan or other financial assistance which is or would be secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(6) Failing or refusing to provide information, or to accept an application or to approve a long or other financial assistance for a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of the present or prospective residents or occupants of dwellings in the area.

(7) Engaging in any conduct, because of the race, color, religion, sex, handicap, familial status, or national origin of any person seeking a loan or other financial assistance, or because of the race, color, religion, sex, handicap, familial status, or national origin of any person associated with such persons with regard to a loan or other financial assistance for a dwelling which would otherwise make unavailable or deny a dwelling.

§ 100.125 Discrimination in the purchasing of loans.

(a) It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts of securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of person in such neighborhoods or communities.

(2) Pooling or packaging loans or other debts or securities which relate to, or which are secured by dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Using different qualification requirements, processing procedures, or evaluation standards in accepting applications or in approving loans and other financial assistance for dwellings

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or which are secured by dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Determining the type of loan or other financial assistance to be provided with respect to dwelling or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Failing to make available the same information or the same types of loans or other financial assistance which are for a dwelling or which are, or would be, secured by dwellings because of the race, color, religion, sex, handicap, familial status, or national origin of the present or the prospective residents or occupants of dwellings in the area of the dwelling for which such loan or other financial assistance is sought or in the area in which a dwelling, which is provided for security, is located.

§ 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the terms or conditions of the availability of such services because of race, color, religion, sex, handicap, familial status, or national origin.

(b) For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a commercial context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(d) Practices which are unlawful under this section include, but are not limited to:

(1) Taking into consideration any factor in connection with the selling, brokering or appraising of residential real property because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Imposing different standards or procedures in the selling or brokering of dwellings or in conducting an appraisal of residential real property because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Instructing or encouraging any person, either by statement or conduct, or imposing standards requiring any person, to consider any factor which relates to race, color, religion, sex, handicap, familial status, or national origin in the selling or brokering of residential real-estate transactions or in making an appraisal of residential real property.

(4) Using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal takes into consideration a factor or factors based on race, color, religion, sex, handicap, familial status, or national origin, or using any information contained in an appraisal report with respect to an appraisal which relates to race, color, religion, sex, handicap, familial status, or national origin.

Subpart D—Prohibitions Against Discrimination Because of Handicap

§ 100.200 Purpose.

The purpose of this subpart is to effectuate sections (6)(a) and (b) and 15 of the Fair Housing Amendments Act of 1988.

§ 100.201 Definitions.

As used in this subpart:

"Accessible", when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1 or another standard that affords handicapped persons access essentially equivalent to or greater than that required by ANSI A117.1 is "accessible" within the meaning of this paragraph.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1 is an "accessible route".

"ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. Copies may be inspected at the Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

"Building" means a structure, facility or the portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route within the boundary of the site to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 complies with the requirements of this paragraph.

"Common use areas" means rooms, spaces or elements inside or outside of a building that are made advailable for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms and passageways among and between buildings.

"Controlled substance" means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units.

"Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person or family. Examples of dwelling units include single family detached houses, townhouses, apartments, and condominiums.

"Entrance" means any access point to a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

(a) "Phyiscal or mental impairment" includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

§ 100.202 General prohibitions against discrimination because of handicap.

(a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

(1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(2) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

(3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;

(4) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

(5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

(d) Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

§ 100.203 Reasonable modifications of existing premises.

(a) It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not, however, increase for handicapped persons any customarily required security deposit for this purpose.

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(b) The application of paragraph (a) may be illustrated by the following examples:

Example (1): A tenant with a handicap asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear or tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not undermine the integrity of the wall or otherwise interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

Example (2): An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may *not*, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

§ 100.204 Reasonable accommodations.

(a) It is unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of this section may be illustrated by the following examples:

Example (1): A blind applicant for rental housing wants to live in a dwelling unit with a seeing eye dog. The building has a "no pets" policy. It is a violation of § 100.204 for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a "first come first served" basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of § 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

§ 100.205 Design and construction requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) The application of paragraph (a) may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six town houses on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter each townhouse. Since there is no practical way to provide an accessible route to any of the town houses, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of paragraph (c) may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c).

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the "ground floor" units are covered multifamily units. The "ground floor" is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of paragraph (c)(3).

(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) satisfies the requirements of paragraphs (a) and (c).

(g)(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c).

(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) are met.

(h) Determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.

Subpart E—Housing for Older Persons

§ 100.300 Purpose.

The purpose of this subpart is to effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons.

§ 100.301 Exemption.

(a) The provisions regarding familial status in this part shall not apply to housing for older persons if it meets the conditions in §§ 100.302, 100.303 or 100.304.

(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

§ 100.302 State and federal elderly housing programs.

The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

§ 100.303 62 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over.

(b) The following examples illustrate the application of paragraph (a):

Example (1): John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in § 100.304.

Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were newly occupied after September 13, 1988 were occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the "62 or over" exemption.

§ 100.304 55 or over housing.

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit. *Provided that* the housing satisfies the requirements of § 100.304(b)(1) *or* (b)(2) *and* the requirements of § 100.304(c).

(b)(1) The housing facility has significant facilities and services specifically designed to meet the physical and social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include an accessible physical environment, congregate dining facilities, social and recreational programs, emergency and preventive health care or programs, continuing education, welfare, information and counseling, recreational, homemaker, outside maintenance and referral services, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

(2) It is not practicable to provide significant facilities and services designed to meet the physical and social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. The following factors, among others, are relevant in determining whether a housing facility satisfies the requirements of paragraph (b)(2)—

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical and social needs of older persons.

(ii) The cost of providing such services, including the availability of such services at little or no cost to the owners or managers of the facility.

(iii) The amount of rent charged, if the dwellings are rented. The price of the dwellings, if they are offered for sale.

(iv) The income range of the residents of the housing facility.

(v) The demand for housing for older persons in the relevant geographic area.

(vi) The range of housing choices for older persons within the relevant geographic area.

(vii) The availability of other similarly priced housing for older persons in the relevant geographic area.

(viii) The vacancy rate of the housing facility.

(c)(1) At least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit *except that* a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this paragraph (c)(1) until 25% of the units in the facility are occupied; and

(2) The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of paragraph (c)(2):

(i) The manner in which the housing facility is described to prospective residents.

(ii) The nature of any advertising designed to attract prospective residents.

(iii) Age verification procedures.

(iv) Lease provisions.

(v) Written rules and regulations.

(vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

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(d) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or over.

(e) The application of this section may be illustrated by the following examples:

Example 1: A. John and Mary apply for housing at the Valley Heights apartment complex which is a 100 unit housing complex that is operated for persons 55 years of age or older in accordance with all the requirements of this section. John is 56 years of age. Mary is 50 years of age. Eighty (80) units are occupied by at least one person who is 55 years of age or older. Eighteen (18) units are occupied exclusively by persons who are under 55 years of age. These 18 units were all occupied by new occupants after September 13, 1988. Two (2) units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because 82% of the occupied units (80/98) at Valley Heights are occupied by at least one person 55 years old or older. If John and Mary are accepted for occupancy, then 81 out of the 99 occupied units (82%) will be occupied by at least one person who is 55 years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption. If John and Mary had both been under 55 years old, they still could have occupied a unit without Valley Heights losing its exemption because, in that case, 80 out of 99 occupied units (81%) would have been occupied by at least one person 55 years of age or older.

B. If only 78 out of the 98 occupied units had been occupied by at least one person 55 years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary if they were both under 55 without losing the exemption.

Example 2: Green Meadow is a 1,000 unit retirement community that provides significant facilities and services specifically designed to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 300 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988, 67% of the Green Meadow's occupied units (600 out of 900) were occupied by at least one person 55 years of age or older. Under paragraph (d)(1), Green Meadow qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80% of the occupied units in the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that were occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older. Under paragraph (d), Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80% of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in paragraph (c)(1) that at least 80% of the occupied units be occupied by at least one person 55 years of age or older per unit *until* 50 units (25%) are occupied. When the 50th unit is occupied, then 80% of the 50 occupied units (*i.e.*, 40 units) must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

Subpart F—Interference, Coercion, or Intimidation

§ 100.400. Prohibited interference, coercion or intimidation.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful housing discrimination under section 818 of the Fair Housing Act.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

(c) Conduct made unlawful under this section includes, but is not limited to, the following:

(1) Coercing a person, either orally, in writing, or by other means to deny or limit the benefits provided a person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

(3) Threatening an employee or agent with dismissal or an adverse employment action or taking such adverse employment action for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person.

(4) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or to encourage such other persons to exercise rights granted or protected by this part.

(5) Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act.

4. Part 103 would be added to read as follows:

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

Subpart A—Purpose and Definitions

Sec.
103.1 Purpose and applicability.
103.5 Other civil rights authorities.
103.9 Definitions.

Subpart B—Complaints
103.10 Submission of information.
103.15 Who may file complaints.
103.20 Persons against whom complaints may be filed.
103.25 Where to file complaints.
103.30 Form and content of complaints.
103.40 Date of filing of complaint.
103.42 Amendment of complaint.
103.45 Service of notice on aggrieved person.
103.50 Notification of respondent; joinder of additional or substitute respondents.
103.55 Answer to complaint.

Subpart C—Referral of Complaints to State and Local Agencies
103.100 Notification and referral to substantially equivalent State or local agencies.
103.105 Cessation of action on referred complaints.
103.110 Reactivation of referred complaints.
103.115 Notification upon reactivation.

Subpart D—Investigation Procedures
103.200 Investigations.
103.205 Systemic processing.
103.215 Conduct of investigation.
103.220 Cooperation of Federal, State and local agencies.
103.225 Completion of the investigation.
103.230 Final investigative report.

Subpart E—Conciliation Procedures
103.300 Conciliation.
103.310 Conciliation agreement.
103.315 Relief sought for aggrieved persons.
103.320 Provisions sought for the public interest.
103.325 Termination of conciliation efforts.
103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.
103.335 Review of compliance with conciliation agreements.

Subpart F—Issuance of Charge
103.400 Reasonable cause determination.
103.405 Issuance of charge.
103.410 Election of administrative proceeding or civil action.

Subpart G—Other Action by the Department
103.500 Prompt judicial action.
103.510 Other action by HUD.

Authority: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3600–3620; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart A—Purpose and Definitions

§ 103.1 Purpose and applicability.

(a) This part contains the procedures established by the Department of Housing and Urban Development for the investigation and conciliation of complaints under section 810 of the Fair Housing Act, 42 U.S.C. 3610, as amended by the Fair Housing Act of 1988 (Pub. L. 100–430, approved September 13, 1988).

(b)(1) This part applies to:

(i) Complaints filed on or after March 12, 1989 that involve alleged discriminatory housing practices that occur on or after March 12, 1989 or involve alleged discriminatory practices that occur before and continue on or after March 12, 1989; and

(ii) Complaints filed before March 12, 1989 that involve alleged discriminatory housing practices that occur before and continue on or after March 12, 1989, where the complainant elects under § 105.81 to proceed under this part.

(2) Part 104 governs the administrative proceedings before an administrative law judge adjudicating charges issued under § 103.405.

(3) Part 105 contains the procedures established by HUD for the investigation and conciliation of complaints filed with HUD under section 810 of the Fair Housing Act, as it existed prior to the amendment of the Act by the Fair Housing Amendments Act of 1988.

(c) The procedures under this part for the investigation and conciliation of complaints will be conducted in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

§ 103.5 Other civil rights authorities.

In addition to the Fair Housing Act, other civil rights authorities may be applicable in a particular case. Thus, where a person charged with a discriminatory housing practice in a complaint filed under section 810 of the Fair Housing Act is also prohibited from engaging in similar practices under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5), section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), Executive Order No. 11063 of November 20, 1962, on Equal Opportunity in Housing (27 FR 11527–30, November 24, 1962), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or other applicable law, the person may also be subject to action by HUD or other Federal agencies under the rules, regulations, and procedures prescribed under Title VI (24 CFR Parts 1 and 2), section 109 (24 CFR 570.602)), Executive Order 11063 (24 CFR Part 107), section 504 (24 CFR Part 8), or other applicable law.

§ 103.9 Definitions.

As used in this part,

Aggrieved person includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that he or she will be injured by a discriminatory housing practice that is about to occur.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity in HUD.

Attorney General means the Attorney General of the United States.

Complainant means the person (including the Assistant Secretary) who files a complaint under this part.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the aggrieved person, the respondent, and the Assistant Secretary.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Discriminatory housing practice means an act that is unlawful under section 804, 805, 806 or 818 of the Fair Housing Act, as described in Part 100.

Dwelling means any building, structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof, including mobile home parks and trailer courts.

Fair Housing Act means Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–3620, as amended by the Fair Housing Amendments Act of 1988.

General Counsel means the General Counsel of HUD.

HUD means the United States Department of Housing and Urban Development.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, fiduciaries, governmental entities, banks, building and loan associations, or other firms or enterprises.

Personal service means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served.

Receipt of notice means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail.

Respondent means:

(a) The person or other entity accused in a complaint of a discriminatory housing practice; and

(b) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under § 103.50.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Substantially equivalent State of local agency means a State or local agency certified by HUD under 24 CFR Part 115 (including agencies certified for interim referrals).

To rent includes to lease, to sublease, to let, and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

Subpart B—Complaints

§ 103.10 Submission of information.

(a) Any person may submit information concerning alleged discriminatory housing practices to the Assistant Secretary. Where the information constitutes a complaint within the meaning of this part and is furnished by an aggrieved person, it will be considered to be filed under § 103.40. Where additional information is required for purposes of perfecting a complaint under this part, HUD shall advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.

(b) If the submitted information warrants, HUD may also concurrently initiate compliance reviews under other appropriate civil rights authorities, such as Executive Order No. 11063 on Equal Opportunity in Housing, Title VI of the Civil Rights Act of 1964, section 109 of

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the Housing and Community Development Act of 1974, or section 504 of the Rehabilitation Act of 1973. The information may also be made available to any other Federal, State or local agency having an interest in the matter. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant, where desired by the informant or claimant.

§ 103.15 Who may file complaints.

Any aggrieved person or the Assistant Secretary may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

§ 103.20 Persons against whom complaints may be filed.

(a) A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.

(b) A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope or his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

§ 103.25 Where to file complaints.

(a)(1) Complaints may be delivered or mailed to the Assistant Secretary. Complaints should be sent to: Fair Housing, Department of Housing and Urban Development, Washington DC 20410, or any Regional or Field Office of HUD. A list of Regional Offices (with addresses and areas of jurisdiction) and Field Offices (with addresses) is contained in an appendix to Part 105.

(2) Aggrieved persons may provide information to be contained in a complaint by telephone to any Regional or Field Office of HUD. HUD will reduce information provided by telephone to writing on the prescribed complaint form and send the form to the aggrieved person to be signed and attested to as provided in § 103.30(a).

(3) Complaints may be delivered or mailed to any substantially equivalent State or local agency. Complaints filed with a substantially equivalent State or local agency shall be considered to be complaints dual filed with the agency under its own law, and with HUD under this part.

(b) Generally, complaints will be processed through HUD's Regional Administrator having jurisdiction in the State in which the alleged discriminatory housing practice occurred. However, where a complaint has been identified for systemic processing under § 103.205, that complaint may be processed in the Office of the Assistant Secretary in Washington, D.C.

§ 103.30 Form and content of complaint.

(a) Each complaint must be in writing and must be signed by the aggrieved person filing the complaint. If the complaint is filed by HUD, it will be signed by the Assistant Secretary. The complaint shall be attested to before a notary public or a duly authorized representative of the Assistant Secretary. The signature and attestation may be made at any time during the investigation.

(b) The Assistant Secretary may require complaints to be made on prescribed forms. Complaint forms will be available in any Regional or Field Office of HUD or in any substantially equivalent State or local agency. Notwithstanding the requirement for use of the prescribed form, HUD will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under the Fair Housing Act (including any such statement filed with a substantially equivalent State or local agency) as a Fair Housing Act complaint. Personnel in these offices will provide appropriate assistance in filling out forms and in filing a complaint.

(c) Each complaint must contain substantially the following information:

(1) The name and address of the aggrieved person.

(2) The name and address of the respondent.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

§ 103.40 Date of filing of complaint.

(a) Except as provided in paragraph (b) below, a complaint is filed when it is received by HUD, or dual filed with HUD through a substantially equivalent State or local agency, in a form that reasonably meets the standards of § 103.30.

(b) The Assistant Secretary may determine that a complaint is filed for the pruposes of the one-year period for the filing of complaints, upon the submission of written information (including information provided by telephone and reduced to writing by an employee of HUD) identifying the parties and describing generally the alleged discriminatory housing practice.

(c) Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint shall be timely if filed within one year of the last alleged occurrence of that practice.

§ 103.42 Amendment of complaint.

Complainants may reasonably and fairly amend the complaint at any time to cure technical defects or omissions, including failure to attest to a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondent under § 103.50, amended complaints will be considered as having been made as of the original filing date.

§ 103.45 Service of notice on aggrieved person.

Upon the filing of a complaint, the Assistant Secretary shall notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice must:

(a) Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing

(b) Include a copy of the complaint.

(c) Advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under this part and Part 104 of this title.

(d) Advise the aggrieved person of this or her right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

(e) Advise the aggrieved person that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under this part or an administrative proceeding under Part 104, is a discriminatory housing practice that is prohibited under section 818 of the Fair Housing Act.

§ 103.50 Notification of respondent; joinder of additional or substitute respondents.

(a) Within ten days of the filing of a complaint under § 103.40 or the filing of an amended complaint under § 103.42, the Assistant Secretary shall serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under Subpart D of this part as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based, may be joined as an additional or substitute respondent by service of a notice under this section within ten days of the identification.

(b)(1) The notice shall identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint.

(2) The notice shall state the date that the complaint was accepted for filing.

(3) The notice shall advise the respondent of the time limits applicable to complaint processing under this part and of the procedural rights and obligations of the respondent under this part and Part 104, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice.

(4) The notice shall advise the respondent of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice shall also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

(5) If the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice shall explain the basis for the Assistant Secretary's belief that the joined person is properly joined as a respondent.

(6) The notice shall advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation under this part or an administrative proceeding under Part 104, is a discriminatory housing practice that is prohibited under section 818 of the Fair Housing Act.

§ 103.55 Answer to complaint.

(a) The respondent may file an answer not later than ten days after receipt of the notice described in § 103.50. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be attested to before a notary public or a duly authorized representative of the Assistant Secretary.

(b) An answer may be reasonably and fairly amended at any time with the consent of the Assistant Secretary.

Subpart C—Referral of Complaints to State and Local Agencies

§ 103.100 Notification and referral to substantially equivalent State or local agencies.

(a) Whenever a complaint alleges a discriminatory housing practice that is within the jurisdiction of a substantially equivalent State or local agency and the agency is certified or may accept interim referrals under Part 115 with regard to the alleged discriminatory housing practice, the Assistant Secretary shall notify the agency of the filing of the complaint and refer the complaint to the agency for further processing before HUD takes any action with respect to the complaint. The Assistant Secretary shall notify the State or local agency of the referral by certified mail.

(b) The Assistant Secretary shall notify the aggrieved person and the respondent, by certified mail or personal service, of the notification and referral under paragraph (a) of this section. The notice shall advise the aggrieved person and the respondent of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

§ 103.105 Cessation of action on referred complaints.

(a) After a complaint is referred under § 103.100, the Assistant Secretary shall not take any further action with respect to the complaint, except as provided in § 103.110.

(b) A referral under § 103.100 does not prohibit the Assistant Secretary from taking appropriate action to review or investigate matters in the complaint that raise issues cognizable under other civil rights authorities applicable to departmental programs (see § 103.5).

§ 103.110 Reactivation of referred complaints.

The Assistant Secretary may reactivate a complaint referred under § 103.100 for processing by HUD if:

(a) The substantially equivalent State or local agency consents to the reactivation;

(b) The Assistant Secretary determines that, with respect to the alleged discriminatory housing practice, the agency no longer qualifies for certification as a substantially equivalent State or local agency and may not accept interim referrals; or

(c) The substantially equivalent State or local agency has failed to commence proceedings with respect to the complaint within 30 days of the date that it received the notification and referral of the complaint; or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness. HUD shall not reactivate a complaint under this paragraph (c) until the appropriate HUD Regional Office has conferred with the agency to determine the reason for the delay in processing of the complaint. If the Assistant Secretary believes that the agency will proceed expeditiously following the conference, the Assistant Secretary may leave the complaint with the agency for a reasonable time, notwithstanding the expiration of the 30-day period or a previous failure to carry the proceedings forward with reasonable promptness.

§ 103.115 Notification upon reactivation.

(a) Whenever a complaint referred to a State or local fair housing agency under § 103.100 is reactivated under

to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

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§ 103.110, the Assistant Secretary shall notify the substantially equivalent State or local agency, the aggrieved person and the respondent of HUD's reactivation. The notification must be made by certified mail or personal service.

(b) The notification to the respondent and the aggrieved person shall advise the aggrieved person and the respondent of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person and the respondent under this part and Part 104. The notice shall advise the respondent and the aggrieved person of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

Subpart D—Investigation Procedures

§ 103.200 Investigations.

(a) Upon the filing of a complaint under § 103.40, the Assistant Secretary shall initiate an investigation. The purposes of an investigation are:

(1) To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

(2) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

(3) To develop factual data necessary for the General Counsel to make a determination under § 103.400 whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

(b) Upon the written direction of the Assistant Secretary, HUD may initiate an investigation of housing practices to determine whether a complaint should be filed under Subpart B. Such investigations shall be conducted in accordance with the procedures described under this subpart.

§ 103.205 Systemic processing.

Where the Assistant Secretary determines that the alleged discriminatory practices contained in a complaint are prevasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will impact on a large number of persons, the Assistant Secretary may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the Fair Housing Act.

§ 103.215 Conduct of investigation.

(a) In conducting investigations under this part, the Assistant Secretary shall seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

(b) The Assistant Secretary and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under Part 104, except that the Assistant Secretary shall have the power to issue subpoenas described in § 104.590 in support of the investigation or at the request of the respondent. Subpoenas issued by the Assistant Secretary must be approved by the General Counsel before issuance.

§ 103.220 Cooperation of Federal, State and local agencies.

The Assistant Secretary, in processing Fair Housing Act complaints, may seek the cooperation and utilize the services of State and local agencies and of other appropriate Federal agencies. In accordance with section 808 (d) and (e) of the Fair Housing Act and Executive Order No. 12259, other Federal agencies, including any agency having regulatory or supervisory authority over financial institutions, are responsible for ensuring that their programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing, and for cooperating with the Assistant Secretary in furthering the purposes of the Fair Housing Act, including investigations under this part.

§ 103.225 Completion of investigation.

The investigation will remain open until the reasonable cause determination is made under § 103.400, or a conciliation agreement is executed and approved under § 103.310. Unless it is impracticable to do so, HUD shall complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Assistant Secretary reactivates the complaint, within 100 days after service of the notice of reactivation under § 103.115). If the Assistant Secretary is unable to complete the investigation within the 100-day period, HUD shall notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

§ 103.230 Final investigative report.

(a) At the end of each investigation under this part, the Assistant Secretary shall prepare a final investigative report. The investigative report shall contain:

(1) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. HUD, however, may be required to disclose the names of such witnesses in the course of an administrative hearing under Part 104 or a civil action under Title VIII of the Fair Housing Act;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

(b) A final investigative report may be amended at any time, if additional evidence is discovered.

(c) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in § 103.330, the Assistant Secretary shall make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent, upon request, at any time following the completion of the investigation.

Subpart E—Conciliation Procedures

§ 103.300 Conciliation.

(a) During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the

General Counsel, the Assistant Secretary shall, to the extent feasible, attempt to conciliate the complaint.

(b) In conciliating a complaint, HUD shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

(c) Generally, officers, employees, and agents of HUD engaged in the investigation of a complaint under this part will not participate or advise in the conciliation of the same complaint or in any factually related complaint. Where the rights of the aggrieved party and the respondent can be protected and the prohibitions with respect to the disclosure of information obtained during conciliation can be observed, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.

§ 103.310 Conciliation agreement.

(a) The terms of a settlement of a complaint shall be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in § 103.315. The provisions that may be sought for the vindication of the public interest are described in § 103.320.

(b)(1) The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the Assistant Secretary, who will indicate approval by signing the agreement. The Assistant Secretary shall approve an agreement and, if the Assistant Secretary is the complainant, shall execute the agreement, only if:

(i) The complainant and the respondent agree to the relief accorded the aggrieved person;

(ii) The provisions of the agreement will adequately vindicate the public interest; and

(iii) If the Assistant Secretary is the complainant, the aggrieved person is satisfied with the relief provided to protect his or her interest.

(2) The General Counsel may issue a charge under § 103.405 if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Assistant Secretary.

§ 103.315 Relief sought for aggrieved persons.

(a) The following types of relief may be sought for aggrieved persons in conciliation:

(1) Monetary relief in the form of damages, including damages caused by humiliation or embarrassment, and attorney fees;

(2) Other make-whole relief, including access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or

(3) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.

(b) The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in paragraph (a) of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

§ 103.320 Provisions sought for the public interest.

The following are types of provisions that may be sought for the vindication of the public interest:

(a) Elimination of discriminatory housing practices.

(b) Prevention of future discriminatory housing practices.

(c) Remedial affirmative activities to overcome discriminatory housing practices.

(d) Reporting requirements.

(e) Monitoring and enforcement activities.

§ 103.325 Termination of conciliation efforts.

(a) HUD may terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with HUD; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or HUD finds, for any reason, that voluntary agreement is not likely to result.

(b) Where the aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, HUD shall terminate conciliation unless the court specifically requests assistance from the Assistant Secretary.

§ 103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.

(a) Except as provided in paragraph (b) of this section and § 103.230(c), nothing that is said or done in the course of conciliation under this party may be made public, used in an investigation, or used as evidence in a subsequent administrative hearing under Part 104 or in civil actions under Title VIII of the Fair Housing Act, without the written consent of the persons concerned.

(b) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purpose of the Fair Housing Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the Assistant Secretary may publish tabulated descriptions of the results of all conciliation efforts.

§ 103.335 Review of compliance with conciliation agreements.

HUD may, from time to time, review compliance with the terms of any conciliation agreement. Whenever HUD has reasonable cause to believe that a respondent has breached a conciliation agreement, the General Counsel shall refer the matter to the Attorney General with a recommendation for the filing of a civil action under section 814(b)(2) of the Fair Housing Act for the enforcement of the terms of the conciliation agreement.

Subpart F—Issuance of Charge

§103.400 Reasonable cause determination.

(a) If a conciliation agreement under § 103.310 has not been executed by the complainant and the respondent, and approved by the Assistant Secretary, the General Counsel, within the time limits set forth in paragraph (c) of this section below, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination shall be based on all facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise, disclosed during the investigation. In making the reasonable cause determination, the General Counsel shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in Federal court.

(1) If the General Counsel determines that reasonable cause exists, the General Counsel shall immediately issue a charge under § 103.405 on behalf of the

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aggrieved person, unless the matter involves the legality of any State or local zoning or other land use law or ordinance. If the General Counsel determines that the matter involves local zoning or land use laws or ordinances, the General Counsel shall immediately refer the matter to the Attorney General for appropriate action under section 814(b)(1) of the Fair Housing Act, and shall notify the aggrieved person and the respondent of this action by certified mail or personal service.

(2) If the General Counsel determines that no reasonable cause exists, the General Counsel shall dismiss the complaint, notify the aggrieved person and the respondent of the dismissal by certified mail or personal service and make public disclosure of the dismissal.

(b) The General Counsel may not issue a charge under paragraph (a) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the General Counsel shall so notify the aggrieved person and the respondent by certified mail or personal service.

(c)(1) The General Counsel shall make a reasonable cause determination within 100 days after the filing of the complaint (or where the Assistat Secretary has reactivated a complaint, within 100 days after service of the notice of reactivation under § 103.115), unless it is impracticable to do so.

(2) If the General Counsel is unable to make the determination within the time limits specified in pragraph (c)(1), HUD will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

§ 103.405 Issuance of charge.

(a) A charge:

(1) Shall consist of a short and plain statement of the facts upon which the General Counsel has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) Shall be based on the final investigative report; and

(3) Need not be limited to facts or grounds that are alleged in the complaint filed under Subpart B of this part.

(b) Within three days after the issuance of the charge, the General Counsel shall:

(1) Obtain a time and place for hearing from the Chief Docket Clerk of the Office of Administrative Law Judges;

(2) File the charge along with the notifications described in § 104.410(b) with Office of Administrative Law Judges;

(3) Serve the charge and notifications in accordance with § 104.410(c); and

(4) Notify the Assistant Secretary of the filing of the charge.

§ 103.410 Election of administrative proceeding or civil action.

(a) If a charge is issued under § 103.405, a complainant (including the General Counsel, if HUD filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding under Part 104, to have the claims asserted in the charge decided in a civil action under section 812(o) of the Fair Housing Act.

(b) The election must be made not later than 20 days after the receipt of service of the charge, or in the case of the General Counsel, not later than 20 days after service. The notice of the election must be filed with the Chief Docket Clerk in the Office of Administrative Law Judges and served on the General Counsel, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification will be filed and served in accordance with the procedures established under Part 104.

(c) If an election is not made under this section, the General Counsel will maintain an administrative proceeding based on the charge in accordance with the procedures under Part 104.

(d) If an election is made under this section, the General Counsel shall promptly notify and authorize the Attorney General to commence and maintain a civil action seeking relief under section 812(o) of the Fair Housing Act on behalf of the aggrieved person in an appropriate United States District Court. Such notification and authorization shall include transmission of the file in the case, including a copy of the final investigative report and the charge, to the Attorney General.

(e) The General Counsel shall be available for consultation concerning any legal issues raised by the Attorney General regarding how best to proceed in the event that commencement of a civil action would implicate Rule 11 of the Federal Rules of Civil Procedure.

Subpart G—Other Actions by the Department

§ 103.500 Prompt judicial action.

(a) If at any time following the filing of a complaint, the General Counsel concludes that prompt judicial action is necessary to carry out the purposes of this part or Part 104, the General Counsel will request that the Attorney General commence a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. Before making the determination that prompt judicial action is necessary, the General Counsel will consult with the Assistant Attorney General for the Civil Rights Division. The commencement of a civil action by the Attorney General under this section will not affect the initiation or continuation of proceedings under this part or administrative proceedings under Part 104.

(b) If the General Counsel has reason to believe that a basis exists for the commencement of proceedings under section 814(a) of the Fair Housing Act (Pattern or Practice Cases), proceedings under section 814(c) of the Fair Housing Act (Enforcement of Subpoenas), or proceedings by any governmental licensing or supervisory authorities, the General Counsel will transmit the information upon which that belief is based to the Attorney General and to other appropriate authorities.

§ 103.510 Other action by HUD.

In addition to the actions described in § 103.500, HUD may pursue one or more of the following courses of action:

(a) Refer the matter to the Attorney General for appropriate action (e.g., enforcement of criminal penalties under section 811(c) of the Act).

(b) Take appropriate steps to initiate proceedings leading to the debarment of the respondent under 24 CFR Part 24, or initiate other actions leading to the imposition of administrative sanctions where HUD determines that such actions are necessary to the effective operation and administration of Federal programs or activities.

(c) Take appropriate steps to initiate proceedings under:

(1) 24 CFR Part 1, implementing Title VI of the Civil Rights Act of 1964;

(2) 24 CFR 570.912, implementing section 109 of the Housing and Community Development Act of 1974;

(3) 24 CFR Part 8, implementing section 504 of the Rehabilitation Act of 1973; or

(4) 24 CFR Part 107, implementing Executive Order No. 11063.

(d) Inform any other Federal, State or local agency with an interest in the enforcement of respondent's obligations with respect to nondiscrimination in housing.

5. A new Part 104 would be added to read as follows:

PART 104—ADMINISTRATIVE PROCEEDINGS UNDER SECTION 812 OF THE FAIR HOUSING ACT

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104.30 Time computations.
104.40 Service and filing.

Subpart B—Administrative Law Judge

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104.590 Subpoenas.

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Subpart I—Dismissals and Decisions

104.900 Dismissal.
104.910 Initial decision of administrative law judge.
104.920 Service of initial decision.
104.925 Resolution of charge.
104.930 Final decision.
104.935 Action upon issuance of final decision.
104.940 Attorney's fees and costs.

Subpart J—Judicial Review and Enforcement of Final Decision

104.950 Judicial Review of final decision.
104.955 Enforcement of final decision.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Information

§ 104.10 Scope of rules.

(a) *Applicability.* This part contains the rules of practice and procedure established by the Department of Housing and Urban Development for administrative proceedings before an Administrative Law Judge adjudicating the claims asserted in a charge issued under Part 103, where no party—the complainant, the respondent, or an aggrieved party—elects to have the claims decided in a civil action under section 812(o) of the Fair Housing Act. The provisions of this part do not apply to complaints processed under Part 105.

(b) *General application of rules.* Hearings under this subpart shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(c) *Conduct of proceedings.* The Department will reasonably accommodate persons with disabilities who are participants in the hearing process or interested members of the general public.

§ 104.20 Definitions.

Aggrieved person includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that he or she will be injured by a discriminatory housing practice that is about to occur.

Attorney General means the Attorney General of the United States.

Charge means the statement of facts issued under § 103.405 upon which HUD has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

Complainant means the person (including the Assistant Secretary for Fair Housing and Equal Opportunity) who filed the complaint under Part 103 of this title.

Complaint means a complaint filed under Part 103 of this title.

Discriminatory housing practice means an act that is unlawful under Part 100 of this title.

Fair Housing Act means Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–3620, as amended by the Fair Housing Amendments Act of 1988.

General Counsel means the General Counsel of HUD.

Hearing means that part of an administrative proceeding that involves the submission of evidence, either by oral presentation or written submission, and includes the submission of briefs and oral arguments on the evidence and applicable law.

HUD means the United States Department of Housing and Urban Development.

Party means a person or agency named or admitted as a party to a proceeding. Party includes an aggrieved person who intervenes under § 104.430.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title II of the United States Code, receivers, fiduciaries governmental entities, banks, building and loan associations, or other firms or enterprises.

Personal service means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served.

Prevailing party has the same meaning as the term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

Respondent means the person accused in a charge of a discriminatory housing practice.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

§ 104.30 Time computations.

(a) *In general.* In computing time under this part, the time period shall begin the day following the act, event, or default and include the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the Federal Government, in whch case the time period includes the next

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business day. When the prescribed time period is seven days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Modification of time periods.* Except for time periods required by statute, the administrative law judge may enlarge or reduce any time period required under this part where necessary to avoid prejudicing the public interest or the rights of the parties.

(c) *Entry of orders.* In computing any time period involving the date of the issuance of an order or decision by an administrative law judge, the date of issuance shall be the date the order or decision is served by the Chief Docket Clerk.

(d) *Computation of time for delivery by mail.*

(1) Documents shall not be considered filed until received by the Chief Docket Clerk. However, when documents are filed by mail, three days shall be added to the prescribed time period.

(2) Service is effected at the time of mailing.

(3) When a party has the right or is required to take an action within a prescribed period after the service of a document upon the party, and the document is served by mail, three days shall be added to the prescribed period.

§ 104.40 Service and filing.

(a) *Generally.* Copies of all filed documents shall be served on all parties of record. All filed documents shall clearly designate the docket number, if any, and title of the proceeding. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, Room 2158, 451 Seventh Street, SW., Washington, DC 20410.

(b) *By parties.* Parties shall file all documents with the Office of Administrative Law Judges with a copy to all other parties of record. Service of documents upon any party may be made by personal service or by mailing a copy to the last known address. When a party is represented by an attorney, service shall be made upon the attorney. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* The Office of Administrative Law Judges shall serve all notices, order, decisions and all other documents by mail to the last known address.

Subpart B—Administrative Law Judge

§ 104.100 Designation.

Proceedings under this part shall be presided over by an administrative law judge appointed under 5 U.S.C. 3105. The presiding administrative law judge shall be designated by the Chief Administrative Law Judge at HUD.

§ 104.110 Authority.

The administrative law judge shall have all powers necessary to the conduct of fair and impartial hearings including, but not limited to, the power:

(a) To conduct hearings in accordance with this part.

(b) To administer oaths and affirmations and examine witnesses.

(c) To issue subpoenas in accordance with § 104.590.

(d) To rule on offers of proof and receive evidence.

(e) To take depositions or have depositions taken when the ends of justice would be served.

(f) To regulate the course of the hearing and the conduct of parties and their counsel.

(g) To hold conferences for the settlement or simplification of the issues by consent of the parties.

(h) To dispose of motions, procedural requests, and similar matters.

(i) To make initial decisions as described under Subpart I of this Part.

(j) To exercise such powers vested in the Secretary as are necessary and appropriate for the purpose of the hearing and conduct of the proceeding.

§ 104.120 Disqualification.

(a) *Disqualification.* If an administrative law judge finds that there is a basis for his or her disqualification in a proceeding, the administrative law judge shall withdraw from the proceeding. Withdrawal is accomplished by entering a notice in the record and by providing a copy of the notice to the Chief Administrative Law Judge.

(b) *Motion for recusal.* If a party believes that the presiding administrative law judge should be disqualified in a proceeding for any reason, the party may file a motion to recuse with the administrative law judge. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The administrative law judge shall rule on the motion. If the administrative law judge denies the motion, the administrative law judge shall incorporate a written statement of the reasons for the denial in the record.

(c) *Redesignation of administrative law judge.* If an administrative law judge is disqualified, the Chief Administrative Law Judge shall designate another administrative law judge to preside over further proceedings.

§ 104.130 Ex parte communications.

(a) *General.* An ex parte communication is any direct or indirect communication concerning the merits of a pending proceeding, made by a party in the absence of any other party, to the administrative law judge assigned to the proceeding and which was neither on the record nor on reasonable prior notice to all parties. Ex parte communications do not include communications made for the sole purpose of scheduling hearings, requesting extensions of time, or requesting information on the status of cases.

(b) *Prohibition.* Ex parte communications are prohibited.

(c) *Procedure upon receipt.* If the administrative law judge receives an ex parte communication that the administrative law judge knows or has reason to believe is prohibited, the administrative law judge shall promptly place the communication, or a written statement of the substance of the communication, in the record and shall furnish copies to all parties. Unauthorized communications shall not be taken into consideration in deciding any matter in issue. Any party making a prohibited ex parte communication may be subject to sanctions including, but not limited to, exclusion from the proceeding, and an adverse ruling on the issue that is the subject of the prohibited communication.

§ 104.140 Separation of functions.

No officer, employee, or agent of the Federal government engaged in the performance of investigative, conciliatory, or prosecutorial functions in connection with the proceeding shall, in that proceeding or any factually related proceeding under this part, participate or advise in the decision of the administrative law judge, except as a witness or counsel during the proceedings.

Subpart C—Parties

§ 104.200 In general.

(a) *Parties.* Parties to the proceeding include:

(1) HUD. HUD files the charge under § 103.405 of this title seeking appropriate relief for an aggrieved party and vindication of the public interest.

(2) The respondent. The respondent is the person named in the charge issued under § 103.405 of this title against whom relief is sought.

(3) Intervenors. Any aggrieved person may intervene as a party to the proceeding. No other intervention will be permitted.

(b) *Rights of parties.* Each party may appear in person, be represented by counsel, examine or cross-examine witnesses, introduce documentary or other relevant evidence into the record, and request the issuance of subpoenas.

(c) *Amicus curiae.* Briefs of amicus curiae may be permitted at the discretion of the administrative law judge. Such participants are not parties to the proceeding.

§ 104.210 Representation.

(a) *Representation of HUD.* HUD is represented by the General Counsel.

(b) *Representation of other parties.* Other parties may be represented as follows:

(1) Individuals may appear on their own behalf.

(2) A member of a partnership may represent the partnership.

(3) An officer of a corporation, trust or association may represent the corporation, trust or association.

(4) An officer or employee of any governmental unit, agency or authority may represent that unit, agency or authority.

(5) An attorney admitted to practice before a Federal Court or the highest court in any State. The attorney's representation that he or she is in good standing before any of these courts is sufficient evidence of the attorney's qualifications under this section, unless otherwise ordered by the administrative law judge.

(c) *Notice of appearance.* Each attorney or other representative of a party shall file a notice of appearance. The notice must indicate the party on whose behalf the appearance is made. Any individual acting in a representative capacity may be required by the administrative law judge to demonstrate authority to act in that capacity.

(d) *Withdrawal.* An attorney or other representative of a party must file a written notice of intent before withdrawing from participation in the proceeding.

§ 104.220 Standards of Conduct.

(a) *In general.* All persons appearing in proceedings under this part shall act with integrity and in an ethical manner.

(b) *Exclusion.* The administrative law judge may exclude parties or their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violations of the prohibitions against ex parte communications. If an attorney is suspended or barred from participation in a proceeding by an administrative law judge, the administrative law judge shall include in the record the reasons for the action. An attorney who is suspended or barred from participation may appeal to the Chief Administrative Law Judge. The proceeding shall not be delayed or suspended pending disposition on the appeal, except that the administrative law judge shall suspend the proceeding for a reasonable time to enable the party to obtain another attorney.

Subpart D—Pleadings and motions

§ 104.400 In general.

(a) *Form.* Every pleading, motion, brief, or other document shall contain a caption setting forth the title of the proceeding, the docket number assigned by the Office of Administrative Law Judges, and the designation of the type of document (*e.g.*, charge, answer or motion to dismiss).

(b) *Signature.* Every pleading, motion, brief, or other document filed by a party shall be signed by the party, the party's representative, or the attorney representing the party, and must include the signer's address and telephone number. The signature constitutes a certification that the signer has read the document; that to the best of the signer's knowledge, information and belief there is good ground to support the document; and that it is not interposed for delay.

(c) *Timely filing.* The administrative law judge may refuse to consider any motion or other pleading that is not filed in a timely fashion and in compliance with this part.

§ 104.410 The charge.

(a) *Filing and service.* Within three days after the issuance of a charge under § 103.405, the General Counsel shall file the charge with the Chief Docket Clerk in the Office of Administrative Law Judges and serve copies (with the additional information required under paragraph (b) of this section) on the respondent and the aggrieved person on whose behalf the complaint was filed.

(b) *Contents.* The charge shall consist of a short and plain statement of the facts upon which the General Counsel has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The following notifications shall be served with the charge:

(1) The notice shall state that a complaint (including HUD, if HUD filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, in lieu of an administrative proceeding under this part. The notice shall state that the election must be made not later than 20 days after the receipt of the service of the charge. Where HUD is the complainant, the General Counsel must make the election not later than 20 days after the service of the charge. The notice shall state that the notification of the election must be served on the Chief Docket Clerk in the Office of Administrative Law Judges, the respondent, the aggrieved party on whose behalf the complaint was filed, and the General Counsel.

(2) The notice shall state that if an election is made under paragraph (b)(1) to use the administrative procedure:

(i) The parties will have an opportunity for a hearing at a date and place specified in the notice.

(ii) The respondent will have an opportunity to file an answer to the charge within 30 days of the date of service of the charge.

(iii) The aggrieved person may intervene as a party to the administrative proceeding within 30 days of the date of service of the charge.

(iv) All discovery must be concluded 15 days before the date set for hearing.

§ 104.420 Answer to charge.

Within the 30 days after the service of the charge, a respondent contesting material facts alleged in a charge or contending that the respondent is entitled to judgment as a matter of law shall file an answer to the charge. An answer shall include:

(a) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny, each allegation made in the charge. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted.

(b) A statement of each affirmative defense and a statement of facts supporting each affirmative defense.

§ 104.430 Request for intervention.

Within 30 days after the service of the charge, any aggrieved person may file a request for intervention and participate as a party to the proceeding. No other intervention will be permitted.

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§ 104.440 Amendments and supplemental pleadings.

(a) *Amendments.* (1) By right. HUD may amend its charge once as a matter of right prior to filing of the answer.

(2) By leave. Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the administrative law judge may allow amendments to pleadings upon motion of the party.

(3) Conformance to the evidence. When issues not raised by the pleadings are reasonably within the scope of the original charge and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings and amendments may be made as necessary to make the pleading conform to evidence.

(b) *Supplemental pleadings.* The administrative law judge may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

§ 104.450 Motions.

(a) *Motions.* Any application for an order or other request shall be made by a motion which, unless made during an appearance before the administrative law judge, shall be made in writing. Motions or requests made during an appearance before the administrative law judge shall be stated orally and made a part of the transcript. All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.

(b) *Answers to written motions.* Within five days after a written motion is served, any party to the proceeding may file an answer in support of, or in opposition to the motion. Unless otherwise ordered by the administrative law judge, no further responsive documents may be filed.

(c) *Oral argument.* The administrative law judge may order oral argument on any motion.

Subpart E—Discovery

§ 104.500 Discovery.

(a) *In general.* This subpart governs discovery in aid of administrative proceedings under this part. Except for time periods stated in these rules, to the extent that these rules conflict with discovery procedures in aid of civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) *Scope.* The parties are encouraged to engage in voluntary discovery procedures. Discovery shall be conducted as expeditiously and inexpensively as possible, consistent with the needs of all parties to obtain relevant evidence. Unless otherwise ordered by the administrative law judge, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of documents or persons having knowledge of any discoverable matter. It is not grounds for objection that information sought will not be admissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Methods.* Parties may obtain discovery by one or more of the following methods:

(1) Deposition upon oral examination or written questions.

(2) Written interrogatories.

(3) Requests for the production of documents or other evidence, for inspection and other purposes, and physical and mental examinations.

(4) Requests for admissions.

(d) *Frequency and sequence.* Unless otherwise ordered by the administrative law judge, the frequency or sequence of these methods is not limited.

(e) *Completion of discovery.* All discovery shall be completed 15 days before the date scheduled for hearing.

§ 104.510 Depositions.

(a) *In general.* Depositions may be taken upon oral examination or upon written interrogatory before any person having the power to administer oaths.

(b) *Notice.* Any party desiring to take the deposition of a witness shall indicate to the witness and to all parties the time and place of the deposition, the name and post office address of the person before whom the deposition is to be taken, the name and address of the witness, and the subject matter of the testimony of the witness. Notice of the taking of a deposition shall be given not less than five days before the deposition is scheduled. The attendance of a witness may be compelled by subpoena under § 104.590.

(c) *Procedure at deposition.* Each witness deposed shall be placed under oath or affirmation, and other parties shall have the right to cross-examine. The questions propounded and all answers and objections made to the propounded questions shall be reduced to writing; read by or to, and subscribed by, the witness; and certified by the person before whom the deposition was taken.

(d) *Objections.* During a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party, or improper questioning. Upon the request for suspension, the deposition will be adjourned. The objecting party or deponent must immediately move the administrative law judge for a ruling on the objections. The administrative law judge may then limit the scope or manner of taking the deposition.

(e) *Payment of costs of deposition.* The party requesting the deposition shall bear all costs of the deposition.

§ 104.520 Use of deposition at hearings.

(a) *In general.* At the hearing, any part or all of a deposition, so far as admissible under the Federal Rules of Evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice of the taking of the deposition, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of expert witnesses may be used by any party for any purpose, unless the administrative law judge rules that such use is unfair or a violation of due process.

(3) The deposition of a party or of anyone who at the time of the taking of the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association that is a party, may be used by any other party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the administrative law judge finds:

(i) That the witness is dead;

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment;

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Whenever exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of

presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(5) If a part of a deposition is offered in evidence by a party, any other party may require the party to introduce all of the deposition that is relevant to the part introduced. Any party may introduce any other part of the deposition.

(6) Substitution of parties does not affect the right to use depositions previously taken. If a proceeding has been dismissed and another proceeding involving the same subject matter is later brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former proceeding may be used in the latter proceeding.

(b) *Objections to admissibility.* Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part of a deposition for any reason that would require the exclusion of the evidence if the witness were present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the basis of the objection is one which might have been obviated or removed if presented at the time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection is made at the taking of the deposition.

(3) Objections to the form of written interrogatories are waived unless served in writing upon the party propounding the interrogatories.

§ 104.530 Written interrogatories.

(a) *Written interrogatories to parties.* Any party may serve on any other party written interrogatories to be answered by the party served. If the party served is a public or private corporation, a partnership, an association, or a governmental agency, the interrogatories may be answered by any authorized officer or agent who shall furnish such information as may be available to the party.

(b) *Responses to written interrogatories.* Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless the party objects to the interrogatory. If a party objects to an interrogatory, the response shall state the reasons for the objection in lieu of an answer. The answer and objections shall be signed by the person making them, except that objections may be signed by the counsel for the party. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties within 15 days after service of the interrogatories.

§ 104.540 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examinations.

(a) *In general.* Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on the party's behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served;

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, photographing, testing, or other purposes stated in paragraph (a)(1) of this section; or

(3) Submit to a physical or mental examination by a physician.

(b) *Contents of request.* The request shall:

(1) Set forth the items to be inspected by individual item or by category of items;

(2) Describe each item or category with reasonable particularity;

(3) Specify a reasonable time, place and manner for making the inspection and performing the related acts; and

(4) Specify the time, place, manner, conditions, and scope of the physical or mental examination, and the person or persons who will make the examination. A report of the examining physician shall be made in accordance with Rule 35(b) of the Federal Rules of Civil Procedure.

(c) *Response to request.* Within 15 days of the service of the request, the party upon whom the request is served shall serve a written response on the party submitting the request. The response shall state, with regard to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made to the request in whole or in part. If an objection is made, the response must state the reasons for the objection

§ 104.550 Admissions.

(a) *Request for admissions.* A party may serve on any other party a written request for the admission of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) *Response to request.* (1) Each matter for which an admission is requested is admitted unless, within 15 days after service of the request, the party to whom the request is directed serves on the requesting party:

(i) A written statement specifically denying the relevant matters for which an admission is requested;

(ii) A written statement setting forth in detail why the party cannot truthfully admit or deny the matters; or

(iii) Written objections to the request alleging that the matters are privileged or irrelevant, or that the request is otherwise improper.

(2) The party to whom the request is directed may not give lack of information or knowledge as a reason for failure to admit or deny, unless the party states that it has made a reasonable inquiry and that the information known or readily obtainable is insufficient to enable the party to admit or deny.

(c) *Sufficiency of response.* The party requesting admissions may move for a determination of the sufficiency of the answers or objections. Unless the administrative law judge determines that an objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, the administrative law judge may order either that the matter is admitted or that an amended answer be served.

(d) *Effect of admission.* Any matter admitted under this section is conclusively established unless, upon the motion of a party, the administrative law judge permits the withdrawal or amendment of the admission. Any admission made under this section is made for the purposes of the pending proceeding only, is not an admission by the party for any other purposes, and may not be used against the party in any other proceeding.

(e) *Service of requests.* Each request for admission and each written response must be served on all parties and filed with the Office of Administrative Law Judges.

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§ 104.560 Supplementation of responses.

(a) *In general.* A party who responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information acquired after the response was made except:

(1) A party is under a duty to timely supplement responses with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty to timely amend a previous response if the party later obtains information upon the basis of which:

(i) The party knows the response was incorrect when made; or

(ii) The party knows the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

(b) *By order or agreement.* A duty to supplement responses may be imposed by order of the administrative law judge or by agreement of the parties.

§ 104.570 Protective orders.

Upon motion of a party or a person from whom discovery is sought or in accordance with § 104.580(c), the administrative law judge may make appropriate orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense as a result of the requested discovery request. The order may direct that:

(a) The discovery may not be had;

(b) The discovery may be had only on specified terms and conditions, including a designation of time and place for discovery;

(c) The discovery may be had by a method of discovery other than that selected by the party seeking discovery;

(d) Certain irrelevant matters may not be the subject of discovery, or that the scope of discovery be limited to certain matters;

(e) Discovery may be conducted with no one present other than persons designated by the administrative law judge;

(f) A trade secret or other confidential research, development or commercial information may not be disclosed, or may be disclosed only in a designated way; or

(g) To protect privileged matters, the administrative law judge may take such other action permitted under § 104.740.

§ 104.580 Failure to make or cooperate in discovery.

(a) *Motion to compel discovery.* If a deponent fails to answer a question propounded, or a party upon whom a request is made under §§ 104.530 through 104.550 fails to respond adequately, objects to a request, or fails to permit inspection as requested, the discovering party may move the administrative law judge for an order compelling a response or an inspection in accordance with the request. The motion shall:

(1) State the nature of the request;

(2) Set forth the response or objection of the party upon whom the request was served;

(3) Present arguments supporting the motion; and

(4) Attach copies of all relevant discovery requests and responses.

(b) *Evasive or incomplete answers.* For the purposes of this section, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

(c) *Administrative law judge ruling.* In ruling on a motion under this section, the administrative law judge may enter an order compelling a response or an inspection in accordance with the request, may issue sanctions under paragragh (d) of this section, or may enter a protective order under § 104.570.

(d) *Sanctions.* If a party fails to comply with an order (including an order for taking a deposition, the production of evidence within the party's control, a request for admission, or the production of witnesses), the administrative law judge may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought;

(4) Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or

(5) Take such order action as may be appropriate.

Subpart F—Subpoenas

§ 104.590 Subpoenas.

(a) *In general.* This section governs the issuance of subpoenas in administrative proceedings under this part. Except for time periods stated in these rules, to the extent that this rule conflicts with procedures for the issuance of subpoenas in civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) *Issuance of subpoena.* Upon the written request of a party, the Chief Administrative Law Judge or the presiding administrative law judge may issue a subpoena requiring:

(1) The attendance of a witness for the purpose of giving testimony at a deposition;

(2) The attendance of a witness for the purpose of giving testimony at a hearing; and

(3) The production of relevant books, papers, documents or tangible things.

(c) *Time of request.* Requests for subpoenas in aid of discovery must be submitted in time to permit the conclusion of discovery 15 days before the date scheduled for the hearing. If a request for subpoena of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the Chief Administrative Law Judge or the presiding administrative law judge, as appropriate.

(d) *Service.* A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service on a person shall be made by delivering a copy of the subpoena to the person and by tendering witness fees and mileage to that person. When the subpoena is issued on behalf of HUD, witness fees and mileage need not be tendered with the subpoena.

(e) *Amount of witness fees and mileage.* A witness summoned by a subpoena issued under this part is entitled to the same witness and mileage fees as a witness in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena shall be paid by the party requesting the issuance of the subpoena, or where the administrative law judge determines that a party is unable to pay the fees, the fees shall be paid by the Department.

(f) *Motion to quash or limit subpoena.* Upon a motion by the person served with a subpoena or by a party, made within five days of the service of the subpoena (but in any event not less than the time specified in the subpoena for compliance), the administrative law judge may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or

(2) Condition denial of the motion upon the advancement, by the party on whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed books, papers or documents.

Where the circumstances require, the administrative law judg may act upon such a motion at any time after a copy of the motion has been served upon the party on whose behalf the subpoena was issued.

(g) *Failure to comply with subpoena.* If a person fails to comply with a subpoena issued under this section, the party requesting the subpoena may refer the matter to the Attorney General for enforcement in appropriate proceedings under section 814(c) of the Fair Housing Act.

Subpart G—Prehearing Procedures

§ 104.600 Prehearing statements.

(a) *In general.* Before the commencement of the hearing, the administrative law judge may direct parties to file prehearing statements.

(b) *Contents of statement.* The prehearing statement must state the name of the party or parties presenting the statement and, unless otherwise directed by the administrative law judge, briefly set forth the following:

(1) Issues involved in the proceeding.

(2) Facts stipulated by the parties and a statement that the parties have made a good effort to stipulate to the greatest extent possible.

(3) Facts in dispute.

(4) Witnesses (together with a summary of the testimony expected) and exhibits to be presented at the hearing.

(5) A brief statement of applicable law.

(6) Conclusions to be drawn.

(7) Estimated time required for presentation of the party's case.

(8) Such other information as may assist in the disposition of the proceeding.

§ 104.610 Prehearing conference.

(a) *In general.* Before the commencement or during the course of the hearing, the administrative law judge may direct the parties to participate in a conference to expedite the hearing.

(b) *Matters considered.* At the conference, the following matters may be considered:

(1) Simplification and clarification of the issues.

(2) Necessary amendments to the pleadings.

(3) Stipulations of fact and of the authenticity, accuracy, and admissibility of documents.

(4) Limitations on the number of witnesses.

(5) Negotiation, compromise, or settlement of issues.

(6) The exchange of proposed exhibits.

(7) Matters of which official notice will be requested.

(8) A schedule for the completion of actions discussed at the conference.

(9) Such other information as may assist in the disposition of the proceeding.

(c) *Conduct of conference.* The conference may be conducted by telephone, correspondence or personal attendance. Conferences, however, shall generally be conducted by a conference call, unless the administrative law judge determines that this method is impracticable. The administrative law judge shall give reasonable notice of the time, place and manner of the conference.

(d) *Record of conference.* Unless otherwise directed by the administrative law judge, the conference will not be stenographically recorded. The administrative law judge will reduce the actions taken at the conference to a written order or, if the conference takes place less than seven days before the beginning of the hearing, may make a statement on the record summarizing the actions taken at the conference.

§ 104.620 Settlement negotiations before a settlement judge.

(a) *Appointment of settlement judge.* The administrative law judge, upon the motion of a party or upon his or her own motion, may request the Chief Administrative Law Judge to appoint another administrative law judge to conduct settlement negotiations. The order appointing the settlement judge may confine the scope of settlement negotiations to specified issues. The order shall direct the settlement judge to report to the Chief Administrative Law Judge within specified time periods.

(b) *Duties of settlement judge.* (1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties and assess the practicalities of a potential settlement.

(2) The settlement judge shall report to the Chief Administrative Law Judge describing the status of the settlement negotiations, evaluating settlement prospects, and recommending the termination or continuation of the settlement negotiations.

(c) *Termination of settlement negotiations.* Settlement negotiations shall terminate upon the order of the Chief Administrative Law Judge issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the commencement of the hearing.

Subpart H—Hearing Procedures

§ 104.700 Date and place of hearing.

(a) *Date.* The hearing shall commence not later than 120 days following the issuance of the charge under § 103.405, unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the administrative law judge shall notify HUD, the aggrieved persons on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay.

(b) *Place.* The hearing will be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) *Notification of time and place for hearing.* The charge issued under § 103.405 will specify the time, date and place for the hearing. The administrative law judge may change the time, date or place of the hearing, or may temporarily adjourn or continue a hearing for good cause shown. If such a change is made or the hearing is temporarily adjourned, the administrative law judge shall give the parties at least five days notice of the revised time, date and place for the hearing, unless otherwise agreed by the parties.

§ 104.710 Conduct of hearings.

The hearing shall be conducted in accordance with the Administrative Procedure Act (5 U.S.C. 551–559).

§ 104.720 Waiver of right to appear.

If all parties waive their right to appear before the administrative law judge or to present evidence and arguments, it is not necessary for the administrative law judge to conduct an oral hearing. Such waivers shall be made in writing and filed with the administrative law judge. Where waivers are submitted by all parties, the administrative law judge shall make a record of the relevant written evidence submitted by the parties and pleadings submitted by the parties with respect to the issues in the proceeding. These documents shall constitute the evidence in the proceeding and the decision shall be based upon this evidence. Such hearings shall be deemed to commence on the first day that written evidence may be submitted for the record.

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§ 104.730 Evidence.

The Federal Rules of Evidence apply to the presentation of evidence in hearings under this part.

§ 104.740 In camera and protective orders.

The administrative law judge may limit discovery or the introduction of evidence, or issue such protective or other orders necessary to protect privileged communications. If the administrative law judge determines that information in documents containing privileged matters should be made available to a party, the administrative law judge may order the preparation of a summary or extract of the original. The summary or abstract may be admitted as evidence in the record.

§ 104.750 Exhibits.

(a) *Identification.* All exhibits offered into evidence shall be numbered sequentially and marked with a designation identifying the party offering the exhibit.

(b) *Exchange of exhibits.* One copy of each exhibit offered into evidence must be furnished to each of the parties and to the administrative law judge. If the administrative law judge does not fix a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time before the commencement of the hearing.

§ 104.760 Authenticity.

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be admitted, unless a party files a written objection to the exhibit before the commencement of the hearing. Upon a clear showing of good cause for failure to file such a written objection, the administrative law judge may permit the party to challenge the authenticity.

§ 104.770 Stipulations.

The parties may stipulate to any pertinent facts by oral agreement at the hearing or by written agreement at any time. Stipulations may be submitted into evidence at any time before the end of the hearing. When received into evidence, the stipulation is binding on the parties.

§ 104.780 Record of hearing.

(a) *Hearing record.* All oral hearings shall be recorded and transcribed by a reporter designated by, and under the supervision of, the administrative law judge. The original transcript shall be a part of the record and shall constitute the sole official transcript. All exhibits introduced as evidence shall be marked for identification and incorporated as a part of the record. Transcripts may be obtained by the parties and by the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion of a party. Motions for correction must be submitted within five days of the receipt of the transcript. Corrections of the official transcript will be permitted only where errors of substance are involved and upon the approval of the administrative law judge.

§ 104.790 Arguments and briefs.

(a) *Arguments.* Following the submission of evidence at an oral hearing, the administrative law judge may hear oral arguments. The administrative law judge may limit the time permitted for such arguments to avoid unreasonable delay.

(b) *Submission of written briefs.* The administrative law judge may permit the submission of written briefs following the adjournment of the oral hearing. Written briefs shall be simultaneously filed by all parties and shall be due not later than 30 days following the adjournment of the oral hearing.

§ 104.800 End of hearing.

(a) *Oral hearings.* Where there is an oral hearing, the hearing ends on the day of the adjournment of the oral hearing or, where written briefs are permitted, on the date that the written briefs are due.

(b) *Hearing on written record.* Where the parties have waived an oral hearing, the hearing ends on the date set by the administrative law judge as the final date for the receipt of submissions by the parties.

§ 104.810 Receipt of evidence following hearing.

Following the end of the hearing, no additional evidence may be accepted into the record, except with the permission of the administrative law judge. The administrative law judge may receive additional evidence upon a determination that new and material evidence was not readily available before the end of the hearing, the evidence has been timely submitted, and its acceptance will not unduly prejudice the rights of the parties. However, the administrative law judge shall include in the record any motions for attorney's fees (including supporting documentation), and any approved corrections to the transcripts.

Subpart I—Dismissals and Decisions

§ 104.900 Dismissal.

(a) *Election of judicial determination.* If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, the administrative law judge shall dismiss the administrative proceeding.

(b) *Effect of a civil action on administrative proceeding.* An administrative law judge may not continue an administrative proceeding under this part regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by an aggrieved person under an Act of Congress or a State law seeking relief with respect to that discriminatory housing practice. If such a trial is commenced, the administrative law judge shall dismiss the administrative proceeding. The commencement of a civil action for appropriate temporary or preliminary relief under section 810(e) or section 813(c)(1) of the Fair Housing Act does not affect administrative proceedings under this part.

§ 104.910 Initial decision of administrative law judge.

(a) *In general.* Within the time period set forth in paragraph (d) below, the administartive law judge shall issue an intial decision including findings of fact and conclusions of law upon each material issue of fact or law presented on the record. The initial decision of the administrative law judge shall be based on the record of the proceeding.

(b) *Finding against respondent.* If the administrative law judge finds that a respondent has engaged, or is about to engage, in a discriminatory housing practice, the administrative law judge shall issue an initial decision against the respondent and order such relief as may be appropriate. The relief may include, but is not limited to, the following:

(1) The administrative law judge may order the respondent to pay damages to the aggrieved person (including damages caused by humiliation and embarrassment).

(2) The administrative law judge may provide for injunctive or such other equitable relief as may be appropriate. No such order may affect any contract, sale, encumbrance or lease consummated before the issuance of the initial decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge issued under § 104.405.

(3) To vindicate the public interest, the administrative law judge may assess a civil penalty against the respondent.

(i) The amount of the civil penalty may not exceed:

(A) $10,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.

(B) $25,000, if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, and the adjudication was made during the five-year period preceding the date of filing of the charge.

(C) $50,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearings or civil actions permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, and the adjudications were made during the seven-year period preceding the date of the filing of the charge.

(ii) The time periods set forth in paragraph (b)(3)(i)(B) and (C) do not apply if the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged to have committed acts constituting a discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.

(iii) If the administrative law judge determines that more than one respondent has been engaged or is about the engage in a discriminatory housing practice, the administrative law judge may assess a civil penalty, up to the maximum permitted under paragraph (b)(3)(i) and (ii) of this section, against each respondent.

(c) *Finding in favor of respondent.* If the administrative law judge finds that a respondnet has not engaged, and is not about to engage, in a discriminatory housing practice, the administrative law judge shall make an initial decision dismissing the charge.

(d) *Date of issuance.* The administrative law judge shall issue an initial decision within 60 days after the end of the hearing, unless it is impracticable to do so. If the administrative law judge is unable to issue the initial decision within this time period (or within any succeeding 60-day period following the initial 60-day period), the administrative law judge shall notify HUD, the aggrieved person on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay.

§ 104.920 Service of initial decision.

Simultaneously with the issuance of the initial decision, the administrative law judge shall serve the initial decision on the respondent, the aggrieved person on whose behalf the charge was filed, the General Counsel, the Secretary of HUD and any intervenors. The initial decision will include a notice stating that the initial decision will become the final decision of the Department unless the Secretary issues a final decision under § 104.930 within 30 days of the date of issuance of the initial decision.

§ 104.925 Resolution of charge.

At any time before the issuance of a final decision under § 104.930, the parties may submit an agreement resolving the charge. The agreement must be signed by the General Counsel, the respondent, and all aggrieved persons upon whose behalf the charge was issued. The administrative law judge shall accept the agreement by issuing an initial decision based on the agreed findings. The submission of an agreement resolving the charge constitutes a waiver of any right to challenge or contest the validity of a decision entered in accordance with the agreement.

§ 104.930 Final decision.

(a) *Issuance of final decision by Secretary.* The Secretary of HUD may review any finding of fact, conclusion of law, or order contained in the initial decision of the administrative law judge and issue a final decision in the proceeding. The Secretary may affirm, modify or set aside, in whole or in part, the initial decision, or remand the initial decision for further proceedings. The Secretary shall serve the final decision on all parties no later than 30 days from the date of issuance of the initial decision of the administrative law judge. The final decision shall be served on the respondent, the aggrieved person on whose behalf the charge was filed, the General Counsel, and any intervenors.

(b) *No final decision by Secretary.* If the Secretary of HUD does not serve a final decision within the time period described above, the initial decision of the administrative law judge will become the final decision of the Department. For the purposes of this part, such a final decision will be considered to have been issued 30 days following the date of issuance of the initial decision.

(c) *Public disclosure.* HUD shall make public disclosure of each final decision.

§ 104.935 Action upon issuance of a final decision.

(a) *Licensed or regulated businesses.* (1) If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice in the course of a business that is subject to licensing or regulation by a Federal, State or local governmental agency, the General Counsel will notify the governmental agency of the decision by:

(i) Sending copies of the findings of fact, conclusions of law and the final decision to the governmental agency by certified mail; and

(ii) Recommending appropriate disciplinary action to the governmental agency, including, where appropriate, the suspension or revocation of the license of the respondent.

(2) The General Counsel shall notify the appropriate governmental agencies within 30 days after the date of issuance of the final decision, unless a petition for judicial review of the final decision as described in § 104.950 has been filed before the issuance of the notification of the agency. If such a petition has been filed, the General Counsel will provide the notification to the governmental agency within 30 days of the date that the final decision is affirmed upon review. If a petition for judicial review is timely filed following the notification of the governmental agency, the General Counsel will promptly notify the governmental agency of the petition and withdraw his or her recommendation.

(b) *Notification to the Attorney General.* If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice and another final decision including such a finding was issued under this part within the five years preceding the date of issuance of the final decision, the General Counsel shall notify the Attorney General of the decisions by sending a copy of the final decisions in each administrative proceeding.

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§ 104.940 Attorney's fees and costs.

Following the issuance of the final decision under § 104.930, any prevailing party, except HUD, may apply for attorney's fees and costs. The administrative law judge will issue an initial decision awarding or denying such costs. The initial decision will become the final decision of HUD unless the Secretary reviews the initial decision and issues a final decision on fees and costs within 30 days. The recovery of reasonable attorney's fees and costs will be permitted as follows:

(a) If the respondent is the prevailing party: (1) HUD shall be liable for reasonable attorney's fees and costs to the extent provided under the Equal Access to Justice Act (5 U.S.C. 504) and HUD's regulations at 24 CFR Part 14; and (2) an intervenor shall be liable for reasonable attorney's fees and costs only to the extent that the intervenor's participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

(b) To the extent that an intervenor is a prevailing party, the respondent shall be liable for reasonable attorney's fees unless special circumstances make the recovery of such fees and costs unjust.

Subpart J—Judicial Review and Enforcement of Final Decision

§ 104.950 Judicial review of final decision.

(a) *Petition for review.* Any party adversely affected by a final decision under §104.930 may file a petition in the appropriate United States Court of Appeals for review of the decision under section 812(i) of the Fair Housing Act. The petition must be filed within 30 days of the date of issuance of the final decision.

(b) *No petition for review.* If no petition for review is filed under paragraph (a) within 45 days from the date of issuance of the final decision, the findings of facts and final decision shall be conclusive in connection with any petition for enforcement described under § 104.955(a) filed thereafter by the General Counsel, and in connection with any petition for enforcement described under § 104.955(b).

§ 104.955 Enforcement of final decision.

(a) *Enforcement by HUD.* Following the issuance of a final decision under § 104.930, the General Counsel may petition the appropriate United States Court of Appeals for the enforcement of the final decision and for appropriate temporary relief or restraining order in accordance with section 812(j) of the Fair Housing Act.

(b) *Enforcement by others.* If before the expiration of 60 days from the date of issuance of the final decision under § 104.930, no petition for review of the final decision described under § 104.950 has been filed, and the General Counsel has not sought enforcement of the final decision as described in paragraph (a) of this section, any person entitled to relief under the final decision may petition the appropriate United States Court of Appeals for the enforcement of the final decision in accordance with section 812(m) of the Fair Housing Act.

PART 105—FAIR HOUSING

6. The authority citation for Part 15 would be revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

7. In §105.1, paragraph (a) would be revised, paragraph (b) would be redesignated as paragraph (d), and new paragraphs (b) and (c) would be added, to read as follows:

§ 105.1 Purpose.

(a) This part contains the procedures established by the Department of Housing and Urban Development for the investigation and conciliation of complaints under section 810 of the Fair Housing Act, 42 U.S.C. 3610, as it existed before the amendment of the Act by the Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988).

(b)(1) This part applies to:

(i) Complaints filed before or after March 12, 1989 that involve alleged discriminatory housing practices that occurred before March 12, 1989 and are not alleged to have continued after March 12, 1989; and

(ii) Complaints filed before March 12, 1989 that involve alleged discriminatory housing practices that occurred before and continue after March 12, 1989, unless the complainant elects under § 105.81 to proceed under Part 103.

(2) Part 103 contains the procedures established by HUD for the investigation and conciliation of complaints under section 810 of the Act as amended by the Fair Housing Amendments Act of 1988. HUD's regulations governing proceedings before an administrative law judge adjudicating a charge issued under § 103.405 are contained in Part 104, and are not applicable to complaints processed under this Part 105.

(c) The procedures under this part for the investigation and conciliation of complaints will be conducted in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

* * * * *

8. Section 105.81 would be added to read as follows:

§ 105.81 Continuing violations.

If at any time during investigation or conciliation, the Department determines that a complaint involves an alleged discriminatory housing practice that continued after March 12, 1989, the Department shall notify the complainant and provide the complainant with a reasonable opportunity to elect to have the complaint processed under Part 103, in lieu of the procedures under this part. The notice shall describe the procedures available to the complainant under each part and shall be made by certified mail. If such an election is made, HUD shall notify the respondent of the election, and process the complaint under Part 103.

PART 106—FAIR HOUSING ADMINISTRATIVE MEETINGS UNDER THE FAIR HOUSING ACT

9. The authority citation for Part 106 would be revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. Section 106.1 would be revised to read as follows:

§ 106.1 Purpose.

The purpose of this part is to establish procedures for public meetings or conferences that may be used to assist the Assistant Secretary in achieving the aims of the Fair Housing Act for the promotion and assurance of equal opportunity in housing with regard to race, color, religion, sex, handicap, familial status, or national origin, and, specifically, to carry out those responsibilities delegated to him or her by the Secretary of Housing and Urban Development under sections 808(e)(1), (2), and (3), and 809 of the Fair Housing Act.

11. Section 106.2 would be revised to read as follows:

§ 106.2 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development.

(b) "Meeting" means a public meeting or conference held under the authority of the Fair Housing Act and this part.

(c) "Fair Housing Act" means Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3600–3620.

12. Part 109 would be revised to read as follows:

PART 109—FAIR HOUSING ADVERTISING

Sec.
109.5 Policy.
109.10 Purpose.
109.15 Definitions.
109.16 Scope.
109.20 Use of words, phrases, symbols, and visual aids.
109.25 Selective use of advertising media or content.
109.30 Fair housing policy and practices.

Appendix I to Part 109—Fair Housing Advertising

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 109.5 Policy.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of the Fair Housing Act (42 U.S.C. 3600–3620) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, on account of race, color, religion, sex, handicap, familial status, or national origin. Section 804(c) of the Fair Housing Act, 42 U.S.C. 3604(c), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. However, the prohibitions of the act regarding familial status do not apply with respect to "housing for older persons", as defined in section 807(b) of the act.

§ 109.10 Purpose.

The purpose of this part is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish, or cause to be made, printed, or published, advertisements with respect to the sale, rental, or financing the dwellings which are in compliance with the requirements of the Fair Housing Act. These regulations also describe the matters this Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

§ 109.15 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor oganizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

(g) "Handicap" means, with respect to a person—

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment.

This term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (12 U.S.C. 802)). For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite.

(h) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

§ 109.16 Scope.

(a) *General.* This part describes the matters the Assistant Secretary will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of these criteria will be considered by the Assistant Secretary in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(1) *Advertising media.* This part provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the Assistant Secretary in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(2) *Persons placing advertisements.* A failure by persons placing advertisements to comply with the provisions in this part, when found in connection with the investigation of a compaint alleging the making or use of discriminatory advertisements, will be a basis for making a determination of reasonable cause to believe that a violation of section 804 has occurred or is about to occur.

(b) *Affirmative advertising efforts.* Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

§ 109.20 Use of words, phrases, symbols, and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising and convey either overt or tacit discriminatory intent. Their use should, therefore, be avoided in order to eliminate their discriminatory effect. In considering a complaint under the Fair Housing Act, the Assistant Secretary will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the act and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the act is likely to result.

(a) *Words descriptive of dwelling, landlord, and tenants.* White private

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home, Colored home, Jewish home, Hispanic residence, adult building.

(b) *Words indicative of race, color, religion, sex, handicap, familial status, or national origin.*

(1) *Race*—Negro, Black, Caucasin, Oriental, American Indian.

(2) *Color*—White, Black, Colored.

(3) *Religion*—Protestant, Christian, Catholic, Jew.

(4) *National origin*—Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

(5) *Sex*—the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this part shall restrict advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

(6) *Handicap*—crippled, blind, deaf, mentally ill, retraded, impaired, handicapped, physically fit. Nothing in this part restricts the inclusion of information about the availability of accessible housing m advertising of dwellings.

(7) *Familial status*—adults, singles, mature persons. Nothing in this part restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in Part 100 of this title.

(8) *Catch words*—words such as restricted and exclusive should be avoided. Also, words and phrases used in a discriminatory context should be avoided, e.g., "private", "integrated", "traditional", "board approval" or "membership approval".

(c) *Symbols or logotypes.* Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(d) *Colloquialisms.* Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(e) *Directions to real estate for sale or rent (use of maps or written instructions).* Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its inclusion of minorities (signal to whites) should not be used. Specific directions which make reference to a racial or national origin significant area may indicate a preference and should not be used. References to a synagogue, congregation or parish may also indicate a religious preference and should not be used.

(f) *Area (location) description.* Names of facilities which cater to a particular racial, national origin or religious group such as country club or private school designations, or names of facilities which are used exclusively by one sex, should not be used to describe an area.

§ 109.25 Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the Fair Housing Act. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

(a) *Selective geographic advertisements.* Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

(b) *Selective use of equal opportunity slogan or logo.* When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

(c) *Selective use of human models when conducting an advertising campaign.* Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

§ 109.30 Fair Housing policy and practices.

In the investigation of complaints, the Assistant Secretary will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

(a) *Use of Equal Housing Opportunity logotype, statement, or slogan.* All advertisng of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Table I (see appendix) indicates suggested use of the logotype, statement, or slogan and size of logotype. Table II (see appendix) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

(b) *Use of human models.* Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness on the basis of race, color, religion, sex, handicap, familial status, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.

(c) *Coverage of local laws.* Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the coverage of any local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

(d) *Notification of fair housing*—(1) *Employees.* All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental or financing of real estate should provide a printed copy of their nondiscriminatory policy to each employee and officer.

(2) *Clients.* All publishers of advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.

(3) *Publishers' notice.* All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in Table III (see appendix). The notice can include a statement regarding the coverage of any local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

Appendix I to Part 109—Fair Housing Advertising

The following three tables may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising:

Table I

A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan.

In all space advertising (advertising in regularly printed media such as newspapers or magazines) the following standards should be used:

Size of advertisement	Size of logotype in inches
½ page or larger	2 x 2
⅛ page up to ½ page	1 x 1
4 column inches to ⅛ page	½ x ½
Less then 4 column inches	(1)

[1] Do not use.

In any other advertisements, if other logotypes are used in the advertisement, then the Equal Housing Opportunity logo should be of a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, 3 to 5 percent of an advertisement may be devoted to a statement of the equal housing opportunity policy.

In space advertising which is less that 4 column inches (one column 4 inches long or two columns 2 inches long) of a page in size, the Equal Housing Opportunity slogan should be used. Such advertisements may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, religion, sex, handicap, familial status, or national origin.

Table II

Illustrations of Logotype, Statement, and Slogan. Equal Housing Opportunity Logotype:



Equal Housing Opportunity Statement: We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.

Equal Housing Opportunity Slogan: "Equal Housing Opportunity."

Table III

Illustration of Media Notice—Publisher's notice: All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

PART 110—FAIR HOUSING POSTER

13. The authority citation for Part 110 would be revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

14. Section 110.1 would be revised to read as follows:

§ 110.1 Purpose.

The regulations set forth in this part contain the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of the Fair Housing Act, 42 U.S.C. 3604–3606.

15. In § 110.5, paragraphs (b), (e), (g) and (h) would be revised to read as follows:

§ 110.5 Definitions.

* * * * *

(b) "Discriminatory housing practice" means an act that is unlawful under sections 804, 805, 806, or 818 of the Act.

* * * * *

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries.

* * * * *

(g) "Fair housing poster" means the poster prescribed by the Secretary for display by persons subject to sections 804 through 806 of the Act.

(h) "The Act" means the Fair Housing Act (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988), 42 U.S.C. 3600–3620.

* * * * *

16. In § 110.10, paragraph (a) introductory text and paragraph (c) would be revised to read as follows:

§ 110.10 Persons subject.

(a) Except to the extent that paragraph (b) of this section applies, all persons subject to section 804 of the Act, Discrimination in the Sale or Rental of Housing and Other Prohibited Practices, shall post and maintain a fair housing poster as follows:

* * * * *

(c) All persons subject to section 805 of the Act, Discrimination In Residential Real Estate-Related Transactions shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

* * * * *

17. Section 110.15 would be revised to read as follows:

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§ 110.15 Location of posters.

All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services as contemplated by sections 804 through 806 of the Act.

18. In § 110.25, paragraph (a) would be revised to read as follows:

§ 110.25 Description of posters.

(a) The fair housing poster shall be 11 inches by 14 inches and shall bear the following legend:

EQUAL HOUSING OPPORTUNITY

Equal Housing Opportunity

We do business in accordance with the Fair Housing Act.

(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.)

It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status or national origin

- In the sale or rental of housing or residential lots.
- In advertising the sale or rental of housing.
- In the financing of housing.
- In the appraisal of housing.
- In the provision of real estate brokerage services.
- Blockbusting is also illegal.

Anyone who feels he or she has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development, Assistant Secretary for Fair Housing and Equal Opportunity, Washington, DC 20410.

Toll free numbers for filing complaints are: 1-800-424-8590 1-800-543-8294 (TDD) or HUD Region or [Area Office stamp]

* * * * *

19. Part 115 would be revised to read as follows:

PART 115—CERTIFICATION OF SUBSTANTIALLY EQUIVALENT AGENCIES

Sec.
115.1 Purpose.
115.2 Basis of determination.
115.3 Criteria for adequacy of law.
115.3a Criteria for adequacy of law—discrimination because of handicap.
115.4 Performance standards.
115.5 Request for certification.
115.6 Procedure for certification.
115.7 Denial of certification.
115.8 Withdrawal of certification.
115.9 Conferences.
115.10 Consequences of certification.
115.11 Interim referrals.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

§ 115.1 Purpose.

(a) Section 810(f) of the Fair Housing Act, (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Act) provides that: whenever a complaint alleges a discriminatory housing practice within the jurisdiction of a State or local public agency that has been certified by the Secretary as substantially equivalent, the Secretary shall refer the complaint to that certified agency before taking any action with respect to the complaint. Except with the consent of the certified agency, the Secretary, after referral is made, shall take no further action with respect to the complaint unless:

(1) The certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of referral;

(2) The certified agency, having commenced proceedings, fails to carry forward proceedings with reasonable promptness; or

(3) The Secretary determines that the certified agency no longer qualifies for certification.

The Secretary has delegated the exercise of functions and duties under section 810(f) of the Act to the Assistant Secretary for Fair Housing and Equal Opportunity (the Assistant Secretary).

(b) The purpose of this part is to set forth:

(1) The basis for agency certification.

(2) The procedure by which a determination to certify is made by the Assistant Secretary.

(3) The basis and procedure for withdrawal of certification.

(4) The consequences of certification.

§ 115.2 Basis of determination.

A determination to certify an agency as substantially equivalent involves a two-phase procedure. The determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries:

(a) Whether the law, administered by the agency, on its face, provides that:

(1) The substantive rights protected by the agency in the jurisdiction with respect to which certification is to be made;

(2) The procedures followed by the agency;

(3) The remedies available to the agency; and

(4) The availability of judicial review of the agency's actions; are substantially equivalent to those created by and under the act; and

(b) whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.3 Criteria for adequacy of law.

(a) In order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

(1) Provide for an administrative enforcement body to receive and process complaints and provide that:

(i) Complaints must be in writing;

(ii) Upon the filing of a complaint the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;

(iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint;

(iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaint matters, and require that:

(i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigate the allegations of the complaint and complete the investigation in no more than 100 days after receipt of the complaint;

(iii) If the agency is unable to complete the investigation within 100 days it shall notify the complainant and respondent in writing of the reasons for not doing so;

(iv) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impractical to do so. If the agency is unable to do so it shall notify the complainant and respondent, in writing, of the reasons for not doing so;

(v) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent and the complainant and shall be subject to the approval of the agency;

(vi) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.

(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to section 803 of the Act (which provides coverage with respect to all dwellings except, under certain circumstances, single family homes sold or rented by the owner and units in owner-occupied dwellings containing living quarters for no more than four families).

(5) Be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, *i.e.*, prohibit the following acts:

(i) Refusal to sell or rent based on discrimination because of race, color, religion, sex, familial status, or national origin;

(ii) Refusal to negotiate for a sale or rental based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iii) Otherwise making available or denying a dwelling based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iv) Discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, based on discrimination because of race, color, religion, sex, familial status, or national origin;

(v) Advertising in a manner that indicates any preference, limitation, or discrimination because of race, color, religion, sex, familial status, or national origin;

(vi) Falsely representing that a dwelling is not available for inspection, sale, or rental because of race, color, religion, sex, familial status, or national origin;

(vii) Coercion, intimidation, threats, or interference with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by section 803, 804, 805, or 806 of the Act;

(viii) Blockbusting based on representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin;

(ix) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, familial status, or national origin. Such transactions include:

(A) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(B) The selling, brokering, or appraising of residential real property;

(x) Denying a person access to, or membership or participation in, a multiple listing service, real estate brokers' organization, or other service on account of race, color, religion, sex, familial status, or national origin.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have authority to:

(i) Seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the agency concludes that such action is necessary to carry out the purposes of the law or ordinance;

(ii) Issue subpoenas;

(iii) Grant actual damages, or arrange to have adjudicated in court at agency expense the award of actual damages, to an aggrieved person;

(iv) Grant injunctive or other equitable relief;

(v) Assess a civil penalty against the respondent, or arrange to have adjudicated in court at agency expense the award of punitive damages against the respondent.

(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(3) Judicial review of a final agency order must be in a court with authority to grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper; affirm, modify, or set aside, in whole or in part, the order or remand the order for further proceedings; and enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the State or local law prohibit discrimination on the basis of familial status does not require that the State or local law limit the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The State or local law must assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in Part 100 Subpart E.

(e) A determination of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account such relevant matters of State of local law, e.g., regulations, directives and rule of procedure, or interpretations of the fair housing law by competent authorities, as may be necessary.

(f) A law will be held to be not adequate "on its face" if it permits any of the agency's decision making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragrpah, "decision making authority" shall include:

(1) Acceptance of the complaint;

(2) Approval of the conciliation agreement;

(3) Dismissal of a complaint;

(4) Any action specified in § 115.3(a)(2)(iv) or § 115.3(b)(1).

(g) Provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an

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action in an appropriate court not less than 1 year after the occurrence or termination of an alleged discriminatory housing practice. The court should be empowered to:

(1) Award the plaintiff actual and puntitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order;

(3) allow reasonable attorney's fees and costs.

115.3a Criteria for adequacy of law—discrimination because of handicap.

(a) In addition to the provisions of § 115.3, in order for a determination to be made that a State or local fair housing agency administers a law which, on its face provides rights and remedies for alleged discriminatory housing practices, based on handicap, that are substantially equivalent to those provided in the Act, the law or ordinance must be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, *i.e.*, it must prohibit the following acts:

(1) Advertising in a manner that indicates any preference, limitation, or discrimination because of handicap;

(2) Falsely representing that a dwelling is not available for inspection, sales, or rental based on discrimination because of handicap;

(3) Blockbusting, based on representations regarding the entry or prospective entry into the neighborhood of a person or persons with a particular handicap;

(4) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of handicap. Residential and real estate-related transactions include:

(i) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(ii) The selling, brokering, or appraising of residential real property;

(5) Denying a person access to, or membership or participation in, multiple listing services, real estate brokers' organizations, or other services because of handicap;

(6) Discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of a handicap of that buyer or renter, or of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or of any person associated with the buyer or renter;

(7) Discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of that person, of a person residing in or intending to reside in the dwelling after it is sold, rented, or made available, or of any person associated with that person.

(b) For purposes of this section, discrimination includes—

(1) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person, if the modifications may be necessary to afford the handicapped person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; or

(3) In connection with the design and construction of covered multifamily dwellings for first occpancy after March 31, 1991, a failure to design and construct dwellings in such a manner that—

(i) The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

(ii) With respect to dwellings with a building entrance on a accessible route—

(A) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;

(B) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(C) All premises within covered multifamily dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in the bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(c) The law or ordinance administered by the State or local fair housing agency may provide that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (b)(3)(ii)(C).

(d) As used in this section, the term "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

§ 115.4 Performance standards.

(a) The initial and continued certification that a State or local fair housing law provides rights and remedies substantially equivalent to those provided in the Act will be dependent upon an assessment of the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of the law to determine that, in operation, the law is in fact providing substantially equivalent rights and remedies. The performance standards set forth in paragraph (b) of this section will be used in making this assessment.

(b) A State or local agency must:

(1) Engage in comprehensive and thorough investigative activities; and

(2) Commence proceedings with respect to a complaint before the end of the 30th day after the receipt of the complaint, carry forward proceedings with reasonable promptness, and in accordance with the memorandum of understanding described in 24 CFR 111.104(a)(2), make final administrative disposition of a complaint within one year of the date of receipt of the complaint and, within 100 days of receipt of the complaint, complete the following proceedings:

(i) Investigation, including the preparation of a final investigation report containing—

(A) The names and dates of contacts with witnesses;

(B) A summary and dates of correspondence and other contacts with the aggrieved person and the respondent;

(C) A summary description of other pertinent records;

(D) A summary of witness statements; and

(E) Answers to interrogatories.

(ii) Conciliation activity.

(3) Conduct compliance reviews of all settlements, conciliation agreements and orders issued by or entered into to resolve discriminatory housing practices.

(4) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices;

(5) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law;

(c) Where the State or local agency has duties and responsibilities in addition to administration of the fair housing law, the Assistant Secretary may consider such matters as the relative priority given to fair housing administration, as compared to such other duties and responsibilities, and the compatibility or potential conflict of fair housing objectives with the agency's other duties and responsibilities.

§ 115.5 Request for certification.

(a) A request for certification under this part may be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. The request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, the law creating and empowering the agency, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

(2) Organization of the agency responsible for administering and enforcing the law.

(3) Funding and personnel made available to the agency for administration and enforcement of the fair housing law during the current operating year, and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) Data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.4.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A copy of the request and supporting materials will be kept available for public examination and copying at: (1) The office of the Assistant Secretary, (2) the HUD Regional Office in whose jurisdiction the State or local jurisdiction seeking recognition is located, and (3) the office of the State or local agency charged with administration and enforcement of the State or local law.

§ 115.6 Procedure for certification.

(a) Upon receipt of a request for certification filed under § 115.5, the Assistant Secretary may request further information that he or she considers relevant to the determinations required to be made under this part.

(b) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a that the State or local fair housing law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of that determination. Except under circumstances where the Assistant Secretary determines that interim referrals or other utilization of services under § 115.11 is appropriate, the Assistant Secretary shall publish a notice in the **Federal Register** which advises the public of the determination that the law, on its face, is substantially equivalent, and shall invite interested persons and organizations, during a period of not less than 30 days following publication of the notice, to file written comments relevant to the determination whether the current practices and past performance of the State or local agency charged with administration and enforcement of such law demonstrates that, in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act. The **Federal Register** notice shall also invite comments on the Department's determination as to the adequacy of the law on its face.

(c) If the Assistant Secretary determines, on the basis of the standards specified in § 115.4 and after considering the materials and information submitted pursuant to § 115.5, additional material obtained under paragraph (a) of this section, and any written comments filed under paragraph (b) of this section, that, in operation, a State or local fair housing law in fact provides rights and remedies which are substantially equivalent to those provided in the Act, the Assistant Secretary shall offer to enter into a written agreement with the appropriate State or local agency providing for referral of complaints to the agency and for procedures for communication between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the continuing substantial equivalency of the State or local law. The written agreement may, but need not, be incorporated in a Memorandum of Understanding as described in 24 CFR 111.104(a)(2). Upon execution of a satisfactory agreement, the Assistant Secretary shall publish notice of certification under this part in the **Federal Register**.

(d) During the period which begins on September 13, 1988 and ends January 13, 1992, each State or locality recognized as substantially equivalent under 24 CFR Part 115 (including any State or locality which had entered into an agreement for interim referrals under § 115.11, unless the State or locality is subsequently denied recognition under 24 CFR 115.7) for the purposes of the Fair Housing Act before September 13, 1988 shall, for the purposes of this paragraph (d), be considered certified under this part with respect to those matters for which the agency was previously recognized. If the Secretary determines in an individual case that a State or locality has not been able to meet the certification requirements within this 40-month period because of exceptional circumstances (such as the infrequency of legislative sessions in that jurisdiction), the Secretary may extend the period of temporary certification to no later than September 13, 1992.

(1) No State, locality or agency thereof shall be considered certified under this paragraph (d) for the purpose of processing complaints alleging—

(i) Discrimination based on familial status;

(ii) Discrimination based on handicap; or

(iii) Coercion, intimidation or threats as described in § 115.3(a)(5)(vii).

(2) Certification under this paragraph (d) is not a determination that the administrative or judicial remedies provided by the State or locality is substantially equivalent to those provided by the Act.

(e) Certification of a State or local fair housing agency under this part shall

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remain in effect until withdrawn under § 115.8.

(f) Not less frequently than annually, the Assistant Secretary will cause to be published in the **Federal Register** a notice which sets forth:

(1) An updated, consolidated list of all certified agencies;

(2) A list of all agencies whose certification under this part has been withdrawn since publication of the previous notice;

(3) A list of agencies with respect to which notice of denial of certification has been published under § 115.7(c) since issuance of the previous notice;

(4) A list of agencies with respect to which a notice for comment has been published under paragraph (b) of this section whose request for certification remains pending.

(5) A list of agencies for which notice of proposed withdrawal of certification has been published under § 115.8(c) whose proposed withdrawal remains pending; and

(6) A list of agencies with which an agreement for interim referrals or other utilization of services has been entered under § 115.11 and remains in effect.

§ 115.7 Denial of certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a, that a State or local fair housing law, on its face, fails to provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of the reasons for that determination. The Assistant Secretary's advice may include specification of the manner in which the State or local law could be amended in order to provide substantially equivalent rights and remedies. The Assistant Secretary shall extend to the State or local official an opportunity to submit data, views, and arguments in opposition to the Assistant Secretary's determination and to request an opportunity for a conference in accordance with § 115.9. If no submission or request is made, no further action shall be required to be taken by the Assistant Secretary. If the State or local official submits materials but does not request a conference, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency. If, after the evaluation, the Assistant Secretary is still of the opinion that the law, on its face, fails to provide rights and remedies for allegedly discriminatory housing practices that are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(b) If the Assistant Secretary determines, after considering the materials and information submitted under § 115.5, any additional information obtained under § 115.6(a), an assessment of the current practices and past performance of the agency in meeting the standards of § 115.4(b), and any written comments received under § 115.6(b), that it has not been demonstrated that, in operation, a State or local fair housing agency in fact provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, the Assistant Secretary shall communicate this determination in writing to the State or local agency and shall allow the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9. If a request for a conference is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and, if after that evaluation the Assistant Secretary is still of the opinion that certification should be denied, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(c) Where comment on a request for certification was invited in accordance with § 115.6(b), notice of denial of certification under this section shall be published in the **Federal Register**.

§ 115.8 Withdrawal of certification.

(a) Not less frequently than every 5 years, the Assistant Secretary shall determine whether each agency certified under this part continues to qualify for certification. The Assistant Secretary shall take appropriate action with respect to any agency not so qualifying.

(b) The Assistant Secretary shall periodically review the administration of fair housing laws recognized under this part. If the Assistant Secretary finds, as a result of a periodic review, upon the petition of an interested person or organization, or otherwise, that taken as a whole, the agency's administration of its fair housing law or the law, on its face, no longer meets the requirements of this part, the Assistant Secretary shall propose to withdraw the certification previously granted.

(c) The Assistant Secretary shall propose withdrawal of certification unless review establishes that the current fair housing law administered by the certified agency meets the criteria of § 115.3 and that current practices and past performance of the agency meet the standards of § 115.4.

(d) Before the Assistant Secretary publishes notice of a proposed withdrawal of certification, the Assistant Secretary shall inform the State or local agency in writing of his or her intention to withdraw certification. The communication shall state the reasons for the proposed withdrawal and provide the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9.

(e) Notice of a proposed withdrawal shall be published in the **Federal Register**. The notice shall allow the State or local agency and other interested persons and organizations not less than 30 days in which to file written comments on the proposal.

(f) If a request for a conference in accordance with § 115.9 is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and other interested persons or organizations, and if after that evaluation the Assistant Secretary is still of the opinion that certification should be withdrawn, the Assistant Secretary shall withdraw certification and shall publish notice of the withdrawal in the **Federal Register**.

§ 115.9 Conferences.

(a) Whenever an opportunity for a conference is timely requested by a State or local agency in accordance with § 115.7 or § 115.8, the Assistant Secretary shall issue an order designating an officer who shall preside at the conference. The order shall indicate the issues to be resolved and any initial procedural instructions that might be appropriate for a particular conference. It shall fix the date, time and place of the conference. The date shall not be less than 20 days after the date of the order. The date and place shall be subject to change for good cause.

(b) A copy of the order shall be served on the State or local agency and:

(1) In the case of a denial of certification, on any person or organization that files a written comment in accordance with § 115.6(b); or

(2) In the case of a withdrawal of certification, on any person or

organization that files a petition in accordance with § 115.8(a) or written comment in accordance with § 115.8(c). The agency and all such persons and organizations shall be considered to be participants in the conference. After service of the order designating the conference officer, and until the officer submits a recommended determination, all communications relating to the subject matter of the conference shall be addressed to that officer.

(c) The conference officer shall have full authority to regulate the course and conduct of the conference. A transcript shall be made of the proceedings at the conference. The transcript and all comments and petitions relating to the proceedings shall be made available for inspection by interested persons.

(d) The conference officer shall prepare proposed findings and a recommended determination, a copy of which shall be served on each participant. Within 20 days after service, any participant may file written exceptions. After the expiration of the period for filing exceptions, the conference officer shall certify the entire record, including the proposed findings and recommended determination, and any exceptions to the findings and recommendations, to the Assistant Secretary, who shall review the record and issue a final determination within 30 days. Where applicable, this determination shall be published in the **Federal Register**.

§ 115.10 Consequences of certification.

(a) Where all alleged violations of the Act contained in a complaint received by the Assistant Secretary appear to constitute violations of a State or local fair housing law administered by an agency that has been certified as substantially equivalent, the complaint shall be referred promptly to the appropriate State or local agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint, except as provided for by the Act, this part, and by §§ 103.100 through 103.115 or 105.20 through 105.22 of this chapter.

(b) Notwithstanding paragraph (a) of this section, no complaint based in whole or in part on allegations of discrimination on the basis of familial status or handicap shall be referred to any State, locality or agency thereof whose certification was granted in accordance with § 115.6(d) or section 810(f)(4) of the Act, without regard to whether the fair housing law administered by such certified agency appears to prohibit discrimination based on familial status or handicap.

(c) Notwithstanding paragraph (a) of this section, whenever the Secretary has reason to believe that a complaint shows a basis may exist for the commencement of proceedings against any respondent under section 814(a) of the Act, or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which that belief is based to the Attorney General, or to appropriate governmental licensing or supervisory authorities.

§ 115.11 Interim referrals.

If the Assistant Secretary determines after application of the criteria set forth in § 115.3, that a State or local fair housing law on its face provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, but that the law has not been in effect, or the appropriate State or local agency in operation, for a sufficient time to permit a demonstration of compliance with the performance standards described in § 115.4, the Assistant Secretary may enter into a written agreement with the State or local agency providing for referral of complaints to the agency on such terms and conditions as the Assistant Secretary shall prescribe, or providing for other utilization of the services of the State or local agency and its employees upon agreed terms, and providing further for procedures for communications between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's administration and enforcement of its law and to assist the Assistant Secretary in making the determination required in § 115.2(b). The agreement may provide for reactivation of referred complaints by the Assistant Secretary without regard to the limitations described in § 115.10. If such an agreement for interim referrals or other utilization of services is entered, the Assistant Secretary may defer final determination under § 115.6 or § 115.7 for a reasonable period determined by the Assistant Secretary to be necessary in order to permit a fair assessment of the agency's performance. In no event shall this period extend more than two years beyond the date of entry into the agreement for interim referrals or other utilization of services. This two year limitation does not apply to agencies certified in accordance with § 115.6(d). However, an agreement under this section shall not be extended beyond the date of certification under § 115.6 or denial of recognition under § 115.7. Notice of entry into an agreement under this section shall be published in the **Federal Register**.

20. PART 121, redesignated from Part 100, would be revised to read as follows:

PART 121—COLLECTION OF DATA

Sec.

121.1 Purpose.
121.2 Furnishing of data by program participants.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); E.O. 11063, 27 FR 11527; sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d–1); sec. 562, Housing and Community Development Act of 1987 (42 U.S.C. 3608a); sec. 2, National Housing Act, 12 U.S.C. 1703; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 121.1 Purpose

The purpose of this part is to enable the Secretary of Housing and Urban Development to carry out his or her responsibilities under the Fair Housing Act, Executive Order 11063, dated November 20, 1962, Title VI of the Civil Rights Act of 1964, and section 562 of the Housing and Community Development Act of 1987. These authorities prohibit discrimination in housing and in programs receiving financial assistance from the Department of Housing and Urban Development, and they direct the Secretary to administer the Department's housing and urban development programs and activities in a manner affirmatively to further these policies and to collect certain data to assess the extent of compliance with these policies.

§ 121.2 Furnishing of data by program participants.

Participants in the programs administered by the Department shall furnish to the Department such data concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, those programs as the Secretary may determine to be necessary or appropriate to enable the Secretary to carry out his or her responsibilities under the authorities referred to in § 121.1. Specific requirements for furnishing such data are imposed under the individual program regulations contained under this Title 24.

Date: October 31, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88–25506 Filed 11–4–88; 8:45]

BILLING CODE 4210–28–M

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.115New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

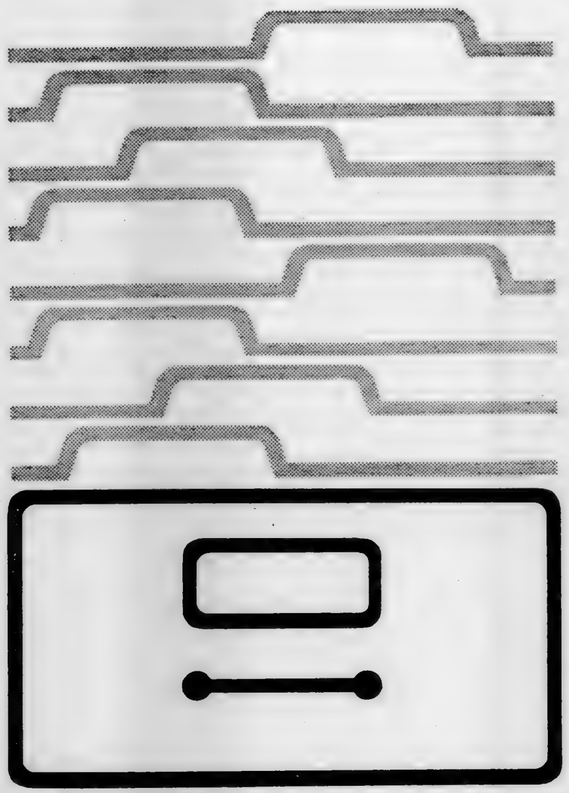
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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing these chapters.

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in the Code of Federal Regulations (CFR)

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VOL
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Pages 45059-45248

federal register

Tuesday
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VOL
53
ISS
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Presidential Documents

Title 3—

The President

Proclamation 5894 of November 2, 1988

50th Anniversary Year of the Federal Food, Drug, and Cosmetic Act, 1988

By the President of the United States of America

A Proclamation

Half a century ago, in 1938, the Federal Food, Drug, and Cosmetic Act was signed into law by President Franklin Delano Roosevelt. This legislation was the start of modern food and drug regulation. That this year is the 50th anniversary of that legislation reminds each of us to be grateful for our American legacy of concern for protecting the public health.

The 1938 Act covered cosmetics, medical devices, food additives, and pesticides, but made its strongest impact by giving the Food and Drug Administration the authority and responsibility for approving new drugs for safety before they could be sold. These drug review provisions came just at the beginning of the "first therapeutic revolution," when penicillin and sulfa drugs were being discovered. Wave after wave of new drug classes were discovered in the 1940's and 1950's, and the new drug review system enabled patients and physicians to have a level of confidence in medications that had never before existed.

To this day, the Food and Drug Administration uses the provisions of the 1938 Act, as amended over the years, to establish rigorous standards for food and drug safety that are widely respected and emulated.

The Congress, by House Joint Resolution 600, has recognized the 50th anniversary of the Federal Food, Drug, and Cosmetic Act and authorized and requested the President to issue a proclamation in observance of this anniversary.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1988 as the 50th Anniversary Year of the Federal Food, Drug, and Cosmetic Act, 1988. I call upon the people of the United States to observe this anniversary with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25902
Filed 11-4-88; 2:24 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5895 of November 2, 1988

Geography Awareness Week, 1988

By the President of the United States of America

A Proclamation

The United States of America is a unique and great land with a diverse ethnic population and an extraordinary international role. Geographical influences that have helped determine the discovery and development of this country, and global conditions that have given rise to wave after wave of immigration to our shores, make ours a history that cannot be understood without a ready knowledge of world geography. In order for our Nation to maintain its special heritage and retain its position of global economic and political leadership, it is essential that our citizens have a sound appreciation of basic geographical facts and principles.

Today, however, as recent studies—including a major report last summer from the National Geographic Society—have affirmed, many young people and adults lack knowledge of elementary geography. The situation among 18- to 24-year-olds is particularly disturbing, with these young Americans ranking last in basic knowledge in this multination report.

We can do better. A free society has no greater enemy than ignorance, and there is no greater waste than the underuse of a child's God-given ability to learn and explore. Fortunately, our Nation has begun to give new attention in the past decade to the need for educational reform and educational focus. Young people need to be challenged early and often; and subjects like geography, and closely related studies like history and civics, can be taught in ways that promote curiosity and help young people stretch their minds and engage their imaginations as they view the map and all the many frontiers and horizons it charts.

Truly we live in a world rich in wonder, variety, and mystery. During Geography Awareness Week, 1988, we can resolve to share more of these qualities with our children and to encourage them in their understanding of the social, economic, and political influence of geographic issues and conditions.

The Congress, by Public Law 100-391, has designated the period beginning November 13 and ending November 19, 1988, as "Geography Awareness Week" and has authorized and requested the President to issue a proclamation to recognize this observance.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 13 through November 19, 1988, as Geography Awareness Week. I urge educational institutions, parents, and all Americans to celebrate this observance with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25903
Filed 11-4-88; 2:25 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5896 of November 3, 1988

National Jukebox Week, 1988

By the President of the United States of America

A Proclamation

For a century now, the jukebox has been a fixture of popular culture in our land. In restaurants, diners, and clubs across our country, jukeboxes have long provided patrons with music for dining and dancing. The jukebox is to many a symbol of good, clean fun. It is also an inexpensive source of entertainment for young and old alike, and a treasury of memories for listeners of every generation. The centennial of the jukebox now gives all of us an excellent opportunity to celebrate its enduring place in American life.

The Congress, by House Joint Resolution 446, has designated the week of October 30 through November 5, 1988, as "National Jukebox Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 30 through November 5, 1988, as National Jukebox Week. I call upon the American people to celebrate this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25904
Filed 11-4-88; 2:26 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 330 and 351

Recruitment, Selection, and Placement (General); Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the Reemployment Priority List (RPL). The RPL is the mechanism agencies use to give reemployment consideration to employees separated by reduction in force, or recovered from a compensable injury after more than 1 year. These changes are intended to improve the operation of the RFL and clarify requirements.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Leota Shelkey, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Veterans' Preference Act of 1944 extended reemployment eligibility to preference eligibles furloughed or separated without delinquency or misconduct. This provision, now at 5 U.S.C. 3315, is the basis for the Reemployment Priority List (RPL) for employees separated by reduction in force (RIF). Coverage for employees who have fully recovered from a compensable injury after more than 1 year is based on 5 U.S.C. 8151(b)(2).

On January 7, 1988, OPM published proposed revisions to the RPL regulations in the **Federal Register** (53 FR 408). We received 13 written comments from Federal agencies and employee organizations. The key comments and changes are summarized below. In addition, several editorial changes were made.

a. Proposed § 330.201 would permit an agency to operate an alternative placement program as an exception to the RPL requirement. In the final regulation, we have clarified that OPM prior approval is necessary for such an exception. Also, we have changed the definition of "agency" to mean "Executive agency," which is used for reduction-in-force coverage in 5 U.S.C. 3501 and is defined in 5 U.S.C. 105. This allows all the Department of Defense agencies to use a single RPL.

b. Proposed § 330.202(a)(1) would require an individual to file an application for the RPL within 30 days after the RIF separation date and would require an agency to enroll the individual on the RPL within 10 days thereafter. One commenter suggested we drop the requirement for an application because employees often don't know the jobs for which they are qualified.

We have not adopted this suggestion because we believe the use of an employee-completed application is more advantageous and efficient than the existing system. We plan, however, to advise agencies to give employees guidance in completing an application. Although several commenters suggested less specific deadlines, we have retained the proposed 30-day and 10-day limits as easier to administer.

Three commenters opposed the provision in § 330.202(a)(1) that would permit employees to receive consideration for positions with work schedules different from the schedule worked at the time of separation. Although the proposal was intended to provide broader placement consideration, the commenters felt it extended placement rights inconsistent with that available under RIF procedures and also limited management flexibility. In consideration of these concerns, we have given agencies discretion in the final regulations to adopt provisions permitting employees to request consideration for positions having different work schedules.

c. Proposed § 330.203(a) covered eligibility based on RIF separation. A new provision would deny RPL eligibility if an employee's last rating of record for RIF purposes was unacceptable. Six commenters suggested that, instead, individuals be required to have a rating of at least fully successful. Two commenters suggested that the performance rating requirement be dropped altogether. For the following reasons, we have decided to retain the requirement as proposed.

Performance requirements have been incorporated into a number of other programs—pay, within grade increases, merit promotion. More specifically, the RIF regulations deny displacement rights to any employee whose current rating is unacceptable. A RIF and subsequent RPL eligibility are so closely linked that it would be inconsistent to ignore an unacceptable rating and grant reemployment priority *after* an employee's separation when placement rights *before* separation were denied because of that unacceptable rating. Similarly, it would be inconsistent to negate reemployment eligibility of an employee whose rating is minimally successful when the RIF regulations do not refuse displacement rights because of that rating. Furthermore, we believe the proposed requirement represents a balanced approach to achieving harmony between the reemployment and performance management laws.

Because some employees, such as administrative law judges, are exempt from performance evaluations, we have revised § 330.203(a) to exclude them from the rating requirement.

Another commenter suggested that we continue RPL enrollment of employees who decline to transfer with their function to another commuting area. RPL eligibility has been limited to employees who receive a RIF separation notice. Therefore, when employees involved in a transfer of function are separated by RIF in accordance with 5 CFR Part 351, they may be eligible for the RPL. In addition, all employees who are separated for declining to transfer with their function may receive placement assistance through the Displaced Employee Program, which is described in 5 CFR Part 330, Subpart C.

d. Proposed § 330.203(c) continued the existing policy of 2-year enrollment for tenure group I employees and 1-year enrollment for tenure group II employees. Three commenters suggested that enrollment be limited to 1 year for all employees. We have retained the existing policy as more supportive of placement efforts.

One commenter suggested that RPL enrollment should end when an individual declines an offer under

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conditions shown as acceptable in his or her application. The proposed regulations already provide a new, related provision—an individual loses consideration for all grade levels at and below the grade of an offer he or she declines. If this grade is the same as the last grade held, the individual's RPL enrollment is ended.

e. Proposed § 330.204 covered eligibility based on compensable injury. One commenter suggested that these provisions should be equivalent to those covering RIF separations. We had done this in the proposed regulations to the extent possible without violating the injury compensation law. Thus, no change was made in the final regulation.

f. Proposed § 330.205 would restrict an agency from making certain types of appointments while a qualified RPL enrollee is available. As suggested, we have made several changes.

One change is to permit the *transfer* of preference eligibles, just as their reinstatement eligibility is not blocked by the RPL, on the basis that it is illogical to permit a preference eligible to receive the one type of appointment and not the other. Another change gives agencies the discretion to exempt 30-day special needs appointments and 700-hour temporary appointments of handicapped persons. These exceptions are intended to assure that the RPL does not prevent an agency from meeting its obligations under other programs or from acting quickly in an emergency. Last, we have clarified that statutory or regulatory reemployment rights, such as those in 5 CFR Part 352, are not blocked by the RPL.

One commenter suggested that § 330.205 be revised to specify when an agency must clear the RPL before proceeding with an outside appointment. We concur with this suggestion.

This issue is particularly important because the RPL restrictions apply to *all* components of an agency within the commuting area, not just the component conducting the RIF. Thus, one component may make a job offer just before another component issues RIF notices. By the time the appointee enters on duty, eligibles from the other component have been enrolled on the RPL. It is not good business for the Government to make a firm job offer to someone who accepts and makes plans to change jobs, sometimes involving a geographic move, only to have the Government rescind the job offer because in the meantime someone has been enrolled on the RPL. To avoid such awkward situations, we have revised § 330.205 to provide that the RPL must be cleared at the time an agency makes a firm offer of employment.

g. Proposed § 330.206(a) would limit higher grade job consideration to RPL enrollees who had previously held a higher grade. Four commenters opposed this provision on the basis that priority consideration should not extend beyond the grade from which separated. Our primary intent was to cover employees who had been downgraded in one RIF prior to the second RIF in which they were separated and became eligible for the RPL. Since, in this case, both the downgrade and separation are RIF actions, we believe it's fair to give these individuals job consideration up to the highest grade from which demoted by RIF. We have changed the final regulation to reflect this.

h. Proposed § 330.206(b) provided that an individual recovered from a compensable injury is entitled to priority consideration elsewhere in the agency if not placed in the former commuting area. Three commenters requested clarification. The final regulation indicates that the manner of priority consideration given outside the commuting area is left to the discretion of the former agency. This provision is not intended, however, to extend priority consideration beyond the time limits given in the regulation. Additional guidance will be provided through the Federal Personnel Manual.

i. Proposed § 330.207 provided two options agencies could use in making selections from the RPL. Both options would extend veterans preference. Although three commenters suggested that veterans preference be dropped, we have not done so because 5 U.S.C. 3315 requires it.

One option provided for rating and ranking eligibles. Based on the suggestion of one commenter, we have revised the final regulation to require that job-related evaluation procedures be used to rate eligibles and be applied fairly and consistently. Another commenter suggested that selection be permitted from among the ten highest rated eligibles. We cannot adopt this suggestion because the pertinent provision in the Veterans' Preference Act refers to the selection order for competitive examinations, which by statute follows a rule of three.

One commenter suggested that reemployment should be in strict reverse-RIF order, taking into account length of service. We have not adopted this procedure because the law does not require it and its use would remove all managerial discretion in making selections from the RPL.

j. Proposed § 330.208 contained a revised qualification standard that is the same as that used in any normal placement action. We had dropped the existing requirement that, to be basically qualified, an individual must be able to perform without undue interruption and loss of productivity.

Three commenters opposed this change on the basis that an "undue interruption" standard is appropriate for priority placement. We have not changed the proposed standard because we believe it is appropriate for filling vacancies. Furthermore, both the proposed and final § 330.207(d) permits an agency to make an exception to the RPL selection order when duties cannot be taken over without undue interruption by a qualified individual on the RPL or one who has higher standing than the one selected.

k. Proposed § 330.209 contained a revised standard for filing appeals with the Merit Systems Protection Board. One editorial change was suggested, which we have made.

Effective Date

These regulations must be followed for all RPL enrollments occurring on or after the effective date of these regulations. For employees enrolled before the effective date, the RPL must be operated under the regulations in effect at the time of enrollment.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 330 and 351

Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Parts 330 and 351 of Title 5, CFR, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for Part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

2. Subpart B and its heading are revised to read as follows:

Subpart B—Reemployment Priority List (RPL)

Sec.

330.201 Establishment and maintenance of RPL.
330.202 Application.
330.203 Eligibility due to reduction in force.
330.204 Eligibility due to compensable injury.
330.205 Employment restrictions.
330.206 Job consideration.
330.207 Selection from RPL.
330.208 Qualification requirements.
330.209 Appeals.

Subpart B—Reemployment Priority List (RPL)

§ 330.201 Establishment and maintenance of RPL.

(a) Each agency is required to establish and maintain a reemployment priority list (RPL) for each commuting area in which it separates eligible employees due to reduction in force or compensable injury, except as provided in paragraph (b) of this section. For purposes of this subpart, "agency" means "Executive agency" as defined in 5 U.S.C. 105. All components of an agency within the commuting area utilize a single RPL.

(b) An agency need not maintain a distinct RPL for employees separated by reduction in force if the agency operates a placement program for its employees and obtains OPM concurrence that the program satisfies the basic requirements of this subpart.

§ 330.202 Application.

(a)(1) To be entered on the RPL, an eligible employee under § 330.203 of this part must complete an application prescribed by the employing agency and inform the agency of any significant changes in the information provided. This application must provide for the employee to specify the conditions under which he or she will accept employment, including grade, occupation, and minimum hours of work per week, in addition to positions at the same representative rate and work schedule as the position from which the employee was or will be separated. The employee must submit the application within 30 calendar days after the RIF separation date. An employee who fails to submit a timely application is not entitled to be placed on the RPL.

(2) An eligible employee under § 330.204 must request reemployment within 30 calendar days after the date compensation ceases, except that when an appeal for continuation of compensation is filed, the 30-day period begins the day after resolution is reached. No specific format is required.

(b) An agency must enroll an individual on the RPL no later than 10 calendar days after receipt of an application or request.

§ 330.203 Eligibility due to reduction in force.

(a) To apply for the RPL, an employee must meet all the following conditions:

(1) Be serving under an appointment in the competitive service in tenure group I or II;

(2) Have received a rating above unacceptable (level 1) as the last annual performance rating of record for Part 351 purposes (except for employees in positions excluded from a performance appraisal system by law, regulation, or OPM administrative action);

(3) Have received a specific notice of separation under Part 351 of this chapter; and

(4) Have not declined an offer under Subpart G of Part 351 of this chapter of a position with a representative rate at least as high as that of the position from which the employee was or will be separated.

(b) At the time it gives a specific RIF notice of separation, the agency must give each eligible employee information about the RPL, including appeal rights.

(c) A tenure group I employee is eligible for the RPL for 2 years, and a tenure group II employee is eligible for 1 year, from the date the employee is entered on the RPL. An individual loses RPL consideration for all positions with a respesentative rate at and below that of any position for which the individual has declined an offer of career, career-conditional, or excepted appointment without time limit of failed to reply to an inquiry, under this subpart, when the position meets the acceptable conditions shown in his or her application. Also, an individual is taken off the RPL before the period of eligibility expires when the individual:

(1) Requests removal;

(2) Receives a career, career-conditional, or excepted appointment without time limit in any agency;

(3) Declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, concerning a specific position having a representative rate at least as high, and with the same work schedule, as that of the position from which the person was or will be separated; or

(4) In the case of an individual enrolled on an RPL for Alaska or overseas, leaves the area covered by that RPL or becomes disqualified for overseas employment because of previous service or residence.

§ 330.204 Eligibility due to compensable injury.

(a) A former competitive service employee in tenure group I or II separated because of a compensable injury or disability (as defined in Part 353 of this chapter) who has fully recovered more than 1 year after compensation began is entitled to be placed on the RPL. Part 353 of this chapter contains information on eligibility.

(b) A former tenure group I employee is eligible for the RPL for 2 years, and a former tenure group II employee is eligible for 1 year, from the date the individual is entered on the RPL. An individual is taken off the RPL before the period of eligibility expires when the individual:

(1) Requests removal;

(2) Receives a career, career-conditional, or excepted appointment without time limit in any agency; or

(3) Declines an offer or fails to respond to an inquiry about a specific position that is equivalent to the position from which separated.

§ 330.205 Employment restrictions.

(a) When a qualified individual is available on an agency's RPL, the agency may not make a final commitment to an individual not on the RPL to fill a permanent or temporary competitive service position by:

(1) A new appointment, unless the individual appointed is a qualified 10-point preference eligible; or

(2) Transfer or reemployment, unless the individual appointed is a preference eligible, is exercising restoration rights under Part 353 of this chapter, or is exercising other statutory or regulatory reemployment rights.

(b) Paragraph (a) of this section does not apply to actions involving employees on an agency's rolls, as authorized in chapter 330 of the Federal Personnel Manual, or when all qualified individuals on the RPL decline an offer of a specific position or fail to respond to an inquiry about the position. Furthermore, an agency may, at its discretion, adopt provisions that permit 30-day special needs appointments and 700-hour temporary appointments of handicapped individuals.

(c) An agency may make an exception to this section and appoint an individual not on the RPL as authorized by § 330.207(d) of this part.

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§ 330.206 Job consideration.

(a)(1) An eligible employee under § 330.203 of this part is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent) and have no greater promotion potential than the position from which the employee was or will be separated. In addition, an employee is entitled to consideration for any higher grade previously held on a nontemporary basis in the competitive service from which the employee was demoted under Part 351 of this chapter.

(2) An employee is considered for positions having the same work schedule as the position from which separated except that the agency, at its discretion, may adopt provisions permitting employees to request consideration for other work schedules in addition to that formerly held.

(3) An eligible employee may be entered on the RPL only for the commuting area in which separated and may not apply for the RPL in any other location, except as provided in paragraph (a)(4) of this section.

(4) Each eligible employee in a position in Alaska or overseas is entitled to apply for the RPL for the commuting area in which separated, unless:

(i) The employee leaves that area and makes a written request for entry on the RPL for the commuting area from which he or she was employed for Alaskan or overseas service, or in another area within the United States outside of Alaska that is mutually acceptable to the individual and the agency; or

(ii) The agency has a general program for rotating employees between overseas areas and the United States and the employee's immediately preceding overseas service or residence, combined with prospective overseas service under available appointments, would exceed the maximum duration of an overseas duty tour in the agency rotation program. In this case, the employee may apply for one other commuting area within the United States that is mututally acceptable to the individual and the agency.

(b) An eligible employee under § 330.204 of this part is placed on the RPL for reemployment consideration for his or her former position or an equivalent one. If the individual cannot be placed in such a position in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency at a time and in a manner determined appropriate by the agency.

§ 330.207 Selection from RPL.

(a) *Options.* An agency must adopt one of the selection methods in paragraphs (b) and (c) of this section for use in operating a single RPL but need not adopt the same method for each RPL. While an agency may not vary the method used by individual vacancy, it may at any time switch selection methods for employees enrolled on the RPL on or after this section becomes effective.

(b) *Retention standing order.* Qualified individuals shall be placed in group and subgroup order in accordance with Part 351 of this chapter. In making a selection, an agency may not pass over an individual in group I to select from group II and, within a group, it may not pass over an individual in a higher subgroup to select from a lower subgroup. Within a subgroup, an agency may select an individual without regard to order of retention standing.

(c) *Rating and ranking.* (1) An agency shall develop job-related evaluation procedures capable of distinguishing differences in qualifications measured, which shall be applied in a fair and consistent manner. Based on these procedures, the agency shall assign qualified individuals a numerical score of at least 70 on a scale of 100. The agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(2) Individuals with an eligible numerical score shall be ranked in the following order:

(i) Preference eligibles having a compensable service-connected disability of 10 percent or more in the order of their augmented ratings, unless the position to be filled is a professional position at and above the GS–9 level, or equivalent; and

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of all other eligibles, and those eligible for 5-point preference will be entered ahead of those not eligible for veteran preference.

(3) An agency must make its selection from not more than the highest three candidates available and may pass over a preference eligible to select a nonpreference eligible only as an exception under paragraph (d) of this section.

(d) *Exceptions.* An agency may make an exception to this subpart and appoint an individual who is not on the RPL or has lower standing than others on the RPL only when necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by an individual who is on the RPL or has higher standing than the one appointed. The agency shall notify each individual on the RPL who is adversely affected by an appointment under this paragraph of the reasons for the exception and of the right of appeal to the Merit Systems Protection Board.

§ 330.208 Qualification requirements.

(a) Subject to applicable requirements of law and this chapter, an individual is considered qualified for a position if he or she:

(1) Meets the qualification standard and requirements for the position, including any minimum educational requirements, and any selective placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position; and

(3) Meets any special qualifying condition that OPM has approved for the position.

(b) An agency may make an exception to the qualification standard if:

(1) The exception is applied consistently and equitably in filling a position;

(2) The individual meets any minimum educational requirement for the position; and

(3) The agency determines that the individual has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

(c) The sex of an individual may not be considered in determining qualifications for a position, except positions for which OPM has determined certification of eligibles by sex is justified.

§ 330.209 Appeals.

An individual who believes that his or her reemployment priority rights under this subpart have been violated because of the employment of another person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

PART 351—REDUCTION IN FORCE

3. The authority citation for Part 351 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

Subpart J—[Removed]

4. In Part 351, Subpart J, consisting of §§ 351.1001–351.1005, is removed.

[FR Doc. 88-25830 Filed 11-7-88; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 890

Federal Employees Health Benefits Program; Former Spouses of CIA and Foreign Service Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to implement section 303 of the Intelligence Authorization Act for Fiscal Year 1987, Pub. L. 99–569, section 188 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. 100–204, and section 204 of the Federal Employees' Retirement System—Technical Corrections Act, Pub. L. 100–238. The regulation describes the conditions under which certain former spouses of Central Intelligence Agency (CIA) and Foreign Service employees or former employees previously omitted from spouse equity legislation may enroll in the Federal Employees Health Benefits (FEHB) Program. The regulation also clarifies the prohibition on dual enrollment for FEHB enrollees.

DATES: Sections 890.301, 890.302, and 890.303 effective January 9, 1989. All other sections effective October 1, 1986, for former spouses of Central Intelligence Agency employees; December 22, 1987, for former spouses of Foreign Service employees. Comments must be received on or before January 9, 1989.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On October 27, 1986, Congress enacted the Intelligence Authorization Act for Fiscal Year 1987, Pub. L. 99–569. Section 303 of the act amended the Central Intelligence Agency Act of 1949 to provide FEHB coverage to former spouses of CIA employees or former employees whose marriage was dissolved before May 7, 1985, if the former spouse: (1) Was covered by an FEHB plan as a family member any time during the 18-month period before the dissolution of marriage; (2) was married to the employee for not less than ten years during the period of CIA service, at least five years of which both the employee and the former spouse spent outside the United States; and, (3) has not remarried prior to age 55.

Subsequently, on December 22, 1987, Congress enacted the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. 100–204, which provided similar benefits to former spouses of Foreign Service employees. Section 188 of the act amended Subchapter I of Chapter 8 of the Foreign Service Act of 1980 to provide FEHB coverage to former spouses of Foreign Service employees or former employees whose marriage was dissolved before May 7, 1985, if the former spouse: (1) Was covered by an FEHB plan as a family member any time during the 18-month period before the dissolution of marriage; (2) was married to the employee for not less than ten years during the employee's government service; and (3) has not remarried prior to age 55. Section 204 of Pub. L. 100–238, the Federal Employees' Retirement System—Technical Corrections Act, effective April 7, 1988, extended the time limit for applying for FEHB coverage from June 22, 1988 (established under Pub. L. 100–204), to October 7, 1988.

These sections of law apply to former spouses of CIA and Foreign Service employees and former employees who are or were under the Central Intelligence Agency Retirement and Disability System (CIARDS) or the Foreign Service Retirement and Disability System (FSRDS), the Civil Service Retirement System (CSRS), or the Federal Employees Retirement System (FERS). The former spouse may apply for FEHB coverage even if the employee no longer works for the CIA or the Foreign Service and even if such former employee has received a refund for all of his or her retirement contributions. Further, former spouses under these two sections of law are entitled to benefits even though they have no present or future entitlement to a survivor annuity or portion of a retirement annuity.

Under section 303 of Pub. L. 99–569, a qualified former spouse must have filed an application for health benefits coverage and must have arranged to pay both the employee and agency share of the health benefits premium into the FEHB Fund by April 1, 1987. Although this date has passed, the law gives the Director of Central Intelligence the authority to direct OPM to waive the application time limitation in individual cases where circumstances warrant. Therefore, OPM will waive the six-month limitation on filing upon notification to do so by the Director of Central Intelligence.

Former spouses entitled to FEHB coverage under section 188 of Pub. L. 100–204 and section 204 of Pub. L. 100–238 must file an application for health benefits coverage and must arrange to pay both the employee and agency share of the health benefits premium into the FEHB Fund by October 7, 1988. The law gives the Secretary of State the authority to waive the application time limitation in individual cases where circumstances warrant. Accordingly, OPM will accept a waiver of the filing date when notified of the waiver by the Department of State.

In addition to the above provisions, Pub. Laws 99–569, 100–204 and 100–238 all contain a prohibition on dual enrollment of former spouses which complements the dual enrollment prohibition contained in the FEHB Act. Thus, we have included former spouses in the existing FEHB Program regulatory provision prohibiting dual enrollments at 5 CFR 890.302(a), and we have taken this opportunity to make other clarifying changes to the dual enrollment provision.

Some technical material has been added to the regulations in response to questions raised by a number of Federal agencies concerning the status of health benefits coverage when a former spouse is entitled to FEHB coverage as an employee. A former spouse who at the time he or she becomes a former spouse is, or later becomes, a Federal employee entitled to FEHB coverage may elect to defer the health benefits enrollment as a former spouse and carry the enrollment as an employee. When employment terminates, the individual may enroll or resume health benefits enrollment as a former spouse, providing he or she continues to meet the requirements for health coverage as a former spouse.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the entitlements conferred by Public Laws 99–569 and 100–204 addressed in this regulation were effective beginning October 1, 1986, and December 22, 1987, respectively.

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E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they simply extend FEHB coverage to a small group of qualified former spouses of CIA and Foreign Service employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

1. The authority citation for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; Section 890.102 also issued under 5 U.S.C. 1104; § 890.803 also issued under sec. 303 of Pub. L. 99–569, 100 Stat. 3190, sec. 188 of Pub. L. 100–204, 101 Stat. 1331, and sec. 204 of Pub. L. 100–238, 101 Stat. 1744.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

2. In § 890.101, new paragraphs (5) and (6) are added to the definition of "employing office" to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

"Employing office"

* * * * *

(5) For a former spouse of an employee or former employee of the Central Intelligence Agency (CIA) whose marriage was dissolved before May 7, 1985, and who meets the requirements under § 890.803(a)(3)(iv), the employing office is the CIA.

(6) For a former spouse of an employee or former employee of the Foreign Service whose marriage was dissolved before May 7, 1985, and who meets the requirements under § 890.803(a)(3)(v) of this part, the employing office is the Department of State.

* * * * *

3. In § 890.301, the first two sentences of paragraph (g)(4) are revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollments.

* * * * *

(g) * * *

(4) An employee, annuitant, or former spouse who has established eligibility for health benefits under § 890.803 of this part, who is not enrolled but is covered by the enrollment of another enrollee under this part, may register to be enrolled in the same plan and option within 31 days after cancellation of the other's enrollment. If the individual is not eligible to enroll in the plan from which coverage is lost, he or she may enroll in the same option of any available plan. * * *

* * * * *

4. In § 890.302, paragraph (a) is revised to read as follows:

§ 890.302 Coverage of family members.

(a)(1) The enrollment of an employee, annuitant, or former spouse who enrolls for self and family includes all family members who are eligible to be covered by the enrollment. Except as provided in paragraphs (a)(2), (3), and (4) of this section, no employee, annuitant, child, or former spouse may enroll or be enrolled if he or she is covered under another person's self and family enrollment in the FEHB Program.

(2) *Dual enrollment—spouse.* To protect the interests of the children, an employee or annuitant may enroll in his or her own right in a self and family enrollment even though his or her spouse also has a self and family enrollment. Generally, such dual enrollments are permitted only where two employees or annuitants either are married, each with children from prior marriages who do not live with them, or are separated, with each spouse retaining custody of his or her own children by a prior marriage. Because no person is entitled to receive benefits under more than one enrollment, each enrollee must notify his or her insurance carrier of the names of the spouse and children to be covered under his or her enrollment that are not named under the other enrollment.

(3) *Dual enrollment—child.* (i) When natural parents are divorced and children are included as family members under the enrollment of both natural parents or of a natural parent and a step-parent, the children are entitled to receive benefits under only one enrollment. Each enrollee must notify his or her insurance carrier of the name(s) of the child(ren) to be covered under his or her enrollment that are not named under the other enrollment.

(ii) When an employee who is under age 22 and covered under a parent's self and family enrollment becomes the parent of a child, the employee may elect to enroll for self and family coverage. Because the employee is entitled to receive benefits under only one enrollment, each enrollee must notify his or her insurance carrier of the names of the persons to be covered under his or her enrollment that are not named under the other enrollment.

(4) *Dual enrollment—spouse and child.* Where a situation such as that in paragraph (a)(2) of this section occurs (that is, two employees or annuitants are married, but each has children from prior marriages who do not live with them) and there are also children who are the issue of the marriage, an employee or annuitant may enroll in his or her own right in a self and family enrollment even though his or her spouse also has a self and family enrollment. Because no person is entitled to receive benefits under more than one enrollment, each enrollee must notify his or her insurance carrier of the names of the family members to be covered under his or her enrollment that are not covered under the other enrollment.

* * * * *

5. In § 890.303, paragraph (f) is reserved and a new paragraph (g) is added to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(f) [Reserved]

(g) An individual entitled to health benefits as a former spouse who also has or becomes entitled to health benefits coverage as a Federal employee may suspend or defer coverage as a former spouse and carry the health benefits coverage as an employee. The former spouse must have established entitlement to the health benefits coverage under § 890.803 of this part and filed all required documents with the employing office responsible for maintaining the former spouse enrollment within the time limits specified in § 890.805 of this part. The employing office shall note in the file that the former spouse health benefits enrollment is being suspended or deferred until such time as coverage as a Federal employee terminates. Upon termination of the Federal employment, the individual is entitled to enroll or resume the enrollment as a former spouse, provided he or she remains qualified as such. A former spouse-employee who loses FEHB coverage because of termination of enrollment must enroll or resume enrollment as a former spouse in the same plan and option unless one of more of the conditions in § 890.301 of this part apply.

6. In § 890.803, paragraph (a)(1) is revised, the word "or" is added to the end of paragraph (a)(3)(iii), new paragraphs (a)(3)(iv) and (v) are added, and paragraph (b) is revised to read as follows:

§ 890.803 Who may enroll.

(a) * * *

(1) The former spouse whose marriage to an employee, employee annuitant, or a former Central Intelligence Agency (CIA) or Foreign Service employee is dissolved has not remarried before age 55; and

* * * * * *

(3) * * *

(iv) The former spouse was married to an employee or former employee of the Central Intelligence Agency (CIA) for at least 10 years during the employee's CIA service, at least 5 years of which both the employee and the former spouse spent outside the United States, and the marriage was dissolved before May 7, 1985; *or,*

(v) The former spouse was married to an employee or former employee of the Foreign Service for at least 10 years during the employee's government service, and the marriage was dissolved before May 7, 1985.

(b) Except as contained in paragraphs (a)(3) (iv) and (v) of this section, a former spouse of an employee who separates from Federal service before becoming eligible for immediate annuity is eligible to enroll only if the former spouse's marriage to the employee was dissolved before the employee left Federal service.

* * * * * *

7. The introductory text to § 890.805 is revised, the word "or" before paragraph 890.805(c)(2) is removed, and new paragraphs 890.805(c)(3), (d) and (e) are added to read as follows:

§ 890.805 Application time limitations.

Except for former spouses meeting the requirements in § 890.803(a)(3) (iv) and (v) of this part, former spouses must apply for health benefits coverage by the latest of—

* * * * * *

(c) * * *; or (3) within 60 days after the date of the notice of entitlement to a former spouse annuity under another retirement system for Government employees.

(d) Former spouses who meet the requirements in § 890.803(a)(3)(iv) of this part must apply for health benefits coverage by April 1, 1987. Where circumstances warrant, the former spouse may request that the filing date be waived. The authority of the Director of Central Intelligence to direct OPM to waive the filing date has been delegated to CIA's Office of Personnel. Requests for waiver should be addressed to the Office of Personnel, Retirement Division, Central Intelligence Agency, Washington, DC 20505. OPM will waive the April 1, 1987, filing date upon notification to do so from the Director of Central Intelligence.

(e) Former spouses who meet the requirements in § 890.803(a)(3)(v) of this part must apply for health benefits coverage by October 7, 1988. Where circumstances warrant, the former spouse may request the Secretary of State to waive the filing date. The authority of the Secretary of State to waive the filing date has been delegated to the Department of State's Retirement Division. Requests for waiver should be addressed to the Department of State, Retirement Division, Washington, DC 20520. OPM will accept the waiver upon notification to do so from the Department of State.

8. The introductory text to § 890.807(a)(1) is revised, paragraphs (b) and (c) are designated as (c) and (d), respectively, and a new paragraph (b) is added to read as follows:

§ 890.807 Termination of enrollment.

(a)(1) Except for former spouses meeting the requirements in § 890.803(a)(3) (iv) and (v) of this part, a former spouse's enrollment terminates, subject to the temporary extension of coverage for conversion, at midnight of the last day of the pay period in which the earliest of the following events occurs: * * *

(b) The enrollment of a former spouse who meets the requirements in § 890.803(a)(3) (iv) or (v) of this part terminates, subject to the temporary extension of coverage for conversion, at midnight of the last day of the pay period in which the earliest of the following events occurs:

(1) Former spouse remarries before age 55.

(2) Former spouse dies.

* * * * * *

9. Section 890.808 is amended by adding a second sentence to paragraph (a), by revising paragraph (b)(1), and by adding a sentence to the end of paragraph (b)(2) to read as follows:

§ 890.808 Employing office responsibilities.

(a) * * * Former spouses applying for benefits under § 890.803(a)(3)(iv) of this part must also include with their application a request for waiver of the application time limitation in accordance with § 890.805(d) of this part. Former spouses applying for benefits under § 890.803(a)(3)(v) of this part must also include with their application a request for waiver of the application time limitation in accordance with § 890.805(e) of this part.

(b) *Administration of the enrollment process.* (1) The employing office will set up a method for accepting applications for enrollment informing the former spouse what documents to submit and where to submit them for an eligibility determination, and collecting premium payments. The method will include procedures for verifying the eligibility requirements under § 890.803(a) (1) and (2) of this part. The employing office must obtain OPM, Foreign Service Retirement and Disability System (FSRDS), or CIA Retirement and Disability System (CIARDS) documentation that the former spouse meets the additional requirement under § 890.803(a)(3) (i), (ii), (iii), (iv), or (v) of this part. A request for the retirement system's determination whether a court order is a qualifying court order for health benefits enrollment under this subpart must be accompanied by the documents specified in § 831.1705 (b) and (c) of this chapter.

(2) * * * Reconsideration requests from former spouses applying for benefits under § 890.803(a)(3)(iv) of this part must be directed to the Office of Personnel, Retirement Division, Central Intelligence Agency, Washington, DC 20505. Reconsideration requests from former spouses applying for benefits under § 890.803(a)(3)(v) of this part must be directed to the Department of State, Retirement Division, Washington, DC 20520.

* * * * * *

[FR Doc. 88–25831 Filed 11–7–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88–180]

Interstate Movement of Citrus Fruit From Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: We are amending the citrus canker regulations to allow inspectors to issue certificates for the interstate movement of regulated fruit from Florida, even if all nurseries in Florida are not inspected, provided the State of Florida prohibits the movement of regulated articles from any nursery that

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is not inspected. This action is necessary because some nurserymen refuse to allow inspections of their nurseries. Without amending the regulations, we would have to suspend the issuance of certificates for the interstate movement of regulated fruit. A state-imposed prohibition on the movement of regulated articles from nurseries not inspected would continue to provide protection against the interstate spread of citrus canker.

DATES: Interim rule effective November 2, 1988. We will consider written comments postmarked or received on or before November 21, 1988.

ADDRESSES: Send an original and two copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket 88–180. Comments received may be inspected at USDA, 14th and Independence Ave., SW., Room 1141 South Bldg., Between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Bldg., 6505 Belcrest Rd., Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

The citrus canker regulations, contained in 7 CFR 301.75, prohibit or restrict the interest movement of certain articles to prevent the interstate spread of citrus canker. Section 301.75–7(b) sets forth the requirements that must be met before an inspector will issue a certificate for the interstate movement of regulated fruit. With a certificate, regulated fruit may be moved interstate from Florida to all areas of the United States, including commercial citrus-producing areas. One of the requirements in § 301.75–7(b) is that all nurseries in Florida that contain regulated plants must be inspected for citrus canker approximately every 30 days. All regulated plants in the nurseries must be examined.

We require these nursery inspections because they are the best single means of detecting citrus canker and of ensuring that citrus canker is not introduced into a grove producing fruit for interstate movement.

We have learned that a few nurserymen have refused to allow inspections of their nurseries. If all nurseries in Florida that contain regulated plants are not inspected approximately every 30 days, our current regulations leave us no choice but to suspend the issuance of certificates for the interstate movement of regulated fruit. Rather than allow this to happen because of noncompliance by a few nurseries, we are amending the regulations to allow us to continue to issue certificates, even if all nurseries in Florida are not inspected, provided the State of Florida prohibits the movement of regulated articles from any nursery not inspected. The prohibition on the movement of regulated articles from that nursery would continue until every regulated plant in the nursery has been examined by an inspector on three inspections conducted approximately 30 days apart.

A state-imposed prohibition on the movement of regulated articles from nurseries not inspected as required would ensure that regulated fruit moved interestate with a certificate continues to present negligible risk of spreading citrus canker.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this rule without prior opportunity for public comment. Immediate action is necessary so that regulated fruit can continue to be moved interstate from Florida to commercial citrus-producing areas of the United States, with only a negligible risk of spreading citrus canker, despite some nurserymen refusing to allow inspection of their nurseries as required by the regulations. Suspending the issuance of certificates for the interstate movement of regulated fruit, perhaps indefinitely, would cause serious economic losses to those persons affected.

Because prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these emergency conditions, we find good cause under 5 U.S.C. 553 for making this rule effective upon signature. We will consider comments postmarked or received on or before November 21, 1988. Any amendments we make to this rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in accordance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Only a few nurseries out of thousands in Florida have refused to allow inspection as required by the regulations. Only these nurseries will be affected by this rule, and then only until they have been inspected as required.

Without this rule, all interstate movement of regulated fruit from Florida to commercial citrus-producing areas would have been suspended.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.75–7, paragraph (b)(6) is amended by revising the second sentence and adding a third sentence to read as follows:

§ 301.75–7 Issuance and cancellation of certificates and limited permits.

* * * * *

(b) * * *

(6) * * * In addition, all nurseries in Florida that contain regulated plants must have every regulated plant in the nursery examined by an inspector approximately every 30 days. If any nursery is not inspected as required by this paragraph, issuance of certificates for the interstate movement of regulated fruit may continue only if the State of Florida prohibits the movement of regulated articles from that nursery until every regulated plant in the nursery has been examined by an inspector on three inspections conducted approximately 30 days apart.

* * * * *

Done at Washington, DC, this 2nd day of November 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–25833 Filed 11–7–88; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 780

Appeal Regulations

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule, with minor changes for clarity, the proposed rule published in the **Federal Register** on May 13, 1988 (53 FR 17054). This rule amends 7 CFR Part 780, Appeal Regulations, to: (1) Delete obsolete references; (2) clarify the administrative appeal procedure set forth in this Part; (3) delete restrictions with respect to the reviewability of certain State Agricultural Stabilization and Conservation ("ASC") Committee determinations; (4) specify the persons to whom these regulations apply; and (5) state that these regulations are applicable to only individual determinations made with respect to specific persons. These amendments will provide greater clarity regarding the manner in which this administrative appeal procedure is conducted.

EFFECTIVE DATE: November 8, 1988.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Burchett, Acting Director, Appeals Staff, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC Telephone: (202) 447–5533.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

A proposed rule was published in the **Federal Register** on May 13, 1988 (53 FR 93) to: (1) Delete obsolete references; (2) clarify the administrative appeal procedure set forth in this Part; (3) delete restrictions with respect to the reviewability of certain State Agricultural Stabilization and Conservation ("ASC") Committee determinations; (4) specify the persons to whom these regulations apply; and (5) state that these regulations are applicable to only individual determinations made with respect to specific persons.

The public was given 30 days to submit written comments on the proposed rule published in the **Federal Register** on May 13, 1988 (53 FR 17054). The Department received one (1) timely filed comment.

Background

Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590h(b)), provides for the establishment of "local and State committees" to be used in carrying out the provisions of the act. These local committees are commonly referred to as county committees. County and State committees have been used extensively in the past to implement various other programs that are conducted by CCC and the Department of Agriculture, including the price support and production adjustment programs of the CCC. The method for selecting these committees and their general duties are set forth at 7 CFR Part 7.

A major function of county and State committees is to serve as a reviewing authority with respect to the implementation and administration of the various conservation, price support, and production adjustment programs. Included in this function is the participation of county and State committees in the administrative appeal process that is made available to persons who believe that an erroneous determination concerning their participation in such a program has been made. The administrative appeal process is set forth at 7 CFR Part 780. These regulations provide that if a person is dissatisfied with the initial determination by either the county or State committee or the Deputy Administrator, State and County Operations (the "Deputy Administrator"), Agricultural Stabilization and Conservation Service ("ASCS") that such person may request that the determination be reconsidered by the authority which issued the initial determination. If the person is dissatisfied with this subsequent determination, an appeal may be filed with the next highest reviewing authority, with the final level of appeal being to the Deputy Administrator. Throughout this appeal procedure the person pursuing the appeal may request that an informal hearing be held. If such a hearing is deemed to be appropriate, the county or State committee or the Deputy Administrator will convene a hearing in which the appellant is provided the opportunity to present relevant facts and evidence.

The proposed rule would also make several amendments to 7 CFR Part 780 for clarity and to delete obsolete references. In addition, the proposed rule would provide that any person who is not a program participant but receives

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a payment or other benefit that is made under a program administered by the county or State committee or the Deputy Administrator, such as an assignee, is subject to these regulations. The proposed rule would also make editorial changes to all sections of 7 CFR Part 780. The following is a summary of the major amendments which would be made by the proposed rule.

Section 780.1 would be amended to delete references to obsolete programs and provide that these regulations would be applicable to all programs that are administered by county and State committees and the Deputy Administrator, except as otherwise may be provided in individual program requirements. This section would also be amended to state that this part is applicable to: (1) Persons denied participation in appliable programs, (2) persons participating in such programs; and (3) persons who are not participating in such programs but who recevive payments or other benefits under one of these programs. Finally, this section would be amended to state more clearly that this administrative appeal procedure is available only with respect to individual determinations involving a person meeting the previously stated criteria. Appeals are not available with respect to general program requirements that apply to all program participants. For example, appeals are not available concerning the level at which loans and purchases are established or the type of conservation uses that are suitable for use on acreage that is required to be removed from production in order for a person to be eligible for program benefits.

Section 780.2 would be amended to conform to the amendments to Section 780.1 concerning persons who receive programs payments or other benefits and to remove unnecessary definitions.

Section 780.11 currently provides that nine specified determinations which are made by a State committee are not appealable to the Deputy Administrator. The proposed rule deleted this limitation but provided that certifications by a technician of the Soil Conservation Service or the Forest Service or determinations, of a technical nature by any Federal agency, other than a determination made by ASCS, shall be binding on the reviewing authority. The proposed rule also provides that State committee determinations with respect to program payment yields or crop acreage bases are not appealable to the Deputy Administrator. Producers have been permitted to appeal State committee determinations with respect to bases and yields to the Deputy Administrator since the enactment of the Act. The proposed rule would amend § 780.11 to provide that appeals involving program payment yields and crop acreage bases could not be appealed to the Deputy Administrator.

A comment was received from a Congressional delegation. The Congressional delegation objected to the revision of § 780.11 under the proposed rule that a State committee determination with respect to program payment yields is not appealable. The comment stated that allowing yield determinations to be finalized at the State level based on National rules and procedures without allowing the producer to present an appeal before the person(s) responsible for the issuance of regulations did not conform to the intent of Congress in establishing the ASC farmer-elected committees. The comment stated that the proposed rule might be acceptable if State committees were granted authority to interpret the regulations applicable to the establishment of program payment yields.

Producers have been permitted to appeal State committee determinations with respect to yields to the Deputy Administrator since the enactment of the Food Security Act of 1985 (the Act). During the 12-month period ending in April 1987 approximately 425 appeals concerning program payment yields or crop acreage bases were filed with the Deputy Administrator. The vast majority of the appeals addressed the substance of provisions of the Act or the regulations issued pursuant to the Act and did not concern the manner in which the regulations were applied. To ensure compliance with the Act and consistency in farm program administration, the responsibility for interpretation of the statute and regulations cannot be delegated to a lower authority. However, § 780.12 provides that nothing in these regulations in this part precludes the Administrator, ASCS, or a designee from determining at any time any question arising under the programs to which this part applies or from reversing or modifying any determination made by a State or county committee. This provision provides ample flexibility for the review by the Deputy Administrator of an appeal involving a determination which has been made with respect to a farm program payment yield or crop acreage base if the facts in an individual case warrant such action.

After considering the comments received, it has been determined that the provisions of the proposed rule as published in the **Federal Register** May 13, 1988 (53 FR 17054), should be adopted as a final rule. Accordingly, the proposed rule which was published in the **Federal Register** on May 13, 1988 (53 FR 17054), is adopted, with minor corrections for clarity and typographical errors, as the final rule.

List of Subjects in 7 CFR Part 780

Administrative practices and procedures.

Final Rule

Accordingly, Chapter VII, Title 7 of the CFR Part 780 is revised to read as follows:

PART 780—APPEAL REGULATIONS

Sec.

780.1 Basis, purpose and applicability.
780.2 Definitions.
780.3 Request for reconsideration.
780.4 Appeal to the State committee.
780.5 Appeal to Deputy Administrator.
780.6 Time limitations for filing requests for reconsideration or appeals.
780.7 Form of request for reconsideration or appeal.
780.8 Nature of informal hearing.
780.9 Determination.
780.10 Reopening of hearing.
780.11 Requests for reconsideration and appeals requiring special handling.
780.12 Delegation of authority.
780.13 OMB—Control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); section 8 of the Soil Conservation and Domestic Allotment Act, as amended, 49 Stat. 1149 as amended (16 U.S.C. 590h).

§ 780.1 Basis, purpose and applicability.

(a) The regulations set forth in this Part are applicable to all programs administered by the county and State Agricultural Stabilization and Conservation committees ("county committee" and "State committee," respectively) and the Deputy Administrator, State and County Operations ("Deputy Administrator") of the Agricultural Stabilization and Conservation Service ("ASCS"), except as otherwise may be provided in individual program requirements. These regulations prescribe the rules and procedure that must be followed by a person who seeks reconsideration or review of a determination made with respect to:

(1) Denial of participation in such a program;

(2) Compliance with program requirements;

(3) The making of payments or other program benefits to a person who is a participant in such a program; and

(4) The making of payments or other program benefits to a person who is not a participant in such a program.

(b) Reconsideration and review under this Part is limited to only individual determinations made with respect to those persons meeting the requirements of paragraph (a) of this section. Accordingly, there is no review under this Part with respect to general program requirements that are applicable to all program participants.

§ 780.2 Definitions.

(a) "Participant" means any person whose right to participate in, or receive payments or other benefits in accordance with, any of the programs to which these regulations apply who is affected by a determination of the county committee, State committee, or the Deputy Administrator.

(b) "Reviewing authority" means the county committee, State committee, or the Deputy Administrator, as is appropriate.

(c) "State committee" means in Puerto Rico and the Virgin Islands, insofar as is practical, the Director of the Caribbean Area ASCS office.

§ 780.3 Request for reconsideration.

Any participant who believes that a proper determination has not been made in accordance with applicable program regulations or that all of the facts were not considered with respect to any such determination initially made by the county committee, State committee, or Deputy Administrator, may obtain a reconsideration of such determination and an informal hearing therewith by filing a request for reconsideration with the reviewing authority which initially made such determination.

§ 780.4 Appeal to the State committee.

Any participant who believes that a proper determination has not been made by the county committee upon its reconsideration of an initial determination may obtain a review of such determination by the State committee and an informal hearing in connection therewith by filing an appeal with the State committee.

§ 780.5 Appeal to Deputy Administrator.

Except as provided in § 780.11, any participant who believes that a proper determination has not been made by the State committee may obtain a review by the Deputy Administrator of such determination and an informal hearing in connection therewith by filing an appeal with the Deputy Administrator.

§ 780.6 Time limitations for filing requests for reconsideration or appeals.

(a) A request for reconsideration or appeal by a participant from any determination shall be filed within 15 days after written notice of the determination is mailed to or otherwise made available to the participant. A request for reconsideration or appeal shall be considered to have been "filed" when personally delivered to the appropriate office or when post-marked.

(b) Whenever the final date for filing a request for reconsideration or appeal prescribed in paragraph (a) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal working hours, the time for filing shall be extended to the close of business on the next working day.

(c) A request for reconsideration or appeal may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) or (b) of this section if, in the judgment of the reviewing authority with whom such request is made, the circumstances warrant such action.

§ 780.7 Form of request for reconsideration or appeal.

Each request for reconsideration or appeal shall be in writing and signed by the participant or by an authorized representative of the participant. Each request for reconsideration or appeal shall be supported by a written statement of facts, which may be submitted with or as a part of the request for reconsideration or appeal, or at any time prior to the hearing. The participant may request an informal hearing or may request a determination to be made by the reviewing authority without a hearing on the basis of the written statement submitted and other information available to the reviewing authority. If a request for an informal hearing is not made by the participant, the reviewing authority shall make its determination on the basis of the material that was made available in making the prior determination and the material submitted by the participant.

§ 780.8 Nature of informal hearing.

(a) The hearing shall be held at the time and place designated by the reviewing authority.

(b) The hearing shall be conducted by the reviewing authority, or a representative of the reviewing authority, in the manner deemed most likely to obtain the facts relevant to the matter in issue. The participant shall be advised of the issues involved. The reviewing authority may confine the presentation of facts and evidence to pertinent matters and may exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions.

(c) The participant, or an authorized representative of the participant, shall be given a full opportunity to present facts and information relevant to the matter in issue and may present oral or documentary evidence. At its discretion, the reviewing authority may request or permit persons other than those appearing on behalf of the participant to present information or evidence at such hearing and, in such event, may permit the participant to question such persons.

(d) The reviewing authority shall have prepared a written record containing a clear, concise statement of the facts as asserted by the participant and material facts found by the reviewing authority. The names of interested persons appearing at the hearing shall be included. A verbatim transcript may be made if:

(1) The participant requests at a reasonable period prior to the time the hearing begins that the reviewing authority provide for such a transcript and agrees to pay the expense thereof, or

(2) The reviewing authority determines that such a transcript is appropriate.

(e) If, at the time scheduled for the hearing, the participant is absent and no appearance is made on behalf of the participant, the reviewing authority shall, after a reasonable time conclude the hearing, or may, at its discretion, accept information and evidence submitted by other persons present at the hearing.

§ 780.9 Determination.

(a) The reviewing authority prior to making a determination may request the producer or participant to produce additional evidence which it may deem relevant or may develop additional evidence from other sources. Upon reconsideration or review and within program authorities, the reviewing authority may affirm, modify, or reverse any determination made by it initially or made by a lower reviewing authority, or may remand the matter to a lower reviewing authority for such further consideration as is deemed appropriate. The producer or participant shall be notified in writing of the determination. The notification shall clearly set forth the basis for the determination. Each other person affected by the determination shall be notified in writing of the determination. Determinations made by the Deputy

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Administrator shall not be appealable by the producer or participant.

(b) When a producer requests copies of documents, information, or evidence upon which a determination is made or which will form the basis of the determination, copies of such documents, information or evidence shall be made available as provided in Part 798 of this chapter.

§ 780.10 Reopening of hearing.

The reviewing authority may, upon its own motion or upon request of the participant, reopen any hearing for any reason it deems appropriate unless the matter has been appealed to or considered by a higher reviewing authority.

§ 780.11 Requests for reconsideration and appeals requiring special handling.

Notwithstanding any other provision at this part, determinations:

(a) Made under a conservation program involving a finding or certification by a technician of the Soil Conservation Service or Forest Service, or determinations of a technical nature by any Federal agency, other than a determination made by ASCS, shall be binding on the reviewing authority, and

(b) Made by a State committee with respect to program payment yields or crop acreage bases are not appealable.

§ 780.12 Delegation of authority.

Nothing contained in these regulations in this part shall preclude the Administrator, ASCS, or the Executive Vice President, Commodity Credit Corporation, or a designee from determining at any time any question arising under the programs to which the regulations in this part apply or from reversing or modifying any determination made a county or State committee or the Deputy Administrator.

§ 780.13 OMB—Control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 780) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Signed in Washington, DC, this 1st day of November 1988.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-25827 Filed 11-7-88; 8:45 am]

BILLING CODE 3410-05-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615 and 618

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Parts 614, 615 and 618 on September 14, 1988 (53 FR 35427). The final regulations to Parts 614, 615 and 618 relate to borrower rights which include, among others, procedures for the restructuring of loans from certain Farm Credit System (System) institutions and other "qualified lenders," which have become "distressed loans" as those terms are defined in the Act; protection for certain borrower stock; certain protections for borrowers who have met all loan obligations; cooperation by System institutions with certified State agricultural loan mediation programs; and a right of first refusal with respect to the sale or lease of certain acquired property of the institutions. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 14, 1988.

EFFECTIVE DATE: October 14, 1988, except for the portion of § 614.4367(c)(1) which states, "* * * including the effective interest rate;" and paragraph (d)(1) of that section. See separate Federal Register document published elsewhere in this issue.

FOR FURTHER INFORMATION CONTACT: Andrea J. Cali, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: After publication of the final regulations, the Farm Credit Administration (FCA) received comments from the Farm Credit Corporation of America and other Farm Credit System institutions that they could not presently comply with the above-cited deferred portions of the regulations. The comments stated that even if such compliance were possible some time in the future, it would result in exorbitant and unnecessary costs to the Farm Credit System. Furthermore, the comments questioned the meaningfulness of the disclosures in the form required by the FCA.

Thus, pending further action, the effective date of portions of the regulations is delayed resulting in the deferral of the following portions of the regulations: (1) That portion of § 614.4367(c)(1) which states "* * * including the effective interest rate;" and (2) paragraph (d)(1) of that section.

The deferral of the above-cited portions means that lenders presently are not required to disclose to borrowers the new effective interest rate when it has been changed due to either a change in the stated contract rate, or due to a change in the amount of stock or participation certificates which borrowers are required to own.

The deferral does not exempt lenders from all other requirements of the regulations, including the remaining portions of § 614.4367 (c) and (d) which were effective as of October 14, 1988. Thus, borrowers must be informed of any change in the interest rate when adjusted by the lender, the date on which the new rate is effective, and all other requirements of § 614.4367(c). In addition, borrowers must be notified of action that changes the effective interest rate, such as a change in the amount of stock or participation certificates which borrowers are required to own, as well as all other disclosure requirements found in § 614.4367(d).

(12 U.S.C. 2252(a) (9) and (10))

Dated: November 3, 1988.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 88-25829 Filed 11-7-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-18]

Establishment of Transition Area; Monticello, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Monticello, IL, transition area to accommodate a new VOR-A Standard Instrument Approach Procedure (SIAP) to Monticello Aviation, Inc. Airport, Monticello, IL. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument

conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, August 24, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Monticello, IL (53 FR 32251).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area airspace near Monticello, IL.

The development of a new VOR-A SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Monticello, IL [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Monticello Aviation, Inc. Airport, Monticello, IL (lat. 40°00'20" N., long. 88°33'30" W.).

Issued in Des Plaines, Illinois, on October 25, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88-25737 Filed 11-7-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25729; Amdt. No. 1386]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows.

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

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The large number of SIAPs, their complex nature, and the need for a special format makes their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incoporation by reference are realized and publication of the complete description of each SIAP: Contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also indentifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective January 12, 1989

Goshen, IN—Goshen Muni, LOC RWY 27, Amdt. 2, CANCELLED
Goshen, IN—Goshen Muni, ILS RWY 27, Orig.

. . . Effective December 15, 1988

Anvik, AK—Anvik, NDB RWY 35, Orig., CANCELLED
Shishmaref, AK—Shishmaref, NDB RWY 15, Orig., CANCELLED
Shishmaref, AK—Shishmaref, NDB RWY 33, Orig., CANCELLED
Aspen, CO.—Aspen-Pitkin Co/Sardy Field, VOR/DME-C, Amdt. 2
Jasper, GA—Pickens County, NDB RWY 34, Orig.
Lihue, HI—Lihue, VOR-A, Amdt. 3
Lawrenceville, IL—Lawrenceville-Vincennes Intl, VOR RWY 18, Amdt. 9
Lawrenceville, IL—Lawrenceville-Vincennes Intl, VOR RWY 27, Amdt. 4
Lawrenceville, IL—Lawrenceville-Vincennes Intl, VOR RWY 36, Amdt. 9
Indianapolis, IN—Indianapolis Brookside Airpark, VOR RWY 36, Amdt. 5
Indianapolis, IN—Greenwood Muni, VOR-A, Amdt. 1
Indianapolis, IN—Indianapolis Metropolitan, VOR RWY 32, Amdt. 6
Indianapolis, IN—Mount Comfort, VOR RWY 34, Amdt. 1
Indianapolis, IN—Mount Comfort, ILS RWY 25, Amdt. 2
Decorah, IA—Decorah Muni, VOR RWY 29, Amdt. 2
Decorah, IA—Decorah Muni, NDB RWY 29, Amdt. 6
Decorah, IA—Decorah Muni, RNAV RWY 29, Amdt. 2
Louisville, KY—Standiford Field, ILS RWY 29, Amdt. 17
Crete, NE—Crete Muni, VOR/DME RWY 17, Amdt. 2
Crete, NE—Crete Muni, VOR/DME RWY 35, Amdt. 2
Crete, NE—Crete Muni, NDB RWY 17, Amdt. 1
Crete, NE—Crete Muni, NDB RWY 35, Amdt. 1
Binghamton, NY—Edwin A. Link Field-Broome County, ILS RWY 34, Orig.
Binghamton, NY—Edwin A. Link Field-Broome County, ILS RWY 34, Amdt. 21, CANCELLED
Fayetteville, NC—Fayetteville Regional/Grannis Field, VOR RWY 28, Amdt. 7
Fayetteville, NC—Fayetteville Regional/Grannis Field, RADAR-1, Amdt. 6
Albemarle, NC—Stanly County, NDB RWY 4, Amdt. 3
North Bend, OR—North Bend Muni, NDB RWY 4, Amdt. 2
North Bend, OR—North Bend Muni, ILS RWY 4, Amdt. 3
Pawtucket, RI—North Central State, LOC RWY 5, Amdt. 3
El Paso, TX—El Paso Intl, LOC BC RWY 4, Amdt. 5, CANCELLED
El Paso, TX—El Paso Intl, LOC/DME RWY 4, Orig.

. . . Effective November 17, 1988

Newark, NJ—Newark Intl, ILS RWY 4L, Amdt. 9

. . . Effective October 20, 1988

Farmington, NM—Four Corners Regional, ILS RWY 25, Amdt. 3
Dickinson, ND—Dickinson Muni, VOR-A, Amdt. 4
Dickinson, ND—Dickinson Muni, RNAV RWY 14, Amdt. 4
Dickinson, ND—Dickinson Muni, ILS/DME RWY 32, Amdt. 3

. . . Effective October 19, 1988

St. Louis, MO—Lambert-St. Louis Intl, LDA/DME RWY 12L, Amdt. 4

. . . Effective October 14, 1988

Houston, TX—Houston Intercontinental, ILS RWY 8, Amdt. 17

[FR Doc. 25738 Filed 11-7-88; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 4]

Educational, Scientific and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Notice of Interim Rules.

SUMMARY: In compliance with an order of the United States District Court for the Central District of California, the United States Information Agency (the "Agency" or "USIA") on November 16, 1987 published interim rules to amend regulations found at 22 CFR Part 502 which implement the *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character* ("Beirut Agreement of 1948") at 52 FR 43753. On May 13, 1988, the District Court found the interim regulations unconstitutional and ordered the Agency to draft new regulations. By order dated September 9, 1988, the court required that the new regulations be promulgated within 60 days. This notice sets forth the new set of interim regulations. The USIA seeks comments on the new interim regulations.

DATES: The interim regulations shall become effective November 8, 1988. Comments are invited and will be accepted by the Agency until January 9, 1989.

ADDRESS: Interested persons should submit relevant views and comments to Merry Lymn, Assistant General Counsel, Room 700, USIA, 301 4th Street, SW., Washington, DC 20547, (202) 485-8829.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Room 700, USIA, 301 4th Street, SW., Washington, DC 20547, (202) 485-8829.

SUPPLEMENTARY INFORMATION: By advance notice of proposed rulemaking published at 52 FR 25384, July 7, 1987 (republished in its entirety because of typesetting errors at 52 FR 26156, July 13, 1987), the USIA instituted a rulemaking proceeding in response to an order of the United States District Court for the Central District of California in *Bullfrog Films, Inc.* v. *Wick*, 646 F. Supp. 492 (C.D. Cal. 1986). The district court held that part of the regulations implementing the Beirut Agreement were unconstitutional, and enjoined USIA from enforcing the invalidated sections of the regulations. In addition, the court ordered that USIA reconsider six films which had been denied certification under 22 CFR Part 502. Consequently, in order to aid the Agency in complying with the district court's order, the Agency requested public comments as to whether and how the challenged regulations could be redrafted in a way which would both satisfy the district court's ruling and comply with the terms and requirements of the Beirut Agreement, as interpreted by the United States, UNESCO and the international community. After review of the public comments received, the Agency adopted interim regulations. By order dated May 13, 1988, the court invalidated the interim regulations as unconstitutional. On September 9, 1988, the court ordered the Agency to promulgate regulations which are to become effective within 60 days. Accordingly, the Agency will set forth the new interim regulations with its reasons therefor.

The *Background* and *The Court's Decisions* sections set forth at 52 FR 43754-55 are included here by reference. In addition, on May 17, 1988, a three-judge panel of the United States Court of Appeals for the Ninth Circuit affirmed the district court's October 1986 decision declaring parts of the original regulations unconstitutional. *Bullfrog Films, Inc.* v. *Wick*, 847 F.2d 502 (9th Cir. 1988). The Court of Appeals decision struck down, as contrary to the First and Fifth Amendments of the Constitution, the operative terms of Article I of the Beirut Agreement which define the materials which are eligible for certification under the treaty. On June 30, 1988, Agency petitioned the Ninth Circuit for rehearing *en banc* of the panels' decision invalidating the language of Article I of the treaty. That rehearing petition is presently pending before the court of appeals.

Discussion

For purposes of this second set of interim regulations, the Agency's objective is to resume administering the Beirut Agreement without violating applicable constitutional requirements as defined by the district court. The Agency adopts the new interim regulations set forth below to substitute for the prior interim regulations issued in November 1987, which were invalidated by the district court. These new interim regulations are adopted at this time because of the public interest served by this nation's participation under the treaty. Although the Agency does not believe that these interim regulations fully implement the treaty, they are adopted to promote the public interest, in accordance with the requirements of the district court's orders. The Agency is vigorously pursuing its appeal of the court's judgment that the November 1987 interim regulations are unconstitutional and, if that judgment is reversed on appeal, the Agency intends to resume operating under the November 16, 1987 (52 FR 43753) interim regulations.

As guided by the district court's May 13, 1988 Memorandum Decision and Opinion, the Agency has drafted the new interim regulations to make clear that certifiable materials must teach or explain through a reasoned development of a subject or aspect of a subject so as to aid the viewer or listener in a learning process. Through these criteria, the Agency will focus on the reasoned development of the conclusions stated in the material by looking at the method by which the subject matter is presented rather than the general acceptance of the conclusions stated. The new interim regulations clarify that which has always been the case—that the Agency renders no judgment as to the viewpoints or positions expressed in the materials, and that materials may qualify for certification even if their viewpoints or positions are unpopular or are not generally accepted. This approach follows, in many respects, the "Methodology Test" developed by the Internal Revenue Service for determining if organizations qualify as "educational" under 26 U.S.C. 501(c)(3), which the district court recommended as a possible basis for development of new regulations by the Agency. *Bullfrog Films, Inc.* v. *Wick*, 646 F. Supp. at 506-09.

The Agency will interpret Article I of the Beirut Agreement as excluding from consideration materials which present information so selectively as to constitute hate materials, or which express conclusions more on the basis of strong emotional feelings than objective evaluations. For example, the racial supremacist material involved in *National Alliance* v. *United States*, 710 F.2d 868 (1983), would not qualify under this requirement.

In addition, the new interim regulations reiterate Article I's requirement that the technical quality of the materials must be such that it does not interfere with the use of the materials. For example, sound tracks must be clear and distinct, and photography must be sharp and easy to watch.

Furthermore, the new interim regulations contain several other changes from the prior interim regulations to bring them into compliance with the Court's May 13, 1988 opinion. The Agency will no longer

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determine whether the material is "presented in a primarily factual or demonstrative manner,"—language which the Court determined to be vague. Further, the regulations no longer require that facts stated in the materials must "represent the current state of factual knowledge," a provision which the Court interpreted as narrowly limiting materials to espousing only what is commonly accepted as conventional wisdom. Moreover, the new regulations do not require that material which advocates a conclusion or viewpoint for which different viewpoints exist must acknowledge or refer to the existence of a difference of opinion or other point of view. The district court found this requirement too broad to comply with constitutional principles, and the requirement has been eliminated from the new regulations.

Finally, the prior interim regulations contained authority for the Agency to identify otherwise certifiable material as "propaganda" if the material was substantially adapted to prevail upon, indoctrinate or influence a viewer or user to a particular political, religious or economic view. Because the district court found this provision to be invalid, the Agency will not under these regulations identify materials it finds propagandistic on the certificate.

Findings and Conclusions

The Agency adopts the regulations set forth herein on an interim basis effective November 8, 1988, and will begin to make certification decisions at that time. The public is invited to submit comments in a timely manner as described earlier in this notice.

This decision does not significantly affect the quality of the human environment and is not a major or regulatory action under the Energy and Conservation Act of 1975.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this regulation § 502.6(a)(3) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520) and have been assigned OMB Control Numbers.

List of Subjects in 22 CFR Part 502

Education, Imports, Trade agreements.

PART 502—[AMENDED]

The authority citation for 22 CFR Part 502 continues to read:

Authority: 5 U.S.C. 301, 19 U.S.C. 2051, 2052, 22 U.S.C. 1431 et seq., E.O. 11311, 31 F.R. 13431, 3 CFR 1966–1970 comp. page 593.

2. In § 502.6, paragraph (a)(3) is revised to read as follows:

§ 502.6 Substantive criteria

(a) * * *

(3) Audio visual materials which are deemed "educational, scientific or cultural" for the purposes of Article I of the Beirut Agreement of 1948 are those whose "primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; when the materials are representative, authentic, and accurate; and when the tehnical quality is such that it does not interfere with the use made of the material." This means that:

(i) The subject matter of the materials must teach or explain through a reasoned development of a subject or aspect of a subject to aid the viewer or listener in a learning process. The educational character of the materials may be evidenced by a teacher's guide, study guide or similar collateral instructional materials prepared by a bona fide subject matter specialist.

(ii) Materials which present viewpoints, positions, facts or information so selectively as to constitute an incitement of hatred or violence against a government, group or person, or which make use of inflammatory or disparaging terms or express conclusions more on the basis of strong emotional feelings than objective evaluations, will not be deemed educational. For example, facts or information presented in such a way as to constitute hate material (such as the racial supremacist material involved in *National Alliance* v. *United States*, 710 F.2d 868 (1983)), does not qualify for certification.

(iii) The technical quality of the materials must be such that it does not interfere with the use of the materials. For example, sound tracks must be clear and distinct, and photography must be sharp and easy to watch.

* * * * *

Dated: October 28, 1988.

Charles Z. Wick,

Director.

[FR Doc. 88-25786 Filed 11-7-88; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-225-D]

Occupational Exposure to Formaldehyde; Approval of Information Collection Requirements; Start-Up Date; Clarification; Technical Amendment; Request for Comment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; Notice of approval of information collection requirements; clarification and technical amendment; request for comment.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** for occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). On February 2, 1988, the Office of Management and Budget (OMB), in accordance with its authority under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and 5 CFR Part 1320, approved the information collection requirements contained in the final rule with the exception of those contained in paragraphs (m)(1)(i) through (m)(4)(ii), concerning hazard communication. OSHA resubmitted its request for approval of paragraphs (m)(1)(i) through (m)(4)(ii) and on October 7, 1988, OMB approved paragraph (m)(1)(i) for one year and paragraphs (m)(1)(ii) through (m)(4)(ii) for three years. The OMB clearance number is 1218–0145.

OSHA is providing a sixty day start up period, until December 6, 1988, before it will begin enforcing the newly approved hazard communication provisions. During this period OSHA will consider the petition filed by the Formaldehyde Institute and others for an administrative stay of these provisions pending either judicial review or a new rulemaking limited to the provisions of paragraph (m)(1)(i). OSHA is also seeking comment on whether or not to grant the petition and to initiate limited rulemaking.

This notice also provides a clarification of the labeling provisions.

DATES: *Effective date*: December 6, 1988.

Comments on whether to grant the administrative stay and whether to institute additional rulemaking must be received no later than November 29, 1988.

ADDRESSES: Written comments should be submitted to the OSHA Docket Office, Docket No. H–225–D, Room N–2634, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–7894.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION:

I. Paperwork Approval

OSHA published a final rule on formaldehyde on December 4, 1987 (52 FR 46168). On February 2, 1988, under the Paperwork Reduction Act, OMB approved all of the paperwork requirements of 29 CFR 1910.1048 with the exception of those contained in paragraphs (m)(1)(i) through (m)(4)(ii). OSHA informed the public of this fact and of the OMB clearance number on March 2, 1988 (53 FR 6628).

The disapproved paragraphs contained criteria for determining when the presence of formaldehyde constitutes a health hazard and prescribed information that must be included on hazard warning labels on containers of formaldehyde, and containers of certain formaldehyde-treated products as well as information to be included in the accompanying Material Safety Data Sheets (MSDSs).

On July 7, 1988, OSHA resubmitted its request for information collection approval of paragraphs (m)(1)(i) through (m)(4)(ii) of 29 CFR 1910.1048, with a more detailed justification. The entire text of the resubmission was printed in the **Federal Register** on July 12, 1988 (53 FR 26329).

On October 7, 1988, OMB approved the information collection requirements in paragraph (m)(1)(i) for one year, until October 7, 1989. Paragraph (m)(1)(i) sets forth objective criteria that establish when formaldehyde constitutes a "health hazard" for purposes of triggering the labeling provisions and the requirements for availability of MSDSs. At the same time, paragraphs (m)(1)(ii) through (m)(4)(ii) were approved for three years, until October 7, 1991. These paragraphs prescribe the information to be included on hazard warning labels for formaldehyde and set forth procedures for developing, updating and distributing MSDSs to accompany formaldehyde and formaldehyde-containing products.

II. Clarification of the Labeling Provisions

Paragraph (m)(3)(i) of 29 CFR 1910.1048 requires the employer to assure that hazard warning labels complying with the requirements of the Hazard Communication standard, 29 CFR 1910.1200(f), "are affixed to all containers where the presence of formaldehyde constitutes a health hazard." As noted above, paragraph (m)(1)(i) sets forth objective criteria for ascertaining when formaldehyde constitutes a health hazard. The hazard warning label must identify the hazardous chemical, list the name and address of the responsible party, contain the information "Potential Cancer Hazard" and appropriately warn of all other hazards.

Questions were raised as to the nature of the container that was required to be labeled. For example, in its initial disapproval of paragraph (m)(1)(i) through (m)(4)(ii), OMB stated:

> The F.S. [Formaldehyde Standard] also introduces uncertainty about whether for purposes of Hazard Communication, a solid object is a "container", a "mixture", neither or both.

Several statements in the preamble to the final rule were said to contribute to the uncertainty. Because of this apparent confusion, OSHA hereby reiterates that the labeling requirement of the formaldehyde standard applies to containers, and not products. All statements pertaining to the placement of hazard warning labels in the summary and explanation of paragraph (m) of the final rule on formaldehyde (52 FR 46282–46285), apply to containers. The containers, not the solid products, must bear the warning label. To interpret this language otherwise would contradict not only the language of the standard itself, but also the stated intent of the Formaldehyde Standard (52 FR 46282) to be consistent with the Hazard Communication Standard (29 CFR 1910.1200).

III. Technical Amendment

OSHA is amending the language at the end of the final rule on formaldehyde as it appears in the Code of Federal Regulations to reflect the fact that all paragraphs of the standard have been approved by OMB under Control Number 1218–0145.

IV. Start-Up Dates and Consideration of Administrative Stay Petition and Possible Additional Limited Rulemaking Requirements

OSHA is providing a sixty day start-up period from the date of OMB's approval, until December 6, 1988, before it will begin enforcing the newly approved labeling provisions. This period is reasonable and appropriate in view of the fact that that was the amount of time originally allotted for the public to become familiar with the various provisions of the formaldehyde standard before any provision became effective. During this period, affected employers are expected to continue to comply with the provisions of OSHA's Hazard Communication standard (29 CFR 1910.1200) which contains similar obligations.

The final rule for formaldehyde, 29 CFR 1910.1048, is the subject of several petitions for judicial review under section 6(f) of the Occupational Safety and Health Act (see *UAW, et al.* v. *John A. Pendergrass, Assistant Secretary of Labor, et al.*, D.C. Cir., No. 87–1743). In addition, the Formaldehyde Institute and others have petitioned the Agency for an administrative stay of the warning label requirement pending the outcome of judicial review of a new rulemaking limited to the provisions of paragraph (m)(1)(i). In their petition, which is in the Formaldehyde Docket as Exhibit 251–4 (Docket H–225C), the Formaldehyde Institute contends that "[t]his requirement is on the one hand, unnecessary for worker protection and, on the other hand, devastating to the business of various industries which manufacture and sell products emitting minimal amounts of formaldehyde." OSHA initially declined to entertain the administrative stay petition because of the uncertain status of paragraph (m) due to the original OMB disapproval under the Paperwork Reduction Act. Since OMB has recently approved the information collection requirements for hazard warning labels, it appears to be appropriate to consider the merits of the petition at this time.

To assist OSHA in evaluating the petition, OSHA is seeking comment on the warning label requirements of the standard, particularly the appropriateness of the criteria set forth in paragraph (m)(1)(i). Since the publication of the final standard on December 4, 1987, OSHA has received numerous comments on this requirement raising both substantive and procedural

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issues. One such issue has been the question of the ability of employers to accurately measure formaldehyde emissions at the 0.1 ppm level. Petitioners have also urged OSHA to undertake additional rulemaking to reconsider the provisions of paragraph (m)(1)(i). Comments on this issue are also requested.

V. Public Participation

Interested persons are invited to submit written views and arguments as to whether the administrative stay petition (Exhibit 251–4, Docket H–225–C) should be granted and also whether the Agency should undertake additional rulemaking to reconsider the provisions of 29 CFR 1910.1048(m)(1)(i). These comments must be submitted in quadruplicate to the Docket Officer, Docket H–225–D, Room N–2634, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 and must be received in the Docket Office no later than November 29, 1988. All submissions will be available for public inspection and copying at the above address.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational Safety and Health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, DC this 4th day of November 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is amended as set forth below:

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 continues to read in part as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911. Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553. * * * Section 1910.1048 also issued under 29 U.S.C. 653.

§ 1910.1048 [Amended]

2. By revising the language at the end of § 1910.1048 to read as follows:

(Approved by the Office of Management and Budget under Control Number 1218–0145)

[FR Doc. 88–25959 Filed 11–7–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Revision of Gross Proceeds Definition in Oil and Gas Valuation Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending the definition of "gross proceeds" in its recently adopted regulations governing the valuation for royalty purposes of oil and gas production from Federal and Indian leases (including leases on the Outer Continental Shelf) as the result of an adverse court decision. As amended, so-called "take-or-pay payments" no longer would be part of a lessee's gross proceeds. The MMS also is deleting the references to payments for advanced exploration or development costs and prepaid reserve payments in the "gross proceeds" definition.

The MMS also is amending Notice to Lessees of Federal Onshore Oil and Gas Leases Number 1 (NTL–1) and Notice to Lessees and Operators of Indian Oil and Gas Leases Number 1A (NTL–1A) to remove the requirement to pay royalties on take-or-pay payments. These notices to lessees and operators were effective from January 25, 1977, and April 5, 1977, respectively, to March 1, 1988.

EFFECTIVE DATES: Changes to 30 CFR Part 206—March 1, 1988; changes to NTL–1—January 25, 1977, and NTL–1A—April 5, 1977.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Charles Brook of the Royalty Valuation and Standards Division of the Royalty Management Program, MMS.

I. Background

On January 15, 1988, MMS published notices in the **Federal Register** (53 FR 1184 and 53 FR 1230) of final rulemaking governing the valuation, for royalty purposes, of oil and gas produced from Federal onshore and Outer Continental Shelf leases and from Indian Tribal and allotted leases. The rules amended previous valuation regulations and became effective March 1, 1988.

Under the definition of "gross proceeds" at 30 CFR 206.151, the new rules specifically included take-or-pay payments as part of "the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products." Accordingly, lessees were required to pay royalties on take-or-pay payments when those payments were received.

The Department of the Interior's (Department) position requiring royalties on take-or-pay payments predated the new rulemaking and represented a long-standing policy. While the rulemaking process was ongoing, the take-or-pay position was being challenged in two U.S. District Courts and resulted in conflicting decisions. In *Mesa Petroleum Company v. U.S. Department of Interior*, 647 F. Supp. 1350 (W.D. La., November 10, 1986), the U.S. District Court for the Western District of Louisiana determined that there is no statutory, regulatory, or contractual authority to collect royalties on take-or-pay payments. However, in *Diamond Shamrock Exploration Co. v. Donald P. Hodel, et al.* (E.D. La., Civil No. 86–0537, and consolidated cases, January 23, 1987), the U.S. District Court for the Eastern District of Louisiana agreed with the Department that take-or-pay payments are part of the lessee's gross proceeds for the disposition of production and thus are royalty-bearing at the time the take-or-pay payments are received.

The two District Court decisions were consolidated on appeal to the Court of Appeals for the Fifth Circuit (Nos. 87–3207, 87–3195, and 87–4069, respectively). On August 17, 1988, the Court ruled that "* * * royalty payments are not due on take-or-pay payments and are only due on gas actually produced and taken (i.e., so-called "make-up" gas)." In reaching its decision, the Court held that the Department's position of treating take-or-pay payments, when made, as part of the value on which royalty is due did not comport with either the intent of the governing statutes or the language of the relevant leases and regulations, which require that royalties are due only on the value of "production" saved, removed, or sold from the leased property. The Court adopted as the legal definition of the word "production", as used in the context of calculating royalty payments, the actual physical severance of minerals from the formation. Accordingly, the Court concluded that "royalty payments are due only on the value of minerals actually produced, i.e., physically severed from the ground. No royalty is due on take-or-pay payments unless and until gas (namely, make-up gas) is actually produced and taken."

A. Take-or-Pay Requirement in Section 206.151

The Fifth Circuit's ruling therefore requires that MMS amend its regulations to remove the requirement to pay royalties on take-or-pay payments at the time the payment is made. Of course, royalties still are due when make-up gas is taken.

B. Advanced Payments

The definition of "gross proceeds" in § 206.151 of the recently adopted gas valuation rules also requires the following:

> Payments or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of gross proceeds as of the time of first production.

The advanced payment program was initiated in 1970 and was designed to facilitate capital formation by producers to finance development and production of new gas supplies in order to help alleviate the existing natural gas shortage. The advanced payment program was governed successively by a series of five "advanced payment orders" issued by the Federal Power Commission (FPC) until the program's termination at the end of 1975. FPC Orders Nos. 410, 410–A, 441, 465, and 499 governed advances made pursuant to contracts entered into after October 1, 1970, through December 31, 1975.

The program was conditionally supported in *Public Service Commission, State of New York v. FPC*, 151 U.S. App. D.C. 307, 467 F.2d 361 (1972), as a "justifiable experiment in the continuing search for solutions to our nation's critical shortage of natural gas."

Under the requirements of the FPC advanced payment program, pipelines provided production capital in the form of pre-payments to producers (advanced payments) for future deliveries of natural gas. Producers were expected to seek advanced payments because the advances would provide them with a source of interest-free capital. It was anticipated that pipeline participation in the program would be assured since pipeline rates could reflect a return on qualifying advanced payments. Furthermore, pipeline participation was encouraged by the prospect of securing needed gas reserves for the future while transferring to the rate payer the added cost of making advanced payments for gas.

The "cost" to the pipeline of an advanced payment was the cost of financing the amount advanced, a factor principally determined by interest rates in the bond market. Current purchasers from the pipeline would shoulder, in the rates they paid, the "carrying charges" on these interest-free loans to producers.

In effectuating an advanced payment, the producer and the pipeline would enter into a contract specifying the amount advanced, the potential production committed, and the rate of reimbursement whether through delivery of production or other arrangements such as periodic payments. When production was about to commence, the producer and the pipeline would enter into a typical gas purchase contract which was separate from the advanced payment contract. In some cases the gas purchase contract would reflect terms governing the reimbursement associated with the advanced payment.

Qualifying advance payments had to be made prior to deliveries under an associted purchase contract. Substantial lag times were inevitable between the date of the advance and its full repayment in gas, especially if the advance were made to fund exploration or other pre-production producer expenditures. Advances had to be fully recovered within a "reasonable period of time following commencement of deliveries," and in any case "within a 5-year period * * *" following initial delivery.

Section 206.151 required that royalty be paid on the full amount of the advanced payment at the time when production first begins, when the amounts advanced become repayable in gas, because the payments become consideration for gas at that point. This requirement was analogous to the requirement to pay royalty when a take-or-pay payment was made, not when the make-up gas was produced, because the take-or-pay payment was part of the total consideration for all gas purchased under the contract when received. In view of the Fifth Circuit's ruling that royalty is not owed until make-up gas is actually produced and taken, it follows that no royalty is due on advanced payments until the specific gas which repays the advanced payment actually is produced. Therefore, MMS is removing the requirement from the rules. A similar advanced payment provision is being removed from the oil valuation rules, § 206.101.

C. Notice to Lessees—1 and 1A

For onshore Federal and Indian leases, a prior rule required royalties to be paid on take-or-pay payments. In 1977, following proposals and an opportunity to comment, the Department adopted Notice to Lessees and Operators of Federal Onshore Oil and Gas Leases (NTL–1, 42 FR 4546, January 25, 1977) and Notice to Lessees and Operators of Indian Oil and Gas Leases (NTL–1A, 42 FR 18135, April 5, 1977). Part III of both NTL–1 and NTL–1A provides:

> Payments made by a gas purchaser pursuant to a contractual "take-or-pay" clause are subject to royalty under the terms of the lease agreement.

Therefore, the Department by rule required royalty to be paid on take-or-pay payments for onshore Federal and Indian oil and gas leases as early as 1977. The Fifth Circuit's ruling thus requires that these rules also be amended so as to be consistent with the underlying statutes and lease terms.

NTL–1 and NTL–1A were terminated when the new product value rules became effective on March 1, 1988. Therefore, the rule change is being made for the 1977–1988 period so that the legally proper standard can be applied for audits, etc. which relate to the time period when the rules were effective.

The Department is continuing to review the Fifth Circuit's decision to determine whether any other regulations or royalty valuation policies are affected by the Court's ruling.

II. Final Rule Amendments

To be consistent with the Fifth Circuit Court of Appeals' decision regarding royalties on take-or-pay payments, MMS is amending its gas valuation regulations by revising the definition of "gross proceeds" in 30 CFR 206.151; the definition is amended by deleting the term "Take-or-pay payments" from the third sentence, and by deleting the following sentence from the definitions of "gross proceeds" in both §§ 206.101 and 206.151:

> Payments or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of the gross proceeds as of the time of first production.

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Today's changes to the regulations regarding take-or-pay payments and advanced payments are consistent with, and are the minimum necessitated by, the Fifth Circuit's recent decision. Until the Department completes its consideration as to whether or not additional alterations to regulations or royalty valuation policies are required or suggested by the Court's ruling, the product value regulations will be premised on the concept that royalty value cannot be less than the gross proceeds accruing to the lessee. The MMS, therefore, will carefully review all situations to ensure that lessees do not improperly attempt to use contractual devices to avoid royalties by denominating as take-or-pay or advance payments other consideration which is part of the gross proceeds for production.

The final oil and gas valuation regulations became effective March 1, 1988. Therefore, this final rule amendment is also effective March 1, 1988.

The MMS also is amending § 206.150 to reflect the amendment to NTL-1 and NTL-1A to remove the last paragraph of section III which requires the reporting and payment of royalties on take-or-pay payments. This modification is effective as of the date of issuance of NTL-1 and NTL-1A, respectively, and effective until March 1, 1988, the date of termination of the notices.

III. Procedural Matters

Administrative Procedure Act

The United States Court of Appeals for the Fifth Circuit has determined that, based on the underlying statutes and leases, the Department cannot require lessees to pay royalties on take-or-pay payments unless and until there is make-up gas production. The rule changes provided herein are necessary to make the Department's rules consistent with the court's decision. Accordingly, there is good cause to determine that notice and public comment are unnecessary.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rulemaking amends existing regulations to reflect a court decision that royalties are not due only until minerals actually are produced.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental Shelf, Geothermal energy, Government contracts, Indian lands, Minerals royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: October 12, 1988.

James E. Cason,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Part 206, is amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. The definition of "gross proceeds" in § 206.101 of Subpart C is amended by deleting the fifth sentence. The revised definition reads as follows:

§ 206.101 Definitions.

* * * * *

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of the oil produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to oil, also includes, but is not limited to, reimbursements for harboring or terminaling fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

* * * * *

3. Paragraphs (e)(1) and (e)(2) of § 206.150 of Subpart D are amended to reflect the amendment of Notice to Lessees and Operators of Federal Oil and Gas Leases Number 1 (NTL-1) and Notice to Lessees and Operators of Indian Oil and Gas Leases Number 1A (NTL-1A) to remove the requirement to pay royalties on take-or-pay payments during the effective periods of the notices. The revised paragraphs read as follows:

§ 206.150 Purpose and scope.

* * * * *

(e)(1) Notice to Lessees and Operators of Federal Onshore Oil and Gas Leases Number 1 (NTL-1) is amended as of January 25, 1977, the effective date of NTL-1, by deleting the last paragraph of section III. NTL-1 was terminated effective March 1, 1988.

(e)(2) Notice to Lessees and Operators of Indian Oil and Gas Leases Number 1A (NTL-1A) is amended as of April 5, 1977, the effective date of NTL-1A, by deleting the last paragraph of section III. NTL-1A was terminated effective March 1, 1988.

* * * * *

4. The definition of "gross proceeds" in § 206.151 of Subpart D is amended by deleting the term "take-or-pay payments" from the third sentence and by deleting the fifth sentence. The revised definition reads as follows:

§ 206.151 Definitions.

* * * * *

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to reimbursements for severance taxes and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

* * * * *

[FR Doc. 88-25800 Filed 11-7-88; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 95

[DoD Directive 1005.13]

Gifts From Foreign Governments

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This Part is issued to reflect revised General Services Administration (GSA) regulations concerning the acceptance of gifts from foreign governments and their limits of monetary value. In addition, this Part now conforms to current organizational arrangements within the Office of the Secretary of Defense.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone (202) 697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 95

Foreign relations, DoD and Military Employees.

Accordingly, Title 32, Chapter I, is amended to add Part 95 as follows:

PART 95—GIFTS FROM FOREIGN GOVERNMENTS

Sec.

95.1 Purpose.
95.2 Applicability.
95.3 Definitions.
95.4 Policy.
95.5 Responsibilities.
95.6 Procedures.
95.7 Information Requirements.
Appendix A to Part 95—Procedures for the Receipt and Disposition of Gifts

Authority: 10 U.S.C. 113.

§ 95.1 Purpose.

This Part:

(a) Updates policy governing the acceptance and retention of gifts from foreign governments.

(b) Implements DoD Directive 1005.13 and 5 U.S.C. 2105, 3109, and 7342 that allow Federal employees to accept certain gifts from foreign governments.

(c) Assigns responsibilities and prescribes procedures.

§ 95.2 Applicability.

This Part applies to:

(a) The Office of the Secretary of Defense (OSD); the Military Departments; the Joint Chiefs of Staff (JCS); the Joint Staff; the Unified and Specified Commands; and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

(b) All DoD military and civilain personnel, their spouses (unless legally separated), and their dependents as defined in 26 U.S.C. 152 (hereafter called "employees").

§ 95.3 Definitions.

Employee. An employee of a DoD Component, as defined in 5 U.S.C. 2105; an expert or consultant under contract with a DoD Component, including any individual performing services for a DoD Component under 5 U.S.C. 3109 and members of the Military Services (including retired members and Reservists) regardless of duty status; the spouses of all such individuals (unless legally separated) and their dependents as defined in 26 U.S.C. 152.

Employing Component. The DoD Component in which the recipient is appointed, employed, or enlisted. If a recipient is a spouse or dependent of a serving individual, then the following Component is that in which the serving individual is appointed, employed, or enlisted.

(a) The Military Departments are considered the employing Components for all military and civilian personnel assigned to them. The Military Department also act as the employing Component for all personnel, military and civilian, either directly employed or assigned to the headquarters of Unified Commands.

(b) The OSD is considered the employing Component for its military and civilian personnel, the Joint Staff, the Defense Advanced Research Projects Agency (DARPA), the Defense Security Assistance Agency (DSAA), Strategic Defense Initiative Organization (SDIO), the DoD Field Activities, and other DoD activities not specifically designated an employing Component.

(c) The Defense Agencies (except DARPA, DSAA, and SDIO) are considered the employing Components for their civilian employees and for military members assigned to duty with them.

Foreign Government. Includes any unit of a foreign governmental authority, including any foreign national, state, local, and municipal government; any international or multinational organization whose membership is composed of any unit of foreign government; and any agent or representatives of any such unit or organization while acting as such.

Gift. Any tangible or intangible present by or received from a foreign government.

Minimal Value. A retail value in the United States at the time of acceptance not in excess of $180 or such amount specified by the Administrator of General Services under 5 U.S.C. 7342.

Responsible Accountable Official. The official designated by the employing Component to approve the annual report of foreign gifts.

Travel Expenses. Costs of transportation, food, and lodging incurred during the travel period.

§ 95.4 Policy.

No DoD employee may accept, request, or otherwise encourage the offer of a gift from a foreign government. Whenever possible, employees shall refuse accepance of gifts of any type or nature.

§ 95.5 Responsibilities.

(a) The *Director of Administration and Management, Office of the Secretary of Defense* (DA&M, OSD), shall:

(1) Develop policy and provide guidance to DoD employees regarding the acceptance and retention of gifts offered by foreign governments.

(2) Implement this Part for all OSD personnel as defined in paragraph (b) of definition *Employing Component*, § 95.3.

(b) The *Heads of DoD Components* shall designate an official who shall be responsbile for monitoring compliance with this Part and who shall:

(1) Establish procedures to ensure that employees are familiar with the requirements and restrictions governing acceptance of gifts from foreign governments under 5 U.S.C. 7342.

(2) Review cases in which there exists evidence of failure of any employee to comply with requirements, and establish disciplinary procedures.

(3) Report to the Attorney General, through the General Counsel of the Department of Defense (GC, DoD), when it is determined administratively that an employee who is the donee of a gift, or is the recipient of travel or travel

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expenses, has failed to comply with the procedures established by 5 U.S.C. 2105, 3109 and 7342 through actions or circumstances within the donee's control.

(4) Obtain appraisals of the value of gifts, as required by 5 U.S.C. 7342 and GSA Regulation.

§ 95.6 Procedures.

(a) *Gifts of Minimal Value.* Table favors, mementos, remembrances, or other tokens bestowed at official functions, and other gifts of minimal value received as souvenirs or marks of courtesy from a foreign government may be accepted and retained by the recipient. The burden of proof is upon the recipient to establish that the gift is of minimal value as *Minimal Value* defined in § 95.3.

(b) *Gifts of More Than Minimal Value.* (1) When a gift of more than minimal value is tendered, the donor shall be advised that statutory provisions and DoD policy prohibit employees from accepting such gifts, unless the gift is in the nature of an educational scholarship or medical treatment. If it appears that refusal of a gift, other than medical or educational, may offend or embarrass the donor or could affect adversely the foreign relations of the United States, it may be accepted. (See paragraph 1.c., Appendix of this Part.) The gift then becomes the property of the United States and shall be deposited with the employing DoD Component, in accordance with 41 CFR Part 101–49 and Appendix of this Part, within 60 days for return to the donor, for use within the Component, or for disposition by the GSA.

(2) When more than one tangible gift is included in a single presentation from the same donor to an employee, or jointly to an employee and spouse, the aggregate value of the gifts received at that time must not exceed the minimal value.

(c) An employing Component may, in its implementing documents:

(1) Provide that all gifts shall be appraised, and that the appraisal shall be conclusive as to the value of the gift.

(2) Define minimal value to be less than the figure set in definition *Minimal Value* of § 95.3.

(3) Require that acceptance and retention of any gift, regardless of value, be subject to approval of the DoD Component concerned.

(d) An employing Component is not required to report travel or travel expenses of more than minimal value that were authorized by that Component under conditions stipulated in item 5., Appendix to this Part.

(e) Any gifts not approved for acceptance by the employing DoD Component shall become the property of the United States and shall be reported as a gift to be disposed of in accordance with the procedures outlined in enclosure 2.

(f) The Attorney General may bring a civil action in any U.S. district court against any employee who knowingly violates 5 U.S.C. 7342. The court in which such action is brought may assess a penalty against that employee in an amount not to exceed the retail value of the gift improperly solicited or received, plus $5,000, in accordance with 5 U.S.C. 7342.

(g) *Receipt and Disposition of Gifts.* Procedures are provided in Appendix of this Part.

§ 95.7 Information requirements.

Interagency reporting requirements on gifts from foreign governments are licensed under IRCN 0216–DOS–AN.

Appendix A to Part 95—Procedures for the Receipt and Disposition of Gifts

1. Use or Disposal of Gifts that Become the Property of the United States

a. Any gift that becomes the property of the United States under 5 U.S.C. 7342 may be retained for official use by the employing Component that is responsible for the security of gifts in its custody. DoD Component regulations shall:

(1) Avoid to the maximum extent possible arbitrary action in approving or retaining gifts for official use.

(2) Ensure that all employees are provided the opportunity to receive the indirect benefit of gifts retained for official use. Gifts may not be used for the benefit of any individual. Gifts retained for official use shall be reported to the GSA under 41 CFR 101–49, subpart 2, within 30 calendar days after termination of the official use.

b. Gifts that the employing Component does not wish to retain or that are not approved for retention should be reported to the GSA within 30 calendar days after depositing the gift with the employing Component. In this case, the following actions apply:

(1) Complete Standard Form (SF) 120, "Report of Excess Personal Property," and forward to GSA, Property Management Division, Washington, DC 20406. A sample form and instructions are attached to this enclosure.

(2) The employing Component is responsible for the custody and security of gifts and shall hold them until instructions are received from GSA regarding their disposition.

(3) The employing Component shall be responsible for and bear the cost of care and handling of gifts in its custody and for delivery of the gifts to the physical custody of GSA after the screening period.

(4) Gifts for which there are no Federal requirements as determined by GSA may be offered for sale to recipients before donation when so requested by recipients.

(5) When a recipient indicates an interest in purchasing a gift, the gift is to be reported to GSA on SF 120, Report of Excess Personal Property (attachment 1), for utilization screening before sale to the recipient. GSA shall notify the employing agency if the gift will be offered for negotiated sale to the recipient. The employing agency shall obtain a commercial appraisal and forward a copy of it, attached to a copy of the original SF 120, to GSA. GSA shall notify the employing agency when action is completed. The sales price, to be paid to GSA, shall be the appraised value of the gift plus the cost of the appraisal.

c. If returning the gift to the original donor will adversely affect U.S. foreign relations, the disposing Component shall consult with appropriate officials in the Department of State (DoS) before taking any action.

d. GSA normally shall not take custody of gifts for which recipients have expressed an interest in purchasing. Such gifts shall remain in the physical custody and be the responsibility of the employing agency until recipients either purchase or decline to purchase them. GSA shall accept physical custody of gifts that recipients decline to purchase and that are not retained for official use or returned to the donors.

e. Disposal of Firearms. Firearms received as foreign gifts may be offered for transfer to Federal Agencies including law enforcement activities. Firearms not required for Federal use may be sold to interested recipients at the discretion of GSA. A certification that the recipient shall comply with all State and local laws regarding purchase and possession of firearms must be received by GSA prior to release of such firearms to the purchaser. Those firearms not transferred to a Federal activity or sold to recipients shall be destroyed in accordance with 41 CFR Part 101–45.

2. *Recording of Gifts of More Than Minimal Value.* Each employing Component shall maintain records of gifts of more than minimal value received by their employees from foreign governments. A compilation shall be made each year and transmitted to the Secretary of State no later than January 31. This compilation shall include the following information:

a. Name and title of recipient.

b. Brief description of the gift, date of acceptance, estimated value, and current disposition or location.

c. Identity of foreign donor and government.

d. Circumstances justifying acceptance.

3. *Donations or Transfer of Gifts.* a. A gift may be recommended for donation or transfer by the recipient to an eligible public agency or nonprofit tax-exempt institution for public display, reference, or use.

(1) The employee recipient may indicate a recommendation for donation with a statement on the SF 120 citing the specific donee. Justification for the request must be supported by a letter from the recipient outlining any special significance of the gift to the proposed donee. The mailing address and telephone number of both the recipient and donee shall be included in the letter.

(2) The employee recipient may indicate a recommendation for transfer of a gift to an eligible public agency for public display or other authorized agency use. This request shall be indicated on the SF 120 citing the specific donee, and shall include a brief justification of the display or official use of the gift.

4. *Sale or Destruction of Tangible Gifts Valued at $180 or Less.* Employing Components are authorized to sell or destroy tangible gifts valued at $180 or less not retained by the recipient.

5. *Travel Expenses.* Employing Components shall include in their implementing documents criteria to be applied in determining the propriety of accepting travel expenses of more than minimal value, such as:

a. The travel shall begin and end outside the United States, except when travel across the continental United States (CONUS) is the shortest, least costly, or only available route to destination.

b. The travel shall be in the best interests of the Component and the U.S. Government considering all the circumstances.

c. The travel does not contravene any other Component regulation.

BILLING CODE 3810-01-M

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PAGE 1 OF ____

STANDARD FORM 120 REV. APRIL 195 GEN. SERV. ADMIN. FPMR (41 CFR) 101-43.311

REPORT OF EXCESS PERSONAL PROPERTY

1. REPORT NO	2. DATE MAILED	3. TOTAL COST
		$

4. TYPE OF REPORT (Check one only of "a," "b," "c," or "d") — a. ORIGINAL [x] b. CORRECTED [ ] c. PARTIAL W/D [ ] d. TOTAL W/D [ ] (Also check "e" and/or "f" if appropriate) e. OVERSEAS [ ] f. CONTRACTORS INV [ ]

5. TO (Name and Address of Agency to which report is made) THRU
General Services Administration
Property Management Division
Washington, DC 20406

6. APPROP. OR FUND TO BE REIMBURSED (If any)

7. FROM (Name and Address of Reporting Agency)
Office of the Director of Administration and Management
Pentagon, Washington, DC 20301-1950 695-4506

8. REPORT APPROVED BY (Name and Title)
(Sign Here)
DA&M

9. FOR FURTHER INFORMATION CONTACT (Title, Address and Telephone No.)
Special Assistant, Office of the Director of Administration and Management
Washington, DC 20301-1950 695-4506

10. AGENCY APPROVAL (If applicable)
(Sign Here)

11. SEND PURCHASE ORDERS OR DISPOSAL INSTRUCTIONS TO (Title, Address, and Telephone No.)
See 9. above

12. GSA CONTROL NO.

13. FSC GROUP NO	14. LOCATION OF PROPERTY (If location is to be abandoned give date)	15. REIM REQD YES	15. REIM REQD NO	16. AGENCY CONTROL NO.	17. SURPLUS RELEASE DATE
	Room 3D972-Department of Defense The Pentagon				

18. EXCESS PROPERTY LIST

ITEM NO. (a)	DESCRIPTION (b)	COND. (c)	UNIT (d)	NUMBER OF UNITS (e)	ACQUISITION COST PER UNIT (f)	ACQUISITION COST TOTAL (g)	FAIR VALUE % (h)
0001.	FOREIGN GIFTS-AND/OR DECORATION Gift to Secretary of Defense John Jones: Floral embroidered wall hanging, appx 40" x 13-1/2", brocade trimming. Presented by the Ambassador of Italy, July 1, 1988 (commercial value $250). Appraisal attached (if applicable). Recipient Requests Option to Donate. (Justification letter attached)						
0002.	Gift to Thomas Brown, Director, Defense Agency Oval silver dish with floral design on rim, from Minister of Defense, Lion. Presented July 1, 1988 (commercial value $250). Appraisal attached. RECIPIENT REQUESTS OPTION TO PURCHASE.						
0003.	Unit Decoration (Not approved for acceptance) Presented to the 5401st Military Training Unit for outstanding meritorious service, presented July 15, 1988 by Ambassador Wung Lee in Plekie, Korea. Bronze Medal, Silver Ribbon, with citation and plaque (est. value $175). Unit requests option to retain or transfer to HQ, Mil Tng Gp for display purposes.						

STANDARD FORM 120
APRIL 1957 EDITION

BILLING CODE 3810-01-C

Attachment 2 to Appendix

Instructions for Completion of Standard Form 120 "Report of Excess Personal Property"

Block 1—Enter the DoD Activity address code (six digits) identifying the reporting activity, and the Julian data (four digits) on which the report is prepared. If the report is a correction or withdrawal of a prior report, enter the original report number in block 1 and mark the appropriate type of report in block 4.

Block 2–17—Self-explanatory.

Block 18(a)—Enter a unique four-digit number for each item. Any combination of alpha and/or numeric characters may be used except the alpha characters I and O.

18(b)—Include the name and position of the employee recipient, to include address and telephone number if purchase or donation is desired. Also include a full description of the gift and the identity of the foreign government and the name and position of the individual who presented the gift (include date). Provide the estimate retail value of the gift in the United States at the time of acceptance or the appraised value, if known. If the employee recipient is interested in purchasing the gift, so indicate. A commercial appraisal plus cost of appraisal shall be annotated and a copy of the appraisal attached. If the recipient is interested in having the gift donated to an eligible public agency or nonprofit tax-exempt institution, that should be indicated here.

18(e)—The quantity for each line item should always be one. For example: three pairs of cuff links will be reported as three separate line items, 0001 thru 0003, each reflecting a quantity of one pair.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 2, 1988.

[FR Doc. 88-25698 Filed 11-7-88; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[FRL-3472-6]

Hazardous Waste Management System; Standards for Generators of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule; notice of renewal of the Uniform Hazardous Waste Manifest form.

SUMMARY: Today's action renews the Uniform Hazardous Waste Manifest (UHWM) form without change and extends the expiration date to September 30, 1991. Today's notice also mandates the inclusion of a burden disclosure statement, prepared under provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, with each Uniform Hazardous Waste Manifest form. The Agency is taking this action because the current manifest form expires on December 31, 1988. EPA and the Office of Management and Budget extended the period of use for the current manifest form from September 30, 1988 until December 31, 1988 (53 FR 37563, September 27, 1988). Today's notice also includes a technical correction for a citation to an OMB control number in § 262.20(a).

EFFECTIVE DATE: November 8, 1988.

ADDRESSES: Copies of the renewed form may be requested from the RCRA/Superfund Hotline toll-free at (800) 424-9346, or in Washington, DC call 382-3000.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll-free at (800) 424-9346, or in Washington, DC call 382-3000. For information on specific aspects of today's notice, contact Emily Roth, (202) 382-4777, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

On March 20, 1984, in a joint rulemaking effort, the U.S. Environmental Protection Agency (EPA) and the Department of Transportation (DOT) promulgated the Uniform Hazardous Waste Manifest and required its use for all regulated shipments of hazardous waste. EPA's Resource Conservation and Recovery Act (RCRA) regulations require generators who transport, or offer for transportation, hazardous waste for off-site treatment, storage or disposal to prepare a manifest which must accompany the waste.

II. Technical Amendments to the Uniform Hazardous Waste Manifest Form

The Agency is making the following technical amendments effective with today's notice. The Agency has good cause for finding that public comment on these amendments is unnecessary pursuant to 5 U.S.C. 553(b)(B), because the amendments will not change any substantive requirements of the current regulations.

A. Extension of Manifest Form Expiration Date

The Agency is renewing the Uniform Hazardous Waste Manifest (EPA Forms 8700-22 and 8700-22A) without substantive change and with a new expiration date of September 30, 1991. If the Agency determines there is a need to revise the manifest form, at a later date, an Advance Notice of Proposed Rulemaking (ANPRM) will be published in the **Federal Register** inviting comment from the public and the regulated community.

B. Paperwork Reduction Act Regulations Require Inclusion of a Burden Disclosure Statement

The U.S. Office of Management and Budget (OMB) added § 1320.21, "Agency Display of Estimated Burden," to 5 CFR Part 1320 on May 10, 1988. This section requires Agencies to indicate on each instrument for the collection of information, i.e., form, the estimated average burden hours per response, together with a request that the public direct any comments concerning the accuracy of this burden estimate or suggestions for reducing the burden itself to the Agency and to OMB's Office of Information and Regulatory Affairs (OIRA). This is intended to facilitate Agency management of its collections of information, to reduce paperwork burdens on the public, and to encourage more meaningful public participation in the paperwork reduction process. This rule will not impose any new information collection requirements.

OMB is not concerned that biased or skewed responses will be received from the public (e.g., only those taking longer than average would respond). The goal of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is to minimize the paperwork burden on the public; therefore, OMB needs the input of those respondents who are most burdened by a collection of information.

In order to comply with this new OMB regulation, EPA is requiring that a burden disclosure statement be included with the renewed Uniform Hazardous Waste Manifest form. The burden disclosure statement may be included on the manifest form, attached to the manifest form, or included in the instructions to the manifest form. EPA has estimated the burden associated with filling out the manifest to be 37 minutes for generators, 15 minutes for transporters, and 10 minutes for treatment, storage, and disposal facilities. The burden disclosure statement required with each Uniform Hazardous Waste Manifest form is as follows:

Public reporting burden for this collection of information is estimated to average: 37 minutes for generators, 15 minutes for transporters, and 10 minutes for treatment, storage and disposal facilities. This includes time for reviewing instructions, gathering

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data, and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

C. Technical Amendment of OMB Control Number

The Agency is making a technical correction to the generator regulations in § 262.20(a). That paragraph contains an inaccurate reference to the OMB control number for the UHWM; today's regulations correct it. This correction will not change any requirements of the regulations, it will simply make them more accurate and thus more useful.

III. Regulatory Impacts

The regulation promulgated today is merely a renewal of the Uniform Hazardous Waste Manifest and so has no impact on the regulated community.

A. Executive Order 12291—Regulatory Impacts

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement to perform a Regulatory Impact Analysis. Since today's notice does not impose any substantive regulatory requirement on the regulated community, this notice is not a major rule subject to the Regulatory Impact Analysis requirements of Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all final rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities, because it merely involves the inclusion of a burden disclosure statement with the Uniform Hazardous Waste Manifest and extends the form's expiration date.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements; however, this rule does incorporate a new regulation under the Paperwork Reduction Act, 5 CFR 1320.21, requiring the inclusion of a statement with all Federal forms, which estimates the paperwork burden sustained by the regulated community.

List of Subjects in 40 CFR Part 262

Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Dated: November 1, 1988.

Jonathan Z. Cannon,

Acting Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set forth in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986, as amended, (42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937).

2. Section 262.20 is amended by revising the OMB control number in paragraph (a) to read as follows:

§ 262.20 General requirements.

(a) * * * OMB control number 2050–0039 * * *

* * * * *

3. The Uniform Hazardous Waste Manifest Form in the Appendix to Part 262 is revised and text is added following the first manifest form to read as follows:

* * * * *

BILLING CODE 6560–50–M

Please print or type. *(Form designed for use on elite (12-pitch) typewriter.)* *Form Approved. OMB No. 2050-0039. Expires 9-30-91*

UNIFORM HAZARDOUS WASTE MANIFEST

1 Generator's US EPA ID No. | Manifest Document No. | 2. Page 1 of | Information in the shaded areas is not required by Federal law.

3. Generator's Name and Mailing Address | A. State Manifest Document Number

B. State Generator's ID

4. Generator's Phone ( )

5. Transporter 1 Company Name | 6. US EPA ID Number | C. State Transporter's ID

D. Transporter's Phone

7. Transporter 2 Company Name | 8. US EPA ID Number | E. State Transporter's ID

F. Transporter's Phone

9. Designated Facility Name and Site Address | 10. US EPA ID Number | G. State Facility's ID

H. Facility's Phone

GENERATOR

11 US DOT Description *(Including Proper Shipping Name, Hazard Class, and ID Number)*	12. Containers No.	Type	13. Total Quantity	14. Unit Wt/Vol	I. Waste No.
a.					
b.					
c.					
d.					

J. Additional Descriptions for Materials Listed Above | K. Handling Codes for Wastes Listed Above

15. Special Handling Instructions and Additional Information

16. **GENERATOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.

If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name | Signature | Month Day Year

TRANSPORTER

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

18. Transporter 2 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

FACILITY

19. Discrepancy Indication Space

20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.

Printed/Typed Name | Signature | Month Day Year

EPA Form 8700-22 (Rev. 9-88) Previous editions are obsolete

BILLING CODE 6560-50-C

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The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 37 minutes for generators, 15 minutes for transporters, and 10 minutes for treatment, storage and disposal facilities. This includes time for reviewing instructions, gathering data, and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

* * * * *

BILLING CODE 6560-50-M

Please print or type. (Form designed for use on elite (12 pitch) typewriter.)

Form Approved. OMB No. 2050-0039. Expires 9-30-91

UNIFORM HAZARDOUS WASTE MANIFEST (Continuation Sheet)	21. Generator's US EPA ID No.	Manifest Document No.	22. Page	Information in the shaded areas is not required by Federal law
23. Generator's Name			L. State Manifest Document Number	
			M. State Generator's ID	
24. Transporter ____ Company Name	25. US EPA ID Number		N. State Transporter's ID	
			O. Transporter's Phone	
26. Transporter ____ Company Name	27. US EPA ID Number		P. State Transporter's ID	
			Q. Transporter's Phone	

	28. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)	29. Containers No.	Type	30. Total Quantity	31. Unit Wt./Vol.	R. Waste No.
GENERATOR	a.					
	b.					
	c.					
	d.					
	e.					
	f.					
	g.					
	h.					
	i.					

S. Additional Descriptions for Materials Listed Above	T. Handling Codes for Wastes Listed Above

32. Special Handling Instructions and Additional Information

TRANSPORTER	33. Transporter ____ Acknowledgement of Receipt of Materials		Date
	Printed/Typed Name	Signature	Month Day Year
	34. Transporter ____ Acknowledgement of Receipt of Materials		Date
	Printed/Typed Name	Signature	Month Day Year
FACILITY	35. Discrepancy Indication Space		

EPA Form 8700-22A (Rev. 9-88) Previous edition is obsolete

[FR Doc. 25774 Filed 11–7–88; 8:45 am]

BILLING CODE 6560-50-C

BEST COPY AVAILABLE

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-564; RM-5846]

Radio Broadcasting Services; Augusta, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249C2 for Channel 249A at Augusta, Arkansas, and modifies the Class A license of Prescott-McGuire Broadcasting, Inc. for Station KABK-FM, as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 249C2 at Augusta are 35-11-00 and 91-20-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-564, adopted September 29, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by revising the entry for Augusta by deleting Channel 249A and adding Channel 249C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25749 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-127; RM-5824]

Radio Broadcasting Services; Lebanon, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 255A to Lebanon, Tennessee, as that community's second FM service, at the request of William O. Barry. Channel 255A requires a site restriction of 9.6 kilometers (6.0 miles) north of the city at coordinates 36-17-28 and 86-16-14. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988; the window period for filing applications will open on December 13, 1988, and close on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-127, adopted October 6, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Tennessee, by adding Channel 255A at Lebanon.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25750 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-22; RM-6114]

Radio Broadcasting Services; Lobelville, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 233C2 for Channel 232A at Lobelville, Tennessee, and modifies the license of Station WIST(FM) to specify operation on the higher adjacent channel, as requested by Coleman Broadcasting Company, Inc. This action will provide Lobelville with a first wide coverage area FM service. The station's current transmitter site can be used for the channel change, at coordinates 35-46-21 and 87-52-05 With this action, this proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-22, adopted October 6, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Tennessee by deleting Channel 232A and adding Channel 233C2 at Lobelville.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25751 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-187; RM-6215]

Radio Broadcasting Services; Centerville, UT

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This document substitutes Channel 289C1 for Channel 289C2 at Centerville, Utah, and modifies the license of Station KCGL(FM) to specify operation on the higher class co-channel, as requested by Radio Property Ventures. The substitution could provide the community with expanded service of its first wide coverage area FM station. The station's current transmitter site can be used at coordinates 40-48-29 and 111-53-21. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-187, adopted October 6, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Utah, by deleting Channel 289C2 and adding Channel 289C1 at Centerville.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25752 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-520; RM-6098]

Radio Broadcasting Services; Deer Park, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at Deer Park, Washington, and modifies the license of Station KAZZ(FM) to specify operation on the higher class co-channel, at the request of Barbara L. Kazmark. The channel provides Deer Park with its first wide coverage area FM service. The substitution requires a site restriction of 25.8 kilometers (16.0 miles) northeast of the community, at coordinates 48-08-35 and 117-15-59. Canadian concurrence has been obtained to operate the station as a specially negotiated short-spaced allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-620, adopted October 6, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by deleting Channel 296A and adding Channel 296C2 at Deer Park.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25753 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1828 and 1852

Interim Changes to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: On September 29, 1988, the United States Government and eleven other governments signed an agreement "On Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station." Article 16 of this international agreement provided for a "Cross-Waiver of Liability." This rule provides a cross-waiver of liability clause for use in certain contracts related to the Space Station.

DATES: Effective September 29, 1988. Comments are due not later than December 8, 1988.

ADDRESS: Comments should be addressed to: W.A. Greene, Chief, Regulation Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1988, the United States Government and eleven other governments signed an agreement "On Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station." Article 16 of this international agreement provided for a "Cross-Waiver of Liability." In effect, this international agreement and other related agreements obligated each of the governments to adhere to the cross-waiver of liability and to extend the cross-waiver of liability to its contractors and subcontractors, among other persons and entities, by contract or otherwise.

Since the obligation of the United States Government under the international agreements is effective now, it is an urgent and compelling matter to place the cross-waiver of liability clause in appropriate NASA contracts and subcontracts. Therefore, this rule is issued as an interim rule to require its immediate use.

Impact

The Director, Office of Management and Budget (OMB), by memorandum

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dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls in this category. The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because we do not believe that a substantial number of small entities, who are NASA contractors or subcontractors, will have valuable property exposed to damage, or actually damaged, during Space Station related work. Moreover, these small entities would obtain the protection of the cross-waiver for damage they cause during the conduct of such work, but the probability of such damage occurring is small and the economic impact of this protection would appear to be not significant to a substantial number of small entities. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. This rule does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 48 CFR Parts 1828 and 1852

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1828 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1828—BONDS AND INSURANCE

2. Part 1828 is amended by adding section 1828.001 to read as follows:

1828.001 Definitions.

"Protected Space Operations" means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space related to Space Station. It includes, but is not limited to—

(a) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services; and

(b) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

"Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

3. Subpart 1828.3 is amended by adding section 1828.373 to read as follows:

1828.373 Clause for cross-waiver of liability for Space Station activities.

(a) The contracting officer shall insert the clause at 1852.228–76, Cross-Waiver of Liability for Space Station Activities, in all NASA prime contracts, new-work modifications or extensions to existing contracts, and solicitations of $100,000 or more when the work is to be performed in support of Protected Space Operations (see section 1828.001). The contracting officer shall modify all other such existing contracts of $100,000 or more as soon as practicable to include the clause.

(b) The contracting officer may insert the clause at 1852.228–76 in contracts, new-work modifications or extensions to existing contracts and solicitations under $100,000 when the work is performed in support of Protected Space Operations. The use of the clause would be appropriate in contracts under $100,000, particularly when it is likely that such a contractor or subcontractor will have its valuable property exposed to risk of damage caused by other Space Station participants involved in Protected Space Operations.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Part 1852 is amended by adding section 1852.228–76 to read as follows:

1852.228–76 Cross-waiver of liability for Space Station activities.

As prescribed in 1828.373, insert the following clause:

Cross-Waiver of Liability for Space Station Activities (September 1988)

(a) The objective of this clause is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the Space Station. This cross-waiver of liability should be broadly construed to achieve this objective.

(b) For purposes of this clause:

(1) The term "the Contractor" means the person or entity who is a party to this contract, other than the United States Government and NASA.

(2) The term "damage" means:

(i) bodily injury to, or other impairment of health of, or death of, any person;

(ii) damage to, loss of, or loss of use of, any property;

(iii) loss of revenue or profits; or

(iv) other direct, indirect or consequential damage.

(3) The term "launch vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(4) The term "Partner State" means the Governments of Belgium, Canada, Denmark, France, Italy, Germany, Japan, Netherlands, Norway, Spain, and the United Kingdom of Great Britain and Northern Ireland. It includes a Cooperating Agency of a Partner State and the National Space Development Agency of Japan. (The currently designated Cooperating Agencies are the Ministry of State for Science and Technology of Canada, the European Space Agency and the Science and Technology Agency of Japan.)

(5) The term "payload" means all property to be flown or used on or in a launch vehicle or the Space Station.

(6) The term "Protected Space Operations" means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space related to Space Station. It includes, but is not limited to:

(i) research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services.

(ii) all activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

"Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

(7) The term "related entity" means:

(i) a contractor or subcontractor of a Partner State, of the United States Government or of the Contractor, at any tier;

(ii) a user or customer of a Partner State or of the United States Government, at any tier; or

(iii) a contractor or subcontractor of a user or customer of a Partner State or of the United States Government, at any tier.

The term "contractors" and "subcontractors" include suppliers of any kind.

(c) The United States Government shall require (1) each Partner State; (2) each related entity of a Partner State; and (3) except as provided for in paragraph (h)(1) below, each related entity of the United States Government; to agree, by contract or otherwise, to waive all claims, based on damage arising out of Protected Space Operations, against (1) the Contractor; (2) the Contractor's contractors or subcontractors at any tier; and (3) the employees of the Contractor or the employees of the Contractor's contractors or subcontractors at any tier.

(d) In consideration for the cross-waiver set forth in paragraph (c) above, the Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims, based on damage arising out of Protected Space Operations, against (1) each Partner State; (2) each related entity of a Partner State; (3) except as provided for in paragraph (h)(1) below, each related entity of the United States Government; and (4) except as provided for in paragraph (h)(1) below, the employees of any of the entities identified in paragraph (d)(1) through (3) above.

(e) In addition, the Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (d) above to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims, based on damage arising out of Protected Space Operations, against the entities or persons identified in paragraphs (d)(1) through (d)(4), above, except as provided for in paragraph (h)(1) below.

(f) This cross-waiver in paragraphs (c), (d), and (e) above shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver in paragraphs (c), (d), and (e) above applies to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract.

(g) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the *Convention on International Liability for Damage Caused by Space Objects* where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(h) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(1) claims between (i) the United States Government and the Contractor or between the United States Government and the Contractor's contractors or subcontractors at any tier; (ii) between the Contractor and its related entities; or (iii) between the Contractor's related entities;

(2) claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(3) claims for damage caused by willfull misconduct; and

(4) intellectual property claims.

(i) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(j) This clause, including this paragraph (j), shall be included in all subcontracts hereunder where the work is to be performed in support of Protected Space Operations.

(End of clause)

[FR Doc. 88–25670 Filed 11–7–88; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 81126–8226]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency rule to amend the regulations for the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This rule increases the commercial allocation for the Atlantic migratory group of king mackerel for the current fishing year from 2.60 to 2.866 million pounds. The intended effect of this rule is to permit commercial harvesters access to the amount of Atlantic migratory group king mackerel allocated to them by the regulations.

EFFECTIVE DATES: This rule is effective from November 3, 1988 through February 1, 1989.

ADDRESS: Copies of documents supporting this action may be obtained from, and comments may be mailed to Mark F. Godcharles, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The king and Spanish mackerel fisheries are managed under the FMP, prepared and amended by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under the FMP and implementing regulations, the Councils and NOAA established a commercial allocation for the Atlantic migratory group of king mackerel of 2.60 million pounds for the current fishing year, April 1, 1988, through March 31, 1989 (53 FR 25611, July 8, 1988).

For this 1988/89 fishing year, commercial and recreational fisheries for the Atlantic group of king mackerel are experiencing closures and zero bag limits for the first time. Prior to this, the separate commercial and recreational allocations established for the Atlantic group of king mackerel under Amendment 1 to the FMP (August 1985) had never been reached, except for the recreational fishery during the 1985/86 fishing year. At that time, zero bag limits were not implemented, however, because the allocation was reached too late in the fishing year to effect a timely closure.

This year's 28 percent reduction in total allowable catch (TAC) for the Atlantic group of king mackerel lowered commercial and recreational allocations for the 1988/89 fishing year to catch levels experienced during the preceding fishing year. As a result, the recreational allocation was reached and zero bag limits were implemented on October 17, 1988 (53 FR 40231, October 14, 1988), and a November 1988 closure for the commercial fishery is expected. The Councils reduced allocations as recommended in the 1988 stock assessment because (1) of an apparent decrease in spawning stock biomass, (2) fishing mortality appeared to be at or slightly above full exploitation rates, and (3) catch-per-unit-effort data suggested a decline in spawning stock abundance. Although these actions prohibiting harvest were anticipated by the Councils, their occurrance so early in the second half of the fishing year was not.

An analysis of current and historic landing trends indicates that commercial fishermen in the northern part of the management area will be negatively impacted by the anticipated early closure of the Atlantic group commercial fishery in early to mid-November. Approximately 60 percent of the commercial king mackerel catch off North Carolina, South Carolina, and Georgia is taken in the fall (September-December), during the second half of the fishing year. North Carolina commercial fishermen over the past 3 fishing years have produced about 94 percent of these fish (1985/86: 572,578 pounds; 1986/87: 757,877 pounds; 1987/88: 985,619 pounds).

NMFS' most recent monitoring report indicates 91 percent (2,362,800 pounds) of the 2,600,000 pounds commercial allocation has been reported as landed through October 21, 1988. Approximately 406,000 pounds (17 percent) were taken in the northern part of the management area; the remainder (1.8 million pounds or 75 percent) was taken primarily off the Florida southeast coast. Most of the remaining allocation

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of 237,200 pounds probably will be taken in the area off North Carolina because the commercial fishing season for Atlantic group king mackerel off southeast Florida is essentially over by September, and the boundary separating the Atlantic group moves to the Volusia/Flagler County line in northeast Florida beginning November 1.

Recent NMFS estimates of the 1988 catch indicate that 265,788 pounds (10.2 percent of the commercial allocation) of recreationally caught Atlantic group king mackerel are reported in NMFS commercial landings as a consequence of having been sold. An estimated 70,295 pounds were captured during recreational tournaments and sold. According to NMFS statisticians, the remaining 195,493 pounds has been double counted, i.e., this amount has been included in both the recreational and commercial landing's totals. If this inequity is not resolved this season by emergency action, commercial fisheries in the northern part of the management area will not exceed 378,000 pounds for the 1988/89 fishing year at the time of closure. This would constitute a 54 percent reduction in catch in comparison to the average landings for the past three fishing seasons (827,416 pounds) and a 64 percent reduction from last season's catch (1,049,396 pounds).

The Secretary has elected to temporarily rectify this situation through emergency action to offset negative impacts upon commercial fisheries in the northern part of the management area sustained this fishing year. Testimony and correspondence received from mackerel fishermen indicate that most of their income during the last quarter of the year is derived from the commercial king mackerel fishery. Depriving the commercial fishermen not only of 54–64 percent of their historic catch, but also much of their quarterly income, may have severe and long-lasting economic and social consequences.

By this emergency interim rule, the Secretary is adding 266,000 pounds to the commercial allocation for Atlantic group king mackerel. The Councils will be requested to address this and other problems through an FMP amendment. The counting of recreationally caught Gulf group king mackerel against the commercial allocation was addressed by the Councils in Amendment 1 to the FMP, and the commercial share of TAC was adjusted accordingly by 2 percent to account for king mackerel recreationally caught in the Gulf of Mexico and sold.

Because of the counting of Atlantic group king mackerel against both the recreational and commercial allocations, this action will result in only a minor (70,295 pounds) increase in the TAC of such king mackerel. This amount represents no significant increased risk to the resource because TAC is still well within the range of the acceptable biological catch for Atlantic group king mackerel approved by the Councils. The minimal increased risk is outweighed by the social and economic benefits of this action.

In accordance with section 305(e)(3)(B) of the Magnuson Act, this emergency rule will remain in effect for not more than 90 days after the date of publication. Upon agreement of the Secretary and the Councils, this emergency rule may be promulgated for one additional period of not more than 90 days. This emergency rule will restore to the commercial allocation for Atlantic group king mackerel and amount of fish intended to be available for commercial harvesters and thereby preclude a premature closing of the commercial fishery for Atlantic group king mackerel.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Secretary has determined that because the commercial allocation in the Atlantic king mackerel fishery is in jeopardy of premature closure, and because of the severe economic impact a premature closure of the commercial king mackerel would have on the commercial king mackerel fishery off North Carolina, South Carolina and Georgia, it is impracticable and contrary to the public interest to provide notice and opportunity for comment under the provision of section 553(b)(B) of the Administrative Procedure Act.

The Assistant Administrator also finds that because this is a substantive rule which relieves a restriction, the 30-day delayed effectiveness provisions of the Administrative Procedure Act do not apply.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies which federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

NOAA prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the address above.

NOAA concluded that, to the maximum extent possible, the FMP, as amended, is consistent with the coastal zone management programs of those adjoining States that have coastal zone management programs. Because this rule does not directly affect the coastal zone in a manner not already fully evaluated in the FMP, as amended, and earlier consistency determinations, a new consistency determination is not required.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: November 3, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. *et seq.*

§ 642.21 [Amended]

2. In § 642.21, effective from November 3, 1988 through February 1, 1989, in paragraph (a)(2), the number "2.60" is removed and the number "2.866" is added in its place.

[FR Doc. 88–25768 Filed 11–3–88; 1:46 pm]

BILLING CODE 3510-22-M

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50 CFR Part 644

[Docket No. 81025–8225]

Atlantic Billfishes

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule to implement a technical amendment to the regulations for the Atlantic billfish fishery. This rule provides a period of 60 days for a person to purchase or sell a billfish that was possessed by a seafood dealer or processor prior to October 28, 1988, the effective date of the billfish regulations. The intended effect is to relieve a restriction and conform to the intent of the Fishery Management Plan for Atlantic Billfishes (FMP).

EFFECTIVE DATE: October 28, 1988, through December 26, 1988.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Atlantic billfish fishery is managed under the FMP under authority of the Magnuson Fishery Conservation and Management Act. Regulations to implement the FMP were published September 28, 1988 (53 FR 37765). The effective date of the regulations is October 28, 1988, except for sections dealing with the documentation of billfish possessed by seafood dealers and processors (§§ 644.7(g) and 644.24(b)), which are not effective until December 27, 1988 (or a later date, depending on when the Office of Management and Budget approves the collection-of-information requirement of those sections). The effectiveness of these sections was delayed to enable a seafood dealer or processor to dispose of frozen or processed billfish possessed prior to October 28, 1988 and not accompanied by documentation required by the regulations that it was harvested from an area other than its management unit as defined in the regulations. However, because of an administrative oversight, the regulations do not exempt the sale of such billfish from the prohibition on sale of all billfish taken from their management units (the prohibition of sale is effective October 28, 1988). This rule corrects the regulations published on September 28 and specifically authorizes the sale, prior to December 27, 1988, of billfish possessed before October 28, 1988 by a seafood dealer or processor, as was intended in the FMP.

Other Matters

This final rule, technical amendment, is issued under 50 CFR Part 644 and complies with E.O. 12291.

Because this rule is a technical correction and clarification of existing regulations and because this is a substantive rule of limited duration that relieves a restriction, the Assistant Administrator for Fisheries, NOAA, finds that it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment and that under 5 U.S.C. 553(d)(1) the effective date need not be delayed for 30 days.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

This rule is minor and technical in nature and therefore is not a major rule under E.O. 12291. There is no change in the regulatory impacts previously reviewed and analyzed.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

List of Subjects in 50 CFR Part 644

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 1, 1988.

William Matuszeski,

Executive Director, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 644 is amended as follows:

PART 644—ATLANTIC BILLFISHES

1. The authority citation for Part 644 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 644.7 [Amended]

2. In § 644.7(e), to be effective from October 28, 1988, through December 26, 1988, is amended by adding at the end of the text, a comma and the phrase "except as specified in § 644.24(c)".

3. In § 644.24, to be effective from October 28, 1988, through December 26, 1988, a new paragraph (c) is added to read as follows:

§ 644.24 Restrictions on sale.

* * * * *

(c) Paragraph (a) of this section notwithstanding, a billfish possessed by a seafood dealer or processor before October 28, 1988, may be purchased, bartered, traded, or sold in any State through December 26, 1988.

[FR Doc. 88–25731 Filed 11–3–88; 9:47 am]

BILLING CODE 3510-22-M

VOL 53 ISS 216 NO 8 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 216
Tuesday, November 8, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Expenses and Assessment Rate for Marketing Order 989; Raisins Produced From Grapes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 989 for the 1988–89 fiscal year instituted under the marketing order for raisins produced from grapes grown in California. Funds to administer Marketing Order 989 are derived from assessments on handlers. The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable raisins handled from the beginning of such year. An annual budget of expenses was prepared by the Raisin Administrative Committee (committee) and submitted to the U.S. Department of Agriculture for approval.

The members of the committee are handlers and producers of regulated raisins. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of assessable raisins. Because that rate is applied to actual shipments, it must be established at a level which will produce sufficient income to pay the committee's expected expenses.

DATE: Comments must be received by November 18, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jacobs, Marketing Specialist, Marketing Order Administration Branch, Room 2526, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 23 handlers of California raisins subject to regulation under this marketing order, and approximately 5,000 producers of California raisins. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of raisins may be classified as small entities.

The marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable raisins handled from the beginning of such year. An annual budget of expenses is prepared by the Raisin Administrative Committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of regulated raisins. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings, so all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of assessable raisins. Because that rate is applied to actual shipments, it must be established at a level which will produce sufficient income to pay the committee's expected expenses. The budget of expenses and rate of assessment are usually recommended by the committee shortly after the season starts. Expenses are incurred on a continuous basis; therefore, the expenses and assessment rate approval must be expedited in order that the committee will have funds to meet it's obligations.

The Raisin Administrative Committee met October 4, 1988, and unanimously recommended 1988–89 expenditures of $435,000 and an assessment rate of $1.50 per ton of free tonnage raisins shipped under M.O. 989. In comparison, 1987–88 expenditures were $325,000 and the assessment rate was $1.25. Major expenditure categories in the 1988–89 budget are $126,400 for executive salaries, $85,000 for office personnel salaries, and $60,000 for committee travel. Comparable budgeted expenditures for the 1987–88 fiscal year were $117,000, $36,000, and $35,000, respectively. The estimated assessable tonnage of 290,000 tons would provide adequate funds for budgeted expenses for the 1988–89 crop year.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. These costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

From the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the expenses and assessment rate approval for this program must be expedited. The committee must have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 989

Marketing Agreement and Order, California, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.339 is added to read as follows:

§ 989.339 Expenses and assessment rate.

Expenses of $435,000 by the Raisin Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 989.80 of $1.50 per ton of assessable raisins is established for the crop year ending July 31, 1989. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: November 3, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–25762 Filed 11–7–88; 8:45 am]

BILLING CODE 3410–02–M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Supplemental proposed rule; resolicitation of comments.

SUMMARY: Final regulations (12 CFR Parts 614, 615, and 618) on borrowers rights were published on September 14, 1988 (53 FR 35427). The regulations became effective on October 14, 1988. See Notice of Effective Date published elsewhere in this issue of the **Federal Register**. The borrower rights include, among others, certain disclosure requirements on borrowers' loans specified in the Farm Credit Act of 1971, as amended by the Agricultural Credit Act of 1987 (the Act).

After publication of the final regulations, the Farm Credit Administration (FCA) received comments from the Farm Credit Corporation of America (FCCA) and individual Farm Credit System institutions that the institutions could not presently comply with two portions of the disclosure regulations concerning the effective interest rate. Furthermore, the comments expressed the view that even if compliance were possible at some time in the future, such compliance would create unnecessary costs for the institutions and result in disclosures that would not be meaningful to borrowers. Therefore, in light of these concerns, pending further action on the regulations, the Farm Credit Administration Board (Board) deferred the following portions of the regulations: (1) The language in 12 CFR 614.4367(c)(1) which states "* * *, including the effective interest rate;" and (2) 12 CFR 614.4367(d)(1). See Notice of Effective Date published elsewhere in this issue of the **Federal Register**. The FCA solicits comments on the issues related to the deferred portions of the regulations and on the proposed changes to the regulations set forth below.

DATE: Written comments must be submitted on or before December 8, 1988.

ADDRESS: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Andrea J. Cali, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020. TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The deferral of the portion of 12 CFR 614.4367(c)(1) and of 12 CFR 614.4367(d)(1) means that pending further action by the FCA Board, lenders are not presently required to disclose to borrowers the new effective interest rate which has been changed because of a change in the stated contract rate (as would be required by the deferred portion of 12 CFR 614.4367(c)) or because of a change in the stock or participation certificates that borrowers are required to own (as would be required by 12 CFR 614.4367(d)(1)). However, the deferral does not exempt lenders from compliance with the remainder of the borrower rights regulations which were effective as of October 14, 1988. Lenders are presently required to disclose to prospective borrowers, among other things, the current interest rate, the amount and frequency by which an adjustable interest rate may change, and the current effective interest rate which is the interest rate adjusted to take into consideration any stock or participation certificate purchase requirement and loan origination charges (12 CFR 614.4367(a)). When an interest rate is adjusted on an outstanding loan, a lender must disclose the new interest rate, the date on which the rate is effective, and a statement of any factors other than standard adjustment factors which were taken into account in establishing the new rate (12 CFR 614.4367(c)). In addition, whenever the stock or participation certificate requirement is changed, thus modifying the effective interest rate, the lender must notify the borrower of the date that the new rate is effective and a statement of the actions that resulted in the new effective interest rate (12 CFR 614.4367(d) (2) and (3)).

Throughout the development of the borrower rights regulations, FCA has balanced the rights to which borrowers are entitled against unnecessary costs to the Farm Credit institutions. The deferral will enable FCA to further evaluate the compliance and cost problems identified by lenders while still ensuring that borrowers receive the other required disclosures.

The compliance problems apparently stem primarily from a change in the definition of "effective interest rate". Prior to the 1987 amendments to the Act, the regulations defined "effective interest rate" to take into consideration stock or participation certificates as a percentage of the initial net proceeds of the loan, but did not require the inclusion of loan origination charges. The 1987 amendments to the Act altered the definition of "effective interest rate" by requiring disclosure, not later than the time of loan closing, of "the effect, as shown by a representative example or examples, of *any loan origination charges* or purchases of stock or participation certificates on the effective rate of interest." 12 U.S.C. 2199(a)(3) (emphasis added). Thus, the new definition of "effective interest rate" now includes the impact of any loan origination charges. Pursuant to the 1987

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amendments and the subsequent changes in the regulations, institutions must now include loan origination charges when calculating and dealing with the effective interest rate. Comments have asserted that to do so may result in great cost to the institutions, especially concerning subsequent disclosures on loans which existed prior to the regulations becoming effective.

Disclosure of New Effective Interest Rate Based on Change in Stated Contract Rate—Deferred Portion of 12 CFR 614.4367(c)(1)

FCCA commented on the deferred portion of 12 CFR 614.4367(c) by stating that there is a need to receive comments on the issue of requiring disclosure of a change in the effective interest rate because of a change in the stated contract rate. FCCA expressed concern that many Farm Credit Banks do not presently have loan origination charges in their data bases. Thus, they will not be able to comply with the deferred portion of 12 CFR 614.4367(c)(1).

One lender supported the FCCA's comments by stating that loan origination charges had not yet been included in the data base. It appears that, if the lenders are not able to comply with the deferred portion of 12 CFR 614.4367(c)(1) because they do not have loan origination charges in their data bases as the lenders and FCCA claim, then they may also be unable to comply with 12 CFR 614.4367(d)(1), which is discussed below.

One Farm Credit Bank (FCB) expressed the concern that the requirement of the deferred portion of 12 CFR 614.4367(c) would cause a tremendous burden from both an accounting and data processing standpoint. The FCB claims that this subsequent disclosure would be an unnecessary one as long as the requirement of, among other things, the disclosures at the time of loan closing as prescribed by 12 CFR 614.4367(a) are in place.

Another lender stated that even *partial* compliance with the deferred portion of the regulations (i.e. manually inputting the loan origination charges) would cost approximately $750,000. In addition to the costs involved, this lender questioned the meaningfulness of this disclosure by referring to the Federal Reserve Board's implementing regulations for the Truth in Lending Act (12 CFR Part 226) which do not require similar subsequent disclosures of changes in the annual percentage rate in variable rate transactions.

FCA is now reconsidering whether the deferred portion of 12 CFR 614.4367(c)(1) is necessary to provide meaningful and timely disclosures to borrowers if they receive all other disclosures required by the regulations. One factor to be addressed is whether compliance with the deferred portion of the regulation would result in significant extra costs to the institutions. Therefore, by proposing to delete the deferred portion of 12 CFR 614.4367(c)(1), FAC solicits additional comments on these issues.

Disclosure of New Effective Interest Rate Based on Change in Stock or Participation Certificate Requirement—12 CFR 614.4367(d)(1)

Although only two comments specifically addressed compliance with the requirements of 12 CFR 614.4367(d)(1), FCA believes that it is appropriate to address this issue also. One FCB said that for the same reasons articulated concerning the compliance and costs problems of the deferred portion of 12 CFR 614.4367(d)(1), FCA should also consider amending 12 CFR 614.4367(d)(1).

The other commenter stated that in addition to the deferred portion of 12 CFR 614.4367(c)(1), the requirement found in 12 CFR 614.4367(d)(1) should be reexamined, particularly in light of the fact that Farm Credit System lenders are presently examining and redesigning their capitalization bylaws to conform with the capital adequacy regulations. The commenter suggested that instead of informing borrowers of the new rate, subsequent disclosures should include either a standardized example or a copy of the formula that the borrower could use to compute his own rate.

FCA invites comment on whether informing borrowers of a change in stock or participation certificate purchase requirements is a meaningful disclosure without a calculation of the new effective interest rate. FCA proposes that 12 CFR 614.4367(d)(1) be amended accordingly. Where the lender is able to provide the new effective interest rate (*e.g.*, on loans, closed after the effective date of the regulations, which must include information on the loan origination charges pursuant to 12 CFR 614.4367(a)(3)), it may be easier for the lender to provide the actual new rate. Where such loan origination charges are not available or easily included in a lender's data base, the lender may satisfy the requirements of this regulation by notifying the borrower of the impact of the change on the effective interest rate. Thus, a representative example may be used to inform the borrower how his effective interest rate has been changed by the change in the stock or participation certificate requirement. FCA solicits comments on this issue.

In addition, FCA solicits comments in general on the requirements of 12 CFR 614.4367(d). Specifically, FCA solicits comments on the impact of, meaningfulness of, and circumstances under which such disclosures would be made.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, Banking, Credit, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For reasons stated in the preamble, Part 614 of Chapter VI of the Code of Federal Regulations is proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 continues to read as follows:

Authority: Secs. 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 4.37, 5.9, 5.17(a)(10); 12 U.S.C. 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2219b, 2243, 2252(a)(10).

2. Section 614.4367 is amended by revising paragraphs (c)(1) and (d)(1) to read as follows:

§ 614.4367 Required disclosures—in general.

* * * * *

(c) * * *

(1) The new interest rate on the loan;

* * * * *

(d) * * *

(1) The impact on the effective interest rate by disclosing the new effective interest rate or by a representative example;

* * * * *

Dated November 3, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-25828 Filed 11-7-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-301B]

Concrete and Masonry Construction Safety Standards; Lift-Slab Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of written comment period and period for requesting an informal hearing.

SUMMARY: This notice extends the time in which written comments and requests for a hearing may be submitted concerning the notice of proposed rulemaking which OSHA issued on September 15, 1988 (53 FR 35972) on lift-slab construction. This notice also restates the procedures for submitting hearing requests.

DATE: Written comments and requests for a hearing must be postmarked by December 14, 1988.

ADDRESSES: Comments and requests for a hearing must be submitted, in quadruplicate, to the Docket Office, Docket S-301B, Room N-2634, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-7894. All materials submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: OSHA issued a Notice of Proposed Rulemaking on September 15, 1988 (53 FR 35972) which proposed to revise the safety standards for lift-slab construction. Interested parties were given until November 14, 1988, to submit comments pertaining to the proposal. The notice of proposed rulemaking also informed the public of the opportunity to request an informal public hearing on the proposal.

OSHA has received requests from interested persons to extend the comment period to allow ample opportunity for a complete and full response to the proposed provisions and the specific issues raised in the proposal. To ensure the fullest participation of interested persons, OSHA is hereby extending the period until December 14, 1988.

In addition, interested persons have until December 14, 1988, to request an informal hearing on the proposal. The notice of proposed rulemaking sets forth five conditions that objections and hearings requests must satisfy. It is important that hearing requests clearly indicate the subjects to be addressed at the hearing and the evidence to be presented by the party requesting the hearing. Therefore, OSHA is restating the conditions for submitting objections and hearing requests.

Objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by December 14, 1988;

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken, or concerning which a hearing request is made, and must state the grounds therefor;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearings requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), (40 U.S.C. 333), Secretary of Labor's Order No. 9-83 (49 FR 35736), and 29 CFR Part 1911.

Signed at Washington, DC, this 3rd day of November 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88-25776 Filed 11-7-88; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3285-2]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a revision to the Illinois State Implementation Plan (SIP) for Ozone. The revision would extend the compliance schedule for Georgia-Pacific Corporation's (Georgia-Pacific) two paper varnish coating lines located in Will County, Illinois. This revision would allow Georgia-Pacific additional time to reformulate its varnishes to high solids, or to water-base coatings.

USEPA today is proposing to disapprove this SIP revision because the requested compliance date extension is inconsistent with relevant portions of the Clean Air Act and USEPA Policy.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 8, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, IL 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, IL 62706

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible).

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26) U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for two of Georgia Pacific's paper coating varnish lines. These lines are located in Will County, Illinois, which is part of the Chicago ozone demonstration area. This proposed revision is in the form of a May 5, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB), IPCB 82-142. It grants a variance from the existing SIP requirements until December 31, 1984, and provides a legally enforceable compliance schedule. Georgia-Pacific is located in Will County, which is currently designated attainment for ozone but (as stated above) within the Chicago ozone nonattainment area.

Under the existing federally approved SIP, each varnish coating line is subject to the emission control requirements contained in Rule 205 Chapter 2 (Air Pollution) of the IPCB Rules and Regulations. IPCB Rule 205(n)(1)(C), adopted February 21, 1980, limits volatile organic compound (VOC)

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emissions to 2.9 pounds VOC per gallon of coating. Final compliance was required on December 31, 1982.

In lieu of the compliance date contained in the existing federally approved SIP, the State is proposing an extended compliance schedule for two of Georgia-Pacific's varnish coating lines to December 31, 1984.

Georgia-Pacific manufactures multicolor paper labels, used primarily for canned food products. Included in this facility are two Christensen varnishers that are used to apply a high-gloss protective varnish coating onto printed labels.

In the March 20, 1984, **Federal Register** (49 FR 10277), USEPA proposed to disapprove this proposed SIP revision because the Illinois Ozone SIP backed an approved attainment demonstration for the Chicago nonattainment area. Since the publication of the March 20, 1984, Notice of Proposed Rulemaking, IEPA has submitted a revised ozone attainment demonstration, which USEPA proposed to approve on August 15, 1984 (49 FR 32601). However, USEPA proposed to disapprove the State's attainment demonstration (52 FR 26404, July 14, 1987).

Proposed Actions

USEPA has determined that Georgia-Pacific's schedule to achieve final compliance by December 31, 1984 is not approvable based on the Clean Air Act and USEPA's policy on compliance date extensions. In particular, the State has not adequately research the compliance status of other similar sources to determine if compliance by the original deadline was reasonable. Nor has the State demonstrated that the compliance date extension will not interfere with RFP. This source is located in the Chicago nonattainment area which lacks an approved attainment demonstration. Therefore, USEPA is again proposing to disapprove Georgia-Pacific's compliance date extension request. A more detailed discussion of the rationale for proposing disapproval of the State submission and of the Clean Air Act and USEPA policy related to compliance dae extension appears in Appendix A of this notice.

USEPA is providing a 30-day comment period on this notice or proposed rulemaking. Public comments received on or before December 8, 1988 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. 605(b), I certify that this disapproval will not have a significant economic impact on a substantial number of small entities because it applies only to Georgia-Pacific.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: March 30, 1987.

Editorial Note: This document was received at the Office of the Federal Register November 3, 1988.

Robert Springer,

Acting Regional Administrator.

Editorial Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A

This SIP revision, if approved by EPA, would allow the source an extension of time for complying with the SIP limit. EPA has a policy of approving compliance date extensions, but only under certain circumstances. The following explains the relevant provisions of the Clean Air Act and EPA's policy.

Under the Clean Air Act, a SIP must "provide [] for the attainment of [the] primary [National ambient air quality standard ("NAAQS)] as expeditiously as practicable but [in general] in no case later than three years from the date of approval of such plan". 42 U.S.C. 7410(a)(2) (A)–(B). For areas that had not, as of August 7, 1977, attained the primary standard, the SIP must provide for attainment "as expeditiously as practicable", but, in the case of the primary NAAQS, no later than December 31, 1982, or, under certain circumstances, December 31, 1987. 42 U.S.C. 7502(a).

EPA has reiterated these statutory requirements in a regulation, 40 CFR 51.110, which states, "Each plan providing for the attainment of a primary standard or revision of it must do so as expeditiously as practicable", but no case later than the statutory attainment date.

In addition, the SIP must provide for maintenance of the NAAQS for the period following attainment. 42 U.S.C. 7410(a)(2)(B). It should be noted that some EPA-approved SIPs provide for more pollution reductions than the SIP's supporting analyses show are necessary to attain and maintain the air quality standards. These excess reductions are known as the margin of attainment.

The Clean Air Act further provides that revisions to an approved SIP are permissible only if they do not interfere with attainment by the applicable date, and maintenance thereafter. 42 U.S.C. 7410(a)(3).

In addition to providing for attainment and maintenance, the SIPs in areas that had not attained by August 7, 1977, must "provide for the implementation of all reasonably available control measures ["RACM"] as expeditiously as practicable", and "require, in the interim [period before attaintment], reasonable further progress ["RFP"] * * * including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology ['RACT']." 42 U.S.C. 7502(b) (2)–(3).[1] Because EPA considers RACM to include RACT, these requirements mean that sources must adopt RACT as expeditiously as practicable. To determine RFP, the State typically identifies amounts of reduction expected in the years prior to attainment, and EPA determines whether these interim reductions are approvable as RFP. The amounts of reductions are known as the "RFP Line".

EPA generally has required sources to come into compliance within three years of the date the State adopted the regulation setting out the applicable requirements. EPA has viewed this period as expeditious.

Under long-standing EPA regulation, the State, in seeking EPA approval for a SIP or SIP revision, has the burden of proving that the statutory requirements are met. *See, e.g.*, 40 CFR 51.112(a) ("Each plan must demonstrate that * * * it [is] adequate to provide for the timely attainment and maintenance of the national standard").

Consistent with these statutory and regulatory provisions, EPA uses the following guidelines for allowing compliance date extensions greater than three years from the date of adoption of the SIP requirement by the State:

1.a. In an area with an approved SIP, EPA will approve a compliance date extension only if it represents expeditious action and does not interfere with the attainment date or the RFP line.

EPA will approve compliance date extensions in areas with approved SPIs [2] if the State demonstrates that the

[1] "Reasonable further progress" is defined as—annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions * * * and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required * * * 42 U.S.C. 7501(1).

[2] For present purposes, EPA does not consider an area to have an approved SIP if EPA, at one time, approved the SIP, but subsequently, (i) EPA issued a notice that the SIP failed to attain or maintain the

Continued

extension represents action that is as expeditious as practicable. This policy is consistent with the requirements that sources put in place RACT as expeditiously as practicable, as discussed below. The criteria for determining whether action is expeditious are also discussed below.

In addition, the State must demonstrate that the extension does not, or did not, intefere with the date for attaining the ambient air standard, with the RFP line in the interim, or with maintenance thereafter. If the compliance date extension goes beyond the attainment date, EPA will view the extension as not interfering with attainment or maintenance only if the attainment margin is sufficient to accommodate the additional emissions.

This requirement is consistent with long-standing EPA policy. In the April 4, 1979 "General Preamble", EPA stated, "EPA must reject any individual requirement that would interfere with attaining and maintaining the NAAQS by the required deadline * * * " 44 FR 20373, col. 3. Similarly, a July 29, 1983, memorandum from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, stated,

> For a State to secure EPA approval of a relaxation and continue overall approval status * * * the State would need to show that the SIP as a whole, despite the relaxation, would continue to 'provide for' attainment by the end of 1982 [or 1987, as the case may be].[3]
>
> 1.b. EPA will not approve compliance date extensions in areas that lack approved attainment demonstrations.

A SIP revision seeking a compliance date extension amounts to a relaxation of the SIP requirements because the company would be permitted to emit greater amounts of pollutants for a longer period. EPA may approve the SIP revision only if the State shows that the greater amounts of pollution will not interfere with attainment and maintenance of the NAAQS by the required date, and with RFP in the interim. The State cannot make this showing if it has not submitted an approvable attainment demonstration, identifying the attainment date and the RFP line. Accordingly, EPA cannot approve a compliance data extension in an area lacking an approved attainment demonstration. EPA made this policy clear when it proposed to disapprove compliance date extension requests for Georgia Pacific Corporation and six other sources in Illinois by notice dated March 20, 1984 (49 FR 10277).

> 2. In an area with an approved SIP, EPA will approve the compliance date extension only if it is consistent with the Clean Air Act requirements that SIPs provide for implementation of RACT as expeditiously as practicable.

As noted above, the Clean Air Act requires that SIPs for areas not in attainment of the NAAQS by August 7, 1977 must provide for the implementation of RACT as expeditiously as practicable. 42 U.S.C. 7502(b)(2). EPA has defined RACT as—

> The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[4]

Through the issuance of Control Technique Guidelines ("CTGs"), EPA has identified pollution control levels that EPA presumes to constitute RACT for various categories of sources. Where the State finds the presumptive norm applicable to an individual source of group of sources, the State typically adopts requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation, and States may develop case-by-case RACT determinations independently of EPA's recommendation. EPA will approve these RACT determinations as long as the State shows they will satisfy the Clean Air Act's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated.[5]

EPA will approve a compliance date extension only if the State demonstrates that the extension represents implementation of RACT as expeditiously as practicable. To make this demonstration, the State must show that (i) in fact the SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is not reasonably available in time to meet the SIP compliance date, and (ii) the extension is for the shortest period that reasonably reflects the expected availability of the control technology. EPA will determine whether the State makes these demonstrations on a case-by-case basis, taking into account all the relevant facts and circumstances concerning each case.

In making these demonstrations, the State must make reasonable efforts to determine and adequately document the availability of complying coatings or other kinds of control, as appropriate. The State is free to consult informally with EPA to determine whether EPA has up-to-date information concerning the availability of particular coatings or other kinds of control. If EPA does not have up-to-date information, the State must undertake further efforts. Examples of these efforts include examining information that is or should be reasonably available to the State, including whether sources operating in the State that are in an industry comparable to the source at issue (*e.g.*, within the same CTG category) achieve compliance with the SIP, by the SIP approved compliance schedule, by using complying coatings, or other kinds of control, that the source could adopt. In addition, if the State participates in a formally established, multi-state pollution control group or commission, EPA presumes that the State has reasonable access to information concerning whether sources operating in the other States that are members of the group or commission use complying coatings, or other controls. Thus, the State must examine available information concerning sources in those other States. Reasonable efforts by the

NAAQS (either a SIP call under 42 U.S.C. 7410(a)(2)(H) or a redesignation to nonattainment under 42 U.S.C. 7407) or a notice that the State failed to implement the SIP; (ii) the State failed to fulfill certain conditions in the SIP; (iii) the inventory of VOC emissions substantially changed so that the margin of attainment changed significantly; or (iv) monitoring data raised serious questions about the original prediction of attainment.

[3] In addition, in the April 4, 1979 "General Preamble" describing how EPA intended to implement provisions of the 1977 Clean Air Act, EPA stated that a SIP "relaxation"—*i.e.*, a SIP revision that allows increased emissions, as does a compliance date extension for the period following the SIP compliance date—would not be permitted in an area where the NAAQS was violated. 44 FR 20374, col. 2.

[4] 44 FR 53762 col. 1 (September 17, 1979)

[5] More specifically, EPA has described RACT and the obligations of the State as follows:

Along with information, each CTG contains recommendations to the States of what EPA calls the "presumptive norm" for RACT, based on EPA's current evaluation of the capabilities and problems general to the industry. Where the States finds [*sic*] the presumptive norm applicable to an individual source or group of sources, EPA recommends that the State adopt requirements consistent with the presumptive norm level in order to include RACT limitations in the SIP.

However, recommended controls are based on capabilities and problems which are general to the industry; they do not take into account the unique circumstances of each facility. In many cases appropriate controls would be more or less stringent. States are urged to judge the feasibility of imposing the recommended controls on particular sources, and adjust the controls accordingly.

The presumptive norm is only a recommendation. For any source or group of sources, regardless of whether they fall within the industry norm, the State may develop case-by-case RACT requirements independently of EPA's recommendation. EPA will propose to approve any submitted RACT requirement that the State shows will satisfy the requirements of the Act for RACT based on the economic and technical circumstances of the particular sources being regulated.

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State also include seeking information reasonably available to the source requesting the SIP revision, including, for example, contacting suppliers available to the source to determine if they have complying coatings or other controls; contacting trade associations to determine if they know of complying coatings or other controls; and reviewing trade publications containing information concerning complying coatings or other controls.

It seems appropriate for the source to make a showing that process changes, such as switching to low solvent coatings are not available when applying for a compliance date extension. If low solvent coatings (or other process changes) meeting the Control Technique Guideline (CTG)-recommended emission level are shown not to be feasible for a particular source, then the source should identify the lowest level of volatile organic compound (VOC) emissions that is available for that source or type of coating.

Assuming that a source has prepared an adequate showing that abatement ("add-on") controls are not feasible, an example of an action that a source might perform to demonstrate to the State that no complying coating is available would be for the company to place two consecutive advertisements in each of three leading paint trade journals (*e.g., Industrial Finishing, Products Finishing, Modern Paint and Coatings, JCT-Journal of Coatings Technology, American Paint and Coatings Journal*) and describe the application and product specifications for a low solvent paint which they are seeking. This advertisement should solicit paint companies to provide a low VOC product meeting those specifications. The responses which the company receives could be provided to EPA as proof that this type of product does or does not exist. The advertisement in a trade journal would reach a wide number of paint producers, some of whom may have developed suitable low VOC products. When reporting the response to the advertisement to EPA, the State should report the lowest VOC content coating that is available for the particular job, even if that coating does not meet the CTG recommended limit.

Another example of an approach that a metal coater might use in demonstrating the unavailability of complying coatings for a particular product would be to contact a trade association which represents a large number of manufacturers of low VOC coatings (*e.g.*, the Powder Coating Institute). If such an association documents that none of its members can provide a low solvent complying coating for this product, then this trade association reply could be used to show that a reasonable effort had been made to find a complying product and that such a product apparently does not currently exist. If, through efforts such as those described above, the source makes a convincing demonstration that complying products are not available in the industry, State would not be required to make duplicative efforts.

If, after the reasonable efforts described above are expended, and the State finds that no complying coatings or other controls as appropriate are available, EPA itself may make an independent assessment of the availability of such coatings or controls and the compliance status of other sources in the same CTG category.

It should be noted that by notice dated November 24, 1987, EPA published a proposed program for addressing the expected failure of many areas of the country to attain the ozone NAAQS by the end of 1987 (52 FR 45046). Beginning May 26, 1988, EPA issued SIP calls under 42 U.S.C. 7410(a)(2)(H)—*i.e.*, notices that the SIP failed to attain or maintain the NAAQS—for many areas of the country. These SIP calls have the effect, for certain purposes, of converting an area with an approved attainment demonstration into an area lacking an approved attainment demonstration. Some of the notices of proposed rulemaking that refer to this Appendix concern compliance date extension requests for sources operating in some of those areas.

EPA is currently considering the effect of these SIP calls on pending and future SIP revision requests seeking compliance date extensions, as well as other SIP relaxations. The SIP calls represent a determination that the air quality is not in attainment and that the SIP does not provide for attainment. Current EPA policy, described above, generally precludes approval of relaxations such as compliance date extensions in such areas. EPA's November 24, 1987 notice proposed a program under which States would be required to submit new SIPs within the next few years providing for attainment.

[FR Doc. 88-25770 Filed 11-7-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3472-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Marquette Electronics, Incorporated, Milwaukee, Wisconsin, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATE: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and fate and transport models used to evaluate the petition. Comments will be accepted until December 23, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by November 23, 1988. The request must contain the information prescribed in 40 CFR 260.20 (d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-MQEP-FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contract the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Scott Maid, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4783.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedures (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate model and a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Marquette's petitioned waste on human health and the environment. Specifically, the models will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

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The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that it would be inappropriate to request ground-water monitoring data because Marquette sends the petitioned waste off site for disposal. For petitioners using off-site management, the Agency believes that, in most cases, the ground-water monitoring data collected would not be meaningful for the evaluation of the delisting petition. Most commercial land disposal facilities accept wastes from numerous generators. Any ground-water contamination or leachate would be characteristic of the total volume of waste disposed of at the site. In most cases, the Agency believes that it would be impossible to isolate ground-water impacts associated with any one waste disposed of in a commercial landfill. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

Marquette Electronics, Incorporated, Milwaukee, Wisconsin

1. Petition for Exclusion

Marquette Electronics, Incorporated (Marquette), located in Milwaukee, Wisconsin, is involved in the manufacture of electronic equipment. Marquette petitioned the agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Marquette petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Marquette also believes that its treatment process generates a non-hazardous waste because the constituents of concern are not present in appreciable amounts. Marquette further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Marquette's petition.

2. Background

Marquette petitioned the Agency on August 18, 1986 to exclude its filter press sludge generated from the treatment of various process wastewaters (see below) and subsequently provided additional information to complete its petition. In support of its petition, Marquette submitted (1) detailed descriptions of its manufacturing and waste teatment processes and wastewater treatment system, including schematic diagrams; (2) a list of raw materials used at the facility; (3) total constituent data for the EP toxic metals, nickel and cyanide for representative waste samples; (4) EP leachate analysis results for the EP toxic metals and nickel for representative waste samples; (5) leachate analysis results (using distilled water) for cyanide for representative waste samples; (6) total oil and grease analyses data for representative waste samples; and (7) results from characteristics testing for ignitability, corrosivity, and reactivity.

Marquette manufactures electronic equipment which involves the electroplating of printed circuit boards. The following processes contribute to the waste stream: Deburring; etching; iridiae coating (chromate conversion coating); nickel/gold tab plating; electroless copper plating; and tin/lead and copper plating. A wet deburring machine is operated during the deburring process. Deburring rinsewaters are filtered and then recycled. The filtered sludge is sent off site for copper reclamation. Batch dumps of the rinsewater are discharged periodically (*i.e.*, when necessary or every two weeks) to the wastewater treatment system's concentration sump, a sump which receives concentrated wastes.

The etching process consists of five stages: an etch chamber, etch dragout rinse, water rinse, solder brightening, and final water rinse. Waste from the first two stages are sent off site for copper reclamation. The etching rinsewaters are discharged to the wastewater treatment system's main sump. The etching process baths from these operations are batch dumped periodically (*i.e.*, when necessary or every two weeks) to the concentration sump (as are most of Marquette's process baths).

Marquette's iridite process, a decorative process, operates independently from other plating processes. This process consists of caustic etch, desmutting, and iridite stages, each of which is followed by a rinse stage. The iridite rinsewaters are discharged to the main sump, and the process baths are batch dumped periodically (*i.e.*, when necessary or every two weeks) to the concentration sump.

The nickel/gold plating line consists of seven stages, each followed by a rinse stage. The nickel and gold plating baths are the only process baths on this line that are not periodically batch dumped to the concentration sump. These plating baths are subject to metals reclamation. Rinsewaters from the bath subsequent to the gold plating bath are sent off site for gold reclamation. All other rinsewaters are discharged to the wastewater treatment system's main sump.

Marquette's electroless copper line is a seven stage process consisting of an alkaline cleaner, ammonium persulfate, sulfuric acid, activator predip, activator, conditioner, and electroless copper stage. Each stage, except the activator predip, is followed by one or two rinse stages. As with Marquette's other processes, rinsewaters are discharged to the main sump and process baths are dumped periodically (*i.e.*, when necessary or every two weeks) to the concentration sump with the exception of electroless copper bath waters which are bailed continuously and discharged to the concentration sump.

The tin/lead and copper plating line consists of six stages, each followed by a rinse stage. Small amounts of the acid copper and tin/lead plating baths are removed to replenish the baths and discharged to the concentration sump. Plating rinsewaters are discharged to the main sump, and the remaining process baths are dumped periodically (*i.e.* when necessary or every two weeks) to the concentration sump.

In summary, all of Marquette's process baths from these operations are batch dumped periodically (*i.e.*, when necessary or every two weeks) to the concentration sump, with the exception of the nickel, gold, tin/lead, and copper plate baths (from which metals are

reclaimed) and the electroless copper activator bath (which is bailed continuously throughout the day). Process baths are scheduled to be dumped to the concentration sump at least every two weeks or more frequently when the baths are observed to need changing.

In order to prevent wastewater treatment system upsets, the contents of the concentrate sump are bled slowly to the main sump, which is pumped to the wastewater treatment system. Wastewater treatment processes include: chrome reduction; pH adjustment to 8.5 to 9.0 using sodium hydroxide and sulfuric acid; flocculation with alum, ferrous sulfate, and a polyelectrolyte; and clarification. Effluent from the clarifier is discharged by gravity to the sewer. The clarifier sludge is then pumped to a plate filter press which dewaters the sludge to 20–30 percent solids. The filter press sludge is then emptied into 55-gallon drums before being disposed of off-site. This drummed waste is the subject of Marquette's petition. Effluent from the filter press is returned to the main sump.

Marquette has three degreasing operations also in use at its facility, including: a 1,1,1-trichloroethane cold cleaner, a vapor degreaser, and an in-line cleaner. Marquette claims that wastes generated from these operations are not disposed of in their wastewater treatment system and are not expected to be present in the petitioned waste. The Agency, therefore, did not request sampling and analytical data for constituents contained in these wastes since they were not part of Marquette's petition.

To collect representative samples from 55-gallon drums like Marquette's, petitioners are normally requested to collect a minimum of four composite samples, each comprised of a full-depth core sample collected from one or more of the 55-gallon drums containing the petitioned waste generated over a specific time period (*e.g.*, collect a full-depth core sample from each drum generated during a week and composite the samples weekly). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Marquette collected four composite full-depth core samples on eight occasions from ten 55-gallon drums. On October 7, 1985 two core samples were collected from one drum and combined with two core samples collected from a drum on October 1, 1985. Thus, the composite (consisting of four full-depth cores) covered a one-week period of waste generation. A similar composite sample (*i.e.*, comprising two core samples collected from each of two drums) was collected from two drums sampled on October 24 and 30, 1985. The remaining two composite samples, comprising two core samples collected from each of three drums, were each collected from three drums of the filter press sludge on October 11–21, 1985 and similarly on November 5–11, 1985. Duplicate samples were taken on the final two sampling dates as an additional quality control measure. The four composite samples were analyzed for both total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) and the extraction procedure (EP) leachate concentrations (*i.e*, mass of a particular constituent per unit volume of extract) of the EP toxic metals, cyanide, and nickel.

Based on a review of Marquette's raw materials list and Material Safety Data Sheets, the Agency requested analytical data on 1,1,1-trichloroethane and formaldehyde levels in the waste and testing for ignitability (*i.e.*, flashpoint test results). In response to this request, Marquette collected four additional composite samples from seven drums in December 1986 in a manner similar to the 1985 sampling procedures. These four composite samples were analyzed for total concentrations of formaldehyde and 1,1,1-trichloroethane. Flashpoint tests were also conducted.

Marquette's filter press is operated once or twice a week; the sludge from each filter press run fills a 55-gallon drum. Marquette submitted a batch discharge log for a five-month period (September 12, 1985 to February 6, 1986), which included the period during which sampling was performed. This log demonstrated that the samples collected in support of the petition account for any variation in the number and concentrations of hazardous constituents in the filter press sludge because (1) all process lines were in operation, and (2) all scheduled batch dumps occurred during the sampling period. In addition, Marquette's wastewater treatment system is designed so that process baths are dumped first to the concentration sump before being introduced to the main sump to avoid upsetting the wastewater treatment system.

3. Agency Analysis

Marquette used SW–846 Methods 7060 through 7760 and 9010 to quantify the total constituent concentrations of the EP toxic metals, nickel, and cyanide in the filter press sludge. In addition to these methods, Method 1310 was used to determine the leachable concentrations of the EP toxic metals, cyanide, and nickel in the filter press sludge. Total constituent and EP toxicity analysis of the wastewater treatment sludge for the inorganic constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (PPM) FILTER PRESS SLUDGE

Constituents	Total constituent analyses	EP leachate analyses
Arsenic	1.6	0.002
Barium	4.4	0.26
Cadmium	0.58	0.031
Chromium	14.0	ND (0.05)
Lead	340	ND (0.10)
Mercury	0.0075	ND (0.0004)
Selenium	ND (0.01)	ND (0.01)
Silver	0.85	0.01
Nickel	225	3.3
Cyanide	1.4	0.2

ND: Not Detected. Denotes concentrations below the detection limits shown in parentheses.

The detection limits in Table 1 represent the lowest concentrations quantifiable by Marquette, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using SW–846 Method 9071, Marquette determined that its filter press sludge had a maximum oil and grease content of 0.033 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW–846 Method 1330. Marquette provided test data indicating that the filter press sludge is not ignitable below 210°F. Based on analytical results provided by the petitioner, pursuant to 40 CFR 260.22, the filter press sludge was also determined not to be corrosive or reactive. Furthermore, Marquette claims that sulfides are not introduced to any of the

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processes contributing to the wastewater treatment system. See 40 CFR 261.21, 261.22, and 261.23.

Marquette used "Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater" Method 601, to quantify the total constituent concentration of 1,1,1-trichloroethane and the National Institute for Occupational Safety and Health (NIOSH) Method 3500, from the *NIOSH Manual of Analytical Methods*, 3rd edition, to quantify formaldehyde levels in the filter press sludge. Total constituent analysis results for these two compounds are reported in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) FILTER PRESS SLUDGE

Constituents	Total constituent analyses
1,1,1-Trichloroethane	0.02
Formaldehyde	ND (0.5)

ND: Not Detected. Denotes a concentration below the detection limit shown in parentheses.

Marquette submitted a signed certification stating that based on current annual waste generation, their maximum annual generation rate of filter press sludge will be 36 cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Marquette's certified estimate of 36 cubic yards.

EPA does not generally verify submitted tests data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Marquette's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select this facility in the future for spot-check sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for filter press sludges and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground wate. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). In addition, the Agency used its Organic Leachate Model (OLM) to estimate the leachable portion of the organic constituents in the petitioned waste. See 50 FR 48953 (November 27, 1985), 52 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constituents on the underlying aquifer. The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of Marquette's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of Marquette's filter press sludge. The Agency's evaluation, using Marquette's estimate of 36 cubic yards per year and the maximum reported EP leachate concentrations, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, chromium, lead, mercury, and selenium) from Marquette's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) FILTER PRESS SLUDGE

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Arsenic	0.00006	0.05
Barium	0.008	1.0
Cadmium	0.001	0.01
Silver	0.0003	0.05
Nickel	0.1	0.5
Cyanide	0.006	0.2

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The filter press sludge exhibited arsenic, barium, cadmium, silver, nickel, and cyanide levels at the compliance point below the health-based levels used in delisting decision making. Because the maximum reported concentration of total cyanide in the waste is 1.4 ppm, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. The Agency accepts Marquette's claim that sulfides are not introduced to the process and, therefore, believes that reactive sulfide levels are not of concern.

The Agency also evaluated the mobility of the hazardous organic constituents detected in Marquette's waste using the VHS model. The Agency used the OLM to predict the leachable concentration of 1,1,1-trichloroethane in the filter press sludge. The resulting leachable concentration then was used as an input in the VHS model in order to assess the potential impacts of this constituent upon the ground water. The calculated compliance-point concentration for 1,1,1-trichloroethane is presented in Table 4. The Agency did not evaluate the mobility of formaldehyde from Marquette's filter press sludge because it was not detected in the waste using the appropriate analytical method (see Table 2). As stated previously, the Agency does not evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method.

TABLE 4.—VHS MODEL: COMPLIANCE-POINT CONCENTRATION (PPM) FILTER PRESS SLUDGE

Constituent	Compliance-point concentration	Level of regulatory concern [1]
1,1,1-Trichloroethane	0.00007	0.2

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The filter press sludge exhibited 1,1,1-trichloroethane levels well below the health-based level. The Agency concluded, after reviewing Marquette's processes and raw materials list, that no hazardous constituents of concern, other than those tested for, are being used by Marquette and that no other constituents of concern are likely to be present or formed as reaction products or by-products in Marquette's waste. On the basis of test results submitted by the petitioner, pursuant to 40 CFR 260.22, the Agency concludes that the filter press sludge does not exhibit any of the characteristics of ignitability, corrosibility, or reactivity. See 40 CFR 261.21, 261.22, and 26123, respectively.

5. Conclusion

The Agency believes that Marquette has successfully demonstrated that it filter press sludge is not hazardous. Marquette's manufacturing and waste treatment processes are believed to be consistent because the facility does not perform as a job shop or have seasonal product variations. Furthermore, the Agency believes that the samples collected by Marquette were not biased and that Marquette's five and one-half week sampling period adequately characterized any day-to-day variation of constituent concentrations that may occur in the sludge. Marquette's log of batch discharges to the wastewater treatment system indicates that the samples collected account for any constituent variation in the waste because all process lines were in operation and all scheduled bath dumps occurred during the sampling period. The Agency, therefore, is proposing that Marquette's waste be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant an exclusion to Marquette Electronics, Incorporated, located in Milwaukee, Wisconsin, for its wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the wastewater treatment sludge would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will apply only to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective is less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553 (d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entitiies since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling.

Date: November 1, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In table 1 of Appendix IX, add the following wastestreams in alphabetical order:

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Appendix IX—Wastes Excluded Under § 260.20 and § 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	• •	• •
Marquette Electronics Incorporated.	Milwaukee, Wisconsin.	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations.
•	• •	• •

[FR Doc. 88-25772 Filed 11-7-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3472-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Occidental Chemical Corporation, Sheffield, Alabama, to conditionally exclude certain solid wastes generated at its Muscle Shoals Plant from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evalauting the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until December 23, 1988. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joe Carra, whose address appears below, by November 23, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-OCEP-FFFFF."

Requests for a hearing should be addressed to Joe Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Mr. Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR § 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) Toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standard for "delisting" a treatment residue or a

mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste and, is proposing to use a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of Occidental's petitioned waste on human health and the environment, if the waste is removed from RCRA Subtitle C control. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst case waste disposal scenario for the petitioned waste, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Occidental is seeking an upfront delisting (*i.e.*, an exclusion for wastes not yet generated), ground-water monitoring data collected from the area where the petitioner plans to dispose of the waste is not necessary. Because the petitioned wastestream is not currently generated or disposed of, ground-water data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal site, and thus, would serve no purpose.

Occidental petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on a pilot-scale waste treatment process (*i.e.*, a scaled-down version of a proposed treatment system), untreated waste characteristics, and process descriptions. Additionally, the Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from Occidental's full-scale treatment system verifying that the treatment system is on-line and operating as described in the petition) be made conditions of the exclusion. These conditions, if the exclusion is granted, will be implemented in order to show that, once on-line, the treatment system can render the waste non-hazardous by meeting the Agency's verification testing limitations (*i.e.*, the maximum allowable levels of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous).

From the evaluation of Occidental's upfront delisting petition, a list of constituents was developed for the verification testing, and tentative maximum allowable treated waste concentrations for these constituents were derived by back calculating from the regulatory standards through the useof the proposed fate and transport model for a landfill management scenario. These levels (*i.e.*, "delisting levels") are proposed conditions of the delisting.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating wastes, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on today's proposed decision until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petition

Occidental Chemical Corporation, Sheffield, Alabama.

1. Petition for Exclusion

Occidental Chemical Corporation (Occidental), located in Sheffield, Alabama, produces chlorine and caustics for industrial use. Occidental petitioned the Agency to conditionally exclude from regulation as a hazardous waste its wastewater treatment sludge generated by its mercury cell process, presently listed as EPA Hazardous Waste No. K106—"Wastewater

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treatment sludge from the mercury cell process in chlorine production." The listed constituent of concern for K106 waste is mercury. Occidentald petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. Occidental also believes that its treatment process will generate a non-hazardous waste because the constituent of concern, although present in the waste, is both low in concentration and is in an essentially immobile form. Occidental further believes that the waste is not hazardous for any other reason (*i.e.,* there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Occidental's petition.

2. Background

Occidental petitioned the Agency to exclude its treatment residues on July 22, 1987 and subsequently provided additional information to complete its petition. In support of its petition, Occidental submitted (1) detailed descriptions of its manufacturing and proposed waste treatment processes; and (2) a list of all the raw materials used in both the manufacturing and treatment processes. For representative samples of the reported filter cake, as generated, using a pilot-scale treatment system Occidental provided (1) results from total constituent and EP toxicity analyses for all the EP toxic metals, nickel and cyanide; (2) results from total constituent analyses for hydrazine; and (3) total oil and grease analyses. Once Occidental's full-scale treatment system is on-line, EPA proposes that Occidental be required to submit the results of total constituent analyses for all the EP toxic metals, nickel, and cyanide, reactive cyanide, and reactive sulfide and results of EP toxicity analyses for all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions) on treated batches of retorted filter cake (see Section 6—*Verification Testing Conditions*).

Occidental produces chlorine and caustics using a mercury cell process (*i.e.,* electrolysis of sodium chloride or potassium chloride brine). Rock salt and potassium chloride are dissolved and purified to form brines. The brine flows into one of the 116 electrolytic cells containing dimensionally stable anodes and flowing mercury cathodes. Chloride salt is removed from the brine by electrolysis and the deplated brine containing small amounts of mercury is pumped back to the brine system, where additional salt is added in a continuous closed loop operation. All wastewaters containing mercury contaminants are collected. The major portion of the contaminated wastewaters are created through: (1) Purging of the water used as vapor seals or portions of the electrolytic cells (endboxes), (2) wash downs of the cells building, and (3) rain or wash down water in the brine, caustic filtration, and cell building areas.

All wastewater is collected and pumped either to a wastewater storage tank or, in the case of periodic maintenance of or other work on the storage tank, directly to the wastewater treatment system receiver. At the inlet of the receiver, hydrazine (a reducing agent) is added to precipitate mercury into a filtered form. Currently, the mixture is filtered and the filter cake is sent to a Subtitle C landfill. The effluent is sent through a carbon adsorption unit and discharged through a permitted NPDES outfall. The normal hydrazine concentration in the wastewater during treatment is 0.5 ppm. Occidental claims that upon exposure to air, hydrazine spontaneously and rapidly decomposes to form nitrogen and water.

Once its treatment system is on-line, Occidental proposes to wash the filter cake prior to cleaning out the filter press, but after the plate and frame filters are taken out of service (*i.e.,* the filter cake will be washed after the filter press is turned off, but prior to its removal). All wash water will then be sent through the treatment system, and the remaining filter cake will be removed from the filter press (after washing) and retorted on a batch basis. The filter cake will be placed in the retort vessel and steam will be injected into the retort vessel to vaporize the mercury. The mercury vapors will flow out of the vessel and into a condenser where the mercury will be cooled, condensed, and collected for reuse in the electrolytic process. Trace non-condensable mercury vapors will pass through and be removed in a carbon adsorption column. The completely dryretorted filter cake (*i.e.,* the filter cake remaining in the retort vessel) will be removed and either disposed in an off-site Subtitle D landfill or reused in Occidental's treatment system as filter aid (diatomaceous earth), if the exclusion is granted.

To collect representative samples from filter presses like Occidental's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.,* grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Occidental collected a total of four composite samples of the filter cake (taken from the filter press catch pans). Each composite was made from six grab samples. At the time of sampling Occidental was operating two filter presses. On March 11 and 12, 1987, the two filter presses were cleaned and one composite sample was collected from each. On April 6, the two filter presses were again cleaned, and an additional composite sample was collected from each filter press.

The four composite samples were sent to Occidental's Delaware City plant for retorting. The Muscle Shoals Plant retort vessel, except for scale, will be identical to the Delaware City retort vessel. The retorted sludge was sent to an outside lab for testing [for convenience, the lab is treated here as part of Occidental]. Occidental claims that, due to a consistent manufacturing process and the fact that the Delaware City retort vessel and the proposed Muscle Shouls retort vessel are identical, except for scale, the tested samples are representative of the retort filter cake to be generated once the new treatment system is fully operational.

3. Agency Analysis

Occidental used SW–846 method numbers 7060–7780 and 9010 to quantify the total constituent concentrations of all the EP toxic metals, nickel, and cyanide. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986. Occidental used SW–846 method number 1310 to quantify the EP leachable concentrations of all the EP toxic metals, nickel, and cyanide in its waste. Total constituent analysis of the pilot-scale retorted treatment residue revealed the maximum total constituent concentrations (*i.e.,* mass of a particular constituent per mass of waste) for the EP toxic metals, nickel, and cyanide presented in Table 1. EP toxicity analysis for the EP toxic metals, nickel, and cyanide revealed the maximum EP leachate concentrations (*i.e.,* mass of a particular constituent per unit volume of extract) presented in Table 2. These detection limits represent the lowest concentrations quantifiable by Occidental, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.,* the "cleanliness" of waste matrices varies, and "dirty" waste matrices may cause intereferences, thus raising the detection limit.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS RETORTED FILTER CAKE

Constituents	Concentrations (mg/kg)
Arsenic	27
Barium	48
Cadmium	4.6
Chromium	68
Cyanide	2.73
Lead	99
Mercury	100
Nickel	42
Selenium	ND (0.6)
Silver	9.9

ND: Not Detected. Denotes concentration below the detection limits specified in parentheses.

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS RETORTED FILTER CAKE

Constituents	Concentrations (mg/1)
Arsenic	0.033
Barium	0.14
Cadmium	0.016
Chromium	ND (0.005)
Cyanide	ND (0.01)
Lead	ND (0.06)
Mercury	0.0024
Nickel	0.13
Selenium	ND (0.005)
Silver	ND (0.007)

ND: Not Detected. Denotes concentrations below the detection limits specified in parentheses.

Occidental did not analyze for sulfide because sulfide is not used in the process, consequently, sulfide is not expected to be present in the waste. However, as explained later, if a final exclusion is granted, Occidental will be required to analyze for sulfide during the verification testing period. Analysis for the concentration of total hydrazine, using American Society of Testing Methods (ASTM) number D–1385 (an SW–846 test method for hydrazine is not available) and a detection limit of <0.2 mg/kg, demonstrated that hydrazine was not detectable in the retorted waste.

Occidental claims that no other hazardous constituents of concern, except for carbon tetrachloride, are used in its manufacturing or treatment processes. However, Occidental claims that carbon tetrachloride will not be present in the retorted filter cake because carbon tetrachloride is used outside of the wastewater treatment system (*i.e.,* carbon tetrachloride is used in the chlorine gas purification system). The Agency accepted this explanation. Finally, Occidental claims that the waste does not exhibit any of the characteristics of ignitability, reactivity, or corrosivity. See 40 CFR 261.21, 261.22, and 261.23.

Wastes having more than one percent total oil and grease may have significant concentrations of the constituents of concern in the oil phase (which may not be assessed using the standard EP leachate procedure) or the concentration of oil and grease may be sufficient to coat the solid phase of the sample (interfering with the leaching out of metals from the sample). Consequently, the Agency requires that the EP analyses be modified in accordance with the Oily Waste EP methodology if the waste exhibits more than one percent total oil and grease. See SW–846 method number 1330. Using SW–846 method number 9070, Occidental determined that its waste had a maximum total oil and grease content of less than 5 mg/l (0.0005 percent); therefore, EP analyses did not have to be modified in accordance with the Oily Waste EP methodology.

Occidental submitted a signed certification stating that, based on current annual waste generation and pilot-scale results, it anticipates generating no more than 40 cubic yards of retorted filter cake annually. The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Occidental's certified estimate of 40 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions and has not verified the data upon which it proposes to grant Occidental's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may elect to visit this facility in the future for spot-sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for retorted filter cake wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.,* the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of Occidental's waste.

The Agency used the VHS model to evaluate the mobility of arsenic, barium, cadmium, nickel, and mercury from Occidental's waste. The Agency's evaluation, using Occidental's maximum waste generation rate of 40 cubic yards and the maximum EP leachate concentrations of the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.,* chromium, cyanide, lead, selenium, and silver) from Occidental's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 2). The Agency believes it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent can not be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

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TABLE 3—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS RETORTED TREATMENT RESIDUE

Constituents	Compliance-Point Concentrations (mg/1)	Regulatory Standards (mg/1)
Arsenic	0.001	0.05
Barium	0.0043	1.0
Cadmium	0.0005	0.01
Mercury	0.0001	0.002
Nickel	0.004	0.5

The retorted filter can waste exhibited arsenic, barium, cadmium, mercury, and nickel levels at the compliance point below the health-based levels used in delisting decisionmaking. See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

Because the total constituent concentration of cyanide is 2.73 ppm, the Agency believes that the concentration of reactive cyanide will not exceed the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket. Last, the Agency normally requests analyses for reactive sulfide; however, since sulfides are not used in any of Occidental's processes and since this is a proposed "upfront" exclusion requiring additional verification testing, the Agency, in this case, will process this petition without requiring Occidental to provide analyses for reactive sulfide at this time. If, however, a final exclusion is granted, Occidental would be required to test for reactive sulfide during the verification testing period. If concentrations of reactive sulfide are then detected above the Agency's level of regulatory concern, Occidental would be required to either retreat the waste or handle the waste as hazardous.

The Agency reviewed Occidental's list of raw materials and material safety data sheets and did not identify any other hazardous constituents of concern being used by Occidental, other than hydrazine (or carbon tetrachloride as discussed above), and it believes that no other hazardous constituents of concern are likely to be present or formed as reaction products or by-products of Occidental's waste. The Agency believes that hydrazine will not be present at detectable levels in the retorted residue because hydrazine, on exposure to oxygen, completely decomposes into nitrogen and water. As stated above, hydrazine was not detected in the retorted waste from the pilot-scale system, and the Agency will not evaluate non-detectable concentrations of a constituent of concern if it does not believe that the constituent will be present in the petitioned wastestream. Lastly, based on the data submitted by Occidental, the waste is not expected to exhibit any of the characteristics of ignitability, reactivity, or corrosivity. See 40 CFR 261.21, 261.22, and 261.23.

5. Conclusion

The Agency believes that Occidental's proposed retort treatment system can render the K106 wastes non-hazardous. The manufacturing and treatment processes are believed to be uniform and consistent since the facility neither operates as a job shop nor has seasonal product variations. However, Occidental has reported that the total constituent concentration of mercury varies according to the amount of precipitation. Therefore, at certain times, it will be possible for the total constituent concentration of mercury to be higher than the total constituent concentration of mercury demonstrated during Occidental's sampling period. As a result of the possible variation in the total concentration of mercury, Occidental requested an exclusion conditioned upon the collection of samples of retort filter cake and the subsequent analysis for EP leachate concentrations of mercury, proposed testing of each treated batch for EP levels of mercury, as discussed below, addresses the Agency's concern of possible variation in the EP leachable mercury levels occurring in Occidental's treatment residue.

The Agency, therefore, is proposing that Occidental's retorted filter cake, if it meets certain verification testing requirements, be considered non-hazardous, as it should not present a significant hazard to either human health or the environment. The Agency proposes to grant a conditional exclusion to Occidental Chemical Corporation, located in Sheffield, Alabama, for its retorted treatment filter cake described in its petition as EPA Hazardous Waste No. K106. If the proposed rule becomes effective, the retorted treatment filter cake would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned by Occidental.

This proposed exclusion is conditional upon the following:

(1) Occidental must collect representative grab samples of each treated batch of retored filter cake prior to its disposal or recycling and analyze the samples for the EP leachate concentration of mercury. Analyses must be performed according to SW–846 methodologies. Any treated batch or retorted filter cake which exhibits EP leachable mercury at a concentration exceeding 0.065 mg/1 must either be retreated until it meets this level or be managed and disposed of in accordance with Subtitle CZ of RCRA. Occidental must report the analytical data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report.

The Agency is proposing to require Occidental to continually test each batch of retorted filter cake for the EP leachate concentration of mercury prior to the filter cake's disposal or recycyling, in order to ensure that the EP leachate concentration of mercury has been reduced to below the level of regulatory concern. This requirement is included because it occasionally may be necessary to re-treat treated batches to reduce the concentration of EP leachate mercury to meet the delisting level of 0.065 mg/1.

(2) Occidental must collect weekly composite samples comprised of representative grab samples from each batch of retorted filter cake generated during the particular week and analyze the weekly composite samples for both the total constituent and EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water instead of acetic acid in the cyanide extraction), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW–846 methodologies. Occidental must report the analytical test data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report.

(3) If, under condition (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 1.616 m/1; for barium exceeds 32.3 mg/1; for cadmium or selenium exceed 0.323 mg/1; for nickel exceeds 16.15 mg/1; for cyanide exceeds 22.61 mg/1; or for total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

(4) The requirements of conditions (2) and (3) only shall be terminated by EPA when the results of four consecutive weekly composite samples for the petitioned waste show the maximum allowable levels in condition (3) are not exceeded and the Chief, Variances Section, notifies Occidental that the requirements of condition (2) have been lifted.

The Agency is proposing a mechanism both to collect a minimum of four weekly composite samples and to terminate the testing and reporting requirements of condition (2), after four consecutive weeks of meeting the delisting levels, for the reasons stated below.

First, the Agency is proposing to require sufficient analytical retort treatment system is on-line and operating properly. The Agency determined through its review of similar petitions that approximately four weeks are required for a facility to train operators and collect sufficient data to verify that the full-scale treatment process is operating correctly. Accordingly, the Agency is proposing that Occidental be required to collect a minimum of four weekly composite samples. (If Occidental needs more than four weeks to bring its full-scale treatment process up to specifications in order to meet the delisting levels of condition (3) the terms of condition (4) require four consecutive weeks once meeting specifications.)

Second, based both on the pilot-scale data submitted by Occidental and the characteristics of the untreated waste (*i.e.*, un-retorted filter cake), the Agency believes that consistently non-hazardous levels of the EP toxic metals (except mercury), nickel, cyanide, reactive sulfide, and reactive cyanide can be generated from Occidental's retort treatment process. Thus, the Agency believes that, in this case, a requirement for continued testing, after four consecutive weekly composite samples meet the delisting levels of condition (3), would be excessive.

Lastly, the termination of the sampling and reporting requirements of condition (2), after four consecutive weekly composite samples meet the delisting levels of condition (3), is consistent with existing policy that testing may be terminated for continuously generated wastes after taking a minimum of four representative samples if those wastes are well mixed and uniformly produced. (EPA normally requests a minimum of four samples of a continuously generated waste.) See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Future upfront delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (*e.g.*, see 51 FR 41323, November 14, 1986) and here for mercury, may require continuous batch testing.

(5) All data must be submitted to the Chief, Variances Section, PSPD/OSW (OS–343), U.S. EPA, 401 M Street, SW. Washington, DC 20460 within the time period specified in conditions (1) and (2), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Occidental's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion

(Name of Certifying Person) Date

(Title of Certifying Person)

If made final, the proposed exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes or waste volumes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, of promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the

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overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: November 2, 1988.

Jeffrey D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 2 of Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste Description
•	•	•
Occidental Chemical Corp., Muscle Shoals Production Plant	Sheffield, Alabama	Retorted filter cake from the treatment of wastewater sludge generated from the mercury cell process in clonne production (EPA Hazardous Waste No. K106) after [insert date of final rule's publication]. This exclusion is conditional upon the submission of data obtained form Occidental's full-scale retort treatment system because Occidental's original data were based on a pilot-scale retort system. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Occidental must implement a testing program. This testing program must meet the following conditions for the exclusion to be valid: (1) Occidental must collect representative grab samples of each treated batch of retorted filter cake prior to its disposal or recycling and analyze the sample for the EP leachate concentration of mercury. Analyses must be performed according to SW-846 methodologies. Any treated batch of retorted filter cake which exhibits EP leachable mercury at a concentration exceeding 0.065 mg/l must either be retreated until it meets this level or managed and disposed of in accordance with Subtitle C of RCRA. Occidental must report the analytical data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report. (2) Occidental must collect weekly composite samples comprised of representative grab samples from each batch of retorted filter cake generated during the particular week and analyze the weekly composite samples for both the total constituent and EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water instead of acetic acid in the cyanide extraction), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW-846 methodologies. Occidental must report the analytical test data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report. (3) If, under condition (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 1.616 mg/l; for barium exceeds 32.3 mg/l; for cadmium or selenium exceed 0.323 mg/l; for nickel exceeds 16.15 mg/l; for cyanide exceeds 22.61 mg/l; or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be retreated until it meets these levels or be managed and disposed of in accordance with Subtitle C of RCRA. (4) The requirements of conditions (2) and (3) only shall be terminated by EPA when the results of four consecutive weekly composite samples for the petitioned waste show the maximum allowable levels in condition (3) are not exceeded and the Chief, Variances Section, notifies Occidental that the requirements of condition (2) have been lifted. (5) All data must be submitted to the Chief Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified in conditions (1) and (2), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Occidental's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement. "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if its never had effecat or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the comapny's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion." • • • • •

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

[FR Doc. 88–25773 Filed 11–7–88; 8:45 am]
BILLING CODE 6560–50–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants; Enforcement and Hearing Procedures; Tourism Guidelines

AGENCY: National Science Foundation.

ACTION: Proposed rule.

SUMMARY: The National Science Foundation proposes to issue regulations governing the administrative handling of alleged violations of the Antarctic Conservation Act of 1978. The regulations cover the full range of procedural requirements for civil enforcement actions initiated by NSF against those who contravene the mandates of the Antarctic Conservation Act. Subjects covered include, but are not limited to, complaint procedures, notice and opportunity for response, pre-hearing activities and motion practice, adjudicatory hearing procedures, standards of proof, penalty assessments, settlement, and appeal. Responsibilities of various units within NSF are also set out in detail.

DATE: Comments must be received on or before January 2, 1989.

ADDRESS: Comments may be mailed to National Science Foundation, Office of the General Counsel, Room 501, 1800 G. Street, NW. Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, Deputy General Counsel, or Lawrence Rudolph, Assistant General Counsel at (202) 357–9435.

SUPPLEMENTARY INFORMATION: The Director of the National Science Foundation is responsible for enforcing various conservation and environmental protection provisions of the Antarctic Conservation Act of 1978, 16 U.S.C. 2401 *et seq.* The Act specifies prohibited acts by United States citizens, such as discharging pollutants, or killing, trapping, harming, or harassing protected species, without a valid NSF permit. Violators of the Act are subject to civil penalty actions initiated by NSF and to possible criminal proceedings as well.

In the absence of formal hearing regulations, the Act allows NSF to proceed against alleged violators and seek penalties so long as the Administrative Procedure Act requirements for adjudicatory hearings are followed. Until recently, due to the remoteness of the Antarctic region and the relatively small number of scientists and visitors there, few violations of the Act occurred. NSF informally handled these instances of non-compliance.

The past five years have witnessed a dramatic rise in tourism in the Antarctic, expanded scientific research throughout the Continent, and increased operational activity at United States stations. NSF concludes that enforcing Antarctic conservation measures and preserving present and future opportunities for scientific research will become increasingly difficult if the Foundation relies solely on voluntary compliance and informal enforcement methods.

Early in 1988, NSF considered revising its regulations under the Antarctic Conservation Act to include formal enforcement and hearing procedures designed to insure the fair and efficient handling of administrative complaints that charge individuals with violations

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of the Act. NSF announced that it would conduct a public hearing to aid the Foundation in its deliberations concering the need for hearing and enforcement regulations and for possible Antarctic tourism guidelines. On July 15, 1988, members of the public, scientists who perform research in the Antarctic, naturalists, environmentalists, lawyers, and representatives of the tourism industry attended NSF's public hearing and offered statements for the record.

The Antarctic Conservation Act authorizes NSF to establish formal regulatory procedures that facilitate efficient processing of administrative penalty cases and prevent procedural disputes from stalling the swift and just resolution of alleged violations of the Act. Based on further review of the issues and the record of the public hearing, the Foundation determined that it should propose formal hearing and enforcement regulations. These proposed regulations are primarily procedural in nature; they govern NSF's internal handling of complaints regarding violations of the Antarctic Conservation Act.

Effective hearing and enforcement procedures deter environmental and conservation violations and demonstrate the Foundation's continuing commitment to its obligations under the Act and to international leadership in the Antarctic community. The proposed regulations are similar to the regulations promulgated by other agencies governing enforcement cases and the administrative assessment of civil penalties.

This proposed regulatory action is one of several initiatives discussed at the public hearing. Comments by interested parties are encouraged. NSF intends to thoroughly review all comments, as well as other issues and proposals raised at the public hearing, and take further appropriate action. For example, NSF may establish a working group of representatives of the tourism industry, scientists, environmentalists, and others to review NSF's tourism policies. Among other issues, the working group may assess the effectiveness of voluntary restrictions on the numbers and kinds of tourist activities, since most of the hearing participants favored minimizing mandatory restrictions. NSF reserves the right to further amend its regulations if it determines that such action is necessary to protect Antarctic science, natural resources, and wildlife.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the rules primarily affect the internal procedures of a Federal Agency.

List of Subjects in 45 CFR Part 670

Administrative practice and procedure, Conservation of antarctic animals and plants, Enforcement and hearing procedures.

For the reasons set out in the preamble, Title 45, Subtitle B, Chapter VI of the Code of Federal Regulations is proposed to be amended by adding Subpart K to Part 670 as set forth below.

Dated: November 2, 1988.

Robert M. Andersen,

Deputy General Counsel, National Science Foundation.

PART 670—[AMENDED]

Subpart K is added to read as follows:

Subpart K—Enforcement and Hearing Procedures

Sec.

670.50 Hearing Procedures—Scope of these rules.
670.51 Definitions.
670.52 Powers and duties of the Director; Presiding Official; Division of Polar Programs.
670.53 Filing, service, and form of pleadings and documents.
670.54 Filing and service of rulings, orders, and decisions.
670.55 Appearances.
670.56 Issuance of complaint.
670.57 Answer to the complaint.
670.58 Motions.
670.59 Default order.
670.60 Informal settlement; consent agreement and order.
670.61 Prehearing conference.
670.62 Accelerated decision; decision to dismiss.
670.63 Scheduling the hearing.
670.64 Evidence.
670.65 Objections and offers of proof.
670.66 Burden of presentation; burden of persuasion.
670.67 Filing the transcript.
670.68 Proposed findings, conclusions, and order.
670.69 Initial decision.
670.70 Appeal from or review of interlocutory orders or rulings.
670.71 Appeal from or review of initial decision.
670.72 Final order on appeal.

Subpart K—Enforcement and Hearing Procedures

Authority: The Antarctic Conservation Act of 1978, 16 U.S.C. 2409(f); 2405; 2401–2412; The National Science Foundation Act, 42 U.S.C. 1861 *et seq.*

§ 670.50 Hearing procedures—Scope of these rules.

(a) These hearing rules govern all adjudicatory proceedings for the assessment of civil penalties or imposition of other sanctions pursuant to the Antarctic Conservation Act of 1978, 16 U.S.C. 2407; 2404(f); 2401–2412; and

(b) Other adjudicatory proceedings that the Foundation, in its discretion, determines are appropriate for handling under these rules, including proceedings governed by the Administrative Procedure Act requirements for "hearings on the record." 5 U.S.C. 554 (1982).

(c) Questions arising at any stage of the proceeding which are not addressed in these rules shall be resolved at the discretion of the Director or Presiding Officer.

§ 670.51 Definitions.

(a) Throughout these rules, words in the singular also include the plural, and words in the masculine gender also include the feminine, and vice versa.

(b) "Act" means the particular statute authorizing the initiation of the proceeding.

(c) "Administrative Law Judge" means an Administrative Law Judge appointed under 5 U.S.C. Section 3105 (See also Pub. L. 95–251, 92 Stat. 183).

(d) "Complainant" means any person authorized to issue a complaint on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be the Presiding Officer or any other person who will participate or advise in the decision.

(e) "Complaint" means a written communication, alleging one or more violations of specific provisions of the Act, Treaties, NSF regulations or a permit promulgated thereunder, issued by the complainant to a person under this subpart.

(f) "Consent Agreement" means any written document, signed by the parties, containing stipulations or conclusions of fact or law, and a proposed penalty, revocation or suspension of a permit, or other sanction.

(g) "Director" means the Director of the National Science Foundation (NSF) or his delegatee.

(h) "Final Order" means (1) an order issued by the Director after an appeal of an initial decision, accelerated decision, a decision to dismiss, or default order, or (2) an initial decision which becomes a final order.

(i) "Foundation," Agency," or "NSF" means the National Science Foundation.

(j) "Hearing" means a hearing on the record open to the public and conducted under these rules.

(k) "Hearing Clerk" is the person with whom all pleadings, motions, and other documents required under this subpart are filed.

(l) "Initial Decision" means the decision issued by the Presiding Officer based upon the official record of the proceedings.

(m) "Party" means any person that participates in a hearing as complainant, respondent, or intervenor.

(n) "Permit" means a permit issued under section 5 of the Antarctic Conservation Act of 1978, 16 U.S.C. section 2404.

(o) "Person" includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(p) "Presiding Officer" means the attorney designated by the Director to conduct hearings or other proceedings under this subpart.

(q) "Respondent" means any person proceeded against in the complaint.

(r) Terms defined in the Act and not defined in these rules of practice are used consistent with the meanings given in the Act.

§ 670.52 Powers and duties of the Director; Presiding Official; Division of Polar Programs.

(a) *Director.* The Director of NSF shall exercise all powers and duties as prescribed or delegated under the Act and these rules.

(b) The Director may delegate all or part of his authority. Partial delegation does not prevent the Presiding Officer from referring any motion or case to the Director.

(c) *Presiding Officer.* The Director may designate one or more Presiding Officers to perform the functions described below. The Presiding Officers shall be attorneys who are permanent or temporary employees of the Foundation or some other Federal Agency and may perform other duties compatible with their authority as hearing officers. Administrative Law Judges may perform the functions of Presiding Officers. The Presiding Officer shall have performed no prosecutorial or investigatory functions in connection with any matter related to the hearing.

(d) The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer shall have authority to:

(1) Conduct administrative hearings under these rules of practice;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents, or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of facts, law or discertion;

(9) Issue subpoenas authorized by the Act; and

(10) Take all actions necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

(e) *Disqualification; Withdrawal.* (1) The Presiding Officer may not participate in any matter in which he (i) has a financial interest or (ii) has any relationship with a party or with the subject matter which would make it inappropriate for him to act. Any party may at any time by motion made to the Director, or his delegatee, request that the Presiding Officer be disqualified from the proceeding.

(2) If the Presiding Officer is disqualified or withdraws from the proceeding, the Director shall assign a qualified replacement who has none of the infirmities listed in paragraph (e)(1) of this section. The Director, should he withdraw or disqualify himself, shall assign the Deputy Director to be his replacement.

(f) *Division of Polar Programs.* The Division of Polar Programs (DPP) manages and operates the national program in Antarctica, including administration of the Antarctic Conservation Act (ACA) permit system. DPP is responsible for investigating alleged violations of the "prohibited acts" section of the ACA and alleged noncompliance with ACA permits. DPP will act as the official complainant in all proceedings under the ACA governed by these rules. DPP may delegate all or part of its investigatory duties to other appropriate NSF employees, other qualified federal employees, or consultants. DPP will prepare complaints with the assistance of designated prosecuting attorneys within NSF's Office of General Counsel, other qualified federal attorneys, or other appropriate legal representative selected jointly by DPP and OGC. The designated prosecuting attorney will represent DPP in all proceedings governed by these rules.

(g) The Division of Polar Programs, acting on behalf of the Director, may designate qualified individuals as enforcement officers empowered to execute all of the law enforcement functions set forth in section 10 of the ACA, 16 U.S.C. 2409, as well as any other appropriate actions ancillary to those statutory duties. DPP will provide each enforcement officer with official enforcement credentials for identification purposes and use during execution of official duties. DPP may also designate knowledgeable individuals to provide educational and other information regarding the Antarctic to tour operators, their clients and employees, and other visitors to the Antarctic.

(h) The Division of Polar Programs shall prepare for publication and distribution a clear, concise explanation of the prohibited acts set forth in the Antarctic Conservation Act, and other appropriate educational material. The explanation may be translated into Spanish, French, German, or other foreign languages. This material shall be provided to tour operators for distribution to their passengers and crew prior to or during travel to the Antarctic. Tour operators shall distribute provided materials to each passenger and crew member.

§ 670.53 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.* (1) Except as otherwise provided, the original and one copy of the complaint, and the original of the answer and of all other documents served in the proceeding, shall be filed with the Hearing Clerk.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the Hearing Clerk, after the filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3) When the Presiding Officer corresponds directly with the parties, he shall file the original of the

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correspondence with the Hearing Clerk, maintain a copy in the duplicate file, and send a copy to all parties. Parties who correspond directly with the Presiding Officer shall in addition to serving all other parties send a copy of all such correspondence to the Hearing Clerk. A certificate of service shall accompany each document served under this subsection.

(b) *Service of pleadings and documents*—(1) *Service of complaint.* (i) Service of a copy of the signed original of the complaint, together with a copy of these rules, may be made personally or by certified mail, return receipt requested, on the respondent or his representative.

(ii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, as prescribed by paragraph (b)(1)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iii) Service upon an officer or agency of the United States shall be made by delivering a copy of the complaint to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii) of this section.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the State for the service of process on any such persons, or

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by delivering a copy of the complaint to the chief executive officer thereof; or

(B) If upon a State or local officer by delivering a copy to such officer.

(v) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt. Such proof of service shall be filed with the complaint immediately upon completion of service.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the respondent and the docket number which is exhibited on the complaint.

(3) The original of any pleading, letter, or other document (other than exhibits) shall be signed by the party filing it or by his representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Hearing Clerk, Presiding Officer, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under these rules.

§ 670.54 Filing and service of rulings, orders, and decisions.

(a) All rulings, orders, decisions, and other documents issued by the Presiding Officer shall be filed with the Hearing Clerk. Copies of all such documents shall be served personally, or by certified mail, return receipt requested, upon all parties.

(b) *Computation.* In computing any period of time prescribed or allowed in these rules, except as otherwise provided, computation is by calendar days and does not include the day of the event from which the designated period begins to run. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(c) *Extensions of time.* The Presiding Officer may grant an extension of time for the filing of any pleading, document, or motion (1) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (2) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(d) *Service by mail.* Service of the complaint is complete when the return receipt is signed. Service of all other pleadings and documents is complete upon mailing. Where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.

(e) *Ex parte discussion of proceeding.* At no time after the issuance of the complaint shall the Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in the proceeding or other factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding and shall be served upon all other parties. The Presiding Officer shall give the other parties an opportunity to reply.

(f) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the Hearing Clerk.

(g) The person seeking copies of any documents filed in a proceeding shall bear the cost of duplication. Upon a formal request the Agency may waive this cost in appropriate cases.

§ 670.55 Appearances.

(a) *Appearances.* Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

(b) *Intervention.* A motion for leave to intervene in any proceeding conducted under these rules must set forth the grounds for the proposed intervention, the position and interest of the movant, and whether the intervention will cause delay. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c) of this section, within ten (10) days after service of the motion for leave to intervene.

(c) A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference, or if there is no such conference, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (b) of this section, a statement of good cause for the failure to file in a timely manner. Agreements, arrangements, and other

matters previously resolved during the proceeding are binding on the intervenor.

(d) *Disposition.* The Presiding Officer may grant leave to intervene only if the movant demonstrates that (1) his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; (2) the movant will be adversely affected by a final order; and (3) the interests of the movant are not being adequately represented by the original parties. The intervenor becomes a full party to the proceeding upon the granting of leave to intervene.

(e) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may so move. The motion shall identify the interest of the applicant and shall state the reason why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Director shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, motions, and orders relating to issues to be briefed.

(f) *Consolidation.* The Presiding Officer may, by motion or sua sponte, consolidate any or all matters at issue in two or more proceedings docketed under these rules where (1) there exists common parties or common questions of fact or law; (2) consolidation would expedite and simplify consideration of the issues; and (3) consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(g) *Severance.* The Presiding Officer may, by motion or sua sponte, for good cause, shown order any proceedings severed with respect to any or all parties or issues.

§ 670.56 Issuance of complaint.

(a) *General.* If the complainant has reason to believe that a person has violated any provision of the Antarctic Conservation Act, other Act or attendant regulations, or a permit issued under the ACA, he may institute a proceeding for the assessment of a civil penalty or other sanctions by issuing a complaint under the Act and these rules.

(b) If the complainant has reason to believe that (i) a permittee violated any term or condition of the permit, or (ii) a permittee misrepresented or inaccurately described any material fact in the permit application or failed to disclose all relevant facts in the the permit application, or (iii) other good cause exists for such action, he may institute a proceeding for the revocation or suspension of a permit by issuing a complaint under the Act and these rules. A complaint may seek suspension or revocation of a permit in addition to the assessment of a civil penalty.

(c) *Content and amendment of the complaint.* All complaints shall include:

(1) A statement reciting the section(s) of the Act, regulations, and/or permit authorizing the issuance of the complaint;

(2) A concise statement of the factual basis for all alleged violations; and

(3) Notice of the respondent's right to request a hearing on any material fact contained in the complaint, or on the appropriateness of the proposed sanction.

(d) Each complaint for the assessment of a civil penalty shall also include:

(1) Specific reference to each provisions of the Act and implementing regulations which respondent is alleged to have violated;

(2) The amount of the civil penalty which is proposed to be assessed; and

(3) A statement explaining the reasoning behind the proposed penalty; ⅓ ⅓

(e) Each complaint for the revocation or suspension of a permit shall also include:

(1) Specific reference to each term or condition of the permit which the respondent is alleged to have violated, to each alleged inaccuracy or misrepresentation in respondent's permit application, to each fact which the respondent allegedly failed to disclose in his permit application, or to other reasons which form the basis for the complaint;

(2) A request for an order to either revoke or suspend the permit and a statement of the terms and conditions of any proposed partial suspension or revocation; and

(3) A statement indicating the basis for recommending the revocation, rather than the suspension, of the permit, or vice versa.

A copy of these rules shall accompany each complaint served.

(f) *Derivation of proposed civil penalty.* The complainant shall determine the dollar amount of the proposed civil penalty in accordance with any criteria set forth in the Act and with any civil penalty guidance issued by NSF.

(g) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file his answer.

(h) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice, only upon motion granted by the Presiding Officer.

(i) Complainant, in cooperation with the Office of General Counsel, may refer cases to the Department of Justice for possible criminal prosecution if there is reason to believe that respondent willfully violated the Antarctic Conservation Act or its attendant regulations. Such referral does not automatically preclude NSF from proceeding administratively under the Act and these rules against the same respondent.

§ 670.57 Answer to the complaint.

(a) *General.* Where respondent (1) contests any material fact upon which the complaint is based; (2) contends that the amount of the penalty proposed in the complaint or the proposed revocation or suspension, as the case may be, is inappropriate; or (3) contends that he is entitled to judgment as a matter of law, he shall file a written answer to the complaint with the Hearing Clerk. Any such answer to the complaint must be filed with the Hearing Clerk within twenty (20) days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint. If respondent asserts he has no knowledge of a particular factual allegation, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which respondent intends to place at issue; and (3) whether a hearing is requested.

(c) *Request for hearing.* A hearing upon the issues raised by the complaint and answer shall be held upon request of respondent in the answer. The Presiding Officer may deem the right to a hearing waived if it is not requested by respondent. In addition, a hearing may be held at the discretion of the Presiding Officer, sua sponte, to examine issues raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

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(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 670.58 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall (1) be in writing; (2) state the basis or grounds with particularity; (3) set forth the relief or order sought; and (4) be accompanied by any affidavit, certificate, or other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party must file a response to any written motion within ten (10) days after service of such motion, unless the Presiding Officer allows additional time. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the Presiding Officer may deem the parties to have waived any objection to the granting of the motion. The Presiding Officer may also set a shorter time for response, or make such other appropriate orders concerning the disposition of motions.

(c) *Ruling on Motions.* The Presiding Officer shall rule on all motions, unless otherwise provided in these rules. The Presiding Officer may permit oral argument if he considers it necessary or desirable.

§ 670.59 Default order.

(a) *Default.* The Presiding Officer may find a party in default (1) after motion, upon failure to file a timely answer to the complaint; (2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer; or (3) after motion or sua sponte, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made against the respondent unless the complainant presents sufficient evidence to the Presiding Officer to establish a prima facie case against the respondent. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have twenty (20) days from service to reply to the motion. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. If the complaint is for the assessment of a civil penalty, the penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default. If the complaint is for the revocation or suspension of a permit, the conditions of revocation or suspension proposed in the complaint shall become effective without further proceedings on the date designated by the Presiding Officer in his final order issued upon default. Default by the complainant shall result in the dismissal of the complaint with prejudice.

(b) *Procedures upon default.* When the Presiding Officer finds a default has occurred, he shall issue a default order against the defaulting party. This order shalll constitute the initial decision, and shall be filed with the Hearing Clerk.

(c) *Contents of a default order.* A default order shall include findings of fact showing the grounds for the order, conclusions regarding all material issues of law or discretion, and the penalty which is recommended, or the terms and conditions of permit revocation or suspension, or other sanctions.

(d) The Presiding Officer may set aside a default order for good cause shown.

§ 670.60 Informal settlement; consent agreement and order.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The respondent may confer with complainant concerning settlement whether or not the respondent requests a hearing. Settlement conferences shall not affect the respondent's obligation to file a timely answer.

(b) *Consent agreement.* The parties shall forward a written consent agreement and a proposed consent order to the Presiding Officer whenever settlement or compromise is proposed. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the assessment of a stated civil penalty or to the stated permit revocation or suspension, or to other sanctions or actions in mitigation. The consent agreement shall include any and all terms of the agreement, and shall be signed by all parties or their counsel or representatives.

(c) *Consent order.* No settlement or consent agreement shall dispose of any proceeding under the rules without a consent order from the Director or his delegatee. Before signing such an order, the Director or his delegatee may require that the parties to the settlement appear before him to answer inquiries relating to the consent agreement or order.

(d) *Actions by respondent to clean, protect, enhance, or benefit the environment.* NSF may accept from respondent environmentally beneficial actions, in lieu of penalties, in whole or in part, assessed under the Antarctic Conservation Act. An assessment of the monetary value of any action in mitigation shall be made before that action is incorporated as a part of any consent agreement and order.

§ 670.61 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representatives to appear at a conference before him to consider:

(1) The settlement of the case;

(2) The simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) Setting a time and place for the hearing; and

(7) Any other matters which may expedite the proceeding.

(b) *Exchange of witness lists and documents.* Unless otherwise ordered by the Presiding officer, each party at the prehearing conference shall make available to all parties (1) the names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony, and (2) copies of all documents and exhibits which each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. The Presiding Officer may exclude from evidence any document or testimony not disclosed at the prehearing conference. If the Presiding Officer permtis the submittal of new evidence, he will grant parties a reasonable opportunity to respond.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer upon motion of a party or sua sponte. The Presiding Officer shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or sua sponte, may conduct a telephonic conference or direct the parties to correspond with him to accomplish any of the objectives set forth in this section.

(e) *Other discovery.* (1) Except as provided by paragraph (b) of this section, further discovery shall be permitted only upon determination by the Presiding Officer that (i) such discovery will not in any way unreasonably delay the proceeding; (ii) the information to be obtained is not otherwise obtainable; and (iii) such information has significant probative value.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that (i) the information sought cannot be obtained by alternative methods; or (ii) there is substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party may request further discovery by motion. Such a motion shall set forth (i) the circumstances warranting the taking of the discovery; (ii) the nature of the information expected to be discovered; and (iii) the proposed time and place where it will be taken. If the Presiding Officer determines that the motion should be granted, he shall issue an order granting discovery, with any qualifying conditions and terms.

(4) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to (i) the inference that the information to be discovered would be adverse to the party from whom the information was sought; or (ii) the issuance of a default.

§ 670.62 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law regarding all or any part of the proceeding. In addition, the Presiding Officer, upon motion of the respondent, may at any time dismiss an action without further hearing or upon such limited additional evidence as he requires, if complainant fails to establish a prima facie case, or if other grounds show complainant has no right to relief.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all the issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall then issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

§ 670.63 Scheduling the hearing.

(a) When an answer is filed, the Hearing Clerk shall forward the complaint, the answer, and any other documents filed thus far in the proceeding to the Presiding Officer, who will notify the parties of his assignment.

(b) *Notice of hearing.* If the respondent requests a hearing in his answer, or one is ordered by the Presiding Officer, the Presiding Officer shall serve upon the parties a notice setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than twenty (20) days prior to the date set for the hearing.

(c) *Postponement of hearing.* The Presiding Officer will not grant a request for postponement of a hearing except upon motion and for good cause shown.

§ 670.64 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Notwithstanding the preeding sentence, evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence is inadmissible. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall preserve the confidentiality of trade secrets and other commercial and financial information. The confidential or trade secret status of any information shall not, however, preclude its introduction into evidence. The Presiding Officer may review such evidence in camera, and issue appropriate protection orders.

(b) *Examination of witnesses.* Parties shall examine witnesses orally, under oath or affirmation, except as otherwise provided in these rules or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing.

(c) *Verified statements.* The Presiding Officer may admit into the record as evidence, in lieu of oral testimony, statements of fact or opinion prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver a copy of the statement ot the Presiding Officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are "unavailable," within the meaning of that term under Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter judicially noticeable in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 670.65 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be made orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

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(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded.

§ 670.66 Burden of presentation; burden of persuasion.

The complainant has the burden of going forward with and of proving that the violation occurred as set forth in the complaint and that the proposed civil penalty, revocation, suspension, or other sanction, is appropriate. Following the establishment of a prima facie case, respondent has the burden of presenting and of going forward with any defense to the allegations set forth in the complaint. The Presiding Officer shall decide all controverted matters upon a preponderance of the evidence.

§ 670.67 Filing the transcript.

The hearing shall be transcribed verbatim. After the Presiding Officer closes the record, the reporter shall promptly transmit the original and certified copies to the Hearing Clerk, and one certified copy directly to the Presiding Officer. A certificate of service shall accompany each copy of the transcript. The Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may obtain a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer.

§ 670.68 Proposed findings, conclusions, and order.

Unless otherwise ordered by the Presiding Officer, any party may submit proposed findings of fact, conclusions of law, and a proposed order, together with supporting briefs, within twenty (20) days after the parties are notified of the availability of the transcript. The Presiding Officer shall set a time by which reply briefs must be submitted. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and relied-upon authorities.

§ 670.69 Initial decision.

(a) *Filing and contents.* The Presiding Officer shall issue and file with the Hearing Clerk an initial decision as soon as practicable after the period for filing reply briefs, if any, has expired. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, the reasons for the findings and conclusions, a recommended civil penalty assessment or other sanction, if appropriate, and a proposed final order. Upon receipt of an initial decision, the Hearing Clerk shall forward a copy to all parties, and shall send the original, along with the record of the proceeding, to the Director.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred, he shall set the dollar amount of the recommended civil penalty in the initial decision in accordance with any criteria set forth in the Act, and must consider any civil penalty guidelines issued by NSF. If the Presiding Officer decides to assess a penalty different in amount from the penalty recommended in the complaint, he shall set forth in the initial decision the specific reasons for the increase or decrease. The Presiding Officer shall not raise a penalty from that recommended in the complaint if the respondent has defaulted.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become the final order of the Agency within forty-five (45) days after its service upon the parties and without further proceeding unless (1) an appeal to the Director is filed by a party to the proceedings; or (2) the Director elects, sua sponte, to review the initial decision.

(d) *Motion to reopen a hearing.* A motion to reopen a hearing to take further evidence must be made no later than twenty (20) days after service of the initial decision on the parties and shall (1) state the specific grounds upon which relief is sought; (2) state briefly the nature and purpose of the evidence to be adduced; (3) show that such evidence is not cumulative; and (4) show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Hearing Clerk. Parties shall have ten (10) days following service to respond. The Presiding Officer shall grant or deny such motion as soon as practicable. The conduct of any proceeding which may be required as a result of the granting of any motion to reopen shall be governed by the provisions of the applicable sections of these rules. The filing of a motion to reopen a hearing shall automatically stay the running of all time periods specified under these Rules until such time as the motion is denied or the reopened hearing is concluded.

§ 670.70 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory orders or rulings.* Except as provided in this section, appeals to the Director or, upon delegation, to the General Counsel, shall obtain as a matter of right only from a default order, an accelerated decision or decision to dismiss, or an initial decision rendered after an evidentiary hearing. Appeals from other orders or rulings shall lie only if the Presiding Officer, upon motion of a party, certifies such orders or rulings to the Director on appeal. Requests for such certification shall be filed in writing within six (6) days of notice of the ruling or service of the order, and shall state briefly the grounds to be relied upon on appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may certify any rulings for appeal to the Director when (1) the order or ruling involves an important question of law or policy and there is substantial grounds for difference of opinion; and (2) either (i) an immediate appeal from the order or ruling will materially advance the ultimate resolution of the proceeding, or (ii) review after the final order is issued will be inadequate or ineffective.

(c) *Decision.* If the Director or the General Counsel takes no action within thirty (30) days of the certification, the appeal is dismissed. If the Director or the General Counsel decides to hear the interlocutory appeal, he shall make and transmit his findings and conclusions to the Presiding Officer. When the Presiding Officer declines to certify an order or ruling to the Director on interlocutory appeal, it may be reviewed by the Director only upon appeal from the initial decision.

(d) *Stay of proceedings.* The Presiding Officer may stay the proceedings for an interlocutory appeal. Proceedings will not be stayed except in extraordinary circumstances. Where the Presiding Officer grants a stay of more than thirty (30) days, such stay must be separately approved by the Director.

§ 670.71 Appeal from or review of initial decision.

(a) *Notice of appeal.* Any party may appeal any adverse initial decision of the Presiding Officer by filing a notice of appeal and an accompanying appellate brief with the Hearing Clerk and upon all other parties and amicus curiae within twenty (20) days after the initial decision is served upon the parties. The notice of appeal shall set forth alternative findings of fact, alternative conclusions regarding issues of law or discretion, and a proposed order together with relevant references to the record and the initial decision. The appellant's brief shall contain a statement of the issues presented for review, argument on the issues presented, and a short conclusion stating the precise relief sought, together with appropriate references to the record. Within twenty (20) days of the service of notices of appeal and briefs, any other party or amicus curiae may file with the Hearing Clerk a reply brief responding to argument raised by the appellant, together with references to the relevant portions of the record, initial decision, or opposing brief. Reply briefs shall be limited to the scope of the appeal brief.

(b) *Sua sponte review by the Director.* Whenever the Director determines sua sponte to review an initial decision, the Hearing Clerk shall serve notice of such intention on the parties within forty-five (45) days after the initial decision is served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* The appeal of the initial decision shall be limited to those issues raised by the parties during the course of the proceeding. If the Director determines that issues raised, but not appealed by the parties, should be argued, he shall give the parties or their respresentatives written notice of such determination to permit preparation of adequate argument. Nothing herein shall prohibit the Director from remanding the case to the Presiding Officer for further proceedings.

(d) *Argument.* The Director may, upon request of a party or sua sponte, assign a time and place for oral argument.

§ 670.72 Final order on appeal.

(a) *Contents of the final order.* When an appeal has been taken or the Director issues a notice of intent to conduct review sua sponte, the Director shall issue a final order as soon as practicable after the filing of all appeallate briefs or oral argument. The Director shall adopt, modify or set aside the findings and conclusions contained in the decision or order being reviewed and shall set forth in the final order the reasons for his actions. The Director may, in his discretion, increase or decrease the assessed penalty from the amount recommended in the decision or order being reviewed, except that if the order being reviewed is a default order, the Director may not increase the amount of the penalty.

(b) *Payment of a civil penalty.* The respondent shall pay the full amount of the civil penalty assessed in the final order within sixty (60) days after receipt of the final order unless otherwise agreed by the parties. Payment shall be made by forwarding to the Hearing Clerk a cashiers check or certified check in the amount of the penalty assessed in the final order, payable to the Treasurer, United States of America.

(c) Money due and owning the United States by virtue of an unappealed final decision or settlement order may be collected by referral to the Department of Justice for appropriate civil action against respondent.

[FR Doc. 88-25728 Filed 11-7-88; 8:45 am]

BILLING CODE 7555-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-502, RM-6449]

Radio Broadcasting Services; Winnebago, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Gary L. Violet proposing the substitution of Channel 289C2 for Channel 289A at Winnebago, Nebraska, and the modification of his construction permit for Station KSUX to specify the higher powered channel. Channel 289C2 can be allotted to Winnebago in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) north to avoid a short-spacing to Station KFMT, Fremont, Nebraska. The coordinates for this allotment are North Latitude 42-21-21 and West Longitude 96-29-01. In accordance with § 1.420 of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 289C2 at Winnebago or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before December 15, 1988, and reply comments on or before December 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leonard S. Joyce, Esq., Blair, Joyce & Silva, 1825 K Street, NW, Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-502, adopted September 26, 1988, and released October 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25757 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-268; DA 88-1633]

Broadcast Service; Advanced Television Systems and Their Impact on the Existing Television Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Tentative decision and further notice of inquiry; extension of time for filing comments.

SUMMARY: This Order extends the time for filing comments on the *Tentative Decision and further Notice of Inquiry* in MM Docket No. 87-268. (*See* 53 FR 38747, October 3, 1988.) Comments were originally to be filed on or before October 31, 1988, and reply comments

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were due by December 1, 1988. These dates have been extended due to the complex nature of the issues raised in this proceeding, and the importance of the advanced television proceeding to the broadcast industry, other media, and to consumers.

DATE: Comments are now due November 30, 1988, and reply comments are due January 9, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David R. Siddall, Policy and Rules Division, Mass Media Bureau (202) 632-7792.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-25756 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 88-373]

Permit Business Radio Use of Certain Channels in the 150 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending comment period.

SUMMARY: The Acting Chief, Private Radio Bureau has adopted an *Order* extending the time period in which to file comments and reply comments to the *Notice of Proposed Rule Making* in this proceeding. The new dates are December 14, 1988, for comments and January 6, 1989, for reply comments. This action is taken to allow Teletech, Inc., which requested the extension, additional time to complete a survey of Business Radio Service users to obtain their input about the issues raised by this proceeding. The Bureau stated that such a survey will increase the information contained in the docket and therefore granted the request.

DATES: Comments due December 14, 1988, reply comments due January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: The summary of the *Notice of Proposed Rule Making* in this proceeding was printed on September 13, 1988, at 53 FR 35339. An *Order Extending Comment Period* in this proceeding was printed on October 5, 1988 at 53 FR 39114.

Federal Communications Commission.

Beverly G. Baker,

Acting Chief, Private Radio Bureau.

[FR Doc. 88-25754 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

RIN 2127-AC46

Federal Motor Vehicle Safety Standards: Rear-view Mirrors; Denial of Rulemaking Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Sure-View, Inc., requesting that Federal Motor Vehicle Safety Standard No. 111 be amended to require that both the driver's and passenger's side of all motor vehicles be equipped with a mirror system consisting of a plane mirror and a convex mirror in the same casing. The agency is denying this petiton for several reasons. First, the standard does not prohibit the installation of convex mirrors on the driver's side as a supplementary mirror or on the passenger's side. Second, the agency is concerned that convex mirrors may distort images and distances and may therefore not be appropriate for all drivers.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington DC 20590. (202) 366-5271.

SUPPLEMENTARY INFORMATION:

Standard No. 111

Federal Motor Vehicle Safety Standard ("FMVSS") No. 111 specifies the requirements for the use, field of view, location, and mounting of rearview mirrors on motor vehicles. The purpose of this standard is to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed rearward field of view.

The Standard sets forth separate mirror requirements for passenger cars, multipurpose passenger vehicles, light trucks, heavy trucks, school buses, and motorcycles. With respect to passenger cars, the standard requires that manufacturers mount mirrors of "unit magnification" both inside the vehicle and outside the vehicle on the driver's side. A "unit magnification mirror" is defined in the standard as a plane or flat mirror with a reflective surface through which the angular height and width of the image of an object is equal to the angular height and width of the object when viewed directly at the same distance. The standard specifies detailed field of view requirements for both the interior and exterior mirrors.

In cases where the interior mirror does not meet the specified field of view requirements, either a unit magnification mirror or a convex mirror must be mounted on the passenger's side of the car. A "convex mirror" is defined by the standard as a mirror having a curved reflective surface whose shape is the same as that of the exterior surface of a section of a sphere. Any convex mirror used on the passenger side to satisfy the field of view requirements must comply with additional requirements related to the radius of cuvature and bear the warning "Objects in Mirror Are Closer Than They Appear."

In the case of light multipurpose passenger vehicles, trucks and buses (other than schoolbuses), i.e., those with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less, manufacturers may either comply with the passenger car mirror requirements or have outside mirrors of unit magnification with a reflective surface area of not less than 19.5 square inches on each side of the vehicle. These mirrors must be adjustable both in horizontal and vertical positions.

In the case of heavy multipurpose passenger vehicles, trucks, and buses (other than schoolbuses), i.e., those with a GVWR of more than 10,000 pounds, manufacturers must have outside mirrors of unit magnification with a reflective surface area of not less than 50 square inches on each side of the vehicle.

A manufacturer may voluntarily equip a new motor vehicle with additional mirrors to supplement the required ones. These voluntarily-installed mirrors would not be subject to Standard No. 111. For example, a voluntarily-installed convex mirror on a passenger car need not comply with the configuration and marking requirements. However, a voluntarily-installed mirror must not cause a required mirror to fail to provide any required field of view. Similarly, a mirror installed on a used vehicle need not comply with those configuration and marking requirements but, if installed by a vehicle manufactuer, distributor, dealer or repair business, must not interfere with the field of view for any

federally required mirrors. 47 FR 38700, September 2, 1982.

NHTSA is aware that despite these requirements in FMVSS 111, blind spots do exist in a driver's view through a vehicle's mirror system of the area behind the vehicle. The agency notes that such blind spots are a physical reality inherent in the use of plane mirrors on motor vehicles. The agency further recognizes the fact that the use of convex mirrors reduce blind spots. Nevertheless, the agency believes that there are corresponding negative factors related to the use of convex mirrors such as the distortion of distance and image size.

Past Rulemaking Regarding Convex Mirrors

The agency has previously considered the issue of convex mirrors in a number of rulemaking notices. On May 26, 1976, General Motors Corporation (GM) petitioned NHTSA to amend FMVSS 111 to permit the use of convex mirrors on the passenger side of cars and light trucks, where the interior mirror did not meet the field of view requirements of the standard. GM noted in the petition that convex mirrors would provide a wider field of view than the flat mirrors of the same size. On August 26, 1976, NHTSA issued a notice of proposed rulemaking ("NPRM") to amend the standard as requested by GM to allow installation of a convex mirror instead of a plane mirror on the passenger side of those cars and light multipurpose passenger vehicles (MPVs) and trucks required to have an outside mirror on that side. (41 FR 36037). The notice did warn, however, that the agency was concerned about the use of convex mirrors on smaller vehicles by non-professional drivers. Agency tests had indicated that 20 percent of the drivers had difficulty using an outside convex mirror due to distortion problems. The proposal conditioned the equipping of these small vehicles with convex mirrors as a means of complying with the standard on those mirrors being designed in a way intended to minimize the possible problems associated with distance and image distortion. For heavier MPVs and trucks, and for buses, the notice proposed the manufacturers be permitted to use, instead of a large plane mirror, a combination mirror system incorporating a somewhat smaller plane mirror as well as a convex mirror. The NPRM stated that use of both plane and convex mirrors would increase rearward visibility on multipurpose passenger vehicles, trucks and buses with a GVMR of 10,000 pounds or more. Nevertheless, the NPRM further stated that the agency should not make the use of convex mirrors a mandatory requirement for these larger vehicles without the development of appropriate rearview performance requirements.

The 1976 NPRM was incorporated in a broader proposals for a major upgrading of all requirements in FMVSS 111. See 43 FR 51657, November 6, 1978. The 1978 NPRM proposed to permit the use of convex outside mirrors as a means of complying with the standard if those mirrors met certain additional requirements. These additional requirements were designed to reduce or eliminate problems with distortion that some drivers would experience with convex mirrors.

In a final rule dated September 2, 1982, FMVSS 111 was amended to permit the use of convex mirrors on the passenger side of passenger cars and light trucks if the convex mirror adhered to certain requirements. The amendment provided that: The radius of the curvature could not exceed 65 inches and could not be less than 35 inches; the measured radius of curvature of a convex mirror, as specified in the agency's test procedure, could not vary by more than 12.5 percent from the mean radius of curvature; and each mirror must be etched with the readily identifiable words, "Objects in Mirror Are Closer Than They Appear." 47 FR 38698.

The final rule noted that there are several problems associated with convex mirrors. For instance, the image of an object viewed in a convex mirror is smaller than that of the same object seen in a plane mirror.

Because the object will appear to be farther away than it would when viewed in a plane mirror, a driver might perceive that a car is further to the rear than it actually is. In this situation, the driver might change lanes when it is not safe to do so. In determining whether to adopt the proposals concerning the use of convex mirrors, the agency studied the extensive comments addressing the reaction of drivers to the characteristics of convex mirror systems. Some commenters said that a combination of plane and convex mirrors with the resulting differing image sizes would add to the confusion. Some users of convex mirrors also have experienced double vision, eyestrain, and nausea.

Sure-View Petition

M.W. Urban, representing Sure-Veiw Mirrors Inc. (Sure-View), submitted a petition for rulemaking requesting that the agency amend FMVSS 111. Specifically, the petitioner sought performance specifications that would requrie a mirror system containing one plane mirror and one convex mirror fixed in the same casing to be installed on the outside of both the driver's and passenger's sides of a vehicle. The petitioner stated that the petition applied to passenger cars, multipurpose vehicles, trucks, and buses.

Sure-View argued that NHTSA should requrie the use of the convex/plane mirror system because tests by the United States Army at the Aberdeen Proving Ground in Maryland proved this type of mirror should be requried on motor vehicles. The purpose of this 1966 study was to examine, from a human engineering point of view, the basic requirements for rearview mirrors used on large cargo trucks and buses. The army examined rear vision requriements on two military cargo vehicles that were equivalent to most commercial vehicles. While both vehicle types were analyzed graphically, only one, the M123, was field tested. In its laboratory evaluation, the Army compared three types of combination mirrors. One provided for independent adjustment of the convex mirror, while the other two (one of which being the Sure-View mirror) had a fixed relationship between the convex and plane mirrors. The petitioner claims this study demonstrates that a mirror system with a fixed relationship between the plane and convex mirrors should be required for all motor vehicles.

In deciding whether to amend FMVSS 111 to require a convex/plane mirror system, NHTSA has considered and rejected each argument raised in the Sure-View petition, related studies, and a subsequent letter from the petitioner. The reasons for the agency's denial are explained in greater length below.

First, Sure-View argued that the current provisions in FMVSS 111 requiring a plane mirror fail to provide adequate rearward vision for the safe operation of a motor vehicle because such mirrors provide only a downward and outward view that creates blind spots. As mentioned earlier, NHTSA recognizes that blind spots exist to the left and right of most motor vehicles and that this problem is exacerbated on vans, light trucks, and heavy trucks. While NHTSA will continue to explore ways to improve rearward vision, it notes that there are many problems associated with convex mirrors. For instance, a recent comprehensive paper concerning blind spots pointed out that while convex mirrors increase the field of view, such mirrors reduce the size of images, distort the image linearity, cause objects to appear farther away than they actually are, and cause objects to appear to move more slowly than they

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actually do. These characteristics associated with convex mirrors can result in drivers making errors in judgment that may cause motor vehicle accidents. Henderson, Robert, et al., *Visibility From Motor Vehicles*, SAE 830564 (1983)

Second, Sure-View argued that NHTSA should require the use of the convex/plane mirror system because tests by the United States Army in 1966 at the Aberdeen Proving Ground in Maryland proved this type of mirror should be required on motor vehicles. On the basis of this study, the petitioner claimed that the optical characteristics to consider in establishing rearview mirror specifications are field of view, magnification and intensity discrimination, brightness, and glare. Although NHTSA agrees that these factors are important in establishing specifications for rearview mirrors, it also notes that other studies (e.g. *Visibility From Motor Vehicles*, SAE 830564) and the Aberdeen test itself suggest that other factors such as the image linearity, the effects on viewer judgment concerning distance and speed, and the vulnerability to adverse weather conditions in establishing mirror specifications should be considered in the development of amendments to the standard.

Third, the petitioner stated that because the Aberdeen tests established the merits of its pre-aligned convex/plane mirror system, it should be mandated by NHTSA under FMVSS 111. The agency disagrees with the conclusion Sure-View draws based on the Aberdeen tests for the following reasons:

(1) Since these tests related to larger vehicles, any standard requiring the petitioner's mirror system on all vehicles would be over inclusive.

(2) The Aberdeen test itself concluded that while wide angle mirrors are preferable, they "demand special experience, judgment, and adaptation." (Aberdeen Test, p. 19)

(3) The fixed relationship of the convex/plane mirrors in a single frame was not a factor in the Aberdeen report. In other words, the critical design element of the petitioner's proposed mirror system was not at issue in the Aberdeen tests on which the petitioner based its petition.

Fourth, Sure-View argued that because Standard No. 111 requires all rearview mirror systems to be independently adjustable, this standard "essentially prohibits the use of the Sure-View mirror system for original vehicle manufacture." NHTSA notes that the existing standard does not require each mirror component to be independently adjustable and does not preclude the optional use of a convex/plane mirror system. A combination convex/plane mirror may be used in conjunction with the plane mirror, as long as one or the other mirror meets the requirements prescribed for mirrors in that location on the vehicle. For instance, a plane mirror on the driver's side of a passenger car must comply with the field of view requirements in S5; a plane mirror on the driver's side of a multipurpose passenger vehicle, truck or bus (other than a school bus) with a GVWR of 10,000 pounds or less must comply with the field of view requirements for passenger cars or have not less than 19.5 square inches of reflective surface; and a plane mirror on motor vehicles over 10,000 GVWR must have not less than 50 square inches of reflective surface. In addition, a convex/plane mirror system may also be installed on the passenger side of the vehicle, provided that one of the mirror's meets S5.3 in instances where compliance with that section is required.

Fifth, Sure-View stated that while Congress authorized NHTSA to issue "performance" standards, it withheld from the agency the authority to issue "design" requirements. The agency agrees that Congress spoke in terms of performance standards rather than design standards in the Safety Act. Section 102(2) of the Safety Act defines a motor vehicle safety standard as "a minimum standard for motor vehicle performance or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria." Although the petitioner argued that the inclusion of the word "performance" in this definition might be taken to suggest the existence of a dichotomy between motor vehicle design and performance, there is in fact no dividing line between standards that regulate performance and those that affect design. In the Congressional debates concerning the Safety Act, Senator Magnuson recognized the absence of any dichotomy when he stated that some safety standards would necessarily determine the configuration of some vehicle components. (112 Cong. Rec. S. 21487) In practice, all of the Federal motor vehicle safety standards necessarily have a strong effect on motor vehicle or motor vehicle equipment design. While the agency strives to promulgate standards that give manufacturers as much design flexibility as possible, it is sometimes necessary to be relatively specific in drafting a standard in order to secure a particular safety goal.

In summary, NHTSA concludes that Sure-View has not shown that the agency should amend FMVSS 111 to require a convex/plane mirror system. For that reason and because the standard does not prohibit the installation of convex/plane mirror systems, the agency is denying the Sure/View petition.

(15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50)

Issued on November 3, 1988.

Barry Felrice,

Assistant Administrator for Rulemaking.

[FR Doc. 88-25784 filed 11-7-88; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 53, No. 216
Tuesday, November 8, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-167]

Request for Expedited Processing; Agency Information Collection Under OMB Review

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We have submitted a proposed information collection requirement, the Egg-Type Poultry Flock Survey, to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act and regualtions (44 U.S.C. Chapter 35; 5 CFR Part 1320). The purpose of the survey is to provide us with informaiton on chicken flocks involved in the Model State Program for *Salmonella enteritidis* Quality Assurance, particularly the numbers of chickens per flock and the numbers of houses containing each flock, in order for us to estimate the levels of materials, services, and training that we will provide for the Program.

DATE: We have requested an expedited review of this submission under the Paperwork Reduction Act, in accordance with 5 CFR 1320.18, to be completed by October 28, 1988.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Regualtory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-167. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Ave., SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Adam G. Grow, Emergency Programs, VS, APHIS, USDA, Room 743, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: One of the purposes of the Model State Program for *Salmonella enteritidis* (SE) Quality Assurance (the Program) is to test certain egg-type poultry breeding and production flocks to determine their freedom from SE, an organism which has caused a serious illness in humans known as Salmonellosis. The Program was developed by a Salmonella Committee of the Northeast Conference on Avian Diseases. Following subsequent state meetings and a public hearing called by the Food and Drug Administration, we were charged with providing certain services for this Program to assist the states and industry in implementing the Program. It is our responsibility to provide antigen for tests, to provide serotyping capabilities, and to assist with epidemiologic tracebacks.

The proposed Egg-Type Poultry Flock Survey (the Survey) would permit us to determine how much additional testing antigen, serotyping capabilities, and epidemiological training will be needed to meet the requirements of the Program. The need for the Survey information is urgent, since states have started to test flocks for SE, and the demand for antigen and serotyping has increased. Therefore, we have requested the Office of Management and Budget to complete its Paperwork Reduction Act review of the information collection provisions on an expedited basis and provide us with its determination by October 28, 1988.

The Survey will collect data on approximately 3000 flocks of egg-type breeding or production chickens. The Survey will involve primarily APHIS Veterinary Medical Officers (VMOs), who will complete the Survey forms, and approximately 400 State Contact Representatives for the National Poultry Improvement Plan, State Extension Poultrymen, and State Extension Veterinarians attached to state universities (referred to below as respondents), who will provide the data the VMOs need to complete the forms. Approximately 3000 owners, operators, or managers of egg-type poultry breeding or production flocks will be nominally involved, since they are the ultimate sources of the information we are seeking through the Survey. However, although these owners, operators, or managers are therefore considered the recordkeepers, we do not believe that they will have to maintain any new records as a result of the Survey, since the information required is commonly used and recorded by these individuals for other business purposes. Further, these individuals will spend very little time responding to inquiries regarding the Survey, since the respondents, because of their continuing professional involvement with these recordkeepers, are generally in possession of the flocks and premises data.

Since we expect to use the Survey for a one-time collection of data, we do not believe the Survey will establish a regular or recurring paperwork burden. An estimate of the total reporting and recordkeeping burden and the estimated average burden hours per response is given below.

Number of Respondents: 400.
Average Number of Responses per Respondent: 7.5.
Total Responses: 3000.
Hours per Response: 0.25.
Total Hours: 750.
Number of Recordkeepers: 3000.
Total Hours per Recordkeeper: 0.1.
Total Recordkeeping Hours: 300.

Done in Washington, DC, this 3rd day of November 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

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FORM APPROVED
OMB NO. 0579-XXXX

In conjunction with the Model State Program for Salmonella enteritidis, this survey is necessary to enable the National Veterinary Services Laboratory to provide the appropriate amount of antigen and serotyping services for this program. Even though the survey is voluntary, the information is vital for a successful program.

EGG-TYPE POULTRY FLOCK SURVEY

PREMISES OWNER / LEASE HOLDER

1. TELEPHONE NUMBER (A/C)

(Last Name, First Name, MI)

2. NAME

3. ADDRESS

4. CITY

5. STATE

6. ZIP

7. COUNTY

8. FIPS

9. MAP ID.

a. TWP. / X

b. RNG. / Y

c. SEC.

d. LATITUDE

e. LONGITUDE

10. ☐ PRIMARY BREEDING FLOCK
a. NUMBER OF HOUSES CONTAINING FLOCK
b. NUMBER OF CHICKENS IN FLOCK

11. ☐ MULTIPLIER BREEDING FLOCK
a. NUMBER OF HOUSES CONTAINING FLOCK
b. NUMBER OF CHICKENS IN FLOCK

12. ☐ COMMERCIAL EGG-TYPE PULLET FLOCK (OF 3,000 OR MORE CHICKENS)
a. NUMBER OF HOUSES CONTAINING FLOCK
b. NUMBER OF CHICKENS IN FLOCK

13. ☐ COMMERCIAL LAYING FLOCK (OF 3,000 OR MORE CHICKENS)
a. NUMBER OF HOUSES CONTAINING FLOCK
b. NUMBER OF CHICKENS IN FLOCK

14. DATE D D M O N Y Y

15. INTERVIEWER ID.

Public reporting burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

INTERVIEWER_____ SIGNATURE_____

DEFINITIONS AND DIRECTIONS

OWNER or LEASE HOLDER OF PREMISES - The person, company, cooperative, partnership, corporation, etc. that owns and/or controls the premises which contain the flock listed.

PREMISES - A parcel of land used to raise poultry

FLOCK - All poultry (chickens) of one kind (breed and variety or combination of stocks) and of one classification on one premises. These chickens can be housed in a single house or in multiple houses.

PRIMARY BREEDING FLOCK - A flock composed of one or more generations maintained for the purpose of establishing, continuing, or improving an egg-laying parent line.

MULTIPLIER FLOCK - A flock whose progeny is intended for the production of table eggs.

COMMERCIAL EGG-TYPE PULLET FLOCK - A flock, under 20 weeks of age, whose intended use is to produce commercial table eggs in the future. Survey only commercial pullet flocks with 3,000 or more chickens.

COMMERCIAL LAYING FLOCK - A flock, usually over 20 weeks of age, used to produce commercial table eggs. Survey only commercial laying flocks with 3,000 or more chickens.

A premises may have a single flock or multiple flocks, so long as each flock is used for a different purpose (i.e., a pullet flock and a commercial laying flock.) If an owner has more than one population group of chickens that is used for the same purpose, but on different premises, then each of these is to be counted as separate flocks on separate premises and will require a survey for each premises.

1. Telephone number of the farm or premises being surveyed. This is usually the telephone number of the farm manager or caretaker of the premises.

2. Name should be recorded by last name, first name, and middle initial of the premises owner or manager. If a company or farm name is to be used, it should be listed first, followed on the second line by the owner or manager's name.

3. Local mailing address of the premises being surveyed. Do not use a post office box number.

7. County where the flock and premises is located.

8. FIPS code, if known, as defined by the National Bureau of Standards for geographical locations.

9. Map location of the premises being surveyed. Map identification is the map being used and can include: the township, range, and section number; the X and Y coordinates if a grid map system is being used; or the latitude and longitude if known.

10-13. Make a check for the type of flock (s) on the premises being surveyed. Record (a.) the number of houses used to contain each flock on the premises and (b.) the total number of birds in the flock.

12-13. Survey only commercial pullet and laying flocks with 3,000 or more chickens.

14. The date the survey is conducted.

15. Interviewer identification is the home telephone number of the person doing the survey interview. The interviewer's name and signature should be at the top of this page.

[FR Doc. 88-25834 Filed 11-7-88; 8:45 am]
BILLING CODE 3410-34-C

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Varroa Mite Negotiated Rulemaking Advisory Committee; Establishment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to establish Committee.

SUMMARY: The Animal and Plant Health Inspection Service announces its intent to establish an advisory committee to develop a recommended rulemaking proposal designed to prevent the interstate spread of Varroa mites. This committee, called the Varroa Mite Negotiated Rulemaking Advisory Committee, will comprise representatives of parties with a definable stake in the outcome of the proposed rule.

DATE: Consideration will be given only to comments received on or before November 23, 1988.

ADDRESS: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Specifically refer to Docket No. 88-139. The public may review comments received on this and other dockets in Room 1141 of the South Building, 14th St. at Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Doug Ladner, Senior Staff Officer, Plant Protection Management Systems, Policy and Program Development, APHIS, USDA, Room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1988, we published in the **Federal Register** (53 FR 16536-16538, Docket No. 88-082) an interim rule that, effective May 6, 1988, rescinded the Varroa mite regulations established in an interim rule published in the April 11, 1988, issue of the **Federal Register** (53 FR 11825-11830, Docket No. 87-140).

Until September 1987, the Varroa mite had not been found in the United States. Since then, when the first Varroa mite infestation was reported in Wisconsin, Varroa mite infestations have been reported in 17 additional states.

The Varroa mite, *Varroa jacobsoni* (Oudemans), is a parasite of honeybees. Varroa mites invade hives, weakening the honeybees within those hives and reducing their ability to pollinate plants and produce honey. Varroa mites multiply quickly, and a beekeeper may fail to notice their presence until serious damage has been done. Tests and treatments for Varroa mite-infested honeybees are available, however. Beekeepers with reason to suspect the presence of Varroa mites can avail themselves of those tests and treatments to protect their hives. The apparent efficacy of those tests and treatments led us to establish federal Varroa mite regulations.

However, information received from federal and state officials, beekeepers, growers, and researchers caused us to conclude that the regulatory program effected to contain the interstate spread of Varroa mites was disrupting agricultural operations dependent on the interstate movement of honeybees. Problems also developed concerning the enforcement of the regulations. Our attempt to contain the interstate spread of Varroa mites had been implemented on the basis of preliminary research reports and of optimistic assumptions about the availability of personnel and the other resources without which federal regulations could not succeed. Having determined that the federal quarantine and the restrictions upon interstate movement of honeybees were unworkable, we rescinded the Varroa mite regulations. That was one month after their implementation.

The comments we have received on the subject of Varroa mite regulations suggest that, while the Animal and Plant Health Inspection Service (APHIS) should again establish a federal regulatory program, we are unlikely to draft a rule that all interested parties would find acceptable. Accordingly, many commenters urged us to work with representatives of these divergent interests, convinced that consensus on Varroa mite regulations is attainable. This encourages us to believe that negotiated rulemaking can, in this case, succeed.

Negotiated Rulemaking

The increasingly formal nature of the rulemaking process can impede an agency attempting to develop sound regulatory solutions to complex problems. The traditional process of comment and reply often generates adversarial relationships among participants, who assume fixed positions for the record. Generally, interested parties submit comments independently, without access to one another's information. This precludes the give and take sometimes necessary to reach agreement on a regulatory issue.

In response to this situation, the Administrative Conference of the United States in 1982 recommended that federal agencies consider regulatory negotiation as a way of achieving consensus-based rules ("Procedures for Negotiating Proposed Regulations," Recommendation No. 82-4, 1 CFR 305.82-4). Since then, the process variously known as "regulatory negotiation" and "negotiated rulemaking" has been used by seven agencies to develop 14 proposed rules. With interested parties mutually committed to working together until they reach consensus on regulatory issues of mutual concern, the experience of those seven agencies shows that the process works.

We therefore intend to estalbish a Varroa Mite Negotiated Rulemaking Advisory Committee, chartered under the Federal Advisory Committee Act (Pub. L. 92-468). The purpose of the Committee is to advise the Department on the content of regulation designed to prevent the interstate spread of the Varroa mite.

The establishment of this Committee is necessary and in the public interest in connection with the duties and responsibilities of the Administrator of APHIS in preventing the interestate spread of plant pests. Duties and responsibilities of the Adminstrator include the promulgation of regulations designed to protect U.S. agriculture from plant pests. The Committee is intended to serve as a public forum, in which interested and affected parties can fully discuss the issues under conditions that provide them with an incentive to resolve differences; to attempt, via face-to-face negotiations, to reach consensus on the terms of a regulation designed to prevent the interstate spread of Varroa mite. Under those conditions, the drafting of a proposed rule acceptable to all interests should be possible.

Key Issues for Negotiations

The primary issue confronting us is that, while APHIS believes that federal leadership in a Varroa mite regulatory program is appropriate, we are unable to identify the components of a workable program.

Among the key issues to be addressed by the Committee, we expect to find the following:

- How should we define critical terms, such as "infestation" and "nondetectable level?"
- What can APHIS and the Agricultural Research Service contribute through technology transfer?
- What survey method(s) should be adopted?
- Should APHIS develop a honeybee certification system?
- What can be expected of treatments, based on the most current research? Should we permit the treatment of bees during interstate movement?
- Is establishment of quarantined areas appropriate? If so, according to what criteria should we declare an area quarantined? How would we delimit buffer zones around quarantined areas? What criteria would we use to lift a quarantine?
- What would be the roles and responsibilities of interested parties?

Procedures and Guidelines

The following proposed procedures and guidelines would apply to this negotiated rulemaking, subject to appropriate changes made as a result of comments received on this notice or as determined to be necessary during the negotiating process. We note that several preliminary steps have already been taken.

1. *Facilitator.* APHIS will use a facilitator. The facilitator, a neutral third party, will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to chair negotiating sessions, help the negotiations proceed smoothly, and help participants define and reach consensus.

2. *Good faith negotiation.* Since participants must be willing to negotiate in good faith and be authorized to do so, each organization, including APHIS, must designate a senior official to represent its interests.

3. *Administrative support and meetings.* APHIS will provide staff support for the Committee. Meetings will be held in Washington, DC.

4. *Consensus.* The goal of the negotiating process is consensus. Generally, consensus means that each interest concurs in the result. We expect the participants to develop their own working definition of this term.

5. *Record of meeting.* In accordance with the Federal Advisory Committee Act, APHIS will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking. APHIS will announce Committee meetings in the **Federal Register**. Meetings will be open to the public.

6. *Committee procedures.* Under the general guidance and direction of the facilitator and subject to applicable legal requirements, the members will establish the detailed procedures appropriate for their Committee meetings.

7. *Schedule.* APHIS plans to convene the Committee, if established, for a three-day session, November 30 and December 1 and 2, 1988, in Washington, DC. The time and location will be published in a Meeting Notice in the **Federal Register** at a later date. To help the Committee meet deadlines, we may schedule additional meetings.

8. *Participants.* The Committee will consist of not more than 25 members and a facilitator or mediator. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether Varroa mite regulations would substantially affect interests not adequately represented by the proposed participants listed in this Notice. We do not believe that each potentially affected organization or individual must have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests. Equal opportunity practices, in line with U.S. Department of Agriculture policies, will be followed in all appointments to the Committee.

APHIS has tentatively identified the following interests and parties as potential participants in the Varroa Mite Negotiated Rulemaking Advisory Committee:

Beekeeping Organizations

American Beekeeping Federation
American Bee Breeders Association
California Bee Breeders
American Honey Producers Association
Eastern Apicultural Society

Grower Groups

United Fresh Fruit and Vegetable Association
International Apple Institute

Related Industry Groups

American Association of Professional Apiculturists
American Farm Bureau Federation

State Officials

National Association of State Departments of Agriculture
National Plant Board
Apiary Inspectors of America

Federal Government

Animal and Plant Health Inspection Service, USDA

Comments on this tentative list of participants are invited, as are suggestions of other potential participants. In addition to the groups listed above, we have contacted several groups representing consumer and environmental interests, but have been unable to identify any group with a particular interest in this issue. Therefore, we are especially interested in comments on participation by groups representing these areas of interest. Commenters should keep in mind that it is not necessary for every concerned organization to be represented, so long as every significant interest is represented. Also, negotiation sessions will be open to the public; individuals and organizations without designated representatives on the Committee may attend all sessions and communicate informally with members of the advisory committee.

John J. Franke, Jr.,
Assistant Secretary for Administration.

Done in Washington, DC, this 4th day of November 1988.

[FR Doc. 88-25875 Filed 11-7-88; 8:45 am]
BILLING CODE 3410-34-M

Rural Electrification Administration

Finding of No Significant Impact; Alabama Electric Cooperative

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact relating to the construction of 230 kV transmission lines and a 230/13.8 kV substation in Monroe County, Alabama.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of two 230 kV transmission lines utilizing both single steel and single concrete support structures and a new 230/13.8 kV substation. Alabama Electric Cooperative (AEC), of Andalusia, Alabama, has requested REA's approval of the project with potential REA financing assistance considered on a post construction basis.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington DC 20250, telephone (202) 382-8436.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that AEC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate

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assessment of the environmental impacts of the proposed project. The project will allow AEC to continue to meet its responsibilities to serve its load in a reliable and economical manner.

The proposed transmission lines will loop the existing 230 kV Lowman-Belleville transmission line to the proposed 230/13.8 kV substation to be located on the property of the Alabama River Newsprint facility in Monroe County, Alabama. The parallel circuit 230 kV transmission lines will require new right-of-way (ROW) 175 feet in width to accommodate two parallel lines. The length of each line will be 7.3 miles. The substation will require a 3.7 acre site.

REA has concluded that the proposed project will have no significant impact on wetlands, prime farmland, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals. Floodplains, wetlands, and prime farmland are located in the preferred line ROW. Some transmission line support structures may be located within these areas; however, REA believes that transmission line structure placement will have no significant impact to these areas. No practical alternative routes that could avoid these areas were identified. The substation is located on the Alabama River Newsprint facility site and will not be located in the 100-year floodplain, wetlands or prime farmland. Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Alternatives examined for the proposed project included no action, alternative line routes and alternative substation sites. REA determined that there is a demonstrated need for the project and constructing it within in the preferred ROW will have no significant impact to the environment. Therefore, REA has concluded that its approval to allow AEC to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. REA has reached a FONSI with respect to the proposed project.

Copies of the EA and FONSI can be obtained from the offices of REA in the South Agriculture Building, Room 0270, 14th and Independence Avenue, SW., Washington, DC 20250 or at the office of Alabama Electric Cooperative, P.O. Box 550, Andalusia, Alabama 36420.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, AEC published a notice and advertisement in *The Monroe Journal* which has a general circulation in Monroe County, Alabama. The notice appeared in the September 29, 1988 issue. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by AEC or REA.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850-Rural Electrification Loans and Loan Guarantees. In accordance with 7 CFR Part 3015, Subpart V, and its related **Federal Register** notice (48 FR 29115), this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Dated: November 3, 1988.

Frank W. Bennett,

Acting Assistant Administrator—Electric.

[FR Doc. 88-25832 Filed 11-7-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: *National Oceanic and Atmospheric Administration*

Title: *Oceanic Thermal Energy Conversion Licensing Regulations*

Form Number: *Agency—N/A; OMB—0648-0144*

Type of Request: *Extension of the expiration date of a currently approved collection*

Burden: *Respondents; 1 reporting hour; Average hours per respondent—0 hours estimated—no applications expected—*

Needs and Uses: *Persons wanting to construct, own, or operate an Ocean Thermal Energy Conversion facility or plantship must obtain a license. The information is used to ensure compliance with the requirements of the authorizing legislation*

Affected Public: *State or local governments, businesses or other for-profit organizations, Federal agencies or employees*

Frequency: *On occasion, annual, recordkeeping*

Respondent's Obligation: *Required to obtain or retain a benefit*

OMB Desk Officer: *Francine Picoult 395-7340*

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 2, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-25788 Filed 11-7-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Distribution License Procedure

Form Number: Agency—EAR 373.3; OMB—0694-0015

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 62,485 respondents; 73,697 reporting/recordkeeping hours. Average hours per respondent is 1 hour

Needs and Uses: The Distribution License is a "bulk type" licensing procedure developed in response to and advice received from the export community. It is designed to facilitate the export of commodities under large scale international marketing programs.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion, quarterly, recordkeeping

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Francine Picoult 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 2, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-25789 Filed 11-7-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Report of Requests for Restrictive Trade Practice or Boycott Single or Multiple Transactions

Form Numbers: Agency—ITA-621P, 6015P; OMB—0694-0012

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 1,700 respondents; 35,250 reporting/recordkeeping hours. Average hours per respondent for single transactions is one hour—30 hours for multiple transactions

Needs and Uses: The Export Administration Regulations require U.S. persons to report any requests they have received to take any action to comply with, further, or support an unsanctioned foreign boycott. The information provided is used to monitor such requests. The reports are analyzed to note changing trends and to decide upon actions to be taken to carry out the U.S. policy of discouraging U.S. participation in foreign restrictive trade practices and boycotts directed against friendly countries. The reports are submitted mainly by individuals or organizations that do business in the Middle East

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Francine Picoult 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 2, 1988.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 88-25790 Filed 11-7-88; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 35-88]

Foreign-Trade Zone 15—Kansas City, MO; Application for Subzone; Ortech Motor Vehicle Component Plant, Kirksville, MO

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc. (KCFTZ), grantee of FTZ 15, requesting special-purpose subzone status for the motor vehicle component manufacturing plant of Ortech Company (a joint venture partnership between Oracheln International Company, a Missouri corporation, and Yuhshin USA, Ltd.), located in Kirksville (Adair County), Missouri. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 26, 1988.

The Ortech plant (36 acres) is located at 2806 North Industrail Road, within the Kirksville Industrial Park, Kirksville, some 150 miles northeast of Kansas City. The plant will be used to produce electronic/mechanical components for motor vehicles, such as controls, signaling devices, clocks, touring computers, locks, latches, handles and knobs. The application indicates that the components made at the plant will displace components currently being produced in Japan. At the outset, Ortech plans to mostly use foreign parts and material, including resistors, relays, terminals, switches, conductors, junction boxes, control panels, instruments, locks, latches, fittings, mountings and indicator panels. However, the company expects to source 75 percent of its parts and material domestically within 4 years. Most of the finished components will be shipped to domestic auto assembly plants.

Zone procedures would exempt Ortech from Customs duty payments on foreign materials and components that are reexported as auto parts. On products shipped to U.S. auto assembly plants with subzone status, the company would be able to take advantage of the same duty rate available to imporiers of complete automobiles. The duty rates on materials and components range from 0.0 to 6.5 percent, whereas the rate on autos is 2.5 percent. The applicant indicates that the savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Theodore Galantowicz, District Director, U.S. Customs Service, North Central Region, 7911 Forsythe Boulevard, Suite 625, St. Louis, Missouri 63105; and, Colonel John Atkinson, District Engineer, U.S. Army Engineer District Kansas City, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106-2896.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 22, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Room 635, 601 East 12th Street, Kansas City, MO 64106

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230

Dated: November 2, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-25786 Filed DS-7-88; 8:45 am]

BILLING CODE 3510-DS-M

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[Docket 34–88]

Foreign-Trade Zone 78, Nashville, TN; Extension of Time Limit for Subzones 78C and 78D Tennessee Valley Authority Equipment Storage Facilities, Hartsville and Phipps Bend, TN; Correction

Correction

In notice document 88–25115 appearing on page 43748 in the issue of Friday, October 28, 1988, the District Engineer appointed for this case should read: Colonel Edward A. Starbird, District Engineer, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, TN 37202–1070.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–25787 Filed 11–7–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–570–801]

Preliminary Determination of Sales at Less Than Fair Value; Certain Headwear from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain headwear from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We also preliminarily determined that critical circumstances exist with respect to imports of certain headwear from the PRC. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of certain headwear from the PRC as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by January 16, 1989.

EFFECTIVE DATE: November 8, 1988.

FOR FURTHER INFORMATION CONTACT: Robin Gray or Anne D'Alauro, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1130 or 377–2923.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that certain headwear from the PRC is being, or is likely to be sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (53 FR 23300, June 21, 1988), the following events have occurred. On July 11, 1988, the ITC found that there is a reasonable indication that imports of headwear from the PRC are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 2096, July 1988).

On August 10, 1988, we presented a questionnaire to counsel for China National Arts & Crafts Import & Export Corporation and China National Light Industrial Products Import & Export Corporation, major PRC exporters of the subject merchandise to the United States. On September 26, 27, 29, and October 4, 7, and 13, we received replies to this questionnaire from eight respondents who now claim to be operating as independent export trading companies rather than as branches of these firms.

Universal Hats and Caps Manufacturing Company, Ltd. and Universal Trading Company (Universal) have asked to participate in this proceeding as a respondent. Universal is a Hong Kong company which supplies materials to the PRC factories for conversion into headwear under processing fee arrangements with the PRC trading companies. Universal argues that it should be treated as the producer and exporter of the headwear sold under processing fee arrangements.

In other proceedings involving processing fee-like arrangements, we have treated the processor as the producer/manufacturer/exporter and have based United States price on the price paid for processing. (See, *e.g., Small Diameter Welded Carbon Steel Pipes and Tubes from the Philippines, Final Determination of Sales at Less Than Fair Value*, (51 Fr 33099, September 18, 1986), (*Pipes and Tubes from the Philippines*); *Brass Sheet and Strip from Canada, Final Determination of Sales at Less Than Fair Value*, (51 FR 44319, December 9, 1986), (*Canadian Brass Sheet and Strip*).)

Moreover, under Department practice, where a producer knows that the merchandise is destined for the United States, we base United States price on the price charged by the producer. In this case, the PRC companies are aware that the processing fee sales are destined for the United States because they must supply the export visas required under the U.S.-PRC bilateral textile agreement.

For these reasons, we notified Universal and Golden Crown, another Hong Kong company which supplies materials to the PRC factories for conversion into headwear under processing fee arrangements, on September 7, 1988, that we would not be sending them a questionnaire nor considering a questionnaire response from them.

Standing

The Department and the ITC have received letters from RCC; Weisman Novelty Company, Inc.; Manhattan Miami Sales Company; Betty Ann American Sales Corporation; Arlington Hat Company, Inc.; Triangle Sport Headwear Company, Inc.; Jacobson Hat Company, Inc.; Diversified Graphics, Inc.; Headwear U.S.A., Ltd.; Midway Chinese Products Inc. and Universal Headwear Industries indicating that the petitioner did not speak on behalf of, or represent, their organization. On July 25, 1988, we received a letter from the respondents challenging Headwear Institute of America's (HIA) standing to file the petition and requesting dismissal of the petition on the grounds that the petition was not filed "on behalf of" the United States industry, as required by section 732(b)(1) of the Act.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry" (section732(b)(1) of the Act). As we have stated in prior cases (*see e.g., Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 26, 1987); *Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985)), the Department relies upon the petitioner's representation that it has filed "on behalf of" the domestic industry until it is affirmatively shown that a majority of the domestic industry opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry. As we have noted in other cases, to require a petitioner to establish affirmatively that it has the support of a majority of the industry on whose behalf it has filed the petition would, in many cases, "be so onerous as to preclude access to import relief under the antidumping and countervailing duty laws." *Frozen Concentrated Orange Juice from Brazil; Final Determination of Sales at Less than Fair Value* (52 FR 8324, 8325, March 17, 1987).

When a member (or members) of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the Department will examine the challenge. When evaluating the challenge, the Department does not consider a statement by a member of the domestic industry that it does not take any position with respect to the petition as evidence of opposition to a petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a majority of the domestic industry. Commerce tailors its examination of opposition to the particular facts of the case. Typically, the Department does not canvass the entire domestic industry. Instead, it generally requests the opponent to supply information on the nature and extent of its involvement in the domestic industry. By accumulating the proportion of the domestic industry that is represented by each of the parties in opposition, the Department is able to determine the degree of opposition overall. This was the course followed by the Department in this case.

On August 12, 1988 and August 29, 1988, we sent letters and questionnaires to the aforementioned companies requesting information as to the nature and extent of the companies' activities, including their production of headwear in the United States and their percentage share of the United States market. We received three replies, which together represented less than five percent of the United States market.

Absent evidence of opposition to the petition by other members of the domestic industry, the Department has no basis to conclude that a majority of the industry opposed the petition. Therefore, the Department preliminarily determines in this case that the petition was filed on behalf of the domestic industry, and that the petitioner has standing to bring this petition.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized Tariff Schedule ("HTS"). Until that time, the Department will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HTS item numbers with our product descriptions on a test basis. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Wasington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this investigation are caps, hats, and visors made from knitted or woven cloth of vegetable fibers including cotton, flax, and ramie, of man-made fibers, and/or of blends thereof, and which is cut and sewn. The subject headwear may be adorned with braid, embroidery, or other applied, printed or sewn decoration of may be plain. This investigation does not include headwear of straw, felt or wool. The products are classified under the TSUSA item numbers 702.0600, 702.0800, 702.1200, 702.1400, 702.2000, 702.3200, 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, 703.1650, 384.0438, 384.0954, 384.2211, 384.2608, 384.2707, 384.2723, 384.2741, 384.2752, 384.2784, 384.2796, 384.3436, 384.5216, 384.5365, 384.5427, 384.5485, 384.5533, 384.5685, 384.5698, 384.6676, 384.9443 and currently classifiable under HTS item numbers 6505.90.15, 6505.90.20, 6505.90.25, 6505.90.90, 6502.00.20, 6502.00.90, 6504,00.90, 6505.90.50, 6505.90.70, 6505.90.60, 6505.90.80, 6114.20.00, 6211.42.00, 6114.30.30, 6211.43.00, 6114.30.20, 6104.49.00, 6204.51.00, 6204.23.00, 6204.29.40, 6211.32.00, 6110.90.00, 6204.12.00, 6211.49.00.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

For this merchandise, there are two types of sales: processing fee and non-processing fee. Consistent with past practice, we have based United States price for the processing fee sales on the price received for converting the purchasers' materials into headwear. (*See, e.g., Pipes and Tubes from the Philippines, Canadian Brass Sheet and Strip*). Foreign market value for processing fee sales has been calculated by valuing the factors of production employed by the PRC manufacturers in performning the conversion in a non-state-controlled economy country, as described in the "Foreign Market Value" section of this notice.

For non-processing fee sales, the United States price is based on the prices charged by the PRC trading companies for finished headwear. The foreign market value for these sales has been calculated using home market sales in a non-state-controlled economy or PRC factors of production valued in a non-state-controlled economy, as described in the "Foreign Market Value" section of this notice.

United States Price

We used the purchase price of the subject merchandise to represent United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price of the subject merchandise as provided in section 772 of the Act, on the basis of the C&F or CIF prices with deductions, where applicable, for ocean freight, marine insurance, and for non-processing fee sales, an adjustment for related value-added tax.

Foreign Market Value

The petitioner has alleged that the PRC is a state-controlled economy and, therefore, that sales of headwear in the PRC do not permit a determination of foreign market value under section 773(a) of the Act. The PRC trading companies, however, argue that as a result of economic reforms in the PRC, particularly with respect to the headwear industry, state control is not so great as to preclude the determination of foreign market value under section 773(a).

As a result of the trading companies' argument, we sent a questionnaire to the trading companies on August 29, 1988, seeking information on: (1) The degree of government ownership of the means of production; (2) the degree of centralized government control over input "markets;" (3) the degree of centralized government control over output "markets;" and (4) the relative

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convertibility of the country's currency and the degree of government control over trade. We had identified these criteria as the bases for determining whether a country is state-controlled within the meaning of section 773(c) in *Petroleum Wax Candles From the People's Republic of China: Final Determination of Sales at Less Than Fair Value* (51 FR 25085, July 10, 1986), (*Candles*).

We received responses to our questionnaire on September 26 and October 7. The responses provide the following information:

The Degree of Government Ownership of the Means of Production: The trading company respondents in this investigation are local branches of the state-owned trading companies, China National Arts and Crafts Import and Export Corporation and China National Light Industrial Products Import and Export Corporation. According to information submitted by the trading companies, the local branches have operated as autonomous entities since January 1, 1988 and are now responsible for their own profits and losses. The trading companies are also subject to the bankruptcy law. After-tax profits for these firms go toward employee welfare and benefits, business expansion, and retained earnings. While none of the trading companies sustained a loss during the period of investigation, these companies claim that losses would be financed through retained earnings or through borrowing.

With respect to the factories producing headwear for the United States market, four of them are state-owned, 16 are collective-owned and six are foreign-owned enterprises. (The foreign-owned factories are owned in conjunction with collectives.) According to the responses, the factories' after-tax profits are used for worker welfare and bonuses, and for business promotion and expansion. Like the trading companies, the responses claim that any losses incurred by the factories would have to be financed out of retained earnings or through borrowing. The factories' business or production plans are not reported to the government. Finally, management in the state-owned factories is usually selected by the workers, sometimes with formal approval by the local government. Management in the collective-owned firms is selected by the collective. Foreign owners appoint the management of the foreign-owned factories.

The Degree of Government Control Over the Input Markets: The major physical inputs used in producing the headwear under investigation are cotton and polyester. The decision of which inputs to use is based on customer specifications. The materials for processing fee sales are received from the Hong Kong customers. With respect to other sales, the polyester is imported and all such importations are through the trading companies, according to the responses.

Cotton is purchased domestically from state-owned enterprises and collectives. The choice of suppliers is based on the prices charged and the availability of supply. According to the responses, prices between the factories and their suppliers are set through arm's length negotiations and the quantities supplied are determined by the parties. There are no government policy directives applying to these decisions.

Non-physical inputs include capital, labor and energy. Electricity and water are supplied by state-owned enterprises at prices established by those enterprises. Capital equipment is frequently imported, according to the responses.

With respect to labor, the responses state that wages are established by the factory owners and that there are no general restrictions on seeking new employment. Additionally, there are no government restrictions on the hiring of workers and workers may be fired for cause. Compensation for workers includes wages, welfare benefits and bonuses, which are usually based on performance.

According to the responses, the overall level of credit is controlled by the central authorities, but loans to individual enterprises are decided upon by individual banks based on the applicant's creditworthiness. The interest rate charged is determined by the individual bank.

The Degree of Government Control Over Output Markets: There are three types of prices in the PRC: State-controlled (set by the government), guidance prices (prices which are permitted to fluctuate within a band around a state-controlled price), and market prices (set without government intervention). Respondents' submissions state that all headwear produced for domestic sale in the PRC falls into the third category. Moreover, they claim that decisions by the factories on what merchandise to produce are not subject to government direction.

Sales of headwear to be exported to the United States are negotiated between the factories and the trading companies. The trading company will place an order with the factory and prices are negotiated at arm's length. The decision of which factory to approach is based on the type of headwear involved and the available capacity at the factory.

Export sales by the trading companies depend on foreign demand. After receiving an order, the trading company will seek a price quote from a factory. The trading company then adds an amount to cover its profit and overhead. According to the responses, the trading companies' decisions are not subject to government review and no policy directives apply to these decisions.

Currency Convertibility and the Degree of Government Control Over Trade: According to the responses, the PRC has an official exchange rate and a market exchange rate. The official rate applies to foreign exchange remitted to the central government. The market rate refers to the foreign currency adjustment price negotiated by buyers and sellers in the recently opened foreign exchange adjustment centers. All state-owned, collective-owned and foreign-owned enterprises have access to these centers, regardless of whether they export.

Respondent's submissions state that the trading companies can keep up to 70 percent of their foreign exchange earnings, while those involved in processing arrangements can retain up to 90 percent of their foreign exchange income. A portion of these retained earnings are then returned to the factories based on terms arrived at through negotiation between the parties.

According to the responses, there are no restrictions on imports of headwear into the PRC, and the only controls on headwear exports to the United States are the visas required under the U.S.-PRC bilateral textile agreement. Headwear exports to countries other than the United States with which the PRC does not have a textile agreement are not subject to any restrictions.

Petitioner has also filed submissions on the issue of state control in this proceeding. According to the petitioner, the respondents are state-owned andd the factories are owned and/or controlled by the PRC central and local governments. Indeed, they assert, factories may not be constructed or expanded, nor can they improve production processes by purchasing imported machinery or equipment, without government approval.

The supply of cloth, the major raw material in headwear, is controlled by the Ministry of Textile Industry, which sets output quotas and prices for textile mills. Headwear factories are allocated a certain amount of fabric by the state, and must receive approval and an allocation of foreign exchange to order imported cloth. Wage scales are centrally determined, managers are not free to hire and fire workers, and the workers themselves are not free to move to different employment opportunities.

The petitioner further contends that foreign purchasers cannot negotiate directly with the factories; instead, they can only deal with the trading companies, which determine the product orientation, scale of production, and sales prices and quantities for headwear manufacturers. The PRC government limits the right to export products under the relevant product category (category 359–0) of the Multifiber Arrangement. The allocation under that category for headwear is small due to its low value in relation to higher-valued non-headwear products also covered by that category.

In addition, petitioner maintains that the currency of the PRC, the renminbi, is fundamentally inconvertible. The government tightly controls the supply of foreign currency and allocation of foreign exchange. The official rate has been essentially pegged to the U.S. dollar at a constant rate since the fourth quarter of 1986. The use of foreign exchange swap centers is still commercially insignificant, and all transactions in these centers must be approved by the State Administration of Exchange Control, which has imposed a yuan (the unit of currency)/U.S. dollar ceiling rate.

Finally, petitioner also states that section 773(c) requires the Department to examine whether the PRC economy in general is state-controlled, rather than analyzing the headwear sector in particular. For the reasons explained below, we do not need to address this issue for the preliminary determination.

Based upon our review of the record in this investigation, we have concluded that information pertaining to certain key issues is unpersuasive. For example, the trading companies involved in exporting headwear to the United States may be subject to export earning targets. Furthermore, the responses indicate that headwear manufacturers choose their suppliers "based on price and availability of supply," and that "to the best of the trading company's knowledge, prices and quantities are set in a similar manner when these suppliers sell to other customers in the domestic market." However, like most agricultural products, raw cotton appears to be purchased under contract between the growers and the government. Therefore, the prices and quantities supplied for a major input into headwear may be heavily influenced by direct government involvement in its distribution.

We note that a similar claim of no state control was made in *Candles*. In that case, respondents made in their written submissions a plausible case for finding an absence of state control with respect to the candle industry in the PRC. However, upon verification, the Department found that the actual situation concerning the production and sale of candles in the PRC was much more complicated than the situation described in respondents' written submissions. At vertification, the Department found that, indeed, economic reform in the PRC had resulted in a lessening of state control. The candle factories investigated were managed by, or operated under the auspices of, collectives, and their output was not subject to quotas or price controls.

On the other hand, the Department found that the principal input, petroleum wax, remained subject to state control. The Department concluded in that case that the extent of state control in the PRC at that time continued to be too great to permit the use of section 773(a).

In every prior antidumping investigation involving the PRC, the Department has found the PRC to be state-controlled. In addition, our experience in *Candles* taught us that verification is extremely important in determining whether an industry is substantially unaffected by state control. Therefore, given the conflicting, and as yet unverified, evidence on the record, the continued importance of state economic planning in the PRC generally, and the importance and complexity of the issue, we are not persuaded at this time that the headwear sector is substantially free of state control.

Accordingly, we preliminarily determine that the PRC is state-controlled to such an extent as to preclude the use of section 773(a). In making this preliminary determination, we are particularly influenced by the facts that the trading companies may be subject to foreign exchange targets and that the principal input obtained domestically, cotton cloth, may still be subject to state control, as well as by the conflicting evidence concerning foreign exchange controls, especially the convertibility of the renminbi.

However, we intend to conduct a thorough verification of this issue. If, as a result of our verification, we conclude that economic reforms in the PRC have resulted in a sufficient lessening of state control with respect to the headwear industry, in our final determination we will determine whether to calculate foreign market value pursuant to section 773(a). In this regard, we are issuing our standard antidumping questionnaire to respondents so that we will be able to use section 773(a), if warranted, in our final determination.

As a result of our preliminary determination to treat the PRC as a state-controlled economy, section 773(c) of the Act requires us to use either the prices of or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the state-controlled-economy country.

We determined that Indonesia, Egypt, Morocco, Bolivia, the Dominican Republic, Jamaica, Paraguay, Zambia and the Philippines were at a level of economic development comparable to the PRC and it would, therefore, be appropriate to base foreign market value on their prices. We sent questionnaires to known manufacturers of headwear in the Philippines, Morocco and Jamaica. One manufacturer from the Philippines replied to our questionnaire.

Where possible, we used information on domestic sales provided by this "surrogate" producer as the foreign market value for PRC sales of polyester baseball hats. For processing fee sales, we constructed foreign market value by valuing the factors of production employed by the PRC manufacturers in performing the conversion using factor cost information provided by the surrogate. For sales of cotton hats, we constructed foreign market value by valuing the factors of production employed by the PRC manufacturers based on factor cost information provided by the surrogate for all elements except the cotton input. For the value of the cotton input, we based the factor information on the prices of imports into the U.S. from Egypt. FMV based on valuing factors of production includes the statutory minimum for SG&A and profit.

On October 28 the surrogate provided additional information through the U.S. Embassy in the Philippines. We did not receive that information in time to adjust our calculations for the preliminary determination. However, we will consider that information in our final determination should we continue to use the "factors" methodology.

Currency Conversions

When evaluating U.S. sales made in Hong Kong dollars, we made currency conversions in accordance with § 353.56(a)(1) of our regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

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Because we did not have certified exchange rates from the Federal Reserve Bank of New York for surrogate country data, as best information we used currency conversions based on monthly averages as provided by the International Monetary Fund.

Critical Circumstances

The petition alleged that imports of headwear from the PRC present "critical circumstances." Under section 773(e)(1) of the Act, "critical circumstances" exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 773(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we analyzed recent trade statistics on import levels for headwear from the PRC for equal periods immediately preceding and following the filing of the petition. We also took into consideration seasonal factors. Based on this analysis, we find that there is a reasonable basis to believe or suspect that imports of the subject merchandise from the PRC have been massive over a relatively short period of time subsequent to receipt of the petition.

We examined recent antidumping duty cases and found that there are currently no findings in the United States or elsewhere of dumping of the subject merchandise by the PRC manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient (See, *e.g., Final Antidumping Duty Determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy* (52 FR 24198, June 29, 1987)). Since the estimated margins for three of the eight trading companies exceed 25 percent, as shown below, we find that the requirements of section (e)(1)(A) are met for these companies. Therefore, the following chart sets forth our company-specified preliminary determinations with respect to the existence of critical circumstances for the investigated merchandise.

Manufacturerer/producer/exporter	Critical circumstances
China National Light Industrial Products Import Export Corp., Guangdong Branch, Travelling Goods Co.	Yes.
China National Light Industrial Products Import Export Corp., Guangdong Stationery & Sporting Goods Branch.	No.
China National Light Industrial Products Import/Export Corp., Guangzhou Branch Footwear and Headgear Co.	Do.
Guangdong Arts & Crafts Imports & Exports Corp.	Do.
Jiangsu Arts & Crafts Imports & Exports Corp.	Do.
Shanghai Arts & Crafts Imports & Exports Corp.	Do.
Shanghai Stationery and Sporting Goods Import/Export Corp.	Yes.
Zhejiang Arts & Crafts Import & Export Corp.	Do.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain headwear from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We have preliminarily determined that critical circumstances exist with respect to entries of the subject merchandise from the following three companies: China National Light Industrial Products Import/Export Corporation, Guangdong Branch, Travelling Goods Company; Shanghai Stationery and Sporting Goods Import/Export Corporation; and Zhejiang Arts & Crafts Import & Export Company; (see "Critical Circumstances" section of this notice). Therefore, we are instructing the U.S. Customs Service to suspend liquidation of such entries from these companies that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
China National Light Industrial Products Import/Export Corp., Guangdong Branch, Travelling Goods Co	[1] 26.06
China National Light Industrial Products Import/Export Corp., Guangdong Stationery & Sporting Goods Branch	[1] 8.61
China National Light Industrial Products Import/Export Corp., Guangzhou Branch Footwear and Headgear Co	[1] 22.86
Guangdong Arts & Crafts Imports & Exports Corp	[1] 15.44
Jiangsu Arts & Crafts Imports & Exports Corp	24.47
Shanghai Arts & Crafts Import & Export Corp	9.77
Shanghai Stationery and Sporting Goods Import/Export Corp	58.85
Zhejiang Arts & Crafts Import & Export Co	52.76
All Others	20.76

[1] Because we made fair value comparisons on the basis of processing charges, the resulting differences for these companies have been multiplied by a coefficient equalling the proportion processing represents of the value of PRC hats to arrive at the margins for individual sales. The coefficient is based on our review of the cost and sales experience of Shanghai Stationery and the surrogate producer in the Philippines.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry before the later of 120 days after we made our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on December 30, 1988, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Assistant Secretary by December 23, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: November 2, 1988.

[FR Doc. 88-25785 Filed 11-7-88; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Monday, November 28, 1988 from 1:00 p.m. to 5:30 p.m., and Tuesday, November 29, 1988 from 8:30 a.m. to 1:30 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

DATES: The meeting will convene November 28, 1988, at 1:00 p.m. and will adjourn for the day at 5:30 p.m. The meeting will resume at 8:30 a.m. on November 29, 1988, and will end at 1:30 p.m.

ADDRESS: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Peggy Webb, Office of the Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2411.

SUPPLEMENTARY INFORMATION: The public is invited to attend this meeting, and the Chairperson will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Peggy Webb at the address shown above.

Date: November 2, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-25746 Filed 11-7-88; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner Customs adjusting limits.

EFFECTIVE DATE: November 2, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Group II is being increased by application of swing, reducing the Group III limit to account for the swing being applied.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 55, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 1988

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 2, 1988, the directive of December 30, 1987 is hereby amended to adjust the current limits for cotton, wool and man-made fiber textile products in Groups II and III, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted 12-month limit [1]
Group II: 330, 332, 349, 353, 354, 359-O [2], 431, 432, 459, 630, 632, 633, 643, 644, 653, 654, 659-O [3], as a group.	127,890,000 square yards equivalent

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Category	Adjusted 12-month limit [1]
Group III: 201, 220, 222–225, 227, 229, 362, 369–O [4], 400, 414, 464–469, 600, 603, 604–O [5], 606, 618–622, 624–627, 629, 665, 666, 669–O [6], 670–O [7], as a group.	322,919,000 square yards equivalent

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 359–O, all TSUSA numbers except 381.0822, 381.6510, 384.0928 and 384.5222 in Category 359–C; 384.5214 in Category 359–D; and 381.0258, 281.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, 384.4422 in Category 359–V.

[3] In Category 659–O, all TSUSA numbers except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, and 384.9310 in Category 659–C; 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650 in Category 659–H; and 381.2340, 381.3170, 381.9100, 381.9570, 381.1700, 384.2399, 384.8300, 384.8400 and 384.9353 in Category 659–S.

[4] In Category 369–O, all TSUSA numbers except 365.6815, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860 in Category 369–D; 706.3640 and 706.4106 in Category 369–H; 706.3210, 706.3650 and 706.4111 in Category 369–L; and 366.2840 in Category 369–S.

[5] In Category 604–O, all TSUSA numbers except 310.5049 and 310.6045.

[6] In Category 669–O, all TSUSA numbers except 385.5300 in Category 669–P.

[7] In Category 670–O, all TSUSA numbers except 706.3415, 706.4130 and 706.4135 in Category 670–L.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–25740 Filed 11–7–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning SF 294, Subcontracting Report for Individual Contracts.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Vs. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523–5168.

SUPPLEMENTARY INFORMATION: a. *Purpose:* In accordance with the Small Business Act (15 U.S.C. 631 *et seq.*) contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act (Attachment A) and implemented in FAR 19.7 (Attachment B).

In conjunction with these plans, contractors must submit semiannual reports of their progress on SF 294, Subcontracting Report for Individual Contracts (Attachment C).

A satisfactory subcontracting plan is required before a contract exceeding $500,000 ($1,000,000 for construction) can be awarded. The contracting officer must examine the information in the proposed plan to determine if the plan is in compliance with the Small Business Act and the FAR. In addition, the information is used for policy and management control purposes.

Information submitted on SF 294 is used to assess contractors' compliance with their subcontracting plans.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *1,533*; responses per respondent, *34.47*; total annual responses, *52,850*; preparation hours per response, *5.71*; and total response burden hours, *301,774*.

c. *Annual recordkeeping burden:* THe annual recordkeeping burden is estimated as follows: Recordkeepers, *1,533*; hours per recordkeeper, *116.87*; and total recordkeeping burden hours, *179,161*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0006, SF 294, Subcontracting Report for Individual Contracts.

Dated: October 31, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88–25759 Filed 11–7–88; 8:45 am]

BILLING CODE 6820–60–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning SF 294, Summary Subcontract Report.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3201, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523–5168.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* In accordance with the Small Business Act (15 U.S.C. 631 *et seq.*) contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in the Section 8(d) of the Small Business Act and implemented in FAR 19.7.

In conjunction with these plans, contractors must submit semiannual reports of their progress on SF 294, Summary Subcontract Report for Individual Contracts.

A satisfactory subcontracting plan is required before a contract exceeding $500,000 ($1,000,000 for construction) can be awarded. The contracting officer must examine the information in the proposed plan to determine if the plan is in compliance with the Small Business Act and the FAR. In addition, the information is used for policy and management control purposes.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *1,542*; responses per respondent, *3.61*; total annual responses, *5,567*; preparation hours per response, *15.89*; and total response burden hours, *88,445*.

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, *1,542*; hours per recordkeeper, *12.6*; and total recordkeeping burden hours, *19,429*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0007, SF 295, Summary Subcontract Report.

Dated: October 31, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88–25760 Filed 11–7–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF EDUCATION

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF JUSTICE

Agreement Between the General Services Administration and the Department of Education to Delegate Certain Civil Rights Compliance Responsibilities for State Agencies and Donee Organizations

A. Purpose

Section 1–207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions as required in the Coordination of Enforcement of Non-discrimination in Federally Assisted Programs (28 CFR 42.401–.415); increase the efficiency of compliance activities, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement, the General Services Administration (GSA), designates the Department of Education (DOE), as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to elementary and secondary schools and institutions of higher education. Responsibilities for the following covered nondiscrimination provisions are delegated:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4).

2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice (DOJ)/Equal Employment Opportunity Commission (EEOC), regulation concerning procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance (28 CFR 42.601–42.613, 29 CFR 1691.1–1697.13, 48 FR 3570, January 25, 1983). Complaints covered by that regulation, filed with a delegating agency against a recipient of Federal financial assistance, solely alleging employment discrimination against an individual, are to be referred directly to the EEOC by the delegating agency.

C. Duties of the DOE

The GSA assigns the following compliance duties to the DOE with respect to elementary and secondary schools and institutions of higher education. Specifically, the DOE shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to GSA.

2. Develop and use information for the routine, periodic monitoring of compliance of elementary and secondary schools and institutions of higher education with respect their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by GSA, preapproval reviews for which supplemental information, or field reviews are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients, subject to this agreement, have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, and attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue a written letter of findings of compliance or a letter of findings of noncompliance that: (a) Advises the recipient and, where appropriate, the complainant of the results of the postapproval review or complaint investigation; (b) provides recommendation, where appropriate, for achieving voluntary compliance, and (c) offers the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state in which the applicant or recipient is located will be notified if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The DOE promptly shall provide a copy of its letter of findings to the GSA and to the Assistant Attorney General for Civil Rights, as required by 28 CER 42.407(d).

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. (a) If compliance cannot be voluntarily achieved, and the DOE does not fund the applicant or recipient, refer the matter to GSA for its own independent action and notify the Assistant Attorney General for Civil Rights of referral. (b) If compliance cannot be achieved and both the DOE and GSA fund the applicant or recipient, initiate formal enforcement action. When the DOE initiates formal

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enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide GSA with an opportunity to participate, as a party, in a joint administrative hearing. When the DOE initiates formal enforcement action be referring the matter to the DOJ for appropriate judicial action, notify GSA of the referral.

9. Notify GSA and the Assistant Attorney General for Civil Rights, of the outcome of the hearing, including the reason for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient.

D. Duties of the General Services Administration

The GSA shall:

1. Issue and provide to DOE all regulation guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provision and for DOE to administer its responsibilities under this agreement.

2. Provide DOE with information, technical assistance, and training necessary for DOE to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from GSA, the types of assistance provided, compliance information solely in GSA possession or control, and data on program eligibility or control, and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by DOE. If GSA requests DOE to undertake an on-site review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance, or that is the subject of an application, GSA shall supply information necessary for the DOE to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with GSA against a recipient subject to this delegation and determine, if possible, whether the program involved receives Federal financial assistance from GSA.

5. Where DOE has notified the applicant or recipient, in writing, that compliance cannot be achieved by voluntary means and DOE has referred the matter to GSA, make the final compliance determination with respect to a GSA applicant or recipient and:

(a) If GSA wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify DOE if GSA will either join as a party in a DOE administrative hearing or will conduct its own administrative hearing.

(b) Whenever an opportunity for a hearing is required, GSA will notify the applicant or recipient by registered or certified mail, return receipt requested. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken and the matters of fact of law asserted as the basis for this action. GSA will also notify the DOE and the Assistant Attorney General for Civil Rights of the outcome of the hearing including the reasons for finding the applicant or recipient in noncompliance, and any action against the applicant or recipient. GSA may request DOE to act as counsel in its administrative hearing.

(c) When GSA initiates formal enforcement action by referring the matter to the DOJ for appropriate judicial action, notify the DOE of the referral.

(d) If GSA neither initiates steps to deny or terminate Federal assistance, nor refers the matter to the DOJ, notify DOE and the Assistant Attorney General for Civil Rights, in writing within 15 days after notification from DOE that voluntary compliance cannot be achieved.

E. Effect on Prior Delegation

This agreement supersedes and replaces the delegation agreement regarding elementary and secondary schools and institutions of higher education between GSA and the DOE published in the **Federal Register** (FR 4148, Vol. 32, No. 51, March 16, 1967).

F. Redelegation

Duties delegated herein to the DOE may be redelegated to the Department of Health and Human Services. The DOE shall notify GSA of any such redelegation prior to the effective date.

G. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by both parties and become effective 30 days from publication in the **Federal Register**.

H. Termination

This agreement may be terminated by either agency 60 days after notice to the other agency and to the Assistant Attorney General for Civil Rights.

Date: May 4, 1988.

John Alderson,

Acting Administrator of General Services Administration.

Date: July 18, 1988.

William J. Bennett,

Secretary of Education.

Date: September 15, 1988.

Wm. Bradford Reynolds,

Assistant Attorney General, Civil Rights Division, Department of Justice.

[FR Doc. 88-25844 Filed 11-7-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America, and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the shipment of 5 kilograms of spent fuel from the GRR-1 reactor in Greece for storage and reprocessing at the Department of Energy facilities. The return of highly enriched uranium (HEU) is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: November 2, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-25824 Filed 11-7-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Environment, Safety and Health

Innovative Control Technology Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Innovative Control Technology Advisory Panel.

Date and Time: November 30, 1988—1:30 p.m.-5:00 p.m.

Place: Dow Chemical Louisiana Division, Louisiana Highway No. 1 South, Plaquemine, Louisiana 70865, Purchasing Lobby.

Date and Time: December 1, 1988—9:00 a.m.-3:00 p.m.

Place: Fairmont Hotel, University Place, New Orleans, Louisiana 70112.

Contact: Sandy Guill, Department of Energy, Environment, Safety and Health (EH-22), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586-4628.

Purpose of the Panel: To advise the Secretary of Energy on how to best achieve DOE's expanded innovative clean coal technologies program's objectives of reducing costs and improving efficiency by expanding emissions control options beyond those now available.

Tentative Agenda: Briefings and discussions of:

- Projects selected in DOE Clean Coal-2 Solicitation.
- Project Selection Criteria to be considered for Clean Coal Technology Program (CCTP-3).
- Working Group on "Technology Status Review and Evaluation" Report.
- Working Group on "Incentives for the Demonstration and Deployment of Clean Coal Technologies" Report.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact sandy Guill at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at WAshington, DC, on November 2, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-25822 Filed 11-7-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-65-NG]

Hadson Gas Systems, Inc., Application to Extend Blanket Authorization to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 14, 1988, of an application filed by Hadson Gas Systems, Inc. (Hadson), requesting that the blanket authorization previously granted in DOE/ERA Opinion and Order No. 144 and 144A, issued September 9, 1986, and March 31, 1987, respectively (ERA Docket No. 86-35-NG), be amended to extend its term for two years.

Hadson is currently authorized to import up to a maximum of 50 Bcf of Canadian natural gas through March 2, 1989. Under the extension requested, Hadson would be authorized to import volumes not to exceed in the aggregate 50 Bcf of Canadian natural gas over a two-year period commencing March 3, 1989.

Quarterly reports filed with the ERA indicate that Hadson has imported 4239 MMcf of natural gas under its current import authorization as of June 30, 1988.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than December 8, 1988.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy Forrestal Building, Room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-7249.

Diane Stubbs Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-6667.

SUPPLEMENTARY INFORMATION: Hadson Gas Systems, Inc., an Oklahoma corporation, is a wholly-owned subsidiary of Hadson Corporation, a Delaware corporation. Hadson is an independent coast-to-coast gas marketing business, with its principal place of business in Irving, Texas. Hadson purchases its system supplies from hundreds of producers, both domestic and Canadian, and sells to hundreds of customers. The extension would cover Canadian natural gas imported by Hadson on a short-term or spot basis for resale to undesignated U.S. purchasers.

The specific terms of the Canadian import sales would be negotiated at arms length, including the price, duration, volume renegotiation, and price adjustment provisions, and take-or-pay provisions, if any. Hadson intends to use existing pipeline facilities to transport the gas.

In support of its application, Hadson asserts that the proposed extension of its existing blanket import authorization is not inconsistent with the public interest since the extension requested would assure gas consumers expanded access to competitively-priced Canadian gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidlines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

The ERA will condition any authorization issued in this proceeding on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable,

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and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F-056, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., December 8, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Hadson's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Firday, except Federal holidays.

Issued in Washington, DC, November 1, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-25825 Filed 11-7-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 9078-002 California]

Highland Construction, Inc.; Availability of Environmental Assessment

November 3, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption for the Cove Hydroelectric Project and has prepared an environmental assessment (EA) for the proposed project. In the EA, the Commission's staff analyzes the potential environmental impacts of the proposed project and concludes that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25808 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01

[Docket Nos. CP89-89-000, et al.]

Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89-89-000]

November 1, 1988.

Take notice that on October 25, 1988, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-89-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Tenneco Oil Company under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated September 20, 1988, it proposes to transport up to 2,200 dt of natural gas for Tenneco Oil Company, a producer, from points of receipt located offshore Louisiana. The point of delivery is located offshore Louisiana, and the ultimate point of delivery is located in the state of Wisconsin.

The Applicant further states that the maximum daily quantity it proposes to transport is 2,200 dekatherms, the average daily volume is 2,200 dt, with an annual delivery of 803,000 dt, under the contract. Service under § 284.223(a) commenced October 1, 1988, as reported in Docket No. ST89-242 (filed October 19, 1988).

Comment date: December 16, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-25-000]

November 2, 1988.

Take notice that on October 7, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89-25-000 an application pursuant to section 7(b) of the Natural Gas Act, for an order permitting and approving abandonment of transportation service provided to Ohio Gas Company (Ohio Gas), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that it currently provides up to 8,000 Mcf per day of firm transportation service to Ohio Gas. Panhandle asserts that Ohio Gas has notified Panhandle that it no longer requires this transportation service from Panhandle. Panhandle also states that there would be no abandonment of facilities, only the firm transportation service is being discontinued as requested by Ohio Gas. Panhandle submits that it has been advised by Ohio Gas that the underlying gas purchase agreement and upstream transportation agreement would remain in place for continued use.

Comment date: November 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP89-10-000]

November 2, 1988.

Take notice that on October 4, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-10-000 a request as supplemented October 19, 1988, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to make a direct interruptible sale of natural gas to Calibogue Kansas Corporation (Calibogue) in Jefferson County, Kansas, for use in lease operations, under Williams' blanket certificate issued in Docket No. CP82-479-000 and CP82-479-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that pursuant to an agreement between it and Calibogue dated June 18, 1987, Williams has agreed to provide Calibogue up to 3,000 Mcf of natural gas per month, at no cost, for use in oil lease operations in Williams' McLouth storage field located in Jefferson County, Kansas. The agreement further provides that in the event Calibogue's usage exceeds 3,000 Mcf of natural gas per month, Williams would sell additional volumes to Calibogue at a rate equivalent to Williams' currently effective F-2 excess sales rate. Calibogue now desires to purchase volumes of natural gas in excess of the 3,000 Mcf per month limit.

Williams further states that the total volumes delivered would not exceed 250 Mcf per day and that it anticipates sales volumes would not exceed 200 Mcf per day. Williams also states that total anual volumes are anticipated to be 36,500 Mcf.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP89-83-000]

November 2, 1988.

Take notice that on October 21, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP89-83-000 a request pursuant to § 157.205(b) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate sales taps for the delivery of gas to end-users, under the blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001 and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

K N proposes to construct and operate four sales taps. K N states that the taps would be located in Pawnee County and Wallace County, Kansas and in Gosper County and York County, Nebraska. K N further states that the end use of the gas delivered at each of the four taps would be irrigation. K N indicates that the estimated cost of the taps to be constructed in Pawnee County and Gosper County is $850 each, and that each tap to be constructed in Wallace County and York County would cost approximately $1150. [1]

K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP89-76-000]

November 2, 1988.

Take notice that on October 21, 1988, Southern Natural Gas Company (Southern) filed in Docket No. CP89-76-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation on behalf of Pennzoil Gas Marketing Company (Pennzoil), a marketer, under Southern's blanket certificate issued in Docket Nos. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Pursuant to a service agreement dated July 26, 1988, Southern states that it would perform the transportation service under its Rate Schedule IT. It is stated that the service agreement is for a primary terms of one month with successive one month terms thereafter, unless cancelled by either party. Southern expects to transport 1,500 MMBtu of gas on a peak day, 900 MMBtu of gas on an average day, and 328,500 MMBtu of gas on an annual basis. Southern further states that it would receive the gas at various receipt points in Mississippi and redeliver it to various delivery points in Mississippi. Southern asserts that no new facilities are required to implement the proposed service. Finally, Southern advises that it commenced transportation of natural gas for Pennzoil on August 3, 1988, as reported in Docket No. ST88-5517, pursuant to § 284.223(a)(1) of the Commission's Regulations.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-86-000]

November 2, 1988.

Take notice that on October 28, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-86-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Mountain Iron & Supply Company (Mountain Iron), a marketer and agent for DeKalb-Pfizer Genetics-Tuscola (DeKalb), an end-user, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated August 26, 1988, it proposes to transport up to 500 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for Mountain Iron from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Central Illinois Light Company in various counties in the state of Illinois.

Panhandle advises that service under § 284.223(a) commenced on September 1, 1988, as reported in Docket No. ST88-5867. Panhandle further advises that it would transport 300 dt on an average day and 7,500 dt annually.

[1] K N states that customers reimburse a portion of the construction costs to K N through imposition of a connection charge which varies by state. This charge is $250 in Kansas and $400 in Nebraska.

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Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Lone Star Gas Company

[Docket No. CP89–91–000]

November 2, 1988.

Take notice that on October 27, 1988, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201 filed in Docket No. CP89–91–000 a request pursuant to its blanket certificate in Docket No. CP83–59–000 pursuant to section 7(b) of the Natural Gas Act and §§ 157.205, 157.211, 157.212 and 157.216 of the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) for authorization to abandon a sales tap, lateral line and appurtenant facilities, and to continue service to the existing customer with a service tap from another existing line, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Lone Star proposes to abandon its facilities heretofore used to provide gas service to the following customer:

Customer	Location	Line
W.T. Waggoner Ranch.	Wichita County, Texas.	A–32

Lone Star further states that it has not obtained a letter of consent from the W.T. Waggoner Ranch, since it proposes to continue rendering service to this customer from a line tap off of Line A. No other customers, except the W.T. Waggoner Ranch, are served off of Line A–32.

Lone Star asserts that sales to the W.T. Waggoner Ranch will continue to be made at appropriate rate.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–68–000]

November 2, 1988.

Take notice that on October 14, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–68–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for Arco Oil and Gas Company (Shipper), under the blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day will be 25,000 dt., on an average day will be 25,000 dt., and on an annual basis will be 9,125,000 dt. Transco also states it will receive the gas at High Island Block 111 (110,138), offshore Texas and deliver the gas at Johnson Bayou Barracuda, Cameron Parish, Louisiana. Transco further states it commenced this service September 1, 1988 as reported in Docket No. ST89–24.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Company

[Docket No. CP89–95–000]

November 3, 1988.

Take notice that on October 28, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–95–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223), for authorization to provide a transportation service for Citizens Gas Supply Corporation (Citizens), a marketer, under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated September 30, 1988, it proposes to transport natural gas for Citizens from a point of receipt located offshore Louisiana and redeliver the gas to a interconnect located in Rye, Westchester County, New York with Consolidated Edison of New York. Applicant also states that no construction of facilities will be required to provide this transportation service.

The Applicant further states that the maximum daily, average day and annual volumes of gas delivered would be approximately 100,000 Dekatherms, 100,000 Dekatherms and 36,500,000 Dekatherms respectively. Service under § 284.223(a) commenced October 2, 1988, as reported in Docket No. ST89–241 (filed October 19, 1988).

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

Trinity Pipeline, Inc.

[Docket No. CI89–26–000]

November 3, 1988.

Take notice that on October 24, 1988, Trinity Pipeline, Inc. (Trinity) of 17101 Preston Road, Suite 240, Lock Box 122, Dallas, Texas 75248, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: December 19, 1988, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25617 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM88–5–20–002, TQ89–1–20–000, TM89–2–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 4, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 31, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective August 1, 1988

Substitute Twentieth Revised Sheet No. 205

Substitute Tenth Revised Sheet No. 214

Proposed to be effective November 1, 1988

Twenty-third Revised Sheet No. 205
Thirteenth Revised Sheet No. 214

Proposed to be effective December 1, 1988

Twenty-ninth Revised Sheet No. 201

Algonquin states that pursuant to Section 7 of Rate Schedule F–4 and Section 9 of Rate Schedule SS–III, it is filing Substitute Twentieth Revised Sheet No. 205 and Substitute Tenth Revised Sheet No. 214, respectively, to track the revised rates filed for by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as set forth in Texas Eastern's filing dated October 18, 1988 in Docket No. TQ88–2–17 *et. al.* The proposed effective date for Substitute Twentieth Revised Sheet No. 205 and Substitute Tenth Revised Sheet No. 214 is August 1, 1988.

Algonquin states that pursuant to Section 17 of the General Terms and Conditions, and Section 7 of Rate Schedule F–4 and Section 9 of Rate Schedule SS–III, it is filing Twenty-ninth Revised Sheet No. 201 and Twenty-third Revised Sheet No. 205 and Thirteenth Revised Sheet No. 214, respectively, to track changes by its supplier, Texas Eastern in the rates of the underlying services as set forth in Texas Eastern's compliance filing of October 28, 1988 in Docket Nos. RP85–177 *et. al.*, CP88–136 *et. al.* and RP88–67 *et. al.* The rate changes represent an increase in Algonquin's purchased gas costs of approximately $7.1 million for the effective period of Algonquin's instant Quarterly PGA filing for Rate Schedules F–1, WS, E–1–1, I–1. The rate change in Rate Schedule F–4 represents increases in the Demand component of 47.5 cents per MMBTu and 13.74 cents for MMBtu in the Commodity component. The rate change in Rate Schedule SS–III represents a decrease in the Non-FDDQ Withdrawal component of 0.1 cents per MMBtu. The proposed effective date of Twenty-ninth Revised Sheet No. 201 is December 1, 1988. The proposed effective date for Twenty-third Revised Sheet No. 205 and Thirteenth Revised Sheet No. 214 is November 1, 1988 to coincide with the proposed effective date of Texas Eastern's filing.

Algonquin notes that copies of the filing were served upon all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25803 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–1–002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

November 3, 1988.

Take notice that on November 1, 1988, Algonquin Gas Transmission Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Revised Substitute Sixth Revised Sheet No. 600

Revised Substitute First Revised Sheet No. 662

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by November 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25804 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TQ89-1-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 3, 1988.

Take notice that Carnegie Natural Gas Company ("Carnegie") on October 31, 1988, tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1988:

Eleventh Revised Sheet No. 47
Eleventh Revised Sheet No. 48

Carnegie states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to adjust its rates effective November 1, 1988, to reflect a $.1452 per Dth increase in the applicable commodity components of its LVWS and CDS Rate Schedules, a $.1530 per Dth increase in the D-1 component, and a $.0016 per Dth increase in the D-2 components of those Rate Schedules. The proposed increase in the LVIS Rate Schedule is $.1582 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25805 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. RP89-7-000]

Columbia Gas Transmission Corp.; Notice of Petition for Conditional Waiver of Commission Regulation

November 3, 1988.

Take notice that on October 25, 1988, Columbia Gas Transmission Corporation (Columbia) filed a petition for a conditional waiver of the sunset provision set forth at § 2.104(c)(1) of the Commission's regulations (18 CFR 2.104(c)(1).

Columbia states that its PGA filings have included and continue to include prices it pays for gas under certain Appalachian contracts containing price provisions which were renegotiated during the period 1983-85 to allow for market-sensitive pricing. Columbia alleges that the prices it pays under these amended contracts is its current "offering price" (the price it pays for new Appalachian supplies) as adjusted annually, plus a differential of 25 cents, 50 cents or 75 cents per MMBtu, depending upon the contract language (Price Differential). Certain intervenors and Staff have argued in Columbia's ongoing PGA proceedings in Docket Nos. TA87-4-21, *et al.*, that the Price Differential is a payment by Columbia for the renegotiation of its contractual price provisions, is thus not a gas cost and should not be recovered through the PGA, but rather through a Section 4(e) filing. Columbia states that the costs related to the Price Differential do not involve contract disputes with producers which need to be resolved before December 31, 1988 but rather relate to contracts which have been renegotiated. Therefore, Columbia alleges, the underlying rationale for the need for a sunset deadline is absent.

Columbia states that a conditional waiver of the December 31, 1988 sunset deadline is appropriate in the interests of administrative and judicial economy and fairness in this instance. Columbia states that it should not be required to incur the time and expense of preparing a Section 4(e) rate filing to recover costs which Commission precedent clearly supports as gas costs in order to comply with the Commission's December 31, 1988 sunset deadline. Columbia states that its filing would necessarily be made contingent upon the outcome of its PGA proceeding.

Columbia states that since the characterization of the costs related to the Price Differential is in litigation in Columbia's PGA proceedings, it should be given the right to await the natural end of such litigation and have the opportunity to elect to recover such Price Differential cost through an Order No. 500 filing if they are ultimately found to be non-gas costs. Columbia states that the Commission grant the requested waiver of the December 31, 1988 sunset provision to give Columbia the opportunity, within 60 days after final Commission action in the ongoing PGA proceedings, to recover the Price Differential costs through an Order No. 500 filing in the event the Commission rules that such costs are non-gas costs.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before November 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25806 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-24-000]

Equitrans, Inc., Proposed Change in FERC Gas Tariff

November 4, 1988.

Take notice that Equitrans, Inc. (Equitrans) on October 31, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective December 1, 1988.

Fifth Revised Sheet No. 10
Fifth Revised Sheet No. 14

Equitrans states that the filing is made pursuant to §§ 154.308 and 154.304 of the Commission's Regulations and is in conformity to the provisions of Order 483, as amended.

Equitrans states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Section 19, of its General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

Equitrans states that current purchase gas adjustment to Rate Schedule PLS is an increase of $.1748 per dekatherm (dth). This change results in a current estimated average cost of gas in this filing of $2.3251 per dth and a Total Commodity Charge of $2.7839 per dth.

Equitrans states the current adjustment to D(1) Purchased Gas Costs for Rate Schedule PLS reflects a decrease of $.0647 per dth for an overall D(1) demand costs of $2.9559 per dth.

Equitrans states the current adjustment to D(2) Purchased Gas Costs for Rate Schedule PLS reflects an increase of $.0010 per dth for an overall D(2) demand costs of $.0721 per dth.

Equitrans states the current purchase gas adjustment to Rate Schedule GS-1 is a decrease of $.2403 per dth. This change results in a current estimated average cost of gas in this filing of $2.5812 per dth and a Total Commodity Charge of $2.7839 per dth.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party on the service list of Docket CP86-676-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. All motions to intervene or protests should be filed on or before November 14, 1988.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25807 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-259-002]

Northern Natural Gas Co.; Filing

November 4, 1988.

Take notice that on October 27, 1988, Northern Natural Gas Company (Northern) filed the following tariff sheets to be a part of its FERC Gas Tariff:

Third Revised Volume No. 1

Substitute Sixty-First Revised Sheet No. 4b
Substitute Twenty-Ninth Revised Sheet No. 4b.1

Original Volume No. 2

Substitute Sixty-Eighth Revised Sheet No. 1c

Northern states that this filing contains a statement of the Minimum Bill Deficient Rate on Sheet Nos. 4b and 1c which was inadvertently omitted from its general rate proceeding in Docket No. RP88-259-000. Northern states that the Minimum Bill Deficient Rate on Sheet No. 4b is $.3232 and is derived from the fixed commodity cost for sales shown on Schedule K-1, Page 4, Column (f), Line 75 of RP88-259. In addition, the Minimum Bill Deficient Rate on Sheet No. 1c is $.3708 and is derived from Schedule K-1, Page 7. The demand and fixed commodity costs shown on Lines 13 and 14 respectively are divided by the annual sales volumes shown on Line 10. Northern requests any waivers that may be necessary to correct this inadvertent omission.

In addition, Northern states that this filing reestablishes the PGA costs as reflected in the Flexible PGA (TF89-1-59) filed September 30, 1988 to be effective October 1, 1988.

Northern states that copies of this filing have been mailed to each of its gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25809 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-28-000]

Panhandle Eastern Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 3, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 31, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Ninth Revised Sheet No. 3-A
Forty-Sixth Revised Sheet No. 3-B

The proposed effective date of these revised tariff sheets is December 1, 1988.

Panhandle states that these revised tariff sheets filed herewith reflect a commodity rate decrease of (5.32¢) per Dt in the projected purchased gas cost component.

Panhandle further states that these revised tariff sheets filed herewith also reflect the following changes to Panhandle's D_1 and D_2 demand rates: (1) an increase of $1.01 for D_1 and (2) a decrease of (11.74¢) for D_2 to reflect the current rate changes in § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline supplier demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchased Gas Adjustment Clause) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective December 1, 1988.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25811 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-9-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 4, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 28, 1988, tendered for filing the following proposed changes to is FERC Gas Tariff, Original Volume No. 1: Original Sheet No. 3-C.10, Original Sheet No. 3-C.11, Original Sheet No. 3-C.12, First Revised Sheet No. 43-12.

The subject tariff sheets bear an issue date of October 28, 1988, and a proposed effective date of November 28, 1988.

Panhandle states that these tariff sheets reflect fixed demand surcharges

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to effectuate the recovery of 50% of approximately $128 million for take-or-pay buyout and buydowns of gas purchase arrangements with producers suppliers. This amount reflects take-or-pay settlement costs incurred by Panhandle and for which Panhandle has either a written or verbal obligation to pay, such obligations being entered into during the period from August 30, 1988 to October 28, 1988.

Panhandle states this fixed take-or-pay charge will be billed in addition to Panhandle's currently effective rates including the fixed take-or-pay charges approved subject to refund and conditions, in Docket No. RP88–241–000 which recover 50% of Panhandle's take-or-pay costs incurred prior to August 29, 1988.

Panhandle proposes in this filing to allocate the additional take-or-pay costs to its jurisdictional sales customers, in accordance with the same methodology approved, subject to refund and conditions, by the Commission in its September 28, 1988 Order in Docket No. RP88–241–000.

Panhandle states the additional fixed demand surcharges are allocated among the firm sales customers on the basis of a comparison of their firm purchases during the deficiency period years 1982 through 1987, with their individual firm purchases in base period year 1981.

Panhandle states that in accordance with Order No. 500 it is agreeing in this filing to absorb an amount equal to the costs Panhandle is permitted to recover through fixed demand surcharges. Panhandle reserves the right, however, in the event any customer elects to challenge the prudence of the take-or-pay settlement and contract reformation costs which Panhandle seeks to recover by this filing, to bill to that party, by means of a fixed demand surcharge, its *full* pro rata share of the subject costs found to be prudently incurred (in addition to such further costs as the Commission may permit). In accordance with the Commission's rulings in *United Gas Pipe Line Co.*, 42 FERC Paragraph 61,197 at pp. 61,685–86 (1988), Panhandle also reserves the right to recover through demand surcharges, the full pro rata share of the subject costs found to be recoverable from customers under the jurisdiction of a state agency that elects to contest the prudence of the subject costs. To facilitate the disposition of this matter, Panhandle requests the Commission to require that any party choosing to contest the prudence of the subject costs be provided only a limited amount of time to make such an election and that such election be deemed to be irrevocable except as Panhandle may otherwise consent.

Panhandle requests that the Commission waive the filing requirements of § 154.63 of the Commission's regulations and the provisions of § 154.66 to accept, without delay, Panhandle's filing herein and the material incorporated herein by reference, as the cost and revenue support for this filing, permitting the same to become effective on November 28, 1988.

Panhandle asks the Commission to grant all necessary waivers so as to place the instant tariff sheets and attendant rates into effect on November 28, 1988. Since the instant filing effectuates the cost sharing policy of Order No. 500, Panhandle states good cause exists to place such tariff sheets into effect on an expeditious basis.

Copies of the filing were served upon Panhandle's jurisdictional customers, interested state commissions and the parties in Docket Nos. RP87–103 and RP88–262.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25810 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–8–000]

Pacific Interstate Transmission Co.; Change in Rate

November 3, 1988.

Take notice that on October 28, 1988, Pacific Interstate Transmission Company ("Pacific Interstate") tendered for filing a Notice of a Change in Rates for natural gas service rendered to its sole jurisdictional customer, Southern California Gas Company, pursuant to Rate Schedule CQS–1, FERC Gas Tariff Original Volume No. 1. To implement this notice of change, Pacific Interstate tendered for filing and acceptance Third Revised Tariff Sheet No. 9 superseding Second Revised Tariff Sheet No. 9, First Revised Sheets Nos. 6 and 7 superseding Original Sheets Nos. 6 and 7.

Pacific Interstate states that based upon the test period cost of service, Pacific Interstate projects a decrease in annual revenue requirements and therefore files a rate decrease of approximately $5 million per annum. Pacific Interstate states that the reduction is principally due to a decline in rate base, a lengthening of its depreciation life, and a requested decrease in the cost of long-term debt. Pacific Interstate further notes that the filing reflects the abandonment of its Southwest Division sales authority and PGA as approved by the Commission (43 FERC 61,222; May 5, 1988). The only area in which rates increase, as stated by Pacific Interstate, is charges associated with transportation of gas by others. Pacific Interstate does not propose any other change in its rates.

Pacific Interstate has requested that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to implement the notice of change effective November 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before November 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25818 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2144–007]

City of Seattle, Washington; Petition for Declaratory Order

November 3, 1988.

Public notice is given that the Public Utility District No. 1 of Pend Oreille County, Washington (the PUD) filed a petition for declaratory order with the Federal Eenrgy Regulatory Commission on May 5, 1988. The petition seeks a determination of the correct interpretation of Article 49 of the license for the Boundary Project No. 2144, on the Pend Oreilla river in Northeastern Washington. Article 49 provides for the City of Seattle, the project licensee, to assign "at cost," upon proper notice, 48 megawatts (MW) of Boundary Project power to the PUD. The City of Seattle filed on June 8, 1988, a response to the PUD's petition in which it takes issue with certain aspects of the PUD's filing.

The PUD's petition asks that the Commission determine the meaning of Article 49's provision that the power available to the PUD should be delivered "at cost." The PUD identifies three specific issues as to cost which should be resoved: (1) Whether Seattle's revenues from non-firm sales should be credited against the project's total embedded costs; (2) whether depreciation costs on recent additions made by Seattle to the project should be charged over the remaining useful life of the improvements or over the remaining term of the initial license for the project; and (3) what costs, if any, would be incurred by Seattle and chargeable to the PUD for delivery at the PUD's "system load factor."

Seattle's response maintains that the genesis of Article 49 was a proposal which Seattle made during the licensing proceedings in the 1950's to make the 48 MW of Boundary project power available to the PUD "in consideration of" the PUD's withdrawal of its competing application for the project, and its sale to Seattle at cost of properties it owned within the proposed Boundary Project's boundaries. Seattle states that the PUD did not accept this proposal, however, and continued to oppose Seattle's application. Consequently, Seattle asserts, "the Article 49 reservation of power to [the PUD] was made without any consideration.

Seattle's response further maintains that the cost of providing power under Article 49 "is the cost to Seattle of alternative power" which it will have to acquire to replace the power provided to the PUD.

Both the PUD's and Seattle's filing request that the Commission order a hearing to determine the cost, terms, conditions and availability, if any, of power for the PUD.

The PUD subsequently filed on September 19, 1988, a motion for expedited consideration of its petition. Seattle filed a response to that motion on October 20, 1988, which asserts that the PUD is not entitled to project power during the July1, 1988, through June 30, 1989 operating year, because the PUD has "firm surplus" energy in an amount exceeding the PUD's requested transfer from the project. This filing also argues that any surplus sales the PUD makes outside Pend Oreille County will lower the amount of any valid claim the PUD may have for a transfer of power form the project under Article 49.

Seattle's October 20 response adds the assertion that the issue of Pend Oreille's claim to power under Article 49 stems from the construction of a large paper plant and fiber mill at Usk, Washington, owned by the Ponderway Newsprint Company. Seattle claims that this mill represents a new large single load in the Pacific Northwest region of approximately 60 average MW, allegedly three times the average load of all the PUD's present customers combined. Seattle states that this load will not actually be served by the PUD, but by the Bonneville Power Administration. Seattle argues that the supply of power to the mill by Bonneville brings into question the PUD's entitlement to any power transfer from Seattle's Boundary Project under a claim that the PUD will be supplying power to the newsprint company.

Anyone may file comments, protests, or a motion to intervene in accordance with the requirements of the Commission's Procedural Rules 211 or 214, 18 CFR 385.211 or 385.214 (1984). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. All comments, protests or motions to intervene must be filed with the commission or before November 30, 1988. Any filing must bear in all capital letters the title "COMMENTS," "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Docket No. of this notice. Send the filings to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426. A copy of any filing must also be served on the PUD and Seattle. The petition for declaratory order and subsequent filings referred to herein are available in the Commission's public files. Copies of their respective filings may also be obtained from the PUD and Seattle.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25826 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–191–003]

Tennessee Gas Pipeline Co.; Notice of Filing

November 4, 1988.

Take notice that on October 28, 1988, Tennessee Gas Pipeline Company (Tennessee) filed Substitute Original Sheet Nos. 245A, 245C and 245D to Second Revised Volume No. 1 of its FERC Gas Tariff.

Tennessee states that the purpose of the filing is to comply with Ordering Paragraph (B) of the Commission's September 28, 1988 Order in this proceeding. The revised tariff sheets reflect (1) elimination of language relating to the suspension of the December 31, 1988 sunset date for recovery of costs associated with gas contracts in litigation, (2) an October 28, 1988 deadline for customers to notify Tennessee of extended amortization elections and (3) clarification of language relating to lump sum payment of amounts outstanding at the end of the amortization period elected by a customer.

The tariff sheets are proposed to be effective July 1, 1988.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25812 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP89-8-000]

TransCanada PipeLines Limited v. Michigan Consolidated Gas Company-Utility Division; Notice of Complaint

November 1, 1988.

Take notice that on October 3, 1988, TransCanada PipeLines Limited (TransCanada), P.O. Box 54, Commerce Court West, Toronto, Ontario, Canada M5L 1C2, filed in Docket No. CP89-8-000 a complaint against Michigan Consolidated Gas Company-Utility Division (MichCon) pursuant to Rule 206, 18 CFR 385.206. MichCon, in Docket Nos. CP88-464-000 and CP88-509-000, filed applications for authority for the siting, construction, and operation of a pipeline at the Canadian border in order to import and export natural gas.

MichCon proposes to construct and operate a pipeline under the St. Clair River at the international border in order to facilitate the transportation and exchange of gas between MichCon and Union Gas Limited, a local distribution company in Ontario, Canada. Pursuant to the contractual agreements of the parties, MichCon would transport gas which Union Gas would export and import between the United States and Canada. The project consists of approximatley three miles of 24-inch pipeline for the purpose of transporting natural gas between a proposed gas pipeline in Ontario, Canada, and MichCon's Belle River Mills station in St. Clair County, Michigan. The maximum daily capacity of the proposed pipeline is 200 Mcf.

TransCanada's complaint alleges that, contrary to the assertions contained in MichCon's applications, any subsequent interstate transportation of natural gas imported through their pipeline is not exempt from the Commission's jurisdiction under section 7 of the Natural Gas Act by virtue of MichCon's transportation authority under section 311 of the Natural Gas Policy Act of 1978, that construction and operation of the proposed pipeline constitutes transactions in interstate commerce subject to the Commission's section 7 jurisdiction, and that MichCon holds no transportation authorization pursuant to section 311. TransCanada requests that the Commission enjoin MichCon from proceeding with construction of the proposed pipeline until such time as MichCon receives Commission authorization pursuant to section 7 of the Natural Gas Act.

Any person desiring to be heard or make any protest with reference to said filing should file with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such petitions should be filed within 30 days following publication of this notice in the **Federal Register**. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection. TransCanada has served a copy of the complaint on Mich-Con. Respondent's answer to the complaint is also due on or before 30 days following **Federal Register** publication.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25816 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-11-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

November 4, 1988.

Take notice that Trunkline Gas Company (Trunkline) on October 28, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

Original Sheet No. 3-A.7
Original Sheet No. 3-A.8
Third Revised Sheet No. 21-P

The subject tariff sheets bear an issue date of October 28, 1988, and a proposed effective date of November 28, 1988.

Trunkline states these tariff sheets reflect fixed demand surcharges to effectuate the recovery of 50% of approximately $27 million for take-or-pay buyout and buydowns of gas purchase arrangements with producers suppliers. This amount reflects take-or-pay settlement costs incurred by Trunkline and for which Trunkline has either a written or verbal obligation to pay, such obligations being entered into during the period from August 30, 1988 to October 28, 1988.

Trunkline states this fixed take-or-pay charge will be billed in addition to Trunkline's currently effective rates, including the fixed take-or-pay charges approved subject to refund and conditions, in Docket No. RP88-239-000 which recover 50% of Trunkline's take-or-pay costs incurred prior to August 29, 1988.

Trunkline proposes in this filing to allocate the additional take-or-pay costs to its jurisdictional sales customers, including Mississippi River Transmission Corporation, in accordance with the same methodology approved, subject to refund and conditions, by the Commission in its September 28, 1988 Order in Docket No. RP88-239-000.

Trunkline states the additional fixed demand surcharges are allocated among the firm sales customers on the basis of a comparison of their firm purchases during the deficiency period years 1982 through 1987, with their individual firm purchases in base period year 1981.

Trunkline states that in accordance with Order No. 500 it is agreeing in this filing to absorb an amount equal to the costs Trunkline is permitted to recover through fixed demand surcharges. Trunkline reserves the right, however, in the event any customer elects to challenge the prudence of the take-or-pay settlement and contract reformation costs which Trunkline seeks to recover by this filing, to bill to that party, by means of a fixed demand surcharge, its *full* pro rata share of the subject costs found to be prudently incurred (in addition to such further costs as the Commission may permit). In accordance with the Commission's rulings in *United Gas Pipe Line Co.*, 42 FERC Paragraph 61,197 at pp. 61,685-86 (1988). Trunkline also reserves the right to recover through demand surcharges, the full pro rata share of the subject costs found to be recoverable from customers under the jurisdiction of a state agency that elects to contest the prudence of the subject costs. To facilitate the disposition of this matter, Trunkline requests the Commission to require that any party choosing to contest the prudence of the subject costs be provided only a limited amount of time to make such an election and that such election be deemed to be irrevocable except as Trunkline may otherwise consent.

Trunkline requests that the Commission waive the filing requirements of § 154.63 of the Commission's Regulations and the provisions of § 154.66 to accept, without delay, Trunkline's filing herein and the material incorporated herein by reference, as the cost and revenue support for this filing, permitting the same to become effective on November 28, 1988.

Trunkline asks the Commission to grant all necessary waivers so as to place the instant tariff sheets and attendant rates into effect on November 28, 1988. Since the instant filing effectuates the cost sharing policy of Order No. 500, Trunkline states good cause exists to place such tariff sheets into effect on an expeditious basis.

Copies of the filing were served upon Trunkline's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Trunkline's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25813 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

November 3, 1988.

Take notice that Trunkline Gas Company (Trunkline) on October 28, 1988, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Sixth Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is December 1, 1988.

Trunkline states that this revised tariff sheet filed herewith reflects a commodity rate increase of 6.50¢ per Dt in the projected purchased gas cost component.

Trunkline states that the above-referenced tariff sheet is being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchased Gas Adjustment Clause) of Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Trunkline's jurisdictional rates effective December 1, 1988.

Trunkline states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25814 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89-1-56-000 and TQ89-1-56-001]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

November 3, 1988.

Take notice that Valero Interstate Transmission Company ("Vitco"), on October 31 and November 1, 1988 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in Purchased Gas Cost rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1

10th Revised Sheet No. 14.2

FERC Gas Tariff, Original Volume No. 2

15th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

Vitco states the changes in rates to Rate Schedule S-1, FERC Gas Tariff Original Volume No. 2 includes a decrease in purchased gas costs of $.0218 and elimination of a surcharge of $.2943 for a total decrease of $.3161 per MMBtu. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost $.0061 and elimination of a surcharge of ($1.1241) for a total increase of $1.1302 per MMBtu.

The proposed effective date for the above filing is December 1, 1988. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by December 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25815 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearings; Advanced Broadcast Technologies, Inc.

1. The Commission has before it the following groups of mutually exclusive applications for new FM stations:

I

Applicant, City and State	File No.	MM Docket No.
A. Advanced Broadcast Technologies, Inc., State College, PA.	BPH-870915MC	88-474
B. Destiny Communications, Inc., State College, PA.	BPH-870915MD	.....
C. American Indian Broadcast Group, Inc., State College, PA.	BPH-870916MB	.....
D. Board of Trustees of the Pennsylvania State University, State College, PA.	BPED-870916MD	.....

Issue Heading and Applicants

1. Air Hazard—A, B, C
2. Comparative—All Applicants
3. Ultimate—All Applicants

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II

Applicant, City and State	File No.	MM Docket No.
A. Image Broadcasting, Inc., Lowell, Arkansas.	BPH-871102MB	88-477
B. Douglas R. Whitman, and Pamela K. Whitman, Lowell, Arkansas.	BPH-871105MC	.....
C. War Eagle Broadcasting, Inc., Lowell, Arkansas.	BPH-871105ME	.....
D. Winco Broadcasting, Inc., Lowell, Arkansas.	BPH-871105MH	.....
E. Kenneth G. Eklund and Marsha M. Walker d/b/a Eklund-Walker Communications, Lowell, Arkansas.	BPH-871105MJ	.....
F. Florence K. Grace, Lowell, Arkansas.	BPH-871105MP	.....
G. Beaver Broadcasting, Inc., Lowell, Arkansas.	BPH-871105MM	.....
H. Jimmy Lee Jones d/b/a Jones Communications, Lowell, Arkansas.	BPH-871105MN	.....

Issue Heading and Applicants

1. City Coverage—E
2. Environmental Impact—H
3. Comparative—A–H
4. Ultimate—A–H

III

Applicant, City and State	File No.	MM Docket No.
A. Ra-ad of Trenton, Inc., Trenton, GA.	BPH-870917MD	88-479
B. Trenton Service Co., Inc., Trenton, GA.	BPH-870918MV	.....

Issue Heading and Applicant(s)

1. Comparative—A, B
2. Ultimate—A, B

III

Applicant, City and State	File No.	MM Docket No.
A. Dennis N. O'Neal, Laurel, Delaware.	BPH-870914MA	88-478
B. M Corps, Inc., Laurel, Delaware.	BPH-870914MQ	.....

Issue Heading and Applicants

1. Air Hazard—A, B
2. Comparative—A, B
3. Ultimate—A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceedings upon the issues listed above for each proceeding. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. Non-standardized issues in these proceedings, are set forth in an Appendix to this Notice. A copy of the complete HDO's in these proceedings are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief Audio Services Division, Mass Media Bureau.

[FR Doc. 88-25750 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Renewal without any change.

Title: Monthly Report of Income and Condition (Savings Banks).

Form Number: FDIC 8040/60.

OMB Number: 3064-0058.

Expiration Date of Current OMB Clearance: 1/31/89.

Frequency of Response: Monthly.

Respondents: FDIC-insured savings banks with assets of $500 million or more.

Number of Respondents: 101.

Number of Responses Per Respondent: 12.

Total Annual Responses: 1,212.

Average Number of Hours Per Response: .75.

Total Annual Burden Hours: 909.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 5550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before January 9, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval, under the Paperwork Reduction Act, to continue using form FDIC 8040/60, Report of Income and Condition—Monthly, which is submitted by large FDIC-insured savings banks (assets of $500 million or more). The monthly reports are used by the FDIC to monitor deposit flows and income-expense results for savings banks of supervisory concern. Also, the FDIC uses the data to compute avarage cost of funds indices upon which periodic income maintenance agreements are based.

Dated: November 3, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-25820 Filed 11-7-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations; Crown Shipping (USA) Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2932.
Name: Crown Shipping (USA) Inc.
Address: 4 Carriage Lane, Ste. 205, Charleston, SC 29407.
Date Revoked: October 22, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 3019.
Name: Michael W. Shaw dba Restricted Article Freight Forwarding.
Address: 2831 Hidden Garden, Kingwood, TX 77339.
Date Revoked: October 24, 1988.
Reason: Surrendered license voluntarily.

License Number: 3078.
Name: Seacon Express Chicago, Inc.
Address: 1107 N. Ellis Street, Bensenville, IL 60106.
Date Revoked: October 31, 1988.
Reason: Surrendered license voluntarily.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88-25747 Filed 11-7-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; H.L.M. Intertrans Corp., et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

H.L.M. Intertrans Corp., 5419 NW. 74th Avenue, Miami, FL 33166. Officers: Nilo E. Villena, Sr., President; Rosa E. Villena, Vice President.

Midwest Agencies Company, 3426 S. Lenox Street, Milwaukee, WI 53207. Officer: Cynthia J. Dee, Sole Proprietor.

Transit Cargo Services, Inc., 45 John Street, New York, NY 10038. Officers: Miguel Guerrero, President; Arne Faaberg, Vice President/Stockholder.

Freight Connections International, Ltd., 935 W. 175th Street, Homewood, IL 60430. Officers: Richard Dickson, President/Director/Stockholder; Michael Kelly, Sec./Treas./Dir./Stockholder; George Trainer, Exec. Vice Pres./Dir./Stockholder; Jacqueline Guy, Vice President.

Rewico America Inc., 47 Fitzherbert Street, Bloomfield, NJ 07003. Officers: Rolf Winterberg, President/Director; Gustav Tietje, Vice President/Director; Jurgen Krafft, Treasurer/Director; Steve Higgins, Vice President/Secretary.

Dated: November 3, 1988.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-25746 Filed 11-7-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Brooke Holdings, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The lised company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Brooke Holdings, Inc.*, Jewell, Kansas; to become a bank holding company by acquiring 97.93 percent of the voting shares of Citizens State Bank, Jewell, Kansas.

In connection with this application, Applicant also proposes to engage in credit insurance activities pursuant to § 225.25(b)(8)(i) and insurance activities in small towns pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. The insurance activities to be conducted in a small town will be conducted within a ten mile radius of the community of Jewell, Kansas.

Board of Governors of the Federal Reserve System, November 2, 1988.

James MacAfee,

Associate Secretary of the Board.

[FR Doc. 88-25733 Filed 11-7-88; 8:45 am]

BILLING CODE 6210-01-M

MidAmerica Bank Corp., et al.; Formations of; Acquistions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 23, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33

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Liberty Street, New York, New York 10045:

1. *MidAmerica Bank Corporation,* Somerville, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Mid Jersey National Bank, Somerville, New Jersey.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *CommBanc Shares, Inc.,* Erlanger, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Community Bank, Erlanger, Kentucky.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Security National Corporation,* Maitland, Florida; to acquire 100 percent of the voting shares of Security National Bank of Brevard, Melbourne, Florida, a *de novo* bank.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Charter 95 Corporation,* Hudson, Wisconsin; to acquire 60.65 percent of the voting shares of North Branch Investment, Inc., North Branch, Minnesota, and thereby indirectly acquire 37.31 percent of the voting shares of Merchants State Bank, North Branch, Minnesota.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company of Colorado,* Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of West Vail, Vail, Colorado.

Board of Governors of the Federal Reserve System, November 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25734 Filed 11-7-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Jay Nelson

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 21, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Jay Nelson,* Austin, Minnesota; to acquire an additional 12.4 percent of the voting shares of Mower Agency, Inc., Austin, Minnesota, and thereby indirectly acquire Sterling State Bank, Austin, Minnesota.

Board of Governors of the Federal Reserve System, November 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25732 Filed 11-7-88; 8:45 am]

BILLING CODE 6210-01-M

Signet Banking Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) Of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation,* Richmond, Virginia; to engage *de novo* through its subsidiary, Fortune Asset Management, Inc., Richmond, Virginia, in providing investment counselling and advice and the management of securities accounts through a joint venture with the Equimax Corporation, Richmond, Virginia, pursuant to § 225.25(b) (3) and (4) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *A.B.N.—Stichting,* Amsterdam, The Netherlands; to expand the activities of its subsidiary, Netherlands Trading Society East, Inc., Chicago, Illinois, in making, acquiring, and servicing loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted on a national and international basis.

2. *Athens Bancorp, Inc.,* Athens, Wisconsin; to engage *de novo* by acquiring a 9 percent interest in Vigil Asset Management Group, Inc., Wausau, Wisconsin, in providing a full range of trust and fiduciary services to the general public pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25735 Filed 11-7-88; 8:45 am]

BILLING CODE 6210-01-M

Washington National Holdings, N.V.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-24796) published at page 43477 of the issue for Thursday, October 27, 1988.

Under the Federal Reserve Bank of Richmond, the entry for Washington National Holdings is amended to read as follows:

1. *Washington National Holdings, N.V.,* Netherlands Antilles; acquire 100 percent of the voting shares of The Washington Bank (of Maryland), Baltimore, Maryland, a *de novo* bank.

Comments on this application must be received by November 22, 1988.

Board of Governors of the Federal Reserve System, November 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25736 Filed 11-7-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-021-N]

Medicare Program; Part A Premium for the Uninsured Aged for 1989

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the hospital insurance premium for the uninsured aged for calendar year 1989 under Medicare's hospital insurance program (Part A). The monthly Medicare Part A premium for the 12 months beginning January 1, 1989 (for individuals who are not insured under the Social Security or Railroad Retirement Acts and do not otherwise meet the requirements for entitlement to Part A) is $156. The Medicare statute specifies the method to be used to determine this amount.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara S. Klees, (301) 966-6388.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to Part A. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d)(2) of the Act, as amended by section 103 of Pub. L. 100-360, requires the Secretary to determine and publish, during September of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the following calendar year.

Section 1818(d) of the Act, as amended by section 103 of Pub. L. 100-360, requires the Secretary to estimate the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed and for related administrative costs incurred in the following year with respect to individuals age 65 and over who will be entitled to benefits under Part A, and to estimate the average per capita cost. He must then, during September, determine the monthly actuarial rate (the per capita amount estimated above divided by 12) and promulgate the dollar amount to be applicable for premiums in the succeeding year. If the premium is not a multiple of $1.00, the premium is rounded to the nearest multiple of $1.00 (or if it is a multiple of 50 cents but not of $1.00, it is rounded to the next highest $1.00). The first premium under this new method is effective January 1989.

II. Premium Amount For 1989

Under the authority in section 1818(d)(2) of the Act (42 U.S.C. 1395i-2(d)(2)), I have determined that the monthly Medicare hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1989 is $156, which is a decrease from the 1988 premium. This premium represents a decrease from previous premiums as the law now requires that the premium be based on the cost of services. Until now, the premium was, as required by statute, $33 multiplied by the ratio of the inpatient hospital deductible for the same calendar year to the deductible for 1973.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Premium Rate

As discussed in section I of this notice, the monthly premium for the uninsured aged for 1989 is equal to the monthly actuarial rate for 1989 rounded to the nearest multiple of $1; the monthly actuarial rate is defined to be one-twelfth of the average per capita amount that the Secretary estimates will be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in 1989 for individuals age 65 and over who will be entitled to benefits under the hospital insurance program. Thus, the number of individuals age 65 and over who will be entitled to hospital insurance benefits and the costs incurred on behalf of these beneficiaries must be projected to determined the premium rate.

The principal steps involved in projecting the future costs of the hospital insurance program are (a) establishing the present cost of services provided to beneficiaries, by type of service, to serve as a projection base; (b) projecting increases in payment amounts for each of the various service types; and (c) projecting increases in administrative costs. Establishing historical Part A enrollment and projecting enrollment, by type of beneficiary, is part of this process.

We have completed all of the above steps, basing our projections for 1989 on (a) current historical data and (b) projection assumptions from the Midsession Review of the Presidents Fiscal Year 1989 Budget. It is estimated that in calendar year 1989, 29.543 million people age 65 and over will be entitled to Part A benefits (without premium payment), and that these individuals will, in 1989, incur $55.425 billion of benefits for services performed and related administrative costs. Thus, the estimated monthly average per capita amount is $156.34, and the monthly premium is $156.

IV. Savings to Beneficiaries

The 1989 Part A premium is 33 percent lower than the $234 monthly premium amount for the 12-month period beginning January 1, 1988.

The estimated savings of this decrease to the approximately 19 thousands enrollees who do not otherwise meet the requirements for entitlement to hospital insurance will be about $1.5 million.

V. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612) or section 1102(b) of the Act.

(Section 1818(d)(2) of the Social Security Act (42 U.S.C.) 1395i-2(d)(2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

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Dated: September 29, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 4, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-25765 Filed 11-7-88; 8:45 am]

BILLING CODE 4120-01-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

AGENCY HOLDING THE MEETING: President's Committee on Mental Retardation.

TIME AND DATE: Executive Committee, Sunday, December 4, 1988, 1:00 p.m.–5:00 p.m.; Full Committee, December 5–6, 1988; 9:00 a.m.–5:00 p.m., December 5, 1988; 9:00 a.m.–5:00 p.m., December 6, 1988.

PLACE: Holiday Inn–Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

STATUS: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

MATTERS TO BE CONSIDERED: Reports by members of the Executive Committee of the President's Committee on Mental Regardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to progams and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for persons with mental retardation, and reviewing legislative proposals that affect persons with mental retardation.

CONTACT PERSON FOR MORE INFORMATION: Vivian B. Levin, 330 Independence Avenue, SW., Room 4723–Wilbur J. Cohen Building, Washington, DC 20201–0001, (202) 245–7634.

Date: November 2, 1988.

Vivian B. Levin,

Executive Director, PCMR.

[FR Doc. 88-25764 Filed 11-7-88; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

Advisory Committee to the Director, NIH; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on December 14–15, 1988 at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 9:00 a.m. to 5:00 p.m., on December 14, and 9:00 a.m. to 12:00 noon on December 15, in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to a review and discussion of the report of the Human Fetal Tissue Transplantation Research Panel and the deliberations of the Panel on the scientific, ethical, and legal issues surrounding the use of human fetal tissue obtained from induced abortions in transplantation research for therapeutic purposes.

The executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 103, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: November 1, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-25835 Filed 11-7-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; National Kidney and Urologic Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on December 1–2, 1988, from 8 a.m. to approximately 5 p.m. each day at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, Virginia 22209. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–8045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: November 1, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88-25836 Filed 11-7-88; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Planning Subcommittee of the Board of Regents; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on November 21 and 22, 1988, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on November 21, and from 9:00 a.m. to adjournment on November 22. The Subcommittee will discuss the Outreach Programs of the National Library of Medicine—how the Library can fully inform health care professionals of its products and services, and how to establish a permanent user feedback mechanism. Attendance by the public will be limited to space available.

Ms. Susan P. Buyer Slater, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301-496-8834, will provide a summary of the meeting, a roster of Subcommittee members, and substantive program information upon request.

Date: November 1, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-25837 Filed 11-7-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1888]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, the OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 28, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notice for the Section 8 Certificate Project-Based Assistance Program

Office: Housing

Description of the Need for the Information and its Proposed Use: This program Notice establishes the procedures under which a Public Housing Agency (PHA) may, at its sole option, choose to provide Section 8 project-based assistance with funds provided to the PHA for its Section 8 Certificate Program. The Notice implements a 1987 law which directs the Department to permit a PHA to attach to structures up to 15 percent of the Section 8 Assistance by the PHA under the Certificate Program.

Form Number: None

Respondents: State or Local Governments, Business or Other Non-Profit and Non-Profit Institutions

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondnts	×	Frequency of response	×	Hours per response	=	Burden Hours
PHAs	200		1		2 hrs		400
(Properties)	(50)		(1)		(½ hr)		(25)
Total Burden							425
Owners Total Burden	100		1		10.2 hrs		1020
Estimated Hours							1,445

Total Estimated Burden Hours: 1,445

Status: New Collection

Contact: Myra Newbill, HUD, (202) 755-6887; John Allison, OMB, (202) 395-6880

Dated:

Supporting Statement for Section 8 Certificate Project-Based Assistance Notice

A. Justification

1. The Section 8 Housing Assistance Payments Program was authorized by the U.S. Housing Act of 1937 as amended by the Housing and Community Development Act of 1974 (Pub. L. 93-383) and the Stewart B. McKinney Homeless Assistance Amendments Act of 1988. Under the Section 8 Certificate Program, The Department of Housing and Urban Development (HUD) enters into an Annual Contributions Contract (ACC) with Public Housing Agencies (PHAs) to assist very low-income families who enter into leases directly with private owners of existing rental housing. Section 8(d)(2) was amended by section 148 of the HUD Act of 1987 (Pub. L. 100-242) to require HUD to permit a PHA to attach to structures up to 15 percent of the Section 8 Existing housing assistance provided by the PHA thereby creating a Section 8 Certificate Program project-based component. Section 208 of the Housing and Urban Rural Recovery Act of 1983 (Pub. L. 98-181) previously amended Section 8(d)(2) to permit the attachment of assistance to an existing structure only if the owner agrees to rehabilitate the structure other than with assistance under the 1937 Act. The program Notice requires that the term of the Housing Assistance Payments Contract for the structure not extend beyond the term of the ACC.

2. Section 8 Certificate project-based assistance is a modification of the current Section 8 Existing Housing (Certificate) Program. Neither the statute nor the Notice imposes any obligation on a PHA to implement project-based assistance. Project-based assistance will allow PHAs to tie Section 8 assistance to units where HUD and the PHA agree to such an action and the owner agrees to rehabilitate the structure other than with assistance provided under the U.S. Housing Act of 1937.

The requested information requirements (by whom and for what purpose the information is to be used) consist of the following:

Section 4.—PHA request for HUD approval to attach assistance to units. Approximately 200 PHAs will submit to the HUD Field Office the following:

—The total number of units currently reserved for the PHA's Section 8 Certificate Program and the total number of units requested for project-based subsidy;

—The number of units, by bedroom size, to be assisted and the funding source with the termination date of

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ACC; and
—The estimated rehabilitation periods and termination dates for the HAP Contracts to be executed for the projected-based subsidies.

Upon HUD approval of the PHA request, the PHA will be authorized to implement a Project Based Certificate Program.

Section 12.a.(2)—Submittal of financial statements of PHAs by owners: The Department anticipates that approximately ten owners will request special adjustments to reflect increases in actual and necessary expenses of owning and maintaining units that have resulted from substantial general increases in real property taxes, utility rates, or similar costs. The owners must clearly demonstrate that these general increases in operating costs are not adequately compensated for by the annual adjustments and submit the financial statements to support the increase. PHA will send the Owner requests to HUD. If approved by HUD, the PHA will approve rent increases for the units.

Section 16—Work write-up requirement: Approximately 100 owners must prepare work write-ups which include specifications and plans (where necessary). The write-up describes how the specific work items are to be performed, including the minimum acceptable levels of workmanship and materials. This is necessary so the PHA and owner agree to the items to be rehabilitated.

Section 17.d.—PHA notification of families on waiting list: In order that vacant units might be promptly occupied, the owners (100) must notify the PHAs of vacancies, 60 days before the scheduled completion of the rehabilitation. The PHAs must notify families, of appropriate size and composition, on its waiting lists that units are available.

Section 18 (a) and (b)—Owner notification of completion: The owner must notify the PHA when the rehabilitation work is completed and submit to the PHA the evidence of completion. The evidence of completion consists of the following:
—A certificate of occupancy or other official approvals;
—Owner certifies that:
—The units are completed in accordance with the Agreement requirements
—The units are in good and tenantable condition
—There are no defects or deficiencies in the work
—The units have been rehabilitated in accordance with applicable zoning, building, housing, other codes, ordinances or regulations
—Units built before 1978 are in compliance with the lead-based paint regulations
—The owner has complied with the applicable Agreement's labor standards requirements

If everything is acceptable, the PHA and Owner will execute a HAP Contract and rent subsidies will begin.

3. No consideration has been given to the use of improved information technology to reduce burden.

4. There is no duplication.

5. There is no similar information.

6. The associated burden with this new program component is the minimum needed for monitoring and implementation.

7. The information cannot be collected less frequently because it is either: (1) A one-time collection at the sole option of the PHA (request for HUD approval); (2) information submitted on occasion at the sole option of the owner (special adjustments); or (3) information necessary to ensure housing rehabilitation and occupancy by very low income families.

8. There are no special circumstances and the guidelines of 5 CFR 1320.6 are not violated.

9. There were no consultations outside of the agency.

10. No assurance of confidentially is provided, nor is it needed.

11. No sensitive questions are asked.

12. & 13. It is estimated that because of initial PHA resistance to new programs, approximately 200 PHAs will annually utilize this project-based assistance program. We also estimate that 100 owners with 1000 units in approximately 100 properties will annually participate, and that 50% (50 properties) of the properties will be occupied by eligible families prior to rehabilitation. The total annual burden hours for PHAs are 425 hours and for owners 1025 hours. The estimated cost per PHA and owner is approximately $13.00 per hour which results in the cost of PHAs at $5,525.00 annually ($28.00 per PHA) and for owners $13,260.00 annually ($133.00 per owner) for a total of $18,785.00 annually. See attached matrix for estimated burden hours.

14. This is a new information collection burden. See items 12 and 13 for estimates.

15. Not applicable; information will not be published for statistical use.

B. Collection of Information Employing Statistical Methods: Section B is not applicable since statistical methods are not utilized.

New requirements applicable program ref.	Discription of information collection	Form used	Number of respondents + number of responses per respondent	Hours per response + Total annual hours	Average cost per PHA or owner	Estimates cost annually
Section 4—PHA Application for HUD Approval to attach Assistance to units.	Total No. of units; units proposed for project—based by bedroom size and funding source w/end date; rehab period and proposed termination date of HAP Contract.	No prescribed form	200 PHAs (1 response each).	2 hrs. (400 hrs.)	$13.00 per hr. (average cost per hr. for PHA mgmt. staff).	$5,200.00.
Section 12.a.(2)—Special Rent Adjustment.	Special Adjustments—financial statements submitted by Owner to support request for rent increase.	No prescribed form	10 owners (1 response each).	2 hrs. (20 hrs.)	$13.00 per hr. (average cost per hr. for owner property mgmt. staff).	$260.00.
Section 16 Work Write-up requirement.	Work write-ups prepared by owners	No prescribed form	100 owners (1 response each).	5 hrs. (500 hrs.)	$13.00 per hr	$6,500.00.
Section 17.d. PHA notification of families on waiting list.	PHA notification of families on waiting list of vacant units.	No prescribed form	200 PHAs (50 properties) (1 response each).	½ hr. per property (25 hrs.).	$13.00 per hr	$325.00.
Sections 18 (a) and (b)-owner notification of completion.	Notification and evidence of completion submited by owner.	Owner certification and certificate of occupancy.	100 owners (1 response each).	5 hrs. (500 hrs.). PHAs, 425; Owners, 1020; Cumulative Total Hours, 1,445.	$13.00 per hr	$6,500.00. Total Annual Cost: PHAS, $5,525; Owners, $13,260; Total, $18,785.

Section 8 Certificate Program—Project-based Assistance

1. Purpose

a. This Notice establishes the procedures under which a Public Housing Agency (PHA) may, at its sole option, choose to provide Section 8 project-based assistance with funds provided to the PHA for its Seciton 8 Certificate Program. The Notice implements a 1987 law which directs the Department to permit a PHA to "attach to structures" up to 15 percent of the Section 8 assistance provided by the PHA under the Certificate Program. Within this 15 percent limit, the PHA may attach a Section 8 assistance contract to a structure where the owner agrees to rehabilitate the structure *other than* with assistance provided under the United States Housing Act of 1937. The purpose of project-based assistance in the Certificate Program is to induce property owners to upgrade substandard rental housing stock, and make it available to lower income families at rents within the Sction 8 Existing Housing Fair Market Rents.

b. This notice implements Section 8(d)(2) of the United States Housing Act of 1937 as amended by section 148 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988).

Section 8(d)(2) was further amended by section 1005 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. _____, approved _____)).

The 1988 McKinney amendments permit attachment of assistance to a newly constructed structure (Section 1005(b)). This amendment is not implemented by this notice. The Department intends to implement this provision in a regulation to take effect within 90 days after enactment of the 1988 McKinney amendments.

c. Section 8(d)(2)(A) provides as follows:

Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months. Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (i) the Secretary and the public housing agency approve such action, and (ii) the owner agrees to rehabilitate the structure other than with assistance under this Act and otherwise complies with the requirements of this section, except that the Secretary shall permit the public housing agency to approve such attachment with respect to not more than 15 percent of the assistance provided by the public housing agency if the requirements of clause (ii) are met.

d. HUD does not provide any separate funding expressly for project-based assistance. Funding for project-based assistance is contract authority under the ACC for the PHA's entire Section 8 Certificate Program.

e. The notice contains new provisions needed to implement project-based assistance. However, the bulk of requirements for project-based assistance under this notice are derived from existing HUD regulations: for the Section 8 Certificate Program (Subparts A and B of 24 CFR Part 882), for the Section 8 Moderate Rehabilitation Program (Subparts D and E of Part 882), and concerning termination of tenancy in project-based assisted housing (Part 247).

To avoid unnecessarily repeating provisions common to both the "finders-keepers" Certificate Program and for project-based assistance, whenever practicable this Notice incorporates by cross-reference pertinent provisions in Part 882, Subparts A and B. Certain provisions in the Section 8 Moderate Rehabilitation Program rules (Subparts D and E of Part 882) are also incorporated by cross-reference.

In general, the principal modifications to Certificate Program requirements which are needed to provide project-based assistance fall within the following areas: Policies needed to determine the 15-percent limit under which the PHA must be permitted to attach assistance to units; policies implementing the statutory rehabilitation requirement; and inapplicability of those Section 8 Certificate Program policies that are unique to a "finders-keepers" program and, therefore, not pertinent to project-based assistance.

f. This Notice states the conditions under which a PHA may attach assistance to units. This Notice applies only to assistance provided by HUD under the Annual Contributions Contract for the PHA's Section 8 Certificate Program. Under this Notice, the PHA may execute a HAP Contract with an Owner in which the PHA agrees to make assistance payments to the Owner on behalf of eligible Families leasing one or more units specified in the Contract, if the Owner agrees to rehabilitate the structure other than with assistance under the United States Housing Act of 1937. The units to be assisted are selected by the PHA. Attaching assistance to units means that the HAP Contract for a unit is not limited to assistance on behalf of a specific Family (as in the Certificate Program). During the term of the HAP Contract, the PHA must pay a housing assistance payment to the Owner for a unit under lease by a Family in accordance with the Contract. If an assisted Family moves out of the unit, the HAP Contract continues and the assistance payments are paid on behalf of the next eligible Family which leases the unit. The Family that moves from the unit has no right to continued assistance under the Certificate Program or otherwise.

g. This Notice refers to assistance that is attached to units as "project-based" assistance to distinguish this assistance from the "tenant-based" assistance provided by the Certificate Program under 24 CFR Part 882, Subparts A, B, C, and F, and also by the Housing Voucher Program (24 CFR Part 887). With tenant-based assistance, the assisted unit is selected by the Family. The PHA then enters into an assistance Contract, which only covers a single unit and the specific assisted Family. If the Family moves out of a unit, the assistance contract terminates. The Family may move with continued assistance under the Program, and may find a new unit anywhere in the PHA jurisdiction.

h. Except as otherwise expressly modified or excluded by this Notice, all provisions of Subparts A and B of Part 882 apply to project-based assistance under this Notice.

i. The following sections in Subparts A and B of Part 882, which implement the tenant-based aspect of the Certificate Program, do not apply to project-based assistance under this Notice: Section 882.103, *"Finders-Keepers" policy*; § 882.208, *Activities to encourage participation by Owners and others*; and § 882.209(m), *Continued participation when Participant Family moves.* Other sections in this Notice identify other tenant-based provisions of Subparts A and B that do not apply to project-based assistance under this Notice.

j. This notice is not applicable to the Housing Voucher Program.

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3. Additional Definitions

The following definitions apply to assistance subject to this Notice, in addition to the definitions in § 882.102:

Agreement to Enter into Housing Assistance Payments Contract (Agreement). As defined in § 882.402.

15-Percent Limit. Fifteen percent of the total of the number of units reserved for a PHA's Section 8 Certificate Program.

Funding Source. The ACC funding authority from which the HAP Contract is to be funded. Funding authority under the ACC that was appropriated by Congress before Federal fiscal year 1988 (and amendments of that funding authority) constitutes a single pre-Federal fiscal year 1988 Funding Source. For funding authority appropriated in Federal fiscal year 1988 and later, each funding increment identified in the ACC is a separate Funding Source.

4. PHA Application for HUD Approval to Attach Assistance to Units

a. *Requirements.* A PHA may attach assistance to units in accordance with this Notice if:

(1) The number of project-based units in the PHA Certificate Program does not exceed the 15-Percent Limit. (There will be no waivers under this Notice of this limitation. The only exceptions to this policy will be made for two specific projects as required pursuant to the 1988 McKinney Act Amendments.)

(2) The unit sizes for units to which assistance will be attached are consistent with the unit size distribution for the Funding Source. (PHAs may request unit size redistributions in accordance with Handbook 7420.3 REV, paragraph 6–3, if necessary.)

(3) The rehabilitation period and HAP Contract term are within the ACC term for the Funding Source.

b. *PHA Application.* Before entering into any Agreements for project-based assistance, the PHA must apply to the HUD Field Office for approval to attach the assistance. The PHA application need not specify specific structures or units to be assisted. The PHA shall submit the following information:

(1) The number of units currently reserved for the PHA's Section 8 Certificate Program;

(2) The total number of units for which the PHA is requesting approval to attach assistance;

(3) The number of units by unit size (number of bedrooms) to be assisted from each Funding Source;

(4) The estimated rehabilitation periods and termination dates for HAP Contracts to be executed for project-based subsidies, and the termination date of the ACC for the Funding Source for each HAP Contract.

5. HUD Approval of PHA Application to Attach Assistance to Units

a. *Purpose of review.* The HUD Field Office shall review the information submitted by the PHA under section 4.b only to determine whether the requirements of section 4.a are satisfied.

b. *Notice to PHA.* (1) If the requirements of section 4.a are satisfied, the Field Office shall approve the PHA application.

(2) The Field Office shall notify the PHA of approval or disapproval within 20 calendar days after the date of the PHA submittal under section 4.b (date of postmark, if mailed, or date of receipt by HUD, if hand-delivered).

(3) If the application is approved, the Field Office shall notify the PHA that the PHA may proceed with execution of Agreements for project-based assistance. The approval letter shall specify the maximum number of units, by unit size and Funding Source, for which the PHA may execute Agreements, and shall specify, for each Funding Source, the ACC expiration date (last date of term). The HAP Contract term may not end after the ACC expiration date of the Funding Source from which the HAP Contract is to be funded.

(4) If any of the requirements of section 4.a are not satisfied, the Field Office shall not approve the PHA application. The Field Office shall notify the PHA by letter of the reasons for disapproval.

6. Annual Contributions Contract; Schedule of Leasing

Section 882.206, *Annual Contributions Contract; schedule of leasing,* applies. With respect to units assisted under this Notice the Field Office may authorize the extension of the schedule of leasing (see § 882.206(c)) to accommodate the time needed to complete the rehabilitation of the units.

7. Housing Quality Standards

Section 882.404(b), *Site and neighborhood-performance requirements,* applies, in addition to the Housing Quality Standards in § 882.109.

8. Eligible and Ineligible Properties; Rehabilitation Requirement

a. Section 882.110, *Types of housing,* does not apply. Existing structures of various types may be appropriate for attaching assistance to the units under this Notice, including single-family housing and multifamily structures. To be an eligible property, the property must require rehabilitation involving a minimum expenditure of $1000 per assisted unit, including the unit's prorated share of work to be accomplished on common areas or systems, in order to:

(1) Upgrade the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards;

(2) Repair or replace major building systems or components in danger of failure. (Work which qualifies as a major building system or component is defined in Section 2.a of Appendix 34 to Handbook 7420.3 REV.)

b. A PHA may not attach assistance under this Notice to units in the following types of housing:

(1) Housing that is owned by the PHA (or by an entity substantially controlled by the PHA) administering the ACC under which assistance is to be provided;

(2) Housing that is HUD-owned;

(3) Shared housing, nursing homes, and facilities providing continual psychiatric, medical, or nursing services;

(4) Units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions;

(5) Housing located in the Coastal Barriers Resources System designated under the Coastal Barriers Resources Act of 1982; or

(6) Housing located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a)(i) The community in which the area is situated is participating in the National Food Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or

(ii) Less than a year has passed since FEMA notification regarding such hazards; and

(b) The PHA will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

c. A PHA may attach assistance under this Notice to a highrise elevator project for Families with children only if HUD determines there is no practical alternative. HUD may make this determination for a PHA's project-based assistance, in whole or in part, and need not review each building on a case-by-case basis.

d. A PHA may attach assistance to units under this Notice for use as single room occupancy (SRO) housing only if:

(1) The property is located in an area in which there is a significant demand for these units, as determined by the HUD Field Office;

(2) The PHA and the unit of general local government in which the property is located approve the attaching of assistance to these units; and

(3) The PHA and the unit of general local government certify to HUD that the property meets applicable local health and safety standards.

e. Assistance may not be attached to a unit that is occupied by an Owner; however, cooperatives are considered to be rental housing for purposes of this Notice.

f. For any Section 221(d)(3) BMIR, Section 202, Section 236 (insured or noninsured) or FmHA Section 515 interest credit unit or any State or locally subsidized unit, the housing assistance payment shall be the amount by which the rent otherwise payable by the Eligible Family under this Notice is less than the subsidized rent (which subsidy shall not be reduced on account of any assistance provided under this Notice).

g. In no event may any occupant of a unit with project-based assistance under this Notice receive the benefit of any of the following: any other form of Section 8 assistance, rent supplement, Section 23 housing assistance, or Section 236 "deep subsidy" rental assistance payments.

9. Relocation

Section 882.406 applies except that relocation costs incurred by the owner are not eligible costs for inclusion in the Contract Rents. It is noted, however, that these requirements may be affected by the Uniform Relocation Act Amendments of 1978 (Pub. L. 100–17, Title IV, 101 Stat. 132, 246 (1987). The amendments will become effective on the effective date provided in regulations to be published by the Department of Transportation, but not later than April 2, 1989. The Department of Transportation published a proposed rule on July 21, 1988. 53 FR 27598.

10. Other Federal Requirements

a. Participation in this program requires compliance with the Equal Opportunity requirements specified in § 882.111, with section 504 of the Rehabilitation Act of 1973, and with the Age Discrimination Act of 1975. The PHA must also comply with its equal opportunity housing plan.

b. Activities under this Notice are subject to HUD environmental regulations at 24 CFR Part 50 (Attachment A to this Notice). PHAs shall assist HUD in ensuring compliance with Part 50 requirements as follows:

(1) A PHA may authorize rehabilitation of a project in connection with project-based assistance approved by HUD under section 5 without further HUD approval only if the PHA documents in its file why the rehabilitation activity will not:

(a) Exceed the limits in § 50.20(a) or (c) of this title for categorical exclusion from the NEPA requirements of 24 CFR Part 50. However, the PHA must notify HUD if it has reason to believe that notwithstanding inclusion in these categorical exclusion limits, the project might have a significant environmental effect because of extraordinary circumstances; in that case, HUD shall review the project and the PHA must await approval to proceed under paragraph b.(2) of this section;

(b) Based on information from the State Historic Preservation Officer, involve alterations to a property that is listed on the National Register of Historic Places; is located in an historic district or is immediately adjacent to a property that is listed on the Register; or is deemed by the State Historic Preservation Officer to be eligible for listing on the Register. A PHA is not required to contract the State Historic Preservation Officer if it documents in its file:

(1) For any property that involves only interior rehabilitation, that the property is not on the National Register of Historic Places and is not 50 years old or older; or

(2) For any property that involves exterior rehabilitation, that the property and all immediately adjacent properties are not on the National Register of Historic Places and are not 50 years old or older;

(c) Take place in any 100-year floodplain designated by map by the Federal Emergency Management Agency; or

(d) Conflict with HUD environmental standards in 24 CFR Part 51 (see Attachment B) or with the State's Coastal Zone Management plan.

(2) If further HUD approval is required under paragraph b(1) of this section, a PHA may authorize rehabilitation of a project in connection with project-based assistance only if:

(a) The PHA requests HUD to perform an environmental review of the project under Part 50, including the applicable related laws and authorities under § 50.4, HUD completes the environmental review required by Part 50, and HUD notifies the PHA that it may proceed; or

(b) (1) The PHA informs HUD that an environmental review of the area in which the proposed rehabilitation is to be located:

(A) Was previously completed for the purposes of another HUD Program under 24 CFR Part 50 or 58; and

(B) Addressed properties, activities, and effects comparable to those proposed for assistance under this Notice;

(2) HUD finds that the prior review applies to the proposed activities; and

(3) HUD notifies the PHA that it may proceed.

c. The PHA and Owner must agree to comply with the requirements of the following, where applicable:

(1) Clean Air Act and Federal Water Pollution Control Act;

(2) Flood Disaster Protection Act of 1973;

(3) Section 504 of the Rehabilitation Act of 1973;

(4) Executive Order 11246, Equal Employment Opportunity (for all construction contracts of over $10,000);

(5) Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises;

(6) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy; and

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(7) Payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the rehabilitation of the project under an Agreement covering nine or more assisted units, and compliance with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR Part 5, and other Federal laws and regulations pertaining to labor standards applicable to such an Agreement.

11. Initial Contract Rents

Section 882.106, *Contract Rents,* does not apply.

a. *Fair Market Rent and Agreement limitation.* (1) The initial Contract Rent plus any applicable Utility Allowance (Gross Rent) for any unit approved under this Notice shall not exceed the Section 8 Existing Housing Fair Market Rent applicable to the unit on the date the Agreement is executed, except as provided in this paragraph a. (See section 16.c, *Contract Rents in Agreement.*)

(2) The PHA may approve, on a unit-by-unit basis, initial Gross Rents that exceed the applicable Fair Market Rents by up to 10 percent. The total number of units with such rents approved under this paragraph a.(2) and under paragraph (a)(2) of § 882.106, Contract Rents, may not exceed 20 percent of the number of units under ACC for the PHA's Certificate Program. The PHA, however, may also exercise such authority with respect to more than 20 percent of the units under ACC if HUD approves such extension of the PHA's authority. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

(3) HUD may approve, upon request from a PHA, maximum initial Gross Rents for all units of a given size of up to 20 percent above the applicable Fair Market Rents within a designated municipality, county, or similar locality. Any such request must be supported by a statement of the special circumstances warranting such increase in the maximum Gross Rents, including whether such higher rents are necessary to implement a Housing Assistance Plan. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives. In no event shall a maximum Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(4) On the bais of a showing by the PHA that special circumstances apply to units of a given size limited to a specific neighborhood, and by reason of these circumstances the reasonable Gross Rents for such units are as high as 20 percent above the applicable Fair Market Rents, and the units cannot be rented for less, HUD may authorize the PHA to approve Gross Rents for such units up to 20 percent above the applicable Fair Market Rents. Authorization under this paragraph a(4) shall be based upon substantially the same criteria as under paragraph a(3) of this section, except for the last sentence of that paragraph.

b. *Rent reasonableness limitation.* (1) Because the Fair Market Rents are established for a geographic area, within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit.

(2) The PHA shall certify for each unit it approves for project-based assistance under this Notice that the initial Contract Rent for the rehabilitated unit is:

(a) Reasonable in relation to rents currently being charged for comparable units in the private unassisted market, taking into account the location, size, structure type, quality, amenities, facilities, and management and maintenance service of the unit; and

(b) Not in excess of rents currently being charged by the Owner for comparable unassisted units.

(3) For a rent-controlled unit, comparable units shall be those which are rent-controlled; for a unit which is not subject to rent control, comparable units shall be those which are not rent-controlled.

c. *Congregate housing.* (1) The Fair Market Rent for each congregate housing unit shall be the same as for a 0-bedroom unit, except that if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit.

(2) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining, and sanitary facilities and the provision of special amenities, maintenance or management services, or a combination of both.

(d) *Independent Group Residences.* (1) The Fair Market Rent for an Independent Group Residence shall be the Fair Market Rent applicable to the unit size being leased, for example, a 4-bedroom unit if the residence contains 4-bedrooms.

(2) A Resident Assistant who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining the Total Tenant Payment, the Tenant Rent or the Family's income eligibility.

(3) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common (rather than private) cooking, dining and sanitary facilities, and to the provision of special amenities or of maintenance or management services.

e. *Single room occupancy units.* (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent.

(2) In areas where HUD has approved the use of exception rents for O-bedroom units under paragraphs a(3) or a(4) of this section, the SRO exception rent will be 75 percent of the exception rent which applies to the Existing Housing O-bedroom unit. Further, a SRO unit may be granted an exception rent for its own specified unit size. In no case may the initial rent exceed 75 percent of 120 percent (i.e. 90 percent) of the O-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

f. *Other services—exclusion from Contract Rent.* The Contract Rent may not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or the cost of serving food.

12. Contract Rent Adjustments

a. Contract Rents will be adjusted as provided in paragraphs a(1) and a(2) of this section upon request to the PHA by the Owner. However, the unit must be in decent, safe, and sanitary condition, and the Owner must otherwise be in compliance with the terms of the Leases with Families and with the Contract. Subject to section 11.b (the rent reasonableness limitation), adjustments to Contract Rents shall be as follows:

(1) *Annual adjustments.* (a) Annual adjustments as of any anniversary date shall be determined by applying the applicable Section 8 Annual Adjustment Factor (24 CFR Part 888) most recently published by HUD in the **Federal Register** to the Contract Rent.

(b) Contract Rents may be adjusted upward or downward, as may be

appropriate. However, in no case may the adjusted Contract Rent be less than the Contract Rent on the effective date of the Contract (subject to post-audit and change of Contract Rent in accordance with HUD requirements, including the correction of errors in establishing the initial Contract Rent).

(2) *Special adjustments.* A PHA may make a special adjustment, subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract units that have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments provided for in paragraph a(1) of this section. The Owner must submit financial statements to the PHA which clearly support the increase.

(b) *Overall limitation.* Adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in section 11.b) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph a(2) of this section).

13. PHA Selection and Initial Inspection of Units

a. *PHA selection policy.* The PHA must adopt a written policy establishing criteria and procedures for selecting units to which assistance is to be attached under this Notice and must make this policy known to interested Owners. A PHA must select units in accordance with its written selection policy. PHAs are encouraged to establish preferences for units in troubled, HUD-insured subsidized multifamily projects, for units to be rehabilitated in conjunction with low-income tax credits (26 U.S.C. 42), and for units to be used as limited equity cooperatives.

b. *Initial inspection and determination of unit eligibility.* (1) Before selecting a unit, the PHA must inspect the property to determine that the property meets the $1000 per assisted unit rehabilitation requirement under section 8.a. If the property meets this rehabilitation requirement, the PHA must determine the specific work items that are needed to bring each unit to be assisted up to the Housing Quality Standards specified in section 7 (or other standards as approved in the PHA's application) and to complete any other repairs needed to meet the $1000 per assisted unit rehabilitation requirement.

(2) In addition to ascertaining whether the property meets the above repair requirement, the PHA, at initial inspection, must also consider whether the property is eligible housing in accordance with section 8 of this Notice; meets the other Federal requirements in section 10 and the site and neighborhood standards cross-referenced in section 7; and will be rehabilitated with other than assistance under the U.S. Housing Act of 1937 in accordance with section 14. The PHA must also determine the number of current tenants that are lower income families.

14. Prohibition Against Rehabilitation With U.S. Housing Act of 1937 Assistance; Pledge of Agreement Or HAP Contract

a. Assistance may not be attached to any unit which was in the last five years, or will be, rehabilitated with other assistance under the U.S. Housing Act of 1937 (e.g., public housing (development or modernization), rental rehabilitation programs under 24 CFR Part 511, housing development grants under 24 CFR Part 850, other Section 8 programs, or Section 11(b) tax exempt bonds). HUD may approve attachment of assistance to a unit if attachment of project-based assistance would facilitate sale of a public housing project to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s), where the unit was rehabilitated with public housing modernization funds before conveyance to the corporation.

b. If an Owner is proposing to pledge the Agreement or HAP Contract as security for financing, the Owner must submit the financing documents to the PHA. In determining the approvability of a pledge arrangement, the PHA must review the documents submitted by the Owner to ensure that:

(1) The financing documents do not purport to pledge or give greater rights or payments to any party against the PHA than are provided to the Owner under the Agreement or HAP Contract and do not contain any requirements inconsistent with the Agreement or HAP Contract;

(2) The PHA is not a party to any of the financing documents and undertakes no obligations (other than those already specified under the Agreement or HAP Contract) in connection with the financing; and

(3) No modification or alteration is proposed or made to the Agreement or HAP Contract.

15. Owner Selection of Contractor.

The Owner is responsible for selecting a competent contractor to undertake the rehabilitation. The Owner may not award contracts to, otherwise engage the services of, or fund any contractor or subcontractor that fails to provide a certification that neither it nor its principals is presently debarred, suspended, proposed for debarment, placed in ineligibility status, or voluntarily excluded from participation in Federally assisted activities by any Federal department or agency under 24 CFR Part 24, or is on the list of ineligible contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5. The PHA must promote opportunities for minority contractors to participate in the program.

16. Work-Write-Ups, Agreement to Enter Into Housing Assistance Payments Contract and Contract Rents in Agreement

a. *Work write-ups.* The Owner must prepare work write-ups, including specifications and plans (where necessary). The work write-ups must describe how the specific work items identified by the PHA under section 13.b(1) are to be performed, including minimum acceptable levels of workmanship and materials.

b. *Agreement.* The PHA must enter into an Agreement with the Owner in the form prescribed by HUD for assistance provided under this Notice. (HUD will provide the forms of Agreement and Contract shortly.) The Agreement must be executed before the start of any rehabilitation. Under the Agreement, the Owner agrees to complete rehabilitation of units in accordance with the work write-ups, as approved by the PHA. These work write-ups must be attached to the Agreement as an exhibit.

c. *Contract Rents in Agreement.* The Agreement must list the Contract Rents (as determined by the PHA in accordance with section 11, *Initial Contract Rents*) that will apply to the units after they are rehabilitated. The amounts of the Contracts Rents that are listed in the Agreement shall be the initial Contract Rents upon execution of the Contract. These initial Contract Rents may not be increased for any reason. (After Contract execution the Contract Rents may be adjusted during the term of the Contract in accordance with section 12).

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17. Rehabilitation Period

a. *Timely performance of work.* After the Agreement has been executed, the Owner must promptly proceed with the rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, or completed, the PHA may terminate the Agreement or take other appropriate action.

b. *Inspections.* The PHA must inspect during rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement. The inspection must be carries out to ensure that the work meets the levels of workmanship and materials specified in the work write-ups.

c. *Changes.* The Owner must obtain prior PHA approval for any change from the work specified in the Agreement which would alter the design or quality of the rehabilitation. The PHA may disapprove any changes requested by the Owner. PHA approval of changes may be conditioned on a reduction of the initial Contract Rents in the amount determined by the PHA. If the Owner makes any changes without prior PHA approval, the PHA may reduced Contract Rents in the amount determined by the PHA, and may require the Owner to remedy any deficiencies prior to, and as a condition for, acceptance of the units. However, initial Contract Rents shall not be increased because of any change from the work specified in the Agreement as originally executed or for any other reason.

d. *Notification of vacancies.* Sixty days before the scheduled completion of the rehabilitation, the Owner must notify the PHA of any units expected to be vacant on the anticipated effective date of the Contract. The PHA must refer to the Owner appropriate-sized families from the PHA waiting list. When the Contract is executed, the Owner must notify the PHA which units are vacant. (See also section 13 and section 24).

18. Rehabilitation Completion

a. *Notification of completion.* The Owner must notify the PHA when the work is completed and submit to the PHA the evidence of completion described in paragraph b of this section.

b. *Evidence of completion.* To evidence completion of the work, the Owner must furnish the PHA with:

(1) A certificate of occupancy and/or other official approvals as required by the locality; and

(2) A certification by the Owner that:

(a) The work has been completed in accordance with the requirements of the Agreement;

(b) The unit(s) is in good and tenantable condition;

(c) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy;

(d) The unit(s) has been rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from appropriate officials;

(e) Any unit(s) built before 1978 is in compliance with § 882.109(i) (*Lead-based paint*); and

(f) The Owner has complied with any applicable labor standards requirements in the Agreement.

c. *Review and inspections.* The PHA must review the evidence of completion for compliance with paragraph b of this section. The PHA also must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement, including meeting the Housing Quality Standards or other standards approved by HUD for the program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

d. *Acceptance.* (1) If the PHA determines from the review and inspection that the unit(s) has been completed in accordance with the Agreement, the PHA must accept the unit(s).

(2) If there are any items of delayed completion that are minor items or that are incomplete because of weather conditions, and in any case that do not preclude or affect occupany, and all other requirements of the Agreement have been met, the PHA may accept the unit(s). The PHA must require the Owner to deposit in escrow with the PHA funds in an amount the PHA determines to be sufficient to ensure completion of the delayed items. The PHA and Owner must aldo execute a written agreement, specifying the schedule for completion of these items. If the items are not completed within the agreed time period, the PHA may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, the PHA must determined whether and to what extent the deficiencies are correctable, and whether the Contract Rents should be reduced.

(4) Otherwise, the unit(s) may not be accepted, and the Owner must be notified with a statement of the reasons for nonacceptance.

19. Housing Assistance Payments Contract (Contract)

a. *Required form.* The PHA must enter into a Contract with the Owner in the form prescribed by HUD for assistance provided under this Notice.

b. Term of Contract. The Contract term may not extend beyond the ACC expiration date for the Funding Source. Except for this limitation, the PHA has the sole discretion to determine the Contract term. For example, assuming that the ACC expiration date for the applicable Funding Source is June 30, 2003, and the effective date of a Contract will be July 1, 1988, the Contract could have a 4-, 7- or 15-year term.

c. *Renewal of Contracts.* A Contract that is attached to a structure under this Notice shall (at the option of the PHA but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial Contract and renewals shall not exceed 15 years.

d. *Time of execution.* The PHA and Owner must execute the Contract if the PHA accepts the unit(s) under section 18. The effective date of the Contract may not be earlier than the date of PHA inspection and acceptance of the unit(s).

e. *Units under lease.* After commencement of the Contract term, the PHA shall make the monthly housing assistance payments in accordance with the Contract for each unit occupied under lease by a Family.

20. Reduction of Number of Units Covered by Contract

Section 882.512, *Reduction of number of units covered by Contract,* applies.

21. Responsibilities of the PHA

Section 882.116, *Responsibilities of the PHA,* applies, except paragraphs (d), (f), and (j). The PHA must also:

a. Brief the Family in accordance with section 24.e;

b. Obtain requests for participation from Owners, and select projects;

c. Establish initial Contract Rents in accordance with section 11, approve rent adjustments, and make rent reasonableness determinations;

d. Inspect the project before, during, and upon completion of, rehabilitation; and

e. Ensure that the amount of assistance that is attached to units is within the amounts available under the ACC.

22. Responsibilities of the Owner

Section 882.117, *Responsibilities of the Owner,* applies. The Owner is also responsible for performing all of the Owner responsibilities under the Agreement.

23. Obligations of the Family

Section 882.118, *Obligations of the Family,* applies; however, § 882.118(a)(4) and (5), which pertain to shared housing do not apply (because shared housing is not and an eligible housing type under this Notice).

24. Family Participation

a. Section 882.209, *Selection and participation,* does not apply, except as it is expressly made applicable by this section.

b. *Selection for participation.* Section 882.209(a)(1) does not apply. All other paragraphs in § 882.209(a) apply, except paragraphs (4)(ii), (4)(iii), and (6). For purposes of this Notice, a Family becomes a participant when the Family and Owner execute a Lease for a unit with project-based assistance.

c. *Determining eligibility of in-place Families.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied, and if occupied, whether the unit's occupants are eligible for assistance. If the unit is occupied by an eligible Family (including a Single Person) and the PHA selects the unit, the Family must be afforded the opportunity to lease that unit or another appropriately sized, project-based assisted unit in the project without requiring the Family to be placed on the PHA's waiting list. (The PHA is authorized, under 24 CFR 812.3(b)(1) and consistent with other applicable requirements of § 812.3, to permit occupancy of the project by Single Persons residing in the project at the time of conversion to project-based assistance to prevent displacement.) A PHA may not select a unit, or enter into an Agreement with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

d. *Filling vacant units.* (1) When the Owner notifies the PHA of vacancies in the units to which assistance is attached, the PHA will refer to the Owner one or more Families of the appropriate size on its Section 8 Existing Housing waiting list. A Family that refuses the offer of a unit assisted under this Notice keeps its place on the waiting list.

(2) All vacant units must be rented by the Owner to eligible Families referred by the PHA from its Section 8 Existing Housing waiting list. The PHA must determine eligibility for participation in accordance with HUD requirements.

(3) If the PHA does not refer a sufficient number of interested applicants on the PHA waiting list to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise for or solicit applications from eligible very low income Families, or, if authorized by the PHA in accordance with HUD requirements, lower income Families. The Owner must refer these Families to the PHA to determine eligibility.

(4) The Owner is responsible for screening and selection of tenants. The Owner may refuse any Family, provided the Owner does not unlawfully discriminate. If the Owner rejects a Family and the Family believes that the rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue is not resolved promptly, the Family may file a complaint with HUD.

e. *Briefing of Families.* When a family is selected to occupy a project-based unit, the PHA must provide the Family with information concerning the tenant rent and any applicable utility allowance. The Family must also, either in group or individual sessions, be provided with a full explanation of the following:

(1) Family and Owner responsibilities under the Lease and Contract;

(2) Significant aspects of Federal, State, and fair housing law;

(3) The fact that the subsidy is tied to the unit and that the Family must occupy a unit rehabilitated under the program;

(4) The likelihood of the Family receiving Certificate after the HAP Contract expires.

(5) The Family's options under the program, if the Family is required to move because of a change in Family size or composition.

(6) The advisability and availability of blood level screening for children under seven years of age and HUD's requirements for inspecting, testing, and in certain circumstances, abating lead-based paint; and

(7) Information of the PHA's procedures for conducting informal hearings for participants, including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing (under section 28), and of the procedures for requesting a hearing.

f. *Continued assistance for a Family when the Contract is terminated.* If the Contract for the unit expires or if the PHA terminates the Contract for the unit:

(1) The PHA must issue the assisted Family in occupancy of a unit a Certificate of Family Participation for assistance under the PHA's Certificate Program unless the PHA has determined that it does not have sufficient funding for continued assistance for the Family, or unless the PHA denies issuance of a Certificate in accordance with section 882.210.

(2) If the unit is not occupied by an assisted Family, then the available funds under the ACC that were previously committed for support of the project-based assistance for the unit shall be used for the PHA's Certificate Program.

g. *Amount of rent payable by Family to Owner.* Section 882.209(g), *Amount of rent payable by Family to Owner,* applies.

h. *Lease requirements.* The Lease between the Family and the Owner must be in accordance with section 30 and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD and must not include any of the provisions prohibited by HUD.

25. Maintenance, Operation and Inspections

Section 882.211, *Maintenance, operation and inspections,* does not apply. Instead, paragraphs (a), (b), (c), and (d) of § 882.516, *Maintenance, operation and inspections,* apply.

26. Reexamination of Family Income and Composition

Section 882.212, *Reexamination of Family income and composition,* does not apply. Instead, § 882.515, *Reexamination of Family income and composition,* applies.

27. Overcrowded and Underoccupied Units

a. Section 882.213, *Overcrowded and oversized units,* does not apply.

b. If the PHA determines that a Contract unit is not decent, safe, and sanitary because of an increase in Family size which causes the unit to be overcrowded, or that a Contract unit is larger than apporopriate for the size of the Family in occupancy under the PHA's occupancy standards, Housing Assistance Payments with respect to the unit may not be terminated for ths reason. The Owner, however, must offer the Family a suitable alternative unit if one is available and the Family shall be required to move. If the Owner does not have available a suitable unit within the Family's ability to pay the rent, the PHA

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(if it has sufficient funding) must offer Section 8 assistance to the Family or otherwise assist the Family in locating other standard housing in th PHA's jurisdiction within the Family's ability to pay, and require the Family to move to such a unit as soon as possible. The Family shall not be forced to move, nor shall Housing Assistance Payments under the Contracts be terminated for the reasons specified in this paragraph, unless the Family rejects, without good reason, the offer of a unit that a PHA judges to be acceptable.

28. Informal Review or Hearing

a. Section 882.216(a), *Informal review of PHA decision on application for participation,* applies, except §§ 882.216(a)(3)(ii), (iii), and (iv). In addition to the matters listed in § 882.216(a)(3)(i), the PHA is not required to provide an informal review, in accordance with § 882.216(a), to review the PHA's determination that the Contract unit is not appropriate for the Family size and composition under the PHA's occupancy standards.

b. Section 882.216(b), *Informal, hearing on PHA decision affecting participant Family,* applies, except §§ 882.216(b)(1)(iv) does not apply because there is no right to continued participation in the PHA program for an assisted Family that wants to move to another dwelling unit.

29. Grounds For Denial or Termination of Assistance

Section 882.210, *Grounds for denial or termination of assistance,* applies, except that for purposes of this Notice the grounds for denial of assistance in § 882.210(b) apply only to denial of participation in the program.

30. Assisted Tenancy and Termination of Tenancy

a. Section 882.215, *Assisted tenancy,* does not apply.

b. *Term of Lease.* The term of a Lease, including a new Lease or a Lease amendment, executed by the Owner and the Family must be for at least one year, or the remaining term of the Contract if the remaining term of the Contract is less than one year.

c. *Termination of tenancy.* (1) Subpart A of 24 CFR Part 247, *Eviction from Certain Subsidized and HUD-Owned Projects,* applies to termination of tenancy and eviction of a family assisted under this Notice. However, § 247.4(d) is not applicable (See Exhibit C to this Notice).

(2) The Lease may contain a provision permitting the Family to terminate the Lease on not more than 60 days advance written notice to the Owner. In the case of a Lease term for more than one year, the Lease must contain a provision permitting the Family to terminate the lease on such notice after the first year of the term.

(3) The Owner may offer the Family a new Lease for execution by the Family for a term beginning at any time after the first year of the term of the Lease. The Owner shall give the Family written notice of the offer at least 60 days before the proposed commencement date of the new Lease term. The offer may specify a reasonable time for acceptance by the Family. Failure by the Family to accept the offer of a new lease in accordance with this paragraph shall be "other good cause" for termination of tenancy (under section 247.3(a)(3)).

[FR Doc. 88-25512 Filed 11-7-88; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-08-4121-13]

Availability of Lithologic and Geophysical Logs From the Rawhide Village; Campbell County; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice of availability of 17 Lithologic and 36 Geophysical Logs from the Rawhide Village, N½, N½S½ Section 20 and S½S½ Section 17, T. 51 N., R. 72 W., Campbell County, Wyoming.

SUMMARY: Notice is hereby given that 17 lithologic logs, 36 geophysical logs, and 1 coal quality analysis including Wyoming State Plane Coordinates and elevations for 18 coal test holes located in the Rawhide Village, Campbell County, Wyoming are now available to the public.

The test holes, located in Township 51 North, Range 72 West, Section 20 were designed to provide additional information on the methane gas concentration within the Rawhide Village.

ADDRESS: Reproduction of the geophysical logs, lithologic logs, and quality analysis are available at cost. Contact: Edward C. Coy, Chief, Branch of Solid Minerals, Bureau of Land Management, 1701 East 'E' Street, Casper, Wyoming 82601, telephone (307) 261-5568.

James W. Monroe,
District Manager.

Dated: October 28, 1988.

[FR Doc. 88-25839 Filed 11-7-88; 8:45 am]
BILLING CODE 4310-22-M

[NM-060-09-4760-90]

Roswell District Multiple Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Multiple Use Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Multiple Use Advisory Board.

DATE: Wednesday, November 30, 1988, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

Location: BLM Roswell District Office, 1717 West Second Street, Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, or Terry Keim, Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622-9042.

SUPPLEMENTARY INFORMATION: The proposed agenda will include: (1) Ft. Stanton Development; (2) Abo Gas Field; (3) Hazardous and Toxic Waste; (4) Planning Update; (5) WIPP Update; (6) Automated Mapping. The meeting is open to the public. Interested persons may make oral statements to the Council during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by November 22, 1988. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

Francis R. Cherry, Jr.,
District Manager.

[FR Doc. 88-25840 Filed 11-7-88; 8:45 am]
BILLING CODE 4310-FB-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plats of survey of the following described lands were officially filed in the Idaho State Office, Bureau of Land Managment, Boise, Idaho, effective 10:00 am., October 28, 1988.

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines, and the subdivision of certain sections in T. 9 N., R. 2 E., Boise Meridan, Idaho, Group No. 645, was accepted October 16, 1988.

The plat representing the dependent resurvey of second standard parallel north, along a portion of the south boundary and a portion of the subdivisional lines, and the subdivision of sections 29 and 30, T. 10 N., R. 2 E., Boise Meridan, Idaho, Group No. 684, was accepted October 16, 1988.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 American Terrace, Boise, Idaho 83706.

Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.

October 28, 1988.

[FR Doc. 88-25841 Filed 11-7-88; 8:45 am]
BILLING CODE 4310-GG-M

National Park Service

National Register of Historic Places Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 29, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 23, 1988.

Carol D. Shull,
Chief of Registration, National Register.

Connecticut

Hartford County

Atwater Manufacturing Company (Historic Industrial Complexes of Southington TR), 335 Atwater St., Southington vicinity, 88002678

Church Home, The, 123 Retreat Ave., Hartford, 88002685

Clark Brothers Factory No. 1 (Historic Industrial Complexes of Southington TR), 1331 S. Main St., Southington vicinity, 88002679

Clark Brothers Factory No. 2 (Historic Industrial Complexes of Southington TR), 409 Canal St., Southington vicinity, 88002680

Hurwood Company (Historic Industrial Complexes of Southington TR), 379 Summer St., Southington vicinity, 88002681

Peck, Stow & Wilcox Factory (Historic Industrial Complexes of Southington TR), 217 Center St., Southington vicinity, 88002682

Plantsville Historic District, Roughly bounded by Prospect St., Summer St., Quinnipiac River, Grove St., S. Main St., W. Main St., and West St., Southington vicinity, 88002673

Pultz & Walkley Company (Historic Industrial Complexes of Southington TR), 120 W. Main St., Southington vicinity, 88002677

Rogers Farm Historic District, Roughly Shuttle Meadow Rd., Long Bottom Rd., Andrews Rd., Andrews Rd., and Mine Hollow Rd., Southington, 88002688

West Street School 1432 West St., Southington, 88002689

Middlesex County

Hadlyme North Historic District, Roughly bounded by CT 82, Town St., Banning Rd., and Old Town St., East Haddam vicinity, 88002686

New Haven County

Russian Village Historic District, Roughly Kiev Dr. and Russian Village Rd., between US 6 and the Pomperaug River, Southbury, 88002687

New London County

Pequot Colony Historic District, Roughly bounded by Gardner, Pequot, Glenwood, and Montauk Aves., New London, 88002692

Plant, Morton Freeman, Hunting Lodge, 56 Stone Ranch Rd., East Lyme, 88002691

FLORIDA

Lee County

Alderman House, 2572 First St., Fort Myers, 88002690

NEW YORK

Putnam County

Gilead Cemetery, Mechanic St., Carmel, 88002684

Suffolk County

Conklin, Nathaniel, House, 280 Deer Park Ave., Babylon, 88002683

TEXAS

El Paso County

Sunset Heights Historic District, Roughly bounded by Heisig Ave., River Ave., N. El Paso St., and I-10, El Paso, 88002672

Galveston County

Steffens—Drewa House Complex, 2701, 2705, and 2709 Ave., 0, Galveston, 88002671

WEST VIRGINIA

Ohio County

North Wheeling Historic District, Roughly bounded by Main Street Ter., Market St., I-70, and N. Main St., Wheeling, 88002693

[FR Doc. 88-25843 Filed 11-7-88; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 221)]

CSX Transportation, Inc.; Abandonment and Discontinuance of Trackage Rights in Vinton and Jackson Counties, OH; Findings

The Commission has found that the public convenience and necessity permit CSX Transportation, Inc. to abandon its 9.00-mile line of railroad between milepost, 127.71 at Hamden, OH and milepost 136.71 at Red Diamond, OH and to discontinue service over 14.77 miles of railroad between milepost 112.94 near West Jct., OH and milepost 127.71 at Hamden, OH, all in Vinton and Jackson Counties, OH.

A certificate will be issued authorizing abandonment and discontinuance of trackage rights unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are continued in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: November 1, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commmissioner Lamboley dissented with a separate expression. Commissioner Simmons did not participate in the disposition of this proceeding.

Noreta R. McGee,
Secretary.

[FR Doc. 88-25743 Filed 11-7-88; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 46X)]

Norfolk & Western Railway Co.; Abandonment Exemption Between Putt and Glen Rogers, WV

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 2.4-mile line of railroad

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between milepost VG–12.1 at Putt and milepost VG–14.5 at Glen Rogers, WV.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 8, 1988 (unless stayed pending reconsideration). Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.276(c)(2) [1] must be filed by November 18, 1988. Petitions to stay regarding matters that do not involve environmental issues [2] and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 28, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Solicitor, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 13, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 2, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25744 Filed 11–7–88; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Abandonment—Offers of Financial Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

DEPARTMENT OF JUSTICE

Attorney General

Certification of the Attorney General; Hidalgo County, TX

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Hidalgo County, Texas. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on September 18, 1975, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on September 23, 1975 (40 FR 43746).

November 4, 1988.

Dick Thornburgh,

Attorney General of the United States.

[FR Doc. 88–25978 Filed 11–7–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; AT&T Information Systems (IBEW) et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interst in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 18, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 18, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 31st day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner (Union/Workers/Firm)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
AT&T Information Systems (IBEW)	Shreveport, LA	10/31/88	10/17/88	21,505	Telephone Equipment
Atlas Wireline Serv. (Workers)	Pearland, TX	10/31/88	10/3/88	21,506	Oil & Gas

Appendix

Petitioner (Union/Workers/Firm)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
Bethlehem Steel Corp. Printery Plant, (Workers).	Bethlehem, PA	10/31/88	10/18/88	21,507	Printing Services
CRC Wireline, Inc. (Company)	Odessa, TX	10/31/88	10/31/88	21,508	Oil & Gas
Carbon River Energy Partnership (Workers).	Seattle, WA	10/31/88	10/14/88	21,509	Oil & Gas
Ceja Corporation (Company)	Tulsa, OK	10/31/88	10/14/88	21,510	Oil & Gas
Classic Exploration, Inc. (Company)	Wichita, KS	10/31/88	10/17/88	21,511	Oil & Gas
Classic Exploration, Inc. (Company)	Great Bend, KS	10/31/88	10/17/88	21,512	Oil & Gas
Cleere Operating Co. (Company)	San Angelo, TX	10/31/88	10/1/88	21,513	Oil & Gas
Dawn Drilling Co., Inc. (Company)	Shreveport, LA	10/31/88	10/17/88	21,514	Oil & Gas
Diamond Energy Co. (Workers)	Olney, IL	10/31/88	10/12/88	21,515	Oil & Gas
Fulk Oil Co. (Workers)	Olney, IL	10/31/88	10/12/88	21,516	Oil & Gas
Geosearch, Inc. (Workers)	Wichita, KS	10/31/88	10/12/88	21,517	Oil & Gas
Gulf Oil Corp., Houston Acctg. Center (Workers).	Houston, TX	10/31/88	9/29/88	21,518	Oil & Gas
Health-Tex, Inc. (ACTWU)	Cranston, RI	10/31/88	10/17/88	21,519	Children's Clothing
JHJ Drilling Co. (Company)	Houston, TX	10/31/88	10/13/88	21,520	Oil & Gas
LTV Steel Co. Campbell Works (USWA)	Youngstown, OH	10/31/88	10/17/88	21,521	Steel Pipes
LTV Steel Co. Youngston Works (USWA)	Youngstown, OH	10/31/88	10/17/88	21,522	Steel Pipes
Leppaluoto Offshore Marine, Inc. (Company).	Vancouver, WA	10/31/88	10/15/88	21,523	Oil & Gas
Manley Performance Products (Company)	Bloomfield, NJ	10/31/88	10/4/88	21,524	Engine Components
McGraw-Edison Cooper Power Systems (Workers).	Zanesville, OH	10/31/88	10/18/88	21,525	Transformers & Regulators
Mellon Drilling Co. (Workers)	San Angelo, TX	10/31/88	9/14/88	21,526	Oil & Gas
P.R.O. Petroleum Operating Corp. (Company).	Shreveport, LA	10/31/88	9/29/88	21,527	Oil & Gas
Parallel Petroleum Corp. (Workers)	Midland, TX	10/31/88	10/9/88	21,528	Oil & Gas
Reed Oil Co. (Company)	Chanute, KS	10/31/88	10/17/88	21,529	Oil & Gas
Reed Oil Co. (Company)	Chanute, KS	10/31/88	10/17/88	21,530	Oil & Gas
Russell Pierce Drilling Co. (Workers)	Greenville, KY	10/31/88	10/17/88	21,531	Oil & Gas
Samson Ocean Systems Inc. (Workers)	Shirley, MA	10/31/88	10/18/88	21,532	Synthetic Rope
Santa Fe Drilling Co. (Company)	Oklahoma City, OK	10/31/88	10/18/88	21,533	Oil & Gas
Sedco Forex-Schlumberger (Workers)	Dallas, TX	10/31/88	10/16/88	21,534	Oil & Gas
Southern Illinois Oil Producers Inc. (Workers).	Olney, IL	10/31/88	10/24/88	21,535	Oil & Gas
Standard Oil Production Co., Exploration Business Unit.	Houston, TX	10/31/88	10/7/88	21,536	Oil & Gas
Stateline Drilling Co. (Workers)	Sonora, TX	10/31/88	10/14/88	21,537	Oil & Gas
Teinert Pools (Workers)	Midland, TX	10/31/88	10/16/88	21,538	Installing Swimming Pools
(The) Three B Oil Co. (Workers)	Midland, TX	10/31/88	10/12/88	21,539	Oil & Gas
Transworld Drilling (Workers)	Oklahoma City, OK	10/31/88	10/17/88	21,540	Oil & Gas
Transworld Oil U.S.S. Inc. (Workers)	Houston, TX	10/31/88	10/15/88	21,541	Oil Futures
Weatherford Oilfield Serv. (Workers)	Houston, TX	10/31/88	9/16/88	21,542	Oil & Gas
Westburne Drilling (Workers)	Denver, CO	10/31/88	10/18/88	21,543	Oil & Gas
Williams Exploration (AEWEC)	Houston, TX	10/31/88	10/12/88	21,544	Oil & Gas
Wilson Drilling Co. (Workers)	Albion, IL	10/31/88	10/10/88	21,545	Oil & Gas

[FR Doc. 88–25838 Filed 11–7–88; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ECONOMIC COMMISSION

Meeting Cancellation

AGENCY: Naitonal Economic Commission.

ACTION: Cancellation of public meeting on November 15.

SUMMARY: The National Economic Commission meeting scheduled for November 15, 1988 from 3–6 p.m. has been cancelled. The meeting was to have been devoted to hearing from members of Congress. The commission will announce a subsequent date for this meeting.

FOR ADDITIONAL INFORMATION CONTACT: Jim Hildreth at 703–425–89869 or 202–789–1993, National Economic Commission, 734 Jackson Place NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88–25775 Filed 11–7–88; 8:45 am]

BILLING CODE 6820–45–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by

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grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552 of Title 5, United States Code.

(1) *Date:* November 21, 1988.

Time: 8:30 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications for Higher Education Programs, submitted to the Division of Education Programs, for projects beginning after April 1, 1989.

(2) *Date:* November 22, 1988.

Time: 8:30 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications for Higher Education in the Humanities, submitted to the Division of Education Porgrams, for projects beginning after April 1, 1989.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-25801 Filed 11-7-88; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability Assurance; Rescheduled Meeting

The **Federal Register** published on Thursday, October 27, 1988 (53 FR 43488) contained notice of a meeting of the ACRS Subcommittee on Reliability Assurance to be held on Tuesday, November 22, 1988, in Room P-114, 7920 Norfolk Avenue, Bethesda, MD. This meeting has been rescheduled for Monday, December 12, 1988. The meeting will start at 8:30 a.m. and is expected to be adjourned around 1:30 p.m. All other items pertaining to this meeting remain the same as previously published.

Date: November 2, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-25778 Filed 11-7-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary and Secondary Systems; Cancellation of Meeting

The ACRS Subcommittee meeting on Auxiliary and Secondary Systems scheduled to be held on November 22, 1988 has been cancelled. The notice of this meeting was previously published in the **Federal Register** on Thursday, October 27, 1988 (53 FR 43488).

Date: November 2, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-25779 Filed 11-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-603-CP/0L (ASLBP No. 88-570-01-CP/0L and Docket No. 50-604-CP (ASLBP No. 88-571-01-CP)]

All Chemical Isotope Enrichment, Inc., AlChemIE Facility-1 CPDF and AlChemIE Facility-2 Oliver Springs; Hearing

November 2, 1988.

Before Administrative Judges: Morton B. Margulies, Chairman; Dr. Emmeth A. Luebke; and Dr. Oscar H. Paris.

Notice is hereby given that hearings will be held in the captioned construction permit application proceedings on December 21, 1988, at 9:30 a.m., local time, at the University of Tennessee, College of Law Moot Courtroom, 1505 West Cumberland Avenue, Knoxville, Tennessee.

In the application docketed No. 50-603-CP/OL, All Chemical Isotope Enrichment, Inc. seeks a construction permit for a facility to use centrifugal machines to enrich nonradioactive isotopes at the existing Centrifugal Plant Demonstration Facility site located in Oak Ridge, Tennessee. In the application docketed No. 50-604-CP All Chemical Isotope Enrichment, Inc. seeks a construction permit for a facility to use centrifugal machines to enrich nonradioactive isotopes at the proposed AlChemIE Facility-2 site, at Olive Spring, Tennessee. The nonradioactive isotopes would be used for medical, industrial, environmental and energy conservation purposes. Commission licenses are required because of the capability of the centrifuge machines to enrich uranium.

The hearings are to be held pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 50, "Domestic licensing of Production and Utilization Facilities", Part 51 "Licensing and Regulatory Policy and Procedures for Environmental Production" and Part 2, "Rules of Practice for Domestic Licensing Proceedings".

The issues in the construction permit application Docket No. 50-603-CP/OL are as follows:

1. Whether, in accordance with the provisions of 10 CFR 50.34, the applicant has described the proposed design of the facility including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein to assure adequate protection of the common defense and security.

2. Whether the applicant is technically and financially qualified to modify the existing facility in such a way as to assure adequate protection of the common defense and security.

3. Whether the issuance of a construction permit authorizing the modification of the facility will be inimical to the common defense and security.

4. Whether, in accordance with the requirements of 10 CFR Part 51, the construction permit and operating license should be issued as proposed.

The construction permit issues in Docket No. 50-604-CP are identical to those in Docket No. 50-603-CP/OL except the former involves the modification of an existing facility, and the latter the construction of a proposed facility.

The parties to the proceedings are Applicant, All Chemical Isotope Enrichment, Inc. and NRC Staff. The State of Tennessee has filed a request to participate as an interested state pursuant to 10 CFR 2.715(c). The applications are unopposed.

Limited appearances pursuant to 10 CFR 2.715(a) will be permitted to be made during a session of the hearings and will be scheduled in a further notice. Persons desiring to submit written limited appearance statements, in advance of the hearings, should submit them to the Office of the Secertary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555 with a copy to the Chairman of the Atomic Safety and Licensing Board.

It is so ordered.

For the Atomic Safety and Licensing Board.

Morton B. Margulies

Chairman Administrative Law Judge.

Dated at Bethesda, Maryland this 2nd day of November 1988.

[FR Doc. 88-25780 Filed 11-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335-OLA (ASLBP No. 88-560-01-LA)]

Florida Power & Light Co., St. Lucie Plant, Unit No. 1; Hearing

November 2, 1988.

Before Administrative Judges: B. Paul Cotter, Jr., Chairman; Glenn O. Bright; and Dr. Richard F. Cole.

Please take notice that an evidentiary hearing on the issues remaining in this proceeding will begin at 9:00 a.m. on Tuesday, December 6 and continue through Thursday, December 8, 1988, at the Howard Johnson Lodge, Sailfish Room 950 S. Federal Highway, Stuart, Florida.

The Board will hear Limited Appearance Statements pursuant to 10 CFR 2.715(a) (1988) from 4:00 p.m. to 5:00 p.m. on December 6, 1988. Oral statements will be limited to five minutes each and may be supplemented or replaced by written statements sent to the Board at: Office of the Secretary, Attention: Chief, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

Dated at Bethesda, Maryland, this 2nd day of November 1988.

[FR Doc. 88-25781 Filed 11-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 and 50-323]

Pacific Gas and Electric Co.; Withdrawal of Applications for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Pacific Gas and Electric Company (the Licensee) to withdraw ts September 24 and October 30, 1987 applications to amend the Diablo Canyon Nuclear Plant Licenses and Technical Specifications. The September 24, 1987 application (designated LAR 87-08) requested an extension of the submittal date for the Long Term Seismic Program Seismic Report until July 31, 1989. The October 30, 1987 application (designated LAR 87-09) requested an extension to the three-day Limiting Condition for Operation of the Swing Diesel Generator 1-3. The Commission issued Notices of Consideration of Issuance of Amendments in the **Federal Register** on October 21, 1987 (52 FR 39304) for LAR 87-08 and on December 16, 1987 (52 FR 47812) for LAR 87-09. By letters dated January 19 and May 6, 1988 the licensee withdrew both applications for amendments. For LAR 87-08, the licensee stated that the withdrawal was precipitated by the revised hearing schedule by California Public Utilities Commission for Diablo Canyon Rate Case; and for LAR 87-09, the licensee stated that implementation of additional actions while the diesel generator 1-3 would be out of service and receipt of NRC approval could not be accomplished prior to the next Unit 1 refueling outage. Consequently, the licensee requested that the September 24 and October 30, 1987 applications for amendments be withdrawn.

For further details with respect to this action, see (1) the applications for amendments dated September 24 and October 30, 1987 and (2) the licensee's letters of January 19 and May 6, 1988 requesting withdrawal of the applications. All of the above documents are available or public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the California Polytechnic University Library, Government Documents and Maps Department, San Francisco, California 94120.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25782 Filed 11-7-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

American British Enterprises, Inc.; Order of Suspension of Trading

November 3, 1988.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of American British Enterprises, Inc. ("American British") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the location of Amercian British's principal executive offices, the nature and extent of its current and proposed business activities, its financial condition, the identity of its officers and affiliates, and other matters. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of American British.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of American British, over-the-counter or otherwise, is suspended for the period from 9:00 a.m. (EST), November 3, 1988, through 11:59 p.m. (EST) on November 12, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25783 Filed 11-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16616; (812-7107)]

RBSG Capital Corp.; Application

November 1, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: RBSG Capital Corporation (the "Applicant").

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant, a wholly-owned finance subsidiary of a foreign bank holding company, seeks an order to permit the issuance and sale of Applicant's debt securities in the United States.

Filing Dates: The application was filed on August 24, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 25, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of servcie by affidavit or, for

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attorneys, by ceritificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, c/o Bruce W. Nichols, Esq., Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–2190, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is incorporated in Delaware and is the newly established and wholly-owned finance subsidiary of The Royal Bank of Scotland Group plc ("RBSG"). Applicant was established solely to make debt offerings in the United States to finance the business operations of RBSG.

2. RBSG, a holding company incorporated in Great Britian and registered in Scotland, provides a comprehensive range of commercial banking and other financial services through its subsidiary and associated companies (together with Applicant and RBSG, the "Group"). RBSG's principal subsidiary, The Royal Bank of Scotland plc (the "Bank"), maintains an extensive network of branches in the United Kingdom ("U.K.") and also maintains branches, subsidiaries or representative offices in a number of other countries.

3. By an order issued March 1, 1988 (Investment Company Act Release No. IC–16295) (the "RBSG Order"), the SEC exempted RBSG from all provisions of the 1940 Act pursuant to section 6(c). The RBSG Order permits RBSG to issue in the United States, equity securities in the form of American depositary shares evidenced by American depositary receipts, and also commercial paper notes and other long-term and short-term debt instruments.

4. The Group constitutes the largest banking group based in Scotland, with total consolidated assets of approximately 20.6 billion pounds sterling and total consolidated deposits of approximately 17.7 billion pounds sterling at March 31, 1988. As of March 31, 1988, the rate of exchange was $1.88 to one pound sterling. More than 89% of the Group's consolidated operating profits for the financial half-year ended March 31, 1988 were attributable to retail and commercial banking activities conducted by the Bank. Like most United States banking groups, the Group's principal business consists of receiving deposits and making loans and its operating revenue is derived principally from interest on loans.

5. The Bank of England, the central bank of the United Kingdom, exercises general supervision over all deposit-taking institutions in the United Kingdom in a manner similar to the central banks of most European countries and the United States. The Bank is an "authorized institution" for purposes of the U.K. Banking Act of 1987 (the "1987 Act"). The 1987 Act provides for a licensing and recognition system under which deposit-taking institutions in the United Kingdom must be licensed by the Bank of England, and must meet general statutory criteria of prudential management. As an "authorized institution" the Bank must meet certain statutory criteria, including that directors, managers and controlling persons are "fit and proper persons", and it is subject to extensive power by the Bank of England to make investigations into its business, ownership and control. RBSG files regular, detailed reports and periodic statistical returns as prescribed by the Bank of England, and its senior executives are in close consultation with the Bank of England.

6. The Bank's most significant presence outside the United Kingdom is in the United States, where it maintains a branch and representative office in New York City, an agency and representative office in San Francisco and representative offices in Chicago, Houston and Los Angeles. The Group's operations in the United States subject the Bank, and to a more limited extent, RBSG to the supervisory authority of the Board of Governors of the Federal Reserve System (the "FRB") and subject the Bank to the supervisory authority of the banking departments of the states of New York and California, and to a more limited extent, Illinois and Texas. As a foreign banking organization engaged through a branch of a subsidiary bank in the business of banking in the United States, RBSG and the Bank are subject to certain provisions of the International Banking Act of 1978, as amended (the "IBA"). The IBA requires RBSG and the Bank to file an annual report with the FRB on Form F.R. Y–7, together with a Confidential Report of Operations on Form F.R. 2068. Under the IBA, the Bank's branches and agencies are (1) required to maintain reserves with the local Federal Reserve Banks, (2) required to submit call reports to the FRB in the same manner as member banks, and (3) subject to examination by the FRB.

7. On August 1, 1988, RBSG filed an application with the FRB on Form FR–1F requesting prior approval pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956, as amended (the "BHC Act"), to become a U.S. bank holding company by acquiring 100% of the outstanding common stock of Citizens Financial Group, Inc. ("CFG"). CFG is a bank holding company incorporated in Delaware in 1984, the principal subsidies of which are Citizens Trust Company, a Rhode Island commercial bank; Citizens Savings Bank, a Rhode Island stock savings bank; and Fairhaven Savings Bank, a Massachusetts savings bank acquired by CFG on June 30, 1988. RBSG expects to consummate the acquisition of CFG in late 1988 after obtaining all regulatory approvals. After its acquisition of CFG, RBSG will become subject to the full panoply of U.S. bank holding company regulation under the BHC Act.

8. The Bank's New York branch, which on June 1, 1988 had total assets of approximately $145 million, is subject to supervision and examination by the New York State Banking Department. The New York branch is inspected quarterly by staff of the New York State Banking Department and is also subject to a full examination at least once every two years. The Bank's San Francisco agency, although smaller in terms of assets than the New York branch, is supervised in a similar manner and extent by California banking authorities. In addition, the Chicago and Houston representative offices are each subject to regulation and supervision, though to a significantly lesser extent than branches or agencies, by the banking authorities of Illinois and Texas, respectively.

9. Applicant proposes to issue and sell debt securities in the United States, including commercial paper notes or other short and long-term debt instruments. Applicant is seeking the requested order so that RBSG may sell debt securities through a finance subsidiary organized under the laws of a U.S. jurisdiction. All debt securities issued by Applicant will be direct obligations of Applicant.

10. Applicant undertakes that any of its debt securities issued to or held by the public will be unconditionally guaranteed by RBSG as to the payment of principal, interest, and premium, if any (except that the guarantee may be subordinated in right of payment to other debt of RBSG, and such debt securities may be guaranteed on a joint and several basis by RBSG and the Bank).

11. Applicant undertakes that RBSG's guarantee will provide that in the event of a default in payment of principal, interest, premium, dividends, liquidation preference or payments made under a sinking fund on any debt securities issued by the Applicant, the holders of those securities may institute legal proceedings directly against RBSG to enforce the guarantee without first proceeding against the Applicant.

12. Applicant undertakes that it will invest in or loan to RBSG or companies controlled, by RBSG, at least 85% of any cash or cash equivalents that it raises through an offering of its debt securities or through other borrowings as soon as practicable, but in no event later than six months after its receipt of such cash and cash equivalents.

13. Applicant undertakes that it will not invest in, reinvest in, own, hold or trade in securities other than U.S. Government securities, securities of RBSG or a company controlled by RBSG or debt securities (including repurchase agreements) that are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act.

14. Applicant states that in connection with its application, RBSG will submit expressly to the jurisdiction of New York State and United States federal courts sitting in the City of New York for the purpose of any suit, action or proceeding arising out of the offering of Applicant's debt securities in the United States or RBSG's role as guarantor of the payment of principal, interest, and premium on such securities. In that connection RBSG will appoint a corporation with an office in the City of New York engaged in providing corporate services for lawyers as agents to accept service of process in any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable for as long as any of Applicant's debt securities issued in reliance upon an order of the SEC are outstanding in the United States. No such submission to jurisdiction or appointment of agent for service of process will affect the right of any holder of such debt securities of bring suit in any court which may have jurisdiction over Applicant or RBSG by virtue of Applicant's offer and sale of its debt securities or otherwise. The agent for service of process will not be a trustee for the holders of any securities issued by the Applicant or have any responsibilities or duties to act for such holders as would a trustee.

15. Applicant undertakes that it will not make any offering of its securities in the United States in reliance upon the proposed order of exemption if either: (1) The Bank ceases to be regulated as a commercial bank in the United Kingdom, or (2) the Bank ceases to be subject to banking regulation in the United States. Applicant also represents that (a) RBSG has no present intention of causing the Bank to withdraw its presence in the United States that subjects the Bank and RBSG to banking regulation in the United States and (b) RBSG has no present intention of causing the Bank to limit its presence in the United Kingdom that subjects the Bank and RBSG to banking regulation in the United Kingdom.

Applicant's Legal Analysis

1. The exemption from registration under the 1940 Act afforded to foreign banks and their finance subsidiaries by Rule 6c–9 is technically not available to the Applicant, as the Applicant is a finance subsidiary of a foreign bank holding company and not of a foreign bank. However, Applicant has met, or has undertaken in its application to meet, all of the substantive requirements for an exemption from registration under Rule 6c–9 as if the exemption contained therein is available to the Applicant.

2. Applicant asserts that the proposed exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant further submits that the exemption will advance the policies underlying the IBA of nondiscriminatory treatment of foreign banks in the United States.

Applicant's Condition

If the requested order is granted, the Applicant agrees to the following condition:

1. Applicant consents to any SEC order being expressly conditioned on its compliance with the undertakings and representations summarized above and more fully set forth in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25802 Filed 11–7–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; System of Records

The Department of Transportation (DOT) herewith publishes a proposal to amend a system of records.

Any person or agency may submit written comments on the proposed altered system to: Lieutenant Commander L. M. Kenney, U.S. Coast Guard, Office of Personnel and Training, U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593–0001. Comments must be received within 30 days to be considered.

If no comments are received, the proposed changes will become effective 30 days from the date of issuance. If comments are received, the comments will be considered and, where adopted, the document will be republished with the changes.

Issued in Washington, DC, November 2, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement Department of Transportation Office of the Secretary On Behalf of the United States Coast Guard For Alteration of the Alcohol Abuse Prevention Program Record System DOT/CG–638, Formerly the Drug and Alcohol Abuse Prevention Program Record System DOT/CG–638

The Office of the Secretary, on behalf of the Coast Guard, proposes to amend the Alcohol Abuse Prevention Record System, DOT/CG–638, to cover all records maintained by the Coast Guard pertaining to alcohol abuse prevention programs for Coast Guard members.

The purpose of this notice is to revise the system to reflect the transfer of the alochol abuse prevention, treatment, and education program from Coast Guard Headquarters, Office of Personnel and Training to Coast Guard Headquarters, Office of Health Services, and to provide the changes in system manager and system location addresses.

The changes include amendments to:

a. System name, categories of records, and categories of individuals to reflect the elimination of drug rehabilitation records, since drug abusers are no longer retained in the Coast Guard, and the Coast Guard provides alcohol rehabiliation only for active duty members; and

b. System location, retention and disposal, and system manager to reflect transfer of responsibility for alcohol

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treatment records to the Office of Health Services, U.S. Coast Guard.

Since this proposal is an amendment of an existing record system, the probable effects of this proposal on the privacy interests of the general public is minimal.

Authority for maintenance of the system is contained in 5 U.S.C. 3301 and 7901; 21 U.S.C. 1101; 42 U.S.C. 4541 and 299dd–1; and 44 U.S.C. 3103.

Access to these records is subject to strict guidelines governing their disclosure (42 U.S.C. 4541 *et seq.*; 21 U.S.C. 1101 *et seq.*; and 42 CFR Part 2) and participation in the programs is limited to active duty members of the Coast Guard. As a result, the probable or potential effects of this proposal on the privacy of the general public is minimal.

A description of the steps taken by the Department of Transportation to safeguard these records is given under the appropriate heading of the attached **Federal Register** system of records notice.

The purpose of this report is to comply with Office of Management and Budget Circular A–130 Appendix I, dated December 12, 1985.

DOT/CG–638

SYSTEM NAME:

Amended to "USCG Alcohol Abuse Prevention Program Record System" to reflect the elimination of drug related records from the system.

SYSTEM LOCATION:

Amended to reflect relocation of record system from Coast Guard Headquarters to U.S. Coast Guard Maintenance and Logistics Command, Atlantic and U.S. Coast Guard Maintenance and Logistics Command, Pacific. This more accurately describes current Coast Guard practices as those commands now administer the program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Amended to reflect that only active duty Coast Guard members are covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Amended to remove all references to drug rehabilitation records. Drug abusers are no longer retained in the Coast Guard. All records of drug rehabilitation were retained for three years and have been destroyed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Amended to reflect that there are no routine uses of the records outside the Department of Transportation.

STORAGE, RETRIEVABILITY, ACCESSING, RETAINING, SAFEGUARDS:

Amended to reflect locations, methods of retrieving and access, retention periods, and safeguards established by new system manager.

SYSTEM MANAGERS AND ADDRESS:

Amended to reflect new system manager and location.

NOTIFICATION PROCEDURE:

Amended to indicate new system manager and location.

RECORD ACCESS PROCEDURES:

Amended to reflect new access control offices and procedures.

CONTESTING RECORDS PROCEDURES:

Amended to reflect change in location of records and change in system manager.

RECORD SOURCE CATEGORIES:

Revised to more accurately reflect current procedures and include treatment facility sources.

DOT/CG–638

SYSTEM NAME:

USCG Alcohol Abuse Prevention Program Record System

SYSTEM LOCATION:

Records are maintained in the office of:

a. Commander, U.S. Coast Guard, Maintenance and Logistics Command, Atlantic, New York, NY 10004–5098.

b. Commander, U.S. Coast Guard, Maintenance and Logistics Command, Pacific, Alameda, CA 94501–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Coast Guard personnel receiving alcohol rehabilitation treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alcohol rehabilitation particulars which include: Name, Social Security Number, Prior Service, Rate/Rank, Date of Birth, History of Alcohol Abuse, Treatment Center, Dates of Treatment, Notes on Aftercare, and Final Disposition and Type.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses; 3 through 5 do not apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on file cards (3" X 5") and/or a computer data base.

RETRIEVABILITY:

Records are retrieved by the name of the individual.

SAFEGUARDS:

File cards are maintained in locked filing cabinets. The computer data base is protected by password access limited to the Alcohol Program Managers.

RETENTION AND DISPOSAL:

Records will be destroyed three years after last activity.

SYSTEM MANAGERS AND ADDRESS:

Commandant (G–KOM), United States Coast guard, 400 7th Street SW., Washington, DC 20590–0001.

NOTIFICATION PROCEDURE:

Written inquiries shall be submitted to the Alcohol Program Manager in the area in which the member most recently received treatment, at the following addresses:

a. Commander, U.S. Coast Guard, Maintenance and Logistics Command, Atlantic, New York, NY 10004–5098.

b. Commander, U.S. Coast Guard, Maintenance and Logistics Command, Pacific, Alameda, CA 94501–5100.

RECORD ACCESS PROCEDURES:

Access may be obtained by writing to, or visiting Commander, U.S. Coast Guard Maintenance and Logistics Command, Atlantic, or U.S. Coast Guard Maintenance and Logistics Command, Pacific, at the addresses in "System location." Written requests must be signed by the member. An individual visiting the Maintenance and Logistics Command must provide identification to obtain access to records. A military identification card, a driver's license, or similar document will be considered suitable identification.

a. For individuals undergoing treatment, the record is maintained at the Coast Guard Maintenance and Logistics Command responsible for the geographic region where the member is permanently assigned.

b. For individuals who have completed treatment, the record is maintained at the Coast Guard Maintenance and Logistics Command responsible for the geographic region where treatment was completed.

CONTESTING RECORDS PROCEDURES:

Same as "Record access procedure."

RECORD SOURCE CATEGORIES:

a. Personnel records.
b. Medical records.
c. Security records.
d. Treatment facility reports.
e. Post treatment aftercare reports.

[FR Doc. 88–25783 Filed 11–7–88; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–88–43]

Petition For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 11, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 2, 1988.

Denise Donohue Hall,
Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 18881.
Petitioner: Experimental Aircraft Association.
Regulations Affected: 14 CFR 91.22(a)(1).
Description of Relief Sought: To extend Exemption No. 2689, as amended, that allows members of the International Aerobatic Club to participate and practice for participation in aerobatic competition without meeting the fuel requirement for flight under visual flight rules.

Docket No.: 25688.
Petitioner: Air Specialties Corp. d/b/a Air America.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought: To allow Hong Kong Aircraft Engineering Company to perform maintenance work outside of the United States on petitioner's L–1011 aircraft and components, including the Rolls Royce RB–211 engines and auxiliary power plant units used with these aircraft.

Docket No.: 25702.
Petitioner: Braathens South American and Far East Airtransport A–S.
Section of the FAR Affected: 14 CFR 21.197(c).
Description of Relief Sought: To allow operation of petitioner's aircraft under special flight permit with continuing authorization.

Docket No.: 17145.
Petitioner: United Airlines.
Section of the FAR Affected: 14 CFR 121.665 and 121.697 (a) and (b).
Description of Relief Sought/ Disposition: To extend Exemption No. 2466, as amended, that allows petitioner to use computerized loan manifests which bear the printed name and position of the person responsible for loading the aircraft.
Grant, October 26, 1988, Exemption No. 2466F.

Docket No.: 23492.
Petitioner: United States Hang Gliding Association.
Regulations Affected: 14 CFR 103.1 (a) and (b).
Description of Relief Sought Disposition: To extend Exemption No. 4721 that allows petitioner to operate two-place unpowered ultralight vehicles for the purpose of sport, recreation, or other purposes.
Grant, October 24, 1988, Exemption No. 4721A.

Docket No.: 25055.
Petitioner: Officine Aeronavali Venezia, s.p.a.
Section of the FAR Affected: 14 CFR 145.73(a).
Description of Relief Sought/ Disposition: To allow petitioner to perform modifications converting U.S.-registered McDonnell Douglas passenger DC–8 aircraft to all-cargo aircraft, without complying with the requirements for a foreign repair station to work only on U.S.-registered aircraft used in operations conducted wholly or partly outside of the United States.
Grant, October 25, 1988, Exemption No. 4987.

[FR Doc. 88–25739 Filed 11–7–88; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Nissan Motor Co.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by Nissan Motor Company (Nissan) for an exemption from the parts marking requirements of the vehicle theft prevention standard for the Nissan "Model Q" carline for Model Year 1990. The agency grants this exemption under section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device which the petitioner intends to install on this line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements. Therefore the agency grants the petition.

DATE: The exemption granted by this notice will become effective beginning with the 1990 model year.

SUPPLEMENTARY INFORMATION: This agency received a submission dated July 13, 1988 from Nissan Motor Company (Nissan) seeking an exemption from the parts marking requirements of the vehicle theft prevention standard (49 CFR Part 541), pursuant to the requirements of 49 CFR Part 543, *Petition for Exemption from the Vehicle Theft Prevention Standard.* The agency reviewed the July 13, 1988 submission and concluded that it constituted a complete petition. Accordingly, July 13, 1988 is the date on which the statutory 120 day period for procesing Nissan's petition began. The agency further decided to grant the company's request under 49 CFR Part 512 to treat new product plans for Model Year 1990 and certain design specifications as confidential business information.

In its petition, Nissan included a detailed description of the identity, design, and location of the components

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of the antitheft device, including diagrams of the components and their location in the vehicle. Nissan states that the Nissan "Model Q" will have the same antitheft device that is currently standard on the Nissan 300ZX and Nissan Maxima models.

To activate the system, the driver must turn the ignition switch to the "OFF" position, and ensure that all doors, the hood, and the trunk lid are closed and locked. The doors may be locked either with or without the key. If an unauthorized entry is attempted through the doors, the hood, the trunk lid, if any of the key cylinders are tampered with, or if either of the doors or the trunk lid should be opened by releasing the inside door lock knob or by using the opener switch, the headlights will flicker on and off and the alarm (horn) will sound.

Additionally, the system is armed with a starter interrupt function so that, if tampering does occur, the engine will not start. The alarm automatically turns off in 2 to 4 minutes. However, if one of the protected areas is tampered with again, the alarm will sound once more. If this occurs, the alarm will continue to sound and the starter will not operate until the door or trunk lid is unlocked with the key. Once the system has been activated, it may be turned off only by unlocking either the doors or trunk lid with the key or by turning the ignition switch to the "ACC" or "ON" position. "Model Q" is also equipped with a steering column locking device, so that, if an unauthorized person should forcibly break the steering column locking device and the ignition switch is jump-started, the interrupt relay will be activated by preventing the starter motor from operating. Switches, sensors and control units are located within protected areas in the vehicle to prevent the antitheft device from being defeated or circumvented.

An indicator light on the cluster panel illuminates different signals to let the driver know the condition of the warning system. If the ignition switch is in the "OFF" position and if the doors, hood, or trunk lid are open, the indicator light will flicker to remind the driver to arm the system. If the doors are closed and then left unlocked, the light will go off and the vehicle will be left unarmed. The indicator light will come on for approximately 30 seconds when the last door (hood or trunk lid) is locked, after which the light will go off to indicate that the warning system is armed.

Nissan further states that extensive testing has been conducted to demonstrate the reliabiliy and durability of its antitheft device. Nissan's testing confirmed the device's tolerance for: temperature extremes, stress, shock, vibration, humidity, repeated operation, static electricity, and other factors.

Nissan believes that its antitheft device will reduce and deter theft of the "Model Q" based on reduced theft rates of the 300ZX and Maxima carlines which are presently equipped with the same device. The company based its belief upon theft data for Model Years 1983/1984, which the agency has published at 50 FR 46666. Nissan states that the 300ZX has been equipped with the antitheft device since the model designation was changed from 280ZX to 300ZX in July 1983. Nissan also states that thefts of the 300ZX dropped significantly in that model line, resulting in a 51 percent decrease for the Model Year 1984 theft rates and 42 percent drop in the Model Year 985 theft rates as compared to the MY 1983 theft rates (per 1,000 vehicles). Compared to the MY 1983 theft rates, further analysis revealed that thefts of the 300ZX dropped, resulting in a 30 percent decrease for Model Year 1986, and a 45 percent decrease for Model Year 1987 (per 1,000 vehicles).

Additionally, Nissan reports that the Maxima has been equipped with the antitheft device since the model designation was changed from 810 to Maxima in October 1984. Compared to the Model Years 1983/84 theft rates, the Maxima car line had a 47 percent decrease in theft rates for Model Year 1985, a 3.1 percent decrease for Model Year 1986, and a 25 percent increase in theft rates for Model Year 1987 (per 1,000 vehicles).

Nissan believes that reductions of theft rates for the 300ZX and Maxima models are primarily caused by the antitheft device. Since the Nissan "Model Q" will be equipped with the same antitheft device as the 300ZX and the Maxima, they expect that the antitheft device of the "Model Q" will be as effective in reducing and deterring theft in that line. The agency granted Nissan's petition for exemption from the parts-marking requirements of Part 541 for the Maxima and 300ZX carlines beginning with the 1987 Model Year (See 51 FR 24779).

Based on substantial evidence, the agency believes that the antitheft device for the Model Year 1990 "Model Q" carline is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-making requirements of the theft prevention standard (49 CFR Part 541).

This determination is based on the information Nissan submitted with its petition and on other available information. The agency believes that the device will provide the types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Nissan provided on its device. This information included a description of reliability and functional test procedures prescribed by Nissan's engineering department for the antitheft system and its components. Nissan noted also that the function and design of its antitheft device are identical to those of other devices that the agency has considered likely to be at least as effective as complying with Part 541 would be.

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs make it difficult at this early stage of the theft standard's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this Part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimus*. Therefore, NHTSA suggests that if Nissan contemplates making any changes the effects of which might be characterized as *de minimus*, then the company should consult the agency before preparing and submitting a petition to modify.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on November 3, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-25819 Filed 11-7-88; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Veterans' Advisory Committee For Environmental Hazards; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Veterans' Advisory Committee for Environmental Hazards has been renewed two year period beginning October 24, 1988 through October 24, 1990.

Dated: October 28, 1988.

By direction of the Administrator.

Dennis R. Boxx,

Deputy Associate Deputy Administrator for Public Affairs.

[FR Doc. 88-25741 Filed 11-7-88; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on the Readjustment Problems of Vietnam Veterans will be held November 17, 18 and 19, 1988. The purpose of the meeting is to enable the committee to have first hand experience of VA health care services for Vietnam era veterans through review of treatment units, and discussions with VA mental health professionals and veteran patients. This meeting will be a field meeting primarily conducted at the Tacoma Vet Center and American Lake VA Medical Center. The Tacoma Vet Center is located at 4801 Pacific Avenue, Tacoma, Washington 98408, and American Lake VA Medical Center is located at Veterans Dr., Tacoma, Washington 98493. The meetings on November 17 and 18 will begin at 8:30 a.m. and conclude at 4:30 p.m. Both day's agenda will consist of direct observations of several VA treatment units and facilities to include the Post-Traumatic Stress Treatment Program, Alcohol/Drug Treatment Program, Mental Hygiene Clinic, and the Tacoma Vet Center. The agenda for November 17 will also include a Committee small group tour of VA facilities in Seattle, Washington to include the Vet Center, Medical Center, and Regional Office. The Seattle Vet Center is located at 1322 East Pike Street, Seattle, Washington 98122 and the Seattle Medical Center is located at 1661 S. Columbian Way, Seattle, Washington 98108.

The address of the Seattle Regional Office is 915 Second Avenue, Seattle, Washington 98174. The Committee will tour mental health facilities at both the Vet Center and Medical Center, and they will meet with the Regional Office director and his staff to review issues of adjudication and compensation of post-traumatic stress disorder claims.

The second day's agenda will also consist of a stationary meeting at American Lake VAMC in conference with several VA officials regarding overall mental health services for Vietnam era veterans. Participating VA officials include the Medical Center Director, the Chief of Staff, the Chiefs of Psychiatry, Psychology, and Social Work Services. The Directors for all Medical Center mental health programs will also participate. The meeting on November 19 will begin at 8:30 a.m. and conclude at 12 noon. The third day's agenda will consist of a committee executive meeting regarding committee deliberations, recommendations, and future work plans.

The meeting will be closed from 8:30 a.m. to 4:30 p.m. on Thursday, November 17 and Friday, November 18, in accordance with provisions cited in 5 U.S.C. 552b(c)(6). During this portion of the meeting, the committee will be engaging in discussions with VA mental health professionals and veterans. These discussions will disclose information of a personal nature for veteran patients which would constitute a clearly unwarranted invasion of personal privacy. The meeting on November 19 will be located at the Sheraton Hotel, 1320 S. Broadway Plaza, Tacoma, Washington 98402, and will be open to the public to the seating capacity of the room.

This meeting notice provides for less than 15 days notice. It is not possible in the near future to convene the group at this particular location and time. The meeting must be held at the scheduled times in order to avoid adverse effects on agency services to Post Traumatic Stress Disorder.

Anyone having questions concerning the meeting may contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Veterans Administration Central Office, (phone number 202-233-3317/3303).

Date: November 4, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-25892 Filed 11-7-88; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 53, No. 216
Tuesday, November 8, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

DATE AND TIME: 2:00 p.m. (Eastern Time) Monday, November 14, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations—(Office of Management)

Closed Session

Discussion of a Certain Commissioner's Charge

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 634–6748.

Dated: November 3, 1988

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88–25858 Filed 11–4–88; 10:09 am]

BILLING CODE 6750–06–M

FEDERAL RESERVE SYSTEM:

Board of Governors

TIME AND DATE: 11:00 a.m., Monday, November 14, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–25912 Filed 11–4–88; 2:59 pm]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Open Special Conference; November 15, 1988

TIME: 10:00 a.m.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

MATTER TO BE DISCUSSED:

Finance Docket No. 30965 (Sub-No. 1). *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company—Review of Arbitral Award.*

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Government and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25893 Filed 11–4–88; 1:45 pm]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 7, 14, 21, and 28, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 7

Wednesday, November 9

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Thursday, November 10

10:00 a.m.
Briefing on Final Rule on Standards for Protection Against Radiation—Part 20 (Public Meeting).

Week of November 14—Tentative

Wednesday, November 16

10:00 a.m.
Briefing on Status of Location of Exploratory Shaft at Yucca Mountain (Public Meeting).

Thursday, November 17

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of November 21—Tentative

Wednesday, November 23

10:00 a.m.
Briefing on Effectiveness of Diagnostic Evaluations (Public Meeting).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).
2:00 p.m.
Briefing on Accident Management Program (Public Meeting).

Week of November 28—Tentative

Thursday, December 1

10:00 a.m.
Meeting with State of Nevada on High Level Waste Program (Public Meeting) (Tentative).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

ADDITIONAL INFORMATION: By a vote of 3–0 (Commissioner Carr was not present and Commissioner Curtiss did not participate) on November 2, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of 10 CFR Part 73—Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material" scheduled for November 2, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

November 4, 1988.

[FR Doc. 88–25899 Filed 11–4–88; 2:11 pm]

BILLING CODE 7590–01–M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 1:00–4:00 p.m. Monday, November 14, 1988.

PLACE: World Affairs Center, 312 Sutter Street, San Francisco, CA.

STATUS: Open (telephone 415–982–2541 for reservations).

PURPOSE AND AGENDA: The third of a series of Public Workshops scheduled by the growing United States Institute of Peace, "A Preliminary Discussion of the U.S. Public Effort for Peace, 1984–1988," will focus on basic questions regarding the national, nongovernmental effort for a more peaceful world. The panel members will be drawn from the scholarly, philanthropic, exchange, and educational worlds.

CONTACT: Ms. Aileen C. Hefferren, Telephone 202–457–1700.

Dated: November 1, 1988.

Samuel W. Lewis,

President.

[FR Doc. 88–25842 Filed 11–3–88; 4:56 pm]

BILLING CODE 3155–01–M

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Corrections

Federal Register
Vol. 53, No. 216
Tuesday, November 8, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Reg. Nos. 4 and 16]

Disability Insurance and Supplemental Security Income; Nonpayment Policy for Consultative Examination Appointments That Are Not Kept

Correction

In proposed rule document 88-23218 beginning on page 39487 in the issue of Friday, October 7, 1988, make the following corrections:

1. On page 39488, in the second column, in the second complete paragraph, in the 10th line, "of" should read "on".

2. On the same page, in the third column, under *Executive Order 12291*, in the second paragraph, in the sixth line, "$302 million" should read "$3.2 million".

§ 404.1624 [Corrected]

3. On page 39489, in the first column, in § 404.1624(b), in the third line, "of" should read "a".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Annual List

Correction

In notice document 88-23069 beginning on page 39367 in the issue of Thursday, October 6, 1988, make the following corrections:

1. On page 39369, in the 1st page-column, under **California**, in the second table-column, in the 14th entry, "Gilro City" should read "Gilroy City".

2. On the same page, in the 2nd page-column, in the 2nd table-column, in the 21st entry, "Serra County" should read "Sierra County".

3. On the same page, in the same page-column, under **Colorado**, in the first table-column, in the first entry, "Admas County" should read "Adams County".

4. On the same page, in the same column, under **Colorado**, in the second table-column, in the second entry, "Paurora City" should read "Aurora City".

5. On the same page, in the 3rd page-column, under **Florida**, the 15th entry in the 1st table-column ("St. Lucie County Less Port") and the corresponding entry in the 2nd table column ("Pierce City") should be removed.

6. On the same page, in the same page-column, under **Florida**, in the 2nd table column, in the 16th entry, before "Port St. Lucie City" insert "St. Lucie County Less Fort Pierce".

7. On page 39370, in the second page-column, in the first table-column, in the seventh entry, "Twihs Falls City" should read "Twins Falls City".

8. On the same page, in the same page-column, under **Illinois**, in the 2nd table column, in the 25th entry, "St. Clear County" should read "St. Clair County".

9. On the same page, in the third page-column, in the first table-column, in the fourth entry, "Joliet County" should read "Joliet City".

10. On the same page, in the same page column, in the first table-column, in the eighth entry, "Ls Salle County" should read "La Salle County".

11. On page 39371, in the 1st page-column, in the 1st table-column, in the 15th entry, "Kokomo County" should read "Kokomo City".

12. On the same page, in the same page-column, in the same table-column, in the 21st entry, "Muncie County" should read "Muncie City".

13. On the same page, in the 3rd page-column, in the 2nd table-column, in the 32nd entry, after "Owensboro City" remove the period and insert "in Davies County.".

14. On page 39372, in the 3rd page-column, in the 1st table-column, in the 15th entry, "Jackson County" should read "Jackson City".

15. On page 39374, in the first page-column, under **New Jersey**, in the first table-column, in the second entry, "Camdem City"should read "Camden City".

16. On the same page, in the 2nd page-column, under **New York**, in the 2nd table-column, in the 12th entry, "Orelans County" should read "Orleans County".

17. On page 39375, in the 3rd page-column, in the 1st table-column, in the 52nd entry, "Sanbana Municipo" should read "Sanbana Grande Municipa"; and in the 2nd table-column, in the corresponding entry, make the same correction.

18. On page 39376, in the first page-column, under **Tennessee**, in the first table-column, in the ninth entry, "Clarksville County" should read "Clarksville City".

19. On the same page, in the 3rd page-column, in the 2nd table-column, in the 18th entry, after "Houston City." insert "Missouri City.".

20. On the same page, in the same page-column, in the 1st table-column, in the 37th entry "Harlingen County" should read "Harlingen City".

21. On page 39377, in the 3rd page-column, under **Washington**, in the 1st table-column, in the 21st entry, "Longview County" should read "Longview City".

22. On page 39378, in the 2nd page-column, in the second table-column, in the 11th entry, "Doughlas County" should read "Douglas County".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ANM-6]

Alteration of VOR Federal Airway V-68; CO

Correction

In rule document 88-23868 beginning on page 40408 in the issue of Monday, October 17, 1988, make the following correction:

§ 71.123 [Corrected]

On page 40409, in the first column, in § 71.123, under **V-68 [Amended]**, in the fourth line, "Cortex" should read "Cortez".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 83-AWA-26]

Proposed Department of Energy Prohibited Areas

Correction

In proposed rule document 88-23873 appearing on page 40452 in the issue of Monday, October 17, 1988, make the following correction:

In the second column, under **Withdrawal of ANPRM**, in the fourth line, "83-AWS-26" should read "83-AWA-26".

BILLING CODE 1505-01-D

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federal register

Tuesday
November 8, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 815, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Progam; Reclamation and Operation Plan; Performance Standards; Roads; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 815, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Reclamation and Operation Plan; Performance Standards; Roads

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the Department of the Interior (DOI) is amending its rules governing roads at surface and underground mining operations and coal exploration operations. The provisions for roads are to replace rules that previously were suspended. These rules define a road, establish a road classification system, and set forth performance standards that allow regulatory authorities to approve designs tailored to local needs. Also, revised information requirements for the reclamation and operations plan reflect changes in the performance standards for roads.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Wiles, P.E., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 343–1502.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Comments
III. Procedural Matters

I. Background

Section 701(28)(B) of the Surface Mining Control and Reclamation Act (the Act), 30 U.S.C. 1201 *et seq.*, defines "surface coal mining operations" to include roads constructed, improved or used for access to the mine site and for haulage. The Act also establishes specific environmental protection performance standards governing roads used for access into and across the mine site during surface coal mining and reclamation operations in section 515(b)(17) and (18). Section 515(b)(17) provides that all surface coal mining and reclamation operations shall "insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property." Section 515(b)(18) provides that all operations shall "refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water." Section 516(b)(10) of the Act imposes these same requirements on roads associated with underground mines with such modifications as are necessary to accommodate the distinct differences between surface and underground mining.

The permanent regulatory program promulgated on March 13, 1979, contained expansive and detailed provisions pertaining to road construction, maintenance and postmining conditions. The rule at 30 CFR 701.5 defined roads for surface mining operations and established a three-tiered road classification system (44 FR 15320, March 13, 1979). Specific provisions for each classification were established at 30 CFR 816.150–176 (44 FR 15416–15421). At the same time, similar requirements for underground mines were established at 30 CFR 817.150–817.176 (44 FR 15442–15447).

The permanent program rules were challenged in a suit filed with the U.S. District Court for the District of Columbia. The court remanded the rules for further consideration because the Secretary had not given adequate notice that he was considering a classification system, *In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, slip op. at 32–36 (D.D.C. May 16, 1980). As a result of the court decision, OSMRE suspended its permanent program rules for roads (45 FR 51547, August 4, 1980).

New rules substantially different from the remanded and suspended 1979 rules were proposed on January 4, 1982 (47 FR 56) and April 16, 1982 (47 FR 16592) and were finalized in a rule published May 16, 1983 (48 FR 22110). The 1983 rules, although constituting an extensive expansion of the statutory performance standards, gave regulatory authorities greater flexibility as to the details of road design than did the remanded and suspended 1979 rules. Upon issuance, the 1983 rules were challenged in the U.S. District Court for the District of Columbia. In response to the challenge, the court remanded § 816.150(a) *(In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144, slip op. at 24–28 (D.D.C. Oct. 1, 1984), hereafter *Round II)*. The court held that OSMRE, in promulgating the classification system in 30 CFR 816.150(a), violated the Administrative Procedure Act (APA), 5 U.S.C. 553, by again not providing adequate notice and opportunity to comment (Slip op. at 28).

Subsequently, in an amended order filed December 10, 1984, the court remanded all of the rules governing roads which were dependent upon the road classification system. OSMRE then suspended those rules as well as the definition of *road* at § 701.5 (50 FR 7278, February 21, 1985). The definition was suspended to give OSMRE an opportunity to reconsider all the provisions in the rules affecting the performance standards for roads.

OSMRE proposed new road rules on November 3, 1987 (52 FR 42258) that were quite similar to the remanded and suspended 1983 rules. Public hearings were scheduled for January 5, 1988, in Washington, DC; Denver, CO; and Knoxville, TN. Since no one requested to testify at these hearings, none were held. The comment period closed on January 12, 1988. OSMRE received 152 individual comments from 23 sources: Ten industry associations, eight State regulatory authorities, two public interest groups, and three Federal agencies. OSMRE also received comments from the Environmental Protection Agency (EPA) after the comment period had closed.

The rules adopted today replace the rules suspended in 1985 (50 FR 7278, February 21, 1985). The minor changes from the proposed rule are identified in the following discussion of the final rule. OSMRE believes, based on analysis of the issues involved, the legislative history of the Act, and the administrative record of this rulemaking, including comments received, that this final rule is a reasonable interpretation and expansion of the provisions of sections 515(b) (17) and (18) of the Act.

OSMRE has not identified any differences between roads for surface and underground mines that would appear to necessitate different regulatory provisions under this rulemaking. Therefore, the final permitting rule applicable to roads for surface mining activities at 30 CFR 780.37 and the final rule for underground mining activities at 30 CFR 784.24 are identical. Similarly, the final performance standards for surface mining activities at 30 CFR 816.150 and 816.151 are identical to the performance standards for underground mining activities at 30 CFR 817.150 and 817.151 respectively. The final permitting rule applicable to support facilities for surface mining activities at 30 CFR 780.38 and the final rule applicable to such facilities for underground mining activities at § 784.30 are also identical. The discussion of the revisions to 30 CFR 780.37, 780.38, 816.150, and 816.151 should be understood to apply also to the revisions to 30 CFR 784.24, 784.30, 817.150, and 817.151, respectively.

II. Discussion of Final Rule and Comments

This portion of the preamble consists of a description of the rules adopted, changes to the proposal, comments received, and OSMRE's response to comments.

A. General Comments

In addition to receiving comments on specific provisions of the November 3, 1987, proposed rules, OSMRE received several general comments. Two commenters requested time extensions of 30 days to allow adequate time to evaluate the proposed regulations. OSMRE did not accede to the time extension requests; however, OSMRE did give full consideration to all comments received on the proposed rule regardless of whether the comments were timely or late. The proposed rule allowed seventy days for the submission of written comments. OSMRE believes that this amount of time strikes a balance between the needs of reviewers and the agency's responsibility to implement the Act expeditiously through regulations.

One commenter stated that the proposed regulations do not provide consistent guidance to regulatory authorities, or establish minimum national standards for construction, maintenance, or reclamation of roads. The commenter suggested that the proposed regulations be withdrawn, and noted that OSMRE has a mandatory obligation to include standards in the regulations, and that failure to provide these standards is a violation of the Act. The commenter stated that Congress enacted sections 515(b) (10), (17), and (18) with the intent to set "appropriate limits" for road construction, manintenance, and reclamation. The commenter also stated that the 1979 regulations implemented this congressional intent to provide minimum standards, but that adequate specific requirements no longer exist in the proposed regulations. The commenter argued further that, under these regulations, Federal and State agencies, particularly States whose regulations can be "no more stringent than" the Federal program will be unable to set meaningful standards. The commenter also suggested that the proposed regulations be withdrawn pending the outcome of current litigation in the U.S. Court of Appeals for the District of Columbia Circuit where the issue of requiring minimum national standards was under consideration.

OSMRE disagrees. Sections 515(b)(17) and (18) of the Act establish statutory performance standards for roads. In its January 29, 1988, opinion, the Courts of Appeals for the District of Columbia Circuit concurred with the Secretary of the Interior that the Act does not automatically and inevitably require him to "flesh out" statutory performance standards except in limited cases for which such a requirement is clearly established, such as sections 515(b)(13), 516(b)(5) and 517(a) of the Act (*NWF v. Hodel*, 839 F.2nd 694, 734 (DC Cir., 1988), hereafter *NWF v. Hodel*). The court went on to say, "The Secretary is to exercise his informed discretion in deciding what other statutory performance standards bear elucidation or elaboration. In short, we read the Act * * * to afford the Secretary discretion, absent an express statutory instruction to regulate, to decide whether fleshing out is appropriate in light of other concerns. Chief among these concerns is a need to accommodate widely varying local conditions that will not admit of a single nationwide rule." (id. p. 735) Additional material in support of the legal sufficiency of the regulatory approach taken in these rules appears in the Secretary's March 5, 1984 district court brief filed in *Round II at p. 160–166.*

This discussion concerned the Secretary's elimination in 1983 of minimum national environmental standards contained in the 1979 regulations involving: (1) The contemporaneous reclamation of mined lands, (2) the design of earth "terraces" on restored land, and (3) the exemption from the "approximate original contour" requirement of lands featuring unusually thick or thin overburden. The court went on to say, "Under [*Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)] the agency must examine the relevant data and articulate a satisfactory explanation for the revised regulation if it is to gain judicial approbation" (id.). The Secretary, therefore, is required to articulate a satisfactory explanation for the final rule and to discuss the specific comments received on the proposed rule. However, the Secretary is not required to justify changes from either the 1979 rule or the 1983 rule since both were invalidated upon appeal.

OSMRE believes this rulemaking is consistent with the above decision of the Court of Appeals for the District of Columbia Circuit and that more specific minimum national standards for construction, maintenance, or reclamation of roads are not necessary. The rules adopted today constitute a considerable expansion and fleshing out of the statutory requirements of section 515(b)(17) and (18) of the Act. However, in accordance with section 101(f) of the Act, the rules take into account regional, physical, biological and climatic diversity among the States by providing State regulatory authorities with the flexibility to incorporate regional and local considerations into their programs.

One commenter noted that the construction of roads and support facilities associated with coal mining and exploration could have serious adverse effects on historic properties. The commenter indicated that, under these rules, regulatory authorities would not adequately identify adverse effects for consideration during permit planning, review, and approval in order to avoid or mitigate such effects. The commenter suggested that a new section be inserted that would require a description of the methods to be used to identify properties included in or eligible to be in the National Register of Historic Places, and the efforts to be taken to prevent or control damage to such properties.

OSMRE's regulations at 30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784 (52 FR 4244–4263, February 10, 1987) include adequate provisions for the identification of historic properties and consideration of the effects of all surface mining activities on such properties, including the design and construction of roads. To include these provisions in the performance standards for roads, or for any other specific activity related to surface mining, would be redundant.

Two commenters were concerned that, if the roads regulations were finalized, they would be applied retroactively. They suggested that retroactive compliance would be expensive and actually could increase environmental harm due to reconstruction of existing roads. The commenters also suggested that OSMRE clarify that the regulations apply prospectively to operators requesting a permit as of the date that a State adopts these final rules.

OSMRE anticipates that these rules will be applied prospectively by a State after a State has amended its regulatory program to be no less effective than these regulations. That is, a State would require proposed roads included in a permit or permit revision application to comply with the roads regulations adopted by the State pursuant to these Federal regulations. In accordance with 30 CFR 701.11(e), existing roads that meet the performance standards, but not the design requirements, may be exempted from meeting design

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requirements by the regulatory authority. Therefore, OSMRE does not anticipate that regulatory authorities will require changes in existing roads if they meet environmental performance standards. Because proposed but not constructed roads included in permits approved prior to a State's adoption of rules pursuant to these regulations would comply with existing performance standards and design requirements, OSMRE believes that extensive reworking of plans would not be required.

One commenter contended that the proposed regulations do nothing for environmental protection other than to restate the existing performance standards contained within the regulatory program. The commenter went on to argue that the proposed regulations create an excessive amount of unnecessary paperwork for industry and the rgulatory authorities. The commenter recommended that the proposed regulations should not become final.

OSMRE disagrees because, even though general performance standards have already been established in 30 CFR Subchapter K—Permanent Program Performance Standards, there is a significant need to have sections specific to the design, construction, reconstruction, improvement, and maintenance of roads. Roads can have a significant environmental impact if they are not properly managed and, with this in mind, OSMRE believes that the requirements outlined in these rules justify the documentation required.

B. Section 701.5 Definitions: Road

The definition of *road* in final § 701.5 is identical to that proposed on November 3, 1987 (52 FR 42265), except that the exemption of "pioneer roads" contained in the proposal has been deleted. The rule defines *road* to mean a surface right-of-way for purposes of travel by land vehicles, including mining equipment, used in surface coal mining and reclamation operations or coal exploration. The term *road* encompasses the entire area and structures within a surface right-of-way that is constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term specifically excludes ramps and routes of travel within the immediate mining area (discussed below) and within excess spoil or coal mine waste disposal areas.

The proposed rule excluded pioneer roads, defined in the proposal as "temporary routes used for constructing access or haul roads," from the definition of *road*. The preamble to the proposed rule explained that pioneer roads provide preliminary access for the construction of permanent access and haul roads or equipment roads and not for mining purposes and that they are either replaced by a primary or ancillary road or reclaimed once they have fulfilled their purpose. The final rule does not retain the exclusion. OSMRE has reviewed the issue and believes that pioneer roads are not a separate, discrete category of roads, but are merely part of the process of constructing primary and ancillary roads. Therefore, pioneer roads are subject to the performance standards of this rule applicable to the construction process but not to those that specify standards applicable to completed primary or ancillary roads.

The term "immediate mining area" refers to the area where coal is being removed from the seam and to other areas that should not be subject to the performance standards for roads because they are subject to frequent surface changes. These other areas include areas where topsoil and overburden are being moved and areas undergoing active reclamation. OSMRE intends the term "immediate mining area" to refer to such areas of frequent surface change. Many areas in a mining operation contain routes of travel that are moved every few days as the mining advances during coal removal and as the operator works in coal waste disposal and spoil areas. These routes have a short life and are not included in the definition of road or subject to the road performance standards, but would be subject to the other performance standards applicable to all surface coal mining and recalamation operations.

Temporary routes within spoil or coal mine waste disposal areas are excluded from the definition of *road* according to an agreement by the Secretary in *Round II* (slip op. at footnote 14). The industry plaintiffs contended and OSMRE agreed that it was not reasonable to require roads within coal spoil and refuse disposal areas to be surfaced with nonacid- or nontoxic-forming substances, since these areas often contain acid- and toxic-forming materials. In addition, all of the surface drainage from these areas is controlled by siltation structures and treatment facilities, where necessary, to mitigate any potential adverse environmental effects.

One commenter suggested revisions to the definitions of *affected area* and *permit area* in 30 CFR 701.5. The commenter wanted existing or proposed roads under the jurisdiction of a Federal land management agency to be excluded from these definitions.

The definitions of *affected area* and *permit area* are not part of this rulemaking. OSMRE believes that a revision to either of these definitions is not necessary. The definition of *road* is clear on its own terms as to which roads are included. For this reason, a reference to *affected area* has not been included. On the specific concern relative to Federal lands roads, neither this definition nor the definition of *affected area* as partially suspended (51 FR 41952, November 20, 1986) is intended to expand or limit the jurisdictional reach of the definition of "surface coal mining operations" contained in section 701(28)(B) of the Act, relative to roads. That jurisdictional reach must be determined on a case-by-case basis by the regulatory authority.

One commenter suggested that OSMRE retain the "within the affected area" phrase in the definition of road to ensure that jurisdiction over existing roads under the control of a Federal land management agency is not transferred to the Secretary or to a State regulatory authority.

As noted above, OSMRE does not agree that adding the phrase "within the affected area" will affect jurisdiction over existing roads.

One commenter requested that OSMRE restate its position with respect to the definition of *affected area* and public roads. Another commenter suggested that the definition of *road* be modified to specifically exclude "public roads." The commenter argued that roads maintained by public funds and located on properties dedicated to public entities are not roads as defined by § 701.5 and, even if the permittee so desired, could not be permitted since ownership is not controlled.

The definition of *affected area* is not a part of this rulemaking, nor is there any reference to *affected area* in the definition of *road*. Similarly, there was no reference to roads in the 1979 definition of *affected area* (44 FR 15317, March 13, 1979). The definition of *affected area* was modified in 1983 as it related to public roads in order to address the practice in some states of operators constructing new access roads and then deeding them to a public entity in order to keep the operation less than two acres in area and thus avoid applicability of the Act for the entire mining operation (48 FR 14814, April 5, 1983). The litigation on this definition (*In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. 1980)) also concerned the two-acre exemption, and the definition of *affected area* was suspended insofar as it might limit jurisdiction over roads covered by the definition of "surface coal mining operations." (51 FR 41952, November 20, 1986) The two-acre exemption has since been eliminated by Congress. Since the definition of *affected area* as partially suspended no longer provides additional guidance as to which roads are included in the definition of "surface coal mining operations," no reference to *affected area* is included in the definition of *road*.

State laws vary widely in their road classification systems. OSMRE is concerned that roads constructed to serve mining operations not avoid compliance with the performance standards by being deeded to public entities. However, it is not OSMRE's intention automatically to extend jurisdiction over roads into the existing public road network. Jurisdiction under the Act and applicability of the performance standards are best determined on a case-by-case basis by the regulatory authority. For this reason, OSMRE did not accept the commenter's suggestion that "public roads" be specifically excluded from the definition of *road*.

Several commenters were concerned about the term "immediate mining area" and expressed views concerning which roads within the mining area should be excluded from the definition of *road*. One noted that roads leading to transfer, processing, or storage areas would be subject to the design and performance standards of § 780.37, yet routes within the immediate mining area are not considered roads under this definition. This commenter was unsure how OSMRE defines "immediate mining area" and argued that, if it is assumed that "immediate mining area" includes any road within the permit area, then the definition would be self-defeating. A second commenter maintained that the use of the term "within the immediate mining area" in the exclusion part of the definition of roads leaves the meaning open to varying interpretations since the word "immediate" is undefined and vague.

One commenter recommended that the definition of *road* exclude those access and haulroads that are located in areas that have been mined and are upstream from sedimentation ponds or other siltation structures that have been designed to contain or treat the runoff from the 10-year, 24-hour precipitation event. Since these roads are in areas that already have been disturbed and all runoff from these areas is controlled, the commenter maintained that it is not necessary that these roads meet the performance standards in § 816.150 and 816.151. Another commenter suggested excluding from the definition roads within the mine area unless a road is to be left as a permanent road and bond release is being sought in accordance with § 800.40. The suggested language stated that roads shall be considered to be within the mine area only where the drainage from the road is commingled and treated with other mine drainage through approved sediment control structures. A fifth commenter suggested that the exclusion be limited to roads which are constructed within the portion of the permit area which is controlled by siltation structures and treatment facilities as required by 30 CFR 816.46. The commenter also suggested that this language would give an exact meaning to the exclusion since the area of the permit required to be controlled by siltation structure and treatment facilities is defined in 30 CFR 816.46. Another commenter agreed with the exclusion, but felt that it would extend to all roads within the mine area since their drainage is otherwise treated with that of the rest of the mine. Another commenter was also concerned that roads within the mine area not frequently changing should not be included in the definition.

OSMRE has not modified the rule in response to these wide-ranging comments. OSMRE intends the term "immediate mining area" to refer to the area of the mine that is subject to frequent surface changes and where the protection required by section 515(b)(17) of the Act, concerning controlling or preventing erosion, siltation, pollution of water, damage to fish and wildlife or their habitat or to public or private property, is provided by other applicable performance standards. The constraints of section 515(b)(18) of the Act would not apply to this area because any serious alterations to the normal flow of water and impact on natural stream beds and drainage channels would have already occurred. The term "immediate mining area" is not intended to encompass the entire permit area and, therefore, would not create a self-defeating definition. OSMRE's view is in part consistent with the view expressed by several of the commenters concerning the exclusion of roads within the permit area for which drainage control is otherwise provided. Since all of the other standards of section 515 of the Act would also necessarily apply to temporary routes not considered roads, the protection required by section 515(b)(17) of the Act would still be achieved. However, OSMRE has retained the concept of frequent changes to ensure that all roads are adequately reclaimed. All routes subject to frequent changes will be obliterated during the mining process. However, routes no longer changing need to be included in the definition of *road* to ensure that they are adequately designed, constructed, maintained and reclaimed.

One commenter maintained that the definition of roads arbitrarily restricts the applicability of the regulations for certain types of road disturbances, and argued that this is a clear contradiction of section 701(28) of the Act. The commenter stated that the deletion of pioneer and construction roads from the roads definition is clearly unlawful. The commenter argued that the principal purpose of pioneer and construction roads is to gain access to the mine site. The commenter also noted that pioneer roads typically disturb virgin areas and can lead to greatly increased sedimentation from a mine site (especially on steep slopes). The commenter asserted that this was a loophole that offers a potential for substantial abuse. The commenter maintained that OSMRE must set out clearly in the record the performance standards that must be met in the design, construction, and reclamation of pioneer roads. Two other commenters were concerned that the term "pioneer road" is not defined in the regulations and may not be universally understood. It was suggested that OSMRE should either define the term "pioneer road" or change the language in the definition of roads.

In response to these comments, the provision excluding pioneer roads from the definition of *road* has been deleted from the rule. As indicated above, OSMRE has re-examined this issue and believes that pioneer roads are not a separate, discrete category of roads, but are part of the process of constructing primary and ancillary roads. As such, pioneer roads are subject to the performance standards applicable to the construction process such as those in § 816.150(b)(1) through (6). The completed primary or ancillary road is subject to the remaining applicable performance standards.

One commenter addressed the term "pioneer roads" in the context of roads for coal exploration. The commenter assumed that most exploration roads are simply unsurfaced, cleared paths that allow access into the area for off-road exploration equipment and would be considered "pioneer roads" and, therefore, not subject to the road regulations. If this assumption is correct,

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the commenter would support the current language with respect to coal exploration activities and pioneer roads.

OSMRE has dropped the use of the term "pioneer roads" from the rule to avoid the kind of confusion reflected in the comment. All roads used for coal exploration activities that substantially disturb the natural land surface are subject to the standards of 30 CFR 816.150.

One commenter agreed that temporary routes used for constructing access or haulroads should be excluded from the definition of roads. However, the commenter noted that, just as temporary routes are sometimes used to construct roads, so are temporary routes used to construct any number of structures, such as sediment ponds, stockpiles, and so forth. The commenter maintained that these routes also should be excluded from the definition.

OSMRE has deleted the exclusion for temporary routes that are part of the road construction process. Temporary routes used to construct other types of structures are, by definition, ancillary roads.

One commenter suggested that the rule state that only those roads used exclusively for the sole purpose of surface coal mining reclamation and exploration operations, should be included in the definition. The commenter also suggested that the definition should state that only those access and haulroads constructed, used, reconstructed, improved, *and* maintained are included. The commenter argued that this language would clearly show that the combination of these activities is necessary in order for a road to be considered a "road" under the definition.

OSMRE did not accept these suggestions, which are intended to limit the scope of the definition of *road*, because to do so would be inconsistent with the requirements of section 515(b)(17) of the Act, which requires control or prevention of environmental harm from the construction, maintenance or postmining conditions of access roads into and across the site of operations.

One commenter requested that OSMRE clarify the definition of *road* with respect to roads to and from transfer, processing, or storage areas. The commenter maintained that all roads from these areas would also fall under the definition of *road*.

OSMRE agrees that roads to and from transfer, processing, or storage areas are included in this definition, if these roads fall within the definition of "surface coal mining operations." This will have to be determined on a case-by-case basis consistent with the guidance previously stated in this preamble.

C. Sections 780.37/784.24 Road Systems

Final § 780.37 is the same as the proposed rule, except for some minor wording changes discussed below, and contains permit application requirements which specify the plans and drawings that an applicant is required to submit for each road within a proposed permit area. The section also discusses certification of primary roads and the establishment of standard design plans by the regulatory authority.

One commenter suggested that the requirements of § 780.37 would accomplish little more than additional excessive paperwork for industry and the regulatory authority because environmental protection could be accomplished by requiring roads to meet the performance standards of the existing regulations.

OSMRE believes that the requirements of § 780.37 are the minimum necessary to provide the regulatory authority with the permit information needed to find that the performance standards promulgated with this rule will be met so that a permit may be issued.

Sections 780.37(a)/784.24(a) Plans and Drawings

Final § 780.37(a) requires the permit application to include plans and drawings for each road to be constructed, used, or maintained within the proposed permit area. OSMRE believes that the information in the plans and drawings enables the regulatory authority to assess the impacts resulting from any road that would be constructed or used as part of the surface mining operation, and determine whether the operation and reclamation plan would be effective in mitigating as much of the cumulative impacts on the environment as possible, consistent with the purpose of the Act.

Final § 780.37(a)(1) requires the applicant to submit a map, and as appropriate, cross sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures. OSMRE expects that the amount of detail submitted by the applicant under this section will be appropriate to the classification of the road and to the extent of the projected impact from the specific feature. For example, less detail will be required for an ancillary road than for a primary road, for which the drawings and specifications would be quite detailed.

Final section (a)(2) requires drawings and specifications of each proposed road that will be located in the channel of an intermittent or perennial stream to give the regulatory authority the information necessary to approve the road, consistent with the performance standard in § 816.150(d)(1), which was promulgated pursuant to section 515(b)(18) of the Act.

Final § 780.37(a)(3) requires that the drawings and specifications for each proposed ford of perennial or intermittent streams that will be used as a temporary route provide the regulatory authority with sufficient information to review the stream ford and decide whether to approve it, consistent with the performance standard in § 816.151(c)(2). A minor wording change, discussed below, was made in the final rule to make the language in § 780.37(a)(3) consistent with the language in § 816.151(c)(2).

Final § 780.37(a)(4) requires a description of measures that the applicant must take to obtain the approval of the regulatory authority for alteration or relocation of a natural stream channel, consistent with the performance standard in proposed § 816.151(d)(5). A minor wording change, discussed below, was made in the final rule to make the language in § 780.37(a)(4) consistent with the languag in § 816.151(d)(5).

Final § 780.37(a)(5) requires drawings and specifications for each low-water crossing of perennial or intermittent streams, to enable the regulatory authority to maximize the protection of the stream in accordance with the performance standard in § 816.151(d)(6). A low-water crossing resembles a bridge in that water flows under the structure at normal stream level, but high water goes over the structure during storm or flood events. A minor word change, discussed below, was made in the final rule to make the language in § 780.37(a)(5) consistent with the language in § 816.151(d)(6).

Final § 780.37(a)(6) requires information on the applicant's plans to remove and reclaim each road, and the schedule to be followed for road reclamation, to ensure consistency with the performance standards. This information will not be required for a road that is proposed to be retained for use under an approved postmining land use.

One commenter supported the new language for permit information requirements for roads and suggested that § 780.37(a) provides needed

information for the regulatory authorities to make an informed decision where an operator proposes to place roads in stream courses or ford streambeds. Another commenter suggested a language change for § 780.37 and other similar sections that reference the preparation of plans, drawings, or maps. The commenter suggested that each section could include a sentence noting that these requirements may be accomplished through the use of photogrammetric methods for aerial surveys and mapping.

While these methods may be appropriate to fulfill some of the plans, drawings, and map requirements in the paragraph and other sections, OSMRE does not believe that photogrammetric methods need to be specifically referenced in a national rule. The States are free to specify the types of plans, drawings and maps that will be acceptable based on an assessment of the quality, reliability and availability of data provided by various methods of data collection and presentation.

One commenter maintained that the requirements in § 780.37(a) are redundant and should be deleted because they are essentially found elsewhere in the regulations. The commenter noted that 30 CFR 816.57 prohibits any activity within 100 feet of an intermittent or perennial stream unless that activity is approved by the regulatory authority and diversions of perennial and intermittent streams, for any reason (including roads) are specifically addressed by 30 CFR 816.43(b). The commenter argued further that plans for diversions are required to be included in the permit by 30 CFR 780.29, and the effects of all proposed activities on hydrology must be addressed in the permit under 30 CFR 780.21(f).

OSMRE does not agree that § 780.37(a) is redundant. It contains the requirement that the permit application include plans, drawings, maps, descrptions, and other information to enable the regulatory authority specifically to assess the impacts resulting from roads that would be constructed or used as part of the surface mining operation relative to the specific performance standards applicable to roads. These information requirements will enable the regulatory authority to determine whether the operation and reclamation plan will be effective in mitigating the impacts specific to roads to ensure compliance with those standards.

One commenter asserted that there was insufficient protection for stream courses and suggested that OSMRE set minimum standards for determining allowable practices.

OSMRE does not agree that further minimum standards are appropriate in a national rule, because such standards would fail to take into account regional differences in the hydrologic characteristics of streams. Further, OSMRE believes that the information requirements of § 780.37 provide the information necessary under the Act for regulatory authorities to use in making permit decisions concerning the location of roads in stream channels. Also, the performance standards for roads found in §§ 816.150 and 816.151, along with the other general performance standards found in "Subchapter K-Permanent Program Performance Standards," provide sufficient protection for stream courses.

Two commenters suggested that the technology used in § 780.37(a) (2) through (5) should correspond to the terminology used in the performance standards referenced by each paragraph.

OSMRE agrees and has made the following changes to the rule. In § 780.37(a)(3), "each proposed stream ford" is replaced by "each proposed ford of perennial or intermittent streams" to correspond to the language in 30 CFR 816.151(c)(2). In § 780.37(a)(4), "natural drainageway" is replaced by "natural stream channel" to correspond to the langauge in 30 CFR 816.151(d)(5). In § 780.37(a)(5),"each low-water crossing" is replaced by "each low-water crossing of perennial or intermittent stream channels" to correspond to the language in 30 CFR 816.151(d)(6). Identical changes were made in § 784.24(a)(3) to correspond to 30 CFR 817.151(c)(2), in § 784.24(a)(4) to correspond to 30 CFR 817.151(d)(5), and in § 784.24(a)(5) to correspond to 30 CFR 817.151(d)(6).

Three commenters maintained that the requirement in § 780.37(a) to prepare plans is burdensome, does not reflect the dynamic nature of a mining operation, and does not produce a commensurate gain in environmental protection. The commenters suggested language changes and alternate concepts that included requiring only typical design plans, plans as appropriate, or only details for primary roads.

OSMRE does not agree with the commenters. The information required for plans and drawings in § 780.37(a) is necessary for the regulatory authority to assess the impacts expected from roads associated with a permit application. This evaluation of the efficacy of the proposed reclamation and operations plan in mitigating impacts on the environment is consistent with the purposes of the Act. However, OSMRE expects that the amount of detail submitted in a permit application will be appropriate to the classification of the road and its projected impacts.

One commenter suggested that, where stream crossings are proposed, detailed plans for such crossings should be submitted so that the regulatory authority can evaluate the impacts of their construction.

OSMRE agrees that this could be helpful to the regulatory authority, and the regulatory authority has the flexibility to require this type of information. Section 780.37 requires the applicant to submit plans and drawings for each road, including a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings and drainage structures.

Four commenters suggested that the requirement in § 780.37(a)(6) to describe road removal and reclamation and provide a schedule for the work should be deleted or clarified to ensure that the detail required for the schedule would be commensurate with the dynamic nature of mining operations. The commenters noted that, due to the variable nature of mining operations, a schedule for road removal and reclamation would be speculative at best.

OSMRE recognizes the potential for changes in the road removal and reclamation plan and schedule as mining progresses. However, this potential for change, which is inherent in all plans and schedules, does not obviate the need to have this best-plan information available to the regulatory authority during permit review to ensure consistency with the performance standards found in 30 CFR 816.150(f).

Sections 780.37(b)/784.24(b) Primary Road Certification

This provision is identical to the proposed rule and requires that the plans and drawings for each primary road be prepared by or under the direction of a qualified registered professional engineer experienced in the design and construction of roads. It also requires that the engineer certify that the design meets the performance standards of 30 CFR Chapter VII, current, prudent engineering practices, and any design criteria estblished by the regulatory authority. The phase "current, prudent engineering practices" includes those practices well-established by engineering principles

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and widely recognized by experts with experience in the subject.

Section 780.37(b) also allows design and certification by a qualified registered professional land surveyor experienced in the design and construction of roads in any State which authorizes land surveyors to certify the design of primary roads. This provision is based on the November 4, 1983, amendments to the Act which authorize land surveyors to prepare and certify cross sections, maps, and plans (Sec. 115, Pub. L. 98–146, 97 Stat. 938 (1983)). The amendment provides that "not withstanding section 507(b)(14) of the Surface Mining and Reclamation Act of 1977 (Pub. L. 95–87), cross sections, maps, or plans of land to be affected by an application for surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans." Before a land surveyor could certify the design of a primary road under this rule, State law also would have to grant corresponding authority.

One commenter indicated support for § 780.37(b), which reflects the 1983 amendment to the Act initiated by the surveying profession authorizing a qualified registered professional land surveyor to design and certify plans and drawings for each primary road.

Two comments maintained that, at the time of permit application preparation, an operator may not have determined the precise location and design of a road or may not have sufficient site-specific field information to certify the plans and drawings for a primary road. They suggested that OSMRE change the language in § 780.37(b) to allow for the submission of detailed design and plans prior to construction, instead of requiring submission with the permit application. They noted that this would reduce the likelihood of permit modifications later during the duration of the operation. In a related comment, it was suggested that § 780.37 contain a provision requiring submission to the regulatory authority by the permittee of updated plans and drawings to account for changes in the location or design of roads.

OSMRE did not accept the suggestion that the final rule allow submission of detailed design and plans at the time of road construction. OSMRE believes that in order to adequately assess the impacts of the roads planned for an operation, the regulatory authority needs the information required in § 780.37(b) during the initial permit review. This is particularly important for primary roads due to the potential for environmental impact associated with their frequency or length of usage. Also, OSMRE anticipates that sufficient information will be present in the permit application package to ensure compliance with the appropriate performance standards. OSMRE did not accept the suggestion that the final rule require the submission of updated plans and drawings to account for changes in the location or design of roads. If changes occur, they must be incorporated into the permit by the normal permit revision process established in 30 CFR Part 774.

One commenter did not agree with the language that authorizes land surveyors to certify plans and drawings for roads. The commenter maintained that the design of roads was outside the field of expertise of land surveyors.

OSMRE recognizes that not all land surveyors have adequate expertise to certify plans and drawings for road designs, and therefore requires that the registered professional land surveyor be "qualified and experienced in the design and construction of roads." This requirement, along with the requirement for State authorization of surveyor certification of road design, is sufficient to ensure that certifying land surveyors will have appropriate expertise to certfiy plans and drawings for roads.

One commenter argued that the certification requirement in § 780.37(b) was unnecessary and should be deleted. The commenter noted that since the roads were part of the permit area, they were already completed by a qualified engineer or land surveyor and, therefore, must comply with the approved mining plan and performance standards. The commenter argued further that requiring post-construction certification of roads creates additional unnecessary paperwork with no net environmental protection.

OSMRE does not agree with the commenter and believes the design certification requirement for primary roads is necessary because the potential for environmental impacts from primary roads can be significant. By requiring certification that the design of primary roads meets the requirements of the Act, the potential problems associated with design of primary roads will be minimized.

Two commenters suggested that geologists be authorized to certify plans and drawings for primary roads. They noted that the November 4, 1983, amendment to the Act allows cross sections, maps, or plans of land to be affected by an application for surface mining and reclamation permit to be prepared by or under the direction of a qualified registered professional geologist.

OSMRE did not accept this suggestion because the existing authority of geologists is not affected by this rulemaking; therefore, their authority for preparing and certifying cross sections, maps and plans has not changed since 1985 (50 FR 16195, April 24, 1985).

One commenter suggested that ancillary roads should also be designed and certified by a qualified professional to ensure proper drainage control and stability of road embankments.

OSMRE did not accept this suggestion. It is not necessary to require design certification of ancillary roads because usage of ancillary roads has smaller potential for adverse environmental impact than usage of primary roads. Ancillary roads are subject to relatively infrequent use by smaller, lighter weight vehicles. See the discussion of the road classification system in the preamble to final § 816.150(a)(1).

Sections 780.37(c)/784.24(c) Standard Design Plans

Final § 780.37(c) is identical to the proposed rule and allows the regulatory authority to establish engineering design standards for primary roads through the State program approval process, in lieu of the engineering tests that otherwise would be performed to establish compliance with the minimum static safety factor of 1.3, for all primary road embankments. Such standards must be no less effective than the minimum static safety factor of 1.3. Suitable engineering design standards are those that are accepted in the engineering community as the basis for constructing stable roads, and are known to assure proper performance through testing and past practice. This provision enables the regulatory authority and the operator to save time and effort during the design and review of road plans, and also ensures protection of the environment through the application of standards that have proven effective for the conditions prevalent in each State.

Three commenters supported proposed § 780.37(c). They noted that, by allowing the regulatory authority to establish or use engineering design standards instead of engineering tests, § 780.37(c) reinforces the Act's finding in section 101(f) that, because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations should rest with the States.

D. Sections 780.38/784.30 Support Facilities

Final § 780.38 addresses the specific permit application requirements for all support facilities covered by § 816.161 of the performance standards. A permit applicant must submit a description, plans and drawings for each facility to be constructed, used or maintained within the proposed permit area. The plans and drawings include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with § 816.161 for each facility. The final rule is adopted as proposed.

This rule expands new § 780.38 to cover support facilities in general. Although existing 30 CFR Part 780 contains a number of requirements applicable to support facilities, the existing rules do not contain a general requirement that a permit application include plans and drawings for support facilities that would be sufficient to demonstrate compliance with § 816.161. To remedy this deficiency, § 780.38 applies to all support facilities in addition to the conveyors and rail systems covered by previous § 780.37.

One commenter objected to proposed § 780.38 because it appeared to the commenter to consider roads associated with support facilities to be distinct from roads regulated by §§ 816.150 and 816.151. The commenter stated that the preamble provided no justification for distinguishing roads associated with support facilities as distinct from roads associated with the surface coal mining operation since the same equipment uses both roads. For this reason, the commenter continued, all roads should be designed and maintained under a uniform set of performance standards and reclaimed to permanent program standards.

OSMRE agrees that this rule should not distinguish roads associated with support facilities from other roads. The definition of *road* in final §701.5 includes all roads that are used in surface coal mining and reclamation operation without differentiating between roads for support facilities and roads for coal mining operations. Section 780.37 as well as the performance standards in §§ 816.150 and 151 apply to all roads at the coal mining operation including those associated with support facilities. Therefore, all roads must be designed and maintained under a uniform set of performance standards and reclaimed to permanent program standards.

The same commenter also stated that proposed § 780.38 appeared to remove support facilities, including conveyors and rail systems, from the permit information requirements and permanent program performance standards that were applicable for these facilities under the 1983 rule and would be applicable to roads under the proposed rule. The commenter stated that § 780.38 must be substantially rewritten to ensure that conveyors and rail systems in particular, and all support facilities in general, meet all permanent program application and performance standard requirements.

OSMRE disagrees with the commenter's assessment of the purpose and effect of this final rule. The final rule does not change or affect in any way the performance standards for support facilities. The rule brings the format of the permit information requirements into harmony with the format of the performance by placing the permit information requirements and performance standards for roads and support facilities in separate, parallel sections.

OSMRE also disagrees that § 780.38 should be rewritten to indicate more clearly the performance standards applicable to support facilities. In fact, § 780.38 certifies the performance standards applicable to support facilities (including rail systems and conveyors) by grouping the permit information requirements and the associated performance standard reference in the same place. Previously, the permit applicant would have had to search through § 780.37 to determine the requirements applicable just to roads and those applicable to both support facilities and roads.

One commenter stated that the title of § 780.38 should be "Other Transportation Facilities" since that is the section's topic of discussion.

OSMRE did not accept this comment. Since the permitting requirements established by this section cover all support facilities, and parallel and reference the performance standards in § 816.181, concerning support facilities, the title is appropriate.

Two commenters requested that § 780.38 be withdrawn from this rulemaking because OSMRE has not defined "support facilities," and it is therefore premature for OSMRE to adopt this rule. They also stated that the proposal substantially changes the scope of this rule from roads and conveyors to all facilities. They stated that it was not possible to comment on § 780.38 without any guidance on what constitutes a support facility until it is defined in the rules. Finally, the commenters suggested that States are capable of determining those facilities related to coal mining that should be regulated under their regulatory programs and establishing appropriate performance standards as necessary.

OSMRE agrees in part and disagrees in part. First, effective July 11, 1988, OSMRE reinstated the suspended definition of *support facilities* (53 FR 21784, June 9, 1988) pursuant to the January 29, 1988 decision of the U.S. Court of Appeals for the District of Columbia Circuit (*NWF* v. *Hodel*). However, OSMRE agrees that State regulatory authorities are capable of identifying facilities that should be subject to the provisions of the Act without having a definition of support facilities in the Federal regulations. Therefore, OSMRE has proposed to delete the recently reinstated definition of *support facilities* from 30 CFR 701.5 (53 FR 23522, June 22, 1988). However, whether there is or is not a Federal definition of *support facilities* is irrelevant to this rule, the purpose of which is to specify more clearly the link between permit information requirements for such facilities and the applicable performance standards, which are not part of this rulemaking. The information required in § 780.38 is needed to demonstrate compliance by each facility with 30 CFR 816.161.

One commenter stated that § 780.38 was unnecessary because sufficient information is authorized in the existing regulations to show the location and dimensions of all support areas within the permit boundary; therefore, the proposed rule does little more than reinforce the existing regulations.

OSMRE disagrees that § 780.38 is unnecessary because although existing 30 CFR Part 780 contains a number of requirements which may be applicable to support facilities, the existing rules do not contain a specific requirement that a permit application include plans and drawings for support facilities that would be sufficient to demonstrate compliance with § 816.161. By specifying the degree of detail that is needed in each permit application, § 780.38 provides clear direction to the applicant.

E. Section 815.15(b) Road Standards for Coal Exploration

Final § 815.15(b) requires all roads or other transportation facilities used for coal exploration to comply with the applicable provisions of 30 CFR 816.150, 816.180, and 816.181. The final rule is unchanged from the proposal.

OSMRE believes that it is not necessary for roads used for coal

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exploration to meet the performance standards of § 816.151 for primary roads because the amount of coal or spoil transported during coal exploration operations is relatively small. OSMRE believes that the performance standards of § 816.150 provide sufficient protection for the environment during coal exploration. Under section 512(a) of the Act, 30 CFR 815.15 applies only to "coal exploration activities which substantially disturb the natural land surface." Thus, a road must comply with the applicale provisions of 30 CFR 816.150 only to the extent that the coal exploration activities substantially disturb the land where the road is located. OSMRE has defined the term *substantially disturb* in 30 CFR 701.5.

One commenter supported the language in § 815.15(b) because, in the commenter's opinion, it allows the regulatory authority some flexibility in deciding if a coal exploration road should be designed and constructed to primary road standards. The commenter stated that, since these roads are generally used for only a short time during coal exploration activities, especially when 250 tons or less of coal is removed, the design and construction of a road to such stringent standards is not necessary.

OSMRE disagrees with the commenter's assessment of the applicability of the rule. The rules adopted today do not apply the primary road performance standards in § 816.151 to coal exploration activities. Furthermore, the coal exploration regulations do not require prior approval of roads when 250 tons or less of coal is to be removed.

Another commenter stated that OSMRE has a responsibility to set national standards for roads associated with coal exploration, regardless of the amount of coal removed from the site. The commenter suggested that haulroads for coal exploration in steep-slope areas have the potential for environmental damage and require standards to ensure that environmental damage caused by construction and use of these roads is minimized. The commenter also stated that OSMRE has no basis for the arugment that specific design standards only apply to primary roads because OSMRE has a statutory responsibility to provide meaningful national standards for all surface coal mining and reclamation operations. The commenter concluded that meaningful national standards for roads associated with coal exploration sites should be adopted in the final rule.

OSMRE has included a full discussion on the necessity of promulgating specific design standards for mining roads in the discussion of § 816.150. Neither section 512 nor section 515 of the Act requires the establishement of design standards for coal exploration roads. The requirement in § 816.150(c) that the road shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, and any necessary design criteria established by the regulatory authority will provide adequate environmental protection to the area of coal exploration activities. Enforcement of these provisions will provide the necessary protection in steep-slope areas.

One commenter recommended that the term *substantially disturbed* in 30 CFR 701.5 be changed to exclude the construction of a road for coal exploration activities proposing to remove less than 250 tons of coal.

OSMRE does not agree that the construction of a road for such coal exploration activities could not involve "substantial disturbance." The determination of when "substantial disturbance" has occurred must be made on a site-by-site basis. OSMRE does not believe the routine maintenance of an existing road used for coal exploration is a substantial disturbance requiring the road to be reclaimed in accordance with the preformance standards of section 515 of the Act. To use an existing road that is in poor condition due to lack of maintenance, a coal exploration operator may need to blade the road surface, replace some culverts, or do other minor routine maintenance. Such routine maintenance of an existing road would not be considered substantial disturbance of the natural land surface that would require reclamation of the road. Further, in some cases coal exploration activities are conducted without roads and in such a manner that the activities do not substantially disturb the natural land surface.

F. Sections 816.150/817.150 Roads: General

Final § 816.150 applies to all roads as defined by 30 CFR 701.5. It includes a road classification system, performance standards, design and construction limits, provision for design criteria, and provisions on road location, maintenance, and reclamation. Section 816.150 is identical to the proposed rule except for a clarifying change to § 816.150(b)(1) adopted at the request of EPA and minor changes to § 816.150(d)(1) and (f).

Sections 816.150(a)/817.150(a) Road Classification System

Final § 816.150(a) is identical to the proposed rule and establishes classifications for all mine roads as either primary or ancillary. Primary roads are defined as any roads(1) used for transporting coal or spoil, (2) frequently used for access or other purposes for a period in excess of six months, or (3) to be retained for an approved postmining land use. An ancillary road is any road not classified as a primary road. OSMRE believes that the potential for environmental harm associated with the two types of roads is sufficiently different to require a two-tiered classification system. Roads that are heavily travelled over a long period of time; used by large, heavy vehicles; or that have a potential for spillage have a greater potential for environmental harm than roads that are used infrequently by small, light vehicles or for short periods of time. This concept is supported by OSMRE's experience and observations over the past ten years operating a regulatory program.

Each of the factors that distinguish primary roads from ancillary roads is related to an increased potential for environmental harm. Roads used for haulage of coal, overburden, spoil, etc. are classified as primary roads under the final rules. These roads are typically used by large, heavy vehicles. In order to accommodate such vehicles, the road must be wide, generaly involving two lanes of traffic, and its surface must be capable of supporting the weight of the traffic. A wide road involves much more earthmoving in its construction and exposes more surface area, increasing the potential for erosion. On heavily travelled roads, provision must be made for vehicles to pass one another safely. The design manuals recommend wider lanes where the ability of vehicles to pass one another is a concern. See Kaufman and Ault, pp. 30–33. On less travelled roads, a single lane would suffice. The increased potential for environmental harm associated with frequently travelled roads derives from the greater surface area exposed and the greater dust entrainment associated with larger vehicles and the greater volume of traffic. Roads with a higher weight bearing capacity require a thicker subbase, so that more material must be excavated, placed and compacted in constructing the road.

Design manuals recommend that roads used by large haulage vehicles, for example, in the 100,000–200,000 pound range, minimize the severity of road grades. See Kaufman and Ault, pp. 8–11. Building roads to accommodate heavier vehicles, therefore, often requires substantial cut and fill work to limit maximum and sustained grades in addition to providing adequate width for wide vehicles to safely pass. Also, since there is a certain amount of cargo spillage associated with haulage roads, the potential for erosion, siltation or damage to property or wildlife habitat is greater for such primary roads due to loose coal, coal waste or spoil on the road surface. Roads not used for haulage will not typically generate this potential problem.

Under the classification system, primary roads also include roads frequently used for a period in excess of six months. This factor is included due to the increased risk of environmental harm associated with heavy traffic over long periods of time. Duration of road use is also an important predictor of potential environmental harm. The longer a road exists, the greater potential for slips or grade failures as well as other impacts previously mentioned. In OSMRE's experience, the potential for erosion and siltation as well as road grade failures is quite seasonal, normally occurring in early spring. Especially in the Eastern U.S., the increased precipitation associated with this period combined with frequent freezing and thawing tends to degrade road beds as well as the surface. However, such problems are frequently not evident in the first season. Moreover, roads used less than six months will frequently not even be in place during this season. Therefore, OSMRE believes, due to the increased risk of environmental harm, that longer term roads must be subject to the more stringent primary road design and performance standards. OSMRE strongly believes that differentiating between potentially greater or lesser environmental impacts in developing regulatory requirements is fully consistent with the requirement in section 102 of the Act to establish a program to protect society and the environment and to strike a balance between protection of the environment and the nation's need for coal. OSMRE is basing these road provisions, in part, on ten years of experience enforcing the surface mining regulatory program. OSMRE believes that these standards are both necessary and adequate to achieve the purposes of the Act.

Ancillary roads are all roads not designated as primary. Ancillary roads are subject to relatively infrequent use by smaller, lighter weight vehicles. Consequently, the potential severity and risk of harm from use by such vehicles is smaller. OSMRE has not identified specific types of roads in the rule as ancillary because it would not be possible to make an all-inclusive list. Examples of ancillary roads are those which provide access to air shafts, sediment ponds, and locations for hydrologic sampling, equipment maintenance, monitoring, or other similar uses.

One commenter supported the concept of two classifications for roads as well as the handling of performance standards in general terms. The commenter noted that this gives the regulatory authority more discretion in managing permitting and enforcement programs.

One commenter suggested that all roads outside the area controlled by siltation structures and treatment facilities be considered primary roads.

OSMRE did not accept this suggestion because it is unnecessarily rigid. Such a system for designating primary roads would entail substantial design, construction and maintenance costs without, in many cases, a concomitant reduction in potential environmental harm.

Some commenters were concerned that the proposed two-tiered system was overly simplistic, especially with resepct to limited use roads that exist for extended periods of time. The commenters felt that such roads would be inappropriately considered primary roads.

OSMRE does not agree that the two-tiered system is overly simplistic, nor does it agree that a "simple" system is necessarily inferior to a "complex" one. The final rule balances environmental protection, safety and road stability against design, construction and maintenance costs while providing the flexibility to address a multitude of varying site conditions. Under the final rule, infrequently used acess roads that will be in existence for an extended period of time will be considered ancillary roads.

Numerous commenters voiced their concerns about how the elements of the definition of primary road in § 816.150(a)(2) would be interpreted. Regarding the criterion in § 816.150(a)(2)(i) that roads used for transporting coal or spoil are primary roads, there was concern that a bona fide ancillary road would automatically be classified as a primary road if a pickup truck loaded with coal used the road.

OSMRE did not modify the regulation in response to this concern because it is confident that such situations rarely, if ever, arise and that regulatory authorities will use reasoned judgement in applying the definition to achieve its intended purpose. Roads used for coal and spoil transportation must be considered primary roads because of the generally large trucks used, the high frequency of trips, the potential for spillage of coal or spoil onto the road surface, and the fact that coal and spoil transport occurs throughout the life of the operation.

Concerning the frequency of use criterion contained in § 816.150(a)(2)(ii), a commenter suggested that the word "frequently" be dropped because some infrequently used road could cause more environmental harm than coal haulroads. It was also suggested that frequency be defined.

OSMRE did not drop the frequency element from the definition of primary road because it believes that frequency of use is a key predictor, along with duration of use, of potential environmental harm. OSMRE did not add a definition of "frequently used" to the final rule because it is not possible or advisable in a national rule to devise a definition that will fairly address all sets of circumstances. Whether a road is "frequently used" is a determination that should be made at ground level on a case-by-case basis taking into account the probable environmental consequences of the anticipated level of use and the types of vehicles expected to use the road. As an example, OSMRE considers that a road used only once or twice each day, or once or twice each shift, for access to a structure housing a fan or ventilator (fan house) for the purpose of monitoring and/or maintenance would not be a "frequently used" road.

Concerning the duration of use criterion in § 816.150(a)(2)(ii), it was suggested that the six-month period should be deleted and that the primary road definition should better reflect the type of vehicular use and primary purpose of the road. It was argued further that access and service roads used in excess is six months would be classified as primary roads thus burdening the operator with unnecessary design and performance requirements.

The concern that the primary road definition should better reflect the type of vehicular use and primary purpose of the road is addressed in the previous discussion explaining the basis for the road classification system. As to which roads are classified as primary, the commenter may have misunderstood the proposed regulation. Duration of use is a key predictor of a road's potential for environmental harm. It is generally

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recognized that the longer a road is used, the greater the potential for stability problems and erosion. However, an infrequently used road of more than six months duration (which is not used to haul coal or spoil, and which will not be retained for postmining land use) is unlikely to cause significant environmental harm and, thus, is not classified as a primary road. The six-month limit establishes a reasonable balance between long- and short-term use.

Three commenters suggested that OSMRE revise the road classification system in § 816.150(a)(2)(iii) as it relates to roads that will be retained for an approved postmining land use. The commenters argued that retaining a road for a approved postmining land use should not be a determining factor in classifying the road because to do so would subject the road to performance standards that could be unrelated to the use of the road during the mining operation. They felt that the classification should be determined solely by the purpose and frequency of use of the road during mining. The same commenters were also concerned about how changes in the status of a road would be handled, e.g. a road classified as ancillary during the mining operation becomes a primary road when the operator retains the road after mining and reclamation is completed.

OSMRE did not accept the commenters' arguments and continues to believe that roads which are to be retained for an approved postmining land use should be considered primary roads and be subject to the associated performance standards. OSMRE bases this belief on the fact that after final bond release, protection from the future environmental consequences of road use and maintenance under the Act ceases. The operator has no responsibility for subsequent adverse environmental impacts related to the road's use and maintenance. In order to provide a reasonable assurance of environmental protection after the site has been reclaimed, and in the absence of an operator, OSMRE believes that postmining roads must be designed and constructed in compliance with the more stringent primary road standards. This will ensure, as far as possible, that the location, design, construction and maintenance of the road during mining operations will have minimum adverse impacts after reclamation. Concerning changes in the classification of a road, OSMRE believes that the regulatory authority must approve such changes based on the road's compliance with all standards applicable to the road.

One commenter suggested that performance standards are unnecessary because primary roads are required as part of any operation, and the regulations are only a duplication of existing performance standards.

OSMRE does not agree. These regulations and performance standards specific to roads are necessary to insure that all roads are properly classified, that potential environmental impact of the roads are adequately evaluated and that roads are located, designed, constructed, reconstructed, maintained, and reclaimed so as to minimize their environmental impacts.

One commenter maintained that some of the requirements for primary roads would be burdensome to small operators. The commenter noted that at small operations, the equipment used to transport the coal may only include small trucks of limited capacity. The commenter suggested that some allowance or exception should be made whereby use of a road to transport coal does not automatically cause it to be a primary road.

OSMRE understands the commenter's concern for small operators. However, as discussed above, OSMRE has concluded that roads used for transporting coal or spoil have a potential for environmental damage regardless of whether their use is frequent or long-term. Therefore, roads used for transporting coal or spoil have been included in the definition of primary roads and are subject to more stringent performance standards. It should be noted that OSMRE expects that road design will reflect the anticipated road duration and usage.

One commenter indicated that the term "ancillary road" requires a better definition. The commenter was concerned because of the lack of any permitting or reclamation requirements for ancillary roads.

OSMRE disagrees that "ancillary road" is poorly defined. Taken together, the definition of *road* at § 701.5 and the definition of primary road at § 816.150(a)(2) delineate ancillary road with a degree of specificity appropriate to a national rule given the variety of roads associated with mining operations. The permit information and reclamation requirements specifically associated with ancillary roads are found in §§ 780.37 and 816.150, respectively.

One commenter recommended that the classification system be changed to account for the diversity in service life and uses of mine roads. This commenter also suggested that designs should be prepared by qualified professionals.

OSMRE agrees that some form of categorization of roads is necessary from both the environmental and economic points of view due to the diversity of road uses and types associated with mining operations, but did not make any change in the final rule because the road classification system being adopted today explicitly differentiates between the two types of roads on the basis of purpose and frequency of use. Further, § 780.37 requires the plans and drawings for each primary road to be prepared by, or under the direction of, qualified professionals. Because the risk of environmental harm from ancillary roads is less than that from primary roads, the added expense for design and construction certification by a registered professional is not appropriate.

One commenter felt that § 816.150(a) should explicitly exclude public roads.

OSMRE disagrees. The applicability of these standards to public roads is discussed elsewhere in this preamble.

One commenter objected to the distinctions made between primary and ancillary roads for determining which roads have to meet specific performance standards. The commenter maintained that OSMRE has failed to meet the mandate of the Act by not establishing specific design criteria for all roads including ancillary roads, because of the potential for environmental damage. The commenter did not accept OSMRE's position that ancillary roads do not cause as much damage as primary roads. The commenter maintained that OSMRE is using the classification system to allow an exception from the statutory standards for ancillary roads. The commenter was particularly concerned with the potential environmental damage caused by ancillary roads in steep-slope areas.

Another commenter questioned the need to classify all mine roads as either primary or ancillary on the basis of purpose and frequency of use. The commenter argued that all roads, regardless of their intended purpose or frequency of use, retain similar potential for environmental damage if they are not designed, constructed, maintained or reclaimed properly. The commenter maintained that the additional requirements in § 816.151 are essentially the best management practices that should apply to all roads in order to achieve the performance standards contained in § 816.150(b). The commenter contended that the two-tiered classification system would result in less attention being paid to ancillary roads, which are more numerous in a mining operation than primary roads.

OSMRE believes that the road classification system established in § 816.150(a) appropriately distinguishes between primary roads, which need more detailed consideration in their design, construction, maintenance, and reclamation; and ancillary roads, which are likely to be small and would generally not be used for carrying heavy loads. The basis for the distinction is that the potential severity and risk of harm associated with smaller, less used (ancillary) roads is considerably less than that associated with larger, busier (primary) roads. Ancillary roads are not exempted from performance standards; all roads, including ancillary roads, must comply with the standards of § 816.150, which is an expansion of the statutory standards contained in section 515(b)(17) and (18) of the Act.

Sections 816.150(b)/817(b) Performance Standards

Final § 816.150(b) establishes performance standards that operators must meet when locating, designing constructing, reconstructing, using, maintaining, and reclaiming roads associated with surface coal mining operations as defined by 30 CFR 701.5. Section 816.150(b) is identical to the proposed rule except for a clarifying change to § 816.150(b)(1) adopted at the request of EPA. The change is discussed below in the responses to comments.

The performance standard in section (b)(1) requires the control or prevention of erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occuring on the other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

The standards in sections (b)(2) through (7) require an operator to control or prevent damage to fish, wildlife, or their habitat and related environmental values; control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area; neither cause nor contribute, directly or indirectly, to the violation of State or Federal water quality standards applicable to receiving waters; refrain from seriously altering the normal flow of water in streambeds or drainage channels; prevent or control damage to public or private property, including the prevention or mitigation of adverse effects to lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers system, including designated study rivers, and National Recreation Areas designated by Act of Congress; and prohibit the use of acidic or toxic substances in road surfacing.

One commenter felt that § 816.150 fails to provide meaningful,. national standards for the design, construction, maintenance, and reclamation of roads. The commenter referred to a discussion of the need for detailed performance standards in the preamble to the 1979 final rule where OSMRE stated, in part, that there were many comments recommending that OSMRE "limit the Federal performance standards to generalized guidelines and suggestions which would then serve as the nucleus for the State regulatory authorities to develop standards unique to local conditions." In response to these recommendations, OSMRE "determined that such general standards, incorporating broad interpretation capabilities, would not be consistent with the intent of the Act or the rest of the regulatory scheme" (44 FR 14901, 15246, March 13, 1979). The commenter suggested that the proposed rule was inconsistent with the position expressed in 1979.

Where it is appropriate to "flesh out" portions of the Act in the implementing regulations, OSMRE has not hesitated to do so. OSMRE believes that § 816.150 does provide sufficient national standards for the design, construction, maintenance, and reclamation of roads, while allowing consideration of the variations in site-specific conditions that can be encountered at different operations throughout the coal fields. These standards necessarily allow the regulatory authority the flexibility to identify the measures that are appropriate for the site-specific characteristics of each surface coal mining operation. In 1979, OSMRE has less then one year of experience regulating surface coal mining operations. Now, after ten years of experience, most of that in oversight of approved State programs, which deal with roads quite effectively, but through quite varied approaches, OSMRE feels that the expansion of the statutory language being promulgated today is fully adequate the ensure that statutory standards are met.

The same commenter and another commenter particularly noted the removal of the phrase "minimize the diminution to or degradation of the quality or quantity of surface and ground-water systems" from § 816.150(b)(5) of the 1983 rule. The commenters suggested that specific language for protection of both quantity and quality of surface and groundwater systems from adverse impacts of roads should be reinstated into the final rule. A third commenter was concerned that the water quality and quantity provisions removed from § 816.150(b)(5) of the remanded and suspended 1983 regulations were not adequately covered in other regulations.

OSMRE did not propose a provision specifically addressing the impact of roads on the quantity and quality of surface and groundwater systems, such as that contained in the remanded and suspended 1983 rule. Adequate standards to ensure compliance with section 515(b)(17) of the Act are provided by the other provisions of §§ 816/817.150(b) and by 30 CFR 780.21 and 784.14. After considering the comments, OSMRE does not believe that adding such a standard specifically for roads would add to the effectiveness of this rule.

One commenter suggested that the final rule should be clarified to ensure that it includes performance standards for roads that will protect all private property from damage. The commenter wanted to insure that all private properties are protected and not just those areas listed in section 522(e) of SMCRA. Another commenter argued that inserting into § 816.150(b)(6) the lands listed in section 522(e)(1) of the Act inserts unsuitability criteria into this performance standard. The commenter maintained that OSMRE lacks authority to include the list in § 816.150(b)(6). Two commenters suggested that the list be deleted because these lands already have provisions for special consideration.

Final § 816.150(b)(6) requires the operator to protect both private property and public property, placing special emphasis on certain types of public property. OSMRE has enumerated those areas covered by the mining prohibitions of section 522(e)(1) of the Act to ensure that special consideration is given these public properties. This enumeration does not remove the operator's requirement to protect other public property or private property as required by section 515(b)(17). OSMRE does not agree that including the list of areas covered by section 522(e)(1) of the Act in § 816.150(b)(6) constitutes an insertion of unsuitability criteria. OSMRE believes that inclusion of these specific areas in § 816.150(b)(6) appropriately emphasizes the importance attached to such areas by Congress in drafting the Act, without providing less protection for other public

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and private property under this provision.

One commenter was concerned that § 816.150(b) would require the reconstruction of existing permitted roads causing extensive environmental damage. The commenter suggested that the regulatory authority should be able to waive certain performance standards, e.g. drainage control, cut and fill slopes, and lane widths, as along as erosion and stream sedimentation are controlled.

OSMRE did not include such a waiver provision in the final rule. In accordance with 30 CFR 701.11(e), existing structures, including roads, that meet the performance standards may be exempted from meeting the design requirements. To the extent that changes may be required by a regulatory authority to bring existing permitted roads into compliance with this rule, no significant reconstruction and expense or increased environmental harm is expected. Existing permitted roads should already be in compliance with the performance standards of a State or Federal regulatory program.

One commenter noted that § 816.150(b) refers to erosion requirements for roads, but lacks sediment control standards. The commenter argued that, without some guidance, it would be difficult for states to be "no less effective" in parallel provisions of their regulations.

OSMRE did not accept this comment. OSMRE believes that adequate performance standards for sediment control can be found in §§ 816/817.150(b). These standards are fully consistent with the requirements of section 515(b)(17) of the Act. OSMRE recognizes that the mechanisms for achieving that standard vary widely over the wide range of topographic, climatological and geologic conditions, and also vary according to the uses of the roads, where these standards will be applied. OSMRE therefore feels further guidance is not appropriate or necessary. States may or may not choose to elaborate upon this guidance in ways specific to the conditions in those States. So long as the required results are achieved in actual implementation, such elaboration is at the States's discretion.

One commenter was unsure if the performance standards in § 816.150(b) were intended to relieve coal mine operators of the general requirements to meet effluent limitations. The commenter thought that 30 CFR 816.46, which prescribes performance standards for siltation structures, excluded roads from meeting effluent limits and wondered if § 816.150(b) could be interpreted the same way. Another commenter was confused about the application of performance standards for drainage control systems for roads. The commenter noted that, under 30 CFR 816.46(a)(2), drainage from roads for which the upstream area is not otherwise disturbed by the operator is exempt from the requirement of passing through a siltation structure. The commenter, however, also noted that the disturbance associated with roads must be conducted to minimize disturbance to the hydrologic balance as required in §§ 816.41 and 816.45. The commenter was concerned as to what the specific drainage control requirements are for roads.

Effluent limitations only apply to point source discharges regulated under section 402 of the Clean Water Act. Section 816.150(b) does not require the creation of a point source. However, if a point source is created, a National Pollutant Discharge Elimination System permit would be required and effluent limits would apply. A variety of other mechanisms may also be and are being used to provide the required protection of water quality.

Two commenters were concerned with the word "prevent" in § 816.150(b)(1) through (3) and (6). It was suggested that it be deleted because it was the intent of Congress to have OSMRE set attainable standards which would "minimize" erosion and "prevent" damage. The commenters felt that it would be unrealistic to require an operator to "prevent" erosion, siltation, and air pollution. Another commenter favored deletion of both "control" and "prevent."

OSMRE did not accept the suggestions and believes that the language in § 816.150(b) is consistent with the language in the Act at section 515(b)(17) which requires the operation as a minimum to insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property (Emphasis added). It should be noted that § 816.150(b) allows the regulatory authority the flexibility to determine the level of protection necessary to control or prevent erosion, siltation, or air pollution attendant to erosion.

One commenter suggested that the language in § 816.150(b)(1) with respect to exposed surfaces be clarified by adding the word "road" between exposed and surfaces.

OSMRE does not agree that this clarification is necessary because those surfaces exposed in connection with construction, use, reconstruction, maintenance, or reclamation of the road are properly subject to this requirement.

Four commenters responded with respect to the control of air pollution. One commenter supported the language in § 816.150(b)(1), and asserted that OSMRE is the appropriate agency to regulate fugitive dust at coal mining operations. One commenter requested that OSMRE change the language in § 816.150(b) in its entirety. This commenter was concerned that air and water quality standards were being intermixed. The commenter also noted that previous district court decisions clarified that Congress only intended to regulate air pollution related to erosion. One commenter stated that the issue of responsibility in the control of air pollution attendant to erosion and pollution caused by fugitive dust as part of a surface mining operation is currently on appeal. Another commenter was concerned that including specific air pollution control measures in § 816.150(b) would lead to these measures being interpreted as the exclusive means necessary for compliance. It was suggested that these measures be kept only in the preamble.

OSMRE believes that the language in § 816.150(b)(1) is in harmony with the intent of Congress. It is appropriate for OSMRE to regulate road dust consistent with section 515(b)(17) of the Act because of the need to protect public and private property. It is being applied here in a manner consistent with section 515(b)(4). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision concerning the issue of responsibility for control of air pollution attendant to erosion (*NWF v. Hodel*, 839 F.2nd 694, 785). The appeals court concluded that the Secretary's interpretation of section 515(b)(4) of the Act, as controlling only the impacts of mining on air quality due to erosion, is reasonable. OSMRE also believes that the use of the terms "erosion," "siltation," and "air pollution attendant to erosion" in § 816.150(b)(1) is appropriate in considering what measures are necessary to meet the performance standards. OSMRE does not intend this list of measures to exclude the use of other measures for controlling dust attendant to erosion and does not intend that the language in § 816.150(b)(1) be interpreted that way. The phrase "such as" makes that clear.

The EPA noted that proposed § 816.150(b)(1) stated that road should be built, used and maintained to control "air pollution attendant to erosion" and that the preamble to the proposal explained that this phrase includes "road dust, as well as dust occurring on other exposed surfaces" (52 FR 42262, November 3, 1987). EPA suggested that the explanation should be included in the final rule language to clarify that the performance standards apply not only to wind erosion, but also to dust created by vehicle traffic.

OSMRE has accepted this comment and made the suggested change to clarify the applicability of the final rule.

EPA noted also that proposed § 816.150(b)(1) stated that air pollution should be controlled "in accordance with current, prudent engineering practices." EPA stated its belief that the final rule should specify reasonable control levels and techniques suitable under various conditions and requested the addition of a technical guidance document that would address current practices and their effectiveness under varying conditions. The agency suggested that the technical guidance could be developed in the near future and be incorporated into the regulation by reference at a later date.

After giving this recommendation serious consideration, OSMRE decided not to accept it. Differing geologic and climatic factors associated with the coal fields throughout the nation make it impractical to develop a single set of dust control standards and techniques with nationwide applicability. In accordance with the concept of primacy, whereby the States have the primary responsibility for the regulation of coal mining, this final rule gives State regulatory authorities the flexibility to establish guidance that is appropriate to regional and local conditions. On request, OSMRE will provide techincal assistance to the States concerning the development or application of dust control standards and techniques. The primary purpose of this rule is to make clear that regulatory authorities have both the authority and obligation to regulate road dust while recognizing that operations have a wide range of options available for controlling it.

As to the EPA's concern about the effectiveness of the treatment methods employed by the operator, before a mining permit is issued, the regulatory authority has to approve the air pollution control plan submitted by a permit applicant under 30 CFR 780.15 or 784.26. In addition, monthly inspections by regulatory authority inspectors under 30 CFR 840.11 and inspections resulting from citizens' complaints filed anytime under 30 CFR 840.15 and Part 842 will ensure that potential on-the-ground problems are resolved quickly and efficiently.

One commenter was concerned that § 816.150(b)(5) would prohibit placement of any road anywhere it would alter flow in a streambed or drainage channel. The commenter asserted that the terms "streambed or drainage channel" could be construed so as to include even the smallest ephemeral flow. The commenter suggested a language change that would replace "streambed or drainage channel" with "intermittent or perennial stream."

OSMRE did not accept this suggested language change since it is not consistent with section 515(b)(18) of the Act which uses the phrase "streambed or drainage channel." Further, OSMRE does not agree that § 816.150(b)(5) would necessarily prohibit placement of any road where it would alter flow in streambeds or drainage channels because the language in this section states that the road shall refrain from "seriously" altering the normal flow. OSMRE does not regard this language as a strict prohibition on the placement of roads that would cause minor alterations in normal flow.

Sections 816.150(c)/817.150(c) Design and Construction Limits and Establishment of Design Criteria

Final § 816.150(c) requires that roads be designed and constructed or reconstructed to meet certain criteria in order to ensure environmental protection appropriate for their planned duration and use. These criteria include limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, that are in accordance with current, prudent engineering practices, and any other necessary design criteria established by the regulatory authority. Section 816.150(c) is identical to the proposed rule.

One commenter agreed with the deletion of the provisions addressing road safety that had previously been included in the 1983 rule, noting that road safety for users is the responsibility of the Mine Safety and Health Administration.

One commenter raised the question of what standards for road width, drainage control, culvert placement, etc. will apply in Federal program States since OSMRE sets forth no more detailed limits for Federal program States under § 816.150(c). The commenter was also concerned about inadequate regulation by States with "no more stringent" provisions in the absence of standards in the Federal rules.

Concerning Federal program States, where OSMRE is the regulatory authority, OSMRE will consider on a program-by program basis unique factors and regional and local conditions present in each State and will propose and promulgate appropriate standards in accordance with 30 CFR Part 736 if it determines that program-wide design criteria are needed. Concerning States that have legislatively prohibited their regulatory authorities from promulgating regulations more stringent than the Federal regulations, OSMRE considers that the regulations adopted today provide a reasonable expansion of the statutory requirements and are adequate for effective regulation of surface coal mining operations. Further expansion and additional regulations may be promulgated at the States' discretion. OSMRE does not believe that use of design standards by a State in its rules would necessarily be more stringent than the Federal rules. This issue was also addressed by the Secretary in his March 5, 1984 brief in *Round II*, referenced earlier.

One commenter suggested that the design, construction, and certification of ancillary roads should also be done by a qualified registered professional to ensure proper drainage control and stability of road embarkments.

OSMRE believes the suggested requirement to have ancillary roads designed, constructed, and certified by a qualified professional is not necessary to ensure compliance with the performance standards because such roads have much less potential for environmental harm than do primary roads because of differences in size, use and/or duration. Ancillary roads are generally only one lane for small vehicles, thereby involving far less earthmoving in their construction. Vehicles using ancillary roads are generally small with light loads and ground pressures. Therefore, to require certification of plans and drawings for ancillary roads would place a burden on the operator that is unnecessary to provide the protection called for in section 515(b)(17) of the Act.

One commenter was concerned that the use of the term "surface materials" in § 816.150(c) implied a requirement for surfacing all roads. The commenter did not feel that a "blanket" surfacing requirement was appropriate because in many instances the natural surface of a road was sufficient to meet the appropriate performance standards. The commenter suggested that the words "any necessary" should precede the term "surface materials" in the text of the rule.

OSMRE does not agree that the addition of these words is necessary because the language in § 816.150(c) states that surface materials appropriate for the planned use of the road need to be incorporated into the design and

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construction or reconstruction to ensure environmental protection. This requirement does not preclude a finding by the regulatory authority that the natural surface of the road meets the performance standards.

Section 816.150(d)/817.150(d) Location

Final § 816.150(d) sets the performance standards for the location of all roads. These standards prohibit the placement of any part of a road in the channel of an intermittent or perennial stream unless the regulatory authority specifically approves such an action in accordance with applicable §§ 816.41 through 816.43 and 816.57. Also, roads must be located to minimize downstream sedimentation and flooding. The language in § 816.150(d) is identical to the proposed rule except that reference to the performance standards in accordance with which the regulatory authority may approve placement of a road in the channel of a stream (§§ 816.41 through 816.43 and 816.57) have been added to the final rule for clarity.

One commenter argued that the language in the proposed rule prohibits the use of structures such as bridges or culverts. The commenter considered this a drastic departure from the Act and beyond the intent of section 515(b)(18). The commenter provided suggested language to better reflect the statutory requirements. The suggested language read, "(1) No road shall be built in a streambed or drainage channel."

OSMRE did not accept the commenter's suggestion. Section 816.150(d) is not intended to establish a strict prohibition on the use of structures such as bridges and culverts. Section 816.43, Diversions, allows the regulatory authority to specify design criteria for the diversion of intermittent and perennial streams. Section 816.43 also requires the regulatory authority to make a finding that the environmental resources of the stream will not be adversely affected.

One commenter noted that § 816.150(d)(1) does not contain a cross reference to § 816.57 as does § 816.151(d)(5). The commenter was unclear if this was intended or was an inadvertent omission by OSMRE.

In response to this comment, OSMRE has reviewed the reference to hydrologic balance protection and stream buffer performance standards in proposed § 816.151(d)(5) and determined that those performance standards should be applied to the location of any road in the channel of an intermittent or perennial stream, as well as to the alteration or relocation of natural stream channels by primary roads. Therefore, OSMRE has added the reference to the performance standards (§§ 816.41 through 816.43 and 816.57) to § 816.150(d)(1) of the final rule.

Section 816.150(e)/817.150(e) Maintenance

Final § 816.150(e) governs the general maintenance responsibilities of the operator. Under this section, a road must be maintained to meet the performance standards and any additional design criteria established by the regulatory authority. Section 816.150(e) also requires that, in the event of damage due to a catastrophic event, a road must be repaired as soon as is practicable after the damage has occurred. The language in § 816.150(e) is identical to the proposed rule.

One commenter supported the language found in § 816.150(e) because it no longer contains the requirement from previous remanded and suspended rules to maintain a road throughout its life. The commenter agrees that the Act does not impose a perpetual responsibility for roads in the postmining use period. In contrast, one commenter was concerned with the deletion of the requirement to maintain a road throughout its life. The commenter argued that operators are liable under the Act for roads and suggested reinstatement of the requirement to maintain roads throughout their life.

OSMRE did not propose this requirement because, under the Act, an operator has no responsibility for maintenance of the postmining land use after the performance bond has been properly released for the area in which the road is located. For this same reason, the suggestion that the requirement be added was not accepted.

Section 816.150(f)/817.150(f) Reclamation

Final § 816.150(f) provides that a road which is not to be retained under an approved postmining land use must be reclaimed as soon as practicable after it is no longer needed for mining and reclamation operations. The reclamation activities that are required by this paragraph include: (1) Closing the road to traffic; (2) removing all bridges and culverts unless approved as part of the postmining land use; (3) removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and the revegetation requirements of the regulation; (4) reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain; (5) protecting the natural drainage pattern by installing dikes or cross drains as necessary to control surface runoff and erosion; and (6) scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with 30 CFR 816.22 and 816.111–816.116. As discussed below, the final rule differs from the proposal in that the phrase "as soon as practicable" has replaced the word "immediately."

Three commenters were concerned with the word "immediately" in the phrase "shall be reclaimed in accordance with the approved reclamation plan immediately after it is no longer needed for mining and reclamation operations." The commenters believed it to be an unreasonable requirement that is subject to varying interpretations. The commenters noted that it may actually be environmentally undesirable for a road to be reclaimed during certain times of the year, due to problems with runoff and sediment control. One of these commenters argued that the immediate reclamation of a road would eliminate needed flexibility and preclude reuse of the road if mining and reclamation conditions change. One commenter noted that immediate reclamation is not needed to enforce the intent of the regulation.

OSMRE agrees with the commenters and has substituted the phrase "as soon as practicable" for the word "immediately" in § 816.150(f) of the final rule. OSMRE believes that the phrase "as soon as practicable" is in keeping with the intentions of the Act as expressed in sections 102(e), 515(b) (2) and (16), which basically require reclamation to take place as contemporaneously as practicable with mining. However, this requirement does not become operable until the road is no longer needed. To postpone reclamation, the permittee must show a future need for or continuing use of the road as a part of his operation. The operator is required to maintain the road during this period. The reclamation schedule necessary to meet the requirement for timely reclamation should be contained in the permit and be consistent with the intent of the Act, by providing for reclamation which is as contemporaneous as practicable, minimizing unreasonable delays in reclamation implementation, and proceeding in an environmentally sound manner.

One commenter believed that proposed § 816.150(f) should allow coal exploration roads to remain if they comply with the postmining land use. In the commenter's opinion, if retained, these roads would allow for better management of the forest reserve through better access for timber management and fire fighting activities.

OSMRE agrees that the retention of roads can be beneficial and has made provision in 30 CFR Part 815 for the retention of coal exploration roads in limited circumstances. Specifically, § 815.15(d) provides an exemption from the requirement that all facilities and equipment be promptly removed from the exploration area when they are no longer needed. If the regulatory authority determines that the facilities or equipment will provide additional environmental data, reduce or control the on-site and off-site effects of the exploration operation, or facilitate future surface mining and reclamation operations, the facilities (roads) and equipment may be retained. The operator must apply to the regulatory authority for approval of the retention on a case-by-case basis. To the extent that coal exploration roads meet one of these three criteria, they may be exempted from the reclamation requirement. However, it should be noted that the concept of an approved postmining land use is not applicable to coal exploration activities since exploration is not mining. Therefore, OSMRE did not accept the suggested change.

One commenter suggested that some language should be added to § 816.150(f) to clarify that both primary and ancillary roads are considered to be part of the surface coal mining operation and subject to the performance standards.

OSMRE agrees that both primary and ancillary roads are part of the surface coal mining operation. However, OSMRE believes that the wording of § 816.150, *Roads: General*, is sufficiently clear in applying that section to all roads as defined in 30 CFR 701.5. Therefore, no change has been made.

One commenter supported the phrase "as necessary" in the requirement in § 816.150(f)(4) that reclamation of a road include "reshaping cut and fill slopes as necessary to be compatible with the postmining land use and revegetation requirements." The commenter noted that this language recognizes that it is not always an appropriate requirement to redisturb an area for reshaping where stability of a slope has been assured to the satisfaction of the regulatory authority. In contrast, one commenter objected to the phrase "as necessary" because it dilutes or loosens the requirements contained in the remanded and suspended 1983 rule to reshape cut and fill slopes to be compatible with the postmining land use and to return the land to the approximate original contour.

In developing the proposed rule OSMRE looked at how this issue was handled in the remanded and suspended 1979 rule. OSMRE stated in the preamble to that final rule that "obliteration of the road might in some circumstances create extensive environmental harm due to excessive redisturbance of the road prism. Therefore, the concept of blending the road into the topography was incorporated [into the final rule] based on comments received and work practices on thousands of miles of roads by the U.S. Forest Service" (Citation omitted.) (44 FR 14901, 15259, March 13, 1979). OSMRE went on to emphasize "that this blending is not to be construed as a variance from the requirement to restore the area to approximate original contour." Also, the statutory definition of "approximate original contour" allows the retention of terrances (section 701(2) of the Act). For these reasons, OSMRE proposed language similar to that used in 1979. After consideration of the comments, OSMRE feels that the position stated in 1979 and repeated here is still valid. Thus, OSMRE did not delete the phrase "as necessary" from the final rule.

One commenter supported proposed § 816.150(f)(6), which allows the use of topsoil substitutes in reclaiming roadbeds. The commenter stated that this will accommodate the beneficial practice of redistributing topsoil taken from road areas for use in permit areas where it will promote better postmining land use.

OSMRE agrees that topsoil substitutes may be used in reclaiming roads and emphasizes that any such substitute material is subject to the requirements of § 816.22.

G. Sections 816.151/817.151 Primary Roads

Final § 816.151 establishes a set of performance standards for the design, construction, and maintenance of primary roads, in addition to those already established for all roads in § 816.150. These performance standards are identical to the proposed rule except for § 816.151(b) and (d) which have been changed to clarify the intent of the rule.

Sections 816.151(a)/817.151(a) Certification

Final § 816.151(a) is identical to the proposed rule and requires that primary road construction or reconstruction be certified in a report to the regulatory authority by a qualified registered professional engineer or land surveyor. The requirement for professional certification is intended to assure that the road is properly constructed to meet the environmental protection standards of the Act. Certification by a qualified registered professional land surveyor is allowed in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads. This provision is based on the November 4, 1983, amendment to the Act (Sec. 115, Pub. L. 98–146, 97 Stat. 938 (1983)) which provides that "not withstanding section 507(b)(14) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87), cross sections, maps, or plans of land to be affected by an application for a surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans." A registered land surveyor must have experience in the design and construction of roads in order to be eligible to provide this certification. This authority is given only to the extent allowed under State law. This requirement is equivalent to the experience requirement for registered engineers. Section 816.151(a) requires the certifying professional to prepare and submit to the regulatory authority a report certifying that the primary road was constructed or reconstructed as designed and in accordance with the approved plan.

One commenter did not agree with the language that authorizes land surveyors to certify the construction or reconstruction of primary roads. The commenter noted that the design and engineering of primary roads is outside the area of expertise of land surveyors. The commenter was particularly concerned with the adequacy of a land surveyor's expertise for roads in steep slope areas and the frequent use of primary roads by coal hauling vehicles.

OSMRE recognizes the fact that not all land surveyors have adequate expertise to certify road construction or reconstruction and, with this in mind, uses the terms qualified and experienced in the design and construction of roads. OSMRE feels that this language covering the experience and qualifications of the certifying individual and the additional requirement that the State must authorize a land surveyor to certify primary road construction or reconstruction provides adequate justification. In view of the legislative history of the November 3, 1983 amendment to the Act, OSMRE has concluded that the Congress intended the amendment to authorize certification

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because it is a step so intimately related to preparation of cross-sections, maps and plans that authority is necessarily implied by the terms of the legislation. As discussed by Senator Byrd on the floor of the Senate (129 Cong. Rec. S12411, Sept. 19, 1983), the purpose of the amendment was to remedy "conflicts with State laws [where the Act] preempts registered land surveyors from a lead role in the preparation and certification of maps, plans, and cross-sections."

OSMRE believes that Congress intended to authorize qualified, registered, professional land surveyors to perform both of these functions as lead professionals. If land surveyors were authorized merely to prepare and certify cross sections, maps, and plans, but were not authorized to certify associated construction or reconstruction, their status as lead professionals would be seriously impaired or negated. Thus, this rule authorizes qualified, registered, professional land surveyors to certify the construction or reconstruction of primary roads.

One commenter noted that a registered land surveyor would have to have experience in the design and construction of roads in order to have a State authorize the land surveyor to certify such work. The commenter indicated the language "with experience in the design and construction of road" to be unnecessary.

OSMRE believes that the language in § 816.151(a) is necessary to ensure that only these land surveyors with experience in the design and construction of roads be allowed to certify this work.

One commenter suggested that landscape architects should also be allowed to certify the construction and reconstruction of roads. The commenter noted that the education and experience of landscape architects coupled with their registration would qualify them to develop plans and manage the construction of all types of roads associated with coal mining.

OSMRE does not have the statutory authority to allow landscape architects to certify cross sections, maps and plans or to authorize them to certify that the construction or reconstruction of primary roads was in accordance with those plans.

Four commenters recommended that the requirement in § 816.151(a) to have the certified report sent to the regulatory authority should be changed to allow the report to be filed at the mine site or in a report to the regulatory authority. The commenters noted that the report should be available to the inspectors at the mine site and, by filing the report at the mine site, it would reduce the amount of paperwork that the regulatory authority would have to handle.

OSMRE believes that it is necessary to have the certified report sent to the regulatory authority so that any problems can be brought to the State's attention and so that the State has the opportunity to adequately monitor corrective action that may be necessary. Having the information on file in the State office also provides advance information to inspectors before beginning an inspection trip. Although OSMRE is sensitive to the concern that regulatory authorities' paperwork burdens should be reduced where possible, OSMRE does not agree that the limited time involved in handling this certified report outweighs the need to have it available at the regulatory authority's office.

Sections 816.151(b)/817.151(b) Safety Factor

Final § 816.151(b) requires that all embankments have a minimum static safety factor of 1.3 or meet the requirements of § 780.37(c). This section applies only to primary roads. Rather than specifying particular design criteria for road embankments, the 1.3 factor of safety establishes a performance standard that must be attained. The operator has the flexibility to select the particular design for the road that meets this standard. Related § 780.37(c) enables the regulatory authority to establish engineering design standards through the State program approval process in lieu of engineering tests that would be performed to establish compliance with the safety factor. The language in final § 816.151(b) has been changed from the proposed language by adding a cross-reference to § 780.37(c) for clarity.

One commenter did not agree that a safety factor for road embankments was necessary, except for large embankments and those embankments which could endanger life or property upon failure. The commenter suggested new language for § 816.151(b) that would remove the minimum safety factor requirement and require that primary road embankments be designed in accordance with standard engineering practice so as to be stable.

Two commenters agreed that the safety factor should only be applicable to primary roads. The commenters noted that, in general, ancillary roads are much smaller and less frequently used than primary roads. They also noted that, if an ancillary road would experience a slope or fill stability problem, the extent of these failures and the significance of the associated environmental impacts would be minimal.

One commenter argued that it is necessary to apply the minimum safety factor to ancillary as well as primary roads. The commenter argued further that the differentiation between primary and ancillary roads was not based on the potential for environmental effects to the point of being consistent with the concept in the 1979 rule, that minimum safety factors should apply only to roads that have greater environmental effects. The commenter specifically noted that the existence of high embankments, a factor specifically discussed by OSMRE as related to the degree of environmental risk from roads, is not a factor which is considered in the proposed distinction between primary and ancillary roads. As a result, the commenter concluded, ancillary roads with high embankments in steep slope areas, the failure of which could have serious environmental effects, would not be subject to static safety requirements.

As discussed previously in the preamble to the road classification system, there are substantial differences between primary and ancillary roads concerning road width (and thus the amount of cut and fill involved in steep slopes), ground pressure from traffic, and vehicle frequency that justify the application of the static safety factor to ensure stable primary roads that will meet the mandate of section 515(b)(17) of the Act. This reduces the potential for slips or failures on those heavily used roads. On the other hand, the narrow, lightly travelled ancillary roads do not typically have the high embankments associated with primary roads, even in steep slope areas, nor are they subject to the frequent impact of high ground pressures. Therefore, OSMRE is finalizing the rule as proposed.

A commenter expressed confusion about the fact that proposed §§ 780.37(c) and 784.24(c) appeared to allow the regulatory authority to develop design standards in lieu of the minimum safety factor. The commenter argued that the language in the proposal was confusing and should be clarified concerning the regulatory authority's flexibility to develop design standards under § 780.37(c) in lieu of minimum safety factor requirements. Three additional commenters suggested language changes to § 816.151(b) to help clarify the fact that regulatory authorities can establish engineering design standards in lieu of the minimum safety factor requirement.

Section 780.37(c) allows the regulatory authority to establish engineering design standards for primary roads in lieu of

the engineering tests that otherwise would be performed to establish compliance with the minimum static safety factor of 1.3 for all primary road embankments. This provision enables the regulatory authority and the operator to save time and effort during the design and review of road plans and also ensures protection of the environment through the application of standards that have proved effective for the conditions prevalent in that State. Section 780.37(c) was not cross-referenced in proposed § 816.151(b), and OSMRE recognizes, in response to the comments, that the connection needs emphasis. Final § 816.151(b) includes a cross-reference to § 780.37(c) to clarify that embankments must either have a minimum safety factor of 1.3 or, alternatively, meet the design standards developed in accordance with § 780.37(c).

Sections 816.151(c)/817.151(c) Location

Final § 816.151(c) requires primary roads to be located, insofar as is practicable, on the most stable available surfaces to minimize erosion. Section 816.151(c)(2) prohibits primary roads from using stream fords on perennial or intermittent streams unless specifically approved by the regulatory authority as temporary routes during road construction. These provisions are identical to the proposed rule.

One commenter was concerned about the difference in the language of proposed § 816.151(c) and that of the 1979 regulations (44 FR 15416, March 13, 1979). The commenter noted that the language in 816.151(c) states that primary roads are located, insofar as is "practicable," on the most stable available surface, while the 1979 regulations require roads to be placed on the most stable surface insofar as "possible." The commenter proposed that, in the alternative, roads be required to be located on ridges.

OSMRE disagrees. In developing the proposed rule, OSMRE chose to use the word "practicable" because it provides an adequate standard for road location to achieve the required stability when applied along with the requirement for a 1.3 static safety factor. OSMRE is concerned that requiring location of primary roads, insofar as is "possible," on the most stable surface available could result in roads being unnecessarily lengthened. In the preambles to both the 1979 (44 FR 14901, 15248, March 13, 1979) and 1983 (48 FR 22110, 22120, May 16, 1983) suspended rules, OSMRE expressed concern that road location requirements might unduly lengthen roads as well. Concerning the commenter's alternative, OSMRE agrees that ridges are often the most stable surface available and should be used for roads where practicable. However, ridges are not always located where the road is intended to go. Additionally, in appropriate circumstances, wildlife disturbance can be reduced by locating roads below ridgelines (Ambrose, *et al.*, p. 14). Since this alternative would not allow sufficient flexibility in the location of roads, OSMRE did not accept it.

Sections 816.151(d)/817.151(d) Drainage Control

Final § 816.151(d) requires that surface water drainage for each primary road be controlled in accordance with the approved reclamation and operations plan specified in § 780.37(a).

Final section (d)(1) requires that primary roads be constructed or reconstructed, and maintained to have adequate drainage control by using structures such as, but not limited to, bridges, ditches, cross drains and ditch relief drains. Section (d)(1) also requires that, at a minimum, drainage control systems be designed to safely pass the peak runoff from a ten-year, six-hour precipitation event, or greater event as specified by the regulatory authority. The language in final § 816.151(d)(1) has been changed from the proposed language in an effort to clarify its intent because proposed § 816.151(d)(1) could be read to mean that the regulatory authority may specify a lesser precipitation event than the ten-year, six-hour event. To clarify that the ten-year, six-hour event is the minimum precipation event that the drainage control system must be able to handle, the final rule allows only modification to a higher standard by the regulatory authority.

Final § 816.151(d)(2) requires that drainage pipes and culverts be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets. Final § 816.151(d)(3) requires that drainage ditches be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment. Final § 816.151(d)(4) requires that culverts be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road. Final § 816.(d)(5) requires that natural stream channels not be altered or relocated without prior approval of the regulatory authority in accordance with §§ 816.41 through 816.43 and 816.57.

Final § 816.151(d)(6) requires that, except as provided in section (c)(2), stream channel crossings for perennial and intermittent streams be accomplished using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The requirement for drainage structures at perennial and intermittent streams is included to ensure consistency with § 816.150(d)(1) of this part. By using current, prudent engineering practices to design, construct, and maintain crossings, the hydrologic and environmental balance of the stream is protected while the crossing is in place. Section 816.151(d)(6) includes language referring to perennial and intermittent streams for consistency with the language of performance standard in § 816.150(d).

Several commenters requested a clarification as to the intent of proposed § 816.151(d)(1) which stated, "The drainage control system shall be designed to safely pass the peak runoff from a ten-year, six-hour or greater precipitation event, unless otherwise specified by the regulatory authority." The confusion involved whether the regulatory authority could specify only a precipitation event greater than the ten-year, six-hour storm, or any greater or lesser precipitation event. One commenter suggested that the words "or greater precipitation" be deleted so the regulatory authority could, based on site-specific conditions, reduce the design storm below the ten-year, six-hour event.

Final § 816.151(d)(1) provides flexibility to regulatory authorities to account for particular situations likely to be encountered over the life of the mine or related to specific downstream conditions. The rule allows for modification by the regulatory authority in those situations when the ten-year, six-hour precipitation event is not appropriate. In order to eliminate the confusion created by the language in proposed § 816.151(d)(1), OSMRE has changed the final rule to read, "(1) Each primary road shall be constructed or reconstructed and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a ten-year, six-hour precipitation event, or a greater event as specified by the regulatory authority." This will ensure that reductions in the required storm event are not made.

Several commenters suggested that the design precipitation event for the drainage control system should be modified from the ten-year, six-hour event in the proposed rule. One commenter suggested the use of the 25-

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year, 24-hour storm event, the ten-year, six-hour event or another event specified by the regulatory authority. The commenter maintained that the 25-year, 24-hour event is consistent with current local practices and has not caused any problems. Another commenter stated that the ten-year, six-hour event is excessive, and the one-year, 24-hour event should be used to design the drainage control system. The commenter argued that no problems have been experienced with excessive water overtopping the road surface during major storm events when the one-year, 24-hour standard was used. Two other commenters were satisfied that the ten-year, six-hour storm would be appropriate.

Another commenter contended that the drainage control systems should be designed for a ten-year, 24-hour storm event rather than a ten-year, six-hour event because better data is available for the 24-hour events. Also, the commenter indicated that the peak flows for ten-year, 24-hour events and ten-year, six-hour events do not differ significantly. One commenter believed that the ten-year, six-hour event standard could create compliance problems since some states currently design for a 25-year, 24-hour event. If the ten-year, six-hour event produces higher peak runoff volumes than the 25-year, 24-hour event, the commenter maintained that existing approved roads could be found in non-compliance. (See the discussion under *General Comments* concerning existing structures.)

OSMRE believes that the ten-year, six-hour precipitation event is appropriate for drainage control systems for primary roads. This design event makes the road rules consistent with the rules for diversions in § 816.43. OSMRE recognizes that for some basins, depending on location, the 24-hour duration storm may result in a runoff volume somewhat higher than the six-hour storm for the same area (44 FR 15207, March 13, 1979). However, for most mining situations, a six-hour event is more likely to result in a higher peak flow. See the Final Environmental Statement, OSM–EIS–1: Supplement, Volume 1: Analysis, p. IV–17. For a given storm frequency, the time of concentration and watershed shape can be more influential in determining the peak flow than the storm duration. Therefore, in most cases the differences in any increased volume of peak flow will be minor from a practical design and construction standpoint. Any computed increase in peak flow volume would most likely not result in any significant change in flow depth or flow velocity and, correspondingly, any alteration in the design of the drainage control system. Thus, OSMRE did not find any compelling reasons to change the proposed design event standard in response to comments on the proposed rule.

One commenter asserted that drainage control systems designed to pass the peak runoff from a ten-year, six-hour or greater precipitation event as required in proposed § 816.151(d)(1), would be inadequate. The commenter argued that drainage control systems for ancillary roads, especially those with high embankments and those in steep slope areas, should be required to be designed to safely pass the peak runoff from some precipitation event that is greater than the ten-year, six-hour storm. The commenter was also particularly concerned with long-term or permanent roads where there is potential danger to health and/or safety or significant environmental impacts. The commenter suggested that drainage control systems for long-term roads have a minimum of a 25-year precipitation event, and permanent roads have a minimum of a 100-year precipitation event. The commenter also suggested that drainage control systems on roads with high potential for injury or significant environmental damage should be designed to appropriate precipitation event standards.

Another commenter suggested that there should be a distinction made in the design precipitation events for temporary water crossings versus permanent structures. The commenter argued that permanent structures have a longer intended life and should be designed accordingly. The commenter suggested that the design precipitation event for permanent structures should be the 100-year, six-hour event, with the exception for low-water crossings since they are designed to be overtopped.

OSMRE believes that a minimum standard of a ten-year, six-hour precipitation event for the design of drainage control system is adequate to protect the public and the environment from significant damage. The U.S. Army Corps of Engineers and State highway departments use ten-year storms for design purposes. The regulatory authority may specify a greater precipitation event as appropriate for site-specific conditions and situations. Concerning ancillary roads, OSMRE considers that the standards in final § 816.150(b) (2) through (6) are adequate to protect the environment without details associated with the standards for primary roads. The standards in § 816.150(b) allow the operator and the regulatory authority to use a variety of methods to minimize adverse environmental impacts from ancillary roads.

One commenter suggested that proposed § 816.151(d)(1) be revised to delete the word "reconstructed." The commenter argued that roads in existence at the time that this rulemaking is adopted should not be required to be reconstructed.

OSMRE does not agree. The word "reconstructed" in the context of this rule refers to those situations where an operator on his own initiative decides to upgrade or improve significantly a road by reconstructing it. The application of these standards to existing roads is covered by the provisions of 30 CFR 701.11(e), concerning existing structures.

One commenter suggested that the word "avoid" in proposed § 816.151(d)(2) be replaced by the word "control." The commenter noted that, because some erosion is unavoidable, the use of the word "avoid" makes it possible for an operator to meet this requirement.

Since the language of section 515(b)(17) of the Act requires control or prevention of erosion, not avoidance of erosion, OSMRE has deleted the word "avoid" and replaced it with "prevent or control" in the final rule.

One commenter noted that the performance standards for diversions are found in 30 CFR 816.43, but the definition of "diversion" in 30 CFR 701.5 does not explicitly include stream channel crossings. The commenter suggested revising the definition of "diversion" to clarify that stream channel crossings (i.e., culverts, bridges, fords, etc.) are included in the definition and that the requirements of § 816.43 apply to roads. The commenter also suggested that specific reclamation design criteria for restoration of channel crossings be added.

The definition of "diversion" does not include stream channel crossings, and OSMRE does not agree that the definition should be changed. Culverts, bridges, and fords are man-made structures that cross a stream and do not "divert" water to a channel in a new location. OSMRE does not agree that specific design criteria for restoration of stream channel crossings should be included in the final rule. The performance standards adopted today and other permanent program regulations, e.g. 30 CFR 816.43, are adequate to minimize environmental harm. Further, specific design criteria would limit the regulatory authority's flexibility in approving effective reclamation designs.

One commenter felt that the addition of low-water crossings to the list of structures that are allowed for stream crossings was not acceptable because of potential problems with erosion and increased sediment, and the fact that they are inundated by high flows. The commenter noted further that there is a need for detailed national standards for erosion prevention and sediment control.

OSMRE notes that the regulations require that the operator prevent erosion and sediment problems with low-water crossings. Final § 816.151(d)(6) specifically states that "the regulatory authority shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow." OSMRE agrees that by design, low-water crossings will be inundated during high flows which will restrict their use. OSMRE does not agree that this creates a problem except that it necessarily will cause the operator to alter mining operations to accommodate the inundation.

One commenter was concerned with the use of the word "prevent" in proposed § 816.151(d)(6) with respect to erosion associated with low-water structures. The commenter suggested that the word "prevent" be replaced by the word "control" because an operator cannot prevent erosion entirely.

OSMRE kept the word "prevent" in final § 816.151(d)(6) because by design, a low-water structure will be inundated during high-water flow periods, and this high-water flow will have greater velocities and erosion potential than during periods of low water. Therefore, the design, construction, and maintenance of low-water structures must prevent erosion of the structure and streambed during all anticipated flow conditions.

One commenter inquired if it was the intent of OSMRE to allow retention of low-water crossings as permanent structures.

OSMRE believes that the decision on retention of low-water crossings as permanent structures is the responsibility of the regulatory authority. This decision must consider the requirements of 30 CFR 816.133 and other associated permanent structure performance requirements.

Sections 816.151(e)/817.151(e) Surfacing

Final § 816.151(e) is identical to the proposed rule and requires that primary roads be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of trafic and the weight and speed of vehicles using the road. The final rule does not specify the kinds of materials which must be used for surfacing primary roads and does not list routine maintenance responsibilities for primary roads. Since the regulatory authority may approve only surfacing materials that meet the requirements of this section, it is not necessary to list the materials that may be used. The regulatory authority should have the flexibility to approve any material which will satisfy these requirements. The final rule establishes adequate maintenance requirements for all roads and, therefore, it is not necessary to establish separate requirements for primary roads. The regulatory authority may specify additional maintenance criteria for primary roads, as necessary.

One commenter was concerned that the requirements in proposed § 816.151(e) were too general. The commenter questioned if economics would be taken into account when the regulatory authority comes to a decision on the type of material that will be "sufficiently durable." The commenter raised the possibility that appropriate surface materials may not be available at or near the mine site, and the costs to obtain the required materials could be prohibitive. Two commenters argued that proposed § 816.151(e) was a "blanket" surfacing requirement that would, in every case, require some type of additional surface material. The commenters contended that, in many instances, the natural surface of the road may be sufficient to meet the performance standards. The commenters suggested that the language in § 816.151(e) be changed by taking out the phrase "approved by the regulatory authority."

OSMRE does not foresee that a regulatory authority would take economics into account in approving road surfacing material. In the first place, the regulatory experience OSMRE has accumulated over the past ten years indicates that durable surfacing material is usually present in sufficient quantities at the vast majority of coal mining operations, particularly when used in association with periodic chemical treatment to maintain a compacted, dust-free surface. Secondly, the purpose of the provision is to protect the environment, that is, to ensure that the road surfacing material is sufficiently durable to avoid problems with excessive dust and erosion due to breakdown of the road surface. While OSMRE agrees that, in some instances, the natural surface of the road may be sufficient to meet the performance standards, the commenter's suggested change was not accepted. Final § 816.151(e) does not preclude the acceptability of the natural road surface in meeting the durability requirement.

One commenter objected to the lack of a justification for the requirement to have the surface materials approved in advance.

OSMRE believes that the regulatory authority must review the type of surface material proposed for the construction of each primary road prior to the construction of the road. From a practical standpoint, prior approval will ensure that environmental damage does not result from surfacing with substandard material, and will avoid the problems and costs associated with having to remove any substandard material and/or resurface the road.

H. References

In addition to the literature cited with previous rulemakings on this subject (43 FR 41739, September 18, 1978; 44 FR 15245, March 13, 1979; and 47 FR 16595, April 16, 1982) which was used as general background material, the following items were used in the preparation of this final rule:

Ambrose, R.E., C.R. Hinkle, and C.R. Wenzel, 1983, Practices for protecting and enhancing fish and wildlife on coal surface-mined lands in the Southcentral U.S., U.S. Department of the Interior, Fish and Wildlife Service, FWS/OBS–83/11, 229 pp.

Kaufman, W.K. and J.C. Ault, 1977, Design of Surface Mine Haulage Roads—A Manual, U.S. Department of the Interior, Bureau of Mines, Information Circular No. 8758, 66 pp.

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1983, Proposed revisions to the Permanent Program Regulations Implementing section 501(b) of the Surface Mining Control and Reclamation Act of 1977, Final Environmental Statement, OSM–EIS–1: Supplement, 3 vols.

III. Procedural Matters

Effect in Federal Program States and on Indian Lands

The rule applies through cross-referencing, to those states with Federal progams. This includes California (as of August 12, 1988; 53 FR 26570, July 13, 1988), Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule also applies, through cross-referencing, to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750.

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Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual states will be notified in accordance with the provisions of 30 CFR 732.17.

Executive Order 12291

The Department of the Interior has examined this final rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that this is not a major rule and does not require a regulatory impact analysis. The final rule will impose only minor costs on the coal industry and coal consumers because it emphasizes the use of performance standards instead of design criteria which will allow operators to use the most cost-effective means of achieving the minimum standards.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities. The funds that a small operator will have to invest in the construction of roads to comply with this final rule will only be minimally increased over what would normally be spent to ensure efficient transportation and minimal vehicle damage. The cost of building roads will be defrayed by lowered maintenance costs for roads and vehicles. The operator will also avoid losses from a shutdown of operations due to impassable roads.

Federal Paperwork Reduction Act

The information collection requirements contained in §§ 780.37 and 780.38 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0036. The information collection requirements contained in §§ 784.24 and 784.30 have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0039.

Public reporting burden for this information is estimated to average as follows: § 780.37—17.0 hours, § 780.38—12.0 hours, § 784.24—9.7 hours, and § 784.30—12.0 hours, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSMRE, 1951 Constitution Avenue, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

National Environmental Policy Act

OSMRE has prepared an environmental assessment and has made a finding that the final rules will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The environmental assessment is on file in the OSMRE Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC.

Agency Approval

Section 516(a) requires that, with regard to rules directed toward the surface effects of underground mining, OSMRE must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSMRE has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

Authors

The authors of this rule are Robert A. Wiles, P.E., and Donald E. Stump, Jr., P.E., with assistance from Patrick W. Boyd; OSMRE, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1502 (Commercial or FTS).

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 780

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 815

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 701, 780, 784, 815, 816, and 817 are amended as set forth below:

Dated: September 14, 1988.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended, and Pub. L. 100–34.

§ 701.5 [Amended]

2. In § 701.5, the definition of *road* is reinstated and revised to read as follows:

* * * * *

Road means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

* * * * *

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLAN

3. The authority citation for Part 780 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; 16 U.S.C. 470 *et seq.*; and Pub. L. 100–34.

4. Section 780.37 is revised to read as follows:

§ 780.37 Road systems.

(a) *Plans and drawings.* Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in § 701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall—

(1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;

(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the regulatory authority in accordance with § 816.150(d)(1) of this chapter;

(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the regulatory authority in accordance with § 816.151(c)(2) of this chapter;

(4) Contain a description of measures to be taken to obtain approval of the regulatory authority for alteration or relocation of a natural stream channel under § 816.151(d)(5) of this chapter;

(5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the regulatory authority can maximize the protection of the stream in accordance with § 816.151(d)(6) of this chapter; and

(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(b) *Primary road certification.* The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the design of primary roads a qualified registered professional land surveyor, with experience in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(c) *Standard design plans.* The regulatory authority may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in § 816.151(b) of this chapter.

5. Section 780.38 is added to read as follows:

§ 780.38 Support facilities.

Each applicant for a surface coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with § 816.181 of this chapter for each facility.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLAN

6. The authority citation for Part 784 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; 16 U.S.C. 470 *et seq.*; and Pub. L. 100–34.

7. Section 784.24 is revised to read as follows:

§ 784.24 Road systems.

(a) *Plans and drawings.* Each applicant for an underground coal mining and reclamation permit shall submit plans and drawings for each road, as defined in § 701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall—

(1) Include a map, appropriate cross sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;

(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the regulatory authority in accordance with § 817.150(d)(1) of this chapter;

(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the regulatory authority in accordance with § 817.151(c)(2) of this chapter;

(4) Contain a description of measures to be taken to obtain approval of the regulatory authority for alteration or relocation of a natural stream channel under § 817.151(d)(5) of this chapter;

(5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the regulatory authority can maximize the protection of the stream in accordance with § 817.151(d)(6) of this chapter; and

(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(b) *Primary road certification.* The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the design of primary roads a qualified registered professional land surveyor, experienced in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(c) *Standard design plans.* The regulatory authority may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in § 817.151(b) of this chapter.

8. Section 784.30 is added to read as follows:

§ 784.30 Support facilities.

Each applicant for an underground coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with § 817.181 of this chapter for each facility.

PART 815—PERMANENT PROGRAM STANDARDS—COAL EXPLORATION

9. The authority citation for Part 815 is revised to read as follows:

Authority: Pub. L. 95–87, U.S.C. 1201 *et se.*, as amended; and Pub. L. 100–34.

10. Section 815.15 is amended by revising paragraph (b) to read as follows:

§ 815.15 Performance standards for coal exploration.

* * * * *

(b) All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of §§ 816.150 (b) through (f), 816.180, and 816.181 of this chapter.

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PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

11. The authority citation for Part 816 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; and Pub. L. 100–34.

12. Section 816.150 is reinstated and revised to read as follows:

§ 816.150 Roads: general.

(a) *Road classification system.* (1) Each road, as defined in § 701.5 of this chapter, shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is–

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) *Performance standards.* Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress;

(7) Use nonacid- and nontoxic-forming substances in road surfacing.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority in accordance with applicable §§ 816.41 through 816.43 and 816.57 of this chapter.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) *Reclamation.* A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts unless approved as part of the postmining land use;

(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and

(6) Scarifying or ripping the roadbed; replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with §§ 816.22 and 816.111 through 816.116 of this chapter.

12. Section 816.151 is reinstated and revised to read as follows:

§ 816.151 Primary roads.

Primary roads shall meet the requirements of section 816.150 and the additional requirements of this section.

(a) *Certification.* The construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified registered professional land surveyor with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(b) *Safety Factor.* Each primary road embankment shall have a minimum static factor of 1.3 or meet the requirements established under § 780.37(c) of this chapter.

(c) *Location.* (1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(2) Fords or perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of road construction.

(d) *Drainage control.* In accordance with the approved plan—

(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the regulatory authority;

(2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with applicable § 816.41 through 816.43 and 816.57 of this chapter; and

(6) Except as provided in paragraph (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The regulatory authority shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to steamflow.

(2) *Surfacing.* Primary roads shall be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

13. The authority citation for Part 817 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; and Pub. L. 100–34.

14. Section 817.150 is reinstated and revised to read as follows:

§ 817.150 Roads: general.

(a) *Road classification system.* (1) Each road, as defined in § 701.5 of this chapter, shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is—

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approval postmining land use.

(3) An ancillary road is any road not classified as a primary road

(b) *Performance standards.* Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife, or otheir habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standard applicable to receiving waters;

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress; and

(7) Use nonacid- and nontoxic-forming substances in road surfacing.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority in accordance with applicable §§ 817.41 through 817.43 and 817.57 of this chapter.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority;

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) *Reclamation.* A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts unless approved as part of the postmining land use;

(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material and revegetating disturbed surfaces in accordance with §§ 817.22 and 817.111 through 817.116 of this chapter.

15. Section 817.151 is reinstated and revised to read as follows:

§ 817.151 Primary roads.

Primary roads shall meet the requirements of § 817.150 and the additional requirements of this section.

(a) *Certification.* The construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified registered professional land surveyor, with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(b) *Safety Factor.* Each primary road embankment shall have a minimum static factor of 1.3 or meet the requirements established under § 784.24(c).

(c) *Location.* (1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of road construction.

(d) *Drainage control.* In accordance with the approved plan—

(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the regulatory authority;

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(2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with applicable §§ 816.41 through 816.43 and 816.57 of this chapter; and

(6) Except as provided in paragraph (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The regulatory authority shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(e) *Surfacing.* Primary roads shall be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

[FR Doc. 88-25688 Filed 11-7-88; 8:45 am]
BILLING CODE 4310-05-M

federal register

Tuesday
November 8, 1988

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 280

Nehemiah Housing Opportunity Grants Program; Notice of Proposed Rulemaking and Notice of Concurrent Delegation of Authority

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 280

[Docket No. R-88-1403; FR-2478]

Nehemiah Housing Opportunity Grants Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the Act) establishes the Nehemiah Housing Opportunity Grants Program (NHOP). Title VI authorizes HUD to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program. The loans to the family: May not exceed $15,000; bear no interest; are secured by a second mortgage held by the Secretary; and are repayable to the Secretary upon the sale, lease or transfer of the property. This Notice announces the proposed rules to govern the NHOP program.

DATE: Comments are due January 9, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-6720. Hearing or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION. The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503.

I. Background

On February 5, 1988, President Reagan approved the Housing and Community Development Act of 1987 (Pub. L. 100-242)(the Act). Title VI of the Act establishes the Nehemiah Housing Opportunity Grants Program (NHOP). Under NHOP, HUD is authorized to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program.

The purposes of NHOP are:

—To encourage homeownership by families who are not otherwise able to afford homeownership.

—To undertake a concentrated effort to rebuild the depressed areas of cities and to create sound and attractive neighborhoods.

—To increase the employment of residents of such neighborhoods.

II. Procedural Matters

Section 611 of the Act provides: "Not later than July 1, 1988, the Secretary shall issue final regulations to carry out the provisions of this title." This section also makes the notice and comment rulemaking requirements of the Administrative Procedure Act applicable to NHOP. Since no appropriations were made for NHOP for FY 1988, the Department did not attempt to meet section 611's deadline.

The Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988) appropriated $20 million for the Nehemiah program. These funds will not become available until July 1, 1989. HUD intends to have a final rule published and effective by that date.

III. Program Description

As more fully described below, nonprofit recipients under the proposed rule would be selected in a funding competition using cited threshold and ranking criteria. Following the selection of a program, HUD would obligate sufficient amounts to cover the aggregate amount of the loans proposed for the program and the recipient would begin the development and marketing of the project. (Other than model display units, however, no construction or substantial rehabilitation may begin until 25 percent of the homes in the program are contracted for sale to purchasers who intend to live in the homes, and required downpayments have been made to the recipient.)

Within 30 days of the date of the execution of a contract for the sale of a home to an eligible family, HUD would provide to the recipient from the obligated funds, an amount equal to the loan to be made to the family to purchase the home. This amount would be used by the recipient to provide a loan to the family to purchase the home. The loan would be secured by a second mortgage on the property; may not exceed $15,000; would bear no interest; and would be repayable to HUD upon the sale, lease or other transfer of the property.

A. Assistance Provided

Under NHOP, HUD would provide assistance in the form of grants to nonprofit recipients. Recipients must use the assistance to provide loans to families purchasing homes constructed or substantially rehabilitated under an approved program. The amount of assistance could not exceed $15,000 for each home.

Recipients must be nonprofit organizations. The proposed rule (§ 280.5) defines nonprofit organization as a private nonprofit corporation or other private nonprofit legal entity that: (1) Is not controlled by or under the direction of, persons or firms seeking to derive profit or gain from the organization, (2) has voluntary board, (3) has a tax exemption ruling from the Internal Revenue Service. This definition would exclude a public body or the instrumentality of any public body.

Except for assistance made available under the Community Development Block Grant program under Title I of the Housing and Community Development Act of 1974, (42 U.S.C. 5301, *et seq.*), recipients of NHOP assistance would not be eligible for assistance under other HUD assistance programs. (Homes purchased with loans under NHOP, however, would be eligible for mortgage insurance under the programs described at § 280.103.)

B. Program Eligibility Requirements

1. *Construction or substantial rehabilitation of homes.* Assistance under NHOP is limited to programs that involve the construction or substantial rehabilitation of homes. Under section 602(2) of the Act, the term "home" is defined to mean any one- to four-family dwelling. The term includes any dwelling unit in a condominium project or cooperative project consisting of not more than four dwelling units, any townhouse, and any manufactured home. Proposed § 280.5 reflects this statutory definition.

Proposed § 280.5 provides that rehabilitation means labor, material, and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing buildings, security devices, and improvements through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings. A home would be substantially rehabilitated if the rehabilitation costs are in excess of 60 percent of the maximum sales price of the home, or if the home to be rehabilitated is a vacant, abandoned structure. (See section 602(8) of the Act.)

2. *Program size requirements.* Programs under NHOP must be of a sufficient size to create a major impact on the distressed neighborhood; to withstand the forces of deterioration that would surround the redeveloped neighborhood; and to obtain other advantages such as economies of scale in the building process, reduced costs of compliance with local regulations, and reduced per unit legal, architectural, engineering and selling costs. H. Rep. No. 100-122, 100th Cong. 1st Sess. 95-96, 97 (1987) and S. Rep. No. 100-21, 100th Cong. 1st Sess. 23 (1987). Accordingly, section 606(e)(1) of the Act provides that a program may be approved only if the program meets minimum size limitations, based upon the number of existing dwelling units in the unit of general local government that provides the most assistance to the program.

These program size requirements are reflected in proposed § 280.105(a), which states that the minimum number of homes in the program is: 250, if the unit of general local government has more than 100,000 existing dwelling units; .25 percent of the number of existing dwelling units in the unit of general local government, if the number of existing dwelling units is between 20,000 and 100,000; or 50 homes, if the unit of general local government has less than 20,000 existing dwelling units.

For the purpose of determining which unit of general local government provides the most assistance, HUD would consider both financial and other contributions to the program. Contributions are defined as financial or other contributions that result in program cost reductions that will be reflected in the sales price of homes purchased under the program, or that result in the reduction of carrying charges to families purchasing homes under the program. Contributions may include cash contributions to the program; the waiver or modification of construction, development or zoning requirements; the provision of no-interest construction loans; "in kind" donations of land, structures, equipment, materials and supplies; home loan programs that provide below-market interest rates, or principal or interest payment reductions, to families purchasing homes under the program, and property tax abatement to families purchasing homes under the program. Contributions exclude the time or services contributed by volunteers, and contributions provided with funds obtained through a Federally assisted program, except for contributions made available under the Community Development Block Grant Program.

For the purpose of computing the number of existing dwelling units located within a unit of general local government, HUD would use the number of "housing units" in the unit of general local government, as reported in the most recent decennial Census. Housing unit as used in the Census includes a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, or if vacant, intended for occupancy as separate living quarters. HUD would use the Census number, unless the applicant submits a revised estimate and supporting documentation demonstrating that the number of housing units has changed significantly since the most recent decennial Census.

Projects of the size required under the statute may be difficult to develop under certain circumstances (for example, in cities where there is little vacant or government-owned land, or where a different type of development may be more appropriate). See H. Rep. 100-122, 100th Cong. 1st Sess. 97 (1987). To address such situations, section 606(e)(1) permits the Secretary to waive the project size limitations if the Governor of the State or the unit of general local government requests the waiver and certifies, with supporting documentation, that the requirements would prevent the State or the unit of general local government from using the program effectively.

Proposed § 280.105(b) provides that HUD will determine that the project size requirement would prevent the effective use of the program where: (1) The projected market demand for homes, the amount of reasonably available land or structures, the available financial and other contributions, or the available mortgage financing is insufficient to support a program of the size required; (2) the construction or substantial rehabilitation of a project of the size proposed will result in cost reductions through economies of scale similar to the cost reductions achieved through other programs eligible for NHOP assistance; and (3) the program, by itself or together with other improvement efforts, will result in a substantial improvement in the overall quality and long term viability of the neighborhood. (Programs for which the size requirements have been waived would be subject to all other program requirements.)

3. *Program Location*

(a) *Neighborhood requirements.* Section 606(e)(4) of the Act provides that all homes constructed or substantially rehabilitated under NHOP must be concentrated in a single neighborhood and located on contiguous parcels of land. Proposed § 280.110(b) implements this requirement. For the purposes of this program, "neighborhood" would be defined to mean an area that (a) has a population of at least 2,500 persons, and (b) is distinguishable from other areas on the basis of one or more significant features, such as: (1) Natural or man-made boundaries; (2) a locally recognized name, formal or informal; (3) an identity as a residential subdivision; (4) an identity as an elementary school district; or (5) distinctive population, social, or housing characteristics. Contiguous parcels of land would mean parcels of land that abut, or if the parcels of land do not abut, parcels of land that are divided only by natural or man-made boundaries (such as streets, rights-of-way, or similar divisions) and

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that are located within the same neighborhood. (See proposed § 280.5).

Section 606(e)(4) permits homes to be constructed or substantially rehabilitated in up to four identifiable neighborhoods, each of which consists of contiguous parcels of land, if certain requirements are met. In accordance with this section, proposed § 280.110(b)(2) would permit approval of such programs if: (1) Each unit of general local government in which the program is located certifies that land cannot be made available, at a reasonable cost, in a single neighborhood for a program of the size required; (2) the applicant demonstrates that substantial rehabilitation and construction in the neighborhoods would result in cost reductions through economies of scale, comparable to the cost reductions achieved by other programs under NHOP (including economies of scale in the construction process, reduced costs of compliance with State and local laws and regulations, and reduced per unit legal, architectural, engineering, and sales costs); and (3) the applicant demonstrates that the program, by itself or together with other improvement efforts that are or will be undertaken in the neighborhoods (such as the construction or rehabilitation of other structures, improvements to facilities or services, or expansion of private enterprise in the neighborhood), would result in a substantial improvement in the overall quality and long-term viability of the neighborhood.

(b) *Census tract or neighborhood income limitations.* Two purposes of NHOP are to rebuild distressed neighborhoods and to promote homeownership for families who would not otherwise be able to purchase a home. The program would accomplish these purposes by two forms of targeting. The first is contained in section 606(e)(3) of the Act, which restricts home development to Census tracts (or identifiable neighborhoods within Census tracts) in which the median family income is not more than 80 percent of the median family income for the area. See S. Rep. No. 100–21, 100th Cong. 1st Sess. 22 (1987). This requirement is included in the proposed rule at § 280.110(a). (The second form of targeting is the family income limitation, discussed below.)

Section 606(e)(3) provides that "median family income" and "area" (as determined for the purposes of assistance under section 8 of the United States Housing Act of 1937) are to be used to determine whether a program meets the median family income requirements. Proposed § 280.110(a)(1) would implement this requirement, except that this section would refer directly to median family income reported in the most recent decennial Census, since HUD uses this Census data for determining median family income under the Section 8 program.

For the purposes of determining the median family income for the Census tract, HUD would use the most recent decennial Census data, but would provide applicants with an opportunity to demonstrate that the median family income for the Census tract, as reported in the most recent decennial Census, does not reflect the current median family income for the tract. Since the Census does not provide median family income on a "neighborhood" basis, if homes are located in a Census tract that does not meet the median family income limitation stated above, the applicant would be required to demonstrate that the neighborhood meets the requirement. The evidence required to make such a showing is discussed at § 280.100(a)(3).

(c) *Location in MSA.* Section 605(b) of the Act contains the eligibility requirements for families purchasing homes under NHOP. Section 605(b)(1)(A) provides that the family must meet certain income requirements based upon the median family income for a family of four persons in the metropolitan statistical area involved. HUD believes that this family income requirement imposes a requirement that all programs be located in a metropolitan statistical area. This requirement is included in § 280.110(c) of the proposed rule.

4. *Home quality standards.* Proposed § 280.115 reflects the home quality standards contained in section 606(e)(2) of the Act. Proposed § 280.115(a) addresses home quality standards for homes constructed or substantially rehabilitated under this part (except manufactured homes). Such homes must comply with applicable local building code standards. If no local building code standards are applicable, the homes must comply with a nationally recognized model building code (such as the CABO One- and Two-Family Dwelling Code) mutually agreed upon by the recipient and HUD. Homes must also comply with the energy performance requirements contained in the minimum property standards under 24 CFR Part 200, Subpart S.

Section 606(e)(2) provides that manufactured homes must comply with the standards prescribed under Title VI of the Housing and Community Development Act of 1974 (24 CFR Part 3280—Manufactured Home Construction and Safety Standards), the installation, structural and site requirements that would apply under title II of the National Housing Act (24 CFR 203.43f), and the energy performance requirements prescribed in accordance with section 203(b) of the National Housing Act (24 CFR 200.926d(e)). These requirements are contained in the proposed rule at § 280.115(b).

C. Application and Selection Process

1. *Notice of fund availability.* Proposed § 280.200 states that HUD will periodically publish a notice of fund availability in the **Federal Register**. This section describes the contents of the notice.

2. *Application requirements.* Under § 280.205, applicants would be required to submit applications in the form and within the time periods established by HUD. This proposed section includes the minimum application requirements. As required by section 606(b) of the Act, this proposed section includes a requirement that applicants submit a schedule for completion of the proposed program which has been agreed to by each unit of local government in which the program is to be located.

3. *Other Federal requirements.* Section 280.207 would address other Federal requirements applicable to recipients. These include nondiscrimination and equal opportunity requirements, flood insurance purchase requirements, requirements of OMB Circulars governing the acceptance and use of assistance by nonprofit organizations, conflict of interest prohibitions, provisions applicable to the use of debarred, suspended or ineligible contractors and audit requirements.

This section would address the requirements implementing the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846). The proposed requirements are similar to the lead-based paint requirements for HUD programs involving the rehabilitation of structures (e.g., Section 8 Existing Housing, the Rental Rehabilitation Grant Program, and the Community Development Block Grants Program), with modifications necessary to reflect the requirements of NHOP. The proposed rule includes the construction cut-off date requirements and revised definitions of applicable surfaces that were included in section 566 of the 1987 Act, and contained in a final rule revising HUD programs, published June 6, 1988 (53 FR 20790).

Most activities under NHOP are not covered under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Uniform Relocation Act) (42 U.S.C. 4601) because NHOP recipients will be nonprofit organizations rather than Federal agencies, States or State agencies. (It is possible, however, that a contribution of structures or land made by a local government to a program could be covered under the Uniform Relocation Act.) The Uniform Relocation Act was amended in the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relation Assistance Act of 1987 (Pub. L. 100–17, approved April 2, 1987). Effective April 2, 1989, certain relocation assistance requirements will apply to programs or projects that involve acquisition, rehabilitation, or demolition, and that receive Federal financial assistance. HUD, with the Department of Transportation as the lead agency, is participating in the preparation of uniform regulations for Federal and Federally assisted programs. The final rule will address the applicability of the Uniform Relocation Act, and will include appropriate relocation provisions implementing the 1987 amendments.

4. *Selection process.* Under NHOP, HUD will use a three-step selection process. The three steps consist of the following stages:

(a) *Threshold review (Section 280.215).* In this stage, HUD would review all applications, to determine whether they meet stated threshold criteria. The criteria are:

—The application must be on the application form prescribed by HUD and filed within the time periods established in the NOFA.

—The applicant must demonstrate that it is a nonprofit organization; is financially responsible; has the ability to carry out activities under the program within a reasonable time after the execution of a grant agreement with HUD, and in a successful manner; and has the legal authority to participate in the program.

—The program must meet requirements governing program size, program location, home quality and the sales contract.

—The applicant must demonstrate that there is a demand among eligible purchasers for homes in the metropolitan statistical area, and that this demand is sufficient to ensure the sale of all homes under the proposed program.

—The applicant must demonstrate that it has consulted with, and has received the support of, residents of the neighborhood in which the program is located, and that each unit of local government has approved the program.

—The program must be financially feasible.

—The applicant must demonstrate that it has site control; and that the use of the proposed site is permissible under applicable zoning and other regulations, or that there is a reasonable basis to believe that proposed zoning actions will be completed successfully within four months of the submission of the application.

—HUD would assess the environmental effect of the application. Applications that require an Environmental Impact Statement would not be eligible for ranking.

(b) *Ranking criteria.* In the second stage of the selection process, HUD would evaluate the applications that pass threshold review and place these applications in a rank order based on six ranking criteria. The criteria listed in the regulations reflect the statutory selection factors found at section 607 of the Act. The criteria are:

—Contributions of land. Under this criterion, HUD would consider the extent to which public or private entities will contribute land necessary to make the program feasible. Land necessary to the feasibility of the program would include individual lots for homes constructed or substantially rehabilitated under the program.

—Other contributions. HUD would consider the extent to which financial and other contributions to the program will reduce the cost to families purchasing homes constructed or substantially rehabilitated under a program.

—Cost effectiveness. Under this third criterion, HUD would consider the degree to which each program will produce the maximum number of homes for the least amount of assistance under NHOP, taking into consideration cost differences between different market areas. Cost adjustments will be made by the application of a commercial construction cost index selected by HUD and announced in the notice of fund availability.

—Neighborhood blight. HUD would consider the degree of physical and economic blight in the neighborhoods in which the program is located. In determining the degree of physical blight, HUD will consider the condition (but not the age) of existing housing, other buildings and the infrastructure of the neighborhood. In determining the degree of economic blight, HUD will consider such factors as the unemployment rate, median family income and the crime rate in the neighborhoods. Because one of the major purposes of NHOP is to rebuild the depressed areas of the cities of the United States and to create sound and attractive neighborhoods, HUD would also consider the impact that the proposed program, together with other improvement efforts that are or will be undertaken in the neighborhood by units of general local government or private entities, will have on the quality and viability of the neighborhood.

—Construction cost. Under the fifth criterion, HUD would consider the degree to which the applicant will use construction or rehabilitation methods that would reduce the cost per square foot for the proposed program below the average construction cost per square foot in the market area involved. HUD will compare the average construction costs for the market area (determined by reference to a commercially available publication selected by HUD and announced in the notice of fund availability) with the average construction or rehabilitation costs for the program (adjusted for cost reductions that are attributable solely to financial and other contributions to the program).

—Local resident involvement. Under the final statutory criterion, HUD is required to consider the extent to which each program provides for the involvement of local residents in the planning, construction and rehabilitation of homes. One of the major purposes of NHOP is to increase the employment of neighborhood residents. Accordingly, one of the factors that HUD will consider under this criterion is the degree to which residents of the neighborhood will be employed in the construction and substantial rehabilitation of homes in the program. Additionally, since successful programs are best developed with the involvement of local residents of the neighborhood who have an understanding of the needs and characteristics of the neighborhood and a substantial stake in the improvement of the neighborhood, HUD will also consider the extent to which local residents of the neighborhood have advised or assisted the applicant in the development of the proposed program, and the likelihood of continued participation by local residents in program activities following selection.

Section 280.220(c) provides an exception to the ranking process based on section 607(b) of the Act. To the extent that State and local governmental entities are prohibited by State law from making a financial or other contribution to the program that would otherwise be eligible for consideration under the first or second ranking criterion, HUD would not penalize an applicant under the

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ranking process for the lack of such a contribution to the program.

(c) *Final selection.* In the final stage of the selection process, HUD would select for funding the highest-ranked applications under the ranking criteria. To ensure reasonable variety in the program, HUD would reserve the right to substitute one or more other highly-ranked applications, if the highest-ranked applications involve programs that would predominately serve one geographic area. Upon completion of final selection, HUD will notify each successful applicant of its selection. HUD will also notify each unsuccessful applicant that it has not been selected, and will provide the unsuccessful applicant with an explanation for the denial of the application.

D. Program Operation

1. *Obligation of funds.* When HUD selects an application for funding, it would obligate sufficient amounts for the recipient's grant to cover the aggregate amount of loans proposed under the selected program. (Proposed § 280.300).

2. *Grant agreement.* The responsibilities of the recipient under NHOP would be incorporated in a grant agreement executed by HUD and the recipient and HUD would monitor the recipient's performance to determine if the recipient is complying with the requirements of the grant agreement. (See § 280.303).

3. *Minimum participation.* Section 606(c) of the Act provides that no nonprofit organization receiving assistance under NHOP may commence any construction or substantial rehabilitation until not less than 25 percent of the homes to be constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes, and the required downpayments are made. An exception is made for the construction or substantial rehabilitation of display homes. Section 280.305 would incorporate these requirements and specify that the maximum number of display homes that may be constructed or substantially rehabilitated is five percent of the number of homes to be constructed or substantially rehabilitated under the program, or three homes if the program involves less than 60 homes.

4. *Eligible purchasers.* Under section 605(b) of the Act, each family purchasing a home under Title VI must meet family income requirements and must not have owned a home during the three-year period preceding the purchase of the home. These requirements are included in proposed § 280.315.

Section 605(b) of the Act states that each family purchasing a home must have a family income on the date of purchase that does not exceed the higher of "the median income for a family of 4 persons in the metropolitan statistical area involved" (subject to a limited exception, discussed below) or "the national median income for a family of 4 persons." The language of the statute is troublesome, because data on median income for a family of four is not available. The decennial Census provides only median family income data, and does not provide median income data based on family size.

For programs under the United States Housing Act of 1937, HUD is required to develop lower income limits that are based on 80 percent of the median family income for an area. These median income limits are then adjusted for smaller and larger families. See section 3(b)(2) of the United States Housing Act of 1937. Currently, for most areas, the lower income limit for a family of four under these programs is set at 80 percent of the median family income. (*I.e.* Under these programs, the median family income adjusted for a family of four is equal to median family income.) In light of the lack of data for median income for a family of four, the attached proposed rule at § 280.315 make a similar assumption and uses median family income as the income eligibility standard. HUD specifically requests public comment on this issue.

To purchase a home, the family's income may not exceed the higher of the national median family income or the median family income for the metropolitan statistical area involved. The statute permits the Department to modify the income standard for the metropolitan statistical area. The proposed rule permits the recipient to request such a modification at any time during the development of the program. To obtain a modification, the recipient must submit a request made by a unit of general local government in which the program is located, and supporting documentation demonstrating to HUD that such action is necessary to achieve or maintain neighborhood stability. If a modification is granted, HUD would permit up to 15 percent of the families that purchase homes under NHOP to have a family income on the date of purchase that is between 100 and 115 percent of the median family income for the metropolitan statistical area. (For the purposes of this program, the date of purchase would be defined as the date that a family executes a sale contract for the purchase of a home under NHOP.)

5. *Sales contract and downpayment requirements.* Under proposed § 280.320, the recipient and each family purchasing a home constructed or substantially rehabilitated under a program would be required to execute a sales contract containing appropriate terms and conditions covering the purchase of the home, the downpayment requirements and repayment provisions described below, and such other terms and conditions as HUD may require.

Congress recognized that downpayment requirements would provide a valuable incentive to save for families wishing to purchase a home, and would ensure that purchasers have some equity and thus a greater stake in the home's upkeep. (See H. Rep. No. 100–122, 100th Cong. 1st. Sess. 97 (1987)). Accordingly, section 605(c) of the Act requires that each family purchasing a home under NHOP to make a downpayment of 10 percent of the sales price of the home. This requirement is included in the proposed rule at § 280.320(b). To ensure that families will have a financial stake in the home, the proposed rule would also forbid government entities and instrumentalities from providing the funds for the family's downpayment.

Section 605(c) of the Act states that the recipient may require a downpayment of more than 10 percent, if it determines that a higher downpayment is appropriate, and may require a downpayment of less than 10 percent, if the first mortgage on the home is to be held by a State or a unit of general local government under a home loan program provided by the State or unit of general local government, and the program provides for a lower downpayment. These requirements have been incorporated in the proposed rule.

The statute does not specify a date that the family must provide a downpayment. HUD anticipates that recipients may wish to require the downpayment at differing points of time, or may wish to permit families to accumulate their downpayments over a period of time. To provide the recipient with the greatest amount of discretion with regard to the date of the required downpayment, § 280.320(b)(2) would provide simply that the family make the downpayment on the date required by the recipient. This requirement is subject to § 280.305, which provides that no construction or rehabilitation may begin until at least 25 percent of the homes to be constructed or substantially rehabilitated under the program have been contracted for sale, and the downpayments have been made.

The statute requires the recipient to pay interest to the family on the downpayment from the date upon which the downpayment is made through the date of settlement, at a rate not less than the passbook rate. The proposed rule requires the recipient to deposit all downpayments in an account with a federally-insured bank or savings and loan institution. The amount of interest to be paid to the family would be the actual interest earned on the downpayment deposit. Under no circumstances would the interest rate paid to the family be lower than the lowest interest rate paid on time savings (passbook) deposits with a federally-insured bank or savings and loan institution which conducts business within the MSA. (See § 280.320(b)(3).)

6. *Loan requirements.* Proposed § 280.322(a) provides that each loan made under the part: (1) Must be secured by a second mortgage held by HUD on the property involved; (2) may not exceed $15,000; (3) will not bear interest; (4) is repayable to HUD upon the sale, lease, or other transfer of the property; (5) must be applied by the family to the purchase price of the home; (6) may not be used by the family to provide the downpayment required under § 280.230; and (7) is subject to such other terms and conditions as HUD may require. (See section 604(b).) Proposed § 280.322(b) states that HUD will provide the recipient with an amount equal to the amount of the loan within 30 days after the date of purchase of a home with a loan under this part.

7. *Repayment of loan.* As required by sections 604(b)(4) and 606(e)(5) of the Act, loans under NHOP are repayable upon the sale, lease, or other transfer of the property. The Senate Committee Report stated that the refinancing of the first mortgage will not require repayment, unless there is a related sale, lease or other transfer of the property. See S. Rep. No. 100–21, 100 Cong. 1st Sess. 23 (1987). This is reflected in proposed § 280.330(a) which states that the refinancing of the first mortgage will not require the repayment of the loan unless the refinancing is related to a sale, equity withdrawal, lease, or transfer of interest in the property. If an equity withdrawal is involved, the family would be required to repay the loan to HUD to the extent of the withdrawal. To the extent that repayment is not required as a result of refinancing, the second mortgage held by HUD on the property will remain in force until the loan is repaid in full.

Section 606(e)(5) of the Act provides that the Secretary may approve a transfer of the home without repayment. The Housing Committee report stated that the legislation anticipates that the Secretary will issue such approval only if the proceeds of a sale are insufficient to repay the full second mortgage. (H.R. Rep. No. 100–122, 100 Cong. 1st Sess. 96 (1987). Proposed § 280.330(b) provides that approval will be granted if HUD determines that an undue hardship would result from application of the repayment requirement and that such a finding will be made only if the proceeds of a sale are insufficient to repay the loan amount in full. Approval will be granted only to the extent that the proceeds of the sale are insufficient to repay the loan in full. In light of the leasing prohibition under section 605(d) of the Act, the proposed rule states that HUD will not approve a lease without repayment. To the extent that a sale or other transfer is approved by HUD, the second mortgage held by the Secretary would remain in force until the loan is repaid.

8. *Funding amendments and deobligation of funds.* Section 280.335 would contain provisions governing HUD's administration of the program. This section contains provisions addressing funding increases and the deobligation of funds.

E. Waiver

Section 280.10 would permit the Secretary of HUD, for good cause, to waive NHOP requirements that are not required by law.

IV. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Since the number of recipients that will be funded under the program will be small and will include both small and large recipients, HUD does not believe that a significant number of small entities will be affected by this program.

This rule was listed as Item No. 957 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 41989) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Number is 14.179.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under setion 3504(h) of the Paperwork Reduction Act of 1980. The sections of the proposed rule identified in the matrix below have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—NEHEMIAH HOUSING OPPORTUNITY PROGRAM

Description of information collection requirement	Section of 24 CFR affected	Number of respondents	Number of response per respondent	Total annual response	Hours per response	Total hours
1. Application Submission Requirements	§ 280.205; § 280.105 (b) & (C); § 280.110 (a) & (b); § 280.215(2) (i) & (iv), (b)(5) & (b)(7).	150	1	150	8.00	1,200
2. Affirmative Fair Housing Marketing Requirements.	§ 280.207(a)(6)	10	1	10	3 minutes	0.5

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TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—NEHEMIAH HOUSING OPPORTUNITY PROGRAM—Continued

Description of information collection requirement	Section of 24 CFR affected	Number of respondents	Number of response per respondent	Total annual response	Hours per response	Total hours
3. Racial and Ethnic Data Collection Requirement.	§ 280.207(a)(7)	10	145	1,450	3 minutes	43.5
4. Lead-Based Paint Reporting and Recordkeeping Requirement.	§ 280.207(d)	2	145	290	0.50	145
5. Grant Agreement	§ 280.303(a)	10	1	10	2.00	20
6. Request for Modification of Requirement for Eligible Buyers.	§ 280.315(a)	5	1	5	1.50	7.5
7. Sales Contract Requirement	§ 280.320(a)	10	145	1,450	0.50	725
8. Request for Reimbursement	§ 280.322(b)	10	145	1,450	0.50	725
9. Loan and 2nd Mortgage Requirement	§ 280.322(a)	10	145	1,450	0.50	725
10. Request for HUD Approval of Sale or Transfer.	§ 280.330(b)	10	45	450	1.50	675
Total Burden Hours						4,266.5

List of Subjects in 24 CFR Part 280

Grant program, housing and community development, Loan program, housing and community development, Low- and moderate-income housing.

For the reasons set forth in the preamble, Title 24 of the Code of Federal Regulations would be amended to add a new Subchapter E, consisting of Part 280, to Chapter II to read as follows:

SUBCHAPTER E—GRANT PROGRAMS

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

Subpart A—General

Sec.

280.1 Applicability and scope.
280.5 Definitions.
280.10 Waiver.

Subpart B—Assistance Provided

280.100 NHOP assistance.
280.103 Assistance under other HUD programs.

Subpart C—Program Eligibility Requirements

280.105 Program size.
280.110 Program location.
280.115 Home quality.

Subpart D—Application and Selection Procedures

280.200 Notice of fund availability.
280.205 Application requirements.
280.207 Other Federal requirements.
280.210 Selection process.
280.215 Threshold requirements.
280.220 Ranking criteria.
280.225 Final selection.

Subpart E—Program Operation

280.300 Obligation of funds.
280.303 Grant agreement.
280.305 Minimum participation.
280.315 Eligible purchases.
280.320 Sales contract and downpayment requirements.
280.322 Loan requirements.
280.330 Repayment of loan.
280.335 Funding amendments and deobligation of funds.

Authority: Sec. 611, Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 280.1 Applicability and scope.

(a) *General.* Under the Nehemiah Housing Opportunity Grants Program (NHOP) contained in Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), HUD is authorized to provide assistance in the form of grants to nonprofit organizations to be used to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program.

(b) *Purpose.* The purpose of NHOP is:

(1) To encourage homeownership by families who are not otherwise able to afford homeownership;

(2) To undertake a concentrated effort to rebuild the depressed areas of cities and to create sound and attractive neighborhoods; and

(3) To increase the employment of residents of such neighborhoods.

§ 280.5 Definitions.

As used in this part:

Applicant means a nonprofit organization that submits an application for assistance under this part. The term applicant does not include two or more entities submitting a joint application.

Assistance means grants to recipients for the purpose of providing loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approval program.

Contiguous parcels of land means parcels of land that abut, or if the parcels of land do not abut, parcels of land that are divided only by natural or man-made boundaries (such as streets, rights-of-way, or similar divisions) and that are located within the same neighborhood.

Date of purchase means the date that a family executes a sales contract for the purpose of a home under this part.

Financial and other contributions to the program means financial or other contributions that result in program cost reductions that will be reflected in the sales price of the homes purchased under the program, or that result in the reduction of carrying charges to families purchasing homes under the program. Such contributions include (but are not limited to) cash contributions to the program; the waiver or modification of construction, development or zoning requirements by units of general local government; the provision of no-interest or below-market interest construction loans; "in kind" donation of land, structures, equipment, materials and supplies; home loan programs that provide below market interest rates, or principal or interest payment reductions to families purchasing homes under the program; and property tax abatement offered by a State or a unit of general local government to families purchasing homes under the program. Such contributions do not include: the time or services contributed by volunteers, or contributions provided with funds obtained through a federally assisted program, except for contributions made available under the Community Development Block Grant Program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, *et seq.*).

Home means a one- to four-family dwelling. Home includes dwelling units in a condominium project that consists of not more than four dwelling units, dwelling units in a cooperative project that consists of not more than four dwelling units, townhouses, and manufactured homes.

HUD means the Department of Housing and Urban Development.

Metropolitan statistical area means a metropolitan statistical area or a primary metropolitan statistical area established by the Office of Management and Budget.

Neighborhood means an area that (a) has a population of at least 2,500 persons, and (b) is distinguishable from other areas on the basis of one or more significant features, such as:

(1) Natural or man-made boundaries;

(2) A locally recognized name, formal or informal;

(3) An identity as a residential subdivision;

(4) An identity as an elementary school district; or

(5) Distinctive population, social, or housing characteristics.

Nonprofit organization means a private nonprofit corporation or other private nonprofit legal entity. No part of the net earnings of the organization may inure to the benefit of any member, founder, contributor, or individual. The organization:

(a) May not be controlled by, or be under the direction of, persons or firms seeking to derive profit or gain from the organization;

(b) Must have a voluntary board; and

(c) Must have a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue Code.

Nonprofit organization does not include a public body or the instrumentality of any public body.

Program means the undertaking by a recipient with HUD assistance under this part for the construction or substantial rehabilitation of homes in accordance with the requirements of this part.

Recipient means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD to carry out a program under this part.

Rehabilitation means labor, material, and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings, security devices, and improvement through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Substantial rehabilitation means rehabilitation involving costs in excess of 60 percent of the maximum sales price of the home, or the rehabilitation of a vacant, uninhabitable structure.

Unit of general local government means a borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

§ 280.10 Waiver.

The Secretary of HUD may waive any requirement of this part that is not required by law, if the Secretary determines that good cause for waiver exists. Each waiver must be in writing and must be supported by documentation of the pertinent facts or grounds.

Subpart B—Assistance Provided

§ 280.100 NHOP assistance.

(a) *General.* HUD will provide assistance in the form of grants to recipients. Recipients may only use assistance provided by HUD under this part to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program.

(b) *Amount.* The amount of assistance provided to any recipient under this part shall not exceed $15,000 for each home purchased by an eligible family under an approved program.

§ 280.103 Assistance under other HUD programs.

Except for assistance made available under the Community Development Block Grant program, a recipient's program is not eligible for assistance under other HUD assistance programs. Dwellings purchased under the program are eligible for mortgage insurance under section 203(b) (one- to four-family home mortgages), section 203(k) (rehabilitation of one- to four-family homes), section 221(d)(2) (low- and moderate-income families), section 234(c) (condominium mortgages), section 245(a) (graduated payment mortgages), and section 251 (adjustable rate mortgages) of the National Housing Act.

Subpart C—Program Eligibility Requirements

§ 280.105 Program size.

(a) *Number of homes.* The minimum number of homes that must be constructed or substantially rehabilitated under a program will depend on the number of existing dwelling units that are located in the unit of general local government that provides the greatest financial and other contributions to the program. The minimum number of homes is:

(1) 250, if there are more than 100,000 existing dwelling units in the unit of general local government;

(2) .25 percent of the number of existing dwelling units in the unit of general local government, if the number of existing dwelling units in the unit of general local government is between 20,000 and 100,000; or

(3) 50, if there are less than 20,000 existing dwelling units in the unit of general local government.

(b) *Exception.* HUD may waive the program size requirement in paragraph (a) of this section, if the chief elected official of the unit of general local government that provides the most financial and other contributions to the program, or the Governor of the State in which the program is to be located, requests a waiver and certifies, with supporting documentation, that the program size requirement will prevent the State or the unit of general local government from using the program effectively. HUD will determine that the program size requirement would prevent the effective use of the program if:

(1)(i) The projected market demand for the homes is insufficient to support a program of the size required;

(ii) Structures cannot be made available for rehabilitation and a sufficient amount of land cannot be made available for new construction, at a reasonable cost, to support a program of the size required.

(iii) The financial and other contributions available to the program are insufficient to support a program of the size required; or

(vi) The amount of mortgage financing available is insufficient to support a program of the size required;

(2) The construction or substantial rehabilitation of a project of the proposed size will result in cost reductions through economies of scale, comparable to the cost reductions achieved by other programs eligible for assistance under this part. (Such cost reductions include (but are not limited to) economies of scale in the construction process, reduced costs of compliance with State and local laws and regulations, and reduced per unit legal, architectural, engineering and sales costs); and

(3) The program, by itself or together with improvement efforts that are or will be undertaken in the neighborhood by units of general local government or private entities, will result in a

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substantial improvement in the overall quality and long-term viability of the neighborhood. Other improvement efforts may include the construction or rehabilitation of other structures, improvements to public facilities or services, or the expansion of private enterprise in the neighborhood.

(c) *Number of dwelling units.* For the purposes of this section, the number of existing dwelling units in the unit of general local government means the number of housing units in the unit of general local government, as reported in the most recent decennial Census. HUD will use the Census number unless the applicant submits a revised estimate and supporting documentation demonstrating that the number of housing units has changed significantly since the most recent decennial Census.

§ 280.110 Program location.

(a) *Census tract or neighborhood income limitations.* All homes constructed or substantially rehabilitated under a program must be located in Census tracts, or in neighborhood (within Census tracts), in which the median family income does not exceed 80 percent of the median family income of the area in which the program is to be located. Median family income will be determined as follows:

(1) For the purpose of determining the median family income of the area in which the program is to be located, HUD will use median family incomes derived from the most recent decennial Census, and the areas established under Section 8 of the United States Housing Act of 1937.

(2) For the purpose of determining the median family income for Census tracts, HUD will use the tract definitions and median family income data reported in the most recent decennial Census, unless the applicant demonstrates that the Census data does not reflect the current median family income of the tract. The applicant must submit appropriate supporting documentation, including a revised estimate of median family income for the tract; an explanation of the methods used to compute the revised estimate; and a description of the social and economic changes causing the median family income change.

(3) If the homes are located in a Census tract that does not meet the median family income requirements, the applicant may demonstrate that the homes will be located in a neighborhood (within a Census tract) that meets these median family income limitations. The applicant must submit appropriate supporting documentation, including an estimate of the median family income for the neighborhood; an explanation of the methods used to compute the estimate; and a description of the social and economic factors that cause the median family income for the neighborhood to be less than the median family income of the Census tract. In computing neighborhood median family income, applicants should rely, to the extent practicable, on block group data reported in the most recent decennial Census.

(b) *Neighborhood requirements.* (1) Except as provided under paragraph (b)(2) of this section, all homes constructed or substantially rehabilitated under a program must be located in one neighborhood and must be located on contiguous parcels of land.

(2) Homes constructed or substantially rehabilitated under a program may be located in up to four neighborhoods, each of which consists of contiguous parcels of land, if the following requirements are met:

(i) Each unit of general local government in which the program is to be located certifies that land cannot be made available, at a reasonable cost, in a single neighborhood for a program of the size required under § 280.105.

(ii) The applicant submits evidence demonstrating that construction or substantial rehabilitation in the neighborhoods will result in cost reductions through economies of scale, comparable to the cost reductions achieved by other programs eligible for assistance under this part. (Such cost reductions may include economies of scale in the construction process, reduced costs of compliance with State and local laws and regulations, and reduced per unit legal, architectural, engineering and sales costs).

(iii) The applicant submits evidence demonstrating that the program, by itself or together with improvement efforts that are or will be undertaken in the neighborhoods by units of general local government or private entities, will result in a substantial improvement in the overall quality and long-term viability of the neighborhoods. Other improvement efforts may include the construction or rehabilitation of other structures, improvements to public facilities or services, or the expansion of private enterprise in the neighborhoods.

(c) *Location in MSA.* All homes constructed or substantially rehabilitated under a program must be located within a metropolitan statistical area.

§ 280.115 Home quality.

(a) *Generally.* Except for manufactured homes, homes constructed or substantially rehabilitated under a program must comply with applicable local building code standards. (If no local building code standards are applicable, the homes must comply with a nationally recognized model building code (such as the CBO One- and Two-Family Dwelling Code) mutually agreed upon by the recipient and HUD). All such homes must also comply with the energy performance requirements contained in the minimum property standards under 24 CFR Part 200, Subpart S.

(b) *Manufactured homes.* Manufactured homes under a program must comply with the Manufactured Homes Construction and Safety Standards in 24 CFR Part 3280, the installation, structural, and site requirements described in 24 CFR 203.43f, and the energy performance requirements of 24 CFR 200.926d(e).

Subpart D—Application and Selection Procedures

§ 280.200 Notice of fund availability.

HUD will periodically publish a Notice Of Fund Availability in the **Federal Register.** The Notice will:

(a) Explain how application packages providing specific application requirements and guidance may be obtained;

(b) Specify the place for filing completed applications, and the date by which the applications must be physically received at that location;

(c) State the amount of funding available under the Notice;

(d) Specify the maximum number of points that may be awarded under each of the ranking criterion described in § 280.220, and the commercial construction cost indices and data that will be used under ranking criteria described in § 280.220(b) (3) and (5).

(e) Provide other appropriate program information and guidance.

§ 280.205 Application requirements.

(a) *General.* Applicants must submit applications for assistance in the form and within the time periods established by HUD.

(b) *Application requirements.* At a minimum, HUD will require applications to include:

(1) Applicant data (identity, evidence of eligibility and capacity to carry out program activities, legal authority to submit the application and to participate in the program, and information necessary to demonstrate financial responsibility).

(2) A description of the proposed program, including:

(i) *The project location.* The applicant must identify the metropolitan statistical area, Census tracts, neighborhoods, and parcels of land where the program will be located. The applicant must demonstrate that program will be located in one neighborhood or must provide the information necessary to meet the requirements of § 280.110(b)(2). In addition, the application must include evidence demonstrating the extent of physical and economic blight in each neighborhood, must describe any improvement efforts undertaken or to be undertaken by units of general local government or private entities in the neighborhoods, and must describe the improvements in the quality and viability of the neighborhoods that will result from the proposed program and other efforts (see § 280.220(b)(4)).

(ii) *Number of homes.* The applicant must identify the number of homes that will be constructed or substantially rehabilitated under the program. If waiver of the program size limitation is sought, the application must include a waiver request and certification as described in § 280.105(b).

(iii) *Architectural drawings.* The application must include architectural drawings of the site, and floor plans for display homes to be constructed or substantially rehabilitated under the program.

(iv) *Substantial rehabilitation and construction.* The application must include a description of proposed construction and substantial rehabilitation. If the program involves substantial rehabilitation, the applicant must identify all existing structures that will be used in the program, describe the proposed rehabilitation activities, and demonstrate that the proposed rehabilitation activities will constitute substantial rehabilitation.

(v) *Compliance with home quality standards.* The applicant must certify that the proposed program will comply with the home quality standards contained in § 280.115.

(vi) *Compliance with site control and zoning requirements.* The applicant must demonstrate that the project will meet the site control and zoning threshold described at 280.215(b)(7).

(3) Project financial data. The applicant must provide specific information on project costs and financing including:

(i) Total project development costs.

(ii) Sources and applications of all funds that will be used in the development of the program.

(iii) The source and amount of financial and other contributions to the program. For financial and other contributions to the program that will be made by entities other than the applicant, the application must provide firm commitments to provide the contributions to the program. The firm commitment must demonstrate the source's binding commitment to provide the contribution and the date upon which the contribution will be made available. The commitment may be contingent upon the applicant's selection for funding under this part.

(A) If "in kind" contributions are made to the program, the application must include documentation supporting the valuation of the property. If real property is contributed, the supporting documentation must include an appraisal, acceptable to HUD, prepared by a real estate appraiser.

(B) If State or local government entities are prohibited from making a financial or other contribution to the program by State law, the application must identify the State law prohibiting the contribution.

(iv) Projected annual budget for each year until program completion.

(v) The amount of assistance requested under this part.

(4) Need. The application must include evidence of the demand for homes under the proposed program in the metropolitan statistical area. Housing demand may be demonstrated with a market analysis prepared by a reliable, knowledgeable source. Applicants are not required to submit commercially prepared market studies.

(5) A program schedule. The applicant must submit an estimated schedule for completion of the proposed program, including the dates of the commencement and completion of construction and substantial rehabilitation of any display homes; the date that homes will first be offered for sale; and the dates of the commencement and completion of construction and substantial rehabilitation of nondisplay homes. In addition, the applicant must submit evidence that each unit of local government in which the program is to be located has approved of the program schedule.

(6) Home sales description. The application must describe the applicant's home sales process, including the proposed marketing procedures, procedures for determining family eligibility, a copy of the proposed sales contract, the downpayment requirements, the projected sales price of homes, and settlement procedures. The application should indicate whether the applicant is seeking a modification of the family income limitations under § 280.315(a).

(7) Local participation. The applicant must demonstrate that the local consultation requirements of § 280.215(b)(5) have been met, and must provide a narrative statement describing the involvement of neighborhood residents in the development of the proposed program, the likelihood of continued neighborhood resident participation in program activities following selection of the program, and the planned employment of neighborhood residents in the construction or substantial rehabilitation of the program.

(8) Additional data.

(i) If the application states that the number of housing units in a unit of general local government has significantly changed since the most recent decennial Census, the applicant must provide the additional information described at § 280.105(c).

(ii) If the application states that the most recent decennial Census does not reflect the current median family income for a Census tract, the applicant must provide the additional information described in § 280.110(a)(2).

(iii) If the homes will be located in a Census tract that does not meet the median family income requirements of § 280.110(a), but the homes will be located in a neighborhood that does meet these requirements, the applicant must provide the additional information described in § 280.110(a)(3).

(9) Other data as prescribed by HUD.

§ 280.207 Other Federal requirements.

The applicant (or recipient) must assure that the following additional requirements are met:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to NHOP include:

(1) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Distrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations;

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(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and implementing regulations at 24 CFR Part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities; and

(6) The affirmative fair housing marketing requirements at 24 CFR Part 200, Subpart M, and the implementing regulations at 24 CFR Part 108.

(7) Racial and ethnic data collection requirements. Recipients must maintain current and accurate data on the race and ethnicity of program beneficiaries.

(b) *Flood insurance purchase requirements.* Grants will not be provided to programs involving the acquisition or rehabilitation of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations under that program (44 CFR Parts 59 through 79); or

(2) Less than a year has passed since FEMA notification regarding such hazards.

A recipient may not make a loan under this part involving buildings located in these areas unless flood insurance on the structure is obtained by the purchaser in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(c) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by nonprofit organizations.[1]

(d) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 (except as provided in paragraph (d)(2) of this section apply to the program.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and provides, with respect to the program, the requirements prescribed in Subpart C of 24 CFR Part 35. The requirements of this paragraph apply to structures that are occupied or are expected to be occupied by children under seven years of age.

(ii) The following definitions apply to this paragraph (d):

Applicable surface means all interior and exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 μg/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(iii) In the case of a structure constructed or substantially rehabilitated before 1978, the applicant must inspect the structure for defective paint surfaces before it submits an application. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the inspection must be completed before initial occupancy of the structure.

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that the family purchasing a home under the program includes a child under the age of seven years who has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified by a State or local health or housing agency, or by an association recognized by HUD. Lead content must be tested by using an X-ray flourescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) In lieu of the procedures set forth in paragraph (d)(2)(iv) of this section, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vi) The recipient must take appropriate action to protect residents of the structure from hazards associated with abatement procedures.

(vii) The recipient must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the recipient must submit the test results and, if applicable, the certification of treatment to HUD which shall retain the records in the recipient's case file. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated at any subsequent time.

(3) The applicant or recipient, however, must ensure that the program sponsor carriers out all requirements in accordance with the paragraph, and must retain ultimate responsibility for complying with the requirements of this paragraph.

(e) *Conflicts of interest.* No person:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the recipient that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to activities under the program or

(2) Who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities,

May obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. The provisions of paragraph (e)(1) of this section do not prohibit a non-managerial and

[1] These circulars are available from the Regulations Division, HUD, 451 7th Street, SW., Rm. 10276, Washington, DC 20410.

nonsupervisory employee who is otherwise eligible, from purchasing a home under this part.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Audit.* Recipients are subject to the audit requirements of OMB Circular A–110.[2] HUD may perform or require further and additional audits as it finds necessary or appropriate.

(h) *Davis-Bacon Act.* The prevailing wage rate determinations under the Davis-Bacon Act (40 U.S.C. 276a–276a–5) do not apply to the program.

§ 280.210 Selection process.

The selection process for applications for assistance under this part has three stages:

(a) The threshold stage (see § 280.215);

(b) The ranking stage (see § 280.220d); and

(c) The final selection stage (see § 280.225).

§ 280.215 Threshold requirements.

(a) *General.* To be eligible for evaluation under the ranking criteria set out in § 280.220, applications must meet each of the threshold criteria described below. Applications that fail to meet all threshold criteria will not be eligible for assistance under this part.

(b) *Threshold criteria.* The threshold criteria are:

(1) *Form, time and adequacy of the application.* The application must be filed in the application form prescribed by HUD under § 280.205, and within the time period established by HUD in the notice of funds availability under § 280.200.

(2) Applicant—(i) *Eligibility to receive assistance.* The applicant must demonstrate that it is a nonprofit organization. An applicant will meet this threshold requirement if it demonstrates that it applied for a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue Code before the submission of its application. However, assistance will not be provided until an effective tax exemption ruling has been issued by the Internal Revenue Service.

(ii) *Financial responsibility.* The applicant must demonstrate its financial responsibility. In making its determination of financial responsibility, HUD will consider the applicant's ability to maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles.

(iii) *Capacity.* Each applicant must demonstrate that it has the ability to carry out activities under the program within a reasonable time after execution of the grant agreement with HUD, and in a successful manner. In making this determination, HUD will consider the extent and quality of the applicant's past experience in developing or administering programs similar to the proposed program. HUD will also consider the ability of applicant's personnel to perform administrative, managerial, and operational functions necessary to the successful development and administration of the proposed program.

(iv) *Legal authority.* Each applicant:

(A) Must demonstrate that it has the legal authority to participate in the program and to carry out activities in accordance with program requirements, and the requirements of other applicable Federal law.

(B) Must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by its governing body, authorizing the submission of the application under this part.

(3) *Program eligibility.* The applicant must demonstrate that the program meets the program size, location and home quality requirements described under Subpart C of this part, and that the sales contract will meet the requirements described at § 280.320.

(4) *Need.* The applicant must demonstrate that there is a demand for homes in the metropolitan statistical area among eligible purchasers and that this demand is sufficient to ensure the sale of all homes constructed or substantially rehabilitated under the program.

(5) *Local consultation requirements.* (i) The applicant must demonstrate that is has consulted with, and received the support of, residents of the neighborhood in which the program is to be located. At a minimum, the applicant must demonstrate that it provided a description of the program to the residents of the neighborhood and requested their comments on the proposal. The method used by the applicant to furnish information to the residents must be designed to ensure that all residents receive actual or constructive notice of the program description and the request for comments. Support of the residents may be demonstrated by such documents as a summary of all comments received to the request, the transcript of any public meeting, and affidavits of support submitted by local residents of the neighborhood.

(ii) The applicant must also submit a written statement signed by the chief elected official of each unit of general local government in which the program is to be located, stating that the unit of general local government approves of the proposed program.

(6) *Financial feasibility of the program.* The applicant must demonstrate that the proposed program is financially feasible. In determining financial feasibility, HUD will consider:

(i) The sources and amounts of financial or other resources that will be used to carry out the program (including the availability of financial and other contributions to the program); and

(ii) The total projected program costs.

(7) *Siting and zoning.* Applicants must meet the following siting and zoning requirements at the time of the application:

(i) The applicant must demonstrate that it has control of the site involved. The applicant must demonstrate that it owns or has an option to purchase the properties involved, or has a long-term lease or has an option on a long-term lease on such properties.

(ii) The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully within four months following the submission of the application.

(8) *Environmental review.* (i) HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), HUD's implementing regulations at 24 CFR Part 50, and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601). Any application that requires an Environmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) will not be eligible for assistance under this part.

(ii) The environmental review may reveal information not contained in the application that may have relevance to

[2] This circular is available from the Regulations Division, HUD, 451 7th Street, SW., Rm. 10276, Washington, DC 20410.

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the selection process. HUD will consider such relevant information under the appropriate threshold and ranking criteria.

§ 280.220 Ranking criteria.

(a) *In general.* Applications that fulfill each of the threshold requirements of § 280.215 will be assigned a rating score and will be placed in ranked order, based upon the criteria described in paragraph (b) of this section. The number of points that will be awarded under each ranking criterion will be announced in the Notice Of Fund Availability under § 280.200.

(b) *Criteria.* The ranking criteria are:

(1) *Contributions of land.* (i) HUD will consider the extent to which public and private entities will contribute land necessary to make the program feasible. To be considered under this criterion, the contribution of land must meet the definition of financial and other contributions to the program as described in § 280.5.

(ii) For the purposes of this criterion, land is necessary to the feasibility of the program if the land is used to provide individual lots for homes constructed or substantially rehabilitated under the program. Other contributions of land, such as land that will be used for parks, green spaces, or lots to support community facilities, are not necessary to the feasibility of the program and will not be considered under this criterion. Such contributions, however, may be considered if the requirements of paragraph (b)(2) of this section are met.

(iii) HUD will award the maximum number of points to applications that involve programs for which all land necessary to the feasibility of the program will be contributed from such sources.

(2) *Other contributions.* HUD will consider the extent to which financial and other contributions to the program will reduce the cost to families purchasing homes constructed or substantially rehabilitated under the program. (Donations of land will not be considered under this criterion to the extent that such donations are considered under paragraph (b)(1) of this section.) HUD will assign the maximum number of points under this criterion to applications that involve financial and other contributions to the program that will result in the greatest reduction in purchase price and carrying charges to families purchasing homes constructed or substantially rehabilitated under the program.

(3) *Cost effectiveness.* HUD will consider the degree to which each program will produce the maximum number of homes for the least amount of assistance under this part, taking into consideration cost differences among different metropolitan statistical areas. For each application, HUD will:

(i) Adjust the amount of requested assistance to eliminate cost differences between metropolitan statistical areas by applying a commercial construction cost index selected by HUD and announced in the Notice Of Fund Availability under § 280.200; and

(ii) Divide the adjusted assistance by the number of homes to be constructed or substantially rehabilitated under the program.

Applications that have the smallest adjusted assistance average will receive the maximum number of points under this criterion.

(4) *Neighborhood blight.* (i) HUD will consider the degree of the physical and economic blight in the neighborhoods in which the program is located. In determining the degree of physical blight, HUD will consider the condition (but not the age) of existing housing, other buildings, and the infrastructure in the neighborhoods. In assessing the degree of economic blight, HUD will consider such factors as the unemployment rate, median family income and crime rate in the neighborhoods. HUD will assign the maximum number of points under this factor to applications that demonstrate the greatest degree of physical and economic blight.

(ii) HUD will also consider the impact that the proposed program, by itself or together with improvement efforts that are or will be undertaken in the neighborhoods by units of general local government or private entities, will have upon the quality and viability of the neighborhoods. Other improvement efforts may include the construction or rehabilitation of other structures, improvements to public facilities or services, or the expansion of private enterprise in the neighborhoods. HUD will assign the maximum number of points under this factor to applications that demonstrate that the program, by itself or together with other improvement efforts, will result in a substantial improvement in the overall quality and long-term viability of the neighborhood.

(5) *Construction cost.* HUD will consider the degree to which the applicant will use construction or rehabilitation methods that will reduce the cost per square foot for the proposed program below the average construction cost per square foot in the metropolitan statistical area involved. HUD will determine:

(i) The average construction cost per square foot in the metropolitan statistical area of the proposed program by referring to a commercially available publication issuing construction cost data for the metropolitan statistical area (the construction cost publication will be selected by HUD and announced in the notice of fund availability under § 280.200); and

(ii) The average construction or rehabilitation cost per square foot of the program (as adjusted for cost reductions that are attributable solely to financial and other contributions to the program).

HUD will award the maximum number of points under this criterion to the applications in which the average adjusted cost per square foot for the program is the smallest percentage of the average construction cost per square foot in the metropolitan statistical area.

(6) *Local resident involvement.* HUD will consider the degree to which the program provides for the involvement of local residents of the neighborhood in the planning and construction or substantial rehabilitation of homes. Under this criterion, HUD will consider:

(i) The extent to which residents of the neighborhood will be employed in the construction and substantial rehabilitation of homes in the program;

(ii) The extent to which local residents, individually or through membership in local organizations, have advised or assisted the applicant in the development of the proposed program, or have participated on committees or governing boards of the applicant involved in the development of the proposed program; and

(iii) The likelihood of continued participation by local residents in program activities following selection.

The maximum number of points under this criterion will be awarded to applicants that demonstrate: A commitment to employ a significant number of local residents in the construction or substantial rehabilitation of homes in the program; a significant past commitment by local residents to the development of the program; and a strong likelihood that this level of commitment to the program will continue through program completion.

(c) *Exception.* If State or local governmental entities are prohibited by State law from making a financial or other contribution to a program and the contribution would be eligible for consideration under the criterion described at paragraph (b)(1) or (2) of this section, HUD will not penalize an applicant under the ranking process for the lack of such contribution to the program.

§ 280.225 Final selection.

In the final stage of the selection process, the highest-ranked applications will be considered for final selection in accordance with their rank order, as determined under § 280.220. If the highest-ranked applications involve programs that predominantly serve one geographic area, HUD may substitute one or more other highly-ranked applications to ensure reasonable geographic variety in the program. Upon completion of final selection, HUD will notify each successful applicant of its selection. HUD will also notify each unsuccessful applicant that it has not been selected, and will provide the unsuccessful applicant with an explanation for the denial of the application.

Subpart E—Program Operation

§ 280.300 Obligation of funds.

When HUD selects an application for funding, will obligate sufficient amounts for a grant to cover the aggregate amount of the loans proposed under the selected program.

§ 280.303 Grant agreement.

(a) *General.* The recipient's responsibilities under NHOP will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *HUD Monitoring.* HUD will monitor the recipient's performance to determine whether the recipient is complying with the requirements of the grant agreement. HUD will rely on such data as information obtained from the recipient's records and reports, findings from on-site monitoring and audit reports.

§ 280.305 Minimum participation.

The recipient may not begin the construction or substantial rehabilitation of homes until 25 percent of the homes to be constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments required under § 280.320(b) are made. However, the recipient may construct and substantially rehabilitate homes for the purpose of display to potential homeowners. The maximum number of display homes is limited to five percent of the number of homes to be constructed or substantially rehabilitated under the program, or three homes, where the program involves less than 60 homes.

§ 280.315 Eligible purchasers.

(a) *Income limitations.* (1) Each family purchasing a home constructed or substantially rehabilitated under a program must have a family income on the date of purchase that does not exceed the higher of the following:

(1) The median family income for the metropolitan statistical area in which the program is located. At any time during the development of the program, the recipient may request HUD to modify this family income requirement. To obtain a modification, the recipient must submit a request by a unit of general local government in which the program is located, and supporting documentation demonstrating to HUD that such action is necessary to achieve or maintain neighborhood stability. If a modification is granted, HUD may permit up to 15 percent of the families that purchase homes under this part, to have a family income on the date of purchase that is between 100 and 115 percent of the median family income for the metropolitan statistical area.

(ii) The national median income.

(2) For the purpose of determining the median family income, the recipient must use the median family income for the nation and the metropolitan statistical area, as established by HUD from the most recent decennial Census. Family income is the annual income as computed in accordance with 24 CFR 813.106.

(b) *Homeownership.* No member of a family purchasing a home constructed or substantially rehabilitated under the program may have owned a home at any time during the three years before the date of purchase.

§ 280.320 Sales contract and downpayment requirements.

(a) *Sales contract.* The recipient and each family purchasing a home constructed or substantially rehabilitated under the program must execute a sales contract. The sales contract shall contain appropriate terms and conditions covering the purchase of the home and must contain:

(1) The downpayment provisions described in paragraph (b) of this section;

(2) The repayment provisions described at § 280.330 of this part.

(3) Such other terms and conditions as HUD may require.

(b) *Downpayment.* Each family purchasing a home constructed or substantially rehabilitated under the program must provide a downpayment. A governmental entity or instrumentality may not provide funds for the family's downpayment.

(1) *Amount.* The amount of the downpayment must be equal to 10 percent of the sales price of the home except:

(i) The recipient may require a downpayment that is greater than 10 percent of the sales price of the home, if the recipient has determined that a higher downpayment is appropriate.

(ii) The recipient may require a downpayment that is less than 10 percent of the sales price of the home, if the first mortgage on the home is to be held by a State or a unit of general local government under a home loan program provided by the State or unit of general local government, and the program provides for a lower downpayment.

(2) *Date of downpayment.* The downpayment must be made on the date required by the recipient. Under § 280.305, however, no construction or rehabilitation may be begun until at least 25 percent of the homes constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments are made.

(3) *Interest.* The recipient shall deposit the downpayment in an account with a federally-insured bank or saving and loan institution. The recipient shall pay interest on the downpayment to the family from the date that downpayment is made through the date of settlement, at the actual rate of interest earned on the account. Under no circumstances may the interest rate paid to the family be lower than the lowest rate of interest paid on time savings deposits with a federally-insured bank or savings and loan institution conducting business within the metropolitan statistical area in which the program is located.

§ 280.322 Loan requirements.

(a) *Loan requirements.* A loan made to a family purchasing a home constructed or substantially rehabilitated under the program:

(1) Must be secured by a second mortgage held by HUD on the property involved;

(2) May not exceed $15,000;

(3) May not bear interest;

(4) Is repayable to HUD upon the sale, lease, or other transfer of the property.

(5) Must be applied by the family to the purchase price of the home.

(6) May not be used by the family to provide the downpayment required under § 280.230.

(7) Is subject to such other terms and conditions as HUD may require.

(b) *Reimbursement of recipient.* Within 30 days after the date of purchase of a home with a loan under

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this part, HUD will provide the recipient with an amount equal to the amount of the loan.

§ 280.330 Repayment of loan.

(a) *Repayment.* A family purchasing a home with a loan under this part must repay the loan to HUD, if the family sells, leases, or transfers any interest in the property. If the family refinances the first mortgage and the refinancing is unrelated to a sale, equity withdrawal, lease or transfer of an interest in the property, the family will not be required to repay the loan. If the refinancing of the first mortgage involves an equity withdrawal, the family will be required to repay the loan to HUD to the extent of the withdrawal. To the extent that repayment is not required as a result of refinancing, the second mortgage held by HUD on the property will remain in force until the loan is repaid in full.

(b) *HUD-approval.* (1) The family may request HUD approval of a sale or other transfer of the property without full repayment. Approval will be granted if HUD determines that an undue hardship will result from the application of the repayment requirement. HUD will make this finding only if the proceeds of the transaction are insufficient to repay the loan amount in full. Approval will be granted only to the extent that the proceeds of the transaction are insufficient to repay the loan in full. HUD will not approve the lease of a home without repayment.

(2) To the extent that HUD approves a sale or transfer without repayment, the second mortgage held by HUD on the property will remain in force until the loan is repaid in full.

§ 280.225 Funding amendments and deobligation of funds.

(a) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated.

(b) *Deobligation.* (1) HUD may deobligate amounts:

(i) If the amount of the loans provided under the program are less than the amount of the loans anticipated in the application; or

(ii) If the recipient fails to carry out activities under the program within a reasonable time after selection;

(2) If as a result audit, HUD determines that the recipient has expended funds for uses that are ineligible under this part, HUD may adjust or deobligate funding amounts, as appropriate, to recover the ineligible costs.

(3) The grant agreement may set forth in detail other circumstance under which funds may be deobligated, and other sanctions may be imposed.

Dated: July 8, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-25730 Filed 11-7-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-88-888; FR-2514]

Delegation of Authority with Respect to the Nehemiah Housing Opportunity Grants Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: The Nehemiah Housing Opportunities Program was authorized by Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). This notice delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner, the Secretary's power and authority with respect to this program, subject to specified exceptions.

EFFECTIVE DATE: This notice is effective on July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6720. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This notice states the scope of authority given to the Assistant Secretary for Housing—Federal Housing Commissioner and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner for the Nehemiah Housing Opportunities Program. All of the Secretary's authority with respect to this program is delegated, except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules, regulations and guidelines under the program.

Nehemiah Housing Opportunities Program is a new program authorized by Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Proposed rules for the operation of the program are published elsewhere in today's issue of the **Federal Register**. Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Assistant Secretary for Housing—Federal Housing Commissioner and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Nehemiah Housing Opportunities Program as authorized in Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), except as indicated in section B. below. This includes the authority to issue or waive rules, regulations or guidelines under the program.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A, the power to sue and be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Housing—Federal Housing Commissioner and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules, regulations or guidelines under the Program.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: July 8, 1988.

Carl D. Covitz,

Acting Secretary.

[FR Doc. 88-25729 Filed 11-7-88; 8:45 am]

BILLING CODE 4210-32-M

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Part IV

Department of Energy

Office of Energy Research

Research Opportunity Announcement; 1988; Notice

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DEPARTMENT OF ENERGY

Office of Energy Research

Research Opportunity Announcement; 1988

I. Introduction

The Office of Energy Research (OER), Department of Energy, invites any universities or other institution of higher education, not-for-profit or for-profit organizations, non-Federal agency, or entity to submit competitive proposals for a contract for the conduct of research in any of the areas set forth in Appendix A. An unaffiliated individual also is eligible for a competitive award. The project period for which DOE expects to provide funding for a selected proposal shall generally not exceed three years and may exceed five years only if DOE makes a renewal award or otherwise extends the contract. This Announcement is being issued pursuant to section 309(b)(2) of the Federal Property and Administrative Services Act of 1949 as added by Pub. L. 98–369, the Competition in Contracting Act of 1984; the Federal Aquisition Regulations (FAR) 6.102(d)(2); and FAR 35.016.

II. Definitions

Research means basic and applied research and that part of development not related to the development of a specific system or hardware procurement. The primary aim of research is scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding rather than focusing on a specific system or hardware. See also the definition for basic and applied research at FAR 35.001.

III. Proposals

An original and seven copies of an initial proposal submitted in response to this Research Opportunity Announcement must be submitted to: Division of Acquisition and Assistance Management, ER–64, Office of Energy Research, U.S. Department of Energy, Washington, DC 20545. Proposals may be submitted to DOE at any time after public release of the Reseach Opportunity Announcement, but in all cases must be received by DOE within twelve months after the publication date of this Research Opportunity Announcement in the Federal Register.

IV. Information To Be Provided in Proposals

A. Each Proposal Should Include the Following Information

1. A DOE F 4650.2 application face page that requests basic information on the organization, principal investigator and the proposed project.

2. A detailed description of the proposed project, including the objectives of the project, its relationship to the program description(s) set forth in Appendix A and the proposer's plan for carrying it out. Such information should provide a basis upon which DOE can evaluate the proposal in view of the criteria provided in Section V.A. below.

3. Detailed information about the background and experience of the principal investigator(s) (including references to publications), the facilities and experience of the proposer, and the cost-sharing arrangements, if any. (While cost sharing is encouraged, it is not required nor is it to be considered as a criterion in the evaluation and selection process.)

4. A budget with supporting justification sufficient to evaluate the costs of the proposed project (ER budget forms 4620.1 and 4620.1A should be used.)

5. A description of the proposer's management capability (including cost management techniques), experience and past performance, and subcontracting practices.

6. The proposal face page must be signed by the individual who is applying and by an individual who is authorized to act for the proposing organization and to commit the proposer to comply with the terms and conditions of the contract, if awarded.

B. Renewal Proposals

Proposals for a renewal award must be submitted in an original and seven copies to the DOE contracting officer at the DOE Office administering the current contract.

C. Other Information for Proposers

DOE is under no obligation to pay for any costs associated with the preparation or submission of proposals.

DOE reserves the right to fund, in whole or in part, any, all or none of the proposals submitted.

DOE is not required to return to the proposer a proposal which is not selected or funded.

V. Proposal Evaluation and Selection

A. Proposals shall be evaluated for funding generally within 6 months but, in any event, no later than 12 months from the date of receipt by DOE. After DOE has held a proposal for 6 months, the proposer may, in response to DOE's request, be required to revalidate the terms of the original proposal. DOE staff shall perform an initial evaluation of all proposals to ensure that the information required by this Research Opportunity Announcement is provided, that the proposed effort is technically sound and feasible, and that the effort is consistent with program funding priorities.

For proposals which pass the initial evaluation, DOE shall objectively evaluate each proposal received using scientific or peer review against the criteria set forth below. OER may supplement internal DOE review resources with peer review, in addition to Federal evaluation, with the objective of having the technical/scientific evaluation conducted by the most qualified individuals available. Mail reviews are most commonly used to obtain peer review comments. Large dollar value proposals, technically complex/multidisciplinary proposals or those proposals submitted in a scientific field for which review committees are currently available to ER will generally be reviewed by peer committees, if determined to be appropriate by the program office.

DOE shall select evaluators on the basis of their professional qualifications and expertise in the field of research. Evaluators shall be required to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

DOE shall evaluate new and renewal proposals based on the following criteria which are listed in descending order of importance:

(1) The scientific and technical merit of the research;

(2) The appropriateness of the proposed method or approach;

(3) Competency of research personnel and adequacy of proposed resources; and

(4) Reasonableness and appropriateness of the proposed budget.

B. In addition to the evaluation criteria set forth in paragraph A, DOE shall consider the proposer's technical performance under the existing contract during the evaluation of a renewal proposal

C. Proposals will be selected for award based upon the findings of the technical evaluations, the importance and relevance of the proposed research to OER's mission, and fund availability. Cost reasonableness and realism will also be considered to the extent appropriate. After the selection of a proposal for funding, DOE may, if necessary, enter into negotiations with a proposer prior to the award of a contract. Such negotiations are not a commitment that DOE will make an award. Resultant contracts will be subject to the applicable portions of the Federal Acquisition and Department of Energy Acquisition Regulations.

Issued in Washington, DC on October 17, 1988.

D.D. Mayhew,

Acting Deputy Director for Management, Office of Energy Research.

Appendix A

The Office of Basic Energy Science

This program supports basic science research efforts in a variety of disciplines to broaden the energy supply and technology base of knowledge. The major science divisions and their objectives are as follows:

(i) Energy Biosciences

The primary objective of this program is to generate a base of understanding of fundamental biological mechanisms in the areas of botanical and microbiological sciences. This work serves as the underpinning for DOE's efforts in biomass production of fuels and chemicals, microbial conversions of biomass, and biological systems for the conservation of energy.

(ii) Chemical Sciences

This program has as its primary objectives: Increased understanding of basic chemical or physical phenomena which are likely to be important to existing or future technological concepts for production or conversion of energy; discovery of new phenomena bearing on chemical or physical aspects of energy processes; elucidation of fundamentally new general techniques for separation of energy-related mixtures or for the chemical analysis of energy-related substances. Also included is a study of the basic chemical and physical properties of the actinide elements and their compounds. This program supports the operation of the Stanford Synchrotron Radiation Laboratory and the production of a broad variety of isotopically enriched research materials.

(iii) Carbon Dioxide Research

This program's goal is to develop a sound, quantitative atmospheric carbon dioxide knowledge based to aid in energy policy decision making. This goal involves the following objectives: Improve knowledge of the carbon cycle; improve estimates of future atmospheric carbon dioxide; improve understanding of the effects of atmospheric carbon dioxide on climate; improve understanding of the direct carbon dioxide effects on productivity of nature and agricultural systems; develop and verify methods for the detection of climate change due to increasing atmospheric carbon dioxide; identify define and quantify indirect effects; define possible options for mitigating long-term consequences of a higher CO_2 atmosphere.

(iv) Geosciences

The goal of this program is to develop a quantitative, predictive understanding of the energy-related aspects of geological, geophysical and geochemical processes within the earth and in the solar-terrestrial interface. This understanding and knowledge base is needed to provide for long-range requirements of U.S. efforts in energy resources recognition, evaluation, utilization, and their long-term environmental implications. The program is stressing fundamental research related to discovery and recovery of domestic oil and gas resources.

(v) Engineering Research

This program's objectives are: (1) To extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output and performance quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies.

(vi) Materials Sciences

The objective of this program is to increase our understanding of phenomena and properties important to materials behavior which will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, solid state physics, materials chemistry, and related disciplines where the emphasis is on the science of materials.

(vii) Advanced Energy Projects

The objective of this program is to support exploratory research on novel concepts related to energy. The concepts may be in any field related to energy. The research is usually aimed at establishing the scientific feasibility of a concept and, where appropriate, also at estimating its economic viability.

Office of High Energy and Nuclear Physics

This program supports 90% of the U.S. effort in high energy and nuclear physics. The objective of these programs are indicated below.

(i) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are an understanding of the interactions and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature as manifested in nuclear matter.

(ii) High Energy Physics (Including Supercollider Activities)

The primary objectives of this program are to understand the nature and relationships among the fundamental forces of nature and to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents.

Office of Health and Environmental Research

The goals of this research program are as follows:

Provide, through basic and applied research, the scientific information required to identify, understand and anticipate the long-term health and environmental consequences of energy use and development.

Utilize the Department's unique resources to solve major scientific problems in medicine and biology.

The goals of the program are accomplished through the effort of its divisions, which are:

(i) Physical and Technological Research

The objectives of this program are to develop new concepts and techniques for detecting and measuring hazardous physical and chemical agents related to energy production: Characterize the atmospheric transport and chemical transformations of radionuclides and energy-related chemical effluents in order to define pathways to human exposure; determine the physical and chemical mechanisms of radiation action in biological systems; and develop new instrumentation and technology for biological and biomedical research.

(ii) Ecological Research

The objectives of this program are to identify the physical, chemical, and biological processes that cycle nutrients and energy-related materials through terrestrial and aquatic ecosystems, including the coastal oceans; and to determine the resiliency of ecosystems to natural and energy-related stresses. Fundamental research in hydrological

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transport, mobility, and degradation of energy substances at shallow depth will continue to receive increased attention.

(iii) Health Effects Research

The objectives of this program are to develop information in experimental biological systems for estimating or predicting risks of carcinogenesis, mutagenesis, and delayed toxicological effects associated with human exposures to energy-related radiations and chemicals; to define mechanisms involved in the induction of biological damage following exposure to low levels of energy-related agents; to support fundamental research on biomolecular structure, gene structure, functions and control, genetic damage and repair, and cell transformation and to create new tools and resources for characterizing the molecular nature of the human genome.

Increased emphasis will be placed on developing technologies and resources for characterization of the human genome and the utilization of unique resources for the determination of biological structure.

(iv) Human Health and Assessments

The goals of this program fall into two broad categories, human health and nuclear medicine.

The objectives of the human health component are to ascertain by epidemiologic and dosimetric methods the potential spectrum of risks to human health related to energy generation and usage, operation of DOE facilities, and nuclear medicine procedures, and to detect and measure significant health effects in humans exposed to naturally occurring radiation, primarily radon and its daughter products, and energy-related chemicals. Increased emphasis in the future will be on the use of biochemical, genetic, and molecular endpoints.

The nuclear medicine component is aimed at enhancing the beneficial applications of radiation, radionuclides, and stable isotopes in the diagnosis, study, and treatment of human diseases. This includes the development of new techniques for stable and radioactive isotope production, labeled pharmaceuticals, imaging devices, and radiation beam applications for the improved diagnosis and therapy of human diseases or the study of human physiological processes. Increased emphasis for the future will be on the development of new isotopes and radiopharmaceuticals for studies of human nutrition, cardiac function, neurological disorders, and disease control.

Office of Fusion Energy

The magnetic fusion energy program is an applied research and development program whose goal is to develop the scientific and technological information required to design and construct magnetic fusion energy systems. This goal is pursued by three divisions, whose major functions are as listed below.

(i) Applied Plasma Physics

This Division seeks to develop that body of physics knowledge which permits advancement of the fusion program on a sound basis. APP research programs provide: (1) The theoretical understanding of fusion plasmas necessary for interpreting results from present experiments, and the planning and design of future confinement devices; (2) the data on plasma properties, atomic physics and new diagnostic techniques for operational support of confinement experiments; and (3) critical tests and evaluation of promising alternate fusion concepts that may lead to more economic fusion reactor systems.

(ii) Confinement Systems

This Division has as its primary objective the conduct of research efforts to investigate and resolve basic physics issues associated with medium- to large-scale confinement devices. These devices are used to experimentally explore the limits of specific confinement concepts as well as to study associated physical phenomena. Specific areas of interest include: the production of increased plasma densities and temperatures, the understanding of the physical laws governing plasma energy transport and confinement scaling, equilibrium and stability of high plasma pressure, the investigation of plasma interaction with radio-frequency waves, and the study and control of particle transport in the plasma.

(iii) Development and Technology

This Division supports the research and development of the technology necessary for the fabrication and operation of present and future plasma and fusion devices. The program also pursues R&D and system studies pertaining to critical feasibility issues of fusion technology and development.

Field Operations Management

This office administers special purpose support programs that cut across DOE program areas and in conjuction with this activity related conferences and research and training initiatives are funded to further these areas of interest.

(i) Nuclear Engineering Research

The objective of this program is to support research effort aimed at strengthening university-based nuclear engineering programs. Specific areas of basic and applied research of interest include: (1) Material behavior in a radiation environment typical of advanced nuclear power plants; (2) real-time instrumentation that identifies and applies innovative measurement technologies in nuclear-related fields; (3) advanced nuclear reactor concepts; (4) applied nuclear sciences that address improvements in the applications of radiation and the understanding of the interaction of radiation with matter; (5) engineering science research applicable to advanced nuclear reactor concepts, industry safety and reliability concerns; (6) neutronics that address improvements in reactor computational methodologies and knowledge of the basic fission processes; and (7) nuclear thermal hydraulics that address improvements of models and analysis of thermal hydraulic behavior in an advanced nuclear reactor system.

Scientific Computing Staff

The goal of this program is to advance the understanding of the fundamental concepts of mathematics, statistics, and computer science underlying the complex mathematical models of the key physical processes involved in the research and development programs in DOE. Broad emphasis is given in three major categories: analytical and numerical methods, information analysis techniques, and advanced computer concepts.

[FR Doc. 88-25823 Filed 11-7-88; 8:45 am]
BILLING CODE 6450-01-M

federal register

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Part V

The President

Proclamation 5897—Week of Remembrance of Kristallnacht, 1988

Proclamation 5898—National Teacher Appreciation Day, 1988

Proclamation 5899—National Farm-City Week, 1988

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Presidential Documents

Title 3—

The President

Proclamation 5897 of November 4, 1988

Week of Remembrance of Kristallnacht, 1988

By the President of the United States of America

A Proclamation

Fifty years ago, on the night of November 9–10, 1938, German Nazis committed a nationwide pogrom against Jewish people. By the next morning, scores of Jews were dead, hundreds were injured, and many synagogues, shops, and homes lay in ruins. This vicious attack became known around the globe as "Kristallnacht"—"crystal night" or "the night of broken glass"—from the mute evidence of shattered window glass it left in so many streets. Half a century later, we mourn every victim of this pogrom and we rededicate ourselves to preventing repetitions of such brutality anywhere and everywhere.

The world had been ignoring many warning signs in Germany and elsewhere of increasing anti-Semitism, disregard for human rights, and eugenically motivated assaults on individual dignity and worth. Kristallnacht surely should have alerted everyone that time had run out—that the "peace in our time" proclaimed hopefully by British Prime Minister Neville Chamberlain only a few weeks before was not to be. It took World War II to eliminate the Nazi threat to humanity and to our most sacred values.

Fifty years later, in our Nation's Capital, we have now laid the cornerstone for a national museum to commemorate those who perished in the Holocaust foreshadowed by Kristallnacht. We are determined as Americans to keep their memory fresh and enduring. We resolve to remind ourselves of the enormous evil of which mankind is capable and to remain vigilant.

We know that anti-Semitism is still present in the world and that there are still those who oppress others for their race, creed, or color and their simple desire for self-determination and a better life. We know where such racism and prejudice can lead. Let us ever recall that a remedy exists; it is our profound belief in and our readiness to defend the immortal declaration "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." If we hold fast to these truths we will find the inspiration and the power to prevent inhumanity on the face of the earth.

The Congress, by House Joint Resolution 654, has designated November 4 through November 10, 1988, as "Week of Remembrance of Kristallnacht" and authorized and requested the President to issue a proclamation in observance of this week.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 4 through November 10, 1988, as Week of Remembrance of Kristallnacht. I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25991
Filed 11-7-88; 11:03 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5898 of November 4, 1988

National Teacher Appreciation Day, 1988

By the President of the United States of America

A Proclamation

Education requires devotion and hard work from student and teacher alike, and good teachers are inseparable from learning at any age. Education is a lifelong process that benefits individuals and entire communities and countries and helps lay the foundation of the future. We should all express our gratitude to the teachers among us who seek to offer pupils a thirst for knowledge, a solid education, and the inspiration to achieve and excel throughout life.

Teachers do an incalculable amount of good as they teach pupils how to study and learn; provide instruction in the skills of reading, writing, mathematics, languages, history, the sciences, and other disciplines; and transmit understanding of and appreciation for the many influences that have shaped our land of liberty and justice. Teachers do much good as well as they offer vocational instruction, continuing education, and education for special needs. By word and deed, teachers foster intellectual and all-around development; they must do so in conjunction with the example and guidance parents and families give their youngsters.

Our country's great teachers often make many sacrifices as they fulfill their countless responsibilities. They have earned, and truly deserve, the utmost gratitude and esteem of students, parents, and community members.

The Congress, by House Joint Resolution 438, has designated November 4, 1988, as "National Teacher Appreciation Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 4, 1988, as National Teacher Appreciation Day. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25992
Filed 11-7-88; 11:04 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5899 of November 4, 1988

National Farm-City Week, 1988

By the President of the United States of America

A Proclamation

Communication systems are the essential circuitry of democracy, the lifelines of information and ideas that provide the motive power for economic growth, social development, and personal enrichment. Throughout our history as a Nation of great size and dynamic opportunities, America has relied on the creation and extension of new lines of communication as a primary means of achieving greater cohesion and more rapid transfer of knowledge and services.

During National Farm-City Week, we pause to recognize formally this aspect of our heritage and to rededicate ourselves to the goal of open and effective communication between rural and urban people, groups, and institutions. The pace of change in this regard has been truly extraordinary over the past century—with, for example, rural free delivery, the telephone, radio, and television. From the vantage point of the late 20th century, it may be hard for us to imagine how significant these and other developments in urban-rural communication actually were.

Advances in communication are even more vital today, when an average of 112 people rely on a single American farmer for their supply of food and fiber and agriculture is the focus of increasing international commerce and competition. The range of agricultural issues has grown, too, to include public concern over the environment, recreational areas, water, wildlife, food safety and nutrition, and, of course, the productivity and profitability of farming itself. Fortunately, new means of communication are facilitating the rapid transfer of the ever more complex data needed to support our Nation's thriving mix of urban and rural activity. From satellites to on-line communications, from specialized newsletters to general trade publications, America's city-dwellers and farm families have an array of impressive new tools for sharing the fruits of their intelligence and their labor in the pursuit of a better life for all.

For the past 34 years, the theme of urban-rural dialogue and communication has been a regular part of our national celebration of Thanksgiving Week. Let us pause again this year to acknowledge our gratitude for the bounty of energy and invention God has bestowed upon our land.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 18–24, 1988, as National Farm-City Week. I call upon all Americans to join in recognizing the importance of communication between rural and urban areas and in acclaiming the collaborative accomplishments of our productive farmers and urban residents.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25993
Filed 11-7-88; 11:06 am]
Billing code 3195-01-M

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Part VI

Office of Personnel Management

45 CFR Part 801
Voting Rights Program; Final Rule With Request for Comments

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OFFICE OF PERSONNEL MANAGEMENT

45 CFR PART 801

Voting Rights Program

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution.

DATES: This rule is effective immediately upon publication. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before December 8, 1988.

ADDRESS: Send or deliver comments to James Green, Associate General Counsel, Office of Personnel Management, Room 7353, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James Green, (202) 632–5087.

SUPPLEMENTARY INFORMATION:

The Attorney General has designated Hidalgo County, Texas, as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He determined on November 4, 1988, that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal examiners to prepare and maintain lists of persons eligible to vote and Federal observers to observe local elections.

Under 5 U.S.C. 553(b)(3)(B), the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to 5 U.S.C. 553(d)(3), the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in light of the pending elections to be held on November 8, 1988, in the subject county, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291 (February 17, 1981), Federal Regulation. OPM is required, pursuant to the Voting Rights Act of 1965, as amended, to give notice to the public of the time and place to file applications to vote. In order to carry out the intent of the Voting Rights Act, notice should be given prior to an election. Due to the impending election on November 8, 1988, section 8(a)(2) permits an exemption from the procedures outlined in Executive Order 12291.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds one new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting rights.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 45 CFR Part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for Part 801 continues to read as follows:

Authority: 5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973e, 1973g).

2. Section 801.202, Appendix A, is amended by adding alphabetically the Texas county of Hidalgo to read as follows:

§ 801.202 Times and places for filing and forms of application.

* * * * *

Appendix A

* * * * *

Dates, Times, and Places for Filing

* * * * *

Texas

County; Place for Filing; Beginning Date

* * * * *

Hidalgo—101 East 14th (West Entrance), Mission, Texas, 78572, (512) 585–8380, November 8, 1988.

* * * * *

[FR Doc. 88–26000 Filed 11–7–88; 11:48 am]

BILLING CODE 6325–01–M

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H.R. 900/Pub. L. 100-535
Imperial Valley College Barker Museum Land Transfer Act of 1988. (Oct. 28, 1988; 102 Stat. 2709; 1 page) Price: $1.00

H.R. 4209/Pub. L. 100-536
To authorize appropriations to carry out title I of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years, 1989, 1990, and 1991. (Oct. 28, 1988; 102 Stat. 2710; 1 page) Price: $1.00

H.R. 4375/Pub. L. 100-537
Michigan Public Lands Improvement Act of 1988. (Oct. 28, 1988; 102 Stat. 2711; 6 pages) Price: $1.00

H.R. 4410/Pub. L. 100-538
To designate the Federal Building at Spring and High Streets in Columbus, Ohio, as the "John W. Bricker Federal Building". (Oct. 28, 1988; 102 Stat. 2717; 1 page) Price: $1.00

H.R. 4480/Pub. L. 100-539
To change the name of the Pacific Tropical Botanical Garden, a federally chartered organization, to the National Tropical Botanical Garden, and for other purposes. (Oct. 28, 1988; 102 Stat. 2718; 1 page) Price: $1.00

H.R. 4557/Pub. L. 100-540
To amend title 46, United States Code, to require alerting and locating equipment on manned uninspected vessels, to provide for exemption of uninspected vessels from certain requirements of that title, and to increase penalties for violations of certain uninspected vessel requirements. (Oct. 28, 1988; 102 Stat. 2719; 1 page) Price: $1.00

H.R. 4777/Pub. L. 100-541
To modify the boundary of the Guadalupe Mountains National Park, and for other purposes. (Oct. 28, 1988; 102 Stat. 2720; 1 page) Price: $1.00

H.R. 4992/Pub. L. 100-542
Telecommunications Accessibility Enhancement Act of 1988. (Oct. 28, 1988; 102 Stat. 2721; 2 pages) Price: $1.00

H.R. 5007/Pub. L. 100-543
To designate the United States Courthouse at 620 Southwest Main Street, Portland, Oregon, as the "Gus J. Solomon United States Courthouse". (Oct. 28, 1988; 102 Stat. 2723; 1 page) Price: $1.00

H.R. 5066/Pub. L. 100-544
To add additional land to the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes. (Oct. 28, 1988; 102 Stat. 2724; 3 pages) Price: $1.00

H.R. 5052/Pub. L. 100-545
To amend title 31 of the United States Code to provide for a transfer of control of the General Accounting Office Building and to improve the administration of the General Accounting Office. (Oct. 28, 1988; 102 Stat. 2727; 3 pages) Price: $1.00

H.R. 5325/Pub. L. 100-546
Federal Crop Insurance Commission Act of 1988. (Oct. 28, 1988; 102 Stat. 2730; 6 pages) Price: $1.00

H.R. 5395/Pub. L. 100-547
Sipsey Wild and Scenic River and Alabama Addition Act of 1988. (Oct. 28, 1988; 102 Stat. 2736; 4 pages) Price: $1.00

H.J. Res. 629/Pub. L. 100-548
Designating October 22, 1988, as "National Chester F. Carlson Recognition Day". (Oct. 28, 1988; 102 Stat. 2740; 2 pages) Price: $1.00

H.J. Res. 644/Pub. L. 100-549
Granting the consent of Congress to the compact entered into between the State of North Carolina and the State of South Carolina establishing the Lake Wylie Marine Commission. (Oct. 28, 1988; 102 Stat. 2742; 7 pages) Price: $1.00

S. 59/Pub. L. 100-550
National Forest and Public Lands of Nevada Enhancement Act of 1988. (Oct. 28, 1988; 102 Stat. 2749; 6 pages) Price: $1.00

S. 744/Pub. L. 100-551
To amend the Toxic Substances Control Act to assist States in responding to the threat to human health posed by exposure to radon. (Oct. 28, 1988; 102 Stat. 2755; 11 pages) Price: $1.00

S. 1704/Pub. L. 100-552
To authorize the establishment of the Lewis and Clark National Historic Trail Interpretive Center in the State of Montana, and for other purposes. (Oct. 28, 1988; 102 Stat. 2766; 3 pages) Price: $1.00

S. 1727/Pub. L. 100-553
National Deafness and Other Communication Disorders Act of 1988. (Oct. 28, 1988; 102 Stat. 2769; 7 pages) Price: $1.00

S. 1914/Pub. L. 100-554
To designate a segment of the Wildcat River in the State of New Hampshire as a component of the National Wild and Scenic Rivers System, and for other purposes. (Oct. 28, 1988; 102 Stat. 2776; 2 pages) Price: $1.00

S. 1985/Pub. L. 100-555
To improve the protection and management of archeological resources on Federal land. (Oct. 28, 1988; 102 Stat. 2778; 1 page) Price: $1.00

S. 1986/Pub. L. 100-556
To require that plastic ring carrier devices be degradable, and for other purposes. (Oct. 28, 1988; 102 Stat. 2779; 3 pages) Price: $1.00

S. 2148/Pub. L. 100-557
To amend the Wild and Scenic Rivers Act of 1968, and for other purposes. (Oct. 28, 1988; 102 Stat. 2782; 14 pages) Price: $1.00

S. 2436/Pub. L. 100-558
To reauthorize the Sleeping Bear Dunes National Lakeshore Advisory Commission. (Oct. 28, 1988; 102 Stat. 2796; 1 page) Price: $1.00

S. 2545/Pub. L. 100-559
To redesignate Salinas National Monument in the State of New Mexico, and for other purposes. (Oct. 28, 1988; 102 Stat. 2797; 6 pages) Price: $1.00

H.R. 775/Pub. L. 100-560
To provide for the establishment of the Poverty Point National Monument, and for other purposes. (Oct. 31, 1988; 102 Stat. 2803; 2 pages) Price: $1.00

H.R. 2266/Pub. L. 100-561
Pipeline Safety Reauthorization Act of 1988. (Oct. 31, 1988; 102 Stat. 2805; 13 pages) Price: $1.00

H.R. 2628/Pub. L. 100-562
Imported Vehicle Safety Compliance Act of 1988. (Oct. 31, 1988; 102 Stat. 2818; 8 pages) Price: $1.00

H.R. 3408/Pub. L. 100-563
To authorize additional appropriations for the Central Utah Project, to implement a settlement with the Strawberry Water Users, to expand the John Muir Historic Site, to prohibit the expansion of any reservoir within the boundaries of Yosemite National Park, and for other purposes. (Oct. 31, 1988; 102 Stat. 2826; 5 pages) Price: $1.00

H.R. 3559/Pub. L. 100-564
To authorize and direct the acquisition of lands for Canaveral National Seashore, and for other purposes. (Oct. 31, 1988; 102 Stat. 2831; 2 pages) Price: $1.00

H.R. 3685/Pub. L. 100-565
To amend title 31, United States Code, to increase from $25,000 to $40,000 the maximum amount that the United States may pay in settlement of a claim against the United States made by a member of the uniformed services or by an officer or employee of the Government. (Oct. 31, 1988; 102 Stat. 2833; 1 page) Price: $1.00

H.R. 3757/Pub. L. 100-566
Federal Employees Leave Sharing Act of 1988. (Oct. 31, 1988; 102 Stat. 2834; 13 pages) Price: $1.00

H.R. 4182/Pub. L. 100-567
Zuni-Cibola National Historical Park Establishment Act of 1988. (Oct. 31, 1988; 102 Stat. 2847; 6 pages) Price: $1.00

H.R. 4262/Pub. L. 100-568
Berne Convention Implementation Act of 1988. (Oct. 31, 1988; 102 Stat. 2853; 9 pages) Price: $1.00

H.R. 4416/Pub. L. 100-569
To extend the authorization of appropriations for titles V and VI of the Library Services and Construction Act through fiscal year 1989. (Oct. 31, 1988; 102 Stat. 2862; 3 pages) Price: $1.00

H.R. 4418/Pub. L. 100-570
National Science Foundation Authorization Act of 1988. (Oct. 31, 1988; 102 Stat. 2865; 14 pages) Price: $1.00

H.R. 4818/Pub. L. 100-571
To establish the National Park of American Samoa. (Oct. 31, 1988; 102 Stat. 2879; 5 pages) Price: $1.00

H.R. 4939/Pub. L. 100-572
Lead Contamination Control Act of 1988. (Oct. 31, 1988; 102 Stat. 2884; 6 pages) Price: $1.00

H.R. 5001/Pub. L. 100-573
To establish the Delaware Water Gap National Recreation Area Citizen Advisory Commission. (Oct. 31, 1988; 102 Stat. 2890; 2 pages) Price: $1.00

H.R. 5199/Pub. L. 100-574
To make nonmailable any plant, fruit, vegetable, or other matter, the movement of which in interstate commerce has been prohibited or restricted by the Secretary of Agriculture in order to prevent the dissemination of dangerous plant diseases or pests, and for other purposes. (Oct. 31, 1988; 102 Stat. 2892; 3 pages) Price: $1.00

H.R. 5318/Pub. L. 100-575
Egg Research and Consumer Information Act Amendments of 1988. (Oct. 31, 1988; 102 Stat. 2895; 2 pages) Price: $1.00

H.R. 5389/Pub. L. 100-576
Bangladesh Disaster Assistance Act of 1988. (Oct. 31, 1988; 102 Stat. 2897; 4 pages) Price: $1.00

H.R. 5442/Pub. L. 100-577
Asbestos Information Act of 1988. (Oct. 31, 1988; 102 Stat. 2901; 2 pages) Price: $1.00

H.R. 5471/Pub. L. 100-578
Clinical Laboratory Improvement Amendments of 1988. (Oct. 31, 1988; 102 Stat. 2903; 13 pages) Price: $1.00

S. 136/Pub. L. 100-579
Native Hawaiian Health Care Act of 1988. (Oct. 31, 1988; 102 Stat. 2916; 8 pages) Price: $1.00

S. 2723/Pub. L. 100-580
Hoopa-Yurok Settlement Act. (Oct. 31, 1988; 102 Stat. 2924; 14 pages) Price: $1.00

H.R. 2677/Pub. L. 100-581
To establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987). (Nov. 1, 1988; 102 Stat. 2938; 12 pages) Price: $1.00

H.R. 3515/Pub. L. 100-582
Medical Waste Tracking Act of 1988. (Nov. 1, 1988; 102 Stat. 2950; 10 pages) Price: $1.00

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VOL
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NO
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11-9-88
Vol. 53 No. 217

federal register

Wednesday
November 9, 1988

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SECOND CLASS NEWSPAPER
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VOL
53
ISS
217
NO
9
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11-9-88
Vol. 53 No. 217
Pages 45249-45442

federal register

Wednesday
November 9, 1988

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Presidential Documents

Title 3—

The President

Presidential Determination No. 89-2 of October 5, 1988

Determination of FY 1989 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act

Memorandum for the United States Coordinator for Refugee Affairs

In accordance with Section 207 of the Immigration and Nationality Act ("the Act") (8 U.S.C. 1157), and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

a. The admission of up to 94,000 refugees to the United States during FY 1989 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 1989 with federal refugee resettlement assistance under the Amerasian admissions program, as provided in paragraph (b) below.

Four thousand of these admissions numbers shall be set aside for private sector admissions initiatives. The admission of refugees using these 4,000 numbers shall be contingent upon the availability of private sector funding sufficient to cover the essential and reasonable costs of such admissions (so that no federal program funds shall be expended for such admissions).

b. The 90,000 refugee admissions numbers for which federal funding may be used shall be allocated among refugees of special humanitarian concern to the United States as described in the documentation presented to the Congress during the consultations that preceded this Determination and in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia Orderly Departure Program shall be reduced by one for each person admitted to the United States during FY 1989 with federal refugee resettlement assistance under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in Section 101(e) of Public Law 100-202 (Amerasians and their family members):

Africa	2,000
East Asia, First Asylum	28,000
East Asia, Orderly Departure Program	25,000
Eastern Europe/Soviet Union	24,500
Latin America/Caribbean	3,500
Near East/South Asia	7,000

Utilization of the 90,000 federally funded admissions numbers shall be limited by such public and private funds as shall be available to the Department of State and the Department of Health and Human Services for refugee and Amerasian admissions in FY 1989. You are hereby authorized and directed to advise the Judiciary Committees of the Congress of the intended allocation of numbers within the above regional ceilings in light of the availability of federal funding sufficient for up to 84,000 fully funded refugee and Amerasian admissions.

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Unused admissions numbers allocated to a particular region within the 90,000 federally funded ceiling may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the Judiciary Committees of the Congress prior to any such reallocation.

The 4,000 privately funded admissions may be used for refugees of special humanitarian concern to the United States in any region of the world at any time during the fiscal year. You are hereby authorized and directed to notify the Judiciary Committees of the Congress in advance of the intended use of these numbers.

c. An additional 5,000 refugee admissions numbers shall be made available during FY 1989 for the adjustment to permanent resident status under Section 209(b) of the Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under Section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

In accordance with Section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)), I also specify, after appropriate consultation with the Congress, that the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States while still within their countries of nationality or habitual residence:

a. Persons in Vietnam and Laos who have past or present ties to the United States or who have been or currently are in reeducation camps in Vietnam or seminar camps in Laos, and their accompanying family members.

b. Present and former political prisoners and persons in imminent danger of loss of life in countries of Latin America and the Caribbean, and their accompanying family members.

c. Persons in the Soviet Union.

You are hereby authorized and directed to report this Determination to the Congress immediately and to publish it in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 5, 1988.

cc: The Secretary of State
The Attorney General
The Secretary of Health and Human Services

[FR Doc. 88-26136
Filed 11-8-88; 9:41 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5900 of November 5, 1988

National Alzheimer's Disease Month, 1988

By the President of the United States of America

A Proclamation

Alzheimer's disease ranks among the most severe of afflictions, because it strips people of their memory and judgment and robs them of the essence of their personalities. As the brain progressively deteriorates, tasks familiar for a lifetime, such as tying a shoelace or making a bed, become bewildering. Spouses and children become strangers. Slowly, victims of the disease enter profound dementia.

Today, Alzheimer's disease affects nearly 2½ million Americans. Half of all those admitted to nursing homes have this diagnosis. Among older individuals, Alzheimer's disease is the most common cause of severe intellectual impairment and contributes to the major causes of death.

Alzheimer's disease is precisely that, a disease of the brain. It is not a normal consequence of aging. Scientific studies of families with an abnormally high incidence of Alzheimer's disease have revealed a possible genetic connection in some patients to chromosome 21. Encouragingly, new knowledge about the brain's neurotransmitters—chemicals that ferry messages between nerve cells—is enabling scientists to develop experimental drugs to try to slow or halt the relentless progress of the disease.

Within the Federal Government, research into the cause, diagnosis, treatment, and ultimately the prevention of Alzheimer's disease is led by the National Institute of Neurological and Communicative Disorders and Stroke, the National Institute on Aging, and the National Institute of Mental Health. Federal research efforts are augmented in the private sector by the work of voluntary health organizations committed to the conquest of dementing disorders. Through forceful leadership, these groups aid distressed families, inform the public, and attract young investigators to the challenge of Alzheimer's disease research.

To enhance public awareness of Alzheimer's disease, the Congress, by Senate Joint Resolution 261, has designated November 1988 as "National Alzheimer's Disease Month" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 1988 as National Alzheimer's Disease Month, and I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-26137
Filed 11-8-88; 9:42 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5901 of November 5, 1988

National Diabetes Month, 1988

By the President of the United States of America

A Proclamation

Eleven million Americans suffer from diabetes. The disease strikes men, women, and children of all races. It takes many forms and is likely to have many causes, but the long-term outcome is the same—over the years, diabetes damages the heart, blood vessels, kidneys, eyes, and nerves. The disease and its complications affect individuals and our country heavily in terms of illness, disability, and economic loss.

Through research, we are learning how diabetes occurs, how it causes complications, and how in the future we may short-circuit its effects. We are also improving the understanding and management of diabetes, thereby helping people with this disease to minimize the threat of complications.

Nevertheless, much work lies ahead. As research continues to provide insights, the communication of new information to those in the forefront of managing this disease—primary care practitioners and people with diabetes—will permit new advances to be put into practice.

Through research we can find a way to eradicate this disease, and through public awareness we can keep those with diabetes healthier than ever before. The continued cooperation of the Federal Government, the scientific community, and private individuals and organizations makes our success in both these realms possible.

To increase public awareness of diabetes and to emphasize the need for continued research efforts, the Congress, by Senate Joint Resolution 272, has designated November 1988 as "National Diabetes Month" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 1988 as National Diabetes Month, and I call upon concerned governmental agencies, health care providers, and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-26138
Filed 11-8-88; 9:43 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5902 of November 5, 1988

National Disabled Americans Week, 1988

By the President of the United States of America

A Proclamation

Americans are thankful for the inspiration and achievements of the millions of us who have disabilities. Through the years, and in more and more spheres of endeavor, disabled Americans have demonstrated their capabilities and their desire to make the most of the opportunities life can offer. Still, much more remains to be done by each of us so all citizens with disabilities can reach their potential.

To reach this goal, for the past 20 years a partnership between governments at all levels and the private sector, including groups and individual volunteers, has fostered opportunity for disabled citizens. National Disabled Americans Week, 1988, allows each of us to salute efforts aimed at developing and utilizing the skills and insights of disabled people—and to honor the spirit and accomplishments of Americans with disabilities in these efforts and in communities everywhere.

The Congress, by Senate Joint Resolution 319, has designated the period beginning November 6, 1988, and ending November 12, 1988, as "National Disabled Americans Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period beginning November 6, 1988, and ending November 12, 1988, as National Disabled Americans Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-26139
Filed 11-8-88; 9:44 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 53, No. 217
Wednesday, November 9, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revisions of Delegation of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule revises the delegations of authority by the Secretary of Agriculture to the Chief of the Forest Service to authorize the Chief to make technical amendments and corrections to final rules relating to the administration of Forest Service programs. This revision in the Chief's authority is made for purposes of administrative efficiency.

EFFECTIVE DATE: This rule is effective November 11, 1988.

FOR FURTHER INFORMATION CONTACT: Marian P. Connolly, Regulatory Officer, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, (202) 235–1488.

SUPPLEMENTARY INFORMATION: The delegations of authority from the Secretary of Agriculture to the Chief of the Forest Service are codified at 7 CFR 2.42. Presently, the Chief has authority to issue proposed rules and to issue final regulations prohibiting acts and omissions on National Forest Systems lands pursuant to 36 CFR 261.70. The Secretary, at 7 CFR 2.43(a), reserves the authority to issue final rules and regulations relating to the administration of Forest Service programs.

This rule revises the delegations to authorize the Chief to issue technical amendments and corrections to final rules governing Forest Service programs arising from inadvertence, omission, or typographical error. This revision in the Chief's authority is made for purposes of administrative efficiency. The Secretary's reservation of authority to issue substantive final rules and regulations governing Forest Service programs is not altered by this rulemaking.

This rule relates solely to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication of the Federal Register. Further, because this rule relates to internal agency management, it is exempt from review under Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and, thus, is exempt from the provision of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7 of the Code of Federal Regulations is hereby amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart D—Delegation of Authority to Other General Officers and Agency Heads

2. Revise paragraph (p) of § 2.42 to read as follows:

§ 2.42 Delegations of authority to the Chief of the Forest Service.

* * * * *

(p) Issue proposed rules relating to the authorities delegated in this section, issue final rules and regulations as provided at 36 CFR 261.70, and issue technical amendments and corrections to final rules issued by the Secretary pursuant to § 2.43(a) of this part arising from inadvertence, omission, or typographical error.

3. Revise paragraph (a) of § 2.43 to read as follows:

§ 2.43 Reservations of authority.

* * * * *

(a) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided at 36 CFR 261.70 and 2.42(p) of this part.

* * * * *

Date: November 1, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88–25874 Filed 11–8–88; 8:45 am]

BILLING CODE 3410-01-M

Farmers Home Administration

7 CFR Part 1980

Business and Industrial Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations governing eligible and ineligible loan purposes relating to Business and Industrial (B&I) loans. B&I regulations prohibit assistance for agricultural production, subject to certain exceptions. The intended effect of this action is to reduce the list of exceptions to eliminate commercial custom feedlots and similar operations.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Loan Specialist, Business and Industry Division, Room 6321–S, Farmers Home Administration, USDA, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 475-3611.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor". This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of enterprises based in the United States to compete with foreign-based

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enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.422 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Discussion of Rule

Under existing B&I program regulations, FmHA may not guarantee loans for agricultural production activities. Such activities are assisted through other programs of FmHA (Farmer Programs) which utilize human and other resources especially suited for assistance to the agricultural production sector. There are several exceptions to the exclusion of agricultural production from B&I assistance. One of these exceptions is for commercial custom feedlots.

Commercial custom feedlot activities are clearly a part of agricultural production. There is no statutory requirement requiring an exception for commercial, custom feedlots.

Additionally, FmHA experience with loans in this area has not been satisfactory. Since 1976, there have been 19 feedlot loan applications or preapplications submitted. Of the 19, 13 were either withdrawn or rejected, often after considerable expenditure of scarce FmHA resources. Six loans have been guaranteed since 1976. Of those, only one remains active. All five others have been closed out, one having failed.

FmHA published a proposed rule eliminating the commercial custom feedlot exception on May 4, 1988 (53 FR 15852), inviting comment through June 3, 1988. No comments were received.

For these reasons, FmHA deletes the exception for commercial custom feedlots, 7 CFR 1980.411(a)(9), and makes necessary technical and conforming amendments to Subpart E of Part 1980.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and Industry, Rural development assistance, Rural areas.

Therefore, Title 7, Chapter XVIII, Part 1980 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

§ 1980.411 [Amended]

2. Section 1980.411 is amended by removing paragraph (a)(9) and redesignating paragraphs (a)(10) through (a)(16) as (a)(9) through (a)(15).

3. Section 1980.412 is amended by removing paragraph (e)(5) and redesignating paragraph (e)(6) as (e)(5) and by revising the introductory text of paragraph (e) to read as follows:

§ 1980.412 Ineligible loan purposes.

* * * * *

(e) For agricultural production which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control, and/or management of farm and domestic animals. Exceptions to this definition are:

* * * * *

§ 1980.414 [Amended]

4. Section 1980.414(b) is amended by changing the reference "§ 1980.411(a)(13) and (14)" to read "§ 1980.411(a)(12) and (13)."

§ 1980.451 [Amended]

5. Section 1980.451(i)(19) is amended by changing the reference "§ 1980.411(a)(12)" to read "§ 1980.411(a)(11)."

§ 1980.452 [Amended]

6. Section 1980.452, ADMINISTRATIVE paragraph C is amended by changing the reference "§ 1980.411(a)(12)" to read "§ 1980.411(a)(11)."

Dated: September 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–25872 Filed 11–8–88; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 88–ASW–19]

Change to Time of Use for Restricted Area R–6312 Cotulla, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation of Restricted Area R–6312 Cotulla, TX, by adding the statement "other times by NOTAM" to the existing published hours. This provision enables R–6312 to be used for nighttime fighter training missions.

EFFECTIVE DATE: 0901 U.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

History

On June 2, 1988, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to add the provision "other times by NOTAM" to the published time of designation (53 FR 20125). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.63 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations permits expanded use of R–6312 by adding the provision "other times by NOTAM" to the current published time of designation. This change accommodates nighttime fighter training requirements. It is projected that R–6312 will be used approximately three nights per week, two hours per night.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.63 [Amended]

2. Section 73.63 is amended as follows:

R–6312 Cotulla, TX [Amended]

By removing the current time of designation and substituting the following:

Time of designation. Sunrise to sunset; other times by NOTAM.

Issued in Washington, DC, on November 1, 1988.

Harold W. Becker,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–25861 Filed 11–8–88; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

Information Security Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1203 by revising Subpart 1203.H, "Delegation of Authority to Make Determinations in Original Classification Matters." This revision adds the Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance, and makes organizational title changes to the designated officials in § 1203.800(b).

EFFECTIVE DATE: November 9, 1988.

ADDRESS: NASA Security Office, Code NIS, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Erwin V. Minter, 202–453–2953.

SUPPLEMENTARY INFORMATION: Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1203

Classified information, Foreign relations.

For reasons set out in the preamble, 14 CFR Part 1203 is amended as follows:

PART 1203—INFORMATION SECURITY PROGRAM

1. The authority citation for Part 1203 continues to read as follows:

Authority: 42 U.S.C. 2451 *et seq.*, and E.O. 12356.

2. Subpart 1203.H is revised to read as follows:

Subpart H—Delegation of Authority To Make Determinations in Original Classification Matters

Sec.
1203.800 Delegations.
1203.801 Redelegation.
1203.802 Reporting.

Subpart H—Delegation of Authority To Make Determinations in Original Classification Matters

§ 1203.800 Delegations.

(a) The NASA officials listed in paragraph (b) of this section are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. Such actions shall be in accordance with currently applicable criteria, guidelines, laws, and regulations; and they shall be subject to any contrary determination that has been made by the Chairperson of the NASA Information Security Program Committee or by any other NASA official authorized to make such a determination.

(b) Designated Officials.

(1) *TOP SECRET Classification Authority.*

(i) Administrator.
(ii) Deputy Administrator.
(iii) Associate Deputy Administrator.
(iv) Chairperson, NASA Information Security Program Committee.

(2) *SECRET AND CONFIDENTIAL Classification Authority.*

(i) Officials listed in paragraph (b)(1) of this section.
(ii) Associate Administrator for Space Flight.
(iii) Associate Administrator for Space Science and Applications.
(iv) Associate Administrator for External Relations.
(v) Associate Administrator for Management.
(vi) Associate Administrator for Aeronautics and Space Technology.
(vii) Associate Administrator for Space Operations.
(viii) Associate Administrator for Space Station.
(ix) Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance.
(x) General Counsel.
(xi) Director, NASA Security Office.
(xii) Director, International Relations Division.
(xiii) Executive Secretary, NASA Information Security Program Committee.
(xiv) Field Installation Directors.
(xv) Manager, NASA Resident Office—JPL.
(xvi) Installation Security Classification Officers.
(xvii) Such other officials as may be delegated original classification authority.

(c) Written requests for original classification authority shall be forwarded to the Executive Secretary, NASA Information Security Program Committee, with appropriate justification appended thereto. The Executive Secretary will submit such requests to the Committee Chairperson for a determination by the Committee regarding the validity of the requests. Findings and recommendations of the Committee will then be submitted by the Committee Chairperson to the Administrator for approval.

(d) The Executive Secretary shall maintain a list of all delegations of original classification authority by name or title of the position held.

(e) The NASA Information Security Program Committee shall conduct a periodic review of delegation lists to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

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(f) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

§ 1203.801 Redelegation.

Redelegation of TOP SECRET, SECRET, or CONFIDENTIAL original classification authority is not authorized.

§ 1203.802 Reporting.

The officials to whom original classification authority has been delegated herein shall ensure that feedback is provided to the Administrator through the NASA Information Security Program Committee. The Chairperson of the Committee shall keep the Administrator currently informed of all significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

Dale D. Myers,

Deputy Administrator.

November 3, 1988.

[FR Doc. 88-25898 Filed 11-8-88; 8:45 am]

BILLING CODE 7510-01-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Parts 410 and 420

Amendment of Comprehensive Plan, Water Code of the Delaware River Basin and Basin Regulations—Water Supply Charges

AGENCY: Delaware River Basin Commission.

ACTION: Final rules.

SUMMARY: At its October 26, 1988 business meeting the Delaware River Basin Commission took two rule-making actions. The first amended its Comprehensive Plan and Water Code by adopting a drought management plan for the Christina River Basin, Chester County, Pennsylvania and New Castle County, Delaware. The second amended its Comprehensive Plan and Basin Regulations—Water Supply Charges by adopting water charges for water use at hydroelectric power plants.

As noted in the September 15 and October 18, 1988 Federal Register, the Commission held a public hearing on the proposed Christina River Basin Drought Management Plan on October 26, 1988. Resolution No. 88-26 amended the Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin, which are referenced in 18 CFR Part 410, by the addition of a new Section 2.5.7 Drought Management Plan for the Christina River Basin, Chester County, Pennsylvania and New Castle County, Delaware, a summary of which follows.

The adopted drought management plan addresses the unique hydrologic circumstances of the Christina River Basin by establishing drought criteria based on both surface and ground water conditions within the Christina River Basin and setting forth actions to be undertaken on a coordinated basis as conditions dictate, notwithstanding the absence of the commission drought declaration. The plan is incorporated in the drought management plans of the Commonwealth of Pennsylvania and the State of Delaware and, by this action, in the commission's Comprehensive Plan. The amendment defines the area governed by the plan; plan administration; drought indicators, criteria and actions; enforcement and plan amendment procedures.

Anyone interested in obtaining a copy of the full text of the amendment may request a copy by writing or calling the Commission. See **FOR FURTHER INFORMATION CONTACT.**

As noticed in the June 16 and July 27, 1988 Federal Registers, the Commission held a public hearing on a proposed amendment to its Comprehensive Plan and Basin Regulation—Water Supply Charges to include water charges for water use at hydroelectric power projects on August 3, 1988. At that time, the hearing record was extended through September 20, 1988 for the submission of written comments. Resolution No. 88-29 added a new Section 420.51, hydroelectric power plant water use charges, to the Commission's Basin Regulations—Water Supply Charges. The amendment establishes annual base charges to owners of conventional run-of-river hydroelectric power plants that benefit from water storage facilities owned or partially owned by the Commission. In addition to the base charge, annual variable charges based on power generated at each facility would be assessed to owners of hydroelectric power plants that benefit from increased hydraulic head to the hydroelectric project as a result of investments by the Commission. Owners of hydroelectric power plants that derive additional benefits from increased flows available to the hydroelectric project that would not have been available without the Commission-sponsored project would also be charged; however, no charges for increased flows would be required when charges for increased hydraulic head are in effect. Finally, charges for the use of any facilities such as pipe conduits, outlet works, and so on, installed in, on or near a Commission-sponsored project that benefit the hydroelectric project in any way would be determined on a case-by-case basis. As adopted, the owner of any hydroelectric generating facility would receive a credit against the water use fee otherwise payable to the Commission for any amount which the Commission receives from the U.S. Army Corps of Engineers or from the Federal Energy Regulatory Commission. The amendment also includes provisions addressing payment of bills and exemptions from charges.

EFFECTIVE DATE: Both amendments became effective on October 26, 1988.

ADDRESS: Copies of the Commission's Water Code and Basin Regulations—Water Supply Charges are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

List of Subjects in 18 CFR Part 420

Water supply policy.

PART 420—[AMENDED]

1. The authority citation for 18 CFR Part 420 continues to read as follows:

Authority: Pub. L. 87-328 (75 Stat. 688).

2. Section 420.51 is added and an undesignated center heading is added preceding it to read as follows:

Hydroelectric Power Water Use Charges

§ 420.51 Hydroelectric power plant water use charges.

(a) *Annual base charges.* Owners of conventional run-of-river hydroelectric power plants that benefit from water storage facilities owned or partially owned by the Commission shall pay an annual base charge to the Commission. The amount of the base annual charge shall be one dollar per kilowatt of installed capacity.

(b) *Annual variable charges.* In addition to the base charge established in (a) of this section, annual charges based on power generated at each facility will be assessed as follows:

(1) Owners of hydroelectric power plants that benefit from increased hydraulic head available to the hydroelectric project as a result of investments by the Commission shall be charged one mill per kilowatt-hour of energy produced.

(2) Owners of hydroelectric power plants that derive additional benefits from increased flows available to the hydroelectric project that would not have been available without the Commission-sponsored project shall be charged one-half mill per kilowatt-hour of energy produced. No charges for increased flows will be required when charges for increased hydraulic head are in effect.

(3) Charges for the use of any facilities such as pipe conduits, outlet works, and so on, installed in, on or near a Commission-sponsored project that benefit the hydroelectric project in any way will be determined on a case-by-case basis as approved by the Commission.

(c) *Credits.* The owner of any hydroelectric generating facility shall receive a credit against the current year water use fee otherwise payable to the Commission for any amount which the Commission receives from the U.S. Army Corps of Engineers or from the Federal Energy Regulatory Commission for each calendar year.

(d) *Exemptions.* No payment will be required when hydroelectric power facility water use charges would amount to less than $25 per year. Retroactive charges will not be assessed for facilities which have already obtained Commission approval pursuant to Section 3.8 of the Delaware River Basin Compact. All hydroelectric generating projects that do not benefit from storage owned or partially owned by the Commission are exempt from these Commission water charges.

(e) *Payment of bills.* The amount due each year shall bear interest at the rate of 1% per month for each day it is unpaid beginning 30 days after the due date. Payments are due within 30 days of the end of each calendar year. Annual base charges will be prorated for periods less than a year.

2. This amendment shall be effective October 26, 1988.

Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman,

Secretary.

November 2, 1988.

[FR Doc. 88-25881 Filed 11-8-88; 8:45 am]

BILLING CODE 6360-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 361

Recovery of Debts Owed to the United States Government by Employees

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to provide for the administration of its authority under 5 U.S.C. 5514 to recover debts owed to the United States by installment collections from the current pay account of Federal employees.

EFFECTIVE DATE: November 9, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide guidelines for the administration of the Board's authority under 5 U.S.C. 5514 for recovering debts owed to the United States by installment collections from the current pay accounts of its employees.

The Debt Collection Act of 1982, Pub. L. 97-365, amended section 5514 to permit interagency recovery of general debts due the United States. However, before agencies may use this new recovery procedure, certain due process rights must be extended to the debtor. The specific procedures in this regulation conform with the statutory provisions added to 5 U.S.C. 5514 by the Debt Collection Act, 5 CFR 550.1101 *et seq.*, and court decisions emphasizing the debtor's right to due process protection prior to the initiation of an action to recover for a debt (*Califano* v. *Yamasaki*, 442 U.S. 682 (1979)).

On March 9, 1984, the U.S. General Accounting Office and the Department of Justice adopted final regulations amending the Federal Claims Collection Standards (FCCS). See 4 CFR Chapter II. Although the installment collection from the current pay account of an employee described in these regulations is authorized by 5 U.S.C. 5514, such a collection is still an administrative offset as defined in 31 U.S.C. 3701(a)(1). Consequently, any collection matters involving salary offset not addressed in these regulations are governed by the FCCS.

In essence this rule provides that the Board shall not deduct moneys from the current pay of one of its employees in order to satisfy a debt owed by that employee to the United States until it has afforded the employee a pre-offset hearing before an impartial adjudicator. However, there are three types of collections against pay which are not subject to the full procedural rights provided by these regulations.

The first is a collection which has resulted from an overpayment caused by an employee's election of coverage or a change in coverage under a Federal benefit program. An employee who makes such an election is aware, or reasonably should be aware, that the election would cause a change in the amount withheld from his or her salary. Accordingly, it is appropriate to exclude from the scope of the salary offset due process procedures routine "catch-up" retroactive collections which are necessary solely because of brief, necessary, and inevitable processing delays.

A similar situation exists with regard to ministerial adjustments of pay rates of allowances, *e.g.*, credit union allotment, union dues deduction, etc., which cannot be placed into effect immediately because of normal processing delays. The debt in this case does not arise from any error committed by either the employee or the agency. The validity of the obligation is beyond reasonable dispute and the amount due is readily ascertainable.

For these two types of collections the rule provides for a limited procedure whereby the employee is notified in advance of the amount of the retroactive collection and may dispute the retroactive collection by notifying a specified official. Furthermore, it should be noted that in collections by salary offset made for reasons other than normal processing delays or, even if made by reason of normal processing delays but where the period for which retroactive deduction must be made will exceed four pay period, the full due process procedures set out in the final regulations shall apply.

Finally, where there is no question regarding credibility and veracity, no pre-offset hearing will be granted. In these cases the Board will make its pre-offset determination under this part based upon a review of the written record. Such a provision in the regulation is consistent with the FCCS (4 CFR 102.3(c)).

In addition, this rule also covers the situation in which the Board is not the creditor agency but merely the paying agency of the debtor. In such situations, the rule provides that this agency will commence deductions from the current pay account of an employee upon receipt of a properly certified debt claim as provided by 5 CFR 550.1108.

On January 5, 1988, the Board published this rule as a proposed rule and invited comments for 120 days ending May 4, 1988. (53 FR 143-147). No comments were received within the allotted time frame. The Board did receive on May 5, 1988, a comment from the American Federation of Government

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Employees (AFGE), Local 375. AFGE suggested that the Board provide some limited due process when it is the paying agency (see § 361.17), and receives a claim from another agency. Specifically, AFGE recommends that when the Board receives such a claim and the affected employee disputes the debt, the Board should provide the documentation from the requesting agency which proves that the debt exists and give the employee 60 days to attempt resolution of the debt before offset would occur.

Under 5 CFR 550.1108(b)(3), if a paying agency receives a debt claim which meets the requirements of that section, it is not authorized to review the merits of the creditor agency's determination with respect to the validity of the debt. Under 5 CFR 550.1108(b), upon receipt of a properly certified debt claim the paying agency should schedule deductions to begin prospectively at the next officially established pay interval.

Section 361.17 of this part provides that if the Board receives a claim which meets the requirements of 5 CFR 550.1108, deductions will commence at the next established pay interval. In addition, the Board will notify the employee of receipt of the claim, the amount of the debt, and the date salary deductions will commence and the amount of the deductions. Furthermore, it is the agency's policy to permit the affected employee to view and make copies of any documentation provided by the creditor agency.

It is the Board's view that § 361.17 fully complies with the requirements of 5 CFR 550.1108 and therefore AFGE's suggestion was not adopted.

This regulation has been approved by the Office of Personnel Management.

This rule is not a major rule as defined under section 1(b) of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. In addition, any information required to be furnished under this rule is information to be provided by a government employee or agency and, therefore, is not covered by the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 361

Administrative practice and procedure, Government employees, Wages, Debt Collection.

1. For the reasons set forth in the preamble, Title 20, Chapter II, of the Code of Federal Regulations is amended by adding a new Part 361 as follows:

PART 361—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY GOVERNMENT EMPLOYEES

Sec.

361.1 Purpose.
361.2 Scope.
361.3 Definitions.
361.4 Determination of indebtedness.
361.5 Notice requirements before offset.
361.6 Requests for waiver or hearing.
361.7 Written decision following a hearing.
361.8 Limitations on notice and hearing requirements.
361.9 Exception to requirement that a hearing be offered.
361.10 Written agreement to repay debt as alternative to salary offset.
361.11 Procedures for salary offset: When deductions may begin.
361.12 Procedures for salary offset: Types of collection.
361.13 Procedures for salary offset: Methods of collection.
361.14 Procedures for salary offset: Imposition of interest, penalties and administrative costs.
361.15 Non-waiver of rights.
361.16 Refunds.
361.17 Coordination with other government agencies.

Authority: 5 U.S.C. 5514(b)(1).

§ 361.1 Purpose

These regulations, which implement 5 U.S.C. 5514, provide the standards and procedures which the Board will utilize to collect debts owed to the United States from the current pay accounts of its employees, including the current pay accounts of employees who owe debts to agencies other than the Board.

§ 361.2 Scope.

(a) *Coverage.* This part applies to agencies and employees as defined by § 361.3 of this part.

(b) *Applicability.* This part and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations shall be consistent with the provisions of the Federal Claims Collection Standards (FCCS).

(1) *Excluded debts or claims.* The procedures contained in this part do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1, *et seq.*), the Social Security Act (42 U.S.C. 301, *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) *Waiver requests and claims to the U.S. General Accounting Office.* This part does not preclude an employee from requesting waiver of recovery of an overpayment under 5 U.S.C. 5584 or any other similar provision of law, or from questioning the amount of validity of a debt by submitting a subsequent claim to the U.S. General Accounting Office.

(3) *Compromise, suspension, or termination under the Federal Claims Collection Standards (4 CFR 101.1, et seq.).* Nothing in this part precludes the compromise, suspension or termination of collection actions where appropriate under the standards implementing 31 U.S.C. 3711, *et seq.* (4 CFR 101.1, *et seq.*).

§ 361.3 Definitions.

For purposes of this part, terms are defined as follows:

"Agency" means—

(a) An executive agency as defined by section 105 of Title 5, United States Code; including the U.S. Postal Service and the U.S. Postal Rate Commission;

(b) A military department as defined in Section 102 of Title 5, United States Code;

(c) An agency or court in the judicial branch, including a court as defined in Section 610 of Title 28, United States Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(d) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(e) Other independent establishments that are entities of the Federal government.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

"Delinquent debt" means a debt which has not been paid by the date specified in the creditor agency's initial written notification, unless satisfactory arrangements for payment have been made by that date, or where, at any time thereafter, the employee fails to satisfy his or her obligations under a payment agreement with the creditor agency.

"Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay, remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.104 (b) through (f) to determine disposable pay subject to salary offset.

"Employee" means a current employee of a Federal agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

"FCCS" means the Federal Claims Collection Standards jointly published by the Department of Justice and the U.S. General Accounting Office at 4 CFR 101.1, *et seq.*

"Paying agency" means the Federal agency or branch of the Armed Forces or Reserves employing the individual and disbursing his or her current pay account.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

"Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other similar law.

§ 361.4 Determination of indebtedness.

In determining that an employee is indebted, the Board will review the debt to make sure it is valid and past due.

§ 361.5 Notice requirements before offset.

The Board shall provide an employee written Notice of Intent to Offset Salary (Notice of Intent). The employee will be provided the notice at least thirty calendar days before the intended deduction is to begin. In addition, the notice must provide the following:

(a) That the Board has reviewed the records relating to the claim and has determined that a debt is owed, and the origin, nature, and amount of that debt;

(b) The Board's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Board's requirements concerning interest, penalties, and administrative costs, and notification that such assessment must be made unless such payments are excused in accordance with the FCCS;

(e) Advice as to the employee's or his or her representative's right to inspect and copy or to be provided copies of government records relating to the debt;

(f) If not previously provided, notification of the opportunity (under terms agreeable to the Board) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Board, and documented in the Board's files (4 CFR 102.2(e));

(g) Advice that the Board will accept a repayment agreement which is reasonable in view of the financial condition of the employee at that time;

(h) If there is a statutory provision for waiver, cancellation, remission or forgiveness of the debt to be collected, advice that waiver may be requested within the period and by the procedure specified and explaining the conditions under which waiver, cancellation, remission or forgiveness is granted;

(i) Advice as to the employee's right to a hearing conducted by an official arranged by the Board (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) on the Board's determination of the debt, the amount of the debt, and the percentage of disposable pay to be deducted each pay period if a petition is filed as prescribed by the Board;

(j) Advice that the timely filing of a petition for hearing or a request for waiver (if the waiver statute or regulations are not "permissive" in nature) will stay the commencement of collection proceedings;

(k) Advice that a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than sixty days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(l) Advice as to the method and time period for requesting a hearing as provided for in section 361.5 and for requesting waiver, if it is available;

(m) Advice that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(3) Criminal penalties under §§ 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority;

(n) Advice as to other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(o) Advice that unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee. Such refunds will not bear interest unless required or permitted by law.

§ 361.6 Requests for waiver or hearing.

(a) A request for waiver or for a hearing must be made in writing and received by the Chief Financial Officer no later than thirty calendar days after the notice is sent to the employee. This time limit may, at the discretion of the Chief Financial Officer, be extended if the employee can show that the delay was caused by circumstances which were beyond the employee's control or because of the employee's failure to receive notice of the time limit. Any right to waiver or to a hearing is forfeited unless the time limits set forth in this paragraph are complied with.

(b) The employee's request for a hearing must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(c) A request for a hearing under this paragraph is not a request for waiver. A request for waiver must state the basis for the request for waiver and whether a hearing is requested. If no request for a hearing is contained in the waiver request, no hearing will be provided.

(d) A hearing, if requested, will be an informal proceeding conducted by an administrative law judge or hearing official not under the control of the Board. The employee, or his/her representative, and the Board will be given full opportunity to present evidence, witnesses and argument.

§ 361.7 Written decision following a hearing.

Within thirty days after the hearing, the administrative law judge or hearing official shall issue a written decision stating the facts evidencing the nature and origin of the alleged debt; the amount and validity of the alleged debt; and the judge or hearing official's analysis, findings and conclusions with

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respect to the employee's position on liability for the debt and with respect to his or her eligibility for waiver. The decision of the administrative law judge or hearing official shall be the final agency decision.

§ 361.8 Limitations on notice and hearing requirements.

(a) The procedural requirements of this part are not applicable to collections which result from:

(1) An employee's election of coverage or of a change in coverage under a Federal benefits program which requires periodic deductions from pay and which cannot be placed into effect immediately because of normal processing delays; and

(2) Ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays.

(b) *Limited procedures.* If the period of the normal processing delay for which the retroactive deduction must be recovered does not exceed four pay periods, the procedures provided in §§ 361.4 and 361.5 of this part shall not apply, but the Board shall in advance of the collection issue a general notice that:

(1) Because of the employee's election, future salary will be reduced to cover the period between the effective date of the election and the first regular withholding, and the employee may dispute the amount of the retroactive collection by notifying a specified office or official; or

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immediately, future salary will be reduced to cover any excess pay or allowances received by the employee, the employee may dispute the amount of the retroactive collection by notifying a specified office or official.

(c) *Limitation on exceptions.* The exceptions described in paragraphs (a) and (b) of this section shall not include a recovery required to be made for any reason other than normal processing delays in putting the change into effect, even if the period of time for which the amounts must be retroactively withheld is less than four pay periods. Further, if normal processing delays exceed four pay periods, then the full procedures prescribed under §§ 361.4 and 361.5 of this part shall be extended to the employee.

§ 361.9 Exception to requirement that a hearing be offered.

When an employee is overpaid due to the hours worked reported on the payroll exceeding the actual hours worked, no pre-offset hearing must be granted since in such cases there is no question regarding credibility and veracity. In these cases the Board will make its determination under this part based upon review of the written record.

§ 361.10 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Board within thirty calendar days of the date of the Notice of Intent.

(b) *Board's response.* In response to timely notice by the debtor as described in paragraph (a) of this section, the Board will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Board's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, the Board will balance the agency's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Board will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 361.11 Procedures for salary offset: When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for hearing with the Board before the expiration of the period provided for in section 361.5, then deductions will begin after the hearing officer has provided the employee with a hearing and the hearing officer's final written decision is in favor of the Board.

(c) If an employee retires, resigns or his or her period of employment ends before collection of a debt is completed, offset shall be made from subsequent payments of any nature (*e.g.*, final salary payment, lump sum leave, etc.) due the employee from the Board to the extent necessary to liquidate the debt. If the debt cannot be liquidated by offset from any final payment due the employee from the Board, the Board shall liquidate the debt by administrative offset, pursuant to 31 U.S.C. 3716, from later payments of any kind which are due the employee from the United States.

§ 361.12 Procedures for salary offset: Types of collection.

A debt will be collected in a lump sum or in installments. Collection will be effected in one lump sum collection unless the employee is financially unable to pay in one lump sum, or if the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

§ 361.13 Procedures for salary offset: Methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Board agree to alternative arrangements for repayment. The alternative arrangement must be in writing, signed by both the employee and the Board.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Board will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 361.14 Procedures for salary offset: Imposition of interest, penalties and administrative costs.

Interest will be charged in accordance with 4 CFR 102.13.

§ 361.15 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee involuntary payment (of all or a portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 361.16 Refunds.

The Board will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expresaly prohibited by statute or regulation); or

(b) The Board is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 361.17 Coordination with other government agencies.

(a) *Board is paying agency.* (1) If the Board receives a claim which meets the requirements of 5 CFR 550.1108 from another agency, deductions shall begin prospectively at the next officially established pay interval. The employee will receive written notice that the Board has received a certified debt claim from a creditor agency. The notice will contain the amount of the debt and the date deductions from salary will commence and the amount of such deductions.

(2) If the Board receives a claim which does not meet the requirements of 5 CFR 550.1108, then the Board will return the claim to the creditor agency and inform the creditor agency that before any action is taken to collect the debt from the employee's current pay account, the procedures under 5 U.S.C. 5514 and 5 CFR Part 550 must be followed and a claim which meets the requirements of 5 CFR 550.1108 must be received.

(b) *Board is creditor agency.* When the Board is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until the Board provides the agency with a written certification that the procedures under this part have been followed and the Board has provided the other agency with a claim which meets the requirement of 5 CFR 550.1108.

Dated: November 2, 1988.

By Authority of the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-25886 Filed 11-8-88; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 885

[Docket No. R-88-1391; FR-2477]

Loans for Housing for the Elderly or Handicapped

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing projects that receive direct loans under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the United States Housing Act of 1937. This rule amends 24 CFR Part 885 to incorporate loan interest rate provisions contained in the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988).

DATES: Under Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become final until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Assisted Elderly and Handicapped Housing Division, Room 6118, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 426-8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Purpose

HUD's regulations at 24 CFR Part 885 govern projects that receive direct loans under Section 202 of the Housing Act of 1959 and housing assistance payments under Section 8 of the United States Housing Act of 1937. On February 5, 1988, President Reagan approved the Housing and Community Development Act of 1987 (Pub. L. 100-242) ("the Act"). This Act made several revisions to the section 202 loan program. This final rule implements statutory revisions to the method of calculating the interest rate to be used on section 202 loans.

The Department published an interim rule on June 1, 1988 (53 FR 19899) seeking public comments on interim provisions governing the interest rate calculation. No public comments were received. Accordingly, this final rule makes no changes to the provisions contained in the interim rule.

II. Findings and Certifications

Under 24 CFR 50.20(1), an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters categorically excluded from the environmental requirements of 24 CFR Part 50.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides HUD with additional flexibility in adjusting section 202 interest rates in periods of low market interest rates, and may result in lower section 202 interest rates for some Borrowers. The effect of these changes on small entities, however, should be minor.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that the rule will not have a significant impact on the family. The final rule establishes the methodology that will be used to calculate the interest rate on section 202/8 loans to non-profit Borrowers and will have little, if any, impact on family formation, maintenance or general well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation, and does not have federalism implications. The final rule establishes the methodology that will be used to calculate the interest rate on section

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202/8 loans made by HUD to non-profit Borrowers and will not have any direct impact on the States.

This rule was listed as item 996 in the Department's Semiannual Agenda of Regulations published October 24, 1988 (53 FR 41974, 14997) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.157, Housing for the Elderly or Handicapped.

List of Subjects in 24 CFR Part 885

Aged, Grant programs: housing and community development, Handicapped, Loan programs: housing and community development, Low- and moderate-income housing.

Accordingly, the Interim Rule published in the **Federal Register** on June 1, 1988 (53 FR 19899) is adopted as final without change.

* * * * *

Date: October 31, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-25968 Filed 11-8-88 ;8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 250 and 275

[T.D. AFT-277]

Implementation of Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF) Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule, which is being issued without notice, amends ATF regulations to implement a new form, Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico). Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico) is prescribed for use in conjunction with both the prepayment and deferred payment of excise taxes on distilled spirits, wines, beer, tobacco products, and cigarette papers and tubes brought into the United States from Puerto Rico.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jackie White, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7602).

SUPPLEMENTARY INFORMATION:

Background

The Internal Revenue Code of 1986 provides, in 26 U.S.C. 7652(a)(1), that articles of Puerto Rican manufacture coming into the United States, and withdrawn for consumption or sale, shall be subject to a tax equal to the internal revenue tax imposed in the United States upon like articles of merchandise of domestic manufacture.

Section 7652(a)(2) provides that the Secretary shall prescribe by regulation the mode for payment of excise taxes on, among other things, distilled spirits, wines, beer, tobacco products, and cigarette papers and tubes. Currently, ATF regulations in 27 CFR Parts 250 and 275 prescribe the use of eight different tax return forms for the collection of these taxes. In order to simplify returns processing, AFT consolidated these eight returns into one new form, Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico).

Section 7652 allows for the deposit of excise taxes into the Treasury of Puerto Rico on articles produced in Puerto Rico and brought into the United States. Payments to the Treasury of Puerto Rico of excise taxes on articles containing distilled spirits will be permitted only if at least 92 percent of the alcoholic content of such articles is attributable to rum and if they are not articles for which drawback of tax will be claimed in accordance with 26 U.S.C. 5134. In addition, an article not containing distilled spirits (e.g. wine, beer, and tobacco products) will not be considered as produced in Puerto Rico unless the sum of the cost or value of the materials produced in Puerto Rico plus the direct costs of processing operations performed in Puerto Rico equals or exceeds 50 percent of the value of the article at the time it is brought into the United States.

Since the taxes on many products brought into the United States from Puerto Rico are not entitled to cover over into the Treasury of Puerto Rico, Form 5000.25 has been designed in a manner that will require the taxpayer (in the case of wine, beer or tobacco products) to indicate the amount of excise taxes attributable to such products that are entitled to cover over. In the case of distilled spirits, the taxpayer shall be required to provide the total proof gallons of spirits which meet the 92 percent rum criterion. It will be this proof gallon figure that will be used in conjunction with data on other Puerto Rican rum brought into the United States in determining the amount to be covered over to the Puerto Rican Treasury.

Obsolete Forms

Implementation of Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico), makes the following forms obsolete.

ATF F 5110.52, Deferred Tax Return—Distilled Spirits (Puerto Rico)
ATF F 5110.53, Prepayment Tax Return—Distilled Spirits (Puerto Rico)
ATF F 2927 (5120.33), Deferred Tax Return—Wine (Puerto Rico)
ATF F 2928 (5120.34), Prepayment Tax Return—Wine (Puerto Rico)
ATF F 2929 (5130.17), Deferred Tax Return—Beer (Puerto Rico)
ATF F 2930 (5130.21), Prepayment Tax Return—Beer (Puerto Rico)
ATF F 2988 (5200.5), Deferred Tax Return—Puerto Rican Cigars and Cigarettes
ATF F 3073 (5200.8), Prepayment Tax Return—Puerto Rican Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes

These forms may not be used for the payment of tax liabilities incurred on or after January 1, 1989.

Regulatory Changes

Implementation of Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico) requires several regulatory changes. Every regulation in Title 27 of the Code of Federal Regulations containing an obsolete form number has to be amended. In addition, some sections of regulations are being revised to clarify the fact that Form 5000.25 is to be used as both a prepayment and a deferred payment or semimonthly return.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in: (a) An annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512-0497.

Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing burden should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, with copies of the Chief, Information Programs Branch, Room 7011, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

The collection of information in this regulation is in 27 CFR 250.81, 250.96, 250.105, 250.110 through 250.113, 275.105, 275.106, 275.112, and 275.115a. This information is required by the Bureau of Alcohol, Tobacco and Firearms for the collection of excise taxes on distilled spirits, wine, beer, tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico for consumption and sale. This information will be used by the government to ensure that the correct excise tax has been timely paid and received into the Treasury. The likely respondents are small businesses or organizations.

Estimated total annual reporting burden: 138 hours.
Estimated average annual burden hours per respondent: 6.25 hours.
Estimated number of respondents: 22.
Estimated annual frequency of responses: 25.

Administrative Procedure Act

This Treasury decision consolidates eight different tax return forms into one form and makes minor editorial changes. Accordingly, it is found that it is unnecessary and impracticable to issue this rule with notice and public procedure under 5 U.S.C. 553(b).

Drafting Information

The principal author of this document is Jackie White, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 250

Administative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Drugs, Electronic fund transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bond, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 275

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

Issuance

27 CFR Chapter I, Subchapter M is amended as follows:

PART 250—[AMENDED]

¶ 1. The authority citation for Part 250 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131-5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

* * * * *

¶ 2. The table of sections is amended to revise the title of § 250.112 to read as follows:

Sec.

* * * * *

§ 250.112 Returns for semimonthly periods.

* * * * *

¶ 3. Section 250.81 and the Office of Management and Budget control number following the section are revised to read as follows:

§ 250.81 Prepayment of tax and release of spirits.

(a) *Action by proprietor.* Where the distilled spirits are to be released after payment of the computed tax, the proprietor shall enter the amount of such computed tax on all copies of ATF Form 5110.51 and execute the statement that such tax is being prepaid. The proprietor shall then prepare ATF Form 5000.25 in duplicate, and send the original with all copies of ATF Form 5110.51 and any package gauge record as provided in § 250.164a and the remittance in full for the tax, to the Chief, Puerto Rico Operations.

(b) *Action by Chief, Puerto Rico Operations.* On receipt of ATF Forms 5110.51, 5000.25 and any package gauge record, with remittance covering prepayment of tax, the Chief, Puerto Rico Operations shall execute the receipt on ATF Form 5000.25 and execute the report of prepaid taxes on all copies of ATF Form 5110.51. The Chief, Puerto Rico Operations shall then retain the originals of ATF Forms 5110.51 and 5000.25 and forward the remaining copies of ATF Form 5110.51 in accordance to the instructions on the form.

(c) *Action by revenue agent.* On receipt of ATF Form 5110.51 executed by the Chief, Puerto Rico Operations to show receipt of ATF Form 5000.25 and remittance, the revenue agent shall execute the report of release on the ATF Form 5110.51 and release the spirits for shipment to the United States. The completed ATF Form 5110.51 shall be distributed according to the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512-0210 and 1512-0497)

¶ 4. Section 250.96 is revised to read as follows:

§ 250.96 Prepayment of tax—release of wine.

(a) *Action by proprietor.* Where the wine is to be withdrawn from bonded storage after payment of the computed tax, the proprietor shall enter the amount of such computed tax on all copies of ATF Form 2900 (5100.21) and execute the statement that such tax is being prepaid. The proprietor shall then prepare ATF Form 5000.25 in duplicate and send the original with all copies of ATF Form 2900 (5100.21) and the remittance in full for the tax, to the Chief, Puerto Rico Operations.

(b) *Action by Chief, Puerto Rico Operations.* On receipt of ATF Forms 2900 (5100.21) and 5000.25, and remittance covering prepayment of tax, the Chief, Puerto Rico Operations shall

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execute the receipt on ATF Form 5000.25 and execute the report of prepaid taxes on all copies of ATF Form 2900 (5100.21). The Chief, Puerto Rico Operations shall then retain the originals of ATF Forms 2900 (5100.21) and 5000.25 and forward the remaining copies of ATF Form 2900 (5100.21) in accordance with the instructions on the form.

(c) *Action by revenue agent.* On receipt of ATF Form 2900 (5100.21) executed by the Chief, Puerto Rico Operations to show receipt of ATF Form 5000.25 and remittance, the revenue agent shall execute the report of release on the ATF Form 2900 (5100.21) and release the wine for the purpose authorized on the form. The completed ATF Form 2900 (5100.21) shall be distributed according to the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512–0149 and 1512–0497)

¶ 5. Section 250.105 is revised to read as follows:

§ 250.105 Prepayment of tax—release of beer.

(a) *Action by brewer.* Where the beer is to be withdrawn from bonded storage after payment of the computed tax the brewer shall enter the amount of such computed tax on all copies of ATF Form 2900 (5100.21) and execute the statement that such tax is being prepaid. The brewer shall then prepare ATF Form 5000.25 in duplicate and send the original with all copies of ATF Form 2900 (5100.21) and the remittance in full for the tax, to the Chief, Puerto Rico Operations.

(b) *Action by Chief, Puerto Rico Operations.* On receipt of ATF Forms 2900 (5100.21) and 5000.25, and remittance covering prepayment of tax, the Chief, Puerto Rico Operations shall execute the receipt on ATF Form 5000.25 and execute the report of prepaid taxes on all copies of ATF Form 2900 (5100.21). The Chief, Puerto Rico Operations shall then retain the originals of ATF Forms 2900 (5110.21) and 5000.25 and forward the remaining copies of ATF Form 2900 (5100.21) in accordance with the instructions of the form.

(c) *Action by revenue agent.* On receipt of ATF Form 2900 (5100.21) executed by the Chief, Puerto Rico Operations to show receipt of ATF Form 5000.25 and remittance, the revenue agent shall execute the report of release on the ATF Form 2900 (5100.21) and release the beer for the purpose authorized on the form. The completed ATF Form 2900 (5100.21) shall be distributed according to the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512–0149 and 1512–0497)

§ 250.110 [Amended]

¶ 6. Section 250.110 is amended by replacing, in the first sentence, the words "ATF Form 5110.53, 2928, or 2930" and inserting in their place the words "AFT Form 5000.25", and by revising the parenthetical citation of Office of Management and Budget control numbers to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0497)

§ 250.111 [Amended]

¶ 7. Section 250.111 is amended by replacing, in the first sentence, the phrase "semimonthly or prepayment return" with the phrase "tax return".

¶ 8. Section 250.112 and the Office of Management and Budget control number following the section are revised to read as follows:

§ 250.112 Returns for semimonthly periods.

(a) *Returns.* The taxes imposed by 26 U.S.C. 7652(a), (equal to the taxes imposed in the United States by 26 U.S.C. 5001(a)(1), 5041, or 5051), the payment of which has been deferred under the provisions of §§ 250.80, 250.95 or 250.104 of this part, shall be paid pursuant to a return on ATF Form 5000.25 prepared in accordance with the instructions on the form.

(b) *Periods.* The periods to be covered by returns on ATF Form 5000.25 shall be semimonthly; such periods to run from the 1st day through the 15th day of each month and from the 16th day through the last day of each month.

(c) *Filing.* (1) The original of ATF Form 5000.25, with remittance covering the full amount of the tax, shall be filed with the Chief, Puerto Rico Operations not later than the 14th day after the last day of the return period except as provided by paragraph (d) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day within is not a Saturday, Sunday, or legal holiday.

(2) The tax shall be paid in full by remittance at the time the return is filed, unless the proprietor is required to make remittances by electronic fund transfer in accordance with § 250.112a.

(3) The remittance may be in any form the Chief, Puerto Rico Operations, is authorized to accept under the provisions of § 70.66 (Payment by check or money order) and which is acceptable to the Chief, Puerto Rico Operations. A remittance by check or money order, shall be made payable to the "Bureau of Alcohol, Tobacco and Firearms."

(4) When the return and remittance are delivered by U.S. mail to the office of the Chief, Puerto Rico Operations, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return and remittance were mailed shall be treated as the date of delivery.

(d) *Special rule for return period ending December 15, 1986.* The last day for filing AFT Form 5110.52 with remittance covering the return period December 15, 1986 is January 14, 1987.

(e) *Default.* Where a taxpayer has defaulted in any payment of tax under this section, during the period of such default and until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment of tax under this section, the tax shall be prepaid by such taxpayer in accordance with the provisions of § 250.113. During such period, distilled spirits, wine, or beer shall not be released from the proprietor's bonded premises before the proprietor has paid the tax thereon. In the event of default, the Chief, Puerto Rico Operations shall immediately notify the Secretary and the revenue agent at the premises that tax is to be prepaid until further notice, and upon a finding that the revenue will not be jeopardized by resumption of deferred payment or tax under this section, the Chief, Puerto Rico Operations shall notify the Secretary and the revenue agent that deferred payment may be resumed.

(Approved by the Office of Management and Budget under control number 1512–0497)

(Aug. 16, 1954, Ch. 736, 68A Stat. 775, (26 U.S.C. 6301); June 29, 1956, Ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

§ 250.112a [Amended]

¶ 9. Section 250.112a is amended by replacing in paragraphs (a) (3) and (c) (1) the words "semimonthly return form or prepayment return form" with the words "tax return".

§ 250.113 [Amended]

¶ 10. Section 250.113 is amended by replacing in paragraph (c) the phrase "Form 5110.53" with the phrase "ATF Form 5000.25", by replacing in paragraph (d) the phrase "Form 2928" with the phrase "ATF Form 5000.25", by replacing in paragraph (e) the phrase "Form 2930" with the phrase "ATF Form 5000.25.", by replacing in paragraph (f) the phrase "§ 250.112(e)" with the phrase "§ 250.112(c)", and by adding at the end of the section the parenthetical citation of Office of Management and Budget control number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0497)

PART 275—[AMENDED]

¶ 11. The authority citation for Part 275 is revised to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

¶ 12. Section 275.105 is revised to read as follows:

§ 275.105 Prepayment of tax.

To repay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C. 7652(a), on tobacco products and cigarette paper and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper shall file, or cause to be filed, with the Chief, Puerto Rico Operations, a tax return, ATF Form 5000.25, in duplicate, with full remittance of tax which will become due on such tobacco products and cigarette papers and tubes. The Chief, Puerto Rico Operations will present a receipted copy of the return to the person filing the return and paying the tax and retain the original.

(Approved by the Office of Management and Budget under control number 1512–0497)

¶ 13. Section 275.106 is revised to read as follows:

§ 275.106 Inspection of shipment and certification of prepayment by ATF officer.

The taxpayer will prepare ATF Form 3075 (5200.9), in quintuplicate, identifying the tobacco products and cigarette papers and tubes released in each shipment, for certification by the ATF officer that the tax has been prepaid. The ATF officer assigned to inspect the shipment shall obtain the receipted copy of the tax return from the taxpayer and verify with ATF Form 3075 (5200.9) that the proper tax has been prepaid. After verification of the tax return with ATF Form 3075 (5200.9), the ATF officer will return the receipted copy of the tax return to the taxpayer. The ATF officer will then present one copy of ATF Form 3075 (5200.9) to the taxpayer for attachment to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; promptly mail two copies to the district director of customs at the port of entry; mail one copy to the regional director (compliance) of the region wherein the customs collection headquarters is located; and retain the remaining copy. The ATF officer, will then prepare for each shipping container, a statement on ATF Form 3074 (5200.6) that the tax has been prepaid, and show the other information required by that form. The shipper shall affix the completed ATF Form 3074 (5200.6) to the outside of each shipping container in which the articles are packed. Such statement, ATF Form 3074 (5200.6), shall be affixed to the outside container used in the shipment of freight in bulk (crate, packingbox, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container. Noncommercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the ATF officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein.

§ 275.112 [Amended]

¶ 14. Section 275.112 is amended by removing the third sentence of the paragraph, by replacing in the paragraph the phrase "Form 2988" with the phrase "ATF Form 5000.25" wherever it appears, by replacing in the last sentence, the phrase "New York, NY," with the phrase "Atlanta, GA,", and by adding at the end of the section the parenthetical citation of the Office of Management and Budget control number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0497)

§ 275.115a [Amended]

¶ 15. Section 275.115a is amended by replacing in paragraphs (a)(3), (b)(3) and (c)(1) the phrase "semimonthly return form or prepayment return form" and inserting in its place the phrase "tax return".

August 31, 1988.

Stephen E. Higgins

Director.

Approved: September 26, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88–25656 Filed 11–8–88; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS SENTRY (MCM–3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a mine countermeasure ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P. C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, has certified that USS SENTRY (MCM–3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed

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herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS SENTRY	MCM-3							X	62

Dated: November 1, 1988.

H. Lawrence Garrett, III,

Under Secretary of the Navy.

[FR Doc. 88-25859 Filed 11-8-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80990-8227]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency final rule.

SUMMARY: NOAA amends the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) to modify, temporarily, the boundary of the Tortugas shrimp sanctuary (established by the FMP) to reduce the area closed to trawl fishing. This action will enable fishermen to harvest marketable-size shrimp from a small area that otherwise would be closed.

EFFECTIVE DATES: November 4, 1988 except § 658.22(b) and designation of (a), which is effective from November 4, 1988 through February 2, 1989.

ADDRESSES: Copies of the environmental assessment may be obtained from Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Reporting forms, sea turtle identification guides, and resuscitation techniques may be requested from, and completed forms should be sent to, the Director, Galveston Laboratory, NOAA Fisheries, Avenue U, Galveston, TX 77550.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The shrimp fishery is managed under the FMP and its implementing regulations at 50 CFR Part 658, as provided by the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under the FMP, the Director, Southeast Region, NMFS, (Regional Director), may modify by no more than 10 percent the geographical scope of the Tortugas shrimp sanctuary specified at § 658.22, after (1) consultation with the Gulf of Mexico Fishery Management Council (Council), (2) consideration of specified criteria, and (3) determination that benefits may be increased or adverse impacts decreased by the modification.

The primary purpose of establishing the sanctuary was to protect small shrimp and allow them to attain a larger, more valuable size prior to harvest. The FMP stipulates that, prior to any modification of the sanctuary, NMFS will monitor and assess the impacts of the closure and advise the Council of its findings. The Council may also consider the advice of its Shrimp Advisory Panel regarding the findings.

When the sanctuary was partially opened in 1983–1984, NMFS determined that harvestable populations of shrimp occur periodically within a small portion of the sanctuary—a fact strongly supported by public testimony. Fishermen contend that shrimp from within this portion of the sanctuary emigrate to untrawlable areas and are unavailable to the fishery. Poor recruitment of shrimp to the Tortugas fishery has resulted in 2 consecutive years of poor production and economic loss to the adjacent shrimp ports. As identified in the FMP, poor recruitment in this unique fishery is more a function of environmental forces than of overfishing. Opening the area of the sanctuary containing all sizes of shrimp is consistent with optimum yield because it will allow shrimpers to obtain, on a temporary basis, a more valuable catch per unit of effort.

Thus, the Regional Director, after consulting with the Council and considering the criteria for modifying the sanctuary, has determined that the small portion of the sanctuary that periodically contains harvestable shrimp should be opened for 90 days. This area is less than 10 percent of the total geographical scope of the sanctuary and such modification will increase the benefits by optimizing the yield of shrimp recruited to the fishery. This temporary geographic modification is consistent with Objective 1 of the FMP because it provides temporary economic relief to the stressed fishermen while continuing to optimize the yield of shrimp recruited to the fishery.

To maximize its intended economic benefits, this rule should be implemented on November 1, 1988, or as soon thereafter as possible. November 1 marks the onset of the 6-month period when peak landings occur. Due to the time consumed by preparation of the Biological Opinion regarding potential impacts of the proposed rule on endangered and threatened sea turtles, the normal Administrative Procedure Act requirement for publication of proposed regulations cannot be followed if the proposed opening is to occur in a timely and effective manner. NOAA finds that it is both impracticable and against the public interest to publish proposed regulations and receive public comment at this time. For this reason, a final rule is being promulgated to remain in effect for 90 days. NOAA also finds that opening a portion of the Tortugas shrimp sanctuary to trawl fishing has the effect of relieving a restriction, and, therefore, NOAA is waiving the normal Administrative Procedure Act requirement for delayed effectiveness after publication of this final rule.

Endangered Species Impacts

The modification of the geographic size of the Tortugas shrimp sanctuary is considered to be a "federal action" under the Endangered Species Act (ESA). Therefore, consultation under section 7 of the ESA is required to ensure that such action is not likely to jeopardize the continued existence of any endangered or threatened species or result in the adverse modification of the critical habitat of such species. A Biological Opinion is then written that concludes whether or not the proposed activity is likely to jeopardize such species or adversely affect their habitat. When any Federal action may incidentally take listed species, NOAA Fisheries must issue a statement in the Biological Opinion that specifies the impact (amount or extent) of such taking and the terms and conditions that must be followed to reduce such impact. Only incidental taking by the Federal agency or applicant that complies with the specified terms and conditions of this statement is authorized and exempt from the taking prohibition of the ESA.

NOAA Fisheries has written a Biological Opinion which establishes two conditions on the incidental take of sea turtles in the Tortugas sanctuary:

(1) If an endangered or threatened sea turtle is encountered in a shrimp trawl, the sea turtle resuscitation procedures and release techniques established for threatened sea turtles must be followed (50 CFR 227.72(e)(1)).

(2) If sea turtles are encountered, a report giving the date of take and an account of the status of each turtle must be provided to NOAA Fisheries on return to port after each fishing trip.

The Biological Opinion also contains a note that there are regulations which require the use of turtle excluder devices (TEDs) and other conservation measures in certain areas and at certain times. The implementation of these regulations has been delayed by Congress until May 1, 1989. At that time, the regulations will become effective for the opened portion of the Tortugas sanctuary as well.

Anticipated Extension of the Temporary Geographic Modification and Implementation of the Reporting Requirement Contained in the Biological Opinion

This emergency action will be effective for 90 days. The Biological Opinion for this action requires that a report must be provided in order for individual fishermen to be exempt from the taking prohibitions of the ESA whenever they incidentally take a sea turtle in the opened portion of the Tortugas sanctuary. This report constitutes a collection-of-information requirement subject to the Paperwork Reduction Act. A request is being prepared for submission to the Office of Management and Budget for approval. Since it is impracticable to satisfy the requirements of the Paperwork Reduction Act and the ESA in a timely manner, this geographic modification is effective only for 90 days. As soon as possible during this period, the temporary geographic modification established by this emergency rule will be extended and the reporting requirement will be implemented through a notice of proposed rulemaking, giving interested persons an opportunity to comment, and a final rule.

In the meantime, a fisherman fishing for shrimp in the opened portion of the Tortugas shrimp sanctuary, who incidentally takes a Kemp's ridley, hawksbill, leatherback, loggerhead, or green turtle, can avoid violating the ESA restrictions on takings of these species by making a voluntary report of that take and following the resuscitation procedures. A voluntary report should give the date of take and an account of the status of each turtle and should be provided to: Director, Galveston Laboratory, NOAA Fisheries, Avenue U, Galveston, Texas 77550, on return to port after each fishing trip. Reporting forms, sea turtle identification guides, and resuscitation techniques are available from the Director, Galveston Laboratory.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator), has determined that this rule is necessary to respond to an emergency and that it is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

The Assistant Administrator finds that notice and opportunity for public comment are impracticable and contrary to the public interest pursuant to section 553(b)(B) because of the necessity of conducting a Section 7 Consultation under the ESA and completing a Biological Opinion while also providing timely economic relief to a segment of the shrimp industry. Because this is a substantive rule which relieves a restriction, the Assistant Administrator also finds that it is not necessary to delay its effective date for 30 days, pursuant to the provision of section 553(d)(1) of the Administrative Procedure Act.

Because of the emergency need for implementation of this rule as soon as possible after November 1, 1988, it is exempt from the normal review procedures of E.O. 12291, as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comments.

The Council prepared an Environmental Assessment (EA) for this rule and, based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. Copies of the EA are available (see **ADDRESSES**).

This rule does not contain a collection-of-information requirement and therefore is not subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Florida. This determination was submitted for review by Florida under section 307 of the Coastal Zone Management Act. Florida failed to comment within the statutory time period and concurrence is therefore implied.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing.

Dated: November 4, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO [AMENDED]

1. The authority citation for Part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.22, effective from November 4, 1988 through February 2, 1989, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 658.22 Tortugas shrimp sanctuary.

* * * * *

(b) The provisions of paragraph (a) of this section notwithstanding, effective from November 4, 1988 through February 2, 1989, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: From point F at 24°50.7'N. latitude, 81°51.3'W. longitude to point Q at 24°46 7'N. latitude, 81°52.2'W. longitude (the intersection of the extension of the sanctuary boundary line from point N to point F (in a direction of 191° from true north) and the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition (March 21, 1987) of NOAA chart 11439, to point R at 24°44.7'N. latitude, 82°10.0'W. longitude; thence north to point S at 24°45.1'N. latitude, 82°10.0'W. longitude (the intersection of 82°10.0'W. longitude and the sanctuary boundary line from point F to point G) (see Figure 1).

3. Figure 1 is revised to read as follows:

BILLING CODE 3510-22-M

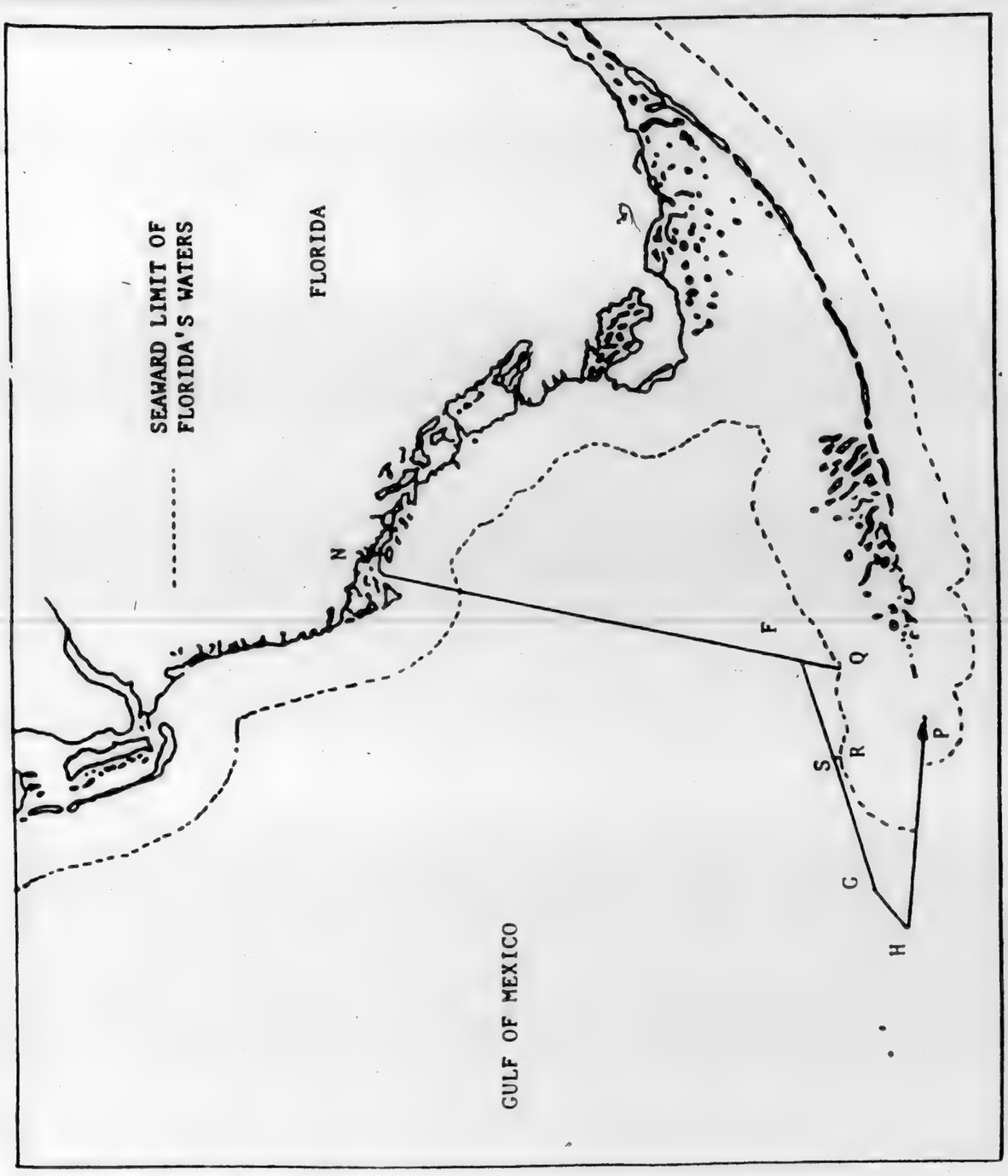


FIGURE 1. TORTUGAS SHRIMP SANCTUARY

[FR Doc. 88-25917 Filed 11-4-88; 4:10 pm]
BILLING CODE 3510-22-C

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Proposed Rules

Federal Register
Vol. 53, No. 217
Wednesday, November 9, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 88-174]

Interstate Movement of Citrus Fruit and Calamondin and Kumquat Plants From Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correction to a proposed rule.

SUMMARY: We are correcting an error in a proposed rule that would amend the citrus canker regulations. This proposed rule was published in the **Federal Register** on October 21, 1988 [53 FR 41538–41549, Docket 88–105]

DATES: We will consider written comments on the proposed rule (Docket 88–105), as corrected by this document, if they are postmarked or received on or before November 21, 1988.

ADDRESSES: Send an original and three copies of written comments to Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket 88–105. Comments received may be inspected at USDA, 14th and Independence Ave., SW, Room 1141 South Bldg., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Bldg., 6505 Belcrest Rd., Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION: We published in the **Federal Register** on October 21, 1988 [53 FR 41538–41549, Docket No. 88–105] a proposed rule that would amend the citrus canker regulations (contained in 7 CFR Part 301, Subpart 301.75).

Proposed § 301.75–12(a), which sets forth the proposed treatments for fruit, contains an error. It provides that fruit produced in groves of 10 or more regulated trees located outside the area of Florida that has had primary infestations of citrus canker caused by the Asiatic strains may be treated either with sodium o-phenyl phenate (SOPP) or sodium hypochlorite, or with water and soap (or water and detergent). However, as explained in the "Supplementary Information" section of the proposed rule, treatment with water and soap would be allowed only for fruit produced in groves of 10 or more regulated trees located outside the area of Florida that has had primary infestations of citrus canker caused by the Asiatic strains, *if the fruit is moved interstate with a limited permit to areas of the United States other than commercial citrus-producing areas.* Fruit moved interstate with a certificate to commercial citrus-producing area would continue to need treatment with SOPP or sodium hypochlorite.

This document corrects proposed § 301.75–12(a) as follows so that it is consistent with the explanation in the "Supplementary Information" section of the proposed rule:

PART 301—[AMENDED]

§ 301.75–12 Treatments.

(a) *Fruit.* Fruit for which treatment is required by this subpart must be treated in accordance with this paragraph in the presence of an inspector or at a facility whose owner operates under a compliance agreement.

(1) Fruit to be moved interstate with a certificate: Thorough wetting with a solution containing 200 parts per million sodium hypochlorite for at least 2 minutes; or thorough wetting with a solution containing sodium o-phenyl phenate (SOPP) at a concentration of 1.86 to 2 percent of the total solution for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain sufficient soap or detergent to cause a visible foaming action.

Note: Sodium hypochlorite and SOPP must be applied in accordance with label directions.

(2) Fruit that is to be moved interstate with a limited permit and that was produced in groves located within the area of Florida designated in § 301.75–7(b) of this subpart as having had primary infestations of citrus canker caused by the Asiatic strains: Treatment as prescribed in paragraph (a)(1) of this section.

(3) Fruit that is to be moved interstate with a limited permit and that was produced in groves of 10 or more regulated trees located outside the area of Florida designated in § 301.75–7(b) of this subpart as having had primary infestations of citrus canker caused by the Asiatic strains: Treatment as prescribed in paragraph (a)(1) of this section or thorough wetting and brush scrubbing for one minute with a solution of water and soap (or water and detergent) sufficient to cause a visible foaming action.

* * * * *

Done at Washington, DC, this 4th day of November 1988.

Larry B. Slagle,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–25871 Filed 11–8–88; 8:45 am]
BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88–ACE–11]

Proposed Alteration of Transition Area—Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to amend the Des Moines, Iowa, transition area by increasing the radius of the 700-foot transition area from 15 miles to 20 miles. This action will eliminate the need to increase Minimum Vectoring Altitudes (MVA) caused by the application of a new method for determining the elevation of the general terrain.

DATE: Comments must be received on or before December 12, 1988.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Discussion

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Des Moines, Iowa, transition area. A change has been made in the method for evaluating the elevation of general terrain. In the past, the general terrain has been determined by review of quadrangle charts. The current method uses the contour lines of sectional charts to verify the terrain elevations. This method result in higher MVA's. This action, which would increase the radius of the Des Moines, Iowa, 700 foot transition area from 15 miles to 20 miles, would eliminate the need to increase the MVA of 2,500 feet within this radius. This action would provide ample area for descent to the final approach intercept at a reasonable altitude.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that the proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a subtantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

Des Moines Municipal Airport [Amended]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; EO 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Des Moines, Iowa

That airspace extending upward from 700' above the surface within a 23-mile radius of the Des Moines Municipal Airport ASR radar site (latitude, 41°32'28"N; longitude, 093°39'10" W).

Issued in Kansas City, Missouri, on October 25, 1988.

Clarence E. Newbern
Manager, Air Traffic Division.

[FR Doc. 88–25862 Filed 11–8–88; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–16619; File No. S7–24–88]

Exemptions for Certain Registered Open-End Management Investment Companies To Impose Deferred Sales Loads

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and request for comment.

SUMMARY: The Commission is proposing a rule that would provide a registered open-end management investment company (other than a registered insurance company separate account) ("mutual fund" or "fund"), and certain related persons, with exemptions from several provisions of the Investment Company Act of 1940 ("Act") to the extent necessary to permit the use of sales loads payable on a deferred basis ("deferred sales loads"). The proposed rule would codify generally the standards that the Commission has developed in issuing exemptive orders concerning the use of contingent deferred sales loads on fund shares. The proposed rule would also expand these exemptions to permit the use of types of deferred sales loads not previously used. In addition, disclosure requirements for these other types of deferred sales loads are being proposed. The Commission is proposing the rule because deferred sales load arrangements would provide investors with alternatives to sales loads that are charged at the time fund shares are purchased. If adopted, the proposed rule could reduce significantly the need for mutual funds and related persons to obtain individual exemptions before imposing deferred sales loads.

The Commission is also considering whether to propose amendments to two existing rules, and to issue revised proposed amendments to another rule. These rules permit (or in the case of the proposed rule amendments, propose to permit), in relevant part, certain registered insurance company separate

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accounts ("separate accounts") to charge deferred sales loads. Amendments are now being considered because the issues under review in the mutual fund deferred sales load area also apply to separate accounts. The Commission is requesting comment on insurance considerations relevant to the questions of whether and how amendments to these rules should be implemented.

DATE: Comments must be received on or before January 9, 1989.

ADDRESSES: Send comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments should refer to File No. S7–24–88. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian P. Kindelan, Special Counsel, (202) 272–2048, or Rochelle G. Kauffman, Attorney, (202) 272–2038, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is publishing for comment proposed rule 6c–10 under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Act"), and is also proposing certain related amendments to form N–1A [17 CFR 239.15A] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*]. Additionally, the Commission is asking for public comment on insurance considerations pertaining to whether, and, if so, how rules 6c–8 [17 CFR 270.6c–8], 6e–3(T) [17 CFR 270.6e–3(T)] and 6e–2 [17 CFR 270.6e–2] under the Act should be amended.

Executive Summary

Proposed rule 6c–10 would provide broad exemptions from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), 80a–22(c) and 80a–22(d), respectively] and rule 22c–1 under the Act [17 CFR 270.22c–1] to permit a registered open-end management investment company (other than a registered insurance company separate account) ("mutual fund" or "fund"),[1] its principal underwriter, dealers in the fund's shares, and persons authorized to consummate transactions in the fund's shares, to impose a deferred sales load, subject to specified conditions.[2] The deferred sales load could be deducted either upon redemption or in installments over time.[3] Proposed rule 6c–10 is intended, therefore, to permit funds to provide investors the opportunity to pay distribution costs on a deferred basis. The proposal should be read together with the recently proposed amendments to rule 12b–1 [17 CFR 270.12b–1] under the Act.[4] The conditions in the proposal, which are based on conditions developed in the context of a series of exemptive orders issued by the Commission, are designed to (i) provide investors with alternatives to sales loads that are paid at the time of purchase, and (ii) permit funds to charge and administer deferred sales loads in a manner substantially comparable to front-end sales loads.

Many of the exemptive orders issued by the Commission permit the use of deferred sales loads on shares of existing funds and other funds that might be created subsequent to the orders, the shares of which would be distributed by the same or related underwriters on substantially the same basis. Proposed rule 6c–10 would be prospective in effect to the extent that any fund inexistence at the time rule 6c–10 is adopted that charges a deferred sales load in reliance on a Commission order would be able to continue to rely on that order after adoption of the rule. However, any fund organized subsequent to the adoption of the rule that wishes to impose a deferred sales load would be required to comply with the provisions of the rule and would not be permitted to rely on a prior Commission order. Compliance with the rule also would be required of any existing fund that, after the adoption of the rule, wishes to impose a deferred sales load. Comment is requested as to whether *all* funds that charge deferred sales loads in reliance on prior orders should be required to comply with the provisions of rule 6c–10, when adopted.

The Commission also is considering whether to propose amendments to rules 6c–8 and 6e–3(T), and issue revised proposed amendments to rule 6e–2 under the Act. Rule 6c–8 permits the imposition of a deferred sale load on variably annuity contracts issued by separate accounts. Rule 6e–3(T), in pertinent part, provides exemptions to permit separate accounts to impose a deferred sales load on flexible premium variable life insurance contracts ("flexible premium contracts"). Similarly, the proposed amendments to rule 6e–2 would, in part, permit the imposition of a deferred sales load by separate accounts offering scheduled premium variable life insurance contracts ("scheduled premium contracts").[5] The Commission is requesting comment on insurance considerations relevant to proposing amendments to these rules to conform the rules to proposed rule 6c–10.

Background

Mutual funds engaged in a continuous public offering of redeemable securities. Until fairly recently, most of the sales and promotional expenses associated with this offering were passed on to fund investors in the form of a sales charge or "sales load" paid by the investor at the time fund shares were purchased and expressed as a percentage of the public offering price of the shares.[6] Funds that sold their shares to the public without a sales load formerly represented only a small portion of the industry.[7] However, the

[1] Paragraph (c)(1) of the proposed rule would provide that, for purposes of this rule, a registered open-end management investment company includes a separate series of such a company. *See infra* notes 59–60 and accompanying text.

[2] While the following discussion refers generally to the imposition of deferred sales loads by mutual funds, the proposed rule would provide exemptions to funds, their principal underwriters, dealers in fund shares, and persons authorized to consummate transactions in fund shares. Such exemptions are necessary because sections 22(c) and 22(d) of the Act, and rule 22c–1 thereunder, apply to all such parties. In addition, any of these parties may actually administer the deferred sales load.

[3] Paragraph (c)(3) of the proposed rule defines the term "deferred sales load" to mean any amount properly chargeable to sales or promotional expenses that is or may be deducted directly from a shareholder's account in one or more installments during the term of the investment, or upon the redemption of fund shares, or both. Accordingly, proposed rule 6c–10 would not provide exemptions for the deduction of an amount designated as a deferred sales load where the facts and circumstances indicate that the payment is not intended to cover sales or promotional expenses, but is intended to achieve some other purpose, such as to deter or restrict redemptions.

[4] Rule 12b–1 permits mutual funds to use a portion of fund assets to finance the distribution of fund shares, provided that certain procedural and substantive conditions are satisfied. The Commission proposed amendments to rule 12b–1 in Investment Company Act Rel. No. 16431 (June 13, 1988) [53 FR 23258, June 21, 1988] ("Release 16431").

[5] *See* Investment Company Act Rel. No. 14421 (Mar. 15, 1985) [50 FR 11709, Mar. 25, 1985] (proposed amendments to rule 6e–2).

[6] *See generally Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth*, H.R. Rep. No. 2337, 89th Cong., 2d Sess., 51–56, 201–209 (1966) (hereinafter "Public Policy Implications"). Where the proceeds of sales loads were insufficient to cover all distribution expenses, the excess was borne by the fund's investment adviser, either directly or through the operation of an affiliated underwriter. *Id.* at 209.

[7] *See id.* at 204 n. 7.

number and asset size of so-called "no-load" funds increased dramatically in the 1970's.[8] This increased competition from no-load funds and a perceived resistance among mutual fund investors to products that charge front-end sales loads have prompted load funds to develop alternative methods of distribution financing, such as the imposition of sales loads payable other than at the time of purchase.

The practice of imposing deferred sales loads originated with separate accounts. In 1979, one such account was granted exemptions from several provisions of the Act to permit the imposition of a "contingent deferred sales load" ("CDSL")[9] on variable annuity contracts issued by that account.[10] The CDSLs were to be paid when all or part of a shareholder's interest in the separate account was either redeemed from the account or converted to an annuity. Exemptions were sought because the provisions of the Act do not specifically address situations where investment companies, whether separate accounts or mutual funds, charge sales loads payable other than at the time of purchase.[11] Subsequent to the 1979 order, the Commission received numerous similar requests for exemptions from separate accounts seeking to impose CDSLs on variable annuity contracts.[12] The Commission codified those exemptions in 1983 when it adopted rule 6c–8 under the Act.[13] Following that, the Commission adopted rule 6e–3(T) for flexible premium contracts and proposed amendments to rule 6e–2 for scheduled premium contracts, broad exemptive rules which include provisions that permit (or in the case of rule 6e–2, proposed to permit) a separate account to deduct a sales load upon redemption, as well as in installments from a contractowner's account.[14]

At the time rule 6c–8 was proposed, the Commission had received, and granted, only one application from a mutual fund that sought to charge a deferred sales load.[15] In the release proposing rule 6c–8, the Commission specifically requested comment on whether, and under what conditions, the proposed rule should be expanded to provide exemptions to mutual funds that wish to charge deferred sales loads on their shares. No comments on this subject were received, and the Commission decided to adopt rule 6c–8 essentially as proposed and to consider later whether to provide similar exemptions to mutual funds.

Following the adoption of rule 6c–8, the Division of Investment Management ("Division") began to receive applications for exemptions from mutual funds and certain related persons ("Applicants") to permit deduction of deferred sales loads upon redemption of funds shares, and to date has received more than 60 applications.[16] In each application, Applicants sought to impose a CDSL. As noted above,[17] a CDSL is a deferred sales load that is paid, if at all, at the time fund shares are redeemed. The amount of the CDSL decreases to zero if redemption does not occur before a specified period of time. For instance, a typical CDSL might impose a five percent charge on the redemption of shares made within one year of purchase. In each successive year, the percentage of the sales load would be reduced by one percent, with the result that a redemption of shares that had been held for more than five years would not be subject to any sales load.[18]

The majority of Applicants have been funds and related persons that use a combination of a CDSL and a distribution plan, adopted in accordance with rule 12b–1 under the Act (commondy, and herein, referred to as a "12b–1 plan"), as a substitute for charging investors a front-end sales load.[19] Typically, a fund's principal

[8] No load funds generally are distributed directly to the investing public by the fund organization, without the intervention of a retail network of broker-dealers. The lower distribution costs that result from this arrangement were traditionally paid by the fund's investment adviser or principal underwriter out of its own resources. In recent years, many of such funds have paid for distribution out of fund assets by adopting distribution plans under rule 12b–1. Other directly distributed funds have imposed relatively modest front-end sales loads on their shares and have become known as "low-load" funds.

[9] As discussed in more detail below, a CDSL is a deferred sales load that is paid, if at all, at the time of redemption, the amount of which would decrease to zero if the shares were held for a reasonable period of time specified by the fund. *See infra* text accompanying notes 17–23.

[10] *See* Nationwide Life Insurance Company and MFS Variable Account, Investment Company Act Rel. Nos. 10557 (Jan. 15, 1979) [44 Fr 4087, Jan. 19, 1979] (notice of application and 10590 (Feb. 12, 1979) (order) ("Nationwide").

[11] Specifically, exemptions were sought from sections 2(a)(32), 2(a)(35), 22(c), 28(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the Act, and from rule 22c–1 under the Act. Mutual funds and related persons that desire to charge a sales load payable other than at the time of purchase must first obtain exemptions from sections 2(a)(32), 2(a)(35), and 22(c) of the Act, and rule 22c–1 under the Act. For more discussion of why it is necessary for mutual funds to obtain exemptions from these sections, *see infra* notes 24–29 and accompanying text.

[12] *See, e.g.*, American Variable Annuity Life Assurance Co., *et al.*, Investment Company Act Rel. Nos., 11025 (Jan. 16, 1980) [45 FR 6522, Jan. 28, 1980] (notice of application) and 11045 (Feb. 12, 1980) (order); Nationwide Life Ins. Co. and Nationwide DC Variable Account, Investment Company Act Rel. Nos. 11180 (May 22, 1980) [45 FR 36251, May 29, 1980] (notice of application) and 11218 (June 17, 1980) (order).

[13] Rule 6c–8 under the Act was proposed in Investment Company Act Rel. No. 13048 (Feb. 28, 1983) [48 FR 9532, Mar. 7, 1983] ("Release 13048") and adopted in Investment Company Act Rel. No. 13406 (July 28, 1983) [48 FR 36097, Aug. 9, 1983]. The imposition of deferred sales loads on variable annuity contracts by separate accounts is discussed more fully in Release 13048.

[14] The imposition of deferred sales loads on flexible premium contracts is discussed in Investment Company Act Rel. No. 14234 (Nov. 14, 1984) [48 FR 47208, Dec. 3, 1984] (adopting rule 6e–3(T)) and Investment Company Act Rel. No. 15651 (Mar. 30, 1987) [52 FR 11187, Apr. 8, 1987] (adopting amendments to rule 6e–3(T)). The imposition of deferred sales loads on scheduled premium contracts is discussed in Investment Company Act Rel. No. 14421 (Mar. 15, 1985) [50 FR 11709, Mar. 25, 1985] (proposing rule amendments to rule 6e–2).

[15] *See* E.F. Hutton Investment Series, Inc., Investment Company Act Rel. Nos. 12079 (Dec. 4, 1981) [46 FR 60703, Dec. 11, 1981] (notice of application) and 12135 (Jan. 4, 1982) (order).

[16] *See, e.g.*, Drexel Burnham Fund and DBL Tax-Free Fund, Inc., Investment Company Act Release Nos. 16201 (Jan. 22, 1988) [53 FR 2664, Jan. 29, 1988] (notice of application) and 16284 (Feb. 24, 1988) (order); Keystone America Equity Income Fund, Investment Company Act Rel. Nos. 15633 (Mar. 19, 1987) [52 FR 9598, Mar. 25, 1987] (notice of application) and 15684 (Apr. 15, 19878) (order); FPA Paramount Fund, Inc., Investment Company Act Rel. Nos. 14769 (Oct. 25, 1985) [50 FR 45520, Oct. 31, 1985] (notice of application) and 14803 (Nov. 19, 1985) (order).

[17] *See supra* note 9.

[18] Although much of the discussion below focuses on CDSLs, the proposed rule, if adopted, also would provide exemptions to permit the imposition of non-contingent deferred sales loads.

[19] *See, e.g.*, Eaton Vance California Municipals Trust, Investment Company Act Rel. Nos. 15829 (June 26, 1987) [52 FR 25105, July 2, 1987] (notice of application) and 15883 (July 24, 1987) (order); GNA Investors Trust, Investment Company Act Rel. Nos. 15619 (Mar. 11, 1987) [52 FR 8666, Mar. 19, 1987] (notice of application) and 15872 (Apr. 9, 1987) (order); PaineWebber Investment Series and Master Series, as amended, Investment Company Act Rel. Nos. 15579 [52 FR 5608, Feb. 25, 1987] (notice of application) and 15618 (Mar. 11, 1987) (order).

Although most Applicants do not charge a front-end sales load, the Commission has received several applications from funds and related persons that sought to impose both a front-end sales load and a CDSL on the same shares. *See, e.g.*, Keystone America Equity Income Fund, Investment Company Act Rel. Nos. 15633 (Mar. 19, 1987) [52 FR 9598, Mar. 25, 1987] (notice of application) and 15684 (Apr. 15, 1987) (order); International Heritage Fund and International Heritage Securities, Inc., Investment Company Act Rel. Nos. 15597 (Mar. 2, 1987) [52 FR 7354, Mar. 10, 1987] (notice of application) and 15648 (Mar. 27, 1987) (order); Continental U.S. Government Plus Fund Trust, Investment Company Act Rel. Nos. 14973 (Mar. 7, 1986) [FR 8725, Mar. 13, 1986] (notice of application) and 15029 (Apr. 2, 1986) (order). In addition, some Applicants impose a front-end sales load, but waive that load for certain specified investors. These investors, however, will be subject to a CDSL if their shares are redeemed within a certain period of time after purchase. Of these Applicants, some stated that they have a 12b–1 plan and some did not. *See, e.g.*, Drexel Burnham Fund and DBL Tax-Free Fund, Inc., Investment Company Act Rel. Nos.16201 (Jan. 22, 1988) [53 FR 2664, Jan. 29, 1988] (notice of application) and 16284 (Feb. 24, 1988) (order) (12b–1 plan); FPA Paramount Fund, Inc., Investment Company Act Rel. Nos. 14769 (Oct. 25, 1985) [50 FR 45520, Oct. 31, 1985] (notice of

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underwriter initially pays the sales and promotional expenses associated with the sale of fund shares, including any sales commissions paid to persons that sell the shares. The principal underwriter then recovers the amounts expended through payments under the fund's 12b–1 plan.[20] However, because 12b–1 plans provide that annual payments for distribution may not exceed a specified percentage of the fund's average net assets, or some similar ceiling, it may be several years before the principal underwriter can recover fully the amounts expended on the fund's behalf. According to Applicants, this delay in payment raises the possibility that a shareholder will redeem fund shares before the payments under the funds's 12b–1 plan have reimbursed fully the principal underwriter for expenses incurred in connection with the sale of those shares. Thus, Applicants have sought to impose on each redeeming shareholder a CDSL designed to approximate the amount of unreimbursed expenses.[21]

Applicants generally have represented that no CDSL will be imposed upon the redemption of shares purchased through the reinvestment of dividends or capital gains distributions.[22] In addition, in calculating the amount of a CDSL due upon redemption, shares not subject to any CDSL generally will be redeemed first.[23] After all such shares have been redeemed, the remaining shares will be redeemed in the order purchased.

Applicants routinely have sought exemptions from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act, and from rule 22c–1 under the Act, to the extent necessary to permit a CDSL.[24] Following is a discussion of why exemptions from those sections are necessary and a summary of the arguments typically made by Applicants.

Section 2(a)(32) of the Act defines the term "redeemable security" to be a security that, upon its presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent of those assets. Because the imposition of a CDSL would cause a redeeming shareholder to receive an amount less than net asset value of redeemed shares, Applicants have requested an exemption from section 2(a)(32) to the extent necessary to have shares subject to a CDSL be considered "redeemable securities" for purposes of the Act.[25] In support of their position, Applicants have maintained that, although the imposition of a CDSL, in effect, could cause the shareholder to receive an amount less than the net asset value of his redeemed shares, payment of a CDSL does not prevent a redeeming shareholder from receiving his proportionate share of the fund's current net asset value. Rather, Applicants have argued that payment of a CDSL constitutes only the payment of the same sales load that could have been charged when the shares were purchased.

Section 2(a)(35) defines the term "sales load" to be an amount properly chargeable to sales or promotional expenses that are paid at the time the securities are purchased.[26] Because CDSLs are not charged at the time of purchase, Applicants routinely have requested an exemption from section 2(a)(35). Applicants have maintained that a CDSL, in essence, is a sales load because a CDSL is used to pay expenses relating to sales and promotional activities, and that the basic nature of a CDSL as a sales charge is not changed by the fact that payment is deferred and made contingent upon the occurrence of a certain event.

Section 22(c) of the Act and rule 22c–1 thereunder require that the price of a redeemable security issued by a fund, for purposes of sale, redemption and repurchase, be based on the fund's current net asset value. Because a CDSL would cause a redeeming shareholder to receive an amount less than the net asset value of the redeemed shares, Applicants have sought an exemption from this section and rule, arguing that the redemption price of shares subject to a CDSL is based on current net asset value, and that a CDSL imposed at the time shares are redeemed simply is deducted from the redemption price in arriving at the net proceeds payable to the shareholder.

Section 22(d) of the Act requires a mutual fund, its principal underwriter, and any dealer in redeemable securities issued by a fund to sell securities only at a current public offering price described in the fund's prospectus. Because sales loads (*i.e.*, front-end sales loads) have traditionally been a component of the public offering price, section 22(d) has required historically that all investors be charged the same load.[27] Funds seeking to charge different amounts of sales loads to different classes of investors or for different classes of transactions were, therefore, required to seek an exemption from section 22(d). These applications were codified in rule 22d–1 under the Act [17 CFR 270.22d–1].[28]

By its terms, rule 22d–1 applies to the sale of redeemable securities "at prices that reflect scheduled variations in, or elimination of, the sales load." Because this language contemplates sales loads paid at the time of purchase, the exemption provided by rule 22d–1 does not extend to scheduled variations in deferred sales loads. Therefore, Applicants seeking to offer scheduled variations in, or elimination of, CDSLs to specified classes of investors, or in connection with specified classes of transactions, have requested exemptions from section 22(d).[29] In seeking these exemptions, Applicants have represented that either the scheduled variations would be imposed subject to the conditions set forth in rule 22d–1 under the Act for scheduled variations in front-end sales loads, or the scheduled variations would satisfy equivalent conditions set forth in the particular application.

The Commission granted the CDSL exemptions under section 6(c) of the Act [15 U.S.C. 80a–6(c)].[30] Those exemptions were based on several representations. Applicants represented that a CDSL would be more advantageous to shareholders than a front-end sales load because shareholders would have a greater amount of money available for investment at the time of purchase. Applicants also represented that shareholders would not be charged any greater amount as a CDSL than they could have been charged as a front-end sales load.[31] Other representations related to the administration and calculation of CDSLs.[32]

Discussion

A. Proposed Rule 6c–10

Proposed rule 6c–10 would provide exemptions to permit the use of a deferred sales load, including a CDSL, provided that certain conditions are met. The proposal would obviate the need for funds to obtain individual exemptive orders prior to charging CDSLs. The proposed rule would also permit a fund to use other types of deferred sales loads, such as a sales load deducted in one or more installments over time. Any combination of front-end and contingent or non-contingent deferred sales loads would be permissible.

The proposed rule is intended to provide greater flexibility to mutual funds in their distribution arrangements. In this regard, the proposal should be read together with the recently proposed amendments to rule 12b–1 under the Act;[33] the proposal seeks to afford shareholders the alternative of deferring payments for distribution without the use of 12b–1 plans.

The availability of proposed rule 6c–10 would be subject to specific conditions. These conditions would: (i) Require funds to calculate the amount of a deferred sales load payable upon redemption as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption; (ii) prohibit funds from charging a deferred sales load, or combination of deferred sales load and front-end sales load, that exceeds the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD Rules"); (iii) prohibit funds from charging any amount to shareholders or to the fund that represents interest, or any similar or related charge, on the unpaid balance of a deferred sales load; (iv) prohibit funds from charging a deferred sales load on any amount that represents an increase in the value of fund shares due to capital appreciation; (v) prohibit funds from imposing a deferred sales load on shares, or amounts representing shares, purchased through the reinvestment of dividends or capital gains distributions; (vi) require funds that impose a deferred sales load, all or part of which is payable at the time of redemption, to calculate the amount of the load by considering all shares, or amounts respresenting shares, that are not subject to any deferred sales load to be redeemed first, with all other shares to be considered redeemed in the order purchased, unless a different order is used that would result in a lower deferred sales load; and (vii) permit funds to offer scheduled variations in, or elimination of, deferred sales loads for particular classes of shareholders or transactions, subject to the substantive conditions applicable to front-end sales loads under rule 22d–1. In addition, the proposed rule would prohibit funds that charge deferred sales loads from holding themselves out or being held out as "no-load" funds or being promoted in a manner that is likely to convey to investors the impression that no charges for sales or

application) and 14803 (Nov. 19,1985) (order) (no 12b–1 plan); EuroPacific Growth Fund, Investment Company Act Rel. Nos. 14161 (Sept. 17, 1984) [49 FR 37492, Sept. 24, 1984] (notice of application) and 14195 (Oct. 15, 1984) (order) (12b–1 plan).

[20] These types of 12b–1 plans are known typically as "reimbursement plans."

[21] The CDSL percentage that would be payable for shares redeemed in the first year is calculated to cover fully the distribution expenses incurred in connection with the sale of those shares. The rate at which the CDSL decreases in subsequent years generally reflects the rate at which the underwriter recovers the amounts disbursed through payments under the fund's 12b–1 plan.

[22] *But see* E.F. Hutton Investment Series, Inc., Investment Company Act Rel. Nos. 12079 (Dec. 4, 1981) [46 FR 60703, Dec. 11, 1981] (notice of application) and 12135 (Jan. 4, 1982) (order), which permits the Applicant, in some situations, to impose a CDSL on shares purchased through the reinvestment of dividends and capital gains distributions. This order was subsequently amended to prohibit the imposition of a deferred sales load on such shares. *See* Investment Company Act Rel. Nos. 16426 (June 8, 1988) [53 FR 22255, June 14, 1988] (notice of application) and 16464 (July 1, 1988) (order).

Similarly, Applicants generally have stipulated that a CDSL will not be charged against the portion of a shareholder's account that is attributable to capital appreciation. One order does permit a two percent CDSL to be charged against a shareholder's account, including the portion that is attributable to capital appreciation. However, this order was contingent on the Applicant's representation that no shareholder will pay a charge in any one year (inclusive of initial sales charges, redemption charges, distribution charges, and CDCLs) that is greater than 8.5 percent of the share's purchase price. *See* Baron Asset Fund and Baron Capital, Inc., Investment Company Act Rel. Nos. 15898 (July 28, 1987) [52 FR 28889, Aug. 4, 1987] (notice of application) and 16039 (Oct. 7, 1987) (order).

[23] For purposes of calculating the CDSL, if any, due upon redemption, some Applicants track specific fund shares purchased and redeemed, others track dollar amounts invested and withdrawn, while others use a combination of the two methods. The rule text reflects these alternative formulations. *See infra* text accompanying note 55.

Among the shares that most Applicants redeem first are share equal in value to the excess of the current value of shares in the account over total purchase payments made by the shareholder. *See, e.g.*, Criterion Special Series, Investment Company Act Rel. Nos. 16009 (Sept. 28, 1987) [52 FR 37234, Oct. 5, 1987] (notice of application) and 16072 (Oct. 23, 1987) (order); GNA Investors Trust, Investment Company Act Rel. Nos. 15619 (Mar. 11, 1987) [52 FR 8686, Mar. 19, 1987] (notice of application) and 15672 (Apr. 9, 1987) (order).

[24] *See, e.g.*, Tucker Anthony Mutual Fund, as amended, Investment Company Act Rel. Nos. 15708 (Apr. 28, 1987) [52 FR 16474, May 5, 1987] (notice of application) and 15745 (May 19, 1987) (order); Keystone America Equity Income Fund, Investment Company Act Rel. Nos. 15633 (Mar. 19, 1987) [52 FR 9598, Mar. 25, 1987] (notice of application) and 15684 (Apr. 15, 1987) (order.

[25] One consequence of a determination that a security subject to a CDSL is not a "redeemable security" under section 2(a)(32) is that the fund issuing the security could not meet the definition of an "open-end company" contained in section 5(a)(1) of the Act [15 U.S.C. 80a–5(a)(1)]. Section 5(a)(1) defines an "open-end company" as a "management company which is offering for sale or has outstanding any redeemable security of which it is the issuer."

[26] Section 2(a)(35) of the Act defines "sales load" as [t]he difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. In the case of a periodic payment plan certificate, "sales load" includes the sales load on any investment company securities in which the payments made on such certificates are invested, as well as the sales load on the certificate itself.

[27] *See* Investment Company Act Rel. No. 13183 (Apr. 22, 1983) [48 FR 1987, May 3, 1983], in which the Commission proposed rule 22d–6 (later renumbered rule 22d–1) under the Act. *See also* Public Policy Implications, *supra* note 6, at 221.

[28] Rule 22d–1 was adopted in Investment Company Act Rel. No. 14390 (Feb. 22, 1985) [50 FR 7909, Feb. 27, 1985]. Rule 22d–1 provides that the issuer, principal underwriter, or dealer in redeemable securities may sell those securities at prices that reflect scheduled variations in, or elimination of, the sales load for particular classes of shareholders or transactions, provided that (1) the scheduled variation is applied uniformly to all offerees in the class specified; (2) the fund furnishes to existing shareholders and prospective investors adequate information concerning any scheduled variation as prescribed in applicable registration statement form requirements; (3) the fund revises its prospectus and statement of additional information to describe any new variation prior to making the variation available to purchasers; and (4) the fund informs existing shareholders of the new variation within one year of the date the variation is first made available to purchasers of the fund's shares.

[29] For example, many Applicants stated that the CDSL would be waived if the shares were redeemed under such circumstances as (1) the death or disability of the shareholder; (2) certain distributions from Individual Retirement Accounts (IRAs) or other qualified retirement plans; (3) involuntary redemptions of accounts; or (4) redemptions effected by employees, and spouses and minor children of those employees of the fund, investment adviser, or underwriter. *See, e.g.*, Shearson Lehman Asset Allocation Fund, Investment Company Act Rel. Nos. 15530 (Jan. 12, 1987) [52 FR 2169, Jan. 20, 1987] (notice of application) and 15566 (Feb. 4, 1987) (order); Keystone America Equity Income Fund, Investment Company Act Rel. Nos. 15633 (Mar. 19, 1987) [52 FR 9598, Mar. 25, 1987] (notice of application) and 15684 (Apr. 15, 1987) (order); Paine Webber Investment Series and Master Series, as amended, Investment Company Act Rel. Nos. 15579 (Feb. 13, 1987) [52 FR 5608, Feb. 25, 1987] (notice of application) and 15618 (Mar. 11, 1987) (order). In addition, some Applicants have requested exemptions to permit a CDSL to be reduced or waived for redemptions by shareholders who had purchased fund shares of a specified value. *See, e.g.*, Mackay-Shields Mainstay Series Fund, as amended, Investment Company Act Rel. Nos. 15718 (May 5, 1987) [52 FR 17654, May 11, 1987] (notice of application) and 15758 (May 29, 1987) (order); Tucker Anthony Mutual Funds, as amended, Investment Company Act Rel. Nos. 15708 (Apr. 28, 1987) [52 FR 16474, May 5, 1987] (notice of application) and 15745 (May 19, 1987) (order).

[30] Section 6(c) authorizes the Commission to grant an exemption from the Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes farily intended by the policy and provisions of [the Act]."

[31] While some Applicants specifically made this representation, others were silent on the question. However, none of the exemptive orders issued by the Commission permit the imposition of a CDSL that could exceed the maximum front-end sales load permitted under Article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD Rules").

[32] *See supra* notes 22–23 and accompanying text.

[33] *See* Release 16431, *supra* note 4, at n.84. In Release 16431, the Commission noted that proposed rule 6c–10 would be forthcoming. *Id.*

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promotional expenses are imposed on fund shares.

The conditions are intended to: (i) Reduce investor confusion concerning the amount of deferred sales loads that could be charged and the schedule of any installment payments to be made, (ii) provide shareholders the alternative of deferring sales load payments while minimizing the prospect of these payments being imposed to impede the redemption of fund shares,[34] and (iii) provide that deferred sales loads be imposed and administered in a manner substantially comparable to front-end sales loads. Most of the conditions are based on those developed by the Commission in issuing exemptive orders on individual applications for CDSLs.

1. Scope of the Rule

Paragraph (c)(3) of the proposed rule defines the term "deferred sales load" to mean "any amount properly chargeable to sales or promotional expenses that is or may be deducted directly from a shareholder's account in one or more installments during the term of the investment, or upon redemption, or both." [35] Under that definition, a fund could impose a sales load that is payable by the shareholder while the shares are being held, or upon redemption of the shares, or both. For example, the proposed rule would permit a fund to offer shareholders the option of paying a deferred sales load in installments payable out of the shareholder's account at specified intervals. If the shareholder redeemed before the load was fully paid, the balance could be deducted from the redemption proceeds.[36]

By providing an exemption to permit deferred sales loads, regardless of whether the deferred sales load is subject to any contingency, proposed rule 6c–10 would facilitate providing investors with alternatives to sales loads that are charged at the times fund shares are purchased. In addition, although no exemptive applications have been received from Applicants seeking to impose deferred sales loads other than CDSLs,[37] such arrangements raise few issues that have not been addressed in the context of CDSLs,[38] and there is no apparent reason to distinguish between CDSLs and other types of deferred sales loads.

2. Calculation of Deferred Sales Loads

In the majority of the CDSL exemptive applications, Applicants have, in effect, represented that, when a share subject to a CDSL is redeemed, the maximum CDSL payable on that share will be determined as a specified percentage of the share's net asset value at the time it was purchased. By calculating the CDSL as a percentage of net asset value at the time of purchase, rather than as a percentage of net asset value at the time of redemption, Applicants, in effect, permit investors to ignore the possibility of a higher sales load payment resulting from market appreciation.[39]

Subject to one exception, described below, this method of calculation would be incorporated into paragraph (a)(1)(i) of proposed rule 6c–10. In addition, paragraph (a)(1)(ii) would provide that if a fund imposes a deferred sales load payable in installments, each installment payment would have to be expressed either as specified dollar amount or calculated as a specified percentage of the net asset value at the time of purchase. These requirements are intended to enable shareholders both to (i) calculate readily, at the time of investment, the total deferred sales loads that could be charged and (ii) compare deferred sales loads charged by competing funds.[40]

Although the maximum CDSLs payable under the exemptive orders are calculated generally as a specified percentage of the net asset value of the shares at the time they were purchased, many Applicants stipulated that a lower CDSL would be imposed on redeemed shares whose net asset value had declined since they were purchased. This reduction in CDSL was accomplished by applying the same specified percentage to the reduced net asset value, rather than to the original, higher, net asset value at the time of purchase.[41] Proposed paragraph 6c–10(a)(1)(i) would essentially codify these orders and also require this practice for other deferred sales loads payable upon redemption.

Specifically, paragraph (a)(1)(i) of the proposed rule would require any fund that imposes a deferred sales load payable upon redemption to calculate the deferred sales load as being the lesser of the (i) amount that represents a stated percentage of the net asset value of the shares at the time of purchase, or (ii) the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption. All other provisions of rule 6c–10 would also have to be satisfied. Thus, for example, funds would remain subject to paragraph (a)(4) of the proposed rule, which would prohibit the imposition of a deferred sales load on any amount which represents capital appreciation.[42]

Funds that charge deferred sales loads payable upon redemption would be required to use this method of calculation so that, in a falling market, an investor would not pay a deferred

[34] While there may be benefits to deferring sales load payments, it should be noted that where a fund imposes a 12b–1 fee together with a deferred sales load, the benefits of deferral are diminished, particularly if the fund must pay interest on amounts advanced by the principal underwriter in anticipation of reimbursement. *See* Release 16431, *supra* note 4, at n.90 and accompanying text.

[35] Since a CDSL is a type of deferred sales load, all references in the proposed rule to deferred sales loads include CDSLs. Paragraph (c)(4) of the proposed rule defines a CDSL to be "a deferred sales load that is paid, if at all, at the time of redemption, the amount of which would decrease to zero if the shares were held for a reasonable period of time specified by the company."

[36] Regardless of how the deferred sales load is to be paid, the maximum amount of the deferred sales load that could be imposed and the schedule of any installment payments would have to be disclosed properly in the fund's prospectus. *See infra* notes 61–66 and accompanying text.

[37] While no exemptive applications have been received from Applicants seeking to impose deferred sales loads other than CDSLs, the Division has received a number of informal inquiries on the subject. The subject has also been raised in an article on a related topic. *See* Gardiner, *Mutual Fund Financing of Share Distribution Expenses*, 20 Review of Securities and Commodities Regulation 77, 83 (May 13, 1987) ("Gardiner").

[38] The Commission also has had extensive experience in reviewing a variety of deferred sales load arrangements in the context of separate accounts. *See supra* notes 9–14 and accompanying text.

[39] For example, a 5 percent maximum CDSL on a share whose net asset value at the time of purchase was $100, but at the time of redemption had risen to $150, would be $5, not $7.50.

Applicants have used different terminology to express this method of calculation. For instance, most Applicants represented that the maximum amount of the CDSL would be calculated as a percentage of the "purchase price" of the redeemed securities. Since in the context of a deferred sales load, the entire amount paid is invested, the term "purchase price" is simply another way to express the net asset value of the redeemed shares at the time of purchase.

[40] By requiring that deferred sales loads be calculated as a percentage of the net asset value at the time of purchase, the proposed rule also is intended to make it easier for shareholders to compare funds that charge a deferred sales load with funds that charge a combination of a front-end sales load and deferred sales load. Form N–1A requires front-end sales loads to be calculated as a percentage of the net amount invested, as well as a percentage of the public offering price.

[41] *See, e.g.*, Keystone American Equity Income Fund, Investment Company Act Rel. Nos. 15633 (Mar. 19, 1987) [52 FR 9568, Mar. 25, 1987] (notice of application) and 15684 (Apr. 15, 1987) (order); MetLife-State Street Equity Trust, Investment Company Act Rel. Nos. 15072 (Apr. 24, 1986) [51 FR 16244, May 1, 1986] (notice of application) and 15107 (May 19, 1986) (order).

[42] The rule would not permit, for example, a deferred sales load to be set at 2 percent of the net asset value of the shares at the time of redemption, subject to a cap of 7 percent of the value of the shares at the time of purchase. To do so would permit a sales load on capital appreciation until the cap was reached, in contravention of paragraph (a)(4). For more discussion of the capital appreciation issue, *see infra* text following note 52.

sales load upon redemption that would be higher as a percentage of the investor's total account than would have been the case had the investor paid the load at the time of purchase. Without such a requirement, the proportionate increase in the impact of a sales load might impinge on an investor's freedom to redeem shares.[43] The Commission specifically requests comment as to whether this method of calculation should be permissive rather than mandatory.

Paragraph (a)(1)(ii) would permit, but not require, a fund that imposes a deferred sales load payable on an installment basis to calculate the deferred sales load as being the lesser of (i) the amount that represents a stated percentage of the net asset value of the shares at the time of purchase, or (ii) the amount that represents the same or a lower percentage of the net asset value of the shares at the time the installment is paid, provided again that all other provisions of rule 6c–10 are satisfied. The intent of this provision is to permit a fund that imposes a deferred sales load payable on an installment basis to impose a lower deferred sales load in a falling market. Unlike the comparable provision in proposed paragraph (a)(1)(i), however, proposed paragraph (a)(1)(ii) would be permissive. The Commission is not proposing to require this method of calculation because the concern that deferred sales loads would be imposed in such a manner as to impede the redemption of fund shares is not relevant to deferred sales load payable on an installment basis. The Commission is also concerned that possible investor confusion and difficulties relating to the computation of the sales load would outweigh the benefits that would otherwise exist by using this method of calculation. However, the Commission specifically requests comment on whether, in the context of installment payments, this method of calculation should be mandatory rather than permissive.

3. Reference to the NASD Rules of Fair Practice

Paragraph (a)(2) of proposed rule 6c–10 would limit exemptions to those funds whose maximum amount of all front-end and deferred sales loads do not exceed the maximum sales charge permissible as a front-end sales load under Article III, section 26(d) of the NASD Rules.[44] As stated earlier, none of the exemptive orders issued by the Commission permit the imposition of a CDSL that would exceed the maximum front-end sales load permitted under the NASD Rules. In addition, Applicants that sought to charge both a front-end sales load and a CDSL have stipulated that the aggregate of the front-end sales load and the maximum CDSL payable would not exceed the NASD limitations.[45] Accordingly, paragraph (a)(2) would codify this practice and apply it to the other types of deferred sales loads permissible under the proposed rule.

Article III, section 26(d) of the NASD Rules was adopted in 1975 under the authority granted to the NASD by section 22(b) of the Act [15 U.S.C. 80a–22(b)]. The authority was granted to the NASD as part of the 1970 amendments to the Act,[46] and reflects a Congressional judgment that sales loads on mutual fund shares should allow for both reasonable compensation for sales personnel, broker-dealers and underwriters, and reasonable sales loads to shareholders.[47] While section 22(b) and the NASD Rules speak in terms of sales loads or charges that are included in the public offering price of fund shares, it would be in accordance with the purpose of those provisions to prohibit funds relying on the proposed rule from charging deferred sales loads that, alone or in combination with front-end sales loads, would exceed the maximum charge permissible under the NASD Rules.[48]

As stated previously, the majority of Applicants have been funds that use a combination of a CDSL and a 12b–1 plan as a substitute for charging investors a front-end sales load.[49] Payments under 12b–1 plans are often used to pay sales commissions and other types of distribution costs traditionally covered by sales loads.[50] Accordingly, comment is requested on whether funds with 12b–1 plans should be prohibited from imposing a deferred sales load where the total of all front-end sales loads, deferred sales loads, and 12b–1 fees exceeds the NASD maximum, and whether any distinction should be drawn in such circumstances between non-contingent deferred sales loads and CDSLs.

4. Interest, Carrying and Finance Charges

Proposed paragraph 6c–10(a)(3) would prohibit a fund from imposing a deferred sales load if any charge is imposed on shareholders or the fund that is intended to be a payment of interest or similar charge on the amount of load deferred. Moreover, any penalty or fee charged upon early payment of a deferred sales load would be considered an interest charge and would, therefore, be prohibited by proposed paragraph (a)(3).

Like the exemptions previously granted under section 6(c) of the Act, proposed rule 6c–10 is premised on the recognition that deferred sales loads may be preferable to some investors in lieu of front-end sales loads because investors may have more money available for investment at the time of purchase. This possible benefit would be greatly diminished, if not eliminated, if funds were allowed to impose interest or similar charges on the amount of load deferred.[51] Nevertheless, the possibility exists that some investors may be willing to pay interest on the amount of sales load deferred if the interest rate charged is less than the expected rate of appreciation of the investment. Accordingly, the Commission requests comment on whether funds should be permitted to charge interest on the amount of the load deferred.[52]

[43] *See supra* note 25 and accompanying text.

[44] Article III, section 26(d)(1) of the NASD Rules states that the "maximum sales charge on any transaction shall not exceed 8.5% of the offering price." The section also establishes lower maximum sales charges where fund investors are not given certain favorable treatement with respect to dividend reinvestment and quantity discounts on sales charges imposed on single and multiple share purchases.

[45] *See supra* note 31 and accompanying text.

[46] *See* Investment Company Amendments Act of 1970, Pub. L. No. 91–547, 84 Stat. 1413–1436 (1970).

[47] *See* section 22(b)(1) of the Act. *See also* H.R. Rep. No. 1631, 91st Cong., 2d Sess. 28 (1970); S. Rep. No. 184, 91st Cong., 1st Sess. 7–8 (1969).

[48] On a related matter, under the amendments to rule 12b–1 proposed in Release 16431, if adopted, the existence of a deferred sales load should be considered a surrounding circumstance when directors consider the NASD Rules in adopting or continuing a 12b–1 plan. *See* Release 16431, *supra* note 4, at nn.167–69 and accompanying text.

[49] *See supra* notes 19–21 and accompanying text.

[50] *See Release 16431, supra* note 4, at text following n.122. The Commission has recently proposed that the term "asset-based sales load" be used to refer to payments made under 12b–1 plans. *See id.* at n.194 and accompanying text.

[51] While none of the Applicants impose interest or similar charges on shareholders for the amount of sales loads deferred under a CDSL, many funds that charge 12b–1 fees and CDSLs do pay interest on amounts advanced by the principal underwriter in anticipation of reimbursement. *See supra* note 34.

[52] At least one commentator has raised the issue of whether the use of deferred sales load arrangements should be considered an extension of credit on mutual fund shares that would be prohibited under section 11(d)(1) of the Securities Exchange Act of 1934 [15 U.S.C. 78k(d)(1)]. *See* Gardiner, *supra* note 37, at 83. Neither the Commission nor its staff has formally addressed this issue in the past. Nevertheless, the Commission is aware that, while such arrangements may be viewed as involving an extension of credit whether or not there is an explicit interest charge, the staff of the Division of Market Regulation has informally indicated that it would not regard the use of deferred sales charges on mutual funds as prohibited by section 11(d)(1).

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5. Capital Appreciation of Fund Shares

Paragraph (a)(4) of the proposed rule would prohibit a fund from imposing a deferred sales load on any amount that represents an increase in the value of fund shares due to capital appreciation. Virtually all Applicants have represented that no CDSL will be imposed on such amounts. A sales load on capital appreciation would essentially constitute a performance-based sales load. Such a sales load would also be inconsistent with the argument that deferral of a sales load is mainly a matter of timing and does not affect the amount or nature of the charge. Thus, paragraph (a)(4) would codify a condition of prior exemptive orders, and would apply the restriction to other types of deferred sales loads permissible under the rule.

6. Reinvested Dividends and Capital Gains Distributions

Paragraph (a)(5) of the proposed rule would prohibit the imposition of a deferred sales load on shares purchased through the reinvestment of dividends or captial gains distributions. Applicants for exemptions generally have represented that no CDSL will be imposed on such shares.[53] Paragraph (a)(5) would, therefore, codify this condition of prior exemptive orders, and apply it to the other types of deferred sales loads permissible under the proposed rule.

Although virtually no fund presently charges a CDSL on shares acquired through the reinvestment of dividends, some funds do impose a front-end sales load on such shares. Accordingly, comment is requested on whether a fund should be permitted to impose a deferred sales load on shares purchased through dividend reinvestment.

7. Order of Redemption

Paragraph (a)(6) of the proposed rule would require a fund that imposes a deferred sales load, all or part of which is paid at the time of redemption, to calculate the amount of the load by considering all shares, or amounts representing shares, that are not subject to any deferred sales load to be redeemed first. Thus, the first shares or amounts to be redeemed would be those attributable to capital appreciation, the reinvestment of dividends and capital gains distributions, or to a scheduled variation in the load. Other shares or amounts would then be considered to be redeemed in the order purchased, unless the fund chose to redeem in another order that would result in a lower sales load. Proposed paragraph (a)(6), which is modeled on representations made in a majority of CDSL exemptive applications,[54] is intended to require redemptions in an order that (i) allows investors to receive the maximum benefit from shares not subject to any deferred sales load, (ii) is easily disclosed to and understood by shareholders, and (iii) is compatible with existing bookkeepng systems developed for funds that charge CDSLs.[55]

Given the high degree of control that a fund's investment adviser or principal underwriter may have over the order of redemption, and the fact that the underwriter would benefit from an order that results in the payment of a higher sales load or in the earlier payment of a load, the inclusion of a specific provision in the proposed rule would appear necessary. Paragraph (a)(6) of the proposed rule would, however, permit a different order if the alternative order would result in the redeeming shareholder paying a lower deferred sales load than would be payable under the order specified in the rule.

8. Scheduled Variations

Paragraph (a)(7) of proposed rule 6c–10 would permit a fund to offer a scheduled variation in, or the elimination of, a deferred sales load to classes of shareholders or in connection with classes of transactions specified by the fund, as long as the fund complies with the substantive provisions of rule 22d–1 under the Act.[56] Proposed paragraph (a)(7), therefore, would require a fund that offers a scheduled variation to (i) apply the scheduled variation uniformly to all offerees in the specified class; (ii) furnish to existing and prospective shareholders adequate information concerning the scheduled variation as prescribed in applicable registration statement form requirements; (iii) revise its prospectus and statement of additional information to describe the new variation prior to making the sales load variation available to purchasers of fund shares; and (iv) advise existing fund shareholders of any new scheduled variation within one year of the date such variation is first made available to purchasers of fund shares.

As discussed previously, the Commission has received a large number of requests for exemption from section 22(d) from Applicants that wish to offer the sale of securities subject to scheduled variations in or the elimination of a CDSL.[57] The Commission has granted such exemptions based generally on representations that scheduled variations would be imposed either in compliance with the provisions of rule 22d–1 or equivalent conditions. Paragraph (a)(7) would codify the conditions of prior orders and apply the conditions to other types of deferred sales loads permissible under the rule. By requiring compliance with the substantive provisions of rule 22d–1, the proposed rule would provide that scheduled variations in deferred sales loads would be subject to the same restrictions applicable to front-end sales loads.

Paragraph (a)(7) of the proposed rule also would permit a fund to offer an existing shareholder any new scheduled variation that would waive or reduce the amount of a deferred sales load that had not yet been paid by the shareholder. Rule 22d–1(c), which would be among the substantive requirements incorporated by reference into proposed paragraph (a)(7), requires a fund to amend its prospectus and statement of additional information *before* making any new scheduled variation in a front-end sales load available to purchasers of fund shares. However, a literal application of rule 22d–1(c) to deferred sales loads arguably could prevent a fund from offering the benefit of a new scheduled variation to a shareholder who had already purchased his shares, but had not yet paid any or all of the deferred sales load. Paragraph (a)(7) would state specifically that this practice is permissible. Of course, before the variation is offered on new sales of fund shares, the fund's prospectus and statement of additional information would have to be amended in accordance with rule 22d–1(c).

9. No-Load Labeling

Paragraph (b) of the proposed rule would remove the exemption for any fund that charges a deferred sales load and holds itself out to the public as a "no-load" fund or uses terminology that, given the context and presentation, is likely to convey to investors the impression that the fund does not impose any charges for sales or promotional expenses. Similarly, if the proscribed activity was engaged in by any other person that would otherwise receive an exemption under the proposed rule, any affiliated person of that person, or any affiliated person of such affiliated person, the exemption would be unavailable to the person who engaged in such activity. Removal of the exemption would also pertain to any person relying on the exemption who causes the proscribed action to be taken.

The Commission previously has taken the position that it would be inappropriate and misleading for a fund that imposes a deferred sales load to be held out as a "no-load" fund.[58] Paragraph (b), therefore, would codify an existing Commission position. Further, even if funds that impose a deferred sales load are prohibited from being held out as "no-load," shareholders still could be misled by the use of language which simply avoids using the term "load." For instance, phrases such as "no front-end sales charge," or "no initial sales charge," without appropriate qualifying language, may convey to the prospective shareholder the same impression as the "no-load" label. Subtle distinctions between the term "load" and its descriptive substitutes might not be easily recognized by investors. Therefore, to avoid investor confusion, paragraph (b) of the proposed rule also would prohibit the use of terminology that, given the context and presentation, is likely to convey to investors the impression that no charges for sales or promotional expenses are imposed on fund shares.

10. Application to Series Companies

Paragraph (c)(1) of the proposed rule would provide that, for purposes of the rule, a registered open-end management investment company includes a separate series of such a company. Proposed paragraph (c)(1) would, therefore, require a fund to calculate any deferred sales load payable by considering only an investor's account in the particular series from which the shares are being redeemed. Funds would be prohibited from calculating the deferred sales load payable by aggregating all of an investor's accounts in a fund, regardless of the particular series from which the shares are being redeemed. Virtually all Applicants have represented that the CDSL will be imposed on a series-by-series basis.[59] Accordingly, proposed paragraph (c)(1) would codify ths practice and apply it to the other types of deferred sales loads permissible under the proposed rule.

This aspect of the proposed rule reflects the Commission's view that it is appropriate in the deferred sales load context to treat each individual series of a series fund as a separate fund.[60] The individual series of a series fund are, as a practical matter, separate investment companies. Separate series of a single fund typically have very different investment objectives and shareholders of an individual series hold interests only in that series' segregated portfolio. Because both the objectives and the portfolios of two series in one fund may be vastly different, the best interest of the shareholders of one series may or may not coincide with the best interests of the shareholders of another series. Accordingly, the nature of series companies justifies treating individual series as separate funds under the proposed rule. This would permit each individual series to structure deferred sales loads in the manner best suited to the needs of that series and its shareholders.

The Commission also is concerned that the possible complexity of calculating a deferred sales load on a fund-wide basis without regard to the particular series from which the shares are being redeemed could cause investor confusion and difficulty in computing the deferred sales load. In addition, an investor could be required to pay a higher deferred sales load than the investor would have to pay if the deferred sales load was calculated on the basis of only the series from which the shares were being redeemed. The Commission is aware however, that, in some instances, calculating a deferred sales load on a fund-wide basis may result in a lower deferred sales load. Accordingly, comment is specifically requested on whether and under what circumstances a fund-wide calculation should be permitted.

B. Proposed Amendments to Form N–1A

The Commission recently amended form N–1A to require all fund expenses, including deferred sales loads, to be disclosed in a table located near the front of the propspectus ("fee table").[61] The Commission proposes to modify the table to accommodate the deferred sales loads that would be permitted if rule 6c–10 is adopted. In the revised fee table, the fund would be required to list the maximum amount of deferred load as a percentage of the net asset value at the time of purchase and, where applicable, as a percentage of the net asset value at the time of redemption.[62] Consistent with the approach taken currently in form N–1A, the range of CDSLs over time may be disclosed in the fee table. As is the case with respect to front-end sales loads, however, other scheduled variations in deferred loads would not be listed in the fee table.[63]

Funds that permit deduction of a sales load in installments would list the maximum amount as a "deferred load" and may describe the amount and frequency of installments after the caption "Deferred Sales Load."[64] If the installment amounts or frequency of deduction vary so that a brief description after the caption is not practical, a fund may include a table of installment amounts within the larger fee table, unless the table would be so lengthy as to diminish the utility of the table as a device for easily comparing fund expenses. In that case, the table would direct that only the maximum amount of deferred load be listed in the table and a cross-reference provided to the textual discussion of sales load in the prospectus.[65] Comment is requested

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[52] *But see supra* note 22.

[54] *See supra* note 23 and accompanying text.

[55] *Id.*

[56] *See supra* note 26.

[57] *See Supra* note 27–29 and accompanying text.

[58] *See* Release No. 13048, *supra* note 13, at n. 6.

[59] The Commission has issued at least one exemptive order to an Applicant that represented that the CDSL payable would be the *lesser* of (i) the amount calculated based on the aggregate of the shareholder's accounts in the fund, with the result that aggregate purchase payments and current account value would be determined without regard to the particular series in which purchase payments were allocated or from which the redemption is made, or (ii) the amount calculated based only on the current value and aggregate purchase payments of the particular series from which the shares are being redeemed. *See* E.F. Hutton Investment Series, Inc., Investment Company Act Rel. Nos. 12079 (Dec. 4, 1981) [46 FR 60703, Dec. 11, 1981] (notice of application) and 12135 (Jan. 4, 1982) (order). However, this order was subsequently amended to require the calculation of the CDSL only on a series-by-series basis. *See* Investment Company Act Rel. Nos. 16426 (June 8, 1988) [53 FR 22255, June 14, 1988] (notice of application) and 16464 (July 1, 1988) (order).

[60] The Commission has treated the separate series of a series fund as separate investment companies for purposes of applying other rules under the Act. For example, rule 17a–7 [17 CFR 270.17a–7], which exempts from section 17(a) of the Act the purchase or sale of certain securities between a registered investment company and certain affiliated persons, treats the separate series of a single investment company as separate investment companies. *See* Investment Company Act Rel. No. 11676 (Mar. 10, 1981) [45 FR 17011, Mar. 17, 1981] (adopting rule 17a–7 under the Act). In addition, rule 12d3–1 [17 CFR 270.12d3–1] which, under certain conditions, permits registered investment companies to acquire securities issued by persons engaged directly or indirectly in securities-related businesses, provides that an individual series shall be treated as if it is a separate investment company. *See* Investment Company Act Rel. No. 14036 (July 13, 1984) [49 FR 29362, July 20, 1984] (adopting rule 12d3–1 under the Act). *See also* Release 16431, *supra* note 4 (proposing amendments to rule 12b–1).

[61] Investment Company Act Rel. No. 16244 (Feb. 1, 1988) [53 FR 3192, Feb. 4, 1988] ("Release 16244").

[62] Currently, the table requires that a deferred load be listed as "a percentage of original purchase price or redemption proceeds, as applicable."

[63] *See* Release 16244, *supra* note 61, at Section A.2.

[64] *See* proposed Instruction 5 to Item 2(a)(i) of form N–1A.

[65] *Cf.* Instruction 7 to Item 2(a)(i) of form N–1A, and proposed Instructions 10 and 11 to forms N–3 and N–4 in Investment Company Act Rel. No. 16482 (June 1, 1988) [53 FR 27872, July 25, 1988] ("Release 16482")

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as to whether this approach would provide for adequate disclosure of deferred sales loads permitted under proposed rule 6c–10. In addition, comment is requested as to whether multiple fee tables should be allowed in situations that involve unusual complexity.[66]

C. Request for Comment on Rules 6c–8, 6e–2 and 6e–3 (T)

The imposition of sales loads on a deferred basis originated with separate accounts and is now a common practice in the insurance products area. Separate accounts should be subject to the same procedural requirements as mutual funds, absent a compelling need under the Act for special regulations arising from the nature of that insurance product.[67] The rules and proposed rule amendments governing the imposition of deferred sales loads by separate accounts do not presently include many of the conditions set forth in proposed rule 6c–10. In order to promote competitive equality among investment company products and enable separate account investors to receive benefits and protections comparable to those that would be available to mutual fund investors under proposed rule 6c–10, the Commission is considering whether to propose amendments to rule 6c–8 and 6e–3 (T), and issue revised proposed amendments to rule 6e–2, to require any separate account that wishes to impose a deferred sales load in reliance on those rules to comply with conditions similar to those contained in proposed rule 6c–10. the Commission therefore is requesting comment on insurance considerations relevant to amendments of these rules.[68]

[66] In Release 16482, *supra* note 65, the Commission published a staff guideline for the computation of amounts required to be listed under the Example portion of the fee table in variable annuity separate account prospectuses. A similar guide is under consideration for form N–1A and would be modified, if necessary, to accommodate sales loads deducted from shareholder accounts in installments. Comments is requested as to what modifications, if any, would be needed.

[67] *See* Investment Company Act Rel. No. 15586 (Feb. 26, 1987) [52 FR 7166, 7170, Mar. 9, 1987] (reproposing rule 28a–3 under the Act).

[68] Not all of the proposed conditions in rule 6c–10 would be relevant in the context of separate accounts. For instance, paragraph (a)(2) of proposed rule 6c–10, which would prohibit the imposition of a deferred sales load that, alone or in combination with a front-end sales load, would exceed the maximum charge permissible under the NASD Rules, would not be applicable to separate accounts. Rules 6c–8 and 6e–3(T), and the proposed amendments to rule 6e–2, already prohibit the total maximum sales load imposed on a contract, including any deferred sales load, from exceeding 9 percent of purchase payments. The Commission limited the total amount of sales loads (including deferred sales loads) charged by separate accounts to 9 percent of purchase payments, because such accounts are subject to section 27(a)(1) of the Act [15 U.S.C. 80a–27(a)(1)]. Section 27(a)(1) prohibits a registered investment company issuing periodic payment plan certificates from charging a sales load that exceeds 9 percent of purchase payments.

Cost Benefit of Proposed Action

Proposed rule 6c–10 would not impose any significant burdens on mutual funds. It would benefit mutual funds by reducing the costs that they would incur by virtually eliminating the need to file exemptive applications in this area. The proposed rule also would benefit mutual funds by giving them broader flexibility in the structuring of sales load arrangements. Additionally, the Commission would benefit because its staff would have to review very few applications for exemptive relief in this area. Comments are requested, however, on these matters and on the costs or benefits of any other aspect of the proposed action. Commenters should submit estimates of any costs and benefits perceived, together with any supporting empirical evidence available.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rule 6c–10 and the proposed amendments to form N–1A. The Analysis explains that proposed rule 6c–10 would permit mutual funds to impose sales loads on a deferred basis. It states that the proposed rule would give mutual funds broader flexibility in the structuring of sales load arrangements. The proposed rule could also reduce significantly the number of exemptive applications filed with the Commission in this area, and, therefore, reduce the costs incurred by smaller entities in preparing and filing exemptive applications. The Analysis also states that, to the extent funds would be required to maintain records to track and assess deferred sales loads, such recordkeeping is comparable to that currently practiced by funds with exemptive orders. The proposed amendments to form N–1A would modify that form to accommodate the deferred sales loads that would be permitted if rule 6c–10 is adopted. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Rochelle G. Kauffman, Esq., Mail Stop 5–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Proposed Amendments to Form

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is amended by adding the following citation:

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37, 80a–39; the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted. * * * Section 270.6c–10 is also issued under Secs. 6(c) [15 U.S.C. 80a–6(c)] and 22(c) [15 U.S.C. 80a–22(c)].

2. By adding § 270.6c–10 to read as follows:

§ 270.6c–10 Exemptions for registered open-end management investment companies other than registered separate accounts to impose deferred sales loads.

(a) A company or any other exempted person as defined in paragraph (c)(2) shall be exempt from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), 80a–22(c) and 80a–22(d), respectively] and rule 22c–1 under the Act [17 CFR 270.22c–1] to the extent necessary to permit a deferred sales load to be imposed on shares issued by the company, *provided that*:

(1) (i) The amount of a deferred sales load payable upon redemption is calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption;

(ii) The amount of any installment payment of a deferred sales load is calculated as a specified percentage of the net asset value of the shares at the time of purchase or as a specified dollar amount, except that such a deferred sales load may be calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or a lower percentage of the net asset value of the shares at the time the installment payment is deducted from a shareholder's account;

(2) The maximum amount of any deferred sales load, or combination of deferred sales load and any sales load payable at the time the shares are purchased, does not exceed the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair Practice Promulgated by the National Association of Securities Dealers;

(3) No amount is charged to shareholders or to the fund that is intended as payment of interest or any similar charge related to a deferred sales load;

(4) No deferred sales load is imposed on an amount that represents an increase in the value of company shares due to capital appreciation;

(5) No deferred sales load is imposed on shares, or amounts representing shares, purchased through the reinvestment of dividends or capital gains distributions;

(6) If all or part of a deferred sales load is payable at the time shares are redeemed, then shares, or amounts representing shares, that are not subject to any deferred sales load are redeemed first, and other shares or amounts are then redeemed in the order purchased, *provided, however*, another order of redemption may be used if such order would result in the redeeming shareholder paying a lower deferred sales load; and

(7) The same deferred sales load is imposed on all shareholders except that scheduled variations in or elimination of deferred sales loads may be offered to particular classes of shareholders or in connection with particular classes of transactions if the conditions contained in paragraphs (a) through (d) of rule 22d–1 under the Act [17 CFR 270.22d–1] are satisfied with respect to such scheduled variations. Nothing in this paragraph shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a deferred sales load that has not yet been paid.

(b) Any exempted person, or any affiliated person of such exempted person (or any affiliated person of such affiliated person), who holds a company out to the public, or who, directly or indirectly, causes a company to be held out to the public, as being "no-load" or uses, or who, directly or indirectly, causes the use of, terminology that, given the context and presentation, is likely to convey to investors the impression that no charges for sales or promotional expenses are imposed on shares issued by the company, shall not be entitled to the exemption provided in paragraph (a).

(c) For purposes of this rule:

(1) "Company" means a registered open-end management investment company, other than a registered separate account, and includes a separate series of such a company;

(2) "Exempted person" includes any company and any principal underwriter of, dealer in, or person authorized to consummate transactions in securities issued by such company;

(3) "Deferred sales load" means any amount propely chargeable to sales or promotional expenses that is or may be deducted directly from a shareholder's account in one or more installments during the term of the investment, or upon redemption, or both. This term shall include, but is not limited to, a contingent deferred sales load within the meaning of paragraph (c)(4); and

(4) "Contingent deferred sales load" means a deferred sales load that is paid, if at all, at the time of redemption, the amount of which would decrease to zero if the shares were held for a reasonable period of time specified by the company.

3. By proposing to amend Item 2(a)(i) and Instruction 5 of Item 2(a)(i) of Form N–1A, described in § 239.15A and 274.11A, to read as follows:

Item 2. Synopsis

(a)(i) Include a table furnishing the following information, using the caption provided, in the format illustrated below:

* * * * *

Deferred Sales Load (as a percentage of the net asset value at the time of purchase, and, where applicable, as a percentage of the net asset value at the time of redemption)

* * * * *

Instructions:

* * * * *

Shareholder Transaction Expenses

5. "Deferred Sales Load" includes, but is not limited to, the maximum contingent deferred sales load, expressed as the lesser of a percentage of the net asset value at the time of purchase or of the net asset value at the time of redemption.

(a) The table may not include scheduled variations of a deferred sales load, but, instead, the brief narrative following the table should provide a cross-reference to the narrative portion of the prospectus discussing variations.

(b) If the Registrant permits the sales load to be paid in installments pursuant to rule 6c–10 [17 CFR 270.6c–10], the table should disclose the maximum deferred load, and may disclose the installment amounts (or percentage amounts) and frequency of deduction, which should be described after the caption "Deferred Sales Load," *e.g.*, 2% per year not to exceed 8% of net asset value at the time of purchase. However, if the installment amounts or frequency of deduction vary so that a brief description following the caption is impractical, the Registrant may include a tabular presentation of installments unless such a presentation would be so lengthy as to encumber the larger table. In that case, the Registrant should list only the maximum amount and provide a cross-reference to the narrative portion of the prospectus discussing the sales load.

(c) If the Registrant imposes a contingent deferred sales load as defined in rule 6c–10(c)(4), the table may include a tabular presentation, within the larger table, of the range of the contingent deferred sales load over time.

By the Commission.

Jonathan G. Katz,

Secretary.

November 2, 1988.

[FR Doc. 88–25863 Filed 11–8–88; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3445–5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a request for monthly averaging and a relaxation from Ohio's reasonably available control technology (RACT) requirements for volatile organic compound (VOC) emissions for an architectural aluminum extrusion coating line (K001) at Easco Aluminum Corporation (Easco). This facility is located in Trumbull County, Ohio.

USEPA is proposing to disapprove this SIP revision, because it has not been demonstrated that add-on controls for Easco are economically infeasible, that application of RACT on less than a monthly basis is infeasible, and that a permanent relaxation is warranted.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 9, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43210

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

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Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On September 11, 1985, the Ohio Environmental Protection Agency (OEPA) submitted a proposed revision to its ozone SIP, allowing monthly averaging and relaxation from Ohio's RACT [1] VOC regulations for an architectural aluminum extrusion coating line (K001). This operation is located at the Easco Facility in Trumbull County [2] Ohio, a nonattainment area for ozone.

On March 25, 1986, USEPA notified OEPA that the September 11, 1985, submittal requesting a monthly averaging and a RACT relaxation for Easco was deficient as stated in USEPA's technical support documents (TSD) dated February 5, 1986, and March 14, 1986. OEPA submitted supplemental information on July 7, 1986, and August 18, 1986, to support this revision.

Ohio's SIP

Under the existing federally approved SIP for Ohio, the architectural aluminum extrusion coating line (K001) is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U)(1)(a)(iii) which limits the VOC content of extreme performance coatings applied to miscellaneous metal parts and products to 3.5 pounds of VOC per gallon of coating, minus water. OAC Rule 3745–21–04(C)(28) requires compliance with the limit by December 31, 1982. USEPA approved these rules as meeting the RACT requirement of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

Summary of SIP Revision

Easco's Girard Extrusion Division is an aluminum extrusions facility which applies paint to extruded parts. Easco operates one electrostatic spray coating line which applies a wide range of coatings (approximately 80 different coating per month) to products in the architectural and transportation vehicles industries. Approximately 30 percent of the paint used is white paint that has been in compliance since October 1, 1984. Bronze and several other colors accont for an additional 30 percent which are now in compliance. The remaining 40 percent of coatings are high performance architectural coatings and flexible recreational vehicle coatings.

Easco's aluminum extrusion paint line is subject to OAC Rule 3745–21–09(U)(1)(a)(iii) which limts extreme performance coatings used on miscellaneous metal parts and products to 3.5 pounds of VOC per gallon of coating, minus water. OAC Rule 3745–21–04(C)(28) requires compliance with this limit by December 31, 1982.

The Ohio Environmental Protection Agency has proposed to specify the following allowable VOC emission limitations to be met by November 30, 1985, for Easco's paint line in lieu of OAC Rules 3745–21–09(B) and 3745–21–09(U)(1)(a)(iii):

(a) The VOC content of each coating employed in this coating line, excluding the high performance aluminum coatings, shall not exceed 3.5 pounds of VOC per gallon of coating, excluding water, as a monthly, volume-weighted

(b) In addition, a VOC emission ceiling (for any coating) is established at 6.2 pounds of VOC per gallon of coating employed, minus water, in order to ensure that maintenance of the ozone NAAQS is not jeopardized.

Extended Averaging Time Criteria

USEPA's January 20, 1984, policy memorandum, entitled "Averaging Times for Compliance With VOC Emission Limits", contains the following criteria for evaluating VOC requests for extended averaging.

Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

Criterion 2

Sources in areas lacking approved SIPs, or in areas with approved SIPs but showing measured violations, cannot be considered for longer term averages until the SIP has been revised demonstrating ambient standards attainment and maintenance of reasonable further progress (RFP) (reflecting the maximum daily emissions from the source with long-term averaging).

Criterion 3

A demonstration must be made that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area. This must be accomplished by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP.

Criterion 4

Averaging time must be as short as practicable, and in no case longer than 30 days.

Analysis

For a RACT relaxation to be approved, it must be demonstrated that the RACT-level emission limit for Easco is technically or economically infeasible. OEPA determined the cost-effectiveness, based on an 81 percent overall efficiency and fuel costs only, to be reasonable compared to the cost analysis of the miscellaneous metals Control Techniques Guidelines (CTG).

In addition, for an extension of the averaging time to 30 days to comply with the VOC emission limit, Easco must demonstrate that it is not possible to meet the 3.5 pounds of VOC per gallon of coating, excluding water, limit using a shorter averaging period. Easco has failed to make this demonstration.

If the State demonstrates conclusively that complying low-solvent coastings are unavailable, then the USEPA would consider an alternative RACT determination for the existing coastings.

A detailed discussion of the extent of an acceptable investigation is contained in Appendix A of this document.

USEPA is proposing to disapprove this SIP revision because Easco has not demonstrated that add-on control is economically infeasible and that a shorter averaging period is not practicable.

[1] A defintion of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

[2] Trumbull County is an area that is unmonitored for ozone. Trumbull County adjoins Mahoning County's northern border. The available meteorological data imply that Trumbull County is downwind of Youngstown, Ohio. (Mahoning County), the closest significant source area of ozone precursors and the only adjoining major urbanized area. OEPA submitted a request to revise the attainment status designations, at 40 CFR 81.336, for Mahoning County and Trumbull County from nonattainment to attainment for the ozone national ambient air quality standard (NAAQS). USEPA will propose action on Ohio's request in a separate **Federal Register** notice. Mahoning County and Trumbull County, at this time, are still designated as nonattainment areas. There have been, however, no measured violations of the ozone NAAQS from 1982 through 1985 in Mahoning County.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before December 9, 1988, will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

Under 5 U.S.C. Section 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities, because the effect of this disapproval is to leave in effect existing emission limitations. Therefore, there is no change or any impact on any source or community. Additionally, it applies to only one major corporation, Easco.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: February 6, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note.—This document was received at the office of the Federal Register November 3, 1988.

Note: This appendix will not appear in the Code of Federal Regulations

Appendix A

The Clean Air Act requires that SIPs for areas not in attainment of the NAAQS by August 7, 1977 must provide for the implementation of RACT as expeditiously as practicable. 42 U.S.C. 7502(b)(2). EPA has defined RACT as—

> The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasiability. 44 Fed. Reg. 53762 Col. 1 (September 17, 1979).

Through the issuance of Control Technique Guidelines (TCGs) EPA has identified pollutant control levels that USEPA presumes to constitute RACT for various categories of sources. Where the State finds the presumptive norm applicable to an individual source or group of sources, the State typically adopts requirements consistent with the presumptive norm. However, the presumptive norm is a recommendation, and States may develop case-by-case RACT determinations independently of EPA's recommendation. EPA will approve these RACT determinations as long as the States shows they will satisfy the Clear Air Act's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated.[1]

In light of these requirements, EPA will approve an alternative RACT requirement only if the State demonstrates that the requirement does in fact constitute RACT. To make this demonstration, the State must show that in fact the current SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is not—and is not expected to be—reasonably available. EPA will determine whether the State makes this demonstrations on a case-by-case basis, taking into account all the relevant facts and circumstances concerning each case.

In making these demonstrations, the State must make reasonable efforts to determine and adequately document the availability of complying coatings or other kinds of control, as appropriate. The State is free to consult informally with EPA to determine whether EPA has up-to-date information concerning the availability of particular coatings or other kinds of control. If EPA does not have up-to-date information, the State must undertake further efforts. Examples of these efforts include examining information that is or should be reasonably available to the State, including whether sources operating in the State that are in an industry comparable to the source at issue (*e.g.*, within the same CTG category) achieve compliance with the SIP, by the SIP approved compliance scheduel, by using complying coatings, or other kinds of control, that the source could adopt. In addition, if the State participates in a formally established, multi-state pollution control group or commission, EPA presumes that the State has reasonable access to information concerning whether sources operating in the other States that are members of the group or commission use complying coatings, or other controls. Thus, the State must examine available information concerning sources in those other States. Reasonable efforts by the State also include seeking information reasonably available to the source requesting the SIP revision, including, for example, contacting suppliers available to the source to determine if they have complying coatings or other controls; contacting trade associations to determine if they know of complying coatings or other controls; and reviewing trade publications containing information concerning complying coatings or other controls.

It seems appropriate for the source to make a showing that process changes, such as switching to low solvent coatings are not available. If low solvent coatings (or other process changes) meeting the Control Technique Guideline (CTG)—recommended emission level are shown not to be feasible for a particular source, then the source should identify the lowest level of volatile organic compound (VOC) emissions that is available for that source or type of coating.

Assuming that a source has prepared an adequate showing that abatement ("add-on") controls are not feasible, an example of an action that a source might perform to demonstrate to the State that no complying coating is available would be for the company to place two consecutive advertisements in each of three leading paint trade journals (*e.g., Industrial Finishing, Products Finishing, Modern Paint and Coatings, JCT-Journal of Coatings Technology, American Paint and Coatings Journal*) and describe the application and product specifications for a low solvent paint which they are seeking. This advertisement should solicit paint companies to provide a low VOC product meeting those specifications. The responses which the company receives could be provided to EPA as proof that this type of product does or does not exist. The advertisement in a trade journal would reach a wide number of paint producers, some of whom may have developed suitable low VOC products. When reporting the response to the advertisement to EPA, the State should report the lowest VOC content coating that is available for the particular job, even if that coating does not meet the CTG recommended limit.

[1] More specifically EPA has described RACT and the obligations of the States as follows:

> Along with information, each CTG contains recommendations to the States of what EPA calls the "presumptive norm" for RACT, based on EPA's current evaluation of the capabilities and problems general to the industry. Where the States finds [sis] the presumptive norm applicable to an individual source or group of sources, EPA recommends that the State adopt requirements consistent with the presumptive norm level in order to include RACT limitations in the SIP.
>
> However, recommended controls are based on capabilities and problems which are general to the industry; they do not take into account the unique circumstances of each facility. In may cases appropriate controls would be more or less stringent. States are urged to judge the feasibility of imposing the recommended controls on particular sources, and adjust the controls accordingly.
>
> The presumptive norm is only a recommendation. For any source or group of sources, regardless or whether they fall within the industry norm, the States may develop case-by-case RACT requirements independently of EPA's recommendation. EPA will propose to approve any submitted RACT requirement that the State shows will satisfy the requirements of the Act for RACT based on the economic and technical circumstances of the particular sources being regulated. 44 FR 53762–63 (September 17, 1979).

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Another example of an approach that a metal coater might use in demonstrating the unavailability of complying coatings for a particular product would be to contact a trade association which represents a large number of manufacturers of low VOC coatings (*e.g.*, the Powder Coating Institute). If such an association documents that none of its members can provide a low solvent complying coating for this product, then this trade association reply could be used to show that a reasonable effort had been made to find a complying product and that such a product apparently does not currently exist. If, through efforts such as those described above, the source makes a convincing demonstration that complying products are not available in the industry, State would not be required to make duplicative efforts.

If, after the reasonable efforts described above are expended, and the State finds that no complying coatings or other controls as appropriate are available, EPA itself may make an independent assessment of the availability of such coatings or controls and the compliance status of other sources in the same CTG category.

[FR Doc. 88-25771 Filed 11-8-88; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS-62059A; FRL-3475-5]

Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is announcing that it is extending the period for receipt of written comments on the proposed rule on notification and manifesting for PCB waste activities, which was published in the **Federal Register** on September 26, 1988. The written comment period is being extended until November 25, 1988, to provide additional time to prepare and submit comments. In addition, the date for the informal hearing on the proposed rule is being changed to December 13, 1988.

DATES: Written comments must be received by November 25, 1988. If persons request time for oral comment, EPA will hold an informal hearing in Washington, DC, on December 13, 1988. The hearing is presently scheduled to take place in the public auditorium of the Disabled American Veterans Building, 807 Maine Avenue SW., from 9:30 a.m. to 12:30 p.m. Participants are encouraged to call the TSCA Assistance Office at the telephone number listed under "FOR FURTHER INFORMATION CONTACT" to verify the exact time and location. Written requests to participate in the informal hearing must be received by the TSCA Assistance Office or postmarked no later than November 22, 1988.

ADDRESSES: Submit written comments, in triplicate, identified by the document control number OPTS 62059, by mail to: TSCA Public Docket Office (TS-793), Rm. NE G004, Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedure set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be disclosed publicly by EPA by placing it in the public record without prior notice to the submitter. All written comments will be available for public inspection and copying at the TSCA Public Docket Office, in Rm. NE G004, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202-554-1404), TDD: (202-544-0557).

SUPPLEMENTARY INFORMATION: In the **Federal Register** published on September 26, 1988 (53 FR 37436), EPA announced proposed amendments to its existing disposal and storage regulations for polychlorinated biphenyls (PCBs). The proposed rule notice published on that date included a proposal to add a tracking system for PCB wastes, a proposal to add to the regulations an approval process for certain commercial storers of PCB wastes, and a proposal to add certain recordkeeping and reporting requirements to facilitate the implementation of the proposed waste tracking system. The proposed rule notice published on September 26, 1988 required that written comments be submitted by no later than October 26, 1988. The previously issued notice also stated that upon request, EPA would hold an informal hearing on the proposed rule in Washington, DC, on November 9, 1988.

Since the publication of the proposed rule notice, EPA has received several written requests asking EPA to grant commentors an additional 30 days to prepare and submit their written comments. These petitioners have alleged in their written requests that the 30-day comment period required under the September 26, 1988 proposed rule notice has caused them hardship, and that they need the additional 30 days to provide EPA with meangingful comments. The associations which filed the written requests for extensions represent many of the generators, storers, transporters, and disposers of PCB wastes which the proposed regulatory amendments would affect, and they assert that a 30-day comment period is insufficient to enable them to survey their membership and to consider all aspects of the proposed amendments. Other commentors have telephoned the TSCA Assistance Office (TAO) to express similar concerns about the 30-day public comment period.

EPA believes that there is merit to the requests for extensions of the public comment period. The proposed rule published on September 26, 1988 is a lengthy and fairly complex document, and EPA appreciates the difficulties involved in circulating, reviewing, digesting, and responding to such a significant document within only 30 days. EPA does not believe that the exigencies of promulgating this regulation promptly merit cutting off the submission of detailed and meaningful comments by the petitioners. In addition, EPA believes that there are other persons who have only recently become aware of the proposal. If EPA were to cut off the receipt of comments after only 30 days, these commentors would not enjoy any real opportunity to participate in the rulemaking. Therefore, to avoid the confusion and potential for any unfairness occasioned by the 30-day comment period, EPA is granting petitioners' requests that EPA extend the period for submitting written comments an additional 30 days. Accordingly, main written comments on this proposed rule are now due by no later than Friday, November 25, 1988.

The extension of the written comment period also requires that EPA modify its plans for the informal hearing on this proposed rule. The regulations governing public comment on rules issued under section 6 of the Toxic Substances Control Act require that the due date for public comments be at least 2 weeks prior to any informal hearing. See 40 CFR 750.3(c)(3). Therefore, EPA is designating Tuesday, December 13, 1988 as the date for the informal hearing in Washington, DC.

Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request to participate must be sent to the TSCA Assistance Office at the address listed under "FOR FURTHER INFORMATION CONTACT." The written request to participate must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a nonbinding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. Organizations which do not file main comments in the rulemaking will not be allowed to participate at the hearing, unless the Record and Hearing Clerk grants a waiver of this requirement in writing.

All correspondence relating to requests for extensions to the public comment period have been entered in the public record for this rulemaking.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: October 31, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-26053 Filed 11-7-88; 2:45 pm]
BILLING CODE 6560-50-M

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40 CFR Parts 795 and 799

[OPTS-42084F; FRL 3473-3]

Commercial Hexane; Proposed Pharmacokinetics Test Requirements and Revision of Proposed Test Guideline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is reproposing under section 4(a) of the Toxic Substances Control Act (TSCA) the pharmacokinetics test requirements and the associated test guideline for commercial hexane. This proposed rule complements a final test rule (53 FR 3382; February 5, 1988) issued under section 4(a)(1)(B) of TSCA that requires manufacturers and processors of commercial hexane to test it for subchronic toxicity, oncogenicity, reproductive toxicity, developmental toxicity, mutagenicity, neurotoxicity, and pharmacokinetics.

DATES: Submit written comments on or before December 27, 1988. If persons request an opportunity to submit oral comments by December 9, 1988, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at this meeting, see Unit VII of this preamble. The incorporation by reference in this rule shall become effective 44 days after date of publication of the final rule in the **Federal Register**.

ADDRESS: Submit written comments, identified by the document control number (OPTS-42084F) in triplicate to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is reproposing the pharmacokinetics test requirements and the associated test guideline in 40 CFR 795.323 for commercial hexane (previously proposed May 15, 1986, 51 FR 17854).

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

I. Background

On May 15, 1986, EPA proposed pharmacokinetics testing of commercial hexane at 40 CFR 795.232 (51 FR 17854). Prior to issuing the final test rule for commercial hexane (53 FR 3382; February 5, 1988), EPA determined from an internal review that inadequacies in the proposed guideline for pharmacokinetics testing would limit the ability to obtain meaningful data. When the final test rule for commercial hexane was issued, EPA required that test sponsors perform pharmacokinetics testing but stated that it would propose a revised test standard and reporting requirements at a later date. EPA is now proposing a revised test standard and reporting requirements.

II. Proposed Pharmacokinetics Test Standard

EPA is proposing that the required pharmacokinetics testing for commercial hexane be conducted according to the inhalation and dermal pharamcokinetics test guideline described in this rule. Pharmacokinetics testing is necessary to determine the absorption, distribution metabolism, and excretion of commercial hexane by inhalation and dermal routes of administration. Data from these studies will help EPA evaluate whether exposure to commercial hexane presents an unreasonable risk of injury to human health.

The purposes of these studies are to: (1) Compare the pahrmacokinetics and metabolism of commercial hexane after inhalation and dermal administration, (2) compare the bioavailability of commercial hexane after inhalation and dermal administration and (3) examine the effects of repeated doses on the pharmacokinetics and metabolism of commercial hexane.

EPA proposes that investigators use 7- to 9-week old rats and 5- to 7-week old female guinea pigs for these studies. Both species have been used extensively for percutaneous absorption studies. Two doses would be required in these studies, a "low" dose and a "high" dose. The "high" dose should ideally induce some measurable toxicity such as weight loss. The "low" dose should correspond to a no observed effect level (NOEL). If possible, the same "high" and "low" doses would be administered by inhalation and dermal contact. The proposed studies would measure blood concentrations, urinary and fecal excretion, and metabolites of the test substances.

As stated in the February 5, 1988 preamble, EPA agrees with the American Petroleum Institute (API) that isotopically labelling all component of commercial hexane would be excessively burdensome. Consequently, EPA is proposing that each pharmacokinetics test described in this document be performed separately with commercial hexane containing two different radiolabeled test substances.

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As suggested by API, one test mixture would contain ^{14}C methycyclopentane (MCP) and the other would contain ^{14}C *n*-hexane. (Ref. 1). An intravenous test has also been added to the protocol to obtain baseline information on the metabolism and excretion of the test substances when it is completely absorbed. This data would permit comparisons of absorption and metabolic processes operating via dermal and inhalation routes of exposure by monitoring excretion (urine, feces, expired air) of test substances during the study and tissue distribution of test substances at the end of the study.

EPA believes that this test methodology will provide the basis for a valid and scientifically acceptable test. EPA is proposing that the test guideline described in this document be adopted as the test standard for the pahrmacokinetics studies on commercial hexane. All persons conducting tests would submit plans and conduct tests in compliance with the TSCA Good Labaratory Practice (GLP) Standards found in 40 CFR Part 792.

III. Reporting Requirements

All data developed under this proposed rule would be reported in accordance with TSCA GLPL Standards.

As described in 40 CFR 790.50 under single-phase rulemaking procedures, test sponsors would submit a study plan no later than 45 days before the initiation of pharmacokinetics testing.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. EPA is proposing that the test sponsors complete the pharmacokinetics testing and submit the final report to EPA within 18 months of the effective date of the final test rule establishing pharmacokinetics tests standards and reporting requirements. Interim progress reports would be provided to EPA at 6-month intervals, beginning 6 months after the effective date of the final rule establishing test standards and reporting requirements for the required pharmacokinetics testing, until the final report has been submitted to EPA.

IV. Issues for Comment

EPA is soliciting comments on the suitability of the revised inhalation and dermal pharmacokinetics test standard proposed by the Agency for the testing of commercial hexane.

V. Economic Analysis

To assess the potential economic impact of the final test rule for commercial hexane published in the **Federal Register** of February 5, 1988, EPA has estimated the cost of the testing regimen. Total test costs for the final test rule were estimated to range from $2.2 to $2.9 million. As a result of these costs, EPA determined that the likelihood of significant adverse economic impact was low for the manufacturers of commercial hexane.

In accordance with the specifics of this new protocol, EPA has reevaluated the cost of conducting pharmacokinetics testing on commercial hexane. This procedure is estimated at $208,000 to $262,000. This revised estimate is discussed in more detail in a memorandum in the rulemaking record (Ref. 2).

On the basis of the costs estimated in the economic analysis for the final commercial hexane test rule, and the incremental cost of this pharmacokinetics procedure, the additional testing cost will not result in any change from the conclusions of the prior economic analysis. Refer to the economic impact analysis of the final test rule for commercial hexane for a complete discussion of potential economic impact.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "* * * the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82-140773). On the basis of this study, EPA believes that there will be test facilities and personnel available to perform the testing proposed in this rule.

VII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting in Washington, DC subsequent to the close of the public comment period. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): (202) 554-1404, by December 9, 1988. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to public, active participation will be limited to those persons who arrange to present comments and to designated EPA participants. Persons wishing to attend should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, EPA would transcribe the meeting and include the written transcript in the rulemaking record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42084F). This record includes the basic information considered by EPA in developing this rule and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this proposed test standard consisting of:

(a) Notice of final rule of EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(b) Notice of proposed test rule on methylcyclopentane and commercial hexane (51 FR 17854; May 15, 1986).

(c) Notice of final test rule for commercial hexane and methylcyclopentane (53 FR 3382; February 5, 1988).

B. References

(1) American Petroleum Institute (API). Letter from Steven M. Swanson, Director, Health and Environmental Affairs Department, to USEPA, transmitting comments on the MCP and commercial hexane proposed test rule (September 15, 1986).

(2) USEPA. Internal memorandum from Mark Dreyfus, Regulatory Impacts Branch, to Catherine Roman, Test Rules Development Branch, discussing the cost of the new pharmacokinetics testing protocol for commercial hexane (August 2, 1988).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, NE-GOO4, 401 M St. SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

IX. Other Regulatory Requirements

A. Executive Order 12291

EPA has judged that the final test rule for commercial hexane was not subject to the requirement of a Regulatory Impact Analysis under Executive Order 12291. EPA has determined that this proposed test rule for pharmacokinetics testing does not alter this determination.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA has certified that the final test rule for commercial hexane would not have a significant impact on a substantial number of small businesses. The proposed pharmacokinetics test standard and reporting requirements do not change this determination.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 795 and 799

Chemicals, Environmental protection, Hazardous substances, Laboratories, Recordkeeping and reporting requirements, Testing.

Dated: November 1, 1988.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Chapter I, Subchapter R, be amended as follows:

1. In Part 795:

PART 795—[AMENDED]

a. The authority citation would continue to read as follows:

Authority: 15 U.S.C. 2603.

b. By adding new § 795.232 to read as follows:

§ 795.232 Inhalation and dermal pharmacokinetics of commercial hexane.

(a) *Purposes.* The purposes of these studies are to:

(1) Determine the bioavailability of the test substances after dermal and inhalation administration.

(2) Compare the pharmacokinetics and metabolism of the test substances after intravenous, dermal, and inhalation administration.

(3) Examine the effects of repeated doses on the pharmacokinetics and metabolism of the test substances.

(b) *Definitions.* (1) "Bioavailability" refers to the rate and relative amount of administered test substance which reaches the systemic circulation.

(2) "Metabolism" means the study of the processes by which a particular substance is absorbed, distributed, biotransformed, stored, and excreted by the body.

(3) "Percent absorption" means 100 times the ratio of the total radioactivity excreted following dermal or inhalation administration and total radioactivity excreted following intravenous administration of the test substance.

(4) "Pharmacokinetics" means the study of the rates of absorption, tissue distribution, biotransformation, and excretion.

(5) "Low dose" should correspond to the no-observed-effect level (NOEL).

(6) "High dose" should induce some measurable effect such as weight loss.

(7) "Test substance" refers to the nonradioactive and both radiolabeled mixtures (^{14}C *n*-hexane and ^{14}C methylcyclopentane) of commercial hexane used in the testing.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The rat shall be used for pharmacokinetics testing because it has been used extensively for metabolic and toxicological studies. The female guinea pig shall be used for dermal bioavailability tests.

(ii) *Animal strains.* Adult male and female rats and female guinea pigs shall be used for testing. The rats shall be 7 to 9 weeks old and their weight range should be comparable from group to group. The female guinea pigs shall be 5 to 7 weeks old, and their weight range should be comparable from group to group. The animals shall be purchased from a reputable dealer and shall be permanently identified upon arrival. The animals shall be selected at random for the testing groups, and any animal showing signs of ill health shall not be used.

(iii) *Animal care.* (A) Animal care and housing shall be in accordance with DHEW Publication No. (NIH)-86-23, revised 1985, "Guide for the Care and Use of Laboratory Animals."

(B) The animals shall be housed in environmentally controlled rooms with at last 10 air changes per hour. The rooms shall be maintained at a temperature of 24 ± 2 degrees centigrade and humidity of 50 ± 10 percent with a 12-hour light/dark cycle per day. The animal subjects shall be kept in a quarantine facility for at least 7 days prior to use, and shall be acclimated to the experimental environment for a minimum of 48 hours prior to treatment.

(C) During the acclimatization period, the rats and guinea pigs shall be housed in suitable cages. All animals shall be provided with certified feed and tap water *ad libitum.* The guinea pig diet shall contain adequate amounts of ascorbic acid.

(2) *Administration of test substances*—(i) *Test substances.* The study will require the use of nonradioactive and radioactive test substances. These test substances shall be identical in chemical composition, and shall contain at least 40 liquid volume percent but no more than 55 liquid volume percent *n*-hexane and no less than 10 liquid volume percent methylcyclopentane (MCP) and otherwise conform to the specifications prescribed in the American Society for Testing and Materials Designation D 1836-83 (ASTM D 1836), "Standard Specification for Commercial Hexanes", published in the *1986 Annual Book of ASTM Standards: Petroleum Products and Lubricants,* ASTM D 1836-83, pp. 966-967, 1986, which is incorporated by reference. ASTM D 1836 is available for public inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, DC, and copies may be obtained from the EPA, TSCA Public Docket Office, Room NE G-004, 401 M Street SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Office of the Federal Register in

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accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. This material is incorporated as it exists on the date of approval, and a notice of any change in this material will be published in the **Federal Register**. Two kinds of radioactive test substances shall be tested. ^{14}C *n*-hexane shall be the only radioactive component of one, and ^{14}C MCP shall be the only radioactive component of the other radioactive test substance.

(ii) *Dosage and treatment*—(A) *Intravenous.* The low dose of each test substance, in an appropriate vehicle, shall be administered to four rats of each sex.

(B) *Inhalation.* Two concentrations of each test substance shall be used in this portion of the study, a low concentration and a high concentration. The high concentration should ideally induce some overt toxicity, while the low concentration should correspond to the NOEL. In addition, the high concentration should not exceed the lower explosive limit of the test substance. Inhalation treatment shall be conducted using a "nose-cone" or "head only" apparatus to reduce ingestion of the test substance through "grooming."

(C) *Dermal—(1) Dermal absorption studies.* Dermal treatment should be conducted by the methodology of System, A.S., Dames, B.L. and Niemeier, R.W., "*In vivo* percutaneous absorption studies of volatile solvents in hairless mice. I. Description of a skin depot", In: *Journal of Applied Toxicology* 6:43–46, (1986), or by some other suitable modification because the test substances have significant volatility. The high and low doses shall be tested in rats and guinea pigs.

(*2*) *Washing efficacy study.* Before performing the dermal absorption studies, a washing efficacy study shall be conducted to assess the removal of the applied low dose of test substance by washing the exposed skin area with soap and water, and an appropriate organic solvent. The low dose shall be applied to separate groups of four rats and four female guinea pigs in accordance with paragraph (c)(2)(ii)(C)(*1*) of this section. Two to five minutes after application, the treated areas of two rats and two guinea pigs shall be washed with soap and water and the treated areas of the remaining animals shall be washed with an appropriate solvent. The amount of test substance recovered in the washing solutions shall be determined to assess the efficacy of its removal by washing.

(iii) *Dosing and sampling schedule*—(A) *Rat studies.* Each experimental group shall contain at least four animals of each sex. After administration of the test substance, each rat shall be placed in an individual metabolic unit for collection or urine, feces, and expired air. For the inhalation of and dermal studies, excreta from the rats shall also be colleced during the exposure periods. At the end of each collection period, the metabolic cages shall be cleaned to recover any excreta that might adhere to the cages. All studies, except the repeated dose studies, shall be terminated at 7 days, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first. All studies described below shall be conducted separately with each radiolabeled test substance.

(*1*) *Intravenous study.* Group A shall be given a single intravenous low dose of the labeled test substance (containing either ^{14}C *n*-hexane or ^{14}C MCP) at the low dose.

(*2*) *Inhalation studies.* A single 6-hour exposure period shall be used for each group.

(*i*) Group B shall be exposed to a mixture of the labeled test substance in air at the low concentration.

(*ii*) Group C shall be exposed to a mixture of the labeled test substance in air at the high concentration.

(*3*) *Dermal studies.* The test substance shall be applied and kept on the skin for a minimum of 6 hours. At the time of removal of the covering apparatus, the treated area shall be washed with an appropriate solvent to remove any test substance that may be on the skin surface. The covering apparatus components and the washing solutions shall be assayed to recover residual radioactivity. At the termination of the studies, each animal shall be sacrificed and the exposed skin area removed. An appropriate section of the skin shall be solubilized and assayed for radioactivity to ascertain whether the skin acts as a reservoir for the test substance.

(*1*) Group D shall be given one dermal, low dose of the labeled test substance.

(*ii*) Group E shall be given one dermal, high dose of the labeled test substance.

(*4*) *Repeated dosing study.* Group F shall receive a series of single daily 6-hour inhalation doses of nonradioactive test substance at the low dose over a period of at least 7 days. A single 6-hour inhalation dose of the radioactive test substance (^{14}C *n*-hexane or ^{14}C MCP) at the low dose shall be administered 24 hours after the last nonradioactive dose. Following administration of the radioactive substance, the rats shall be placed in individual metabolic cages. Excreta shall also be collected during the exposure periods. The study shall be terminated 7 days after the last dose, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(B) *Guinea pig studies*—(*1*) *Intravenous study.* The study conducted on group A as specified in paragraph (c)(2)(iii)(A)(*1*) of this section shall be repeated using four guinea pigs per group (group G).

(*2*) *Dermal studies.* The studies conducted on groups D and E as specified in paragraph (c)(2)(iii)(A)(*3*) of this section shall be repeated using four female guinea pigs per group.

(i) Group H shall be given one dermal low dose of test labeled test substance.

(*ii*) Group I shall be given one dermal high dose of labeled test substance.

(*iii*) After administration of the test substance, each guinea pig shall be kept in a separate metabolic unit to facilitate collection of excreta. At the end of each collection period, the metabolic units shall be cleaned to recover any excreta that might adhere to them. All studies shall be terminated at 7 days, or after 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(3) *Types of Studies*—(I) *Pharmacokinetics studies*—(A) *Rat studies.* Groups A, B, C, D, E, and F shall be used to determine the kinetics of absorption of the test substance. In animal subjects administered the test substance intravenously (i.e., Group A), the concentration of radioactivity in blood and excreta shall be measured following administration. In animal subjects administered the test substance by the inhalation and dermal routes (i.e., Groups B, C, D, E, and F), the concentration of radioactivity in blood and excreta shall be measured at selected time intervals during the following exposure period to allow calculations of uptake, half lives, and clearance. In addition, in the groups administered the test substance by inhalation (i.e., Groups B, C, and F), the concentration of test substance in the exposure chamber air shall be measured at selected time intervals during the exposure period.

(B) *Guinea pig studies.* Groups H and I shall be used to determine the extent to which the test substance is metabolized and absorbed through the skin. The amount of radioactivity in excreta shall be determined at selected time intervals that will enable the measurement of kinetic processes.

(ii) *Metabolism studies—Rats.* Groups A, B, C, D, E, and F shall be used to determine the metabolism of the test substance. Excreta (urine, feces, and expired air) shall be collected for identification and measurement of the quantities of test substance and metabolites.

(*4*) *Measurements*—(i) *Pharmacokinetics.* Four animals from each group shall be used for these purposes.

(A) *Rat studies*—(*1*) *Bioavailability.* The levels of radioactivity shall be determined in whole blood, blood plasma or blood serum at 15 minutes, 30 minutes, 1 hour, 2 hours, 8 hours, 24 hours, and 96 hours after administration of the intravenous and dermal doses, and at the same intervals after the last inhalation exposure.

(*2*) *Extent of absorption.* The total quantities of radioactivity shall be determined for excreta collected daily for 7 days, or after at least 90 percent of the radioactivity has been recovered in the excreta.

(*3*) *Excretion.* The quantities of radioactivity eliminated in the urine, feces, and expired air shall be determined separately at time intervals that provide accurate measurement of clearance and excretory rates. The collection of carbon dioxide may be discontinued when less than one percent of the dose is found to be exhaled as radioactive carbon dioxide in 24 hours.

(*4*) *Tissue distribution.* At the termination of each study, the quantities of radioactivity shall be determined in blood and in various tissues, including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lungs, muscle, skin, spleen, and residual carcass of each animal.

(*5*) *Change in pharmacokinetics.* Results of pharmacokinetics measurements (i.e., biotransformation, extent of absorption, tissue distribution, and excretion) obtained in rats receiving the single low inhalation dose of the test substance (Group B) shall be compared to the corresponding results obtained in rats receiving repeated inhalation doses of the test substance (Group F).

(B) *Guinea pig studies—Extent of absorption.* The total quantities of radioactivity in excreta shall be determined daily for 7 days or until 90 percent of the radioactive dose has been excreted.

(ii) *Metabolism.* Four animals from each group shall be used for these purposes. (A) *Rat Studies*—(*1*) *Biotransformation.* Appropriate qualitative and quantitative methods shall be used to assay urine, feces, and expired air collected from rats. Efforts shall be made to identify any metabolite which comprises 5 percent or more of the dose eliminated.

(*2*) *Changes in biotransformation.* Appropriate qualitative and quantitative assay methods shall be used to compare the composition of radioactive compounds in excreta from rats receiving single inhalation dose (Groups B and C) with rats receiving repeated inhalation doses (Group F).

(B) [Reserved]

(d) *Data and reporting.* The final test report shall include the following:

(1) *Preservation of results.* Numerical data shall be summarized in tabular form. Phamacokinetics data shall also be presented in graphical form. Qualitative observations shall also be reported.

(2) *Evaluation of results.* All data shall be evaluated by an appropriate statistical method.

(3) *Reporting results.* In addition to the reporting requirements as specified in 40 CFR Part 792, the following information shall be reported.

(i) Species and strains of laboratory animals.

(ii) Chemical characterization of the test substances, including: (A) For the radioactive test substances, information on the sites and degree of radiolabeling, including type of label, specific activity, chemical purity, and radiochemical purity.

(B) For the nonradioactive test substance, information on chemical purity.

(C) Results of chromatography.

(iii) A full description of the sensitivity, precision, and accuracy of all procedures used to obtain the data.

(iv) Percent and rate of absorption of the test substances after inhalation and dermal exposures to rats and dermal exposure to guinea pigs.

(v) Quantity and percent recovery of radioactivity in feces, urine, expired air, and blood. For dermal studies with rats and guinea pigs, include recovery data for skin, skin washings, and residual radioactivity in the recovering apparatus as well as results of the washing efficacy study.

(vi) Tissue distribution reported as quantity of radioactivity in blood, in various tissues including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lung, muscle, skin, and spleen and in residual carcass of rats.

(vii) Biotransformation pathways and quantities of the test substances and metabolites in excreta collected after administering single high and low doses to rats.

(viii) Biotransformation pathways and quantities of test substances and metabolites in excreta collected after administering repeated low doses to rats.

(ix) Pharmacokinetics models developed from the experimental data.

2. In Part 799:

a. The authority citation would continue to read as follows:

Authority: 15 U.S.C. 2063, 2611, 2625.

b. § 799.2155 by adding paragraph (c)(8) and by revising paragraph (d) to read as follows:

§ 799.2155 Commercial hexane.

* * * * * *

(c) * * *

(8) *Pharmacokinetics*—(i) *Required testing.* Pharmacokinetics testing shall be conducted with the test substances specified in paragraph (a)(2) of this section and in § 795.232(c)(2)(i) of this chapter. Two separate tests will be run, one with the test substance labeled with ^{14}C *n*-hexane, and the other with the test substance labeled with ^{14}C methylcyclopentane, in accordance with § 795.232 of this chapter. In addition, the rat strain used shall be the same as the strain used in the other tests required under this section.

(ii) *Reporting requirements.* (A) The inhalation and dermal pharmacokinetics test shall be completed and the final report submitted to EPA within 18 months after [the effective date of the final rule specifying the pharmacokinetics test standard and reporting requirements for commercial hexane].

(B) Interim progress reports shall be submitted to EPA for the inhalation and dermal pharmacokinetics test at 6-months intervals, beginning 6 months after the effective date of the final test rule specifying the pharmacokinetics test standard for commercial hexane, until the final report is submitted to EPA.

(d) *Effective date.* (1) Section 799.2155 is effective on November 17, 1988 except for paragraph (c)(8) which is effective [44 days after publication of the final rule incorporating this amendment].

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the respective paragraphs of this section.

[FR Doc. 88–25929 Filed 11–8–88; 8:45 am]
BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[GSAR Notice No. 5–268]

General Services Administration Acquisition Regulation; Economic Price Adjustment Clause for Multiple Award Schedule Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

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SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise Alternate I of the clause entitled "Economic Price Adjustment-FSS Multiple Award Schedule Contracts" at GSAR 552.216–71 to provide for price adjustments in multiyear contracts that are for periods of more than 3 years. This change is proposed as a result of the recent policy decision by the Federal Supply Service permitting the award of Multiple Award Schedule (MAS) contracts for periods of up to 5 years. The intended effect is to provide uniform procedures for contracting under the regulatory system.

DATE: Comments are due in writing on or before December 9, 1988.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This exemption applies to this proposed rule.

The GSA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would simply modify th existing Economic Price Adjustment clause used in multiyear Multiple Award Schedule contracts to make the language more general so that it will apply to multiyear contracts of varying terms. The existing clause is written in contemplation of a 3 year contract period.

The Economic Price Adjustment Clause at GSAR 552.216–71 contains an information collection requirement which was previously submitted to the OMB for review under section 3504(h) of the Paperwork Reduction Act. This proposed revision has also been submitted to OMB for approval. Comments on the information collection requirements in GSAR 552.216–71 may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the collection is "48 CFR 552.216–71, Economic Price Adjustment Clause." The clause requires MAS contractors submission of certain pricing information when requesting a price adjustment under an MAS contract. The contracting officer uses the information to determine whether the requested price adjustment is reasonable. The respondents are MAS contractors requesting price adjustment under MAS contracts that contain the Economic Price Adjustment clause. The estimated total annual burden for this collection is 2,186 hours. This is based on estimated average burden hours per response of .5, a proposed frequency of 1.5 responses per respondent, and an estimated number of likely respondents of 2,914.

List of Subjects in 48 CFR Part 552

Government procurement.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

Subpart 552.2—Text of Provisions and Clauses

2. Section 552.216–71 is amended to change the date that follows Alternate I, to revise paragraph (c) of the Alternate clause, and to revise the text that follows the asterisk at the end of the clause to read as follows:

§ 552.216–71 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

* * * * *

Alternate I (October 1988)

* * * * *

(c) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed —*—percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change."

(End of Clause)

*Insert the percentage appropriate at the time the solicitation is issued. This percentage should be determined based on the trend established by an appropriate index such as the Producer Prices and Price Index. A ceiling of more than 10 percent must be approved by the contracting director.

Dated: October 21, 1988.

Ida M. Ustad,

Director, Office of GAS Acquisition Policy and Regulations.

[FR Doc. 88–25885 Filed 11–8–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Parts 932 and 952

Acquisition Regulation

AGENCY: Department of Energy (DOE).

ACTION: Proposed rule.

SUMMARY: This proposed rule, when issued as a final rule, will amend the Department of Energy Acquisition Regulation (DEAR), by deleting the DOE unique prompt payment policies, procedures and contract clauses established in the DEAR to implement the requirements of the Prompt Payment Act (Pub. L. 97–177) and require the use of new prompt payment policies, procedures and contract clauses recently established, on a Federal-wide basis, in the Federal Acquisition Regulation (FAR). .

DATE: Written comments must be submitted no later than (December 9, 1988.

ADDRESS: Comments must be addressed to: Rudolph J. Schuhbauer, U.S. Department of Energy, Business and Financial Policy Division (MA–422), 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Business and Financial Policy Division (MS–422), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 586–8175.

Paul A. Gervas, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Washington, DC 20585, (202) 586–6906.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Public Hearing
III. Public Comments

I. Background

Under Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The purpose of this rule is to revise the DEAR, as necessary, to implement the requirements of the Prompt Payment Act as implemented by Office of Management and Budget (OMB) Circular A–125, Prompt Payment, and FAR Subpart 32.9, Prompt Payment.

A brief description of DEAR amendments follows:

DEAR Section 932.111, Contract Clauses, is deleted in its entirety.

DEAR Subpart 932.71, Contract Payments, is deleted in its entirety.

DEAR Subpart 932.9, Prompt Payment, is added as a new Subpart in order to establish certain DOE specific policies and procedures required to implement the prompt payment provisions specified in FAR Subpart 32.9.

Under Part 952, Solicitation Provisions and Contract Clauses, Section 952.232, including Subsections 952.232–1 through 952.232–8, 952.232–10, and 952.232–70 through 952.232–73, is deleted in its entirety.

II. Procedural Requirements

A. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 27, 1981), this rulemaking has been reviewed by DOE. DOE has concluded that the rule is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rule. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.*, 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

List of Subjects in 48 CFR Parts 932 and 952

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, on September 14, 1988.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 932—CONTRACT FINANCING

1. The authority citation for Parts 932 and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

932.111 [Removed]

2. Section 932.111 is removed in its entirety.

Subpart 932.71—[Removed]

3. Subpart 932.71, consisting of sections 932.7100, 932.7101, 932.7102, 932.7103, 932.7104, 932.7105, 932.7106, and 932.7107 and subsections 932.7107–1 and 932.7107–2, is removed in its entirety.

4. Part 932 is amended by adding new Subpart 932.9, Prompt Payment, consisting of sections 932.908 and 932.970, as follows:

Subpart 932.9—Prompt Payment

932.908 Contract clause
932.970 Implementing DOE Policies and Procedures

Subpart 932.9—Prompt Payment

932.908 Contract Clause.

(c) The contracting officer shall incorporate paragraph (c), *Electronic Funds Transfer*, promulgated as Alternate II at FAR 52.232–25, in solicitations and contracts containing the basic Prompt Payment clause or its Alternate I as prescribed at FAR 32.908(a) and FAR 32.908(b), respectively.

932.970 Implementing DOE Policies and Procedures.

(a) *Invoice payments*—(1) *Contract settlement date.* For purposes of determining payment due dates on a final invoice pursuant to paragraph (a)(2)(ii) of the basic Prompt Payment clause and (a)(2)(i)(B) of its Alternate I at FAR 52.232–25, contract settlement occurs when the contracting officer determines that the contractor has complied with all contract terms and conditions, including all administrative requirements (e.g., execution and delivery of contractor's release of claims, execution of understandings setting forth final indirect costs rates, establishment of final contract price). In addition, for purposes of determining any interest penalties under cost-type contracts, the effective date of contract settlement shall be the effective date of the final contract modification issued to acknowledge contract settlement and to closeout the contract.

(2) *Constructive acceptance periods.* It is expected that, in the majority of cases, Government acceptance or approval can occur within the standard constructive acceptance or approval periods specified in paragraphs (a)(6)(i) of the basic Prompt Payment clause and

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(a)(5)(i) of its Alternate I at FAR 52.232–25. However, the contracting officer should coordinate these provisions with the DOE official(s) that will be responsible for performing the acceptance and/or approval function(s). Where the contracting officer determines, in writing, on a case-by-case basis, that it is not reasonable or feasible for DOE to perform the acceptance or approval function within the standard period, the contracting officer should specify a longer constructive acceptance or approval period, as appropriate. Considerations include, but are not limited to, the nature of supplies or services involved, geographical site location, inspection and testing requirements, shipping and acceptance terms, and available DOE resources.

(b) *Contract financing payments.* (1) The standard payment due date to be specified by the contracing officer in paragraphs (b)(2) of the basic Prompt Payment clause and its Alternate I at FAR 52.232–25 shall normally be 30 days for progress payments and 30 days for interim payments on cost-type contracts.

(2) Contracting officers may specify payment due dates that are less than the standard when a determination is made, in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be required to finance contract work. In such cases, the contracting officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 952.232—[Removed]

5. Subpart 952.232, consisting of subsections 952.232–1, 952.232–2, 952.232–3, 952.232–4, 952.232–5, 952.232–6, 952.232–7, 952.232–8, 952.232–10, 952.232–70, 952.232–71, 952.232–72 and 952.232–73, is removed in its entirety.

[FR Doc. 88–25889 Filed 11–8–88; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Zones In Which Lead Shot Will Be Prohibited For The Taking of Waterfowl, Coots and Certain Other Species In The 1989–90 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The use of lead shot in waterfowl Hunting poses an unnecessary risk to certain migratory birds because when the spent shot is consumed it often produces lead poisoning and death. Accordingly, this proposed rule describes the zones in which the use of lead shot would be prohibited for hunting waterfowl, coots and certain other species in the 1989–90 season. The zones described consist of (1) the same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in § 20.108 of Title 50 of the Code of Federal Regulations (50 CFR) for the 1988–89 hunting season, (2) the added counties identified for 1989–90 in Appendix N of the Final Supplemental Environmenfal Impact Statement (SEIS) on the Use of Land Shot for Hunting Migratory Birds in the United States (see Table 1 in Supplementary Information) and (3) those additional areas indentified by the States where acceleration of the nontoxic shot phase-in schedule is considered appropriate because of potential administrative, enforcement and/or lead poisoning problems. States that have declared a statewide ban on the use of lead shot waterfowl and coot hunting are so noted.

DATE: Comments on this proposal will be accepted until December 9, 1988.

ADDRESS: Submit comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Buidling, Washigton, DC 20240 (202/254–3207).

SUPPLEMENTARY INFORMATION: This rule implements the third year (1989–90) of the 5-year component of the strategy to phase-in a nontoxic shot requirement for waterfowl hunting nationwide by 1991–92, as set out by the preferred alternative of the Final SEIS on the Use of Lead Shot for Hunting Migratory Birds in the United States published in June 1986 (FES 86–16). The SEIS and consequent rulemaking imposing nontoxic shot requirements results from the Secretary of Interior's responsiblities under the Migratory Bird Treaty Act (MBTA), as amended (16 U.S.C. 703 *et seq.;* 40 Stat. 755), and the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), to decide whether, where and how migratory bird hunting will allowed. A critical element in the Department of the Interior's deliberations and decision to implement and enforce regulations establishing nontoxic shot zones nationwide has been the determination that lead poisoning resulting from waterfowl hunting is a significant annual mortality factor in certain migratory birds.

Information detailing the scientific basis of concluding that lead shot from waterfowling is causing lead poisoning in certain migratory birds and the development of the strategy to eliminate lead toxicity as a major mortality factor, including discussions of the issues for and against lead/steel shot, appears in the SEIS and the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987–88 and subsequent years published in the **Federal Register** on June 27, 1986 (51 FR 23444). The final rule for the proposed rule was published in the **Federal Register** on November 21, 1986 (51 FR 42103). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative VII$_3$), the June 27, 1986, proposed rule and in the Record of Decision confirming the preferred alternative and published in the **Federal Register** on August 20, 1986 (51 FR 29673). Additional information relating to the imposition of nontoxic shot zones nationwide, according to the 5-year schedule, is contained in the final rule for the 1987–88 and 1988–89 waterfowl hunting seasons published in the **Federal Register** on Tuesday, July 21, 1987 (52 FR 27352) and on Tuesday, June 28, 1988 (53 FR 24284), respectively.

Counties scheduled to convert in their entireties to nontoxic shot in the 1989–90 waterfowl season are those counties having had an average annual waterfowl harvest of 10 or more per square mile over the 10-year period 1971–80. As scheduled, aproxmately 79 percent of the waterfowl harvest nationwide will occur in nontoxic shot zones in the 1988–89 waterfowl hunting season. However, the conversion of many entire States ahead of the schedule is estimate to increase the percentage of the total waterfowl harvest occurring in nontoxic shot zones to be about 90 percent in this 1989–90 waterfowl hunting season.

In summary, this rule proposes to amend § 20.108 of 50 CFR to add areas to expand existing nontoxic shot zones for the 1989–90 waterfowl hunting season.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or signficant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprieses. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Excutive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The FWS believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles. The section 7 opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. Also, a recent section 7 opinion concludes that the action being carried out is not likely to jeopardize the continued existence of the Aleutian Canada goose.

Table 1—Counties proposed to be added in 1989–90 to the existing zones where the hunting of waterfowl, coot and certain other species is limited to the use of nontoxic shot.(1)

State And County
ALABAMA
Jackson
Madison
ARKANSAS
Crawford
Green
Jackson
Mississippi
Randolph
Sevier
St. Francis
White
Yell
CALIFORNIA
Fresno
Napa
Santa Clara
Siskiyou
FLORIDA
St. Johns
GEORGIA
Dougherty
McIntosh
IDAHO
Bannock
ILLINOIS
Franklin
Peoria
Pike
Rock Island
INDIANA
All lands and waters of all counties of the State.
KANSAS
Cherokee
Crawford
Pratt
Reno
KENTUCKY
Caldwell
Hopkins
Lyon
Union
LOUISIANA
Bienville
Catahoula
Concordia
Franklin
Grant
Sabine
St. Landry
St. Martin
Union
MARYLAND
Anne Arundel
Calvert
Harford
St. Marys
Wicomico
MICHIGAN
All lands and water of all counties of the State.
NEW HAMPSHIRE
Rockingham
Strafford
NEW JERSEY
Burlington
Gloucester
Mercer
NORTH CAROLINA
New Hanover
NORTH DAKOTA
Benson
Dickey
Kidder
McLean
Renville
Richland
Steele
Stutsman
Ward
OHIO
Summit
OKLAHOMA
Comanche
Johnston
McIntosh
Marshall
Muskogee
Sequoyah
Wagoner
OREGON
Benton
Clatsop
Tillamook
SOUTH CAROLINA
All lands and waters of all counties of the State.
TENNESSEE
Crockett
Franklin
Lauderdale
Meigs
Stewart

(1) Counties listed are taken from the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States, Appendix N. Counties listed are those that have 10 or more waterfowl harvested per square mile, as referenced by Carney et al. 1983 (Distribution of waterfowl species harvested in states and counties during 1971–80 hunting seasons. U.S. Fish and Wildlife Service. Spec. Sci. Rpt.—Wildl. No. 254, Washington, DC). "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bag limits and concurrent seasons. Differences between this Table and the Appendix N schedule reflect changes initiated by the States to accelerate county nontoxic shot conversions.

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TEXAS
Baylor
Brazos
Comanche
Grayson
Hopkins
Marion
Trinity
Willacy

UTAH
Box Elder

VIRGINIA
King Willam
Mathews
Middlesex
Northumberland
Westmoreland

WASHINGTON
Snohomish

Authorship

The primary author of this proposed rule in Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 would continue to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Section 20.108 would be revised to read as follows:

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

Atlantic Flyway

Connecticut

All lands and waters within the State of Connecticut have been designated for nontoxic shot use.

Delaware

1. Kent and New Castle Counties.
2. All State and/or Federally owned property within the following areas of Sussex County:
A. Assawoman, Gordon's Pond and Prime Hook State Wildlife Areas.
B. Cape Henlopen and Delaware Seashores State Parks.
C. Prime Hook National Wildlife Refuge.

Florida

1. Brevard, Broward, Citrus, Collier, Dade, Leon, Osceola, Polk, St. Johns and Volusia Counties.
2. Those portions of Gadsden and Liberty Counties, adjacent to Leon County, that include the floodplains of Lake Talquin and the Ochlockonee River.
3. That portion of Lake Miccosukee in Jefferson County.
4. Orange Lake and Lochloosa Lake in Alachua County.
5. The area lying lakeward of and bounded by the Lake Okeechobee levee, by the State Road 78, Kissimmee River bridge, and by State Road 78 from its intersection with the Lake Okeechobee levee at points near Lakeport and the Old Sportsman's Village site.
6. That portion of Glades County outside of the area described in No. 5 above.
7. Occidental Wildlife Management Area, as well as all of the Occidental Chemical Company phosphate pits east of US 41, south of State Road 6, west of State Road 135 and north of White Springs, all in Township 1 north, Ranges 15 and 16 east in Hamilton County comprising approximately 35,000 acres.
8. That area formerly known as the M–K Ranch public waterfowl are in Gulf County.
9. Hickory Mound Impoundment within the Aucilla Wildlife Management Area in Taylor County.
10. That portion of Everglades Conservation Area 2 in Palm Beach County.
11. That portion of Lake George lying in Putnam County.
12. That portion of the St. Johns River floodplain lying in Lake, Seminole and Orange Counties.
13. That portion of Lake Rousseau lying in Levy and Marion Counties.
14. Lake Harbor public waterfowl hunting area in Palm Beach County.
15. Chassahowitzka Wildlife Management Area in Hernando County, and the State waters of the Gulf of Mexico in Hernando County north of Raccoon Point designated by posted signs.
16. Chassahowitzka, Lower Suwannee, Merritt Island and Loxahatchee National Wildlife Refuges.

Georgia

1. Dougherty and McIntosh Counties.
2. Eufaula and Savannah National Wildlife Refuges.

Maine

All lands and waters within the State of Maine have been designated for nontoxic shot use.

Maryland

1. Ann Arundel, Calvert, Cecil, Dorchester, Harford, Kent, Queen Annes, Somerset, St. Marys, Talbot, Wicomico and Worcester Counties.

Massachusetts

All lands and waters within the State of Massachusetts have been designated for nontoxic shot use.

New Hampshire

1. Rockingham and Stafford Counties.

New Jersey

1. Atlantic, Burlington, Cape May, Cumberland, Gloucester, Hudson, Mercer, Middlesex, Monmouth, Ocean and Salem Counties, and any adjacent State-owned tidal waters.

New York

All lands and waters within the State of New York have been designated for nontoxic shot use.

North Carolina

1. Beaufort, Currituck, New Hanover, Pamlico and Washington Counties.
2. Cape Hatteras National Seashore Recreation Area.
3. Cedar Island, Mattamuskeet and Swanquarter National Wildlife Refuges.

Pennsylvania

All lands and waters within the State of Pennsylvania have been designated for nontoxic shot use.

Rhode Island

All lands and waters within the State of Rhode Island have been designated for nontoxic shot use.

South Carolina

All lands and waters within the State of South Carolina have been designated for nontoxic shot use.

Vermont

1. Franklin and Grand Isle Counties.
2. Missisquoi National Wildlife Refuge.

Virginia

1. Counties of Accomack, Charles City, Gloucester, James City, King William, Mathews, Middlesex, New Kent, Northumberland, Westmoreland and York.
2. Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson Portsmouth, Suffolk, Virginia Beach and Williamsburg.

Mississippi Flyway

Alabama

1. Jackson, Limestone and Madison Counties.
2. Eufaula National Wildlife Refuge.

Arkansas

1. Arkansas, Ashley, Clay, Conway, Craighead, Crawford, Crittenden, Cross, Desha, Green, Jackson, Jefferson, LaFayette, Lawrence, Lincoln, Little River, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, Woodruff and Yell Counties.
2. Lake Dardanelle and Millwood Lake Wildlife Management Areas.
3. Felsenthal National Wildlife Refuge.

Illinois

1. Mississippi River and adjacent areas in the following counties BORDERED BY the roads and/or lines indicated as follows: All of Alexander, Calhound, Carroll, Henderson, Jackson, Jersey, Pike, Rock Island and Union Counties; Adams County—IL–96 (Lima), County Hwy–41, County Hwy–7, County Hwy–8 and Lock and Dam 20. (The Mark Twain NWR, Bear Creek Unit is also a nontoxic shot zone); Hancock County—(Dallas City), IL–9/96, IL–96/US 136 and IL–96; Henry County—I–80 and I–74/280; Jo Daviess County—IL–35 (East Dubuque), US 20, IL–84/US 20 and IL–84; Mercer County—Railroad bridge (Keithsburg), County Hwy–16 and County Hwy–25; and Whiteside County—IL–84 (north), IL–136/Fulton Road, County Hwy–21/Frog Pond Road, Garden Plain Road, County Hwy–21/Sand Road and IL–5.
2. Illinois River and adjacent areas in the following counties BORDERED BY the roads and/or lines indicated as follows: All of Calhoun, Cass, Fulton, Jersey, Marshall, Mason, Peoria, Pike, Putnam and Woodford Counties; Brown County—County Hwy–3/FAS–582, FAS–582, County Hwy–12 and IL–99; Bureau County—IL–89 (Spring Valley), IL–6/89, IL–29, and IL–26/29 and IL–29; Greene County—Kampsville Ferry route, IL–108 and FAP–155 (south); Morgan County—IL–104 (Meredosia) and IL–100/US 67; Schuyler County—IL–100 (Bluff City), IL–103 and County Hwy–9; and Tazewell County—IL–26, IL–116, IL–116/US 150, IL–8/116, IL–29, IL–9/29, IL–29, FAS–461 and County Hwy–16.
3. Southern Goose Quota Zone: All of Alexander, Jackson, Union and Williamson Counties.
4. Rend Lake Goose Quota Zone: All of Franklin and Jefferson Counties.
5. Other Areas: All of Bond, Clinton, Fayette, Kane, Lake and McHenry Counites.

Indiana

All lands and waters within the State of Indiana have been designated for nontoxic shot use.

Iowa

All lands and waters within the State of Iowa have been designated for nontoxic shot use.

Kentucky

1. Western Zone. That area of western Kentucky west of an eastern boundary described by the lines and/or roads as follows: The Purchase Parkway from Fulton, Kentucky, on the Kentucky-Tennessee border northeast to the Interstate 24-Purchase Parkway junction; northeast on I–24 to Lyon County line; then on a line including all of Lyon, Caldwell and Hopkins Counties to Fredonia; north from Fredonia on US 641 to US 60 at Marion, north on US 60 to the Union County line; northeast and north along the Union County line to the Union County line-US 60 junction; north on US 60 to the US 60-US 41 juntion; and north on US 41 to the Indiana-Kentucky border near Henderson, Kentucky.

Louisiana

1. Acadia, Assumption, Avoyelles, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Concordia, Evangeline, Franklin, Grant, Iberia, Jefferson, Jefferson Davis, LaFourche, LaSalle, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Rapides, Red River, Sabine, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Terrebonne, Union and Vermilion Parishes.

Michigan

All lands and waters within the State of Michigan have been designated for nontoxic shot use.

Minnesota

All lands and waters within the State of Minnesota have been designated for nontoxic shot use.

Mississippi

All lands and waters within the State of Mississippi have been designated for nontoxic shot use.

Missouri

All lands and waters within the State of Missouri have been designated for nontoxic shot use.

Ohio

1. Ashtabula, Cuyahoga, Erie, Holmes, Lake, Lorain, Lucas, Ottawa, Sandusky, Summit, Trumbull, Wayne and Wood Counties.

Tennessee

1. Benton, Crockett, Dyer, Franklin, Jefferson, Lake, Lauderdale, Meigs, Obion, Shelby, Stewart and Tipton Counties.

Wisconsin

All lands and waters within the State of Wisconsin have been designated for nontoxic shot use.

Central Flyway

Colorado

1. Alamosa, Boulder, Conejos, Costilla, Morgan, Rio Grande and Weld Counties.
2. Hinsdale, Mineral and Saguache Counties east of the Continental Divide.
3. Turk's Pond portion of Baca County.

Kansas

1. Barton, Cherokee, Coffey, Cowley, Crawford, Doniphan, Ellsworth, Jefferson, Linn, Mitchell, Mongomery, Neosho, Pratt, Reno and Stafford Counties.
2. All areas administered by the Kansas Department of Wildlife and Parks, U.S. Army Corps of Engineers and U.S. Bureau of Reclamation, including those within the boundaries of the above Counties.
3. Kirwin Reservoir.
4. Kirwin and Quivira National Wildlife Refuges.

Montana

All land and waters within the State of Montana have been designated for nontoxic shot use.

Nebraska

All lands and waters within the State of Nebraska have been designated for nontoxic shot use.

New Mexico

All lands and waters within the State of New Mexico have been designated for nontoxic shot use.

North Dakota

1. Bensen, Bottineau, Dickey, Griggs, Kidder, McIntosh, McLean, Nelson, Ramsey, Renville, Richmond, Sargent, Steele, Stutsman, Towner and Ward Counties.

Oklahoma

1. Comanche and Nowata Counties.
2. The area described within the roads and/or lines as follows: US 77 from the Kansas border south to US 177; US 177 south to State Highway 15; State Highway 15 east to State Highway 18; State Highway 18 south to US 64; US 64 east to State Highway 99; State Highway 99 south to State Highway 51; State Highway 51 east to State Highway 97; State Highway 97 north to its junction with unnamed county roadway; northwestward on the county roadway to its junction with State Highway 20; State Highway 20 west to State Highway 18; and State Highway 18 north to the Kansas border.
3. The area described within the roads and/or lines as follows: The Sequoyah County line west to the Muskogee County line from the Arkansas-Oklahoma State line; north and west on the Muskogee County line to State Highway 80; north on State Highway 80 to State Highway 251A; west on State Highway 251A to the Wagoner County line; (generally) north, west and south on the Wagoner, Muskogee and McIntosh County lines to US 266; west on US 266 to US 62; south on US 62 to Indian Nation Turnpike; south on Indian Nation Turnpike to the McIntosh County line; west, south and east along the McIntosh County line to the Indian Nation Turnpike; south on Indian Nation Turnpike to US 270; US 270 east to State Highway 2; State Highway 2 north to State Highway 31; State Highway 31 west to State Highway 71; State Highway 71 north to State Highway 9; State Highway 9 to State Highway 9A; and State Highway 9A north and east to the Arkansas border.
4. The area described within the roads and/or lines as follows: State Highway 78 from the Texas border north and west to US 75; US 75 north to State Highway 78; State Highway 78 northwest to the Johnston County line; (generally) north, west and south on the Johnston and Marshall County lines to State Highway 32 near Lebanon; south and west on State Highway 32 to the junction of IH–35 near Marietta; and south down IH–35 to the Texas border.
5. That portion of Oologah Reservoir and all adjoining public lands in Rogers County.
6. Fort Cobb Reservoir and all adjoining public lands in Caddo County.
7. Hajek Marsh.
8. Those areas of land and water encompassing the controlled water level impoundments (WATERFOWL STAMP HUNTING AREAS) within the following State Wildlife Management Areas:
A. Waurika
B. Hulah
C. Wister
D. Okmulgee
E. Copan
F. Hugo
G. Mt. Park
H. Deep Fork
I. Lake Ellsworth
9. Salt Plains and Washita National Wildlife Refuges.

South Dakota

All lands and waters within the State of South Dakota have been designated for nontoxic shot use.

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Texas

1. Baylor, Brazos, Comanche, Hopkins and Trinity Counties.

2. The area described within the roads and/or lines as follows: Beginning at the Louisiana State line; west along IH–10 to the Jefferson County line; north of IH–10 along the Jefferson County line to its junction with the Liberty County line; west, north, southwest and southeast along the Liberty County line to its junction with the Harris County line; (generally) west along the Harris County line to its junction with the Waller County line; (generally) north, west and south along the Harris County line to its intersection with State Highway 159; southwest along State Highway 159 to its intersection with the Colorado County line; northwest and southwest along the Colorado County line to its junction with IH–10 near Schulenberg; west along IH–10 to its junction with US 77 at Shulenberg; south and southwest along US 77 to its junction with the (north) Nueces County line at the Nueces River; (generally) northwest and south along the Neuces County line to its junction with US 77 near Kingsville; south on US 77 to its junction with the (north) Willacy County line; (generally) west, south and east on the (south) Willacy County line to its junction with US 77; south along US 77 to its junction with the US-Mexico international boundary at Brownsville; east along the US-Mexico international boundary to the Gulf of Mexico; east and seaward to the three marine league limit; northeast along the three marine league limit to the Louisiana State line; and north along the Texas-Louisiana State line to its junction with IH–10.

3. The area described within the roads and/or lines as follows: Beginning at the Oklahoma State line; south along I–35 to its junction with US 82 at Gainesville; east along US 82 to its junction of the Grayson County line; south, east and north to the junction of the Grayson County line and US 82; east along US 82 to its junction with State Highway 78 at Bonham; north along State Highway 78 to its junction with the Oklahoma State line; and west along the Oklahoma-Texas State line to its junction with I–35.

4. The area described within the roads and/or lines as follows: Beginning at the Louisiana State line; west along the (north) Marion County line to its junction with State Highway 49 near Avinger; northwest on State Highway 49 to its junction with US 259 at Daingerfield; south along US 259 to its junction with State Highway 450 at Ore City; east on State Highway 450 to its junction with State Highway 154 at Harleton; southeast along State Highway 154 to its junction with US 80 at Marshall; east along US 80 to its junction with State Highway 43; northeast along State Highway 43 to its junction with FM 2682 at Karnack; east along FM 2682 to its junction with FM 134; south along FM 134 to its junction with FM 1999 at Leigh; east along FM 1999 to its junction with the Louisiana State line; and north along the Louisiana-Texas border to its junction with State Highway 49.

5. The area described within the roads and/or lines as follows: Beginning at the junction of State Highway 31 and FM 2661; west along State Highway 31 to its junction with US 175 at Athens; northwest along US 175 to its junction with FM 90; north along FM 90 to its junction with FM 1391; west along FM 1391 to its junction with US 175 at Kemp; south along US 175 to its junction with State Highway 274; south along State Highway 274 to its junction with State Highway 31 at Trinidad; east along State Highway 31 to its junction with FM 3441 at Malakoff; south along FM 3441 to its junction with FM 59 at Cross Roads; south along FM 59 to its junction with US 287 at Cayuga; southeast along US 287 to its junction with FM 860; north along FM 860 to its junction with FM 837; northeast along FM 837 to its junction with US 175 at Frankston; east along US 175 to its junction with FM 855; north along FM 855 to its junction with FM 346; north along FM 346 to its junction with FM 344; north along FM 344 to its junction with FM 2661; and north along FM 2661 to its junction with State Highway 31.

Wyoming

1. Big Horn County: Along and within one mile either side of the waterline of the Big Horn River, Yellowtail Reservoir, Shoshone River, Nowood River and portions of Medicine Lodge Creek and Paintrock Creek where they flow into the Nowood River, beginning from their confluence to where they flow from the mountains.

2. Goshen County:

A. North Platte River/Laramie River—Beginning where US 25 crosses the Wyoming-Nebraska State line; south along said State line to Goshen County Road No. 7–108; west along said road to Wyoming Highway 92, west, then north along said highway to US 85; north along said highway to Wyoming Highway 156; west and north along said highway to Goshen County Road No. 7–62; west along said road to the Fort Laramie Canal Road; northwest along said road to Goshen County Road No. 7–48; southwest along said road to the Goshen-Platte County line; north along said line to US 26; and southeast along said highway to the point of beginning.

B. Table Mountain—Beginning where Wyoming Highway 92 intersects Wyoming Highway 158; south along said highway to Goshen County Road No. 7–171; west along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7–160; east along said road to Goshen County Road No. 7–166; North along said road to Goshen County Road No. 7–114, east along said road to Wyoming Highway 92; and east along said highway to the point of beginning.

Pacific Flyway

Arizona

1. Game Management Unit 5B, Upper Lake Mary, Lower Lake Mary and Mormon Lake.

2. Hopi Indian Reservation lands in Coconino and Navajo Counties.

3. Navajo Indian Reservation lands in Apache, Coconino and Navajo Counties.

4. Cibola National Wildlife Refuge.

California

1. Alameda, Butte, Colusa, Contra, Costa, Fresno, Glenn, Imperial, Marin, Merced, Napa, Sacramento, San Joaquin, Santa Clara, Solano, Stanislaus, Sutter, Yolo and Yuba Counties.

2. Northeastern Zone. Those portions of Plumas, Shasta, Sierra, Siskiyou and Tahama Counties, and all of Lassen and Modoc Counties, bunded by the following line: Beginning at I–5 at the Oregon border, south on I–5 to State Highway 89, and southeast on State Highway 89 to State Highway 70, and east on State Highway 70 to US 395, and south on U.S. 395 to the Nevada border.

3. Siskiyou County west of I–5.

Colorado

1. Montrose County.

Idaho

1. Panhandle Zone. All of Benewah, Bonner, Boundary and Kootenai Counties.

2. Southwestern Zone. Canyon and Payette Counies north and east of I–84, and those portions of Ada, Conyon, Elmore, Owyhee and Payette Counties within the following boundary: Beginning at the interesection of I–84 Business Highway junction at Cold Springs Creek east of Hammett, then northwest on I–84 to the Idaho-Orgeon State line, then south along the Idaho-Oregon State line to State Highway 19, then east on State Highway 19 to US 95 near Homedale, the southand east on US 95 to State Highway 55 west of Marsing, then east on State Highway 55 to State Highway 78 at Marsing, then southeast on State Highway 78 to I–84 Business Highway at Hammett, then east on I–84 Busines Highway to I–84 at Cold Springs Creek, the point of beginning.

3. South Central Zone. All of Gooding County, and that portion of twin Falls County that is west of the Gooding County-Jerome County-Twin Falls County junction and within 600 feet of the high water line of the Snake River.

4. Southeastern Zone.

A. All lands within the Fort Hall Indian Reservation boundary;

B. All of Jefferson County; and that portion of Bannock County not included in the bounderies described in C. Below; and

C. Those portions of Bannock, Bingham, Bonneville, Caribou, Cassia, Madison and Power Counties within the following boundary: Beginning at the Interstate 15-Jefferson County intersection (north of Idaho Falls), then south and southwest on I–15 to State Highway 39 near Blackfoot, then southwest on State Highway 39 to the road to the Idaho Department of Fish and Game's American Falls Fish Hatchery (approximately one-quarter mile west of American Falls Dam), then south on the hatchery road to the Union Pacific Railroad tracks, then southwest on the Union Pacific Railroad tracks to the Blaine County line, then south on the Blaine County line to its juction with the Cassia County line, then west on the Cassia County line to the Snake River-Raft River confluence, then upstream on the Raft River to I–86, then northeast on I–86 to I–15, then north on I–15 to US 91 (Old Yellowstone Highway) near Blackfoot, then northeast on US 91 to its junction with State Highway 26 approximately five miles northeast Shelly, then northeast on US 26 to the spot directly above the Heise measuring cable (about 1.5 miles upstream from Heise Hot Springs), then north across the South Fork of the Snake River to the Heise-Archer-Lyman Road (Snake River Road), then northwest on the Heise-Archer-Lyman Road to US 191/20, then north on US 191/20 to the US 191/20-Jefferson County line, and then west on the southern boundary of Jefferson County to the point of beginning.

Montana

All lands and waters within the State of Montana have been designated for nontoxic shot use.

Nevada

1. Canvasback Gun Club in Churchill County.

2. Carson Lake (Greenhead Hunting Club) in Churchill County.

3. Humboldt Wildlife Management Area in Churchill and Pershing Counties.

4. Key Pittman Wildlife Management Area in Lincoln County.

5. Mason Valley Wildlife Management Area in Lyon County.

6. Overton Wildlife Management Area in Clark County.

7. Stillwater Wildlife Management Area in Churchill County.

8. Ruby Lake National Wildlife Refuge in White Pine and Elko Counties and Pahranagat National Wildlife Refuge in Lincoln County.

New Mexcico

All lands and waters within the State of New Mexico have been designated for nontoxic shot use.

Oregon

1. Benton, Marion, Polk, Tillamook, Washington and Yamhill Counties.

2. Columbia and Clatsop Counties, those portions south and west of US 30 that are not included in the Lower Columbia River Zone.

3. Multnomah County, that portion south of I–84.

4. Southcentral Zone—All of Klamath County, excluding Davis Lake, and that portion of Lake County lying west of Highway 395.

5. Lower Columbia River Zone—Those portions of Multnomah, Columbia and Clatsop Counties bounded by the following line: Beginning at the Bonneville Dam, west on Highway I–84 to Portland, northwest on US 30 to the Astoria bridge, partially across Astoria bridge to the Oregon-Washington State line, and upriver on the Washington-Oregon State line to point of origin.

6. Malheur County Zone—That portion of Malheur County bounded by a line beginning at I–84 at the Oregon-Idaho State line, northwest on I–84 to State Highway 201, south on State Highway 201 to State Highway 19, east on State Highway 19 to the Oregon-Idaho State line and back to the point of origin.

7. Columbia Basin Zone—Those portions of Gilliam, Morrow and Umatilla Counties bounded by the following line: Beginning at the town of Arlington on I–84, east on I–84 to US 730, northeast on US 730 to the Oregon-Washington State border, and west along the Columbia River, Oregon-Washington border to point of origin.

Utah

1. Box Elder, Cache, Davis, Salt Lake, Utah and Weber Counties.

2. Navajo Indian Reservation lands in San Juan County.

Washington

1. All of Walla Walla County; those portions of Clallam, Snohomish and Thurston Counties not included in the Puget Sound Zone; and that portion of Pacific County not included in the Southwestern Zone.

2. Clark County, that portion north and/or east of State Highway 14 and I–5.

3. Franklin County, that portion east of State Highway 17.

4. Grant County, that portion east and/or south of State Highway 17 and US 2.

5. Skagit County, that portion east of I–5.

6. Southwestern Zone—Those portions of Skamania, Clark, Cowlitz, Wahkiakum, Grays Harbor and Pacific Counties south and west of the following line: Beginning at the Bonneville Dam, west on State Highway 14 to Vancouver, north on I–5 to Kelso, west on State Highway 4 to US 101, north on US 101 to Aberdeen, west on State Highway 109 to Ocean City, and due west to the Pacific Ocean.

7. Puget Sound Zone—Those portions of Whatcom, Skagit, San Juan, Island, Clallam, Jefferson, Kitsap, Mason, Thurston, Pierce, King and Snohomish Counties bounded by the following line: Beginning at I–5 on the Washington-British Columbia, Canada border, west, south and west along said border to a point due north of Neah Bay, due south to Neah Bay, east on State Highway 112 to US 101, east and south on US 101 to I–5, north on I–5 to State Highway 538 near Mt. Vernon, east on State Highway 538 to State Highway 9, north on State Highway 9 to State Highway 20, west on State Highway 20 to I–5, and north on I–5 to point of origin.

8. Columbia Basin Zone—Those portions of Benton, Klickitat, Franklin, Adams, Grant, Yakima, Chelan, Kittitas, Douglas, Lincoln, Okanogan and Walla Walla Counties bounded by the following line: Beginning at the Washington-Oregon State border on the Celilo 1 ridge on US 97, north on US 97 to State Highway 14, east on State Highway 14 to US 395/I–82, north on US 395/I–82 (formerly a continuation of State Highway 14) to Kennewick, west on State Highway 240, north on State Highway 240 to State Highway 24, west on State Highway 24 to US 97, north on US 97 to State Highway 155 at Omak, east and south on State Highway 155 to State Highway 174 at Grand Coulee, southeast on State Highway 174 to US 2, west on US 2 to State Highway 17, south on State Highway 17 to US 395, south on US 395 to US 12, south on US 12 and US 730 to the Oregon border (including the entire McNary National Wildlife Refuge), and west along the Columbia River and the Washington-Oregon border to the point of origin.

Date: October 20, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–25852 Filed 11–8–88; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 81128–8228]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to amend the rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This proposed Amendment 2 (Amendment) will improve the overall effectiveness of existing management measures and enhance conservation of the groundfish stocks. The intended effect of the rule is to maintain the abundance and viability of the groundfish stocks to support both commercial and recreational fisheries .

DATE: Comments on the proposed rule must be received on or before December 19, 1988.

ADDRESSES: Send comments on the proposed rule and Amendment to Richard Roe, Regional Director, NMFS, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930–3799. Mark the outside of the envelope "Comments on Multispecies Amendment 2."

Copies of the Amendment, the environmental assessment (EA), the regulatory impact review (RIR), and other supporting documents are available from Douglas Marshall, Executive Director, New England Fishery and Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01908.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst), 508–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION: Pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801, *et seq.*, the Secretary of Commerce (Secretary), in consultation with regional fishery management councils, is authorized to take such measures as are necessary to conserve and manage the fishery resources within the U.S. exclusive economic zone (EEZ). Under the Magnuson Act, regional fishery management councils develop fishery management plans for specific fisheries within a geographic region. If approved by the Secretary, the plans are then implemented through Federal regulations.

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The multispecies (groundfish) fishery is an important and traditional fishery in the New England region. Species harvested in that fishery include cod, haddock, yellowtail flounder, pollock, redfish, white hake, and four other flounders. In recent years, the fishery had been severely exploited and needed effective management and conservation measures. In March 1986, the New England Fishery Management Council (Council) submitted for approval the FMP, which established new conservation measures for the New England groundfish fishery. NMFS concluded that the FMP failed to provide an adequate program to manage the fishery, but that it was a step in the right direction. Based on that evaluation, the Secretary approved the FMP and its implementing regulations for the interim period of September 19, 1986, to September 30, 1987 (51 FR 29642, August 20, 1986).

In May 1987, the Council submitted for Secretarial approval Amendment 1, which would amend and extend the FMP. Amendment 1 was designed to improve and strengthen the conservation measures of the FMP by addressing deficiencies that were identified by the Secretary in his decision to conditionally approve the FMP. The Secretary approved Amendment 1 and its implementing regulations effective October 1, 1987 (52 FR 35093, September 17, 1987).

The Council has prepared and submitted Amendment 2 to amend the FMP. A notice of availability was published on October 11, 1988 (53 FR 39627). Amendment 2 contains proposed actions that are expected to improve the effectiveness of several of the existing FMP measures in relation to two major factors: (1) The promotion of regulatory compliance, and (2) the long-term achievement of the FMP's management objectives. The Amendment also adopts a management measure that had previously been implemented in February 1988 as an emergency action (53 FR 5773, February 26, 1988). The FMP established a technical monitoring group (TMG) to "evaluate both current conditions within the fishery and the status of implementation of the management program in relation to the achievement of the FMP objective." The TMG is comprised of assessment scientists and fishery managers from the New England and Mid-Atlantic Fishery Management Councils, the States of Massachusetts and New York, and NMFS. Concurrent with the development of this amendment, the TMG prepared a report evaluating the effectiveness of the FMP. Included in the report were recommendations on modifications to the existing measures of the FMP. Many of the measures proposed in the amendment were also proposed in the TMG report, which strongly supported their implementation as necessary to achieve the goals of the FMP.

In developing Amendment 2, the Council obtained substantial public input through a series of six regional public hearings (Rockland and Portland, Maine; Gloucester and Buzzards Bay, Massachusetts; Galilee, Rhode Island; and Riverhead, New York) which were held from July 18 through July 20, 1988. The proposed measures reflect actions that the Council believes are necessary and appropriate for the achievement of the Council's objectives for managing the multispecies fishery. It remains possible that other measures may be required in the future to support the management program.

Management Measures Proposed in the Amendment

The Amendment proposes the following management measures:

1. An increase in the minimum fish size (total length, TL) for the following regulated species:

Species	Existing	Proposed
Yellowtail flounder	12 inches	13 inches
American plaice (dab)	12 inches	14 inches

Analysis of the overall fishery resource suggests that the current regulated mesh size in the Regulated Mesh Area (RMA) is not being satisfactorily complied with. Assessment data indicate that the average mesh size being used to catch regulated species from the Georges Bank and Gulf of Maine stocks may be as much as one inch less than 5½ inches, the regulated size. Some of the discrepancy is undoubtedly due to the fact that some regulated species are taken in the Exempted Fishery Program (EFP) or in areas where mesh is either not regulated (Southern New England) or regulated at a smaller size (Canadian Zone). Notwithstanding these exceptions, information from fishermen, port agents, and enforcement agents indicates that at least some fishermen use smaller than 5½-inch mesh while operating in the RMA because the currently required minimum mesh size does not retain a satisfactory level of legal-size fish of certain species.

Two illustrations of this discrepancy are 12-inch yellowtail flounder, of which only 45 percent are retained with 5½-inch mesh, and 12-inch American plaice, of which 35 percent are retained. These levels of retention contrast significantly with 55 percent, 60 percent, and 85 percent for 19-inch haddock, 19-inch pollock, and 14-inch witch flounder, respectively. Thus, the desire to retain a higher percentage of 12-inch yellowtail or plaice, for example, promotes the illegal use of smaller mesh or mesh liners. The proposed increases in minimum fish sizes noted above will produce retention levels near 60 percent for both species, which are consistent with levels for other regulated species. It is argued that higher, more consistent levels of retention will promote compliance by reducing the incentive to use small mesh to capture more legal-size fish. This proposal is expected to encourage more widespread use of the current minimum mesh size for nets, which will reduce discard mortality of undersized fish. This proposal will reduce catch in the short term for fishermen currently in compliance with the regulated mesh size, but long-term benefits will accrue through improved industry-wide compliance with mesh regulations. The magnitude of long-term benefits will depend on the extent to which culled flatfish survive when returned to the sea and the escapement of undersized fish through 5½-inch stretch mesh. This proposal will help meet the FMP's long-term objective of achieving spawning potential targets for these and all other regulated species by reducing discards of small and immature fish.

2. An indefinite postponement of the FMP's scheduled increase in regulated mesh (to 6 inches) in the Georges Bank portion of the RMA. Alternatively, vessels operating in the RMA will only be permitted to use nets with mesh no smaller than the regulated size throughout the net, effective January 1, 1990. Currently, the regulated size of 5½-inch mesh is required only in the first 75 meshes from the terminus of the net.

The Council is aware that non-compliance with mesh regulations remains a significant problem for effective implementation of the multispecies management program. Non-compliance stems from several factors, two of which are size retention and the level of enforcement/enforceability. Although some of the Georges Bank regulated species (particularly cod and yellowtail flounder) would benefit from a fishery that used 6-inch mesh, the current level of non-compliance argues against such an action until the Council can be assured that mesh regulations can be fairly and effectively enforced. A decision to increase mesh without having first established broad-based compliance would only place an additional burden upon those fishermen who already voluntarily comply, and would, in the Council's judgment, lead to industry-wide disregard for mesh regulation.

The Council is aware that certain practices within the harvesting sector thwart the effective use of mesh as a management tool. These practices include "choking-off" the cod end so that the small-mesh extension piece (the twine tube between the belly of the net and the cod end) is effectively used to select and retain fish. The proposal to require nets operated in the RMA to be constructed of mesh no smaller than the regulated size directly addresses the problem of "choking-off" by negating the retention benefit of trying to retain fish with parts of the net other than the cod end.

3. A modification to the language that allows nets of smaller than the regulated mesh to be aboard but not in use in the RMA, by removing from § 651.20(f) paragraphs (3) and (4) and replacing them with "nets which are secured in a manner approved by the Regional Director."

Currently, the definition of nets not "available for immediate use" includes: (a) Nets which are on reels and are covered and secured, and (b) nets on vessels which have the towing wires detached from the fishing gear, in addition to (c) nets stored below deck, and (d) nets stowed and lashed down on deck. This definition was developed to provide flexibility for vessels that either had to fish in two separate areas with differing mesh regulations on the same trip, or had to traverse the RMA on the way to or from fishing grounds where regulated mesh is not required. Because it contains points (a) and (b) noted above, the current definition does not, and cannot provide reasonable assurance to an enforcement officer that small-mesh net found aboard a vessel in the RMA was not used in that area. The two remaining options (c and d) provide the necessary flexibility for fishermen while promoting compliance and maintaining reasonable enforceability. Other methods that assure that small-mesh nets are secured in a manner which significantly limits their chances of being used in the RMA may be approved subsequently by the Regional Director by notice in the **Federal Register**.

4. Adopt regulatory language to facilitate non-reissuance of EFP permits when participants have not complied with reporting requirements.

Currently, it is not possible to deny reissuance of a permit to participate in the EFP when a participant has failed to comply with report submission requirements, unless a Notice of Violation and Assessment (NOVA) has been issued. The Council's position is that reporting is a necessary requirement of participation in the EFP and that a participant should not be allowed to continue in an exempted fishery if he/she does not submit the required trip records on time. The regulatory language that accompanies this proposal makes provision for suspension of current participation or denial of entry, or both, if the applicant fails to report as required under the EFP, but does provide for reinstatement if the applicant submits missing reports within a specified time limit.

5. Establish a trip bycatch limit of 25 percent regulated species for vessels operating in the EFP.

The proposal establishes a two-tier bycatch limit on vessels operating in the EFP. In addition to the existing requirement that participating vessels not exceed a 10 percent bycatch limit of regulated species over the 7- to 30-day reporting period, vessels would not be allowed to land, on any single trip, regulated species in excess of 25 percent of the landings for the target species for which the exemption is issued.

Currently, the EFP is enforced administratively. Individual participating vessels submit reports of their landings on a trip-by-trip basis over a 7- to 30-day reporting period. Landings data are used by NMFS to determine whether the 10 percent bycatch allowance has been complied with by each participating vessel. Under this system, participants can balance heavy bycatch trips with light bycatch trips in order to meet the 10 percent standard over several trips. While the Council understands that reasonable variation in the bycatch of regulated species on a whiting or shrimp trip must be accounted for, landings data demonstrate that some vessels have used the program to fish directly for regulated species with small-mesh gear. The latter fishing practice is not consistent with the Council's intent to reduce juvenile mortality of regulated species, nor is it consistent with achieving the Council's management objectives. Therefore, the Council's proposal is designed to assure that the exempted fishery remains a directed fishery on small-mesh species with minimum impact on regulated species and to improve enforceability of the exempted fishery regulations.

6. A prohibition on trawl vessels from entering Closed Area II during the period of seasonal closure.

In order to promote compliance with the Closed Area II closure and facilitate enforcement, the Council proposes to prohibit trawlers in the area during the period of closure. The proposed measure would provide greater certainty of achieving the goal of preventing fishing pressure on spawning haddock in Closed Area II, and would provide an effective and reliable enforcement tool in this remote, but critical spawning area. Vessels were alleged to have frequently violated Closed Area II during the recent period of closure.

7. The establishment of a minimum size of 9 inches for redfish.

The proposed 9-inch (TL) minimum size for redfish would achieve three objectives: (1) It corresponds with the bottom of the selection range of 5½-inch mesh and is not expected to require any significant discarding of redfish that may be retained in large-mesh fishing operations; (2) the minimum size greatly discourages any directed small-mesh fishing; and (3) the proposed minimum size is consistent with the usual range of sizes of imported redfish from Canada.

8. Minimum fish sizes (TL) shall apply to both commercial and recreational fishermen.

Species	Recreational minimum size	
	Existing	Proposed
Atlantic cod	17 inches	19 inches
Haddock	17 inches	19 inches
Pollock		19 inches
Witch flounder (gray sole)		14 inches
Yellowtail flounder		13 inches
American plaice (dab)		14 inches
Winter flounder (blackback)		11 inches
Redfish		9 inches

Currently, only the minimum fish sizes for cod and haddock apply to recreational fishermen. Because minimum fish and mesh sizes are established in consideration of the total mortality generated by all fishermen, the Council believes that the inherent conservation benefit of the minimum size measure can only be achieved if the same minimum fish sizes apply to all fishermen.

This measure will primarily affect the recreational catch of cod, pollock and haddock in the EEZ. Although there may be recreational fisheries for the other regulated species (yellowtail, winter flounder, witch flounder, American plaice, redfish) in the territorial sea, there are few or no recreational landings of these species from the EEZ. Recreational fishermen fishing in the territorial sea are not subject to these regulations, but are subject to minimum-

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size regulations of the coastal States in which they fish. Under provisions in the FMP, an increase in the minimum size of cod to 19 inches is scheduled to occur in October 1989. The proposed rule would implement this size increase at an earlier date.

9. An RMA would be implemented for December through March in an area designated as Nantucket Shoals.

This measure had been implemented as a one-time occurrence by emergency action for the period February 20, 1988, through March 31, 1988, at the request of the Council and the fishing industry. The Council proposes to extend seasonally the RMA mesh regulations into the Nantucket Shoals area in order to protect seasonal concentrations of juvenile cod that have been documented by fishermen, the Massachusetts Division of Marine Fisheries, and the Northeast Fisheries Center of NMFS. The area and time period are intended to correspond to the location and timing of a juvenile cod discard problem that has been documented over the past 2 years. The Northeast Regional Director would be authorized to suspend the RMA extension prior to March 31 of each year if he/she determines that juvenile cod are not sufficiently abundant in the Nantucket Shoals area to warrant large-mesh protection.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99–659, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an EA for the Amendment and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the assessment from the Council (see **ADDRESSES**).

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the draft RIR, which demonstrates positive long-term economic benefits to the fishery under the proposed management measures. The proposed rule is not expected to have an annual impact of $100 million or more, nor to lead to an increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor to have significant adverse effects on competition, employment, investment, productivity, inovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. You may obtain a copy of the draft RIR from the Council (see **ADDRESSES**).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 99–659, require the Secretary to publish this proposed rule 15 days after its receipt. It is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This certification is based upon an Initial Regulatory Flexibility Analysis (IRFA) which determined that the average impact in terms of foregone revenue is $12,000 per vessel, out of average gross revenues of $312,000 per vessel. The measure increasing the minimum fish size of yellowtail flounder and American plaice will affect harvesters' landings from individual States differently, from a decline in landings of 12 percent for Maine, to a decline in landings of 42 percent for New York. The measure establishing a redfish minimum size will eliminate directed trips on redfish for bait, which accounted for 41 out of a total of 38,000 trips for all species of groundfish in 1985. A third measure, applying uniform minimum sizes to both commercial and recreational users is expected to result in a decrease in the amount of recreationally harvested cod from the EEZ by approximately 7 percent, by weight, and 19 percent, by number. This is due to an accelerated implementation from the previous date of October 1, 1989, for a size increase to 19 inches for cod. Insufficient data are available for the other species to calculate their impact, which is thought to be minimal.

The measure requiring vessels to have 5½-inch mesh throughout the net in the RMA by January 1, 1990, is expected to have an impact that would be lessened, or eliminated, by the 1-year phase-in period, the usual turnover of nets in use due to wear, and the ability of vessels to use their existing small-mesh nets in the EFP or other areas where there are no mesh regulations. Modifications limiting how small mesh may be allowed on board a vessel in the RMA will have no impact.

The measure proposing modifications to the EFP concerning non-reporting will not impose any costs or loss of revenue for those fishing in compliance with the terms of the program. It was determined from data collected for 1979 through 1983 that the mean percentage of bycatch of regulated species from directed small mesh trips was 10.43 percent. The measure imposing a 25 percent bycatch allowance will result in a loss of revenue only for those not engaged in true small-mesh fisheries.

Prohibiting trawlers from entering Closed Area II during the period of closure will have minimal, if any, impact. The area is in a location that provides no benefit, transiting or otherwise, to those types of vessels prohibited from entering the area during the seasonal closure.

The Nantucket Shoals seasonal RMA is expected to result in a loss of revenue of $130,000 out of $1,760,000. It is expected to have minimal impact on revenue lost from harvest of small-mesh species from the area due to their low abundance in the area occurring at this time of year.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: November 3, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 651 is proposed to be amended as follows:

PART 651—[AMENDED]

1. The authority citation for 50 CFR Part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 651.7 is proposed to be amended by adding new paragraph (b)(11) to read as follows:

§ 651.7 Prohibitions.

* * * * *

(b) * * *

(11) Enter the area described in § 651.21(a)(2) during a period in which that area is closed, unless allowed by § 651.21(a).

* * * * *

3. Section 651.20 is proposed to be amended by revising paragraphs (a) (1) and (2), (b)(1), (c)(2), (d)(1) introductory text and (2) and (f) to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

(a) * * *

(1) *Gulf of Maine/Georges Bank regulated mesh area* (Figure 1):

(i) Bounded on the east by the U.S.—Canada maritime boundary, defined by the following points in the order stated:

Point	Latitude	Longitude
L	Northward along the irregular U.S.-Canada maritime boundary to the territorial sea.	
K	43°58′ N.	67°22′ W.
M	42°31.1′ N.	67°44.4′ W.
F	42°20′ N.	67°28.1′ W.
G	41°18.6′ N.	66°24.8′ W.

(ii) Bounded by straight lines connecting the following points in the order stated:

Point	Latitude, longitude	Loran C. bearings
N1	40°55.5′ N, 68°38.0′ W.	5930–Y–30750 and 9960–Y–43500.
N2	40°45.5′ N, 68°00′ W.	9960–Y–43500 and 68°00′ W.
N3	40°37.0′ N, 68°00′ W.	9960–Y–43450 and 68°00′ W.
N4	40°30.5′ N, 69°00′ W.	9960–Y–43450 and 69°00′ W.
N5	40°22.7′ N, 69°00′ W.	9960–Y–43400 and 69°00′ W.
Z	40°18.7′ N, 69°40′ W.	9960–Y–43400 and 69°40′ W.
A	40°35.5′ N, 69°40′ W.	
B	41°35.0′ N and 69°40′ W.	
C	41°35.0′ N and the territorial sea.	

NOTE: Loran lines are included for the convenience of fishermen.

(iii) Northward along the territorial sea of Massachusetts, New Hampshire, and Maine to the U.S.-Canada maritime boundary at Point L.

(2) *Nantucket Shoals regulated mesh area* (Figure 4): Bounded by straight lines connecting the following points in the order stated:

Point	Latitude, longitude	Loran C bearings
NS1	41°24.0′ N, 69°59.0′ W.	9960–Y–43850 and 69°59′ W.
NS2	41°28.0′ N, 69°40.0′ W.	9960–Y–43850 and 69°40′ W.
NS3	40°56.5′ N, 69°40.0′ W.	9960–Y–43650 and 69°40′ W.
NS4	40°51.5′ N, 70°14.0′ W.	9960–Y–43650 and 60–X–25175.
NS5	41°00.0′ N, 70°17.5′ W.	9960–X–25175 and 41°00′ N.
NS6	41°10.0′ N, 70°19.0′ W.	9960–X–25175 and 41°00′ N.
NS7	41°15.5′ N, 70°18.5′ W.	9960–X–25175 and 41°15.5′ N.

and then to NS1 following the seaward limit of the territorial sea.

NOTE: Loran lines are included for the convenience of fishermen.

(i) This area will be in effect for the months of December through March, inclusive, unless suspended pursuant to § 651.20(a)(2)(ii).

(ii) The Regional Director may suspend this Regulated Mesh Area (RMA) by notice in the **Federal Register**, if he/she determines that concentrations of juvenile cod are not sufficiently abundant in the area to warrant protection by this RMA.

(b) *Trawl nets*—(1) *Diamond mesh.* Except as provided for in §§ 651.20(b)(3), 651.20(d) and 651.22, the minimum mesh size for any trawl net, including midwater trawls, or Scottish seine used by a vessel fishing in the mesh areas described in paragraphs (a)(1) and (a)(2) of this section is 5½ inches throughout the entire net.

* * * * *

(c) * * *

(2) In other portions of the New England area not subject to minimum mesh size restrictions under paragraph (b) of this section, the mesh in bottom-tending gillnets must be the same during the months of November through February as that in effect in the Regulated Mesh Area, as defined in paragraph (a)(1) of this section.

(d) *Midwater gear exception.* (1) For the RMA south of 42°20′ N. latitude, fishing for Atlantic herring or blueback herring, mackerel, and squids may take place throughout the fishing year with mesh sizes less than the regulated size provided that:

* * * * *

(2) For the RMA north of 42°20′ N. latitude, fishing for herring and mackerel may take place from December through May with mesh sizes less than the regulated size, provided that the requirements of paragraphs (d)(1) (i) and (ii) of this section are met and that the bycatch of regulated species does not exceed 1 percent, by weight, of herrings and mackerel on board the vessel.

* * * * *

(f) Except as provided in paragraph (d) of this section, no vessel issued a permit under § 651.4 may have available for immediate use any net not meeting the requirements specified in paragraphs (b) and (c) of this section, or mesh that is rigged in a manner that is inconsistent with § 651.20(e)(2), while in the areas described in paragraph (a) of this section. A net that conforms to one of the three following specifications and which can be shown not to have been in recent use is considered to be not "available for immediate use":

(1) Nets stored below deck; or

(2) Nets stowed and lashed down on deck; or

(3) Nets which are secured in a manner approved by the Regional Director. After review and approval, the Regional Director shall specify alternative manner(s) of securing nets by notice in the **Federal Register**.

§ 651.21 [Amended]

4. In § 651.21 (a) heading is revised to read *"Georges Bank"*.

5. In § 651.22(a)(1), the table entry for Point B is revised to read as follows:

Point	Latitude	Longitude
B	41°35′ N.	69°40′ W.

6. Section 651.22 is amended by revising paragraphs (c) and (e)(2) to read as follows:

§ 651.22 Exempted fishery program.

* * * * *

(c) *Certification.* (1) The Regional Director will certify in writing the entry of the applicant into the exempted fisheries program.

(2) Entry of the applicant into the exempted fisheries program cannot occur until the applicant receives written certification from the Regional Director.

(3) The Regional Director may suspend current participation or deny entry into the exempted fishery program, or both, to an applicant if:

(i) The Regional Director determines that the applicant has failed to file reports as required by § 651.22(f); or

(ii) The applicant violates any provision of these regulations or of the Magnuson Act, providing a notice of

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violation and assessment for such violation has been issued to the applicant.

(4) With respect to any suspension or denial for failure to report under paragraph (c)(3)(i) above, the Regional Director may reinstate the applicant or approve the applicant's request to enter the exempted fishery program for subsequent reproting periods; if the applicant submits, and the Regional Director receives, completed missing reports. For missing reports received within 5 calendar days of suspension or denial, the Regional Director shall decide whether reinstatement is appropriate within 14 calendar days of receiving the missing reports. For missing reports received after the 5 calendar days of suspension or denial, the Regional Director shall decide within 30 calendar days of receiving the reports. The Regional Director's authority to suspend participation in or deny into the exempted fishery program is separate and distinct from any civil penalty assessed under § 651.7(b)(8).

* * * * *

(e) * * *

(2) Participation in the exempted fisheries program is subject to seasonal limitations, exempted species, and maximum regulated species percentage restrictions as follows:

Period	Target species	Comments
June through November	Dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid.	Regulated species weight may not exceed 10% of the total landings of dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid during the reporting period. Regulated species weight may not exceed 25% of the combined weight of dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid on each trip.
December through January	Silver hake (whiting)	Regulated species weight may not exceed 10% of the total landings of silver hake and shrimp during the reporting period. Regulated species weight may not exceed 25% of the combined weight of silver hake and shrimp on each trip.
December through May, or as specied by ASMFC [1].	Shrimp	Regulated species weight may not exceed 10% of the total landings of shrimp the reporting period. Regulated species weight may not exceed 25% of the weight of shrimp on each trip.

[1] The Northern Shrimp Section of the Atlantic States Marine Fisheries Commission is responsible for the management of northern shrimp. The Section has designated a regulatory period from December through May within which it sets the annual fishing season for northern shrimp. The Section has the authority to adjust the regulatory period or add-additional measures appropriate for the conservation of northern shrimp. The Section will consult with the New England Fishery Management Council regarding recommendations to adjust the regulatory period, with respect to the management of multispecies.

7. Section 651.23 is proposed to be amended by revising paragraph (a) to read as follows:

§ 651.23 Minimum fish size.

(a) The minimum fish sizes (total length) for certain regulated species follow:

	Inches
Cod, haddock, and pollock	19
Witch flounder (gary sole)	14
Yellowtail Flounder	13
American plaice (dab)	14
Winter flounder (blackback)	11
Redfish	9

* * * * *

8. In Part 651, Figures 1 and 4 are revised to read as follows:

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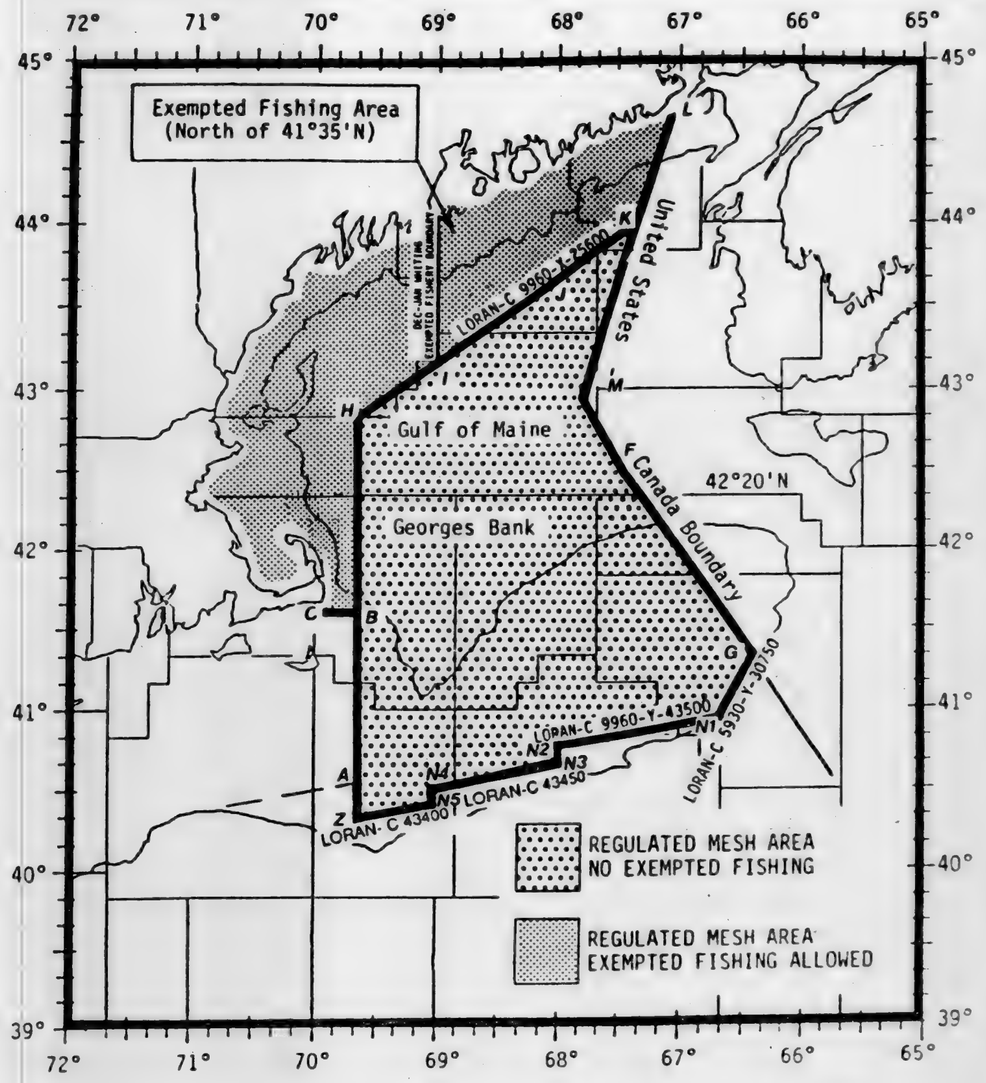


Figure 1. New England regulated mesh areas and areas of exempted and non-exempted fishing. See text for details. These areas are defined in 651.20(a)(1). Loran lines are included for the convenience of fishermen.

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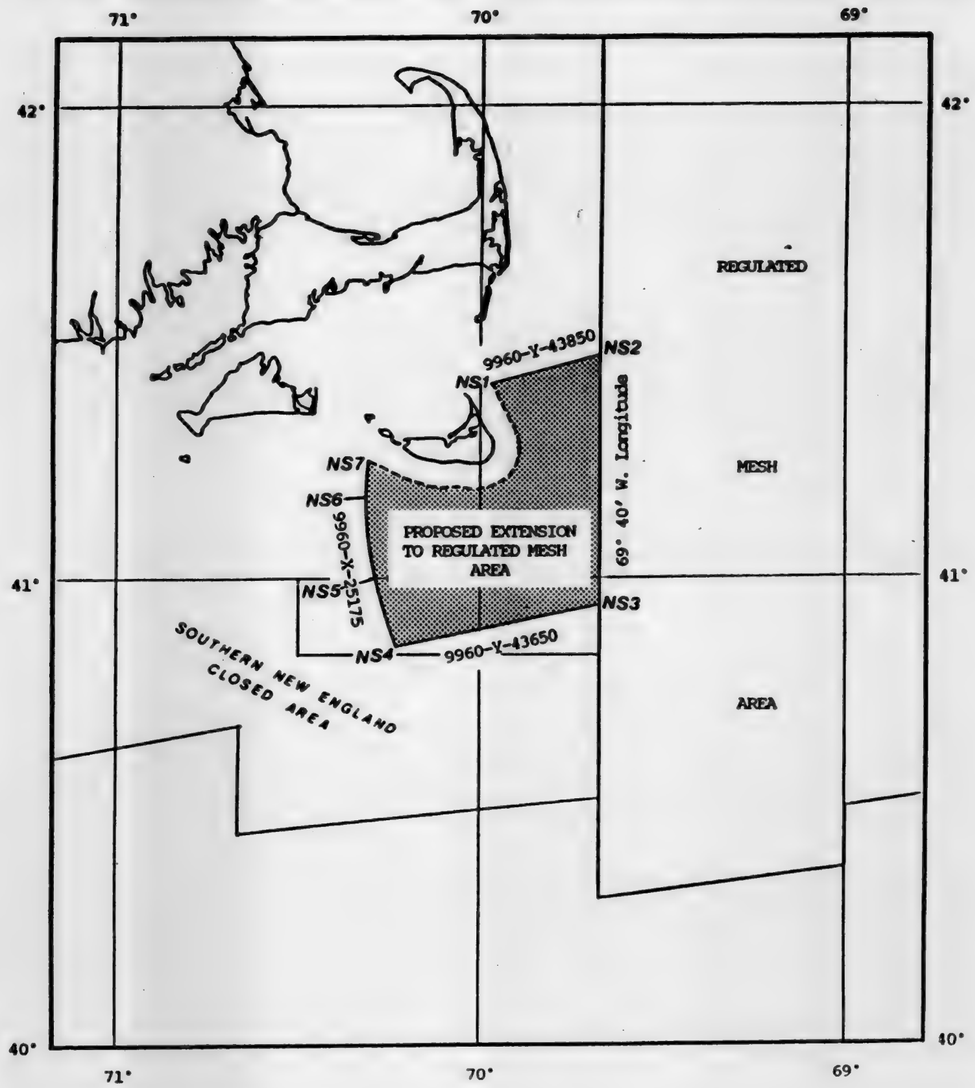


Figure 4. Nantucket Shoals regulated mesh area. See text for details. This area is defined in 651.20(a)(2). Loran lines are included for the convenience of fishermen.

[FR Doc. 88-25918 Filed 11-4-88; 4:42 pm]
BILLING CODE 3510-08-C

Notices

Federal Register
Vol. 53, No. 217
Wednesday, November 9, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 4, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) sine the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the informaiton collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the informaiton; (8) an indication of whether section 3540(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250 (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Cooperative Service
- Food and Nutrition Service

Performance Reporting System, Management Evaluation, Data Analysis and Corrective Action
None
Recordkeeping: Semi-annually; Annually
State of local governments; Federal agencies or employees; 5,970 responses; 593,215 hours; not applicable under section 3504(h)
Carole Phillips (703) 756-3384

Extension

- Agricultural Cooperative Service Questionnaire: New Cooperative Volume and Structure (Producer Survey for New Cooperative Activity)

N/A
On Occasion
Individuals or households; Farms; 245 responses; 245 hours; not applicable under section 3504(h)
William R. Seymour (202) 653-6969

Larry K. Roberson
Acting Departmental Clearance Officer.

[FR Doc. 88-25873 Filed 11-8-88; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Marketing Service

[FV-89-005]

Navel Oranges Grown in Arizona and Designated Part of California; Marketing Policy for the 1988-89 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary of the 1988-89 marketing policy for navel oranges grown in Arizona and designated part of California. The marketing policy was discussed and approved on September 27, 1988, by the Navel Orange Administrative Committee, which locally administers the marketing order covering California-Arizona navel oranges. The marketing policy contains information on crop and market prospects for the 1988-89 season.

DATE: Written suggestions, views, or pertinent information relative to the marketing of the 1988-89 California-Arizona navel orange crop will be considered if received by December 9, 1988.

ADDRESS: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, Room 2085-S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456. Such submissions should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5127. Growers and handlers of navel oranges may obtain a copy of the marketing policy directly from the Navel Orange Administrative Committee. Copies of the marketing policy are also available from Ms. Schlatter.

SUPPLEMENTARY INFORMATION: Pursuant to § 907.50 of the marketing order covering navel oranges grown in Arizona and designated part of California, the Navel Orange Administrative Committee, hereinafter referred to as the "committee," is required to submit a marketing policy to the Secretary prior to recommending regulations for the ensuing season. The order, issued pursuant to the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended, authorizes volume and size regulations applicable to fresh shipments of navel oranges to domestic markets which are defined by the order to include Canada. Regulation of export shipments of navel oranges and navel oranges utilized in the production of processed orange products is not authorized under the order.

Prior to the recommendation for regulation for each prorate district, the committee shall submit to the Secretary its marketing policy for the ensuing season. Such marketing policy shall contain the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments

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to be recommended to the Secretary during the ensuing season; (4) available supplies of competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of oranges. In formulating its marketing policy, the committee should give due consideration to the onset and duration of prorate, and size regulation. In the event that it becomes advisable to substantially modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this paragraph.

The committee adopted its marketing policy for the 1988–89 marketing season at its September 27, 1988, meeting in Los Angeles, California. Various meetings to develop, discuss and review the committee's marketing policy were held throughout the production area on September 9 in Lindsay, California, September 13 in Los Angeles, California, September 15 in Tempe, Arizona, September 19 in Orland, California, September 23 in Riverside, California, October 4 in Visalia, California, and October 11 in Tempe, Arizona. Substantial numbers of industry representatives were present at many of these meetings.

The marketing policy is intended to inform the Secretary and persons in the industry of the committee's plans for recommending regulation of shipments during the marketing season and the basis therefor. The committee evaluates market conditions and makes recommendations to the Secretary as to the quantity of navel oranges that can be shipped each week to domestic outlets during the season, without disrupting markets. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In addition to providing the Secretary with information specified in the marketing order about crop and marketing conditions, the policy statement affords an opportunity for growers and handlers to gain a broad perspective of the industry as it relates to all prorate districts and supplies a view of the anticipated economic environment in which the total crop will be marketed. The committee identified an array of general considerations in formulating its 1988–89 marketing policy.

Historically, the most prominent characteristics of the California-Arizona navel orange industry has been continuing growth. Production of 40,000 cars a season, which at the time was considered the upper level of marketability, was first reached in the 1969–70 season, and has been consistently exceeded ever since.

Another characteristic is a shift in the geography of production. Until the mid-1960s, acreage and production was about evenly divided between the districts of Arizona and Southern California and the desert valleys, and the districts in the Central Valley of California. Over the past two decades there has been a continuing shift northward. District 1 last year had 96,000 bearing acres, nearly 85 percent of the entire production area, and accounted for about the same percentage of total production.

The shift to District 1 has not changed the basic nature of the industry, but it has accentuated some of the problems of marketing while at the same time minimizing others.

The major benefit of the growth of District 1 has been the availability of more fruit for the fresh market. As overall production has increased, so has the amount available as fresh fruit to the consumer. During the past five years of near record crops, nearly 80 percent of all navel oranges grown have reached consumers as fresh fruit.

An important characteristic of the navel orange is that it is primarily a fresh market orange, in contrast with other citrus varieties which have viable alternative uses. Juice from navel oranges develops a bitter off-flavor within a short time after it has been squeezed. This characteristic precludes the use of navel oranges for juice except when blended with juice from other varieties of oranges, and, in most years, prices received for navel oranges sold to processors have produced negative returns in terms of on-tree prices.

Another major characteristic of navel oranges considered by the committee in developing its marketing policy is the ability of the fruit to be held on the trees for an extended period. This has proven to be useful in extending shipments throughout the marketing season while narrowing fluctuations in short term shipping volumes. In many other crops, mature fruit can be harvested and stored for an extended marketing period. However, navel oranges are not amenable to this storage practice as they develop flavor characteristics making them unusable for any purposes. Thus, the only practical system for handling navel oranges is to pick them and pack them at the time they are needed for the market, a market system which requires leaving much of the crop on the tree for extended periods. Therefore, the industry has developed a variety of strategies which extend the navel orange season. These include the use of growth regulators which can delay maturity for long periods, planting early or late maturing varieties, and using frost protection devices.

California-Arizona navel oranges are a winter orange produced and shipped between October and June. Since the first damaging frosts may come as early as November and the danger is present until mid-March, the bulk of the crop is exposed to possible damage or loss and this risk increases each day the fruit remains on the tree. This situation has always existed in the California orange industry, but the northward shift in acreage has made it more pronounced.

Despite the dangers of freeze damage, the California-Arizona navel orange industry is committed to, and plans for, a long season. The present production levels mandate this, and producers and handlers have developed their operating methods accordingly to include the planting of early maturing clones and the increased use of frost protection devices such as orchard heaters, wind machines, water application systems, and frost protection chemicals.

In its 1988–89 marketing policy, the committee projected the California-Arizona navel orange crop at 75,750 cars (1,000 cartons at 37.5 pounds net weight each equals one car). This compares with last year's estimated total production of 65,594 cars. The National Agricultural Statistics Service (NASS) September estimate for the 1988–89 crop was 70,000 cars for the State of California, which, when combined with the committee's estimate of 1,300 cars for the Arizona desert valley, totals 71,300 cars for the entire production area.

The committee estimates District 1, Central California, 1988–89 production at 65,700 cars compared to 55,225 cars produced 1987–88. In District 2, Southern California, the crop is expected to be 8,200 cars compared to 8,842 cars produced last year. In District 3, the Arizona-California desert valley, the committee estimates a production of 1,300 cars compared to 1,027 cars in 1987–88. In District 4, Northern California, a 550 car crop is projected compared to 500 cars last year.

In terms of total crop utilization, the committee expects 64 percent of the 1988–89 crop to be accounted for in domestic fresh markets compared with 69 percent in 1987–88; fresh exports are projected to require 9 percent of total 1988–89 utilization compared with 8 percent in 1987–88; and processing and other uses would account for the residual 27 percent compared with 23 percent in the last season. Expressed in terms of the actual volumes of navel oranges shipped or processed, domestic fresh market shipments would be up about 7 percent from 1987–88 estimates, export shipments would be up about 15 percent, and processed and other utilization would increase approximately 39 percent.

The committee has projected much smaller orange sizes in 1988–89 crop than in the previous year. Because of the smaller fruit sizes, the skin texture of the fruit is expected to be smoother and thinner than the past season. Fruit quality is expected to range from excellent to well above average.

The committee estimates that shipments of domestic fresh outlets, including Canada, during the 1988–89 season will account for 48,500 cars. Last year a total of 45,087 cars were shipped to fresh domestic markets. Fresh export shipments are expected to total 6,250 cars compared to 5,399 cars last year. Processing and other dispositions are forecast at 21,000 cars compared to 15,106 cars last year. The committee expects that the fresh domestic market will absorb all the fruit that meets quality standards and is economically feasible to ship.

Based on current projections, shipments are expected to begin at the end of October and finish in late May. The committee has developed a schedule of estimated weekly shipments covering the 1988–89 season.

The committee reports that Florida round orange production is expected to be 294,000 cars, about 6 percent greater than last year. In Texas, orange production for the 1988–89 is expected to be 3,200 cars, an increase of more than 18 percent from last season. Production of apples is estimated at 192.1 million bushels in 1988–89 compared to 251.0 million bushels in 1987–88. Winter pear fresh pack is estimated at 12.4 million bushels in 1988–89 compared to 12.3 million bushels last year. Of increasing importance in considering the supplies of competitive non-citrus fruits are "summer fruit" importations from Chile (nectarines, plums, peaches, and grapes), and it is expected that this upward trend will continue for some time. General economic conditions are expected to be favorable.

The 1987–88 season average fresh equivalent on-tree grower returns for California-Arizona navel oranges as reported by the NASS were $3.94 per carton. This was about 71 percent of the equivalent season average parity of $5.53 per carton.

Based upon fresh utilization levels indicated in the Navel Orange Administrative Committee's Marketing Policy, the current point estimate of the season average fresh on-tree price for 1988–89 is $4.40 per carton, or 78 percent of the projected season average fresh on-tree equivalent parity price of $5.65. It is currently estimated that there is less than a 2.5 percent probability that the 1988–89 season average fresh on-tree price will exceed the projected season average fresh on-tree equivalent parity price.

In discussing the possible need for prorate regulation early in the season, the marketing policy indicated that the beginning of harvest is expected to start somewhat earlier this year than a year ago. Therefore, the committee anticipates that volume regulation could be recommended earlier than last year.

In view of the above, it is the committee's view that early shipments without volume regulation could be excessive and disruptive to the early market and to the market immediately following that time. The committee points out that such recommendations, of course, will depend on the rate of the early harvest and anticipated market conditions at the time regulations are considered. The committee believes it is essential to the successful marketing of the entire crop that shipments be made in an orderly manner from the beginning of the season.

The marketing order identifies areas the committee should consider in recommending prorate regulation and states that the committee, in making its recommendations, shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors: (1) Market prices for oranges, including market prices by grades and sizes; (2) supply of oranges on track at, and en route to, the principal markets; (3) supply, maturity, and condition of oranges in the area of production including the grade and size composition thereof; (4) market prices and supplies of citrus fruits from California, Arizona, and competitive producing areas, and supplies of competitive fruits; (5) trends and level in consumer income; and (6) other relevant factors.

In order to provide an opportunity for public input, the Department will accept written views and information pertinent to the marketing policy and the need for, or level of, regulations for the 1988–89 season. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and seasonal volume regulations on small businesses. This notice provides a 30-day period for the receipt of comments. This period is considered to be adequate due to the number of meetings held throughout the production area, both prior to and subsequent to the adoption of the marketing policy, at which such policy was reviewed and disucssed by industry representatives and interested persons.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: November 4, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–25870 Filed 11–8–88; 8:45 am]

BILLING CODE 3410-02-M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date and Time: December 1, 1988, 8:30 a.m.–5:00 p.m.; December 2, 1988, 8:30 a.m.–5:00 p.m.

Place: U.S. Department of Agriculture, Room 338C, Aerospace Building, Washington, DC 20250–2200.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact Person for Agenda and More Information: Dr. John A. Naegele, Executive Secretary, U.S. Department of Agriculture, Cooperative, State Research Service, Room 328, Aerospace Building, Washington, DC 20251–2200, Telephone: 202447–4587.

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Done at Washington, DC this 1st day of November 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service

[FR Doc. 88-25947 Filed 11-8-88; 8:45 am]

BILLING CODE 3410-22-M

COMMISSION ON CIVIL RIGHTS

Pennsylvania Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on December 1, 1988, in Room 317 of the U.S. Customs House, 2 Chestnut Street, Philadelphia, Pennsylvania. The purpose of the meeting is to discuss: The status of the Commission; a November 4–5, 1988 Regional Conference at which the Advisory Committee was represented; the April 1988 summary report on the State law requiring the collection of data on bias-related incidents; and plans for Fiscal Year 1989.

Persons desiring additional information, or planning a presentation to the Committee should contact Committee Chairperson Susan M. Wachter, (215/898-6355) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 4, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88-25970 Filed 11-8-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held December 6, 1988, 9:30 a.m., Room 1617-F at the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

Open Season

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of upcoming regulatory changes in the telecommunications areas.
4. Public comments are requested on decontrol or relaxation of ECCN 1519A and 1520A for either the Bloc or PRC.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Ferrell at (202) 377-2583.

Date: November 4, 1988.

Betty Ann Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-25897 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-412-801]

Preliminary Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (UK) are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of a certain class or kind of antifriction bearings (other than tapered roller bearings) and parts thereof from the UK. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from the UK as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Mary Clapp, Carole Showers, or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230, telephone: (202) 377-0161, 377-3965, 377-3217, or 377-2239 respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from the UK are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do exist with respect to imports of a certain class or kind of AFBs from the UK, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from the UK (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to INA Bearings Ltd. (INA), RHP Bearings Ltd. (RHP), SKF UK Limited (SKF), and Rose Bearings, Ltd. These companies account for a substantial portion of exports of the subject merchandise from the UK to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from the UK. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from the UK.

However, we have only recently been able to identify an exporter of plain bearings from the UK, Rose Bearings, Ltd. (Rose). On October 21, 1988, a questionnaire was issued to Rose; responses will not be received until late November. Given these circumstances, we consider it appropriate to preliminary determine that plain bearings from UK are not being, nor are likely to be, sold in the United States at less than fair value.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see*, "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging the Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of

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Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38(a), the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from the UK. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decision to initiate COP investigations. Citing *Al Tech Speciality Steel Corp. v. United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), these respondents argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market sales below the COP.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that sufficient company-specific allegations have been provided with respect to the following investigations:

1. Ball Bearings—SKF
2. Spherical Roller Bearings—SKF
3. Needle Roller Bearings—INA

Therefore, the Department has reinstated COP investigations for these companies on the classes or kinds of AFBs listed above. Petitioner submitted on October 21, 1988, a new allegation of sales below the cost of production for sales by RHP of ball bearings and cylindrical roller bearings. The Department is currently reviewing this allegation and will make a determination in the near future.

Voluntary Respondents

On July 1 and 7, 1988, we issued questionnaires to companies which had expressed interest in submitting voluntary responses in these investigations. On September 15, 16, and 19, 1988, we received a voluntary response from Cooper Bearings Ltd. (Cooper), a producer of cylindrical roller bearings in the UK. This response was not timely as it was received after the final due date for questionnaire responses (September 6, 1988). This response also contained material deficiencies. Therefore, it was not considered for purposes of this investigation. Accordingly, cylindrical roller bearings exported by Cooper will be subject to the "All Other" rate.

Period of Investigation

This period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchanidise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, (52 FR 30790, August 17, 1987). In addition, we sought

and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and within the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from the UK to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of a related selling agent;
2. This was a customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *RHP:* RHP reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for brokerage and handling, foreign inland freight, foreign inland insurance, ocean freight, U.S. duty, and U.S. inland freight in accordance with section 772(d)(2) of the Act. We made further deductions from ESP, where appropriate, for advertising, commission, credit expenses, and indirect selling expenses pursuant to sections 772(e)(1) and (2) of the Act.

RHP has calculated its foreign inland freight, ocean freight, packing, and U.S. inland freight based on value rather than weight or volume. We have requested that RHP calculate revised allocation rates for these expenses based on how their costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of our preliminary determination, we have accepted RHP's allocation rates as the best information available.

RHP claimed advertising expenses incurred on its U.S. sales as an indirect expense. For purposes of this determination and as the best information available, we are treating advertising expenses as a direct selling expense because RHP did not clearly specify whether these expenses were directed at its customers or its customers' customers.

B. *SKF:* SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, inland freight, marine insurance, and ocean freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for credit, "other expenses", repacking expenses in the United States, technical service expenses, warranty expenses, and indirect selling expenses, pursuant to sections 772(e)(1) and (2) of the Act.

SKF claims that the category "other expenses" should be used as an adjustment to its United States price to account for data entry and invoicing errors. The data included both positive and negative values. Given that SKF did not provide any information regarding how this adjustment should be treated, *i.e.*, whether it should be added or subtracted from United States price, we added these expenses to United States price.

II. Spherical Roller Bearings

SKF: SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transactions. We calculated ESP for spherical roller bearings based on packed, f.o.b. or delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

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III. Cylindrical Roller Bearings

RHP: RHP reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP for cylindrical roller bearings based on packed, delivered prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: INA reported that less than 33 percent by volume of its U.S. sales were identical to products sold in the home market and did not provide home market sales of similar merchandise. (*See,* "Alternative Reporting Requirements" section of this notice.) Lacking these comparisons, we have applied best information available for those sales which would achieve the 33 percent threshold. We have used the margin calculated as best information available since this rate was higher than the rate provided in the petition for this class or kind of merchandise from the UK.

All of INA's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. U.S. warehouse price to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling (which included containerization, marine insurance, ocean freight, U.S. inland freight and insurance), foreign inland freight, foreign inland insurance, and U.S. duty, in accordance with section 772(d)(2) of the Act. We made further deductions from ESP for credit expenses, warranty expenses, and U.S. indirect selling expenses and non-U.S. indirect selling expenses, pursuant to section 772(e)(1) and (2) of the Act.

For the following expenses, INA used the same allocation rates for U.S. sales of merchandise from INA-FRA, INA-France and INA-UK: brokerage and handling, foreign inland freight, foreign inland insurance, packing and non-U.S. selling expenses. We have requested that INA calculate separate allocation rates, by country, for these charges. Also, INA has calculated its foreign inland freight, ocean freight and packing based on value, rather than weight or volume. We have also requested that INA calculate revised allocation rates for these expenses based upon how their costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of the preliminary determination, we have accepted INA's allocation rates as the best information available.

V. Plain Bearings

Rose: As stated in the "Case History" section of this notice, given that we have only recently identified Rose as an exporter of plain bearings, and its response will not be due until late November, we have preliminarily determined that Rose's sales of plain bearings are not being made at less than fair value.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales. The calculation of foreign market value for each respondent is detailed below.

I. Ball Bearings

A. *RHP:* We calculated foreign market value based on packed, delivered prices to unrelated customers in the home market. We made deductions form the home market price, where appropriate, for inland freight, inland insurance, home market packing and rebates. We added U.S. packing to the home market price in accordance with section 773(a)(1) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses and credit notes, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made further deductions from home market price, where appropriate, for credit expenses and credit notes. We also deducted indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

RHP calculated its home market freight and packing based on value rather than weight or volume. We have requested that RHP calculate revised allocation rates for these expenses based on how their costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of this preliminary determination, we have accepted RHP's allocation rates as the best information available.

B. *SKF:* We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, home market packing, and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. We also deducted certain indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

SKF's response included a claim for home market "indirect selling expenses". Although requested in our original and supplemental questionnaires, SKF failed to provide an itemized breakdown of these indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

II. Spherical Roller Bearings

SKF: We calculated foreign market value for spherical roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

RHP: We calculated the foreign market value for cylindrical roller bearings based on packed, delivered prices to unrelated customers in the home market. The adjustments to home market price for comparisons involving purchase price and ESP sales were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price for inland freight and inland insurance, and discounts. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. We also deducted indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

INA has calculated its foreign inland freight based on value rather than weight or volume. We have requested that INA calculate a revised allocation rate for this expense based on how its costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of the preliminary determination, we have accepted INA's allocation rate as the best information available.

V. Plain Bearings

Rose Bearings, Ltd.: Refer to "Case History" section of this notice.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from the UK. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(1) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company-specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation. We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. Based on our analysis of the monthly shipment data submitted by respondents, we have preliminarily found that there is a reasonable basis to believe or suspect that imports of cylindrical roller bearings from RHP have been massive over a relatively short period of time. Therefore, we find that the requirements of section 733(e)(1)(B) are met for RHP's exports of cylindrical roller bearings.

SKF, however, has failed to provide the Department with adequate information upon which to base a determination. Therefore, as best information available, we are assuming that imports from SKF have been massive over a relatively short period of time for spherical roller bearings. Therefore, we also find that the requirements of section 733(e)(1)(B) are met for SKF and spherical roller bearings.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by UK manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient [*See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988).] Since RHP and SKF sell in the United States through related companies, and their rates are sufficiently high, we find that the requirements of section 733(e)(1)(A) are met for these companies with respect to two classes or kinds of merchandise. Therefore, the following chart sets forth our company-specific preliminary determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise from the UK.

	Critical circumstances
Ball bearings:	
SHP	No.
SKF	No.
All others	No.
Spherical roller bearings:	
SKF	Yes.
All others	Yes.
Cylindrical roller bearings:	
RHP	Yes.
All others	Yes.
Needle roller bearings:	
INA	No.
All others	No.
Plain bearings:	
Rose	No.
All others	No.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from the UK, as defined in the "Scope of Investigations" section of this notice, with the exception of Rose and all other producers of plain bearings, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. For entries of those products from those manufacturers, producers, and exporters in the UK where we have preliminarily determined that critical circumstances exist (*see,* the "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from

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the UK exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
RHP	32.15
SKF	205.07
All others	131.86
Spherical roller bearings:	
SKF	24.82
All others	24.82
Cylindrical roller bearings:	
RHP	45.56
All others	45.56
Needle roller bearings:	
INA	174.17
All others	174.17
Plain bearings:	
Rose	0.00
All others	0.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

October 27, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

Appendix I—Scope of These Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704 and 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.130); and other bearings (except tapered roller bearings) and parts thereof (TSUSA items 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA items are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all plain bearings which do not employ rolling elements. Plain bearing entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

[FR Doc. 88-25799 Filed 11-8-88; 8:45 am]
BILLING CODE 3510-DS-M

[A-401-801]

Preliminary Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from Sweden are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of a certain class or kind of antifriction bearings (other than tapered roller bearings) and parts thereof from Sweden. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Sweden as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Carole Showers, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-0161 or 377-3217, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject mechandise) from Sweden are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Sweden, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Sweden (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to Aktiebolaget SKF (AB SKF). This company accounts for a substantial portion of exports of the subject merchandise from Sweden to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from Sweden. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from Sweden.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see* "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging the Torringotn Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 7732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in

However, since plain bearings enter the United States under a basket TSUSA category, we are unable to definitively establish whether plain bearings were imported from Sweden during the period of investigation. In addition, we are unable to specifically identify any Swedish exporters of plain bearings to the United States. Therefore, we have preliminarily determined that plain bearings from Sweden are not being, or are likely to be, sold in the United States at less than fair value. We will continue to attempt to establish whether plain bearings from Sweden were imported and attempt to identify any Swedish exporters of plain bearings to the United States during the period of investigation for purposes of our final determination.

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the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38(a), the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all intersted parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: it at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from Sweden. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on JUly 13, 1988, we issued a decision memorandum stating that the

products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, respondent objected to the Department's decision to initiate COP investigations. Citing *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), respondent argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market and third country sales below the COP, as appropriate.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that sufficient company-specific allegations have been provided with respect to SKF ball bearings and spherical roller bearings. Therefore, the Department has reinstated COP investigations for these products only.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and within the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from Sweden to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For those sales where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with secion 772(c) of the Act.

All of SKF's U.S. sales were ESP transactions. The calculation of United States price for each class or kind of merchandise is detailed below.

I. Ball Bearings

SKF reported that more than 33 percent by volume of its U.S. sales were identical to products in the third country market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical third country market matches in our price-to-price comparisons.

We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, inland freight, marine insurance, and ocean freight, in accordance with section 772(d) (2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for credit, "other expenses", repacking in the United States, technical service expenses, warranty expenses, and indirect selling expenses pursuant to sections 772(e)(1) and (2) of the Act.

SKF reported a minimal amount of purchase price sales during the POI; however, SKF did not report complete sales data for these transactions. For both these reasons, we did not include any purchase price sales in our calculation of United States price.

SKF notified us that approximately fifty percent of its reported U.S. sales of ball bearings and one percent of its sales of spherical roller bearings were produced in a country other than Sweden. SKF claims that although it is impossible for them to separate sales of this merchandise from that produced in Sweden. United States price of multiple sourced products are comparable. While we will carefully examine this issue at verification, we have included all reported sales in our calculation of United States price as best information available.

SKF claimed that the category "other expenses" should be used as an adjustment to its United States price to account for data entry and invoicing errors. The data included both positive and negative values. Given that SKF did not provide any information regarding how this adjustment should be treated, *i.e.*, whether it should be added or subtracted from United States price, we added these expenses to United States price.

II. Spherical Roller Bearings

SKF reported that more than 33 percent by volume of its U.S. sales were identical to products in the third country market. (See, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical third country market matches in our price-to-price comparisons. We calculated ESP for spherical roller bearings based on delivered prices to unrelated purchasers in the United States. The adjustments were identical to those described above for ball bearings.

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III. Cylindrical Roller Bearings

SKF reported that more than 33 percent by volume of its U.S. sales were identical to products in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons. We calculated ESP for cylindrical roller bearings based on delivered prices to unrelated purchasers in the United States. The adjustments were identical to those described above for ball bearings.

Foreign Market Value

In accordance with secion 773(a) of the Act, we calculated foreign market value based on home market sales and, where appropriate, third country sales. The calculation of foreign market value is detailed below.

I. Ball Bearings

Following the methodology for determining home market viability, we found that the home market sales of ball and spherical roller bearings were not of a sufficient quantity to provide an adequate basis for foreign market value. (*See* "Such or Similar section of this notice.) In our original questionnarie, we had requested that respondent provide third country sales information where the home market was determined to be not viable. SKF did not provide us with this information. Therefore, on September 16, 1988, we issued a letter to SKF again requesting third country sales data. On September 23, 1988, SKF submitted arguments challenging the Department's finding that the home market is not viable, while also providing the Department with the requested third country sales data for sales to the Federal Republic of Germany (FRG), its largest third country market for sales of ball and spherical roller bearings from Sweden.

On October 17, 1988, petitioner submitted a letter requesting that the Department use constructed value as the basis for determining the foreign market value of ball bearings because the third country data is unreliable. Petitioner asserts that the reported third country sales include sales of ball bearings not manufactured in Sweden. Petitioner argues that, in order for sales of multiple origin products to be used, the Department must determine that the foreign market value in the FRG is higher than that in Sweden, adjusted for certain costs, pursuant to the special rule for multinational corporations, as provided for in section 773(d) of the Act, *see* 19 U.S.C. 1677(d).

First, petitioner has provided no evidence that the reported third country sales are of multiple origin and, therfore, an unreliable basis upon which to determine foreign market value. Second, petitioner has not provided appropriate pricing and cost information to demonstrate that the foreign market value of such or similar merchandise in the FRG is higher than the foreign market value of such or similar merchandise produced in Sweden. Therefore, for purposes of the preliminary determination, we are using the third country data provided by respondent as the basis for foreign market value.

We calculated foreign market value based on delivered prices to unrelated customers in the third country market. We made an adjustment for interest earned on delayed payments. We made deductions from the third country price, where appropriate, for export packing expenses, foreign inland freight, and inland freight. We added U.S. packing to the third country price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions were ESP sales, we made further deductions, where appropriate, for credit expenses and warranty expenses. We also deducted certain indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all third country products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

SKF's response included a claim for third country "indirect selling expenses". Although requested in our original and supplemental questionnaires, SKF failed to provide an itemized breakdown of the indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

SKF claimed cash discounts, rebates, and technical services as direct selling expenses. However, these claims were not adequately supported. Therefore, we treated them as indirect selling expense.

SKF also claimed an adjustment for a category labelled "other expenses". However, no description of these expenses was provided. Therefore, these expenses were disallowed.

II. Spherical Roller Bearings

We calculated third country price for spherical roller bearings based on delivered prices to unrelated customers in the third country. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

We calculated foreign market value based on c&f, ex-factory, and delivered prices to unrelated customers in the home market. We made an adjustment to home market price for interest earned on delayed payments. We made deductions from the home market price, where appropriate, for inland freight, home market packing, and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit expenses. We also deducted indirect selling expenses in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Sweden. Section 773(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of

domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company-specific data on specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation. We have asked SKF to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. Based on our analysis of the monthly shipment data submitted by respondent, we have preliminarily found that there is a reasonable basis to believe or suspect that imports of the spherical roller bearings from SKF have been massive over a relatively short period of time. Therefore, we find that the requirements of section 733[e][1][B] are met for SKF spherical roller bearings.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Swedish manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733[e][1][A] of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988).] Since SKF sells in the United States through related companies, and its rate is sufficiently high, we find that the requirements of section 733(e)(1)(A) are met for these companies with respect to spherical roller bearings.

Therefore, the following chart sets forth our preliminary determinations with respect to the existence of critical circumstances for each class or kind of merchandise from Sweden.

	Critical circumstances
Ball bearings:	
AB SKF	No.
All others	No.
Spherical roller bearings:	
AB SKF	Yes.
All others	Yes.
Cylindrical roller bearings:	
AB SKF	No.
All others	No.

Verification

We will verifiy the information used in making our final determinations in accordance with section 776(a) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Sweden, as defined in the "Scope of Investigations" section of this notice, with the exception of entries of needle roller and plain bearings, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register, in accordance with section 733(d)(1) of the Act. For entries of spherical roller bearings from Sweden (*see*, the "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the Federal Register, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Sweden exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
AB SKF	162.52
All others	162.52
Spherical roller bearings:	
AB SKF	22.37
All others	22.37
Cylindrical roller bearings:	
AB SKF	24.30
All others	24.30
Needle roller bearings; All manufacturers/producers/exporters	0.00
Plain bearings; All manufacturers/producers/exporters	0.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-

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hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of these Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

[FR Doc. 88-25797 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-801]

Preliminary Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from Romania are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of antifriction bearings (other than tapered roller bearings) and parts thereof from Romania. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Romania as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Carole Showers, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377-0161, or 377-3217, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from Romania are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Romania, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Romania (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaire to Technoimportexport. This company accounted for all known exports of the subject merchandise from Romania to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. The response to Section A was due on June 14, 1988, and the responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see,* "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from Romania. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner submitted insufficient information supporting the claim of LTFV sales of cylindrical roller bearings, needle roller bearings, and plain bearings from Romania. Accordingly, on September 26, 1988, we rescinded our initiations of antidumping duty investigations on these classes or kinds of merchandise from Romania (53 FR 39327, October 6, 1988).

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

At the request of the respondent, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental questionnaires were issued subsequent to that date. Supplemental responses were received from the respondent prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to being petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products From Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel From Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

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We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Period of Inestigation

The period of investigation is October 1, 1987 through March 31, 1988.

Fair Value Comparisions.

To determine whether sales of the subject merchandise from Romania to the United Statess were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Petitioner alleged that Romania has a state-controlled economy, within the meaning of section 773(c) of the Act, and that sales of the subject merchandise in that country do not permit a determination of foreign market value. After an analysis of the Romanian economy, consideration of the submissions by the parties, and past Departmental practice, we have preliminarily concluded that Romania has a state-controlled economy for purposes of these investigations. Basic to our decision on this issue is the fact that the central government of Romania controls the prices and levels of production of the antifriction bearing industry, as well as the internal pricing of the factors of production.

With respect to spherical roller bearings, although we requested factors of production information for all products sold in the United States during the period of investigation, Tehnoimportexport provided information for products accounting for less than two percent of the quantity of total U.S. sales of this class or kind of merchandise. We consider this to be totally inadequate for the basis of determining whether spherical roller bearings were sold in the United States at less than fair value. In accordance with section 776(c) of the Act, when a company submits a response which we consider to be substantially deficient, we rely on best information available. Therefore, we used the highest rate provided in the petition for this class or kind of merchandise as best information available.

Tehnoimportexport did provide the requested information with respect to the other class or kind of merchandise subject to investigation, *e.g.*, ball bearings. The calculation of our margin for ball bearings is detailed below.

United States Price

All sales from Tehnoimportexport were made directly to unrelated parties prior to importation into the United States. Therefore we based the United States price on purchase price, in accordance with section 772(b) of the Act.

We calculated the pruchase price for ball bearings based on the f.o.b. price to unrelated purchasers. We made deductions from purchase price, were appropriate, for foreign inland freight in accordance with section 772(d)(2) of the Act. In *Final Determination of Sales of Less Than Fair Value: Carbon Steel Wire Rod From Poland* (49 FR 29434, July 20, 1984), it was determined that inland freight incurred in a state-controlled economy should be based on similar charges in a non-state-controlled economy. Because information on these charges was not available for Yugoslavia, the surrogate country chosen for purposes of these investigations (*see* Foreign Market value section of this notice), we used the freight expenses reported as actually incurred in Romania as the best information available.

Foreign Market Value

As a result of our determination that Romania has a state-controlled economy (*see* "Fair Value Comparison" section of this notice), section 773(c) of the Act requires us to use prices or the constructed value of "such or similar merchandise in a non-state-controlled economy country." Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a country without a state-controlled economy at a stage of economic development comparable to that with a state-controlled economy.

After an analysis of countries producing antifriction bearings, we determined that Brazil, Mexico, Portugal, the Republic of Korea, and Yugoslavia would be the most appropriate surrogate countries. We sent questionnaires requesting assistance in these investigations to producers of antifriction bearings in Mexico, Portugal, the Republic of Korea, and Yugoslavia, but to date, no affirmative responses have been received. We did not send questionnaires to any companies located in Brazil since all identified Braxilian Companies were related to other antifriction bearing companies currently under investigation. It has been Departmental practice not to request surrogate information from companies that are related to other companies already under investigation due to the possible skewing of data being provided for purposes of determining foreign market value. *See, Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unifinished, From the Socialist Republic of Romania* (52 FR 17433, May 8, 1987). We will continue our attempts to obtain and verify surrogate company data prior to the final determinations.

Since we were unable to obtain any price data from the potential surrogate companies in comparable economies, we used the factors of production valued in a comparable economy as the basis of foreign market value, as provided for in 19 CFR 353.8(c). We added U.S. packing to the constructed value, in accordance with section 773(e)(C) of the Act. We calculated constructed value based on the factors of production reported by Tehnoimportexport on behalf of the Romanian producers which account for 100 percent of the exports to the United States of the subject merchandise. We used best information available, in accordance with section 776(c) of the Act, for valuing the factors of production. Were possible, best information available was obtained from publicly available sources in Yugoslavia. We chose Yugoslavia as the surrogate county for purposes of valuation of the factors of production because Yugoslavia's level of economic development most closely approximates Romania's own level of economic development. We derived the value of labor costs based on themetal processing industry as provided by the U.S. Embassy in Yugoslavia.

Where public information was not available in Yugoslavia, we used the following data provided by respondent for the valuation of factors as best information available: the prices for steel used in the manufacture of the outer and inner rings and the cage portion of bearings were based on the value of the steel entering the United States; the prices for steel used in the manufacture of the roller and ball portions of bearings were based on the value of the steel in the European market; the values of methane gas and water were based on values in the Mexican market; the value of scrap was based on the average value of scrap as per the *American Metal Market;* the value of electricity was based on prices in the Yugoslavian market; and the value of factory overhead was derived as a percentage of the total manufacturing expenses incurred by Tehnoimportexport. We used the statutory minimum of ten percent of the sum of material and production costs for general, sales and administrative expenses and the statutory minimum of eight percent for profit.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Roomania. Section 773(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reaonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United Sates or elsewhere of the class or kind of merchandise which is the subject of the invlestigation; or

(ii) the person by whom, or for those account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject to the investigation of less than iuts fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation. We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data.

Tehnoimportexport has failed to provide the Department with adequate information upon which to base a determination. Therefore, as best information available, we are assuming that imports from Tehnoimportexport have been massive over a relatively short period of time for ball and spherical roller bearings. Therefore, we find that the requirements of section 733(e)(1)(B) are met for the above company and classes or kinds of merchandise.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Romanian manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] Since the estimated margins for Tehnoimportexport exceed 25 percent, we find that the requirements of section 733(e)(1)(A) are met for this company with respect to both classes or kinds of merchandise. Therefore, given that we preliminarily determine that imports have been massive over a relatively short period, and that the margins calculated for both ball and spherical roller bearings exceed 25 percent, we preliminarily determine that critical circumstances exist.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Romania, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. Because we have preliminarily determined that critical circumstances exist with respect to entries of the subject merchandise from Romania, (*see*, the "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Romania exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until

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further notice. The weighted-average margins are as follows:

Weighted-Average Margin Percentage	
Ball bearings:	
Tehnoimportexport	46.91
All others	46.91
Spherical roller bearings:	
Tehnoimportexport	28.10
All others	28.10

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (20 the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of these Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3706, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following *Harmonized Tariff Schedule* (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.80.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.80.50, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

[FR Doc. 88–25795 Filed 11–8–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–801]

Preliminary Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from France are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from France as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Mary S. Clap, Carole Showers, or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377–0161, 377–3965, 377–3217, or 377–2239, repectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from France are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from France (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to INA Roulements S.A. (INA); SKF Compagnie d'Applications Mecaniques S.A. (SKF); and Societe Nouvelle de Roulements (SNR). These companies account for a substantial portion of exports of the subject merchandise from France to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see,* "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from France. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from France.

After review of this additional data, we determined that petitoiner's LTFV allegations were adequate for each of the five classes or kinds of the subject merchandise. However, since plain bearings enter the United States under a basket TSUSA category, we are unable to definitively establish whether plain bearings were imported from France during the period of investigation. In addition, we are unable to specifically identify any French exporters of plain bearings to the United States. Therefore, we have preliminarily determined that plain bearings from France are not being, or are likely to be, sold in the United States at less than fair value. We will continue to attempt to establish whether plain bearings from France were imported and attempt to identify any French exporters of plain bearings to the United States during the period of investigation for purposes of our final determination.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see,* "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases [(*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985)], the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of the Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of

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customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialists at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with all product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38(a), the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memoradum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from France. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decision to initiate COP investigations. Citing *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. (CIT 1983) (*Al Tech*), these respondents argued that petitioner's sales below cost allegations were deficient becasue they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-speicific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market sales below the COP.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that a sufficient company-specific allegation has been provided with respect to SKF ball bearings. Therefore, the Department has reinstated a COP investigation for this product only.

Voluntary Respondents

On July 1, 1988, we issued questionnaires to companies which had expressed an interest in submitting voluntary responses in these investigations. However, no responses were received.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the

matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and within the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind or merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisions of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). It those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from France to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For those sales where the sale to the first unrealted customer took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of INA's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight and insurance, brokerage and handling (which inlcuded marine insurance, ocean freight, U.S. inland freight and insurance, and containerization), and U.S. duty in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for warranty expenses, credit, and other direct selling expenses incurred in the United States and France, U.S. indirect selling expenses, and non-U.S. indirect selling expenses, pursuant to sections 772(e)(1) and (2) of the Act.

For the following expenses, INA used the same allocation rates for U.S. sales of merchandise from INA–FRG, INA-France and INA–UK: brokerage and handling, foreign inland freight, foreign inland insurance, packing and non-U.S. selling expenses. The Department has requested that INA calculate separate allocation rates, by country, for these charges. Also, INA has calculated its foreign inland freight, ocean freight and packing based upon value rather than weight or volume. We have requested that INA calculate revised allocation rates for these expenses based upon how their costs were incurred (*i.e.*, by weight, volume, etc.). For purposes of the preliminary determination, we have accepted INA's allocation rates as the best information available.

B. *SKF:* SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, inland freight, marine insurance, ocean freight, and U.S. duty, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for credit, "other expenses," repacking in the United States, technical service expenses, warranty expenses, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

SKF reported a minimal amount of purchase price sales during the POI; however, SKF did not report complete sales data for these transactions. For both these reasons, we did not include any purchase price sales in our calculation of United States price.

SKF notified us that approximately three percent of its reported U.S. sales of ball bearings were produced in a country other than France. SKF claims that although it is impossible for them to separate sales of this merchandise from that produced in France, United States prices of multiple-sourced products are comparable. While we will carefully examine this issue at verification, we have included all reported sales in our calculation of United States price as best information available. SKF also notified us that all reported sales of a certain type of bearing were actually produced in Spain. We deleted all sales of this product from our calculations.

SKF claimed that the category "other expenses" should be used as an adjustment to its United States price to account for data entry and invoicing errors. The data included both positive and negative values. Given that SKF did not provide any information regarding how this adjustment should be treated, *i.e.*, whether it should be added or subtracted from United States price, we added these expenses to United States price.

C. *SNR:* SNR reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See* "Alternative Reporting Requirements" section of this notice) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SNR's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts. We made further deductions for advertising, commissions, credit, technical services, as well as adjustments for indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

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SNR calculated credit expense based on the average number of days accounts receivable were outstanding. We have recalculated credit expense based on the actual number of days from shipment to payment.

For certain transactions, no amounts were reported for brokerage and handling, packing, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. duty, U.S. inland freight, and indirect non-U.S. selling expenses. As best information available, we found the average of each of these expenses and compared it to the average gross price reported. The resultant percentages were then applied, individually, to the gross price for each transaction in which these expenses were not reported.

II. Spherical Roller Bearings

SKF: SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice). Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transactions. We calculated ESP for spherical roller bearings based on the packed, f.o.b. or delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of INA's U.S. sales were ESP transactions. We calculated ESP for cylindrical roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

B. *SNR:* SNR reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See* "Alternative Reporting Requirements" section of this notice) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SNR's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of INA's U.S. sales were ESP transactions. We calculated ESP for needle roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales. The calculation of foreign market value for each respondent is detailed below.

I. Ball Bearings

A. *INA:* We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and home market packing. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we deducted credit expenses from home market price. We also deducted indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the product sold in the United States, no adjustments for physical differences in merchandise were required.

INA included advertising and technical expenses in the claim for indirect selling expenses. It failed, however, to provide an itemized breakdown for the remainder of the indirect selling expenses claimed. Therefore, we have disallowed all indirect selling expenses, except for advertising and technical expenses, for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

INA calculated its inland freight and packing allocations based upon value rather than weight or volume. We have requested that INA calculate revised allocation rates for these expenses based upon how their costs were incurred (*i.e.,* by weight, volume, etc.) For purposes of this preliminary determination, we have accepted INA's allocation rates as the best information available.

B. *SKF:* We calculated foreign market value based on f.o.b. prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and home market packing, and cash discounts and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for advertising expenses, credit, and warranty expenses. We also deducted certain indirect selling expenses in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparions are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

SKF's response included a claim for home market "indirect selling expenses". Although requested in our original and supplemental questionnaires, SKF failed to provide an itemized breakdown of the indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

SKF claimed technical service expenses as a direct selling expense. However, that claim was not adequately supported and, therefore, we treated these expenses as indirect selling expenses.

C. *SNR:* We calculated foreign market value based on packed, ex-works prices to unrelated customers. We made deductions from the home market price, where appropriate, for packing and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, were appropriate, for credit. We also made an adjustment to home market price for indirect selling expenses in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

SNR calculated credit expense based on the average number of days for invoicing to payment. We have recalculated credit expense based on the reported number of days from shipment to payment.

SNR's response was ambiguous as to when inland freight and inland insurance charges were included in the reported gross unit price. Because of this ambiguity, we have not deducted these charges from the home market price for purposes of these determinations.

II. Spherical Roller Bearings

SKF: We calculated foreign market value for spherical roller bearings based on f.o.b. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *INA:* We calculated foreign market value for cylindrical roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *SNR:* We calculated foreign market value based on packed, ex-works prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: We calculated foreign market value for needle roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

Currency conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from France, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except for entries of needle roller bearings from INA, in accordance with section 733(d)(1) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise form France exceeds the United States price, as shown below. Needle roller bearings from INA are not included in that determination since the weighted-average margin is *de minimis*. This suspension of liquidation will remain in effect until further noitice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
INA	65.80
SKF	90.42
SNR	63.77
All others	84.07
Spherical roller bearings:	
SKF	24.84
All others	24.84
Cylindrical roller bearings:	
INA	79.52
SNR	22.60
All others	78.59
Needle roller bearings:	
INA	[1]48
All others	[1]48
Plain bearings: All manufacturers/producers/exporters	0

[1] *4De minimis.*

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published to section 733(f) of the Act (19 U.S.C. 1673(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of these Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted on Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger unis, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

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Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.) such parts are included *if*: (1) They have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

[FR Doc. 88-25791 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-801]

Preliminary Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that ball bearings and parts thereof from Thailand are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of ball bearings and parts thereof from Thailand. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Thailand as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Eleanor Shea, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-2438 or 377-0164.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that ball bearings and parts thereof (hereinafter referred to as ball bearings or the subject merchandise) from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b)(the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to imports of ball bearings from Thailand, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Thailand (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented section A of the antidumping duty questionnaire to NMB Thai, Ltd. and Pelmec Thai, Ltd. (NMB/Pelmec). These are related companies and account for a substantial portion of exports of the subject merchandise from Thailand to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice.) In light of this decision, the Department re-examined the sufficiency of petititoner's less than fair value (LTFV) allegations for each class or kind of merchandise from Thailand. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner submitted insufficient information supporting the claim of LTFV sales of spherical roller bearings, cylindrical roller bearings, needle roller bearings, and plain bearings from Thailand. Accordingly, on September 26, 1988, we rescinded our initiations of antidumping duty investigations on these classes or kinds of merchandise from Thailand (53 FR 39327, October 6, 1988).

On July 15, 1988, the Department detemined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see*, "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988.

On September 28, 1988, we issued a detailed supplemental questionnaire requesting, among other information, that respondent revise its product matching criteria methodology in accordance with the instructions outlined in the original questionnaire. On October 7, 1988, respondent submitted a narrative response to this supplemental questionnaire, as well as revised computer tapes on home market and U.S. sales data and constructed value information. On October 17, 1988, respondent submitted again revised computer tapes on home market and U.S. sales. All of these responses were received too late to be fully analyzed and used for purposes of this preliminary determination.

In the notice of initiation (53 FR 15076, April 27, 1988), we stated that we would investigate sales at less than fair value pursuant to the special rule for multinational corporations, as provided in Section 773 (d) of the Act (*see*, 19 U.S.C. 1677b(d)). One of the critieria for invoking the special rule for multinational corporations is that home market sales do not provide an adequate basis for comparison with U.S. sales of the subject merchandise. *See*, 19 U.S.C. 1677b(d)(2).

Based on information in the questionnaire responses submitted on July 18, and September 6, 1988, we determined that the home market in Thailand is viable based on the criterion set forth in 19 CFR 353.4, and that, as a result, home market sales do provide an adequate basis for comparison with the sales of the merchandise to the United States.

Therefore, we have determined that the special rule for multinational coroporations does not apply with respect to sales of the subject merchandise from Thailand. For this reason, on October 18, 1988, we issued a letter to petitioner stating that the Department would not require the respondent to provide Japanese home market price information pursuant to section 773(d) of the Act. A memorandum dated October 17, 1988 outlining our analysis of this issue is on file in the Central Records Unit.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 26, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determination.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As will the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the

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Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete descriptioin of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38, the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedure outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from Thailand. At that time, we also considered petitioner's allegation that sales in the home market were being made at prices below the cost of production (COP). However, because we stated in the notice of initiation that we would investigate the allegation of sales at LTFV pursuant to the special rule for multinational corporations (*see*, "Case History" section of this notice), we determined that it would be inappropriate to initiate an investigation of sales at below the COP in Thailand. Subsequent to our notice of initiation, however, we determined that the Thai home market is viable and that, as a result, the special rule for multinational corporations does not apply to this case.

As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents involved in the concurrent antidumping duty investigations of antifriction bearings from eight other countries objected to the Department's decision to initiate COP investigations in those cases. Citing *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), these respondents argued that petitioner's sales-below-cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit.

On September 22, 1988, petitioner submitted a new allegation that home market sales of ball bearings are being made below the COP. However, petitioner based this allegation on cost and price information for products sold only to related parties in the home market. Because petitioner failed to base its allegation on information submitted by respondent on sales to unrelated parties (*i.e.*, arm's-length transactions), we have determined that petitioner's COP allegation is insufficient.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*See*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of ball bearings from Thailand to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the Act, where a company has failed to respond to our questionnaire, has submitted a response which we consider to be substantially deficient, or has submitted information too late to be considered for purposes of this preliminary determination, we relied on best information available. For this preliminary determination, we have used best information available for the calculation of foreign market value, as discussed in detail below.

United States Price

For all U.S. transactions, the sale to the first unrelated purchaser took place after importation into the United States; therefore, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

We calculated ESP based on the packed, f.o.b. U.S. shipping point prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for discounts, freight forwarding expenses, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling expenses, in accordance with section 772(d)(2) of the Act. We made further deductions from ESP, where appropriate, for advertising, commissions, U.S. credit expenses, warranty expenses, and all indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

Respondent claimed warranty as an indirect selling expense; however, this claim was not adequately supported. Therefore, for purposes of this preliminary determination, we have treated the warranty expense as a direct selling expense in the U.S. market.

The amended response submitted on October 7, 1988, contained revised information on discounts, freight forwarding expenses, inventory carrying costs, and new information on U.S. indirect selling expenses incurred in Thailand and Japan. Although the October 7, 1988 computer tapes were not submitted in time to be used for purposes of this preliminary determination, we have incorporated the new and revised information on certain charges and adjustments wherever possible for purposes of our analysis.

Foreign Market Value

In order to meet the minimum reporting requirement of 33 percent (*see*, "Alternative Reporting Requirements" section of this notice), NMB/Pelmec had to report both identical and similar home market matches. However, in the response submitted on September 6, 1988, NMB/Pelmec failed to follow the instructions outlined in the questionnaire to make its selection of most similar home market product comparisons (*see*, "Such or Similar Comparisons" section of this notice). Furthermore, applying its own product matching methodology, NMB/Pelmec was unable to provide a sufficient number of home market products as matches to the top 33 percent by volume of U.S. sales. Therefore, in its September 6, 1988 response, NMB/Pelmec also included constructed value data.

On September 28, 1988, we issued a supplemental questionnaire to NMB/Pelmec, requiring that it report its home market matches in accordance with the Department's instructions outlined in the questionnaire. On October 7, 1988, respondent submitted a revised response; however, this information was received too late to be fully analyzed and used for purposes of this preliminary determination.

Althought the respondent provided information on some identical matches in its September 6, 1988 response we were unable to use these matches in our analysis because all sales of identical product was made to related parties in the home market. Respondent was unable to demonstrate that these sales were arm's-length transactions because no sales of the same merchandise in the home market were made to unrelated parties.

Therefore, we had no home market sales information which could be used for purposes of our fair value comparisons. Accordingly, we had to rely on best information available as required by section 776(c) of the Act. For purposes of this preliminary determination, we determined that respondent's constructed value data submitted on September 6, 1988 are the best information available to use for foreign market value.

In calculating constructed value, we used the respondent's submission for material and fabrication costs, and we revised the submitted general and administrative expenses using the company's latest available consolidated financial statement. This is in accordance with our usual methodology of using the general, administrative, and interest expenses as they appear in the company's consolidated financial statements. The selling expenses reported by respondent could not be used for the calculation of constructed value because we did not have a way to segregate these in the selling, general and administrative expenses (SG&A) reported in the company's consolidated financial statements. Since the reported home market profit was less than eight percent of the sum of the costs of materials, fabrication, and general expenses, we used the statutory minimum of eight percent.

We made deductions from constructed value, where appropriate, for inland freight and credit expenses. We also made an adjustment to constructed value for indirect selling expenses, in accordance with 19 CFR 353.159(c). As best information available, for direct and indirect selling expenses, we calculated a weighted-average of these expenses as they were reported in the home market sales database. Since the constructed value data did not include packing, we added U.S. packing to the constructed value for comparison with United States price.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

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Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Thailand. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in this investigation that company-specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterrring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked respondents to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determination on company-specific data. Based on our analysis of the monthly shipment data submitted by NMB/Pelmec, we have preliminarily found that there is no reasonable basis to believe or suspect that imports of ball bearings from NMB/Pelmec have been massive over a relatively short period of time. Therefore, we find that the requirements of section 733(e)(1)(B) have not been met with respect to ball bearings from NMB/Pelmec.

Since we do not find that there have been massive imports of ball bearings from NMB/Pelmec, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that it was being sold at less than fair value. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of ball bearings from NMB/Pelmec.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Thailand, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Thailand exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
NMB/Pelmec	1.34
All others	1.34

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of Investigation

The products covered by this investigation, ball bearings, mounted or unmounted, and parts thereof, are defined as follows:

Ball Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* (TSUSA) items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA) item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this (TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized System (HS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

This investigation covers all of the subject ball bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of the investigation. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if:* (1) They have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts are *not* covered by this investigation are those where the part will be subject to heat treatment after importation.

[FR Doc. 88-25798 Filed 11-8-88; 8:45 am

BILLING CODE 3510-DS-M

[A-559-801]

Preliminary Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that ball bearings and parts thereof from Singapore are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Singapore as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Eleanor Shea, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377-2438 or 377-0184.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that ball bearings and parts thereof (hereinafter referred to as ball bearings or the subject merchandise) from Singapore are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred: On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Singapore (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaire to NMB Singapore and Pelmec Industries, Ltd. (NMB/Pelmec). These companies are related and account for a substantial portion of exports of the subject merchandise from Singapore to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due of June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice.) In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from Singapore. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner submitted insufficient information supporting the claim of LTFV sales of spherical roller bearings, cylindrical roller bearings, needle roller bearings, and plain bearings from Singapore. Accordingly, on September 26, 1988, we rescinded our initiations of antidumping duty investigations on these classes or kinds of merchandise from Singapore (53 FR 39327, October 6, 1988).

On July 15, 1988, the Department that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see*, "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988.

In our original questionnaire, we requested that respondent report third country sales information if the home market was not viable. NMB/Pelmec did not provide this information. Based on information provided in the September 6, 1988 questionnaire response, we determined that the home market in Singapore is not viable. Accordingly, on September 23, 1988, we issued a letter to NMB/Pelmec requesting third country sales data, and on September 29, 1988, we issued a detailed supplemental questionnaire. On October 3, 1988, respondent submitted constructed value information, as well as arguments challenging the Department's finding that the home market is not viable. On October 7, 1988, respondent submitted revised home market and U.S. sales data, as well as incomplete third country data. Computer tapes containing revised their country sales data were submitted on October 11, 1988. Finally, on October 17, again revised home market, U.S. and third country sales data were submitted. However, all of these responses were submitted too later to be fully analyzed and used for purposes of this preliminary determination.

On September 22, 1988, petitioner submitted a letter requesting that we obtain the resale prices of Minebea Co., Ltd., the Japanese parent company of NMB/Pelmec, for the products produced in Singapore pursuant to the special rule for multinational corporations, as provided for in section 773(d) of the Act (*see*, 19 U.S.C. 1677b(d)). One of the criteria for invoking the special rule for multinational corporations is that the foreign market value of such or similar merchandise produced outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the country of exportation. Petitioner did not provide pricing information to demonstrate that the foreign market value of such or similar merchandise in Japan is higher than the foreign market value of such or similar merchandise produced in Singapore. Therefore, there is no basis

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at this time to pursue the analysis provided for under section 773(d) of the Act.

For this reason, on October 18, 1988, we issued a letter to petitioner stating that the Department would not require respondent to provide Japanese home market price information pursuant to section 773(d) of the Act. A memorandum dated October 17, 1988, outlining our analysis of this issue is on file in the Centeral Records Unit.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that these are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, or October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determination.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to this investigation, see Appendix I attached to this notice

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five serarate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Sperical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursunt to 19 CFR 353.38, the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the ecormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of

products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the responsent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from Singapore. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See,* "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decision to initiate COP investigations. Citing *Al Tech Specialty Steel Corp.* v. *United States,* 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), these repondents argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Because we rescinded the initiation of LTFV investigations with respect to spherical roller bearings, cylindrical roller bearings, needle roller bearings, and plain bearings from Singapore (*See,* "Case History" section of this notice), petitioner submitted a new allegation of home market below the COP with respect to ball bearings only. Petitioner submitted revised data on sales at below the COP in Singapore on September 27, 1988. Nevertheless, because we have found that Singapore home market is not vaiable (*See,* "Such or Similar Comparisons" section of this notice), there is no basis to conduct a COP investigation of the Singapore home market.

Because we requested that respondent provide third country sales information, petitioner then submitted on October 17, 1988, an allegation that sales to the third country (*i.e.,* Japan) are being made at below the COP. However, there were significant omissions in the third country sales data on which petitioner relied to make this COP allegation. Furthermore, all of the third country sales responses were submitted too late to be analyzed fully and used for any purpose, including an analysis of sales below cost, for these preliminary determinations. If petitioner makes an allegation that sales to the third country are below the COP based on respondent's revised response, we will consider that allegation when it is submitted.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan,* (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

In the September 6, 1988 questionnaire response, respondent failed to provide calculations of home market viability as requested in the original questionnaire. According to the sales figures reported in the response, and following the methodology outlined above for determining home market viability, we found that the home market sales were not of a sufficient quantity to provide an adequate basis for foreign market value. Therefore, on September 23, 1988, we issued a letter to NMB/Pelmec requesting third country sales data. We received a response to this request on October 7, 1988, which contained numerous deficiencies and missing data. Revised third country sales data were submitted on October 17, 1988. However, all of this information was submitted too late to be fully analyzed and used for purpose of this preliminary determination.

With respect to our product comparisons and pursuant to our alternative preporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*see,* "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of ball bearings from Singapore to the United States were made at less than fair value, we compared the United Staes price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the Act, where a company has failed to

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respond to our questionnaire, has submitted a response which we consider to be substantially deficieint, or has submitted information too late to be considered for purposes of these preliminary determinations, we relied on best information available. Those instances where we have used best information available are fully described below.

United States Price

For all U.S. transactions, the sale to the first unrelated purchaser took place after importation into the United States; therefore, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

In order to meet the minimum reporting requirements of 33 percent (*see*, "Alternative Reporting Requirements" section of this notice), NMB/Pelmec had to report both identical and similar home market matches. However, in the response submitted on September 6, 1988, respondent failed to follow the instructions outlined in the questionnaire to make its selection of most similar home market comparisons to U.S. sales. In addition, in the original questionnaire, we requested that respondent provide third country sales information where the home market is not viable. NMB/Pelmec did not provide this information in its September 6, 1988 response.

On October 3, 1988, respondent voluntarily submitted constructed value information, as well as arguments challenging the Department's finding that the home market is not viable. On October 7, 1988, respondent submitted revised home market and U.S. sales information amending its product matches, as well as incomplete third country sales data. Additional information on third country sales was submitted on October 11, 1988. Again revised home market, U.S. sales and third country sales data were submitted on October 17, 1988. All of these responses were submitted too late to be fully analyzed and used for purposes of these preliminary determinations. Therefore, we had to rely on best information available as required by section 776(c) of the Act. For purposes of this preliminary determination, we have determined that respondent's September 6, 1988 response is the best information available to the extent that respondent reported identical product matches. Because respondent failed to follow our product comparison criteria for selection of similar home market merchandise, we had to use best information available for those reported sales involving similar matches. As best information available, we have used the highest margin alleged in the petition for ball bearings from Singapore.

For the U.S. sales with identical home market matches, we based our analysis on price-to-price comparisons. For these sales, we calculated ESP based on the packed, f.o.b. U.S. shipping point prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for freight forwarding expenses, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling expenses, in accordance with section 772(d) of the Act. We also made deductions, where appropriate, for advertising, discounts, U.S. credit expenses, warranty expenses, and all indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

The amended response submitted on October 7, 1988, contained revised information on discounts, freight forwarding expenses, inventory carrying costs, home market credit expenses, and new information on U.S. indirect selling expenses incurred in Singapore and Japan. As stated above, the October 7, 1988 computer tapes were not submitted in time to be used for purposes of this preliminary determination; however, we incorporated the new and revised information on certain charges and adjustments wherever possible for purposes of our analysis.

To calculate the weighted-average margin listed in the "Suspension of Liquidation" section of this notice, we weighted the margin calculated using NMB/Pelmec's sales information for identical matches with the margin alleged by petitioner until we reached 33 percent coverage of U.S. sales by volume.

Foreign Market Value

For those home market sales used in our price-to-price comparisons, we calculated foreign market value based on the packed, free-to-customer-door prices to unrelated customers in the home market. We made deductions from home market price, where appropriate, for inland feight. In order to adjust for differences in packing costs between the U.S. and home markets, we deducted home market packing expenses from the home market price and added U.S. packing costs, in accordance with sections 773(a)(1) and 773(a)(4)(B) of the Act.

We made further deductions from home market price, where appropriate, for credit expenses and indirect selling expenses, in accordance with 19 CFR 353.15(c).

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

We will verify the information used in making our final determination in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Singapore, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Singapore exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Ball bearings	Weighted-average margin percentage
NMB/Pelmec	73.55
All others	73.55

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of Investigation

The products covered by this investigation, ball bearings, mounted or unmounted, and parts thereof, are defined as follows:

Ball Bearings, Mounted or Unmounted, and Parts Thereof

These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized System (HS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

This investigation covers all of the subject ball bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of the investigation. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by this investigation are those where the part will be subject to heat treatment after importation.

[FR Doc. 88-25796 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-804]

Preliminary Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminary determine that antifriction bearings (other than tapered roller bearings) and parts thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that cirtical circumstances exist with respect to imports of certain classes or kinds of antifriction bearings (other than tapered roller bearings) and parts thereof from Japan. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Japan as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Rick Herring, or Eleanor Shea, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-2438, 377-0167, or 377-0184, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Japan, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Japan (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to Koyo Seiko Co., Ltd. (Koyo); Minebea Co., Ltd. (Minebea); Nachi-Fujikoshi Corp. (Nachi); Nippon Seiko K.K. (NSK); and NTN Toyo Bearing, Co., Ltd. (NTN). These companies account for a substantial portion of exports of the subject merchandise from Japan to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice.) In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from Japan. the Department afforded petitioner an

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opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from Japan.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see*, "Alternative Reporting Requirements" section of this notice).

Accordingly, response deadlines were extended several times, with the final due date for response being no later than September 6, 1988. A number of supplemental questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the peition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition.

Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions, as with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 Fr 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we receive numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings).
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings).
3. Cylindrical Roller Bearings, Mounted or Unmounted, an Parts Thereof (Cylindrical Roller Bearings).
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings).
5. Plain Bearings, Mounted or Unmounted, an Parts Thereof (Plain Bearings).

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38, the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from Japan. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decision to initiate COP investigations. Citing *Al Tech Specialty Steel Corp.* v. *United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), these respondents argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market sales below the COP.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that sufficient company-specific allegations have been provided with respect to the following:

I. Ball Bearings

A. Koyo.
B. Nachi.
C. NSK.
D. NTN.

II. Spherical Roller Bearings

A. Koyo.
B. Nachi.
C. NSK.
D. NTN.

III. Cylindrical Roller Bearings

A. NSK.
B. NTN.

IV. Needle Roller Bearings

A. NTN.

Therefore, the Department has reinstated COP investigations for these companies on the classes or kinds of AFBs listed above.

Voluntary Respondents

On July 15, 1988, we issued questionnaires to four companies which had expressed an interest in submitting a voluntary responses in these investigations. However, we received no voluntary responses, and none has been considered for the purposes of these investigations.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home markets products, comparisons of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the

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Act, where a company has failed to respond to our questionnaire, has submitted a response which we consider to be substantially deficient, or has submitted information too late to be considered for purposes of these preliminary determinations, we relied on best information available. Those instances where we used best information available are fully described below.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of a related selling agent;

2. This was a customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *Koyo:* In order to meet the minimum reporting requirement of 33 percent (*see,* "Alternative Reporting Requirements" section of this notice), Koyo has to report both identical and similar home market matches and constructed value for certain products with no home market matches. However, for certain U.S. sales, it made comparisons to identical or similar home market products which were only sold to related parties in the home market. Since Koyo had no sales of these products to unrelated parties in Japan (*see* discussion of sales to related and unrelated parties in the "Foreign Market Value" section of this notice), and did not provide constructed value information in sufficient time to analyze for these preliminary determinations, we had to use best information available to calculate the margins for those U.S. sales. As best information available, we used the highest margin alleged in the petition for this class or kind of merchandise.

For those U.S. sales where we had identical or similar home market sales to unrelated parties, we calculated ESP based on the packed, c.i.f. and delivered prices to unrelated customers in the United States. We made deductions from USP, where appropriate, for foreign inland freight, export brokerage, ocean freight, marine insurance, import brokerage, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions, where appropriate, for commissions, credit expenses, inspection fees, quality control expenses, repackaging in the U.S., warranties, and all indirect selling expenses pursuant to section 772(e) (1) and (2) of the Act.

Koyo incorrectly allocated certain movement charges on the basis of sales value, rather than weight. For the preliminary determinations, we are using the reported charges as best information available.

Because the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of Koyo's total sales to the United States, we are disregarding these sales for purposes of these determinations.

To calculate the estimated weighted-average margin listed in the "Suspension of Liquidation" section of this notice, we weighted the margin calculated using Koyo's home market sales to unrelated parties with the margin alleged by petitioner until we reached 33 percent coverage of U.S. sales by volume.

B. *Minebea:* Because Minebea failed to submit a response with respect to ball bearings, we used best information available in accordance with section 776(c) of the Act. For purposes of these preliminary determinations, best information available is the highest rate alleged in the petition for ball bearings from Japan.

c. *Nachi:* Nachi reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market (*see,* "Alternative Reporting Requirements" section of this notice). Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight (which included inland insurance), export brokerage (which included containerization), ocean freight, air freight, marine and air insurance, import brokerage, U.S. duty, and U.S. inland freight (which included inland insurance), in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts. We made further deductions from ESP, where appropriate, for credit expenses, advertising, inspection fees, commissions, technical services (expenses incurred in testing bearings), and all indirect selling expenses, pursuant to section 772(e) (1) and (2) of the Act.

D. *NSK:* NSK reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market (*see,* "Alternative Reporting Requirements" section of this notice). Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on the packed, delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight, foreign inland insurance, export brokerage, ocean freight, marine insurance, U.S. brokerage, U.S. duty, and U.S. inland frieght, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions, where appropriate, for credit expenses, inspection fees, and all indirect selling expenses, pursuant to section 772(e) (1) and (2) of the Act.

NSK omitted its product liability premium expenses for U.S. sales on the computer tape used for these preliminary determinations. Based on information contained in a revised narrative response, we included this expense in our calculation of U.S. price.

for certain of its sales, NSK failed to report inventory carrying costs. Where this expense was omitted, we calculated inventory carrying costs based on the other information in the response.

NSK incorrectly reported charges incurred in yen by converting these charges to U.S. dollar amounts. Certain movement charges were also incorrectly allocated on the basis of sales values, rather than weight. For the preliminary determinations, we are using the reported charges as best information available.

Because the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of NSK's total sales to the United States, we are disregarding these sales for purposes of these determinations.

E. *NTN:* In order to meet the minimum reporting requirement of 33 percent (*see,* "Alternative Reporting Requirements" section of this notice), NTN had to report both identical and similar home market matches which we used in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., and delivered price to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight, foreign inland insurance, brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We made further deductions from ESP, where appropriate, for credit expenses, inspection fees, commissions, and all indirect selling expenses pursuant to sections 772(e) (1) and (2) of the Act.

NTN omitted the Japan Bearing Inspection Fee from the sales tape used for these preliminary determinations. Based on information submitted in a narrative response, we have included that expense in our calculation of U.S. price. NTN also failed to report an amount for U.S. duty on certain sales; for such sales we have calculated an amount for U.S. duty.

NTN incorrectly reported charges incurred in yen by converting these charges into U.S. dollar amounts. Certain movement charges were also incorrectly allocated on the basis of sales value, rather than weight. For these preliminary determinations, we are using the reported charges as best information available.

Because the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of NSK's total sales to the United States, we are disregarding these sales for purposes of these determinations.

II. Spherical Roller Bearings

A. *Koyo:* With respect to the minimum reporting requirement of 33 percent, Koyo reported U.S. sales with identical home market matches. However, as described above for ball bearings, certain of the home market products were sold only to related parties. Therefore, as described above for ball bearings, we had to use both best information available and price-to-price comparisons for purposes of calculating the estimated weighted-average margin.

For the U.S. sales used in price-to-price comparisons, we calculated ESP based on the packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *Nachi:* Nachi reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

C. *NSK:* In order to meet the minimum reporting requirement of 33 percent, NSK reported identical home market matches. However, for certain U.S. sales, it made comparisons to identical home market product which were only sold to related parties in the home market. Since NSK reported no sales of these products to unrelated parties in Japan (*see* discussion of sales to related and unrelated parties in the "Foreign Market Value" section of this notice), we had to use best information available to calculate the margins for those U.S. sales. As best information available, we used the highest margin alleged in the petition for spherical roller bearings.

For those U.S. sales where we had identical home market sales to unrelated parties, we calculated ESP based on the packed, delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

To calculate the estimated weighted-average margin listed in the "Suspension of Liquidation" section of this notice, we weighted the margin calculated using NSK's home market sales to unrelated parties with the margin using data alleged by petitioner until we reached 33 percent coverage of U.S. sales by volume.

D. *NTN:* NTN reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., and delivered price to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *Koyo:* With respect to the minimum reporting requirement of 33 percent, Koyo had to report both identical and similar home market matches. With respect to these home market sales, the same circumstances exist for cylindrical roller bearings as for ball bearings described above. Therefore, as described above for ball bearings, we had to use both best information available and price-to-price comparisons for purposes of calculating the estimated weighted dumping margin. For best information available, we used the margin calculated in the price-to-price comparisons since this margin was higher than the margin alleged in the petition.

We calculated ESP based on the packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *Nachi:* Nachi reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings, except that there were no purchase price sales of cylindrical roller bearings.

C. *NSK:* NSK reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used these sales in our price-to-price comparisons.

We calculated ESP based on the packed, delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

D. *NTN:* NTN reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the

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home market. Therefore, we have used these sales in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b. and delivered price to unrelated customers in the United States. The adjustments were identical to those described above for ball barings.

Because of the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of NTN's total sales to the United States, we are disregarding these sales for purpose of these determinations.

IV. Needle Roller Bearings

A. *Koyo:* With respect to the minimum reporting requirement of 33 percent, Koyo reported U.S. sales with identical home market matches. However, as described above for ball bearings, certain of the home market products were sold only to related parties (*see* discussion of sales to related and unrelated parties in the "Foreign Market Value" section of this notice). In addition, Koyo reported that there were no similar home market matches for a significant percentage of U.S. sales, nor did Koyo provide constructed value information in sufficient time to be analyzed for these preliminary determinations. Therefore, as described above for ball bearings, we had to use both best information available and price-to-price comparisons for purposes of calculating the estimated weighted-average dumping margin.

For the sales used in our price-to-price comparisons, we calculated ESP based on the packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *NTN:* In order to meet the minimum reporting requirement of 33 percent, NTN had to report both identical and similar home market matches which we used in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., and delivered price to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings. We also used purchase price sales in our calculation of U.S. price since the volume of such sales were a significant amount of total U.S. sales of needle roller bearings. We calculated purchase price based on the packed, f.o.b., Japanese warehouse price to unrelated customers in the United States. We made deductions from purchase price, where appropriate, for foreign inland freight and foreign inland insurance, in accordance with section 772(d)(2) of the Act.

V. Plain Bearings

A. *Minebea:* In order to meet the minimum reporting requirement of 33 percent, Minebea had to report both identical and similar home market matches. However, in the response submitted on September 6, 1988, Minebea failed to follow the instructions outlined in the questionnaire to make its selection of most similar home market comparisons to U.S. sales (*see*, "Such or Similar Comparisons" section of this notice). In the amended response submitted on October 7, 1988, Minebea corrected its product matches. However, because this information was submitted so late in these investigations, it was not possible to fully analyze the October 7, 1988 narrative responses and the information provided on computer tape for purposes of these preliminary determinations. Therefore, for those U.S. sales involving similar matches, we have used, as best information available in accordance with section 776(c) of the Act, the highest margin alleged in the petition for plain bearings from Japan.

For the U.S. sales with identical home market matches, we based our analysis on price-to-price comparisons. For these sales, we calculated ESP based on the packed, f.o.b. U.S. shipping point prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for freight forwarding expenses, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling expenses, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts. We made further deductions from ESP, where appropriate, for advertising, U.S. credit expenses, technical service expenses, warranty expenses, and all indirect selling expenses pursuant to sections 772(e) (1) and (2) of the Act.

The narrative response submitted on October 7, 1988, contained revised information on discounts, freight forwarding expenses, inventory carrying costs, home market credit expenses, and new information on U.S. indirect selling expenses incurred in Japan. As stated above, the October 7, 1988 computer tapes were not submitted in time to be used for purposes of these preliminary determinations; however, based on the narrative response, we incorporated the new and revised information on certain charges and adjustments wherever possible for purposes of our analysis.

To calculate the estimated weighted-average margin listed in the "Suspension of Liquidation" section of this notice, we weighted the margin calculated using Minebea's sales information with the margin using data alleged by petitioner until we reached 33 percent coverage of U.S. sales by volume.

B. *NTN:* For plain bearings, NTN reported that more than 33 percent by volume of its U.S. sales were identical to products sole in the home market. Therefore, we have used all U.S. sales with home market identical matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b. and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales to unrelated parties and, where necessary, best information available. The calculation of foreign market value for each respondent is detailed below.

Koyo, Nachi, NSK, and NTN have reported sales to both unrelated and related parties in the home market in making comparisons to U.S. sales. Nachi was the only respondent to notify the Department of its intent to report both unrelated and related party sales and to request that the Department use the related sales in making fair value comparisons. We informed Nachi that, if they chose to report related party sales, such sales would be used in determining foreign market value only if we were satisfied that "such sales are demonstrated * * * to be at prices comparable to those at which such or similar merchandise is sold to persons unrelated to the seller," pursuant to 19 CFR 353.22(b). Furthermore, we informed Nachi that, where home market sales of a comparison product were made only to related parties, the first sale to an unrelated party in the home market had to be reported.

We first learned that Koyo, NSK, and NTN were reporting related party sales when they filed their responses to Section B of our questionnaire. In supplemental questionnaries, we issued the same instructions to these companies as we issued to Nachi.

Nachi, NSK, and NTN have argued that sales to related parties are made at arm's length and that the prices charged to related parties are comparable to those charged to unrelated parties. Koyo has implicitly made this argument since, in its response, Koyo compared U.S. products to the identical or similar products sold in the home market only to related parties. None of the companies, except Nachi, has submitted detailed analyses, on a product-by-

product basis, comparing prices (less discounts, rebates, and credit expenses) of bearings sold in the home market to both related and unrelated parties. Nachi's submission analyzing this issue was received on October 24, 1988, too late to be used for these preliminary determinations. Therefore, for all respondents, we have used only sales in the home market to unrelated parties for the purposes of determining foreign market value.

I. Ball Bearings.

A. *Koyo:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and home market packing. Since U.S. price is based on ESP, we made further deductions from home market price, were appropriate, for home market credit expenses, warranties, and commissions, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. We made further adjustments, where applicable, to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Koyo claimed rebates paid on home market sales as a direct selling expense; however, Koyo allocated the rebates over all home market sales. Since the rebates were allocated over all sales rather than just those sales on which the rebates were paid, we are treating the rebates as indirect selling expenses.

Koyo also incorrectly allocated inland freight by sales value rather than by weight. For the preliminary determinations, we are using the reported charges as best information available.

B. *Minebea:* As described in the "United States Price" section of this notice, we used best information available in accordance with section 776(c) of the Act as the basis for our preliminary determination with respect to ball bearings.

C. *Nachi:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for rebates, inland freight, and home market packing. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, inspection fees, technical services, and advertising, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made further deductions from the home market price, where appropriate, for home market credit expenses, technical services (expenses incurred in testing bearings), and advertising, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

Nachi made a claim that it incurred direct advertising expenses on its sales to original equipment manufacturers (OEMs). We are treating these expenses as indirect selling expenses since Nachi did not provide sufficient information to demonstrate that the advertising in question is directed to the OEMs' customers.

Nachi claimed personnel expenses incurred when rendering technical services as a direct selling expense. Employee salaries are nonvariable expenses and, as such, are not allowable as direct selling expenses. Therefore, we have treated these personnel expenses as indirect selling expenses.

Nachi made a claim for warehousing expenses. We are treating these expenses as indirect selling expenses rather than as direct expenses since the warehousing expenses were incurred before the date of sale reported by Nachi in its responses.

Nachi also claimed an adjustment for exchange gains or losses on certain purchase price sales. For the preliminary determinations, we are not allowing this adjustment since it appears that the dollar price charged to the U.S. customer under a dollar-denominated contract is not affected. Based on the responses, it appears that only the amount of yen received by Nachi on the sale may change.

D. *NSK:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for discounts, inland freight and insurance, and home market packing. Since U.S. price is based on ESP, we made further deductions from the home market price, where appropriate, for home market credit expenses, commissions, and royalty expenses, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. We made further adjustments to the home market price, where applicable, to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

NSK claimed rebates and discounts paid on home market sales as a direct selling expense; however, NSK allocated the rebates and discounts over all home market sales. Since these were allocated over all sales rather than only those sales on which the rebates and discounts were incurred, we are treating the rebates and discounts as indirect selling expenses.

NSK also incorrectly allocated inland freight by sales value rather than by weight. For the preliminary determinations, we are using the reported charges as best information available.

E. *NTN:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for discounts, inland freight and insurance, and home market packing. Since U.S. price is based on ESP, we made further deductions from the home market price, where appropriate, for home market credit expenses, commissions, and royalty expenses, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

NTN incorrectly allocated inland freight by sales value rather than by weight. For these preliminary determinations, we are using the reported charges as best information available.

NTN made a claim for warehousing expenses. We are treating these expenses as indirect selling expenses rather than as direct expenses since the warehousing expenses were incurred before the date of sale reported by NTN in its response.

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II. Spherical Roller Bearings

A. *Koyo*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

B. *Nachi*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

C. *NSK*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

D. *NTN*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

III. Cylindrical Roller Bearings

A. *Koyo*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *Nachi*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings when foreign market value was compared to ESP. There were no comparisons to purchase price because there were no purchase price sales of cylindrical roller bearings.

C. *NSK*: For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were indentical to those described above for ball bearings.

D. *NTN*. For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

IV. Needle Roller Bearings

A. *Koyo:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

B. *NTN:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that for comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses and inspection fees, pursuant to 19 CFR 353.15.

We did not make an adjustment for home market commissions when comparing foreign market value to purchase price sales. NTN did not provide indirect selling expenses incurred on purchase price sales and, therefore, no adjustment could be made pursuant to 19 CFR 353.15(c).

V. Plain Bearings

A. *Minebea:* For those home market sales used in our price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from home market price, where appropriate, for inland freight and home market packing.

We made further deductions from home market price, where appropriate, for home market credit expenses, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

For purposes of these preliminary determinations, we have treated the advertising expense as an indirect expense in the home market, as respondent did not provide sufficient information to demonstrate that the expense is a direct selling expense incurred on behalf of its customer's customers.

B. *NTN:* For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Japan. Section 733(e)(1) fo the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company-specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provisions of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

Therefore, we have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical cricumstances determinations on company-specific data. Because Minebea failed to submit monthly shipment data on ball bearings, we preliminarily determine, as best information available, that Minebea's imports of ball bearings have been massive over a relatively short period of time.

Based on our analysis of the monthly shipment data submitted by the other respondents in these investigations, we have preliminarily found that there is a reasonable basis to believe or suspect that imports of the following classes or kinds of merchandise from the companies listed below have been massive over a relatively short period of time.

I. Ball Bearings

A. Minebea

II. Spherical Roller Bearings

A. Koyo
B. Nachi
C. NSK
D. NTN

III. Cylindrical Roller Bearings

A. NSK

IV. Needle Roller Bearings

A. Koyo

V. Plain Bearings

A. NTN

Therefore, we find that the requirements of section 733(e)(1)(B) are met for the above companies and classes or kinds of merchandise.

For the companies and classes of merchandise listed above, we then examined recent antidumping duty cases and found that there are currently no findings of dumping of the subject merchandise by Japanese manufacturers, producers, or exporters in the United States. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee of the General Agreement on Tariffs and Trade. On July 19, 1984, as set forth in Council Regulation No. 2089/84, the European Economic Community (EEC) imposed antidumping duties on ball bearings with a greatest external diameter of not more than 30 millimeters from Japan. On June 24, 1985, as set forth in Council Regulation No. 1739/85, the EEC imposed antidumping duties on ball bearings with a greatest external diameter of more than 30 millimeters from Japan. On February 5, 1987, as set forth in Council Regulation No. 374/87, the EEC imposed antidumping duties on cast or pressed steel housings fitted with ball bearings from Japan. As this constitutes a history of dumping of ball bearings from Japan, we find that the requirements of section 733(e)(1)(A) are met with respect to ball bearings.

With respect to the remaining four classes or kinds of merchandise, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally, we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. Given the preliminary margins found for Koyo with respect to sales of spherical roller bearings and needle roller bearings, and for NTN with respect to sales of plain bearings, and the fact that these companies sell in the United States through related companies, we find that the requirements of section 733(e)(1)(A) are met for these companies with respect to those classes or kinds of merchandise.

The following chart sets forth our company-specific preliminary determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise from Japan.

	Critical circumstances
Ball bearings:	
Koyo	No.
Minebea	Yes.
Nachi	No.
NSK	No.
NTN	No.
All Others	No.
Spherical roller bearings:	
Koyo	Yes.
Nachi	No.
NSK	No.
NTN	No.
All others	No.
Cylinderical roller bearings:	
Koyo	No.
Nachi	No.
NSK	No.
NTN	No.
All others	No.
Needle roller bearings:	
Koyo	Yes.
NTN	No.
All others	No.
Plain bearings:	
Minebea	No.
NTN	Yes.
All others	No.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of this Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Japan, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. For entries of those products from those manufacturers, producers, and exporters in Japan where we have preliminarily determined that critical circumstances exist (*see*, the "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price, as shown below. This suspension of

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liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
Koyo	73.55
Minebea	106.61
Nachi	43.47
NSK	56.32
NTN	25.65
All others	44.76
Spherical roller bearings:	
Koyo	40.18
Nachi	11.20
NSK	12.46
NTN	3.91
All others	9.79
Cylindrical roller bearings:	
Koyo	51.21
Nachi	2.71
NSK	10.69
NTN	3.40
All others	28.86
Needle roller bearings:	
Koyo	128.25
NTN	147.35
All others	129.14
Plain bearings:	
Minebea	225.68
NTN	91.51
All others	217.31

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determiantions, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of These Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA items 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8406.99.50.

(2) *Spherical Roller Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 661.3900 and 692.3295 are subject to investigation; other products entering under this TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

[FR Doc. 88-25794 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-801]

Preliminary Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of antifriction bearings (other than tapered roller bearings) and parts thereof from the FRG. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from the FRG as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Mary S. Clapp, Carole Showers, or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-0161, 377-3965, 377-3217, or 377-2239, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from the FRG are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from the FRG, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15076, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from the FRG (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to FAG Kugelfischer George Schafer KgA (FAG); Georg Muller Nurnberg AG (GMN); INA Walzlager Schaeffler (INA); and SKF Kugellagerfabriken GmbH (SKF). These companies account for a substantial portion of exports of the subject merchandise from the FRG to the United States during the period of investigation. The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see*, "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from the FRG. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from the FRG.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see*, "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental and deficiency questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an

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investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases (*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985), the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 28, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988), we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comment from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings).
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings).
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings).
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings).
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings).

This July 13, 1988 decisions memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38, the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum explaining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submissions, on April 20, 1988, we initiated an investigation of sales at LTFV from the FRG. At that time, we also initiated an investigation of whether sales in the home markets were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See*, "Class or Kind of Merchandise"; section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decisions to initiate COP investigations. Citing *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*), these respondents argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decisions, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market sales below the COP.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that sufficient company-specific allegations have been provided with respect to the following investigations:

1. Ball Bearings—SKF, FAG, GMN.
2. Spherical Roller Bearings—FAG.
3. Cylindrical Roller Bearings—SKF, INA, FAG.
4. Needle Roller Bearings—SKF, FAG.

Therefore, the Department has reinstated COP investigations for these companies on the classes or kinds of AFBs, listed above.

Voluntary Respondents

On July 1, 1988, we issued questionnaires to companies which had expressed interest in submitting voluntary responses in these investigations. On July 26 and 27, 1988, we received voluntary responses from Maschinenfabrik Joseph Eich KG u. Partner GmbH and ASK Kugellagerfabrik Artur Seyfert GmbH, respectively, producers of certain AFBs in the FRG. These responses contained material deficiencies. Therefore, they were not considered for the purposes of these investigations. Accordingly, the AFBs exported by these producers will be subject to the "All Other" rate.

Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and within the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of Merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparisons based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from the FRG to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the Act, where a company has submitted a response which we consider to be substantially deficient, or has submitted information too late to be considered for purposes of these preliminary determinations, we relied on best information available. Those instances where we used best information available are fully described below.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of a related selling agent;
2. This was a customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market

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matches in our price-to-price comparisons.

We calculated ESP based on packed, c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for containerization, foreign inland freight, import brokerage, import duties, marine insurance, foreign inland insurance, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for advertising, credit, repacking in the United States, technical service expenses, third party payments, warranty expenses, and indirect selling expenses and commissions pursuant to Section 772(e) (1) and (2) of the Act.

For certain transactions, no amounts were reported for brokerage and handling, duty, U.S. inland freight, credit, and warranty expenses. As best information available, we found the average of each of the expenses and compared it to the average gross price reported. The resultant percentages were then applied, individually, to the gross price reported for each transaction in which these expenses were not reported.

FAG claimed an adjustment for losses or gains under "other revenue" on ESP sales. This loss or gain represents the per unit difference between the actual return in deutsche mark to FAG and the theoretical return in deutsche mark which FAG expected to receive at the time FAG priced its products, due to fluctuations in exchange rates. Since these products were actually priced and invoiced in U.S. dollars, there is no need to adjust United States price. Therefore, we disallowed this adjustment.

We have excluded from our calculation of United States price sales of bearings by FAG to the U.S. government for military/defense procurement. These sales were made under Schedule 8 of the TSUSA and will not be subject to any antidumping duties. [*See, e.g., Final Affirmative Antidumping Duty Determination: Titanium Sponge from Japan,* (49 FR 38687, October 1, 1984).] These imports were made prior to enactment of Section 1335 of the Omnibus Trade and Competitiveness Act of 1988 and will not be subject to suspension of liquidation. With respect to any future sales to the U.S. government, we will determine whether these sales are exempt from antidumping duties pursuant to the terms of section 1335 of the 1988 Act.

We also excluded from our calculation of United States price, replacement bearings for defective products, and bearings used as promotional samples; both provided free-of-charge to FAG's customers.

FAG reported purchase price sales of ball bearings in its deficiency response. However, these constitute a minimal percentage of FAG's sales to the United States. Therefore, we did not include these sales in our calculation of United States price.

B. *BMN:* GMN reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) In order to determine identical merchandise in both the U.S. and home markets, we instructed respondents to assign identical products a unique "control number." In its response, GMN, for the most part, appears to have done this. However, in some instances, GMN appears to have assigned different control numbers to products it considered to be identical. Since we are not satisfied that matched products with different control numbers are in fact identical, we have limited our fair value analysis to those products with matching control numbers for purposes of the preliminary determination.

All of GMN's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b., and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, foreign inland freight, marine insurance, ocean freight, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We made further deductions from ESP, where appropriate, for credit, indirect selling expenses, and commissions, pursuant to sections 772(e)(1) and (2) of the Act.

Although requested in our questionnaire, GMN did not report inventory carrying costs on its U.S. sales. Therefore, as best information available, we calculated inventory carrying costs based on information contained in GMN's narrative response and computer data base.

C. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market. matches in our price-to-price comparisons.

In its initial submission, INA did not report sales of any finished bearings which contained imported components and were further manufactured in the United States. In a letter dated August 22, 1988. The Department instructed INA to report all sales of such merchandise made during the period of investigation. While we received revised sales information which included such merchandise, it was received too late to be used for the preliminary determination. Therefore, we have used the earlier sales information as best information available.

All of INA's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling (which included containerization, marine insurance, ocean freight, U.S. inland freight and insurance), foreign inland freight, foreign inland insurance, and U.S. duty, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for warranty expenses, and indirect selling expenses, pursuant to sections 772(e)(1) and (2) of the Act.

For the following expenses, INA used the same allocation rates for U.S. sales of merchandise from INA–FRG, INA-France and INA–UK: brokerage and handling, foreign inland freight, foreign inland insurance, packing and non-U.S. selling expenses. The Department has requested that INA calculate separate allocation rates, by country, for these charges. Also, INA has calculated its foreign inland freight, ocean freight and packing based upon value rather than weight or volume. We have requested that INA calculate revised allocation rates for these expenses based upon how their costs were incurred (*i.e.,* by weight, volume, etc.). For purposes of the preliminary determination, we have accepted INA's allocation rates as the best information available.

D. *SKF:* In order to meet the minimum reporting requirement of 33 percent (*see,* "Alternative Reporting Requirements" section of this notice), SKF had to report both identical and similar home market matches which we used in our price-to-price comparisons.

We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, foreign inland freight, inland freight, marine insurance, and ocean freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for commissions, credit,

repacking expenses in the United States, technical service expenses, warranty expenses, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

SKF reported purchase price sales of ball bearings during the POI. However, these constituted a minimal percentage of SKF sales to the United States. Therefore, we did not include these sales in our calculation of United States price.

In its narrative response, SKF provided an average unit charge for foreign inland freight for each of the three SKF companies under investigation in the FRG. However, in its data submissions, SKF did not report values for this charge. Therefore, we calculated foreign inland freight based on the information provided in its narrative response.

SKF claimed that the category "other expenses" should be used as an adjustment to its United States price to account for data entry and invoicing errors. The data included both positive and negative values. Given that SKF did not provide any information regarding how this adjustment should be treated, *i.e.,* whether it should be added or subtracted from United States price, we added these expenses to United States price.

II. Spherical Roller Bearings

FAG: FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for spherical roller bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

FAG reported purchase price sales of spherical roller bearings in its original response. However, these constitute a minimal percenteage of FAG's sales to the United States. Therefore, we did not include these sales in our calculation of United States price

III. Cylindrical Roller Bearings

A *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for cylindrical roller bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

FAG reported purchase price sales of cylindrical roller bearings in its deficiency response. However, these constitute a minimal percentage of FAG's sales to the United States. Therefore, we did not include these sales in our calculation of United States price.

B. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used al U.S. sales with identical home market matches in our price-to-price comparisons.

All of INA's U.S. sales were ESP transactions. We calculated ESP for cylindrical roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. The adjustements were identical to those described above for ball bearings.

C. *SKF:* SKF rported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transactions. We calculated ESP for cylindrical roller bearings based on packed, f.o.b. or delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings, except for commissions (which are applicable only to sales of ball bearings).

IV. Needle Roller Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of FAG's U.S. sales were ESP transactions. We calculated ESP for needle roller bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of INA's U.S. sales were ESP transactions. We calculated ESP for needle roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

C. *SKF:* SKF repoted that more than 33 percent by volume of its U.S. sales were identical to products sold in the home markets. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transaction. We calculated ESP for needle roller bearings based on packed, f.o.b. or delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings except for commissions (which are applicable only to sales of ball bearings.)

V. Plain Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home markets. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of FAG's U.S. sales were ESP transaction. We calculated ESP plain bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *SKF:* SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price based on packed, f.o.b. European port prices to unrelated customers in the United States. We made deductions from purchase price, where appropriate, for foreign inland freight, in accordance with section 772(d)(2) of the Act.

We calculated ESP for plain bearings based on packed, f.o.b. or delivered prices to unrelated customers in the

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United States. The adjustments were identicial to those described above for ball bearings expect for commissions (which are applicable only to sales of ball bearings.)

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales. The calculation of foreign market value of each respondent is detailed below.

I. Ball Bearings

A. *FAG:* We calculated foreign market value based on packed, c.i.f. prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, home market packing, and discounts and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for commissions, credit, technical service expenses, and warranty expenses. We also deducted certain indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

FAG claimed product liability premiums and advertising expenses as direct selling expenses. These claims were not adequately supported and, therefore, we treated them as indirect selling expenses.

FAG's response included a claim for home market "indirect selling expenses". Although requested in our original and supplemental questionnaires, FAG failed to provide an itemized breakdown of these indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

B. *GMN:* We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, home market packing and cash discounts. We added U.S. packing to the home market price in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. GMN claimed a deduction for commissions paid in the home market, some of which appear to have been paid to related parties. Given that the response has not clearly described the terms and conditions of the commissions, we have only considered as direct expenses those commissions paid to unrelated parties. Those commissions paid to related parties have been treated as indirect selling expenses, which have been deducted, along with other indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

GMN calculated home market inland freight based on a sampling of home market shipments. For purposes of this preliminary determination, we have accepted respondent's information as the best information available. We have notified GMN that this information must be supplemented and verified in order to be considered for purposes of the final determination.

C. *INA:* We calculated foreign market value based on delivered prices to unrelated customs in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, home market packing, and discounts and rebates. We added U.S. packing to the home market price in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for inland freight, inland insurance, home market packing, and discounts and rebates. We added U.S. packing to the home market price in accordance with section 773(a)(1) of the Act.

INA's response included a claim for home market "indirect selling expenses". Although requested in our original and supplemental questionnaires, INA failed to provide an itemized breakdown of these indirect expenses claimed. Therefore, we have disallowed these expenses for the purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

INA has calculated its foreign inland freight and packing based on value rather than weight or volume. We have requested that INA calculate revised allocation rates for these expenses based upon how their costs were incurred (i.e., by weight, volume, etc.). For purposes of the preliminary determination, we have accepted INA's allocation rates as the base information available.

D. *SKF:* We calculated foreign market value based on c & f or c.i.f. prices to unrelated customers in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from the home market price, where appropriate, for inland freight and home market packing. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit and warranty expenses. We also deducted certain indirect selling expenses in accordance with 19 CFR 353.15(c). We made further adjustments where applicable, to the home market price to account for physical differences in merchandise in accordance section 773(a)(4)(C) of the Act.

SKF stated that it calculated its home market packing costs based on two charges: transport packing and product packing. For product packing, SKF based its calculation on the ten highest priced products. We disallowed this portion of home market packing for all sales because we were not satisfied that SKF's methodology appropriately valued these expenses.

SKF's response included a claim for home market "indirect selling expenses". Although requested in our original and supplemental questionnaires, SKF failed to provide an itemized breakdown of these indirect expenses claimed. Therefore, we have disallowed these expenses for the purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

SKF claimed home market cash discounts, rebates, and technical services as direct selling expenses. However, those claims were not adequately supported and, therefore, we treated them as indirect selling expenses.

SKF also claimed an adjustment for a category labelled "other expenses". However, no description of these expenses was provided. Therefore, these expenses were disallowed.

II. Spherical Roller Bearings

A. *FAG:* Following the methodology for determining home market viability, we found that the home market sales of spherical roller bearings were not of a sufficient quantity to provide an adequate basis for foreign market value. (*See*, "Such or Similar" section of this notice.) In our original questionnaire, we had requested that respondent provide third country sales information where the home market was determined to be not viable. FAG did not provide us with this information. Therefore, on September 26, 1988, we issued a letter to FAG again requesting third country sales data. On September 29, and October 4, 1988, FAG submitted arguments challenging the Department's finding that the home market is not viable. Moreover, while respondent argued that it would not be possible to provide third country data in a timely manner, it did indicate that it would be able to submit constructed value information, which it did on October 6 and 20, 1988. However, this information was submitted too late to be considered for the preliminary determination. Therefore, we had to rely on best information available as required by section 776(c) of the Act, which for this determination was FAG's non-viable home market sales information. We calculated foreign market value for spherical roller bearings based on packed, c.i.f prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *FAG:* We calculated foreign market value for cylindrical roller bearings based on packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *INA:* We calculated foreign market value for cylindrical roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

C. *SKF:* We calculated foreign market value for cylindrical roller bearings based on the c & f or c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

A. *FAG:* We calculated foreign market value for needle roller bearings based on packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *INA:* We calculated foreign market value for needle roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

C. *SKF:* We calculated foreign market value for needle roller bearings based on the c & f or c.i.f. prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

V. Plain Bearings

A. *FAG:* We calculated foreign market value for plain bearings based on the packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *SKF:* We calculated foreign market value based on c & f or c.i.f. prices to unrelated customers in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from the home market price, where appropriate, for inland freight. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses and U.S. technical service expenses pursuant to 19 CFR 353.15. Since all home market products used in the fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

For comparisons involving ESP, we calculated foreign market value for plain bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

SKF stated that it calculated its home market packing costs based on two charges: transport packing and product packing. For product packing, SKF based its calculation on the ten highest priced products. For the reasons discussed above, we disallowed this portion of home market packing for all sales. In addition, for transport packing on sales of plain bearings, SKF allocated transport packing costs to all sales during the period of investigation although the narrative response states that packing is generally not included in the price for certain customers. Therefore, we also disallowed SKF's home market claim for the transport packing portion of home market packing costs for SKF sales of plain bearings.

SKF claimed home market technical service expenses as a direct selling expense. However, that claim was not adequately supported and, therefore, we treated these expenses as indirect selling expenses.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from the FRG. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company-specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked all respondents in each of the AFB investigations to supply

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monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. SKF has failed to provide the Department with shipment data for plain bearings. Therefore, as best information available, we are assuming that imports of plain bearings form SKF have been massive over a relatively short period of time. Based on our analysis of the monthly shipment data submitted by respondents, we have preliminarily found that there is a reasonable basis to believe or suspect that imports of the following classes or kinds of merchandise form the companies listed below have been massive over a relatively short period of time.

1. Ball Bearings—INA, SKF
2. Spherical Roller Bearings—FAG
3. Cylindrical Roller Bearings—FAG, SKF
4. Needle Roller Bearings—SKF
5. Plain Bearings—SKF

Therefore, we find that the requirements of section 733(e)(1)(B) are met for the above companies and classes or kinds of merchandise.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by FRG manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988).] Since FAG, INA, and SKF sell in the United States through related companies, and their margins are sufficiently high, we find that the requirements of section 733(e)(1)(A) are met for these companies with respect to the classes or kinds listed below. Therefore, the following chart sets forth our company-specific preliminary determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise form the FRG.

	Critical circumstances:
Ball bearings:	
GMN	No.
FAG	No.
INA	Yes.
SKF	Yes.
All Others	No.
Spherical roller bearings:	
FAG	Yes.
All Others	Yes.
Cylindrical roller bearings:	
FAG	Yes.
INA	No.
SKF	Yes.
All others	Yes.
Needle roller bearings:	
FAG	No.
INA	No.
SKF	Yes.
All others	No.
Plain bearings:	
FAG	No.
SKF	Yes.
All others	No.

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise form the FRG, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. For entries of those products from those manufacturers, producers, and exporters in the FRG where we have preliminarily determined that critical circumstances exist (*see*, ther "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the FRG exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
FAG	80.38
GMN	21.52
INA	30.60
SKF	132.25
All others	70.04
Spherical roller bearings:	
FAG	48.47
All others	48.47
Cylindrical roller bearings:	
FAT	52.98
INA	10.05
SKF	76.27
All others	52.46
Needle roller bearings:	
FAG	115,40
INA	42.79
SKF	55.86
All others	48.97
Plain bearings:	
FAT	85.39
SKF	118.98
All others	115.89

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistat Secretary at least seven days prior to the schedule date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

October 27, 1988.

Appendix I—Scope of these Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* (TSUSA) items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts threof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8488.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts there of (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3980). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3285 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction brearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheading: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

[FR Doc. 88–25792 Filed 11–8–88; 8:45am]

BILLING CODE 3510–DS–M

[A–475–801]

Preliminary Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof from Italy are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of antifriction bearings (other than tapered roller bearings) and parts thereof from Italy. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Italy as described in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by January 10, 1989.

EFFECTIVE DATE: November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Carole Showers, or

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Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377–0161, 377–3217, or 377–2239, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Italy, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of initiation (53 FR 15075, April 27, 1988), the following events have occurred. On May 17, 1988, the ITC determined that there is reasonable indication that U.S. industries are materially injured by reason of imports of the subject merchandise from Italy (53 FR 18909, May 25, 1988).

On May 31, 1988, the Department presented Section A of the antidumping duty questionnaires to FAG Cuscinetti S.p.A. (FAG); Industria Cuscinetti S.p.A. (ICSA); and RIV-SKF Officine Di Villar Perose, S.p.A. (SKF). These companies account for a substantial portion of exports of the subject merchandise from Italy to the United States during the period of investigation.

The remaining sections of the questionnaire were issued on June 15, 1988. Responses to Section A were due on June 14, 1988, and responses to the remaining sections were due on July 15, 1988.

On July 13, 1988, we issued a decision memorandum stating that the subject merchandise constitutes five classes or kinds of merchandise (*see,* "Class or Kind of Merchandise" section of this notice). In light of this decision, the Department re-examined the sufficiency of petitioner's less than fair value (LTFV) allegations for each class or kind of merchandise from Italy. The Department afforded petitioner an opportunity to provide additional information in support of its LTFV allegations for particular classes or kinds of merchandise where needed. On August 1, 2, and 29, 1988, petitioner submitted additional data. We determined that petitioner provided sufficient information in support of the LTFV allegations for each class or kind of merchandise from Italy.

However, since plain bearings enter the United States under a basket TSUSA category, we are unable to definitively establish whether plain bearings were imported from Italy during the period of investigation. In addition, we are unable to specifically identify any Italian exporters of plain bearings to the United States. Therefore, we have preliminarily determined that plain bearings from Italy are not being, or are likely to be, sold in the United States at less than fair value. We will continue to attempt to establish whether plain bearings from Italy were imported and attempt to identify any Italian exporters of plain bearings to the United States during the period of investigation for purposes of our final determination.

On July 15, 1988, the Department determined that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Act, and postponed the preliminary determinations until no later than October 27, 1988 (53 FR 27738, July 22, 1988).

On August 8, 1988, we issued revised reporting requirements based on our decision to simplify these investigations (*see,* "Alternative Reporting Requirements" section of this notice). Accordingly, response deadlines were extended several times, with the final due date for responses being no later than September 6, 1988. A number of supplemental and deficiency questionnaires were issued subsequent to that date. Supplemental responses were received from the respondents prior to these preliminary determinations.

Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed by "an interested party" "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Section 771(9)(c) of the Act defines "interested party" to include "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesalere in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases [*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985)], the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proponent of the domestic industry opposes the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of The Torrington Company. Responses to the standing questionnaires are due on October 29, 1988. We will continue to examine the standing issue for purposes of the final determinations.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitions to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Class or Kind of Merchandise

In our notice of initiation (53 FR 15076, April 27, 1988) we treated the subject merchandise as one "class or kind of merchandise." Subsequent to initiation, we received numerous comments from petitioner, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as follows:

1. Ball Bearings, Mounted or Unmounted, and Parts Thereof (Ball Bearings)
2. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Spherical Roller Bearings)
3. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof (Cylindrical Roller Bearings)
4. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof (Needle Roller Bearings)
5. Plain Bearings, Mounted or Unmounted, and Parts Thereof (Plain Bearings)

This July 13, 1988 decision memorandum is on file in the Central Records Unit.

Alternative Reporting Requirements

Pursuant to 19 CFR 353.38(a), the Department "normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation." Due to the enormous volume of sales by respondents during the period of investigation and the complexity of identifying similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 15, 1988, we issued a letter to all interested parties requesting comments on two alternatives to our standard methodology. One alternative was to select at random a certain number of products sold in the United States and to compare the U.S. prices for those products with the home market prices of identical or similar merchandise, as appropriate.

The second alternative was as follows: if at least 33 percent by volume of the respondent's U.S. sales could be compared to home market sales of identical products, then fair value comparisons would be limited to identical comparisons. If a respondent failed to reach the 33 percent requirement with identical matches, then, in addition to identical comparisons, we would compare the largest volume products sold in the United States to similar products sold in the home market within each class or kind category until the 33 percent threshold was met.

After reviewing comments from interested parties on this issue, we selected the second alternative. The August 5, 1988 memorandum outlining the procedures outlined above is on file in the Central Records Unit.

Cost of Production Allegations

Based on information presented in the petition and supplemental submission, on April 20, 1988, we initiated an investigation of sales at LTFV from Italy. At that time, we also initiated an investigation of whether sales in the home market were being made at prices below the cost of production (COP). As stated above, on July 13, 1988, we issued a decision memorandum stating that the products under investigation constitute five separate classes or kinds of merchandise. (*See,* "Class or Kind of Merchandise" section of this notice.) Accordingly, on July 22, 1988, the Department requested that petitioner submit evidence of sales at below the COP for each class or kind of merchandise under investigation for which sufficient information had not been provided. In addition, several respondents objected to the Department's decision to initiate COP investigations. Citing *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. 1277 (CIT 1983) (*Al Tech*, these respondents argued that petitioner's sales below cost allegations were deficient because they were based on country-wide, rather than company-specific home market pricing data. After review of these comments, the *Al Tech* decision, and Section 773(b), on August 22, 1988, we discontinued the COP investigations, but allowed petitioner additional time to submit company-specific home market price information to substantiate its allegations of sales at below the COP. The August 22, 1988 decision memorandum outlining our analysis of this issue is on file in the Central Records Unit. Petitioner submitted such new allegations of home market and third country sales below the COP, as appropriate.

After analyzing petitioner's new allegations and the numerous supplements thereto, we have determined that sufficient company-specific allegations have been provided with respect to the following:

1. Ball Bearings—SKF, FAG
2. Spherical Roller Bearings—FAG

Therefore, the Department has reinstated COP investigations for these companies with respect to the classes or kinds of AFBs listed above.

Voluntary Respondents

On July 1, 1988, we issued questionnaires to companies which had expressed an interest in submitting voluntary responses in these investigations. However, no responses were received.

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Period of Investigation

The period of investigation is October 1, 1987 through March 31, 1988.

Such or Similar Comparisons

To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, we normally compare the volume of home market sales to the volume of sales to third countries within each respective such or similar category.

In developing criteria for such or similar comparisons, we reviewed the matching criteria set forth in *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, (52 FR 30790, August 17, 1987). In addition, we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and within the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. Therefore, home market viability was calculated based on home market and third country sales of each class or kind of merchandise.

Pursuant to our alternative reporting requirements, where 33 percent or more of U.S. sales by volume were identical in all physical respects to home market products, comparisons of similar merchandise were unnecessary (*see*, "Alternative Reporting Requirements" section of this notice). In those instances where similar comparisons were necessary for a given class or kind of merchandise, we instructed respondents first to narrow the pool of possible product comparisons by matching each of the following criteria: (1) Number of rows of rolling elements, (2) load direction, (3) bearing design, and (4) precision rating. Respondents were then to apply a ten percent deviation test to each bearing in this pool of possible product comparison based on the (a) outside diameter, (b) inside diameter, (c) width, and (d) dynamic load rating to determine the most similar home market comparison.

Fair Value Comparisons

To determine whether sales of certain AFBs from Italy to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the Act, where a company has failed to respond to our questionnaire, has submitted a response which we consider to be substantially deficient, or has submitted information too late to be considered for purposes of these preliminary determinations, we relied on best information available. Those instances where we used best information available are fully described below.

United States Price

For those sales where the sales to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, "Alternative Reporting Requirements" section of this notice.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of FAG's U.S. sales were ESP transactions. We calculated ESP based on packed, c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for containerization, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. inland freight, U.S brokerage and handling, U.S. duties, U.S. inland insurance, and repacking in the United States, in accordance with section 772(d)(2) of the Act. We also made deductions for discounts and rebates. We made further deductions from ESP, where appropriate, for advertising, commissions, credit, technical services, third party payments, warranty expenses, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

FAG claimed an adjustment for losses or gains under "other revenue" on ESP sales. This loss or gain represents the per-unit difference between the actual return in lira to FAG and the theoretical return in lira FAG expected to receive at the time FAG priced its products, due fluctuations in exchange rates. Since these products were actually priced and paid for in U.S. dollars, there is no need to adjust the United States price. Therefore, we disallowed this adjustment.

For certain transactions, no amounts were reported for brokerage and handling, duty, technical services, U.S. inland freight, credit, and warranty expenses. As best information available, we found the average of each of the expenses and compared it to the average gross price reported. The resultant percentages were then applied, individually, to the gross price reported for each transaction in which these expenses were not reported.

We have excluded from our calculation of United States price sales of bearings by FAG to the U.S. government for military/defense procurement. These sales were made under Schedule 8 of the TSUSA and will not be subject to any antidumping duties. [*See, e.g., Final Affirmative Antidumping Duty Determination; Titanium Sponge from Japan*, (49 FR 38687, October 1, 1984).] These imports were made prior to enactment of Section 1335 of the Omnibus Trade and Competitiveness Act of 1988 and will not be subject to suspension of liquidation. With respect to any future sales to the U.S. government, we will determine whether these sales are exempt from antidumping duties pursuant to the terms of section 1335 of the 1988 Act.

B. *SKF:* SKF reported that less than 33 percent by volume of its U.S. sales were identical to products sold in the third country but did not provide enough third country matches of similar merchandise to reach the 33 percent threshold. (*See*, "Alternative Reporting Requirements" section of this notice.) Lacking these comparisons, we have applied best information available for those sales which would achieve the 33 percent threshold. We have used the margin calculated as best information available since this rate was higher than the rate provided in the petition for this class or kind of merchandise from Italy.

We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, inland freight, marine insurance, and ocean freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for credit, direct selling expenses, "other expenses," repacking, technical services, warranty expenses, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

SKF reported a minimal amount of purchase price sales during the POI; however, SKF did not report complete sales data for these transactions. For both these reasons, we did not include any purchase price sales in our calculation of United States price.

SKF notified us that approximately one percent of its reported U.S. sales of ball bearings were produced in a country other than Italy. SKF claims that although it is impossible for them to separate sales of this merchandise from that produced in Italy, United States price of multiple sourced products are comparable. While we will carefully examine this issue at verification, we have included all reported sales in our calculation of United States price as best information available.

SKF claimed that the category "other expenses" should be used as an adjustment to its United States price to account for data entry and invoicing errors. The data included both positive and negative values. Given that SKF did not provide any information regarding how this adjustment should be treated, *i.e.*, whether it should be added or subtracted from United States price, we added these expenses to United States price.

II. Spherical Roller Bearings

A. *FAG:* During the period of investigation, all FAG's sales of spherical roller bearings were made to the U.S. government for military/defense procurement. As explained above under the "Ball Bearings" section, these sales are not subject to antidumping duties. Because we are not using such sales to calculate United States price, we have no basis for determining whether FAG's sales of spherical roller bearings are at less than fair value. For any sales of this product by FAG which are not exempt from antidumping duties, the "All Other Rate" will apply.

B. *ICSA:* ICSA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (see "Alternative Reporting Requirements" section of this notice) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of ICSA's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions for discounts. We made further deductions from ESP, where appropriate, for advertising, commissions, credit, technical services, and indirect selling expenses, pursuant to sections 772(e)(1) and (2) of the Act.

ICSA calculated credit expense based on the average number of days from invoicing to payment. We have recalculated credit expense based on the actual number of days accounts receivable were outstanding.

For certain transactions, no amounts were reported for brokerage and handling, packing, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. duty, U.S. inland freight and indirect non-U.S. selling expenses. As best information available, we found the average of each of the expenses and compared it to the average gross price reported. The resultant percentages were then applied, individually, to the gross price reported for each transaction in which these expenses were not reported.

III. Cylindrical Roller Bearings

SKF: In its original questionnaire response, SKF stated that it had sales of cylindrical roller bearings and needle roller bearings in the United States during the period of investigation, but reported inadequate sales information for United States price and failed to report any information for foreign market value. SKF later informed the Department that this information was not provided because there were no sales of such or similar merchandise in the home market during the period of investigation. We requested that United States price and constructed value information be provided in accordance with section 773(a)(2) of the Act. Although this information was subsequently submitted, it was not received in time for use in our preliminary determination. Therefore, we used, as best information available, the highest rate provided by petitioner for this class or kind of merchandise. If we are unable to verify the information submitted by SKF, we will continue to use best information available to calculate the United States price and constructed value in our final determination. However, best information available for purposes of the final determination may be different from the information used for this preliminary determination.

IV. Needle Roller Bearings

SKF: We used best information available for purposes of this determination as explained above for cylindrical roller bearings.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales and, where appropriate, third country sales. The calculation of foreign market value for each respondent is detailed below.

I. Ball Bearings

A. *FAG:* We calculated foreign market value based on packed and delivered prices to unrelated customers in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from home market price, where appropriate, for inland freight, inland insurance, home market packing, and discounts and rebates. FAG failed to report U.S. packing. Therefore, we used home market packing expenses as best information available, and added this amount to foreign market value, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit, technical services, and warranty expenses. We also deducted certain indirect selling expenses and commissions in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparions are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

FAG claimed advertising and the cost of shipping sample bearings as direct selling expenses. However, its claims were not adequately supported. Therefore, we have treated these expenses as indirect selling expenses for purposes of this determination.

FAG's response included a claim for "indirect selling expenses". Although requested in our original and supplemental questionnaires, FAG failed to provide an itemized breakdown of the indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

B. *SKF:* Following the methodology for determining home market viability, we found that the home market sales of ball bearings were not of a sufficient quantity to provide an adequate basis for foreign market value. (*See*, "Such or Similar" section of this notice.) In our original questionnaire, we had requested that respondent provide third country sales information where the home

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market was determined to be not viable. SKF did not provide us with this information. Therefore, on September 16, 1988, we issued a letter to SKF again requesting third country sales data. On September 23, 1988, SKF submitted arguments challenging the Department's finding that the home market is not viable, while also providing the Department with the requested third country sales data for sales to the Federal Republic of Germany, its largest third country market for sales of ball bearings from Italy.

We calculated foreign market value based on delivered prices to unrelated customers in the third country market. We made deductions, where appropriate, for export packing expenses, foreign inland freight, and inland freight. We added U.S. packing to the third country price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions, where appropriate, for credit and warranty expenses. We also deducted certain indirect selling expenses, in accordance with 19 CFR 353.15(c). Since all third country products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

SKF's response included a claim for third country "indirect selling expense". Although requested in our original and supplemental questionnaires, SKF failed to provide an itemized breakdown of the indirect expenses claimed. Therefore, we have disallowed these expenses for purposes of this preliminary determination. If the appropriate information is submitted and verified, we will consider it for the final determination.

SKF claimed cash discounts, rebates, technical service expenses, as direct selling expenses. However, these claims were not adequately supported. Therefore, we treated these expenses as indirect selling expenses.

SKF also claimed an adjustment for a category labelled "other expenses". However, no description of these expenses was provided. Therefore, these expenses were disallowed.

II. Spherical Roller Bearings

A. *FAG*: We have not calculated foreign market value for FAG's sales of spherical roller bearings as explained above under the "United States Price" section for spherical roller bearings.

B. *ICSA*: We calculated foreign market value based on packed, delivered prices to unrelated customers in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, packing, and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. We also deducted indirect selling expenses and commissions, in accordance with 19 CFR 353.15(c). Since all third country products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

III. Cylindrical Roller Bearings

SKF: We used best information available for purposes of this determination as explained above under the "Untied States Price" section for cylindrical roller bearings.

IV. Needle Roller Bearings

SKF: We used best information available for purposes of this determination as explained above under the "United States Price" section for cylindrical roller bearings.

Currency Coversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Italy. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

We have determined in past investigations whether imports have been massive by examining the Department's import data. However, because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we determined in these investigations that company-specific data on shipments of the subject merchandise are the most appropriate basis for our preliminary determinations of critical circumstances. Furthermore, we beleive that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. SKF has failed to provide the Department with shipment data for ball bearings. Therefore, as best information available, we are assuming that imports of ball bearings from SKF have been massive over a relatively short period of time. Based on our analysis of the monthly shipment data submitted by respondents, we have preliminarily found that there is a reasonable basis to believe or suspect that imports of the following classes or kinds of merchandise from the companies listed below have been massive over a relatively short period of time.

1. Ball Bearings—FAG, SKF.

Therefore, we find that the requirements of section 733(e)(1)(B) are met for the above companies and classes or kinds of merchandise.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Italian manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficnet. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988).] Since FAG and ICSA sell in the United States through related companies, and because there rates are sufficiently high, we find that the requirements of section 733(e)(1)(A) are met for FAG with respect to ball bearings and ICSA with respect to spherical roller bearings. Therefore, the following chart sets forth our company-specific preliminary determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise from Italy.

	Critical Circumstances
FAG	Yes
SKF	Yes
All Others	Yes
Spherical Roller Bearings:	
ICSA	No
All Others	No
Cylindrical Roller Bearings:	
SKF	No
All Others	No
Needle Roller Bearings:	
SKF	No
All Others	No

Verification

We will verify the information used in making our final determinations in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Italy, as defined in the "Scope of Investigations" section of this notice, with the exception of entries of plain bearings, that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. For entries of those products from those manufacturers, producers, and exporters in Italy where we have preliminarily determined that critical circumstances exist (*see*, the "Critical Circumstances" section of this notice), we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Italy exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-Average Margin Percentage
Ball Bearings:	
FAG	42.05
SKF	155.99
All Others	129.20
Spherical Roller Bearings:	
ICSA	5.76
All Others	5.76
Cylindrical Roller Bearings:	
SKF	35.60
All Others	35.60
Needle Roller Bearings:	
SKF	153.60
All Others	153.60
Plain Bearings:	
All Manufacturers/Producers/-Exporters	0.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be submitted in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

Appendix I—Scope of these Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* (TSUSA) items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3706, 680.3712, 680.3717/8, 680.3717/8, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

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Imports of these products are also classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

[FR Doc. 88-25793 Filed 94-88-8:45 am]

BILLING CODE 3510-DS

[Application No. 88-00014]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to American Cast Metals Association ("ACMA"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Any ferrous (iron or steel) or non-ferrous (e.g., aluminum, magnesium, bronze, brass, copper, and zinc) casting, whether finished or unfinished.

2. Services

Design services related to Products and related manufacturing processes; licensing of Technology Rights concerning Products and related processes.

3. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works.

4. Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; and liaison with U.S. and foreign government agencies, trade associations, and banking institutions; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except: (a) the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands); and (b) Canada.

Export Trade Activities and Methods of Operation

1. ACMA and-or its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and Services and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit non-member Suppliers to sell their Products and Services or offer their Export Trade Facilitation Services through the certified activities of ACMA and/or its Members; provided, however, that non-member Suppliers will not participate in the full range of certified export trade activities and methods of operation under this Certificate; rather, their participation shall be limited to those activities typically associated with subcontractors;

f. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licences shall be determined solely by negotiations between the licensor Member and the export customer without coordination with ACMA or any Member;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. ACMA and/or its Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products or Services in that country or market. In exclusive Export Intermediary agreements, (i) ACMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ACMA or the Member(s) acting as exclusive intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. ACMA and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its services on non-discriminatory terms to those Members that are parties to the exclusive arrangement and which request such services.

3. ACMA and/or its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information about sales or marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

b. Information about the export prices, quality, quantity, source, and delivery dates of Products available from members for export, provided, however, that exchanges of information and discussions as to Product quality, source, and delivery dates must be on a transaction-by-transaction basis only and involve only those members which are participating or have a genuine interest in participating in such transaction;

c. Information about terms, conditions and specifications of particular contracts for sale in Export Markets to be considered and/or bid on by ACMA and its Members;

d. Information about joint bidding, selling, or servicing agreements for Export Markets and allocations of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

g. Information about ACMA's or its Members' export operations, including without limitation sales and distribution networks established by ACMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. ACMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by the ACMA itself, or by agreement with Members or other parties.

5. ACMA and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. ACMA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of ACMA, as listed in Appendix A, and subject to the provisions of this paragraph. New ACMA Members may, from time to time, be incorporated in this Certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of an annual written notification to the Secretary of Commerce and the Attorney General stating changes in ACMA membership, identifying all new ACMA Members that desire to become a Member under this Certificate pursuant to the abbreviated amendment procedure, and certifying for each new ACMA Member so identified its sales of Products in prior fiscal year. Notice of new Members so identified shall be published in the **Federal Register**. However, ACMA may withdraw one or more individual Members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of the new Members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such new Members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the nonabbreviated amendment procedure. This same procedure may be utilized by ACMA to delete one or more Members from the Certificate.

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Terms and Conditions of Certificate

(a) In engaging in Export Trade Activities and Methods of Operation, neither ACMA nor any Member shall intentionally disclose, directly or indirectly, to any other Member or Supplier any information that is about its or any other Member's or Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchaser.

(b) Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing, servicing and repair arrangements) shall be in connection with actual or potential bona fide export transactions and shall be on a transaction-by-transaction basis only and shall include only those Members participating or have a genuine interest in participating in such transactions; provided that ACMA and/or its Members may discuss standardization of Products and Services for purposes of making bona fide recommendations to foreign governmental or private standard-setting organizations.

(c) Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments for sales of Products or Services in specific export transactions. A Member may withdraw from coverage under this Certificate at any time by giving written notice to ACMA, a copy of which ACMA shall promptly transmit to the Secretary of Commerce and the Attorney General.

(d) ACMA and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevent to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information of documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Record Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: November 4, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

Appendix A

Members of Applicant

AACCO Foundry
Abex Corp.
Ace Foundry Co.
Advance Foundry Co.
Akron Foundry Co.
Allegheny Foundry Co.
Alloy Engineering and Castings
Alloys Non Ferrous Foundry
Aluminum Castings Corp.
Amcast Industrial Corp.
The American Brass and Iron Foundry
American Cast Iron Pipe
American Steel Foundries
American Valve and Hydrant Manufacturing Co.
Anstey Foundry
Appleton Electric Co.
Arneson Foundry, Inc.
Arrow Aluminum Castings
Arth Brass & Aluminum Castings
Arzt Foundry Co.
Atherton Foundry Products
Atlantic States Cast Iron Pipe
Atlas Foundry Co.
Gartland-Haswell Foundry Co., Inc.
Atlas Foundry and Machine Co.
Auburn Foundry Co.
Aurora Industries Inc.
Badger Foundry Co.
Bahr Brothers Manufacturing Co.
Barry Foundry
Batavia Foundry and Machine Co.
Belgium Foundry Corp.
Bell Foundry Co.
Beloit Corp.
Benton Foundry
Berlin Foundry Corp.
Bierman-Everett Foundry
Blackhawk Foundry and Machine
Bloomfield Foundry
Bodine Aluminum Inc.
Brass and Bronze Casting Co.
Briggs & Stratton Corp.
Brillion Iron Works
Bronze Co. Ltd., K.P.
Bronze Craft Corp.
Brookman Cast Industries
Brooks Foundry
Brumund Foundry, Inc.
Buck Co., Inc.
Burnham Corp.
Calhoun Foundry Co.
California Electric Steel
Calumet Brass Foundry
Campbell Foundry Co.
Canton Castings
Cast Metals Corp. of Florida
Cedar Springs Castings, Inc.
Centre Foundry and Machine Co.
Chicago Aluminum Castings Co., Inc.
Chicago-Dubuque Foundry
Christensen and Olsen Foundry Co.
Citation Carolina Corp.
Southern Ductile Casting Co.
Clark Metal
Clay & Bailey Manufacturing Co.
Clearfield Machine
Clow Corp.
Clow Water System Corp.
CMI International
Cochrane Foundry
Colonial Brass Co.
Columbian Bronze Corp.
Columbiana Foundry Co.
Consolidated Metco
Covert Iron Works
Crowe Foundry Ltd.
Curto-Ligonier Foundry Co.
Dalton Foundries
Dameron Alloy Foundries
Dayton Foundry
De Zurik Corp.
Decatur Foundry
Deere & Company
Delray Steel Castings
Dempsey Inc.
Dent Manufacturing
Detroit Non Ferrous Foundry
Dexter Co.
Didion & Sons Foundry Co.
Dix-Superior Aluminum Foundry, Inc.
Dock Foundry Co.
Dofasco Inc.
Donsco Inc.
Down River Casting Co.
Draper Corp.
Duriron Co., Inc.
East Jordan Iron Works
The Eastern Company
Eastern Foundry Co.
ECK Foundries
Electric Steel Castings Co.
Electron Corp.
Elizabeth Street Foundry Co.
Elkhart Foundry & Machine
Ellis & Vans Foundry
EMI Company
Enderlein Co., H.G.
Enterprise Brass Works
Ephrata Manufacturing Company, Inc.
Erie Bronze & Aluminum
Essex Castings
Ewing Light Metals Inc.
Excelsior Foundry Co.
Fairfield Aluminum Castings
Falcon Foundary Co.
Falk Corp.
Faunt Foundry Co.
Felton Aluminum Co.
Ferrous Technology
Kline Foundries
Fisher Cast Steel Products
Flanagan Iron Works
Flomatic Corp.
Fonderie Grand'Mere Ltee
Ford Motor Co.
Foundry Inc., The
Foundry of The Schoals
Francis and Nygren Foundry Co.
Frank Foundries Corp.
Frazer And Jones Co.
Frog, Switch & Manufacturing Co.

Frontier Foundries
G&C Foundry Co.
Gainesville Foundry
Galva Foundry Co.
Gartland Foundries, Inc.
Gartland Foundry Co.
General Casting Co.
General Foundry Co.
General Housewares Corp.
General Signal
GIW Industries, Inc.
Globe Iron Foundary
Goetz Corp. of America
Golden's Foundry & Machine Co.
Great Lakes Castings Corp.
Grede Foundries
Gregg Industries
Halpen & Co.
Harmony Castings
Harrison Steel Castings Co.
Heatwole Foundry Company, Inc.
Hendrix Mfg. Co.
Charles O. Hiler and Son, Inc.
Hiler Industries
Accurate Castings, Inc.
Hitchcock Industries
HNF Inc.
Hodge Foundry
Hunstad Foundry
Hyde Park Foundry & Machine
Intermet Corp.
Interstate Castings
Iowa Iron Works
Iowa Malleable Iron Co.
Iroquois Foundry Co.
James Jones Co.
Johnstown Corp.
Joy Tech., Inc.
Kelly Foundry & Machine
Kelsey-Hayes, Inc.
Keystone Grey Iron Foundry Co.
Kirsh Foundry Inc.
Kurdziel Iron Industries
Lacy Foundries
Lancaster Malleable Castings Co.
Larson Foundries
Lattimer-Stevens
Lawran Foundry
Le Baron Foundry
Leitelt Brothers
LEMFCO Inc.
Liberty Foundry Co.
Lincoln Brass Works
Littler Diecast Corp.
Lodi Iron Works, Inc.
M&H Valve Co.
M.P. Industries, Inc.
Mackenzie Speciality Castings
Mansfield Brass & Aluminum
Martin Foundries Co.
Maynard Steel Casting Co.
McConway & Torley Corp.
McDonald Manufacturing Co., A.Y.
McWane Cast Iron Pipe
Mereen Johnson Machine Co.
Merit Metal Products Corp.
Metal Dynamics Corp.
Mid City Foundry Co.
Midwest Foundry Co.
Midwest Metallurgical Laboratory, Inc.
Milwaulkee Malleable & Gray Iron Works
Mobil Pulley & Machine Works
Modern Foundry & Manufacturing
Morrow Foundry Inc.
Motor Castings Co.
Multi-Cast Corp
Myers Co., F.E.
National Castings Inc.
Navistar International
Neelon Castings
Neenah Brass & Aluminum
Neenah Foundry Co.
Neptune Water Meter Co.
NO AM Corp.
North American Royalties
Noblesville Casting
North Star Casteel Products
Nutmeg Steel Castings
O&H Foundry
Oil City Iron Works
Omaha Steel Castings
Opelika Foundry Co.
Orrville Bronze & Aluminum
Osco Industries
Overmyer Corp.
P.C.M. Company
Pacific States Cast Iron Pipe
Pelton Casteel
Penncast Corp.
Pennsylvania Steel Foundry & Machine
Perkins, Henry Co.
Philbrick-Booth & Spencer
Piad Precision Casting
Plymouth Foundry Inc.
Pohlman Consolidated
Pomona Die Casting Corp.
Pontiac Foundry
Process Prototype
Progressive Foundry
Prospect Foundry
Quaker Alloy Inc.
Quali-Cast Foundry, Inc.
Quality Castings Co.
R&D Pattern & Foundry
Racine Steel Castings
Reliable Castings Corp.
Reliance Electric Corp.
Richmond Casting Company
Robinson Foundry
Rochester Metal Products Corp.
Rockwell International
Rodney Hunt Co.
Roloff Manufacturing Corp.
Ross Aluminum Foundries
Sawbrook Steel Casting Co.
Cushman Foundry Inc. Div.
Schneider Corp.
Scott Casting Corp.
Scott-Atwater Foundry
Seneca Foundry, Inc.
Sharon Foundry
Shumway and Sons, C.W.
Sibley Machine & Foundry
Slinger Manufacturing Co.
Sloan Valve Co.
Smith Cos., H.B.
Smith Foundry Co.
Smith Steel Casting Co.
Somerset Consolidated
Soundcast Co.
Southern Alloy
Southern Cast Products
Specialty Castings
Springfield Aluminum Co.
Springfield Foundry
Stahl Specialty Co.
Stainless Foundry & Eng.
Standard Foundry Co.
Standard Foundry Products
Sterling Casting Corp.
Sterling Foundry Co.
Stillman White Co.
Stockham Valves & Fittings
Sturgis Foundry Co.
St. Anne's Foundry
St. Louis Steel Casting
St. Mary's Foundry
St. Paul Brass Foundry
Swayne, Robinson & Co.
Talladega Castings & Mach Co.
Talladega Foundry & Machine
Taylor & Fenn Co.
Teledyne Casting Service
Terrecorp
Texas Foundries
Trinity Valley Iron Works
East Penn Foundry Co.
Unimatic Manufacturing Corp.
Union City Mold & Die Casting Corp.
Union Foundry Co.
United Brass Works
Universal Cast Iron Manufacturing Co.
Urick Foundry Co.
U.S. Magnet & Alloy Corp.
U.S. Pipe and Foundry
Utica Radiator Corp.
V&W Castings
Valley Brass
Varicast Northwest
Victaulic Co. of America
Wagner Castings Co.
Waterman Industries, Inc.
Waupaca Foundry
Wells Manufacturing Co.
West Michigan Steel Foundry
Western Foundry Co.
Westwick Foundry
Whitman Foundry
Whittaker Corp.
Woodland Aluminum Casting
Xenia Foundry & Machine.

[FR Doc. 88-25896 Filed 11-8-88; 8:45 am]
BILLING CODE 3510-DR-M

National Institute of Standards and Technology

Workshop on Alaska Arctic Offshore Oil Spill Response Technology; Meeting

The Workshop on Alaska Arctic Offshore Oil Spill Response Technology will be held at the Anchorage Sheraton Hotel, Anchorage, Alaska, November 29 through December 1, 1988.

The Workshop will be a public forum to describe existing research programs, to identify future research needs and priorities to improve and to advance Arctic oil spill response capabilities and to present discussions of the state-of-the-art in mechanical recovery, mechanical containment, in-situ burning, chemical treatments, readiness and activities of major Arctic oil spill research programs. The Workshop will focus on existing and developing technologies and will not address fate and effect issues.

The Workshop is being coordinated by the National Institute of Technology and Standards, Department of

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Commerce, for the Minerals Management Service, Department of Interior.

FOR FURTHER INFORMATION CONTACT: Ms. Nora H. Jason, Coordinator, Workshop on Alaska Arctic Offshore Oil Spill Response Technology, National Institute of Standards and Technology, Building 224, Room A252, Gaithersburg, MD 20899, telephone 301–975–6862.

Date: November 3, 1988.

Ernest Ambler,

Director.

[FR Doc. 88–25856 Filed 11–8–88; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 80869–8169]

National Voluntary Laboratory Accreditation Program: Proposed Program For Radiation Instrumentation Calibration

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: In accordance with § 7.11 of the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) pertaining to requests from individuals (15 CFR Part 7), notice is hereby given by the National Institute of Standards and Technology of the receipt of a letter dated June 3, 1988, from Elmer Eisenhower, chairman of the Criteria Writing Group comprised of 26 representatives from laboratories concerned with measurement of ionizing radiation. The letter requests the development of a laboratory accreditation program to accredit laboratories that calibrate instrumentation used for such measurements. The letter, which is set out at the conclusion of this notice, includes a statement of need and other considerations in support of its request, meeting the conditions set forth under § 7.11(b).

Any person desiring to comment regarding the need for this program is requested to do so, in writing, not later than 60 days from the date of this notice. Comments should be sent to Mr. John L. Donaldson, Manager, Laboratory Accreditation, National Institute of Standards and Technology, A527 ADMIN, Gaithersburg, MD 20899; (301) 975–4017. Copies of comments received will be available for inspoection and copying at the Department of Commerce Central Reference and Records Inspection Facility, Room 6228, Hoover Building, Washington, DC 20230.

Ernest Ambler,

Director.

Date: November 3, 1988.

June 3, 1988

Dr. Ernest Ambler,

Director, National Institute of Standards and Technology, A1139 Administration, Gaithersburg, MD 20899.

Dear Dr. Ambler: The purpose of this letter is to request establishment of a Laboratory Accreditation Program (LAP) under the procedures described in 15 CFR Part 7. This request is made on behalf of 26 representatives of laboratories that would either be potentially accredited through the requested LAP or are directly concerned with its development.

The scope of the LAP would cover accreditation of laboratories that calibrate instrumentation used for measurement of ionizing radiation. It would include calibration of radiation survey instruments, irradiation of personnel dosimeters, calibration of radiation sources, calibration of reference-class instruments, and calibration of instruments used to measure diagnostic x rays in medical applications.

The applicable standard that would be used to evaluate candidate laboratories is a docment prepared by the 26 representative mentioned above. It is entitled "Criteria for the Operation of Federally-Owned Secondary Calibration Laboratories (ionizing Radiation)" and represents a consensus of the laboratory representatives. This document is generally available, is in the public domain, and is not proprietary in any sense. After the minor revisions expected to be made soon after initial use of the document for laboratory evaluation, we plan to have it published by a suitable national organization.

We estimate approximately eight laboratories would be accredited under the request LAP that presentaly operate at the secondary level, using measurement standards calibrated by the National Institute of Standards and Technology (NIST). The departments or agencies in which the candidate laboratories operate are the Department of Energy, Department of Defense, Food and Drug Administration, and the Federal Emergency Management Agency. In the future, we also plan accredition of laboratories at the tertiary level, using suitably modified evaluation criteria. It is estimated that another 10 laboratories may be accredited at the level.

The laboratory represeantatives feel it is necessary to have accreditation by a federal agency, as opposed to private-sector accreditation. They are concerned that it would be inappropriate for them to be accredited by a private-sector organization whose members are subject to their regulations. During a recent meeting of these laboratory representatives they voted, with no dissent, in favor of accreditation by NVLAP.

Calibrations performed routinely by the candidate laboratories support thousands of radiation measurements made daily in the nuclear industry, defense applications, emergency response, and medical diagnostics. The requested LAP would provide continuing assurance that those calibrations would be performed with adequate quality. Such quality assurance is presently lacking. In addition, the requested LAP would enable accredition of the proficiency testing laboratory presentaly used for the ongoing personnel dosimetry LAP.

At this time there is no existing laboratory accreditation program in either the public or private sector that has sufficient scope to serve the needs of these candidate laboratories. The breadth of scope and the rigor of the criteria proposed for this request LAP exceed any existing program in the national measurement support system for ionizing radiation.

The 26 representatives who have developed the proposed evaluation criteria constitute a group of the country's experts in this technical field. Their services are available to assist in various aspects of development of the requested LAP, and to subsequently perform on-site assessments.

Thank you for considering this request. I will be happy to provide any additional information necessary.

Sincerely,

Elmer Eisenhower,

Chairman, Criterial Writing Group.

[FR Doc. 88–25858 Filed 11–8–88; 8:45 am]

BILLING CODE 3510–13–M

American National Standard on Orifice Metering of Natural Gas: Correction to Notice

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Publication of correction to notice of intent to revise and request for comment and participation in standards development.

In the notice in the **Federal Register** on October 7, 1988 (53 FR 39496), the summary contained a reference to the ANSI/API standard for "Orifice Metering of Natural Gas and Related Hydrocarbon Fluids." The number of the standard was incorrect. The correct number should be ANSI/API 2530.

Ernest Ambler,

Director.

Dated: November 3, 1988.

[FR Doc. 88–25857 Filed 11–8–88; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

National Undersea Research Program

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Request for proposals.

SUMMARY: The Office of Undersea Research (OUR) of the National Oceanic and Atmospheric Administration (NOAA) plans to expand the network of centers comprising the National Undersea Research Program (NURP). Accordingly, OUR is soliciting proposals from institutions to manage an undersea program on the west coast of the United States. OUR desires to establish two such centers; one to support the northwest science community (including Alaska) and a second to support the southwest community. However, because of possible budget constraints, OUR reserves the right to establish one center to service the entire west coast community, and may so designate one of the applicants.

Two planning studies were undertaken by representatives of research institutions and universities on the west coast. These studies provide an evaluation of the scientific demand for *in situ* research in this region and recommendations for an appropriate scientific and management framework for a future program. Respondents to this solicitation should refer to these studies when preparing a proposal. Copies of the final reports for both studies and guidelines for preparation of proposals are available from OUR. These reports may be obtained free of charge by calling or writing the Office of Undersea Research.

DATES: Proposals must be received by the Office of Undersea Research no later than December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Director, Office of Undersea Research, NOAA, Suite 805, WSC–5, 6010 Executive Boulevard, Rockville, MD 20852, (301) 443–8391.

SUPPLEMENTARY INFORMATION:

Proposal Criteria

I. Program Management Plan

The results of the Southwest and Northwest Planning Studies (copies available from NOAA's Office of Undersea Research) examined the justification for an undersea program on the west coast and recommended the following framework for managing such a program:

a. Maintain flexibility in meeting the changing demand of the research community by leasing major undersea platforms.

b. Establish a central administration to coordinate and manage an undersea research program.

c. Implement NOAA's peer review system to evaluate the scientific merit of requests for program support.

NOAA endorses these recommendations and requires that the responsive proposal described how the candidate center would:

a. Establish and maintain a management structure to implement and conduct an undersea program based upon leasing of facilities such as ROVs and manned submersibles required to conduct *in situ* research. This should include an organization chart and description of key personnel and their responsibilities.

b. Develop and maintain the means to ensure the marine science community is aware of the program and opportunities for participation.

c. Determine the nature and scope of equipment acquired by the program and the procedure for its storage, control and use.

d. Coordinate and therefore reduce duplication of effort among research institutions, government agencies, and private industry.

e. Establish and use a program advisory committee.

f. Develop relationships of the program management with NOAA's Office of Undersea Research.

g. Evaluate science proposals and develop and maintain methods for monitoring results of science and technology activities.

h. Review the program's capability to address scientific requirements and long-term objectives.

II. Facilities

Although experience has demonstrated that a lease approach offers flexibility, economy, and continued access to state-of-the-art undersea systems (and it is recommended for the west coast), some facilities are required to support the new undersea research center(s). Such facilities may include the following items:

a. Provision of office space to house program management and administrative support staff.

b. Storage space for equipment that is acquired by or shared with the program.

c. Support vessels, machine shops, and availability of technical and engineering personnel.

In consideration of facilities, the proposal should include the following information:

d. Description of institutional commitment to support the program including use of existing or proposed facilities, equipment storage, repair or fabrication shops, docks, staging areas and laboratories.

e. Extent and manner in which the institution commits support for these operations and support facilities (full or partial support).

f. Identification and description of those facilities which are to be funded entirely or partially by NOAA or another government agency.

III. Institution Capability

Experience indicates that successful undersea research programs are directly related to the character and quality of the leadership and support provided by the host institution (or consortium of institutions). The character and demonstration of such attributes will be a major consideration when deliberations are held to award a grant for the operation of a west coast center(s) and associated program(s). Consequently, the proposal also should address the following:

a. Prior history and level of institutional experience with the management of large, multidisciplinary, multiinstitution research programs.

b. Position of the proposed undersea program within the organization of the institution and level of involvement of senior institution management with the program.

c. Qualifications to be sought in the management team for the undersea program(s).

d. Level of effort (in man-months) for each member of the program management team including administrative and support staff.

e. Unique qualifications held by the institution or an individual to operate or manage the program.

f. Financial contributions from the host institution(s) such as matching salary support, facilities, or adjustment in rate of indirect costs.

IV. Safety Plan

Safety is a basic concern of each undersea research program and is a consideration in the planning and conduct of all NOAA-sponsored undersea activities. All facilities used to place scientists in the sea must be certified by the American Bureau of shipping and/ or a recognized, equivalent licensing authority. Management of wet diving activities must meet the requirements set forth in NOAA Diving Regulations. For clarification, these requirements will be stated in the grant instrument. Thus, each proposal should address how the candidate center(s) will:

a. Establish a Diving Safety Panel to provide oversight for all diving activities.

b. Accept and monitor adherence to the NOAA Diving Regulations.

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c. Accept and monitor adherence to NOAA certification requirements when leasing or using manned systems.

V. Science Program Development

NOAA Is a mission-oriented agency founded on scientific and technical goals and located within the Department of Commerce. Therefore, an undersea research program should address one or more of the following departmental goals:

a. Increase our understanding of oceanic and atmospheric processes through measurement and research.

b. Promote the development and application of science and technology in U.S. industries.

c. Improve federal management of U.S. ocean and coastal resources.

d. Determine the characteristics and resources of the 200 mile U.S. exclusive economic zone.

e. Provide timely environmental data, information, and assessments to U.S. industry.

f. Increase exports and domestic consumption of U.S. fishery products.

g. Improve delivery of ocean information products and services.

h. Promote the development and growth of oceanic and atmospheric industries.

Within the framework provided by these goals, the proposal should explain how the undersea program will:

i. Identify and produce the research framework and questions to be addressed (see planning reports for details).

j. Discuss the uniqueness of the scientific questions and the proposed approach to address these questions.

k. Discuss the application of undersea technology to these questions.

l. Describe the research objectives of the proposed program and the significance of the expected results.

m. Discuss the relationship of the proposed research program to the present state of knowledge and describe any related research completed through and/or presently being conducted at your institution.

VI. Information Transfer

NOAA is especially concerned with the dissemination of information resulting from sponsored programs. Thus, the proposal should describe the mechanisms that will be used to:

a. Monitor advances in technology related to undersea research and dissemination of information on technical innovation to the user community.

b. Inventory and coordinate the use of undersea equipment.

c. Establish the program as a liaison between the research community and industry.

d. Disseminate results of undersea research activities.

VII. Budget

Estimation of annual costs for the center(s) are required prior to any decision to award a program grant. The proposal should include at least the following budget information:

a. Funds required to develop and conduct the program during fiscal year 1989 including salaries, equipment, services, and expected sources of income.

b. Anticipated funds required for purchase or lease of equipment, administrative costs, and travel.

c. Identify and allocate matching funds against line items.

Summary

All proposals received in response to this solicitation will be reviewed and evaluated with respect to the following criteria:

a. Program Management
b. Facilities
c. Institution Capability
d. Safety Plan
e. Science Program Development
f. Information Transfer
g. Budget

Receipt of each proposal will be acknowledged.

Any questions or correspondence concerning this solicitation should be directed to: Director, NOAA's Undersea Research Program, Suite 805, R/SE2, 6010 Executive Boulevard, Rockville, Maryland 20852.

Date: October 28, 1988.

Joseph O. Fletcher,

Assistant Administrator for Oceanic and Atmospheric Research, NOAA.

[FR Doc. 88-25887 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service

Intention to Grant Exclusive Patent License; Pediatric Pharmaceuticals, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Pediatric Pharmaceutical, Inc., having a place of business in Edison, NJ, an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7-055,008. "New Immunotherapeutic Method of Treating Respiratory Disease". The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquires, comments, and other materials relating to the proposed license must be submitted to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephone (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-25877 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-04-M

Intention to Grant Exclusive Patent License; Roberts Pharmaceutical Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Pharmaceutical Corporation, having a place of business in Eatontown NJ., an exclusive license in the United States to practice the invention entitled "Chemical Differentiating Agents" U.S. Patent Application Number 7-062,422. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-25877 Filed 11-8-88; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 17 November 1988 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 1 November 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88-25971 Filed 11-8-88; 8:45 am]

BILLING CODE 6330-01-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

Summary: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, November 14, 1988, beginning 9:00 a.m.; Tuesday, November 15, 1988, beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22302-0268.

Type of Meeting: Closed.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

Supplementary Information: The executive meeting of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-25906 Filed 11-8-88; 8:45 am]

BILLING CODE 3820-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

November 4, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 7, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 218, 219, 313, 315, 640, 641 and 642 are being increased, variously, for swing and carryforward. Categories 300/301 and Category 363 are being reduced to account for the swing being applied. Category 313 is being increased also by special shift from Category 363.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 58, published on January 4, 1988; and 53 FR 43466, published on October 27, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

November 4, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 7, 1988, the directive of December 30, 1987 is being amended further to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and India:

Category levels in group I	Adjusted 12-month limit[1]
218	8,814,000 square yards.
219	42,000,000 square yards.
300/301	5,800,916 pounds.
313	23,456,496 square yards.
315	9,009,737 square yards.
363	15,407,500 numbers.
640	149,806 dozen.
641	886,291 dozen.
642	269,331 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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Sincerely,
James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 88-25894 Filed 11-8-88; 8:45 am]
BILLING CODE 3510-DR-M

Amendment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Macau

November 4, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 14, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: At the request of the Government of Macau, the current minimum consultation level is being increased for Category 434. As a result, the limit for Category 434, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published December 16, 1987). Also see 52 FR 49466, published on December 31, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.
November 4, 1988.
Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 14, 1988, the directive of December 28, 1987 is being amended to increase to 3,500 dozen [1] the limit for wool textile products in Category 434.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James H. Babb,
Chairman, Committee for the Implementation of Textile agreements.
[FR Doc. 88-25895 Filed 11-8-88; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 13-14 Dec 88 from 8:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 88-25880 Filed 11-8-88; 8:45 am]
BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).
Dates of meeting: 28-29 November 1988.
Time: 0830-1600 hours, 28 November 1988; 0830-1500 hours, 29 November 1988.
Place: The Pentagon, Washington, DC.
Agenda: The Army Science Board Effectiveness Review Panel of the US Belvoir Research, Development and Engineering Center will meet in a working session to provide final editing to the Ad Hoc Committee Report. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 88-25919 Filed 11-8-88; 8:45 am]
BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).
Dates of meeting: 29-30 November 1988.
Time: 0700-1700 hours, 29 November 1988; 0800-1200 hours, 30 November 1988.
Place: Fort Bliss, Texas.
Agenda: The Army Science Board Ad Hoc Subgroup on Army Family Programs will be hosted by the Commanding General of Fort Bliss, Texas. The subgroup will received briefings on those programs being utilized at Fort Bliss that address soldier and family issues impacting on quality of life in the Fort Bliss community. In addition, the subgroup will be afforded the opportunity to visit with soldiers and families to hear firsthand of their concerns. This is being done as part of the overall effort on the part of the panel to collect information and to observe Army efforts to meet the need of soldiers and families in the Army. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 88-25920 Filed 11-8-88; 8:45 am]
BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).
Dates of meeting: 30 November-1 December 1988.
Time: 0800—1700 hours each day.
Place: Riverside Research Institute, New York, New York.
Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense (Follow-On) will meet in Executive Session to finalize the report of the panel's study on ICBM target discrimination. This meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 88-25921 Filed 11-8-88; 8:45 am]
BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).
Dates of meeting: 1-2 December 1988.
Time of meeting: 0830-1700 hours.
Place: The Pentagon, Washington, DC.
Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Explosive Systems (TEXS) will meet for the purpose to review the site visits to Yuma Proving Ground, Ireco Chemical Corporation, U.S. Army Engineering School, and Atlas Chemical Corporation, and to draft the final report for the study group. Because of the proprietary information to be discussed, the meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 88-25922 Filed 11-8-88; 8:45 am]
BILLING CODE 3710-08-M

[1] The limit has not been adjusted to account for any imports exported after December 31 1987.

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 9, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission to these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 4, 1988.
Carlos U. Rice,
Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: NEW COLLECTION
Title: National Assessment of Educational Progress (NAEP): Field Tests for 1989 Assessment
Frequency: Non-recurring
Affected Public: Individuals or households; State or local governments
Reporting Burden: Responses: 16,176
Burden Hours: 12,941
Recordkeeping: Recordkeepers: 0
Burden Hours: 0

Abstract: Congress mandated the collection of National Assessment survey data. Development of background questions and exercises, as well as field-testing of items for the 1989-90 assessments in reading, mathematics, and science, including the Trial State Assessment Program will occur during the 1989 school year. Results will be used to select exercises for the 1989-90 assessment. Respondents will be students at grade 4, grade 8, grade 12, teachers, and principals.

Office of Education Research and Improvement

Type of Review: REVISION
Title: Integrated Postsecondary Education Data Systems (IPEDS)
Frequency: Annually
Affected Public: State or Local Governments, Businesses or other for-profit, Non-profit institutions
Reporting Burden:
Responses: 37,000
Burden Hours: 65,200
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: The information collected for the IPEDS is used to report statistics on the condition of postsecondary education. IPEDS provides data on a broad range of topics including postsecondary students, faculty and staff, programs, institutions and finances.

Office of Elementary and Secondary Education

Type of Review: NEW COLLECTION
Title: Application for grants under the Jacob K. Javits Gifted and Talented Students Education Act of 1988
Frequency: Annually
Affected Public: State or local governments and small businesses or organizations

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Reporting Burden:
Responses: 400
Burden Hours: 12,000
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by state and local agencies, institutions of higher education and other public and private agencies and organizations to apply for new awards under the Jacob K. Javits Gifted and Talented Students Education Act of 1988. The Department used the information to make grant awards.

Office of Special Education and Rehabilitation Services

Type of Review: REVISION
Title: Three Year State Plan for Vocational Rehabilitation Services
Affected Public: State or local governments
Frequency: Triennially
Reporting Burden:
Responses: 86
Burden Hours: 6,450
Recordkeeping:
Recordkeepers: 86
Burden Hours: 1,450,860

Abstract: State agencies that administer Vocational Rehabilitation (VR) programs must submit a three year State plan to receive Federal funds. The Department will use the information to make grant awards, and to evaluate States' performance and compliance under Title I of the Rehabilitation Act, as amended.

[FR Doc. 88-25966 Filed 11-8-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10086-000]

Brewster Grist Mill Co.; Surrender of Preliminary Permit

November 1, 1988.

Take notice that Brewster Grist Mill Company, permittee for the proposed Brewster River Water Power Project, has requested that its preliminary permit be terminated. The permit was issued on January 16, 1987, and would have expired December 31, 1989. The project would have been located on the Brewster River, near the town of Jeffersonville, in Lamoille County, Vermont. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed request on March 2, 1987, and the preliminary permit for Project No. 10086 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell.

Secretary.

[FR Doc. 88-25888 Filed 11-8-88; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1989

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of Determination of Excess Amount of Petroleum Violation Escrowed Amounts Pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties and to meet other commitments. Notice is hereby given that $57,218,170.88 of the amounts currently in escrow is determined to be excess funds for fiscal year 1989 and will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter "PODRA"), contained in Title III of the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, establishes certain procedures for the disbursement of oil overcharge funds collected by the Department of Energy pursuant to the Emergency Petroleum Allocation Act of 1973 ("EPAA") or the Economic Stabilization Act of 1970 ("ESA"). These funds are moneys obtained to remedy actual or alleged violations of such Acts.

PODRA requires the Department of Energy (DOE), through the Office of Hearings and Appeals, to conduct proceedings under 10 CFR Part 205, Subpart V, to accept claims for restitution and to refund these oil overcharge moneys to persons injured by violations of the EPAA or the ESA. In addition, PODRA requires the Secretary of Energy to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in refund proceedings and to make this excess available to state governments for use in four energy conservation programs. The determination is required to be published in the **Federal Register** within 45 days after the beginning of each fiscal year. The Secretary has delegated this responsibility to the DOE's Office of Hearings and Appeals.

Notice is hereby given that based on currently available information, $57,218,170.88 is in excess of the amount that is needed to make restitution to injured persons.

To arrive at that figure, the Office of Hearings and Appeals has reviewed all accounts in which moneys covered by PODRA are deposited. PODRA generally covers all funds now in escrow which are derived from alleged violations of the EPAA and the ESA. However, PODRA excludes from its procedures three categories of funds. Some funds currently in escrow have been identified for indirect restitution in orders issued prior to enactment of PODRA. Other funds are attributable to alleged violations of regulations governing the pricing of crude oil and subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., July 7, 1986). Those classes of funds are not subject to the procedures set forth in PODRA. In addition, a relatively small amount of oil overcharge funds is currently subject to the control of the Department's Economic Regulatory Administration, which has generally found that none of those funds are currently excess. As of September 30, 1988, the total amount subject to the PODRA procedures was $428,748,927.70.

The Office of Hearings and Appeals has employed the following methodology to determine the excess amount of PODRA funds. We took special account of the provision of PODRA which directs that "primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making [direct] restitution." In accordance with our prior practice, in

major refiner proceedings where refund claims are not yet being accepted, we have reserved 75 percent of the funds for direct restitution to injured persons. The remainder is excess.[1] For proceedings in which all claims have been considered or in which no claims have been filed, and the deadline for filing claims has passed, all remaining funds are excess. In proceedings in which refund claims are pending, we have on a claim-by-claim basis examined pending claims, and established reserves sufficient to pay the entire amount of all claims. The amount of those reserves also includes all refunds ordered by the Office of Hearings and Appeals since September 30, 1988. Small amounts of interest accrued after September 30, 1987, in accounts that were closed in the fiscal year 1988 PODRA determination (52 FR 43657 (1987)) are included as part of the "excess" for fiscal year 1989. In accordance with section 3002(c)(3) of PODRA, escrowed amounts are not deemed "excess" where they were designated, prior to the enactment of PODRA, for disbursement to specific persons or classes of persons as indirect restitution. No "other commitments" are reflected in the reserves. The ERA has brought to our attention one case, involving a 1982 settlement with Macmillan Ring-Free Oil Company (Consent Order No. 960S00053Z), where the amount transferred as excess under PODRA in 1986 left insufficient funds for the ERA to pay certain refund recipients identified in the consent order. We are therefore making an adjustment in this notice to replenish the Macmillan subaccount so that these identified refund recipients may be paid.

The total escrow account equity subject to PODRA is $428,748,927.70. The total amount needed as reserves for direct restitution in those cases is $371,530,756.82. When the total amount of reserves is subtracted from the total escrow account equity subject to PODRA, the remainder, $57,218,170.88, is the amount in fiscal year 1989 that is "in excess" of the amount that will be needed to make restitution to injured persons. Appendix A sets forth for each refund case within the jurisdiction of the Office of Hearings and Appeals the total product equity eligible for distribution under PODRA, the amount reserved for direct restitution, and the "excess" amount. Appendix B reflects information supplied by the Economic Regulatory Administration regarding cases subject to PODRA under its jurisdiction.

Accordingly, $57,218,170.88 will be transferred to a separate account within the United States Treasury and made available to the states for use in the four designated energy conservation programs in the manner prescribed by the Act.

Date: November 3, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[1] In the case of the Texaco Inc. refund proceeding, the actual amount that is subject to PODRA is disputed by commenters, see 53 FR 32929 (1988), and will be resolved in the relevant Subpart V refund proceeding. The determination to set aside 75 percent of $120 million in Texaco funds is a preliminary determination only for purposes of this proceeding.

APPENDIX A—DETERMINATION OF EXCESS PETROLEUM VIOLATION ESCROW FUNDS FOR FISCAL YEAR 1989

Name	OHA case Number	Consent order Number	Total product equity as of Sept. 30, 1988	Funds available under PODRA for fiscal year 1989
Texaco Inc	KEF-0120	RTXE006A1W	$120,036,411.10	$30,000,000.00
Howard Oil Co	HEF-0008	240H00280Z	10,367,980.92	10,367,980.92
Getty Oil Co	HEF-0209	RGEA00001Z	17,634,872.07	9,000,000.00
CONOCO	HEF-0010	RCOA00001Y	1,467,779.52	1,467,779.52
Saber Energy, Inc	HEF-0220	6D0S00037Z	1,386,654.33	1,386,654.33
Aminoil U.S.A., Inc	HEF-0007	740V01259Y	10,126,591.61	1,022,778.00
Suburban Propane Gas Corp	HEF-0036	733V02010Z	1,489,185.92	1,000,000.00
Bak Ltd	HEF-0034	320H00043Z	428,319.10	428,319.10
Anchor Gasoline Corp	HEF-0120	740S01247W	3,000,000.00	300,000.00
Smith, C.K. & Co	HEF-0172	111H00028Z	299,861.28	299,861.28
UPG, Inc	HEF-0026	641S00123Z	240,725.66	240,725.66
Good Hope Refineries, Inc	HEF-0211	150S00154Z	182,877.24	182,877.24
Howell-Quintana	HEF-0212	610S00068Z	171,953.40	171953.40
Thriftyman, Inc	HEF-0016	610H10449Z	162,176.06	162,176.06
Husky Oil Co	HEF-0213	820S00007Z	151,609.67	150,043.67
U.S.A. Petroleum Corp	HEF-0500	960S00093Z	132,239.60	132,239.60
Tenneco Oil	BEF-0073	RTNA00001Y	127,988.14	127,988.14
Leo's-Winstead's	HEF-0114	710H01376Z	98,729.18	98,729.18
APCO Oil Corp	HEF-0008	660S00632Y	72,307.82	72,307.82
Gibbs Industries, Inc	HEF-0079	110H00494Z	70,089.66	70,089.66
Power Pak Co., Inc	HEF-0155	610H10452Z	122,314.04	70,000.00
Jay Oil Co	HEF-0101	6C1H00209Z	65,304.27	65,304.27
Richardson, Sid	BEF-0022	6D0V00025Y	51,276.60	51,276.60
Northwest Pipeline	HEF-0264	710V03015Z	46,966.64	46,966.64
Cranston Oil Service Co., Inc./Galego	HEF-0029	111K00123Z	46,065.42	46,065.42
Knutson, Marlen L	HEF-0110	000H00422Z	45,498.63	45,498.63
Keller Oil Co., Inc	HEF-0103	720H00598Z	40,740.98	40,740.98
Navajo Refining Co	HEF-0217	672S00136Z	27,629.52	27,629.52
Clean Machine, Inc	KEF-0097	999K90079Z	24,103.57	24,103.57
Quaker State Oil	HEF-0219	340S00352Z	23,527.53	23,527.53
Kent Oil & Trading Co	HEF-0578	940X00232Z	23,481.03	23,481.03
South Hampton Refining	HEF-0222	6E0S00002Z	21,958.81	21,958.81
Marine Petroleum Co	HEF-0122	720H00567Z	20,544.29	20,544.29
Arkansas Louisiana Gas Co	HEF-0201	641S00255Z	18,110.82	18,110.82
GCO Minerals Co	HEF-0570	NGCP00001Z	16,231.84	16,231.84
Appalachian Flying Service	HEF-0028	432K00435Z	15,697.55	15,697.55
Bubble Machine	HEF-0514	999K90040Z	12,859.05	12,859.05
Oceans Terminal Corp	HEF-0142	240H00361Z	12,276.63	12,276.63
King & King Enterprises, Inc	HEF-0106	710H02500Z	12,133.65	12,133.65

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DETERMINATION OF EXCESS PETROLEUM VIOLATION ESCROW FUNDS FOR FISCAL YEAR 1989—Continued

Name	OHA case Number	Consent order Number	Total product equity as of Sept. 30, 1988	Funds available under PODRA for fiscal year 1989
Perta Oil	HEF-0148	930H00088Z	11,905.80	11,905.80
Pyrofax Gas Corp	HEF-0157	641T00099Z	11,803.49	11,803.49
Richardson Ayres Jobber	HEF-0166	640H00354Z	11,720.41	11,720.41
Quarles Petroleum	HEF-0158	N00H00905Z	11,557.86	11,557.86
Sigmor Corp	HEF-0581	6D0S00091Z	9,487.22	8,487.22
Elm City Filling Stations, Inc	HEF-0067	150H00126Z	9,027.90	9,027.90
Union Texas Petroleum Corp	HEF-0009	6E0S00075Y	8,609.69	8,609.69
ONEOK, Inc	HEF-0571	740V01406Z	8,528.18	8,528.18
Swifty Oil Co	HEF-0175	550H00337Z	8,378.88	8,378.88
Gull Industries, Inc	HEF-0085	N00SD0001Z	7,684.07	7,684.07
La Gloria Oil and Gas Co	HEF-0210	641S00234Z	7,647.91	7,647.91
Lee Garrett Chevron	KEF-0040	999K90057Z	7,426.31	7,426.31
Product Tracking—PODRA		999DOE005W	7,366.80	7,366.80
Crystal Oil Co	HEF-0204	641S00098Z	5,956.19	5,956.19
Box, Cloyce K	HEF-0041	600H00037Z	4,872.33	4,872.33
Farstad Oil Co	HEF-0567	850H00018Z	3,876.51	3,876.51
Lewtex Oil and Gas Co	BEF-0033	6D0V00020Y	3,512.73	3,512.73
Alemany Chevron Service Center	KEF-0023	999K90059Z	3,446.99	3,446.99
Eastern of New Jersey	HEF-0065	240H00441Z	3,366.53	3,366.53
Ferrell Companies, Inc	HEF-0587	710T00075Z	3,252.30	3,252.30
Gary Energy Co	HEF-0245	810V00003Z	3,116.38	3,116.38
Car Wash Service	HEF-0516	999K90047Z	2,795.34	2,795.34
Pride Refining, Inc	HEF-0218	6D0S00036Z	2,532.78	2,532.78
Franks Petroleum	HEF-0208	641S00421Z	2,526.09	2,526.09
Inland USA, Inc	HEF-0096	720H00563Z	2,447.96	2,447.96
Consumer Oil Co	HEF-0055	930H00097Z	2,088.56	2,088.56
Tresler Oil Co	KEF-0019	530H00449Z	1,936.33	1,936.33
Southern Union	HEF-0223	673S00336Z	1,828.82	1,828.82
McCleary Oil Co	HEF-0127	310H00439Z	1,735.46	1,735.46
Arapaho Petroleum, Inc	HEF-0231	710V03019Z	1,716.86	1,716.86
Central Oil Co	HEF-0047	110H00300Z	1,694.94	1,694.94
Gull Industries, Inc	HEF-0086	010H00056Z	1,658.75	1,658.75
MAPCO, Inc	HEF-0258	740V01246Z	1,296.99	1,296.99
Allied Materials Corp. & Excel	HEF-0200	660S00302Z	1,285.11	1,285.11
Lucia Lodge	HEF-0119	910K00133Z	1,231.17	1,231.17
Inman Oil Co	HEF-0097	720H00557Z	1,150.33	1,150.33
Pasco Petroleum, Inc	HEF-0146	000H00442Z	737.30	737.30
Martin Oil Service, Inc	HEF-0123	570H00200Z	667.72	667.72
St. James Resources	HEF-0100	110H00487Z	612.80	612.08
Lowe Oil Co	HEF-0118	710H01379Z	505.85	505.85
Indian Oil Co., Inc	HEF-0095	132H00243Z	470.30	470.30
Dalco Petroleum	HEF-0060	660T00642Z	430.96	430.96
Arkansas Valley Petroleum	HEF-0029	660H10655Z	422.80	422.80
Gull Industries	HEF-0084	010H00357Z	361.33	361.33
Eagle Petroleum	HEF-0243	710V03025Z	351.65	351.65
Parman Oil Corp	HEF-0145	430H00219Z	338.66	338.66
Wellen Oil Co	HEF-0584	240H00071Z	296.15	296.15
Hicks Oil & Hick Gas	HEF-0091	570E00128Z	263.90	263.90
Texas Gas & Exploration	HEF-0274	6E0V00015Z	247.81	247.81
Tipperary Oil Co	HEF-0277	670V00323Z	247.79	247.79
Arkla Chemical Corp	HEF-0030	641H00364Z	225.29	225.29
Stinnes Oil	HEF-0174	240H00519Z	161.36	161.36
Tarricone, Inc	HEF-0177	240H00291Z	155.36	155.36
Leathers Oil Co	HEF-0113	000H00426Z	148.64	148.64
Petroleum Sales/Service	HEF-0151	340H00488Z	142.97	142.97
Lewis Oil Co	HEF-0115	340H00493Z	135.28	135.28
Propane Gas & Appliance Co	HEF-0156	420E00206Z	122.24	122.24
Missouri Terminal Oil Co	HEF-0131	720H00562Z	115.88	115.88
Malco Industries	HEF-0121	530H00435Z	99.90	99.90
Ramos Oil Co., Inc	HEF-0159	910H00144Z	97.14	97.14
Belcher, Leonard E., Inc	HEF-0586	151H00003Z	88.50	88.50
Resources Extraction Process	HEF-0574	740V01409Z	79.48	79.48
Little America Refining	HEF-0215	830S00012Z	65.48	65.48
Port Oil Co	HEF-0153	420H00278Z	59.02	59.02
Luke Brothers, Inc	HEF-0120	660E00075Z	57.64	57.64
Plateau, Inc	HEF-0272	733V02013Z	52.41	52.41
Lakes Gas Co., Inc	HEF-0112	510E00134Z	38.56	38.56
Peterson Petroleum	HEF-0149	240H00491Z	35.44	35.44
Earls Broadmoor	HEF-0566	640Z00357Z	27.84	27.84
Steve's Exxon & Towing Service	HEF-0550	999K90036Z	22.62	22.62
Post Petroleum	HEF-0154	910H00145Z	18.62	18.62
McClure's Service Station	HEF-0128	340H00486Z	18.24	18.24
Lockheed Air Terminal, Inc	HEF-0117	930H00199Z	18.11	18.11
Reynolds Oil Co	HEF-0164	810H00324Z	16.42	16.42
Bud's Exxon Service	HEF-0511	999K90038Z	13.91	13.91
Pacific Northern Oil	HEF-0144	010H00028Z	7.53	7.53
Moyle Petroleum	HEF-0133	810H00300Z	6.92	6.92
White Petroleum	HEF-0196	550H00317Z	5.40	5.40

DETERMINATION OF EXCESS PETROLEUM VIOLATION ESCROW FUNDS FOR FISCAL YEAR 1989—Continued

Name	OHA case Number	Consent order Number	Total product equity as of Sept. 30, 1988	Funds available under PODRA for fiscal year 1989
Amtel, Inc	HEF-0027	720H00552Z	1,146,573.42	0.00
Atlantic Richfield Co (ARCO)	HEF-0591	RARH00001Z	43,083,305.80	0.00
Beacon Oil Co	HEF-0203	910S00008Z	2,400,266.89	0.00
Butler Fuel Corp	KEF-0094	110E00421Z	54,901.69	0.00
Century Refining Co	BEF-0041	710V02006Y	58,039.30	0.00
Crown Central Petroleum Corp	KEF-0044	RCWA00000Z	6,764,571.36	0.00
Dorchester Gas Corp	HEF-0559	670S00113Z	1,267,563.01	0.00
Earth Resources	HEF-0205	431S00341Z	319,397.11	0.00
Eastern Oil Co	KEF-0085	412H00040Z	150,764.41	0.00
Edgington Oil Co	KEF-0003	930S00173Z	1,932,487.43	0.00
Elias Oil Co	KEF-0022	412H00105Z	130,053.95	0.00
Empire Gas Corp	KEF-0048	720T00521Z	1,101,916.62	0.00
Enron Corp	KEF-0116	730V00221Z	48,325,342.50	0.00
Evett Oil Co	KEF-0020	400H00221Z	74,027.97	0.00
Exxon Corp	KEF-0087	REXL00201Z	23,917,413.66	0.00
Gulf Oil Corp	HEF-0590	RGFA00001Z	48,128,403.58	0.00
Gulf Oil Corp	DFF-0001	NOOR00007Y	26,924,354.87	0.00
Indian Wells Oil Co	KEF-0103	710V02002Z	1,574,693.52	0.00
Key Oil Co	HEF-0106	430H00477Z	9,131.55	0.00
Ladd Petroleum Corp	KEF-0112	810C00341Z	2,986,585.02	0.00
Marathon Petroleum Co	KEF-0021	RMNA00001Z	6,399,640.80	0.00
Martin Oil Co	HEF-0124	910T00120Z	118,137.39	0.00
Maxwell Oil Co	HEF-0125	000H00425W	10,632.06	0.00
McClure Oil Co	KEF-0009	660E00083Z	17,892.68	0.00
MCO Holdings Inc & MPC, Inc	KEF-0108	831V00016Z	804,816.32	0.00
Mobil Oil Corp	HEF-0508	RMOA00001Z	4,639,804.05	0.00
Murphy Oil Corp	KEF-0095	RMUH01983Z	5,882,428.19	0.00
National Propane Corp	HEF-0135	270T00002Z	11,710.66	0.00
Northeast Petroleum Corp	HEF-0137	110H00334Z	641,946.78	0.00
Northeast Petroleum Corp	HEF-0138	120H00491Z	357,708.93	0.00
O'Connell Oil Co	HEF-0141	110H00513Z	5,718.55	0.00
O'Neals Service Center	KEF-0117	999K90056Z	3,897.84	0.00
Pacer Oil Co	HEF-0143	412H00172Z	19,482.75	0.00
Pedersen Oil, Inc	HEF-0147	000H00418Z	26,846.23	0.00
Petrolane-Lomita Gasoline Co	HEF-0269	940V00195Z	52,991.45	0.00
Petroleum Heat & Power	HEF-0150	110H00530Z	101,104.58	0.00
Placid Oil Co	KEF-0007	6D0S00005Z	1,965,429.89	0.00
Plaquemines Oil Sales Inc	KEF-0039	640H00174Z	518,669.96	0.00
Point Landing Fuel Co	HEF-0152	640H00175Z	128,622.54	0.00
Power Test Petrol Distribution	KEF-0042	240H00499Z	471,344.46	0.00
Reinauer Petroleum Co., Inc	KEF-0110	240H00492Z	313,341.03	0.00
Sauvage Gas Service Co., Inc	KEF-0024	710H06006Z	471,893.11	0.00
Shell Oil Co	KEF-0093	RSHA00001Z	16,772,985.63	0.00
Total Petroleum, Inc	KEF-0133	540S00227Z	2,567,736.60	0.00
True Oil Co	HEF-0557	733V02019Z	1,779,283.42	0.00
Winston Refining Co	HEF-0589	6D0S00006Z	129,907.62	0.00
Witco Chemical Corp	HEF-0227	240S00054Z	3,333,913.78	0.00
World Oil Co	KEF-0005	960S00104Z	2,265,820.81	0.00
MacMillan Ring-Free Oil Co	HEF-0506	960S00053Z	119,912.29	(247,180.00)
Totals			428,748,927.70	57,218,170.88

Appendix B

October 26, 1988.

Memorandum for: George B. Breznay, Director, Office of Hearings and Appeals

Subject: *ERA Input for the PODRA Section 3003(c) Report*

We have completed our review of the funds held in escrow as of September 30, 1988, which have not been petitioned under Subpart V. This review was to identify the escrow amount in excess of that necessary to make restitution to persons or classes of persons in accordance with Section 3003(b)(1) of the Petroleum Overcharged Distribution and Restitution Act of 1986. Once final payments are made into an escrow account, a Subpart V petition is filed with your office. Consequently, the escrow accounts that we examined still have balances due. Many of these accounts are for firms in bankruptcy or have been referred to the Department of Justice for collection. Since the extent of possible claims and amounts that will be available to satisfy the claims are not known at this time, it would be inadvisable to consider any of these funds excess.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration

[FR Doc. 88-25890 Filed 11-8-88; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Federal Hydroelectric Power—Power Allocation Policy

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Opportunity to Provide Comments on Specific Phrases in the Power Allocation Policy.

SUMMARY: The Southwestern Power Administration (SWPA) published the "Policy for the Allocation of Power and Energy from Federal Hydroelectric Power Projects" in the **Federal Register** (52 FR 29881) dated August 12, 1987. Subsequent to that publication, SWPA received several comments which expressed concern over a perceived lack of opportunity to comment on two particular phrases in the policy. This publication provides interested parties the opportunity to comment on those phrases as the phrases pertain to the allocation policy.

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The first phrase appears in the last sentence of the first paragraph of the summary on page 29881 in the **Federal Register**. That sentence reads as follows: "As a result of these changing conditions, Southwestern Power Administration (SWPA) believed a policy was needed to address the allocation of power and energy that may become available for marketing from existing and new, Federally and non-Federally funded, hydroelectric power projects." The phrase "from existing" caused concern with some members of the public. We added that phrase because new power from existing resources occasionally becomes available for allocation from a variety of sources including, but not limited to, new hydroelectric power development at existing projects, upgrading of equipment, and changes in operational agreements. Power may also become available if an existing customer relinquishes or loses its allocation.

The second phrase appears in the second sentence of SWPA's response to comment number 11 located on page 29883 in the **Federal Register**. The sentence reads as follows: "While the Government is presently committed to an announced policy of not removing a Federal allocation, the Government will not guarantee the disposition of its resources beyond present contract commitments." The phrase "the Government will not guarantee the disposition of its resources beyond present contract commitments" was the cause of concern. This phrase refers to the manner in which allocated power is delivered, reflecting the type of service to be recieved by a customer. These is no assurance that the storage now available in the hydroelectric power projects will be available for future hydroelectric power generation, nor is there assurance that the present hydroelectirc power plant equipment, transmission facilities or systems, wheeling arrangements, etc., will be available beyond present contract commitments. Although SWPA fully intends to renew power allocations when existing contracts expire, provided Federal capacity is available, SWPA cannot guarantee the extension of existing contracts.

Neither of these phrases is intended to imply that an existing power allocation may be withdrawn at the end of contract commitments. Present announced policy is that capacity power allocations will continue to be honored beyond present contract commitments (with available resources) under SWPA's allocation policy, subject to appropriate administrative due processes, recognizing pubic laws and the policies of the Department of Energy.

SWPA coordinated the full development of the August 12, 1987, allocation policy with its customers through their Southwestern Power Resources Association.

DATE: Comments must be submitted on or before December 9, 1988.

ADDRESS: Comments may be mailed to: Francis R. Gajan, Director of Power Marketing; Southwestern Power Administration; U.S. Department of Energy; P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director of Power Marketing; (918) 581–7529.

J.M. Shafer,

Administrator, Southwestern Power Administration.

[FR Doc. 88–25891 Filed 11–8–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180792; FRL–3473–2]

Receipt of an Application for a Specific Exemption to Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") for use of avermectin B_1 (Agrimec 0.15 EC Miticide/Insecticide™) to control leafminers (*Liriomyza trifolii* and *L. sativae*) on 56,500 acres of tomatoes in Florida. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and < 20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl)avermectin A_{1a}). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before November 25, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180792" should be submitted by mail to:

Public Docket and Freedom of Information Section,
Field Operations Division (TS–757C),
Office of Pesticide Programs,
Environmental Protection Agency,
401 M St., SW.,
Washington, DC 20460.
In person, bring comments to:
Rm. 246, Crystal Mall #2,
1921 Jefferson Davis Highway,
Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Libby Pemberton,
Registration Division (TS–767C),
Office of Pesticide Programs,
Environmental Protection Agency,
401 M St., SW.,
Washington, DC 20460.
Office location and telephone number:
Rm. 716, Crystal Mall #2,
1921 Jefferson Davis Highway,
Arlington, VA,
(703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as AGRI-MEK 0.15 EC Miticide/Insecticide™, by MSD ABVET, a division of Merck & Co., Inc., on tomatoes in Florida. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 8 to 16 ounces of product per acre per application. A maximum of ten applications will be made per acre per crop season. Treatment would not be allowed 3 days prior to harvest. Applications would be made from January 1, 1989 through July 31, 1989.

The Applicant indicates that many factors have contributed to the frequency and severity of this pest problem. Among these factors are the intensity of plantings within the producing areas, the climatic conditions during the growing season, the large number of alternate hosts surrounding the production areas, the complex pest management requirements of other pests of tomato and most importantly the increasing difficulty of control due to resistance of the pest to existing compounds. Leafminer control has been accomplished in the past by a variety of pesticides including: monocrotophos, diazinon, naled, methamidophos, dimethoate, azinphos-methyl, oxamyl, and permethrin. Even though some of these compounds are still being used, once populations exceed threshold level the effectiveness of any of these compounds is lost, according to the Applicant.

The Applicant indicates that without adequate control of the leafminers a potential loss of $25 to 50 million of income to Florida tomato producers could occur from this pest.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: October 26, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–25932 Filed 11–8–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180790; FRL–3472–8]

Emergency Exemptions; Dicamba, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 11 States listed below and 10 crisis exemptions initiated by various States. These exemptions, issued during the month of August, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail:

Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of dicamba on cotton to control redvine; August 19, 1988, to December 1, 1988. (Robert Forrest)

2. California Department of Food and Agriculture for the use of mevinphos on ornamental pumpkins to control cotton melon and black bean aphids; August 30, 1988, to October 31, 1988. (Libby Pemberton)

3. California Department of Food and Agriculture for the use of formetanate hydrochloride on strawberries to control mites; August 31, 1988, to August 30, 1989. (Jim Tompkins)

4. California Department of Food and Agriculture for the use of hexakis on mixed melons and squash to control spider mites; August 3, 1988, to September 30, 1988. (Robert Forrest)

5. Delaware Department of Agriculture for the use of sodium chlorate on southern peas as a desiccant; August 15, 1988, to October 31, 1988. (Robert Forrest)

6. Kansas State Board of Agriculture for the use of bifenthrin on field corn to control Banks grass mites and two-spotted spider mites; August 1, 1988, to September 30, 1988. (Gene Asbury)

7. Louisiana Department of Agriculture and Forestry for the use of paraquat on grain sorghum as a desiccant; August 31, 1988, to November 1, 1988. (Robert Forrest)

8. Maine Department of Agriculture for the use of paraquat dichloride on dry edible beans as a desiccant/harvest aid; August 3, 1988, to September 14, 1988. (Robert Forrest)

9. Michigan Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrip; August 5, 1988, to August 30, 1988. (Gene Asbury)

10. Mississippi Department of Agriculture and Commerce for the use of dicamba on cotton to control redvine; August 19, 1988, to December 1, 1988. (Robert Forrest)

11. New York Department of Environmental Conservation for the use of sodium chlorate on dry beans as a desiccant; August 19, 1988, to October 1, 1988. (Robert Forrest)

12. North Dakota Department of Agriculture for the use of sodium chlorate on dry beans as a desiccant; August 23, 1988, to October 1, 1988. (Robert Forrest)

13. Texas Department of Agriculture for the use of cyromazine on bell, chili, and jalapeno peppers to control vegetable leafminer; August 19, 1989. (Robert Forrest)

Crisis exemptions were initiated by the:

1. Illinois Department of Agriculture on August 1, 1988, for the use of profenofos on soybeans to control spider mites. This program has ended. (Libby Pemberton)

2. Illinois Department of Agriculture on August 1, 1988, for the use of propargite on soybeans to control spider mites. This program has ended. (Libby Pemberton)

3. Iowa Department of Agriculture on August 3, 1988, for the use of propargite on soybeans to control spider mites. This program has ended. (Libby Pemberton)

4. Minnesota Department of Agriculture on August 16, 1988, for the use of sodium chlorate on dry beans as a desiccant. This program has ended. (Robert Forrest)

5. Minnesota Department of Agriculture on August 1, 1988, for the use of propargite on soybeans to control spider mites. This program has ended. (Libby Pemberton)

6. Mississippi Department of Agriculture and Commerce on August 8, 1988, for the use of iprodione on rice to control sheath blight. This program has ended. (Gene Asbury)

7. Ohio Department of Agriculture on August 3, 1988, for the use of profenofos on soybeans to control spider mites. This program has ended. (Jim Tompkins)

8. Oregon Department of Agriculture on August 22, 1988, for the use of chlorpyrifos on hops to control aphids. This program has ended. (Robert Forrest)

9. South Dakota Department of Agriculture on August 4, 1988, for the use of disulfoton on soybeans to control spider mites. This program has ended. (Jim Tompkins)

10. Wisconsin Department of Agriculture, Trade, and Consumer Protection on August 5, 1988, for the use of sodium chlorate on oats as a desiccant. This program has ended. (Robert Forrest)

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Authority: 7 U.S.C. 136.

Dated: October 26, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-25931 Filed 11-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180793; FRL-3473-1]

Pesticide Programs; Annual Report on Crisis Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked during the fiscal year 1988. State and Federal agencies issued 47 crisis exemptions authorizing unregistered pesticide uses in accordance with the regulations in 40 CFR 166.40 pursuant to section 18 of FIFRA. During this same time period, EPA revoked the right to utilize the crisis provisions for four pesticide uses. This annual report is required under 40 CFR 166.49.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: The regulations pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act require EPA to issue annually a notice for publication in the **Federal Register** which summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked.

Subpart C of 40 CFR Part 166 sets forth the regulations dealing with crisis exemptions. This Subpart allows the head of a Federal or State agency to issue a crisis exemption in a situation involving an unpredictable emergency situation when: (1) An emergency condition exists; and (2) the time element with respect to the application of the pesticide is critical and there is not sufficient time either to request a specific, quarantine, or public health exemption or, if such a request has been submitted, for EPA to complete review of the request. This Subpart also provides for EPA review of crisis exemptions and revocation of individual crisis exemptions or the authority of a State and Federal agency to utilize the crisis provisions.

During the fiscal year 1988 (October 1, 1987 through September 30, 1988), 47 crisis exemptions were declared by State and Federal agencies. A breakdown of the crisis declarations by State/Federal agencies follows:

State/Federal agency	No. of crisis exemptions	Pesticide	Site
California	5	fosetyl-al	Lettuce.
		Sethoxydim	Lettuce.
		Sethoxydim	Broccoli.
		Sethoxydim	Cauliflower.
		Sethoxydim	Dry beans.
Florida	3	Benomyl	Cabbage.
		Iprodione	Cabbage.
		Propiconazole.	Sweet corn.
Georgia	1	Permethrin	Southern peas.
Illinois	2	Propargite	Soybeans.
		Profenofos	Soybeans.
Indiana	1	Propargite	Soybeans.
Iowa	2	Propargite	Soybeans.
		Disulfoton	Soybeans.
Louisiana	1	TPTH	Soybeans.
Maryland	1	Glyphosate	Field corn.
Michigan	3	Diazinon	Soybeans.
		Profenofos	Soybeans.
		Propargite	Soybeans.
Minnesota	5	Dimethoate	Soybeans.
		Disulfoton	Soybeans.
		Propargite	Soybeans.
		Sethoxydim	Lupines.
		Sodium chlorate.	Dry beans.
Mississippi	1	Iprodione	Rice
New York	1	Propachlor	Dry bulb onions.
North Carolina.	1	Metalaxyl	Grapes.
North Dakota.	1	Disulfoton	Soybeans.
Oklahoma	1	Propiconazole.	Peanuts.
Ohio	1	Profenofos	Soybeans.
Oregon	3	Chlorpyrifos	Hops.
		Permethrin	Raspberries.
		Sethoxydim	Snap beans.
South Dakota.	1	Disulfoton	Soybeans.
Texas	4	Ethyl parathion.	Rape.
			Peanuts.
		Propiconazole.	Rice.
			Leafy vegetables.
		Iprodione	
		Permethrin	
USDA	4	Calcium cyanide.	Beehives.
			Beehives.
		Fluvalinate	Bananas.
		Methyl bromide.	Sunflower seeds.
		Ethylene oxide.	
Washington	2	Baythroid	Pears.
		Disulfoton	Hops.
Wisconsin	3	Propargite	Soybeans.
		Sethoxydim	Lupines.
		Sodium chlorate.	Oates.

During the 1988 fiscal year, EPA revoked the authority of Massachuesetts to utilize the crisis provisions for the use of sodium fluoaluminate on potatoes; Louisiana to utilize the crisis provisions for the use of TPTH on soybeans; and Texas and Oklahoma to utilize the crisis provisions for use of propiconazole on peanuts.

Authority: 7 U.S.C. 136.

Dated: October 24, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-25930 Filed 11-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30292; FRL-3472-9]

Fleming Laboratories, Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by December 9, 1988.

ADDRESS: By mail submit comments identified by the document control number [OPP-30292] and the file number (59981-R) to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Attn: Product Manager (PM) 23, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, Attn: PM 23, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, PM 23, Rm. 237, (703-557-1830).

SUPPLEMENTARY INFORMATION: Fleming Laboratories, Inc., PO Box 34384, Charlotte, NC 28234, has submitted an application to EPA to register the pesticide product Pro-Gen® Grapefruit Acidity Control Agent, EPA File Symbol 59981-R, containing the active ingredient arsanilic acid at 99.4 percent, pursuant to the provisions of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use only in certain counties of Florida on the fresh market grapefruit to reduce the acidity for the early season market and processed market grapefruit to reduce the acidity for the midseason market. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: October 26, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-25933 Filed 11-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44518; FRL-3474-4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on hexafluoropropene (CAS No. 116-15-4) and anthraquinone (CAS No. 84-65-1), submitted pursuant to final test rules, and on 4-chloroaniline (CAS No. 106-47-8) and 2,4-dinitroaniline (CAS No. 97-02-9), submitted pursuant to testing consent orders under the Toxic Substances Control Act (TSCA).

Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for 2,4-dinitroaniline and 4-chloroaniline was submitted by Hoechst Celanese pursuant to consent orders for these substituted anilines at 40 CFR 799.5000. It was received by EPA on October 20, 1988. Two submissions, one for each chemical, were received. Each describes a micronucleus test in male and female NMRI mice after oral administration. Mutagenicity testing is required by these consent orders.

The primary use for most substituted anilines is as intermediates in dye and pigment production.

Test data for hexafluoropropene was submitted by E.I. du Pont de Nemours and Company, Inc. pursuant to a test rule for fluoroalkenes at 40 CFR 790.1700. It was received by EPA on October 21, 1988. The submission describes a dominant lethal inhalation study in rats with hexafluoropropene. Mutagenicity testing is required by this test rule.

Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

Test data for anthraquinone was submitted by Mobay Corporation pursuant to a test rule at 40 CFR 799.500. It was received by EPA on October 25, 1988. The submission consists of three test reports: (1) Determination of water solubility of anthraquinone; (2) acute toxicity of anthraquinone to rainbow trout (*Salmo gairdneri*) under flow-through conditions, and (3) acute toxicity of anthraquinone to coho salmon (*Oncorhynchus kisutch*) under acute flow-through conditions. Chemical fate and environmental effects testing is required by this test rule.

Anthraquinone is used principally in production of anthraquinone dyes. It also is used as a catalyst by the paper pulping industry.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the submissions' completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44158). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: November 2, 1988.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-25934 Filed 11-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59265; FRL-3473-5]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption. Written comments by:

T 89-2, November 19, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS-59265]" and the specific TME number should be sent to:

Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 410 M Street SW., Washington, DC 20460, (202) 554-1305.

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FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89–2

Close of Review Period. December 3, 1988.

Manufacturer. Confidential.

Chemical. (G) Acrylate/acrylonitrile/vinylacetate copolymer.

Use/Production. (S) Laminating adhesive. Prod. range: Confidential.

Date: October 26, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–25935 Filed 11–8–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Interest Rate Swap Reporting Standards

AGENCY: Federal Financial Institutions Examination Council

ACTION: Request for comment.

SUMMARY: This proposal, which pertains to interest rate swap contracts ("swaps"), would preclude al FDIC-insured U.S. commercial banks and FDIC-insured state-chartered savings banks, for purposes of the Reports of Condition and Income (Call Reports), from recognizing arrangement fees and spread income at the inception of a swap. Instead, this income would be recognized over the life of the swap. It also would require that subsequent changes in the market value of swaps, except for most swaps accounted for as hedges, be reflected in income during the period in which the changes occur. This proposed Call Report instruction has been developed jointly by the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve Board ("FRB"), and the Federal Deposit Insurance Corporation ("FDIC"), under the auspices of the Council. The instruction will be effective for swap contracts entered into after December 31, 1988, and the first Call Report affected will be the Call Report for March 31, 1989.

DATE: Comments must be received on or before January 9, 1989.

ADDRESS: All comments should be mailed to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G St., NW., Suite 701, Washington, DC 20006, or delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: David C. Motter, Special Assistant to the Chief National Bank Examiner, (202/447–1587), Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

Board: Rhoger H. Pugh, Manager, Division of Banking Supervision and Regulation, (202/728–5883), Board of Governors of the Federal Reserve System, 20th & Constitution Avenue NW., Washington, DC 20551.

FDIC: Robert F. Storch, Chief, Securities and Accounting Section, Division of Bank Supervision, (202/898–8906), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: This proposed Call Report instruction was developed on a joint interagency basis by the OCC, FRB, and the FDIC due to concerns over the lack of a consistent authoritative standard regarding the recognition of swap income. The agencies are not relying upon generally accepted accounting principles as the reporting standard for these transactions because there is an overall lack of authoritative accounting guidance pertaining to swap income and such guidance is not likely to be forthcoming from accounting rulemaking authorities for some time. When and if accounting rulemaking authorities adopt authoritative guidance for the recognition of swap income, the banking agencies will reconsider the appropriateness of any reporting standard for swaps that becomes inconsistent with generally accepted accounting principles.

Proscription on the Immediate Recognition of Fees and Spreads

In the absence of specific authoritative accounting pronouncements in this area, banks have generally followed two basic approaches in accounting for swap income. One method recognizes the arrangement fee and the discounted present value of the spread on a portfolio of swaps, net of a provision for related credit risk and administrative costs, as profit at the inception of the swap. The second method amortizes the arrangement fees and takes the spread into income over the life of the swap, i.e., income is recognized as the swap payments are accrued each period.

The Council believes the second method of income recognition is the more appropriate method for Call Report purposes. Swap income should not be recognized at inception, since that practice is not in accordance with the fundamental accounting principle that income earned as a result of a contractual obligation should be recognized over the life of the contract. The logic that the income is earned over that time period rather than at the inception of the swap is supported by the fact that, in the case of a bank acting as a principal in a swap contract, credit risk, interest rate risk, and administrative costs are incurred over the life of the contract. Therefore, since costs and risks are incurred by the bank over the swap's life, it is appropriate that the income from the swap be recognized over the life of the swap.

The immediate recognition of income leads to higher reported income and capital at the time a swap is booked. However, substantial risks remain over the life of the contract and the recorded income may not be ultimately realized due to credit losses or adverse interest rate changes. Consequently, the Council believes that income recognition at the swap's inception is an unsafe or unsound banking practice.

Recording Changes In Market Value After Inception

The second aspect of the proposed Call Report instruction deals with whether changes in the market values of swaps after their inception should be recorded in income in the period in which they occur. The value of an imperfectly matched swap portfolio can change markedly with changes in interest rates, and the value of an individual swap contract is also subject to change if the creditworthiness of the counterparty changes. Therefore, it is important to set a reporting standard that currently records such changes in value. The proposed Call Report instruction would require that changes in the market value of swaps (except most swaps accounted for as hedges) be recorded in the period in which they occur, with the cumulative change in market value being reported in the Report of Condition. Therefore, any losses in value in a bank's swap

portfolio would be reflected in current period income rather than being deferred, thus providing more discipline to banks engaging in the swap market.

Issues for Specific Public Comment

The Council is aware of the current diversity in practice in accounting for swaps. The proposed Call Report instruction would promulgate the accounting considered appropriate for supervisory purposes commensurate with the federal banking agencies' safety and soundness responsibilities. The Council intends to seek general public comment concerning the proposed Call Report instruction and encourages specific comments on the following additional issues:

1. The proposal would require that arrangement fees and spread income be recognized as income over the life of the swap contract. The Council requests comment on whether certain costs directly related to originating a swap contract should be deferred and amortized over the life of the swap, similar to the method prescribed for loan origination costs under FASB Statement No. 91, "Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases". The Council also seeks comment on an alternative to deferring the costs. This alternative is to allow the arrangement fee (but not the spread) to be recorded as income at inception, to the extent it does not exceed the direct costs of originating the related swap contract.

2. The proposed Call Report instruction would require that changes in the market value of swaps subsequent to inception (except most swaps accounted for as hedges) be recognized in income during the period they occur. Market valuation methods that have been used by banks include the following:

a. The present value of the known cash flows from the swap is calculated using as a discount rate the current rate on a Treasury security of equal remaining maturity plus the excess at inception of the swap rate (defined as the mid-point of the fixed rate side's bid and ask rate) over the rate on a Treasury security of equal maturity.

b. The present value of the known cash flows from the swap is calculated using as a discount rate the current swap rate (defined as the mid-point of the fixed rate side's bid and ask rate) on a swap with equal remaining maturity.

c. The present value of the known cash flows from the swap is calculated using as discount rates the zero coupon rates derived from the current swap yield curve. Swap yields for each maturity are defined as the midpoint of the fixed rate side's bid and ask rates.

The Council requests comment on which of these valuation methods is most appropriate. The Council also requests details on alternatives to the above methodologies that may be more appropriate in all or certain circumstances.

Proposed Instruction

The text of the proposed instruction follows:

Proposed Call Report Glossary Entry for Interest Rate Swaps

An interest rate swap, in its simplest form, entails an agreement between two parties ("counterparties") to exchange interest payments for a specified period of time. These interest payments are calculated on a specified principal value, called the notional amount. Ordinarily, counterparties are only obligated to pay to each other the interest due on this amount and are not obligated to repay the underlying or related principal.

Interest rate swaps are often used to, in effect, transform the interest rates associated with assets or liabilities from fixed-rate to floating-rate or vice versa, or from one floating rate index to another. Banks generally engage in interest rate swaps either to hedge their exposures to interest rate risk or to generate fee income by acting as intermediaries between other swap participants or by trading in swaps.

Since notional principal amounts are not counterparty obligations for single-currency interest rate swaps, these amounts should not be reported on Schedule RC, Balance Sheet. These amounts should be reported on Schedule RC–L, "Commitments and Contingencies," in Memoranda Item 3, "Notional Value of All Outstanding Interest Rate Swaps," as discussed in the instructions for that schedule.

Some cross-currency interest rate swaps—those involving obligations of the respective parties denominated in different currencies—also obligate the counterparties to exchange principal amounts at maturity. Such principal amounts shall be reported on the FFIEC 031, 032, and 033 as "Commitments to Purchase Foreign Currencies and U.S. Dollar Exchange," in Item 5 of Schedule RC–L (not reported on the FFIEC 034). Such transactions can alter a bank's foreign exchange risk position.

Bank management should evaluate the credit risk associated with interest rate swap activities. An allowance for credit losses should be maintained that is sufficient to cover any estimated credit losses associated with swap activities.

Under interest rate swaps, the amounts of interest receivable and payable should be accrued as of the end of each calendar quarter (or more frequently). The receivable and payable balances relating to a particular swap may be reported net only if a contractual right of offset exists and the swap payments are exchanged on a net basis. The aggreate amounts of receivables and payables should be reported as "Other Assets" and "Other Liabilities," respectively, on Schedule RC-Balance Sheet (Items 11 and 20, respectively) and on Schedule RC–F ("Other Assets," Item 3) and Schedule RC–G ("Other Liabilities," Item 4). For purposes of these reports, receivables and payables shall not be accrued for amounts applicable to periods beyond the report date.

In no case shall income be recognized at the inception of a swap. Arrangement fees must be recognized as income over the life of the swap contract. Spread income, i.e., the difference between future cash receipts and payments for a portfolio of swaps, must be recognized only as accrued for the current period, i.e., not beyond the report date.

A bank's activities using interest rate swaps, both as hedges and non-hedges, are subject to review by examiners. Accordingly, banks must fully document their swap hedging policies and transactions. A pattern of excessive and unsatisfactorily documented hedge swap terminations may lead examiners to conclude that an institution has in effect been trading in swaps and require that the results of such swap activities be restated and reported as swaps not used for hedging purposes.

FASB Statement No. 80, *Accounting for Futures Contracts*, for swaps denominated in one currency, and Statement No. 52, *Foreign Currency Translation*, for swaps denominated in more than one currency, should be consulted for additional information regarding accounting standards to be applied by analogy to interest rate swaps.

Reporting for Hedge Swaps

Swaps that are used to reduce a bank's interest rate risk exposure may be reported as hedges of such risk if, in principle, all of the hedging criteria set forth in FASB Statement No. 80 have been fulfilled. Therefore, for example, the specific item to be hedged must expose the enterprise to price (or interest rate) risk, and the swap must reduce that exposure and be designated as a hedge of that item. Swaps

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denominated in more than one currency that are used to reduce a bank's interest rate or foreign exchange risk may be reported as hedges of such risks if, in principle, all of the hedging criteria set forth in FASB Statement No. 52 have been met. However, in no case may swaps used to hedge other swaps be reported as hedges. For example, offsetting swaps for which a bank is acting as an intermediary are not swaps that reduce its interest rate risk exposure.

If the hedge criteria are met, the accounting for the swap shall be related to the accounting for the hedged item so that changes in the market value of the swap are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Therefore, the income or expense from the swap should be reported in Schedule RI, Income Statement, in the same line item as the income or expense from the underlying hedged item. In most cases, the swap's accrued interest income or expense for the period shall adjust the underlying interest income or expense of the hedged item. In addition, the change in the market value of the swap shall be deferred and accounted for as part of the carrying value of the item being hedged, and reflected as an adjustment of the related interest income or expense over the life of the hedged item. However, if the swap hedges an underlying item which is carried at market value (mark to market accounting), a change in the market value of the related swap shall not be deferred but rather should be recognized in income in the period the change in value occurs.

If a swap is accounted for as a hedge (of an underlying item not carried at market value), then the gain or loss on an early termination of the swap shall be defferred, recognized as part of the carrying value of the hedged item, and amortized over the remaining life of the hedged item or the swap, whichever is shorter. Generally, terminations of swaps that are used for hedging purposes should not be significant in relation to the total number or notional amount of swaps that are hedges.

Reporting for Non-Hedge Swaps

For all interest rate swaps that are not reportable as hedges as set forth in the preceding section, the income or expense associated with the accrual of swap receivables and payables shall be reported as "Other Noninterest Income," in Schedule RI (Income Statement), Item 5.f. (item 5.b. on the FFIEC 034), or as "Other Noninterest Expense," in Schedule RI, Item 7.c., as appropriate.

At the first Call Report date following the inception of an interest rate swap, any change in the market value of that swap since its inception shall be recognized in current period income or expense. At each successive Call Report date, any change in the market value of that swap since the previous Call Report date must be recognized in current period income or expense, using a consistent methodology.

These changes in the market value of swaps shall be reflected in Scheduled RI, Item 5.f. (item 5.b. on the FFIEC 034), "Other Noninterest Income," or Item 7.c., "Other Noninterest Expense," as appropriate. The cumulative valuation exposure (asset or liability) on the balance sheet shall be reported as "Other assets," in Schedule RC, Item 11, or as "Other liabilities," in Schedule RC, Item 20.

If a non-hedge swap is terminated early, any amounts the reporting bank receives from or pays to the counterparty on early termination shall be reported net as "Other Noninterest Income," in Schedule RI, Item 5.f. (item 5.b. on the FFIEC 034), or as "Other Noninterest Expense," in Schedule RI, Item 7.c., as appropriate.

November 4, 1988.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 88-25845 Filed 11-8-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010728-001.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland

Hapag Lloyd AG, (operating as Euro-Pacific Service)

Compagnie Generale Maritime

Incotrans B.V., (jointly and severally, operating as Pacific Europe Express)

Synopsis: The agreement (1) reflects the termination of Johnson Scanstar as a participant (joint service) in the basic agreement and (2) amends the terms as it relates to the current parties operations at the assigned Charles P. Howard Terminal.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 4, 1988.

[FR Doc. 88-25846 Filed 11-8-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 003-011218.

Title: The Blue Star Line Breakbulk Division Participation Agreement.

Parties:

The Blue Star Line, Ltd. ("Blue Star")

Sofrana Unilines Wallis SA ("Sofrana")

Synopsis: The proposed agreement would provide for an investment interest by Sofrana in a breakbulk service division to be created by Blue Star.

Filing Party: R. Frederic Fisher, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 4, 1988.

[FR Doc. 88-25908 Filed 11-8-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200056-001.

Title: Maryland Port Administration Terminal Agreement.

Parties:

Maryland Port Administration

Toyota Motor Sales, U.S.A., Inc.

Synopsis: The agreement increases the size of the "office/production shop building" planned for under the basic agreement and adjusts the rental provisions based on the extra construction costs for the building.

Agreement No.: 224-010875-002.

Title: Palm Beach Terminal Agreement.

Parties:

Port of Palm Beach District (District)

Grundstad Terminals, Inc.

Synopsis: The agreement provides for the lease of additional interim facilities and an additional passenger cruise terminal facility at the District's terminal on the north side of Slip No. 1. The agreement's term is for ten years and may be renewed for an additional ten years.

Agreement No.: 224-200047-002.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority

Hapag-Lloyd A.G.

Gulf Container Line BV

Compagnie Generale Maritime

Synopsis: The agreement is amended in accordance with Article 8-E of the Lease to change the consolidated crane rental rate from $23.53 per container loaded on and off vessels (empty or loaded) to $20.51 per pick as reported by Stevedore and Combined Tonnage Center in Houston.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 4, 1988.

[FR Doc. 88-25960 Filed 11-8-88; 8:45am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009420-012.

Title: United States Great Lakes and St. Lawrence River/West Africa Agreement.

Parties:

Black Star Line

Westwind Africa Line, Ltd.

Synopsis: The proposed modification would conform the agreement to the Commission's requirements concerning Docket No. 86-16, service contract provisions.

Agreement No.: 213-010786-003.

Title: Costa/Trasatlantica Space Charter and Sailing Agreement.

Parties:

Costa Container Lines S.p.A.

Compania Trasatlantica Espanola, S.A.

Synopsis: The proposed modification would add d'Amico Societa de Navigazione per Azioni as a party to the agreement. It would also change the name of the agreement to Costa/Trasatlantica/d'Amico Space Charter and Sailing Agreement.

Agreement No.: 203-011219.

Title: Puerto Rico and U.S. Virgin Islands Carriers Discussion Agreement.

Parties:

Zim Israel Navigation Co., Inc.

Nedlloyd Lijnen, B.V.

Synopsis: The proposed agreement would permit the parties to meet, discuss and agree upon rates, charges and practices in the trade from ports and points in Hong Kong, Macao, Korea, Taiwan, Japan, Siberia USSR, the Peoples's Republic of China, Thailand, Vietnam, Democratic Kampuchea (Cambodia), Laos, Burma, the Republic of the Philippines, the Republic of Singapore, the Federation of Malaysia, the Sultanate of Brunei, and the Republic of Indonesia to ports and points in Puerto Rico and U.S. Virgin Islands. Adherence to any agreements reached by the parties would be voluntary. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 4, 1988.

[FR Doc. 88-25907 Filed 11-8-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 3, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

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1. *Report Title:* Weekly Report of Assets and Liabilities of Large U.S. Branches and Agencies of Foreign Banks
Agency Form Number: FR 2069
OMB Docket Number: 7100–0030
Frequency: Weekly
Reporters: Large U.S. branches and agencies of foreign banks
Annual Reporting Hours: 12,012
Number of Respondents: 3,432
Average Hours per Response: 3.5
Small businesses are not affected.

General Description of Report

This report is authorized by law (12 U.S.C. 3105). Individual respondent data are exempt from disclosure (5 U.S.C. 552 (b)(4) and (b)(8)).

This report provides current information on credit developments and sources of funds at large U.S. branches and agencies of foreign banks. The data are used to estimate bank credit and nondeposit funds and for analyzing banking and monetary conditions.

2. *Report Title:* Regulation K Requirements for Applications and Prior Notifications
Agency Form Number: FR K–1
OMB Docket Number: 7100–0107
Frequency: On occasion
Reporters: State member and national banks, Edge and Agreement corporations, bank holding companies

Requirement	Estimated No. of responses	Estimated hours per response
Application/Notification to Establish Foreign Branch of Member Banks	7	9.5
Application to Establish, Acquire or Change Control of an Edge Corp., or to Engage in Certain Domestic Activities	10	12.0
Notification to Establish a Branch of an Edge Corp.	3	
Application to Invest in Other Organizations; Notification to Invest in Other Organizations; Notification to Invest in an Export Trading Company	100	18.8

Annual Reporting Hours: 2,067
Small businesses are not affected.

General Description of Report

These reports are required by law (12 U.S.C. 601–604(a), 611–631, 1843 (c)(13), (c)(14) and 1844(c)). Confidential treatment may be requested by the applicant (5 U.S.C. 552).

The K–1 is a compilation of all the applications and prior notification requirements in Regulation K that pertain to the formation of Edge and Agreement corporations and export trading companies and the international and foreign activities of U.S. banking organizations. The requirements are being renewed with certain minor changes to obtain additional information needed in the application process, and to include notifications of change in control of Edge corporations and of investment in a foreign joint venture.

3. *Report Title:* Annual Report of Bank Holding Companies; Bank Holding Company Report of Changes in Investment and Activities
Agency Form Number: FR Y–6, FR Y–6a
OMB Docket Number: 7100–0124
Frequency: Annual; on occasion
Reporters: Bank holding companies
Annual Reporting Hours: 53,464
Estimated Number of Respondents: 6,433 (FR Y–6); 1,000 (FR Y–6a)
Average Response Time: 8 hours (FR Y–6); 1 hour (FR Y–6a)
Significant effect on small businesses is not affected.

General Description of Report

These reports are required by law (12 U.S.C. 1844(c)). Certain portions may be given confidential treatment at respondent request (5 U.S.C. 552 b)(4) and (b)(8)).

The annual FR Y–6 report is the Federal Reserve System's principal source of independently audited financial data on bank holding companies, their subsidiaries and other regulated investments. It consists of financial statements and structure and ownership information in the company's own format. It is being renewed with a revision requiring a cash flow statement instead of the statement of changes in financial position, beginning December 1988. The FR Y–6a report provides information on any change in the structure of bank holding companies and their subsidiaries. It is being renewed with certain clarifications in wording and revisions to provide additional detail on the manner of divestitures by bank holding companies.

4. *Report Title:* Annual Report of Selected Financial Data of Nonbank Subsidiaries of Bank Holding Companies
Agency Form Number: FR –11i
OMB Docket Number: 7100–0218
Frequency: Annual
Reporters: Nonbank subsidiaries of bank holding companies
Annual Reporting Hours: 1,850
Estimated Number of Respondents: 3,083
Average Response Time: .5 hour
Significant effect on small businesses is not affected.

General Description of Report

This report is required by law (12 U.S.C. 1844(c)). Certain portions may be given confidential treatment at respondent request (5 U.S.C. 552 (b)(4), (b)(8)).

This report provides selected balance sheet and income information in a standardized format, and is being renewed with certain minor informational changes to be effective December 1988. It is the Federal Reserve System's only source of standardized information on individual nonbank subsidiaries and is used to monitor activities of these subsidiaries.

5. *Report Title:* Annual Daylight Overdraft Capital Report for U.S. Agencies and Branches of Foreign Banks
Agency Form Number: FR 2225
OMB Docket Number: 7100–0216
Frequency: Annual
Reporters: U.S. Agencies and Branches of Foreign Banks
Annual Reporting Hours: 110
Estimated Number of Respondents: 110
Average Hours per Response: 1
Small businesses are not affected.

General Description of Report

This information collection is considered voluntary (12 U.S.C. 248) and is given confidential treatment (5 U.S.C. 552(b)(4)).

The FR 2225 report provides timely data on the worldwide capital of the foreign parent, which is used in conjunction with other information to calculate the branches' daylight overdraft limit on large dollar payments systems. Minor revisions include a reduction in the frequency of the report to once a year (and a conforming amendment to the title of the report), elimination of one item, and clarifications.

Final approval under OMB delegated authority of the extension, with revision, of the following report:

Report Title: Report of Sender Net Debit Cap
Agency Form Number: FR 2226
OMB Docket Number: 7100–0217
Frequency: Annual
Reporters: Depository institutions
Annual Reporting Hours: 578
Estimated Number of Respondents: 5,780
Average Hours per Response: .1
Small businesses are not affected.

General Description of Report:

This information collection is considered voluntary (12 U.S.C. 248) and is given confidential treatment (5 U.S.C. 552(b)(4)).

The FR 2226 report provides timely data on institutions' debit cap levels which the Federal Reserve uses to monitor payments activities with the objective of reducing intraday credit exposure.

Board of Governors of the Federal Reserve System, November 3, 1988.

William W. Wiles,
Secretary of the Board.
[FR Doc. 88–25961 Filed 11–8–88; 8:45 am]
BILLING CODE 6210–10–M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Charles K. Breland et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 23, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Charles K. Breland,* Spanish Fort, Alabama; to acquire an additional 33.22 percent of the voting shares of FirstBanc Holding Company, Inc., Robertsdale, Alabama, and thereby indirectly acquire First Bank of Baldwin County, Robertsdale, Alabama.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dale DeVries,* Pearl City, Illinois; and Ronald Lawfer, Stockton, Illinois; to acquire 40 percent of the voting shares of Kent Bancshares, Inc., Kent, Illinois, and thereby indirectly acquire Kent Bank, Kent, Illinois.

2. *Shirley B. Hennebry,* La Grange, Illinois; to acquire 27.24 percent of the voting shares of 1st Brookfield, Inc., Western Springs, Illinois, and thereby indirectly acquire First National Bank of Brookfield, Brookfield, Illinois.

3. *Earl V. Slife and Edith C. Slife,* Hawarden, Iowa; Earl V. Slife, Jr., Hawarden, Iowa; Harry G. Slife, Cedar Falls, Iowa; and Alan J. Burke, Hawarden, Iowa; to acquire 40 percent of the voting shares of Hawarden Bancshares, Inc., Hawarden, Iowa, and thereby indirectly acquire Farmers State Bank, Hawarden, Iowa.

Board of Governors of the Federal Reserve System, November 3, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–25962 Filed 11–8–88; 8:45 am]
BILLING CODE 6210–01–M

Equimark Corp., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, descreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation,* Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Equimanagement, Inc., Pittsburgh, Pennsylvania, in arranging commercial real estate equity financing pursuant to § 225.25(b)(14); and foreign exchange advisory and transactional services pursuant to § 225.25(b)(17) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corportation,* Chicago, Illinois; to engage *de novo* through its subsidiary, Northern Investment Corporation, Chicago, Illinois, in making and servicing mortgage loans pursuant to § 225.25(b)(l)(iii) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Part Financial Corporation,* St. Louis Park, Minnesota; to engage *de novo* through its subsidiary, Part Investment Company, St. Louis Part, Minnesota; in providing securities brokerage services and incidental activities with regard to Mutual Funds, Unit Investment Trusts, Municipal Revenue Bonds, Collateralized Mortgage Obligations, Leases, Securitized Credit Car Receivables, Securitized Automobile Receivables, Commercial Paper, Corporate Bonds, Title I Participation Certificates, Bankers Acceptances, and Certificates of Deposits pursuant to section 225.25(b)(15) of the Board's Regulation Y.

Applicant also proposes to directly engage *de nonvo* in the origination and servicing of loans or other extensions of credit pursuant to § 225.25(b)(1) (i), (iii), and (iv) of the Board's Regulation Y. These activities would include issuing letters of credit and accepting drafts for the company's account or for the account of others.

The securities activities will be conducted in the states of Minnesota and Florida. The lending activity will be conducted in the State of Minnesota.

Board of Governors of the Federal Reserve System, November 3, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–25963 Filed 11–8–88; 8:45 am]
BILLING CODE 6210–01–M

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Norwest Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 1988.

A. FEDERAL RESERVE BANK OF MINNEAPOLIS (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota, and two of its subsidiaries, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to acquire certain assets and liabilities of HBE Leasing Corporation, St. Louis, Missouri, and thereby expand their current activities of leasing personal property or acting as agent, broker or advisor in leasing personal property pursuant to § 225.25(b)(5); and making, acquiring, or servicing loans or other extensions of credit such as would be made by a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y into the five remaining states of Arkansas, Maine, Michigan, New Hampshire, and Vermont and the District of Columbia thereby giving Applicants nationwide authority.

Board of Governors of the Federal Reserve System, November 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25964 Filed 11-8-88; 8:45am]

BILLING CODE 6210-01-M

Sovran Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 30, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation,* Norfolk, Virginia, and Sovran Financial Corporation/Central South, Nashville, Tennessee; to acquire 100 percent of the voting shares of First Bank of Marion County, South Pittsburg, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Friendship Bancorp,* Friendship, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Friendship State Bank, Friendship, Indiana.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *ANB Bankcorp, Inc.,* Bristow, Oklahoma; to acquire 100 percent of the voting shares of Citizens Bank, N.A., Sapulpa, Oklahoma. Comments regarding this application must be received by November 23, 1988.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *C.N. Bancorp, Limited,* Taipei, Taiwan, and Williams-Augusta Acquisition Corp, San Francisco, California; to become bank holding companies by acquiring 97 percent of the voting shares of California National Bank, San Francisco, California.

2. *Moore Financial Group, Incorporated,* Boise, Idaho; to acquire 100 percent of the voting shares of Community Bank of Renton, Renton, Washington.

Board of Governors of the Federal Reserve System, November 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25965 Filed 11-8-88; 8:45am]

BILLING CODE 6210-01-M

[Docket No. R-0650; BGFRS-22]

Privacy Act of 1974; Proposed New System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed New System of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) the Board is publishing for comment a proposed new system of records: BGFRS-22: FRB—Chain Banking Reference System. The proposed new system of records will enable the Federal Reserve System to monitor more effectively the ownership and structural arrangements of chain banking organizations. It will also enhance the System's ability to assure the safety and soundness of banks and other institutions under its supervision.

DATE: Comments must be received on or before January 9, 1989.

ADDRESS: Comments on the proposed new system of records should be addressed to William W. Wiles, Secretary of the Board, Constitution Avenue at 20th Street, NW., Washington, D.C. 20551. All material should be in writing and should contain the docket number R-0650. All written documents will be available for public inspection from 8:45 a.m. to 5:15 p.m., at the Office of the Secretary, Public Information Office, Room B-1122, at the above address.

FOR FURTHER INFORMATION CONTACT: James I. Garner, Assistant Director, Division of Banking Supervision and Regulation (202) 452-2704; MaryEllen A. Brown, Assistant to the General Counsel, Legal Division (202) 452-3608. For the hearing impaired *only*: Telecommunication Devices for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202) 452-3544.

SUPPLEMENTARY INFORMATION: A Federal Reserve System Chain Banking Task Force was formed to evaluated existing Federal Reserve supervisory policies for chain organizations. The Task Force concluded that the System could more effectively and consistently supervise chain organizations nationwide through accessing up-to-date ownership and structural data. Therefore, in conjunction with the Task Force evaluation, the System is developing a new system of records—The Chain Banking Reference System—to provide ongoing structural information on chain organizations.

The "Chain Banking Reference System" would be categorized by the names of the principal(s) of each chain, and would include the percentage ownership and positions held in the institutions, names and reference numbers for the banks and bank holding companies in the chain, and the institutions' locations. For purposes of this system of records, "principal" means an individual who directly or indirectly, or acting through or in concert with one or more persons, controls a banking organization or owns, controls, or has the power to vote 25 percent or more of any class of voting securities of a banking organization. A chain banking organization exists where two or more separate banking organization are owned or controlled by a principal or group of principals acting together.

The recordkeeping system will contain nationwide data and will be used to track and monitor more effectively chain banking organizations and their compliance with Board guidelines, policies, and capital requirements. The proposed new system of records, therefore, will enhance the Federal Reserve System's supervisory responsibilities for banks and bank holding companies. Information used in the proposed recordkeeping system will be obtained form information in acquisition or merger applications of banks and bank holding companies, change of control notices, examination and inspection reports, and the Federal Reserve's F.R. Y-6 annual reports.

A report of this new system of records was filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget on November 7, 1988. This new system of records will become effective on January 9, 1988, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register.**

By order of the Board of Governors of the Federal Reserve System, November 3, 1988.

William W. Wiles,

Secretary of the Board.

BGFRS-22

SYSTEM NAME:

FRB-Chain Banking Reference System.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System Constitution Ave. at 20th St., NW. Washington, D.C. 20551

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principals who directly or indirectly, or acting through or in a concert with one or more persons, control two or more banking organizations or own or have the power to vote 25 percent or more of the outstanding voting shares of two or more separate banking organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of the principal(s) of each chain, the percentage ownership each has, positions held by principal(s) in the institutions, the bank and bank holding company names and reference numbers, and the institutions' locations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 248(a)(1) *et seq.*; 12 U.S.C. 1811 *et seq.*; and 12 U.S.C. 1841 *et seq.*; which together authorize the Board to examine, supervise, and regulate all state chartered commercial banks that are members of the Federal Reserve System and all bank holding companies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By Board and Reserve Banks' staff to identify any individual who is a principal in two or more banks or bank holding companies; to ensure in the merger and application process that all elements of a chain banking organization are considered in assessing financial, managerial and competitive factors and capital adequacy; to apply Board supervisory guidelines and policies that are relevant to chain banking organizations; to analyze probelms within a chain organization in an effort to avoid similar problems at related banking institutions; to coordinate the scheduling of concurrent examinations and inspections of related banking institutions; and to ensure the identification of common practices among banking institutions.

b. To respond to Congressional inquiries, referrals of constituent questions and comments, and to official inquiries by the General Accounting Office.

c. To refer where there is an indication of a violation of law, whether civil, criminal or regulatory in nature, to the appropriate federal, state or local agency charged with the responsibility of investigating or prosecuting such violations or with enforcing or implementing a statute, rule, regulation or order issued pursuant thereto.

d. To respond to a court order.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and word processing discs would be stored in locked metal cabinets; computerized records would be maintained in electronic data processing systems.

RETRIEVABILITY:

Computer output, file folders, and card files would be retrievable by indexes of data fields, including name of a subject individual, bank or bank holding company name or number, Federal Reserve Bank district location, and perhaps control form numbers.

SAFEGUARDS:

Paper records and word processing discs would be stored in locked metal cabinets. Computer-stored information would be protected by appropriate coding and other security measures. Only a limited number of authorized Board and Reserve Banks' staff who have a legitimate need for the information will be able to gain access to these records.

RETENTION AND DISPOSAL:

Records would be maintained indefinitely.

SYSTEM MANAGER AND ADDRESS:

James I. Garner, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the

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Federal System, Contitution Ave., at 20th St., NW., Washington, D.C. 20551, (202) 452–2704.

NOTIFICATION PROCEDURES:

A person requesting notice as to whether this system of records contains information pertaining to him or her should write to the Division of Banking Supervision and Regulation, at the address below, enclosing his or her full name, current address, and a notarized statement attesting to the individual's identity. Simultaneously with requesting notification of inclusion in the system of records, the individual may request record access as described in the following section on "Record Access Procedures".

James I. Garner, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Consitution Ave., at 20th St., NW., Washington, D.C. 20551, (202) 452–2704.

RECORD ACCESS PROCEDURES:

Individuals who, through notification procedures set out above, have established that the system of records contains information pertaining to them, may request access to these records by writing to the Division of Banking Supervision and Regulation at the address given above; and the Board will thereafter notify the individual as to the time and place for access to the records.

CONTESTING RECORD PROCEDURES:

Individuals who seek to contest or to correct records in this system of records should: Contact the Division of Banking Supervision and Regulation at the address given above; reasonably identify the records; specify the information sought to be contested or corrected, the rationale for such challenge or correction, and the information requested to be substituted.

RECORD SOURCE CATEGORIES:

The information would be generated substantially from existing sources, including acquisition, merger and other applications, change of control notices, examination and inspection reports, and the annual F.R. Y–6 reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88–25847 Filed 11–8–88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Telecommunications Privacy Advisory Committee; Meeting

Notice is hereby given that the General Services Administration's (GSA's) Federal Telecommunications Privacy Advisory Committee will meet on November 3, 1988, from 8:30 a.m. to 4:00 p.m. at the American Institute of Architects, Conference Room 1, 1735 New York Avenue NW., Washington, DC. The agenda will include presentations and discussions of the following: Telephone systems operations, Privacy Act, and GSA regulations on listening in to telephone conversations.

The meeting will be open to the public.

Fewer than fifteen days' notice of this meeting is being provided due to scheduling difficulties.

Questions regarding this meeting should be directed to John J. Landers, (202) 523–4968.

Dated: October 26, 1988.

John J. Landers,

Director, Office of Administration, Informotion Resources Management Service.

[FR Doc. 88–25884 Filed 11–8–88; 8:45 am]

BILING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising a notice describing a system of records administered by the Office of Information Resources Management in the Office of the Secretary. On August 17, 1988, a new system of records notice describing telephone call detail records was published in the **Federal Register** for public comment (53 FR 31105). One comment on the proposal was received from the Office of Management and Budget (OMB).

OMB took exception to one of the routine use disclosures included in the notice. The disclosure at issue, routine use (7) in the notice published on August 17, 1988, provides for disclosures to the auditors, investigators, and other authorized employees of the Department's Office of Inspector General. OMB has indicated that the routine use is unnecessary considering the provisions of Section (b)(1) of the Privacy Act (5 U.S.C. 552a(b)(1)), and has recommended the elimination of the disclosure. We have adopted OMB's recommendation by deleting routine use (7) from the notice, and the remaining routine uses have been renumbered accordingly. Also, other minor editing corrections have been made throughout the notice which is republished in its entirety below.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective November 9, 1988. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Date: November 1, 1988.

INTERIOR/OS–36

SYSTEM NAME:

Telephone Call Detail Records—Interior, Office of the Secretary–36.

SYSTEM LOCATION:

U.S. Department of the Interior (DOI) and bureau offices nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally Department, bureau/office, and contractor employees) who make long distance calls and individuals who received telephone calls placed from or charged to DOI telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of DOI telephone systems to place long distance calls; records indicating assignment of telephone numbers of employees; and records relating to the location of telephones. Telephone calls made to the Department's Office of Inspector General Hotline number are excluded from the records maintained in this system pursuant to the provisions of 5 U.S.C., Appendix 3, Section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 1348(b), which prohibits agencies from using appropriated funds to pay for personal calls; 44 U.S.C. 3101, which authorizes agencies to create and preserve records documenting agency organizations, functions, procedures and transactions; and 41 CFR 201–38.007, which limits the use of Government telephone systems to the conduct of official business.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Reord data on computer processing media or paper files.

RETRIEVABILITY:

Records are retrived by employee name, telephone number, identification number, or by an account code.

SAFEGUARDS:

Access to the records is limited to Government employees who have an official need to use the records in the performance of their duties. Records are stored in a controlled area and maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and paper records. Automated records are protected from unauthorized access through password identification procedures and other system based protection methods.

RETENTION AND DISPOSAL:

Pending approval of the Archivist of the U.S.

SYSTEM MANAGERS AND ADDRESS:

(1) Fish and Wildlife Services, Chief, Division of Information Resources Management, Room 801, 1730 K Street NW., Washington, DC 20240 (202) 653–7464.

(2) U.S. Geological Survey, Chief, Branch of Telecommunications Services, 12201 Sunrise Valley Dr., Mail Stop 809, Reston, VA 22092 (703) 648–7006.

(3) Bureau of Indian Affairs, Telecommunications Manager, Office of Facilities Management, P.O. Box 1248, Albuquerque, NM 87103 (505) 766–2846.

(4) Minerals Management Service, Chief, Safety and Facilities Management Branch, Mail Stop 635, 1110 Herndon Parkway Building, Herndon, VA 22070 (703) 435–6220.

(5) Bureau of Mines, Telecommunications Manager, 5th Floor, 2401 E Street, Washington, DC 20240 (202) 634–1032.

(6) Bureau of Reclamation, Telecommunications Manager, Denver Federal Center, Code D7900, P.O. Box 25007, Denver, Colorado 80225 (303) 236–0970.

(7) Office of the Secretary, Office of Administrative Services, Chief, Branch of Telecommunications Management, Room 1449, 18th & C Streets, NW. Washington, DC 20240 (202) 343–1412.

(8) Office of Surface Mining Reclamation & Enforcement, Telecommunications Manager, Room 5131, 1100 L Street, Washington, DC 20240 (202) 343–5447.

(9) National Park Service, Chief, Telecommunications Engineering, P.O. Box 25287, Denver, CO 80225 (303) 969–2084.

(10) Bureau of Land Management, Chief, Branch of Telecommunications, Mail Stop 208 Prmr, 18th & C Street, NW. Washington, DC 20240 (202) 653–8853.

(11) Office of Inspector General Administration, 18th & C Street, NW., Room 5346, Washington, DC 20240 (202) 343–4356.

NOTIFICATION PROCEDURE:

Requests for notification regarding the existence of call detail report information should be addressed to the appropriate system manager. A written and signed request stating that the request stating that the requester seeks information concerning call records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Requests for access to call detail information should be address to the appropriate system manager. All requests must be in writing and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the appropriate systems manager, and meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88–25973 Filed 11–8–88; 8:45 am]

BILLING CODE 4310-RH-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be

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obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Bird Banding Recovery Report.
OMB Approval No.: 1018–0005
Abstracts: This form is used by bird banders and professional wildlife agency personnel to record and report scientific bird band recovery information on the recovery of Service bands and markers used on marked birds that were shot, found dead or injured. The data collected is used by Federal, Provincial and State personnel and scientific cooperators to study population size, mortality and survival rates, longevity and migration pattern of birds. Such data is also one of the most important tools used in the preparation of the annual U.S. and Canadian hunting and shooting regulations.
Service Form number: 3–1807
Frequency: On occasion
Description of Respondents: Individuals or households, Federal agencies or employees, and State, or local governments
Estimated Completion Time: The reporting burden is estimated to be three minutes per response.
Annual Responses: 50,000
Annual Burden Hours: 2,500
Service Clearance Officer: James E. Pinkerton, 202–653–7500, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240

Date: October 19, 1988.

Marvin L. Plenert,
Assistance Director, Refuges and Wildlife.
[FR Doc. 88–25878 Filed 11–8–88; 8:45 am]
BILLING CODE 4310–55–M

Supplemental Environmental Impact Statement on the Wilderness Proposal for the Kenai National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued a Record of Decision (Decision) on the Supplemental Environmental Impact Statement (Statement) for the Wilderness Proposal in the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Kenai National Wildlife Refuge (Refuge), Alaska, pursuant to Section 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Statement will be implemented immediately with the Wilderness Proposal being sent to the Secretary of the Interior for review and forwarding to the President.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

Copies of the Decision will be sent to all persons and organizations on the Kenai Refuge mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative C, the Proposed Action, for implementation. As a result, the Service is recommending that an additional 195,500 acres of the Refuge be added to the National Wilderness Preservation System.

Walter O. Stieglitz,
Regional Director.
[FR Doc. 88–25974 Filed 11–8–88; 8:45 am]
BILLING CODE 4310–55–M

Receipt of Application for Marine Mammal Permit

The public is invited to comment on the following application for permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant

Name: John G. Shedd Aquarium, File no. PRT–730801, 1200 South Lakershore Drive, Chicago, IL 60605
Type of Permit: Public Display
Name of Animals: Alaskan sea otter (**Enhydra lutris lutris**); 6
Summary of Activity to be Authorized: The applicant proposes to Take these animals in Spring 1990 and transport them to permittee's facilities in Chicago, Illinois, for public display.
Source of Marine Mammals for Public Display: Prince William Sound, Alaska
Period of Activity: Spring 1990 until capture is completed.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for the review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application(s) are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1374 "K" Street, NW., Washington, DC.

Dated October 27, 1988.

R.K. Robinson,
Chief, Branch of Permits Office of Management Authority.
[FR Doc. 88–25909 Filed 11–8–88; 8:45 am]
BILLING CODE 4310–55–M

Receipt of Applications for Permits for Endangered and Threatened Species

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Jane N. Fleetwood, PRT–732769, Athens, GA

The applicant requests a permit to import up to 30 preserved hawksbill sea turtle (*Eretmochelys imbricata*) hatchlings and up to 30 preserved loggerhead sea turtle (*Caretta caretta*) hatchlings from Dr. Nicholas Mrosovsky, University of Toronto, Canada, for research purposes. The research will be carried out at the University of Georgia, College of Veterinary Medicine, Department of Anatomy.

Applicant: Exotic Paws, Inc., PRT–732760, Newport Beach, CA

The applicant requests a permit to export and reimport one captive born female leopard (*Panthera pardus*) for the purpose of display in a manner designed to educate the public with regard to the leopard's ecological role and conservation needs.

Applicant: Botanicals Inc., PRT–732482, Wayland, MA

The applicant requests a permit to sell, in interstate commerce, artifically propagated plants of the following species: the Cumberland sandwort (*Arenaria cumberlandensis*), the Tennessee purple coneflower (*Echinacea tennesseensis*), the Maguire daisy (*Erigeron maguirei* var. *maguirei*) and the Contra Costa wildflower (*Erysimum capitatum* var. *angustatum*) for the purpose of enhancement of survival of the species.

Applicant: Gary Thomas, PRT–732664, Williston, FL

The applicant requests a permit to purchase in interstate commerce and then export and re-import one male Asian elephant (*Elephas maximus*) previously imported from the wild. This elephant is to be exported and re-imported for the purpose of conservation education. In the future, the applicant will export and re-import this animal for the same purpose.

Applicant: Cheyenne Mountain Zoological Park, PRT–732772, Colorado Springs, CO

The applicant requests a permit to export one pair of captive-born jaguars (*Panthera onca*) to the Jakarta Zoo, Jakarta, Indonesia, for captive breeding purposes. The jaguars are among six animals that are to be exported to the Jakarta Zoo in trade for two pairs of Sumatran tigers (*Panthera tigris sumatrae*).

Applicant: Tiger Spots, PRT–732660, Las Vegas, NV

The applicant requests a permit to export and re-import two captive-born male bengal tigers (*Panthera tigris*) for the purpose of conservation education. In the future, the applicant will export and re-import these animals for the same purpose.

Applicant: Bruce A. Haak, PRT–732775, Eagle, ID

The applicant requests a permit to import one captive-hatched female Eurasian peregrine falcon (*Falco peregrinus peregrinus*) from Mr. Darryl D. Barnes, Suffolk, England, for the purpose of captive breeding.

Applicant: Barney Lewis, PRT–730094, Meridian, ID

The applicant requests a permit to import one pair of captive-hatched mikado pheasants (*Syrmaticus mikado*) and two pairs of captive-hatched white-eared pheasants (*Crossoptilon crossoptilon*) from H.J. Hardy, South View Aviaries, Burnaby, Canada, for enhancement of propagation.

Applicant: William Van Harlow, Jr., PRT–732802, Amarillo, TX

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. Michael J. D'Alton, Bredasdorp, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Mr. Dallas J. Fontenot, PRT–732797, Houston, Texas

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: November 3, 1988.

Susan Lawrence,
Acting Chief, Branch of Permits, U.S. Office of Management Authority.
[FR Doc. 88–25910 Filed 11–8–88; 8:45 am]
BILLING CODE 4310–M

Bureau of Land Management

[UT–050–09–4212–11; U–58554]

Realty Action; Millard County, UT

AGENCY: Bureau of Land Management, Richfield, Utah.

ACTION: Classification of Public Lands in Millard County, Utah, for Lease or Sale for Recreation and Public Purposes (R&PP), U–58554.

SUMMARY: The surface estate of the following described public lands has been examined and determined to be suitable for classification for lease with an option to purchase under the authority of the R&PP Act of 1926 as amended (43 U.S.C. 869, et seq.):

Salt Lake Meridian, Utah

T. 16 S., R. 6 W.
Section 26, NE¼NW¼, W½NW¼NE¼.
Containing 60 acres.

The lease with option to purchase would be offered to the City of Delta, to be developed for a gun range for public use. Five years after issuance of the lease and upon successful development of the gun range, the lands would be available for purchase by the City of Delta. The lease shall contain terms and conditions to protect the lands from adverse impacts and a provision requiring adherence to an approved Plan of Development. Posting of a performance bond by the City of Delta to insure compliance to the terms of the lease will be required. The lands described in this Notice meet the criteria for classification set forth in 43 CFR 2410.1 and 2430.4. These lands are not required for any Federal purpose. The lease/purchase is consistent with the Bureau's planning for this area and would be in the public interest. These lands will not be offered for lease or sale until classification becomes effective.

The lease and/or patent, if issued, would be subject to the provisions of the R&PP Act to all applicable regulations of the Secretary of the Interior, and the patent would contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of Interior may prescribe.

The patent would also be subject to:

1. Those rights for highway purposes which have been granted to the Utah Department of Transportation under right-of-way grant SL–062152.

2. Right-of-way U–59239 granted to the Williams Telecommunications Company for a fiber optics cable.

3. All other valid existing rights of record at the time of patent issuance.

Upon publication of this Notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws and the material disposal laws, except for recreation and public purposes and leasing under the mineral leasing laws.

ADDRESS: Detailed information concerning the lease, including the environmental assessment report, is available for review at the House Range Resource Area Office, P.O. Box 778, Fillmore, Utah 84631, telephone No. (801) 743–6811. Comments on the proposal should be sent to this address.

DATE: Interested parties may submit comments on or before December 27, 1988.

Any objections received during the comment period will be reviewed by the State Director. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. The classification of the lands described in this Notice will become effective 60

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days from the date of publication in the Federal Register.

Date: November 1, 1988.

Jerry Goodman,

District Manager.

[FR Doc. 88–25882 Filed 11–8–88; 8:45 am]

BILLING CODE 4310–DQ–M

[WY–030–09–4332–09]

Availability of Draft Wilderness Environmental Impact Statement and Notice of Public Meeting; Wyoming

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of Draft Wilderness Environmental Impact Statement for the Whiskey Mountain and Dubois Badlands Wilderness Study Areas (WSAs), Rawlins District, Wyoming.

SUMMARY: This Draft Environmental Impact Statement (DEIS) assesses the environmental consequences of managing the Whiskey Mountain WSA and the Dubois Badlands WSA as wilderness or nonwilderness.

DATES: Public comments on the Draft EIS will be accepted for 90 days after publication of this notice in the Federal Register. Two public meetings will be held to solicit additional public comments. The meetings will be held at the Town Hall in Dubois, Wyoming, on Wednesday, December 14, 1988, starting at 7:00 p.m., and at the Fremont County School District Administration Building in Riverton, Wyoming, Thursday, December 15, 1988 also starting at 7:00 p.m.

ADDRESSES: Individual copies of the EIS may be obtained by by writing to Team Leader, Whiskey Mountain-Dubois Badlands EIS, Rawlins District Office, PO Box 670, Rawlins, WY 82301. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240

Bureau of Land Management, Lander Resource Area Office, 125 Sunflower Street, Lander, WY 82520

Bureau of Land Management, Wyoming State Office, 2515 Warren Ave., Cheyenne, WY 82003

FOR FURTHER INFORMATION CONTACT: Bob Janssen, EIS Team Leader, Rawlins District Office, P.O. Box 670, 1300 North 3rd Street, Rawlins, WY 82301, phone: (307) 324–7171.

SUPPLEMENTARY INFORMATION: This EIS is a supplement to the Lander Resource Area Final Resource Management Plan, published in June 1987. The EIS was not completed in time for the recommendations to be included in the final RMP, so this supplement was prepared. The alternatives assessed in the DEIS for both WSAs include: (1) a "no wilderness" alternative; and (2) an "all wilderness" alternative. The total acreage and the propose action for each of the WSAs analyzed in the EIS are as follows:

Area	Suitable	Non-suitable
Whiskey Mountain WSA.	0 acres	487 acres
Dubois Badlands WSA.	0 acres	4,580 acres

These two WSAs are being studies under the authority of Section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA). Once public comment has been received and analyzed, a final EIS will be prepared which will incorporate those public comment germane to the anaylsis of environmental impacts regarding designation or nondesignation of these two WSAs as wilderness. For Section 202 WSAs that are recommended nonsuitable for wilderness designation, the State Director has the authority to release those public lands from wilderness study and return them to uses other than wilderness in accordance with existing land use plans. A Record of Decisions will be prepared for these WSAs for the State Director's approval. Management based on existing land use plans may begin 30 days after the State Director files the final EIS with the Environmental Protection Agency.

For Section 202 WASs that are recommended suitable for wilderness designation, a legislative final EIS will be prepared and forwarded to the President through the Secretary of the Interior. The President will then make a recommendation to Congress. Only Congress can designate an area as wilderness.

David J. Walter,

Acting State Director.

[FR Doc. 88–25905 Filed 11–8–88; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Concession Contract Negotiations; Elk Creek Marina, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposed to negotiate a concession contract with Elk Creek Marina, Inc., authorizing it to continue to provide marina, boating, food service, and marina related facilities and services for the public at Curecanti National Recreation Area, Colorado for a period of five (5) years from January 1, 1989, through December 31, 1993.

EFFECTIVE DATE: January 9, 1988.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1988, and therefore, pursuant to the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Jack Neckels,

Regional Director, Rocky Mountain Region.

Acting Date: February 12, 1988.

[FR Doc. 88–25926 Filed 11–8–88; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875–1608, IRM/PE, Room 1100B, SA–14, Washington, DC 20523.

Date Submitted: October 28, 1988

Submitting Agency: Agency for International Development

OMB Number: 0412–0520

Type of Submission: Renewal

Title: Information Collection Elements in the A.I.D. Acquisition Regulations (AIDAR)–A.I.D. Procedures for Protest

Purpose: A.I.D. is authorized to make contracts with any corporation, international organization, or other body of persons whether within or without the United States in furtherance of the purposes and within the limitations of the Foreign Assistance Act (FAA). Information collections and recordkeeping requirements placed on the public by the A.I.D. Acquisition Regulation (AIDAR), are published as 48 CFR Part 7. These are all A.I.D. unique procurement requirements which have not otherwise been submitted to OMB for approval. The preaward requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs utilizing public funds. The requirements for information during the post-award period are based on the need to administer public funds prudently. Respondents will have a submission burden of three responses and an estimated annual recordkeeping burden of 12 hours per recordkeeper.

Reviewer: Francine Picoult (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Date: October 28, 1988.

Wayne H. Van Vechten,

Planning and Evaluation Division.

[FR Doc. 88–25972 Filed 11–8–88; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–284]

Certain Electric Power Tools, Battery Cartridges and Battery Chargers; Change of Investigative Attorney

Notice is hereby given that, as of this date, in addition to George C. Summerfield, Esq., Gary Hnath, Esq., of the Office of Unfair Import Investigations will be the Commission Investigative Attorney in the above-captioned investigation.

The Secretary is requested to publish this Notice in the Federal Register.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436.

Date: November 4, 1988.

[FR Doc. 88–25941 Filed 11–8–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–276]

Certain Erasable Programmable Read Only Memories and Products Containing Such Memories; Decision to Review and Modify an Initial Determination Amending the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined (1) to review on its own motion an initial determination (ID) (Order No. 137) issued by the presiding administrative law judge (ALJ) amending the notice of investigation in the above-captioned investigation, (2) to modify the ID to correct the omission of the specific patent claims in controversy from the amended notice of investigation, and (3) to deny respondents' petition to review the ID on other grounds.

ADDRESS: Copies of the ID and all other non-confidential documents filed in correction with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Michael J. Buchenhorner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1097. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments made to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100–418, 102 Stat. 1107) (the OTCA). The notice of investigation was also amended to reflect the fact that complainant Intel Corporation has withdrawn its allegations of infringement of U.S. Letters Patent 4,519,849. However, the claims of the patents remaining in controversy were omitted from the scope of the investigation as set forth in the ID. The Commission on its own motion reviewed and modified the ID to correct that omission.

Respondents Hyundai Electronics Industries Co., Ltd. and Atmel Corporation petitioned for review of the ID, arguing that the OTCA does not apply to section 337 investigations instituted prior to the effective date (August 23, 1988) of the OTCA amendments to section 337. Intel and the IAs both filed responses in opposition to respondents' petition for review.

By order the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 2, 1988.

[FR Doc. 88–25942 Filed 11–8–88; 8:45 am]

BILLING CODE 7020–02–M

[332–264]

U.S. Imports of Lamb Meat

AGENCY: United States International Trade Commission.

ACTION: Institution of Investigation.

EFFECTIVE DATE: October 20, 1988.

SUMMARY: As required by section 1937 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. Law 100–418, 102 Stat. 110, approved Aug. 23, 1988), the Commission has instituted investigation No. 332–264 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of monitoring

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and investigating for two years U.S. imports of fresh, chilled, or frozen lamb meat. The Commission will issue reports after the first and second year of monitoring.

FOR FURTHER INFORMATION CONTACT: David E. Ludwick; Agriculture, Fisheries, and Forest Products Division; U.S. International Trade Commission; Washington, DC, 20436; Telephone (202) 252–1329.

Background and Scope of Investigation

In the course of this investigation, the Commission will monitor and investigate U.S. imports of fresh, chilled, or frozen lamb meat and the primary components of the U.S. market for the product. The Commission will gather data and information, to the extent possible, on U.S. producing facilities in such areas as sales, market share, employment levels, inventories, profit levels, and capital generation, and will examine U.S. imports in relation to levels of domestic production and to imports by other major consuming countries. The Commission will also analyze the relative strengths and weakenesses of U.S. imports and the domestic product in the U.S. market.

Written Submissions

Interested persons are invited to submit written statements at any time during the investigation but no later than May 1, 1990. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirement of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 3, 1988.

[FR Doc. 88–25943 Filed 11–8–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–261]

Certain Recombinant Erythropoietin; Commission Decision Not To Review an Initial Determination Designating the Investigation More Complicated

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 24) issued by the presiding administrative law judge (ALJ) designating the above-captioned investigation "more complicated" and extending the administrative deadline for issuance of the final ID by two months, *i.e.*, from November 10, 1988, to January 10, 1989. The Commission has also extended the deadline for completion of the investigation by two months, *i.e.*, from February 10, 1989, to April 10, 1989.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1104.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On October 12, 1988, the presiding ALJ issued an ID designating the subject investigation "more complicated" because of the complexity of the technology underlying the investigation and because of the complex legal issues involved. No petitions for review of the ID or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.59(a) of the Commission's Interim Rules of Practice and Procedure (53 FR 33307, Aug. 29, 1988.).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 2, 1988.

[FR Doc. 88–25944 Filed 11–8–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–282]

Certain Venetian Blind Components; Decision Not To Review an Initial Determination Amending the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 10) issued by the presiding administrative law judge (ALJ) amending the notice of investigation in the above captioned investigation.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, Telephone 202–252–1105.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 stat. 1107). The notice of investigation was amended to delete the reference to the former requirement that an industry in the United States be efficiently and economically operated and to delete the reference to the former requirement that complainant be required to prove that the effect or tendency of the alleged unfair act of patent infringement or registered trademark infringement is to destroy or substantially injure an industry in the United States. No petitions for review or agency comments regarding the ID were received.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19

U.S.C. 1337) and interim rule § 210.53 (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Issued: November 3, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–25945 Filed 11–8–88; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Volume No. OP3MCF–548 (A)]

Motor Carrier Applications to Consolidate, Merge, or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Application(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notification of effectiveness of this decision-notice or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6.

Noreta R. McGee,

Secretary.

MC–F–19281, filed October 21, 1988. Arrow Stage Lines, Inc. (Arrow) (720 East Norfolk Ave., Norfolk, NE., 68701)—Control—Neoteric, Inc., d/b/a Chief Bus Service (Neoteric) (206 E. Grant, Papillon, NE., 68701). Representative: Doyle Busskohl, 720 East Norfolk Ave., Norfolk, NE., 68701). Arrow (MC–29592), a motor common carrier of passengers in interstate commerce, in charter operations, between points in the United States (except Hawaii), to control Neoteric (MC–165375), a motor common carrier of passengers, in interstate commerce, in special and charter operations, between points in the United States (except Hawaii), through purchase of 52 percent of stock. Approval of purchase is pursuant to 49 U.S.C. 11341(a). Arrow is owned and controlled by Charles D. Busskohl (50 percent) and Doyle Busskohl (50 percent), who also own and control to the same extent Black Hills State Lines, Inc., (MC–123773), a motor common carrier of passengers, in interstate commerce, over regular routes between Omaha, NE and Rapid City, SD, and between Omaha, NE. and Denver, CO.

[FR Doc. 88–25853 Filed 11–8–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub–267)]

CSX Transportation, Inc.; Abandonment of Rail Line of St. Mark's Branch at Tallahassee, FL

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 3.51-mile rail line between milepost 799.79 and milepost 803.30 in Tallahassee, Leon County, FL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: November 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25967 Filed 11–8–88; 8:45am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 273X)]

CSX Transportation, Inc., Abandonment Exemption; in Baltimore, MD

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.314 miles of track between East Fort Avenue and Conway Street in Baltimore, MD. The track, which is located in the beds of Baltimore's public streets, is owned by the city.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2–year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 9, 1988 (unless stayed pending reconsideration). Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1], must be filed by November 21, 1988. Petitions to stay regarding matters that do not involve environmental issues,[2]

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–438446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988).

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and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 29,1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201.

Charles M. Rosenberger and Patricia Vail, 500 Water Street, Jacksonville, FL 32202

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 14, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 1, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25745 Filed 11–8–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Two Partial Consent Decrees Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on October 31, 1988, two proposed partial consent degrees in *United States v. W.R. Grace & Co. Conn. and American Environmental Services, Inc.,* Civil Action No. 88–2412–K, were lodged with the United States District Court for the District of Massachusetts. The decrees resolve claims of the United States against the defendants for violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR Part 61, Subpart M, promulgated pursuant to the Clean Air Act, 42 U.S.C. 7401, et seq. The violations occurred in the course of removal of asbestos by American Environmental Services, Inc. ("AES") at a facility owned by W.R. Grace & Co. Conn. ("W.R. Grace") in Acton, Massachusetts.

In the first of the two proposed consent decrees, referred to herein as the W.R. Grace decree, W.R. Grace agrees to pay the United States a civil penalty in the amount of $50,000. In addition, W.R. Grace agrees to implement specified procedures to ensure future compliance with the asbestos NESHAP at all facilities within its Polyfibron Division, of which the facility in Acton, Massachusetts, is a part. In the second of the two proposed consent decrees, AES agrees to pay the United States a civil penalty in the amount of $40,000 in two installments: $10,000 upon entry of the consent decree and $30,000 on or before June 1, 1989. In addition, AES agrees to implement specified procedures to ensure future compliance with the asbestos NESHAP in all asbestos operations undertaken by AES.

The proposed decrees may be examined at the office of the United States Attorney for the District of Massachusetts, 1107 J.W. McCormack Federal Office Building, U.S. Post Office and Courthouse, Boston, Massachusetts 02109; at the Region I Office of Regional Counsel, Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts 02203, contact: Ann Johnston, Esq.; and at the Environmental Enforcement Section, Land and Natural Resources Division of the United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting copies, please enclose a check in the amount of $1.10 for the W.R. Grace decree or in the amount of $1.20 for the AES Decree (10 cents per page reproduction charge) payable to the Treasurer of the United States. The Department of Justice will receive written comments relating to the proposed consent decrees for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v . W.R. Grace & Co. Conn. and American Environmental Services, Inc., Civil Action No. 88–2412–K (D. Mass.), D.J. reference No. 90–5–2–1–1219.

Richard J. Leon,

Deputy Assistant Attorney General.

[FR Doc. 88–25975 Filed 11–8–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmetal Response, Compensation and Liability Act (CERCLA), notice is hereby given that on October 14, 1988, a proposed consent decree in *United States* v. *Zinc Corporation of America, a Division of Horsehead Industries, Inc.*, Civil Action No. 88–1688 was lodged with the United States District Court for the Middle District of Pennsylvania.

The proposed consent decree requires the defendant to implement the remedial action selected by the Environmental Protection Agency (EPA) to address the imminent and substantial endangerment to human health and the environment posed by the release or threat of release of hazardous substances at Blue Mountain, Operable Unit I of the Palmerton Zinc Site in the vicinity of the Borough of Palmerton, Carbon County, Pennsylvania. The remedy to be conducted by the defendant includes using a mixture of flyash and wastewater treatment sludge to revegetate a portion of Blue Mountain. The decree also requires the defendant to reimburse the United States for past response costs incurred at the site and to pay a percentage of EPA's oversight costs for the remedy. The parties to the consent decree are the United States and Zinc Corporation of America.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Zinc Corporation of America,* DJ Ref. 90–11–2–271.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, Suite 309, Federal Building, Washington & Linden Streets, Scranton, Pennsylvania 18501 and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $5.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 88–25976 Filed 11–8–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M–88–13–M]

Antelope Valley Aggregate, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Antelope Valley Aggregate, Inc., 7311 East Avenue T, Littlerock, California 93543 has filed a petition to modify the application of 30 CFR 56.9007 (unguarded conveyors with walkways) to its Antelope Valley Aggregate, Inc., Mine (I.D. No. 04–01690) located in Los Angeles County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that unguarded conveyors with walkways be equipped with emergency stop devices or cords along their full length.

2. As an alternate method, petitioner proposes to operate a conveyor that is 30 inches or more in height without the use of guards or stop cords.

3. In support of this request, petitioner states that—

(a) The conveyor would be operating in an open area with limited access; and

(b) There are no minimum height standards for the installation of guards or stop cords.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627,, 4015 Wilson Boulevard, Arlington, Virgina 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

Date: November 3, 1988.

[FR Doc. 88–25950 Filed 11–8–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–14–M]

Antelope Valley Aggregate, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Antelope Valley Aggregate, Inc., 7311 East Avenue T, Littlerock, California 93543 has filed a petition to modify the application of 30 CFR 56.14001 (moving machine parts) to its Antelope Valley Aggregate, Inc. Mine (I.D. No. 04–01690) located in Los Angeles County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that takeup pulleys and similar exposed moving machinery parts which may be contacted by persons, and which may cause injury to persons be guarded.

2. As an alternate method, petitioner proposes to install a remote lubrication area and seal off the area in which the pulleys are located in lieu of guards.

3. In support of this request, petitioner states that—

(a) A barrier would be placed around the lubrication area; and

(b) The area would be properly posted to exclude entry when the machinery is operative.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 3, 1988.

[FR Doc. 88–25949 Filed 11–8–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–197–C]

Bare Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bare Mining, Inc., Route 3, Box 84, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 4 (I.D. No. 15–16461) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the mining height is less than 42 inches and the installation of canopies on the mine's electric face equipment would result in a diminution of safety because the canopies:

(a) Shear off roof bolts;

(b) Damage or cut trailing cables;

(c) Interrupt ventilation due to line and check curtains being torn down; and

(d) Limit the visibility for equipment operators.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 3, 1988.

[FR Doc. 88–25951 Filed 11–8–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–201–C]

Jen Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Jen Coal Company, Route 5, Box 357–A, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15–16415) located in Knox County, Kentucky. The petition is

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filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a handheld continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuosly after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 3, 1988.

[FR Doc. 88–25952 Filed 11–8–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–194–C]

Reedy Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Reedy Coal Company, Inc., P.O. Box 339, Isom, Kentucky 41824 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 3 (I.D. No. 15–16377) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the mining height is less than 42 inches and the installation of cabs or canopies on the mine's electric face equipment would result in a diminution of safety because the cabs or canopies:

(a) Shear off roof bolts;

(b) Damage or cut trailing cables;

(c) Disrupt ventilation due to line and check curtains being torn down; and

(d) Limit the visibility for equipment operators.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 3, 1988.

[FR Doc. 88–25953 Filed 11–8–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–202–C]

Roark Contracting, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Roark Contracting, Inc., P.O. Box 27, Trosper, Kentucky 40995 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15–16354) located in Knox Country, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a handheld continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuosly after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

(4) Petitioner states that the proposed alternate method wil provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 2, 1988.

[FR Doc. 88–25954 Filed 11–8–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–200–C]

Steel Hollow Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Steel Hollow Mining, Inc., P.O. Box 527, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 3 Mine (I.D. No. 15–16444) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 2, 1988.

[FR Doc. 88–25955 Filed 11–8–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–198–C]

Tara K Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tara K Coal Company, Inc., P.O. Box 558, Norton, Virginia 24273, has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44–06425) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 Mine ranges from 45 to 53 inches in height and the bottom is extremely soft and uneven with ups and downs throughout the mine.

3. Petitioner states that the installation of canopies on the mine's electric face equipment would result in a diminution of safety because the canopies:

(a) Shear off roof bolts;

(b) Tear down check or line curtains thereby disrupting ventilation; and

(c) Create inadequate visibility and cramped conditions for the operator.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 3, 1988.

[FR Doc. 88–25956 Filed 11–8–88; 8:45 am]

BILLING CODE 4510–43–M

VOL 53 ISS 217 NO 9 1988 UMI

[Docket No. M-88-199-C]

U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Company, Inc., 600 Grant Street, Room 1580, Pittsburgh, Pennsylvania 15230, has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Maple Creek Mine (I.D. No. 36-00970) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to roof deterioration and numerous massive roof falls, the entire length of certain return aircourses cannot be safely traveled.

3. As an alternate method, petitioner proposes that—

(a) A certified person would examine the return aircourses daily by taking air and methane readings at each measuring station, and the readings would be recorded in a book;

(b) A date board would be maintained at each measuring station. A certified person would take the air and methane readings and place his/her initials, date, and time of the readings on the date board;

(c) A diagram indicating the direction of airflow in the vicinity of each meaasuring station would be posted at that measuring station;

(d) The vicinity of each measuring station and access thereto would be maintained in a safe and travelable condition;

(e) Signs would be posted along the track haulage roads designating the location of each monitoring station;

(f) Methane would not be allowed to accumulate in the return aircourses in excess of legal limits, and if a marked variation in air quality is recorded, as determined by readings taken at each monitoring station, immediate action would be taken to determine the cause and appropriate corrective action taken where necessary;

(g) The return aircourses would at no time be utilized as primary return aircourses for the ventilation provided to the working sections of the mine through which miners are required to travel; and

(h) Persons working in the area for the purpose of providing safe access to and from the measuring stations would be limited to a maximum of four at any given time. Each person working in the affected area would be required to wear or carry a self-rescue device at all times. Each person working in the affected area would be able to reach a separate split of air within a reasonable period of time.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 2, 1988.

[FR Doc. 88-25957 Filed 11-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-195-C]

VP-5 Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

VP-5 Mining Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its VP-5 Mine (I.D. No. 44-03795) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the return aircourse be examined in its entirety on a weekly basis.

2. Petitioner states that due to roof deterioration and falls certain areas of the return entry cannot be safely traveled.

3. As an alternate method, petitioner proposes that—

(a) Evaluation points would be established at Spad Nos. 4915 and 5071. Each production day a certified person would take air quality and quantity readings at the evaluation points. The date and time of the examinations and the certified person's initials would be recorded in a book or on a date board provided at the evaluation points;

(b) Weekly examinations for hazardous conditions would be conducted from Spad 4915 outby to the point where the return split meets another split of air and from Spad 5071 inby to the working section; and

(c) The results of the daily and weekly examinations would be recorded in a book on the surface. This book would be accessible to all interested parties.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 9, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 3, 1988.

[FR Doc. 88-25958 Filed 11-8-88; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide on its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 8.12, "Criticality Accident Alarm Systems," describes a system acceptable to the NRC staff for meeting the Commission's requirements for a criticality accident alarm system. The guide endorses, with some limitations, ANSI/ANS-8.3-1986, "Criticality Accident Alarm System."

Comments and suggestions in connection with (1) items for inclusion in guides currently beign developed or

(2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price.

Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88-25900 Filed 11-8-88; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Placement Service.

(2) *Form(s) submitted:* ES-1a, ES-2, ES-20a, ES-20b, ES-20c, ES-21, ES-21c, ES-22 and UI-35.

(3) *OMB Number:* 3220-0057.

(4) *Expiration date of current OMB clearance:* 12-31-88.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Total annual responses:* 70,100.

(9) *Estimated annual number of respondents:* 62,200.

(10) *Average time per response:* 4.088 minutes.

(11) *Total annual reporting hours:* 4,776.

(12) *Collection description:* Under the RUIA, the Board provides job placement assistance for unemployed railroad workers. The collection obtains information from job applicants, unemployment claims agents, railroad and non-railroad employers, and State Employment Service Offices for use in placement, for providing referrals for job openings and reports of referral results and for verifying and monitoring claimant eligibility.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88-25860 Filed 11-8-88; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Revision

Form N-1A
File No. 270-21

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed amendments to Form N-1A under the Investment Company Act of 1940 and the Securities Act of 1933. Form N-1A is the registration statement for use by open-end management investment companies, except small business investment companies and insurance company separate accounts. There are approximately 2,470 registrants using Form N-1A, with an estimated compliance time of 1,055 hours per registrant. The additional time necessary for each registrant to comply with the Form's requirements, if the proposed amendments are adopted, would be negligible.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

November 2, 1988.

[FR Doc. 88-25886 Filed 11-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26243; File No. SR-Amex-88-10, Amendment No. 2]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Equity Index Participations.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is amending its proposed rules relating to Equity Index Participations ("EIPs") to permit holders

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to receive physical delivery of shares of the component stocks of the S&P 500 Index or Amex Major Market Index upon exercise of a specified minimum of EIPs. The cash settlement alternative would continue to be permitted, as originally proposed.

The Exchange is further amending its filing to modify proposed Rule 900F regarding the applicability of certain options rules to EIPs trading; to amend proposed EIPs margin requirements under Rule 462(d); and to make other conforming and technical changes to the rules as originally proposed.

The proposed amendments are as follows ([brackets] indicate deletions; italics indicates new language):

Section 14. Equity Index Participations

Rule 900F. (a) Applicability. The Rules in this Section are applicable only to Equity Index Participations. Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. In addition, the following Options Rules shall be specifically applicable to such trading: 900(b), *902*, 907, 908, 909, 920, 921, 922, 923, 924, 925, 926, 930, 932, 950(b), 950(c), *953*, 954, 955, 956, 957, 958, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, [981], 918C. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, Equity Index Participations are included within the definition of "security" or "securities" as which terms are used in the Constitution and Rules of the Exchange.

Compliance with Rules 904, 905, 906, shall be determined as set forth in Rules [905F, 906F, and 907F] *907F, 908F, and 909F*.

(b) *Definitions.* The following terms as used in the Rules shall, unless the context otherwise indicates, have the meanings herein specified.

(1) *Equity Index Participation*—The term Equity Index Participation means a security based on the [spot] *current* value of an index of stocks, of indeterminate duration, and paying [its purchasers] *holders an amount equal to* a proportionate share of *the* dividends declared on the component stocks of the stock index underlying the Equity Index Partipation.

(2) Delivery-time—The term "delivery time" means the point in time each quarter of the year when a holder of one or more delivery units of a class of Equity Index Participations, upon exercise of the delivery privilege, may obtain physical delivery of the shares of the component stocks in the stock index underlying such class of Equity Index Participations. The delivery time for such quarter will be determined and made public by the Exchange before the beginning of the quarter.

[(2)] *(3) Cash-out time*—The term "cash-out time" means the point in time each quarter of the year when a holder of an Equity Index Participation *of a particular class, upon exercise of the cash-out privlege,* may obtain the [closing] *liquidating* index value *of such class of Equity Index Participations* [upon exercise of the cash-out privilege]. The cash-out time for each *quarter will coincide with "delivery time" and* will be determined and made public by the Exchange before the beginning of the quarter.

[(3)] *(4) Reporting authority*—The term "reporting authority" in respect of a particular [index] *class of Equity index participations* means either the Exchange or the institution or reporting service designated by the Exchange as the official source for calculating and reporting the current index value or the [closing] *liquidating* index value *of the underlying index* [and]; the proportionate share of dividend[s] *equivalents* payable to Equity Index Participation holders[.]; *and the component index stocks, the number of shares of each component stock to be delivered to holders upon exercise of the delivery privilege, and the amount of cash, if any, required to be paid to such holders.*

(5) Physical delivery facilitator—The term "physical delivery facilitator" means a member or member organization designated by the Exchange to make physical delivery at delivery time of the component stocks of the underlying index to Equity Index Participation holders who exercise the delivery privilege, in the event that the number of delivery units for which holders have requested physical delivery exceeds the number of delivery units offered for physical delivery by persons holding short positions.

(6) "Delivery unit"—The term "delivery unit" means the minimum number, as specified by the Exchange, of Equity Index Participations of a particular class, that must be held in an individual account by a holder at the time of exercise of the delivery privilege, or that n st be maintained as a short position in an equivalent account by a person who notifies the Options Clearing Corporation of a desire to make physical delivery of securiites to a holder, if assigned an exercise.

Designation of an Index

Rule 901F. *The Exchange may designate one or more stock indexes as underlying indexes for Equity Index Participations traded on the Exchange. The Equity Index Participations based on each particular stock index shall be designated as a separate class and shall be identified by a unique symbol.* The stocks that are [the basis for the calculation of] *included in* an index on which [the] Equity Index Participations [is] *are* based shall be selected by the Exchange, *or by such other person as shall have a proprietary interest in and authorized use of such index,* and may be revised from time to time [in the Exchange's discretion] as *may be deemed* necessary or appropriate to maintain the quality and character of the index.

Index Calculation and Reporting

Rule 902F. (a) The current index value in respect of an index on which [an] *a class of* Equity Index participations is based shall be derived from the reported prices of the underlying securities that are the basis of the index, as reported by the primary market for such underlying securities.

[Rule 903F. (a)] *(b)* The Exchange shall cause to be *calculated and* reported at specified intervals the current index value of [an] *the* index underlying [an] *each class of* Equity Index Participations during each day the Exchange is open for trading, and shall [cause to be disseminated] *make available* the [closing] *liquidating* index value of such underlying index promptly after such calculation is [available] *made* at the quarterly *delivery or* cash-out time.

(c) The Exchange shall maintain, in files available to the public, information identifying the stocks included in each index underlying [an] *a class of* Equity Index Participations and the method used to determine the current index value *and liquidating index value.*

Liquidating Index Value

[Rule 902F (b)] *Rule 903F* The [closing] *liquidating* index value in respect of a particular *class of* Equity Index Participations [index] shall be derived from the [reported] *opening* prices *reported by the primary market for* [of] the component stocks of the stock index [at a time or times specified by the Exchange] *on the first trading day following the date each quarter as of which* [for determining payment to which an] Equity Index Participations holders [is] *are* entitled [upon] *to* exercise of the *delivery privilege or the* cash-out privilege. *For any component stock that does not open for trading on such day, the closing price on the last preceding day on which such stock traded on the primary market will be used for purposes of determining the liquidating index value.*

Cash-Out Privilege

904F. The holder of an Equity Index Participation *who has not exercised the delivery privilege with respect to such Participation* shall have the right to obtain on each cash-out time, *upon exercise* in accordance with the Rules of The Options Clearing Corporation, the [closing] *liquidating* index value of [the specific] *such* Equity Index Participation. [The deadline for exercising the cash-out privilege will be determined and made public by the Exchange before the beginning of the quarter.]

Delivery Privilege

Rule 905F. The Holder of one or more delivery units that has not exercised the cash-out privilege with respect to such units shall have the right to obtain on each delivery time, upon exercise of one or more full delivery units in accordance with the Rules of the Options Clearing Corporation, the physical delivery of the proportionate number of shares of each stock comprising the underlying index, subject to the following conditions:

(a) The number of shares of each stock to be delivered shall be calculated separately for each delivery unit exercised.

(b) If the number of shares of a particular stock would amount to less than ten full shares, the cash value of such shares shall be paid to the exercising holder rather than physical delivery of shares.

(c) The number of shares of each stock to be delivered shall be rounded down to the nearest whole share and no partial shares will be delivered; the cash value of partial shares shall be paid to the exercising holder.

(d) If any component stock does not open for trading on the primary market for such stock on the trading day for which opening prices are used to calculate the liquidating index value, the cash value of the proportionate number of shares of such stock which would otherwise be deliverable shall be paid to the exercising holder rather than physical delivery of shares.

(e) In all cases where the cash value of shares is to be paid to the exercising holder in lieu of physical delivery of shares, as above provided, such cash value shall be established by using the same prices for such shares as are used in calculating the liquidating index value for the particular class of Equity Index Participations.

(f) The holder of a delivery unit who exercises the delivery privilege with respect thereto shall pay a delivery fee, in an amount to be established by the Exchange from time-to-time and announced prior to the beginning of the quarter to which it is applicable, which fee shall be paid to the party making physical delivery of the shares in respect to such delivery unit.

Payment or Delivery Upon Exercise

906F. (a) Except as provided in paragraph (b) of this Rule, a person maintaining a short position in a class of Equity Index Participations and who is assigned a notice of exercise with respect thereto pursuant to Rule 910F, shall be obligated, in accordance with the Rules of the Options Clearing Corporation, to pay to the Options Clearing Corporation the liquidating index value of the Equity Index Participation or Participations so assigned.

(b) A person maintaining a short position in a class of Equity Index Participations equal to or in excess of the delivery unit for such class may notify the Options Clearing Corporation, in accordance with these Rules and the Rules of the Options Clearing Corporation, prior to any delivery time, of such person's desire to make physical delivery of shares of the stocks comprising the index underlying such class of Equity Index Participations if assigned a notice of exercise. In the event such person is assigned a notice of exercise for a delivery unit, he shall be obligated to make physical delivery of the shares of the stocks comprising the underlying index and to pay the cash amounts calculated in accordance with Rule 905F to the Options Clearing Corporation. Assignments of notices of exercise providing for physical delivery of shares of underlying stocks shall be made only on the basis of whole delivery units. Any portion of a person's short position in a class of Equity Index Participations not terminated by an assignment of notice of exercise of a delivery unit shall be subject to assignment of an exercise notice requiring the payment of cash as provided in paragraph (a) of this Rule.

Position Limits

Rule [905F.] *907F.* In determining compliance with Rule 904, Equity Index Participations shall be subject to a position limit of 15 million Equity Index Participations with respect to [any particular underlying index] *each separate class.*

Exercise Limits

Rule [906F.] *908F.* In determining compliance with Rule 905, exercise limits applicable to Equity Index Participations shall be equivalent to the position limit of set forth in Rule [905F] *907F.*

Reporting of Equity Index Participation Positions

Rule [907F.] *909F.* In determining compliance with Rule 906, each member and member organization shall file with the Exchange a report with respect to each account in which the member or member organization has an interest, each account of a partner, officer, director or employee of the member organization, and each customer account, which has established an aggregate position of 200,000 Equity Index Participations (whether long or short) [covering the same underlying index] *of any particular class.*

Exercise of Delivery or Cash-Out Privilege

Rule [908F.] *910F.* (a) Notice of exercise of the Equity Index Participation *delivery or* cash-out privilege must be provided by a holder of an Equity Index Participation on or before a time specified and made public by the Exchange and which is in accordance with the Rules of The Options Clearing Corporation. Specific exercise cut-off times will also be delineated for Exchange member organizations. *The deadline for exercising the delivery or cashout privilege in respect of a class of Equity Index Participations shall be announced by the Exchange prior to the beginning of the quarter to which it is applicable.* An exercise notice may be tendered to the Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the Equity Index Participation is carried. Members and member organizations shall establish fixed procedures not inconsistent with the rules and policies of the Exchange and The Options Clearing Corporation, as to the latest hour at which they will accept exercise notices from their customers.

(b) A person maintaining a short position of one or more delivery units of a class of Equity Index Participations and that desires to make physical delivery of securities if assigned an exercise notice, must provide notice on or before a time specified by the Exchange prior to each exercise time in accordance with the Rules of the Options Clearing Corporation.

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[(b)] (c) The term "exercise instruction," with respect to a customer, means the notice given to a member organization to exercise an Equity Index Participation. All such exercise instructions must be time stamped at the time they are prepared by the receiving member organization.

Notwithstanding the foregoing, member organizations may receive exercise instructions after the exercise cut-off time but prior to the *delivery or* cash-out time (i) in order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange Equity Index Participation transactions, or (iii) where exception circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such time warrant such action.

Allocation of Equity Index Participation Exercise Notices

Rule [909F.] *911F.* (a) Each member organization shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in Equity Index Participations in such member organization's customers' accounts. *Notices to exercise the delivery privilege shall be allocated, prior to allocation of notices to exercise the cash-out privilege, to persons that have provided notice of a desire to make physical delivery of shares of the stocks comprising the underlying index, if assigned. All* such allocations shall be made on a "first-in, first-out" or automated random selection basis that has been approved by the Exchange or on a manual random selection basis that has been specified by the Exchange. Each member organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for stock options will be deemed to apply to the allocation of exercise notices for Equity Index Participations.

(b) Each member organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no member organization shall change its method of allocation unless the change has been reported to and approved by the Exchange.

(c) Each member organization shall preserve for a three-year period sufficient workpapers and other documentary materials relating to the allocation of exercise assignment notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

Physical Delivery Facilitators

Rule 912F. (a) In the event that the number of delivery units of a particular class of Equity Index Participations for which exercising holders have requested physical delivery exceeds the number of delivery units of such class made available by persons with short positions, a physical delivery facilitator designated by the Exchange, upon notification by the Options Clearing Corporation, shall make delivery, in accordance with rules and procedures of the The Options Clearing Corporation, to holders of Equity Index Participations exercising the delivery privilege of the number of shares of each component stock that is required to be delivered at delivery time, as provided in Rule 905F.

(b) The Exchange may designate one or more member organizations, from among those making application for the privilege, to perform the functions of physical delivery facilitator, as provided in paragraph (a) of this Rule, for each class of Equity Index Participations traded on the Exchange. The specialist unit for a class of Equity Index Participations may be designated as physical delivery facilitator for such class.

Bids and Offers

Rule [910F.] *913F.* All bids and offers made on the trading floor for Equity Index Participations shall be deemed to be for one unit of trading unless a specified greater number is expressed in the bid or offer. A bid or offer for more than a unit of trading of Equity Index Participations shall be deemed to be for the amount thereof or a smaller number of units of trading. The unit of trading in Equity Index Participations shall be 100 Equity Index Participations unless otherwise designated by the Exchange.

Commentary .01 Transactions in Equity Index Participations may be effected until 4:15 each business day.

Limitation of Exchange Liability

Rule [911F.] *914F.* Neither the Exchange, the Reporting Authority nor any Agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current index value or the [closing] *liquidating* index value, [and] tracking dividend payout dates, [or] computing proportionate dividend *equivalent* payouts, *reporting the component stocks of an underlying stock index, or calculating the number of shares of component stocks to be delivered or the amount of cash to be paid to holders in connection with an exercise of the delivery privilege,* resulting from an act, condition or cause beyond the reasonable control of the Exchange or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission or delay in the reports of transactions in one or more underlying securities; or any error, omission or delay in the reports of the current index value, or the [closing] *liquidating* index value by the Exchange or the Reporting Authority.

S&P 500 Index. Rule [912F] *915F.* Standard & Poor's Corporation ("S&P") has licensed the Exchange to use the S&P 500 Index for purposes of trading in Equity Index Participations. S&P has indicated that, while S&P shall obtain information for inclusion in or for use in the calculation of the S&P 500 Index from sources which S&P considers reliable, S&P does not guarantee the accuracy and/or the completeness of the S&P 500 Index or any data included therein. S&P and the Exchange make no warranty, express or implied, as to results to be obtained by any person or entity from the use of the S&P 500 Index or any data included therein in connection with the rights licensed or for any other use. S&P and the Exchange make no express or implied warranties, and disclaim all warranties of merchantability or fitness for a particular purpose with respect to the S&P 500 Index or any data included therein.

Reserved Authority. Rule [913F] *916F.* The Exchange may, upon notice of at least one year, require the holders of and obligors on outstanding Equity Index Participations [based on a] *of any* particular [index] *class* to settle their contracts at the [closing] *liquidating* index value determined [by] *as of* a designated *delivery or* cash out time under the following circumstances:

(i) In the event of insubstantial trading activity in Equity Index Participations *of such class* or other exceptional circumstances as determined by the Exchange, in its discretion, or

(ii) In the event that any agreement pursuant to which the Exchange is licensed to use a particular index for trading Equity Index Participations is terminated, and no other market exists for Equity Index Participations based on such index.

* * *

Margin Accounts. Rule 462 (a) though (d)7—No change.

462(d)8. Equity Index Participations. The margin which must be maintained in margin accounts of customers, whether members, partners of members, member firms, member corporations or stockholders therein or non-members shall be as follows:

1. 25% of the market value of all "long" Equity Index Participation positions in the account plus;

2. 30% of the market value, in cash, of each "short" Equity Index Participation position in the account;

3. No margin need be required in respect of an Equity Index Participation carried "short" in a customer's account when the customer has *executed and* delivered to the member organization carrying the account [a letter of guarantee] *an escrow receipt* meeting the requirements of Rule [610] *1909* of the Options Clearing Corporation. [certifying that the guarantor holds for the customer as security for the letter 1) cash, 2) cash equivalents, 3) one or more qualified securities, or 4) a combination thereof, that such deposit has a market value, computed as of the close of each business day in which the "short" position is carried in the customer account, of not less than 130% of the aggregate current market value of the Equity Index Participations, and that the guarantor will promptly pay the member organization the exercise settlement amount in the event the account is assigned an exercise notice. A qualified security has the meaning specified in Rule 462 Commentary .04.]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex has proposed specific rules applicable to two Equity Index Participation ("EIP") securities based on the Major Market Index ("XMI") and the S&P 500 Index. (See Securities Exchange Act Release No. 25664, May 5, 1988; Securities Exchange Act Release No. 25942, July 25, 1988).

The Exchange is amending its proposal to permit EIP holders to receive actual physical delivery of shares of the component stocks of the underlying index upon exercise of a specified minimum number of EIPs. Physical delivery would be permitted once each quarter on the day coinciding with "triple-witching" options expiration date on the third Friday of March, June, September, and December ("Exercise Friday"). The cash-out alternative also would be permitted on such dates, as originally proposed.

The Exchange believes a physical delivery feature will provide certain large EIP holders and sellers with greater market and investment flexibility, particularly in conjunction with other hedging vehicles, and the Exchange's discussions with industry participants indicate that a physical delivery feature would be attractive to such investors. Institutional investors are acquiring "market baskets" of securities replicating indexes and physical delivery of EIPs could serve as a convenient means of acquiring such baskets. Similarly, certain institutional investors may find it attractive to make physical delivery to holders. While the Exchange believes that a physical delivery feature adds to the attractiveness and flexibility of EIPs, the Exchange does not anticipate that the number of exercises for physical delivery will be so great as to have a significant impact on market prices for individual stocks.

The Exchange is further amending its filing to modify proposed Rule 900F regarding the applicability of certain options rules to EIPs trading; to make technical modifications to certain EIPs rules as originally proposed; and to amend proposed Rule 462(d) relating to EIPs margin requirements.

"Delivery privilege" and exercise notices. The "delivery privilege" will be permitted for EIP holders that submit notice of exercise of the minimum number of EIPs—the "delivery unit"—specified by the Exchange for exercise of the delivery privilege. The Exchange anticipates that it will require holders to submit notice for physical delivery in minimum delivery units of 50,000 EIPs per unit for the S&P 500 Index, and 25,000 EIPs per unit for the XMI, or in multiple delivery units. The Exchange believes that permitting exercises for physical delivery in quantities below these levels would be impractical because of the minute number of shares of individual stocks that would be deliverable. Sellers that desire to make physical delivery if assigned must give timely notice in advance of each exercise date, and must maintain a short EIP position of one or more delivery units in order to be eligible for assignment of an exercise calling for physical delivery. All exercise notices by EIP holders, and notices by persons with short positions desiring to make physical delivery if assigned, must be delivered to the Options Clearing Corporation ("OCC") no later than the time specified in OCC Rules.

Assignment of exercise notices. Exercise notices requesting physical delivery of one or more delivery units will be assigned first, on a random basis, to those short positions having given notice of desire to make physical delivery. If the number of delivery units for which holders have tendered exercise notices is less than the number of delivery units offered by persons having short positions, the unassigned short positions will be included in the pool for random assignment of exercises of the cash-out privilege. All cash-out exercise notices will be randomly assigned to remaining short positions, after assignment of all physical delivery exercise notices.

Liquidating index value. EIPs exercised for cash will be settled on the basis of the liquidating index value which will be calculated after the close on Exercise Friday. Such value will be based on the primary market opening prices for component index securities on Exercise Friday. The price of any stock that fails to open for trading on Exercise Friday will be based on the closing price on the last preceding day on which it traded on the primary market for such stock. Any person holding a short position in a class of EIPs and assigned an exercise notice will be required to pay the liquidating index value for such class of EIPs.

Determination of physical delivery composition. The Exchange will announce the stocks, and numbers of shares of each required to be delivered in satisfaction of a physical delivery exercise after the close of the market on the Exchange business day preceding Exercise Friday. The number of shares of each stock to be delivered will be

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rounded down to the nearest whole share with partial shares being settled for cash. S&P 500 component stocks requiring delivery of fewer than 10 shares will also be settled for cash. In addition, any stock, including those which would require delivery of less than 10 shares, failing to open on Exercise Friday will be settled for cash. The prices of all such shares to be settled for cash will be determined in the same manner as the prices used for determining the liquidating index value of EIPs that are exercised for cash.

The exercising holder will also pay a fee, established by the Exchange, for physical delivery of each delivery unit, to be paid over to the person making physical delivery of such unit.

If the number of delivery units for which holders have requested physical delivery exceeds the number of units made available for delivery by persons with short positions, an Exchange designated "physical delivery facilitator" will assume responsibility for delivering the physical shares with respect to such excess number of units. The facilitator, who may either deliver shares out of inventory, buy shares at the opening on Exercise Friday or borrow shares (possibility against hedged positions in other markets), will be compensated for such deliveries out of the proceeds received from shorts who have been assigned exercise notices. Such compensation will be based on the same share prices that are used for calculating the liquidating index value for cash settled exercises. The Exchange contemplates that initially it will designate only a single facilitator for each class of EIPs and that in each case the facilitator may be the specialist unit for such class of EIPs. After gaining experience with physical delivery, the Exchange may determine it to be appropriate to designate multiple facilitators for each class of EIPs.

Other changes. The Exchange also is amending its filing to clarify some of the technical aspects to EIPs trading. Specifically, (1) proposed Rule 900F has been amended to add Amex Options Rules 902 (Rights and Obligations of Holders and Writers) and 953 (Acceptance of Bid or Offer) incorporating certain rules of the OCC into rules applicable to EIPs trading; (2) Rule 981 (Allocation of Exercise Notices) has been deleted because the allocation of EIPs exercise notices are specifically discussed in proposed Rule 911F; (3) proposed Rule 903F has been amended to describe the manner of calculating the "liquidating index value"; and (4) proposed Rule 462 dealing with margin requirements for short positions in EIPs has been amended to require the delivery of an executed escrow receipt that will meet the requirements of OCC Rule 1909.

In addition, the filing is being amended to clarify that bids and offers for EIPs will be quoted in decimals rather than in fractions. The Exchange believes use of decimals will allow the differential between the bid and offer to be narrower, thus fostering tighter and better markets.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objective(s) of section 6(b)(5) in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has discussed the proposed amendments with the OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Annex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secertary, Securities and Exchange Commission, 540 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal officer of the Amex. All submissions should refer to the file number in the caption above and should be submitted by November 30, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 2, 1988.

[FR Doc. 88-25865 Filed 11-8-88; 8:45 am]

BILLING CODE 8010-01-M

Release No. 34-26240; File No. SR-NASD-88-12

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Adoption of Rules Designed To Implement the Provisions of the Government Securities Act of 1986

The National Association of Securities Dealers, Inc. ("NASD") submitted on April 5, 1988, and amended on September 26 and October 18, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. Pursuant to the provisions of the Act, as amended by the Government Securities Act of 1986 ("GSA"), the amended proposal adopts new rules that permit the NASD to enforce compliance by its members and persons associated with those members, with the provisions of the Act in connection with transactions by members in government securities.[1] The amended proposal also revises the NASD's By-Laws to prescribe standards for the admission of government securities brokers and dealers as members of the NASD, and to provide for the registration with the NASD of principals and representatives who: (1) Engage in government securities business on behalf of government securities brokers or dealers, and (2) have not previously been registered with the NASD as principals or representatives.[2]

The new government securities rules require members, with respect to transactions in government securities, to: (1) Maintain adequate books and records; (2) establish and enforce procedures to ensure proper supervision of persons associated with members; (3) reduce or refrain from expanding their operations if their liquid capital falls below prescribed levels, or "for any other financial or operational reason"; (4) obtain the written approval of the NASD prior to operating in a manner that either changes their exemptive status from an introducing firm to a firm that carries customer accounts under Commission rule 15c3-3, or disqualifies them from exemption under that rule; and (5) file all advertising concerning government securities with the NASD, subject to review according to standards specified in the rules. To ensure the enforcement of the Act and rules thereunder with respect to transactions in government securities, the rules further set forth procedures pursuant to which customers of members or the NASD itself may file complaints against members with the NASD's District Business Conduct Committee. The rules further require members to report to the NASD regarding any matter that is the subject of an NASD investigation or hearing, and to permit the NASD to inspect the members' books and records as the inspection of members' books and records and the prohibition of fraudulent, misleading, deceptive, or false advertising (*see* section 15A(f)(2) of the Act). (In the areas of financial responsibility, protection of investors' securities and balances, recordkeeping, and reporting and audit of government securities brokers and dealers, the GSA empowers the Department of the Treasury to adopt rules and regulations; these rules and regulations are to be enforced by the NASD and by the Commission. Sections 15(c)(1) and 19(g)(1)(B) of the Act.)

[1] Prior to the enactment of the GSA, section 15A(f) of the Act prohibited the NASD from adopting and enforcing compliance with its own rules in connection with transactions by members in government securities. The GSA, however, amended section 15A(f) of the Act to empower the NASD to adopt and implement rules to govern transactions in government securities, provided those rules are designed to enforce compliance with the provisions of the Act and the rules and regulations thereunder, or to further other NASD oversight objectives such

Continued

[2] The GSA imposes, for the first time, the requirements of Commission registration upon brokers and dealers, other than financial institutions, that engage exclusively in transactions in government securities ("sole government securities brokers and dealers") (*see* section 15C(a)(2)(A) of the Act). Accordingly, as "registered broker[s] or dealer[s]" under the Act, these sole government securities brokers and dealers may effect transactions in over-the-counter securities only if they are members of the NASD (section 15(b)(8) of the Act).

In connection with an investigation, a determination as to the filing of a complaint, or a hearing on a complaint. Finally, the rules prescribe sanctions for violation of the Act and rules thereunder in connection with transactions in government securities.

Notice of the propsed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25871, June 30, 1988) and by publication in the **Federal Register** (53 FR 25558, July 7, 1988). No letters of comment were received. On September 26 and October 18, 1988, respectively, the NASD filed amendments to its proposal. The Commission did not solicit comment on those amendments because they either conformed the language of the government securities rules and NASD By-Laws to the original intent of the NASD drafting committee or incorporated into the government securities rules new provisions that had been approved by the Commission pursuant to section 19(b)(2) of the Act and added to the NASD's Rules of Fair Practice since the drafting of the government securities rules.[3]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations therunder applicable to the NASD and, in particular, the requirements of sections 15, 15A, 15C and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

[3] The amendments clarify that: (1) The NASD's authority to adopt the government securities rules derives from section 15A(f)(2) of the Act (Government Securities Rules, section 1); (2) the registration requirements applicable to government securities principals and representatives apply only to those principals and representatives not previously registered as such with the NASD (NASD By-Laws, Schedule C, Article X, sections 1(a) and (b) and 2(a) and (b); and (3) the "early warning rule" requires a member to restrict its business when the member's liquid capital falls below certain levels *after deduction of ownership equity, together with maturities of subordinated debt scheduled during the following six months* (Government Securities Rules, sections 6(b)(1)(C) and 6(c)(1)(C)). Finally, the amendments provide that there is no ceiling on the amount of a fine the NASD may impose on a member or person associated with a member for violation of the Act and rules thereunder in connection with a transaction in government securities (Government Securities Rules, section 12(2)).

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: November 2, 1988.

[FR Doc. 88-25864 Filed 11-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16623; 811-2311]

California Fund for Investment in U.S. Government Securities, Inc.; Notice of Application

November 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: California Fund for Investment in U.S. Government Securities, Inc.

Relevant 1940 Act Section: Order requested under section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on February 23, 1988 and amended on September 20, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2499 West Shaw Avenue, Fresno, CA 93711.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

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SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end diversified management company which registration statement under the Securities Act of 1933 on November 9, 1972. Applicant's registration statement became effective in December of 1972, at which time Applicant commerced offering its shares.

2. On September 18, 1987 Applicant's Board of Directors adopted a plan of liquidation. Proxy material was sent to Applicant's stockholders on November 16, 1987, and on December 14, 1987 the holders of a majority of Applicant's outstanding shares approved the proposal to liquidate and dissolve Applicant.

3. On September 18, 1987 Applicant's Board of Directors established a reserve for liquidation expenses of $12,000, which reduced Applicant's net asset value per share. All liquidation expenses were paid from the reserve, which expenses were allocated as follows: Auditing, $10,500; legal, $700; SEC, $125; printing proxy, $250; shareholder meeting, $100; miscellaneous, $325.

4. At December 16, 1987 Applicant had outstanding 115,000 shares of capital stock with a asset value per share of $8.35, on which date a liquidating dividend of $8.35 per share was distributed to all shareholders of record. Applicant filed a Certificate of Dissolution with the California Secretary of State on December 31, 1987.

5. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

6. Applicant has no assets, debts or liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, has no remaining securityholders and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

7. On February 29, 1988 Applicant filed its Form N–SAR for the period ending December 31, 1987.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25867 Filed 11–8–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16620; File No. 812–7070]

North American Life And Casualty Co., et al.

November 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: North American Life and Casualty Company (the "Company"), NALAC Variable Account B ("Variable Account B") and NALAC Financial Plans, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction from the assets of Variable Account B of a mortality and expense risk charge.

Filing Date: The application was filed on July 18, 1988. Amendments were filed on September 8, 1988 and September 19, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on November 28, 1988. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549; North American Life and Casualty Company, NALAC Variable Account B and NALAC Financial Plans, Inc., 1750 Hennepin Avenue, Minneapolis, Minnesota 55403.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272–3450; Clifford E. Kirsch, Special Counsel, at (202) 272–2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's Commercial Copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Company is a stock life insurance company organized under the laws of the state of Minnesota and is a wholly-owned subsidiary of Allianz Versicherunga-AG. The Company established Variable Account B on May 31, 1985 pursuant to the provisions of Minnesota insurance law. Variable Account B is a segregated investment account of the Company and is registered as a unit investment trust pursuant to the provisions of the 1940 Act.

2. The Company proposes to offer individual flexible payment variable annuity contracts (the "Contracts") which are available for both qualified and Non-Qualified Retirement Plans under the Internal Revenue Code. The purchase payments under the Contracts will be allocated to Variable Account B. Variable Account B is divided into Sub-Accounts. Each Sub-Account is invested solely in the shares of one of the Funds of Franklin Valuemark Annuity Funds (the "Trust"), a trust registered under the Act as a diversified open-end management investment company. The Contracts will be distributed through the principal underwriter, NALAC Financial Plans, Inc., a wholly-owned subsidiary of the Company.

3. The Company will deduct an annual Contract Maintenance charge of $30 from the Contract Value of each Contract Anniversary, and an Administrative Expense Charge, equal on an annual basis to .15% of the average daily net assets of Variable Account B, on each Valuation Date. These charges are designed to reimburse the Company for the expenses it incurs in the establishment and maintenance of the Contracts and Variable Account B. Applicants intend to rely upon Rule 26a–1 with respect to the deduction of the Contract Maintenance Charge and the Administrative Expense Charge. The Applicants represent that the Administrative Expense Charge will be reduced in the future to the extent that the amount of this charge is in excess of that necessary to reimburse the Company for its administrative expenses.

4. The Contracts do not provide for a front-end sales charge to be deducted from purchase payments. Instead, if all or a portion of the Surrender Value is surrendered, a Contingent Deferred Sales Charge (sales load) will be calculated at the time of each surrender and will be deducted from the Contract Value. The Contingent Deferred Sales Charge applies only to those purchase payments received within five (5) years of the surrender. In calculating the Contingent Deferred Sales Charge, purchase payments are allocated to the amount surrendered on a first-in, first-out basis. The amount of the Contingent Deferred Sales Charge is calculated by: (a) Allocating purchase payments to the amount surrendered; and (b) multiplying each allocated purchase payment that has been held under the Contract for the period shown below by the charge shown below:

Years since payment	Charge (percent)
0–1	5
1–2	5
2–3	4
3–4	3
4–5	1.5
5+	0

and (c) adding the products of each multiplication in (b) above. A Contrct Owner may, not more frequently than once annually on a cumulative basis, make a surrender each Contract Year of fifteen (15%) percent of purchase payments paid less any prior surrenders without incurring a Contingent Deferred Sales Charge. In no event will the aggregate Contingent Deferred Sales Charge exceed 9% of the total purchase payments made.

5. The Company proposes to assess each Sub-Account of Variable Account B with daily charges for mortality and expense risks which amount to 1.25% per annum (consisting of approximately .90% for mortality risks and approximately .35% for expense risks). The mortality risk assumed by the Company arises from its contractual obligation to make annuity payments after the Income Date for the life of the Annuitant in accordance with the annuity rates guaranteed in the Contracts. The expense risk assumed by the Company is that all actual expenses involved in administering the Contracts, including Contract maintenance costs, administrative costs, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount received from the Contract Maintenance Charge and the Administrative Expense Charge. If the mortality and Expense Risk Charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The Company expects a profit from this charge. The Mortality and Expense Risk Charge is guaranteed by the Company and cannot be increased.

6. Applicants represent that the 1.25% total which the Company proposes to charge for the Mortality and Expense Risk Charge is within the range of industry practice for comparable annuity products. Applicants' representations are based upon an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, the expense risks taking into account the existence of charges against separate account assets for other than mortality and expense risks and the estimated costs, now and in the future, for certain product features as well as an examination of comparable annuity products. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail this analysis.

7. Applicants acknowledge that the Contingent Deferred Sales Charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the Mortality and Expense Risk Charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Contingent Deferred Sales Charge. In such circumstances a portion of the Mortality and Expense Risk Charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Variable Account B and the Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commisison.

8. The Company represents that Variable Account B will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25868 Filed 11–8–88; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Greyhound-Dobbs Incorporated, 14% Senior Notes, Due 1994, New York Stock Exchange) File No. 1–6242

November 2, 1988.

Greyhound-Dobbs Incorporated ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to remove the above specified securities from listing and registration on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

As of October 4, 1988, there was $40,000,000 of the Company's 14% Senior Notes, due 1994, ("Notes") outstanding. As of that date there were three title holders of record and nineteen beneficial holders. The Depository Trust Company ("DTC") is one of the holders of record on behalf of the 19 beneficial holders. Since January 1, 1988, there has been no trading on the Exchange that the applicant has been able to discover. The only trading in the Notes the Company is aware of is between beneficial holders within the DTC. The trading data the Company has gathered establishes that there is little public interest in trading the Notes. Because of the small number of holders, the Company believes it is unlikely that any significant trading will occur in the future.

Any interested person may, on or before November 23, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the

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Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25924 Filed 11-8-88; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (MGI Properties, Common Stock, $1 Par Value, American Stock Exchange) File No. 1-6833

November 2, 1988.

MGI Properties ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company recently listed and registered this security on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common shares from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common shares on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its shares and believes that dual listing would fragment the market for its common shares.

Any interested person may, on or before November 23, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25925 Filed 11-8-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Haskell and Latimer Counties, OK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Haskell and Latimer Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Frank N. Cunningham, Assistant Division Administrator, Federal Highway Administration, 200 NW. Fifth Street, Room 454, Oklahoma City, Oklahoma 73102, Telephone: (405) 231-4725.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oklahoma Department of Transportation (ODOT), will prepare an environmental impact statement (EIS) on a proposal to construct a new highway between Red Oak in Latimer County and Lequire in Haskell County. The proposed new highway, to be designated as State Highway 82 (SH 82), would be a two-lane facility beginning at US Route 270 near Red Oak and extending northward approximately 13 miles to State Highway 31 near Lequire.

The proposed SH 82 would link the communities of Red Oak and Lequire as well as surrounding areas now separated by a natural barrier, the Sansbois Mountains. Currently, all highway users in this area are forced into circuitous travel (up to 50 miles) due to the lack of a connecting facility. Alternatives under consideration include taking no action and several build alternates. The build alternates will consider several locations and designs to address both the transportation needs of the area and any possible social, economic, and environmental effects of building the proposed new highway.

Letters describing the proposed action and soliciting comments have previously been sent to appropriate Federal, State, and local agencies during the Environmental Assessment stage of environmental processing. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 2, 1988.

Frank N. Cunningham,

Assistant Division Administrator, Oklahoma City, Oklahoma.

[FR Doc. 88-25883 Filed 11-8-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Treasury Customs; Commercial Operations Advisory Committee

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Announcement of Membership and First Meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

SUMMARY: This notice announces the membership of the Treasury Advisory Committee on Customs Commercial Operations and sets the date of the Committee's first meeting.

DATE: The first meeting of the Advisory Committee is set for December 16, 1988, at 9:30 a.m. in Room 4121 of the Department of Treasury, 1500 Pennsylvania Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis O'Connell, Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4004, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566-8435.

SUPPLEMENTARY INFORMATION: On March 29, 1988, Treasury published in the **Federal Register** (53 FR 10183) a Notice of the establishment, in accordance with section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), and the Federal Advisory Committee Act, of an Advisory Committee on Commercial Operations of the United States Customs Service, in order to advise the Secretary of the Treasury on issues relating to the commercial operations of the Customs Service. The Committee's Charter has been filed with the General Services Administration, the Library of Congress, and the appropriate Houses of Congress for a two-year term effective October 17, 1988.

Membership

The March 29, 1988 Notice also solicited membership for the Committee. The selection process and background checks have been completed and Treasury announces that the following persons have been requested to serve on the Committee:

Robert J. Aaronson, The Port Authority of New York and New Jersey
Myles J. Ambrose, Ross & Hardies Law Offices
Lana R. Batts, American Trucking Association
Fermin Cuza, Mattel Toys
David W. Danjczek, Litton Industries
Alfred R. DeAngelus, Logic International, Inc.
Harvey A. Isaacs, Siegel, Mandell & Davidson, P.C.
Richard J. Judy, Dade County Aviation Department
James E. Landry, Air Transport Association of America
Arthur L. Litman, Castelazo & Associates
Eugene J. Milosh, American Association of Exporters and Importers
Stanley Nehmer, Economic Consulting Services, Inc.
David H. Phelps, American Iron and Steel Institute
John J. Robinson, Association of American Railroads
Jerry D. Rucker, Dooley, Rucker, Maris & Foxman
Robert P. Schaffer, Price Waterhouse
William H. Stine, National Business Aircraft Association, Inc.
Gary S. Taylor, American President Companies, Ltd.
Peter Tower, C.J. Tower & Sons Customhouse Brokers
Paul F. Wegener, M.G. Maher & Company, Inc.

First Meeting

The first meeting has been set for December 16, 1988, commencing at 9:30 a.m. in Room 4121, at the Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC. The agenda for this first meeting is to identify initial issues for discussion and to set procedures for the conduct of the Committee.

The meeting is open to the public. Owing to the security procedures in place at the Treasury Building, it is necessary for anyone planning to attend the meeting to call in advance in order to be admitted to the building. Persons other than Advisory Committee members who plan to attend should contact Dennis O'Connell at (202) 566-8435 no later than 5 working days prior to the meeting in order to be admitted to the building for the meeting.

Dated: October 25, 1988.

Gerald L. Hilsher,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88-25869 Filed 11-8-88; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Recordation of Trade Name: "J & J America, Inc."

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Recordation.

SUMMARY: On July 19, 1988, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "J & J AMERICA, INC," was published in the **Federal Register** (53 FR 27258). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views or arguments submitted in writing by any person in opposition to the recordation and received not later than September 19, 1988. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14 Customs Regulations (19 CFR 133.14), the names "J & J AMERICA, INC," is recorded as the trade name used by J & J America, Inc., a corporation organized under the laws of the State of Florida, located at 11401 SW. 40th Street, Miami, Florida 33165.

The trade name is used in connection with the following merchandise manufactured in Korea: Textiles; textile products; fabrics; ladies handbags; luggage; audio/visual equipment; televisions; video camera recorders; electronic accessories; sporting goods; womens fashion accessories and costume jewelry.

FOR FURTHER INFORMATION CONTACT: Bettie Coombs, Value Special Programs and Admissibility Branch, 1301 Constitution Ave., NW., Washington, DC 20229 (202) 566-5765.

Dated: October 31, 1988.

Marvin M. Amernick,

Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 88-25876 Filed 11-8-88; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 1, 1988.

By direction of the Administration.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Office of Acquisition and Materiel Management.
2. Application for United States Flag for Burial Purposes.
3. VA Form 90-2008.
4. The form is used to apply for a United States burial flag for a deceased veteran. In many cases, this form also provides the Government with the first notice of death of the veteran.
5. On occasion.
6. Individuals or households.
7. 386,000 responses.
8. 96,500 hours.

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9. Not applicable.

[FR Doc. 88-20849 Filed 11-8-88; 8:45 am]
BILLING CODE 8320-01-M

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503 (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 1, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Veteran's Application for Increased Compensation Based on Unemployability.
3. VA Form 21-8940.
4. The form is used to gather information for a claim for increased disability compensation based on individual unemployability due to the veteran's service-connected disability(ies).
5. On occasion.
6. Individuals or households.
7. 18,000 responses.
8. 13,500 hours.
9. Not applicable.

[FR Doc. 88-25850 Filed 11-8-88; 8:45 am]
BILLING CODE 8320-01-M

Availability of Report of 38 U.S.C. 219 Program Evaluation

Notice is hereby given that the Surgical Program Evaluation has been completed.

Single copies of the Surgical Program Evaluation Report are available. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mr. Joseph W. Bauernfeind, Acting Director, Studies and Evaluation Service, Veterans Administration (072), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: November 2, 1988.

By direction of the Administrator.

H. Raymond Wilburn,

Acting Director, Office of Program Analysis and Evaluation.

[FR Doc. 88-25851 Filed 11-8-88; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 217
Wednesday, November 9, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Correction of Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on October 31, 1988 (53 FR 43966) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for November 1, 1988. This notice is to revise the agenda for that meeting to add two items in the open session.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFROMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, November 1, is revised as follows:

Open Session

1. Summary Prior Approvals;
2. Farm Credit Administration Budget Fiscal Year 1990;
3. Task Force Report on Institution Mergers;
4. Section 433 Reassignments;
5. Effective Interest Rates Governed by Borrowers Rights Regulations;

[1] Closed Session

6. Examination and Enforcement Matters; and
7. Jackson FLB/FLBA, in Receivership.

Dated: November 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-26080 Filed 11-7-88; 3:15 pm]
BILLING CODE 6705-01-M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (6), (8) and (9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:47 a.m. on Wednesday, November 2, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) Assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act; (2) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; (3) a personnel matter; and (4) the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(b)(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 7, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-26051 Filed 11-7-88; 2:40 pm]
BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 15, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, November 17, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1987-31 (Reconsideration):
Terry L. Claassen on behalf of the Chicago Board Options Exchange, Inc.
Proposed Final Rules: 11 CFR 100.7(b)(8), 100.8(b)(9), 110.11(a)(1)(iv)(A), and 114.8(f).
Status of Regulations Projects
Status of Advisory Opinions
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-26052 Filed 11-7-88; 8:45 am]
BILLING CODE 6717-01-M

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federal register

Wednesday
November 9, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

Unapproved Collections of Information; Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing; Notice

BEST COPY AVAILABLE

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-88-1886; FR-2576]

Unapproved Collections of Information; Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice is intended to inform the public that: (1) Certain information collection requirements contained in administrative instructions issued by the Department on the prepayment of mortgages under Subtitle B, Title II of the Housing and Community Development Act of 1987, were not approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Consequently, pending OMB approval, property owners are not required to comply with these information collection requirements, and those owners who have already submitted such documentation as part of their Plans of Action may request its return; and (2) because the Department considers these requirements to be critical to its determination of prepayment eligibility under the 1987 Act, expedited OMB clearance of these information collection requirements has been requested. However, until such time as OMB approval of these requirements is obtained, the Department may not impose a penalty or deny a benefit to a property owner for failure to provide this information.

ADDRESS: Interested persons are invited to submit comments on the information collection requirements contained in this Notice to John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and to the HUD Rules Docket Clerk, Office of General Counsel, Room 10276, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to the proposal by name.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 426–3944. [This is not a toll free number].

SUPPLEMENTARY INFORMATION: On April 5, 1988, the Department published an interim rule (53 FR 11224) setting forth the procedures governing the prepayment of a HUD-held or HUD-insured multifamily mortgage by an owner of eligible low income housing. The rule was precipitated by legislation contained in Title II, Subtitle B of the Housing and Community Development Act of 1987, Pub. L. 100–242, approved February 5, 1988 (1987 Act). The information collection requirements contained in this interim rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

Subsequently, on May 20 and July 14, 1988, the Department issued administrative guidance pertaining to the requirement in the interim rule that an owner file a Notice of Intent to Prepay, and a Plan of Action. (These memoranda are published in their entirety in an Appendix to this Notice).

In order to assess whether a project owner's request for prepayment satisfies the requirements of the 1987 Act, the July 14, 1988 memorandum asked that owners seeking to prepay provide more information in the Plan of Action than had been requested in the interim rule (*see* Items 5 (a) and (b), and 7–10 of the July 14, 1988 memoranda). These additional requirements were not submitted to OMB for review and approval under the Paperwork Reduction Act, and consequently did not display an approved OMB control number.

In addition, the Department's May 20, 1988 memorandum included a sample form entitled, "Owner's Notice of Intent to Prepay." This form, although approved by OMB under the Paperwork Reduction Act, failed to display the approved OMB control number and expiration date.

On October 5, 1988, HUD representatives met with officials from OMB to discuss these unapproved information collection requirements. As a result of this meeting, the following actions were agreed to:

1. Property owners who have already submitted a Plan of Action for review under the 1987 prepayment legislation will be notified by HUD that, pending OMB approval, they are not required to submit information in response to items 5 (a) and (b) and 7–10 contained in the July 14, 1988 memorandum, and that they may withdraw such information if they choose to do so.

2. The Department is submitting to OMB under the Paperwork Reduction Act (44 U.S.C. Chapter 35) an expedited request for approval of the information collection requirements contained in the July 14, 1988 administrative instructions. Because of the statutory 60-day approval deadline for prepayments under the 1987 Act, OMB approval of these requirements has been requested within the next two weeks.

3. The public is advised that the public reporting burden for these collections of information is estimated to average 100 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This Notice lists the folllowing information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 27, 1988.

Samuel R. Pierce, Jr.,

Secretary.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Prepayment of a HUD-Insured Mortgage by an Owner of Low-Income Housing

Office: Housing

Description of the Need for the Information and Its Proposed Use: This information will enable the Department to make an adequate review, analysis and determination that a given Plan of Action for prepayment may be found acceptable i.e., that such Plan meets the standards required by the statute.

Form Number: None

Respondents: Businesses or other for-profit organizations

Frequency of Submission: One-time per project

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
120		1		100		12,000

Total Estimated Burden Hours: 12,000

Status: Revision

Contact: James J. Tahash, HUD, (202) 426–3944; John Allison, OMB, (202) 395–6880

Date: October 27, 1988.

Support Statement for Final Rule—Prepayment of a HUD-Insured Mortgage By An Owner of Low Income Housing

1. This final rule sets forth HUD's procedures governing the prepayment of an insured multifamily mortgage by an owner of low income housing. The rule gives regulatory effect to legislative provisions governing prepayment of HUD-insured mortgages that are contained in Title II of the Housing and Urban Development Act of 1987, entitled "Preservation of Low Income Housing." Congress enacted these provisions as an interim measure to assure that affordable multifamily housing units are preserved to the maximum extent practicable for lower-income families, and that displacement of such families is minimized, while the public and private sectors work together to find long term remedies to the potential loss of affordable housing.

The sections of this legislation governing prepayment, and the final rule will be replaced two years after the date of enactment of this legislation, but will have no effect on action taken or authorized prior to such repeal.

2. In enacting Title II, "Preservation of Low Income Housing," Congress made a number of findings leading to the conclusion that these interim measures are "needed to avoid the irreplaceable loss of low income housing and irrevocable displacement of current tenants." Congress has determined that in the next 15 years, more than 330,000 low income housing units insured under section 221(d)(3) and 236 of the National Housing Act could be lost as a result of the termination of low income affordability restrictions, and that in the next decade more than 465,000 low income housing units produced with assistance under Section 8 of the United States Housing Act of 1937 could be lost as a result of the expiration of the rental assistance contracts executed between project owners and HUD.

An owner of eligible low income housing, therefore, will no longer be able to prepay a mortgage unless the prepayment is first approved by HUD. HUD will only approve a prepayment in accordance with an acceptable plan of action submitted by the owner that discusses the impact of the proposed prepayment on the future use of the involved units and on the lower income tenants. If HUD determines that a mortgage cannot be prepaid, it can still agree to give the owner certain financial incentives to keep the mortgage in place, provided that the incentive is necessary to provide a fair return on the investment of the owner, is cost effective to the Federal Government, and meets statutory criteria designed to protect tenants.

If the project owner and HUD reach preliminary agreement on the terms of a plan of action, the owner will prepare a summary of these terms. Upon HUD's approval of the summary, the owner will send a copy of the summary to each tenant in the project, and will post a copy of the summary in each occupied building in the project. The summary will notify tenants that they have 30 calendar days to submit any comments to HUD who shall take such comments into account before giving final approval to the plan of action.

This new rule governing prepayments reflects provisions mandated by Congress and appears in a new part of the Code of Federal Regulations, 24 CFR Part 248.

3. Information is submitted on a project-by-project basis with no consideration being given to the use of improved information technology to reduce burdens. Further this information collection is not amenable to improved information technology because it is unique to the projects to which it applies. This final rule will largely reflect provisions mandated by statute and that frequently does not provide for agency discretion.

4. Each submission is unique to a particular project and, therefore, the possibility of duplication is almost nonexistent. In reviewing the regulation, however, we are assured that there are no unnecessary duplications therein.

5. Similar information that can be used or modified is not available.

6. Not applicable.

7. This legislation contains a provision for the repeal of this same section governing prepayment two years from the date of enactment of this legislation, at which time the final rule will also be repealed. Congress enacted these provisions as an interim measure to assure that affordable multifamily housing units are preserved to the maximum extent practicable for lower-income families, and that displacement of such families is minimized, while the public and private sectors work together to find long term responses to the potential loss of affordable housing. The final rule largely reflects provisions mandated by statute and that frequently does not provide for agency discretion.

8. There are no special circumstances requiring the collection of information that is inconsistent with the guidelines in 5 CFR 1320.6

9. The interim rule invited interested persons to submit comments on the procedures governing its implementation, and revised its final regulation based on the comments submitted. The Department evaluated the comments in an effort to assist Congress in ultimately establishing long term measures for assuring the existence of an adequate supply of affordable low-income housing units.

10. There are no assurances of confidentiality provided to the respondents. The information collected is not considered confidential.

11. There are no questions being asked that are of a sensitive nature.

12. Estimates of annualized cost to the Federal Government and respondents. It is estimated that it will cost the respondent and the government approximately $15.00 per hour including overhead and support staff.

	Total responses		Hours/response		Cost/hour		Annual cost
Respondents	120	×	100	×	$15	=	$180,000
Government	120	×	40	×	15	=	72,000
							252,000

13. It is further estimated that it will take each project owner 100 hours to complete all of its responsibilities for each project, and the Federal Government 40 hours to complete its responsibilities. The length of time

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required for these functions is based on the experience of Field Office staff and of Headquarters staff who had previously worked in a Field Office.

The project owner will, in the 100 hours time period, file a Notice of Intent, prepare a Plan of Action that includes all of the information required by HUD to make an intelligent and valid evaluation, make necessary revisions to the Plan of Action, and negotiate with HUD regarding any possible incentives extended by HUD. The time and expense also includes notification to tenants when the project owner and HUD have reached preliminary agreement on the terms of the Plan of Action, and the cost and time necessary for duplication, mailing and posting of the summary of the agreement, as well as the cost and time involved in reviewing any comments received.

In addition to the information specifically required by the regulation; further information determined by the Commissioner to be necessary when making valid evaluations and determinations to meet the statutory test for prepayment have also been included as a requirement in the owner's Plan of Action. This information includes: 1. A protection plan to be provided by the owner for very low, low, and moderate income tenants when relocation is necessary (8 hours), 2. an independent market analysis or appraisal of the area providing the specific information requested in the Plan of Action (44 hours), 3. project operating statements (2 hours), 4. a description of any outstanding findings of noncompliance (2 hours), and 5. any other information enabling the owner to show that the criteria can be met (4 hours).

This additional 60 hours is included in the previously mentioned 100 hours necessary to complete all of the project owner's responsibilities for each project actually prepaid, or where there is an attempt to prepay.

The Department must review the Plan of Action for form and content, notify the project owner of any deficiencies in the Plan of Action along with recommendations to correct the deficiencies, be available to negotiate terms of any incentives with the owner, and provide incentives where appropriate.

14. This information collection is the result of the implementation of new statutory requirements. This information has not previously been collected in this format. While it is estimated that 297 projects will be eligible for prepayment by the end of 1989, the Department has determined that only 25 percent or 75 projects will actually prepay or attempt to prepay. Being cautious, however, this request for OMB approval indicates that 40 percent or 120 projects will prepay or attempt to prepay.

15. The information is not being collected for statistical use and will not be published.

PLAN OF ACTION—TABULATION OF ANNUAL REPORTING BURDEN PRESERVATION OF LOW-INCOME HOUSING—24 CFR PART 248

Description of information collection/Applicable program reference	Number of Respondents	x	Responses per Respondent	=	Total Annual Responses	x	Hours per response	=	Total Hours
A protection plan provided by the owner for very low, low and moderate income tenants:									
a. when relocation necessary	120		1		120		4		480
b. to maintain current rent structure	120		1		120		4		480
An independent market analysis or appraisal of the area providing the specific information requested in the Plan of Action	120		1		120		44		5280
Project operating statement	120		1		120		2		240
A description of outstanding findings of noncompliance	120		1		120		2		240
Any other information enabling the owner to show that the criteria can be met	120		1		120		4		480
							60		7200

May 20, 1988.

Memorandum for : All Regional Administrators; Directors of Regional Housing; Managers, Category A, B and C Offices; Directors, Housing Management Division; Loan Management and Assisted Housing Management Branch Chiefs; Valuation Branch Chiefs; and Area Economic and Market Analysts.

From: Thomas T. Demery, Assistant Secretary for Housing, H.

Subject: Prepayment of HUD-Insured Mortgage by an Owner of Low Income Housing.

A. Purpose

To provide guidance and direction addressing the criteria, procedures and time frames governing the prepayment of a multifamily mortgage by an owner of eligible low-income housing, in accordance with the provisions of the *Housing and Community Development Act of 1987*, and HUD's Interim Rule, *Prepayment of HUD-Insured Mortgage by an Owner of Low-Income Housing.*

B. Background

On February 5, 1988, The President signed the *Housing and Community Development Act of 1987.* Title II, Subtitle B of the Act, entitled: "Preservation of Low-Income Housing", provides that an owner of eligible low-income housing is precluded from prepaying the mortgage on such housing unless first approved by HUD. It further provides that HUD cannot approve a prepayment without an acceptable "plan of action", submitted by the owner, that dicusses the impact of such proposed prepayment on the future use of the involved housing units on lower income tenants. This legislation also contains a provision for the repeal of Subtitle B on February 5, 1990.

Congress enacted these provisions as an interim measure to establish criteria needed to avoid the irreplaceable loss of low-income housing and the irrevocable displacement of current tenants, while the public and private sectors work together to find long-term respones to the potential loss of affordable housing.

HUD published an Interim Rule on April 5, 1988, implementing the legislative provisions. The effective date for the rule is May 20, 1988. (*Exhibit 1*; 53 FR 11224).

C. Dates

Effective Date: May 20, 1988.

Expiration Date: Febraury 5, 1990, except for certain actions, as otherwise indicated herein.

D. Applicability

Eligible Low Income Housing—housing financed by a mortgage that is:

1. Insured or Held by the Commissioner under Part 221(d)(3) *and* assisted under Rent Supplement or Part 880, 881, or 886;

2. Insured or Held by the Commissioner under Part 221(d)(3) Below Market Interest Rate;

3. Insured, assisted, or Held by the Commissioner, under Part 236, and subject to a regulatory agreement;

4. A purchase money mortgage held by the Commissioner where, immediately prior to HUD's acquisition, would have been classified under paragraphs 1, 2, or 3 above;

and

Where, by regulation or contract in effect *before* such mortgage *is* or [within one year from the date of the owner's Notice of Intent to prepay] *would become eligible* for prepayment *without the prior approval of the Commissioner.*

At this time, HUD will not accept or process Notices of Intent or Plans of Action for projects which are not eligible to prepay by February 4, 1990.

E. Program Administration

General

HUD will approve prepayment of an eligible mortgage where the owner provides an acceptable "plan of action", and such plan is approved by HUD.

A mortgagee *cannot accept prepayment* without HUD's prior approval. To do so, is grounds for administrative action and legal remedies.

HUD may consult with and enter into agreements with local governments to implement Owners' plans of action and/or State strategies where such have been found acceptable and approved by HUD.

A sequence of steps and actions involved in the prepayment of a mortgage is set forth in the Prepayment Processing Flow Chart (*Exhibit 2*). Each of these steps is described in detail within this package, with instructions for the individual processes and time frames for completion.

Generally, HUD will attempt to make a final determination on a *plan of action* well in advance of the required 300 days from the time of completion, initial receipt.

If HUD determines that a mortgage cannot be prepaid, HUD may agree to certain financial incentives to keep the mortgage in place or to maintain long-term affordability restrictions, or a combination thereof.

F. Processing Procedures

Processing criteria, procedures, and time frames, are included herein and presented in individual packages, inclusive of form letters and notifications for easy and expeditious reference and application. These are identified and presented as follows:

Action	Reference
1. Notice of Intent to Prepay	Exhibit 3
2. Plan of Action	Exhibit 4[1]
Alternative State Strategy	Exhibit 5[1]
4. Incentives to Extend Low-Income Use.	Exhibit 6[1]

[1] These are not attached: they will be forthcoming under seperate cover.

G. Approval Process

Approval of a *plan of action;* a *State strategy; incentives; modifications* to Regulatory Agreements or mortgages; and any *final agreements* implementing such, up to and including prepayment of a mortgage shall be made by HUD Headquarters.

Headquarters will approve and execute such final agreements based on the Field Office's packaged submission, which shall include by not necessarily be limited to:

1. Review and analyses;

2. Consultations between HUD program and technical disciplines, local governments, and other interested parties;

3. Sound and conclusive findings and supporting documentation from qualified, independent analyses, appraisals, etc.; and

4. Recommendations for approval/disapproval decision

H. Compliance

Important

These instructions are effective May 20, 1988. Upon receipt, Field Offices *must* immediately act to follow the procedures outlined, herein. All actions are time-critical, as mandated by statute.

Loan Management Branch Chiefs—immediately: Forward to all owners of eligible mortgages—Notice of Intent to Prepay Letter and Notice (see Exhibit 3)

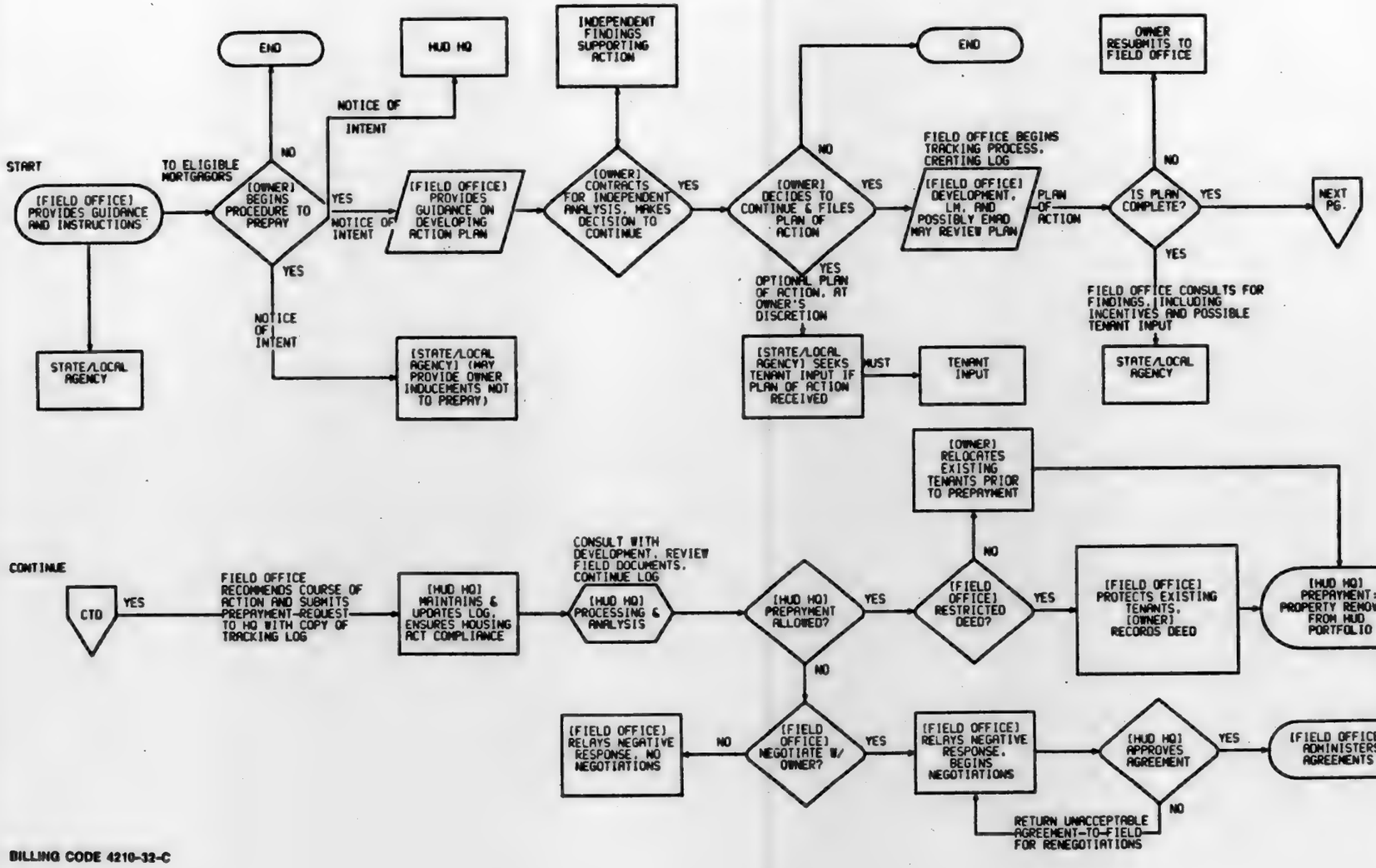
Once this has been accomplished, following the processing procedure and time frames as set forth in the Exhibits for the appropriate actions.

If you have questions or need further clarification or guidance with respect to this memorandum and its content, contact your Desk Officer in the Management Operations Division, Office of Multifamily Housing Management.

BILLING CODE 4210-32-M

Exhibit 2

PREPAYMENT PROCESSING UNDER THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987



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Exhibit 3—Notice of Intent to Prepay

Important—Loan Management Branch Chiefs:

The Rule is effective May 20, 1988. Owners have been aware that they can give Notice beginning on that date.

Notice and Guidance MUST be provided *immediately* to each owner of an eligible mortgage.

There are three (3) attachments to this Exhibit:

(1) Form Letter to Owners;

(2) Owners Intent to Prepay; and

(3) Eligible Projects list.

These have been provided for your use in giving guidance to owners and for receipt of a complete, uniform "Notice of Intent to Prepay" from owners.

The eligible projects list shows those projects which have been identified (by the Field Offices) as being eligible to prepay, by the Rule's definition.

A Letter is to be sent to each project owner on this list.

When you are in receipt of an Owner's *Notice of Intent to Prepay:*

(1) Review for completeness—(if not complete, return with explanation of required information);

(2) (if complete) go to next step—*Plan of Action, Exhibit 4.*

Note: If you should receive a Notice of Intent from an Owner involving a project that is not on the Eligible Projects Lists:

(1) review project file to determine eligibility status;

(2) confirm status with HUD Headquarters, Planning and Procedures Division, FTS 426–3944

(3) take action as directed by HUD Headquarters

May 20, 1988.

Re: Notice of Intent to Prepay.

Dear Owner: On February 5, 1988, the President signed the *Housing and Community Development Act of 1987.* Title II, Subtitle B of the Act, entitled: "Preservation of Low-Income Housing", provides that an owner of eligible low-income housing is precluded from prepaying the mortgage on such housing unless first approved by HUD. It further provides that HUD cannot approve a prepayment without an acceptable "plan of action", submitted by the owner, that discusses the impact of such proposed prepayment on the future use of the involved housing units on lower income tenants. This legislation also contains a provision for the repeal of Subtitle B on February 5, 1990.

Congress enacted these provisions as an interim measure to establish criteria needed to avoid the irreplaceable loss of low-income housing and the irrevocable displacement of current tenants, while the public and private sectors work together to find long-term responses to the potential loss of affordable housing.

HUD published an interim rule on April 5, 1988, implementing the legislative provisions. The rule provides that, upon the effective date, May 20, 1988, an owner of eligible low-income housing who wishes to prepay the mortgage or to change the terms of the mortgage or regulatory agreement shall file a "Notice of Intent".

This letter is to inform you of the requirements in the case that you should elect to seek prepayment or to negotiate changes to the mortgage or regulatory agreement.

The enclosed Notice of Intent has been developed for your use in providing Notice and the required information to HUD. Owners wishing to file must do so simultaneously to three places:

(1) *HUD Field Office* in jurisdiction where the project is located. Attention: Loan Management Branch Chief

(2) *HUD Headquarters*, U.S. Department of Housing and Urban Development, Office of Multifamily Housing Management. Attention: Operations Division, Room 6164, 451 7th Street, SW., Washington, DC 20410–8000

(3) *Appropriate State or local government agency* in jurisdiction where the project is located.

The Notice of Intent MUST provide the following information:

(1) Project Name, Number, and Location;

(2) Description of owner's plans for the project;

(3) Timetables or deadlines for actions to be taken;

(4) Reason(s) for prepayment, and/or Reasons(s) for change in terms of mortgage or regulatory agreement; and

(5) Description of any contacts with other government agencies or other interested parties in connection with the Notice of Intent.

If HUD receives your Notice of Intent, you will be sent a package of information needed to prepare a plan of action. This information will tell you what you will have to provide HUD and the standards and criteria regarding the approval of a plan of action which would result in prepayment of the mortgage and the termination of the low-income affordability restrictions.

Also included will be a list of various Federal incentives that HUD is authorized to negotiate for those projects where a plan of action involving termination of the low-income affordability restrictions would not be approvable.

Please be aware that HUD plans to approve any and all plans of action where owners meet the standards and criteria mandated by the statute. It is our sincere wish and pledge to you to work together to negotiate in a positive and cooperative effort so that our mutual needs and considerations are addressed and dealt with to the maximum extent practicable.

Sincerely,

Thomas T. Demery,

Assistant Secretary.

Intent to Prepay Mortgage

Important: This form should be completed in triplicate and submitted simultaneously to: (1) HUD Field Office, (2) HUD Headquarters, and (3) State and/or local agency(s).

Project name: _____
Project number: _____
Project address: _____
_____
_____
_____

Plans for the project:
(Pursuant to § 248.211) _____
_____
_____
_____

Timetables or deadlines for proposed actions: _____
_____
_____
_____

Reason(s) for prepayment: _____
Reason(s) for changing mortgage
_____
_____
_____

Terms/regulatory agreement: _____
Descriptions of contacts made or discussions which have been held with other government agencies or other interested parties in connection with this notice of intent?
_____
_____
_____
_____

Additional comments? _____
_____
_____
_____

From:
Owner name: _____
Owner address: _____
_____
_____
_____

Owner telephone: _____

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Room 3001 Office of Management and Budget, Washington, DC 20503.

July 14, 1988.

Memorandum For: All Regional Administrators; Directors of Regional Housing; Managers, Category A, B and C Offices; Directors, Housing Management Division; Loan Management and Assisted Housing Management Branch Chiefs; and Valuation Branch Chiefs

From: Thomas T. Demery, Assistant Secretary for Housing, H.

Subject: Prepayment of HUD-Insured Mortgage by an Owner of Low Income Housing—*Exhibit 4—Plan of Action.*

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A. Purpose: To provide guidance and direction addressing the criteria, procedures and time frames governing the Owner's Plan of Action involving prepayment of a HUD-insured Mortgage by an Owner of Low Income Housing.

B. Background: On May 20, 1988, the Department issued guidance and direction pertaining to prepayment in general and specific, step-by-step procedures for an Owner's Notice of Intent to prepay a multifamily mortgage pursuant to Title II, subtitled B of the *Housing and Community Development Act of 1987,* and HUD's Interim Rule implementing these legislative provisions. You were also advised that further direction would be forthcoming, under separate cover, addressing other specific actions.

This transmits *Exhibit 4—Plan of Action* step-by-step standards and criteria, and time frames for an Owner's Plan of Action;

C. Compliance: Upon receipt of an Owner's Notice of Intent, Field Offices must act to follow the procedures outlined, herein. All actions are time-critical, as mandated by statute.

Note: Notice of Intent is first subject to review and process as outlined in the May 20, 1988 Exhibit 3-Notice of Intent to Prepay.

If you have questions or need further clarification or guidance with respect to this Exhibit and its content, contact Jim Tahash or Barbara Hunter in the Planning and Procedures Divisions, on FTS 426-3944.

Exhibit 4—Plan of Action

Important—Loan Management Branch Chiefs

These are the processing instructions for an Owner's Plan of Action. They have been written for Field Office use only.

There are three (3) attachments to this Exhibit:

(1) Form Letter to Owners (who have given Notice of Intent);

(2) Itemized Time Table; and

(3) Standards and Criteria for Approval Involving Termination of Affordability Restrictions.

The Form Letter to Owners and the *Standards and Criteria for Approval Involving Termination of Affordability Restrictions* have been developed for your use in providing Owners with the required information. Forward these once you receive a Notice of Intent to Prepay.

General

Upon the receipt of an Owner's Notice of Intent of Prepay, the Owner must be forwarded the information he/she will need to prepare a Plan of Action. The criteria and standards required to be addressed in the Plan of Action involve prepayment of a mortgage where the low-income affordability restrictions are terminated. However, in the case where HUD decides that a Plan of Action involving termination of the low-income affordability restrictions would not be approvable, HUD can offer incentives or consolations to extend the low-income use.

There are five (5) possible results from HUD's review and evaluation of a Plan of Action:

(1) Prepayment will be approved and all low income affordability restrictions will be terminated—except for the protection of the very low, low and moderate income tenants in-place;

(2) Prepayment will be approved, but owner will receive incentives to continue use of the project as low income housing;

(3) Prepayment will not be approved, but owner receives incantives to maintain the project as low and moderate income housing;

(4) Prepayment will not be approved, but failing to reach agreement (within 300 days) on a negotiated Plan of Action, HUD and the Owner will agree on a package of incentives and restrictions which would modify the regulatory agreement; or

(5) Prepayment will not be approved, and no incentives will be offered.

Any and all Plans of Action where an owner meets the standards and criteria mandated by statute *will* be approved. Plans of Action which propose prepayment and termination of affordability restrictions are to be analyzed and evaluated in accordance with the attached *Standards and Criteria for Approval Involving Termination of Low-Income Affordability Restrictions.*

Any Plans of Action not meeting these criteria may be considered for prepayment approval with restrictions; incentives for continuing the use as low and moderate income housing; etc., as listed above. Owner's must submit a Notice of Intent to prepay. HUD will not intertain a project that deals only with a request for incentives. Incentives will only be offered where the project has a higher and better use than low income housing and where the Owner has notified HUD of their Intent to Prepay. A Plan of action is required in *all* cases.

The Letter to Owners and Standards and Criteria have been developed for providing Owners with the required information and standards. This package is attached and is to be sent to an Owner who has submitted a *Notice of Intent to Prepay.*

Plan of Action

Once an Owner receives this package, he/she must prepare to meet and respond to its requirements. No further action is taken by the Field Office until An Owner submits the completed *Plan of Action. At that point,* and this is very important, the 300 day clock begins—and it is incumbent upon HUD to act and document its actions in as thorough and expedient a manner possible. This Exhibit explains the step-by-step processing and coordination between the Owner and HUD, and between the multiple factions and entities within HUD. It is very important to follow and track these processes with the highest commitment and diligence to product and time.

Processing Instructions

1. Receipt of Owners Notice of Intent to Prepay:

Loan Management Branch

(a) Forward to Owner:

(i) Letter to Owner; and

(ii) Plan of Action Standards and Criteria

Note: Insert your office address in space on Owner's Letter before forwarding to Owner.

(b) Owner starts preparation process.

2. Receipt of Owners Plan of Action and Creating the Tracking Process:

Loan Management Branch

(a) *Review:*

Review submission for completeness. All descriptions, analyses, certifications, etc. must be complete so that adequate evaluations, analyses, and findings can be made;

(b) *Return:*

[If not complete, or more information or clarification needed] return to Owner, requesting required information; or

(c) *Establish Tracking Record:*

[If complete, no additional information or clarification needed] start processing and tracking record by date and action.

Note: This review for completeness is for form and not substance, and should be accomplished ASAP but not longer than five (5) work days after receipt; ten (10) work days if written response to owner is necessary to request additional information or clarification.

Receipt of a complete Plan of Action starts the 300 day clock. This is the first action and date recorded and tracked. This tracking record will follow the process, up through a prepayment decision at HUD Headquarters, and will be an important part of the formal project docket. It is important to keep this record updated and current, tracking all actions and action dates. Attached to these instructions is an itemized time table for the sequence of actions. The Loan Management Branch is the responsible point for coordinating, tracking, and recording all actions, maintaining such record, and the contact point with Headquarters.

(d) *Disseminate Plan:*

After this recording, individual review and analysis begins. Provide a copy of the Plan of Action now to the Valuation Branch, the Area Economic and Market Analyst, and the FH&EO Division for their independent review and analysis, simultaneously with the Loan Management Branch. Provide this through written transmission establishing and indicating response time frames, leaving Loan Managment Branch time to incorporate and consolidate the various reviews, as appropriate.

Note: This analysis if a *priority* work product. The Field Office has 60 days from receipt of the Owner's (complete) Plan to review, identify any deficiencies, and obtain directive from Headquarters and alert Owner, in writing, of the deficiencies *and* how Owner could revise the Plan to meet the criteria for approval.

3. Review and Analyses of the Plan of Action:

Note: HUD will approve a Plan of Action and Prepayment where Owners meet the standards and criteria mandated by the statute, and as soon as possible.

Loan Management Branch/Valuation Branch/FH&EO Division/Area Economic and Market Analyst

(a) Analyze and verify contents of the Plan of Action. Confer and coordinate, as appropriate, to accord full analytic evaluation of the Plan and to produce sound findings. The Standards and Criteria, attached, are to be used to review and analyze the Owner's Plan of Action and to make findings and recommendations regarding the Owner's submission.

(b) Make findings.

Field Office evaluation and findings should substantiate either:

(1) Owner's Plan of Action meets the standards and criteria for prepayment and termination of all affordability restrictions (except protection of in-place tenants), and does not need any revision, additional information, or additional analysis—

In this case, skip to Section 6. *Notification Procedures* and follow directions.

or

(2) Owner's Plan of Action does not meet the standards and criteria but could if the Owner modified the Plan—

In this case, the Field Offices will work with the Owner to assist in getting information and developing a plan which can be approved. Refer to Section 4 *Notification of Deficiencies* and follow directions.

or

(3) Owner's Plan of Action does not meet the standards and criteria and Owner cannot or does not want to make the necessary revisions, but, instead, to negotiate for incentives—

In this case, skip to Section 6. *Notification Procedures* and follow directions:

Note: Incentives will only be offered if the property has a higher and better use, as determined and shown in the Plan of Action.

(c) Findings of deficiencies. The finding of any deficiencies of the Plan which would prevent the Plan from being approved MUST be sound, supported with justifications and recommendations or suggestions which will allow Headquarters to make an expedient and proficient review and decision. Where there are no conflicting findings but such findings and recommendations cross program offices, the Loan Management Branch will be responsible for consolidating the findings into one composite package and preparing and submitting to Headquarters.

Where findings and/or recommendations to make the Plan approvable conflict or disagree:

• If dissenting viewpoint or opinion between Loan Management Branch and Valuation Branch—the Area Manager will be the final Field Office decision point.

• If dissenting viewpoint or opinion from either FH&EO or Economic and Market Analyst, (where Loan Management and Valuation Branch do not agree or support) the FH&EO and/or Economic and Market Analyst dissenting opinion is to be included in the submission to Headquarters with rationale from Valuation and/or Loan Management for disagreement.

4. Notification of Deficiences.

The Notification, as it would be prepared to be sent to Owner, will be forwarded to the Office of Multifamily Housing Management, Headquarters, by the Field Office, as follows:

(a) Identify Deficiences and Recommendations: Loan Management Branch Chief:

(1) Coordinate and consolidate all reviews, responses and recommendations for suggested revisions;

(2) Prepare Notification Letter;

(3) Alert Desk Officer telephonically, in Operations Division (Headquarters) of deficiencies and forthcoming facsimile;

(4) Transmit facsimile of Notification Letter to Headquarters, Office of Multifamily Housing Management, Operations Division.

Note: Fax must be sent ASAP but NLT 45 days after receipt of Owners Plan.

(b) Obtain Headquarters' Response: Headquarters will respond to the Field Office as follows:

(1) Desk Officer in Operations Division (Headquarters) will telephone response to Loan Management Branch;

(2) Written Approval/Disapproval of Notification and its contents will be directed to Loan Management Branch Chief via facsimile.

(c) Notify Owner:

Loan Management Branch Chief

Notify Owner, in writing, of any deficiencies/revisions (as approved by Headquarters).

Note: Notification must be given to Owner NLT 60 days after receipt of Owner's Plan of Action.

Deficiency(s) Notice will contain:

(1) Description of any deficiencies which prevent the Plan of Action from being approved;

(2) Description of how the Plan could be revised to meet the criteria for approval; and

(3) Provision that Owner should be in contact to negotiate time frame for any revision—that time clock for approval is halted with this Notice until further response is received.

5. Revisions to Owner's Plan of Action: Based on the Notification of Deficiencies, the Owner may revise the Plan of Action. This is necessary before HUD can approve or disapprove the Plan.

The Field Office and the Owner should keep in close contact during this period of time to ascertain the direction the Owner may wish to take and what alternatives are available.

There is no limit on the number of times that a Plan may be revised; however, it will, necessarily, affect the time frame for an approval decision, accordingly.

Loan Management Branch

Upon receipt of a revised Plan of Action, follow the procedure as outlined under 2. through 4. above, in the same repeat manner.

Be sure to indicate all actions and dates on your processing log.

6. Notifiation Procedure:

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Note: NLT 180 days after receipt of Owner's Plan of Action [longer if Owner requests and/or revisions to Plan were necessary], owner will be notified whether Plan is approved.

Loan Management Branch

(1) Forward to Headquarters, Attention: Director, Operations Division:

(i) The Plan of Action;

(ii) Field Office Analysis, supporting statements, professional analyses, appraisals, etc.; and

(iii) Field Office findings, suggestions, recommendations.

If disapproval is recommended, based on findings and evaluations, Field Office will:

(i) Explain and describe reasons; and

(ii) Describe actions that could be taken to meet the criteria for approval;

Forward these ASAP but NLT 150 days after receipt of Owners Plan. (Longer if actions necessitated return to Owner for additional work or revisions). Headquarters will review recommendations and respond to Field Office with decision for approval or disapproval, etc.

(2) Obtain Headquarters Approval/ Disapproval.

(3) Forward Approval/Disapproval to Owner.

All executions and final agreements will be made at the Headquarters level. Headquarters may instruct Field Office to negotiate with Owners, with appropriate guidance, on a case-by-case basis.

ITEMIZED TIME TABLE

Action	Start	Finish
Recording and Tracking Log.	With receipt of complete Plan of Action from Owner.	Continues through final approval/ disapproval action and response back to Owner.
Notification of Deficiencies:		
—to Headquarters.	ASAP, But	NLT 45 days after receipt of Plan (each time).
—to Owner.....	ASAP, But	NLT 60 days after receipt of Plan (each time).
Revisions to Plan (as required by HUD or Owner).	This time required for revisions to Plan is negotiated with Owner, BUT understand until such revised Plan is re-submitted to HUD, the clock stops (each time).	

ITEMIZED TIME TABLE—Continued

Action	Start	Finish
Notification of Approval/ Disapproval:		
—findings and recommendations to Headquarters.	ASAP, But	NLT 150 days after receipt of Plan (or longer as required/ requested, as in revisions, above).
—findings and Approval/ Disapproval to Owner.	ASAP, But	NLT 180 days after receipt of Plan (or longer as required/ requested, as in revisions, above).

Note: Create log for recording and tracking processing actions and time frames. This is an important process and one which will become part of the formal "decision" package. It is important that HUD conduct all actions within the time frames established by the statute.

Dear Owner:

Re: Owners Plan of Action—Information For Preparation And Submission.

Pursuant to your Notice of Intent to Prepay, this will provide further guidance and information that HUD requires to evaluate your proposed Plan of Action.

Preparation and Submission. An original and 3 copies of your Plan of Action is required to be submitted to your local HUD Field Office as follows:

U.S. Department of Housing and Urban Development

Attention: Loan Management Branch Chief

You may also submit the Plan of Action simultaneously to the appropriate State or local government. If you do, please be advised that it is incumbent upon such State or local government to consult with representatives of the tenants of the housing in its review of the Plan of Action.

Contents. Your Plan of Action must include certain descriptions, data, and information to meet statutory and regulatory mandates and to help facilitate HUD's review and approval of an acceptable Plan.

Based on the contents of your Plan, HUD will make a finding(s) that certain conditions are met, agreements made, and situations are considered, evaluated and sufficient in meeting the standards and criteria for prepayment.

The standards and criteria HUD will use to evaluate particular findings for the approval of a prepayment involving termination of all low-income affordability restrictions are enclosed.

In addition, included is a list of various Federal incentives that HUD is authorized to negotiate for those projects where (1) the Owner's Plan of Action involving termination of the low-income affordability restrictions would not be approvable, or (2) the Owner wishes to reconsider prepayment, involving termination, for incentives to maintain the low income nature of the project. Such incentives will be offered only if (a) the property has a higher and better use, as determined and shown in the Plan of Action, and (b) low-income affordability restrictions are locked-in for the remaining term of the mortgage.

HUD will approve any and all Plans of Action where an Owner meets the criteria and, where all standards and criteria cannot be met, to negotiate in good faith efforts to accommodate our mutual needs and considerations.

I look forward to working with you in a positive and creative partnership to meet the challenges addressing today's housing issues.

Sincerely,

Thomas T. Demery,

Assistant Secretary.

Plan of Action

Standards and Criteria

A. *Contents:* The Plan of Action must include:

(1) Descriptions of proposed changes in the status or terms of the mortgage or the regulatory agreement which may include a request for incentives to extend the low income use of the housing;

(2) Description of any assistance that could be provided by State or local government agencies, as determined by prior consultation between the owner and the agencies;

(3) Description of any proposed changes in the low-income affordability restrictions;

(4) Description of any proposed change in ownership related to the Plan of Action or prepayment;

(5) An assessment of the effect of the proposed changes on existing tenants, i.e., rent increases, relocation, etc.

If an Owner plans to prepay, the Owner must protect the existing very low, low, and moderate income tenants [in-place] by either:

(a) relocating all such tenants to comparable and affordable replacement housing with similar rent structures within the housing market area; or

(b) protecting the low-income affordability of all such tenants by maintaining their current rent structures, as determined by the program economic criteria, for as long as such tenant(s) qualifies under such economic criteria.

The Plan of Action must, therefore, describe the type of protection the Owner plans to provide the tenants, how he/she plans to go about it, where the replacement housing would be, contracts, agreements, etc.

(6) A statement of the effect of the proposed changes on the supply of housing affordable to low and very low-income families in the community within

which the housing is located and in the housing market area that the housing could reasonably be expected to serve, i.e., percentage of assisted housing the project represents to the total assisted housing in the market area and/or percentage of housing stock of similar rental structure this housing represents in the market area.

(7) An independent market analysis or appraisal, providing unsubsidized market information sufficient in scope to allow HUD to determine market rents and value and market needs in the area for both market and below market tenants and equity of property. Such appraisal shall include, as a minimum, the following:

(a) Project identification and information [Complete attached Form HUD–92013, page 1.];

(b) A map showing the location of the project and accompanying demographic data, including:

- Racial composition of the census tract in which project is located;
- Income composition of the census tract in which project is located;
- Employment and employment opportunities in the neighborhood, community and market area,
- Neighborhood condition and characteristics, including type (residential, commercial, industrial, etc.);

(c) Description of the current condition in the overall market for *unassisted rental housing* in the community and the market area, including:

- Types of other rental housing available;
- Description and number of units and current vacancy rates;
- Size and description of waiting lists; and
- Description of comparable rents;

(d) Description of the current condition of *assisted rental housing* in the community and the market area, including:

- Description and number of units and current vacancy rates (Section 8, Public Housing, etc.);
- Size and description of waiting list; and
- Description of comparable rents.

(e) Description and data of project tenancy, including:

- Race/ethnicity and gender of household head composition of the project, as of the date of the prepayment request;
- Designation of the project (elderly or nonelderly);
- Income composition of project tenants as of the date of the prepayment request broken down as follows:

Very low (50% or below of median)
Low (50/80% of median)
Moderate (80/90% of median)
Market (95% or above median)

- Place/location of employment of project tenants;
- Occupancy rate of the project *as of January 1, 1987*, broken down as follows:

Very low (50% or below of median)
Low (50/80% of median)
Moderate (80/90% of median)
Market (95% or above median)

- Rent roll, unit-by-unit (Complete Format attached)

(f) Description and physical condition of the Property;

(g) Description and financial condition of the Property:

- Existing First Mortgage Information

—Mortgage Balance
—Interest Rate
—Monthly Mortgage Payments to Principal and Interest
—Monthly Payment to MIP
—Maturity date of the Mortgage

- Existing second mortgages, subsidy, Flexible Subsidy, Grants, or financial loans/contracts or other financial liens/ encumbrances—

—Outstanding Balance(s)
—Interest Rate(s)
—Monthly Payments to Principal and Interest
—Maturity or Expiration date of loan/ grant/contract term

(h) The estimated fair market value, based on the project being maintained as residential rental housing, as of the date of the prepayment request.

(i) The estimated fair market value, based on the property's highest and best use.

Important.—The independent analysis or appraisal incorporating the information requested under 7) above, is to be conducted and provided by an independent, qualified professional, recognized by the real estate appraisal industry. It is to be included in the Owner's Plan of Action, but packaged separately and discreetly from the other requested contents, and signed, certified and dated by the Appraiser.

The Owner should also make the Appraiser aware that, in the case of litigation involving the information contained in the market analysis or appraisal, the Appraiser may be called upon as an expert witness on behalf of the Department in any such litigation or court action emanating from any of the information supplied in the market analysis/appraisal.

The cost of the appraisal will be approved by HUD as a project expense if the ultimate result of the Plan of Action extends the low-income character of the project for the remaining term of the mortgage.

(8) Copies of Project Operating Statements (Forms HUD–92410) for last three (3) years;

(9) Description of any outstanding findings of noncompliance with Title VIII of the Civil Rights Act of 1968; Title VI of the Civil Rights Acts of 1964; Executive Order 11063; or with respect to the project Regulatory Agreement.

(1) Any other information which would enable the Owner to show and demonstrate that the legislatively mandated criteria can be met.

B. Approval of a Plan of Action that involves termination of low-income affordability restrictions:

Based on the content of the Plan of Action, HUD must make findings that certain conditions and situations are considered and evaluated. A Plan of Action involving termination of low-income affordability restrictions must meet the following tests before prepayment can be approved:

(a) Implementation of the Plan of Action will not materially increase economic hardship for current very low-income, low-income and moderate income tenants or involuntarily displace current very low-income, low-income and moderate income tenants (except for good cause) where comparable and affordable housing is not readily available. The owner will agree to execute and allow the recordation of use agreements to safeguard current tenants against such adverse effects. The Plan of Action generally will not be considered materially to increase economic hardship for current tenants if:

(1) In the case of a project that is to be converted to cooperative or condominium ownership, very low-income, low-income and moderate income tenants who are unable or unwilling to purchase cooperative shares or condominium units:

- Are provided relocation assistance sufficient to secure adequate, comparable replacement housing at rentals not exceeding the levels set forth in paragraph (a)(2) of this section, or
- Are allowed to remain as tenants, paying rents not exceeding such levels; and

(2) In the case of a project which will continue as rental housing, the Commissioner determines that comparable and affordable replacement housing is available in the community and that tenants will be provided reasonable relocation assistance.

If the Commissioner determines that comparable and affordable replacement housing is not available, a material increase in economic hardship will not occur when rent contributions for

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current tenants do not exceed the following percentages:

- 30 percent of 50 percent of median areas income, adjusted by family size, for tenants who are very low income tenants at the time of the increase,
- 30 percent of 80 percent of median area income, adjusted by family size, by tenants who are low income tenants at the time of the increase, and
- 30 percent of 95 percent of median area income, adjusted by family size, for tenants who are moderate income tenants at the time of the increase.

The Commissioner may require that increases in rents for some or all of the such current tenants (except for increases made necessary by increased operating costs) allowed under this paragraph be phased in gradually; and

(b)(1) The supply of vacant, comparable housing is sufficient to ensure that the prepayment will not materially affect;

(i) The availability of decent, safe and sanitary housing affordable to low-income and very low-income families in the area that the housing could reasonably be expected to serve;

(ii) The ability of lower income and very low-income families to find decent, safe and sanitary housing near employment opportunities; or

(iii) The housing opportunities of minorities in the community within which the housing is located; or

(2) The Plan of Action has been approved by the appropriate State agency and any appropriate local government agency for the jurisdiction in which the housing is located as being in accordance with a State strategy approved by the Commissioner.

It is incumbent upon the Owner to prepare the Plan of Action in such manner as to show and demonstrate that these findings are met.

C. Plan of Action involving prepayment with Restrictions:

Plans of Action not meeting the standards and findings under B., involving termination of low-income affordability restrictions, may be considered for prepayment with restrictions. Each such Plan will be evaluated on its own merits and on a case-by-case basis, through negotiations between the Owner and HUD.

An example of such a situation might be where, through restrictive, binding agreements, such housing would be maintained as housing for the very low-income, low-income, and moderate income tenants for a designated time into the future, notwithstanding a prepayment of the current, existing mortgage. In this case, all low-income affordability restrictions would not be terminated, tenants (current and future) would be protected, and such a prepayment would not materially affect the supply of decent, safe and sanitary housing available to such tenants.

Plans of Actions involving prepayment with restrictions shall clearly and definitively describe and demonstrate the manner and wherewithall to accommodate the legislative mandates, i.e., conventional financing, State or local agency financial intervention, the Low-income Tax Credit Program, etc.

Use Restrictions would be set forth in a document that would (1) be recorded in the appropriate land records, (2) have priority over all mortgage liens, and (3) be enforceable by HUD [and existing and, if applicable, potential tenants].

D. Incentives to Extend Low-Income Use:

Where Plans of Action providing for prepayment of the mortgage cannot be approved, or where an Owner might be induced to extend the low-income use of the project, (within certain market areas) HUD may agree to provide one or more Federal incentives, if such incentive(s) are determined to be warranted in order to achieve the purposes of the legislation.

Note: such incentives will be offered only if (a) the property has a higher and better use, as determined and shown in the Plan of Action, and (b) low-income affordability restrictions are locked-in for the remaining term of the mortgage.

Incentives to Extend Low-Income Use, the specific incentives available, and individual procedures and step-by-step instructions for processing, are covered and detailed in Exhibit 6, published under separate cover. The incentives and the probable order in which HUD will consider such incentives are briefly set forth here, as follows:

(1) Increased access to residual receipts funds: For those projects in good physical condition, HUD will consider releasing all or a portion of the projects residual receipts funds.

Access to the Reserve for Replacement funds will not be entertained as a possible inducement given that the General Accounting Office, the Office of Inspector General and HUD audits and reviews all have consistently found that the Reserve for Replacement funds do not have excessive balances to cover project needs.

(2) Revisions to the method of calculating equity: HUD may consider revising the method of calculating equity based on the new appraised value as residential rental housing, minus the total outstanding financial debt and encumbrances, to arrive at a new equity based on which the six percent rate of return on equity is applied.

(3) Provision of insurance for an equity loan, HUD may approve and insure an Equity Loan under section 241(f). The Owner would be required to seek out a mortgagee to submit an application for processing, and such processing and loan approval would be carried out in a pro forma manner.

(4) Provision of Flexible Subsidy assistance; To provide financial assistance under the Flexible Subsidy Program in order to cure financial difficulties and/or to fund deferred maintenance needs or the provision of capital improvements for the project.

Though the legislative and regulation provisions covering prepayment include capital improvement loans as a possible incentive, the Department does not plan to implement the Capital Improvements Loan Program at this time. However, the need for capital improvements can be met through the Flexible Subsidy Program as stated above.

(5) An increase in the allowable distributions, or other measures to increase the rate of return; Increasing the allowable distribution by increasing the current six percent rate to some higher agreed upon amount.

(6) An increase in the rents permitted under an existing Section 8 Contract.

Section 8, in and of itself, is not a real inducement not to prepay, but a funding mechanism to make it possible for the Owner to collect rents from those tenants whose 30 percent of income would not meet the approved rent. Therefore, on a case-by-case basis, subject to Appropriations Act funding, the Department would consider providing some form of Section 8 assistance for those particular tenants.

E. Submission of the Plan of Action:

The Plan of Action should be submitted to HUD only upon completion of all required information. It should meet the requirements in such a manner as to show and demonstrate, as thoroughly and accurately as possible, how the legislative and regulatory mandates are met. Any and all portions of the plan involving participation or involvement by third parties shall be endorsed, certified or otherwise verified or signed, as appropriate. Specifically, the market analysis or appraisal must be signed and dated by a recognized Appraiser.

Finally, the completed package must be dated and signed by the Project Owner of Record (General Partner) and submitted in triplicate to the HUD Office in the jurisdiction of the subject housing project.

For Each Project Where Project Owner Submits a Plan of Action

(1) Complete the following sections of the front page of Form HUD–92013, attached:

(a) Section A, all
(b) Section C, all
(c) Section D, blocks 7 through 12
(d) Section E, all
(e) Section F, all (including F–1)

(2) Complete Information for Project Rent Roll, unit-by-unit, Format attached. (Two separate forms)

(3) Submit completed Form HUD–92013 and Rent Roll Formats with, and as part of, The Plan of Action.

BILLING CODE 4210–32–M

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OMB No. 2502-0029 (Exp. 10-31-87)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING-FEDERAL HOUSING COMMISSIONER

APPLICATION FOR MULTIFAMILY HOUSING PROJECT

SECTION A - PROJECT IDENTIFICATION

1. Name of Project
2. HUD Project Number *(Mortgage Ins. or Sec. 202)*
3. HUD Project Number *(Section 8)*

SECTION B - PURPOSE OF APPLICATION

TO: The Assistant Secretary for Housing-Federal Housing Commissioner: Application is being made pursuant to Item (a): ☐ 1, ☐ 2, ☐ 3 of Section M, Page 3 hereof. The undersigned desire(s) to participate, with respect to the Property and Program(s) described below. Therefore, it is requested that you give consideration to the information presented herein, for the purpose of loaning and/or approving:

☐ Mortgage Insurance: Section: _____
☐ a Feasibility Letter *(Rehab.)* ☐ Direct Loan Section 202
☐ a SAMA Letter *(New Const.)* ☐ Housing Asst. Pymnts. Sec. 8
☐ a Conditional Commitment ☐ a Preliminary Proposal
☐ a Firm Commitment ☐ a Final Proposal

Mortgagor: ☐ FM ☐ NP ☐ LD ☐ 8–S Other _____
Financing: ☐ Conventional ☐ GNMA ☐ Bond ☐ State Agency
Other _____
Mortgage/Loan Amount: $ _____
Interest Rate: Permanent _____ % Construction _____ %

SECTION C - LOCATION AND DESCRIPTION OF PROPERTY

1. Street Address | 2. Municipality | 3. County | 4. State and ZIP Code | 5. Congressional Dist.

6. Type of Project: ☐ Proposed ☐ Rehabilitation ☐ Existing Year Built: 19
7. Number of Units: Revenue: _____ Non-Revenue: _____ TOTAL: _____
8. No. of Buildings
9. List Accessory Buildings: Area _____ Sq. Ft.
10. List Recreation Facilities: Area _____ Sq. Ft.
11. Type of Buildings: ☐ Elevator ☐ Walkup ☐ Row (T.H.) ☐ Detached ☐ Semi-Detached
12. No. of Stories
13. No. of Elevators
14. Type of Foundation: ☐ Slab on Grade ☐ Crawl Space ☐ Partial Bsmt. ☐ Full Basement
15. Structural System | 16. Floor System | 17. Exterior Finish | 18. Heating System | 19. Air Conditioning System

SECTION D - INFORMATION CONCERNING LAND OR PROPERTY

1. Date: ☐ Acquired ☐ Optioned / /
2. Price: ☐ Purchase ☐ Option $
3. Additional Cost Paid or Accrued: $
4. Total Cost: $
5. Outstanding Balance: $
6. Relationship Between Seller and Buyer, Business, Personal or Other
7. Site Area: _____ Sq. Ft.
8. Zoning *(If recently changed, submit evidence)*
9. If leasehold show annual ground rent $ _____ lease term, remaining years. . . .
10. Off-Site Facilities: Public / Comm. / At Site / Feet from Site
Water ☐ ☐ ☐ _____ ft.
Sewer ☐ ☐ ☐ _____ ft.
Paving ☐ ☐ ☐ _____ ft.
Gas ☐ ☐ ☐ _____ ft.
Electrical ☐ ☐ ☐ _____ ft.
11. Unusual Site Features: ☐ None ☐ Poor Drainage ☐ Cuts ☐ Retaining Walls ☐ Fill ☐ Rock Foundations ☐ Erosion ☐ High Water Table ☐ Other _____
12. Special Assessments: a. ☐ Prepayable ☐ Non-prepayable; b. Principal Balance $ _____; c. Annual Payment $ _____; d. Remaining Terms _____ years.

SECTION E - ESTIMATE OF INCOME

Unit Type	No. of Living Units	No. of Units Assisted	Living Area (Sq. Ft.)	Composition of Units	PBE Incl. in Rent ($) * (Sec. F-1)	Unit Rent per Mo. ($)	Total Monthly Unit Rent ($)
Employee/Unl. Unit/etc.							
TOTALS				2. TOTAL ESTIMATED MONTHLY RENTALS FOR ALL LIVING UNITS $			

3. Number of Parking Spaces: ☐ Attended ☐ Self Park; Total Spaces
4. Parking and Other Income *(Not Included in Rent)*: Open Spaces _____ @ $ _____ per month = $ _____; Covered Spaces _____ @ $ _____ per month = $ _____; Laundry _____ Sq. Ft. or Living Units @ _____ per month = $ _____; Other _____ per month = $ _____; TOTAL ANCILLARY INCOME $
5. Commercial Space *(Describe)*: Area-Ground Level _____ sq. ft. @ $ _____ per sq. ft./month = $ _____; Other Levels _____ sq. ft. @ $ _____ per sq. ft./month = $ _____; TOTAL COMMERCIAL $
6. TOTAL ESTIMATED MONTHLY GROSS INCOME AT 100 PERCENT OCCUPANCY $
7. TOTAL ANNUAL RENT *(Item 6 times 12 months)* $
8. Gross Floor Area: _____ Sq. Ft.
9. Net Rentable Residential Area: _____ Sq. Ft.
10. Net Rentable Commercial Area: _____ Sq. Ft.

SECTION F - EQUIPMENT AND SERVICES *(Check Items Included in the Rent, Listed Below)*

Equipment: ☐ Range and Oven ☐ Microwave Oven ☐ Refrigerator ☐ Laundry Facilities ☐ In Common Area ☐ In Living Unit ☐ L.U. Hookup Only ☐ Carpet ☐ Drapes ☐ Swimming Pool ☐ Air Conditioning Equip. ☐ Trash Compactor ☐ Disposal ☐ Other

Services: ☐ Heat ☐ Hot Water ☐ Cooking ☐ Air Conditioning ☐ Lights, etc., in Units ☐ Cold Water ☐ Other

Services:	Gas	Elect.	Oil
Heat	☐	☐	☐
Hot Water	☐	☐	☐
Cooking	☐	☐	
Air Conditioning	☐	☐	
Lights, etc., in Units			
Cold Water		☐ Parking	
Other			

SECTION F-1 - UTILITIES *(Not in Rent)*

* PERSONAL BENEFIT EXPENSES *(PBE)*: Check Utilities and Services Not Included in the Rent and Paid Directly by the Tenant.
☐ Electricity ☐ Heating ☐ Gas ☐ Decorating ☐ Repairs ☐ Water
Other
Remarks

Previous Editions Are Obsolete

HUD-92013 (3-88)
HB 4571.1

BILLING CODE 4210-32-C

RENT ROLL FORMAT—Information on Tenant Income and Rent on hand at the Project as of Date of Appraisal

A	B	C	D	E	F	G	H	I	J	K	L	M
Project Name: Project Number: Unit No..	Tenant Name.	Unit Type...	Tenant Adj. Income.	Base Rent .	Personal Benefit Ex-pense.	Total Rent .	LMSA Section 8.	Total Rent Actually.	30 Percent of Adjust-ed Income.	Existing FMR.	Market Rent by Com-parison.	Lowest Of Cols. I,J,K,L.

RENT ROLL FORMAT—Information on Tenant Income and Rent on hand at the Project on January 1, 1987

A	B	C	D	E	F	G	H	I	J	K	L	M
Project Name: Project Number: Unit No..	Tenant Name.	Unit Type...	Tenant Adj. Income.	Base Rent .	Personal Benefit Ex-pense.	Total Rent .	LMSA Section 8.	Total Rent Actually.	30 Percent of Adjust-ed Income.	Existing FMR.	Market Rent by Com-parison.	Lowest Of Cols. I,J,K,L.

[FR Doc. 88-25425 Filed 11-8-88; 8:45 am]
BILLING CODE 4210-32-M

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federal register

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Part III

The President

Proclamation 5903—National Hospice Month, 1988

Proclamation 5904—National Women Veterans Recognition Week, 1988

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Presidential Documents

Title 3—

The President

Proclamation 5903 of November 6, 1988

National Hospice Month, 1988

By the President of the United States of America

A Proclamation

Hospice care helps terminally ill people cope physically and emotionally with illness and helps their families cope with grief. To achieve these goals, hospices offer an intimate approach for both patient and family that encompasses medical care, relief from pain, and encouragement to continue in loving family relationships. Observance of National Hospice Month, 1988, provides Americans with the chance to learn more about hospice care and its purposes.

Hospices offer compassionate, planned care by interdisciplinary teams of doctors, nurses, therapists, home health aides, homemakers, volunteers, social workers, and pastoral and other counselors. All of these people see to the varied needs of patients and families. At present, small hospices, staffed largely by volunteers, are supplying much of the care to those in need, often without charge. But hospice care is increasingly a part of health care in America. Medicare has begun certifying hospices; Medicaid programs will provide hospice care; and many private insurance companies already offer hospice benefits.

During this special month of observance and in the future, we can all be aware that hospices make it possible for terminally ill people to have a natural death in the comforting knowledge that their loved ones will not face their loss unprepared or alone. We can be grateful for the reverence thus shown for the sanctity of life and human dignity.

The Congress, by Public Law 100–405, has designated November 1988 as "National Hospice Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 1988 as National Hospice Month. I urge all government agencies, the health care community, appropriate private organizations, and the people of the United States to observe the month of November with appropriate programs and activities to recognize and support hospice care.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88–26166
Filed 11–8–88; 11:17 am]
Billing code 3195–01–M

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Presidential Documents

Proclamation 5904 of November 6, 1988

National Women Veterans Recognition Week, 1988

By the President of the United States of America

A Proclamation

Throughout our history, women have been among the patriots who have defended our land and liberty from every enemy. Many women have served in the military, in occupations from pilot to nurse and in both peacetime and war. We owe all of them a special debt of gratitude for their part in advancing the promise of freedom. We do well to recall that we owe appreciation to our many veterans of military service who are women.

Today, the number of women serving in the military, and thus the number of women veterans, continues to grow; women veterans now comprise 4.4 percent of the total veteran population. They continue to enrich our country in civilian life as they bring their skills and patriotism to bear in communities across America. Let us use the welcome occasion of National Women Veterans Recognition Week, 1988, to honor the service, sacrifice, and love of country so gladly given by our women veterans.

To create greater public awareness and recognition of the many achievements of women veterans, the Congress, by Public Law 100–514, has designated the week of November 6 through November 12, 1988, as "National Women Veterans Recognition Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 6 through November 12, 1988, as National Women Veterans Recognition Week. I encourage all Americans and government officials at every level to celebrate this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88–28167
Filed 11–8–88; 11:18 am]
Billing code 3195–01–M

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H.R. 515/Pub. L. 100-583

Fair Credit and Charge Card Disclosure Act of 1988. (Nov. 3, 1988; 102 Stat. 2960; 10 pages) Price: $1.00

H.R. 2472/Pub. L. 100-584

To provide authorization of appropriations for activities of the National Telecommunications and Information Administration. (Nov. 3, 1988; 102 Stat. 2970; 3 pages) Price: $1.00

H.R. 2642/Pub. L. 100-585

Colorado Ute Indian Water Rights Settlement Act of 1988. (Nov. 3, 1988; 102 Stat. 2973; 7 pages) Price: $1.00

H.R. 2806/Pub. L. 100-586

To amend the Federal Land Policy and Management Act of 1976, to permit temporary use for military purposes of public lands in Alaska managed by the Bureau of Land Management, Department of the Interior, and for other purposes. (Nov. 3, 1988; 102 Stat. 2980; 2 pages) Price: $1.00

H.R. 4064/Pub. L. 100-587

To amend title 28 of the United States Code to authorize the appointment of additional bankruptcy judges. (Nov. 3, 1988; 102 Stat. 2982; 1 page) Price: $1.00

H.R. 4068/Pub. L. 100-588

To amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes. (Nov. 3, 1988; 102 Stat. 2983; 1 page) Price: $1.00

H.R. 4124/Pub. L. 100-589

To authorize appropriations to carry out the Atlantic Striped Bass Conservation Act for fiscal years 1989 through 1991, and for other purposes. (Nov. 3, 1988; 102 Stat. 2984; 5 pages) Price: $1.00

H.R. 4174/Pub. L. 100-590

Small Business Administration Reauthorization and Amendment Act of 1988. (Nov. 3, 1988; 102 Stat. 2989; 22 pages) Price: $1.00

H.R. 4686/Pub. L. 100-591

Aviation Safety Research Act of 1988. (Nov. 3, 1988; 102 Stat. 3011; 7 pages) Price: $1.00

H.J. Res. 446/Pub. L. 100-592

Designating October 30 through November 5, 1988, as "National Jukebox Week." (Nov. 3, 1988; 102 Stat. 3018; 1 page) Price: $1.00

H.J. Res. 572/Pub. L. 100-593

Designating November 28 through December 2, 1988, as "Vocational-Technical Education Week." (Nov. 3, 1988; 102 Stat. 3019; 2 pages) Price: $1.00

S. 1048/Pub. L. 100-594

Federal Communications Commission Authorization Act of 1988. (Nov. 3, 1988; 102 Stat. 3021; 5 pages) Price: $1.00

S. 1476/Pub. L. 100-595

To designate the Federal Records Center Extension Building 109 under construction in Overland, Missouri, as the "Charles F. Prevedel Federal Building." (Nov. 3, 1988; 102 Stat. 3026; 1 page) Price: $1.00

S. 1827/Pub. L. 100-596

To designate the Federal building and United States courthouse located at 300 Booth Street in Reno, Nevada, as the "C. Clifton Young Federal Building and United States Courthouse." (Nov. 3, 1988; 102 Stat. 3027; 1 page) Price: $1.00

S. 1863/Pub. L. 100-597

To amend the bankruptcy law to provide for special revenue bonds, and for other purposes. (Nov. 3, 1988; 102 Stat. 3028; 3 pages) Price: $1.00

S. 2344/Pub. L. 100-598

To reauthorize the Office of Government Ethics, and for other purposes. (Nov. 3, 1988; 102 Stat. 3031; 5 pages) Price: $1.00

S. 2835/Pub. L. 100-599

To designate the United States Post Office and Courthouse located at 151 West Street in Rutland, Vermont, as the "Robert T. Stafford United States Courthouse and Post Office." (Nov. 3, 1988; 102 Stat. 3036; 1 page) Price: $1.00

S.J. Res. 280/Pub. L. 100-600

To designate the week of November 27, 1988 through December 3, 1988 as "National Home Care Week." (Nov. 3, 1988; 102 Stat. 3037; 1 page) Price: $1.00

S.J. Res. 302/Pub. L. 100-601

To designate October 1988 as "National Down Syndrome Month." (Nov. 3, 1988; 102 Stat. 3038; 1 page) Price: $1.00

S.J. Res. 324/Pub. L. 100-602

To designate February 1989 as "America Loves Its Kids Month." (Nov. 3, 1988; 102 Stat. 3039; 1 page) Price: $1.00

S.J. Res. 335/Pub. L. 100-603

To designate the last full week of October, October 23 through October 29, 1988, as "National Adult Immunization Awareness Week." (Nov. 3, 1988; 102 Stat. 3040; 2 pages) Price: $1.00

S.J. Res. 381/Pub. L. 100-604

To designate October 30, 1988, as "Fire Safety at Home Day—Change Your Clock, Change Your Battery." (Nov. 3, 1988; 102 Stat. 3042; 1 page) Price: $1.00

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Presidential Documents

Title 3—

The President

Proclamation 5905 of November 7, 1988

National Craniofacial Awareness Week, 1988

By the President of the United States of America

A Proclamation

Craniofacial conditions of some kind affect approximately 465,000 people in the United States each year. Hereditary and congenital conditions such as Down Syndrome and cleft lip and palate are the leading reasons for facial disfigurement. Hundreds of thousands of others suffer facial disfigurement from cancer. Advanced medical technology can save people who might otherwise die from accidents or burns, but their faces remain affected. People with craniofacial conditions often experience emotional isolation and rejection and live in seclusion from society.

Now, various foundations and institutions are addressing their needs. They have begun to fund programs for research and education regarding craniofacial conditions, to initiate the funding of surgical and nonsurgical treatment for people from our country and around the world, and to seek people who can be helped.

Mutual support organizations now forming are dedicated to helping the facially disfigured, their families, and the professionals who care for them. Through newsletters and computer linkages, people throughout our Nation offer shared experiences and resources for recovery. These praiseworthy mutual support groups encourage people to esteem the person behind every face.

Because of the difficulties of looking "different," it is important that the public understand the exceptional challenges confronting people with craniofacial conditions. Personal and community outreach efforts to befriend and assist these people deserve our cooperation, participation, and recognition.

The Congress, by House Joint Resolution 573, has designated the week of November 13 through November 19, 1988, as "National Craniofacial Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 13 through November 19, 1988, as National Craniofacial Awareness Week. I call upon the people of the United States and concerned organizations to observe that week with appropriate programs, ceremonies, and activities that foster awareness about craniofacial conditions and the continuing efforts to lessen the suffering of people afflicted.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-26215
Filed 11-8-88; 3:06 pm]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12655 of November 7, 1988

Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the Transportation Communications Union-Carmen Division

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Transportation Communications Union-Carmen Division.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act (45 U.S.C. Section 159a).

Section 9A(e) of the Act provides that the President upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after creation of the board, the parties to the dispute shall submit to the board final offers for settlement of the dispute. Within 30 days after submission of final offers for settlement of the dispute, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(h) of the Act, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
November 7, 1988.

[FR Doc. 88-26216
Filed 11-8-88; 3:07 pm]
Billing code 3195-01-M

Editorial note: For a White House announcement on the establishment of the emergency board, dated Nov. 7, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 45).

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Rules and Regulations

Federal Register
Vol. 53, No. 218
Thursday, November 10, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 70, and 73

Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its physical protection and security personnel performance regulations and its design basis threat for fuel facilities possessing formula quantities of strategic special nuclear material (SSNM) to require protection equivalent to that in place at comparable Department of Energy (DOE) fuel facilities. These changes have been prompted by a recent study that compared NRC's security requirements for SSNM with DOE's recently upgraded security system. The changes are also supported by findings from reviews of safeguards event reports, Regulatory Effectiveness Reviews, and inspection reports. The amendments provide greater assurance that physical protection measures at these fuel facilities can protect against theft.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Frattali, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3773; or Kristina Z. Jamgochian, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–0360.

SUPPLEMENTARY INFORMATION:

Background

In 1974, a national goal was established that nuclear weapons-usable material, whether in the licensed or license-exempt sector, should receive fully adequate and essentially comparable levels of protection. The objective of providing comparable protection for SSNM has been reiterated in a number of subsequent communications by the National Security Council, Energy Research and Development Administration (now DOE), Department of Defense, and NRC. In consonance with this objective, reviews have been conducted periodically by joint NRC/DOE review teams. The findings from the most recent review (1986) indicated that DOE has placed increased emphasis on guard weaponry, training, and tactical response exercises and has upgraded some physical security measures. To maintain comparability with DOE as well as to respond to recent NRC security reviews, the NRC is amending its physical protection regulations for licensed fuel facilities possessing formula quantities of SSNM. These facilities are: General Atomics, La Jolla, California; Nuclear Fuel Services, Erwin, Tennessee; Babcock and Wilcox, Lynchburg, Virginia; and United Nuclear Corporation, Montville, Connecticut. Although the Fort St. Vrain reactor (Colorado) uses high enriched uranium fuel, it is not subject to these upgrades because of the extensive processing required to yield weapons usable material and because of the weight of the fuel elements and their low concentration of uranium. Pursuant to 10 CFR 73.5, the Commission will initiate an exemption from the new requirements for Fort St. Vrain. These amendments will provide greater assurance that security systems and security force capabilities at these facilities are comparable to those used by DOE. A remaining comparability issue relates to the use of deadly force by licensee guards. This issue is being addressed separately and is not covered by these amendments.

On December 31, 1987, the NRC published in the **Federal Register** (52 FR 49418) a proposed rule for upgrading safeguards requirements for licensed fuel facilities possessing formula quantities of SSNM. The upgrades called for: (1) Security system performance evaluation through tactical response exercises, (2) night firing qualification for guards using all assigned weapons, (3) search of 100 percent of entering personnel and packages (for explosives, firearms, and incendiary devices), (4) posting of armed guards at MAA control points, (5) providing two separate physical personnel barriers around the protected area, and (6) revision of the design basis threat at these fuel facilities to include land vehicle use by adversaries attempting to commit theft and require the implementation of countermeasures to prevent forcible vehicle entry into the protected area. The comment period ended on March 30, 1988.

Summary of Public Comment

Letters of comment were received from six respondents: four from fuel facility licensees, one from DOE, and one from a manufacturer of fences who submitted specifications on a type of security fence but did not comment on the rule itself. Copies of comment letters are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW., Lower Level, Washington, DC.

A summary of the public comments and their resolution follows. The comments are organized in the following categories:

1. Performance Evaluation Through Tactical Response Exercises and Tactical Response Teams (TRT);
2. Guard Force Weaponry;
3. Personnel, Package, and Material Entrance Search;
4. Protected Area Physical Barriers.

1. Performance Evaluation Through Tactical Response Exercises and Tactical Response Teams

Under the proposed rule, affected licensees would conduct tactical response exercises for each guard force shift on a quarterly basis. The exercises would demonstrate the guard force state of readiness and test the effectiveness of delay mechanisms, alarm and communication systems, response times, deployment of response forces, firing skills (simulated), and tactical maneuvers. The results would be used to determine whether additional training or security system improvements are needed. The exercises are not intended to be viewed in terms of "pass" or "fail."

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The quarterly exercises could be of short duration, would have at least one exercise per guard shift, and would cumulatively represent the various lighting conditions during a 24-hour day. Each year, at least two of the quarterly exercises for each shift would include force-on-force scenarios. Also proposed was an additional, more extensive annual exercise to be observed by NRC representatives that would include force-on-force scenarios.

One letter of comment stated that quarterly exercises are more frequent than necessary and requested a reduction in the number of exercises to one per shift every four months. Another respondent requested that ther NRC observe one of the quarterly force-on-force exercises rather than have the licensee conduct a special annual exercise. A third respondent requested clarification of the number of exercises and how much prior notice the NRC needed before the NRC-observed annual exercise.

The NRC staff accepts that a routine of 13 exercises per year, seven of which are force-on-force (based on a three-shift operation, one exercise per shift per quarter, plus one annual exercise) can, over time, become less effective due to their frequent repetition and reduced learning curve. Therefore, this final rule is being modified to require a licensee, during the first year of rule implementation, to conduct a total of 12 exercises (one exercise per quarter per shift), half of which are to be force-on-force. The NRC will observe one of the quarterly force-on-force exercises and will not require an additional annual exercise. This reduces the number of exercises during the first year of compliance to 12 for a three-shift operation. During the second year and each year thereafter, licensees will be required to conduct nine exercises per year (one exercise per shift every four months), one-third of which will be force-on-force, with the NRC observing one of the force-on-force exercises. The NRC is to be notified 60 days prior to an NRC-observed, force-on-force exercise so that possible scheduling conflicts can be resolved.

This final rule requires licensees to establish a designated TRT and replaces the current general requirement for an armed response force. Creation of TRT's is expected to provide more highly motivated, professional, and effective organizations to respond to and prevent forceful attempts to remove SSNM from licensee sites. This rule also requires that TRT members have individually assigned, upgraded weaponry and an item of uniform distinctive and different from that of the guard force (e.g., cap, armband, etc.).

One licensee objected to the NRC replacing the term "armed response personnel" with "Tactical Response Team". This licensee believed that it should not be restricted in selection of a title, since the title/designation of its response force is changed periodically for security purposes. The NRC does not object to a licensee using different code names or changing code names for its TRT. When amending the security plan, however, a licensee shall use the term "Tactical Response Team".

This licensee also objected to the proposed requirement that TRT members have a distinctive item of uniform. It was the licensee's experience that fostering a spirit of elitism among a small group of individuals within the security force often only serves to create a schism and affects morale unfavorably. The NRC accepts that the establishment of the TRT could have unfavorable effects on the morale of some personnel as foreseen by the licensee. However, these negative factors, if indeed they develop, are far less important than the need for a highly effective response capability. Moreover, an elite group within the guard force need not be viewed negatively by the remaining guard force if presented properly. All members of a security force could be eligible to qualify as TRT members (as opposed to being singled out by the licensee). Ideally, if all members of the security force qualify as TRT members, they can be rotated through the schedule on an equal basis, thereby alleviating the concern of creating a separate elitist group and making shift scheduling easier.

The licensee was also concerned that a distinctive item of uniform could single out TRT members to an adversary. The NRC accepts this as a valid concern. However, the distinctive item could be small, such as a pin or badge, and not noticeable at a distance.

Under the proposed amendment, TRT members and guards who are eligible to be TRT members would have to successfully complete training in response tactics. The training would be in addition to the individual training currently required in Appendix B to Part 73. No specific criteria or standards for the training in response tactics were provided with the proposed rule. A licensee respondent suggested that the NRC should establish minimum standards but that the standards or criteria should be adaptable to site-specific situations.

The NRC agrees with this suggestion. A Tactical Training Manual has been developed for licensee use. The material can be adapted and used under a variety of conditions and circumstances. The manual provides viable approaches for licensees to use in structuring site-specific tactical response training programs.

2. Guard Force Weaponry

Under the proposed rule, all TRT members would be armed with 9mm semiautomatic pistols. Many major city law enforcement agencies, SWAT teams, and the U.S. military are shifting from revolvers to semiautomatic pistols in order to take advantage of sustained fire capability. These police upgrades respond to increased encounters with adversaries using more sophisticated weapons. After conducting a literature review and discussing with various agencies their rationale for converting from revolvers to semiautomatic pistols, the NRC included in the proposed amendments a requirement for TRT members only (not other security force personnel) to be armed with 9mm semiautomatic pistols.

The Commission explicitly solicited public comment on the requirement for equipping TRT members with semiautomatic pistols and on whether the final choice of weapons should be left to the licensee. Only one response (from a licensee) was received. It stated that the choice of weapon and caliber of weapon should be left to the individual licensee. This licensee believes that the NRC if justifying the requirement for a 9mm semiautomatic pistol on the faulty conclusions (1) that greater firepower (increased availability of rounds) equates with an enhanced ability to hit the target, and (2) that the 9mm's larger magazine (up to 15 rounds) and more rapid action allows for faster discharge of rounds and increased hit probability. The licensee also stated that certain types of revolvers could be equally justified and that after an in-depth evaluation of weapons and ammunition currently available, each licensee could best determine which meet the requirements of the site.

The NRC's rationale for the requirement is based on the advantages of the weapon. The 9mm has less recoil than revolvers currently used, making it easier to control, and thereby allowing increased accuracy. In light of the growing worldwide trend among the criminal element toward the adoption of sophisticated automatic and semiautomatic weaponry, the 9mm provides added firepower considered necessary while maintaining the necessary high degree of reliability and accuracy. Additionally, the semiautomatic pistol is easier to load in the dark, in the cold, or when one is under stress. In the event adversaries armed with semiautomatic weapons attack a facility where TRT members are equipped with standard six-round revolvers, the TRT responders would need to reload ammunition long before the opponents would. During reloading, TRT responders could be exposed to deadly fire without defense. The ability to sustain fire is of major importance. This final rule requires that all TRT members be equipped with 9mm semiautomatic pistols, with qualification and annual requalification in both day and night firing courses. The choice of model and manufacturer is left to the licensee.

The proposed rule required each TRT member be armed with a shoulder fired weapon, and at least one TRT member carry a .30 caliber or 7.62mm rifle. The requirement for a heavier rifle would provide additional effectiveness against the use of land vehicles, which is now included in the design basis threat.

Letters of comment on this issue were received from two licensees. One licensee did not agree with the large caliber weapon requirement and recommended that this option be left up to the licensee. The licensee asserted that a rifle of .30 caliber or 7.62mm will not immediately stop a vehicle and if that was NRC's intent, then nothing less than a .50 caliber heavy machine gun would be needed. A second licensee requested an exemption from this requirement due to the configuration and limited size of its facility. This licensee was concerned about various problems due to the proximity of high population areas and public reaction and, therefore, believed it unnecessary and dangerous to arm TRT members with large caliber rifles.

The requirement that one TRT member carry a rifle of at least .30 caliber or 7.62mm is retained in the final rulemaking. The Commission believes that additional capability should be available to defend against adversaries in a vehicle attempting to penetrate a protected area boundary. The intent of this requirement is not to stop the vehicle immediately, but to disable adversaries inside the vehicle. Any site-specific considerations that licensees may have once this final rulemaking is effective should be dealt with on an individual basis through appropriate procedures.

Under the proposed rule, TRT members on duty would be required to carry their individually assigned shotgun or semiautomatic rifle, with one member carrying the .30 caliber or 7.62mm weapon. Two licensee respondents believed that the weapons need not be carried but should be readily available i.e., kept a strategic locations throughout the facility. Both respondents noted that there were times when carrying shoulder fired weapons was not practical and were concerned about the safety hazard involved should the weapon have to be laid down (i.e., lunch, restrooms). Additional concerns were that the weapons may be functionally abused during the TRT members normal activities of climbing ladders and maneuvering through close areas, or contaminated should the weapon have to be laid down while performing searches in material access areas.

The requirement for TRT members to carry their assigned shoulder fired weapons while on duty is included in this final rule. The requirement "to carry" is not to be interpreted to mean "hand carry" but to be on the person as in a shoulder sling. The normal duties of a TRT member should permit immediate response and, therefore, should not include routine searches at material access areas. Likewise, while on lunch break, the TRT member should be relieved by another TRT-qualified security officer in order to avoid the need to lay the weapon down. The main rationale for TRT members to carry their assigned weapons is to permit immediate response. In the event of an adversary attack the timely delay caused by retrieving weapons from strategically located repositories could have an adverse impact on the successful containment of the adversaries.

3. Personnel, Package, and Material Entrance Search

Under the proposed amendments, search for explosives, firearms, and incendiary devices would be required of 100 percent of entering personnel and packages except for Federal, State, and local law enforcement personnel on official duty. Also, under the proposed amendments, present exemptions would continue for those delivery and inspection activities specifically designated by the licensee and approved by the Commission to be carried out within material access, vital, or protected areas for reasons of safety, security, or operational necessity.

One licensee respondent recommended that "Q" cleared armed security officers should be included in the exemption based on the fact that it could see no benefit in performing a prohibited article search on a security officer overtly carrying a weapon. In response, it is pointed out that of concern to the NRC is the issue of an insider attempting to introduce not only firearms, but also explosives and incendiary devices inside a protected area. Under this criterion, although a security officer displays an authorized handgun, searching the officer for explosives, incendiary devices, and unauthorized weapons is still necessary before the officer enters a protected area. Accordingly, the proposed search requirement is retained unchanged in the final rule.

4. Protected Area Physical Barriers

Under the proposed rule, the perimeter of the protected area of a fuel facility possessing formula quantities of SSNM would be required to have a double physical personnel barrier. The two barriers would be constructed and installed primarily to ensure the ability to assess an attempted penetration of the protected area perimeter at the time of the occurrence and secondarily to delay attempts of unauthorized exit from the protected area. The present intrusion detection systems required by NRC would be located between these two barriers.

In the sole letter of comment regarding the proposed requirement, DOE recommended that the proposed changes be deferred until a performance analysis of the existing security system has been completed and the need for change has been determined. In its detailed comments, DOE stated that two perimeter fences are not a DOE requirement and that double fences, where they have been installed, are installed on the basis of the overall performance of all security systems at these sites. DOE pointed out that only very limited adversary delay time is provided by a perimeter fence, and the potential of a second perimeter barrier is realized only if designed to enhance assessment. Relative to the intrusion detection system, DOE proposed revising the requirment to call for optimum use of the present systems and leaving the systems in their current locations until an evaluation of the usefulness of these present systems through a performance exercise is made.

The NRC recognizes that DOE has not established a generic requirement for two perimeter fences. However, all DOE facilities reviewed by the NRC/DOE Comparability Review Group do have double perimeter barriers. The NRC believes that the performance standards achieved at these DOE facilities, which are met in part by double fences, should be provided at comparable NRC-licensed facilities.

In guidance to affected licensees NRC makes clear that the intrusion detection

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system and the inner barrier are to be positioned and constructed to assure adequate delay after an intruder triggers an alarm. The delay must be sufficient to permit a defender to determine positively whether the triggering was due to an intruder. The interrelationship of the perimeter intrusion detection system and the double barriers is so close that it is essential to treat improvements to them simultaneously. Therefore, it is necessary for the overall performance of the protection system that the double barrier system and intrusion detection system locations (and possible reinstallation) be designed in concert. For these reasons, the barrier requirement is retained in the final rule.

Other Changes: Weapons Qualification

These amendments require night firing qualification and annual requalification by the security force and TRT members with all weapons assigned to them. This revises the current requirement for night familiarization firing only. Specified courses (included in Appendix H) for qualification and annual requalification with revolvers, shotguns, and rifles are added as requirements in this final rulemaking. Licensees may develop and sumibt for NRC approval a qualification course for day firing for 9mm semiautomatic pistols which TRT members must now carry. Additionally, licensees may also substitute shoulder firing for hip firing for the day shotgun qualification course contained in Appendix B to Part 73 and reflect this change in their amended security plan. Licensees are required to retain the documentation of each qualification and requalification as a record for three years after each qualification and requalification. Microfilm documents are acceptable.

Implementation

Currently, under conditions of license, licensees carry out certain of the measures called for in the amendments, namely: (1) Search of 100 percent of personnel and packages admitted to the protected area, (2) posting of armed guards at MAA control points, and (3) night firing qualification for guards using all assigned weapons. Under the new amendments, each licensee will modify its physical security plan to show how all of the new requirements would be carried out and will submit the plan to the NRC for approval within 180 days after the effective date of these amendments. The license conditions listed earlier will be withdrawn at the time that the corresponding commitments in the approved plan become effective. The licensee will carry out the various additional new commitments not already implemented by license conditions in the approved plan commencing at various dates, ranging from 30 to 365 days after NRC approval of the plan.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. These amendments affect neither the safety of operation nor the routine of, or exposure to, radioactivity from fuel facilities possessing formula quantities of SSNM. Their only intent is to provide greater protection against the revised design basis threat and thus reduce the risks of theft of SSNM from these facilities. Of the six measures proposed, three have no identifiable environmental impact; namely, initiation of security system performance evaluations through tactical team exercises, night firing qualification of guards using all assigned weapons, and posting of armed guards at MAA control points. The 100 percent search of entering personnel and packages would require installation of additional walk-through detection equipment which likely would require construction activities to expand or modify the existing building in which this equipment is located. The requirement regarding protected area personnel barriers would necessitate construction, on the licensee's property, of a second barrier. Finally, the installation of structures to prevent forcible vehicle entry would likely require the deployment of vehicle barriers which would be installed on the licensee's property at or near the protected area boundary at points accessible to vehicles. These construction activities at four current licensee sites and at any sites of future fuel facility licensees who require possession of formula quantities of SSNM are considered to have a minor impact on the environment and support a finding that the final rule involves no significant environmental impact. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555. Single copies of the environmental assessment and finding of no significant impact are available from Dr. Sandra D. Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3773.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget under approval number 3150–0002.

Public reporting burden for this collection of information is estimated to average 2.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to The Records and Reports Management Branch, Mail Stop P–530, Division of Information Support Services, IRM, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555. Single copies of the analysis may be obtained from Dr. Sandra D. Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3773.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The rule affects four licensees who operate fuel facilities possessing formula quantities of SSNM under 10 CFR Parts 70 and 73. They are GA Technologies Inc., La Jolla, California; Nuclear Fuel Services, Erwin, Tennessee; Babcock & Wilcox, Lynchburg, Virginia; and United Nuclear Corporation, Uncasville, Connecticut. The companies that own these plants

are dominent in their service areas and do not fall within the scope of the definition of small entities set forth in section 605(b) of the Regulatory Flexibility Act of 1980 or within the definition of Small Business size standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, a backfit analysis is not required since these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 70

Hazardous materials-transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 73

Hazardous materials-transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 70, and 73.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Appendix C—[Amended]

2. In Appendix C of Part 2, footnote 10 to Supplement III is revised to read "[10] See 10 CFR 73.2 for the definition of 'formula quantity.' "

3. In Appendix C of Part 2, footnote 11 to Supplement III is revised to read "[11] See 10 CFR Part 73.2 for the definition of 'special nuclear material of moderate strategic significance.' "

4. In Appendix C of Part 2, footnote 12 to Supplement III is revised to read "[12] See 10 CFR Part 73.2 for the definition of 'special nuclear material of low strategic significance.' "

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 70.22 [Amended]

6. In § 70.22 paragraph (k) is amended by revising "as defined under § 73.2 (x) and (y) of this chapter" to read "as defined under § 73.2 of this chapter."

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

7. The authority citation for CFR Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) is also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26 (b)(3), (h)(6), and (k)(4), 73.27 (a) and (b), 73.37(f), 73.40 (b) and (d), 73.46 (g)(6) and (h)(2), 73.50 (g)(2), (3)(iii)(B), and (h), 73.55 (h)(2) and (4)(iii)(B), 73.57, 73.70, 73.71, and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. In § 73.1, paragraph (a)(2)(i) is revised to read as follows:

§ 73.1 Purpose and scope.

(a) * * *

(2) Theft or diversion of formula quantities of strategic special nuclear material.

(i) A determined, violent, external assault, attack by stealth, or deceptive actions by a small group with the following attributes, assistance, and equipment:

(A) Well-trained (including military training and skills) and dedicated individuals;

(B) Inside assistance that may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both;

(C) Suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long-range accuracy;

(D) Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safe-guards system;

(E) Land vehicles used for transporting personnel and their hand-carried equipment; and

(F) the ability to operate as two or more teams.

* * * * *

9. In § 73.2, remove all alphabetical designators and place all definitions in alphabetical sequence; paragraph (1) of the definition of "Special nuclear material of low strategic significance" is amended by removing "§ 73.2(x)(1)" and inserting "paragraph (1) of the definition of strategic nuclear material of moderate strategic significance set out in this section;" insert new definition, "Tactical Response Team," in proper alphabetical sequence; and revise the definition for "Physical Barrier" to read as follows:

§ 73.2 Definitions.

* * * * *

"Physical Barrier" means: (1) Fences constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled inward or outward between 30° and 45° from the vertical, with an overall height of not less than 8 feet, including the barbed topping; (2) building walls, ceilings and floors constructed of stone, brick, cinder block, concrete steel or comparable materials (openings in which are secured by grates, doors, or covers of construction and fastening of sufficient strength such that the integrity of the wall is not lessened by any opening), or walls of similar construction, not part of a building, provided with a barbed topping described in paragraph (1) of this definition of a height of not less than 8 feet; or

* * * * *

"Tactical Response Team" means the primary response force for each shift which can be identified by a distinctive

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item of uniform, armed with specified weapons, and whose other duties permit immediate response.

* * * * *

10. In § 73.46, paragraphs (b)(3)(i), (b)(4), (b)(6), (c)(1), (d)(4)–(6), (d)(9), and (h)(3) are revised and paragraphs (b)(7)–(9) and (i) are added to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(b) *Security organization.* * * *

(3) * * *

(i) Written security procedures which document the structure of the security organization and which detail the duties of the Tactical Response Team, guards, watchmen, and other individuals responsible for security. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which these procedures were developed and, if any portion of these procedures is superseded, retain the superseded material for three years after each change; and

(4) The licensee may not permit an individual to act as a guard, watchman, Tactical Response Team member, or other member of the security organization unless the individual has been trained, equipped, and qualified to perform each assigned security duty in accordance with Appendix B of this part, "General Criteria for Security Personnel." In addition, guards and Tactical Response Team members shall be trained, equipped, and qualified in accordance with paragraphs (b)(6) and (b)(7) of this section. Upon the request of an authorized representative of the Commission, the licensee shall demonstrate the ability of the physical security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities. Each guard, watchman, Tactical Response Team member, or other member of the security organization, whether a licensee or contractor employee, shall requalify in accordance with Appendix B of this part, and , for guards and Tactical Response Team members, in accordance with paragraph (b)(7) of this section, at least every 12 months. The licensee shall document the results of the qualification and requalification. The licensee shall retain the documentation of each qualification and requalification as a record for three years after each qualification and requalification.

* * * * *

(6) Each guard shall be armed with a handgun, as described in Appendix B of this part. Each Tactical Response Team member shall be armed with a 9mm semiautomatic pistol. All but one member of the Tactical Response Team shall be armed additionally with either a shotgun or semiautomatic rifle, as described in Appendix B of this part. The remaining member of the Tactical Response Team shall carry, as an individually assigned weapon, a rifle of no less caliber than .30 inches or 7.62mm.

(7) In addition to the qualification criteria of Appendix B of this part, guards and Tactical Response Team members shall qualify and requalify annually for night firing with assigned weapons in accordance with Appendix H of this part. The licensee or the licensee's agent shall document the results of weapons qualification and requalification for night firing. The licensee shall retain the documentation of each qualification and requalification as a record for three years after each qualification and requalification.

(8) In addition to the training requirements contained in Appendix B of this part, Tactical Response Team members shall successfully complete training in response tactics. The licensee shall document the completion of training. The licensee shall retain the documentation of training as a record for three years after training is completed.

(9) The licensee shall conduct Tactical Response Team and guard exercises to demonstrate the overall security system effectiveness and the ability of the security force to perform response and contingency plan responsibilities and to demonstrate individual skills in assigned team duties. During the first 12-month period following the date specified in paragraph (i)(2)(ii) of this section, an exercise must be carried out at least every three months for each shift, half of which are to be force-on-force. Subsequently, during each 12-month period commencing on the anniversary of the date specified in paragraph (i)(2)(ii) of this section, an exercise must be carried out at least every four months for each shift, one third of which are to be force-on-force. The licensee shall use these exercises to demonstrate its capability to respond to attempts to steal strategic special nuclear material. During each of the 12-month periods, the NRC shall observe one of the force-on-force exercises which demonstrates overall security system performance. The licensee shall notify the NRC of the scheduled exercise 60 days prior to that exercise. The licensee shall document the results of all exercises. The licensee shall retain the documentation of each exercise as a record for three years after each exercise is completed.

(c) *Physical barrier subsystems.* (1) vital equipment must be located only within a vital area, and strategic special nuclear material must be stored or processed only in a material access area. Both vital areas and material access areas must be located within a protected area so that access to vital equipment and to strategic special nuclear material requires passage through at least three physical barriers. The perimeter of the protected area must be provided with two separated physical barriers with an intrusion detection system placed between the two. The inner barrier must be positioned and constructed to enhance assessment of penetration attempts and to delay attempts at unauthorized exit from the protected area. The perimeter of the protected area must also incorporate features and structures that prevent forcible vehicle entry. More than one vital area or material access area may be located within a single protected area.

* * * * *

(d) *Access control subsystems and procedures.*

* * * * *

(4)(i) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals for firearms, explosives, and incendiary devices must be made and authorization must be checked at these points except for Federal, State, and local law enforcement personnel on official duty and United States Department of Energy couriers engaged in the transport of special nuclear material. The search function for detection of firearms, explosives, and incendiary devices must be accomplished through the use of detection equipment capable of detecting both firearms and explosives. The individual responsible for the last access control function (controlling admission to the protected area) shall be isolated within a structure with bullet resisting walls, doors, ceiling, floor, and windows.

(ii) When the licensee has cause to suspect that an individual is attempting to introduce firearms, explosives, or incendiary devices into a protected area, the licensee shall conduct a physical pat-down search of that individual. Whenever firearms or explosives detection equipment at a portal is out of service or not operating satisfactorily, the licensee shall conduct a physical pat-down search of all persons who would otherwise have been subject to search using the equipment.

(5) At the point of personnel and vehicle access into a protected area, all hand-carried packages except those carried by individuals exempted from personal search under the provisions of paragraph (d)(4)(i) of this part must be searched for firearms, explosives, and incendiary devices.

(6) All packages and material for delivery into a protected area must be checked for proper identification and authorization and searched for firearms, explosives, and incendiary devices prior to admittance into the protected area, except those Commission-approved delivery and inspection activities specifically designated by the licensee to be carried out within material access, vital, or protected areas for reasons of safety, security, or operational necessity.

* * * * *

(9) The licensee shall control all points of personnel and vehicle access to material access areas, vital areas, and controlled access areas. At least two armed guards trained in accordance with the provisions contained in paragraph (b)(7) of this section and Appendix B of this part shall be posted at each material access area control point whenever in use. Identification and authorization of personnel and vehicles must be verified at the material access area control point. Prior to entry into a material access area, packages must be searched for firearms, explosives, and incendiary devices. All vehicles, materials and packages, including trash, wastes, tools, and equipment exiting from a material access area must be searched for concealed strategic special nuclear material by a team of at least two individuals who are not authorized access to that material access area. Each individual exiting a material access area shall undergo at least two separate searches for concealed strategic special nuclear material. For individuals exiting an area that contains only alloyed or encapsulated strategic special nuclear material, the second search may be conducted in a random manner.

* * * * *

(h) *Contingency and response plans and procedures.*

* * * * *

(3) A Tactical Response Team consisting of a minimum of five (5) members must be available at the facility to fulfill assessment and response requirements. In addition, a force of guards or armed response personnel also must be available to provide assistance as necessary. The size and availability of the additional force must be determined on the basis of site-specific considerations that could affect the ability of the total onsite response force to engage and impede the adversary force until offsite assistance arrives. The rationale for the total number and availabiliy of onsite armed response personnel must be included in the physical protection plans submitted to the Commission for approval.

* * * * *

(i) Implementation schedule for revisions to physical protection plans. (1) By June 12, 1989, each licensee shall submit a revised fixed site physical protection plan to the Commission for approval. The revised plan must describe how the licensee will comply with the requirements of paragraphs (b)(3)(i), (b)(4), (b)(6), (b)(7), (b)(8), (b)((9), (c)(1), (d)(4), (d)(5), (d)(6), (d)(9), and (h)(3) of this section. Revised plans must be mailed to the Director, Division of Safeguards and Transportation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) Each licensee shall carry out the new commitments in the revised plan in accordance with the following schedule:

(i) Commencing 30 days after Commission approval of the revised plan for commitments related to paragraphs (b)(3)(i), (d)(4), (d)(5), (d)(6) and (d)(9) of this section.

(ii) Commencing 60 days after Commission approval of the revised plan for commitments related to paragraphs (b)(4), (b)(6), (b)(7), (b)(8), (b)(9) and (h)(3) of this section.

(iii) Commencing 365 days after Commission approval of the revised plan for commitments related to paragraph (c)(1) of this section.

Appendix H—[Amended]

11. A new Appendix H is added to read as follows:

APPENDIX H—MINIMUM QUALIFICATION CRITERIA FOR NIGHT FIRING

Weapon	Stage	Distance	No. Rounds	Timing	Position	Target	Scoring	Lighting
Handgun:								
Revolver	1	7 yds	12	35 sec	Standing—No artificial support.	B–27	Minimum qualifying=70%.	For all courses: 0.2 footcandles at center mass of target area.
	2	15 yds	12	45 sec	do.			
Semi-automatic	1	7 yds	2 + clip	30 sec	do.		do.	
	2	15 yds	2 + clip	40 sec	do.			
Shotgun	1	25 yds	2 Rifled slugs	30 sec (Load 2 slugs—chamber empty—Time starts—Commence firing.)	Standing—strong shoulder.	B–27	Rifled-Slug: Hits=strike area on target (10, 9, 7).	
	1	15 yds	5 Double 00 buckshot.	10 sec. (Load 5rds Buckshot—chamber empty—Time starts—Commence firing.)	do.	B–27	Double 00 Buckshot: Hits in black=2 pts (5rds x 9 pellets/rd x 2 pts=90 Mimimum qualifying=70%.	
Rifle	1	25 yds	1—5rd mag	45 sec	Standing—Barricade	B–27		
	2	25 yds	1—5rd mag	45 sec	Standing			
	3	25 yds	1—5rd mag	45 sec	Kneeling		Mimimum qualifying=70%.	
	4	25 yds	1—5rd mag	45 sec	Prone			

Note.—All firing is to be done only at night. Use of night simulation equipment during daylight is not allowable. Use of site specific devices (i.e., laser, etc.) should be included in the licensee amended security plan for NRC approval.

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Dated at Rockville, MD, this 4th day of November 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-26059 Filed 11-9-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 571

[No. 88-1182]

Accounting Policy Relating to Acquisition, Development and Construction Loans

Date: November 2, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Statement of Policy; withdrawal.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is removing its statement of accounting policy relating to acquisition, development and construction ("ADC") arrangements, and consequently terminates the proposed rule issued March 4, 1987. Board Res. No. 87-240, 52 FR 7887 (March 13, 1987). All institutions, the accounts of which are insured by the FSLIC ("insured institutions") or affiliates thereof, should follow generally accepted accounting principles ("GAAP") in classifying and accounting for ADC arrangements in reports or financial statements filed with the Board or the FSLIC. GAAP on ADC arrangements is currently set forth in the "Notice to Practitioners" issued by the American Institute of Certified Public Accountants ("AICPA") and published in the February 10, 1986 issue of the CPA Letter. By this amendment, the Board is reducing the number of documents which insured institutions must consult in determining how to account for transactions. At the same time, the Board continues its longstanding policy that insured institutions should apply the guidance of the accounting profession in determining whether a transaction characterized as an ADC loan is in fact a loan or whether, in substance, it is a real estate investment or a joint venture.

EFFECTIVE DATE: November 10, 1988.

FOR FURTHER INFORMATION CONTACT: Carol H. Larson, Professional Accounting Fellow, (202) 331-4577, Ben F. Dixon, Policy Analyst, (202) 331-4599, Office of Regulatory Activities, 801 17th Street NW., Washington, DC 20006, or Deborah Dakin, Regulatory Counsel, Regulations and Legislation Division, Office of General Counsel, (202) 377-6445, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: In the early 1980's, insured institutions began entering into an increasing number of acquisition, development and construction arrangements. These ADC arrangements may be structured as loans, but the insured institution has virtually the same risks and potential rewards as those of an owner or joint venturer. Because this type of arrangement had not been common previously, clearly-defined accounting literature providing authoritative accounting guidance did not exist. As a result, accounting for ADC arrangements varied widely in practice. This was of particular concern to not only the accounting profession but also the Board, because ADC arrangements were more common among thrift institutions than among commercial banks.

In response, the AICPA's Accounting Standards Executive Committee ("AcSEC"), in November 1983, and the Savings and Loan Committee, in November 1984, issued two notices to practitioners addressing ADC arrangements. Professional Notes, *Guidance on Accounting for Real Estate Acquisition, Development or Construction Loans: Enhancing the Accounting Manual*, Journal of Accountancy, November 1983, at 51; *Notice to Practitioners on ADC Loans*, CPA Letter, November 26, 1984, at 3. In 1985, the Board adopted these notices to practitioners as its accounting policy in this area "to put into regulatory format the accounting guidance that had been developed by the accounting profession and to state that there was *no substantive difference* between the Board's regulatory treatment and GAAP [generally accepted accounting principles]." Board Res. No. 85-291, 50 FR 18233, 18235 (April 30, 1985) (emphasis in original). The Board's statement of policy, codified at 12 CFR 571.17, incorporated both notices, neither of which separately addressed all aspects of ADC arrangements. The Board's regulations continued to provide that except where the Board's regulations specifically required different accounting principles or procedures to be employed, insured institutions were to prepare financial statements and reports to the Board or the FSLIC in accordance with GAAP. 12 CFR 563.23-3(c).

As a result of continuing practice problems, the AICPA's AcSEC issued in February 1986 a Third Notice to practitioners superseding the two previous notices. *Notice to Practitioners on ADC Loans*, CPA Letter, February 10, 1986, at 3. This Third Notice was intended to clarify and expand upon the guidance provided in the two previous notices.

On March 4, 1987, the Board proposed to amend its ADC policy by adopting the Third Notice substantially in its entirety. The proposed policy would have deviated from GAAP, however, in that the lender's loan and accrued interest, real estate investment, or joint venture investment would be subject to recoverability under the market value concept of the Board's then-effective appraisal policies as set forth in staff memorandum R41c rather than the net realizable value concept which might be approriate for GAAP purposes.

The proposal also specifically sought comment on the effective date and transition rule of the amendment. Comments were sought because of inconsistencies between the effective date contained in the Third Notice and the determination by the Notice to a broader range of ADC arrangements. The proposal presented three alternatives: the AICPA effective date (the Third Notice governs only ADC transactions entered into after February 10, 1986); the SEC transition rule (the Third Notice applies to all ADC arrangements, regardless of when originated, but only financial statements prepared for periods ending on or after January 1, 1986 must reflect the asset reclassifications); and the Board compromise rule (the Third Notice applies to all ADC arrangements regardless of the date of origination, but only financial statements prepared for periods ending on or after the date of publication of the final policy statement must reflect this classification).

Summary of Comments Received on the Proposal

The Board received a total of 26 comment letters in response to its proposal. Seventeen comments were received from FSLIC-insured institutions, 5 from thrift trade associations, 2 from professional accounting societies, 1 from a thrift holding company and 1 from a public accounting firm. Most commenters favored the substantive aspect of the proposal, agreeing that the thrift industry should adhere to the accounting guidance published by the AcSec Committee of the AICPA in the Third Notice, insofar as it differed from the guidance previously published by the AcSec in two previous Notices to Practitioners. Many noted that most of the thrift industry already follows the Third Notice even though it is not yet reflected in the Board's current policy statement. While, as discussed below, a few commenters suggested revisions to the substantive provisions of the accounting policy, both as it currently exists and as proposed, the vast majority of the comments received by the Board with respect to this proposal addressed the effective date and transition rule.

Of the comment letters addressing this issue, 19 commenters supported the AICPA effective date. Only one commenter supported the SEC rule. One expressed support for the FHLBB compromise rule. In addition, three comment letters expressed support for a prospective transition rule and effective date, under which the adoption of the provisions of the Third Notice would apply to ADC arrangements completed on or after the first day of the calendar quarter in which the final amendment of the ADC accounting rule becomes effective.

The primary focus of the comments addressing the substantive provisions of the proposal was the use of the R41c "market value" concept in evaluating the institution's ADC arrangements. The commenters addressing this issue all urged the Board to adhere to GAAP, as represented by the Third Notice.

Discussion

On August 10, 1987, Congress enacted the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100-86, 101 Stat. 552. Section 402 of the CEBA instructs the Board to adopt accounting principles consistent with generally accepted accounting practices or practices of the commercial banking regulators. The Board notes that commercial banking regulators have not adopted any modifications to GAAP in this area. Additionally, Congress instructed the Board to modify its appraisal policies to conform with those of the federal banking agencies. As a result, the Board has withdrawn the R-41c memorandum discussed in the proposal. As part of its Uniform Accounting Standards regulation, adopted on December 21, 1987 and published at 12 CFR 563.23-3, the Board instructed all insured institutions to prepare financial reports to the Board or the FSLIC in accordance with GAAP for all periods beginning on or after January 1, 1989.

The Board has determined that insured institutions should account for ADC arrangements in accordance with GAAP. As such, loss allowances relating to ADC arrangements would be based upon net realizable value or market value as GAAP guidance would indicate is appropriate in the given circumstances. The Board has also determined that insured institutions should use the effective date set forth in the Third Notice in classifying ADC arrangements and in accounting for these arrangements. Publicly held institutions should continue to account for ADC arrangements in accordance with SEC requirements.

After reviewing the comments received in response to its proposal and in light of the CEBA and the Board's modification of its accounting regulations to conform to GAAP, the Board believes that a policy statement instructing insuring institutions that they should classify and account for ADC loans in accordance with GAAP, while accurate, is redundant and unnecessary.

The Third Notice, as discussed above, currently embodies GAAP on ADC arrangements. It is the Board's intention that institutions should account for ADC arrangements in accordance with the most recent guidance of the accounting profession. The Board believes that restating the Third Notice in the form of a Board regulation or policy statement would serve no useful purpose and in fact may lead to confusion in the event that GAAP is modified at some point in the future. The statement of policy is therefore being withdrawn.

The Board is taking this opportunity, however, to reiterate its commitment to monitoring ADC and nothing in the withdrawal of this statement of policy should be construed as in any way indicating any change in Board policy on this matter. As noted above, the Board's current accounting regulations instruct institutions to prepare reports in accordance with GAAP except where Board regulations affirmatively require a different accounting treatment. 12 CFR 563.23-3(c) (1988).

As indicated by the comments received in response to the proposal, the industry is already informally following the Third Notice, including the effective date contained therein. The Third Notice is less restrictive than the Board's statement of policy. Because of this, and to minimize industry confusion, the Board is adopting the effective date as set forth in the Third Notice.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of this rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by comments and agency assessment and response.* The comments have been summarized and addressed in the **SUPPLEMENTARY INFORMATION** section of this rule.

3. *Significant alternative minimizing small-entity impact and agency response.* There are no less burdensome alternatives.

List of Subjects in 12 CFR Part 561

Accounting, Bank deposit insurance, Savings and loan associations.

Accordingly, the Board hereby amends Part 571, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 571—STATEMENTS OF POLICY

1. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp. p. 1071.

§ 571.17 [Removed and reserved]

2. Section 571.17 is removed and reserved.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25997 Filed 11-9-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 429

Rule on Cooling-Off Period for Door-to-Door Sales

AGENCY: Federal Trade Commission.

ACTION: Final non-substantive amendments and exemptions to sellers of automobiles at auctions and arts and crafts at fairs.

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SUMMARY: The Federal Trade Commission ("Commission") is issuing final non-substantive amendments to section 429 (a) and (b) of the Rule on a Cooling-Off Period for Door-to-Door Sales (16 CFR Part 429), and is granting exemptions to sellers of automobiles at public auctions and tent sales and arts and crafts at fairs. The Rule presently requires that sellers of goods or services who make sales away from their place of business provide the buyer with a completed Notice of Cancellation form in duplicate, containing certain mandatory language, which shall be attached to the contract or receipt and easily detachable. The amendments permit alternative methods of complying with the Notice requirements of the Rule, without lessening consumer rights. The Commission is also exempting sales of automobiles and products such as arts and crafts, which are offered for sale at temporary places of business, from the Rule's application pursuant to section 18(g) of the Federal Trade Commission Act. The exemption for automobile sales is limited to sellers who have at least one permanent place of business.

EFFECTIVE DATE: The amendments and exemptions will be effective on December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Franke, Attorney, Federal Trade Commission, Washington, DC 20580 (202) 326–3009.

SUPPLEMENTARY INFORMATION: The Rule on a Cooling-Off Period for Door-to-Door Sales was promulgated by the Commission on October 26, 1972 (37 FR 22933 (1972)). The Rule makes it an unfair or deceptive act or practice for the seller of consumer goods or services with purchase price of $25.00 or more, who sells away from its place of business, to fail to furnish to the buyer certain information including the buyer's right to cancel the sale within three business days from the date of the transaction and to give the buyer a full refund of any downpayment upon the buyer's cancellation.

On August 10, 1987 the Commission published a notice in the **Federal Register** (52 FR 29539 (1987)), soliciting public comments for 60 days on the Commission's proposed amendments to the Rule and proposed exemptions. The Commission also stayed application of the Rule to sellers of automobiles at temporary places of business and sellers of arts and crafts at fairs because the underlying reasons for the Rule do not appear to apply to these types of transactions.

In response to the **Federal Register** Notice the Commission received 15 comments.

I. Rule Simplification Proposals

The Commission proposed two simplification amendments concerning the "Notice of Cancellation," which is one of the two notices required by the Rule.[1]

The "Notice of Cancellation" is required to be in duplicate, attached to the contract or receipt and "easily detachable."[2] Each duplicate must contain the date of the transaction as well as the date by which the buyer must mail the "Notice of Cancellation" to cancel the transaction.[3] The "Notice of Cancellation informs the buyer about: (1) The right to cancel and how to cancel; (2) the seller's obligation to return to the buyer any property traded in, payments made and any negotiable instruments executed by the buyer; and (3) the buyer's and seller's obligations with regard to the purchased product. All of this information is required to be found in the "Notice" regardless of whether it is applicable.[4]

First, the Commission proposed that sellers be afforded the opportunity to select the method of providing the Notices to buyers. In place of the requirement that each seller furnish a completed form in duplicate, "which shall be attached to the contract or receipt and easily detachable," the Commission proposed substituting a provision that only requires the seller to furnish a completed form in duplicate, one copy of which can be easily returned to the seller to effect cancellation. A seller would be in compliance with the duplicate Notice requirement as long as the buyer can retain one copy for reference and mail another copy to cancel the transaction.

Second, the Commission proposed giving sellers the option to shorten the Notice by eliminating the sections that are inapplicable to a particular transaction, such as language dealing with property traded-in, negotiable instruments, or property being delivered within the three day cooling-off period.

[1] The Rule requires the seller to furnish the buyer with a completed receipt or copy of the sales contract with two types of notices. The first is a summary notice, printed near the place for the buyer's signature, which informs the buyer generally of the right to cancel the transaction and that there is an attached "Notice of Cancellation." The latter notice explains in detail the buyer's right to cancel. See § 429.1(a) and (b). The amendments affect only the "Notice of Cancellation."

[2] Section 429.1(b).

[3] Section 429.1(c).

[4] Section 429.1(d).

A. Summary of Comments

Several comments support the simplification proposals on the basis that they would greatly reduce compliance burdens such as printing costs and at the same time benefit consumers by making the notice more understandable.[5]

Sears proposed two additional sets of amendments to the Rule. First, Sears proposed modifying the Rule to conform to rescission under the Truth-in-Lending Act and Regulation Z [6] in order that sellers could use one form for both and to eliminate consumer confusion. Second, Sears proposed broadening two exceptions to the Rule, one dealing with repairs on personal property and the other with mail and telephone orders, to include additional repairs necessary to complete the repair work initially requested by the buyer.[7]

The National Automobile Dealers Association ("NADA") proposed obligating a cancelling buyer to return a purchased automobile to the seller instead of the current requirement of either the seller picking up the purchased merchandise or the buyer returning it at the seller's expense. There was also a proposal to extend the Rule's application to telephone sales because of the increased use of this medium to conduct sales.[8]

B. Conclusions

The Commission is rejecting the proposal to conform the requirements of the Rule with the requirements of the Truth-in-Lending Act and Regulation Z. Because transactions covered by the Act and Regulation are excluded from the Rule's application, consumers would not receive two different notices for one transaction, and therefore there is little likelihood of confusion. Further, the

[5] Direct Selling Association; Sears, Roebuck & Co.; Household Finance Co.; and the Recreational Vehicle Industry Association.

[6] Under the Truth-in-Lending Act and implementing Regulation Z, consumers have three days to cancel credit transactions involving a second mortgage on one's home. 15 U.S.C. 1635 and 12 CFR 226.15, 226.23. A transaction which is subject to rescission under Truth-in-Lending is exempt from the Cooling-Off Rule. See Note 1(a)(2) to Section 429.1 of the Rule. Though the right to cancel under both is fundamentally the same, the notices and obligations under them differ from each other in several respects.

[7] Transactions in which the buyer has requested the seller to repair the buyer's personal property are excluded from the Rule's coverage. See Note 1(a)(5) to the Rule. Transactions completed entirely by mail or telephone are also excluded from the Rule. See Note 1(a)(4). Sears believes that if it is determined that additional repairs and merchandise not initially requested by the buyer are necessary to complete the original repair, the additional work would not be included in the exception.

[8] W. Leipold.

Commission is rejecting the proposal to expand the exceptions to the Rule because all merchandise or services necessary to complete a repair requested by a buyer are already included in the above-mentioned exceptions. Finally, the Commission is rejecting separate proposals which would: (1) Obligate the buyer to return a purchased vehicle to the seller at the buyer's expense, upon the buyer's cancellation, and (2) extend the Rule's application to telephone sales, because there is no evidentiary record establishing the need for such actions.

Based on the comments received the Commission is adopting the amendments it originally proposed.[9] The first amendment affords sellers the opportunity to select the method of providing the Notices to buyers. In place of the requirement that each seller furnish a completed form in duplicate "which shall be attached to the contract or receipt and easily detachable," the Rule will only require the seller to furnish a completed form in duplicate, one copy of which can be easily returned to the seller for cancellation.

This would permit, for example, the use of a contract or receipt with the reverse side containing one "Notice of Cancellation" and an attached "Notice" to be used by the buyer should the buyer decide to cancel. Another alternative method of complying with the duplicate Notice requirement will be for the seller to give the buyer two copies of the contract or receipt with both having the Notice on the reverse side of the contract or receipt.

However, regardless of the method used, the seller must ensure that in the event of cancellation the buyer is able to retain a complete copy of the contract. For example, in the case of a two-page contract the seller is not permitted to place the required duplicate Notice on the contract in such a way that when the buyer returns one of the Notices, a portion of the contract is removed as well. To preclude this type of situation, as well as other similar situations, the Rule specifies that irrespective of the location of the two Notices, the buyer must be able to retain one complete copy of the contract or receipt in the event of cancellation.

Further, regardless of the method selected by the seller to satisfy the duplicate Notice provision of the rule, the buyer must know where to find the copies of the Notice if the disclosure and retention aspects of the Rule are to be effective. Thus for those sellers who do not attach both copies of the Notice to the contract or receipt, the last sentence of the summary notice required by paragraph (a) of the rule must be appropriately altered by the seller so as to include sufficiently specific information to enable the consumer to locate the copies easily. Of course, if both copies of the Notice are attached to the contract, no change in the current summary notice will be required.

This proposed simplification satisfies the Commission's original purpose in adopting these notice provisions. As in the current Rule, the proposed simplification continues to ensure that the buyer will receive two easily-located copies of the Notice and remain fully informed of his/her rights. Further, in the event of cancellation the buyer will be able to retain a complete copy of the contract or receipt. However, by provding the seller with increased flexibility in complying with the duplicate Notice provisions of the Rule, the policy objectives of those provisions will be attained at a lower cost (including paperwork-related costs) to the seller and ultimately to the consumer.

The second amendment gives sellers the option to shorten the Notice by eliminating the sections that are inapplicable to the particular transaction. Much of the mandatory language in the Notice is not applicable to many direct sales because they do not involve property traded-in, negotiable instruments, or property being delivered prior to the expiration of the three day cooling-off period. This amendment will further reduce paperwork—related costs incurred by sellers in complying with the Rule. Shortening the Notice will also benefit consumers. Fewer sections in the Notice should increase the likelihood of consumers' reading and understanding key provisions of all documents involved. Elimination of inapplicable language could be accomplished by inserting the words "where applicable" in the paragraph preceding the verbatim statement set forth in the required Notice.

The Commission is also issuing another nonsubstantive amendment that will permit sellers to use an alternative title for the cancellation notice, *i.e.*, "Notice of Right to Cancel," thereby clarifying the purpose of the notice. The Commission is permitting the use of this title as an optional method of complying with the requirement that the form required by § 429.1(b) of the Rule be captioned "Notice of Cancellation" so that sellers who choose to continue using their old forms or the original title may do so.

[9] These comments are consistent with comments the Commission received on the two studies it published in 1981 that led to the proposed amendments.

II. Exemption for Sellers of Certain Products at Temporary Locations

The Commission stayed the Rule's application to sellers of automobiles at temporary places of business and sellers of arts and crafts at fairs because application of the Rule to these sellers may not be necessary to prevent the deceptive practices to which the Rule relates.[10]

A. Summary of Comments

Three commenters support the proposed exemption for sellers of arts and crafts at fairs.[11] Twelve comments address the Commission's proposed exemptions for sellers of automobiles at temporary places of business. Eleven comments support the exemption for sellers of automobiles on the basis that the reasons for the Rule do not apply.[12] One opposes the proposed exemption because it claims it has received consumer complaints alleging that these sellers use deceptive advertising, including bait and switch tactics, high pressure sales tactics, and misrepresentations of quality and price.[13]

Another commenter [14] supports exempting all new and used car sellers who have at least one "permanent place of business," even though it may not be within the same city or county. One permanent place of business, argues this commenter, would be evidence that the seller is seriously engaged in business and could be contacted for future problems that might arise.

One commenter requested that the automobile exemption be broadened to include all vehicles, including motor homes, vans and trucks, and all vehicle accessories.[15] Another commenter proposed that the arts and crafts exemption be extended to sellers who sell at temporary booths located in shopping malls and local fairs.[16] One

[10] The Rule applies to sales made "at a place other than the place of business of the seller." See Note 1(a) to the Rule. Hence, the Rule applies to public auctions, tent sales, and sales at fairs.

[11] Sears, Roebuck & Co., Household Finance, and Recreational Vehicle Industry Association.

[12] The names of these organizations are: Pentagon Federal Credit Union, Texas Credit Union League & Affiliates, National Association of Federal Credit Unions, Direct Selling Association, American Car Rental Association, Recreational Vehicle Industry Association, Avis Rent A Car, The Hertz Corporation, National Automobile Dealers Association, Credit Union National Association, and Household Finance.

[13] North Carolina Attorney General's Office.

[14] Texas Credit Union League and Affiliates.

[15] Recreational Vehicle Industry Association.

[16] Household Finance.

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commenter opposes limiting the automobile exemption to sellers having a permanent place of business because "legitimate auctioneers" not having a permanent place of business should be exempted.[17]

Finally, NADA proposed that instead of granting a national industry-wide exemption, the Commission amend the Rule to allow specific state and local exemption applications as well as individual applications on a case-by-case basis, thereby continuing the Rule's applications where necessary.

B. Conclusions

The Rule was promulgated by the Commission due to five problems associated with sales made away from the seller's principal place of business. These problems are: (1) Deception by the seller in getting inside the consumer's home; (2) high pressure sales tactics; (3) misrepresentation as to the quality, price or characteristics of the product; (4) high price for low quality merchandise; and (5) the nuisance created by the uninvited visit of the salesperson to the home.

Although the Rule is primarily directed toward door-to-door sales, the Commission was also concerned with itinerant salesmen who sell at restaurants, shops and other places, and with the possibility that salespeople would attempt to evade the Rule's application by luring consumers outside the home by subterfuge. The Commission therefore broadened the definition of a "door-to-door" sale to include those sales made away from the seller's place of business. A literal reading of the definition of "door-to-door" sale would include a host of away from home transactions not necessarily contemplated by the Commission when it issued the Rule. Sales at arts and crafts shows and sales of automobiles at auctions do not appear to have been contemplated by the Commission as these transactions were not referenced in the Commission's *Statement of Basis and Purpose* for the Rule.

All but one of the comments support the proposed exemptions on the basis that the reasons for the Rule do not apply to auto auctions and arts and crafts fairs. There is no indication that consumers are lured to these sales settings by subterfuge. Consumers know the purpose for going to an auction and that is to buy a car and at a fair to buy arts and crafts or other merchandise.

To the extent that certain problems occur at auto sales, they typify the same problems that may occur at transactions at the seller's place of business and are addressed by other Commission rules, *e.g.*, the Used Car Rule [18] and Guides on Bait and Switch, or state laws, *e.g.*, prohibitions of "As is Sales." [19] Moreover, application of the Rule to these transactions does not necessarily mean that buyers will get a three-day period in which to learn more about the condition of the goods they are purchasing. For example, the concern of the North Carolina Attorney General's office that sellers are not permitting consumers to test drive and inspect cars offered for sale at auctions is not necessarily alleviated by application of the Cooling-Off Rule.[20] As with many other goods and services the seller may choose not to make delivery until after the cooling-off period has expired. Because of the insurance, titling, and odometer issues involved for automobiles, delivery at the conclusion of the cooling-off period seems particularly likely.[21]

The record with regard to these transactions indicates the absence of the equivalent of a deceptive "door-opener" and subterfuge; the absence of the kind of high pressure sales tactics characterizing in-home sales, which may result in a purchase simply to convince the sales agent to cease using the tactics; and the absence of the nuisance aspects of in-home sales that the Rule sought to remedy. The extent of successful price and quality misrepresentation that may accompany in-home sales is unlikely to occur in these transactions because the consumer can peruse the wares of different vendors at the auction or the fair as well as the vendors at permanent business locations. Thus, it does not appear that the underlying reasons for the Rule apply to these types of transactions.

The Commission has determined therefore to grant the exemptions pursuant to section 18(g)(2) of the Federal Trade Commission Act.[22] However, the exemption for automobile sales will be limited to sellers who have at least one permanent place of business.[23] Any automobile sellers who are itinerant, a group of salespeople the Rule was aimed at,[24] will continued to be covered by the Rule. A permanent place of business would be an indication that the seller is seriously engaged in business and very importantly can be contacted for later problems that may arise with an automobile. This limitation is particularly appropriate given that auto sales are expensive transactions and often there may be a need to contact the seller. There is no indication that this limitation is necessary with regard to the sale of arts and crafts at fairs.

The request to broaden the automobile exemption covers many additional product categories not addressed in the notice seeking comment on the proposed exemptions. Thus, to consider this proposal would require an additional notice and comment period. Consequently, the Commission must deny this request at this time. The proposal to extend the arts and crafts exemption to products sold at temporary locations such as booths at shopping malls is unnecessary. The exemption for sellers of arts and crafts sold at fairs includes arts and crafts events at, for example, shopping malls, civic centers, community centers or schools.

Finally, the proposal to amend the Rule to include specific state and local exemption applications appears to be unnecessary. The state exemption provisions in rules such as the Used Car Rule were designed to permit a state to enforce its own law if it provides protection comparable to the Commission's rule. No state or local government suggested the need for such a provision in this Rule. Further, the proposal to grant individual case-by-case exemptions in lieu of an industry-wide exemption is impractical. Many of the affected parties are likely to be relatively small or modest size businesses which might find it too costly or time consuming to petition the Commission. It also would be more resource intensive for the Commission to respond to individual requests rather than to grant the industry-wide exemption, which the Commission finds appropriate here. We therefore reject the proposal.

[17] Credit Union National Association, Inc.

[18] 16 CFR Part 455. The Used Car Rule requires dealers to post a Buyers Guide on each used car which must describe whether the vehicle is sold with a warranty, or "as is." These Guides warn consumers not to rely on spoken promises and to seek independent inspections. To the extent that inspections are impractical in an auction setting, consumers will have greater incentives to ask for a warranty or to negotiate a lower purchase price to reflect any uncertainty over the vehicle's mechanical condition. The Guide also requires the seller to give the name and address of the dealer or the person to contact if there is a problem.

[19] See, *e.g.*, comments of CUNA and the Pentagon Federal Credit Union. The latter also stated that the combined effect of the Commission's Used Car Rule and various state "lemon laws" provides a level of protection against high prices for low quality merchandise.

[20] But see, Hertz and Avis comments. Hertz states that at tent sales of its vehicles done in conjunction with credit unions, "customers are permitted to examine the cars, test drive them and review each car's written maintenance record." Avis states that purchasers "have the opportunity to thoroughly look at the vehicles, to have them inspected by their own mechanics and to review the maintenance records for the vehicles."

[21] According to CUNA, where there is a three day cancellation period, "[c]redit unions, under these circumstances, are reluctant to release the proceeds of the loan until the three day period has expired. Further, Credit Union members would be forced to wait to take possession of their automobiles."

[22] 15 U.S.C. 57 (a). This section provides that the Commission may on its own or by petition exempt persons from a rule's application if it is not necessary to prevent a practice to which the rule relates. The exemption is effectuated through informal rulemaking, consisting of notice and comment.

[23] As was the case with the original petitioner, Public Auction, an auctioneer may not be the actual seller. Hence CUNA's opposition to the "permanent place of business" limitation on the basis that "legitimate auctioneers" should be exempted is a moot point. The Rule would not apply to the auctioneer unless he or she is the seller.

[24] See Section H of Chapter X to the Rule's *Statement of Basis and Purpose* 37 FR 22947 (1972).

List of Subjects in 16 CFR Part 429

Trade practices.

For the reasons set forth in the preamble, the Commission amends 16 CFR Part 429 as follows:

PART 429—[AMENDED]

1. The authority citation for Part 429 is revised to read as follows:

Authority 15 U.S.C. 41–58.

2. In § 429.1 the following text will be added to the end of paragraph (a) and the introductory text of paragraph (b) is revised to read as follows:

§ 429.1 The Rule.

* * * * *

(a) * * *

The seller may select the method of providing the buyer with the duplicate notice of cancellation form set forth in paragraph (b) of this section, *provided however*, that in the event of cancellation the buyer must be able to retain a complete copy of the contract or receipt. Furthermore, if both forms are not attached to the contract or receipt, the seller is required to alter the last sentence in the statement above to conform to the actual location of the forms.

(b) Fail to furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned either "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION," which shall (where applicable) contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88–25080 Filed 11–9–88; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining and Reclamation Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program; Approval of Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of an amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment changes the Indiana Surface Mining Law provisions concerning: (1) Bond surety, (2) locations where inspection and enforcement documents will be made available to the public, and (3) notices of violation to make these provisions consistent with the requirements of SMCRA.

EFFECTIVE DATE: November 10, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Room 300, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204; Telephone: (317) 269–2609.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. Information regarding the general background on the Indiana program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107–32108). Subsequent actions concerning the conditions of approval and proposed amendments are identified in 30 CFR 914.15, 30 CFR 914.16 and 914.17.

II. Discussion of Amendments

On August 13, 1987 (Administrative Record No. IND–0501), the Indiana Department of Natural Resources (IDNR) submitted to OSMRE pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The amendment modifies Indiana Code (IC) 13–4.1–6–4; 13–4.1–11–3; and 13–4.1–11–4. The proposed changes are briefly summarized below:

(1) Amendment to Indiana Code Section 13–4.1–6–4 requires that the surety of mine operator be recognized by the Treasurer of State as holding a certificate of authority from the United States Department of the Treasury as an acceptable surety on Federal Bonds.

(2) Amendment to Indiana Code Section 13–4.1–11–3 requires copies of any record, report, inspection material or other information obtained pursuant to the Division's inspection and enforcement responsibilities under Indiana Code 13–4.1–11 be made available at a public library in the county in which the mining operation is located rather than at the county recorder's office.

(3) Amendment to Indiana Code Section 13–4.1–11–4 requires that notices of violation are effective when served upon the permittee, subject to an application for temporary relief.

OSMRE announced receipt of the proposed amendments in the September 23, 1987 **Federal Register** (52 FR 35734) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their substantive adequacy. The public comment period ended October 23, 1987. There was no request for a public hearing and the hearing scheduled for October 19, 1987, was not held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Indian program. Only those revisions of particular interest are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, or concern non-substantive wording changes.

1. Bonding

Indiana has amended its program at Indiana Code Section 13–4.1–6–4 to require that the surety of a mine operator be recognized by the Treasurer of State as holding a certificate of authority from the United States Department of the Treasury as an acceptable surety on Federal Bonds.

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Although SMCRA and the Federal regulations do not require that corporate sureties approved by the State also hold a certificate of authority from the United States Treasury, such a requirement would increase the likelihood that sureties would be solvent for the duration of the mining and reclamation operations. The Director finds, therefore, that the amendment is not inconsistent with the requirements of SMCRA and no less effective than the Federal bonding regulations at 30 CFR Part 800.

2. Availability of Records

Indiana has amended Indiana Code Section 13–4.1–11–3 to require copies of any record, report, inspection material or other information obtained pursuant to the Division's inspection and enforcement responsibilities under Indiana Code 13–4.1–11 be made available at a public library in the county in which the mining operation is located rather than at the county recorder's office in the appropriate county or counties as has previously been required. This change is consistent with SMCRA and the Federal regulations. SMCRA at section 517(f) requires that such records be conveniently available to the public in the areas of mining at county, multicounty and State locations. The Federal regulations at 30 CFR 840.14(c)(1) require that such records be available at Federal, State or local government offices in the county where the mining is occurring or is proposed to occur. The Director finds, therefore, that the amendment is no less stringent than SMCRA and no less effective than the Federal regulations.

3. Notices of Violation

Indiana Code Section 13–4.1–11–1 was amended to require that notices of violation are effective when served upon the permittee, subject to an application for temporary relief. This amendment is submitted to correct an inadequacy created by earlier passage of the Indiana Administrative Adjudication Act (IAAA) which made orders effective 15 days after being served unless another statute specifies a different date or the agency specifies a later date in the order. OSMRE announced approval of part of the IAAA amendment in the April 1, 1987, **Federal Register**, but deferred action on the effective date of orders issue (52 FR 10372). In that ruling, the Director stated that section 521(a)(3) of SMCRA and 30 CFR Part 840 do not provide for such time lapse between the discovery of a violation and the issuance of a notice of violation.

The current amendment at section 13–4.1–11–1 removes the time lapse provision and stipulates that notices of violation are effective when served. Subsequent correspondence with Indiana (Administrative Record No. IN–0591) has determined that Cessation Orders are effective when served as indicated by the Indiana provisions at IC 4–21.5–4–1 (concerning special proceedings and temporary orders) and IC 4–21.5–4–33 (indicating that such orders are effective when issued). The Director finds, therefore, that the amendment at IC 13–4.1–11–1 is no less stringent than SMCRA and no less effective than the Federal regulations, and that the Director's deferral of IC 4–21.5–3–6(d) at 30 CFR 914.15(p) can be removed.

IV. Public Comment

As discussed in the section of this notice entitled "Discussion of Amendments," the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No comments were received from the public during the public comment period which closed on October 23, 1987. Since no one requested an opportunity to testify, the hearing scheduled for October 19, 1987, was not held.

Pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, comments were also solicited from various Federal agencies with an actual or potential interest in the Indiana program. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the amendments to sections IC 13–4.1–6–4, 13–4.1–11–3 and 13–4.1–11–4 of the Indiana program as submitted on August 13, 1987. The Federal rules at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: November 2, 1988.

Robert E. Boldt,

Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Paragraph (p) of § 914.15 is revised to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(p) The following amendments are approved effective April 1, 1987: Revision to the Indiana Codes as contained in Senate Enrolled Act No. 41 and House Enrolled Act No. 1339 submitted June 11, 1986, as modified on November 7, 1986. Senate Enrolled Act No. 41 amends provisions at IC 13–4–6–9, IC 13–4.1–1–3, IC 13–4.1–1–5, IC 13–4.1–3–3, IC 13–4.1–3–4, IC 13–4.1–3–6, IC 13–4.1–4–1, IC 13–4.11–4–3, IC 13–4.1–4–7, IC 13–4.1–7–1, IC 13–4.1–7–5, IC 13–4.1–7–8, IC 13–4.1–8–1, IC 13–4.1–11–5, IC 13–4.1–11–6, IC 13–4.1–11–8, IC 13–4.1–11–12, and IC 13–4.1–14–1. House Enrolled Act No. 1339, effective July 1, 1987, replaces IC 4–22–1 with the new State Administrative Adjudication act at IC 4–21.5.

3. Paragraph (t) is added to § 914.15 to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(t) The following amendments to the Indiana permanent regulatory program, as submitted to OSMRE on August 13, 1987, are approved effective November 10, 1988: Revisions to the Indiana Code (IC) as contained in Senate Enrolled Acts Nos. 44 and 225. Senate Enrolled Act No. 44 amends IC 13–4.1–6–4, which concerns acceptable surety. Senate Enrolled Act No. 225 amends IC 13–4.1–11–3, which concerns the availability of inspection and enforcement data at public libraries; and IC 13–4.1–11–4, concerning the effective date of notices of violation.

[FR Doc. 88–26163 Filed 11–9–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R, Amdt. No. 16]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Cardiorespiratory Monitor Durable Medical Equipment (DME) Benefit

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule expands the circumstances for which the CHAMPUS may share the cost of a cardiorespiratory monitor and certain associated services for in-home use. This change is necessary to comply with The National Defense Authorization Act for Fiscal Years 1988 and 1989.

EFFECTIVE DATE: December 4, 1987.

ADDRESSES: Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Joseph W. Baker, Office of Program Development, OCHAMPUS, telephone (303) 361–4019.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8–R was reissued in the **Federal Register** on July 1, 1988 (51 FR 24008).

This final rule was not issued as a proposed rule as the change implemented is expressly authorized by legislation and further delay in providing public notice of the effective date of this enhanced benefit is contrary to the public interest [32 CFR 296.2(d)(4)]. Written comments, however, are invited for 30 days following publication of this final rule. Any revision prompted by public comments will be published in the **Federal Register** and any changes which operate to increase the rights, benefits, or privileges provided in the amended regulation will be effective retroactively to the effective date insofar as administratively feasible.

On December 4, 1987, the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100–180) section 726 amended U.S.C. Title 10, Chapter 55 by adding section 1079(a)(15). The Act authorized cardiorespiratory home monitoring equipment for an infant who has had an apparent life-threatening event, or certain siblings of a victim of sudden infant death syndrome (SIDS), or whose birth weight was 1,500 grams or less, or who is a pre-term infant with pathologic apnea.

Coverage of this equipment for other applications which meet Program benefit requirements is not effected. To improve clarity, we have rewritten the regulation provision on durable medical equipment. Other than the inclusion of this expanded benefit, there have been no substantive changes.

The Office of CHAMPUS has determined that this amendment is not a major rule under Executive Order 12291 because (1) the projected additional cost to the Program for this benefit is less than $2 million, an amount far below the executive order threshold of an annual effect on the economy of $100 million or more; (2) this rule will reduce cost for those beneficiaries who would have otherwise had to pay the entire cost of this equipment; (3) there is no cost effect upon the general health care industry nor will it cause increased cost to the durable medical equipment supply segment of that industry as it places no regulatory burden upon either; (4) the rule places no regulatory burden upon Federal, State, or local government agencies, or geographic regions; and (5) the rule does not have any direct or indirect adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets as it does not concern these aspects of the market place.

Further, we certify that this final rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act because this rule (1) only provides the administrative framework to allow Program beneficiaries to have the cost of this equipment shared by the Program; (2) does not guarantee payment or patronage; (3) does not affect the requirements for a firm to become a CHAMPUS-approved durable medical equipment supplier; and, (4) will generate estimated Program expenditures of less than $2 million dollars, an economic impact of no more than 0.125 percent of the estimated durable medical equipment sales of $1.6 billion from all sources nationally.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. § 199.4 is amended by revising paragraph (d)(3)(ii) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(ii) *Durable medical equipment*—(A) *Scope of benefit.* Subject to the exceptions in paragraphs (d)(3)(ii) (B) and (C) of this section, only durable medical equipment (DME) which is for the specific use of the beneficiary, and which complies with the definition of "Durable Medical Equipment" in § 199.2 of this part, and which is not otherwise excluded by this part, qualifies as a Basic Program benefit.

(B) *Cardiorespiratory monitor exception.* (*1*) When prescribed by a physician who is otherwise eligible as a CHAMPUS individual professional provider, or who is on active duty with a United States Uniformed Service, an electronic cardiorespiratory monitor, including technical support necessary for the proper use of the monitor, may be cost-shared as durable medical equipment when supervised by the

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prescribing physician for in-home use by:

(*i*) An infant beneficiary who has had an apparent life-threatening event, as defined in guidelines issued by the Director, OCHAMPUS, or a designee, or

(*ii*) An infant beneficiary who is a subsequent or multiple birth biological sibling of a victim of sudden infant death syndrome (SIDS), or

(*iii*) An infant beneficiary whose birth weight was 1,500 grams or less, or

(*iv*) An infant beneficiary who is a pre-term infant with pathologic apnea, as defined in guidelines issued by the Director, OCHAMPUS, or a designee, or

(*v*) Any beneficiary who has a condition or suspected condition designated in guidelines issued by the Director, OCHAMPUS, or a designee, for which the in-home use of the cardiorespiratory monitor otherwise meets Basic Program requirements.

(*2*) The following types of services and items may be cost-shared when provided in conjunction with an otherwise authorized cardiorespiratory monitor:

(*i*) Trend-event recorder, including technical support necessary for the proper use of the recorder.

(*ii*) Analysis of recorded physiological data associated with monitor alarms.

(*iii*) Professional visits for services otherwise authorized by this part, and for family training on how to respond to an apparent life threatening event.

(*iv*) Diagnostic testing otherwise authorized by this part.

(C) *Basic mobility equipment exception.* A wheelchair, or a CHAMPUS-approved alternative, which is medically necessary to provide basic mobility, including reasonable additional cost for medically necessary modifications to accommodate a particular disability, may be cost-shared as durable medical equipment.

(D) *Exclusions.* DME which is otherwise qualified as a benefit is excluded as a benefit under the following circumstances:

(*1*) DME for a beneficiary who is a patient in a type of facility that ordinarily provides the same type of DME item to its patients at no additional charge in the usual course of providing its services.

(*2*) DME which is available to the beneficiary from a Uniformed Services Medical Treatment Facility.

(*3*) DME with deluxe, luxury, or immaterial features which increase the cost of the item to the government relative to a similar item without those features.

(E) *Basis for reimbursement.* The cost of DME may be shared by the CHAMPUS based upon the price which is most advantageous to the government taking into consideration the anticipated duration of the medically necessary need for the equipment and current price information for the type of item. The cost analysis must include comparison of the total price of the item as a monthly rental charge, a lease-purchase price, and a lump-sum purchase price and a provision for the time value of money at the rate determined by the U.S. Department of the Treasury.

* * * * *

Dated: November 7, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-26082 Filed 11-9-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

32 CFR Part 1293

[DLA Reg. 5500.1]

Standards of Conduct

AGENCY: Defense Logistics Agency (DLA).

ACTION: Final rule.

SUMMARY: This regulation prescribes the standards of conduct required of all DLA personnel, regardless of assignment, which are set forth in DLA Regulation 5500.1, Standards of Conduct, 24 February 1988. The DLA Regulation implements DoD Directive 5500.7, 6 May 1987 as published at 32 CFR Part 40.

EFFECTIVE DATE: November 10, 1988.

FOR FURTHER INFORMATION CONTACT: Richard L. Frenette, Commercial—202-274-6158, Autovon—284-6158.

SUPPLEMENTARY INFORMATION: DLA Regulation 5500.1, Standards of Conduct implements DOD Directive 5500.7 and was approved by the General Counsel, DOD on 15 January 1988. To provide notice of the DLA regulation, it is being published in the **Federal Register** for incorporation in the Code of Federal Regulations.

List of Subjects in 32 CFR Part 1293

Conflict of interests.

By order of the director.

October 3, 1988.

James J. Singsank,

Colonel, USA, Staff Director, Administration.

A new Part 1293 is added to Subchapter B, Chapter XII of Title 32 of the Code of Federal Regulations to read as follows:

PART 1293—STANDARDS OF CONDUCT

1293.1 Reference.
1293.2 Purpose and scope.
1293.3 Policy.
1293.4 Definitions.
1293.5 Significant changes.
1293.6 Responsibilities.
1293.7 Procedures.

Appendix A to Part 1293—Laws Affecting DLA Personnel

Appendix B to Part 1293—Code of Ethics for Government Service—Pub. L. 96-303

Appendix C to Part 1293—Additional Guidance on Gratuities, Reimbursements, and Other Benefits from Outside Sources

Appendix D to Part 1293—Executive Personnel Financial Disclosure Report (SF 278)

Appendix E to Part 1293—Requirements for Submission of DD Form 1555, Statement of Affiliations and Financial Interests

Appendix F to Part 1293—Reporting Procedures for DOD and Defense Related Employment

Appendix G to Part 1293—Administrative Enforcement Provisions

Authority: E.O. 12222 30 FR 6469; 18 U.S.C. 201-209.

§ 1293.1 References.

(a) DLAR 1005.1, Decorations and Gifts from Foreign Governments.

(b) DLAR 1430.12, Civilian Employee Development and Training.

(c) DLAR 5035.1, Fund-Raising Within the Defense Logistics Agency.

(d) DLAR 5400.13, Clearance of Information for Public Release.

(e) DLAR 5500.4, Policies Governing Participation of DLA and Its Personnel in Activities of Private Associations.

§ 1293.2 Purpose and scope.

(a) Part 1293 prescribes standards of conduct required of all DLA personnel, military and civilian, regardless of grade or assignment. It also establishes criteria and procedures for reports required of certain individuals who have left Federal service and of former employees of defense contractors presently employed by DLA.

(b) Close adherence to the standards of conduct will ensure compliance with the high ethical standards demanded of all public employees. Violations of the standards prescribed in this regulation, or by Federal laws, including the laws described in enclosure 1, may result in criminal and/or administrative sanctions. Accordingly, all DLA personnel should become familiar with these standards.

(c) The reporting procedures for defense related employment are applicable to former military officers and civilian employees of DLA and to former employees of defense contractors presently employed by DLA.

(d) All retired regular officers are also required to file a statement of employment with the Military Department in which they hold a retired status.

(e) This DLAR is applicable to HQ DLA and all DLA field activities and implements DoD Directive 5500.7, Standards of Conduct.

§ 1293.3 Policy.

(a) *General requirements.* (1) Government employment is a public trust which requires that loyalty to country, ethical principles, and the law be placed above private gain and other interests. All DLA personnel must conduct themselves, both on and off the job, in such a manner as to avoid the existence or appearance of a conflict of interest between their official responsibilities and their personal affairs.

(2) DLA personnel shall become familiar with the scope of, authority for, and limitations on the activities for which they are responsible. DLA personnel also shall acquire a general knowledge of the statutory standards of conduct prohibitions and restrictions. The most commonly encountered of these provisions are summarized in Appendix A, and are laws dealing generally with conflicts of interest and postemployment activities.

(3) If DLA personnel are unsure whether a proposed action or decision is proper because it may be contrary to law or regulation, they shall consult the Designated Agency Ethics Official, or Deputy Ethics Official, for guidance. The individuals are identified in § 1293.4.

(4) DLA personnel shall not take or recommend any action or make or recommend any expenditure of funds known or believed to be in violation of Federal laws, Executive Orders, or applicable directives, instructions, or regulations.

(5) Practices that may be accepted in the private business world may not be acceptable for DLA personnel. As public employees, all DLA personnel are accountable for the manner in which they perform their official responsibilities.

(6) DLA personnel shall strictly adhere to the DLA program of equal opportunity regardless of race, color, religion, sex, age, national origin, or handicap.

(7) DLA personnel shall avoid any action, whether or not specifically prohibited by Part 1293, which might result in or reasonably be expected to create the appearance of:

(i) Using public office for private gain.

(ii) Giving preferential treatment to any person or entity.

(iii) Impeding Government efficiency or economy.

(iv) Losing complete independence or impartiality.

(v) Making a Government decision outside official channels.

(vi) Affecting adversely the confidence of the public in the integrity of the Government.

(b) *Information to personnel.*

(1) All new civilian employees and military personnel newly assigned to DLA will be provided a copy of Part 1293 upon their entrance to duty.

(2) DLA personnel shall be reminded at least semiannually of their duty to comply with the required standards of conduct. Appropriate means of accomplishing these reminders include notices, circulation of Part 1293 to employees, briefings, or any other means which serve to remind employees of their ethical responsibilities.

(3) Copies of the Code of Ethics for Government Service (Appendix B) shall be displayed in appropriate areas of DLA occupied buildings in which 20 or more persons are regularly employed. (Code of Ethics posters are self-service supply items and may be obtained under NSN 7690-01-099-8167.)

(4) All DLA employees (military and civilian) who leave Federal service shall be informed of the restrictions on the postemployment activities of former Federal employees.

(c) *Conflicts of interest*—(1) *Affiliations and Outside Associations.*

(i) DLA personnel shall not engage in any personal, business, or professional activity which conflicts with the interests of the Government they serve through the duties and responsibilities of their DLA positions. This prohibition applies to all DLA employees, regardless of whether they are required to file a financial disclosure report. In the event a conflict, or potential conflict of interest arises, it shall be promptly reported and resolved in accordance with § 1293.7(b).

(ii) Membership or activity of DLA personnel in non-Governmental associations or organizations must not be incompatible with their official Government positions (see DLAR 5500.4).[1]

[1] Copies may be obtained, if needed, from Defense Logistics Agency, ATTN: DLA-XPD, Cameron Station, Alexandria, VA 22304-6100.

(iii) DLA personnel shall not knowingly deal, on behalf of the Government, with present or former Government personnel, military or civilian, whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in Part 1293.

(2) *Financial interests.* DLA personnel shall not receive or retain any direct or indirect financial interest which conflicts with the interests of the Government they serve through the duties and responsibilities of their DLA positions. Matters concerning outside employment by DLA personnel are discussed in paragraph (i) of this section. For the purpose of this prohibition, the financial interests of a spouse, minor child, or any household member are treated as the financial interests of the DLA employee. Thus, not only stocks and other similar holdings, but also the wages, salaries, dividends, or any other income of a spouse, minor child, or household member are considered financial interests of the DLA employee. Particular care must be given in situations involving former DoD contractor employees as they may be entitled to benefits from their former employer (such as pensions, company discounts or concessions, etc.) which could create a criminal conflict of interest situation under 18 U.S.C. 208 if DLA assigns the employee duties and responsibilities involving the former employer. (For reporting requirements unique to former DoD contractor employees see § 1293.7(e). These prohibitions apply to all DLA employees, regardless of whether they are required to file a financial disclosure report. In the event a conflict or potential conflict of interest arises, it shall be promptly reported and resolved in accordance with § 1293.7(b).

(3) *Avoiding Actual or the Appearance of Conflicts of Interest.* Direct or indirect financial interests in a defense related contractor, in any amount and in any form (stocks, bonds, options, employment of spouse, minor child, or any other household member) may be a prohibited conflict or appearance of a conflict of interest. Outside employment or other outside activity, with or without compensation, regarding possible future employment may also create a conflict or the appearance of a conflict of interest. Discussions with a defense contractor regarding possible future employment may require reporting and disqualification under the procedures set forth in paragraph (k) of this section. In these situations, DLA personnel are encouraged to seek advice from the

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Designated Agency Ethics Official or Deputy Ethics Official to protect not only themselves, but also be avoid embarrassment to DLA.

(4) *Assignment of Reserves for training.* DLA personnel who assign Reserves for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors. Prior to entering active duty, reservists must disclose to superiors or assignment personnel, sufficient information to ensure that no conflict exists between their duty assignments and their private interests.

(d) *Use of DLA Position, Property, Resources, and Information*—(1) *Using DLA position.* DLA personnel are prohibited from using their DLA position to induce, coerce, or in any manner influence any person to provide any benefit, financial or otherwise, to themselves or others.

(2) *Use of Civilian and Military Titles or Positions in Connection with Commercial Enterprises.* (i) All DLA personnel are prohibited from using their official titles or positions in connection with the promotion of any commercial enterprise or endorsement of any commercial product. This does not preclude author identification for materials published in accordance with DLAR 5400.13.[3]

(ii) Retired military personnel, and members of Reserve components not on active duty, may use their military titles in connection with commercial enterprises provided that they indicate their Retired or Reserve status. However, if the use of military titles in any way casts discredit on the Military Departments or DoD, or gives the appearance of sponsorship, sanction, endorsement, or approval by a Military Department or DoD, it is prohibited. In addition, a Military Department may further restrict the use of titles, including use by retired military personnel and members of reserve components not on active duty, in overseas areas.

(3) *Use of Government property and resources.*

(i) DLA personnel have a positive duty to protect and conserve Government property and resources and assure that they are used only for official Government business. DLA personnel shall not directly or indirectly use, take, dispose of, or allow the use, taking, or disposing of, Government property including property leased to the Government, for other than official purposes. Government facilities, property, and resources (such as telephones, stationery, stenographic and typing assistance, duplicating and computer equipment) shall be used only for official Government business.

(ii) These provisions do not preclude the use of Government facilities for approved activities in furtherance of DLA community relations, provided they do not interfere with military missions or Government business. Government equipment and clerical support may be authorized for the preparation of papers to be presented to professional associations if appropriate to the mission of the office and approved, in advance, by the Head of the HQ PSE or PLFA.

(iii) All DLA personnel are responsible for using office telecommunication services (telephone, message, data, video, facsimile services, etc.) for official use only. The term "official use" means service directly in support of Government business or as otherwise approved by the Head of the PSE or PLFA, or their designee, as being in the best interest of the Government.

(A) DLA office telecommunications services are resources provided to conduct business directly in support of the Government.

(B) DLA shall pay only for the official uses of DLA telecommunications services.

(C) Where available and practicable, steps shall be taken to ensure user accountability (i.e., call verification, call restriction, other telecommunications service features).

(D) Employees who make unofficial use of DLA office telecommunications services are subject to appropriate disciplinary action.

(4) *Using inside information.* DLA personnel shall not directly or indirectly use information obtained as a result of their DLA position to further a private gain for themselves or others if that information is not generally available to the public. This prohibition continues even after a DLA employee leaves Federal service.

(5) *Release of acquisition information.* All releases of acquisition information shall be in accordance with authorized procedures. DLA personnel are prohibited from making an unauthorized disclosure of any information concerning proposed acquisitions or purchases by DLA, or the identity of any contractor, unless the contractor's identity has been made public under established procedures.

(6) *Unauthorized statements or commitments with respect to award of contracts.* Only contracting officers and their duly authorized representatives acting within their authority are authorized to commit the Government to the award of contracts. Unauthorized DLA personnel are prohibited from making any commitment or promise relating to the award of a contract or from making any representation that reasonably can be construed as such a commitment.

(e) *Commercial and charitable solicitations*—

(1) *Commercial Soliciting by DLA Personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, full-time DLA personnel are prohibited from making personal commercial solicitations or sales to DLA personnel (including their family members) who are junior in rank or grade, or who are under any level of supervision by them, at any time, on or off duty.

(i) This prohibition includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services.

(ii) This prohibition does not include the sale or lease by individuals of their own personal property or privately-owned residence or to the off-duty employment of DLA personnel as employees in retail stores or other situations not involving solicited sales.

(2) *Charitable solicitations by DLA personnel.* The high visibility of DLA officials generates requests from charitable and nonprofit organizations to use an official's name and title in conjunction with fund-raising activities. The use of names and titles of DLA officials, even regarding fund-raising activities of charitable organizations, may give an improper impression that the Department of Defense or Defense Logistics Agency endorses the activities of a particular organization, thereby resulting in unauthorized assistance for the organization or sponsors of the activities. The presence of DLA officials may be sought, under the guise of bestowing awards upon the official, to promote attendance at programs. DLA officials shall not allow the use of their names or titles in connection with charitable or nonprofit organizations, subject to the following:

(i) DLA personnel may assist only those charitable programs administered by the Office of Personnel Management under its delegation from the President and those other programs authorized by DLAR 5035.1.

(ii) This prohibition does not preclude speeches before such organizations by DLA officials if the speech is designed to express an official position in a public forum.

(iii) This prohibition does not preclude volunteer efforts on behalf of charitable or nonprofit organizations by individuals who do not use their official titles in relation to solicitations and who do not solicit from individuals or entities with whom they do business in their official capacity.

(f) *Other prohibitions*—

(1) *Gambling, betting, and lotteries.* While on Government-owned, leased, or controlled property, or otherwise while on duty for the Government, DLA personnel shall not participate in any gambling activity, including a lottery or pool, a game for money or property, and the sale or purchase of a number slip or ticket. The only exceptions are:

(i) Where authorized by law, such as vending stands licensed in accordance with 20 U.S.C. 107a(a)(5) to sell chances for any lottery authorized by state law and conducted by an agency of a state.

(ii) Activities which have been specifically approved by the Director, DLA.

(2) *Indebtedness.* DLA personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law, such as Federal, state, and local taxes. DLA activities are not required to determine the validity or amount of disputed debts.

(g) *Gratuities, reimbursements, and other benefits from outside sources*—

(1) *Policy.* No matter how innocently tendered and received, the acceptance of gratuities, reimbursements, or other benefits by DLA personnel (including their spouse, minor child, or any household member) from those who have or seek business with the Department of Defense or from those whose business interests are affected by Department of Defense functions, may be a source of embarrassment to the Department of Defense, may affect the objective judgment of the DLA personnel involved, and may impair public confidence in the integrity of the Government.

(2) *Bribery and graft.* DLA personnel may be subject to criminal penalties if they solicit, accept, or agree to accept anything of value in return for performing or refraining from performing an official act.

(3) *General prohibition.* Except in the limited circumstances set forth in Appendix C, DLA personnel (including their spouse, minor child, or any household member) shall not solicit, accept, or agree to accept any gratuity, reimbursement, or other benefit for themselves, or others, either directly or indirectly from or on behalf of any source that:

(i) Is engaged in or seeks business or financial relations of any sort with any DoD Component.

(ii) Conducts operations or activities that are either regulated by a DoD Component or substantially affected by DoD decisions.

(iii) Has interests that may be substantially affected by the performance or nonperformance of the official duties of DLA personnel.

(iv) Is a foreign government or representative of a foreign government that is engaged in selling to the DoD, where the gratuity is tendered in the context of the foreign government's commercial activities. (See also paragraph (h)(1) of this section.)

(4) Employees who receive gratuities which may not be accepted under the limited circumstances set forth in Appendix C shall promptly report the matter to the Designated Agency Ethics Official or Deputy Ethics Official.

(h) *Gifts and donations.*

(1) Procedures with respect to gifts from foreign governments are set forth in DLAR 1005.1.[3]

(2) Prohibition of Contributions or Presents to Superiors. DLA personnel shall not solicit a contribution from other DLA personnel for a gift to a superior, make a donation as a gift to a superior, give a gift to a superior, or accept a gift from other DLA personnel subordinate to themselves. This prohibition also applies to gifts, contributions, or donations to immediate family members of a superior. However, this paragraph does not prohibit voluntary gifts of reasonable value or contributions of nominal amounts (or the acceptance thereof) on special occasions such as marriage, illness, transfer, or retirement, provided that any gifts acquired with such contributions will be reasonable in value in view of the occasion.

(i) *Outside employment of DLA personnel.*

(1) DLA personnel shall not engage in outside employment or other outside activity, with or without compensation, that:

(i) Interferes with, or is not compatible with, the performance of their Government duties.

(ii) May reasonably be expected to bring discredit on the Government.

(iii) Is otherwise inconsistent with the requirements of Part 1293, including the requirements to avoid actions and situations which reasonably can be expected to create the appearance of conflicts of interests.

(2) Enlisted military personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession.

(3) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike, and if the employment is otherwise in conformance with the provisions of Part 1293. After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(4) DLA personnel are encouraged to engage in teaching, lecturing, and writing. However:

(i) DLA personnel shall not, either for or without compensation, engage in activities that are dependent on information obtained as a result of their Government employment, except when: The information has been published or is generally available to the public; or it will be made generally available to the public, and the Director, DLA gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(ii) Employment by a DoD contractor is prohibited unless the circumstances are presented to and approval is obtained from the Designated Agency Ethics Official or Deputy Ethics Official stating that such employment does not constitute either a conflict or the appearance of a conflict of interest between the employee's duties and the outside employment.

(j) *Honoraria.* DLA personnel may not accept honoraria for official activities, nor may they suggest charitable contributions in place of honoraria. Even when acting in a personal, rather than official, capacity:

(1) DLA personnel are prohibited from accepting an honorarium of more than $2,000 (excluding travel and subsistence expenses, agent's fees or commissions) for any appearance, speech, or article;

(2) The acceptance of honoraria from groups doing, or seeking to do business with DLA, presents the potential for a conflict of interest or the appearance of a conflict. Before accepting any honorarium, DLA personnel shall consult the Designated Agency Ethics Official, or Deputy Ethics Official.

(k) *Pursuit of outside employment.*

(1) When a military officer assigned to DLA or a civilian DLA employee leaves Federal service and begins working for a business with which the officer or

[3] See footnote 1, to § 1293.3(c)(1)(ii).

[3] See footnote 1, to § 1293.3(c)(1)(ii).

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employee conducted official business, or one which might have been affected by the officer or employee's performance of official duties, the public may perceive that the public's interest has been compromised. There is the concern that the former officer or employee may have been more interested in future employment than the diligent performance of official duties and protecting the Government's interests. Officers and employees must be sensitive to this public perception when considering future employment opportunities and avoid any action which would cause loss of public confidence in their performance of official duties.

(2) DLA personnel shall not perform any official duties, or otherwise participate in any official matter dealing with any organization with which the DLA employee is pursuing employment, has any arrangement concerning future employment, or has a financial interest. Pursuing employment is not limited to firm offers of employment; it includes any action which could reasonably be construed as an indication of interest in future employment, including sending letters or résumés, telephone discussions, or the consideration of unsolicited proposals from a business entity regarding possible future employment.

(3) All DLA personnel who have contact (regardless of who initiated the contact) regarding possible future employment, or have any arrangement concerning future employment with any organization that may be affected by the performance of their official duties shall immediately report the contact to the Designated Agency Ethics Official or Deputy Ethics Official. So long as the decision on future employment with the organization remains open, DLA personnel must disqualify themselves from participating in any manner in any official action involving that organization. Thus, if a DLA employee mails resumes to multiple organizations, that may be affected by the performance of official duties, the DLA employee must report the sending of resumes, disqualify himself/herself from participating in matters involving those organizations until either the organization or the employee specifically terminates the employment possibilities. Disqualification procedures are set forth in § 1293.7(c).

(l) *Restrictions on the activities of former officers and employees.* Laws and regulations impose restrictions on the activities of individuals who have ceased Federal employment. Violation of some of the laws and regulations may result in criminal prosecution. It is the obligation of each military officer assigned to DLA and each civilian employee, upon ending Federal service, to review the post employment restrictions in making decisions regarding their post employment activities. Appendix A contains a summary of the laws and regulations which deal with the conduct of DLA officers and employees and the restrictions on the activities of former officers and employees.

§ 1293.4 Definitions.

(a) *Alternate Agency Ethics Official.* An attorney in the DLA Office of General Counsel who shall serve in the absence of the Designated Agency Ethics Official. The attorney shall be appointed by the General Counsel, DLA.

(b) *Defense contractor.* Any individual, firm, corporation, partnership, association, or other legal entity that enters into a contract directly with the Department of Defense to furnish services, supplies, or both, including construction, to the Department of Defense. Subcontractors are excluded, as are subsidiaries unless they are separate legal entities that contract directly with the Department of Defense in their own names. Foreign governments or representatives of foreign governments that are engaged in selling to the Department of Defense are defense contractors when acting in that context.

(c) *DLA personnel.* All civilian officers and employees of DLA, including special Government employees, and all active duty military officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps, assigned to DLA.

(d) *Deputy ethics officials.* The Counsel of each DLA PLFA and the DLA Counsel, Europe are designated as Deputy Ethics Officials.

(e) *Designated Agency Ethics Official (DAEO).* The General Counsel, DLA is appointed the DLA Designated Agency Ethics Official (DAEO).

(f) *Financial interest.* Any wages, salaries, interest, dividends, or any other form of income or benefit received or to be received in the future by virtue of the relationship; includes potential benefit, such as preemployment contracts with a potential employer; also includes financial interests of a spouse, minor child, and member of household.

(g) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, or any other tangible item, and any intangible benefits (such as passes, discounts, promotional benefits, vendor training) given or extended to or on behalf of DLA personnel, their spouse, minor child, or member of their household for which fair market value is not paid by the recipient or the U.S. Government.

(h) *Honorarium (and all variations).* A payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration for an appearance, speech, or article. The term does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals of an officer or employee and spouse or aide, and does not include amounts paid or incurred for any agent's fees or commissions.

(i) *Special Government employee.* A person who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a Reserve military officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

§ 1293.5 Significant changes.

Part 1293 has been revised to incorporate changes necessitated by a new DoD Standards of Conduct Regulation and new statutory reporting and postemployment restrictions. The most significant changes relate to the limited circumstances under which DLA personnel can accept gratuities from DoD contractors and in prescribing which employees are required to file DD Forms 1555, Confidential Statement of Affiliations and Financial Interests. Finally, the provisions of law which require reports of cetain former DLA employees who have left Federal service and are working for certain DoD contractors, as well as certain former DoD contractor employees currently working for DLA, have been incorporated in Part 1293 rather than in a separate part, DLAR 7700.3, Reporting Procedures on Defense Related Employment.[4]

§ 1293.6 Responsibilities.

(a) *DLA Wide.* (1) All DLA Employees will: (i) Become familiar with the standards of conduct set forth in Part 1293.

[4] See footnote 1, to § 1293.3(c)(1)(ii).

(ii) Adhere to the highest standards of honesty and integrity.

(iii) Promptly file financial disclosure reports when required by Part 1293.

(iv) Bring suspected violations of a statute or standards of conduct imposed by Part 1293 to the attention of the Designated Agency Ethics Official or Deputy Ethics Official in a timely manner.

(v) Report to their immediate supervisor the acceptance of gratuities under the exceptions provisions of Appendix C. Failure to submit these reports will be a basis for disciplinary action.

(vi) Refuse to participate in any matters which appear to violate the provisions of Appendix A, call the appropriate provisions of Appendix A to the attention of any retired or former officer or employee with whom they deal, and advise that any apparent violations will have to be referred to the Department of Justice.

(2) All DLA Supervisors will: (i) Ensure that the position description of each of their immediate subordinates indicates whether the incumbent of the position is required to submit a financial disclosure report (DD Form 1555 or SF 278).

(ii) Ensure that an individual has filed a DD Form 1555 prior to assuming the duties of a position that requires the incumbent to submit the form.

(iii) Annually review the positions of their immediate subordinates to ensure that the position descriptions accurately reflect whether the incumbent is required to file a financial disclosure report (DD Form 1555).

(iv) Review DD Forms 1555 filed by their immediate subordinates to identify any conflict between the employee's private financial interests and official responsibilities, complete the supervisor's statement contained therein, and forward the completed form to the appropriate DLA ethics official. (See Appendix E, section 1293.3(g)).

(b) *HQ DLA.* (1) The Heads of HQ DLA Principal Staff Elements will: (i) Remind all personnel in their Directorate/Office at least semiannually of their duty to comply with the required standards of conduct and advise employees that they may obtain clarification of Part 1293 from the Office of General Counsel, DLA (DLA–G).

(ii) Report promptly all violations of Part 1293 and statutes cited herein to the General Counsel, DLA.

(iii) Review and evaluate the DD Forms 1555 filed by their deputies prior to forwarding them to the General Counsel, DLA.

(iv) Assure that required DD Forms 1555 are filed by officers and employees of their element and forwarded to the General Counsel, DLA, in accordance with Part 1293.

(2) The Staff Director, Office of Military Personnel, DLA (DLA–M) will:

(i) Assure that all military personnel, upon assignment to duty with DLA in the Metropolitan Washington area, are informed of the standards of conduct specified in Part 1293, and are furnished a copy.

(ii) Maintain a list of all military personnel within the activities furnished personnel services by DLA–M who are required to submit a DD Form 1555.

(iii) Assure that all military officers furnished personnel services by DLA–M, upon separation from active duty when assigned to DLA, are informed of the standards of conduct and post employment restrictions governing former military officers, and are furnished copies of available information and guidance relating to service with DLA.

(3) The Commander, DLA Administrative Support Center (DASC) will: (i) Furnish a copy of Part 1293 to all civilian personnel receiving personnel services by DASC upon entry to duty.

(ii) Assure that each position description for a civilian employee receiving personnel services from DASC indicates whether the incumbent of that position is required to submit a financial disclosure report (DD Form 1555 or SF 278).

(iii) Maintain a list of all civilian employees in DLA activities furnished personnel service by DASC who are required to submit a financial disclosure report (DD Form 1555 or SF 278).

(iv) Assure that all civilian employees receiving personnel services by DASC, upon their separation from Federal service, are informed of the standards of conduct and post employment restrictions governing former civilian employees, and are furnished copies of available information and guidance.

(4) The General Counsel, DLA will:

(i) Have the authority to modify or supplement any of the enclosures to Part 1293 in a manner consistent with the policies set forth in Part 1293.

(ii) Provide additional clarification of standards of conduct, post employment restrictions and related laws, rules and regulations, and provide advice and assistance on all matters relating to conflicts of interests.

(iii) Coordinate proper and final disposition of all matters that are not resolved by the supervisor or Deputy Ethics Official relating to matters arising under Part 1293.

(iv) Receive, review, approve, and make available to the public all SF 278s required to be filed in accordance with Part 1293.

(v) Receive, review, and approve DD Forms 1555 required to be submitted to the General Counsel, DLA after review by supervisors.

(vi) Receive, review, and approve DD Form 1787, Report of DoD and Defense Related Employment, required to be filed under the Part 1293.

(vii) Receive reports of any favor, gratuity, or entertainment accepted by DLA personnel as being in the Government's interest, when required to be submitted to the Designated Agency Ethics Official and initiate or recommend action as appropriate.

(viii) Review reports of violations of the standards of conduct statutes or regulations required to be submitted under paragraphs (c)(2) (ii) and (iii) of this section and assure proper action has been taken.

(ix) Initiate procedures and take action in accordance with Appendix G, Administrative Enforcement Provisions.

(x) Initiate and maintain a counseling, education, and training program concerning all ethics, standards of conduct, and post-employment matters.

(xi) Periodically evaluate DLA's ethics program and disclosure reporting systems.

(xii) Appoint the Alternate Agency Ethics Official.

(c) *Field activities.* Establishment and maintenance of an effective ethics program is a command responsibility. Commanders shall integrate the DLA ethics program into PLFA operations and procedures and provide sufficient resources to enable the Deputy Ethics Official to administer the PLFA ethics program in a positive and effective manner.

(1) Heads of DLA Primary Level Field Activities will: (i) Assure that all employees, military and civilian, upon their separation from military or Federal service, are informed of the standards of conduct and post employment restrictions governing former military or civilian employees, and are furnished copies of available information and guidance.

(ii) Take action to advise employees that they may obtain clarification of Part 1293 from the PLFA Office of Counsel.

(iii) Review and evaluate the DD Forms 1555 submitted by their deputies prior to forwarding them to the General Counsel, DLA.

(iv) Assure that required DD Forms 1555 are filed by officers and employees of their activity and forwarded to the appropriate Deputy Ethics Official, in accordance with Part 1293.

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(2) The Counsel for each DLA PLFA will: (i) Serve as Deputy Ethics Official and provide advice and assistance on matters relating to standards of conduct, post employment restrictions, and conflicts of interest and related laws, rules, and regulations arising at the activity.

(ii) Issue advice on the applicability of 10 U.S.C. 2397b to personnel assigned to their activity.

(iii) Forward to DLA–G a report of each suspected violation of the standards of conduct statutes or regulations as required under § 1293.7(a).

(iv) Provide a summary of all reports of violations of the standards of conduct statutes or regulations and the status of each investigation or other action taken to HQ DLA, ATTN: DLA–G. Such reports shall be furnished semiannually, as of 31 March and 30 September each year, and shall be forwarded to reach HQ DLA no later than 10 calendar days after the reporting date. For those violations that are being reported under other procedures, this reporting requirement may be satisfied by a reference to the identifier of the other procedure. This reporting requirement is assigned report control symbol DLA(SA)2217(G).

(v) Review, approve, and retain DD Forms 1555 for personnel of the activity (except the Head of the PLFA and deputy) and all subordinate DLA activities after review by the supervisor.

(vi) Establish a procedure to identify employees within the activity and subordinate activities who are required by Part 1293 to file DD Forms 1555.

(vii) By 10 December of each year, notify DLA–G that all employees of the activity required to file DD Forms 1555 as of 30 September of that year have filed the form, and of any apparent conflicts of interest identified on the forms that have not been resolved.

(3) The responsibilities assigned to PLFA Counsel may be delegated to the Counsel of a subordinate activity.

§ 1293.7 Procedures.

(a) *Reporting suspected violations.* DLA personnel who have information which causes them to believe that a violation of the policies, procedures, or standards set forth in Part 1293 or of the statutes listed in Appendix A is foreseeable or has occurred shall report the matter promptly to the General Counsel, DLA or PLFA Counsel who shall:

(1) Evaluate the report and obtain such additional information as may be necessary.

(2) Refer the matter for investigation or other action as appropriate, or advise the reporter that no further action will be taken.

(3) Forward a report of the matter and any action taken to the General Counsel, DLA within 30 days.

(b) *Resolving violations.* The resolution of real, apparent, or potential standards of conduct violations shall be accomplished promptly by one or more measures, such as divestiture of conflicting interests, disqualification for particular assignments, changes in assigned duties, transfer, reassignment, suspension, termination, or other appropriate action, as provided by statute or administrative procedures (see Appendix G).

(c) *Disqualification or Divestiture Procedures*— (1) *Affiliations and Financial Interests.*

(i) Any DLA employee who has affiliations or financial interests (which includes those of their spouse, minor children, or members of their households) which create conflicts of interest or the appearance of conflict of interest with their official duties, must immediately disqualify themselves from any official activities that are related to those affiliations or interests of the entities involved. If the individual cannot adequately perform assigned official duties after such disqualification, divestiture will be required or the individual must be moved from that position. The requirement to remedy the conflict or the appearance of a conflict exists independently of the requirement to file a financial disclosure report.

(ii) *Exceptions.* (A) DLA personnel need not disqualify themselves for holding shares of a widely-held, diversified mutual fund or regulated investment company. Such holdings are exempt as being too remote or inconsequential to affect the integrity of the services of DLA personnel.

(B) In limited circumstances, the General Counsel, DLA may exempt, under 18 U.S.C. 208(b), certain affiliations and financial interests if they are deemed not substantial enough to affect the integrity of Government services. Written requests for such exemptions will be processed through the appropriate Deputy Ethics Official.

(2) Written notice of disqualification must be promptly delivered to the employee's immediate supervisor, immediate subordinates, and to the Designated Agency Ethics Official or Deputy Agency Ethics Official.

(3) Supervisors shall periodically review disqualification notices to ensure their effectiveness.

(d) *Financial disclosure procedures.* Many military officers and civilian employees of DLA are subject to one of the financial disclosure reporting systems described below. Persons subject to each are identified below. Detailed instructions on the information to be furnished and the procedures for processing the forms are set out in Appendices to this Part 1293 and in referenced regulations.

(1) *Executive Personnel Financial Disclosure Report (SF 278).*

(i) The following military officers and civilian employees are required by the Ethics in Government Act of 1978 to file a Standard Form 278 if they have served in an identified position for 61 days or more during the preceding calendar year. These individuals need not file a DD Form 1555.

(A) Civilian employees, including special Government employees, whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the minimum rate of basic pay fixed for GS–16 (except for GS/GM–15s).

(B) Members of the uniformed services whose pay grade is O–7 or above.

(C) Civilian employees in SES or in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16.

(D) The Designated Agency Ethics Official and Alternate Agency Ethics Official.

(ii) Detailed instructions on the information to be furnished and the procedures for processing the forms are set forth in Appendix D.

(2) *Statements of Affiliations and Financial Interests (DD Form 1555).*

(i) The following DLA personnel are required to submit initial and annual Statements of Affiliations and Financial Interests (DD Form 1555), unless they are subject to the Executive Personnel Financial Disclosure Report (SF 278).

(A) PLFA Commanders, Deputy Commanders and Counsel, and PSE Heads and Deputies.

(B) DLA personnel classified at GS/GM–15 or below, or at a comparable pay level under other authority, and members of the military whose pay grade is below O–7 not otherwise required to file under paragraph (d)(2)(i)(A) of this section, whose official duties require the exercise of judgment in making a Government decision or in taking Government action for contracting or procurement, regulating or auditing private or other non-Federal enterprise, or other activities in which the final decision or action may have an economic impact on any non-Federal entity.

(C) DLA personnel, regardless of grade, in the following positions:

(*1*) Attorneys.

(*2*) Contracting Officers.

(*3*) Supervisory Quality Assurance Representatives and Supervisory Quality Assurance Specialists.

(*4*) Quality Assurance Representative-in-Charge.

(*5*) Supervisory Procurement Agents and Analysts.

(*6*) Supervisory Industrial Property Administrators.

(*7*) Supervisory Industrial Specialists.

(*8*) Supervisory Industrial Engineers.

(*9*) Supervisory Property Disposal Specialists and Property Disposal Officers.

(*10*) Value Engineers and Analysts.

(D) Reserve officers assigned to positions meeting the criteria in paragraphs (d)(2)(i) (B) and (C) of this section.

(E) Other special Government employees as set forth in Appendix E.

(ii) Detailed instructions on the information to be furnished and the procedures for processing the forms are set forth in Appendix E.

(e) Reporting procedures applicable to former military officers and civilians employees, and to former employees of defense contractors now employed by DLA.

(1) *Defense Related Employment (DD Form 1787)*—(i) *Personnel required to file.* The following individuals are required to file a Report of DoD and Defense Related Employment (DD Form 1787):

(A) A retired former military officer who served on active duty at least 10 years and who held, for any period during that service, the pay grade of O–4 or above, or a former civilian employee whose pay rate at any time during the 3-year period prior to the end of DoD employment was equal to or greater than a the minimum rate for a GS–13 (GS–12, step 7) and:

(*1*) Within the 2-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year before the former officer or employee began employment, was awarded $10,000,000 or more in defense contracts; and

(*2*) Is employed by or performs service for the defense contractor and at any time during a year directly receives compensation of or is salaried at a rate of $25,000 per year or more from the defense contractor ("compensation" is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that person).

(B) Each civilian officer and employee of a DoD Component who:

(*1*) Is employed at a pay rate equal to or greater than the minimum rate for GS–13 (GS–12, step 7), and

(*2*) Within the 2-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded $10,000,000 or more in defense contracts, and

(*3*) Was employed by or performed services for the defense contractor and at any time during that year received compensation of or was salaried at a rate of $25,000 per year or more at any time during employment ("compensation" is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by the person).

(ii) Detailed instructions concerning this reporting requirement are contained in Appendix F.

(2) *Statement of Employment (DD Form 1357).*

(i) Each retired Regular officer of the Armed Forces shall file with the Military Department in which he or she holds retired status a DD Form 1357, Statement of Employment-Regular Retired Officers (Appendix H). The DD Form 1357 should not be filed with DLA. Filing shall be within 60 days after retirement and thereafter within 30 days of changing employer or taking on new duties. The filing requirement continues for 3 years after retirement.

(ii) Additional details concerning this reporting requirement are contained in:

(A) AR 600–50.

(B) SECNAVINST 5370.2.

(C) AFR 30–30.

(D) MCO 5330.3C.

Appendix A to Part 1293—Laws Affecting DLA Personnel

I. Caution

Employees and former employees are cautioned that the descriptions of the laws and regulations in this enclosure should not be the only thing relied upon to make decisions regarding their activities. Although the descriptions do provide general guidelines, restrictions are dependent on the specific facts in a particular case. Accordingly, employees and former employees are encouraged to discuss specific cases with the Designated Agency Ethics Official or Deputy Ethics Official in their Office of Counsel, or with private counsel.

II. Conflict of Interest Laws

A. 18 U.S.C. 203

1. Subsection (a) prohibits military officers or civilian employees from directly or indirectly receiving or seeking compensation for services rendered or to be rendered before any department or agency in connection with any contract, claim, controversy or particular matter in which the United States is a party or has a direct and substantial interest. The statute does not apply to enlisted military personnel. The purpose of this law is to reach any situation where the judgment or efficiency of a Government agency might be influenced because of payments or gifts to an officer or employee regardless of whether there is any intent to give preferential treatment in a manner otherwise than provided by law.

2. Subsection (b) makes it unlawful for anyone to offer or to pay the compensation prohibited by subsection (a).

B. 18 U.S.C. 205

1. This law prohibits military officers or civilian employees from acting as an agent or attorney for anyone else before a department, agency, or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest. The law does not apply to enlisted military personnel.

2. The following exemptions are allowed:

a. The law does not prohibit military officers or civilian employees from giving testimony under oath; from making statements required to be made under the penalty of perjury or contempt; or, from representing another person, without compensation, in a personnel matter such as a discrimination complaint or disciplinary action.

b. The law also authorizes a limited waiver of its restrictions and those of section 203 for an officer or employee, including a special Government employee, who represents his or her parents, spouse, or child, or a person or estate he or she serves as a fiduciary. The waiver is available only if approved by the official making appointments to the position. However, the waiver does not allow the officer or employee to represent any person in matters in which the officer or employee has participated personally and substantially or which are the subject of the officer or employee's official responsibility.

c. Finally, section 205 gives the head of a department or agency the authority to allow a special Government employee to represent his or her regular employer or other outside organization in the performance of work under a Government grant or contract if the department or agency head certifies and publishes in the Federal Register that the national interest requires such representation.

C. 18 U.S.C. 208

1. Subsection (a) prohibits military officers and civilian personnel from their personal and substantial participation as Government personnel in any particular matter in which they, their spouse, their minor children, their partners, their employers, their prospective employers, or their organizations have a financial interest. "Personal and substantial participation" includes such things as decision, approval, disapproval, recommendation, the rendering of advice, or investigation. A "particular matter" may be less concrete than an actual contract, but is something more specific than rule making or

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abstract scientific principles. If the individual can reasonably anticipate that his/her Government action, or the decision in which he/she participates or with respect to which he/she advises, will have a direct and predictable effect upon financial interests, then a "particular matter" is involved.

2. Subsection (b) permits a written exemption from subsection (a) if the outside financial interest is deemed in advance not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made nondisqualifying by a regulation published in the **Federal Register**. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

D. 18 U.S.C. 209

Subsection (a) prohibits military officers and civilian employees from receiving, and prohibits anyone from paying them, any money as additional compensation for their Government service. The law does not apply to enlisted military personnel. Subsection (b) permits military officers and civilian employees to participate in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer. Subsection (c) exempts special Government employees and anyone serving the Government without compensation. Subsection (d) exempts contributions, awards, or other expenses under the Government Employees Training Act. See 5 U.S.C. 4111(a).

E. 10 U.S.C. 2397a

This law applies to DoD employees at pay rates of GS–11 or higher (GS–10, Step 4) and to military officers in pay grades O–4 or higher. These employees must report any contact they have had, or will have, with defense contractors regarding future employment with the defense contractor. These employees must also disqualify themselves from any participation in DoD procurements related to the defense contractor. The penalty for violation is a bar from employment with the defense contractor for up to 10 years after Government service and up to a $10,000 penalty.

III. Restriction on Former Military Officers and Civilian Employees

A. Former Officers and Employees Include the Following Personnel:

1. Full-time civilian employees who have left Federal service.

2. Special Government employees who have left Federal service.

3. Retired military officers released from active duty.

4. Reserve military officers released from active duty. The term does not include enlisted personnel; however, enlisted personnel are subject to the restrictions applicable to retired members of the Armed Forces set forth in subparagraph G.

B. Senior employees are those individuals who have been specifically advised by the Designated Agency Ethics Official that they hold senior employee positions. In general, senior employees within DLA include military officers in pay grades O–7 and above, and most Senior Executive Service (SES) positions.

C. General:

1. Laws and regulations restrict the activities of former officers and employees, establish certain reporting requirements, and, in some cases, restrict employment by former officers and employees with DoD contractors. Violation of some of the laws and regulations may result in criminal prosecution, or civil fines.

2. The purpose of the post employment restrictions is to preclude the actual or apparent use of public office for private gain, and to ensure that the administration of Government is conducted honestly and in an impartial manner.

3. The restrictions are divided into five parts; those applicable to all former officers and employees, those applicable to former senior employees, those applicable to retired military officers, and those applicable to all retired members of the Armed Forces. In addition, the special restrictions applicable to personnel who were engaged in "procurement functions" are set out. Because of the expansive definition of the term "procurement function," all civilian employees whose grade was GS–12, step 7 or higher, and all military personnel in grades O–4 and above should review the definition of "procurement function" set forth in subparagraph H6i below.

4. In addition to the information contained herein, retired military personnel are encouraged to review parallel regulations of their Military Service:

a. Army—AR 600–50.

b. Navy—SECNAVINST 5370.2H.

c. Air Force—AFR 30–30.

d. Marine Corps—MCO 5330.3C.

5. General professional knowledge acquired while in Federal service generally may be used while employed in the private sector. Laws and regulations do, however, restrict activities of former officers and employees which give the appearance of making unfair use of prior Federal employment and affiliations, or are detrimental to public confidence in the Government. In addition, certain former employees who dealt with DoD contractors may be prohibited from working for those contractors.

D. Restrictions Applicable to all Former Officers and Employees:

1. Permanent bar on representation. (18 U.S.C. 207(a).) Former officers and employees (not including former enlisted personnel) may never represent anyone except the United States or communicate with any Government agency with the intent to influence the United States in any matter with which the former officer or employee was personally and substantially involved while a Government employee, and which involves specific parties where the United States either is a party or has an interest.

a. This provision is aimed at your activities representing anyone, whether or not you make a personal appearance before the Government. The intent of the provision is to prevent you from "switching sides," so that information, influence, and access you acquired during Federal service is not subsequently used for improper or unfair advantage in post-employment dealings with the Government.

b. The matters to which this bar applies are those in which you were involved as a Federal employee. Your involvement as a Federal employee must have been of significance to the matter, or must form the basis for a reasonable appearance that it was significant, and may include involvement by any of your subordinates.

c. Matters of general application such as general policy or program design are not included in this bar.

d. The concept of representation is broadly construed and includes any type of communication whose intent is to influence the United States. Representation includes not only acting as another's attorney or agent, but promotional and contract representations as well. Communications include both oral and written communications.

2. Two-year bar on representation. (18 U.S.C. 207(b)(i).) Former officers and employees (not including enlisted personnel) may not, for a 2-year period after departing from Federal service, represent anyone except the United States in any matter which was pending under the former employee's official responsibility during the final year of Federal service. The bar includes communicating with any Government agency with intent to influence the United States on the matter.

a. The only substantive difference between this 2-year bar and the permanent bar described in subparagraph 1. above is the degree of your closeness to, or involvement in, the matter.

b. The term "official responsibility" refers to the direct administrative or operating authority, whether intermediate or final, either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

3. Exception for Scientific or Technological Information. The permanent bar and 2-year bar do not apply to communications made solely for the purpose of furnishing scientific or technological information if approved by the head of the agency to which the communication is directed.

E. Additional Restrictions Applicable to Former Senior Employees:

1. *Two-year bar. (18 U.S.C. 207(b)(ii).)* For 2 years after leaving a senior employee position, you may not represent or assist in representing another person by personally appearing at any proceeding before the Government where the matter that is the subject of the proceeding, is one in which you participated personally and substantially while in Federal service.

a. The matters to which this bar applies are those in which you were involved as a Federal employee. Your involvement as a Federal employee must have been of significance to the matter, or must form the basis for a reasonable appearance that it was significant, and may include involvement by any of your subordinates.

b. This restriction does not bar all forms of behind-the-scenes assistance by you, but only assistance in representing or assisting in representing another person while personally present at any type of proceeding.

2. *One-year bar. (18 U.S.C. 207(c).)* For one year after leaving a senior employee position, you may not represent anyone before your former agency, or have any communication with your former agency on any matter which is pending before or of substantial interest to the agency. This restriction, sometimes called the "no contract" bar, is intended to provide a "cooling-off" period between you and your former agency.

a. This bar applies regardless of the degree of your involvement with the matter.

b. The bar applies to all matters, whether or not specific parties are involved, and includes matters of general application such as general policy or program design.

c. The bar also extends to matters in which your agency has a substantial interest even though the matter may be pending before another agency.

d. The bar is limited to contracts with your former agency and does not apply Government-wide.

e. Your former agency is specifically defined. As it pertains to former DLA senior employees, the term includes DLA and the DoD less:

(1) The Military Departments.

(2) Defense Mapping Agency.

(3) Defense Communications Agency.

(4) Defense Intelligence Agency.

(5) Defense Nuclear Agency.

(6) National Security Agency.

f. There are several exemptions to this one-year bar. The bar does not cover a former senior employee who is: An elected official of a state or local government; an employee of an accredited degree-granting institution of higher education; or, an employee of a nonprofit hospital or medical research organization, provided that the communication, appearance, or representation is on behalf of such government, institution, hospital, or organization. The bar also does not cover purely social or informational communications, the transmission or filing of documents not requiring governmental action, personal matters, representing oneself in any administrative or judicial proceeding, any expression of personal view where the former senior employee has no monetary interest, responses to the former agency's request for information, or participation as the principal researcher or investigator under Government grants.

F. Additional Restrictions Applicable to Retired Regular Military Officers:

1. *Claims against the United States (18 U.S.C. 281)*

a. A retired officer of the Armed Forces may not, for two years after release from active duty, act as an agent or attorney for prosecuting or assisting in the prosecution of a claim against the United States:

(1) Which involves the Military Department in which the officer is retired, or

(2) Which involves any subject matter with which the officer was directly connected while on active duty.

b. The penalty for violating this restriction includes civil and criminal sanctions.

2. *Selling to the United States (18 U.S.C. 281)*

a. A retired officer of the Armed Forces may not, for two years after release from active duty, receive (or agree to receive), either directly or indirectly, any compensation for representating any person in the sale of anything to the United States through the Military Department in which the officer is retired.

b. The penalty for violating this restriction includes civil and criminal sanctions.

3. *Retired Regular Officers*

For 3 years after retirement, a retired Regular officer may not, either for himself/herself or for others, sell, contract, or negotiate to sell, any supplies or war materials to the DoD (or any of its components), Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.

a. This 3-year bar does not prohibit all types of employment by, or association with, a company that does business with the Government. The bar is directed only to those activities related to selling which include:

(1) Signing a bid, proposal, or contract.

(2) Negotiating a contract.

(3) Contracting an officer or employee of any of the agencies listed in subparagraph 2.b. above for the purpose of:

(a) Obtaining or negotiating contracts,

(b) Negotiating or discussing changes in specifications, price, cost allowance, or other terms of a contract, or

(c) Settling disputes concerning performance of a contract, or

(4) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person.

b. Violations of this bar are punishable by loss of retirement pay for that period of time during which the prohibited activity occurs.

G. Additional Restrictions Applicable to all Retired members of the Armed Forces:

1. *DoD civilian employment.* A retired member of the Armed Forces may not be appointed to a DoD civilian position within 180 days after retirement unless:

a. The employment is approved by the appropriate authority (DOD Directive 1402.1, Employment of Retired Members of the Armed Forces).

b. The position is one for which an advance hiring pay rate has been authorized by the Office of Personnel Management under 5 U.S.C. 5305, or

c. A state of national emergency exists.

2. *Foreign employment.* A retired member of the Armed Forces may not accept any present, emolument, office, title, or employment from any foreign government unless approved by the Secretary of the Military Department concerned and the Secretary of State. The penalty for a violation is loss of retirement pay.

3. *Use of military titles.* Retired members of the Armed Forces may not use their military title in such a way as to give rise to the appearance of sponsorship, sanction, endorsement, or approval of the Military Service or the DoD in connection with any commercial enterprise. Overseas commanders may further restrict the use of military titles by retired personnel in overseas areas.

H. Special Restrictions on the Activities of Former Employees Who Were Engaged in Procurement Functions:

1. Pursuant to 10 U.S.C. 2397b, certain former military officers and civilian employees may not receive compensation from a major defense contractor for a 2-year period, beginning on the date the former officer or employee separated from Federal service. This restriction prohibits the acceptance of compensation from a particular major defense contractor only if the former officer or employee performed the duties listed in subparagraph 2, below, relating to that same defense contractor.

2. *Personnel to whom restrictions apply.* Individuals in the following categories are subject to the restrictions:

a. Civilian employees whose rate of pay was greater than or equal to that for a GS–13, Step1 (GS–12, Step 7) and military officers in pay grades of O–4 or higher, if such individuals:

(1) Spent the majority of their working days during the last 2 years of DoD service performing a procurement function relating to a DoD contract, at a site or plant that was owned or operated by a contractor, and which was the principal location of their performance of that procurement function; or

(2) Performed, on a majority of their working days during the last two years of DoD service, a procurement function relating to a major defense system and, in the performance of such a function, participated on any occasion personally and substantially in a manner involving decision-making responsibilities with respect to a contract for that major defense system through contact with the contractor.

b. Civilian employees who served in a Senior Executive Sevice position or higher, and military officers who served in the pay grade of O–7 or higher, if such individuals during the last 2 years of DoD service:

(1) Acted as a primary representative of the United States in the negotiation with a defense contractor of a defense contract in an amount in excess of $10,000,000 (the actual contractual action taken by the individual must have been in an amount in excess of $10,000,000), or

(2) Acted as a primary representative of the United States in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of $10,000,000. An unresolved claim shall be, for the purposes of Part 1293 valued by the greater of the amount of the claim or the amount of the settlement.

3. *Advice from the designated Agency Ethics Official.*

a. Any person may, before accepting compensation, request that PLFA Counsel or the General Counsel, DLA provide advice on the applicability of 10 U.S.C. 2397b and Part 1293 to the acceptance of such compensation.

b. A request for advice shall be in writing and shall contain all relevant information.

c. If the PLFA Counsel or General Counsel, DLA receives a request for advice, he shall issue a written opinion in response thereto

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not later than 30 days after receipt of all relevant information.

d. If the advice rendered by the PLFA Counsel or General Counsel, DLA states that the law and Part 1293 are inapplicable, and that the individual may accept the compensation from the contractor, then there shall be a conclusive presumption that the acceptance of the compensation is not a violation of 10 U.S.C. 2397b.

4. *Apparent violations.* Apparent violations. Apparent violations of these prohibitions shall be referred to the General Counsel, DLA who will review the matter for referral to the DoD Inspector General or the Inspector General of the appropriate Military Department for investigation.

5. *Penalties.* Pursuant to 10 U.S.C 2397b(b)(1), individuals who knowingly violate the prohibitions of this section are subject to a civil fine of up to $250,000.

6. *Special definitions.* For the purpose of subparagraph H of this Appendix, terms used shall have the following meanings:

a. *Armed Forces.* The term "Armed Forces" does not include the United States Coast Guard.

b. *Compensation.* Includes any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment and which has a fair market value in excess of $250. Compensation shall be deemed indirectly received if it is paid to an entity or person other than the individual, in exchange for services performed by the individual.

c. *Contractor-operated facility.* Includes any facility leased or loaned by the United States to the contractor by written agreement. It does not include facilities located on a military installation where contractor personnel may work, but which is not either leased or loaned by the United States to the contractor by written agreement.

d. *Defense contractor.* An entity that: Contracts directly with the Department of Defense to supply the Department of Defense with goods or services; or, controls or is controlled by an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services; or, is under common control with an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services. The term does not include an affiliate or subsidiary of an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services if the affiliate or subsidiary is clearly not engaged in the performance of a defense contract, nor does it include a state or local government.

e. *DoD component.* The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Inspector General, and the Defense Agencies, including nonappropriated fund activities.

f. *Employee.* This term does not include a part-time employee, or a Special Government Employee.

g. *Major defense contractor.* Any business entity which, during the fiscal year preceding the fiscal year in which compensation was received, was a defense contractor that received defense contracts in a total amount equal to or greater than $10,000,000.

h. *Major defense system.* A combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major defense system if: the Department of Defense is responsible for the system and the total expenditures, for research, development, test and evaluation for the system are estimated to exceed $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement exceeds $300,00,000 (based on fiscal year 1980 constant dollars); or, the system is designated a "major system" by the head of the agency responsible for the system.

i. *Majority of working days.* The majority of days actually worked during the period, excluding weekends, holidays, days of leave or sick days when the employee did not actually work. A work day on which an individual performed a procurement function includes any day on which the individual worked on that procurement function for any amount of time during that day.

j. *Negotiation and settlement.* Exchange of views between representatives of the Government and a contractor regarding respective liabilities and responsibilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

k. *Primary Government representative.* If more than one Government representative is involved in any particular transaction, it is the Government employee who supervised the Government's effort in that matter. To act as a "representative" requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a contractor.

l. *Procurement related function (or "procurement function").* Any function relating to: The negotiation, award, administration, or approval of a contract; the selection of a contractor; the approval of a change in a contract; the performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or, the management of a procurement program.

m. *Separation of a member of the Armed Forces.* A person who is a retired or former member of the Armed Forces shall be considered to have been separated from service in the Department of Defense on the effective date of the person's discharge or release from active duty.

IV. Other Laws Applicable to DoD Personnel

Engaging in the following activities may subject present and former DLA personnel to criminal or other penalties:

A. Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 201).

B. Concealing or failing to report to proper authorities the commission of felony under any criminal statute if the person knew of the actual commission of the crime (18 U.S.C. 4).

C. Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (18 U.S.C. 371).

D. Lobbying with appropriated funds (18 U.S.C. 1913).

E. Disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

F. Disclosure of classified information (18 U.S.C. 793 and 798, 50 U.S.C. 783); and disclosure of trade secrets and other confidential information (18 U.S.C. 1905).

G. Habitual use of intoxicants to excess (5 U.S.C. 7352).

H. Misuse of a Government vehicle (31 U.S.C. 1349(b)).

I. Misuse of the mailing privilege (18 U.S.C. 1719).

J. Deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

K. Committing fraud or making false statements in a Government matter (18 U.S.C. 1001).

L. Mutilating or destroying a public record (18 U.S.C. 2071).

M. Counterfeiting and forging transportation requests (18 U.S.C. 641).

N. Embezzlement of Government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); private use of public money (18 U.S.C. 653) and embezzlement of the money or property of another person in the possession of an employee by reason of his/her Government employment (18 U.S.C. 654).

O. Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

P. Certain political activities (5 U.S.C. 7321–7327 and 18 U.S.C. 600, 601, 602, 603, 606, and 607). These statutes apply to civilian employees; regulations govern military personnel (DoD Directive 1344.10).[*]

Q. Any person (including a special Government employee) who is required to register under the Foreign Agents Registration Act of 1938 (18 U.S.C. 219) may not serve the Government as an officer or employee. The section does not apply to retired Regular military officers who are not on active duty, or Reserves who are not on active duty or who are on active duty for training; or, a special Government employee in any case in which the department head certifies to the Attorney General that his or her employment by the United States Government is in the national interest.

R. Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (5 U.S.C. 7351). This statute applies only to civilian employees; the provisions of § 1293.3(h), apply to military personnel.

S. Acceptance of excessive honoraria (2 U.S.C. 441i).

T. Acceptance, without statutory authority, of any present, emolument, office or title, or

[*] See footnote 1, to § 1293.3(c)(1)(ii).

employment of any kind whatever, from any king, prince, or foreign state by any person holding any office or profit in or trust of the Federal Government, including all retired military personnel and regular enlisted personnel (U.S. Constitution, Art. I., Sec. 9, cl. 8). Exceptions to this prohibition are authorized under 37 U.S.C. 908.

U. Union activities of military personnel (10 U.S.C. 976).

V. Violation of merit system principles (5 U.S.C. 2301).

W. Prohibited personnel practices (5 U.S.C. 2302).

X. Employment of a Regular Navy Officer or a Regular Marine Corps Officer, other than a retired officer, by a person furnishing naval supplies or war materials to the United States (37 U.S.C. 801(a)).

Appendix B to Part 1293—Code of Ethics For Government Service—Pub. L. 96–303

Any person in Government service should:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

II. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

III. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors and benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

VI. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

VIII. Never use any information gained confidentially in the performance of government duties as a means for making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

Appendix C to Part 1293—Additional Guidance On Gratuities, Reimbursements, And Other Benefits From Outside Sources

I. General

The general prohibition against accepting gratuities, reimbursements, and other benefits from outside sources does not apply to the following. These exceptions shall be applied narrowly in keeping with the prohibition in § 1293.3(g).

A. The continued participation in employee welfare or benefit plans of a former employee when permitted by law and approved by the General Counsel, DLA, or PLFA Counsel.

B. The acceptance of unsolicited advertising or promotional items that are less than $10 in retail value.

C. The acceptance of trophies, entertainment, prizes, or awards for public service or achievement in an individual, unofficial capacity or given in games or contests that do not relate to official duties and are clearly open to the public generally, or are officially approved for DLA personnel participation.

D. The acceptance of benefits available to the public, such as university scholarships covered by DoD Directive 1322.6, Fellowships, Scholarships, and Grants for Members of the Armed Forces, and free exhibitions by DoD contractors at public trade fairs.

E. The acceptance of discounts or concessions realistically available to all DLA personnel, provided that such discounts or concessions are not used to obtain any item for the purpose of resale at a profit.

F. Participation by DLA personnel in civic and community activities that also involve a DoD contractor, when any relationship between DLA personnel and the contractor is indirect; for example participation in a Little League or Combined Federal Campaign luncheon that is subsidized by a defense contractor.

G. Activities engaged in by DLA personnel with local civic or military leaders as part of authorized community relations programs of DLA.

H. The participation of DLA personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by industrial, technical, and professional associations (not by individual contractors), provided that they have been approved in accordance with DoD Instruction 5410.20, Public Affairs Relations with Business and Nongovernmental Organizations Representing Business.

I. Situations in which participation by DLA personnel at public ceremonial activities of mutual interest to industry, local communities, and DLA serves the interest of the Government, and acceptance of the invitation is approved by the General Counsel, DLA or PLFA Counsel.

J. When on official Government business and when the DLA personnel reports the circumstances in writing to the immediate supervisor and to the General Counsel, DLA or the PLFA Counsel, as soon as possible:

1. Space available use of previously scheduled ground transportation to or from a DoD contractor's place of business provided by the contractor for its own employees, and

2. Contractor-provided transportation, meals, or overnight accommodations when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable.

K. Attendance or participation of DLA personnel in gatherings, including social events such as receptions, which are hosted by foreign governments (when not acting in their DoD contractor capacity) or international organizations, provided that the acceptance of the invitation is approved by the General Counsel, DLA or PLFA Counsel.

L. Customary exchanges of gratituities between DLA personnel and their friends and relatives or the friends and relatives of their spouse, minor children and members of their household, when the circumstances clearly indicate that it is the relationship, rather than the business of the person concerned, that is the motivating factor for the gratuity and it is clear that the gratuity is not paid for by the United States Government or any DoD contractor.

M. Acceptance of coffee, doughnuts, and similar refreshments of nominal value offered as a normal courtesy incidental to the performance of duty. This exception applies to acceptance on an occasional basis and does not authorize acceptance on a recurring basis.

N. The acceptance of benefits resulting from the business activities of a spouse where it is clear that the benefits are given to the spouse in the normal course of the spouse's employment or business and have not been given or made more attractive because of the DLA employee's status. This exception does not, however, alter the requirement for disqualification under § 1293.7(c)(1).

O. Acceptance of transportation and related travel expenses from a potential employer in connection with a job interview, provided that prior to departing on the trip:

1. The DLA employee receiving the gratuity notifies his or her immediate supervisor of the travel arrangements.

2. The DLA employee files a written disqualification statement concerning any possible official actions involving the potential employer.

3. The DLA employee submits some evidence that the potential employer offers the same benefits to all similarly situated individuals, not only those employed in the Department of Defense.

P. Situations in which, in the sound judgment of both the individual involved and his or her immediate supervisor, the Government's interest will be served by DLA personnel participating in activities otherwise prohibited. In any such case, a written report of the circumstances shall be made in advance, or, when an advance report is not possible, within 48 hours, by the individual or supervisor to the General Counsel, DLA or PLFA Counsel.

II. Defense Contracting Training

The guidance in subparagraphs A through C of this section applies whenever defense contractors provide training, orientation, or refresher courses to DLA personnel. These courses range from executive orientation courses in which all expenses are borne by the defense contractor to seminars devoted to technical developments in which the only "gratuity" may be lectures given free of charge.

A. Attendance by DLA employees at training sessions provided by defense contractors is permitted when the contractor's products or systems are provided under contract to DoD and the training is to facilitate the utilization of those products or systems by DLA personnel.

B. When a defense contractor provides training pursuant to a contract, the training itself is not a gratuity. Likewise, meals,

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lodging, and transportation would not be considered a gratuity if the defense contractor was required to furnish them under the terms of the contract, but would result in reductions to the travel and other expenses normally payable to the employee under the Joint Federal Travel Regulation. However, if the defense contractor, without charge, provides something to DLA personnel which is not required by the contract, the contractor is giving a gratuity to the DLA employee.

C. Attendance at tuition-free training, refresher courses, or other educational meetings offered by a defense contractor (although not required to do so by the terms of a contract) may be authorized when attendance is clearly in the best interests of the Government and meets the following criteria of DLAR 1430.12, Civilian Employee Development and Training: [6]

1. Selection of the DLA employees attending the contractor training will be made by the Government.

2. The unavailability of alternative training sources, and confidence that the contractor provided training will not adversely affect the objectivity of the DLA employee.

3. Approval of the training is at a sufficiently high level to assure the need cannot otherwise reasonably be met and has the concurrence of the General Counsel, DLA or PLFA Counsel.

4. No appreciable cost is incurred by the contractor in order to accommodate attendance by DLA employees.

5. An understanding that the contractor will receive no special consideration or benefit because of the Government's participation.

III. Reimbursements

DLA personnel may not accept either personal reimbursement or in kind accommodations, subsistence, transportation, or services for expenses incident to official travel, from any source outside the Government except as indicated in subparagraphs A through F of this section. In cases where acceptance is authorized, appropriate deductions will be made in the travel, per diem, or other allowances payable to the employee. In no event will DLA personnel accept benefits which are excessive.

A. A DLA employee who is to be a speaker, panelist, project officer, or other bona fide participant in the activity attended, may accept accommodations, subsistence, transportation, or other services furnished in-kind in connection with official travel when such attendance and acceptance are authorized by the order-issuing authority as being in the overall Government interest. Under these circumstances, an employee may not accept personal reimbursement.

B. When a DLA employee is summoned to testify in an official capacity on behalf of a private party at a judicial proceeding, the appearance will be on official time and travel expenses may be accepted from the court, authority, or party who caused the person to be summoned. In accordance with 5 U.S.C. 5751, the funds may be turned over to the agency and Government travel orders issued or the employee may use the funds to defray costs directly. Any excess funds must be returned to the party or paid into the U.S. Treasury as miscellaneous receipts. Any employee appearing on behalf of a private party not in an official capacity must use leave to do so and may retain any fees or expenses.

C. Except as indicated in subparagraphs A and B of this section, DLA personnel may not accept personal reimbursement from any source for expenses incident to official travel, unless authorized by their supervisor consistent with guidance provided by the Designated Agency Ethics Official or Deputy Ethics Official pursuant to 5 U.S.C. 4111 or other statutory authority. Rather reimbursement must be made to the Government by check payable to DLA.

D. DLA personnel may accept travel, or reimbursement for travel expenses from a foreign government as provided in DLAR 1005.1, Decorations and Gifts from Foreign Governments.

E. When accommodations, subsistence, or services in kind are furnished to DLA personnel by non-U.S. Government sources, consistent with this paragraph, appropriate deductions shall be reported and made in the travel, per diem, or other allowance payable.

F. DLA personnel who receive gratuities, or have gratuities received on their behalf, in circumstances not in conformance with the standards of Part 1293, shall promptly report the circumstances to the Designated Agency Ethics Official or Deputy Ethics Official for disposition determination.

IV. Ship Launch and Similar Ceremonies

The following guidance applies to ceremonies and gifts associated with the launch or commissioning of a naval vessel, an aircraft or other vehicle, and all similar events:

A. Attendance at Ceremonies

Acceptance of an invitation to attend a ceremony shall be approved by the Head of the PSE or PLFA. Attendance is permitted at appropriate functions incident to the ceremony, such as a dinner preceding the ceremony and the reception following it, as long as the function is not lavish, excessive, or extravagant.

B. Acceptance of Gifts

DLA personnel, their spouses, and their dependent children, who are official participants may accept a tangible thing of value as a gift or memento in connection with the ceremony as long as its retail value does not exceed $100 per family and the cost is not borne by the Government. When a gift exceeds the $100 limit the recipient shall pursue one of the following alternatives:

1. Return the gift to the donor.

2. Retain the gift after reimbursing the donor the full value of the gift.

3. Forward the gift to the Staff Director, Administration (DLA–X) for disposition as a gift to the Government in accordance with statute.

[6] See footnote 1. to § 1293.3(c)(1)(ii).

Appendix D to Part 1293—Executive Personnel Financial Disclosure Report (SF 278)

I. DLA Personnel Required to File SF 278

A. DLA personnel required to file a Financial Disclosure Report (SF 278) are listed at section 1293.7(d)(1). These personnel occupy "covered positions."

B. A person who is nominated to or assumes a covered position is not required to file an SF 278 if the Secretary of Defense or the General Counsel, DLA determines that the person is not reasonably expected to perform the duties of the position for more than 60 days in the calendar year. However, if the person performs the duties of the office or position for more than 60 days in the calendar year, an SF 278 shall be filed within 15 days after the 61st day of duty.

C. A person otherwise required to file an SF 278, but who is expected to perform the duties of the position for less than 130 days in the calendar year, may request a waiver of any or all reporting requirements from the Director, Office of Government Ethics, if the person is not a full-time employee of the Government, is able to provide specially needed services, and does not have outside employment or financial interests likely to create a conflict of interest. A request for a waiver shall be initially submitted to the General Counsel, DLA.

II. Time of Filing

An SF 278 shall be submitted under the circumstances described below.

A. Assumption Report

DLA personnel shall submit a SF 278 to the General Counsel, DLA before assuming a covered position. This requirement does not apply if the individual has left another covered position within 30 days before assuming a new position, or already has filed with respect to nomination for the new position.

B. Annual Report

DLA personnel, including special Government employees, occupying a covered position for more than 60 days during a calendar year shall submit an SF 278 annually. The annual report must be filed with the General Counsel, DLA not later than 15 May unless a written extension is granted.

C. Termination Report

DLA personnel occupying a covered position shall submit an SF 278 to the General Counsel, DLA no sooner than 15 days before and no later than 30 days after the date of departure from that position unless they accept another covered position. The termination report will cover the portion of the present calendar year up to the date of termination and, if the annual report has not yet been filed, the preceding calendar year.

III. Contents of Reports

Instructions for completing SFs 278 are included as part of the report forms. Additional guidance for personnel in covered positions is available from the General Counsel, DLA.

IV. Submission and Review of Reports

A. Reports will be submitted to the General Counsel, DLA. After final review, copies of the reports of military officers assigned to DLA will be forwarded by the General Counsel, DLA to the appropriate Military Department official.

B. Final review of an SF 278 is completed when the Genral Counsel, DLA has signed the SF 278, indicating that each item is completed and that the report discloses no unresolved conflict or appearance of a conflict of interest under applicable laws and regulations.

1. If the General Counsel, DLA, after reviewing an SF 278, believes additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the General Counsel, DLA.

2. If the General Counsel, DLA, after reviewing the SF 278, is of the opinion, on the basis of information submitted, that the reporting person is not in compliance with applicable laws and regualtions, the following steps shall be taken:

a. The person shall be notified in writing of the preliminary determination.

b. After an opportunity for personal consultation, if practicable, the General Counsel, DLA shall notify the person in writing of the remedial measures that should be taken to bring the person into compliance. The notification shall specify a date by which such measures must be taken, which, except in unusual circumstances, must be taken within 90 days.

(1) When the General Counsel, DLA determines that a reporting person has fully complied with the remedial measures, a notation to that effect shall be made in the comment section of the SF 378. The General Counsel, DLA shall then sign and date the SF 278 and send written notice of that action to the person.

(2) If steps assuring compliance with applicable laws and regulations are not taken by the date established, the General Counsel, DLA shall report the matter to the Director, DLA for appropriate action. The Office of Government Ethics and the Attorney General shall also be notified.

3. Remedial action may include the following measures:

a. Disqualification.
b. Limitation of duties.
c. Divestiture.
d. Transfer or reassignment.
e. Resignation.
f. Exemption under 18 U.S.C. 208.
g. Establishment of a qualified blind trust.

V. Public Availability of SFs 278

A. SFs 278 must be made available for public examination upon request 15 days after the report is filed unless otherwise exempted pursuant to law. Receipt of the report by the General Counsel, DLA for final review constitutes official filing and establishes the date from which the 15 days shall run. In most cases, this means the reports are available to the public before final review is completed. Reporting persons are personally responsible for ensuring that their reports are accurate, complete, and timely.

B. Any request for an SF 278 must be in writing and state:

1. The person's name, occupation, and address.

2. The name and address of any other person or organization on whose behalf the inspection or copy is requested.

3. That the person is aware that it is unlawful to obtain or use the report for:

a. Any unlawful purpose.

b. Any commercial purpose, other than by news and communications media for dissemination to the general public.

c. Determining or establishing the credit rating of any individual.

d. Use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

VI. Retention of SFs 278

SFs 278 shall be retained for 6 years from the date of filing.

VII. Penalties

Compliance with the financial disclosure provisions shall be enforced by administrative, civil, or criminal remedies, which include:

A. Action Within the DoD Component

The Director, DLA may take appropriate action, including a change in assigned duties or adverse action, in accordance with applicable law or regulation, against any person who fails to file an SF 278, or who falsifies or fails to report required information.

B. Action by the Attorney General

The General Counsel, DLA is required to refer to the Attorney General the name of any person whom he or she has reasonable cause to believe has failed willfully to file an SF 278 on time or has falsified or failed willfully to file information required to be reported. Such referral does not bar additional administrative or judicial enforcement. The Attorney General may bring a civil action in the U.S. District Courts against any person who knowingly and willfully falsifies or fails to file or report any required information. The court may assess a civil penalty not to exceed $5,000. Knowing or willful falsification of information required to be filed also may result in criminal prosecution under 18 U.S.C. 1001, leading to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.

C. Misuse of Reports

1. The Attorney General may bring a civil action against a person who obtains or uses an SF 278 filed under the Ethics in Government Act for any of the following reasons:

a. Any unlawful purpose.

b. Any commercial purpose, other than by news and communications media for dissemination to the general public.

c. Determining or establishing the credit rating of any individual.

d. Directly or indirectly, for the solicitation of money for any political, charitable, or other purpose.

2. The court in which such action is brought may assess a penalty in any amount not to exceed $5,000. This is in addition to any other legal remedy available.

Appendix E to Part 1293—Requirements for Submission of DD Form 1555, Statement of Affiliations and Financial Interests

I. DLA Personnel Required To Submit Statements

A. DLA personnel required to file Statements of Affiliations and Financial Interests (DD Forms 1555) are those indicated in § 1293.7(d)(2).

B. Special Government Employees (as defined in § 1293.4(i)).

1. Special Government employees, including Reserve military officers assigned to positions requiring the submission of a DD Form 1555 shall file a DD Form 1555 prior to performing the duties of the position.

2. The following categories of special Government employees are not required to file DD Forms 1555 unless they are specifically notified that they must do so:

a. Physicians, dentists, and allied medical specialists engaged only in providing service to patients.

b. Veterinarians providing only veterinary services.

c. Lecturers participating only in educational activities.

d. Chaplains performing only religious services.

e. Individuals in the motion picture and television fields who are utilized only as narrators or actors in DLA productions.

f. A special Government employee who is not a "consultant" or "expert" as those terms are defined in the Federal Personnel Manual, Chapter 304.

II. Review of Positions

Immediate supervisors shall annually review each civilian and military position under their supervision, determine whether the position requires the incumbent to file a DD Form 1555, and will notify each employee of the determination. The position description of each position shall state whether or not the incumbent must file a DD Form 1555. Any individual may request a review of the determination requiring submission of a DD Form 1555 from the Deputy Ethics Official. In the event the employee is dissatisfied with this decision, there is an appeal right to the Designated Agency Ethics Official, whose decision shall be final.

III. Manner of Submission

A. Time of Submission

1. Employees will file a DD Form 1555 for review and approval prior to performing the duties of a position that requires filing of a DD Form 1555. Reserve Officers shall file the form upon reporting for duty. If an employee has filed a DD Form 1555 by virtue of a previous position, a copy of the previously submitted form may be submitted to the new supervisor for review rather than filing a new DD Form 1555.

2. DD Forms 1555 shall annually be filed by 31 October each year for all affiliations and financial interests as of the 30th of September of that year. Even if no changes occur from

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the previous year, a new and complete DD Form 1555 is required to be filed each year.

3. *Excusable Delay.* When required by reason of duty assignment or infirmity, a supervisor may grant an extension of time with concurrence of the DAEO or Deputy Ethics Official. Any extension in excess of 30 days requires the concurrence of the Designated Agency Ethics Official. Any late DD Forms 1555 shall include appropriate notation of any extension of time granted hereunder.

B. To Whom Submitted

1. *HQ DLA.* a. Heads of PSEs required to file DD Forms 1555 will submit them through the General Counsel, DLA to the Director, DLA.

b. Deputy Heads of PSEs required to file DD Forms 1555 will submit them to the Head of the PSE for review and evaluation. After resolution of any conflict, the DD Forms 1555 will be forwarded to the General Counsel, DLA.

c. Other officers and employees of HQ DLA, and their management support activities, will submit DD Forms 1555 to their immediate supervisor for review and evaluation. Upon completion of their review and resolution of any conflicts, supervisors will forward the DD Forms 1555 to the General Counsel, DLA.

2. *Field activities with assigned DLA Counsel.* a. Heads of PLFAs required to file DD Forms 1555 will submit them through the General Counsel, DLA to the Director, DLA.

b. Deputy Heads of PLFAs required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be submitted to the General Counsel, DLA.

c. Other officers and employees of PLFAs or subordinate activities required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be forwarded to the appropriate Deputy Ethics Official.

d. Counsel for PLFAs will submit DD Forms 1555 to the Head of the PLFA for review and evaluation. After resolution of any conflict, the forms will be forwarded to the General Counsel, DLA.

e. Heads of DLA activities subordinate to PLFAs, when required to file DD Forms 1555, will submit the forms to the Head of the PLFA, who will review and evaluate, and forward to the appropriate Deputy Ethics Official after resolution of any conflict.

f. Counsel for DLA activities subordinate to a PLFA will submit DD Forms 1555 to the activity Head for review, evaluation, and resolution of any conflict. The forms will be forwarded to the Counsel of the PLFA.

3. *Management Support Activities.* a. Heads of Management Support Activities will submit DD Forms 1555 to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be submitted to the General Counsel, DLA.

b. Other officers and employees of Management Support Activities will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be forwarded to the Deputy Ethics Official of the PLFA providing personnel services to the Management Support Activity.

4. *Detailed employees.* Agreements with other DoD Components and Government agencies shall contain a requirement that the other Component agency shall, within 60 days, forward to the General Counsel, DLA a copy of the detailed individual's DD Form 1555, if required, and notice concerning the disposition of any conflict or apparent conflict of interest indicated.

C. Content of Report

1. Instructions for completing the DD Form 1555 are included as a part of the form. Additional guidance may be obtained from the Designated Agency Ethics Official or Deputy Ethics Official.

2. The interest of a spouse, minor child, or any member of the employee's household shall be reported as if it were the interest of the employee. The interests of a spouse need not be reported if the employee and spouse have:

a. A final decree of separation,

b. An interim or interlocutory decree, or

c. A separation agreement formally executed by the employee and spouse in anticipation of its incorporation into a final decree of divorce or separation.

3. DLA personnel are not required to submit on a DD Form 1555 any information relating to their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business for profit. However, educational or other institutions doing research and development or related work involving grants of money or contracts with the Government must be reported.

4. Ownership of personal savings or checking accounts in financial institutions, shares in credit unions or savings and loan associations, life or property insurance policies and shares in widely held diversified mutual funds or regulated investment companies need not be reported.

5. An employee need not disclose the assets of, sources of income of, or transactions of, a trust if:

a. The trust is a qualified blind or qualified diversified trust certified by the Office of Government Ethics and is otherwise reported on the DD Form 1555 by name of trust and date of execution, or

b. The trust is an "excepted" trust, defined as follows:

(1) A trust that was not created by the DLA employee, or the employee's spouse, or dependent child:

(2) A trust that consists of withholdings or sources of income of which the officer or employee, or spouse, or dependent child have no knowledge, and

(3) Which is disclosed as an asset or income source on the report.

6. DLA personnel shall request submission on their behalf of required information known only to other persons; for example, holdings of spouse or other members of the household, executor of any estate, or trustee. The submissions may be made with a request for confidentiality that will be honored even if it includes a limitation on disclosure to the DLA employee concerned.

D. *Confidentiality of DD Forms 1555 of DLA personnel.* Each DD Form 1555 shall be held in confidence. Information from a DD Form 1555 may not be disclosed except as the Designated Agency Ethics Official or the Office of Government Ethics may determine for good cause. Persons designated to review the DD Forms 1555 are responsible for maintaining the statements in confidence and shall not allow access to or disclosure from the DD Forms 1555 except to carry out the purpose of Part 1283.

E. *Effect of statements on other requirements.* The DD Form 1555 required of DLA personnel is in addition to, and not in substitution for, any similar requirement imposed by statute, Executive Order, or regulation. Submission of a DD Form 1555 does not permit DLA personnel to participate in matters in which their participation is prohibited by statute, Executive Order, or regulation.

F. *Review of DD Forms 1555.* 1. The filing employee's immediate supervisor reviews the DD Form 1555 to evaluate whether there is a conflict or apparent conflict between the employee's private financial interests and his or her official responsibilities. The immediate supervisor records the results of the evaluation in block 13. Heads of PSEs and PLFAs will perform the initial review of their deputies' DD Forms 1555 before forwarding them to the General Counsel, DLA. Heads of PLFAs perform the initial review of the PLFA Counsel's forms. After review and completion of the supervisor's statement, the DD Form 1555 should be forwarded to the Designated Agency Ethics Official or Deputy Ethics Official, as appropriate, for final review and filing.

2. DD Forms 1555 shall be reviewed to assure that:

a. Each item is completed, and

b. No interest or position disclosed on the form violates or appears to violate any of the following:

(1) Any applicable provision of Chapter 11 of Title 18 of the United States Code (Part 1).

(2) The "Ethics in Government Act of 1978," as amended, and any regulations promulgated thereunder.

(3) Executive Order 11222 as amended, and any regulations promulgated thereunder.

(4) Any other related statute or regulation applicable to the employees of the agency.

3. The supervisor need not audit the report to ascertain whether the disclosures are correct; disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. The supervisor's signature shall signify that he or she has found that the information in the report discloses no conflict of interest under applicable laws and regulations and that the report fulfills the requirements set out in IIIF2, above.

4. If the supervisor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted.

5. Whenever the supervisor's review of a DD Form 1555 discloses a conflict or an apparent conflict of interest, the employee concerned will be given an opportunity to explain the conflict or apparent conflict to the immediate supervisor. Resolution of a conflict or apparent conflict will be made under § 1293.7(b). If the conflict or apparent conflict cannot be resolved by the supervisor, it will be forwarded, along with a copy of the employee's current position description, to the Designated Agency Ethics Official or Deputy Ethics Official, as appropriate, for resolution.

6. If the supervisor concludes that the report is completed properly and that no item violates, or appears to violate, applicable statute or regulation, then such official shall sign and date the report.

G. *Remedial action.*

1. Whenever the designated Agency Ethics Official or Deputy Ethics Official concludes that the filing individual is not in compliance with applicable laws or regulations, the Designated Agency Ethics Official or Deputy Ethics Official shall do the following:

a. Notify the reporting individual of the preliminary determination.

b. Afford the reporting individual an opportunity for personal consultation, if practicable.

c. Determine what remedial action should be taken to bring the reporting individual into compliance.

d. Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken.

2. Except in unusual situations, which must be documented fully to the satisfaction of the appropriate ethics official, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.

3. Remedial action includes any of the following measures:

a. Disqualification.

b. Limitation of duties.

c. Divestiture.

d. Transfer or reassignment.

e. Resignation.

f. Exemption under 18 U.S.C. 208.

g. Establishment of a qualified blind trust.

4. When the ethics official determines that a reporting person has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the DD Form 1555. The ethics official then shall sign and date the form and send written notice of that action to the reporting individual.

5. If steps ensuring compliance with applicable laws and regulation are not taken by the date established, the ethics official shall report the matter to the General Counsel, DLA for appropriate action.

H. *Retention of statements.* DD Forms 1555 shall be retained for 6 years from the date of filing.

I. *Penalties*—1. *Administratives penalties.* Any individual failing to file a report or falsifying or failing to file required information, may be subject to any appropriate personnel or other action in accordance with applicable law or regulation, including adverse action.

2. *Criminal liability.* Any individual who knowingly or willfully falsifies information on a report required to be filed under this enclosure also may be subject to criminal prosecution under 18 U.S.C. 1001.

Appendix F to Part 1283 Reporting Procedures for DoD and Defense Related Employment

I. Personnel Required To File

The following military officers and civilian employees are required to file a Report of DoD and Defense Related Employment (DD Form 1787):

A. A retired military officer who served on active duty at least 10 years and who held, for any period during that service, the pay grade of O–4 or above, or a former civilian employee whose pay rate at any time during the 3-year period prior to the end of DoD employment was equal to or greater than the minimum rate for a GS–13 (GS–12, step 7), and who:

1. Within the 2-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year before the former officer or employee began employment, was awarded $10,000,000 or more in defense contracts; and

2. Is employed by or performs services for the defense contractor and at any time during a year directly receives compensation of or is salaried at a rate of $25,000 per year or more from the defense contractor ("compensation" is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that person).

B. Each civilian employee of a DoD Component who:

1. Is employed at a pay rate equal to or greater than the minimum rate for GS–13 (GS–12, step 7),

2. Within the 2-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded $10,000,000 or more in defense contracts, and

3. Was employed by or performed services for the defense contractor and at any time during that year received compensation from or was salaried at a rate of $25,000 per year or more at any time during employment ("compensation" is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by the person).

II. Content of Report

Instructions for completing DD Forms 1787 are included as part of the form. A DD Form 1787 appears at the end of this appendix. Additional guidance for personnel required to file is available from the Designated Agency Ethics Official (DAEO) or Deputy Ethics Official.

III. Submission and Review of Reports

A. Time of Filing

1. Current military officers and civilian employees shall file a DD Form 1787 within 30 days after entering employment or service with any DoD Component.

2. Former officers and employees shall file an initial report within 90 days after the date on which the individual began employment with the defense contractor.

3. Former officers and employees shall file subsequent reports each time, during the 2-year period after service or employment with the DoD Component ended, that the person's duties with the defense contractor significantly changes or the person begins employment with another defense contractor. Such reports shall be filed within 30 days after the date of the change.

B. Submission

1. Civilians shall submit their reports to the General Counsel, DLA.

2. Former military officers shall submit their report in accordance with the procedures set forth in the following:

a. *Army*—AR 600–50, Standards of Conduct for Department of the Army personnel.

b. *Navy*—SECNAVINST 5314.5A, Reporting Procedures on Defense Related Employment.

c. *Air Force*—AFR 30–14, Procedures for Reporting on Defense Related Employment.

3. The General Counsel, DLA shall review DD Forms 1787 to assure that:

a. Each item is completed, and

b. No interest or position disclosed on the form violates or appears to violate the following:

(1) Any applicable provision of Chapter 11 of Title 18 of the United States Code (Part 1).

(2) The "Ethics in Government Act of 1978," as amended, and any regulations promulgated thereunder.

(3) E.O. 11222 as amended, and any regulations promulgated thereunder.

(4) Any other related statute or regulation applicable to the employees of DLA.

4. The reports need not be audited to ascertain whether the disclosures are correct; disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the General Counsel, DLA has independent knowledge of matters outside the report.

5. If the General Counsel, DLA believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the General Counsel, DLA.

6. If the General Counsel, DLA concludes that the report is completed properly and that no item violates, or appears to violate, applicable statute or regulation, then the reports shall be signed and dated.

IV. Remedial Action

A. If the General Counsel, DLA concludes that the filing individual is not in compliance with applicable laws or regulations, he shall:

1. Notify the reporting individual in writing of the preliminary determination;

2. Afford the reporting individual an opportunity for personal consultation, if practicable;

3. Determine what remedial action should be taken to bring the reporting individual into compliance; and

4. Notify the reporting individual in writing of the remedial action required, indicating a date by which that action must be taken.

B. Except in unusual situations, which must be fully documented to the satisfaction of the General Counsel, DLA, remedial action shall be completed within 90 days from the date

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the reporting individual was notified that the action is required.

C. Remedial steps may include the following measures:

1. Disqualification.
2. Limitation of duties.
3. Divestiture.
4. Transfer or reassignment.
5. Resignation.
6. Exemption under 18 U.S.C. 208(b).
7. Establishment of a qualified blind trust.

D. When the General Counsel, DLA determines that a reporting person has fully complied with the remedial measures, a notation to that effect shall be made in the comment section of the DD Form 1787. The General Counsel, DLA shall then sign and date the DD Form 1787 and send written notice of that action to the reporting individual.

E. If steps assuring compliance with applicable laws and regulations are not taken by the date established, appropriate remedial action shall be instituted. The Office of Government Ethics shall be notified of the remedial action taken.

V. Public Availability of Reports

DD Forms 1787 must be made available for public examination upon request 15 days after the report is filed unless otherwise exempted pursuant to law. Receipt of the report for final review constitutes official filing and establishes the date from which the 15 days shall run. In most cases, this means the reports are available to the public before final review is completed. Reporting persons are personally responsible for ensuring that their reports are accurate, complete, and timely.

VI. Retention of Reports

DD Forms 1787 shall be retained for 6 years from the date of filing.

VII. Penalties

A. Administrative penalties

Any individual failing to file a report or falsifying or failing to file required information, may be subject to any appropriate personnel or other action in accordance with applicable law or regulation, including adverse action. Administrative penalty of up to $10,000 may also be imposed.

B. Criminal Liability

Any individual who knowingly or willfully falsifies information on a report required to be filed under this subpart may be also be subject to criminal prosecution under 18 U.S.C. 1001.

Appendix G to Part 1293 Administrative Enforcement Provisions

I. Applicability and Scope

A. These provisions shall apply to all DLA Activities.

B. This appendix is adopted pursuant to 18 U.S.C. 207 and 10 U.S.C. 2397, 2397a, and 2397c which require the Department of Defense to develop administrative procedures for the review and disposition of reported violations of post employment restrictions and reporting requirements.

C. The procedures set forth in this appendix may be used, at the discretion of the General Counsel, DLA, to accomplish administrative enforcement of all statutes and regulations which would require or allow their use.

II. Policy

A. Administrative Procedure Act (APA)

In cases in which an APA hearing is required by statute, APA rules shall be used.

B. Rules of Evidence

In the discretion of the hearing examiner, the rules of evidence may be relaxed from those established in the Federal Rules of Evidence. Evidence must be relevant and material to be considered.

C. Burden of Proof

The DLA bears the burden of proof. A violation must be established by substantial evidence.

D. Protection of Privacy

The privacy of suspected individuals or entities shall be protected by safeguarding information concerning allegations and evidence, especially before initiation of administrative disciplinary action.

E. Reporting Suspected Violations

1. If any DLA officer or employee has reason to suspect that an individual or entity has violated a statute or regulation referred to in Part 1293 the suspicion shall be reported immediately to the General Counsel, DLA or to the Counsel of the PLFA affected.

2. If other individuals have reason to suspect that an individual or entity has violated a statute or regulation, the suspicion may be reported to any DoD officer or employee.

III. Responsibilities

A. The General Counsel, DLA, shall:

1. Administer the provisions of this appendix.

2. Receive reports of alleged violations from the Inspector General, Department of Defense (IG, DoD).

3. Receive memoranda of results of preliminary investigations from the IG, DoD.

4. Review copies of reports and memoranda from the IG, DoD, to determine if it is reasonable to believe there may have been a violation.

5. Provide copies of reports and memoranda regarding cases where it is reasonable to believe there may have been a violation, to the Director, Office of Government Ethics (OGE).

6. Provide copies of reports and memoranda regarding cases where it is reasonable to believe there may have been a violation, to the Criminal Division, Department of Justice (DoJ).

7. Coordinate investigations and administrative disciplinary actions with the DoJ Criminal Divisions, unless DoJ advises that criminal proceedings will not be pursued.

8. Initiate administrative disciplinary action, in cases where it is reasonable to believe there may have been a violation, by providing the suspected individual or entity with notice as described in IVB, below.

9. Request the Heads of DLA PLFAs or PSEs in which the case arose to appoint a Government representative to present evidence of violations.

10. In cases not subject to the APA, appoint a hearing examiner.

11. Receive written appeals from suspected individuals or entities.

12. Make appeal decisions, when appeals are timely submitted, after reviewing the findings of facts and decision of the hearing examiner and the appeal.

13. Impose administrative disciplinary sanctions when applicable.

14. Mail copies of appeal decisions and/or any sanctions to be imposed to the suspected individuals of entities along with statements notifying of the right to seek judicial review of administrative decisions.

15. Submit written reports of suspected violations, when the information regarding the violations is not frivolous, directly to the IG, DoD, and not through ordinary DoD Component channels.

B. The Hearing Examiner shall:

1. Hear each case in accordance with the hearing procedures specified in subparagraph 4, of this Section IV.

2. Make a written report of all findings of fact and conclusions of law, including mitigating factors.

3. Make a written decision and recommendation of administrative disciplinary sanctions to be imposed.

4. Submit the report, the decision, and any recommendations to the General Counsel, DLA through the Head of the cognizant PLFA or PSE.

5. Mail a copy of the report, the decision, and any recommendations to the suspected individual and General Counsel, DLA.

IV. Procedures.

A. Initiation of Administrative Disciplinary Action

1. Administrative disciplinary actions are initiated by providing suspected individuals or entities with notice of the report of a violation and notice of the intention to begin administrative disciplinary proceedings at least 20 calendar days prior to the beginning of such proceedings.

2. When hearings are required by statute, a hearing shall be conducted before imposition of administrative disciplinary sanctions unless the suspected individual or entity waives the hearing in writing in accordance with subparagraphs D2c and d, of this Section IV.

3. When hearings are not required by statute, a hearing may be requested in writing by the suspected individual or entity in accordance with subparagraphs D2e and f, of this Section IV.

B. Content of Notice

Notice to initiate administrative disciplinary proceedings shall include the following:

1. A statement of allegations, and the basis thereof, sufficiently detailed to enable the suspected individual or entity to prepare an adequate defense.

2. Notification of the right to a hearing when a hearing is required by statute.

3. The procedure for waiving the right to appear at the hearing when a hearing is required by statute.

4. A copy of a written waiver that shall include a statement that the signer understands that the signer has the right to appear at a hearing and that administrative disciplinary sanctions may be imposed even if the signer does not appear at a hearing.

5. When a hearing is not required by statute, a statement to the effect that if the suspected individual or entity fails to request such a hearing in writing, the DLA may initiate administrative disciplinary action which may result in imposition of administrative disciplinary sanctions.

6. The procedure for requesting a hearing when a hearing is not required by statute.

7. Notice that the failure to appear at a scheduled hearing shall constitute a constructive waiver of the right to appear at the hearing.

8. The date, time, and place of a scheduled hearing; however, suspected individuals or entities shall be scheduled to appear for hearings in the Federal judicial district in which the individual or entity resides or in the Federal judicial district in which the alleged violation occurred.

9. A statement of hearing rights in accordance with subparagraph D of this Section IV.

10. A copy of these Administrative Enforcement Provisions.

C. Hearing Examiners

1. Hearing examiners shall be attorneys with not less than 3 years experience in the practice of law subsequent to admission to the bar.

2. A hearing examiner shall be impartial. An individual who has participated in the decisions to initiate proceedings shall not serve as a hearing examiner in those proceedings.

3. In cases not subject to the APA, the General Counsel, DLA, shall appoint a hearing examiner.

4. In cases subject to the APA, Administrative Law Judges (ALJ) shall be used as hearing examiners. The General Counsel, DLA, shall forward a written request to the office of Administrative Law Judges, Office of Personnel Management. (See 5 U.S.C. 3344.) The request shall contain the following:

a. The requisite authority requiring an APA hearing for the particular statutory violation.

b. The status of the case.

c. The tentative hearing data.

d. The point of contact within the DLA.

e. An acknowledgment that the request is being made on a reimbursable, intermittent basis.

D. Hearings

1. The hearing examiner shall have the power to do the following:

a. Administer oaths and affirmations.

b. Issue subpoenas authorized by law.

c. Rule on offers of proof and recieve relevant evidence.

d. Take depositions or have depositions taken when justice shall be served.

e. Regulate the course of the hearing.

f. Hold conferences for the settlement or simplification of the issues by comment from the suspected individual or entity and the Government representative.

g. Dispose of procedural requests or similar matters.

h. Make decisions, in writing, on the merits of the particular case, as well as written recommendations of administrative disciplinary sanctions.

2. Suspected individuals and entities shall have hearing rights which include the following:

a. The right to self representation, or to be represented by counsel.

b. The right to introduce evidence and witnesses and the right to examine adverse witnesses.

c. The right to stipulate to facts.

d. The right to present oral argument.

e. The right to receive a transcript or recording of the proceedings upon request.

f. Additional rights that may be in the Administrative Procedure Act, if applicable.

3. Before the hearing examiner makes a decision, or the General Counsel, DLA, makes an appeal decision, the suspected individual or entity and the Government representative may submit the following material for consideration:

a. Proposed findings and conclusions.

b. Exceptions to the decisions of the hearing examiner, or to the tentative decisions of the GC, OSD.

c. Supporting reasons for the exceptions or proposed findings or conclusions.

4. The record shall reflect the ruling on each finding, conclusion, or exception. All decisions by the hearing examiner or the General Counsel, DLA, shall be a part of the record, along with the reasons and basis for such findings and decisions.

E. Appeals

1. Within 20 days following the date on the report and recommendations from the hearing examiner, the suspected individual or entity may file an appeal with the General Counsel, DLA. An appeal shall be in writing, and shall set forth all errors of act, law, or both, together with the reasons, alleged to exist in the report from the hearing examiner.

2. Extensions of time to file an appeal may be granted at the discretion of the General Counsel, DLA, upon receipt of written request for an extension from the individual or entity concerned.

3. The General Counsel, DLA shall make a written appeal decision if any appeal is submitted timely, after reviewing the report of findings of facts, the decision, and recommendations from the hearing examiner.

4. If the appeal decision is not in accordance with the report of findings of facts, the decision, or recommendations from the hearing examiner, the reasons shall be specified.

5. The decision of the General Counsel, DLA, shall be the final administrative determination. The appeal decision shall be mailed to the suspected individual or entity along with a statement, if applicable, that the individual or entity may seek judicial review of the administrative determinations.

F. Administrative Sanctions

1. The General Counsel, DLA, may take appropriate disciplinary action when indicated by the outcome of a case involving a violation of 18 U.S.C. 207 by:

a. Prohibiting the individual or entity from making on behalf of any other person except the United States, any formal or informal appearance before, or any oral or written communication with the intent to influence, to the Department of Defense, its officers or employees, on any matter of business for a period not to exceed 5 years. This may be enforced by directing DoD officers and employees to refuse to participate in any such appearance, or to accept any such communication.

b. Barring the individual or entity from employment by the Department of Defense for a period not to exceed 5 years.

2. The General Counsel, DLA, may take appropriate disciplinary action whenever indicated by the outcome of a case involving violations of 10 U.S.C. 2397, 2397a, or 2397c by:

a. Imposing and administrative penalty, not to exceed $10,000.

b. With respect to violations of 10 U.S.C. 2397a, imposing an additional administrative penalty of a particular amount if the individual is determined to have accepted or continued employment with a defense contractor during the 10-year period beginning with the date of separation from Government service.

3. The General Counsel, DLA, may take other appropriate disciplinary action when indicated by the outcome of a case in accordance with the laws or regulations violated.

G. Judicial Review

Any individual or entity found in violation as described, and against whom an administrative sanction is imposed, may seek judicial review of the final administrative determination.

[FR Doc. 88-25977 Filed 11-9-88; 8:45 am]
BILLING CODE 3620-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-74; RM-6063]

Radio Broadcasting Services; Sheridan, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 275C2 for Channel 272A at Sheridan, Arkansas, and modifies the Class A license of Ainsley Communications, Corp. for Station KQLV(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 275C2 at Sheridan are 34-15-33 and 92-34-56. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 19, 1988.

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FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–74, adopted September 30, 1988, and released November 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by revising the entry for Sheridan by deleting Channel 272A and adding Channel 275C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26097 Filed 11–9–88; 8:45 am]

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47 CFR Part 73

[MM Docket No. 88–77; RM–5900]

Radio Broadcasting Services; Key West, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Key Chain, Inc., substitutes Channel 228C2 for Channel 228A at Key West, Florida, and modifies its license for Station WKRY(FM) to specify operation on the higher powered channel. Channel 228C2 can be allotted to Key West in compliance with the Commission's minimum distance separation requirements and can be used at Station WKRY(FM)'s present transmitter site. The coordinates for this allotment are North Latitude 24–34–18 and West Longitude 81–45–19. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–77, adopted September 23, 1988, and released November 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Florida is amended by revising the entry for Key West by deleting Channel 228A and adding Channel 228C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26098 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–220; RM–6220]

Radio Broadcasting Services; Hilo, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 224C1 for Channel 224A at Hilo, Hawaii and modifies the construction permit (BPH841228MH) of Station KHHI (FM) to specify operation on the higher class channel. Channel 224C1 can be used at KHHI's current transmitter site at coordinates 19–43–51 and 155–04–11. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–220, adopted September 30, 1988, and released November 3, 1988. The full text of this Commission decision is availabl for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Hawaii by deleting Channel 224A and adding Channel 224C1 at Hilo.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26099 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–125; RM–6140]

Radio Broadcasting Services; Kailua-Kona, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 229C1 for Channel 228A at Kailua-Kona, Hawaii, and modifies the construction permit for Station KLUA(FM) to specify Channel 229C1, at the request of Fakas Broadcasting. The coordinates for Channel 229C1 at Kailua-Kona are 19–43–15 and 155–55–16. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–125, adopted September 30, 1988, and released November 3, 1988. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Hawaii by deleting 228A and adding 229C1 at Kailua-Kona.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26101 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–381; RM–5352, RM–5663]

Radio Broadcasting Services; Folsom and Bogalusa, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 285A to Folsom, Louisiana, as that community's first local FM service, as requested by Folsom Community Broadcasters. A site restriction of 10.1 kilometers (6.3 miles) east of the community is required. The coordinates for the restricted site are 30–38–24 and 90–04–56. This action further denies the counterproposal of Timberlands Broadcasting Corporation for Bogalusa, Louisiana RM–5663). With this action, this proceeding is terminated.

DATES: Effective December 19, 1988; this window period for filing applications will open on December 20, 1988, and close on January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No 86–381, adopted October 11, 1988, and released November 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Louisiana by adding Channel 258A to Folsom.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26102 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–336; RM–5672]

Radio Broadcasting Services; North Windham, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 294A to North Windham, Maine, in response to a petition filed by Kollen Dodge. Petitioner filed supporting comments. There is a site restriction 1.2 kilometers west of the community. Canadian concurrence has been obtained for the allotment of Channel 294A at North Windham at coordinates 43–50–05 and 70–27–13. With this action, this proceeding is terminated.

DATES: Effective December 19, 1988; the window period for filing applications will open on December 20, 1988, and close on January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–336, adopted September 30, 1988, and released November 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Maine by adding Channel 294A at North Windham.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26103 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–39; RM–6151]

Radio Broadcasting Services; Okmulgee and Stillwater, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the joint request of Brewer Communications, Inc., licensee of Station KOKL–FM, Channel 232A, Okmulgee, Oklahoma, and Stillwater Publishing Company, Inc., licensee of Station KSPI–FM, Channel 230C, Stillwater, Oklahoma, substitutes Channel 231C2 for Channel 232A at Okmulgee and substitutes Channel 229C2 for Channel 230C at Stillwater, Oklahoma. In addition, the Commission modifies the licenses of Stations KOKL–FM and KSPI–FM to specify operation on Channels 231C2 and 229C2, respectively. Channel 231C2 can be allotted to Okmulgee in compliance with the Commission's minimum distance separation requirements with a site restriction of 27.5 kilometers (17.1 miles) north to accommodate Brewer's desired transmitter site. Channel 229C2 can be allotted to Stillwater in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in Station KSPI–FM's outstanding construction permit (BPH–870225MI). The coordinates for Station KSPI–FM, Stillwater, are North Latitude 36–06–33 and West Longitude 97–11–43. The coordinates for

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Station KOKL–FM, Okmulgee, are North Latitude 35–50–02 and West Longitude 96–07–28. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–39, adopted October 11, 1988, and released November 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 153, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oklahoma is amended by revising the entry for Okmulgee by deleting Channel 232A and adding Channel 231C2. The entry for Stillwater is revised by deleting Channel 230C and adding Channel 229C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26104 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–454; RM–6026]

Radio Broadcasting Services; Gleneden Beach, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hal D. Fowler, allots Channel 264C2 to Gleneden Beach, Oregon, as the community's first local FM service. Channel 264C2 can be allocated to Gleneden Beach in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 44–52–53 and West Longitude 124–01–59. With this action, this proceeding is terminated.

DATES: Effective December 19, 1988. The window period for filing applications will open on December 20, 1988, and close on January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–454, adopted September 30, 1988, and released November 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oregon is amended by adding Gleneden Beach, Channel 264C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26105 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–401; RM–5876]

Radio Broadcasting Services; Dickson, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 229A to Dickson, Tennessee, as that community's second FM service, at the request of Edmission and Eubank Communications. The allotment requires a site restriction of 11.3 kilometers (7.0 miles) east of Dickson, at coordinates 36–06–03 and 87–15–58. With this action, this proceeding is terminated.

DATES: Effective December 19, 1988; the window period for filing application will open on December 20, 1988, and close on January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–401, adopted October 11, 1988, and released November 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Tennessee, by adding Channel 229A at Dickson.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26100 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–594; RM–6100, RM–6424]

Radio Broadcasting Services; Huntsville and Centerville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276A to Centerville, Texas, as that community's first local FM service at the request of Center-Dial, Inc. In addition, this document allots Channel 278A to Huntsville, Texas, as that community's third local FM service, at the request of Huntsville Broadcasting Group. Channel 276A can be sited at Centerville from the reference coordinates at 31–15–36 and 95–58–42. Channel 278A at Huntsville requires a site restriction of 2.3 kilometers (1.4 miles) southwest of that city at coordinates 30–43–24 and 95–33–00. With this action, this proceeding is terminated.

DATES: Effective December 19, 1988; the window period for filing applications will open on December 20, 1988, and close on January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–594, adopted October 11, 1988, and released November 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by adding Channel 276A at Centerville and Channel 278A at Huntsville.

Steve Kaminer,

Deputy Chief, Policy and Rules Dvision, Mass Media Bureau.

[FR Doc. 88–26106 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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Proposed Rules

Federal Register
Vol. 53, No. 218
Thursday, November 10, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Ch. III

[Docket No. 88-165]

Varroa Mite Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The purpose of this notice is to announce the first meeting of the Varroa Mite Negotiated Rulemaking Advisory Committee. This meeting is contingent upon the timely establishment of this Committee.

Place, dates, and time of meeting: The meeting sessions will be held at the Washington Court Hotel, 525 New Jersey Ave., NW., Washington, DC 20001-1527, November 30-December 2, 1988, from 9 a.m. to 5 p.m. each day.

FOR FURTHER INFORMATION CONTACT: For technical information, contact: Doug Ladner, Senior Staff Officer, Plant Protection Management Systems, Policy and Program Development, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 644, Hyattsville, MD 20782, (301)436-8247. for information on negotiated rulemaking, contact Emmett P. De Deyn, at (202)653-5232; Lou Manchise, at (513)684-2951; or Deborah S. Dalton, at (202)382-5495, facilitators.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to bring together members of the Animal and Plant Health Inspection Service, the bee industry, and other members of the public to discuss whether there can or should be a proposed rule to prevent the interstate spread of the Varroa mite.

The meeting will be open to the public. Public participation will be limited to written statements. Anyone who wants to file a written statement with the Committee about meeting topics may do so either at the time of the meeting or before the meeting, by sending the statement to Helene Wright, APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464.

This notice of meeting is given in compliance with the Federal Advisory Committee Act (Public Law 92-463).

Done in Washington, DC, this 7th day of November 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-26116 Filed 11-9-88; 8:45 am]

BILLING CODE 4310-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 88-1181]

Bonds for Directors, Officers, Employees, and Agents; Form of and Amount of Bonds

Date: November 2, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is proposing to amend the provisions of 12 CFR Part 563 regarding the permissible deductible amount for bonds for directors, officers, employees, and agents of institutions the accounts of which are insured by the FSLIC ("FSLIC-insured institutions"). The proposal would delete the current schedule for calculating the permissible deductible.

DATE: Comments must be received on or before January 9, 1989.

ADDRESS: Send Comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments received will be available for public inspection at the Board's Information Services Office, 801 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Cindy L. Hausch, Financial Analyst, (202) 377-7488; Kathleen V. O'Dea, Assistant Director, (202) 377-6789; Patrick G. Berbakos, Director, (202) 377-6720, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Linda Lowry, Policy Analyst, (202) 331-4597; Edward J. Taubert, Deputy Director, Policy (202) 331-4588, Office of Regulatory Activities, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: All operating FSLIC-insured institutions are required to maintain adequate fidelity bond coverage in accordance with 12 CFR 563.19. In 1979 when the Board last amended the maximum deductible amounts, it was believed that all FSLIC-insured institutions would be able to obtain bonds with deductible amounts within the limits of the regulations. Additionally, it was believed that the negotiated deductible would be less than the maximum permissible deductible. However, that has not proven to be the case. Today, institutions seeking bond coverage are experiencing difficulty obtaining bond coverage, and those who are able to obtain coverage often find the deductible in excess of the permissible amount. Bonding companies have been particularly unwilling to issue to *de novo* institutions bonds with deductibles within the limits required by the regulations. Thus, *de novo* institutions have obtained coverage with deductibles of $50,000, at minimum—far exceeding the permissible deductible in the existing regulation.

In order to adjust the permissible deductible to increases corresponding with the insurance market rates and to relate permissible deductibles to the additional protection offered FSLIC by an insured institution's tangible capital, the Board hereby proposes to amend 12 CFR 563.19(b). Section 563.19(b) as proposed would delete the current schedule for calculating the permissible deductible. It would also establish a new method for calculating the permissible deductible, allowing the maximum permissible deductible to be the higher of either five percent of tangible capital as defined in § 563.9-8(b)(12) or $50,000. The Board notes that with this calculation there is a possibility of anomalous situations wherein the deductible as calculated would be higher than the $3 million limit of required bond coverage under § 563.19(b). Additionally, the Board proposes to remove the sentence in paragraph (b) which permits institutions to increase the permissible deductible to a maximum of 3 times the above-specified permissible amount whenever losses under the bond exceed 50 percent of the premium. Due to the increased permissible deductibles, this allowance would be unnecessary.

The Board is currently considering whether more substantive revisions to the fidelity bond regulations for all insured institutions are appropriate, and solicits comments as to the advisability and scope of such rulemaking.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* The proposed rule would in fact ease the burden on small institutions by allowing a more reasonable permissible deductible.

4. *Overlapping or conflicting federal rules.* There are no known rules that duplicate, overlap, or conflict with this proposal.

5. *Alternative to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank proposes to amend Part 563, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows.

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

2. Amend § 563.19 by revising paragraph (b) to read as follows:

§ 563.19 Bonds for directors, officers, employees, and agents; form of and amount of bonds.

* * * * *

(b) No insured institution shall be required to maintain such bond coverage in an amount greater than $3,000,000. Such bond coverage may provide for a deductible amount from any loss which otherwise would be recoverable from the bonding company. A deductible amount may be applied separately to one or more insuring agreements. The bond shall not provide for more than one deductible amount from all losses caused by the same person or caused by the same persons acting in collusion or combination in cases in which such losses result from dishonesty of employees (as defined in the bond). The maximum permissible deductible is the higher of five percent of tangible capital as defiend in § 563.9-8(b)(12) or $50,000.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25999 Filed 11-9-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 141

Importation of Ethyl Alcohol for Nonbeverage Purposes

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (BATF) has requested that Customs change certain procedures in its regulations concerning the withdrawal of ethyl alcohol from Customs custody and its transfer to the BATF bonded premises of a distilled spirits plant for nonbeverage purposes. These changes are intended to conform that portion of the Customs Regulations concerning such transfer procedures to existing BATF transfer procedures. The changes will generally delete obsolete procedures regarding the transfer of nonbeverage ethyl alcohol and references to obsolete forms from the Customs Regulations and will incorporate, in the Customs Regulations, references to the BATF Regulations which contain the details regarding the BATF transfer procedures. The changes will also conform the declaration filed in connection with the entry of ethyl alcohol for other than beverage purposes to the relative statutory requirements.

DATE: Comments must be received on or before January 9, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2324, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Operational Matters

Louis Alfano, Office of Trade Operation, 202-566-8651.

John Holl, Office of Inspection and Control, 202-566-8151.

Audit Matters

Matthew Krimski, Regulatory Audit Division, 202-566-2812.

Legal Matters

Ken Paley, Entry Rulings Branch, 202-566-5856.

SUPPLEMENTARY INFORMATION:

Background

The procedures for the withdrawal of certain imported ethyl alcohol from Customs custody and their transfer to the BATF bonded premises of a distilled spirits plant, for nonbeverage purposes, without the payment of internal revenue tax pursuant to section 5232, I.R. Code of 1954 (26 U.S.C. 5232), are contained in § 10.99, Customs Regulations (19 CFR 10.99). These regulations contain detailed procedural instructions for the tax-free transfer of imported ethyl alcohol of 185 degrees or more of proof, which is classifiable for duty purposes under item 427.88, Tariff Schedules of the U.S. (19 U.S.C. 1202). The procedures contained therein are no longer current and the forms described are, in many cases, obsolete and unavailable. Difficulty has arisen because Customs officers, relying on the above regulatory authority, have been requiring these obsolete and unavailable forms. In addition thereto, the Internal Revenue Code has been revised since the distilled spirits transfer procedures were originally promulgated. The BATF authority for such transfer procedures is now contained in Section 5232, I.R. Code of 1986 (26 U.S.C. 5232). Appropriate changes to the BATF Regulations were published as T.D. ATF-198 in the

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Federal Register of March 1, 1985 (50 FR 8456).

In considering this matter, Customs notes that the major substantive responsibility for imported nonbeverage alcohol as it enters the commerce of the U.S. lies with the BATF. Customs also notes the difficulty of keeping the procedures, which are essentially for BATF purposes, current in the Customs Regulations. We, therefore, have concluded that it would be more appropriate for these procedural matters to appear in detail in the BATF Regulations (27 CFR Parts 250, 251) as suggested by that Bureau, and that the Customs Regulations merely reference the BATF forms and procedures.

Proposed Action

It is proposed that the obsolete procedures regarding the transfer of ethyl alcohol for nonbeverage purposes from Customs custody to BATF custody be deleted from §§ 10.99 and 141.102, Customs Regulations (19 CFR 10.99 and 141.102), and references to the appropriate parts and subparts of the BATF Regulations, which now contain those procedures, be inserted in the Customs Regulations in lieu thereof.

It is also proposed to amend § 10.99(a), Customs Regulations (19 CFR 10.99(a)), to clarify that the importer's declaration to Customs supporting the tax-free transfer of imported ethyl alcohol must note whether the alcohol is to be used for fuel purposes, as well as stating that the alcohol is to be used for nonbeverage purposes. This change is being proposed pursuant to the Tax Reform Act of 1986 (Section 423, Pub. L. 99–514).

The proposed amendments to § 141.102(b), Customs Regulations (19 CFR 141.102 (b)), would clarify the fact that the transfer of the nonbeverage ethyl alcohol to a distilled spirits plant from Customs custody is tax free but not duty free.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulation (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criterial for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for U.S. Customs Service, with copies to the U.S. Customs Service, Management Analysis and Systems Division, Washington, DC 20229.

The collection of information in this regulation is in § 10.99, title 19, Code of Federal Regulations. This information is required by the U.S. Customs Service to ascertain whether ethyl alcohol imported for nonbeverage purposes may be transferred from Customs custody to the premises of a distilled spirits plant bonded by the Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury. This information will be used to determine whether such transfer may be accomplished without the payment of internal revenue tax pursuant to Section 5232, I.R. Code of 1986 (26 U.S.C. 5232). These changes will conform the Customs Regulations to changes made in the BATF Regulations which were published as T.D. ATF–198 in the **Federal Register** of March 1, 1985 (50 FR 8456). The likely respondents are business or other for-profit institutions and Federal agencies or employees.

Estimated total annual reporting and/or recordkeeping burden: 25 hours.

Estimated average annual burden per respondent and/or recordkeeper: 5 minutes.

Estimated number of respondents and/or recordkeepers: 300.

Estimated annual frequency of responses: 1.

Drafting Information

The principal author of this document was Arnold L. Sasrasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Art, Customs duties and inspection, Exports, Fisheries, Imports, Oil imports, Packaging and containers, Petroleum, Tobacco and Wildlife.

19 CFR Part 141

Customs duties and inspection, Explosives, Imports and lawyers.

Proposed Amendments

It is proposed to amend Part 10, Customs Regulations (19 CFR Part 10), as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10, as hereto pertinent, would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Headnote 11), and 1624.

2. It is proposed to revise § 10.99 to read as follows:

§ 10.99 Importation of ethyl alcohol for nonbeverage purposes.[90]

(a) If claim is made by an importer other than the United States or a governmental agency thereof for the classification of ethyl alcohol of 185 degrees or more of proof under item 427.88, Tariff Schedules of the United States,[91] the importer or his agent shall

[90] *"Imported distilled spirits.* Imported distilled spirits of 185 degrees or more of proof (or spirits of any proof imported for any purpose incident to the requirements of the national defense) may, under such regulations as the Secretary or his delegate shall prescribe, be withdrawn from customs custody, and transferred to the bonded premises of a distilled spirits plant, for nonbeverage use, without payment of the internal revenue tax imposed on imported distilled spirits by section 5001. Such spirits may be redistilled or denatured and may, without redistillation or denaturation, be withdrawn for any purpose authorized by this chapter, in the same manner as domestic distilled spirits." (Sec. 5232 Internal Revenue Code of 1986; 26 U.S.C. 5232)

"Withdrawal of distilled spirits from Customs custody free of tax for use of the United States. Distilled spirits may be withdrawn free of tax from customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes, under such regulations as may be prescribed by the Secretary or his delegate." (Sec. 5313, Internal Revenue Code of 1986; 26 U.S.C. 5313)

[91] "Alcohols, monohydric, unsubstituted. * * * Ethyl for nonbeverage

Continued

file in connection with the entry a declaration that the alcohol is to be used for nonbeverage purposes only and whether the alcohol is to be used for fuel purposes. Customs shall release the alcohol for transfer, under internal revenue bond, to a distilled spirits plant upon deposit of estimated duty, if any, and without the payment of the internal revenue tax upon receipt of a transfer record for bulk spirits. In addition, a package gauge record must be submitted to Customs if the alcohol is in packages, as specified in subpart I of Part 251, Bureau of Alcohol, Tobacco and Firearms (BATF) Regulations (27 CFR Part 251, Subpart I). The transfer shall be accomplished in accordance with subpart L of Part 251, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR Part 251, Subpart L).

(b) An appropriate BATF permit shall be filed with Customs in connection with the withdrawal of ethyl alcohol from Customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes. Such permit shall be filed before release under the entry without the deposit of estimated duties, if any, and internal revenue tax, or before release in accordance with the provisions of § 141.102(d) of this chapter. (See subpart M of Part 251, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR Part 251, Subpart M)).

(c) The procedures for the withdrawal free of tax on the entry of ethyl alcohol for nonbeverage purposes from the Virgin Islands are found in subpart O of Part 250, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR Part 250, Subpart 0).

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 and the specific authority of Subpart G thereof would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. Subpart G—19 U.S.C. 1505.

2. It is proposed to revise § 141.102(b) to read as follows:

§ 141.102 When deposit of estimated duties, estimated taxes, or both not required.

* * * * *

(b) *Bulk distilled spirits transferred to the bonded premises of a distilled spirits plant.* An importer may transfer distilled spirits in bulk to the bonded premises of a distilled spirits plant, without the payment of tax, under the provisions of section 5232(a), Internal Revenue Code of 1986 (26 U.S.C. 5232(a)), and the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR Part 251).

* * * * *

William von Raab,
Commissioner of Customs.

Approved: July 26, 1988.

John P. Simpson,
Acting Assistant Secretary for Enforcement.

[FR Doc. 88–25901 Filed 11–9–88; 8:45 am]

BILLING CODE 4820–02–M

purposes" (Item 427.88, Tariff Schedules of the United States.)

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule updates and clarifies the Mine Safety and Health Administration's (MSHA) safety standards for explosives at metal and nonmetal mines. These revisions upgrade existing provisions consistent with technological advances in mining, eliminate duplicative and unnecessary standards, reduce recordkeeping requirements, and provide alternative methods of compliance.

DATES: Written comments and requests for public hearings on the proposed rule must be received on or before January 9, 1989.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631, Ballston Towers No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, or Yvonne Johnson, Project Officer, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

This proposed rule is part of MSHA's comprehensive review of its metal and nonmetal safety and health standards. MSHA announced the availability of a draft proposal on August 20, 1984 (49 FR 33087), and invited public comment

During the review process, MSHA received suggestions and recommendations from many commenters. Many substantive changes consistent with commenters' suggestions, the specific goals of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act have been made.

The proposed rule arranges the standards in Subpart E of Parts 56 and 57 into related categories. They are: storage; transportation; use; electric blasting; nonelectric blasting; extraneous electricity; equipment/tools; maintenance; and general restrictions. Each standard is provided with a title for easier accessibility. Definitions pertaining to Subpart E precede the standards in § 56/57.6000. Of twenty-five existing definitions in § 56/57.2 relating to explosives, fourteen are revoked, five are added and one is substantively modified. In the following discussion, the designation "56/57" indicates that the standards applies to both Parts 56 and 57.

To aid in comparing the existing standards with the revised standards, this document includes a derivation table and a distribution table which cross-reference the existing standard numbers with the proposed standard numbers. MSHA specifically solicits further comment on each proposed standard and definition.

II. Discussion and Summary of the Proposed Rule

A. General Discussion

Hazards associated with explosive materials have historically been a leading cause of many serious injuries and fatalities in metal and nonmetal mines. Precautions to safeguard against these hazards are an essential part of any effective mine safety program.

Generally, Subpart E standards focus upon hazards which may be present when persons use or work near explosive material at metal and nonmetal mines. The safety measures that are necessary depend upon the nature of the hazards involved. In some instances, the standards prohibit certain actions so as to avoid a situation which could lead to a premature detonation. Other standards set out correct procedures to be followed when working with explosive material. New developments in the field have been reviewed and are addressed where necessary. These include: nonelectric initiation systems such as shock tube systems, gaseous initiation systems, and miniaturized detonating cord systems; the use of sequential timers and other in-hole blast delay techniques; and bulk mixing and loading technology.

B. Transfers

Two standards are transferred to Subpart F, Drilling and Rotary Jet

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Piercing. Existing standard 56/57.6107 prohibits the drilling of holes where there is danger of intersecting a charged or misfired hole. Existing standard 56/57.6135 prohibits collaring holes in bootlegs. These standards will be renumbered 56/57.7055 and 56/57.7056 respectively. A clarifying change has been made to the wording of standard 56/57.6107. The phrase "charged" hole has been replaced with "a hole containing explosives, blasting agents or detonators" to make the wording consistent with language used in proposed Subpart E.

C. Deletions

Existing standard 56.6046, which requires that vehicles containing explosives or detonators be maintained in good condition and be operated at a safe speed and in accordance with all safe operating practices, is proposed for deletion since other standards address the maintenance or safe operation of vehicles. Existing standard 56/57.6108, which requires that fuse and igniters be stored in a cool, dry place away from oils or grease is proposed for deletion since both safety fuse and igniter cord are defined as Class "C" explosives and are covered under MSHA's storage requirements for explosives. Existing standard 56.6132, which requires delay connectors to be treated and handled with the same safety precautions as detonators, is proposed for deletion because delay connectors are defined as detonators.

Existing standard 56/57.6139 requires that blasting areas shall not be re-entered after firing until concentrations of smoke, dust, and fumes have been reduced to limits determined by the air quality standards. This standard is proposed for deletion since the hazards are addressed by the post-blast examination requirements of proposed standard 56/57.6306 and by the allowable concentrations of blast-generated gases in the existing Air Quality standards. However, MSHA solicits additional comments on this issue.

Existing standard 56/57.6140, concerning extraneous electricity is proposed for deletion as redundant with other standards dealing with extraneous electricity.

The existing introductory statement, designated 56/57.6000, states that the term "explosives" includes "blasting agents." Commenters suggested deletion of the introductory statement. MSHA agrees and proposes to include specific language in the standards which clarifies the applicability of each standard with respect to blasting agents and explosives.

Commenters objected to the requirement of preproposal draft standard 56.6330 that holes be stemmed as unrelated to safety and unnecessary. Explosive manufacturers, many users, and MSHA recognize that the practice of stemming increases the efficiency of explosive materials and contributes to safety by minimizing flyrock and reducing the need for secondary blasting. However, the safety aspects of flyrock and secondary blasting are addressed in proposed standards 56/57.6306 and 56/57.6312. For example, proposed standard 56/57.6306(e) requires all persons to be out of the blast area or in a protected location when the blast is fired. The practice of stemming can, therefore, be left to the discretion of the mine operator, and the stemming requirement is deleted from the proposed rule.

D. Incorporation by Reference

Existing standard 56/57.6020 incorporates by reference "the current American Table of Distances for Storage of Explosives" published by the Institute of Makers of Explosives (IME). The draft proposal incorporated directly into the standard the pertinent parts of the Table and the National Fire Protection Association's table, "Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents" (NFPA 492–1976). Commenters suggested deleting any reference to either table because the tables are set out in existing Bureau of Alcohol, Tobacco, and Firearm (BATF) standards. While a long-standing interagency agreement provides for MSHA enforcement of BATF standards, MSHA believes that specific hazards unique to mining exist on mine property and dictate the use of tables which specifically address them. For example, the IME table provides excellent safety guidance but is primarily directed at protecting areas outside of mine property. Accordingly, MSHA has replaced the incorporation by reference with tables of distances specifically directed toward mining. Thus, for Part 57 the term of "inhabited buildings" is replaced with "mine buildings, underground mine openings, fans, dams and electric substations" to address the risk to miners, including underground miners, from the initiation of a surface storage facility. For Part 56, the definition is replaced with "mine buildings, dams, and electric substations" to afford protection at surface operations.

E. Performance Language

In developing the proposed rule, performance-oriented criteria was used rather than specification language, where appropriate. With performance-oriented language, a proposed standard sets out aspects of the safe use of explosive material as an objective to be met. As long as the safety objective is achieved, the agency allows the operator to use the compliance method that is most appropriate. However, in standards where a necessary and accepted margin of protection is provided and where safety is enhanced by a precise statement of a specific requirement, specifications are retained.

The distances used in the various proposed standards are taken from recommendations of consensus standards, expert organizations, and manufacturers' publications. To illustrate, areas around magazines must be kept clear of combustible materials for specified distances because fires initiated by nearby lightning strikes have resulted in the explosion of magazines. The footage requirements of the applicable standard conform with IME Publication No. 3, "Suggested Regulations" (Section 5.6 r and s), 1985 edition, BATF regulations 27 CFR 55.215, 1987 compilation, and the NFPA Code 495, (Section 6–8 Miscellaneous Safety Precautions), 1985 edition.

In cases where the potential source of ignition in a mine environment is electricity, the current could pass through such alternative conductive paths as: (1) The earth, (2) damp timbers, (3) metal pipelines, (4) machinery housings, (5) track rails, (6) metal fences, or (7) a conductive rock strata that lies on top of or between two nonconductive strata. The use of electric detonators, spark-sensitive explosive material and new forms of blasting agents and explosives reinforce the need for a routinely implemented separation distance.

The agency retains specific separation requirements from sources of electricity and fire in standards that address electrical distribution circuits; electrical substations; welding and other sparks; and open flames and smoking. The distances used are taken from the IME Safety Library publications, the Atlas Powder Company "Handbook of Electric Blasting" (1976), the Dupont "Blaster's Handbook" (1978), Bureau of Mine's Circular 54 and the National Fire Protection Association (NFPA) Code 495 (1985).

F. Definitions

"Active workings." The proposed rule deletes the definition of "active workings." Where relevant, the proposed standards include specific

language relating to the places where persons work or travel.

"American Table of Distances." The proposed rule deletes the definition of "The American Table of Distances" because the table is not included in the proposed standards.

"Attended." This newly defined term allows for flexibility in securing areas containing explosive materials, including areas to be blasted. It is performance-oriented and allows for electronic or video monitoring devices as well as the actual presence of an individual.

"Blasting agent." The proposed definition updates the existing reference pertaining to any substance classified as a blasting agent.

"Blast area." The proposed rule changes the phrase "blasting area" to "blast area" for consistency. The characteristics to be considered in determining the blast area have been listed in the definition in order to more clearly state its intent. The presence of "gases" is added as a determinant of the blast area since toxic gases associated with blasting can cause serious injury and death. The MSHA air quality standards establish the permissible exposure limits for toxic gases. The term "shock wave" has been added to clarify the term "concussion."

"Blasting cap." The proposed rule deletes the existing definition of "blasting cap". The term is commonly understood to be a detonator which is initiated by a safety fuse.

"Blasting circuit." The existing MSHA definition of "Blasting circuit" limiting the term to electric circuits is inappropriate. As a result of new technology, many non-electric blasting circuits are now in use. The proposed rule contains no definition for blasting circuit because the term can apply to either electric or nonelectric circuits. Where used, its application is made clear by the language of the standard.

"Blast site." This newly defined term describes the area where specific safety precautions must be taken during loading of blastholes. The term is taken from the Institute of Makers of Explosives (IME) Publication No. 12, (January , 1985) "Glossary of Commercial Explosives Industry Terms". The "Blast site" is considerably smaller in size than the "blast area" and is intended to provide protection for miners engaged in blasthole loading activities and miners engaged in other non-blasting activities in the vicinity.

Activity at the blast site unrelated to loading increases the probability of injury associated with explosives-handling. Only activities related to loading would be permitted within the blast site. The distance set out in the definition is a reasonable distance to separate the loading operations from other operations which may interfere with preparations for the blast or be affected by a premature detonation of a limited size. Mining activities such as drilling, overburden removal, mucking and hauling would be permitted to continue uninterrupted at the mine at a distance which would not interfere with loading activities. This area of inactivity will provide assurance that mine vehicles will not damage the explosive materials being handled or disturb the blastholes being loaded. It will also minimize the possibility of injury to miners from a premature detonation and reduce the likelihood that miners' activities such as drilling or mucking could cause a premature detonation. This definition includes not only "loaded holes" but also "holes to be loaded." This inclusion recognizes that the entire loading process often progresses at a rapid rate. It assures that miners engaged in non-blasting activities will not be within the 50 foot protected area unknowingly.

"Blasting switch." MSHA adopts the suggestion of several commenters that we retain the definition of "blasting switch." The term defines the switch used in powerline shooting and is used in several standards.

"Booster." The proposed rule deletes the existing definition because the term "booster" is not used in the proposed standards.

"Capped Fuse." The proposed rule deletes the existing definition because the term "capped fuse" is not used in the proposed standards.

"Capped primer." The proposed rule deletes the existing definition because the term "capped primer" is not used in the proposed standards.

"Delay connector." The proposed rule deletes the existing definition because the proposed definition for the term "detonator" addresses delay connector.

"Detonating cord." The proposed rule clarifies the existing definition. The phrase "used to initiate other explosives" is added to assure that detonating cord is not confused with other initiating devices.

"Detonator." The existing definition is revised for clarity by including examples of commercially available detonating devices. In response to comments received, MSHA has clarified the definition by adding that "detonator" does not include detonating cord. The proposed definition states that detonators may be either "Class A" or "Class C" detonators as classified by the Department of Transportation (DOT). DOT makes this classification on the basis of its test results. When more than 90 percent of the devices tested in a package explode practically simultaneously, they are classified as Class A detonators. Class A detonators, as packaged, are more likely to mass detonate than Class C detonators. Extra caution must be exercised when storing, transporting or using Class A detonators.

"Electric blasting cap." The proposed rule deletes this definition because the term "electric blasting cap" is readily understood by persons in the mining community who use and handle explosives.

"Explosive." The proposed definition clarifies the existing definition by stating that the DOT document referenced is a 1986 publication. It is proposed to continue to use the DOT classification of materials to determine those substances that are to be treated as explosives and blasting agents. The classification is used industry-wide and provides an accurate grouping of materials having similar characteristics as determined through DOT tests. The labeling of explosives according to this classification is in widespread use and provides an effective identification system. Classification labels are placed on products by the manufacturer and are present when these products are brought onto mine property. Mine operators are familiar with these labels and can readily identify the nature of the explosive material.

The Agency is aware that DOT is proposing to revise its existing classification system for packaging of hazardous substances (52 FR 18482, May 5, 1987 and 52 FR 42772, November 6, 1987). In these documents, DOT states that work has begun in another rulemaking action to address the testing, classing and packaging of explosives and that a notice of proposed rulemaking will be issued. MSHA is following these rulemakings closely. Upon publication of a final rule amending the existing explosives classification system, MSHA will determine the advisability of incorporating the new classification scheme into its rule.

"Explosive material." This newly defined term includes "explosives," "blasting agents" and "detonators" as explosive material and is used many times throughout the proposed rule. It eliminates repetition of the terms "explosives", "blasting agents", and "detonators" and allows for the deletion of the introductory application statement appearing as existing standard 56/57.6000.

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"Flashpoint." The proposed rule adopts the definition used in Subpart C, Fire Prevention and Control, Section 56/57.4000. This definition conforms with the definition of "flash point" in the National Fire Protection Association's "Flammable and Combustible Liquid Code," NFPA 30–1981. Flash point is defined as the minimum temperature at which a liquid releases sufficient vapor to form a flammable vapor-air mixture near the surface of the liquid.

"Igniter cord." The proposed definition is retained with editorial changes. The definition is necessary to avoid confusion with other initiating devices.

"Laminated partition." In response to comments received, MSHA has added this definition to clarify what may be used as an equivalent alternative to four inches of hardwood separating detonators from other explosive material. MSHA clarified the term in the draft proposal by stating that the materials must be bonded and consist of minimum nominal dimensions. The definition is derived from the IME Pamphlet Number 22, January 1, 1985. The phrase "laminated partition" appears in standards 57/57.6133 and 56/57.6201.

"Loading." The definition is added to standardize and clarify this important aspect of blasting activities. The use of "charge" as synonymous with "load" has resulted in some confusion within the mining community. MSHA proposes the exclusive use of "load" as descriptive of the process of placing explosive material in a hole or against material to be blasted.

"Magazine." The proposed rule would delete the term "magazine" since it is commonly understood in the mining community. The construction requirements for a surface magazine appear in proposed standard 56/57.6132.

"Mass Detonation." The draft proposal definition of "mass detonation" is deleted because the term is not used in the proposed rule.

"Misfire." The complete or partial failure of explosive material to detonate as planned. The proposed definition substitutes the terms "explosive material" for "blasting charge" and "detonate" for "explode" for consistency in terminology. Misfires have occurred for a variety of reasons, including use of inappropriate, damaged or deteriorated explosive material.

"Multi-purpose dry-chemical fire extinguisher". The proposed rule adopts the definition used in Subpart C, Fire Prevention and Control, § 56/57.4000, which defines multi-purpose dry-chemical fire extinguishers as those meeting at least the nationally recognized criteria for extinguishers with a 2-A:10-B:C rating. These extinguishers are appropriate for use on fires involving combustible solids, flammable and combustible liquids, and electric equipment. Approval organizations such as the Underwriters Laboratories, Inc. and the Factory Mutual Research Corporation test and list fire extinguishers meeting this rating. Because fire equipment manufacturers designate the weight of dry-chemical agent in an extinguisher by "nominal" weight rather than by "minimum" weight, the definition uses the term "nominal" and clarifies that the nominal weight must be at least 4.5 pounds.

"Non-electric delay blasting cap". The proposed rule deletes the existing definition because the term "non-electric delay blasting cap" is not used in the proposal.

"Powder chest". The proposed rule deletes the existing definition for the term "powder chest" since it is commonly understood in the mining community, and the construction requirements for a powder chest are contained in standard 56/57.6132.

"Safety switch". The proposed rule makes editorial revisions to the existing definition of "safety switch" for clarity and consistency.

"Water gel" or "Slurry". The proposed rule deletes the existing definition of water gel because the term is not used in the proposal. The proposed rule editorially revises the existing definition of slurry.

"Working place". The proposed rule deletes the existing definition since the term is not used in any proposed standard.

G. Section-by-Section Analysis

The following analysis examines the proposed rule and its effect on existing standards.

Storage—Surface and Underground

Section 56/57.6100 Separation of explosive material.

This proposed standard combines and clarifies existing standards 56/57.6002 and 56/57.6008 and expands the coverage of 56/57.6008 to include all forms of blasting agents rather than only ammonium nitrate-fuel oil (ANFO). Existing standard 56/57.6002 addresses the need to store detonators away from explosives and blasting agents because of the sensitivity of detonators. Paragraph (a) of the proposed standard would require continuation of this practice. Storing detonators separately would reduce the chances of accidental detonation of other explosive material.

Existing standard 56/57.6008 deals with the contamination of explosive materials by ingredients such as fuel oil (from ANFO mixes) and other blasting agents. This contamination could cause deterioration of the explosive materials and lead to misfires. In paragraph (b) of the proposed standard, MSHA adopts the language suggested by one commenter to apply the standards to other blasting agents in addition to ANFO. This is necessary to keep pace with new forms of blasting agents introduced. One commenter suggested that the word "physically" be retained in the proposed standard. However, since any separation must be "physical", it is not necessary to use the term.

Section 56.610 Areas around storage facilities

The proposed standard clarifies the intended coverage of existing standard 56/57.6005. The standard addresses the combustion hazards which can exist near a magazine from either the natural growth of vegetation or the accumulation of other materials which would support combusion. Fires believed to be initiated by nearby lighting strikes have resulted in the explosions of several magazines. For this reason, it is imperative to keep areas around magazines clear of combustible materials. The proposed rule requires the clearance of combustible materials from areas surrounding magazines and facilities which store explosive material. The language of the standard conforms with BATF regulations (27 CFR 55.215 Housekeeping), and with IME, Publication No. 3, "Suggested Regulations" (Sec 5.6 r and s), 1985 edition. There appears to be a general consensus in the explosive community that 150° F is an excessive and potentially dangerous temperature for explosive material. In some cases, tempetures much below 150°F have been shown to be a hazard. Paragraph (a) reflects a consideration that low intensity rubbish, brush, and dry grass fires would not normally exceed this temperature at the magazine if a 25 foot clearance is maintained. Paragraph (b) requires a separation of 50 feet between storage facilities and stored combustibles, such as mine timbers and fuels. Fires from these sources noramlly burn with higher intensity, and distances greater than those needed for protection from rubbish and brush fires are required to assure than an excessive temperature is not reached. Both of these distances are the recognized industry consensus figures as published

in the National Fire Protection Association (NFPA) Code 495, Chapter 3, Section 6–8, 1985 edition, as well as in other BATF and IME publications.

In addition, combustible liquids have occasionally been stored in the vicinity of a storage facility. MSHA is considering additional language to require that ground around storage facilities slope away for drainage, as a precaution in case a tank containing combustible liquid ruptures. The Agency solicits specific comment on this issue.

The phrase relating to "unnecessary combustible materials" is deleted since no combustible material should be allowed to accumulate or be stored near magazines. Live trees 10 feet or taller are less combustible than the other substances covered by the standard. Removal of these trees is not required.

Section 56/57.6102 Storage practices

This propsoed standard addresses the storage of explosive material in magazines, and combines existing standards 56/57.6007 and 56/57.6011. Under the proposal, explosive material would be stored in a stable manner, not more than eight (8) feet high with the brand and grade readily identifiable. Explosive material shall also be stored in a manner which facilitates use of the oldest stock first. Implementation of these requirements would minimize the migration of sensitizing agents within storage containers and assure that explosive materials are not crushed or dropped, possibly resulting in unplanned detonation. The requirements also assure stability of the stacked explosive material, while providing ease of handling and ready identification. Many of the explosive materials on the market today have a predetermined shelf life. Misfires have occurred as a result of using outdated stock. The requirement for storage to facilitate the rotation of stock addresses this hazard. The existing requirement in 56/57.6007 relating to the storage of explosive material with "top sides up" is deleted. While this language is intended to further the stability of the stacked material, the Agency believes paragraph (c) of the proposed standard requiring storage in a stable manner assures stability.

The proposal requires that explosives be stored in closed nonconductive containers except that nonelectric detonating devices may be stored on nonconductuve racks. Existing standard 56/57.6011 requires explosive material containers to be closed. Several existing standards including §§ 56/57.6020, 57.6050, and 57.6056 address the nonsparking and nonconductive nature of containers. Comenters noted that this requirement would prohibit accepted safe practices such as storing delay connectors in labeled, open bins and opening containers of rolled detonating cord to cut and remove specific lengths. The nonconductive containers and nonconductive rack requirements of this standard provide protection equivalent to closed containers and allow for deletion of this requirement with respect to nonelectric detonating devices. The term "explosive material" is used for uniformity with other standards and adds clarity. Consistent with commenters' suggestions, the title has been revised.

BATF requires that a record be kept of the inventory of many storage facilities because of the possibility of theft and subsequent use. This recordkeeping requirement is not contained in the MSHA regulation because it does not pertain to the on-site safety of miners at work.

Sections 56/57.6130 Storage facilities

Existing standard 56/57.6001 states that detonators and explosives other than blasting agents shall be stored in magazines. The proposed rule also addresses storage facilities for blasting agents in recognition of the many new types of products on the market. The proposal contains the general requirements for magazines, bins, tanks, and certain other facilities such as droptrailers, which would allow for the storage of blasting agents in these facilities. MSHA's preproposal included new language requiring that facilities be "well-ventilated." Commenters recommended use of the term "ventilated", stating that "well-ventilated" was vague. MSHA adopts this suggestion, and notes that it is consistent with existing ventilation requirements of BATF. MSHA also adopts the phrase in paragraph (c) suggested by one commenter that bins or tanks be " * * * locked or attended, or otherwise made inaccessible to unauthorized entry."

In addition, MSHA solicits comment on an alternative to requiring compliance with specific Tables of Distances. This alternative would require that storage facilities be located so that, in the event of an explosion, they will not create a hazard to occupants in mine buildings and will not damage mine openings, mine ventilation fans, dams or electric substations. The MSHA Tables of Distances could be included as a nonmandatory appendix to give guidance to mine operators. This option would ensure that hazards would not occur, while giving operators the flexibility to use barriers to other means of protection as well as distance.

Sections 56.6131 and 57.6131 Location of storage facilities

Existing standard 56/57.6020 addresses construction, location and housekeeping criteria for surface magazines and incorporates by reference the IME "American Table of Distances". Proposed standard 56/57.6131 addresses the location of surface magazines. Proposed standard 56/57.6132 addresses construction and housekeeping criteria for surface magazines. Commenters suggested deletion of the incorporation because the subject is covered by BATF standards which are enforced by MSHA under an Interagency Agreement. BATF regulations include the "American Table of Distances", the "Table of Distances for Storage of Low Explosives", and the "Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents". These tables principally address the safety of individuals off the mine property. They have been deleted from the proposed standard which is restructured to provide increased safety for miners at the mine site.

MSHA is proposing to include its own tables of separation distances as Appendix I of this Supart. The IME "American Table of Distances", May 1983, and the National Fire Protection Association (NFPA) "Table of Separation Distances" (NFPA 492–1976) as published in NFPA 495–1985, form the basis of the MSHA tables. It should be emphasized that the MSHA tables are specifically developed for hazards unique to the mining environment. The IME and NFPA tables remain a primary source of separation distances in other situations and should be referred to in those cases. MSHA's tables would not conflict with BATF regulations, which the Agency will continue to enforce under an interagency agreement.

MSHA recognizes that some mines do not have sufficient surface area to comply with the tables. For these mines, MSHA allows an exception based on performance criteria. The criteria are intended to provide protection from the hazards of a surface storage facility detonation. Such a detonation could endanger mine employees in nearby buildings. It could also pose a danger to other employees, especially underground miners, if a mine opening, electric substation, dam or mine ventilation fan were damaged. The standard requires a mine operator to take these hazards into consideration when selecting a storage facility location. In addition to natural or artificial barriers, features such as the

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natural topography of the ground can be considered in determining the location of the facility when it is not possible to comply with the tables. An example of an acceptable location could be within natural earth formations outside the blast area. Another could be a storage facility placed in an excavation into the toe of a highwall in an abandoned portion of the mine. MSHA is specifically soliciting comments on the appropriateness of its tables, the specific distances referenced in the tables and examples were deviations from the tables might be necessary.

Paragrpah (b) addresses inadvertent damage to a magazine and detonation of its explosive material contents caused by flyrock from a blast or by electrical sources generated from severed powerlines. The requirement that storage facilities be located outside of the blast area is a new proposal to address the accidents, fatalities and injuries that have occured in recent years from flyrock.

The existing requirement for location of magazines "away from" powerlines is clarified in this proposal as "a sufficient distance from powerlines so that the powerlines, if damaged, would not contact the storage facility." This proposal provides assurance that energized powerlines, when severed by an accident or a storm, will not cause a fire at the storage facility or introduce an electrical current which could cause detonation of its contents.

All blasting agents can be affected by heat generated from electric sources and therefore are included in the coverage of this standard. The reference to fuel storage areas in the existing standard has been deleted and is addressed in proposed standard 56/57.6101.

The Agency believes that there will be a little or no additional cost associated with the proposed requirement. MSHA requests data to determine whether any facilities will be affected by the changes in the proposed rule.

Section 56/57.6132 Magazine requirements

Existing standard 56/57.6020 addresses construction, location and houskeeping critieria for surface magazines. Proposed standard 56/57.6131 addresses the location of surface magazines. Proposed standard 56/57.6132 addresses construction and housekeeping criteria for surface magazines.

Paragraphs (a) and (b) of the proposed standard modify paragraph (c) of the existing standard. The structural integrity requirements of paragraph (a) are proposed as suggested by commenters. the magazine must provide protection of its contents from the elements and from potential impact which could alter the sensitivity of the explosive material or cause a detonation. A structurally sound magazine also enhances safety by contributing to the security of the stored explosive materials.

Paragraph (b) of the proposed rule contains requirements which provide protection from the sparks and heat of nearby fires which could cause a detonation.

Paragraph (c) addresses the hazard of magazine detonation by the impact of a bullet on the explosive materials stored within. The large quantities of materials stored magnify the destructive forces which are generated if a detonation occurs. Three of the last ten magazine explosions were caused by bullets penetrating the magazine. Various methods for achieving bullet resistance are detailed in BATF regulations and IME Safety Library Publication No. 3. These documents are commonly used to evaluate what is an acceptable level of bullet resistance. They do not include the word "reasonably". For that reason the proposed standard deletes the word "reasonably" which appears in the existing standard.

Paragraph (d) addresses the bonding and grounding of magazines. The existing standard requires electrical bonding and grounding if constructed of metal. Several commenters suggested that these requirements be deleted. MSHA agrees with comments with respect to grounding of metal magazines. A metal magazine resting on the earth will likely dissipate static electricity without a grounding rod. Secondly, metal structures are an effective shield from lightning and offer a satisfactory path to earth when the metal is resting, uninsulated, on the ground. A Bureau of Mine's research contract report, "Evaluation of Surface Storage Facilities for Explosives, Blasting Agents and Other Explosive Material", June 1, 1983. concluded that metal magazines do not have to be grounded and recommended that metal portions of nonmetal magazines be bonded together and grounded to assure that all metal portions are at the same electrical potential. The proposed rule deletes the requirement for grounding of metal magazines but requires that metal portions of nonmetal magazines be bonded and grounded to prevent internal build-up of electrical energy which could detonate the explosive material stored. The proposal also clarifies that welds, rivets and securely tightened bolts are acceptable methods for magazine bonding.

Paragraph (e) requires that the magazines have nonsparking materials on the inside. Sparking material is prohibited inside a magazine because of the potential for a spark-generated detonation of the magazine contents. This provision editorially revises the existing standard.

Paragraph (f) addresses the need for ventilation in a magazine. The existing standard requires "* * * adequate and effectively screened ventilation openings near the floor and ceiling". The performance-oriented proposed standard provides that the magazine must be ventilated to control dampness and excessive heating. Dampness increases the likelihood of deterioration and misfires. Excessive heat or fumes increase the likelihood fo detonation or deterioration of explosive material.

Paragraph (g) editorially modifies the existing standard which requires danger signs to be located so that a bullet passing through the face of the sign will not strike the magazine.

Paragraph (h) of the existing standard requires that magazines be "kept clean and dry in the interior, and in good repair". The reference to "good repair" has been deleted from the proposed rule because it is covered by the "structurally sound" requirements of paragraph (a). The proposed rule retains the "clean and dry" requirements in paragraph (h) however, in recognition of two concerns. First, if accumulations of rain, snow, and mud are not removed, they may contaminate the explosive materials and alter their chemical nature. Improper detonation can result. In addition, blasting agents are often stored in these magazines with more sensitive explosives. Minor spills of blasting agents which occur during handling in the magazine must be cleaned up to prevent contamination of the explosives.

Paragraph (i) is a new provision which addresses fire and explosion hazards that can exist from improper lighting equipment installed in a magazine. This proposal is consistent with the BATF requirement which allows battery-activated safety lights or battery-activated safety lanterns in explosives storage magazines. The IME Publication #3, § 5.4.5, provides guidance for safe lighting of a magazine.

Paragraph (j) editorially revises the existing requirement dealing with the fire and explosion hazards that can exist with improper heating devices in magazines. The standard would allow heating of magazines in a manner which assures that hazards will not be introduced into the magazine. The IME Publication #3, § 5.4.5, provides guidance for safe heating of a magazine.

Paragraph (k) editorially revises existing paragraph (h) which requires that magazines be kept locked securely when left unattended. This provision is designed to protect against vandalism.

Paragraph (l) permits storage of essential nonsparking equipment needed to clean, maintain and operate the facility. The existing standard does not allow any extraneous material in the magazine. Allowing essential equipment to be stored in the magazine would not affect the safe storage of explosive material, but would assure that the magazine is effectively maintained.

Section 56/57.6133 Powder chests

This proposed standard modifies existing standard 56/57.6159 concerning stationary of mobile powder chests for the short-term storage of limited quantities of explosive material. The exisiting standard applies to both surface and underground operations. The proposed standard applies only to surface areas since proposed standard 57.6161 deals with auxiliary storage facilities underground.

Paragraphs (a), (b), (c), (d), and (f) of the existing standard have been edited for clarity and appear in the proposed standard without substantive change as paragraph (a). Paragraph (e) of the existing standard is revised and set out as proposed paragraph (b). The proposed standard permits alternative methods for the storage of detonators depending on their classification by the DOT. The agency recognizes that when dealing with small quantities of Class C detonators, protection can be achieved with 4-inches of hardwood, laminated partition or equivalent.

Some commenters requested clarification of the word "equivalent" in the phrase "4-inches of hardwood or the equivalent". MSHA added the defined term "laminated partition" as an example of equivalent protection but has also retained "equivalent" to allow for advances in mining technology and flexibility in compliance.

Storage—Underground Only

Section 57.6160 Main facilities

MSHA recognizes that underground storage of explosive material is a common practice. This new provision addresses hazards associated with the improper storage and location of main underground facilities. The inherently hazardous nature of stored explosives necessitates that certain safety precautions be taken, particularly in a mine environment which may contain high electric current, conductive ore bodies, heavy equipment and nearby activity.

The proposed standard, in response to public comment, omits certain draft proposal language. The draft proposal required that facilities be located so that fumes could not course to working places. Fumes from explosive materials stored in a wellmaintained facility present no problem when the facility and the mine are ventilated. However, the proposal provides that the main facility shall be located so that a fire or explosion in the storage facilities will not prevent escape of miners from the mine. The requirements of this standard are taken from Bureau of Mines Circular 54, and IME Safety Library publications. The distances in the Bureau of Mines circular have been in effect during the times when the modes of transportation in underground mines have evolved. Various modes of transportation have differing potential for impact on storage facilities. These distances have proven effective for rail haulage and more recently diesel-powered rubber-tired haulage.

Section 57.6161 Auxiliary facilities

This proposed standard combines existing standards 57.6027, 57.6029, and 57.6030 which address facilities used to store explosive material near work places. This standard is consistent with the general practice in the mining community of providing wooden, box-type facilities near the work place. Paragraph (a) would allow alternatives to "box-type" facilities addressed in existing standards 57.6027 and 57.6029 by permitting the use of other facilities which provide equivalent impact resistance and confinement. Original shipping containers often provide some degree of protection and confinement during transportation. However, construction of paper and plastic products does not adequately protect the contents from deterioration caused by impact and moisture in the mining environment during auxiliary storage.

Auxiliary storage facilities are used in areas other than "working faces", the phrase appearing in existing standard 57.6027. For example, explosive material is occasionally stored near crushers and chutes. MSHA has substituted the phrase "work places" since precautions are necessary wherever explosive materials are stored.

Paragraphs (b)(1), (b)(2), (b)(5), (b)(6) and (b)(9) are taken from the existing standards and provide that auxiliary facilities be posted and protected against environmental conditions such as sparks, moisture, and detonation from other storage facilities. The 25 foot separation distance in paragraph (b)(9) is taken from Bureau of Mines Circular 54 and provides assurance that accidentally initiated detonators will not influence the other stored explosive material.

Paragraphs (b)(3) and (b)(4) are new provisions designed to protect the contents of auxiliary storage facilities from exposure to the mine environment and particularly to prevent moisture from contaminating and desensitizing the contents. Paragraph (b)(7) is a new provision addressing hazards which occur when equipment or electrical charges contact the explosive materials. The 15 foot separation from haulageways and electrical equipment is less than that for main storage facilities but assures clearance and separation near auxiliary facilities. Since generally the size of equipment and the electrical current would be less in these areas than in areas near main storage facilities, less clearance and separation would be required.

Paragraph (b)(8) is a new provision limiting the amount of explosive material stored in auxiliary facilities near the underground work site. These facilities being near work areas are exposed to harsher conditions than a main storage facility. They may be subjected to rougher handling, environmental factors such as water, and the potential to be struck by mine equipment, and a restriction on quantity is warranted.

One commenter stated that the two-day supply restriction contained in the preproposal draft could create significant logistical problems. After reevaluating the amounts of explosive materials used at an individual work site, the size and material handling capabilities of the affected mines, and the protection provided by the construction requirements for the auxiliary facility, MSHA proposes to increase the storage limit to a one-week supply. This limit will minimize the hazards of unplanned detonation of large amounts of explosives by work site activities and protect the stored materials from deterioration, while permitting efficient scheduling of explosive materials delivery to work areas throughout the mine.

MSHA estimates that 5 percent of the facilities contain an average supply of two weeks of explosive material. To comply with the proposal, these mines would increase their deliveries from 26 times per year to 52 times per year. An average of additional hours per delivery is required. The additional annual operating cost for small mines would be $17,761 and for large mines, $51,985.

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MSHA solicits comments on these preliminary estimates.

MSHA's preliminary analysis has not attributed any benefits to this new requirement because none of the injuries or fatalities that occurred in the past ten years would have been prevented by compliance. Hence, MSHA solicits comments on any benefits resulting from it.

Paragraph (b)(10) is a new requirement which addresses situations where unauthorized access can be gained to an underground work site during times when the mine is not working or is occupied by a few workers in areas where the auxiliary facilities are not present. The locked facility will assure that on-site miners and subsequently returning miners will not be endangered by unauthorized use of the stored explosive materials.

Transportation

Section 56/57.6200 Delivery to storage or blast site areas

The proposed standard modifies language addressing the need to avoid delay in the transportation of explosive materials to the blast site or storage facility. The phrase in existing § 56/57.6048 "* * * over routes and at times that expose a minimum number of persons" has been deleted since it has resulted in some unnecessarily circuitous routes being used, possibly increasing the overall risk.

Section 56/57.6201 Separation of explosive material

Existing standard 56/57.6040 requires that explosives and detonators be transported in separate vehicles unless separated by 4-inches of hardwood or the equivalent, and makes no distinction between Class A and Class C detonators. The proposed rule distinguishes between Class A and Class C detonators and specifies the transportation requirements for each.

MSHA's preproposal draft would have prohibited a detonator subject to mass detonation (a Class A detonator) from being transported in the same vehicle or conveyance as explosives or blasting agents. Several commenters objected to this prohibition and suggested that MSHA allow the use of the laminated partition container specified in the IME Safety Library Publication 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials." The Agency has adopted the suggestion that the IME container be allowed. However, to provide additional protection from the mass detonation hazard, MSHA is also requiring that appropriate packaging be used whenever Class A detonators are transported. This packaging, provided by the manufacturer, conforms with the DOT requirements for transportation of explosive material. These requirements limit the number of detonators, their total weight and their movement within the package and would reduce the likelihood of mass detonation. MSHA's proposed standard would prohibit all Class A detonators, and Class C detonators in quantities of more than 1000, from being transported in a vehicle or conveyance with explosives or blasting agents unless the detonators are maintained in the original packaging as shipped from the manufacturer and separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition or equivalent. The Institute of Makers of Explosives' Booklet No. 22 may be used as reference material for Class A and Class C detonator separation.

A fire-initiating detonator in the vehicle could also detonate explosives. This hazard is greatly enhanced if the detonators are Class A. The DOT classification of detonators as Class A or Class C is based on tests involving quantities of 1000 detonators. Class A detonators are likely to mass detonate. The use of Class A detonators is becoming more prominent with the development of safer, less-sensitive explosives and blasting agents. Class C detonators are not likely to mass detonate. When the detonators are Class C, up to 1000 (the quantity tested by DOT) may be transported with other explosive material if separated from the explosive material by 4-inches of hardwood, laminated partition or equivalent. Class C detonators transported in quantities of more than 1000 must be treated as Class A detonators, in conformance with the Institute of Makers of Explosives' Booklet No. 22.

The proposal retains the concept of laminate construction but also includes language allowing for use of an "equivalent" protection. This language provides flexibility in compliance while clarifying that a laminated partition is acceptable. MSHA specifically solicits comments concerning the manner in which the separation of explosive material and Class A detonators is addressed.

Vehicles referred to in this proposed standard include carriers such as trucks, front-end loaders, railcars, and personnel carriers. A conveyance refers to various types of shaft and slope cages used to carry persons or materials.

There is little or no additional cost associated with the proposed standard. Some mines may have to transport Class A detonators separately if they are not maintained in their original packaging as shipped and separated from explosives by 4-inches of hardwood, laminated partition or equivalent. MSHA believes the cost to be minimal and request data to determine the number of affected mines and any cost that they might incur.

Section 56/57.6202 Vehicles

This proposed standard modifies, combines and clarifies existing standards 56/57.6042; 56/57.6043; 56/57.6044; 56/57.6047; 56/57.6050; 56/57.6053; 56/57.6065; 56/57.6077; and 56/57.6200. It addresses the hazard of an unplanned detonation of explosive materials during transportation on a mine vehicle. Detonation can result from vehicle fires, vehicle accidents, or construction of a vehicle with inappropriate materials.

In paragraphs (a)(1) and (a)(2), the proposal addresses construction requirements, warning signs and operational safeguards. The term "suitable" is deleted and the term "substantially constructed" is replaced with a more precise term "structurally sound." Several changes have been made to allow greater flexibility in vehicle construction. The phrase "secured to a nonconductive pallet" has been added as an alternative for compliance with sides and tailgate requirements.

Paragraph (a)(3) clarifies MSHA's intent as to where explosive material shall be located during transportation by vehicle. The proposal would clarify that the carrying of explosive material in the passenger area of a vehicle is not permitted.

Paragraph (a)(4) clarifies existing § 56/47.6042 which requires more than one extinguisher on vehicles used to transport explosive materials. The term "suitable" is replaced with the phrase "multipurpoae dry-chemical fire extinguishers." Multipurpose dry-chemical fire extinguishers are "suitable" for fighting all classes of fires that would be expected to occur on a vehicle used to transport explosive materials. These vehicles usually have more than one person aboard. Providing two extinguishers allows for more than one person to fight the fire. In addition, tire fires can rekindle after the flame has been extinguished and the second extinguisher may be needed for resuppression. When faced with the hazards presented by fire near explosive or detonators, the need readily available fire extinguishers is of critical importance. The presence of two fire extinguishers on a vehicle containing explosives or detonators could greatly reduce response time in fighting a fire. Under the proposal, an automatic fire suppression system can be used as an alternative to one of the extinguishers.

Paragraph (a)(5) is a new provision requiring vehicles to be vented unless transporting in bulk. While it may not be possible to vent bulk delivery vehicles, it is practical to vent other vehicles containing explosive material to avoid the build-up of heat and moisture which can result in premature detonation.

Existing standard 56/57.6043 requires posting of proper warning signs on vehicles containing explosives or detonators. Paragraph (a)(6) clarifies what "proper" warning signs would be and is consistent with language used in other posting sections of the proposed rule.

Paragraph (a)(7) clarifies the phrase "necessary attendants" used in existing standard 56/57.6053, by substituting the phrase "persons necessary for handling the explosive material".

Paragraph (a)(8) combines existing standards 56/57.6065 and 57.6077 concerning the need to attend vehicles during transportation of explosive material. Attendance provides vehicles security as well as protection for nearby miners against a runaway vehicle. The scope of the standard has been broadened to include blasting agents. While blasting agents are less sensitive than explosives, they still require special precautions. The terms "attended" and "loading" are defined terms in the proposed rule.

Paragraph (a)(9) addresses inadvertent movement of parked vehicles containing explosive material to prevent runaway vehicle accidents which could cause detonation of the contents. Paragaraph (a)(9)(i) is taken from existing standard 56/57.6044. The phrase "blocked securely against rolling" in existing standard 56.57.6044, is replaced by paragraph (a)(9)(ii) which requires wheel chocking only if the possibility of movement exists. Paragraph (a)(9)(iii) is a new provision which allows the engine to run while the vehicle is parked if it powers a device being used in the loading operation. Although commenters suggested that paragraph (a)(9) duplicates proposed mobile equipment standards 56/57.9036 and 56/57.9037, it contains additional specific requirements applicable to the hazards associated with explosive material.

Paragraph (b) makes editorial changes to existing standards 56/57.6047 and 56/57.6050 dealing with the hazard of spark-producing material in the cargo space with explosives. Sparks produced during transit or in an accident could detonate the entire load. MSHA agrees with the commenter who suggested that blasting agents should not be included in the coverage since they are not spark-sensitive.

The preproposal requirements applicable to bulk dispensing vehicles are contained in paragraph (c). Existing standard 56/57.6200 deals with the transportation and dispensing of blasting agents. The language has been written to address the dispensing of all types of bulk explosive material.

The proposed rule retains the requirement for protection against internal pressure and frictional heat when screw conveyors are used. This protection addresses potential fires and explosions in the vehicle. In the draft proposal MSHA used the word "excessive" to clarify the intended degree of internal pressure and frictional heat to be avoided in screw conveyor. MSHA agrees with a commenter that the word "excessive" is unnecessary and has deleted it from the proposed rule. Commenters objected to draft proposal language requiring venting "to allow free movement of air around the cargo", stating that such a regulation would be impossible to comply with. MSHA agrees that compliance would be impractical and has deleted this language. Existing standard 56/57.6200 prohibited zinc or copper exposed in the cargo space when blasting agents are transported. The proposal extends the requirement to vehicles used for dispensing any type of bulk explosive materials. As technology has evolved, bulk explosive material other than blasting agents has sometimes included chemicals which can react with zinc or copper.

Section 56/57.6203 Locomotives

This proposal combines existing standards 56/57.6041 and 56/57.6051 covering transportation of explosive materials on top of locomotives and in cars being pushed or towed by locomotives. Locomotives are normally powered through direct-current trolley wires, batteries or diesel engines. All three sources have the potential to generate heat or sparks which could cause a fire and unplanned detonation of the explosive material. Additionally, locomotives are not equipped with an enclosed space for material hauling. Any materials transported on top of a locomotive are subject to dislodging and subsequent impact during transit or in an accident.

When explosive material is transported in a car being propelled by a trolley-powered locomotive, a potential for electrical sparking and short circuits exist. These cars must be covered and electrically insulated. In addition, fall of ground or other impact can present a hazard to exposed explosive material. The required cover would protect the explosive material from impact.

Section 56/57.6204 Hoists

The proposal combines and clarifies existing standards 56/57.6054, 57.6075 and 57.6076 and addresses hazards encountered when conveying explosive material on hoists. The proposal broadens coverage to include surface operations. Many surface operations such as slate and dimension-stone mines utilize hoists to allow miners to enter and leave the work area.

The proposed surface and underground standards are identical with the exception that the underground standard requires hoisting to be stopped in compartments adjacent to those transporting explosive material. This exception is necesary to address the use of the large compartmentalized hoists used in some underground metal and nonmetal mines.

Paragraph (a) of the proposal would assure that hoist operators at surface mines as well as underground operations are notified that explosive material is being transported.

Paragraph (b) of the proposal requires containment of the explosive material in a structurally sound container to prevent shifting of the cargo which could cause detonation by impact or by sparks. The manufacturers' containers, usually cardboard boxes or plastic bags, are acceptable, provided they are secured to a nonconductive pallet and no sparks can be generated.

Paragraph (c) prohibits the transporting of persons on a hoist conveyance or mantrip containing explosive material. This provision minimizes the probability of injury during a hoisting accident involving explosive material.

Section 56/57.6205 Conveying explosives by hand

This proposed standard combines existing standards 56/57.6056 and 56/57.6057. To reflect the intent of the standard to isolate explosives from the elements during conveyance, the term "closed, nonconductive containers" replaces the phrase "substantial nonconductive containers" used in the existing standard. Draft proposal language expanding the coverage to include "blasting agents" has been deleted as suggested by one commenter, since blasting agents are not spark-sensitive. Language was added requiring detonators and other explosive material

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to be carried in separate containers. This practice follows the principle that detonators and other explosive material should be kept separate until loading so that accidental initiation of detonators will not cause detonation of other explosive material. Other editorial changes have been made for clarity.

Use—Surface and Underground

Section 56/57.6300 Control of blasting operations

The proposed standard combines and clarifies existing standards 56/57.6090 and 56/57.6091 dealing with direction and supervision of blasting operations. MSHA proposes that only trained and experienced persons direct the specific tasks involved in blasting operations. Several commenters felt the existing standards are redundant with present training regulations. The training and experience needed to supervise or direct blasting operations in today's mines where the technology is continually changing would be expected to exceed the training provided to miners who simply handle explosives under a supervisor's direction. As new explosive materials are introduced at the mine, the persons directing the blasting operations shall be trained in the safe handling and use of the products. This training is normally on-the-job, provided at the mine site by a representative of the explosive manufacturer. These new products may create hazards in storage, transportation, loading, blast hook-up, blast area security, firing, and post-blast examinations. Training shall address these areas where appropriate.

Section 56/57.6301 Blasthole obstruction check

The proposal clarifies existing standard 56/57.6093 concerning obstructions in blastholes. When explosive materials are loaded into an obstructed blasthole, several safety related problems can occur. A partially obstructed hole can result in wedging of the primed charge at an improper depth in the hole. Manual maneuvering to dislodge the wedged material could result in a premature detonation. A partial obstruction could also cause a separation between the blasting agent and the initiating charge and a misfire could occur. In addition, obstructions which interfere with proper loading of the blasthole can result in poor fragmentation which could require that secondary blasting be performed. Obstructions could also increase flyrock and blowouts which pose injury risks to miners. The proposal clarifies that checks for obstructions must be performed before holes are loaded. Some obstructions can occur near the bottom of a blasthole without effectively blocking the entire hole. In these instances, loading can be accomplished to that depth without imposing safety hazards, and no restrictions apply. Where a rigid liner is inserted in the entire length of the blasthole and remains intact, the hole is considered checked and cleared of obstructions. Commenters to the draft proposal were concerned that all holes would have to be drilled before any one hole was checked. This requirement was not intended and the word "all" has been deleted from the final rule.

Section 56/57.6302 Explosive material protection

This proposed standard deals with the need to provide a protected environment for explosive materials prior to loading. Paragraph (a) modifies exisiting § 56/57.6096 by substituting the word "loading" for the word "charging" and adding the term "blasting agents" for clarity. Paragraph (b) is a new requirement that is a basic safety practice to prevent premature initiation of the explosive material due to impact or heat. The many new types of explosive material presently in use at the mine site are sensitive to varying amounts of impact. In addition, large equipment capable of exerting heavy impact is often used in the loading environment. The IME cautions that temperatures in excess of 150° F are considered hazardous (Safety Library Publication No. 4, p.5, December, 1985).

Section 56/57.6303 Initiation preparation

This standard addresses the hazards of premature detonations and misfires associated with the preparation of primers. Paragraph (a) contains the requirements of existing standard 56/57.6098(a) with clarifying editorial changes requested by commenters. The requirements of proposed paragraph (b) appeared in the draft proposal as 56/57.6302(b). It substituted "blast site" for "blasting area" in existing standard 56/57.6097 and required that "primers shall be made up only at the time of use and as close to the blast site as conditions allow." One commenter suggested adding the words "as close to the time of use as practical" to paragraph (c). MSHA disagrees because the word "practical" provides no specific guidance in this matter. Preparing primers as close to the blast site as "conditions allow" more clearly conveys the needed safety concern. The preproposal draft incorporated this thought by requiring primer preparation as close to the blast site as conditions allow, and therefore, the proposal retains this language. Paragraph (c) retains the requirements of existing standard 56/57.6098 (b) with editorial changes. It protects against misfires by requiring that connections between detonating cord and other explosives be made in a manner which assures that the detonation will not be interrupted.

Section 56/57.6304 Primer protection

This proposed standard addresses the tamping or dropping of large cartridges of explosives or blasting agents directly on primers, a practice which can cause accidents and misfires.

Paragraph (a) adopts the tamping precautions of existing standard 56/57.6101 without change. Paragraph (b) is a new requirement which prohibits dropping of large cartridges of explosive material directly on a primer unless the blasthole is full of water. If cartridges are dropped into blastholes only partially filled with water, the cartridges are likely to spread from the impact and cause an interruption in the column of explosive material.

The draft proposal prohibited dropping cartridges greater than 3 inches in diameter. Commenters pointed out that 4 inches and greater sizes have bails which facilitate lowering, while smaller sizes do not. The proposal acknowledges this provision and prohibits the dropping of cartridges which are 4 inches or larger in diameter directly on a primer unless the hole is full of water.

Section 56/57.6305 Unused explosive material

This proposed standard has been revised to clarify existing standard 56/57.6102 dealing with unused explosives, and to provide uniformity with other standards. The "protected location" language of the proposal allows unused explosive material inside the blast area provided it would not be affected by concussion or flyrock.

Section 56/57.6306 Loading and blasting

The proposed standard deals with precautions during loading and blasting, and combines existing standards 56/57.6094, 56/57.6160, 57.6175, and 57.6182, and adds several new provisions. The proposal would apply to surface and underground operations. Paragraph (a) is a new requirement to assure proper treatment of explosive materials and initiating systems at the blast site. Explosive materials can be prematurely detonated if struck by moving vehicles or contacted by electrically-powered equipment.

Paragraph (b) is a new provision restricting activities near the blast site during loading. It also specifies the minimum distance from the loading and hook-up where work unrelated to the blasting operation is permitted. MSHA's draft proposal language required that "once loading begins, only activity directly related to the blasting operation shall be permitted within an area at least five times the face height in all directions from the blast site." Many comments were received objecting to this language as being unnecessarily restrictive. MSHA has reevaluated the provision and responded to these comments by excluding unrelated activity only from the blast site, a defined term. Activity at the blast site can interfere with the loading process and increase the likelihood of an accident.

Paragraph (c) requires that loading be a continuous operation to avoid the hazard of prolonged "sleeping" of explosive material. This proposal is a substitute for the requirement in existing standard 56/57.6094 that blasting occur within 72 hours of loading the hole unless prior approval is obtained. Several commenters felt an exception was needed from "continuous" loading when unusual circumstances exist. MSHA agrees. The proposal allows relief for emergency situations, shift changes, and idle shifts not to exceed 16 hours.

Paragraph (d) requires that when loading is suspended, the blast site shall be attended. MSHA's proposed definition of "attended" would allow electronic or video monitoring devices as well as the actual presence of an individual to satisfy this standard.

Paragraph (e) is derived from existing standards 56/57.6160, 57.6175, and 57.6182. It addresses the time when persons must be removed from the blast area to provide for their safety.

Paragraph (f) deals with the need to fire blasts without delay. Once all circuits have been connected, conditions at the blast site have reached their maximum potential to cause injury or death if an accidental detonation occurs. Blasts must be initiated as soon as possible once preparations have been completed.

Paragraph (g) provides for warning, clear escape routes from the blast area, and all access to the blast area to be protected against entry. Like the existing standard, the proposal provides that access to the blast area be guarded by persons, or barricaded. It clarifies that "barricade" in this provision means "obstructed to prevent the passage of persons or vehicles."

Paragraph (h) is a new provision requiring post-blast examinations to minimize hazards to persons who will perform subsequent work at the site. One commenter stated that the language for post-blast examinations would not adequately promote safety because it does not explicitly state that smoke, dust, and fumes should be evaluated in any post-blast examination. This degree of specificity is not necessary. Trained and experienced persons conduct these examinations and would address all the potential hazards present at a blast site including ground conditions, undetonated explosive materials and smoke, dust and fumes.

Section 56/57.6307 Drill stem loading

This proposed standard addresses the potential for premature detonation of explosive material while it is being loaded into the blastholes with drill stem equipment or other devices that could be extracted. It editorially revises existing standard 56/57.6142 for consistency with other standards by substituting the terms "explosive material" and "blastholes" for the existing language "explosives or blasting agents" and "boreholes". Accidental deaths and injuries have resulted from failure to recognize the detonation hazard potential which exists when explosive material is accidentally struck by extractable drill stem equipment. Commenters suggested no substantive changes and none have been made.

Section 56/57.6308 Initiation systems

Recent accidents and MSHA experience have indicated the need for this new standard to address the safe use of electric initiating systems. In cases where initiating systems are used incorrectly, a variety of malfunctions or unsafe practices can occur. Any malfunction in a multiple hole blast can result in uninitiated explosive material remaining in the rock or ore. When the rock or ore is excavated with large mining equipment the explosives may not be observed until they are introduced into the crushing and screening equipment where a hazard to persons is created. Recently a licensed blaster was testing equipment in a blast sequence. He picked up the sequential blasting cable plug lying alongside of the machine instead of the shunt plug. He plugged it in, proceeded through the test sequence of the charging machine and pressed the fire button. An unintended detonation occurred resulting in two injuries.

Any malfunction or misuse of an initiating system in a multiple hole blast can result in noninitiated explosive material remaining in the rock or ore. When the rock or ore is dug with large mining equipment, the explosives are not always observed until it is introduced to the crushing or screening equipment where it creates a hazard to persons.

Some commenters found the preproposal draft provision to be acceptable, however others felt that this provision was both unacceptable and unnecessary. MSHA believes that as a minimum, manufacturer's instructions relating to safe use of these systems must be followed to assure safety of miners. The manufacturer, when introducing technology, can be expected to be familiar with any new safety characteristics and can communicate the hazards in a timely manner.

Section 56/57.6309 Fuel oil requirements for ANFO

This new standard addresses misfires associated with less than maximum detonation of ammonium nitrate-fuel oil blasting agents. It prohibits the use of waste fuels as an oxidizer and restricts the use of other hydrocarbons. It requires that liquid hydrocarbon fuels used in ammonium nitrate-fuel oil have a minimum flash point of 125 °F or less to minimize the hazards of fuel storage and blasting agent mixing and use and to prevent the excessive build-up of fumes following a blast. The two primary concerns addressed by this standard are incomplete detonation and the creation of unusually high quantities of toxic fumes.

Section 56/57.6310 Misfire waiting period

The proposed standard combines and updates existing standards 56/57.6104 and 56/57.6105 dealing with the length of time a person must wait after a suspected misfire before entering the blast area. The phrase "when a misfire is suspected" is introduced as the criteria for determining when to wait the prescribed period before returning to the blast area. This language is added so that a person would not feel compelled to physically investigate to determine if a misfire has occurred. After a suspected misfire, persons shall not enter the blast area for 30 minutes if blasting caps and safety fuse are used; or 15 minutes if any other type detonators are used.

Section 56/57.6311 Handling of misfires

This proposal would combine existing standards 56/57.6106, 56/57.6168 and 57.6177 dealing with the examination for, and handling of misfires. The

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competent person requirement in the draft proposal has been deleted as unnecessary since proposed standard 56/57.6300 requires a trained and experienced person to direct all blasting operations.

The proposal recognizes that mine personnel often have the capability of safely disposing of misfires without the need to immediately notify mine management of the misfire. Other misfire conditions may require the expertise of the manufacturer who can be contacted by mine management. For this reason, existing language has been modified to require reporting of all misfires either immediately or at the end of the shift depending upon conditions.

In paragraph (a) the term "searched" used in the preproposal draft has been changed to the more appropriate term "examined" as recommended by several commenters. This would comply with the original intent of the standard and conform with the language of existing standard 56/57.6106.

In paragraphs (b) and (c), several commenters suggested changing "affected areas" to "blast site". The proposed rule retains the "affected areas" terminology because an accidental detonation during the removal of a misfire is likely to affect an area larger than the blast site. Several commenters questioned the scope of the phrase "only work necessary to remove any misfires" appearing in paragraph (b). MSHA clarifies its intent by adding to the proposal language which would include any work related to securing the safety of miners in the affected area. For example, necessary control of ground in the misfire area would be permitted prior to removing the misfire.

Section 56/57.6312 Secondary blasting

Existing standard 57.6141 deals with multiple secondary blasts in a blasting area. Its intent is to minimize risks associated with the unnecessary use of multiple initiation sources in a work area when one source will suffice. Because this principle is equally applicable for surface and underground operations, the scope has been expanded to include secondary blasting at surface operations as well as underground mines.

The term "blast area" is used in the existing standard. However, the proposed rule definition of "blast area" has been broadened to include those areas of the mine affected by shock waves, flying material or gases. The proposed rule uses the term "work area", more accurately reflecting the original intent of the standard.

Section 56/57.6313 Blast site security

This standard addresses hazards present where loading is completed and the hole is awaiting firing. It replaces existing standard 56/57.6103. The term "loaded" is substituted for "charged" and the term "attended" is substituted for "guarded" for consistency with other standards. The existing standard allows alternatives to guarding. The area can be barricaded and posted, or flagged against unauthorized entry. Comments indicated that it is appropriate to continue to allow these alternatives to "attending" the site. The proposed rule incorporates the comments by allowing barricading and posting, or flagging against unauthorized entry.

Electric Blasting—Surface and Underground

MSHA has received communication from industry concerning the quality of the insulation used for blasting wire and cable. The Agency solicits comments on the issue of substandard insulation and the desirability of establishing minimum insulation specifications. An alternative to a specification standard would be to include in the final rule, language adopted from the following which appears in the existing 56 and 57.2 definitions:

"Insulated" means separated from other conducting surfaces by a dielectric substance permanently offering a high resistance to the passage of current and to disruptive discharge through the substance. When any substance is said to be insulated, it is understood to be insulated in a manner suitable for the conditions to which it is subjected. Otherwise, it is, within the purpose of this definition, uninsulated. Insulating covering is one means for making the conductor insulated.

"Insulation" means a dielectric substance offering a high resistance to the passage of current and to a disruptive discharge through the substance.

Section 56/57.6400 Compatibility of electric detonators

This standard modifies existing standard 56/57.6119 and prohibits the use of incompatible electric detonators in the same round. Individual explosive material manufacturers and the IME caution that electric blasting caps of different manufacturers should not be mixed in the same series. Ignition systems may not be electrically compatible and misfires may occur. The term "brand" appearing in the existing standard is replaced with "manufacturer". Commenters agreed that "manufacturer" should be used.

Section 56/57.6401 Shunting

This proposal addresses shunting. It provides protection against premature detonation caused by extraneous current flowing through the individual portions of the circuit as they are prepared. Editorial changes have been made in existing standard 56/57.6120 for clarity. Commenters objected to the removal of the reference to blasting galvanometers in the existing standard. The requirement for these testing devices is retained in proposed standard 56/57.6407, Circuit testing.

Section 56.6402 Deenergized circuits near detonators

This proposal modifies existing standard 56/57.6126. It addresses the need to deenergize electrical circuits in a blast site where electric detonators are used, so that stray current will not be introduced. Stray current can cause a premature detonation during the loading process.

The proposal also provides an alternative compliance method by allowing for stray current tests in lieu of deenergization. The tests must indicate that stray current levels in the area are sufficiently low so that they would not cause detonation. Otherwise, all electrical circuits within 50 feet of electric detonators at the blast site shall be deenergized when electrical detonators are used. At surface operations, voltages in excess of 650 volts are common. The use of any power cable that has copper-braid shielding, such as types SHD or SHC, is recommended to minimize stray current hazards. MSHA specifically solicits comments on the desirability of requiring that specific distances be established separating high voltage lines from the surface blast site where electric detonators are being used.

As pointed out in the "Handbook of Electric Blasting", Atlas Powder Company (1976), electric current will always flow from a higher voltage to a lower voltage through whatever conductive paths are available to it. If the insulation around a conductor in a power system or a piece of electrically operated equipment is defective, part of the current in the conductor can leak out and follow other conductive paths to the lower voltage. Thus, this type of stray current could pass through such alternate conductive paths as: (1) The earth, (2) damp timbers, (3) metal pipelines, (4) machinery housings, (5) track rails, (6) metal fences, (7) a conductive rock strata that lies on top of or between two nonconductive strata or (8) other conductive material in

electrical contact with the defect in the insulation. A potential hazard exists if an electric detonator becomes part of one of these alternate conductive paths. In the proposed stray current test, the 1-ohm resistor is used to simulate the electric detonator. Any stray current flowing in the circuit is detected by measuring the voltage drop across the resistor. The measured voltage drop cannot exceed the equivalent of 0.050 amps. This maximum stray current provides a safety factor and is 20% of the 0.250 amp firing current for electric detonators.

The frequency of stray current testing should be determined by considering factors such as: changes in the conductivity of the ground; relocation or change of a source or conductors of electrical current; and the continual development of new blast sites as mining progresses. The term, "electric blasting caps" is changed to read "electric detonators" as suggested by commenters. Other editorial changes have been made.

Section 56/57.6403 Branch circuits

This proposal modifies existing standard 56/57.6125, addressing unintentional current in branch circuits. It protects miners by requiring that safety switches provide isolation of the circuits to reduce the hazard of premature detonation. The proposal allows equivalent methods of isolation to be used.

Permanent blasting circuits are often used by more than one miner, particularly in underground mines. The safety switch required in the standard is used to protect individuals from unintentional voltage when another miner may be energizing the circuit which would cause an unplanned ignition. This circuit is similar to an electrical lock-out when working on an electrical circuit.

Section 56/57.6404 Positive separation of blasting circuits from power source

Existing standard 56/57.6127 addresses blasting switches and lead wire connections to the switch. The intent is to prevent accidental initiation of a blast by premature completion of the circuit. There were no changes suggested by commenters and the proposed rule appears with editorial changes only.

Section 56/57.6405 Firing devices

This proposal combines existing standards 56/57.6128 and 56/57.6131 and deals with power sources and control of firing devices. Paragraph (a) addresses the need to provide sufficient power to prevent misfires. Electric detonator manufacturers specify that a minimum of 1.5 amps direct current (DC) or 2.0 amps alternating current (AC) be supplied to any single series or parallel series circuit. Many metal and nonmetal blasts include several hundred detonators and varying amounts of resistance dependent upon lengths and composition of leg wires and lead wires, series and parallel series circuits, and current leakage. It is incumbent upon the operator to evaluate these power needs and use the proper source. The use of storage or dry cell batteries is not acceptable as a power source because dry cell batteries cannot be relied upon to have sufficient power to detonate a round and there is no built-in mechanism to alert the user that a low electric charge exists.

Paragraph (b) is a new provision which addresses the need for proper maintenance of blasting machines. Advances in technology have led to increasing complexity in firing devices. All blasting devices, including sequential timers, should be maintained in accordance with the manufacturer's instructions to assure effective operation. Defective or improperly repaired blasting machines can contribute to misfires creating hazards to persons. For example, on September 19, 1988 in Lafayette, New Jersey, the bucket of a front-end loader struck an undetonated charge buried on the floor of the quarry, the ensuing explosion injured the operator. The incident might have been prevented if the contract blaster working for the mine operator had properly maintained, tested, and repaired his blasting machine as prescribed in proposed §§ 56/57.6405. The blasting machine being used at this operation was a sequential timer that energizes multiple electric blasting cap circuits in a programmed sequence. The timing system provides blasting operators with a greater number of delays than is available with a conventional blasting machine. According to the preliminary accident report, the machine "shut down" meaning that some or all of the circuits were not being energized appropriately. MSHA believes that compliance with the standard on examination for misfires, §§ 56/57.6311 and this standard, addressing proper maintenance, testing, and repair of blasting machines would have prevented this incident. MSHA solicits comments on other incidents which might have been prevented by this new provision.

In developing an annual cost for this new provision, MSHA has estimated that fifty percent of the mines blast electrically and eighty percent of those would comply voluntarily as a safe work practice and company policy. Cost for those mines not complying would be $200 per mine. Mines average one machine per mine. The total annual cost for small mines would be $69,700 and for large mines would be $23,180. MSHA solicits additional information on the various paramenters and costs associated with testing, repairing, and maintaining blasting machines.

Paragraph (c) assigns control of the firing device key to the blaster. Several commenters suggested that the language relating to "person designated" in the existing standard be used instead of the term "blaster". MSHA disagrees. The blaster would be a knowledgeable person fully trained in all phases of blasting operations and is more likely to have been involved in the loading process and the evaluation of the safety hazards associated with the blast. MSHA is considering including all firing devices, not only electrical devices in this requirement. Comments are solicited on this issue. Editorial changes have also been made to existing standard 56/57.6131.

Section 56/57.6406 Duration of current flow

This standard clarifies existing standard 56/57.6133 which addresses the prevention of misfires through limiting the duration of current flow. The proposal modifies the existing standard by allowing the operator to choose the manner in which the current flow would be limited.

"Arcing" occurs when excessive current within the electric detonator causes a build-up of heat at the bridgewire. The build-up can result in a misfire. When electric blasting is performed from power sources such as powerlines or lighting circuits which provide a continuous current, the duration of current flow must be limited to prevent arcing within the detonator. Manufacturers have determined that arcing can be avoided if the current flow time is limited to 25 milliseconds. The phrase "zero-delay" has been changed to "25 millisecond delay", the more precise term. In response to comments, the phrase "explosive charge" in the existing standard is changed to "explosive device" for clarity.

Section 56.6407 and 57.6407 Circuit testing

The proposal editorially modifies existing standard 56/57.6121 dealing with circuit testing. Testing of circuits helps prevent misfires by determining whether an individual series circuit is closed and by locating broken wires and

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connections. When blasting electrically, the circuit must be tested for continuity and for resistance at surface mines and for continuity at underground mines prior to blasting. The required testing differs between surface and underground mines since surface holes are deeper, larger, and different types of priming systems are used.

This standard also addresses the need to use the appropriate type of testing equipment to avoid introducing excessive current which has resulted in premature detonations and fatalities. Used properly, blasting galvanometers produce the correct amount of current for testing the circuit. The term "borehole" is proposed to be changed to "blasthole" for consistency. As suggested by commenters, the term "electric blasting caps" has been changed to the proper term, "electric detonators."

Nonelectric blasting—Surface and Underground

Section 56/57.6500 Damaged initiating material

This proposal revises existing standard 56/57.6109 which addresses the prevention of misfires from defective initiating material. The phrase "shock and gas tubing and similar material" is added to include recent technological developments in the coverage of the standard. A commenter stated that the term "shock tubing" is no longer used by the manufacturers to describe this initiating material. While manufacturers may be identifying the product by its brand name, the term "shock tubing" is understood by the industry and has been included in manufacturers' publications.

Except for gas tubing, there is no method of testing the continuity of these initiating materials prior to blasting. To avoid misfires it is extremely important to protect the integrity of the material by using components which are not kinked, bent sharply or damaged. It is also important to check visually to assure that components are properly aligned and connected. This requirement has been included in the proposed rule.

Section 56/57.6501 Nonelectric systems

This proposal combines existing standards 56/57.6115, 56/57.6163, and 56/57.6164 which address misfire hazards encountered in detonating cord blasting. For other nonelectric blasting systems, it also addresses the misfire hazard from interruptions or cut-offs to the initiation line.

A new provision in paragraph (a) requires the use of double trunklines or loop systems to help prevent misfires when blasting with any nonelectric system. There are three exceptions. First, paragraph (a)(1) excepts safety fuse blasting because of its uniqueness. The provisions dealing with safety fuse are set out in 56/57.6502. Secondly, paragraph (a)(2) excludes secondary blasting from the double-trunkline requirement. MSHA agrees with public comment that a misfire would be obvious in a secondary blast and easily dealt with. Third, paragraph (a)(3) allows the operator to forego use of the double trunkline or loop system when using in-the-hole delays of sufficient duration to retard ground movement. This method has been effective in preventing misfires due to cut-offs.

Paragraphs (b) and (d) are new provisions dealing with the shock tube and gas tube blasting systems which have recently been introduced into the mining industry. These paragraphs set out basic safety practices as outlined by the individual manufacturers. The proper handling of shock tube initiation systems is essential because it cannot be checked for continuity. It is also directional in nature and cannot be spliced to another length of shock tube by the traditional knotting or tying techniques. When connecting shock tube to other initiation devices such as the detonating cord trunkline, it is necessary that all joints be kept tight and at right angles to the trunkline. Otherwise cut-off can occur and result in a misfire. Special connectors are available for connecting shock tube to detonating cord. When connecting shock tube to another length of shock tube, propagation can only be assured if the correct type of connector is used.

Paragraph (c) addresses detonating cord blasting. Paraqraph (c)(1) is a new requirement to assure that a premature detonation in the blasthole will not transmit detonation to the entire spool of cord on the surface. Paragraphs (c)(2), (c)(3), and (c)(4), have been revised in this proposal to allow the mine operator flexibility in the shot design while addressing the hazards of misfires due to cut-offs. The requirements of these paragraphs retain the same degree of safety as the prior specific requirements of crossties at 200 feet intervals and tight connections at right angles to the trunkline. Paragraph (c)(5) is a new provision designed to protect the integrity of the cord and connections from damage by loading activities so that misfires will not occur.

Section 56/57.6502 Safety fuse

The proposed standard combines existing standards dealing with safety fuse into one standard. They are: §§ 56/57.6110, 56/57.6111, 56/57.6112, 56/57.6113, 56/57.6114, 56/57.6116, 56/57.6117 and 56/56.6116.

Paragraph (a) requires that the burning rate of each spool of safety fuse be checked and that users be made aware of the rate. Manufacturers acknowledge that burning rates vary as much as plus or minus ten percent. Additionally, during storage and handling, factors such as dampness and mishandling may create an evern greater variation in the burning rate. Blasters must know the burning rate of the fuse in use in order to properly time the individual shots and allow an opportunity to evacuate safely.

Paragraph (b) addresses the minimum burning time for safety fuse depending on the number of holes to be fired. It recognizes that the length of lighting time varies with the number of fuses to be lit, and provides time for the miner to evacuate before holes begin to detonate.

Paragraph (c) assures that the timing of safety fuse is considered so that all fuses are burning within the hole before the first blasthole detonates. Failure to take this precaution could result in undetonated holes, leaving unwanted explosive material in the muckpile to be handled later.

Paragraph (d) includes a quality control measure to assure ease of lighting and consistency of the burning rate. When lighting multiples of safety fuse which have a specified burning rate, it becomes important that a minimum amount of time is taken to light each individual fuse. Smoking cannot be permitted in this area due to the spark sensitivity of the black powder train in the fuse.

Paragraphs (e) and (f) contain only editorial changes. The existing standards provides for effective connection betweeen the fuse and cap and prohibits lighting prior to placement.

Paragraph (g) specifies certain types of devices which shall not be used to light safety fuse. These devices may induce erratic burning rates, and may not provide reliable initiation of the fuse.

Paragraph (h) provides a safety factor during the critical fuse lighting operation. It addresses the need to provide sufficient evacuation time and reduces the possibility of some fuses being missed as the area becomes smoke-filled. On March 13, 1982, two miners were fatally injured when they attempted to light more fuses than time and the smoke-filled environment permitted. In addition, they were lighting their fuses with inappropriate devices which would be prohibited by paragraph (g). MSHA specifically solicits comments on the acceptability of further reducing the number of safety fuses that can be lit by individuals to ten. Above that number, the use of igniter cord would be required. The Agency also solicits comments on the frequency at which the buring rate of safety fuse should be posted.

Extraneous Electricity—Surface and Underground

Section 56/57.6600 Loading practices

Existing standard 56/57.6123 requires that loading be suspended if extraneous electricity is detected when using electrical detonators. The proposal substitutes the word "suspected" for "detected" to increase the margin of safety. Adopting the suggestion of a commenter, the proposal sets out a threshold level to determine the presence of stray current. The threshold is the level recommended by the IME and is accepted by the industry as a safe level of extraneous electricity for electric blasting. It is based upon the current required to detonate electric detonators.

The minimum firing current of detonators is approximately 0.25 amperes. The manufacturers have established that the maximum safe current flow through a detonator, without the potential for initiation, is one-fifth of the minimum firing current, or 0.05 amperes. The 1-ohm resistor specified in the test represents the same resistance as the electric detonator. One commenter stated that MSHA's draft proposal language which allowed no extraneous current is inappropriate and inconsistent with draft proposal language in standard 56/57.6402. MSHA agrees. The proposed language that stray current not exceed "0.05 amperes through a 1-ohm resistor," is consistent with proposed standard 56/57.6402.

Editorial changes have also been made. The term "extraneous electricity" includes both static electricity and stray current. The word "loading" replaces "charging" and the word "detonators" replaces "caps" for consistency.

Section 56/57.6601 Grounding

This proposal clarifies existing standard 56/57.6129, addressing the hazard of ground wires conducting extraneous electricity through the blasting circuit and into the blast area. It is important that electrical blasting circuits be isolated or insulated from any other electrical sources and not grounded, so that fault currents are not introduced into the blasting circuit.

MSHA adopts a commenter's suggestion to broaden the existing language. The phrase "including powerline sources when used" clarifies that all methods of electric initiation are covered. The standard also has been edited for clarity.

Section 56/57.6602 Static electricity dissipation during loading

This proposal addresses the build-up of static electricity during pneumatic loading or dropping of explosive materials into a blasthole. It expands the scope of existing standards 56/57.6193; 56/57.6194; 56/57.6195; and 56/57/6196, which explicity cover "blasting agents", to address all explosive material.

The proposal requires that an evaluation of potential static electricity hazards be made and that the hazard be eliminated before loading begins. It also prohibits the use of wire-countered hoses and plastic tube hole liners where their use could create the hazard of unwanted current flow.

The proposal also contains requirements for loading equipment used in pneumatic placement of explosive material. Loading hoses must be semi-conductive so that static electricity generated during the loading process is harmlessly dissipated. The hose must, however, provide sufficient resistence to prevent stray current from reaching the detonators which could result in a premature detonation. The loading vessel and its component parts must be bonded and grounded to complete the flow path for static electricity to ground and to prevent the vessel from serving as a storage capacitor for the generated static electricity.

The draft proposal contained specifications for loading hose which were derived from the NFPA Code No. 495. Manufacturers specify differing amounts and tolerances for resistance of the hose depending upon the mining environment. The proposal contains language which will assure that the characteristics of the hose will be appropriate for the conditions present and will provide protection against premature detonation.

Some commenters acknowledged the hazard of using plastic hole liners, but suggested that their restriction is appropriate only when electric detonators are used. The agency concurs and the proposal includes this revision. Commenters also requested clarification that plastic bags containing stemming and explosive materials would not be covered by this standard. These objects are not considered to be plastic tube hole liners and would be exempt from the provisions of the standard.

Section 56/57.6603 Air gap

No change has been made to existing standard 56/57.6130. The standard provides for an air gap to reduce the potential for extraneous electricity bridging the distance between blasting circuits and electric power sources.

Several commenters objected to the 15-foot air gap separation and contended that there was no electrical criteria to support it. These commenters argued that a 5-foot air gap provided a suitable measure of protection. However, they supplied no electrical criteria in support of this distance. Commenters further contended that the size of underground mine openings are not large enough to permit a 15-foot separation space and that the MSHA standard should be made consistent with the OSHA 5-foot air gap standard for underground construction.

The OSHA standard is based on ANSI document A–10–7–1970. The MSHA 15-foot air gap is based upon more recent recommendations of the manufacturers of explosive material used in these metal and nonmetal mines, and the industry consensus standards as contained in National Safety Council Data Sheet 1–644–74. It also takes into account the high amperages generated by lightning strikes and the fact that lightning can reach the blast site in metal and nonmetal mines through many paths, such as transmission lines, water lines, compressed air lines, conductive ore bodies and rails. The agency cannot perceive of an underground environment where the 15-foot gap could not be achieved, either from the width of the opening or the length of the drift.

Section 56.6604 and 57.6604 Precautions during storms

This proposal divides existing standard 56/57.6124 into two standards, §§ 56.6604 and 57.6604. It broadens the scope of the existing surface blasting standard to require the evacuation of personnel when an electrical storm is approaching, regardless of the type of initiation systems being used. MSHA is considering requiring evacuation when the storm is within five miles of the site and specifically solicits comments on the appropriateness of this provision. It also revises the language applicable to underground mines to address those situations where lightning strikes on the surface can travel underground and create a hazard. For surface blasting, the NFPA document 495 7–1.15(c), 1985 and manufacturers of explosive material agree that a direct lightning strike on any type of initiation system can result

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in detonation. Agency statistics indicate that premature detonations have been initiated by lightning in underground mines when paths such as air lines, water lines, rails, and conductive ore bodies are present. Each mine operator would evaluate his underground entrances and ore body to determine whether a path is provided for lightning to travel to a blasting area.

The proposal would require that a determination be made that an electrical storm is in progress and is indeed approaching the blast area before evacuation of the blast area must occur. Some commenters suggested that MSHA adopt the Arizona Code language for determining when persons should evacuate a blast area during the approach of a storm. The Arizona Code uses the phrase "during the ominous approach and progress" of a storm. These commenters contend that the approach of a storm may be hours away and evacuation may not yet be necessary. However, the proposal does not incorporate the term "ominous" since the term may be construed to mean "arrival" of the storm. Recent fatalities resulting from premature detonations attributable to lightning strikes indicate that the danger can exist well before a storm may be considered ominous to those affected. In addition to lightning, the atmosphere can also build up dangerous charges of static electricity at distances far removed from the storm center.

The proposal also incorporates suggestions of commenters to include language calling for the withdrawal of persons "to a safe location." As stated by one commenter, a safe location would provide protection against both explosive and lightning hazards.

Section 56/57.6605 Isolation of blasting circuits

Existing standard 56/57.6162 deals with the need to isolate the blasting circuits from sources of extraneous electricity. It also addresses the force of the blast that can propel firing lines into contact with overhead powerlines. Coverage is expanded to underground as well as surface applications since the same safety principles are applicable underground. Overhead powerlines include trolley lines. For clarity, MSHA has adopted the suggestions of two commenters to include the language "stray or static" electricity instead of "extraneous" electricity and "contact between firing lines and overhead powerlines."

Equipment/Tools—Surface and Underground

Section 56/57.6700 Nonsparking tools

Proposed standard 56/57.6700 combines and editorially revises existing standards 56/57.6099 and 56/57.6134 dealing with the use of nonsparking tools when preparing packaged explosive materials for use. Some explosive materials contain spark-sensitive and potentially spark-generating ingredients. The proposal should reduce the likelihood that sparks would be generated by requiring that nonsparking tools be used for punching holes in cartridges.

Existing standard 56/57.6134 deals with the use of nonsparking implements to open containers. The agency considered deleting the standard if explosive material could no longer be found packaged in metal containers and if nonmetallic containers in use had no metallic fasteners which could contribute to the generation of a spark. Upon review, however, it was recognized that black powder is presently shipped in metal containers and many metallic fasteners are used in the packaging of explosive material. In view of these packaging practices and the possibility that a tool used to open a cartridge of explosive material could puncture the contents, the proposal also requires that nonsparking tools be used for opening containers of explosive material and for punching holes in explosives cartridges.

Section 56/57.6701 Tamping and loading pole requirements

Proposed standard 56/57.6701 clarifies existing standard 56/57.6100 and affirmatively responds to commenters' requests to provide language allowing material other than wood to be used for tamping poles. The draft proposal permitted the use of products other than wood for tamping and loading poles. It specified, however, the electrical resistance criteria for these alternative products. Although commenters were in general agreement with the standard and its intent, some commenters observed that the resistance requirements may not be achievable, even in wooden poles, where a wet environment is encountered. Manufacturing requirements for resistive tamping and loading poles specify an electrical resistance of more than 5000 ohms per foot and less than 3 meg ohms per foot. The proposal contains no reference to these specifications but rather requires that poles be nonconductive and nonsparking and that couplings be nonsparking. The agency specifically solicits additional comments on the potential for generating static electricity while tamping explosive material with a non-wooden pole.

Maintenance—Surface and Underground

Section 56/57.6800 Storage facilities

This proposed standard describes precautions to be taken when an explosive material storage facility is repaired. Existing standard 56/57.6012 requires removal of material and cleaning for all interior repairs. The proposal requires removal and cleaning only if a spark or flame could be generated.

The existing standard also requires material removal to a "safe distance" and requires that the material be "properly guarded." The proposal requires removal of all explosive material to a distance of 50 feet. Repairs which generate sparks are generally of a welding or cutting nature. In these instances, the hot sparks are propelled outward from the work site. A minimum of 50 feet, as recommended by manufacturers, is needed for safety.

"Monitored" has been substituted for "properly guarded" to allow the mine operator latitude for security measures. In most instances, the workers performing the repairs would do the monitoring.

Section 56/57.6801 Vehicles

This proposal editorially revises existing standard 56/57.6045 and incorporates commenters' language substituting "explosive materials" for "explosives or detonators" and "into" for "to". That standard prohibits vehicles containing explosive material from being taken into a repair garage or shop, where ignition sources are present.

Section 56/57.6802 Bulk delivery vehicles

This new standard addresses the detonation hazard created when heat is applied to equipment on bulk delivery vehicles which have contained explosive material. The new venting requirement for hollow shafts is derived from the National Fire Protection Code 495, 1985 edition, to provide for the escape of gases which could be generated if even minimal amounts of residue remain inside the shaft when heat is applied.

Section 56/57.6803 Blasting lines

This proposed standard adds a requirement to existing standard 56/57.6122 which addresses the quality of permanent blasting lines. The proposal requires that not only permanent blasting lines but "all" blasting lines be insulated, physically separated from pipelines, power cables and other conductors, and kept in good repair. This minimizes the risk of pre-ignition and reduces the possibility of misfires.

General Requirements—Surface and Underground

Section 56/57.6900 Damaged or deteriorated explosive material

This proposal revises existing standard 56/57.6092, dealing with disposal of defective explosives. Delay detonators that are at least five years old cannot be used or stored because the delay element becomes erratic and may cause misfires or out-of-sequence firing. MSHA's preproposal draft would have required that damaged or deteriorated explosive material be disposed of "only on the surface". Commenters objected to this change because it would introduce additional hazards entailed in the handling and transporting of damaged or deteriorated explosives to the surface for removal. MSHA agrees and retains the existing requirement for safe disposal of these explosives. The proposal makes editorial changes to the existing standard.

Section 56/57.6901 Black powder

The proposal combines and editorially revises existing standards 56/57.6136 and 56/57.6137 and adds the requirement that containers of black powder be constructed to be nonsparking. Black powder is presently used in the metal and nonmetal mining industry as the powder train in safety fuse and in bulk form in dimension stone mining. This standard addresses bulk use. Black powder when used in bulk form is extremely spark and heat sensitive. For this reason, black powder must be handled with extreme caution. Spills, which could occur any time the bulk material is handled, must be especially avoided in the vicinity of a magazine. Vehicular and foot traffic in this area while loading and unloading magazines could spread this substance over a wider area and expose it to heat sources such as engine manifolds and catalytic converters. For this reason, MSHA proposes to retain the existing requirement that black powder containers shall not be opened within 50 feet of any magazine. The proposed standard also retains existing provisions that prohibit the opening of containers of black powder within 50 feet of sources of open flame or sparks because the material is so spark sensitive. These provisions are consistent with other proposed standards that require separation of ignition sources from explosive material by 50 feet.

The nonsparking container requirement is intended to prevent the practice of transferring black powder into small metal cans before loading. Manufacturers often supply black powder in metal containers. These containers, however, are coated with a nonsparking material and their continued use will be accepted.

The proposal would prohibit holes from being reloaded for at least 12 hours when the blastholes have failed to break as planned due to the potential hazard of residual heat from the initial blast.

Section 56/57.6902 Hot holes

Proposed standard 56/57.6902 deals with placement of explosive materials in holes where heat could cause premature detonation. It revises existing standard 56/57.6138 for clarity, and the term "explosive material" replaces the phrase "explosives or blasting agents" for consistency. The temperature of holes suspected of being hot should be measured before loading. Explosive material cannot be safely loaded into holes having a temperature above 150° F. These temperatures are often encountered where explosives have been used to enlarge or "spring" the holes, or when blasting near fires or other hot areas such as kilns. Ammonium nitrate-fuel oil blasting agents, or blasting materials reacting with sulfide ores may also generate high temperatures.

Section 56/57.6903 Burning explosive material

Existing standard 56/57.6161 addresses actions to be taken with burning explosives at the blast site. The proposal broadens the scope of the existing standard. It expands the "surface only" application of the standard to include underground areas because burning explosives can occur anywhere blasting is performed. Incomplete detonation in a blasthole can lead to the slow burning of explosives in the hole. The IME recommended that these locations not be approached for at least one hour after the apparent burning has stopped. MSHA agrees and has incorporated this language into the standard. Editorial changes have been made to the standard.

Section 56/57.6904 Smoking, open flame restriction

Existing standard 56/57.6250 which prohibits smoking and open flames near explosive materials is editorially changed for clarity.

General Requirements—Underground Only

Section 57.6960 Mixing of explosive material

Existing standard 57.6220 prohibits the mixing of ammonium nitrate-fuel oil blasting agents underground. The draft proposal would have prohibited the underground mixing of all blasting agents. Commenters objected, stating that underground mixing of blasting agents would actually promote safety when done properly. One commenter pointed out that hazards associated with mixing and handling of ammonium nitrate-fuel oil included the potential build-up of static electricity and fine dust upon handling and processing. As ammonium nitrate is crushed finer and finer, it becomes more and more sensitive to many stimuli, such as sparks, friction, impact and shock. The commenter indicated that these hazards do not exist or are greatly reduced when mixing slurries or emulsions. MSHA is proposing to allow bulk mixing underground to produce explosive material in the form of slurry or emulsions but only under conditions which minimize the possibility of heat build-up, fire and sparks. The agency specifically seeks comments relating to the hazards associated with bulk mixing underground, the need to restrict the location of these mixing facilities and related storage facilities, the need to indicate the location of all mixing and explosive material storage facilities on the mine escape and evacuation maps or the ventilation plans, and the appropriateness of the proposed standard.

H. Derivation Table

The following derivation table lists: (1) The number of the proposed standard, and (2) the number of the existing standard. Standards that uniformly appear in 30 CFR Parts 56 and 57 are referred to in this table as 56/57.

DERIVATION TABLE

Proposed Number	Existing Number
56/57.6100	56/57.6002 and 56/57.6008
56/57.6101	56/57.6005
56/57.6102	56/57.6007 and 56/57.6011
56/57.6130	56/57.6001
56/57.6 and 57.6131	56/57.6020
56/57.6132	56/57.6020
56/57.6133	56/57.6159
57.6160	New
57.6161	57.6027, 57.6029 and 57.6030
56/57.6200	56/57.6048
56/57.6201	56/57.6040

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DERIVATION TABLE—Continued

Proposed Number	Existing Number
56/57.6202	56/57.6042, 56/57.6043, 56/57.6044, 56/57.6047, 56/57.6050, 57.6053, 56/57.6065, 57.6077 and 56/57.6200
56/57.6203	56/57.6041 and 56/57.6051
56.6204 and 57.6204	56/57.6054, 57.6075 and 57.6076
56/57.6205	56/57.6056 and 56/57.6057
56/57.6300	56/57.6090 and 56/57.6091
56/57.6301	56/57.6093
56/57.6302	56/57.6096
56/57.6303	56/57.6097 and 56/57.6098
56/57.6304	56/57.6101
56/57.6305	56/57.6102
56/57.6306	56/57.6094, 56/57.6160, 57.6175, and 57.6182
56/57.6307	56/57.6142
56/57.6308	New
56/57.6309	New
56/57.6310	56/57.6104 and 56/57.6105
56/57.6311	56/57.6106, 56/57.6168 and 57.6177
56/57.6312	57.6141
56/57.6313	56/57.6103
56/57.6400	56/57.6119
56/57.6401	56/57.6120
56/57.6402	56/57.6126
56/57.6403	56/57.6125
56/57.6404	56/57.6127
56/57.6405	56/57.6128 and 56/57.6131
56/57.6406	56/57.6133
56.6407 and 57.6407	56/57.6121
56/57.6500	56/57.6109
56/57.6501	56/57.6115, 56/57.6163, and 56/57.6164
56/57.6502	56/57.6110, 56/57.6111, 56/57.6112, 56/57.6113, 56/57.6114, 56/57.6116, 56/57.6117, and 56/57.6118
56/57.6600	56/57.6123
56/57.6601	56/57.6129
56/57.6602	56/57.6193, 56/57.6194, 56/57.6195, and 56/57.6198
56/57.6603	56/57.6130
56.6604 and 57.6604	56/57.6124
56/57.6605	56/57.6162
56/57.6700	56/57.6099 and 56/57.6134
56/57.6701	56/57.6100
56/57.6800	56/57.6012
56/57.6801	56/57.6045
56/57.6802	New
56/57.6803	56/57.6122
56/57.6900	56/57.6092
56/57.6901	56/57.6136 and 56/57.6137
56/57.6902	56/57.6138
56/57.6903	56/57.6161
56/57.6904	56/57.6250
57.6960	57.6220
56/57.7055	56/57.6107
56/57.7051	56/57.6135

I. Distribution Table

For the convenience of the reader, the following distribution table has been added as a cross-reference guide. Standards that uniformly appear in 30 CFR Parts 56 and 57 are referred to in this table as 56/57.

DISTRIBUTION TABLE

Existing Number	Proposed Number
56/57.6001	57/57.6130
56/57.6002	56/57.6100
56/57.6005	56/57.6101
56/57.6007	56/57.6102
56/57.6008	56/57.6100
56/57.6011	56/57.6102
56/57.6012	56/57.6800
56/57.6020	56.6131, 57.6131 and 56/57.6132
57.6027	57.6161
57.6029	57.6161
57.6030	57.6161
56/57.6040	56/57.6201
56/57.6041	56/57.6203
56/57.6042	56/57.6202
56/57.6043	56/57.6202
56/57.6044	56/57.6202
56/57.6045	56/57.6801
56/57.6046	Removed
56/57.6047	56/57.6202
56/57.6048	56/57.6200
56/57.6050	56/57.6202
56/57.6051	56/57.6203
56/57.6053	56/57.6202
56/57.6054	56.6204 and 57.6204
56/57.6056	56/57.6205
56/57.6057	56/57.6205
56/57.6065	56.6202
57.6075	56.6204 and 57.6204
57.6076	56.6204 and 57.6204
57.6077	56/57.6202
56/57.6090	56/57.6300
56/57.6091	56/57.6300
56/57.6092	56/57.6900
56/57.6093	56/57.6301
56/57.6094	56/57.6306
56/57.6096	56/57.6302
56/57.6097	56/57.6303
56/57.6098	56/57.6303
56/57.6099	56/57.6700
56/57.6100	56/57.6701
56/57.6101	56/57.6304
56/57.6102	56/57.6305
56/57.6103	56/57.6313
56/57.6104	56/57.6310
56/57.6105	56/57.6310
56/57.6106	56/57.6311
56/57.6107	Transferred to Subpart F, 56/57.7055
56/57.6108	Removed
56/57.6109	56/57.6500
56/57.6110	56/57.6502
56/57.6111	56/57.6502
56/57.6112	56/57.6502
56/57.6113	56/57.6502
56/57.6114	56/57.6502
56/57.6115	56/57.6501
56/57.6116	56/57.6502
56/57.6117	56/57.6502
56/57.6118	56/57.6502
56/57.6119	56/57.6400
56/57.6120	56/57.6401
56/57.6121	56.6407 and 57.6407
56/57.6122	56/57.6803
56/57.6123	56/57.6600
56/57.6124	56.6604 and 57.6604
56/57.6125	56/57.6403
56/57.6126	56/57.6402
56/57.6127	56/57.6404

DISTRIBUTION TABLE—Continued

Existing Number	Proposed Number
56/57.6128	56/57.6405
56/57.6129	56/57.6601
56/57.6130	56/57.6603
56/57.6131	56/57.6405
56/57.6132	Removed
56/57.6133	56/57.6406
56/57.6134	56/57.6700
56/57.6135	Transferred to Subpart F, 56/57.7056
56/57.6136	56/57.6901
56/57.6137	56/57.6901
56/57.6138	56/57.6902
56/57.6139	Removed
56/57.6140	Removed
57.6141	56/57.6312
56/57.6142	56/57.6307
56/57.6159	56/57.6133
56/57.6160	56/57.6306
56/57.6161	56/57.6903
56/57.6162	56/57.6605
56/57.6163	56/57.6501
56/57.6164	56/57.6501
56/57.6168	56/57.6311
57.6175	56/57.6306
57.6177	56/57.6311
57.6182	57.6306
56/57.6193	56/57.6602
56/57.6194	56/57.6602
56/57.6195	56/57.6602
56/57.6198	56/57.6602
57.6200	56/57.6202
57.6220	56/57.6960
56/57.6250	66/57.6904

III. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an initial analysis to identify potential costs and benefits associated with the proposed changes to its explosives standards for metal and nonmetal mines. The Agency has incorporated this analysis into the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, summarized below, MSHA has determined that the proposed rule would not result in major cost increases nor have an effect of $100,000,000 or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, whereever possible, compliance alternatives that minimize an adverse impact on small business when developing regulatory proposals. This proposed rule would introduce alternative compliance methods to the existing regulations that would directly benefit small mining operations. In addition, the proposals would clarify compliance responsibilities and adopt performance-oriented standards when possible.

In the following summary of the Initial Regulatory Flexibility Analysis, MSHA has compared the costs associated with the proposed requirements to the costs associated with the existing requirements. MSHA has also compared the benefits associated with the proposed requirements to the benefits associated with the existing requirements. A copy of the full analysis is available upon request.

MSHA estimates that the total annual and annualized cost of complying with the existing rule is $1.2 million and of the proposed rule is $1.3 million. The total annual and annualized incremental cost for complying with the proposed rule is $148,000.

MSHA expects that the proposed rule will result in reduced risk to employee safety. Full compliance with the proposed standards may potentially prevent as many as 3 deaths and 24 injuries from occurring annually.

For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. The proposed rule affects about 4,600 metal and nonmetal mining operations under MSHA jurisdiction that use explosive material, of which about 3,500 are small business entities. Almost 25,000 of 108,000 affected employees work at small mining operations.

The existing rule will result in annual and annualized costs of approximately $280,000 for small mines. The proposed rule will cost approximately $364,000 annually. Full compliance with the proposed rule may potentially prevent as many as 1.1 fewer deaths and 8.0 fewer injuries annually at small operations.

Little or no measurable economic effect is expected after this proposed rule is promulgated. The Agency specifically solicits comments and data on how the proposed regulations would impact on the mining industry.

IV. Paperwork Reduction Act

The proposed rule contains an information collection paperwork requirement in § 56/57.6502. This paperwork requirement has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provision should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSHA.

The respondents in the paperwork provision would be mine operators. The following public hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing the review of collection information. In each instance, the resultant information collection would be used by MSHA to assess compliance with the proposed requirement.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Patricia W. Silvey; director, Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower # 3; 4015 Wilson Boulevard, Arlington, FA 22203 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health, Metal and nonmetal mining, Explosives.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Date: November 2, 1988.

It is proposed to amend Subparts E and F of Part 56, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations to read as follows:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

§ 56.6107 and 56.6135 [Redesignated as §§ 56.7055 and 56.7056 and Revised]

1. Redesignate and revise §§ 56.6107 as 56.7055 and § 56.6135 as § 56.7056 in Subpart F—Drilling and Rotary Jet Piercing.

2. Revise Subpart E to consist of §§ 56.6000 through 56.6904, as set forth below.

* * * * *

Subpart E—Explosives

Sec.

Use

56.6300 Control of blasting operations.
56.6301 Blasthole obstruction check.
56.6302 Explosive material protection.
56.6303 Initiation preparation.
56.6304 Primer protection.
56.6305 Unused explosive material.
56.6306 Loading and blasting.
56.6307 Drill stem loading.
56.6308 Initiation systems.
56.6309 Fuel oil requirements for ANFO.
56.6310 Misfire waiting period.
56.6311 Handling of misfires.
56.6312 Secondary blasting.
56.6313 Blast site security.

Electric Blasting

56.6400 Compatibility of electric detonators.
56.6401 Shunting.
56.6402 Deenergized circuits near detonators.
56.6403 Branch circuits.
56.6404 Positive separation of blasting circuits from power source.
56.6405 Firing devices.
56.6406 Duration of current flow.
56.6407 Circuit testing.

Nonelectric Blasting

56.6500 Damaged initiating material.
56.6501 Nonelectric systems.
56.6502 Safety fuse.

Extraneous Electricity

56.6600 Loading practices.
56.6601 Grounding.
56.6602 Static electricity dissipation during loading.
56.6603 Air gap.
56.6604 Precautions during storms.
56.6605 Isolation of blasting circuits.

Equipment tools

56.6700 Nonsparking tools.
56.6701 Tamping and loading pole requirements.

Maintenance

56.6800 Storage facilities.
56.6801 Vehicles.
56.6802 Bulk delivery vehicles.
56.6803 Blasting lines.

General Requirements

56.6900 Damaged or deteriorated explosive material.
56.6901 Black powder.
56.6902 Hot holes.
56.6903 Burning explosive material.
56.6904 Smoking, open flame restriction.

Appendix I for Subpart E—MSHA Tables of Distances

Storage

56.6000 Definitions.
56.6100 Separation of explosive material.
56.6101 Areas around storage facilities.
56.6102 Storage practices.
56.6130 Storage facilities.
56.6131 Location of storage facilities.
56.6132 Magazine requirements.
56.6133 Powder chests.

Transportation

56.6200 Delivery to storage or blast site areas.
56.6201 Separation of explosive material.
56.6202 Vehicles.
56.6203 Locomotives.
56.6204 Hoists.
56.6205 Conveying explosives by hand.

Authority: 30 U.S.C. 811.

Subpart E—Explosives

§ 56.6000 Definitions.

The following definitions apply in this subpart.

Attended. Presence of an individual or continuous monitoring to prevent unauthorized entry or access.

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Blast area. The area in which concussion (shock wave), flying material, or gases from an explosion may cause injury to persons. In determining the blast area, the following factors shall be considered:

(a) Geology or material to be blasted.

(b) Blast pattern.

(c) Burden, depth, diameter and angle of the holes.

(d) Blasting experience of the mine.

(e) Delay system, powder factor, and pounds per delay.

(f) Type and amount of explosive material.

(g) Type and amount of stemming.

Blast site. The area where explosive material is handled during loading, including the perimeter formed by the blast holes and 50 feet in all directions from loaded holes or holes to be loaded. The 50 foot requirement also applies in all directions along the full depth of the hole.

Blasting agent. Any substance classified as a blasting agent by the Department of Transportation in 49 CFR 173.114(a) (1986 compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Blasting switch. A switch used to connect a power source to a blasting circuit.

Detonating cord. A flexible cord containing a center core of high explosives and used to initiate other explosives.

Detonator. Any device containing a detonating charged used to initiate an explosive. These devices include blasting caps, electric or non-electric instantaneous or delay blasting caps, and delay connectors. The term "detonator" does not include detonating cord. Detonators may be either "Class A" detonators of "Class C" detonators, as classified by the Department of Transportation in 49 CFR Sections 173.53 and 173.100 (1986 compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Explosive. Any substance classified as an explosive by the Department of Transportation in 49 CFR Sections 173.53, 173.88 and 173.100 (1986 compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Explosive material. Explosives, blasting agents, and detonators.

Flash point. The minimum temperature at which sufficient vapor is released by a liquid to form a flammable vapor-air mixture near the surface of the liquid.

Igniter cord. A fuse that burns progressively along its length with an external flame at the zone of burning, used for lighting a series of safety fuses in a desired sequence.

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½ inch thick plywood,. ½ inch thick gypsum wallboard, ⅛ inch thick low carbon steel and ¼ inch thick plywood, bonded together in that order.

Loading. Placing explosive material either in a blast hole or against the material to be blased.

Misfire. The complete or partial failure of explosive material to detonate as planned. The term is also used to describe the explosive material itself that has failed to detonate.

Multipurpose dry-chemical fire extinguisher. An extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

Safety switch. A switch that provides shunt protection in blasting circuits between the blasting switch and the blast site.

Slurry. An explosive material containing substantial portions of water, such as a water gel or emulsion.

Storage

§ 56.6100 Separation of explosive material.

(a) Detonators shall not be stored in the same magazine with other explosive material; and

(b) Blasting agents shall be separated from explosives, safety fuse, and detonating cord to prevent contamination.

§ 56.6101 Areas around storage facilities.

(a) Areas surrounding storage facilities for explosive material shall be clear of rubbish, brush, dry grass, and trees for 25 feet in all directions. However, live trees 10 feet or taller need not be removed.

(b) Combustibles shall not be stored or allowed to accumulate within 50 feet of explosive material. Combustible liquids shall be stored in a manner that assures drainage will occur away from the explosive material storage facility in case of tank rupture.

§ 56.6102 Storage practices.

Explosive material shall be—

(a) Stored in a manner to facilitate use of oldest stocks first;

(b) Stored according to brand and grade in such a manner as to facilitate identification; and

(c) Stacked in a stable manner but not more than eight (8) feet high.

Explosives shall be stored in closed nonconductive containers except that nonelectric detonating devices may be stored on nonconductive racks.

§ 56.6130 Storage facilities.

(a) Detonators and explosives shall be stored in magazines;

(b) Packaged blasting agents shall be stored in a magazine or other facility which is ventilated, weather-resistant, and locked or attended. Facilities other than magazines used to store blasting agents shall contain only blasting agents;

(c) Bulk blasting agents shall be stored in weather-resistant bins or tanks which are locked, attended, or otherwise inaccessible to unauthorized entry; and

(d) Facilities, bins or tanks shall be posted with warning signs shall indicate the contents and are visible from each approach.

§ 56.6131 Location of storage facilities.

Storage facilities shall be—

(a) Located in accordance with Appendix I for Subpart E—MSHA Tables of Distances. However, where there is not sufficient area at the mine site to allow compliance with Appendix I, storage facilities shall be located so that the forces generated by a storage facility explosion will not create a hazard to occupants in mine buildings and will not damage dams or electric substations; and

(b) Detached structures located outside the blast area and a sufficient distance from powerlines so that the powerlines, if damaged, would not contact the magazines.

§ 56.6132 Magazine requirements.

Magazines shall be—

(a) Structurally sound;

(b) Noncombustible, or covered with fire-resistant material;

(c) Bullet resistant;

(d) Equipped with electrical bonding connections between all conductive portions of a metal magazine so the entire structure is at the same electrical potential. Suitable electrical bonding methods include welding, riveting or the use of securely tightened bolts where individual metal portions are joined. Conductive portions of nonmetal magazines shall be grounded;

(e) Made of nonsparking materials on the inside;

(f) Ventilated to control dampness and excessive heating within the magazine;

(g) Posted with warning signs that indicate the contents and are visible from each approach, so located that a bullet passing through any of the signs will not strike the magazine;

(h) Kept clean and dry inside;

(i) Unlighted or lighted by devices that are specifically designed for use in magazines and which do not create a fire or explosion hazard. All switches and outlets shall be located on the outside;

(j) Unheated, or heated only with devices that do not create a fire or explosion hazard;

(k) Locked when unattended; and

(l) Used exclusively for the storage of explosive materials except for essential nonsparking equipment used for the operation of the magazine.

§ 56.6133 Powder chests.

(a) Powder chests (day boxes) shall be—

(1) Structurally sound, weather-resistant, equiped with a lid or cover, and with only nonsparking material on the inside;

(2) Posted with warning signs that indicate the contents and are visible from each approach;

(3) Located out of the blast area once loading has been completed;

(4) Locked or attended when containing explosive material;

(5) Emptied at the end of each shift with the contents returned to a magazine or other storage facility, or attended.

(b) All detonators shall be kept in separate chests from explosives or blasting agents, except that Class C detonators may be placed in the same powder chest with explosives or blasting agents if separated by 4-inches of hardwood, laminated partition or equivalent.

Transportation

§ 56.6200 Delivery to storage or blast site areas.

Explosive material shall be transported without avoidable delay to the storage area or blast site.

§ 56.6201 Separation of explosive material.

(a) Class A detonators, and Class C detonators in quantities of more than 1000, shall not be transported in a vehicle or conveyance with explosives for blasting agents unless the detonators are maintained in the original packaging as shipped from the manufacturer and separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition or equivalent.

(b) Class C detonators may be transported in quantities up to 1000 with explosives or blasting agents. However, such detonators shall be kept in closed containers and separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition or equivalent. The hardwood or laminated partition shall be fastened to the vehicle or conveyance.

§ 56.6202 Vehicles.

(a) Vehicles containing explosive material shall be—

(1) Structurally sound and well-maintained;

(2) Equipped with sides and enclosures higher than the explosive material being transported or have the explosive material secured to a nonconductive pallet;

(3) Equipped with a cargo space which shall contain the explosive material. Passenger areas shall not be considered cargo space;

(4) Equipped with at least two multipurpose dry-chemical fire extinguishers or one such extinguisher and an automatic fire suppression system;

(5) Vented except when transporting in bulk;

(6) Posted with warning signs that indicate the contents and are visible from each approach;

(7) Occupied only by persons necessary for handling the explosive material;

(8) Attended, except when parked at the blast site and loading is in progress; and

(9) Secured while parked by having—

(i) The brakes set;

(ii) The wheels chocked if movement could occur; and

(iii) The engine shut off unless powering a device being used in the loading operation.

(b) Vehicles containing explosives shall have—

(1) No sparking material exposed in the cargo space; and

(2) Only properly secured nonsparking equipment shall be in the cargo space with the explosives.

(c) Vehicles used for dispensing bulk explosive material shall—

(1) Have no zinc or copper exposed in the cargo space; and

(2) Provide any enclosed screw-type conveyors with protection against internal pressure and frictional heat.

§ 56.6203 Locomotives.

Explosive material shall not be transported on a locomotive. When explosive material is hauled by trolley locomotive, covered, electrically insulated cars shall be used.

§ 56.6204 Hoists.

(a) Before explosive material is transported in hoist conveyances, the hoist operator shall be notified.

(b) Explosive material transported in hoist conveyances shall be placed within a structurally sound container. The manufacturer's container may be used if secured to a nonconductive pallet. When explosives are transported, they shall be secured so as not to contact any sparking material.

(c) No person shall be transported on a hoist conveyance or mantrip containing explosive materials.

§ 56.6205 Conveying explosives by hand.

Closed, nonconductive containers shall be used to carry explosives to and from blast sites. Separate containers shall be used for explosives and detonators.

§ 56.6300 Control of blasting operations.

(a) Only persons trained and experienced in the handling and use of explosive material shall direct blasting operations and related activities.

(b) Trainees and inexperienced persons shall work only in the immediate presence of persons trained and experienced in the handling and use of explosive material.

§ 56.6301 Blasthole obstruction check.

After blastholes are drilled, they shall be checked, and cleared of obstructions wherever possible, before loading.

§ 56.6302 Explosive material protection.

(a) Explosives and blasting agents shall be kept separated from detonators until loading begins; and

(b) Explosive material shall be protected from impact and temperatures in excess of 150 °F when taken to the blast site.

§ 56.6303 Initiation preparation.

(a) Primers shall be prepared with the detonator contained securely and completely within the explosive or contained securely and appropriately for its design in the tunnel or cap well;

(b) Primers shall be made up only at the time of use and as close to the blast site as conditions allow; and

(c) When using detonating cord to initiate another explosive, a connection shall be prepared with the detonating cord threaded through, attached securely to, or otherwise in contact with the explosive.

§ 56.6304 Primer protection.

(a) Tamping shall not be done directly on a primer.

(b) If cartridges of explosives or blasting agents exceed 4 inches in diameter, they shall not be dropped on the primer except where the blasthole is filled with or under water.

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§ 56.6305 Unused explosive material.

Unused explosive material shall be moved to a protected location as soon as loading operations are completed.

§ 56.6306 Loading and blasting.

(a) Once explosive material has reached the blast site, vehicles and equipment shall not be driven over explosive materials or initiating systems or otherwise contact them in a manner which could create a hazard;

(b) Once loading begins, only activity directly related to the blasting operation shall be permitted within the blast site;

(c) Loading shall be continuous except for emergency situations, shift changes, and idle shifts not to exceed 16 hours;

(d) When loading is suspended, the blast site shall be attended;

(e) In electric blasting prior to hook-up of the power source and in nonelectric blasting prior to the attachment to an initiating device, all persons shall be removed from the blast area except persons in a blasting shelter or other location that protects from concussion (shock wave), flying material, or gases.

(f) Upon completion of loading and connecting or circuits, firing of blasts shall occur as soon as possible.

(g) Before firing a blast—

(1) Ample warning shall be given to allow all persons to be evacuated;

(2) Clear exit routes shall be provided for persons firing the round; and

(3) All access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.

(h) No work shall resume in the blast area until a postblast examination has been conducted.

§ 56.6307 Drill stem loading.

Explosive material shall not be loaded into blastholes with drill stem equipment or other devices that could be extracted while containing explosive material. The use of loading hose, collar sleeves, or collar pipes is permitted.

§ 56.6308 Initiation systems.

Initiation systems shall be used in accordance with the manufacturer's instructions.

§ 56.6309 Fuel oil requirements for ANFO.

Liquid hydrocarbon fuels with flash points lower than that of No. 2 diesel oil (125 ° F) shall not be used to prepare ammonium nitrate-fuel oil. Waste oil, including crankcase oil, shall not be used.

§ 56.6310 Misfire waiting period.

When a misfire is suspected, persons shall not enter the blast area—

(a) For 30 minutes if safety fuse and blasting caps are used; or

(b) For 15 minutes if any other type detonators are used.

§ 56.6311 Handling of misfires.

(a) Faces and muck piles shall be examined for misfires after each blasting operation.

(b) Only work necessary to remove a misfire and protect the safety of miners engaged in the removal shall be permitted in the affected area until the misfire is disposed of in a safe manner.

(c) When a misfire cannot be disposed of safely, each approach to the area affected by the misfire shall be posted with a warning sign at a conspicuous location to prohibit entry, and the condition shall be reported immediately to mine management.

(d) All misfires occurring during the shift shall be reported to mine management not later than the end of the shift.

§ 56.6312 Secondary blasting.

Secondary blasts fired at the same time in the same work area shall be initiated from one source.

§ 56.6313 Blast site security.

Areas in which loaded holes are awaiting firing shall be attended, or barricaded and posted, or flagged against unauthorized entry.

Electric Blasting

§ 56.6400 Compatability of electric detonators.

All electric detonators to be fired in a round shall be from the same manufacturer and shall have similar electrical firing characteristics.

§ 56.6401 Shunting.

Except during testing—

(a) Electric detonators shall be dept shunted until connected to the blasting line or wired into a blasting round;

(b) Wired rounds shall be kept shunted until connected to the blasting line; and

(c) Blasting lines shall be kept shunted until immediately before blasting.

§ 56.6402 Deenergized circuits near detonators.

Electrical distribution circuits within 50 feet of electric detonators at the blast site shall be deenergized. However, such circuits need not be denergized between 25 to 50 feet of the electric detonators if stray current tests indicate a maximum stray current of less than 0.05 amperes through a one-ohm resistor as measured at the location of the electric detonators.

§ 56.6403 Branch circuits.

If electric blasting includes the use of branch circuits, each branch shall be equipped with a safety switch or equivalent method to isolate the circuits to be used. At least one safety switch or equivalent method of protection shall be located outside the blast area and shall be in the open position until persons are withdrawn.

§ 56.6404 Positive separation of blasting circuits from power source.

Except when closed to fire the blast, blasting switches shall be locked in the open position. Lead wires shall not be connected to the blasting switch until the shot is ready to be fired.

§ 56.6405 Firing devices.

(a) Power sources shall be capable of delivering sufficient current to energize all electric detonators to be fired with the type of circuits used. The use of storage or dry cell batteries is not permitted as a power source.

(b) Blasting machines shall be tested, repaired, and maintained in accordance with manufacturer's instructions.

(c) Only the blaster shall have the key or other control to an electrical firing device.

§ 56.6406 Duration of current flow.

If any part of a blast is connected in parallel and is to be initiated from powerlines or lighting circuits, the time of current flow shall be limited to a maximum of 25 milliseconds. This can be accomplished by incorporating an arcing control device in the blasting circuit or by interrupting the circuit with an explosive device attached to one or both lead lines and initiated by a 25 millisecond delay electric detonator.

§ 56.6407 Circuit testing.

A blasting galvanometer or other instrument designed for testing blasting circuits shall be used to test the following:

(a) Continuity of each electric detonator in the blasthole prior to stemming or connection to the blasting line;

(b) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line;

(c) Continuity of blasting lines prior to the connection of electric detonator series; and

(d) Total blasting circuit resistance prior to connection to the power source.

Nonelectric Blasting

§ 56.6500 Damaged initiating material.

Safety fuse, igniter cord, detonating cord, shock or gas tubing and similar material which is kinked, bent sharply, or damaged shall not be used. A visual check of the completed circuit shall be made to assure that the components are properly aligned and connected.

§ 56.6501 Nonelectric systems.

(a) When blasting with any nonelectric system, double trunklines or loop systems shall be used, except:

(1) When blasting with safety fuse and caps;

(2) When performing secondary blasting; or

(3) When in-the-hole delays are of sufficient duration to preclude cutoffs from the movement of ground.

(b) When the nonelectric blasting system utilizes shock tube—

(1) All connections with other initiation devices shall be secured in a manner which provides for uninterrupted propagation;

(2) Factory made units shall be used as assembled and shall not be cut; and

(3) Connections between blastholes shall not be made until immediately prior to clearing the blast area and connecting to the source of energy for firing the blast.

(c) When the nonelectric blasting system utilizes detonating cord—

(1) The line of detonating cord extending out of a blasthole shall be cut from the supply spool immediately after the attached explosive is correctly positioned in the hole;

(2) In multiple row blasts, the trunkline layout shall be designed so that the detonation can reach each blasthole from at least two directions;

(3) All connections shall be tight and kept at right angles to the trunkline;

(4) Detonators shall be attached securely to the side of detonating cord and pointed in the direction in which detonation is to proceed; and

(5) Connections between blastholes shall not be made until immediately prior to clearing the blast area.

(d) When the nonelectric blasting system utilizes gas tube, continuity of the circuit shall be tested prior to blasting.

§ 56.6502 Safety fuse.

(a) The burning rate of each spool of safety fuse to be used shall be measured, posted in locations which will be conspicuous to safety fuse users, and brought to the attention of all persons involved with the blasting operation.

(b) When firing with safety fuse ignited individually using handheld lighters, the safety fuse shall be of lengths which provide at least the minimum burning time for a particular size round as specified in the following table.

SAFETY FUSE—MINIMUM BURNING TIME

Number of holes in a round	Minimum burning time
1	2 minutes.[1]
2 to 5	2 minutes 40 seconds.
6 to 10	3 minutes 20 seconds.
11 to 15	5 minutes.

[1] For example, persons shall use at least 36-inch length of 40-second-per-foot safety fuse or at least a 48-inch length of 30-second-per-foot safety fuse to allow sufficient time to evacuate the area.

(c) Where flyrock might damage exposed safety fuse, the blast shall be timed so that all safety fuse are burning within the blastholes before any blasthole detonates.

(d) Fuse shall be cut and capped in dry locations posted with "No Smoking" signs.

(e) Blasting caps shall be crimped to fuse only with implements designed for that purpose.

(f) Safety fuse shall be ignited only after the primer and the explosive material are securely in place.

(g) Safety fuse shall be ignited only with devices designed for that purpose. Carbide lights, liquefied petroleum gas torches and cigarette lighters shall not be used to light safety fuse.

(h) At least two persons shall be present when lighting safety fuse, and no one shall light more than 15 individual fuses. If more than 15 holes per person are to be fired, electric blasting systems, igniter cord and connectors, or other nonelectric blasting systems shall be used.

Extraneous Electricity

§ 56.6600 Loading practices.

If extraneous electricity is suspected in an area where electric detonators are used, loading shall be suspended until tests determine that stray current does not exceed 0.05 amperes through a 1-ohm resister when measured at the location of the electric detonators. If greater levels of extraneous electricity are found, the source shall be determined and no loading shall take place until the condition is corrected.

§ 56.6601 Grounding.

Electric blasting circuits, including powerline sources when used, shall not be grounded.

§ 56.6602 Static electricity dissipation during loading.

When explosive material is loaded pneumatically or dropped into a blasthole in a manner that could generate static electricity—

(a) An evaluation of the potential static electricity hazard shall be made and any hazard shall be eliminated before loading begins;

(b) The loading hose shall be of a semiconductive type, have a total of not more than 2-megohms of resistance over its entire length and not less than 1,000-ohm of resistance per foot;

(c) Wire-countered hoses shall not be used;

(d) All conductive parts of the loading equipment shall be bonded and grounded. Grounds shall not be made to other potential sources of extraneous electricity; and

(e) Plastic tubes shall not be used as hole liners if the hole contains an electric detonator.

§ 56.6603 Air gap.

At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

§ 56.6604 Precautions during storms.

During the approach and progress of an electrical storm, all blasting operations shall be suspended and all persons withdrawn from the blast area or to a safe location.

§ 56.6605 Isolation of blasting circuits.

Lead wires and blasting lines shall not be strung across power conductors, pipelines and railroad tracks, and shall be protected from sources of stray or static electricity. Blasting circuits shall also be protected from any contact between firing lines and overhead powerlines which could result from the force of a blast.

Equipment/Tools

§ 56.6700 Nonsparking tools.

Only nonsparking tools shall be used to open containers of explosive material or to punch holes in explosive cartridges.

§ 56.6701 Tamping and loading pole requirements.

Tamping and loading poles shall be of wood or other nonconductive, nonsparking material. Couplings for poles shall be nonsparking.

Maintenance

§ 56.6800 Storage facilities.

When repair work which could produce a spark or flame is to be performed on a storage facility for explosive materials:

(a) The explosive material shall be moved to another facility, or moved at least 50 feet from the repair activity and monitored; and

(b) The facility shall be cleaned to prevent accidental detonation.

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§ 56.6801 Vehicles.

Vehicles containing explosive material shall not be taken into a repair garage or shop.

§ 56.6802 Bulk delivery vehicles.

No welding or cutting shall be performed on bulk delivery vehicles until the vehicles have been washed down and all explosive material has been removed. Before welding or cutting on a hollow shaft, the shaft shall be thoroughly cleaned inside and out and vented with a minimum ½ inch diameter opening to allow for sufficient ventilation.

§ 56.6803 Blasting lines.

Permanent blasting lines shall be properly supported. All blasting lines shall be insulated and kept in good repair.

General Requirements

§ 56.6900 Damaged or deteriorated explosive material.

Damaged or deteriorated explosive material shall be disposed of in a safe manner in accordance with the instructions of the manufacturer. Delay detonators at least five years old are considered deteriorated explosive material.

§ 56.6901 Black powder.

(a) Black powder shall be used for blasting only when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.

(b) Containers of black powder shall be—

(1) Nonsparking;

(2) Kept in a totally enclosed cargo space while being transported by a vehicle;

(3) Securely closed at all times, when—

(i) Within 50 feet of any magazine or open flame;

(ii) Within any building in which a fuel-fired or exposed-element electric heater is operating; or

(iii) In an area where electrical or incandescent-particle sparks could result in powder ignition; and

(4) Opened only when the powder is being transferred to a blasthole or another container and only in locations not listed in paragraph (b)(3) of this section.

(c) Black powder shall be transferred from containers only by pouring;

(d) Spills shall be cleaned up promptly with nonsparking equipment. Contaminated powder shall be put into a container of water to be disposed of promptly after the granules have disintegrated, or the spill area shall be promptly flushed with water until the granules have disintegrated completely;

(e) Misfires shall be disposed of by washing the stemming and powder charge from the blasthole, and removing and disposing of the initiator in accordance with the requirement for damaged explosives; and

(f) Holes shall not be reloaded for at least 12 hours when the blastholes have failed to break as planned.

§ 56.6902 Hot holes.

Where heat could cause premature detonation, explosive material shall not be loaded into drilled or sprung holes. Special precautions are required when blasting sulfide ores that react with explosive material or stemming in blastholes.

§ 56.6903 Burning explosive material.

If explosive material is suspected of burning at the blast site, all persons shall be evacuated from the endangered area and shall not return for at least one hour after the burning or suspected burning has stopped.

§ 56.6904 Smoking, open flame restriction.

(a) Smoking and use of open flames shall not be permitted within 50 feet of explosive material unless separated by permanent noncombustible barriers.

(b) This standard does not apply to devices designed to ignite safety fuse or to heating devices which do not create a fire or explosion hazard.

Appendix I for Subpart E—MSHA Tables of Distances

MSHA TABLE OF DISTANCES FOR SURFACE STORAGE OF EXPLOSIVE MATERIAL

Quantity of explosive material in pounds	Mine buildings, dams, and electrical substations		Distances in feet—Separation of magazines	
Over—Not over	Barricaded	Unbarricaded	Barricaded	Unbarricaded
2—5	70	140	6	12
5—10	90	180	8	16
10—20	110	220	10	20
20—30	125	250	11	22
30—40	140	280	12	24
40—50	150	300	14	28
50—75	170	340	15	30
75—100	190	380	16	32
100—125	200	400	18	36
125—150	215	430	19	38
150—200	235	470	21	42
200—250	255	510	23	46
250—300	270	540	24	48
300—400	295	590	27	54
400—500	320	640	29	58
500—600	340	680	31	62
600—700	355	710	32	64
700—800	375	750	33	66
800—900	390	780	35	70
900—1,000	400	800	36	72
1,000—1,200	425	850	39	78
1,200—1,400	450	900	41	82
1,400—1,600	470	940	43	86
1,600—1,800	490	980	44	88
1,800—2,000	505	1,010	45	90
2,000—2,500	545	1,090	49	98
2,500—3,000	580	1,160	52	104

MSHA TABLE OF DISTANCES FOR SURFACE STORAGE OF EXPLOSIVE MATERIAL—Continued

Quantity of explosive material in pounds	Mine buildings, dams, and electrical substations		Distances in feet—Separation of magazines	
Over—Not over	Barricaded	Unbarricaded	Barricaded	Unbarricaded
3,000—4,000	635	1,270	58	116
4,000—5,000	685	1,370	61	122
5,000—6,000	730	1,460	65	130
6,000—7,000	770	1,540	68	136
7,000—8,000	800	1,600	72	144
8,000—9,000	835	1,670	75	150
9,000—10,000	865	1,730	78	156
10,000—12,000	875	1,750	82	164
12,000—14,000	885	1,770	87	174
14,000—16,000	900	1,800	90	180
16,000—18,000	940	1,880	94	188
18,000—20,000	975	1,950	98	196
20,000—25,000	1,055	2,000	105	210
25,000—30,000	1,130	2,000	112	224
30,000—35,000	1,205	2,000	119	238
35,000—40,000	1,275	2,000	124	248
40,000—45,000	1,340	2,000	129	258
45,000—50,000	1,400	2,000	135	270
50,000—55,000	1,460	2,000	140	280
55,000—60,000	1,515	2,000	145	290
60,000—65,000	1,565	2,000	150	300
65,000—70,000	1,610	2,000	155	310
70,000—75,000	1,655	2,000	160	320
75,000—80,000	1,695	2,000	165	330
80,000—85,000	1,730	2,000	170	340
85,000—90,000	1,760	2,000	175	350
90,000—95,000	1,790	2,000	180	360
95,000—100,000	1,815	2,000	185	370
100,000—110,000	1,835	2,000	190	390
110,000—120,000	1,855	2,000	205	410
120,000—130,000	1,875	2,000	215	430
130,000—140,000	1,890	2,000	225	450
140,000—150,000	1,900	2,000	235	470
150,000—160,000	1,935	2,000	245	490
160,000—170,000	1,965	2,000	255	510
170,000—180,000	1,990	2,000	265	530
180,000—190,000	2,010	2,010	275	550
190,000—200,000	2,030	2,030	285	570
200,000—210,000	2,055	2,055	295	590
210,000—230,000	2,100	2,100	315	630
230,000—250,000	2,155	2,155	335	670
250,000—275,000	2,215	2,215	360	720
275,000—300,000	2,275	2,275	385	770

For purposes of this table, "barricaded" means that the storage facility containing explosive material is effectually screened by a natural or an artificial barricade consisting of a mound or revetted wall of earth of a minimum thickness of three feet.

For conversion to the metric system of measurement: 1 lb=0.454 kg; 1 ft=0.305 m; 1 in=2.54 cm

This table is derived from the IME "American Table of Distances", May 1983 edition

MSHA TABLE OF SEPARATION DISTANCES

Pounds of explosives or blasting agents	Storage facilities—Separation distances when barricaded		Minimum thickness of artificial barricades (in.)
Over—Not over	Ammonium nitrate	Blasting agents	
Not over 100	3	11	12
100—300	4	14	12
300—600	5	18	12
600—1,000	6	22	12
1,000—1,600	7	25	12
1,6000—2,000	8	29	12
2,000—3,000	9	32	15
3,000—4,000	10	36	15
4,000—6,000	11	40	15
6,000—8,000	12	43	20
8,000—10,000	13	47	20
10,000—12,000	14	50	20
12,000—16,000	15	54	25
16,000—20,000	16	58	25
20,000—25,000	18	65	25
25,000—30,000	19	68	30
30,000—35,000	20	72	30

MSHA TABLE OF SEPARATION DISTANCES—Continued

Pounds of explosives or blasting agents	Storage facilities—Separation distances when barricaded		Minimum thickness of artificial barricades (in.)
Over—Not over	Ammonium nitrate	Blasting agents	
35,000—40,000	21	76	30
40,000—45,000	22	79	35
45,000—50,000	23	83	35
50,000—55,000	24	86	35
55,000—60,000	25	90	35
60,000—70,000	26	94	40
70,000—80,000	28	101	40
80,000—90,000	30	108	40
90,000—100,000	32	115	40
100,000—120,000	34	122	50
120,000—140,000	37	133	50
140,000—160,000	40	144	50
160,000—180,000	44	158	50
180,000—200,000	48	173	50
200,000—220,000	52	187	60

MSHA TABLE OF SEPARATION DISTANCES—Continued

Pounds of explosives or blasting agents	Storage facilities—Separation distances when barricaded		Minimum thickness of artificial barricades (in.)
Over—Not over	Ammonium nitrate	Blasting agents	
220,000—250,000	56	202	60
250,000—275,000	60	216	60
275,000—300,000	64	230	60

For purposes of this table, "barricaded" means that the storage facility is effectually screened by a natural barricade or an artificial barricade consisting of a mound or revetted wall of earth.

When the explosives or blasting agents are not barricaded, the distances shown in this table shall be multiplied by six.

For conversion to the metric system of measurement: 1 lb=0.454 kg; 1 ft=.305 m; 1 in=2.54 cm.

This table is derived from NFPA 492—1976, published in National Fire Protection Association (NFPA) document 495, 1985 edition.

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Subpart F—Drilling and Rotary Jet Piercing

§ 56.7055 Intersecting holes.

Holes shall not be drilled where there is a danger of intersecting a misfired hole or a hole containing explosives, blasting agents or detonators.

§ 56.7056 Collaring in bootlegs.

Holes shall not be collared in bootlegs.

It is proposed to amend subparts E and F of Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations as follows:

PART 57—SAFETY AND HEALTH STANDARDS UNDERGROUND METAL AND NONMETAL MINES

§§ 57.6107 and 57.6135 [Redesignated as §§ 57.7055 and 57.7056 and revised]

1. Redesignate and revise §§ 57.6107 as 57.7055 and 57.6135 as 57.7056 in Subpart F—Drilling and Rotary Jet Piercing.

2. Revise Subpart E to consist of §§ 57.6000 through 57.6960, as set forth below.

Subpart E—Explosives

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Storage—Surface Only

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Storage—Underground Only

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57.6800 Storage facilities.
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57.6903 Burning explosive material.
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General Requirements—Underground Only

57.6960 Mixing of explosive material.

Appendix I for Subpart E—MSHA Tables of Distances

Authority: 30 U.S.C. 811.

Subpart E—Explosives

§ 57.6000 Definitions.

The following definitions apply in this subpart.

Attended. Presence of an individual or continuous monitoring to prevent unauthorized entry or access.

Blast area. The area in which concussion (shock wave), flying material, or gases from an explosion may cause injury to persons. In determining the blast area, the following factors shall be considered:

(a) Geology or material to be blasted.

(b) Blast pattern.

(c) Burden, depth, diameter and angle of the holes.

(d) Blasting experience of the mine.

(e) Delay system, powder factor, and pounds per delay.

(f) Type and amount of explosive material.

(g) Type and amount of stemming.

Blast site. The area where explosive material is handled during loading, including the perimeter formed by the blast holes and 50 feet in all directions from loaded holes or holes to be loaded. The 50 foot requirement also applies in all directions along the full depth of the hole. In underground mines, 15 feet of solid rib or pillar can be substituted for the 50 foot distance.

Blasting agent. Any substance classified as a blasting agent by the Department of Transportation in 49 CFR 173.114(a), (1986 Compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Blasting switch. A switch used to connect a power source to a blasting circuit.

Detonating cord. A flexible cord containing a center core of high explosives and used to initiate other explosives.

Detonator. Any device containing a detonating charge used to initiate an explosive. These devices include blasting caps, electric or non-electric instantaneous or delay blasting caps, and delay connectors. The term "detonator" does not include detonating cord. Detonators may be either "Class A" detonators or "Class C" detonators, as classified by the Department of Transportation in 49 CFR 173.53 and 173.100 (1986 Compilation). This document is available at any Metal and Nonmetal Safety and Health district office.

Explosive. Any substance classified as an explosive by the Department of Transportation in 49 CFR 173.53, 173.88 and 173.100 (1986 Compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Explosive material. Explosives, blasting agents, and detonators.

Flash point. The minimum temperature at which sufficient vapor is released by a liquid to form a flammable vapor-air mixture near the surface of the liquid.

Igniter cord. A fuse that burns progressively along its length with an external flame at the zone of burning, used for lighting a series of safety fuses in a desired sequence.

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½ inch thick plywood, ½ inch thick gypsum wallboard, ⅛ inch thick low carbon steel and ¼ inch thick plywood, bonded together in that order.

Loading. Placing explosive material either in a blast hole or against the material to be blasted.

Misfire. The complete or partial failure of explosive material to detonate as planned. The term is also used to describe the explosive material itself that has failed to detonate.

Multipurpose dry-chemical fire extinguisher. An extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

Safety switch. A switch that provides shunt protection in blasting circuits between the blasting switch and the blast site.

Slurry. An explosive material containing substantial portions of water, such as a water gel or emulsion.

Storage—Surface and Underground

§ 57.6100 Separation of explosive material.

(a) Detonators shall not be stored in the same magazine with other explosive material; and

(b) Blasting agents shall be separated from explosives, safety fuse, and detonating cord to prevent contamination.

§ 57.6101 Areas around storage facilities.

(a) Areas surrounding storage facilities for explosive material shall be clear of rubbish, brush, dry grass, and trees for 25 feet in all directions. However, live trees 10 feet or taller need not be removed.

(b) Combustibles shall not be stored or allowed to accumulate within 50 feet of explosive material. Combustible liquids shall be stored in a manner that assures drainage will occur away from the explosive material storage facility in case of tank rupture.

§ 57.6102 Storage practices.

Explosive material shall be—

(a) Stored in a manner to facilitate use of oldest stocks first;

(b) Stored according to brand and grade in such a manner as to facilitate identification; and

(c) Stacked in a stable manner but not more than eight (8) feet high.

Explosives shall be stored in closed nonconductive containers except that nonelectric detonating devices may be stored on nonconductive racks.

Storage—Surface Only

§ 57.6130 Storage facilities.

(a) Detonators and explosives shall be stored in magazines;

(b) Packaged blasting agents shall be stored in a magazine or other facility which is ventilated, weather-resistant, and locked or attended. Facilities other than magazines used to store blasting agents shall contain only blasting agents;

(c) Bulk blasting agents shall be stored in weather-resistant bins or tanks which are locked, attended, or otherwise inaccessible to unauthorized entry; and

(d) Facilities, bins or tanks shall be posted with warning signs that indicate the contents and are visible from each approach.

§ 57.6131 Location of storage facilities.

Storage facilities shall be—

(a) Located in accordance with Appendix I for Subpart E—MSHA Tables of Distances. However, where there is not sufficient area at the mine site to allow compliance with Appendix I, storage facilities shall be located so that the forces generated by a storage facility explosion will not create a hazard to occupants in mine buildings and will not damage mine openings, mine ventilation fans, dams or electric substations; and

(b) Detached structures located outside the blast area and a sufficient distance from powerlines so that the powerlines, if damaged, would not contact the magazines.

§ 57.6132 Magazine requirements.

Magazines shall be—

(a) Structurally sound;

(b) Noncombustible, or covered with fire-resistant material;

(c) Bullet resistant;

(d) Equipped with electrical bonding connections between all conductive portions of a metal magazine so the entire structure is at the same electrical potential. Suitable electrical bonding methods include welding, riveting or the use of securely tightened bolts where individual metal portions are joined. Conductive portions of nonmetal magazines shall be grounded;

(e) Made of nonsparking materials on the inside;

(f) Ventilated to control dampness and excessive heating within the magazine;

(g) Posted with warning signs that indicate the contents and are visible from each approach, so located that a bullet passing through any of the signs will not strike the magazine;

(h) Kept clean and dry inside;

(i) Unlighted or lighted by devices that are specifically designed for use in magazines and which do not create a fire or explosion hazard. All switches and outlets shall be located on the outside;

(j) Unheated, or heated only with devices that do not create a fire or explosion hazard;

(k) Locked when unattended; and

(l) Used exclusively for the storage of explosive materials except for essential nonsparking equipment used for the operation of the magazine.

§ 57.6133 Powder chests.

(a) Powder chests (day boxes) shall be—

(1) Structurally sound, weather-resistant, equipped with a lid or cover, and with only nonsparking material on the inside;

(2) Posted with warning signs that indicate the contents and are visible from each approach;

(3) Located out of the blast area once loading has been completed;

(4) Locked or attended when containing explosive material; and

(5) Emptied at the end of each shift with the contents returned to a magazine or other storage facility, or attended.

(b) All detonators shall be kept in separate chests from explosives or blasting agents, except that Class C detonators may be placed in the same powder chest with explosives or blasting agents if separated by 4-inches of hardwood, laminated partition or equivalent.

Storage—Underground Only

§ 57.6160 Main facilities

(a) Main facilities used to store explosive material underground shall be located—

(1) In stable or supported ground;

(2) So that a fire or explosion in the storage facilities will not prevent escape from the mine, or cause detonation of the contents of another storage facility;

(3) Out of the line of blasts, and protected from vehicular traffic, except that accessing the facility;

(4) At least 25 feet from track and haulageways, except those necessary to provide access to the facility;

(5) At least 200 feet from work places or shafts;

(6) At least 50 feet from electric substations;

(7) At least 25 feet from trolley wires;

(8) At least 25 feet from detonator storage facilities; and

(b) Main facilities used to store explosive material underground shall be—

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(1) Posted with warning signs that indicate the contents and are visible from each approach;

(2) Used exclusively for the storage of explosive material and associated nonsparking equipment;

(3) Clean and dry inside;

(4) Provided with unobstructed ventilation openings;

(5) Kept securely locked unless all access to the mine is either locked or attended;

(6) Unlighted, or lighted only with devices that do not create a fire or explosion hazard and which are specifically designed for use in magazines. All electrical switches and outlets shall be located outside the facility;

(7) Kept free of empty explosive material packaging; and

(8) Made of nonsparking material on the inside and equipped with doors or lids.

§ 57.6161 Auxiliary facilities.

(a) Auxiliary facilities used to store explosive material near work places shall be wooden box-type containers or facilities constructed to provide equivalent impact resistance and confinement.

(b) The auxiliary facilities shall be—

(1) Constructed of nonsparking material on the inside;

(2) Equipped with covers or doors;

(3) Clean and dry inside;

(4) Kept in repair;

(5) Located out of the line of blasts so they will not be subjected to damaging shock or flyrock;

(6) Identified with warning signs that indicate the contents and are visible from each approach;

(7) Located at least 15 feet from all haulageways and electrical equipment, or placed entirely within a recess in the rib used exclusively for explosive material;

(8) Filled with no more than a one-week supply of explosive material;

(9) Separated by at least 25 feet from other facilities used to store detonators; and

(10) Kept securely locked unless all access to the mine is either locked or attended.

Transportation—Surface and Underground

§ 57.6200 Delivery to storage or blast site areas.

Explosive material shall be transported without avoidable delay to the storage area or blast site.

§ 57.6201 Separation of explosive material.

(a) Class A detonators, and Class C detonators in quantities of more than 1000, shall not be transported in a vehicle or conveyance with explosives or blasting agents unless the detonators are maintained in the original packaging as shipped from the manufacturer and separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition or equivalent.

(b) Class C detonators may be transported in quantities up to 1000 with explosives or blasting agents. However, such detonators shall be kept in closed containers and separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition or equivalent. The hardwood or laminated partition shall be fastened to the vehicle or conveyance.

§ 57.6202 Vehicles.

(a) Vehicles containing explosive material shall be—

(1) Structurally sound and well-maintained;

(2) Equipped with sides and enclosures higher than the explosive material being transported or have the explosive material secured to a nonconductive pallet;

(3) Equipped with a cargo space which shall contain the explosive material. Passenger areas shall not be considered cargo space;

(4) Equipped with at least two multipurpose dry-chemical fire extinguishers or one such extinguisher and an automatic fire suppression system;

(5) Vented except when transporting in bulk;

(6) Posted with warning signs that indicate the contents and are visible from each approach;

(7) Occupied only by persons necessary for handling the explosive material;

(8) Attended, except when parked at the blast site and loading is in progress; and

(9) Secured while parked by having—

(i) The brakes set;

(ii) The wheels chocked if movement could occur; and

(iii) The engine shut off unless powering a device being used in the loading operation.

(b) Vehicles containing explosives shall have—

(1) No sparking material exposed in the cargo space; and

(2) Only properly secured nonsparking equipment in the cargo space with the explosives.

(c) Vehicles used for dispensing bulk explosive material shall—

(1) Have no zinc or copper exposed in the cargo space; and

(2) Provide any enclosed screw-type conveyors with protection against internal pressure and frictional heat.

§ 57.6203 Locomotives.

Explosive material shall not be transported on a locomotive. When explosive material is hauled by trolley locomotive, covered, electrically insulated care shall be used.

§ 57.6204 Hoists.

(a) Before explosive material is transported in hoist conveyances—

(1) The hoist operator shall be notified; and

(2) Hoisting in adjacent shaft compartments, except for empty conveyances or counterweights, shall be stopped until transportation of the explosive material is completed.

(b) Explosive material transported in hoist conveyances shall be placed within a structurally sound container. The manufacturer's container may be used if secured to a nonconductive pallet. When explosives are transported, they shall be secured so as not to contact any sparking material.

(c) No person shall be transported on a hoist conveyance or mantrip containing explosive materials.

§ 57.6205 Conveying explosives by hand.

Closed, nonconductive containers shall be used to carry explosives to and from blast sites. Separate containers shall be used for explosives and detonators.

Use—Surface And Underground

§ 57.6300 Control of blasting operations.

(a) Only persons trained and experienced in the handling and use of explosive material shall direct blasting operations and related activities.

(b) Trainees and inexperienced persons shall work only in the immediate presence of persons trained and experienced in the handling and use of explosive material.

§ 57.6301 Blasthole obstruction check.

After blastholes are drilled, they shall be checked, and cleared of obstructions wherever possible, before loading.

§57.6302 Explosive material protection.

(a) Explosives and blasting agents shall be kept separated from detonators until loading begins.

(b) Explosive material shall be protected from impact and temperatures

in excess of 150° F when taken to the blast site.

§ 57.6303 Initiation preparation.

(a) Primers shall be prepared with the detonator contained securely and completely within the explosive or contained securely and appropriately for its design in the tunnel or cup well;

(b) Primers shall be made only at the time of use and as close to the blast site as conditions allow; and

(c) When using detonating cord to initiate another explosive, a connection shall be prepared with the detonating cord threaded through, attached securely to, or otherwise in contact with the explosive.

§ 57.6304 Primer protection.

(a) Tamping shall not be done directly on a primer.

(b) If cartridges of explosives or blasting agents exceed 4 inches in diameter, they shall not be dropped on the primer except where the blasthole is filled with or under water.

§ 57.6305 Unused explosive material.

Unused explosive material shall be moved to a protected location as soon as loading operations are completed.

§ 57.6306 Loading and blasting.

(a) Once explosive material has reached the blast site, vehicles and equipment shall not be driven over explosive material or initiating systems or otherwise contact them in a manner which could create a hazard;

(b) Once loading begins, only activity directly related to the blasting operation shall be permitted within the blast site;

(c) Loading shall be continuous except for emergency situations, shift changes, and idle shifts not to exceed 16 hours;

(d) When loading is suspended, the blast site shall be attended;

(e) In electric blasting prior to hook-up of the power source and in nonelectric blasting prior to the attachment to an initiating device, all persons shall be removed from the blast area except persons in a blasting shelter or other location that protects from concussion (shock wave), flying material, or gases.

(f) Upon completion of loading and connecting of circuits, firing of blasts shall occur as soon as possible.

(g) Before firing a blast—

(1) Ample warning shall be given to allow all persons to be evacuated;

(2) Clear exit routes shall be provided for persons firing the round; and

(3) All access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.

(h) No work shall resume in the blast area until a post-blast examination has been conducted.

§ 57.6307 Drill stem loading.

Explosive material shall not be loaded into blastholes with drill stem equipment or other devices that could be extracted while containing explosive material. The use of loading hose, collar sleeves, or collar pipes is permitted.

§ 57.6308 Initiation systems.

Initiation systems shall be used in accordance with the manufacturer's instructions.

§ 57.6309 Fuel oil requirements for ANFO.

Liquid hydrocarbon fuels with flash points lower than that of No. 2 diesel oil (125 °F) shall not be used to prepare ammonium nitrate-fuel oil. Waste oil, including crankcase oil, shall not be used.

§ 57.6310 Misfire waiting period.

When a misfire is suspected, persons shall not enter the blast area—

(a) For 30 minutes if safety fuse and blasting caps are used; or

(b) For 15 minutes if any other type detonators are used.

§ 57.6311 Handling of misfires.

(a) Faces and muck piles shall be examined for misfires after each blasting operation.

(b) Only work necessary to remove a misfire and protect the safety of miners engaged in the removal shall be premitted in the affected area until the misfire is disposed of in a safe manner.

(c) When a misfire cannot be disposed of safely, each approach to the area affected by the misfire shall be posted with a warning sign at a conspicuous location to prohibit entry, and the condition shall be reported immediately to mine management.

(d) All misfires occurring during the shift shall be reported to mine management not later than the end of the shift.

§ 57.6312 Secondary blasting.

Secondary blasts fired at the same time in the same work area shall be initiated from one source.

§ 57.6313 Blast site security.

Areas in which loaded holes are awaiting firing shall be attended, or barricaded and posted, or flagged against unauthorized entry.

Electric Blasting—Surface and Underground

§ 57.6400 Compatibility of electric detonators.

All electric detonators to be fired in a round shall be from the same manufacturer and shall have similar electrical firing characteristics.

§ 57.6401 Shunting.

Except during testing—

(a) Electric detonators shall be kept shunted until connected to the blasting line or wired into a blasting round;

(b) Wired rounds shall be kept shunted until connected to the blasting line; and

(c) Blasting lines shall be kept shunted until immediately before blasting.

§ 57.6402 Deenergized circuits near detonators.

Electrical distribution circuits within 50 feet of electric detonators at the blast site shall be deenergized. However, such circuits need not be deenergized between 25 to 50 feet of the electric detonators if stray current tests indicate a maximum stray current of less than 0.05 amperes through a one-ohm resistor as measured at the location of the electric detonators.

§ 57.6403 Branch circuits.

If electric blasting includes the use of branch circuits, each branch shall be equipped with a safety switch or equivalent method to isolate the circuits to be used. At least one safety switch or equivalent method of protection shall be located outside the blast area and shall be in the open position until persons are withdrawn.

§ 57.6404 Positive separation of blasting circuits from power source.

Except when closed to fire the blast, blasting switches shall be locked in the open position. Lead wires shall not be connected to the blasting switch unitl the shot is ready to be fired.

§ 57.6405 Firing devices.

(a) Power sources shall be capable of delivering sufficient current to energize all electric detonators to be fired with the type of circuits used. The use of storage or dry cell batteries is not permitted as a power source.

(b) Blasting machines shall be tested, repaired, and maintained in accordance with manufacturer's instructions.

(c) Only the blaster shall have the key or other control to an electrical firing device.

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§ 57.6406 Duration of current flow.

If any part of a blast is connected in parallel and is to be initiated from powerlines or lighting circuits, the time of current flow shall be limited to a maximum of 25 milliseconds. This can be accomplished by incorporating an arcing control device in the blasting circuit or by interrupting the circuit with an explosive device attached to one or both lead lines and initiated by a 25 millisecond delay electric detonator.

§ 57.6407 Circuit testing.

A blasting galvanometer or other instrument designed for testing blasting circuits shall be used to test the following:

(a) In surface operations—

(1) Continuity of each electric detonator in the blasthole prior to stemming or connection to the blasting line;

(2) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line;

(3) Continuity of blasting lines prior to the connection of electric detonator series; and

(4) Total blasting circuit resistance prior to connection to the power source.

(b) In underground operations—

(1) Continuity of each electric detonator series; and

(2) Continuity of blasting lines prior to the connection of electric detonators.

Nonelectric Blasting—Surface and Underground

§ 57.6500 Damaged initiating material.

Safety fuse, igniter cord, detonating cord, shock or gas tubing and similar material which is kinked, bent sharply, or damaged shall not be used. A visual check of the completed circuit shall be made to assure that the components are properly aligned and connected.

§ 57.6501 Nonelectric systems.

(a) When blasting with any nonelectric system, double trucklines or loop systems shall be used, except:

(1) When blasting with safety fuse and caps;

(2) When performing secondary blasting; or

(3) When in-the-hole delays are of sufficient duration to preclude cutoffs from the movement of ground.

(b) When the nonelectric blasting system utilizes shock tube—

(1) All connections with other initiation devices shall be secured in a manner which provides for uninterrupted progagation;

(2) Factory made units shall be used as assembled and shall not be cut; and

(3) Connections between blastholes shall not be made until immediately prior to clearing the blast area and connection to the source for energy for firing the blast.

(c) When the monelectric blasting system utilizes detonating cord—

(1) The line of detonating cord extending out of a blasthole shall be cut from the supply spool immediately after the attached explosive is correctly positioned in the hole;

(2) In multiple row blasts, the trunkline layout shall be designed so that the detonation can reach each blasthole from at least two directions;

(3) All connections shall be tight and kept at right angles to the trunkline;

(4) Detonators shall be attached securely to the side of the detonating cord and pointed in the direction in which detonation is to proceed; and

(5) Connections between blastholes shall not be made until immediately prior to clearing the blast area.

(d) When the nonelectric blasting system utilizes gas tube, continuity of the circuit shall be tested prior to blasting.

§ 57.6502 Safety fuse.

(a) The burning rate of each spool of safety fuse to be used shall be measured, posted in locations which will be conspicuous to safety fuse users, and brought to the attention of all persons involved with the blasting operation.

(b) When firing with safety fuse ignited individually using handheld lighters, the safety fuse shall be of lengths which provide at least the minimum burning time for a particular size round as specified in the following table.

Safety Fuse-Minimum Burning Time

Number of holes in a round	Minimum burning time
1	2 minutes.[1]
2–5	2 minutes 40 seconds.
6–10	3 minutes 20 seconds.
11–15	5 minutes.

[1] For example, persons shall use at least 36-inch length of 40-second-per-foot safety fuse or at least a 48-inch length of 30-second-per-foot safety fuse to allow sufficient time to evacuate the area.

(c) Where flyrock might damage exposed safety fuse, the blast shall be timed so that all safety fuses are burning within the blastholes before any blasthole detonates.

(d) Fuse shall be cut and capped in dry locations posted with "No Smoking" signs.

(e) Blasting caps shall be crimped to fuse only with implements designed for that purpose.

(f) Safety fuse shall be ignited only after the primer and the explosive material are securely in place.

(g) Safety fuse shall be ignited only with devices designed for that purpose. Carbide lights, liquefied petroleum gas torches and cigarette lighters shall not be used to light safety fuse.

(h) At least two persons shall be present when lighting safety fuse, and no one shall light more than 15 individual fuses. If more than 15 holes per person are to be fired, electric blasting systems, igniter cord and connectors, or other nonelectric blasting systems shall be used.

Extraneous Electricity—Surface and Underground

§ 57.6600 Loading practices.

If extraneous electricity is suspected in an area where electric detonators are used, loading shall be suspended until tests determine that stray current does not exceed 0.05 amperes through a 1-ohm resister when measured at the location of the electric detonators. If such levels of extraneous electricity are found, the source shall be determined and no loading shall take place until the condition is corrected.

§ 57.6601 Grounding.

Electric blasting circuits, including powerline sources when used, shall not be grounded.

§ 57.6602 Static electricity dissipation during loading.

When explosive material is loaded pneumatically or dropped into a blasthole in a manner that could generate static electricity—

(a) An evaluation of the potential static electricity hazard shall be made and any hazard shall be eliminated before loading begins;

(b) The loading hose shall be of a semiconductive type, have a total of not ore than 2-megohms of resistance over its entire length and not less than 1000-ohm of resistance per foot;

(c) Wire-countered hoses shall not be used;

(d) All conductive parts of the loading equipment shall be bonded and grounded. Grounds shall not be made to other potential sources of extraneous electricity; and

(e) Plastic tubes shall not be used as hole liners if the hole contains an electric detonator.

§ 57.6603 Air gap.

At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

§ 57.6604 Precautions during storms.

During the approach and progress of an electrical storm—

(a) All surface blasting operations shall be suspended and all persons withdrawn from the blast area or to a safe location.

(b) All underground electrical blasting operations that are capable of being initiated by lightning shall be suspended and all persons withdrawn from the blast area or to a safe location.

§ 57.6605 Isolation of blasting circuits.

Lead wires and blasting lines shall not be strung across power conductors, pipelines and railroad tracks, and shall be protected from sources of stray or static electricity. Blasting circuits shall also be protected from any contact between firing lines and overhead powerlines which could result from the force of a blast.

Equipment Tools—Surface and Underground

§ 57.6700 Nonsparking tools.

Only nonsparking tools shall be used to open containers of explosive material or to punch holes in explosive cartridges.

§ 57.6701 Tamping and loading pole requirements.

Tamping and loading poles shall be of wood or other nonconductive, nonsparking material. Couplings for poles shall be nonsparking.

Maintenance—Surface and Underground

§ 57.6800 Storage facilities.

When repair work which could produce a spark or flame is to be performed on a storage facility for explosive materials:

(a) The explosive material shall be moved to another facility, or oved at least 50 feet from the repair activity and monitored; and

(b) The facility shall be cleaned to prevent accidental detonation.

§ 57.6801 Vehicles.

Vehicles containing explosive material shall not be taken into a repair garage or shop.

§ 57.6802 Bulk delivery vehicles.

No welding or cutting shall be performed on bulk delivery vehicles until the vehicles have been washed down and all explosive material has been removed. Before welding or cutting on a hollow shaft, the shaft shall be thoroughly cleaned inside and out and vented with a minimum 1/2 inch diameter opening to allow for sufficient ventilation.

§ 57.6803 Blasting lines.

Permanent blasting lines shall be properly supported. All blasting lines shall be insulated and kept in good repair.

General Requirements—Surface and Underground

§ 57.6900 Damaged or deteriorated explosive material.

Damaged or deteriorated explosive material shall be disposed of in a safe manner in accordance with the instructions of the manufacturer. Delay detonators at least five years old are considered deteriorated explosive material.

§ 57.6901 Black powder.

(a) Black powder shall be used for blasting only when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.

(b) Containers of black powder shall be—

(1) Nonsparking;

(2) Kept in a totally enclosed cargo space while being transported by a vehicle;

(3) Securely closed at all times, when—

(i) Within 50 feet of any magazine or open flame;

(ii) Within any building in which a fuel-fired or exposed-element electric heater is operating; or

(iii) In an area where electrical or incandescent-particle sparks could result in powder ignition; and

(4) Opened only when the powder is being transferred to a blasthole or another container and only in locations not listed in paragraph (b)(3).

(c) Black powder shall be transferred from containers only by pouring;

(d) Spills shall be cleaned up promptly with nonsparking equipment. Contaminated powder shall be put into a container of water to be disposed of promptly after the granules have disintegrated, or the spill area shall be promptly flushed with water until the granules have disintegrated completely;

(e) Misfires shall be disposed of by washing the stemming and powder charge from the blasthole, and removing and disposing of the initiator in accordance with the requirement for damaged explosives; and

(f) Holes shall not be reloaded for at least 12 hours when the blastholes have failed to break as planned.

§ 57.6902 Hot holes.

Where heat could cause premature detonation, explosive material shall not be loaded into drilled or sprung holes. Special precautions are required when blasting sulfide ores that react with explosive material or stemming in blastholes.

§ 57.6903 Burning explosive material.

If explosive material is suspected of burning at the blast site, all persons shall be evacuated from the endangered area and shall not return for at least one hour after the burning or suspected buring has stopped.

§ 57.6904 Smoking, open flame restriction.

(a) Smoking and use of open flames shall not be permitted within 50 feet of explosive material except when separated by permanent noncombustible barriers.

(b) This standard does not apply to devices designed to ignite safety fuse or to heating devices which do not create a fire or explosion hazard.

General Requirements—Underground Only

§ 57.6960 Mixing of explosive material.

The mixing of ingredients to produce explosive material shall not be conducted underground unless the product of the mixing is an emulsion or slurry and the storage facilities and mixing equipment are designed, maintained and operated to minimize the possibility of heat build-up, fires and sparks. Storage facilities shall provide drainage away from the facilities for leaks and spills.

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Appendix I For Subpart E—MSHA Tables of Distances

MSHA TABLE OF DISTANCES FOR SURFACE STORAGE OF EXPLOSIVE MATERIAL

Quantity of explosive material in pounds— Over—Not over	Mine buildings, underground mine openings, fans, dams, and electric substations		Distances in feet—Separation of magazines	
	Barricaded	Unbarricaded	Barricaded	Unbarricaded
2—5	70	140	6	12
5—10	90	180	8	16
10—20	110	220	10	20
20—30	125	250	11	22
30—40	140	280	12	24
40—50	150	300	14	28
50—75	170	340	15	30
75—100	190	380	16	32
100—125	200	400	18	36
125—150	215	430	19	38
150—200	235	470	21	42
200—250	255	510	23	46
250—300	270	540	24	48
300—400	295	590	27	54
400—500	320	640	29	58
500—600	340	680	31	62
600—700	355	710	32	64
700—800	375	750	33	66
800—900	390	780	35	70
900—1,000	400	800	36	72
1,000—1,200	425	850	39	78
1,200—1,400	450	900	41	82
1,400—1,600	470	940	43	86
1,600—1,800	490	980	44	88
1,800—2,000	505	1,010	45	90
2,000—2,500	545	1,090	49	98
2,500—3,000	580	1,160	52	104
3,000—4,000	635	1,270	58	116
4,000—5,000	685	1,370	61	122
5,000—6,000	730	1,460	65	130
6,000—7,000	770	1,540	68	136
7,000—8,000	800	1,600	72	144
8,000—9,000	835	1,670	75	150
9,000—10,000	865	1,730	78	156
10,000—12,000	875	1,750	82	164
12,000—14,000	885	1,770	87	174
14,000—16,000	900	1,800	90	180
16,000—18,000	940	1,880	94	188
18,000—20,000	975	1,950	98	196
20,000—25,000	1,055	2,000	105	210
25,000—30,000	1,130	2,000	112	224
30,000—35,000	1,205	2,000	119	238
35,000—40,000	1,275	2,000	124	248
40,000—45,000	1,340	2,000	129	258
45,000—50,000	1,400	2,000	135	270
50,000—55,000	1,460	2,000	140	280
55,000—60,000	1,515	2,000	145	290
60,000—65,000	1,565	2,000	150	300
65,000—70,000	1,610	2,000	155	310
70,000—75,000	1,655	2,000	160	320
75,000—80,000	1,695	2,000	165	330
80,000—85,000	1,730	2,000	170	340
85,000—90,000	1,760	2,000	175	350
90,000—95,000	1,790	2,000	180	360
95,000—100,000	1,815	2,000	185	370
100,000—110,000	1,835	2,000	190	390
110,000—120,000	1,855	2,000	205	410
120,000—130,000	1,875	2,000	215	430
130,000—140,000	1,890	2,000	225	450
140,000—150,000	1,900	2,000	235	470
150,000—160,000	1,935	2,000	245	490
160,000—170,000	1,965	2,000	255	510
170,000—180,000	1,990	2,000	265	530
180,000—190,000	2,010	2,010	275	550
190,000—200,000	2,030	2,030	285	570
200,000—210,000	2,055	2,055	295	590
210,000—230,000	2,100	2,100	315	630
230,000—250,000	2,155	2,155	335	670
250,000—275,000	2,215	2,215	360	720
275,000—300,000	2,275	2,275	385	770

For purposes of this table, "barricaded" means that the storage facility containing explosive material is effectually screened by a natural barricade or an artificial barricade consisting of a mound or revetted wall of earth of a minimum thickness of three feet.

For conversion to the metric system of measurement: 1 lb = 0.454 kg; 1 ft = 0.305 m; 1 in = 2.54 cm

This table is derived from the IME "American Table of Distances", May 1983 edition

MSHA TABLE OF SEPARATION DISTANCES

Pounds of explosives or blasting agents— Over—Not over	Storage facilities—separation distances when barricaded— Ammonium nitrate	Blasting agents	Minimum thickness of artificial barricades (in.)
Not over 100	3	11	12
100—300	4	14	12
300—600	5	18	12
600—1,000	6	22	12
1,000—1,600	7	25	12
1,600—2,000	8	29	12
2,000—3,000	9	32	15
3,000—4,000	10	36	15
4,000—6,000	11	40	15
6,000—8,000	12	43	20
8,000—10,000	13	47	20
10,000—12,000	14	50	20
12,000—16,000	15	54	25
16,000—20,000	16	58	25
20,000—25,000	18	65	25
25,000—30,000	19	68	30
30,000—35,000	20	72	30
35,000—40,000	21	76	30
40,000—45,000	22	79	35
45,000—50,000	23	83	35
50,000—55,000	24	86	35
55,000—60,000	25	90	35
60,000—70,000	26	94	40
70,000—80,000	28	101	40
80,000—90,000	30	108	40
90,000—100,000	32	115	40
100,000—120,000	34	122	50
120,000—140,000	37	133	50
140,000—160,000	40	144	50
160,000—180,000	44	158	50
180,000—200,000	48	173	50
200,000—220,000	52	187	60
220,000—250,000	56	202	60
250,000—275,000	60	216	60
275,000—300,000	64	230	60

For purposes of this table, "barricaded" means that the storage facility is effectually screened by a natural barricade or an artificial barricade consisting of a mound or revetted wall of earth.

When the explosives or blasting agents are not barricaded, the distances shown in the table shall be multiplied by six.

For conversion to the metric system of measurement: 1 lb = 0.454 kg; 1 ft = 0.305 m; 1 in = 2.54 cm

This table is derived from NFPA 492–1976, published in National Fire Protection Association (NFPA) document 495, 1985 edition

Subpart F—Drilling and Rotary Jet Piercing

§ 57.7055 Intersecting holes.

Holes shall not be drilled where there is a danger of intersecting a misfired hole or a hole containing explosives, blasting agents or detonators.

§ 57.7056 Collaring in bootlegs.

Holes shall not be collared in bootlegs.

[FR Doc. 88–25894 Filed 11–9–88; 8:45 am]

BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3474–9]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located offshore of the mouth of the Conquille River, Oregon, for the disposal of dredged material removed from the Coquille River navigation project and vicinity. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

DATE: Comments must be received on or before December 27, 1988.

ADDRESSES: Comments on this proposed rule should be sent to: John Malek, Ocean Dumping Coordinator, Region X, WD–138, 7200 Sixth Avenue, Seattle, WA 98101

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC.

EPA Region X, 1200 Sixth Avenue, Seattle, Washington.

U.S. Army Corps of Engineers, North Pacific Division, U.S. Custom House, 220 Northwest Eighth, Portland, Oregon.

U.S. Army Corps of Engineers, Portland District, Multnomah Building, 319 Southwest Pine, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/442–1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping site will be designated by publication in Part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last extended on May 4, 1984 (49 FR 19012). That list established an interim site in the vicinity of the Coquille River entrance. An adjusted site, located approximately 450 meters north-northwest of the interim site, has been selected for formal designation. This site designation is being published as proposed rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. 39 FR 16186 (May 7, 1974).

EPA Region X has prepared a Draft EIS entitled "Coquille Ocean Dredged Material Disposal Site (ODMDS) Designation". As a separate but concurrent action, a notice of availability of the Draft EIS for public review and comment has been published in the **Federal Register**. It is planned that the public review periods for the Draft EIS and this proposed rule overlap. However, comments will be accepted on either the draft EIS or proposed rule until the end of the latest 45-day period. Comments will be responded to in the final EIS and rule. Anyone desiring a copy of the EIS may obtain one from the address given above.

The action discussed in the Draft EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable

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location for ocean disposal of dredged material. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The Draft EIS provides information to support designation of an ocean dredged material disposal site (ODMDS) in the Pacific Ocean off the mouth of the Coquille River in the State of Oregon. The proposed ODMDS is an adjusted location lying north-northeast of an existing, interim-designated site. Site designation studies were conducted by the Portland District, Corps of Engineers, in consultation with EPA Region X. The adjusted ODMDS was judged to be a safer location with less potential for adverse environmental effects. No significant or long-term adverse environmental effects are predicted to result from the designation. The designated ODMDS would continue to receive sediments dredged by the Corps of Engineers to maintain the federally-authorized navigation project at Coquille River, Oregon, and other dredged materials authorized in accordance with section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA). Before any disposal may occur, a specific evaluation by the Corps must be made using EPA's ocean dumping criteria. EPA makes an independent evaluation of the proposal and has the right to disapprove the actual disposal.

The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Description

The adjusted site proposed for designation is located approximately 1 nautical mile offshore of the Coquille River, Oregon, and occupies an area of approximately 150 acres (.17 square nautical miles). Water depths within the area average 18.3 meters. The coordinates of the site are as follows:

43°08'26"N. 124°26'44"W.
43°08'03"N. 124°26'08"W.
43°08'13"N. 124°27'00"W.
and 43°07'50"N. 124°26'23".
43°08'08"N. 124°26'34"W. (centroid)

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The interim and adjusted sites, as discussed below under the eleven specific factors, are acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the Draft EIS, that a site off the Continental Shelf is not feasible and that no environmental benefits would be obtained by selecting such a site instead of that proposed in this action. The interim site also carries higher safety risks due to its proximity to partly submerged rocks and reefs which make it less preferable. Historical use at the existing interim site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the existing interim site and the proposed adjusted site are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography, and distance from coast.* 40 CFR 228.6(a)(1). The interim site lies in 12 to 25 meters of water, 450 meters offshore from the entrance to the Coquille River. Corner coordinates are:

43°07'54"N. 124°26'27"W.
43°07'30"N. 124°27'04"W.
43°07'20"N. 124°26'40"W.
and 43°07'44"N. 124°27'17"W.

The interim site's center is on a 280 degree azimuth from the river mouth. In general, the interim site lies just north of the submerged extension of Coquille Point on bottom contours sloping at about 60 feet per mile.

The adjusted ODMDS lies 1,150 meters north-northeast of the interim ODMDS. Bottom contours and depths at the adjusted site are similar to those at the interim ODMDS. The adjusted site has the following corner and centroid coordinates:

43°08'26"N. 124°26'44"W.
43°08'03"N. 124°26'08"W.
43°08'13"N. 124°27'00"W.
and 43°07'50"N. 124°26'23"W.
43°08'08"N. 124°26'34"W. (centroid)

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult and juvenile phases.* 40 CFR 228.6(a)(2). Aquatic resources are described in detail in the Draft EIS, appendix A. The interim and adjusted sites are located in the nearshore area, and contain an abundance of aquatic life characteristic of nearshore, sandy, wave-influenced regions common along the coasts of the Pacific Northwest. The dominant commercially and recreationally important macroinvertebrate species in the area are shellfish, Dungeness crab, and squid. The Oregon Department of Fish and Wildlife (ODFW) has identified a squid spawning area that overlays the adjusted site. Numerous species of birds and marine mammals occur in the pelagic nearshore and shoreline habitats.

The nearshore area off the Coquille River supports a varity of pelagic and demersal fish species. Pelagic species include anadromous salmon, steelhead, cutthroat trout, striped bass, and shad which migrate through the estuary to upriver spawning areas. Although migratory species are present throughout the year, individual species are present only during certain times of the year. Demeral species present include English sole, sanddab, and starry flounder which spawn in the inshore coastal area in the summer. The species of invertebrates inhabiting the sandy portions of the area are the more motile, sand-dwelling forms which tolerate or require high sediment flux. Past and anticipated future disposal activities are not expected to significantly effect this community beyond the initial physical impacts of disposal. Abundances of some benthic organisms were higher at the adjusted site than at the interim site.

The interim site contains submerged rocky habitats and is immediately adjacent to neritic reefs. These are unusual features along the coast and support a variety of aquatic organisms, including bull kelp and its associated fish and invertebrate community. Pelagic species associated with the neritic reefs to the east and south of the estuary and jetties include both resident and non-resident species. The shallower reefs are dominated by black rockfish while the deeper reefs are dominated by lingcod, yellow rockfish and black rockfish. These rocky areas also have a very different benthic composition from the surrounding, sandy environments. Past disposal activity does not appear to have significantly impacted this community.

The ocean waters contain many nearshore pelagic organisms which include zooplankton and meroplankton (fish, crab and other invertebrate larvae).

These organisms generally display seasonal changes in abundance and, since they are present over most of the coast, are not critical to overall coastal populations. Based on evidence from previous zooplankton and larval fish studies, no impact to organisms in the water column are predicted.

Portland District requested an endangered species listing from U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service NMFS). The brown pelican and the gray whale represent the only species which were listed. Based on previous biological assessments conducted along the Oregon coast regarding impacts to the brown pelican and the gray whale, no impact to either species is anticipated from the project. Letters of concurrence are included in the Draft EIS.

In summary, both the interim and adjusted ODMDS contain living resources that could be affected by disposal activities. Evaluation of past disposal activities do not indicate that unacceptable adverse effects to these resources have occurred. The interim site contains and is in close proximity to submerged rocks and reefs with rich and varied aquatic communities. There is no evidence that past disposal has seriously impacted these communities, and in the absence of any other disposal location the interim site should be considered an acceptable site. However, the adjusted site represents a potentially less impacting location and its use is considered environmentally preferable.

3. *Location in relation to beaches and other amenity areas.* 10 CFR 228.6(a)(3). The southeast corner of the proposed site is approximately 1,150 meters from the end of the north jetty. Both the interim and adjusted ODMDS are far enough removed that use of either site would not affect these amenities.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* 40 CFR 228.6(a)(4). The final designated ODMDS will receive dredged materials transported by either government or private contractor hopper dredges. The current dredges available for use at Coquille have hopper capacities from 800 to 4,000 cy. This would be the range in volumes of dredged material disposed of in any one dredging/disposal cycle. Upwards of 100,000 cy of material can be placed at the site in one dredging season by any combination of private and government dredgers. The dredges would be under power and moving while disposing. This allows the ship to maintain steerage.

The material dredged from the entrance channel consists of medium to fine grain marine sands. The dredged material shows a wider variation in median grain size and tends to be slightly coarser than the ambient sediments at the proposed disposal site. The differences are small enough that the sediments are considered compatible. The occasional gravel sized sediments occur in such small quantities and so infrequently as to cause no problems. All sediments destined for ocean disposal is subject to specific evaluation, including independent review by EPA. Past sediments discharged at the interim ODMDS have been clean sands that met the exclusion criteria (40 CFR 227.13(b)).

5. *Feasibility of surveillance and monitoring.* 40 CFR 228.6(a)(5). The proximity of the proposed disposal site to shore facilities creates an ideal situation for shore-based monitoring of disposal activities to ensure that material is actually discharged at the disposal site. There is routinely a Coast Guard vessel patrolling the entrance and nearshore areas so surveillance can also be accomplished by surface vessel.

Following formal designation of an ODMDS for Coquille, EPA and the Corps will develop a site management plan which will address the need for post-disposal monitoring. Several research groups are available in the area to perform any required field monitoring. The work could be performed from small surface research vessels at a reasonable cost.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction, and velocity.* 40 CFR 228.6(a)(6). The nearshore circulation at Coquille is influenced by the complex bathymetry and geology. Bottom currents have been observed by video camera and were recorded in April-May 1985. Currents were toward the north and offshore with velocity under .5 feet/second. The area at Coquille is exposed to normal wave action typical of this portion of the Pacific Ocean. The material dredged from the entrance channel at Coquille River is fine to medium sand. For the range of depths and grain sizes found at either of the Coquille ODMDS sites there is essentially constant mobility of bottom sediment due to wave action. This wave-induced motion is not responsible for net transport, but, once in motion, bottom sediments can be affected by other forces such as gravity or directional currents. Sediments discharged at either of the ODMDS would be expected to join the littoral movement and disperse gradually out of the site.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* 40 CFR 228.6(a)(7). The 10 year range of disposal has varied from 25,000 to 116,000 cy; on average, about 59,000 cy are annually discharged to the ocean. Future volumes are expected to be similar, although probably showing some increase as other disposal options are exhausted.

No biological information has been found to exist regarding the interim site prior to any disposal having occurred. It is expected that no significant impacts to the interim site have occurred beyond the yearly, site-specific effects of disposal. Beyond the observation that abundances of some benthic organisms are lower inside the interim ODMDS than other locations outside (which may be related to past disposal), there appear to be no apparent disposal effects.

No pre- or post-disposal studies on water or sediment quality have been performed. Sediments disposed in the past are identical to sediments collected in close proximity to the interim site and have met the exclusion criteria for testing.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shelfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* 40 CFR 228.6(a)(8). The Draft EIS identified no legitimate uses of the ocean that would be interfered with as a result of designation of an ODMDS or its use. The following paragraphs summarize conclusions:

Commercial Fishing: Two commercial fisheries occur in the inshore area: salmon trawling and Dungeness crab fishing. The length of the salmon fishing season varies each year depending upon the established quota; however, it normally extends from July to September. During this period, the potential exists for conflicts between the dredge and fishing boats. The Coast Guard and ODFW indicated that this had never been a problem to their knowledge. The Dungeness crab season extends from December 1 to August 15 each year; however, most of the crabbing occurs prior to June and usually ends early because of the increase in soft shell crabs in the catch which are not marketable. As a result,

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most crab fishing occurs outside of the normal dredging season and it is unlikely that a conflict would result. ODFW has identified a potential squid fishery in the area. No fishery exists at present, but stocks may be sufficient to support a fishery if a market develops. There are no commercial fish or shellfish aquaculture operations that would be impacted by use of the existing disposal site.

Recreational Fishing: Both private party and charterboat recreational fishing for salmon and rock and reef fish occurs in the inshore area off Coquille River. The sports salmon fishing season coincides with the commercial season and extends from summer until the quota for the area is reached. Most of the sports fishery occurs along the south reef because of navigational hazards on the north reef. Potential exists for recreational fishing boats to conflict with dredging and disposal operations; however, none has been reported to date. It is unlikely that any significant conflict will develop in the near future.

Offshore Mining Operations: No offshore mining presently occurs; although, considerations for offshore mining and oil/gas leases are in the development stages. The disposal site is not expected to interfere with such proposed operations, as most exploration programs are scheduled for the outer continental shelf.

Navigation: No conflicts with commercial navigation traffic have been recorded in the more than 60-year history of hopper dredging activity. The probable reason for this is the light commercial traffic through the Coquille navigation channel. Interviews with Coast Guard personnel also did not produce any instances of conflicts with either commercial or recreational traffic. Navigation hazards exist within the immediate area (e.g., rock outcroppings/reefs) which have been considered in positioning the adjusted ODMDS. Ships cannot navigate within the area south of the interim disposal site.

Scientific: There are no identified scientific study locations. However, there is a permanent wave buoy several miles offshore in 70 meter water depth. This buoy is part of a Pacific Coast wave data network operated by Scripps for the Corps of Engineers. Site designation or use of the site would not interfere with this operation.

Coastal Zone Management: In reviewing proposed ODMDS for consistency with the Coastal Zone Management (CZM) plan, they are evaluated against Oregon's Statewide Goal 19 (Ocean Resources). Local jurisdiction does not extend beyond the baseline for territorial seas and, therefore, local plans do not address offshore sites. Goal 19 requires that agencies determine the impact of proposed projects or actions. Paragraph 2.g of Goal 19 specifically addresses dredged material disposal. The requirements of the ocean dumping regulations are broad enough to meet the needs of Goal 19. Therefore, the designation of this site for ocean disposal of dredged material following the ocean dumping regulations would be consistent with Goal 19 and the State of Oregon's Coastal Zone Management Plan.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment of baseline surveys.* 40 CFR 228.6(a)(9). Water quality off the mouth of the Coquille River is considered excellent, typical of unpolluted seawater along the Pacific Northwest coast. No short or long term impacts of water quality are expected to be associated with disposal operations. The offshore area is a northwest Pacific Ocean mobile sand community bordered by a neritic reef system. Evaluation of the interim ODMDS in light of past disposal did not indicate any significant adverse effects to those communities. Designation and use of the adjusted ODMDS is not expected to have significant ecological consequences and provides additional distance from the reef community.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* 40 CFR 228.6(a)(10). It is highly unlikely that any nuisance species could be transported or attracted to the disposal site as result of dredging and disposal activities.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* 40 CFR 228.6(a)(11). The neritic reefs off the Oregon coast comprise a unique ecological feature. They support a wide variety of invertebrates and fish species as well as bull kelp communities. These areas are partially sheltered from wave action and receive nutrients from both the ocean and the estuaries are usually highly productive. The adjusted site, which is proposed for designation, is farther removed from these reefs than the interim site.

Potential areas of shipwrecks were evaluated. Given the characteristics of the Coquille Bar, onshore current patterns, and hard sand bottom, and the fact that the ship channel over the bar has been actively maintained by dredging and removal of wrecks from the 1860's to present, it is unlikely that any wrecks have survived in the vicinity of the disposal site. The existing information and supplementary side scan sonar data was reviewed by the State Historic Preservation Office (SHPO). SHPO concurred with the Corps' findings of no cultural resources concerns. The SHPO letter of concurrence is included in the Draft EIS.

E. Proposed Action

The EIS concluded that the proposed site may be appropriately designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Coquille River ODMDS as an EPA approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region X.

It should be emphasized that, if an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping or dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessiate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not ncessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: November 1, 1988.

Robie G. Russell,

Regional Administrator for Region X.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) the entry "Coquille River Entrance", and adding paragraph (b)(71) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(71) Coquille River—Region X.

Location: 43°08'26"N., 124°26'44"W.; 43°08'03"N., 124°26'08"W.; 43°08'13"N., 124°27'00"W.; and 43°07'50"N.,124°26'23"W.

Size: 0.17 square nautical miles.

Depth: 18.3 meters (average).

Primary Use: Dredged mateial.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material from the Coquille Estuary and River and adjacent areas.

[FR Doc. 88-28056 Filed 11-9-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3474-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period on a proposed delisting decision for Merck & Company, Inc., Elkton, Virginia, which appeared in the **Federal Register** on September 27, 1988 (53 FR 37601). After publication of the proposal it was noted that information had been inadvertently omitted from the regulatory docket associated with the proposed rule. This extension is provided to allow the public an adequate opportunity to review all information used to support the Agency's decision.

DATE: EPA will accept public comments on the previously proposed decision until December 14, 1988. This date reflects the period of time that the docket was deficient. Comments postmarked after the close of the extended comment period will be stamped "late".

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branches, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. All comments must be identified at the top with docket number "F-88-MLEP-FFFFF".

The public docket where the information can be viewed for the proposed rule is located in the sub-basement of the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9436, or at (202) 382-3000. For technical information, contact Linda Cessar, Office of Solid Waste (OS-343), Environmental Protection Agency, 401 M Street SW.; Washington, DC 20460, (202) 475-9828.

SUPPLEMENTARY INFORMATION: On September 27, 1988, EPA proposed to exclude incinerator fly ash waste (EPA Hazardous Waste No. F002) generated by Merck and Company, Inc., (Merck) located in Elkton, Virginia, from the lists of hazardous wastes published in 40 CFR 261.31 and 261.32. See 53 FR 37601-37609. This proposal was made pursuant to 40 CFR 260.20 and 260.22. On October 25, 1988, the Virginia Department of Waste Management (VDWM) noted that a specific document necessary to understand the information used to support the Agency's decision on Merck's delisting petition was not in the regulatory docket (RCRA docket number "F-88-MLEP-FFFFF"). The missing document, which had been inadvertently omitted from the docket, was placed into the docket on October 26, 1988. The VDWM subsequently requested an extension of the public comment period for a period equal to the time the document was missing from the docket. The Agency is hereby granting that request.

The public comment period for the proposed rule was originally scheduled to end on November 14, 1988. Today's notice extends the public comment period for the proposed rule to allow the public an opportunity to review all information used to support the Agency's decision on Merck's delisting petition. The Agency will now accept public comments on the proposed rule until December 14, 1988.

Date: November 3, 1988.

Devereaux Barnes,

Acting Deputy Director, Office of Solid Waste.

[FR Doc. 88-26055 Filed 11-9-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-519, RM-6379]

Radio Broadcasting Services; Beaumont and Big Bear Lake, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Eastland Broadcasting Corp., provposing the allotment of Channel 269A to Beaumont, California, as its first FM service at coordinates 33-56-06 and 116-58-24. Additionally, petitioner requests the substitution of Channel 231A for Channel 269A, licensed to Mountain Broadcasting Company, Inc. for station KTOT(FM), Big Bear Lake, California, to accommodate its proposal. Proposed coordinates for Channel 231A are 34-16-10 and 116-50-46.

DATES: Comments must be filed on or before December 27, 1988, and reply comments on or before January 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William E. Kennard and Susan F. Hecks, Esqs., Verner, Liipfert, Bernhard, McPherson and Hand, 1660 L St., NW., Suite 1000, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-519, adopted September 30, 1988, and released November 4, 1988. The full text of this Commission decision is available for inspection and copying during

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normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26110 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–518, RM–6123]

Television Broadcasting Services; Yreka City, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Junko K. and Bobby C. Shehan, sole applicants for UHF television Channel 27 at Medford, Oregon, proposing the substitution of UHF television Channel *35 for Channel *20 at Yreka City, California, to enable petitioners to specify a preferred antenna site to serve Medford, Oregon, and surrounding areas. Reference coordinates utilized for this proposal are 41–43–48 and 122–38–12.

Although the Commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby.

DATES: Comments must be filed on or before December 27, 1988, and reply comments on or before January 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Junko K. and Bobby C. Shehan, 2032 Amsterdam Lane, Modesto, CA 95356.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–518, adopted September 30, 1988, and released November 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26111 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–236; RM–5725]

Radio Broadcasting Services; Carthage, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Bryan Broadcasting, Inc., ("petitioner") requesting substitution of Channel 221B1 for Channel 221A at Carthage, Illinois, and modification of its Class A license for Station WCAZ(FM) to specify the higher powered channel. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–236, adopted September 30, 1988, and released November 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26112 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–509; FCC 88–325]

Enhanced Nighttime Operation for Class II–S and Class III–S AM Radio Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On its own motion the FCC has initiated this action inviting comments upon a proposal to amend the Commission's Rules to allow Class II–S and Class III–S AM radio broadcast stations to establish a separate nighttime antenna system for nighttime operations without having to meet the minimum power, city coverage or minimum operating schedule requirements that otherwise would apply to a change in nighttime operations.

DATES: Comments must be filed on or before December 27, 1988, and reply comments on or before January 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane L. Hofbauer, Policy and Rules Division, Mass Media Bureau, (202) 254–3394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in MM Docket No. 88–509, adopted October 13, 1988, and released November 4, 1988.

The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this *Notice of Proposed Rulemaking* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. Having previously permitted unlimited-time operation for most daytime-only AM radio broadcast stations operating on the 14 foreign clear channels and on the U.S. clear and regional AM channels, the FCC proposes changes in its Rules to facilitate the enhancement of nighttime operations of Class II–S and Class III–S AM stations operating on these channels. Accordingly, the Commission proposes rule amendments that would permit these stations to establish a separate nighttime antenna system without having to meet the minimum power, city coverage or minimum operating schedule requirements that would otherwise appy to such changes in nighttime operations.

2. In prior actions permitting daytime-only stations to oeprate at night, the power levels authorized were calculated based upon use of the same antenna system that the station used for daytime operations. Because such antenna systems were designed with only daytime protection in mind, in many caes they were not capable of providing effective nighttime service due to differing interference considerations. Many AM stations authorized to operate at night thus chose not to utilize the nighttime authorization. The rule changes proposed in this action would allow Class II–S and Class III–S stations to operate at night using a separate nighttime antenna system designed with nighttime interference protection requirements in mind.

3. Similarly, under prior actions authorizing such AM stations to operate at night, the Commission's Rules restricted power increases to only those stations able to achieve minimum power as set forth in the Commission's Rules. This action proposes to allow Class II–S and Class III–S stations' nighttime operations to utilize power levels below the 0.25 kW minimum power requirement.

4. Under the proposed rule amendments, no station will be permitted to cause any increased interference to full-time AM broadcast stations.

5. It is proposed that Class II–S and Class III–S stations providing enhanced nighttime service would continue to be exempt from the city coverage and minimum operating schedule requirements.

6. Finally, the *Notice of Proposed Rulemaking* seeks comment upon permitting voluntary power reductions for nighttime operations by full-time AM broadcast stations. Stations eligible for and engaging in such voluntary power reductions would be reclassified as Class II–S or III–S stations and would lose their right to interference protection that is accorded to stations with at least minimum facilities.

Comments

7. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 27, 1988, and reply comments on or before January 11, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Non-restricted rulemaking

8. This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Initial Regulatory Flexibility Analysis

9. With reference to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 603, the proposed rule will, if promulgated, have a beneficial impact upon small AM broadcast stations that will be enabled to provide enhanced nighttime services to the public, and thereby compete more effectively with existing unlimited-time AM and FM stations. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete.

Notice of Proposed Rulemaking

10. The Secretary of the Commission is directed to send a copy of the *Notice of Proposed Rulemaking* in this proceeding to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Paperwork Reduction Act Statement

11. The proposed rule changes have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information, collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed upon the public.

12. Authority for the rule changes upon which comments are invited is contained in sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88–26108 Filed 11–9–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM–142A; Notice No. 88–6]

RIN: 2137 AB56

Etiologic Agents

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Hazardous Materials Regulations (HMR) by revising the definition of "etiologic agent" and removing the 50 milliliter (1.69 fluid ounces) exception in 49 CFR 173.386. This action is necessary to protect health and safety and to ensure that all quantities of etiologic agents are subject to the same requirements for packaging and hazard communication. The intended effect is to enhance the safe transportation of etiologic agents through application of regulatory requirements for packaging and hazard communication.

DATE: Comments must be received on or before January 18, 1989.

ADDRESS: Address comments to Dockets Unit, Office of Hazardous Materials Transportation, (DHM–30), U.S. Department of Transportation,

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Washington, DC 20590. Comments should be submitted, when possible, in five copies and should identify the docket number. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except public holidays.

FOR FURTHER INFORMATION CONTACT: George Cushmac, (202) 366–4545, Technical Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, or Ann Boylan, (202) 366–4488, Standards Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street SW., Washingotn, DC 20590.

SUPPLEMENTARY INFORMATION: RSPA is proposing three amendments to the HMR with regard to etiologic agents. The first proposal concerns the definition of an etiologic agent and the list of etiologic agents referenced in the regulations of the Department of the Health and Human Services (DHHS) in 42 CFR 72.3. Objective criteria for the etiologic agent hazard class have not been developed yet and the list of etiologic agents is difficult to keep current. Therefore, RSPA proposes to broaden the definition of an etiologic agent in 49 CFR 173.386(a)(1). The proposed definition would include those agents listed in 42 CFR 72.3, and "any agent that poses a degree of hazard similar to those agents". This proposed action would require pathogens not currently listed in the DHHS regulations to be shipped as etiologic agents, based on the shipper's knowledge that the agents present a substantial risk to health and safety. This would include the acquired immune deficiency syndrome (AIDS) virus.

The proposed definition is broader in scope than the current definition in § 173.386 because it applies to more agents than are currently regulated. However, it is not as broad as the definition for infectious substances (Division 6.2) contained in the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and international regulations based on the UN Recommendations such as the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These standards define infectious substances as "substances containing viable microorganisms or their toxins which are known, or suspected to cause disease in animals or humans". Under the international regulations, any quantity of an infectious substance is subject to requirements for shipping papers, marking, labeling and packaging. This definition of infectious substance includes substances which affect animals, and appears to include some relatively innocuous substances (e.g., cold viruses, yeasts and fungi which may cause minor illnesses). However, the scope of the definition is limited in this proposal to address the immediate problem.

A second proposal concerns the exception in 49 CFR 173.386(d)(3) under which cultures of etiologic agents of 50 ml or less total quantity in one outside package are not subject to any requirements of the HMR if the items as packaged do not contain a material otherwise subject to the HMR. After reconsideration of the health hazards presented by etiologic agents, it is RSPA's belief, based on safety considerations, that etiologic agents in any quantity present a substantial public health hazard and should be subject to regulation. Therefore, RSPA proposes to regulate all quantities of etiologic agents by deletion of the exception for quantities of 50 ml or less.

A third proposal concerns the per package quantity limits of etiologic agents aboard aircraft. This proposal would align the HMR with quantity limitations for infectious substances in the ICAO Technical Instructions.

The proposals in this notice are the initial step in a comprehensive review of the requirements pertaining to the transportation of etiologic agents. In future rulemaking action, RSPA plans to focus attention on various issues concerning etiologic agents, including packaging, the exceptions for biological products and diagnostic specimens addressed in § 173.386(d)(1) and (2), the present exclusion of etiologic agents which only affect animals, and adoption of hazard communication provisions and the definition for infectious substances in the UN Recommendations.

Administrative Notices

Executive Order 12291

The RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures [44 FR 11034]; (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the Docket.

Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Impact on Small Entities

Based on limited information concerning size and nature of entities likely to be affected by this final rule, I certify that the regulations proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Parts 172

Hazardous materials transportation, Hazardous materials table.

49 CFR Part 173

Hazardous materials transportation, Definition, Packaging, Etiologic agents.

In consideration of the foregoing, 49 CFR Parts 172 and 173 would be amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

§ 172.101 [Amended]

2. The Hazardous Materials Table would be amended by revising the entry for "Etiologic agent, n.o.s." to read as follows:

§ 172.101 Hazardous Materials Table

+ A W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo only aircraft	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	(3a)	(4)	(5a)	(5b)	(6a)	(6b)	(7a)	(7b)	(7c)
	REVISED Etiologic agent, n.o.s.	Etiologic agent.	NA2814	Etiologic agent.	173.386	173.387	50 ml or 50 g.	4 L or 4 Kg.	.....	.....	Not permitted except under specific conditions approved by the Department.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. In § 173.386, paragraph (d)(3) would be removed and paragraph (a)(1) would be revised to read as follows:

§ 173.386 Etiologic agents; definition and scope.

(a) * * *

(1) An "etiologic agent" means a viable microorganism, or its toxin, which causes or may cause human disease, and includes those agents listed in 42 CFR 72.3 of the regulations of the Department of Health and Human Services and any agent that poses a degree of hazard similar to those agents.

* * * * *

Issued in Washington, DC, on November 7, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88–26132 Filed 11–9–88; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 88–13; Notice 1]
RIN 2127–AC72

Consumer Information; Vehicle Owner's Manuals

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice implements the granting of a petition by Motor Voters requesting that NHTSA require motor vehicle manufacturers to include information in their vehicle owners' manuals advising owners about the agency's defect authority and providing them with the telephone number for the agency's Auto Safety Hotline. To encourage owners to report defects and to facilitate their doing so, this notice proposal to amend the agency's Consumer Information Regulations to require manufacturers to provide the requested information.

DATES: Comment closing date: Comments on this notice must be received on or before December 27, 1988.

Proposed effective date: If adopted, these amendments would be effective 180 days after the publication of the final rule.

ADDRESS: All comments on this notice should refer to Docket No. 88–13; Notice 1 and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: James P. Talentino, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington DC 20590 (202–366–5212).

SUPPLEMENTARY INFORMATION: The National Traffic and Motor Vehicle Safety Act ("Safety Act") requires manufacturers of motor vehicles and motor vehicle equipment to recall and remedy vehicles and equipment that are determined by the manufacturer or NHTSA to contain either a safety-related defect or fail to comply with a Federal motor vehicle safety standard issued under the Safety Act. The agency's most important source of data used to identify defects which relate to motor vehicle safety is the consumer complaints made by persons calling the agency's Auto Safety Hotline. In 1987, the agency received 332,659 calls on the Hotline. In addition, NHTSA received 15,092 detailed Vehicle Owner Questionnaires that had been sent by the agency to some of the Hotline callers.

Motor Voters, a consumer organization interested in motor vehicle safety, has petitioned the agency to strengthen the Hotline as source of defect information by requiring the manufacturers of "passenger vehicles" to include information in the vehicle owners' manuals about NHTSA's and safety defects. Specifically, this information would advise owners about NHTSA safety defect authority and urge them to contact the agency about potential safety defects in their vehicles. To facilitate contacting the agency, the information would include the toll free telephone number of the Auto Safety Hotline and the agency's address. The information also would explain that while the agency has authority to investigate defects and order recall and remedy compaigns, it does not become directly involved in the dealings of a particular consumer with a manufacturer of a motor vehicle regarding a defect in that vehicle. These requirements would be added to the agency's Consumer Information Regulations in Part 575 of Title 49 of the Code of Federal Regulations.

NHTSA previously has granted this petition by letter to the petitioner and is issuing this notice to propose the requested requirements. A longstanding goal of the agency is to enhance the visibility of the Auto Safety Hotline and to improve the process of getting information from consumers about potential safety defects. NHTSA plans to publicize the Hotline through public service announcements in the media, through consumer and corporate safety offices, in telephone books, and through programs with State transportation agencies.

The inclusion of the requested information in the owners' manuals would be an important addition to NHTSA's public information campaign to increase consumer awareness of the

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Hotline and the agency's efforts to strengthen its defect investigation activities. Including the Hotline number in owners' manuals would put the number in the hands of millions of motor vehicle purchasers at very little cost. Moreover, since owners typically refer to their manuals periodically throughout the ownership of their vehicles, especially when they are experiencing vehicle problems, the Hotline number printed in the manuals is likely to be seen many times. The inclusion of the Hotline number in manuals would be particularly important for new car owners since it would produce a higher volume of calls about potential safety defects earlier in a vehicle's life. This would be particularly important to detect defects in newly introduced models.

Accordingly, NHTSA proposes to amend § 575.6 of the Consumer Information Regulation to require motor vehicle manufacturers to include information about NHTSA's recall and remedy authority and about the Auto Safety Hotline in the owner's manual. The agency is proposing a requiremnt that is somewhat broader than the petition in that the proposal covers all new motor vehicles, not just "passenger vehicles." NHTSA took this step because facilitating owner reporting of potential safety defects is important for all types of motor vehicles. The agency also has made minor changes in the information requirements requested in the petition.

The proposed amendment would require manufacturers to state in the owener's manuals that consumers may contact NHTSA if they believes that their vehicle contains a safety defect. The amendment would also require that the manuals include the Hotline telephone number and agency address. Finally, the amendment would require that manufacturers include in the manuals a statment about the agency's authority to order a safety recall if it finds thaf a safety defect exists in a group of vehicles.

NHTSA has evaluated this proposal to require information about the agency in vehicle owners' manuals and has found that its effect would be to impose only minimal costs on a motor vehicle manufacturer, even though this regulation would require every new vehicle to contain this information in the owners' manual. The agency anticipates that a manufacturer would have to devote only one-half of a page in the owner's manual to this information. The cost of this measure is estimated to be only the additional costs related to the printing of one-half page since the manufacturers already print manuals. Therefore, the additional costs resulting from this rule not be more than a few cents per vehicle. Accordingly, the agency has determined that the proposal is not major within the meaning of Executive Order 12291 and is not significant for purposes of Department of Transportation policies and procedures for internal review because it would not have an impact on the economy in excess of $100 million. Similarly, it would not result in a major change in costs or prices for consumer's individual industries, government, or any geographic region. Nor would this action significantly affect competition. The agency has further determined that the costs associated with this proposal would not be large enough to warrant preparation of a regulatory evaluation under the procedures.

For the same reasons just discussed, I certify under the Regulatory Flexibility Act this rule will not have a significant impact on a substantial number of small entities within the meaning of the statute.

Further, this rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it has no Federalism implication that warrants preparation of Federalism report.

Finally, the agency has concluded that the environmental consequences of the proposed change would be of such limited scope that they clearly would not have a significant effect on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 575

Consumer protection, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, it is proposed that 49 CFR 575.6 be amended as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for Part 575 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407, 1421, and 1423; delegation of authority at 49 CFR 1.50.

§ 575.6 [Amended]

2. Section 575.6(a) would be amended by redesignating the existing language as paragraph 6(a)(1), and adding a new paragraph (a)(2), to read as follows:

§ 575.6 Requirements.

(a) * * *

(2) At the time a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer of that vehicle shall provide to the purchaser, in writing and in the English language, the following statement in the owner's manual:

If you believe that a vehicle or item of motor vehicle equipment (such as tires, lamps, etc.) has a potential safety-related defect, you may notify the National Highway Traffic Safety Administration (NHTSA). You may either call toll free at 800-424-9393 (or 366-0123 in Washington, DC) or write Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. NHTSA investigates alleged safety-related defects and may order a recall and remedy campaign if it finds that a safety defect exists in a group of vehicles and the manufacturer does not voluntarily conduct a recall and remedy campaign. However, NHTSA does not become directly involved in the dealings between a particular consumer and vehicle manufacturer regarding a defect in the consumer's vehicle.

Issued on: November 7, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-26079 Filed 11-9-88; 8:45 am]

BILLING CODE 4910-59-M

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Notices

Federal Register
Vol. 53, No. 218
Thursday, November 10, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. FV-88-211]

Establishment of Perishable Agricultural Commodities Act Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Pub. L. 100-414 requires the establishment of a Perishable Agricultural Commodities Act (PACA) Industry Advisory Committee to review the PACA program and confer with Department officials regarding program enhancement. This document seeks nominations of individuals to be considered for selection as Committee members.

DATE: Written nominations must be received on or before December 12, 1988.

ADDRESS: Nominations should be sent to Mr. John D. Flanagan, Chief, PACA Branch, Rm. 2095 S., Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC. 20090-6456.

FOR FURTHER INFORMATION CONTACT: John D. Flanagan, (202) 447-2272.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463) notice is hereby given that Pub. L. 100-414 requires that the Secretary of Agriculture establish a Perishable Agricultural Commodities Act Industry Advisory Committee. The purpose of the Committee is to review the PACA program, to recommend ways of improving its efficiency, and to ensure equitable treatment in its application among the various segments of the fruit and vegetable industry. On the basis of its review, the Committee shall develop recommendations for consideration by Congress and the Secretary of Agriculture with respect to future operation of the PACA program.

The Secretary of Agriculture has determined that the work of the Committee is in the public interest in view of the duties conferred upon the Department of Agriculture (USDA) by law.

The Director of the Fruit and Vegetable Division, Agricultural Marketing Service (AMS), will be chairperson of the Committee. The Chief of the PACA Branch will serve as its executive secretary. Staff support essential to the execution of the Committee's responsibilities shall be provided by AMS.

Committee members shall be appointed by the Secretary of Agriculture and shall serve for the entire term of the Committee. The Committee shall be comprised of twenty (20) members representing balanced interests of the fruit and vegetable industry. Membership shall include but not be limited to growers, shippers, brokers, receivers, wholesalers, retailers, and processors. One alternate member for every two regular Committee members shall also be appointed.

Industry members receiving nominations will be contacted and supplied with biographical forms. The biographical information must be completed and returned to the USDA within five (5) working days of its receipt, to expedite the security clearance process that is required before selection by the Secretary of Agriculture. Equal opportunity practices will be followed in all appointments to the Committee in accordance with USDA policies.

The PACA Industry Advisory Committee is charged with providing an interim report to the Secretary of Agriculture, the House Committee on Agriculture, and the Senate Committee on Agriculture, Nutrition and Forestry no later than September 30, 1989. A final report including the results of the Committee's review and its recommendations based on these results, shall be submitted no later than May 1, 1990. The Committee will cease to exist when its final report is submitted, but no later than May 1, 1990.

Done at Washington, DC this 4th day of November, 1988.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 88-25946 Filed 11-9-88; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Intention to Withdraw Draft Environmental Impact Statement; Highway 88 Future Recreation Use Determination

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of Draft Environmental Impact Statement.

SUMMARY: The Forest Service hereby gives notice that the Draft Environmental Impact Statement (DEIS) for the Highway 88 Future Recreation Use Determination Study (FRUD) is withdrawn.

DATE: November 15, 1988.

ADDRESS: Submit written comments and suggestions concerning the withdrawal of the DEIS to Jerald N. Hutchins, Eldorado National Forest Supervisor, 100 Forni Road, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Questions about the withdrawal and proposed action should be directed to Jerald N. Hutchins, Forest Supervisor, 100 Forni Road, Placerville, CA 95667, phone 916-622-5061.

SUPPLEMENTARY INFORMATION: On November 7, 1984, a Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register** (vol. 49, page 44513). Internal and public scoping meetings were held in November and December 1984. Studies were conducted during the next 2 years and the DEIS was made available to the public on January 21, 1987. The public comment period, originally scheduled to end on April 29, 1987 was extended to September 15, 1987 to allow the public a full summer to review the DEIS. The preferred alternative called for the recovery of 82 recreation residences located on or near the lake shores of Silver Lake and Kirkwood Lake to facilitate public lakeshore access and to provide space for public campground development.

The comment period for this DEIS coincided with the comment period for the proposed new Forest Service policy for administration of recreation residence permits. Many people apparently confused the **Federal Register** notice on Recreation Residence Policy with the **Federal Register** notice on the DEIS. The DEIS was temporarily withdrawn on April 9, 1987, because the policy on future use determinations was one of the major items being considered in the proposed recreation residence policy and because of the apparent confusion the DEIS was creating for permittees. It was determined that any future action or study of the recreation residences in the Highway 88 area would be consistent with direction contained in this final policy.

The new Recreation Residence Policy was implemented on August 31, 1988. Although the new policy does not preclude future use studies of the type prepared for Highway 88, the current DEIS is being withdrawn for the following reasons.

1. Comments received during the 10-week comment period, were overwhelmingly opposed to the DEIS preferred alternative and its rationale. Comparatively little support for the preferred was received, indicating an apparent lack of strong constituency for the recovery proposal.

2. The East Silver Lake and South Silver Lake Associations have withdrawn their proposals for land exchanges which would have converted to private ownership the lakeshore recreation lands now occupied by the two tracts.

3. Permittees in the lakeshore tracts have expressed a willingness to mitigate many of the situations now existing that restrict public access. For example: cooperation in construction and maintenance of lake side trails and public use areas; installation of signing to encourage public use; acceptance by associations of responsibility for docks, which would also be made available to the public.

4. The staff time and costs involved in continuance of the study at this time do not appear justified, considering the probable outcome.

The Forest Supervisor will offer 20 year term permits to all recreation residence permittees encompassed by the Highway 88 Study (with the exception of those whose permits are on tenure). The organization camp and resort permits will be allowed to run to the end of their current terms, and renewals will be considered on a case-by-case basis.

Date: November 2, 1988.

Jerald N. Hutchins,

Forest Supervisor.

[FR Doc. 88-26042 Filed 11-9-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 2:30 p.m. and adjourn at 5:00 p.m., on December 7, 1988, at the Stouffer-Nashville Hotel, 611 Commerce Street, Nashville, Tennessee. The purpose of the meeting will be to discuss current civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James F. Blumstein, or William F. Muldrow, Acting Director of the Centeral Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will atend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working dats before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 4, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88-26089 Filed 11-9-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Felipe Beltran from an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of dismissal.

On November 19, 1987, Felipe Beltran (Appellant) filed with the Department of Commerce (Department) a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations, 15 CFR Part 930, Subpart H. The appeal arose from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's certification that his proposed construction of a bulkhead and a boat ramp on the Bayamon River in Catano, Puerto Rico would be consistent with Puerto Rico's coastal management program.

By a later dated June 30, 1988, the PRPB informed the Department that the Appellant has revised the project such that the PRPB now concurs in its consistency with Puerto Rico's coastal management program. Accordingly, the Department dismissed the appeal on September 27, 1988 for good cause pursuant to 15 CFR 930.128. That dismissal bars the Appellant from filing another appeal from the PRPB's objection to the aforementioned activities.

FOR FURTHER INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Advisory, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: November 2, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 88-25988 Filed 11-9-88; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by James E. Daspit from an Objection by the Mississippi Department of Wildlife Conservation

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of dismissal.

On January 8, 1988, James E. Daspit (Appellant) filed with the Department of Commerce (Department) a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations, 15 CFR Part 930, Subpart H. The appeal arose from an objection by the Mississippi Department of Wildlife Conservation (State) to the Appellant's certification that his proposed dredging and filling of wetlands to construct an indented boat slip, a bulkhead, and a road in Hancock County, Mississippi would be consistent with the State's coastal management program.

To perfect the appeal, the Appellant was required to file, pursuant to 15 CFR 930.125, information and data addressing the criteria relevant to the Department's decision whether to override the State's objection to the

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Appellant's proposed project. Because of the Appellant's failure to file responsive materials, the Department dismissed the appeal on October 5, 1988 for good cause pursuant to 15 CFR 930.128(d). That dismissal bars the Appellant from filing another appeal from the State's objection to the aforementioned activities.

FOR FURTHER INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: November 2, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 88–25987 Filed 11–9–88; 8:45 am]

BILLING CODE 3510–08–M

National Technical Information Service

Intent To Grant Exclusive Patent License to Research Biochemicals, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Research Biochemicals, Inc., having a place of business at Natick, MA, in the United States to manufacture, use, and sell products embodied in the invention entitled "Metaphit," U.S. Patent 4,598,153, for non-human use. The patent rights in this invention have been assigned to the United States of America, as represented by the Department of Commerce.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the subject patent may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, Department of Commerce.

[FR Doc. 88–26043 Filed 11–9–88; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License to Xoma Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Xoma Corporation, having a place of business at Berkeley, CA, an exclusive license in the United States under the rights of the United States of America to manufacture, use, and sell products and use methods embodying the invention entitles "Cloning cDNA's for the Human Interleukin—2 Receptor," United States Patent Application Seriel Number 6–634,380. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487–4650 or by writing to NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, Department of Commerce.

[FR Doc. 88–26044 Filed 11–9–88; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice. The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Certificate of Physician, AF Form 3118, OMB Control Number 0701–0091.

Type of request: Reinstatement.

Average burden hours/minutes per Response: 12 minutes.

Frequency of Response: On occasion.

Number of Respondents: 240.

Annual Burden Hours: 48.

Annual Responses: 240.

Needs and Uses: Medical doctors fill out AF Form 3118 to certify to the mental or physical incapacity of dependent children of deceased military retirees. The physicians' certification is necessary to continue annuities to dependent children who are over age 18 but incapable of self-support. The Air Force uses the information to verify the dependents continued eligibility for annuity pay.

Affected Public: Individiauls.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Pearl Rascoe-Harrison. A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

November 4, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–26081 Filed 11–9–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Scientific Advisory Board; Meeting

November 7, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Progress on High Power Microwave will meet on November 28, 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to examine the appropriateness, extent, and character of the Air Force's involvement in research and development programs into potential applications of high power microwaves.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 88–26003 Filed 11–9–88; 8:45am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting of the Ad Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs

November 7, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet from 28 Nov–9 Dec 1988 at numerous locations in the United Kingdom, France, and the Federal Republic of Germany.

The purpose of this meeting is to gather information on how our Allies handle the problems associated with "crud parts" and how they, their aircraft manufacturers, and their suppliers control the production quality control of these parts. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–26154 Filed 11–9–88; 8:45 am]

BILLING CODE 3910–01–M

Corps of Engineers, Department of the Army

Intent To Prepare Draft Environmental Impact Statement (DEIS) for the Proposed Modifications to the Washington, DC, and Vicinity Local Flood Protection (LFP) Project

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District, Corps of Engineers is conducting a study to complete the existing line of flood protection for the Washington, DC LFP Project. The study is expected to be completed in September 1990. The local flood protection project for downtown Washington is in place except for the modification providing for permanent closures at 23rd Street and Constitution Avenue, at 17th Street NW., and at P and Canal Streets SW. The closures involve minor grade raisings at Constitution Avenue and P Street. A more comprehensive regrading is required at 17th Street to continue the existing levee which parallels the Lincoln Memorial reflecting pool to high ground between Constitution Avenue and the Washington Monument. At present, project operation continues to require implementation of emergency measures such that the ability of the project to provide the design level of protection is questionable. The modification to the original project as authorized by Congress in 1946 provides for remedial work and the construction of new permanent closures to make the protective system complete

CONTACT FOR FURTHER INFORMATION: Questions about the proposed action and DEIS can be answered by Mr. Ted Rossman, Project Manager, CENAB–EN–RC, Baltimore District Corps of Engineers, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (301) 962–4067/68.

SUPPLEMENTARY INFORMATION: 1. The existing local flood protection project was authorized by the Flood Control Act of June 22, 1936 and was constructed in 1940. In October 1942, portions of Washington were flooded when a high tide coincided with the third highest flow of record on the Potomac River. The resulting flood stage was the highest on record and caused an estimated $5,510,000 in damages at October 1988 price levels. Extensive temporary dikes were constructed to close the openings in the existing project under emergency conditions to prevent serious flooding in the downtown area. The experience gained during this flood indicated that temporary closures might not be effective during a flood higher than the 1942 flood.

In the Flood Control Act of July 24, 1946, the U.S. Congress authorized modifications to the existing project to alleviate the need for emergency closures and to conduct remedial work, as necessary, to bring the project to a uniform level of protection. A 1979 review of the improvements indicated that the improvements were still warranted in view of the potential for severe flood damages to the numerous Federal government office buildings, national landmarks, museums, and commercial and residential properties that would be affected. The potential damage area is contained within a large crescent-shaped developed area extending from Constitution Avenue and 17th Street eastward and southward to P Street at Fort McNair. In a flood emergency, the existing project requires temporary earthen barriers to be erected across 17th Street and across Constitution Avenue north of the Lincoln Memorial. Temporary sandbag closures are also needed at P Street adjacent to Fort McNair.

The proposed remedial work consists of minor grading to the levee sections along the existing alignment north of the reflecting pool to reinstate a uniform level of protection in areas where subsidence or work by others has affected the top of protection. A new closure consisting of a raised pavement section less than two feet would be required across Constitution Avenue near Henry Bacon Drive. A new closure structure or regrading would also be required across 17th Street, parallel to Constitution Avenue, which would connect high ground adjacent to Constitution Gardens to high ground south of 17th Street. A raised pavement section along P Street or a low level flood wall along the grassed area adjacent to Fort McNair would also be required.

2. Since this is a modification to an existing system, it is not likely that completely different or separable systems would be feasible. However, practicable alternatives will be considered and addressed in the DEIS. There are several optional plans that can be implemented to complete the closure system. In particular, the closure across 17th Street could consist of a levee section with a ramped roadway over the levee or a levee section with a closure section with stop log beams which would be put into place during a flood emergency. Several variations of these two basic plans are also possible. Alternative plans and variations will be investigated in the design process and coordinated with the resource agencies and the public. The No Action alternative is also a feasible alternative in that the existing emergency plan would be implemented each time a flood emergency threatens the potential damage area.

3. The Baltimore District invites the participation of potentially affected Federal, State, and local agencies and other interested private organizations and parties in this study. Other agencies that will be actively involved in the study include, but are not limited to, the National Park Service (NPS); the Washington, DC Department of Public

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Works (DPW); the Commission on Fine Arts (CFA); the U.S. Fish and Wildlife Service; the Smithsonian Institution; the General Services Administration (GSA); the Architect of the Capitol and the National Capital Planning Commission (NCPC).

The public involvement process will be initiated by a scoping meeting, described below. Public concerns or issues, studies needed, alternatives to be examined, procedures and other related matters will be addressed during the scoping meeting. Several workshops are being planned to be held during the study to present findings and results of technical studies and to develop a consensus on acceptable plan solutions. A public meeting will be held after the DEIS has been distributed for public review.

The scoping process will identify significant issues to be analyzed in depth in the DEIS. Engineering investigations and economic and enivironmental baseline studies are now proceeding. The EIS will be prepared to document the effects of the proposal on the fish and wildlife, cultural, historical, and aesthetic resources of the study area and how resource agency concerns have been resolved and/or incorporated in the final design plan.

4. The Scoping Meeting will be held in conjunction with an agency coordination meeting at 10:00 a.m. on December 6, 1988. The meeting will be conducted in the conference room at the National Capital Planning Commission (NCPC), which is located at 1325 G Street NW., Washington, DC 20576.

5. The draft EIS is scheduled to be available for public review May 1989.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-26045 Filed 11-9-88; 8:45 am]

BILLING CODE 3710-43-M

Department of the Navy

Naval Research Advisory Committee; Meeting

Notice was published October 28, 1988, at 53 FR 43757 that the Naval Research Advisory Committee Panel on Next Generation Computer Resources will meet on November 16-17, 1988. The meeting dates have been changed. All sessions of the meeting will be held on December 12-13, 1988. All other information in the previous notice remains effective. In accordance with 5 U.S.C. 552b(e)(2), the date of meeting change is publicly announced at the earliest practical time.

Date: November 4, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Navy Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 88-26009 Filed 11-9-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-41-NG]

Consumers' Gas Co. Ltd.; Order Granting Blanket Authorization to Export Natural Gas From the United States to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice granting blanket authorization to export natural gas from the United States to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Consumers' Gas Company Ltd. (Consumers' Gas) blanket authorization to export natural gas from the United States to Canada. The order issued in ERA Docket No. 88-41-NG authorizes Consumers' Gas to export up to an aggregate of 100 Bcf of gas supplies over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-057, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, November 2, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-26128 Filed 11-9-88; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Nonresidential Buildings Energy Consumption Survey (NBECS); Request

AGENCY: Energy Information Administration, for Comments DOE.

ACTION: Request for comments on the 1989 survey forms.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) is seeking comments on the proposed survey forms for the 1989 Nonresidential Buildings Energy Consumption Survey (NBECS). The NBECS is a general purpose statistical survey conducted for non-regulatory purposes. It is designed to meet the needs of public and private data users in addition to meeting the legislative requirements of EIA as specified in section 52 of the Federal Energy Administration Act of 1974, Pub. L. 93-275 as amended. Section 52 requires the EIA to establish a National Energy Information System which "* * * shall contain such information as is required to provide a description of and facilitate analysis of energy supply and consumption within and affecting the United States on the basis of such geographic areas and economic sectors as may be appropriate * * *"

The NBECS provides basic statistical informaiton on the consumption of, and expenditures for, energy in U.S. commercial buildings, along with data on energy-related characteristics of these buildings. EIA conducts this national sample survey of nonresidential buildings and their energy suppliers on a triennial basis. Previous NBECS were conducted in 1979, 1983, and 1986. The data from these surveys have been used by policy-makers at the Federal, regional, State, and local levels, and by the private sector for benchmarking forecasting, policy evaluation and planning.

The design of the 1989 NBECS is expected to yield national estiamtes based on 6,000 completed interviews. Present plans call for data to be collected that will yeild valid estimates also for the four Census regions (Northwest, South, Midwest, and West).

As in previous surveys, the 1989 NBECS will be conducted in two states. In the first stage, information about buildings are collected in the Building Characteristics Survey through voluntary personal interviews with the owners, managers or tenants of a sample of buildings located throughout the United States. At the conclusion of the interview, the building respondent is asked to sign a waiver authorizing the survey contractor to obtain fuel consumption records from the building's energy suppliers. In the second stage, the Energy Supplier Survey, data concerning the actual consumption of and expendutures for energy are obtained from records maintained by energy suppliers to the building. This informaiton is obtained by means of a mail survey conducted under EIA's mandatory data collection authority. The interviews with the building owners and managers will take place in the late summer and fall of 1989. The initial

mailings for the Energy Supplier Survey will start in January, 1990 and nonresponse follow-up efforts will continue through September 1990.

The proposed 1989 NBECS is not substantially different from the previous surveys in its basic data requirements. Some changes have been made in order to: Make the data collection more efficient; improve the reliability of the data; and reduce respondent burden.

A series of proposed screening questions and a new survey form, Form EIA-871H, the Facility form have been developed for use on the 1989 NBECS. This new form has been developed to obtain better data on (1) cogeneration and (2) district heating and cooling that takes place in a campus, a complex or multi-building facility such as a hosptial or a shopping mall.

Because NBECS is a building survey and collects information about energy consumed in a building, a problem arises when the building is part of a facility and receives energy from the facilitiy's central power plant. A series of proposed screening questions has been developed as part of the Building Characteristics Survey to determine (1) if the building is located on a facility and (2) if the building receives energy from a central power located on that facility. If so, Form EIA-871H, the proposed Facility form, will then be sent during the Energy Supplier Survey to the facility on which the building is located. This new form will gather the information necessary to permit disaggregation of consumption data for the sampled building.

Destermination if any of the energy generated at the facility is from a cogeneration system would also be obtained from this proposed new form. Previous NBECS surveys asked about cogeneration systems only in the sampled building themselves. Although there are indications that the number of packaged cogeneration units designed to serve a single building is growing, cogeneration in the commercial sector is more likely to be found in a large facility such as a college, hospital, and shopping mall rather than in an individual building, such as a church. Therefore, since most of the buildings on facilities that meet the sampling criteria to be included in the NBECS survey do not contain the cogeneration equipment for the facility, a major segment of the consumption of energy produced through cogeneration might be missed wihout the proposed new Facility form.

ADDRESS: To obtain additional information or copies of the proposed forms, contact Ms. Julia D. Oliver, Energy End Use Division, Energy Information Administration, Department of Energy, Mail Stop 1H-053, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: 202-586-1114.

DATE: Written responses on the proposed form should be submitted to Ms. Julia D. Oliver, Energy End Use Division at the above address on or before December 12, 1988.

FOR FURTHER INFORMATION: To obtain additional information or copies of the forms, contact Julia Oliver at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Written Comments

I. Background

The proposed 198 NBECS will use essentially the same sample design and questionnaires that were used on the 1986 survey. Comments on the 1986 NBECS were solicited in a March 11, 1986, **Federal Register** Notice (51 FR 8351). That version of the NBECS was modified on the basis of those comments and the EEUD's experience from previous surveys.

The proposed 1989 NBECS design utilizes experience gained from the administration and processing of the 1986 NBECS, and on consultations with respondents, trade association representatives and data users.

II. Current Actions

EIA proposes to make the changes described below to the 1986 NBECS forms for use in the 1989 survey. These changes are being made to better serve the needs of data users, to streamline the administration and processing of the survey and to improve overall data quality.

Specific changes in data items from the 1986 NBECS are discussed below.

Form EIA-871A-Building Characteristics Questionnaire and Authorization Form. Most of the changes made to the Building Characteristics Questionnaire were to clarify instructions, definitions and the intent of the questions to both the respondent and the interviewer. As a result, questions have been combined, reworded, reformatted, and in some cases dropped altogether.

In addition, several interviewer self-edits have been added to ensure that the interviewer has obtained all the pertinent information on energy sources used and energy end uses from the respondent before leaving the building.

Of greater importance is the addition of questions relating to the cogeneration and district heating and cooling issues discussed above. There is a need to collect better information on these two areas. For the 1989 NBECS it is proposed that additional questions be asked on Form EIA-871A if the building is part of a facility or campus complex. If so, information will be obtained on the address of the facility's power plant (if different from the building), the use of a cogeneration system in the facility, and the number of buildings and the total enclosed square footage of all the buildings served by the power plant on the facility. As described below, the facility will then be mailed the proposed Form EIA-871H during the Energy Supplier Survey.

Energy Supplier Forms, Forms EIA-871B through F. The energy supplier forms are essentially the same as those used on previous surveys. Questions and data items that were not found to be useful have been deleted. As a result of our experiences with the 1986 survey, instructions have been clarified, administrative questions have been modified to better obtain the requested data and some questions have been added to help clarify data responses. For example, the question on fuel switching, which appeared on Form EIA-871C (Usage of Natural Gas), has been moved to the Building Characteristics Survey after comments received from respondents indicated that most suppliers of natural gas could not provide the information on back-up fuels used.

Form EIA-871G, Construction Improvements and Maintenance and Repairs Supplement. This is a special supplement designed and collected for the U.S. Bureau of the Census at the end of the Building Characteristics Survey. It is planned that it will be administered again in the 1989 survey. As in previous surveys, this form will be cleared through OMB by the Bureau of the Census.

Energy Supplier Form, Form EIA-871H, Facility Form. A new form is under consideration that will capture better information at the facility level on (1) district heating and cooling and (2) cogeneration that takes place on a multi-building facility, such as a campus or complex. Since it may be implemented, it is presented here for comment.

Because the NBECS is a building survey and collects information about energy consumed in the building, a problem arises when a building is part of a facility and receives energy from a central power plant. Usually buildings on a facility are not individually metered for this energy making it difficult to isolate the consumption for the sampled building. To correct this

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situation, the EIA is proposing a new form, Form EIA–871H, to obtain information on the total consumption of primary fuels, the total number of buildings on the facility and other information that will assist in the disaggregation of consumption data for the individual buildings located on the facility.

The proposed Form EIA–871H will also be used to help obtain better information on cogeneration. Previous NBECS surveys asked about cogeneration at the building level (Questions H–1 to H–3 on Form EIA–871A). For the most part, cogeneration identified by these questions would tend to be performed by relatively small packaged cogeneration units. However, the EIA is concerned that by focusing on the building, a major portion of the consumption of energy through cogeneration has been missed: Cogeneration systems located in an on-site power plant that provide the building with district heating and/or cooling. Thus, questions have been developed for the proposed new Form EIA–871H to determine (1) if electricity is cogenerated on the facility; and (2) if so, how many kilowatt-hours of electricity were generated in 1989; (3) the total generating capacity of the equipment; and (4) if the facility has been designated a Qualifying Facility (QF) under the Public Utility Regulatory Policies Act (PURPA) of 1978.

III. Written Comments

The following general guidelines are provided to assist in the preparation of comments. When providing comments, please indicate the form to which the comment applies: (1) The Building Characteristics Questionnaire (Form EIA–871A); (2) the Energy Supplier Forms (EIA–871B through F); (3) the Construction Improvements and Maintenance and Repairs Supplement (Form EIA–871G); or (4) the Facility Form (Form EIA–871H).

As a potential data user:

A. Can you use data at the levels of detail indicated on the forms (or at higher levels of aggregation, if necessary)?

B. For what purpose would you use the data? Please be specific.

C. How could the forms be improved to better meet your specific data needs?

D. Are there alternative sources for the data: What are they? Do you use them, What are their deficiencies?

As a potential respondent:

A. Are the instructions clear and sufficient?

B. How can the forms be improved?

C. Can the data be submitted using the definitions included in the instructions?

D. Public reporting burden for this collection is estimated to average 45 minutes per building for Form EIA–871A; an additional 4 minutes per building for the 3,000 buildings selected for the Construction Improvements and Maintenance and Repairs Supplement (Form EIA–871G) and 25 minutes per form for each of the Energy Supplier Forms B through F and the proposed Facility form, Form EIA–871H. As a potential recipient of a form, how much time on a per building basis, do you estimate it will require your company to complete and submit the appropriate form? (Include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.)

E. Do you know of other Federal, State, or local agencies that collect similar data? If so, specify the agency and the means of collection.

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in this survey.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this survey and will become a matter of public record.

Statutory Authority

Sections 5(a), 5(b), 13(b), and 52 of Public Law 93–275, Federal Energy Administration Act of 1974, as amended (15 U.S.C. S764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC on November 4, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–26129 Filed 11–9–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–602–000, et al.]

Mississippi Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Mississippi Power & Light Company

[Docket No. ER88–602–000]

November 1, 1988.

Take notice that on October 11, 1988, Mississippi Power & Light Company (MP&L) tendered for filing a response to the Staff's deficiency letter in this proceeding.

MP&L requests an effective date of August 31, 1988 for the letter agreement. MP&L requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

Comment date: November 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Texasgulf, Inc.

[Docket No. QF86–51–001]

November 3, 1988.

On October 24, 1988, Texasgulf, Inc. Applicant, of 3101 Glenwood Avenue, P.O. Box 30321, Raleigh, North Carolina 27622–0321 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Wharton County, Texas. The facility will consist of a combustion turbine generator, heat recovery steam-turbine generator and a steam turbine generator which is used in the Frasch mining process which involves injecting large quantities of superheated water into an underground sulphur bearing formation to melt the sulphur, and then air lifting the molten sulphur to the surface. The net electric power production capacity will be 86,380 Kilowatts. The primary energy source will be natural gas. Installation of the facility began during June 1984.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Foster Wheeler Broome County, Inc.

[Docket No. QF89–6–000]

November 3, 1988.

On October 12, 1988, Foster Wheeler Broome County, Inc. (Applicant), of Perryville Corporate Park, Clinton, New Jersey 08809–4000 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Broome County, New York. The facility will consist of waterwall steam generator trains and a single turbine generator. The net electric power production capacity will be 15 megawatts. The primary energy will be biomass in the form of municipal solid waste. Natural gas will be used for ignition, start-up, testing, flame stabilization and control, however, such fossil fuel uses will not exceed 25 percent of the total energy input of the facility during any calendar year. Construction of the facility will be in 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Gas and Electric Company

[Docket No. ES89–3–000]

November 3, 1988.

Take notice that on October 28, 1988, Kansas Gas and Electric Company (Applicant) filed an application with the Commission, pursuant to section 204 of the Federal Power Act, seeking authority to borrow from time to time through December 31, 1992, from any bank or banks, trust company or trust companies, or through the issuance of unsecured promissory notes in the form of commercial paper with maturities of not more than one (1) year, such amounts of money not to exceed $225,000,000 in the aggregate. All notes will have final maturities of not later than December 31, 1992.

Comment date: November 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–26022 Filed 11–9–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–103–000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89–103–000]

November 3, 1988.

Take notice that on October 31, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP89–103–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act for Power Resources Operating Company, Inc. (Power Resources), all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Power Resources, a broker. Tennessee explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–340. Tennessee further explains that the peak day quantity would be 23,000 dekatherms, the average daily quantity would be 23,000 dekatherms, and that the annual quantity would be 8,395,000 dekatherms. Tennessee explains that it would receive natural gas for Power Resources' account at six points in the states of Louisiana and Texas, as well as offshore Louisiana and Texas. Tennessee further explains that, it would redeliver natural gas for the account of Power Resources in the states of Ohio, West Virginia, and Pennsylvania. It is indicated that the location of the ultimate delivery points of the gas are also in the states of Ohio, West Virginia, and Pennsylvania.

Comment date: December 19, 1988, in accordance with standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89–96–000]

November 3, 1988.

Take notice that on October 28, 1988, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–96–000 a request pursuant to § 157.05 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (Enron), under its blanket authorization issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for Enron, a marketer of natural gas, pursuant to an interruptible transportation service agreement dated July 19, 1988 (#IGP–1295) and amendments dated August 16, 1988, August 25, 1988, and September 20, 1988. The term of the transportation agreement is from the date of the contract and shall continue for a primary term ending August 1, 1990, and shall continue month to month thereafter unless cancelled by five days prior notice by either party. Natural proposes to transport on a peak day up to 100,000 MMBtu per day; on an average day up to 50,000 MMBtu; and on an annual basis 18,250,000 MMBtu of natural gas for Enron. Natural further states that consistent with its Rate Schedule ITS, Enron may request and Natural may agree to accept additional quantities as overrun gas. Natural proposes to receive the subject gas from various existing points of receipt on its system in Louisiana, offshore Louisiana, Illinois, Texas, offshore Texas, Oklahoma, New Mexico, Iowa, Arkansas, Kansas, and Nebraska for redelivery to various delivery points in Texas. Natural avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on September 1, 1988, as reported in Docket No. ST89–416–000.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP89–87–000]

November 3, 1988.

Take notice that on October 25, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–87–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of OXY NGL, Inc. (OXY), under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

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Natural requests authorization to transport, on an interruptible basis, up to a maximum of 80,000 MMBtu of natural gas for OXY from receipt points located in Texas, Lousisiana, offshore Louisiana, Kansas, Oklahoma, Colorado and Iowa to delivery points located in Texas, Illinois and Louisiana. Natural anticipates transporting, on an average day 20,000 MMBtu and an annual volume of 7,300,000 MMBtu.

Natural states that the transportation of natural gas for OXY commenced September 1, 1988, as reported in Docket No. ST89–328–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP89–562–000.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP89–88–000]

November 4, 1988.

Take notice that on October 25, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–88–000 a request for authorization pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Applicant's blanket certificate issued in Docket No. CP87–115–000 for authorization to provide a transportation service for Citizens Gas Supply Corporation, (Citizens), a marketer, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated September 16, 1988, it proposes to transport natural gas for Citizens from various receipt points located offshore Louisiana and offshore Texas, and in the states of Texas, Louisiana, Mississippi, Alabama, New York, Ohio, Connecticut, Kentucky and Pennsylvania. It is maintained that the points of delivery would be located in the states of Louisiana, Mississippi, Rhode Island, and New York. The ultimate point of delivery would be the state of New York.

The Applicant further states that under the contract, the transportation volumes would be as follows:

Maximum daily quantity—250,000 dt.
Average day—250,000 dt.
Annual basis—91,250,000 dt.

It is asserted that service under § 284.223(a) commenced September 30, 1988, as reported in Docket No. ST89–244.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP89–112–000]

November 4, 1988.

Take notice that on October 31, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–87–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Westar Trading and Refining, Inc. (Westar), a marketer of naturla gas, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 30,000 MMBtu of natural gas equivalent per day, plus additional quantities of overrun gas, on behalf of Westar pursuant to a transporation agreement dated August 24, 1988, between Natural and Westar.Natural would receive gas at various existing points of receipt on its system in Texas, Louisiana, offshore Louisiana, Oklahoma and Iowa and redeliver equivalent volumes, les fuel and unaccounted for volumes, at existing delivery points in Texas, Louisiana, Oklahoma, Iowa, Kansas and Illinois.

Natural further states that the estimated average daily and annual quantities would be 12,000 MMBtu and 4,380,000 MMBtu, respectively. Service under § 284.223(a) commenced on September 1, 1988, as reported in Docket No. ST89–459–000, it is stated.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. National Fuel Gas Supply Corporation

[Docket No. CP89–85–000]

November 4, 1988.

Take notice that on October 24, 1988, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP89–85–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the replacement of 15,000 feet of 22-inch pipleine with an equivalent length of 24-inch coated steel line in Hamburg, New York (Erie Country), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National proposes to construct and operate a replacement of the 22-inch segment because it is old, bare, and in close proximity to residential dwellings which makes future maintenance of the line difficult.

National states that the purpose of the facility proposed is to maintain existing markets, and that the cost of construction is estimated to be $1,481,622, which will be financed with internally generated funds and/or interim short-term bank loans.

Comment date: November 25, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if not motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 88–26096 Filed 11–9–88; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TA89–1–1–000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

November 4, 1988.

Take notice that on October 31, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, the following tariff sheet.

Ninth Revised Sheet No. 4.

The tariff sheet is proposed to become effective January 1, 1989. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers and to change its FERC Annual Charge Adjustment.

Alabama-Tennessee states that the instant filing represents its annual purchased gas cost adjustment pursuant to § 154.305 of the Commission's regulations and contains the Assessment of Past Performance required by § 154.306.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214). All such motions or protests should be filed on or before November 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88–26023 Filed 11–9–88; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. TQ89–1–22–000 and RP89–15–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 4, 1988.

Take notice that CNG Transmission Corporation ("CNG"), on November 1, 1988, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's regulations (18 CFR Part 154) and section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Fourth Revised Sheet No. 31.
Second Revised Sheet No. 150.

CNG states this filing, quarterly PGA, is tendered to become effective on December 1, 1988. The filing would increase CNG's RQ and CD commodity rates by 6.47 cents per dekatherm, decrease D–1 demand rates by 23.09 cents per dekatherm, and decrease D–2 demand rates by 1.04 cents per dekatherm. Other rates are changed correspondingly.

CNG states this filing seeks a revision in CNG's tariff to permit the automatic passthrough of pipeline supplier standby charges.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervent with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20462, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88–26024 Filed 11–9–88; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TA89–1–2–000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

November 4, 1988.

Take notice that East Tennessee Natural Gas Company (East Tennessee) hereby filed the following revised tariff sheet to Original Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1989:

Forty-Fifth Revised Sheet No. 4.

East Tennessee states that the purpose of this revision is to institute the Annual PGA pursuant to sections 22.2 and 22.3 of the General Terms and Conditions of East Tennessee's Tariff.

East Tennessee states the rate adjustments reflected on Forty-Fifth Revised Sheet No. 4 consist of $.0637 per dekatherm adjustment applicable to the gas rate and the Rate Schedule SWS, $(.12) per dekatherm applicable to the D_1 component of the demand rates and a $.0033 per dekatherm adjustment to the D_2 component.

East Tennessee states the revisions relfect a $(.0086) per dekatherm surcharge adjustment to the gas rates and $(.26) per dekatherm surcharge adjustment to the demand D_1 rate and $.0008 per dekatherm surcharge to the demand D_2 rate for amortizing the Unrecovered Gas Cost Account.

East Tennessee states that the current adjustment to its demand rates (D_1 and D_2) reflect the demand charges from Tennessee Gas Pipeline Company effective January 1, 1988. East Tennessee states that current adjustments to its gas rate reflect increases in the gas rate of Tennessee and other various producer-suppliers.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or

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before November 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not srve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26026 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-58-023 and TA85-1-33-012]

El Paso Natural Gas Co.; Filing

November 4, 1988.

Take notice that on October 25, 1988, El Paso Natural Gas Company (El Paso) filed the following tariff sheets to its FERC Gas Tariff and detailed supporting workpapers in compliance with the Commission's letter order of September 30, 1988:

First Revised Volume No. 1

Third Substitute Sixteenth Revised Sheet No. 100.
Substitute Eighteenth Revised Sheet No. 100.
First Substitute Eighteenth Revised Sheet No. 100.

Third Revised Volume No. 2

Third Substitute Fortieth Revised Sheet No. 1-D.
Substitute Forty-second Revised Sheet No. 1-D.
First Substitute Forty-second Revised Sheet No. 1-D.

Original Volume No. 2A

Third Substitute Forty-second Revised Sheet No. 1-C.
Substitute Forty-fourth Revised Sheet No. 1-C.
First Substitute Forty-fourth Revised Sheet No. 1-C.

El Paso states that subsequent to filing with the Commission, El Paso discovered certain errors in the tariff sheet pagination for the sheets effective July 1, 1988 and rate calculations for the tariff sheets effective October 1, 1988. El Paso states that such errors were corrected on the service copies of the filing prior to mailing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26025 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-14-000]

Inter-City Minnesota Pipelines Ltd., Inc.; Proposed Changes in FERC Gas Tariff

November 4, 1988.

Take notice that on October 31, 1988, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 York Land Boulevard, North York, Ontario M2J 1R1, tendered for filing certain revised tariff sheets to Original Volume No. 1 and Original Volume No. 2 its FERC Gas Tariff.

Inter-City has also filed supporting calculations and work papers showing the computations of the proposed rate change.

Inter-City states this proposed tariff revision reflects a change in the level of Inter-City's jurisdictional rates and volumes from the currently effective levels and provides for an increase in current annual cost of service of approximately 5.3 percent, to approximately $972,900. The rates reflected in this filing are designed to bring Inter-City's revenues to a level of its costs and reflects changes in rate of return and other base rate changes. Inter-City is also filing revised tariff sheets to remove references to MMBtu.

Inter-City requests these tariff sheets to become effective December 1, 1988.

Also contained in the filing is a modification of Inter-City's one-part Western Zone rate to a two-part rate, consistent with Inter-City's Eastern Zone rate.

Copies of the filing were served on Inter-City's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26027 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

November 4, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on October 31, 1988, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective December 1, 1988:

Sixty-Sixth Revised Sheet No. 3a
superseding Sixty-Fifth Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of Sixty-Sixth Revised Sheet No. 3a is to reflect a 30.21¢ per MCF increase in its current cost of gas.

This filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with sections 211 and 214 of the Commission's Rules of Practice and Prodcedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26028 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-12-000]

Mississippi River Transmission Corp.; Tariff Filing

Take notice that on October 29, 1988 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to it FERC Gas Tariff, Second Revised Volume No. 1:

Tariff Sheet—Proposed Effective Date

Original Sheet No. 4A.2—September 29, 1988.
Alternate Original Sheet No. 4A.2—September 29, 1988.
Fourth Revised Sheet No. 62—September 29, 1988.
Alternate Fourth Revised Sheet No. 62—September 29, 1988.
Third Revised Sheet No. 63—September 29, 1988.

MRT states that its filing is being submitted to reflect in its rates and charges the flow-through of fixed take-or-pay charges billed to MRT by Trunkline Gas Company (Trunkline) in Docket No. RP88-239. MRT states that its primary tariff sheets utilize a Demand Component D-1 allocation methodology for the flow-through of Trunkline take-or-pay charges. MRT states that the impact of the primary tariff sheets on its jurisdictional sales customers is an increase of approximately $3.4 million annually.

MRT states that its filing also contains alternate tariff sheets which reflect utilization of the cumulative purchase deficiency allocation method for the flow-through of Trunkline take-or-pay charges. MRT states that the impact on its jurisdictional sales customers of the alternate tariff sheets is an increase of approximately $2.8 million annually.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding Any person wishing to become a party must filed a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26029 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-13-000]

Mississippi River Transmission Corp.; Tariff Filing

November 4, 1988.

Take notice that on October 28, 1988 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Tariff Sheet—Proposed Effective Date

Tenth Revised Sheet No. 4A—November 1, 1988.
Fifth Revised Sheet No. 62—November 1, 1988.
Alternate Fifth Revised Sheet No. 62—November 1, 1988.

MRT states that its filing is being submitted to reflect in its rates and charges the follow-through of Fixed Additional Take-or-Pay Charges billed to MRT by United Gas Pipe Line Company (United) in Docket No. RP88-264.

MRT states that the impact of the Additional Monthly Take-or-Pay Charges on its jurisdictional customers is an annual increase of approximately $3.5 million.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26030 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

November 4, 1988.

Take notice that on October 341, 1988, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet proposed to become effective January 1, 1989: Seventeenth Revised Sheet No. 4.

National states this filing reflects its first annual PGA incompliance with § 154.305 of the Commission's Regulations. National states that the purpose of the tariff sheet is to reflect the quarterly Purchased Gas Cost adjustments required under the Commission's Regulations.

Further, National states that Seventeenth Revised Sheet No. 4 reflects an overall increase in rates of 5.86 cents per dekatherm. The overall increase results from an increase in current purchased gas costs, a positive demand surcharge adjustment, and a negative commodity surcharge adjustment.

National states that copies of this filing were served upon the Company's jurisdictional customers and the regulatory commissions of the states of New York, Ohio, Pennsylvania, Delaware and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such motions to intervene or protests should be filed on or before November 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26032 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-26-000]

Natural Gas Pipeline Co. of America; Change in Rates

November 4, 1988.

Take notice that on October 31, 1988, Natural Gas Pipeline Company of Ameican (Natural) tendered for filing as

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part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), the below listed tariff sheets to be effective December 1, 1988:

Sixth Substitute Seventy-fifth Revised Sheet No. 5
Sixth Substitute Fortieth Revised Sheet No. 5A

Natural states the purpose of the instant filing is to implement Natural's quarterly PGA unit rate adjustment calculated pursuant to Section 18 of the General Terms and Conditions of Natural's Tariff.

Natural states the overall effect of the quarterly adjustment when compared to Natural's last quarterly PGA filing in Docket No. TQ88-2-26-000 effective September 1, 1988, is an increase in the DMQ-1 commodity charge of 125.06, a decrease in the DMQ-1 demand charge of $.01 and a decrease in the DMQ-1 entitlement charge of $.0007. Appropriate adjustments have been made with respect to Natural's other rate schedules.

A copy of this filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion tointervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26031 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-10-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 4, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 28, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volumes No. 1:

Original Sheet No. 3-C.13
Original Sheet No. 3-C.14
Original Sheet No. 3-C.15
First Revised Sheet No. 43-14

Panhandle proposed a November 28, 1988 effective date.

Panhandle states that the foregoing tariff sheets are being filed pursuant to Order No. 500 to recover additional take-or-pay settlement and contract reformation cost fixed surcharges which its pipeline suppler, Trunkline Gas Company billed to Panhandle. As a downstream pipeline, Panhandle proposes to recover such costs on an as-billed basis, pursuant to § 2.104(e) of the Commission's General Policy and Interpretations. For fixed costs billed to Panhandle by its pipeline supplier, Panhandle will allocate such costs to its customers utilizing the same deficiency-based formula which its pipeline supplier utilized in allocating its fixed-charge take-or-pay settlement and contract reformation costs to Panhandle.

Copies of the filing were served upon Panhandle's jurisdictional customers, interested state commissions and the parties in Docket Nos. RP87-103 and RP88-262.

Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, Union Center, Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26033 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-55-000]

Questar Pipeline Co.; Rate Change

November 4, 1988.

Take notice that on October 31, 1988, Questar Pipeline Company tendered for filing and acceptance Eighteenth Revised Sheet No. 12 to be effective December 1, 1988, to its FERC Gas Tariff, First Revised Volume No. 1.

Questar Pipeline states that the purpose of this filing is to: (1) Adjust the purchased gas costs under Questar Pipeline's sale-for-resale Rate Schedule CD-1 effective November 1, 1988; and (2) to request an extension of a temporary waiver of the PGA clause and related Commission regulations to permit gas-cost treatment of certain firm transportation demand charges from Northwest Pipeline Corporation related to the conversion of Questar Pipeline's contract demand from Northwest's PL-1 sales rate schedule to its TF-1 transportation rate schedule for the period October 1, 1988, through October 31, 1989.

Questar Pipeline further states that Eighteenth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.15998/Dth for sales under its Rate Schedule CD-1 whic is $0.13892/Dth higher than the currently effective rate of $2.02106/Dth. The demand base cost of purchased gas as adjusted is increased by $.27139/Mcf to $.42655/Mcf.

Questar Pipeline has requested any necessary waivers of the Commission's Rules and Regulations to allow the tendered tariff sheet to become effective as proposed, and states that is has provided a copy of the filing to its sales customer and state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26034 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-6-000]

Sea Robin Pipeline Co.; Tariff Filing of Revised Tariff Sheet and Request for Relief

November 4, 1988.

Take notice that on November 1, 1988, Sea Robin Pipeline Company (Sea Robin) tendered for filing to its FERC Gas Tariff, to be effective January 1, 1989:

Original Volume No. 1

Fifty-Fourth Revised Sheet No. 4

Sea Robin states that due to the magnitude of its deferred purchased gas cost account balance relative to projected sales, Sea Robin is requesting one time authority to defer billing its existing Account No. 191 balance as of December 31, 1988. Absent dererral the current surcharge would be $3,3282 per mcf and when added to Sea Robin's gas cost of $3.2264 would result in an intolerable and unacceptable gas cost of $6.5546.

Sea Robin states that its filing includes a request to merge the deferred account balance related to sales rate schedules X-7 and X-8 with the balance related to sales rate schedules X-1 and X-2. Sea Robin requests authority to combine X-7 and X-8 because the dererred account balance is negative indicating an overcollection with the refunds due its customers, and, because Sea Robin no longer has a contracturla obligation to purchase any gas underlying those dates schedules and that no purchases are anticipated.

Sea Robin states an effective date of Jan. 1, 1989 for combining and dererring the deferred account balances, and the preceding tariff sheet is requested. The above referenced tariff sheet is being filed pursuant to § 154.10 of the Commission's regulations to reflect the changes in the purchased gas cost adjustment provisions contained in Sections 1 and 4 of Sea Robin's FERC Gas Tariff, Original Volume No. 1.

Sea Robin states the tariff sheet reflects a Current Adjustment of −$0.0370 under Rate Schedules X-1 and X-2. Sea Robin states that there is no change under Rate Schedules X-7 and X-8 in this filing since no gas is expected to be purchased in that area.

Sea Robin states that the revised tariff sheet and supporting data are being mailed to its jurisdictional sales customers and to interested state commission.

Any person desiring to be hear or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with § 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before November 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26035 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-9-000]

Tennessee Gas Pipeline Co.; Rate Change Under Tariff Rate Adjustment Provisions

November 4, 1988.

Take notice that on November 1, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective January 1, 1989:

Second Revised Volume No. 1

Item A:
Ninth Revised Sheet No. 20
Sixth Revised Sheet No. 20A
Eleventh Revised Sheet No. 21
Item B:
Third Revised Sheet Nos. 31 through 36

Original Volume No. 2

Item C:
Tenth Revised Sheet No. 5
Ninth Revised Sheet No. 6

Tennessee states that the purpose of the revisions listed under Item A is to reflect various PGA rate adjustments pursuant to sections 2, 3, and 5 of Article XXIII of the General Terms and Conditions of Tennessee's Tariff. Tennessee states that the purpose of the revisions listed under Item B is to reflect (1) amortization of Order 94 production-related costs pursuant to the settlement agreement approved by the Commission's Order on June 14, 1985 in Docket Nos. CP84-441, *et al.* and (2) Recovery of Order 473 producer compressor fuel costs pursuant to Article XXIX of the General Terms and Conditions of its FERC Gas Tariff. Tennessee states that the purpose of the revisions listed under Item C is to reflect adjustments to transportation rate schedules for changes in the cost of gas for fuel and losses pursuant to section 5 of Article XXIX of the General Terms and Conditions.

Tennessee states that the total change in the Tennessee Gas Rate from the last scheduled PGA is 9.12 cents per dth consisting of a Current Purchased Gas Rate Adjustment of (1.01) cents per dth and a Surcharge for Amortizing Unrecovered Purchase Gas Costs of 10.13 cents per dth to be effective from January 1, 1989 through December 31, 1989. Tennessee states that the total change to the Demand Rate is 5 cents per dth, reflecting a Current Adjustment of 4 cents and a Surcharge for Amortizing Unrecovered Purchase Gas Costs of 1 cent. Tennessee states that the gas rate adjustment is based upon an Average Cost of Purchased Gas of $2.2477 per dth.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26036 Filed 11-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-16-000]

Transwestern Pipeline Co., Division of Enron Corp.; Filing

November 4, 1988.

Take notice that on November 1, 1988, Transwestern Pipeline Company tendered for filing to become a part of Transwestern's F.E.R.C. Gas Tariff, Second Revised Volume No. 1, to be effective December 1, 1988:

3rd Revised Sheet No. 29
1st Revised Sheet No. 29A
1st Revised Sheet No. 30I
4th Revised Sheet No. 32
1st Revised Sheet No. 32A
3rd Revised Sheet No. 34D
1st Revised Sheet No. 34E
1st Revised Sheet No. 60

Transwestern proposes to eliminate the requirements under section 3 of Rate Schedules FTS-1 and ITS-1, that it provide Buyers with notification twenty-four (24) hours prior to, and written verification five (5) days following, the effective date of discounted rates. Transwestern has established an electronic bulletin board in response to Order No. 497 to communicate such

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pricing information, as well as information relating to available capacity contemporaneously to all potential Shippers, obviating the need for notification by other means.

Transwestern states section 5 of Schedule FTS–1 and ITS–1 have been modified to require Buyers to nominate transportation service two (2) days in advance of the first day of a month and make all Buyer nomination time periods exclusive of Saturdays, Sundays and holidays. In addition, a new provision has been added to the section to provide Transwestern with the ability to schedule transportation nominations outside the established time period where capacity remains available after gas has been scheduled or as the result of an operational or weather situation. Such modifications (1) will afford Transwestern the time needed to schedule and coordinate with other pipeline companies the influx of transportation activity that accompanies a new month; (2) clarify that transportation must be nominated by Buyers during Transwestern's standard working hours; and (3) provide greater flexibility in the scheduling of transportation nominations to accommodate last minute changes that can occur in pipeline operations, supply or markets.

Transwestern states section 14 of Schedule ITS–1 reflects a modification which would permit a Buyer to substitute a newly-constructed delivery point for an existing delivery point under an executed ITS–1 Service Agreement without affecting the priority date of such Service Agreement in the interruptible, first come, first served queue. While generally a request for additional delivery points will continue to constitute a new request for transportation service, this exception, for example, would permit a Buyer who desires alternate downstream transportation into the California market to request that Transwestern interconnect with such alternate transporter, without affecting the Buyer's priority in the interruptible queue.

Transwestern states sections 15 and 17 of Schedules FTS–1 and ITS–1 reflect a modification which would permit Transwestern to waive any tariff provision in a not unduly discriminatory manner. This modification is proposed in response to the Commission mandate under Order No. 497 that pipelines strictly enforce all tariff provisions in the event these provisions contain no discretionary language. As Transwestern noted in its Request for Rehearing of Order No. 497, operational situations occur from time to time which may have an indeterminable effect on the pipeline and may prevent the pipeline from strictly enforcing its tariff provisions. Because there are a multitude of such situations, solutions cannot be identified in advance. A pipeline must have sufficiently flexible tariff provisions to allow it to react reasonably to problematic situations in a not unduly discriminatory manner. The proposed tariff provision provides Transwestern with the flexibility it needs to address such undefined situations as they occur.

Transwestern states that it proposes to modify its established schedule for meter testing as set forth in section 5.6 of the General Terms and conditions of its Tariff. The monthly testing of measuring equipment is much too frequent. Transwestern proposes to test such equipment periodically in an effort to reduce the time and expense associated with monthly testing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–26037 Filed 11–9–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3474–6]

Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and are available to the public for review and comments. The ICRs describe the nature of the information collection and their expected cost and burden; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Clara Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS Municipal Incinerator Reporting and Recordkeeping Provisions. (EPA ICR # 1058) This is a request for renewal of an existing collection.

Abstract: Owners and operators of municipal incinerators must notify EPA of construction, startup, shutdown, malfunction, and modification to the plant. Owners and operators must also report performance test results and record the occurrence and duration of any startup, shutdown, or malfunction in the operation of the facility. In addition, owners and operators must record daily charging rates and measurements of particulate matter emissions. The States and/or EPA use this information to ensure compliance with the standards and, when necessary as evidence in court.

Burden Statement: Public reporting burden is estimated to be approximately 70 hours per performance test (on average), including time for providing notification, reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Recordkeeping requirements are estimated to consume 15 minutes each day.

Respondents: Owners and operators for municipal incinerators with a charging rate of more than 50 tons per day which commenced construction or modification after August 17, 1971.

Estimated No. of Respondents: 58.

Estimated Total Annual Burden on Respondents: 5,642 hours.

Frequency of Collection: On occasion.

Title: NSPS Monitoring Requirements For Coal Preparation Plants. (EPA ICR # 1062) This is a request for renewal of an existing collection.

Abstract: Owners and operators of coal preparation plants must notify EPA of construction, startup, shutdown, malfunction, and modification to the plant. Owners and operators must also report performance test results and record the occurrence and duration of any startup, shutdown, or malfunction in the operation of the facility. In addition, owners/operators must install, calibrate, maintain and continuously measure the temperature of the gas stream of the dryer, and if applicable, the pressure drop across the scrubber system. The State and/or EPA use this information to ensure compliance with the standards and, when necessary, as evidence in court.

Burden Statement: Public reporting burden is estimated to be approximately 350 hours per performance test (on average), including time for providing notification, reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Recordkeeping requirements are estimated to consume 3 minutes each day.

Respondents: Owners and operators of coal preparation plants which process over 200 tons per day and which commenced construction or modification after October 24, 1974.

Estimated No. of Respondents: 217.

Estimated Total Annual Burden on Respondents: 20,555 hours.

Frequency of collection: On occasion.

Title: NESHAP for Beryllium (Subpart C)—Information Requirements. (EPA ICR # 0193) This is a request for renewal of an existing collection.

Abstract: Owners and operators of affected facilities must apply for approval of construction or modification as well as approval of proposed ambient monitoring plans. Owners and operators must also notify EPA of startup, and initial performance testing. In addition, monthly reports on ambient beryllium monitoring or emission levels must be submitted. This informaiton is needed to ensure compliance with the standard, alert EPA to public health hazards, and provide evidence in court when appropriate.

Burden Statement: Reporting burden is estimated to be approximately 8 hours for each monitoring report, including time for providing notification, reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Recordkeeping requirements are estimated to consume 15 minutes each day.

Respondent: Owners and operators of all extraction plants, ceramic plants, foundries, incenerators, and propellant plants which process beryllium ore, beryllium, beryllium oxide, beryllium alloys, or beryllium-containing waste. These requirements also apply to machine shops which process beryllium, beryllium oxides, or any alloy when such alloy contains more than five percent beryllium by weight.

Estimated No. of Respondents: 236.

Frequency of Collection: Monthly.

Total Annual Burden: 37,406 hours.

Title: NSPS For Nonmentallic Mineral Processing Plants—Reporting and Recordkeeping Requirements. (EPA ICR # 1084) This is a request for renewal of an existing collection.

Abstract: Owners and operators of nonmetallic mineral processing plants must notify EPA of construction, startup, shutdown, malfunction, and modification of the plant. Owners and operators must also report performance test results and record the occurrence and duration of any startup, shutdown, or malfunction in the operation of the facility. In addition, owners/operators must install, calibrate, maintain, and continuously measure the temperature of the gas stream through the scrubber, and of the scrubbing liquid flow rate. Owners and operators must also submit semiannual reports of occurrences when the scrubber pressure drop and liquid flow rate differ by more than 30% from the measurement recorded during the most recent performance test. The States and/or EPA use this information to ensure compliance with the standards and, when necessary, as evidence in court.

Burden Statement: Public reporting burden is estimated to be approximately 345 hours per performance test (including notification of construction, modification, etc.) and 8 hours per scrubber malfunction report, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Recordkeeping requirements are estimated to consumre 15 minutes each day.

Respondents: Requirements apply to owners and operators of the following facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyer, bagging operation, storage bin, enclosed truck or railcar loading station commencing construction or modification after August 31, 1983.

Estimated No. of Respondents: 86.

Estimated Total Annual Burden on Respondents: 6,024 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to:

Carla Levesque, Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460

and

Nicholas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC, 20503, Telephone (202–395–3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 1039; Technical and Financial Reports Submitted in Accordance with Contracts Requirements; was approved 9/20/88; OMB # 2030–0005; expires 10/31/90.

EPA ICR # 1049; Notification of Oil or Hazardous Substances Episodic Releases; was approved 9/28/88; OMB # 2050–0046; expires 9/30/91.

EPA ICR # 0229; NPDES Discharge Monitoring Report; was approved 9/28/88; OMB # 2040–004; expires 6/30/91.

EPA ICR # 1395: Title III Emergency Planning And Emergency Release Notification; was approved 9/28/88; OMB # 2050–0092; expires 9/30/91.

EPA ICR # 1038; Acquisition Solicitation (IFB's and RFP's; was approved 9/21/88; OMB # 2030–0006; expires 12/31/90.

Dated: October 27, 1988.

Paul Lapsley,

Director Information and Regulatory Systems Division.

[FR Doc. 88–26057 Filed 11–9–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3475–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared October 24 through 28, 1988

Availability of EPA comments prepared October 24, 1988 through October 28, 1988, pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–BLM–K65118–AZ, Rating EC2, San Pedro River Riparian Resource Management Plan, Implementation, San Simon Resource Area, Safford District, Cochise County, AZ.

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Summary: EPA expressed environmental concerns because the preferred alternative's level of proposed recreational and minerals development could conflict with the goal of protecting the area's natural resources, such as water quality, riparian habitats, and wildlife.

ERP No. DS–COE–K32029–HI, Rating EC2, Kaulana Bay Navigation Improvements, Reevaluation of Project, Implementation, South Point, Island of Hawaii, Hawaii County, HI.

Summary: EPA expressed environmental concerns and requested that the final supplemental EIS identify control measures to protect water quality from erosion from shoreside developments, document water quality certification from the State of Hawaii, and specify mitigation measures to protect water quality, beneficial uses and aquatic resources.

ERP No. LD–SFW–L64040–AK. Rating EC2, Alaska National Wildlife Refuges Native Owned Inholdings Acquisition in Exchange for Limited Oil and Gas Interest in the Coastal Plain of the Arctic National Wildlife Refuge, AK.

Summary: EPA expressed environmental concerns due to lack of a commitment in the EIS from the Department of Interior to prepare site-specific NEPA documents for exploration activities.

Final EISs

ERP No. F–BLM–J65147–WY, Cody Resource Area Land Management Plan, Implementation, Big Horn and Park Counties, WY.

Summary: Though some of EPA's concerns with the draft EIS have been addressed. EPA is still concerned with impacts to water quality and to wetlands.

ERP No. F–BLM–J65148–UT, Pony Express Resource Management Plan, Implementation, Salt Lake District, Utah, Tooele and Salt Lake Counties, UT.

Summary: EPA's concerns with the draft EIS have been addressed. EPA has no objection to the action as proposed.

ERP No. F–COE–E30033–FL, Martin County Beach Erosion Control Project, Implementation, Hutchison and Jupiter Islands, Martin County, FL.

Summary: EPA's evaluation of this document did not reveal any new information meriting additions to our original comments.

Note.—The above summary should have appeared in the 11–4–88 FR Notice.

ERP No. F–SFW–L64038–AK, Arctic National Wildlife Refuge, Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Implementation, AK.

Summary: EPA continues to have concerns regarding the uncertainty about the availability of adequate funding to fully implement the management directives of the preferred alternative.

ERP No. F–SFW–L64039–AK, Alaska Maritime National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, Implementation and Wilderness Recommendations, Forrester Island to near Barrow on the Arctic Ocean, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F–UAF–K52003–AZ, Sells Military Operations Area/Air Traffic Control Assigned Airspace, Supersonic Flight Operations Overlying Tohono O'Odham Indian Reservation and Organ Pipe Cactus National Monument, Continuation, Pima County, AZ.

Summary: EPA encouraged the Air Force, in its Record of Decision, to adopt the mitigation measures outlined in the final EIS. EPA asked to receive a copy of the ROD when it is issued.

Dated: November 7, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–26131 Filed 11–9–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3475–2]

Environmental Impact Statements; Availability of Environmental Impact Statements Filed October 31, Through November 4, 1988

Responsible Agency: Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5075.

EIS NO. 880359, DRevised, BLM, WY, Rock Springs District Wilderness Study Areas (WSAs), Wilderness Recommendations, Designation or Nondesignation, Fremont, Lincoln, Sublette and Sweetwater Counties WY, Due: December 19, 1988, Contact: Alan Stein (307) 382–5350.

EIS NO. 880366, Final, FHW, ME, Fore River Bridge/Million Dollar Bridge/ME–77 Rehabilitation or Replacement, Broadway in South Portland to York Street in Portland, Sections 10 and 404 Permits USCG Bridge Permit and Funding, Fore River, Cumberland Co., Due: December 12, 1988, Contact: William Richardson (202) 622–8487.

EIS NO. 880367, Final, SCS, KS, NB, Pony Creek Watershed Protection and Flood Prevention Plan, Funding and 404 Permits, Missouri River Basin, Brown and Nemaha Counties, KS and Richardson County, NB, Due: December 12, 1988, Contact: James N. Habiger (913) 823–4565.

EIS NO. 880368, Final, OSM, MT, Peabody Big Sky Coal Mine—Area B Expanded Operations Project, Plan Approval, Lee Coulee Drainge, Rosebud County, MT, Due: December 12, 1988, Contact: Floyd McMullen (303) 844–3104.

EIS NO. 880369, DRevised, COE, MS, Gulfort Harbor Deep Draft Navigation Project, Channel Improvements, Implementation, Garrison County, MS, Due: December 27, 1988, Contact: Susan Ivester Rees (205) 690–2724.

EIS NO. 880370, Draft, EPA, OR, Coquille Ocean Dredged Material Disposal Site (ODMDS) Designation in the Pacific Ocean off the mouth of the Coquille River, OR, Due: December 27, 1988, Contact: John Malek (206) 442–1286.

EIS NO. 880371, Draft, FHW, WA, WA–18 Improvements, Auburn-Black Diamond Road to I–90, Funding and 404 Permit, King County, WA, Due: December 27, 1988, Contact: P. C. Gregson (206) 753–2120.

EIS NO. 880372, Final, FHW, CA, I–5 and Santa Ana Freeway Widening and Interchanges Reconstruction, CA–22/57 Interchange to CA–55, Funding and 404 Permit, Orange County, CA, Due: December 12, 1988, Contact: C. Glenn Clinton (916) 551–1310.

EIS NO. 880373, DSuppl, USN, NC, Mid-Atlantic Electronic Warfare Range (WAEWR) Within Restricted Airspace R–5306A; Aircraft Noise Analysis, Beaufort, Carteret, Craven, Hyde and Pamlico Counties, NC, Due: December 7, 1988, Contact: Lt. Col. P. J. Lowery (919)(466–2343.

EIS NO. 880374, Draft, AFS, PA, Allegheny Wild and Scenic River Study, Allegheny River, Kinzua Dam to East Brady, Wild and Scenic River Designation, Armstrong, Butler, Clarion, Forest, Venango and Warren Counties, PA, Due: February 13, 1989, Contact: David J. Wright (814) 723–5150.

Dated: November 7, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–26130 Filed 11–9–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–34748]

Environmental Health Committee; Science Advisory Board; Drinking Water Subcommittee; Opening Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Drinking Water Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on December 1–2, 1988, at the Governors House Hotel, Rhode Island Avenue at 17th Street NW., Washington, DC 20036. The meeting will be held from 9:00 a.m. to 5:00 p.m. on December 1st and 8:30 a.m. to noon on December 2nd.

The purpose of this meeting is to continue discussions with the Office of Drinking Water concerning disinfection and disinfection by-products and to review their activities involving pesticides.

The meeting will be open to the public. Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, Washington, DC 20460, or contact him on (202) 382–2552 by November 22, 1988. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. IN general, each individual or group making an oral presentation will be limited to a total time of 10 minutes.

Dated: November 4, 1988.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 88–26058 Filed 11–9–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59855; FRL–3473–4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 89–12—November 1, 1988.

Y 89–13, 89–14—November 2, 1988.

Y 89–15—November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89–12

Manufacturer. Minnesota Mining & Manufacturing Co. (3M)

Chemical. (S) 2-Propenoic acid; isoctyl-2-propenoate; octadecyl-2-methyl-2-propenoate; hexadecyl-2-methyl-propenoate eisosyl methacrylate; benzoyl peroxide.

Use/Production. (G) Polymeric additive. Prod. range: Confidential.

Y 89–13

Manufacturer. Confidential.

Chemical. (G) Functional polymer of mixed acrylate and methacrylate based monomers.

Use/Production. (G) Industrial coatings with open use. Prod. range: 277,500–555,000 kg/yr.

Y 89–14

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Textile. Prod. range: Confidential.

Y 89–15

Manufacturer. Confidential.

Chemical. (G) Polyester of fatty acid alkanediol and alkanedioic acids.

Use/Production. (G) Plasticizer for polymeric materials. Prod. range: Confidential.

Date: October 26, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–25936 Filed 11–9–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51716; FRL–3473–7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of two hundred twenty-six such PMNs and provides a summary of each:

DATES: Close of Review Periods:

P88–2101, 88–2102, 88–2103, 88–2104, 88–2105, 88–2106, 88–2107, 88–2108, 88–2110, 88–2112, 88–2113, 88–2114, 88–2115, 88–2116, 88–2117, 88–2119, 88–2120, 88–2121, 88–2122, 88–2123, 88–2124, 88–2125, 88–2126, 88–2127, 88–2128, 88–2129, 88–2130, 88–2132, 88–2133, 88–2134, 88–2135, 88–2136, 88–2137, 88–2138—December 18, 1988.

P88–2139, 88–2140, 88–2141, 88–2142, 88–2143, 88–2144, 88–2145, 88–2146, 88–2147, 88–2148, 88–2149, 88–2150, 88–21251, 88–2152, 88–2153, 88–2154, 88–2155—December 19, 1988.

P88–2156—December 21, 1988.

P88–2157, 88–2158—December 19, 1988.

P88–2159, 88–2160, 88–2161, 88–2162, 88–2163, 88–2164, 88–2165, 88–2166, 88–2167, 88–2168, 88–2169, 88–2170, 88–2171, 88–2172, 88–2173, 88–2174, 88–2175, 88–2176, 88–2177—December 20, 1988.

P88–2178, 88–2179, 88–2180, 88–2181, 88–2182, 88–2183, 88–2184, 88–2185, 88–2186, 88–2187, 88–2188, 88–2189, 88–2190, 88–2191, 88–2192, 88–2193, 88–2194—December 21, 1988.

88–2195, 88–2196, 88–2197, 88–2198, 88–2199, 88–2200, 88–2201, 88–2203, 88–2204, 88–2205, 88–2206, 88–2207, 88–2208—December 24, 1988.

P88–2209—December 19, 1988.

P88–2210, 88–2211, 88–2212, 88–2213, 88–2214, 88–2215, 88–2216, 88–2217, 88–2218, 88–2219, 88–2220, 88–2221, 88–2222, 88–2223, 88–2224, 88–2225, 88–2226, 88–2227, 88–2228, 88–2229, 88–2230, 88–2231, 88–2232, 88–2233, 88–2234, 88–2235, 88–2236, 88–2237, 88–2238, 878–2239—December 24, 1988.

P88–2240, 88–2241, 88–2242, 88–2243, 88–2244, 88–2245, 88–2246, 88–2247, 88–2248, 88–2249, 88–2250, 88–2251, 88–

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2252, 88–2253, 88–2254, 88–2255, 88–2256, 88–2257, 88–2258, 88–2259, 88–2260, 88–2261, 88–2262, 88–2263, 88–2264, 88–2265, 88–2266, 88–2267, 88–2268, 88–2269, 88–2270, 88–2271, 88–2272, 88–2273, 88–2274, 88–2275, 88–2276, 88–2277, 88–2278, 88–2279, 88–2280, 88–2281, 88–2282, 88–2283, 88–2284, 88–2285, 88–2286, 88–2287, 88–2288, 88–2289, 88–2290, 88–2291, 88–2292, 88–2293, 88–2294, 88–2295, 88–2296, 88–2297, 88–2298, 88–2299, 88–2300, 88–2301, 88–2302, 88–2303, 88–2304, 88–2305, 88–2306, 88–2307, 88–2308, 88–2309—December 25, 1988.

P88–2310—December 27, 1988.

P88–2311, 88–2312, 88–2313, 88–2314, 88–2315, 88–2316, 88–2317, 88–2318, 88–2319, 88–2320, 88–2321, 88–2322, 88–2323, 88–2324, 88–2325, 88–2326, 88–2327, 88–2328, 88–2329, 88–2330.

Written comments by:

P88–2101, 88–2102, 88–2103, 88–2104, 88–2105, 88–2106, 88–2107, 88–2108, 88–2110, 88–2112, 88–2113, 88–2114, 88–2115, 88–2116, 88–2117, 88–2119, 88–2120, 88–2121, 88–2122, 88–2123, 88–2124, 88–2125, 88–2126, 88–2127, 88–2128, 88–2129, 88–2130, 88–2132, 88–2133, 88–2134, 88–2135, 88–2136, 88–2137, 88–2138—November 18, 1988.

88–2139, 88–2140, 88–2141, 88–2142, 88–2143, 88–2144, 88–2145, 88–2146, 88–2147, 88–2148, 88–2149, 88–2150, 88–2151, 88–2152, 88–2153, 88–2154, 88–2155—November 19, 1988.

P88–2156—November 21, 1988.

P88–2157, 88–2158—November 19, 1988.

P88–2159, 88–2160, 88–2161, 88–2162, 88–2163, 88–2164, 88–2165, 88–2166, 88–2167, 88–2168, 88–2169, 88–2170, 88–2171, 88–2172, 88–2173, 88–2174, 88–2175, 88–2176, 88–2177—November 20, 1988.

P88–2178, 88–2179, 88–2180, 88–2181, 88–2182, 88–2183, 88–2184, 88–2185, 88–2186, 88–2187, 88–2188, 88–2189, 88–2190, 88–2191, 88–2192, 88–2193, 88–2194—November 21, 1988.

P88–2195, 88–2196, 88–2197, 88–2198, 88–2199, 88–2200, 88–2201, 88–2202, 88–2203, 88–2204, 88–2205, 88–2206, 88–2207, 88–2208—November 24, 1988.

P88–2209—November 19, 1988.

P88–2210, 88–2211, 88–2212, 88–2213, 88–2214, 88–2215, 88–2216, 88–2217, 88–2218, 88–2219, 88–2220, 88–2221, 88–2222, 88–2223, 88–2224, 88–2225, 88–2226, 88–2227, 88–2228, 88–2229, 88–2230, 88–2231, 88–2232, 88–2233, 88–2234, 88–2235, 88–2236, 88–2237, 88–2238, 88–2239—November 24, 1988.

P88–2240, 88–2241, 88–2242, 88–2243, 88–2244, 88–2245, 88–2246, 88–2247, 88–2248, 88–2249, 88–2250, 88–2251, 88–2252, 88–2253, 88–2254, 88–2255, 88–2256, 88–2257, 88–2258, 88–2259, 88–2260, 88–2261, 88–2262, 88–2263, 88–2264, 88–2265, 88–2266, 88–2267, 88–2268, 88–2269, 88–2270, 88–2271, 88–2272, 88–2273, 88–2274, 88–2275, 88–2276, 88–2277, 88–2278, 88–2279, 88–2280, 88–2281, 88–2282, 88–2283, 88–2284, 88–2285, 88–2286, 88–2287, 88–2288, 88–2289, 88–2290, 88–2291, 88–2292, 88–2293, 88–2294, 88–2295, 88–2296, 88–2297, 88–2298, 88–2299, 88–2300, 88–2301, 88–2302, 88–2303, 88–2304, 88–2305, 88–2306, 88–2307, 88–2308, 88–2309—November 25, 1988.

P88–2310—November 27, 1988.

P88–2311, 88–2312, 88–2313, 88–2314, 88–2315, 88–2316, 88–2317, 88–2318, 88–2319, 88–2320, 88–2321, 88–2322, 88–2323, 88–2324, 88–2325, 88–2326, 88–2327, 88–2328, 88–2329, 88–2330—November 25, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS–51716]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street, SW., Washington, DC 20460, (2020) 554–1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Cullen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88–2101

Importer. Sherex Chemicals Company Inc.
Chemical. (G) Water reducible thereoplastic polyamide resin.
Use/Import. (G) Vehicle for flex inks. Import range: Confidential.

P 88–2102

Importer. Confidential.
Chemical. (G) Acetylated mixed aldehyde novolac.
Use/Import. (G) Coating component. Import range: Confidential.

P 88–2103

Importer. Confidential.
Chemical. (G) Fluorinated acrylic ester.
Use/Import. (G) Coatings. Import range: Confidential.

P 88–2104

Importer. Confidential.
Chemical. (G) Fluorinated acrylic ester copolymer.
Use/Import. (G) Fluorinated acrylic ester copolymer for coatings. Import range: Confidential.

P 88–2105

Importer. Confidential.
Chemical. (G) Fluorinated acrylic ester copolymer.
Use/Import. Fluorinated surface active agent for coatings. Import range: Confidential.

P 88–2106

Importer. Confidential.
Chemical. (G) Polybrominated aromatics modified with brominated epoxy resin.
Use/Import. (G) Flame retardant additives. Import range: Confidential.

P 88–2107

Importer. Confidential.
Chemical. (G) Glycidyl ether of substituted phenyl.
Use/Import. (G) Component of adhesive. Import range: Confidential.

P 88–2108

Importer. Confidential.
Chemical. (G) Glycidyl ether of substituted phenyl.
Use/Import. (G) Component of adhesives. Import range: Confidential.

P 88–2110

Importer. Confidential.
Chemical. (G) Naphthalene substituted diazo chromium complex alkali salt.
Use/Import. (S) Acid dye for textile. Import range: Confidential.

P 88–2112

Importer. Confidential.
Chemical. (G) Sulfonated naphthalene azo chromium complex.
Use/Import. (S) Acid dye for textile. Import range: Confidential.

P 88–2113

Chemical. Reilly Tar & Chemical Corporation.
Chemical. (S) Pyridine, 4-ethenyl-, polymer with diethenylbenzene and ethyelethylbenzene, compound with chloromethane.
Use/Production. (S) Exchange resin. Prod. range: Confidential.

P 88–2114

Importer. Reilly Tar & Chemical Corporation.
Chemical. (G) Heterocyclic amine.

Use/Import. (G) Intermediate. Import range: Confidential.

P 88–2115

Manufacturer Reilly Tar & Chemical Corporation.
Chemical. (G) Heterocyclic N-Oxide.
Use/Productions. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1,100 mg/kg species(rat). Acute dermal toxicity: LD50 2–4 g/kgRabbit species(Rabbit).

P 88–2116

Importer. Confidential.
Chemical. (G) Polyoxyethylene phenylalkyl cresylether.
Use/Import. (G) Dispersant/emulsifier. Import range: Confidential.

P 88–2117

Manufacturer. Confidential.
Chemical. (G) Polyester urethane-methacrylate blocked.
Use/Production. (S) Component of radiation elastomeric mold resins. Prod. range: 12,500–25,000 kg/yr.

P 88–2119

Manufacturer. Confidential.
Chemical. (G) Phosphorochloridic acid, dihexacosyl ester.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–2120

Importer. Huls America Inc.
Chemical. (G) Polyester resin of alkyldicarboxylic acids and alkyl diols.
Use/Import. (S) Prepolymer for manufacture of hot melt adhesive. Import range: Confidential.

P 88–2121

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–2122

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–2123

Importer. Atlantic Industries, Inc.
Chemical (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–2124

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–2125

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–2126

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–2127

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–2128

Manufacturer. Hercules Incorporation.
Chemical. (G) Alkyl amine rosinate.
Use/Production. (G) Manufacture of products for building construction. Prod. range: Confidential.

P 88–2129

Importer. Confidential.
Chemical. (G) Blocked polyurethane.
Use/Import. (G) Component of coating (open use). Import range: 14,000–28,000 kg/yr.

P 88–2130

Manufacturer. Confidential.
Chemical. (G) Epoxy urethane.
Use/Production. (g) Industrial product-dispersive use. Prod. range: 375,000–750,000 kg/yr.

P 88–2132

Manufacturer. Confidential.
Chemical. (G) Acid functional ester.
Use/Production. (G) Industrial coating-dispersive use. Prod. range: 6,400–84,000 kg/yr.

P 88–2133

Manufacturer. Confidential.
Chemical. (G) Functional acrylate.
Use/Production. (G) Industrial coating-dispersive use. Prod. range: 13,000–40,000 kg/yr.

P 88–2134

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic methacrylic amide polymer.
Use/Production. (S) Industrial vehicle-dispersive capability. Prod. range: 200–1500 kg/yr.

P 88–2135

Manufacturer. Confidential.
Chemical. (G) Substituted polyester.
Use/Production. (G) Coating-open, industrial use. Prod. range: 264,800–851,500 kg/yr.

P 88–2136

Manufacturer. Confidential
Chemical. (G) Substituted polyester.
Use/Production. (G) Coating-open, industrial use. Prod. range: 264,800–851,500 kg/yr.

P 88–2137

Manufacturer. Confidential.
Chemical. (G) Substituted polyester.
Use/Production. (G) Coating-open, industrial use. Prod. range: 264,800–851,500 kg/yr.

P 88–2138

Importer. Confidential.
Chemical. (G) Non-plasticized soft poly-vinylchloride; plasticizer-free poly-vinyochloride.
Use/Import. (G) Base material automobile. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >30,000 mg/kg species (Rat).

P 88–2139

Manufacturer. Confidential.
Chemical. (G) Iso octadecanioc acid glycol ester.
Use/Production. (G) Metal working compound. Prod. range: 160,000–170,000 kg/yr.

P 88–2140

Manufacturer. Confidential.
Chemical. (G) Salt of substituted arylazo butanamide.
Use-Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2141

Manufacturer. Confidential.
Chemical. (G) Salt of substituted arylazo butanamide.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2142

Manufacturer. Confidential.
Chemical. (G) Acrylate terpolymer.
Use/Production. (G) Thickner for aqueous mixtures (nondispersive). Prod. range: Confidential.

P 88–2143

Importer. Confidential.
Chemical. (S) Benzenesulfonic acid, 5-((2-nitro-4-((phenylamino)sulfonyl)phenyl)amino)-2-(phenylamino)-, sodium salt.
Use/Import. (S) Dye for nylon fibers. Import range: Confidential.

P 88–2144

Manufacturer. Confidential.
Chemical. (G) Polyamino polyether.

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Use/Production. (G) Coating—dispersive use. Prod. range: 700–1,000 kg/yr.

P 88–2145

Manufacturer. Confidential.
Chemical. (G) Acid functional polyester.
Use-Production. (G) Coating—dispersive. Prod. range: 12,000–30,000.

P 88–2146

Manufacturer. Confidential.
Chemical. (G) Styrenated methacrylic acrylic functionalized polymer.
Use/Production. (S) Binder Resin in industrial powder coating. Prod. range: 50,000–250,000 kg/yr.

P 88–2147

Manufacturer. Confidential.
Chemical. (G) Cycloalkylated polyester polyurethane.
Use/Production. (G) Industrial coating-dispersive use. Prod. range: 225,000–450,000 kg/yr.

P 88–2148

Manufacturer. Confidential.
Chemical. (G) Styrenated amino methylacrylic polymer.
Use/Production. (S) Topcoat resin for general industrial market. Prod. range: 10,000–125,000 kg/yr.

P 88–2149

Manufacturer. Confidential.
Chemical. (G) Polyester polymer with neopentyl glycol.
Use/Production. (G) Industrial coating—open use. Prod. range: 20,000–270,000 kg/yr.

P 88–2150

Manufacturer. Confidential.
Chemical. (G) Styrenated methacrylic functionalized polymer.
Use/Production. (S) Binder resin in industrial powder coating. Prod. range: 10,000–250,000 kg/yr.

P 88–2151

Manufacturer. Hi-Tek Polymers, Inc.
Chemical. (G) Polyester oligomer; reactive diluent.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88–2152

Manufacturer. Hi-Tek Polymers, Inc.
Chemical. (G) High solids acrylic copolymer solution.
Use/Production. (G) Component of colorants, inks, coatings. Prod. range: Confidential.

P 88–2153

Manufacturer. Hi Tek Polymer, Inc.
Chemical. (G) Polyester oligomer; reactive diluent.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88–2154

Manufacturer. NL Chemicals.
Chemical. (G) Urethane modified polyester.
Use/Production. (G) Urethane modified polyester (Open, nondispersive). Prod. range: Confidential.

P 88–2155

Manufacturer. Confidential.
Chemical. (G) Solvent-free baking alkyd.
Use/Production. (S) Baking finishes with urea and melamine resin. Prod. range: Confidential.

P 88–2156

Manufacturer. Hi-Tek Polymers, Inc.
Chemical. (G) High solids acrylic copolymer solution.
Use/Production. (G) Component of colorants, inks, coating. Prod. range: Confidential.

P 88–2157

Importer. Confidential.
Chemical. (G) Substituted carbomonocyclic carboxylic acid.
Use/Import. (G) Contained use in consumer product. Import range: 4,000–5,000 kg/yr.

P 88–2158

Manufacturer. Confidential.
Chemical. (G) Substituted xanthene.
Use/Production. (G) Dye. Prod. range: Confidential.

P 88–2159

Importer. Sherex chemical Company, Inc.
Chemical. (G) Polyglycol diepoxide.
Use/Import. (S) Reactive diluent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 7,400 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 88–2160

Manufacturer. Alco Chemical Corporation.
Chemical. (G) Alco corrosion inhibitor, QDT.
Use/Production. (G) Industrial corrosion inhibitor. Prod. range: Confidential.

P 88–2161

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Determining surfactant for polyurethane foam. Import range: 1,000–2,000 kg/yr.

P 88–2162

Manufacturer. Confidential.
Chemical. (G) urethane modified acid functional polyester.
Use/Production. (S) Crosslinker automotive topcoats. Prod. range: 100,000–100,000 kg/yr.

P 88–2163

Manufacturer. Confidential.
Chemical. (G) Neutralized aliphatic aromatic polyester.
Use/Production. (G) Polymer with open use. Prod. range: 100,000–300,000 kg/yr.

P 88–2164

Manufacturer. Confidential.
Chemical. (G) Neutralized aliphatic polyester.
Use/Production. (G) Polymer with open use. Prod. range: 100,000–300,000 kg/yr.

P 88–2165

Manufacturer. Confidential.
Chemical. (G) Neutralized aliphatic aromatic polyester.
Use/Production. (G) Polymer with open use. Prod. range: 100,000–300,000 kg/yr.

P 88–2166

Importer. Confidential.
Chemical. (S) Siloxanes and silicones, dimethyl, polymers with silsesquionanes, hydroxy-terminated, reaction products with methyltris(ethylketoxime silane and trimethoxy(3-(oxiranylmethoxy)propyl)silane.
Use/Import. (G) Coating material for metal particles. Import range: 1,200–2,500 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 88–2167

Importer. Confidential.
Chemical. (S) Siloxanes and silicones, dimethyl, polymers with methyl silsesquioxanes, hydroxyterminated, reaction products with methyltris(ethylmethylketoxime) silane, trimethoxy (3-(oxiranylmethoxy)propyl) silane and (3-anilinopropyl) trimethoxysilane.
Use/Import. (S) Coating material for metal particles. Import range: 2,000–3,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 88–2168

Importer. Confidential.
Chemical. (S) Siloxanes and silicones, dimethyl, polymers with methy silsesquioxanes, hydroxyterminated, reaction, reaction products with hydroxy-terminated dimethylsiloxanes, methyltris(ethylmethylketoxime)silane,trimethoxy(3-(oxiranylmethoxy)propyl)silane and ethenyltriacetoxysilane.
Use/Import. (S) Coating material for particles. Import range: 1,200-2,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 88–2169

Manufacturer. Baker Performance Chemical Incorporation.
Chemical. (G) Cationic terpolymer of acrylamide.
Use/Production. (S) Water clarification. Prod. range: Confidential.

P 88–2170

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Aminoacrylate polymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88–2171

Importer. Rhone-Poulenc Incorporated.
Chemical. (G) Hexamethylenediamine/adipic acid/dimer acid copolyamide.
Use/Import. (G) Thermoplastic polymer for manufacture of articles. Import range; Confidential.

P 88–2172

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Coat base resin. Prod. range: Confidential.

P 88–2173

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Polyester gel coat resin. Prod. range: Confidential.

P 88–2174

Importer. Confidential.
Chemical. (G) Substituted naphthalene diazo alkali salt.
Use/Import. (G) Acid dye for textile. Import range: Confidential.

P 88–2175

Manufacturer. Lonza Inc.
Chemical. (G) Polyethylene glycol, fatty acid esters of.
Use/Production. (G) Additive for plastic. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat).

P 88–2176

Importer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Polyester glycol.
Usee/Import. (S) Polymers intermediate. Import range: Confidential.

P 88–2177

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Hydrochlorofluoro alkane.
Usee/Production. (S) Polymer intermediate. Prod. range: Confidential.

P 88–2178

Importer. Henkle Corporation Process Chemicals.
Chemical. (G) Phthalic ester.
Use/Import. (S) Plasticizer for laquers and paints. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat).

P 88–2179

Manufacturer. Henkel Corporation.
Chemical. (G) Aliphatic epoxy monomer.
Use/Production. (G) Coating. Prod. range: Confidential.

P 88–2180

Manufacturer. Henkel Corporation.
Chemical. (G) Aliphatic epoxy monomer.
Use/Production. (G) Coating. Prod. range: Confidential.
Toxicity Data. Skin irritation: slight species (Rabbit).

P 88–2181

Manufacturer. Henkel Corporation.
Chemical. (G) Aliphatic epoxy monomer.
Use/Production. (G) Coatings. Prod. range: Confidential.

P 88–2182

Manufacturer. Confidential.
Chemical. (G) Aliphatic epoxy monomer.
Use/Production. (S) Oil geller for well drilling fluids. Prod. range: 18,530—27,818 kg/yr.

P 88–2183

Manufacturer. Confidential.
Chemical. (G) Polyamide modified acrylic resin.
Use/Production. (G) Coatings and inks. Prod. range: Confidential.

P 88–2184

Manufacturer. Confidential.
Chemical. (G) Polyamide modified acrylic resin.
Use/Production. (G) Coatings and inks. Prod. range: Confidential.

P 88–2185

Importer. Confidential.
Chemical. (S) Ethaneperoxoic acid, reaction products with aluminium isoprop-oxide and 1,5,10-trimethyl-1,5,9-cyclododecatrien.
Usee/Import. (S) Dispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: positive.

P 88–2186

Manufacturer. E.A. Abbot.
Chemical. (G) Amino siloxane.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 88–2187

Manufacturer. The Goodyear Tire & Rubber Company.
Chemical. (G) Substituted carboxylic acid alkane diol polyester.
Use/Production. (S) Containers and packaging. Prod. range: 14,000–375,000 kg/yr.

P 88–2188

Manufacturer. Henkel Corporation.
Chemical. (S) Poly(oxy-1,2-ethanediyl), alpha-hydro-omega-(oxiranylmethoxy)-ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1).
Use/Production. (G) Coating. Prod. range: Confidential.
Toxicity Data. Skin irritation: negligible species (Rabbit).

P 88–2189

Manufacturer. NL Chemicals.
Chemical. (G) Water dispersable polyamide resin.
Use/Production. (G) Ink additive. Prod. range: Confidential.

P 88–2190

Manufacturer. NL Chemical.
Chemical. (G) Water dispersable polyamide resin.

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Use/Production. (G) Ink additive. Prod. range: Confidential.

P 88–2191

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Aryl alkyl copolyamide.
Use/Production. (G) Membrane. Prod. range: Confidential.
Toxicity Data. Skin irritation: negligible species (Rabbit).

P 88–2192

Manufacturer. Confidential.
Chemical. (G) Pyradine derivative.
Use/Production. (G) Colorant. Prod. range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88–2193

Manufacturer. Confidential.
Chemical. (G) Substituted carboxylic acid, alkane diol polyester.
Use/Production. (G) Coating. Prod. range: Confidential.

P 88–2194

Manufacturer. The Goodyear Tire & Rubber.
Chemical. (G) Substituted carboxylic acid, alkane diol polyester.
Use/Production. (S) Containers, packing, light guage sheeting. Prod. range: 14,000–500,000 kg/yr.

P 88–2195

Manufacturer. Wayne Pigment Corp.
Chemical. (G) Chrome yellow light.
Use/Production. (S) Plastics, inks, & coatings manufacture. Prod. range: Confidential

P 88–2196

Importer. Confidential.
Chemical. (G) Bis-(hydroxy-alkylphenyl)sulfide.
Use/Import. (G) Paper coating component. Import range: Confidential.

P 88–2197

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (G) Coatings. Prod. range: Confidential.

P 88–2198

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (G) Coatings. Prod. range: Confidential.

P 88–2199

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (G) Coatings. Prod. range: Confidential.

P 88–2200

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (S) Spray allied coatings. Prod. range: Confidential.

P 88–2201

Importer. Confidential.
Chemical. (G) Carboxy functional acrylic resin.
Use/Import. (S) Temporary coatings. Import range: Confidential.

P 88–2202

Manufacturer. Confidential.
Chemical. (G) cationic polyamine.
Use/Production. (G) Dispersive. Prod. range: Confidential.

P 88–2203

Manufacturer. Confidential.
Chemical. (G) Epichlorohydrin/amine polymer.
Use/Production. (G) Dispersive. Prod. range: Confidential.

P 88–2204

Importer. Huls America Inc.
Chemical. (S) Malonic acid, n-butyl-, diethyl ester.
Use/Imports. (G) Coatings for metal. Import range: Confidential.

P 88–2205

Manufacturer. Huls America Inc.
Chemical. (S) Bis(trimethoxysilylpropyl)disulfide.
Use/Production. (S) Coupling. Prod. range: Confidential.

P 88–2206

Manufacturer. Dow Chemical U.S.A.
Chemical. (G) Styrene/butadine polymer.
Use/Production. (S) Cement/concrete modifier. Prod. range: Confidential.

P 88–2207

Manufacturer. Confidential.
Chemical. (S) Tall oil fatty acides, pentaerythritol, benzoic acid, maleic anhydride, chlorendic anthydride alkyd resin.
Use/Production. (S) Component of coatings. Prod. range: Confidential.

P 88–2208

Manufacturer. Confidential.
Chemical. (S) Vegetable oil, pentaerythritol, benzoic acid, maleic anhydride, chlorendic anthydride alkyd resin.
Use/Production. (S) Component of coatings. Prod. range: Confidential.

P 88–2209

Importer. Confidential.
Chemical. (G) Carbamodithioc acid. ethylphenyl,- lead (2+) salt.
Use/Import. (S) Vulcanization accelerator. Import range: Confidential.

P 88–2210

Manufacturer. Confidential.
Chemical. (G) Alpha olefin sulfonated, sodium salt.
Use/Production. (S) Oil field and cleaning surfactant. Prod. range: Confidential.

P 88–2211

Manufacturer. Confidential.
Chemical. (G) Alpha olefin sulfonate, calcium salt.
Use/Production. (G) Additive for food cleaning & energy industries. Prod. range: Confidential.

P 88–2212

Manufacturer. Confidential.
Chemical. (G) Alkyl disulfonated, diammonium salt.
Use/Production. (G) Additive for cleaning & energy industries. Prod. range: Confidential.

P 88–2213

Manufacturer. Confidential.
Chemical. (G) Alkyl disulfonated, disodium salt.
Use/Production. (G) Additive for cleaning & energy industries. Prod. range: Confidential.

P 88–2214

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated nonionic surfactant, potassium salt.
Use/Production. (G) Additive in cleaning formulation. Prod. range: Confidential.

P 88–2215

Manufacturer. Confidential.
Chemical. (G) Alpha olefin sulfonate, sodium salt.
Use/Production. (G) Additive in cleaning & energy industries. Prod. range: Confidential.

P 88–2216

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated nonionic surfactant, triethanolamine salt.

Use/Production. (G) Additive in cleaning & energy industries. Prod. range: Confidential.

P 88–2218

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated nonionic surfactant, sodium salt.
Use/Production. (G) Additive in cleaning formulations. Prod. range: Confidential.

P 88–2219

Manufacturer. Confidential.
Chemical. (G) Alpha olefin sulfonate, magnesium salt.
Use/Production. (G) Additive in food, industrial & energy production. Prod. range: Confidential.

P 88–2220

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated nonionic surfactant, potassium salt.
Use/Production. (G) Additive in cleaning formulation. Prod. range: Confidential.

P 88–2221

Manufacturer. Confidential.
Chemical. (G) Alpha olefin sulfonate, calcium salt.
Use/Production. (G) Additive in food and energy industries. Prod. range: Confidential.

P 88–2222

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated nonionic sufactant, triethanolamine salt.
Use/Production. (G) Additive in cleaning formulations. Prod. range: Confidential.

P 88–2223

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated nonionic surfactant, calcium salt.
Use/Production. (G) Additive in cleaning formulation. Prod. range: Confidential.

P 88–2224

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated nonionic surfactant, calcium salt.
Use/Production. (G) Additive in cleaning formulations. Prod. range: Confidential.

P 88–2225

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) Molded and extruded parts. Prod. range: Confidential.

P 88–2226

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) Molded and extruded parts. Prod. range: Confidential.

P 88–2227

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated nonionic surfactant, magnesium salt.
Use/Production. (G) Additive in cleaning formulations. Prod. range: Confidential.

P 88–2228

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated nonionic surfactant, potassium salt.
Use/Production. (G) Additive in cleaning formulations. Prod. range: Confidential.

P 88–2229

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated nonionic surfactant, sodium salt.
Use/Production. (G) Additive in cleaning formulations. Prod. range: Confidential.

P 88–2230

Manufacturer. Confidential.
Chemical. (G) Alpha olefin sulfonated, amine salt.
Use/Production. (G) Additive and energy production. Prod. range: Confidential.

P 88–2231

Manufacturer. Confidential.
Chemical. (G) Alkylbenzene sulfonic acid.
Use/Production. (G) Additive in industrial products. Prod. range: Confidential.

P 8–2232

Manufacturer. Confidential.
Chemical. (G) Cocoamine condensate salt.
Use/Production. (G) Additive for energy production industries. Prod. range: Confidential.

P 88–2233

Manufacturer. Confidential.
Chemical. (G) Alpha olefin sulfonate, ammonium salt.
Use/Production. (G) Additive in food and energy production. Prod. range: Confidential.

P 88–2234

Manufacturer. Confidential.
Chemical. (G) Carboxylated nonionic surfactant, magnesium salt.
Use/Production. (G) Additive in food and energy production. Prod. range: Confidential.

P 88–2235

Manufacturer. Confidential.
Chemical. (G) Alpha olefin sulfonated, sodium salt.
Use/Production. (G) Additive in food, cleaning & energy production. Prod. range: Confidential.

P 88–2236

Manufacturer. Confidential.
Chemical. (G) Alkyl disulfonate, disodium salt.
Use/Production. (G) Additive in cleaning & energy production. Prod. range: Confidential.

P 88–2237

Manufacturer. Confidential.
Chemical. (G) Alkyl benzene sulfonic acid, sodium salt.
Use/Production. (G) Emulsifier. Prod. range: Confidential.

P 88–2238

Manufacturer. Amoco Corporation.
Chemical. (G) Polyalkenylheterocyclic amine.
Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 88–2239

Manufacturer. Amoco Corporation.
Chemical. (G) Aromatic amide-imide polymer.
Use/Production. (G) Protective coating. Prod. range: Confidential.

P 88–2240

Manufacturer. Confidential.
Chemical. (G) Organo silane.
Use/Production. (G) Coating for plastic films. Prod. range: Confidential.

P 88–2241

Manufacturer. Reilly Tar & Chemical Corporation.
Chemical. (G) Heterocyclic amine salt.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species (Rat).

P 88–2242

Manufacturer. Confidential.
Chemical. (G) Hydrogenated fatty acid alkyd.
Use/Production. (G) Polymer component of metal coating. Prod. range: Confidential.

P 88–2243

Manufacturer. Confidential.
Chemical. (G) Alkenes, reaction products with 2,5-furandione.

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Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88–2244

Manufacturer. Confidential.
Chemical. (G) Alkenes reaction products with 2,5-furandione.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88–2245

Manufacturer. Confidential.
Chemical. (G) Alkenes reaction products with 2,5-furandione.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88–2246

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylate, mixed ammonium sodium salt.
Sulfonated polyacrylated, ammonium salt.
Use/Production. (S) Dispersant. Prod. range: Confidential.

P 88–2247

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylate, mixed ammonium sodium salt.
Sulfonated polyacrylated, ammonium salt.
Use/Production. (S) Dispersant. Prod. range: Confidential.

P 88–2248

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylkate, mixed ammonium sodium salt.
Sulfonated polyacrylated, ammonium salt.
Use/Production. (S) Dispersant. Prod. range: Confidential.

P 88–2249

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylkate, mixed ammonium sodium salt.
Sulfonated polyacrylated, ammonium salt.
Use/Production. (S) Dispersant. Prod. range: Confidential.

P 88–2250

Manufacturer. Confidential.
Chemical. (S) Polyester resin.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–2251

Manufacturer. Confidential.
Chemical. (G) Alkyl disulfonate, disodium salt.
Use/Production. (G) Additive in cleaning & energy industries. Prod. range: Confidential.

P 88–2252

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (S) Epoxy allied coatings. Prod. range: Confidential.

P 88–2253

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (S) Epoxy allied coatings. Prod. range: Confidential.

P 88–2254

Manufacturer. Confidential.
Chemical. (G) Starch graft compolymer latex.
Use/Production. (S) Binder textile treatment, sheet additive, adhesive. Prod. range: 68,000–455,000 kg/yr.

P 88–2255

Manufacturer. Confidential.
Chemical. (G) Starch graft copolymer latex.
Use/Production. (S) Binder, additive, adhesive, textile treatment. Prod. range: 68,000–455,000 kg/yr.

P 88–2256

Manufacturer. Confidential.
Chemical. (G) Acryliated alkyd.
Use/Production. (S) Coating for metal. Prod. range: Confidential.

P 88–2257

Manufacturer. Confidential.
Chemical. (G) Alkoxypolyalkoxysulfo compounds with polyalkanolamine.
Use/Production. (G) Production of leveling agents. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,000 mg/yr species (mouse). Eye irritation: none species (Rabbit). Skin irritation: moderate species (Rabbit).

P 88–2258

Manufacturer. Confidential.
Chemical. (G) Alkenyl heteromonocyclicones polymer with alkenylalkoate.
Use/Production. (S) Binder in transfer printing. Prod. range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: moderate species (Rabbit).

P 88–2259

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Halogenated aromatic acid chloride.
Use/Production. (S) Monomer, destructive use. Prod. range: Confidential.
Toxicity Data. Eye irritation: strong species (Rabbit). Skin irritation: strong species (Rabbit).

P 88–2260

Manufacturer. Chattem Chemicals.
Chemical. (G) Cobalt aluminum organometallic compound.
Use/Production. (S) Acid dye for textile. Prod. range: Confidential.

P 88–2261

Importer. Confidential.
Chemical. (G)1,2,4 Benzotriazine sulfonic acid alkali salt.
Use/Import. (S) Acid dye for textile. Import. range: Confidential.

P 88–2262

Manufacturer. Lynad Division; Colloids, Inc.
Chemical. (G) Guar gum 2-hydroxpropyl ether, glyoxal-crosslinked.
Use/Production. (G) Mater gel expolsive plant nuturient. Prod. range: 5,000–250,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (rat).

P 88–2263

Manufacturer. Ethyl Corporation.
Chemical. (G) Partially fluorinated polyimide.
Use/Production. (S) Coating, molding, plastic composites. Prod. range: Confidential.

P 88–2264

Importer. DSM Resins U.S.A., Inc.
Chemical. (G) Saturated polyester resin.
Use/Import. (G) Coatings for metal. Import range: Confidential.

P 88–2265

Importer. DSM Resins U.S.A., Inc.
Chemical. (G) Acrylic modified saturated polyester resin.
Use-Import. (G) Coatings for metal. Import range: Confidential.

P 88–2266

Importer. DSM Resins U.S., Inc.
Chemical.(G) Acrylic modified saturated polyester resin.
Use/Import. (G) Formulation of coatings for metal. Import range: Confidential.

P 88–2267

Importer. DSM Resins U.S., Inc.
Chemical. (G) Saturdated polyester resin modified with phenolic resin.
Use/Import. (G) Formulation of coatings for metal. Import range: Confidential.

P 88–2268

Importer. Confidential.
Chemical. (G) Substituted oxindole.
Use/Import. (S) Pharmaceutical intermediate. Import range: Confidential.

P 88–2269

Importer. Confidential.
Chemical. (G) Substituted triazin, azo, alkali salt.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88–2270

Manufacturer. Reichhold Chemical
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Resin for exterior coatings. Prod. range: Confidential.

P 88–2271

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Urethane acrylate.
Use/Production. (S) Resin for UV curable paints. Prod. range: Confidential.

P 88–2272

Importer. Confidential.
Chemical. (G) Substituted benzene, mono azo dye.
Use/Import. (S) Dye for textile. Import range: Confidential.

P 88–2273

Importer. Confidential.
Chemical. (G) Substituted naphthalene, diazo chromium complex.
Use/Import. (S) Dye for textile. Import range: Confidential.

P 88–2274

Manufacturer: Reilly Tar & Chemicals Corporation.
Chemical. (G) Polymeric amine.
Use/Production. (G) Catalyst. Prod. range: Confidential.

P 88–2275

Manufacturer. Quantum Chemical Corp.
Chemical. (G) Hydrogenated oigomers of c8 to c14 olefins.
Use/Production. (S) Motor oil, gear lube, hydraulic oil. Prod. range: 79MM gk/yr.
Toxicity Data. Acute oral toxicity: LD50 5.0 g/kg species (Rat). Inhalation toxicity: LC50 4.68 mg/1 1 hr. Eye irritation: none species(Rabbit). Skin irritation: moderate species(Rabbit).

P 88–2276

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Rosin phenolic modified alkyd.
Use/Production. (S) Air dry primer and coatings. Prod. range: Confidential.

P 88–2277

Manufacturer. Reichhold Chemicals. Inc.
Chemical. (G) Chlorinated polypropylene Modified acrylic copolymer.
Use/Production. (S) Coatings for thermoplastics. Prod. range: Confidential.

P 88–2278

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Long oil alkyd.
Use/Production. (S) Air dry primer, coating, enamel. Prod. range: Confidential.

P 88–2279

Manufacturer. Confidential.
Chemical. (G) Substituted 3H-pyrazol-3-one-4-(2-metnhyl phenyl)azo}-2,4-dihydro-5-methyl-2-(2-chlorophenyl.
Use/Production. (S) Dye for textile. Prod. range: Confidential.

P 88–2280

Manufacturer. Confidential.
Chemical. (G) Alkyl substituted xanthene.
Use/Production. (G) Dye. Prod. range: Confidential.

P 88–2281

Manufacturer. Confidential.
Chemical. (G) Polymer of an aromatic diisocyanate, aliphatic diols, a diepoxide and an aliphatic diamine.
Use/Production. (G) Laminating adhesive. Prod. range: Confidential.

P 88–2282

Manufacturer. Ethyl Corporation.
Chemical. (G) Partially fluorinated polyamide.
Use/Production. (S) Fabricating composite parts. Prod. range: Confidential.

P 88–2283

Manufacturer. Confidential.
Chemical. (G) Polyester polyol.
Use/Production. (S) Polyester polyol. Prod. range: 6,100–20,400 kg/yr.

P 88–2284

Manufacturer. Ethyl Corporation.
Chemical. (G) Partially fluorinated polyimide.
Use/Production. (S) Surface coating, molding. Prod. range: Confidential.

P 88–2285

Manufacturer. Ethyl Corporation.
Chemical. (S) 1-Triacontene internal decene, tetradecenes, docosenes, hexacosenes, octocosene, and triacontenses.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–2286

Manufacturer. Ethyl Corporation.
Chemical. (S) 1-Triacontenes; linera internal decenes, tetradecenes, docosenes, tetracosenes, hexacosenes, octacosenes, & triacontenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–2287

Manufacturer. Confidential.
Chemical. (G) Acrylourethane.
Use/Production. (G) Coating (non-dispersive use). Prod. range: Confidential.

P 88–2288

Manufacturer. Ethyl Corporation.
Chemical. (G) Partially fluorinated polyimide.
Use/Production. (S) Surface coating, plastic composite, molding. Prod. range: Confidential.

P 88–2289

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Thermoset molding resin. Prod. range: 172,517–517,600 kg/yr.

P 88–2290

Manufacturer. Confidential.
Chemical. (G) Modified zinc resinate.
Use/Production. (G) Additive for resins. Prod. range: Confidential.

P 88–2291

Manufacturer. Confidential.
Chemical. (G) Alkylbenzene.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (Rat).

P 88–2292

Manufacturer. Confidential.
Chemical. (G) Alkylbenzene sulfonic acid.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–2293

Manufacturer. Quantum Chemical Corp, Emery Division.
Chemical. (G) Anhydrosorbitol esters with octanoic acid.
Use/Production. (S) Intermediate, surfactant. Prod. range: Confidential.

P 88–2294

Manufacturer. Ethyl Corporation.
Chemical. (S) Branched hexenes, octenes, decenes, dodecenes, tetradecenes, hexadecenes, octadecenes, eicosense, docosenes, tetracosenes, hexacosenes, octacosenes and acontens.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD 50 >10 g/kg species(Rat). Acute dermal toxicity: LD 50 >10 g/kg species

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(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 88–2295

Manufacturer. Ethyl Corporation.
Chemical. (S) Branched hexenes, octenes, decenes, dodecenes, tetradecenes, hexadecenes, octadecenes, eiocosenes, docosenes, tetracosenes, hexacosenes, octacosenes and triacontenes.
Use/Production. (G) Chemical intermediates. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD 50 >10 g/kg species (Rat). Acute dermal toxicity: LD 50 >10 g/kg species (Rabbit). Inhalation toxicity: LC50 33,400 ppm 4hr. species (Rats).

P 88–2296

Manufacturer. Confidential.
Chemical. (S) Phenol, formaldehyde,methyl d-glucopyranoside.
Use/Production. (S) Thermosetting binder. Prod. range: Confidential.

P 88–2297

Manufacturer. Confidential.
Chemical. (S) Phenol; formaldehyde,ethylene glycol,cresol.
Use/Production. (S) Thermosetting binder. Prod. range: Confidential.

P 88–2298

Manufacturer. Confidential.
Chemical. (S) Phenol, formaldehyde,propylene glycol,cresol.
Use/Production. (S) Thermosetting binder. Prod. range: Confidential.

P 88–2299

Manufacturer. Confidential.
Chemical. (G) Ammonium salt of carboxy functional acrylic polymer.
Use/Production. (S) Temporary coating. Prod. range: Confidential.

P 88–2300

Manufacturer. Confidential.
Chemical. (G) Alkoxysilane terminated polyesther polymer.
Use/Production. (S) Polymer for adhesives & sealants. Prod. range: 200,000–750,000 kg/yr.

P 88–2301

Manufacturer. Products Research & Chemical Corporation.
Chemical. (G) Coluene diisocyanate terminated polyether urethane.
Use/Production. (S) Polymer for sealants, adhesives & encapsulants. Prod. range: 51,000–100,000 kg/yr.

P 88–2302

Manufacturer. Confidential.
Chemical. (G) Alkoxysilane terminated polyether polymer.
Use/Production. (S) Polymer for adhesive & sealants. Prod. range: 200,000–750,000 kg/yr.

P 88–2303

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Polymer of: polyether polyol, toluene diisocyanate, and 2-propen-1-ol; polymer of: poly(oxy(methyl-1,2-ethanediyl)),alpha, alpha'-(1-methyl-1,2-ethanediyl)bis(omega-hydroxy-,toluene diisocyante, 2-propen-1-ol; ethanethiol 2,2'-(1,2-ethanediyl bis(oxy.
Use/Production. (S) Polymer for sealants/adhesives. Prod. range: 700,000–1,000,000 kg/yr.

P 88–2304

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Polymer of: oxirane, methyl-, polymer with oxirane, ether with 1,2,3-propanetriol-toluene diisocyanate and 2-propen-1-ol Polymer of:.
Use/Production. (S) Polymer for manufacturer of sealants & adhesives. Prod. range: 200,000–400,000 kg/yr.

P 88–2305

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Polymer of: Oxirane, methyl-, polymer with oxirane ether with 1,2,3-propanetriol-toluene diisocyanate and 2-propen-1-ol; Polymer of: poly(oxy(methyl-1,2-ethanediyl), alpha alpha-(1-methyl-1,2-ethanediyls)bis(omega-hydroxy-, toluene diisocyanate and 10-propen-1-ol.
Use/Production. (S) Polymer for sealants & adhesives. Prod. range: 200,000–400,000 kg/yr.

P 88–2306

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Poly(oxy(methyl-1,2-ethanediyl)). alpha, alpha'-(methyl-1,2-ethanediyl)bis; (omega-hydroxy- toluene diisocyante; 2-propen-1-ol.
Use/Production. (S) Intermediate for polymer production. Prod. range: 550,000–800,000 kg/yr.

P 88–2307

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) 4,7-diamino-9-hydroxy-11-oxa-1,14-bis(trimethoxysily) tetradecane.
Use/Production. (S) Adhesive promoter. Prod. range: 1,750–3,000 kg/yr.

P 88–2308

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Polymer of: Oxirane, methyl-, polymer with oxirane, either with 1,2,3-propanetririol-, toluene diisocyante and 2-propen-ol: poylmer of: Poly(oxy(methyl-1,2-ethanediyl)- alpha, alpha'-(1-methyl-1,2-ethanediyl)bis(omega-hydroxy, toluene diisocyante, and 2-propen-1-ol: ethanthiol, 2,2,'-(1,2 ethanediyl B.
Use/Production. (S) Polymer for sealants & adhesives. Prod. range: 700,000–1,000,000 kg/yr.

P 88–2309

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Oxirane methyl, polymer with oxirane, ether with 1,2,3-propanetriol-; toluene diisocyanate; 2-propen-1-ol.
Use/Production. (S) Intermediate for polymer production. Prod. range: 500,000–800,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (Rat).

P 88–2310

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Polymer of: Oxirane, methyl-, polymer with oxirane, ether with 1,2,3-propanetriol-, toluene and 2-propen-1-ol; Poly(oxomethyl-1,2-ethanediyl) alpha-hydro-omega-hydroxy-, toluene diisocyante, and 2-propen-1-ol.
Use/Production. (S) Polymer for sealants & adhesives. Prod. range: 7,000,000–1,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (Rat).

P 88–2311

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Polymer of: Polyester polyol, Toluene diisocyanate and 2-propen-1-ol; Poly(oxy(methyl-1,2-ethanedyl, alpha-hydro-omega-hydroxy-toluene diisocyanate, and 2-propen-1-ol.
Use/Production. (S) Polymer for sealants & adhesives. Prod. range: 700,000–1,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species(Rat).

P 88–2312

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Polymer of: Polyether polyol; toluene diisocyanate, and 2-propen-1-ol; Polymer of: Poly(oxy(methyl-1;2-ethanediyl, alpha, alpha'-(1-methyl-1, 2-ethanediyl)bis (omega-hdroxy-, toluene diisocyanate and 2-propen-1-ol.
Use/Production. (S) Polymer for sealants & adhesives. Prod. range: 200,000–400,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >16 g/kg species(RAT).

P 88–2313

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Poly(oxy(methyl-1,2-ethanediyl), alpha-hydro-omega-hydro-; toluene diisocyanate; 2-propen-1-ol.
Use/Production. (S) Intermediate for polymer production. Prod. range: 550,000–800,000 kg/yr.

P 88–2314

Manufacturer. Products Research & Chemical Corporation.
Chemical. (G) Ethanethiol, 2,2'thiobis-.
Use/Production. (S) Polymer for sealants & adhesives. Prod. range: 200,000–400,000 kg/yr.

P 88–2315

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Polyether polyol; toluene diisocyanate; 2-propen-1-ol.
Use/Production. (S) Intermediate for polymer production. Prod. range: 500,000–800,000 kg/yr.

P 88–2316

Manufacturer. Confidential.
Chemical. (G) Substituted alkenoic amide polymer with alkylalkenoates.
Use/Production. (G) Pigment binder. Prod range: Confidential.

P 88–2317

Manufacturer. Confidential.
Chemical. (G) Alkenoic acid polymer with alkyalkenoate, carbomonocyclic alkene and alkyl alkenamide, compound with alkylaminoalkanol.
Use/Production. (S) Enhances binding properties of pigments. Prod. range: Confidential.

P 88–2318

Manufacturer. Confidential.
Chemical. (G) polymer from: polyester polyol with alkyl and carbomon-cyclic cyanates and salt of aminoalkenoic acid.
Use/Production. (S) Leather fininshing. Prod. range: Confidential.
Toxicity Data. Inhalation toxicity: LC50 50 mg/1 species (Golden orfe).

P 88–2319

Manufacturer. Confidential.
Chemical. (G) Aromatic polyester/ polyether.
Use/Production. (G) Dispersively applied coating. Prod. range: 25,000–150,000 kg/yr.

P 88–2320

Manufacturer. Confidential.
Chemical. (G) Polyaromatic.
Use/Production. (G) Openly used industrial coating. Prod. range: 600 kg/yr.

P 88–2321

Manufacturer. Confidential.
Chemical. (G) Aryl polyether.
Use/Production. (G) Industrial coating with open use. Prod. range: 100,000–1,000,000 kg/yr.

P 88–2322

Manufacturer. Confidential.
Chemical. (G) Acid functional polyester resion of neopentyl glycol.
Use/Production. (G) Binder for exterior coating for containers. Prod. range: 100,000–1,000,000 kg/yr.

P 88–2323

Manufacturer. Confidential.
Chemical. (G) Polyurea.
Use/Production. (G) Component of industrial coating system. Prod. range 10,000–100,000 kg/yr.

P 88–2324

Manufacturer. Confidential.
Chemical. (G) Polyurea.
Use/Production. (G) Component of industrial coating system. Prod. range: 10,000–100,000 kg/yr.

P 88–2325

Manufacturer. Confidential.
Chemical. (G) Polyurea.
Use/Production. (G) Component of industrial coating system. Prod. range: 10,000–100,000 kg/yr.

P 88–2326

Manufacturer. Confidential.
Chemical. (G) Polyurea.
Use/Production. (G) Component of industrial coating system. Prod. range: 10,000–100,000 kg/yr.

P 88–2327

Manufacturer. Confidential.
Chemical. (G) Functional polymer of mixed acrylate and metacrylate based monomers.
Use/Production. (G) Industrial coatings with an open use. Prod. range: 277,500–555,000 kg/yr.

P 88–2328

Manufacturer. Confidential.
Chemical. (G) Styrenated methacrylate.
Use/Production. (G) Coating dispersive use. Prod. range: 5,000–10,000 kg/yr.

P 88–2329

Manufacturer. Confidential.
Chemical. (G) Styrenated polyacrylate polymethacrylate.
Use/Production. (G) Coating (dispersive use). Prod. range: 10,000–71,000 kg/yr.

P 88–2330

Manufacturer. Confidential.
Chemical. (G) Amine-modified epoxy resin.
Use/Production. (G) Industrial paint product. Prod. range: 1,000,000–3,000,000 kg/yr.

Date: October 27, 1988.

Steven Newburg-Rinn,
Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–25938 Filed 11–9–88; 8:45 am]
BILLING CODE 6560–50–M

[OPTS–51715; FRL–3473–8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of one hundred sixty-six such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88–1926, 88–1927—November 30, 1988;
P 88–1928, 88–1929, 88–1932, 88–1933, 88–1934, 88–1935, 88–1936, 88–1937, 88–1938, 88–1939, 88–1940, 88–1941—December 4, 1988;
P 88–1942, 88–1943, 88–1944, 88–1945, 88–1946, 88–1947, 88–1948, 88–1949, 88–1950, 88–1951, 88–1952, 88–1953, 88–1954, 88–1955, 88–1956, 88–1957, 88–1958, 88–1959, 88–1960, 88–1962, 88–1963, 88–1964, 88–1965, 88–1966, 88–1967, 88–1968, 88–1969, 88–1970, 88–1968, 88–1971, 88–1972, 88–1973, 88–1974—December 5, 1988;
P 88–1976, 88–1977, 88–1978, 88–1979, 88–1980, 88–1981, 88–1982, 88–1983, 88–1984, 88–1985, 88–1986—December 6, 1988;
P 88–1987, 88–1988, 88–1989, 88–1990, 88–1991, 88–1992, 88–1993—December 7, 1988;

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P 88–1994, 88–1995, 88–1996, 88–1997, 88–1999, 88–2000, 88–2001, 88–2002, 88–2003—December 10, 1988;
P 88–2004, 88–2005, 88–2006, 88–2007, 88–2008, 88–2009, 88–2010, 88–2011, 88–2012, 88–2013, 88–2014, 88–2015 88–2016, 88–2017, 88–2018, 88–2019, 88–2020, 88–2021, 88–2022, 88–2023, 88–2024, 88–2025, 88–2026, 88–2028—December 11, 1988;
P 88–2029, 88–2030, 88–2031, 88–2032, 88–2033, 88–2034, 88–2035, 88–2036, 88–2037, 88–2038, 88–2039, 88–2040, 88–2041, 88–2042, 88–2043, 88–2044, 88–2045, 88–2046, 88–2047, 88–2048, 88–2049, 88–2050—December 12, 1988;
P 88–2051, 88–2052, 88–2053, 88–2054, 88–2055, 88–2056, 88–2057, 88–2058, 88–2059, 88–2060, 88–2061, 88–2062, 88–2063, 88–2064, 88–2065, 88–2066—December 13, 1988;
P 88–2067, 88–2068, 88–2069, 88–2070, 88–2071, 88–2073, 88–2074, 88–2075, 88–2076, 88–2077, 88–2078, 88–2079, 88–2080, 88–2081, 88–2082—December 14, 1988;
P 88–2083, 88–2084, 88–2085, 88–2086, 88–2087—December 17, 1988;
P 88–2088—December 19, 1988;
P 88–2089, 88–2090, 88–2091—December 17, 1988;
P 88–2092—December 19, 1988;
P 88–2095, 88–2096, 88–2097, 88–2098, 88–2099, 88–2100—December 18, 1988.

Written comments by:

P 88–1926, 88–1927—October 31, 1988;
P 88–1928, 88–1929, 88–1932, 88–1933, 88–1934, 88–1935, 88–1936, 88–1937, 88–1938, 88–1939, 88–1940, 88–1941—November 4, 1988;
P 88–1942, 88–1943, 88–1944, 88–1945, 88–1946, 88–1947, 88–1948, 88–1949, 88–1950, 88–1951, 88–1952, 88–1953, 88–1954, 88–1955, 88–1956, 88–1957, 88–1958, 88–1959, 88–1960, 88–1962, 88–1963, 88–1964, 88–1965, 88–1966, 88–1967, 88–1968, 88–1969, 88–1970, 88–1971, 88–1972, 88–1973, 88–1974—November 5, 1988;
P 88–1976, 88–1977, 88–1978, 88–1979, 88–1980, 88–1981, 88–1982, 88–1983, 88–1984, 88–1985, 88–1986—November 6, 1988;
P 88–1987, 88–1988, 88–1989, 88–1990, 88–1991, 88–1992, 88–1993—November 7, 1988;
P 88–1994, 88–1995, 88–1996, 88–1997, 88–1999, 88–2000, 88–2001, 88–2002, 88–2003—November 10, 1988;
P 88–2004, 88–2005, 88–2006, 88–2007, 88–2008, 88–2009, 88–2010, 88–2011, 88–2012, 88–2013, 88–2014, 88–2015, 88–2016, 88–2017, 88–2018, 88–2019, 88–2020, 88–2021, 88–2022, 88–2023, 88–2024, 88–2025, 88–2026, 88–2028—November 11, 1988;
P 88–2029, 88–2030, 88–2031, 88–2032, 88–2033, 88–2034, 88–2035, 88–2036, 88–2037, 88–2038, 88–2039, 88–2040, 88–2041, 88–2042, 88–2043, 88–2044, 88–2045, 88–2046, 88–2047, 88–2048, 88–2049, 88–2050—November 12, 1988;
P 88–2051, 88–2052, 88–2053, 88–2054, 88–2055, 88–2056, 88–2057, 88–2058, 88–2059, 88–2060, 88–2061, 88–2062, 88–2063, 88–2064, 88–2065, 88–2066—November 13, 1988;
P 88–2067, 88–2068, 88–2069, 88–2070, 88–2071, 88–2073, 88–2074, 88–2075, 88–2076, 88–2077, 88–2078, 88–2079, 88–2080, 88–2081, 88–2082—November 14, 1988;
P 88–2083, 88–2084, 88–2085, 88–2086, 88–2087—November 17, 1988;
P 88–2088—November 19, 1988;
P 88–2089, 88–2090, 88–2091—November 17, 1988;
P 88–2092—November 19, 1988;
P 88–2095, 88–2096, 88–2097, 88–2098, 88–2099, 88–2100—November 18, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS–51715]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88–1926

Manufacturer. Confidential.
Chemical. (G) Functionalized polyurethane polyester.
Use/Production. (S) Chemical intermediate. Prod. range: 96,000–289,000 kg/yr.

P 88–1927

Manufacturer. Confidential.
Chemical. (G) Functionalized polyester polyacrylate.
Use/Production. (G) Industrial coating (dispersed use). Prod. range: 250,000–750,000 kg/yr.

P 88–1928

Manufacturer. Confidential.
Chemical. (G) Sulfonamides of isoindolyl derivative of aromatic heterocycle.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1929

Manufacturer. Confidential.
Chemical. (G) Modified acrylate terpolymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1932

Manufacturer. Confidential.
Chemical. (G) Sulfonyl chloride of mono- and di-substituted heterocyclic compound.
Use/Production. (G) Isolated intermediate. Prod. range: Confidential.

P 88–1933

Manufacturer. Confidential.
Chemical. (G) Poly(alkyl methacrylate-succinic)alkyl imides.
Use/Production. (G) Fuel additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 2,000 mg/kg species (Rat). Mutagenicity: negative.

P 88–1934

Manufacturer. Confidential.
Chemical. (G) Sodium thiosulfate derivative of a sulfur dye.
Use/Production. (S) Powder dye (for cellulosic fibers). Prod. range: Confidential.

P 88–1935

Manufacturer. Confidential.
Chemical. (G) Reaction product of a substituted copper phthalocyanine and sodium, oxidized.
Use/Production. (S) Intermediate further chemical manufacture. Prod. range: Confidential.

P 88–1936

Manufacturer. Sandoz Chemicals Corporation.
Chemical. (S) Reaction product of 5-((4-hydroxyphenyl)amino)-8-(phenylamino)-1-naphthalenesulfonic acid, with sodium sulfide (Na2)(Sx)), oxidized; C.I. 53571.
Use/Production. (S) Dye intermediate (for further chemical manufacture). Prod. range: Confidential.

P 88–1937

Manufacturer. Confidential.
Chemical. (G) Substituted 2-nitrobenzenesulfonamide.
Use/Production. (S) Intermediate for further chemical manufacture. Prod. range: Confidential.

P 88–1938

Manufacturer. Confidential.
Chemical. (G) Substituted 2-aminobenzenesulfonamide.
Use/Production. (S) Intermediate for further chemical manufacture. Prod. range: Confidential.

P 88–1939

Manufacturer. Confidential.
Chemical. (G) Substituted benzenesulfonamide-2-(substituted hydroxynaphthalene sulfonic acid)azo-, sodium salt.
Use/Production. (S) Powder dye (for nylon fibers). Prod. range: Confidential.

P 88–1940

Manufacturer. Sandoz Chemicals Corporation.
Chemical. (G) N-Substituted octadecanamide.
Use/Production. (S) Emulsifier (for surface coating). Prod. range: Confidential.

P 88–1941

Importer. Confidential.
Chemical. (G) Substituted piperidine.
Use/Import. (S) Light stabilizer for automotive paint. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88–1942

Manufacturer. Confidential.
Chemical. (G) Ester-aldehyde.
Use/Production. (G) Coating. Prod. range: Confidential.

P 88–1943

Manufacturer. Confidential.
Chemical. (G) Ester-aldehyde.
Use/Production. (G) Coating. Prod. range: Confidential.

P 88–1944

Importer. Roure, Inc.
Chemical. (S) Acetylated cedrus terpenes.
Use/Import. (S) Ingredient in fragrances, cosmetics, household products. Import range: 400–500 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 2.5 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin sensitization: negative species (Guinea pig). Phototoxicity: negative species (Guinea pig).

P 88–1945

Manufacturer. Confidential.
Chemical. (G) MDI prepolymer.
Use/Production. (G) Elastomer. Prod. range: Confidential.

P 88–1946

Importer. Confidential.
Chemical. (G) Salt of substituted naphthalene disulfonic acid.
Use/Import. (G) Colorant. Import range: Confidential
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–1947

Importer. Huls America Inc.
Chemical. (S) Piperidine, 1-acetyl-4-(3-dodecyl-2.5-doxo-1-pyrrolidinyl)-2.2.6.6-tetratmethyl.
Use/Import. (S) Light stabilizer for plastics lacquers and coating. Import range: 3,000–30,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50>3,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: strong species (Rabbit).

P 88–1948

Importer. E.I. Du Pont De Nemours & Company, Inc.
Chemical. (G) Copolyester.
Use/Import. (G) Molded and extruded goods. Import range: Confidential.

P 88–1949

Importer. E.I. Du Pont De Nemours & Company, Inc.
Chemical. (G) Copolyester.
Use/Import. (G) Molded and extruded goods. Import range, Confidential.

P 88–1950

Importer. E.I. Du Pont De Nemours & Company, Inc.
Chemical. (G) Copolyester.
Use/Import. (G) Liner and film. Import range: Confidential.

P 88–1951

Importer. E.I. Du Pont De Nemours & Company, Inc.
Chemical. (G) Copolyester.
Use/Import. (G) Liner and film. Import range: Confidential.

P 88–1952

Manufacturer. Confidential.
Chemical. (S) 2-Butane acid, 4-chloro-4-oxo-ethyl ester.
Use/Production. (S) Part of a polyether ester. Prod. range: 16,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 810 mg/yr. Acute dermal toxicity: LD50 1,410 mg/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: strong species (Rabbit).

P 88–1953

Importer. Confidential.
Chemical. (G) Acrylate vinylidene chloride copolymer.
Use/Import. (G) Binder. Import range: Confidential.

P 88–1954

Manufacturer. Confidential.
Chemical. (G) Alkenoic acid polymer with alkene, carbomononcyclic alkene, alkenylnitrile, and alkylalkenylamide.
Use/Production. (S) Leather finishing. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit).

P 88–1955

Manufacturer. Confidential.
Chemical. (G) Heteromonocyclic derivative of a substituted oxoalkanamide, alkanoate.
Use/Production. (S) Paper dye. Prod. range: Confidential.

P 88–1956

Manufacturer. Milliken & Company.
Chemical. (G) Alkyl capped polethylene glycol fatty acid ester.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1957

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Automotive body patch resin. Prod. range: Confidential.

P 88–1958

Manufacturer. Reilly Tar & Chemical Corporation.
Chemical. (S) 4-(1,2,4-(4H)triazol)amine.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 100 mg/kg species (Rat). Acute dermal toxicity: LD50 150 mg/kg species (Rabbit). Inhalation toxicity: LC50 890 ppm/4 hr. species (Rat).

P 88–1959

Manufacturer. Koppers Co., Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (G) Open, nondispersive. Prod. range: 300,000–500,000 kg/yr.

P 88–1960

Manufacturer. Confidential.
Chemical. (G) Heterocyclic amine.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 100–200 mg/kg species (Rat). Acute dermal toxicity: LD50 1,350 mg/kg

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species (Rabbit). Inhalation toxicity: LC50 5,500 pmm/1.5 hr. species (Rats).

P 88–1962

Manufacturer. Confidential.
Chemical. (G) Polyamine amide derivative.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–1963

Manufacturer. Confidential.
Chemical. (G) Polyamine amide derivative.
Use/Production. (G) Chemical Intermediate. Prod. range: Confidential.

P 88–1964

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Powdered or liquid reactive dye for textiles cellulose. Import range: Confidential.

P 88–1965

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Powdered or liquid reactive dye for textiles cellulose. Import range: Confidential.

P 88–1966

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Powdered or liquid reactive dye for textiles cellulose. Import range: Confidential.

P 88–1967

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Powdered or liquid reactive dye for textiles cellulose. Import range: Confidential.

P 88–1968

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Powdered or liquid reactive dye for textiles cellulose. Import range: Confidential.

P 88–1969

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Powdered or liquid reactive dye for textiles cellulose. Import range: Confidential.

P 88–1970

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Powdered or liquid reactive dye for textiles cellulose. Import range: Confidential.

P 88–1971

Manufacturer. Confidential.
Chemical. (G) Substituted 3H-pyrazol-3-one-4-(2-methylphenyl)azo)-2,4-dihydro-5-methyl-2-phenyl.
Use/Production. (S) Colorant for plastics. Prod. range: Confidential.

P 88–1972

Manufacturer. Confidential.
Chemical. (G) Polyether amide.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1973

Manufacturer. Confidential.
Chemical. (G) Polyether amide.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1974

Importer. Confidential.
Chemical. (S) Fatty acids, C16–18 esters with pentaerythritol.
Use/Import. (S) Lubricant for plastics. Imprt range: Confidential.

P 88–1976

Manufacturer. Confidential.
Chemical. (G) Polyimide.
Use/Production. (G) Hardening of epoxy resins. Prod. range: Confidential.

P 88–1977

Importer. Confidential.
Chemical. (G) N-Substituted aminonaphthalenesulfonic acid, potassium salt.
Use/Import. (S) Intermediate for further chemical manufacture. Import range: Confidential.

P 88–1978

Importer. Confidential.
Chemical. (G) N-Substituted amino naphthalene sulfonic acid, ammonium salt.
Use/Import. (S) Intermediate for further chemical manufacturing. Import range: Confidential.

P 88–1979

Manufacturer. Confidential.
Chemical. (G) Diethylenetriamine, reaction product with mixed alcohol propyl epoxides.
Use/Production. (S) Intermediate for further processing. Prod. range: Confidential.

P 88–1980

Manufacturer. Confidential.
Chemical. (G) Dimethylsulfate, reaction products with ethoxylated, diethylenetriamine racted substituted epoxides.
Use/Production. (S) Component of leveling agent for dyes. Prod. range: Confidential.

P 88–1981

Manufacturer. Confidential.
Chemical. (G) Carboxymethylated alcohol, sodium salt.
Use/Production. (S) Intermediate for further processing, textile industry. Prod. range: Confidential.

P 88–1982

Manufacturer. Confidential.
Chemical. (G) Substituted 1,2-epoxypropane.
Use/Production. (S) Intermediate for further chemical processing. Prod. range: Confidential.

P 88–1983

ImporterManufacturer. Confidential.
Chemical. (G) Sulfonated substituted anthraquinone, potassium salt.
Use/Import. (S) Dye for nylon fibers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–1984

Importer. Confidential.
Chemical. (G) Sulfonated substituted anthraquinone, lithium salt.
Use/Import. (S) Dye for nylon fibers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–1985

Manufacturer. Confidential.
Chemical. (G) Diethylenetriamine, reaction product with mixed alcohol propyl epoxides, ethylated.
Use/Production. (S) Intermediate for further processing, textile industry. Prod. range: Confidential.

P 88–1986

Importer. Confidential.
Chemical. (G) Substituted ethylated alkylamine.
Use/Import. (G) Leveling agent for the dyeing of wool. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–1987

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer,

aminomethylated, chloromethane quarternized, chloride.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD 50 5.0 g/kg species (Rat).

P 88–1988

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated, trimethylammonium quarternized, hydroxide.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5.8 g/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 88–1989

Importer. Confidential.
Chemical. (G) Polyacrylate resin.
Use/Import. (G) Paint. Import range: Confidential.

P 88–1990

Manufacturer. Confidential.
Chemical. (G) Polyacrylate resin.
Use/Production. (G) Paint. Prod range: Confidential.

P 88–1991

Manufacturer. Confidential.
Chemical. (G) Polymer of ethenyl benzene, 2-methyl-2-propenoic acid hydroxalkyd ester; propenoic acid and oxirane compound with chain transfer agent and initiator.
Use/Production. (G) Paint. Prod. range: Confidential.

P 88–1992

Manufacturer. Confidential.
Chemical. (G) Polymer of ethenyl benzene; 2-methyl-2-propenoic acid hydroxyalkyl ester; and propenoic acid with chain transfer agent and initiator.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–1993

Manufacturer. Confidential.
Chemical. (G) Epoxy modified oleoresinous varnish.
Use/Production. (G) Chemical-resistant clear coating. Prod. range: Confidential.

P 88–1994

Importer. Confidential.
Chemical. (G) Substituted sulfonated nickel phthalocyanine, sodium salt.
Use/Import. (S) Dye for cellulosic fibers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

P 88–1995

Manufacturer. Confidential.
Chemical. (G) Dialkyldithiophosphoric acid, metal salt.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1996

Manufacturer. Ethyl Corporation.
Chemical. (S) 1-Octylamine, N, N-dimethyl-N-oxide.
Use/Production. (S) Surface clearing, personal care. Prod. range: Confidential.

P 88–1997

Importer. Confidential.
Chemical. (S) 1,1-Bis(4-hydroxyphenyl)-1-phenylethane, polymer with dichlorocarbon monooxide, terminated by 4-(ter-butyl)phenol.
Use/Import. (G) Binder resin. Import range: Confidential.

P 88–1999

Manufacturer. Confidential.
Chemical. (G) Substituted phenol, metal salt.
Use/Production. (S) Coating component of carbonless copy paper. Prod. range: Confidential.

P 88–2000

Manufacturer. Confidential.
Chemical. (G) Substituted phenol alkaline salt.
Use/Production. (S) Coating component of carbonless copy paper. Prod. range: Confidential.

P 88–2001

Manufacturer. Confidential.
Chemical. (G) Substituted phenol, metal salt.
Use/Production. (S) Coating component of carbonless copy paper. Prod. range: Confidential.

P 88–2002

Importer. Emser Industries, a division of EMS-Amer
Chemical. (S) 1,6-Hexane-diglycidylether.
Use/Import. (S) Reactive diluent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 8,500 mg/ky species (Rat). Acute dermal toxicity: LD50 >4,900 mg/yr species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: positive.

P 88–2003

Manufacturer. Confidential.
Chemical. (S) Rosin, fumarated, polymer with p-tert-butyl-phenol, formaldehyde, pentaerythritol and glycerol.
Use/Production. (G) Resin for oils. Prod. range: Confidential.

P 88–2004

Importer. Confidential.
Chemical. (S) Bis(substituted)heteropolycyclicdiione.
Use/Import. (S) Protective of polymers against U.V. radiation. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 species (Rat).

P 88–2005

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Thermoplastic polyamide.
Use/Import. (S) Hot melt adhesive (electronics industry). Import range: Confidential.

P 88–2006

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane.
Use/Import. (S) Lamination of packaging materials. Import range: Confidential.

P 88–2007

Importer. Confidential.
Chemical. (G) Alkylamine.
Use/Import. (S) Manufacture of all an agricultural Chemical. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 486 mg/kg species (Rat). Inhalation toxicity: LC50 5.2-6f mg/1 (4hr.) species (Rabbit).

P 88–2008

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid easter.
Use/Production. (S) Lubricant base. Prod. range: Confidential.

P 88–2009

Manufacturer. Confidential.
Chemical. (G) Alkenylether of alkanetriol polymer.
Use/Production. (S) Paper auxiliaries. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg species (Rat). Skin irritation: moderate species (Rabbit). Mutagenicity: negative.

P 88–2010

Manufacturer. Confidential.
Chemical. (G) Polyurethane polysiloxane blocked copolymer.
Use/Production. (G) Additive coating. Prod. range: Confidential.

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P 88–2011

Importer. Huls America Inc.
Chemical. (S) Ethane, homopolymer and paraffin waxes, calcium (fischer-tropsch process) oxidized, mixed hydroxide, partially saponified.
Use/Import. (S) Compound in dry-bright emulsion. Import range: 50,000–100,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >3,000 mg/kg species (Rat). Acute dermal toxicity: LD50. Eye irritation: none species (rabbit). Skin irritation: negligible species (Rabbit).

P 88–2012

Manufacturer. The Goodyear Tire & Rubber Company.
Chemical. (G) Substituted carboxylic acid alkene diol polyester .
Use/Production. (S) Containers packages cord, gage sheeting. Prod. range: 50,000–750,000 kg/yr.

P 88–2013

Manufacturer. NL Chemicals.
Chemical. (G) Polyester.
Use/Production. (G) Polyester (open, non-dispersive use). Prod. range: Confidential.

P 88–2014

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, hydrolyzed.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2015

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benezene polymer hydrolyzed.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2016

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benezene polymer, hydrolyzed.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2017

Importer. Confidential.
Chemical. (S) Substituted-substituted-substituted-benezene polymer, hydrolyzed.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2018

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benezene polymer, aminosmethylated, substituted, partial sodium salt.
Use/Import. (G) Open. nondispersive. Import range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit).

P 88–2019

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benezene polymeraminomethylated, dimethylated.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit).

P 88–2020

Manufacturer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benezene polymer, aminomethylated.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2021

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene aminomethylated, dimethylated, partially chloromethane quarternized, partial chloride salt.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit).

P 88–2022

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Chlorofluorocarbon.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88–2023

Importer. Emser Industries, a Div. of EMS-Amer.
Chemical. (S) Caprolactam-isocyanic acid, polymethylenepolyphenlene ester-adduct.
Use/Import. (G) Reactive hot melt adhesive. Import range: Confidential.

P 88–2024

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Resin for manufacture of industrial coating. Prod. range: Confidential.

P 88–2025

Manufacturer. Confidential.
Chemical. (G) Amine functionalized olefin polymer.
Use/Production. (G) Petroleum additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 10 g/kg species (Rat).

P 88–2026

Manufacturer. Confidential.
Chemical. (G) Amine functionalized olefin polymer.
Use/Production. (G) Petroleum additive. Prod. range: Confidential.

P 88–2028

Importer. Reichhold Chemicals Inc.
Chemical. (G) Polyurethane.
Use/Production. (S) Laminating adhesive for packaging materials. Import range: Confidential.

P 88–2029

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, reacted with a substituted amine.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2030

Importer. Confidential.

Chemical. (G) Substituted-substituted-substituted-benzene polymer, reacted with a substituted amine, quarternized chloride salt.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Date. Acute oral toxicity: LD50 5.0 g/kg species (Rat).

P 88–2031

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, reacted with a substituted amine, partially quarternized, partial chloride salt.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Date. Acute oral toxicity: LD50 5.0 g/kg species (Rat).

P 88–2032

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, hydrolyzed.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Date. Acute oral toxicity: LD50 >5.0 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: moderate species (Rabbit).

P 88–2033

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated, borate.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2034

Importer. Confidential

Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated, molybdate.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2035

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated, nitrate.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2036

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated, phosphate.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2037

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated, reacted with an organic zinc salt.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2038

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated reacted with an organic copper salt.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2039

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated, reacted on with an organic iron salt.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2040

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated, reacted with an organic magnesese sale.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2041

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer. aminomethylated reacted with an organic carbamide.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2042

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated, quarternized, chloride salt.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2043

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer, aminomethylated, dimethylated, quarternized, chloride salt.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–2044

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester acid.
Use/Production. (S) Flow modifier for powder coatings. Prod. range: 10,000–100,000 kg/yr.

P 88–2045

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester acid.
Use/Production. (S) Flow modifier for powder coatings. Prod. range: 10,000–100,000 kg/yr.

P 88–2046

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester acid.
Use/Production. (S) Flow modifier for power coatings. Prod. range: 10,000–100,000 kg/yr.

P 88–2047

Manufacturer. Confidential.
Chemical. (G) Methacrylate acrylic polymer.
Use/Production. (S) Resin for coil coatings. Prod. range: 500,000–1,000,000 kg/yr.

P 88–2048

Manufacturer. Confidential.
Chemical. (G) Modified styrenated polymer.
Use/Production. (S) Interior container coating. Prod. range: 8.330–4,160 kg/yr.

P 88–2049

Manufacturer. Confidential.
Chemical. (G) Alcoholic polyimide urethane.
Use/Production. (G) Coating (industrial. dispersive use). Prod. range: 10.000–80.000 kg/yr.

P 88–2050

Importer. Confidential.
Chemical. (G) Fluorinated acrylic ester copolymer.
Use/Import. (G) Coating resin. Import range: Confidential.

P 88–2051

Manufacturer. Confidential.
Chemical. (G) Substituted phthalic anhydride.
Use/Production. (G) Polymer intermediate. Prod. range: Confidential.

P 88–2052

Manufacturer. Confidential.
Chemical. (G) Salt of perylene tetracarboxylic acid bis-arylimide.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2053

Manufacturer. Confidential.
Chemical. (G) Perylene tetracarboxylic acid bis-arylimide.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–2054

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer.
Use/Import. (S) Coating, modifier for coatings. Import range: Confidential.

P 88–2055

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer.
Use/Import. (S) Coating, modifier for coatings. Import range: Confidential.

P 88–2056

Manufacturer. Confidential.
Chemical. (G) Vinyl acrylic copolymer.
Use/Production. (S) Coating, modifier for coatings. Prod. range: Confidential.

P 88–2057

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer.
Use/Import. (S) Coatings. Import range: Confidential.

P 88–2058

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer.
Use/Import. (S) Coatings. Import range: Confidential.

P 88–2059

Manufacturer. Confidential.
Chemical. (G) Neutralized aliphatic aromatic polyester.
Use/Production. (G) Industrial coating vehicle. Prod. range: 1,360–68,000 kg/yr.

P 88–2060

Manufacturer. Confidential.
Chemical. (G) Neutralized aliphatic polyester.

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Use/Production. (G) Industrial coating vehicle. Prod. range: 1,360–68,000 kg/yr.

P 88–2061

Manufacturer. Confidential.
Chemical. (G) Neutralized aliphatic aromatic polyester.
Use/Production. (G) Industrial coating vehicle. Prod. range: 1,360–68,000 kg/yr.

P 88–2062

Manufacturer. Confidential.
Chemical. (G) Neutralized aliphatic aromatic polyester.
Use/Production. (G) Industrial coating vehicle. Prod. range: 1,360–68,000 kg/yr.

P 88–2063

Manufacturer. Confidential.
Chemical. (G) Neutralized aliphatic aromatic polyester.
Use/Production. (G) Industrial coating vehicle. Prod. range: 1,360–68,000 kg/yr.

P 88–2064

Manufacturer. Hi-Tek Polymers, Inc.
Chemical. (G) Polyester oligomer; reactive diluent.
Use/Production. (G) Component of colorants, inks coatings. Prod. range: Confidential.

P 88–2065

Manufacturer. Hi-Tek Polymers, Inc.
Chemical. (G) Polyester oligoner; Reactive diluent.
Use/Production. (G) Component of inks, colorants, coatings. Prod. range: Confidential.

P 88–2066

Importer. Daicolor-Pope, Inc.
Chemical. (G) Polyvinyl butyral and organopolysiloxane copolymer.
Use/ Import. (G) Back coating agent. Import range: 2,000–15,000 kg/yr.

P 88–2067

Manufacturer. Alco Chemical Corporation.
Chemical. Vinyl modified nonionic surfactant.
Use/Production. (S) Solids alkyd modifer for air dry coatings. Prod. range: 21,000–42,000 kg/yr.

P 88–2068

Manufacturer. Confidential.
Chemical. (G) Sodium polyacrylate; acrylate copolymer salt; vinyl copolymer.
Use/Production. (G) Thickening compound for aqueous systems. Prod. range: Confidential.

P 88–2069

Manufacturer. Confidential.
Chemical. (G) Halogenated aromatic polycarbonate polymer.
Use/Production. (G) Flame retardant for plastics. Prod. range: Confidential.

P 88–2070

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyester resin.
Use/Production. (G) Industrial coating vehicle intermediate. Prod. range: 1,360–68,000 kg/yr.

P 88–2071

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester acid polymer.
Use/Production. (S) Flow modifier for powder coating. Prod. range: 10,000–100,000 kg/yr.

P 88–2073

Manufacturer. Confidential.
Chemical. (G) Styrenated functionalized methacrylic polymer.
Use/Production. (S) Resin for seam adhesive. Prod. range: 700–2,100 kg/yr.

P 88–2074

Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Polymer for industrial usage. Prod. range: 8,330–41,600 kg/yr.

P 88–2075

Manufacturer. Confidential.
Chemical. (G) Aromatic polyurethane in polyol.
Use/Production. (G) Coating polymer, nondispersive. Prod. range: 100,000–1,565,000 kg/yr.

P 88–2076

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Resins for coating. Prod. range: Confidential.

P 88–2077

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Resin for coating. Prod. range: Confidential.

P 88–2078

Manufacturer. Hanna Chemical Coatings Corp.
Chemical. (G) Saturated polyester.
Use/Production. (S) Polyester vehicle for pigmented synthetic coatings. Prod. range: 117,000–234,000 kg/yr.

P 88–2079

Manufacturer. Confidential.
Chemical. (G) Blocking catalyst.
Use/Production. (G) Coating catalyst. Prod. range: Confidential.

P 88–2080

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Resin for coating. Prod. range: Confidential.

P 88–2081

Manufacturer. Confidential.
Chemical. (G) Isocyanate reaction with cyclic primary amines.
Use/Production. (G) Oil thickner. Prod. range: Confidential.

P 88–2082

Importer. Confidential.
Chemical. (G) Polyether diol sulfonates.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,700 mk/kg species(Rat). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–2083

Manufacturer. Confidential.
Chemical. (G) Substituted heterocyclic compound.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2084

Manufacturer. Confidential.
Chemical. (G) Alkyl amino heterocylic compound.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2085

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer.
Use/Import. (S) Coating; modifier coatings, inks, adhesives. Import range: Confidential.

P 88–2086

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer.
Use/Import. (S) Coatings, modifier for coatings, inks, adhesives. Import range: Confidential.

P 88–2087

Importer. Confidential.
Chemical. (G) Derivative of copper phthalocyanine.
Use/Import. (G) Additives. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >16 g/kg species (Mice). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88–2088

Importer. Emser Industries.
Chemical. (S) Dodecanoic acid. diester with 2,2'-(isopropylenebis(P-phenylenoxy)diethanol.

Use/Import. (G) Nucleating agent. Import range: Confidential.

P 88–2089

Importer. Emser Industries.
Chemical. (S) Dodecanoic acid,(1-Methyllidene)bis(4,1-phenyleneoxy-2,1-ethane-diyloxy-2,1-ethanediyl)-ester.
Use/Import. (G) Nucleating agent. Import range: Confidential.

P 88–2090

Importer. Emser Industries.
Chemical. (S) N-tridecanoic acid diester with 2,2'(isopropylidenebis(phenylene oxy)diethanol.
Use/Import. (G) Nucleating agent. Import range: Confidential.

P 88–2091

Importer. Emser Industries.
Chemical. (S) N-Tridecanoic acid,(1-methylethylidene)bis(4,1-phenyleneoxy-2,1-ethane-diyloxy-2,1-ethanedily)-ester.
Use/Import. (G) Nucleating agent. Import range: Confidential.

P 88–2092

Importer. Hodogaya Chemical (U.S.A.) Inc.
Chemical. (S) Ferrate(1-),; bis[4-((5-chloro-2-hydroxyphenyl)azo)-3-hydroxy-N-phenyl-2-naphthalenecarboxamidato(2-)]-,ammonium, sodium and hydrogen.
Use/Import. (S) Charge controlling agent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5.0 g/kg species(Raty). Acute dermal toxicity: LD50 2.0 g/kg species(Rats). Eye irritation: none species(Rabbir). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 88–2095

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyalcohol ether amine.
Use/Production. (G) Film forming resin for industrial application. Prod. range: 200,000–3,000,000 kg/yr.

P 88–2096

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyalcohol ether amine.
Use//Production. (G) Film forming resin for industrial application. Prod. range: 200,000–3,000,000 kg/yr.

P 88–2097

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyalcohol ether amine.
Use/Production. (G) Film forming resin for industrial application. Prod. range: 200,000–3,000,000 kg/yr.

P 88–2098

Manufacturer. Confidential.
Chemical. (g) Aliphatic aromatic polyalcohol ether amine.
Use/Production. (G) Film forming resin for industrial application. Prod. range: 200,000–3,000,000 kg/yr.

P 88–2099

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyalcohol ether amine.
Use/Production. (G) Film forming resin for industrial application. Prod. range: 200,000–3,000,000 kg/yr.

P 88–2100

Manufacturer. Confidential.
Chemical. (G) Cationic terpolymer of acrylamide.
Use/Production. (S) Water clarification. Prod. range: Confidential.

Dated: October 27, 1988.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–25939 Filed 11–9–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51717; FRL–3474–5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of three hundred seventy-four such PMNs and provides a summary of each:

DATES: Close of review periods:

P 88–2331, 88–2332, 88–2333, 88–2334, 88–2335, 88–2337, 88–2338, 88–2339, 88–2340, 88–2341, 88–2342, 88–2343, 88–2344, 88–2345, 88–2346, 88–2347, 88–2348, 88–2349, 88–2350, 88–2351, 88–2352—December 25, 1988.

P 88–2353, 88–2354, 88–2355, 88–2356, 88–2357, 88–2358, 88–2359, 88–2360, 88–2362, 88–2363, 88–2364, 88–2365, 88–2366, 88–2367, 88–2368, 88–2369, 88–2370, 88–2371, 88–2372, 88–2373, 88–2374, 88–2375, 88–2376, 88–2377, 88–2378—December 26, 1988.

P 88–2379—December 28, 1988.

P 88–2380, 88–2381, 88–2382, 88–2384, 88–2385, 88–2386, 88–2387, 88–2388, 88–2389, 88–2390, 88–2391, 88–2392, 88–2393, 88–2394, 88–2395, 88–2396, 88–2397, 88–2398, 88–2399, 88–2400, 88–2401, 88–2402, 88–2403, 88–2404, 88–2405, 88–2406, 88–2407, 88–2408, 88–2409, 88–2410, 88–2411, 88–2412, 88–2413, 88–2414, 88–2415—December 26, 1988.

P 88–2416, 88–2417, 88–2418, 88–2419, 88–2420, 88–2421, 88–2422, 88–2423, 88–2424, 88–2425, 88–2426—December 27, 1988.

P 88–2427—December 31, 1988.

P 88–2428, 88–2429, 88–2430, 88–2431, 88–2432, 88–2433, 88–2434, 88–2435, 88–2436, 88–2437, 88–2438, 88–2439, 88–2440, 88–2441, 88–2442, 88–2443, 88–2444, 88–2445, 88–2446, 88–2447, 88–2448, 88–2449, 88–2450, 88–2451, 88–2452, 88–2453, 88–2454, 88–2455, 88–2456, 88–2457, 88–2458, 88–2459, 88–2460, 88–2461, 88–2462, 88–2463, 88–2464, 88–2465, 88–2466, 88–2467, 88–2468, 88–2469, 88–2470, 88–2471, 88–2472, 88–2473, 88–2774, 88–2475, 88–2476, 88–2477, 88–2478, 88–2479, 88–2480, 88–2481, 88–2482, 88–2483, 88–2484, 88–2485, 88–2486, 88–2487, 88–2488, 88–2489, 88–2490, 88–2491, 88–2492, 88–2493, 88–2494, 88–2495, 88–2496, 88–2497, 88–2498, 88–2499, 88–2500, 88–2501, 88–2502, 88–2503, 88–2504, 88–2505, 88–2506, 88–2507, 88–2508, 88–2509, 88–2510, 88–2511, 88–2512, 88–2513, 88–2514, 88–2515, 88–2516, 88–2517, 88–2518, 88–2519, 88–2520, 88–2521, 88–2522, 88–2523, 88–2524, 88–2525, 88–2526, 88–2527, 88–2528, 88–2529, 88–2530, 88–2531, 88–2532, 88–2533, 88–2534, 88–2535, 88–2536, 88–2537, 88–2538, 88–2539, 88–2540, 88–2541, 88–2542, 88–2543, 88–2544—December 27, 1988.

P 88–2545—December 28, 1988.

P 88–2546, 88–2547, 88–2548, 88–2549, 88–2550, 88–2551, 88–2552, 88–2553, 88–2554, 88–2555, 88–2556, 88–2557, 88–2558, 88–2559, 88–2560, 88–2561—December 27, 1988.

P 88–2562—January 3, 1989.

P 88–2563, 88–2564, 88–2565, 88–2566, 88–2567—December 27, 1988.

P 88–2568, 88–2569, 88–2570, 88–2571, 88–2572, 88–2573, 88–2574, 88–2575, 88–2576, 88–2577, 88–2578, 88–2579, 88–2580—December 28, 1988.

P 88–2581—January 3, 1989.

P 88–2582, 88–2583, 88–2584, 88–2585, 88–2586, 88–2587, 88–2588, 88–2589, 88–2590, 88–2591, 88–2592, 88–2593, 88–2594, 88–2595, 88–2596, 88–2597, 88–2598, 88–2599, 88–2600, 88–2601, 88–2602, 88–2603, 88–2604, 88–2605, 88–2606, 88–2607, 88–2608, 88–2609, 88–2610, 88–2611, 88–2612, 88–2613, 88–2614, 88–2615, 88–2616, 88–2617, 88–

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2618, 88–2619, 88–2620, 88–2621, 88–2622, 88–2623, 88–2624, 88–2625, 88–2626, 88–2627, 88–2628, 88–2629, 88–2630, 88–2631, 88–2632, 88–2633, 88–2634, 88–2635, 88–2636, 88–2637, 88–2638, 88–2639, 88–2640, 88–2641, 88–2642, 88–2643, 88–2644, 88–2645—December 28, 1988

P 89–1—December 31, 1988.

P 89–2, 89–3, 89–4, 89–5, 89–6, 89–7, 89–8, 89–9, 89–10, 89–11, 89–12, 89–13, 89–14, 89–15, 89–16, 89–17—January 1, 1989.

P 89–18, 89–19—December 31, 1988.

P 89–20, 89–21, 89–22, 89–23, 89–24, 89–25—January 1, 1989.

P 89–26, 89–27, 89–28, 89–29, 89–30, 89–31, 89–32—December 31, 1988.

P 89–33, 89–34, 89–35, 89–36, 89–37, 89–38—January 1, 1989.

P 89–39, 89–40, 89–41, 89–42, 89–43, 89–44, 89–45, 89–46, 89–47, 89–48—January 2, 1989.

P 89–49, 89–50, 89–51—January 3, 1989.

P 89–52, 89–53—January 8, 1989.

P 89–54—January 9, 1989.

P 89–55—89–56—January 10, 1989.

P 89–57—January 14, 1989.

P 89–58, 89–59, 89–60—January 15, 1989.

P 89–61, 89–62—January 16, 1989.

Written comments by:

P 88–2331, 88–2332, 88–2333, 88–2334, 88–2335, 88–2337, 88–2338, 88–2339, 88–2340, 88–2341, 88–2342, 88–2343, 88–2344, 88–2345, 88–2346, 88–2347, 88–2348, 88–2349, 88–2350, 88–2351, 88–2352—November 25, 1988.

P 88–2353, 88–2354, 88–2355, 88–2356, 88–2357, 88–2358, 88–2359, 88–2360, 88–2362, 88–2363, 88–2364, 88–2365, 88–2366, 88–2367, 88–2368, 88–2369, 88–2370, 88–2371, 88–2372, 88–2373, 88–2374, 88–2375, 88–2376, 88–2377, 88–2378—November 26, 1988.

P 88–2379—November 28, 1988.

P 88–2380, 88–2381, 88–2382, 88–2384, 88–2385, 88–2386, 88–2387, 88–2388, 88–2389, 88–2390, 88–2391, 88–2392, 88–2393, 88–2394, 88–2395, 88–2396, 88–2397, 88–2398, 88–2399, 88–2400, 88–2401, 88–2402, 88–2403, 88–2404, 88–2405, 88–2406, 88–2407, 88–2408, 88–2409, 88–2410, 88–2411, 88–2412, 88–2413, 88–2414, 88–2415—November 26, 1988.

P 88–2416, 88–2417, 88–2418, 88–2419, 88–2420, 88–2421, 88–2422, 88–2423, 88–2424, 88–2425, 88–2426—November 27, 1988.

P 88–2427—December 1, 1988.

P 88–2428, 88–2429, 88–2430, 88–2431, 88–2432, 88–2433, 88–2434, 88–2435, 88–2436, 88–2437, 88–2438, 88–2439, 88–2440, 88–2441, 88–2442, 88–2443, 88–2444, 88–2445, 88–2446, 88–2447, 88–2448, 88–2449, 88–2450, 88–2451, 88–2452, 88–2453, 88–2454, 88–2455, 88–2456, 88–2457, 88–2458, 88–2459, 88–2460, 88–2461, 88–2462, 88–2463, 88–2464, 88–2465, 88–2466, 88–2467, 88–2468, 88–2469, 88–2470, 88–2471, 88–2472, 88–2473, 88–2474, 88–2475, 88–2476, 88–2477, 88–2478, 88–2479, 88–2480, 88–2481, 88–2482, 88–2483, 88–2484, 88–2485, 88–2486, 88–2487, 88–2488, 88–2489, 88–2490, 88–2491, 88–2492, 88–2493, 88–2494, 88–2495, 88–2496, 88–2497, 88–2498, 88–2499, 88–2500, 88–2501, 88–2502, 88–2503, 88–2504, 88–2505, 88–2506, 88–2507, 88–2508, 88–2510, 88–2511, 88–2512, 88–2513, 88–2514, 88–2515, 88–2516, 88–2517, 88–2518, 88–2519, 88–2520, 88–2521, 88–2522, 88–2523, 88–2524, 88–2525, 88–2526, 88–2527, 88–2528, 88–2529, 88–2530, 88–2531, 88–2532, 88–2533, 88–2534, 88–2535, 88–2536, 88–2537, 88–2538, 88–2539, 88–2540, 88–2541, 88–2542, 88–2543, 88–2544—November 27, 1988.

P 88–2545—November 28, 1988

P 88–2546, 88–2547, 88–2548, 88–2549, 88–2550, 88–2551, 88–2552, 88–2553, 88–2554, 88–2555, 88–2556, 88–2557, 88–2558, 88–2559, 88–2560, 88–2561—November 27, 1988.

P 88–2562—December 4, 1988.

P 88–2563, 88–2564, 88–2565, 88–2566, 88–2567—November 27, 1988.

P 88–2568, 88–2569, 88–2570, 88–2571, 88–2572, 88–2573, 88–2574, 88–2575, 88–2576, 88–2577, 88–2578, 88–2579, 88–2580—November 28, 1988.

P 88–2581—December 4, 1988.

P 88–2582, 88–2583, 88–2584, 88–2585, 88–2586, 88–2587, 88–2588, 88–2589, 88–2590, 88–2591, 88–2592, 88–2593, 88–2594, 88–2595, 88–2596, 88–2597, 88–2598, 88–2599, 88–2600, 88–2601, 88–2602, 88–2603, 88–2604, 88–2605, 88–2606, 88–2607, 88–2608, 88–2609, 88–2610, 88–2611, 88–2612, 88–2613, 88–2614, 88–2615, 88–2616, 88–2617, 88–2618, 88–2619, 88–2620, 88–2621, 88–2622, 88–2623, 88–2624, 88–2625, 88–2626, 88–2627, 88–2628, 88–2629, 88–2630, 88–2631, 88–2632, 88–2633, 88–2634, 88–2635, 88–2636, 88–2637, 88–2638, 88–2639, 88–2640, 88–2641, 88–2642, 88–2643, 88–2644, 88–2645—November 28, 1988.

P 89–1—December 1, 1988.

P 89–2, 89–3, 89–4, 89–5, 89–6, 89–7, 89–8, 89–9, 89–10, 89–11, 89–12, 89–13, 89–14, 89–15, 89–16, 89–17—December 2, 1988.

P 89–18, 89–19—December 1, 1988.

P 89–20, 89–21, 89–22, 89–23, 89–24, 89–25—December 2, 1988.

P 89–26, 89–27, 89–28, 89–29, 89–30, 89–31, 89–32—December 1, 1988.

P 89–33, 89–34, 89–35, 89–36, 89–37, 89–38—December 2, 1988.

P 89–39, 89–40, 89–41, 89–42, 89–43, 89–44, 89–45, 89–46, 89–47, 89–48—December 3, 1988.

P 89–49, 89–50, 89–51—December 4, 1988.

P 89–52, 89–53—December 9, 1988.

P 89–54—December 10, 1988.

P 89–55, 89–56—December 11, 1988.

P 89–57—December 15, 1988.

P 89–58, 89–59, 89–60—December 16, 1988.

P 89–61, 89–62—December 17, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS–51717]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88–2331

Manufacturer. Confidential.

Chemical. (G) Amine–modified epoxy resin.

Use/Production. (G) Industrial paint product. Prod. range: 1,000,000–3,000,000 kg/yr.

P 88–2332

Manufacturer. Confidential.

Chemical. (G) Amine–modified epoxy resin.

Use/Production. (G) Industrial paint product. Prod. range: 1,000,000–3,000,000 kg/yr.

P 88–2333

Manufacturer. Confidential.

Chemical. (G) Functionalized polyurethane.

Use/Production. (S) Adhesive. Prod. range: 5,900–18,000 kg/yr.

P 88–2334

Manufacturer. Confidential.

Chemical. (G) Polyether polyamine.

Use/Production. (G) Coating (open dispersive). Prod. range: 1,500–900,000 kg/yr.

P 88–2335

Manufacturer. Confidential.

Chemical. (G) Aliphatic alicyclic polyester.

Use/Production. (G) Dispersively used coating. Prod. range: 325,000–650,000 kg/yr.

P 88–2337

Manufacturer. Dow Corning Corporation.

Chemical. (G) Organofunctional polysiloxane.

Use/Production. (S) Intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 2,000 mg/kg species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: strong species(Rabbit). Mutagenicity: negative.

P 88–2338

Manufacturer. Dow Corning Corporation.

Chemical. (G) Organofunctional polysiloxane.

Use/Production. (S) Curable siloxane coating. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 2,000 mg/kg species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 88–2339

Manufacturer. Confidential.

Chemical. (G) N–Substituted aminophenol.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–2340

Manufacturer. Confidential.

Chemical. (G) N-Substituted-m-anisidine.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88–2341

Manufacturer. Confidential.

Chemical. (G) Substituted phenol sulfonic acid.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–2342

Manufacturer. Exxon Chemical Company.

Chemical. (G) Sulfonated theroplastic polymer.

Use/Production. (S) Drilling fluid additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 5.0 g/kg species (Rat). Acute dermal toxicity: LD50 3.6 g/kg species (Rabbit).

P 88–2343

Manufacturer. Confidential.

Chemical. (G) Methyl tertiary amyl ether.

Use/Production. (S) Automotive fuel component. Prod. range: Confidential.

P 88–2344

Importer. Confidential.

Chemical. (G) Phosphorodithioic acid esters, zinc salts.

Use/Import. (G) Petroleum additive. Import range: Confidential.

P 88–2345

Manufacturer. Confidential.

Chemical. (G) Substituted sulfonated amino hydroxy naphthalene.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–2346

Manufacturer. Confidential.

Chemical. (G) Alkyldiamine, N,N-(chloro-substituted sulfonatednaphthalenyl) (heterocycle)-sodium salt.

Use/Production. (S) Power dye. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 500 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–2347

Manufacturer. Confidential.

Chemical. (G) Alkyldiamine, N,N-(chloro-substituted sulfonatednaphthalenyl)-heterocycle)-sodium salt.

Use/Production. (S) Power dye. Prod. range: Confidential.

P 88–2348

Manufacturer. Confidential.

Chemical. (G) Alkyldiamine, N,N-(chloro-substituted sulfonatednaphthalenyl)-heterocycle)-sodium salt.

Use/Production. (S) Power dye. Prod. range: Confidential.

P 88–2349

Manufacturer. The Dow Chemical Company.

Chemical. (G) Trialkylene glycol ether.

Use/Production. (S) Paint solvent, cleaner solvent, ink solvent. Prod. range: Confidential.

P 88–2350

Manufacturer. Confidential.

Chemical. (G) Quaternized nicotinic acid.

Use/Production. (S) Electroplating zinc brightener. Prod. range: Confidential.

P 88–2351

Manufacturer. Confidential.

Chemical. (G) Quaternized nicotinic acid.

Use/Production. (S) Electroplating zinc brightener. Prod. range: Confidential.

P 88–2352

Importer. Confidential.

Chemical. (G) Silicic acid tetraalkyl ester.

Use/Import. (G) Adhesive additive. Import range: Confidential.

P 88–2353

Importer. Confidential.

Chemical. (G) Polyether urethane.

Use/Import. (S) Latex paint component. Import range: Confidential.

P 88–2354

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic copolymer.

Use/Production. (S) Coatings. Prod. range: Confidential.

P 88–2355

Manufacturer. Confidential.

Chemical. (G) Methoxy polyethylene oxide diol.

Use/Production. (S) Coating. Prod. range: Confidential.

P 88–2356

Manufacturer. Confidential.

Chemical. (G) Methoxy polyethylene oxide diol.

Use/Production. (S) Coatings prepolymer. Prod. range: Confidential.

P 88–2357

Manufacturer. Confidential.

Chemical. Hydroxy functional acrylic resin.

Use/Production. (S) Coatings. Prod. range: Confidential.

P 88–2358

Manufacturer. Confidential.

Chemical. (G) Methoxy polyethylene oxide diol.

Use/Production. (S) Coatings prepolymer. Prod. range: Confidential.

P 88–2359

Manufacturer. Mazer Chemicals, Div, of PPG Industries.

Chemical. (G) Amine-sulfonate salt.

Use/Production. (G) Component. Prod. range: Confidential.

P 88–2360

Manufacturer. Mazer Chemicals, Div, of PPG Industries.

Chemical. (G) Silicone fluid.

Use/Production. (G) Mold release agent. Prod. range: Confidential.

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P 88-2362

Manufacturer. Mazer Chemicals, Div. of PPG Industries.
Chemical. (G) Alkoxylated ammonium sulfonated.
Use/Production. (G) Component. Prod. range: Confidential.

P 88-2363

Manufacturer. Mazer Chemicals, Div. of PPG Industries.
Chemical. (G) Alkoxylated ammonium salt.
Use/Production. (G) Component. Prod. range: Confidential.

P 88-2364

Manufacturer. Mazer Chemicals, Div. of PPG Industries.
Chemical. (G) Alkoxylated ammonium salt.
Use/Production. (G) Component. Prod. range: Confidential.

P 88-2365

Importer. Confidential.
Chemical. (S) 4-Benzoyl-N,N-dimethyl-[2-(2-methyl-1-oxy-2-propanenyloxy)benzene methanaminium chloride.
Use/Import. (S) Photocuring agent. Import range: Confidential.

P 88-2366

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Copolyimide.
Use/Production. (S) Confidential. Prod. range: Confidential.

P 88-2367

Importer. Nagase America Corporation.
Chemical. (G) Oxalic acid ester.
Use/Import. (S) Efficiency improver for heat-sensitive recording material. Import range: Confidential

P 88-2368

Importer. Mitsubishi International Corporation.
Chemical. (S) Butanadioic acid alkeny[C13-C16]dipotassium salt.
Use/Import. (S) Internal sizing for paper & paperboard. Import range: 200,000 kg/yr.

P 88-2369

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Novolac modified epoxy resin.
Use/Production. (S) Resin used in heavy duty coatings. Prod. range: Confidential.

P 88-2370

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Styrene acrylate copolymer.
Use/Import. (S) Xerographic toner. Import range: Confidential.

P 88-2371

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Alpha-Pinene dipentene polymer.
Use/Production. (S) Tackifier for adhesive. Prod. range: Confidential.

P 88-2372

Manufacturer. Confidential.
Chemical. (G) Modified epoxy.
Use/Production. (G) Coating component. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88-2373

Manufacturer. Minnesota Mining Manufacturing Co. (3M).
Chemical. (G) Isoctyl acrylate containing terpolymer.
Use/Production. (G) Adhesive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Human).

P 88-2374

Importer. Henkel Corporation, Organic Products Div.
Chemical. (G) Complex polyurethane.
Use/Import. (G) Coatings. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88-2375

Importer. Huls America Inc.
Chemical. (S) Titanium, butyl alcohol 2,ethyl-1,3-hexanediol complexes.
Use/Import. (S) Crosslinking agent in wire coatings. Import range: Confidential.

P 88-2376

Importer. Huls America Inc.
Chemical. (S) Titanium isopropyl alcohol 2-ethyl-1,3-hexaneddiolcomplexes.
Use/Import. (S) Crosslinking agent in wire coatings. Import range: Confidential.

P 88-2377

Manufacturer. Confidential.
Chemical. (G) Oxyalkylated tetraphthalated glycol ester.
Use/Production. (S) Insulating material component. Prod. range: 9,090,000-13,635,000 kg/yr.

P 88-2378

Manufacturer. Confidential.
Chemical. (G) Terephathalene acid polyester.
Use/Production. (S) Insulating material component. Prod. range: 7,272,000-10,909,000 kg/yr.

P 88-2379

Importer. Shin-Etsu Silicones of America.
Chemical. (G) Modified silica.
Use/Import. (S) Ingredient of silicone resins. Import range: 2,000-5,000 kg/yr.

P 88-2380

Manufacturer. Confidential.
Chemical. (G) Urethane extended epoxy methacrylate.
Use/Production. (S) Component of bowling ball veneer. Prod. range: 661,000-1,635,000 kg/yr.

P 88-2381

Manufacturer. Confidential.
Chemical. (G) Dichloro disubstituted heteropolycycledisulfonic acid.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88-2382

Manufacturer. Confidential.
Chemical. (G) Disubstituted phenylaminobenzene azo substituted phenol compound with ammonia derivative.
Use/Production. (G) Open, non dispersive. Prod. range: Confidential.

P 88-2384

Manufacturer. Confidential.
Chemical. (G) Disubstituted phenylaminobenzene azo substituted phenol salt.
Use/Production. (S) Isolated intermediate. Prod. range: Confidential.

P 88-2385

Manufacturer. Confidential.
Chemical. (G) Cycloalkene alkanol dialkyl methylene.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 88-2386

Manufacturer. Confidential.
Chemical. (G) Terephthalate acid glucoside polyester.
Use/Production. (S) Insulating material component. Prod. range: 3,500,000-4,320,000 kg/yr.

P 88-2387

Manufacturer. Confidential.
Chemical. (G) Oxyalkylated terephthalate glucoside polyester.

Use/Production. (S) Insulation material component. Prod. range: 4,090,000-5,090,000 kg/yr.

P 88-2388

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Pigment binder. Prod. range: 13,200-16,000 kg/yr.

P 88-2389

Manufacturer. Confidential.
Chemical. (G) Poly-chloroethoxyamine comnpound.
Use/Production. (G) Metal finishing additive. Prod. range: Confidential.

P 88-2390

Manufacturer. Dexter Composites Div.
Chemical. (S) 4,4-(2,2,2-Trifluoro-1-(trifluoromethyl)ethylidene)bis-1,2-benzenedicarboxylic acid, ary-dimethyl ester.
Use/Production. (S) Resin component. Prod. range: 300-1,000 kg/yr.

P 88-2391

Importer. Confidential.
Chemical. (G) Substituted naphthaleene diazo alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-2392

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Acid black 58.
Use/Import. (S) Resale. Import range: 4,000-8,000 kg/yr.

P 88-2393

Manufacturer. Confidential.
Chemical. (G) Water reducible alkyd resin.
Use/Production. (S) Industrial air-dry and baking finishing. Prod. range: Confidential.

P 88-2394

Manufacturer. Confidential.
Chemical. (G) Water reducible urethane alkyd.
Use/Production. (S) Air-dry water thinner varnishes and enamels. Prod. range: Confidential.

P 88-2395

Manufacturer. Confidential.
Chemical. (G) Water reducible alkyd resin.
Use/Production. (S) Industrial air-dry and baking finishes. Prod. range: Confidential.

P 88-2396

Manufacturer. Confidential.
Chemical. (G) Water reducible alkyd resin.
Use/Production. (S) Industrial air-dry and baking finishes. Prod. range: Confidential.

P 88-2397

Manufacturer. Confidential.
Chemical. (G) Starch graft copolymer latex.
Use/Production. (S) Binder for cellulosic, fiber glass fibers. Prod. range: 90,000-900,000 kg/yr.

P 88-2398

Manufacturer. Vista Chemical Company.
Chemical. (G) Linear alkylate sulfonate.
Use/Production. (G) Detergent manufacture. Prod. range: Confidential.

P 88-2399

Manufacturer. Alkaril Chemicals, Inc.
Chemical. (G) Alkoxylated myristic acid.
Use/Production. (G) Component. Prod. range: Confidential.

P 88-2400

Importer. Hoechst Celanese Corporation.
Chemical. (S) 4,4'-(2,2,2-Trifluoro-1-(trifluoromethyl)ethylidene)-bis-benzoic acid.
Use/Import. (S) Prestage material for polymeric materials. Import range: Confidential.

P 88-2401

Manufacturer. Hoechst Celanese Corporation.
Chemical. (S) 4,4'-(2,2,2-Trifluoromethyl-(ethylidene)-bis-benzamide.
Use/Production. (S) Intermediate for the manufacture of polymeric material. Prod. range: Confidential.

P 88-2402

Manufacturer. Hoechst Celanese Corporation.
Chemical. (S) 2,2-(4-Aminophenyl)-hexafluoropropene; 4,4'-(hexalfluoropropylidene)-bis-(phthalic anhydride).
Use/Production. (G) Component. Prod. range: 200-1,000 kg/yr.

P 88-2403

Manufacturer. Hoechst Celanese Corporation.
Chemical. (S) 4,4'=¶-(2,2,2-trifluoro-1-(trifluoromethyl)-ethylidene)-bis-benzeneamine.
Use/Production. (S) Industrial air dry primers. Prod. range: Confidential.

P 88-2404

Manufacturer. Hoechst Celanese Corporation.
Chemical. (S) Products from the reaction of 4,4'(2,2,2-trifluoromethyl)-ethylidene)-bis-benzamide(cas no. 10224-16-5) with sodium hypochlorite (us no. 7681-52-9) in the presence of sodium hydroxide (cas no. 1310-73-2).
Use/Production. (S) Intermediate for manufacture of polymeric material. Prod. range: Confidential.

P 88-2405

Manufacturer. Confidential.
Chemical. (G) Epoxy polyurethane.
Use/Production. (S) Binder for general industrial topcoat. Prod. range: 40,000-250,000 kg/yr.

P 88-2406

Manufacturer. Confidential.
Chemical. (G) Cyclic aliphatic polyester resin.
Use/Production. (S) Binder for automative primer. Prod. range: 200,000-500,000 kg/yr.

P 88-2407

Importer. High Point Chemical Corporation.
Chemical. (G) 1-Alkyl, n-hydroxyl,n,n dimethylquarternary ammonium salt.
Use/Import. (G) Antistic agent. Import range: Confidential.

P 88-2408

Manufacturer. Confidential.
Chemical. (G) Polyamide graft polymer.
Use/Production. (G) Component of a blend to enhance resin melt viscosity. Prod. range: Confidential.

P 88-2409

Manufacturer. Confidential.
Chemical. (G) Polyamide graft polymer.
Use/Production. (G) Component of a blend to enhance resin melt viscosity. Prod. range: Confidential.

P 88-2410

Manufacturer. Confidential.
Chemical. (G) Polylamide graft polymer.
Use/Production. (G) Component of a blend to enhance resin melt viscosity. Prod. range: Confidential.

P 88-2411

Manufacturer. Confidential.
Chemical. (G) Polyamide graft polymer.
Use/Production. (G) Component of a blend to enhance resin melt viscosity. Prod. range: Confidential.

P 88-2412

Importer. High Point Chemical Corporation.

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Chemical. (G) Fatty acids, Diester with aromatic diol alkoxylated.
Use/Import. (G) Lubricants. Import range: Confidential.

P 88–2413

Importer. High Point Chemical Corporation.
Chemical. (G) Saturated alkyl dicarboxylic acid diester with branched alkyl alcohol.
Use/Import. (G) Lubricant. Import range: Confidential.

P 88–2414

Importer. High Point Chemical Corporation.
Chemical. (G) Unsaturated fatty acid ester with branched alkyl alcohol.
Use/Import. (G) Lubricants. Import range: Confidential.

P 88–2415

Importer. High Point Chemical Corporation.
Chemical. (G) 1-Alkyl N-hydroxyethyl N,N-dimethylquaternaryammonium salt with acid.
Use/Import. (G) Antistatic agent. Import range: Confidential.

P 88–2416

Manufacturer. Minnesota Mining & Manufacturing Co. (3M).
Chemical. (G) Fluorinated acrylate polymer containing acrylic acid.
Use/Production. (G) Protective coating. Prod. range: Confidential.

P 88–2417

Manufacturer. Amoco Corporation.
Chemical. (G) Epoxy/amine adduct.
Use/Production. (S) Component in epoxy resin formulation. Prod. range: 480–1,200 kg/yr.

P 88–2418

Manufacturer. Amoco Corporation.
Chemical. (G) Epoxy/amine adduct.
Use/Production. (S) Component in epoxy resin system. Prod. range: 115–900 kg/yr.

P 88–2419

Manufacturer. Amoco Corporation.
Chemical. (G) Epoxy/amine adduct.
Use/Production. (S) Component in epoxy resin system. Prod. range: 215–1,700 kg/yr.

P 88–2420

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Alkyl silane.
Use/Import. (S) Co-catalyst for olefin polymerization. Import range: Confidential.

P 88–2421

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Thermoplastic polyamide.
Use/Import. (S) Hot melt adhesive for automotive filters. Import range: Confidential.

P 88–2422

Manufacturer. Sherex Chemical Company, Inc.
Chemical. (G) Alkoxylated diol.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88–2423

Manufacturer. Sherex Chemical Company, Inc.
Chemical. (G) Polyamide.
Use/Production. (S) Typewritter ribbon ink vehicle. Prod. range: Confidential.

P 88–2424

Manufacturer. Confidential.
Chemical. (G) Polymeric product of the reaction of epoxy with organic acids and anhydrides.
Use/Production. (G) Polymer for substrates. Prod. range: Confidential.

P 88–2425

Manufacturer. Confidential.
Chemical. (G) Polymeric product of the reaction of epoxy with organic acids and anhydrides.
Use/Production. (G) Polymer for substrates. Prod. range: Confidential.

P 88–2426

Manufacturer. Confidential.
Chemical. (G) Polymeric product of the reaction of epoxy with organic acids and anhydrides.
Use/Production. (G) Polymer for substrates. Prod. range: Confidential.

P 88–2427

Manufacturer. Confidential.
Chemical. (G) Polymeric product of the reaction of epoxy with organic acids and anhydrides.
Use/Production. (G) Polymer for substrates. Prod. range: Confidential.

P 88–2428

Manufacturer. Amoco Corporation.
Chemical. (G) Aromatic polyimide.
Use/Production. (G) Protective coating. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity LD50 7,000 mg/kg species(Rat). Acute dermal toxicity: LD50) 8,000 mg/kg species(Rabbit).

P 88–2429

Manufacturer. Amoco Corporation.
Chemical. (G) Aromatic polyimide.
Use/Production. (G) Protective coating. Prod. range: Confidential.

P 88–2430

Importer. Degussa Corporation.
Chemical. (S) Bis(3-Trimethoxysilylpropyl)polysulfane.
Use/Import. (G) Coupling agent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >6,106 mg/kg species(Rat). Eye irritation: none species(Rabbit). Skin irritation: slight species(Rabbit).

P 88–2431

Manufacturer. Confidential.
Chemical. (G) Styrenic-acrylic copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–2432

Manufacturer. Confidential.
Chemical. (G) Styrene-acrylic copolymer.
Use/Production. (S) General purpose coating. Prod. range: Confidential.

P 88–2433

Importer. Degussa Corporation.
Chemical. (S) 1,2-Dihydroxy-tetradecane.
Use/Import. (G) Polymer additive. Import range: Confidential.

P 88–2434

Manufacturer. Calloway Chemical Company.
Chemical. (G) Diisoctyl sodium sulfosuccinate (DOSS).
Use/Production. (S) Anionic surfactant. Prod. range. Confidential.

P 88–2435

Manufacturer. Callaway Chemical Company.
Chemical. (S) Poly(oxy-1,2-ethanediyl)-(2-carboxyethyl)-w-hydroxy, c11-c14-iso, c13-rich alkyl ethers, sodium salt.
Use/Production. (S) Anionic surfactant. Prod. range: Confidential.

P 88–2436

Manufacturer. Callaway Chemical Company.
Chemical. (S) Isooctanol reacted products with phosphorous oxide (P205) and alcohols, C11-C1,-iso-,C12-rich ethoxylated.
Use/Production. (S) Wetter/detergent/emulsifier for fibers. Prod. range: Confidential.

P 88–2437

Manufacturer. Callow Chemical Company.

Chemical. (S) Isooctanol, reaction products with phosphorous oxide (p2o5) and alcohols, c11–14–iso, c13–rich, ethylated, potassium salts.
Use/Production. (S) Anionic surfactant. Prod. range: Confidential.

P 88–2438

Manufacturer. Tennant Company.
Chemical. (G) Urethane resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–2439

Importer. Stockhausen Inc.
Chemical. (G) Acrylic acid, copolymer with na cationic acid derivate.
Use/Import. (S) Auxiliary for manufacturing paper. Import range: 100,000–200,000 kg/yr.

P 88–2440

Manufacturer. E.I. du Pont de Nemours & Co. (Inc.).
Chemical. (G) Organophosphorous ester.
Use/Production. (G) Polymer catalyst. Prod. range: Confidential.

P 88–2441

Manufacturer. E.I. du Pont de Nemours & Co. (Inc.).
Chemical. (G) Organophosphorous acid.
Use/Production. (G) Polymer catalyst. Prod. range: Confidential.

P 88–2442

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88–2444

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88–2445

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88–2446

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88–2447

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88–2448

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted aromatic azo compound.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88–2449

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted heterocyclic azo.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–2450

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic copolymer.
Use/Production. (S) Coating. Prod. range: Confidential.

P 88–2451

Importer. Marubeni America Corporation.
Chemical. (S) Methyl methacrylate, styrene, 2-ethylhexyl acrylate methacrylic acid ammonium salt polymer.
Use/Import. (S) Penetration agent for transperences paper. Import range: 60,000–500,000 kg/yr.

P 88–2452

Importer. Marubeni America Corporation.
Chemical. (G) Polyvinylalcohol, acrylamide and 2-acrylamide-2-methylpropane-sulfonic acid graft copolymer.
Use/Import. (S) Coating binder for pressure sensitive paper. Import range: 60,000–500,000 kg/yr.

P 88–2453

Importer. Marubeni America Corporation.
Chemical. (S) Polyvinylalcohol, acrylamide, acrylonitrile graft copolymer.
Use/Import. (S) Coating binder for ink, jet recording paper. Import range: 60,000–500,000 kg/yr.

P 88–2454

Importer. Marubeni America Corporation.
Chemical. (S) Polyvinylalcohol, allylacetoacetate, acrylamide graft copolymer.
Use/Import. (S) Coating binder for ink-jet recording paper. Import range: 60,000–500,000 kg/yr.

P 88–2455

Importer. Marubeni America Corporation.
Chemical. (S) Polyvinylalcohol, acrylamide and sodium styrenesulfonate graft copolymer.
Use/Import. (S) Coating agent for offset printing plate. Import range: 60,000–500,000 kg/yr.

P 88–2456

Importer. Marubeni America Corporation.
Chemical. (S) Acrylamide, acrylonitrile, 2-hydroxyethyl metharylate polymer.
Use/Import. (S) Penetration agent for released paper. Import range: 60,000–500,000 kg/yr.

P 88–2457

Importer. Marubeni America Corporation.
Chemical. (S) Polyvinylalcohol, acrylamide, 2-acrylamido-2-mehylpropanesulfonic acid, 2-hydroxypropyl mhacrylate graft copolymer.
Use/Import. (S) Coating binder for pressure sensitive paper. Import range: 60,000–500,000 kg/yr.

P 88–2458

Manufacturer. Confidential.
Chemical. (G) Tin chelate.
Use/Production. (G) Ingredient for coating. Prod. range: Confidential.

P 88–2459

Importer. Ciga-Geigy Corporation.
Chemical. (S) Substituted dioxazine dye.
Use/Import. (G) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative. Skin sensitization: negative species(Guinea pig).

P 88–2460

Manufacturer. ARCO Chemical Company.
Chemical. (G) Polyalkylene carbonate.
Use/Production. (S) Pattern production for last foam casting. Prod. range: Confidential.

P 88–2461

Importer. Confidential.
Chemical. (G) Fatty acid, rare earth salt.
Use/Import. (G) Processing aid. Import range: Confidential.

P 88–2462

Importer. Confidential.

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Chemical. (G) Polydimethylsiloxane, modified.
Use/Import. (G) Polymer additive. Import range: Confidential.

P 88–2463

Manufacturer. Confidential.
Chemical. (G) Trimethylopropane fatty acid diacrylate.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–2464

Importer. Dow Corning Corporation.
Chemical. (S) Silicic acid, teraethyl ester, reaction products with hexamethyldisiloxane.
Use/Import. (G) Resist resin. Import range: 100–500 kg/yr.

P 88–2465

Importer. Dow Corning Corporation.
Chemical. (S) Silicic acid, teraethyl ester, reaction products with ethoxytrimethylsilane.
Use/Import. (G) Resist resin. Import range: 100–300 kg/yr.

P 88–2466

Importer. Dow Corning Corporation.
Chemical. (S) Silicic acid, tetraethyl ester, reaction products with (3-mercaptopropyl) trimethoxysilane and ethoxytrimethylsilane.
Use/Import. (G) Resist resin. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >15 g/kg species(Rat). Skin irritation: negligible species(Rabbit).

P 88–2467

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted anthraquinone.
Use/Import. (S) Reactive disperse dye. Import range: Confidential.

P 88–2468

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted heterocyclic azo.
Use/Import. (S) Reactive dispersive dye for textiles. Import range: Confidential.

P 88–2469

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted heterocyclic azo benzeneamine.
Use/Import. (S) Dyeing and printing of textiles. Import range: Confidential.

P 88–2470

Manufacturer. Confidential.
Chemical. (G) Azo compound.
Use/Production. (G) Raw material for synthetic resins and fibers. Prod. range: Confidential.

P 88–2471

Importer. Confidential.
Chemical. (G) Polyester resin.
Use/Import. (G) Resin for photo-copying. Import range: Confidential.

P 88–2472

Importer. Confidential.
Chemical. (G) Polyester resin.
Use/Import. (G) Resin for photo-copying. Import range: Confidential.

P 88–2473

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted heterocyclic azo benzeneamine.
Use/Import. (S) Dyeing and printing of textile. Import range: Confidential.
Toxicity Data. Mutagenicity: positive.

P 88–2474

Manufacturer. Milliken & Company.
Chemical. (G) Polyoxyalkylene bicyclohexanol.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–2475

Manufacturer. Milliken & Company.
Chemical. (G) Polyoxyalkylene bicyclohexanol.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–2476

Manufacturer. Milliken & Company.
Chemical. (G) Polyoxyalkylene bicyclohexanol.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–2477

Manufacturer. Milliken & Company.
Chemical. (G) Chromophore substituted polyoxyalkylene.
Use/Production. (G) Colorant. Prod. range: Confidential.

P 88–2478

Manufacturer. Milliken & Company.
Chemical. (G) Chromophore substituted polyoxyalkylene.
Use/Production. (G) Colorant. Prod. range: Confidential.

P 88–2479

Manufacturer. Milliken & Company.
Chemical. (G) Chromophore substituted polyoxyalkylene.
Use/Production. (G) Colorant. Prod. range: Confidential.

P 88–2480

Manufacturer. Milliken & Company.
Chemical. (G) Chromophore substituted polyoxyalkylene.
Use/Production. (G) Colorant. Prod. range: Confidential.

P 88–2481

Manufacturer. Milliken & Company.
Chemical. (G) Substituted furanone.
Use/Production. (G) Raw material for colorant. Prod. range: Confidential.

P 88–2482

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted heterocyclic disazo.
Use/Import. (S) Reactive dispersive dye for textile. Import range: Confidential.

P 88–2483

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthol.
Use/Production. (G) Chemical intermediate. Prod. range: 66,000–91,000 kg/yr.

P 88–2484

Importer. Hoechst Celanese Corporation.
Chemical. (G) Ethoxylated substituted naphthol.
Use/Import. (S) Processing aid. Import range: 900–3,400 kg/yr.

P 88–2485

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Tetra substituted naphthol.
Use/Production. (G) Chemical intermediate. Prod. range: 50,000 kg/yr.

P 88–2486

Importer. Hoechst Celanese Corporation.
Chemical. (G) Tetra substituted pyrazole.
Use/Import. (S) Coloration of plastics. Import range: 500–2,500 kg/yr.

P 88–2487

Importer. High Point Chemical Corporation.
Chemical. (G) Polyoxyethylene alkylaryl phenol.
Use/Import. (G) Lubricants/drying assistant. Import range: Confidential.

P 88–2488

Importer. High Point Chemical Corporation.
Chemical. (G) Polyoxyethylene alkylaryl ether ammonium sulfate.
Use/Import. (G) Lubricants/dyeing assistants. Import range: Confidential.

P 88–2489

Importer. High Point Chemical Corporation.
Chemical. (G) Polypropylene alkylaryl phenol.

Use/Import. (G) Lubricants/dyeing assistants. Import range: Confidential.

P 88–2490

Importer. Confidential.
Chemical. (G) Poly(oxy-1,2-ethandiyl)-hydro-w-hydroxy and oxepanone, polymer with n-decanol, reaction product with benzene, diisocyanatomethyl.
Use/Import. (G) Paint additive, open, nondispersive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–2491

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Glycidyl functional solid acrylic polymer.
Use/Production. (S) Resin used in powered coating. Prod. range: Confidential.

P 88–2492

Manufacturer. Reichhold Chemicals, Inc.
Chemical.(G) Alkyd modified triazine polyol.
Use/Production. (S) Printing ink/paint. Prod. range: Confidential.

P 88–2493

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Rosin—phenolic modified alkyd.
Use/Production. (S) Industrial air dry primers. Prod. range: Confidential.

P 88–2494

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Blocked isocyanate compound.
Use/Production. (S) Metal coating. Prod. range: Confidential.

P 88–2495

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Fluorochloroolefin copolymer.
Use/Import. (S) Component of exterior coating. Import range: Confidential.

P 88–2496

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Chlorinated polypropylene modified acrylic copolymer.
Use/Production. (S) Coating for polypropylene goods. Prod. range: Confidential.

P 88–2497

Manufacturer. Confidential.
Chemical. (G) Polyester/acrylic polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–2498

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Modified amino resin.
Use/Production. (S) Thermoset coatings. Prod. range: Confidential.

P 88–2499

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Modified polyamine.
Use/Production. (S) Industrial coatings. Prod. range: Confidential.

P 88–2500

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Styrene-acrylic copolymer.
Use/Production. (S) Resin used in automotive and exterior paint. Prod. range: Confidential.

P 88–2501

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Chlorinated polypropylene modified acrylic copolymer.
Use/Production. (S) Resin used in modified of acrylic resin. Prod. range: Confidential.

P 88–2502

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Styrene acrylate copolymer.
Use/Import. (S) Binder used in xerographic toner. Import range: Confidential.

P 88–2503

Manufacturer. Reichhold Chemicals, Inc.
Chemical. Novolac modified resin.
Use/Production. (S) Component of solvent resistant coating. Prod. range: Confidential.

P 88–2504

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Phenolic modified alkyd resin.
Use/Production. (S) Industrial air dry primer. Prod. range: Confidential.

P 88–2505

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Glycidyl functional acrylic copolymer.
Use/Import. (S) Resin used in powder coating. Import range: Confidential.

P 88–2506

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Crosslinked butadiene-styrene polymer.
Use/Production. (S) Nonwoven binder. Prod. range: Confidential.

P 88–2507

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Short oil alkyd resin.
Use/Production. (S) Industrial air-dry coating. Prod. range: Confidential.

P 88–2508

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–2509

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic copolymer.
Use/Production. (S) Coating. Prod. range: Confidential.

P 88–2510

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 88–2511

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 88–2512

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 88–2513

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 88–2514

Importer. Confidential.
Chemical. (G) Alkyl carboxylic acid ester.
Use/Import. (S) Mold release agent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>5,000 mg/kg species (Rat). Mutagenicity: negative.

P 88–2515

Importer. Confidential.
Chemical. (G) Bis-ketimine.

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Use/Import. (S) Industrial maintenance. Import range: 3,000–25,000 kg/yr.

Toxicity Data. Eye irritation: moderate species (Rabbit). Skin irritation: strong species (Rabbit).

P 88–2516

Importer. Confidential.

Chemical. (G) Butadiene, polymer with acrylonitrile, susbstitutedethylene substituted-ethylene, substituted-substituted ethylenes.

Use/Import. (S) Auxiliary for textile. Import range: Confidential.

P 88–2517

Importer. Confidential.

Chemical. (G) Metal salt of a phosphoric acid derivative.

Use/Import. (S) Heat stabilizer for nylon. Import range: Confidential.

P 88–2518

Importer. Confidential.

Chemical. (S) 2-phosphono-1,2,4-butane tricarboxylic acid, potassium salt.

Use/Import. (S) Scale and corrosion inhibitor. Import range: 1,500–3,000 kg/yr.

P 88–2519

Manufacturer. Products Research & Chemical Corp.

Chemical. (G) Isocyanate terminated polyester polyol.

Use/Production. (S) Polymer for adhesives/coatings/sealants. Prod. range: 10,000–50,000 kg/yr.

P 88–2520

Manufacturer. Products Research & Chemical Corp.

Chemical. (G) Isocyanate terminated polyester polyol.

Use/Production. (S) Polymer for adhesives/coatings/sealants. Prod. range: 10,000–50,000 kg/yr.

P 88–2521

Manufacturer. Products Research & Chemicals Corp.

Chemical. (G) Isocyanate terminated polyethioether.

Use/Production. (S) Polymer for adhesives/coatings/sealants. Prod. range: 10,000–50,000 kg/yr.

P 88–2522

Manufacturer. Products Research & Chemicals Corp.

Chemical. (G) Isocyanate terminated polythioether.

Use/Production. (S) Polymer for adhesives/coatings/sealants. Prod. range: 10,000–50,000 kg/yr.

P 88–2523

Manufacturer. Products Research & Chemical Corp.

Chemical. (G) Isocyanate terminated polypropylene oxide triol.

Use/Production. (S) Polymer for adhesives/coatings/sealants. Prod. range: 10,000–50,000 kg/yr.

P 88–2524

Manufacturer. Products Research & Chemical Corp.

Chemical. (G) Isocyanate terminated polyether glycol.

Use/Production. (S) Polymer for adhesives/coatings/sealants. Prod. range: 10,000–50,000 kg/yr.

P 88–2525

Manufacturer. Confidential.

Chemical. (G) Isocyanate terminated polyester polyol.

Use/Production. (S) Polymer for adhesives/coatings/sealants. Prod. range: 10,000–50,000 kg/yr.

P 88–2526

Manufacturer. Products Research & Chemical Corp.

Chemical. (G) Isocyanate terminated polyester polyol.

Use/Production. (S) Polymer for adhesives/coatings/sealants. Prod. range: 10,000–50,000 kg/yr.

P 88–2527

Manufacturer. Products Research & Chemical Corp.

Chemical. (G) Isocyanate terminated polythioether.

Use/Production. (S) Polymer for adhesives/coatings/sealants. Prod. range: 10,000–50,000 kg/yr.

P 88–2528

Manufacturer. Chattem Chemicals.

Chemical. (S) 3,5-Di-tert-butyl salicyclic acid; zinc salt.

Use/Production. (S) Carbon copy paper. Prod. range: Confidential.

P 88–2529

Manufacturer. Confidential.

Chemical. (G) Alkyl phosphate ester ammonium salt.

Use/Production. (G) Additive for electrical & industrial industry. Prod. range: Confidential.

P 88–2530

Manufacturer. Confidential.

Chemical. (G) Alkylbenzenesulfonic acid, sodium salt.

Use/Production. (G) Additive for cleaning & energy industrial. Prod. range: Confidential.

P 88–2531

Manufacturer. Confidential.

Chemical. (G) Alkylbenzenesulfonic acid.

Use/Production. (G) Additive for lubricating & cutting fluids. Prod. range: Confidential.

P 88–2532

Manufacturer. Dexter Composites Division.

Chemical. (S) 4,4'-(hexafluoroisopropylidene)-bis(phthalic anhydride; P-Diaminobenzene; 5-Norborene-2, 3-dicarboxylic acid monomethyl-ester.

Use/Production. (S) Molding compounds. Prod. range: 100–400 kg/yr.

P 88–2533

Importer. Confidential.

Chemical. (G) Substituted benzoic acid.

Use-Import. (G) Chemical intermediate. Import range: Confidential.

P 88–2534

Manufacturer. Confidential.

Chemical. (G) Disubstituted phenyl azo substituted naphthalene sulfonic acid salt.

Use/Production. (S) Isolated intermediate. Prod. range: Confidential.

P 88–2535

Manufacturer. Lonza Inc.

Chemical. (G) Polyglycerol, fatty acid ester of.

Use/Production. (G) Additive for plastics processing. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: slight species(Rabbit).

P 88–2536

Manufacturer. Lonza, Inc.

Chemical. (S) Aromatic polyol alkoxylated acetate ester of.

Use/Production. (G) Additive for textile processing. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: slight species(Rabbit).

P 88–2537

Importer. Lonza Inc.

Chemical. (G) Fluorinated alkyl ester of butonic acid.

Use/Import. (G) Intermediate for hericide synthesis. Import range: Confidential.

P 88–2538

Manufacturer. Confidential.

Chemical. (G) Polyol blend.

Use/Production. (G) Insulation. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: slight species(Rabbit).

P 88–2539

Importer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Import. (G) Temporary coating. Import range: Confidential.

P 88–2540

Importer. Confidential.

Chemical. (G) Nitrate esters.

Use/Import. (G) Fuel additive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 1,000–3,000 species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: positive.

P 88–2541

Manufacturer. Confidential.

Chemical. (G) Complex acrylate/methacrylate copolymer.

Use/Production. (G) Industrial coating as a adhesive. Prod. range: 10,000–111,000 kg/yr.

P 88–2542

Manufacturer. Confidential.

Chemical. (G) Functionalized ploymerized alkenes.

Use/Production. (G) Dispersively used coating. Prod. range: 100,000–300,000 kg/yr.

P 88–2543

Manufacturer. Confidential.

Chemical. (G) Polymer of styrene and mixed acrylate or methacrylates.

Use/Production. (G) Industrial coating having an open use. Prod. range: 25,000–31,000 kg/yr.

P 88–2544

Manufacturer. Confidential.

Chemical. (G) Acrylate methacrylate polymer.

Use/Production. (G) Industrial coating. Prod. range: 36,600–109,800 kg/yr.

P 88–2545

Manufacturer. Confidential.

Chemical. (G) Unneutralized alkyd resin.

Use/Production. (S) Alkyd intermediate resin. Prod. range: 10,000–100,000 kg/yr.

P 88–2546

Manufacturer. Confidential.

Chemical. (G) Substituted amines.

Use/Production. (G) Dispersively used coating. Prod. range: 1,000–3,000 kg/yr.

P 88–2547

Manufacturer. Confidential.

Chemical. (G) Neutralized alkyd resin.

Use/Production. (S) Binder resin in general industrial topcoat. Prod. range: 10,000–100,000 kg/yr.

P 88–2548

Manufacturer. Confidential.

Chemical. (G) Neutralized alkyd resin.

Use/Production. (S) Binder resin in general industrial topcoat. Prod. range: 10,000–100,000 kg/yr.

P 88–2549

Manufacturer. Confidential.

Chemical. (G) Neutralized alkyd resin.

Use/Production. (S) Binder resin in general industrial topcoat. Prod. range: 10,000–100,000 kg/yr.

P 88–2550

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer/amine product.

Use/Production. (G) Industrial coating. Prod. range: 40,000–49,000 kg/yr.

P 88–2551

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylate/methacrylate.

Use/Production. (G) Dispersively used topcoat. Prod. range: 10,000–120,000 kg/yr.

P 88–2552

Manufacturer. Confidential.

Chemical. (G) Acrylic polyester.

Use/Production. (G) Industrial coating. Prod. range: 55,400–166,000 kg/yr.

P 88–2553

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Industrial coating. Prod. range: 62,000 kg/yr.

P 88–2554

Manufacturer. Confidential.

Chemical. (G) Styrenated copolymer of acrylates and a methacrylate.

Use/Production. (G) Openly used industrial coating. Prod. range: 50,000–100,000 kg/yr.

P 88–2555

Manufacturer. Confidential.

Chemical. (G) Functional methacrylic styrenated acrylic polymer.

Use/Production. (S) Flow control agent for automative topcoat. Prod. range: 7,000–28,000 kg/yr.

P 88–2556

Manufacturer. General Electric Plastics.

Chemical. (G) Epoxy triazine per sumitter.

Use/Production. (S) Intermediate for production of resins. Prod. range: Confidential.

P 88–2557

Manufacturer. General Electric Plastics.

Chemical. (G) Modified aromatic polyether condensed with epoxy triazine.

Use/Production. (S) Thermoplastic resin. Prod. range: Confidential.

P 88–2558

Manufacturer. General Electric Plastics.

Chemical. (G) Aromatic polyether copolymer with polyester.

Use/Production. (S) Thermoplastic resin. Prod. range: Confidential.

P 88–2559

Manufacturer. Callaway Chemical Company.

Chemical. (G) Octadecanoic acid, esters with alcohols, c11-14-iso-,c13-rich, ethoxylated.

Use/Production. (S) Fiber lubricant & softener. Prod. range: Confidential.

P 88–2560

Manufacturer. Callaway Chemical Company.

Chemical. (G) Octadecanoic acid, esters with alcohol, c11-14-iso-,c13-rich.

Use/Production. (S) Fiber lubricant & softener. Prod. range: Confidential.

P 88–2561

Manufacturer. Callaway Chemical Company.

Chemical. (S) Alcohols, c11-14-iso-, c13-rich, ethoxylated, reaction products with phosphorus oxide (p205).

Use/Production. (S) Wetter/detergent/emulsifier. Prod. range: Confidential.

P 88–2562

Manufacturer. Callaway Chemical Company.

Chemical. (S) Alcohols, c11-14-iso-, c13-rich, reaction products with phosphorous oxide (p205) and alcohols, c11-14-iso-,c13-rich, ethoxylated.

Use/Production. (S) Wetter/detergent/emulsifier. Prod. range: Confidential.

P 88–2563

Manufacturer. Callaway Chemical Company.

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Chemical. (S) Alcohols, c11-14-iso-, c13-rich, reaction products with phosphorous oxide (p205) and alcohols, c11-14-iso-,c13-rich, ethoxylated, potassium salts.
Use/Production. (S) Anionic surfactant. Prod. range: Confidential.

P 88–2564

Manufacturer. Callaway Chemical Company.
Chemical. (S) Alcohols, c11-14-iso-, c13-rich, ethoxylated, reaction products with phosphorous oxide (p205), potassium salts.
Use/Production. (S) Anionic surfactant. Prod. range: Confidential.

P 88–2565

Importer. Em Industries, Inc.
Chemical. (S) 4-(2-Hydroxyethoxy)phenyl(2-chloro-2-popyl)ketone.
Use/Import. (S) Photo initiated. Import. range: 500–2,000 kg/yr.

P 88–2566

Importer. Confidential.
Chemical. (G) Atomatic methacrylate.
Use/Import. (G) Cement. Import. range: Confidential. *Toxicity Data.* Acute oral toxicity: LD50 <1,000 mg/kg species (Rat). Skin irritation: slight species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig).

P 88–2567

Importer. Confidential.
Chemical. (G) Substituted triazine, alkali salt.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88–2568

Importer. Serex Chemical Company, Inc.
Chemical. (G) Glycerol glycidyl ether.
Use/Import. (S) Reactive deluent for epoxy resins.
Import range: Confidential.

P 88–2569

Importer. Confidential.
Chemical. (G) Polyester polyol.
Use/Import. (S) Automative refinishing. Import range: 8,000–40,000 kg/yr.

P 88–2570

Importer. Confidential.
Chemical. (G) Hydroxy terminated polyacrylate.
Use/Import. (S) Automative repair finishes. Import range: 10,000–100,000 kg/yr.

P 88–2571

Importer. Confidential.
Chemical. (G) Aliphatic polyisocyanate.
Use/Import. (S) Plastic coatings. Import range: 50,000–125,000 kg/yr.

P 88–2572

Importer. Confidential.
Chemical. (G) Polyether polyurethane.
Use/Import. (S) Heat sensitizing of rubber latices. Import range: Confidential.

P 88–2573

Importer. Confidential.
Chemical. (G) Substituted, substituted phenazine.
Use/Import. (S) Colorant for polymers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species(Rat). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–2574

Importer. Confidential.
Chemical. (S) 2,2'-{2,2-dimethyl-1,3-propanediylbis (bis)}bis (5,5-dimethyl-1-1,3,2-dioxaborinane).
Use/Import. (S) Adhesive additive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–2575

Importer. Confidential.
Chemical. (S) N-(1,1-dimethylpropyl)-2-benzothiazole sulfenamide.
Use/Import. (S) Chemical accelerator for rubber vulcanizate. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species(Rat). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 88–2576

Importer. Confidential.
Chemical. (S) Di(phenoxyethyl)formal.
Use/Import. (S) Plasticizer for paints. Import range: 1,000–1,200 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 8.93 ml/kg species(Rat).

P 88–2577

Importer. Thompson-Hayward Chemical Company.
Chemical. (G) Alkyl aryl ethoxylate.
Use/Import. (S) Coating component. Import range: 218,000–227,000 kg/yr.

P 88–2578

Manufacturer. Confidential.
Chemical. (G) Maleinized fatty acid derivative.
Use/Production. (S) Coating component. Prod. range: 218,000–227,000 kg/yr.

P 88–2579

Manufacturer. Confidential.
Chemical. (G) Polyester polyol.
Use/Production. (S) Printing inks. Prod. range: 182,000–363,000 kg/yr.

P 88–2580

Manufacturer. Confidential.
Chemical. (G) Halogenated polyester polyol.
Use/Production. (S) Fire retardant. Prod. range: 45,000–450,000 kg/yr.

P 88–2581

Manufacturer. Confidential.
Chemical. (G) Aromatic polyether prepolymer-isocyanate terminated.
Use/Production. (S) Medical devices. Prod. range: 23,000–34,000 kg/yr.

P 88–2582

Importer. Marubeni America Corporation.
Chemical. (S) {poly-(bisphenol a-2-hydroxy proply ether)} poly-capralactone graft polymer.
Use/Import. (S) Epoxy resin for coating. Import range: Confidential.

P 88–2583

Manufacturer. Baker Performance Chemicals Inc.
Chemical. (G) Alkylester of -olefin/malic anhydride copolymer.
Use/Production. (S) Pour paint depressant. Prod. range: Confidential.

P 88–2584

Manufacturer. Baker Performance Chemical Inc.
Chemical. (G) Alkyldiester of -olefin/malic anhydride copolymer.
Use/Production. (S) Pour paint depressant. Prod. range: Confidential.

P 88–2585

Manufacturer. Hoechst Celanese Corp.
Chemical. (S) 4,4'-{2,2,2-trifluoro-1-triflouromethyl) ethylidene}-bis- {2-nitrophenol}.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–89–2586

Manufacturer. Confidential.
Chemical. (G) Aliphatic polymeric polyester.
Use/Production. (S) Plasticizer. Prod. range: Confidential.

P 88–2587

Manufacturer. Confidential.
Chemical. (G) Cyanoguanidine amine polymer acid salt.
Use/Production. (S) Textile dye-fixing agent. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 3,310 mg/kg species(Rat). Acute dermal toxicity: LD50 1,060 mg/kg species(Rabbit).

P 88–2588

Manufacturer. Confidential.
Chemical. (G) Polyacrylic wood.
Use/Production. (S) Marine construction applications. Prod. range: 50,000–150,000 kg/yr.

P 88–2589

Manufacturer. Confidential.
Chemical. (G) Substituted amine carbon dioxide product.
Use/Production. (S) Frothing agent. Prod. range: 50–1,000 kg/yr.

P 88–2590

Manufacturer. Confidential.
Chemical. (G) Modified acrylate pentapolymer.
Use/Production. (G) Component. Prod. range: Confidential.

P 88–2591

Manufacturer. Confidential.
Chemical. (G) Amine salt of a carboxyl terminated polyester urethane polymer.
Use/Production. (S) Fabric finish/fabric coating. Prod. range: 100,000–500,000 kg/yr.

P 88–2592

Importer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Import. (G) Open, nondispersive use. Import range: 100,000–500,000 kg/yr.

P 88–2593

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Paint component. Prod. range: Confidential.

P 88–2594

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Paint component. Prod. range: Confidential.

P 88–2595

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Paint component. Prod. range: Confidential.

P 88–2596

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Paint compaint. Prod. range: Confidential.

P 88–2597

Manufacturer. Confidential.
Chemical. (G) Substituted beta-naphthol compound.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2598

Manufacturer. Confidential.
Chemical. (G) Disubstituted dimethoxybenzidine.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2599

Manufacturer. Confidential.
Chemical. (G) Salt of substituted naphthol compound.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2600

Manufacturer. Confidential.
Chemical. (G) Dialkyl dimethyl ammonium salt of substituted arylazo.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2601

Manufacturer. Confidential.
Chemical. (G) Dialkyldimethyl salt of substituted arylazo butanamide.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–2602

Importer. Sherex Chemical Company, Inc.
Chemical. (S) Diglycide ether of polypropylene glycol.
Use/Import. (S) Reactive diluent for epoxy resins. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>4,000 mg/kg species (Rat). Eye irritation: strong species (Rabbit). Skin irritation: moderate species (Rabbit). Mutagenicity: positive. Skin sensitization: positive species (Guinea pig).

P 88–2603

Manufacturer. Confidential.
Chemical. (G) Salt of sulfonated unsaturated polyester resin.
Use/Production. (S) Fiberglass preform binder resin. Prod. range: 25,000–41,600 kg/yr.

P 88–2604

Manufacturer. Hoechst Celanese Corp.
Chemical. (S) 4,4'-(2,2,2-trifluoro-1-(trifluoromethyl)ethylidene)-bis-benzoyl chloride.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–2605

Manufacturer. Hoechst Celanese Corporation.
Chemical. (S) 4,4'-(2,2,2-trifluoro-1-(trifluoromethyl)ethylidene)-bis-(2-aminophenol).
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 88–2606

Manufacturer. Hoechst Celanese Corporation.
Chemical. (S) 2,2-bis(3-amino-4-hydroxyphenyl)-hexafluoropropane/1,3-benzene discarboxylic acid-2,2-bis-(4-carboxyphenyl)hexafluoropane copolyamide.
Use/Production. (G) Resin for coating application. Prod. range: Confidential.

P 88–2607

Importer. Quantum Chemical Corporation.
Chemical. (G) Sulphurized fatty acid ester.
Use/Import. (G) Lubricants. Import range: 52,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50>5 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).
Manufacturer. Confidential.

P 88–2608

Chemical. (S) Benzoic acid 2-[(2-Methyl-3-(4-methoxyphenyl)propylidene)amino)-, methyl ester.
Use/Production. (S) Component of fragrance compound. Prod. range: 1,000–2,000 kg/yr.

P 88–2609

Manufacturer. Fritzsche Dodge & Olcott.
Chemical. (S) Benzoic acid 2-[(2-Methyl-3-(3,4-methylenedioxyphenyl)propylidene)amino
Use/Production. (S) Component of fragrance compounds. Prod. range: 1,000–2,000 kg/yr.

P 88–2610

Manufacturer. Fritzsche Dodge & Olcott.
Chemical. (S) Butylbenzene; 4-Phenyl-2-butanone; 4-cyclohexyl-butanol-2.
Use/Production. (S) Component of fragrance compounds. Prod. range: 1,000–3,000 kg/yr.

P 88–2611

Manufacturer. Confidential.
Chemical. (G) Reaction products of sodium tetraborate and postassium hydroxide.
Use/Production. (S) Buffer for corrosion inhibition. Prod. range: 7,300–10,900 kg/yr.

P 88–2612

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>5 g/kg species (Rat). Acute dermal toxicity: LD50>5 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–2613

Manufacturer. Confidential.
Chemical. (G) Organic rare earth salt.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 88–2614

Manufacturer. Confidential.
Chemical. (G) Organic acid rare earth salt.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 88–2615

Manufacturer. Hi-Tek Plymers, Inc.
Chemical. (G) Polyether urethane.
Use/Production. (G) Dispersing agent. Prod. range: Confidential.

P 88–2616

Manufacturer. Confidential.
Chemical. (G) Satured polyester.
Use/Production. (S) Component in paint. Prod. range: 120,000–240,000 kg/yr.

P 88–2617

Manufacturer. Confidential.
Chemical. (S) 1(3H)-Isobenzofuranone, 3,3-bis(4-hydroxyphenyl)-,potassium salt.
Use/Production. (S) PH indicator/colorant. Prod. range: 54.54–81.6 kg/yr.

P 88–2618

Importer. Confidential.
Chemical. (G) Sulfonated amine.
Use/Import. (S) Chemical intermediate. Import range: Confidential.

P 88–2619

Manufacturer. Interez, Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Intrermediate. Prod. range: 250,000 kg/yr.

P 88–2620

Manufacturer. Confidential.
Chemical. (S) Dimethyl glutarate, diethylentriamine, Ammonia, epichlorohydrin.
Use/Production. (S) Additive in mfgr. or paper products. Prod. range: Confidential.
Toxicity Data: Acute oral toxicity: LD50 .95 ml/kg species(Rat).

P 88–2621

Importer. Quantum Chemical Corp.
Chemical. (G) Fatty acid ester.
Use/Import. (S) Lubricants. Import range: 5,000 kg/yr.

P 88–2622

Importer. Quantum Chemical Corp.
Chemical. (G) Sulphurized fatty acid ester.
Use/Import. (G) Lubricants. Import range: 52,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50>5 g/kg species(Rat). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–2623

Importer. Quantum Chemical Corp.
Chemical. (G) Fatty acid ester.
Use/Import. (S) Lubricants. Import range: 218,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50>5 g/kg species(Rat). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–2624

Manufacturer. Confidential.
Chemical. (G) A polymer of a methacrylic acid, an acrylic acid ester and methac acid.
Use/Production. (G) Synthetic thickener. Prod. range: Confidential.

P 88–2625

Manufacturer. Confidential.
Chemical. (G) Polymer of a methacrylate ester, an acrylate ester, vinyl acids and other vinyl monomers.
Use/Production. (G) Polymer for floor polish. Prod. range: Confidential.

P 88–2626

Importer. Confidential.
Chemical. (G) Blocked urethane prepolymer of an aromatic diisocyanate, aliphatic polyols and an aliphatic blocking agent.
Use/Import. (G) Coatings to import leather like appearance. Import range: Confidential.

P 88–2627

Importer. Quantum Chemical Corp.
Chemical. (G) Fatty acid ester.
Use/Import. (S) Lubricants. Import range: 120/000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species(Rat). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–2628

Manufacturer. The Goodyear Tire&Rubber Company.
Chemical. (G) VFR–1027x & vfr–10273x.
Use/Production. (S) Containers and packaging. Prod. range: 11,000–275,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species(rat). Skin irritation: negligible species(Rabbit).

P 88–2629

Manufacturer. E.A. Abbott.
Chemical. (G) Chloroalkyldisiloxane.
Use/Production. (G) Intermediate. Prod. range: 250,000 ky/yr.

P 88–2630

Manufacturer. Confidential.
Chemical. (G) Polysulfide acrylate.
Use/Production. (S) Component of formulated polymer. Prod. range: 100,000–1,000,000 kg/yr.

P 88–2631

Manufacturer. Confidential.
Chemical. (G) Alkenes a, reaction products with 2,5-furandione and substituted alkyl amines.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species(Rat). Acute dermal toxicity: LD50>2,000 mg/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: moderate species(Rabbit).

P 88–2632

Manufacturer. Confidential.
Chemical. (G) Alken b reaction products with 2,5-furandion and substituted alkyl amines.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species(Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: moderate species(Rabbit).

P 88–2633

Manufacturer. Confidential.
Chemical. (G) Alkenesc, reaction products with 2,5-furandione and substituted alkyl amines.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 <5,000 kg/yr species(Rat). Acute dermal toxicity LD50 >2,000 mg/kg species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: moderate species(Rabbit).

P 88–2634

Chemical. (G) Humic acid, sodium salt, polymer with acrylic monomer.
Use/Production. (G) Fluid loss additive. Prod. range: Confidential.

P 88–2635

Manufacturer. Confidential.

Chemical. (G) Humic acid, sodium salt, polymer with acrylic monomer.
Use/Production. (G) Fluid loss additive. Prod. range: Confidential.

P 88–2636

Manufacturer. Confidential.
Chemical. (G) Humic acid, sodium salt, polymer with acrylic monomer.
Use/Production. (G) Fluid loss additive. Prod. range: Confidential.

P 88–2637

Manufacturer. Confidential.
Chemical. (G) Aliphatic dibasic acid glycol ester.
Use/Production. (G) Fuel and lubricant additive. Prod. range: Confidential.

P 88–2638

Manufacturer. Confidential.
Chemical. (G) Aliphatic acid dibasic glycol ester.
Use/Production. (G) Fuel and lubricant additive. Prod. range: Confidential.

P 88–2639

Manufacturer. Confidential.
Chemical. (G) Aliphatic acid dibasic glycol ester.
Use/Production. (G) Fuel and lubricant additive. Prod. range: Confidential.

P 88–2640

Manufacturer. Confidential.
Chemical. (G) Aliphatic dibasic acid dibasic glycol ester.
Use/Production. (G) Fuel and lubricant additive. Prod. range: Confidential.

P 88–2641

Manufacturer. Confidential.
Chemical. (G) Aliphatic dibasic acid dibasic glycol ester.
Use/Production. (G) Fuel and lubricant additive. Prod. range: Confidential.

P 88–2642

Manufacturer. T1Confidential.
Chemical. (G) Aliphatic dibasic acid dibasic glycol ester.
Use/Production. (G) Fuel and lubricant additive. Prod. range: Confidential.

P 88–2643

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate.
Use/Production. (G) Fuel and lubricant additive. Prod. range: Confidential.

P 88–2644

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Azo substituted aniline.
Use/Production. (S) Dyestuff. Prod. range: 2,300–7,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rabbit). Static acute toxicity: LC50 67.9 ml/l time 96 species(zebra fish). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative. Skin sensitization: positive species(Guinea pig).

P 88–2645

Importer. Hoechst Celanese Corporation.
Chemical. (G) Azo substitute aniline.
Use/Import. (S) Dyestuff. Import range: 2,300–7,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rabbit). Static acute toxicity: LC50 18.25 ml/l time species(zebra fish). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative. Skin sensitization: positive species(Guinea pig).

P 89–1

Importer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Peroxy-initiated acrylate ester/ether nitrile polymer.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 89–2

Manufacturer. Koppers Co., Inc.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Reinforcement for glass. Prod. range: Confidential.

P 89–3

Manufacturer. Texaco Chemical Company.
Chemical. (S) 2-(2-(2-Hydroxyethoxy)ethoxy)ethylamine.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 3.66g/Kg species(Rat). Acute dermal toxicity: LD50 > 89/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: positive species(Guinea pig).

P 89–4

Manufacturer. Texac Chemical Company.
Chemical. (S) 2-(2-(2-Hydroxyethoxy)ethoxy)ethylamine.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 3.88g/kg species (Rat). Acute dermal toxicity: LD50 > 8g/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: positive species (Guinea pig).

P 89–5

Manufacturer. Confidential.
Chemical. (S) Isononanoic acid adipic acid polyester of glycerine.
Use/Production. (G) Printing ink vehicle. Prod. range: 22,000–30,000 kg/yr.

P 89–6

Manufacturer. Minnesota Mining Manufacturing Co. (3M).
Chemical. (G) Substituted ketazine.
Use/Production. (S) Photographic leuco dye. Prod. range: Confidential.

P 89–7

Manufacturer. Minnesota Mining Manufacturing Co.
Chemical. (G) Substitute phenone.
Use/Production. (S) Photographic dye intermediate. Prod. range: Confidential.

P 89–8

Manufacturer. Minnesota Mining Manufacturing Co.
Chemical. (G) Substituted alkyl aniline.
Use/Production. (S) Photographic dye intermediate. Prod. range: Confidential.

P 89–9

Manufacturer. Minnesota Mining Manufacturing Co.
Chemical. (G) Substituted dialkyl aniline.
Use/Production. (S) Photographic leuco dye. Prod. range: Confidential.

P 89–10

Manufacturer. Minnesota Mining Manufacturing Co.
Chemical. (G) Salt or substituted oxazine.
Use/Production. (S) Photographic dye intermediate. Prod. range: Confidential.

P 89–11

Manufacturer. Minnesota Mining Manufacturing Co.
Chemical. (G) Substituted oxazine.
Use/Production. (S) Photographic leuco dye. Prod. range: Confidential.

P 89–12

Manufacturer. Ashland Chemical Co.
Chemical. (G) Azo-initiated acrylic hydroxy/ester polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89–13

Manufacturer. Ashland Chemical Co.

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Chemical. (G) Thermoplastic saturated polyester.
Use/Production. (G) Cured reinforced thermoset plastic composite. Prod. range: Confidential.

P 89–14

Manufacturer. Ashland Chemical Co.
Chemical. (G) Mixed glycol esters of terephthalic acid.
Use/Production. (G) Destructive use. Prod. range: Confidential

P 89–15

Manufacturer. Ashland Chemical Co.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Cured reinforced plastic composite. Prod. range: Confidential.

P 89–16

Manufacturer. Confidential.
Chemical. (G) 2,2-(substituted)bisoxazoline polymer with phenol and phenol and formaldehyde.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89–17

Manufacturer. Confidential.
Chemical. (G) 2,2-(substituted)bisoxazoline polymer with phenol and formaldehyde.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89–18

Manufacturer. Confidential.
Chemical. (G) Halogenated polyether prepolymer-isocyanate terminated.
Use/Production. (S) Resin component. Prod. range: 30,500–91,000 kg/yr.

P 89–19

Importer. Hoechst Celanese Corporation.
Chemical. (G) Oleifin identified.
Use/Import. (S) Petroleum distillate additive. Import range: 45,000–90,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 89–20

Manufacturer. Confidential.
Chemical. (S) Calcium trifluoromethanesulfonate.
Use/Production. (G) Catalyst. Prod range: Confidential.
Toxicity Data. Eye irritation: slight species (Rabbit). Skin irritation: strong species (Rabbit).

P 89–21

Manufacturer. Confidential
Chemical. (G) Chemical intermediate.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,679 mg/kg species (Rat). Acute dermal toxicity: LD50 2,000 mg/kg species (Rabbit). Skin irritation: slight species (Rabbit).

P 89–22

Manufacturer. Confidential.
Chemical. (G) Octylacrylamide/acrylates copolymer (CFRA designation).
Use/Production. (G) Photoresist film additive. Prod. range: Confidential.

P 89–23

Manufacturer. National Strarch and Chemical Corp.
Chemical. (G) Carboxylated vinyl acrylic copolymer.
Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.

P 89–24

Manufacturer. Quantum Chemical Corp.
Chemical. (G) Alkyl ester.
Use/Production. (S) Chemical intermediate. Prod. range: 100–25,000 kg-yr.

P 89–25

Manufacturer. Confidential.
Chemical. (G) Aryl bisphosphite.
Use/Production. (G) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 16 g/kg species (Rat). Acute dermal toxicity: LD50 7.1 g/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89–26

Importer. Confidential.
Chemical. (G) Styrenic monomer
Use/Import. (G) Destructive use Import range: Confidential.

P 89–27

Importer. Confidential.
Chemical. (G) Modified alkyl methacrylate.
Use/Import. (G) Destructive use. Import range: Confidential.

P 89–28

Manufacturer. Confidential.
Chemical. (G) Styrenic-acrylic copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89–29

Importer. Marubeni America Corporation.
Chemical. (S) E-cuprolactone modified 2-hydroxyethyl acrylate monomer.
Use/Import. (S) UV curing resin for plastic paint. Import range: 20,000–100,000 kg/yr.

P 89–30

Importer. Marubeni America Corporation.
Chemical. (S) 3,4-Epoxy cyclohexyl methyl methacrylate.
Use/Import. (S) Powder coating paint. Import range: 500–10,000 kg/yr.

P 89–31

Importer. Marubeni America Corporation.
Chemical. (S) 3,4-Epoxy cyclohexyl methyl acrylate.
Use/Import. (S) Powder coating paint. Import range: 500–10,000 kg/yr.

P 89–32

Importer. Marubeni America Corporation.
Chemical. (S) E-cuprolactone modified 2-hydroxyethyl methacrylate monomer.
Use/Import. (S) UV curing for plastic paint. Import range: 20,000–100,000 kg/yr.

P 89–33

Importer. Confidential.
Chemical. (S).
Use/PImport. (G) Component. Import range: Confidential.

P 89–34

Importer. Akzo Chemicals, Inc.
Chemical. (S) Trans-1,4-cyclohexanediisocyanate: polytetramethylene glycol.
Use/Import. (S) Prepolymers in the production of cast elestomers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5.000 mg/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 89–35

Importer. Akzo Chemicals, Inc.
Chemical. (S) Trans-1,4-cyclohexanediisocyanate; polytetramethylene glycol.
Use/Import. (S) Prepolymers in the production of cast electomers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.000 mg/kg species (Rat). Eye irritation: moderate species(Rabbit). Skin irritation: slight species(Rabbit).

P 89–36

Importer. Akzo Chemicals, Inc.

Chemical. (G) The polymer of trans-1,4-cyclohexanediisocyanate and a diol.
Use/Import. (S) Prepolymers in the production of cast electomers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species(Rat). Eye irritation: moderate species(Rabbit). Skin irritation: slight species(Rabbit).

P 89–37

Importer. Akzo Chemicals, Inc.
Chemical. (G) The polymer of trans-1,4-cyclohexanediisocyanate and a diol.
Use/Import. (S) Prepolymers in the production of cast electomers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 89–38

Manufacturer. Pratt & Lambert.
Chemical. (G) Oxime capped aromatic polyester urethane.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 89–39

Manufacturer. Confidential.
Chemical. (G) Acrylic solution resin.
Use/Production. (S) Appliance coatings. Prod. range: Confidential.

P 89–40

Manufacturer. Confidential.
Chemical. (G) Acrylic solution resin.
Use/Production. (S) Coating for polypropylene. Prod. range: Confidential.

P 89–41

Manufacturer. Confidential.
Chemical. (G) Acrylic solution resin.
Use/Production. (S) Automotive finishes. Prod. range: Confidential.

P 89–42

Manufacturer. Confidential.
Chemical. (G) Acrylic solution resin.
Use/Production. (S) Pressure sensitive adhesives. Prod. range: Confidential.

P 89–43

Manufacturer. Confidential.
Chemical. (G) Acrylic solution resin.
Use/Production. (S) Appliance coatings. Prod. range: Confidential.

P 89–44

Manufacturer. Confidential.
Chemical. (G) Acrylic solution resin.
Use/Production. (S) Appliance coatings. Prod. range: Confidential.

P 89–45

Manufacturer. Confidential.
Chemical. (G) Acrylic solution resin.
Use/Production. (S) Automotive finishes. Prod. range: Confidential.

P 89–46

Manufacturer. Confidential.
Chemical. (G) Acrylic Resin.
Use/Production. (S) Exterior coatings for metal. Prod. range: Confidential.

P 89–47

Manufacturer. Confidential.
Chemical. (G) Acrylic solution resin.
Use/Production. (S) Can coatings. Prod. range: Confidential.

P 89–48

Manufacturer. Confidential.
Chemical. (G) Acrylic solution resin.
Use/Production. (S) Adhesive, lacquers inks. Prod. range: Confidential.

P 89–49

Importer. Basf Engineering Plastics.
Chemical. (G) Poly phenylene ether graft polymer.
Use/Import. (S) Plastic materials for the automative industry. Import range: Confidential.

P 89–50

Importer. Basf Engineering Plastics.
Chemical. (G) Poly phenylene ether graft polymer.
Use/Import. (S) Plastic materials for the automative industry. Import range: Confidential.

P 89–51

Importer. Marubeni America Corporation.
Chemical. (G) (Poly-(bisphenol-Alpha-2-hydroxy propyl ether)) poly-capralactone graft polymer.
Use/Import. (S) Epoxy resin for coating. Import range: Confidential.

P 89–52

Manufacturer. Confidential.
Chemical. (G) Bis((aryl) (diaryl) phosphoranediyl) ammonium chloride.
Use/Import. (S) Urethane foam Prod. range: Confidential.

P 89–53

Importer. Confidential.
Chemical. (G) Bis(aralky) (diaryl)phosphoranediyl chloride.
Use/Import. (S) Vulcanization accelerator. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 656 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rat). Inhalation toxicity: LC50 0.25 mg/l species (Rat). Eye irritation: strong species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: positive species (Guinea pig).

P 89–54

Importer. Confidential.
Chemical. (G) Micronized grafted silica.
Use/Import. (G) Component. Import range: Confidential.

P 89–55

Importer. Marubeni America Corporation.
Chemical. (G) Polycarbonatediol.
Use/Import. (S) Thermoplastic elastomer. Import range: 3,000–20,000 kg/yr.

P 89–56

Importer. Marubeni America Corporation.
Chemical. (G) Polycarbonatediol.
Use/Import. (S) Thermoplastic elastomer. Import range: 3,000–20,000 kg/yr.

P 89–57

Manufacturer. Confidential.
Chemical. (G) Modified soya alkyd.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89–58

Manufacturer. Confidential.
Chemical. (G) Ester-imide.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–59

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) Molded parts. Prod. range: Cofidential.

P 89–60

Manufacturer. Confidential.
Chemical. (G) Isophthalate polyester.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89–61

Importer. Nachem, Inc.
Chemical. (G) Sulfonated phenol-formaldehyde condensation product.
Use/Import. (S) Stain blocking agent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > mg/kg species (Rat). Eye irrigation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89–62

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted azo triazine.
Use/Import. (G) Textile dye. Import range: Confidential.

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Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation : none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

Dated: November 2, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-25940 Filed 11-9-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 1, 1988.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 et seq.).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0190.

Title: Section 73.3544, Application to obtain a modified station license.

Action: Extension.

Respondents: Businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 238 responses; 238 hours; 1 hour each.

Needs and Uses: To make certain changes in a station authorization or facilities where prior authority is not required, a broadcast station licensee is required to file an informal application with the Commission to obtain a modified station license. The informal application is used by Commission staff to ensure changes are in accordance with FCC rules and to issue a modified station license.

OMB Number: 3060-0297

Title: Section 80.503, Cooperative use of facilities.

Action: Extension.

Respondents: Individuals, state or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 100 recordkeepers; 1,600 hours; 16 hours each.

Needs and Uses: This requirement is necessary to ensure that licensees who share private communications facilities operate within the specified scope of service on a non-profit basis, and do not function as common carriers providing ship-shore public correspondence service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-26113 Filed 11-9-88; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

November 1, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0021.

Title: Civil Air Patrol Radio Station License (Application).

Form No.: FCC 480.

Action: Revision.

Respondents: Non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 12 Responses, 5 minutes each.

Needs and Uses: Filing is required for a new, renewal, or modified license. The data is used to evaluate the application, to determine station location, to provide information for enforcement and rulemaking proceedings, and to maintain a current inventory of licenses.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-26114 Filed 11-9-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearings

1. The Commission has before it the following groups of mutually exclusive applications for new FM stations:

I.

Applicant, city, and state	File No.	MM Docket No.
A. Abilene Radio Partnership; Abilene, TX.	BPH-871124MF	88-485
B. William E. Cordell, d/b/a Spectrum, Engineering Co.; Abilene, TX.	BPH-871124MH	
C. CVC Broadcasting Corp.; Abilene, TX.	BPH-871124MJ	
D. Robert Lester Griffis; Abilene, TX.	BPH-871124MO	

Issue Heading and Applicants

1. Air Hazard, A,D
2. Comparative, A,B,C,D
3. Ultimate, A,B,C,D

II.

Applicant, city, and state	File No.	MM Docket No.
A. Kennebunkport FM Limited Partnership; Kennebunkport, ME.	BPH-87110MF	88-483
B. Chester P. Coleman; Kennebunkport, ME.	BPH-871105MG	
C. Radio Kennebunkport, Inc.; Kennebunkport, ME.	BPH-871105MK	
D. Lindsay Collins and Stuart Richter, a General Partnership; Kennebunkport, ME.	BPH-871105ML	
E. Kennebunkport Media; Limited Partnership; Kennebunkport, ME.	BPH-871105MQ	
F. Maine Street Broadcasting Inc.; Kennebunkport, ME.	BPH-871105MO (Dismissed herein)	

Issue Heading and Applicants

1. Air Hazard, B,C
2. Comparative, A-E
3. Ultimate, A-E

III.

Applicant, city, and state	File No.	MM Docket No.
A. Rollings Communications, Inc.; Warrenton, MO.	BPH-880107ML	88-516
B. Kaspar Broadcasting Company of Missouri; Warrenton, MO.	BPH-88017MO	
C. James C. Mages; Warrenton, MO.	BPH-880107MP	

Issue Heading and Applicant(s)

1. Comparative, A, B, C
2. Ultimate, A, B, C

IV.

Applicant, city, and state	File No.	MM Docket No.
A. Pocahontas Broadcasting Company; Welch, WV.	BPH-871229MJ	88-517
B. McDowell County Broadcasting; Welch, WV.	BPH-880106ME	

Issue Heading and Applicants

1. Environmental Impact, A
2. Comparative, A, B
3. Ultimate, A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceedings upon the issues listed above for each proceeding. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. Non-standardized issues in these proceedings, are set forth in an appendix to this notice. A copy of the complete HDO's in these proceedings are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W.Jan Gay,

Assistant chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-26115 Filed 11-9-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 88-1184]

Securities Offerings Disclosure

Date: November 4, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Securities Offerings Disclosure" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This information is required by the Bank Board to determine if the securities-offering regulation standards reduce the risk of a fraudulent securities offering by an insured institution which could adversely affect the public safety and soundness of an insured institution, and the FSCLIC insurance fund. The burden per response will vary significantly depending upon the type of transaction.

DATE: Comments on the information collection request are welcome and should be received on or before November 25, 1988.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552, Phone: 202-853-2751.

FOR FURTHER INFORMATION CONTACT: Deborah F. Silberman, Office of General Counsel, 202-377-7013, Federal Home Loan Bank Board, 1700 G. Street, NW., Washington, DC 20552.

By The Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25998 Filed 11-9-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-750; FHLBB No. 1587]

Farmers' and Mechanic's Savings Bank, S.L.A.; Final Action Approval of Conversion Application

Date: November 4, 1988.

Notice is hereby given that on November 2, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Farmers' and Mechanics' Savings Bank, S.L.A., Burlington, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25995 Filed 11-9-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-749; FHLBB No. 4009]

Home Federal Savings and Loan Association; Final Action Approval of Conversion Application

Date: November 3, 1988.

Notice is hereby given that on October 25, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings and Loan Association, Washington, DC for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

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By the Federal Home Loan Bank Board.
John F. Ghizzoni
Assistant Secretary.
[FR Doc. 88-25998 Filed 11-9-88; 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Proposed Change in the Method of Reporting the Results of Sanitation Inspections of International Cruise Vessels

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Request for public comment on the proposed change in the method of reporting the results of sanitation inspections of international cruise vessels.

SUMMARY: The Centers for Disease Control (CDC) proposes to change the method of reporting the results of sanitation inspections of international cruise vessels in the biweekly Summary of Sanitation Inspections of International Cruise Ships to include the numerical score achieved by vessels during the most recent sanitation inspection and the median of routine semi-annual sanitation inspection score achieved during the past 5 years.

DATE: Comments must be received on or before January 9, 1989.

ADDRESS: Comments may be mailed to Director, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Linda W. Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: FTS:236-4595; Commercial: (404) 488-4595.

SUPPLEMENTARY INFORMATION: All passenger cruise vessels with foreign itineraries arriving at ports under the control of the U.S. are subject to vessel sanitation inspections twice a year. All inspections are unannounced and rate vessels on the following items to determine if they meet CDC sanitation standards: (1) Water; (2) food preparation and handling; (3) potential contamination of food; and (4) general cleanliness, methods of food storage, and repair of food service equipment. If a vessel fails a semi-annual inspection, one or more followup inspections are scheduled. Scheduling of followup inspections is dependent on the itinerary of the cruise vessels, staff availability and other factors.

Current inspection results are provided to the public in the form of a Summary of Sanitation Inspections of International Cruise Vessels published biweekly. The biweekly summary shows the date of the last inspection and whether or not the vessel achieved a satisfactory rating.

The current reporting scheme has an important drawback. Sanitation inspections are intended to reflect the level of sanitation on board the vessel at the time of the inspection. The numerical score is more indicative of the sanitation on board the vessel at the time of the inspection than the broader satisfactory/unsatisfactory rating. For example, a vessel that just barely achieves a satisfactory rating with a score of 86 receives the same rating as a vessel that achieves a score of 100. Conversely, a vessel that achieves a score of 85 receives the same unsatisfactory rating as a vessel that achieves a score of 40. CDC has received suggestions that publishing the numerical scores instead of simply the satisfactory or unsatisfactory ratings would be fairer and more helpful to the public.

There is no evidence that a single inspection score accurately predicts the probability of an outbreak on a particular cruise. However, there is evidence to indicate an outbreak is less likely to occur on a vessel whose staff maintains a higher level of sanitation over a period of time. A conscientious attention to achieving a high level of sanitation could best be demonstrated by a succinct, easy-to-understand historical reporting of the results of the sanitation inspections. Results of a vessel's inspection scores over a 5-year period would provide the traveling public with more information than is now provided.

CDC is proposing to change the reporting system to include the following:

(1) The Median of the numerical scores the vessel achieved during routine semiannual inspections over the past 5 years; and

(2) The numerical score by the vessel achieved during the most recent routine sanitation inspection.

The median is the central value of a series of observations; in this instance the observations are the numerical scores achieved by a vessel during sanitation inspections. In this report, the median is a single measure of sanitation inspection scores over the previous 5 years. The median is the most accurate representation of a vessel's sanitation history because it is less affected by outlying or unusual scores than the average. For example, a vessel that achieved scores of 96, 96, 94, 96, and 60 would have an average score of 88 and a median of 96. Thus, the median score is more indicative of the vessel's past performance than the average score. The median of the scores for the previous 10 routine periodic sanitation inspections, which for most vessels, would cover the last 5 years, would be reported in the biweekly summary.

For vessels that have not had 10 routine periodic sanitation inspections in the past 5 years, the median of the scores for whatever number of routine periodic inspections that had been performed during the last 5 years would be used.

Comments are also invited on other options for reporting the results of the sanitation inspections; whether or not the reinspection scores should be included in the calculation of the median score; on listing the number of scores the median score is based upon; and whether a change in the vessel owner/management should be noted in the biweekly Summary.

Dated: November 3, 1988.
Robert L. Foster,
Acting Director, Office of Program Support, Centers for Disease Control.
[FR Doc. 88-25983 Filed 11-9-88; 8:45 am]
BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 77P-0403 et al.]

Approved Variances for Laser Light Shows; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 19 organizations that manufacture and produce laser light shows, light show projectors, or both. the projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "SUPPLEMENTARY INFORMATION."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305). Food and Drug Administration. Rm. 4-62. 5600 Fishers Lane. Rockville. MD 20857

FOR FURTHER INFORMATION CONTACT: Sally Friedman. Center for Devices and Radiological Health (HFV-84). Food and Drug Administration. 5600 Fishers Lane. Rockville. MD 20857. 301-443-4874.

SUPPLEMENTARY INFORMATION: Under 21 CFR 1010.4 of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 19 organizations listed in the table below a variance from the requirements of 21 CFR 1040.11(c) of the performance standards for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product, assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of class II levels but not exceeding those reuqired to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical designs and by warnings in the user manuals and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Acting Deputy Director, CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by 21 CFR 1010.2(a) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date termination date
77P-0403 (amendment)	Laser Productions, 7000 N.E. 4th Court, Miami, Florida 33138.	Laser Productions laser light show assembled and produced by Laser Productions incorporating the Models 2001 and Orion projectors and Laser Media Models LM and LMS projection systems.	July 14, 1988-May 6, 1990
79P-0348 (renewal)	Laservision Productions, Incorporated, 72-1 Shawnee Avenue, Yonkers, New York 10710.	Laservision Productions, Inc. Models L-174, H-174, and AO-90 laser projection systems and for laser light shows assembled and produced by the firm with any of these projectors. The projectors may contain Class III or IV argon, krypton, copper, vapor, or helium-neon laser systems.	Aug. 2, 1988-May 19, 1990.
79P-0462 (renewal)	Laser Systems Development Corporation, P.O. Box 639, 6960 Lake Street, Green Mountain Falls, Colorado 80819.	Laser Systems Development Corporation Class IIIb or Class IV laser projection systems, Model R-2 and the C-3 Model Series, and laser light shows assembled and produced by Laser Systems Development Corporation incorporating these projection systems. These projectors may contain HeNe, Ar, Kr, or Ar/Kr lasers.	Aug. 26, 1988-Aug. 20, 1990.
80P-0100 (renewal)	Laser Fantasy, Incorporated, 2793 152nd Avenue, N.E., Redmond, Washington 98052.	Laser Fantasy, Incorporated, Class IV "Rainbow" projectors and for the laser light shows manufactured, assembled, and produced by Laser Fantasy incorporating these projectors.	Aug. 31, 1988-June 6, 1990.
83V-0151 (renewal)	Precision Projection Systems, Incorporated, 19109 Benfield Avenue, Cerritos, California 90701.	Class IIIb or Class IV Precision Projection Systems, Incorporated laser light show projectors and laser light shows assembled and produced by Precision Projection Systems Incorporated incorporating these projectors or the Laser Images CS Series or Mark VI Series projectors.	Sept. 1, 1988-Sept. 1, 1990.
84V-0376 (renewal)	Shawnee Brittan Productions, 1500 United Founders Tower, Oklahoma City, Oklahoma 73112.	Shawnee Brittan Productions Laser Space Theater laser light shows incorporating the Laser Presentations Model LP-4 laser light show projector	Aug. 18, 1988-Dec. 19, 1990.
86V-0093 (renewal)	Walt Disney Productions, dba Walt Disney Imagineering (Disney World), P.O. Box 10,000, Lake Buena Vista, Florida 32830.	Walt Disney Productions, dba Walt Disney Imagineering, laser light show incorporating the Prescision Projection Model TL-32 laser projector system with Class IV argon and krypton ion lasers.	July 20, 1988-Sept. 10, 1992.
86V-0164 (renewal)	Le Masquerade, 125 Michael Drive, Syosset, New York 11791.	Le Masquerade laser light shows incorporating the Falk Special Effects, Incorporated Model B projector and Class IIIb argon lasers.	Aug. 3, 1988-May 1, 1990

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Docket No.	Organization granted the variance	Demonstration laser product	Effective date termination date
86V-0167 (renewal)	Irvine Company, dba The Irvine Exhibit, Jamboree Center, 2 Park Plaza, Suite 110, Irvine, California 92714.	Irvine Exhibit laser light show produced by the Irvine Co. incorporating the Laser Media Chromaray D #08 projector.	Aug. 5, 1988–June 11, 1990.
86V-0187 (revenwal)	Museum of Arts and Sciences Planetarium, 1040 Museum Boulevard, Daytona Beach, Florida 32014.	Museum of Arts and Sciences Planetarium "Cosmic Concerts" laser light show incorporating the firm's AR/NE laser systems.	Aug. 18, 1988–June 2, 1990.
86V-0299 (renewal)	Busch Entertainment Corporation dba Busch Gardens, P.O. Box 9158, Tampa, Florida 33674.	Laser light shows produced and assembled by Busch Entertainment Corporation dba Busch Gardens (Tampa, Florida) incorporating a Science Faction Corporation Laser-Chaser II laser projection system with Inertial Scanner and a Coherent Innova 90-5 laser.	Aug. 5, 1988–Aug. 12, 1990.
88V-0143	Flying Eagle, 4082 Crete Lane, #A, Las Vegas, Nevada 89103.	Flying Eagle laser light show which incorporates the Laser Media Model LMS laser projection system.	Aug. 18, 1988–Feb. 18, 1989.
88V-0165	Laser Image Productions, 10423 Starview Court, Indianapolis, Indiana 46229.	Laser Image Productions' laser light shows incorporating the firm's Class IV argon and helium-neon Model LIP-88-1, laser projection system.	Aug. 25, 1988–Aug. 25, 1990.
88V-0230	Impunity, Incorporated, 157 Hudson Street, New York, New York 10013.	Impunity, Incorporated laser light show incorporating the Laser Media LMS projector	July 20, 1988–July 20, 1990.
88V-0246	Bennett-Ross, Incorporated, 9754 Hawthorn Glen Drive, Grosse Ile, Michigan 48138.	Bennett-Ross, Incorporated, Laser Graphics Model LP-1 laser projection system and laser shows assembled and produced by Bennett-Ross, Incorporated.	Aug. 5, 1988–Aug. 5, 1990.
88V-0259	Twilight Theatrical Lighting, 538 Clifton Avenue, Clifton, New Jersey 07011.	Twilight Theatrical Lighting laser light show incorporating the Laser Media LMS projector	Aug. 5, 1988–Aug. 5, 1990.
88V-0270	Southworth Planetarium, University of Southern Maine, 96 Falmouth Street, Portland, Maine 04103.	Southworth Planetarium laser light show incorporating the Laser Systems Development Corporation Model R-2a projector.	Aug. 5, 1988–Aug. 5, 1990.
88V-0283	Laser Look, Incorporated, 193 White Birch Road, Edison, New Jersey 08837.	Laser Look, Incorporated laser light shows and the incorporated laser projection system consisting of American Lasers Model 60-X and 68-B, ILT Model 5490, Spectra Physics Model 168 Class IV argon or krypton lasers in a Technological Artisans Model TA-1 laser projector.	Aug. 5, 1988–Aug. 5, 1990.
88V-0293	Maryland Academy of Sciences, Maryland Science Center, 601 Light Street, Baltimore, Maryland 21230.	Maryland Academy of Sciences—Maryland Science Center laser light shows incorporating the Image Engineering Corporations Model 355ACB laser projection system.	Sept. 1, 1988–Sept. 1, 1990.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: October 26, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-25989 Filed 11-9-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0302]

CIBA Vision Corp.; Premarket Approval of In A Wink® (Lensept®) Cleaning Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Ciba Vision Corp., Atlanta, GA, for premarket approval under the Medical Device Amendments of 1976, of the In A Wink® (Lensept®) Cleaning Solution. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 11, 1988, of the approval of the application.

DATE: Petitons for administrative review by December 12, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On January 29, 1987, Ciba Vision Corp., Atlanta, GA 30348, submitted to CDRH an application for premarket approval of the In A Wink® (Lensept®) Cleaning Solution indicated for use to clean daily and extended wear soft (hydrophilic) contact lenses.

On April 22, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 11, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the In a Wink® (Lensept®) Cleaning Solution states that the solution is indicated for use to clean daily and extended wear soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved soft contact lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 12, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 26, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-25990 Filed 11-9-88; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting:

Detroit District, chaired by Louis F. Schneider, Acting District Director. The topics to be discussed are standardizing absorbency testng and labeling for tampons and updates on new drug testing procedures.

DATE: Tuesday, November 15, 1988, 2 p.m. to 3:30 p.m.

ADDRESS: Cooper Hall, Rm. 187, Ball State University, Muncie, IN 47309.

FOR FURTHER INFORMATION CONTACT: L.M. Goossens, Consumer Affairs Officer, Food and Drug Administration, 575 North Pennsylvania St., Rm. 693, Indianapolis, IN 46204, 317-269-6500.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 3, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-25986 Filed 11-7-88; 11:16 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing To Reconsider Disapproval of a Portion of an Arkansas State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

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ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on December 6, 1988, in Dallas, Texas to reconsider our decision to disapprove a portion of Arkansas State Plan Amendment 88–5.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4471.

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider our decision to disapprove a portion of Arkansas State Plan Amendment 88–5 (SPA 88–5).

Section 1116 of the Social Security Act and 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issues in this matter are whether use of an unmodified Average Wholesale Price (AWP) constitutes the agency's "best estimate" of current prices as required by 42 CFR 447.301 and, therefore, whether payments resulting from the use of the unmodified AWP are consistent with efficiency, economy, and quality of care as required by section 1902(a)(30) of the Social Security Act.

Arkansas SPA 88–5 in part implements the drug reimbursement regulations published July 31, 1987. The State's plan amendment indicates that the State will use the AWP for the purpose of establishing the estimated acquisition cost (EAC) levels.

The current rules and the former Maximum Allowable Cost (MAC) regulations require the State agencies to establish EAC levels at "the agency's best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of the drug most frequently purchased by providers." This is necessary because, in general, the State payments for drugs may not exceed, in the aggregate, payment levels derived by applying the lower of: The cost of the drug plus a reasonable dispensing fee or the provider's usual and customary charge to the general public. HCFA believes that use of the AWP without modification does not comport with the definition of "estimated acquisition cost" in 42 CFR 447.301 because of a preponderance of evidence which demonstrates that the AWP overstates the price that providers actually pay for drug products. Thus, use of an unmodified AWP cannot constitute an agency's "best estimate" of current price. It also does not comport with section 1902(a)(30) of the Act requiring the State plan to assure that payments are consistent with efficiency, economy, and quality of care.

The notice to Arkansas announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Kenny Whitlock, *Deputy Director, Division of Economic and Medical Services, Arkansas Department of Human Services, Post Office Box 1437, Little Rock, Arkansas 72203–1437 Q02*

Dear Mr. Whitlock:

I am advising you that your request for reconsideration of the decision to disapprove a portion of Arkansas State plan amendment 88–5(SPA 88–5) was received on October 6, 1988.

Arkansas SPA 88–5 implements the drug reimbursement regulations published on July 31, 1987. The State's plan amendment indicates, in part, that the State will use the average wholesale price (AWP) for the purpose of establishing the estimated acquisition cost (EAC) levels.

The issues in this matter are whether use of an unmodified AWP constitutes the agency's "best estimate" of current prices as required by 42 CFR 447.301 and, therefore, whether payments resulting from the use of the unmodified AWP are consistent with efficiency, economy, and quality of care as required by section 1902(a)(30) of the Social Security Act.

I am scheduling a hearing on your request to be held on December 6, 1988, at 10:00 a.m. in Room 1005, 1200 Main Tower, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430.

I am designating Mr. Albert Miller as the president officer. If these arrangements present any problems please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4471.

Sincerely,

William L. Roper,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: November 4, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–28001 Filed 11–9–88; 8:45 am]

BILLING CODE 4120–03–M

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privcacy Act of 1974, we are proposing to establish a new system of records, the "PRO Data Information System (PDMS)," HHS/HCFA/HSQB 09–70–1512. We have provided background information about the system in the "Supplementary Information" section below. Although the Privacy Act requires only that the routine uses portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on November 7, 1988, pursuant to paragraph 4b(3) of Appendix I to EOMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985. The new system of records, including routine uses, will become effective January 9, 1989, unless HCFA receives comments which would necessitate changes to the system.

ADDRESS: The public should address comments to Mr. Richard A. DeMeo, Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G–A–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland, 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT:

Ms. Tina Donahue, Office of Peer Review, Health Standards and Quality Bureau, Health Care Financing Administration, 2–D–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone: (301) 966–7207, or

Mr. Steven Finlayson, Office of Peer Review, Health Standards and Quality Bureau, Health Care Financing Administration, 2–D–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone: (301) 966–6897.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, notice is hereby given that the Health Care Financing Administration (HCFA) proposes to initiate PDMS to collect, track, monitor, and analyze the medical review data submitted by PROs regarding utilization and quality of care rendered to Medicare beneficiaries throughout the country. A PRO is a review organization which has executed a contract with HCFA to assure the quality of care provided to Medicare beneficiaries.

PDMS is one of several approaches HCFA will utilize to promote the effective administration and operation, and to maintain the integrity of the PRO program. The primary function of PDMS will be to collect, track, monitor, and analyze data regarding the medical review activities performed by PROs. In addition, PDMS will serve a valuable program evaluation function. The data accumulated in PDMS will be aggregated and used to generate reports documenting on a national, regional, or State level the scope, volume, and results of PRO required activities on behalf of Medicare beneficiaries. The Office of Peer Review within the Health Standards and Quality Bureau (HSQB), the component of HCFA responsible for administering the PRO program, will use these reports to conduct various analyses of data dn to analyze PRO performance on a national level while each HCFA RO will address PRO-specific performance. If a particular analysis reveals a significant deficiency, HCFA will pursue further investigation and/or corrective action that may be appropriate. In this manner, PDMS will be integrated into and will complement other monitoring and oversight activities of the Department, HCFA, and HSQB, thereby better enabling them to ensure that Medicare beneficiaries receive quality medical care.

The PDMS system is established under the authority of Section 1886(a)(1)(F) and (d) of the Social Security Act which requires hospitals participating in the Medicare program to have an agreement with a PRO for the latter to review various aspects of the hospital's activities; Part B of the Social Security Act, which established the Utilization and Quality Control Peer Review Organization (PRO) program; Section 1862(g) of the Social Security Act, which requires the Secretary to enter into contracts with PROs to assist him in making certain types of determinations in the Medicare program and section 1874(a) and (b) of the Social Security Act, which authorize the Secretary to administer the Medicare program through contracts with others, including contracts for procuring data as may be necessary in carrying out his functions under the Medicare statute. The system is subject to the regulations at 45 CFR Part 5b, setting forth the conditions under which Medicare information shall be made available to the public and the Freedom of Information Act rules that apply to such disclosures of information. The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the system meet the compatibility requirement of the Act since they are consistent with the propose of the system to monitor and analyze contractor performance in the review of the quality of care provided to Medicare beneficiaries. Release of beneficiary-specific information will require authorization and will be determined on an individual case-by-case basis.

We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: November 4, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09–70–1512

SYSTEM NAME:

Pro Data Management System (PDMS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, Health Standards and Quality Bureau, Office of Peer Review, Division of Program Operations, 2nd Floor, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Health Care Financing Administration, Regional Offices. See Appendix A

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A record will be generated for each Medicare beneficiary case reviewd by a PRO.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *PRO ID*

A unique identifier assigned to the PRO for identification and reporting purposes.

2. *Record Type*

Identifies the type of record being submitted (e.g., new, replacement or cancelled record).

3. *Provider ID*

A coded number of a Medicare provider used to group review data.

4. *Health Insurance Claim (HIC) Number*

The Medicare beneficiary's unique Medicare Health Insurance Claim Number.

5. *Admission/Service Date*

If record is an inpatient admission, the date of admission to the facility or if outpatient, date of service provided.

6. *Discharge Date*

If record is an inpatient admission, the date of discharge from the facility.

7. *Basis for Selection*

The original category of required review from which the case was selected.

8. *Review Selection and Completion Dates*

Date selected and date review completed.

9. *Completed Review Results*

—Admissions review data
—DRG validation data
—Generic screen data (quality of care)
—Coverage review data
—Discharge review
—Reconsideration and appeal data
—PRO initiative adjustment data

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—Review of hospital issued notices of non-coverage

10. *Review Type*

Indicates whether the review was performed on a pre-discharge, prepayment or retrospective basis.

AUTHORITY FOR MAINTENCE OF THE SYSTEM:

This system is established under the authority of Section 1866(a)(1)(F) and (d) of the Social Security Act, which requires hospitals participating in the Medicare program to have an agreement with a PRO for the latter to review various aspects of the hospital's activities; Part B of the Social Security Act, which established the Utilization and Quality Control Peer Review Organization (PRO) program; Section 1862(g) of the Social Security Act, which requires the Secretary to enter into contracts with PROs to assist him in making certain types of determinations in the Medicare program and Section 1874(a) and (b) of the Social Security Act, which authorize the Secretary to administer the Medicare program through contracts with others, including contracts for procuring data as may be necessary in carrying out his functions under the Medicare statute and regulations at 45 CFR Part 5b.

PURPOSE OF THE SYSTEM:

This system will be used to collect data on the selection and subsequent medical review of required areas of review in the acute hospital setting, specialty hospitals and exempt units, swing beds, hospital outpatient areas and ambulatory surgical centers (ASC). The system will allow for PRO generation and submission to HCFA of a unique record with all applicable review information relevant to contractor performance and data analysis. The HIC number is utilized because it represents the only unique constant identifier available to allow for identification and tracking of a particular record. The HIC number will also eliminate the probability of double counting records when determining the number of reviews performed for reimbursement purposes and identifying erroneous record submissions. Additionally, this system will allow for project officer (PRO) and SuperPRO selection of samples for re-review to validate the accuracy of contractor performance. (SuperPRO is an organization under contract with HCFA to review the quality of PRO medical review decisions on a sample basis.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To a congressional office in response to an inquiry from that office at the request of the subject individual.

2. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof;

where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and that the use of such records by the Department of Justice, the tribunal, or the party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

4. To a third party where:

(a) HCFA needs information from the third party to verify information relating to program integrity, quality of care, and evaluation and measurement of system activities;

(b) The party to whom disclosure is to be made has, or is reasonably expected to have such information, and disclosure is needed in order to obtain the information; and

(c) HCFA determines that the purpose of disclosure is compatible with the purposes for which the records were collected.

5. To a Peer Review Organization, SuperPRO, or an entity under contract to HCFA or the Department acting in a manner consistent with maintaining the integrity of the Medicare program if HCFA determines that disclosure of beneficiary-specific information is necessary or relevant to an official investigation or litigation regarding a specific case, and if HCFA determines:

(a) That the use or disclosure of information does not violate legal limitations under which the record was provided, collected, or obtained; and

(b) That the purpose for which disclosure is to be made:

(1) Is compatible with the purposes for which the records were collected;

(2) Cannot be reasonably accomplished unless the record is provided in individual identifiable form; and

(3) Is of sufficient importance to warrant any effect on the privacy of the individual that disclosure of the record might bring; and

(c) That adequate safeguards have been instituted so as to protect the confidentiality of the data and prevent unauthorized access to it; and

(d) That the appropriate procedures, format, and media will be used for the data disclosure process.

POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained at the system location site in magnetic media (e.g., magnetic tape and computer discs).

RETRIEVABILITY:

The data in this system are retrieved by PRO ID and HIC number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the Department of HHS' Information Resources Management Manual, "Part 6, Automated Information Systems Security." This includes maintaining the records in a secure enclosure.

Access to specific records is limited to those who have a need for them in the performance of their official duties.

RETENTION AND DISPOSAL:

Records are maintained on-line in the system from the date of submission to approximately three years (length of contract).

SYSTEM MANAGER AND ADDRESS:

Director, Office of Peer Review, Health Care Financing Administration, 2-D-2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the system manager at the address indicated above or to the appropriate regional office (see Appendix A), and specify Health Insurance Number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the information in the records being sought. You may also request an accounting of disclosures that have been made of your records, if any. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with information to show how the record is inaccurate, incomplete, untimely, irrelevant, or otherwise in need of correction. (These procedures are in accordance with Departmental Regulations 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

These records will be generated by the PRO from data received from the servicing fiscal intermediary (FI) or carrier responsible for the processing of Medicare hospital bills and data generated by the PRO itself as a direct result of medical review performed. Other sources would include Medicare beneficiaries, congressional office, HCFA, Medicare providers, Medicare intermediary/carrier, Office of the Inspector General, etc. The magnetic tape record will only include information to be compiled in the data base (e.g., Peer Review Organizations identifier, HIC, admission/service and discharge dates, review selection and results).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Health Care Financing Administration Regional Offices

I Boston, Project Officer, Peer Review Organization, Room 1309, JFK Federal Building, Boston, Massachusetts 022032.

II New York, Project Officer, Peer Review Organization, Room 3804, 26 Federal Plaza, New York, New York 10278.

III Philadelphia, Project Officer, Peer Review Organization, 3535 Market Street, P.O. Box 7760, Philadelphia, Pennsylvania 19101.

IV Atlanta, Project Officer, Peer Review Organization, Suite 601, 101 Marietta Tower, Atlanta, Georgia 30323

V Chicago, Project Officer, Peer Review Organization, Suite A-835, 175 W. Jackson Boulevard, Chicago, Illinois 60604.

VI Dallas, Project Officer, Peer Review Organization, Room 2000, 1200 Main Tower Building, Dallas, Texas 75202.

VII Kansas City, Project Officer, Peer Review Organization, New Federal Office Building, Room 235, 601 East 12th Street, Kansas City, Missouri 64106.

VIII Denver, Project Officer, Peer Review Organization, Federal Building, Room 574, 1961 Stout Street, Denver, Colorado 80294.

IX San Francisco, Project Officer, Peer Review Organization, 14th Floor, 100 Van Ness Avenue, San Francisco, California 94102.

X Seattle, Project Officer, Peer Review Organization, Room 430A, 2901 Third Avenue, Seattle, Washington 98121.

[FR Doc. 88-25979 Filed 11-9-88; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Recombinant DNA Advisory Committee Human Gene Therapy Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Human Gene Therapy Subcommittee at the National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, on December 9, 1988, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. The purpose of the meeting will be to review a human gene transfer protocol submitted by Drs. Steven A. Rosenberg, R. Michael Blaese, and W. French Anderson and to complete an information brochure on human gene therapy. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Ms. Rachel E. Levinson, Executive Secretary, Recombinant DNA Advisory Committee Human Gene Therapy Subcommittee, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room B1C34, Bethesda, Maryland 20892, telephone (301) 496-9838.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be inlcuded as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: November 3, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-26070 Filed 11-9-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the Frederick Cancer Research Facility Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Frederick Cancer Research Facility (FCRF) Advisory Committee, National Cancer Institute, November 21-22, 1988, Building 549, Executive Board Room, at the NCI Frederick Cancer Research Facility, Frederick, Maryland 21701-1013.

The meeting will be open to the public on November 21 from 8:30 a.m. to approximately 11 a.m. to discuss administrative matters, future meetings, budget, legislative update, and to hear from the Associate Director for FCRF on items of interest to NCI and the Committee, including progress made on development of AIDS vaccine. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 21 from approximately 11 a.m. to recess and on November 22 from 8:30 a.m. to adjournment for site visit of research being conducted by the Basic Research Program's Laboratory of Chemical and Physical Carcinogenesis. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda,

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Maryland 20892 (301, 496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research facility, Advisory Committee, National Cancer Intitute, Frederick Cancer Research Facility, Building 427, Frederick, Maryland 21701–1013 (301, 698–1108) will provide substantive program information upon request.

Dated: November 1, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–26064 Filed 11–9–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on January 11–12, 1989, in Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on January 11 from 9:00 a.m. to recess and from 8:30 a.m. to adjournment on January 12 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide summary of the meeting and a roster of committee members upon request.

Dr. William R. Harlan, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 3, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–26065 Filed 11–9–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting to the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases (NIAID), on December 12 and 13. The meeting will be held in the 11th floor solarium, Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on December 12 from 8:30 a.m. to 9 a.m., to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Board will be closed to the public on December 12 from 9 a.m. until recess, and on December 13 from 8:30 a.m. until adjournment for the discussion, and evaluation of individual contracts supporting the NIAID Intramural Research Program, The discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the contracts, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (302–496–3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13–301, National Institutes of Health)

Dated: November 1, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–26066 Filed 11–9–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 7–9, 1988, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to recess on December 7 and from 8:30 a.m. to 12:15 p.m. on December 8. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:30 p.m. to recess on December 8 and from 9:00 a.m. to adjournment on December 9 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of individual investigations, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH, Building 30, Room 132, Bethesda, Maryland 20892 (telephone 301–496–1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated: November 1, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–26067 Filed 11–9–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on November 29, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public on November 39 from 9 a.m. to approximately 10:30 a.m. for general discussion. Attendance by the pubic is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 29, from 10:30 a.m. to adjournment on November 29, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the

applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun or Carol Shreffler, Executive Secretaries, Environmental Health Sciences Review Committee, National institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 1,2233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 12.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13,894, Resource and Manpower Development, National Institutes of Health)

Dated: November 1, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–27068 Filed 11–9–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Board of Scientific Counselors, Division of Biometry and Risk Assessment

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DBRA, December 1–2, 1988, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 9 a.m. to 12 noon on December 1, for the purpose of presenting an overview of the organization and conduct of research in the section on molecular toxicology and risk models in the Laboratory of Biochemical Risk Analysis. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6) of Title 5 U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 1 from approximately 1 p.m. to adjournment on December 2, for the evaluation of the programs of the section on molecular toxicology and risk models in the Laboratory of Biochemical Risk Analysis, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David Hoel, Director, Division of Biometry and Risk Assessment, NIEHS, Research Triangle Park, NC 27709, telephone (919) 541–3441, FTS 629–3441, will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: November 1, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–28069 Filed 11–9–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Center For Health Services Research And Health Care Technology Assessment; Assessment of Medical Technology Extracorporeal Shock Wave Lithotripsy (ESWL) For the Treatment of Gallstones

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety and clinical effectiveness and use (indications) of extracorporeal shock wave lithotripsy (ESWL) for the treatment of gallstones. ESWL is a noninvasive technique of disintegranting calculi using electrohydraulic shock wave. In the past this technique has been used in the treatment of kideny stone. Recently it has been adapted to the treatment of selected patients with gallstones who may also receive other adjunctive therapeutic modalities to enhance removal of stone fragments after the stones are shattered or pulverized. This assessment seeks to answer the following questions: (1) Is ESWL accepted as a safe and clinically effective method for treating gallstones? (2) what are the clinical indications in patients with gallstones for which ESWL is deemed appropriate? (3) are there specific subgroups of patients with gallstones who are most likely to benefit from biliary ESWL? (4) are there specific subgroups of patients who are not likely to benefit from this therapeutic approach? (5) can patient selection criteria be developed to specify which types of patients would benefit from this type of treatment? (6) are there any disadvantages or risks associated with this type of procedure? (7) are there adjunctive therapies such as stone dissolution therapy, therapeutic endoscopy (endoscopic sphincterotomy) or percutaneous cholecystostomy, that are considered necessary for successfuly carrying out these treatments and when are these indicated? and (8) what is known about the morbidity associated with the use of this technique?

The PHS assessment consists of a synthesis of information obtained from the literature and from appropraite organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concering the safety, clinical effectiveness, and appropriate uses of a technoloy. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research realed to this technology, as well as a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on clinical acceptability and the effectiveness of this technology and extent of use are also being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than January 31, 1989 or within 90 days from the date of publication of this notice.

Written Material should be sumitted to: Kesinee C. Nimit, M.D., Health Science Analyst, Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A–27, Rockville, MD 20857, Tel (301) 443–4990.

Date: November 3, 1988.

Donald E. Goldstone,

Acting Director, National Center for Health Service Research, and Health Care Technology Assessment.

[FR Doc. 88–26004 Filed 11–9–00; 8:45 am]

BILLING CODE 4160–17–M

Centers For Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 53 FR 7403, March 8, 1988) is amended to reflect the following changes:

(1) The establishment of the division-level internal substructure for the Center for Chronic Disease Prevention and Health Promotion.

(2) The transfer of the Preventive Health and Health Services Block Grant

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from the Office of the Director, Center for Prevention Services, to the Center for Chronic Disease Prevention and Health Promotion.

Section HC–B, Organization and Functions, is hereby amended as follows:

1. After the heading and statement for the *Center for Chronic Disease Prevention and Health Promotion (HCL),* insert the following:

Office of the Director (HCL1). (1) Managers, directs, coordinates, and evaluates the activities of the Center for Chronic Disease Prevention and Health Promotion (CCDPHP); (2) develops goals and objectives and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (3) coordinates assistance provided by CCDPHP to other CDC components, other Federal, State, and local government agencies, the private sector, and other nations; (4) provides and coordinates administrative support services for CCDPHP requirements, including guidance and coordination for grants, cooperative agreements, and other assistance mechanisms; (5) provides administrative support and coordinates technical consultation and assistance for the Preventive Health and Health Services Block Grant; (6) coordinates, manages, and conducts analyses of broad-based surveillance activities in support of programs carried out by various CCDPHP components; (7) coordinates the recruitment, assignment, technical supervision, and career development for staff, including field assignees, with emphasis on goals for affirmative action; (8) acoordinates all CCDPHP international activities; (9) provides technical information services to facilitate dissemination of significant information to CCDPHP staff, various Federal, State, and local health agencies, professional and voluntary organizations, and through them to selected target populations; and in carrying out the above functions, (10) collaborates, as appropriate, with other Centers/Institute/Officers of CDC, other PHS agencies, and other Federal agencies.

Office of Surveillance and Analysis (HCL11). (1) In coordination with other components of CCDPHP and State and local agencies, plans, develops, conducts, and maintains national- and state-based surveillance for chronic diseases and conditions, related risk factors, policies, preventive health practices and services for infants, children, adolescents, and adults; (2) in coordination with other components of CCDPHP, investigates, analyzes, interprets, and disseminates the results of surveillance investigations and studies on trends, patterns, associated behavioral and other risk factors and causes of chronic diseases and conditions; (3) supports, coordinates, facilitates and conducts analyses, interprets and disseminates the findings of the Behavioral Risk Factor Surveillance System and related surveillance activities; (4) plans and implements strategies and methods to routinely collect, analyze, interpret, and disseminate surveillance information on rates, trends, and patterns of chronic diseases and associated factors; (5) consults and collaborates with professional staff in other CCDPHP components to plan and implement strategies to collect, analyze, interpret, and disseminate surveillance information on trends, patterns, associated behavioral and other risk factors and causes of chronic diseases and conditions; (6) coordinates, develops, catalogs, manages, and facilitates access to surveillance data bases of broad interest and utility within CCDPHP and for other CDC programs; (7) serves as a principal liaison for surveillance activities with other CDC programs, especially NCHS, IRMO, and EPO; (8) provides overall coordination for surveillance systems and activities within CCDPHP; (9) provides technical assistance to Federal, State, and local health agencies, and national and international organizations to develop their capacity to plan and implement strategies and methods for collection, analysis, interpretation, and dissemination of information on rates, trends, and patterns of chronic diseases and conditions and behavioral and other related risk factors; (10) develops methods to analyze and display information to assist in evaluating trends, setting priorities, and developing investigative and control strategies.

Division of Adolescent and School Health (HCL2). (1) Administers a program of comprehensive school health education with emphasis on adolescent health issues; (2) identifies priority health risks among adolescent populations, including behaviors that result in elevated risk of the development of cardiovascular diseases and cancer, transmission of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), or that result in mortality, morbidity, and disability either during adolescence or adulthood; (3) in coordination with the Office of Surveillance and Analysis and other CCDPHP components, develops and supports national, State, and local surveillance systems to monitor priority health risks among school and adolescent populations; (4) conducts epidemiologic studies to identify principal determinants of priority health risks among adolescent populations; (5) develops, evaluates, and disseminates interventions to reduce high-priority health risks among adolescent populations; (6) assists State and local agencies to implement and assess school- and community-based interventions to reduce high-priority health risks among adolescent populations that attend school and among adolescent populations that do not; (7) administers a program of cooperative agreements and grants to schools, colleges, and related educational organizations to promote and disseminate effective school health education about HIV/AIDS prevention; (8) assists the nation's schools and colleges in protecting and improving the health of students, faculty, and staff through comprehensive school health education, and related school health and social services; (9) assists other nations in reducing health risks among adolescent populations and in implementing and improving school health programs; (10) and in accomplishing the functions listed above, collaborates with other components of CDC, PHS, and DHHS, the U.S. Department of Education and other federal agencies; national professional, voluntary, and philanthropic organizations; international agencies, and other organizations as appropriate.

Division of Chronic Disease Control and Community Intervention (HCL3). (1) Plans, directs, and conducts a program to translate chronic disease preventive practices, behaviors, and policies into widespread public health practice through epidemiologic, behavioral, and laboratory investigations, and State and community demonstrations and interventions; (2) identifies problems, needs, and opportunities related to modifiable behavioral and other risk factors, and recommends priorities for health education, health promotion, and risk reduction activities; (3) in coordination with the Office of Surveillance and Analysis and other CCDPHP components, plans, develops, and maintains systems of chronic disease surveillance associated with specific epidemiologic investigations, demonstrations, and programs; (4) plans and conducts epidemiologic studies of selected chronic disease, key behavioral and other risk factors, such as physical activity, exercise, alcohol use, and effectiveness of intervention programs; (5) provides technical consultation and assistance and training to State and local health agencies and national, international, and private organizations in chronic disease and health promotion activities, including state-of-the-art program development such as PATCH, health education, health promotion, intervention activities, service delivery, and program management; (6) serves as a resource for technical consultation and assistance and expertise in the epidemiology, prevention, and control of selected chronic diseases, both domestically and internationally; (7) coordinates Division activities with other CCDPHP components, other CDC organizations, and other PHS agencies as appropriate.

Division of Diabetes Translation (HCL4). (1) Plans, directs, and coordinates a program to reduce morbidity, mortality, disability, and costs associated with diabetes and its complications; (2) identifies, evaluates, and implements programs to prevent and control diabetes through the translation of state-of-the-art health care and self-care practices into widespread community practice; (3) in coordination with the Office of Surveillance and Analysis, conducts surveillance of diabetes, its complications, and the utilization of health care and prevention resources to monitor trends and evaluate program impact on morbidity, mortality, disability, and cost; (4) conducts epidemiologic studies and disseminates findings to identify and evaluate the feasibility and effectiveness of potential prevention and control strategies at the community level; (5) develops clinical and public health guidelines and strategies to form the basis for community interventions; (6) provides technical consultation and assistance to State and local health agencies to implement and evaluate cost effective interventions to reduce morbidity, mortality, and disability; (7) maintains liaison and collaborative relationships with official, private, voluntary agencies, educational institutions, or foreign countries and groups involved in diabetes-related activities; (8) provides technical assistance and consultation to other nations and to the World Health Organization (WHO) as a WHO Collaborating Center.

Division of Nutrition (HCL5). (1) Identifies and develops priorities for nutrition-related health problems of national and State significance; develops goals and objectives, and plans, implements, and evaluates appropriate activities that contribute to the reduction of preventable morbidity and mortality and promote enhancement of the quality of life as related to nutrition, nutritional problems, and related risk factors; (2) plans, directs, and conducts epidemiologic investigations, demonstration projects, and programs to better describe and resolve nutrition-related health problems and risk factors and other factors affecting growth and development, especially in high-risk populations; (3) plans and conducts applied investigations to develop or improve nutrition assessment methods and reference criteria for monitoring infant and child growth and determining adult nutrition status, especially among women during the prenatal and postpartum periods; (4) directs and coordinates nutrition status surveillance and survey activities, especially among high-risk, low income populations within the United States, including infants, children, and pregnant women; (5) provides technical and consultative services to State, local, and Federal agencies in the development and management of nutrition status monitoring systems and in the planning and implementation of appropriate intervention strategies to improve nutritional status; (6) collaborates with other divisions of CCDPHP in the nutritional components of their programs, as appropriate, and provides technical assistance and training to State, local, and Federal agencies in the planning and implementation of programs intended to promote optimal nutritional status and reduce nutrition-related risk factors associated with chronic disease; (7) provides technical assistance in the evaluation of surveillance of nutritional status, nutrition-related diseases, and nutrition-related relief efforts in developing countries in collaboration with international agencies such as the Agency for International Development (AID) and the World Health Organization (WHO); (8) designs and conducts epidemiologic and other investigations to clarify the relationship beween nutritional status and related preventable health problems in collaboration with the Department of State, AID, and other international agencies; (9) participates in the Department's Nutrition Policy Board and coordinates Division activities with other PHS agencies and the OASH, other Federal agencies, and appropriate nutrition-related organizations.

Division of Reproductive Health (HCL6). (1) Proposes appropriate goals and objectives, identifies problems and needs, and recommends priorities for reproductive health program activities that can contribute to the reduction of preventable morbidity and mortality due to selected, non-environmentally, non-occupationally related adverse reproductive outcomes; (2) conducts public health surveillance in coordination with the Office of Surveillance and Analysis, epidemiologic investigations, and evaluations of health problems and programs related to contraception, pregnancy, human reproduction, and infancy; (3) develops and implements intervention programs to prevent and/or resolve problems related to reproductive, infant, and maternal health, and selected adverse reproductive outcomes; (4) conducts evaluation of service programs and service delivery intended to improve the organization and delivery of reproductive health services, including certain family planning services; (5) confers, consults, collaborates with, and provides technical assistance and training to local, State, and other Federal agencies, and appropriate nongovernmental organizations on selected reproductive health problems and on programs to resolve these problems; (6) consults, collaborates with, and provides technical assistance to international governmental and nongovernmental organizations on bilateral and multilateral epidemiologic investigations and demonstration projects in reproductive health, including surveys and assessments, improvement of service delivery, and reproductive risk assessment; (7) serves as a primary Federal resource for technical assistance and expertise in family planning evaluation methodologies and reproductive health epidemiology; (8) serves as a World Health Organization (WHO) Collaborating Center in Perinatal Care and Health Service Research in maternal and child health, and as a WHO Collaborating Center for Research Training in Human Reproduction; (9) coordinates Division activities with other CCDPHP components, other CDC organizations, other PHS agencies, and the OASH, including the Deputy Assistant Secretary for Population Affairs, as appropriate.

Office on Smoking and Health (HCL7). (1) Administers a program to inform Americans about the dangers of tobacco use in order to reduce death and disability due to smoking and smokeless tobacco use; (2) promotes and stimulates research on the determinants and health effects of smoking and

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smokeless tobacco use; (3) coordinates all PHS research and educational programs and other DHHS activities related to tobacco and health; (4) establishes and maintains liaison with other Federal agencies, private organizations, State and local governments, and international agencies on matters related to tobacco and health; (5) serves as a clearinghouse for the collection, organization, and dissemination of information on all aspects of tobacco and health; (6) develops materials on tobacco use in relation to health; (7) provides assistance for educational programs on smoking and health; (8) produces Congressionally mandated reports to Congress; (9) conducts surveys, and coordinates and conducts epidemiologic studies related to tobacco use and tobacco control; (10) provides staff support for a Congressionally mandated Federal advisory committee on smoking and health; (11) pursuant to Pub. L. 98–474 and 99–252, collects, maintains, and analyzes information provided by the tobacco industry on cigarette additives and smokeless tobacco additives and nicotine content; (12) serves as a World Health Organization (WHO) Collaborating Center on Smoking and Health; (13) serves as the lead DHHS organization for the Objectives for the Nation related to smoking and health; (14) provides staff support to the Surgeon General on activities related to smoking and health.

2. Within the *Center for Prevention Services (HCMR,* make the following changes:

a. After the heading *Office of the Director (HCM1),*delete item (5) and renumber items (6) and (7) as items (5) and (6) respectively.

b. After the heading and statement for the *Office of the Director (HCM),* delete in its entirety the heading and functional statement for the *Division of Diabetes Control (HCM6).*

3. Within the *Center for Environmental Health and Injury Control (HCN),* after the heading and statement for the *Division of Birth Defects and Developmental Disabilities (HCN5),* delete in its entirety the heading and functional statement for the *Division of Chronic Disease Control (HCN6).*

Effective Date: October 28, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–26002 Filed 11–9–88; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–09–4333–10]

Motor Vehicle Use Restrictions; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of designation of motor vehicle use on Carter Mountain, Park County, Wyoming.

SUMMARY: The proposed Carter Mountain ACEC area is hereby redesignated "limited to designated roads, trails, and seasons of use" for the next three years, effective as of November 15, 1988. This is in response to a request from the Wyoming Game and Fish Department as part of their effort to reduce the size of the migratory elk herd. It is consistent with the Cody RMP which calls for the proposed Carter Mountain ACEC area to limit motor vehicle use to season of use and designated roads and trails.

EFFECTIVE DATE: This designation becomes effective November 15, 1988 and will remain in effect until May 1, 1991 or until rescinded or modified by the authorized officer before that date. An environmental assessment describing the impact of this designation is available for inspection at the Worland District Office.

ADDRESS: Bureau of Land Management, 101 South 23rd Street, P.O. Box 119, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: Darrell C. Barnes, District Manager, Worland District, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, (307) 347–9871.

SUPPLEMENTARY INFORMATION: In response to a Wyoming Game and Fish Department request, the Cody Resource Area held a public meeting on October 11, 1988, to discuss the concerns and issues involved in changing the motor vehicle designation for the Carter Mountain area. All motor vehicle use on public lands administered by the Bureau of Land Management in the proposed Carter Mountain ACEC is restricted to designated roads and trails from May 1 to November 14 and the area is closed to motor vehicle use fromm November 15 to April 30. This designation will be rescinded May 1, 1991; however, it may be rescinded prior to May 1, 1991, if it is determined by the authorized officer, through an annual assessment, that the designation is no longer necessary for its intended purpose. The Wyoming Game and Fish officials feel that motorized vehicle use, including snowmobiles, can disrupt the migration patterns of all wildlife; however, elk are particularly affected by such use. By restrictng motorized vehicle use the elk will migrate in the Carter Mountain area, thus allowing more elk to move into the lower reaches of their winter range and the harvest will increase. After the hunting season the area would remain closed until April 30 of each year to reduce the stress on the wintering elk herds. The "limited to designated roads, trails and seasons of use" designation applies to public lands in Park County located approximately 20 miles west of Meeteetse, Wyoming.

This designation affects all public lands above 3000 meters (9843 feet) in elevation in T. 49 N., R. 103 W., Sixth Principal Meridan, approximately 7,500 acres.

The limited use designation applies to all motorized vehicles, included but not limited to: Automobiles, trucks, four-wheel drive or low-tire-pressure vehicles, tracked or amphibious machines, ground-effect or air-cushion vehicles, recreation campers, motorcycles, snowmobiles and another means of transportation deriving motive power from any source other than muscle. Under the limitation, exceptions are made for (1) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, or any combat or combat support vehicle when used for national defense purposes, (2) any vehicle whose use is expressly authorized by the Bureau of Land Management under permit, lease, license or contract, and (3) any government vehicle on official business.

A map showing the new limited use area, and additional information about the designation are available for review at the Bureau of Land Management, Worland District Office, at the address listed previously.

November 4, 1988.

Hillary A. Oden,

State Director.

[FR Doc. 88–26011 Filed 11–9–88; 8:45 am]

BILLING CODE 4310–22–M

[U–59194]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease U–59194 for lands in San Juan County, Utah, was timely filed and required rentals and royalties accruing from April 1, 1988, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16–2/3 percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U–59194 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–25982 Filed 11–9–88 8:45 am]

BILLING CODE 4310–DQ–M

[WY–920–08–4120–11; WYW114115]

Coal Leases; Exploration Licenses, etc.; Cheyenne, WY; Correction

AGENCY: Bureau of Land Management.

ACTION: Notice, correction.

SUMMARY: In the **Federal Register** of October 21, 1988, (53 FR 41422), the Bureau of Land Management published an invitation for coal exploration license for the Kerr-McGee Coal Corporation. There were errors in the land description. This document corrects these errors.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Wyoming State Office, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003; 307–772–2569.

SUPPLEMENTARY INFORMATION: In FR 88–24370, appearing on page 41422 in the **Federal Register** of Friday, October 21, 1988, the following corection is made: Under the heading "SUMMARY," the land description is corrected to read:

"T. 44 N., R. 70 W., 6th P.M., WY,
Sec. 33: Lots 1 thru 16 inclusive;
Sec. 34: Lots 1 thru 16 inclusive;
Sec. 35: Lots 1 thru 15 inclusive.
Containing 1,910.17 acres."

Hillary A. Oden,

State Director.

[FR Doc. 88–28091 Filed 11–9–88; 8:45 am]

BILLING CODE 4310–22–M

[OR110–6310–11 OR910–GP9–20]

Medford District Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 99–463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held December 2, 1988.

On December 2, the meeting will begin at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

An update of the district's planning for the 1990s, the outlook for public and private timber production capability in the next 20 years and an update in the district spotted owl program, including the injunction affecting virtually all old growth timber on the district.

Other items include the district's riparian program initiatives, volunteer program, the Bureau's Recreation 2000 initiative, the growing problem of chemical dumps on public lands, and election of officers.

Persons interested in making oral statements during the Council meeting, may do so following conclusion of the Council's other agenda items, or written statements may be submitted for the Council's consideration.

Anyone wishing to make an oral statement at the Council meeting must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business December 1, 1988. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

David A. Jones,

District Manager.

October 31, 1988.

[FR Doc. 88–26122 Filed 11–9–88; 8:45 am]

BILLING CODE 4310–33–M

[WY–920–08–4111–15; W–79705–G]

Proposed Reinstatement of Terminated Oil and Gas Lease; Crook County, WY

November 4, 1988.

Pursuant to provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–79705–G for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–79705–G effective July 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

David A. Pomerinke,

Acting Chief, Leasing Section.

[FR Doc. 88–28092 Filed 11–9–88; 8:45 am]

BILLING CODE 4310–22–M

[CA–010–09–4212–13; CA 23666]

Realty Action; Exchange of Public Lands and Private Lands in Calaveras and Mariposa Counties, CA

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The Public Lands described below have been determined to be suitable for disposal by exchange under the authority of section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716); this action involves all of the public land located within the following legal description:

Selected Public Land

Calaveras County, California

T. 2 N., R. 11 E., MDM,
Sec. 24.
T. 2 N., R. 12 E., MDM,
Sec. 19, 20, 29, & 30.

The subject public lands consist of several isolated unpatented parcels and fragments that vary in size from 72.69 acres to less than ¼-acre in size. All together they total approximately 145 acres. Supplemental survey plats are being prepared and a more specific legal description will be available upon completion.

In exchange for the above land the United States will acquire the following described private land from Meridian Minerals Company:

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Offered Private Land

Mariposa County, California

T. 4 S., R. 18 E., MDM.
Sec. 10, Mineral Survey 5897.
Aggregating 19.28 acres, more or less.

The purpose of this exchange is to improve the Bureau's management capabilities on the Merced River. The United States will be acquiring riverfront property which is adjacent to a large block of public land several thousand acres in size. The exchange will allow the Bureau to dispose of several isolated parcels and fragments that are inaccessible to the public and difficult to manage. The action will include the transfer of the surface and mineral estate for all parcels exchanged.

The Federal land to be transferred will be subject to the following reservations, terms and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 30, 1890, (U.S.C. 945).

(2) The right to itself, its permittees or licensees, the right to enter upon, occupy and use, any part or all of that portion of Lot 1, Sec. 24, T. 2 N., R. 11 E., MDM, and Lot 11, Sec. 19, T. 2 N., R. 12 E., MDM, lying within 50 feet of the center line of the transmission line right-of-way Power Site Reserve Withdrawal No. 707, for the purposes set forth in and subject to the conditions and limitations of Sec. 24 of the Federal Power Act of June 10, 1920, as amended, (16 U.S.C. 818).

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from settlement, location and entry under the public land laws and the mining laws for a period of two years from the date of first publication.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley, Folsom Resource Area Office, (916) 985–4474, at the address listed below. Also available for review is the land report/environmental assessment.

DATE: On or before December 27, 1988 interested parties may submit comments to the Bakersfield District Manager.

ADDRESS: Comments should be sent to the Bakersfield District Manager, c/o Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 96530; (916) 985–4474. Any adverse comments will be forwarded to and evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

Date: November 4, 1988.

D.K. Swickard,

Area Manager.

[FR Doc. 88–26093 Filed 11–9–88; 8:45 am]

BILLING CODE 4310–22–M

[WY–060–09–5101–09–YKAK]

Availability of Amoco Co_2 Draft Environmental Impact Statement; Wyoming and Montana

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of Amoco Co_2 Draft Environment Impact Statement (DEIS), Wyoming and Montana.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Draft Environmental Impact Statement (DEIS) for the Amoco CO_2 Projects for public review and comment. The draft EIS, prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, analyzes the impacts of constructing, operating, and abandoning five related projects proposed by Amoco; a proposed CO_2 source near Fontenelle Reservoir in Southwestern Wyoming; transportation of the gas via underground pipeline to four fields; Elk Basin, Little Buffalo Basin, Beaver Creek, and the Salt Creek; and injection of the gas for enhanced oil recovery purposes.

DATE: Written comments on the DEIS will be accepted at the Casper District Office until Friday, January 6, 1989.

ADDRESSES: Copies of the DEIS are available from the following BLM offices:

Casper BLM District Office, 1701 E. East Street, Casper, Wyoming 82601.
Rock Springs District Office, Highway 191 North P.O. Box 1869, Rock Springs, Wyoming 82902–1869.
Wyoming State Office, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.
Miles City BLM District Office, P.O. Box 940, Miles City, Montana 59301.
Rawlins BLM District Office, P.O. Box 670, 1300 Third Street, Rawlins, Wyoming 82301.
Worland BLM District Office, P.O. Box 119, 101 South 23rd Street, Worland, Wyoming 82401.
Lander Resource Area Office, P.O. Box 589, 125 Sunflower Street, Lander, Wyoming 82520.

FOR FURTHER INFORMATION CONTACT: Glen Nebeker, Bureau of Land Management, Casper District Office, 1701 East E. Street, Casper, Wyoming 82601, phone (307) 261–5101.

SUPPLEMENTARY INFORMATION: The five proposed project are located almost entirely within the State of Wyoming, with the exception of portion of the Elk Basin field which lies in southern Carbon County, Montana. The five projects covered by the DEIS include: (1) Development of a natural source of CO_2 located in southwestern Wyoming, near Fontenelle reservior, which includes drilling ten wells in the Raptor Field, 24 miles of gas gathering pipelines, and construction of 150 million standard cubic foot per day (MMSCFD) gas processing plant; (2) The Elk Basin Project which consists of construction of 178 miles of 18 inch in diameter CO_2 pipeline and construction and operation of a 150 MMSCFD recycle plant located near the Wyoming/Montana border north of Powell, Wyoming; (3) Beaver Creek Project which consists of 44 miles of 16 inch in diameter pipeline to transport the CO_2 from the main trunkline to the proposed 150 MMSCFD recycle plant which is located south of Riverton, Wyoming; (4) the Little Buffalo Basin Project, which consists of construction of a 35 mile, 16 inch in diameter pipeline to carry the CO_2 from the main line to a proposed 150 MMSCFD recycle plant which will be located south of Meeteetse, Wyoming; and (5) the Salt Creek Project which consists of construction of 9 miles of 16 inch pipeline to carry the CO_2 to a proposed 150 MMSCFD recycle plant which will be built north of Casper, Wyoming.

Construction of the various components is scheduled to begin with the Fontenelle plant and development of the well field in 1989 and continues through completion of the Salt Creek project components scheduled for completion near the end of 1994.

F. William Eikenberry,

Associate State Director, Wyoming.

November 2, 1988.

[FR Doc. 88–26047 Filed 11–9–88; 8:45 am]

BILLING CODE 4310–22–M

[FES 88–47 and 88–48; CA–930–09–4332–13]

Final Environmental Impact Statements, California Section 202 Wilderness Study Areas (WSAs); Bakersfield District and Susanville District, CA et al.; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Errata notification.

SUMMARY: The recently published Final Environmental Impact Statements (EIS) for California Section 202 Wilderness Study Areas (WSAs) (53 FR 44672, November 4, 1988) regarding (1) the South Warner Contiguous and Carson Iceberg WSAs and (2) the Garcia Mountain, Rockhouse, Domeland, Machesna, Big Butte and Yolla Bolly WSAs contain an error in the responses to public comments. The responses are switched between documents. Therefore, the responses to public comments for one EIS are contained in the other EIS and vice-versa. The two EISs were distributed as a package, however, if necessary, additional copies of the responses can be obtained from:

Bureau of Land Management, California State Office (CA–930), 2800 Cottage Way, Sacramento, CA 95825.

Date: November 1, 1988.

Ed Hastey,

State Director.

[FR Doc. 88–26119 Filed 11–9–88; 8:45 am]

BILLING CODE 4310–40–M

[MT–920–10–4120–10]

Fort Union Regional Coal Team (RCT) Activities; Announcement of Public Meeting

ACTION: Public notice.

SUMMARY: The Fort Union Coal Team will hold a public meeting on December 16, 1988, to review Federal coal management issues of regional concern. The full agenda and other details for the RCT meeting are set out below.

DATE: The coal team will meet at 10 a.m. on December 16, 1988.

ADDRESS: The meeting will be held in the Colt Room of the Hospitality Inn, 532 15th West, Dickinson, North Dakota.

FOR FURTHER INFORMATION CONTACT: Bill Frey, telephone (406) 657–6841 or (FTS) 585–6841.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review Federal coal management issues of regional concern, including the final review, revision, and approval of the Fort Union Data Adequacy Standards. Comments may be submitted, in writing, by December 8, 1988, to State Director (921), Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107, or presented orally during the meeting.

Opportunities of statements from the public will be provided on all agenda items. The agenda for this meeting is as follows:

I. Introduction.
II. Approval of Minutes of November 5, 1987, RCT Meeting.
III. Status of Regional Coal Activity.
A. Mine Production.
B. Lease Statistics.
C. Emergency Leasing.
D. Preference Right Lease Applications.
E. Other Activities.
IV. Fort Union Coal Production Region Deactivation.
V. Fort Union Action Plan.
VI. Data Adequacy Standards.
VII. Adjourn.

Dated: November 2, 1988.

Ray Brubaker,

Acting State Director.

[FR Doc. 88–26117 Filed 11–9–88; 8:45 am]

BILLING CODE 4310–DN–M

[CO–942–09–4520–12]

Filing of Plats of Survey; Colorado

October 31, 1988.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., October 31, 1988.

The plat representing the dependent resurvey of a portion of the New Mexico Principal Meridian (east boundary), portions of the south, west, and north boundaries, and subdivisional lines, and the subdivision of certain sections, T. 34 N., R. 1 W., New Mexico Principal Meridian, Colorado, Group No. 848, was accepted October 17, 1988.

This survey was requested by the U.S. Forest Service, Rocky Mountain Region, to identify the National Forest boundaries.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88–26083 Filed 11–9–88; 8:45 am]

BILLING CODE 4310–JB–M

[AZ–020–09–4212–12; Serial No. AZA 23606]

Realty action; Gila and Salt River Meridian; Arizona

The following described public land under the administration of the Bureau of Land Management has been determined to be suitable for disposal through exchange under section 206 of the Federal Land and Policy Act of 1976, 43 U.S.C. 1716.

Selected Land

Gila and Salt River Meridian; Arizona

T. 15 N., R. 19 E.,
Sec. 14, N½.
T. 5 N., R. 19 W.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 10 N., R. 16 W.,
Sec. 2, N½N½NE¼.
T. 6 S., R. 23 E.,
Sec. 31, lots 1–7, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼.
T. 7 S., R. 23 E.,
Sec. 2, lots 1–4, incl., S½NE¼, N½SW¼NW¼, SE¼NW¼;
Sec. 6, lots 1–6, incl., SW¼NE¼, SE¼NW¼.
T. 14 S., R. 27 E.,
Sec. 16, SE¼NE¼.
T. 14 S., R. 31 E.,
Sec. 2, lots 3 & 4, S½NW¼, SW¼.
T. 14 S., R. 32 E.,
Sec. 19, N½NE¼,
Sec. 20, N½.

2,946.34 acres.

In exchange, the Bureau of Land Management will receive the following described lands from the State of Arizona:

Offered Land

Gila and Salt River Meridian, Arizona

T. 16 N., R. 20.,
Sec. 20, all
Sec. 28, all
T. 9 N., R. 9 W.,
Sec. 32, lots 1–10, incl. E½NE¼, NW¼NW¼, SW¼SW¼, E½SE¼, SW¼,SE¼.
T. 31 N., R. 11 W.,
Sec. 2, S½N½, N½SW¼,SW¼SW¼, SE¼.
T. 33 N., R. 12 W.,
Sec. 2, lots 1–4, incl., S½N½.
T. 34 N., R. 12 W.,
Sec. 32, all.
T. 7 S., R. 25 E.,
Sec. 24, that portion lying north of the golf course road.

3,274.12 acres.

The lands transferred from the United States will be conveyed subject to the following reservations:

AZA 008585, a Federal aid highway and a reservation of rights-of-way for ditches and canals to the United States, pursuant to the Act of August 30, 1890.

Publication of this notice shall segregate the subject lands from operation of the public land laws, including mining laws, (except for mineral leasing) for a period of two years. This segregation will terminate in two years or when a deed or patent is issued. More detailed information may be obtained from the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 850027. For a period of 45 days from the date of this notice is published in the **Federal Register**, interested parties may submit comments to the Phoenix District Manager at the address listed above. Any adverse comments will be reviewed by the State

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Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Bureau of Land Management.

Date: November 2, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88-26118 Filed 11-9-88; 8:45 am]

BILLING CODE 4310-32-M

[MT-060-09-4410-08 Montana]

Resource, Management Plan; Judith Resource Area et al.

AGENCY: Bureau of Land Management, Lewistown District, Montana Interior.

ACTION: Call for coal and other resource information for the Judith, Valley, Phillips Resource Management Plan, Lewistown District, Montana.

SUMMARY: As stated in the Notice of Intent published September 30, 1988, (FR, Vol. 53, No. 190, 38362), the Lewistown District has initiated a resource management plan for the public lands in the Judith, Valley and Phillips Resource Areas of Montana. The Bureau, in accordance with 43 CFR 3420.1-2, is formally soliciting indications of interest and information on the coal resource development potential for public lands and minerals in the Judith, Valley, Phillips planning area (Fergus, Judith Basin, Petroleum, Phillips, Valley and southern Chouteau counties). The BLM will not conduct any coal resource inventory in the planning area. Parties interested in Federal coal leasing and development will be expected to provide coal resource data for their area of interest. The adequacy and timing of the information received will determine the extent that the Federal coal resource and its development potential may be addressed in the RMP/EIS.

This notice also calls for indications of interest and resource information for other resources within the planning area. This includes, but is not limited to: Oil, gas, gold, wildlife, range and forest products. Identification of definite interests in resource development, substantiated with adequate resource data, at this time will allow addressing resource potentials in this plan and possibly avoid unnecessary work, delays, or near term revisions to the plan. Non-proprietary data and general comments should be submitted to:

District Manager, Bureau of Land Management, Lewistown District, 80 Airport Road, Lewistown, MT 59457.

Proprietary data marked as confidential may be submitted only to:

Chief, Branch of Solids, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, MT 59107.

DATES: Industry, state and local governments and the general public are encouraged to submit relevant information at any time during the planning process. However, information about coal and other resources will be most useful in focusing the Bureau's planning efforts if received prior to April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Wayne Zinne, District Manager at (406) 538-7461 or write to: Lewistown District, 80 Airport Road, Lewistown, Montana 59457-9699.

Date: November 4, 1988.

Wayne Zinne,

District Manager.

[FR Doc. 88-26094 Filed 11-9-88; 8:45 am]

BILLING CODE 1610-08-M

Bureau of Reclamation

[INT-FES-88-51]

San Jacinto Project, Montgomery County, TX

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of Planning Report/Final. Environmental Statement (PR/FES).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a PR/FES for the San Jacinto Project, Texas. The PR/FES addresses the impacts of alternative water supply sources within the San Jacinto River basin which could help meet water needs.

ADDRESSES: Single copies of the PR/FES may be obtained on request to the Regional Director or the Texas Representative at the addresses below.

Copies of the PR/FES are available for inspection at the following locations:

Director, Public Affairs Office, Department of the Interior, Bureau of Reclamation, Room 7644, Washington, DC 20240; Telephone: (202) 343-4662.

Assistant Commissioner—Resources Management, Department of the Interior, Bureau of Reclamation, Program Services Division, Environmental Services, Federal Center, Building 67, Room 638, Denver, CO 80225; Telephone: (303) 236-9336.

Regional Director, Bureau of Reclamation, Great Plains Regional Office, P.O. Box 36900, Billings, MT; Telephone (406) 657-6214.

Office of the Texas Representative, Bureau of Reclamation, 300 East 8th, Post Office Box 1046, Austin, Texas 78767; Telephone: (512) 482-5641.

Libraries

University of Houston Library, 4800 Calhoun, Houston, TX 77004

Rice University Library, P.O. Box 1892, Houston, TX 77251

Montgomery County Library, P.O. Box 579, Conroe, TX 77305

Huntsville Public Library, 1212 Avenue M, Huntsville, TX 77340

Houston Public Library, Attn: Ms. Ruby Weaver, 500 McKinney, Houston, TX 77002

Harris County Public Library, 49 San Jacinto, Suite 200, Houston, TX 77002

Austin Memorial Library, 220 S. Bonham, Cleveland, TX 77327

Prairie View A&M University Library, Prairie View, TX 77446

Octavia Fields Library, 111 West Higgins, Humble, TX 77338

Harris Country Library, 701 James Street, Tomball, TX 77375

Texas Southern University Library, 3100 Cleburne, Houston, TX 77004

Texas A&M University, Sterling Evans Library, College Station, TX 77843

University of Texas, General Libraries, P.O. Box, Austin, TX 78713

Sam Houston State University, Newton Gresham Library, Huntsville, TX 77341

Magnolia Branch Library, 31350 Industrial Lane, Magnolia, TX 77355.

FOR FURTHER INFORMATION CONTACT:

Mr. Nicolas Palacios (Planning Study Manager), (512) 482-5641; or

Dr. Wayne O. Deason (Manager of Environmental Services, Federal Center), (303) 236-9336

SUPPLEMENTARY INFORMATION: The recommended plan proposes construction of a multi-purpose dam and reservoir, Lower Lake Creek, on the West Fork of the San Jacinto River in Montgomery County, Texas. The project would provide a municipal and industrial water supply, flood control, and recreation opportunities. No significant changes have been made to the recommended development plan as presented in the Bureau of Reclamation's planning report/draft environmental statement (DES 87-25).

The PR/FES presents the recommended plan and the no Federal action alterntive, describes the existing environment, and analyses the environmental consequences of project construction. It also presents the comments received during the 90-day public review of the draft statement and documents Reclamation's responses.

Date: October 25, 1988.

D.W. Webber,

Acting Deputy Commissioner.

[FR Doc. 88-26135 Filed 11-9-88; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Becharof National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued a Record of Decision (Decision) on the Wilderness Review Amendment and Supplemental Environmental Impact Statement (Statement) for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Becharof National Wildlife Refuge (Refuge), Alaska, pursuant to section 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Statement will be implemented immediately with the Wilderness Proposal being sent to the Secretary of the Interior for review and forwarding to the President.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the Becharof Refuge mailing list. Others wishing to receive a copy of the Decison may obtain one by contacting Mr. Knauer

SUPPLEMENTARY INFORMATION: The Service has selected Alternative A, the Proposed Action, for implementation, As a result, the Service is recommending that an additional 347,000 acres of the Refuge be added to the National Wilderness Preservation System.

Date: November 1, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-26121 Filed 11-9-88; 8:45 am]

BILLING CODE 4310-55-M

Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Alaska Peninsula National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued a Record of Decision (Decision) on the Wilderness Review Amendment and Supplemental Environmental Impact Statement (Statement) for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Alaska Peninsula National Wildlife Refuge (Refuge), Alaska, pursuant to section 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATE: This Decision on the Statement will be implemented immediately with the Wilderness Proposal being sent to the Secretary of the Intrerior for review and forwarding to the President.

DATES: William Knauer, Refugees and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the Alaska Peninsula Refuge mailing list. Others wishing to receive a copy of the Decison may obtain one by contacting Mr. Knauer

SUPPLEMENTARY INFORMATION: The Service has selected Alternative A, the Proposed Action, for implementation, As a result, the Service is recommending that an additional 347,000 acres of the Refuge be added to the National Wilderness Preservation System.

Dated: November 1, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-26046 Filed 11-9-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, U.S. Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Union Exploration Partners, Ltd., three exploratory wells, SEA No. N-2922A.	Pulley Ridge, Blocks 629 and 630, Leases OCS-G 6491 and 6492, 53 miles northwest of the Dry Tortugas, FL.	June 3, 1988.
Mobil Exploration & Producing U.S. Inc., four exploratory wells, SEA No. N-3022.	Pulley Ridge, Block 799, Lease OCS-G 6520, 187 miles southwest of Port Manatee, FL.	July 22, 1988.
Meridian Oil Inc., one exploratory well, SEA No. N-3013	High Island Area, East Addition, South Extension, Block A-400, Lease OCS-G 6263, 119 miles southeast of the Texas coastline.	July 8, 1988.
Union Exploration Partners, Ltd., one exploratory well, SEA No. R-2116.	High Island Area, East Addition, South Extension, Block A-384, Lease OCS-G 3316, 110 miles southeast of the Texas coastline.	Aug. 18, 1988.
Tenneco Oil Company, structure removal operations, SEA No. ES/SR 88-006.	Galveston Area, Block 393, Lease OCS-G 3741, 23 miles south of Brazoria County, TX.	July 6, 1988.
Exxon Company, U.S.A., structure removal operations, SEA No. ES/SR 88-010.	West Delta Area, Blocks 30 and 31, Leases OCS 0026 and 0016, 8 miles south of Plaquemines Parish, LA.	Aug. 12, 1988.
Tenneco Oil Company, structure removal operations, SEA No. ES/SR 88-011.	West Cameron Area, Block 180, Lease OCS 0763, 28 miles south of Cameron Parish, LA.	May 31, 1988.
Tenneco Oil Exploration and Production, structure removal operations, SEA No. ES/SR 88-012.	Sabine Pass Area, Block 13, Leases OCS-G 3959, 24 miles southeast of Sabine Pass, TX.	Do.
Tenneco Oil Exploration and Production, structure removal operations, SEA No. ES/SR 88-013.	East Cameron Area, Block 255, Lease OCS-G 2040, 75 miles south of Cameron Parish, LA.	Aug. 5, 1988.

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Activity/Operator	Location	Date
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 88-014.	Ship Shoal Area, Block 32, Lease OCS 0335, 10 miles south of Terrebonne Parish, LA.	June 3, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-015.	Main Pass Area, Block 91, Lease OCS-G 1499, 10 miles southeast of St. Bernard Parish, LA.	Aug. 5, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-016.	Eugene Island Area, South Addition, Block 354, Lease OCS-G 3573, 99 miles south of Iberia Parish, LA.	Aug. 8, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-017.	Eugene Island Area, Block 119, Lease OCS 049, 22 miles south of Terebonne Parish, LA.	Aug. 5, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-018.	Vermilion Area, Block 182, Lease OCS-G 2074, 52 miles south of Iberia Parish, LA.	Aug. 8, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-019.	Vermilion Area, Block 76, Lease OCS 0249, 18 miles south of Vermilion Parish, LA.	Aug. 5, 1988.
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 88-020.	Ship Shoal Area, South Addition, Block 296, Lease OCS-G 1535, 75 miles south of Terrebonne Parish, LA.	Sept. 1, 1988.
Conoco Inc., structure removal operations, SEA No. ES/SR 88-022	West Cameron Area, Block 135, Lease OCS-G 1470, 20 to 30 miles south of Cameron and Vermilion Parishes, LA.	Aug. 3, 1988.
Conoco Inc., structure removal operations, SEA No. ES/SR 88-023	Vermilion Block 242, Lease OCS-G 3133, 72 miles south of Vermilion Parish, LA.	Aug. 17, 1988.
Conoco Inc., structure removal operations, SEA No. ES/SR 88-024	East Cameron Area, Block 47, Lease OCS 0767, 20 to 52 miles south of Cameron and Vermilion Parishes, LA.	Aug. 3, 1988
Conoco Inc., structure removal operations, SEA No. 88-025	Ship Shoal Area, Block 206, Lease OCS-G 1522, 48 miles south of Terrebonne Parish, LA.	Aug. 17, 1988.
Conoco Inc., structure removal operations, SEA No. ES/SR 88-026	South Marsh Island Area, North Addition, Block 261, Lease OCS-G 2306, 20 to 52 miles south of Cameron and Vermilion Parishes, LA.	Aug. 3, 1988.
Conoco Inc., structure removal operations, SEA No. ES/SR 88-027	West Cameron Area, Block 261, Lease OCS-G 3501, 20 to 52 miles south of Cameron and Vermilion Parishes, LA.	Do.
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 88-028.	East Cameron Area, Block 34, Lease OCS-G 2655, 21 miles southeast of Grand Chenier, LA.	May 31, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-029.	West Cameron Area, Blocks 132 and 101, Leases OCS 0251 and 0246, 23 and 16 miles south of Cameron Parish, LA.	Aug. 25, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-030.	South Pelto Area, Block 12, Lease OCS 071, 20 miles south of Terrebonne Parish, LA.	Aug. 18, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-031.	South Marsh Island Area, North Addition, Block 235, Lease OCS-G 2300, 15 miles southwest of Iberia Parish, LA.	Do.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-032.	West Cameron Area, Block 71, Lease OCS 0244, 15 and 10 miles southwest of Iberia and Cameron Parishes, LA.	Aug. 18, 1988.
Exxon Company, U.S.A., structure removal operations, SEA No. ES/SR 88-033.	High Island Area, East Addition, South Extension, Blocks A-343 and A-342, Leases OCS-G 2741 and 2740, 120 miles south of Cameron Parish, LA.	Aug. 11, 1988.
Exxon Company, U.S.A., structure removal operations, SEA No. ES/SR 88-033.	High Island Area, East Addition, South Extension, Blocks A-343 and A-342, Leases OCS-G 2741 and 2740, 120 miles south of Cameron Parish, LA.	Sept. 21, 1988.
Texaco U.S.A., structure removal operations, SEA No. ES/SR 88-034	High Island Area, Block 111, Lease OCS-G 2354, 38 miles east of Galveston, TX.	Aug. 25, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-035.	Vermilion Area, Block 76, Lease OCS 0249, 18 miles south of Vermilion Parish, LA.	Aug. 18, 1988
Samedan Oil Corporation structure removal operations, SEA No. ES/SR 88-037/037A.	Galveston Area, Block 241, Lease OCS-G 4846, 18 miles southeast of Galveston, TX.	Aug. 25, 1988.
BHP Petroleum, structure removal operations, SEA No. ES/SR 88-038	High Island Area, South Addition, Block A-507, Lease OCS-G 3755, 68 miles southeast of Brazoria County, TX.	Aug. 23, 1988.
Conoco Inc., structure removal operations, SEA No. ES/SR 88-039	West Delta Area, Block 45, Lease OCS 0138, 18 miles south of Plaquemines Parish, LA.	Aug. 3, 1988.
Conoco Inc., structure removal operations, SEA No. ES/SR 88-040/041/042.	Grand Isle Area, Blocks 63, 45, and 47, Leases OCS-G 1054 and 1582 and OCS 0133, 21 miles south of Lafourche Parish, LA.	Aug. 18, 1988.
Tenneco Oil Exploration and Production, structure removal operations, SEA No. ES/SR 88-043.	Ship Shoal Area, Block 198, Lease OCS 0594, 44 miles south of Terrebone Parish, LA.	Aug. 16, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-044.	East Cameron Area, Block 14, Lease OCS-G 1440, 10 miles south of Cameron Parish, LA.	Sept. 15, 1988.
Union Exploration Partners, Ltd., structure removal operations, SEA No. ES/SR 88-046.	Vermilion Area, Block 38 (S/2), Lease OCS 0204, 33 miles southwest of Intracoastal City, LA.	June 7, 1988.
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 88-047.	Ship Shoal Area, Blocks 29, 26, and 32, Leases OCS 0345, 0346, and 0335, 6 miles south of Terrebonne Parish, LA.	June 22, 1988
FMP Operating Company, structure removal operations, SEA No. ES/SR 88-049.	West Cameron Area, South Addition, Block 464, Lease OCS-G 2545, 77 miles southwest of Cameron Parish, LA.	Aug. 8, 1988.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-011A.	Mustang Island Area, East Addition, Block A-90, Lease OCS-G 8986, 36 miles southeast of Aransas County, TX.	Aug. 5, 1988.
Placid Oil Company structure removal operations, SEA No. ES/SR 88-053.	Ship Shoal Area, Blocks 204, 207, and 216, Leases OCS-G 1520, 1523, and 1524, 36 miles south of Terrebonne Parish, LA.	Aug. 19, 1988.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 88-055.	Eugene Island Area, Block 41, Lease OCS-G 4857, 8 miles south of St. Mary Parish, LA.	July 22, 1988.
Amoco Production Company, structure removal operations, SEA No. ES/SR 88-056.	Mustang Island Area, Block 755, Lease OCS-G 3018, 20 miles south of St. Joseph Island, TX.	Aug. 17, 1988.
Texaco U.S.A., structure removal operations, SEA No. ES/SR 88-057	South Marsh Island Area, North Addition, Blocks 216 and 222, Lease OCS 0310, 8 miles southwest of Iberia Parish, LA.	Aug. 9, 1988.
Mobil Oil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 88-058.	Main Pass Area, Block 92, Lease OCS-G 1366, 30 miles northeast of Plaquemines Parish, LA.	July 29, 1988.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 88-048A.	South Timbalier Area, Block 21, Lease OCS 0263, 20 miles south of Terrebonne Parish, LA.	July 22, 1988.
Arco Oil and Gas Company, structure removal operations, SEA No. ES/SR 88-059.	High Island Area, Block 68, Lease OCS-G 6145, 14 miles south of Jefferson County, TX.	Aug. 31, 1988.

Activity/Operator	Location	Date
CNG Producing Company structure removal operations, SEA No. ES/SR 88-060.	East Cameron Area, Block 118, Lease OCS-G 1974, 35 miles south of Cameron Parish, LA.	Sept. 22, 1988.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of the NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Date: November 3, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-26048 Filed 11-9-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: November 7, 1988.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and coorespondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) WISCO Farm Cooperative, P.O. Box 753, Lake Mills, WI 53551.

(2) 450 North C.P. Avenue, Lake Mills, WI 53551.

(3) Mr. Jerome J. Kuhl, P.O. Box 753, Lake Mills, WI 53551.

Noreta R. McGee,

Secretary.

[FR Doc. 88-26006 Filed 11-9-88 8:45 am]

BILLING CODE 7035-01-M

Subsidiaries	State of Incorporation
SVS Trucking, Inc., Eden Prairie, MN.	Minnesota.
Western Grocers Inc., Albuquerque, NM.	Colorado.
Western Grocers Inc., Denver, CO	Colorado.
West Coast Grocery Co., Salem, OR.	Washington.
West Coast Grocery Co., Spokane, WA.	Washington.
West Coast Grocery Co., Tacoma, WA.	Washington.
Twin Valu Stores, Inc., Eden Prairie, MN.	Minnesota.

Noreta R. McGee,

Secretary.

[FR Doc. 88-26007 Filed 11-9-88; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-30117]

Regular Common Carrier Conference; Petition for Declaratory Order; Range of Discounts and Customer Account Codes

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: By petition filed July 13, 1988, the Regular Common Carrier Conference (RCCC) seeks a declaratory order to the effect that: (1) Discount tariff provisions of motor common carriers of property (other than household goods) containing ranges of discounts which can apply to a given shipment are contrary to 49 U.S.C. 10761 and 10762; and (2) such tariff provisions naming rates that apply only to customers identified only by account codes are contrary to 49 U.S.C. 10701(a), 10761, and 10762. RCCC asks the Commission to strike all such tariff provisions. The Commission seeks comments from interested parties. All motor common carriers of other than household goods are hereby placed on notice that, should we grant the petition, they will be directed to cancel certain tariff provisions. Accordingly, they are all made respondents in this proceeding.

DATES: Persons interested in participating in this proceeding shall advise the Commission in writing by December 12, 1988. A service list will then be prepared. Comments shall be filed with us and a copy served on each party on the service list within 30 days

Intention to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

Super Valu Stores, Inc., P.O. Box 990, Minneapolis, Minnesota 55440.

Subsidiaries	State of incorporation
J.M. Jones Co., Champaign, IL	Delaware.
Lewis Grocer Co., Indianola, MS	Mississippi.
Lewis Grocer Co., Hammond, LA	Mississippi.
Preferred Products, Inc., Chaska, MN.	Minnesota.
Shopko Stores, Inc., Green Bay, WI.	Minnesota

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of the service date of the list. Reply comments will be due within 50 days of the service date of the list.

ADDRESS: The original and, if possible, 10 copies of comments referring to No. MC–C–30117 should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Jane Udovic (202) 275–7982

or

Richard Felder (202) 275–7691

[TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: RCCC also asks the Commission to reverse the Special Permission Board decision in Special Tariff Authority No. 86–639, *Outstanding Relief for "Shipper Account Codes"—Individual Motor Common Carriers and Freight Forwarders* (not printed), decided March 28, 1986, which grants blanket special permission authorizing motor common carriers and freight forwarders to use shipper account codes rather than shipper names in tariffs filed with the Commission.

In addition to its statutory arguments, RCCC contends that these tariff provisions are similar to other tariff provisions the Commission and a Federal court have found violate the statute. RCCC also notes that in a similar proceeding, No. MC–C–30029, *Andrews Van Lines, Inc., et al.—Petition for Declaratory Order* (not printed), served July 20, 1987, 52 FR 27471, July 21, 1987, the Commission instituted a proceeding to consider the lawfulness of tariff provisions of household goods carriers containing ranges of discounts.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Authority: 5 U.S.C. 554(e), and 49 U.S.C. 10701(a), 10761, and 10762.

Decided: October 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25948 Filed 11–9–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31350]

Midwest Coal Handling Co., Inc.; Trackage Rights and Operation Exemption; Line of CSX Transportation, Inc. in Muhlenberg County, KY

Midwest Coal Handling Company, Inc. (Midwest), a noncarrier, has filed a notice of exemption to acquire by trackage rights and to operate approximately 12.24 miles of line owned by CSX Transportation, Inc., in Muhlenberg County, KY. The line extends from milepost 180 at Central City to milepost 172 south of Drakesboro and from station 0+00 at Drakesboro to station 244+39 at the facilities of the Tennessee Valley Authority near Paradise. The transaction was expected to be consummated on or after October 28, 1988.

Any comments must be filed with the Commission and served on William C. Evans, Verner, Liipfert, Bernhard, McPherson and Hand, Suite 700, 901 15th Street, NW., Washington, DC 20005–2301.

Midwest has certified that no properties qualifying for inclusion in the National Register of Historic Places will be affected by the transaction.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 3, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25855 Filed 11–9–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub-No. 19X)]

Norfolk and Western Railway Co., et al.; Abandonment Exemption Between Whitehouse and Liberty Center, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 10.7-mile line of railroad between milepost T–17.3 at Whitehouse, OH, and milepost T–28.0 at Liberty Center, OH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line or may be rerouted; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective December 10, 1988 (unless stayed pending reconsideration). Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[1] must be filed by November 21, 1988. Petitions to stay regarding matters that do not involve environmental issues [2] and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 30, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA by November 15, 1988. Interested persons may obtain a copy of the EA fom SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988).

Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 3, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25854 Filed 11–9–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Cleveland Wrecking Co. and Atlantic Richfield Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 3, 1988 a proposed Superseding Consent Decree in *United States v. Cleveland Wrecking Company,* (S.D. NY) Civil Action No. 83 Civ. 7193 (KTD) and that on November 3, 1988 a proposed Consent Judgment in *United States v. Cleveland Wrecking Company and Atlantic Richfield Company,* (D. Montana) Civil Action No. CV–88–125–BU–PGH was located with the United States District Court for the Southern District of New York and the United States District Court for Montana, Butte Division, respectively. The proposed Superseding Consent Decree and Consent Judgment concern violations of the Asbestos National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR 61.140, *et seq.,* and the Clean Air Act, 42 U.S.C. 7401, *et seq.* The proposed Superseding Consent Decree requires the defendant Cleveland Wrecking Consent Decree requires defendant Cleveland Wrecking Company, among other things, to comply with the requirements of NESHAP for asbestos in 40 CFR 61.140, *et seq.,* to pay a civil penalty of $15,000, to initiate an asbestos control program, and to initiate an EPA-approved asbestos training program. Pursuant to the Consent Judgment defendants Cleveland Wrecking Company and Atlantic Richfield Company must pay a civil penalty of $140,000.

The Department of Justice will receive comments relating to the proposed Superseding Consent Decree and Consent Judgment for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Cleveland Wrecking Company and Atlantic Richfield Company, D.J.* No. 90–5–2–1–849. The comments should specify whether they refer to the Superseding Consent Decree or the Consent Judgment, or both.

The proposed Superseding Consent Decree may be examined at the office of the United States Attorney for the Southern District of New York, One St. Andrew's Plaza, New York, New York 10007 and at the United States Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. The proposed Consent Judgment maybe examined at the office of the United States Attorney for the District of Montana, Federal Building, Room 167, 400 N. Main Street, Butte, Montana 59701 and at the United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 700, Denver Colorado 80202–2413.

The Decree and Judgment also may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–26090 Filed 11–9–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application for Registration for Hoffmann-La Roche Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 27, 1988, Hoffmann-La Roche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I.
Alphaprodine (9010)	II.
Levorphanol (9220)	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than December 12, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: November 3, 1988.

[FR Doc. 88–26077 Filed 11–9–88; 8:45 am]

BILLING CODE 4410–09–M

Hueytown Discount Drugs; Revocation of Registration

On September 2, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Hueytown Discount Drugs, 1355 Hueytown Road, Hueytown, Alabama 35023, proposing to revoke the pharmacy's DEA Certificate of Registration BH0720652, and to deny any pending applications for renewal of the registration. The statutory basis for this action was that the pharmacy's continued registration was inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that the pharmacy's continued registration posed an imminent threat to the public health and safety, the Administrator ordered the immediate suspension of the pharmacy's DEA Certificate of Registration BH0720652 during the pendency of this proceeding. 21 U.S.C. 824(d).

The Order to Show Cause and Immediate Suspension of Registration was personally served on Frederick A. Gach, R.Ph., the registered pharmacist and owner of Hueytown Discount Drugs, on September 8, 1988. More than thirty days have passed since the Order to Show Cause was served, and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), the Administrator concludes that Hueytown Discount Drugs has waived its opportunity for a hearing. Accordingly, the Administrator now enters this final order in the matter without a hearing

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and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that prior to June 1988, the Jefferson County Sheriff's Office, Bessemer, Alabama, received reliable information that Frederick Gach was unlawfully dispensing controlled substances from Hueytown Discount Drugs. Their investigation revealed that from June 3 to 14, 1988, Mr. Gach unlawfully dispensed large quantities of controlled substances to individuals for other than legitimate medical purposes and without receiving valid written prescriptions for the drugs dispensed. The drugs included Vicodin, Fastin, Dilaudid, amphetamine and diazepam.

On June 3, 1988, a cooperating individual purchased 152 dosage units of Fastin capsules (Schedule IV) and legend drugs from Mr. Gach at Hueytown Discount Drugs for the sum of $100.00. On June 13, 1988, at approximately 12:00 p.m., a cooperating individual purchased 400 dosage units of diazepam 10 mg. tablets (Schedule IV) and legend drugs from Mr. Gach for the sum of $100.00. Approximately one hour later, a cooperating individual was able to purchase 85 dosage units of Vicodin tablets (Schedule III), 194 dosage units of diazepam 10 mg. tablets (Schedule IV) and three amphetamine capusles from Mr. Gach for the sum of $150.00. All transactions were monitored by the Jefferson County Sheriff's Office. In each instance, Mr. Gach freely dispensed the controlled substances without receiving prescriptions.

On July 14, 1988, a cooperating individual, under the direction of the Hueytown Police Department, purchased five Dilaudid tablets (Schedule II) and 100 dosage units of diazepam 10 mg. tablets (Schedule IV) from Mr. Gach at Hueytown Discount Drugs for the sum of $320.00. Once the transaction was completed, Mr. Gach was arrested on charges of unlawful distribution of controlled substances, in violation of Alabama Statutes 13A–12–211.

On June 16, 1988, Inspectors from the Alabama State Board of Pharmacy conducted a controlled substance accountability audit at the pharmacy. The audit revealed excessive, unexplained shortages of Valium 10 mg. and generic diazepam 10 mg. tablets and an overage of Dilaudid 4 mg. tablets. The audit also revealed discrepancies between the records maintained in the pharmacy's controlled substance prescription files and the pharmacy's computerized prescription records.

The Administrator finds that despite his arrest for unlawful distribution of controlled substances, Mr. Gach has continued his unlawful practices. On July 18, 1988, a cooperating individual under the supervision of the Jefferson County Sheriff's Office purchased legend drugs from Gach for the sum of $10.00. Additionally, on July 28, 1988, a cooperating individual purchased a 16 oz. bottle of Hycodan liquid (Schedule III) and 10 dosage units of Didrex tablets (Schedule III) from Mr. Gach for the sum of $60.00. Finally, on August 1, 1988, a cooperating individual purchased 40 dosage units of Didrex tablets (Schedule III) and legend drugs from Mr. Gach for the sum of $40.00. At no time did Mr. Gach receive any prescriptions for the drugs he dispensed. All of these transactions were corroborated by an agent of the Jefferson County Sheriff's Office.

The Administrator finds that there is overwhelming evidence to conclude that the continued registration of Hueytown Discount Drugs is inconsistent with the public interest. 21 U.S.C. 824(a)(4). In July 1988, Frederick Gach was arrested for unlawful distribution of controlled substances. As recently as August 18, 1988, he continued to sell dangerous controlled substances for other than legitimate medical purposes. The Administrator finds that Mr. Gach intentionally diverted large quantities of controlled substances from legitimate channels. No evidence of explanation or mitigating circumstances has been offered on behalf of the registrant. The Administrator cannot conceive of any explanation which would excuse Mr. Gach's criminal and unprofessional conduct. To protect the public interest and to prevent further diversion of controlled substances, the pharmacy's DEA registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration BH0720652, previously issued to Hueytown Discount Drugs, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

At the time the Order to Show Cause and Immediate Suspension of Registration was served on Hueytown Discount Drugs, all controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until the time for taking appeals has elapsed. Accordingly, these controlled substances shall remain under seal until December 12, 1988, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

This order is effective November 10, 1988.

John C. Lawn,
Administrator.

Dated: November 4, 1988.

[FR Doc. 88–26074 Filed 11–9–88; 8:45 am]
BILLING CODE 4410–09–M

Robert W. Sonntag, M.D.; Revocation of Registration

On August 15, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert W. Sonntag, M.D., of 7080 Hollywood Boulevard, Hollywood, California 90028, proposing to revoke his DEA Certificate of Registration AS1484952, and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the issuance of the Order to Show Cause was Dr. Sonntag's lack of authorization to handle controlled substances in the State of California. The Order to Show Cause further alleged that Dr. Sonntag's registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4), thereby providing a second statutory basis for the revocation of his registration.

Additionally, citing his preliminary finding that his continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of Dr. Sonntag's registration during the pendency of this proceeding.

The Order to Show Cause/Immediate Suspension of Registration was personally served on Dr. Sonntag on September 2, 1988. More than thirty days have passed since the service of the Order to Show Cause, and DEA has received no response thereto. Therefore, the Administrator concludes that Dr. Sonntag has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on June 8, 1988, the California Board of Medical Quality Assurance (BMQA) revoked Dr. Sonntag's license to practice medicine in California. Dr. Sonntag's medical license was revoked following his arrest by the Los Angeles Police Department on

August 24, 1985, for unlawful possession of morphine, a Schedule II controlled substance. On that day, police officers found Dr. Sonntag in a nearly unconscious state sitting in the driver's seat of a parked car. Dr. Sonntag was holding a hypodermic syringe, with its needle intact, which he then tried to hide as the officers approached the car. An elastic arm band lying on Dr. Sonntag's lap and numerous prescription vials were observed in the car. Dr. Sonntag's behavior led the officers to believe that he was under the influence of an opiate. The officers also observed recent needle marks and numerous scars on Dr. Sonntag's left arm. Dr. Sonntag was arrested and charged with unlawful possession of a controlled substance and being under the influence of opiates. Two examining doctors at the Central Jail facility concluded that Dr. Sonntag was under the influence of opiates.

Based on this arrest, the California BMQA revoked Dr. Sonntag's license to practice medicine in that state. Therefore, as of June 8, 1988, Dr. Sonntag was no longer authorized to handle any controlled substances in the State of California. The Administrator and his predecessors have consistently held that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. 21 U.S.C. 823(f) and 824(a)(3); See *Edward V. McIver, M.D.*, 53 FR 16477 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86–54, 51 FR 41168 (1986); and cases cited therein.

The Administrator also finds that Dr. Sonntag's continued registration is inconsistent with the public interest. The BMQA found that during the period from 1983 to 1984, Dr. Sonntag unlawfully administered or furnished morphine sulfate to fifteen patients without a medical indication therefor. The BMQA concluded that Dr. Sonntag's controlled substance handling practices were incompetent, excessive and grossly negligent. In many cases his excessive prescribing of morphine sulfate was carried out over a prolonged period, presenting a high risk of addiction to the user of the drug. A medical expert retained by BMQA reviewed 120 patient charts, together with Dr. Sonntag's narcotic dispensing chart, and concluded that in not one of the cases where Dr. Sonntag dispensed or prescribed morphine was there a medical justification for doing so. The expert found that the majority of Dr. Sonntag's patients appeared to be homosexuals who were afflicted with recurrent anal warts. Although Dr. Sonntag's treatment of the warts may have been painful, the expert found that is was "neither customary or advisable" to treat these patients with morphine sulfate. He found that the patients invovled were prone to addiction because of their relative youth. Dr. Sonntag's clearly excessive prescribing practices constituted an imminent danger to his patients.

In addition to prescribing dangerous controlled substances to persons for other than legitimate medical purposes, the Administrator finds that after his state medical license was revoked, Dr. Sonntag continued to order and receive large quantities of controlled substances. During June and July of 1988, Dr. Sonntag ordered a total of 4,000 dosage units of morphine sulfate .5 g. tablets. Dr. Sonntag clearly had no authority to handle controlled substances at that time. Such behavior evidences a total disregard for controlled substance laws and regulations.

Finally, the investigative file reveals that Dr. Sonntag has a history of personnally abusing dangerous controlled substances, particularly morphine. As discussed earlier, the revocation of Dr. Sonntag's state medical license was based, in part, on his personal abuse of morphine. Dr. Sonntag appears to have a personal drug problem. He cannot be entrusted with the responsibilities of a DEA registration.

The Administrator notes that on September 2, 1988, when DEA served the immediate suspension order on Dr. Sonntag at his Corona Del Mar residence, he was simultaneously served with state criminal search and arrest warrants. Felony charges under California statutes are currently pending against Dr. Sonntag for practicing medicine without a license and illegally possessing controlled substances.

Based on Dr. Sonntag's lack of state authorization to handle controlled substances, the Administrator concludes that his DEA registration must be revoked. In addition, because of overwhelming evidence that his state medical license was revoked based upon unlawful controlled substance handling practices, that he continued to handle controlled substances long after his medical license was revoked, and that he has a serious abuse problem, the Administrator concludes that Dr. Sonntag's continued registration is contrary to the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that DEA Certificate of Registration AS1484952, previously issued to Robert W. Sonntag, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective November 10, 1988.

John C. Lawn,
Administrator.

Dated: November 4, 1988.

[FR Doc. 88–26076 Filed 11–9–88; 8:45 am]
BILLING CODE 4410–09–M

William T. Williamson, M.D.; Revocation of Registration

On September 2, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William T. Williamson, M.D., of 720 Brookside Avenue, Redlands, California 92373, proposing to revoke his DEA Certificate of Registration AW7380405, and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the issuance of the Order to Show Cause was Dr. Williamson's lack of authorization to handle controlled substances in the State of California. In addition, the Order to Show Cause alleged that Dr. Williamson's continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

A registered mail receipt indicates that the Order to Show Cause was received by Dr. Williamson on September 17, 1988. More than thirty days have passed since the Order to Show Cause was received by Dr. Williamson and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Williamson has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on January 1, 1988, the State of California, Board of Medical Quality Assurance, (BMQA), revoked Dr. Williamson's medical license in that state, effective January 7, 1988. Consequently, Dr. Williamson is no longer authorized to handle controlled substances in California.

The Drug Enforcement Administration does not have the authority to maintain

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the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 823(f) and 824(a)(3). The Administrator has consistently so held. See *Fazal Ahmad, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1984); and *Agostino Carlucci, M.D.*, Docket No. 82–20, 40 FR 33184 (1984). In the instant case, it is clear that Dr. Williamson is not currently authorized to handle controlled substances in the State of California. Without the appropriate state authority to handle controlled substances, Dr. Williamson cannot hold a DEA Certificate of Registration.

The Administrator also finds that, on at least eleven occasions in 1986 and 1987, Dr. Williamson issued prescriptions for excessive quantities of controlled substances to several individuals for other than legitimate medical purposes and without conducting proper medical examinations. Dr. Williamson exhibited a disregard for the dangerous nature of the controlled substances he prescribed, to wit: Doriden (Schedule II), Butisol (Schedule III), and Fastin (Schedule IV). Dr. Williamson attempted to conceal his unlawful activities by writing various medical symptoms in the patients' medical charts even though the individuals never suffered from, nor complained of, any symptoms.

Additionally, the Administrator finds that Dr. Williamson has a history of personally using and abusing controlled substances. From March 1984 through May 1987, Dr. Williamson issued prescriptions to an individual for Talwin, a Schedule IV controlled subtance. That individual would have the prescriptions filled at various pharmacies in different communities. The Talwin tablets were then used by the individual and Dr. and Mrs. Williamson for other than legitimate medical purpose. During this period, Dr. Williamson occasionally injected himself with Talwin as well. Such behavior demonstrates a lack of understanding of the responsibilities that come with a DEA Certificate of Registration.

Based upon Dr. Williamson's lack of state authorization to handle controlled substances, the Administrator concludes that his registration must be revoked. Additionally, evidence of Dr. Williamson's unlawful prescribing practices and personal abuse of controlled substances support the conclusion that his continued registration is contrary to the public interest. Therefore, the Administrator concludes that Dr. Williamson's registration must be revoked and that any pending applications for renewal thereof must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AW7380405, previously issued to William T. Williamson, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective November 10, 1988.

John C. Lawn,
Administrator.

Dated: November 4, 1988.

[FR Doc. 88–26075 Filed 11–9–88; 8:45 am]
BILLING CODE 4410–09–M

Federal Bureau of Investigation

National Crime Information Center Advisory Policy Board Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on December 7–8, 1988, from 9 a.m. until 5 p.m. at the Sheraton at Fisherman's Wharf, 2500 Mason Street at beach, San Francisco, California 94133.

The major topics to be discussed will include the NCIC 2000 Risk Analysis, the status of deoxyribonucleic acid technology, status of the Violent Crime Apprehension Program, a proposal to amend the NCIC Bylaws to permit a representative of a regional computer system to be elected as a "local" voting member of the NCIC Regional Working Groups, and the NCIC Vehicle and Wanted Person Files Survey results.

The meeting will be open to the public with approximately 25 seats available on a first-come, first-served basis. Any member of the Public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Committe Management Liaison Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with the capsulized version of the statement and an outline of thematerial to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. William A. Bayse, Committee Management Liaison Officer, Technical Services Division, Federal Bureau of Investigatio, Washington, DC 20535, telephine number 202–324–5350.

Dated: November 1, 1988

William S. Sessions,
Director.

[FR Doc. 88–26008 Filed 11–9–88; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Employment of Homeworkers in Certain Industries; Records To Be Kept by Employers

AGENCY: Office of the Secretary, Labor.

ACTION: Submission of recordkeeping/reporting requirements for clearance under the Paperwork Reduction Act.

SUMMARY: The Wage and Hour Division, ESA, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35; 5 CFR Part 1320 (53 FR 16618 to 16632, May 10, 1988)), is submitting the recordkeeping requirements of the final rule amending 29 CFR Parts 530 and 516, published in the **Federal Register** on November 10, 1988, to the Office of Management and Budget for that Agency's approval.

DATE: The Wage and Hour Division has requested an expedited review of this submission under the Paperwork Reduction Act, to be completed within 30 days of the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the recordkeeping/reporting requirements for these rules should be directed to Theresa O'Malley, Acting Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210 (telephone (202) 523–6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 3208, Washington, DC (telephone (202) 395–6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Ms. O'Malley of this intent at the earliest possible date.

SUPPLEMENTARY INFORMATION: On November 10, 1988, the Wage and Hour

Division published a final rule on employment of homeworkers in certain industries, 29 CFR Part 530, and an accompanying final rule amending the recordkeeping provisions in 29 CFR Part 516. The following submission for approval of the recordkeeping/reporting requirements of those rules has been submitted to OMB with a request for expedited approval under the Paperwork Reduction Act.

Signed at Washington, DC, this 7th day of November 1988.

Theresa O'Malley,
Acting Departmental Clearance Officer.

BILLING CODE 4510–27–M

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Standard Form 83 (Rev. September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request
U. S. Department of Labor
Employment Standards Administration
Wage and Hour Division

2. Agency code
1 2 1 5

3. Name of person who can best answer questions regarding this request
William G. Blackburn

Telephone number
(202) 523-8412

4. Title of information collection or rulemaking
29 CFR Parts 516 and 530 - Employment of Homeworkers in Certain Industries; Records to be Kept by Employers

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*
29 USC 211(d) , or

6. Affected public *(check all that apply)*
1 [X] Individuals or households
2 [ ] State or local governments
3 [ ] Farms
4 [X] Businesses or other for-profit
5 [ ] Federal agencies or employees
6 [X] Non-profit institutions
7 [X] Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)
___ ___ ___ ___ ___ ___ ___ ___ ___ ___, or. None assigned [ ]

8. Type of submission *(check one in each category)*

Classification
1 [ ] Major
2 [ ] Nonmajor

Stage of development
1 [ ] Proposed or draft
2 [ ] Final or interim final, with prior proposal
3 [ ] Final or interim final, without prior proposal

Type of review requested
1 [ ] Standard
2 [ ] Pending
3 [ ] Emergency
4 [ ] Statutory or judicial deadline

9. CFR section affected
_____ CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? [ ] Yes [ ] No

11. If a major rule, is there a regulatory impact analysis attached? 1 [ ] Yes 2 [ ] No
If "No," did OMB waive the analysis? 3 [ ] Yes 4 [ ] No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

Previous editions obsolete
NSN 7540-00-634-4034

83-108

Standard Form 83 (Rev. 9-83)
Prescribed by OMB
5 CFR 1320 and E.O. 12291

PART III.—Complete This Part Only if the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less 'Compensation; manufacturing industry; records'
These reporting and recordkeeping requirements for employers and employees performing homework in the restricted industries under the certification program are necessary to insure employees receive the minimum wage and overtime pay mandated by the Fair Labor Standards Act.

14. Type of information collection *(check only one)*

Information collections not contained in rules
1 [X] Regular submission
2 [ ] Emergency submission *(certification attached)*

Information collections contained in rules
3 [ ] Existing regulation *(no change proposed)*
4 [ ] Notice of proposed rulemaking (NPRM)
5 [X] Final, NPRM was previously published
6 Final or interim final without prior NPRM
A [ ] Regular submission
B [ ] Emergency submission *(certification attached)*

7 Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*
1 [ ] New collection
2 [X] Revision of a currently approved collection
3 [ ] Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 [ ] Reinstatement of a previously approved collection for which approval has expired
5 [ ] Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*
WH-75, WH-46

17. Annual reporting or disclosure burden

1 Number of respondents	See item 13 of justification
2 Number of responses per respondent	
3 Total annual responses *(line 1 times line 2)*	
4 Hours per response	
5 Total hours *(line 3 times line 4)*	

18. Annual recordkeeping burden

1 Number of recordkeepers	See item 13 of justification
2 Annual hours per recordkeeper	
3 Total recordkeeping hours *(line 1 times line 2)*	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	38,883
2 In current OMB inventory	22,500
3 Difference *(line 1 less line 2)*	16,383
Explanation of difference	
4 Program change	+16,001
5 Adjustment	+ 382

20. Current *(most recent)* OMB control number or comment number
1215-0013

21. Requested expiration date
3/31/91

22. Purpose of information collection *(check as many as apply)*
1 [ ] Application for benefits
2 [ ] Program evaluation
3 [ ] General purpose statistics
4 [X] Regulatory or compliance
5 [ ] Program planning or management
6 [ ] Research
7 [ ] Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*
[X] Recordkeeping
Reporting
2 [X] On occasion
3 [ ] Weekly
4 [ ] Monthly
5 [ ] Quarterly
6 [ ] Semi-annually
7 [ ] Annually
8 [X] Biennially
9 [ ] Other *(describe)*: _____

24. Respondents' obligation to comply *(check the strongest obligation that applies)*
1 [ ] Voluntary
2 [ ] Required to obtain or retain a benefit
3 [X] Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? [ ] Yes [X] No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? [ ] Yes [X] No

27. Regulatory authority for the information collection
29 CFR 530.102, 103, 202(a) & 29 CFR 516.31)c) ; or, Other *(specify)*: _____

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official — Date 11/1/-8

Signature of agency head, the senior official or an authorized representative — Date 11/8

U.S. GOVERNMENT PRINTING OFFICE : 1984 O - 433-469

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Supporting Statement

1. Section 11(d) of the Fair Labor Standards Act (FLSA) authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary to prevent evasion of the minimum wage requirements of the Act. In the 1940's, the Department banned homework in seven industries (knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries). Exceptions to the ban have been permitted for individuals in certain hardship cases. Homework has always been permitted under the FLSA in all other industries provided the employer maintains homeworker handbooks for such employees.

In 1980, the Department initiated regulatory efforts to reduce the restrictions on homework. These efforts resulted in extensive rulemaking and litigation. On November 5, 1984, the Department issued a final rule lifting the total ban on homework in the knitted outerwear industry. This rule was in response to the decision in *ILGWU* v. *Donovan*, 722 F.2d 795 (DC Cir. 1983) which vacated an earlier rescission of the ban. Under this rule, employers of homeworkers in the knitted outerwear industry must first obtain a certificate from the Department authorizing such employment (OMB No. 1215–0159).

In August 1986, the Department published a further proposal which would have expanded the certification system in the knitted outerwear industry to the remaining restricted industries.

In March 1988, the Department published a new proposal which modified the certification system proposed in August 1986 but retained the ban on homework in women's apparel (pending further review) and those jewelry manufacturing operations in the home that may be hazardous.

This final rule adopts the information collections in the March 1988 proposal:

A. Applications to Employ Homeworkers

In order to be permitted to employ homeworkers in the industries under the certification program, an employer must first apply to the Wage and Hour Division of the Department of Labor for a certificate. The employer's request must contain the information required by § 530.102 of Regulations, 29 CFR Part 530, including the names and addresses and languages spoken (other than English) by the homeworkers, and also the written assurances set forth in § 530.103 of the rule.

B. Piece Rate Measurements

Section 530.202 requires that employers in the restricted industries under the certification program who pay homeworkers based on piece rates have documentation of the work measurements used to establish such piece rates and the circumstances under which such measurements were conducted and that such documentation be retained for 3 years and be made available on request to the Wage and Hour Division.

C. Homeworker Handbooks

Section 516.31(c) of Regulations, 29 CFR Part 516, sets forth the requirement that employers obtain from the Wage and Hour Division a separate homeworker handbook for each homeworker employed. The employer must insure that each homeworker makes the proper entries in the handbook concerning their hours of work. These requirements apply to all employers of homeworkers subject to FLSA. Employers are required to retain the completed handbooks for two years in order to provide essential information for FLSA enforcement by the Wage and Hour Division.

2. A. Applications to Employ Homeworkers

The application process provides Wage-Hour with a means of identifying employers of homeworkers, and the individual homeworkers, in the restricted industries who may not be identified otherwise. Further, it provides an early opportunity for Wage-Hour to contact such employers and assist them in complying with the requirements of the certification program.

B. Piece Rate Measurements

The requirement that employers record and retain documentation of the method used to establish piece rates is necessary so that Wage and Hour can verify that rates were properly determined and will result in wage payments to homeworkers at a rate at least equal to the FLSA minimum wage for each hour worked. Failure to require this documentation would impair Wage-Hour's ability to assure FLSA compliance.

C. Homeworker Handbooks

To ensure the employer fulfills its obligation to obtain and record accurate hours worked information whenever homework is distributed to and collected from employees, homeworkers should record the information or keep hours worked information as the work is performed.

Individual homeworkers retain their own handbooks until completely filled-in, and then return them to the employer. The information is used by the Wage and Hour Division in conducting homeworker employment investigations to insure FLSA compliance. Failure to collect the information would make it extremely difficult to ensure that homeworkers are being paid properly and would severely impede the Division's investigation activities.

3. There are no sources of improved technology which can be used to reduce these recordkeeping and reporting burdens.

4. There is no duplication of existing information collections.

5. No similar information is available from any other source.

6. The information required to be reported and collected is the minimum necessary to assure FLSA compliance with respect to homework. Homeworker handbooks (WH–75) are provided free of charge to employers. The recently revised WH–75 contains clearer instructions and modified time sheets designed to simplify completion of the forms and accurate recording of daily hours worked. Space for recording of piece rates, wages paid and dates of payment has been removed.

7. It would not be possible to assure compliance with the FLSA in homework employment with less frequent information collections.

8. This information collection is conducted in a manner which is consistent with the guidelines in 5 CFR 1320.6.

9. As noted in 1. above, the Department, in March 1988, published the proposed certification requirements for notice and comment. Comments received regarding the information collections are addressed in the preamble to the final rule.

10. There are no assurances of confidentiality.

11. There are no questions of a sensitive nature.

12. A. Applications to Employ Homeworkers

The processing of the application involves the services of a GS–11, step 4 analyst (annual salary—$30,488) and requires an estimated average of thirty minutes to analyze the form for approval or denial. There are no reliable data concerning the number of homeworkers or the number of employers operating in the restricted industries. On the basis of available estimates, adjusted for the estimated number of homeworkers in States where homework is restricted, it is estimated that approximately 1,000 employers of homeworkers may be subject to the certification program. Since applications are approved for a two-year period, it is estimated that 500 applications will be received annually. 500 app. x 30 min. x $30,488/2087 = $3,652.13

B. Piece Rate Measurements

There are no Federal costs associated with this requirement.

C. Homeworker Handbooks

Based on enforcement experience, there are an average of 11 homeworkers per employer. Taking into account the rough estimates of the number of employers who may be subject to the certification program, together with the number of employers currently requesting handbooks in the unrestricted industries, it is estimated that 17,500 homeworkers will complete handbooks. Previous experience indicates that an average of four handbooks will be used annually by each homeworker. Accordingly, 70,000 handbooks will be printed and mailed annually (17,500 homeworkers x 4). Therefore, the annualized Federal costs are as follows:

Labor	$3,652
Printing 70,000 handbooks	3,269
Postage (1,600 mailings (a) $.75 each)	1,200
Total annual Federal Cost for handbooks	4,467
Total Federal Costs	12,590

13. Reporting Requirements

A. Applications to Employ Homeworkers

It is estimated that each employer of homeworkers in the restricted industries will spend approximately one-half hour preparing an application to employ homeworkers. This result in an annual burden of 250 hours (500 applications x ½ hour).

B. Homeworker Handbooks

As indicated above, it is estimated that 17,500 homeworkers will record the information in the handbooks which they then will turn over to their employer (see item 12). An average burden of 30 minutes per handbook is estimated, with each homeworker completing four annually. Total annual burden is 35,000 hours (70,000 handbooks x ½ hour).

Recordkeeping Requirements

A. Piece Rate Measurement

It is estimated that each employer in the restricted industries subject to the certification program will complete documentation on three piece rate work measurements annually and that each such documentation will take approximately one hour. Total annual burden will be 3,000 hours (1,000 employers (see item 12) x 3 hours). Further the filing of the documentation of each piece rate work measurement will take approximately one minute, for an additional total annual burden of 50 hours (3,000 piece rate work measurements x one minute).

B. Homeworker Handbooks

It is estimated that it takes each employer an average of ½ minute to file each completed homeworker handbook for an annual burden of 583 hours (70,000 handbooks x ½ minute).

Total Annual Reporting and Recordkeeping Burden—38,883 Hours.

14. The increases in the burden result from the final rule lifting the prior restrictions on employment of homeworkers except in women's apparel and hazardous jewelry manufacturing. These rules will increase the use of homeworker handbooks and applications to employ homeworkers (and require the reporting of more information than the prior application) and impose new burden for piece rate work measurements.

In the last clearance, reporting burden per handbook for 45,000 handbooks was estimated at 15 minutes for recordkeeping and 15 minutes for reporting. We have reexamined this burden and concluded that the 15 minutes formerly counted as recordkeeping is, in fact, reporting burden. Therefore, a more accurate estimate of 30 minutes per handbook for reporting, and ½ minute for recordkeeping in being submitted, for this clearance request. Although the revision of the handbook is intended to simplify completion, there is no measurable savings in burden. Because of the new regulation explained above, the number of handbooks will increase to 70,000. Thus:

45,000 handbooks x ½ minute for recordkeeping correction = +375 hours adjustment;

25,000 additional handbooks (70,000 − 45,000) x ½ min. recordkeeping = +208 hours program change; and

25,000 additional handbooks x 30 minutes reporting = +12,500 hours program change.

The certifications which were formerly cleared under 1215–0159 are now being merged into this clearance. The certification had a total of 7 hours in the last clearance. As a result of the new regulations, the total number of hours for certification will increase to 250. This causes an adjustment of +7 hours and a program change of +243 hours.

The new burden imposed for piece rate work measurement by the new regulations causes a program change of +3,050 hours.

15. This information is not published.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the recordkeeping provisions that are included in these rules, including revisions to the homeworker handbooks, have been submitted to the Office of Management and Budget for approval. The Wage and Hour Division has requested an expedited review of its submission under the Act, to be completed within 30 days of the date of publication in the Federal Register. A copy of the submission is being separately published in the Federal Register for the convenience of the public.

Public reporting burden for this collection of information, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated to average, per response: (1) Homework application (§ 530.102 and .103)—½ hour; (2) piecework measurement documentation (§ 530.202)—1 hour per measurement plus 1 minute for filing; (3) homeworker handbook (§ 516.31(c))—½ hour completion time by the homeworker plus ½ minute for filing by the employer. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Washington, DC 20503.

FLSA section 11(d)

(d) The Secretary is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the Administrator relating to industrial homework are hereby continued in full force and effect.

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29 CFR Part 530

Section 530.102 Requests for employer certificates.

The initial request for certification or renewal application shall be signed by the employer and shall contain the name of the firm, its mailing address, the physical location of the firm's principal place of business and a description of the business operations and items produced. In addition, the initial or renewal application shall contain the names, addresses, and languages (if other than English) spoken by the homeworkers that are currently employed (if any) or expected to be employed. The employer shall also provide the Administrator, within thirty (30) days, a notice of each change of address of the principal place of business. The notification shall be in writing and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

Section 530.103 Employer assurances.

In order to be granted a certificate authorizing the employment of industrial homeworkers, the employer must provide written assurances concerning the employment of homeworkers subject to section 11(d) of the Fair Labor Standards Act to the effect that:

(1) All homeworkers shall be paid in accordance with the monetary provisions of the Act.

(2) All homeworkers shall be employed in compliance with the child labor provisions contained in section 12 of the Act and regulations and orders issued pursuant to section 12. All homeworkers will be instructed not to permit minors to work in violation of such provisions.

(3) Records of hours worked and wages paid shall be maintained in accordance with section 11 of the Act and Part 516 of this chapter.

(4) All homeworkers shall complete homeworker handbooks in accordance with § 516.31 of Part 516.

(5) All homeworkers will be instructed to accurately record all hours worked, piece work information, and business-related expenses in the handbooks.

(6) All records shall be made avialable for inspection and transcription by the Administrator or a duly authorized and designated representative, or transcription by the employer upon written request.

(7) Piece rates paid to homeworkers shall be established using stop watch time studies or other work measurement methods.

(8) All homeworkers shall be encouraged to cooperate with the Department in any investigation that may be made.

(9) With respect to jewelry manufacturing, no operations other than the stringing of beads and other jewelry and the carding and packaging of jewelry will be performed by homeworkers.

29 CFR Part 530

Section 530.202 Piece rates—work measurement.

(a) No certificate will be issued pursuant to § 530.101 of subpart B to an employer who pays homeworkers based on piece rates unless the employer establishes the piece rates for the different types of items produced using stop watch time studies or other work measurement methods. Documentation of the work measurements used to establish the piece rates, and the circumstances under which such measurements were conducted shall be retained for three years and made available on request to the Wage and Hour Division.

29 CFR 516.31(c)

(c) *Homeworker handbook.* In addition to the information and data required in paragraph (b) of this section, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by such employer to each worker) shall be kept for each homeworker. The employer is required to insure that the hours worked and other information required therein is entered by the homeworker when work is performed and/or business-related expenses are incurred. This handbook must remain in the possession of the homeworker except at the end of each pay period when it is to be submitted to the employer for transcription of the hours worked and other required information and for computation of wages to be paid. The handbooks shall include a provision for written verification by the employer attesting that the homeworker was instructed to accurately record all of the required information regarding such homeworker's employment, and that, to the best of his or her knowledge and belief, the information was recorded accurately. Once no space remains in the handbook for additional entries, or upon termination of the homeworker's employment, the handbook shall be returned to the employer. The employer shall then preserve this handbook for at least two years and make it available for inspection by the Wage and Hour Division on request.

BILLING CODE 4510-27-M

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division

APPLICATION FOR CERTIFICATE TO EMPLOY HOMEWORKERS

DRAFT

I _____ (name of employer) at _____ (address of establishment, including mailing address), _____ (county), _____ (state & zip code), hereby make application to employ homeworkers in the _____ (e.g., jewelry, gloves & mittens, etc.) industry for the manufacture of _____ (item(s) to be produced by homeworkers). Attached is a list of the names, addresses, and languages spoken (if other than English) of homeworkers that I intend to employ under this certificate.

I hereby assure that:

- All homeworkers will be paid in accordance with the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA).
- No minor under 16 will be employed to perform homework.
- Records will be maintained in accordance with section 11(c) of the FLSA and Regulations, 29 CFR Part 516.
- All homeworkers will complete a homeworker handbook in accordance with Regulations, Part 516.31 and will be instructed to accurately record all hours worked, piece work information and business-related expenses in the handbook.
- All records will be made available for inspection and transcription by the Administrator or a duly authorized and designated representative, or transcription by the employer upon written request.
- Piece rates paid to homeworkers will be calculated using stop watch time studies or other work measurement methods.
- All homeworkers will be encouraged to cooperate with the Department of Labor in any investigation that may be made by the Administrator or a duly authorized and designated representative.
- Where homeworkers will be employed in jewelry manufacturing, their work will be limited exclusively to the stringing of beads and other jewelry and the carding and packaging of jewelry.*

I understand that violations of the FLSA, of FLSA regulations, or of these assurances, may result in the assessment of civil money penalties or revocation of my certificate.

_____ Date

_____ Signature

_____ Title

_____ Firm

DRAFT

Form WH-46
Rev. Nov. 1988

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Notification of address change of the employer must be provided in writing within 30 days to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Approval of this application does not relieve an employer from compliance with standards applicable to homeworkers under State law or local ordinance.

* As set forth in Regulations, 29 CFR 530.101, the terms, "carding and packaging of jewelry" include the attaching of jewelry to cards, boxing and wrapping, and the use of common household glues available to the general public, but do not include potentially hazardous operations such as the use of industrial glues, epoxies, soldering irons, or heating elements.

FT

DRAFT

Public Burden Statement

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, U.S. Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

-3-

Name of Homeworker	Address (street, city, state)	Language Spoken (if other than English)

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Homeworker Handbook

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

DRAFT

This handbook is the property of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, and must be returned upon request. This is a Federal handbook only and does not authorize the distribution of homework by any employer or by any contractor in violation of any applicable State law or regulation.

1. A. Homeworker's name: (last name) (first name)

B. Address: (number, street, city, State, Zip code)

2. A. Firm's name:

B. Address: (number, street, city, State, ZIP code)

3. Homework distributed from: (number, street, city, State, Zip code)

4. Industry:	5. Day and time workweek begins	6. Required minimum wage

7. Date issued to homeworker (month, day, year):

8. Homeworker's certificate number (if applicable) (See Regulations 29 CFR 530.4)

DRAFT

Form WH-75 (Rev. July 1988)

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NOTICE TO EMPLOYER AND HOMEWORKER

1. Under the Fair Labor Standards Act, homeworkers are entitled to the same protections of the law as other employees. Any violations committed with respect to homeworkers are subject to the penalties set forth in the law and in Regulations, 29 CFR Parts 530 and 579.

2. Homeworkers must be paid at a rate of not less than the minimum wage provided in the Act for all hours worked unless a lower rate is permitted under a special certificate for an individual homeworker in accordance with Regulations, 29 CFR Part 525.

3. Homeworkers must be paid overtime pay at a rate of not less than one and one-half times their regular rates of pay for all hours of work after 40 in a workweek.

4. Deductions from wages for damaged goods, cost of tools or materials (yarn, thread, packing materials, etc.), cost of machines or other equipment, etc., are not permitted and workers may not themselves pay such costs without reimbursement where this reduces the wages received to less than the minimum wage or cuts into required overtime pay.

5. No one under 16 years of age is permitted to perform industrial homework as defined in Regulations, 29 CFR Part 530.

6. The work record entered in this handbook must be only for the employee named on the front page.

7. Records of hours worked and earnings of homeworkers must be kept by the employer in accordance with section 516.31 of Regulations, 29 CFR Part 516.

8. No homework may be performed on Government manufacturing or supply contracts subject to the Walsh-Healey Public Contracts Act.

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INSTRUCTIONS

(Enter in ink all information required)

Each page of this handbook is a time sheet to be used by the homeworker to accurately record all the hours worked in one workweek. A workweek is a fixed period of 7 consecutive calendar days - 168 hours. The employer designates the time of the day and day of the week on which the workweek begins.

In many instances, a homeworker does not work continuously, so space has been provided for several daily entries of starting and stopping times, if needed. It is important that the homeworker accurately record each time he or she starts and stops working (for example, "Start" - 8:15 a.m.; "Stop" - 10:45 a.m.). This time should be recorded immediately when he or she starts and stops working, rather than at the end of the day or workweek. However, short breaks or rest periods of less than 20 minutes need not be recorded.

Activities which must be considered hours worked (and paid for each pay period) include all time spent in:

(a) setting up and putting away machines and materials,
(b) adjusting, threading, cleaning, oiling, or repairing machines,
(c) actual production of the articles,
(d) inspection of the articles,
(e) repairing or re-work,
(f) sorting and packing or unpacking materials,
(g) training to produce new designs or new items,
(h) rest periods of short duration (up to 20 minutes),
(i) traveling to and from the distribution point to pick up and/or deliver the homeworker's own work or the work of other homeworkers (where the travel includes time spent in personal activities, such as shopping or going to the post office, this personal travel time need not be included in counting the hours worked),
(j) waiting at the distribution point to pick up work or deliver completed work and have it inspected,
(k) any other activity required to produce the article, or otherwise required by the employer to be performed.

In the space indicated, the homeworker is to record the type(s) of article(s) worked on each day, the number of pieces made, and any other activities (travel, packing, etc.). The homeworker also is to record all business-related expenses incurred during the workweek, such as cost of thread and tools, postage, etc., in the space provided at the bottom of the time sheet.

Except for the time necessary for the calculation of hours worked at the end of the pay period by the employer, the handbook shall remain in the possession of the homeworker until filled in (that is, no space is left for entries) or until the homeworker's employment is terminated, at which time the handbook shall be returned to the employer as required by the regulations. The employer then signs and dates the statement on the final page and keeps and preserves the handbook for at least 2 years.

For further information or additional handbooks, contact the nearest office of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

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Workweek Ending Date:

	Start	Stop	Hours	Article (hat, glove, etc.) Style or lot number and number of pieces of each Other activities (travel, packing, etc.)
Day 1				DRAFT
Day 2				
Day 3				
Day 4				
Day 5				
Day 6				
Day 7				
	DRAFT		Total Hours	Expenses (description/amount)

NOTE: This homeworker handbook consists of 20 pages, 15 of which are identical to this page. It is used by the homeworker primarily to record hours worked. In order to reduce the cost of printing, only one page has been reproduced.

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Workweek Ending Date:		Start	Stop	Hours	Article (hat, glove, etc.) Style or lot number and number of pieces of each Other activities (travel, packing, etc.)
Day 1					DRAFT
Day 2					
Day 3					
Day 4					
Day 5					
Day 6					
Day 7					
	DRAFT			Total Hours	Expenses (description/amount)

I attest that the homeworker to whom this handbook was issued was instructed to accurately record all hours worked, piece work information, and business-related expenses. I also attest that, to the best of my knowledge and belief, the information was recorded accurately.

Date _____ Signature of Employer _____

Public reporting burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, U.S. Department of Labor, Rm N1301, 200 Constitution Avenue NW, Washington, D.C. 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 88-26192 Filed 11-9-88; 8:45 am]
BILLING CODE 4510-27-C

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Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Appointment of Members

AGENCY: Occupational Safety and Health Administration (OSHA), USDOL.

ACTION: Notice of appointment of members.

Notice is hereby given that appointments have been made to fill fifteen (15) vacancies on the Advisory Committee on Construction Safety and Health. The vacancies were created by the expiration of the terms of the fifteen (15) members on June 30, 1988. The new membership of the Committee and the categories represented are as follows:

Employee

Mr. Joe A. Adam, Director, Department of Safety and Health, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry (reappointed).
Mr. Robert E.P. Cooney, retired union official (reappointed).
Mr. Jim E. Lapping, Director, Safety and Health, Building and Construction Trades Department, AFL–CIO (reappointed).
Mr. Joseph L. Durst, Director, Occupational Safety and Health, United Brotherhood of Carpenters and Joiners of America (reappointed).
Mr. George E. Smith, Director, Safety Department, International Brotherhood of Electrical Workers (reappointed).

Employer

Mr. Larry L. Swanda, Vice President, Jensen Construction Company (reappointed).
Mr. Stephen J. Cloutier, Safety and Loss Control Manager, Metric Construction, Inc. (new appointment).
Mr. Ronald R. Amerson, Coordinator of Construction Safety, Georgia Power Company (new appointment).
Mr. Rick Palmer, Vice President and Part Owner, Palmer Painting Company (new appointment).
Ms. Delaine L. Nelson, Administrative Vice President, Mueller Resource Management, Inc. (new appointment).

State

Mr. Allen Meier, Commissioner of Labor, State of Iowa (reappointed).
Mr. Edgar L. McGowan, Commissioner of Labor, State of South Carolina (reappointed).

Public

Major General Wesley E. Peel (U.S. Army Retired), Vice Chancellor for Facilities Planning and Construction, Texas A and M University System (reappointed to serve as Chairman).
Mr. Delmar E. Tally, Executive Director, Austin Chapter, Associated General Constructors of America, Inc. (new appointment).

Federal

Mr. Melvin L. Myers, Deputy Assistant Director, National Institute for Occupational Safety and Health (NIOSH) (new appointment).

Each of these members has been appointed for a term which will end on June 30, 1990.

The Advisory Committee on Construction Safety and Health was established under section 107 of the Contract Work Hours and Safety Standards Act and section 7(b) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on matters pertaining to construction safety and health.

FOR ADDITIOINAL INFORMATION CONTACT: Tom Hall, Division of Consumer Affairs, Room N–3647, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 523–8615.

Signed at Washington, DC, this 7th day of November, 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–26039 Filed 11–9–88; 8:45 am]

BILLING CODE 4510–26–M

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on November 30 and December 1, 1988 in Room C–2318 of the Francis Perkins Building, Department of Labor, Washington, DC. The meeting is open to the public and will begin at 9:00 am.

The agenda for this meeting includes reports from the Committee's work groups on hazard communication and competent persons training, a review of the proposed standard on cadmium, a presentation on the new field operations manual, and other occupational safety and health matters of concern to the Committee.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Any one wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room–N3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone 202–523–8615.

An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 7th day of November, 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–26040 Filed 11–9–88; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88–100; Exemption Application No. D–7483 et al.]

Grant of Individual Exemptions; Emergency Medical Associates, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

STATUTORY FINDINGS

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the Plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the Plans.

Emergency Medical Associates, Inc. Amended Multiple Employer Profit Sharing Plan and Emergency Medical Associates, Inc. Multiple Employer Money Purchase Plan (the Plans) Located in Columbus, Ohio

[Prohibited Transaction Exemption 88–100; Exemption Application Nos. D–7483 and D–7485]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The extension of credit (the Loans) by the individual participant accounts (the Accounts) of T. William Evans, M.D. (Dr. Evans) in the Plans to Emergency Medical Associates, Inc., the sponsor of the Plans; and (2) Dr. Evans' personal guarantee of the Loans; provided that all terms of the Loans are at least as favorable to the Accounts as those which the Accounts could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 16, 1988 at 53 FR 36133.

Temporary Nature of Exemption: The making of loans under this exemption is limited to the two-year period commencing on the date on which this Final Grant is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Eastwood Printing and Publishing Company Profit Sharing Plan and Trust (the Plan) Located in Denver, Colorado

[Prohibited Transaction Exemption 88–101; Exemption Application No. D–7506]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan to Siegel Investment Company, a limited partnership and a party in interest with respect to the Plan, of a certain parcel of real property located in Denver, Colorado; provided that the terms and conditions of the transaction are at least as favorable to those obtainable by the Plan in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 30, 1988 at 53 FR 33201.

FOR FURTHER INFORMATION CONTACT: B.S. Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Individual Retirement Account of Robert E. Keefer (IRA) Located in Hawthorne, California

[Prohibited Transaction Exemption 88–102; Exemption Application No. D–7525]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of a parcel of real property (the Property) to the IRA by the Robert and Suzette Keefer Family Trust, nor to the subsequent lease of the Property by the IRA to Hawthorne Mazda, a company which is wholly owned by Mr. Keefer, provided that the terms of the transactions are not less favorable to the IRA than those obtainable in arm's-length transactions with unrelated parties.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 16, 1988 at 53 FR 36135.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Tarrant Services, Inc. Profit Sharing Plan and Trust (the Plan) Located in Fort Worth, TX

[Prohibited Transaction Exemption 88–103; Exemption Application No. D–7628]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of its general partnership interest (the Interest) in Galaxy Development Joint Venture II (the Partnership) to Tarrant Services, Inc. (the Employer), the sponsor of the Plan, provided that the sales price is not less than the *greater* of: (1) the fair market value of the Plan's interest in the Partnership on the date of the sale, or (2) the costs to the Plan associated with the acquisition and holding of the Interest; and provided further that the Plan, the Partnership, and the Employer execute appropraite documents that reflect the substitution of the Employer as a partner in the Partnership and acknowledge that the Plan has been absolved and released of any further and continuing obligations in connection with the partnership.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 16, 1988 at 53 FR 36135.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. LeBlanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

[1] Pursuant to the provisions contained in 29 CFR 2501.3–2(d), the IRA is not subject to Title I of the Act. However, the IRA is subject to Title II of the Act pursuant to section 4975 of the Code.

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Health Care Administration Company Profit Sharing Plan and Trust (the Plan) Located in San Antonio, Texas

[Prohibited Transaction Exemption 88-104; Exemption Application No. D-7648]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of certain certificates of deposit (the CDs) and certain oil well interests (the Oil Well Interests) to Health Care Administration Company, the Plan sponsor, provided that the price paid be no less than the greater of the fair market value of the CDs and the Oil Well Interests as of the date of sale or the original prices paid for the CDs and Oil Well Interests and all expenses to the Plan in connection with its acquisition and holding of the CDs and Oil Well Interests to the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 16, 1988 at 53 FR 36136.

FOR FURTHER INFORMATION CONTACT: Joseph L Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Plan of First Wachovia Diversified Funds for Retirement Trusts Located in Winston-Salem, North Carolina

[Prohibited Transaction Exemption 88-105; Exemption Application No. D-7674]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the merger of the First Wachovia Income Fund, trusteed by First National Bank of Atlanta, into the First Wachovia Fixed Income Fund, trusteed by Wachovia Bank and Trust Company, N.A., provided that upon completion of the merger the aggregate fair market value of the interest of each employee benefit plan participating (Participating Plan) in the two funds (collectively the Funds) equals the aggregate fair market value of each such Participating Plan's interest in the Funds immediately preceding the merger.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 16, 1988 at 53 FR 36137.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of November, 1988.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-26073 Filed 11-9-88; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-7386] et al.

Proposed Exemptions; Truman Arnold Co. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department..

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Truman Arnold Company

Profit Sharing Plan & Trust (the Plan)

Located in Texarkana, Texas

[Application No. D-7386]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past contribution of two buildings to the Plan and leaseback of the buildings to Truman Arnold Companies (the Employer), nor to the agreement by the Employer and Mr. Truman Arnold (Mr. Arnold) to indemnify the Plan against any decline in the market value of the buildings, provided that the terms of the transactions were at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

EFFECTIVE DATE: If granted, the proposed exemption will be effective June 1, 1988.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 214 participants and net assets of 5,029,632 as of September 30, 1987. The trustee of the Plan is State First National Bank of Texarkana, Texas (the Trustee). The Employer owns and operates an interstate chain of convenience stores and distribution centers for petroleum products. Stock of the Employer is wholly owned by Mr. Arnold.

2. The Plan acquired land and buildings on South Robison Road in Texarkana, Texas which the Plan leased to the Employer prior to July 1, 1974, for use as its home office site (Parcel 1). In 1979, the Exployer expanded its home office operations by purchasing a parcel of property contiguous with Parcel 1 and constructing a building on the property (Parcel 2). Pursuant to an exemption application filed by the Employer, the Department granted an exemption permitting the Employer to contribute Parcel 2 to the Plan and then lease Parcel 2 back to the Employer (See Prohibited Transaction Exemption (PTE) 81-56, 46 FR 36273, July 14, 1981). The Employer subsequently submitted and was granted an exemption by the Department permitting the continuation of the lease on Parcel 1 beyond the June 30, 1984 termination of the transitional provisions contained in the Act (See PTE 85-19, 50 FR 3045, January 23, 1985).

3. The Employer, pursuant to the terms of the lease on Parcel 1, and with the approval of the Plan's independent fiduciary (see representation 6) constructed two additions to the original office building located on Parcel 1, at a cost of $556,000. The actual improvements consist of additional connecting buildings to Parcel 1 (hereafter referred to as Buildings B and C). Building B contains approximately 2,888 square feet of space. Building C, which connects with Building B, contains approximately 4,820 square feet.

4. Buildings B & C (the Buildings) were appraised by Mr. Jim Freeman (Mr. Freeman) of P.M. Brown, Inc. Realtors in Texarkana, Texas, as having a fair market value of $587,000 as of October 1, 1987. Mr. Freeman, who has no relationship with the Employer, is a senior member of both the American Society of Appraisers and the American Association of Certified Appraisers. Mr. Freeman appraised Building B as having a fair market value of $178,000 and Building C as fair market value of $409,000.

5. On June 1, 1988, the Employer with the independent fiduciary's approval contributed the Buildings to the Plan as a portion of its annual contribution and then leased back the Buildings from the Plan (the Lease). The lease is a triple net lease having a primary term of 5 years with options for 3 additional 5 year terms which may be exercised solely in the independent fiduciary's discretion. The initial rental rate on the Buildings is $82,188 per year, which amount equals 14% of the appraised fair market value of the Buildings. The Lease provides that every third year the rental on the Buildings will be adjusted pursuant to an independent appraisal. The rental payments shall be in an amount equal to 14% of the appraised value of the Buildings, but in no event will the lease payments be less than that of the proceeding three year period. The Employer will maintain fire and casualty insurance on the Buildings with the Plan named as loss payee. Further, the Employer and Mr. Arnold, have agreed to indemnify the Plan against any decline in the market value of the Buildings below their appraised value of $587,000.

6. An independent fiduciary, the Commercial National Bank in Shreveport, Louisiana (that Bank) was appointed to both approve and monitor the contribution and lease back transactions. The Bank is not related in any way to the Employer or its officers or directors.[1] The Bank has full responsibility and exclusive authority to take all actions on behalf of the Plan with respect to the Buildings, including selling them if the Bank determines that the sale is in the best interest of the Plan and its participants and beneficiaries.

The Bank determined that the transactions were in the best interests of the Plan and its participants and beneficiaries. The Bank inspected the Buildings and found them to be of high quality comparing favorably to other projects in this region. Further, since contributions to the Plan are made at the Employer's discretion, ongoing contributions are in the best interest of Plan participants.

The Bank in reaching the conclusion that the transactions were in the Plan's best interest, reviewed the Plan's financial records and asset portfolio. The Bank found that the Trustee maintains more than 20% of the Plan's assets in liquid investments, which should be more than adequate to fulfill any contingent liabilities in the foreseeable future.

The terms of the Lease were found by the Bank to be no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated person. The rental of $82,188 per annum will be paid to the Plan on a triple net basis. The Bank views the guaranteed 14% return on the fair market value of the Buildings as an attractive feature of the Lease. The Bank examined the past payment records of the Employer and found that it has never defaulted on any rental payments to the Plan. The Bank also examined the financial statements of the Employer and concluded that the Employer is a responsible lessee and financially healthy. In addition, Mr. Arnold and the Employer have agreed to indemnify the Plan against any decline in the market value of the Buildings below the Plan's historical cost basis. The Building are also readily adaptable to other uses should the need arise.

7. In summary, the applicant represents that the subject transactions

[1] The Employer maintains a checking account with the Bank and also a certificate of deposit. The total balance of these Employer deposits represents a negligible amount of the Bank's total deposits.

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satisfied the statutory criteria under section 408(a) of the Act because:

(a) The interests of the Plan with regard to the transactions were represented by an independent fiduciary, the Bank;

(b) The initial rental rate under the Lease is 14% of the fair market value of the Buildings, which amount is not less than the current fair rental value of the Buildings;

(c) The rental rate will be adjusted every third year of the Lease based on independent appraisals of the Buildings and will equal the greater of 14% of the fair market value of the Buildings or the prior rental paid;

(d) The Plan will be indemnified against any decline in the fair market value of the Buildings;

(e) The Bank determined that the transactions were protective of and in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Alan E. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Grand Valley Manufacturing Company Profit Sharing Plan (the Plan) Located in Erie, Pennsylvania

[Application No. D–7437]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain real property (the Property) located in Titusville, Pennsylvania and five overhead industrial cranes (the Cranes) to the Grand Valley Manufacturing Company (the Employer), the sponsor of the Plan; provided that such sale is on terms no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan with 55 participants and total net assets of $208,555 as of September 30, 1987. The Employer is a closely-held Pennsylvania corporation doing business as a specialty machine shop in Titusville, Pennsylvania. Since 1969, the Plan's trustee has been the Marine Bank (the Trustee), a Pennsylvania-chartered bank with its principal place of business in Erie, Pennsylvania. The Trustee represents that it is unrelated to the Employer and that there is no outstanding extension of credit between the Trustee and the Employer. Investment decisions on behalf of the Plan are made by an Administrative Committee comprised of officers and employees of the Employer.

2. Among the assets of the Plan is the Property, two contiguous tracts of real property located at 220 South Washington Street in Titusville, Pennsylvania. The Property consists of a 60,660 square-foot main parcel, improved with a tall one-story steel frame industrial warehouse building (the Building) currently used by the Employer for storage, and an adjacent 12,554 square-foot parking lot used by the Employer. The Property had an appraised fair market value of $125,000 as of June 8, 1988, according to Harry E. Mueller, Jr. (Mueller), an independent, professional real estate appraiser in Erie, Pennsylvania. The Property was purchased by the Plan from an unrelated party in November of 1976, when the Trustee immediately entered into a lease (the Lease) of the Property to the Employer for a term of five years. In January of 1982 the Lease was extended by the parties for an additional ten-year term. The Employer continues to occupy the Property under the Lease, which requires the Employer to pay rent in monthly installments of $1,850 and to pay all taxes, utilities and costs of maintenance and insurance. The Property houses the Cranes, which were purchased by the Plan upon acquisition of the Property, three of which are used by the Employer. The Cranes had a fair market value of $3,000 as of May 24, 1988, according to an appraisal performed by Duane D. Linhart, president of Modern Machinery Sales Company in Erie, Pennsylvania.

3. Since approximately March of 1985, a portion of the Building has been occupied by the Blue Chip Tool Company (Blue Chip) and utilized in Blue Chip's business operations under arrangements made by the Employer. Blue Chip is a party in interest with respect to the Plan because it is wholly owned by H. Richard Ewing, who is an officer, employee and shareholder of the Employer, and his spouse and children. Since June of 1986, Blue Chip has paid the Employer rental of $115 per month for its use of the Building. The Lease includes a provision which prohibits the Employer from subleasing the Property.

4. On June 12, 1987 the Philadelphia Area Office of the Department of Labor (the Area Office) notified the Trustee that certain actions of the Trustee and the Employer associated with the Property constituted violations of the Act. Specifically, the Area Office cited violations of section 406(a) and (b) of the Act in the Plan's ownership of the Property, the Lease to the Employer, Blue Chip's use of the Property and the Employer's use of the Cranes. The Area Office also cited violations of section 406(a) and (b) and section 404(a) of the Act in numerous extensions of credit by the Plan to the Employer resulting from the Trustee's failure to enforce Lease provisions requiring the Employer's payment of rent, taxes and insurance. According to the Trustee, as of March 31, 1988 the Employer had undertaken certain actions and made payments to the Plan as corrections and remedies of these violations cited by the Area Office with respect to the Property. The Trustee represents that as a result of such actions and payments, as of March 31, 1988 the Plan had been compensated and made whole for deficiencies of performance and payment under the Lease and all losses associated with the violations cited by the Area Office. In reference to this remedial activity, the Area Office stated in a letter on October 15, 1987, that it was taking no further action and that all related matters had been resolved except for the Plan's divestiture of the Property. As a final component of remedial action to bring the parties into compliance with the Act, the Trustee and the Employer propose that the Employer purchase the Property and the Cranes from the Property and are requesting an exemption to permit such purchase transaction under the terms and conditions described herein.

5. The Employer will pay the Plan cash for the Property and the Cranes in the amount of their fair market value on the sale date as determined by an independent, qualified appraiser selected by the Trustee, but in no event shall the total purchase price be less than $128,000. The Employer will bear all costs and expenses related to the sale transaction. The Trustee will oversee the transaction on behalf of the Plan to insure that it proceeds as proposed herein. The Trustee has determined that the proposed purchase price of no less than $128,000, combined with the rentals and compensation paid to the Plan by the Employer, will result in total receipts by the Plan in excess of the Plan's total investment in the Property and the Cranes.

6. The exemption proposed herein does not propose exemptive relief for the Lease of the Property by the Employer from the Plan commencing in November of 1976, the Employer's use of the Cranes, the extensions of credit by the Plan to the Employer resulting from the Trustee's failure to enforce Lease provisions, or Blue Chip's use of the Property. Accordingly, the Employer represents that it will pay any excise taxes which are applicable under section 4975(a) of the Code by reason of such transactions within sixty days of the publication in the **Federal Register** of a notice granting the exemption proposed herein.

7. In summary, the applicants represent that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The Plan will receive cash for the Property and the Cranes in the amount of no less than their fair market value on the sale date as determined by an qualified, independent appraiser selected by the Trustee; (2) The Plan will not incur any costs or expenses related to the proposed transaction; (3) The transaction will allow an appropriate diversification of Plan assets, as the Property and the Cranes constitute a high percentage of Plan assets; and (4) The Trustee represents that the Plan has been made whole with respect to the Employer's past uses of the Property, the Cranes, the extensions of credit resulting from the Employer's deficiencies under the Lease and Blue Chip's use of the Property.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881 (this is not a toll-free number.).

Operating Engineers Training Trust (the OE Plan) Located in Whittier, California and Southern California Surveyors Joint Apprenticeship Trust (the SC Plan; together, the Plans) Located in Walnut, California

[Applications Nos. D–7513 and D–7527]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to: (1) The proposed sale by the International Union of Operating Engineers, Local Union No. 12 (Local 12) to the OE Plan of 20 units of a two-way communications system (the Radios) and a Base Station, and the proposed sale by Local 12 to the SC Plan of 4 Radios and a Base Station, for $2,400 per Radio and $4,908 per Base Station, provided such amounts are not greater than the fair market value of the Radios and the Base Stations at the time of the sales; and (2) the proposed use by the Plans of Local 12's communications equipment including common hardware and antenna, under the terms described in this proposed exemption, provided such terms are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are multi-employer employee welfare benefit plans which provide apprenticeship and other training programs. The OE Plan has approximately 17,810 participants and had assets of $4,288,000 as of June 30, 1987. The SC Plan has approximately 1,350 participants and had assets of $643,201 as of July 31, 1987. One-half of the members of the board of trustees of each Plan are appointed by employer associations, and the remaining one-half of each board of trustees are appointed by Local 12. Each of the trustees of the Plans appointed by Local 12 is an employee of Local 12, and some are officers of Local 12.

2. The Plans have been using a radio communications system with Local 12 for many years. The primary reason for such a communications system is safety. If an accident occurs, the Plans need to be able to learn of the accident and contact medical and safety personnel as soon as possible. The communications system has also been used to allow the Plans' field representatives to monitor several jobsites so they can provide assistance and advice as the situation requires. These field representatives and the Plans' administrative staffs have been able to communicate with Local 12's personnel by radio to obtain needed information and increase their effectiveness in monitoring the training progress of apprentices.

3. Local 12 recently upgraded its own communications system. Until recently, Local 12 used equipment that transmitted over a radio channel shared with many other users. With the number of users of the channel increasing, communication was usually difficult and sometimes impossible. In order to obtain a license for a new exclusive radio channel, Local 12 constructed six micro repeaters stations (the MRS) located at various points throughout Southern California, and purchased 75 Radios, the minimum number able to use the exclusive channel. The Radios are Motorola two-way mobile communications systems, Model Syntor X 9000. The Radios cost $2,400 each, and Local 12 incurred fixed costs of $181,640 in connection with the MRS common hardware, antenna hook-up and installation.

4. The Plans now wish to purchase Radios from Local 12 so that they will be able to take advantage of Local 12's exclusive channel. The applicants represent that the Plans cannot simply buy 20 and 4 Radios, respectively, from Motorola or any other third party manufacturer and proceed to use the radios for communications purposes. The Radios must be part of a system containing properly located repeater stations and access to a frequency channel licensed by the FCC. In the absence of the proposed exemption, the Plans would have to buy the equipment and pay for installation of six MRS of their own, and also obtain the minimum number of Radios required to qualify as a licensee of an exclusive channel. Motorola has quoted the fixed cost of $147,306, plus monthly recurring costs of $1,800, to the OE Plan, not including the cost of the 20 Radios, the cost of the unneeded extra Radios required to obtain the license nor the cost of acquiring the license.

5. Accordingly, the Plans propose to acquire the Radios from Local 12. The OE Plan proposes to buy 20 Radios, and the SC Plan proposes to buy 4 Radios. The Radios are to be installed in vehicles owned by the Plans and operated by employees of the Plans. In addition, each Plan will buy one Base Station to be located at the Plan's headquarters. The Plans will pay $2,400 each per Radio, and $4,908 for each Base Station, which is the price that Local 12 paid to Motorola for these items. However, Local 12 will not charge the Plans any installation fees for the Radios, which will save the Plans $3,000. The OE Plan will pay Local 12 $1,345.49 per month for a term of three years to amortize a pro rata share (20/75) of the fixed costs incurred by Local 12 for common hardware, antenna hook-up and installation. The SC Plan will pay Local 12 $269.10 per month for a term of three years to amortize its pro rata share (4/75) of Local 12's fixed costs. The amortization schedule includes no interest on the capital expended by Local 12. The Plans will deal directly with Motorola for maintenance of the Plans' Radios ($10/month per Radio) and a pro rata share (20/75 for the OE Plan, 4/75 for the SC Plan) of repeater maintenance and site rental for the repeater sites furnished by Motorola for Local 12's communications system. Local 12 will allow the Plans access to its exclusive channel frequency without additional charge.

6. Both Plans have obtained Glen Slaughter & Associates (GSA), an independent employee benefit plan administrator in Pasadena, California.

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as an independent fiduciary to review the purchase of the equipment by the Plans and to monitor the use of the equipment. Mr. Joseph Ehrbar, Vice President of GSA, represents that he has reviewed the proposed transactions on behalf of both Plans and has determined that the transactions are appropriate for and in the best interests of both Plans. Mr. Ehrbar represents that the Radios and related equipment cannot be purchased on the same basis for a price even close to the charge from Local 12. He has confirmed the charges with Motorola. The cost of the Radios is the same; there is no installation charge for the Radios, and the various MRS costs are prorated. The acquisitions are important for the Plans as communications between coordinators, business representatives and dispatch officers are essential for reasons of safety and apprentice evaluation. As independent fiduciary, Mr. Ehrbar will monitor the implementation of all terms of the transactions, including the monthly payments to Local 12 and the verification that all equipment purchased by each Plan is used exclusively by Plan personnel in the ordinary course of Plan business.

7. In summary, the applicants represent that the proposed transactions meet the statutory criteria contained in section 408(a) of the Act because: (a) The Radios and Base Stations will represent approximately 1% of the assets of the OE Plan and approximately 2% of the assets of the SC Plan; (b) the terms of the acquisitions of the equipment under the proposed exemption are more favorable to both Plans than those obtainable in an arm's-length transaction with unrelated parties; (c) Mr. Ehrbar, the Plans' independent fiduciary, has represented that the proposed transactions are appropriate for the Plans and in the Plans' best interests; and (d) Mr. Ehrbar will monitor the Plans' use of the equipment to ensure that all the equipment purchased by the Plans is used exclusively by Plan personnel for Plan purposes.

Notice to Interested Persons: Notice will be provided to interested persons within 30 days of the date of publication of this notice in the **Federal Register**. Comments and hearing requests are due within 60 days of the date of publication.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of November, 1988.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–26072 Filed 11–9–88; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge II Section) to the National Council on the Arts will be held on December 2, 1988, from 9:00 a.m.—4:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection 9c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

November 1, 1988.

Yvonne M. Sabine,

Director Council and Panel Operations National Endowment for the Arts.

[FR Doc. 88–26124 Filed 11–9–88; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Care of Collections Section) to the National Council on the Arts will be held on November 29-December 1, 1988, from 9:00 a.m.–5:30 p.m. in room 415 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United State Code.

Further information with reference to this meeting can be obtained from Ms.

Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

November 1, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 88–26126 Filed 11–9–88; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Orchestra Section) to the National Council on the Arts will be held on

November 29, 1988, from 9:00 a.m.—6:30 p.m. (Room M14);
November 30 from 9:00 a.m.—9:00 p.m. (Room M14);
November 1 from 9:00 a.m.—10:00 p.m. (Rooms M14 and M09);
December 2 from 9:00 a.m.—9:30 p.m. (Rooms MM14 and M09); and
December 3 from 10:00 a.m.—5:30 p.m. (Room M14);
at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington DC 20506.

A portion of this meeting will be open to the public on December 2, from 3:30—6:00 p.m. The topic for discussion will be FY 1990 Music Ensembles Guidelines.

The remaining sessions of this meeting on

November 29 from 9:00 a.m.—6:30 p.m.;
November 30 from 9:00 a.m.—9:00 p.m.;
December 1 from 9:00 a.m.—10:00 p.m.;
December 2 from 9:00 a.m.—3:30 p.m. & 7:00 p.m.—9:30 p.m.; and
December 3 from 10:00 a.m.—5:30 p.m.

are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

November 1, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 88–26127 Filed 11–9–88; 8:45 am]

BILLING CODE 7537–01–M

Music Program Advisoring Panel, Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Program Advisory Panel (Opera/Musical Theater New American Works Section) to the National Council on the Arts will be held on November 29—December 2, 1988, from 9:00 a.m.—6:00 p.m. in Room M09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 29, from 9:00—9:45 a.m. The topic for discussion will be the review process.

The remaining sessions of this meeting on November 29 from 9:45 a.m.—6:00 p.m. and November 30—December 2 from 9:00 a.m.—6:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

November 1, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 88–26125 Filed 11–9–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978; Arthur L. DeVries and John T. Shields

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On September 26, 1988, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued to the following individuals on October 31, 1988: Arthur L. DeVries and John T. Shields.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 88–26084 Filed 11–9–88; 8:45 am]

BILLING CODE 7555–01–M

Geography and Regional Science Advisory Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Geography and Regional Science.

Date/Time: December 5, 1988: 8:30 a.m. to 6:00 p.m.; December 6, 1988: 8:30 a.m. to 4:00 p.m.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Thomas J. Baerwald, Program Director, Geography and Regional Science, National Science Foundation, Washington, DC 20550, Room 336, Telephone (202) 357–7326.

Purpose of Panel: To provide advice and recommendations concerning research in Geography and Regional Science.

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Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b, Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-26049 Filed 11-9-88; 8:45 am]

BILLING CODE 7555-01-M

Metabolic Biology Advisory Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Metabolic Biology.

Date: December 1, 2 and 3, 1988.

Place: Savoy Suites Hotel, 2505 Wisconsin Avenue, NW., Washington, DC 20007, Panel Room—Nouveau A.

Type of Meeting: Closed.

Time:

Thursday 9:00 a.m. to 5:00 p.m.

Friday, 8:30 a.m. to 5:00 p.m.

Saturday, 8:00 a.m. to 1:00 p.m.

Contact Person: Carter Kimsey, Cellular Biochemistry Program, Rm 325-I, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7987.

Summary of Minutes: May be obtained from the Contract Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in cellular biochemistry and metabolism.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of Government in the Sunshine Act.

November 7, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-26050 Filed 11-9-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

Consumers Power Co. Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-20 issued to Consumers Power Company (the licensee) for operation of Palisades Plant, located in Van Buren Country, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TSs) relating to low temperature, overpressure protection and the heatup and cooldown limits for meeting the requirements of 10 CFR Part 50, Appendix G, and operability requirements for the high pressure safety injection pumps.

The proposed action is in accordance with the licensee's application for amendment dated December 22, 1987, as revised by application dated April 12, 1988.

The Need for the Proposed Action

The proposed change to the TSs is required in order to provide assurance that the requirements of Appendix G to 10 CFR Part 50 are met during plant heatup, cooldown and hydrostatic testing.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs and concludes that the proposed pressure-temperature limits meet the safety margins of Appendix G, 10 CFR Part 50. The restrictions in heatup and cooldown rate and on pump inoperability/operability and the reduced relief valve settings for low temperature, overpressure protection acceptably protect against the violation of the Appendix G limits, while acceptably mitigating the results of potential primary coolant system coolant loss. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupation radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TSs involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impact associated with the proposed amendemnt.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 19, 1988 (53 FR 17994). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resource not previously considered in the Final Environmental Statement for the Palisades Plant dated June 1972.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 22, 1987, as revised by application dated April 12, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 7th day of November, 1988.

For The Nuclear Regulatory Commission.

Theodore Quay,

Acting Director, Project Directorate III-1, Division of Reactor Projects, III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26060 Filed 11-9-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-20 issued to Consumers Power Company (the licensee) for operation of Palisades Plant located in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specificatins (TSs) to add additional limitations to plant operation with less than four reactor primary coolant pumps operating; modify the rector protection system setpoints, limiting conditions for operation and surveillance requirements to reflect the modifications being made to the reactor protection system; and revise the peaking factors and linear heat rate limits.

The proposed action is in accordance with the licensee's application for amendment dated March 25, 1988, as supplemented by a submittal dated June 17, 1988, and the licensee's application for amendment dated September 1, 1988.

The Need for the Proposed Action

The proposed amendment is required in order to provide more operational margin to safety limits with a new reactor protection system installed during the present refueling outage, the Technical Specifications associated with the new system, additional limitations on operation with less than four reactor primary coolant pumps, and revised peaking factors and linear heat rate limits to reduce fluence on critical reactor welds.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed modifications to the reactor protection system and the revisions to the Technical Specifications. The reactor protection system modifications include a variable high power trip instead of the fixed high power trip at 108 percent of rated power. The variable high power trip will be no more than 10 percent above the existing power but no greater than 108 percent of rated power, 2350, Mwt. Teh modifications include a new thermal margin monitor that has inputs from the upper and lower power range neutron detectors so that the axial power distribution in the core can be factored into the thermal margin monitor. The previous thermal margin monitor used a fixed, conservative value of axial power distribution. The Associated Technical Specifications, both limiting conditions for operation and surveillance requirements ensure that this system is operable when required. The Technical Specification change for operation with less than four reactor primary coolant pumps in operation adds restrictions, not presently in the Technical Specifications, to preclude operation in a condition that could produce consequences greater than those determined from the analyses of design basis accidents. The change in peaking factors and linear heat rate are supported by accident reanalyses that demonstrate that the design basis limits continue to be met. Therefore, the proposed changes do not increase the probability or consequences of any accident, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission conculdes that the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Notices of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action were published in the Federal Register on July 6, 1988 (53 FR 25397) and September 27, 1988 (53 FR 37663). No request for hearing or petition for leave to intervene was filed following these notices.

Alternative to Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Palisades Plant dated June 1972.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's requests and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environment impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 25, 1988, as supplemented June 17, 1988, and the application for amendment dated September 1, 1988, which are available for pubic inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 7th day of November 1988.

For the Nuclear Regulatory Commission.

Theodore Quay,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26061 Filed 11-9-88; 8:45 am]

BILLING CODE 7590-01-M

Correction to Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

On October 19, 1988, the Federal Register published the Biweekly Notice

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of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 41002, Column 1, the heading, Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing, should be replaced with the following:

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Dated at Rockville, Maryland, this 3rd day of November 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects III, IV, V and Special Projects.

[FR Doc. 88–26062 Filed 11–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

GPU Nuclear Corporation, et al. (Three Mile Island Nuclear Station, Unit No. 1); Exemption

I

General Public Utilities Nuclear Corporation (GPUN/Licensee) and three co-owners hold Facility Operating License No. DPR–50, which authorizes operation of the Three Mile Island Nuclear Station, Unit No. 1 (TMI–1) (the facility) at power levels not in excess of 2568 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Dauphin County, Pennsylvania.

II

On November 18, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.G, is the subject of this exemption request. Specifically, Subsection III.G.2b provides that, "* * * where cables or equipment, including associated non-safety circuits that could prevent operation or cause maloperation due to hot shorts, open circuits, or shorts to ground, of redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located within the same fire area outside of primary containment, one of the following means of ensuring that one of the redundant trains is free of fire damage shall be provided:

b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustible or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area."

By letter dated May 21, 1988, the licensee requested exemption from the requirements of Section III.G.2.b of Appendix R, as these requirements apply to separation of 20-feet, free of intervening combustibles, with fire detection or suppression capabilities, for redundant reactor letdown system values MU–V–2A, 2B, –3, –4 and –5. The acceptability of the exemption request is addressed below.

III

The purpose of Section III.G.2 to Appendix R is to ensure that redundant components of safety system, required to achieve and maintain post-fire hot shutdown, are protected in such a way that at least one such component will remain free of damage which could prevent the completion of the safety function. One such means of protecting these redundant safety components is provided for in Section III.G.2.b, that is, separate the components by at least 20-feet without intervening combustibles or fire hazards, with a fire detection and suppression capability.

At TMI–1, Fire Zones AB–FZ–4 and FH–FZ–1 contain circuits which if damaged by fire, could prevent letdown isolation from the control room. Values MU–V–2A and 2B, or MU–V–4 and 5, or MU–V–3 can be used to isolate letdown. Although redundant values exist which allow for letdown isolation, a situation can be postulated in which spurious opening of valve MU–V–5 concurrent with the loss of intermediate cooling to the letdown coolers could result in damage to the low pressure portion of the letdown system.

Fire Zone AB–FZ–4 is on elevation 281' of the Auxiliary Building. Fire Zone FH–FZ–1 is on elevation 281' of the Fuel Handling Building. Both zones contain redundant circuitry for letdown isolation valves. In Fire Zone AB–FZ–4, circuits associated with valve MU–V–5 are approximately 40 ft. from cable trays containing MU–V–2A and MU–V–2B. In Fire Zone FH–FZ–1, circuits associated with valve MU–V–3 are 36 ft. from the trays containing MU–V–2A and 2B circuits. The space between the redundant valve combinations contains intervening combustibles in the form of cable trays in both fire zones.

Both fire zones contain area wide smoke detection which alarms in the Control Room. Both zones are provided with area wide suppression covering the floor area and cable trays. Portable fire extinguishers and hose reels are provided throughout both zones. The combustible loading in both zones is less than one hour in equivalent time as compared with the ASTM E119 Time-Temperature Curve.

Fire Zones AB–FZ–4 and FH–FZ–1 are not in compliance with Section III.G.2 of Appendix R to 10 CFR Part 50 since redundant Letdown Isolation circuits are not separated by a distance of 20 feet or greater which is free of intervening combustibles.

However, both areas are provided with detection and suppression in accordance with Section III.G.2 of Appendix R. The intervening combustibles between the redundant circuits are in the form of cables, which if ignited, would be expected to initially burn slowly with limited heat release. The detection provided in both zones would be expected to notify the Control Room of any fire in the zones. Control Room Operators would dispatch the plant fire brigade which would use available extinguishers and hose reels to control the fire. In addition, the automatic suppression provided in both zones gives reasonable assurance that a fire could not travel between redundant letdown isolation value circuits. Therefore, the current configuration of Fire Zones AG–FZ–4 and FH–FZ–1, including the installed fire protection features, provides a level of protection equivalent to that of Section III.G.2 of Appendix R.

IV

Based on the evaluation above, the level of protection provided in Fire Zones AB–FZ–4 and FH–FZ–1 has been found to be equivalent to that called for in Section III.G.2 of Appendix R. Specifically, the intervening combustibles between redundant Letdown Isolation Value circuits have been found not to present a level of safety less than that called for in Appendix R.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that (1) this exemption as described in Section IV is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present for this exemption in that application of the regulation in this particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Specifically, the underlying purpose of Appendix R, Section III.G.2.b is to assure that a suitable complement of safe-shutdown equipment will be available, post-fire, to achieve and maintain hot shutdown of the reactor. The analysis of valves MU–V–2A and 2B, MU–V–3 and MU–V–4 and –5 indicates that at least one set of valves will be capable of performing its post-fire shutdown role (i.e. isolate the low-pressure letdown piping) without additional fire protection enhancements. Therefore, the Commission hereby grants the exemption request identified in Section IV above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 44247).

Dated at Rockville, Maryland, this 2nd day of November 1988.

For The Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–26063 Filed 11–9–88; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Order No. 806; Docket No. A89–2]

Notice and Order Accepting Appeal and Establishing Procedural Schedule; Jack and Dixie Wignall, Petitioners; Dallas, IA

Issued November 4, 1988.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc III.

Docket Number: A89–2.

Name of affected Post Office: Dallas, Iowa 50062.

Name(s) of Petitioner(s): Jack and Dixie Wignall.

Type of Determination: Consolidation.

Date of filing of Appeal Papers: November 3, 1988.

Categories of Issues Apparently Raised

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before November 18, 1988.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

November 3, 1988, Filing of Petition
November 4, 1988, Notice and order of Filing of Appeal
November 28, 1988, Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b))
December 8, 1988, Petitioners' Participant Statement or Initial Brief (*see* 39 CFR 3001.115 (a) and (b)
December 28, 1988, Postal Service Answering Brief (*see* 39 CFR 3001.115(c))
January 12, 1989, Petitioners' Reply Brief should Petitioners choose to file one (*see* 39 CFR 3001.115(d)
January 19, 1989, Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116
March 3, 1989, Expiration of 120-day decisional schedule (*see* 39 U.S.C. (404(b)(5))

[FR Doc. 88–28088 Filed 11–9–88; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26247; File No. SR–BSE–88–3]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by Boston Stock Exchange, Inc. and the Boston Stock Exchange Clearing Corp. relating to an amendment of their schedules of value and comparison charges.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 1988, the Boston Stock Exchange, Incorporated ("BSE") and the Boston Stock Exchange Clearing Corp. ("BSECC") filed with the Securities and Exchange Commission the proposed rule as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Effective November 1, 1988 the fee schedules have been amended to provide for reduced charges on trades less than 1,300 shares. The specific changes are listed in *Exhibit 1*, which is attached to this notice.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 (1988).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

(a) The BSE and BSECC have proposed revised fee schedules that reduce charges on trades of less than 1,300 shares. The purpose of the revised schedules is to encourage members to direct additional orderflow to the BSE.

(b) The basis for the proposed change is Section 6 [3] of the Act, and in particular section 6(b)(4) in that the reduction of charges on trades of less than 1,300 shares is consistent with the equitable allocation of reasonable fees among its members and issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were solicited from the Fee Committee of the Board of Governors comprised of representatives of dealer-specialists, retail, and institutional firms and, similarly, from the Executive Committee which serves as the Board of Governors of the Clearing Corporation and from the Board of Governors of the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78f (1982).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 3, 1988.

Exhibit 1—Boston Stock Exchange Fiscal 1989 Fee Reduction

Fee Schedules as of November 1, 1988 Transaction Related Fees

Fee Schedule Through October 30, 1988

Trade Recording & Comparison

First 2,500 Trades/Month
$.29 per 100 shares
Next 2,500 Trades/Month
$.25 per 100 shares
Next 2,500 Trades/Month
$.15 per 100 shares
Over 7,500 Trades/Month
$.05 per 100 shares
Maximum Fee per Trade Side
$50
Minimum Fee per Trade
None

Value Charges

First $10M per Month
$.16 per $1,000 value
Next $40M per Month
$.13 per $1,000 value
Next $50M per Month
$.10 per $1,000 value
Next $100M per Month
$.08 per $1,000 value
Next $300M per Month
$.06 per $1,000 value
Over $500M per Month
$.03 per $1,000 value
Maximum Charge per Side
$100

Fee Schedule as of November 1, 1988

Existing schedule applies for trades equal to or greater than 1,300 shares. Revisions are as follows:

(1) Trades less than 1,300 shares—$.10 per Trade Side,

(2) Per trade charge is applied to BSE EXECUTIONS ONLY.

(All trades will accumulate for volume discounts.)

Existing schedule applies for trades equal to or greater than 1,300 shares. Revisions are as follows:

	Discount [1] (percent)
(1) Trade Size:	
1 to 100 shares	60
101 to 500 shares	50
501 to 700 shares	40
701 to 1,299 shares	30
(2) Discounts apply to BSE EXECUTIONS ONLY.	

[1] Contract value on these trades will accumulate for volume discounts.

[FR Doc. 88-26021 Filed 11-9-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-2649; File No. SR-DTC-88-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change By The Depository Trust Company Relating to International Institutional Delivery System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 26, 1988, The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as discribed in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule change

The Depository Trust Company ("DTC") is filing herewith a proposed rule change relating to an International Institutional Delivery System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A). Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose for the proposed rule change is to provide information which is intended to increase efficiency in settling many institutional trades executed in foreign (non-U.S. or Canadian) securities. The proposed rule change would add an international capability to DTC's existing Institutional Delivery System that would permit users to accept foreign security trade confirmation data from brokers-dealers, distribute ID confirmations to international investors and other interested parties, provide for trade affirmation, and transmit deliver/receive instructions to those concerned, including foreign sub-custodians. Trade settlement would not take place in DTC, but between foreign sub-custodians.

See Exhibit A for key components of the proposed International Institutional Delivery System.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will increase efficiency in settling many trades in foreign securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change was developed at the request of Participants and securities industry organizations. An International ID steering committee composed of industry representatives developed solutions for the issues involved. DTC requested comments on the proposed rule change by memorandum dated August 26, 1988. One comment letter was received which endorsed the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the data of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR-DTC-88-18 and should be submitted by December 1, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 6, 1988.

Exhibit A

DTC's International Institutional Delivery System

Key components of IID are as follows:

1. To accommodate short settlement cycles in some markets, IID from the outset will be capable of processing trade confirmation data, generating confirms, processing affirms, and generating deliver/receive isntructions, all on the same day.

2. The SEDOL (Stock Exchange Daily Official Listing) security numbering system will be strongly recommended for all participating users. However, IID initially will accept any numbering system on IID input and pass it through on all output (including confirmations) related to that trade. Later the feasibility will be reviewed of providing users with output in the particular numbering system of their preference, regardless of the numbering system used for input.

3. Computer to Computer Facility (CCF and CCF II) users may effect to receive either the existing ID or ISO (International Standards Organization) deliver/receive instruction formats.

4. A new affirm function will permit the investment manager to have DTC provide payment and settlement instructions to the agent (global custodian).

5. Global custodians and brokers will forward deliver/receive instructions to their sub-custodians to effect foreign settlement.

[FR Doc. 88-26019 Filed 11-9-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-2646; File No. SR-Amex-88-23]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendment To Amex Rule 205 to Modify Pricing Procedures for Odd-Lot Market Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 18, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is proposing to amend Exchange Rule 205 to require execution of odd-lot market orders at the prevailing Amex quote with no odd-lot differential charged; to permit the acceptance of odd-lot orders to buy or sell "at the close" and to provide that the odd-lot portion of a Part of Round Lot (PRL) order will be executed at the same price as the round lot portion, with no differential charged.

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The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), and (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) *Odd-lot market orders.* Amex Rule 205 provides procedures for the execution on the Exchange Floor of odd-lot orders (orders to buy or sell a security in an amount less than the unit of trading), and currently requires odd-lot market orders to be filled at the price of the first round lot transaction to occur on the Floor after the odd-lot is received at the trading post. An odd-lot differential (generally ⅛ or ¼ point, depending on the price of the stock) may be added by the odd-lot dealer to odd-lot orders to buy, or subtracted from odd-lot orders to sell.

The Amex is proposing to amend Amex Rule 205 to require odd-lot market orders with no qualifying notations to be executed at the price of the prevailing Amex quotation in the stock at the time the order is represented in the market either by being received at the trading post or through the Exchange's Post Execution Reporting system (PER). Buy orders would be executed on the Amex offer and sell orders would be executed on the Amex bid. No odd-lot differential would be charged. These procedures would also apply to orders to buy on the offer and orders to sell on the bid marked "long". They would not apply to market orders to sell "short", which would be filled at the price of the next transaction on the Floor following receipt of the order at the trading post or through the PER system which is higher than the last different round lot price. A differential could be charged for such orders.

(b) *Odd-lot limit orders/other orders.* No change is proposed to the pricing of odd-lot limit orders and a differential would continue to be permitted for such orders.

Procedures would remain the same for other types of orders included in Rule 205, such as limit orders to buy on the offer or sell on the bid, limit orders marked "immediate or cancel," limit orders "with or without sale," or limit orders to buy or sell marked "or on close."

(c) *Openings.* All odd-lot market orders entered prior to the opening of trading would receive the opening price, with no differential charged.

(d) *"At the close" orders.* Rule 205 would be further amended to eliminate Rule 205(B)(2) in order to permit the acceptance of odd-lot orders to buy or sell "at the close," (plus or minus any differential). This is to conform odd-lot procedures with procedures implemented by the Exchange to permit Amex specialists to accept round lot market at-the-close orders.[1]

(e) *Part of Round Lot (PRL) orders.* Finally, Rule 205 would be amended to provide that the odd-lot portion of a Part of Round Lot (PRL) order (an order consisting of a round lot portion and an odd-lot portion, *e.g.*, an order of 101 shares, or 275 shares) will be executed at the same price as the round lot portion, with no differential charged, whether entered directly with the specialist or through the PER system. The Exchange is modifying procedures for the entry and execution of PRL orders through the PER system to provide for single price executions.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of Sections 6(b)(5) and 11A(a)(1) in particular in that it facilitates the economically efficient execution of odd-lot transactions, which will result in improved execution of customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] *See* Securities Exchange Act Release Nos. 24616 (June 19, 1987) 52 FR 23909 and 25331 (February 16, 1988) 53 FR 4491.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by December 1, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 3, 1988.

[FR Doc. 88-26016 Filed 11-9-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26250; File No. SR-DTC-88-16]

Self Regulatory Organizations; Depository Trust Company; Order Granting Approval of Proposed Rule Change Concerning Memo Segregation

On August 1, 1988, the Depository Trust Company ("DIC") filed a proposed rule change (File No. SR-DTC-88-16),

with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("the Act"), 15 U.S.C. 78s(b)(1).[1] On August 22, 1988, the Commission published notice to solicit comments from interested persons and granted accelerated temporary approval of this proposed rule change.[2] No comments were received. As discussed below, the Commission is approving this proposal.

I. Description

The proposal would authorize DTC to establish a new method for participants, particularly broker-dealer participants, to segregate customer fully-paid-for securities against unintended delivery by creating a "memo" position within a participant's free account. This "memo" position allows participants to protect from unintended delivery a designated quantity of customer fully-paid-for securities that are in the participant's free account or may be received during the daily processing cycle. Securities would remain in the memo position until the participant provides DTC with new instructions to remove them from the memo position or until the participant reduces the position by executing eligible transactions that are normally customer transactions. Withdrawals-by-transfer, certificates-on-demand withdrawals, and free delivery orders that are not indentified as stock loan or stock loan returns would be considered eligible transactions which would be used to reduce the securities in both the memo position and the free account position.[3]

By using memo segregation, participants can submit instructions on the evening of T+4 to deliver securities which they expect to receive on T+5 out of the free account and protect customer fully-paid-for securities in the free account from delivery. If on T+5 there are not enough non-segregated securities in the account to fill the order, the delivery order will recycle until enough non-segregated securities are in the account to fill the order.

DTC developed the memo segregation service to assist participant broker-dealers to comply with Exchange Act requirements concerning segregation of customer fully-paid for securities.[4] This service supplements other related DTC account structures to protect participant customer fully-paid-for securities from unrelated or intra-day DTC liens, such as segregated accounts and the conduit accounts.[5]

DTC has been operating the memo segregation service since August 1988, under the terms of a temporary approval order.[6] DTC has informed the Commission that during the pilot period 12 broker-dealers used the service and submitted approximately 65 memo segregation instructions per day. DTC has experienced no operational problems with this service. According to DTC, its participants have not experienced any operational problems with the service.[7]

II. DTC's Rationale

DTC believes that the proposed rule change is consistent with the requirements of action 17A(b)(3)(F) of the Act in that it is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency. DTC believes that implementing this service will assist broker-dealers in complying with Exchange Act Rule 15c3-3. In addition, DTC states that the participants which have used this service during the pilot period believe that it improved their ability to comply with Commission Rule 15c3-3 by increasing the number of automated deliveries which can be made without violating the Rule 15c3-3 requirements.

III. Discussion

The Commission believes that the proposal is consistent with section 17A(b)(3) (A) and (F) of the Act. The Commission also agrees with DTC that the proposal will allow broker-dealer participants to increase the number of automated deliveries made through DTC and, at the same time, provide broker-dealer participants with an additional tool to aid them in protecting customer fully-paid-for securities as required by Exchange Act Rule 15c3-3. In addition, DTC has operated memo segregation for two months without any significant operational problems. Based on DTC's experience, the Commission believes that full implementation of memo segregation will promote the prompt and accurate clearance and settlement of securities transactions and improve DTC's ability to safeguard customer fully-paid-for securities within its custody or control.

DTC provides custodial services for its participants, including banks and broker-dealers. Broker-dealers trade for their own accounts and act as custodians for customers. Rule 15c3-3 requires brokers, acting in a custodial capacity, to maintain possession or control over such customer fully-paid-for securities.

DTC's custodial services are one of several alternative means for participants to maintain their own and customer securities. Other custodial arragements include: (1) The retention of the physical securities in the broker-dealer's vault; (2) a custodial arrangement with a custodial bank or another broker-dealer; and (3) an arrangement with other registered depositories. DTC has no way of knowing which, if any, securities in its possession or control represent customer fully-paid-for securities. Moreover, under section 8(c) of the Act and Rule 8c-1(g) thereunder, DTC is under an obligation to deliver fully-paid-for securities to its participants.

The Commission believes that memo segregation provides a useful aid to broker-dealers in managing their depository accounts and their inventory controls to assure possession or control of customer fully-paid-for securities. Before DTC offered the memo segregation enhancement, participants protected customer fully-paid-for securities from delivery by placing them in a separate account or sub-account. When a participant's customers wanted to transfer these securities, the participant was required to take the additional step of transferring the securities into his free account before the securities could be delivered out of the account. The Commission believes that memo segregation provides participants with more flexibility, eliminates the need for additional transfers to protect customer fully-paid-for securities within the participant's free account, and allows for automated

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 26000 (August 16, 1988), 32 FR 31947.

[3] DTC presumes that these activities are customer transactions and, therefore, once satisfied from a participant's free account position, are no longer anticipated customer securities that need protection.

[4] Rule §240.15c-3 requires, among other things, that a broker-dealer obtain and thereafter maintain possession or control of all fully-paid-for or excess margin securities held for the accounts of customers. Broker-dealers may deposit these securities with registered clearing agencies, such as DTC, for safekeeping.

[5] Currently, to protect customer fully-paid-for securities, broker-dealers must segregate customer fully-paid-for securities in a segregated account which prevents these securities from being used for any transactions while they are held in the segregated account. Securities in a segregated account may not be delivered out until those securities are transferred to the participant's free account. A participant also may open a conduit account to receive certain securities (*e.g.*, stock-loan deliveries). A participant issues instructions to DTC to deliver securities out of this account rather than the participant's free account. Participants usually use a conduit account to make a delivery using securities it expects to receive that day.

[6] *See* Securities Exchange Act Release No. 26000 (August 16, 1988), 53 FR 31947.

[7] Telephone conversation between Carl Urist, Deputy General Counsel, DTC and Cynthia Psoras Staff Attorney, Commission, October 12, 1988.

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deliver orders to be executed through DTC.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–88–16) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: November 3, 1988.

[FR Doc. 88–26017 Filed 11–9–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26242; File No. SR–NASD–88–29]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Proposed Rule Change Concerning Amendments to the NASD Code of Arbitration Procedure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 1, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and two amendments thereto, filed on September 19, 1988 and October 7, 1988, as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Part II section 10, and Part III, sections 13, 21, 23, 25, 32, 37, and 43 and to establish a new section 45 of the NASD Code of Arbitration Procedure (the "Code") to improve the efficiency of its arbitration process, to extend the benefits of simplified arbitration procedures to industry controversies involving not more than $10,000; to expedite the service of pleadings in arbitration proceedings; to provide additional information concerning arbitrators' background to parties to arbitration proceedings; to codify the affirmative disclosure obligations of arbitrators; to require that parties pay deposits upon the filing of counterclaims, cross-claims, and third-party claims; to improve pre-hearing processes and provide for pre-hearing conferences; to require that a verbatim record of proceedings be kept; to establish a separate fee schedule for industry and clearing controversies; to establish a surcharge for proceedings handled on an expedited basis at the request of the parties or pursuant to court order; and to clarify the authority of arbitrators or the Director of Arbitration to assess fees and costs or to refund deposits.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, in NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) A Uniform Arbitration Code (the "Uniform Code") has been developed by the Securities Industry Conference on Arbitration ("SICA"), which is composed of representatives of the NASD, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, as implemented by the various self-regulatory organizations, has established throughout the securities industry a uniform system of arbitration procedures. The proposed changes to sections 21, 23, 25 (with the exception of section 25(c)), 32, 33 and 37 are intended to conform the provisions of the Code to amendments to the Uniform Code approved by SICA on May 24, 1988.

The proposed changes to section 10 and the new proposed section 45, while not constituting a part of the Uniform Code, were recommended by the NASD National Arbitration Committee and were approved for filing by the NASD's Board of Governors on May 10, 1988.

In general, the proposed rule changes are intended to improve the efficiency of the arbitration process; to extend the benefits of simplified arbitration procedures to industry controversies involving not more that $10,000; to expedite the service of pleadings in arbitration proceedings; to provide additional information concerning arbitrators' backgrounds to parties to arbitration proceedings; to codify the affirmative disclosure obligations of arbitrators; to require that parties pay deposits upon the filing of counterclaims, cross-claims, and third-party claims; to improve pre-hearing discovery processes and provide for pre-hearing conferences; to require that a verbatim record of proceedings be kept; to establish a separate fee schedule for industry and clearing controversies; to establish a surcharge for proceedings handled on an expedited basis at the request of the parties or pursuant to court order; and to clarify the authority of arbitrators or the Director of Arbitration to assess fees and costs or to refund deposits.

(1) *Simplified Industry Arbitration.* Section 10 of the Code currently permits disputes between or among members or associated persons involving a dollar amount not exceeding $5,000, exclusive of attendant costs, to be considered under simplified industry arbitration procedures. In order to extend the benefits of these procedures to a greater number of cases, the proposed rule change would increase the current $5,000 limit to $10,000. This proposed rule change would be consistent with current provisions applicable in customer disputes.

(2) *Simplified Arbitration.* Section 13 of the Code currently requires that all pleadings, including claims, answers, and third-party claims, be filed with the Director of Arbitration, who in turn serves all parties to a proceeding with a copy of each pleading. Consistent with procedures utilized by the Commodity Futures Trading Commission in reparation proceedings and the American Arbitration Association, it is proposed that the simplified arbitration provisions of the Code be amended to eliminate NASD responsibility for service of pleadings subsequent to the filing of a Claim (the initial pleading in any proceeding). The NASD arbitration staff would continue to serve all initial claims, but the parties would be required to serve each other and the NASD by the means prescribed in proposed section 25(c) with a copy of all subsequent pleadings. This modification would substantially reduce delays experienced in the initial stages of a case, resulting in improvements in case administration and speedier resolution of claims.

(3) *Notice of Selection of Arbitrators.* Section 21 of the Code mandates disclosure of only the names and business affiliations of arbitrators. In order to provide the parties with more extensive information concerning the arbitrators' backgrounds, it is proposed that employment histories of arbitrators for the past ten years, as well as information disclosed pursuant to section 23, be made available to parties at least eight business days prior to the date of an initial hearing session.

(4) *Disclosures Required by Arbitrators.* Upon appointment to the NASD National Arbitration Pool, each potential NASD arbitrator receives a copy of the American arbitration Association/American Bar Association Code of Ethics for Arbitrators, which set forth their obligation to inform the parties of any conflicts of interest which may impair their ability to render an impartial award. The proposed amendment to section 23 of the Code is intended to reinforce the obligation or arbitrators regarding the full range of disclosures which they would be required to make to parties in arbitration proceedings. The proposed amendments codify the arbitrator's continuing obligation to disclose matters which may indicate the appearance or existence of partiality or bias.

(5) *Initiation of Proceedings.* Section 25 of the Code currently requires that all proceedings, including claims, answers, third-party claims, and cross-claims, be filed with the Director of Arbitration, who in turn serves all parties to a proceeding with a copy of each pleading. Consistent with procedures utilized by the Commodity Futures Trading Commission in reparation proceedings and the American Arbitration Association, it is proposed that the Code be amended to eliminate NASD responsibility for service of pleadings subsequent to the filing of a Claim, the initial pleading in any proceeding. The NASD arbitration staff would continue to analyze and serve all initial claims, but the parties would be required to serve each other and the NASD with a copy of all subsequent pleadings. This modification would substantially reduce delays experienced in the initial stages of a case, and would result in improvements in case administration. This change is identical to that in revised section 13 for simplified arbitration.

(6) *General Provisions Governing Pre-Hearing Proceedings.* Proposed section 32 of the Code continues the current practice of encouraging the parties to exchange documents and information prior to the first hearing date and allows the arbitrators to rule upon disputes between the parties regarding what documents must be produced. This section also provides that the Director of Arbitration may appoint a single presiding person or arbitrator to conduct pre-hearing conferences or may appoint a single arbitrator on a hearing panel to resolve pre-hearing issues between the parties and make decisions to expedite the proceedings. Such issues would be decided upon the parties' written submissions or, in the discretion of the arbitrator, after a hearing. The arbitrator would be empowered to act on behalf of the entire panel to "issue subpoenas, direct appearances of witnesses and production of documents, set deadlines for compliance, and issue any other ruling which will expedite the arbitration proceedings." Proposed section 32(c) is similar to New York Stock Exchange Arbitration Rule 638 which mandates the pre-hearing exchange of documents intended to be used in the party's direct case at the hearing. The foregoing provisions address many of the major criticisms of the arbitration process and would serve to reduce delays occasioned by failure of parties to comply with document exchange requirements prior to the date of the initial hearing.

(7) *Subpoenas and Power to Direct Appearances.* Proposed section 33 of the Code consolidates current sections 32(a) and 33, which deal with the power of arbitrators and counsel to issue subpoenas as provided by applicable law, and empower arbitrators to direct the appearance of any person employed or associated with any member of the NASD and to direct the production of any records in the possession or control of such persons. Proposed section 33(a) would also require that notice of the issuance of all subpoenas be given to all parties to a proceeding.

(8) *Record of Proceedings.* Section 37 of the Code currently does not require that a record of a proceeding be kept. As a matter of practice, the NASD tape records all arbitration hearings. Consistent with the Uniform Arbitration Code adopted by SICA, the proposed section would require that a record be kept in all proceedings. The proposed rule would expressly authorize the practice of tape recording hearings. Parties seeking the transcription of proceedings would bear the costs of such transcription unless the arbitrators directed otherwise, and arbitrators would also be authorized, on their own motion, to direct that a record be transcribed.

(9) *Schedule of Fees for Customer Disputes.* Section 43 of the Code currently does not require parties prosecuting counterclaims, cross-claims, or third party claims to make deposits upon the assertion of such claims, although such deposit is required of claimants. In order to equalize the obligations of all those experiencing the benefits of the arbitration process, the proposed rule would require parties prosecuting counterclaims, cross-claims, or third party claims to make deposits. By requiring such parties to make deposits, and by virtue of the fact that all forum fees may, in appropriate circumstances, be assessed by the arbitrators against a single non-prevailing party, the potential fees which a losing party might be ordered to pay at the conclusion of an arbitration proceeding might be substantially increased. The rule also codifies an administrative definition which has been applied in cases filed with the NASD since January 1987, by defining a "hearing session" as any meeting between the parties and an arbitrator, including pre-hearing conferences with an arbitrator, which lasts four hours or less. Further, the rule gives notice to the parties of the maximum amount of forum fees which they may reasonably expect to have assessed against them, and clarifies the authority of the arbitrators to assess fees and costs, which include but are not limited to costs associated with arbitrator travel, the production of documents, the appearances of witnesses, the preparation of a written record of the proceedings and the rental of a hearing room if the parties do not avail themselves of an available NASD hearing room.

The change in the definition of hearing session referred to above was adopted to correct a disparity between forum fees assessed by the New York Stock Exchange ("NYSE") Arbitration Department and those assessed by the NASD Arbitration Department. The definition set forth in the proposed rule change also encourages more efficient use of arbitration resources by effectively increasing the forum costs in longer proceedings, thus discouraging lack of pre-hearing preparation and other dilatory practices. Notwithstanding the possible increase in the total amount of forum fees which may be assessed by arbitrators as a result of the foregoing definitional change, it is expected that revenues from the assessment of fees and costs will continue to cover only a fraction of the operational costs of the NASD Arbitration Department. Fees collected

[1] Because of the nature of this proposed rule change and the fact that some arbitration proceedings are already pending, the NASD has proposed specific dates of effectiveness for the various sections of the Code being amended. *See infra* Item III of this Notice.

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from parties to NASD arbitrations covered 7 percent of the Arbitration Department's expenses in FY 1985; 25 percent of such expenses in FY 1986; and 9.4 percent of such expenses in FY 1987.

(10) *Schedule of Fees for Industry and Clearing Controversies.* The NASD does not currently maintain a separate fee schedule pertaining to industry and clearing controversies. Like the separate schedule of fees for industry controversies established under New York Stock Exchange Arbitration Rule 632, proposed section 45 of the Code would establish a separate schedule setting forth the amounts which must be deposited with the NASD in industry or clearing controversies which are required to be submitted to arbitration before the NASD as set forth in section 8 of the Code. The proposed rule incorporates the procedural structure of proposed section 43, with the addition of a proposed subparagraph (h) establishing a non-refundable surcharge of $5,000 payable in industry or clearing controversies requiring expedited hearings. Expedited hearings have been held at the request of the parties or pursuant to a court order binding on the parties in cases in which ongoing or irreparable harm has been alleged for violations of employment agreements, covenants not to compete, use of customer lists or other proprietary information, and other controversies between registrants in the securities industry. The NASD has incurred certain additional administrative costs associated with industry proceedings which, pursuant to court order or by agreement of the parties, have required expedited processing on the part of the arbitration staff and arbitrators. These costs have included increased staff and arbitrator time and effort necessary to schedule, administer, hear, and decide such proceedings on an expedited basis, as well as incidental costs resulting from the rescheduling or delay of other regularly scheduled cases. A non-refundable surcharge of $2,500 proposed in subparagraph (h) would be asessed against all claimants, collectively, and all respondents, collectively, since expedited proceedings occur as a result of the request and agreement of the parties or pursuant to a court order binding on all parties. The proposed surcharge would thus be assessed against those persons experiencing the benefits of expedited consideration.

(b) The NASD believes the proposed rule change is consistent with sections 15A(b) (5) and (6) of the Act, which require the rules of the NASD to provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest, in that the proposed rule change will facilitate the arbitration process in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furthernance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such lnger period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

Specifically, the NASD proposes to make effective sections 21, 23, 32, 37 and 45 upon Commission approval of this proposed rule change (except for counterclaims and third party claims that were previosly filed). The proposed provisions of sections 13 and 25 will only apply to cases filed after Commission approval of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission encourages comment on an aspect of the proposed rule change, including the proposed effective dates. In addition the Commission requests specific comment as follows:

The proposed rule change represents significant modifications in the current rules for arbitration proceedings administrated by the NASD. On September 10, 1987, the Commission wrote to SICA, ofwhich the NASD is a member, in order to request that it consider a wide range of changes to its Uniform Code of Arbitration. Since that time, SICA has developed new rules to respond to many of the issues raised in the Commission's letter. Proposed amendments to four sections of the Code contained in this filing respond to issues raised in the September 10, 1987, letter. Accordingly, it is with particular interest that the Commission solicits comment on the amendment sto those four sections, sections 21, 23, 32, and 37, dealing ith the disclosure of arbitrator biographical information and potential conflicts of interest, the discovery process and thepreservation of a recored.[2] Comment is sought as to whtether these proposed rule changes will appropriately protect investors and the public. In particular, proposed section 32, concerning prehearing proceedings, does not explicitly provide for the taking of depositions. Rather, the section permits arbitrators to issue any ruling which will expedite the arbitrations proceedings. The Commission understands this to include the ability to order depositions. Comments is specifically solicited as to whether "expediting the proceedings" would cover appropriate reasons for ordering depositions. Should a party be able to have the arbitrators order depositions in a particular cae if he can demostrate to them that a deposition is necessary to develop his case or that he cannot obtain equivalent informatin from documents alone? Would these reasons come within the language of proposed section 32?

In addition, comment is specifically solicited on the proposed amendments to sections 43 and 45 of the Code. These sections change the definiton of a "hearing session" from a full day of hearings to a four hours period, assess forum fees against counter, cross and third-party claimants, specify costs that may be assessed against parties, and add a non-refundable fee of $5,000 to certain intra-industry disputes. The combined effect of these changes has the potential to increase material the fees and costs that could be assessed by the arbitrators against a single party to an arbitration proceeding. Comment is solicited on whether such fees and charges are reasonable.

[2] The NASD is currently preparing to submit to the Commission, in a separate filing, proposed new rules that set out guidelines for public arbitrators. Commentators will be able to submit comments on those and other subjects covered int he September 10, 1987, letter to SICA when those rules are proposed and published for public comment.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C., will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-88-29 and should be submitted by December 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.,

Dated: November 2, 1988.

[FR Doc. 88-26018 Filed 11-9-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26248; File No. SR-NASD-88-19]

Self-Regulation Organizations; National Association of Securities Dealers, Inc.; Extension of Public Comment Period of Proposed Rule Change To Create an OTC Bulletin Board Display Service

On June 9, 1988, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to establish a quotation service, the OTC Bulletin Board Display Service, for OTC securities that are not included in the NASDAQ System nor listed on a national securities exchange. Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25949, July 28, 1988) and by publication in the **Federal Register** (53 FR 29096, August 2, 1988).

The NASD originally consented to an extension of the period for public comment on the proposed rule change for forty-five days, until October 7, 1988,[1] and, on October 14 and October 28, 1988, consented to additional extensions on the comment period, until November 4, 1988.[2]

The Commission hereby extends the period for public comment on the proposed rule change until November 4, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 3, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26015 Filed 11-9-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24740]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 3, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 28, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service *by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

[1] *See* letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated August 22, 1988.

[2] *See* letters to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Robert E. Aber, Vice President and Deputy General Counsel, Corporate Subsidiaries, dated October 14, 1988, and October 28, 1988.

Massachusetts Electric Company (70-7409)

Massachusetts Electric Company ("Company"), 25 Research Drive, Westborough, Massachusetts 01582, a subsidiary of New England Electric System, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42 and 50 thereunder.

By order in this proceeding, dated October 9, 1987 (HCAR No. 24473), the Company was authorized to issue and sell through June 30, 1989, one or more series of first mortgage bonds ("Bonds") in an aggregate principal amount not exceeding $100 million. To date the Bonds have not been sold. The Company seeks to amend the terms and conditions of the first mortgage bonds in the following manner. It is proposed to update the restriction on common stock dividends or other distributions to be contained in the Company's Indenture relating to the Bonds. The updated restriction will provide that so long as any the Bonds shall be outstanding, the Company will not declare or pay any dividend or make any other distribution on, or purchase or otherwise acquire for value, any shares of its common stock at anytime outstanding (other than by way of stock dividends or when an equal amount of cash is received concurrently as a capital contribution or from the sale of common stock), if the cumulative aggregate amount of such dividends, distributions, purchases, and acquisitions (at cost) declared or effected subsequent to the issuance of that series of the Bonds exceeds the Net Income of the Company (as defined in the Original Indenture) subsequent to that date, less the aggregate amount of all dividends paid or declared on the preferred stock of the Company during such period, plus an amount approximately equal to the annual dividend payments on the outstanding preferred stock and common stock of the Company, plus such additional amount as may be authorized or approved upon application of the Company to the Commission, or by any successor commission thereto under the Act.

Appalachian Power Company, et al. (70-7549)

Appalachian Power Company, Columbus Southern Power Company, Kentucky Power Company and Ohio Power Company ("Applicants"), all in care of American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, public utility

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subsidiaries of American Electric Power Company, Inc., a registered holding company, have filed an application pursuant to sectons 9(a) and 10 of the Act.

Applicants request authority to lease to one or more nonassociated companies up to 50% of the capacity of a fiber optics system, which they are planning to build between Columbus, Ohio and Roanoke, Virginia for internal communications needs. Such system will consist of 20 fibers and once in operation, Applicants will immediately require the use of 10 of these fibers. Applicants also expect to utilize the remaining 10 fibers in the foreseeable future and have decided to build the entire system now, because it is less costly than constructing such a system in two separate stages, particularly over the mountainous terrain between Columbus and Roanoke.

Louisiana Power & Light Company (70–7553)

Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70114, a wholly owned electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a)(1), 10 and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

LP&L seeks authorization to issue and sell not more than $350,000,000 principal amount of its first mortgage bonds ("Bonds") to be issued in one or more new series from time to time not later than December 31, 1989.

LP&L further proposes to issue and sell, from time to time not later than December 31, 1989, one or more new series of its preferred stock, cumulative, of either $25 par value or $100 par value (collectively, the "Stock"). the total aggregate par value of shares of those new series of the Stock may not exceed $100,000,000. LP&L may determine that the terms of the Stock should provide for an adjustable dividend rate thereon to be determined on a periodic basis, subject to specified maximum and minimum rates, rather than a fixed dividend rate.

LP&L also proposes to acquire through tender offers or otherwise certain of its outstanding securities at any time, or from time to time, prior to December 31, 1990, including (1) up to $340,000,000 aggregate principal amount of its outstanding first mortgage bonds; and (2) up to $211,000,000 of one or more of series of its outstanding preferred stock.

LP&L has requested an exception, pursuant to Rule 50(a)(5), from the competitive bidding requirements of Rule 50 (b) and (c) so that it can undertake negotiations with respect to the issuance and sale of the Bonds and the Stock. LP&L may proceed to negotiate the terms of the Bonds and the Stock.

Mississippi Power & Light Company (70–7554)

Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215–1640, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration pursuant to sections 6(a), &, 9(a)(1), 10, and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

MP&L proposes to issue and sell, in one or more new series at one time or from time to time not later than December 31, 1989, not more than $100,000,000 principal amount of its general and refunding mortgage bonds ("G&R Bonds"). MP&L is currently authorized to issue and sell through December 31, 1988, up to $150,000,000 aggregate principal amount of its G&R Bonds, $75,000,000 of which currently remains unsold ("Remaining G&R Bonds"). The $100,000,000 of G&R Bonds which is, in part, the subject of this application-declaration includes the Remaining G&R Bonds; if MP&L issues and sells any of the Remaining G&R Bonds, the authorized principal amount of the G&R Bonds would be reduced by an amount equal to the principal amount of the Remaining G&R Bonds sold.

MP&L further proposes to issue and sell, at one time, or from time to time, not later than December 31, 1989, one or more new series of its preferred stock, cumulative, $100 Par Value, in an aggregate amount not to exceed $37,500,000 ("Stock") MP&L may determine that the terms of the Stock should provide for an adjustable dividend rate thereon to be determined on a periodic basis, subject to specified maximum and minimum rates, rather than a fixed dividend rate.

MP&L also proposes to acquire, at any time, or from time to time, prior to December 31, 1990, by means of tender offer, or otherwise, prior to their respective maturities, certain of its outstanding securities, including (1) up to $100,000,000 aggregate principal amount of its outstanding first mortgage bonds; and (2) up to $100,000,000 aggregate par value of its outstanding preferred stock.

MP&L has requested an exception, pursuant to Rule 50(a)(5), from the competitive bidding requirements of Rule 50 (b) and (c) so that it can undertake negotiations with respect to the issuance and sale of the Bonds and the Stock. MP&L may proceed to negotiate the terms of the Bonds and the Stock

System Energy Resources, Inc., et al. (70–7570)

System Energy Resources, Inc. ("SERI"), One Jackson Place, 188 East Capitol Street, Jackson, Mississippi 39201, Arkansas Power & Light Company ("AP&L"), 425 West Capitol Street, Little Rock, Arkansas 72203, and Louisiana Power & Light Company ("LP&L") 317 Baronne Street, New Orleans, Louisiana 70112, each a wholly owned subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, have filed a joint declaration pursuant to Sections 12(b) and 13(b) of the Act and Rules 45, 86, 87, 88, 89, 90, 91, 93, and 94 promulgated thereunder.

SERI currently has a 90% undivided ownership interest in the Grand Gulf Nuclear Project ("Grand Gulf") and operates Grand Gulf Unit No. 1.[1] It is proposed that SERI become the nuclear operating company for the MSU system, effective on or about January 1, 1989. SERI, under licenses to be granted by the Nuclear Regulatory Commission and pursuant to separate operating agreements ("Agreements") with AP&L and LP&L, proposes to operate, but not own, two MSU system nuclear power plants, Arkansas Nuclear One, Units 1 and 2, ("ANO"), located in Pope County, Arkansas, and Waterford Steam Electric Station, Unit No. 3 ("Waterford 3"), located near Taft, Louisiana. ANO and Waterford 3 are owned and currently operated by AP&L and LP&L, respectively.

Under the Agreements, AP&L and LP&L will continue to own the entire output of their respective nuclear plants. Services provided by SERI will be billed to AP&L and LP&L ast SERI's cost and will lbe funded directly by, or allocated among, the owning utilities and paid by SERI. The Agreements further provide for indemnities between SERI and AP&L and SERI and LP&L in connection with SERI's service activities. SERI proposes to indemnify the respective owning utility against all actual losses, costs, liabilities and expenses (except consequential damages, as defined) resulting from SERI's gross negligence or willful misconduct, as defined. If SERI otherwise incurs any liability to any third party, any amounts paid by SERI will be a cost passed on to the owning utility. In the event that SERI should require additional capital to finance the proposed transaction, it will seek further authorization from the Commission.

[1] The remaining 10% undivided interest is owned by South Mississippi Electric Power Association ("SMEPA"), a Mississippi electric cooperative. By order dated October 30, 1980 (HCAR No. 21770), SERI was authorized to operate SMEPA's interest in Grand Gulf 1 pursuant to an Operating Agreement between SMEPA and SERI. SMEPA pays an allocable share of Grand Gulf 1 operating costs to SERI.

New England Electric System (70–7573)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By orders dated January 10, 1980, February 12, 1980, and June 25, 1985, (HCAR Nos. 21387, 21428, and 23743, respectively), the Commission authorized NEES to issue and sell from time to time through December 31, 1988, an aggregate of up to 1,000,000 of its authorized but unissued common shares, $1 par value, pursuant to the NEES Incentive Thrift Plan ("Plan"). After a common stock split on January 24, 1986, and including all issuances under the Plan through September 30, 1988, NEES has a balance of 415,042 authorized but unissued shares. NEES continues to issue shares monthly under the Plan.

NEES now proposes to further extend the period for issuing the remaining common shares under the Plan to December 31, 1992 and to issue and sell an additional 3,000,000 of its authorized common shares for an aggregate of 3,415,042 shares, pursuant to the Plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28020 Filed 11–9–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

November 4, 1988

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Allstate Municipal Income Trust II
Common Stock $.01 Par Value (File No. 7–3981)

American Capital Income Trust
Common Stock, No $.01 Par Value (File No. 7–3982)

Ashland Coal, Inc.
Common Stock, $.01 Par Value (File No. 7–3983)

Blackstone Income Trust
Common Stock, $.01 Par Value (File No. 7–3984)

Bond International Gold, Inc.
Common Stock, $.01 Par Value (File No. 7–3985)

Cigna High Income Shares
Common Stock, No $.01 Par Value (File No. 7–3986)

Citytrust Bancorp, Inc.
Common Stock, $2.50 Par Value (File No. 7–3987)

Comprehensive Care Corp.
Common Stock, $.10 Par Value (File No. 7–3988)

Diagnostic Products
Common Stock, No Par Value (File No. 7–3989)

Emerald Mortgage Investment Corp.
Common Stock, $.01 Par Value (File No. 7–3990)

High Yield Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3991)

Hughes Supply, Inc.
Common Stock, $1.00 Par Value (File No. 3992)

India Growth Fund Inc.
Common Stock, $.01 Par Value (File No. 3993)

Kemper High Income Trust
Common Stock, $.01 Par Value (File No. 3994)

Kemper Intermediate Gov't Trust
Common Stock, $.01 Par Value (File No. 3995)

Medusa Corp.
Common Stock, No Par Value (File No. 3996)

New American High Income Fund
Common Stock, $.01 Par Value (File No. 3997)

Nuveen California Municipal Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 3998)

Nuveen Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 3999)

Par Technology Corp.
Common Stock, $.02 Par Value (File No. 7–4000)

Premier Industrial Corp.
Common Stock, $1.00 Par Value (File No. 7–4001)

Putnam Master Intermediate Income Trust
Common Stock, No Par Value (File No. 7–4002)

Rexene Corp.
Common Stock, $1.00 Par Value (File No. 7–4003)

Silicon Systems, Inc.
Common Stock, No Par Value (File No. 7–4004)

TIS Mortgage Investment Co.
Common Stock, $.001 Par Value (File No. 7–4005)

TCBY Enterprises Corp.
Common Stock, $.10 Par Value (File No. 7–4006)

Universal Medical Buildings, L.P.
Common Stock, $.01 Par Value (File No. 7–4007)

Wyse Technology
Common Stock, No Par Value (File No. 7–4008)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 25, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28012 Filed 11–9–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

XTRA Corporation
Common Stock, $0.50 Par Value (File No. 4009)

These securities are listed and registered on one or more other national securities exchange and are reported in

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the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 25, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26013 Filed 11-9-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-4172]

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration; (Sheller-Globe Corp., 13% Senior Subordinated Notes, Due June 15, 2000, American Stock Exchange)

November 4, 1988.

Sheller-Globe Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

As of September 20, 1988, there were less than twenty (20) registered holders of the 13% Senior Subordinated Notes, due June 15, 2000 ("Senior Notes"). A review of the AMEX records indicates that since the original issuance of the Senior Notes in June 1986, trading volume has been relatively low. The Company believes that continued listing of the Senior Notes is too costly.

Any interested person may, on or before November 25, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26014 Filed 11-9-88; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

U.S. Participation in the Harmonized System Committee of the Customs Cooperation Council

AGENCY: Office of the United States Trade Representative.

ACTION: Notification of procedures to implement sections 1209 and 1210 of the Omnibus Trade and Competitiveness Act of 1988.

SUMMARY: This notice is intended to describe procedures for implementing sections 1209 and 1210 of the Harmonized System subtitle of the Omnibus Trade and Competitiveness Act of 1988 (the Act) relating to U.S. participation in the Harmonized System Committee of the Customs Cooperation Council.

FOR FURTHER INFORMATION CONTACT: Barbara Norton, Office of GATT Affairs (202-395-5097).

Background Information

Subtitle B of title I of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) provides for the approval and implementation of the International Convention on the Harmonized Commodity Description and Coding System (Convention) and its associated nomenclature (Harmonized System or HS). More specifically, the Act provides for congressional approval of United States accession to the Convention (section 1203), the enactment of the Harmonized Tariff Schedule of the United States (HTS) (section 1204) and the publication of foreign trade statistics in conformity with the HS nomenclature (section 1208). In addition, under section 1209, the United States Trade Representative (USTR) is made responsible for coordinating trade policy concerning the Convention. Section 1210 provides that, subject to the policy direction of the USTR, the Departments of Treasury and Commerce and the United States International Trade Commission (the Commission) shall have responsibility for formulating U.S. positions on technical and procedural issues relating to the Convention and for representing the United States government with respect thereto. The purpose of this notice is to describe the framework for implementing sections 1209 and 1210 of the Act.

Policy coordination and U.S. Government representation. The conference report on the Act cites the need to ensure a broad base of participation in the work relating to the HTS and the Convention. The USTR will assume leadership with respect to policy questions arising from the implementation of the Convention including coordination of matters for action by the Trade Policy Staff Committee, and the negotiation of issues arising under the dispute settlement provisions of the Convention. In accordance with section 1210 of the Act, the Treasury Department, represented by the Customs Service, the Commerce Department, represented by the Census Bureau, and the Commission (referred to below as "the three agencies") will jointly represent the U.S. government at the Customs Cooperation Council (the Council) with respect to matters relating to the Convention and, subject to the policy direction of USTR, will be primarily responsible for formulating U.S. positions on technical and procedural matters. The Customs Service representative will serve as head of the delegation at sessions of the Harmonized System Committee (HSC). As the agency primarily responsible for administering the tariff, the Customs Service will take the lead role in issues concerning the interpretation and application of the HS and will ensure that, to the extent consistent with judicial decisions and trade policy directives, U.S. classification treatment is consistent with uniform application of the HS at the international level. The Commission will lead the U.S. delegation to international working parties and HSC subcommittees responsible for considering amendments to the HS in order to keep the Harmonized System abreast of changes in technology and patterns of international trade and shall ensure that U.S. technical positions reflect the needs of the business community. The Census Bureau will assume leadership responsibility for the United States in international efforts in the Council with respect to promoting and achieving consistency and comparability in statistical reporting.

Availability of information: Solicitation of public views. The Summary Records of past sessions of the Harmonized System Committee will be made available at the Nationl Technical Information Service, Department of Commerce.

Harmonized System Committee documents including the draft agenda of upcoming sessions will be made available at the Trade Advisory Center of the Department of Commerce.

In an effort to receive private sector views on current issues before the Harmonized System Committee, the Office of Tariff Affairs and Trade Agreements of the Commission will maintain a list of interested parties. The list will be referred to when making direct contracts for advise on pending matters. For inclusion on this list, interested parties should write to the United States International Trade Commission, Office of Tariff Affairs and Trade Agreements and indicate the HS chapters of interest.

Secretariat. The Commission, in its Office of Tariff Affairs and Trade Agreements, will serve as the secretariat to the three agencies with respect to activities under section 1210 of the Act, and in that capacity will receive inquiries and petitions for consideration by the agencies concerned.

Technical Proposals. The Act directs the Commission and the Secretaries of Commerce and of the Treasury to prepare, in connection with their responsibilities in the area of trade statistics arising under the Convention and under section 484(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1484 (e)), technical proposals to be submitted to the Council in connection with the administration of the Harmonized System. Among other things, the proposals are intended to assure that the U.S. contribution to this Convention recognizes the needs of the U.S. business community for a trade nomenclature reflecting sound principles of commodity identification, modern production methods, and current trading patterns and practices. Thus, the proposals may relate to issues concerning the interpretation of the nomenclature, or its amendment to reflect new technology or changes in patterns in international trade.

Such technical prposals may be initiated by the three agencies on their own initiative or at the request of interested government agencies or members of the public. After considering all available information (including the views of a functional advisory committee), and after consultation with other interested agencies, the three agencies jointly act to formulate U.S. government positions. Approved final technical proposals will then be submitted to the HSC for action.

Inquiries regarding U.S. exports. Inquiries relating to the classification of goods under the Statistical Classification of Domestic and Foreign Commodities (Schedule B) as well as routine inquiries concerning the tariff classification of goods in other countries should be addressed to the Commercial Rulings Division of the U.S. Customs Service, Washington, D.C. All other inquiries and complaints from interested parties concerning the HS treatment of articles produced in and exported from the United States will be considered by the three agencies which will review each such inquiry or complaint and take such actions or make such recommendations as may be consistent with U.S. export interests. These actions may include the formulation of technical proposals to be submitted to the HSC or the Council and expressing the position of the U.S. government on the particular technical or procedural matters raised, requests that the HSC provide information or guidance, or stepts toward the initiation of dispute settlement under article 10 of the Convention.

Dispute Settlement. The three agencies are also directed to establish procedures to ensure that the dispute settlement provisions in article 10 of the Convention are utilized to promote U.S. export interests. Article 10 provides that any dispute between contracting parties concerning the interpretation or application of the Convention is to be settled by negotiation between the contracting parties to the extent possible. If this cannot be accomplished, the parties (that is, the governments concerned) are to refer the dispute to the HSC for its consideration and recommendations. The HSC in turn is to refer irreconcilable disputes to the Council for its recommendations. Individual parties have no standing to initiate dispute settlement under the Convention. Thus, it is necessary for individuals or firms seeking to raise disputes with another contracting party to file inquiries or complaints with the U.S. government and to present, or assist in the collection of, any information relating to the dispute which may be required.

Accordingly, interested parties seeking to have the United States initiate dispute settlement procedures under the convention must file an inquiry or complaint. If the three agencies determine that such action is warranted, they will recommend to the USTR the initiation of bilateral negotiations with the other contracting party concerned. If unsuccessful or if resort to the other contracting party is deemed not to be appropriate, the U.S. delegate will invoke the dispute settlement procedures in the HSC and the Council. The inquirer or complainant will be informed of all steps taken and of any progress in resolving the matter.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 88-25985 Filed 11-9-88; 8:45 am]

BILLING CODE 3190-01-M

Generalized System of Preferences (GSP), Public Hearings for the 1988 Annual Review, Change of Hearing Location

Notice is hereby given of a change in location for the GSP Public hearings to be held on petitions accepted for review in the 1988 Annual Review, and the addition of one day to the hearings. These hearings are scheduled for November 15-18. **Federal Register** notices regarding these hearings have been published on a number of occasions. The document numbers and the dates of these notices are as follows:

FR Doc. 88-23939 (Oct. 18)
FR Doc. 88-23176 (Oct. 7)
FR Doc. 88-20742 (Sept. 9)
FR Doc. 88-19730 (Aug. 30)
FR Doc. 88-16303 (July 20)

The GSP Public Hearings will be moved from the Commerce Department Auditorium to the Main Commission Hearing Room of the International Trade Commission, 500 E Street, SW., Washington, DC.

The hearing will be open to the press, but closed to any video cameras. No such cameras will be permitted in the building. Any interested news organization may contact Kelly Shipp for further information at (202) 395-3230.

Sandra J. Kristoff

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 88-26038 Filed 11-9-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Motor Carrier Advisory Committee, Subcommittee on Government And Taxation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

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SUMMARY: The FHWA announces that the Subcommittee on Government and Taxation of the National Motor Carrier Advisory Committee will hold a meeting on November 28, 1988, in Washington, DC, at the U.S. Department of Transportation Headquarters, 400 7th Street, SW., Washington, DC. The meeting will begin at 9:30 a.m. in Room 4200 and it is open to the public.

The agenda will include a discussion of ways to promote greater uniformity among State motor carrier requirements, particularly the furtherance of the National Governors Associations Consensus Agenda on taxation and registration issues. In Addition, the Subcommittee will review the status of the National Economic Commission's recommendations to the President as they may relate to transportation.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA–1, Room 4218, 400 7th Street, SW., Washington, DC 20590, (202) 366–2238, office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: November 4, 1988.

Robert E. Farris,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 88–26010 Filed 11–9–88; 8:45 am]

BILLING CODE 4910-22-M

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463); 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 1:00 p.m., December 8, 1988, at the Corporation's Washington, DC Office at 400 7th Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interest public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than November 30, 1988, Paul A. Maroun, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW, Washington, DC 20590; 202/366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on November 4, 1988.

Paul A. Maroun,

Advisory Board Liaison.

[FR Doc. 88–26086 Filed 11–9–88; 8:45am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series No. 28–88]

Treasury Notes of November 15, 1991, Series U–1991

Washington, November 3, 1988.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Notes of November 15, 1991, Series U–1991 (CUSIP No. 912827 WV O), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated November 15, 1988, and will accrue interest from that date, payable on a semiannual basis on May 15, 1989, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239–1500, prior to 1:00 p.m., Eastern Standard time, Tuesday, November 8, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 7, 1988, and received no later than Tuesday, November 15, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, November 15, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, November 10, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, November 15, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–26147 Filed 11–8–88; 10:49 am]

BILLING CODE 4810-40-M

[Department Circular Public Debt Series No. 29–88]

Treasury Notes of November 15, 1988, Series D–1998

Washington, November 3, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Notes of November 15, 1998, Series D–1998 (CUSIP No. 912827 WW 8), hereafter referred to as Notes. The Notes will be sold at auction, with

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bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated November 15, 1988, and will accrue interest from that date, payable on a semiannual basis on May 15, 1989, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1998, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 9, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 8, 1988, and received no later than Tuesday, November 15, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Resreve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair detemination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, November 15, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, November 10, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, November 15, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request of separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payments on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A

CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of November 15, 1998, Series D–1998, CUSIP No. 912827 WW 8

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series D–1998 due

November 15, 1998, CUSIP No. 912820 AQ O.

INTEREST COMPONENTS

Designation	CUSIP number 912833
Treasury Interest (TINT) due:	
May 15, 1989	EN 6
November 15, 1989	EP 1
May 15, 1990	EQ 9
November 15, 1990	ER 7
May 15, 1991	ES 5

INTEREST COMPONENTS—Continued

Designation	CUSIP number 912833
November 15, 1991	ET 3
May 15, 1992	EU 0
November 15, 1992	EV 8
May 15, 1993	EW 6
November 15, 1993	EX 4
May 15, 1994	EY 2
November 15, 1994	EZ 9
May 15, 1995	FA 3
November 15, 1995	FB 1
May 15, 1996	FC 9

INTEREST COMPONENTS—Continued

Designation	CUSIP number 912833
November 15, 1996	FD 7
May 15, 1997	FE 5
November 15, 1997	FF 2
May 15, 1998	FG 0
November 15, 1998	FH 8

BILLING CODE: 4810-40-M

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MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

ATTACHMENT R

[FR Doc. 88-26148 Filed 11-8-88; 10:49 am]
BILLING CODE 4810-40-C

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VETERANS' ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans' Administration.

ACTION: Notice.

The Veterans' Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans' Benefits (203C), Veterans' Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 3, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans' Benefits.
2. Designation of Certifying Official(s).
3. VA Form 22–8794.
4. The form notifies the VA of the individual who may certify reports of enrollment and pursuits of training on behalf of a training institution or establishment.
5. On occasion.
6. State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations.
7. 3,200 responses.
8. 534 hours.
9. Not applicable.

[FR Doc. 88–25981 Filed 11–9–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 218
Thursday, November 10, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

November 7, 1988.

PLACE: 1121 Vermont Avenue NW., Room 516, Washington, DC 20424.

DATE AND TIME: Friday, November 18, 1988, 9:00 p.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda.
II. Approval of Minutes of October Meeting.
III. *SAC Recharter:* Tennessee.
IV. *Interim Appointments:* Colorado, Hawaii, Idaho, and Iowa.
V. Staff Director's Report.
  A. Status of Earmarks.
  B. Personnel Report.
  C. Activity Report.
VI. Future Agenda Items.
VII. Executive Session closed to the public at the end of the public meeting to discuss proposed draft report on Medical Discrimination against Children with Disabilities.

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,

Solicitor.

[FR Doc. 88–26146 Filed 11–8–88; 12:22 pm]

BILLING CODE 6335–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 1:30 p.m., November 21, 1988.

PLACE: National Finance Center, 4277 W. Poche Court, Conference Room, New Orleans, Louisiana.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of last meeting.
2. Thrift Savings Plan activities report by Executive Director.
3. Review of investment performance for the third quarter.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, or Catherine Ball, Deputy Director, Office of External Affairs, (202) 523–5660.

Date: November 7, 1988.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 88–26134 Filed 11–8–88; 9:03 am]

BILLING CODE 6760–01–M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The meeting will commence at 2:30 p.m. on Friday, November 18, 1988, and continue until 5:00 p.m.

PLACE: The Horton Grand Hotel, Three Eleven Island Avenue, Hahn Cosmopolitan Theater, San Diego, California 92101.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes—January 28–29, 1988.
3. Consideration of Proposed Revisions to Part 1626, Restrictions on Legal Assistance to Aliens.

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: November 8, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 26218 Filed 11–8–88; 3:46 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: A closed Executive Session will commence at 5:30 p.m. on Friday, November 18, and continue until 6:30 p.m. in The Pete Wilson Suite. The open meeting will commence at 9:00 a.m. on Saturday, November 19, 1988, and continue until 2:30 p.m.

PLACE: The Horton Grand Hotel, The Pete Wilson Suite (Executive Session). Hahan Cosmopolitan Theater (Open Session), Three Eleven Island Avenue, San Diego, California 92101.

STATUS OF MEETING: Open (A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act (5 U.S.C. 552b (c) (2), (6), (7), (9)(B), and (10)) and 45 CFR 1622.5 (a), (e), (f), (g), and (h)).

MATTERS TO BE CONSIDERED:

Executive Session (Closed)

1. Personnel and Personal Matters
2. Litigation and Investigation Matters

Board of Directors Meeting (Open)

1. Approval of Agenda
2. Approval of Minutes—August 26, 1988
3. Report from the President
4. Report from the Operations and Regulations Committee and Consideration of Proposed Revisions to Part 1626, Restrictions in Legal Assistance to Aliens
5. Discussion of Client Training

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: November 8, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88–26219 Filed 11–8–88; 3:46 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee Meeting

TIME AND DATE: The meeting will commence at 2:30 p.,m., or immediately following the previous meeting, on Saturday, November 19, 1988, and continue until 5:00 p.m.

PLACE: The Horton Grand Hotel, Hahn Cosmopolitan Theater, Three Eleven Island Avenue, San Diego, California 92101.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—August 26, 1988
3. Review of FY 1988 Monthly Expenditures through September 30, 1988
4. Review of FY 1989 Appropriations
5. Presentations from the Field on FY 1990 Proposed LSC Budget Request.

Discussion and Public Comments follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: November 8, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88–26220 Filed 11–8–88; 3:46 pm]

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Corrections

Federal Register
Vol. 53, No. 218
Thursday, November 10, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

Correction

In notice document 88-25627 appearing on page 44639 in the issue of Friday, November 4, 1988, make the following correction:

In the first column, in the **EFFECTIVE DATE** line, "November 11" should read "November 4".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-113]

Disqualification Under the Horse Protection Act

Correction

In notice document 88-20061 appearing on page 34134 in the issue of Friday, September 2, 1988, make the following correction:

In the third column, in the table, under "Disqualification period", in the second line, "11-80-1989" should read "11-30-1989".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84014B; FRL-3439-9]

Health and Safety Data Reporting Period Terminations

Correction

In rule document 88-20002 beginning on page 38642 in the issue of Friday, September 30, 1988, make the following corrections:

1. On page 38642, in the first column, under **DATES**, in the 5th and 6th lines, insert the date "October 14, 1988."; in the 8th, 9th and 10th lines, insert the date "October 31, 1988."; and in the 11th and 12th lines, insert the date "December 29, 1988."

§ 716.120 [Corrected]

2. On page 38648, in § 716.120(a), in the table, under "Substance", in the 31st entry, "acetyl-amino" should read "acetylamino".

3. On page 38649, in the same section, in the same table, under "Effective Date", in the seventh entry, "6/20/98" should read "6/20/88"; and in the corresponding entry, under "Sunset Date", "6/20/98" should read "6/20/88".

4. On page 38650, in § 716.120(c), in the table, under "CAS No. (examples for category)", in the 26th entry, "26636-91-1" should read "26636-01-1".

5. On page 38651, in the same section, in the same table, under "Effective Date", in the first through seventh entries, the "/" appearing after each date should be removed.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30290; FRL-3452-8]

Certain Companies; Applications to Register Pesticide Products; Sandoz Crop Protection Corp., et al.

Correction

In notice document 88-21777 beginning on page 37866 in the issue of Wednesday, September 28, 1988, make the following corrections:

1. On page 37867, in the second column, in paragraph 3, in the first line, "Mobray" should read "Mobay"; and the fifth line should read "Alpha-[2-(4-chlorophenyl)ethyl-alpha-".

2. On the same page, in the same column, in paragraph 4, in the first line, "Mobray" should read "Mobay"; the fifth line should read "dimethylethyl)-1*H*-1,2,4-triazole-1-"; and in the ninth line, "domestic" was misspelled.

3. On the same page, in the same column, in paragraph 5, in the first line, "Mobray" should read "Mobay"; in the second line, "Folicur" should read "Folicur®"; in the fifth line, "dimethylethyl" was misspelled; and in the sixth line, "ethanol" was misspelled.

4. On the same page, in the same column, in paragraph 6, in the second line, "Tycor DF" should read "Tycor® DF"; and in the fifth line, "dimethylethyl" was misspelled.

5. On the same page, in the same column, in paragraph 7, in the first line, "Mobray" should read "Mobay"; in the third line, "Tycor Technical" should read "Tycor® Technical"; and in the fifth line, "dimethylethyl" was misspelled.

6. On the same page, in the same column, in paragraph 8, in the fourth line, "Ignite Herbicide" should read "Ignite® Herbicide".

7. On the same page, in the third column, in paragraph 9, the second line should read "Product name: Ignite® Herbicide. Herbicide. Active"; in the fifth line "16.23%" should read "16.22%"; and in the ninth line "PN 23" should read "PM 23".

8. On the same page, in the same column, in paragraph 10, in the second line, "Ignite Technical" should read "Ignite® Technical".

9. On the same page, in the same column, in paragraph 11, in the second line, "Ignite" should read "Ignite®"; and in the same line, "Manufacturing" was misspelled; in the fourth line, "amino" was misspelled; and in the seventh line, "only" was misspelled.

20. On the same page, in the same column, in paragraph 12, in the first line, "E. I, Du Pont" should read "E. I. Du Pont"; in the second line, "Products" was misspelled; in the third line, "Walkers" should read "Walker's"; in the fifth line, "Du Pont Londax Herbicide" should read "Du Pont Londax® Herbicide"; and the sixth line should read "ingredient: Methyl 2-((((((4,6-dimethoxy".

21. On the same page, in the same column, in paragraph 13, in the second line, "Du Pont Express" should read "Du Pont Express®"; the fourth line should read "Methyl 2-[[[[*N*-4-methoxy-6-methyl-"; and in the eighth line, "selective" was misspelled.

22. On the same page, in the same column, in paragraph 14, in the fourth line, "Phenyl" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Parts 524, 525, and 529

Employment of Workers With Disabilities Under Special Certificates

Correction

In proposed rule document 88-25125 appearing on page 43899 in the issue of Monday, October 31, 1988, make the following correction:

In the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the 15th line, "October 31, 1988" should read "November 15, 1988".

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federal register

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Part II

Federal Policy for the Protection of Human Subjects; Notice and Proposed Rules

Office of Science and Technology Policy
Department of Agriculture
Department of Energy
National Aeronautics and Space Administration
Department of Commerce
Consumer Product Safety Commission
International Development Cooperation Agency
Agency for International Development
Department of Housing and Urban Development
Department of Justice
Department of Defense
Department of Education
Veterans Administration
Environmental Protection Agency
Department of Health and Human Services
Office of the Secretary
Food and Drug Administration
National Science Foundation
Department of Transportation

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OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Federal Policy for the Protection of Human Subjects

AGENCY: Office of Science and Technology Policy, Executive Office of the President.

ACTION: Notice of Federal Policy for Protection of Human Subjects.

SUMMARY: The Office of Science and Technology Policy intends to accept as the Final Model Federal Policy for the Protection of Human Subjects the common rule to be promulgated after consideration of public comment on the Notice of Proposed Rulemaking set forth in this part of this issue of the **Federal Register**. The proposed common rule was developed by the Interagency Human Subjects Coordinating Committee of the Council on Science, Engineering and Technology, in response to public comment on the Notice of Proposed Model Policy for Department and Agency implementation published in the **Federal Register** on June 3, 1986 (51 FR 20204).

Note that the Central Intelligence Agency is required by Executive Order 12333 to conform to the guidelines issued by the Department of Health and Human Services (HHS).

ADDRESS: Requests for additional information should be addressed to Dr. Joan P. Porter, Staff Director, Interagency Human Subjects Coordinating Committee, Building 31, Room 4B09, Bethesda, Maryland 20892. Telephone: 301–496–7005.

William R. Graham,

Director, Office of Science and Technology Policy, Executive Office of the President.

[FR Doc. 88–25551 Filed 11–9–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF AGRICULTURE

7 CFR PART 1C

DEPARTMENT OF ENERGY

10 CFR PART 745

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1230

DEPARTMENT OF COMMERCE

15 CFR PART 27

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR PART 1028

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR PART 225

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PART 60

DEPARTMENT OF JUSTICE

28 CFR PART 46

DEPARTMENT OF DEFENSE

32 CFR PART 219

DEPARTMENT OF EDUCATION

34 CFR PART 97

VETERANS' ADMINISTRATION

38 CFR PART 16

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 26

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PART 46

NATIONAL SCIENCE FOUNDATION

45 CFR PART 690

DEPARTMENT OF TRANSPORTATION

49 CFR PART 11

Federal Policy for the Protection of Human Subjects

AGENCIES: United States Department of Agriculture, Department of Energy, National Aeronautics and Space Administration, Department of Commerce, Consumer Product Safety Commission, Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Defense, Department of Education, Veterans' Administration, Environmental Protection Agency, National Science Foundation, Department of Health and Human Services, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth a common Federal Policy for the Protection of Human Subjects (Model Policy) accepted by the Office of Science and Technology Policy and proposes the adoption of that Policy in regulation by each of the listed Departments and Agencies. A Proposed Model Federal Policy published on June 3, 1986 (51 FR 20204) was revised in response to public comments. The Policy as revised is now set forth as a common Notice of Proposed Rulemaking. Additional public comments are solicited concerning adoption of the Policy by each of the listed Departments and Agencies and the proposed departures from the Policy described herein. For related documents, see other sections of this part of this **Federal Register** issue.

DATE: To be assured of consideration, comments must be in writing and must be received on or before 5:00 p.m. on January 9, 1989.

ADDRESSES: Please send comments or requests for additional information to: Dr. Joan P. Porter, Office for Protection from Research Risks, National Institutes of Health, Building 31, Room 4B09, Bethesda, MD 20892. Comments directed toward adoption of the common Federal Policy by a particular Department or Agency should clearly identify that Department or Agency. Comments should refer to specific sections in the proposed regulations. Comments received will be available for public inspection at the National Institutes of Health, Building 31, Room 4B09, Bethesda, Maryland, from 9:00 a.m. to 4:00 p.m., Monday through Friday except legal holidays.

PAPERWORK REDUCTION ACT REQUIREMENTS: Sections ____.103(b); ____.109(d); ____.113; ____.115; ____.116; and ____.117 contain information collection requirements subject to approval by the Office of Management and Budget under the terms of the Paperwork Reduction Act. Comments on these requirements should be submitted to Dr. Joan Porter at the address noted and to Mr. Richard Eisinger, Office of Management and Budget, Executive Office of the President, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Joan P. Porter, (301) 496–7005.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the common Notice of Proposed Rulemaking is to request public comment on implementation of a common Federal Policy (Model Policy) for the protection of human subjects of research conducted, supported or regulated by the following Federal Departments and Agencies: United States Department of Agriculture, Department of Energy, National Aeronautics and Space Administration, Department of Commerce, Consumer Product Safety Commission, Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Defense, Department of Education, Veterans' Administration, Environmental Protection Agency, National Science Foundation, Department of Health and Human Services, Department of Transportation. Each of these Departments and Agencies would adopt the common rule in total except as indicated in the departures for the Department of Education published herein, as regulations to be codified as listed above.

The Food and Drug Administration (FDA) Notice of Proposed Rulemaking to modify current regulations to conform to the Federal Policy is presented elsewhere in this part. Public comment is requested concerning the FDA Notice of Proposed Rulemaking. Comment regarding the Department of Education departures is also solicited.

Adoption of the common Federal Policy by these Departments and Agencies will implement a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research which was established on November 9, 1978, by Pub. L. 95–622. One of the charges to the President's Commission was to report biennially to the President, the Congress, and appropriate Federal Departments and Agencies on the protection of human subjects of biomedical and behavioral research. In carrying out that charge, the President's Commission was directed to conduct a review of the adequacy and uniformity (1) of the rules, policies, guidelines, and regulations of all Federal Departments and Agencies regarding the protection of human subjects of biomedical or behavioral research which such departments and agencies conduct or support, and (2) of the implementation of

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such rules, policies, guidelines, and regulations by such agencies, such review to include appropriate recommendations for legislation and administrative action.

In December 1981 the President's Commission issued its *First Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and their Implementation, for the Protection of Human Subjects in Biomedical and Behavioral Research, Protecting Human Subjects.*

In accord with Pub. L. 95–622, each Federal Department or Agency which receives recommendations from the President's Commission with respect to its rules, policies, guidelines or regulations, must publish the recommendations in the **Federal Register** and provide an opportunity for interested persons to submit written data, views and arguments with respect to adoption of the recommendations. On March 29, 1982 (47 FR 13272–13305), the Secretary, HHS published the recommendation on behalf of the affected Departments and Agencies.

In May 1982 the Chairman of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET), appointed an *Ad Hoc* Committee for the Protection of Human Research Subjects under the auspices of the FCCSET. The Committee, chaired by Dr. Edward N. Brandt, Jr., Assistant Secretary for Health, Department of Health and Human Services (HHS), was composed of the representatives and ex-officio members of affected Departments and Agencies. In consultation with the Office of Science and Technology Policy (OSTP) and the Office of Management and Budget, the *Ad Hoc* Committee, after considering all public comments, developed responses to the recommendations of the President's Commission. After further review and refinement, OSTP responded on behalf of all the affected Department and Agency heads to the recommendations of the President's Commission, including the recommendation that:

> The President should, through appropriate action, require that all federal departments and agencies adopt as a common core the regulations governing research with human subjects issued by the Department of Health and Human Services (codified at 45 CFR 46), as periodically amended or revised, while permitting additions needed by any department or agency that are not inconsistent with these core provisions.

The *Ad Hoc* Committee agreed that uniformity is desirable among Departments and Agencies to eliminate unnecessary regulation and to promote increased understanding and ease of compliance by institutions that conduct federally supported or regulated research involving human subjects. Therefore, the *Ad Hoc* Committee developed a Model Federal Policy, which applies to research involving human subjects that is conducted, supported or regulated by Federal Departments and Agencies. In accordance with the Commission's recommendation, the Model Federal Policy is based on Subpart A of the regulations of HHS for the protection of human research subjects (45 CFR Part 46). The Proposed Model Federal Policy developed by the *Ad Hoc* Committee was modified by OSTP to enhance uniformity of implementation among the affected Federal Departments and Agencies and to provide consistency with other related policies. The revised Model Federal Policy was concurred in by all affected Federal Departments and Agencies in March 1985.

An Interagency Human Subjects Coordinating Committee was chartered in October 1983 under the auspices of FCCSET to follow the *Ad Hoc* Committee. It is composed of representatives of all Federal Departments and Agencies that conduct, support or regulate research involving human subjects. The Committee is advisory to Department and Agency Heads and, among other responsibilities, will evaluate the implementation of the Model Federal Policy and recommend modification as necessary.

On June 3, 1986, OSTP published for public comment in the **Federal Register** (51 FR 20204) a Proposed Model Federal Policy for Protection of Human Subjects and Response to the *First Biennial Report* of the President's Commission. Over 200 written comments were received concerning the publication. The Interagency Human Subjects Coordinating Committee considered these comments in the revisions of the common Federal Policy which is proposed here for adoption by each of the Departments and Agencies listed. Response to the public comments and discussion of revisions made in the Proposed Model Federal Policy follow.

General Description of Responses

Two hundred and thirty four comments were received during the sixty day period following publication of the Proposed Model Federal Policy for Protection of Human Subjects [51 FR 20204]. Approximately 40 comments came in after the close of the public comment period. Of all the responses 192 came from medical schools and other academic institutions; 15 were from professional associations; 12 from Federal, state or county agencies, two from industry, and two from members of the public. Seventeen comments came from individuals who identified themselves as belonging to Institutional Review Boards (IRBs), and 36 were research administrators.

Almost unanimously, the respondents enthusiastically supported the concept of a Model Federal Policy. A few noted that the June 3 **Federal Register** publication of the Proposed Model Federal Policy did not address HHS intentions on retaining 45 CFR Part 46, Subpart B, concerning fetuses, pregnant women and human *in vitro* fertilization involved in research; Subpart C, concerning additional protections for prisoners as research subjects; and Subpart D, concerning children. HHS intends to retain Subparts B, C and D. The Notices of Proposed Rulemaking published here are the proposed replacement of the current Subpart A of the HHS policy. It should also be noted that the Department of Justice, Bureau of Prisons, intends to retain additional protections for prisoners codified at 28 CFR Part 512.

Section ——.103—Sixty Day Grace Period

The vast majority of the comments (223 of 234) addressed the "60 day grace period" which is included in HHS regulations at 45 CFR 46.103(f) but not in the Proposed Model Federal Policy. The grace period is the time interval between an institution's submission of a research grant application or contract proposal to HHS and certification of the institution's IRB review and approval under current HHS regulations. Institutions that have Multiple Project Assurances on file with HHS have 60 days to finish IRB review and notify HHS. Two hundred and nineteen respondents disagreed with the deletion of the grace period from the Model Federal Policy and asked that the grace period be reinstated in the final Model Federal Policy. Summaries of their justifications are given below.

The arguments in favor of retaining the grace period are primarily based on the HHS time frame for preparation and review of research grant applications or contract proposals, the competitiveness of the review process and the quality of IRB review. For HHS-sponsored research there is usually about a nine month interval between the date an application is received and the earliest date an award can be made. For new applications, especially those which are submitted in response to a HHS Request for Applications, the time for preparation of the proposal is only 30 to 90 days. Some respondents indicated that this time frame is much different from the pace of biomedical science in which new publications, information or discoveries can make a methodology or approach obsolete within a few months. This discrepancy results in pressure upon principal investigators to revise and amend applications and proposals up until the last day before submission so as to have the best chance of success in the review process. Since an IRB cannot approve a tentative protocol, but must wait until the proposal is made final, requiring its review before the receipt date shortens an already brief preparation period and may adversely affect the quality of proposed research. Secondly, the requirement for prior IRB approval could adversely affect the quality of review. The IRB would have to be convened on short notice with possible reduced attendance by its members. This may well diminish the quality of review and create additional pressure on the IRB to approve proposals based upon limited information.

Arguments in favor of omitting the grace period are also based on quality of IRB review. These comments indicated that, if IRB review took place *after* a fundable priority score were obtained, the IRB might feel pressured to approve a questionable activity. In addition, the difficulties of tracking down an application which is moving through the review process to append an IRB certification of approval creates an administrative burden.

Response: The Interagency Human Subjects Coordinating Committee has revised § ——.103(f) [§ ——.103(g) in the Proposed Model Federal Policy] to accommodate the concerns raised in the public comments. Under the revised section, the certification of IRB review and approval must accompany the application unless the Department or Agency specifies a later date for submission of the certification.

Although HHS intends to amend its current regulations to incorporate the language of the Model Federal Policy, it will retain a "grace period" for institutions that have multiple project assurances and announce the period through advisories, e.g. *OPRR Reports* or *Public Health Service Guide to Grants and Contracts*, which are routinely received by institutions. The "grace period" is the time between submission of an application for research support and submission of certification of IRB review and approval of the research proposed. Other Departments and Agencies will advise institutions of appropriate timing of certification through similar publications.

Other Comments and Revisions

While the Interagency Committee considered each comment carefully, the Committee made changes in the Proposed Model Federal Policy only when it decided that the suggestions would accomplish the following: strengthen the protections for human subjects; clarify the intention or requirements of the Model Federal Policy; or facilitate the administrative processes required by the Model Federal Policy while maintaining or increasing human subjects protections. Areas in which there were a number of comments are highlighted below together with the rationale for the Interagency Committee's incorporating changes or retaining the provisions addressed in these comments.

Sections ——.101(b)(1) and ——.101(b)(2)

Public Comments: One respondent suggested that no exemptions should be allowed if vulnerable subjects are involved. Concerning § ——.101(b)(2), an exemption for certain types of research involving educational tests, survey procedures, interview procedures or observation of public behavior, one respondent noted that no mention is made of the potential impact that certain educational test surveys or interview procedures might have on children or adolescents and the Model Federal Policy should include consideration of this. To a few others, the rationale for the modifications was not clear. One response from an IRB recommended that no study involving educational tests where identifiers are recorded should be exempt from review and suggested that there are risks that are significant in addition to criminal or civil liability noted in this exemption when educational tests are used with identifiers. Another respondent thought that the Proposed Model Federal Policy language in the exemptions lessened human subjects protections. Similarly, another response suggested that the language be broadened to show that harming an individual's reputation in the community was a risk as well as financial standing and employability. Another comment indicated that if interviews yield identifiable data, regardless of the content, the research should be reviewed by an IRB.

Response: In response, the Interagency Human Subjects Coordinating Committee modified the language in § ——.101(b)(2)(ii) of the Model Federal Policy to include the reputation of an individual as a consideration in determining whether research could be exempt. The Committee notes also that the Model Federal Policy exemptions at § ——.101(b)(1) and § ——.101(b)(2) will make *less* research exempt than now under 45 CFR 46.101(b)(3) and (b)(4).

Section ——.101(b)(3)

Public Comment: Section ——.101(b)(3) exempts certain research not covered under § ——.101(b)(2), involving use of educational tests, survey procedures, interview procedures or observation of public behavior. Several respondents believed the wording here was unexplained, unclear, and possibly weakened protections for human subjects from those afforded by 45 CFR 46.101(b). A few other respondents felt that further defintions would clarify the provisions. One response from an IRB indicated that few IRB members would be able to judge if this exemption applies in the absence of further legal guidance and that the exemption should be reconsidered.

Response: The Interagency Human Subjects Coordinating Committee notes that the exemptions as § ——.101(b)(2) and § ——.101(3) of the Model Federal Policy represent a consolidation of the exemptions at 45 CFR 46.101(b)(2), (3) and (4) of the current HHS regulations. The added portion at § ——.101(b)(3)(ii) of the Model Federal Policy indicates that some types of research involving the use of educational tests, survey procedures, interview procedures or observation of public behavior are exempt if a Federal statute requires without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter. The Department of Justice has indicated that 42 U.S.C. 3789(g) is such a statute. The Department of Education intends to take a departure from the Model Federal Policy at § ——.101(b)(3)(ii). The departure pertains only to research involving the use of educational tests, survey procedures, interview procedures, or observation of public behavior, conducted under a program subject to the General Education Provisions Act and to the specific protections provided under that Act to participants in programs administered by the Department of Education.

Section ——.101(b)(6)

Public Comment: The proposed § ——.101(b)(6) contains an exemption not found in 45 CFR Part 46 for taste testing. Seven respondents endorsed the new exemption, but one of these suggested the inclusion of testing

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involving already broadly marketed food containing approved types and levels of additives, unless quantities are limited. Another comment from an IRB suggested that the provisions on taste testing should require confidentiality.

Response: The Interagency Human Subjects Coordinating Committee modified exemption § _____.101(b)(6) to add that consumer acceptance studies are also included in the exemption. Also added to the exempton is a clarification that the food may contain an ingredient at or below the level and for a use found to be safe or an agricultural chemical or environmental contaminent at or below the level and for a use found to be safe by the FDA or approved by the Environmental Protection Agency (EPA) or the Food Safety Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA). This clarification is necessary because under the Food, Drug and Cosmetic Act, an approval of the use of a food additive sets forth not only the level at which the substance may be added, but also the technical effect for which it may be added (e.g., as a preservative) and the types of food to which it may be added (e.g., baked goods). Note that the exemption is not intended to apply to taste tests and quality evaluation studies if (1) a food ingredient is being tested, and (2) the test substance is *not* on the FDA's Generally Recognized as Safe (GRAS) list; not a permitted food additive as tested; not normally found in food at the concentration being tested; is a pesticide; or contains a chemical residue for which the acceptable level has not been established by the FDA, the EPA and the FSIS of the USDA.

Section _____.101(h)

Public Comment: This concerns research in foreign countries. One respondent endorsed this provision; another suggested that the IRB, rather than the Department or Agency Heads, should determine whether protections for subjects in foreign countries are at least equivalent to those provided in the Proposed Model Federal Policy.

Response: No change has been made in this Section. The Interagency Committee concludes that there is a need for oversight at the federal level concerning protections for subjects in foreign countries.

Section _____.102

Twelve respondents addressed the distinction between "regulated research" and research that is "conducted or supported" by Federal Agencies or Departments. (See § _____.102 for a definition or regulated research.) Historically, one regulatory agency, the FDA, has relied on inspections of research projects to ensure compliance with Federal regulations regarding protection of human subjects. On the other hand, Departments and Agencies which sponsor research (e.g., HHS) have a system that requires that awardee institutions submit an assurance of compliance (assurance document) to the awarding Department or Agency which must be approved prior to the funding of research involving human subjects.

Of the 12 comments about this distinction, 11 argued against preserving the distinction. One respondent asserted that the continued distinction could be maintained without creating any problems for an institution that is both supported and regulated. The other respondents felt that the continued distinction was contrary to the aims of uniformity and consistency of the Model Federal Policy, and that it created an unnecessary administrative burden on institutions that must comply with two sets of procedures. One respondent felt that the administrative distinctions were not burdensome and that the distinction could be maintained without problems for institutions at which both federally supported and regulated research are conducted.

Response: The Interagency Human Subjects Coordinating Committee considered these comments but determined that the Model Federal Policy should retain the distinction between "regulated research" and research that is "conducted or supported" by Federal Departments or Agencies. This distinction is necessary because "regulated research" is often privately financed by an array of sponsors ranging in size from multinational corporations to individual physicians and is conducted at a variety of locations ranging from large university hospitals to community hospitals to physicians' offices. The provisions for regulated research, therefore, must accommodate the diverse needs of those engaging in regulated research while also ensuring that human subjects are adequately protected. Requiring all sponsors to negotiate assurances would place a significant burden on many sponsors involved in regulated research, especially those engaged in research with a small number of patients in small institutions. For example, under the present regulatory structure, FDA will permit an investigational drug to be used by a physician on one patient for a treatment use under a treatment investigational new drug protocol or application (IND). For such a physician, the institution (if there is one), and the government, the assurance system would require a significant expenditure of time with little gain. Under the existing system, which is not unduly burdensome, the physician must obtain IRB approval and informed consent before administering the investigational drug. Absent Federal support, however, he or she would not be required to negotiate the assurance set forth in § _____.103 of the Model Federal Policy. Eliminating the distinction between "regulated research" and federally conducted or supported research would mean that the physician would be compelled to learn about the assurance system and then negotiate and file an assurance, even if the investigational drug were to be given once to only one person. Consequently, the needs of small institutions and investigators are best met through the methods presently employed.

In addition, it should be noted that, contrary to the assertions made in several comments, the distinctions made for regulated research do not compel large institutions where research is regularly conducted to satisfy two different sets of regulations. A common set of provisions concerning IRBs and human subject protections apply to regulated research and to research conducted or supported by Federal Departments or Agencies, and this will continue to be the case.

Thus, the distinction for regulated research and federally supported or conducted research in the Model Federal Policy embodies the most effective and efficient manner for ensuring that regulated research is conducted in a manner that will assure the protection of human subjects.

Section _____.102(g)

Public Comment: One respondent indicated that the term "IRB" should be defined.

Responses: A definition of IRB is now included in § _____. 102(g): "IRB means an institutional review board established in accord with and for the purpose expressed in the Model Federal Policy."

Section _____.103(a)

Several public comments indicated that this section is confusing with regard to (1) with whom an institution should file an assurance; (2) to whom an institution should report modifications or amendments to existing assurances; and (3) to whom an institution should report adverse effects or acts of noncompliance [particularly § _____.103(b)(3), (d), (e)]. Reporting

some changes through OPRR was suggested as a possibility.

Response: The Interagency Human Subjects Coordinating Committee redrafted § _____.103 to place in a more prominent position the provision found in § _____.103(f) of the Proposed Model Federal Policy, which indicates that individual Department and Agency Heads *shall* accept the existence of a current assurance, appropriate for the research in question, on file with OPRR and approved for federalwide use by that office. When this type of assurance is used, all reports, except certification, required by the Model Federal Policy, must be submitted to OPRR as well as to the appropriate Department and Agency Heads.

In § _____.103(b)(3), an addition has been made to clarify that changes in IRB membership are reported by institutions to the appropriate Department or Agency head unless, in accord with § _____.103(a), the existence of an HHS approved assurance is accerpted in lieu of submission of an assurance. In this case, changes in IRB membership are reported directly to OPRR.

Section _____.103(b)(5)

Public Comment: Several comments addressed the requirements for § _____.103(b)(5), written procedures to ensure prompt reporting to the IRB, appropriate institutional officials, and the Department of Agency Head of any unanticipated problems or scientific misconduct involving risks to human subjects or others; any allegation or finding of serious or continuing noncompliance with the Federal Model Policy or the requirement or determinations of the IRB; and any suspension or termination of IRB approval.

One IRB proposed language that would eliminate any implication that the IRB should necessarily be the body within an institution that is responsible for investigating and reporting noncompliance with human subjects regulations. More flexibility in administrative arrangements for reporting was urged. Other comments endorsed the proposed language of the Policy if there is recognition that most institutions must have their own due process and if some flexibility is permitted in reporting scientific misconduct. Several respondents noted that the terms "unanticipated problems," "scientific misconduct," and "risks to others" were unclear.

Several respondents also indicated that institutions should not report *allegations* of misconduct and noncompliance—only results of investigation or inquiry about such to Federal Department and Agency Heads. It was argued that some flexibility must be given to institutions, and that institutions should be allowed to screen out allegations that are frivolous, michievous or lacking in substance. One respondent suggested that any additional policing actions are inappropriate and that only *actions* of institutions should be reported to Federal officials; otherwise, due process for researchers or other institutional personnel is jeopardized. Other reactions were that paperwork would increase if allegations are reported and that an institution would be hesitant to use the suspension mechanism as a management tool if such a suspension must be reported to Federal offices because of infractions such as tardiness in responding to an IRB.

Response: The Interagency Committee clarifies that the word "others" in § _____.103(b)(5)(i) denotes other persons who are participating in clinical trials under the same or similar protocols or who may be affected by products or procedures that were developed on the basis of inappropriate or questionable research.

In addition, in § _____.103(b)(5)(ii) the Interagency Committee has modified the Model Federal Policy to delete the word "allegation." This Section now indicates that written procedures in assurances must ensure prompt reporting to the IRB, appropriate institutional officials, and the department or Agency Head of any instance of serious or continuing noncompliance with the Policy or the requirements or determinations of the IRB. While the Interagency Committee did not intend that institutions report frivolous situations, it does expect institutions to report serious instances of noncompliance in which there is some reasonable substantiation, even if a final institutional determination has not yet been made. In such cases, the Committee also expects prompt notification of the final decision by the institutions.

Section _____.103(f)

Public Comment: Four respondents endorsed this section; one other noted that this provision was valuable to the IRB, and one suggested that it was a valuable provision in easing administrative burdens if the Office for Protection from Research Risks will accept minor rewording changes in current assurances on file to reflect changes in HHS regulations that result from adoption of the Model Federal Policy.

Response: Section _____.103(f) in the Proposed Model Federal Policy has been moved to § _____.103(a). This section requires individual Department and Agency Heads, in lieu of requiring submission of a separate assurance, to accept the existence of a current assurance on file with the Office for Protection from Research Risks, HHS, which has been approved for federalwide use by that office. Also, this section has been modified slightly to indicate that not all types of assurances on file in OPRR are appropriate for federalwide use.

Section _____.107(a) and (b)

Public Comment: Section _____.107 addresses IRB membership. One response indicated that the membership requirements for IRBs have been changed in a way that decreases the protection to vulnerable groups in research projects.

Five commentators wrote with some concern about the language changes in this section from the language in the current HHS regulations, as follows. One response indicated distress over the language changes because the presence of an advocate for a vulnerable group as a voting member of the IRB has been of immense value, and strong language is urged to require members concerned with special populations. Several others commented that the Model Federal Policy language regarding representation of vulnerable subjects is weak compared to the HHS regulations, so that the welfare of vulnerable subjects may not be adequately represented. One response also reflected that it is "risky" to remove required representation for vulnerable subjects, and it should be mandatory that representatives of the subject population serve as full members of the IRB.

Section _____.107(b), which addresses gender considerations in IRB selection, elicited a comment that the language eliminates bias or discrimination, but seven others indicated a negative response to the change from the current HHS regulations at 45 CFR 46.107(b) and urged retention of the requirement that no IRB may consist entirely of men or entirely of women. One respondent wrote that the new language is confusing, and that the term "nondiscriminatory effort" used in § _____.107(b) is unclear.

Response: The Interagency Committee expects that institutions will use good judgment and diligence in selecting persons as IRB members who can fulfill the requirements of § _____.107(a), so that persons of varying backgrounds will promote complete and adequate review of the research activities. In

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approving assurances, the Federal Departments and Agencies that conduct, support or regulate the research will review IRB composition to ensure that the membership is appropriate for the research, and may request that membership be supplemented if complete and adequate review of the research does not appear possible. Concerning gender representation of the IRB, the Interagency Committee notes that in seeking diverse membership on the IRB, the institution must consider both men and women who can contribute to the role of the IRB. Given the ready availability of well qualified persons of both genders, the Interagency Committee expects that only rarely, if ever, will an IRB consist solely of men or solely of women.

Section _____.107(c) and (d)

Public Comment: Section _____.107(c) and (d) require IRBs to include at least one scientific member, at least one nonscientific member and at least one member unaffiliated with the institution. One comment was that changing the current 45 CFR 46.107(c) language to require one scientific member constitutes an improvement, but consideration should be given to smaller, particularly rural, institutions. Some allowance for review by a cooperating institution should be made, it was suggested.

Response: The Interagency Human Subjects Coordinating Committee notes that § _____.114 permits agreements between cooperating institutions under which the institution may, with the approval of the Department or Agency, use joint review, rely upon the review of another qualified IRB, or make other review arrangements aimed at avoiding a duplication of effort.

Section _____.110

Public Comment: Section _____.110 sets forth requirements for expedited review. Five respondents expressed concern that the conditions under which Department or Agency Heads may suspend, restrict or terminate approval of expedited review are not specified and that, consequently, each Head could have a separate agreement which might be burdensome for research institutions. One respondent suggested a clarification to indicate that a minor change in approved research could have an expedited review procedure *only* within the one year minimum annual review period of the IRB.

Response: The parenthetical clarification "(of one year or less)" has been added to § _____.110(a)(b)(2) to clarify the period for which IRB approval is authorized.

The Interagency Committee expects that Department and Agency Heads will base the authority to use expedited review on the "track record" of the institutions involved. For example, HHS generally permits institutions with Multiple Project Assurances to utilize the expedited review procedure. Other institutions may not use this type of review.

Section _____.111

Public Comment: This section sets forth the criteria for IRB approval of research. A few commented on § _____.111(a)(3) concerning equitable selection of subjects, as follows: (1) Institutions should be provided with a clear definition of "economically or educationally disadvantaged" persons; and (2) institutions need guidelines on involvement of these populations in research before they are included in the list of vulnerable populations. Another suggested that an additional safeguard would be that the IRB require an explanation by the investigator as to why research needs to be conducted involving a vulnerable population and that the IRB certify that such involvement is necessary. Another comment was that pregnant women should not necessarily be considered members of a vulnerable population.

Response: The Interagency Human Subjects Coordinating Committee made no changes in the Model Federal Policy at this time that specifically address these public comments but is concerned about adequate protections for vulnerable subjects and equitable selection of subjects and is continuing to study these issues. Section 107(a) of the Model Federal Policy has been modified to strengthen consideration of interests of vulnerable subjects.

Section _____.114

Public Comment: Section _____.114 concerns cooperative research. Five responses raised the following points. The current provisions could result in many different requirements if each Department or Agency Head can make a determination about cooperative research projects. Similarly, one concern expressed was that the Model Federal Policy should permit cooperating institutions to decide among themselves how to enter into various alternatives named in the section, rather than require institutions first to obtain permission from the Department or Agency; to eliminate paperwork and time burdens does not further the protection of human subjects. The section appeared to another commentator as a hindrance to cooperative effort at the "grass roots" level where working together should be encouraged. Other suggestions were that the section should be expanded to include specific details for institutions, and that it should be made clear that the requirement for IRB review of cooperative research applies whether or not funds are involved.

Response: The Interagency Committee has formulated the Model Federal Policy in such a way that Department and Agency heads retain the authority to determine what levels and loci of review are appropriate, given the nature of the research to be conducted or supported and their judgment about the experience and expertise of the institutions to be involved in the collaborative research. In this way a balance between uniform review standards and flexibility can be maintained to protect human subjects of research.

Section _____.121

Public Comment: Section _____.121 is reserved. Some respondents questioned whether the provisions of 45 CFR 46.121 are still applicable since the comparable section in the Model Federal Policy is now reserved.

Response: The Interagency Human Subjects Coordinating Committee clarifies that the FDA requirements referenced in 45 CFR 46.121 (i.e., 21 U.S.C. 312, 355, 357, 812) still apply. However, the information called for by 45 CFR 46.121 was considered no longer necessary. This section has been designated as reserved in the Model Federal Policy so that the parallel numbering sequence between the HHS and FDA regulations for the protection of human subjects could be retained in the current Model Federal Policy.

Section ——.124

Public Comment: Section ——.124 states that Department and Agency Heads may impose additional conditions necessary for the protection of human subjects. One respondent expressed hope that the Department and Agency Heads would limit additional conditions to those required by statute.

Response: The Interagency Human Subjects Coordinating Committee agrees and indicates that it will work toward uniformity among Departments and Agencies.

Departures Proposed by Departments and Agencies

Public Comment: Several comments expressed concern that deviations from the Model Federal Policy could be abused, and departures should be limited only to those required by statute.

Concerning the VA departure, one comment stated that the Federal Departments and Agencies with which many universities are affiliated should be required to file assurances with OPRR when research administered by the affiliated institution is performed in a VA facility. Another urged that consent documents be as similar as possible among university hospitals, county hospitals and VA hospitals.

Response: The VA indicated that specification to the level of detail noted in the comments is beyond the level which is appropriate for a Model Federal Policy, and that cooperative arrangements are properly clarified by individual Departments and Agencies. VA elects to require that VA Medical Centers (VAMCs) which participate in cooperative or multi-hospital research projects obtain approval from their own IRBs for such research and does not contemplate approving § ——.114 arrangements inconsistent with this policy. VA also elects not to require that VAMCs submit written institutional assurances under § ——.103(a) to the VA Central Office. As the official responsible for the operation of VA research facilities, the Administrator will employ procedures other than the submission of written assurance from subordinate officials to assure compliance with VA policies.

On the issue of departures, the VA notes the statutory directive that it adopt the Model Federal Policy "to the maximum extent feasible consistent with other [statutory] provisions" which govern its conduct. 38 U.S.C. 4134. It has determined that adoption of the Model Federal Policy without departures is "feasible" and, thus, has withdrawn the departures noted in the June 3 **Federal Register** Notice. It notes, however, that certain provisions of the Model Federal Policy, particularly § ——.101(b) and § ——.116(c) and (d), will be narrowly construed in order to avoid inconsistency with other statutory directives.

FDA indicates that it has concurred in the Model Federal Policy. Since the Agency has already adopted regulations on informed consent (21 CFR Part 50) and on IRBs (21 CFR Part 56) elsewhere in this issue of the **Federal Register**, FDA is proposing to amend those regulations to eliminate certain inconsistencies with the Model Federal Policy. Nonetheless, because of the statutory requirements described in the proposal (51 FR 20216), FDA's regulations will continue to depart from § ——.101(h) (requirements for foreign research) and § ——.116(d) (waiver of informed consent) of the Model Federal Policy.

The Department of Education proposes to make a departure from § ——.101(b)(3)(ii) of the Model Federal Policy that pertains only to research involving the use of educational tests, survey procedures, interview procedures, or observations of public behavior, conducted under a program subject to the General Education Provisions Act. Under this departure the exemption to the Model Federal Policy is revised to read as follows: "The research is conducted under a program subject to the protections of the General Education Provisions Act (GEPA), including GEPA sections 400A (20 U.S.C. 1221–3), 438 (20 U.S.C. 1232g), and 439 (20 U.S.C. 1232h)."

The Department of Education proposes also to make a departure from section 107(a) of the Model Federal Policy that pertains to membership of IRBs. This departure results from the special concern of the Department to provide additional safeguards in the Policy for mentally disabled persons and handicapped children who are subjects of research. Under this departure, the final sentences in section 107(a) of the Policy are revised to read as follows: "When an IRB reviews research that deals with handicapped children or mentally disabled persons, the IRB shall include at least one person primarily concerned with the welfare of the research subjects. If an IRB regularly reviews research that involves other vulnerable categories of subjects, such as non-handicapped children, prisoners, or pregnant women, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects."

The HHS is withdrawing its departure from the proposed Model Federal Policy indicated in the June 3, 1986, **Federal Register**. This is a provision which is now found in the current HHS regulations at 45 CFR 46.101(i): "If, following review of proposed research activities that are exempt from these regulations under paragraph (b)(6), [of the current HHS regulations] the Secretary determines that a research or demonstration project presents a danger to the physical, mental, or emotional well-being of a participant or subject of the research or demonstration project, then federal funds may not be expended for such a project without the written informed consent of each participant or subject." While the Department has an obligation, pursuant to the conditions imposed upon its appropriations, to ensure that research activities do not present a danger to the physical, mental or emotional well-being of participants, as enacted by the most recent continuing appropriations act for HHS, this statutory requirement will be accomplished under § ——.101(d). This section indicates that Department or Agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

Lists of Subjects in the Notices of Proposed Rulemaking

Protection of human research subjects, Research conducted, supported, regulated, Institutional review boards, Informed consent, Cooperative research, Research investigators, Research institutions, Assurances of Compliance.

DEPARTMENT OF AGRICULTURE

7 CFR Part 1c

It is proposed that Title 7 of the Code of Federal Regulations be amended by adding Part 1c as set forth at the end of this document.

PART 1c—PROTECTION OF HUMAN SUBJECTS

Sec.

1c.101 To what does this policy apply?
1c.102 Definitions.
1c.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
1c.104—1c.106 [Reserved]
1c.107 IRB Membership.
1c.108 IRB functions and operations.
1c.109 IRB review of research.
1c.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
1c.111 Criteria for IRB approval of research.
1c.112 Review by institution.
1c.113 Suspension or termination of IRB approval of research.
1c.114 Cooperative research.
1c.115 IRB records.
1c.116 General requirements for informed consent.
1c.117 Documentation of informed consent.
1c.118 Applications and proposals lacking definite plans for involvement of human subjects.

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Sec.
1c.119 Research undertaken without the intention of involving human subjects.
1c.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
1c.121 [Reserved]
1c.122 Use of Federal funds.
1c.123 Early termination of research support: Evaluation of applications and proposals.
1c.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Peter C. Myers,

Deputy Secretary of Agriculture.

September 16, 1988.

DEPARTMENT OF ENERGY

10 CFR Part 745

It is proposed that Title 10 of the Code of Federal Regulations be amended by revising Part 745 as set forth at the end of this document.

PART 745—PROTECTION OF HUMAN SUBJECTS

Sec.
745.101 To what does this policy apply?
745.102 Definitions.
745.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
745.104—745.106 [Reserved]
745.107 IRB membership.
745.108 IRB functions and operations.
745.109 IRB review of research.
745.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
745.111 Criteria for IRB approval of research.
745.112 Review by institution.
745.113 Suspension or termination of IRB approval of research.
745.114 Cooperative research.
745.115 IRB records.
745.116 General requirements for informed consent.
745.117 Documentation of informed consent.
745.118 Applications and proposals lacking definite plans for involvement of human subjects.
745.119 Research undertaken without the intention of involving human subjects.
745.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
745.121 [Reserved]
745.122 Use of Federal funds.
745.123 Early termination of research support: Evaluation of applications and proposals.
745.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 7254; 42 U.S.C. 300v–1(b).

James F. Decker,

Deputy Director, Office of Energy Research. Department of Energy.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1230

It is proposed that Title 14 of the Code of Federal Regulations be amended by adding Part 1230 as set forth at the end of this document.

PART 1230—PROTECTION OF HUMAN SUBJECTS

Sec.
1230.101 To what does this policy apply?
1230.102 Definitions.
1230.103 Assuring Compliance with this policy—research conducted or supported by any Federal department or agency.
1230.104—1230.106 [Reserved].
1230.107 IRB membership.
1230.108 IRB functions and operations.
1230.109 IRB review of research.
1230.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
1230.111 Criteria for IRB approval of research.
1230.112 Review by institution.
1230.113 Suspension or termination of IRB approval of research.
1230.114 Cooperative research.
1230.115 IRB records.
1230.116 General requirements for informed consent.
1230.117 Documentation of informed consent.
1230.118 Applications and proposals lacking definite plans for involvement of human subjects.
1230.119 Research undertaken without the intention of involving human subjects.
1230.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
1230.121 [Reserved].
1230.122 Use of Federal funds.
1230.123 Early termination and research support: Evaluation of applications and proposals.
1230.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

James C. Fletcher,

Administrator, National Aeronautics and Space Administration.

DEPARTMENT OF COMMERCE

15 CFR Part 27

It is proposed that Title 15 of the Code of Federal Regulations be amended by adding Part 27 as set forth at the end of this document.

PART 27—PROTECTION OF HUMAN SUBJECTS

Sec.
27.101 To what does this policy apply?
27.102 Definitions.
27.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
27.104—27.106 [Reserved].
27.107 IRB membership.
27.108 IRB functions and operations.
27.109 IRB review of research.
27.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
27.111 Criteria for IRB approval of research.
27.112 Review by institution.
27.113 Suspension or termination of IRB approval of research.
27.114 Cooperative research.
27.115 IRB records.
27.116 General requirements for informed consent.
27.117 Documentation of informed consent.
27.118 Applications and proposals lacking definite plans for involvement of human subjects.
27.119 Research undertaken without the intention of involving human subjects.
27.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
27.121 [Reserved].
27.122 Use of Federal funds.
27.123 Early termination and research support: Evaluation of applications and proposals.
27.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

C. William Verity,

Secretary of Commerce.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1028

It is proposed that Title 16 of the Code of Federal Regulations be amended by revising Part 1028 as set forth at the end of this document.

PART 1028—PROTECTION OF HUMAN SUBJECTS

Sec.
1028.101 To what does this policy apply?
1028.102 Definitions.
1028.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
1028.104—1028.106 [Reserved]
1028.107 IRB Membership.
1028.108 IRB functions and operations.
1028.109 IRB review of research.
1028.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

Sec.
1028.111 Criteria for IRB approval of research.
1028.112 Review by institution.
1028.113 Suspension or termination of IRB approval of research.
1028.114 Cooperative research.
1028.115 IRB records.
1028.116 General requirements for informed consent.
1028.117 Documentation of informed consent.
1028.118 Applications and proposals lacking definite plans for involvement of human subjects.
1028.119 Research undertaken without the intention of involving human subjects.
1028.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
1028.121 [Reserved]
1028.122 Use of Federal funds.
1028.123 Early termination of research support: Evaluation of applications and proposals.
1028.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

James V. Lacy,

General Counsel, CPSC.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

22 CFR Part 225

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 225 as set forth at the end of this document.

PART 225—PROTECTION OF HUMAN SUBJECTS

Sec.
225.101 To what does this policy apply?
225.102 Definitions.
225.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
225.104—225.106 [Reserved]
225.107 IRB membership.
225.108 IRB functions and operations.
225.109 IRB review of research.
225.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
225.111 Criteria for IRB approval of research.
225.112 Review by institution.
225.113 Suspension or termination of IRB approval of research.
225.114 Cooperative research.
225.115 IRB records.
225.116 General requirements for informed consent.
225.117 Documentation of informed consent.
225.118 Applications and proposals lacking definite plans for involvement of human subjects.
225.119 Research undertaken without the intention of involving human subjects.
225.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
225.121 [Reserved]
225.122 Use of Federal funds.
225.123 Early termination of research support: Evaluation of applications and proposals.
225.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Alan Woods,

Administrator.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 60

It is proposed that Title 24 of the Code of Federal Regulations be amended by adding Part 60 as set forth at the end of this document.

PART 60—PROTECTION OF HUMAN SUBJECTS

Sec.
60.101 To what does this policy apply?
60.102 Definitions.
60.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
60.104—60.106 [Reserved]
60.107 IRB membership.
60.108 IRB functions and operations.
60.109 IRB review of research.
60.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
60.111 Criteria for IRB approval of research.
60.112 Review by institution.
60.113 Suspension or termination of IRB approval of research.
60.114 Cooperative research.
60.115 IRB records.
60.116 General requirements for informed consent.
60.117 Documentation of informed consent.
60.118 Applications and proposals lacking definite plans for involvement of human subjects.
60.119 Research undertaken without the intention of involving human subjects.
60.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
60.121 [Reserved]
60.122 Use of Federal funds.
60.123 Early termination of research support: Evaluation of applications and proposals.
60.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: August 17, 1988.

J. Michael Dorsey,

Acting Secretary.

DEPARTMENT OF JUSTICE

28 CFR Part 46

It is proposed that Title 28 of the Code of Federal Regulations be amended by adding Part 46 as set forth at the end of this document.

PART 46—PROTECTION OF HUMAN SUBJECTS

Sec.
46.101 To what does this policy apply?
46.102 Definitions.
46.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
46.104—46.106 [Reserved]
46.107 IRB membership.
46.108 IRB functions and operations.
46.109 IRB review of research.
46.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
46.111 Criteria for IRB approval of research.
46.112 Review by institution.
46.113 Suspension or termination of IRB approval of research.
46.114 Cooperative research.
46.115 IRB records.
46.116 General requirements for informed consent.
46.117 Documentation of informed consent.
46.118 Applications and proposals lacking definite plans for involvement of human subjects.
46.119 Research undertaken without the intention of involving human subjects.
46.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
46.121 [Reserved]
46.122 Use of federal funds.
46.123 Early termination of research support: Evaluation of applications and proposals.
46.124 Conditions.

Authority: 5 U.S.C. 301; 28 U.S.C. 509–510; 42 U.S.C. 300v–1(b).

Richard L. Thornburgh,

Attorney General, U.S. Department of Justice.

DEPARTMENT OF DEFENSE

32 CFR Part 219

It is proposed that Title 32 of the Code of Federal Regulations be amended by revising Part 219 as set forth at the end of this document.

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PART 219—PROTECTION OF HUMAN SUBJECTS

Sec.
219.101 To what does this policy apply?
219.102 Definitions.
219.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
219.104—219.106 [Reserved]
219.107 IRB Membership.
219.108 IRB functions and operations.
219.109 IRB review of research.
219.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
219.111 Criteria for IRB approval of research.
219.112 Review by institution.
219.113 Suspension or termination of IRB approval of research.
219.114 Cooperative research.
219.115 IRB records.
219.116 General requirements for informed consent.
219.117 Documentation of informed consent.
219.118 Applications and proposals lacking definite plans for involvement of human subjects.
219.119 Research undertaken without the intention of involving human subjects.
219.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
219.121 [Reserved]
219.122 Use of Federal funds.
219.123 Early termination of research support: Evaluation of applications and proposals.
219.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 3, 1988.

DEPARTMENT OF EDUCATION

34 CFR Part 97

1. It is proposed that Title 34 of the Code of Federal Regulations be amended by adding Part 97 as set forth at the end of this document.

PART 97—PROTECTION OF HUMAN SUBJECTS

Sec.
97.101 To what does this policy apply?
97.102 Definitions.
97.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
97.104—97.106 [Reserved]
97.107 IRB Membership.
97.108 IRB functions and operations.
97.109 IRB review of research.
97.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
97.111 Criteria for IRB approval of research.
97.112 Review by institution.
97.113 Suspension or termination of IRB approval of research.
97.114 Cooperative research.
97.115 IRB records.
97.116 General requirements for informed consent.
97.117 Documentation of informed consent.
97.118 Applications and proposals lacking definite plans for involvement of human subjects.
97.119 Research undertaken without the intention of involving human subjects.
97.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
97.121 [Reserved]
97.122 Use of Federal funds.
97.123 Early termination of research support: Evaluation of applications and proposals.
97.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b); Section 97.101(b)(3) issued under 20 U.S.C. 1221–3(a)(1), 3474.

2. Part 97 is further amended by revising paragraph (b)(3) of § 97.101 to read as follows:

§ 97.101 To what does this policy apply?

* * * * *

(b) * * *

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement) survey procedures, interview procedures or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if:

(i) The human subjects are elected or appointed public officials or candidates for public office; or

(ii) The research is conducted under a program subject to the protections of the General Education Provisions Act (GEPA), including GEPA sections 400A (20 U.S.C. 1221–3), 438 (20 U.S.C. 1232g), and 439 (20 U.S.C. 1232h).

* * * * *

3. Part 97 is further amended by revising paragraph (a) of § 97.107 to read as follows:

§ 97.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. When an IRB reviews research that deals with the handicapped children or mentally disabled persons, the IRB shall include at least one person primarily concerned with the welfare of the research subjects. If an IRB regularly reviews another vulnerable category of subjects, such as non-handicapped children, prisoners, or pregnant women, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

* * * * *

4. Part 97 is further amended by adding after each section the following authority citation:

Authority: 5 U.S.C. 301; 20 U.S.C. 1221–3(a)(1), 3474; 42 U.S.C. 300v–1(b))

Lauro F. Cavazos,

Secretary of Education.

VETERANS ADMINISTRATION

38 CFR Part 16

It is proposed that Title 38 of the Code of Federal Regulations be amended by adding Part 16 as set forth at the end of this document.

PART 16—PROTECTION OF HUMAN SUBJECTS

Sec.
16.101 To what does this policy apply?
16.102 Definitions.
16.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
16.104—16.106 [Reserved]
16.107 IRB membership.
16.108 IRB functions and operations.
16.109 IRB review of research.
16.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
16.111 Criteria for IRB approval of research.
16.112 Review by institution.
16.113 Suspension or termination of IRB approval of research.
16.114 Cooperative research.
16.115 IRB records.
16.116 General requirements for informed consent.
16.117 Documentation of informed consent.

Sec.
16.118 Applications and proposals lacking definite plans for involvement of human subjects.
16.119 Research undertaken without the intention of involving human subjects.
16.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
16.121 [Reserved]
16.122 Use of Federal funds.
16.123 Early termination of research support: Evaluation of applications and proposals.
16.124 Conditions.

Authority: 5 U.S.C. 301; 38 U.S.C. 210(c)(1), 4131, 4134; 42 U.S.C. 300v–1(b).

Thomas K. Turnage,

Administrator.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 26

It is proposed that Title 40 of the Code of Federal Regulations be amended by adding Part 26 as set forth at the end of this document.

PART 26—PROTECTION OF HUMAN SUBJECTS

Sec.
26.101 To what does this policy apply?
26.102 Definitions.
26.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
26.104—26.106 [Reserved]
26.107 IRB membership.
26.108 IRB functions and operations.
26.109 IRB review of research.
26.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
26.111 Criteria for IRB approval of research.
26.112 Review by institution.
26.113 Suspension or termination of IRB approval of research.
26.114 Cooperative research.
26.115 IRB records.
26.116 General requirements for informed consent.
26.117 Documentation of informed consent.
26.118 Applications and proposals lacking definite plans for involvement of human subjects.
26.119 Research undertaken without the intention of involving human subjects.
26.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
26.121 [Reserved]
26.122 Use of Federal funds.
26.123 Early termination of research support: Evaluation of applications and proposals.
26.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Lee M. Thomas,

Administrator for EPA.

August 30, 1988.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

It is proposed that Title 45 of the Code of Federal Regulations Part 46 be amended, as follows:

PART 46—PROTECTION OF HUMAN SUBJECTS

1. An authority citation for Subpart A is added to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 289; 42 U.S.C. 300v–1(b).

2. Subpart A is revised to read as set forth at the end of this document.

Subpart A—Basic HHS Policy for Protection of Human Research Subjects

Sec.
46.101 To what does this policy apply?
46.102 Definitions.
46.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
46.104—46.106 [Reserved]
46.107 IRB membership.
46.108 IRB functions and operations.
46.109 IRB review of research.
46.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
46.111 Criteria for IRB approval of research.
46.112 Review by institution.
46.113 Suspension or termination of IRB approval of research.
46.114 Cooperative research.
46.115 IRB records.
46.116 General requirements for informed consent.
46.117 Documentation of informed consent.
46.118 Applications and proposals lacking definite plans for involvement of human subjects.
46.119 Research undertaken without the intention of involving human subjects.
46.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
46.121 [Reserved]
46.122 Use of Federal funds.
46.123 Early termination of research support: Evaluation of applications and proposals.
46.124 Conditions.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

NATIONAL SCIENCE FOUNDATION

45 CFR Part 690

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 690 as set forth at the end of this document.

PART 690—PROTECTION OF HUMAN SUBJECTS

Sec.
690.101 To what does this policy apply?
690.102 Definitions.
690.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
690.104—690.106 [Reserved]
690.107 IRB membership.
690.108 IRB functions and operations.
690.109 IRB review of research.
690.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
690.111 Criteria for IRB approval of research.
690.112 Review by institution.
690.113 Suspension or termination of IRB approval of research.
690.114 Cooperative research.
690.115 IRB records.
690.116 General requirements for informed consent.
690.117 Documentation of informed consent.
690.118 Applications and proposals lacking definite plans for involvement of human subjects.
690.119 Research undertaken without the intention of involving human subjects.
690.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
690.121 [Reserved]
690.122 Use of Federal funds.
690.123 Early termination of research support: Evaluation of applications and proposals.
690.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Erich Bloch,

Director.

DEPARTMENT OF TRANSPORTATION

49 CFR Part 11

It is proposed that Title 49 of the Code of Federal Regulations be amended by adding Part 11 as set forth at the end of this document.

PART 11—PROTECTION OF HUMAN SUBJECTS

Sec.
11.101 To what does this policy apply?
11.102 Definitions.

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Sec.
11.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
11.104—11.106 [Reserved]
11.107 IRB membership.
11.108 IRB functions and operations.
11.109 IRB review of research.
11.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
11.111 Criteria for IRB approval of research.
11.112 Review by institution.
11.113 Suspension or termination of IRB approval of research.
11.114 Cooperative research.
11.115 IRB records.
11.116 General requirements for informed consent.
11.117 Documentation of informed consent.
11.118 Applications and proposals lacking definite plans for involvement of human subjects.
11.119 Research undertaken without the intention of involving human subjects.
11.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
11.121 [Reserved]
11.122 Use of Federal funds.
11.123 Early termination of research support: Evaluation of applications and proposals.
11.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1–(b).

Mimi Dawson,
Deputy Secretary.

Text of the Proposed Common Rule

The text of the proposed common rule as adopted by the agencies in this document appears below.

Part ——— Protection of Human Subjects

Sec.
———.101 To what does this policy apply?
———.102 Definitions.
———.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
———.104—.106 [Reserved]
———.107 IRB membership.
———.108 IRB functions and operations.
———.109 IRB review of research.
———.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
———.111 Criteria for IRB approval of research.
———.112 Review by institution.
§ ———.113 Suspension or termination of IRB approval of research.
§ ———.114 Cooperative research.
§ ———.115 IRB records.
§ ———.116 General requirements for informed consent.
§ ———.117 Documentation of informed consent.
§ ———.118 Applications and proposals lacking definite plans for involvement of human subjects.
§ ———.119 Research undertaken without the intention of involving human subjects.
§ ———.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
§ ———.121 [Reserved]
§ ———.122 Use of Federal funds.
§ ———.123 Early termination of research support; evaluation of applications and proposals.
§ .124 Conditions.

§ ———.101 To what does this policy apply?

(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the federal government outside the United States.

(1) Research that is conducted or supported by a federal department or agency, whether or not it is regulated as defined in § ——— .102(e), must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in § ——— .102(e) must be reviewed and approved, in compliance with §§ ——— .101, ——— .102, ——— .107 through ——— .117 of this policy, by an institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as: (i) Research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (i) Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if: (i) The human subjects are elected or appointed public officials or candidates for public office; or (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (i) Public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (i) if wholesome foods without additives are consumed or (ii) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy.

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations which provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1983) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the **Federal Register** or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy. Except when otherwise required by stature or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Protection from Research Risks, Department of Health and Human Services (HHS), and shall also publish them in the **Federal Register** or in such other manner as provided in department or agency procedures.

§ ———.102 Definitions.

(a) "Department or agency head" means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.

(b) "Institution" means any public or private entity or agency (including federal, state, and other agencies).

(c) "Legally authorized representative" means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(d) "Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute "research" for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

(e) "Research subject to regulation," and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

(f) "Human subject" means a living individual about whom an investigator (whether professional or student) conducting research obtains:

(1) Data through intervention or interaction with the individual, or

(2) Identifiable private information.

"Intervention" includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. "Interaction" includes communication or interpersonal contact between investigator and subject. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(g) "IRB" means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) "IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(i) "Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(j) "Certification" means the official notification by the institution to the supporting department or agency, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and approved by an IRB in accordance with an approved assurance.

§ ———.103 Assuring compliance with this policy—research conducted or supported by any federal department or agency.

(a) Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency will provide written assurance satisfactory to the department or agency head that it will comply with the requirements set forth in this policy. In lieu of requiring submission of an assurance, individual department or agency heads shall accept the existence of a current assurance, approprate for the research in question, on file with the Office for Protection from Research Risks, HHS, and approved for federalwide use by

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that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Protection from Research Risks, HHS.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of whether the research is subject to federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under § _____.101 (b) or (i).

(2) Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

(3) A list of the IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the department or agency head, unless in accord with § _____.103(a) of this policy, the existence of an HHS-approved assurance is accepted. In this case, change in IRB membership shall be reported to the Office for Protection from Research Risks, HHS.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and (iii) for ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.

(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head (i) any unanticipated problems or scientific misconduct involving risks to human subjects or others; (ii) any instance of serious or continuing noncompliance with this policy or the requirements or determinations of the IRB; and (iii) any suspension or termination of IRB approval.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(d) The department or agency head will evaluate all assurances submitted in accordance with this policy through such officers and employees of the department or agency and such experts or consultants engaged for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institutions' research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under § _____.101 (b) or (i). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by § _____.103 of this policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by § _____.103 of the policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

§ _____.104_____.106 [Reserved]

§ _____.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore, include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

§ _____.108 IRB functions and operations.

In order to fulfill the requirements of this policy each IRB shall:

(a) Follow written procedures in the same detail as described in § _____.103(b)(4) and, to the extent required by, § _____.103(b)(5).

(b) Except when an expedited review procedure is used (see § _____.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

§ _____.109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § _____.116. The IRB may require that information, in addition to that specifically mentioned in § _____.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with § _____.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

§ _____.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary, HHS, has established, and published as a Notice in the **Federal Register**, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate after consultation with other departments and agencies, through periodic republication by the Secretary, HHS, in the **Federal Register**. A copy of the list is available from the Office for Protection from Research Risks, National Institutes of Health, HHS, Bethesda, Maryland 20892.

(b) With the approval of department or agency heads, an IRB may use the expedited review procedure to review either or both of the following:

(1) some or all of the research appearing on the list and found by the reviewers to involve no more than minimal risk,

(2) minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

Under and expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may excercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in § _____.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

(d) The department or agency head may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure.

§ _____.111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by § _____.116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by § _____.117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

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(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

§ _____.112 Review by institution.

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

§ _____.113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

§ _____.114 Cooperative research.

Cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort.

§ _____.115 IRB records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described in § _____.103(b)(3).

(6) Written procedures for the IRB in the same detail as described in § _____.103(b)(4) and § _____.103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by § _____.116(b)(5).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a reasonable manner.

§ _____.116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigatory, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any resasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of threatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subjects and

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

(3) Any additional costs to the subject that may result from particpation in the research;

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) The approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) Public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and

(2) The research could not practicably be carried out without the waiver or alteration.

(d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;

(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) The research could not practicably be carried out without the waiver or alteration; and

(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in this policy are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law.

§ _____.117 Documentation of informed consent.

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by § _____.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A "short form" written consent document stating that the elements of informed consent required by § _____.116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the "short form."

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

(2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context. In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

§ _____.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under § _____.101(b) or (i), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted, by the institution, to the department or agency.

§ _____.119 Research undertaken without the intention of involving human subjects.

In the event research is undertaken without the intention of involving of human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted, by the institution, to the department or agency, and final approval given to the proposed change by the department or agency.

§ _____.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.

(a) The department or agency head will evaluate all applications and proposals involving human subjects submitted to the department or agency through such officers and employees of the department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.

(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.

§ _____.121 [Reserved]

§ _____.122 Use of Federal funds.

Federal funds administered by a department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

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§ _____.123 Early termination of research support; evaluation of applications and proposals.

(a) The department or agency head may require that department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person or persons who would direct or has have directed the scientific and technical aspects of an activity has have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

§ _____.124 Conditions.

With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

[FR Doc. 88-25552 Filed 11-9-88; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 56

[Docket No. 87N-0032]

Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend (1) its regulations that contain the general standards for any institutional review board (IRB) that reviews clinical investigations regulated by the agency and (2) its regulations that establish general requirements for informed consent of human subjects that participate in such research. The agency intends to conform its regulations to the extent possible to the "Federal Policy for the Protection of Human Research Subjects" (Model Policy) published elsewhere in this issue of the **Federal Register**. Existing FDA regulations governing protection of human subjects share a common core with the Model Policy and implement the fundamental principles embodied in that policy. The purpose of these proposed amendments is to eliminate certain inconsistencies with the Model Policy.

DATE: Comments by January 9, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bonnie M. Lee, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION:

Background

Development of Model Policy

FDA is charged by statute with the obligation of ensuring the protection of the rights, safety, and welfare of human subjects who participate in clinical investigations involving articles subject to section 505(i), 507(d), or 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i), 357(d), or 360j(g)), as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA, including food and color additives, drugs for human use, medical devices for human use, biological products for human use, and electronic products. In performance of that obligation, FDA, in the **Federal Register**, of January 27, 1981, adopted regulations governing informed consent of human subjects (21 CFR Part 50; 46 FR 8942) and regulations establishing standards for the composition, operation, and responsibilities of any IRB that reviews clinical investigations involving human subjects (21 CFR Part 56; 46 FR 8958). At the same time, the Department of Health and Human Services (HHS) also adopted regulations on the protection of human research subjects (45 CFR Part 46). The regulations adopted by FDA in 21 CFR Parts 50 and 56 and by HHS in 45 CFR Part 46 have provided a common framework for clinical investigators, any IRB, and institutions that have been involved in research that is subject to FDA's regulatory requirements or that is funded by HHS.

In December 1981, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research issued its "First Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and Their Implementation, for the Protection of Human Subjects in Biomedical and Behavioral Research, Protecting Human Subjects." Included in this report was a recommendation that the regulations issued by HHS (45 CFR Part 46) be adopted as a common core by all Federal departments and agencies, while permitting additions needed by any department or agency that were not inconsistent with these core provisions.

In May 1982, The President's Science Advisor, Office of Science and Technology Policy (OSTP), appointed an Ad Hoc Committee for the Protection of Human Research Subjects, under the auspices of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET), to respond to the recommendations of the President's Commission. The Committee was composed of representatives and ex-officio members from departments and agencies that conduct, support, or regulate research involving human subjects. The Ad Hoc Committee developed responses to the recommendations of the President's Commission in consultation with OSTP and the Office of Management and Budget (OMB).

The Ad Hoc Committee agreed that uniformity of Federal regulations is desirable to eliminate unnecessary regulations and to promote increased understanding by institutions that conduct federally supported or regulated research involving human subjects. The Ad Hoc Committee developed a model policy which OSTP later modified and, with the concurrence of all affected Federal departments and agencies, published as a proposal in the **Federal Register** of June 3, 1986 (51 FR 20204). More than 200 written comments were submitted in response to the proposal. These comments were considered by the Interagency Human Subjects Coordinating Committee, a second committee chartered by FCCSET in 1983. This committee is composed of representatives of all Federal departments and agencies that conduct, support, or regulate research involving human subjects. Published elsewhere in this issue of the **Federal Register** is the final Model Policy.

FDA concurs with the final Model Policy. However, FDA must diverge

from § _____.101(h) of the final Model Policy with regard to those clinical investigations that take place in a foreign country and are conducted under a research permit granted by FDA. Such investigations must be carried out in accordance with the act, which establishes certain requirements for the conduct of such investigations (see, e.g., 21 U.S.C. 355(i), 357(d)(3), and 360j(g)). For these investigations, FDA does not have the authority to accept the procedures followed in a foreign country in lieu of the procedures required by the act. FDA must also depart from § _____.116(d) of the final Model Policy (see 21 CFR 50.20). The act requires that informed consent be obtained from all subjects of clinical investigations except in very limited circumstances (see, e.g., 21 U.S.C. 355(i), 357(d)(3), and 360j(g)(3)(D), which establish requirements for the conduct of clinical investigations for drugs, antibiotic drugs, and medical devices, respectively). FDA does not have the authority under the act to waive this requirement.

Accordingly, the agency is committed to being as consistent with the final Model Policy as it can be, given the unique situation created by the act and the fact that FDA only regulates, and does not support or conduct, research under its regulations. For all these reasons, the agency proposes the following amendments to its regulations in Parts 50 and 56 to conform them to the final Model Policy to the extent permitted by the act. The proposed changes are minor, and FDA believes that they would not require significant modifications in current IRB procedures or operations or in how informed consent is obtained from human subjects who participate in clinical investigations.

Proposed Revisions of FDA'S Regulations

Definitions

1. FDA proposes to revise the definition of "minimal risk" in §§ 50.3(l) and 56.102(i) to conform it to the definition in the Model Policy. The current definition in §§ 50.3(l) and 56.102(i) of FDA's regulations states:

> "Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

The wording of the definition of "minimal risk" in § ——.102(i) of the final Model Policy is slightly different. To make its regulations as consistent as possible with the Model Policy, FDA is proposing to adopt that policy's definition of "minimal risk." Accordingly, FDA is proposing to revise §§ 50.3(l) and 56.102(i) to state:

> "Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

FDA believes that the proposed change in wording does not substantively change the current definition of "minimal risk" as it pertains to research regulated by the agency. Rather, it clarifies FDA's current definition.

2. FDA proposes to add to the IRB regulations a definition of "IRB approval," which is included in § —— .102(h) of the final Model Policy. The definition of "IRB approval" in proposed new § 56.102(m) is provided to conform FDA's regulations with the Model Policy and for clarification. It is consistent with the agency's policy respecting IRB approval under current Part 56.

Exemptions from IRB Requirement

3. In new § 56.104(d), FDA proposes to add to the list of categories of clinical investigations that are exempt from the requirements for IRB review certain taste and food quality evaluation studies. This exemption is provided in the final Model Policy at § —— .101(b)(6), in response to a request from the U.S. Departmen tof Agriculture (USDA), but it is also appropriate for FDA. The exemption would apply only to taste tests and quality evaluation studies of foods that are not adulterated and that contain ingredients that are (1) generally recognized as safe (GRAS) (see 21 CFR Parts 170, 182, 184, and 186), (2) used in accordance with FDA's food additive regulations, or (3) used in accordance with an approval issued by USDA or the Environmental Protection Agency.

IRB Membership

4. FDA is proposing to amend § 56.107(a) in several respects to conform it to the language contained in § ——.107(a) of the final Model Policy. First, instead of the current provision in FDA's regulations that specifies that an IRB shall be sufficiently qualified through, among other factors, "* * * the diversity of the members' backgrounds including consideration of the racial and cultural backgrounds of members * * *," the agency proposes to substitute "* * * the diversity of the members, including consideration of race, gender, and cultural backgrounds * * *."

This proposed change would add gender to the considerations of diversity. The addition of gender emphasizes the importance of including both men and women as members of any IRB. FDA considers this change to be necessary in light of the change that it is proposing to make in § 56.107(b), which is discussed in paragraph 5 of this preamble.

In addition, to conform to the language contained in § ——.107(a) of the final Model Policy, FDA is proposing to modify the requirement in § 56.107(a) that an IRB that regularly reviews research that involves a vulnerable category of subjects include one or more individuals who are primarily concerned with the welfare of those subjects. FDA is proposing to require only that the institution (or other authority) that establishes the IRB consider including such an individual as a member of such an IRB. FDA expects that, even if it makes this change in its regulations, institutions will continue to appoint individuals to the IRB who are primarily concerned with the welfare of vulnerable subject populations in appropriate situations.

Finally, FDA proposes to add the following examples of vulnerable populations to § 56.107(a): Children, prisoners, pregnant women, or mentally disabled persons. FDA is proposing this change in the regulation to conform it to the final Model Policy and to make clear the types of human subjects that the agency considers to be "vulnerable populations."

5. In current § 56.107(b), FDA provides that an IRB may not consist entirely of men or entirely of women, or entirely of members of one profession. FDA proposes to revise § 56.107(b) to require that:

> Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

This language was developed by OSTP in consultation with the U.S. Department of Justice and is included in § _____.107(b) of the final Model Policy to make clear that an individual should not be appointed to an IRB solely because of gender. FDA proposes to revise § 56.107(b) accordingly.

As provided in § 56.107(a), however, in seeking diverse membership on the IRB, the institution must consider both men and women who can contribute to

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the work of the IRB. Given the ready availability of well-qualified persons of both genders, FDA expects that only rarely, if ever, will an IRB consist solely of men or solely of women.

6. FDA proposes to revise § 56.107(c), which currently requires each IRB to include at least one member whose primary concerns are in nonscientific areas, to conform to the language contained in final § ———.107(c) of the Model Policy. As revised, § 56.107(c) would require that each IRB include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas. These changes should not affect any IRB that reviews research regulated by FDA. As described in the preamble to the 1981 IRB regulations (46 FR 8966), FDA's current regulations assume that an IRB will include at least one qualified scientist:

> • • • FDA emphasizes that § 56.107(a) requires that IRBs have as members persons with the professional competence necessary to review the proposed research. For example, FDA would expect that an IRB that reviews investigational new drug studies will include at least one physician.

FDA expects that institutions will continue to use good judgment and diligence in selecting as IRB members persons who can fulfill the requirements of § 56.107(a), so that persons of varying backgrounds will be included on any IRB to ensure complete and adequate review of the research activities.

Should FDA adopt the proposed amendment, in inspecting any IRB, the agency will continue to review an IRB's composition to ensure that its membership is appropriate for the research it is charged to review and may request that member ship be supplemented if complete and adequate review of the research does not appear possible.

IRB Functions and Operations

To be consistent with the language contained in § ———.103(b) (4) and (5) of the final Model Policy, FDA is proposing to remove § 56.108(a) (5) and (c), redesignate current § 56.108(b) as § 56.108(c), and add new § 56.108(b) that would state:

> Follow written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the Food and Drug Administration of: (1) Any unanticipated problems or scientific misconduct involving risks to human subjects or others; (2) any instance of serious or continuing noncompliance with these regulations or the requirements or determinations of the IRB; and (3) any suspension or termination of IRB approval.

New § 56.108(b) would incorporate the requirements currently included in § 56.108(a) (5) and (c) of FDA's regulations, conform them to the final Model Policy, and respond to recommendations 7 and 8 of the President's Commission concerning scientific misconduct in research involving human subjects, as described in the preamble to the proposed Model Policy (51 FR 20209, 20210). New § 56.108(b) would effect three changes in FDA's regulations.

a. The major change is to require prompt reporting of scientific misconduct involving risks to human subjects or others while allowing institutions the flexibility to develop their own procedures. These procedures must assure that instances of scientific misconduct are promptly reported to the IRB, to appropriate institutional officials, and to FDA. Institutions will, therefore, be afforded flexibility in meeting the requirements of the regulations.

b. The current regulations require that an IRB follow written procedures that ensure prompt reporting to the IRB of unanticipated problems involving risks to subjects or others. Proposed § 56.108(b) would require that an IRB follow written procedures that ensure prompt reporting of unanticipated problems not only to the IRB but also to appropriate institutional officials and FDA.

c. Finally, FDA's current regulations provide that the IRB is responsible for reporting any instance of serious or continuing noncompliance with the regulations or the requirements or determinations of the IRB, and any suspension or termination of IRB approval, to appropriate institutional officials and to FDA. FDA is proposing to require that these responsibilities be reflected in the written procedures of the IRB.

These proposed changes would ensure that the IRB, the institution, and FDA are informed of problems and misconduct based on noncompliance with the regulations. Because of the importance that FDA attaches to ensuring that the IRB, the institution, and FDA are so informed, the agency has tentatively determined that the obligation to notify these bodies should be reflected in the IRB's written procedures.

Expedited Review Procedures for Certain Kinds of Research Involving No More Than Minimal Risk and for Minor Changes in Approved Research

8. FDA proposes to revise § 56.110(b) to conform it to the language contained in § 2.110(b) of the final Model Policy. The first and second sentences of § 56.110(b) currently provide that:

> An IRB may review some or all of the research appearing on [a list published in the Federal Register of January 27, 1981; 46 FR 8980] through an expedited review procedure, if the research involves no more than minimal risk. The IRB may also use the expedited review procedure to review minor changes in previously approved research during the period for which approval is authorized.

FDA proposes to revise this language to state:

> An IRB may use the expedited review procedure to review either or both of the following: (1) Some or all of the research appearing on the list and found by the reviewers to involve no more than minimal risk, (2) minor changes in previously approved research during the period (of 1 year or less) for which approval is authorized.

FDA believes that this change would not in any way change the substance of the regulation or the circumstances in which expedited review may be used.

Criteria for IRB Approval of Research

9. FDA proposes to revise § 56.111(a)(3) and (b) to conform its regulations to the language contained in § ———.111(a)(3) and (b) of the final Model Policy. As discussed below, these proposed revisions would both clarify and reinforce current regulatory requirements.

FDA would retain the current wording in § 56.111(a)(3), but at the end of the provision would add the phrase "and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons."

This proposed addition would conform § 56.111(a)(3) to the language contained in § ——.111(a)(3) of the final Model Policy and would reinforce the protections in § 56.107 for vulnerable populations.

FDA is proposing three changes in § 56.111(b) to conform it to the language contained in the Model Policy. The first proposed change would delete the phrase "such as persons with acute or severe physical or mental illness" from the examples given of subjects likely to be vulnerable to coercion or undue influence. Although this category of subjects would no longer be explicitly included in § 56.111(b), FDA would continue to regard these persons as being likely to be vulnerable to coercion or undue influence and would expect an IRB to ensure that appropriate additional safeguards have been included in a study to protect the rights and welfare of such subjects. The second proposed change would clarify which groups of subjects are likely to be vulnerable to coercion or undue influence, by giving examples from § ——.111(b) of the final Model Policy. The groups mentioned are children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons. The third change that the agency is proposing is to delete the word "appropriate" from the requirement that, where necessary "• • • additional safeguards have been included in the study to protect the rights and welfare of these subjects." FDA expect that any additional safeguards that are recommended in a study would be appropriate to protect the rights and welfare of subjects included in the study, and, therefore, inclusion of the word "appropriate" is unnecessary.

IRB Records

10. FDA is proposing to revise § 56.115(a)(6) to cross-reference proposed § 56.108(b), which would require the IRB to follow written procedures for certain reporting requirements. The agency proposes this change for consistency with the Model Policy and, therefore, considers it to be minor.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

Sections 56.108(b) and 56.115 of this proposed rule contain collection of information requirements subject to approval by the Office of Management and Budget under the terms of the Paperwork Reduction Act. Comments on these requirements should be submitted to FDA's Dockets Management Branch (address above) and to Mr. Richard Eisinger, Office of Management and Budget, Executive Office of the President, Room 3002, New Executive Office Building, Washington, DC 20503.

Economic and Regulatory Assessments

FDA has examined the economic consequences of the proposed amendments to its regulations pertaining to any IRB and to informed consent in accordance with the criteria in section 1(b) of Executive Order 12291 and found that these amendments, if promulgated, would not be a major rule under the Executive Order. The agency also has considered the effect that the proposed rule would have on small entities including small businesses in accordance with the Regulatory Flexibility Act (Pub. L. 96–354). The agency certifies that there will not be a significant economic impact on a substantial number of small entities.

The proposed amendments are intended to being FDA's regulations on informed consent of human subjects that participate in clinical research (21 CFR Part 50) and on general standards for any IRB that reviews clinical investigations regulated by the agency (21 CFR Part 56) into conformance with the Model Policy to the extent possible. The proposed amendments have three kinds of impact.

First, there are nomenclature, definitional, and clarifying changes that do not alter the current usage or meaning of the terms in the regulations. These changes have no impact on IRB functions or operations.

Second, there are two changes that clearly benefit an IRB and the research community in general. One exempts certain taste and food quality evaluation studies from IRB review. The other allows for greater flexibility in determining the composition of any IRB.

Third, there is the change, responding to recommendations in the preamble to the Model Policy, which necessitates adding "unanticipated problems or scientific misconduct" to a list of items that are to be reported to the IRB, the institution, and to the agency, and requires the IRB to adopt and follow written procedures for two responsibilities held under the current regulations. Incorporating these requirements into existing IRB written procedures should require at most a paragraph. The agency does not consider this to be a material burden on any IRB, regardless of size.

Thus, these proposed amendments are considered to have no significant effect, either positive or negative, on the institutions overseeing clinical research.

Request for Comments

Interested persons may, on or before January 9, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 50

Prisoners, Reporting and recordkeeping requirements, Research, Safety.

21 CFR Part 56

Reporting and recordkeeping requirements, Research, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, it is proposed that Parts 50 and 56 be amended as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 21 CFR Part 50 is revised to read as follows:

Authority: Secs. 201, 406, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1040–1042 as amended, 1049–1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 72 Stat. 1785–1788 as amended, 74 Stat. 399–407 as amended, 76 Stat. 794–795 as amended, 90 Stat. 540–560, 562–574 (21 U.S.C. 321, 346, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371(a), 376, and 381); secs. 215, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 262, 263b–263n); 21 CFR 5.10.

2. In § 50.3 by revising paragraph (l) to read as follows:

§ 50.3 Definitions.

• • • • •

(l) "Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

• • • • •

PART 56—INSTITUTIONAL REVIEW BOARDS

3. The authority citation for 21 CFR Part 56 is revised to read as follows:

Authority: Secs. 201, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1040–1042 as amended, 1049–1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511–518 as amended, 72 Stat. 1785–1788 as amended, 74 Stat. 399–407 as amended, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 560, 562–574 (21 U.S.C. 321, 346, 348a, 348, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371(a), 376, and 381) secs. 215, 301, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 241, 262, 263–263n); 21 CFR 5.10.

4. In § 56.102 by revising paragraph (i) and adding new paragraph (m) to read as follows:

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§ 56.102 Definitions.

* * * * *

(i) "Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

* * * * *

(m) "IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements.

5. In § 56.104 by adding paragraph (d) to read as follows:

§ 56.104 Exemptions from IRB requirement.

* * * * *

(d) Taste and food quality evaluation and consumer acceptance studies, if wholesome foods without additives are consumed or if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

6. In § 56.107 by revising paragraphs (a), (b), and (c) to read as follows:

§ 56.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

* * * * *

7. In § 56.108 by removing paragraph (c), redesignating paragraph (b) as paragraph (c), revising paragraph (a), and adding paragraph (b) to read as follows:

§ 56.108 IRB functions and operations.

* * * * *

(a) Follow written procedures (1) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (2) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; (3) for ensuring prompt reporting to the IRB of changes in a research activity; and (4) for ensuring that changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except where necessary to eliminate apparent immediate hazards to the human subjects.

(b) Follow written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the Food and Drug Administration of (1) any unanticipated problems or scientific misconduct involving risks to human subjects or others; (2) any instance of serious or continuing noncompliance with these regulations or the requirements or determinations of the IRB; and (3) any suspension or termination of IRB approval.

* * * * *

8. In § 56.110 by revising paragraph (b) to read as follows:

§ 56.110 Expedited review procedures for certain kinds of research involving no more than minimal risk and for minor changes in approved research.

* * * * *

(b) An IRB may use the expedited review procedure to review either or both of the following: (1) some or all of the research appearing on the list and found by the reviewers to involve no more than minimal risk, (2) minor changes in previously approved research during the period (of 1 year or less) for which approval is authorized. Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in § 56.108(c).

* * * * *

9. In § 56.111 by revising paragraphs (a)(3) and (b) to read as follows:

§ 56.111 Criteria for IRB approval of research.

(a) * * *

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

* * * * *

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

10. In § 56.115 by revising paragraph (a)(6) to read as follows:

§ 56.115 IRB records.

(a) * * *

(6) Written procedures for the IRB as required by § 56.108 (a) and (b).

* * * * *

James S. Benson,
Acting Commissioner of Food and Drugs.
Otis R. Bowen,
Secretary of Health and Human Services.
Dated: August 9, 1988.

[FR Doc. 88-25553 Filed 11-9-88; 8:45 am]
BILLING CODE 4140-01-M

federal register

Thursday
November 10, 1988

Part III

Department of Education

Consolidated Application Package for Fiscal Year 1989; Notice

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DEPARTMENT OF EDUCATION

Consolidated Application Package for Fiscal Year 1989

AGENCY: Department of Education.

ACTION: Notice inviting applications for certain new direct grant awards.

SUMMARY: The Secretary gives notice inviting applications for new direct grants under the Handicapped Children's Early Education Program and Postsecondary Education Programs for Handicapped Persons.

This notice consists of three Sections and an Appendix. Section I provides background information and discusses the purpose of this notice. Section II contains two lists of program application notices and application information that pertains to the programs in each list. Section III provides information regarding applicable procedures under Executive Order 12372, Intergovernmental Review of Federal Programs. The Appendix contains the basic application form and instructions for completing the form. No separate application package is necessary to apply under the programs announced in this notice.

The estimates of funding levels in this notice do not bind the Department of Education to a specific number of grants or level of funding, unless otherwise specified by statute or regulation.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities for these competitions, as published in the **Federal Register** on September 29, 1988, 53 FR 38254, because many of these projects will require cooperative planning efforts among grantees and State and local agencies and that projects need to be in place at the beginning of the 1989–90 school year.

Further, the Secretary has received only a few comments regarding these priorities. None of the commenters objected to the priorities, but rather offered suggestions for modification in their focus. It is not anticipated that substantive changes will be made in the final priorities. However, if any substantive changes are made in the final priorities for these programs, applicants will be given an opportunity to revise or resubmit their applications.

DATES: The closing dates for transmitting applications under this notice are listed in Section II of this notice.

ADDRESS: Applications are to be mailed to the following address: U.S. Department of Education, 400 Maryland Avenue SW., Application Control Center, Washington, DC 20202–4725. See Section III for detailed information relate to hand-delivered applications.

FOR FURTHER INFORMATION CONTACT: For specific information concerning a particular program, contact the Program Contact cited in the application notice in section II applicable to the program.

Section I—Background Information

The purpose of this notice is to inform potential applicants of closing dates for the transmittal of applications for certain grants issued by the U.S. Department of Education.

Application closing dates are listed in section II of this notice.

Applicants who decide to apply under one or more program priority covered by this notice should submit an application for each program priority and follow the specific instructions established for each program, as described in section II.

Closing dates and procedures may vary from program to program. The charts in section II inform potential applicants of: Title of the program; Title of program priority and Catalog of Federal Domestic Assistance (CFDA) number; Deadline for transmittal of Applications (closing date); Deadline for Intergovernment Review; Expected available funds; Estimated range of awards; Estimated size of awards; and Expected project period. To ensure expeditious processing of their respective applications, applicants are particularly requested to make certain that the correct CFDA number for the priority addressed in the application appears on each application. Following the chart is the program specific information: the purpose of the program, applicable regulations, information contact person, description of programmatic priorities, and other program information and specific requirements not covered in the application form in the Appendix.

Section II—Program Application Notices

This section contains (1) a listing of application notices for new awards for FY 1989 and (2) specific application information and requirements for individual programs.

Paperwork Reduction Act of 1980

This combined application package contains no new information collection requirements. The information collection requirements contained herein have been approved by the Office of Management and Budget under OMB control number 1820–0028.

TITLE OF PROGRAM: HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

[Application notices for fiscal year 1989]

Title and CFDA Number	Deadline for transmittal of applications	Deadline for Intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Nondirected Demonstration (CFDA No. 84.024B1)	Jan. 12, 1989	Mar. 12, 1989	$550,000	$80,000 to 125,000	$110,000	5	Up to 36.
Nondirected Experimental Projects [1] (CFDA No. 84.024H1).	Jan. 12, 1989	Mar. 12, 1989	1,500,000	80,000 to 150,000	125,000	4	Up to 36.

[1] Nondirected Experimental projects are forward funded for three years.

Title of Program: Handicapped Children's Early Education Program
CFDA No. 84.024

Purpose: To provide Federal support for a variety of activities designed to address the special problems of infants and children with handicaps, from birth through age eight and their families, and to assist State and local entities in expanding and improving programs and services for these children and their families. Activities include demonstrations, outreach, experimental, research and training projects, and research institutes.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 79, and 80, and (b) The Handicapped Children's Early Education Program, 34 CFR Part 309, as amended August 11, 1987 (52 FR 29816).

Priorities: The Secretary announces, pursuant to 34 CFR 75.105(c)(3), the following priorities for the Handicapped Children's Early Education Program. The Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications that meet these priorities.

Priority 1. Nondirected Demonstrations (CFDA No. 84.024)

This priority supports demonstration projects that develop, implement, and evaluate new or improved approaches for serving young children with handicaps (ages birth through eight). Projects funded under this priority must design models that allow young children with handicaps to achieve their optimal functioning level within normalized, nonsegregated environments.

Applications must describe (1) the specific service problem or issue that the project will address; (2) the specific components or procedures of the model and the rationale, based on theory, research, or practice evaluation, for those components or procedures; (3) the specific types of students participating in the project (i.e., age, handicapping condition or diagnosis, level of functioning) and (4) an evaluation design that includes functional outcome measures for the young children with handicaps who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing interventions for young children with handicaps. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particularly invites applications for demonstration projects that develop models for delivering, coordinating, or supplementing needed developmental, special educational, or related services to infants, toddlers, or preschool-aged children with handicaps who are in day-care programs (home-based, center-based, or home or center based in conjunction with part-day special education preschool programs). This invitational priority responds to the growing number of young children, including children with handicaps, who are placed in day-care services to accommodate the child-care needs of working parents. However, applications that meet this invitational priority will not receive a competitive preference over applications for demonstration projects that develop, implement, and evaluate new or improved approaches for serving young children with handicaps (ages birth through eight).

Priority 2. Nondirected Experimental Projects (CFDA No. 84.024)

This priority supports investigations of alternative interventions or approaches for serving infants, toddlers, or preschool-aged children with handicaps. Interventions selected for comparison must include those for which information is unavailable regarding their relative effectiveness for particular groups of children or within particular settings or conditions. Projects supported under this priority must:

(1) Compare the alternative interventions or approaches in typical service settings;

(2) Conduct the investigations using methodological procedures that will produce unambigious findings regarding the relative effectiveness of the alternative strategies as well as any findings as to interaction effects between particular approaches and particular groups of children or particular contexts; and

(3) Include dissemination activities that will lead to improved services for infants, toddlers, or preschool-aged children with handicaps.

Applications must describe (1) the specific problem or issue that the project will address; (2) the specific approaches or interventions that will be compared or validated, including the rationale for selecting particular approaches and previous evaluation information regarding these approaches; (3) specifically, the children targeted by the project (i.e., age, handicapping condition or diagnosis, level of functioning); and (4) an evaluation design that includes functional outcome measures for the young children with handicaps or their families who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing interventions for young children with handicaps. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particularly invites applications that compare alternative approaches to assessing family strengths and needs as part of the process for developing the individualized family service plans (IFSP) required under Part H of the Education of the Handicapped Act. Such projects could compare approaches, instruments, or tools commonly used for family assessment across disciplines or within a single discipline to determine their relative effects on the strength and needs identified, on the process for developing the IFSP, on the document itself, and on the satisfaction of participants in the planning process, including families of infants and toddlers with handicaps. However, applications that meet the invitational priority will not receive a competitive preference over other applications for projects that investigate alternative interventions or approaches for serving infants, toddlers, or preschool-aged children with handicaps.

Eligible Applicants: Public agencies and nonprofit private organizations may apply for an award under any of the priorities.

For Applications or Information Contact: Susan Fowler or Joseph Clair, Office of Special Education Programs, Division of Educational Services, U.S. Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4620–2644), Washington, DC 20202. Telephone: Susan Fowler (202) 732–1068; Joseph Clair (202) 732–4503.

Program Authority: 20 U.S.C. 1424.

(Catalog of Federal Domestic Assistance No. 84.024; Handicapped Children's Early Education Program)

Selection Criteria: The Secretary uses the following criteria under 34 CFR Part 309 to evaluate an application. References to the Act refer to the Education of the Handicapped Act.

(a) *Importance.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed:

(ii) The extent to which the project is based on previous research findings related to the problem or issue:

(iii) The numbers of individuals who will benefit; and

(iv) How the project will address the identified problem or issue.

(b) *Impact.* (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with

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handicaps, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) *Technical soundness.* (35 points)

(1) The Secretary reviews application to determine the the technical soundness of the project plan;

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project:

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects, in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practica leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by Parts B and H of the Act, and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other than those available through this part;

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timelines for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objective and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

TITLE OF PROGRAM: POSTSECONDARY EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

[Application notices for fiscal year 1989]

Title and CFDA Number	Deadline for transmittal of applications	Deadline for Intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Nondirected Demonstration (CFDA No. 84.078C1).....	Jan. 13, 1989	Mar. 13, 1989	$800,000	$60,000-90,000	$75,000	10	Up to 36

Title of Program: Postsecondary Education Programs for Handicapped Persons CF DA No: 84.078.

Purpose: To develop, operate, and disseminate specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with handicapping conditions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 79, and 80, and (b) The regulations for Postsecondary Education Programs for Handicapped Persons, 34 CFR Part 338.

Priorities: The Secretary announces pursuant to 34 CFR 75.105(c)(3), the following priority for fiscal year 1989. The Secretary will give an absolute preference to applications that meet this priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Priority: Postsecondary Demonstration Projects. (CFDA 84.078C)

This priority supports model projects which provide individuals with mild or moderately disabling conditions other than deafness with adapted or specially designed programs that coordinate, facilitate, and promote the provision of appropriate education of these individuals with their nondisabled peers. These projects are to be targeted to improve the vocational outcomes for youths and adults who have completed or left secondary school programs and who are in need of additional education or training in order to secure and maintain competitive employment. Applicants under this priority must describe in detail how they will accomplish the following tasks:

(1) Establish strategies for use in locating and serving youth and adults with disabilities who are in need of continued educational services;

(2) Establish or make use of existing formal cooperative relationships among and between schools (public secondary and higher educational institutions), vocational rehabilitation agencies, and potential employers;

(3) Develop individualized programs that detail the goals and objectives necessary for students to obtain the requisite skills for securing competitive employment;

(4) Achieve appropriate job placements for persons with disabilities served by the project through short term postsecondary educational interventions;

(5) Provide follow-up and follow-along activities for persons with disabilities placed in jobs by the project; and

(6) Propose training of project participants in relevant aspects of adjustment to the community as well as the workplace.

Eligible Applicants: State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies.

Selection Criteria: The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

(a) *Plan of Operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of Key Personnel:* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, *Evaluation by the grantee.)*

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Continuation of program.* (5 points)

(1) The Secretary reviews each application for information that shows that the activities to be supported are likely to be continued after Federal funding ends.

(2) The Secretary looks for information that shows the likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of the Federal funding, as measured by evidence of financial and other commitment of the applicant to the program.

(g) *Importance.* (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project is nationally important in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue, and in remediating or compensating for it;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(h) *Impact* (15 points)

The Secretary reviews each application for information that shows the probable impact of the proposed research or demonstration activities in improving postsecondary education for handicapped individuals, including—

(1) The contribution that the research or demonstration findings or products will make to current knowledge or practice; and

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(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(Authority: 20 U.S.C. 1424a)

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Exceutive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# [applicant must insert number and letter], U.S. Department of Education, MS 6403, 400 Maryland Avenue, SW., Washington, DC 20202–0125. Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #[applicant must insert number and letter]), Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#[applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (Note: Ed Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4620–2644), Washington, DC 20202. Telephone: Joseph Clair (202) 732–4503.

Dated: November 4, 1988.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions. In general these questions and answers are applicable to all direct grant competitions covered by this combined application package.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to *all* applications. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applicants should not use foldouts, photographs, or other materials that are hard to duplicate.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, but it may not be worth the postage. A properly prepared application should meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate. What should I do?

A. We are happy to discuss the questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor does it guarantee the success of the application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with *anyone* reviewed under a different competition from the one you intended.

Q. Will my application be returned if I am not funded?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to applicants who are not successful.

Q. How should my application be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project should precede the application narrative.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual meeting, you may also wish to include a trip to Washington, DC in the travel budget. Travel conferences is sometimes allowed when it is for the purpose of dissemination.

Q. If my application receives a high score from the reviewer, does that mean that I will receive funding?

A. No. It is often the case that the number of applications scored highly by or approved by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations, technical and budget issues may be raised. These are issues that have been identified during panel and staff review and require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. If my application is successful can I assume I will get the estimated/projected budget amounts in subsequent years?

A. No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subsequent years. Grantees having a multi-year project will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

Q. What is a cooperative agreement and how does it differ from a grant?

A. A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for a public purpose of support or stimulation as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

Q. Is the procedure for applying for a cooperative agreement different from the procedure for applying for a grant?

A. No. If the Department of Education determines that a given award should be made by cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

Q. How do I provide an assurance?

A. Simply state in writing that you are meeting a prescribed requirement.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. It is helpful to include in the appendices such information as:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information relevant to the proposed project. Qualifications of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project.

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including copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How can I be sure that my application is assigned to the correct competition?

A. Applicants should clearly indicate in Block 10 of the face page of their application (Standard form 424) the CFDA number and the title of the program priority (e.g., 84.023) representing the competition in which the application should be considered. If this information is not provided, your application may inadvertently be assigned and

Q. Where can copies of the Federal Register, program regulations, and federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (*specify*): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

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INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c) and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

PART III - PROGRAM NARRATIVE

A. New Grants

Prepare the program narrative statement in accordance with the following instructions for all new grants programs and all new functions or activities for which support is being requested.

Note that the program narrative should encompass each program and each function or activity for which funds are being requested (see Sections A and B in Part II). Relevant selection criteria (included in this package) should be carefully examined for criteria upon which evaluation of an application will be made and the program narrative must respond to such criteria under the related headings below. The program narrative should begin with an overview statement (Abstract) of the major points covered below.

1. OBJECTIVES AND NEED FOR THIS ASSISTANCE

Describe the problem and demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

Any relevant data based on planning studies should be included or footnoted. Projects involving Demnstration/Service activities should present available data, or estimates for need in terms of number of handicapped childen (by type of handicap and by type of service) in the geographic area involved.

Projects involving Training should present available data, or estimates, for need in terms of number of personnel by position type (e.g., teachers, teacher-aides) by type of handicap to be served. Documentation by the SEA should be supplied for 84.029 (Handicapped Personnel Preparation).

2. RESULTS OR BENEFITS EXPECTED

Identify results and benefits to be derived. Projects involved in Training and or Demonstration/Service activities should indicate the number of personnel to be trained or the number of children to served.

3. APPROACH

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others.

For example, an application for demonstration/service programs should describe the planned educational curriculum: the types of attainable accomplishments set for the children served; supplementary services including parent education; and the composition and responsibilities of an advisory council.

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An application for a training program should describe the substantive content and organization of the training program, including the roles or positions for which students are prepared, the tasks associated with such roles, the competencies that must be acquired; the program staffing; and the practicum facilities including their use by students, accessibility to students and their staffing.

B. Provide for each grant program, function or activity, quantitative projections of the accomplishments to be achieved.

An applications for demonstration/service programs should project the number of children to receive demonstration/services by type of handicapping conditions, and number of persons to receive inservice training.

Training programs should project the number of students to be trained by type of handicapping condition.

For non-demonstratin/service and non-training activities of all programs, planned activities should be listed in chronological order to show the schedule of accpmplishment and their target dates.

C. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. For demonstration/service activities, evaluation procedures should be related to the child-centered objectives set for project participants.

For all activities, explain the methodology that will be used to evaluate project accomplishments.

D. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Especially for demonstration/service activities, describe the liaison with community or State organizations as it affects project planning and accomplishments.

E. Present biographical sketch of the project director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the names, training and background for other key personnel engaged in the project.

Note: The application narrative should not exceed 30 double-spaced, typed pages (on one side only).

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

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Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature

Date

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Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

[FR Doc. 88-25911 Filed 11-9-88; 8:45 am]
BILLING CODE 4000-01-C

federal register

Thursday
November 10, 1988

Part IV

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeworkers in Certain Industries; Records To Be Kept by Employers; Final Rule

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeworkers in Certain Industries; Records To Be Kept by Employers

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Final rules.

SUMMARY: This document provides a final rule on restrictions affecting the employment of industrial homeworkers in certain industries under section 11(d) of the Fair Labor Standards Act (FLSA). It also provides a final rule amending the recordkeeping requirements imposed pursuant to section 11(c) of the FLSA for all covered employers of homeworkers. There are presently six industries in which homework is banned under section 11(d) of the FLSA unless special individual certificates are obtained. The six industries are: Women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries. (Under a rule adopted in 1984, homework is permitted in the knitted outerwear industry, provided the employer first obtains a certificate from the Department of Labor.) For the reasons discussed below, the Department has decided that the current restrictions should be modified.

Under the final rule, the women's apparel industry and activities in the jewelry industry not identified herein as nonhazardous remain subject to the same restrictions on homework as in the prior rule. Any employer who wishes to employ homeworkers in the remaining restricted industries must first obtain a certificate from the Department authorizing such employment. Employers in the knitted outerwear industry must obtain new certificates in accordance with this rule. Any such employer who does not first obtain a certificate cannot legally employ homeworkers (other than those homeworkers for whom special certificates have been issued under certain specified conditions) and is subject to the restrictions and sanctions provided by the FLSA. Also, a number of clarifying changes have been made in the text of the final rule.

EFFECTIVE DATE: January 9, 1989. The paperwork requirements of this regulation §§ 530.102, 530.103, 530.202, and 516.31(c)) are effective January 9, 1989, provided they have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980, as amended. If they are not approved by January 9, 1989, a notice will be published in the **Federal Register** delaying the effective date.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the recordkeeping provisions that are included in these rules, including revisions to the homeworker handbooks, have been submitted to the Office of Management and Budget for approval. The Wage and Hour Division has requested an expedited review of its submission under the Act, to be completed within 30 days of the date of publication in the **Federal Register**. A copy of the submission is being separately published in the **Federal Register** for the convenience of the public.

Public reporting burden for this collection of information, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated to average, per response: (1) Homework application (§ 530.102 and .103)—½ hour; (2) piecework measurement documentation (§ 530.202)—1 hour per measurement plus 1 minute for filing; (3) homeworker handbook (§ 516.31(c))—½ hour completion time by the homeworker plus ½ minute for filing by the employer. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Washington, DC 20503.

Background

Statutory Provisions and History of Homework Regulations

Section 11(d) of the FLSA provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Pursuant to this authority, the Secretary has issued regulations, published as Part 530 of Title 29 of the Code of Federal Regulations. As originally issued in the 1940's, these regulations restricted the employment of industrial homework in seven industries: Knitted outerwear; women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. Homework in other industries has not been restricted. The regulations essentially provide that the production of goods in these restricted industries may not be carried on by employees in or about a home, apartment, tenement, or room in a residential establishment except by a certified homeworker. Under specified conditions, an employer may obtain a certificate for employees who are unable to adjust to factory work because of age or physical or mental disability or who are unable to leave home because their presence is required to care for an invalid there. Individuals may also be employed as industrial homeworkers in the restricted industries under the supervision of a sheltered workshop without obtaining a certificate under Part 530.

Final Rule Establishing a Certification System in Knitted Outerwear Industry Effective December 5, 1984

In 1980, in light of the fact that the homework regulations had been in effect for almost 40 years without substantive revision, the Department undertook a review of the status of industrial homework. The Department published a proposal in the **Federal Register** on May 5, 1981 (46 FR 25108) to remove the existing restrictions on homework in all seven industries. On October 9, 1981, after reviewing the entire record, the Department issued a final rule rescinding the restrictions on the employment of homeworkers in the knitted outerwear industry only (46 FR 50348).

This rulemaking action was challenged in court by the International Ladies' Garment Workers' Union (ILGWU), various knitgoods manufacturers, the New York and California State Labor Commissioners, and others who sought to enjoin the rescission. The United States District Court for the District of Columbia upheld the rule. However, on November 29, 1983, the Court of Appeals for the District of Columbia Circuit vacated the rescission of the restriction and remanded the case to the district court resulting in the reinstatement of

restrictions in the knitted outerwear industry on May 23, 1984.

The Court of Appeals ruled that the final rule had been promulgated in violation of the Administrative Procedure Act, in that the Department had failed to articulate adequately the reasons for its action (*ILGWU v. Donovan*, 722 F.2d 795 (DC Cir. 1983)). The court was concerned that the Department had failed to consider alternatives to the complete lifting of the ban, and that the record lacked factual support for the Department's assertion that an effective enforcement program would be feasible if the ban were lifted. In this connection, the court focused on four factors which arguably rendered the enforcement of the minimum wage for homeworkers difficult or impossible:

1. Difficulty of locating and identifying homeworkers;
2. Inadequate or nonexistent recordkeeping by employers and employees;
3. Strain on departmental resources required by excessive investigative time in homework cases; and
4. Difficulty in recovering back wages when violations were discovered.

Thereafter, the Department published a proposal on March 27, 1984 (49 FR 11786) to repromulgate a permanent rule rescinding the restrictions in knitted outerwear, and solicited comments on various alternatives to total rescission. A second comment period was announced on June 22, 1984 (49 FR 25641) inviting comments on the alternatives to total rescission, and, in particular, comments pertaining to licensing/registration of employers of industrial homeworkers.

On March 27, 1984, the Department also promulgated an "emergency" rule (49 FR 11792) temporarily rescinding the restrictions on homework in knitted outerwear for 120 days, to avoid potential disruption to homeworkers while the new rulemaking was pending. On May 8, 1984, the District Court ruled that the emergency rule was invalid, and ordered that it be rescinded forthwith.

On November 5, 1984, a final rule was published in the **Federal Register** (49 FR 44262) which permits the use of homeworkers in the knitted outerwear industry, provided the employer first obtains a certificate from the Department. Those knitted outerwear employers who do not obtain such certificates remain subject to the ban on homework and to the same restrictions applicable in the case of the other six restricted industries. The authority of the Department to promulgate this regulation was never challenged.

On August 21, 1986, the Department of Labor published a proposed rule which, if adopted, would have lifted the restrictions on the employment of homeworkers in all restricted industries for employers who first obtain certificates authorizing homework from the Department. Thus, the proposal would have expanded the certification program currently in effect in the knitted outerwear industry. The period for public comment on the proposed rule, after having been extended, expired on December 4, 1986.

A number of the commenters indicated their belief that the Department would face substantial difficulty in enforcing the FLSA under the proposal. Specifically, these commenters argued that the enforcement had been ineffective among employers of homeworkers in the knitted outerwear industry under the rule promulgated in 1984. The Department reviewed its enforcement experience in knitted outerwear in light of the issues raised in these comments and, recognizing the validity of some of the concerns raised, issued a revised proposal on March 30, 1988, which incorporated a number of provisions designed to improve and strengthen FLSA enforcements with respect to homeworkers. That notice also stated that any action with respect to the restrictions on homework in the women's apparel industry would be the subject of separate rulemaking proceedings. In addition, those manufacturing operations in the jewelry industry that were believed to be potentially hazardous were not included in the March 30, 1988, proposal. Thus, those portions of the August 21, 1986, proposal relating to the women's apparel and jewelry industries (other than those operations identified in the revised proposal as nonhazardous) were specifically withdrawn.

Increased Homeworker Enforcement Efforts

Since 1981, the Department has conducted a concerted compliance effort to detect violations of the FLSA among homeworkers. As part of this effort, the Department has given priority to investigating all complaints received involving homework, has followed up on all leads regarding employment of homeworkers, and has actively sought to ensure that homework activity, wherever it occurs, is in compliance with the FSLA. Between October 1981 and September 1987, 1,926 investigations of employers utilizing homeworkers were completed as compared with approximately 75 to 80 such investigations during the entire previous six-year period. Of the 1,926 investigations completed, 170 involved knitted outerwear employers; 573 were of other restricted industry employers; and the remaining 1,183 involved employers in nonrestricted industries.

The Department is fully committed to maintaining a strong and effective FLSA enforcement program in industries utilizing homeworkers and will continue to provide a sufficient level of resources to insure the accomplishment of this goal. In this regard, the FY 1989 Budget request submitted to the Congress included 20 additional full-time equivalent (FTE) positions for enforcement of the FLSA among employers of homeworkers. The Department will monitor its enforcement resource needs under this rule and take the necessary steps to ensure that appropriate resources are devoted to this effort.

Interest in Lifting the Remaining Restrictions on Homework

After the implementation of the certification system in the knitted outerwear industry, the Department received five petitions with 1,493 signatures requesting further deregulation of homework, as well as over 400 letters from individuals and organizations urging that the remaining homework restrictions be lifted. Among the reasons for wishing to work at home cited by employees were: The desire to be at home to care for their children; the inability to afford the costs of child care, transportation, clothing, and meals, if they had to work in a factory; the lack of transportation or the difficulty in commuting from their homes to a factory; the desire to set their own work schedules; and the ability to engage in farming operations or other pursuits while working part-time at home.

Individuals who wrote to the Department regarding the homework restrictions pointed to the inequity and incongruity of the prior regulations which permitted the manufacture at home of certain articles of clothing and prohibited the manufacture at home of other similar articles of clothing. For example, homeknitters whose employer obtained a certificate could knit sweaters and hats at home, but they could not knit mittens. The extension of the certification system to the extent practical and appropriate among the remaining restricted industries is intended to reduce these inequities.

Except for the 1981 and 1984 revisions to the homework regulations for the knitted outerwear industry, these regulations have not been substantively changed since the early 1940s. The underlying rationale behind the regulatory restrictions was that people

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working in their homes in these industries would be more susceptible to abuse and federal minimum wage violations, as well as child labor exploitation. We now know that the Federal (and, in many cases, State) prohibition on homework in these industries did not eliminate such homework. Moreover, in the Department's view, the prohibition against any homework significantly increased the difficulty of locating homeworkers and ensuring that they have been properly paid. The ban on homework reduced an employee's incentive to file a complaint or cooperate in an investigation regarding minimum wage violations, since a substantiated complaint might have led to a loss of the homeworker's job. Unlike the certificate system, the ban provided no alternative basis for identifying firms employing homeworkers. Since homeworker employers operating in the restricted industries were operating in violation of the law simply by employing homeworkers, these employers had little incentive to comply with the FLSA wage provisions; if found by the Department, they could be compelled to discontinue their homework operations regardless of any minimum wage or overtime pay violations.

August 1986 Regulatory Proposal

The Department reviewed its experience with the certification system in the knitted outerwear industry which became effective December 5, 1984, and concluded that such a system was more effective in ensuring compliance with the minimum wage requirement of the FLSA than was the ban on homework. Accordingly, on August 21, 1986, the Department proposed to adopt a similar certification system in the remaining restricted industries (51 FR 30036). The comment period was subsequently extended to December 4, 1986 (51 FR 37045 as corrected by 51 FR 37296). A total of 19,206 comments were received on the August 1986 proposal, of which 8,020 argued in favor of lifting the ban on homework and 11,186 argued against. Included were 5,814 form letters and post cards opposed to the proposal; 235 form letters in favor. Not included in the above count of comments were 7,648 signatures on petitions in favor of the proposal and 953 signatures on petitions opposed.

March 1988 Regulatory Proposal

A number of commenters on the August 1986 proposal expressed concerns about the Department's ability to enforce the FLSA with respect to homeworkers in these industries. The Department reviewed its enforcement experience in knitted outerwear in light of these comments. Based on this review, and to address the concerns raised in the comments, the Department decided to include in the proposed rule a wider range of enforcement mechanisms to improve FLSA compliance among employers of homeworkers in the restricted industries. In addition, the Department decided to propose revisions to the homework handbook and other recordkeeping requirements in 29 CFR Part 516. These revisions to the August 1986 proposal were made in a March 30, 1988, proposal (53 FR 10342, as corrected by 53 FR 11590).

Furthermore, with respect to the women's apparel industry, the Department decided to continue to review the potential impact of lifting the ban on homework and thus withdrew its prior proposal to modify the existing homework ban in that industry in the March 1988 proposal. The proposal indicated that if the Department decided at a later date to lift the ban in women's apparel, such action would require separate rulemaking. With respect to the jewelry industry, in the March 1988 proposal, the Department withdrew its proposal to lift the ban on the employment of homeworkers except with respect to certain jewelry manufacturing operations which it believed do not involve safety and health hazards. Nonhazardous operations were specifically identified in the proposal as the stringing of beads and other jewelry, carding, and packaging. While the Department tentatively identified these operations as nonhazardous, it recognized that there might be other such safe operations. Comment was invited identifying any additional nonhazardous operations (as well as any operations identified as nonhazardous that might in fact be hazardous).

In the March 1988 notice, the Department also proposed to adopt a policy whereby certain employers who utilize so-called "model garment programs" would not be subject to any action by the Department simply for employing individuals who may work at home at times under certain specified conditions.

Pursuant to the March 1988 notice, the comment period was reopened to solicit views on these modifications to the August 1986 proposal. Notice was given that all comments received in response to the prior notice would continue to be part of the rulemaking record. These comments were considered in preparation of this final rule.

A total of 2,823 comments were received on the March 1988 proposal, of which 197 argued in favor of lifting the ban on homework and 2,626 argued against. The vast majority of the comments opposed consisted of one of several identical (or virtually identical) form letters.

Among the commenters supporting the lifting of the homework ban were five State Departments of Labor; American Farm Bureau Federation; National Federation of Independent Business; U.S. Small Business Administration; Federal Trade Commission; several business, civic, and religious groups; and a number of U.S. Senators and Representatives and other public officials.

Among the commenters opposing the lifting of the homework ban were the AFL–CIO and a number of affiliated unions, including the International Ladies' Garment Workers' Union (ILGWU), Service Employees International Union (SEIU), Amalgamated Clothing and Textile Workers Union (ACTWU), and National Council of Field Labor Lodges (NCFLL); five former Secretaries of Labor and several former Wage and Hour Division officials; 13 State Departments of Labor; a large number of religious, civic, and community organizations; and a number of U.S. Senators and Representatives and other public officials.

Discussion of Issues and Analysis of Comments

The Department recognizes the deeply-held views on all sides of this complex issue. The strong feelings about the employment of homeworkers were highly evidenced in the comments, as discussed below.

I. Enforcement Mechanisms Proposed in March 1988 and Included in the Final Rule

As indicated above, the March 1988 proposal included a number of additional enforcement mechanisms. All of these have been incorporated into this final rule.

The additional enforcement mechanisms were developed with the expectation that, while no single requirement or remedy is likely to ensure compliance with the FLSA, their impact would be cumulative, and the cumulative impact would enhance compliance. Among other things it was expected that experience with the new requirements would educate employers as to their responsibilities under the FLSA. Employers who understand and are willing to comply with the requirements of the FLSA in the

employment of homeworkers will be able to do so, and certificates will be revoked and other enforcement mechanisms utilized, as appropriate, where the Department discovers a lack of responsibility to comply with the Act. Vigorous efforts will simultaneously be taken to enforce the continuing ban with respect to employers without certificates.

With the exception of one commenter who questioned the need to retain the federal ban where it is prohibited under State law, no criticisms of the mechanisms were received from commenters favoring lifting of the restrictions. The main criticism of the mechanisms from commenters opposed to the proposal was that they were not a panacea and could not solve all of the problems of compliance with the FLSA with respect to homeworkers. No suggestions were made, however, as to any revisions that could be made to alleviate perceived shortcomings in individual mechanisms. Following is a discussion of each mechanism with any significant comments made on them:

(1) Phase-in of industries. In order to more efficiently utilize available resources, the certificate program will be phased-in in the remaining restricted industries on an industry-by-industry basis. This will give the Department the time to implement the rule in an orderly fashion and allow the Department to conduct investigations of the employers who apply for certification promptly after the issuance of the certificate, thereby providing the necessary assistance to enable them to fully comply with the FLSA from the outset.

As set forth in § 530.101, the phase-in of the certification program will take place on a graduated basis, beginning with the gloves and mittens industry and the embroideries industry, immediately upon the effective date of the final rule, and the permissible operations in the jewelry industry and the button and buckle manufacturing and handkerchief manufacturing industries six months later. Although the certification program is already in place in the knitted outerwear industry, the additional requirements set forth herein apply upon the effective date of this rule, and new certificates will need to be obtained in accordance with the provisions.

(2) Issue no certificates in States prohibiting homework. Prior to the issuance of certificates pursuant to this rule, the Department will contact those States with statutes which appear to prohibit homework in the federally-restricted industries in order to confirm whether such homework employment is illegal under State law. The States will be afforded thirty days in which to reply. In accordance with § 530.201, the Department will not issue a certificate authorizing the employment of homeworkers where the Governor (or authorized representative) has advised the Administrator in writing that the use of homeworkers in a federally-restricted industry conflicts with a State labor standards or health and safety law. This will avoid any possible confusion for employers in such States and eliminate any potential impact on State agency enforcement efforts.

(3) Regular renewal of certificates. Section 530.101 provides that certificates issued to employers of homeworkers in the restricted industries will be renewable at two-year intervals. Also, at the time of application and at each renewal, § 530.102 requires employers to furnish the Department with a listing of the names, addresses, and languages (other than English) spoken by the homeworkers that are currently employed (if any) or expected to be employed. Thus, the Department will have an additional mechanism for close monitoring of certified employers of homeworkers in these industries, and a system for distributing information such as handbooks and pamphlets. In addition, this requirement will assist the Department in assigning bilingual compliance officers to investigations of such employers.

The ILGWU was critical of the requirement that homeworker employers list the names and addresses of their homeworkers when they apply for a certificate, on the grounds that some employers may not hire homeworkers until after they are certified and if they do, they may fail to list them because it would expose their employment in violation of the FLSA or other statutes.

The Department is aware that many employers will apply for certificates prior to the employment or identification of their homeworkers, in which case the employers will not furnish the information until the time of application for renewal of their certificates. In the interim, of course, the employer is required under current recordkeeping requirements to have on file and make available to the Wage and Hour Division, when requested, the names and addresses of all employees. This (together with any leads obtained) will continue to be Wage-Hour's primary source of information regarding homeworkers. The list of homeworkers provided with the certificate application will simply be a convenient means available for Wage-Hour to contact directly those employees and to learn about languages spoken (for handbooks and investigation scheduling). Finally, the Department recognizes that if an employer decides to operate in violation of labor standards he or she is not likely to provide an accurate list of employees. The purpose of the certificate program is to facilitate employment of homeworkers by employers who wish to comply with the FLSA. There are enforcement remedies available to deal with those who do not.

(4) Conditions of certification. To insure that employers of homeworkers are fully aware of their regulatory and statutory obligations in employing homeworkers, the rule at § 530.103 adds a requirement to the process of application for certification that the employer provide written assurance that all homeworkers will be employed in compliance with the provisions of the FLSA and all applicable regulations with respect to the payment of wages, employment of minors, and recordkeeping. The employer must further assure compliance with the requirements of Parts 516 and 530 with respect to maintenance of homeworker handbooks and calculation of piece rates, and encourage all homeworkers to cooperate with the Department in any investigation that may be made. The final rule has been revised to include that employers must assure that they will instruct homeworkers to accurately fill out homeworker handbooks and that employers in jewelry manufacturing must assure that homeworkers will be limited to certain nonhazardous activities.

Several commenters stated that the assurances would have no effect because employers either did not know the requirements of the law or did not observe the number of compensable hours their employees worked at home. The ILGWU commented that proof of a false assurance would be difficult and that it is inconsistent to require assurance of compliance with the law, implying knowledge of the law, and then at the same time consider ignorance of the law as a factor in assessment of civil money penalties. The majority members of the House Committee on Education and Labor commented that there is no penalty for knowingly making a false assurance.

The Department views the requirement of employer assurances as primarily a mechanism for assuring that employers are aware of their duties under the FLSA, and believes that their public acknowledgement of their legal responsibilities will focus their attention on the law's requirements and have a deterrent effect on violations. We also anticipate that execution of the assurances will assist the Department in

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the establishment of willful or knowing violations for purposes of assessment of civil money penalties and collection of back wages and liquidated damages in litigation. With respect to the employer's ignorance of the law as a factor in setting civil money penalties, the Department recognizes that even conscientious employers may not be familiar with all the technicalities of the FLSA. As to the comment of the Committee, if it could be established that an employer gave false assurances, ordinarily his or her certificate would be denied or revoked. Civil money penalties are also available as a sanction against employers whose incorrect assurances are not so severe as to warrant denial or revocation of a certificate. Criminal sanctions for false assurances may also be available under 18 U.S.C. 1001 in appropriate cases.

(5) Wage-Hour investigation procedures. Under § 530.105, any employer in a restricted industry who requests certification to employ homeworkers will be investigated promptly after the issuance of the certificate by the Department's Wage and Hour Division. Where such an employer is found to be in violation of the FLSA, corrects the violation(s) and promises future compliance, the firm will be reinvestigated to further assure that full FLSA compliance has been achieved.

(6) Improved homeworker handbook. This rule contains a number of initiatives to promote the accuracy of hours worked records for all homeworkers (including those in industries in which homework is not restricted). A simplified homeworker handbook has been developed to enable homeworkers to accurately record daily and weekly hours worked. While the prior handbook required a fairly detailed description of work done, e.g., style or lot number, article worked on, operation performed, etc., with a single "hours worked" total for each line entry, the new handbook gives primary attention to accurate recording of daily and weekly hours worked by providing time sheets with sufficient space for a homeworker to log in and out several times a day. The Department believes that this recordkeeping tool more closely approximates the reality of the homework situation in that it recognizes that homeworkers frequently start and stop working a number of times over the course of a day. The new handbook affords homeworkers a simple means to record their hours as they work, rather than to reconstruct the hours worked at the end of the day or week. In addition, in contrast to the prior rule in 29 CFR Part 516 which required that the employer personally enter the information into the handbook, § 516.31(c) requires the employer to insure that the hours worked and other information are accurately entered by the homeworker.

In addition to revising the format of the homeworker handbook, the Department has revised the instructions for filling out the handbook and has included a brief explanation of what constitutes "hours worked" under the FLSA. The new homeworker handbook will be published in several foreign languages, which is expected to reduce enforcement problems associated with language barriers. Presently, the Department is making arrangements to translate the handbook into Spanish, Chinese, Korean, Vietnamese, Cambodian and Laotian.

Under the revised homework recordkeeping regulations, employers are required to insure that the homeworker handbooks are completed accurately and in a timely fashion. In this regard, § 516.31 requires employers to sign a statement in each homeworker handbook that the homeworker was instructed to accurately record all of the required information regarding such homeworker's employment, and that, to the best of his or her knowledge and belief, the information was recorded accurately. The Department believes that the signing of a statement attesting to the validity of the information in the handbook will encourage the maintenance of accurate records.

In addition, a number of clarifying changes have been made to the homework recordkeeping rules in § 516.31

Several commenters stated two reasons why improved handbooks would not result in more accurate records of hours worked by homeworkers. They contend that homeworkers, like other workers, find it inconvenient to write down every time they start and stop working, particularly at home with frequent interruptions; and even if they are willing to keep accurate records, fear of retaliation from their employers makes it unlikely that they will turn in records requiring their employers to pay more wages.

The Department does not dispute the inconvenience of accurate recordkeeping in the home. This is true, however, not only in the home but also with respect to virtually every job where employees work by themselves without supervision. It has been the Department's experience that homeworkers did not understand the handbooks used previously, particularly the need to record all hours worked. The explanation in the handbook of how to record "hours worked" in the homework setting will greatly alleviate this problem. Accurate records will also be facilitated by the log in—log out format and the instructions will provide that the records be kept as the day progresses, rather than reconstructed at a later time—the most difficult problem with recordkeeping by unsupervised employees. Furthermore, the instructions will advise that short rest breaks (less than 20 minutes) are hours worked and such breaks need not be recorded.

With regard to fear of retaliation, it is anticipated that education of employers and employees concerning the consequences of inaccurate records, i.e., that the employer will not be permitted to employ any homeworkers, will encourage accurate recordkeeping. It has been our experience with certified knitted outerwear employers of homeworkers that most come into compliance or substantial compliance with the recordkeeping requirements affter an initial investigation and explanation of the requirements by Wage-Hour compliance officers. Furthermore, employers will be required to submit a written assurance that the homeworkers were instructed to accurately record the required information, and to sign a statement in each handbook that to the best of the employer's knowledge, the entries in the handbook are accurate.

(7) Piece rates—work measurement. Experience in enforcement of the FLSA with respect to homeworkers has shown that many homeworkers do not earn sufficient amounts at piece rates to meet the minimum wage. One apparent reason is that employers have often not set their piece rates high enough to insure that all the homeworkers will be paid at least the required hourly minimum wage. Consequently, as a condition for obtaining a certificate, employers who wish to pay piece rates (as opposed to hourly rates) to their homeworkers are required under § 530.202 to establish the piece rates for the different types of items produced using stop watch time studies or other work measurement methods.

The ILGWU commented that it is inconsistent to admit that the Department's compliance officers had difficulties performing time studies while at the same time expecting employers to perform them properly. They argued that the reasons for the deficiencies in the Department's time studies likewise would apply to those performed by employers.

The Department recognizes that piece rates established by employer time studies will not provide a measurement of hours worked by employees. The requirement that employers set piece rates through time studies or other work measurement methods is intended to help ensure that employers use a rational basis for setting piece rates. A review of the time studies will also assist compliance officers in identifying employers whose practices must be closely examined to ensure compliance with the Act. For example, if the piece rate is set to yield earnings only slightly above the minimum wage, violations are likely with regard to less skilled employees. Finally, the regulation emphasizes that each worker must always earn at least the minimum wage for all hours worked, even if paid at piece rates.

(8) Denial or revocation of a homework certificate. Upon finding violations of the FLSA, the Department has authority under sections 16(c) and 17 of the Act to seek back wages and injunctive relief through court action. The Administrator also has the authority, codified in section 11(d) of the Act, to ban homework if that is necessary to insure that homeworkers are not employed in violation of the minimum wage requirements of the Act. Instead of a total ban on homework, under this rule, the administrator will allow homework in four of the six remaining restricted industries and to a limited extent in a fifth (jewelry), upon the condition that the employer obtain a certificate and comply with the requirements of these regulations. In this regard, another means to obtain compliance with the FLSA is the denial or revocation of a homework certificate upon a determination by the Administrator of the failure of the applicant or certificate holder to comply with the FLSA, the regulations, and the assurances the applicant makes as a condition of obtaining a certificate. Since certificate holders have made certain assurances as a condition of obtaining a certificate, revocation of the certificate is appropriate when the certificate holder does not comply with these assurances. Depending on the circumstances, as described in the regulations, a certificate may be denied or revoked for a period of one to three years.

Several comments stated that the specific new criteria for denying or revoking a certificate will not promote the desired effect of increasing FLSA compliance because the Department has never fully utilized the remedies it has always had to achieve compliance: Back wage suites, injunction suits against the employment of homeworkers and denial of certificates in the knitted outerwear industry. The ILGWU commented that revocation of a certificate is less likely to occur under these specific standards than under the prior discretionary provisions for denial or revocation of a certificate. Several comments stated, on the other hand, that the discretion granted the Administrator not to revoke or deny a certificate under certain circumstances where FLSA compliance is assured means that the denial or revocation standards in the proposal are not truly mandatory.

The Department believes that, given the relatively small number of approximately 50 certified knitted outerwear employers in actual operation, the amount of activity in denial or revocation of certificates and in litigation is not inconsistent with normal enforcement efforts. With regard to the criteria themselves, the Department believes that enforcement of the Act will be best achieved by creation of specific standards of revocation and denial. We anticipate that the establishment of mandatory standards for revocation will be a significant deterrent against violations. The ILGWU comment that revocation is less likely than under the prior discretionary standard overlooks the fact that the rule maintains general discretionary authority in the administrator to deny or revoke a certificate if employment of homeworkers under that certificate is likely to result in violation of the FLSA. This provision may be utilized to deny or revoke a certificate in appropriate circumstances not otherwise subject to one of the specific denial or revocation standards.

With regard to the administrator's discretion not to revoke or deny a certificate where the otherwise mandatory criteria have been met, the circumstances in which such discretion can be exercised are very narrowly circumscribed. It is necessary that the employer not know or have reason to know of the violations, despite the exercise of due care, that all back wages and civil money penalties be paid, and that steps have been taken to prevent recurrence. In our judgement, the purposes of the FLSA and the certificate program are not served by denying or revoking certificates in such circumstances. The Department expects, however, that the cases satisfying the criteria necessary for application of the Administrator's discretion will be infrequent.

Finally, the ILGWU commented that the provision requiring denial or revocation of certificates where an employer has discriminated against homeworkers for engaging in protected activity designed to enforce their rights under the FLSA was unnecessary because homeworkers don't file complaints with the Department, because section 15(a)(3) of the FLSA already protects employees from discrimination, and because it is difficult to prove discrimination.

In the Department's view, providing protection to employees who seek to enforce their rights is essential to effective administration of the Act. Although such protection is provided already in section 15(a)(3) of the Act, including it in these regulations underscores its importance, and may also provide an additional deterrent to employers and alleviate some employees' fear of retailiation.

A revision has been made to § 530.205(g) to make it clear that if an employer fails to maintain the names and addresses of employees, this would be a serious recordkeeping violations and grounds for revocation or denial of a certificate.

(9) Civil money penalties. Section 530.301 establishes a system of civil money penalties to be assessed against applicants and certificate holders for any violation of the FLSA related to homework (except child labor) or for any violation of the homeworker regulations or the assurances made thereunder. (Part 579 of this chapter, issued pursuant to section 12 of the FLSA provides a separate system of civil money penalties for child labor violations.) In setting the amount of any penalty assessed under this rule, the Administrator will take into consideration the number of homeworkers affected, the history of prior violations, whether a violation was intentional or knowing, whether a violation was substantial (but not so serious as to warrant revocation of a certificate) or minor in nature, and any mitigating or extenuating circumstances. A schedule is prescribed in the rule for computation of such penalties, up to $500 per affected homeworker. Procedures for assessment and administrative hearings are also included in the rule.

Authority for imposition of civil money penalties may be found in section 11(d) of the Act, enacted in 1949, which authorizes the Secretary to make "such regulations and orders regulating, restricting, or prohibiting industrial homework *as are necessary or appropriate* to prevent the

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circumvention or evasion of and to safeguard the minimum wage rate prescribed in the Act" (emphasis added). Even before this provision was added to the Act the Supreme Court upheld, in *Gemsco* v. *Walling*, 324 U.S. 244 (1945), the Wage-Hour Administrator's authority to prohibit, outright, the practice of industrial homework, where the statute authorized the prescription in industry wage orders of "such terms and conditions as the Administrator finds necessary * * * to safeguard the minimum wage rates * * *".

By the same rationale, section 11(d) authorizes the Secretary to impose remedies short of outright prohibition, namely civil money penalties, where this is a reasonable alternative to prohibition, and reasonably necessary or appropriate to safeguard payment of the minimum wage to homeworkers. (See also *Janik Paving & Construction, Inc.* v. *Brock*, 828 F.2d 84 (2nd Cir. 1987) wherein it was held that the Secretary is authorized to debar contractors under the Contract Work Hours and Safety Standards Act, pursuant to statutory authority "to prescribe appropriate standards, regulations, and procedures * * * with respect to compliance with the enforcement of such labor standards, as he deems desirable," following *Steuart & Bro.* v. *Bowles*, 322 U.S. 398 (1944).) As in *Gemsco*, the Secretary's utilization of a specially tailored remedy pursuant to this rule is necessitated by the special enforcement problems posed by industrial homework, where these problems cannot be readily resolved by the use of more routine back wage or injunctive remedies, yet the violations are not deemed to warrant revocation of the certificate.

The Department views the civil money penalty provisions of this rule as an important enforcement tool to encourage employers of homeworkers to pay not less than the minimum wage and overtime pay as required by the Act, and to keep proper records as required by the regulations. This device will be used in those instances when revocation of a certificate seems inappropriate or unduly harsh under the circumstances of the violations.

The civil money penalty system permits the imposition of relatively moderate administrative remedies for violations of recordkeeping requirements and for operating without certificates in situations where substantial back wages are not found to be due homeworkers. Full due process will be afforded to employers through prescribed administrative appeal procedures as discussed below.

A former Wage and Hour official stated that such penalties were tried unsuccessfully in the migrant farm labor area, but that employers just disappeared rather than face enforcement of the penalties.

The Department views migrant farm labor employment conditions, generally involving transient farm labor contractors, as providing no valid comparison with homework employment by certified employers. In the event an employer with a homeworker certificate fails to pay a civil money penalty, this final rule requires revoking the certificate. The Department views civil money penalties as an intermediate remedy for those violations of the FLSA which are not so severe as to require revocation of a certificate. In the enforcement of the FLSA, the Department has had experience with many types of employers who disappear, seek relief under the bankruptcy laws to avoid the payment of back wages, or refuse compliance with the Act.

(10) Administrative procedures. The final rule in Subpart E, §§ 530.401 through 530.414, provides an administrative process for review of a determination to deny or revoke a homework certificate and for review of a decision to assess a civil money penalty. The procedures include a right to a hearing before an Administrative Law Judge and an appeal of the Judge's decision to the Secretary.

Special procedures are included at § 530.411 for an expedited proceeding when a hearing has been requested following a determination to revoke a certificate on an emergency basis. In the case of a request for such a hearing, special time limits are provided for the Administrative Law Judge to hold a hearing and issue a decision, and for the Secretary to issue a final decision.

The final rule at § 530.410 also provides an informal procedure before the Administrator in lieu of a formal hearing before an Administrative Law Judge. This procedure is to be used when an applicant or certificate holder does not contest the factual findings of the Administrator and waives a formal hearing.

The House Committee on Education and Labor argued that it is inconsistent for the Department to create expedited procedures in this proposed and at the same time to be on record as opposed to the time frames for administrative proceedings in the Committee's bill to amend the Davis-Bacon Act, H.R. 2216.

There are significant differences between the expedited administrative procedures in § 530.411 and those contemplated by the legislation. The Department anticipates that the number of administrative hearings and appeals resulting from the Committee's Davis-Bacon bill would be far greater than the number of cases subject to the administrative procedures of this rule. Expedited procedures for routine Davis-Bacon cases would place a great burden on the resources of the Department, at the expense of other cases, whereas the expedited procedures of this rule are not expected to be invoked frequently. Unlike the Davis-Bacon bill, the expedited procedures in these regulations are not invoked for routine cases, but only in emergencies where the Administrator determines that immediate revocation is necessary to safeguard the payment of minimum wages to homeworkers.

(11) Bonding or security payments. Section 530.104 authorizes the Administrator to require employers to furnish a bond or cash security payment as a condition for issuance or renewal of a certificate. Such bond will be compulsory prior to issuance or renewal of a certificate in the case of any employer whose application for a certificate has previously been denied, or whose certificate has previously been revoked. Such bond or cash payment will be in an amount up to $2500 for each homeworker to be employed under a certificate, and will be subject to payment or forfeiture in the event the employer fails to pay any minimum wages or overtime pay due homeworkers. The Administrator will disburse any sums thus paid or forfeited to affected homeworkers in accordance with the procedures set forth in section 16(c) of the FLSA.

The Department considers a bonding or security requirement to be a significant enforcement tool which will not only provide a strong incentive for employers to pay homeworkers the minimum wage and overtime pay required by the FLSA, but also assure that in the event of nonpayment, funds will be available to satisfy the employer's back wage obligations.

In order to avoid unnecessary burdens on law-abiding employers, bonding will not be imposed as a routine requirement, but only in instances where it is questionable, based on Wage-Hour experience with the employers from past or current investigations, whether they will comply with their legal obligations, or whether money will be available to compensate homeworkers if violations occur.

Bonding will be imposed, for example, in cases where an employer in the past has needed an installment plan to pay the back wages due. In such cases, however, the Administrator may relieve the employer from the bonding obligation and refund any amounts held as security where it is subsequently determined that the employer is in compliance with the law and the Administrator is satisfied that the employer will be financially able to remedy any back wage violations which may occur.

The ILGWU commented that these requirements are not necessary because the Department can deny or revoke a certificate for an employer's failure to comply with the FLSA. The ILGWU also believes that bonding of employers is unlikely to be very useful or occur very often because of the difficulty in making the necessary findings concerning the ability of the employer to meet its obligations under the Act.

Under the regulatory scheme, not all first-time wage violations are necessarily so serious as to require revocation of a certificate, but the circumstances of those violations or the employer's ability to pay may lead to a conclusion that a bond is necessary for protection of the employees' wages. Furthermore, where a certificate has been previously denied or revoked, a bond will generally be a prerequisite to obtaining a certificate and additional findings would not be necessary.

II. Homework in the women's apparel industry.

Many comments were received on the August 1986 proposal opposing the lifting of the ban on homework in the women's apparel industry. The Department indicated in the March 1988 notice that it is still carefully reviewing all of the comments submitted on this issue. Accordingly, the August 1986 proposal to lift the ban in the women's apparel industry was withdrawn. Should the Department decide to take further action with respect to this industry, the March 1988 notice stated that separate rulemaking would be undertaken. Thus, the final rule has no effect on the current restrictions on the employment of homeworkers in the women's apparel industry.

III Freedom of choice.

The Department received a great many comments from individuals who expressed a strong belief that the freedom to work at home is a basic right and explained their reasons for wanting to work at home: A homworker is free from direct supervision; work schedules can be adjusted to fit individual circumstances; and a homeworker can work at his or her own pace and time, resulting in a more satisfied person and a product of better quality. Several commenters mentioned that homework provided freedom from the noise and crowded conditions of a factory. Others claimed that the homework ban was unconstitutional in that it limited their "pursuit of happiness." A number of commenters acknowledged that there are benefits to working outside the home, but that the independence and flexibility of working at home outweigh any loss of these benefits.

In the Department's view, it is desirable for individuals to have the greatest freedom possible in selecting employment. Thus, the Department feels that it is appropriate to provide employers and employees the opportunity to arrange for individuals to work out of their homes, provided that the Department is able to effectively enforce the provisions of the FLSA and that the workers are paid in compliance with the Act.

IV. Impact on rural areas

Many commenters submitted views on the benefits of homework in rural areas. Some of the reasons cited by these commenters for lifting the ban were:

1. The agricultural economy is depressed and jobs are scarce;
2. Mass transportation is nonexistent;
3. Travel, especially in winter over rough roads, is difficult;
4. The distance from home to workplace is often considerable, thus making employment outside the home difficult and expensive;
5. Day care facilities are few and far between and are expensive where available;
6. Farm wives need to be available for farming activities during the busy parts of the year; and
7. The need for flexibility to perform farm chores at certain times is required every day.

Several commenters noted that income derived from homework made the diffence between holding on to a family farm or having it go under.

The Department agrees that homework may be the most viable type of employment for certain individuals, and that this is a valid reason for removing the restrictions on homework provided such individuals will be paid in compliance with the FLSA.

V. Impact on local and national economies

Many commenters argued that the ban has denied homeworkers opportunities to earn a living and thereby caused substantial personal hardships. They also stated that the prior rule impacted adversely on unemployment and productivity in the restricted industries at a time when imports are eroding traditional manufacturing bases. Some noted that the 1986 White House Conference on Small Business strongly recommended the repeal of the regulations restricting homework. Lifting the restrictions, many argued, would encourage the expansion of job opportunities, permit businesses to find ways to reduce costs, provide additional tax revenues for Federal, State and local governments, and place the United States in a more competitive position in the global economy.

While the Department agrees with the thrust of these comments, no reliable data are available to confirm any conclusions about the impact of the homework restrictions on employment opportunities or their economic effect on businesses in the restricted industries. Consequently, the Department's decisions in this rulemaking were not based on any consideratiopn of the net impact of the rule on employment opportunities.

Conversely, many clothing and textile manufacturers, associations of manufacturers, the ILGWU, the Amalgamated Clothing and Textile Workers Union, and others argued that traditional manufacturers cannot compete with employers who use homeworkers. A number argued that factories cannot compete with manufacturers who use homemakers because the costs associated with operating a factory are much greater, that lifting the homework restrictions would cause factories to close, and that responsible employers would have to move jobs to employees' homes in order to compete. They also argued that the Department had not considered the impact of the proposal on employees in factories. A number of associations of manufacturers stated that these industries are dying out as a result of foreign competition. One manufacturers' association pointed to the consequences of unfair foreign competition on these industries and argued that the proposal would eliminate protections that now exist against unfair competition at home. Some argued that the proposal would not produce any growth of employment opportunities, and that any gain in homeworker employment would be offset by losses in factory employment.

Several State Departments of Labor argued that the Department had not considered the impact on manufacturers in States that ban homework who will be forced to compete with homeworker employers in other States and stated

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that the proposal would undermine their own State enforcement efforts.

The Department recognizes that factory manufacturers may pay wages and provide benefits to their employers in excess of those required by the FLSA. However, the FLSA provides the authority to restrict homework only to the extent necessary to safeguard the minimum wage. Many of the concerns about "unfair competition" with homeworker employers relate to higher operating costs for employers of factory workers. Provided the homeworkers are paid at least minimum wage and required overtime pay, the objections raised in the comments concerning "unfair competition" are not FLSA matters and, therefore, are not pertinent to these regulations. Finally, all other industries, other than the few restricted industries, have always been permitted to use homeworkers and such allegations have not been heard from these other industries.

In the Department's view, the ban on homework has been only partially effective and, thus, factory manufacturers have already been competing to some extent with employers of homeworkers in the restricted industries just as they have been competing in the non-restricted industries. Furthermore, homeworker employers in the restricted industries have had little incentive to comply with the FLSA minimum wage and overtime requirements, since their operations have been illegal under the Act. Under the ban it has been extremely difficult for the Department to locate and identify homeworkers or to obtain their cooperation in investigations. This problem should be ameliorated under a certification system. Through the Department's efforts to ensure that homeworkers legally employed by certified employers are paid legal wages and vigorous enforcement of the FLSA with respect to employers operating without certificates, the competitive position of factory employers should not be substantially impacted and may improve under the certification process.

This regulation will have no effect on any existing State restrictions on homework. Thus, under § 530.201, homework in these industries will continue to be prohibited under this rule in those States where, and to the extent that, State officials advise the Department that homework is restricted by State laws and rules. The fact that such State restrictions may work to the disadvantage of local factory manufacturers in competition with those in States who might utilize homeworkers in compliance with the FLSA is not an FLSA issue.

VI. Need for homework restrictions

Many commenters in favor of the proposed argued that while the regulations restricting homework might have been necessary when they were promulgated in the 1940's, the restrictions are obsolete and contrary to the needs of today's workers. As discussed above, some of these commenters pointed out inconsistencies in the prior rule, in that homework was prohibited in some industries but not others.

The Department appreciates the difficulty the public has in understanding why restrictions on the use of homeworkers should apply in certain industries, but not others. After the enactment of the FLSA, homework in certain industries was believed by the Department to be a threat to maintaining labor standards. A series of public hearings extending from 1941 through 1943 was held for seven industries in which homework was most prevalent and in which FLSA violations were believed to be a serious problem. As a result of these hearings, restrictions on the employment of homeworkers in the seven industries (including knitted outerwear) were established by regulation.

Today, with the growth of homework in other industries (such as telemarketing and word processing), the application of such restrictions to only a few specific industries is easily perceived as an anomaly which is hard to understand without the historical background and the appreciation that the prior rules remained essentially unchanged for over forty years.

Commenters opposed to the proposal pointed to the impediments to achieving FLSA compliance with respect to homeworker in these industries that were identified by the Administrator in the 1940's, and argued that nothing had changed over the years to diminish these impediments. Many commenters argued that certification of homeworkers employers would not work because only a handful of employers (those that are law-abiding) would seek to obtain certificates.

In the Department's view, the latter argument is precisely the point in permitting employers to obtain certificates to employ homeworkers. It is anticipated that, as a general matter, employers who come forward and identify themselves and agree to open their records to inspection, do, in fact, intend to comply with the law. It is to these and only these employers that this rule has any application.

While the Wage-Hour Administrator in 1942 concluded that a ban on homework was needed to protect homeworkers, it is evident that the 45-year ban did not eliminate homework. During those years the ban on homework fostered an underground, unchecked homework industry in which enforcement of minimum wage and overtime pay requirements has been very difficult. Employers of such homeworkers had little reason to comply with the FLSA (or meet any other Federal or State standards) since their operations were illegal under the FLSA in any event. In the Department's view, the certification system and enforcement mechanisms incorporated in the final rule are preferable and reasonable alternatives to a total ban.

VII. Homework permits individuals to combine work and family obligations

Among commenters in favor of the proposal, the flexibility provided by homework to combine work and family obligations was second only to the "freedom" issue as a reason to adopt the proposal. The consensus of these commenters was that working at home would enable parents to earn money and care for their children without incurring expenses for child care, transportation, or clothing suitable for work outside the home; would provide income opportunities for senior citizens and handicapped persons; would enable people to earn money and care for sick or elderly family members; and would help remove single parents from welfare rolls and place them in the work force. One commenter questioned the fairness of the government's prohibiting people from working at home, supporting themselves, and paying taxes, and at the same time paying out welfare funds for such people to stay home and be supported by taxpayers. Several people commented that homeworkers can earn less per hour than they would for the same work outside the home and still come out ahead because they have no child care, transportation, or clothing costs.

The Department would point out that elderly and handicapped persons who are unable to adjust to factory work and persons required to remain at home to care for invalids were permitted under the prior rule to work at home with individual certificates. In other respects the Department shares the concerns of these commenters, provided that the Department is able to assure compliance with the Act.

VIII. Homework in the jewelry industry

Many comments were received on the August 21, 1986, proposal opposing the lifting of the ban on jewelry homework based on safety and health issues. Specifically, the SEIU and other commenters expressed the opinion that permitting homework in the jewelry industry could impose a grave danger to the health and safety of workers, their families and the community. They alleged that a number of the processes involved in jewelry manufacturing expose workers to toxic fumes and acids, many of which are known cancer-causing agents or are harmful to the reproductive processes. It was also argued that significant fire hazards and the potential for explosions are present due to the use of flammable solvents, propane tanks and acetylene torches.

Comments in favor of lifting the ban on jewelry homework argued that its retention would result in loss of jobs, thereby exacerbating already depressed employment situations in certain parts of the country.

The Department carefully considered the comments submitted on this issue. In light of the potential for very serious safety and health hazards for homeworkers in the jewelry industry, and the Secretary's broad and multi-faceted responsibility for protecting and promoting the welfare of working people generally (29 U.S.C. 551), and in view of the potential adverse impact on the public at large, the March 1988 notice withdrew the Department's prior proposal to lift the ban on this industry except with regard to operations determined not to involve safety and health standards, and the notice indicated that the restrictions on other homework would be retained. Since there was no evidence in the rulemaking record of safety and health hazards in jewelry assembly operations limited to the stringing of beads and other jewelry, carding and packaging operations, and since a number of comments submitted on the August 1986 proposal advocated that homework should be permitted in such operations, the Department proposed in March 1988 that the ban be lifted with respect to such operations.

One jewelry manufacturer commented in favor of the proposed rule, stating that its operations are in accordance with its provisions. In addition, the Small Business Administration alleged that the rule is so restrictive that virtually all jewelry manufacturing is excluded, and stated that the proposal does not contain sufficient information to support its conclusion. However, neither the SBA nor any other commenter provided any information or suggestions in support of a broader rule.

The SEIU submitted subsequent comments opposed to the limited certification program in the jewelry industry. Among the issues raised, they stated that the terms "carding and packaging" as used in the industry include operations which could be hazardous in a home environment such as the use of industrial glues and epoxies for mounting backs or stems on earings and the use of heating elements to seal plastic wrapping. To avoid any such effect, § 530.101(a) clarifies that "carding and packaging" operations may include the use of common household glues available to the general public but do not include potentially hazardous operations such as the use of industrial glues, epoxies or heating elements. Also, § 530.103 has been amended to require employers in this industry to provide written assurances that their homeworkers will be exclusively engaged in the permitted operations.

IX. Enforcement experience in the knitted outerwear industry

Commenters in favor of the 1986 and 1988 proposals argued that the enforcement experience in knitted outerwear under the certification program had proven to be an effective means of ensuring employers' compliance with the FLSA. Many of these commenters expressed the view that the lifting of the ban together with the certification requirement would eliminate the fear of job loss for homeworkers who would, therefore, feel free to file complaints of wage underpayments with the Department.

The Department agrees that FLSA enforcement among employers of homeworkers in the knitted outerwear industry has been more effective under the certification program than under the prior ban. The certification program has identified homeworker employers in the industry, permitted employers who wished to comply with the FLSA and employ knitted outerwear homeworkers a legal avenue to do so, and provided an incentive for employees and employers to furnish the Department with information about other companies in the industry operating without certificates.

The Department has identified far more knitted outerwear employers of homeworkers than was possible under the prior restrictions. The certification program established a channel of enforcement and public information to a segment of the knitted outerwear industry that was largely out of reach under the prior restrictions. Without this program, it is likely that many of the knitted outerwear firms investigated would not have been contacted by the Department.

By contrast, many of the commenters opposed to the 1986 and 1988 proposals presented a sharply critical view of the Department's investigations of knitted outerwear manufacturers under the certification program. The thrust of these comments was that these investigations demonstrated that the Department did not and could not properly enforce the FLSA.

The ILGWU submitted a lengthy narrative discussion on each of the two proposals. Accompanying each of these submissions was a separate volume of attachments (photos, affidavits, etc.). In addition a private consulting firm's analysis of Wage-Hour time studies was submitted. Also submitted were 57 appendix volumes consisting of reproductions of Wage-Hour files and documents provided the ILGWU in response to requests for disclosure under the Freedom of Information Act.

The Department recognizes the extraordinary levels of effort and resources the ILGWU expended in analyzing the disclosable portions of the knitted outerwear files and preparing comments on these investigations. The major issues raised in the ILGWU comments on the knitted outerwear enforcement program are discussed below.

The ILGWU argued that the Department's identification of approximately 665 homeworkers in the knitted outerwear industry between 1984 and 1986 does not establish its ability to identify and locate the remainder of the universe of homeworkers in that industry. The union concluded that this inability to locate homeworkers would be exacerbated if the certification system were extended to the remaining restricted industries due to an anticipated growth of illegal homework in those industries. Few employers of homeworkers in these industries, they submit, would obtain certificates, because as a regular practice such employers pay their homeworkers subminimum wages and would not expose this practice to the Department.

In fact, only those employers who come forward and identify themselves through the certification procedure are affected by this rule. Those employers who fail to obtain certificates will remain subject to the restrictions on the use of homeworkers applicable under the prior rule. The impact of the new regulations is neutral with respect to employers of homeworkers who operate

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outside the certification system. Lifting the restrictions on those employers who do obtain certificates should not lead to an increase in illegal homework. The Department will continue its efforts to locate and investigate illegal homework and obtain compliance with the law.

The ILGWU argued that many of the knitted outerwear investigation files were deficient in that the compliance officers did not follow three Wage-Hour Field Operations Handbook (FOH) "mandates" for homework investigations, namely, records review, time studies, and interviews. In comments submitted on the 1986 proposal, the ILGWU also argued that based on a review of investigatory records, the Department disregarded or overlooked evidence of monetary violations involving seven certified employers, and understated violations involving five others.

The Department carefully reviewed its enforcement experience in knitted outerwear based on these and other comments. As a result of this review, the Department conducted training in the Summer of 1987 of its Wage-Hour compliance officers concerning enforcement techniques to use in such investigations. A review of investigations conducted since the training was completed disclosed some errors in knitted outerwear files. However, the Department does not agree with the ILGWU assessment of the overall success of the knitted outerwear investigation program under the certification process, in comparison with the success of the prior total ban on homework in that industry. It has been the Department's experience that compliance has improved as certified employers are further educated about the requirements of the Act.

The ILGWU claims are based primarily on assumptions concerning the lack of investigation file documentation in the areas of wage and handbook transcription, interviews, time spent in setting up and putting away equipment and materials, and employee expenses. While compliance officers are expected to follow FOH guidance in the conduct of homework investigations, these instructions are not intended to be "mandates" in all cases. It is generally understood throughout the Wage and Hour Division and by the public that considerable judgment and discretion is to be used by compliance officers in determining the amount of factfinding to devote to a case and selecting the most appropriate investigation techniques to apply. Many of the decisions made by compliance officers must be made on the spot in view of the particular circumstances of a case.

Furthermore, an investigation file is merely a record of the compliance officer's findings and conclusions about an investigation and, as explained below, does not present a comprehensive picture of all the records which were reviewed or all the questions which were asked in employee interviews. Thus, while compliance officers are expected to review records of hours of work, they are not, contrary to the ILGWU assertion, expected to include *transcribed* records in the investigation file unless there is some reason to do so, e.g., to illustrate or document minimum wage and overtime pay violations. Similarly, while oral interviews of employees are normally taken, field staff are not in any way expected to take a verbatim transcription of everything discussed with an employee.

To an outside observer it may appear that portions of the investigation process were omitted in error while it is likely that a judgment was made that further factfinding was not necessary in order to make determination concerning the employer's status of compliance. For example, where it is clear that employees earn well in excess of the minimum wage, details concerning the time spent in setting up are not necessary. For these reasons, the Department believes the ILGWU conclusions about the "mandates" relating to knitted outerwear investigations are overstated.

Several commenters, including a consultant retained by the ILGWU, argued that time studies cannot be used by Wage-Hour as a tool to determine FLSA compliance in homeworker investigations. They pointed out that it is impossible to study every style produced or to insure that the styles time-studied are, in fact, the more difficult patterns. They also stated that time studies only result in approximations of the average time required by employees to produce a given style and do not take into account vast differences in the skill levels of employees. They also argued that the time studies conducted in the knitted outerwear investigations were not used effectively.

In the Department's view, compliance officer time studies (which are now more accurately termed "work observations") can serve as a tool in homeworker investigations in confirming or negating information obtained from employer records, homeworker handbooks, homeworker interviews, and other sources. However, compliance determinations cannot be and are not based solely on work observations in any type of investigation, including homework investigations.

Furthermore, upon review of its experience in knitted outerwear investigations, the Department has concluded it is not necessary or appropriate to conduct work observations in all homeworker investigations or to observe the work of each homeworker. For example, where records and interviews otherwise clearly indicate compliance, and where there is no reason to suspect falsification, work observations serve little, if any, purpose. Where, for example, an employee works part-time and clearly earns in excess of the minimum wage, there is no need to ascertain whether a certain item takes forty or fifty minutes to make or whether the employee is earning $8.00 or $8.25 an hour. All that is necessary is to determine that the employee is paid at least the minimum wage for each hour of work. This is a matter of judgment and discretion by the compliance officers and their supervisors, based on the facts and circumstances of a given case.

X. Enforcement Resources

Many commenters on the August 1986 proposal argued that the Department's resources (approximately 900 compliance officers) were inadequate to enforce the FLSA in the restricted industries. Most of these commenters pointed to the relatively small size of the knitted outerwear industry in comparison with the women's apparel industry. Many argued that the annual inspection program in knitted outerwear could not be carried over to the remaining industries without draining resources away from non-homework investigations of all other industries, as well as homework investigations of unscrupulous employers who do not obtain certificates. A number of commenters pointed to a GAO report finding of a 20 percent reduction in compliance officer staff years between 1980 and 1984 and the addition of 7.5 million covered State and local government workers as a result of the decision in *Garcia* v. *San Antonio Metropolitan Transit Authority et al.* (*Garcia*), 469 U.S. 528 (1985). In response to the March 1988 proposal some argued that the 20 additional compliance officer staff years included in the 1989 Budget for homework enforcement is inadequate.

Since it is presently illegal to employ homeworkers in the restricted industries, there are no reliable

estimates as to the number of such homeworkers. Based on the 1980 census, the Bureau of the Census estimates that there are 8,711 homeworkers in the six industries (including women's apparel). The Bureau of Labor Statistics places the figure at approximately 122,000. Both studies have certain limitations in their effectiveness in identifying homeworkers in the precise industries restricted by the prior rule. However, assuming that, in fact, 122,000 homeworkers are employed in the six industries, the size of the work force is a very small fraction of the total number of workers subject to the FLSA minimum wage, which is estimated at 73 million. Moreover, while precise data are not available, it is likely that relatively few of these homeworkers are in the industries affected by this rule and in States which permit such homework.

Furthermore, contrary to these comments, the number of Wage-Hour compliance officers has not dropped sharply since 1980:

Date	On board compliance officers
Sept. 30, 1980	1,059
Sept. 30, 1981	953
Sept. 30, 1982	914
Sept. 30, 1983	928
Sept. 30, 1984	916
Sept. 30, 1985	950
Sept. 30, 1986	908
Sept. 30, 1987	951
Sept. 30, 1988	[1] 985
Sept. 30, 1989	[1] 1,028

[1] Estimated.

The workload impact of the *Garcia* decision has not strained available compliance officer staff resources. For example, in FY 1987 the Wage and Hour Division received a total of only 1,300 complaints from State and local government workers while 62,000 were received from workers in the private sector.

The NCFLL asserts that the Wage and Hour Division program operational plan inhibits the ability of compliance officers to conduct homeworker investigations, contending that homeworker investigations require significantly more time than other Wage and Hour investigations. The Department has recognized that homeworker investigations require more compliance officer investigation time. The request for additional compliance officer resources was based on the Department's estimate that the typical homeworker investigation requires 35 hours to complete, compared to 20–22 hours as an average for all other FLSA investigations. In addition, it is important to note that program operational plans establish production goals for field offices, not individual compliance officers. The plan is based on average investigation time and recognizes that some investigations require more time than others.

It is the Department's view that the additional compliance officer resources requested in the 1989 Budget will provide sufficient resources to conduct an effective enforcement program in the restricted industries. Within current resources, the Department has been able to conduct approximately 375 homeworker investigations annually. The additional compliance officers will permit an increase in the number of investigations to 1,150, more than triple the current level. While a higher percentage of covered homeworker employers are investigated than are employers in many other enforcement programs, the Department believes that the devotion of a higher level of resources is warranted.

Whether the Department has sufficient resources to investigate homeworker employers certified under this rule will depend, in part, on the number of employers who request certificates and the level of compliance with the FLSA such employers achieve and maintain. Also, while the Department does not anticipate any increase in illegal homework, it recognizes that additional leads may also require the use of additional resources to vigorously enforce the FLSA with respect to uncertified employers. The resources needed may change over time and will be examined regularly (as they are presently examined for all Wage and Hour Division activities). As necessary, the Department will include additional resources in its budget requests. The fact that the Department cannot identify the precise resource impact of permitting a relatively small number of employees to work at home is not a valid reason to ban such work.

XI. Rate of violations

Many commenters argued that adoption of the proposal would result in widespread FLSA violations. Some stated that lifting the ban would be an abdication of the Department's statutory responsibility to workers in these industries because such action would foster FLSA violations. Others argued that children would be used to help increase the family income by doing some of the work, to the detriment of their studies.

The Department believes that the FLSA itself provides strong safeguards to assure compliance by employers generally, including homeworker employers. Specifically, the Secretary has authority to assess civil money penalties for child labor violations, to file lawsuits to compel compliance through injunctions and obtain the payment of back wages, and to pursue criminal penalties through the U.S. Justice Department.

The Department also believes that the certification program will foster FLSA compliance to a greater extent than occurred under the homework ban among those employers who will come forward to obtain certificates. Most importantly, such employers will have a new incentive to comply with the FLSA, namely, the opportunity to operate legally. Under the prior rule such employers had little incentive to comply since their operations were illegal irrespective of any wages paid or compliance with child labor rules. The Department also agrees with commenters (both in favor of and opposed to the proposals) that generally only those employers who intend to pay their homeworkers properly will come forward to obtain certificates. As previously pointed out, only those who do so are affected by this rule. Employers who do not obtain certificates remain subject to the ban on homework.

Moreover, the final rule incorporates significant enforcement mechanisms to address commenters' concerns about the difficulty of enforcing the FLSA among employers of homeworkers. The Department believes, since the ban has been ineffective in eliminating homework, on balance, the more effective means to achieve FLSA compliance for homeworkers in these industries is to implement the strong new enforcement mechanisms in this rule for employers who seek to comply with the FLSA and come forward to obtain certificates, rather than to continue the ban on such employment. The prior rule did not eliminate homework, foreclosed opportunities to work at home legally, fostered an underground homework industry comprised of employers with little incentive to comply with FLSA standards, and reduced the likelihood that the Department would identify homeworkers and monitor their activities.

XII. Inadequate Recordkeeping

Many commenters argued that no methods exist to accurately measure hours worked by homeworkers, that the sporadic and unsupervised nature of homework precludes any accurate or complete recordkeeping, and that it is

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too easy for employers to falsify hours records on homeworkers. Some argued that homeworkers underestimate their actual hours of work (and thus overstate their earnings per hour) in order to avoid "make-up" pay needed to provided them with the minimum wage and thus eliminate the risk of losing their jobs. The ILGWU quoted the Department's 1959 report on homework: "It is to the advantage of the employer to maintain inadequate records of their employees' wages and hours. Any attempt to reconstruct hours or wages in the absence of required records in many cases is an exercise in futility."

The Department agrees that recordkeeping has been a common problem area among employers of homeworkers. However, compliance officers over the years have conducted a variety of non-homeworker investigations where records are inaccurate, incomplete, or nonexistent, where employees work at multiple locations, and where wages are paid based on piece rates. In the construction industry, for example, it is common to find so-called "independent contractors" paid so much per square foot of wall-board or so much per square foot of roofing. Similar recordkeeping problems are common with respect to taxicab drivers, home service and repair workers, resident managers, maintenance engineers, irrigation installation and repair workers, insurance adjusters, and other employees subject to unscheduled "on-call" work outside their normal workday.

Furthermore, many Wage and Hour investigations involve employees whose employers incorrectly assume they are exempt pursuant to FLSA section 13(a)(1) and 29 CFR 541 as "managers", administrative personnel, or other salaried white collar workers. Frequently, such employees work outside normal schedules, including working at home, and there are no records of hours worked. Thus, the problems of recordkeeping and the need to reconstruct hours are not, by any means, unique to homeworker cases.

Experience in the initial round of investigations under the knitted outerwear certification program showed a high rate of recordkeeping violations, as discussed in the ILGWU comments. The high percentage of employers with recordkeeping violations closely parallels the Department's historic experience with homeworker employers as cited by a number of commenters.

However, the effectiveness of the homeworker certification program in fostering improved recordkeeping should not be measured on the basis of the initial investigations of certified employers as the ILGWU contended. The Department's initial investigations of knitted outerwear employers immediately following certification covered time periods largely or entirely prior to the employers' certifications. (Investigations generally covered a two-year period from the last payroll completed before the opening of the investigation.)

A better measurement of the effectiveness of the certification program in improving recordkeeping by employers using homeworkers is to be found in the status of recordkeeping compliance in investigations subsequent to the initial one. In fact, both the number and severity of recordkeeping violations found in the reinvestigations of certified employers have been reduced from those found in the initial investigations. Most certified employers substantially improved their recordkeeping compliance (or came into full compliance) once the relatively complex recordkeeping rules peculiar to homeworker employers were adequately explained. Under this rule, certified employers of homeworkers have an incentive to keep proper records that uncertified employers do not have, namely, the desire to retain their certification. Thus, the Department believes that homeworkers are better protected under the certification program than under the prior ban.

Unquestionably, determining hours worked is an important aspect of any investigation where accurate time records have not been kept. Though burdensome, it is not an impossible task. Wage and Hour compliance officers have been trained to make determinations of hours worked by employees in their normal day-to-day investigations through the use of employee interviews and other techniques. Moreover, since the FLSA was enacted, the courts have placed great weight on the Administrator's estimates of the hours worked in calculating back wages. Inaccurate or missing records have provided little defense to employers who objected to the size of such estimates. (See, for example, *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946) and *Donovan* v. *Grantham*, 690 F.2d 453 (5th Cir. 1982).) The FLSA provides penalties, including injunctive relief, for continued recordkeeping violations. The final rule includes civil money penalties and certificate revocation as tools for the Department to improve compliance in this area by certified homeworker employers.

The Department believes the regulatory changes put into effect by this rule will improve the accuracy of recordkeeping by certified homeworker employers, as well as homeworker employers in all the unrestricted industries. The homeworker handbook has been simplified to facilitate recording of daily and weekly hours worked. The revised handbook includes instructions for filling it out and a brief explanation of what constitutes "hours worked" under the FLSA. The handbook will be available in English and six foreign languages. Finally, the recordkeeping rules (29 CFR 516) have been revised to clarify the types of information to be kept and to require employers to insure that homeworkers make the required entries into the handbooks.

XIII. Language Barriers and the Widespread Use of Immigrants

A great many commenters pointed to the widespread employment of immigrants in the restricted industries as a basis for maintaining the ban. Some argued that because of language differences and other social barriers, newly-arrived immigrants are not fully aware of their rights, and are especially vulnerable to manipulation and abuse. Others stated that language barriers effectively would eliminate the Department's ability to interview and do time studies and pointed out that the prior homeworker handbook, as discussed above, was not generally available in languages other than English. Many commenters argued that illegal aliens are often employed as homeworkers and that such workers will not complain to the Department out of fear of deportation.

The Department has to deal with language barriers as part of its overall enforcement activities under all the various laws it administers, and in all types of industries. Even if this rule were not implemented, the challenge of language barriers would remain in investigations of employers of homeworkers both in these industries and in the unrestricted industries, and of factory employers. The ban imposed under the prior rule offered no assistance in addressing the problem of language barriers among homeworkers in any industry (restricted or not restricted). By contrast, this rule requires that certified employers provide the Department with information about the languages spoken by their employees. Advance steps can be taken, therefore, to insure that compliance officer staff who have the necessary language skills are assigned to conduct these investigations. The Wage and Hour Division has extensive bilingual capabilities, with approximately one-fourth of the current field staff having some proficiency in one or more languages other than English. However, when a compliance officer does not possess the language skills required in a particular investigation, a variety of other sources is used, including Federal, State, and local governments, and service organizations. Furthermore, as indicated above, arrangements are being made to print and distribute the new homework handbooks in Spanish, Chinese, Korean, Vietnamese, Cambodian, and Laotian. On balance, the Department believes the certification program in this rule provides more tools to address language barriers with respect to homeworkers of certified employers than did the ban under the prior rule.

There are a great number of industries in which illegal aliens have been employed (e.g., factories, restaurants, agriculture, construction, maintenance and service industries) and the same challenges apply to investigations in these industries.

Furthermore, the Immigration Reform and Control Act (IRCA) of 1986 addresses these problems by providing civil money penalties for employers of illegal aliens and criminal penalties under certain circumstances. (The Wage and Hour Division is responsible for making inspections of certain employer records under IRCA and providing information to the Immigration and Naturalization Service.) It seems apparent that unscrupulous employers who employ illegal aliens as homeworkers at substandard wages will not apply for certification and thus will not be affected by this rule. Such employers will continue to be subject to the ban on homework as under the prior rule. On the other hand, employers who apply for certificates, the only employers affected by this rule, are likely to avoid hiring illegal aliens because of the possible exposure of such workers to a Federal Government agency which has inspection functions under IRCA within its assigned area of responsibility. Therefore, in the Department's view, this rule is more effective, on balance, than the prior ban in addressing the issue of illegal alien employment and exploitation.

Model Garment Programs

Home sewing retailers (fabric stores) have for some time conducted model garment programs, which have been found to be in violation of the FLSA homework restrictions.

Typical model garment programs involve employees of retail fabric stores making garments in their homes for display in the stores.

While there are many variations, usually the employee is given free patterns, notions and materials, and is allowed to keep the garment after the display period, which usually lasts three to six weeks. Such programs are voluntary, and the employee typically has wide discretion in selecting patterns, fabrics and notions.

Such display garment programs are considered beneficial by employers and employees. The employees find the program beneficial because many of them are enthusiastic home sewers. The display garment programs are of advantage to consumers because they can see finished products. The employers are pleased since they can display model garments—which are constructed with personal care—to their customers.

The Department believes that a special provision is appropriate for model garment programs and, therefore, in the March 1988 notice proposed to adopt a policy whereby the Department would not take any action in situations where certain criteria are met. The Department received no comments specifically opposed to the adoption of a special policy for model garment programs. However, a number of comments argued that the policy should be incorporated into the text of the regulation, and that the employer should not be required to (1) provide all materials at no cost, (2) pay the employee for the time spent making the garment, and, at the same time, (3) permit the employee to keep the garment after the display period.

The Department believes it is generally not appropriate to incorporate special enforcement policies in the text of regulations. However, the policy regarding model garment programs will be included in the Wage and Hour Division's procedural instructions to field enforcement staff, and information regarding this policy will be available to representatives of the industry and the general public. In addition, the Department agrees that employers in such programs should be permitted to charge the employees for the employer's cost of materials (e.g., patterns, fabrics, notions) used in producing the garments, since this policy requires that the employee retain the model garment.

It must be emphasized that time spent by employees in sewing model garments is hours worked under the FLSA and that such hours must be combined with hours worked at the establishment in recording the total hours in the workweek and calculating the payment of the minimum wage and overtime pay. The enforcement policy applies only where:

(1) The employees' work is voluntary;

(2) The materials (e.g., patterns, fabrics, and notions) are provided to the employees free or at no more than their cost to the employer;

(3) The employees retain ownership of the model garments after the display period;

(4) An accurate record in homeworker handbooks is maintained of all hours worked in the home-sewing activities; and

(5) The employees are paid for all hours worked, both in the stores and in the home-sewing activities, in accordance with the provisions of the FLSA.

Discussion of Historical Impediments to Enforcement

Many commenters addressed the historical impediments to FLSA enforcement identified by the appeals court in *ILGWU* v. *Donovan*, 722 F.2d 795 (DC Cir. 1983). The prior ban on homework in the restricted industries was adopted in the 1940s largely due to these impediments. However, as discussed above, the ban has not eliminated such homework. In developing the final rule, the Department carefully weighed its experience under the certification program and under the prior ban to determine which of these approaches better addresses the impediments to FLSA enforcement among homeworkers in these industries.

1. Difficulty of locating and identifying homeworkers

The Department believes those employers who apply for certification are motivated to comply with the Act's requirements and will maintain records of the names and addresses of their homeworkers. Furthermore, such employers will be required under this rule to provide the names and addresses of their homeworkers to the Department at the time of the initial certification and at each biannual certification. (Falsification of this information is grounds for denial or revocation of a certificate.) The final rule also provides an incentive for certified employers to furnish the Department information regarding uncertified competitor employers.

By contrast, the ban on homework imposed under the prior rule provided little incentive for homework employers and employees to contact the Department and identify themselves or others in the restricted industries.

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2. Inadequate or nonexistent recordkeeping by employers and employees

Experience in the knitted outerwear industry under the certification program has shown that most certified employers substantially improve their recordkeeping compliance after certification. By contrast with employers who operate illegally in the restricted industries, certified employers of homeworkers will have strong incentives to keep proper records, namely, the desire to retain their certification and avoid civil money penalties. In addition, the revised homeworker handbook, as discussed above, will facilitate the recording of the hours of work by improving the format and instructions for completing the handbook. Employers will be required to provide written assurance that they will instruct their homeworkers to maintain accurate records in the handbooks and will also be required to sign a statement in each handbook indicating that to the best of their knowledge the entries made are accurate. Thus, the Department believes that the certification program is a reasonable alternative to a total ban with respect to improving compliance with the FLSA recordkeeping rules.

3. Strain on Departmental resources required by excessive investigative time in homework cases

As discussed above, the Department believes that in view of the size of the affected industries, and the exclusion of the employers in States where homework is prohibited, the scope of the final rule adopted herewith is small.

Furthermore, the phasing in of the certification program in the industries affected will help to spread the burden of performing prompt investigations after initial certificates are issued.

Since 1980, despite budgetary constraints, the Department has maintained an increased enforcement effort directed at FLSA compliance among both legal and illegal employers of homeworkers. This effort has resulted in far more annual investigations of such employers. With its eight-year experience under this special effort, the Department believes, the certification program under the final rule with its new enforcement mechanisms will provide a better opportunity to achieve FLSA compliance with available resources than would any of the other alternatives considered. In particular, the prior ban provided no mechanisms for locating homeworker employers in these industries and little incentive for such employers (or their homeworkers) to cooperate in investigations. The FY 1989 Budget includes an additional 20 full-time equivalent (FTE) positions for the Wage and Hour Division's compliance activities among employers of homeworkers (certified and noncertified). At the present time, the Department believes this increase to the current resources available should be sufficient. The Department has committed itself to maintaining a strong enforcement program for all homeworkers and will include further additional resources, as necessary, in its annual Budget requests to the Congress.

4. Difficulty in recovering back wages when violations were discovered

The Department recognizes that certified homeworker employers in the industries affected by this rule are mostly small entities, often with few assets to pay the back wages found due. However, there are thousands of small business employers in many other industries who have few cash reserves to pay back wage bills, and their operations have never been banned under the FLSA.

In the Department's view, employers of homeworkers in the restricted industries who come forward and obtain certificates are generally more likely to comply with the FLSA's requirements, and, in the event of violations, will be more responsive than other homeworker employers in achieving future compliance and paying any back wages due in order to retain their certificates.

Moreover, the final rule specifically addresses this problem by providing a mechanism whereby the Administrator can require that employers with poor compliance histories, as a condition for initial certification or certificate renewal, post bonds to cover potential back wage claims. The rule further establishes improved recordkeeping systems which will assist in identifying violations and permitting more precise back wage calculations. Finally, the rule establishes remedies (including the potential denial or revocation of certificates and civil money penalties) in addition to the basic FLSA sanctions for back wage liabilities.

Based on its experience in homework investigations since 1980, the Department believes the final rule, on balance, will result in the restoration of any back wages found due more effectively among certified employers than was the case under the prior rule with respect to homeworker employers in these industries.

Consideration of Alternatives to Certification

Prior to the promulgation of the final rule lifting the ban on the employment of homeworkers in the knitted outerwear industry, the Department carefully considered various alternatives to a total rescission of the ban (49 FR 44268). These alternatives were rejected and the certification system was adopted. Although comments on alternatives were specifically invited, the current rulemaking record provided no significant comments on these or other alternatives to the certification program. Following are the alternatives which were considered and rejected:

A. *Remove the restrictions on homework in rural areas but retain restrictions for urban areas.* Under this alternative proposal, only persons residing in rural areas, as defined by the Secretary, would be permitted to engage in homework in the restricted industries.

The Department has concluded that the alternative of removing the restrictions on homework in rural areas and retaining the restrictions in urban areas is not appropriate. Many of the comments favoring the proposals were received from individuals in rural areas, and these indicated the need to permit homework in such areas. Moreover, it would be difficult to devise a workable definition of the terms "rural" and "urban" that would avoid inequitable treatment of employees. The distinctions between "urban" and "rural" would be further complicated by urban employers who hired rural homeworkers, and vice versa. Finally, the Act authorizes the Department to restrict homework only to the extent necessary to safeguard the minimum wage. The Department believes that under the certification system with the additional enforcement mechanisms included in this rule, enforcement of the minimum wage provisions of the Act with respect to both urban and rural homeworkers is feasible and that compliance among certified urban and rural employers is more likely under this rule than under the prior ban.

B. *Expand the conditions for granting certificates permitting homework employment in the restricted industries.* Under this alternative proposal, the existing system for granting special individual employee certificates authorizing homework in the restricted industries would be expanded to include various additional categories of need, such as the following: The need to care for children or other family members; the lack of accessible factory employment; the lack of public transportation; and economic need.

The Department has concluded that this alternative is not feasible. It would be difficult to define what constitutes a "legitimate" need for an employee to work at home and yet avoid inequities, and it could be difficult to monitor and guard against abuses (as, for example, situations in which the homeworker's "legitimate" needs changed over time or were seasonal or temporary) while providing the necessary flexibility to take into account individual circumstances.

C. *Transfer homework certification and enforcement responsibilities to the States.* The Department decided not to adopt this alternative as it is not feasible. The FLSA requires that the Secretary issue such rules regulating or restricting homework as are needed, without regard to State boundaries. Because of the possibility of different certification requirements among States, the Department is concerned that a transfer of certification and enforcement responsibilities to the States would be contrary to the statutory purpose of the FLSA to establish minimum uniform labor standards so as to prevent unfair competition. However, in keeping with the principle of federalism, and the Department's desire to avoid undermining any State homeworker rules, the certification program will not apply in States that ban homework in these industries. In such States, the federal ban on homework is retained.

Scope of the Final Rule

Under these regulations, employers in the restricted industries (other than those in women's apparel and in certain operations in the jewelry industry, and in States which restrict such homework) who obtain certificates are permitted to employ homeworkers, while employers without such certificate continue to be subject to the prohibitions on the employment of homeworkers. Employers legally utilizing homeworkers in these industries will be known to the Department; their homeworkers' names, addresses, and languages will be known to the Department through the biannual certification renewal process; such employers will be required to make written assurances of FLSA compliance, conduct time studies (or other work measurements) to establish piece rates; and post bonds if requested. Their compliance with the FLSA will be determined by investigation. Such employers will also be subject to civil money penalties and certificate revocation for violations. Employers who do not obtain certificates remain subject to the ban on the use of homeworkers. The Department is committed to continue its efforts to locate and investigate such employers. Homeworkers of certified employers in these industries who are paid properly will not be deprived of employment opportunities, and employers of homeworkers in these industries who fail to identify themselves and their homeworker will not be able to legally employ homeworkers.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets. Therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

This rule will not have a significant effect on a substantial number of small entities. This conclusion is based on all information presently available to the Department concerning the employment of homeworkers. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

The Chief Counsel for Advocacy filed comments in support of the proposed rule and the amended proposal and indicated the belief that the certification program would provide significant benefits for small businesses by improving their competitive position and increasing their ability to offer flexibility in employment. In light of his view that the rule would likely have a substantial impact on a significant number of small businesses seeking to employ homeworkers, he urged that a regulatory impact analysis be published with the final rule. The Department has reviewed its preliminary conclusion that the rule will not have a significant effect on a substantial number of small entities in light of the record, and finds no reason to depart from that conclusion. No persuasive data have been identified by the Department or submitted by commenters which would quantify the potential impact on small entities (including factory employers) that would or would not employ homeworkers under this rule.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 516

Minimum wage, Reporting and recordkeeping requirements.

29 CFR Part 530

Employment, Investigations, Labor, Law enforcement, Minimum wages, Wages, Licenses.

For the reasons set forth above, 29 CFR Parts 530 and 516 are amended as set forth below.

Signed at Washington, DC, on this 7th day of November 1988.

Ann McLaughlin,

Secretary of Labor.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

1. The authority citation for Part 530 is revised to read as set forth below and the authority citations following all of the sections in Part 530 are removed.

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by Sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 6–84, 49 FR 32473, August 14, 1984; and Employment Standards Order No. 85–01, June 5, 1985.

2. The table of contents is revised to read as follows:

Subpart A—General

Sec.
530.1 Definitions.
530.2 Restriction of homework.
530.3 Application forms for individual homeworker certificates.
530.4 Terms and conditions for the issuance of individual homeworker certificates.
530.5 Investigation.
530.6 Termination of individual homeworker certificates.
530.7 Revocation and cancellation of individual homeworker certificates.
530.8 Preservation of individual homeworker certificates.
530.9 Records and reports.
530.10 Delegation of authority to grant, deny, or cancel an individual homeworker certificate.
530.11 Petition for review.
530.12 Special provisions.

Subpart B—Homeworker Employer Certificates

530.101 General.
530.102 Requests for employer certificates.
530.103 Employer assurances.
530.104 Bonding or security payments.
530.105 Investigations.

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Subpart C—Denial/Revocation of Homeworker Employer Certificates

530.201 Conflict with State law
530.202 Piece rates—work measurement
530.203 Outstanding violations and open investigations.
530.204 Discretionary denial or revocation.
530.205 Mandatory denial or revocation.
530.206 Special circumstances

Subpart D—Civil Money Penalties

530.301 General.
530.302 Amounts of civil money penalties.
530.303 Considerations in determining amounts.
530.304 Procedures for assessment.

Subpart E—Administrative Procedures

530.401 Applicability of procedures and rules.
530.402 Notice of determination.
530.403 Request for hearing.
530.404 Referral to Administrative Law Judge.
530.405 General.
530.406 Decision and order of Administrative Law Judge.
530.407 Procedures for initiating and undertaking review.
530.408 Notice of the Secretary to review decision.
530.409 Final decision of the Secretary.
530.410 Special procedures.
530.411 Emergency certificate revocation procedures.
530.412 Alternative summary proceedings
530.413 Certification of the record.
530.414 Equal Access to Justice Act.

Subpart A—General

3. Sections 530.1 through 530.12 are retitled: Subpart A—General.

4. In § 530.1 paragraphs (b) through (j) are redesignated as (c) through (k) and a new paragraph (b) is added as follows:

§ 530.1 Definitions.

* * * * *

(b) "Administrator" as used in this part means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or an authorized representative of the Administrator.

* * * * *

5. Section 530.2 is revised to read as follows:

§ 530.2 Restriction of homework.

Except as provided in Subpart B of this part, no work in the industries defined in paragraphs (e) through (k) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homeworker or unless the homeworker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.2 of this chapter.

6. The headings to § 530.3, 530.4, 530.6, 530.7, 530.8, and 530.10 are revised as follows:

§ 530.3 Application forms for individual homeworker certificates.

§ 530.4 Terms and conditions for the issuance of individual homeworker certificates.

§ 530.6 Termination of individual homeworker certificates.

§ 530.7 Revocation and cancellation of individual homeworker certificates.

§ 530.8 Preservation of individual homeworker certificates.

§ 530.10 Delegation of authority to grant, deny, or cancel an individual homeworker certificate.

§ 530.4 [Amended]

7. In § 530.4, paragraph (c) in its entirety is removed.

8. The OMB information collection approval, which is displayed in parentheses at the end of § 530.4, is amended by removing the second sentence which refers to paragraph (c)

§ 530.13 [Removed]

9. Section 530.13 is removed.

10. New subparts B, C, D, and E are added as follows:

Subpart B—Homeworker Employer Certificates

§ 530.101 General.

(a) Except as provided in subpart C, a certificate may be issued to an employer authorizing the employment of homeworkers in

(1) The knitted outerwear, gloves and mittens, and embroideries industries as defined in paragraphs (g), (h), and (k), respectively, at § 530.1, effective January 9, 1989;

(2) in the button and buckle and handkerchief manufacturing industries as defined in paragraphs (i) and (j), respectively, of § 530.1, effective July 9, 1989; and

(3) in the jewelry industry as defined in paragraph (f) of § 530.1, effective July 9, 1989, but only where the employer's homeworkers are engaged exclusively in the stringing of beads and other jewelry and the carding and packaging of jewelry. The terms "carding and packaging of jewelry" include the attaching of jewelry to cards, boxing and wrapping, and the use of common household glues available to the general public, but do not include potentially hazardous operations such as the use of industrial glues, epoxies, soldering irons, or heating elements.

(b) This certificate may be issued irrespective of whether individual homeworkers meet the conditions set forth in paragraph (a) of § 530.4 of Subpart A. Unless suspended or revoked, such certificates are valid for two-year periods. Applications for renewals must be submitted no later than thirty (30) days prior to the expiration date of the current certificate. Except as provided in subpart A, in the absence of a certificate, the employment of homeworkers in these industries is prohibited, and an employer violating this prohibition is subject to all the sanctions provided in the Fair Labor Standards Act and in this part, including an injunction restraining the employment of homeworkers.

(c) Certificates authorizing such employment may be issued on the following terms and conditions upon written application to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210

§ 530.102 Requests for employer certificates.

The initial request for certification or renewal application shall be signed by the employer and shall contain the name of the firm, its mailing address, the physical location of the firm's principal place of business and a description of the business operations and items produced. In addition, the initial or renewal application shall contain the names, addresses, and languages (if other than English) spoken by the homeworkers that are currently employed (if any) or expected to be employed. The employer shall also provide the Administrator, within thirty (30) days, a notice of each change of address of the principal place of business. The notification shall be in writing and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

§ 530.103 Employer assurances.

In order to be granted a certificate authorizing the employment of industrial homeworkers, the employer must provide written assurances concerning the employment of homeworkers subject to section 11(d) of the Fair Labor Standards Act to the effect that:

(a) All homeworkers shall be paid in accordance with the monetary provisions of the Act.

(b) All homeworkers shall be employed in compliance with the child labor provisions contained in section 12 of the Act and regulations and orders issued pursuant to section 12. All

homeworkers will be instructed not to permit minors to work in violation of such provisions.

(c) Records of hours worked and wages paid shall be maintained in accordance with section 11 of the Act and Part 516 of this chapter.

(d) All homeworkers shall complete homeworker handbooks in accordance with § 516.31 of Part 516.

(e) All homeworkers will be instructed to accurately record all hours worked, piece work information, and business-related expenses in the handbooks.

(f) All records shall be made available for inspection and transcription by the Administrator or a duly authorized and designated representative, or transcription by the employer upon written request.

(g) Piece rates paid to homeworkers shall be established using stop watch time studies or other work measurement methods.

(h) All homeworkers shall be encouraged to cooperate with the Department in any investigation that may be made.

(i) With respect to jewelry manufacturing, no operations other than the stringing of beads and other jewelry and the carding and packaging of jewelry will be performed by homeworkers.

§ 530.104 Bonding or security payments.

(a) Where in the Administrator's judgment there is not sufficient reason to believe that the Act will be complied with or that money will be available if violations of the Act occur, the Administrator may condition issuance or renewal of a certificate to an employer upon the furnishing of a bond with a surety or sureties satisfactory to the Administrator.

(b) The Administrator shall condition issuance or reinstatement of a certificate to any employer whose application for a certificate had previously been denied, or whose certificate had been revoked, upon the furnishing of a bond.

(c) Any bond required by the Administrator under paragraph (a) or (b) of this section shall be in an amount determined by the Administrator, up to $2500 for each homeworker to be employed by such employer under the certificate. In lieu of a bond, the employer may furnish a cash payment of equal amount, to be held in a special deposit account by the Administrator for the period during which the certificate is in effect. Such bond, or cash payment, shall be subject to payment or forfeiture, in whole or in part, upon a final determination that the employer has failed to pay minimum wages or overtime compensation to homeworkers in accordance with the Act. Any sums thus paid or forfeited to the Administrator shall be disbursed to affected homeworkers in accordance with section 16(c) of the Act.

(d) At the Administrator's discretion, the obligation of a bond may be relieved, and any cash payment held as security in lieu thereof may be refunded (together with any interest accrued thereon), upon a subsequent determination that the employer is in compliance with the Act and that sufficient funds will be available to meet back wage payment obligations in the event of violations of the Act.

§ 530.105 Investigations.

Any employer in a restricted industry who requests certification to employ homeworkers will be investigated promptly after the issuance of the certificate by the Wage and Hour Division. Where such an employer is found to be in violation of the FLSA, and the violations are corrected and future compliance is promised, the firm will be reinvestigated to assure that full FLSA compliance has, in fact, been achieved.

Subpart C—Denial/Revocation of Homeworker Employer Certificates

§ 530.201 Conflict with State law.

No certificate will be issued pursuant to § 530.101 of subpart B above authorizing the employment of homeworkers in an industry in a State where the Governor (or authorized representative) has advised the Administrator of the Wage and Hour Division in writing that the employment of homeworkers in such industry, as defined in paragraphs (f) through (k) of § 530.1, is illegal by virtue of a State labor standards or health and safety law.

§ 530.202 Piece rates—work measurement.

(a) No certificate will be issued pursuant to § 530.101 of subpart B to an employer who pays homeworkers based on piece rates unless the employer establishes the piece rates for the different types of items produced using stop watch time studies or other work measurement methods. Documentation of the work measurements used to establish the piece rates, and the circumstances under which such measurements were conducted shall be retained for three years and made available on request to the Wage and Hour Division.

(b) The fact that an employer bases piece rates on work measurements which indicate that the homeworkers would receive at least the minimum wage at such piece rate(s) does not relieve the employer from the Act's requirement that *each* homeworker actually receive not less than the minimum wage for all hours worked.

§ 530.203 Outstanding violations and open investigations.

A homework certificate will not be issued or renewed by the Administrator if, within the previous three years, the Administrator has found and notified the applicant of a monetary violation of the Fair Labor Standards Act in an amount certain, or the Administrator has assessed a civil money penalty pursuant to subpart D of these regulations or Part 579 of this chapter (child labor), and such amounts are unpaid, or if the applicant is the subject of a revocation proceeding at the time of the application for renewal, or the applicant is the subject of an open investigation.

§ 530.204 Discretionary denial or revocation.

Where the Administrator finds that the employment of homeworkers under a certificate is likely to result in violations of the Fair Labor Standards Act, the regulations issued thereunder, or the assurances required by this part, the Administrator may deny or revoke the certificate.

§ 530.205 Mandatory denial or revocation.

The Administrator shall deny or revoke a certificate in accordance with the following standards and for the period specified in the standards:

(a) *Serious wage violations.* Upon a finding by the Administrator of a serious wage violation, a certificate shall be denied (including refusal to renew) or revoked for one year. A serious wage violation is defined as minimum wage or overtime pay violations of the Act totalling $10,000 or more with respect to homeworkers; or minimum wage violations where 10 percent or more of a certificate holder's homeworkers (but in all cases at least two homeworkers) failed to receive at least 80 percent of the minimum wage for all hours worked for 6 or more weeks in any 3 month period; or minimum wage or overtime pay violations affecting more than half of the homeworkers of the certificate holder for 6 or more weeks in any 3 month period. All other wage violations are deemed non-serious wage violations for purposes of this section.

(b) *Repeated wage violations.* For repeated wage violations found by the Administrator, a certificate shall be denied or revoked for one to three years, depending on the seriousness and frequency of the violations.

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(c) *Child labor violations.* Upon a finding by the Administrator of a violation of the child labor provisions of section 12 of the Fair Labor Standards Act and the regulations at Part 570 of this title, a certificate shall be denied or revoked for one year. Upon a second finding by the Administrator of such a violation, the certificate shall be denied or revoked for three years.

(d) *Failure to pay back wages or civil money penalties judged owing.* Upon the failure of a certificate holder to pay within 60 days back wages or civil money penalties finally judged by a court, administrative law judge or other appropriate authority, as the case may be, to be owed by the certificate holder, or agreed to be paid by the certificate holder, or within such longer period as may be specified in the final order or agreement, a certificate shall be denied or revoked for up to one year or for such period as such obligation shall remain unpaid if longer than one year.

(e) *Failure to cooperate in an investigation.* Where the Administrator finds obstruction of or other failure to cooperate in a Wage and Hour investigation by a certificate holder which impedes the investigation, the certificate shall be denied or revoked for a period of one to three years, depending on the circumstances. For purposes of this regulation, cooperation includes providing records upon request to Wage and Hour compliance officers, identifying homeworkers of the certificate holder, and encouraging homeworkers to make themselves available in connection with an investigation.

(f) *Serious recordkeeping violations.* Upon a finding by the Administrator that a certificate holder has engaged in a serious recordkeeping violation, the certificate may be revoked for up to one year. Upon a second finding by the Administrator of a serious recordkeeping violation, a certificate shall be denied or revoked for one to three years. A serious recordkeeping violation is defined as one where, either through errors in or omissions of required information, the name and current address of homeworkers and the data which is necessary for the accurate determination of hours worked by or wages paid to homeworkers or data necessary for the computation of wages owed to homeworkers is unavailable with respect to 10 percent or more of the homeworkers.

(g) *Deliberate misstatement in an application for a certificate or in other documents.* Upon a finding by the Administrator of a deliberate misstatement of a material fact in an application for a certificate, in payroll records, or in any other information submitted to the Wage and Hour Division or maintained by the employer pursuant to these regulations, the certificate shall be denied or revoked for one to three years.

(h) *Discrimination against a homeworker.* Upon a finding by the Administrator that a certificate holder has discharged or otherwise discriminated against a homeworker with respect to the homeworker's compensation or terms, conditions, or privileges of employment because the homeworker engaged in protected activity, the certificate shall be denied or revoked for three years. Protected activity is defined as: (1) Any complaint of a violation of the Act to the employer, the Department or other appropriate authority, or (2) any action which furthers the enforcement of or compliance with the Act, such as giving information to a Wage and Hour compliance officer.

§ 530.206 Special circumstances.

At the discretion of the Administrator, a certificate need not be denied or revoked pursuant to §§ 530.204 or 530.205 of this subpart if the Administrator finds all of the following:

(a) The certificate holder, despite the exercise of due care, did not know and did not have reason to know of the violations;

(b) All back wages and civil money penalties found by the Administrator to be owing by the certificate holder have been paid; and

(c) The certificate holder has taken appropriate steps to prevent recurrence of the violations.

Subpart D—Civil Money Penalties

§ 530.301 General.

A system of civil money penalties is established to provide a remedy for any violation of the FLSA related to homework (except child labor violations, which are subject to civil money penalties pursuant to Part 579 of this chapter), or for any violation of the homeworker regulations or employers' assurances pursuant to this Part, which are not so serious as to warrant denial or revocation of a certificate. Accordingly, no civil money penalty will be assessed for conduct which serves as the basis of proposed denial or revocation of a certificate. (See Subpart C of this part.) Civil money penalties will be assessed only against employers who are operating under a certificate or who are seeking certification.

§ 530.302 Amounts of civil money penalties.

(a) A civil money penalty, not to exceed $500 per affected homeworker for any one violation, may be assessed for any violation of the Act or of this Part or of the assurances given in connection with the issuance of a certificate.

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	$10–100	$100–200	$200–500
Monetary violations	10–100	100–200	.....
Employment of homeworkers without a certificate	.....	100–200	200–500
Other violations of statutes, regulations or employer assurances	10–100	100–200	200–500

§ 530.303 Considerations in determining amounts.

(a) In determining the amount of a penalty within any range, the Administrator shall take into account the presence or absence of circumstances such as the following:

(1) Good faith attempts to comply with the Act or regulations;

(2) Extent to which the violation is under the employer's control;

(3) Non-culpable ignorance of the requirements of the Act or regulations;

(4) False documents or representations; and

(5) Exercise of due care.

(b) An employer's financial inability to meet obligations under the Act shall not constitute a mitigating or extenuating circumstance.

(c) No civil money penalty shall be assessed against an employer, who applies for a certificate, solely for employing homeworkers, provided the employer is not currently under investigation by the Wage and Hour Division.

§ 530.304 Procedures for assessment.

Assessment of penalties pursuant to this section, including administrative proceedings, shall be in accordance with the procedures set out in Subpart E of this part.

Subpart E—Administrative Procedures

§ 530.401 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process which will be applied with respect to a determination to deny (including refusal to renew) or revoke a certificate and to a determination to assess civil money penalties. Special rules and procedures for the emergency revocation of certificates are prescribed in § 530.412 of this subpart.

§ 530.402 Notice of determination.

Whenever the Administrator determines to deny or revoke a certificate or determines to assess a civil money penalty, the person affected by such determination shall be notified of the determination in writing, by certified mail to the last known address. The notice required shall:

(a) Set forth the determination of the Administrator, including the specific statutory or regulatory provision or assurance violated, the reasons for denying or revoking a certificate, or the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 530.403 of this subpart.

(d) Inform any affected person or persons that in lieu of formal proceedings there is available an alternative summary proceeding under § 530.412 of this subpart.

(e) Inform any affected persons that in the absence of a timely request for a hearing the determination of the Administrator shall become final and unappealable.

§ 530.403 Request for hearing.

(a) Except in the case of an emergency revocation under § 530.411 of this subpart, a request for an administrative hearing on a determination referred to in § 530.402 of this subpart shall be made in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210, and must be received no later than thirty (30) days after issuance of the notice referred to in § 530.402 of this subpart.

(b) No particular form is prescribed for any request for a hearing permitted by this part. However, any such request shall be typewritten or legibly written; specify the issue or issues stated in the notice of determination giving rise to such request; state the specific reason or reasons why the person requesting the hearing believes such determination is in error; be signed by the person making the request or by an authorized representative of such person; and include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) In the case of an emergency revocation, a request for an administrative hearing shall be made in writing to the Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street, NW., Suite 700, Washington, DC 20036, and must be received no later than 20 days after the issuance of the notice referred to in § 530.402 of this subpart.

§ 530.404 Referral to Administrative Law Judge.

Upon receipt of a timely request for a hearing, the request and a copy of the notice of administrative determination complained of, shall, by Order of Reference, be referred to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceedings, subject to any amendment that may be permitted under 29 CFR Part 18.

§ 530.405 General.

Except as specifically provided in these regulations, the "Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges" established by the Secretary at 29 CFR Part 18 shall apply to administrative proceedings described in this subpart.

§ 530.406 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, after completion of the hearing and closing of the record, a decision on the issues referred by the Administrator.

(b) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. If the Administrative Law Judge finds that the Administrator has established by a preponderance of the evidence the factual basis for the determination to deny or revoke a certificate or to assess a civil money penalty, that determination shall be affirmed. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator. The reason or reasons for such order shall be stated in the decision.

(c) The decision shall be served on all parties and the Secretary in person or by certified mail. The decision when served by the Administrative Law Judge shall constitute the final order of the Department of Labor unless the Secretary, as provided for in § 530.407 of this subpart, determines to review the decision.

§ 530.407 Procedures for initiating and undertaking review.

Any party desiring review of the decision of the Administrative Law Judge may petition the Secretary to review the decision. To be effective, such petition must be received by the Secretary within 30 days of the date of the decision of the Administrative Law Judge. Copies of the petition shall be served on all parties and on the Chief Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 30 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition has been received, the decision of the Administrative Law Judge shall be deemed the final agency action.

§ 530.408 Notice of the Secretary to review decision.

Whenever the Secretary determines to review the decision and order of an Administrative Law Judge, the Secretary shall notify each party of the issue or issues raised; the form in which submission shall be made (i.e., briefs, oral argument, etc.); and, the time within which such presentation shall be submitted.

§ 530.409 Final decision of the Secretary.

The Secretary's final decision shall be served upon all parties and the Administrative Law Judge, in person or by certified mail.

§ 530.410 Special procedures.

In a revocation proceeding pursuant to § 530.205(d) of subpart C of this part arising as a result of a certificate holder's failure to pay back wages or civil money penalties judged owing, the Administrator may file a motion for expedited decision, attaching to the notice, by affidavit or other means, evidence that a final order has been entered or agreement signed requiring

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respondent to pay back wages or civil money penalties and that the back wages or civil money penalties have not been paid. The respondent in the proceeding shall have 20 days in which to file a countering affidavit or other evidence. If no evidence countering the material assertions of the Administrator has been submitted within 20 days, the Administrative Law Judge shall, within 30 days thereafter, affirm the revocation or denial of the certificate. If the respondent does timely file such evidence, the Administrative Law Judge shall schedule a hearing pursuant to § 530.411(c) of this subpart and the case shall be subject to the expeditious procedures following therein.

§ 530.411 Emergency certificate revocation procedures.

(a) When the Administrator determines that immediate revocation of a homework certificate is necessary to safeguard the payment of minimum wages to homeworkers, a notice of proposed emergency revocation of a certificate shall be sent to the certificate holder pursuant to § 530.402 of this subpart setting forth reasons requiring emergency revocation of the certificate.

(b) If no request for a hearing pursuant to § 530.403 of this subpart is received within 20 days of the date of receipt of the notice by the certificate holder, the proposed revocation of the certificate shall become final.

(c) The Office of Administrative Law Judges shall notify the parties at their last known address, of the date, time and place for the hearing, which shall be no more than 60 days from the date of receipt of the request for the hearing. All parties shall be given at least 5 days notice of such hearing. No requests for postponement shall be granted except for compelling reasons.

(d) The Administrative Law Judge shall issue a decision pursuant to § 530.406 of this subpart within 30 days after the termination of a proceeding at which evidence was submitted. The decision shall be served on all parties and the Secretary by certified mail and shall constitute the final order of the Department of Labor unless the Secretary determines to review the decision.

(e) Any party desiring review of the decision of the Administrative Law Judge may petition the Secretary to review the decision of the Administrative Law Judge. To be effective, such petition must be received by the Secretary within 30 days of the date of the decision of the Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 15 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition is filed, the decision of the Administrative Law Judge shall be deemed the final agency action.

(f) The Secretary's decision shall be issued within 60 days of the notice by the Secretary accepting the submission, and shall be served upon all parties and the Administrative Law Judge, in person or by certified mail.

§ 530.412 Alternative summary proceedings.

In lieu of an administrative hearing before an Administrative Law Judge under the above procedures, an applicant or certificate holder who does not dispute the factual findings of the Administrator may, within 30 days of the date of issuance of the notice of denial, revocation, or assessment (or within 20 days in the case of a notice of emergency revocation) petition the Administrator instead to reconsider the denial or revocation of the certificate or the assessment of civil money penalties. An applicant or certificate holder electing this informal procedure may appear before the Administrator in person, make a written submission to the Administrator, or both. Such reconsideration by the Administrator shall be available only upon waiver by the applicant or certificate holder of the formal hearing procedures provided by the above regulations.

§ 530.413 Certification of the record.

Upon receipt of a complaint seeking review of a final decision issued pursuant to this part filed in a United States District Court, after the administrative remedies have been exhausted, the Chief Administrative Law Judge shall promptly index, certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

§ 530.414 Equal Access to Justice Act.

Proceedings under this part are not subject to the provisions of the Equal Access to Justice Act. In any hearing conducted pursuant to these regulations, Administrative Law Judges shall have no power or authority to award attorney fees or other litigation expenses pursuant to the Equal Access to Justice Act.

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

11. The authority citation for Part 516 continue to read as follows:

Authority: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*

12. Paragraphs (b) and (c) of § 516.31 are revised to read as follows:

§ 516.31 Industrial homeworkers.

* * * * *

(b) *Items required.* In addition to all of the records required by § 516.2, every employer of homeworkers shall maintain and preserve payroll or other records containing the following information and data with respect to each and every industrial homeworker employed (excepting those homeworkers to whom section 13(d) of the Act applies and those homeworkers in Puerto Rico to whom Part 545 of this chapter applies. or in the Virgin Islands to whom Part 695 of this chapter applies):

(1) With respect to each lot of work:

(i) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun;

(ii) Date on which work is turned in by worker, and amount of such work;

(iii) Kind of articles worked on and operations performed;

(iv) Piece rates paid;

(v) Hours worked on each lot of work turned in;

(vi) Wages paid for each lot of work turned in.

(2) With respect to any agent, distributor, or contractor: The name and address of each such agent, distributor, or contractor through whom homework is distributed or collected and the name and address of each homeworker to whom homework is distributed or from whom it is collected by each such agent, distributor, or contractor.

(c) *Homeworker handbook.* In addition to the information and data required in paragraph (b) of this section, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by such employer to each worker) shall be kept for each homeworker. The employer is required to insure that the hours worked and other information required therein is entered by the homeworker when work is performed and/or business-related expenses are incurred. This handbook must remain in the possession of the homeworker except at the end of each pay period when it is to be submitted to the employer for transcription of the hours worked and other required information and for computation of wages to be paid. The handbooks shall include a provision for written verification by the employer attesting that the homeworker was instructed to accurately record all of the required information regarding such homeworker's employment, and that, to the best of his or her knowledge and belief, the information was recorded accurately. Once no space remains in the handbook for additional entries, or upon termination of the homeworker's employment, the handbook shall be returned to the employer. The employer shall then preserve this handbook for at least two years and make it available for inspection by the Wage and Hour Division on request.

[FR Doc. 88-26041 Filed 11-9-88; 8:45 am]

BILLING CODE 4510-27-M

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federal register

Thursday
November 10, 1988

Part V

Department of Education

34 CFR Parts 316 and 318

Handicapped Education Program; Final Rule and Notice

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 316 and 318

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Training Personnel for the Education of the Handicapped Program under Part D of the Education of the Handicapped Act (EHA). These amendments are needed to implement changes made by the Education of the Handicapped Act Amendments of 1986. The intended effect of these regulations is to clarify the statutory requirements and improve the operation of the program.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Norman Howe, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3072—M/S 2651), Washington, DC 20202. Telephone: (202) 732–1068.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped Program is authorized by sections 631 and 632 of the EHA. Section 631 creates three specific programs, providing grants to (1) private nonprofit organizations for parent training and information, (2) institutions of higher education (IHEs) and nonprofit organizations training personnel for careers in special education and early intervention, and (3) IHEs and nonprofit organizations for special projects. Section 632 provides for grants to State educational agencies (SEAs) and IHEs for preservice and inservice personnel training.

In the past, the regulations implementing all four programs were included under 34 CFR Part 318, and the same selection criteria were used in reviewing applications submitted under that part. However, in order to clarify the separate requirements for the programs, and to allow separate selection criteria, 34 CFR Part 318 is being divided into three separate parts.

The final regulations for the program authorized by section 632 were published July 8, 1987 as Part 319.

The new Part 316 and Part 318 contain the regulations for Parent Training and Information Centers, and Training Personnel for Careers in Special Education and Early Intervention authorized by section 631. Three separate components are addressed in these final regulations: Parent training and information centers; training personnel for careers in special education and early intervention; and special projects.

Under the parent training and information centers program, eligible parent organizations may submit applications to provide training and dissemination of information to parents of children and youth with handicaps, and to professionals and paraprofessionals who work with parents, to enable parents to participate more fully and effectively with professionals in meeting the educational needs of children and youth with handicaps. The Secretary will select applications for funding based on the selection criteria established in the regulations.

Under the training personnel for careers in special education and early intervention program, eligible applicants may conduct preservice training of personnel for careers in special education and early intervention. In the special projects program, applicants may conduct preservice and inservice training activities.

On July 11, 1988 the Secretary published a Notice of Proposed Rulemaking (NPRM) for the Training Personnel for the Education of the Handicapped in the **Federal Register** (53 FR 26190).

Analysis of Comments and Changes

A technical change has been made to § 318.5, due to the publication in the Education Department General Administrative Regulations (EDGAR) of the new 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments). Effective October 1, 1988, Part 80, and not Part 74, applies with respect to grants and cooperative agreements to State and local governments.

In response to the Secretary's invitation in the NPRM, several parties submitted comments on the proposed regulations. However, no significant changes have been made to the regulations. The comments received and the Department's responses are summarized below.

Section 316.1

Comments: Two commenters recommended that throughout Part 316 whenever the term "children" or "children and youth" appears it instead should read "infants, toddlers, children, and youth". Specifically, one of the two commenters suggested that § 316.3(b) be amended to read "under Part B and Part H of the Act."

Discussion: The Secretary finds no support in the statutory language or legislative history of the EHA for the specific inclusion of the term "infants and toddlers" or specific reference to Part H in the program regulations to implement section 631(c) of the EHA. However, the Department has and will continue to define "child" or "children" to include individuals birth to age two, inclusive, for purposes of this program. Thus, parents of infants and toddlers with handicaps are not excluded from receiving training and information assistance under this program.

Changes: No changes have been made in response to these comments.

Section 316.1

Comments: One commenter suggested a need to mention the ten percent set aside for parent training authorized by section 635(c) of the EHA.

Discussion: The purpose of these regulations is to implement and, as necessary, clarify the statutory requirements. The requirement under section 635(c) is clear and needs no implementing regulation.

Changes: No change has been made in response to this comment.

Section 316.1

Comments: One person requested that authority be given to SEAs to approve or disapprove parent training projects.

Discussion: The Training Personnel for the Education of the Handicapped Program was designed by Congress to be administered by the U.S. Department of Education through the Division of Personnel Preparation within the Office of Special Education and Rehabilitative Services.

Changes: No changes have been made in response to this comment.

Section 318.2

Comments: Three commenters asked for more guidance to applicant agencies in meeting State and professional standards. Another commenter questioned if an arts non-profit agency would be eligible to apply.

Discussion: Applicants must look to their State's standards and those standards applicable to professionals in specific fields to evaluate their eligibility

to apply for an award. Although the Federal Government does not regulate in this area, it relies upon the States and professionals in the field to regulate themselves.

Changes: No changes have been made in response to these comments.

Section 318.3

Comments: One person recommended that only IHEs be allowed to apply for preservice training grants under §§ 318.3 (b) and (c). Another requested that local educational agencies (LEAs) and intermediate educational units (IEUs) be included.

Discussion: Section 631(a)(1) of the EHA authorizes the Secretary to make awards to both IHEs and other appropriate nonprofit agencies, but not to LEAs or IEUs.

Changes: No changes have been made in response to these comments.

Section 318.4

Comments: One commenter favored the collapsing of all priorities into two: special educators and related services personnel.

Discussion: The Secretary believes that more specialized priorities are needed in order to target funds to shortage areas.

Changes: No changes have been made in response to this comment.

Section 318.4

Comments: One commenter suggested adding a priority for the preparation of consultant teachers.

Discussion: The preparation of consultant teachers is an allowable activity under the special educators priority.

Changes: No changes have been made in response to this comment.

Section 318.4

Comments: One commenter recommended expanding the transition priority to include training of leadership personnel.

Discussion: The Secretary agrees that transition has grown to include a broad set of issues within special education. Both theory and implementation issues require attention by persons trained at the doctoral level.

Changes: Section 318.4(a) has been changed to read "* * * doctoral and postdoctoral preparation may be supported only under the priorities described in paragraphs (b)(3), (b)(4), and (b)(8) of this section," *i.e.*, leadership, transition, and special projects.

Section 318.4

Comments: Three requests were made to use the words "infants and toddlers" instead of "newborn and infant", to add these words consistently throughout the regulations, and to insert "early intervention" wherever appropriate.

Discussion: The requested terminology is consistent with section 631 (a) and (b) of the EHA and with Part H of the EHA.

Changes: The priority at § 318.4(b)(5) has been changed to read, "Preparation of personnel to provide services to infants and toddlers with handicaps." The terms "early intervention" and "infants and toddlers" have been added in appropriate places at §§ 318.1, 318.4, and 318.21. A reference to Part H has been added at § 318.21(a)(2)(vii).

Section 318.4

Comments: Two people addressed the related services priority. One asked that school psychologists be specifically mentioned, and the second recommended that a distinction be made between the delivery of services in a public school versus non-public school setting, such as hospital, home, or institution.

Discussion: School psychologists are already included in the priority as personnel who provide "other supportive services". The program is authorized for training personnel for the education of the handicapped. There is no limitation on the setting in which training may be provided.

Changes: No changes have been made in response to these comments.

Section 318.4

Comments: Twelve comments were received objecting to the replacement of the minority preference priority with the priority for the preparation of personnel for special populations of children with handicaps at § 318.4(b)(6). Eight commenters requested that the exact wording of the current equal opportunity requirement in § 318.21(a) be kept. One person asked that the needs of traditionally underrepresented parents be addressed in Part 316.

Discussion: The preparation of minority handicapped personnel remains an allowable activity under the special populations priority. Racially neutral standards and criteria in the regulations expand the opportunity for other populations—heretofore not addressed—to benefit from the program. An effort has been made in these regulations not to single out a particular group by race or ethnic origin. There should be no difference in the opportunities provided minority and non-minority personnel working in special education and related areas.

Changes: No changes have been made in response to these comments.

Section 318.4

Comments: Two individuals recommended modification of the rural priority language from "training to assist personnel working with parents, teachers, and administrators" to language which clarifies that projects must be designed to train new personnel in this area.

Discussion: The Secretary agrees that the requested change adds clarification since the goal of the priority is to train new people to work with colleagues.

Changes: A change has been in the description of the rural priority at § 318.4(b)(7) as follows: "personnel to work with parents, teachers, and administrators in a rural environment."

Section 318.4

Comments: Three people objected to the proposed provision of personnel preparation for certain low-incidence populations and to the categories as listed because it appeared that new categories were being proposed that were not consistent with those identified in Part B of the EHA.

Discussion: The intent of the section is to ensure adequate support for personnel training for that portion of the population that generates low full-time equivalencies, and that universities find most expensive to train.

Changes: A change has been made to clarify the categories listed in § 318.4(c). They are as follows: Severe handicaps, deaf, blind, serious emotional disturbance, and other health impairments.

Section 318.21

Comments: One person said related services data in the arts are not collected from the State Comprehensive System of Personnel Development (CSPD) and feared that the impact on critical need criterion at § 318.21(a)(1) would adversely affect the potential for further development of these fields.

Discussion: The CSPD data is but one of a number of sources of needs data that may be included to support an application.

Changes: No changes have been made in response to this comment.

Section 318.21

Comments: One individual expressed apprehension that § 318.21(a)(2)(vii) might disadvantage private institutions compared to their public institution counterparts regarding collaboration

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with SEAs. Another person suggested that SEAs should establish collaborative relationships with IHEs and LEAs.

Discussion: The collaboration between private institutions and SEAs is deemed important and necessary for the most efficient and effective delivery of services to occur. The Department has no reason to believe private institutions would be disadvantaged by this criterion. Collaborative cooperation is encouraged at § 318.21(a)(2) (vi) and (vii).

Changes: No changes have been made in response to these comments.

Section 318.21

Comments: Four comments were received recommending a decrease in the weighting of the first selection criterion (impact on critical present and projected need) and an increase in the weighting of the third selection criterion (plan of operation).

Discussion: The EHA Amendments of 1986 (Pub.L. 99-457) stated that the Secretary shall base awards on present and projected need and the capacity of the institution to train qualified personnel. This new wording in the statute is reflected in the weighting of the selection criteria. In light of this emphasis the Department believes that the proposed weighting is appropriate for these two criteria, but agrees that the plan of operation could be increased.

Changes: The weight of the plan of operation has been increased by five points and the evaluation plan has been reduced by five points in order to accommodate the 100 point scale.

Section 318.21

Comments: One commenter suggested integrating the discussion of practicum sites and local educational agencies into one section since they are closely related, and moving the discussion on collaboration to the section on impact on need.

Discussion: The Secretary deems the items are sufficiently distinct and hence appropriately placed.

Changes: No changes have been made in response to this comment.

Section 318.21

Comments: Four persons recommended eliminating the words "critical" and "reliable" in § 318.21(a)(1)(i)(A) and "publications" and "performance evaluations" in § 318.21(a)(2)(i), contending the former belong in applied research and the latter is of a confidential nature.

Discussion: The use of "critical" in the selection criteria is intended to allow the Secretary to consider the importance, as well as the presence, of a need for more or better-trained personnel. "Reliable" is interpreted to mean revelant, accurate, or dependable. The inclusion of "performance evaluations" was intended to elicit documentation of the quality of the applicant's key personnel.

Changes: The word "accurate" has been added to "reliable." "Positive performance evaluations" has been deleted; and in its place "and other professional contributions" has been added with the expectation applicants will thoroughly document the quality of their key personnel.

Section 318.21

Comments: One person recommended inserting the word "technology" in § 318.21(a)(3)(vii)(B) and § 318.21(b)(2)(ii)(B) because of its prominence in modern education.

Discussion: The Secretary agrees with the recommendation since recent technological innovations have made vast improvements in the ways people with handicaps can access information.

Changes: The sections have been modified to read, "Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials * * * ."

Section 318.21

Comments: An individual commenter expressed the point of view that specifying preservice and inservice models only in the special projects priority may be too limiting.

Discussion: The Secretary agrees that a modification would allow projects to justifiably and productively address aspects of personnel preparation other than preservice and inservice models.

Changes: Section 318.21(b)(2)(i) has been altered to read "* * * its potential for replication and effectiveness, and the quality of its plan for dissemination * * *". Section 318.3(a)(3) has been changed as follows: "other projects of national significance for the preparation of personnel needed to serve infants, toddlers, children, or youth with handicaps."

Executive Order 12606

Regulations governing the Parent Training and Information Centers program will have a positive impact on the family and are consistent with Executive Order 12606—The Family. The regulations strengthen the authority and participation of parents in the education of their children by providing appropriate training and disseminating information.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They ae not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 316

Education, Education of handicapped, Education-training, Grant programs-education, Nonprofit organizations, Teachers.

34 CFR Part 318

Education, Education of handicapped, Education-training, Grant programs-education, Student aid, Teachers.

Dated: October 19, 1988.

Lauro F. Cavazos,

Secretary of Education

(Catalog of Federal Domestic Assistance No. 84.029; Training of Personnel for the Education of the Handicapped)

The Secretary amends Title 34 of the Code of Federal Regulations by adding new Part 316 and by revising Part 318 to read as follows:

PART 316—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED—PARENT TRAINING AND INFORMATION CENTERS

Subpart A—General

Sec.

316.1 What is the purpose of this program?
316.2 Who is eligible for an award?
316.3 What activities may the Secretary fund?
316.4 What regulations apply to this program?
316.5 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

316.20 How does the Secretary evaluate an application?
316.21 What selection criteria does the Secretary use?

Sec.

316.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must a Grantee Meet?

316.30 What types of services are required?
316.31 What are the duties of the board of directors or special governing committee of a parent organization?

Authority: 20 U.S.C. 1431 and 1434, unless otherwise noted.

Subpart A—General

§ 316.1 What is the purpose of this program?

(a) This program supports grants to parent organizations for the purpose of providing training and information to parents of children and youth with handicaps and to persons who work with parents, to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children and youth.

(b) Parent training and information programs may, at a grantee's discretion, include State or local educational agency personnel if that participation will further an objective of the program assisted by the grant.

(Authority: 20 U.S.C. 1431(c))

§ 316.2 Who is eligible for an award?

Parent organizations are eligible to receive grants under this program.

(Authority: 20 U.S.C. 1431(c))

§ 316.3 What activities may the Secretary fund?

Parent training and information projects assisted under this program must be designed to assist parents to—

(a) Understand the nature and needs of the handicapping conditions of their children and youth;

(b) Provide follow-up support for their children and youth's educational programs;

(c) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(d) Participate fully in educational decisionmaking processes, including the development of their child or youth's individualized education program;

(e) Obtain information about the programs, services, and resources available to their children and youth, and the degree to which the programs, services, and resources are appropriate to meet the needs of their children and youth; and

(f) Understand the provisions for educating children and youth with handicaps under Part B of the Act.

(Authority: 20 U.S.C. 1431(c))

§ 316.4 What regulations apply to this program?

The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 316.

(Authority: 20 U.S.C. 1431(c))

§ 316.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant.
Aplication.
Award.
Department.
EDGAR.
Fiscal year.
Local educational agency.
Nonprofit.
Private.
Project.
Secretary.
State.
State educational agency.

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300:

Individualized education program (§ 300.340).
Parent (§ 300.10).
Related services (§ 300.13).
Special education (§ 300.14).

(c) *Other definitions specific to 34 CFR Part 316.* The following terms used in this part are defined as follows:

"Act" means the Education of the Handicapped Act (EHA).

"Children and youth with handicaps" means children and youth who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, or who have specific learning disabilities, and who by reason thereof need special education and related services.

"Parent organization" means a private nonprofit organization that is governed by a board of directors of which a majority of the members are parents of children and youth with handicaps and that includes professionals in the field of special education and related services who serve children and youth with handicaps; or if the nonprofit private organization does not have such a board, such organization shall have a membership representing the interests of individuals with handicaps and a special governing committee, a majority of the members of which are parents of children and youth with handicaps, and which includes professionals in the fields of special education and related services. The organization, in providing training and information under this part, must serve the parents of children and youth representing the full range of handicapping conditions. The organization must demonstrate the capacity and expertise to conduct the authorized training and information activities efectively.

(Authority: 20 U.S.C. 1431(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 316.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 316.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431(c))

§ 316.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of present and projected needs.* (15 points) The Secretary reviews each application to determine the extent to which the project makes an impact on parent training and information needs, consistent with the purposes of the Act, including consideration of the impact on—

(1) The present and projected needs in the applicant's geographic area for trained parents; and

(2) The present and projected training and information needs for personnel to work with parents of children and youth with handicaps.

(b) *Anticipated project results.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist parents to—

(1) Understand the nature and needs of the handicapping conditions of their children and youth;

(2) Provide follow-up support for their children and youth's educational programs;

(3) Communicate more effectively with special and regular educators,

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administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decisionmaking processes, including the development of their child or youth's individualized educational program;

(5) Obtain information about the programs, services, and resources available to their children and youth and the degree to which the programs, services, and resources are appropriate to meet the needs of their children and youth; and

(6) Understand the provisions for educating children and yoth with handicaps under Part B of the Act.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective management plan that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as s part of its nondiscriminatory practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(5) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(f) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431(c))

§ 316.22 What additional factors does the Secretary consider?

In addition to the criteria in § 316.21, the Secretary considers the following factors in making an award:

(a) *Geographic distribution.* In selecting projects for award, the Secretary ensures that, to the greatest extent possible, awards are distributed geographically, on a State or regional basis, throughout all the States and serve parents of children and youth with handicaps in both urban and rural areas.

(b) *Unserved areas.* In selecting projects for award, the Secretary gives priority to applications that propose to serve unserved areas.

(Authority: 20 U.S.C. 1431(c))

Subpart D—What Conditions Must a Grantee Meet?

§ 316.30 What types of services are required?

(a) Projects must be designed to meet the unique training and information needs of parents of children and youth with handicaps who live in the area to be served by the project, particularly those who are members of groups that have been traditionally underrepresented.

(b) A grantee shall consult with appropriate agencies that serve or assist children and youth with handicaps in the geographic areas served by the project.

(Authority: 20 U.S.C. 1431(c))

§ 316.31 What are the duties of the board of directors or special governing committee of a parent organization?

The recipient's board of directors or special governing committee as described in § 316.5 must meet at least once in each calendar quarter to review the parent training and information activities under the grant.

(Authority: 20 U.S.C. 1431(c))

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED—CAREERS IN SPECIAL EDUCATION AND EARLY INTERVENTION

Subpart A—General

Sec.

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318.30 Is student financial assistance authorized?
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318.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Authority: 20 U.S.C. 1431 and 1434, unless otherwise noted.

Subpart A—General

§ 318.1 What is the purpose of this program?

This program serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with handicaps through—

(a) The provision of awards to support the preservice training of personnel for careers in special education and early intervention in—

(1) Special education teaching, including speech-language pathology, audiology, and adaptive physical education;

(2) Related services to children and youth with handicaps in educational settings;

(3) Special education supervision and administration;

(4) Special education research; and

(5) Training of special education personnel and other personnel providing special services and preschool and early intervention services for infants, toddlers, children, and youth with handicaps; and

(b) Special projects designed to develop and demonstrate new approaches for the preservice training described in § 318.3(a) and also for inservice training activities.

(Authority: 20 U.S.C. 1431 (a) and (b) and 1434)

§ 318.2 Who is eligible for an award?

(a) The following agencies are eligible for assistance under this part:

(1) Institutions of higher education and other appropriate nonprofit agencies are eligible under § 318.1(a); and

(2) Institutions of higher education, State agencies, and other appropriate nonprofit agencies are eligible under § 318.1(b).

(b) In order to receive a preservice training grant under § 318.3, an institution or agency must demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless the grant is for the purpose of assisting the applicant agency or institution to meet those standards.

(Authority: 20 U.S.C. 1431(a)(2))

§ 318.3 What activities may the Secretary fund?

The Secretary supports three types of projects under this program:

(a) Special projects designed to include—

(1) Development, evaluation, and distribution of innovative approaches to personnel preparation;

(2) Development of materials to prepare personnel to educate or provide early intervention services to infants, toddlers, children, and youth with handicaps; and

(3) Other projects of national significance for the preparation of personnel needed to serve infants, toddlers, children, and youth with handicaps.

(b) Development of new programs designed to establish and increase the capacity and quality of preservice training; and

(c) Improvement of existing programs designed to maintain and upgrade the capacity and quality of preservice training.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.4 What priorities may the Secretary establish?

(a) Projects supported under this program that meet a priority as described in paragraph (b) or (c) of this section may provide training to degree, nondegree, certified, and noncertified personnel, except that doctoral and post-doctoral preparation may be supported only under the priorities described in paragraphs (b)(3), (b)(4), and (b)(8) of this section.

(b) The Secretary may select annually one or more of the following priority areas for funding:

(1) *Preparation of personnel for careers in special education and early intervention.* This priority supports projects under §§ 318.3 (b) and (c) that are designed to provide preservice training of personnel for careers in special education and early intervention, or supervisors of those personnel. The priority includes the preparation of special teachers of infants, toddlers, children, and youth with handicaps, special education administrators and supervisors, speech-language pathologists, audiologists, adaptive physical educators, vocational educators, and infant intervention specialists.

(2) *Preparation of related services personnel.* This priority supports projects under §§ 318.3 (b) and (c) that are designed to provide preservice preparation of individuals who provide developmental, corrective, and other supportive services that assist infants, toddlers, children, and youth with handicaps to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, health service providers, physical therapists, occupational therapists, and other related services personnel.

(3) *Preparation of leadership personnel.* This priority supports projects under § 318.3 (b) and (c) that are designed to provide preservice doctoral and post-doctoral preparation of professional personnel such as administrators, supervisors, researchers, and teacher trainers.

(4) *Preparation of personnel for transition of youth with handicaps to adult and working life.* This priority supports projects under § 318.3 (b) and (c) that are designed to provide preservice preparation of individuals who assist youth with handicaps in their transition from school to adult roles. Personnel may be prepared to provide short-term transitional services, long-term structured employment services, or instruction in community and school settings with secondary school students.

(5) *Preparation of personnel to provide early intervention services to infants and toddlers with handicaps.* This priority supports projects under § 318.3 (b) and (c) that are designed to provide preservice preparation of individuals who serve infants and toddlers with handicaps or those who are at high risk of being handicapped. Personnel may be prepared to provide short-term services or long-term services that extend into a child's preschool program.

(6) *Preparation of personnel for special populations of infants, toddlers, children, and youth with handicaps.* This priority supports the preservice preparation of early intervention, special education, and related services personnel under § 318.3 (b) and (c) who will serve special populations of infants, toddlers, children, and youth with handicaps who, because of special characteristics, require professional competencies in addition to those needed for other infants, toddlers, children, and youth with similar disabilities. Project personnel funded under this priority must define a specific special population, describe the additional competencies that are needed by professionals serving that population, and describe how the project's training program will result in the attainment of those competencies.

(7) *Preparation of personnel to work in rural areas.* This priority supports projects under § 318.3 (b) and (c) that are designed to provide preservice training of personnel who will serve infants, toddlers, children, and youth with handicaps in rural areas. Projects must also be designed to provide training to assist personnel to work with parents, teachers, and administrators in a rural environment.

(8) *Special projects.* This priority supports projects with preservice and inservice activities specified in § 318.3(a).

(c) In addition to the priority areas described in paragraph (b) of this section, the Secretary may select annually as a priority the support of pre-service preparation of special educators and early intervention personnel who serve infants, toddlers, children, and youth with low-incidence handicaps in a designated State or geographic area. Specifically, the Secretary may select one or more of the following low-incidence categories:

(1) Severe handicaps, including intense physical or mental problems, deaf-blindness, and other multiple handicaps.

(2) Deaf.

(3) Blind.

(4) Serious emotional disturbance.

(5) Other health impairments, including autism and chronic or acute health problems.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.5 What regulations apply to this program?

The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and

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Activities), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(b) The regulations in this Part 318.

(Authority: 20 U.S.C. 1431 (a) and (b) and 1434)

§ 318.6 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Local educational agency
Nonprofit
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300:

Deaf (§300.5(b)(1))
Deaf-blind (§300.5(b)(2))
Other health impaired (§300.5(b)(7))
Seriously emotionally disturbed (§300.5(b)(8))
Related services (§300.13)
Special education (§300.14)

(c) *Definitions in 34 CFR Part 315.* The following term used in this part is defined in 34 CFR Part 315:

Severely handicapped children and youth (§ 315.4(d))

(d) *Other definitions specific to 34 CFR Part 318.* The following terms used in this part are defined as follows:

"Act" means the Education of the Handicapped Act (EHA).

"Children and youth with handicaps" means children and youth who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, or who have specific learning disabilities, and who by reason thereof need special education and related services.

"Early intervention services" means those developmental services which meet the requirements of section 672(2) of the EHA.

"Infants and toddlers with handicaps" as used in this part means children from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas—

(i) Cognitive development;

(ii) Physical development, including vision and hearing;

(iii) Language or speech development;

(iv) Psychosocial development;

(v) Self-help skills; or

(vi) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(2) The term may also include children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1431 (a) and (b))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 318.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 318.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.21 What selection criteria does the Secretary use?

(a) The Secretary uses the following criteria to evaluate all applications other than applications for special projects, as described in § 318.3(a).

(1) *Impact on critical present and projected need.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with handicaps. The Secretary considers—

(i) The significance of the personnel needs to be addressed to the provision of special education, related services and early intervention services. Significance of need identified by the applicant may be shown by—

(A) Evidence of critical personnel shortages in targeted specialty or geographic areas, as demonstrated by data from the State Comprehensive System of Personnel Development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with handicaps; or other indicators of need that the applicant demonstrates are relevant, reliable, and accurate; or

(B) Evidence showing significant need for improvement in the quality of personnel providing special education, related services and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

(ii) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted needs may include—

(A) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(B) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, the professional contributions of those graduates, and data on the need for graduates in paragraph (a)(1)(ii)(A) of this section; and

(C) For new programs, the extent to which program features support the projections in § 318.21(a)(1)(ii)(A) of this section, and the applicant's plan for helping graduates locate appropriate employment in the area of need or the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(2) *Capacity of the institution.* (25 points) The Secretary reviews each application to determine the capacity of the institution or agency to train qualified personnel, including consideration of—

(i) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(ii) The amount of time each key person plans to commit to the project;

(iii) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(iv) The quality of the practicum training settings, including evidence that they are sufficiently available, apply state-of-the-art services and model teaching practices, materials and technology, provide adequate supervision to trainees, and offer opportunities for trainees to teach and foster interaction between students with handicaps and their non-handicapped peers;

(v) The capacity of the applicant to recruit well-qualified students;

(vi) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practicum sites; and

(vii) The extent to which the applicant cooperates with State educational agency (SEAs), the State designated lead agency under Part H of the Act, other institutions of higher education (IHEs), and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(vi) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(vii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the students' attainment of professional knowledge and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with handicaps; and

(B) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with handicaps; and

(viii) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with handicaps.

(4) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project;

(ii) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired;

(iii) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project; and

(iii) The applicant presents appropriate plans for the institutionalization of Federally supported activities into basic program operations.

(b) The Secretary uses the following criteria to evaluate a special projects application described in § 318.3(a):

(1) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under Parts B and H of the Act in special education, related services, or early intervention services personnel development.

(2) *Program content.* (20 points) The Secretary reviews each application to determine—

(i) The project's potential for national significance, its potential for replication and effectiveness, and the quality of its plan for dissemination of the results of the project;

(ii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with handicaps; and

(B) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children and youth with handicaps; and

(iii) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with handicaps.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each of the key personnel plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(v) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431 (a) and (b))

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§ 318.22 What additional factors does the Secretary consider?

The Secretary makes awards for a one- to five-year period based on the nature of projected needs addressed by the project and the quality of the plan for meeting those needs.

(Authority: 20 U.S.C. 1431 (a) and (b))

Subpart D—What Conditions Must a Grantee Meet?

§ 318.30 Is student financial assistance authorized?

A grantee may use grant funds to provide traineeships or stipends. The sum of the assistance provided to a student through this part and any other assistance provided the student may not exceed the cost of attendance. Cost of attendance is defined as—

(a) Tuition and fees normally assessed a student carrying the same academic workload, as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(b) An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

(c) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(1) Will be an allowance of not less than $1,500 for a student without dependents residing at home with parents;

(2) For students without dependents residing in institutionally owned or operated housing, will be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board; and

(3) For all other students, will be an allowance based on the expenses reasonably incurred by the students for room and board, except that the amount may not be less than $2,500;

(d) For less than half-time students (as determined by the institution), tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (g) of this section);

(e) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specially in fulfilling a required period of residential training;

(f) For a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with the study (as determined by the institution);

(g) For a student with one or more dependents, an allowance (as determined by the institution) based on the expenses reasonably incurred for dependent care based on the number and age of the dependents;

(h) For a handicapped student, an allowance (as determined by the institution) for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(i) For a student receiving all or part of his or her instruction by means of telecommunications technology, no distinction must be made with respect to the mode of instruction in determining costs, but this paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.31 What are the student financial assistance criteria?

Direct financial assistance may only be paid to students in preservice programs and only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains satisfactory progress in a course of study as defined in 34 CFR 668.16(e);

(c) The student is a citizen or a national of the United States.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other students during the grant period.

(Authority: 20 U.S.C. 1431 (a) and (b))

[FR Doc. 88-25913 Filed 11-9-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Invitation of Applications for New Awards for Fiscal Year 1989

Title of Program: Training Personnel for the Education of the Handicapped. CFDA No. 84.029

Purpose: To provide training and information to parents of children and youth with handicaps and to persons who work with parents of children and youth with handicaps to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children and youth.

Application Notice for Fiscal Year 1989

Title and CFDA	Deadline for transmittal of applications	Available funds [1]	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Parent Organization Projects (84.029M)	01/09/89	$4,000,000	$80,000–$100,000	$100,000	40	Up to 60.

[1] The funding levels are estimated projections of available Federal resources and may be subject to revision pending changes in Congressional appropriations.

Eligible Applicants: Private, nonprofit organizations.

For Applications or Information Contact: Norman D. Howe, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3072—M/S 2313), Washington, DC. 20202. Telephone: (202) 732–1068.

Program Authority: 20 U.S.C. 1431.

Dated: November 4, 1988.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 88-25914 Filed 11-9-88; 8:45 am]

BILLING CODE 4000-01-M

Invitation of Applications for New Awards for Fiscal Year 1989

Title of Program: Training Personnel for the Education of the Handicapped. CFDA No. 84.029

Purpose: To increase the quantity and improve the quality of personnel available to educate and provide early intervention services to infants, toddlers, children, and youth with handicaps.

Applicable Regulations: (a) The Training Personnel for the Education of the Handicapped Program, 34 CFR Part 318, that are published in this issue of the **Federal Register**, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, and 80.

Priorities: The Secretary announces, pursuant to 34 CFR 75.105(c)(3), the following priorities for fiscal year 1989. Projects supported under this program may provide training to degree, nondegree, certified, and noncertified personnel, except that doctoral and post-doctoral preparation may be supported only under the leadership, transition, and special projects priorities. The Secretary will give an absolute preference to applications that meet any of the priorities.

Preparation of Personnel for Careers in Special Education and Early Intervention (84.029B)

This priority supports projects under § 318.3 (b) and (c) that are designed to provide preservice training of personnel for careers in special education and early intervention, or supervisors of those personnel.

The priority includes the preparation of special teachers of infants, toddlers, children, and youth with handicaps, special education administrators, and supervisors, speech-language pathologists, audiologists, adaptive physical educators, vocational educators, and infant intervention specialists.

Deadline for Intergovernmental Review Comments: March 9, 1989.

Applicable Regulations: (a) The Training Personnel for the Education of the Handicapped Program, 34 CFR Part 316, that are published in this issue of the **Federal Register**, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 79.

Priorities: The Secretary announces, pursuant to 34 CFR 75.105(c)(3), the following priority for fiscal year 1989. Projects supported under this program may provide training to degree, nondegree, certified, and noncertified individuals. The Secretary will give an absolute preference to applications that meet this priority.

Parent Organization Projects (84.029M)

This program supports grants to parent organizations for the purpose of providing training and information to parents of children and youth with handicaps and to persons who work with parents, to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children and youth.

Preparation of Leadership Personnel (84.029D)

This priority supports projects under § 318.3 (b) and (c) that are designed to provide preservice doctoral and post-doctoral preparation of professional personnel such as administrators, supervisors, researchers, and teacher trainers.

Preparation of Personnel for Special Populations of Infants, Toddlers, Children, and Youth With Handicaps (84.029E)

This priority supports the preservice preparation of early intervention, special education, and related services personnel under § 318.3(b) and (c) who will serve special populations of infants, toddlers, children, and youth with handicaps who, because of special characteristics, require professional competencies in addition to those needed for other infants, toddlers, children, and youth with similar disabilities. Project personnel funded under this priority must define a specific special population, describe the additional competencies that are needed by professionals serving that populations, and describe how the project's training program will result in the attainment of those competencies.

Preparation of Related Services Personnel (84.029F)

This priority supports projects under § 318.3 (b) and (c) that are designed to

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provide preservice preparation of individuals who provide developmental, corrective, and other supportive services that assist infants, toddlers, children, and youth with handicaps to benefit from special education.

These include paraprofessional personnel, therapeutic recreation specialists, health services providers, physical therapists, occupational therapists, and other related services personnel.

Preparation of Personnel for Transition of Handicapped Youth to Adult and Working Life (84.029G)

This priority supports projects under § 318.3 (b) and (c) that are designed to provide preservice preparation of individuals who assist youth with handicaps in their transition from school to adult roles. Personnel may be prepared to provide short-term transitional services, long-term structured employment services, or instruction in community and school settings with secondary school students.

Preparation of Personnel to Work in Rural Areas (84.029J)

This priority supports projects under § 318.3 (b) and (c) that are designed to provide preservice training of personnel who will serve infants, toddlers, children, and youth with handicaps in rural areas. Projects must also be designed to provide training to assist personnel to work with parents, teachers, and administrators in a rural environment.

Special Projects (84.029K)

This priority supports projects with preservice and inservice training activities specified in § 318.3(a). Project activities assisted under this priority include development, evaluation, and distribution of imaginative or innovative approaches to personnel preparation, development of materials to prepare personnel to educate or provide early intervention services to infants, toddlers, children, and youth with handicaps, and other projects of national significance for the preparation of personnel needed to serve infants, toddlers, children, and youth with handicaps.

Preparation of Personnel to Provide Early Intervention Services to Infants and Toddlers With Handicaps (84.029Q)

This priority supports projects under § 318.3 (b) and (c) that are designed to provide preservice preparation of individuals who serve infants and toddlers with handicaps, or those who are at high risk of being handicapped. Personnel may be prepared to provide short-term services or long-term services that extend into a child's preschool program.

Preparation of Personnel for Low-Incidence Handicapped Students (84.029A)

This priority supports training that focuses on the preparation of personnel to serve students with severe handicaps, including intense physical or mental problems, deaf-blindness, and other multiple handicaps; deaf; blind; serious emotional disturbance; and other health impairments, including autism and chronic or acute health problems. Special consideration will be given to preservice preparation of certified personnel in serious emotional disturbance programs east of the Mississippi River, and in other health impairment programs (including autism and chronic or acute health problems) nationwide.

APPLICATION NOTICES FOR FISCAL YEAR 1989

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds [1]	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Preparation of Personnel for Careers in Special Education and Early Intervention (84.029B).	01/09/89	03/09/89	$8,800,000	$60,000–$80,000	$80,000	110	Up to 60.
Preparation of Leadership Personnel (84.029D)	01/23/89	03/23/89	2,000,000	70,000–90,000	90,000	22	Do.
Preparation of Personnel for Special Populations of Infants, Toddlers, Children, and Youth with Handicaps (84.029E).	02/13/89	04/13/89	1,500,000	60,000–75,000	75,000	20	Do.
Preparation of Related Services Personnel (84.029F)	01/30/89	03/30/89	1,900,000	50,000–75,000	75,000	25	Do.
Preparation of Personnel for Transition of Handicapped Youth to Adult and Working Life (84.029G).	02/06/89	04/06/89	500,000	60,000–80,000	80,000	6	Do.
Preparation of Personnel to Work in Rural Areas (84.029J)	02/13/89	04/13/89	550,000	60,000–75,000	75,000	7	Do.
Special Projects (84.029K)	02/20/89	04/20/89	1,500,000	65,000–85,000	85,000	17	Do.
Preparation of Personnel to Provide Early Interventions Services to Infants and Toddlers with Handicaps (84.029Q).	02/06/89	04/06/89	1,800,000	60,000–75,000	75,000	24	Do.
Preparation of Personnel for Low-Incidence Handicapped Students (84.029A).	02/27/89	04/27/89	500,000	60,000–80,000	80,000	6	Do.

[1] The funding levels are estimated projections of available Federal resources and may be subject to revision pending changes in Congressional appropriations.

Eligible Applicants: Institutions of Higher Education, and other appropriate nonprofit private agencies under § 318.1(a); and Institutions of Higher Education, State agencies, and other appropriate nonprofit agencies under § 318.1(b)

For Applications or Information Contact: Norman D. Howe, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3072—M/S 2313), Washington, DC 20202. Telephone: (202) 723–1068.

Program authority: 20 U.S.C. 1431.

Dated: November 4, 1988.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 88–25915 Filed 11–9–88; 8:45 am]

BILLING CODE 4000–01–M

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Thursday
November 10, 1988

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 47 and 52
Federal Acquisition Regulation (FAR); Commercial Bills of Lading Under Cost-Reimbursement Contracts Audit by GSA; Proposed Rule

VOL 53 ISS 218 NO 10 1988 UMI

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

Federal Acquisition Regulation (FAR); Commercial Bills of Lading (CBL's) Under Cost-Reimbursement Contracts Audit by GSA

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to FAR 47.104–4 and adding a clause at 52.247–65 to clarify standards for procedures governing Commercial Bills of Lading (CBL's) documentation, payment, and audit.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 9, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–56 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule does not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). It is not feasible, however, to estimate the number of small entites to which this rule will apply because the number of small businesses which would participate in these types of acquisitions is unknown. Comments are invited.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not contain any recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq. 41 CFR 101–41 contains the primary regulatory requirement for submission of transportation documentation to GSA for audit.

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: November 3, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 47 and 52 be amended as set forth below:

1. The authority citation for Parts 47 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 47—TRANSPORTATION

2. Section 47.104–4 is amended by revising the section title and adding paragraph (c) to read as follows:

47.104–4 Contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 52.247–65, Submission of commercial freight bills to the General Services Administration for audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation costs as a direct charge to the contract or subcontract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.247–65 is added to read as follows:

52.247–65 Submission of commercial freight bills to the General Services Administration for audit.

As prescribed in 47.104–4(c), insert the following clause:

Submission of Commercial Freight Bills to the General Services Administration for Audit (Nov 1988)

(a) The Contractor shall submit to the General Services Administration (GSA), for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), and other supporting documents for transportation services on which the United States will assume freight charges that were paid (1) by the Contractor under a cost-reimbursement contract, and (2) by a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) The Contractor shall forward copies of paid freight bills/invoices, and CBL's as soon as possible following the end of the month, in one package to the General Services Administration, ATTN: FWAA/C, 18th & F Streets NW, Washington, DC 20405. The Contractor shall include the paid freight bills/invoices, CBL's, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

(c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

(End of clause)

[FR Doc. 88–26087 Filed 11–9–88; 8:45 am]

BILLING CODE 6820–61–M

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Thursday
November 10, 1988

Part VII

Office of Management and Budget

Audits of Institutions of Higher Education and Other Nonprofit Organizations; Notice

VOL 53 ISS 218 NO 10 1988 UMI

OFFICE OF MANAGEMENT AND BUDGET

[Proposed Circular No. A-133]

Audits of Institutions of Higher Education and Other Nonprofit Organizations

AGENCY: Financial Management Division, OMB.

ACTION: Proposed Circular No. A-133 "Audits of Institutions of Higher Education and Other Nonprofit Organizations".

SUMMARY: This notice offers interested parties an opportunity to comment on a new circular, "Audits of Institutions of Higher Education and Other Nonprofit Organizations". The revision would supersede Attachment F subparagraph 2h of Circular A-110 "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations".

The change in audit policy arises from a commitment made by OMB during Congressional consideration of the Single Audit Act of 1984, Pub. L. 98-502. At that time Congress agreed to exclude most colleges and universities from coverage under the Act. OMB agreed to develop an audit policy for these organizations consistent with the provisions of the Act.

The revised audit policy will require an independent annual audit of the organization in accordance with generally accepted government auditing standards and the provisions of the Circular. The revised audit policy covers:

—Scope of audit,
—Internal control reviews,
—Compliance reviews,
—Relationship to other audit requirements,
—Federal cognizant agency responsibilities,
—Reporting illegal acts of irregularities,
—Audit reports,
—Audit resolution,
—Retention of audit workpapers and reports,
—Audit costs,
—Sanctions, and
—Auditor selection.

The audit provisions of Circular A-110 are being published separately from the uniform agency regulations replacing Circular A-110 for more effective administration of audit policy. If the audit requirements for recipients were published in the uniform rules a separate Circular would still be necessary for Federal audit responsibilities and fragment the overall audit approach. This proposed Circular is patterned after Circular A-128 "Audits of State and Local Governments," which has become familar to the audit and grantee community and is generally being implemented effectively. The proposed Circular helps tailor requirements to the recipient and generally avoids confusion.

All interested parties are encouraged to make their views known.

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, Financial Systems and Policy Branch, Office of Management and Budget, Washington, DC 20503, 202-395-3993.

Comments should be received within 60 days of this notice. All comments should be submitted to the above individual.

Sincerely,

Gerald R. Riso,

Associate Director for Management.

[OMB Circular No. A-133, 1988]

To the Heads of Executive Departments and Establishments

Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. *Purpose.* This Circular establishes audit requirements for institutions of higher education and other nonprofit institutions receiving Federal funds. It also defines Federal responsibilities for implementing and monitoring these requirements. The term "nonprofit institutions" used throughout the Circular includes institutions of higher education. The term does not include hospitals, or State and local governments and Indian tribes covered by Circular A-128 "Audits of State and Local Governments."

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921 as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970 and Executive Order No. 11541.

3. *Supersession.* This Circular supersedes Attachment F, subparagraph 2h, of Circular A-110, "Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

4. *Policies.*

a. Nonprofit institutions that receive $100,000 or more a year in Federal funds shall have an audit made in accordance with this Circular.

b. Nonprofit institutions that receive Federal awards between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular or have an audit made of each Federal award.

c. *Subrecipients.* All subrecipients of Federal financial assistance receiving more than $25,0000 in Federal awards are subject to those Federal audit requirements applicable to that particular subrecipient.

d. *Cognizant Agencies.*

(1) OMB will assign a Federal agency to each of the larger nonprofit institutions as the cognizant agency for monitoring audits, and overseeing the resolution of audit findings that affect the programs of more than one agency. Smaller nonprofit institutions not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them with the most funds.

(2) Federal cognizant agency assignments for carrying out the responsibilities in this section are set forth in a separate supplement. Government-owned, contractor-operated facilities at nonprofit institutions are not included in the cognizance assignments. These will remain the responsibility of the contracting agencies. The listed assignments cover all of the functions in this Circular unless otherwise indicated. The Office of Management and Budget will coordinate changes in agency assignments.

5. *Scope of Audit*

a. The audit shall be made by an independent auditor in accordance with Government Auditing Standards covering financial audits. The audit should be an organization-wide audit of the nonprofit institution. However, a coordinated audit approach which tailors the scope of the audit to individual circumstances may be worked out between the recipient and the cognizant agency or the agency providing the most funds to a recipient when a cognizant agency has not been assigned. Any agreements concerning coordinated audits reached between cognizant agencies and recipients should be cleared with other Federal agencies providing funds.

b. States and local governments may include public colleges and universities in audits performed in accordance with OMB Circular A-128 "Audits of State and Local Governments". However, such audits of these entities when made as part of the States A-128 audit should include the additional audit requirements in this Circular.

c. The auditor shall determine whether:

(1) the financial statements of the institution present fairly its financial position and the results of its financial

operations in accordance with generally accepted accounting principles;

(2) the institution has an internal accounting and other control structure to provide reasonable assurance that it is managing Federal awards in compliance with applicable laws and regulations; and

(3) the institution has complied with laws and regulations that may have material effect on its financial statements and on each major Federal award program.

6. *Applicability.* The provisions of this Circular apply to all Federal agencies responsible for administering programs that involve grants, contracts and other agreements with institutions of higher education and other nonprofit recipients. These principles, to the extent permitted by law, constitute guidance to be applied by agencies consistent with and within the discretion, conferred by the statutes governing agency action.

7. *Definitions.* For the purposes of this Circular the following definitions apply:

a. "Award" means financial assistance, and Federal cost type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through other grantees. It does not include procurement contracts under grants or subcontracts used to buy goods or services. Audits of such government contracts shall be covered by the terms and conditions of the contract.

b. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 10 of this Circular.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other recipients.

e. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

f. "Government Auditing Standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated July 1988.

g. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

h. "Internal control structure" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resources use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained maintained, and fairly disclosed in reports.

i. "Major program" means an individual award or a number of awards in a category of Federal assistance or support on which the auditor will be required to express an opinion as to whether the major program is being administered in compliance with laws and regulations.

(1) Universities:

(a) Each of the following categories of Federal awards shall constitute a major program:

—Research and Development,
—Student Aid,
—Individual awards (not in the student aid or research and development category) for which Federal expenditures during the applicable year exceed the larger of 3 percent of the total Federal funds received (other than research and development and student aid) or $100,000.

(2) Other nonprofit organizations:

A major program for nonprofit organizations means any program for which Federal expenditures during the applicable year exceed the larger of $100,000 or 3 percent of such total expenditures.

j. "Subrecipient" means any person or government department, agency, establishment or nonprofit organization that receives Federal financial assistance to carry out the program through a primary recipient, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal awards.

8. *Frequency of audit.* Audits shall be made annually unless the recipient is audited as part of the State or local government that have previously made other arrangements with the Federal Government.

9. *Internal control and compliance reviews.* The independent auditor shall determine and report on whether the recipient has internal control systems to provide reasonable assurance that it is managing Federal awards in compliance with applicable laws, regulations and contract terms.

a. *Internal control review.* In order to provide this assurance on internal controls the auditor must make a study and evaluation of internal control systems used in administering Federal awards. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The auditor should determine whether the recipient has complied with laws and regulations that may have a material effect on each major Federal program.

(1) In order to determine which major programs are to be tested for compliance, recipients shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies, through other State and local governments or other primary recipients. To assist recipients in identifying Federal funds, Federal agencies and primary recipients should provide the Catalog of Federal Domestic Assistance (CFDA) numbers to the institutions when making the awards.

(2) The review must include the selection and testing of a representative number of charges from each major Federal program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program, the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews or system reviews required by Federal Acquisition Regulation); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

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—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with (1) OMB Circular A–21 "Cost principles for educational institutions"; (2) Attachment F of Circular A–110 "Uniform Requirements for Grants and Agreements with Institutions of Higher Education and other Nonprofit Organizations"; (3) Circular A–122 "Cost principles for nonprofit organizations"; and (4) FAR Subpart 31 cost principles.

(c) The principle compliance requirements of the largest Federal programs may be ascertained by referring to the *"Compliance Supplement for Single Audits of Educational Institutions and Other Nonprofit Organizations"*, and the *Compliance Supplement for Single Audits of State and Local Governments,"* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to awards that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

10. *Subrecipients.* Recipients that receive Federal awards and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether the subrecipients have met the audit requirements of this Circular.

b. Determine whether the subrecipient spent Federal funds in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with OMB Circulars, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

11. *Relation to other audit requirements.* An audit made in accordance with this Circular shall be in lieu of any financial audits required under individual Federal awards. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits or reviews which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audits or reviews shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal awards, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any institution or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits, evaluations or reviews.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits or reviews include economy and efficiency audits, program results audits, and program evaluations.

12. *Cognizant agency responsibilities.* Cognizant Federal agencies will be assigned to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for larger institutions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller institutions not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to institutions and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits or reviews build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

13. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 12c below for the auditor's reporting responsibilities.) The auditor shall also promptly report to proper Federal officials, including the audit officials and those entities of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

14. *Audit Reports.* Audit reports must be prepared at the completion of the audit.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on the financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance. For recipients receiving 25 grants or more, the schedule of Federal assistance should contain changes in Federal award balances showing the total expenditures for federally assisted programs by funding agency and a schedule of changes in Federal award balances and a schedule of disbursements and expenditures for each student financial assistance program of the Department of Education. For recipients receiving less than 25 awards the schedule shall show the total expenditures for each award and program as identified in the *Catalog of Federal Domestic Assistance*. Federal programs that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control structure. The report must identify the organization's significant internal accounting controls, or control structure including those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, the material weaknesses identified as a result of the evaluation and the scope of the auditor's work in obtaining an understanding of the internal control structure in assessing the control risk.

3. The auditor's report on compliance containing:

—An opinion as to whether major Federal programs were being administered in compliance with laws and regulations.

—A statement of positive assurance with respect to those items tested for compliance relative to the financial statements, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance including:

- The size of the universe in number of items and dollars.
- The number and dollar amount of transactions tested by the auditors.
- The number and corresponding dollar award in instances of noncompliance.

—An identification of total amounts questioned, if any, for each Federal award, as a result of noncompliance;

b. The three parts of the audit report may be bound into a single report, or presented at the same time or separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, may be covered in a separate written report submitted in accordance with paragraph 14e.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. In accordance with Government Auditing Standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the auditor shall submit copies of the reports to each Federal department or agency that provided Federal awards to the recipient. Subrecipient auditors shall submit copies to recipients that provided them Federal awards. The report shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

f. Recipients of more than $100,000 in Federal awards shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file.

g. Recipients shall keep audit reports on file for three years from their issuance.

15. *Audit Resolution.* As provided in paragraph 12, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

16. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

17. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal awards.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A–21, "Cost principles for Universities" or Circular A–122 "Cost principles for nonprofit organizations," and FAR Subpart 31.

b. Generally, the percentage of costs charged to Federal awards for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

18. *Sanctions.* No cost may be charged to Federal awards for audits that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of awards until the audit is completed satisfactorily;

—Withholding or disallowing overhead costs; or

—Suspending Federal awards until the audit is made.

19. *Auditor Selection.* In arranging for audit services institutions shall follow the procurement standards prescribed by Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations."

20. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal awards shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

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b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

21. *Effective date.* The provisions of this Circular are effective upon publication and shall apply to audits of nonprofit institutions for fiscal years that begin after January 1, 1989. Earlier implementation is encouraged. However, until this Circular is implemented the audit provisions of Attachment F to Circular A-110 shall continue to be observed.

22. *Policy Review (Sunset).* This Circular will have a policy review three years from the date of issuance.

23. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Financial Management Division, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

[FR Doc. 88-25994 Filed 11-9-88; 8:45 am]
BILLING CODE 3110-01-M

federal register

Thursday
November 10, 1988

Part VIII

The President

Notice of November 8, 1988—
Continuation of Iran Emergency

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Federal Register
Vol. 53, No. 218
Thursday, November 10, 1988

Presidential Documents

Title 3—

The President

Notice of November 8, 1988

Continuation of Iran Emergency

On November 14, 1979, by Executive Order No. 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**, most recently on November 10, 1987. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1988. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
November 8, 1988.

[FR Doc. 88-26301
Filed 11-9-88; 11:58 am]
Billing code 3195-01-M

Editorial note: For the text of the President's message to the Congress, dated Nov. 8, on the continuation of the Iran emergency, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 45).

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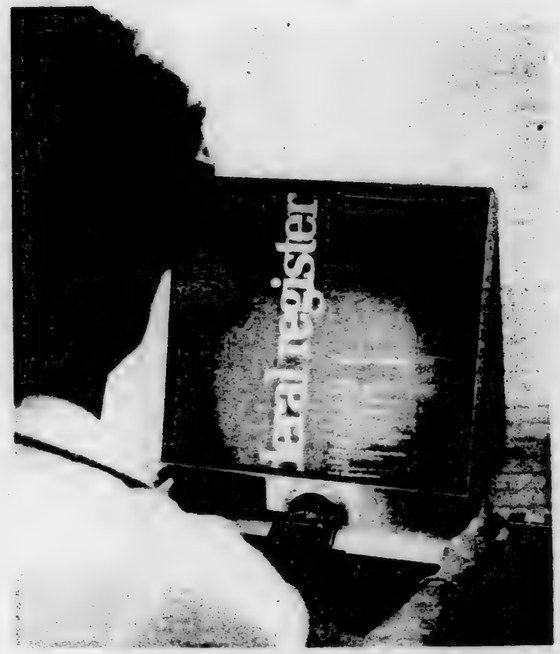
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Pages 45751-45880

federal register

Monday
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Rules and Regulations

Federal Register
Vol. 53, No. 219
Monday, November 14, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[FV-88-003]

Lemons Grown in California and Arizona; Revisions to Rules and Regulations Regarding Allotment Loan Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule requests comments on the revision of the administrative rules and regulations established under the marketing order covering lemons grown in California and Arizona to allow the Lemon Administrative Committee (Committee), the agency responsible for local administration of the lemon marketing order, to issue special allotments to lemon handlers. The lemon marketing order allows lemon handlers, when they are unable to utilize all or a portion of their own weekly allotment, to loan such allotment to other handlers. Such loans provide for repayment to loaning handlers within one year of the loan. In some instances, loaning handlers fail to receive allotment loan repayments from borrowing handlers because such handlers have left the lemon business subsequent to receiving allotment loans and are thereby unavailable to repay the loaned allotment. Special allotments would be issued by the Committee to loaning handlers only in such instances. This action was unanimously recommended by the Committee.

EFFECTIVE DATE: November 14, 1988. Comments which are received by December 14, 1988, will be considered prior to any finalization of this interim final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this interim final rule. Comments should be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 910 (7 CFR Part 910), as amended, regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three fiscal years of less than $500,000 and agricultural service firms, which include handlers, are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona lemon producers and handlers may be classified as small entities.

Section 910.52 of the lemon marketing order authorizes the Secretary to establish, based on the recommendation of the Committee and other information, quantities of lemons which may be handled in fresh domestic markets (the United States and Canada) during any week of the fiscal year. Handlers earn the right to ship lemons to fresh domestic markets based on their prorate base, a measure of the lemons picked by them in relation to the number of lemons picked by other handlers both within their own and other districts. Their prorate bases, when applied to the level of total shipments established by the Secretary for a particular week, result in allotments issued to them by the Committee. Such allotments represent the relative number of cartons handlers may ship to fresh domestic markets during the specified week.

Section 910.59 of the order provides that, whenever prorate bases have been established and allotments have been issued to handlers, handlers may loan all or a portion of their allotment to other handlers. Handlers may enter into allotment loan agreements which require the repayment of loaned allotment within one year of the date of the loan. Loans must be reported to the Committee within 48 hours of the time when loan agreements are entered into. Allotment loans may be made between handlers within the same district or to handlers of lemons produced in another district. Inter-district loans are usually arranged directly between handlers, although the Committee may be requested to arrange the loan. Inter-district loans must be arranged by the Committee.

Paragraph (e) of § 910.59 authorizes the Committee, with the approval of the Secretary, to adopt procedural rules and regulations to effectuate allotment loan provisions. Section 910.159 of the administrative rules and regulations of the order describes procedures currently in effect. Such procedures cover topics such as loan payback dates, confirmation of loans to the Committee, the Committee's role in arranging loans, arrangements when loan requests

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exceed loan offers and arrangements when loan offers exceed loan requests. The Committee has unanimously requested that this section be revised to recognize an emergency condition that has arisen in the California-Arizona lemon industry.

Currently, there are no provisions for the repayment of allotment loans to handlers who have loaned allotment to other handlers who, subsequent to borrowing allotment, cease operations in a particular lemon district or otherwise leave the lemon business by sale of their business to another handler or business failure. Unrepaid allotment loans represent a financial loss to loaning handlers. Handlers plan their business operations in anticipation of loan repayments on scheduled dates and sales may thus be lost. This is inequitable to such loaning handlers, since their prorate bases earned them the right to ship such lemons.

In the past, there have been only a minimal number of handlers who have left the lemon business with outstanding allotment loans to be repaid. However, the Committee reports that during the 1988–89 season there have been seven handlers who have ceased operating in a particular district or who have gone out of business entirely. Such handlers cumulatively left a total of 45,000 cartons (45 cars) of allotment loans outstanding and the majority of the loan repayment dates are from the beginning of October through mid-December of the current fiscal year.

Although 45 cars of allotment is not significant at the aggregate industry level, it could be quite substantial to individual handlers. Failure to receive repayment of a loan could significantly affect the operation of such handlers and could have a serious financial impact. Thus, immediate action is required to prevent individual handlers from incurring financial losses.

The Committee, at its September 20, 1988, meeting, unanimously recommended that it should be authorized to issue special allotments to those handlers who would have allotment loan repayments lost to them because the borrowing handlers ceased operations in a particular district or went out of business. The level of such special allotments should be included by the Committee in their prorate recommendations to the Secretary of the number of cartons of lemons deemed advisable to be handled by all handlers during a particular week of the fiscal year, but should not be utilized in the calculation of regular allotments to be issued to all handlers during the particular prorate week. This will prevent other handlers from being penalized by having their level of shipments reduced by the amount of special allotment issued.

The Committee should monitor all loan arrangements and promptly notify any handler prior to the end of any prorate period when the Committee has reason to believe that a previously approved allotment loan cannot or will not be repaid by a borrowing handler. Handlers so notified by the Committee should promptly apply to the Committee by telephone or in person for repayment of the allotment loans. Handlers should provide their name, address, and the number of cartons of loan repayment requested from the Committee. This will allow the Committee to adequately evaluate the need for the issuance of special allotments during any particular prorate week.

The Committee has also recognized that the possibility exists for handlers with outstanding unpaid allotment loans to make requests to the Committee of a substantial volume of allotment loan repayments during any one week of the fiscal year. A substantial volume which needs to be repaid in any one week could result in excess supplies of lemons being made available to the fresh domestic market which could result in depressed prices and decreased returns to producers. Thus, the Committee has also recommended that the issuance of special allotments to repay allotment loans be limited to no more than 2.5 percent of the quantity recommended by the Committee to the Secretary of the total number of cartons to be handled by all handlers during a particular prorate week. Should this limitation prevent 100 percent of the loans to be repaid during a particular week, the Committee should apportion the special allotments issued among all requesting handlers so that the amount received by each requesting handler bears the same ratio to the total amount of special allotment issued as each requesting handler's average weekly pick bears to the total of all requesting handlers' average weekly picks for the particular prorate week. This will result in an equitable distribution of such special allotments. Should this procedure be necessary, the Committee should also be authorized to extend the payback periods, upon suitable notification to the handlers, to such subsequent prorate weeks as are necessary to pay back the full requested amounts.

A Notice of Recommended Decision which was published in the August 7, 1985, issue of the **Federal Register** [50 FR 31850], contained a proposal similar to the action discussed herein. That formal rulemaking proceeding covers 29 material issues and has not yet been completed. This action does not require an amendment to the order to implement and, in light of the emergency situation currently facing the lemon industry, should not be delayed pending the outcome of that formal rulemaking proceeding.

After consideration of all available information and other available information, it is found that the amendment of § 910.159, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Based on available information, the Administrator of the AMS has determined that issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3594], the information collection provision that is included in this interim final rule has been approved by the Office of Management and Budget (OMB) and is assigned OMB No. 0581–0120.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** in that: (1) Allotment loans already have been entered into for the 1987–88 lemon marketing season; (2) interested persons were given an opportunity to submit information and views on this action at an open meeting; (3) handlers stand to incur financial losses in the absence of this action; and, (4) this action relieves restrictions on handlers by making more allotment available to them.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

For the reasons set forth in the preamble, 7 CFR Part 910 continues to read as follows:

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.159 is amended by adding a new paragraph (c) to read as follows:

Note.—This section will not be published in the Code of Federal Regulations.

Subpart—Rules and Regulations

§ 910.159 Allotment Loans.

* * * * *

(c) *Loan repayments made by the committee.* If borrowing handlers are unable to repay any allotment loan arranged in accordance with paragraphs (a) and (b) of this section due to cessation of business or cessation of business in a particular prorate district, the committee may accept applications for repayment relief from the loaning handlers.

(1) *Notice of non-payment.* The committee shall notify the loaning handlers prior to the end of any prorate period when it has reason to believe that loans previously approved cannot or will not be repaid by the borrowing handlers for the reasons specified in this section.

(2) *Application by lender for committee repayment.* Handlers who do not receive loan repayments for the reasons specified in this section shall have the right to apply to the committee in person or by telephone for repayment. Requests for committee repayment shall be made by 12:00 noon on Monday of the prorate week following the week during which notice of non-repayment is received. Handlers should provide their name, address, and the number of cartons of loan repayment requested from the committee. On the basis of all the information available, the committee may authorize repayment of all or a portion of the allotment loan for the following prorate week: *Provided,* That the total of such repayment to all requesting handlers does not exceed 2.5 percent of the allotment established for the prorate period when the repayments are to be made.

(3) *Procedure when repayment requests exceed allowable percentage.* If the quantity of requests for repayment exceeds 2.5 percent of the allotment established for the prorate period, the repayments granted by the committee shall be apportioned among requesting handlers so that the amount received bears the same ratio to the total repayment approved as each requesting handler's average weekly pick bears to the total of average weekly picks for such prorate week of all handlers requesting repayment by the committee.

(4) *Extension of repayment.* In the event the committee is unable to make all of the allotment loan repayments requested in any prorate week, the committee may extend any repayment period, after notifying the handler of the extension, to such subsequent prorate weeks as may be necessary to make the approved repayments within the limitations prescribed in paragraphs (c) (2) and (3) of this section.

Dated: November 9, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–26299 Filed 11–10–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Reg. 639]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 639 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period November 13 through November 19, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 639 (§ 910.939) is effective for the period November 13 through November 19, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on November 8, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 10–2 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.939 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

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§ 910.939 Lemon Regulation 639.

The quantity of lemons grown in California and Arizona which may be handled during the period November 13, 1988, through November 19, 1988, is established at 300,000 cartons.

Dated: November 9, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-26330 Filed 11-10-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 984

Expenses and Assessment Rate for Walnuts Grown in California

AGENCY: Agricultural Marketing Service.

ACTION: Final Rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 984 for the 1988–89 marketing year established under the walnut marketing order, which began August 1, 1988. The marketing order requires that the assessment rate for a particular marketing year shall apply to all walnuts certified as merchantable during such year. An annual budget of expenses was prepared by the Walnut Marketing Board (Board), the agency responsible for local administration of the walnut marketing order, and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of walnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The assessment rate recommended by the Board was derived by dividing the Board's anticipated expenses by the anticipated quantity of walnuts which will be certified as merchantable during the 1988–89 marketing year. Because that rate is applied to the quantity of walnuts which is actually certified as merchantable, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1988, through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is issued under marketing agreement and Order No. 984 (7 CFR Part 984), both as amended, regulating the handling of walnuts grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of walnuts grown in California subject to regulation under the walnut marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of walnut producers and handlers may be classified as small entities.

The walnut marketing order requires that the assessment rate for a particular marketing year shall apply to all walnuts certified as merchantable during such year. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of walnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by the anticipated quantity of walnuts which will be certified as merchantable during the marketing year. Because that rate is applied to the quantity of walnuts which is actually certified as merchantable, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment is usually acted upon by the Board before October 1 of each marketing year, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Board will have funds to pay its expenses.

The Board met on September 9, 1988, and unanimously recommended 1988–89 marketing order expenditures of $1,400,294 and an assessment rate of $0.85 per hundredweight of walnut kernels. In comparison, 1987–88 marketing year actual expenditures were $1,248,485 and the assessment rate was $0.70 per hundredweight of walnut kernels. Assessment income for 1988–89 is estimated to total as much as $1,620,303 based on an estimated crop of 190,623,890 kernelweight pounds of walnuts. Thus, estimated assessment income exceeds the recommended level of marketing order expenditures for the current year. Due to this year's crop conditions, the Board believes the actual yield of merchantable walnuts in the 1988–89 year is likely to be lower than the initial crop estimate of 190,623,890 kernelweight pounds. Thus, the assessment rate is established at a level adequate to meet the Board's anticipated expenses in the event that the total crop in the current year is less than the estimated figure. However, if the estimated yield is achieved, and there is extra income from assessments above marketing order expenditures for the year, such funds may be used temporarily by the Board during the first five months of the 1989–90 marketing year, but must be made available to the handlers from whom collected within that period.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 984.340 and is based on Board recommendations and other information. A proposed rule was published in the October 6, 1988, issue of the **Federal Register** (53 FR 39307). Comments on the proposed rule were invited from interested persons until October 17, 1988. No comments were received.

After consideration of the information and recommendations submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Board at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 984

California, Marketing agreements and orders, and Walnuts.

For the reasons set forth in the preamble, a new § 984.340 is added as follows:

1. The authority citation for 7 CFR Part 984 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Add a new § 984.340 to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations.]

PART 984—WALNUTS GROWN IN CALIFORNIA

§ 984.340 Expenses and assessment rate.

Expenses of $1,400,294 by the Walnut Marketing Board are authorized, and an assessment rate of $0.0085 per kernelweight pound of merchantable walnuts is established for the marketing year ending July 31, 1989. Unexpended funds may be used temporarily during the first five months of the subsequent marketing year, but must be made available to the handlers from whom collected within that period.

Dated: November 8, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-26253 Filed 11-10-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1951

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Program Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule, Correction.

SUMMARY: Farmers Home Administration is correcting certain Attachments to Exhibit A to Subpart S of Part 1951 of its regulations to ensure that these attachments fully reflect the provisions of the new regulations.

DATES: Effective November 14, 1988. Any comments on this correction must be submitted by December 14, 1988.

ADDRESS: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at this address.

FOR FURTHER INFORMATION CONTACT: Glenn J. Hertzler, Jr., Assistant Administrator, Farmer Program, Farmers Home Administration, USDA, Room 5019, Washington, DC 20250, Telephone: (202) 447-4671.

SUPPLEMENTARY INFORMATION: On September 14, 1988, Farmers Home Administration published an Interim Rule to implement the changes to its regulations necessary to implement the Agricultural Credit Act of 1987, with a request for comments to be submitted no later than November 14, 1988. 53 FR 35638 et seq. The new loan servicing system established in this Interim Rule contemplates that borrowers can request a meeting to consider action to cure non-monetary defaults and, at the same time, request loan servicing to correct monetary defaults (See, e.g., the discussion at 53 FR 35658–59).

The correction to the Notice (Attachment 3 to Exhibit A) set out in paragrpah 2, below, is intended to make it clearer that both requests can be made at the same time, i.e., that borrowers are not obliged to choose between one or the other form of relief. The amendment to the response Notices (Attachments 4, 8, and 10 to Exhibit A) re-emphasizes this same point by reminding borrowers that they can check more than one of the boxes on the response forms.

While Farmers Home Administration is not ordinarily required by law to publish changes to its forms when such changes are made solely to conform those forms to the provisions of its regulations, publication is being made in this instance because of the specific provisions of 7 U.S.C. 1981d(c), enacted by section 605 of the Agricultural Credit Act of 1987, which states that these notices and response forms must "be contained in the regulations implementing this title". An opportunity for further comment on these corrections is being given because of the unusual importance of the forms. These forms are also within the scope of the comments requested by Farmers Home Administration on the Interim Rule published on September 14, 1988, and final action in this matter may deal with comments made in response to that notice as well as to this one.

List of Subjects in 7 CFR Part 1951

Loan Programs—Agricultural, Rural areas.

Accordingly, the Farmers Home Administration is correcting Attachments 3, 4, 8 and 10 to Exhibit A to 7 CFR Subpart 1951–S, published September 14, 1988, 53 FR 35742–45, as follows:

PART 1951—[AMENDED]

1. The authority citation for 7 CFR Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Exhibit A—Notice of the Availability of Loan Service Programs For Delinquent Farm Borrowers [Amended]

2. Correct Attachment 3 to Exhibit A, under the heading "Steps You Can Take Before FmHA Accelerates Your Loans," by adding, after the existing text, the following new text: "You can also ask for a meeting. At this meeting you can explain why you think FmHA's records, as indicated on this Notice, are wrong. You can also suggest things you can do to correct these problems, so as to avoid acceleration and foreclosure. You can request both loan servicing and a meeting at the same time. For example, if this Notice states that you are delinquent, and also have disposed of property without FmHA's written consent, you can request servicing to deal with the delinquency problem and request a meeting on the question of unauthorized disposition of property."

3. Correct Attachments 4, 8, and 10 to Exhibit A, by adding, immediately above Box (1), as it appears on each Notice, the following text: "(check one or more of the following boxes)".

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Signed at Washington, DC, on November 8, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-26246 Filed 11-10-88; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; Docket No. R-0646]

Equal Credit Opportunity; Preemption of New York Law

AGENCY: Board of Governors of Federal Reserve System.

ACTION: Preemption determination.

SUMMARY: The Board is publishing in final form a determination that a certain provision in New York law is inconsistent with the Equal Credit Opportunity Act and Regulation B and therefore is preempted.

EFFECTIVE DATE: November 11, 1988.

FOR FURTHER INFORMATION CONTACT: Linda Vespereny, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) General

Section 705(f) of the Equal Credit Opportunity Act authorizes the Federal Reserve Board to determine whether an inconsistency exists between a provision of the act and a state law relating to credit discrimination. If a state law is inconsistent and provides no greater protection for credit applicants than does the federal law, the state law is preempted to the extent of the inconsistency, and creditors in that state may not follow the inconsistent state requirement.

The Board received a request, made on behalf of an organization headquartered in the Republic of China, for a preemption determination concerning New York state law. The organization plans to operate a fund that will guarantee loans made to overseas Chinese residing in the United States when they borrow money from the U.S. branches of Chinese banks or from U.S. banks that have Chinese capital. The organization proposes to establish this guarantee program in keeping with provisions of the Equal Credit Opportunity Act that permit a creditor offering a special-purpose credit program (as defined by the Board's Regulation B, which implements the act) to take into account a factor—such as national origin—whose consideration is normally barred by the act and regulation.

In response to this request the Board examined New York law, Article 15, section 296-a to determine whether its provisions are inconsistent with the ECOA and the Board's Regulation B. On July 18, 1988, the Board published a preliminary determination (53 FR 26887). In that notice, the Board proposed to preempt the New York law to the extent that it bars a creditor from offering a special-purpose credit program. One comment on the proposed detemination was received during the comment on the proposed determination was received during the comment period, which closed on September 12, 1988.

The Board is now publishing a final determination regarding the New York law under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR Part 265).

(2) Analysis of ECOA, Regulation B, and New York Law

The ECOA and Regulation B prohibit discrimination in any credit transaction on the basis of race, color, national origin, religion, sex, marital status, age, receipt of income from public assistance programs, or the good-faith exercise of any rights under the Consumer Credit Protection Act. However, § 202.8 of the regulation (which implements section 701(c) of the ECOA) permits a creditor to extend special-purpose credit and to consider one or more common characteristics of program participants (for example, race or national origin) when extending credit under these programs.

Under § 202.8, creditors are allowed to offer credit assistance programs that are authorized by federal or state law, or that are established by a not-for-profit organization, for the benefit of an economicially disadvantaged class of persons. It also allows a not-for-profit organization to offer credit assistance programs for the benefit of its members. In addition, for-profit organizations may provide special-purpose credit programs to meet special social needs if the programs are administered pursuant to a written plan that identifies the class of persons the particular program is designed to benefit. As mentioned earlier, participants of these programs may be required to share one or more common characteristics, such as race or national origin. If participants are required to possess a common characteristic, the creditor may request and consider information regarding that particular characteristic.

Under section 705 of the ECOA and § 202.11 of Regulation B, state law provisions that are inconsistent with the requirements of the act and regulation are preempted. Section 202.11(b)(1)(v) of Regulation B also provides that a state law is inconsistent with the requirements of the federal law to the extent that the state law prohibits inquires necessary to establish or administer a special-purpose credit program as defined by § 202.8.

The Board has made a comparison of New York statute section 296-a(1) (b) and (c) to regulation B's Section 202.8. The establishment of a special-purpose credit program, though permissible under the ECOA and § 202.8, is prohibited under New York law, which bars—without exception—discrimination on the basis of the race, creed, color, national origin, sex, or marital status of an applicant or of a class of applicants. Furthermore, creditors are expressly prohibited under New York law from inquiring about these characteristics.

(3) Determination and Effect of Preemption

Based on its analysis, the Board has determined that the New York law on credit discrimination is inconsistent with federal law, and that it is preempted by the ECOA and Regulation B to the extent of the inconsistency. Thus, the state of New York is barred from prohibiting special-purpose credit programs and related inquires that are permissible under federal law.

The Board makes no determination, however, as to whether any particular credit program (including the program which the party requesting this preemption determination proposes to establish) qualifies as a special-purpose credit program under the ECOA and Regulation B. As explained in comment 8(a)-1 of the official staff commentary to Regulation B (12 CFR Part 202, Supp. 1), the agency or creditor administering or offering the credit program must make that determination.

Board of Governors of the Federal Reserve System, November 4, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-26140 Filed 11-10-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWP-15]

Removal of Transition Area, South Kauai, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the transition area located at South Kauai, HI. The instrument approach serving Port Allen Airport has been cancelled. No instrument approaches are conducted to this airport. The effect of this rule is to return to public use that airspace no longer required for instrument approaches.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

SUPPLEMENTARY INFORMATION:

History

On August 31, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the transition area at South Kauai, HI (53 FR 33502). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations removes the transition area at South Kauai, HI. No instrument approaches are conducted to Port Allen Airport. The airspace is being returned to public use.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

South Kauai, HI [REMOVED]

Issued in Los Angeles, California, on October 31, 1988.

Merle D. Clure,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-26169 Filed 11-10-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASO-17]

Revision to Transition Area, St. George, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the St. George, South Carolina, Transition Area by correcting the geographic position coordinates of the St. George Municipal Airport and deleting the arrival area extension predicated on the Indian Field (RBN) Radio Beacon. The arrival area extension was designated to afford airspace protection for a planned standard instrument approach procedure (SIAP) utilizing the RBN. The Indian Field RBN was never commissioned. Therefore, the arrival area extension is not required.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On September 13, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the St. George, South Carolina, Transition Area (53 FR 35324). The proposed revision was to correct the geographic position coordinates of the St. George Municipal Airport and to delete the arrival area extension based on the Indian Field RBN. A NDB standard instrument approach procedure had been planned based on the RBN. However, the Indian Field RNB was never commissioned. Therefore, the arrival area extension serves no purpose and is not required for protection of IFR aeronautical operations. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the St. George, South Carolina, transition area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; Feburary 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

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PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.18 [Amended]

2. Section 71.181 is amended as follows:

St. George, SC [Amended]

By removing the existing description and substituting the following: "That airspace extending upward from 700' above the surface within a 5.5-mile radius of St. George Municipal Airport (Lat. 33°11'40"N; Long. 80°30'31"W).

Issued in East Point, Georgia, on November 1, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-26170 Filed 11-10-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 88-ACE-8]

Change to Times of Designation for Restricted Areas R-3601A and R-3601B Brookville, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action increases the published times of designation for Restricted Areas R-3601A and R-3601B Brookville, KS. Increased training requirements have resulted in expanded use of these areas through daily Notice to Airmen (NOTAM) action. This action revises the published times to reflect actual current usage and negates the need for issuing daily NOTAM's.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On August 11, 1988, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to expand the published times of designation for Restricted Areas R-3601A and R-3601B Brookville, KS, in order to more accurately indicate the actual times of use for these areas (53 FR 30298). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.36 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations expands the published times of designation for Restricted Areas R-3601A and R-3601B Brookville, KS. The military has increased their use of the areas requiring daily issuance of a Notice to Airmen (NOTAM) as authorized in the current time of designation. This action updates the published times of use shown on aeronautical charts and deletes the need for daily NOTAM's.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.36 [Amended]

2. Section 73.36 is amended as follows:

R-3601A Brookville, KS [Amended]

By removing the present time of designation and substituting the following: Time of designation. Monday, Wednesday, Friday and Saturday, 0800 to 1800 local time; Tuesday and Thursday, 0800 to 2230 local time; other times by NOTAM 24 hours in advance.

R-3601B Brookville, KS [Amended]

By removing the present time of designation and substituting the following: Time of designation. Monday, Wednesday, Friday and Saturday, 0800 to 1800 local time; Tuesday and Thursday, 0800 to 2230 local time; other times by NOTAM 24 hours in advance.

Issued in Washington, DC, on November 3, 1988.

Harold W. Becker,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-26171 Filed 11-10-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87-17-000]

Availability of Revised Print Software for FERC Form Nos. 8 and 11

Issued November 7, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Availability of Revised Print Software for FERC Form Nos. 8 and 11.

SUMMARY: Revised software to print FERC Form Nos. 8 and 11 data required to be filed on an electronic medium in accordance with Order Nos. 493 (53 Fed. Reg. 15,023 (Apr. 27, 1988)) and 493-A (53 FR 30,027 (Aug. 10, 1988)) is now available. The software released today contains revisions adopted at the Order No. 493 implementation conference on September 12 and 13, 1988. In addition, certain deficiencies in the earlier version have been corrected.

DATE: The revised software is available as of November 7, 1988.

ADDRESSES: Requests for copies of the software and the accompanying documentation, if desired, should be directed to: Public Reference Branch, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 1000, Washington, DC 20426, (202) 357-8118.

FOR FURTHER INFORMATION CONTACT:

Craig Hill, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7010, Washington, DC 20426, (202) 357-9039

or

Brooks Carter, (202) 357-8995.

SUPPLEMENTARY INFORMATION: The software programs to produce a hard copy printout of FERC Form Nos. 8 and 11, when filed in accordance with the record formats for those forms as reissued on October 7, 1988, are now available.

The programming language used for the print software is ANSI 1974 Standard COBOL. The diskette for each form contains the COBOL source code and an executable file which can be run on an IBM-compatible PC with at least 384K RAM and DOS 3.0 (or later version). Instructions on the use of the software, a test data file and a sample output file are also included on each diskette. The instructions, sample output and COBOL source code are also available on hard copy.

The software is available from the Commission's Public Reference Branch in Washington, DC. Persons requesting this software, in person or by written request, should refer to: "RM87-17-000: Print Software for FERC Form Nos. 8 and/or 11 (November 7, 1988 release)" and specify if they wish to order a copy of the diskettes, the hard copy material, or both. Although the software is available without charge, the Commission has a fee for photocopying and there is a fee of $5.00 per diskette.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26095 Filed 11-10-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Diethylcarbamazine Plus Oxibendazole Chewable Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Norden Laboratories, Inc. The supplement provides for an additional diethylcarbamazine/oxibendazole chewable tablet size to treat dogs for heartworms and hookworms.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2871.

SUPPLEMENTARY INFORMATION: Norden Laboratories, Inc., Lincoln, NE 68501, filed supplemental NADA 136-483 providing for an additional size diethylcarbamazine citrate/oxibendazole chewable tablet. The supplement provides for a chewable tablet containing 120 milligrams (mg) of diethylcarbamazine citrate combined with 91 mg of oxibendazole. Approved are tablets containing 60 and 45 mg each and 180 and 136 mg each of diethylcarbamazine citrate with oxibendazole, respectively. The supplement is approved and the specification in 21 CFR 520.623(a) is revised to provide for the additional tablet size.

Approval of this supplement is an administrative action that did not require generation of new effectiveness or safety data. Therefore, a freedom of information summary (pursuant to 21 CFR 514.11(e)(2)(ii)) is not required.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FROM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.623 is amended by revising paragraph (a) to read as follows:

§ 520.623 Diethylcarbamazine citrate, oxibendazole chewable tablets.

(a) *Specifications.* Each tablet contains either 60, 120, or 180 milligrams of diethylcarbamazine citrate with 45, 91, or 136 milligrams of oxibendazole, respectively.

* * * * *

Dated: November 3, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 88-26209 Filed 11-10-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Repository Corticotropin Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Anthony Products Co. The NADA provides for the use of repository corticotropin injection as a diagnostic aid to test for adrenal dysfunction in dogs and for therapeutic use to stimulate the adrenal cortex where there is a general deficiency of corticotropin (ACTH) in dogs and cats.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Anthony Products Co., 5600 Peck Rd., Arcadia, CA 91006, filed NADA 140-563 which provides for the use of repository corticotropin injection containing 40 or 80 U.S.P. units of corticotropin per milliliter. The drug is for use by or on the order of a licensed veterinarian. The drug is used as a diagnostic aid to test for adrenal dysfunction in dogs and for therapeutic use to stimulate the adrenal cortex where there is a general deficiency of ACTH in dogs and cats. The NADA is similar to one in 21 CFR 522.480, originally approved December 17, 1952. The product was the subject of a National Academy of Sciences/National Reserach Council (NAS/NRC) Drug Efficacy Study Implementation (DESI) report published in the Federal Register of May 13, 1969 (34 FR 7621). That report found the drug effective for stimulation of the adrenal cortex where there is a general deficiency of ACTH and as a therapeutic agent for primary bovine ketosis. Approval of a

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supplement reflecting compliance with the conclusions of the NAS/NRC DESI review was published April 8, 1972 (37 FR 7079). The new approval is based on the pioneer product meeting the U.S.P. standards. The NADA is approved and 21 CFR 522.480 is amended to reflect the approval. The section is also amended to reflect that the therapeutic indications for use have been reviewed by NAS/NRC and found to be effective. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 522.480 is amended by redesignating existing paragraphs (a), (b), (c), (d), (d) (1), (2), and (3) as paragraphs (a) (1), (2), (3), (4), (4) (i), (ii), and (iii), respectively, by revising "ACTH" to read "corticotropin (ACTH)" appearing in the first sentence of newly redesignated paragraph (a)(4)(i), and by adding new paragraphs (b) and (c) to read as follows:

§ 522.480 Repository corticotropin injection.

* * * * *

(b)(1) *Specifications.* The drug conforms to respository corticotropin injection U.S.P. It contains 40 or 80 U.S.P. units per milliliter.

(2) *Sponsor.* See No. 000864 in § 510.600(c) of this chapter.

(3) *Conditions of use.* (i) For intramuscular injection in dogs as a diagnostic aid to test for adrenal dysfunction. For intramuscular or subcutaneous injection in dogs and cats for stimulation of the adrenal cortex where there is a general deficiency of ACTH.

(ii) For diagnostic use: Administer at one unit per pound of body weight intramuscularly. For therapeutic use: Administer at one unit per pound of body weight intramuscularly or subcutaneously, initially, to be repeated as indicated.

(iii) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(c) *National Academy of Sciences/National Reserach Council (NAS/NRC) status.* The therapeutic indication for use has been reviewed by NAS/NRC and found to be effective. Applications for this use need not include effectiveness data as specified in § 514.111 of this chapter, but may require bioequivalency and safety information.

Dated: November 3, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–26159 Filed 11–10–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Correction of Oil and Gas Royalty Valuation Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its final revised oil and gas product valuation regulations that were published in the **Federal Register** on January 15, 1988 (53 FR 1184 and 53 FR 1230) for technical corrections and clarification. Since adoption of the final regulations, it was discovered that several provisions were worded in a manner such that they were inconsistent with MMS's intent as discussed in the preamble to the final rules. Consequently, MMS is amending the language of those provisions to clarify MMS's intent.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS–662, Building 85, Denver Federal Center, Denver, Colorado 80225, telephone (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rule amendment is John L. Price of the Royalty Valuation and Standards Division of the Royalty Management Program, MMS.

I. Introduction

During a subsequent review of the revised regulations governing oil and gas product valuation that were adopted on January 15, 1988, it was discovered that several provisions were worded in a manner such that they were inconsistent with MMS's intent as discussed in the preamble to the final rules. Consequently, MMS is amending the language of those provisions with this final rulemaking action to clarify MMS's intent. The amendments are not consistent substantive and are therefore being implemented as a final rule without an opportunity for comment.

II. Section-by-Section Discussion of Amendments

Section 206.102 Valuation Standards (Oil)

In the final rule adopted at § 206.102(c)(1), MMS included the provision that if the lessee made arm's-length purchases or sales at different postings or prices, then the volume-weighted average price for the purchases or sales for the production month reported on Form MMS–2014 would be used. During discussions with industry subsequent to the publication of the final rules, it became apparent that the inclusion of the words "reported on Form MMS–2014" was confusing as to MMS's intent. Some parties questioned whether those words applied to prices reported on the Form MMS–2014 or whether they applied to the production month reported on the Form MMS–2014.

The intent, as discussed at 53 FR 1202, was that the volume-weighted average price for all purchases or sales made by the lessee during the month of production were to be used in paying its royalty. It was not intended that the lessee use the volume-weighted average of only those prices reported on the Form MMS–2014 in valuing its oil. Therefore, in an effort to remove any ambiguity in the final rules, MMS is removing the words "reported on Form MMS–2014" from the final rule at § 206.102(c)(1).

Section 206.104 Transportation Allowances—General (Oil)

Section 206.104(a)(2) includes a reference to a contract between a Royalty-In-Kind purchaser of OCS royalty oil and "Indian lessor." Because Indians are not lessors of OCS leases, MMS is removing the words "or Indian lessor" from the end of the sentence in § 206.104(a)(2).

Section 206.105 Determination of Transportation Allowances (Oil)

As a result of comments received from States, Indians and Congress, MMS included two provisions that outline those circumstances under which values and/or transportation costs under arm's-length contracts would not be acceptable. (See §§ 206.102(b)(1)(ii) and (iii) and 206.105(a)(ii) and (iii)). As stated in the preamble to the final rules at 53 FR 1209, these provisions were to be applied to transportation allowances in essentially the same manner as they were to be applied in the determination of oil values.

Section 206.102(b)(1)(iii) includes the requirement that MMS give a lessee an opportunity to respond to preliminary determinations that its value under an arm's-length contract may be unacceptable for royalty purposes. While the provisions in § 206.105(a) were intended to be essentially identical, the requirement that MMS give a lessee an opportunity to respond before MMS made a determination that its transportation costs under an arm's-length contract were unacceptable was inadvertently omitted. The change being made adds this requirement to § 206.105(a)(1)(iii).

The final rule adopted at § 206.105(b)(5) includes the provision that allows the lessee to use as its transportation allowance, with approval, its tariff for the transportation system approved by the Federal Energy Regulatory Commission (FERC) or a State regulatory agency. The approval by MMS constitutes an exception to the requirement that the lessee compute actual costs under § 206.105(b)(1) through (b)(4). This provision was adopted in an effort to reduce the unnecessary burden to recompute costs for another government agency. However, certain protections against unreasonable high tariffs were included in the final rule.

In carrying this rationale throughout the final rules, MMS provided in § 206.105(c)(2)(viii) that a lessee authorized to use its tariff as its transportation cost would follow the same reporting requirements used in reporting transportation allowances under arm's-length contracts. However, the final rules only specified the use of these reporting requirements when MMS approves the use of FERC-approved tariffs. It was MMS's intent that approval of the use of a State regulatory agency-approved tariff would also provide for the use of the same reporting requirements as under arm's-length contracts. Thus, § 206.105(c)(2)(viii) is being changed accordingly.

The MMS is modifying § 206.105(e)(1) to clarify MMS's intent that an allowance must be deducted on a monthly basis even though the allowance form reporting period is based on a longer period. It was not MMS's intent that a lessee could deduct the total of a yearly allowance on the January Form MMS–2014 report, deduct no allowances on the February through December Form MMS–2014 reports, and meet the requirements of the regulations. A lessee may only deduct the allowance that is applicable to the monthly volume upon which royalty is due as reported on Form MMS–2014.

Section 206.157 Determination of Transportation Allowances (Gas)

As discussed above, MMS included in the final oil valuation rules at § 206.105(b)(5) a provision allowing the use of the lessee's tariff, with certain limitations, as its transportation costs. A similar provision was also included in the final gas valuation rules at § 206.157(b)(5). However, the conditions under which MMS would deny the use of a tariff were not properly worded. The correct wording should have been identical to the wording contained in § 206.105(b)(5), as explained in the preamble to the final gas valuation regulations at 53 FR 1261. Consequently, MMS is amending § 206.157(b)(5) to reflect the provision that MMS stated that it was adopting.

The MMS is modifying § 206.157(c)(2)(viii) in the same manner and for the same reason as it modified § 206.105(c)(2)(viii), as discussed above.

The MMS is modifying § 206.157(e)(1) in the same manner and for the same reasons that it modified § 206.105(e)(1), as discussed above.

Section 206.159 Determination of Processing Allowances (Gas)

The MMS is modifying § 206.159(a)(1)(iii) by making grammatical corrections only. Two sentences will be created out of the existing one by inserting a period, and four duplicative words will be removed.

The MMS is also adding the requirement that a Schedule 1 be submitted with the Form MMS–4109 required under § 206.159(c)(1)(iii). This change conforms to the instructions contained on actual copies of Form MMS–4109.

The MMS is modifying § 206.159(e)(1) in the same manner and for the same reasons that it modified § 206.105(e)(1), as discussed above.

III. Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are technical corrections only and not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final rule amendment. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make these amendments effective upon publication in the **Federal Register**.

Executive Order 12291

The Department of the Interior (Department) has hereby determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This final rulemaking is to correct certain technical inaccuracies in the Federal and Indian oil and gas royalty valuation regulations that were issued on January 15, 1988 (53 FR 1184 and 53 FR 1230), and to clarify the intent of the Department under a few of the provisions of those final rules.

Regulatory Flexibility Act

Because these amendments primarily clarify existing regulations, there are no additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the Department has hereby determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act. (5 U.S.C. 601 et seq.)

Paperwork Reduction Act of 1980

This rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major

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Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: October 19, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set out in the preamble, 30 CFR Part 206 is amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (c)(1) of § 206.102 under Subpart C is amended by removing the words "reported on Form MMS–2014" from the last sentence. The revised last sentence reads as follows:

§ 206.102 Valuation standards.

* * * * *

(c) * * *

(1) * * * If the lessee makes arm's-length purchases or sales at different postings or prices, then the volume-weighted average price for the purchases or sales for the production month will be used;

* * * * *

3. Paragraph (a)(2) of § 206.104 under Subpart C is amended by removing the words "or Indian lessor" from the end of the sentence. The revised sentence reads as follows:

§ 206.104 Transportation allowances—general.

(a) * * *

(2) Transport oil from an offshore lease to the point off the lease; provided, however, that for oil taken as RIK, a transportation allowance shall be provided for the reasonable actual costs incurred to transport that oil to the delivery point specified in the contract between the RIK oil purchaser and the Federal Government.

* * * * *

4. Section 206.105 under Subpart C is amended by adding a new last sentence to paragraph (a)(1)(iii), and revising paragraphs (c)(2)(viii) and (e)(1). The revised paragraphs read as follows:

§ 206.105 Determination of transportation allowances.

(a) * * *

(1) * * *

(iii) * * * When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

* * * * *

(c) * * *

(2) * * *

(viii) If the lessee is authorized to use its FERC-approved or State regulatory agency-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

* * * * *

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be entitled to a credit without interest.

* * * * *

5. Section 206.157 under Subpart D is amended by revising paragraphs (b)(5), (c)(2)(viii), and (e)(1). The revised paragraphs read as follows:

§ 206.157 Determination of transportation allowances.

* * * * *

(b) * * *

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS will grant the exception only if the lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission (FERC) (for both Federal and Indian leases) or a State regulatory agency (for Federal leases). The MMS shall deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if: (i) No FERC or State regulatory agency cost analysis exists and the FERC or State regulatory agency, as applicable, has declined to investigate pursuant to MMS timely objections upon filing; and (ii) the tariff significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) * * *

(2) * * *

(viii) If the lessee is authorized to use its FERC-approved or State regulatory agency-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

* * * * *

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be entitled to a credit without interest.

* * * * *

6. Section 206.159 under Subpart D is amended by revising paragraphs (a)(1)(iii) and (e)(1), and adding the words "and Schedule 1" after MMS–4109 in paragraph (c)(1)(iii). The revised paragraphs read as follows:

§ 206.159 Determination of processing allowances.

(a) * * *

(1) * * *

(iii) If MMS determines that the consideration paid pursuant to an arm's-length processing contract does not reflect the reasonable value of the processing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and lessor, then MMS shall require that the processing allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the processing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's processing costs.

* * * * *

(c) * * *

(1) * * *

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page 1 of Form MMS–4109 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

* * * * *

(e) *Adjustments.* (1) If the actual gas processing allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a processing allowance. If the actual processing allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance period, the lessee shall be entitled to a credit without interest.

* * * * *

[FR Doc. 88–26175 Filed 11–10–88; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3474–2]

Approval and Promulgation of State Implementation Plan; North Dakota; Stack Height Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving stack height regulations for the State of North Dakota which were submitted by the Governor on January 26, 1988. The State submittal is in response to EPA's July 8, 1985, stack height regulation promulgation. The July 8, 1985, stack height regulations were challenged by the Natural Resource Defense Council (NRDC) and resulted in the remand of three provisions of the regulations to EPA for reconsideration. The remand is not believed to significantly affect the North Dakota submittal. EPA's approval is given with the understanding that should EPA promulgate revisions to the stack height regulations as a result of the remand, the State will and has agreed to modify its regulations accordingly.

DATES: This action will be effective on January 13, 1989, unless notice is received by December 14, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 293–1764, (FTS) 564–1764.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (CAA). These regulations were challenged in the Courts for the next two years and resulted in revisions to the stack height regulations. The revisions were promulgated on July 8, 1985 (50 FR 27892), and redefined a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts. The Federal regulations also modified some of the bases for determining good engineering practice (GEP) for stack height.

The July 8, 1985, promulgation required the State to (1) review and revise, as necessary, its State Implementation Plan (SIP) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. This action only pertains to item (1) above, revised regulations.

Stack Height Regulations

On April 18, 1986, Mr. Dana Mount, Division Director of Environmental Engineering, North Dakota Department of Health, submitted a letter of commitment to comply with the July 8, 1985, regulation requirement in all future State actions, new source reviews, and PSD actions.

In 53 FR 3052 (February 3, 1988), EPA acknowledged the commitment from North Dakota to comply with the Federal stack height regulations until the State adopted the required regulations and such revisions were approved by EPA.

On January 26, 1988, the Governor of North Dakota submitted "Revisions to the Implementation Plan for the Control of Air Pollution for the State of North Dakota". The submittal included the addition of and revision to several Air Pollution Control Rules and Regulations. This action pertains only to the addition of Chapter 33–15–18, Stack Heights.

Chapter 33–15–18 was added to North Dakota's rules and regulations effective October 1, 1987. This Chapter meets all the requirements of 40 CFR Part 51.118 and contains all necessary definitions relating to stack heights found in 40 CFR Part 51.100 (i.e., stack in existence, dispersion technique, excessive concentration, good engineering practice, nearby and stack) except "emission limitation/emission standard". North Dakota's definition of "emission standard" can be found in the North Dakota Air Pollution Control law, North Dakota Century Code (NCC), Chapter 23–25, Air Pollution Control. Although the definition of "emission standard" in NCC, Chapter 23–25, is not identical to that found in 40 CFR Part 51.100, it has the same intent. That is North Dakota has regulations that limit the emissions of air contaminants into the ambient air:

Chapter

33–15–03 Restriction of Emission of Visible Air Contaminants;
33–15–04 Open Burning Restrictions;
33–15–05 Emissions of Particulate Matter Restricted;
33–15–06 Emissions of Sulfur Compounds Restricted;
33–15–07 Control of Organic Compounds Emissions;
33–15–08 Control of Air Pollution from Vehicles and Other Internal Combustion Engines;
33–15–09 Emission of Certain Settleable Acids and Alkaline Substances Restricted; and
33–15–10 Control of Pesticides;
33–15–12 Standards of Performance for New Stationary Sources; and
33–15–13 Emission Standards for Hazardous Air Pollutants.

Immediately following promulgation, the July 8, 1985, regulations were challenged by the NRDC. On January 22, 1988, the U.S. Appeals Court for the D.C.

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Circuit issued its decision in the *NRDC v. Thomas* case (838 F.2d 1224) affirming the stack height regulations for the most part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and

3. Grandfathering pre-1979 use of the refined H + 1.5L formula [40 CFR 51.100(ii)(2)].

The remand is not believed to significantly affect the North Dakota submittal. EPA's approval is given with the understanding that should EPA promulgate revisions to the stack height regulations as a result of the remand, the State will modify its regulations accordingly. In a letter dated May 11, 1988, Dana Mount, Division Director of Environmental Engineering, committed to revise North Dakota's stack height regulations should the remand result in changes to the July 8, 1985, Federal stack height regulations. EPA interprets this to mean that should the regulations be revised, any permits issued in the interim that would be affected, will be revised accordingly. Such interpretation was confirmed with Dana Mount in a verbal discussion on July 6, 1988.

Final Action

EPA finds that the North Dakota stack height regulations satisfy 40 CFR Part 51. This action is a revision to an approved new source review program. Also, is view of the partial remand situation EPA is approving the State's regulation with the understanding that at such time as EPA modifies its regulations in response to the NRDC remand, the State must change its regulations and any affected permits to comply accordingly.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. Once notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 13, 1989.

EPA finds that good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from publication). This action may not be challenged later in proceedings to enforce its requirements (See CAA Section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Stack height, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of North Dakota was approved by the Director of the Federal Register on July 1, 1982.

Date: November 2, 1988.

Lee M. Thomas,

Administrator.

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart JJ—North Dakota

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—7642.

2. Section 52.1820 is amended by adding paragraph (c)(16) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(16) On January 26, 1988, the Governor submitted a plan adding Stack Height Regulations, Chapter 33–15–18.

(i) Incorporation by reference.

(A) Addition to North Dakota Air Pollution Control Rules Chapter 33–15–18, Stack Heights, was adopted on July 21, 1987 and effective on October 1, 1987.

3. Add a new § 52.1832 to read as follows:

§ 52.1832 Stack height regulations.

The State of North Dakota has committed to revise its stack height regulations should EPA complete rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). In a letter to Douglas M. Skie, EPA, dated May 11, 1988, Dana K. Mount, Director, Division of Environmental Engineering stated:

* * * We are submitting this letter to allow EPA to continue to process our current SIP submittal with the understanding that if EPA's response to the NRDC remand modified the July 8, 1985, regulations, EPA will notify the State of the rules that must be changed to comply with EPA's modified requirements. The State of North Dakota agrees to make the appropriate changes to its stack height rules.

[FR Doc. 88–25928 Filed 11–10–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 60 and 61

[FRL–3475–6]

Standards for Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); Delegation of Authority to the State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: This notice announces an expansion of previously-issued delegations of authority for the implementation and enforcement of the federal Standards of Performance for New Stationary Sources (NSPS), 40 CFR Part 60, and the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61. The action which involved the EPA Region VII office and the State of Missouri added the standards that are set forth in eight (8) NSPS and three (3) NESHAP Subparts to the NSPS and the NESHAP delegations of authority. The delegations now include many source categories and/or pollutants for which federal standards have been promulgated by the agency through July 1, 1987.

EFFECTIVE DATE: November 14, 1988.

ADDRESSES: All requests, reports, applications, submittals and such other communications which are required to be submitted under 40 CFR Part 60 or Part 61 (including the notifications required to be submitted under Subpart A of said regulations) for affected facilities or activities in Missouri should be sent to the Missouri Department of Natural Resources (MDNR), P.O. Box 176, Jefferson City, Missouri 65102. A copy of all Subpart A related notifications concerning said facilities or activities must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address (913/236–2896 or FTS: 757–2896).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the Environmental Protection Agency (i.e., EPA or the agency) to delegate to any state government concurrent authority to implement and enforce the standards promulgated by the agency under 40 CFR Part 60 and 40 CFR Part 61, respectively. When a delegation is issued, the agency retains concurrent authority to implement and enforce the delegated standards. The delegation basically shifts the primary responsibility for implementation and enforcement of the standards from the agency to the state government. In general, the NSPS regulations are "source category" oriented. The NESHAP regulations are "pollutant" oriented.

On October 29, 1984, the EPA regional office and the State of Missouri entered into a delegation of authority agreement whereby the state would automatically receive concurrent authority to implement and enforce federal NSPS and NESHAP standards and the delegable provisions relating to said standards upon the adoption of the standards by the state government (see 50 FR 933).

Prior to October 29, 1984, Missouri was delegated authority to implement and enforce the standards for numerous source categories and pollutants in various delegation and expansion of authority actions. These previous delegation and expansion of authority actions are not affected by the action described below.

Missouri recently updated its rules to incorporate, by reference, the provisions of 40 CFR Part 60 and Part 61 as in effect on July 1, 1987, except with regard to certain specified provisions, source categories and/or pollutants. The updating action, in effect, incorporated the standards for eight (8) additional NSPS source categories and for three (3) additional NESHAP pollutants that were promulgated by the agency over a three (3) year period. The effective date of the state's updating action was June 27, 1988. The MDNR informed the agency of its updating actions in a letter to the EPA regional office dated July 20, 1988.

The agency subsequently acknowledged the state's updating actions and the concurrent automatic expansion of the delegations of authority in a letter to MDNR dated October 3, 1988. The extension of authority occurred under the terms of the above-mentioned October 29, 1984, automatic delegation of authority agreement.

Interested individuals are informed that, as of June 27, 1988, the State of Missouri has EPA's authorization to implement and enforce the federally-established standards for the following additional source categories and/or pollutants.

NSPS

Subpart Db—Industrial/Commercial/Institutional Steam Generating Units;

Subpart Kb—Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984;

Subpart Na—Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction Is Commenced After January 20, 1983;

Subpart AAa—Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983;

Subpart JJJ—Petroleum Dry Cleaners;

Subpart KKK—Equipment Leaks of VOC from Onshore Natural Gas Processing Plants;

Subpart LLL—Onshore Natural Gas Processing: SO_2 Emissions; and,

Subpart PPP—Wool Fiberglass Insulation Manufacturing Plants.

NESHAP

Subpart N—Inorganic Arsenic Emissions from Glass Manufacturing Plants;

Subpart O—Inorganic Arsenic Emissions from Primary Copper Smelters; and,

Subpart P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.

Effective immediately, all reports, correspondence, and such other communications that are required to be submitted under the NSPS or NESHAP regulation for facilities or activities in Missouri affected by the amended delegations of authority should be sent to the Missouri Department of Natural Resources at the above address rather than to the EPA Region VII office, *except* as noted below.

A copy of each notification required to be submitted under Subpart A of 40 CFR Part 60 or Part 61, must *also* be sent to the attention of the Director, Air and Toxics Division, U.S. EPA Region VII, at the above address.

Each document and letter mentioned in this notice is available for public inspection at the Air Branch office of the EPA regional office.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Date: October 24, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88–26213 Filed 11–10–88; 8:45 am]

BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 11)]

Abandonment Regulations; Costing

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts a technical revision to its final rules governing the calculation of opportunity cost in abandonment proceedings (and return on investment in subsidy proceedings). Specifically, the revised rules would recognize income tax liabilities, if any, in the determination of the investment base used to compute opportunity cost and return on investment. This rule change is being implemented without notice and comment, since it has already been approved (but never implemented) in an earlier decision in this proceeding. *See Abandonment Regulations—Costing*, 3 I.C.C.2d 340 (1987) [Ex Parte No. 274 (Sub-No. 11)].

EFFECTIVE DATE: The rules are effective December 14, 1988.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: The revised rules are set forth below.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202)

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289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

The rule modifications will not have a significant economic impact on a substantial number of small entities. Nor will this action significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1152

Administrative practices and procedure, Railroads, reporting and recordkeeping requirements, Uniform system of accounts, Abandonment and discontinuances, Investigations, Public use conditions, Environmental protection, National trail system, National resources, Recreation and recreation areas.

Decided: October 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

Title 49, Subtitle B, Chapter X, Part 1152 of the Code of Federal Regulations is amended as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903.

1. The authority citation for 49 CFR Part 1152 is revised to read as follows:

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, 10903, 11161, 11162, 11163, *et seq.*,

2. Section 1152.34 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 1152.34 Return on investment

(c) * * *

(1) * * *

(ii) The amount of current income tax benefits resulting from abandonment of the line which would have been applicable to the period of the subsidy agreement. (Conversely, if the railroad would incur an income tax liability from abandonment, the liability should be deducted from the investment base.) This information is to be furnished by the railroad and subject to audit by the person offering the subsidy.

* * * * *

[FR Doc. 88-26233 Filed 11-10-88; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 53, No. 219
Monday, November 14, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 971

Texas Lettuce; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule regarding Texas lettuce would authorize expenses and establish an assessment rate under Marketing Order 971 for the 1988–89 fiscal period. Authorization of this budget would allow the South Texas Lettuce Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

DATE: Comments must be received by November 25, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2065–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–5610.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 971 (7 CFR Part 971), regulating the handling of lettuce grown in the Lower Rio Grande Valley of South Texas. This order is effective under the Agricultural Marketing Agreement Act of 1973, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers of Texas lettuce under this marketing order, and approximately 15 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 21.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable lettuce handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of lettuce. They are familar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of lettuce. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The South Texas Lettuce Committee met on October 11, 1988, and unanimously recommended a 1988–89 budget of $34,305. The additional $942 over last season's budget of $33,363 would cover increases in the items of rent and utilities, insurance and bonds, and accounting and audit. The committee recommended an assessment rate of $0.05 per carton, the same as last year. This rate, when applied to anticipated shipments of 750,000 cartons, would yield $37,500 in assessment revenue. The surplus income of $3,195 would be added to the current program reserve of $42,000, resulting in an ending reserve of $45,195, an amount within the maximum authorized under the order of three years' expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 971

Marketing agreements and orders, Lettuce (Texas).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 971 be amended as follows:

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PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 971 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 971.228 is added to read as follows:

§ 971.228 Expenses and assessment rate.

Expenses of $34,305 by the South Texas Lettuce Committee are authorized and an assessment rate of $0.05 per carton of lettuce is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: November 8, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–26252 Filed 11–10–88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

Sequestration of Witnesses Interviewed Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to provide that all persons compelled to appear before NRC representatives under subpoena in connection with an agency investigation (and their counsel, if any) shall, unless otherwise authorized by the NRC official conducting the investigation, be sequentered from other interviewees in the same investigation. The proposed action is necessary because the NRC has encountered difficulties in conducting investigative interviews in an atmosphere free of outside influences. The proposed rule is intended to clarify and delineate the rights and responsibilities of the agency, interviewees and licensees during the conduct of agency investigations and inspections. The proposed amendments are not expected to have any economic impact on the NRC or its licensees.

DATES: Comment period expires January 10, 1989. Comments received after this date will be considered if it is practical to do so, but the Commission can only assure consideration of those comments received on or before that date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 2120 L Street NW., Washington, DC, between 7:30 a.m. and 4:15 p.m., Monday through Friday.

Comments received may be examined at: the NRC Public Document Room at 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carolyn F. Evans, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–1632.

SUPPLEMENTARY INFORMATION: The Commission is aware of the confusion that has arisen regarding who can attend investigative interviews of individuals which are conducted by NRC inspectors or investigators. *See, e.g., Metropolitan Edison Company* (Three Mile Island Nuclear Station, Unit 1), LBP–82–34B, 15 NRC 918, 990–93 (1982) (discusses the question of whether an interviewee may have a representative of company management present during investigative interview). As a general matter, a person has a right to be accompanied by counsel or any other individual the person desires during a voluntary interview by NRC representatives. *Id.* The investigator may either accept the individual's conditions for submitting to the voluntary interview or decline the interview. However, absent a subpoena, no person is required to submit to an NRC interview. Thus, to the extent the existence and scope of one's right to be accompanied by counsel or other representative becomes an issue, it is in the context of an interview compelled by administrative subpoena issued pursuant to 42 U.S.C. 2201(c). In these cases, section 6(a) of the Administrative Procedure Act (APA), 5 U.S.C. 555(b), provides that the interviewee "is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative."

Questions concerning the scope of an interviewee's right to be accompanied by counsel or others, born out of the absence of clear Commission policy on the issue and the lack of clearly developed judicial guidelines, have been raised in essentially three ways. First, in several instances, an interviewee's employer has sought to arrange for a management representative to attend NRC interviews of its employees. Second, the employer has provided corporate counsel, either unilaterally or with the agreement of the employee, to represent all employees during an NRC interview. Third, an employer has offered to provide its employees, free of charge, non-corporate counsel initially selected by management or independently retained by the individual employee.

Where interviewee is a member of the employer's corporate control group, the presence of corporate counsel at an NRC interview is, except in extraordinary circumstances, not objectionable. Similarly, the fact that an employer has agree to pay the fees of employee selected, non-corporate counsel should generally be of no concern to the investigative staff unless the fee reimbursement agreement, on its face or in operation, acts as an improper restraint on the employee's potential candor. However, where corporate counsel seeks to represent non-management employees during an NRC investigation, or where the employer effectively selects the employee's non-corporate counsel, the potential for conflicts of interest among counsel's multiple clients in responding fully and candidly to the inquiries of the agency and the potential impairment to the efficacy of the NRC investigation become a paramount concern.

In most cases, attempts to interject a corporate presence into investigative interviews of the non-management employees of a licensee or applicant have been satisfactorily resolved through negotiation between company management and NRC staff. However, such ad hoc negotiations have led to unnecessary delay in completing NRC investigations. In order to clearly delineate the rights of individual interviewees, the legitimate intersts of the company or licensee, and the responsibilities of the NRC to ensure the public health and safety, the Commision believes it appropriate to announce general guidance to be followed in this area.

The Commission believes as a matter of policy that investigative interviews should be conducted in an atmosphere free of outside influences. The Commission is aware that management has a legitimate interest in NRC inspections and investigations in order to detect and correct any violations of NRC regulations. Moreover, since the policy of the Commission is to hold the licensee or applicant liable for the acts and omissions of its employees and contractors, the licensee or applicant normally has a corporate or financial interst in the outcome of the investigation. Nevertheless, the Commission believes that the purpose of its inspections and investigations (to protect the public health and safety by identifying unsafe practices and violations of Commission regulations and the Atomic Energy Act), and its interest in ensuring the integrity of the agency's factual findings and regulatory conclusions from such efforts would be better served by excluding all persons from the interview except for the interviewee's counsel.

In cases where dual representation is an issue, the Commission believes that exclusion of the particular counsel chosen by or for the interviewee might be warranted. Where the person being interviewed chooses to be represented by counsel for the licensee or applicant, an inherent potential for a conflict of interest and impairment of the NRC's investigation exists. The Commission recognizes, however, that the attorney can ethically represent multiple clients if he or she fully discloses the potential conflict to the clients and they individually assent to the multiple representation. Such disclosure between counsel and client does not always eliminate or reduce the inherent potential that the multiple representation could impair or impede the Commission's investigation. Dual representation of both the interviewee and the licensee or applicant could permit the subject of the investigation to learn, through counsel, the direction and scope of the investigation. The subject could then take steps to structure the flow of information to the NRC or otherwise impede the investigation. Indeed, in three recent cases where the company offered its own attorney to potential witnesses, the attorney stated prior to any interview that he would relate to the company all that took place in the interviews. This produces an inherent coercion on the interviewee not to reveal to the NRC information that is potentially detrimental to his employer. Moreover, should the agency official conducting the investigation determine that an offer of confidentiality to an interviewee is warranted, the purpose for confidentiality could be undermined simply by the presence of counsel who represents other interviewees or the subject of the investigation.

For these reasons, the Commission believes that dual representation could prove detrimental to NRC investigations. Accordingly, the proposed rule provides that where the agency official conducting the investigation determines after consultation with the Office of the General Counsel that there is a reasonable basis to believe that the attendance of a particular attorney might prejudice, impede, or impair the investigation by reason of that attorney's dual representation of other interests, the particular attorney may be excluded from the interview. The proposed rule further provides that where an interviewee's counsel is excluded and the interviewee is not given reasonable prior notice of an intent to exclude counsel, the interview may be delayed at the interviewee's option for a reasonable period to permit the retention of other counsel. The "reasonable prior notice" standard contemplates affording the interviewee sufficient time in advance of his/her interview to retain new counsel, e.g., one week. The Commission believes that the interest in ensuring the health and safety of the public through vigorous probing of possible regulatory violations justifies the somewhat minor burden on an individual's right to be accompanied by a particular counsel.

Several district courts have upheld an agency's power to exclude a witness' attorney from an investigative interview where the attorney also represented the person under investigation. *See United States v. Steel,* 238 F. Supp. 575 (S.D.N.Y. 1965); *Torras v. Stradley,* 103 F. Supp. 737 (N.D. Ga. 1952); *United States v. Smith,* 87 F. Supp. 293 (D. Conn. 1949). One circuit court considering this issue however, reversed a district court decision that held the Internal Revenue Service could deny a third party witness the right to be accompanied by counsel for the taxpayer under investigation. *Backer v. Commissioners of Internal Revenue,* 275 F.2d 141 (5th Cir. 1960). That court, however, which indicated that a witness has a right to the counsel of his choice, did not decide whether that right could be limited or otherwise qualified through formal rule-making procedures. Two other circuit court decisions, involving the Securities and Exchange Commission's sequestration rule, have also indicated that the terminology of 5 U.S.C. 555(a) means counsel of one's choice. *SEC v. Csapo,* 533 F.2d 7 (D.C. Cir. 1976); *SEC v. Higashi,* 359 F.2d 550 (9th Cir. 1966). Both of those courts, however, indicated that there could be circumstances where an attorney could be barred from the interview, although it could not be done under the facts of those cases.

With this guidance in mind, the Commission realizes that no absolute criteria can be established for determining when the NRC may exclude an interviewee's attorney where the attorney is also counsel for the licensee, applicant, or other organization under investigation. The Commission believes however, that dual representation of interviewees and licensees should be prevented wherever circumstances require this. An appropriate rule would grant the NRC office conducting the interview the discretion to determine whether the attorney should be allowed to attend the interview. Some factors, which in conjunction with other circumstances may justify exclusion include: (1) Whether the company under investigation suggested that the witness employ the particular counsel and is paying the fee; (2) whether there might be a divergence of interest between the witness and the company unknown to the witness such that the witness might not want the attorney to be present if he were aware of the divergency of interest; (3) whether the investigation could be prejudiced if the attorney is allowed to attend the interview, the greater the potential prejudice the greater the case for excluding. The factors to consider in favor of allowing the attorney to be present include: (1) Whether there is little or no diversity of interest between the witness and the entity being investigated so that an interview of the witness would in effect practically be an interview of the person or company under investigation; (2) whether the nature of the case makes it unreasonable to insist that the witness have separate counsel; and (3) whether there has been any showing of potential prejudice to the investigation by allowing the attorney to be present.

Enviromental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this purposed rule.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Regulatory Analysis

The APA affords individuals compelled to submit to agency inquiry under subpoena the right to be accompanied by counsel or other representative of choice. 5 U.S.C. 555(b). Questions concerning the scope of this right have arisen in the context of NRC investigative interviews of licensee employees and the presence of outside influences which often undermine the process. These outside influences have essentially arisen in one of three ways. First, an interviewee's employer has

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sought to arrange for a management representative to attend agency interviews of its employees. Second, an employer has provided corporate counsel, either unilaterally or with the agreement of employees, to represent all employees during NRC interviews. Third, an employer has offered to provide its employees free of charge, non-corporate counsel, either selected by the employer or individually retained by the employee. Where licensee provides corporate counsel or selects the interviewees' non-corporate counsel, the potential for conflicts of interest among counsel's multiple clients in responding fully and candidly to agency inquiry become a major concern. Guidance is required in this area because attempts to resolve multiple representation issues on an ad hoc basis have led to unnecessary delays in completing investigations. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The proposed rule, which simply sets forth the rights of licensee employees and other individuals who are compelled to appear before NRC representatives under subpoena, would have no significant economic impact on a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule. Therefore, a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 19

Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 19.

The authority citation for Part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955 as amended, sec. 234.83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11 (a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued uder sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. The title of Part 19 is revised to read as follows:

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS AND INVESTIGATIONS

3. Section 19.1 is revised to read as follows:

§ 19.1 Purpose.

The regulations in this part establish requirements for notices, instructions, and reports by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974, and regulations orders, and licenses thereunder regarding radiological working conditions. The regulations in this part also establish the rights and responsibilities of the Commission and individuals during interviews compelled as part of agency inspections or investigations pursuant to Section 161c of the Atomic Energy Act of 1954, as amended, on any matter within the Commission's jurisdiction.

4. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in Parts 30 through 35, 40, 60, 61, or Part 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter and persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter. The regulations regarding investigative interviews of individuals apply to all investigations within the jurisdiction of the Nuclear Regulatory Commission other than those involving NRC employees or NRC contractors.

5. In § 19.3, remove the alphabetical designators, rearrange definitions in alphabetical order, and insert the definition for sequestration in the alphabetical sequence to read as follows:

§ 19.3 Definitions.

* * * * *

"Sequestration" means the separation of multiple witnesses from each other during the conduct of investigative interviews, and the exclusion of counsel who (1) represents one witness from the interviews of other witnesses or who (2) represents the employing entity of the witness or management personnel from the interview of that witness, when such representation obstructs, impairs, or impedes an agency investigation.

* * * * *

6. New § 19.18 is added to read as follows:

§ 19.18 Sequestration of witnesses and counsel.

(a) Any person compelled to appear in person at an interview during an agency investigation may be accompanied, represented, and advised by counsel of his or her choice; *Provided, however,* that all witnesses shall be sequestered, and unless permitted in the discretion of the official conducting the investigation, no witness or counsel accompanying the witness (including counsel who also represents the person or employing entity that is the subject of the investigation) shall be permitted to be present during the examination of any other witness called in such proceeding.

(b) When the agency official conducting the investigation determines, after consultation with the Office of the General Counsel, that a reasonable basis exists to believe that the investigation may be obstructed, impeded or imparied, either directly or indirectly by an attorney's representation of more than one witness or by an attorney's representation of a witness and the employing entity of the witness, the agency official may prohibit that attorney from being present during the interview of any witness other than the witness on whose behalf counsel first appeared in the investigatory proceeding. To the extent practicable and consistent with the integrity of the investigation, the attorney will be advised of the reasons supporting the decision to prohibit his or her representation of more than one interviewee during the investigation .

(c) Where a person's counsel is excluded under paragraph (b) of this section from his or her interview and the person is not provided reasonable prior notice of an intent to exclude counsel, the interview shall, at the person's request, be delayed for a reasonable period of time to permit the retention of new counsel.

Dated at Rockville, Maryland, this 8th day of November 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–26200 Filed 11–10–88; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–88–14]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

Petitions for Rulemaking

Docket No.: 25698

Petitioner: American Association of Airport Executives and Airport Operators Council International

Regulations Affected: 14 CFR 139.329

Description of the Petition: The petition, if granted, would delete the words "and complies" from the paragraph which currently reads, "ensure that each employee, tenant, or contractor who operates a ground vehicle on any portion of the airport which has access to the movement area is familiar and complies with the airport's rules and procedures for the operation of ground vehicles."

Petitioner's Reason for the Rule: The petitioners assert that the language establishes an unreasonable regulatory standard that causes confusion and frustration among airport officials seeking to comply with their obligations.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 30, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. ——, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telepnone (202) 267–3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 4, 1988.

Denise Donohue Hall,

Manager, Program Development Staff.

[FR Doc. 88–26168 Filed 11–10–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 25

[Docket No. NM–35; Notice No. SC–88–8–NM]

Special Conditions; CASA CN–235–100, Lightning and Radio Frequency (RF) Energy Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the CASA Model CN–235–100 airplane. This airplane will have novel or unusual design features associated with engine and propeller electronic controllers. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection from the effects of lightning and the susceptibility to external radio frequency (RF) energy sources. This notice contains safety standards which the Administrator finds necessary to ensure that critical and essential functions of systems in the CN–235–100 are maintained.

DATE: Comments must be received on or before December 5, 1988.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–35, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–35. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168, telephone (206) 431–2157.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–35." The postcard will be date/time stamped, and returned to the commenter.

Background

On May 12, 1987, Construcciones Aeronauticas S.A. (CASA) applied for an amendment to their Type Certificate No. A21NM to include the Model CN–235–100 airplane. The CN–235–100 airplane, which is a derivative version of the CN–235 airplane, is modified to incorporate a new version of the General Electric CT7–7 engine (CT7–9), new engine nacelles, relocation of the

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right forward door, and an increased passenger capacity.

Lightning Protection

The CASA CN–235–100 airplane is designed with engine and propeller electronic controllers which perform critical and essential engine functions, such as the start schedule, engine overspeed protection, governing schedule, acceleration schedule, surge schedule, and minimum fuel schedule inputs to the engines. These controllers, which are designed to perform critical or essential functions, are susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. This disruption of signals could result in dual engine shutdown due to opening of the engine ultimate overspeed fuel cutoff solenoids. To ensure that a level of safety is achieved equivalent to that of existing operating airplanes, special conditions are needed which require that the controllers will be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning. To provide a means of compliance with the proposed special conditions, a clarification on the threat definition for lightning is needed.

The following "threat definition", based on SAE Report AE4L–87–3, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc.

Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the system under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation,

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equations:

$$i(t) = I_0 (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple Stroke (½ component D)	Multiple burst (component H)
I_0, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics;				
I_{peak} =	200 KA	100 KA	50 KA	10KA
and				
$(di/dt)_{max}$ (amp/sec) =	1.4 × 10^{11} @t=0+sec	1.4 × 10^{11} @t=0+sec	0.7 × 10^{11} @t=0+sec	2.0 × 10^{11} @t=0+sec
di/dt, (amp/sec) =	1.0 × 10^{11} @t=.5 us	1.0 × 10^{11} @t=.25 us	0.5×10^{11} @=.25 us	
Action integral (amp^2 sec), =	2.0 × 10^6	0.25 × 10^6	.0625 × 10^6	

Protection from Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the RF special condition is shown with paragraphs 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 Khz–3 MHz	100	100
3 MHz–30 MHz	1,000	1,000
30 MHz–100 MHz	100	100
100 MHz–200 MHz	200	3,000
200 MHz–1 GHz	2,000	6,000
1 GHz–2 GHz	2,000	14,000
2 GHz–8 GHz	600	14,000
8 GHz–10 GHz	2,000	14,000
10 GHz–40 GHz	1,000	8,000

To establish the values in pargraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: in the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), CASA must show that the Model CN–235–100 meets the applicable provisions of the regulations incorporated by reference in Type Certificate A21NM, or the applicable regulations in effect on the date of application for the Model CN–235–100. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The type certification basis for the CASA CN–235–100 airplane includes Part 25 of the FAR, effective February 1, 1965, including Amendments 25–1 through 25–54, and the requirements of § 25.904 concerning an automatic takeoff power control system (ATPCS); Part 36 of the FAR effective December 1, 1969, including Amendments 36–1 through current amendment; Special Federal Aviation Regulation 27, dated February 1, 1974, including Amendments 27–1 through 27–6 (Fuel Venting and Exhaust Emissions); and the special conditions proposed herein.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

As the intended type certification date for the CN–235–100 is approximately December 15, 1988, the public comment period is shortened to 20 days in order to make the final special conditions effective prior to that date.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the CASA Model CN–235–100 airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. *Lightning Protection.*

a. Each electronic system which performs critical functions must be designed and installed to ensure that these critical functions are not affected when the airplane is exposed to lightning.

b. Each essential function of an electronic system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning and prior to the time at which the loss of that function would have a significant impact on safety.

c. For the purpose of thsee special conditions, the following definitions apply:

(1) *Critical Functions.* Functions whose failure would contribute to or cause a condition which would prevent the continued safe flight and landing of the airplane.

(2) *Essential Functions.* Functions whose failure would contribute to or cause a condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

3. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* Each engine and propeller control system which performs critical functions must be designed and installed to ensure that these critical functions are not adversely affected when the airplane is exposed to high energy RF fields.

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Issued in Seattle, Washington, on November 2, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26179 Filed 11-10-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052G]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for Combination Drug Products; Clarification

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; clarification.

SUMMARY: The Food and Drug Administration (FDA) is issuing a clarification of its notice of proposed rulemaking published in the Federal Register of August 12, 1988 (53 FR 30522) in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products (drug products that contain more than one active ingredient and are used for the relief of symptoms such as nasal congestion, runny nose, coughing, watery eyes, sore throat, headache, and fever) are generally recognized as safe and effective and not misbranded.

DATE: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by December 12, 1988.

ADDRESS: Written comments, objections, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: This clarification relates to § 341.40(t) of the tentative final monograph (53 FR 30561), which provided that promethazine hydrochloride identified as an antihistamine (if labeled for relief of symptoms of the common cold as identified in § 341.72(b)(2)) may be used in combination with other cough-cold and/or analgesic-antipyretic ingredients as provided for antihistamine active ingredients in § 341.40 (a) through (f).

Because § 341.40 (a) through (f) each refer to any single antihistamine active ingredient identified in § 341.12, and promethazine hydrochloride is not identified in § 341.12, it might be possible § 341.40(t) could be subject to more than one interpretation. It could be interpreted to mean that promethazine hydrochloride and another antihistamine active ingredient identified in § 341.12 could be combined with other nonantihistamine active ingredients as permitted combinations in § 341.40 (a) through (f), or it could also be interpreted to mean that only promethazine hydrochloride, without any other antihistamine active ingredients, may be combined with other nonantihistamine active ingredients identified in § 341.40 (a) through (f).

In proposing § 341.50(t) the agency intended the latter interpretation of the wording. In order to remove the potential ambiguity and to avoid possible misinterpretation, FDA is revising § 341.40(t) as set forth below.

The agency has determined that this clarification should not necessitate an extension of the December 12, 1988, deadline for written comments, objections, or requests for oral hearing on this proposed rule.

List of Subjects in 21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic combinations; Labeling; Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 341 to read as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 341 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 341.40 is amended by revising paragraph (t) to read as follows:

§ 341.40 Permitted combinations of active ingredients.

* * * * *

(t) Promethazine hydrochloride identified as an antihistamine (if labeled for relief of symptoms of the common cold as identified in § 341.72(b)(2)) may be used as the antihistamine component of any of the permitted combinations of active ingredients identified in § 341.40 (a) through (f) of this section.

* * * * *

Dated: November 4, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-26158 Filed 11-10-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendments to the Bank Secrecy Act Regulations Regarding the International Transportation and Receipt of Monetary Instruments

AGENCY: Departmental Office, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Anti-Drug Abuse Act of 1988, Pub. L. 99-570, Title I, Subtitle H, section 1358, authorized the Secretary of the Treasury to prescribe regulations defining "at one time" for the purposes of the international transportation and receipt of monetary instruments. This Notice proposes such a definition in order to permit Customs, under a delegation from Treasury, to investigate instances of structuring of international transportation and receipt of monetary instruments to avoid the reporting requirements of the Bank Secrecy Act.

In a related matter, Treasury also is proposing to amend §103.11(k), the definition of "monetary instruments," to include all forms of traveler's checks. This amendment would clarify the status of traveler's checks and conform the definition more closely to the statute.

DATE: Comments should be submitted by January 13, 1989.

ADDRESS: Comments should be addressed to Amy G. Rudnick, Director, Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. 91-508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, and 31 U.S.C. 5311-5324), authorizes the Secretary of the Treasury to require reports on the international transportation and receipt of monetary instruments. 31 U.S.C. 5316. Pursuant to this authority, Treasury issued regulations requiring that a form be filed reporting the international transportation and receipt of monetary instruments that exceed $10,000. (Form 4790, the "CMIR".) *See* 31 CFR 103.11(k) and 103.23.

Section 5316 requires that reports be filed by a person, or agent or bailee of a person, when he knowingly transports, is about to transport, or has transported, more than $10,000 in monetary instruments "at one time" into or out of the United States. The statute also requires that the same report be filed upon receipt of more than $10,000 in monetary instruments from outside the United States "at one time."

In the Anti-Drug Abuse Act of 1988, 31 U.S.C. 5316 was amended. One amendment was the addition of a new subsection (d), reading as follows:

> The Secretary of the Treasury may prescribe regulations under this section defining the term "at one time" for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for purposes of subsection (a).

The House Report on this provision notes:

> This provision closes a loophole regarding reports of transporting cash out of the country.
>
> 31 U.S.C. 5316, relating to the reports on exporting and importing monetary instruments, requires reports when one transports more than $10,000 "at one time." The U.S. Court of Appeals for the First Circuit overturned a conviction in *United States v. Anzalone*, 766 F.2d 676 (1st Cir. 1985) holding that structuring currency transactions to avoid the reporting requirements was not a conspiracy to defraud the United States (18 U.S.C. 1001). This amendment permits the Secretary to prescribe regulations to define the term "at one time" to permit the cumulation of closely related events in order that they may collectively be considered to occur at one time for purposes of the reporting requirements.
>
> H. Rep. 99-855, Part I, 99th Cong., 2d Sess. 19.

As a result of this statutory authorization, Treasury has developed the proposed definition of "at one time." Under this proposed definition, a person who transports, mails, ships or receives; is about to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

(1) For the purpose of evading the reporting requirements under § 103.23;

(2) That person either alone, or in conjunction with, or on behalf of others;

(3) Transports, mails, ships or receives; is about to transport, mail or ship; or causes the transportation, mailing, shipment or receipt;

(4) Of monetary instruments;

(5) In any amount;

(6) On one or more days;

(7) Into or out of the United States.

This definition will make clear that structuring schemes involving the international transportation and receipt of monetary instruments are illegal to the same extent that structuring schemes to evade the domestic currency transaction reporting requirements of 31 CFR 103.22 are illegal. *See* 31 U.S.C. 5324; 31 CFR 103.53.

A second amendment also is proposed with respect to the international transportation and receipt of traveler's checks. Under 31 CFR 103.11(k) (ii) and (iii), traveler's checks are presently reportable under 31 U.S.C. 103.23 *only* if (1) they are negotiable instruments that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; or (2) they are incomplete instruments signed but with the payee's name omitted. The Bank Secrecy Act definition of "monetary instruments" at 31 U.S.C. 5311(a)(3), however, if very broad and includes all forms of traveler's checks within the definition of "monetary instruments."

Treasury is proposing to clarify the definition of "monetary instruments" as it pertains to traveler's checks, and conform the definition more closely to the statute, by including all forms of traveler's checks in the definition of "monetary instruments."

There is a high degree of law enforcement value in reporting all forms of traveler's checks. Traveler's checks are intended to substitute for currency and to operate as currency. Their potential for abuse by drug traffickers and other money launderers therefore is great. For this reason, Treasury is proposing to amend the definition of "monetary instruments." *If adopted, the proposed amendment would subject all forms of traveler's checks to the reporting requirements of 31 CFR 103.23.* The exception from reporting transportation of these instruments by an issuer of traveler's checks or its agent prior to their delivery to selling agents for eventual sale to the public will be retained. 31 CFR 103.23(c)(7). The CMIR form will be changed at a later date.

Submission of Comments

Treasury requests comments from all interested persons concerning the proposed amendments. All comments received before the closing date will be carefully considered. All oral comments must be reduced to writing and submitted to Treasury in order to be considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Ave. NW., Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at (202) 566-8022.

Executive Order 12291

This proposed rule, if adopted as a final rule, is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and

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Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Treasury Departmental Offices, with copies to the Office of Financial Enforcement at the address noted above.

The collections of information in 31 CFR 103.23 are authorized by 31 U.S.C. 5316. This information is required by Treasury to record the international transportation and receipt of monetary instruments in excess of $10,000. This information is used to identify the volumes, sources and movement of currency and other monetary instruments into and out of the country. The likely respondents are those who engage in the international transportation and receipt of monetary instruments in amounts over $10,000.

Estimated total additional annual reporting burden if the Notice of Proposed Rulemaking is adopted as a Final Rule: 834 hours.

Estimated average annual burden per respondent: .1667 hours.

Estimated additional number of respondents if the Notice of Proposed Rulemaking is adopted as a Final Rule: 5,000.

Estimated annual frequency of responses: 1.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law Enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendment

For the reasons set forth below in the preamble, it is proposed to amend 31 CFR Part 103 as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5324).

2. It is proposed to amend § 103.11 by redesignating paragraphs (a) through (r) as (b) through (s) accordingly, and add a new paragraph (a) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(a) *At one time.* For purposes of § 103.23 of this Part, a person who transports, mails, ships or receives; is about to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

(1) For the purpose of evading the reporting requirements of section 103.23 of this Part;

(2) That person either alone, in conjunction with or on behalf of others;

(3) Transports, mails, ships or receives; is about to transport, mail or ship; or causes the transportation, mailing, shipment or receipt;

(4) Of monetary instruments;

(5) In any amount;

(6) On one or more days;

(7) Into or out of the United States.

* * * * *

3. It is proposed to further amend § 103.11 by redesignating paragraphs (ii) through (iv) as (iii) through (v); by removing the words "traveler's checks" from newly redesignated paragraphs (iii) and (iv); and by adding a new paragraph (ii) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(l) *Monetary instruments.* * * *

* * * * *

(ii) Traveler's checks in any form;

* * * * *

Dated: October 19, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88–26189 Filed 11–10–88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Reg. 12-35]

Air Force Privacy Act Program

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule; exemption. Proposed amendment to an existing general exemption rule for public comment.

SUMMARY: The Department of the Air Force is publishing for public comment a proposed exemption rule that will exempt an existing record system, subject to the Privacy Act, from access and therefore permitting denial of individual requests to gain access to certain categories or records maintained in the system pertaining to the individual The purpose for claiming and invoking this exemption by rulemaking is to ensure and protect the integrity and frankness of the information received or solicited from third parties, under an expressed or implied promise of confidentiality, compiled solely for the purpose of determine suitability, eligibility, or qualifications for appointment or interservice transfer.

The Department of the Air Force also proposes to amend an existing general exemption rule for an existing system of records to reflect the change in the system name.

DATE: Comments must be received on or before December 14, 1988.

ADDRESS: Send any comments to Ms. Linda G. Adams, Information Management Division, Directorate of Information Management and Administration, Office of the Administrative Assistant, Secretary of the Air Force, The Pentagon, Washington, DC 20330–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Adams at the above address or telephone: 202–694–3488, AUTOVON 224–3488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force proposes to amend 32 CFR Part 806b by publishing a specific exemption rule to exempt certain provisions of an existing system of records F035 AF MP R, entitled: "Application for Appointment and Extended Active Duty Files" from the access provisions of the Privacy Act of 1974, 5 U.S.C. 552a(d). This exemption rule is needed to protect the integrity of records by ensuring confidentiality of information provided by individuals on the record subject and precluding the record subject from accessing any information in the record system containing appraisal information on the suitability, eligibility or qualifications of health care professionals seeking appointment or interservice transfer to the Air Force. In order to exempt a system of records from access, the Air Force must invoke and publish a specific exemption rule for the particular system of records under the provisions of 5 U.S.C. 552a(k) of the Privacy Act. The exemption provision applies only to the extent that information in the system is subject to the exemption. That is any information in the system which cannot be defined as (k)(5) information will not be withheld pursuant to thereto simply because the system is an "exempted system." For practical reasons, non-exempt information in the system cannot be segregated and maintained

apart from that information which is exempt. Therefore, the exemption is claimed to protect the (k)(5) information in the system of records. The exemption rule is promulgated in accordance with 5 U.S.C. 553(b) (1), (2) and (3), (c), and (e) as required by subsection (k) of the Privacy Act. The exemption will not prevent proper access to the vast majority of information contained in the system. The Department of the Air Force also proposes to amend a general exemption rule to reflect a change in the name of the exempted system of records from "Incident Investigation Files, F125 AF SP E" to "Security Police Automated System, F125 AF SP E." The name change occurred when the system were altered under the provisions of 5 U.S.C. 552a(o). There is no change in the system identification number and no change in exemptions claimed from the provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

List of Subjects in 32 CFR Part 806b

Privacy Act exemptions.

For the reasons set out in the preamble, Title 32, Chaptyer VII, Subchapter A, Part 806b, Subpart E of the Code of Federal Regulations is proposed to be amended as follows:

PART 806b—[AMENDED]

1. The authority citation for Part 806b continues to read as follows:

Authority: Pub. L. 93–579, 5 U.S.C. 552a.

2. Section 806b.13 is amended by revising paragraph (a)(3) and adding new paragrpah (b)(20) as follows:

Subpart E—Privacy Act Exemptions

§ 806b.13 General and specific exemptions.

(a) * * *

(3) Security Police Automated System (SPAS), F125 AF SP E.

* * * * *

(b) *Specific exemptions.* * * *

(20) *Application for Appointment and Extended Active Duty Files (F035 AF MP R)*—(i) *Exemption.* Parts of this system of records are exempt form 5 U.S.C. 552a(d), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect the identity of confidential sources who furnish information necessary to make determinations about the qualifications, eligibility, and suitability of health care professionals who apply for Reserve of the Air Force appointment or interservice transfer to the Air Force.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 8, 1988.

[FR Doc. 88–26194 Filed 11–10–88 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 863

Leasing of USAF Aircraft and Related Equipment to Nongovernment Organizations

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: This proposed part outlines USAF policies and procedures for the provision of leasing USAF aircraft and related equipment to nongovernment organizations. It establishes the responsibilities for evaluating lease requests, obtaining necessary approvals, and negotiating and administering lease agreements. It is intended to accelerate the evaluation, approval and negotiation processes associated with these lease requests.

DATE: Comments must be submitted on or before December 14, 1988.

ADDRESS: Department of the Air Force, SAF/AQCM, Washington, DC 20330–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Kattner, Procurement Analyst, SAF/AQCM, Washington, DC 20330–1000, telephone (202) 695–4982.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 32 CFR Part 863

Aircraft, Government contracts, Government property.

Therefore, it is proposed to amend 32 CFR, Chapter VII, Subchapter F, by adding Part 863 to read as follows:

PART 863—LEASING USAF AIRCRAFT AND RELATED EQUIPMENT TO NONGOVERNMENT ORGANIZATIONS

Sec.

863.0 Purpose.

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Authority: 10 U.S.C. 2667.

Note: This part is derived from Air Force Regulation (AFR) 70–10.

Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 863.0 Purpose.

This part outlines United States Air Force (USAF) policies and procedures for leasing USAF aircraft and related equipment to nongovernment organizations (such as, American manufacturers) under 10 U.S.C. 2667. The intended uses of the leased assets might include, but are not necessarily limited to, participation in national and international trade or air shows, foreign military sales or direct foreign sales demonstrations, independent research and development efforts by defense firms, and direct or indirect support of United States Government (USG) contracts. This part does not apply to military leases of USG property to foreign governments or international organizations (such as, North Atlantic Treaty Organization) under Chapter 6 of the Arms Export Control Act. This part establishes the responsibilities for evaluating lease requests, obtaining approvals, and negotiating and administering the lease agreements. This

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part applies to the Office of the Secretary of the Air Force, the Air Staff, Air Force Systems Command (AFSC), and Air Force Logistics Command (AFLC). This part requires coordination with the USAF operational commands, the Air Force Reserve, and the Air National Guard when their assets are under consideration for lease. It implements DOD Instructions 7230.7, January 29, 1985 (32 CFR Part 288), and 7230.8, June 9, 1976.

Subpart A—Policy and Responsibilities

§ 863.1 Leasing policy.

10 U.S.C. 2667 provides the Secretary of the Air Force the authority to lease assets under the control of the USAF to nongovernment organizations. When the Secretary considers it advantageous for the United States, leases may be approved under such terms and conditions the Secretary considers will promote the national defense or be in the public interest. The statute provides that the property must be under the control of the department; not for the time needed for public use; and not excess property. Typically, the USAF does not lease assets which are otherwise available from commercial sources.

§ 863.2 SAF/AQ responsibilities.

(a) The Secretary of the Air Force delegated the statutory authority to approve leases to the Assistant Secretary of the Air Force for Acquisition (SAF/AQ). Since final leasing authority rests at the secretariat level, field and staff elements must take care not to preempt or prejudice the Secretary's authority to determine whether a proposed lease is advantageous to the United States and what terms and conditions will be considered as promoting the national defense or being in the public interest.

(b) SAF/AQ determines whether a lease request from a nongovernment organization or from a command on behalf of a nongovernment organization meets the general guidelines of this part. Furthermore, SAF/AQ ensures that the Air Staff (HQ USAF/LE, PR, XO, CC), the Office of the Secretary of the Air Force (SAF/AC, PA, GC), Defense Security Assistance Agency (DSAA), and USAF operational commands, the Air Force Reserve, or Air National Guard when their assets are potential lease candidates have coordinated, as necessary, before recommending that SAF/AQ sign a Determination and Finding (D&F). This document designates which command, normally AFSC or AFLC, will negotiate and execute the lease agreement and outlines the basic terms and conditions which must be contained in the lease. SAF/AQ makes the determination if it is unclear whether AFSC or AFLC should assume a particular leasing action. The determination and finding format for authority to lease United States government property is shown below.

Determination and Finding Format

The Department of the Air Force (USAF) proposes to lease aircraft to for a period. (Describe the details of the proposed lease activity.) As consideration for the lease, the lease will contain the following additional terms and conditions:

(1) The leased property shall not be transferred, encumbered, or used for other purposes without the written consent of the Secretary of the Air Force.

(2) The leased property shall be furnished "as is" without any warranty, express or implied, as to serviceability, fitness for use, or other matters.

(3) The lessee shall pay the United States Government (USG) all rent, costs, and charges associated with the use of the leased property while under lease according to 32 CFR 288 and this Determination and Finding.

(4) The lessee shall maintain the leased property during the term of the lease in a safe and serviceable condition according to prescribed USAF standards or pay the full cost of any such maintenance accomplished by the USG.

(5) Support provided by the USG, if any, shall be on a noninterference, reimbursable basis, including use of support aircraft, equipment, and facilities. The availability of such support, and the computation of any associated charges or costs, will be according to applicable Department of Defense directives and instructions and USAF regulations and manuals.

(6) The lessee shall be responsible for all costs relating to the leased property during the term of the lease including, without limitation, expenses of operation, maintenance, display, demonstration, ferrying, transportation, support, and protection.

(7) The lessee shall not include any charges or costs resulting from the lease authorized hereby directly or indirectly in any USG contract, except to the extent authorized under the Federal Acquisition Regulations. OPTIONAL (7) Except as otherwise authorized under the Federal Acquisition Regulations, the lessee shall not include any charges or costs resulting from the lease authorized hereby directly or indirectly in any USG contract except for DOD contracts expressly requiring use of the leased property and then only to the extent that such costs are properly allocable to such contracts and reimbursable according to the terms thereof. Costs charged to the USG respecting the leased property under any such contracts will not exceed the lessee's costs under the lease.

(8) The lessee shall assume the risk of loss, damage, or destruction to the leased property. The risk will be covered by insurance on the depreciated value of the property or, with the USG's approval, the lessee may be self-insured.

(9) The lessee shall indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss and liability (whether in tort or contract) which might arise in connection with the lease because of: (a) injury or death of a personnel of the USG, the lessee, or third parties; and (b) damage to or destruction of property of the lessee or third parties, and leased property, support equipment, or other property of the USG. The lessee shall obtain insurance adequate to cover all such liabilities.

(10) the lessee shall return all leased property to the USAF, at such place as is designated by the contracting officer, in the same condition as when accepted, fair wear and tear excepted. If the USAF determines that any of the leased property was not returned in such condition, or has not been maintained according to prescribed USAF standards, the lessee shall reimburse the USAF for the cost of returning such property to its proper condition. OPTIONAL (10) The lessee shall return all leased property to the USAF, at such place as is designated by the contracting officer, in the same condition and configuration as when accepted, fair wear and tear excepted. If the USAF determines that any of the leased property was not returned in such condition or configuration, or has not been maintained according to prescribed USAF standards, the lessee shall reimburse the USAF for the cost of returning such property to its proper condition and pre-lease configuration.

(11) The lease may be revocable by the USAF at any time. The lease may be terminated by the lessee at any time upon 15 days prior written notice, subject to the lessee's residual responsibilities under the lease (to return leased property, to pay all costs resulting from the lease, to indemnify and hold harmless the USG, etc.).

(12) The lessee shall assume responsibility that may be imposed by other Government agencies for certification and registration of the leased property and for payment of any taxes or other charges thereon.

OPTIONAL (13) During the term of the lease, the lease status of the leased property may be interrupted from time to time by the USAF and the property made available for other USG activities under USG contracts with the lessee. During such periods, the property will revert to Government-Furnished Property status under the applicable USG contract. Any doubt as to the status of the leased property at any particular time will be resolved in favor of lease status.

OPTIONAL (14) The lessee shall secure necessary Defense Security Assistance Agency and State Department clearances prior to commencement of any demonstration or evaluation flights for representatives of foreign governments.

OPTIONAL (15) Orientation flights for United States Congressional and news media representatives and orientation and evaluation flights for foreign nationals shall be subject to approval according to Department of Defense Regulation 4515.13R.

OPTIONAL (16) The lessee planning to fly leased aircraft at the air show shall prepare an air show plan for the USAF's approval which provides information on: scheduled use of the leased property; qualifications and duties of lessee personnel attending the air show; intended and contingency flight profiles; provisions for ensuring adequate preflight crew rest and for ensuring proper preflight briefings and postflight debriefings; and provisions for obtaining a visual record, and flight data recorder coverage (if aircraft is so equipped) of practice and show flight demonstrations, and orientation flights. USG approval of, or involvement in, such plan shall not diminish the lessee's assumption of risk of loss and liability in connection with the lease.

Pursuant to Title 10, United States Code, Section 2667, I find that the property to be leased is under the control of the USAF; it is not excess property as defined by Section 472 of Title 40, United States Code; but it is not for the time needed for public use. I consider the above described lease of such property to be advantageous to the United States and such terms to be in the public interest.

The Commander, , or designee, is authorized to execute a lease according to this Determination and Finding.

§ 863.3 AFSC responsibilities.

AFSC evaluates lease requests, determines asset availability, and negotiates approved leases. When a prospective lessee desires to lease an asset being acquired or managed by a System Program Office (SPO), that SPO evaluates the lease request, makes its recommendation to HQ AFSC/PKC, and negotiates the lease agreement, if approved by SAF/AQ.

§ 863.4 AFLC responsibilities.

AFLC evaluates lease requests, determines asset availability, and negotiates approved leases. When a prospective lessee requests the lease of an asset managed by AFLC or an asset under the control of any of the USAF operational commands, the AFLC Air Logistics Center (ALC) most familiar with the asset evaluates the lease request and makes its recommendation to HQ AFLC/PM. The Wright-Patterson Contracting Center (WPCC) negotiates the lease agreement, if approved by SAF/AQ.

Subpart B—Basic Terms and Conditions

§ 863.5 Authorized uses.

The lease agreement will specify what uses may be made of the leased property. The authorized uses of the leased property need not support a USG contract or requirement. The lease may limit or specify the location of lease performance.

§ 863.6 Lease charges.

(a) Lease charges are comprised of rent, reimbursement of any out of pocket expense to the USG, and other costs which the lessee must pay according to the terms of the lease. Pursuant to 32 CFR Part 288, User Charges, rent must include charges for depreciation and interest on investment. These charges may be assessed on a daily, monthly, or yearly basis as determined appropriate by the contracting officer. For example, if the lease period is short term or if the leased property is being modified in such a way as to preclude its return to the USAF for immediate use to satisfy a USG mission requirement, charge rent during the entire lease term. However, if the lease period is long term and lease activities are actually intermittent rather than continuous, charge rent only during those times the leased property is actually in use by the lessee or unavailable for USAF use.

Note.—Periods of use are defined in the lease.

(b) It may be appropriate to assess flying-hour charges if an aircraft is leased. Flying hour charges can be assessed for depot maintenance, replenishment spares, base support, etc., depending on the leasing situation. If an operational aircraft is leased, payment of depot maintenance and replenishment spares charges would be in order. If the lessee is authorized under the lease to obtain spare parts from the supply system, the lessee should either pay the spares flying-hour charges or reimburse the USG the cost of the spare part plus the cost of providing it.

(c) Leases should include a charge for general and administrative expenses of the USG. The contracting officer should assess a charge of 10 percent of all other lease charges to recoup the USG's general and administrative expenses.

(d) SAF/ACCS sets depreciation, interest on investment, and flying-hour charges. When the specific item to be leased is identified, these rates may be based on supplemental information from the SPO or ALC as to the property's acquisition cost, replacement cost, age, major modifications, salvage value, etc. When the specific item is not identified or actual costs are unknown, use reasonable estimates. The contracting officer is authorized to communicate directly with SAF/ACCS in determining rental charges. Also assess rent for pieces of support equipment which the lessee may require to support the major items of leased property. In such cases, SAF/ACCS may recommend the use of the rates set forth in the Use and Charges clause in the Federal Acquisition Regulation for rental computation.

(e) When the lease activity being pursued by the lessee is of particular interest to the USG, the contracting officer may arrange to receive a technical report from the lessee. The value of the report, as established by the contracting officer, can represent a credit against rental charges otherwise due under the lease. Such a credit must not exceed the rental charges owed by the lessee.

§ 863.7 No cost to the USG.

The lessee is responsible for all rent, costs and charges relating to the leased property during the lease. Generally, the lessee may not include any charges or costs resulting from the lease directly or indirectly in any USG contract or subcontract. Exceptions may be approved for contracts for foreign military sales, for independent research and development costs, international air show costs and in other limited cases where specific USG contracts or programs benefit from the lease activities or when otherwise authorized by law.

§ 863.8 Risk of loss.

The lessee must agree to assume the risk of loss, damage, or destruction of the leased property during the period of the lease. This applies when equipment or an aircraft is leased whether a lessee or USAF operator or pilot is operating the equipment or acting as pilot in command. The lessee must obtain insurance to cover the insurable value of the leased property, unless the contracting officer agrees that the lessee may be self-insured.

§ 863.9 Indemnification of the USG.

The lessee must agree to hold harmless and indemnify the USG, its agents, employees, and offices from any and all loss and liability. The lessee must obtain insurance adequate to cover all such liabilities.

§ 863.10 Maintenance responsibilities.

The lessee must maintain the leased property during the lease period according to standards established by the USG or pay the cost of maintenance accomplished by the USG.

§ 863.11 Inspection responsibilities.

The contracting officer should ensure appropriate inspections are performed by contract administration services personnel or others during lease performance and by the activity receiving the property after lease performance to determine whether the lessee maintained the leased property according to USAF standards.

§ 863.12 USG support.

Any support provided the lessee by the USG will be on a noninterference,

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cost-reimbursable basis. This applies to material, facilities, support aircraft, and crewmembers.

§ 863.13 Terminating the lease agreement.

The USG may terminate the lease at any time and at no cost. The lessee may terminate the lease upon prior written notice to the contracting officer and subject to its residual responsibilities under the lease (payment of charges, return of the leased property, etc.). In long-term leases it may be appropriate to provide for periodic interruptions of the lease so the leased property can be returned to the USG to satisfy its requirements.

§ 863.14 DSAA and State Department Approvals.

When a lessee proposes to demonstrate the leased property to representatives of foreign governments or international organizations or to participate in international organizations or to participate in international air shows, the lessee must secure DSAA approval and obtain export license clearance from the State Department. If the lessee knows the details of the proposed demonstration or evaluation at the time the lease request is submitted, SAF/AQ will obtain DSAA coordination when processing the lease request to the SAF/AQ for approval. If these details are unknown at the time of the lease request, then the lessee must obtain DSAA approval by separate request through HQ USAF/PRI (Directorate of International Programs) channels.

§ 863.15 Flights for dignitaries.

The lessee must get prior approval for flights if one of the authorized uses of a leased aircraft is orientation flights for foreign nationals or dignitiaries, including members of Congress and representatives of the US news media (see DOD Regulation 4515.13R).

§ 863.16 Air show participation plan clause.

Leases authorizing participation in an international air show must contain a provision requiring the lessee to obtain prior USAF approval of its plans for conducting flight operations and providing adequate crew rest. The provision also requires the lessee to describe its demonstration flight profiles. Leases for international air shows require compliance with Part 862 of this chapter. The Air Show Participation Plan clause is shown below.

Air Show Participation Plan Clause

(a) Prior to any flight performed for demonstration, exhibition, practice, or evaluation purposes at a scheduled international air show as authorized elsewhere in this lease, the Lessee shall obtain the approval of the Director of Operations and Readiness, Headquarters, USAF (AF/XOO), for an Air Show Participation Plan covering the following:

(1) Detailed schedule of planned use of the leased aircraft.

(2) The name (or names) and qualifications of the pilot (or pilots) who are scheduled to fly the aircraft in practice, deployment or redeployment, and air show flights.

(3) Specific information on the qualifications of other crewmembers who may be needed.

(4) The names, qualifications, and exact duties of contractor supervisory personnel who may take part in any way in the management and control of the USAF aircraft while it is leased.

(5) The intended flight profiles planned for:

(i) Favorable weather conditions (specify favorable weather conditions for subject aircraft).

(ii) Weather conditions less than favorable but above the air show minimums, AFRs 60-16 and 60-18, and the aircraft handbook (Technical Order) limitations.

(iii) Alternate modified profiles for both weather conditions that would be flown if air show authorities limit flight time due to scheduling problems.

(6) Provisions for ensuring adequate preflight crew rest for the pilot (or pilots) and other crewmembers. This must include the way in which the flightcrews (pilots) will be isolated from potential marketing or other pressures that may be expected in the international air show environment.

(7) Specific schedule and attendees at preflight planning, preflight briefings, and postflight debriefings.

(8) Provisions for providing a visual record of all practice flights and air show demonstrations (16mm film or three-fourths inch video tape).

(9) Provisions for providing maximum flight data recorder coverage (if subject aircraft is normally flight data recorder equipped) of all practice flights and air show flight demonstrations.

(10) Provisions for ensuring the pilot who flies the aircraft wears suitable flight clothing for maneuvers to be performed (such as, anti-g suit).

(11) The Air Show Participation Plan as submitted for such required approval shall specify each nonstandard configuration of the aircraft to be leased and shall list each item of equipment or stores intended to be incorporated in or used to support the leased aircraft that is not part of the USAF standard equipment or approved stores list.

(b) Lessee's initial proposal and any revised proposals for such Air Show Participation Plan are to be submitted to the cognizant Systems Program Office or Plant Representative Office according to Part 862 of this chapter.

(c) The provisions of such Air Show Participation Plan as so approved shall be complied with by the Lessee as regards all air show demonstrations, exhibition, and evaluation flights performed with the leased property during the term of this lease, at or in the general vicinity of the air show locations, and shall also be complied with regarding all practice and pilot qualification flights during the term of this lease in preparation for such demonstration, exhibition, or evaluation flights.

(d) The Lessee shall permit the Contract Monitor or a delegate, as appointed by the United States Government (USG) for this lease, to monitor air show participation under this lease, and to have access to the leased aircraft during the entire period of air show participation and during all periods of practice or qualification for such air show participation as authorized under this lease, together with access to the maintenance and staging areas used for such participation or practice.

(e) The Contract Monitor shall be considered an element of USAF support, the costs of which are charged to the Lessee as lease support costs.

(f) The Lessee shall submit to the Contracting Officer, within thirty days after the completion of such air show participation authorized under this lease, a lease completion report outlining and explaining any problems encountered in and during the performance of the lease as regards such aircraft practice and participation flights, together with recommended procedures and procedural changes to improve the safety of USAF aircraft leased for air show participation under future leases. If no such problems are encountered, a negative report shall be submitted. The Lessee shall also, upon the written request of the Contracting Officer, and at no cost to the USG under this lease, provide the USG with copies (duplicate) of all visual record and of the flight recorder data of all practice flights and air show demonstrations as called for in the foregoing paragraphs.

(g) The Lessee shall also advise the cognizant System Program Director of its proposed participation in static displays or flights demonstrations at the air show, and shall ensure that appropriate Lessee personnel are available, at the time and place designated by the System Program Director, to receive a cautionary prebriefing on the military security requirements and other sensitive areas related to the leased aircraft and equipment.

(h) It is mutually understood and agreed that the sole purpose of this clause is to give the USG full knowledge of the intended use of the leased property and an opportunity to observe the Lessee's compliance with its proposed plan. Lessee acknowledges and agrees that the USG makes no warranty that the approved plan is safe and that the USG assumes no risk of loss or liability to third parties that may arise despite the Lessee's adherence to the approved plan. This clause creates no exceptions to the Lessee's obligations to assume risk of loss and third party liability, including obtaining insurance, as set out fully in the clauses elsewhere in this lease.

Subpart C—Lease Requests and Evaluation

§ 863.17 Request initiation.

The prospective lessee initiates the lease request and submits it to the appropriate SPO or ALC responsible for the items desired under the lease. The lease request must contain, as a minimum, the following information:

(a) Identification of the property to be leased (including tail numbers or part numbers, if known).

(b) Purpose of the lease.

(c) Proposed start date and duration.

(d) Proposed location(s) of the lease activity.

(e) Expected benefits to the lessee.

(f) Expected benefits to the USG.

(g) Statement as to nonavailability of suitable commercial items.

(h) Other pertinent facts (flights for dignitaries, for example).

§ 863.18 SPO or ALC.

When the SPO or ALC receives a request to lease USAF assets, they evaluate the request for the benefits to the USG and the lessee and the availability of the property during the proposed lease period. Also, they address the appropriateness of the intended use of the property and any limitations or reservations which should be imposed on such use. If the property requested for lease is assigned to an operational command, the SPO or ALC coordinates with that command then sends the request through contracting channels to command headquarters.

§ 863.19 HQ AFSC or HQ AFLC.

Command headquarters review each lease request and prepare a draft Secretarial D&F. The command then forwards the lease package consisting of the lease request, the D&F, and other supporting data with an endorsement to SAF/AQC for approval. The command forwards lease packages requesting participation in an international air show to HQ USAF/XOO (with an information copy to SAF/AQC).

Subpart D—Coordination and Approval Process

§ 863.20 Air Staff coordination.

Coordination requirements depend on the intended use of the leased items and whether the items are developmental or operational. SAF/SQC coordinates with HQ USAF/XOO, PRI, and LEY, as necessary. SAF/AQC coordinates with HQ USAF/PRP on the use of aerospace vehicles counted in the USAF inventory. If the proposed lease is for participation in an international air show, follow Part 862 of this chapter.

Note.—HQ USAF/XOO approves the lessee's international air show plans, including flight profiles. HQ USAF/PRI coordinates on requests involving demonstrations of leased property to representatives of foreign governments.

§ 863.21 Secretariat approval process.

Secretariat coordination and approval involves offices of diverse responsibilities. SAF/PA coordinates on air show lease requests. SAF/ACCS reviews all requests and provides rental charge guidance to the contracting officer. The DSAA approves all requests involving potential sales to foreign governments and organizations. In all cases SAF/GC reviews lease requests and D&Fs. SAF/AQ final approval on all lease requests.

§ 863.22 Processing time.

The coordination and approval process for a routine lease request usually takes four weeks. Prospective lessees and the commands should plan on a minimum of four weeks for approval of the D&F once a lease request reaches the SAF/AQC. Lease requests received with insufficient lead time may be returned without action.

Subpart E—Lease Negotiation and Administration

§ 863.23 AFSC lease negotiation.

The AFSC SPO responsible for an item which is approved for lease must negotiate the lease according to the signed D&F. The office which negotiates a lease is also responsible for amending it and recommending renewal, if appropriate. The SPO is also responsible for working with SAF/ACCS to determine the appropriate lease charges.

§ 863.24 AFLC lease negotiation.

WPCC negotiates leases of equipment no longer being acquired by AFSC. WPCC also amends leases and recommends renewal, if appropriate. The Secretarial D&F sets the basic terms and conditions which must be incorporated into the lease. WPCC works with SAF/ACCS to establish the proper lease charges.

§ 863.25 Delegation of lease administration.

After negotiaton, the SPO or WPCC delegates the lease to the cognizant contract administration office for administration. However, if the lease is to be performed overseas, the contracting officer may retain administration.

§ 863.26 Lessee compliance.

The contract administration activity must make sure that the lessee is complying with all the terms and conditions of the lease. The lessee must follow maintenance requirements, obtain necessary approval keep use records upon which rental charges may be calculated, and pay rental and other charges according to the lease agreement.

§ 863.27 Lessee payments.

Payments for rental (including depreciation and interest on investment) must be returned to miscellaneous receipts of the U.S. Treasury. Payments for flying-hour charges and reimbursement for support or services provided by the USG may be credited to the appropriation of the activity to which the leased property is assigned or which provided the support or service. If the lessee is authorized to obtain material from the supply system, it can only be provided on an as available, reimbursable basis. The contracting officer provides instructions to the lessee and appropriate accounting and finance office on handling payments.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-26177 Filed 11-10-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 50

[Docket No. 88-21257]

Announcement of Development of Regulations Protecting Against Scientific Fraud or Misconduct

AGENCY: Public Health Service, HHS.

ACTION: Advance notice of proposed rulemaking; Extension of comment period.

SUMMARY: On September 19, 1988, the Department issued (at 53 FR 36344-36347) an Advance Notice of Proposed Rulemaking to elicit public comment on a range of policy options being considered concerning possible regulatory action for protecting against scientific misconduct. The purpose of this Notice is to extend the pertinent comment period to December 19, 1988.

DATE: To assure consideration, comments must now be received at the address indicated below by the close of business on December 19, 1988.

ADDRESS: Comments should continue to

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be addressed to: John Gallivan, PHS Regulations Officer, Room 740 G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Comments will be available for review by the public at this address from 9 a.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION, CONTACT: Mr. Gallivan, at the address or telephone number indicated above.

SUPPLEMENTARY INFORMATION: The Department published two documents in the September 19, 1988 **Federal Register** pertaining to scientific misconduct—an Advance Notice of Proposed Rulemaking (ANPRM), found on pages 36344–36347 of that issue, and a Notice of Proposed Rulemaking (NPRM), found on pages 36347–36350. We are hereby extending the comment period on the former document.

A 60-day comment period was established for this ANPRM, with the deadline for receipt of comments established as November 18, 1988. The majority of the responses received to date, however, have requested that this period be extended by 60 days. We have received several such requests from individual universities, departments or researchers. Additionally, we have received such requests from the Federation of American Societies for Experimental Biology, the American Chemical Society, the American Society for Microbiology, and the Institute of Medicine—professional organizations which represent large numbers of individuals or groups that could possibly be affected by regulation action on scientific misconduct.

While we recognize that thoughtful formulation of commentary on the issues and options raised in the ANPRM cannot be effected quickly, it is also felt that an extension of another 60 days would unduly delay any subsequent rulemaking process, especially in light of the 60-day comment period already established. However, because of the importance of receiving comments from all parties that may be affected by further proposed regulations protecting against scientific misconduct, it has been determined that it is reasonable to extend the closing date of the comment period on the ANPRM for another 30 days, to December 19, 1988.

Date: November 8, 1988.

John Gallivan,

PHS Regulations Officer.

[FR Doc. 88-26224 Filed 11-10-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2200

[AA-320-89-4212-13]

Land Exchange Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The Federal Land Facilities Act of August 20, 1988 (Pub. L. 100-409) amended the Federal Land Policy and Management Act with regard to exchanges so as to require changes in Department of the Interior regulations and implementing instructions applicable to exchange and appraisal procedures.

One purpose of the Federal Land Exchange Facilitation Act was to amend the provisions of the Federal Land Policy and Management Act of 1976 and other laws to exchange involving lands managed by the Departments of the Interior and Agriculture in order to facilitate and expedite exchanges. In general, it directs the Bureau of Land Management and the Forest Service to develop more uniform rules and regulations pertaining the land appraisals that reflect nationally recognized standards, and to establish procedures and guidelines for the resolution of appraisal disputes.

The Department of the Interior requests suggestions from the public on procedures for implementing the new provisions of the law. Public comments are sought on the agreement to initiate and exchange, appraisal standards, adjustment of relative values for compensation purposes, the bargaining process, and the definition of "approximately equal value", "statement of value" and "qualified appraiser". The suggestions and recommendations submitted should reflect normal real estate practices, be consistent with nationally recognized appraisal standards, and encourage accountability for expenditure of public resources. In addition, the recommendations should be designed to encourage and facilitate the land exchange process.

DATE: Comments should be submitted by December 14, 1988. This limitation of time to comment is essential because final regulations are required to be issued by August 20, 1989. Comments received or postmarked after December 14, 1988 may not be considered in developing the proposed rulemaking.

Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Cavanaugh, (202) 343-5441, or David Hemstreet, (202) 343-8693.

SUPPLEMENTARY INFORMATION: The provisions of the Federal Land Exchange Facilitation Act require changes in the exchange policies of the Bureau of Land Management. The following is a brief summary of significant provisions applicable to exchange and appraisal procedures.

Sections 3 and 9 of that Act amend section 206 of the Federal Land Policy and Management Act by adding provisions:

1. Establishing timetables and mechanisms for the resolution of disagreements concerning the values of the properties involved, unless otherwise agreed by parties to the exchange;

2. Requiring the Department of the Interior and the Department of Agriculture to develop regulations which reflect nationally recognized appraisal standards;

3. Permitting the Secretary of the Interior to adjust the relative values of the properties to be exchanged in order to compensate a party or parties to the exchange for assuming costs, or other responsibilities or requirements, which would ordinarily be borne by the other party or parties;

4. Allowing exchange of Federal lands at approximately equal value when the combined value of the Federal lands is $15,000 or less, and when the determination of approximately equal value can be made without formal appraisals based on a statement of value prepared by a qualified appraiser, and approved by the authorized officer;

5. Permitting waiver of cash equalization payments where the amount to be waived is no more than 3 percent of the value of the lands being transferred out of Federal ownership or $15,000, whichever is less;

6. Allowing temporary segregation of Federal lands under consideration for exchange from appropriations under the mining laws for a period not to exceed 5 years.

Other sections of the Federal Land Exchange Facilitation Act provide for land exchange funding authorization, a land information study, and authorization to revoke, modify or terminate part or all of the withdrawal

in order to complete an exchange. Those provisions will not be addressed in the rule to be proposed and comments on them are not requested.

The public is requested to provide information or make suggestions which would assist the Bureau of Land Management in developing regulations implementing the Federal Land Policy and Management Act as amended by the Federal Land Exchange Facilitation Act. Specific comments should address the following new sections:

1. Sections 206(d) (1) and (2) of the Federal Land Policy and Management Act require an agreement to initiate an exchange. The sections provide that, unless otherwise agreed, arrangements for appraisals shall be made within 90 days. If the parties fail to agree on value within 180 days of submission of the appraisals for review, the appraisals shall be submitted to arbitration. The Senate Committee on Energy and Natural Resources, in commenting on this provision, indicates that the term "agreement to initiate an exchange" does not imply that the Secretary concerned or any other party is bound to complete the exchange.

We would appreciate comments and alternatives on how the process should be structured and to what extent the process should be addressed in the regulations.

2. Section 206(d)(4) provides that, instead of sending the appraisal to a arbitrator, the Secretary concerned and other parties to the exchange may mutually agree to employ a process of bargaining or some other process to determine the values of the properties involved in the exchange.

The public is invited to comment on the process of bargaining and suggest possible alternatives to facilitate Federal land exchange and protect the public interest.

3. Sections 206(f) (1) and (2) require the Secretary of Interior to develop rules pertaining to appraisals of lands and interests involved in exchanges which reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions.

The public is requested to provide comments, suggestions, references, or proposed language for criteria to be included in the appraisal standards.

4. Section 206(f)(2)(B)(ii) allows the Secretary of the Interior, upon mutual agreement of the parties, to adjust the relative values of the lands to be exchanged. This would allow compensation for various costs, responsibilities, or requirements assumed by one party which are ordinarily paid by the other party. Public suggestions are invited to identify allowable deductions.

Suggestions and comments should specifically address a provision in section 206(f) that would allow an adjustment for costs, or requirements associated with "curing deficiencies preventing highest and best use, and other costs to comply with laws, regulations and policies applicable to exchange transactions, or which are necessary to bring the Federal or non-Federal lands or interests involved in the exchange to their highest and best use for the appraisal and exchange purposes."

5. Section 206(h)(1) of the Federal Land Policy and Management Act allows the Secretary of the Interior to exchange lands out of Federal ownership without a formal appraisal if the combined value of the Federal lands is not more than $150,000, and the lands exchanged are approximately equal in value. The estimated values of the tracts must be based on a "statement of value made by a qualified appraiser and approved by an authorized officer."

Public suggestions are requested on what is "approximately equal value", what supporting appraisal information should be included in a statement of value, and what criteria should be used for determining a qualified appraiser.

Consideration is being given to defining approximately equal value in terms of differences in relative values of the properties to be exchanged. As an example, if the values of the lands exchanged are within 10% of each other, they would be considered approximately equal in value.

"Statement of value" is a new term to most professional appraisers. The new provision in section 206 of the Federal Land Policy and Management Act allows something less than a formal appraisal. This can be interpreted as meaning that the standard narrative reports are unnecessary. We solicit comments from the public as to whether or to what degree statements of value should comply with nationally recognized minimum appraisal standards.

The term "qualified appraiser" is not defined in the Act. Bureau of Land Management Manual 9310—Real Property Appraisal—requires that staff appraisers successfully complete a minimum of 160 hours of training sponsored or conducted by a nationally recognized professional appraisal organization. Review Appraisers must have completed 200 hours of training and have 5 years of experience. In addition, review and staff appraisers should accumulate a minimum of 60 hours of real estate training every 3 years, including 21 hours sponsored or conducted by a professional appraisal organization. Public comments should address the adequacy of these standards and identify appropriate requirements for contract appraisers.

November 5, 1988.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88-26190 Filed 11-10-88; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 390

[Docket No. R-120]

RIN 2133-AA65

Capital Construction Fund; Correction

AGENCY: Maritime Administration, DOT.

ACTION: Notice of correction in NPRM preamble.

SUMMARY: The Maritime Administration (MARAD) is correcting errors of omission in the preamble of this rulemaking action (NPRM) which appeared in the **Federal Register** on October 31, 1988 (53 FR 43907).

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Chief, Division of Capital Assets Management, 400 Seventh Street SW., Washington, DC 20590 Tel: (202) 366-1905.

SUPPLEMENTARY INFORMATION: The NPRM published on October 31, 1988 proposed amendments to MARAD's Capital Construction Fund (CCF) Regulations, 46 CFR Part 390, to conform to provisions in the Tax Reform Act of 1986 (Pub. L. 99-514). This NPRM would clarify the constraints on permissible operations for qualified CCF vessels and would change the financial reporting and "Buy American" requirements, respectively. There were two inadvertent omissions of words in the **SUPPLEMENTARY INFORMATION** part of the NPRM preamble, in the discussions of "Use of CCF for Lease Payments," and "Impermissible Operations for Qualified Agreement Vessels." The first omission was a number and the second was part of one sentence and the following sentence. Accordingly, the following corrections are made in the preamble of this document at 53 FR 43907:

1. On page 43906, in the second paragraph under the heading "Use of CCF for Lease Payments," add at the end thereof after the words, "Statement

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of Financial Accounting Standards No." the number "13."

2. Also on page 43908, in the paragraph under the heading, "Impermissible Operations for Qualified Agreement Vessels," revise the first two sentences to read as follows:

The present regulatory provisions at 46 CFR 390.5, defining "qualified agreement vessels," do not identify and define or describe impermissible operations for qualified agreement vessels. In order to ensure that the use of the CCF comports with the goals of the CCF program and with the overall purposes and policies of the Act, these regulations would be amended to specifically define and describe "impermissible operations" for qualified agreement vessels.

Dated: November 7, 1988.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 88-26195 Filed 11-10-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

Injurious Wildlife: Mitten Crabs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to prohibit the importation of any live animal or viable eggs of mitten crabs, genus *Eriocheir*, non-indigenous crustaceans of the Family Grapsidae, into the United States by adding the genus to the list of injurious fish, mollusks, and crustaceans in 50 CFR 16.13. The best available information indicates that this action is necessary to protect the interests of agriculture, human health and safety, and existing fish and wildlife resources from potential adverse effects that could result from purposeful or accidental introduction and subsequent establishment of naturally reproducing mitten crab populations into ecosystems of the United States. If added to the list, live mitten crabs or viable eggs could only be imported by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits would also be required for the interstate transportation of live mitten crabs or viable eggs currently held in the United States for scientific, medical, educational, or zoological purposes. However, the proposal would prohibit interstate transportation of live mitten crabs or viable eggs currently held in the United States for purposes not listed above.

DATE: Public comments addressing this proposed action must be submitted by December 29, 1988.

ADDRESS: Comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Fish and Wildlife Management Assistance, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dan Bumgarner, Acting Chief, Division of Fish and Wildlife Management Assistance, Room 514, Matomic Building, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone (202) 632-2202.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1987, the Service published a "Request for Information" in the **Federal Register** (52 FR 2748) announcing its intention to review available information on freshwater crabs of the genus *Eriocheir* for possible addition to the list of injurious animals within 50 CFR Part 16. The Request contained brief background material and it solicited biologic, economic, or other information concerning mitten crabs to aid the Service in determining if a proposed rule is warranted. Nearly 200 copies of the request were mailed to a variety of government agencies, organizations, associations, and individuals considered possibly to have knowledge of mitten crabs or a vested interest in the outcome of the Service's review process. The mailing included, but was not limited to:

—All State fish and game agencies;
—Conservation agencies of all Canadian Provinces and the Canadian Wildlife Service;
—Conservation agencies of Asian and European countries where mitten crabs are known to exist in the environment;
—Domestic and foreign conservation and professional organizations and associations;
—Federal agencies;
—Aquaculture specialists; and
—Business organizations.

A complete copy of the mailing list can be obtained by contacting the individual identified in the section above entitled **FOR FURTHER INFORMATION CONTACT.**

Information related to this action was also obtained in telephone conversations with, but not necessarily limited to, representatives of the academic community, wholesale food industry, and Federal and State governments.

The Request for Information's 45-day comment period ended on March 12, 1987. Written comments were received from five respondents as follows:

Government (State)—4
Universities—1

Although all five respondents indicated support for listing mitten crabs as injurious, only one respondent provided information that, as far as was known, mitten crabs were not being raised in Florida and none had been accidentally introduced into that State. The other four respondents did not provide any information about the crabs.

In addition to the written responses, one telephone response was received expressing a desire to be included in any future mailings on the subject. This response was from a State government agency; no information was provided, however, and no indication of support or opposition to the Service's effort was stated.

In a March 17, 1987, Department of the Interior news release, the Service also informed the public that mitten crabs were being considered for addition to the list of injurious wildlife. No public comments are known to have been submitted in response to that news release.

Service involvement with mitten crabs began in 1986 when, in a September 16 letter, the California Department of Fish and Game (Department) requested that the Service prevent the importation of mitten crabs (genus *Eriocheir*) into the United States. The Department, aware that live Chinese mitten crabs (*Eriocheir sinensis*) were being legally imported from China and sold as a live food item at Asian-American food markets in the Los Angeles and San Francisco Bay Areas for $10–$15 per pound, was concerned that people might release live crabs into public or private waters as, for example, part of religious ceremonies or for other unspecified reasons. Such releases, the Department stated, were increasing in occurrence in the State's waters. Believing a threat to the State existed, the Department itself on June 12, 1986, initiated actions to prevent the importation, transportation, and possession of the genus *Eriocheir* in California by proposing to place it on that State's "List of Prohibited Species," and effort that resulted in the addition of the genus to that list in early 1987. The Department feared that importation could ultimately lead to the introduction and subsequent establishment of a reproducing population in the State's natural ecosystem with concomitant adverse results to agriculture, aquatic resources, and human health.

The Department's 1987 action to prohibit importations into California has no effect on prohibiting importations throughout the rest of the United States. If importations are not prohibited nationwide, mitten crabs could ultimately establish wild populations in other geographical areas where appropriate environmental conditions exist.

The Department's September 16, 1986, letter requested that the Service examine the genus *Eriocheir* for possible prohibition of importation under the Lacey Act although only the Chinese mitten crab, *E. sinensis*, was specifically identified and discussed in the supporting documents submitted along with the letter. The literature search conducted by the Service in the process of developing this proposed rule revealed that at least three additional species of mitten crabs exist (Sakai 1976) as follows:

—*E. japonicus*, found throughout Japan from Hokkaido to Okinawa, to Vladivostok, north and east costs of Korea, Taiwan, and Hong Kong;
—*E. rectus*, found on Taiwan and Mainland China to Macao; and
—*E. leptognathus*, distributed along coastal areas of the Yellow Sea, from Shanghai to various localities of northern Mainland China to Korea.

A preponderance of information obtained in the Service's literature search and discussions with individuals of the academic and scientific communities dealt with the species *E. sinensis*, a fact clearly reflected in this proposed rule and other documents prepared for, and in support of, this action. However, the Service is proposing to list as injurious the entire genus *Eriocheir* because of the similarity of appearance of the species, and because all species have similar habits and utilize similar habitats (Felder and Wicksten pers. comm.); it is believed that all four species might have the same negative impacts.

Description of the Proposed Rule

The regulations contained in 50 CFR Part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of that law, the Secretary of the Interior is authorized to prescribe by regulation those nonindigenous wild animals, or viable eggs thereof, which are deemed to be injurious or potentially injurious to the health and welfare of human beings, to the interests of agriculture, forestry, and horticulture, or the welfare and survival of wildlife or wildlife resources of the United States. If it is determined that mitten crabs of the genus *Eriocheir* are injurious, or potentially injurious, then as with all listed injurious animals, their acquisition, importation into, or transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited except by permit for zoological, educational, medical, or scientific purpose, or by Federal agencies without a permit solely for their own use upon filing a written declaration with the district Director of Customs at the port of entry. In addition, no live mitten crab or progeny thereof acquired under permit may be sold, donated, traded, loaned, or transferred to any other person unless such person has a permit issued by the Director of the Service. The interstate transportation of any live mitten crabs or viable eggs thereof that currently may be held in the United States for purposes such as aquaculture propagation or for human consumption, or for any purpose not otherwise permitted, would be prohibited.

Distribution

The Chinese mitten crab is indigenous to the temperate zone in eastern Asia, including the east coast of Mainland China from Fuchien Province in the south, northward along the coast of the Yellow Sea, and around the west coast of the Korean Peninsula (Panning 1938). Although the species apparently prefers the coastal areas of China and Korea, it is also found upstream in river systems at considerable distances from coastal areas. For example, in the Yangtse-kiang River it occurs more than 800 miles upstream (Schmitt 1965), and in Germany's Elbe River they have been found more than 400 miles from the coast (Christiansen 1969).

As just alluded to, the Chinese mitten crab also occurs, as an introduced species, throughout the coastal areas and many river systems of temperate central Europe and cold-temperate northern Europe according to Panning (1938). He reported that the first Chinese mitten crab was taken in 1912 from Germany's Aller River, a tributary of the Weser River with a confluence approximately 60 miles from the North Sea, and surmised that the species was first introduced into Europe between 1900 and 1910 with the release into German coastal areas of ships' ballast water containing larvae taken on board in Chinese ports. During the next two decades the crab expanded throughout Germany. By the 1930's it had moved westward into The Netherlands, Belgium, and northern France (*ibid.*, Wolff and Sandee 1971) and eastward into Denmark, Norway, Sweden, Finland, and Poland (*ibid.*, Grabda 1973, Christiansen 1977). Ingle and Andrews (1976) discussed the first three isolated collections of the crab in Great Britain: Chelsea (London) in the Thames River in 1935; in the Southfields Reservoir near Castleford in 1949; and three individual crabs in the Thames River approximately 20 miles downstream from London in 1976. They believed the 1976 collections arrived in Great Britain in the ballast water of ships arriving from European ports, but did "* * * not constitute a serious invasion by the species." However, Clark (1984) described a number of subsequent findings of the crab in Great Britain including annual sightings from the Humber and Ancholme Rivers (approximately 150 miles north of London) from 1976 through 1979, and again in 1984. Additionally, Clark reported that sixteen more specimens were collected from the Thames River subsequent to the 1976 account of Ingle and Andrews. It seems apparent from the accounts, therefore, that the species commonly occurs along coastal areas and into many river systems of northern Europe from France to Norway; it may be established in Great Britain although this has not been conclusively stated in available sources.

Several known collections of the crab have occurred in North America. Nepszy and Leach (1973) reported the first collection of the species from the Detroit River (between Lake St. Clair and Lake Erie) in 1965, while three more specimens were taken from commercial gillnets in Lake Erie in 1973. Theorized to have been brought to North America, as in Europe, in the ballast of cargo ships, they offered the opinion that (p. 1910):

* * * [Although] the crab is unlikely to become established in Lake Erie or the Upper Great Lakes [presumably because of natural and artificial barriers that would impede migrations to salt water for reproductive purposes] accidental introduction to an estuarine system might permit it to become established in North America. The crab is a lowland form that needs not only sea or brackish water for its propagation but also the mouths of large rivers not subject to strong currents [which evidently facilitates upstream migration] * * * The normal habitat of the adults in Europe is the bottoms and banks of freshwater rivers and estuaries; individuals prefer hard bottom and areas covered with submerged plants, which are the main food source * * * In Europe, it bypasses obstacles such as dams and survives up to 36 days in wet meadows * * *

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A live Chinese mitten crab was taken from a crab trap in Louisiana's Mississippi River Delta in early 1987 (Felder pers. comm.). It is not yet known if this individual animal represents a widespread infestation or an isolated incident; the crab's origin is unknown.

Biology

Grzimek (1974) includes the Chinese mitten crab in the Suborder Brachyura, Family Grapsidae (rock crabs). In apparent recognition of the hair covering the species' claws, it is variously referred to as the wool crab (*ibid.*), Chinese mitten crab, mitten crab, and hairy-fisted crab (Ingle 1980). The species varies in color from grayish-green to dark brown with "* * * the carapace subsquare, a little broader than long with lateral margins slightly curved, rather convex in longitudinal direction, front scarcely deflexed." (pg. 96) (Christiansen 1969). Nepszy and Leach (1973) stated that the four crabs taken in Lake Erie and the Detroit River had carapace lengths of 57 to 64 mm. and carapace widths of 65 to 74 mm. Their weights ranged from 124 to 201 grams.

Panning (1938) discussed reproduction by the species as follows (pp. 365–366):

> The mitten crab is, during its whole life, practically a fresh-water animal and is found hundreds of kilometers upstream in thickly infested rivers. With the development of the sex instinct, the urge for the sea also awakens in them, and in August, or after, they leave their feeding grounds, often located far inland, to move on downstream to the sea. The sex organs develop during this migration and the crabs reach puberty on the last lap of the journey through the usually brackish water in the tidal regions. In the fall they always gather to breed in large swarms in the brackish water in the lower course of the rivers * * *.
>
> The eggs are laid within 24 hours after mating and are fastened to the small hairs on the pleopods on the underside of the abdomen with a cementlike substance which hardens in salt water. This cementlike substance hardens only in water that has a salt content of more than 2.5 percent, according to F. Buhk. The females, burdened with the weight of the eggs on the pleopods under their abdomens, choose to stay on in the deep water outside the river mouths through the winter. As soon as it gets warm in the spring the tiny larvae escape from the eggs to start to drift about free * * *. In all probability the females hunt up particularly brackish water for this purpose. In June or July, after all the larvae have left the eggs, both males and females set out for the river banks at the mouths of the rivers, where they gradually perish.
>
> The intermittent stay in fresh water, and these long journeys far inland between birth and death, which both take place in salt water, bring about the peculiar character of the life cycle of these mitten crabs. They cannot repeat these long journeys to reproduce every year or two, which other crawfishes do, because the distances are too great. Breeding has, therefore, been put off to the last part of their life span. But under normal circumstances this single breeding period is compensated by an enormous egg production * * *.
>
> Whereas the eggs need pure salt water to mature, the larvae leave the eggs in very brackish water * * *. These larvae probably move gradually into less brackish water * * *.
>
> This migration from salt to fresh water in the larval stage and from fresh water to salt water as adults toward the end of their life, is a distinguishing habit of the mitten crab * * *.

Panning attributed the upstream migration into waters beyond tidal influence to the tremendous number of crabs and inadequate forage. He reported that the species is omnivorous; it primarily eats vegetable matter although a portion of its diet includes "* * * worms, * * * mussels and snails, inferior crustaceans, water insects, insect larvae, and * * * dead * * * organic [matter] * * *" (pg. 371). He also stated that the crab consumes fish trapped in nets although a study of the stomach contents of 1,000 crabs revealed only four or five with fish in them; it was not determined whether these remains were of netted, free-swimming, or dead fish.

Control

Several methods of controlling mitten crabs in Europe are described in literature sources; apparently, none of these methods are completely effective in controlling their migratory movements or geographical spread. It is doubtful that these methods would be any more practical or effective in the United States than they are in Europe.

Panning (1938) has stated that, once established, control of mitten crabs is best effected just below barriers (e.g., dams) that obstruct their upstream migrations. As the crabs leave the water in efforts to bypass the barriers, they are directed by means of sheet metal into collection pits. He also stated that crabs moving upstream and downstream were collected at dams from eel basket pots. In Germany during 1936 and 1937, nearly 580,000 pounds and 420,000 pounds, respectively, were collected by these methods. Other means of control were not considered by Panning to be efficacious. More recently, Halsband (1968) described the use in Germany of electrical screens installed on river bottoms to block the movements of crabs during migration; electrical pulses at a frequency of 30–40 per minute were found to disable, then kill the crabs. Schmitt (1965) reported that efforts were unsuccessful in Europe to market the large numbers of migrating crabs collected from river systems. Panning (1938) mentioned that crabs taken in Germany were used to feed pigs, ducks and fish; these uses, however, were unprofitable and other more economically viable, but unidentified, solutions were being sought.

In mainland China where availability fluctuates, the species is commercially harvested from November through February. Until their recent listing by California as a prohibited species, Chinese mitten crabs were known to have been imported legally into that State and sold at $10–15 per pound as a specialty, live food item at small Asian-American food markets in the San Francisco Bay and Los Angeles areas. Their appearance in food markets was sporadic (California Department of Fish and Game 1986). No information is currently available to indicate that live crabs are either imported for sale as a live food item in Asian-American food markets in other States, or produced in aquaculture in the United States. Such actions, however, are conceivable in the future given the retail prices at which they recently sold in California.

Affected Environment

The average yearly temperature (extending down to 100 meters) of water in the Yellow Sea off the coast of mainland China and Korea is approximately 15 to 25 degrees centigrade, while the average yearly surface temperature in the North and Baltic Seas in Northern Europe and Scandinavia is approximately 10 to 15 degrees centigrade (Williams *et al.* 1968). According to this source, these same average temperatures exist along most of North America's coastal areas, from Nova Scotia to Florida in the East, and from the Queen Charlotte Islands, British Columbia to the Baja Peninsula in the West. The average yearly surface temperature of water in the Gulf of Mexico is given as approximately 25 degrees centigrade.

Additionally and as previously stated, during the reproductive process hardening of the substance that cements the eggs to the pleopods occurs in water with a salt content greater than 2.5 percent (interpreted to mean 25 parts per thousand), a factor that would not be likely to significantly restrict establishment and expansion of the species into estuaries and upstream into wide, slow moving river systems of the United States.

Literature Cited

Citations for all references listed in this Proposed Rule appear in the Environmental Assessment, copies of which are available by contacting the individual identified in the section above entitled **FOR FURTHER INFORMATION CONTACT.**

Need for the Proposed Rule—Environmental Consequences

The Service believes this proposal is needed based on currently available evidence which suggests that importation of live mitten crabs or viable eggs thereof, their release, and subsequent establishment of naturally reproducing populations in ecosystems of the United States could pose a real, or potential, threat of undetermined extent to the interest of agricuture, human health and safety, and existing fish and wildlife resources as follows:

1. Agriculture—by destruction of levee systems and earth fill irrigation canals resulting from their burrowing behavior. The species is known to seriously undermine streambanks and earthen levee and irrigation systems. According to Chivers (1986), it has caused millions of dollars of damage to dikes in Germany and The Netherlands as a result of its burrowing behavior. Their tunnels, which may number up to 30 per square meter, are believed to provide protection from birds and other crabs during the moulting process (Ingle 1986). Extensive burrowing activities over time could result in the collapse of riverbanks or levees with significant impacts likely to occur to the interests of agriculture.

2. Human health and safety—by serving as an intermediate host to the Oriental lung fluke *Paragonimus westermani.* Human beings are final hosts in the life cycle of this internal parasite that commonly occurs throughout the Orient. The Chinese mitten crab provides an essential link in the life cycle of the Oriental lung fluke, *P. westermani,* by serving as a second intermediate host of the parasite. *P. westermani* is not known to exist in the United States although the closely related lung fluke *P. kellicotti* has been found in pigs and cats in South Carolina, Mississippi and Louisiana (Nash pers. comm.). According to Burch (pers. comm.), freshwater snails of the Family thiaridae (several species of which have been introduced into Hawaii, Florida, Texas, and Arizona) and the closely related Family Pleuroceridae (representatives of which are native to the United States and common in the South) serve as first intermediate hosts of the fluke. Mannals, including humans, dogs, cats, raccons, opossums, and fox could serve as final hosts. Comon in Asia, *P. westermani* is transmitted in raw or undercooked crab meat or in the crab's body fluids. Schmitt (1965) states (pg. 184):

> * * * in countries where the lung fluke is prevalent it is a greater scourge than the hookworm. Not only does it invade the lungs, producing a chronic cough, blood spitting, and an anemic condition, but it penetrates the brain as well, giving rise to * * * afflictions that have been variously diagnosed as infantile paralysis, cerebral hemorrhage, encephalitis * * *

P. westermani is also known to move to the heart in severe infestations such as when it is undiagnosed and, according to Durio (pers. comm.), both heart and brain infestations can cause death.

3. Wildlife resources—by serving as an intermediate host to the Oriental lung fluke *P. westermani.* As with humans, a number of wildlife species could become infected with the lung fluke and function in the life cycle of the parasite as final hosts.

4. Fish resources—by providing interspecific competition to indigenous crustaceans, mitten crabs could displace native species. It has been stated that the species could prove harmful to native crustaceans and other aquatic resources (Parnell 1986), presumably by competing for available foood resources, or as stated by Wicksten (1986) by introducing diseases and parasites (other than the lung fluke) for which native species would show little or no tolerance.

Information on the impacts of introducing the mitten crab in the United States is generally incomplete and unavailable at this time. Unless actually introduced and established in the United States, the long-term effects on agriculture, human health and safety, and existing fish and wildlife resources are not known. Based on the history of other exotic introductions and the ecology of the mitten crab, its introduction into the United States should be avoided. The Service has determined that addition of mitten crabs and viable eggs thereof to the list of injurious fish, mollusks, and crustaceans in 50 CFR 16.13 is the only means available to achieve this result.

Required Determinations

An assessment of the environmental effects of this proposed rule has been prepared and a determination has been made that the proposal is not a major Federal action under the National Environmental Policy Act. It has also been determined that this proposal is not a major rule under Executive Order 12291. In addition, the best available information indicates that no live mitten crabs or viable eggs thereof are known to be imported for human consumption, or propagated at aquaculture facilities, and the proposed rule is not expected to have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act. Although the prohibitions imposed by this Rule will not significantly affect the human environment in the United States, the importation and spread of the mitten crab, without imposing these restrictions, could pose a potential adverse impact on agriculture, human health and safety, and fish and wildlife resources. Since data on the impacts of this crab on the resources of the United States are incomplete and unavailable, a rigorous evaluation of impacts is not possible.

The Environmental Assessment, the Determination of Effects of Rule, and all supporting documents are available for public inspection during regular business hours of 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Service's Division of Fish and Wildlife Management Assistance, Room 514, 1717 H Street, NW., Washington, D.C.

Information Collection Requirements

This proposed rule contains no information collection requirements for which Office of Management and Budget approval is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

Author

The author of this proposed rule is Jeffrey Lorenz Horwath, Wildlife Biologist, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 16

Fish, Fish and Wildlife Service, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

PART 16—INJURIOUS WILDLIFE

Accordingly, 50 CFR Part 16 is proposed to be amended as described below:

1. The authority for Part 16 continues to read as follows:

Authority: Lacey Act, 74 Stat. 754 (18 U.S.C. 42)

2. § 16.13 Paragraph (a)(1) is revised to read as follows:

§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.

(a)(1) The importation, transportation, or acquisition is prohibited of any:

(i) Live fish or viable eggs of the family Clariidae; and

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(ii) Live crustaceans or viable eggs of mitten crabs, genus *Eriocheir: Provided,* that the Director shall issue permits authorizing the importation, transportation, and possession of such live fish or crustaceans or viable eggs under the terms and conditions set forth in § 16.22.

* * * * *

Dated: October 25, 1988.

Susan Recce,

Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 88-26162 Filed 11-10-88; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Petitions to List Populations of the Western Snowy Plover and the California Mountain Lion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on petitions.

SUMMARY: The U.S. Fish and Wildlife Service announces 90-day petition findings for two petitions to amend the Lists of Endangered and Threatened Wildlife and Plants. Substantial information has been presented that a petition to list coastal western snowy plovers may be warranted. Substantial information has not been presented that listing a Santa Monica Mountains population of the California mountain lion may be warranted.

DATES: The findings announced in this notice were made in July 1988. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding the coastal western snowy plover petition may be submitted to the Supervisor, Fish and Wildlife Enhancement Field Station, 727 N.E. 24th Avenue, Portland, Oregon 97232. Information, comments, or questions regarding the Santa Monica Mountains mountain lion petition may be submitted to the Field Supervisor, Fish and Wildlife Enhancement Field Station, Federal Building, 24000 Avila Road, Laguna Niguel, California 92677. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Mr. Russell D. Peterson, at the above Portland, Oregon, Field Station address (telephone 503/231-6179 or FTS 429-6179); Ms. Nancy Kaufman, at the above Laguna Niguel, California, Field Station address (telephone 714/643-4270 or FTS 798-4270).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. The Service has received and made 90-day findings on the following petitions.

A petition from Dr. J. P. Myers, Senior Vice President, National Audubon Society, was dated March 11, 1988, and received on March 24, 1988. It requested that a Pacific coast population of the western snowy plover, *Charadrius alexandrinus nivosus,* be added to the list of threatened species. The petitioner submitted information documenting the decline of, current status of, and threats to coastal western snowy plovers. The number of birds nesting in coastal Washington, Oregon, and California, has declined by about 50 percent in the past two decades despite protective efforts by the affected States. Primary factors have been habitat loss and alteration from recreation, coastal developments, and introduction of European beach grass. Nest abandonment and predation have also been significant. Questions pertaining to the significance of interchange between coastal and interior stocks of the subspecies and demarcation of the subspecies itself remain to be answered. Nonetheless, the Service found that the petition presented substantial information indicating that the requested action may be warranted. Formal review of the status of the entire subspecies *Charadrius alexandrinus nivosus* has been in progress since the Service's December 30, 1982 vertebrate notice of review (47 FR 58454).

A petition from Mr. Sean Manion, on behalf of the Topanga-Las Virgenes Resource Conservation District of California, was dated April 12, 1988, and received on April 25, 1988. The petitioner requested that a Santa Monica Mountains population of the California mountain lion (*Felis concolor californica*) be added to the list of endangered species. After review of the petition and supporting documentation, the Fish and Wildlife Service finds that the petition does not present substantial information that the requested action may be warranted.

The range of the California mountain lion encompasses most of California, southern Oregon, western Nevada, and southern Baja California, Mexico. The lion is distributed throughout the majority of its historic range and the population appears to be stable or increasing. Although the petition presents information suggesting deterioration of the lions' habitat in the Santa Monica mountains, there is insufficient evidence that would support a determination that these animals constitute a completely isolated subpopulation or that the status of the species, as a whole, is declining over all or a significant portion of its range.

Author

This notice was prepared by Ms. Jackie Campbell, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6150 or FTS 429-6150).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: October 26, 1988.

Susan Recce

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 88-26188 Filed 11-10-88; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 18

Marine Mammals; Native Exemptions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereafter the Service) proposes to amend the regulations implementing the Marine Mammal Protection Act of 1972 (the Act), 16 U.S.C. 1361-1407; 50 CFR 18. Recent U.S. District Court decisions in Alaska have called for a thorough administrative review of the taking of northern sea otters (*Enhydra lutris lutris*) under the native exemptions section of the regulations (50 CFR 18.23). The Service has conducted a preliminary analysis of all available information, including historical evidence, legislative history, and past policy statements and guidelines relating to the Alaska Native use of the sea otter in handicrafts and clothing. Sea otters apparently were not being taken for such purposes when Congress passed the Act, nor had they been taken legally within living memory by Alaska Natives. The clear intent of Congress in passing the Act was to preserve existing native uses of marine mammals rather than to promote expansion of Alaskan arts and crafts industries or the creation of new industries. Therefore, the Service interprets the Act and its existing regulations to prohibit the taking of sea otters by Alaska Natives for use in creating and selling handicrafts and clothing, and the Service proposes to amend the definition of "authentic native articles of handicrafts and clothing" to clearly state this interpretation. In keeping with the paramount objective of Congress to protect marine mammals, this amendment to the regulations is intended to supersede and inconsistent Service policy guidelines and resolve the existing controversy over the allowable native uses of the sea otter. Alaska Natives would continue to be permitted to take this species for subsistence purposes.

DATE: Comments must be submitted by January 13, 1989.

ADDRESSES: Comments and materials concerning this notice should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038-8006. Comments and materials may be delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, Room 300, Hamilton Building, 1375 K Street NW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Thomas L. Striegler at the above address [(202) 343-9242 or FTS 343-9242].

SUPPLEMENTARY INFORMATION:

Existing Regulations

The Act provides for a moratorium on the taking and importation of marine mammals and marine mammal products, including the northern sea otter (*Enhydra lutris lutris*). However, Congress created a limited exemption for Alaska Natives. 16 U.S.C. 1371(b) provides, in relevant part:

Except as provided in section 1379 of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) Is for subsistence purposes; or

(2) Is done for the purposes of creating and selling authentic native articles of handicrafts and clothing: *Provided,* That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: *And provided further,* That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, and painting; and

(3) In each case, is not accomplished in a wasteful manner.

Pursuant to the authority granted in 16 U.S.C. 1382, the Service promulgated regulations to implement the Act on December 21, 1972 (37 FR 28173) and substantially amended on February 25, 1974 (39 FR 7262). 50 CFR 18.3 provides, in pertinent part that "Authentic native articles of handicrafts and clothing" means items made by an Indian, Aleut, or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern techniques at a tannery registered pursuant to section 18.23(c) may be used so long as no large scale mass production industry results.

The native exemptions section of the regulations (50 CFR 18.23) provides, in relevant part that except as otherwise provided in Part 403 of this Title, any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammel without a permit, subject to the restrictions contained in this section, if such taking is: (1) For subsistence purposes, or (2) For purposes of creating and selling authentic native articles of handicraft and clothing, and (3) In each case, not accomplished in a wasteful manner.

Historic Uses

Since 1741, the date of the earliest exploitation of sea otter populations for the fur trade, there has been virtually no use of sea otters by Alaska Natives. Native takings were largely precluded, and in fact prohibited by the Russians and later by Alaska statutes during the 18th and 19th century fur trade. There is evidence of certain uses of sea otter pelts and parts in Alaska prior to 1741. However, Alaska Natives have apparently not commonly produced and sold handicrafts or clothing from sea otters within living memory.

Congressional Intent

The paramount objective of Congress in passing the Act was the protection of marine mammals. Congress allowed the taking of marine mammals by Alaska Natives to continue as those practices existed at the time of the passage of the Act, but did not provide for the development of new uses or the expansion of taking by natives. Congress intended to preserve existing native uses of marine mammals, characterized as the maintenance of "cottage industries", rather than to promote economic development or the growth of Alaskan arts and crafts industries. The fact that sea otter handicrafts have not been commonly produced for more than 200 years makes it impossible to consider them a part of the "cottage industry" or status quo Congress was exempting from the provisions of the Act. The native exemptions were passed with the implicit understanding that the patterns of native taking and use of marine mammals would remain as they were in 1972, at the time of passage of the Act. For the sea otter, this would allow essentially no take by Alaska Natives for the commercialization of handicrafts and clothing. In the words of United States District Judge Holland, ruling the *Maria Rena Katelnikoff* v. *U.S. Department of the Interior, et al.,* A85-336 Civ. (D.C. Alaska; July 21, 1986):

* * * it is entirely conceivable that the regulation at issue could leave Alaska Natives with virtually no uses of sea otters and still be consistent with the congressional intent to preserve traditional lifestyles and handicrafts.

In keeping with the purpose of Congress in passing the Act, the Service believes that exemptions from the moratorium which permit limited taking of marine mammals should be construed narrowly. By amending the marine mammal regulations in 50 CFR 18 to clarify their application to the sea otter, the Serivce will comply with

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congressional intent and supersede any inconsistent policy guidelines and rulings, thereby resolving the existing controversy over the allowable native uses of this species.

Note.—The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, there are no information collection requirements contained in this document that require Office of Management and Budget clearance under 44 U.S.C. 3501. Since there has been no lawful, commercial use of sea otters by Alaska Natives for more than 200 years, there will be no economic impacts on the public, individual industries, or Federal, state, or local governments. The only effect of this rule will be to eliminate the confusion and controversy which have resulted from the misinterpretation of congressional intent, previous regulatory language, and policy guidelines regarding the allowable native uses of the sea otter.

The Service has determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this action. Since the proposed rule reflects the statutory language and intent of Congress in the Act, this document is considered an amendment to an approved action having no potential for causing substantial environmental impact, and thus qualifies as a categorical exclusion from National Environmental Policy Act requirements under 516 DM 6, Appendix 1, Section 1.4(A)(1). The primary author of this document is Special Agent Michael Sutton, Division of Law Enforcement, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Marine mammals, Transportation.

Regulation Promulgation

PART 18—[AMENDED]

For the reasons set forth in the preamble, Part 18, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for Part 18 continues to read as follows:

Authority: Marine Mammal Protection Act of 1972, as amended (Pub. L. 92–522, 88 Stat. 1027; Pub. L. 97–58, 95 Stat. 979 (16 U.S.C. 1361–1407)).

§ 18.3 [Amended]

2. Section 18.3 is amended by adding the following sentence to the end of the definition of "Authentic native articles of handicrafts and clothing": "*Provided that,* it has been determined that no items created in whole or in part from sea otter meet paragraph (a) of this definition, and therefore no such items may be sold."

Dated: October 17, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–26085 Filed 11–10–88; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 53, No. 219
Monday, November 14, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development; Availability of Funds; Southern University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into an agreement with Southern University for the adaptation and introduction of Solar Box Cooker Technology in Sierra Leone.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1989 (FY1989) to provide funding support to Southern University to aid in alleviating two related problems that impact on the nutritional status of poor and rural people in developing countries; i.e., the need for fuel-saving techniques for cooking food, and a method to increase available potable water at the home/village level. Funds will be utilized for adapting and developing solar box cooker technology for cooking food and water quality improvement.

Assistance will be provided only to the University which will utilize funds to support purchase of equipment, test foods, and for chemical/bacteriological analyses.

Based on the above, this is not a formal request for application. An estimated $7400 will be available in FY1989 as partial support for this project.

Information on proposed Agreement #58–319R–9–006 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Nancy J. Croft,

Contracting Officer.

Date: November 8, 1988.

[FR Doc. 88–26190 Filed 11–10–88; 8:45am]

BILLING CODE 3410–DP–M

Animal and Plant Health Inspection Service

[Docket No. 88–166]

National Animal Damage Control Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Animal Damage Control Advisory Committee.

Meeting Places, Dates, and Times: The meeting will be held at the Denver Wildlife Research Center, Building 16, Federal Center, Lackwood, CO 80228, November 28, from 1:30 p.m. to 5 p.m. The meeting will also be held at the Sheraton Hotel and Conference Center, 360 Union Blvd., Lakewood, CO 80228, on November 29 from 8 a.m. to 5 p.m., and November 30 from 8 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: C. Joe Packham, Acting Deputy Administrator, ADC, APHIS, USDA, Room 1624, South Building, 14th and Independence Avenue SW., Washington, DC 20090–6464, (202) 447–2054.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Animal Damage Control Program. Committee members will discuss these matters during the meeting, which will be open to the public. Members of the public will be unable to participate in the meeting. However, written statements concerning the Animal Damage Control Program can be sent to C. Joe Packham at the address listed under **FOR FURTHER INFORMATION CONTACT.** These statements may be submitted before or after the meeting. Please refer to Docket Number 88–166 when submitting your comments.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 8th day of November, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–26178 Filed 11–10–88; 8:45 am]

BILLING CODE 3410–34–M

Farmers Home Administration

Housing Preservation Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant ((HPG) program. FmHA hereby announces that it will receive preapplications in December 1, 1988, and for 90 days thereafter.

DATE: The closing date for acceptance by FmHA of preapplications is February 28, 1989. Preapplications must be received by or postmarked on or before this date.

ADDRESSES: Submit preapplications to FmHA field offices; applicants must contact their State FmHA Office for this information.

FOR FURTHER INFORMATION CONTACT: Sue M. Harris, Loan Officer, Multi-Family Processing Division, FmHA, USDA, Room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1660 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: 7 CFR Part 1944, Subpart N provides details on what information must be contained in the preapplication package. (See 51 FR 17443 published May 13, 1986). Entities wishing to apply for assistance should contact the FmHA State Office to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.433—Housing Preservation Grants. This program is subject to the

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provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V; 49 FR 29112, June 24, 1983). Applicants are also referred to 7 CFR Part 1944, § 1944.674 and 1944.676(d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the Housing Preservation Grant program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been set, although, based on FY 1987 and FY 1988 experience, the Agency anticipates that the average grant will be between $100,000 and $150,000 for a one-year proposal. For FY 1989, $19,140,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR Part 1940, Subpart L. Methodology and Formulas for Allocation of Loan and Grant Funds.

Applications will be reviewed and rated on the project selection criteria contained in the regulations for the program.

Decisions on funding will be based on the preapplications and notices of action on the preapplications should be made within 60 days of the closing date.

Date: November 7, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-26247 Filed 11-10-88; 8:45 am]

BILLING CODE 3410-07-M

ARMS CONTROL AND DISARMAMENT AGENCY

U.S. Arms Control and Disarmament Agency; the President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: December 6, 1988.

Time: 8:30 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact: William C. Golbitz, Executive Director, General Advisory Committee on Arms Control and Disarmament, Room 5927, Washington, DC 20451. (202)-647-5178.

Purpose of Advisory U.S. Committee: To advise the President, the Secretary of State, and Director of the Arms Control and Disarmament Agency respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review specific arms control and related treaty issues; an Executive session will be held.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and the Disarmament Agency dated November 4, 1988, made pursuant to the provisions of section 10 (d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 88-26133 Filed 11-10-88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1987 Economic Censuses Self-Employment Classification Form.

Form Number: CB-9924.

Type of Request: New.

Burden: 5,833 hours.

Avg Hours per Response: 14 minutes (approximately).

Number of Responses: 25,000.

Needs and Uses: This survey is part of the Economic Censuses which are the primary source of facts about the structure and functioning of the Nation's economy and provide essential information for government, business, and the general public. This information collection is needed to assure the quality of data for establishments without payroll.

Affected Public: Businesses and other for-profit.

Frequency: One-time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: Novmeber 7, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-26227 Filed 11-10-88; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Current Industrial Reports Program (Wave III Voluntary).

Form Number: M37L.

Type of Request: Extension.

Burden: 1,200 hours.

Avg Hours per Response: 35 minutes.

Number of Responses: 2,058.

Needs and Uses: The Current Industrial Reports program collects and publishes 7-digit product information on over 5,000 manufactured products from 44,000 manufacturing firms. Survey results are available monthly, quarterly, and annually. Other Government agencies use the data to analyze specific commodities and industries.

Affected Public: Businesses or other for-profit.

Frequency: Annually/Monthly.

Respondent's Obligation: Monthly—Voluntary, Annual—Mandatory.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 7, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-26228 Filed 11-10-88; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-484-801]

Electrolytic Manganese Dioxide From Greece; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain electrolytic manganese dioxide from Greece is being, or is likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of electrolytic manganese dioxide from Greece. We have notified the International Trade Commission of our determination and have directed the U.S. Customs Service to suspend the liquidation of all entries of electrolytic manganese dioxide from Greece as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by January 23, 1989.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro (202) 377-2923 or Holly Kuga (202) 377-1130, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that certain electrolytic manganese dioxide ("EMD") from Greece is being, or is likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (53 FR 24114, June 27, 1988), the following events have occurred. On July 15, 1988, the International Trade Commission ("ITC") found that there is a reasonable indication that imports of EMD from Greece are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 2097, July 1988).

On August 18, 1988, we presented questionnaires to counsel for Tosoh Hellas, A.I.C. ("Tosoh Hellas"), the sole manufacturer of EMD from Greece. On September 13, 1988 and October 3, 1988, we received the responses to our questionnaire covering the period from December 1, 1987 through May 31, 1988.

Scope of the Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized Tariff Schedule ("HTS"). Until that time, the Department of Commerce ("the Department") will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HTS item numbers with our product descriptions on a test basis. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is electrolytic manganese dioxide from Greece currently classifiable under TSUSA item number 419.4420 and HTS item number 2820.10.0000.

EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the investigation.

Fair Value Comparisons

To determine whether sales of EMD in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below.

We made comparisons on all sales of the product during the period of investigation December 1, 1987 through May 31, 1988.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for the sales by Tosoh Hellas to unrelated customers in the United States, all of which were made through a related trading company. We used purchase price as the basis for determining United States price since the following criteria were met: (1) The merchandise was sold to unrelated purchasers in the U.S. prior to importation; (2) the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent; (3) this was the customary commercial channel for sales of this merchandise between the parties involved; (4) the related selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Purchase price was based on the C.I.F. and F.O.B. (foreign port) price to unrelated purchasers in the United States. Where applicable, we made deductions for foreign inland freight and insurance, brokerage and handling, ocean freight, marine insurance, export licensing fees, U.S. inland freight, as well as additions for import duties, import taxes and value-added taxes not collected on exports of the merchandise.

Foreign Market Value

In accordance with section 773(a) of the Act, we determined that there were sufficient home market sales of such or similar merchandise by Tosoh Hellas to form the basis for foreign market value. For this reason, we have not applied the special rule for certain multinational corporations contained in section 773(d) of the Act as requested by petitioner. Petitioner alleged that home market sales were made at less than the cost of production. We compared the home market prices exclusive of value-added tax to the cost of production, which included materials, fabrication costs, and selling, general, and administration expenses. The Department used all home market sales in its comparison since all sales were preliminarily found to be made at or above the cost of production.

Home market price was based on the delivered and "free on truck" price to

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unrelated purchasers in the home market. We deducted inland freight and home market packing, and added U.S. packing. We made a circumtance of sale adjustment for differences in credit, value-added taxes and royalty expenses between the two markets.

Currency Conversions

We used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Determination of Critical Circumstances

Petitioner alleged that imports of EMD from Greece present "critical circumstances." Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we analyzed recent U.S. import statistics for EMD from Greece for equal periods immediately preceding and following the filing of the petition to determine if there have been massive imports. We also took into consideration average import levels and seasonal factors. Based on this analysis, we find that there is a reasonable basis to believe or suspect that imports of the subject merchandise from Greece have been massive over a relatively short period of time. Therefore, we find that the requirements of section 733(e)(1)(B) are met.

We examined recent antidumping duty cases and found that there are currently no findings in the United States or elsewhere of dumping of the subject merchandise by Greek manufacturers, producers, and exporters. However, it is our standard practice to infer knowledge of dumping under section 733(e)(1)(A)(ii) of the Act if the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient [See, e.g., *Final Antidumping Duty Determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy* (52 FR 24198, June 29, 1987)]. Since the estimated margin for Tosoh Hellas exceeds 25 percent, we find that the requirements of section 733(e)(1)(A)(ii) are met as well. Therefore, we preliminarily determine that critical circumstances exist for Tosoh Hellas.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of EMD from Greece that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. Because we have preliminarily determined that critical circumstances exist with respect to entries of the subject merchandise from Greece, (*see*, "Critical Circumstances" section of this notice), we are further instructing the U.S. Customs Service to suspend liquidation of such entries that are entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market values of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Tosoh Hellas	34.03
All others	34.03

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonpriviledged and nonconfidential information relating to this investigation. We will allow the ITC access to all priviledged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the consent of the Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injury, or threaten material injure to, a U.S. industry before the later of 120 days after we made our preliminary affirmative determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with § 353.47 of the Department's regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, United States Department of Commerce, Room B–099, 14th Street and Constitution Avenue NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the prehearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: November 7, 1988.

[FR Doc. 88–26229 Filed 11–10–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–419–801]

Electrolytic Manganese Dioxide From Ireland; Preliminary Determination of No Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain electrolytic manganese dioxide from Ireland is not being, nor is likely to be, sold in the United States at less than fair value and have notified the International Trade Commission of our determination. The respondent in this investigation, the sole producer of electrolytic manganese dioxide in Ireland, Mitsui Denman Ireland, reported no sales during the period of investigation and no outstanding offers pursuant to contracts entered into prior to or during the period of investigation. If this investigation proceeds normally, we will make a final determination by January 23, 1989.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro (202) 377–2923 or Holly Kuga (202) 377–1130, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that certain electrolytic manganese dioxide ("EMD") from Ireland is not being, nor is likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) ("the Act"). The Department found no sales or outstanding contractual obligations for sales to the United States during the period of investigation to compare with foreign value.

Case History

Since the notice of initiation (53 FR 24116, June 27, 1988), the following events have occurred. On July 15, 1988, the International Trade Commission ("ITC") found that there is a reasonable indication that imports of EMD from Ireland are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 2097, July 1988).

On August 16, 1988, we presented questionnaires to counsel for Mitsui Denman Ireland ("MDI"), the sole manufacturer of EMD from Ireland. On August 31, 1988, we received the response to our questionnaire covering the period December 1, 1987 through May 31, 1988, in which MDI reported that it had made no sales or shipments to the United States within that period.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized Tariff Schedule ("HTS"). Until that time, the Department of Commerce ("the Department") will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HTS item numbers with our product descriptions on a test basis. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is electrolytic manganese dioxide from Ireland currently classifiable under TSUSA item number 419.4420 and HTS item number 2820.10.0000.

EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the investigation.

Fair Value Comparisons

To determine whether sales of EMD in the United States are made at less than fair value, we would compare the United States price to the foreign market value. In the present investigation, we were unable to make this comparison due to the absence of U.S. sales during the period of investigation ("POI"), December 1, 1987 through May 31, 1988.

The petitioner has requested that the Department extend the POI to include those sales made by MDI which correspond to United States entries made in the first half of 1987. The petitioner argues that this is the appropriate response since Irish EMD has been exported to the United States in all of the most recent years except the current one, a fact that reflects a mere depression in current sales activity. In support of this argument, the petitioner states that the Department has utilized its discretion to extend the period of investigation in a similar case of "unusually depressed sales activity" (see *Certain Iron Metal Castings from India*, 46 FR 39869 (1981)). Furthermore, petitioner argues, EMD being shipped from a related producer in Japan concurrently involved in an antidumping investigation can easily be sourced from the Irish respondent.

The Department has extended the normal six-month POI where that period did not adequately reflect the sales activity of the firms subject to the investigation. For example, where sales were made pursuant to long term contracts, the Department has extended the period in order to include the date of sale corresponding to shipments during the period. See *Certain Forged Steel Crankshafts from the United Kingdom*, 52 FR 32951 (1987). In instances where distortions would have resulted from using a POI limited to six months, as in the case of seasonally-affected sales, the Department has extended the period to eliminate such distortions. See *Certain Fresh Cut Flowers from Colombia*, 52 FR 6842 (1987). The Department has also extended the period in cases where special order or customized sales are under investigation in order to accommodate the unique circumstances involved in investigating this type of merchandise. See *Offshore Platform Jackets and Piles from Japan*, 51 FR 11788 (1986). In addition, as pointed out by the petitioner, the Department has extended the period in cases where sales activity was unusually depressed (*Castings from India*).

The facts as presented in this case indicate that there were no U.S. sales or related sales activity, such as shipments

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or outstanding contractual obligations, made by MDI during the POI. Furthermore, none of the precedents applied previously, which would warrant the extension of the POI back eleven month to capture the last commercial U.S. sale, apply in this case. In making this decision the Department is particularly influenced by the fact that no seasonal or cyclical sales patterns exist with respect to EMD that would explain the absence of sales related activity for such an extended period of time. Moreover, a depression in sales related activity is typically evidenced by a smaller volume of sales within a period as opposed to complete absence from the market for a period of time which encompassed annual negotiations. For these reasons, the Department has determined that it will not extend the POI.

In a letter dated October 25, 1988, the petitioner stated that in April 1988, representatives of MDI's related trading company, Mitsui U.S., "offered to sell" a U.S. customer EMD produced by MDI. This was documented by a statement to that effect by an executive of the U.S. purchaser. However, there is no evidence that MDI's agent discussed specific price or quantity terms at that meeting.

MDI reports that no current contractual obligations remain outstanding for EMD of Irish origin. MDI further states that Irish EMD has been and remains disqualified by one major U.S. purchaser and unqualified by another major U.S. purchaser; qualification is a necessary requirement of battery producers prior to sales negotiation and purchase of the subject merchandise. For these reasons, we have preliminarily determined that no bona fide offer exists which would allow us to compare a quoted U.S. price for Irish EMD to a foreign market value.

Negative Preliminary Determination of Critical Circumstances

Petitioner alleged that "critical circumstances" exist with respect to imports of EMD from Ireland. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we analyzed recent U.S. import statistics for EMD from Ireland for equal periods immediately preceding and following the filing of the petition. Since there are no imports reported for either of these periods, we find no basis to believe that imports of the subject merchandise from Ireland have been massive over a relatively short period of time subsequent to receipt of the petition.

Since we do not find that there have been massive imports, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value. Therefore, we preliminary determine that critical circumstances do not exist with respect to imports of EMD from Ireland.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation. In particular, we will carefully examine the question of whether there were in fact bona fide offers for sale to the United States during the POI.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry 45 days after we make our final determination, if affirmative.

Public Comment

In accordance with § 353.47 of the Department's regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, United States Department of Commerce, Room B–099, 14th Street and Constitution Avenue NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the prehearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: November 7, 1988.

[FR Doc. 88–26230 Filed 11–10–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–806]

Electrolytic Manganese Dioxide From Japan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain electrolytic manganese dioxide from Japan is being, or is likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of electrolytic manganese dioxide from Japan. We have notified the International Trade Commission of our determination and have directed the U.S. Customs Service to suspend the liquidation of all entries of electrolytic manganese dioxide from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by January 23, 1989.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro (202) 377–2923 or Kelly Parkhill (202) 377–1130, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that certain electrolytic manganese dioxide ("EMD") from Japan is being, or is likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation, (53 FR 24116, June 27, 1988), the following events have occurred. On July 15, 1988, the International Trade Commission ("ITC") found that there is a reasonable indication that imports of EMD from Japan are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 2097, July 1988).

On August 18, 1988, we presented questionnaires to Mitsui Mining and Smelting Co., Ltd., ("MMS") and Tosoh Corporation ("Tosoh"), manufacturers of EMD from Japan. On September 13, 26 and October 3, 1988, we received replies to the questionnaries.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized Tariff Schedule ("HTS"). Until that time, the Department of Commerce ("the Department") will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HTS item numbers with our product descriptions on a test basis. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is electrolytic manganese dioxide from Japan currently classifiable under TSUSA item number 419.4420 and HTS item number 2820.10.0000.

EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the investigation.

Fair Value Comparisons

To determine whether sales of EMD in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. The period of investigation is December 1, 1987 through May 31, 1988.

With the exception of several small sales reported too late to be included in the calculations for our preliminary determination, we made comparisons on all sales of the product made by MMS and Tosoh during the period of investigation. The late-reported sales will be included in our final determination.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for all sales made by MMS and Tosoh. We used purchase price as the basis for determining United States price since the merchandise was sold to an unrelated purchaser in Japan with the knowledge that that purchaser would then export the merchandise to the United States.

Purchase price was based on the F.O.B. (foreign port) and ex-godown price to unrelated purchasers in Japan. Where applicable, we made deductions for foreign inland freight, brokerage and handling, and certain other movement expenses.

Foreign Market Value

In accordance with section 773(a) of the Act, we determined that there were sufficient home market sales of such or similar merchandise by both MMS and Tosoh to form the basis for foreign market value.

Home market price was based on the delivered price to unrelated purchasers in the home market. We deducted for inland freight, rebates, discounts, and home market packing. We added U.S. packing. We made a circumstance of sale adjustment for differences in credit between the two markets.

Preliminary Determination of Critical Circumstances

Petitioner alleged that imports of EMD from Japan present "critical circumstances." Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we analyzed recent U.S. import statistics for EMD from Japan for equal periods immediately preceding and following the filing of the petition to determine if there have been massive imports. We also took into consideration average import levels and seasonal factors. Based on this analysis, we find that there is a reasonable basis to believe or suspect that imports of the subject merchandise from Japan have been massive over a relatively short period of time. Therefore, we find that the requirements of section 733(e)(1)(B) are met.

The Department received company-specific EMD import data from Mitsui Mining and Smelting on November 3,

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1988. Since we received the information late and we did not have company-specific data for the second respondent, the Department will request and consider this information in making our final determination in this case.

We examined recent antidumping duty cases and found that there are currently no findings in the United States or elsewhere of dumping of the subject merchandise by Japanese manufacturers, producers, and exporters. However, it is our standard practice to infer knowledge of dumping under section 733(e)(1)(A)(ii) of the Act if the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient [See, e.g., *Final Antidumping Duty Determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy* (52 FR 24198, June 29, 1987)]. Since the estimated margin for both MMS and Tosoh exceed 25 percent, we find that the requirements of section 733(e)(1)(A)(ii) are met as well. Therefore, we preliminarily determine that critical circumstances exist for both MMS and Tosoh.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with sections 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of EMD from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. Because we have preliminarily determined that critical circumstances exist with respect to entries of the subject merchandise from Japan, (*see*, "Critical Circumstances" section of this notice), we are further instructing the U.S. Customs Service to suspend liquidation of such entries that are entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act.

The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market values of the merchandise subject to this investigation exceed the United States price, as shown below.

This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
MMS	78.62
Tosoh	72.02
All others	73.57

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the consent of the Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry before the later of 120 days after our preliminary affirmative determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with § 353.47 of the Department's regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, United States Department of Commerce, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230. After requests for hearings are received, we will notify all interested parties of the date, time, and place of the hearing.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the prehearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: November 7, 1988.

[FR Doc. 88-26231 Filed 11-10-88; 8:45 am]

BILLING CODE 3510-DS-M

President's Export Council; Full Council Meeting; Open Meeting

A meeting of the President's Export Council will be held November 28, 1988, at the Capital Hilton Hotel, 16th & K Streets, N.W., Washington, D.C. The Council's purpose is to advise the President on matters relating to U.S. export trade.

Full Council Meeting: 10:00 a.m.-12:30 p.m., Federal Room. The Council will issue and discuss its final report for this Presidential term. Also, discussion of the trade outlook, trade and export policy, economic policy decisions of the future, and other related trade matters.

A limited number of seats are available for the Full Council meeting. For further information or copies of the minutes, contact Sylvia Lino (202) 377-1125.

Date: November 7, 1988.

Wendy H. Smith,

Acting Director, Office of Planning and Coordination.

[FR Doc. 88-26232 Filed 11-10-88; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Business Development Center Applications; Tucson, AZ

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period April 1, 1989 to March 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Tucson, Arizona geographic service area.

The I.D. Number for this project will be 09-10-89004-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organziations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is December 19, 1988. Applications must be postmarked on or before December 19, 1988.

ADDRESS: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. 415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. November 29, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

November 7, 1988.

[FR Doc. 88-26163 Filed 11-10-88; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Los Angeles, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $622,000 in Federal funds and a minimum of $109,765 in non-Federal contributions for the budget period May 1, 1989 to April 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Los Angeles, California geographic service area.

The I.D. Number for this project will be 09-10-89005-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organziations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory

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performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is January 12, 1989. Applications must be postmarked on or before January 12, 1989.

ADDRESS: San Francisco Regional Office, Minority Business Development Agency, U. S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. 415/974–9597.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

November 7, 1988.

[FR Doc. 88–26164 Filed 11–10–88; 8:45am]

BILLING CODE 3510–21–M

[Transmittal No. 06–10–88001–01; Project I.D. No. 06–10–88001–01]

Austin Minority Business Development Center (MBDC)

Summary: The Minority Business Development Agency (MBDA) announces that it is withdrawing the solicitiation to operate a Minority Business Development Center in Austin, Texas. MBDA inadvertly authorized the Federal Register to publish the announcement which appeared in its November 1, 1988 issue (53 FR 44062).

Please *Note:* All applications submitted to operate the Austin MBDC under the competitive solicitation published in the **Federal Register** (VOL. 53, No. 125, Wednesday, June 29, 1988) are being considered in the competitive review process.

The Agency apologizes for any inconvenience our error may have caused.

Bobby Jefferson,

Acting/Regional Director, Regional Office.

Date: November 7, 1988.

[FR Doc. 88–26165 Filed 11–10–88; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Taking of Marine Mammals; Application for Permit

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife.

1. *Applicant:* Dr. Bernd Wursig, Associate Professor and Mr. Salvatore Cerchio, Candidate for Master of Science, Moss Landing Marine Laboratory, P.O. Box 450, Moss Landing, California 95039–0450.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* Humpback whales (*Megaptera Novaeangliae*) 100.

4. *Type of Take:* Harassment during photographic activities. Photographs will be taken to identify recorded singers. By comparing the photo-ID's of each recorded singer it can be determined if each recording represents a different individual. The photographs will also be used to investigate the hypothesis which considers the possibility that differences in the songs between individuals may be due to the existence of sub-populations and thus serve as a signature. All whale song recordings will be done from a distance well over 100 meters.

5. *Location and Duration of Activity:* East coast of Kauai, Hawaii for a 1-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC, within 30 days of publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Silver Spring, Maryland 20910; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90130.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

Date: November 4, 1988.

[FR Doc. 88–26196 Filed 11–10–88; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of The Air Force

Privacy Act of 1974; Altered Systems of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice of eight altered systems of records, subject to the privacy Act of 1974, being published for any public comment.

SUMMARY: The Air Force is altering eight existing systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice December 14, 1985, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Ms. Linda G. Adams, SAF/AADAQI, the Pentagon, Washington, D.C. 20330–1000, telephone: (202) 694–3488, AUTOVON: 224–3488.

SUPPLEMENTARY INFORMATION: The Air Force inventory of systems of records notice, subject to the Privacy Act of 1974, have been published in the **Federal Register** as follows:

FR DOC. 85–10237 (50 FR 22332) May 29, 1985 (Compilation)
FR DOC. 85–14122 (50 FR 24672) June 12, 1985
FR DOC. 85–15062 (50 FR 25737) June 21, 1985
FR DOC. 85–26775 (50 FR 46477) November 8, 1985

FR DOC. 85–29261 (50 FR 50337) December 10, 1985
FR DOC. 86–2527 (51 FR 4531) February 5, 1986
FR DOC. 86–4546 (51 FR 7371) March 3, 1986
FR DOC. 86–10044 (51 FR 16735) May 6, 1986
FR DOC. 86–11696 (51 FR 18927) May 23, 1986
FR DOC. 86–25787 (51 FR 41382) November 14, 1986
FR DOC. 86–25788 (51 FR 41402) November 14, 1986
FR DOC. 86–27635 (51 FR 44332) December 9, 1986
FR DOC. 87–6139 (52 FR 11845) April 13, 1987
FR DOC. 88–14507 (53 FR 24354) June 28, 1988.

The specific changes to the systems of records being altered are set forth below, followed by the system notices, as amended, published in their entirety.

An altered system report, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on November 2, 1988, to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 8, 1988.

F011 AF A

System name: Locator, Registration and Postal Directory Files (51 FR 413812), November 14, 1986.

Changes:

* * * * *

Categories of individuals covered by the system: Delete the entire entry and substitute with the following: "US Armed Forces active duty military personnel; US Armed Forces Reserve and National Guard personnel; US Government Civilian employees assigned to or on duty with Air Force organizations and HQ USSPACECOM. Dependents may be included at the option of the organization. Non-US Military personnel or civilian employees, at their option, may be included also; however, the Privacy Act does not apply to them and they have no appeal rights."

* * * * *

Authority for maintenance of the system: In line one, delete the number: "* * * 8012 * * *" and substitute with: "* * * 8013 * * *"

* * * * *

System manager(s) and address: In line one, delete the phrase: "Director of Administration, Headquarters, US Air Force * * *" and substitute with the following: "Director of Information Management and Administration, Office of the Administrative Assistant, Secretary of the Air Force, * * *"

* * * * *

Contesting record procedures: At end of entry, add "* * * and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

* * * * *

F011 AF A

SYSTEM NAME:

011 AF A—Locator, Registration and Postal Director Files

SYSTEM LOCATION:

Headquarters United States Air Force and at Air Force installations, to include bases, units, offices, and functions. Official mailing addresses are in the Department of Defense directory in the appendix of the Air Force's systems notices. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US Armed Forces active duty military personnel; US Armed Forces Reserve and National Guard personnel; US Government Civilian employees assigned to or on duty with Air Force organizations and HQ USSPACECOM. Dependents may be included at the option of the organization. Non-US Military personnel or civilian employees, at their option, may be included also; however, the Privacy Act does not apply to them and they have no appeal rights.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cards or listings may contain the individual's name, grade, military service identification number, Social Security number, duty location, office telephone number, residence address and residence telephone number, and similar type personnel data determined to be necessary by the local authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Used to locate or identify personnel assigned to, attached to, tenanted on, or on temporary duty at the specific installation, office, base, unit, function, and/or organization in response to specific inquiries from authorized users for the conduct of business. Portions of the system are used to directorize and forward individual personnel mail received by Air Force postal activities, and for assignment of individual mail boxes. Files may be used locally to support official and unofficial programs which require minimal locator information or membership or user listings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from the system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records in card or form media in visible file binders, cabinets, card files, or on computer and computer products.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, or when superseded or no longer needed for reference, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning, or by overwriting magnetic media. Postal directory files are maintained for six months after reassignment, separation or departure from servicing activity.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Management and Administration, Office, of the Administrative Assistant, Secretary of the Air Force, Washington, DC. Local System Managers: Privacy officer of the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on or on temporary duty. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

NOTIFICATION PROCEDURES:

Requests from individuals should be addressed to the local System Manager or custodian of the records. Individual must furnish full name and the name of dependents to the Air Force installation, unit and organization, office, or function to which assigned, attached, tenanted on or on temporary duty at, including the calendar years of such service. The individual may visit the Locator Office

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or Privacy Officer at the place of assignment. No identification is required to determine if the system contains records pertaining to a specific individual.

RECORD ACCESS PROCEDURE:

Individual can obtain assistance in gaining access from the System Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORD PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the local System Manager and are published in AFR 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces or from individuals or personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEMS:

None.

FO35 AF MP A

System name: Effectiveness/ Performance Reporting System (50 FR 222373), May 29, 1985.

Changes:

* * * * *

Categories of individuals covered by the system: In line one, after the word "Officer," add the following: "Applies to active duty/Air National Guard/Air Force Reserve personnel serving in grades Warrant Officer (W–1) through General (O–10)."

Categories of records in the system: In line three, after the phrase "* * * Colonel Promotion Recommendation Report; * * *" add the following: "* * * Air Force Brigadier General (Selectee) Effectiveness Report; Air Force General Officer Effectiveness Report; * * *"

Authority for maintenance of the system: Delete first two lines through: "* * * delegation by; * * *" and substitute with "10 USC 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Force Regulation 36–9, General Officer Evaluation * * *" At the end of entry, add "* * * and Executive Order 9397."

* * * * *

Retention and disposal: In line 27, after the phrase "* * * has been served" add the following: "General Officer and Brigadier General (Selectee) Effectiveness Reports are destroyed within 30 days of retirement or separation."

System manager(s) and address: Delete the entire entry and substitute with the following: "Deputy Chief of Staff Personnel, Headquarters United Staters Air Force, Washington, DC 20330, the Assistant for General Officer Matters, Deputy Chief of Staff, Personnel, Headquarters United States Air Force, Washington, DC 20330, and Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330."

* * * * *

Contesting record procedures: At end of entry, add "* * * and are published in Air Force Regulation 12–35 (32 CFR Part 806b)."

Records source categories: At the end of entry, add: "* * * or Supplemental Evaluation Sheet."

* * * * *

FO35 AF MP A

SYSTEM NAME:

035 AF MP A—Effectiveness/ Performance Reporting System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Washington, DC 20330; Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150; headquarters of the major commands and separate operating agencies; consolidated base personnel offices; each State Adjutant General Office; Reserve and Air National Guard units, and the Human Resources Laboratory, Brooks Air Force Base, TX. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military Personnel Only. Officer: Applies to active duty/Air National Guard/Air Force Reserve Personnel serving in grades Warrant Officer (W–1) through General (O–10). Airmen: Applies to active duty personnel in grades Airman Basic (E–1) through Chief Master Sergeant (E–9), and to Air Force Reserve personnel in grades Staff Sergeant (E–5) through Chief Master Sergeant (E–9).

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer Effectiveness Report; Education/Training Report; Lieutenant Colonel Promotion Recommendation Report; Colonel Promotion Recommendation Report; Air Force Brigadier General (Selectee) Effectiveness Report; Air Force General Officer Effectiveness Report; Airman Performance Report; Technical Sergeant (TSGT), Staff Sergeant (SSGT), and Sergeant (SGT) Performance Report; Chief Master Sergeant (CMSGT), Senior Master Sergeant (SMSGT), and Master Sergeant (MSGT) Performance Report; Description of Data Contained Therein: Name; Social Security Number (SSN); Active and Permanent Grades; Speciality Data; Organization Location and Personnel Accounting Symbol (PAS); Period of Report; Number of Days of Supervision; Performance Evaluation Scales; Assessment of Potential; Comments Regarding Ratings.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 USC 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Force Regulation 36–9, General Officer Evaluations; Air Force Regulation 39–10, Officer Evaluations; Air Force Regulation 39–62, Volume I, Noncommissioned Officer and Airman Performance Reports; and Executive Order 9397.

PURPOSE(S):

Uses Include: Documentation of effectiveness/duty performance history; promotion selection; school selection; assignment selection; reduction-in-force; control roster; reenlistment; separation; research and statistical analyses; other appropriate personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in visible file binders/ cabinets.

RETRIEVABILITY:

Field by name and SSN.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Copies of performance reports are retained until separation or retirement. At separation or retirement, data subject is presented with field and command record copies of his or her reports. The Headquarters Air Force (HAF) copy is a permanent record that is forwarded to the National Personnel Records Center, St. Louis, MO. In the event the member has a Reserve commitment, the HAF copy is sent to the Air Reserve Personnel Center (ARPC), York Street, Denver, CO. However, the following exceptions apply: Officers Field Record: Remove and give to individual when promoted to Colonel, when separated or retired. Destroy when voided by action of the Air Force (AF) Board for Correction of Military Records, forward all copies of report to Headquarters United States Air Force (HQ USAF) when directed. Command Record: The command custodian will destroy the reports when voided by action of Officer Personnel Records Review Board. When voided by action of the AF Board for Correction of Military Records, forward all copies of report to HQ USAF when directed. HAF Record: Remove reports voided by action of the Officer Personnel Records Review Board from the selection folder and file in the board recorder's office until destroyed by tearing into pieces, shredding, pulping, macerating or burning. Remove reports voided by action of the AF Board for Correction of Military Records from selection folder and submit to Board's Secretariat with duplicate and triplicate copies, for custody and disposition. Lt Colonel and Colonel Promotion Recommendation Reports are temporary documents maintained only at HQ Air Force level and are destroyed after their purpose has been served. General Officer and Brigadier General (Selectee) Effectiveness Reports are destroyed within 30 days of retirement or separation. Active duty airmen: Grades E–3 through E–6: On separation or retirement, Airman Performance Reports (APRs) are forwarded to the National Personnel Records Center, St. Louis, MO, unless data subject holds a reserve obligation, in which case they are forwarded to ARPC. Grades E–7 through E–9: On separation or retirement, original copies, those retained in Senior NCO selection folders and those in field record closing before January 1, 1967, are forwarded to the National Personnel Records Center or to ARPC if data subject holds a reserve obligation. Duplicate copies closing January 1, 1967, or later (field record) are returned to the member at separation or retirement. Non-EAD USAFR airmen: Air Force Reserve Forces Non-Commissioned Officers Performance Report; upon separation, retirement or assignment to a non-participating reserve status, they are forwarded to ARPC for file in the master personnel record and disposed of as a part of that record.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff Personnel, Headquarters United States Air Force, Washington, DC 20330, the Assistant for General Officer Matters, Deputy Chief of Staff, Personnel, Headquarters United States Air Force, Washington, DC 20330, and Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager. Mailing addresses are in the Department of Defense directory in the Appendix to the Air Force's systems notices.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in AFR 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

The basis of the ratings is observed on-the-job or education/training performance progression of the individual. Further, evaluation reports may have as an additional source of information, Letters of Evaluation or Supplemental Evaluation Sheet.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 USC 552a(k)(7), as applicable. For additional information, contact the System Manager.

F035 AF MP Q

System name: Family Support Center Case Files (51 FR 4531), February 5, 1986.

Changes:

* * * * *

Categories of individuals covered by the system: Delete the entire entry and substitute with the following: "Active duty military personnel and their dependents, Air Force Reserve personnel, and Air National Guard personnel. Retired Air Force personnel and Air Force civilian employees and their dependents may also be included when records are created which are identical to those on military members."

Categories of records in the system: Delete the entire entry and substitute with the following: "File copies of information, which include but are not limited to demographics, client concerns, referrals client assessments, home and duty phone numbers, addresses, volunteer records, and staff member comments."

Authority for maintaining the system: In line one, delete the number: "* * * 8012 * * " and substitute with: "* * * 8013 * * * "

Purpose(s): Delete the entire entry and substitute with the following: "To provide informaton to Family Support Center staff for actions related assessment counseling, program development, training, and referral actions."

* * * * *

Storage: Delete the entire entry and substitute with the following: "Automated, maintained on computer and manual, maintained in paper files."

* * * * *

Safeguards: In line three, delete the sentence "Records are stored in security file containers/cabinets." and substitute with "Records are stored on computer disk, in locked cabinets or rooms. Computers are only accessible by proper log-on/password capability."

Retention and disposal: Delete the entire entry and substitute with the following: "Retained in office files for one year or when no longer needed, whichever is later, then destroyed by erasing, degaussing, overwriting, shredding, macerating, burning, pulping or buried in a landfill."

System manager(s) and address: Delete the entire entry and substitute with the following: "Chief Air Force Family Matters Branch, Human Resources Development Division, Directorate of Personnel Plans, HQ USAF; Directorate of Personnel Programs at Major Command Headquarters; and Director, Family Support Center at Air Force installations."

Notification procedure: Delete the entire entry and substitute with the following: "Address written requests from individual to the Director or Deputy Director of the Family Support Center where the individual's records are maintained. Include the full name and signature of the requester and sufficient information to ensure positive identification of requester."

* * * * *

Contesting records procedures: Delete the entire entry and substitute with the following: "The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b)."

* * * * *

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F035 AF DP A

SYSTEM NAME:

035 AF DP A—Family Support Center Case Files.

SYSTEM LOCATION:

At servicing Family Support Centers on Air Force installations. Official mailing addresses are in the Air Force directory in AFP 12–36, attachment 3.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel and their dependents, Air Force Reserve personnel, and Air National Guard personnel. Retired Air Force personnel and Air Force civilian employees and their dependents may also be included when records are created which are identical to those on military members.

CATEGORIES OF RECORDS IN THE SYSTEM:

File copies of information, which include but are not limited to demographics, client concerns, referrals, client assessments, home and duty phone numbers, addresses, volunteer records, and staff member comments.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 USC 8013, Secretary of the Air Force; powers and duties; delegation by; as implemented by Air Force Regulation 30–7, Family Action/Information Board and Family Support Center.

PURPOSE(S):

To provide information to Family Support Center staff for actions related to assessment counseling, program development, training, and referral actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Automated, maintained on computer and manual, maintained in paper files.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Record are accessed by the custodian of the record system and person(s) responsible for servicing the record system in the performance of their duties. Records are stored on computer disk, in locked cabinets or rooms. Computers are only accessible by proper log-on/password capability.

RETENTION AND DISPOSAL:

Retained in office files for one year or when no longer needed, whichever is later, then destroyed by erasing, degaussing, overwriting, shredding, macerating, burning pulping or buried in a landfill.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Air Force Family Matters Branch, Human Resources Development Division, Directorate of Personnel Plans, HQ USAF; Directorate of Personnel Programs at Major Command Headquarters; and Director, Family Support Center at Air Force installations.

NOTIFICATION PROCEDURE:

Address written requests from individual to the Director or Deputy Director of the Family Support Center where the individual's records are maintained. Include the full name and signature of the requester and sufficient information to ensure positive identification of requester.

RECORD ACCESS PROCEDURES:

Contact Director, Family Support Center at servicing AF installation.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information obtained from individual, medical institutions, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF MP R

System name: Application for Appointment and Extended Active Duty Files (51 FR 41397) November 14, 1986.

Changes:

* * * * *

Exemptions claimed for the system: Delete the entire entry and substitute with the following: "Parts of this system may be exempt under 5 U.S.C. 552a(k)(5). For additional information see exemption rule in AFR 12–35 (32 CFR Part 806b)."

* * * * *

F035 AF MP R

SYSTEM NAME:

035 AF MP R—Application for Appointment and Extended Active Duty Files.

SYSTEM LOCATION:

Headquarters United States Air Force, Washington, DC 20330–5120; Air Force Military Personnel Center, Randolph AFB, TX 78150–6001; Air Reserve Personnel Center, Denver, CO 80280–5000; Headquarters Air Force Reserve Robins AFB, GA 31098–6001; United States Air Force Recruiting Service, Randolph AFB, TX 78150–5421; Air National Guard Support Center, Andrews AFB, Washington, DC 20331–6608.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) All applicants for appointment/reappointment as Reserves of the Air Force (ResAF) to United States Air Force Reserve (USAFR) or Air National Guard of the United States (ANGUS) affiliation; (2) all applicants for appointment/reappointment as ResAF to serve on extended active duty (EAD)—as medical service officers, chaplains, and judge advocates; (3) all USAFR and ANGUS members who apply for voluntary entry on EAD; (4) all commissioned officers of other uniformed services on EAD who apply for interservice transfer to serve on EAD with the USAF; (5) all commissioned officers and enlisted members of the USAF Reserve components, not on EAD, who apply for interservice transfer between Reserve components of the USAF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application and supporting documents as applicable.

AUTHORITY FOR MAINTAINING OF THE SYSTEM:

10 U.S.C. Chapter 837, Appointment as Reserve Officers; Chapter 839, Temporary Appointments implemented by Air Force Regulation 36–15, Appointment in Commissioned Grades and Designation and Assignment in Professional Categories—Reserve of the Air Force and United States Air Force (Temporary). 10 U.S.C. 716, Commissioned officers transfer among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service, implemented by AFR 35–39, Interservice and Intraservice Transfer of Uniformed Service Members. 10 U.S.C. 672(d), Reserve components generally; 689, Reserve officers; grade in which ordered to active duty; 50 U.S.C. App 454, Selective Service Act, Persons liable for training and service; App 456, Deferments and exemptions from training and service; implemented by AFR 45–26, Voluntary Entry on Extended Active Duty of Commissioned Officers of the Air Reserve Forces.

PURPOSE(S):

Used to select, appoint or designate persons for the USAFR or ANGUS, for interservice/intraservice transfer, Ready Reserve assignment, or EAD.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

If selected for appointment/reappointment, extended active duty, USAFR or ANGUS affiliation, or interservice/intraservice transfer, records become the Master Personnel Record Group (MPerRGp) and are forwarded to the appropriate MPerRGp custodian. An abbreviated reference file of selected documents is maintained by the applicable utilization and assignment branch. If not selected, documents are retained for one year by the selection or appointment authority.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/Personnel, Randolph Air Force Base, TX 78150–6001.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Member's application, letters of recommendation, results of National Agency Check and Military Personnel Records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(5). For additional information see exemption rule in AFR 12–35 (32 CFR Part 806b).

F050 AU F

System name: Air University Academic Records (50 FR 22452), May 29, 1985.

Changes:

* * * * *

Authority for maintenance of the system: In line one, delete the numbers "* * 8012 * * *" and substitute the following: "* * * 8013 * * *." At the end of the entry, add "* * * and Executive Order 9397."

* * * * *

Storage: In line two, delete the phrase: "Maintained on roll microfilm and on microfiche * * *" and substitute with the following: "* * * and in microform and on computer * * *"

* * * * *

Contesting record procedures: At end of entry, add "* * * and are published in Air Force Regulation 12–35 (32 CFR Part 806b)."

* * * * *

F050 AU F

SYSTEM NAME:

050 AU F—Air University Academic Records.

SYSTEM LOCATION:

Air University, Maxwell Air Force Base, AL 36112. Subsystems are located and maintained at the Air Force Institute of Technology/RR, Wright-Patterson Air Force Base, OH 45433; Extension Course Institute/EDOR, Gunter Air Force Station, AL 36118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Graduates, students currently or previously enrolled in AFIT, AU PME schools or ECI.

CATEGORIES OF RECORDS IN THE SYSTEM:

Education records which include transcripts; test scores; completion/noncompletion status; training reports; rating of distinguished, outstanding or excellent graduate as appropriate; and other documents associated with academic records.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Force Regulation 50–12, Extension Course Program; Air Force Regulation 53–8, USAF Officer Professional Military Education System; and Executive Order 9397.

PURPOSE(S):

Individuals seeking academic or certification credit for courses completed may request applicable Registrar to send a record of courses completed to school or activity desired.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in file folders at Air Force Institute of Technology, and in microform and on computer at Extension Course Institute.

RETRIEVABILITY:

Filed by name and Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in vaults and locked cabinets or rooms and are controlled by personnel screening.

RETENTION AND DISPOSAL:

Retained for 30 years or until no longer required at ECI; master transcripts of resident schools are kept 50 years at AFIT.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Air Force Institute of Technology, Wright-Patterson Air Force Base, OH 45433; Air University Registrar, Extension Course Institute, Gunter Air Force Station, AL 36118.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager. Include full name, SSN and class designation. Individuals may visit Office of the Registrar. Identification is required.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager. Mailing addresses are in the Department of Defense directory in the

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appendix to the Air Force's systems notices.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, source documents such as reports, testing agencies, student, and on-the-job training officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F125 AF SP E

System name: Incident Investigation Files (50 FR 22497), May 29, 1985.

Changes:

* * * * *

System name: Delete curent name and substitute the following: "Security Police Automated System (SPAS)."

System location: Delete the entire entry and substitute the following: "Active Duty Security Police Activities, Air Force Reserve Security Police Units and Air National Gaurd Security Police Activities."

Categories of individuals covered by the system: Delete the entry and substitute with the following: "All military and civilian security police personnel. All military and civilian personnel who register privately owned vehicles or weapons on Air Force installations. All military and civilian personnel who are issued restricted or controlled area passes by a security police activity. All military and civilian personnel who possess an individual incident reference and/or drivers record. All military and civilian personnel posses an Air Force security clearance. All military and civilian personnel who: are issued traffic citations, are involved in criminal acts or incidents which generate an incident report or are involved in motor vehicle accidents on Air Force installations. All military and civilian personnel who are prohibited from entering an Air Force installation."

Categories of records in the system: Delete the entry and substitute with the following: "Files containing: (1) Security police and security police augmenter identification data such as name, grade, social security number, address and phone number; (2) security police and security police augmenter qualification data such as security clearance, Personnel Reliability Program status, weapon qualifications, quality control certification and training data; (3) security clearance data on all military and civilian personnel who possess an Air Force security clearance; (4) documentation used to request identification or entry credentials, information reports on the loss, theft or destruction of said credentials, certain types of entry authority listings and various accountability records; (5) individual records which reflect historical involvement in incidents which require a police report on all military and civilian personnel; (6) records that reflect traffic penalty point accumulation as a result of driving infractions on all military and civilian personnel; (7) documentation used to register privately owned vehicles and weapons for all military and civilian personnel; (8) documentation used to identify all military and civilian personnel who have been prohibited from entering Air Force installations; and (9) includes a chronology of an investigation being conducted, data on sources of information, information on investigation techniques, and records concerning seized property.

Authority for maintaining the system: In line one, delete the number "* * * 8012 * * *" and substitute the following: "* * * 8013 * * *." At the end of entry add "* * * Data Project Directive (DPD) # DSC–P76–99 dated 5 Mar 84; and Executive Order 9397.

Purpose(s): Delete the entire entry and substitute with the following: "Personnel records are used by security police manages to track and monitor availability and qualification of personnel assigned or attached to security police activities. Vehicle and weapon registration records are used by security police personnel to monitor vheicles and weapons registered on Air Force installations. Incident and traffic records are used by commanders to identify repeat offenders. Security clearance records are used by security police and commanders to determine eligibility for access to classified information. Identification and entry authority records are used by security police personnel for issuing identification cards and restricted by controlled area badges and for accountability of various controlled forms used in the process. Barment records are used by security police installation entry controllers to identify personnel who are prohibited from entering the installation. Investigation records are used by security police investigators to assist in the investigation of a criminal act or incident.

* * * * *

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Delete the entire entry and substitute with the following: "Records in this system are maintained manually (paper files), automated (in computer, on hard disks, floppy diskettes or tape backups), and in combination when deemed necessary.

Retrievability: Delete the entire entry and substitute with the following: "Records in this system are retrieved from manual storage by name and from automated storage by name or social security number.

Safeguards: In lines 3 and 4, delete the phrase: "Records are stored * * * or rooms * * *" and add the following phrase: "Records are maintained/stored on computer hard disks (backup copies are maintained on floppy diskettes or tape media) and/or in secure file containers and in locked cabinets or rooms."

Retention and disposal: Delete the entire entry and substitute with the following: "Files for security police and security police augmenter personnel are destroyed when superseded or upon reassignment or separation from the security police activity. Accountability records are destroyed five years after issue of the last controlled form or the last entry on the accountability log. Incident reports are destroyed three years after last entry or forwarded to gaining installations upon reassignment of the individual. Traffic records are destroyed one year after last entry or forwarded to gaining installations upon reassignment of the individual. Motor vehicle accident records are destroyed three months after posting or forfeiture of collateral. Barred personnel records are destroyed three years after removal from the list. Investigation reports are retained in office for one year after annual cutoff, transferred to a staging area for two years and then destroyed. Records stored in a computer, on a hard disk, a floppy diskette or tape media, are destroyed by deleting them from the file. Paper records are destroyed by tearing them into pieces, shredding, pulping or burning.

System manager(s) and address: Delete the entire entry and substitute with the following: "Air Force Office of Security Police, Kirtland Air Force Base, NM 87117–6001 and Chiefs of Security police at each security police activity."

Notification Procedures: Delete the entire entry and substitute with the following: "The Chiefs of Security Police at each appropriate security police activity should be contacted for information relative to records maintained in this system. Information relating to police records will be coordinated through local Staff Judge Advocate offices before release. When requesting information in writing, the individual must include full name, social security number, military status, full home address with complete zip codes, and the letter must be notarized. If an individual requests information in person, that individual must present a military identification card, if applicable, a valid drivers license, or other requested proof of identity."

Record access procedure: Delete the entire entry and substitute with the following: "Individuals may obtain assistance in gaining access to their records from the system manager at the appropriate security police activity. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices. Contact the Chief of Security Police at the appropriate installation."

* * * * *

Record Source Categories: Delete the entire entry and substitute with the following: "Information on security police and security police augmenter personnel is extracted from computer printouts, unit personnel records, the unit commander, supervisors, and the individual. Other information is extracted from incident reports, traffic tickets, registration forms and applications prepared by the individual."

Exemptions claimed for the system: At the end of the entry, add: "The general exemption rule is published in Air Force Regulation 12–35 (32 CFR Part 806b)."

* * * * *

F125 AF SP E

SYSTEM NAME:

125 AF SP E—Security Police Automated System (SPAS).

SYSTEM LOCATION:

Active Duty Security Police Activities, Air Force Reserve Security Police Units and Air National Guard Security Police Activities. Official mailing addresses are in the Air Force address directory in AFP 12–36, attachment 3.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian security police personnel. All military and civilian personnel who register privately owned vehicles or weapons on Air Force installations. All military and civilian personnel who are issued restricted or controlled area passes by a security police activity. All military and civilian personnel who possess an individual incident reference and/or drivers record. All military and civilian personnel who possess an Air Force security clearance. All military and civilian personnel who: Are issued traffic citations, are involved in criminal acts or incidents which generate an incident report or are involved in motor vehicle accidents on Air Force installations. All military and civilian personnel who are prohibited from entering an Air Force installation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files containing: (1) Security police and security police augmenter identification data such as name, grade, social security number, address and phone number; (2) security police and security police augmenter qualification data such as security clearance, personnel Reliability Program status, weapon qualifications, quality control certification and training data; (3) security clearance data on all military and civilian personnel who possess an Air Force security clearance; (4) documentation used to request identification or entry credentials, information reports on the loss, theft or destruction of said credentials, certain types of entry authority listings and various accountability records; (5) individual records which reflect historical involvement in incidents which require a police report on all military and civilian personnel; (6) records that reflect traffic penalty point accumulation as a result of driving infractions on all military and civilian personnel; (7) documentation used to register privately owned vehicles and weapons for all military and civilian personnel; (8) documentation used to identify all military and civilian personnel who have been prohibited from entering Air Force installations; and (9) includes a chronology of an investigation being conducted, data on sources of information, information on investigation techniques, and records concerning seized property.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Data Project Directive (DPD) #DSC–P76–99 dated March 5, 1984; and Executive Order 9397.

PURPOSE(S):

Personnel records are used by security police managers to track and monitor availability and qualification of personnel assigned or attached to security police activities. Vehicle and weapon registration records are used by security police personnel to monitor vehicles and weapons registered on Air Force installations. Incident and traffic records are used by commanders to identify repeat offenders. Security clearance records are used by security police and commanders to determine eligibility for access to classified information. Identification and entry authority records are used by security police personnel for issuing identification cards and restricted by controlled area badges and for accountability of various controlled forms used in the process. Barment records are used by security police installation entry controllers to identify personnel who are prohibited from entering the installation. Investigation records are used by security police investigators to assist in the investigation of a criminal act or incident.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record from this system may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained manually (paper files), automated (in computer, on hard disks, floppy diskettes or tape backups), and in combination when deemed necessary.

RETRIEVABILITY:

Records in this system are retrieved from manual storage by name and from automated storage by name or social security number.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the record system in performance of their official duties. Personnel are thoroughly screened for need-to-know. Records are maintained/stored on computer hard disks (backup copies are maintained on floppy diskettes or tape media) and/or in secure file containers and in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Files for security police and security police augmenter personnel are destroyed when superseded or upon reassignment or separation from the security police activity. Accountability records are destroyed five years after issue of the last controlled form or the

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last enery on the accountability log. Incident reports are destroyed three years after last entry or forwarded to gaining installations upon reassignment of the individual. Traffic records are destroyed one year after last entry or forwarded to gaining installations upon reassignment of the individual. Motor vehicle accident records are destroyed three months after posting or forfeiture of collateral. Barred personnel records are destroyed three years after removal from the list. Investigation reports are retained in office for one year after annual cutoff, transferred to a staging area for two years and then destroyed. Records stored in a computer, on a hard disk, a floppy diskette or tape media, are destroyed by deleting them from the file. Paper records are destroyed by tearing them into pieces, shredding, pulping or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Air Force Office of Security Police, Kirtland Air Force Base, NM 87117–6001 and Chiefs of Security Police at each security police activity.

NOTIFICATION PROCEDURES:

The Chiefs of Security Police at each appropriate security police activity should be contacted for information relative to records maintained in this system. Information relating to police records will be coordinated through local Staff Judge Advocate offices before release. When requesting information in writing, the individual must include full name, social security number, military status, full home address with complete zip codes, and the letter must be notarized. If an individual requests information in person, that individual must present a military identification card, if applicable, a valid drivers license, or other requested proof of identity.

RECORD ACCESS PROCEDURE:

Individuals may obtain assistance in gaining access to their records from the system manager at the appropriate security police activity. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices. Contact the Chief of Security Police at the appropriate installation.

RECORD SOURCE CATEGORIES:

Information on security police and security police augmenter personnel is extracted from computer printouts, unit personnel records, the unit commander, supervisors, and the individual. Other information is extracted from incident reports, traffic tickets, registration forms and applications prepared by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 USC 552a(j)(2). For additional information, contact the System Manager. The exemption rule is published in Air Force Regulation 12–35 (32 CFR Part 806b).

F177 AF AFC D

System name: Joint Uniform Military Pay System (JUMPS) (50 FR 22527), May 29 1985.

Changes:

* * * * *

System location: In line 2, delete the phrase: " * * * Manpower and Personnel Center, Randolph Air Force Base, TX 78150" and add the following: " * * * Military Personnel Center, Randolph Air Force Base, TX 78150–6001."

Categories of records in the system: In line 5 after " * * * pay authorization file, * * * " add the following " * * * central pay automated teller machine (ATM) files."

* * * * *

Authority for maintenance of the system: At the end of the entry, add " * * * and Executive Order 9397."

Purpose(s): In line 2 after " * * * and savings accounts, * * * " add the following: " * * * Air Force ATM accounts."

* * * * *

Retrievability: At the end of entry, add " * * * or ATM card number."

* * * * *

Contesting records procedures: At the end of entry, add " * * * (32 CFR Part 806b)"

* * * * *

F177 AF AFC D

SYSTEM NAME:

177 AF AFC D—Joint Uniform Military Pay System (JUMPS).

SYSTEM LOCATION:

Air Force Accounting and Finance Center, Denver, CO 80279. Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150. Consolidated base personnel offices at Air Force installations. Accounting and finance offices at Air Force bases. At Data Systems Design Office, Gunter Air Force Station, AL 36114 (for research and test only), Denver Federal Archives and Records Center, Denver, CO 80225 (storage), Records Center Annex GSA, PO Box 141, Neosho, MO 64850 (backup storage). Information pertaining to geographically dispersed elements of the record system (CBPOs and AFOs) may be obtained from Record Managers at the applicable Air Force component listed in the Department of Defense Director in the appendix to the Air Force system notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel and dependents, retired and separated Air Force military personnel, officers of the Air Reserve and Air National Guard on extended active duty, officers and airmen of the Air Reserve and Air National Guard on active duty where strength accountability remains with the reserve component, and individuals to whom active duty military personnel authorize a direct payment of a portion of their pay.

CATEGORIES OF RECORDS IN THE SYSTEM:

Military pay records and files including but not limited to master military pay accounts, immediate access storage, six-months history, leave and earnings statements, federal insurance contribution act tax and federal income tax withholding pay authorization control files, central pay authorization file, central pay automated teller machine (ATM) files, deferred transaction file, reject suspense file and daily transaction record. Military pay supporting documents and vouchers including but not limited to basic pay; special compensation positions such as medical, dental, veterinary and optometry; special pay such as foreign duty, proficiency, hostile fire and diving duty; status adjustments relating to entrance on active duty, absent-without-leave, confinement, desertion, sick or injured, leave, mentally incompetent, missing, interned, permanent change of station, promotions and emotions; separation, reenlistment bonus; incentive pay such as flying duty, stress duty, demolition duty, parachute jumping duty and submarine duty; allowances, such as basic allowance for subsistence, basic allowance for quarters, family separation allowances, overseas station allowances, clothing monetary allowance; separation payments, death gratuities, time-in-service; allotments of pay; checks-to-banks; federal and state withholding taxes; courtmartial sentences and non-judicial punishment; indebtedness resulting from but not limited to overpayment of pay and allowances and allotments, other debts to United States, certain nongovernment debts, and correspondence pertaining to all of the above. Inquiries, files, personal financial records and sundry lists, reports and rosters including but not limited to Internal Revenue reports, state tax reports, Veterans Administration reports, Social Security Administration reports, and Treasury reports.

AUTHORITY FOR MAINTAINING THE SYSTEM:

Title 37 USC, Pay and Allowances of the Uniformed Services; 10 USC 265, Policies and regulations: Participation of Reserve officers in preparation and administration; 8033, Reserve components of the Air Force; policies and functions for government of: Functions of National Guard Bureau with respect to Air National Guard; 8496, Air National Guard of the United States: Commissioned officers; duty in; 9837(d), settlement of accounts: Deductions from pay; 32 USC 708, Property and fiscal officers; and Executive Order 9397.

PURPOSE(S):

Used to pay members of the Air Force, to their checking and saving accounts, Air Force ATM accounts, and their allotments either directly to financial institutions or through Direct Deposit/Electronic Fund Transfer Program, provide members periodic comprehensive statements of their accounts, and to respond to inquiries concerning their accounts at any time.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. Records from this system of records may be disclosed to the Internal Revenue Service for tax information on members, Social Security Administration for information regarding Federal Insurance Contribution Act tax deducted from members, Veterans' Administration for information regarding premiums on servicemen group life insurance, state and local governments for tax and welfare information, insurance companies for allotments made to them by military members, financial institutions for deposits (checks-to-banks) and/or payments, the American Red Cross and the Air Force Aid Society. American Red Cross uses this information to determine needs of a member of his dependents in emergency situations and for verification of loan applications.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, computer, and computer output products, and in microform.

RETRIEVABILITY:

Filed by name, Social Security Number (SSN), military service number, or ATM card number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers, cabinets, locked cabinets or rooms, protected by guards, and controlled by personnel screening, visitor registers and computer system software.

RETENTION AND DISPOSAL:

Local retention varies from 3 to 6 years. After that time, records are either destroyed by tearing, shredding, pulping, macerating or burning or transferred by the Air Force Accounting and Finance Center to the Denver Federal Archives and Records Center for varying retention periods up to 56 years. Destroyed by shredding. Backup records for emergency reconstruction in the event of primary record destruction are retained by the Federal Records Center Annex GSA at Neosho MO. Destruction is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Accounting and Finance, United States Air Force.

NOTIFICATION PROCEDURE:

Information as to whether the record system contains information on an individual may be obtained from AFAFC/DAD, Denver, CO 80279, telephone (303) 370–7553. Information pertaining to geographically dispersed elements of the record system may be obtained from Records Managers at the applicable Air Force component listed in the Department of Defense Directory in the appendix to the Air Force's systems notices. Requester should be able to provide sufficient proof of identity, such as name, Social Security Number, military status, duty status or place of employment or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Request from individuals should be addressed to AFAFC/DAD Denver, CO 80279, telephone (303) 370–7553. The record system may be obtained from Record Managers at the applicable Air Force component listed in the Department of Defense Directory in the appendix to the Air Force system notice. Requester should be able to provide sufficient proof of identity, such as name, Social Security Number, military status, duty status or place of employment or other information verifiable from the record itself.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information obtained from financial institutions, automated system interfaces, a state or local government, source documents such as reports, military pay information originating from telephone inquiries, telegraph messages and correspondence information from federal agencies and other DOD components and information from Air Force installations, Major Commands and USAF Headquarters.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F190 SAFPA B

System name: Official Biographies (51 FR 41399), November 14, 1986.

Changes:

* * * * *

Categories of individuals covered by the system: In last line, delete sentence "Key personnel in USSPACECOM." and add "Key personnel in Office of the Secretary of Defense (OASD), military departments, and HQ USSPACECOM."

Authority for maintenance of the system: In line one, delete the number "* * * 8012 * * *" and substitute the following: "* * * 8013 * * *."

* * * * *

Contesting records procedures: At the end of the entry, add "* * * and are published in Air Force Regulation 12–35 (32 CFR Part 806b)."

* * * * *

F190 SAFPA B

SYSTEM NAME:

190 SAFPA B—Official Biographies.

SYSTEM LOCATION:

Biographies of active duty general officers and high-level civilian personnel of the Department of the Air Force Service Information and News Center,

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Kelly Air Force Base, TX 78241 (AFSINC/IIB). Record system segments or duplicates pertaining to active duty general officers may be found at the Office of Public Affairs, Office of the Secretary of the Air Force, Washington, DC 20330; Headquarters of major commands and at all levels down to and including Air Force installations. Also at Air Force libraries, offices of air attaches to United States Embassies, Air Force sections of Military Assistance Advisory Groups and missions; unified activities and unified commands. Additional locations include the Air Force Chief Historian (AF/CHO), Washington, DC 20330; Assistant for General Officer Matters (AF/MPG), Washington, DC 20330; and the Aerospace Historical Foundation, University of KS. Biographies of retired Air Force general officers are located at the Media Relations Division, Secretary of the Air Force Office of Public Affairs (SAF/PAM), Room 5C879, The Pentagon, Washington, DC 20330, and at the Retired Activities Section, Assistant DCS/Personnel, Air Force Manpower and Personnel Center (AFMPC/AFPMSDMI), Randolph Air Force Base, TX 78150. Biographies of key civilian employees of the Office of the Secretary of the Air Force and of Headquarters, United States Air Force, relocated at the Director of Civilian Personnel, Washington, DC 20330. Biographies of key civilian employees at subordinate organizational levels may be found at the office of the Director of Civilian Personnel. Biographies of Air Reserve general officers are at Headquarters, USAF/REL, Washington, DC 20330. Record segments or duplicates may be found at the Office of Public Affairs, Headquarters, of the United States Air Force, major commands an major subordinate commands. Air Force Manpower and Personnel Center (AFMPC/DPMYR), Randolph Air Force Base, TX 78150; Headquarters, Air Force Reserve (Commander and Public Information Office), Robins Air Force Base, GA 31098; Air Reserve Personnel Center (Commander and Public Affairs Office), Denver, CO 80280; Headquarters, Military Airlift Command (CSB), Scott Air Force Base, IL 62225; Secretary of the Air Force, Manpower and Reserve Affairs (MRR), Washington, DC 20330; the Reserve Forces Policy Board, Washington, DC 20330; and the offices of all Air Reserve general officers. Biographies of Air National Guard general officers are located at the National Guard Bureau, Washington, DC 20310. Records system segments of duplicates may be found at Department of the Army major divisions and installations. Headquarters of the major commands and separate operating agencies. Army readiness regions; the offices of Army Guard and Air National Guard Liaison Officers; the Aerospace Audio-Visual Service, Norton Air Force Base, CA 92404; the Office of the Secretary of Defense; the Office of the Secretary of the Navy; the Library of Congress; the Air Force Association; the Army Association; the Reserve Officers Association; Air Force libraries; the Air War College, the offices of all National Guard and Air National Guard general officers, and the offices of state Adjutants General. Specific addresses may be obtained form the National Guard Bureau. Biographies prepared under the official biographies program for key military and civilian personnel of other Air Force organizations may be found at the Office of Public Affairs. Headquarters of major commands and at all levels down to and including Air Force installations. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Secretary of the Air Force, Under Secretary and assistant secretaries of the Air Force, Air Force general officers on active duty or retired, Air Reserve and Air National Guard general officers, Air Force personnel assigned as pilots to the Manned Space Program, and key military and civilian personnel at all Air Force organizations. Key personnel in Office of the Secretary of Defense (OASD), military departments, and HQ USSPACECOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes, but not limited to, summary of military service (including dates and locations of assignments and dates of promotions), military honors and awards, educational background, date and place of birth, marital status, name of spouse and family, and any additional personal information provided by the general.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 USC 8013, Secretary of the Air Force: Powers and duties delegation by.

PURPOSE(S):

Biographies are prepared to support the Air Force policy to keep its members and the public informed about the Air Force and its leaders. Biographies may be used as resource documents in preparing news releases or other public information material and are included in the official personnel records of all general officers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. In their final form the biographies are considered published, public domain material may be released to any requester on an as needed or as requested basis.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

No specific safeguards required.

RETENTION AND DISPOSAL:

Retained in office files until superseded obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESSES:

Commander, Air Force Service Information and News Center (AFSINC/CC), Kelly Air Force Base, TX 78241.

NOTIFICATION PROCEDURE:

Requests from individuals should be directed to Commander, Air Force Service Information and News Center (AFSINC/CC), Kelly Air Force Base, TX 78241, telephone (512) 925-6161 for all biographies of active duty general officers and key civilians assigned to the Office of the Secretary of the Air Force or to Headquarters Air Force. Biographies for Air Reserve general officers at Headequarters USAF/REL; Air National Guard general officers at the National Guard Bureau, and retired officers from the Media Relations Division (SAF/PAM), mailing addresses in the Department of Defense directory in the appendix to the Air Force's systems notices. All other biographies: Office of Public Affairs at the appropriate level.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance from the Commander, Air Force Service Information and News Center, the National Guard Bureau, Headquarters, USAF/REL, Media Relations Division (SAF/PAM) or the Office of Public Affairs at the appropriate level. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12-35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information obtained from the public media and information obtained from source documents such as reports. Subject to final review by the individual concerned before publication.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-26193 Filed 11-10-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.129U]

Notice Inviting Applications for New Awards Under the Rehabilitation Continuing Education Program of the Rehabilitation Services Administration for Fiscal Year 1989

Purpose: Provides funding through cooperative agreements to State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, for training centers that serve either a Department of Education region or another multi-State geographical area and provide for a broad integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel. The amount of available funds in this notice is an estimate. Applications are invited from Department of Education Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) and Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee).

Deadline for Transmittal of Applications: January 17, 1989

Applications Available: November 17, 1988

Estimated Available Funds: $850,000

Estimated Range of Awards: $200,000 to $350,000

Estimated Number of Awards: 2 to 3

Estimated Average Size of Awards: $283,000

Project Period: Not to exceed 60 months

Applicable Regulations: (a) The Rehabilitation Services Administration Regulations governing the Rehabilitation Continuing Education Program, 34 CFR Parts 385 and 389, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 80.

For Applications or Information Contact: Mary Ford, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332 (Switzer Building), Washington, DC 20202-2650. Telephone: (202) 732-1351.

Program Authority: 19 U.S.C. 774.

Dated: November 7, 1988.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 88-26261 Filed 11-10-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Award of a Cooperative Agreement, Noncompetitive Financial Assistance; Thermoluminescence Laboratory of University of Utah

AGENCY: Nevada Operations Office, DOE.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(e)(1)(ii), it is awarding a noncompetitive financial assistance cooperative agreement for a research program to be conducted at the Thermoluminescence (TL) Laboratory of the University of Utah on the development of optically stimulated luminescence, imaging TL spectrometry, and electron spin resonance techniques for accident and environmental dosimetry.

Project Scope

This award will primarily support the operation of the TL Laboratory and the development of new techniques for analysis of environmental materials which will expand the capability for rapid, accurate measurement of radiation dose delivered in accident situations. The Optically Stimulated Luminescence technique is similar to TL spectrometry but uses photo rather than thermal stimulation. Recent results from a research laboratory indicated that, in fired quartz, doses as low as one rad can be measured. Development of this technique will enable the University to analyze ceramics and bricks containing feldspar crystals that cannot be analyzed using the TL technique.

Imaging TL Spectrometry will address the problems of grain heterogeniety by providing single-grain imaging of TL samples. This technique will provide a method by which grains of similar properties may be sorted to improve the signal output and speed up sample preparation. Development of this capability will facilitate the laboratory's capability for emergency response to a radiological accident.

Eligibility for the award of this cooperative agreement is being limited to the University of Utah because the TL Laboratory at the University is the only laboratory in the United States that is capable of doing this kind of work.

The term of this cooperative agreement is for three years and will commence on January 1, 1988, and end on December 31, 1991. The total estimated cost of this award is $1.12 million.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: David L. Wheeler, P.O. Box 98518, Las Vegas, NV 89193-8515.

Issued in Las Vegas, Nevada on October 26, 1988.

Nick C. Aquilina,

Manager.

[FR Doc. 88-26234 Filed 11-10-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No., 88-51-NG]

Renaissance Energy (U.S.) Inc.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order granting Renaissance Energy (U.S.) Inc. (Renaissance) blanket authorization to import natural gas from and export natural gas to Canada. The order issued in ERA Docket No. 88-51-NG authorizes Renaissance to import or export in the aggregatge not more than 200 Bcf of U.S. and Canadian natural gas over a two-year term beginning on the date of first delivery.

A copy of this order is available in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW.,

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Washington, DC 20585, (202) 586–0478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., on November 8, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–26235 Filed 11–10–88; 8:45 am]

BILLING CODE 6450–01–M

Proposed Remedial Order To Richome Oil and Gas Co., Jerome B. Herrmann and Richard P. Herrmann

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Richome Oil and Gas Company, Jerome B. Herrmann and Richard P. Herrmann.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Richome Oil and Gas Company (now known as Herrmann Energy), Jerome B. Herrmann and Richard P. Herrmann of Amarillo, Texas on September 21, 1988. This Proposed Remedial Order alleges overcharges in the amount of $137,030.20, plus interest, resulting from violations of 6 CFR 150.354(c), and 10 CFR 212.73(a) and 212.74 during the time period November 1973 through December 1974. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with 10 CFR 205.193, the Proposed Remedial Order may be issued as a final Remedial Order.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Ben Lemos, Director, Enforcement Litigation Division, U.S. Department of Energy, 1403 Slocum Street, 2nd Floor, Dallas, Texas 75207,

and upon:

Diana D. Clark, Director, Administrative Litigation Division, U.S. Department of Energy, RG–32, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on the 4th day of November 1988.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88–26236 Filed 11–10–88; 8:45 am]

BILLING CODE 6450–01–M

Proposed Remedial Order to Salomon Inc., et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Salomon Inc., Philipp Brothers, Inc., Derby & Co., Inc., Phibro Corporation, Derby Distributors, Inc., Philipp Brothers Latin American Corporation, Philipp Brothers Pam American Corporation.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order (PRO) which was issued to Salomon Inc., c/o Corporation Trust Company, Corporation Trust Plaza, 1209 Orange Street, Wilmington, Delaware 19801, and the following subsidiary corporations: Philipp Brothers, Inc., 1221 Avenue of the Americas, New York, New York 10020; Derby & Co., Inc. (same address); Phibro Corporation, c/o Corporation Trust Company, Corporate Trust Center, 1209 Orange Street, Wilmington, Delaware 19801; Derby Distributors, Inc., McGraw-Hill Bldg., Avenue of the Americas and 48th Street, New York, New York, 10020; Philipp Brothers Latin American Corporation, 1221 Avenue of the Americas, New York, New York 10020; and Philipp Brothers Pan American Corporation (same address). The PRO charges that Derby & Co., Inc. and Phibro Corp. violated the anti-layering and other pricing provisions of the regulations applicable to crude oil resales (10 CFR Part 212, Subpart L) during the 1978–1980 period and received unlawful revenues of $46.06 million and $59.29 million, respectively. The PRO further alleges that Derby Distributors, Inc., Philipp Brothers Pan American Corp., and Philipp Brothers Latin American Corporation violated the pricing provisions of these regulations during the same period and received unlawful revenues of $1,362,459.14, $164,780.40, and $1,096,434.92, respectively. The effect of these overcharges is nationwide.

The total overcharges alleged in the PRO amount to $107.97 million. The PRO seeks payment of this amount, plus interest, to DOE. With interest, the total restitutionary amount sought, through September 30, 1988, is $311.61 million. The PRO contemplates that all monies received will be deposited into an interest-bearing escrow account for ultimate distribution pursuant to DOE's Special Refund Procedures (10 CFR Part 205, Subpart V) and DOE's Modified Statement of Restitutionary Policy (51 FR 27899, August 4, 1986).

A copy of the PRO may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order, and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon: Ben Lemos, Director, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum, 2nd Floor, Dallas, Texas 75207 and upon: Diana D. Clark, Director, Administrative Litigation Division, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., RG–32, Washington, DC 20585.

Issued in Washington, DC, on the 3rd day of November 1988.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88–26237 Filed 11–10–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–38–000, et al.]

New England Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER89–38–000]

November 4, 1988.

Take notice that on October 31, 1988, New England Power Company (NEP) tendered for filing amendments to its FERC Eelctric Tariff, Original Volume No. 1, Schedule II–A, which is the Oil Conservation Adjustment Clause (OCA) within that tariff. NEP requests that the proposed changes be made effective December 31, 1988, but be suspended for one day, to permit billing under the amendments on January 1, 1989.

NEP states that the proposed amendments add a 1.1 mill per KWH floor to the OCA charge. NEP explains that the floor is needed to allow full recovery of its coal conversion investment in its Salem Harbor Units 1, 2, and 3 (Units). According to NEP, the currently effective OCA charge, which is based on the oil/coal price differential of the Units, does not allow for amortization of that investment due to the precipitous drop in oil prices. NEP states that the proposed change will allow full amortization by 1996.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. The Dexter Corporation and Meridian Trust Company

[Docket No. QF86–765–001]

November 4, 1988.

On October 20, 1988, The Dexter Corporation and Meridian Trust Co. (Applicants), of One Elm Street, Windsor Locks, Connecticut 06096 and 35 North 6th St., Reading, Pennsylvania 19601, respectively, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined-cycle cogeneration facility will be located in Windsor Locks, Connecticut. The facility will consist of a combustion turbine generating unit, a heat recovery steam generator, and an extraction/condensing steam turbine generating unit. Steam and hot water produced by the facility will be used by C.H. Dexter Division of The Dexter Corporation to manufacture specialty papers and nonwovens. The net electric power production capacity of the facility will be 52 MW. The primary energy source will be natural gas. The installation of the facility began in 1987.

The original application was filed May 27, 1986, and was granted on August 22, 1986 (36 FERC ¶ 62,216). The recertification is requested due to change of ownership. The legal title to the facility has been transferred to Meridian Trust, not in its individual capacity, but solely as owner trustee.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Hampshire

[Docket No. ER89–36–000]

November 4, 1988.

Take notice that on October 28, 1988, Public Service Company of New Hampshire tendered for filing proposed changes in its transmission service to Commonwealth Electric Company. The proposed changes would increase revenues from jurisdictional sales and service by $324,690 based on the 12 month period ending October 31, 1989.

The proposed change is designed to put in place rates that reflect accurately the costs of the transmission service provided by PSNH and the parties have executed a contract memorializing the changes.

Public Service Company requests waiver of the Commission's notice requirements to permit the transmission agreement to become effective as of November 1, 1988.

Copies of the filing were served upon Commonwealth Electric Company.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas

[Docket No. ER89–37–000]

November 4, 1988.

Take notice that on October 31, 1988, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with UNITIL Power Corporation (UNITIL). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to UNITIL. Service under this agreement will commence on November 1, 1988 and shall terminate on April 30, 1989 unless extended in writing by mutual agreement.

NYSEG has filed a copy of this filing with UNITIL Power Corporation and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that November 1, 1988 be allowed as the effective date of the filing.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Colorado

[Docket No. ER89–898–000]

November 4, 1988.

Take notice that on October 31, 1988, Public Service Company of Colorado (Public Service) tendered for filing a proposed change in its Power Purchase and Interchange Agreement (Agreement) with Colorado-Ute Electric Association, Inc. (Colorado-Ute). Public Service states that the proposed change is a Supplement to Public Service's Agreement with Colorado-Ute, dated April 30, 1982, on file with the Commission under Public Service's FERC Rate Schedule No. 37.

Public Service states that the Supplement to the Agreement with Colorado-Ute provides for a change in the billing procedures reflecting Intermountain REA's (REA) wheeling power and energy on behalf of Public Service.

Public Service states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Comment date: November 21, 1988, in accordance with Standard Pargraph E at the end of this notice.

6. Allegheny Power Service Corporation on Behalf of Monongahela Power Company, The Potomac Edison Company, West Penn Power Company (The APS Companies)

[Docket No. ER88–615–000]

November 4, 1988.

Take notice that on October 24, 1988, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, tendered for filing information in response to requests by the Staff concerning the initial filing in this docket on September 19, 1988.

Copies of the filing have been served upon American Municipal Power-Ohio, Inc., the Maryland Public Service Commission, the Ohio Public Utilities Commission, the Pennsylvania Public Utility Commission, the Virginia State Corporation Commission, the West

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Virginia Public Service Commission, and Elkem Metals Company.

Comment date: November 14, 1988, in accordance with Standard Pargraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER88-606-000]

November 4, 1988.

Take notice that on September 14, 1988, Southern California Edison Company (Edison) tendered for filing a change of rates for transmission service as embodied in Edison's agreements with the following entities which reflects a reduction in rate of return from 11.24 percent to 10.75 percent and changes to depreciation rate authorized by the California Public Utilities Commission (CPUC) to be made effective January 1, 1988.

Rate Schedule FERC No.	
1. Arizona Electric Power Cooperative.	131, 161
2. Arizona Public Service Company.	185
3. City of Burbank	166
4. California Department of Water Resources.	36, 112, 113, 181
5. City of Los Angeles Department of Water and Power.	102, 118, 140, 141, 163, 188
6. City of Glendale	143
7. M-S-R Public Power Agency	153
8. Pacific Gas and Electric Company.	117, 147
9. City of Pasadena	158
10. San Diego Gas & Electric Company.	151
11. Western Area Power Authority..	20

Edison requests waiver of the Commission's prior notice requirement and an effective date for these rate changes of January 1, 1988.

In addition, Edison tendered for filing a corrected Exhibit F of Attachment D under ER87-517-000 which corrects a typographical error in the presently effective rate for PG&E, Rate Schedule FERC No. 147. Edison requests waiver of the Commission's prior notice requirement and an effective date for this correction as of July 1, 1987.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 14, 1988, in accordance with Standard Pargraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER89-41-000]

November 7, 1988.

Take notice that on October 31, 1988, Florida Power & Light Company (FPL) tendered for filing Amendment Number One To Short Term Agreement To Provide Power and Energy by Florida Power & Light Company To Utilities Commission, City of New Smyrna Beach, Florida.

Under Amendment Number One, FPL and Utilities Commission, City of New Smyrna Beach, Florida have agreed to extend the term of the Short Term Agreement from December 31, 1989 to May 28, 1992. According to FPL, a copy of this filing was served upon the Utilities Commission, City of New Smyrna Beach, Florida and the Florida Public Service Commission.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Ohio Edison Company

[Docket No. ER88-544-000]

November 7, 1988.

Take notice that on October 14, 1988, Ohio Edison Company tendered for filing, pursuant to the Commission's Order of September 30, 1988, two unexecuted Service Agreements between Ohio Edison Company and American Municipal Power-Ohio, Inc.

Comment date: November 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER89-40-000]

November 7, 1988.

Take notice that on October 31, 1988, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with Long Island Lighting Company (LILCO). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to LILCO. Service under this agreement commenced on September 16, 1988 and shall terminate on October 30, 1988 unless extended in writing by mutual agreement.

NYSEG has filed a copy of this filing with Long Island Lighting Company and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that September 16, 1988 be allowed as the effective date of the filing.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. MSU System Services, Inc.

[Docket No. ER89-34-000]

November 7, 1988.

Take notice that on October 28, 1988, MSU System Services, Inc. (SSI), as agent for Arkansas Power & Light Company (AP&L), Louisiana Power & Light Company (LP&L), Mississippi Power & Light Company (MP&L) and new Orleans Public Service Inc. (NOPSI), tendered for filing an Interchange Agreement between AP&L, LP&L, MP&L, NOPSI, and SSI (collectively the Middle South System Companies) and Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T) (Interchange Agreement), an Amendment to the Replacement Energy service schedule under the Interchange Agreement, and a letter agreement for the sale of unit and reserve capacity and energy to SRG&T (Letter Agreement).

SSI requests an effective date of January 1, 1989 for the Interchange Agreement, the Amendment to the service schedule, and the Letter Agreement.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

12 Arizona Public Service Company

[Docket No. ER89-35-000]

November 7, 1988.

Take notice that on October 28, 1988, Arizona Public Service Company (APS) tendered for filing a Supplemental Capacity Sale Agreement (Agreement) between APS and Citizen's Utilities Company (CUC).

The Agreement provides for APS to initially supply 6 MW of supplemental capacity for the period December 1, 1988 through February 28, 1989. No new facilities nor modifications to existing facilities will be required to provide the aforementioned service.

A copy of this filing has been served upon Citizens Utilities Company and Arizona Corporation Commission.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER89-43-000]

November 7, 1988.

Take notice that on October 31, 1988, Northeast Utilities Service Company (NUSCO), as Agend for the Connecticut Light and Power Company (CL&P) for itself and as successor by merger with the Hartford Elecric Light Company (HELCO) and Western Massachusetts Electric Company (WMECO), tendered for filing Notices of Termination of the following rate schedules:

Burlington Exchange Agreement (Middletown/Montville) between CL&P, HELCO, and Burlington Electric Department, dated November 1, 1980 (CL&P's Rate Schedule No. FERC 243, HELCO's FERC No. 244, hereinafter referred to as "CL&P's Rate Schedule No. FERC 243").

Weekly Exchange Agreement between CL&P, HELCO, and Hardwick Electric Department dated June 1, 1979 (CL&P Rate Schedule No. FERC 206, HELCO's FERC No. 213, hereinafter referred to as "CL&P's Schedule No. FERC 206").

Agreement Between WMECO and Village of Hyde Park With Respect to Gas Turbine Units Located at Doreen and Woodland Road Substation dated April 1, 1983 (WMECO Rate Schedule No. FERC 233).

Agreement Between WMECO and Village of Johnson With Respect to Gas Turbine Units Located at Doreen and Wooland Road Substation dated April 1, 1983 (WMECO Rate Schedule No. FERC 232).

Weekly Exchange Agreement between CL&P, HELCO, and Lyndonville Electric Department dated October 1, 1977 (CL&P Rate Schedule No. FERC 197, HELCO's FERC No. 196, hereinafter referred to as "CL&P's Rate Schedule No. FERC 197").

Weekly Exchange Agreement between CL&P, HELCO, and Ludlow Electric Department dated June 1, 1979 (CL&P Rate Schedule No. FERC 202, HELCO's FERC No. 209, hereinafter referred to as "CL&P's Rate Schedule No. FERC 202").

Weekly Exchange Agreement between CL&P, HELCO, and Morrisville Water and Light Department dated June 1, 1979 (CL&P Rate Schedule No. FERC 204, HELCO's FERC No. 211, hereinafter referred to as "CL&P's Rate Schedule No. FERC 204").

Weekly Exchange Agreement between CL&P, HELCO, and Northfield Electric Department dated June 1, 1979 (CL&P Rate Schedule No. FERC 205, HELCO's FERC No. 212, hereinafter referred to as "CL&P's Rate Schedule No. FERC 205").

Weekly Exchange Agreement between CL&P, HELCO, and Stowe Electric Department dated June 1, 1979 (CL&P Rate Schedule No. FERC 203, HELCO's FERC No. 210, hereinafter referred to as "CL&P's Rate Schedule No. FERC 203").

Weekly Exchange Agreement between CL&P, HELCO, and Washington Electric Cooperative, Inc., dated June 1, 1979 (CL&P Rate Schedule No. FERC 207, HELCO's FERC No. 214, hereinafter referred to as "CL&P's Rate Schedule No. FERC 207").

The rate schedules are to be terminated because they are no longer being utilized by the parties to the agreements. The Commission is requested to allow the terminations to take effect on November 14, 1988.

Notices of the proposed terminations have been served upon all the parties affected by this proceeding.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER89-42-000]

November 7, 1988.

Take notice that on October 31, 1988, Northeast Utilities Service Company (NUSCO) tendered for filing proposed changes with respect to a Purchase Agreement with respect to Various Gas Turbine Units between the Connecticut Light and Power Company (CL&P) and Newport Electric Corporation (Newport), dated May 1, 1986.

The proposed changes would not increase rates, but would (1) change the amounts of the purchases provided under and add a unit to the Rate Schedule, and (2) change the date on which the negotiated rate for the capacity charge would be replaced with a cost-of-service rate.

Pursuant to § 35.19 of the Commission's Regulations and in order to conform with the requirements of § 35.18(b) and (c), NUSCO incorporates hereto by reference the information previously submitted to the Commission under FERC Rate Schedule No. CL&P 350 (Agreement).

NUSCO requests that the Commission waive its standard notice period and permit the rate schedule changes to become effective May 1, 1986.

NUSCO states that copies of this rate schedule have been mailed or delivered to CL&P and Newport.

NUSCO further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

15. Montaup Electric Company

[Docket No. ER89-47-000]

November 7, 1988.

Take notice that on November 1, 1988, Montaup Electric Company (Montaupo) tendered for filing rate schedule revisions incorporating the 1989 forecast billing rate for its purchased capacity, adjustment clause (PCAC) for all-requirements service to Montaup's affiliates Eastern Edison Company (Eastern Edison) in Massachusetts and Blackstone Valley Electric Company (Blackstone) in Rhode Island and contract demand service to three non-affiliated customers: The Town of Middleborough in Massachusetts and the Pascoag Fire District and the Newport Electric Corporation in Rhode Island. The new forecast billing rate is $9.47931/kw-Mo. Montaup requests that the new rate become effective January 1, 1989 in accordance with the PCAC.

Montaup's filing was served on the affected customers, the Attorneys General of Massachusetts and Rhode Island, the Rhode Island Public Utilities Commission and the Massachusetts Department of Public Utilities.

Comment date: Novembver 21, 1988, in accordance with Standard Paragraph E at the end of this document.

16. Idaho Power Company

[Docket No. ER89-45-000]

November 7, 1988.

Take notice that on October 31, 1988, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1976, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during August 1988, along with cost justification, for the rate charged. This filing includes the following supplements:

Utah Power and Light Company; Supplement No. 78
Pacific Power and Light Company; Supplement No. 25
Sierra Pacific Power Company; Supplement No. 78

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Company

[Docket No. ER89-46-000]

November 7, 1988.

Take notice that on November 1, 1988, New England Power Company (NEP) tendered for filing an executed Interconnection Agreement with Indeck Energy Services of Turners Falls, Inc., an Illinois Corporation.

The purpose of the Agreement is to facilitate the transmission of power that will be produced by Indeck's planned new cogeneration facility in Turners Falls, Massachusetts to UNITIL Power Corp. (UNITIL) in Exeter, New Hampshire.

NEP requests waiver of the Commission's notice requirements so that the Agreement may become effective July 7, 1988 in accordance with its terms and the intent of the parties.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

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18. Southern Company Services, Inc.

[Docket No. ER89-48-000]

November 7, 1988.

Take notice that on November 1, 1988, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company, tendered for filing the Southern Company Intercompany Interchange Contract, together with all Allocation Methodology and Periodic Rate Computation Manual showing the basis for interchange and pooling transactions between such companies. The filing also includes informational schedules which detail the charges and derivation of components of the rate to be used during the calendar year 1989. The new Intercompany Interchange Contract is proposed to be effective on January 1, 1989.

The new Southern Company System Intercompany Interchange Contract constitutes a coordination and interchange agreement between the operating companies of the Southern Company. The Contract provides for certain power pooling transactions, including exchange of interchange energy and the pricing thereof, the purchase and sale of capacity and the rates and charges therefore, as well as other interchange arrangements between the operating companies.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

19. United States Department of Energy Bonneville Power Administration

[Docket No. ER89-2061-000]

November 7, 1988.

Take notice that on November 2, 1988, Bonneville Power Administration (BPA) of the United States Department of Energy tendered for filing a proposed modification of Southern California Edison Company Contract Formula Rate schedule SC-86 (Modified SC-86). BPA requests final confirmation and approval of this rate schedule pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(a)(2), and the Commission's rules for the confirmation and approval of rates for Federal power marketing agencies, 18 CFR Part 300.

BPA does not request interim approval of the Modified SC-86 rate schedule. BPA requests that the Commission grant final approval of the Modified SC-86 Rate schedule by January 15, 1989, for an effective date of July 1, 1989, and that the Commission extend the existing rate approval period of the original SC-86 rate schedule, as modified, until June 30, 2008. *United States Dep't of Energy—Bonneville Power Adm'n.*, 37 F.E.R.C. ¶ 61,345 (1986).

Modified SC-86 applies to the sale of 250 MW of surplus firm power at an annual load factor of 53.57%. It begins at an initial level of 28.5 mills per kWh (a 23% decrease in the initial rate level) and escalates annually using a weighted average of the oil and gas price escalation in the previous year. The operative Modified SC-86 rate in each successive year will be bounded by a floor and ceiling, which escalate each fiscal year based on changes in BPA's average system cost.

Comment date: November 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

20. The Procter & Gamble Paper Products Company

[Docket No. QF89-23-000]

November 7, 1988.

On October 26, 1988, The Procter & Gamble Paper Products Company (Applicant), of 1 Procter & Gamble Plaza, Cincinnati, Ohio 45202-3315 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oxnard, California. The facility will consist of a combustion turbine generator and a heat recovery steam generator. Steam recovered from the facility will be used in Procter & Gamble's papermaking process. The net electric power production capacity will be 46.77 megawatts. The primary energy source will be natural gas. Installation of the facility began in July 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26198 Filed 11-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

November 7, 1988.

Take notice that on October 31, 1988, Mississippi River Transmission Corporation (MRT) tendered for filing, to be effective December 1, 1988, Twenty-Seventh Revised Sheet No. 4 and Alternate Twenty-Seventh Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1. MRT states that the filing is being submitted to reflect its second quarterly purchased gas cost adjustment (PGA) pursuant to § 154.308 of the Commission's Regulations and the PGA provisions of MRT's tariff, and is designed to track pipeline and producer cost changes and recover costs which have accumulated in its Unrecovered Purchased Gas Cost Account.

In its filing, MRT requests authorization to extend its existing PGA surcharge amortization period, which would presently expire February 1, 1989, to May 31, 1989, in order to mitigate the impact of increases in its current costs of purchased gas during the winter heating season. MRT states that extending the existing surcharge amortization period as proposed will result in a composite reduction of $519,000 during the subject quarterly PGA period.

MRT also states that the primary tariff sheet included in its filing reflects the impact of a recent agreement in principle reached with United Gas Pipe Line Company (United) pursuant to which MRT will both reduce its current firm sales maximum daily quantity with United and become a firm shipper under United's Rate Schedule FTS, effective November 1, 1988. The primary tariff sheet, Twenty-Seventh Revised Sheet No. 4, reflects both the reduction of sales demand charges presently paid United, as well as the proposed reclassification of certain costs, previously paid United as sales demand charges, which will be paid as fixed transportation reservation fees as a result of MRT's conversion of sales service to transportation service on the United system. This reclassification will result in a corresponding restatement of MRT's base tariff rates, similar to the cost reclassification and rate restatement resulting from MRT's conversion of firm sales contract demand with Natural Gas Pipeline Company of America, which was recently approved by the Commission at Docket No. RP88-220-000. MRT requests Commission authorization for this proposed cost reclassification and base rate restatement in the subject filing.

MRT further states that Twenty-Seventh Revised Sheet No. 4 reflects a decrease of $1.93 per Mcf in Demand Charge D-1, a decrease of $.0021 per Mcf in the Demand charge D-2 and an increase in the CD-1 commodity charge of $.3868 per Mcf, under MRT's Rate Schedule CD-1. The Rate Schedule SGS-1 single part rate reflects an increase of $.1980 per Mcf. MRT states that the cost impact of such rate changes on MRT's jurisdictional customers, when applied to quarterly billing determinants, is an increase of $18.9 million. Alternate Twenty-Seventh Revised Sheet No. 4, reflecting the continuation of the current service agreement with United, contains rates $7.7 million higher than those on Twenty-Seventh Revised Sheet No. 4.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 395.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26180 Filed 11-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-94-010]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

November 7, 1988.

Take notice that on October 31, 1988, Natural Gas Pipeline Company of America (Natural) submitted for filing First Revised Sheet Nos. 169 and 170 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective December 1, 1988.

Natural states that the filing is made in accordance with section 33.2 of its tariff which provides that the Take-or-Pay Settlement Cost Assessments will be redetermined on a semi-annual basis to be effective each June 1 and December 1 through November 30, 1992. The revision to each jurisdictional customer's monthly allocation of transition costs includes (1) interest accrued since May 1, 1988; and (2) additional costs which Natural has incurred since the filing of the initial phrase of the transition costs recovery program.

Natural states the interest is calculated in accordance with the Commission's Regulations as set forth in § 154.67(c)(2)(iii) and allocated by month among the jurisdictional customers based on each customer's pro rata share of the outstanding transition cost balance on which the interest was calculated. Additional transition costs have been allocated among Natural's firm customers in the manner set out in Natural's June 7, 1988 filing under Docket No. RP88-94-005.

Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheet to become effective December 1, 1988.

A copy of this filing was mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list in Docket No. RP88-94-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance the §§ 385.214 and 385.211. All such motions or protests must be filed on or before November 15, 1988. Protests will be considered by the Commission in determining the appropriate action to the taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26181 Filed 11-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-59-000]

Northern Natural Gas Co., Division of Enron Corp.; Purchased Gas Cost Adjustment Rate Change

November 7, 1988.

Take notice that on October 31, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets:

Third Revised Volume No. 1

Forty-Ninth Revised Sheet No. 4a
Sixty-Third Revised Sheet No. 4b
Thirty-First Revised Sheet No. 4b.1
Seventh Sheet Revised No. 4g.2

Original Volume No. 2

Seventieth Revised Sheet No. 1c

Northern states that such revised tariff sheets are required in order that Northern may place into effect the proposed rates on January 1, 1989 to:

(1) Reflect Northern's cost of purchased gas to be experienced during the 1st Quarter, 1989, pursuant to Paragraph 18 of Northern's Volume 1 Tariff, and Paragraph 1 of Northern's Volume 2 Tariff.

(2) Reflect a negative surcharge to amortize the overrecovered commodity cost of purchased gas account for the eleven months ended August 31, 1988, and a negative surcharge to amortize the overrecovered demand cost of purchased gas account for the eleven months ended August 31, 1988, both pursuant to Paragraph 18 of Northern's Volume 1 Tariff and Paragraph 1 of Northern's Volume 2 Tariff and also to reflect certain revenue tracking adjustments.

(3) Track the change in the cost of transportation of gas through the Alaska Natural Gas Transportation System (ANGTS) pursuant to Paragraph 21 of Northern's Volume 1 Tariff and Paragraph 4 of Northern's Volume 2 Tariff. In addition, this filing reflects a positive surcharge to amortize the underrecovered cost of transportation of gas through ANGTS for the twelve months ended September 30, 1988.

In the filing, Northern has established a ceiling PGA rate of $2.5098 per MMBtu which reflects an increase of $.1615 per MMBtu from the approved 4th Quarter 1988 ceiling PGA rate of $2.3483 per MMBtu.

Northern states that since the projection of 1st Quarter, 1989 gas purchased costs may not reflect the level of gas purchased costs it actually will experience on January 1, 1989, it

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may not bill the commodity rates established in its filing on January 1, 1989. Instead, Northern states that it will utilize its flexible PGA tariff mechanism, if necessary, to reflect in the commodity rates on January 1, 1989, the estimated actual cost of purchased gas being experienced at that time.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26182 Filed 11-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-117-004]

Northern Natural Gas Co., Division of Enron Corp.; Compliance with Order Nos. 483 and 483-A

November 7, 1988.

Take notice that on October 31, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets:

Third Revised Volume No. 1

Seventh Revised Sheet No. 65
Substitute Fifth Revised Sheet No. 66
Substitute Seventh Revised Sheet No. 67
Substitute Sixth Revised Sheet No. 68
Substitute Ninth Revised Sheet No. 69
Substitute First Revised Sheet No. 69a
Substitute Eighth Revised Sheet No. 70
Substitute Fourth Revised Sheet No. 70a
Third Revised Sheet No. 70b
Substitute Fifth Revised Sheet No. 70c

Original Volume No. 2

Substitute Fifth Revised Sheet No. 1d
Substitute Fifth Revised Sheet No. 1e
Substitute Sixth Revised Sheet No. 1f
Substitute Eighth Revised Sheet No. 1g
Substitute Sixth Revised Sheet No. 1h
Substitute Sixth Revised Sheet No. 1i
Substitute Second Revised Sheet No. 1i.1
Fifth Revised Sheet No. 1i.2
First Substitute Original Sheet No. 1i.2a

Northern states such revised revised tariff sheets are required in compliance with the Letter Order dated September 29, 1988, in order that Northern's tariff will be in conformance with Order Nos. 483 and 483-A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 88-26183 Filed 11-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-180-004]

Trunkline Gas Co.; Compliance Filing

November 7, 1988.

Take notice that on October 31, 1988 Trunkline Gas Company (Trunkline) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, to be effective December 1, 1988.

These revised tariff sheets to be effective December 1, 1988 reflect (1) compliance with Ordering Paragraphs (B), (C), (D), (E) and (G) of the Commission's Order dated June 30, 1988; (2) compliance with Ordering Paragraph (G) of the Commission's Order dated October 4, 1988; (3) the application of Ordering Paragraphs (B) and (L) of the Commission's Order dated September 28, 1988 in Docket No. RP88-239-000; (4) inclusion of the Annual Charge Adjustment (ACA) pursuant to the Commission's Order in Docket Nos. TM89-1-48-000, *et al.*; (5) the regularly scheduled Quarterly PGA filing to be effective December 1, 1988; and (6) changes to Rate Schedule PT pursuant to the requirements of the Commission's Order No. 497.

Trunkline states that the filing of these revised tariff sheets which satisfies the requirements of the Commission's Orders dated June 30, 1988 and October 4, 1988 in this proceeding is without prejudice to Trunkline's rights on rehearing or in any judicial review proceeding or its position in this proceeding and the Docket No. RP88-239-000 proceeding.

Copies of this letter and enclosures are being served on all jurisdictional customer, interested state commissions and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26184 Filed 11-10-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3475-7]

Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Correction and Request for Comments.

SUMMARY: On November 1, 1988, EPA announced it had submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The **Federal Register** notice announced that EPA had requested that OMB conduct an expedited review of the ICR, titled "Pesticide Manufacturing Facility Census for 1986, Part B: Economic and Financial Information (EPA ICR #1028)." The notice contained an abstract of the census activity and included a copy of the complete questionnaire, but failed to indicate the deadline for submission of comments on the questionnaire. Today's notice provides this additional information and invites public comment.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

EPA's Request for Expedited Review

The November 1 **Federal Register** notice (53 FR 44073) announced that EPA was requesting that OMB conduct an expedited review, pursuant to 5 CFR 1320.18 of the OMB regulations. The basis for seeking expedited review is explained in EPA's letter to OMB of October 26, 1988, as required by § 1320.18(a).

The notice also included a copy of the complete questionnaire, as required by § 1320.15. However, the deadline for submission of comments (required by § 1320.18(d)) was inadvertently omitted from that notice. The deadline for submitting comments is December 9, 1988.

Request for Public Comments

The ICR document (announced in the November 1 notice) provides a description of EPA's need for the Census information and discusses the economic analyses the Agency will conduct. EPA invites comment on the possibility of reducing respondent burden by making three tables in the questionnaire optional. These are Tables 2-H (p. 31), 2-I (p. 34), and 2-J (p. 37). If respondents choose not to complete these tables, the Agency would assess impacts based on financial averages for all products within a given plant. EPA seeks comment on the acceptability of this approach.

Send comments on the Census to:

Sandy Farmer, Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, [Telephone (202) 395-3084]

Date: November 7, 1988.

Paul R. Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88-26214 Filed 11-10-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement in made of the following committee meeting:

Name:
Board of Visitors (BOV) for the Emergency Management Institute (EMI)

Dates of Meeting:
December 12-14, 1988

Place:
Federal Emergency Management Agency
National Emergency Training Center
Emergency Management Institute
Conference Room, Building N
Emmitsburg, Maryland 21727

Time:
December 12—8:30 a.m. to 5:00 p.m.
December 13—8:30 a.m. to 5:00 p.m.
December 14—8:30 a.m. to Agenda Completion

Proposed Agenda:
BOV task force status reports and working sessions

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301-447-1251) on or before November 30, 1988.

Minutes of the meeting will be prepard by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: November 1, 1988.
Notice of open meeting.

Robert Volland,

Acting Director, Office of Training.

[FR Doc. 88-26191 Filed 11-10-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL RESERVE SYSTEM

Caisse Nationale de Credit Agricole et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies or that has been approved by Order. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Caisse Nationale de Credit Agricole*, Paris, France; to engage *de novo* through its subsidiary, UI-USA, Inc., New York, New York, in providing advice in connection with merger, acquisition/divestiture and financing transactions for nonaffiliated financial and nonfinancial institutions; providing fairness opinions in connection with mergers, acquisitions and similar transactions for nonaffiliated financial and nonfinancial institutions; providing advice regarding the structure of and arranging for loan syndications, interest rate "swap", interest rate "cap" and similar transactions; providing valuations of companies and of large blocks of stock for nonaffiliated financial and nonfinancial institutions; and providing financial feasibility studies for specific projects of private companies. These activities have been previously approved by Board Order (*SunTrust Banks, Inc.*, 74 Federal Reserve Bulletin 256 (1988). Applicant also proposes to engage *de novo* through

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its subsidiary in providing portfolio investment advice and research to customers and affiliated, and furnishing general economic information and advice, general economic statistical forecasting services and industry studies to customers and affiliates pursuant to § 225.25(b)(4); making or acquiring loans or other extensions of credit pursuant to § 225.25(b)(1); leasing personal or real property or acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5); and acting as intermediary for the financing of commercial or industrial income—producing real estate by arranging for the transfer of the title, control and risk of such a real estate project to one or more investors pursuant to § 225.25(b)(14) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bosshard Banco, Ltd.*, La Crosse, Wisconsin; to engage *de novo* through its subsidiary, Vigil Asset Management, Inc., Wausau, Wisconsin, in performing trust functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in North Central Wisconsin, including Marathon, Portage, Oneida, Lincoln, Forest, Vilas, Taylor, Langlade, Shawano, Wood, Waupaca, Clark, and Price Counties.

Board of Governors of the Federal Reserve System, November 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26141 Filed 11–10–88; 8:45 am]

BILLING CODE 6210–01–M

Harrogate Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 2, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Harrogate Corporation*, Harrogate, Tennessee; to merge with Commercial Bank Group, Inc., formerly Commercial Securities Corporation, Middlesboro, Kentucky, and thereby indirectly acquire Commercial Bank, Middlesboro, Kentucky.

2. *Pasco Financial Corporation*, Dade City, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Pasco, Dade City, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Bancorp., Inc.*, St. Charles, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Community State Bank of St. Charles, St. Charles, Michigan.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dassel Investment Company*, Minneapolis, Minnesota; to acquire an additional 0.54 percent of the voting shares of Fidelity State Bank, New Prague, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *New Hampton Bancshares, Inc.*, Albany, Missouri; to merge with Security Bancshares, Inc., Albany, Missouri, and thereby indirectly acquire Bank of Gallatin, Gallatin, Missouri. Comments on this application must be received by November 30, 1988.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Mineral King Bancorp, Inc.*, Visalia, California; to become a bank holding company by acquiring 100 percent of the voting shares of Mineral King National Bank, Visalia, California.

Board of Governors of the Federal Reserve System, November 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26142 Filed 11–10–88; 8:45 am]

BILLING CODE 6210–01–M

Lake Crystal Bancorporation, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lake Crystal Bancorporation, Inc.*, Lake Crystal, Minnesota; to acquire Lake Crystal National Agency, Inc., Lake Crystal, Minnesota, and thereby engage in insurance activities pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Lake Crystal, Minnesota, with a population of 2,200, and the surrounding area. The trade area to be served has a population of approximately 4,000.

Board of Governors of the Federal Reserve System, November 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26143 Filed 11–10–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 28, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Wayne R. and Virginia E.L. McKinney*, Kearney, Nebraska; to acquire an additional 6.52 percent of the voting shares of Circle Management Company, Kearney, Nebraska, and thereby indirectly acquire Guaranty Trust Company, Kearney, Nebraska, and Platte Valley State Bank and Trust Co., Kearney, Nebraska.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, Calfornia 94105:

1. *Siegel & Feldstein Voting Trust*, Los Angeles, California; to acquire between 20 and 35 percent of the voting shares of Griffin Holdings, Inc., Los Angeles, California, and thereby indirectly acquire Guaranty Bank of California, Los Angeles, California.

Board of Governors of the Federal Reserve System, November 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26144 Filed 11–10–88; 8:45 am]

BILLING CODE 6210–01–M

Scandinavian Bank Group plc; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Scandinavian Bank Group plc*, London, England; to engage *de novo* through its subsidiaries, Cambridge International Partners, L.P., New York, New York, and Cambridge International Partners Inc., New York, New York, in acting as financial adviser, either on a retained or success fee basis, in providing corporate finance advisory services, including advice concerning domestic and international mergers, acquisitions, joint ventures and divestitures, financings, and the structuring of leveraged buyouts and other capital-raising vehicles.

In connection with the Subsidiary's advice concerning the financial of transactions, it may seek to arrange equity and/or debt financing for transactions or other client purposes (*e.g.*, leveraged buyouts, acquisitions, large capital projects, financial restructurings, refinancings, working capital, etc.). In the course of arranging such financing or separately, the Subsidiary may provide advice to client with respect to the appropriateness or desirability of alternate financings or capital structures, and may assist clients in structuring and negotiating the terms of specific financings.

The Board has previously determined by order that the activity described above—the provision of advice by a subsidiary of a bank holding company in connection with merger, acquisition, joint venture, divestiture and financing transactions—is an activity which is closely related to banking and permissible for bank holding companies generally. *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987); *Sovran Financial Corporation*, 73 Federal Reserve Bulletin 744 (1987); *The Bank of Nova Scotia*, 74 Federal Reserve Bulletin 249 (1988). Applicant agrees to conduct its activities in accordance with certain limitations approved by the Board in these orders.

Board of Governors of the Federal Reserve System, November 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26145 Filed 11–10–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83F–0239]

Akzo Chemicals, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to future filing of a petition proposing a change in the food additive regulations to permit

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an increase in the use level limitation for certain polyamine-epichlorohydrin wet-strength resins intended for use in paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1983 (48 FR 36203), FDA published a notice that a petition (FAP 3B3729) had been filed by Monsanto Co., 800 North Lindberg Blvd., St. Louis, MO 63166, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to permit an increase in the limitations for certain polyamine-epichlorohydrin wet-strength resins intended for use in paper and paperboard. Monsanto Co. subsequently sold the rights to the petition to Akzo Chemicals, Inc., 300 South Riverside Plaza, Chicago, IL 60606. Akzo Chemicals, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: November 3, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

Health Resources and Services Administration

Funding Preferences and Priorities for Grants for Area Health Education Centers Special Initiatives

The Health Resources and Services Administration announces the final funding preferences and priorities for Area Health Education Centers Special Initiatives.

Section 781(a)(2) authorized Federal assistance to medical and osteopathic schools which have previously received Federal financial assistance for the Area Health Education Centers (AHEC) program under either section 802 of Pub. L. 94–484 in 1979 or under section 781. In addition, section 781(a)(2) authorizes medical and osteopathic schools currently receiving Federal support for an AHEC program to apply for project aid on behalf of an Area Health Education Center that is no longer federally funded as part of that program.

Section 781(a)(2) applications will be for the purpose of improving the distribution, supply, quality, utilization and efficiency of health personnel in the health services delivery system; to encourage regionalization of responsibility of the health professions schools; or to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps Scholarship program to provide effective health services in health manpower shortage areas.

To receive support, programs must meet the requirements of regulations set forth in 42 CFR Part 57, Subpart MM.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The relative merit of the proposed project and;
2. The relative cost-efficiency of the proposed project.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.
2. Funding priorities—favorable adjustment of review scores by HRSA staff when applications meet specified objective criteria.
3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Proposed funding preferences and priorities were published in the **Federal Register** of August 24, 1988 (FR 32281) for public comment under Area Health Education Centers Special Initiatives. No comments were received during the 30-day comment period.

Therefore, the funding preferences and priorities as proposed are retained as follows:

Final Funding Preferences

In making Area Health Education Center awards for Fiscal Year 1989, the final funding preferences are as follows:

(1) Competing continuation applications;

(2) New applications for planning and development projects under section 781(a)(1);

(3) New applications for Special Initiatives projects under Section 781(a)(2); and

(4) Supplements to existing awards.

Final Funding Priorities

In determining the order of funding of approved applications the final funding priorities are as follows:

(1) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

(2) Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective care for the elderly.

(3) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: November 7, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88–26160 Filed 11–10–88; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement, Funding Preferences and Proposed Funding Priorities for Grants for Residency Training and Advanced Education in the General Practice of Dentistry

The Health Resources and Services Administration announces that applications for Fiscal Year 1989, Grants for Residency Training and Advanced Education in the General Practice of Dentistry are being accepted under the authority of section 786(b) of the Public Health Service Act as amended and invites comments on the proposed funding priorities set forth below.

Section 786(b) of the Act authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or advanced educational program in the general practice of dentistry and to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

Approximately $1.2 million is being made available by the Department of Health and Human Services appropriations for Fiscal Year 1989. (Pub. L. 100–436). In addition to funding noncompeting continuations, it is estimated that 15 projects averaging $81,000 will be supported.

To receive support, programs must meet the requirements of final regulations at 42 CFR Part 57, Subpart L.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The potential effectiveness of the proposed project in carrying out the training purposes of section 786(b) of the Act;

(b) The degree to which the proposed project adequately provides for meeting the project requirements;

(c) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner;

(d) The qualifications of proposed staff and faculty;

(e) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.
2. Funding priorities—favorable adjustment of review scores by HRSA staff when applications meet specified objective criteria.
3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Funding Preferences

Funding preferences were established in the **Federal Register** of April 17, 1986, (51 FR 13099).

The following established preferences will be used in making grant awards in Fiscal Year 1989:

New programs (Category 1), followed by expanding programs (Category 2), and then program improvements (Category 3), and within Category 1, first funding will be for approved applications designed to establish programs in States in which no nonfederal supported residency or advanced educational programs in general dentistry are currently in operation.

There is no funding preference between residency training programs and advanced educational programs in general dentistry.

In accordance with section 786(b) of the Act, three distinct categories of program development can be supported. Applications must address at least one of these categories.

Category 1: Program Initiation

An applicant may request support for up to one year of program planning and development, followed by two years of program operation. For this purpose an applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1 of the current fiscal year). Before a second year grant award will be made, the grantee must show an accreditation classification of accreditation eligible.

Category 2: Program Expansion

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

Category 3: Program Improvement

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval accreditation status. Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum and/or facilities to enhance the quality of the program.

Proposed Funding Priorities

In determining the order of funding of approved applications it is proposed to give a funding priority to the following:

(1) Projects which satisfactorily document enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document a net increase of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native or Pacific Islanders) over average enrollment of the past three years in the project's postgraduate year (PGY) trainees.

These population groups continue to be underrepresented in the dental profession and have insufficient access to dental care. Their representation should be increased to promote more equitable opportunities for postgraduate training in dentistry and improved access to dental care services. Studies show that minority dentists provide a greater proportion of dental care for dentally underserved populations than other United States dentists. Therefore, this funding priority is designed to increase opportunities for advanced training of underrepresented minority dentists.

(2) Projects in which substantial training experiences is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 of the Public Health Service Act is the authority which supports community health centers providing primary health services to persons located in rural and urban areas with financial and/or geographic barriers to care. Section 781 authorizes a national program to support area health education centers and projects to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system. There are an estimated 788 dental manpower shortage areas with an estimated underserved population of 7,145,722. An estimated 1,717 dental practitioners are needed to remove these areas from the shortage designation.

These designations include geographic areas, population groups and facilities. The proposed funding priority is designed to provide trainees with substantial training in health manpower shortage areas, community health centers, migrant health centers, and State facilities serving underserved populations. An applicant applying for this priority through a State or local designation must have written documentation from the appropriate State or local authority responsible for designating health personnel shortages for geographic areas, population groups and/or facilities. This documentation must indicate that the designated geographic areas, population groups, and/or facilities are part of a State or local plan to increase service access to underserved populations. These experiences are expected to have a positive influence on the selection of practice locations of such trainees. The application of this fundig priority is also to provide a more integrated Federal strategy to the implementation of health professions assistance and primary health service programs.

(3) Applications proposing to develop, expand or implement curricula concering ambulatory and inpatient case management of HIV/AIDS patients.

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Health professionals are increasingly required to provide a wide range of services of HIV-infected persons. However, widespread organized curricula offerings for these trainees are not in place. The proposed priority is designed to encourage new offerings.

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluating of dental services and utilization of peer-developed guidelines and standards. Assuring quality in the health care system is increasingly becoming the responsibility of health care providers. The proposed funding priority is designed to encourage increased emphasis on the principles and methods of health care quality assurance and risk management in the continum of the dental education process.

(5) Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

The population 65 years of age and over will increase about 2 percent a year between now and 2020 (compared to an increase of less than 1 percent for younger persons). The oldest (85-plus) segment of the population will experience the most rapid growth before 2000. The youngest old (65–74) segment will increase fastest between 2000 and 2020. The older population will require expansion of a wide range of dental services. However, dentists lack adequate training needed to care for this aging population. The proposed funding priority is designed to provide increased emphasis on geriatrics training for all dental trainees.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before December 14, 1988 will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities will be applied.

Written comments should be addressed to: Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Grant application materials are being mailed only in response to requests received. Such requests and questions regarding grants policy should be directed to: Grants Management Officer (D–30), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rooms 8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Applications should be sent to the Grants Management Officer at the above address.

To obtain specific information concerning programmatic aspects of the grant program, contact: Dental Health Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–15, Rockville, Maryland 20857. Telephone: (301) 443–6837.

The application deadline date is January 13, 1989. Applications will be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline date, or

(2) *Postmarked on* or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

This program is listed at 13.897 in the *Catalolg of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subjec to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: November 7, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88–26161 Filed 11–10–88; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, December 1–2, 1988, at the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on December 1 from 8:30 a.m. to 9 a.m. for reports by the Executive Secretary and Chairman of the Cancer Clinical Investigation Review Committee. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 1, from 9 a.m. to recess; and on December 2 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications and cooperative agreements. These grant applications and cooperative agreements and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Ann Sestili, Executive Secretary, Cancer Clinical Investigation Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7481) will provide substantive program information upon request.

Dated: November 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–26221 Filed 11–10–88; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research; Meeting of National Advisory Council for Nursing Research

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research, February 16–17, 1989, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on February 16, from 9 a.m. to 1:30 p.m. and on February 17 from 8:30 a.m. to adjournment. Agenda items to be discussed will include the NCNR Director's Report, report of the meeting of the Advisory Committee to the Director, NIH, renewal of statement of understanding, update on FIRST awards, Nursing Research Agenda update, competing continuations, biological dimensions of nursing research, and report of Information Resources Group.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d)) of Pub. L. 92–463, the meeting will be closed to the public on February 16 at 1:30 p.m. to completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ruth K. Aladj, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Building 31A, Conference Room 2, Bethesda, Maryland 20892, (301) 496–0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: November 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–26222 Filed 11–10–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–88–1890]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: Nobember 2, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Monthly Survey of Private Mortgage Insurance Activity

Office: Housing

Description of the Need for the Information and its Proposed Use: This survey enables private and public officials to track the growth and contributions of private mortgage insurance industry and provides aggregate statistics for market share analysis. Data obtained from private mortgage insurance companies ensure a sound analysis of Mortgage Market Trends and future outlook.

Form Number: HUD–9040

Respondents: Businesses or Other For-Profit and Federal Agencies or Employees

Frequency of Submission: Monthly

Reporting Burden:

	Number of respond-ents	X	Fre-quency of re-sponse	X	Hours per re-sponse	=	Burden hours
Survey	13		12		.083		13

Total Estimated Burden Hours: 13

Status: Reinstatment

Contact: John N. Dickie, HUD (202) 755–7270; John Allison, OMB, (202) 395–6880.

Date: November 1, 1988.

Proposal: Insurance Information

Office: Public and Indian Housing

Description of the Need for the Information and Its Proposed Use: The Annual Contributions Contract requires that public housing agencies and Indian housing authorities obtain adequate fire insurance, extended coverage insurance, and boiler insurance to protect the Federal interest. The form, HUD–5460, provides the format for determining the initial amount of insurance required for each project. The form is also used to update insurance property values for

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renewals of property insurance contracts.

Form Number: HUD–5460
Respondents: Non-Profit Institutions
Frequency of Submission: Recordkeeping and On Occasion
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Insurance information form	500		1		1.00		500
Recordkeeping	500		1		.25		125

Total Estimated Burden Hours: 625
Status: Reinstatement
Contact: Ralph E. Lecky, HUD, (202) 755–8145; John Allison, OMB, (202) 395–6880.
Date: November 2, 1988.

Proposal: Tenant Participation and Management in Public Housing Projects: Eligibility for Comprehensive Improvement Assistance Program Funds (FR–2519)
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: The nine specific information collections in the final rule (24 CFr Part 964) adhere to the statutory model outlined in section 122 of the Housing and Community Development Act of 1987. The information provided to tenants will allow them to comment on management policies and actions. Resident Management Corporations' contracts and budgets may be used by PHAs for accounting, auditing, and performance review.
Form Number: None
Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Appeal process with resident management	50		1		2		100
PHAs' policies to tenants	2,000		1		1		2,000
Advisory guidelines	1,000		1		1		1,000
Memo of understanding	500		1		2		1,100
Budget guidelines	1,000		1		1		1,000
PHA and management contract agreement	100		1		1		800
Operating budget	100		1		8		800
Rejection documentation	50		1		2		100
Summary of tenant comments	500		1		4		2,000

Total Estimated Burden Hours: 8,800
Status: Revision
Contact: Janice D. Rattley, HUD, (202) 755–7970; John Allison, OMB, (202) 395–6880.
Date: November 3, 1988.

[FR Doc. 88–26254 Filed 11–10–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF ENERGY

Western Area Power Administration

Hoover Powerplant Modification, Boulder Canyon Project, Arizona/Nevada

AGENCIES: Bureau of Reclamation, DOI, and Western Area Power Administration, DOE.

ACTION: Notice of intent to contract with the Arizona Power Authority (APA) and the Colorado River Commission (CRC) for a feasibility study for additional hydropower development and a notice of a proposal to grant a right of first refusal to entities funding feasibility studies.

SUMMARY: By letter dated May 3, 1988, APA and CRC jointly submitted a proposal (Joint Proposal) to the Bureau of Reclamation (Reclamation) and Western Area Power Administration (Western) wherein APA and CRC proposed to contract for a study of the feasibility of development of a Hoover Modifications Hydroelectric Project pursuant to the provisions of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617, *et seq.*) and the Contributed Funds Act (43 U.S.C. 395). As a result of this proposal, a notice was published in the **Federal Register** on July 15, 1988 (53 FR 26893), which acknowledged receipt of the proposal and requested that any comments and/or additional proposals be submitted to Reclamation.

Reclamation received four letters commenting on the proposal; three in support of the proposal and one from the city of Vernon, California, which requested information, expressed concerns about scheduling problems if the modification program were adopted, and asked that certain allocation procedures be developed that might be beneficial to Vernon.

This notice Reclamation's and Western's intent to negotiate an agreement for a feasibility study of the Hoover Powerplant modification with APA and CRC. Reclamation and Western, in coordination with APA and CRC, will jointly conduct these studies, which include any environmental studies that may be required and which will be financed by APA and CRC. This notice also proposes to grant APA and CRC a right of first refusal to fund construction work and to receive an allocation of the resulting capacity.

DATE: Final comments on the proposed selection of APA and CRC as financiers of the feasibility study and the proposed grant of a right of first refusal contained in this notice must be submitted no later than December 14, 1988.

ADDRESS: Comments should be sent to: Mr. Benedict R. Radecki, Assistant Manager, Washington Liaison Office, Resource Management, Bureau of Reclamation, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Johnson, Chief, Water, Lands, and Power Division, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, (702) 293–8414, concerning power development matters; or Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005, (702) 477–3255, concerning power marketing and transmission matters.

Availability of Information: Copies of the proposal may be obtained upon request from the contacts identified above.

SUPPLEMENTARY INFORMATION:

Contents

A. Discussion of Public Comments.
B. Evaluation of the Proposal.

A. Discussion of Public Comments

As a result of the **Federal Register** notice of July 15, 1988 (53 FR 26893), noting receipt of a proposal for the study of hydropower development on the Boulder Canyon Project and requesting comments and/or additional proposals, four letters were received.

Comments from two of the commenters (Salt River Project and Arizona Public Service Company) were supportive of the proposal. They also stated that if the study indicated the modification program was feasible, they would support APA and CRC as the entities to finance and develop the modification program.

APA and CRC were the third entities responding to the July 15, 1988, **Federal Register** notice. As potential developers of the modification program at Hoover Powerplant, APA and CRC were appreciative of the publication of their proposal in the **Federal Register** and were anticipating further assistance and advice from Western and Reclamation.

A fourth letter from the City of Vernon, California, requested copies of previous studies prepared by Western and Reclamation and a copy of the Joint Proposal submitted by APA and CRC dated May 3, 1988. Reclamation submitted copies of these documents to Vernon by letter dated September 29, 1988. Vernon also suggested that serious scheduling problems could occur if the modification program were adopted without attempting to provide benefits to the other existing contractors, and requested that the study explore and recommend that additonal benefits be allocated to Vernon if the modification program appears feasible. If constructed, capacity resulting from the modification program will be scheduled in a manner that will not adversely impact existing Boulder Canyon Project power contractors. Vernon's concerns about scheduling problems appear to be premature and will be addressed at a later date.

Since the feasibility studies will be funded with non-Federal financing, it is proposed that the financing entities will receive a right of first refusal to finance any construction that might take place and to receive allocations of capacity from the modifications in recognition of that financial contribution.

Reimbursement of past study costs incurred by Reclamation may also be required. Constructed facilities would be owned and operated by the United States. The financing entities would be responsible for marketing and operating expenses. Should the condition exist whereby the financing entities do not desire or cannot use capacity allocated to them in recognition of their investment, such capacity could be allocated to others in accordance with applicable marketing criteria.

B. Evaluation of the Proposal

Reclamation and Western have evaluated the Joint Proposal, dated May 3, 1988, wherein APA and CRC proposed to contract for a study for the feasibility of a Hoover Modifications Hydroelectric Project. Reclamation and Western propose to enter into negotiations with those two entities after completion of the final comment period announced in this **Federal Register.**

Date: November 8, 1988.

C. Dale Duvall,
Commissioner, Bureau of Reclamation.

Date: November 4, 1988.

William H. Clagget,
Administrator, Western Area Power Administration.

[FR Doc. 88–26197 Filed 11–10–88; 8:45 am]
BILLING CODE 4310–09–M

DEPARTMENT OF THE INTERIOR

Mineral Management Service

Pacific OCS Region Workshop on Oil and Gas Production Platform on Rocky Reef Fishes and Fisheries

AGENCY: Minerals Management Service, Pacific OCS Region, Interior.

ACTION: Announcing Public Workshop: "Effects of an Outer Continental Shelf Oil and Gas Production Platform on Rocky Reef Fishes and Fisheries"

SUMMARY: As proposed by the Minerals Management Service (MMS), Pacific Outer Continental Shelf (OCS) Region, Fiscal Year 1989 Environmental Study Plan (June 1988), the MMS anticipates the release of an open, competitive Request for Proposals (RFP) to address the topic "Effects of an OCS Oil and Gas Production Platform on Rocky Reef Fishes and Fisheries". The study site will include production platform Hidalgo and adjacent deep water reefs, located 12 nautical miles northwest of Point Conception, California. Because water depths at the study site range from about 100 to 200 meters, sampling will include remote photographic and video techniques and from Remotely Operated Vehicles (ROVs) and/or submersibles. Prior to the release of the RFP (scheduled for Febraury 1989), MMS will hold a public workshop to discuss and receive comments on the project's background, rationale, objectives, and potential sampling methodologies. MMS will consider the information and recommendations that result from the workshop in preparation of the RFP.

The one-day workshop will be held December 14, 1988 in Los Angeles, California. Invited experts will present 20-minute summary papers on topics related to (1) past and ongoing studies near the platform Hidalgo study site; (2) existing commercial and recreational fishing in the area; (3) fish survey techniques using SCUBA, ROVs, and submersibles; (4) feasibility of studying the behavior and movements of fishes via multi-beam acoustics and/or tagging; (5) studies of the food habits of fisheries; and (6) biochemical studies to examine potential hydrocarbon and metal contamination. The workshop will conclude with a round-table discussion of priorties for study objectives and methodologies. A proceedings volume tht summarizes the meeting will be available from MMS about one month after the meeting.

TIME AND LOCATION OF WORKSHOP: 8:00 a.m.—5:00 p.m., Wednesday, December 14, 1988; Mosher Lecture Hall, Occidental College; Pasadena, California. The workshop will be hosted by Dr. John Stephens, Biology Department, Occidental College, 1600 Campus Road, Los Angeles, California. Telephone (213) 259–2675.

WORKSHOP REGISTRATION: Attendees will be asked to register at the workshop. No pre-registration is

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available. There will be no registration fee.

FOR FURTHER INFORMATION CONTACT: Dr. Gary D. Brewer, Minerals Management Service, Pacific OCS Region, 1340 West 6th Street, Los Angeles, California 90017. Telephone (213) 894–4023, (FTS) 798–4023 (office hours: 7:00 a.m.—4:30 p.m., Monday—Friday). A copy of a three-page study prospectus, as it appeared in the MMS Pacific OCS Region Fiscal Year 1989 Environmental Study Plan, is available from Dr. Brewer.

Dated: November 7, 1988.

J. Lisle Reed,

Director, Pacific OCS Region.

[FR Doc. 88–26217 Filed 11–10–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 Sec. 10), that a meeting of the Acadia National Park Advisory Commission will be held on Monday December 12, 1988.

The Commission was established pursuant to Pub. L. 99–420, Sec. 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Bass Harbor Fire Station, Bass Harbor, Maine, at 1:00 p.m. to consider the following agenda:

(1) Old business:

(A) Cameron and DeLaittre Farm easements owned by Margaret Rockefeller.

(2) New business:

(A) Committee reports, acquisition, easement.

(3) Proposed agenda and date of next Commission meeting.

The committee meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609.

Steven H. Lewis,

Acting Regional Director.

Date: November 4, 1988.

[FR Doc. 88–26225 Filed 11–10–88; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 343–7340.

Title: Surface Mining Permit Applications—Minimum Requirements for Permits for Special Categories of Mining 30 CFR 785.

OMB Number: 1029–0040.

Abstract: Sections 507(b), 508(a) and 515 (b) and (d) of Pub. L. 95–87 require applicants for surface coal mine permits to provide a description of each existing structure proposed to be used in the mining and reclamation operation and a compliance plan for each structure proposed to be modified or constructed for use in the operation. This information is used by the regulatory authority in determining if the applicant can comply with the applicable performance and environmental standards.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Surface Coal Mining Operators.

Annual Responses: 7,616.

Annual Burden Hours: 133,103.

Estimated Completion Time: 17.

Bureau Clearance Officer: Nancy Ann Baka, (202) 343–5981.

Date: October 24, 1988.

Richard O. Miller,

Chief, Regulatory Development and Issues Management.

[FR Doc. 88–26176 Filed 11–10–88; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub–1090X)]

Consolidated Rail Corp.; Abandonment Exemption in Cambria County, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.6-mile line of railroad known as the Barnes Industrial Track, between its connection with applicant's Cresson Secondary Track near milepost 0.0 at Bradley Junction and the end of the line near milepost 3.6, located in Cambria County, PA.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective December 14, 1988 (unless stayed pending reconsideration). Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by November 25, 1988. Petitions to stay regarding matters that do not involve environmental issues [2] and peititons for reconsideration, including environmental, energy, and public use concerns, must be filed by December 4, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's rerpesentative: Charles E. Mechem, Consolidated Rail Corporation, Six Penn Center Plaza, Room 1138, Philadelphia, PA 19103–2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 18, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 7, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–21685 Filed 11–10–88; 8:45am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maryland:
- MD88–1 (Jan. 8, 1988) ..... pp. 416, 418.
- MD88–11 (Jan. 8, 1988) ..... p. 444.
- MD88–15 (Jan. 8, 1988) ..... pp. 454–455.

Maine:
- ME88–3 (Jan. 8, 1988) ..... p. 463.

Pennsylvania:
- PA88–8 (Jan. 8, 1988) ..... pp. 912–915, pp. 919–920.

Pennsylvania:
- PA88–12 (Jan. 8, 1988) ..... pp. 938–940.
- PA88–20 (Jan. 8, 1988) ..... p. 981

Volume II

Illinois:
- IL88–2 (Jan. 8, 1988) ..... pp. 96–98, 101.
- IL88–7 (Jan. 8, 1988) ..... pp. 136–140b.
- IL88–8 (Jan. 8, 1988) ..... p. 143.
- IL88–12 (Jan. 8, 1988) ..... p. 164.
- IL88–13 (Jan. 8, 1988) ..... p. 174.
- IL88–14 (Jan. 8, 1988) ..... p. 184.

Indiana:
- IN88–6 (Jan. 8, 1988) ..... pp. 300–302, pp. 305–306.

Kansas:
- KS88–6 (Jan. 8, 1988) ..... p. 346.
- KS88–8 (Jan. 8, 1988) ..... p. 354.

Nebraska:
- NE88–11 (Jan. 8, 1988) ..... p. 692d.

Listing by Location (index) ..... pp. xxxv–xxxvi

Volume III

Colorado:
- CO88–2 (Jan. 8, 1988) ..... pp. 114–115.
- CO88–4 (Jan. 8, 1988) ..... pp. 120–125.

Nevada:
- NE88–2 (Jan. 8, 1988) ..... pp. 260–261.

Oregon:
- OR88–1 (Jan. 8, 1988) ..... pp. 302–304, pp. 306–308, pp. 311–312.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts,

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including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Act Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 4th day of November 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–25923 Filed 11–10–88; 8:45 am]

BILLING CODE 4510–27–M

MONITORED RETRIEVABLE STORAGE REVIEW COMMISSION

Meeting

Pursuant to its authority under Subtitle A of Pub. L. 100–203, the Nuclear Waste Policy Amendments Act of 1987, notice is hereby given that the Monitored Retrievable Storage Review Commission will hold a meeting on Wednesday, November 16, 1988 from 2:30–3:30 p.m. in Suite 318, 1825 K Street NW, Washington DC 20036.

The purpose of the meeting will be to obtain additional information from officials of COGEMA, a nuclear fuel cycle company, following recent visits by the Commissioners to nuclear waste storage facilities in Sweden, France, Germany, and Switzerland. Mr. Claude Seyve, Director Commercial Adjoint for COGEMA, will be answering the Commissioners' questions.

Members of the public are permitted to attend this meeting only as observers. As meeting space is very limited, anyone interested in attending is requested to contact the Commission in advcance. A transcript of the meeting will be kept and placed in the Commission's Public Document Room following the meeting. For further information, contact Ms. Paula N. Alford Director, External Affairs, MRS Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. (202) 653–5361.

Jane A. Axelrad,

Executive Director and General Counsel.

November 8, 1988.

[FR Doc. 88–26245 Filed 11–10–88; 8:45 am]

BILLING CODE 8820–BE–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The NRC has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new revision or extension: Revision.

2. Title of the information collection: 10 CFR Part 21, "Reporting of Defects and Noncompliance," and 10 CFR 50.55(e), "Reporting of Defects in Design and Construction."

3. the form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. who will be required or asked to report: NRC licensee and directors or responsible officers of non-licensees that supply components to licensed facilities or activiies.

6. An estimate of the number of responses: 300 Parts 21 and 900, § 50.55(e) reports annually.

7. An estimate of the total number of hours needed to complete the requirements or request: Part 21—52,200 hours per year, § 50.55(e)—19,050 hours per year.

8. The average burden per response is: Part 21—167 hours per year, § 50.55(e)—28 hours.

9. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

10. Abstract: Proposed amendments to 10 CFR Part 21 and § 50.55(e) rules will clarify the criteria and procedures for reporting of safety defects by licensees and nonlicensees. The proposed revised criteria and procedures to the existing rules would: (1) Eliminate duplicate evaluation and reporting, (2) establish a uniform threshold for defects that need to be reported, (3) establish a uniform content for safety defect reporting, (4) extend the time limit for submittal of written Part 21 reports following the initial notfication, and (5) establish a time limit for transmittal of information to end users when evaluation is not possible.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW, Washington, DC.

Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia, (202) 395–3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 17 day of October, 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–26201 Filed 11–10–88; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–315 and 50–316]

Indiana Michigan Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, located at the licensee's site in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TSs) and License Conditions relating to fuel enrichment.

The proposed action is in accordance with the licensee's application dated August 19, 1988.

The Need for the Proposed Action

The proposed amendment is needed so that the licensee can use higher enrichment fuel and provides the flexibility of extending the fuel irradiation and permitting operation of longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evalaution of the proposed amendment. The proposed revisions would permit use of fuel enriched with Uranium 235 in

excess of 4 weight percent and up to 4.23 weight percent, and the license would expect the fuel to be irradiated to levels above 33 gigwatt days per metric ton (GWD/MT) but not to exceed 50 GWD/MT. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evalauted by the Commission's staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increase burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes involve systems located within the restricted area, as defined 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the Commission's assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988 (53 FR 30355). As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c).

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 11, 1988 (53 FR 39679). No request for hearing or pettion for leave to intervene was filed following this notice.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the Donald C. Cook Nuclear Plant, Untis 1 and 2, dated August 1973.

Agencies and Person Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated August 19, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 8th day of November 1988.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–26202 Filed 11–10–88; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, RS 802–5 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 3 to Regulatory Guide 1.9, "Selection, Design, Qualification, Testing, and Reliability of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants." This guide has been prepared for the resolution of Generic Safety Issue B–56, "Diesel Generator Reliability."

Section 50.63 of 10 CFR Part 50 requires that light-water-cooled nuclear power plants be capable of withstanding a total loss of alternating current (ac) electric power (called station blackout) for a specified duration and maintaining reactor core cooling during that period. Regulatory Guide 1.155, "Station Blackout," provides guidance for assessing plant blackout coping capability and further identifies a need for a diesel generator reliability program designed to maintain and monitor reliability levels for assurance that the selected plant emergency diesel generator reliability levels are being achieved.

The staff has previously addressed diesel generator design, reliability, and operational aspects by using IEEE Std 387–1984, Revision 2 of Regulatory Guide 1.9, Regulatory Guide 1.108 (which is being withdrawn), and Generic Letter 84–15. The purpose of this Revision 3 to Regulatory Guide 1.9 is to integrate into a single regulatory guide the guidance previously dispersed in these multiple documents. This regulatory guide will be a principal reference in the NRC staff's resolution of Generic Safety Issue B–56.

Comments are particularly solicited on the following sections of this regulatory guide:

1. Regulatory Position 10, which deals with preoperational and scheduled testing of the diesel generator, with specific attention being directed to Section 10.2.2 dealing with accelerated testing and Section 10.2.4.6 dealing with 24-hour tests.

2. Regulatory Position 16, which deals with recordkeeping and reporting criteria.

3. Regulatory Position 18, which is guidance for a diesel generator reliability program.

This draft guide is being issued to invoive the public in the early stages of

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the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position. The regulatory and backfit analyses for the station blackout rule included analysis of the diesel generator reliability program, which is the subject of this guide. The regulatory analysis is documented in NUREG–1109. A backfit analysis was published with the station blackout rule in the **Federal Register** June 21, 1988 (53 FR 23203). A summary of these analyses is included in the Backfit Analysis for Regulatory Guide 1.9, Revision 3.

Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to NRC at the Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. Written comments are requested by January 13, 1989.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(Authority: 5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 4th day of November 1988.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 88–26204 Filed 11–10–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co. (Palisades Plant); Exemption

I

The Consumers Power Company (the licensee) is the holder of Provisional Operating License No. DPR–20, which authorizes operation of the Palisades Plant (Palisades) at a steady-state power level not in excess of 2530 megawatts thermal. The plant is a pressurized water reactor located at the licensee's site in Van Buren County, Michigan. The license provides, among other things, that Palisades is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Paragraph III.A.3 of Appendix J incorporates by reference the American National Standard ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage rate calculations for containment integrated leakage rate test (CILRTS) be performed using either the Point-to-Point method or Total Time method.

Further advances in leakage rate testing technology have provided improved test methods, including a newer method of evaluating test data called the Mass Point method. This Mass Point method was incorporated in a newer standard, ANSI/ANS–56.8–1981, "Containment System Leakage Testing Requirements" (revised 1987) and in fact has been accepted by the Commission's staff as an improved alternative method of calculating containment leakage rates. However, a strict interpretation of the specific wording of Appendix J, III.A.3, by referencing only the older ANSI standard, precludes use of the newer improved method, unless the licensees who wish to use this method receive an exemption from the Appendix J requirement of conforming to this provision of ANSI N45.4–1972.

III

By letter dated September 9, 1988, as supplemented by letter dated September 16, 1988, the licensee requested an exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, which requires that all CILRTs be performed in accordance with ANSI N45.4–1972. ANSI N45.4–1972 requires that leakage rate calculations be performed using either the Total Time method or the Point-to-Point method.

The licensee indicated that since the issuance of ANSI N45.4–1972, a more accurate method of determining containment leakage rates, the Mass Point method, has been developed as described in ANSI/ANS–56.8. Therefore, the licensee has requested an exemption to allow the use of the Mass Point method for calculating containment leakage rates.

It has been recognized by the professional community that the Mass Point method is superior to the Point-to-Point and Total Time methods which are referenced in ANSI N45.4–1972 and endorsed by the present regulations. The Mass Point method calculates the air mass at a series of points in time, and plots it against time. A linear regression line is plotted through the mass-time points using a least square fit. The slope of this line is divided by the intercept of this line, and the result is multiplied by an appropriate constant to obtain the calculated leakage rate.

The superiority of the Mass Point method becomes apparent when it is compared with the two other methods. In the Total Time method, a series of leakage rates are calculated on the basis of containment air mass differences between an initial data point and each individual data point thereafter, and an average of these leakage rates is then determined. If for any reason (e.g., instrument error, lack of temperature equilibrium, ingassing, or outgassing) the initial data point is not accurate, the results of the test will be affected. In the Point-to-Point method, the leak rates are based on the mass difference between each pair of consecutive data points, and these leakage rates are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the Point-to-Point method ignores any mass readings taken during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

On February 29, 1988 (53 FR 5985), the Commission published a proposed amendment to Appendix J to explicitly permit the use of the Mass Point method, subject to certain conditions that have been accepted by the Commission's staff since approximately 1976, as well as to permit the use of the prior methods referenced in ANSI N45.4–1972.

In addition to the method of calculation, consideration of the length of the test should also be included in the overall program. In accordance with section 7.6 of ANSI N45.4–1972, a test duration of less than 24 hours is only allowed if approved by the Commission, and the only currently approved methodology for such a test is contained in Bechtel Topical Report BN–TOP–1, Revision 1, "Testing Criteria for Integrated Leakage Rate Testing of Primary Containment Structures for Nuclear Power Plants," dated November 1, 1972. This approach only allows use of the Total Time method. Therefore, the Commission conditions the exemption to require a minimum test duration of 24 hours when the Mass Point method is used. By letter dated September 16, 1988, the licensee confirmed that a minimum test duration of 24 hours will be utilized when the Mass Point method is used.

In the September 9, 1988 letter, the licensee also submitted information to identify the special circumstances for granting this exemption for Palisades pursuant to 10 CFR 50.12. The purpose of Appendix J to 10 CFR Part 50 is to assure that containment leak-tight integrity can be verified periodically throughout the service lifetime in order to maintain containment leakage rate within the limit specified in the facility Technical Specifications. The underlying purpose of the rule, in specifying particular methods for calculating leakage rates, is to assure that accurate and conservative methods are used to assess the results of containment leakage rate tests. The Commission's staff has determined that the Mass Point method is an acceptable method for calculating containment leakage rates and satisfies the purpose of the rule.

Based on the above discussion, the licensee's proposed exemption from paragraph III.A.3 of Appendix J to allow use of the Mass Point method as requested in the submittal dated September 9, 1988, as revised by letter dated September 16, 1988, is acceptable, until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage rates (by use of the Mass point method) and not to any other aspects of the tests.

IV

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a)(1), that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission hereby grants an exemption as described in section III above from Paragraph III.A.3 of Appendix J to the extent that the Mass Point method may be used for containment leakage rate calculations providing it is used with a minimum test duration of 24 hours. The exemption is granted until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage rate (using the Mass Point method) and not to any other aspects of the tests.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will not have a significant effect on the quality of the human environment (November 3, 1988, 53 FR 44246).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 3rd day of November 1988.

[FR Doc. 88–26205 Filed 11–10–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26257; File No. SR–CBOE–88–09, Amdt. 1]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Value of Index Participations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1988 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the following chapter 25 rules relating to value of index participations.

(Note: Italics indicate additions; brackets indicate deletions.)

CHAPTER XXV

Value of Index Participations

Introduction

The rules in this Chapter are applicable only to value of index participations. The rules in Chapters I through XIX are also applicable to the value of index participations provided for in this Chapter. In some cases rules in Chapter I through XIX are replaced or are supplemented by rules in this Chapter.

Definitions

Rule 25.1.

Value of Index Participation

(a) No change in text.

Cash-out Time

(b) The term "cash-out time" means the point in time [each quarter of the year] *semi-annually* when (i) a purchaser of a VIP may obtain the [aggregate] closing value or (ii) a seller of a VIP may pay the [aggregate] closing value [plus the excise fee,] upon exercise of the cash-out privilege. The cash-out time [for each quarter] will be determined and made public by the Exchange before the beginning of [the quarter.] *each such semi-annual period.*

[Exercise Fee

[c] The term "exercise fee" is the amount, representing one percent (1%) of the aggregate closing vlaue, that the exercising seller must pay to the assigned purchaser, in addition to the aggregate closing value, upon exercise of the cash-out privilege.]

Purchaser

([d]) *c* The term "purchaser" or "long" means the holder of a VIP contract under which the holder has the right, in accordance with the terms and provisions of the VIP, to sell the contract to the Clearing Corporation and obtain the [aggregate] closing value, and the obligation to receive the [aggregate] closing value [plus the exercise fee] if assigned at the cash-out time. The deadline for exercising the cash-out privilege will be determined and made

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public by the Exchange before the beginning of [the quarter] *each such semi-annual period.*

Seller

([e]) *d* The term "seller" or "short" means the seller of a VIP contract under which the seller has the right, in accordance with the terms and provisions of the VIP, to purchase the contract from the Clearing Corporation and pay the [aggregate] closing value, [plus the exercise fee] and the obligation to deliver the closing value if assigned at the cash-out time. *The deadline for exercising the cash-out privilege will be determined and made public by the Exchange before the beginning of each such semi-annual period.*

Underlying Security

([f]) *e* No change in text.

VIP Multiplier

([g]) *f* No change in text.

Current and Closing Value

([h]) *g* No change in text.

VIP Closing Value

([i]) *h* No change in text.

Reporting Authority

([j]) *i* No change in text.

Bids and Offers

Rule 25.8 All bids and offers made on the trading floor for VIPs shall be expressed in terms of *fractions of 1/8 of a point* [dollars and decimals] for one VIP. The unit of trading shall be 100 VIPs unless otherwise designated by the Exchange.

Exercise of Cash-Out Privilege

Rule 25.10(a) Notice of exercise of the VIP cash-out privilege must be provided on or before a time specified and made public by the Exchange and must be in accordance with the Rules of The Options Clearing Corporation. Specific exercise cut-off times will also be delineated for Exchange members [organizations]. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the VIP is carried. Members and member organizations, to the extent that they do not conflict with the rules and policies of the Exchange and The Options Clearing Corporation, shall establish fixed procedures as to the latest hour at which they will accept exercise notices from their customers.

(b) The term "exercise instruction," with respect to a customer *or member,* means the notice given to a *clearing* member organization to exercise an VIP. All such exercise instructions must be time stamped at the time they are *received* [prepared] by the [receiving] *clearing* member organization. *In the case of a members exercise instruction, it should also be time stamped when the decision to exercise is made.*

(c) Notwithstanding the foregoing, member organizations may receive exercise instructions after the exercise cut-off time but prior to the cash-out time (1) in order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange VIP transactions, or (iii) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such time warrant such action.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule changes address two specific areas where the Exchange has determined that modifications to the product are required. The first involves the deletion of the proposed short exercise fee. The Exchange has decided that the imposition of such a fee could act as a deterrent to the exercise by such sort holders. The second area relates to when the cash-out periods should occur. The originally proposed quarterly cash outs have been modified such that they occur semi-annually. The change to the semi-annual cash out reflects the Exchange's interest in accommodating investors who may use the product to balance investment planning related to such products as CD's while providing them cash-out privileges for unforseen circumstances.

The final proposed change is a correction to the original filing. The VIPs shall trade in fractions of 1/8 of a point and not in decimals. The underlying product trades in decimals.

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act in that these contracts will serve the public investors by enabling them to invest in or hedge a basket of stocks reflecting the market in one transaction. the Exchange believe that a properly structured index value contract will benefit public customers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 7, 1988.

[FR Doc. 88-26238 Filed 11-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26259; File No. SR-GSCC-88-2]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 19, 1988, GSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Text of the proposed rule change is attached as Exhibit "A".

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the purposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change is to establish the fee structure for GSCC's Trade Comparison Services.

(b) The proposed rule change provides for the equitable allocation of reasonable fees among its participants and is, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act") and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not perceive that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making a written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to File No. SR-GSCC-88-2 and should be submitted by December 5, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 7, 1988.

Exhibit A

I. Trade Comparison Fees

A. For entry of one side of a U.S. Treasury Bond, Note, Bill, STRIP or U.S. Government Agency (excluding Mortgage-Backed Securities) trade for comparison processing and production of reports the charges are as follows:

For Computer to Computer input and, Computer to Computer output	$.50 per side*;
Magnetic Tape output	$1.00 per side*;
Paper output	$1.50 per side*;
for Magnetic Tape input and, Computer to Computer output	$1.00 per side*;
Magnetic Tape output	$1.00 per side*;
Paper output	$1.50 per side*;

* All trades for a given Participant will be billed at the highest rate applicable to that Participant during each billing period.

[FR Doc. 88-26239 Filed 11-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26254; File No. SR-MCC-88-11]

Self-Regulatory Organizations; Midwest Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 28, 1988, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below in which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Below is MCC's revised fee schedule concerning some services involving physical processing or special handling of securities.

Service	Current fee	Proposed fee
SSM Delivery Approval Call.	$2.00/call	$2.00/item.
SSM Delivery Reject:		

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Service	Current fee	Proposed fee
Rec. Part.	0.00	5.00/delivery.
Del. Part.	0.00	5.00/delivery.
CHRPS	10.00/delivery	15.00/delivery.
NYRP	10.00/delivery	15.00/delivery.
CDCS	10.00/delivery	15.00/delivery for first 25 deliveries, 10.00/delivery thereafter.
CDCS Reclaims.	6.00/item	10.00/reclaim.
Bearer Surcharge (CDCS & SSM).	0.00	7.00/item.
Trade for Trade Reclaim.	9.00/reclaim	10.00/reclaim.
Underwriting Pick Up.	17.50	22.50.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MCC Revised Fee Schedule more accurately reflects the cost of providing various services to MCC's Participants. The Revised Fee Schedule is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were solicited and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to SR–MCC–88–11 and should be submitted by December 5, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–26241 Filed 11–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26260; File No. SR–MSTC–88–6]

Self Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co. Relating to National Institutional Delivery System ("NIDS"); Filing and Immediate Effectiveness

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 26, 1988, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

MSTC has developed proposed revised procedures regarding Midwest Securities Trust Company's ("MSTC's") National Institutional Delivery System ("NIDS"). The procedures contain several enhancements to NIDS formats and reports, including those relating to input and output processing and reporting.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NIDS system improvements are the result of a four-year development process. Initial planning began in December, 1984, when representatives of brokerage firms, banks, and depositories met to discuss projected improvements. As a result of these discussions, several enhancements were made in both NIDS input and output processing.

The NIDS system improvements enhance both manual and terminal input and features requirements. Trade input forms have been enhanced to allow Participants to enter additional information on the form. Terminal input has been enlarged and will be capable of processing non-U.S., as well as U.S., currencies. Fields for standard security descriptions have been increased from 55 to 78 characters.

Finally, all of the NIDS reports have been enhanced. These include the NIDS Trade Error Report (includes written messages for the first two errors), Eligible Trade Report (now shows the trade date, in addition to settlement date, of each trade) and the Ineligible Trade Report (NIDS Participants will now be able to confirm or affirm trades for a larger variety of financial instruments, including fractional shares). NIDS sign-up procedures, time frames for entering information into the system, and use of MCC/MSTC symbols for trade input remain the same.

The proposed rule changes are consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Act"), in that they facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on burden on Competition

MSTC does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule changes are the result of discussions and planning by representatives of brokerage firms, banks and depositories. During the enhancement process, feedback and input from the various participants in the securities industry were generated and used. MSTC has received input and suggestions from its own Participants during this development process and has kept them informed of developments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer File No. SR–MSTC–88–06 and should be submitted by December 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 7, 1988.

[FR Doc. 88–26240 Filed 11–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26258; File No. SR–NASD–88–49]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Excused Withdrawal of Quotations From the NASDAQ System Based on Vacation.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to amend paragraph (b), Part VI, Section 7, Schedule D to the NASD By-Laws on the Withdrawal of Quotations from the National Association of Securities Dealers Automated Quotations ("NASDAQ") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On June 9, 1988 the Commission approved amendments to Part VI, Schedule D to the NASD By-Laws setting forth requirements applicable to NASDAQ market makers.[1] In pertinent part, the rule amendments deleted vacations from the list of reasons for which NASDAQ market makers would be permitted to withdraw their quotations from the NASDAQ system. Since the rule amendments became effective, a number of market makers have written to the NASD requesting that Schedule D be amended to permit excused withdrawals for vacations. The nine letters received by the Association are from smaller firms that believe the newly amended Schedule D provisions on excused withdrawals place them at a competitive disadvantage to larger firms that are able to provide adequate coverage for traders who are on vacation. After considering the market makers' requests, the NASD has concluded that firms with a limited number of personnel are most affected by the existing excused withdrawal provisions under Schedule D because these firms are unable to assign stocks to other experienced personnel during a trader's absence. Thus, the NASD has adopted the proposed rule change to permit market makers with three or fewer NASDAQ Level 3 terminals to obtain excused withdrawals from NASDAQ for vacation, provided that the request for withdrawal is submitted to the NASD in writing 20 business days prior to the effective date of withdrawal from the NASDAQ system, and the request includes a list of the securities for which withdrawal is requested. Therefore, the proposed rule change is

[1] File No. SR–NASD–88–1, Securities Exchange Act Release No. 34–25791.

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consistent with the provisions of Section 15A(b)(6) under the Act as it is designed to remove impediments to the maintenance of a free and open market and a national market system, and does not permit unfair discrimination for which withdrawal is requested.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited. As described above, however, the NASD has received nine letters from firms objecting to the provisions of Schedule D as amended in June 1988, which eliminate vacation as a reason for granting an excused withdrawal from the NASDAQ system. The letters are listed and attached as Exhibit 2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-88-49 and should be submitted by December 5, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: November 7, 1988.

[FR Doc. 88-26242 Filed 11-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26262; File No. SR-PHILADEP-88-01]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revised Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 6, 1988, the Philadelphia Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Philadelphia Depository Trust Company (PHILADEP) proposes as a rule change revisions to certain fees charged to participants for services provided by the Corporation. The charges are proposed to take effect October 1, 1988.

Attached hereto as Exhibit A is a schedule indicating the changes in the fees.

(b) PHILADEP does not expect that the proposed rule change will have any direct effect or significant indirect effect on any of its other rules.

(c) Not applicable.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements:

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

PHILADEP's last fee change occurred nearly two and one half years ago. Over this period, the cost of manually intensive services has risen and the post October crash environment has been one of reduced trading activity which has negatively impacted the revenues of all of the nation's clearing organizations, including PHILADEP. Accordingly, in order to put current revenues more in line with current costs, PHILADEP submits as a rule change the fee changes detailed in *Exhibit A*. In summary, only those fees associated with services which are manually intensive and are not benefited by computer automation efficiencies have been increased. A careful review of these revised service fees compared to service fees charged by the competition, discloses that PHILADEP continues to remain significantly less expensive.

Additionally, in order to further its competitive edge, PHILADEP has increased its volume discounts and has offered a lower bundled service rate in connection with its customer name mailing service. *See* service charge revisions #3, #15, and #19 of Exhibit *A*.

The proposed rule change is consistent with Section 17A(b)(3)(D) of the Exchange Act in providing for equitable allocations of reasonable dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not perceive any burdens on competition as a result of the proposed rule change, which is intended to align more closely the charge for a particular service with the cost of producing it.

(C) Self-Regulatory Organizations Statement on Comments the Proposed Rule Change Received from Members, Participants, or Others

A forthcoming SCCP/PHILADEP Member Bulletin will advise members of officials to whom they may direct questions upon receipt of the new fee schedule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-PHILADEP-88-01 and should be submitted by December 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 7, 1988.

Jonathan G. Katz,

Secretary.

EXHIBIT A.—SR-PHILADEP-88-01—PHILADEP SCHEDULE OF CHARGES

[New Material italicized; deleted material bracketed; asterisks indicate no changes in material]

Service	Charge.
1. Account Charges	* * *
2. Custody Fee	* * *
3. Deposit Fee	[$0.90] *$1.30* per deposit.

EXHIBIT A.—SR-PHILADEP-88-01—PHILADEP SCHEDULE OF CHARGES—Continued

[New Material italicized; deleted material bracketed; asterisks indicate no changes in material]

Service	Charge.
4. Legal Deposits	$8.50 processing fee, plus regular deposit fee *for participants with less than 3,000 deposits per month $5.50 processing fee, plus regular deposit fee for participants with 3,000 or more deposits per month.*
5. Withdrawals:	
a. By transfer	[$1.95] *$2.30* per manual transfer $1.35 per automated tape transfer.
b. By certificate	[$5.00] *$8.00* per withdrawal same day or next day.
6. Accommodation Transfers, Ironclads.	* * *
7. MDO Movements	$0.75 per movement. *Automatic inter-depository deliveries: $0.50 per item (daily deliveries). $0.55 per item (weekly deliveries).* $0.60 per item (bi-weekly deliveries). *$0.65 per item (monthly deliveries).*
8. CNS/PHILADEP Movements.	* * *
9. Pledge Fees	* * *
10. Dividend and Interest Payments.	[$1.20] *$1.40* per cash credit. *$6.00 per stock dividend.*
11. Reject Fees	* * *
12. Research Fees	* * *
13. Computer Transmission Tapes.	* * *
14. Eligibility Book	* * *
15. Customer Name Mailing.	$0.65 per envelope plus appropriate transfer withdrawal charge fee(s) includes stationary and insurance but not postage. *$0.75 per envelope for securities delivered inter-depository plus appropriate transfer withdrawal charge fees; fee includes stationary, insurance and MDO charge but not postage.*
16. Stock Loan Program.	* * *
17. Reorganization Fees:	
a. Mandatory Exchanges, Cash & Stock Mergers, and Reverse Splits.	[$15.00] *$20.00* per position.
b. Voluntary Tender Offers.	[$15.00] *$25.00* per instruction received before cutoff. [$25.00] *$50.00* per instruction received after cutoff, with authorization.
c. Voluntary Conversions.	[$15.00] *$25.00* per instruction.
d. Redemptions: Stocks, Corporate Bonds, Registered Municipal Bonds, etc..	[$15.00] *$22.00* per position.

EXHIBIT A.—SR-PHILADEP-88-01—PHILADEP SCHEDULE OF CHARGES—Continued

[New Material italicized; deleted material bracketed; asterisks indicate no changes in material]

Service	Charge.
18. National Institutional Delivery System (NIDS).	* * *
19. PHILADEP Discount.	5% off PHILADEP charges for participants with more than 10,000 but less than 15,000 trades per month. An additional 5% off PHILADEP charges for participants with 15,000 but less than 30,000 trades per month. An additional 5% off PHILADEP charges for participants with 30,000 *but less than* 45,000 [or more] trades per month. *An additional 5% off PHILADEP charges for participants with 45,000 or more trades per month* * * *

[FR Doc. 88-26243 Filed 11-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16625; 812-7138]

Midwest Income Trust et al.; Notice of Application

November 7, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Midwest Income Trust, Midwest Group Tax Free Trust and Financial Independent Trust.

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from the provisions of Section 32(a)(1).

Summary of Application: Applicants, on behalf of themselves and any series, class or portfolio thereof and on behalf of each open-end management investment company and any series, class or portfolio thereof which are advised now or in the future by Midwest Advisory Services, Inc. or Financial Independence Trust Advisers, Inc., and which are not required by law to hold annual meetings of shareholders, seek an order permitting each of them to file with the SEC financial statements signed or certified by an independent public accountant selected at a Board of Trustees' Meeting held within ninety days after the beginning of an Applicant's fiscal year.

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Filing Date: The application was filed on September 30, 1988, and amended on October 31, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 1, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyer, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o John F. Splain, General Counsel, Midwest Group of Funds, 700 Dixie Terminal Building, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272–3026 or Matthew A. Chambers, Assistant Director, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (310) 258–4300).

Applicants' Representations:

1. Each Applicant is a registered, open-end, management investment company organized as a business trust under the laws of the Commonwealth of Massachusetts. Each Applicant is advised by Midwest Advisory Services, Inc. or Financial Independent Trust Advisers, Inc.

2. Each of the Applicants is governed by a Board of Trustees of which at least 40 percent of the members are not "interested persons" within the meaning of section 2(a)(19) of the 1940 Act ("Disinterested Trustee") All Applicants hold regularly scheduled board meetings about four times each year.

3. The Applicants are not required by state law to hold annual shareholders' meetings. Therefore, the selection of an independent public accountant is currently made by the Disinterested Trustees of each Applicant at a regularly scheduled board meeting held within thirty days before or after the beginning of Applicant's fiscal year.

4. The Applicants have various fiscal years. An Applicant will typically hold a board meeting within 30 days before its fiscal year-end for the primary purpose of selecting the Applicant's independent public accountant. With regard to two of the Applicants, such selection is based upon a recommendation from an audit committee which will meet immediately prior to the board meeting at which the selection of accountants is to take place. Each board will then meet again after substantial completion of the audit, usually 40–60 days following fiscal year-end to review and approve the results of the audit and other related matters.

5. Each Applicant currently employs the same firm as independent public accountants. Each Applicant proposes to select an independent public accountant at a regularly scheduled Board of Trustees meeting, held within 90 days after the beginning of its fiscal year.

Applicant's Legal Conclusions:

1. The 30-day time frame prescribed by Section 32(a)(1) of the 1940 Act is not flexible enough to allow for a logical and efficient approach for selecting an independent public accountant. Changing the required time frame to within 90 days after the beginning of the fiscal year would permit the Applicants to select accountants following an annual audit. It is at this time that the Boards of Trustees are best able to evaluate the performance and services of the accountants.

2. The 30-day window for selection of accountants is obscure especially since, if a meeting of shareholders is held, the selection of accountants at any prior thereto is authorized.

3. Expansion of the window from 30 days to within 90 days after the beginning of each Applicant's fiscal year will ensure that the selection of an independent public accountant is considered on a more systematic and logical basis while continuing to serve the best interests of shareholders. The review procedures will provide for a detailed review of the services furnished by the independent public accountant and result in the Trustee's consideration of all information developed by an audit committee, where applicable.

4. For these reasons, the exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–26244 Filed 11–10–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License Number: 05/05–0096]

Doan Resources Limited Partnership; Surrender of License

Notice is hereby given that Doan Resources Limited Partnership, 4251 Plymouth Road, P.O. Box 986, Ann Arbor, Michigan 48106–0986, has surrendered its License to operate a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Doan Resources Limited Partnership was licensed by the Small Business Administration on February 25, 1974.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on October 26, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: November 7, 1988.

[FR Doc. 88–26256 Filed 11–10–88; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting; Connecticut

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting, at 8:00 a.m. on December 5, 1988 at the Yale Inn, 900 East Main Street, Meriden, Connecticut 06450, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, 203/240–4670.0.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 6, 1988.

[FR Doc. 88–26257 Filed 11–10–88; 8:45 am]

BILLING CODE 8025–01–M

Region VII Advisory Council; Public Meeting; Missouri

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Kansas City, will hold a public meeting at 10:00 a.m., Thursday, December 1, 1988, at the United Missouri Bank of Kansas City, N.A., First Floor Auditorium 1010 Grand Avenue, Kansas City, Missouri 64106, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Glenn Davis, District Director, U.S. Small Business Administration, 1103 Grand Avenue, 6th Floor, Kansas City, MO 64106—(816) 374–6760.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 6, 1988.

[FR Doc. 88–26259 Filed 11–10–88; 8:45 am]

BILLING CODE 8025–01–M

Region II Advisory Council; Public Meeting; New Jersey

The U.S. Small Business Administration, Region II Advisory Council, located in the geographical area of Newark, New Jersey, will hold a public meeting at 9:30 a.m., on Thursday, December 15, 1988, at the Headquarters of Bellcore, Bell Communications Research, 290 West Mount Pleasant Avenue, Livingston, New Jersey to discuss such matters as may be presented by members and the staff of the U.S. Small Business Administration, or others present. For further information write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, (201) 645–3580.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 6, 1988.

[FR Doc. 88–26258 Filed 11–10–88; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting; Vermont

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Montpelier, will hold a public meeting at 10:00 a.m. on Wednesday, December 7, 1988, at the Brandon Inn, Brandon, Vermont, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602, 802/828–4422.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 6, 1988.

[FR Doc. 88–26260 Filed 11–10–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1234]

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 0930 on Tuesday, 29 November 1988 in Room 6332 of the Department of Transportation Building, 400 Seventh Street, SW., Washington, DC. The purpose of the meeting is:

1. To consider U.S. positions for the upcoming 5th Session of the International Maritime Organization (IMO)/United Nations Conference on Trade and Development (UNCTAD) Joint Group of Intergovernmental Experts (JIGE) on Maritime Liens and Mortgages scheduled to meet in Geneva from 12–20 December 1988;

2. To begin development of U.S. positions for the IMO Diplomatic Conference on the Draft Salvage Convention scheduled to meet in London from 17–28 April 1989; and

3. To review the negotiations concerning the question of liability and compensation related to the maritime carriage of hazardous and noxious substances (HNS) which took place at the recent 60th Session (10–14 October 1988) of the IMO Legal Committee, and to discuss preparations for further negotiations on this topic at the next Legal Committee session scheduled to meet in London from 25–29 September 1989.

With respect to the IMO/UNCTAD Joint Group of Intergovernmental Experts, this body has been considering possible changes in existing international conventions relating to maritime liens and mortgages and to the arrest of seagoing ships since its 1st Session in December 1986. In view of progress to date, it is expected that a draft of a new International Convention on Maritime Liens and Mortgages will be completed at the upcoming 5th session.

In planning for the April 1989 Diplomatic Conference on the Draft Salvage Convention, the Shipping Coordinating Committee will conduct one, and possibly two, special meetings on this subject early next year. In preparing for the Conference, four draft convention issues appear to be particularly important from the U.S. perspective and will be discussed extensively at the SHC public meetings:

1. The system established in Articles 10 and 11 ("Criteria for Assessing the Reward" and "Special Compensation") for sharing the cost of a new environmental incentive for salvors between shipowners and cargo interests;

2. The jurisdiction provisions in Article 21;

3. The present scope of the provision for exception by reservation in Article 24, the effect of which would be to require application of the convention to many offshore hydrocarbon exploration and production facilities; and

4. The absence of any exclusion from the convention for government-owned, non-commercial cargoes carried in other than government-owned vessels.

Finally, with respect to HNS liability and compensation, while no decision has yet been taken regarding which alternative approach should serve as the model for a proposed new international regime, the recent negotiations featured a number of significant developments and the introduction of several additional approaches. There is likely to be considerable interest at the next Legal Committee session in October 1989 in coming to a decision on the fundamental question of which approach to adopt, and it is particularly important to a wide range of domestic interests that all of the existing HNS options be carefully studied and compared in order to develop appropriate U.S. positions.

Members of the public are invited to attend the 29 November 1988 Shipping Coordinating Committee meeting, up to the seating capacity of the room.

For further information pertaining to the issues to be discussed at the Shipping Coordinating Committee meeting, contact either Captain Frederick F. Burgess, Jr. or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), 2100 Second Street SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4165.

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Date: October 31, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-26174 Filed 11-10-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 4, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45904

Date Filed: November 2, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 30, 1988.

Description: Application of Tem Enterprises, Inc. d/b/a Casino Express, pursuant to Section 401(d)(3) of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in charter interstate and overseas air transportation of persons and property.

Docket No. 45905

Date Filed: November 2, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 30, 1988.

Description: Application of Tem Enterprises, Inc. d/b/a Casino Express, pursuant to Section 401(d)(3) of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in charter foreign air transportation of persons and property between any point in any state of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and any point or points outside the United States, the District of Columbia or any territory or possession of the United States, on the other hand.

Docket No. 45906

Date Filed: November 2, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 30, 1988.

Description: Application of Air Guadeloupe pursuant to Section 402 of the Act and Subpart Q of the Regulations requests an amendment of its foreign air carrier permit, to operate "via intermediate points" in its San Juan service, so as to provide the flexibility allowed under Route 6 of the France/U.S. bilateral.

Docket No. 45908

Date Filed: November 2, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 30, 1988.

Description: Application of Trans Continental Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests it be granted certificate authority to engage in interstate and overseas charter air transportation of persons and their accompanying baggage.

Docket No. 45909

Date Filed: November 2, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 30, 1988.

Description: Application of Trans Continental Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests that its certificate for foreign charter air transportation be amended to authorize air transportation of persons and their accompanying baggage between any point in any state of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and any point outside thereof, on the other hand.

Docket No. 45910

Date Filed: November 3, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 1, 1988.

Description: Application of Atlanta Royal Air, Ltd., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled air transportation of persons, property, mail, and cargo, between any point in any state in the United States or the District of Columbia of any territory or possession of the United States and any other point in any state of the United States or the District of Columbia, or any territory or possession of the United States.

Docket No. 45914

Date Filed: November 3, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 1, 1988.

Description: Application of Spantax, S.A., pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for renewal of its foreign air carrier permit authorizing it to engage in foreign charter air transportation of passengers, property and mail between any point or points in Spain and any points or points in the United States.

Docket No. 45915

Date Filed: November 3, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 1, 1988.

Description: Application of Air Micronesia, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests an amendment to its certificate of public convenience and necessity for Route 170 that would add a new segment between the coterminal points Saipan, Northern Mariana Islands, Palau, Eastern Caroline Islands, Guam and a point or points in Indonesia.

Docket No. 45918

Date Filed: November 4, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 2, 1988.

Description: Application of Minerve, Compagnie Francaise De Transportes Aeriens, S.A., pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests renewal of its foreign air carrier permit, issued by Order 83-11-27, which authorizes it to engage in charter foreign air transportation of persons and property between any point or points in France and Corsica and any point or points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-26250 Filed 11-10-88; 8:45 am]

BILLING CODE 4910-62-M

Solicitation of Comments on Revisions to the Carriage of Goods by Sea Act

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice seeking comments.

SUMMARY: On October 20, 1988, the Department of Transportation held a symposium on Revisions to the Carriage of Goods by Sea Act (COGSA) to bring it in line with modern shipping practices. This meeting was attended by approximately 80 industry and government representatives. The comments made at this meeting are now being evaluated by DOT staff.

In order to obtain as broad and respresentative an input as possible, we invite all interested parties to submit any pertinent comments they deem will be helpful to us in these COGSA revisions.

DATE: All comments should be received by December 31, 1988. Based on all comments received, including those made during the October 20 symposium, we plan to make a recommendation to the Secretary of Transportation on the best approach to take to resolve the issues by February 1, 1989.

ADDRESS: Submit all comments to: Office of International Transportation and Trade, P-20, Room 10300, Department of Transportation, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: John D. Coakley, Office of Assistant Secretary for Policy and International Affairs, Room 10300, Department of Transportation, Washington, DC 20590. (Telephone (202) 366-9504).

SUPPLEMENTARY INFORMATION:

We are particularly interested in receiving comments on the following issues and options:

I. COGSA Issues

1. General and U.S.-specific international trade implications of the various options listed below.
2. Ability to accommodate developments in maritime transportation and related documentation (e.g., electronic data interchange (EDI) and paperless bills of lading, intermodalism)
3. Likely changes in level and incidence of total transportation costs due to COGSA revision (including land based costs);
   a. Short term costs;
   b. Long term cost.
4. Uniformity of law implications.
5. Likely changes in the allocation of risk between carriers/liability insurers and shippers/cargo insurers;
   a. As a practical business arrangement between carriers and shippers;
   b. As a question of equity and fairness.
6. Uniqueness of ocean shipping and its attendant liability regime compared with other modes.

II. Options

1. No change to COGSA.
2. Adopt Visby and SDR Protocols.
3. Adopt Hamburg Rules.
4. Adopt Visby and SDR Protocols now and transition to Hamburg Rules via DOT trigger formula, or some other trigger.
5. Send both instruments to Congress without a trigger.
6. Implement the proposal of the American Bar Association to adopt the Visby and SDR Protocols now and seek international agreement on additional amendments.
7. Seek domestic legislation implementing the Visby and SDR Protocols and the four ABA proposed amendments to Visby.

All comments received on these revisions as well as a transcript of the October 20, 1988 meeting will be open to public inspection in Room 10300, DOT Headquarters, 400 7th and D Street, SW., Washington, DC during normal business hours.

Dated: November 8, 1988.

Arnold Levine,

Director, Office of International Transportation and Trade, Department of Transportation.

[FR Doc. 88-26248 Filed 11-10-88; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on November 7, 1988

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on November 7, 1988, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on November 7, 1988.

DOT No: 3126
OMB No: 2125-0507
Administration: Federal Highway Administration
Title: Voucher for Federal-aid Reimbursement
Need for Information: For the Federal Highway Administration to reimburse State highway costs incurred on Federal-aid projects.
Proposed Use of Information: To assure the Federal Highway Administration that the amount of claims and terms of agreements have been certified by an authorized State official.
Frequency: On occasion
Burden Estimate: 15,174 hours
Respondents: State highway agencies
Form(s): PR-20, FHWA-1447, FHWA-1175
Average Burden Hours Per Respondent: The average completion time for each form, PR-20, FHWA-1447, and FHWA-1175 is 1 hour.

DOT No: 3127
OMB No: 2120-0060
Administration: Federal Aviation Administration
Title: General Aviation Activity and Avionics Survey
Need for Information: This survey is needed to collect information of the

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use and the characteristics of the general aviation aircraft.
Proposed Use of Information: The data is used by the FAA in supporting safety analysis, regulatory changes, assisting the impact of general aviation on the National Airspace System and formulating long term programs and policies.
Frequency: Annually.
Burden Estimate: Total estimated to be 3,500 hours.
Respondents: A sampling of general aviation aircraft owners and operators
Form(s): FAA Form 1800–54
Average Burden Hours Per Respondent: 12 minutes for 1989 and 1991 surveys; 9 minutes for 1990 survey.

DOT No.: 3128
OMB No.: 2130–0006
Administration: Federal Railroad Administration
Title: Railroad Signal Systems Requirements
Need for Information: To assure that signal systems are tested and maintained in safe and suitable condition to provide the safety intended by the Act.
Proposed Use of Information: To determine if a potential safety hazard exists in the signal systems.
Frequency: Recordkeeping and on occasion
Respondents: 102 Railroads
Total Estimated Burden: 480,383 Hours
Estimated Average Per Response: 2 Hours and 23 minutes
Form Number(s): FRA–F–6180.14 and FRA–F–6180.47

DOT No.: 3129
OMB No.: 2115–0013
Administration: U.S. Coast Guard
Title: Application and Permit to Handle Hazardous Materials
Need for Information: This information collection requirement is needed to ensure safe handling and transporting of explosives and other hazardous materials in port areas and onboard vessels.
Proposed Use of Information: The Coast Guard uses the information to issue a permit indicating that safe practices are being followed in the stowage and handling of designated dangerous cargo.
Frequency: On occasion
Burden Estimate: 819
Respondents: Shipping agents and terminal operators
Form(s): CG–4260
Average Burden Hours Per Respondent: 1 hour and 6 minutes per application

DOT No.: 3130
OMB No.: 2115–0505
Administration: U.S. Coast Guard
Title: Plan Approval and Records for Tank Passenger, Cargo and Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical Schools and Oceanographic Research Vessels and Electrical Engineering
Need for Information: This information collection requirement is necessary to determine if a vessel's construction, arrangement and equipment are in full compliance with applicable marine safety regulations. The plans are those normally developed by a shipyard designer or manufacturer, and are not developed solely for the Coast Guard.
Proposed Use of Information: The Coast Guard uses the information to approve the ships structure prior to building the ship.
Frequency: On occasion
Burden Estimate: 7,200 hours
Respondents: Shipbuilders, designers, owners and operators
Form(s): None
Average Burden Hours Per Respondent: 27 minutes

DOT No.: 3131
OMB No.: 2106–0030
Administration: DOT, Office of the Secretary
Title: Certificate of Insurance, Air Taxi Operator Policies of Insurance for Aircraft Bodily Injury and Property Damage Liability
Need for Information: To protect the public's right to recover losses incurred in accidents involving air taxi operators.
Proposed Use of Information: Used internally by DOT to monitor compliance with the insurace regulations applicable to air taxi operators.
Frequency: On occasion, when policies are renewed or modified
Burden Estimate: 2,400 hours
Respondents: Aviation insurance underwriters, brokers and agents
Form(s): OST Form 4521
Average Burden Hours Per Respondent: 30 minutes

DOT No.: 3132
OMB No.: New
Administration: Research and Special Programs Administration
Title: Report of Traffic and Capacity Statistics—The T–100 System
Need for Information: To check carrier fitness, to administer airport programs, as an information base for international negotiations.
Proposed Use of Information: Reports are used for international negotiations, monitoring air carrier fitness, international rates, foreign air carrier applications.
Frequency: Monthly
Burden Estimate: FY 1989—2,892 hours, FY 1990—10,512 hours
Respondents: FY 1989 foreign air carriers, FY 1990 foreign and U.S. air carriers
Form(s): T–100
Average Burden Hours Per Respondent: Foreign air carriers 1.5 hours, U.S. air carriers 10 hours

DOT No.: 3133
OMB No.: 2105–0520
Administration: DOT, Office of the Secretary
Title: Uniform Administrative Requirements for Grants and Cooperative Agreements
Need for Information: Information is needed to properly manage grant programs
Proposed Use of Information: Grant management
Frequency: Record Keeping
Burden Estimate: 2,850 grantees x 70 hours = 199,500 hours
Respondents: all grantees
Form(s): SF 269, SF 272, SF 270, SF 271, SF 424,
Average Burden Hours Per Respondent: 70 hours

DOT No.: 3134
OMB No.: 2132–0543
Administration: Urban Mass Transportation Administration
Title: Charter Service Operations
Need for Information: UMTA requires applicants to submit a charter bus agreement that the applicant will provide charter service only if there is no willing and able operator.
Proposed Use of Information: To ensure that the UMTA Act's protections for UMTA equipment and for private operators are complied with.
Frequency: Annually (with each grant application) and trip-by-trip
Burden Estimate: 1,984 hours
Respondents: State & local government and Businesses
Form(s): None
Average Burden Hours Per Respondent: 1 hour and 12 minutes

DOT No.: 3135
OMB No.: 2132–0011
Administration: Urban Mass Transportation Administration
Title: Environmental Assessments
Need for Information: To comply with the National Environmental Policy Act of 1969, as amended.
Proposed Use of Information: To consider environmental consequences of proposed projects and to develop mitigation measures, if necessary.
Frequency: On occasion
Burden Estimate: 3,720
Respondents: State or local governments
Forms: none
Average Burden Hours Per Respondent: 120 hours

DOT No.: 3136
OMB No.: 2115–0133
Administration: U.S. Coast Guard
Title: Passenger Vessel Reports
Need for Information: This is a recordkeeping requirement in which the Coast Guard issues a Control Verification Form which verifies that the vessel has been examined and that the applicable standards are met. This requirement is necessary for effective administration of our foreign flag vessels boarding programs. It is needed to ensure that specified foreign flag vessels meet the applicable federal and international requirements for safety and environmental protection.
Proposed Use of Information: The vessel master, agent or owner uses this requirement as evidence of Coast Guard examination and recent compliance with the requirements.
Frequency: On occasion
Burden Estimate: 10 hours
Respondents: Owners/operators of foreign flag passenger vessel
Forms: CG–4504
Average Burden Hours Per Respondent: 5 minutes

DOT No.: 3137
OMB No.: 2127–0519
Administration: National Highway Traffic Safety Administration
Title: 49 CFR 575.104, Uniform Tire Quality Grading Standards
Need for Information: To assist consumers in making informed choices when purchasing motor vehicle tires.
Proposed Use of Information: This regulation requires tire manufacturers to furnish performance information about their tires to the public. The information must be labeled on tire sidewalls; printed on paper labels that are affixed to the tires, and described in brochures.
Frequency: Other—as needed
Burden Estimate: 1,092,000 hours
Respondents: 575 manufacturers
Form(s): None
Average Burden Hours Per Respondent: 60 x 0.006856 = 0.42 minutes

DOT No.: 3138
OMB No.: 2120–0522
Administration: Federal Aviation Administration
Title: Inoperable Instrument and Equipment for Multiengine Aircraft FAR 91.30.
Need for Information: Without the information, the owners/operators of multiengine aircraft would be required to have all instruments and equipment in operative condition regardless of the need for the specific instrument and/or equipment.
Proposed Use of Information: The information submitted to the FAA authorizes owners/operators of multiengine aircraft to operate with inoperative instruments and quipment.
Frequency: On occasion
Burden Estimate: 1,500 total annual hours
Respondents: Aircraft owners and operators
Form(s): None
Average Burden Hours Per Respondent: An average of 6 hours per response

DOT No.: 3139
OMB No.: 2127–0505
Administration: National Highway Traffic Safety Administration
Title: 49 CFR 571.217, Bus Emergency Retention and Release
Need for Information: To insure passenger safety for emergency exit.
Proposed Use of Information: This standard requires emergency exist identification to be marked in all buses, along with concise operating instructions explaining how to unlatch and open the exit.
Frequency: On occasion
Burden Estimate: 113 hours
Respondents: Manufacturers
Form(s): None
Average Burden Hours Per Respondent: 60 × .001388 = 0.08 hours (5 minutes)

DOT No.: 3140
OMB NO.: 2125–0540
Administration: Federal Highway Administration
Title: Nationwide Truck Activity and Commodity Survey
Need for Information: To collect additional information primarily from commodity-carrying trucks which have a major impact on the Federal-aid Highway System.
Proposed Use of Information: To provide DOT with essential data for the analysis of highway user charges, truck size and weight issues, and related aspects of the Federal-aid Highway Program.
Frequency: Other: 1 time only
Burden Estimate: 21,000
Respondents: Individuals or households/farms/businesses/or other for profit/non-profit intitutions/small businesses or organizations
Form(s): Survey Report Forms NTACS–2 and NTACS–1
Average Burden Hours Per Respondent: The average completion time for the report form NTACS–2 is 35 minutes and the average completion time for the report from NTACS–1 is 25 minutes.

DOT No.: 3142
OMB No.: 2115–0543
Administration: U.S. Coast Guard
Title: Reception Facilities for Oil, Noxious Liquid Substances and Garbage
Need for Information: This information collection requirement is needed to support the Act to Prevent Pollution from Ships which implements the discharge prohibitions of MARPOL 73/78 and Annex I (Oil), Annex II (NLS) and Annex V (Garbage).
Proposed Use of Information: The information is used to: (1) determine if proposed reception facilities are adequate to receive waste which ships cannot discharge at sea (2) grant waivers in particular circumstances; (3) provide Coast Guard with necessary changes for publication in the Federal Register; and, (4) evaluate an appeal of Coast Guard's action.
Frequency: On occasion
Burden Estimate: 1,990 hours
Respondents: Owners/operators of ports and terminals used by oceangoing ships handling MARPOL regulated chemicals
Form(s): CG–5401, CG–5401A, CG–5401B
Average Burden Per Respondent: 2 hours

DOT No.: 3143
OMB No.: 2133–0016
Administration: Maritime Administration
Title: Container/Trailer Report
Need for Information: To maintain the only comprehensive Government source of oceanborne container movement information.
Proposed Use of Information: To provide shipping data to other Government Agencies, Businesses, and other groups. Also to MARAD to aid in formal contract hearings.
Frequency: On occasion
Burden Estimate: 4,550 hours
Respondents: Ship-owners and ship-operators
Form(s): MA–578A
Average Burden Hours Per Respondent: 30 minutes

DOT No.: 3144
OMB No.: 2133–0010
Administration: Maritime Administration
Title: U.S. Merchant Marine Academy Application for Admission and Pre-candidate Questionnaire
Need for Information: To document applicant's qualifications for admission to the U.S. Merchant Marine Academy
Proposed Use of Information: To assess and determine the best qualified candidates for the U.S. Merchant Marine Academy.
Frequency: One time requirement
Burden Estimate: 15,000 hours

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Respondents: Individuals seeking admission to the academy
Form(s): KP2–65, KP3–4
Average Burden Hours Per Respondent: 5 hours
DOT No.: 3145
OMB No.: 2133–0006
Administration: Maritime Administration
Title: Request for Transfer of Ownership, Registry, and Flag or Lease Charter or Mortgage of U.S. Citizen-owned Documented Vessels.
Need for Information: To document the above requests.
Proposed Use of Inforamtion: To examine and approve/disapprove the above requests.
Frequency: On occasion
Burden Estimate: 1,123 hours
Respondents: Individual vessel owners
Form(s): MA–29, 29–Z, MA–29–B
Average Burden Hours Per Respondent: 2½ hours
DOT No.: 3146
OMB No.: 2133–0033
Administration: Maritime Administration
Title: Exporter/Importer Data
Need for Information: To determine whether MARAD is cooperating with vessel owners in devising means to induce U.S. Exporters and Importers to give preference to U.S. Flag Vessels.
Proposed use of Information: MARAD will identify existing and potential movements of cargo that can be targeted for the marketing efforts of MARAD and the U.S. Flag Carriers.
Frequency: On occasion
Burden Estimate: 1,500 hours
Respondents: U.S. Exporters and U.S. Importers
Form(s): MA–740
Average Burden Hours Per Respondent: 1 hour
DOT No.: 3148
OMB No.: 2106–0009
Administration: Federal Aviation Administration
Title: Certification Procedures for Products and Parts, FAR–21
Need for Information: 14 CFR 21 prescribes certification procedures for aircraft, aircraft engines, propellers, products and parts. The information is needed to help determine that the products and parts have no unsafe features, and comply with standards set forth in FAR 21. When that has been determined, the appropriate certification is issued.
Proposed Use of Information: The inforamtion collected is used to determine compliance and applicant eligibility.
Frequency: On occasion
Burden Estimate: 44,176 hours. This total is broken down by form as follows:
FAA Form 8130–1—estimated average per response is 12 min.
FAA Form 8130–6—estimated average per response is 42 min.
FAA Form 8130–9—estimated average per response is 42 min.
FAA Form 8130–12—estimated average per response is 15 min.
FAA Form 8110–12—estimated average per response is 30 min. for most sections of the FAR, 3+ hours for Section 21.153, 16 hours for Section 21.267, and 160 hours for Section 21.133.
Respondents: Businesses
Form(s): FAA Forms 8130–1, 8130–6, 8130–9, 8130–12, and 8110–12.
Average Burden Hours Per Respondent: See the above

Issued in Washington, DC, on November 7, 1988.

Robert J. Woods,
Director of Information Resource Management.

[FR Doc. 88–26249 Filed 11–10–88; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting With the International Associates

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the Executive Committee meeting with the international associates to be held November 28, 1988, in Ballroom Salon A, Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) approval of minutes of the last meeting; (3) Executive Director's report; (4) Special Committee Activities Report for September-October; (5) approve Special Committee Reports; (6) consider action of proposals to establish new Special Committees; (7) report on EUROCAE Working Group activities; (8) comments and reports by international associates present; (9) other business; and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 1, 1988.

Geoffrey R. McIntyre,
Acting Designated Officer.

[FR Doc. 88–26172 Filed 11–10–88; 8:45 am]
BILLING CODE 4910–13–M

Proposed Advisory Circular 120–42A; Extended Range Operation With Two-Engine Airplanes (ETOP)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 120–42A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to extended range operations with two-engine airplanes. This notice is necessary to give all interested persons an opportunity to present their views on the proposed change.

DATE: Comments must be received on or before December 12, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Flight Technical Programs Branch, AFS–210, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be inspected at the above address between 9:00 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, AFS–210, at the address above, telephone (202) 267–3722.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 120–42A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

Background

This AC provides an acceptable means to obtain approval under FAR § 121.161 for two-engine airplanes to operate over a route which contains a point farther than one hour flying time at the approved one-engine inoperative cruise speed (in still air) from an adequate airport. It describes the criteria for extended range type design approval, maintenance programs, and operations programs. Change material describes the criteria for type design and operational approval to conduct operations 75 minutes, 120 minutes, and 180 minutes from an adequate airport (at approved single-engine inoperative cruise speed (in still air). The draft material was developed following a series of meetings between FAA representatives and representatives from pilot groups, airline operators, manufacturers, and international civil aviation authorities.

Issued in Washington, DC, on November 4, 1988.

D.C. Beaudette,
Acting Director, Flight Standards Service.

[FR Doc. 88–26173 Filed 11–10–88; 8:45 am]
BILLING CODE 4910–13–M

Research and Special Programs Administration

Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes November 30, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

Application No.	Applicant	Renewal of exemption
3095–X	The Dow Chemical Co., Midland, MI.	3095
3498–X	U.S. Department of Defense, Falls Church, VA.	3498
3630–X	General Chemical Corp., Parsippany, NJ.	3630
4698–X	United Technologies Automotive Group, Howe, IN.	4698
4726–X	U.S. Department of Energy, Washington, DC.	4726
5022–X	Morton Thiokol, Inc., Elkton, MD.	5022
5022–X	U.S. Department of Defense, Falls Church, VA.	5022
5022–X	Hercules Aerospace Co., Magna, UT.	5022
5022–X	United Technologies Chemical Systems, San Jose, CA.	5022
5022–X	Boeing Aerospace Co., Seattle, WA.	5022
5600–X	Air Products and Chemicals, Inc., Allentown, PA.	5600
6267–X	Alden Leeds, Inc., South Kearny, NJ.	6267
6296–X	Platte Chemical Co., Greeley, CO.	6296
6651–X	Heatbath Corp., Chicago, IL.	6651
6686–X	Chilton Metal Products Division, Chilton, WI.	6686
7517–X	Trinity Industries, Inc., Dallas, TX.	7517
7657–X	Welker Engineering Co., Sugar Land, TX.	7657
7765–X	Carleton Technologies Inc., Tampa, FL.	7765
7774–X	Pipe Recovery Systems, Inc., Houston, TX.	7774
7822–X	Air Products and Chemicals, Inc., Allentown, PA.	7822
7862–X	General Electric Co., Milwaukee, WI.	7862
7943–X	Chem Lab Products, Inc., Ontario, CA.	7943
8115–X	Acurex Corp., Mountain View, VA.	8115
8451–X	U.S. Department of Defense, Falls Church, VA.	8451
8451–X	Boeing Military Airplanes, Wichita, KS.	8451
8480–X	Gillette Co., Boston, MA.	8480
8494–X	Fruehauf Corp., Omaha, NE.	8494
8495–X	Walter Kidde, Wilson, NC.	8495
8498–X	Hunter Drums, Ltd., Bramalea Ontario, Canada.	8498
8519–X	Atlantic Container Line, Ltd., Elizabeth, NJ.	8519
8526–X	Phelco, Inc. Trucking, Hazelwood, MO.	8526
8539–X	Aero Taxi-Rockford, Inc., Rockford, IL.	8539
8561–X	HTL Division of Pacific Scientific Co., Duarte, CA.	8561
8710–X	Akzo Chemicals Inc., formerly Akzo Chemie America, Chicago, IL. (See Footnote 1).	8710
8723–X	Strawn Explosives, Inc., Dallas, TX.	8723
8877–X	Hoechst Celanese Corp., Somerville, NJ.	8877
8877–X	Union Carbide Corp., Danbury, CT.	8877
8877–X	General Chemical Corp., Parsippany, NJ.	8877
8877–X	PCR, Inc., Gainesville, FL.	8877
8901–X	Soweco, Inc., Amarillo, TX.	8901
8903–X	Teledyne McCormick Selph, Hollister, CA.	8903
8906–X	FMC Corp., Philadelphia, PA.	8906
8939–X	Hollice Clark Truck Fabrication, Inc., Odessa, TX.	8939
9023–X	Eurotainer, S.A., Paris, France.	9023
9220–X	Custom Packaging Systems, Inc., Manistee, MI.	9220
9243–X	Abatar, Inc., Winter Park, FL.	9243
9289–X	ICI Americas Inc., Wilmington, DE (See Footnote 2).	9289
9329–X	Western Atlas International, Houston, TX.	9329
9332–X	Engelhard Corp., Edison, NJ.	9332
9340–X	Pioneer Plastics & Services Co., Ltd., Brampton, Ontario, CN.	9340
9348–X	DURACELL, Inc., Bethel, CT (See Footnote 3).	9348
9354–X	Companhia Nitro Quimica Brasileira, Sao Paulo, Sp Brazil.	9354
9507–X	Union Carbide Corp., Danbury, CT.	9507
9507–X	Air Products and Chemicals, Inc., Allentown, PA.	9507
9554–X	ENPAC Corp., Jacksonville, FL.	9554
9627–X	TLC Air, Inc., Addison, TX.	9627

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Application No.	Applicant	Renewal of exemption
9644-X	Atlas Powder Co., Dallas, TX.	9644
9676-X	EM Science, Cincinnati, OH.	9676
9679-X	Michlin Diazo Products Corp., Dearborn, MI.	9679
9690-X	Snyder Industries, Inc., Lincoln, NE.	9690
9700-X	Dow Chemical Co., Midland, MI.	9700
9785-X	Compagnie Generale Maritime, Paris, France.	9785
9940-X	G.E. Reuter-Stokes, Twinsburg, OH (See Footnote 4).	9940
10067-X	Hamilton Standard, Div. of United Technologies, Windsor Locks, CT (See Footnote 5).	10067
10067-X	U.S. Department of Energy, Washington, DC (See Footnote 6).	10067

(1) To authorize Trigonox 165 as an additional Commodity.
(2) To renew and authorize additional combustible liquids identified by their trade names for shipment in metal or polyethylene portable tanks.
(3) To renew and authorize motor vehicle, rail freight and cargo vessel as additional modes of transportation not to exceed six batteries shipped as cargo.
(4) To authorize passenger carrying aircraft as additional mode of transportation.
(5) To review party status originally issued on emergency basis to authorize shipment of Hydrazine, anhydrous, classed as a flammable liquid in specially designed modular propulsion system.
(6) To renew exemption originally issued on an emergency basis to authorize shipment of Hydrazine, anhydrous, class as a flammable liquid in specially designed modular propulsion system.

Application No.	Applicant	Parties to exemption
6765-P	Iwatani International Corp., Tokyo Japan.	6765
7052-P	DC Battery Products, St. Paul, MN.	7052
7052-P	GE Reuter-Stokes, Twinsburg, OH.	7052
7052-P	Wood Group Wireline Products, Inc., Fort Worth, TX.	7052
7052-P	Tracor Aerospace, Inc., Austin, TX.	7052
7052-P	Aquatronics, Hadlock, WA.	7052
7052-P	GE Aerospace, Philadelphia, PA.	7052
7607-P	Delta Environmental Consultants, Inc., Tampa, FL.	7607
7607-P	Versar, Inc., Springfield, VA.	7607
7616-P	Chicago & Northwestern Transportation Co., Chicago, IL.	7616
7753-P	FMC Corp., Philadelphia, PA.	7753
8214-P	Allied-Signal, Inc., Troy, MI.	8214
8214-P	Nissan Motor Corp. in U.S.A., Gardena, CA.	8214
8445-P	Waste Conversion, Inc., Hatfield, PA.	8445
8451-P	Battelle Columbus Division, Columbus, OH.	8451
8451-P	Motorola Tactical Electronics Division (TED), Scottsdale, AZ.	8451
8489-P	IRECO, Inc., Salt Lake City, UT.	8489
8871-P	IRECO, Inc., Salt Lake City, UT.	8871
9144-P	IRECO, Inc., Salt Lake City, UT.	9144
9220-P	IRECO, Inc., Salt Lake City, UT.	9220
9275-P	J.C.&F., Inc., Jersey City, NJ.	9275
9367-P	IRECO, Inc., Salt Lake City, UT.	9367
9507-P	Messer Greisheim Industries, Valley Forge, PA.	9507
9533-P	IRECO, Inc., Salt Lake City, UT.	9533
9607-P	Revlon Professional Products Group, Jacksonville, FL.	9607
9701-P	IRECO, Inc., Salt Lake City, UT.	9701
9713-P	IRECO, Inc., Salt Lake City, UT.	9713
9723-P	Triumvirate, Inc., Quincy, MA.	9723
9783-P	IRECO, Inc., Salt Lake City, UT.	9783
9785-P	Maersk, Inc., Madison, NJ.	9785
9785-P	Thos & Jas Harrison Ltd., Liverpool, England.	9785
9806-P	IRECO, Inc., Salt Lake City, UT.	9806
9848-P	IRECO, Inc., Salt Lake City, UT.	9848
10044-P	Western Sales & Testing of Amarillo, Inc., Amarillo, TX.	10044
10048-P	Air Products and Chemicals, Inc., Allentown, PA.	10048

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 7, 1988.

J. Suzanne Hedgepeth,
Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-26207 Filed 11-10-88; 8:45 am]
BILLING CODE 4910-60-M

Research and Special Programs Administration of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes December 15, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application number—applicant	Regulation(s) affected	Nature of exemption thereof
10068-N—Boliden Mineral AB, Skelleftehamn, Sweden	49 CFR 173.366	To authorize shipment of arsenic trioxide classed as a Poison B, in flexible, woven, polypropylene intermediate bulk containers with a polyethylene inner liner. (modes 1, 2, 3)
10069-N—Martin Electronics, Inc., Perry, FL	49 CFR 172.101, 173.86, 173.91	To authorize shipment of special fireworks, classed as a Class B explosive, as a Class C explosive when shipped separately from the initiating device. (mode 1)
10070-N—Williams Pipe Line Company, Coralville, IA	49 CFR 173.119	To authorize use of a non-DOT 1500 gallon capacity vacuum trailer for transporting waste or spilled gasoline, and crude oil, classes as flammable liquids, and fuel oil classed as a combustible liquid. (mode 1)
10071-N—S.A.F.E. Systems, Inc., Decatur, GA	49 CFR 173.306, 175.3, 178.33a-9	To authorize shipment of a charged fire extinguisher constructed similarly to the DOT spec. 2Q cylinder except it has not been properly marked. (modes 1, 3, 4, 5)
10072-N—Nupro Company, Willoughby, OH	49 CFR 173.327(a)	To authorize use of a bellows valve in cylinders containing a Class A poison. (mode 1)
10073-N—Sonoco Fibre Drum Inc., Lombard, IL	49 CFR Part 173 Subparts D, F, H	To authorize manufacture, marking and sale of non-DOT specification integrally lined fibre drum for shipment of those hazardous materials presently authorized for shipment in specification 17E or composite packaging 21P/2U, 21P/2SL, 37M/2U, and 37M/2SL. (modes 1, 2, 3)
10074-N—Environmental Response Corporation, Santa Maria, CA	49 CFR 173.119, 173.126, 173.131, 173.136, 173.139, 173.141, 173.148, 173.149a, 173.202, 173.245, 173.247, 173.249, 173.254, 173.255, 173.273, 173.280, 173.287, 173.294, 178.81	To authorize the manufacture, marking and sale of a non-DOT specification waste steel container similar to the DOT spec. 5A steel barrel for shipment of various flammable and combustible, liquids, flammable solids and corrosive materials. (modes 1, 2)
10075-N—Jet Fleet Corporation, Dallas, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30, 175.320(b)	To authorize transport of certain Class A, B, and C explosives that are forbidden for transportation by air or are in quantities greater than prescribed for air transportation. (mode 4)
10078-N—Wasson-ECE Instrumentation, Inc., Fort Collins, CO	49 CFR 178.42-2	To manufacture, mark sell non-DOT specification cylinder comparable to DOT Specification 3E except for outside diameter of 2.3 inches for shipment of liquefied petroleum gas, classed as flammable gas. (modes 1, 2)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 7, 1988.

J. Suzanne Hedgepeth,
Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-26208 Filed 11-10-88; 8:45 am]
BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0088
Form Number: Treasury International Capital (TIC) Form BL.3
Type of Review: Extension
Title: Intermediary's Notification of Foreign Borrowing, Denominated in U.S. Dollars
Description: This form is designed for use by a bank or other institution to notify a nonbanking customer of its obligation to report on TIC Form CQ-1 borrowings from foreigners which will not be reported by the bank or other intermediary as a custody liability on TIC form BL.2
Respondents: Businesses and other for-profit
Estimated Number of Respondents: 100
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 6,000 hours
Clearance Officer: Dale A. Morgan, (202) 343-0263, Departmental Offices, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88-26150 Filed 11-10-88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8725
Type of Review: New Collection
Title: Excise Tax on Greenmail

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Description: Form 8725 is used by persons who receive "greenmail" to compute and pay the excise tax on greenmail imposed under section 5881. IRS uses the information to verify that the correct amount of tax has been reported.
Respondents: Business or other for-profit
Estimated Number of Respondents: 12
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 5 hours 30 minutes
Learning about the law or the form, 35 minutes
Preparing and sending the form to IRS, 43 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 82 hours
OMB Number: 1545–0245
Form Number: 6627
Type of Review: Revision
Title: Environmental Taxes
Description: Attached to Form 720 to compute and collect tax on petroleum, chemicals, and imported chemical substances. Information on Form 6627 will be processed by IRS and provided to EPA to report to Congress on the efficiency of the legislation.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 2,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 25 hours 7 minutes
Learning about the law or the form, 22 minutes
Preparing the form, 1 hour 43 minutes
Copying, assembling, and sending the form to IRS, 16 minutes
Frequency of Response: Quarterly
Estimated Total Recordkeeping/Reporting Burden: 219,760 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 88–26151 Filed 11–10–88; 8:45 am]
BILLING CODE 4810-35-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 7, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Review Service

OMB Number: 1545–1010
Form Number: 1120–RIC
Type of Review: Resubmission
Title: U.S. Income Tax Return for Regulated Investment Companies
Description: Form 1120–RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,050
Estimated Burden Hours Per Response:
Recordkeeping, 51 hours 25 minutes
Learning about the law or the form, 19 hourse 47 minutes
Preparing the form, 46 hours 37 minutes
Copying, assembling, and sending the form to IRS, 7 hours 14 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 256,353 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–26152 Filed 11–10–88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0182
Form Number: ATF F 5400.13/5400.16
Type of Review: Extension
Title: Application for Lincense or Permit
Description: This form allows application for an Explosives license or permit which, if approved, permits the holder to engage in certan Explosives activities under Title XI of the Organized Crime Control Act of 1970. Emphasis is on qualified persons and proper storage. $10,000 Fine/10 Years in prison are possible penalties for violation.
Respondents: Businesses or other for-profit, Small business or organizations
Estimated Number of Respondents: 2,100
Estimated Burden Hours Per Response: 3 hours
Frequency of Response: Annually
Estimated Total Reporting Burden: 6,200 hours
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 88–26153 Filed 11–10–88; 8:45 am]
BILLING CODE 4810-25-M

Fiscal Service

Bureau of the Public Debt; Office of Administration Reorganization

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.
ACTION: Notice of reorganization.

SUMMARY: Effective November 15, 1988, the Bureau of the Public Debt will reorganize the Office of Administration (OA). After reorganization, OA will be comprised of the Office of the Assistant Commissioner (Administration) and the following components: (1) Division of Personnel Management, (2) Division of Planning and Program Analysis, (3) Division of Financial Management, and (4) Division of Management Services.

FOR FURTHER INFORMATION CONTACT: Kathryn O. D'Auria, Director, Administrative Policy Staff, Bureau of the Public Debt, E Street Building, Washington, DC 20239–0001, 202–376–4330.

SUPPLEMENTARY INFORMATION: The OA reorganization was undertaken to provide a better structure for the performance of the administrative functions of the Bureau, and to reflect changes in scope and reponsibilities of the various organizational components. Changes are intended to improve OA's ability to provide services and to develop programs to support the Bureau's mission.

The reorganization strengthens overall management and control of program activities within the Office of Adminstration and will improve services to the other offices in the Bureau.

Under the general authority vested in the Secretary of the Treasury in 5 U.S.C. Sec. 301 and 31 U.S.C. Sec. 321, approval for the reorganization was granted on September 22, 1988, by the Assistant Secretary of the Treasury (Management).

Date: November 7, 1988.

Richard L. Gregg,
Commissioner.
[FR Doc. 88–26149 Filed 11–10–88; 8:45 am]
BILLING CODE 4810-40-M

VOL 53 ISS 219 NO 14 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 219
Monday, November 14, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 45184, Tuesday, November 8, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Monday, November 14, 1988.

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Date: November 8, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88–26346 Filed 11–9–88; 3:50 pm]

BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:02 p.m. on Tuesday, November 8, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) An assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act: (2) the possible closing of certain insured banks; and (3) an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the maters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: November 9, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–26347 Filed 11–9–88; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Wednesday, November 16, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Request for modification of a condition of a purchase and assumption approval:

The Bank of Casey, Casey, Illinois.

Memorandum and resolution re: Final amendments to Part 308 of the Corporation's rules and regulations, entitled "Rules of Practice and Procedures."

Memorandum and resolution re: Final amendments to Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," which amendments (1) reflect those changes made in 12 U.S.C. 1832 by Congress which give nonprofit political organizations the right to hold NOW accounts; and (2) make certain other technical changes.

Memorandum and resolution re: (1) Final amendments to Part 336 of the Corporation's rules and regulations, entitled "Employee Responsibilities and Conduct;" and (2) final amendments to one of the Corporation's Privacy Act system or records, which amendments (a) reflect the addition of the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation to the system, (b) add the Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification to the sytem, (c) delete Financial Disclosure Reports submitted pursuant to title II of the Ethics in Government Act of 1978 from the system, (d) reflect a change in system location from one location in Washington, DC, to designated divisional, regional, and consolidated offices of the Corporation, and (e) generally clarify and update the system.

Memorandum and resolution re: Amendment to one of the Corporation's systems of records, maintained pursuant to the Privacy Act of 1974, which amendment (1) retitles the "Administrative Action System" to read "Administrative and Personnel Action System" and (2) updates the language describing the system.

Resolution amending the delegations of authority with respect to regulation and supervision expenditures.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations in the form of new Part 354 to be entitled "Deposit Liabilities," which amendments would find that a bank's liability on a promissory note, bond, acknowledgement of advance, or similar obligation that is issued or undertaken by the insured bank as a means of obtaining funds is a deposit liability, with certain enumerated exceptions to the general proviso.

Memorandum re: Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: November 9, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–26348 Filed 11–9–88; 3:51 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Wednesday, November 16, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Bank of Dallas, Dallas, Texas (2781) (Memo dated October 4, 1988)
Audit Report re:
Denver Consolidated Office, Cost Center—603 (Memo dated October 12, 1988)
EDP Audit Report re:
Dallas Regional Office, Cost Center—400 (Memo dated September 30, 1988)
Audit Report re:
Payment of Depositors' Claims Process (Memo dated October 17, 1988).

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for Federal deposit insurance:

First Commercial Thrift and Loan Company, a proposed new industrial bank to be located at 655 Anton Boulevard, Costa Mesa, California.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: November 9, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–26349 Filed 11–9–88; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 16, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS. Open.

MATTERS TO BE CONSIDERED:

1. Proposals regarding the Office of Inspector General (OIG): Impact of 1988 IG Act amendments, and revised OIG charter.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: November 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26273 Filed 11–9–88; 10:16 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, November 16, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on November 9, 1988.)
2. Personnel actions (appointments, promotions, assignments, reassignments and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: November 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26274 Filed 11–9–88; 10:16 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Tuesday, December 13, 1988.

PLACE: Room 532, (open); Room 540 (closed) Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to Public:
(1) Oral Argument in Louisiana-Pacific Corporation, Docket No. C–2956.
Portions closed to the Public:
(2) Executive Session to follow Oral Argument in Louisiana-Pacific Corporation, Docket No. C–2956.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326–2179; Recorded Message: (202) 326–2711.

Benjamin I. Berman,

Secretary.

[FR Doc. 88–26350 Filed 11–9–88; 4:01 pm]

BILLING CODE 6750–01–M

VOL 53 ISS 219 NO 14 1988 UMI

Corrections

Federal Register
Vol. 53, No. 219
Monday, November 14, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88-160]

Horse Protection Regulations

Correction

In rule document 88-24471 beginning on page 41561 in the issue of Monday, October 24, 1988, make the following corrections:

PART 11—[CORRECTED]

1. On page 41562, in the second column, the authority citation should be corrected to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

§ 11.2 [Corrected]

2. On the same page, in the same column, in § 11.2(b)(8), in the last line, "hell" should read "heel".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction; Lake Ouachita, AR

Correction

In the issue of Wednesday, November 2, 1988, on page 44214 in the third column, a correction to FR Doc. 88-25405 appeared. The seventh item was inaccurately printed and should have appeared as follows:

* * * * *

7. On page 5612, in the second column, T1S, R23W, Section 27 should read: Pt. SE¼NE¼ above 610', Pt. NE¼SE¼ above 610', Pt. NE¼SW¼ above 610'.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 71264-8028]

Atlantic Mackerel, Squid, and Butterfish Fisheries

Correction

In rule document 88-24904 appearing on page 43718 in the issue of Friday, October 28, 1988, make the following correction:

In the second column, under **SUMMARY**, in the seventh line, "DAR" should read "DAH".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 81020-8220]

Atlantic Mackerel, Squid, and Butterfish Fisheries

Correction

In proposed rule document 88-24902 beginning on page 43741 in the issue of Friday, October 28, 1988, make the following corrections:

1. On page 43742, in the first column, in the last complete paragraph, in the seventh line, "§ 655.21(b)(1)(i)" should read "§ 655.21(b)(1)(ii)".

2. On the same page, in the same column, in the third line from the bottom, "OIY" should read "IOY".

3. On the same page, in the second column, under **Atlantic Squids**, in the first line, "IOYs" should read "OYs".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

National Assessment Governing Board, Education; Meeting

Correction

In notice document 88-25315 beginning on page 44219 in the issue of Wednesday, November 2, 1988, make the following correction:

On page 44219, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the last line, the telephone number should read "(202) 357-6050".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 103

[Docket No. 86N-0445]

Quality Standards for Foods With No Identity Standards; Bottled Water

Correction

In proposed rule document 88-21120 beginning on page 36063 in the issue of Friday, September 16, 1988, make the following corrections:

1. On page 36065, in the first column, in the fourth complete paragraph, in the 10th line, "53 FR 11396" should read "51 FR 11396".

2. On the same page, in the second column, in the last paragraph, in the first line, "[A] one" should read "[A]s one".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 88-21294 beginning on page 36372 in the issue of Monday, September 19, 1988, make the following correction:

On page 36373, in the second column, in the second paragraph, in the third line, "Lopod" should read "Lopid".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 88-21297 beginning on page 36371 in the issue of Monday,

September 19, 1988, make the following correction:

On page 36371, in the second column, in the second complete paragraph, in the last line, "5 U.S.C. 552(c)(4)" should read "5 U.S.C. 552b(c)(4)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-09-4212-13; A-22880]

Exchange of Public and Private Lands in Mohave and Yavapai Counties, AZ

Correction

In notice document 88-24908 beginning on page 43774 in the issue of Friday, October 28, 1988, make the following corrections:

1. On page 43774, in the first column, in the second line of the subject heading, "and" was misspelled.

2. On the same page, in the second column, in the 26th line, the Patent No. "02-89-002" should read "02-89-0002".

3. On the same page, in the same column, in the second land description for Gila and Salt River Meridian, under "T. 14 N., R. 9 W.", in Section 5, at the end of the fourth line, "SE¼SW¼," should read "SE¼SE¼SW¼,".

BILLING CODE 1505-01-D

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federal register

Monday
November 14, 1988

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Theatened Wildlife and Plants; Determination of Endangered Status for the Little-Wing Pearly Mussel and Threatened Status for Boltonia decurrens (Decurrent False Aster); Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Boltonia decurrens (Decurrent False Aster)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Boltonia decurrens* (Decurrent false aster), a wet prairie perennial, to be a threatened species under authority of the Endangered Species Act (Act) of 1973, as amended. Twelve populations are known to be extant in five Illinois counties, and two populations, one of which is divided into two subpopulations, are known in one Missouri county. The plant is believed extirpated from 13 other counties in Illinois and three counties in Missouri. It is threatened by destruction and modification of the floodplain forest along the Illinois and Mississippi rivers due to wetland drainage and agricultural expansion. Because of extensive row crop cultivation within the watersheds of these rivers, habitat of the decurrent false aster is continually being modified or destroyed by heavy siltation. This action will implement Federal protection, provided by the Act of 1973, for *Boltonia decurrens*.

EFFECTIVE DATES: December 14, 1988.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cites, MN 55111.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator, at the above address (612/725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

Boltonia decurrens, a member of the Aster family, was recognized as a distinct species by Schwegman and Nyboer (1985). However, the taxon has gone by many names in the past. Torrey and Gray (1841) first described it as *Boltonia glastifolia* L' Her. *beta decurrens*. Subsequently, Wood (1869) described it as *Boltonia decurrens*; Engelmann (1884) as *B. asteroides* (L.) L'Her. var. *decurrens*; and Fernald and Griscom (1940) considered it *B. latisquama* var. *decurrens*. According to Schwegman and Nyboer (1985), most taxonomists considered the one distinctive feature of the taxon to be leaf bases that are decurrent down the stem. However, Fernald and Griscom (1940) attached more significance to the underground parts and qualified their treatment of *Boltonia latisquama* var. *decurrens* pending further analysis of the underground parts of *Boltonia*. Thus Schwegman and Nyboer (1985) undertook a comprehensive study of the roots and rhizomes of *Boltonia asteroides* var. *recognita* and *Boltonia decurrens* and concluded that *B. decurrens* is clearly separated from *B. asteroides* var. *recognita* by its decurrent leaves and the lack of long white creeping rhizomes. Schwegman and Nyboer (1985) observed that where *Boltonia decurrens* and *Boltonia asteroides* var. *recognita* were found growing together, the former never had rhizomes, and the latter always produced them.

Boltonia decurrens, a perennial, reproduces both vegetatively, by producing basal shoots, and sexually. It will grow to a height of 1.5 meters (59 inches), sometimes reaching heights of more than two meters (79 in.). It is characterized by conspicuous decurrent leaves which are linear to lanceolate about 5–15 cm (2–6 in.) long, and 5–20 mm (.2–.8 in.) wide. The lower leaves are generally broader and longer. The inflorescence is branched and somewhat leafy with several aster like heads with yellow disks 7–14 mm (.3–.6 in.) wide. The rays are white to purple (more frequently purple or violet than white) and 1–1.6 cm (.4–.7 in) long. Aster like flowers about the size of a quarter-dollar appear on the tall bushy plants from July to October.

Boltonia decurrens was first collected by Dr. Short about 1841 in habitat described as "wet prairies of Illinois." Subsequent investigators, Morgan (1980), Kurz (1981), and Schwegman and Nyboer (1985), list habitat as disturbed alluvial ground along the Mississippi and Illinois rivers and open muddy shores of the floodplain forest along the Mississippi and Illinois rivers. Morgan (1980) describes the habitat as disturbed alluvial ground bordering sloughs, ditches, ponds, and streams. Historically, *B. decurrens* has been known from this type of habitat along a 400 km (250-mile) stretch of river floodplain from LaSalle, Illinois, on the Illinois River, downstream to St. Louis, Missouri, on the Mississippi River. An outlying record reported in 1976, but not relocated since, is known from Cape Girardeau, Missouri, about 195 km (120 miles) down the Mississippi River from St. Louis (Schwegman and Nyboer 1985). It is thought to be extirpated from thirteen counties in Illinois and three counties in Missouri.

Extensive surveys for the plant were conducted in 1980 and 1981 by Schwegman and Nyboer (1985). An aerial survey of the Illinois River was conducted in 1984 (Schwegman 1984). These surveys located a total of 13 populations in Illinois. Schwegman (pers. comm.) reports a 1986 total of 12 populations in Illinois; three previously known populations disappeared (two were plowed up and one succumbed to forest succession), but two new populations were discovered. These 12 Illinois populations are located along the Illinois River in Morgan, Schuyler, Fulton, and Marshall Counties, and one along the Mississippi River in St. Clair County. In addition, two populations are known from St. Charles County, Missouri (S. Morgan, Missouri Department of Conservation, pers. comm., and B. Stebbins, Fish and Wildlife Service, pers. comm.).

Schwegman and Nyboer (1985) report that the extant populations in Illinois are found in disturbed alluvial soil habitats such as old agricultural fields, roadsides, and disturbed lake shores. The plant is found in similar habitat (disturbed areas) in Missouri (J.H. Wilson, Missouri Department of Conservation, pers. comm.).

Kurz (1981) identifies associated open forest species of *Boltonia decurrens* to include *Acer saccharinum, Populus deltoides, Platanus occidentalis, Betula nigra, Salix nigra,* and *Acer negundo.* Herbaceous associates are *Polygonum pensylvanicum, Leersia oryzoides, Xanthium strumarium,* and *Bidens aristosa.* Because of frequent flooding, both the overstory and understory are often open.

Boltonia decurrens was first recommended for Federal listing as a threatened species by the Smithsonian Institution in its December 15, 1974, report to Congress, "Report on Endangered and Threatened Plant Species of the United States." On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of Section 4(c)(2) (petition acceptance is now governed by Section 4(b)(3) of the Act). On December 15, 1980, the Service published a revised notice of review for native plants (45 FR 82480). *Boltonia asteroides* var. *decurrens* was included in that notice as a category 2 species.

Category 2 species are those for which the Service believes additional data must be obtained before a proposal to list is warranted. On September 27, 1985 (50 FR 39526), the Service again published a revised notice for native plants in the **Federal Register**; *Boltonia asteroides* var. *decurrens* was included in that notice as a category 2 species. The treatment of *Boltonia decurrens* by Schwegman and Nyboer in 1985, and status information received since the September 27, 1985 (50 FR 39525), notice indicate that listing *Boltonia decurrens* as a threatened species is warranted.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on these petitions, including the one for *B. decurrens*, was October 13, 1983. On October 13, 1983; October 12, 1984; October 11, 1985; October 10, 1986; and again on October 13, 1987; the petition finding was made that listing *B. decurrens* was warranted but precluded by other pending actions, in accordance with Section 4(b)(3)(C)(iii) of the Act. A final finding to the effect that the petitioned action was warranted was incorporated in a proposed rule to determined threatened status for *Boltonia decurrens* issued in the **Federal Register** of February 25, 1988 (53 FR 5598).

Summary of Comments and Recommendations

In the February 25, 1988, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, scientific organizations, landowners, and other interested parties were contacted and requested to comment. Notices inviting public comment were published in the following newspapers: *The Fulton Democrat*, Lewistown, Illinois; *Mason County Democrat*, Havana, Illinois; *Illinoian Star Daily*, Beardstown, Illinois; *Journal Star*, Peoria, Illinois; *Lacon Home Journal*, Lacon, Illinois; and *Jacksonville Journal Courier*. Four comments were received and are discussed below.

Comments supporting the listing were received from the Illinois and Missouri Departments of Conservation and a Horticultural Taxonomist from the Missouri Botanical Garden. The U.S. Army Corps of Engineers did not object to the listing and offered comments on the habitat of *B. decurrens*. The Illinois and Missouri Departments of Conservation advised that St. Charles County is the correct location for *B. decurrens* in Missouri. In addition, Missouri advised that one of the two populations in St. Charles County is threatened by road construction and part of that population was transplanted last fall. The Missouri Department of Conservation will monitor the transplant and search for additional populations of *B. decurrens*. Missouri further suggested that the effects of flooding on the distribution and survival of the species be examined in more detail. The comment from the Missouri Botanical Garden advised that they have the species in cultivation and it is doing well. The Taxonomist from the Garden believes that further taxonomic study is needed for this species, and advised that some is underway. All comments are now incorporated into this rule and the Service appreciates the assistance to all parties.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Boltonia decurrens* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Boltonia decurrens* (Torr. & Gray) Wood are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Boltonia decurrens* is threatened by the elimination and modification of its floodplain habitat. Schwegman and Nyboer (1985) attribute this to the elimination of wet prairies and marshes for agricultural development. As a result of the increased agricultural activities, flooding regimes have changed and siltation has increased. Schwegman and Nyboer (1985) also cite extensive rowcrop agricultural practices and numerous levee systems that increase the amount of silt deposited on river banks during floods, and contribute to the problem. The increased amount of siltation is considered to be the main factor in the reduction of *Boltonia decurrens*. Schwegman (Ambrose 1986) explains that the plant prefers moist, sandy areas, normally found around natural lakes in the Illinois River floodplain; however, these areas now receive two to three inches of silt per year, preventing seed germination. Before the river carried so much silt, the sandier shores of lakes and streams were suitable for seed germination and maintenance of this species. Schwegman (Ambrose 1986) expects that the only remaining populations of *Boltonia decurrens* occur in areas where agricultural practices maintain proper conditions for seed germination. Without this manipulation, and in the absence of silt-free flooding, the species is not self-sustaining. Effects of flooding on the distribution of *Boltonia decurrens* are not well understood. Research is needed to provide a better understanding of the plant's survival capabilities. Kurz (1981) believes that siltation is apparently more severe now than in pre-settlement times. Increased use of herbicides may also have potential detrimental affects, but more study is needed.

Five of the 14 known extant populations of *B. decurrens* occur on public lands; three on Illinois State lands and two on Army Corps of Engineers lands in St. Charles County, Missouri. Management plans are being developed for the *Boltonia decurrens* populations found on Illinois State lands. The Corps of Engineers may soon enter into a cooperative management agreement with the Missouri Department of Conservation on the areas in St. Charles County, Missouri. Soil manipulation on selected sites within these areas will help us to better understand reproductive requirements of this taxon. Nearly two-thirds of the known populations of *Boltonia decurrens* are found on private lands and receive no protection or management consideration.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Commercial trade of this plant is not known to exist, but collection could reduce populations in more accessible sites.

C. *Disease or predation.* None known which affects this taxon.

d. *The inadequacy of existing regulatory mechanisms. Boltonia decurrens* is not presently recognized as being endangered or threatened by the State of Illinois; however, it is currently under review for addition to the State's threatened list. The plant is listed as endangered by Missouri where State regulations prohibit exportation, transportation, or sale of plants on the State or Federal lists. Collecting, digging, or picking any rare or endangered plant without permission of the property owner is prohibited. While approximately 20 percent of the known populations of *Boltonia decurrens* are located upon land owned by the State of

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Illinois and receive some form of protection, a majority of the known populations are, as yet, unprotected. Two of the populations in Missouri are located on lands administered by the Corps of Engineers. Although plants are found on public lands, there is no guarantee of protection without specific management plans for *Boltonia decurrens*. The Endangered Species Act offers possibilities for additional protection of this taxon through Section 6 cooperation between the States and the Service, and through Section 7 (interagency cooperation) requirements.

E. *Other natural or manmade factors affecting its continued existence.* Because *Boltonia decurrens* seems to thrive in disturbed areas, the inadvertent destruction of plants in the course of normal agricultural activities will continue to plague the species' survival (Schwegman and Nyboer 1985). According to Schwegman (Ambrose 1986), the threat of a severe flood such as the one in 1981 that inundated the Illinois floodplain and deposited large amounts of silt still exists. For several years after that flood it was feared that *B. decurrens* was extirpated. In Illinois, the taxon is only known from disturbed habitat. Nearly all the known populations are found in habitat kept open by occasional cropping. Research is needed to better understand the amount of disturbance and habitat alteration the plant can tolerate.

In determining to make this final rule the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Nine of the 14 known populations are on privately owned property and receive no protection or management designed to enhance the species' continued existence.

Based on this evaluation, the preferred action is to list *B. decurrens* as threatened, as opposed to endangered, because the species is not in danger of immediate extinction, but does have a restricted range and is confronted by a number of problem. For reasons detailed below, it is not considered prudent to propose designation of critical habitat

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The Service believes that designation of critical habitat for *Boltonia decurrens* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of detailed critical habitat maps.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States. It also requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Some may be undertaken prior to listing, circumstances permitting. Management actions that may be of benefit to *Boltonia decurrens* include: developing and implementing protection plans for publicly owned areas; establishing a monitoring system; censusing all known populations; and establishing controlled till plots to monitor seedling emergence after cultivation. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to consult with the Service on any action that is likely to jeopardize the continued existence of such a species or result in the destruction or adverse modification of critical habitat, if any is being designated. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species, or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The U.S. Army Corps of Engineers has jurisdiction over one of the *Boltonia decurrens* populations in St. Charles County, Missouri.

The Food Security Act of 1985 (Pub.L. 99–198) also provides at sections 1314 and 1318 opportunities for the Service and State conservation agencies to acquire restrictive easements beneficial to endangered and threatened species on lands acquired by the Farmers Home Administration in the course of farm foreclosures. Upon notification by the Farmers Home Administration of pending foreclosures, the Service is continually reviewing possible areas where restrictive easements would benefit endangered and threatened species.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Boltonia decurrens*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, will apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. International and interstate commerce in *Boltonia decurrens* is not known to exist. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27239, Central Station, Washington, DC 20038–7329, (703/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the

Federal Register on October 25, 1983 [48 FR 49244).

References Cited

Ambrose, D. 1986. Rare flowers such as these. Outdoor Highlights. Illinois Department of Conservation. 14(8):8–9.

Engelmann, G. 1884. *in* Gray, A synoptical flora of North America 1(2):166.

Fernald, M., and L. Griscom. 1940. A century of additions to the flora of Virginia. Rhodora 42:355–416, 419–482, 503–521.

Kurz, D.R. 1981. Status report on *Boltonia asteroides* var. *decurrens* in Illinois. Unpub. rep. 9 pp.

Morgan, S.W. 1980. Status report on *Boltonia asteroides* var. *decurrens* in Missouri. Unpubl. rep. 13 pp.

Schwegman, J.E., and R.W. Nyboer. 1985. The taxonomic and population status of *Boltonia decurrens*. Castanea 50 (2):112–115.

Schwegman, J.E. 1984. 1984 status report on *Boltonia decurrens* in Illinois. Unpubl. rep. 4 pp.

Torrey, J., and A. Gray. 1841. Flora of North America 2:188.

Wood, A. 1869. Class-book botany. p. 430.

Author

The primary author of this rule is William F. Harrison (see **ADDRESSES** section) (612/725–3276 or FTS 725–3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the CFR, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–635, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
*	*	*	*	*	*	*
Boltonia decurrens	Decurrent false aster	U.S.A. (IL, MO)	T	341	NA	NA
*	*	*	*	*	*	*

Dated: October 25, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–26187 Filed 11–10–88; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for the Little-wing Pearly Mussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service designates the little-wing pearly mussel (*Pegias fabula*) as an endangered species under the Endangered Species Act of 1973, as amended. This freshwater mussel has been reported historically from 27 river reaches in Alabama, North Carolina, Kentucky, Tennessee, and Virginia. Only six small populations are known to survive—three in Kentucky, one in Tennessee, and two in Virginia. The species' decline has resulted primarily from habitat and water quality deterioration caused by impoundments and by pollution and siltation resulting from mining, agriculture, and construction activities. Owing to the species' limited distribution, any factor that adversely modifies habitat or water quality in the short river reaches that the species inhabits could threaten its survival. This final rule extends the protection provided by the Endangered Species Act to the little-wing pearly mussel.

EFFECTIVE DATE: December 14, 1988.

ADDRESSES: A complete file of this rule is available for public inspection, during normal business hours, at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The little-wing pearly mussel (*Pegias fabula*) was originally described by Lea (1838) as *Margaritana fabula*. Simpson (1900) placed the species by itself in his new genus *Pegias* and listed previous scientific name combinations that had been applied to this species. Ortmann (1914) considered *Pegias* to be a subgenus of *Alasmidonta;* that change has been followed by few subsequent authorities. The Service follows Simpson (1900) and Clarke (1981) in considering *Margaritana curreyiana* Lea, 1840, to be a synonym of *Pegias fabula.*

The little-wing pearly mussel has been recorded historically from 27 river reaches in Alabama, North Carolina, Kentucky, Tennessee, and Virginia. All of the reported localities are in either the Tennessee or the Cumberland River drainages (Ahlstedt 1986, Bakaletz *in litt.*, Clarke 1981, Stansbery 1976). Based on a recently completed Service-funded survey involving extensive field studies of potential and historic habitat in Cumberland and Tennessee River tributaries (Ahlstedt 1986), the results of a study funded by the U.S. Army Corps of Engineers (Corps) (Bakaletz *in litt.*), and the results of a survey conducted by Virginia Polytechnic Institute and State University (Richard Neves, Virginia Polytechnic Institute and State University, personal communication, 1987), the little-wing pearly mussel is now apparently restricted to six short stream reaches—three in southeastern Kentucky, two in southwestern Virginia, and one in central Tennessee. The Kentucky populations are on both public and private lands, while the Tennessee and Virginia populations are primarily on private lands. Habitat loss and water quality deterioration, attributable to impoundments, to industrial and municipal pollution, and to siltation

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resulting from mining, agriculture, large land disturbances, and construction activities, are the primary reasons for the species' decline. However, some losses are apparently due to other factors or to less drastic changes in water and habitat quality, as some populations have been extirpated from stream reaches that still contain mussel communities comprising other species (Stansbery 1976).

Horse Lick Creek in Jackson and Rockcastle Counties, Kentucky, presently contains the most extensive little-wing pearly mussel population, but it is threatened by surface coal mining activities and oil and gas exploration (Ahlstedt 1986). The Big South Fork Cumberland River, McCreary County, Kentucky, contains a restricted population (Bakaletz *in litt.*). This population occurs in a short river section that is limited both upstream and downstream by deteriorating water quality resulting from poor land use practices and the impact of coal mining. The population in the Little South Fork Cumberland River, McCreary and Wayne Counties, Kentucky, once contained a substantial number of individuals; but recent mussel collections in this stream reach (Ahlstedt 1986; Skip Call, Kentucky Department for Environmental Protection, personal communication, 1985; Robert Anderson, Tennessee Technological University, personal communication, 1988) have revealed large numbers of dead little-wing pearly mussels and other species, including a federally listed endangered species, the Cumberland bean pearly mussel (*Villosa trabalis*).

The Virginia populations of the little-wing pearly mussel are restricted to a single shoal in the North Fork Holston River in Smyth County and a short river reach in the Clinch River in Tazewell County. These populations are small and are vulnerable to toxic chemical spills and siltation from land use changes and construction.

The Tennessee population is in Cane Creek, Van Buren County. This population is also very small (probably inhabits less than 2 river miles) and vulnerable to toxic chemical spills.

The little-wing pearly mussel, the only species in the genus *Pegias*, is small, not exceeding 1.5 inches (3.8 centimeters) in length and 0.5 inches (1.3 centimeters) in width. The shell's outer surface (periostracum) is usually eroded, giving the shell a chalky or ashy white appearance. When present, however, the periostracum is light green or dark yellowish brown with dark rays of variable width along the anterior portion of the shell (Ahlstedt 1986). The species inhabits small, cool, high-to-moderate gradient streams, where it is usually found in the transition zone between pools and riffles. Like other freshwater mussels, it feeds by filtering food particles from the water; and like most species in its family (Unionidae), its reproductive cycle probably includes a larval stage that parasitizes a host fish. The mussel's life span, host fish species, and many other aspects of its life history are unknown.

The little-wing pearly mussel was recognized by the Service in the May 22, 1984, **Federal Register** (49 FR 21664) as a species that was being considered for possible addition to the List of Endangered and Threatened Wildlife. On June 22, 1987, the Service notified Federal, State, and local governmental agencies by mail (State fish and wildlife agencies were also contacted by telephone) that the species' status was being reviewed and that the species could be proposed for listing. The Service received 16 responses to the notification. Support for Federal protection was expressed by all three States involved, and no party voiced any objection to proposing Federal protection. The little-wing pearly mussel was proposed for listing as endangered on April 21, 1988 (53 FR 13226).

Summary of Comments and Recommendations

In the April 21, 1988, proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and interested parties were contacted and requested to comment. A newspaper notice was published in the following papers: *News-Messenger*, Saltville, Virginia, May 12, 1988; *McCreary County Record*, Whitley City, Kentucky, May 10, 1988; *Commonwealth-Journal*, Somerset, Kentucky, May 8, 1988; *Expositor*, Sparta, Tennessee, May 9, 1988; and *Clinch Valley News*, Tazewell, Virginia, May 11, 1988.

All eight respondents—the U.S. Department of the Interior's Office of Surface Mining; the U.S. Forest Service; the Tennessee Valley Authority; the States of Kentucky, Tennessee, and Virginia; and two private individuals supported the listing.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the little-wing pearly mussel should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the little-wing pearly mussel (*Pegias fabula*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Of the 27 river reaches reported to have supported little-wing pearly mussel populations (Ahlstedt 1986, Clarke 1981, Stansbery 1976), only six (three in Kentucky, two in Virginia, and one in Tennessee) are known to still support the species (Ahlstedt 1986; Bakaletz *in litt.*; Richard Neves, personal communication, 1987) (see "Background" section). The species has apparently been extirpated from Alabama (two historic populations lost) and North Carolina (one historic population lost). Although it still survives in Kentucky, Tennessee, and Virginia, three populations in Kentucky, nine in Tennessee, and six in Virginia are believed to have been extirpated. The loss of some populations can be linked to specific causes, such as the impacts of coal mining, industrial and municipal pollution, and impoundments. However, other populations have apparently been lost to the general deterioration in aquatic habitat quality. Stansbery (1976) states, concerning this species, "Its disappearance from several sites which still retain populations of other species indicates a form highly sensitive to current changes."

Ahlstedt (1986) surveyed 55 potential and historic habitats but was able to find a total of only 17 live specimens. Seven live and three dead specimens were found in Horse Lick Creek in Jackson and Rockcastle Counties, Kentucky. This population, which extends over at least 10 creek miles, is one of the healthiest of the surviving populations. Horse Lick Creek, identified by the Kentucky Division for Environmental Protection as one of Kentucky's Outstanding Resource Waters, has good habitat and water quality and a complex mussel fauna. The Horse Lick Creek watershed is remote, not extensively developed, and partially within the Daniel Boone National Forest. However, the watershed has oil, gas, and coal deposits, and the exploration and development of these resources has already begun. This population can be protected only if the survival of the species is considered during the development of these resources.

In a recent study funded by the Corps (Bakaletz *in litt.*), a small population of the little-wing pearly mussel was discovered in a 2.1-mile (approximately) section of the Big South Fork Cumberland River (McCreary County, Kentucky) within the Big South Fork National River and Recreation Area administered by the National Park Service. Much of the Big South Fork Cumberland River is impacted by siltation and acid mine drainage from coal mining activities. However, the short reach inhabited by this species is in a river section that has recovered from upstream impacts and is above the coal mining and impoundment impacts that degrade the lower river. Fourteen other mussel species also occur in this river reach including the federally listed Cumberland bean pearly mussel (*Villosa trabalis*). However, the little-wing pearly mussel, possibly due to its greater sensitivity to environmental degradation, does not inhabit the entire river reach (more than 10 miles) populated by the Cumberland bean pearly mussel.

Sampling in the Little South Fork Cumberland River, McCreary and Wayne Counties, Kentucky, produced 3 live and 126 dead specimens. This population, which extends over about 10 river miles, was once relatively large, but recent deterioration in water quality has had a severe impact on the river's mussel community. Studies by the Kentucky Department for Environmental Protection (Sherri Evans and Skip Call, Kentucky Department for Environmental Protection, personal communications, 1986) indicate that the lower portion of the river section inhabited by the species is being impacted by drainage from abandoned mined lands. Lick Creek, a tributary in this river reach, was found to have substantially elevated concentrations of dissolved solids, sulphates, aluminum, iron, and manganese in November 1985 (Sherri Evans, personal communication, 1986). Although 52 dead specimens were found below Lick Creek, no live little-wing pearly mussels were encountered in this river reach.

Four live and three dead specimens were taken from Cane Creek, Van Buren County, Tennessee. This river has very limited mussel habitat, with the species apparently limited to less than 2 river miles. Downstream from the population, Cane Creek is impounded by Great Falls Lake on the Caney Fork River, while upstream from the population the large boulder substrate is unsuitable habitat for this species, and at some points upstream the creek goes underground. Some siltation is apparent downstream from a recently constructed bridge.

The population in the North Fork Holston River (three live and three dead specimens collected), Smyth County, Virginia, is small. The North Fork Holston River has been sampled at a number of sites, and, except for one individual taken near Saltville, Virginia, all specimens past and present have been taken at one shoal near Nebo, Virginia.

A small population (six relic shells and one live animal collected) exists in the Clinch River in Tazewell County, Virginia. This population, like the North Fork Holston and Cane Creek populations, is apparently small and extends over only a short river reach.

Potential threats to the species and its habitat could arise from development of coal and/or gas reserves in the watersheds of Horse Lick Creek, Big South Fork Cumberland River, the Little South Fork Cumberland River, and Cane Creek. However, it should be noted that the Service has issued a no-jeopardy biological opinion under Section 7 of the Endangered Species Act to the Office of Surface Mining with respect to its approval of the coal mining regulation program of the Commonwealth of Kentucky. Although no final determination of impact can be made until the little-wing pearly mussel is listed and a consultation undertaken, the Service has no evidence that mining activities conducted in accordance with State and Federal regulations are a threat to the species. Rather, past unregulated activities have contributed to the species' decline, and current activities not in compliance with appropriate regulations may be a threat to the species. All six populations could potentially be impacted by such actions as road construction, stream channel modifications, logging activities, impoundments, sewage treatment plant discharges, land use changes, and other projects in the watershed if such activities are not planned and implemented with the survival of the species and the protection of its habitat in mind. As these populations inhabit only short stream reaches that are all within 1 to 5 miles of bridges and fords, they are all vulnerable to toxic spills.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The specific areas inhabited by the species are presently unknown to the general public. As a result, overutilization of the species has not been a problem. However, through listing and the publicity it brings to a species, the problem of vandalism could arise, especially if maps of specific occupied habitat areas were identified through critical habitat designation. (See "Critical Habitat" section for reasons why critical habitat is not being designated.)

C. *Disease or predation.* Although the little-wing pearly mussel is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs have recently been reported throughout the Mississippi River basin, including the Tennessee River and its tributaries (Richard Neves, personal communication, 1988). The cause of the die-offs has not been determined, but significant losses have occurred in some populations. If this problem spreads to river reaches containing this species, significant losses could occur and further endanger the species' survival. Disease is one of the possible explanations for these die-offs.

D. *The inadequacy of existing regulatory mechanisms.* The States of Kentucky, Tennessee, and Virginia prohibit taking wildlife and fish, including freshwater mussels, for scientific purposes without a State collecting permit. However, these State laws do not protect the species' habitat from the potential impacts of Federal actions. Federal listing will provide the species additional protection under the Endangered Species Act by requiring a Federal permit to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* All six known populations are small and isolated. This isolation blocks the natural interchange of genetic material between populations, and small population size reduces the reservoir of genetic variability within the populations. The lack of genetic diversity could adversely affect, over time, the species' ability to evolve and respond to natural habitat changes. The sizes of the little-wing pearly mussel populations are unknown; but considering the limited extent of available habitat and the densities of individuals (no little-wing pearly mussels were taken in 30 quantitative quadrat samples [Ahlstedt 1986]), it is likely these populations, with the possible exception of that in Horse Lick Creek, are now below the generally accepted level (Soulé 1980) required to maintain long-term genetic viability.

The Service has carefully assessed the best scientific and commercial information available regarding the past,

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present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the little-wing pearly mussel (*Pegias fabula*) as an endangered species. Historical records reveal that the species, although rare, was once widely distributed in many cool-water tributaries of the Tennessee and Cumberland Rivers. Now only six small, isolated populations are known to survive. Four are threatened by coal mining and/or oil and gas resource development, and all six populations, owing to their small size, are vulnerable to toxic spills. This species is also apparently very sensitive to environmental change, as it has been extirpated from many streams that still contain diverse mussel communities. Owing to the species' history of population losses, its apparent sensitivity to environmental change, and the vulnerable nature of all six populations, threatened status does not appear appropriate for this species. (See "Critical Habitat" section for a discussion of why critical habitat is not being proposed for the little-wing pearly mussel.)

Critical Habitat

Section 7(a)(2) of the Endangered Species Act, as amended, requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. Section 4(a)(3) requires that critical habitat be designated, to the maximum extent prudent and determinable, concurrent with the determination that a species is endangered or threatened. The Service finds that a determination of critical habitat for the little-wing pearly mussel is not prudent. Such a determination would result in no known benefit to the species. As part of the development of the proposed and final rule, Federal agencies have been notified of the little-wing pearly mussel's distribution and have been requested to provide data on proposed Federal projects that might adversely affect the species. No specific projects were identified. Should any potential adverse effects arise from future projects, the involved Federal agencies will already have the species' distributional data needed to determine if the species may be impacted by their action. The listing of a species and the publicity that arises as a consequence creates the potential for vandalism. Through the designation of critical habitat and the requirement for maps and specific habitat descriptions, the threat to the species from vandalism increases. Therefore, the Service believes that designation of critical habitat would not be prudent because no benefit to the species has been identified that would outweigh the potential threat of vandalism or collection, which would be exacerbated by publication of detailed critical habitat maps and descriptions.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service is aware of only three Federal agencies (U.S. Forest Service, Office of Surface Mining, and National Park Service) that are presently involved with programs that may affect the species. The Service has been in contact with them concerning the potential impacts of their activities on the species and its habitat. Other Federal activities that could impact the species and its habitat include, but are not limited to, the carrying out of or the issuance of permits for surface mining, hydroelectric facilities, reservoir construction, stream alterations, wastewater facility development, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations are resolved so that the species is protected and the project objectives can be met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Author

The primary author of this final rule is Richard G. Biggins, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "CLAMS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS:							
Pearly mussel, little-wing	*Pegias fabula*	U.S.A. (AL, KY, NC, TN, VA)	NA	E	342	NA	NA.

Dated: October 26, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-26186 Filed 11-10-88; 8:45 am]

BILLING CODE 4310-55-M

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federal register

Monday
November 14, 1988

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 et al.

Classification of Gases Which are Toxic by Inhalation; Supplemental Notice of Proposed Rulemaking; Request for Additional Comments

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, and 179

[Docket No. 181, Notice No. 88-7]
RIN Number 2137-AA01

Classification of Gases Which are Toxic by Inhalation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking; request for additional comments.

SUMMARY: RSPA is providing additional information and requesting additional comments concerning proposals in Docket HM-181, Notice 87-4 (52 FR 16462 and 52 FR 42772), for classifying certain hazardous materials as Division 2.3 poisonous gases. Of particular concern are the potential effects of the proposed reclassification of anhydrous ammonia as a poisonous gas. Numerous comments to the docket opposed the proposals. RSPA has reviewed the comments regarding the reclassification of anhydrous ammonia. As a result of these comments, RSPA believes that a Supplemental Notice of Proposed Rulemaking is necessary to (1) clarify the proposals, (2) solicit substantive information concerning potential impacts, and (3) describe possible regulatory alternatives that could be considered should the record demonstrate that the impact of a reclassification of anhydrous ammonia would be more severe than necessary to address transportation safety.

DATE: Comments must be received on or before March 9, 1989.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m., and 5:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Edward T. Mazzullo, Chief, Standards Division, telephone (202) 366-4488, or James K. O'Steen, Chief, Technical Division, telephone (202) 366-4545, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 1982, RSPA published (47 FR 16268) an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** which proposed to adopt performance-oriented packaging standards for small, or "non-bulk", packagings. On May 5, 1987, RSPA published a notice of proposed rulemaking (NPRM) (Docket No. HM-181; Notice No. 87-4) in the **Federal Register** (52 FR 16482) which expanded the scope of the ANPRM and proposed sweeping changes to the Hazardous Materials Regulations (HMR) addressing not only performance-oriented standards for non-bulk packagings but also changes to hazard classification, hazard communication and bulk packaging. An extension of the comment period from November 2, 1987 to February 26, 1988 was published in the **Federal Register** (52 FR 33906) on September 8, 1987, due to a pending supplemental NPRM and in response to several requests for additional time to submit comments. On November 6, 1987, RSPA published the supplemental NPRM (52 FR 42772) containing corrections to the initial NPRM and additional proposals. The interested reader is referred to these prior publications for additional information concerning the purpose, scope and specific proposals contained in the notices.

Following publication of the supplemental NPRM, a public hearing was held on November 17 and 18, 1987 in Washington, DC. In early 1988, several commenters again indicated that additional time was needed to fully develop their responses to specific proposals, due to the size and scope of Notice No. 87-4. The specific areas of concern addressed by these commenters included proposed bulk packaging provisions, reclassification of certain materials such as anhydrous ammonia, and non-bulk packaging requirements for poisonous liquids which are toxic by inhalation. In a notice published April 14, 1988 (53 FR 12442), RSPA reopened the comment period for Notice No. 87-4 from February 26, 1988 to May 25, 1988.

Of the more than one thousand comments RSPA has received in response to Docket HM-181, at least seven hundred were addressed to the proposed classification criteria for poisonous gases, generally the proposal to reclassify anhydrous ammonia from a nonflammable gas to a poisonous gas. In this document, RSPA intends to clarify the proposal (in order to avoid any potential misunderstanding of the proposal or its effects), seek substantiation from the commenters regarding the adverse impacts they perceive in the proposal, and seek comment on whether adjustments to the proposal are necessary.

Hazard Classification System For Gases

The classification system proposed in Notice No. 87-4 sets forth nine numbered classes for hazardous materials, including Class 2 for gases. This system was selected for consideration because it provides an accurate means to establish and communicate the actual risks posed by hazardous materials. The accuracy of classification is critical to the success of emergency response and the protection of emergency responders.

As is the case with certain other Classes, Class 2 is further divided into three divisions: Division 2.1 (flammable gases), Division 2.2 (nonflammable compressed gases) and Division 2.3 (poisonous gases). For poisonous gases, RSPA proposed classification criteria designed to include materials that, if released, could disperse over a large area and endanger the lives and health of a large number of persons, (e.g., the operator of the vehicle carrying the material, passersby, emergency response personnel, and nearby residents).

The proposed criteria classify a gas as poisonous when the material is known to pose a threat to human health based on human experience or, in the absence of human data, the material is considered to be toxic to humans because when tested on laboratory animals the material has an LC50 equal to or less than 5000 parts per million (ppm). As used in the HMR, LC50 means the lethal concentration, present during an exposure period of one hour, at which half or more of a sample population of test animals would die within a fourteen-day observation period.

The proposal, based upon toxicity, further subdivides Division 2.3 poisonous gases into four categories: IA, IB, II and III, ranging from the most toxic (requiring packaging of the highest integrity) to the least toxic, respectively. Under the proposal, anhydrous ammonia would be assigned to category III, the least hazardous group of the proposed poisonous gas division.

The proposed "poisonous gas" classification does not equate to the existing "Poison A" classification. In contrast to the reclassification proposal, the present regulations contain only a small list of poison gases called Poison A materials. Excluded from the list of Poison A materials are a number of gases that present a significant inhalation hazard and are classified as poisonous under international regulations. An example is chlorine which, although used as a chemical warfare agent in World War I, is presently classified as a nonflammable gas under the HMR.

The proposed definition and grouping scheme for poisonous gases allows for different packaging and operational controls commensurate with the hazard presented by each group. RSPA will develop proposals as appropriate, in conjunction with the respective DOT modal administrations, that could prescribe operational requirements commensurate with the hazards presented by each of the four groups in Division 2.3.

The Proposal as Related to Anhydrous Ammonia

Because anhydrous ammonia is but one of approximately 70 gases that would meet the proposed criteria for poisonous gas, RSPA previously did not fully discuss in the preamble to the notice the available information on the hazards of anhydrous ammonia used to support its proposed reclassification as a poisonous gas. Consequently, commenters did not have a complete explanation of the risks associated with anhydrous ammonia or its record in transportation. To address this situation, there follows a discussion of the hazards of anhydrous ammonia and some of the factual information on which RSPA based the proposed reclassification.

A. Technical Information

Anhydrous ammonia poses an inhalation hazard because of its alkaline corrosive properties that result in the destruction of tissues that are in contact with ammonia gas, liquid or solutions. Similar to many gases, the data for the lethal gas concentration are reported as a wide range of values for several species of animals. The Registry of Toxic Effects of Chemical Substances (RTECS) published by the National Institute for Occupational Safety and Health (NIOSH) lists the following acute toxicity values:

LCLo 2000 ppm/4hrs rat
LC50 4230 ppm/1hr mouse
LCLo 7000 ppm/1hr cat
LCLo 7000 ppm/1hr rabbit
LCLo 5000 ppm/5min mammal

Note: LCLo means "lethal concentration low", i.e., the lowest concentration of a material in air which has been reported to cause death in humans or animals.

Many commenters submitted a study done in the Netherlands (American Industrial Hygiene Association Journal; September 1982), which reported an LC50 (for rats) of 16,800 as evidence that anhydrous ammonia does not meet the proposed criteria for a poisonous gas. RSPA notes the more conservative RTECS values given in the preceding table, and the data on human experience discussed in the following section. Comments are requested as to whether these data are erroneous or otherwise inappropriate for assessing the degree of risk posed by anhydrous ammonia.

B. Transportation Record

In the Acute Hazardous Events Database compiled for the Environmental Protection Agency (EPA), ammonia was the second most common hazardous material in events involving death or injury (accounting for 6.8% of all events), second only to chlorine (9.6%). RSPA is aware of at least 1046 transportation incidents involving inhalation of ammonia in the United States between 1969 and 1987. These incidents resulted in 25 deaths and 602 injuries. When large scale transportation incidents are considered, the magnitude of the hazard is clear. For example, incidents involving the release of anhydrous ammonia in Crete, Nebraska (1969), Belle, West Virginia (1970), Houston, Texas (1976), and Pensacola, Florida (1977) resulted in a total of 13 deaths and 307 injuries.

C. Impacts of Reclassification

In considering the impacts of RSPA's proposal with respect to anhydrous ammonia it is important to note that the proposal is not intended to change, prohibit, or restrict the use of cargo tanks for shipments on public highways. In addition, the reclassification proposal would not change existing regulatory requirements that packages be marked with the 4-digit identification number (1005) and with the proper shipping name or, as an option on cargo tanks, with a common name (e.g., AMMONIA). Current regulations require the use of NONFLAMMABLE GAS labels and placards. These are green, square-on-point, with the symbol of a cylinder in the upper third of the design and bear the words "NONFLAMMABLE GAS". Under the proposed rule, anhydrous ammonia would be classified as a poisonous gas and would, therefore, have to bear a POISON GAS label and placard. These are white with a black "skull and crossbones" symbol but the words "POISON GAS" or "POISONOUS GAS" would not be required. Labels and placards could be configured in any one of three ways: without any text; with the words "POISON GAS" across the center; or, for placards only, with the identification number across the center. Additionally, each package would have to be marked with the words "INHALATION HAZARD".

The general public, community planners, and emergency response personnel should have access to the best information concerning the hazards associated with a release of anhydrous ammonia. RSPA wants to ensure that the hazards are adequately communicated by any classification system, and questions the adequacy of the present system. On the other hand, RSPA is well aware that anhydrous ammonia has been and can be safely transported and it plays an undeniably important role in this nation's economy. It is the purpose of this notice to establish the basis for striking the proper balance between these two important public policy considerations. In this context, RSPA points out that nothing in the proposal would substantively affect the ability of farmers or others to use or transport anhydrous ammonia, or require the use of different packagings or conveyances for the material. Only labeling, placarding, and shipping paper descriptions for the material would be changed.

In an effort to assure that the comments to the proposal provide the maximum value in resolving the issues in this rulemaking proceeding, RSPA is seeking substantive information on the potential impacts of reclassifying this material. A discussion of these issues follows.

a. *Increased transportation costs.* Numerous commenters have stated that the change in the classification of anhydrous ammonia will increase its transportation costs. However, more data is needed in order to fully evaluate the impact of a reclassification on freight rates. Specific questions on the issue of freight rates appear at the end of this section of this document.

A second cost issue of concern to commenters is the potential for adverse impact on insurance rates and the availability of insurance if anhydrous ammonia were classed as a poisonous gas. Commenters should submit information on this point; substantive data to support commenters' views would be particularly useful. RSPA additionally solicits information from shippers, insurance companies, and state insurance commissions regarding

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the relationship of the proposed classification system and insurance rates.

With respect to the specific regulatory requirements regarding insurance, it should be noted that the proposed rule has no direct effect on the financial responsibility requirements for highway transport which are prescribed in section 30 of the Motor Carrier Act of 1980, as amended (Pub. L. 96–296) and codified in the Motor Carrier Safety Regulations (specifically, 49 CFR 387.9). Currently, anhydrous ammonia, because it is a hazardous substance, is subject to a financial responsibility requirement of $5 million for motor carriers that transport bulk packagings of more than 3,500 gallons capacity (in either intrastate or interstate transportation) and $1 million for other quantities (in interstate transportation only). Intrastate transportation of anhydrous ammonia in packages of 3,500 gallons or less is not subject to financial responsibility requirements.

b. *The displacement of anhydrous ammonia by more costly, less effective fertilizers.* Many commenters have stated that the new labeling requirements would alarm the public and lead to the displacement of anhydrous ammonia from the farm economy by other more costly materials. Additional comments to support this concern are requested; substantive data to support commenters' views would be particularly useful.

c. *Non-transportation impacts related to the reclassification of anhydrous ammonia.* Many concerns similar to those expressed about the transportation impacts of the reclassification of anhydrous ammonia have been expressed about fixed facilities, including siting restrictions, and employee health concerns. While siting restrictions for facilities and increased employee health protections are changes that may occur, these would result not from the reclassification of anhydrous ammonia but from environmental protection requirements mandated in 1986 in the Superfund Amendments and Reauthorization Act (SARA; Pub. L. 99–499).

A number of commenters expressed concern about potential adverse impacts on their businesses related to the appearance of skull and crossbones placards and labels on cylinders, storage tanks and transport vehicles containing anhydrous ammonia. In particular, businesses which use anhydrous ammonia in refrigeration systems and in diazo reproduction (i.e., blueprinting) systems believe that the proposed reclassification of anhydrous ammonia would result in extensive litigation based on employees' claims of exposure to a poisonous gas. Since the proposal would pertain to the same material now being used, and would not change packaging or containment requirements for it, it appears that any increased litigation risk would stem from changes to employee perceptions of anhydrous ammonia, based upon its reclassification. Is this characteristic correct? Additional comments are requested in order for RSPA to evaluate the actual impact of the proposal on the litigation exposure of employers.

Several commenters expressed concerns about the adverse public perception of poisonous gas being applied to the fields where crops are grown and to food products which are refrigerated in facilities using anhydrous ammonia refrigerating systems. These commenters stated that the public would perceive such food products to be tainted and that such products may not be exportable because foreign purchasers restrict the importation of foods treated with poisonous chemicals. RSPA requests information on whether the referenced restrictions apply to materials like anhydrous ammonia which do not leave a poisonous residue, or only to food products treated with certain poisonous fumigants and pesticides which in some instances may remain on the food product in residual form.

To assist RSPA in the further resolution of the issues discussed in this notice, interested parties are invited to comment on the foregoing issues, and in particular, on the following questions, supplying where possible any relevant analyses, studies or data.

1. (a) What are the current average freight charges, per ton, for transportation of anhydrous ammonia by rail tank car? By highway cargo tank? Upon what factors are these charges based?

(b) Assuming no changes in operating requirements, is there any basis for increasing freight rates for anhydrous ammonia as a result of the proposed reclassification of anhydrous ammonia as a "poisonous gas"? To what extent would rates be increased?

(Comments and data from rail and highway carriers would be particularly helpful.)

2. What are representative annual insurance rates for transportation of anhydrous ammonia in bulk (more than 3500 gallons) and non-bulk packages? Do rates differ for interstate and intrastate transportation?

3. How would the proposed classification of anhydrous ammonia impact insurance costs or availability for nurse tank operations?

4. What is the basis for increasing insurance rates for carriers of anhydrous ammonia as a result of the proposed reclassification of anhydrous ammonia as a "poisonous gas"? To what extent would rates be increased?

(Comments and data from state insurance commissions and insurance carriers with significant business with farm clients would be particularly helpful.)

Regulatory Alternatives

In addition to the issues discussed in the preceding section, RSPA also seeks substantive comments concerning available regulatory alternatives. RSPA is interested in achieving a practicable role that enhances public safety, is uniform where necessary for interstate commerce and secondarily for international commerce, and is not unduly burdensome or costly to those who must comply with the rule.

RSPA issued its proposal on the reclassification of gases which are toxic by inhalation as part of its continuing program to update and more accurately portray the hazards of toxic materials. Nevertheless, the number and tenor of comments to the public docket indicate that the notice may not have provided adequate explanation of the intent and effects of the proposal and may not have encouraged and elicited comments concerning all possible regulatory alternatives. Therefore, RSPA requests substantive comments concerning those regulatory alternatives available to it with respect to classification of gases, namely—

(1) Adoption of Class 2 (poisonous gas) as proposed in the original notice;

(2) Adoption of Class 2 as proposed, but with the inclusion of special provisions that would limit application of regulatory provisions (e.g., labeling, placarding, etc.), in whole or in part, for specific materials, quantities of materials, types of operations (e.g., transportation by farmers in nurse tanks), or other considerations;

(3) Alternative classification schemes. Examples might include substantive comments on the present nonflammable gas classification or the Canadian corrosive gas classification. This latter example is raised in light of a substantial number of comments that suggested this classification as an alternative to classification of anhydrous ammonia as a poisonous gas.

With these alternatives in mind, comments are solicited addressing the following questions:

(1) Is it important to communicate the health effects of anhydrous ammonia to the public and to emergency responders? What is the best way to communicate these effects? If symbols and words are necessary, which are appropriate and adequate to communicate so that appropriate breathing apparatus, protective clothing, and emergency response can be taken?

(2) How would each alternative impact shippers' and carriers' costs and ability to do business? How would each affect transportation safety?

(3) For alternatives involving special provisions, to what materials or categories of hazardous materials should the special provisions apply? To what quantities of materials? To what specific operations? To what types of vehicles (e.g., farm vehicles) or packagings?

Commenters are not limited to responding to the questions raised above and may submit any facts and views consistent with the intent of this notice.

Issued in Washington, DC, on November 7, 1988, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88–26206 Filed 11–10–88; 8:45 am]

BILLING CODE 4910–60–M

VOL
53

ISS
219

NO
14

1988

UMI

federal register

Monday
November 14, 1988

Part IV

Department of Education

34 CFR Part 280

Magnet Schools Assistance Program; Notice of Proposed Rulemaking

VOL 53 ISS 219 NO 14 1988 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 280

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Magnet Schools Assistance Program (MSAP). These amendments are needed to implement changes to the Magnet Schools Assistance Act (Act) (reauthorized as Title III of the Elementary and Secondary Education Act of 1965) made by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297). Most of the changes implement additions to and deletions from the statute. Included in these amendments are new selection criteria that address greater parental decisionmaking and involvement, and the applicant's capacity to continue the magnet schools program without Federal funds. In addition, special consideration is given to applicants that demonstrate a collaborative effort with institutions of higher education and community-based organizations. Amended sections of the regulations that reflect the Secretary's interpretation of provisions in Pub. L. 100–297 are explained under "Supplementary Information."

DATE: Comments must be received on or before December 29, 1988.

ADDRESS: All comments concerning these proposed regulations should be addressed to M. Patricia Goins, Acting Director, Office of School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–6245.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Annie R. Mack, Magnet Schools Assistance Program, 400 Maryland Avenue SW. (Room 2067, FOB #6), Washington, DC 20202–6440, (202) 732–4358.

SUPPLEMENTARY INFORMATION: In accordance with section 3011(a)(3) of the Act, the Secretary amends § 280.3 to exempt grantees under the MSAP from § 75.253(c) of the Education Department General Administrative Regulations (EDGAR). This section of EDGAR requires the reduction of a grantee's award by the amount of any funds it carries over from the previous year. In addition, a new § 280.42 has been added to the proposed regulations to implement section 3011(a)(2) of the Act, which limits to 15 percent of a local educational agency's (LEA) grant the amount of funds the LEA may carry over from one budget period to the next budget period. The House committee report indicates that this 15 percent cap is designed to encourage LEAs to spend grant funds within the year. In accordance with the statute, this limitation is waived for any year in which grants are not awarded in a timely manner.

Section 280.20 is amended by: (1) Adding a requirement that the LEA assure that it will carry out a high quality educational program that will encourage greater parental decisionmaking and involvement; and (2) adding a paragraph (g) that requires an LEA to describe in its application how assistance made available under this program will be used to promote desegregation and the manner in which the LEA will continue the magnet schools program after assistance under the MSAP is no longer available. In addition, these three factors will be evaluated through the selection criteria in § 280.31.

Section 280.31 is amended by: (1) Adding a paragraph (a)(2)(v), under "Plan of Operation," to address how assistance made available under this program will be used to promote desegregation; (2) revising paragraph (b)(2)(iv), under "Quality of key personnel," to conform to language used in EDGAR concerning nondiscriminatory employment practices; (3) revising paragraph (c)(2)(iii)(B), under "Quality of project design," to reflect the new statutory language concerning how the LEA will carry out a high quality educational program that will encourage greater parental decisionmaking and involvement; (4) and adding a paragraph (c)(2)(iv) to address the manner in which the LEA will continue the magnet schools program after assistance under the MSAP is no longer available.

Section 280.32 is amended by adding a paragraph (f) to give special consideration to applicants that demonstrate a collaborative effort with institutions of higher education and community-based organizations. Five points are added for this new selection factor.

Section 280.33 in the current regulations is redesignated as § 280.34. A new § 280.33 is proposed to explain how—in distributing funds appropriated for this program in excess of $75 million—the Secretary will give priority to applicants that did not receive funding in the last fiscal year of the previous funding cycle. After distributing the first $75 million appropriated for this program, the Secretary would give ten additional points to each remaining applicant that did not receive funding in the last fiscal year of the previous funding cycle. The funds in excess of $75 million would then be distributed to the highest ranking of all of the remaining applicants.

Other changes to the program include: Deleting eligibility factors and preferences for LEAs that received $1 million less under Chapter 2 of the Education Consolidation and Improvement Act than they did under the last year of the Emergency School Aid Act; adding definitions for "community-based organization," and "institution of higher education;" and revising new § 280.2(b) to clarify that, in addition to voluntary plans, the Secretary may approve as adequate under Title VI plans required by the Office for Civil Rights. Corrected authority citations to the United States Code are made throughout these proposed amendments to the regulations. A table of corrected authority citations for all of the sections of Part 280 will be published with the final regulations.

Executive Order 12606

These regulations will have a positive impact on the family and are consistent with the requirements of Executive Order 12606—The Family. The regulations strengthen the authority and participation of parents in the education of their children. For example, the regulations specifically require that LEAs will carry out a high quality educational program that will encourage greater parental decisionmaking and involvement.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Executive Order.

Regulatory Flexibility Act

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would impose minimal requirements to ensure the proper expenditure of program funds and would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

Sections 280.20, 280.31, and 280.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed amendments to the regulations.

All comments submitted in response to these proposed amendments to the regulations will be available for public inspection, during and after the comment period, in Room 2067 FOB #6, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Education Department, Elementary and secondary education, Grant programs-education, Magnet schools.

Dated: November 4, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.165, Magnet Schools Assistance Program.)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending Part 280 as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

1. The authority citation for Part 280 is revised to read as follows:

Authority: 20 U.S.C. 3021–3032, unless otherwise noted.

2. Section 280.2 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b) respectively, revising newly redesignated paragraph (b) and revising the authority for this section to read as follows:

§ 280.2 Who is eligible to apply for a grant?

* * * * *

(b) The LEA adopted and is implementing on either a voluntary basis or as required under Title VI of the Civil Rights Act of 1964—or, will adopt and implement if assistance is made available under this part—a plan that has been approved by the Secretary as adequate under Title VI.

(Authority: 20 U.S.C. 3022)

3. Section 280.3(a) is amended by removing "74 (Administration of grants)," adding, after "(Direct grant programs)," the following: "except that § 75.253(c) (relating to reducing a subsequent year's award by the amount remaining available from the grantee's current award) does not apply to this program." removing "and" before "79", removing the period at the end of the paragraph, and adding, in its place,", and 80 (Uniform Administrative Requirements for State and Local Governments)."

4. Section 280.4(b) is amended by adding the definitions of "Community-based organization" and "Institution of higher education" in aphabetical order to read as follows:

§ 280.4 What definitions apply to this program?

* * * * *

(b) * * *

"Community-based organization" means a private nonprofit organization that—

(1) Is representative of a community or a significant segment of a community; and

(2) Provides educational or related services to individuals in the community.

(Authority: 20 U.S.C. 2891(3))

* * * * *

"Institution of higher education" has the same meaning as in section 1201(a) of the Higher Education Act of 1965, as implemented in 34 CFR 600.4(a).

(Authority: 20 U.S.C. 2891(10))

* * * * *

5. Section 280.10 is amended by removing the reference "280.2(b)" in paragraph (c) and adding, in its place, "280.2(a)", and by revising paragraph (b) to read as follows:

§ 280.10 What types of projects does the Secretary assist?

* * * * *

(b) For the purposes of this part, an approved desegregation plan is a desegregation plan described in § 280.2 (a) or (b).

* * * * *

6. Section 280.20 is amended by revising paragraphs (b)(1), (b)(3), (b)(4) and (b)(5), and adding new paragraphs (b)(6) and (g) to read as follows:

§ 280.20 How does one apply for a grant?

* * * * *

(b) * * *

(1) Will use funds made available under this part for the purposes specified in section 3003 of the Act;

* * * * *

(3) Will not engage in discrimination based upon race, religion, color, national origin, sex, or handicap in the hiring, promotion, or assignment of employees of the agency or other personnel for whom the agency has any administrative responsibility;

(4) Will not engage in discrimination based upon race, religion, color, national origin, sex, or handicap in the mandatory assignment of students to schools or to courses of instruction within schools of the agency except to carry out the approved desegregation plan;

(5) Will not engage in discrimination based upon race, religion, color, national origin, sex, or handicap in designing or operating extracurricular activities for students; and

(6) Will carry out a high quality education program that will encourage greater parental decisionmaking and involvement.

* * * * *

(g) In addition to including the assurances required by this section, an LEA shall describe in its application—

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(1) How assistance made available under this part will be used to promote desegregation; and

(2) The manner in which the LEA will continue the magnet schools program after assistance under this program is no longer available.

* * * * *

7. Section 280.31 is amended by removing "and" at the end of paragraph (a)(2)(iii), removing the period at the end of paragraph (a)(2)(iv)(D) and adding, in its place, "; and," adding paragraph (a)(2)(v), revising paragraphs (b)(2)(iv) and (c)(2)(iii)(B), and adding paragraph (g) and revising the authority citation for the section to read as follows:

§ 280.31 What selection criteria does the Secretary use?

* * * * *

(a) * * *

(2) * * *

(v) How assistance made available under this program will be used to promote desegregation.

(b) * * *

(2) * * *

(iv) How the applicant, as part of its nondiscriminatory employment practices will ensure that its personnel are selected for employment without regard to race, religion, color, national origin, sex, age, or handicap.

(c) * * *

(2) * * *

(iii) * * *

(B) Carry out a high quality education program that will encourage greater parental decisionmaking and involvement.

* * * * *

(g) *Commitment and capacity.* (10 points)

(1) The Secretary reviews each application for information that shows how the applicant will continue the magnet schools program after assistance under this part is no longer available.

(2) The Secretary looks for information that shows the applicants—

(i) Commitment to the magnet schools program; and

(ii) Plan for gradual assumption of program costs.

* * * * *

(Authority: 20 U.S.C. 32021–3032)

8. Section 280.32 is amended by removing "(b) through (e)" from paragraph (a) and adding, in its place, "(b) through (f)", removing paragraphs (d)(1), (d)(2), and (d)(3) and the designation "(4)" preceding paragraph (d)(4), and by adding a new paragraph (f) to read as follows:

§ 280.32 How is special consideration given to applicants?

* * * * *

(f) *Collaborative efforts.* (5 points) The Secretary determines the degree to which the program or project for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, the appropriate State educational agency, or any other private organization.

* * * * *

§ 280.34 [Redesignated from § 280.33]

9. Section 280.33 is redesignated as § 280.34.

10. A new § 280.33 is added to read as follows:

§ 280.33 How does the Secretary select applications for new grants with funds appropriated in excess of $75 million?

(a) In selecting among applicants for funds appropriated for this program in excess of $75 million, the Secretary first identifies those remaining applicants that did not receive funds under this program in the last fiscal year of the previous funding cycle.

(b) The Secretary then awards ten additional points to each applicant identified under paragraph (a) of this section.

(Authority: 20 U.S.C. 3021(b)(2))

§ 280.40 [Amended]

11. Section 280.40(a) is amended by removing the words "expansion and" and adding, in their place, "expansion, continuation, or".

12. Section 280.42 is added to read as follows:

§ 280.42 What is the limitation on the amount of a grant an LEA may carry over into the next fiscal year?

(a) An LEA may not carry more than 15 percent of its grant award into a subsequent fiscal year.

(b) The Secretary does not apply the limitation in paragraph (a) of this section in any fiscal year where awards under the Magnet Schools Assistance Program are not made in a timely manner.

(Authority: 20 U.S.C. 3031(a)(2))

13. Section 280.50 is revised to read as follows:

§ 280.50 May a State reduce the amount of aid it gives an LEA?

No State may reduce the amount of State aid with respect to the provision of free public education or the amount of assistance received under Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965, as amended, in any school district of any local education agency within the State because of assistance made available to that agency under this part.

(Authority: 20 U.S.C. 3030(c))

[FR Doc. 88–25916 Filed 11–10–88; 8:45 am]
BILLING CODE 4000–01–M

federal register

Monday
November 14, 1988

Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Part 50

Notification, Investigation, Reports and Records of Accidents, Injuries, Illnesses, Employment, and Coal Production in Mines; Advance Notice of Proposed Rulemaking

VOL 53 ISS 219 NO 14 1988 UMI

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 50

Notification, Investigation, Report and Records of Accidents, Injuries, Illnesses, Employment, and Coal Production in Mines

AGENCY: Mine Safety and Health Administration, Labor .

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is in the process of reviewing the regulations in 30 CFR Part 50 which set forth the requirements for mine operators to investigate mine accidents and injuries; report mine accidents, injuries, illnesses, employment, and coal production; and maintain copies of these reports. The Agency plans to review all aspects of the existing regulations and related interpretations. Comments and information pertaining to any aspect of the regulations are invited. This notice also outlines specific issues on which MSHA is seeking comment and information from the mining community concerning the need for changes to Part 50 and the impact of these changes on the mining community.

DATE: All comments and information should be submitted by January 13, 1989.

ADDRESS: Comments should be sent to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, (703) 235–1910.

SUPPLEMENTARY INFORMATION: Part 50 sets forth investigation, recordkeeping, and reporting requirements. Mine operators are required to investigate each accident and occupational injury; report each accident, occupational injury or occupational illness to MSHA; and, maintain records of each accident and investigation report. The mine operators must also submit employment and coal production data. This information is used by MSHA and the mining community to identify safety and health problems and injury trends. MSHA also uses this information to determine national fatality and injury incidence rates of the mining industry.

The American Mining Congress (AMC) and the Bituminous Coal Operators' Association (BCOA) jointly have petitioned MSHA to institute a rulemaking proceeding to revise Part 50 and conform the reporting and recordkeeping system of MSHA with that of the Occupational Safety and Health Administration (OSHA).

MSHA is closely monitoring a study of the BLS/OSHA injury and illness recordkeeping reporting system. MSHA intends to work closely with these two Agencies to assure that injury and illness recordkeeping and reporting reflect a coordinated Departmental approach.

On December 11, 1986, MSHA distributed Program Circular No. 7014: Report on 30 CFR Part 50 (Notification Investigation, Reports and Records of Accidents, Injuries, Illnesses, Employment and Coal Production in Mines), also referred to as the "Part 50 Yellow Jacket". The 1986 Yellow Jacket was an update of two earlier reports issued in 1978 and 1980 explaining the reporting requirements and addressing frequently asked questions about Part 50. On March 14, 1988, MSHA requested comments on the Yellow Jacket on such matters as definitions and explanatory material. The information provided by the commenters will be considered in preparing any proposal that may result from this ANPRM.

Specific Issues Identified for Comment

In this advance notice of proposed rulemaking, MSHA is seeking comments and information on a number of issues. Commenters should provide detailed reasons to support their respective positions based upon particular experience and circumstances. MSHA requests comments on all relevant aspects of the provisions of Part 50 and on the following issues in particular:

General

—Under what conditions and in what manner should Part 50 apply to independent contractors working on mine property?

—Should MSHA consider collecting any additional data to address mine safety and health concerns? If so, what data should MSHA consider and why?

—Are all data currently being submitted to MSHA being used as a part of your safety and health program? If not, what data are not being used and why?

—Are these current MSHA published statistics which have little use for your safety and health program, e.g. injury severity which is based on scheduled time changes, etc.? If so, what are they and give your reasons?

Definitions

Several terms used in Part 50 have been defined in this section to clarify the operators compliance responsibility. The definitions include such terms as "accident", "occupational injury", and "occupational illness."

—How and why should any of the definitions be revised?

—What should "medical treatment" include?

—What should "first aid" constitute as distinguished from "medical treatment"?

—Should a time limit be added to the criteria for distinguishing between first aid and medical treatment injuries, If so, give specifics.

Investigations

—How could operator investigation requirements be improved and reduce the burden on the industry?

—What specific guidance, if any, should be provided on the format and content of operator investigation reports?

Reporting

—Are there ways that accident, injury, and illness data could be more effectively and efficiently gathered? If so, what alternatives should be considered for reporting and collecting this information?

—Should operators be required to report an occupational illness they are made aware of when the affected person is no longer employed at the mine? If so, under what circumstances? Give detailed rationale.

—Under what situations should an injury be considered a recurrence of a previous injury and not be reported as an injury?

—Should there be limits on the reporting of occupationally-related illnesses, e.g. "minor" or "first aid" illnesses would not be reportable? If so, how should the criteria be written?

—Would a list of recognizable illnesses and their relation to specific workplace exposure be helpful to operators in determining what illnesses are reportable? If so, give examples of such a list.

Form 7000–1 Criteria

Mine operators are required to submit to the Agency an MSHA Form 7000–1 for each accident, occupational injury, and occupational illness that occurs on mine property. Sections 50.20–1 through 50.20–7 set forth the instructions and criteria for completion and distribution of this form.

—What specific revisions to the form, terminology, and instructions should MSHA consider?

—Which criteria for processing and completing Form 7000–1 should be improved or clarified?

Verification

—What are the best means for MSHA to effectively verify compliance with Part 50 requirements?

—What types of records or information sources should MSHA check to verify compliance?

List of Subjects in 30 CFR Part 50

Reporting and recordkeeping requirements, Mine safety and health.

Date: November 8, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88–26223 Filed 11–10–88; 8:45 am]

BILLING CODE 4510–43–M

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 3614/Pub. L. 100–605
To authorize a study of the Hanford Reach of the Columbia River, and for other purposes. (Nov. 4, 1988; 102 Stat. 3043; 2 pages) Price: $1.00

S. 1851/Pub. L. 100–606
Genocide Convention Implementation Act of 1987 (the Proxmire Act). (Nov. 4, 1988; 102 Stat. 3045; 3 pages) Price: $1.00

S. 2689/Pub. L. 100–607
Health Omnibus Programs Extension of 1988 (Nov 4, 1988; 102 Stat. 3048; 126 pages) Price: $3.50

H.R. 1473/Pub. L. 100–608
To designate the building which will house the United States District Court for the Eastern District of Texas in Lufkin, Texas, as the "Ward R. Burke United States Courthouse." (Nov. 5, 1988; 102 Stat. 3174; 1 page) Price: $1.00

H.R. 2756/Pub. L. 100–609
Granting the consent and approval of Congress to the addition of the State of Ohio as a party to the Middle Atlantic Interstate Forest Fire Protection Compact. (Nov. 5, 1988; 102 Stat. 3175; 1 page) Price: $1.00

H.R. 4517/Pub. L. 100–610
Outer Continental Shelf Operations Indemnification Clarification Act of 1988. (Nov. 5, 1988; 102 Stat. 3176; 3 pages) Price: $1.00

H.R. 4574/Pub. L. 100–611
To amend title 5, United States Code, with respect to certain programs under which awards may be made to Federal employees for superior accomplishments or cost savings disclosures, and for other purposes. (Nov. 5, 1988; 102 Stat. 3179; 1 page) Price: $1.00

H.R. 5104/Pub. L. 100–612
Federal Property Management Improvement Act of 1988. (Nov. 5, 1988; 102 Stat. 3180; 3 pages) Price: $1.00

H.R. 5552/Pub. L. 100–613
To provide that the Consumer Product Safety Commission amend its regulations regarding lawn darts. (Nov. 5, 1988; 102 Stat. 3183; 1 page) Price: $1.00

H.J. Res. 438/Pub. L. 100–614
Designating November 4, 1988, as "National Teacher Appreciation Day." (Nov. 5, 1988; 102 Stat. 3184; 1 page) Price: $1.00

S. 1382/Pub. L. 100–615
Federal Energy Management Improvement Act of 1988. (Nov. 5, 1988; 102 Stat. 3185; 7 pages) Price: $1.00

S. 1991/Pub. L. 100–616
Uranium Mill Tailings Remedial Action Amendments Act of 1988. (Nov. 5, 1988; 102 Stat. 3192; 2 pages) Price: $1.00

S. 2201/Pub. L. 100–617
To extend for an additional 8-year period certain provisions of title 17, United States Code, relating to the rental of sound recordings, and for other purposes. (Nov. 5, 1988; 102 Stat. 3194; 1 page) Price: $1.00

S. 2361/Pub. L. 100–618
Video Privacy Protection Act of 1988 (Nov. 5, 1985; 102 Stat. 3195; 3 pages) Price: $1.00

S. 2685/Pub. L. 100–619
To amend the Hunger Prevention Act of 1988 to make a technical correction. (Nov. 5, 1988; 102 Stat. 3196; 1 page) Price: $1.00

S.J. Res. 261/Pub. L. 100–620
Designating the month of November 1988 as "National Alzheimer's Disease Month." (Nov. 5, 1988; 102 Stat. 3199; 1 page) Price: $1.00

S.J. Res. 272/Pub. L. 100–621
To designate November, 1988, as "National Diabetes Month." (Nov. 5, 1988; 102 Stat. 3200; 1 page) Price: $1.00

S.J. Res. 306/Pub. L. 100–622
Designating the day of August 7, 1988, as "National Lighthouse Day." (Nov. 5, 1988; 102 Stat. 3201; 1 page) Price: $1.00

S.J. Res. 319/Pub. L. 100–623
To designate the period commencing November 6, 1988, and ending November 12, 1988, as "National Disabled Americans Week." (Nov. 5, 1988; 102 Stat. 3202; 2 pages) Price: $1.00

S.J. Res. 378/Pub. L. 100–624
Designating the week of October 2 through 8, 1988, as "National Wild and Scenic Rivers Act Week." (Nov. 5, 1988; 102 Stat. 3204; 1 page) Price: $1.00

H.R. 3146/Pub. L. 100–625
Charity Games Advertising Clarification Act of 1988. (Nov. 7, 1988; 102 Stat. 3205; 2 pages) Price: $1.00

H.R. 4118/Pub. L. 100–626
Public Telecommunications Act of 1988. (Nov. 7, 1988; 102 Stat. 3207; 6 pages) Price: $1.00

H.R. 4210/Pub. L. 100–627
To authorize appropriations to carry out titles II and III of the Marine Protection, Research, and Sanctuaries Act of 1972, to establish the National Oceans Policy Commission, and for other purposes. (Nov. 7, 1988; 102 Stat. 3213; 11 pages) Price: $1.00

H.R. 4352/Pub. L. 100–628
Stewart B. McKinney Homeless Assistance Amendments Act of 1988. (Nov. 7, 1988; 102 Stat. 3224; 62 pages) Price: $1.75

H.R. 4919/Pub. L. 100–629
To approve the governing international fishery agreement between the United States and the Union of Soviet

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Socialist Republics, and for other purposes. (Nov. 7, 1988; 102 Stat. 3286; 3 pages) Price: $1.00

H.R. 5334/Pub. L. 100-630

Handicapped Programs Technical Amendments Act of 1988. (Nov. 7, 1988; 102 Stat. 3289; 29 pages) Price: $1.00

H.J. Res. 573/Pub. L. 100-631

To designate the week beginning November 13, 1988, as "National Craniofacial Awareness Week." (Nov. 7, 1988; 102 Stat. 3318; 1 page) Price: $1.00

H.J. Res. 654/Pub. L. 100-632

Designating November 4 through 10, 1988, as the "Week of Remembrance of Kristallnacht." (Nov. 7, 1988; 102 Stat. 3319; 1 page) Price: $1.00

S. 850/Pub. L. 100-633

To amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers System. (Nov. 7, 1988; 102 Stat. 3320; 2 pages) Price: $1.00

S.J. Res. 301/Pub. L. 100-634

Designating January 20, 1989, as "National Skiing Day." (Nov. 7, 1988; 102 Stat. 3322; 1 page) Price: $1.00

S.J. Res. 342/Pub. L. 100-635

To designate the week of November 28 through December 5, 1988, as "National Book Week." (Nov. 7, 1988; 102 Stat. 3323; 1 page) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.115New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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VOL
53
ISS
220
NO
15
1988
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11-15-88
Vol. 53 No. 220

federal register

Tuesday
November 15, 1988

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SECOND CLASS NEWSPAPER
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VOL
53
ISS
220
NO
15
1988
UMI

11-15-88
Vol. 53 No. 220
Pages 45881-46078

federal register

Tuesday
November 15, 1988

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VOL
53
ISS
220
NO
15
1988
UMI

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Presidential Documents

Title 3—

The President

Proclamation 5906 of November 10, 1988

National China-Burma-India Veterans Appreciation Day, 1988

By the President of the United States of America

A Proclamation

More than 40 years after the end of World War II, America is a Nation proud, strong, and at peace. We should be ever mindful, however, that the peace and the freedom we now enjoy have been won through the sacrifices of those who served during times of conflict.

Many courageous Americans fought long and arduously to stop the Japanese advance in the Far East during World War II. These patriots surely deserve our admiration and respect. We should especially recognize the heroism and unwavering purpose of those who took part in the battles and campaigns of the China-Burma-India Theater of Operations, scene of some of the most intense fighting during the war. Thousands risked their lives to transport military supplies across rugged and treacherous terrain after the fall of Burma and the loss of the famous Burma supply route in 1942. Many others flew with the U.S. Air Transport Command over a 500-mile route, the "Hump," which stretched over the Himalayas from India to Western China. When the first supplies were brought into China over the "Stilwell Road" in 1945, a victory was won for all free nations.

It is most fitting that on Veterans Day weekend, 1988, we acknowledge the special contributions made by these fellow citizens in our country's cause.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 12, 1988, as National China-Burma-India Veterans Appreciation Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-26560
Filed 11-14-88; 11:09 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5907 of November 10, 1988

National Firefighters Day, 1988

By the President of the United States of America

A Proclamation

Each year, fires claim some 6,000 lives in our country and destroy property worth $10 billion. The toll would be much higher were it not for the skilled and dedicated individuals who are our Nation's firefighters. These Americans, our friends and neighbors, confront danger every day as they protect our lives, homes, and communities. They exemplify the very best in the American spirit. On National Firefighters Day, 1988, and all year long, we owe municipal, volunteer, and all other firefighters our heartfelt thanks, our utmost respect, and our thorough cooperation in their fire prevention, rescue, and safety efforts.

Last year, 127 firefighters gave their lives in the line of duty. Let us pause in solemn and prayerful remembrance of these fallen heroes and of all firefighters who have given their lives through the years. Let us also be sure to extend our support and sympathy to their brave families.

From the days of firefighters' hand-drawn rigs in the 18th century to those of the 19th-century horse-drawn engines, and on to today's modern fire and rescue vehicles, Americans young and old have thrilled, during many a parade on many a Main Street or Maple Avenue throughout our land, to colorful and exciting displays of powerful firefighting equipment. But we have thrilled even more in understanding and appreciation of firefighters' critical mission and their indispensable spirit of courage, service, and sacrifice. May such recognition always inspire us to salute and thank America's firefighters for all they do for each of us.

The Congress, by House Joint Resolution 649, has designated November 12, 1988, as "National Firefighters Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 12, 1988, as National Firefighters Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-28561]
Filed 11-14-88; 11:10 am]
Billing Code 3195-01-M

VOL
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ISS
220
NO
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General); Interest on Back Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting an interim rule as a final rule implementing a provision of Pub. L. 100–202 that provides for the payment of interest on back pay awards to Federal employees. This rule establishes the interest rate or rates to be used in the computation, the frequency of compounding, the period of time for which interest accrues, and certain other computational procedures.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: John P. Cahill, (202) 632–5056.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) published an interim rule in the **Federal Register** (53 FR 18071, May 20, 1988), providing that interested persons could file comments through July 19, 1988. We received comments from 10 agencies, 1 labor organization, and 1 individual.

Comments on Entitlement to Interest

Three agencies requested additional guidance on determining entitlement to interest when various specific types of pay, allowances, and differentials—e.g., within-grade increases—are withdrawn, reduced, or denied. Although enactment of the provision for interest on back pay emphasized the variety of situations falling within the scope of the back pay law, it did not change the types of personnel actions falling within the scope of the law. Therefore, the interest provision applies whenever an unjustified or unwarranted personnel action results in the withdrawal, reduction, or denial of pay, allowances, and differentials. Detailed guidance may be found in Federal Personnel Manual Supplement 990–2, Book 550, Subchapter S–8.

Agencies are reminded that under the back pay law, the term "unjustified or unwarranted personnel action" includes both personnel and pay actions (alone or in combination), as well as the omission or failure to take an action or confer a benefit. For example, if an agency, through administrative error, fails to implement a pay action such as a within-grade increase (after approval by the properly authorized official), the employee is made whole by issuing the appropriate payment of back pay and interest. If the error occurs before approval by the properly authorized official, back pay and interest are appropriate only if (1) the error resulted in the failure to carry out a nondiscretionary administrative regulation or policy, or (2) the employee was deprived of a right granted by applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a legally enforceable provision of a collective bargaining agreement.

One agency commented that interest accrual should begin on the date an agency is "notified of a delinquency." Since an agency normally does not learn of its obligation to issue payment of back pay and interest until it receives a back pay award from a third party or discovers an administrative error, this suggestion would preclude the accrual of interest for nearly the entire period during which the employee actually suffered a withdrawal, reduction, or denial of pay, allowances, and differentials. Such a provision would be inconsistent with the statutory requirement to begin interest accrual on the "effective date of the withdrawal involved."

The same agency commented that employees should be entitled to interest only when there was "intent" by an agency to withdraw, reduce, or deny pay. We find no basis in the legislative history of the back pay law for limiting entitlement to back pay or interest based on evaluating an agency's intent. An employee may suffer a withdrawal, reduction, or denial of pay, allowances, and differentials regardless of an agency's intent.

The same agency also commented that the final rule should limit entitlement to interest when an employee intentionally fails to notify an agency of an unjustified or unwarranted personnel action resulting in entitlement to back pay and interest. We believe such a limitation would tend to relieve agencies of responsibility for detecting and correcting unjustified or unwarranted personnel actions as soon as is practicable and would therefore be inconsistent with the purpose of the back pay law.

Comments on Reduction for Earnings from Other Employment

One agency commented that the final rule should state explicitly whether unemployment compensation benefits are included in the phrase "earnings from other employment." The final rule merely incorporates the existing concept of "earnings from other employment," as provided by statute. Guidance provided in Federal Personnel Manual Supplement 990–2, Book 550, Subchapter S–8, indicates that this concept applies only to amounts earned in employment and self-employment. Therefore, unemployment compensation benefits are not considered "earnings from other employment." Because the issue is discussed in existing guidance, we believe it is unnecessary to specifically mention unemployment compensation benefits in the final rule.

A labor organization commented that prorating earnings from other employment could be unfair to employees who have no outside earnings during a significant period of time covered by a back pay award when that period is followed by a period of time with outside earnings. The labor organization suggested deducting the actual corresponding amount of earnings from other employment from each withdrawal of pay, allowances, and differentials. The final rule adopts a proration method in deference to the established principle that the total amount of earnings from other employment must be deducted from the total amount of back pay. In some cases, the suggested computation method would result in deducting the total amount of earnings from other employment for the purpose of computing the amount of back pay, but deducting a smaller amount of earnings from other employment for the purpose

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of computing interest on back pay. Such a discrepancy would be inconsistent with the purpose of the back pay law. Moreover, a proration method may actually advantage employees whose earnings from other employment occur near the beginning of the period covered by the back pay award or during periods of relatively high interest rates. In addition, the suggested method would present administrative difficulties in verifying and matching each withdrawn amount of pay, allowances, and differentials to a corresponding amount of earnings from other employment.

Comments on Administrative Burden

Seven agencies commented on the administrative burden of computing and issuing payments of interest on back pay in cases involving small amounts of interest or brief delays in issuing payment of pay, allowances, and differentials. The agencies suggested various regulatory remedies, including (1) paying interest only when the amounts of back pay and/or interest exceed minimum dollar amounts, and (2) allowing grace periods for the correction of unjustified or unwarranted personnel actions. We do not believe the statute authorized OPM to prescribe a regulation allowing agencies to forgo the payment of small amounts of interest on back pay. With regard to the second suggestion, we do not believe additional rulemaking is needed since the statute and final rule already permit adequate administrative flexibility in cases where the agency issues payment of back pay within 30 days of the withdrawal, reduction, or denial of pay, allowances, and differentials.

The final rule provides that an agency may end the accrual of interest up to 30 days before the date payment of interest is issued—i.e., the date an agency effectively discharges its fiscal obligation to issue payment of back pay and interest. If an agency can discharge its fiscal obligation within 30 days of the withdrawal, reduction, or denial, it may, in effect, end the accrual of interest before accrual could begin. As a result, the amount of interest payable would be zero.

For example, after approval by the properly authorized official, an agency intends to make an employee's within-grade increase effective with the pay period beginning November 20, 1988. This change should be reflected in the pay check issued December 13, 1988. Due to an administrative error, the within-grade increase is not reflected in the employee's pay check until the December 27, 1988, pay date. Payment of the within-grade increase amount that should have been paid on December 13, 1988, is also issued on December 27, 1988.

Since the agency effectively discharged its fiscal obligation by issuing payment of back pay on December 27, it may end the accrual of interest as early as November 27. Since interest does not begin to accrue until December 13 (the date of the withdrawal), no interest would accrue.

One individual commented that, in certain situations, the phrase "payment of back pay" may be misinterpreted as the actual money amount of the back pay check issued to the employee. This individual noted that the amount of the payment of back pay subtracted from the accrued amount of back pay and interest should be the amount of back pay prior to deductions for erroneous payments and miscellaneous deductions if that amount is larger than the actual amount issued to the employee. While we do not believe that this observation requires a change in the final rule, future guidance will emphasize that the amount of any payment of back pay to be subtracted from the interest computation includes amounts deducted from that payment (except outside earnings, which have already been deducted from the interest computation).

Finally, one agency commented that the final rule should further define the date interest accrual ends. The final rule incorporates as much flexibility as the statute permits—i.e., agencies may end interest accrual on any date not more than 30 days before the date the interest payment is issued. We do not believe additional definition is needed.

Tax Treatment

The Internal Revenue Service has issued an opinion on the tax treatment of interest on back pay. The opinion is consistent with the tentative guidance provided in Federal Personnel Manual Letter 550–78, dated May 31, 1988. Interest payments are not wages for Federal income tax or Federal Insurance Contributions Act (FICA) purposes, nor are they subject to withholding of FICA tax. In most cases, agencies should not withhold Federal income tax from interest payments unless the employee has failed to provide a social security number or the Internal Revenue Service has notified the agency that the social security number provided is incorrect. However, withholding may be required for nonresident alien employees. Agencies may contact the Internal Revenue Service for guidance in individual cases. IRS also advises that agencies should issue Form 1099–INT, Interest Income, to employees receiving interest payments of $600 or more.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Civil defense, Government employees, Wages.

Office of Personnel Management.
Constance Horner,
Director.

PART 550—[AMENDED]

Accordingly, OPM is adopting the interim rule amending 5 CFR Part 550 published in the **Federal Register** (53 FR 18071, May 20, 1988) as a final rule without change.

[FR Doc. 88–26278 Filed 11–14–88; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 630

Absence and Leave; Temporary Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management is revising the termination date of the voluntary leave transfer program from September 30, 1988, to September 30, 1989. This is a result of the enactment of Pub. L. 100–440, signed by the President on September 22, 1988, which extends OPM's authority to conduct a voluntary leave transfer program in the Federal Government through fiscal year 1989.

DATES: This interim rule is effective retroactively to October 1, 1988, and will expire on September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Martha Hoehn, (202) 632–5056.

SUPPLEMENTARY INFORMATION: Pub. L. 100–440, signed by the President on September 22, 1988, authorizes the extension of the fiscal year 1988 voluntary leave transfer program through fiscal year 1989. The termination date of the extended voluntary leave transfer program is September 30, 1989.

Pursuant to section 553(b)(3)(B) and (d)(3) of Title 5, United States Code, I find that good cause exists for waiving the general notice of proposed

rulemaking and for making this amendment retroactively effective to October 1, 1988. The notice and the 30-day delay in the effective date are being waived because of the need to continue the voluntary leave transfer program without interruption.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees; Employee benefit plan.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, the Office is amending Part 630 of Title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 is revised to read as set forth below:

Authority: 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under Pub. L. 100–202, 100–284, and 100–440.

2. In § 630.913, paragraph (a) is revised to read as follows:

§ 630.913 Termination of temporary leave transfer program.

(a) The temporary leave transfer program shall terminate on September 30, 1989.

* * * * *

[FR Doc. 88–26277 Filed 11–14–88; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule published in the **Federal Register** on January 5, 1988 (53 FR 107) which amended 7 CFR Part 1430 to implement a two and one-half (2½) cents per hundredweight reduction in the price received by producers for all milk produced within the forty-eight contiguous states and marketed for commercial use in calendar year 1988.

EFFECTIVE DATE: November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph E. Chervenic, Fiscal Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–3679. A final regulatory Impact Analysis for this final rule is available upon request.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulations 1512–1 and has been classified "nonmajor". It has been determined that the provisions of this rule will not result in an annual effect on the national economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule-making with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases—10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An interim rule, published on January 5, 1988, provided for a reduction of 2½ cents per hundredweight to be made in the price received by producers for all milk produced within the forty-eight contiguous states of the continental United States and marketed by producers for commercial use during calendar year 1988. The 1988 calendar year reduction in producer proceeds required by the 1987 Act was implemented by an interim rule published on January 5, 1988, in the **Federal Register** (53 FR 107). The comment period ended March 7, 1988. The reduction is required by an amendment to section 201 of the Agricultural Act of 1949 which was enacted in the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). No comments were received and it was determined that no modifications of the rule were needed.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Final Rule

Accordingly, with respect to 7 CFR Part 1430—*Dairy Products*, Subpart—*Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1988 to December 31, 1988:*

PART 1430—[AMENDED]

1. The authority citation for the subpart shall continue to read as follows:

Authority: Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446); Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*), unless otherwise noted.

2. The interim rule published in the **Federal Register** on January 5, 1988 (53 FR 107) is adopted as a final rule without change.

Signed at Washington, DC, on November 9, 1988.

Vern Neppl,
Acting Executive Vice President, Commodity Credit Corporation.

[FR. Doc. 88–26368 Filed 11–14–88; 8:45 am]
BILLING CODE 3410–05–M

Farmers Home Administration

7 CFR Part 1956

Debt Settlement; Community and Business Programs; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule regarding debt settlement on Community Program Loans and insured Business and Industry loans published April 21, 1988 (53 FR 13098). In this final rule, a portion of Subpart C of 7 CFR Part 1956, § 1956.101 was omitted. The intent of this action is to insert the missing portion.

FOR FURTHER INFORMATION CONTACT: Susan G. Wieferich, Senior Loan Officer, Program Management Branch,

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Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6320, South Agriculture Building, Washington, DC 20250; telephone (202) 382–1490.

SUPPLEMENTARY INFORMATION:

Intergovernmental Review

The final rule that is being corrected by this action affects the following FmHA programs listed in the Catalog of Federal Domestic Assistance:

Sec.
10.414 Resource, Conservation and Development Loans.
10.418 Water and Waste Disposal Systems for Rural Communities.
10.419 Watershed and Flood Prevention Loans.
10.421 Indian Tribes and Tribal Corporations.
10.422 Business and Industry Loans.
10.423 Community Facility Loans.

All of the above programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, except Indian Tribes and Tribal Corporations.

The final rule that is being corrected by this action affects the following FmHA programs which are not listed in the Catalog of Federal Domestic Assistance:

Irrigation and Drainage Loans
Shift-in-land-use (Grazing) Loans
Timber Development Loans
Economic Opportunity Cooperative Loans

For the reasons set forth in 7 CFR Part 3015, Subpart V, Intergovernmental Review of Department of Agriculture Programs and Activities (December 1, 1983), all of the above programs are excluded from the scope of Executive Order 12372, except Irrigation and Drainage loans.

List of Subjects in 7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

PART 1956—DEBT SETTLEMENT [CORRECTED]

Accordingly, the Farmers Home Administration is correcting Subpart C of 7 CFR Part 1956, § 1956.101, published April 21, 1988 (53 FR 13098), page 13100, as follows:

1. The authority citation for Part 1956 reads as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Debt Settlement—Community and Business Programs

2. Section 1956.101 is revised to read as follows:

§ 1956.101 Purpose.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Water and Waste Disposal System loans; Community Facility loans; Association Recreation loans; Watershed loans and advances; Resource, Conservation and Development loans; Rural Renewal loans; insured Business and Industry loans; Irrigation and Drainage loans, Shift-in-land-use loans and Indian Tribal Land Acquisition loans. Settlement of claims against third party converters and settlement of nonprogram loans, Timber Development loans and Economic Opportunity Cooperative loans is not authorized under this part; settlement under these programs is handled pursuant to the Federal Claims Collection Standards, 4 CFR Parts 101 through 105.

Date: October 4, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–26369 Filed 11–14–88; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Part 310

[Docket No. 85–018F]

Disposition of Livestock Thyroid Glands and Laryngeal Muscle Tissue

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to provide that livestock thyroid glands and the adjacent laryngeal muscle tissue be classified as unfit for human consumption and handled as inedible product. This action is being taken as a result of the health hazard of thyrotoxicosis associated with the consumption of meat trimmings containing cattle thyroid glands. The final rule will assure that thyroid glands are not included in meat trimmings used in the preparation of meat products.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mark T. Mina, Acting Assistant Deputy Administrator, Meat and Poultry Inspecton Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3697.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator, FSIS, has determined that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule serves to classify the laryngeal muscle tissue and thyroid glands as inedible. This action is a result of an outbreak of thyrotoxicosis which was associated with the consumption of beef products made from trimmings containing cattle thyroid glands. This final rule will protect consumers by prohibiting the use of thyroid glands and laryngeal muscle tissue for human food.

Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). Therefore, a regulatory flexibility analysis is not required. As a measure to protect the public from adulterated products, in August 1985, FSIS issued a notice declaring that thyroid glands and larynxes and surrounding laryngeal muscle tissue would be handled as inedible product. Subsequently, FSIS determined that it was unnecessary to treat the larynx as inedible, since the larynx can be separated from the laryngeal muscle tissue without including any thyroid gland tissue. The larynx is that part of the upper respiratory tract composed of cartilage and muscle which contains the vocal cords. The laryngeal muscle tissue surrounds the larynx. Therefore, FSIS's previous determination, announced in the 1985 notice that the larynx was inedible, is rescinded by this rulemaking. This action will permit the use of the larynx as edible tissue and will positively affect those establishments which choose to use it as edible product. In that regard, this rule is less restrictive than the requirements previously instituted at official establishments, as the larynxes will not be handled as inedible.

Background

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary is responsible for assuring that meat and meat food products distributed to consumers are wholesome and not adulterated. Section 1(m)(1) of the FMIA (21 U.S.C. 601(m)(1)) provides that any carcass, part thereof, meat or meat food product is adulterated "if it bears or contains any poisonous or deleterious substance which may render it injurious to health;

* * * "Furthermore, section 1(m)(3) of the FMIA (21 U.S.C. 601(m)(3)) states that any carcass, part thereof, meat, or meat food product is adulterated "if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food; * * *

In August 1985, the Minnesota Department of Agriculture notified FSIS of an outbreak of thyrotoxicosis in portions of Minnesota, South Dakota, and Iowa. Thyrotoxicosis is a condition resulting from excess thyroid hormone, thyroxin, in the blood. The symptoms include sleeplessness, nervousness, increased heart rate, shortness of breath, fatigue, excessive sweating, and weight loss. Thyrotoxicosis can be serious, especially in persons with pre-existing heart disease.

It is suspected that there are a number of possible causes of thryrotoxicosis. Epidemiologic investigations, conducted as a result of this outbreak, have strongly indicated an association of thyrotoxicosis with the consumption of certain ground beef products made from meat trimmings containing cattle thyroid glands.[1] It appears that periodic intake of livestock thyroid tissue results in increased amounts of thyroxin in the human body, causing a potentially severe effect.

Except for livers, testicles and thymus, livestock glands are not used as human food (see § 318.1(g) of the Federal meat inspection regulations (9 CFR 318.1(g)). Livestock glands are sold, however, for pharmaceutical use as provided under § 314.9 of the regulations (9 CFR 314.9). Although the thyroid gland is not used for human food, it has been common practice for some establishments to trim adjacent muscle tissue and sell the tissue as trimmings for use in various meat products, such as ground beef. This tissue (laryngeal muscle tissue) surrounds the larynx and in cattle accounts for approximately 2 to 3 ounces of edible meat product per carcass. The thyroid gland weighs an average of 37 grams or about 1 ounce and is closely aligned with the muscle tissue surrounding the larynx.

Upon being informed of the association between thyrotoxicosis and consumption of cattle thyroid glands, FSIS promptly took action to determine how and why the thyroid glands were being incorporated into the edible meat trimmings. Investigations soon revealed that in trimming laryngeal muscle tissue, some establishments were cutting too deeply, and thus, were retaining all or a significant portion of the thyroid gland. As a result, the owners of a beef slaughtering establishment in Minnesota voluntarily recalled all affected beef trimmings and ground beef products prepared with the affected beef trimmings. In addition, the largest official establishments—producers of approximately 80 percent of all such beef trimmings nationwide—voluntarily ceased using the laryngeal muscle tissue for trimmings.

On August 29, 1985, FSIS issued on FSIS Notice to Agency personnel, official establishments, and other affected parties advising them that, effective immediately, the larynx, including the thyroid gland, would be handled as "inedible" product.[2] Due to the similar coloration and close proximity of the thyroid gland and laryngeal muscle tissue, FSIS determined it to be impractical to attempt to separate the thyroid gland tissue and laryngeal tissue. Thus, all such tissue was deemed as inedible.

Proposal and Response to Comments

On December 15, 1986, FSIS issued a proposed rule to amend the Federal meat inspection regulations by specifically classifying the thyroid glands and laryngeal muscle tissue of all livestock species as inedible and not fit for human consumption (51 FR 44920). FSIS determined that since the larynx itself can be separated without including any thyroid gland tissue, the proposal would not address the larynx.

As inedible product, the thyroid glands and laryngeal muscle tissue may be distributed for pharmaceutical use as prescribed in § 314.9 or § 325.19(c) of the Federal meat inspection regulations (9 CFR 314.9 or 325.19(c)), provided they are labeled in accordance with § 316.13(f) of the Federal meat inspection regulations (9 CFR 316.13(f)). If not so handled, it was proposed such inedible product would be disposed of by tanking, incineration, or denaturing as set forth in § 314.1 or § 314.3 of the Federal meat inspection regulations (9 CFR 314.1 or 314.3).

FSIS received two comments in response to the proposal—one from the State of Minnesota, Department of Agriculture, voicing full support and one from a law firm requesting a revision to the proposal. The law firm represents various companies that manufacture and distribute thyroid-containing products in tablet form which, as claimed in the comment, are regulated as "food" under the Federal Food, Drug, and Cosmetic Act (FFDCA). The commenter further claimed that manufacturing processes used by these companies remove thyroxin to an amount that does not constitute a health hazard. The commenter requested that the proposal be revised to allow the distribution of thyroid and laryngeal muscle tissue for use as "food" when processed to remove thyroxin to insignificant amounts. Otherwise, if the proposal were adopted, as written, thyroid glands would not be available for use in such "food" products.

The Food and Drug Administration (FDA), responsible for implementing the FFDCA, has advised this Agency that it maintains the position that thyroid-containing products on the market are regarded as "drugs" within the meaning of section 201(g) of the FFDCA, and not "food." FDA further maintains that the consumption of unknown amounts of exogenous "thyroid" of unknown hormonal content represents a clear danger to patients with cardiovascular impairment and certain elderly persons. Therefore, FDA believes such products should be marketed only as prescription drugs with adequate directions for use under the supervision of licensed practitioners. In addition, FDA contends that since the products are without apparent nutritional value if consumed in normal amounts, the thyroid-containing tablets would appear to be distributed with an implied therapeutic value.

Because FDA regards thyroid-containing products as drugs, FSIS sees no reason to modify the proposed rule, which is being issued as published.

List of Subjects in 9 CFR Part 310

Carcasses and parts, Meat inspection.

For reasons set forth in the preamble, Title 9, Part 310 of the Code of Federal Regulations is amended as set forth below.

PART 310—[AMENDED]

1. The authority citation for Part 310 continues to read as set forth below:

[1] Preliminary Summary, "Epidemiologic Investigation of an Outbreak of Thyrotoxicosis in Southwestern Minnesota, Eastern South Dakota and Northwestern Iowa," Minnesota Department of Health and Centers for Disease Control. A copy is available for public inspection in the office of the FSIS Hearing Clerk.

[2] This notice is available for public inspection in the office of the FSIS Hearing Clerk.

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Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254(b).

2. Section 310.15 is added to read as follows:

§ 310.15 Disposition of thyroid glands and laryngeal muscle tissue.

(a) Livestock thyroid glands and laryngeal muscle tissue shall not be used for human food.

(b) Livestock thyroid glands and laryngeal muscle tissue may be distributed to pharmaceutical manufacturers for pharmaceutical use in accordance with § 314.9 or § 325.19(c) of this subchapter, if they are labeled in accordance with § 316.13(f) of this subchapter. Otherwise, they shall be disposed of at the official establishment in accordance with § 314.1 or § 314.3 of this subchapter.

Done at Washington, DC, on November 9, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-26288 Filed 11-14-88; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Alternative Method for Leakage Rate Testing

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to modify the requirements applicable to the leakage testing of containments of light-water-cooled nuclear power plants. The rule explicitly permits the use of a new statistical data analysis technique that the NRC considers to be an acceptable method of calculating containment leakage rates in addition to previously acceptable methods.

EFFECTIVE DATE: November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. E. Gunter Arndt, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-492-3814.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission is amending 10 CFR Part 50, Appendix J, "Primary Containment Leakage Testing for Water-Cooled Power Reactors," to explicitly permit the use of the Mass Point statistical data analysis method for calculating containment leakage rates. The Mass Point method involves calculation of the air mass at a series of points in time and the plotting of mass against time. A linear regression line is plotted through the mass-time points using a least squares fit. The slope of this line is divided by the intercept of this line, and the result is multiplied by an appropriate constant to obtain the calculated leakage rate.

This Mass Point method was incorporated in a newer ANSI standard, ANSI/ANS-56.8-1981, "Containment System Leakage Testing Requirements" (revised 1987) and in fact has been accepted by the NRC staff as an improved alternative method of calculating containment leakage rates. However, it was recently recognized by the NRC staff that a strict interpretation of the specific wording of Appendix J, III.A.3, by referencing only the older ANSI standard, would preclude use of the newer, improved method. To alleviate this restriction on the use of an improved alternative methodology, it is necessary to clarify the language in Section III.A.3 to explicitly permit the use of the newer Mass Point method in addition to the earlier methods covered by ANSI N45.4-1972.[1]

A proposed rule concerning the addition of the Mass Point method was published for comment on February 29, 1988 (53 FR 5985). The complete history and background for the proposed action were discussed in detail in the **SUPPLEMENTARY INFORMATION** section which accompanied the proposed rule. The effect of this amendment will be to permit licensees to use the Mass Point analysis as an alternative to the Total Time and Point-to-Point analyses incorporated by reference into Appendix J by ANSI N45.4-1972.

The final rule is identical to the proposed rule published for comment, and adds the following words to Section III.A.3:

> In addition to the Total Time and Point-to-Point methods described in that standard, the Mass Point method, when used with a test duration of at least 24 hours, is an acceptable method to use to calculate leakage rates. A typical description of the Mass Point method can be found in the American National standard, ANSI/ANS 56.8-1987, "Containment System Leakage Testing Requirements", January 20, 1987.

Also, as in the proposed rule, in order to allow a change in the methods now permitted, the final rule deletes the following sentence from Section III.A.3 of Appendix J:

> The method chosen for the initial test shall normally be used for the periodic tests.

The NRC believes the wording of the revision as published for comment, and as finally amended, clearly and accurately represents the NRC's position. All comments have been reviewed. In spite of the objections raised in the comments to the wording or content of the proposed rule, the wording in the final rule is identical to that published for public comment. A Public Comment Resolution Memo has been prepared and sent to all who commented. It is available for inspection and copying at the NRC's Public Document Room at 2120 L Street, Washington, DC. The memo addresses in more detail the NRC's decision to keep the wording the same as in the proposed revision. A brief summary of the comments received is set out in the following paragraphs.

Summary of Public Comments

Twenty-one comment letters were received. In general, three principal comments were presented.

First, all commentors supported the addition of the Mass Point analysis to the list of acceptable analysis methods.

Second, all but two commentors objected to requiring a 24-hour test duration in combination with the Mass Point method.

As noted in the proposed rule of February 29, 1988, the position stated in the text is consistent with the position that has been taken by the NRC staff when granting exemption requests on this matter. In particular, the description of the Mass Point method and its coupling with a test duration of at least 24 hours reflect prior exemption approvals and maintain necessary consistency.

The intent of this limited amendment is not to endorse ANS 56.8, nor to propose any of the changes and updating represented by the October 29, 1986 proposed general revision to Appendix J (51 FR 39538). Instead, this action does no more than eliminate the need for exemptions to the existing rule by permitting the use of a statistical method that has been generally accepted for several years. This revision makes available to all reactor licensees the use of the Mass Point method for 24-hour tests.

Inclusion of the 24-hour duration is considered necessary because a considerable difference of opinion exists as to what is a sufficient test duration. Until an acceptable set of alternative technical criteria is developed to replace the 24-hour duration criterion, the NRC staff intends to continue the 24-hour criterion. Some alternative technical criteria were presented for public review and comment in proposed regulatory guide MS 021-5, "Containment System Leakage Testing," [2] on October 28, 1986. These criteria and others proposed are still being evaluated in order to determine what is an appropriate set of test termination criteria to include in the final regulatory guide.

Third, one objection was raised to the degree of flexibility permitted by the proposed wording in defining the Mass Point method.

If this comment were to be followed, the effect would be to incorporate by reference into 10 CFR Part 50 the exact Mass Point analysis as defined in ANSI/ANS 56.8-1987, along with the portions of that standard that are relevant to setting the conditions of use of this analysis. The existence of proposed regulatory guide MS 021-5 demonstrates that this degree of compatibility between ANS 56.8 and a position acceptable to the NRC staff does not exist. Therefore, in order to define in detail a Mass Point analysis that would be acceptable to the NRC staff, such an incorporation by reference would also have to contain the portions of proposed Regulatory Guide MS 021-5 that modify the ANS 56.8 definition and use of the Mass Point analysis. This approach would be undesirably cumbersome, inflexible, and restrictive in the ability to keep the legally acceptable Mass Point analysis current with any future improvements, simplifications, or changes in the state-of-the-art of statistical reduction of test data to a leakage rate.

An alternative perhaps could be to simply state that the Mass Point method be defined in a manner acceptable to the NRC staff, and leave that definition to the finalization of proposed regulatory guide MS 021-5. However, this would probably be a less acceptable alternative because it would be more flexible than the current wording and would depend heavily on the as yet unissued regulatory guide.

Finally, as noted in the proposed rule of February 29, 1988, the wording was intentionally made instructive but flexible in the event that the proposed general revision to Appendix J and its proposed associated regulatory guide are not issued as final documents. Should that happen, then a clear need would exist for some flexibility in the ability of Appendix J to keep up with changes to ANS 56.8 and potential future modifications to the Mass Point analysis.

Effective Date

Since the amendment set forth below is intended to provide relief from, rather than to impose, restrictions currently in effect, the Commission is, pursuant to 5 U.S.C. 553(d)(1), making the final rule effective on November 15, 1988 without the customary 30-day waiting period.

Environmental Impact: Categorical Exclusion

The Commission has determined that this rule is the type of action described in the categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment have been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved under the Office of Management and Budget approval number 3150-0011.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule effects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in the regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this rule because, although the rule is applicable to all current or future operating nuclear power plants, the provisions of the rule codify and permit the continuation of a previously accepted practice. This action will not encumber those using this accepted practice with the added burden of seeking exemptions to the existing rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read in Part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec 201, 88 Stat 1242, as amended (42 U.S.C. 5841).

2. In Appendix J, Section III.A.3.(a) is revised to read as follows:

Appendix J—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

* * * * *

III. Leakage Testing Requirements

* * * * *

A. *Type A Test*—* * *

3. *Test Methods.* (a) All Type A tests shall be conducted in accordance with the provisions of the American National Standard N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors", March 16, 1972. In addition to the Total time and Point-to-Point methods described in that standard, the Mass Point Method, when used with a test duration of at least 24 hours, is an acceptable method to use to calculate leakage rates. A typical description of the Mass Point method can be found in the American National Standard ANSI/ANS 56.8-1987, "Containment System

[1] ANSI N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors" (dated March 16, 1972). Incorporation of ANSI N45.4-1972 by reference was approved by the Director of the Federal Register on October 30, 1972. Copies of this standard, as well as ANSI/ANS-56.8-1987, "Containment System Leakage Testing Requirements" (dated January 20, 1987) may be obtained from the American Nuclear Society, 555 North Kensington Avenue, La Grange Park, IL 60525. A copy of each of these standards is available for inspection at the Commission's Public Document Room at 2120 L Street NW., Washington, DC.

[2] A free single copy of draft regulatory guide MS 021-5, to the extent of supply, may be obtained by writing to the Distribution Section, Document Control Branch, Division of Information Support Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection, or copying for a fee, in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

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Leakage Testing Requirements", January 20, 1987.[1]

* * * * *

Dated Rockville, MD, this 1st day of November 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-26332 Filed 11-14-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 76-SW-41; Amdt. 39-6069]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 206A, 206A-1, 206B, 206B-1, 206L, 206-L1, and 206L-3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which establishes a 2-year calendar life in addition to the existing flight time restriction on the tension-torsion (T-T) straps on the BHTI Model 206A, 206A-1, 206B, 206B-1, 206L, 206L-1, and 206L-3 helicopters. The AD is needed to prevent T-T strap failure which would result in main rotor (M/R) blades departing the helicopter and subsequent loss of the helicopter.

DATES: *Effective Date:* December 15, 1988.

Compliance: Compliance is required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Roach, Helicopter Certification Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5179.

SUPPLEMENTARY INFORMATION: A proposal to amend Amendment 39-3221, AD No. 78-11-02 (43 FR 22340; May 25, 1978), which currently requires retirement of the T-T straps as a function of flight time with no calendar time restriction on BHTI Model 206A, 206A-1, 206B, 206B-1, and 206L helicopters was published in the **Federal Register** (52 FR 23464) on June 22, 1987.

The proposal was prompted by extensive testing which was accomplished by the manufacturer on T-T straps which had been retired 2 years after installation but had not reached their flight-hour life limit. The results showed that the T-T straps should have a 2-year calendar life limit to assure airworthiness of the part. Consequently, the proposed amendment called for a 2-year calendar life restriction on the T-T straps, in addition to the existing flight hour life limit. Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation would involve 5,000 helicopters for an estimated cost of $3,854 per helicopter every 2 years. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 11 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39-3221, AD No. 78-11-02 (43 FR 22340) by revising the applicability paragraph and paragraph (c) and adding paragraph (d) to read as follows:

Bell Helicopter Textron, Inc.: Applies to Model 206A, 206A-1, 206B, 206B-1, 206L, 206L-1, and 206L-3 helicopters certified in any category. (Airworthiness Docket No. 76-ASW-41)

Compliance is required within the next 6 calendar months after effective date of this AD, unless already accomplished.

To prevent M/R blades from departing the helicopter, accomplish the following:

* * * * *

(c) The retirement time of the tension-torsion straps, Part Numbers 206-010-105-3, 206-010-105-5, and 206-011-127-1, is reduced from 1,200 to 600 hours' time in service. These straps must be retired from service by January 1, 1989, regardless of time in service. The inboard strap fittings, P/N's 206-010-155-11 and -15, must be removed from service as noted in paragraph (a)(1) of this AD. Replacement tension/torsion straps, P/N's 206-011-147-001, -003, -005, -007, and 206-011-154-101 and -103, have a 1,200 hour time in service life or 2-year calendar life after installation, whichever occurs first.

(d) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

This amendment amends Amendment 39-3221; AD No. 78-11-02 (43 FR 22340).

This amendment becomes effective December 15, 1988.

Issued in Fort Worth, Texas, on November 2, 1988.

L. B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 88-26289 Filed 11-14-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-49-AD; Amdt. 39-6057]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires inspections of certain main landing gear (MLG) support link assemblies, and replacement, if necessary. This amendment requires the modification, or replacement, of the MLG support link assemblies with a new improved design. This additional modification is necessary to prevent failure of the support link shaft which, if not corrected, could result in damage to the wing and/or hydraulic system.

EFFECTIVE DATE: December 16, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 68-17-01, Amendment 39-1228, to require the inspection for cracking of certain MLG support links, and replacement, if necessary, on certain Boeing Model 727 series airplanes, was published in the **Federal Register** on June 9, 1988 (53 FR 21669).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter stated that the requirement to inspect the MLG support link shafts on airplanes that have had the MLG support links reworked or replaced in accordance with Boeing Service Bulletin 727-32-306, Original Issue, should be changed to 8 years after the rework, rather than the proposed 5,000 hours time-in-service or 2 years, whichever occurs first. The commenter also stated that the links on its airplanes are lubricated every 400 hours. The FAA does not concur that the links installed in accordance with the initial release by the service bulletin will be good for 8 years time-in-service, because the interference problem that causes the corrosion and cracking problem still exists between the bushing and the shaft. The FAA has determined, however, that corrosion will be reduced if the link has been periodically lubricated. Therefore, if the above conditions are met, the FAA has determined that the terminating action for the AD will not have to be accomplished until the link has been in service for 5 years. Accordingly, the final rule has been revised to address this by adding a new paragraph C., which is applicable to these airplanes.

Another commenter stated that it had reduced corrosion on the shafts by installing "TFE" teflon lined bushings, instead of the currently utilized "DU" lined bushings. The commenter proposed, as an alternate action to the proposed requirements, that visual inspections of the support link shaft be required for airplanes using the TFE teflon lined bushings, and if no corrosion was detected, the link would not have to be modified in accordance with the service bulletin for 4 years. The FAA does not concur with the commenter's proposal, since the interference problem that resulted in the corrosion and cracking of the shaft can still occur with the teflon lined bushing.

Another commenter stated that, because of the lead time necessary for obtaining the kits for replacement or rework of the links, the proposed compliance time of 5,000 hours time-in-service will impose a hardship on the operators. The FAA has discussed the potential lead time problem with the manufacturer. The manufacturer stated that it could accelerate delivery of the necessary parts. Also, it is possible for airlines to modify the existing support link assemblies and bushings. Therefore, the FAA does not agree with the commenter. However, for reasons discussed below, the initial compliance time has been changed to 6,000 hours time-in-service or 2 years, whichever occurs first.

Another commenter stated that the proposed compliance time of 5,000 hours time-in-service should be changed to 5,500 or 6,000 hours time-in-service since, based on the normal airplane utilization rate for most affected operators, the calendar period of 2 years is equivalent to that number of hours time-in-service. The FAA established the 5,000-hour time limit based upon a predicted rate of utilization of the affected airplane models within a 2-year time period. However, in light of the information provided by this commenter, and because the corrosion is considered to be primarily a time-dependent phenomenon, the FAA concurs that the proposed 5,000 hour time-in-service compliance time can be safely extended to 6,000 hours time-in-service. The final rule incorporates this change.

The last commenter stated that the incorporation of the terminating action in the proposed rule is inadequate to eliminate the corrosion problems of the link and shaft. The FAA does not concur. The commenter did not provide any evidence that would substantiate its claim. From data and other information provided by the manufacturer, the FAA has determined that the incorporation of the terminating modification will prevent the corrosion and subsequent cracking problem. However, should future service experience prove that the terminating modification is inadequate for eliminating the corrosion and cracking, the FAA may then consider further rulemaking to address it.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted.

It is estimated that 1,285 airplanes of U.S. registry will be affected by this AD, that it will take approximately 22 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,130,800.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 727 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

BEST COPY AVAILABLE

[1] ANSI N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors" (dated March 16, 1972). Incorporation of ANSI N45.4-1972 by reference was approved by the Director of the Federal Register on October 30, 1972. Copies of this standard, as well as ANSI/ANS-56.8-1987, "Containment System Leakage Testing Requirements" (dated January 20, 1987) may be obtained from the American Nuclear Society, 555 North Kensington Avenue, La Grange Park, IL 60525. A copy of each of these standards is available for inspection at the Commission's Public Document Room at 2120 L Street NW., Washington, DC.

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PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 68-17-01, Amendment 39-635, as amended by Amendment 39-1228, with the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, listed in Boeing Service Bulletin 727-32-306, Revision 1, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the main landing gear support link shaft, which could result in damage to the wing and/or hydraulic system, accomplish the following:

A. Within the next 1,000 hours time-in-service since the last inspection in accordance with AD 68-17-01, and thereafter at intervals not to exceed 1,000 hours time-in-service until the requirements of paragraph B., below, are accomplished, perform an ultrasonic inspection for cracks of the P/N 65-19657-4, -5, -8, or -13 main landing gear (MLG) support link in accordance with paragraph II, Accomplishment Instructions, Part I—Inspection Data, B. Ultrasonic Inspection Data of Boeing Service Bulletin 32-90, Revision 1, dated May 29, 1968, or Boeing Service Bulletin 32-189, dated May 25, 1971. If any cracks are detected, prior to further flight, perform visual and magnetic particle inspections of the MLG support link shaft as described in paragraph B., below, and replace or modify the MLG support link and bushing accordingly.

B. Except for airplanes identified in paragraph C., below, within the next 6,000 hours time-in-service or 2 years after the effective date of this AD, whichever occurs sooner, perform a visual inspection of the MLG support link shaft for corrosion, and a magnetic particle inspection for cracks. If any corrosion and/or cracks are detected in the MLG support link shaft, prior to further flight, repair or replace in accordance with Section 32-01-02 of the Boeing 727 Landing Gear Overhaul Manual. In addition, replace or modify the MLG support link, P/N 65-19657-4,-5,-8,-11,-13,-15,-16, or-18, and associated bushing, as necessary, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727-32-306, Revision 1, dated February 25, 1988.

C. In lieu of the requirements of paragraph B., above, for airplanes line numbers 1793 and subsequent, and airplanes that have been modified in accordance with Boeing Service Bulletin 727-32-306, dated March 26, 1982, and which have had the MLG support links lubricated at intervals not to exceed 500 hours time-in-service: Within the next 6,000 hours time-in-service or 2 years after the effective date of this AD, whichever occurs sooner, or 5 years since the modification, whichever occurs later, perform a visual inspection for corrosion and a magnetic particle inspection for cracks of the MLG support link shaft. If any corrosion and/or cracks are detected in the MLG support link shaft, prior to further flight, repair or replace in accordance with Section 32-01-02 of the Boeing Model 727 Landing Gear Overhaul Manual. In addition, replace or modify the MLG support link and associated bushing, as necessary, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727-32-306, Revision 1, dated February 25, 1988.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 68-17-01, Amendment 39-635, as amended by Amendment 39-1228.

This amendment becomes effective December 16, 1988.

Issued in Seattle, Washington, on October 20, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26294 Filed 11-14-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ANE-33; Amdt. 39-6033]

Airworthiness Directives; General Electric Co. (GE) CF6-80C2; Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes low cycle fatigue (LCF) retirement lives for certain fuel manifolds installed on GE CF6-80C2 series turbofan engines. It also requires inspections for fuel manifold leakage and manifold clamping device security. This AD is needed to prevent fuel manifold leakage resulting in an uncommanded loss of engine power and/or a possibility of fire.

DATES: *Effective:* November 29, 1988.

Compliance Schedule: As required in the body of the AD. Comments for inclusion in the docket must be received on or before December 15, 1988.

Incorporation by Reference: Approved by the Director of the Federal Register as of November 29, 1988.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88-ANE-33, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 88-ANE-33".

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard A. Woldan, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7096.

SUPPLEMENTARY INFORMATION: Fuel manifold cracking and subsequent fuel leakage, resulting in an inflight shutdown in one case, have occurred on two revenue service engines and three factory development test engines. Analysis of these manifold cracks, supplemented by additional stress and component tests, have identified high cycle fatigue (HCF) and low cycle fatigue (LCF) failure mechanisms. Manifold clamping devices which are loose or worn result in fuel manifold HCF cracking. The manifold is also subjected to an overstress condition during engine operation which results in fuel manifold LCF cracking.

The FAA has therefore determined that certain GE CF6-80C2 fuel manifolds must be limited to a service life of 2,000 cycles. This determination is based on updated stress, temperature, and mission analyses. The AD would require affected parts to be retired from service at or prior to the LCF life limit, except for affected parts which are at or above the life limit, in which case a removal schedule is specified. The FAA has further determined that one-time visual inspections of the fuel manifold for leakage and clamping device security are required to ensure safe operation of the manifold until it is removed from service.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD, and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment, must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 88-ANE-33". The postcard will be date/time stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of this final evaluation if filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6-80C2 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of fuel mainfolds accomplish the following:

(a) Remove from service and replace with serviceable parts fuel mainfold, Part Numbers (P/N) 1303M31G04 and 1303M32G04 in accordance with GE CF6-80C2A/B Series Alert Service Bulletin (ASB) A73-038, dated August 3, 1988, which have accumulated 1,700 or more cycles since new (CSN) on the effective date of this AD, within the next 300 cycles in service (CIS) or at the next aircraft letter check, whichever occurs first, after the effective date of this AD.

(b) Inspect, remove as required and replace with servicable parts, fuel manifold P/N 1303M31G04 and 1303M32G04 in accordance with GE CF6-80C2A/B Series ASB A73-038, dated August 3, 1988, which have accumulated less than 1,700 CSN on the effective date of this AD, within the next 300 CIS after the effective date of this AD.

(c) Remove from service, and replace with serviceable parts fuel manifold P/N 1303M31G04 and 1303M32G04, in accordance with GE CF6-80C2A/B Series ASB A73-038, within 300 CIS after the effective date of this AD, if the total CSN cannot be documented.

(d) Thereafter, remove from service and replace with serviceable parts fuel manifold P/N 1303M31G04 and 1303M32G04 in accordance with GE CF6-80C2A/B Series ASB A73-038 prior to accumulating 2,000 CSN.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, may adjust the compliance schedules specified in this AD.

General Electric CF6-80C2A/B Series SB A73-038, dated August 3, 1988, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, Ohio 45246.

This document may also be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket No. 88-ANE-33, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on November 29, 1988.

Issued in Burlington, Massachusetts, on September 16, 1988.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88-26291 Filed 11-14-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket Number 86-ANE-38; Amdt. 39-6018]

Airworthiness Directives; Pratt and Whitney (PW) JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, and -20 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires modification of the sixth stage turbine inner airseal (IAS) assembly in accordance with Revision 5 of PW Service Bulletin (SB) 4835. It also requires a one-time visual and fluorescent penetrant inspection (FPI) and removal, if necessary, in accordance with Revision 5 of the SB for IAS assemblies that have been modified in accordance with Revision 3 or earlier revisions of the SB. The AD is needed to prevent uncontained engine failure.

DATES:

Effective: December 15, 1988.

Compliance Schedule: As prescribed in the body of this AD.

Incorporation by Reference

Approved by the Director of the Federal Register as of December 15, 1988.

ADDRESSES: The applicable SB and section of the engine manual may be obtained from Pratt and Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB and the applicable section of the engine manual is contained in Rules Docket Number 86–ANE–38, in the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE–141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7084.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring modification and inspection of the sixth stage IAS assemblies installed on PW JT9D–3A,–7, –7A, –7AH, –7H, –7F, –7J, and –20 turbofan engines was published in the **Federal Register** on November 26, 1986, (51 FR 42853).

The proposal was prompted by the development of cracks that led to ruptures in 7 sixth stage IAS's in service to date. During one of those events which was uncontained, the wing fuel tank inspection port was penetrated, causing a wing fuel leak.

The post modification inspection requirements of PW SB 4835, Revision 3, dated June 12, 1978, or earlier revisions of the same SB, were insufficient to detect all cracks in the IAS. Failures have occurred on IAS's which had been modified and inspected previously in accordance with the above requirements. The inspection requirements have since been improved by the addition of a wet abrasive blast process to expose cracks that would otherwise be concealed by corrosion. IAS's modified in accordance with PW SB 4835, Revision 4, dated May 12, 1981, or later revision of the SB are not subject to this AD. Since this condition is likely to exist or develop on other engines of the same type design, the AD requires modification of unmodified IAS assemblies in accordance with the requirements of PW SB 4835, Revision 5, dated September 27, 1983. It also requires a one time visual and FPI of IAS assemblies that have been modified in accordance with the requirements of Revision 3, or earlier revisions of the SB, at the next low pressure turbine (LPT) module shop visit.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Two commenters responded.

The first commenter proposed an alternative to the paragraph under the heading **"SUPPLEMENTARY INFORMATION"** beginning with "The FAA has determined * * *", describing the statistics and cause of failures of IAS's as well as corrective actions needed to avoid additional failures. The FAA agrees. The proposed paragraph is more explicit than that of the notice of proposed rulemaking (NPRM). However, since that paragraph is informational in nature, the FAA has not incorporated the exact wording, but has adopted the intent of that proposal.

The same commenter also indentified that there are approximately 1,713 engines affected by this AD, instead of approximately 1,806 engines, as stated. The FAA agrees, and the correction has been made. The approximate total cost of the AD was also reevaluated and was found to be higher than originally estimated, but still below the regulatory guidelines for a major rule.

Both commenters requested a change in paragraph (a) under the heading **"THE PROPOSED AMENDMENT"**, and both proposed their own alternative paragraph. The concern of both commenters is that the proposal requiring certain part number seal assemblies to be modified within the next 500 cycles in service, would necessitate forced removals and grounding of certain aircraft. This concern relates to certain seals in the population identified by the NPRM for modification, which had either been modified but not re-identified in accordance with the SB requirements, or had a reduction in the seal knife edge diameter through usage in service. Such a reduction in diameter would result in an acceptable clearance equivalent to the requirements of the SB and would be an equivalent means of compliance with paragraph (a) of the proposed AD. In addition, certain seals of the same population are installed in engines that incorporate microfin type shrouds that establish adequate seal to shroud clearance for safe operation. The FAA agrees. Paragraph (a) has been reworded to incorporate the intent of the comments and exclude those IAS's whose seal to shroud clearances meet the requirements of the AD.

The second commenter also suggested paragraph (b) read as follows: "Inspect sixth stage IAS in accordance with the requirements of PW (SB) 4735, Revision 4, or later FAA approved versions at the next LPT module shop visit (after effective date of AD)." The FAA disagrees. The paragraph in the proposed Ad provides more explicit information for the identification of the population of the seals that need to be inspected and therefore no change is made.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires modification and one-time visual and fluorescent penetrant inspection, in accordance with PW SB 4835, Revision 5, dated September 27, 1983, of the sixth stage IAS installed in certain JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, and –20 turbofan engines.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has detemined that this regulation involves approximately 1,713 engines at an approximate total cost of $363,320. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using Boeing 747 and McDonnell Douglas DC–10–40 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt and Whitney: Applies to Pratt and Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, and –20 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent sixth stage turbine inner airseal (IAS) rupture that can cause uncontained engine failure, accomplish the following:

(a) Modify sixth stage IAS Part Numbers (P/N) 751879, 660178, 661387, 667924, 677871, 704516, and 751881, in accordance with the Accomplishment Instructions contained in PW Service Bulletin 4835, Revision 5, dated September 27, 1983, as follows:

(1) Sixth stage IAS installed with either honeycomb or microfin type shrouds where engine build records indicate seal knife edge to shroud diametrical clearance less than 0.153 inches in either the front or the rear knife edge, within the next 500 cycles in service after the effective date of this AD.

(2) Sixth stage IAS installed with either honeycomb or microfin type shrouds where engine build records indicate seal knife edge to shroud diametrical clearance equal to or more than 0.153 inches in both front and rear knife edges, at the next low pressure turbine (LPT) module shop visit after the effective date of this AD.

(b) Wet abrasive blast, visually inspect, and fluorescent penetrant inspect (FPI) at the next LPT module shop visit after the effective date of this AD, in accordance with the requirements of paragraph 4E, Inspection 01, Section 72–52–06, of the Engine Manual P/N 646028, Revision 74, sixth stage IAS assemblies P/N's 774836, 774827, 774829, 774825, 774831, 774834, and 774836, that have been modified in accordance with the requirements of PW SB 4835, Revision 3, dated June 12, 1978, or earlier revisions of the SB.

(c) Remove from service, prior to further flight, sixth stage IAS assemblies found cracked when accomplishing the requirements of paragraph (a) or (b) above, and replace with serviceable parts.

Notes: (1) Modification of sixth stage seals in accordance with the requirements of PW SB 4835, Revision 4, dated May 21, 1981, constitutes an equivalent means of compliance with this AD.

(2) For the purpose of this AD, an LPT module shop visit occurs when the LPT module rotor is removed from the case and vane assembly.

(d) Aircraft may be ferried in accordance with the provision of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, may adjust the compliance times specified in this AD.

PW SB 4835, Revision 5, dated September 27, 1983, and the PW Engine Manual P/N 646028, Section 72–52–06, Inspection 01, Paragraph 4E, Page 817, dated December 1, 1986, and Figure 810, Page 818, dated August 1, 1984, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt and Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

These documents also may be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 886–ANE–38, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on December 15, 1988.

Issued in Burlington, Massachusetts, on September 1, 1988.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88–26293 Filed 11–14–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–ANE–06; Amdt. 39–6032]

Airworthiness Directives; Pratt and Whitney Canada (PWC) PT6B–36A, Turboshaft Engines Installed in Sikorsky, Aircraft Model S–76B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of PWC PT6B–36A turboshaft engines installed in Sikorsky Aircraft Model S–76B helicopters by individual priority letters. The AD prohibits steady sta te operation at certain N1 speed ranges, requires the installation of a vibration damping device, and establishes a life limit for certain third stage compressor stator assemblies. The AD is needed to prevent partial power loss or inflight engine shutdown resulting from a third stage compressor stator vane failure.

DATES: *Effective:* November 29, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD 88–03–01, issued February 2, 1988, which contained this amendment.

Compliance: As required in the body of the AD.

Incorporation by Reference: Approved by the Director of the Federal Register as of November 29, 1988.

ADDRESSES: The technical information referenced in this amendment may be obtained from Pratt and Whitney Canada, Box 10, Longueuil, Quebec, Canada J4K 4X9; or may be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, Rules Docket Number 88–ANE–06, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane M. Cook, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: On February 2, 1988, priority letter AD 88–

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03–01 was issued and made effective immediately to all known U.S. owners and operators of PWC PT6B–36A turboshaft engines. The AD prohibited steady state engine operation in two gas generator (N1) speed ranges because resonant frequencies encountered during these speed ranges have resulted in high cycle fatigue cracking of the third stage compressor stator vanes. This effect on the compressor stator vane assembly may result in a reduction of engine power or an inflight engine shutdown. Five partial power loss events and one event resulting in an inflight engine shutdown have occurred. AD action was necessary to prevent partial power loss or inflight engine shutdown resulting from a third stage compressor stator vane failure.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued February 2, 1988, to all known U.S. owners and operators of PWC PT6B–36A turboshaft engines installed in Sikorsky Model S–76B helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of the final evaluation if filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt and Whitney Canada: Applies to Pratt and Whitney Canada (PWC) PT6B–36A turboshaft engines incorporating the third stage compressor stator assembly, Part Number (P/N) 3109163–01, installed in Sikorsky Aircraft S–76B helicopters. The third stage compressor stator assembly, P/N 3109163–01 is incorporated in engines, Serial Number PC–E36043 and subsequent, and those engines incorporating PWC Service Bulletin (SB) 11022, dated September 28, 1987.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the third stage compressor stator vane assembly which could result in loss of engine power or an inflight engine shutdown, accomplish the following:

(a) Prior to further flight, accomplish the following

(1) Attach a placard which reads "avoid N1 ranges, 78–80.5%, 95.6–97.6%", in full view of the pilot and copilot, as close as practicable to the N1 speed indicators.

(2) Place a copy of this AD in the appropriate rotorcraft flight manual.

(3) Operate the rotorcraft in accordance with these speed range restrictions.

(b) For engines which have accumulated 25 hours or less total time in service (TIS) from the effective date of this AD, accomplish the following:

(1) Install vibration damping device, Part Number (P/N) 3112128–01, on vane assembly, P/N 3109163–01, in accordance with PWC Alert SB A–11033, dated December 31, 1987, prior to accumulating 25 hours total TIS.

(2) Remove vane assembly, P/N 3109163–01, prior to accumulating 600 hours total TIS, and replace with a serviceable part.

(c) For engines which have accumulated more than 25 hours total TIS from the effective date of this AD, accomplish the following:

(1) Install vibration damping device, P/N 3112128–01, on vane assembly, P/N 3109163–01, in accordance with PWC Alert SB A–11033, dated December 31, 1987, within 25 hours TIS from the effective date of this AD.

(2) Remove vane assembly, P/N 3109163–01, within 100 hours TIS from the installation of damping device, P/N 3112128–01, and replace with a serviceable part.

(d) Thereafter, remove from service vane assembly, P/N 3109163–01, prior to accumulating 600 hours TIS since new, and replace with a serviceable part.

Note:—When vane assembly, P/N 3109163–01, is installed as a serviceable part, it must include damping device, P/N 3112128–01.

(e) Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon request from an operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Engine & Propeller Directorate, Aircraft Certification Service.

(g) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine & Propeller Directorate, Aircraft Certification Service, may adjust the compliance time specified in this AD.

PWC Alert SBA–11033, dated December 31, 1987, and PWC SB 11022, dated September 28, 1987, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt and Whitney Canada, Box 10, Longueuil, Quebec, Canada J4K 4X9. These documents may also be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, Rules Docket No. 88–ANE–06, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311.

This amendment becomes effective November 29, 1988, as to all persons except those persons to whom it was made immediately effective by individual priority letter AD 88–03–01, issued February 2, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on September 16, 1988.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88–26292 Filed 11–14–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 773, and 774

[Docket No. 80902–8202]

Exports to Finland; General Licenses GCG and G–CEU, Permissive Reexports From Finland to the People's Republic of China, Higher Level Computers Under the Distribution License

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Department of Commerce initiative to streamline export licensing requirements for exports to countries that are demonstrating increased ability to safeguard reexports of U.S.-origin strategic goods and technology, the Bureau of Export Administration (BXA) is extending additional benefits to Finland under section 5(k) of the Export Administration Act of 1979, as amended. This action will lessen the administrative burden on U.S. exporters and their foreign customers.

Specifically, BXA is:

- Amending General Licenses GCG and G–CEU to authorize certain shipments of U.S.-origin commodities to Finland,
- Removing the requirement for specific U.S. reexport authorization for reexports from Finland to the People's Republic of China of commodities described in Advisory Notes for the People's Republic of China or Country Groups QWY, and
- Amending the Distribution License procedure to authorize exports of computers with a processing data rate of up to 1000 megabits per second.

EFFECTIVE DATE: This rule is effective November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under Control Number 0694–0015.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comments, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 771, 773, and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 771, 773, and 774 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR Part 774 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citation for 15 CFR Parts 371 and 373 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, Pub. L. 99–64 of July 12, 1985 and Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 771—[AMENDED]

§ 771.14 [Amended]

3. In § 771.14, paragraph (b) is amended by adding "Finland," immediately after the word "Austria,".

§ 771.20 [Amended]

4. In § 771.20, the second sentence of the introductory text of paragraph (a) is amended by adding "Finland," immediately after the words "the governments of".

PART 773—[AMENDED]

Supplement No. 8—[Amended]

5. In Supplement No. 8 to Part 773, "Finland" is added immediately before "Switzerland".

PART 774—[AMENDED]

§ 774.2 [Amended]

6. In section 774.2, paragraph (j) is amended by adding the word "Finland," immediately before the words "or Switzerland,".

Dated: November 9, 1988

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–26283 Filed 11–14–88; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM82–23–000; Order No. 508]

Revision; Report by Natural Gas Pipeline Companies on Service Interruptions Occurring on the System

Issued November 7, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

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ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has reviewed its regulations requiring interstate natural gas pipeline companies to notify the Commission of any serious interruptions of gas service (18 CFR 260.9 (1988)) and has decided to make no substantive changes to the current § 260.9. The Commission, however, is using this opportunity to revise 18 CFR 260.9 to correctly identify the Commission's current name, address and staff person designated to receive and review these service interruption reports, and to permit use of telefax as an alternative.

The Commission issued a Notice of Proposed Rulemaking (NOPR) on April 6, 1982 (47 FR 16644 (April 19, 1982)). The NOPR proposed to revise the service interruption report filed by pipelines. The NOPR also proposed eliminating the report requirements in paragraph (d) and (e) of § 260.9. After considering the comments filed in this docket, and in light of the regulations subsequently adopted by the Commission, most notably Subpart I of Part 284, the Commission concludes that the changes proposed in § 260.9 of the Commission's regulations are unnecessary. The present regulations keep the Commission apprised of emergency situations as they occur.

EFFECTIVE DATE: This rule is effective December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Barry M. Smoler, Sandra S. Vincent, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Revision of Report by Natural Gas Pipeline Companies on Service Interruptions Occurring on the Pipeline System; Order No. 508 Final Rule

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations requiring interstate natural gas pipeline companies to notify the Commission of any serious interruptions of gas service.[1] This final rule revises 18 CFR 260.9 to correctly identify the Commission's name, address and staff person designated to receive and review these notifications.

II. Background and Discussion

On April 6, 1982, the Commission issued a notice of proposed rulemaking (NOPR) (47 FR 16644 (April 19, 1982)), proposing to amend its regulations regarding the filing of reports by interstate natural gas pipeline companies for emergencies affecting their services and facilities. The NOPR proposed to revise the service interruption report filed by pipelines. Under the proposal, the description of pipelines required to report emergencies would be broadened and the types of emergency situations requiring a report would likewise be expanded. The NOPR also proposed eliminating the report requirements in paragraphs (d) and (e) of § 260.9.[2] Comments were filed in 1982.

After consideration of the comments filed, and in light of the regulations subsequently adopted by the Commission most notably Subpart I of Part 284, the Commission concludes that the § 260.9 changes proposed in this docket are unnecessary. Subpart I of Part 284 provides pipelines an exemption from the certificate requirements in section 7 of the Natural Gas Act that authorizes them to respond to emergency situations.[3] Section 284.270 requires pipelines to report emergency gas sales, transportation or exchange transactions within 48 hours of the emergency.[4] Moreover, a pipeline's tariffs are required to contain provisions on how the pipeline will curtail gas service in the event of emergencies which disrupt such service.

In addition to these considerations, we note the concern expressed by the commenting parties that the rule as proposed would result in certain duplicative filings at this agency and at the U.S. Department of Transportation (DOT). Under the Natural Gas Pipeline Safety Act of 1964, the DOT has the primary jurisdictional responsibility for natural gas pipeline safety. Specifically, the DOT regulations at 49 CFR Part 191 require the reporting of facility failures that occur on gas pipelines. Failures of a serious nature must be reported by telephone after discovery (49 CFR 191.5), while significant leaks are reportable within 20 days after occurrence (49 CFR 191.15). These data would overlap with those called for under the rule proposed in this docket.

For all of these reasons, we have decided to make no substantive changes to the current § 206.9. The rule as presently in effect serves a useful purpose in keeping the Commission apprised of emergency situations as they occur, but we perceive no need to expand the rule. In light of our decision not to expand the data to be filed with this Commission, the current requirements in paragraphs (d) and (e) regarding state commission notification and the filing of copies of DOT reports continue to have merit, and will be retained.

The Commission, however, will use this opportunity to revise 18 CFR 260.9 to correctly identify the Commission's name, address and staff person to contact in the event of such an emergency. A conforming change is made in § 260.9(c). The rule also deletes a reference to the Federal Power Commission in § 260.9(a). Section 260.9(b) currently states that the notification should be sent to "the Chief, Bureau of Natural Gas, Federal Power Commission, 441 G Street NW." This final rule revises the language to read "to the Director, Division of Engineering, Market and Environmental Analysis, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE." [5]

III. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) [6] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[7] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Statement

The Commission has determined that no environmental assessment or environmental impact statement is necessary in this rulemaking proceeding. The Commission has categorically excluded actions that are procedural in nature.[8]

V. Effective Date

This rule is effective December 15, 1988.

List of Subjects in 18 CFR Part 260

Natural gas, Recordkeeping and reporting requirements.

In consideration of the foregoing, the Commission is revising Part 260 in Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission. Commissioner Langdon voted present.

Lois D. Cashell,

Secretary.

PART 260—STATEMENTS AND REPORTS (SCHEDULE)

1. The authority citation for Part 260 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. Section 260.9, paragraph (a) is amended by removing the words "Federal Power Commission" and inserting in its place "Federal Energy Regulatory Commisson (Commission)."

3. In § 260.9, paragraphs (b) and (c) are revised to read as follows:

§ 260.9 Report by natural gas pipeline companies on service interruptions occurring on the pipeline system.

* * * * *

(b) Natural gas pipeline companies must report such interruptions to service by telegram to the Director, Division of Engineering, Market and Environmental Analysis, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20425, at the earliest feasible time following such interruption to service and must state briefly:

(1) The location of the interruption,

(2) The time of the interruption,

(3) The customers affected by the interruption, and

(4) Emergency actions take to maintain service.

(c) If so directed by the Commission or the Director, Division of Engineering, Market and Environmental Analysis, the company must provide any supplemental information so as to provide a full report of the circumstances surrounding the occurrence.

* * * * *

[FR Doc. 88–26309 Filed 11–14–88; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 260.9 (1988). Section 260.9(b) requires a pipeline to notify the Commission by telegram, at the earliest feasible time, of (1) the location of service interruptions, (2) the time, (3) the customers affected and (4) any emergency actions taken to maintain service.

[2] Paragraph (d) requires pipelines to file with the Commission certain reports as filed with the Department of Transportation. Paragraph (e) requires copies of the telegraphic report on interruption of service to be sent to appropriate state commissions.

[3] Subpart I was adopted in 1986, four years after issuance of the NOPR in this docket.

[4] 18 CFR 284.270 (1988).

[5] The Commission notes that in recent years most pipelines have implemented the presently effective rule by sending their notifications to this name and address. Hence, the change in the rule essentially codifies the present practice.

[6] 5 U.S.C. 601 through 612 (1982).

[7] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1982).

[8] 18 CFR 380.4(a)(1) (1988).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

[T.D. 88–72]

Customs Regulations Amendments Relating to Customs Bonds

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations concerning various bond provisions set forth in Part 113. The changes are made as a result of Customs ongoing review of the revised Customs bond structure. One amendment relates to the bond for control of containers and instruments of international traffic (IITs). The section of the regulations relating to IITs provides that an IIT of U.S. origin which has not been increased in value or improved in condition by a process of manufacture or other means while abroad and which is released under that section of the regulations is not subject to entry filing or the payment of duty if it is diverted or otherwise withdrawn. The section of the regulations providing the bond conditions relating to control of containers and instruments of international traffic has no provision for the exemption from entry for a U.S. instrument which has not been increased in value or improved in condition. This document amends the bond conditions to incorporate this exemption and make the regulations concerning containers and instruments of international traffic consistent. The document also amends the bond conditions set forth in various sections of the regulations to specify that the principal and surety are jointly and severally liable under Customs bonds. Specifying that the principal and surety are severally and jointly liable will avoid unnecessary litigation when Customs attempts to collect liquidated damages under a bond.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Entry Rulings Branch, (202) 566–8556.

SUPPLEMENTARY INFORMATION:

Background

By a final rule published in the **Federal Register** as T.D. 84–213, on October 19, 1984 (49 FR 41152), the Customs bond structure was extensively revised by consolidating and reducing the number of bond forms in use. The purpose of the revision was to simplify transactions between Customs and the importing public and to facilitate establishment of an efficient computerized bond control system.

A part of the foregoing involved incorporating specific bond conditions into Part 113, Customs Regulations (19 CFR Part 113), which established a contractual obligation on the part of the bond principal to comply with substantive requirements of the regulations. As a necessary part of this scheme, the bond conditions incorporated specific consequences of default provisions for failure to comply with the substantive requirements of the regulations and bond provisions.

Since then Customs has been undertaking an ongoing review of the revised bond structure. From this review process, it was discovered that certain clarifications in Part 113 are necessary. This document amends the regulations concerning two of these clarifications. One clarification concerns instruments of international traffic and the other concerns the joint and several liability of obligors of bonds.

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Instruments of International Traffic

Section 10.41a, Customs Regulations (19 CFR 10.41a), relates to instruments of international traffic such as lift vans, cargo vans, shipping tanks, skids, pallets and similar instruments. Paragraph (d) of § 10.41a provides that if an instrument of foreign origin, or of U.S. origin which has been increased in value or improved in condition by a process of manufacture or other means while abroad, is released under § 10.41a and is subsequently diverted to point-to-point local traffic within the U.S., or is otherwise withdrawn within the U.S. from its use as an instrument of international traffic, it becomes subject to entry and the payment of any applicable duties. Section 10.41a(d) also provides that an instrument of U.S. origin which has not been increased in value or improved in condition by a process of manufacture or other means while abroad and which is released under § 10.41a is not subject to entry filing or the payment of duty if it is diverted or otherwise withdrawn.

The bond condition relating to control of containers and instruments of international traffic is found in § 113.66, Customs Regulations (19 CFR 113.66). However, no provision had been made in § 133.66(a)(2) for the exemption from entry for a U.S. instrument which has not been increased in value or improved in condition as set forth in the latter part of § 10.41a(d). Accordingly, a notice was published in the **Federal Register** (51 FR 27875), on August 4, 1986, proposing, among other things, to amend § 113.66(a)(2) to incorporate this exemption.

The only comment received on the proposal concerning this subject was a suggestion that § 113.66(a)(2) be further amended to state that reconditioning to restore the container to its original condition would note included in the phrase "increased in value or condition". Customs believes this suggestion is beyond the scope of the proposal and would be more properly the subject of a ruling request. As there were no other comments on this subject matter, Customs is amending § 113.66(a)(2) in this document as proposed.

Joint and Several Liability

Also proposed in the August 4, 1986, **Federal Register** document were amendments to the bond conditions set forth in §§ 113.62(a), 113.63(g)(1), 113.64(a), 113.64(c), 113.65(a)(3), 113.65(b), 113.66(c), 113.67(b)(2)(i), 113.68(b), 113.69, 113.70, 113.71(b), 113.72, and 113.73(a)(2), Customs Regulations (19 CFR 113.62(a), 113.63(g)(1), 113.64(a), 113.64(c), 113.65(a)(3), 113.65(b), 113.66(c), 113.67(b)(2)(i), 113.68(b), 113.69, 113.70, 113.71(b), 113.72, and 113.73(a)(2)), to specify that the principal and surety are "jointly and severally" liable under the bond.

These amendments were proposed to avoid any unnecessary litigation if Customs attempts to collect liquidated damages under a bond and a party wishes to contest that the obligors are severally liable. Adding the language to the bond conditions will minimize the chance of obligors challenging separate liability to Customs. No comments were received concerning this subject. Accordingly, the above-listed sections of the regulations are amended as proposed.

Other Proposed Amendment to be Withdrawn

The document published in the **Federal Register** on August 4, 1986, which proposed the two amendments which are being made in this document also proposed to establish a liquidated damage provision in the basic importation and entry bond condition for failure to timely deposit estimated duties. In another document appearing in today's **Federal Register**, Customs is withdrawing this proposal.

Executive Order 12291

The amendments set forth in this document do not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that the amendments will not have a significant impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 113

Customs duties and inspection, Imports, Surety bonds.

Amendments to the Regulations

Part 113, Customs Regulations (19 CFR Part 113) is amended as set forth below.

PART 113—[AMENDED]

1. The authority for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 113.66(a) is amended by revising paragraph (a)(2) and republishing the introductory text of paragraph (a) to read as follows:

§ 113.66 Control of containers and instruments of international traffic bond conditions.

* * * * *

(a) *Agreement to Enter Any Diverted Instrument of International Traffic.* If the principal brings in and takes out of the Customs territory of the United States an instrument of international traffic without entry and without payment of duty, as provided by the Customs Regulations and section 322(a), Tariff Act of 1930, as amended, the principal agrees to:

* * * * *

(2) Promptly enter the instrument unless exempt from entry; and

* * * * *

§§ 113.62, 113.63, 113.66, 113.67, 113.68, 113.69, 113.70, 113.71, 113.72, and 113.73 [Amended]

3. Sections 113.62(a) introductory text, 113.63(g)(1), 113.66(c), 113.67(b)(2)(i), 113.68(b), 113.69, 113.70, 113.71(b), 113.72, and 113.73(a)(2) are amended by adding a comma and "jointly and severally" after the word "surety" within the parenthesis.

§ 113.64 [Amended]

4. Section 113.64(a) is amended by adding "(principal and surety, jointly and severally)", after the word "obligors".

5. Section 113.64(c) is amended by removing "(principal and surety)" from the second sentence.

§ 113.65 [Amended]

6. Sections 113.65(a)(3) and 113.65(b) are amended by removing "agrees" and inserting in its place," and surety, jointly and severally agree".

Approved: October 18, 1988.

Michael H. Lane,

Acting Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 88-26364 Filed 11-14-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 24

[Docket No. R-88-831; FR-1676]

Debarment, Suspension and Limited Denial of Participation, Contractors and Participants

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: On May 26, 1988 (53 FR 19161), HUD and 24 other Federal agencies adopted a final rule on nonprocurement, debarment and suspension. All participating agencies except HUD also adopted four interim provisions of the rule which remove the references to *domestic* nonprocurement programs and follow more closely the exemption set forth in the Executive Order for foreign governments and public international organizations. This rule makes final a previously published interim rule that adopts these same provisions for HUD.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become final until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Marylea W. Byrd, Office of General Counsel, Department of Housing and Urban Development, Room 10266, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-9886 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 26, 1988 (53 FR 19161), HUD and 24 other Federal agencies adopted a final rule on nonprocurement, debarment and suspension. All participating agencies except HUD also adopted four interim provisions of the rule which remove the references to *domestic* nonprocurement programs and follow more closely the exemption set forth in the Executive Order for foreign governments and public international organizations. This rule makes final a previously published interim rule that adopts these same provisions for HUD.

The Department published an interim rule on August 10, 1988 (53 FR 30049) seeking public comment. No comments were received by HUD.

Finding and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The rule incorporates four interim provisions of the common rule for government-wide debarment and suspension of participants issued pursuant to Executive Order 12549. The rule brings about uniformity of terminology in administering debarment and suspension procedures in Federal agencies. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is intended to bring about uniformity of terminology in administering debarment and suspension procedures in Federal agencies. These changes will have neither a significant economic impact on, nor an effect on a substantial number of, small entities.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the rule will not have a significant impact on the family. The final rule implements several statutory provisions that improve the existing regulations governing administrative sanctions of suspension, debarment and ineligibility of HUD participants and contractors. This will have no effect on family formation, maintenance and general well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism*, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation, and does not have substantial direct effects on States or their political subdivisions, or on the relationship or distribution of power among the various levels of government. The rule, which implements several statutory provisions to improve the existing regulations governing administrative sanctions of suspension, debarment and ineligibility of HUD participants and contractors, will not have a significant impact on the States.

The rule was listed as item #937 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 41985) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Government contracts, Organization and functions, (Government agencies), Government procurement, Grant programs: housing and community development, Loan programs: housing and community development.

PART 24—[AMENDED]

Accordingly, the Interim Rule amending 24 CFR Part 24, published in the **Federal Register** on August 10, 1988 (53 FR 30049), is adopted as final without change.

Date: November 7, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-26255 Filed 11-14-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Parole Hearing Requirements

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its rule that requires parole

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hearings to be conducted by a panel of two hearing examiners, so that a parole hearing can be conducted by a single hearing examiner. This amendment reflects recent statutory authority for a single examiner to conduct parole hearings when circumstances so require.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, Acting General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Prior to 1986, the Commission did not believe it had the authority, in regard to parole determination hearings, to meet the two-examiner concurrence requirement of 18 U.S.C. 4203(c)(2) by having one examiner conduct the parole hearing and another examiner in the Regional Office review the case on the record. The Commission believed that the law required both examiners to conduct the hearing before voting on a recommendation to the Regional Commissioner. This requirement was expressed in 28 CFR 2.13(a).

However, in 1986, Congress amended 18 U.S.C. 4208(g) by striking the requirement for a personal conference between the parole applicant and "the Commissioners or examiners conducting the proceeding." The amended statute required that a personal conference to explain the reasons for denial of parole is to be held between the prisoner and "a representative of the Commission." See section 58(b) of Pub. L. 99–646, 100 Stat. 3612 (1986).

The Commission has been given to understand by the legislative drafters of this amendment that it was intended to permit (but not require) the Commission to conduct one-examiner parole hearings under 18 U.S.C. 4208, so that the Commission could utilize its resources more effectively. See 132 Congressional Record H.11293–94 (daily ed. October 17, 1986). The Commission adopts that interpretation of section 2098(g) (as amended) and changes its regulation accordingly.

However, the Commission continues to be of the view that parole hearings are best conducted by a panel of two hearing examiners, as a matter of sound correctional policy. The regulation is amended to permit a one-examiner hearing where logistical circumstances leave the Commission with no choice, given the constraints imposed by a limited examiner staff and a high caseload of hearings to be conducted, in order to meet its hearing deadlines. Financial considerations may also require the Commission, from time to time, to conduct single-examiner hearings. The amendment is one of procedure only. It does not affect the substance of the parole hearing, nor does it dispense with the statutory requirement for a second examiner vote on the case. See 18 U.S.C. 4203(c)(2) and 28 CFR 2.23(b).

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

Adoption of the Amendment

Accordingly, the Commission amends Part 2 of 28 CFR as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204 (a)(6).

2. 28 CFR 2.13(a) is revised to read as follows:

§ 2.13 Initial Hearing; Procedure.

(a) An initial hearing shall be conducted by a panel of two hearing examiners unless the Regional Commissioner for extraordinary circumstances authorizes the hearing to be conducted by a single examiner. The examiners shall discuss with the prisoner his offense severity rating and salient factor score as described in § 2.20, his institutional conduct and, in addition, any other matter the panel may deem relevant.

* * * * *

Issued in Chevy Chase, Maryland on October 14, 1988.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 88–26324 Filed 11–14–88; 8:45 am]

BILLING CODE 4410–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's interim regulation on Payment of Premiums, which was published on June 30, 1988 (53 FR 24906). Appendix B to the interim regulation contains a table setting forth the interest rates that are required by statute to be used in valuing a plan's vested benefits for purposes of determining the amount of the premium due to the PBGC. This amendment adds to that table the interest rate applicable to plan years beginning in November 1988.

EFFECTIVE DATE: November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8823 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 9331 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, amended section 4006 of the Employee Retirement Income Security Act of 1974 ("ERISA") to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. Under amended ERISA section 4006(a)(3)(E)(iii)(II), the interest rate used in valuing a plan's vested benefits for purposes of determining the amount of the plan's unfunded vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

The Pension Benefit Guaranty Corporation's (the "PBGC's") interim regulation on Payment of Premiums (53 FR 24906 (June 30, 1988)) implements these new premium rules. Under § 2610.23(b)(1) of the regulation, the interest rate for valuing vested benefits is determined by reference to the annual yield for 30-year Treasury constant maturities as reported in Federal Reserve Statistical Release G.13 and H.15. The required interest rate for a given "premium payment year" (the plan year for which the premium is being paid) is 80% of this rate for the calendar month preceding the calendar month in which the premium payment year begins. As a convenience, the PBGC established an Appendix B to the interim regulation containing a table setting forth the required interest rates for premium payment years beginning in January 1988 and thereafter.

The PBGC is amending Appendix B to add the required interest rate for premium payment years beginning in November 1988. Appendix B to the interim regulation does not prescribe the required interest rates for valuing vested benefits. These rates are prescribed by section 4006(a)(3)(E)(iii)(II) of ERISA and § 2610.23(b)(1) of the regulation. The purpose of Appendix B is merely to collect and to republish these rates in a convenient place. Thus, the interest rates in Appendix B are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. See 5 U.S.C. 553(b). For these same reasons, the PBGC also finds that good cause exists for making these amendments effective immediately. See 5 U.S.C. 553(d)(3).

amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Appendix B to Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100–203, 101 Stat. 1330.

2. Appendix B to Part 2610 is amended by adding to the table of interest rates therein a new entry to read as follows. The explanatory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

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For premium payment years beginning in—	Required interest rate [1]
• • • • •	
November 1988	7.11

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Issued in Washington, DC, on this 9th day of November 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-26340 Filed 11-14-88; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of December 1988.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_k are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
•																
December 1988	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 4th day of November 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-26341 Filed 11-14-88; 8:45 am]

BILLING CODE 7708-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Active Military Service Civilian Navy IFF Technicians; Pacific Combat Areas

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration (VA) has amended its regulations concerning persons who are included as having served on active duty. The need for this action results from a recent decision of the Secretary of the Air Force that the service of members of the group known as the Civilian Navy IFF Technicians Who Served in the Combat Areas of the Pacific during World War II (December 7, 1941 to August 15, 1945) constitutes active military service in the Armed Forces of the United States for purposes of all laws administered by the VA. The effect of this action is to confer veteran status for VA benefit purposes on former members of that group who were discharged under honorable conditions.

EFFECTIVE DATE: This final regulation is effective August 2, 1988, the date that the Secretary of the Air Force held that such service constitutes active duty.

FOR FURTHER INFORMATION CONTACT: Robert M. White (211B), Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Pursuant to 38 CFR 1.12(b), the VA finds that prior publication of this change for public notice and comment is impracticable and unnecessary. The VA has no discretion in this matter. The decision of the Secretary of the Air Force concerning active duty status is binding on the VA. Consequently, a proposed notice will not be published. For this reason, this final regulation is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it does not come within the term "rule" as defined in that Act.

In accordance with Executive Order 12291 Federal Regulation, we have determined that this final regulation is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number for this regulation.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: October 25, 1988.

Thomas K. Turnage,

Administrator.

PART 3—[AMENDED]

38 CFR Part 3, Adjudication, is amended by adding § 3.7(x)(16) to read as follows:

§ 3.7 Persons included.

* * * * *

(x) * * *

(16) Civilian Navy IFF Technicians Who Served in the Combat Areas of the Pacific during World War II (December 7, 1941 to August 15, 1945). As used in the official name of this group, the acronym "IFF" stands for Identification Friend or Foe.

(Authority: Pub. L. 95-202, sec. 401)

[FR Doc. 88-26272 Filed 11-14-88; 8:45 am]

BILLING CODE 8320-01-M

VOL
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ISS
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Proposed Rules

Federal Register
Vol. 53, No. 220
Tuesday, November 15, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-88-209]

Standards for Grades of Frozen Hydrated Dried Peas or Frozen Hydrated Dried Beans

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule-modified.

SUMMARY: This proposed rule is a modification of the proposed rule published in the **Federal Register** on February 6, 1986. The modified proposed rule would establish voluntary U.S. Standards for Grades of Frozen Hydrated Dried Beans or Frozen Hydrated Dried Peas. The proposed rule was developed by the U.S. Department of Agriculture (USDA) based on a request from the California League of Food Processors (CLFP) to establish U.S. grade standards for this product. Voluntary U.S. grade standards tend to encourage uniformity and consistency in commercial practices and so would be expected to facilitate the trading of frozen hydrated beans or peas.

DATE: Comments must be received on or before January 17, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709 South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6247.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition these standards are voluntary. A small entity may avoid incurring any additional economic impact by not applying for an inspection.

This proposed rule is a modification of a proposal published on February 6, 1986, (51 FR 4605) which provided for the establishment of voluntary United States Standards for Grades of Frozen Quick-Cooking Beans or Frozen Quick-Cooking Peas. Based on comments received, USDA has modified this proposal and is again soliciting written comments. This proposed rule has been modified to better reflect current industry practice and product style.

Currently, there are no U.S. grade standards for frozen hydrated dried beans or frozen hydrated dried peas. In April 1985, the U.S. Department of Agriculture (USDA) received a petition from the California League of Food Processors (CLFP), an association representing processors of frozen hydrated dried beans or peas, requesting the Department to establish voluntary U.S. grade standards for this product. CLFP recommended that such grade standards use a system of attributes type grading that is similar to the U.S. grade standards for many other processed fruit and vegetable products. That proposal described the attributes as product prepared by hydrating dry, mature beans or peas; which may be partially cooked or fully cooked; are quick frozen; and are maintained at a temperature necessary for preservation. Accordingly, USDA issued a proposed rule which recognized only two styles of the product: "frozen quick-cooking beans or peas" and "frozen mixed bean salad." This proposal for United States Standards for Grades of Frozen Hydrated Dried Beans or Frozen Hydrated Dried Peas was published in the Federal Register, on February 6, 1986 as United States Standards for Grades of Frozen Quick-Cooking Beans or Frozen Quick-Cooking Peas (51 FR 4605). In response to that notice, one comment was received from the California League of Food Processors and one from Richard A. Shaw, Incorporated, a frozen food processor located in Watsonville, California. These comments indicated that the product description contained in that proposal did not adequately address the distinctions among the three styles for this product. The first style, "frozen quick-cooking beans or peas," requires additional cooking prior to serving. The second and third styles are fully cooked and do not require additional cooking (thaw and serve). Frequently, the product is garnished with onions, garlic, peppers or other condiments or spices.

Based on these comments, the USDA determined that changes in the proposal were necessary, including changes in the name of the product and the product description. Accordingly, USDA is publishing this modified proposed rule. The title has been changed to read "Frozen Hydrated Dried Beans or Frozen Hydrated Dried Peas" to more adequately reflect the proposed product description.

This proposal would establish three styles—"frozen quick-cooking beans (or peas)," "frozen fully cooked beans (or peas)," and "frozen mixed bean salad".

The process used to produce "frozen hydrated dried beans" begins with dry beans that are balanced or soaked in a hot salt solution under a vacuum to prevent seed germination and enzymatic action. The beans are then quick frozen by rapidly lowering the temperature for optimum flavor and texture retention. The conventional method of preparing and cooking dry beans or peas involves soaking in water overnight (6 to 14 hours), followed by cooking in boiling water for 45 minutes to three hours. The method used by commercial frozen food processors is a patented process that shortens the time required to two hours or less, depending on the variety of beans or peas.

The California League of Food Processors states that U.S. grade standards would expedite marketing of frozen hydrated dried beans and peas. The product is now being marketed for use in soup mixes, as well as for retail sales as a ready-to-serve salad product (when thawed).

There are three styles of frozen hydrated dried beans or peas—"frozen quick-cooking beans" (or "frozen quick-cooking peas"), "frozen fully cooked beans" (or "frozen fully cooked peas"), and "frozen mixed bean salad." According to the modified proposed grade standards, the product can be called "frozen quick-cooking beans" or "frozen quick-cooking peas" style, as appropriate, if it is partially cooked and consists of one or more of the following varietal types: white beans, pinto beans, pink beans, black-eye peas, speckled butter beans, baby lima beans, fordhook lima beans, light red kidney beans, dark red kidney beans, garbanzos, large lima beans, crowder peas, purple hull peas, or beans and peas of other colors or types. The product can be called "frozen fully cooked beans" or "frozen fully cooked peas" if it is fully cooked and consists of one or more of the following varietal types: white beans, pinto beans, pink beans, black-eye peas, speckled butter beans, baby lima beans, fordhook lima beans, light red kidney beans, dark red kidney beans, garbanzos, large lima beans, crowder peas, purple hull peas, or beans and peas of other color or types. Crowder peas and purple hull peas are two varietal types that were added to the modified proposed rule at the request of the CLFP in its comments on the proposed rule. The product can also be called "frozen mixed bean salad" style when it is fully cooked and consists of a mixture of two or more of these varietal types.

The grade standards would provide two (2) quality levels, "U.S. Grade A" and "U.S. Grade B," since available data indicate only two quality levels are needed in marketing this product. The proposed grade standards are similar to other voluntary grade standards used for beans and peas that are frozen or canned.

The factors of quality contained in this proposal are: Similar varietal characteristics (except for mixed types), flavor and odor, blemished, character, color, extraneous vegetable material, and damaged.

The commenters suggested miscellaneous clarifying changes be made in the proposed definitions of character, color, and damage. However, it does not appear that these recommended changes are necessary and these changes have not been included in this modified proposed rule. However, other miscellaneous changes have been made in this modified proposed rule for clarity.

The standards would provide uniform guidelines for marketing this product for the benefit of processors and buyers as required by the Agricultural Marketing Act of 1946.

List of Subjects in 7 CFR Part 52

Fruits, Vegetables, Food grades and standards.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended; 7 U.S.C. 1622, 1624.

2. Add the Subpart—*United States Standards for Grades of Frozen Hydrated Dried Beans or Frozen Hydrated Dried Peas* (7 CFR 52.6421 through 52.6431) to read as follows:

Subpart—United States Standards for Grades of Frozen Hydrated Dried Beans or Frozen Hydrated Dried Peas

Sec.

52.6421 Product description.
52.6422 Types.
52.6423 Styles.
52.6424 Definitions of terms.
52.6425 Recommended sample unit sizes.
52.6426 Grades.
52.6427 Factors of quality.
52.6428 Classification of defects.
52.6429 Tolerances for defects.
52.6430 Sample size.
52.6431 Quality requirement criteria.

Subpart—United States Standards for Grades of Frozen Hydrated Dried Beans or Frozen Hydrated Dried Peas

§ 52.6421 Product description.

"Frozen hydrated dried beans or frozen hydrated dried peas," referred to as "beans" or "peas" in these standards, is the product prepared from hydrated, mature, dry beans or peas, as *single varietal types or mixtures of varietal types.* The beans or peas may be prepared by any process in accordance with good commercial practice designated to produce quick-cooking or fully cooked products. The beans or peas are quick frozen in accordance with good commercial practice and maintained at temperatures necessary for preservation. Any safe and suitable solid or liquid optional ingredient(s) permissible under the provisions of the Federal Food, Drug, and Cosmetic Act may be used as a garnish.

§ 52.6422 Types.

(a) Single variety:
(1) White beans.
(2) Pinto beans.
(3) Pink beans.
(4) Black-eye peas.
(5) Speckled butter beans (or Jackson Wonders).
(6) Baby lima beans.
(7) Fordhook lima beans.
(8) Light red kidney beans.
(9) Dark red kidney beans.
(10) Garbanzos.
(11) Large lima beans (butter beans or limagrands).
(12) Crowder peas.
(13) Purple hull peas.
(14) Beans and peas of other colors or types.
(b) Mixed varieties consisting of two or more varietal types in any proportion.

§ 52.6423 Styles.

There are three styles of frozen hydrated dried beans or peas. (a) *"Frozen quick-cooking beans or peas"*—which are partially cooked beans or peas of one varietal type or mixed varietal types.

(b) *"Frozen fully cooked beans or peas"*—which are fully cooked beans or peas of one varietal type or mixed varietal types.

(c) *"Frozen mixed bean salad"*—which is fully cooked product prepared from hydrated, mature, dry beans or peas, as a *mixture of varietal types.*

§ 52.6424 Definitions of terms.

In these U.S. standards, unless otherwise required by the context, the following terms shall be construed, respectively, to mean:

(a) *"Acceptable quality level (AQL)"* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Blemished.* Blemished does not include the characteristic mottling of specific varietal types, such as pinto beans, red beans, speckled butter beans, and southern peas. Blemished means a bean or pea that is affected by discoloration (area and intensity) or other causes to the extent that its

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appearance or eating quality is adversely affected:
(1) Slightly;
(2) Materially; or
(3) Seriously.
(c) *Character* refers to the degree of freedom from hard beans, or peas, excessively soft or mushy beans or peas, beans or peas with tough skins, and to the overall texture and eating quality of the product (beans or peas and optional ingredients(s)). Character is determined after cooking the product (quick-cooking style only).
(1) *Good character* means that the product has a good, typical overall texture and eating quality; and that the cotyledons and skins are tender.
(2) *Reasonably good character* means that the product has a reasonably good, typical overall texture and eating quality. The beans or peas may be firm or slightly soft, but the presence of hard beans or peas and excessively soft or mushy beans or peas does not seriously affect the eating quality. The skins may be slightly tough.
(3) *Poor character* means the product fails to meet the requirements for "reasonably good character."
(d) *Color* refers to the overall bright color typical of the variety or varieties.
(1) *Good color* means that the product has a bright overall color typical of the varietal type(s) of beans and may be slightly dull.
(2) *Reasonably good color* means that the product has an overall color typical of the varietal type(s) of beans or peas; and may be dull but not "off-color."
(3) *Poor color* means the product fails to meet the requirements for "reasonably good color."
(e) *Damage* means:
(1) A loose skin or portion of skin;
(2) A cotyledon or portion of a cotyledon;
(3) A bean or pea or portion of a bean or pea with the skin or portion of the skin missing; and
(4) A crushed bean or pea or ruptured bean or pea or ruptured bean bean or pea.
(f) *Defect* means any non conformance of a unit(s) of product from a specified requirement of a single quality characteristic.
(g) *Extraneous vegetable* material (EVM) means vegetable material common to the bean or pea plant or other plants (excluding "garnish") that is harmless upon eating.
(h) *Flavor and odor.*—(1) *Good flavor and odor* means that the product has a good, typical flavor and odor, characteristic of the type(s) of beans or peas and any added garnish. It is free from objectionable flavors and odors of any kind.
(2) *Reasonably good flavor and odor* means that the product may be lacking in good flavor and odor, but is characteristic of the type(s) of beans or peas and any added garnish. It is free from objectionable flavors and odors of any kind.
(i) *Sample unit* means the amount of product to be used for inspection. It may be:
(1) The entire contents of a container;
(2) A portion of the contents of a container;
(3) A combination of the contents of two or more containers; or
(4) A portion of unpacked product.
(j) *Unit* means any individual frozen bean or pea; or any reconstructed portions of beans or peas that are the equivalent of one bean or pea.
(k) *Varietal Characteristics.* Similar varietal characteristics are applicable to single variety types only.
(1) *Contrasting varieties* means beans or peas of different varieties that are of a noticeably different color, size, or shape than the beans or peas of the predominant variety (such as red beans with white beans).
(2) *Varieties that blend* means beans or peas of different varieties that are similar in color, size, or shape to the beans or peas of the predominant variety (such as dark red and light red kidney beans).

§ 52.6425 Recommended sample unit sizes.

Requirements for all factors of quality are based on the following sample unit sizes: (a) For classified defects in Table I of § 52.6428.
(1) On-line grading—200 beans or peas (use 200 plan, under 7 CFR 52.38b).
(2) Lot grading—entire sample (use 100 plan, under 7 CFR 52.38c).
(b) For similar varietal characteristics (single types only) and damaged beans or peas—284 grams (10.0 oz) including beans or peas and garnish:
(c) For flavor and odor, character, and color—850 grams (30.0 oz); and
(d) For extraneous vegetable material (EVM).
(1) On-line grading—850 grams (30.0 oz).
(2) Lot grading—entire sample.

§ 52.6426 Grades.

(a) *U.S. Grade A* is the quality of product that:
(1) Meets the following prerequisite factors in which the beans or peas:
(i) Have practically similar varietal characteristics (applicable to single variety types only). The weight of "contrasting varieties" does not exceed 1.5 grams per 284 grams (10.0 oz); and the weight of "varieties that blend" does not exceed 14 grams per 284 grams (10.0 oz);
(ii) Have good character;
(iii) Have good color;
(iv) Have good flavor and odor;
(v) May contain "damaged" units not exceeding 25 grams per 284 grams (10.0 oz);
(vi) Are practically free from EVM:
(A) On-line grading—within the limits for defects as specified in Table II of § 52.6429
(B) Lot grading—not more than one (1) piece of EVM per 1700 grams (60.0 oz).
(2) Is within the limits for defects as classified in Table I and Specified in Table III of § 52.6429.
(b) *U.S. Grade B* is the quality of product that:
(1) Meets the following prerequisite factors in which the beans or peas:
(i) Have reasonably similar varietal characteristics (applicable to single varietal types only). The weight of "contrasting varieties" does not exceed 3 grams per 284 grams (10.0 oz); and the weight of "varieties that blend" does not exceed 28 grams per 284 grams (10.0 oz);
(ii) Have reasonably good character;
(iii) Have reasonably good color;
(iv) Have reasonably good flavor and odor;
(v) May contain "damaged units not exceeding 45 grams per 284 grams (10.0 oz);
(vi) Are reasonably free from EVM:
(A) On-line grading—within the limits for defects as specified in Table II of § 52.6429.
(B) Lot grading—not more than two (2) pieces of EVM per 850 grams (30.0 oz).
(2) Is within the limits for defects as classified in Table I of § 52.6428 and specified in Table III of § 52.6429.
(c) *Substandard* is the quality of product that fails to meet the requirements for U.S. Grade B.

§ 52.6427 Factors of quality.

The grade of a sample of frozen hydrated dried beans or peas or frozen mixed bean salad is based on requirements for the following quality factors: (a) Prerequisite quality factors:
(1) Varietal characteristics (not applicable to mixed types);
(2) Character;
(3) Color;
(4) Flavor and odor;
(5) Damaged; and
(6) Freedom from extraneous vegetable material (EVM).
(b) Classified quality factor:
(1) Blemished.

§ 52.6428 Classification of defects.

Defects are classified as "minor," "major," or "severe." "Total" defects includes all "minor," "major," and "severe" defects. Each "X" in Table I represents "one (1) defect."

Table I.—Classification of Defects

Quality factor	Defects	Classification		
		Minor	Major	Severe
Blemished: Slightly	Each bean or pea.	X		

Table I.—Classification of Defects—Continued

Quality factor	Defects	Classification		
		Minor	Major	Severe
Materially	Each bean or pea.		X	
Seriously	Each bean or pea.			X

§ 52.6429 Tolerances for defects.

TABLE II.—EXTRANEOUS VEGETABLE MATERIAL (EVM) ON-LINE ONLY (25 PLAN)

	Grade A	Grade B
AQL [1]	1.5	6.5

TABLE III.—BLEMISH DEFECTS

	Grade A			Grade B		
	Total [2]	Major	Sev	Total [2]	Major	Sev
AQL [1]	4.0	1.5	0.4	6.5	4.0	1.5

[1] AQL expressed as defects per hundred units.
[2] Total = Minor + Major + Severe.

§ 52.6430 Sample size.

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83) for lot grading and on-line grading, as applicable.

§ 52.6431 Quality requirement criteria.

(a) *Lot grading.* A lot of frozen hydrated dried beans or peas is considered as meeting the requirements for quality if:
(1) The prerequisite requirements specified in § 52.6426 are met; and
(2) The Acceptable Quality Levels (AQL) in Table III of § 52.6429 are not exceeded.
(b) *On-line grading.* A portion of production is considered as meeting the requirements for quality if:
(1) Prerequisite requirements specified in § 52.6426 are met; and
(2) The Acceptable Quality Levels (AQL) in Table III of § 52.6429 exceeded.
(c) *Single sample unit.* Each single sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:
(1) The prerequisite requirements spcified in § 52.6426 are met; and
(2) The Acceptable Quality Levels (AQL) in Table III of § 52.6429 are not exceeded.

Dated: November 8, 1988.
Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 88-26251 Filed 11-14-88; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-33]

Airworthiness Directives; California Department of Forestry Model UH-1F; Garlick Helicopters Model UH-1B; Hawkins and Powers Aviation, Inc. Model UH-1B; Hercules Model UH-1E, UH-1L, TH-1L; International Helicopters, Model UH-1B; Oregon Helicopters Model UH-1E, UH-1L TH-1L; Pilot Personnel International, Inc. Model UH-1B; Smith Helicopters Model UH-1E; Southern Aero Corporation Model UH-1A, UH-1B; and West Coast Fabrications Model UH-1E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would establish a mandatory fatigue requirement life limit on main rotor masts and trunnions used on certain UH-1 type helicopters. The proposed AD is needed to prevent main rotor mast and trunnion fatigue failures which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter.

DATE: Comments must be received on or before January 3, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Assistant Chief Counsel, FAA, Southwest Region, Fort Worth, Texas 76193-0007, or delivered in duplicate to: Office of the Regional Assistant Chief Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked: Docket No. 88-ASW-33.

Comments may be inspected in the Regional Rules Docket, Room 158, Building 3B, Office of the Regional Assistant Chief Counsel, Sothwest Region, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Helicopter Certification Branch, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The

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proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, Office of the Regional Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 88–ASW–33. The postcard will be date/time stamped and returned to the commenter.

Based on the recent manufacturer's fatigue stress tests and fatigue analysis of main rotor masts and trunnions under ground-air-ground (GAG) loading conditions, the FAA has determined that these components can no longer be operated with an unlimited service life and must be removed after a specified time in service.

Since this condition is likely to exist or develop on helicopters of the same type design, the proposed AD would establish a mandatory retirement life for the main rotor mast and trunnion installed on California Department of Forestry Model UH–1F; Garlick Helicopters Model UH–1B; Hawkins and Powers Aviation, Inc. Model UH–1B; Hercules Model UH–1E, UH–1L, TH–1L; International Helicopters, Inc. Model UH–1B; Oregon Helicopters Model UH–1E, UH–1L, and TH–1L; Pilot Personnel International, Inc. Model UH–1B; Smith Helicopters Model UH–1E; Southern Aero Corporation Model UH–1A, UH–1B; and West Coast Fabrications Model UH–1E helicopters.

The regulations proposed here would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves 146 aircraft. It is anticipated that 2 helicopters per year will require replacement of the main rotor mast trunnion at an annual cost of approximately $20,500 for 2 helicopters. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

California Department of Forestry; Garlick Helicoters; Hawkins and Powers Aviation, Inc; Hercules; International Helicopters, Inc.; Oregon Helicopters; Pilot Personnel International, Inc.; Smith Helicopters; Southern Aero Corporation; and West Coast Fabrications: Applies to Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1L, and TH–1L helicopters certificated in any category.

(Airworthiness Docket No. 88–ASW–33)

Compliance is required as indicated, unless already accomplished.

To prevent possible fatigue failure of the main rotor mast, P/N 204–011–450 (all dash numbers), and main rotor trunnion, P/N 204–011–105–001, which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter, accomplish the following:

(a) Within 10 days after the effective date of this AD, create a historical service record for the main rotor mast, P/N 204–011–450 (all dash numbers), and main rotor trunnion, P/N 204–011–105–001, and record the hours' time in service accumulated on the main rotor mast and trunnion. If the time in service cannot be determined, enter 900 hours for each year from the date the mast and trunnion were installed.

(b) For mast and trunnions with more than 14,900 hours' time in service on the effective date of this AD, remove the masts and trunnions from service within the next 100 hours' time in service.

(c) For masts and trunnions with less than 14,900 hours' time in service on the effective date of this AD, remove the masts and trunnions from service at 15,000 hours' time in service.

(d) An alternate method of compliance which provides an equivalent level of safety with this Ad may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas 76193–0170.

Issued in Fort Worth, Texas, on November 1, 1988.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 88–26290 Filed 11–14–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 81016–8218]

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations (15 CFR Parts 768 through 799) to determine whether they should be modified, rescinded or extended. To help BXA make this determination, BXA is seeking comments on how existing foreign policy-based controls maintained under section 6 of the Export Administration Act of 1979, as amended (EAA), have affected exporters and the general public.

DATE: Comments must be received by December 9, 1988 to assure full consideration in the formulation of export control policies.

ADDRESS: Written comments (six copies) should be sent to Patricia Muldonian, Regulations Branch (Room 1622), Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James Graves, Country Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–4830.

SUPPLEMENTARY INFORMATION:

Generally, the foreign policy controls maintained by the Bureau of Export Administration relate to the following: human rights (§ 776.14), South Africa and Namibia (§ 785.4(a)), Libya (§ 785.7), anti-terrorism (§ 785.4(d)), chemical warfare (§ 785.4(e)), regional stability (§ 776.16), embargoed communist countries (§ 785.1), truck manufacturing equipment for the Soviet Union's Kama River and Zil truck plants (§ 785.2(e)), and technology used in developing missiles capable of delivering nuclear weapons (§ 776.18).

The licensing policies for these control programs are described in Parts 776 and 785 of the Export Administration Regulations.

On January 20, 1988, the Secretary submitted a report to Congress extending foreign policy controls for another year. All foreign policy export controls in effect as of that date were extended. Since that time, no new foreign policy controls have been promulgated.

To assure maximum public participation in the review process, comments on the extension or revision of the existing foreign policy controls are solicited. BXA is particularly interested in the experience of individual exporters in complying with these controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. In addition, in light of the new provisions contained in section 6(p) of the EAA, BXA is interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts. Section 6(p) was added to the EAA by section 2423(b) of the Omnibus Trade and Competitiveness Act of 1988, and states:

Spare parts.—(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts or parts in goods subject to such export controls.

(2) With respect to export controls imposed under this section before the date of the enactment of this subsection, an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

Parties submitting comments are asked to be as specific as possible. Respondents, however, are reminded that the Department is soliciting only information that can be used publicly. Confidential business information will not be accepted. Any information so designated will be returned to the commenter.

All comments received before the close of the comment period will be considered by the Department in reviewing the controls and developing the report to Congress. Among the criteria the Department considers in determining whether to continue or revise U.S. foreign policy export controls are the following:

1. The probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that the foreign policy purpose cannot be achieved through negotiations or other alternative means;

2. The compatibility of the proposed controls with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

3. The likelihood that the reaction of other countries to the extension of such export controls by the United States will not render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

4. The effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United Staes as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives;

5. The ability of the United States to enforce the proposed controls effectively;

6. The foreign policy consequences of not extending the export controls.

All comments will become a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are required. If oral comments are received, they must be followed by written memoranda that will be a matter of public record and will be available for public review and copying. Communication from agencies of the United Staes Government or foreign governments will not routinely be made available for public inspections.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regualtions*. Information about the inspection and copying of records at this facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above addres or by calling (202) 377–2593.

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, Pub. L. 99–64 of July 12, 1985, and Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

Dated: November 9, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–26284 Filed 11–14–88; 8:45 am]

BILLING CODE 3510–DT–M

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act; Generic Names

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In February of 1988, the Sun Company ("Sun") applied to the Federal Trade Commission ("the Commission") requesting the establishment of a new generic name for a fiber it manufactures under the tradename "VIVRELLE." The application was filed pursuant to Rule 8, 16 CFR 303.8, of the Rules and Regulations Under the Textile Fiber Products Identification Act, 15 U.S.C. 70, *et seq.*, and Subpart C of Part 1 of the Commission's Rules of Practice, 16 CFR 1.26. In its application, Sun declared that the generic names presently established by the Commission in Rule 7, 16 CFR 303.7, are inappropriate for its fiber because of the fiber's uniqueness. Sun included a proposed definition for its fiber, together with a proposed corresponding modification to the existing definition of nylon, and suggested the generic name "OXAMID" for its fiber.

The Commission now solicits comments as to whether Rule 7 should be amended to include a new generic

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definition covering Sun's fiber. A Certificate of No Effect under the Regulatory Flexibility Act has been forwarded to the Small Business Administration.

DATE: Written comments will be accepted through January 17, 1989.

ADDRESS: Submit written comments with five copies, where possible, to: Office of the Secretary, Federal Trade Commission, Washington, DC 20580. Submission should be marked: "Textile Comment (Sun Generic)"

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney (202/326–3035), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

Rule 6, 16 CFR 303.6, of the Rules and Regulations under the Textile Fiber Products Identification Act requires manufacturers to use the generic names of the fibers contained in their textile fiber products in making required disclosures of the fiber content of the products. Rule 7, 16 CFR 303.7, sets forth the generic names and definitions that the Commission has established for synthetic fibers. Rule 8, 16 CFR 303.8, sets the procedures for establishing new generic names.

Sun submitted its application in this matter in February of 1988. The application and related materials have been placed on the rulemaking record. After an initial analysis, the Commission, on June 14, 1988, granted Sun the designation "SU 0001" for temporary use in identifying the fiber until a final determination can be made as to the merits of the application for a new generic name.

In its application, Sun described the fiber, its composition, manufacture and possible uses, as follows:

The fiber is now commercially available and will soon become an item of commerce in the U.S., first via imports and secondly by U.S. manufacturing.

Chemical Composition

The fiber for which we seek a new generic classification is a block copolymer of a conventional nylon such as nylon-6 or nylon-6,6 with a polyetheramide. A polyetheramide is a polyamide into which aliphatic ether units have been introduced, and these ether units in the copolymer are responsible for the remarkable properties of the fiber. In terms of chemical structure the repeating units of a typical block copolymer are as follows:

FIGURE 1

Nylon - 6,6

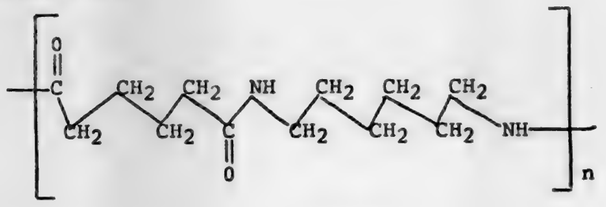
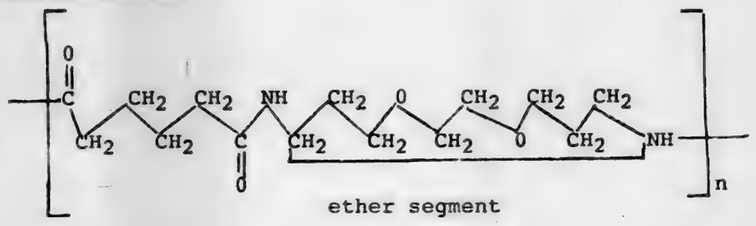
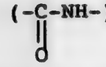


FIGURE 2

Polyetheramide



The resulting copolymer is also a polyetheramide because it has blocks of polyetheramide interspersed in blocks of polyamide. To achieve the desirable properties of the fiber, at least 15% of polyetheramide must be included in the copolymer.



This means that at least 15% of the amide linkages in the block copolymer are attached to aliphatic ether units. In general, the maximum amount is 40%.

Significant Physical Properties

Fundamentally, VIVRELLE is a synthetic "comfort" fiber. We describe it as a comfort fiber because it is a unique combination of three important comfort-related characteristics: softness, moisture absorption and moisture transport.

The following data show the truly unique moisture transport and comfort characteristics of polyetheramides compared to conventional nylons. The data are from conventional test procedures used to evaluate fiber characteristics and include comfort data based on correlations developed from actual fiber use.

In the tables that follow, the polyetheramides which are the subject of this application are, as described above, block copolymers of a conventional nylon and a polyetheramide, the latter being the same or similar to Figure 2 above. The designation Polyetheramide (6,6) 20/80 means a block copolymer containing 20% Figure 2 type polyetheramide and 80% nylon-6,6.

One test related to comfort is moisture absorption. The dry fiber is boiled in water, spun dry to remove surface water, and weighed to determine the amount of water absorbed.

Fiber		Moisture [1]
Nylon-6	100%	10
Polyetheramide (6)	20/80	18
Do	30/70	25
Nylon-6,6	100%	10
Polyetheramide (6,6)	15/85	17
	25/75	19
	35/65	26

[1] Moisture absorption—percent of dry weight.

The over 100% improvement in moisture absorption of the polyetheramide is clearly shown.

Another comfort test is "moisture regain." The fiber is dried to zero moisture, placed in a constant relative humidity chamber until it reaches equilibrium, and the amount of moisture absorbed as a percentage of dry weight is determined. The difference in moisture regain between 65 and 93% relative humidity (RH) is a measure of the fiber's ability to transport moisture from the skin of the wearer to the atmosphere.

Fiber	Moisture Regain		
	65% RH	93% RH	Difference
Nylon-6	4.2	7.9	3.7
Nylon-6,6	4.3	7.8	3.5
Polyetheramide (6) 30/70	5.9	12.8	6.9

The substantial improvement in the polyetheramide over conventional nylon is apparent. To put the magnitude of the "differences" shown above in proper perspective, they should be compared with the values for cotton, 7 (65% RH) and 16 (93% RH), difference of 9, the natural fiber against which synthetics are often compared. The proximity of polyetheramide to cotton is apparent.

The Hohenstein Institute in Stuttgart, West Germany, is a highly respected, well-known fiber testing institute. They conducted a series of comfort-related tests shown below to determine the relative comfort of the polyetheramides. In these tests, the differences found between polyetheramide and conventional nylon were judged significant by Hohenstein.

On Hohenstein test is the "relative liquid water transport rate" which measures the rate at which *liquid* water is transported through the fabric and into the atmosphere, with higher results being better as indicating better transport. Polyetheramides are substantially better than nylon 6, viz.

Nylon-6	8.0
Polyetheramide (6) 20/80	9.9

The values should be considered on a scale of 6–10 since current, significant commercial fibers have values within that range.

Another Hohenstein test is the "water transport resistance" test, which measures the rate at which water *vapor* is transported through the fabric and into the atmosphere. In this test a lower result indicates better transport and hence is better. The results were as follows:

Nylon-6	53.3
Polyetheramide (6) 20/80	49.1

Since substantially all current commercially significant fibers are between the small range of 49.1 to 54.9, the unique characteristics of the polyetheramides is readily apparent.

The third Hohenstein test is a "wearer comfort index under heavy sweating conditions." This index is a correlation between comfort and various physical parameters of the fabric relating to its ability to move water from the skin of the wearer to the atmosphere on the opposite side. Such factors included water vapor resistance, buffering capacity of the fabric to water, short-time water vapor uptake, and equilibrium time between fiber and moisture. The results were as follows with high values being desired:

Nylon-6	4.6
Polyetheramide (6) 20/80	6.6

The polyetheramide was, in fact, higher than any of the other fibers tested which ranged from 1.1 to 5.8.

The Shirley Institute, another widely-respected international fiber testing/evaluation organization, uses an "F value" the measure comfort. The F value reflects the ration of water vapor resistance to thermal resistance. The most satisfactory system, from a comfort standpoint, has an F value as low as possible. The lowest values found in clothing are around 5.

The results for nylon and the polyetheramide are as follows:

Nylon-6	9.7
Polyetheramide (6) 20/80	5.9

Another Hohenstein test reflects the opinions of people who wore garments from fabrics of various type fibers under normal every-day conditions. The wearer ranks the fabric on a scale of 1 to 6 with 1 being "very good," 6 being unsatisfactory, and numbers 2–5 having intermediate descriptors.

The rankings were:

Nylon-6 (satisfactory)	3.0
Polyetheramide (6) 20/80 (between good and very good)	1.6

It is of interest to note that the polyetheramide was the highest ranking synthetic fiber tested. This test is of especial significance because, in the opinion of Hohenstein, it reflects how people perceive comfort.

The above data show that the polyetheramides are distinctly superior to conventional nylons in the factors relevant to comfort. It is submitted that the differences are sufficiently substantial that the polyetheramides should not have to be lumped together with conventional nylons under the same generic classification.

We have referred above to the "softness" of the polyetheramide fibers which is an industry term for how the fiber "feels." Softness is not measured quantitatively in the trade but the excellent softness of the polyetheramide

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(Vivrelle) is apparent from the sample referred to at the end of this petition.

VIVRELLE is now commercially available in Italy (since early 1987) and can be made available in limited export quantities to the U.S. textile industry. U.S. fiber manufacturers may soon elect to begin manufacturing in the U.S.

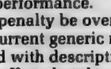
The polyetheramide fiber is a "comfort" fiber because it is soft and has the ability to absorb and transport moisture. Thus, it is an ideal candidate for consumer apparel such as sweatsuits undergarments, etc. where its unique combination of softness and moisture performance are important. Its unique properties would be severely penalized if it must be described as nylon, since nylon has a well-known reputation for *not* being soft and for *not* having good moisture performance. Indeed, nylon in apparel is often referred to as "clammy" because of its poor moisture performance.

Nor can this penalty be overcome by the use of the current generic name nylon combined with descriptive material to the effect that the polyetheramides do not have the softness and moisture performance problems usually associated with nylon. The ultimate purchasers of polyetheramide wearing apparel are not sophisticated professionals but average citizens who associate the generic classification on the label with certain expected properties. Particularly is this true with nylon which has been burdened for several *decades* with its poor, albeit accurate, reputation in much wearing apparel. We will be seriously disadvantaged if we must describe our fiber with the name nylon, which connotes the very undesirable properties our fiber has overcome.

We propose the following definition for these new polyetheramide fibers and a corresponding change in the definition of nylon.

Polyetheramides

A manufactured fiber in which the fiber-forming substance is a long-chain, synthetic polyamide in which at least 15% of the amide linkage units

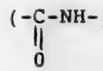


are directly attached to one or more aliphatic ether units.

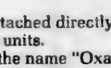
Concurrently, the current definition of nylon should be correspondingly amended to exclude the ether units. A suggested revision is:

Nylon

A manufactured fiber in which the fiber-forming substance is a long-chain synthetic polyamide in which less than 85% of the amide



linkages are attached directly to two aromatic rings and less than 15% of the amide



linkages are attached directly to aliphatic ether units.

We suggest the name "Oxamid" for the polyetheramide of the type described herein, which reflects both that it contains oxygen and that it is an amide. This suggestion parallels our status in Europe where the Italian Ministry of Trade, Department of Industry Trade and Handicrafts, has approved the use of "polyoxyamide" in Italy and has agreed to propose "polyoxyamide" to the European Economic Community (EEC) for adoption as a new EEC generic name for the same fibers as described herein. We have also obtained certain trademark rights in "Oxamid" which would be abandoned, as appropriate, upon adoption of the term as a generic fiber designation.

Section B. Invitation to Comment

The Commission is soliciting comment on Sun's application generally, but is especially interested in comments on whether the application meets the following three criteria, which the Commission has identified as grounds for granting petitions for new generic names, 38 FR 34112, 34114 (December 11, 1973):

1. The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical must result in distinctive physical properties of significance to the general public.

2. The fiber must be in active commerical use or such use must be immediately foreseen.

3. The grant of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies.

Before deciding whether to amend Textile Rule 7, the Commission will give consideration to any written comments submitted to the Secretary of the Commission within the above-mentioned comment period. Comments that are submitted will be available for public inspection, in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission Regulations, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580.

Section C. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis (5 U.S.C. 603 through 604) are not applicable to this proposal because the Commission believes that the amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission has tentatively reached this conclusion with respect to the proposed amendment because the amendment will impose no obligations, penalties or costs.

The Commission invites comment on whether the proposed amendment would have a significant economic impact on a substantial number of small entities. Subsequent to the receipt of any such comments, the Commission will decide whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, the Commission certifies, under section 5 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendment, if promulgated, will not have a significant economic effect on a substantial number of small entities.

Section D. Paperwork Reduction Act

Any amendment that could result from this proceeding would not contain provisions that constitute information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, and the implementing regulation, 5 CFR 1320.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade practices.

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act, 15 U.S.C. 70(e); sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-26307 Filed 11-14-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

Withdrawal of Proposed Amendment to Customs Regulations Relating to Liquidated Damages Provision for Failure to Timely Deposit Estimated Duties

AGENCY: Customs Service, Treasury.

ACTION: Notice of withdrawal.

SUMMARY: This document withdraws a proposed amendment to the Customs Regulations which would have established a liquidated damage provision in the basic importation and entry bond condition for failure to timely deposit estimated duties. The proposal was made in a **Federal Register** document published on August 4, 1986. After analysis of comments and further review, Customs has determined that the proposal is not necessary as there are other procedures to deal with non-timely deposit of estimated duties. Customs has concluded that the proposal would result in voluminous paperwork for Customs with minimal return.

DATE: Withdrawal effective November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, (202) 566-5746.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1986, Customs published a document in the **Federal Register** (51 FR 27875), proposing several amendments to the Customs Regulations relating to the bond provisions in Part 113 (19 CFR Part 113). One amendment Customs proposed in that document was to indicate in the bond conditions relating to the control of containers and instruments of international traffic that an instrument of international traffic of U.S. origin which has not been increased in value or improved in condition by a process of manufacture or other means while abroad is not subject to entry filing or the payment of duty if it is diverted or otherwise withdrawn. Other amendments proposed in that document related to specifying that the principal and surety are jointly and severally liable under Customs bonds. These proposals are being adopted by Customs in another document published in today's **Federal Register.**

The August 4, 1986, document also proposed to establish a liquidated damage provision in the basic importation and entry bond condition for failure to timely deposit estimated duties. It was proposed that such a provision would be set forth in § 113.62, Customs Regulations (19 CFR 113.62). After analysis of the comments received on this subject and further review, Customs has concluded that it should not proceed with this proposal.

All comments Customs reviewed on this subject were opposed to the proposal. Further, Customs has determined that there are other procedures it can pursue to enforce the timely deposit of estimated duties. Customs also determined that the proposal would result in voluminous paperwork for Customs with minimal return.

In accordance with the above, Customs is withdrawing the proposal published in the **Federal Register** on August 4, 1986, to amend § 113.62, Customs Regulations to provide a liquidated damages provision for failure to deposit estimated duties and taxes in a timely manner.

Approved: October 18, 1988.

Michael H. Lane,

Acting Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 88-26380 Filed 11-14-88; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[EE-159-86]

Permitted Disparity With Respect to Benefits and Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the permitted disparity in employer contributions to, and employer-derived benefits under, qualified plans. Changes to the applicable tax law were made by the Tax Reform Act of 1986. These regulations will provide the public with guidance needed to comply with the law and will affect employers maintaining employee retirement plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 17, 1989. These amendments generally are proposed to apply to plan years beginning after December 31, 1988, except as otherwise specified in the applicable Act.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC: CORP:T:R (EE-159-86) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michael C. Garvey of the Employee Benefits and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, Washington, DC 20224 (Attention: CC CORP:T:R) (202-377-9372) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401(a)(5) and 401(l) of the Internal Revenue Code of 1986. These amendments are proposed to conform the regulations to section 1111(a) and (b) of the Tax Reform Act of 1986 (Pub. L. 99-514) (TRA 1986) (100 Stat. 2085, 2435).

Pre-1989 Law

Section 401(a)(4) provided that a qualified pension, profit-sharing or stock bonus plan may not discriminate in favor of employees who are officers, shareholders or highly compensated (the "prohibited group"). Generally, in applying the nondiscrimination test to employer-derived benefits under a plan, the employer-derived benefits provided on behalf of the prohibited group (determined as a percentage of compensation) were compared to the employer-derived benefits provided on behalf of the other participants. A similar test was applied to employer contributions (and forfeitures) under a plan when testing whether such contributions (and forfeitures) discriminated in favor of the prohibited group. If benefits and contributions discriminated in favor of the prohibited group, the plan did not satisfy the nondiscrimination requirements of section 401(a)(4).

However, under section 401(a)(5), in determining whether employer-derived benefits or employer contributions (and forfeitures) discriminated in favor of the prohibited group, the employer-derived portion of each participant's old age, survivors and disability insurance benefits and the employer contributions under social security could be taken into account.

Revenue Rulings 71-446 (1971-2 C.B. 187) and 83-110 (1983-2 C.B. 70) provided guidance for determining the

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maximum amount of social security benefits that could be taken into account for purposes of determining whether a plan satisfied the nondiscrimination requirements of section 401(a)(4).

Section 401(l) provided that employer contributions (and forfeitures) under a defined contribution plan could be integrated for a plan year by reducing employer contributions (and forfeitures) on behalf of a participant by an amount not in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for the plan year (the maximum amount of compensation on which an employer pays social security taxes) multiplied by the tax rate for old age, survivors and disability insurance benefits under the social security system.

A plan that met the nondiscrimination requirements of section 401(a)(4) only if employer-derived social security benefits or contributions were taken into account was referred to as an integrated plan.

Explanation of Provisions

Section 1111(b) of TRA 1986 amended section 401(a)(5) to provide that a pension, profit-sharing or stock bonus plan will not be considered to discriminate within the meaning of section 401(a)(4) merely because the contributions or benefits provided for, or on behalf of, employees under the plan favor highly compensated employees (as defined in section 414(q)), provided that this result is attributable to disparity in the rates of contributions or benefits with respect to compensation below and above a specified level and such disparity is permitted under section 401(l). Section 401(l) provides rules relating to the permitted disparity in employer contributions (and forfeitures) and employer-derived benefits under defined contributions and defined benefit plans.

In determining whether certain disparity should be treated as permitted under section 401(l), the proposed regulations reflect a general concern with respect to plan designs that differ from the standard, permitted disparity design under section 401(l) and that, compared to the disparity permitted under such a standard design, create a significant potential for discrimination in favor of the employer's highly compensated employees. Whether a particular plan design (e.g., use of a flat dollar integration level under a defined benefit excess plan) creates a significant potential for discrimination will depend, in part, on the age, service and compensations characteristics of the employer's employees. Thus, the proposed regulations include various limits and rules that are directed at identifying those potentially discriminatory situations. In such situations, the proposed regulations provide that the disparity under a plan does not satisfy the requirements of section 401(l) and thus may not be disregarded, by reason of section 401(a)(5)(C), in determining whether the plan satisfies section 401(a)(4). Note, however, that a plan with disparity that is not permitted under section 401(l) may be able to demonstrate that it is nondiscriminatory under section 401(a)(4).

Nonapplicability of Provisions in Certain Cases

Under §§ 1.401(l)–1(a)(3) and 1.401(a)(5)–1(d)(6)(iii) of the proposed regulations, the permitted disparity limitations applicable to defined benefit plans and defined contribution plans under sections 401(a)(5)(C) and 401(l) and the final pay limitation provisions applicable to defined benefit plans under section 401(a)(5)(D) are not available to a plan maintained by an employer that is not subject to the tax imposed under section 3111 or section 3221. In addition, § 1.401(l)–1(a)(3) of the proposed regulations provides that sections 401(a)(5)(C) and 401(l) are not available to an employee stock ownership plan.

Defined Contribution Plans

Section 401(l)(2) sets forth the permitted disparity rules applicable to employer contributions (and forfeitures) allocated to participants' accounts under a defined contribution plan. Under section 401(l)(2), a defined contribution plan satisfies the disparity rules for a plan year with respect to employer contributions (and forfeitures) only if the excess contribution percentage (the rate of contributions made to the plan by the employer with respect to compensation above the integration level, expressed as a percentage of such compensation) for the plan year does not exceed the base contribution percentage (the rate of contributions made to the plan by the employer with respect to compensation at or below the integration level, expressed as a percentage of such compensation) for the plan year by more than the maximum excess allowance. The maximum excess allowance applicable to a defined contribution plan for a plan year is the lesser of (1) the base contribution percentage or (2) the greater of 5.7 percentage points or the percentage equal to the portion of the section 3111(a) tax attributable to old age insurance. In addition, § 1.401(l)–2(b)(3) of the proposed regulations provides that the disparity between the excess contribution percentage and the base contribution percentage must be uniform with respect to all participants.

Under section 401(l)(5)(A)(ii), the integration level under a defined contribution plan applicable to a plan year may not exceed the contribution and benefit base (the "taxable wage base") in effect under section 230 of the Social Security Act for the plan year. Section 1.401(l)–2(b)(4) of the proposed regulations provides that a defined contribution plan must specify an integration level for a plan year that equals the taxable wage base in effect at the beginning of the plan year. Thus, the proposed regulations provide that a defined contribution plan will not satisfy the requirements of section 401(l) if it specifies for a plan year an integration level lower than the taxable wage base in effect at the beginning of the plan year. Such a lower integration level creates a significant potential for discrimination in favor of highly compensated employees and thus such a plan may not rely on sections 401(a)(5)(C) and 401(l) aot disregard its disparity. Instead, such a plan will be required to demonstrate that it is nondiscriminatory under the general section 401(a)(4) analysis.

A defined contribution plan will not fail to satisfy the permitted disparity rules applicable to employer contributions (and forfeitures) under section 401(l)(2) and § 1.401(l)–2(b) of the proposed regulations merely because the plan provides for the payment of benefits to participants under circumstances other than upon retirement, death, disability or other separation from the service of the employer.

Defined Benefit Plans

Section 401(l)(3) sets forth the permitted disparity rules with respect to employer-derived benefits under a defined benefit plan. Section 401(l)(3)(A) provides rules applicable to defined benefit excess plans and section 401(l)(3)(B) provides rules applicable to defined benefit offset plans. In general, under the proposed regulations, a defined benefit excess plan is a plan under which the rate of employer-derived benefits with respect to compensation above a level specified in the plan (expressed as a percentage of such compensation) is higher than the rate of employer-derived benefits with respect to compensation at or below such level (expressed as a percentage of such compensation). In general, under the proposed regulations, a defined benefit offset plan is a plan (that is not an excess plan) with a benefit formula that initially provides a benefit to each participant but which reduces or offsets that benefit by an amount determined under the plan. Section 1.401(l)–1(b)(4) of the proposed regulations provides that a defined benefit plan maintained by an employer is not an offset plan for purposes of section 401(l) merely because benefits provided under the plan are offset on account of benefits provided under another qualified plan maintained by the employer.

Defined Benefit Excess Plans

Under section 401(l)(3)(A), a defined benefit excess plan satisfies the permitted disparity rules if (1) the excess benefit percentage (the employer-derived benefits with respect to compensation above the plan's integration level, determined as a percentage of such compensation) under the plan does not exceed the base benefit percentage (the employer-derived benefits with respect to compensation at or below the plan's integration level, determined as a percentage of such compensation) under the plan by more than the maximum excess allowance; (2) any optional form of benefit, preretirement benefit, actuarial factor or other right, option or feature provided under the plan with respect to employer-derived benefits attributable to compensation above the plan's integration level is also provided under the plan with respect to employer-derived benefits attributable to compensation at or below the integration level; and (3) employer-derived benefits provided under the plan to each participant are based on the participant's average annual compensation. In addition, § 1.401(l)–3(b)(2) of the proposed regulations provides that the disparity between the excess benefit percentage and the base benefit percentage must be uniform with respect to all participants.

Section 401(l)(4)(A) provides that the maximum excess allowance applicable to a defined benefit excess plan (with an integration level not in excess of covered compensation) with respect to benefits attributable to any year of service taken into account under the plan for determining benefits (credited service) is the lesser of (1) the base benefit percentage or (2) ¾ of a percentage point. The maximum excess allowance for such a plan with respect to total benefits for all years of credited service is the lesser of (1) the base benefit percentage or (2) ¾ of a percentage point times the participant's years of credited service (not exceeding 35 years).

Section 1.401(l)–3(b)(3) of the proposed regulations clarifies that the maximum excess allowance applies to defined benefit excess plans that determine benefits with reference to a participant's final average compensation and to defined benefit excess plans that determined benefits with reference to a participant's career average compensation. In addition, the maximum excess allowance applies to both unit benefit and flat benefit defined benefit excess plans.

Defined Benefit Offset Plans

Under section 401(l)(3)(B), a defined benefits offset plan satisfies the permitted disparity rules if (1) the participant's employer-derived benefit is not offset or reduced by more than the maximum offset allowance and (2) benefits provided under the plan to each participant (before application of the offset) are based on a participant's average annual compensation or on a specified amount unrelated to the participant's compensation. Section 1.401(l)–3(c)(2) of the proposed regulations provides that the offset must be uniform with respect to all participants.

Section 401(l)(4)(B) provides that the maximum offset allowance applicable to a participant in a defined benefit offset plan for any year of credited service for the employer is the lesser of (1) 50 percent of the employer-derived benefit that would have accrued, without regard to the offset, on behalf of the participant (under the plan's benefit and accrual formula) with respect to the participant's average annual compensation not in excess of the participant's final average compensation (up to covered compensation) or (2) ¾ of 1 percent of the participant's final average compensation (up to covered compensation). The maximum offset allowance applicable to a participant in such a plan with respect to total employer-derived benefits for all years of credited service for the employer is the lesser of (1) 50 percent of the employer-derived benefit that would have accrued, without regard to the offset, on behalf of the participant (under the plan's benefit and accrual formula) with respect to the participant's average annual compensation not in excess of the participant's final average compensation (up to covered compensation) or (2) ¾ of 1 percent of the participant's final average compensation (up to covered compensation) times the participant's years of credited service (not exceeding 35 years). In determining a participant's final average compensation for purposes of computing the maximum offset allowance, section 401(l)(5)(D)(ii) provides that compensation in any year which is greater than the taxable wage base in effect for such year is not taken into account.

Defined Benefit Excess Plans and Offset Plans

Section 1.401(l)–1(b)(8) of the proposed regulations provides that a participant's average annual compensation (on which benefits under a defined benefit excess plans and a defined benefit offset plan must generally be based) may be determined over any consecutive year period (specified in the plan) consisting of at least the 3 consecutive years over which the participant's average annual compensation is the highest. Section 1.401(l)–1(b)(8) of the proposed regulations provides that, for such purposes, a plan may specify any 12-month period as a year.

Section 401(l)(4)(C) requires the Secretary to prescribe regulations requiring the reduction of the ¾ of 1 percent factor (1) in the maximum excess allowance with respect to defined benefit excess plans that specify an integration level in excess of a participant's covered compensation and (2) in the maximum offset allowance with respect to defined benefit offset plans that base the offset to participant's benefit on the participant's final average compensation in excess of the participant's covered compensation. Section 1.401(l)–3(d) of the proposed regulations provides rules under which the ¾ of 1 percent factor in the maximum excess allowance and the maximum offset allowance is reduced under the circumstances described in section 401(l)(4)(C) and sets forth tables providing the reduced factors.

The proposed regulations also include rules with respect to the use of a flat dollar integration level under a defined benefit excess plan and a flat dollar limit on final average compensation taken into account in determining the offset amount under a defined benefit offset plan. In certain cases, depending on the interaction of the particular flat dollar amount and the age, service, and compensation characteristics of the employer's employees, a flat dollar integration level and offset limit may create a significant potential for discrimination in favor of highly compensated employees. The proposed regulations provide that, unless certain requirements are satisfied, a flat dollar integration level and final average compensation offset limit will cause the disparity under a plan to fail to satisfy section 401(l).

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Section 401(l)(5)(F) authorizes the Secretary to prescribe regulations requiring the reduction of the 3/4 of 1 percent factor in the maximum excess allowance and in the maximum offset allowance in the case of a defined benefit excess plan or offset plan that provides for benefits (other than certain disability benefits) commencing before a participant's social security retirement age. Section 1.401(l)–3(e)(3) of the proposed regulations provides tables setting forth the reduced maximum excess allowance and the reduced maximum offset allowance applicable to such benefits and § 1.401(l)–3(e)(4) of the proposed regulations describes the type of disability benefit that is not subject to such a reduction.

The maximum excess allowance requirements of § 1.401(l)–3(b) of the proposed regulations and the maximum offset allowance requirements of § 1.401(l)–3(c) of the proposed regulations apply only to employer-derived benefits under the plan. Section 1.401(l)–3(g) of the proposed regulations provides that benefits attributable to employee contributions are not taken into account in determining whether the benefits provided under a defined benefit excess plan exceed the maximum excess allowance or whether the offset to a participant's benefit under a defined benefit offset plan exceeds the maximum offset allowance.

Section 1.401(l)–3(g)(1) of the proposed regulations provides that, except as may be otherwise provided by the Commissioner, the rules of section 411(c) and the regulations thereunder (with such adjustments as the Commissioner may prescribe) apply for purposes of determining the employee's accrued benefit derived from employer contributions and from employee contributions under the plan. However, § 1.401(l)–3(g)(2) of the proposed regulations also provides a special rule that may be used by certain plans to determine the benefits that are considered to be attributable to employee contributions for these purposes. This special rule is designed to identify those situations, based on the characteristics of the employer's employees, in which the use of uniform factors for determining the portion of an employee's benefit attributable to employee contributions creates a significant potential for discrimination in favor of highly compensated employees.

Combining and Aggregating Plans

Section 401(l)(5)(F)(ii) requires the Secretary to prescribe such regulations as may be necessary or appropriate in order to prevent the multiple utilization of the permitted disparity with respect to an employee who is or may become a participant in more than one plan maintained by an employer. Section 1.401(l)–4 of the proposed regulations provides rules under which employer contributions (and forfeitures) and employer-derived benefits provided under tow or more plans maintained by an employer (within the meaning of section 414(b), (c), (m) and (o)) in which an employee participates or may participate are combined for purposes of applying the (1) maximum excess allowance applicable to defined contribution plans and defined benefit excess plans and (2) the maximum offset allowance applicable to defined benefit offset plans.

Coordination of Sections 401(l) and 401(a)(4)

The proposed regulations clarify that while sections 401(a)(5)(C) and 401(l) may be important components in the determination of whether a plan discriminates in favor of highly compensated employees under section 401(a)(4), compliance with section 401(l) is not an automatic safe harbor for purposes of this determination. Section 401(l) is more narrowly directed at the question of whether, in the case of an excess plan, the disparity in the explicit formula for contribution allocation or benefit rates with respect to compensation below and above a specified level may be disregarded, by reason of section 401(a)(5)(C), in determining whether the plan satisfies the nondiscrimination rule of section 401(a)(4). Similarly, in the case of an offset plan, section 401(l) is directed at determining whether the benefit offset provided under the explicit formula in the plan (i.e., the reduction or offset of the benefit that otherwise would have been earned under the positive portion of the formula) may be disregarded, by reason of section 401(a)(5)(C), in determining whether the plan satisfies the nondiscrimination rule of section 401(a)(4).

This general relationship is reflected by the focus under section 401(l) on the treatment of the disparity in the rates of contributions or benefits with respect to participants' compensation below and above a specified level and the disparity among the rates of contributions or benefits among plan participants that is solely the result of a specified benefit offset under the plan's benefit formula. Section 401(l) does not directly address the disparity in contribution or benefit rates between highly compensated and nonhighly compensated employees.

Thus, for purposes of applying section 401(a)(4) to a defined benefit excess plan that satisfies section 401(l), a participant may generally be treated as having a benefit equal to the excess benefit percentage under the plan formula applied to all compensation taken into account under the plan even though, because of the permitted rate disparity, the participant actually earns a smaller benefit. Similarly, in applying section 401(a)(4) to an offset plan that satisfies section 401(l), a participant may generally be treated as having earned the full benefit under the positive portion of the benefit formula under the plan even though, because of the permitted offset, the participant actually earns the positive benefit reduced by the permitted offset.

However, although the rate disparity or benefit offset provided under the contribution allocation or benefit formula in a plan satisfies section 401(l) and is therefore permitted disparity under such section, the plan nevertheless may not satisfy the nondiscrimination rules of section 401(a)(4). In other words, disregarding the disparity in allocations or benefits that results solely from the permitted disparity in allocation or benefit rates or from the permitted offset does not provide assurance that the plan, or the amounts of contributions or benefits provided thereunder, will be nondiscriminatory under section 401(a)(4).

For example, a plan with an allocation or benefit formula that satisfies section 401(l) may nevertheless be discriminatory with respect to certain benefits or features under the plan (e.g., optional forms of benefits or loans). Similarly, a defined benefit plan that provides some, but not all, participants with a subsidized early retirement benefit or with a subsidized disability may be discriminatory under section 401(a)(4) even though the benefit formula contained in the plan satisfies section 401(l).

Furthermore, a contribution or benefit formula contained in a plan, even disregarding permitted disparity, may provide discriminatory amounts of contributions or benefits. For example, a defined benefit excess plan may apply a 1 percent–1.50 percent unit benefit formula to one group of participants and a 1.25 percent–1.75 percent unit benefit formula to another group of participants. The disparities under these benefit formulas may satisfy section 401(l) and thus may generally be disregarded in applying section 401(a)(4) to the plan. However, whether this plan, even disregarding the permitted disparity, satisfies section 401(a)(4) will depend on a variety of factors, including the composition of the groups of participants covered by the two benefit formulas. For example, if the 1.25 percent–1.75 percent formula applies only to highly compensated employees, the plan (standing alone) would not satisfy section 401(a)(4).

A similar issue arises with respect to an excess plan that does not apply a uniform base percentage to all participants and with respect to an offset plan under which the offset applicable to the positive benefit under the plan formula is not uniform for all participants. For example, assume that a defined benefit excess plan applies a 1.1 percent–1.6 percent unit benefit formula to some participants and a 1.0 percent–1.6 percent unit benefit formula to the other participants. Because the rate disparities with respect to these two groups of participants are not uniform and thus create a significant potential for discrimination in favor of highly compensated employees (e.g., if the 1.1 percent–1.6 percent formula applies only to highly compensated employees), the proposed regulations provide that such a plan does not satisfy section 401(l). (The proposed regulations include an exception to the general uniformity requirement for differences in disparities that are solely the result of different employees' social security retirement ages.) Similarly, if the employer-derived unit benefit provided under the positive portion of a defined benefit offset plan is 2 percent for some participants and 1.8 percent for other participants (because, for example, of the reduction for benefits attributable to employee contributions), the plan may not satisfy section 401(a)(4).

The same analysis applies to a defined benefit excess plan or to a defined benefit offset plan that has a benefit formula that is properly integrated under prior social security integration rules and is amended to reflect amended section 401(l), effective for plan year's beginning in 1989 and thereafter, merely by applying the amended section 401(l) disparity rules to the plan's pre-existing benefit formula. The effect of amending the pre-existing benefit formula in this manner will be to create differences in the rate disparities (in the case of an excess plan) and differences in the offset amount (in the case of an offset plan) among participants. As a result of this lack of uniformity and the resulting potential for discrimination in favor of highly compensated employees, such a plan will not be entitled to rely on section 401(l) in order to permit the rate disparities or offsets to be disregarded for purposes of section 401(a)(4).

However, a plan (such as a plan described in the preceding paragraphs) will not necessarily fail to satisfy section 401(a)(4) merely because the plan fails to satisfy the permitted disparity rules of section 401(l). Section 401(l) and the proposed regulations set forth the exclusive rules under which section 401(a)(5)(C) and 401(l) will cause disparities in the allocation or benefit rates under a plan with respect to compensation below and above a specified level and offsets to benefits under a plan to be disregarded in applying section 401(a)(4) to the plan. These exclusive rules generally are intended to identify those plan designs that both differ from the standard design contemplated under section 401(l) and create a significant potential for discrimination in favor of highly compensated employees. Thus, if a plan fails to satisfy one or more of these exclusive rules, section 401(a)(5)(C) and 401(l) will not permit any such disparities or offsets to be disregarded for purposes of applying section 401(a)(4). However, a plan that fails to satisfy section 401(l) may nevertheless satisfy section 401(a)(4).

For example, the defined benefit excess plan discussed previously with two different unit benefit formulas fails to provide a uniform disparity in benefit rates for all participants and thus does not satisfy section 401(l). Accordingly, in applying section 401(a)(4), the disparities may not be disregarded on account of section 401(a)(5)(C) and 401(l). However, this plan may nevertheless be able to demonstrate, under the applicable section 401(a)(4) analysis, that it does not impermissibly discriminate in contributions and benefits in favor of highly compensated employees. Similarly, in certain cases, a defined benefit excess plan may fail to satisfy section 401(l) because the plan uses an integration level that is lower than covered compensation. However, the plan may nevertheless be able to demonstrate nondiscrimination under section 401(a)(4). Finally, an offset plan that is properly integrated under prior law and merely applies the new section 401(l) limits in addition to the prior law social security offset will fail to satisfy section 401(l), but may nevertheless be able to demonstrate nondiscrimination under section 401(a)(4).

Forthcoming regulations under section 401(a)(4) will provide the methods for determining whether a plan is discriminatory under section 401(a)(4) and such methods will permit, under certain conditions (based on section 401(l) principles), "imputing" or disregarding certain disparity in contribution allocation or benefit rates, even with respect to those plans that do not satisfy section 401(l) and the regulations thereunder. It is expected, however, that in certain important respects the rules for "imputing" permitted disparity under section 401(a)(4) will generally be based on the standard plan design contemplated under section 401(l). In addition, forthcoming regulations under section 401(a)(4) will address situations in which the rate of employee contributions under a plan differs on account of compensation.

Benefits Limited by Reference to Final Pay

Under section 401(a)(5)(D), a defined benefit plan (including an excess plan or an offset plan) does not discriminate in favor of highly compensated employees within the meaning of section 401(a)(4) merely because the plan limits the employer-derived accrued retirement benefit provided to any participant under the plan to the excess of the participant's final pay from the employer over the participant's employer-derived primary insurance amount under social security attributable to the participant's service for the employer. Section 401(a)(5)(D)(i) provides that, in determining this final pay limit, a participant's employer-derived primary insurance amount is considered to accrue ratably over 35 yearts. Under § 1.401(a)(5)–1(d)(2) of the proposed regulations, a participant's final pay is the highest compensation (as defined in section 414(q)) paid to the participant during any 12-month period (specified in the plan) ending with or within the participant's final 5 plan years of service for the employer. Section 1.401(a)(5)–1(d)(3)(i) of the proposed regulations provides that, for purposes of determining this final pay limit, no benefit other than the employer-derived portion of the participant's primary insurance amount payable under social security may be used as the basis for the offset. Section 1.401(a)(5)–1(d)(4) of the proposed regulations provides rules for determining a participant's employer-derived primary insurance amount under social security attributable to the participant's service for the employer for purposes of determining the offset as of a plan year.

Under § 1.401(a)(5)–1(d)(6) (i) and (ii) of the proposed regulations, this final pay limit may not be applied by a plan to the extent its application would reduce either minimum benefits provided under the section 416 rules (relating to top-heavy plans) or accrued

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benefits within the meaning of section 411(b)(1)(G) or (d)(6).

Section 1.401(a)(5)–1(d)(6)(iv) of the proposed regulations provides that the projected employer-derived primary insurance amount (attributable to service for the employer) that may be applied as an offset to limit a participant's accrued retirement benefit must be reduced actuarially if the plan provides for payment of a participant's accrued retirement benefit before the participant's attainment of social security retirement age.

Benefits Provided Under the Railroad Retirement Act

Section 401(l)(6) provides that, in determining whether plans maintained by railroad employers on behalf of employees who are entitled to benefits under the Railroad Retirement Act of 1974 satisfy the permitted disparity limitations of section 401(l), rules similar to the rules set forth in section 401(l) shall apply and such rules shall take into account the employer-derived portion of tier 2 and supplemental annuity benefits provided to employees under the Railroad Retirement Act of 1974. In applying the maximum excess allowance requirements applicable to defined contribution plans and to defined benefit excess plans maintained by railroad employers and in applying the maximum offset allowance requirements applicable to defined benefit offset plans maintained by such employers, § 1.401(l)–3(j) of the proposed regulations provides special rules for coordinating employer contributions (and forfeitures) and employer-derived benefits provided under plans maintained by railroad employers with employer-derived benefits (including the employer-derived portion of tier 2 and supplemental annuity benefits) provided under the Railroad Retirement Act of 1974.

In general, in determining whether a plan maintained by a railroad employer that covers employees entitled to benefits under the Railroad Retirement Act of 1974 satisfies the requirements of section 401(l), the employer-derived portion of tier 2 and supplemental annuity benefits provided under the Railroad Retirement Act of 1974 are considered to be provided under a qualified plan maintained by the railroad employer.

Effective Date

The proposed regulations provide that amended section 401(l) is effective with respect to plan years, and benefits attributable to plan years, beginning after December 31, 1988. Section 1.401(l)–3(1) of the proposed regulations sets forth two alternative transition rules for defined benefit plans to comply with amended section 401(l). Each of these transition rules applies to any participant who has at least 1 hour of service under the plan in a plan year to which amended section 401(l) applies.

Under each of the transition rules contained in the proposed regulations, a plan would determine (1) each participant's accrued benefit (within the meaning of section 411(b) and (d)(6)) under the plan as of the last day of the last plan year beginning before the effective date of amended section 401(l) in accordance with the law and guidance then in effect and (2) each participant's accrued benefit (within the meaning of section 411(b) and (d)(6)) in accordance with amended section 401(l) for subsequent plan years. In connection with each of these transition rules, the proposed regulations provide separate rules for coordinating the permitted disparity limitations applicable to employer-derived benefits provided by the plan under prior law and guidance with the employer-derived benefits provided by the plan under amended section 401(l).

Each of the alternative transition rules contained in the proposed regulations may be used by a defined benefit plan regardless of the extent (if any) to which the plan was integrated with social security benefits prior to the effective date of amended section 401(l).

The transition rule used by a defined benefit plan must be satisfied with respect to all participants with service for the employer to which amended section 401(l) applies. However, a defined benefit plan may provide that each participant (with service for the employer to which amended section 401(l) applies) is entitled to receive, at retirement or other separation from service, the higher of the benefits determined with respect to the participant under the two transition rules described above.

Reliance on These Proposed Regulations

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. Because these regulations are generally effective for plan years beginning after 1988, the Service will apply these proposed regulations in issuing rulings and in examining returns with respect to taxpayers and plans. If future regulations are more restrictive, such guidance will be applied without retroactive effect.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking which solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Michael C. Garvey of the Employee Benefits and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401–1—1.425–1

Income taxes, Employee benefit plans, Pensions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph. 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.401(a)–5 also issued under 26 U.S.C. 401(a)(5). Section 1.401(l)–1 also issued under 26 U.S.C. 401(l).

Par. 2. Section 1.401–3 is amended by adding at the end of paragraph (e) the following sentence:

§ 1.401–3 Requirements as to coverage.

* * * * *

(e) * * * This paragraph (e) does not apply to plan years beginning on or before January 1, 1989.

* * * * *

Par. 3. A new § 1.401(a)(5)–1 is added after § 1.401(a)–50 to read as follows:

§ 1.401(a)(5)–1 Special rules relating to nondiscrimination requirements.

(a) *Salaried or clerical employees.* [Reserved]

(b) *Contributions and benefits may bear uniform relationship to compensation.* [Reserved]

(c) *Certain disparity permitted.* (1) Under section 401(a)(5)(C), a plan does not discriminate in favor of highly compensated employees (as defined in section 414(q) and the regulations thereunder) with respect to the amount of employer-derived benefits or employer contributions within the meaning of section 401(a)(4) solely because—

(i) In the case of a defined contribution plan, employer contributions (and forfeitures) allocated to the accounts of participants favor highly compensated employees in a manner permitted by section 401(l) (relating to permitted disparity in plan contributions and benefits) and the regulations thereunder, and

(ii) In the case of a defined benefit plan, employer-derived benefits favor highly compensated employees in a manner permitted by section 401(l) (relating to permitted disparity in plan contributions and benefits) and the regulations thereunder.

(d) *Defined benefit plans integrated with social security*—(1) *In general.* Under section 401(a)(5)(D), a defined benefit plan does not discriminate in favor of highly compensated employees (as defined in section 414(q) and the regulations thereunder) with respect to the amount of employer-derived benefits or employer contributions within the meaning of section 401(a)(4) solely because the plan provides that, with respect to each participant, the employer-derived accrued retirement benefit under the plan is limited to the excess (if any) of—

(i) The participant's final pay from the employer, over

(ii) The employer-derived retirement benefit created under the Social Security Act and attributable to service by the participant for the employer.

(2) *Final pay.* For purposes of paragraph (d)(1)(i) of this section, a participant's final pay from the employer as of a plan year is the participant's compensation (as defined in section 414(q)(7)) and the regulations thereunder) during the year (ending with or within the 5-plan year period ending with the plan year in which the participant terminates from employment with the employer) in which the participant receives the highest compensation from the employer. In determining a participant's year of highest final pay, the plan may specify any 12-month period (ending with or within the period described in the preceding sentence) as a year provided the specified 12-month period is uniformly and consistently applied with respect to all participants. In addition, a plan may not take into account for any year any compensation in excess of the applicable limit under section 401(a)(17) for such year.

(3) *Rules for determining amount of employer-derived social security retirement benefit.* For purposes of paragraph (d)(1)(ii) of this section, the following rules shall apply—

(i) The employer-derived retirement benefit on which any reduction or offset in the participant's accrued retirement benefit is based is limited solely to the employer-derived primary insurance amount payable under section 215 of the Social Security Act attributable to service by the participant for the employer.

(ii) The employer-derived primary insurance amount attributable to service by the participant for the employer is determined by multiplying the employer-derived portion of the participant's projected primary insurance amount by a fraction (not exceeding 1), the numerator of which is the participant's number of complete years of covered service for the employer under the Social Security Act and the denominator of which is 35.

(4) *Projected primary insurance amount.* (i) As of a plan year, a participant's projected primary insurance amount is the primary insurance amount (determined as of the close of the plan year) payable to the participant upon attainment of the participant's social security retirement age (as determined under section 216(1) of the Social Security Act), assuming the participant's annual compensation from the employer that is treated as wages for purposes of the Social Security Act remains the same from the plan year until the participant's attainment of social security retirement age. With respect to service by the participant for the employer before the determination date, the actual compensation paid to the participant by the employer during all periods of service of the participant for the employer covered by the Social Security Act shall be used in determining a participant's projected primary insurance amount. With respect to years before the participant's commencement of service for the employer, in determining the participant's projected primary insurance amount, it may be assumed that the participant received compensation for such service in an amount computed by using a six percent salary scale projected backwards from the determination date to the participant's 21st birthday. However, if the participant provides the employer with satisfactory evidence of the participant's actual past compensation for such prior years treated as wages under the Social Security Act at the time the compensation was earned, the plan must use such actual past compensation. The plan must give clear written notice to each participant of the participant's right to supply actual compensation history and of the financial consequences of failing to supply such history. The notice must be given each time the summary plan description is provided to the participant and must also be given upon the participant's separation from service. The notice must also state that the participant can obtain the actual compensation history from the Social Security Administration. The employer may not take into account any compensation from any other employer while the participant is employed by the employer for purposes of determining the participant's projected primary insurance amount.

(ii) As of a plan year, the employer-derived portion of the participant's projected primary insurance amount under the Social Security Act is 50 percent of the participant's projected primary insurance amount (as determined under paragraph (d)(4)(i) of this section) under such Act.

(5) *Employer-derived accrued retirement benefit.* For purposes of this section, the participant's employer-derived accrued retirement benefit as of a plan year is the participant's accrued retirement benefit under the plan (determined on an actual basis and not on a projected basis) attributable to employer contributions under the plan. With respect to plans that provide for employee contributions, see section 411(c) (and the regulations thereunder) for rules relating to the allocation of accrued benefits between employer contributions and employee contributions.

(6) *Additional rules.* (i) As of a plan year, paragraph (d)(1) of this section shall not apply to the extent that its application would provide a participant with an accrued retirement benefit that is lower than the minimum benefit the

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plan is required to provide under section 416 and the regulations thereunder.

(ii) As of a plan year, paragraph (d)(1) of this section shall not apply to the extent that its application would result in a decrease in a participant's accrued benefit. See sections 411(b)(1)(G) and 411(d)(6).

(iii) Section 401(a)(5)(D) and paragraph (d) of this section do not apply to a plan maintained by an employer that is not subject to the tax imposed by section 3111 or section 3221.

(iv) If a plan provides for the payment of a participant's accrued retirement benefit (whether or not subsidized) commencing before a participant's social security retirement age, the projected employer-derived primary insurance amount attributable to service by the participant for the employer (as determined under paragraphs (d)(3) and (4) of this section) that may be applied as an offset to limit the participant's accrued retirement benefit must be reduced in accordance with the provisions of § 1.401(l)-3(e)(1).

(v) The Commissioner may, in revenue rulings, notices or other documents of general applicability, prescribe such additional rules as may be necessary or appropriate to carry out the purposes of this section, including rules relating to the determination of a participant's projected primary insurance amount attributable to the participant's service for former employers and rules applying section 401(a)(5)(D) with respect to an employer that is subject to the tax imposed by section 3111 or section 3221 for certain years and is not subject to either of such taxes for other years.

(7) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples:

Example (1). Employer Z maintains a noncontributory defined benefit plan that uses the calendar year as its plan year. The plan provides a normal retirement benefit, commencing at a participant's social security retirement age, equal to $500 a year, multiplied by the participant's years of credited service for Z. However, the plan provides that a participant's otherwise determined normal retirement benefit is limited to a normal retirement benefit equal to the excess of the amount of the participant's year of highest final pay from Z (as determined in accordance with paragraph (d)(2) of this section) over the participant's employer-derived primary insurance amount attributable to the participant's employment by Z. The plan provides no limitation on the number of years of credited service taken into account in determining benefits under the plan. Participant A retires on July 6, 1995, at A's social security retirement age with 35 years of credited service for Z. The plan uses the plan year as the 12 month period for determining a participant's year of final highest pay from the employer. A's compensation for A's final 5 plan years is as follows: 1995 plan year—$10,500, 1994 plan year—$20,000, 1993 plan year—$18,000, 1992 plan year—$17,000, 1991 plan year—$16,500.

Assume that A's annual primary insurance amount under social security, attributable to A's employment by Z and determined as of A's social security retirement age, is $9,000, of which $4,500 is attributable to contributions made by Z on behalf of A under the Federal Insurance Contribution Act. Under the plan's benefit formula (disregarding the final pay limitation provision), A would be entitled to receive an annual normal retirement benefit of $17,500 ($500 x 35 years). However, under the plan, A's otherwise determined normal retirement benefit of $17,500 is limited to a normal retirement benefit equal to the excess of the amount of A's year of highest final pay from Z over A's employer-derived primary insurance amount under social security attributable to A's employment by Z. Accordingly, A's normal retirement benefit is determined to be $15,500 ($20,000 (X's year of highest final pay from Z) less $4,500 (employer-derived primary insurance amount attributable to A's employment by Z)) rather than $17,500. The final pay limitation provision in Z's plan satisfies the requirements of section 401(a)(5)(D) and paragraph (d) of this section. Accordingly, the plan maintained by Z does not discriminate in favor of highly compensated employees within the meaning of section 401(a)(4) merely because of the final pay limitation provision contained in the plan.

Example (2). Assume the same facts as in *Example (1)*, except that A has 32 years of credited service and employment by Z when A retires at A's social security retirement age. Under the plan's benefit formula (disregarding the final pay limitation provision), A would be entitled to receive an annual normal retirement benefit of $16,000 ($500 x 32 years). However, the plan provides that A's annual normal retirement benefit of $16,000 will be limited to $15,500 ($20,000 (the amount of A's year of highest final pay from Z) less $4,500 (½ of A's primary insurance amount under the Social Security Act)). The final pay limitation provision does not satisfy the requirements of paragraph (d)(1) of this section. The portion of A's employer-derived primary insurance amount under the Social Security Act attributable to A's service for Z is $^{32}/_{35}$s x $4,500, or $4,114. Therefore, to satisfy the requirements of paragraph (d)(1) of this section, the final pay provision in Z's plan may not limit A's otherwise determined normal retirement benefit of $16,000 to less than $15,886 ($20,000 (the amount of X's year of highest final pay)–$4,114 (the portion of A's employer-derived primary insurance amount attributable to A's service for Z)).

Example (3). (a) Employer X maintains a noncontributory defined benefit plan that uses the calendar year as its plan year. The formula for determining benefits under the plan provides a normal retirement benefit equal to 90% of a participant's final average compensation with such benefit reduced by 1/30th for each year of credited service less than 30 years a participant has when the participant attains normal retirement age. The plan provides, however, that a participant's accrued benefit or normal retirement benefit under the plan is limited to an amount equal to the participant's year of highest final pay (as determined in accordance with paragraph (d)(2) of this section) less the participant's employer-derived primary insurance amount under social security attributable to the participant's service for X. The plan determines a participant's employer-derived projected primary insurance amount under social security attributable to the participant's service for X in accordance with paragraph (d)(3) of this section.

(b) Participant A commences participation in the plan on January 1, 1990, when A is 36 years of age. A's social security retirement age is age 67 and the plan uses the fractional rule for purposes of determining a participant's accrued benefit. As of the close of the 2014 plan year, A's final average compensation from X is $15,000; A's year of highest final pay from X is $15,400, and A's projected employer-derived annual primary insurance amount under social security attributable to A's service for X is $4,000. Under the plan formula, A's benefit as of the close of the 2014 plan year is $11,250 (90% x $15,000 x 25/30). As of the close of the 2014 plan year, the plan's final pay limitation provision is not applied to A because A's benefit under the plan as of the close of the plan year ($11,250) does not exceed A's year of highest final pay of $15,400 from X, determined as of the close of the plan year, less A's employer-dervied projected primary insurance amount under social security attributable to A's service for X ($4,000).

(c) Assume that as of the close of the 2015 plan year, A's final average compensation from X is $14,500 and A's year of highest final pay from X is $15,400. Assume also that as of the close of the 2015 plan year, A's employer-derived primary insurance amount attributable to A's service for X is $4,200. Accordingly, under the plan's benefit formula, A's benefit as of the close of the 2015 plan year is $11,310 (90% x $14,500 x 26/30). Under the plan's final pay limitation provision, A's benefit of $11,310 as of the close of the 2015 plan year would be limited to $11,200, the amount of A's year of highest final pay from X (15,400), less A's employer-derived projected primary insurance amount under social security attributable to A's service for X ($4,200). However, the plan's final pay, limitation provision may not be applied to limit A's accrued benefit for the 2015 plan year to an amount below $11,250, which was A's accrued benefit under the plan at the close of the prior play year. The foregoing is further illustrated in the following table for the plan years presented above and for additional plan years of credited service performed by A for X.

1	2	3	4	5	6	7
Years of credited service	Final average compensation	Benefit under plan formula (column 2 × .90 × years of credited service/30)	Final pay	Employer-derived projected primary insurance amount under social security attributable to service for employer	Benefit if final pay reduction is applied in full (column 4 − column 5)	Benefit to which A is entitled (smaller of column 6 or column 3, but not less than column 7 for prior year)
25	$15,000	$11,250	$15,400	$4,000	$11,400	$11,250
26	14,500	11,310	15,400	4,200	11,200	11,250
27	15,500	12,555	15,800	4,400	11,400	11,400
28	15,500	13,020	16,000	4,500	11,500	11,500
29	15,000	13,050	16,000	4,800	11,200	11,500
30	14,500	13,050	16,000	5,000	11,000	11,500

(e) *Certain benefits not taken into account.* In determining whether a plan satisfies section 401(a)(4) and this section, other benefits created under state or federal law (e.g., worker's compensation benefits or black lung benefits) may not be taken into account.

(f) *More than one plan treated as a single plan.* [Reserved]

Par. 4. There is added the following new §§ 1.401(l)–1 through 1.401(l)–4 after § 1.401(k)–1 to read as follows:

§ 1.401(l)–1 Permitted disparity with respect to employer contributions or employer-derived benefits.

(a) *Permitted disparity*—(1) *In general.* Under section 401(a)(4), a pension, profit-sharing or stock bonus plan does not constitute a qualified plan (and a trust forming part of such a plan does not constitute a qualified trust) under section 401(a) if, under the plan, the amounts of employer contributions and employer-derived benefits discriminate in favor of highly compensated employees (as defined in section 414(g)). Section 401(a)(5)(C) provides that a plan does not discriminate in favor of highly compensated employees with respect to contributions or benefits merely because of disparities in employer contributions (and forfeitures) or employer-derived benefits provided to, or on behalf of, employees under the plan that are permitted under section 401(l). Thus, if disparities in employer contributions or employer-derived benefits under a plan are permitted under section 401(l), such disparities may be disregarded, by reason of section 401(a)(5)(C), in determining whether the plan is nondiscriminatory under section 401(a)(4). However, even if disparities in employer contributions or employer-derived benefits under a plan are permitted under section 401(l) and thus may be disregarded in applying section 401(a)(4), the plan may still fail to satisfy section 401(a)(4) for other reasons. Similarly, even if disparities in employer contributions or employer-derived benefits under a plan are not permitted under section 401(l) and thus may not be disregarded under section 401(a)(4) by reason of section 401(l), the plan may still be found to be nondiscriminatory under section 401(a)(4). For rules relating to whether disparities in employer contributions (and forfeitures) or employer-derived benefits under a plan are permitted by section 401(l), see § 1.401(l)–(2) and § 1.401(l)–(3), respectively. For rules under which two or more plans of an employer are combined for purposes of applying section 401(l) and §§ 1.401(l)–1 through 1.401(l)–3, see § 1.401(l)–4.

(2) *Exclusive rules.* The rules provided in §§ 1.401(l)–1 through 1.401(l)–4 are the exclusive means for plans to satisfy the requirements of sections 401(l) and 401(a)(5)(C). Accordingly, a plan that provides disparities in employer contributions (and forfeitures) and employer-derived benefits that are not permitted under § 1.401(l)–2 or § 1.401(l)–3 (taking into account § 1.401(l)–4) does not satisfy section 401(l) or 401(a)(5)(C).

(3) *Exceptions.* Sections 401(a)(5)(C) and 401(l) are not available to a plan maintained by an employer that is not subject to the tax imposed by section 3111 or section 3221. In addition, sections 401(a)(5)(C) and 401(l) are not available to a plan, or the portion of a plan, that is an employee stock ownership plan described in section 4975(e)(7) (an ESOP). Thus, in determining whether a plan maintained by an employer that is not subject to the tax imposed by section 3111 or section 3221 or whether an ESOP is nondiscriminatory under section 401(a)(4), the permitted disparity rules of sections 401(a)(5)(C) do not permit any disparity to be disregarded. See also § 54.4975–11(a)(7)(ii), which contains a limited exception that is applicable for purposes of this rule for certain integrated ESOPs in existence on November 1, 1977.

(4) *Additional rules.* The Commissioner may, in revenue rulings, notices or other documents of general applicability, prescribe such additional rules as may be necessary or appropriate to carry out the purposes of this section, including rules applying section 401(l) with respect to an employer that is subject to the tax imposed by section 3111 or section 3221 for certain years and is not subject to either of such taxes for other years.

(b) *Definitions.* For purposes of section 401(l) and §§ 1.401(l)–1 through 1.401(l)(4), the following definitions and rules shall apply.

(1) *Defined contribution plan.* A defined contribution plan shall be as defined in section 414(i).

(2) *Defined benefit plan.* A defined benefit plan shall be as defined in section 414(j).

(3) *Excess plans*—(i) *Defined contribution excess plan.* A defined contribution excess plan is a defined contribution plan under which the rate at which employer contributions (and forfeitures) are allocated to the accounts of participants under the plan with respect to compensation above a level specified in the plan (expressed as a percentage of such compensation) is greater than the rate at which employer contributions (and forfeitures) are allocated to the accounts of participants under the plan with respect to compensation at or below such specified level (expressed as a percentage of such compensation).

(ii) *Defined benefit excess plan.* A defined benefit excess plan is a defined benefit plan under which the rate of employer-derived benefits provided by the plan with respect to compensation above a level specified in the plan

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(expressed as a percentage of such compensation) is greater than the rate of employer-derived benefits provided by the plan with respect to compensation at or below such specified level (expressed as a percentage of such compensation).

(4) *Offset plan.* An offset plan is a defined benefit plan that is not an excess plan and that provides that each participant's employer-derived benefit is reduced or offset by an amount specified (either directly or by formula) in the plan or by a specified percentage of the participant's final average compensation. However, a plan is not an offset plan for purposes of section 401(l) and § 1.401(l)–3 merely because the participant's employer-derived benefit is offset or reduced on account of benefits provided under another qualified plan maintained by the employer or merely because the participant's employer-derived benefit under a plan that takes into account service with a prior employer for purposes of eligibility, vesting and benefit accruals is offset or reduced on account of benefits attributable to such service provided under a qualified plan maintained by the prior employer.

(5) *Integration level.* An integration level is the amount of compensation specified in the plan at or below which the rate of contributions or benefits (expressed in each case as a percentage of such compensation) provided under the plan is less than the rate of contributions or benefits (expressed in each case as a percentage of such compensation) provided under the plan with respect to compensation above such level. Any method or formula for determining an integration level in effect for a plan year must be applicable to all participants on a consistent basis for purposes of determining a participant's accrued benefit attributable to service during such year. The plan must specify an integration level in effect for the plan year for each participant and no integration level specified in the plan for a particular plan year may exceed the contribution and benefit base ("taxable wage base") under section 230 of the Social Security Act in effect at the beginning of such plan year.

(6) *Compensation.* Except for purposes of section 401(a)(5)(D)(ii) and § 1.401(a)(5)–1(d), compensation shall be compensation as defined under the plan, provided that such definition is reasonable and is nondiscriminatory under section 414(s). A definition of compensation that is significantly less inclusive than the maximum amount of compensation that may be taken into account under section 414(s) and the regulations thereunder is not reasonable for purposes of sections 401(a)(5)(C) and 401(l) if such less inclusive definition results in the avoidance of the maximum excess allowance or the maximum offset allowance, whichever is applicable. In addition, a definition of compensation is not reasonable if it provides that compensation is a uniform percentatge of a basic definition of compensation under section 414(s) and the regulations thereunder (e.g., 95 percent of W–2 compensation). Finally, the definition of compensation under a plan may not take into account for any year compensation in excess of the amount specified under section 401(a)(17) for such year. The Commissioner may provide such additional rules as may be necessary or appropriate for purposes of determining whether the definition of compensation under a plan is reasonable for purposes of section 401(l) and the regulations thereunder.

(7) *Final average compensation*—(i) *In general.* A participant's final average compensation, as of a plan year, is the average of the participant's annual compensation from the employer for the 3-consecutive-year period ending with or within the plan year. If a participant terminates from employment with the employer before the last day of a plan year, the participant's final average compensation may be determined based on the participant's most recently completed 3-consecutive-year period. However, if, as of a plan year, a participant's entire period of service for the employer is less than 3 consecutive years, the participant's final average compensation shall be determined by averaging (on an annual basis) the compensation received by the participant from the employer during the participant's entire period of service for the employer. In determining the 3-consecutive-year period, the plan may specify any 12-month period as a year, provided the specified 12-month period is applied consistently with respect to all participants. The definition of final average compensation used in the plan must also be applied consistently with respect to all participants.

(ii) *Limitation.* In determining a participant's final average compensation under paragraph (b)(7)(i) of this section, compensation for any year in excess of the taxable wage base in effect at the beginning of such year shall not be taken into account.

(8) *Average annual compensation.* A participant's average annual compensation, as of a plan year, is the average of the participant's annual compensation from the employer for the consecutive year period (specified in the plan and consisting of at least 3 consecutive years) during which the average of the participant's annual compensation is the highest. In determining the consecutive year period, the plan may specify any 12-month period as a year, provided the specified 12-month period is applied consistently with respect to all participants. The definition of average annual compensation used in the plan must also be applied consistently with respect to all participants. If, as of a plan year, a participant's entire period of service for the employer is less than the consecutive year period specified in the plan for determining the participant's average annual compensation, the participant's average annual compensation shall be determined by averaging (on an annual basis) the compensation received by the participant from the employer during the participant's entire period of service for the employer.

(9) *Covered compensation.* A participant's covered compensation, for a plan year, is the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year preceding the calendar year in which the participant attains (or will attain) social security retirement age (as defined in section 414(b)(8)). In determining a participant's covered compensation for a plan year, the taxable wage base for the current plan year and any subsequent plan year shall be assumed to be the same as the taxable wage base in effect as of the beginning of the plan year for which the determination is being made. A participant's covered compensation for a plan year after the 35-year period described in this subparagraph (9) is the participant's covered compensation for the plan year during which the participant attained social security retirement age. A participant's covered compensation for a plan year before the 35-year period described in this subparagraph (9) is the taxable wage base in effect as of the beginning of the plan year. A plan must provide that a participant's covered compensation is automatically adjusted for each plan year. See paragraph (c) of this section for rules relating to prohibited decreases in a participant's accrued benefit within the meaning of section 411(d)(6) or section 411(b)(1)(G).

(10) *Excess contribution percentage.* For a plan year, the excess contribution percentage with respect to a defined contribution excess plan is the percentage of compensation at which employer contributions (and forfeitures) are allocated to the accounts of participants with respect to compensation of participants above the integration level specified in the plan for the plan year.

(11) *Base contribution percentage.* For a plan year, the base contribution percentage with respect to a defined contribution excess plan is the percentage of compensation at which employer contributions (and forfeitures) are allocated to the accounts of participants with respect to compensation of participants at or below the integration level specified in the plan for the plan year.

(12) *Excess benefit percentage.* For a plan year, the excess benefit percentage with respect to a defined benefit excess plan is the percentage of compensation at which employer-derived benefits are accrued with respect to compensation of participants above the integration level specified in the plan for the plan year.

(13) *Base benefit percentage.* For a plan year, the base benefit percentage with respect to a defined benefit excess plan is the percentage of compensation at which employer-derived benefits are accrued with respect to compensation of participants at or below the integration level specified in the plan for the plan year.

(14) *Highly compensated employees.* For a plan year, highly compensated employees shall be as defined in section 414(q) and the regulations thereunder.

(15) *Social Security retirement age.* The social security retirement age for a participant shall be the social security retirement age of the participant as determined under section 415(b)(8) and the regulations thereunder.

(16) *Participant.* Unless the context suggests otherwise, a participant with respect to a plan is an active employee of the employer who is currently benefiting under the plan.

(c) *Other requirements.* Unless explicitly provided otherwise, section 401(l) does not provide an exception to any other requirement under section 401(a). Thus, for example, in addition to any requirement under section 401(l), a plan may not adjust benefits in any manner that results in either a decrease in any participant's accrued benefit (see section 411(d)(6) and the regulations thereunder and section 411(b)(1)(G) and the regulations thereunder) or in an accrued benefit or normal retirement benefit on behalf of any participant that is lower than the minimum benefit required under section 416 and the regulations thereunder. Similarly, see section 401(a)(15) and the regulations thereunder for additional rules relating to circumstances under which plan benefits may not be decreased because of increases in social security benefits.

§ 1401(l)–2 Permitted disparity with respect to employer contributions.

(a) *In general.* Disparity in the rates of employer contributions (and forfeitures) allocated to the accounts of participants for a plan year is permitted under section 401(l) and this section only if the requirements of paragraph (b) of this section are satisfied for the plan year.

(b) *Defined contribution plans*—(1) *In general.* A defined contribution plan satisfies the requirements of this paragraph (b) for a plan year only if all of the requirements of paragraphs (b)(2), (3), and (4) of this section are satisfied for the plan year.

(2) *Excess plan.* The requirement of this paragraph (b)(2) is satisfied only if the defined contribution plan is an excess plan.

(3) *Uniform and maximum excess allowance.* The requirement of this paragraph (b)(3) is satisfied only if the excess contribution percentage under the plan exceeds the base contribution percentage under the plan by an amount that is uniform for all participants and does not exceed the maximum excess allowance (as defined in paragraph (b)(5) of this section) for any participant.

(4) *Integration level.* The requirement of this paragraph (b)(4) is satisfied only if the integration level under the plan for each participant is equal to the taxable wage base in effect as of the beginning of the plan year.

(5) *Maximum excess allowance.* The maximum excess allowance for a plan year is the lesser of—

(i) The base contribution percentage, or

(ii) The greater of

(A) 5.7 percentage points, or

(B) The percentage rate of tax under section 3111(a) (in effect as of the beginning of the plan year) which is attributable to the old age insurance portion of the Old Age, Survivors and Disability Insurance provisions of the Social Security Act.

For a year in which the percentage rate of tax described in this paragraph (b)(5)(ii)(B) exceeds 5.7 percentage points, the Commissioner will publish the rate of such tax.

(6) *Additional rules.* The Commissioner may, in revenue rulings, notices or other documents of general applicability, prescribe such additional rules as may be necessary or appropriate to carry out the purposes of this section.

(7) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples. In each example, assume that 5.7% exceeds the percentage rate of tax described in paragraph (b)(5)(ii)(B) of this section.

Example (1). Employer X maintains a profit-sharing plan that uses the calendar year as its plan year. For the 1989 plan year, the plan provides that the account of each participant who has compensation in excess of the taxable wage base in effect at the beginning of the plan year will receive an allocation for the plan year of 5.7% of such excess compensation. The plan provides that no allocation will be made to the account of any participant for the plan year with respect to compensation not in excess of the taxable wage base as in effect for the plan year. The maximum excess allowance is exceeded for the 1989 plan year because the excess contribution percentage (5.7%) for the plan year exceeds the base contribution percentage (0%) for the plan year by more than the lesser of the base contribution percentage (0%) or the percentage determined under paragraph (b)(5)(ii) of this section (5.7%) for the plan year.

Example (2). Employer Y maintains a money purchase pension plan that uses the calendar year as its plan year. For the 1990 plan year, the plan provides that the account of each participant will receive an allocation of 5% of the participant's compensation up to the taxable wage base in effect at the beginning of the plan year, and the account of each participant will receive an allocation of 10% of the participant's compensation in excess of the taxable wage base in effect for the plan year. The maximum excess allowance is not exceeded for the plan year because the excess contribution percentage (10%) for the plan year does not exceed the base contribution percentage (5%) for the plan year by more than the lesser of the base contribution percentage (5%) or the percentage determined under paragraph (b)(5)(ii) of this section (5.7%) for the plan year.

Example (3). Assume the same facts as in *Example (2)*, except that the plan provides that with respect to excess compensation for a plan year, the account of each participant will receive an allocation for the plan year of 12% of such excess compensation. The maximum excess allowance is exceeded for the plan year because the excess contribution percentage (12%) for the plan year exceeds the base contribution percentage (5%) for the plan year by more than the lesser of the base contribution percentage (5%) or the percentage determined under paragraph (b)(5)(ii) of this section (5.7%) for the plan year.

Example (4). Employer Z maintains a money purchase pension plan that uses the 12-consecutive-month period beginning July 1 and ending June 30 as its plan year. Assume that the taxable wage base for the 1990 calendar year is $50,000 and that the taxable wage base for the 1991 calendar year is $53,000. For the plan year beginning July 1, 1990 and ending June 30, 1991, the plan provides that the account of each participant will receive an allocation of 4% of the participant's compensation for the plan year up to $53,000 and that the account of each participant will receive an allocation of 6% of the participant's compensation for the plan year in excess of $53,000 (excess compensation). Although the excess

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contribution percentage (6%) for the plan year does not exceed the base contribution percentage (4%) for the plan year by more than the lesser of the base contribution percentage (4%) or the percentage determined under paragraph (b)(5)(ii) of this section (5.7%), the plan does not satisfy paragraph (b)(4) because the integration level of $53,000 exceeds the taxable wage base of $50,000 for the plan year.

§ 1.401(l)–3 Permitted disparity with respect to employer-derived benefits.

(a) *In general.* Disparity in the rates of employer-derived benefits under a defined benefit plan is permitted under section 401(l) and this section for a plan year only if, in the case of a defined benefit excess plan, the requirements of paragraph (b) of this section are satisfied for the plan year or, in the case of a defined benefit offset plan, the requirements of paragraph (c) of this section are satisfied for the plan year. Section 401(a)(5)(D) and § 1.401(a)(5)–1(d) provide other rules under which benefits provided under a defined benefit plan (including offset and excess plans) may be limited.

(b) *Defined benefit excess plans*—(1) *In general.* A defined benefit excess plan satisfies the requirements of this paragraph (b) for a plan year only if all of the requirements of paragraphs (b)(2), (3), (4) and (5) of this section are satisfied for the plan year.

(2) *Uniform and maximum excess allowance*—(i) *In general.* The requirement of this paragraph (b)(2) is satisfied only if the excess benefit percentage under the plan exceeds the base benefit percentage under the plan by an amount that is uniform for all participants and does not exceed the maximum excess allowance (as defined in paragraph (b)(6) of this section) for any participant.

(ii) *Optional forms of benefit*—(A) *In general.* A plan satisfies paragraph (b)(2) of this section only if the plan satisfies paragraph (b)(2)(i) of this section with respect to each optional form of benefit provided under the plan.

(B) *Annuity forms.* In the case of an optional form of benefit payable as a nondecreasing annuity over a period of not less than the life of the participant, the optional form must satisfy paragraph (b)(2)(i) of this section. Thus, for example, if the form of a defined benefit plan's normal retirement benefit is an annuity for life with a ten year certain feature and the plan permits participants to elect to receive their benefits in the form of an annuity for life, the plan must satisfy paragraph (b)(2)(i) of this section with respect to each such optional form of benefit.

(C) *Other forms.* In the case of an optional form of benefit that is not described in paragraph (b)(2)(ii)(B) of this section, the optional form must satisfy paragraph (b)(2)(i) of this section on the basis of an immediate, nondecreasing single life annuity for the life of the participant (determined using reasonable actuarial assumptions and methods and without any term certain, refund or survivor feature), regardless of whether such annuity form is actually provided under the plan.

(iii) *Deemed uniformity.* For purposes of applying paragraph (b)(2)(i) of this section the excess benefit percentage under a plan is deemed to exceed the base benefit percentage by an amount that is uniform for all participants even if the excess benefit percentage exceeds the base benefit percentage by an amount that is not uniform for all participants if the differences in such excesses arise solely as a result of differences in social security retirement ages of participants and the corresponding adjustments in the ¾ of 1 percent factor in the maximum excess allowance required under paragraph (e)(1) of this section.

(iv) *Example.* The provisions of paragraph (b)(2) of this section may be illustrated by the following example.

Example. Assume a plan has a normal retirement age of 65, and benefits participants with social security retirement ages of 65, 66, and 67. There are no other plan benefits or features requiring adjustment of the ¾ of 1 percent factor in the maximum excess allowance. The excess benefit percentage under the plan is 2%. The base benefit percentage is 1.25% for participants with social security retirement age of 65. For participants with a social security retirement age of 66, the base benefit percentage is 1.30%, and for participants with a social security retirement age of 67, the base benefit percentage is 1.35%. The lack of uniformity in the amount by which the excess benefit percentage exceeds the base benefit percentage results solely from differences in participants' social security retirement ages and the corresponding adjustments in the ¾ of 1 percent factor in the maximum excess allowance required under paragraph (e)(1) of this section. (Because the plan effectively provides unreduced benefits prior to the social security retirement age for participants with social security retirement ages of 66 and 67, the ¾ of 1 percent factor in the maximum excess allowance must be reduced to .70% and .65%, respectively.) Thus, under paragraph (b)(2)(iii) of this section, the amount of the excess benefit percentage is deemed to be uniform for purposes of paragraph (b)(2) of this section. (Alternatively, this plan could satisfy paragraph (b)(2) of this section if it provided a uniform rate disparity of .65% for all participants by providing a base benefit percentage of 1.35% and an excess benefit percentage of 2% (i.e., .65% is the maximum excess allowance under the plan for a participant with a social security retirement age of 67).)

(3) *Average annual compensation.* The requirement of this paragraph (b)(3) is satisfied only if the employer-derived benefits under the plan are based on average annual compensation. The maixmum excess allowance applies in the same manner to defined benefit excess plans that determine the amount of plan benefits based on average annual compensation determined over a participant's total years of credited service (e.g., career average compensation) and to defined benefit excess plans that determine the amount of plan benefit based on a participant's average annual compensation determined over a shorter period of time than the participant's total years of credited service (e.g., final average compensation).

(4) *Intergration level*—(i) *In general.* The requirement of this paragraph (b)(4) is satisfied only if the integration level under the plan satisfies the requirements of paragraph (b)(4)(ii), (iii) or (iv) of this section.

(ii) *Covered compensation.* The requirement of this paragraph (b)(4)(ii) is satisfied only if the integration level under the plan for each participant is such participant's covered compensation.

(iii) *Uniform dollar amounts*—(A) *In general.* The requirement of this paragraph (b)(4)(iii) is satisfied only if the integration level under the plan is a uniform dollar amount for all participants (either specified in the plan or determined under a forumla) that either does not exceed the greater of $10,000 or one-half of the covered compensation of an individual who attains social security retirement age in the current plan year or that satisfies the requirements of both paragraphs (b)(4)(iii)(B) and (b)(4)(iii)(C) of this section and the corresponding adjustments to the ¾ of 1 percent factor in the maximum excess allowance required under paragraph (d)(1) of this section (if any) are made. In applying the requirements of paragraphs (b)(4)(iii)(B) and (b)(4)(iii)(C) of this section, participants who would be excludable employees but for the fact that such participants (and similarly situated employees) benefit under the plan (or under another plan of the employer) may be disregarded if the plan would satisfy section 410(b) without regard to such participants.

(B) *Attained age requirement.* The requirement of this paragraph (b)(4)(iii)(B) is satisfied only if the average attained age of the participants who are not highly compensated

employees is not greater than the greater of—

(*1*) Age 50, or

(*2*) The sum of the average attained age of the participants who are highly compensated employees plus five years. For purposes of this paragraph (b)(4)(iii)(B), attained ages are to be determined as of the beginning of the plan year.

(C) *Nondiscrimination requirement.* The requirement of this paragraph (b)(4)(iii)(C) is satisfied only if at least one of the following three tests is satisfied.

(1) Minimum percentage test. This test is satisfied only if more than 50 percent of the participants who are not highly compensated employees have compensation at least equal to 120 percent of the integration level.

(2) Ratio test. This test is satisfied only if the number of participants who are not only highly compensated employees and have compensation at least equal to 120 percent of the integration level, stated as a percentage of all nonhighly compensated employees of the employer, is at least 70 percent of the number of participants who are highly compensated employees, stated as a percentage of all highly compensated employees of the employer. Except as provided in paragraph (b)(4)(iii)(A) of this section, this test must be applied on a basis consistent with the rules applicable under section 410(b) and the regulations thereunder.

(3) High dollar amount test. This test is satisfied only if the integration level exceeds 150 percent of the covered compensation of an individual who attains social security retirement age in the current plan year.

(iv) *Uniform percentage.* The requirement of this paragraph (b)(4)(iv) is satisfied only if the integration level under the plan for each participant is a uniform percentage (greater than 100 percent) of each participant's covered compensation (but not in excess of the taxable wage base as in effect for the plan year) and the corresponding adjustments to the ¾ of 1 percent factor in the maximum excess allowance required under paragraph (d)(1) of this section are made.

(5) *Optional forms of benefit, etc.* The requirement of this paragraph (b)(5) is satisfied only if any optional form of benefit, ancillary benefit, actuarial factor or other right, benefit or feature provided under the plan with respect to employer-derived benefits attributable to compensation above the integration level is also provided under the plan on the same basis with respect to employer-derived benefits attributable to compensation at or below the integration level. Thus, for example, if a single sum optional form of benefit is provided under the plan for employer-derived benefits with respect to compensation above the integration level specified in the plan, then in order to satisfy the requirements of this paragraph (b)(5), a single sum optional form of benefit (using the same, or at least as favorable, interest rate, mortality and other assumptions that are used for determining benefits with respect to compensation abovew the integration level) must also be provided under the plan for employer-derived benefits with respect to compensation at or below the integration level specified in the plan. In addition, if an early retirement benefit (whether or not subsidized) is provided under the plan for employer-derived benefits with respect to compensation above the integration level specified in the plan, then in order to satisfy the requirements of this paragraph (b)(5), an early retirement benefit (determined on the same basis as determined for benefits above the integration level) must be provided under the plan for employer-derived benefits with respect to compensation at or below the integration level specified in the plan. If a plan provides for the payment of early retirement benefits (whether or not subsidized), as described in the preceding sentence, only for participants who satisfy certain age or service requirements, than in order to satisfy the requirements of this paragraph (b)(5), the age or service requirements for employer-derived early retirement benefits based on compensation at or below the integration level specified in the plan may be no less favorable to employees than the age or service (or both) requirements for early retirement benefits based on compensation above the integration level specified in the plan.

(6) *Maximum excess allowance.* (i) For purposes of paragraph (b)(2) of this section, the maximum excess allowance for a plan year is equal to—

(A) With respect to employer-derived benefits provided under the plan for any year of credited service, the lesser of ¾ of 1 percent (reduced as required under paragraphs (d)(1) and (e) of this section) or the base benefit percentage for the plan year, and

(B) With respect to total employer-derived benefits provided under the plan for all years of credited service, the ¾ of 1 percent limitation determined under paragraph (b)(6)(i)(A) multiplied by the participant's total years of credited service (not in excess of 35). The cumulative percentage limitation determined under this paragraph (b)(6)(i)(B) may not exceed 26.25% with respect to a participant as of any plan year. The Commissioner shall prescribe rules for determining the cumulative percentage limitation for a plan year under this paragraph (b)(6)(i)(B) in cases where the ¾ of 1 percent limitation determined under paragraph (b)(6)(i)(A) has differed in prior plan years.

(ii) If the integration level under a plan exceeds covered compensation, the ¾ of 1 percent factor in the maximum excess allowance must be reduced in accordance with paragraph (d)(1) of this section. In addition, if a plan provides certain benefits to a participant commencing before the participant's social security retirement age, the ¾ of 1 percent factor in the maximum excess allowance must be reduced in accordance with paragraph (e) of this section. Any reductions required under paragraphs (d)(1) (e) of this section are cumulative.

(7) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples. In each example, assume that the plan contains no provision that would require a reduction in the ¾ of 1 percent factor in the maximum excess allowance for any participant. Assume also that all participants have a social security retirement age of 65.

Example (1). Employer X mainteins a noncontributory defined benefit plan. The formula for determining benefits under the plan provides a benefit of .5% of the participant's average annual compensation for the plan year in excess of the participant's covered compensation for the plan year, multiplied by the participant's years of credited service for X. The plan provides no benefits with respect to average annual compensation up to a participant's covered compensation for the plan year. The plan formula provides a benefit that exceeds the maximum excess allowance for the plan year because the excess benefit percentage (.5%) for the plan year exceeds the base benefit percentage (0%) for the plan year by more than the base benefit percentage (0%).

Example (2). Employer Y maintains a noncontributory defined benefit plan. The formula for determining benefits under the plan provides a benefit of 1% of the participant's average annual compensation up to covered compensation for the plan year, multiplied by the participant's years of credited service for Y, and a benefit of 1.75% of the participant's average annual compensation for the plan year in excess of the participant's covered compensation for the plan year, multiplied by the participant's years of credited service for Y. The plan contains no limitation on the number of years of credited service taken into account for determining benefits under the plan. Under the plan benefit formula, a participant with 40

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years of credited service will receive a benefit equal to the sum of 40% of the participant's average annual compensation up to covered compensation plus 70% of the participant's average annual compensation in excess of covered compensation. The plan benefit formula provides a benefit that exceeds the maximum excess allowance because the excess benefit percentage, determined on a cumulative basis as 70%, exceeds the base benefit percentage, determined on a cumulative basis as 40%, by more than the cumulative percentage limitation (26.25%).

Example (3). Employer Z maintains a noncontributory defined benefit plan. The formula for determining benefits under the plan provides a benefit of .5% of the participant's average annual compensation up to covered compensation for the plan year, multiplied by the participant's years of credited service for Z, and a benefit of 1.25% of the participant's average annual compensation for the plan year in excess of the participant's covered compensation for the plan year, multiplied by the participant's years of credited service for Z. The plan provides that not more than 35 years of credited service will be taken into account in determining benefits under the plan. The plan formula provides a benefit that exceeds the maximum excess allowance because the excess benefit percentage (1.25%) for the plan year exceeds the base benefit percentage (.5%) for the plan year by more than the base benefit percentage (.5%).

Example (4). (a) Employer X maintains a noncontributory defined benefit plan. The formula for determining benefits under the plan provides a benefit of 1% of the participant's average annual compensation up to covered compensation for the plan year, multiplied by the participant's years of credited service for X. The formula also provides, for the first 10 years of credited service for X, a benefit of 1.85% of the participant's average annual compensation in excess of covered compensation for the plan year multiplied by the participant's years of credited service for X. For each year of credited service for X in excess of 10, the plan provides a benefit of 1.65% of the participant's average annual compensation in excess of covered compensation for the plan year, multiplied by the participant's years of credited service for X. Accordingly, the base benefit percentage for each plan year is 1% and the excess benefit percentage is 1.85% for each of the first 10 plan years. The plan does not satisfy the maximum excess allowance because the benefit provided for a participant who retires or otherwise terminates employment after fewer than 20 years of credited service for X exceeds the cumulative percentage limitation. In addition, for each of the first 10 years of credited service, the maximum excess allowance is exceeded.

(b) If the defined benefit plan maintained by X provided the same base benefit percentage set forth above, but provided an excess benefit percentage of 1.65% of the participant's average annual compensation in excess of covered compensation for the plan year for each of the first 10 years of credited service for X and an excess benefit percentage of 1.85% of the participant's average annual compensation in excess of covered compensation for each year of credited service for X in excess of 10 years, the plan would not satisfy the maximum excess allowance because the benefit provided for a participant who retires or otherwise terminates employment after more than 20 years of credited service for X would exceed the cumulative percentage limitation. In addition, for each year of credited service after the first 10 years of credited service, the maximum excess allowance would be exceeded.

(c) *Defined benefit offset plans*—(1) *In general.* A defined benefit offset plan satisfies the requirements of this paragraph (c) for a plan year only if all of the requirements of paragraph (c)(2), (3) and (4) are satisfied for the plan year.

(2) *Uniform and maximum offset*—(i) *In general.* The requirement of this paragraph (c)(2) is satisfied only if the offset under the plan applied to each participant's benefit, expressed as a percentage of final average compensation, is uniform with respect to all participants and no participant's benefit is reduced by an offset that exceeds the maximum offset allowance (as defined in paragraph (c)(5) of this section).

(ii) *Optional forms of benefit*—(A) *In general.* A plan satisfies paragraph (c)(2) of this section only if the plan satisfies paragraph (c)(2)(i) of this section with respect to each optional form of benefit provided under the plan.

(B) *Annuity forms.* In the case of an optional form of benefit payable as a nondecreasing annuity over a period of not less than the life of the participant, such optional form must satisfy paragraph (c)(2)(i) of this section. Thus, for example, if the form of a defined benefit plan's normal retirement benefit is an annuity for life with a ten year certain feature and the plan permits participants to elect to receive their benefits in the form of an annuity for life, the plan must satisfy paragraph (c)(2)(i) of this section with respect to each such optional form of benefit.

(C) *Other forms.* In the case of an optional form of benefit that is not described in paragraph (c)(2)(ii)(B) of this section, the optional form must satisfy paragraph (c)(2)(i) of this section on the basis of an immediate, nondecreasing single life annuity for the life of the participant (determined using reasonable actuarial assumptions and methods and without any term certain, refund or survivor feature), regardless of whether such annuity form is actually provided under the plan.

(iii) *Deemed uniformity.* For purposes of applying paragraph (c)(2)(i) of this section, an offset under a plan is deemed to be uniform with respect to all participants even though the amount of the offset, expressed as a percentage of final average compensation, is not uniform with respect to all participants if such lack of uniformity is solely the result of differences in the social security retirement ages of participants and corresponding adjustments in the ¾ of 1 percent factor in the maximum offset allowance required under paragraph (e)(1) of this section.

(iv) *Example.* The provisions of this paragraph (c)(2) may be illustrated by the following example.

Example. Assume a plan has a normal retirement age of 65, and benefits participants with social security retirement ages of 65, 66, and 67. There are no other plan benefits or features that require adjustment to the ¾ of 1 percent factor in the maximum offset allowance. For each year of service, the plan provides benefits equal to 2 of average annual compensation, reduced by an offset. For participants with a social security retirement age of 65, the offset is .75% of final average compensation not in excess of covered compensation; for participants with a social security retirement age of 66, the offset is .70% of final average compensation not in excess of covered compensation; and for participants with a social security retirement age of 67, the offset is .65% of final average compensation not in excess of covered compensation. The lack of uniformity in this plan's offset, expressed a percentage of final average compensation, results solely from differences in participants' social security retirement ages and the corresponding adjustments required under paragraph (e)(1) of this section. (Because the plan effectively provides unreduced benefits prior to the social security retirement age for participants with social security retirement ages of 66 and 67, the ¾ of 1 percent factor in the maximum offset allowance msut be reduced to .70% and .65%, respectively.) Thus, under this paragraph (c)(2)(iii), the amount of the offset is deemed to be uniform for purposes of paragraph (c)(2) of this section. (Alternatively, the plan could satisfy paragraph (c)(2) of this section if it provided a uniform offset of .65% of final average compensation not in excess of covered compensation for all participants (i.e., .65% is the maximum offset allowance under the plan for participant with a social security retirement age of 67).)

(3) *Average annual compensation.* The requirement of this paragraph (c)(3) is satisfied only if the employer-derived benefits under the plan (prior to application of the offset) are based on either average annual compensation or are specified as a determinable amount unrelated to the participant's compensation. A plan does not fail to satisfy this paragraph (c)(3) merely because benefits under the plan are based on average annual compensation determined over a period that exceeds three years and the offset under the plan is based on final average compensation.

(4) *Compensation for determination of offset*—(i) *In general.* The requirement of this paragraph (c)(4) is satisfied only if the offset under the plan satisfies the requirements of paragraph (c)(4)(ii), (iii) or (iv) of this section.

(ii) *Final average compensation.* The requirement of this paragraph (c)(4)(ii) is satisfied only if the offset under the plan with respect to each participant is based on the participant's final average compensation not in excess of the participant's covered compensation.

(iii) *Uniform dollar amounts*—(A) *In general.* The requirement of this paragraph (c)(4)(iii) is satisfied only if the offset under the plan with respect to each participant is based on the participant's final average compensation not in excess of a uniform dollar amount for all participants (either specified in the plan or determined under a formula) that either does not exceed the greater of $10,000 or one-half of the covered compensation of an individual who attains social security retirement age in the current plan year or that satisfies the requirements of both paragraphs (c)(4)(iii)(B) and (c)(4)(iii)(C) of this section and the corresponding adjustments to the 3/4 of 1 percent factor in the maximum offset allowance required under paragraph (d)(2) of this section (if any) are made. In applying the requirements of paragraphs (c)(4)(iii)(B) and (c)(4)(iii)(C) of this section, participants who would be excludable employees but for the fact that such participants (and similarly situated employees) benefit under the plan (or another plan of the employer) may be disregarded if the plan would satisfy section 410(b) without regard to such participants.

(B) *Attained age requirement.* The requirement of this paragraph (c)(4)(iii)(B) is satisfied only if the average attained age of the participants who are not highly compensated employees is not greater than the greater of—

(1) Age 50, or

(2) The sum of the average attained age of the participants who are highly compensated employees plus five years.

For purposes of this paragraph (c)(4)(iii)(B), the attained ages of participants is to be determined as of the beginning of the plan year.

(C) *Nondiscrimination requirement.* The requirement of this paragraph (c)(4)(iii)(C) is satisfied only if at least one of the following three tests is satisfied.

(1) Minimum percentage test. This test is satisfied only if more than 50 percent of the participants who are not highly compensated employees have compensation at least equal to 120 percent of the uniform dollar amount.

(2) Ratio test. This test is satisfied only if the participants who are not highly compensated employees and have compensation at least equal to 120 percent of the uniform dollar amount, stated as a percentage of all nonhighly compensated employees of the employer, is at least 70 percent of the participants who are highly compensated employees, stated as a percentage of all highly compensated employees of the employer. Except as provided in paragraph (c)(4)(iii)(A) of this section, this test must be applied on a basis consistent with the rules applicable under section 410(b) and the regulations thereunder.

(3) High dollar amount test. This test is satisfied only if the uniform dollar amount exceeds 150 percent of the covered compensation of an individual who attains social security retirement age in the current plan year.

(iv) *Uniform percentage.* The requirement of this paragraph (c)(4)(iv) is satisfied only if the offset under the plan with respect to each participant is based on the participant's final average compensation not an excess of a uniform percentage (greater than 100 percent) of each participant's covered compensation (but not in excess of the taxable wage base for the year) and the corresponding adjustments to the 3/4 of 1 percent factor in the maximum offset allowance required under paragraph (d)(2) of this section are made.

(5) *Maximum offset allowance.* (i) For purposes of paragraph (c)(2) of this section, the maximum offset allowance for a plan year is equal to—

(A) With respect to employer-derived benefits provided under the plan for any year of credited service, the lesser of—

(1) ¾ of 1 percent (reduced as required under paragraphs (d)(2) and (e) of this section) multiplied by the participant's final average compensation (up to covered compensation), or

(2) One-half of the employer-derived benefit that would be provided, prior to the application of the offset, with respect to the participant's average annual compensation not in excess of the participant's final average compensation (up to covered compensation), and

(B) With respect to total employer-derived benefits provided under the plan for all years of credited service, the offset determined under paragraph (c)(5)(i)(A)(*1*) of this section multiplied by the participant's total years of credited service (not in excess of 35). With respect to a participant as of any plan year, the cumulative offset allowance determined under this paragraph (c)(5)(i)(B) may not exceed 26.25% of the participant's final average compensation up to the participant's covered compensation. The Commissioner shall prescribe rules for determining the cumulative offset allowance for a plan year in cases where the rate of offset has differed in prior plan years.

(ii) If the offset under a plan is based on a participant's final average compensation in excess of the participant's covered compensation, the 3/4 of 1 percent factor in the maximum offset allowance must be reduced in accordance with paragraph (d)(2) of this section. In addition, if a plan provides certain benefits to a participant commencing before the participant's social security retirement age, the 3/4 of 1 percent factor in the maximum offset allowance must be reduced in accordance with paragraph (e)(1) of this section. Any reductions required under paragraphs (d)(2) and (e) of this section are cumulative.

(6) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples. In each example, assume that the plan contains no provision that would require a reduction in the 3/4 of 1 percent factor in the maximum offset allowance. Assume also that all participants have a social security retirement age of 65.

Example (1). Employer X maintains a noncontributory defined benefit plan. Under the benefit formula contained in the plan, for each year of credited service for X, a participant receives a normal retirement benefit equal to 2% of the participant's average annual compensation, reduced by ¾ of 1% of the participant's final average compensation (up to covered compensation). The plan provides that not more than 35 years of credited service may be taken into account in determining benefits under the plan. Participant A retires at A's social security retirement age with 40 years of service for X. At the time of A's retirement, A has average annual compensation of $16,000 and final average compensation (up to covered compensation) of $14,000. Under the plan benefit formula, A is entitled to receive a normal retirement benefit of $7,525 ($11,200 (70% x $16,000) minus $3,675 (¾ of 1% x 35 years x $14,000)). The maximum offset allowance, as applied to A, is not exceeded because the offset under the plan (i) does not exceed ¾ of 1% of A's final average compensation (up to covered compensation) for any year of credited service of X, (ii) does not exceed the maximum cumulative offset allowance of 26.25% of A's final average compensation (up to covered compensation), and (iii) does not exceed 50% of the normal retirement benefit A would have been entitled to receive under the plan with respect to A's average annual compensation not in excess of A's final average

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compensation (up to covered compensation) if no offset had been applied.

Example (2). Assume the same facts as in *Example (1),* except that the plan provides no limit on the years of credited service for X taken into account in determining benefits under the plan. Participant A retires at A's social security retirement age. Under the plan's benefit formula, A is entitled to receive a normal retirement benefit of $ 8,600 ($12,800 (80% of $16,000) minus $4,200 (¾ of 1% x 40 years x $14,000)). The plan benefit formula provides an offset that exceeds the maximum offset allowance because the offset exceeds the maximum cumulative offset allowance of 26.25% of A's final average compensation (up to covered compensation).

Example (3). (a) Employer Y maintains a noncontributory defined benefit plan. Under the benefit formula contained in the plan, for each year of credited service for Y, the plan provides a normal retirement benefit of 1% of the participant's average annual compensation reduced by ¾ of 1% of the participant's final average compensation (up to covered compensation). The plan provides that not more than 35 years of credited service for Y may be taken into account in determining benefits under the plan.

(b) Assume that, as of a plan year, Participant A has average annual compensation of $80,000 and final average compensation (up to covered compensation) of $40,000. Under the plan benefit formula, A would be entitled to receive for the plan year an annual normal retirement benefit of $500 ($800 x $80,000 x 1%)—$300 (¾ of 1% x $40,000)). With respect to A as of the plan year, the plan benefit formula provides an offset that exceeds the maximum offset allowance even though the offset under the plan (as applied to A as of the plan year) (i) does not exceed ¾ of 1% of A's final average compensation (up to covered compensation) for any year of credited service for Y and (ii) would not exceed ¾ of 1% of A's final average compensation (up to covered compensation) x A's total years of credited service for Y. The plan benefit formula provides an offset that exceeds the maximum offset allowance because the offset to A's benefit under the plan ($300) exceeds 50% of the benefit ($400) A would have been entitled to receive under the plan for the plan year with respect to A's average annual compensation not in excess of A's final average compensation (up to covered compensation) ($40,000) if no offset had been applied.

(c) Assume that, as of a plan year, participant B (who has 20 years of credited service for Y) has average annual compensation of $40,000 and final average compensation (up to covered compensation) of $26,000. Under the plan benefit formula, B would be entitled to receive as of the plan year an annual normal retirement benefit of $4,100 ($8,000 ($40,000 x 20 years x 1%)—$3,900 (¾ of 1% x 20 years x $26,000)). With respect to B as of the plan year, the plan benefit formula provides an offset that exceeds the maximum offset allowance even though the offset under the plan (as applied to B as of the plan year): (i) does not exceed ¾ of 1% of B's final average compensation (up to covered compensation) for any year of credited service for Y and (ii) does not exceed ¾ of 1% of B's final average compensation (up to covered compensation) x B's total years of credited service for Y. The plan benefit formula exceeds the maximum offset allowance because the offset to B's benefit under the plan ($3,900) exceeds 50% of the benefit B would have been entitled to receive under the plan ($5,200) (1% x 20 years x $26,000) with respect to B's average annual compensation not in excess of B's final average compensation (up to covered compensation) if no offset had been applied.

Example (4). (a) Employer Z maintains a noncontributory defined benefit plan. Under the plan benefit formula, a participant who attains normal retirment age with at least 15 years of credited service for Z is entitled to receive a normal retirement benefit equal to 50% of the participant's average annual compensation, reduced by the product of ¾ of 1% x the participant's final average compensation (up to covered compensation) times the participant's years of credited service (not exceeding 35) for Z. The plan provides that, as of any plan year, the offset will not exceed 50% of the benefit to which a participant would be entitled if no offset were applied. The plan uses the fractional rule for purposes of determining a participant's accrued benefit.

(b) Assume participant A retires at A's normal retirement age with 20 years of credited service for Z. At retirement, A has average annual compensation of $24,000 and final average compensation (up to covered compensation) of $20,000. Under the plan benefit formula, A is entitled to receive a normal retirement benefit $9,000 ($12,000 (50% x $24,000) minus $3,000 (¾ of 1% × 20 years × $20,000)).

(c) Assume participant B separates from the service of Z at age 40 with 15 years of credited service for Z. At the time B separates from the service of Z, assume that B has average annual compensation of $18,000 and final average compensation (up to covered compensation) of $16,000. Under the plan's benefit formula, B is entitled to receive a deferred benefit, commencing at age 65, equal to $1,575 ($3,375 (15/40 × 50% × $18,000) minus $1,800 (¾ of 1% × 15 years × $16,000)).

(d) The plan benefit formula provides an offset that exceeds the maximum offset allowance even though the offset under the plan (i) does not exceed ¾ of 1% × the participant's final average compensation (up to covered compensation) for any year of credited service for Z and (ii) does not exceed ¾ of 1% of the participant's final average compensation (up to covered compensation) × the participant's total years of credited service for Z. The plan benefit formula provides an offset that exceeds the maximum offset allowance because the offset to B's benefit under the plan ($1,800) exceeds 50% of the benefit B would have been entitled to receive under the plan ($3,000 (15/40 × 50% × $16,000) with respect to B's average annual compensation not in excess of B's final average compensation (up to covered compensation) if no offset had been applied.

Example (5). Assume the same facts as in *Example (4),* except that the plan provides that, for a plan year, the offset will not exceed 50% of the benefit the participant would have accrued under the plan for the plan year with respect to the participant's average annual compensation not in excess of the participant's final average compensation (up to covered compensation). Accordingly, the plan benefit formula provides that the offset to a participant's benefit for a plan year is the lesser of (i) ¾ of 1% of the participant's final average annual compensation (up to covered compensation), or (ii) ½ of the benefit the participant would have accrued under the plan with respect to the participant's average annual compensation not in excess of the participant's final average compensation (up to covered compensation) if the offset had not been applied. Thus, for the plan year, the offset to B's benefit is determined under the plan as the lesser of (i) 11.25% (¾ of 1% × 15 years) of B's final average compensation (up to covered compensation) or (ii) 9.375% (½ of 15/16 × 50%) of B's average annual compensation not in excess of B's final average compensation (up to covered compensation). The plan benefit formula provides an offset that satisfies the maximum offset allowance.

Example (6). Assume that the contribution and benefit bases (taxable wage bases) under section 230 of the Social Security Act for the following calendar years are as follows: 1990—$50,000, 1991—$54,000, 1992—$58,000.

Assume also that participant A's final average compensation is to be determined as of the close of the 1992 calendar year and that, accordingly, A's final average compensation is determined for the 3 consecutive calendar year period 1990–1992. Assume further that A's compensation from employer X for the 3 consecutive year period 1990–1992 is as follows: 1990—$47,000, 1991—$59,000, 1992—$65,000.

For purposes of determining the maximum offset that may be used in a defined benefit offset plan maintained by X to limit A's accrued benefit or normal retirement benefit under the plan, A's final average compensation for the 3 consecutive calendar year period ending with the 1992 plan year is $53,000 ($47,000 + $54,000 + $58,000 divided by 3). This is because compensation in a plan year in excess of the taxable wage base in effect at the beginning of the plan year may not be taken into account in determining a participant's final average compensation for purposes of computing the offset that may be applied to limit the participant's accrued benefit or normal retirement benefit under the plan. If the plan determines the offset applied to limit A's accrued benefit or normal retirement benefit by reference to final average compensation in excess of $53,000, the the plan fails to satisfy the requirements of paragraph (c)(4) of this section.

(d) *Reduction in the ¾ of 1 percent factor if integration level exceeds covered compensation*—(1) *Excess plans.* If a defined benefit excess plan provides that the integration level applicable to each participant for a plan year is the participant's covered compensation as of such plan year, no reduction in the ¾ of 1 percent factor in the maximum excess allowance is required for such plan year under this paragraph (d)(1). However, with respect to a defined benefit excess plan not described in the preceding sentence, if the integration level applicable to any participant for a plan year exceeds the covered compensation (as of the plan year) of an individual attaining social security retirement age in the plan year, the ¾ of 1 percent factor in the maximum excess allowance shall be reduced in accordance with the table set forth below. If a plan specifies an integration level that is a uniform percentage (in excess of 100 percent) of each participant's covered compensation, ¾ of 1 percent factor in the maximum excess allowance shall be reduced in accordance with the table set forth below. Thus, for example, if a plan specifies an integration level of 120% of each paritcipant's covered compensation, the ¾ of 1 percent factor in the maximum excess allowance must be reduced to .69% in accordance with the table set forth below because the specified integration level is more than covered compensation but not more than 125% of covered compensation. If a plan specifies a single dollar amount integration level that applies uniformly to all participants for a plan year (i.e., $30,000), the applicable reduction for the plan year shall be determined by comparing the integration level to the covered compensation of an individual attaining social security retirement age in the plan year. Thus, for example, if a plan specifies a single integration level of $30,000 that is uniformly applicable to all participants for a plan year and the covered compensation of an individual attaining social security retirement age in the plan year is $20,000, the ¾ of 1 percent factor in the maximum excess allowance must be reduced to .60% for all participants in accordance with the table set forth below because the specified integration level is more than 125% of such covered compensation but not more than 150% of such covered compensation.

If the integration level—		The ¾ of 1 percent factor in the maximum excess allowance is reduced to—
Is more than—	But not more than—	
125% of covered compensation	150% of covered compensation	.60%
150% of covered compensation	175% of covered compensation	.53%
175% of covered compensation	200% of covered compensation	.47%
200% of covered compensation		.42%

(2) *Offset plans.* If a defined benefit offset plan provides that the offset applied to limit each participant's accrued benefit under the plan for a plan year is the participant's final average compensation up to the participant's covered compensation as of the plan year, no reduction in the ¾ of 1 percent factor in the maximum excess allowance shall be required for the plan year under this paragraph (d)(2). However, if a plan provides that the offset applied to limit any participant's accrued benefit under the plan for a plan year is based on compensation that exceeds the covered compensation (as of the plan year) of an individual attaining social security retirement age in the plan year, ¾ of 1 percent factor in the maximum offset allowance shall be reduced in accordance with the table set forth below. If a plan determines the offset as a percentage of final average compensation subject to a limitation uniformly applicable to all participants (e.g., 100% of final average compensation) the applicable reduction for a plan year shall be determined by comparing the limitation amount to the covered compensation of an individual attaining social security retirement age in the plan year. If a plan determines the offset as a participant's final average compensation subject to a single dollar limitation amount that uniformly applies to all participants for the plan year (i.e., $30,000), the applicable reduction for the plan year shall be determined by comparing the single dollar limitation amount to the covered compensation of an individual attaining social security retirement age in the plan year. Thus, for example, if a plan determines the offset based on a participant's final average compensation not in excess of $30,000 and the covered compensation of an individual attaining social security retirement age in the plan year is $20,000, the ¾ of 1 percent factor in the maximum offset allowance must be reduced to .60% for all participants in accordance with the table set forth below because the specified dollar amount is more than 125% of such covered compensation but not more than 150% of such covered compensation.

If the integration level—		The ¾ of 1 percent factor in the maximum excess allowance is reduced to—
Is more than—	But not more than—	
Covered compensation.	125% of covered compensation	.69%

TABLE

If the amount of final average compensation taken into account in determining the offset—		Then the ¾ of 1 percent factor in the maximum offset allowance is reduced to— (percent)
Is more than—	But not more than—	
Covered compensation.	125 percent of covered compensation.	0.69
125 percent of covered compensation.	150 percent of covered compensation.	.60
150 percent of covered compensation.	175 percent of covered compensation.	.53
175 percent of covered compensation.	200 percent of covered compensation.	.47
200 percent of covered compensation.		.42

(e) *Reduction in the ¾ of 1 percent factor for certain benefits commencing before social security retirement age*—(1) *In general.* Except as provided in paragraph (e)(3) of this section, with respect to a benefit payable to a participant under a defined benefit excess plan or a defined benefit offset plan commencing at an age before the participant's social security retirement age (including a benefit payable at the normal retirement age under the plan), the ¾ of 1 percent factor in the maximum excess allowance or in the maximum offset allowance, respectively, is reduced in accordance with paragraph (e)(2) of this section. However, with respect to a benefit commencing before normal retirement age, a defined benefit excess plan or offset plan will not fail to satisfy the requirements of this paragraph (e) merely because a benefit that is subject to the interest rate restrictions of section 401(a)(11) or section 417(e) exceeds the benefit that would otherwise be allowed under this paragraph (e) to the extent required to satisfy § 1.417(e)–1(d).

(2) *Required reductions*—(i) *Benefits commencing on or after age 55.* The ¾ of 1 percent factor in the maximum excess allowance and in the maximum offset allowance applies with respect to

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a benefit commencing at a participant's social security retirement age and, with respect to benefits commencing before a participant's social security retirment age, is reduced for such early commencement of benefits in accordance with the tables set forth in paragraph (e)(3) of this section. Similarly, with respect to a defined benefit excess plan, the required reduction under this paragraph (e)(2) is satisfied if the excess benefit percentage under the plan with respect to benefits payable commencing at an age before social security retirement age does not exceed the base benefit percentage under the plan at such age by more than the applicable factor for such age provided in the tables set forth in paragraph (e)(3) of this section. Finally, with respect to a defined benefit offset plan, the required reduction under this paragrpah (e)(2) is satisfied if the offset (expressed as a percentage of final average compensation) applicable to benefits commencing before social security retirement age does not exceed the applicable factor for such age provided in the tables set forth in paragraph (e)(3) of this section.

(ii) *Benefits commencing before age 55.* With respect to benefits commencing before the participant attains age 55, the ¾ of 1 percent factor in the maximum excess allowance and in the maximum offset allowance is further reduced (on a monthly basis to reflect the month in which benefits commence) to a factor that is the actuarial equivalent of the ¾ of 1 percent factor (as reduced in accordance with this paragraph (e)) applicable to a benefit commencing in the month in which the participant attains age 55. In determining actuarial equivalence for this purpose, a reasonable mortality table must be used except to the extent that the participant's benefit is not forfeited at death before the participant's attainment of social security retirement age and a reasonable interest rate must be used.

(3) *Tables.* The following tables set forth the reductions in the ¾ of 1 percent factor in the maximum excess allowance and in the maximum offset allowance applicable to benefits commencing on or after age 55 to a participant who has a social security retirement age of 65, 66 or 67. The reduced factors set forth in the following tables are applicable to benefits that commence in the month the participant attains the specified age. Accordingly, if benefits commence in a month other than the month in which the participant attains the specified age, appropriate adjustments (in accordance with the method of reduction specified in paragraph (e)(2) of this section) in the ¾ of 1 percent factor in the maximum excess allowance and the maximum offset allowance must be made.

Social Security retirement age 67		Social Security retirement age 66		Social Security retirement age 65	
Age at which benefits commence	Annual factor in maximum excess allowance and maximum offset allowance (percent)	Age at which benefits commence	Annual factor in maximum excess allowance and maximum offset allowance (percent)	Age at which benefits commence	Annual factor in maximum excess allowance and maximum offset allowance (percent)
66	0.70	65	0.70	64	0.70
65	0.65	64	0.65	63	0.65
64	0.60	63	0.60	62	0.60
63	0.56	62	0.55	61	0.55
62	0.52	61	0.51	60	0.50
61	0.48	60	0.47	59	0.46
60	0.44	59	0.43	58	0.42
59	0.40	58	0.39	57	0.38
58	0.37	57	0.36	56	0.35
57	0.34	56	0.33	55	0.32
56	0.31	55	0.30		
55	0.28				

(4) *Exception for certain disability benefits.* The maximum excess allowance and the maximum offset allowance shall not be subject to the reductions set forth in paragraphs (e) (1) and (2) of this section solely because the plan provides a qualified disability benefit commencing before a participant's social security retirement age. However, if a disability benefit commencing before a participant's social security retirement age is payable under the plan and the disability benefit is not a qualified disability benefit, the disability benefit will be treated as a benefit described in paragraphs (e) (1) and (2) of this section and the ¾ of 1 percent factor in the maximum excess allowance or in the maximum offset allowance applicable to the benefit must be reduced in accordance with paragraphs (e) (1) and (2) of this section. For purposes of this paragraph (e)(4), a disability benefit is a qualified disability benefit only if the benefit—

(i) Is payable under the plan solely on account of a participant's disability, as determined by the Social Security Administration,

(ii) Terminates no later than at the participant's normal retirement age,

(iii) Is not in excess of the amount of the benefit that would be payable to the participant under the plan if the participant had separated from service at the participant's normal retirement age, and

(iv) Only if upon attainment of early or normal retirement age, a participant receives a benefit that satisfies the accrual and vesting rules of section 411 (and the regulations thereunder) without taking into account the disability benefit payments made up to that age.

(5) *Benefit commencement date.* For purposes of paragraph (e)(1) of this section, a benefit commences on the first day of the period for which the benefit is paid under the plan.

(6) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples. Except as otherwise set forth in the facts of each example, assume that the plan contains no provision that would result in a reduction in the ¾ of 1 percent factor in the maximum excess allowance or in the maximum offset allowance. Assume also that the benefits commencing before social security retirement age are not subject to the interest rate restrictions of section 401(a)(11) or section 417(e).

Example (1). Employer X maintains a noncontributory defined benefit excess plan with a normal retirement age of 65. The formula for determining benefits under the plan for participants with a social security retirement age of 65 provides a normal retirement benefit of 1.25% of the participant's average annual compensation up to the participant's covered compensation plus 2.0 percent of the participant's average annual compensation in excess of the participant's covered compensation. The plan provides a benefit commencing at age 55 with respect to such a participant with at least 20 years of credited service for X and the amount of the early retirement benefit is equal to the benefit payable at age 65. Under the plan, the disparity between the excess benefit percentage and the base benefit percentage for the benefit payable at age 55 is .75%. Because this disparity exceeds the .32% factor provided in the table for a benefit payable at age 55 to a participant with a social security retirement age of 65, the plan fails to satisfy the requirements of paragraphs (b) and (e) of this section with respect to the early retirement benefit.

Example (2). Assume the same facts as in *Example (1),* except that the base benefit percentage under the plan is 1.75%. Thus, the disparity between the excess benefit percentage and the base benefit percentage under the plan for the unreduced benefit payable at age 55 is .25%. Because the disparity does not exceed the .32% factor provided in the table for a benefit payable at age 55 to a participant with a social security retirement age of 65, the plan does not fail to satisfy paragraphs (b) and (e) of this section with respect to the early retirement benefit.

Example (3). Employer Y maintains a noncontributory defined benefit offset plan with a normal retirement age of 65. The benefit formula under the plan provides an offset with respect to participants with a social security retirement age of 65 equal to .75% of the participant's final average compensation up to covered compensation, multiplied by the participant's years of credited service for Y. The plan provides a benefit commencing at age 55 to a participant with at least 20 years of credited service for Y and the early retirement benefit is equal to the benefit payable at age 65. Under the plan, the offset percentage for such a benefit payable at age 55 is .75%. Because this factor exceeds the .32% factor provided in the table for an offset applied to a benefit payable at age 55 to a participant with a social security retirement age of 65, the plan fails to satisfy the requirements of paragraphs (c) and (e) of this section with respect to the early retirement benefit. The plan would not fail to satisfy paragraphs (c) and (e) of this section with respect to the early retirement benefit if the applicable factor for determining the offset applied to such benefit were reduced to .32%.

Example (4). Employer Z maintains a noncontributory defined benefit excess plan with a normal retirement age of 65. The formula for determining benefits under the plan for participants with a social security retirement age of 65 provides a normal retirement benefit of 1.25% of the participant's average annual compensation up to covered compensation plus 2.0% of the participant's average annual compensation in excess of the participant's covered compensation. The plan provides for benefits commencing before normal retirement age with the following reductions:

Age	Percentage of normal retirement benefit
64	90
63	85
62	80

Under the plan, a benefit payable at age 64 is equal to 90% of the normal retirement benefit payable at age 65. Thus, the excess benefit percentage under the plan is 1.8% and the base benefit percentage under the plan is 1.125% for such a benefit and the disparity between the excess benefit percentage and the base benefit percentage is .675%. Similarly, under the plan, a benefit payable at age 63 is equal to 85% of the normal retirement payable at age 65. Thus, the excess benefit percentage under the plan is 1.7% and the base benefit percentage under the plan is 1.0625% for such a benefit and the disparity between the excess benefit percentage and the base benefit percentage is .6375%. Finally, under the plan, a benefit payable at age 63 is equal to 80% of the normal retirement benefit payable at age 65. Thus, the excess benefit percentage under the plan is 1.6% and the base benefit percentage under the plan is 1.0% for such a benefit and the disparity between te excess benefit percentage and the base benefit percentage is .6%. Because the disparities between the excess benefit percentage and the base benefit percentage at each early commencement age do not exceed the factors provided in the table, the plan does not fail to satisfy the requirements of paragraphs (b) and (e) of this section with respect to the early retirement benefits.

Example (5). Employer X maintains a noncontributory defined benefit plan. The formula for determining benefits under the plan provides a normal retirement benefit, commencing at normal retirement age 65, of .75% of the participant's average annual compensation up to the participant's covered compensation, multiplied by the participant's years of credited service for X, plus 1.5% of the participant's average annual compensation in excess of the participant's covered compensation, multiplied by the participant's years of credited service for X. The plan provides that not more than 35 years of credited service for X may be taken into acount in determining benefits under the plan. The plan does not provide any benefits, other than normal retirement benefits, commencing before a participant's social security retirement age. Participant A, born in 1947, has a social security retirement age of 66. Because the plan provides for the distribution of normal retirement benefits to A before A's social security retirement age, the ¾ of 1% factor in the maximum excess allowance applicable to A's normal retirement benefit must be reduced to .70% in accordance with this paragraph (e). Accordingly, the normal retirement benefit provided to A under the plan exceeds the maximum excess allowance applicable to the benefit because the excess benefit percentage (1.5%) under the plan exceeds the base benefit percentage (.75%) under the plan by more that the maximum excess allowance of .70%, as reduced in accordance with this paragraph (e).

Example (6). Assume the same facts as in *Example (5),* except that the plan aleo provides an early retirement benefit, commencing at early retirement age 62, to a participant who satisfies conditions for early retirement specified in the plan. The early retirement benefit is based upon the participant's accrued benefit at early retirement age and equals the amount that would have been paid commencing at the participant's normal retirement age based upon the participant's average annual compensation, covered compensation and credited service at the date of the participant's early retirement. Participant B, who has a social security retirement age of 65, meets the conditions for early retirement under the plan and retires at age 62 with 30 years of credtied service for X. At the time of B's early retirement, B's average annual compensation is $20,000 and B's covered compensation is $16,000. Under the plan's benefit formula, B would be entitled to receive an annual normal retirement benefit, commencing at A's normal retirement age, of $5,400 (22.5% × $16,000 + 45% × $4,000) based upon B's compensation, covered compensation and credited service for X as of B's early retirement age 62. Accordingly, under the plan's early retirement provisions, B is entitled to receive, commencing at B's early retirement age 62, an annual early retirement benefit of $5,400. Because the early retirement benefit is a benefit (other than a qualified disability benefit) commencing before B's social security retirement age, the ¾ of 1% factor in the maximum excess allowance must be reduced to .60% in accordance with this paragraph (e). Accordingly, the benefit provided to B under the plan's benefit formula exceeds the maximum excess allowance applicable to the benefit.

(f) *No additional reductions in ¾ of 1 percent factor.* For purposes of applying the maximum excess allowance described in paragraph (b)(6) of this section and the maximum offset allowance described in paragraph (c)(5) of this section, no reduction is made to the ¾ of 1 percent factor in the maximum excess allowance or in the maximum offset allowance solely because the plan provides integrated death benefits payable before a

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participant's social security retirement age.

(g) *Benefits attributable to employee contributions not taken into account*—(1) *In general.* Benefits attributable to employee contributions to a defined benefit excess plan or to a defined benefit offset plan are not taken into account in determining whether the excess benefit percentage exceeds the base benefit percentage under a defined benefit excess plan by more than the maximum excess allowance described in paragraph (b)(6) of this section or whether an offset applied to a participant's benefit under a defined benefit offset plan exceeds the maximum offset allowance described in paragraph (c)(5) of this section. Accordingly, the base benefit percentage and the excess benefit percentage of a defined benefit excess plan for a plan year are reduced to the extent that benefits are attributable to employee contributions. Similarly, the benefit provided under a defined benefit offset plan for a plan year (before application of the offset) is reduced to the extent such benefit is attributable to employee contributions. Except as provided in paragraph (g)(2) of this section, the determination of the portion of a participant's benefit for a plan year that is attributable to employee contributions for the plan year shall be made in accordance with the rules in section 411(c) and the regulations thereunder, with such adjustments as the Commissioner may prescribe.

(2) *Uniform factor*—(i) *In general.* If at least one of the tests set forth in paragraph (g)(2) (ii) or (iii) of this section is satisfied, then for purposes of applying paragraph (g)(1) of this section, the portion of each participant's benefit that is attributable to employee contributions may be determined by multiplying the rate of employee contributions (determined as a percentage of compensation) by a uniform factor determined under the table set forth in this paragraph (g)(2)(vi) and applied with respect to all participants under the plan. The uniform factor for a plan is the factor determined for an age equal to the average attained age for all participants under the plan minus the average years of participation under the contributory plan for all participants. In applying the requirements of this paragraph (g)(2), participants who would be excludable employees but for the fact that such participants (and similarly situated employees) benefit under the plan (or another plan of the employer) may be disregarded if the plan would satisfy section 410(b) without regard to such participants.

(ii) *Minimum percentage test.* This test is satisfied only if—

(A) More than 40 percent of the participants who are not highly compensated employees have attained ages at least equal to the plan's target age, and

(B) More than 20 percent (rounded up to the next whole number) of the participants who are not highly compensated employees have attained ages at least equal to the average attained age of the participants who are highly compensated employees.

(iii) *Ratio test.* This test is satisfied only if the number of participants who are not highly compensated employees and have attained ages at least equal to the average attained age of the participants who are highly compensated employees, stated as a percentage of all nonhighly compensated employees of the employer, is at least 70 percent of the number of participants who are highly compensated employees and have attained ages at least equal to the average attained age of the participants who are highly compensated employees, stated as a percentage of all highly compensated employees of the employer. For purposes of this test, an employer may assume that 50 percent of its participants who are highly compensated employees have attained ages at least equal to the average attained age of the participants who are highly compensated employees. Except as provided in paragraph (e)(2)(i) of this section, this test must be applied on a basis consistent with the rules applicable under section 410(b) and the regulations thereunder.

(iv) *Target age of plan.* For purposes of the minimum percentage test of paragraph (g)(2)(ii) of this section, a plan's target age is the lesser of—

(A) Age 50, or

(B) The average attained age of the participants who are highly compensated employees minus x years, where x years is equal to 20 minus a number equal to [(5 times [the employee contribution rate under the plan, determined as a percentage of compensation, times 100])).

In no case, however, shall x years be fewer than zero (0) years. Thus, for example, if the average attained age of the participants who are highly compensated employees is 53 and the employee contribution rate is 2 percent of compensation, the plan's target age is 43 years (i.e., 53 minus (20 minus (5 times 2))).

(v) *Attained age.* For purposes of this paragraph (g)(2), the average attained age of the participants who are highly compensated employees is the per capita average of the attained ages for the participants who are highly compensated employees. Also, the attained ages of participants are to be determined as of the beginning of the plan year.

(vi) *Table.*

Average age	Factor	
	Final average compensation benefit formula	Career average compensation benefit formula
Less than 30	0.5	0.75
30 to 40	0.4	0.6
over 40	0.2	0.3

For purposes of this paragraph (g)(2), a plan that determines benefits based on average annual compensation averaged over a specified period not exceeding five consecutive years (or a participant's entire period of service for the employer, if shorter than such specified period) shall be considered to base benefits on final average compensation and a plan that determines benefits based on average annual compensation averaged over a specified period exceeding five consecutive years (or a participant's entire period of service for the employer, if shorter than such specified period) shall be considered to base benefits on career average compensation.

(3) *Certain employee contributions disregarded.* For purposes of paragraphs (g) (1) and (2) of this section, contributions made by an employee shall not be treated as employee contributions to the extent the contributions are applicable to the current cost of insurance or death benefits in excess of the reserve or the cash value of a life insurance contract.

(4) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples. In each example, assume that there are no circumstances applicable to the plan that would require a reduction in the ¾ of 1 percent factor in the maximum excess allowance. Assume also that all participants have a social security retirement age of 65.

Example (1). (a) Employer X maintains a contributory defined benefit excess plan. The formula for determining benefits under the plan provides that a participant will receive a benefit equal to 1.5% of the participant's average annual compensation up to the participant's covered compensation, multiplied by the participant's years of credited service for X, plus 2.25% of the participant's average annual compensation in excess of the participant's covered compensation, multiplied by the participant's years of credited service for X. Accordingly, the base benefit percentage for the plan year (with respect to total benefits for the plan year) is 1.5% and the excess benefit percentage for the plan year (with respect to total benefits for the plan year) is 2.25%. Under the plan, average annual compensation is defined as the participant's average compensation over the 5-consecutive year period that will produce the highest average. The plan provides that a participant must make an employee contribution for the plan year of 4% of the participant's average annual compensation in order to receive a benefit attributable to employer contributions for the plan year. Assume that the plan satisfies at least one of the requirements of paragraph (g)(2)(ii) or (iii) of this section and may, therefore, determine the benefit attributable to employee contributions by a uniform factor for all participants determined under the table set forth in paragraph (g)(2)(vi) of this section. Assume also that the average attained age for all participants is age 55 and the average years of participation in the plan for all participants is ten years. Accordingly, the appropriate factor under the table is .2. Thus, for the plan year the benefit attributable to employee contributions is.8% (4% × .2). Accordingly, for purposes of determining whether the plan satisfies the maximum excess allowance with respect to employer-derived benefits for the plan year, the base benefit percentage for the plan year is .7% (1.5%–.8%) and the excess benefit percentage for the plan year is 1.45% (2.25%–.8%). The plan formula produces a benefit that does not satisfy the maximum excess allowance for the plan year because the excess benefit percentage for the plan year (1.45%) exceeds the base benefit percentage for the plan year (.7%) by more than the lesser of ¾ of 1 percent or the base benefit percentage (.7%) for the plan year.

(b) The plan formula may still produce a benefit that satisfies the maximum excess allowance for the plan year if the reduced excess benefit percentage and the reduced base benefit percentage attributable to employer-derived benefits (determined by calculating the benefit attributable to employee contributions under section 411(c) and the regulations thereunder) produces a benefit that does not exceed the maximum excess allowance for the plan year.

Example (2). Assume the same facts as in *Example (1)*, except that the base benefit percentage for the plan year (with respect to total benefits for the plan year) is 2.0% and the excess benefit percentage for the plan year (with respect to total benefits for the plan year) is 2.75%. Under the table set forth in paragraph (g)(2)(vi) of this section, the benefit attributable to employee contributions (.8%) would reduce the base benefit percentage for the plan year to 1.2% (2.0%–.8%) and the excess benefit percentage for the plan year to 1.95%. (2.75%–.8%). Accordingly, the plan formula would produce a benefit that satisfies the maximum excess allowance for the plan year because the excess benefit percentage for the plan year (1.95%) does not exceed the base benefit percentage for the plan year (1.2%) by more than the lesser of ¾ of 1 percent or the base benefit percentage (1.2%) for the plan year.

Example (3). (a) Employer Y maintains a contributory defined benefit offset plan. Under the benefit formula contained in the plan, for each year of credited service for Y, a participant receives a normal retirement benefit equal to 1.75% of the participant's average annual compensation, reduced by ¾ of 1% of the participant's final average compensation (up to covered compensation). Under the plan, average annual compensation is defined as the participant's average annual compensation over the 5-consecutive year period that will produce the highest average. The plan provides that a participant must make an employee contribution for the plan year of 2% of the participant's average annual compensation in order to receive a benefit attributable to employer contributions for the plan year. Assume that the plan satisfies at least one of the requirements of paragraph (g)(2) (ii) or (iii) of this section and may, therefore, determine the benefit attributable to employee contributions by a uniform factor for all participants determined under the table set forth in paragraph (g)(2)(vi) of this section. Assume also that the average attained age for all participants is age 55 and the average years of participation in the plan for all participants is ten years. Accordingly, the appropriate factor under the table is .2. Thus, for the plan year the benefit attributable to employee contributions is .4% (2%×.2). Accordingly, for purposes of determining whether the plan satisfies the maximum offset allowance with respect to employer-derived benefits for the plan year, the positive portion of the benefit is 1.35% (1.75%–.4%). The plan formula produces a benefit that does not satisfy the maximum offset allowance for the plan year because the offset of .75% exceeds 50% of the employer-derived benefit (1.35%) provided under the plan.

(b) The plan formula may still produce a benefit that satisfies the maximum offset allowance for the plan year if the reduced positive portion of the benefit (determined by calculating the benefit attributable to employee contributions under section 411(c) and the regulations thereunder) produces a benefit that does not exceed the maximum offset allowance for the plan year.

(h) *Multiple integration levels.* [Reserved]

(i) *Target benefit plans*—(1) *Excess plans.* (i) In the case of a target benefit plan described in § 1.410(a)–4(a)(1) under which participants' targeted normal retirement benefits are determined under an excess formula, the plan satisfies the requirements of section 401(l) for a plan year only if the plan satisfies the requirements of paragraph (i)(1) (ii) or (iii) of this section for the plan year. Such a plan does not have to satisfy § 1.401(l)–2.

(ii) In the case of a target benefit plan described in paragraph (i)(1)(i) of this section under which the allocation of employer contributions to the account of any participant is determined under a funding method other than one described in paragraph (i)(1)(iii) of this section, the plan satisfies the requirements of paragraph (b) of this section, applied by multiplying the ¾ of 1 percent factor in the maximum excess allowance described in paragraph (b)(6) of this section by .8.

(iii) In the case of a target benefit plan described in paragraph (i)(1)(i) of this section under which the allocations of employer contributions to the accounts of all participants are determined under a funding method which for all years does not exceed the allocations under the unit credit funding method (as determined for this purpose under rules prescribed by the Commissioner), the plan satisfies the requirements of paragraph (b) of this section.

(iv) For purposes of this paragraph (i)(1), the reductions described in paragraphs (d)(1) and (e) of this section are applicable and are applied on a cumulative basis.

(2) *Offset formula plans.* (i) In the case of a target benefit plan described in § 1.410(a)–4(a)(1) under which participants' targeted normal retirement benefits are determined under an offset formula, the plan satisfies the requirements of section 401(l) for a plan year only if the plan satisfies the requirements of paragraph (i)(2) (ii) or (iii) of this section for the plan year. Such a plan does not have to satisfy § 1.401(l)–2.

(ii) In the case of a target benefit plan described in paragraph (i)(2)(i) of this section under which the allocation of employer contributions to the account of any participant is determined under a funding method other than one described in paragraph (i)(2)(iii) of this section, the plan satisfies the requirements of paragraph (c) of this section, applied by multiplying the ¾ of 1 percent factor in the maximum offset allowance described in paragraph (c)(5) of this section by .8.

(iii) In the case of a target benefit plan described in paragraph (i)(2)(i) of this section under which the allocations of employer contributions to the accounts of all participants are determined under a funding method which for all years does not exceed the allocations under the unit credit funding method (as determined for this purpose under rules prescribed by the Commissioner), the plan satisfies the requirements of paragraph (c) of this section.

(iv) For purposes of applying this paragraph (i)(2), the reductions described in paragraphs (d)(2) and (e) of

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this section are applicable and are applied on a cumulative basis.

(3) *Plans described in section 411(b)(1)(F).* A plan described in section 411(b)(1)(F) satisfies section 401(l) for a plan year only if the plan satisfies the requirements of paragraph (i) (1) or (2) of this section for the plan year.

(4) *Example.* The provisions of this paragraph (i) may be illustrated by the following example. In the example, assume that the plan contains no provision that would require a reduction in the ¾ of 1 percent factor in the maximum excess allowance. Assume also that all participants have a social security retirement age of 65.

Example. Employer X maintains a noncontributory target benefit excess plan. The formula for determining benefits under the plan provides a targeted normal retirement benefit of 1.25% of a participant's average annual compensation, multiplied by the participant's years of credited service for X, plus 2% of the participant's average annual compensation in excess of the participant's covered compensation, multiplied by the participant's years of credited service for X. The plan provides that not more than 35 years of credited service will be taken into account in determining benefits under the plan. Contributions under the plan allocated to participant's accounts to fund participants' targeted normal retirement benefits are made in accordance with the individual level premium funding method. Accordingly, for the plan year the excess benefit percentage is 2% and the base benefit percentage is 1.25%. Normal retirement age under the plan is 65. The plan formula provides a targeted benefit that exceeds the maximum excess allowance for the plan year because (i) the excess benefit percentage (2%) for the plan year exceeds the base benefit percentage (1.25%) for the plan year by more than the maximum excess allowance described in paragraph (b)(6) of this section), applied by multiplying the ¾ of 1 percent factor in the maximum excess allowance by .8.

(j) *Special rules for plans maintained by railroad employers*—(1) *In general.* Section 401(l)(6) provides that; in the case of a plan maintained by a railroad employer that covers employees who are entitled to benefits under the Railroad Retirement Act of 1974, in determining whether such a plan satisfies the requirements of section 401(l), rules similar to the rules applicable under section 401(l) shall apply and such rules shall take into account the employer-derived portion of tier 2 and supplemental annuity benefits provided under the railroad retirement system. In general, for purposes of determining whether a defined benefit plan or a defined contribution plan maintained by a railroad employer, which covers employees described in the preceeding sentence, satisfies the requirements of section 401(l), the employer-derived portion of the employees' tier 2 benefits and supplementary annuity benefits provided under the Railroad Retirement Act of 1974 are treated as though such benefits were provided by the railroad employer under a qualified plan maintained by the railroad employer.

(2) *Defined benefit offset plans*—(i) *In general.* A defined benefit offset plan satisfies the requirements of section 401(l) for a plan year only if the plan satisfies paragraph (c) of this section for the plan year without regard to the offset for the employer-derived portion of tier 2 and supplementary annuity benefits provided under the railroad retirement system and only if the offset for the employer-derived portion of tier 2 and supplementary annuity benefits provided under the railroad retirement system does not exceed the maximum tier 2 and supplementary annuity offset allowance.

(ii) *Maximum tier 2 and supplementary annuity offset allowance.* For purposes of paragraph (j)(2)(i) of this section, the maximum tier 2 and supplementary annuity offset allowance for a plan year is equal to—

(A) With respect to benefits attributable to any year of credited service for the railroad employer, .56% of the employee's railroad retirement covered compensation for the plan year; and

(B) With respect to benefits attributable to the participant's total years of credited service for the railroad employer, the offset determined under paragraph (j)(2)(ii)(A) of this section multiplied by the participant's total years of credited service for the railroad employer.

(3) *Defined benefit excess plans.* (i) A defined benefit excess plan satisfies the requirements of section 401(l) and paragraph (b) of this section for a plan year only if the plan satisfies the requirements of paragraph (j)(3)(ii) or (iii) of this section for the plan year.

(ii) (A) A plan satisfies the requirement of this paragraph (j)(3)(ii) for a plan year only if the plan specifies an integration level that does not exceed railroad retirement covered compensation for the plan year and only if the excess benefit percentage under the plan exceeds the base benefit percentage by an amount that is uniform for all participants and the excess benefit percentage does not exceed the lesser of—

(1) With respect to employer-derived benefits provided under the plan with respect to any year of credited service for the railroad employer, the lesser of—

(i) Two times the sum of .56% and the base benefit percentage, or

(ii) .56% plus the base benefit percentage plus ¾ of 1 percent.

(2) With respect to total employer-derived benefits provided under the plan for all years of credited service for the railroad employer, the limitation determined under paragraph (j)(3)(ii)(A)*(1)* multiplied by the participant's total years of credited service for the railroad employer.

(iii) (A) A plan satisfies the requirement of this paragraph (j)(3)(iii) for a plan year only if the plan specifies two integration levels for each participant, with one integration level being the railroad retirement covered compensation for the participant and the other integration level being the social security covered compensation for the participant, and only if the plan satisfies the requirements of paragraph (j)(3)(iii) (B) or (C) of this section.

(B) With respect to a participant whose lower integration level is the participant's social security covered compensation, a plan satisfies this requirement only if the excess benefit percentage exceeds the intermediate benefit percentage by an amount that is uniform for all participants and the excess benefit percentage does not exceed the intermediate benefit percentage by more than .56% and only if the intermediate benefit percentage exceeds the base benefit percentage by an amount that is uniform for all participants and the intermediate benefit percentage does not exceed the base benefit percentage by more than the lesser of 3/4 of 1 percent or the base benefit percentage.

(C) With respect to a participant whose lower integration level is the participant's railroad retirement covered compensation, a plan satisfies this requirement only if the excess benefit percentage exceeds the base benefit percentage by an amount that is uniform for all participants and the excess benefit percentage does not exceed the lesser of—

(1) Two times the sum of .56% and the base benefit percentage, or

(2) The sum of .56% plus the base benefit percentage plus 3/4 of 1 percent, and only if the intermediate benefit percentage exceeds the base benefit percentage by an amount that is uniform for all participants and the intermediate benefit percentage does not exceed the sum of .56% plus the base benefit percentage.

(iv) For purposes of paragraph (j)(3)(iii) of this section—

(A) The base benefit percentage for a plan year is the percentage of compensation at which employer-derived benefits are accrued with respect to compensation of participants at or below the lower integration level specified in the plan for the plan year.

(B) The intermediate benefit percentage for a plan year is the percentage of compensation at which employer-derived benefits are accrued with respect to compensation of participants between the lower and higher integration levels specified in the plan for the plan year.

(C) The excess benefit percentage for a plan year is the percentage of compensation at which employer-derived benefits are accrued with respect to compensation of participants above the higher integration level specified in the plan for the plan year.

(4) *Defined contribution plans.* (i) A defined contribution plan described in paragraph (j)(1) of this section satisfies the requirements of section 401(l) and § 1.401(l)–2 for a plan year only if the plan satisfies the requirement of this paragraph (j)(4)(ii) or (iii) of this section for the plan year.

(ii) (A) A plan satisfies the requirement of this paragraph (j)(4)(ii) for a plan year only if the plan specifies an integration level that does not exceed the railroad retirement taxable wage base in effect for the plan year and only if the excess contribution percentage exceeds the base contribution percentage by an amount that is uniform for all participants and the excess contribution percentage does not exceed the sum of 11.4 percentage points and the base contribution percentage.

(iii) (A) A plan satisfies the requirement of this paragraph (j)(4)(iii) for a year only if the plan specifies two integration levels for each participant, with one integration level being the railroad retirement taxable wage base in effect for the plan year and the other integration level being the social security taxable wage base in effect for the plan year, and only if the plan satisfies the requirements of paragraphs (j)(4)(iii)(B)*(1)* and *(2)* of this section.

(B) *(1)* A plan satisfies this requirement only if the excess contribution percentage for the plan year exceeds the base contribution by an amount that is uniform for all participants and the excess contribution percentage does not exceed the sum of 11.4 percentage points and the base contribution percentage.

(2) A plan satisfies this requirement only if the intermediate contribution percentage for the plan year exceeds the base contribution by an amount that is uniform for all participants and the intermediate contribution percentage does not exceed the sum of 5.7 percentage points and the base contribution percentage.

(iv) For purposes of paragraph (j)(4)(ii) of this section—

(A) The base contribution percentage for a plan year is the percentage of compensation at which employer contributions (and forfeitures) are allocated to participant's accounts for the plan year with respect to compensation at or below the railroad retirement taxable wage base in effect for the plan year.

(B) The excess contribution percentage for a plan year is the percentage of compensation at which employer contributions (and forfeitures) are allocated to participants' accounts for the plan year with respect to compensation above the railroad retirement taxable wage base in effect for the plan year.

(v) For purposes of paragraph (j)(4)(iii) of this section—

(A) The base contribution percentage for a plan year is the percentage of compensation at which employer contributions (and forfeitures) are allocated to participants' accounts for the plan year with respect to compensation at or below the railroad retirement taxable wage in effect for the plan year.

(B) The intermediate contribution percentage for a plan year is the percentage of compensation at which employer contributions (and forfeitures) are allocated to participants' accounts for the plan year with respect to compensation between the railroad retirement taxable wage base in effect for the plan year and the social security taxable wage base in effect for the plan year.

(C) The excess contribution percentage for a plan year is the percentage of compensation at which employer contributions (and forfeitures) are allocated to participants' accounts for the plan year with respect to compensation above the social security taxable wage base in effect for the plan year.

(5) *Additional rules.* For purposes of paragraph (j) of this section—

(i) The ¾ of 1 percent factor and the .56 factor in the maximum excess allowance and in the maximum excess allowance are subject to the reductions prescribed in paragraphs (d) and (e) of this section, and

(ii) The ¾ of 1 percent factor in the maximum offset allowance is further reduced, as prescribed by the Commissioner, with respect to participants with more than 35 years of credited service for a railroad employer.

(k) *Additional rules.* The Commissioner may, in revenue rulings, notices or other documents of general applicability, prescribe such additional rules as may be necessary or appropriate to carry out the purposes of this section, including updated tables under paragraphs (d) and (e) of this section providing for certain reductions in the ¾ of 1 percent factor in the maximum excess allowance and in the maximum offset allowance, and paragraph (g) of this section providing for factors for determining the portion of an employee's benefit attributable to employee contributions, additional rules under paragraph (d) of this section with respect to whether flat dollar integration levels (in the case of excess plans) and flat dollar limits on final average compensation (in the case of offset plans) are permitted under section 401(l), and additional rules under paragraph (g)(2) of this section with respect to whether a uniform factor may be used with respect to all participants for purposes of determining the portion of the employee's benefit attributable to employee contributions.

(l) *Effective dates and transition rules*—(1) *In general.* Except as otherwise provided in paragraph (l)(2) of this section, section 401(A)(5)(C) and (D) is effective for plan years beginning after December 31, 1988, and section 401(l) is effective with respect to plan years, and benefits attributable to plan years, beginning after December 31, 1988. The preceding sentence is applicable to a plan without regard to whether the plan was in existence as of a particular date. A defined benefit excess plan or offset plan satisfies section 401(l) with respect to plan years, and benefits attributable to plan years, beginning after December 31, 1988, by satisfying the requirements of either paragraph (l)(2), (3) or (4) of this section. A defined benefit plan under any participant had an accrued benefit as of the close of the last plan year beginning before January 1, 1989 must satisfy section 401(l) with respect to plan years, and benefits attributable to plan years, beginning after December 31, 1988, by satisfying the requirements of paragraph (l)(2), (3) or (4) of this section and the method of satisfying section 401(l) must apply to all plan participants who have at least one hour of service in a plan year to which section 401(l) applies. Accordingly, a plan may not, for example, satisfy only paragraph (l)(2) of this section for certain participants who have at least one hour of service for the employer in a plan year to which section 401(l) applies and satisfy only paragraph (l)(3) of this section for other participants who have at least one hour of service in a plan year for which section 401(l) applies. In the case of an

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employer that maintains more than one plan, each plan may satisfy section 401(l) by satisfying the requirements of either paragraph (l)(2), (3) or (4) of this section without regard to how any other plan maintained by the employer satisfies section 401(l). However, with respect to any combination of plans maintained as a single plan for purposes of satisfying the requirements of section 410(b) (relating to minimum coverage requirements), such plans are treated as a single plan for purposes of this paragraph (l)(1). Furthermore, if the employer maintains (or has maintained) more than one plan integrated with social security benefits and any employee is or may become eligible to participate in two or more of such plans, then such plans are treated as a single plan for purposes of this paragraph (l). See § 1.401(l)–4 for rules relating to combining and aggregating plans.

(2) *Total benefits satisfy new rules.* A plan satisfies the requirements of this paragraph (l)(2) only if the employer-derived benefit under the plan attributable to the participant's total years of service (i.e., years of service before and after the effective date of section 401(l)) for the employer satisfies section 401(l) and the regulations thereunder for all plan years beginning after December 31, 1988, and only if each participant has, in all such plan years, an accrued benefit equal to the greater of the participant's accrued benefit, determined under the plan as of the close of the last plan year beginning before January 1, 1989, as if the participant terminated employment with the employer, or the participant's accrued benefit determined under the plan's new formula based upon the participant's total years of credited service for the employer.

(3) *Post effective date benefits or offset satisfy reduced (on a years basis) maximum cumulative disparity limits*—(i) *In general.* A plan satisfies the requirements of this paragraph (l)(3) only if—

(A) The plan specifies that section 401(l) and the regulations thereunder apply only to benefits that accrue in plan years beginning after December 31, 1988, and do not apply to the participant's accrued benefit under the plan, determined as of the close of the last plan year beginning before January 1, 1989 (the current accrued benefit) and determined as if the participants terminated from employment with the employer on that determination date,

(B) Each participant's accrued benefit under the plan equals the sum of—

(1) The participant's accrued benefit, determined under the plan as of the close of the last plan year beginning before January 1, 1989, as if the participant terminated employment with the employer, and

(2) The participant's accrued benefit with respect to years of credited service for plan years beginning after December 31, 1988, and the accrued benefit for such plan years satisfies section 401(l) and § 1.401(l)–2 or § 1.401(l)–3, taking into account § 1.401(l)–4, and

(C) The plan satisfies the requirements of paragraph (l)(3) (ii) or (iii) of this section.

(ii) *Excess plans.* With respect to benefits accrued on behalf of a participant in a defined benefit excess plan for plan years beginning after December 31, 1988, the cumulative percentage limitation of the maximum excess allowance of paragraph (b)(6) of this section applicable to the participant shall be reduced to the percentage equal to the product of .75% multiplied by the number equal to 35 minus the number of years of credited service completed by the participant as of the close of the last plan year beginning before January 1, 1989.

(iii) *Offset plans.* With respect to the offset accrued on behalf of a participant in a defined benefit offset plan for plan years beginning after December 31, 1988, the cumulative percentage limitation of the maximum offset allowance of paragraph (c)(5) of this section applicable to the participant shall be reduced to a percentage equal to the product of .75% multiplied by (35 minus the number of years of credited service completed by the participant as of the close of the last plan year beginning before January 1, 1989).

(4) *Greater of other determinations.* A plan satisfies this paragraph (l)(4) only if the plan specifies that each participant in the plan will receive, upon attaining normal retirement age or separating from the service of the employer, a benefit equal to the higher of the benefits determined for the participant, as of such date, under paragraphs (1), (2), and (3) of this section.

(5) *Collectively bargained plans.* (i) In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, sections 401(a)(5) and 401(l) are applicable for plan years beginning on or after the later of—

(A) January 1, 1989, or

(B) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension of any such agreement occurring on or after March 1, 1986). However, notwithstanding the preceding sentence, sections 401(a)(5) and 401(l) shall be applicable to plans described in this paragraph (l)(5)(i) no later than the first plan year beginning after January 1, 1991.

(ii) For purposes of paragraph (l)(5)(i) of this section, the rules of paragraph (l) of this section shall apply to a plan described in paragraph (l)(5)(i) of this section, except that in applying such rules the effective date determined under paragraph (l)(5)(i) of this section shall be substituted for the effective date determined under paragraph (l)(1) of this section and the determination date with respect to the plan shall be the close of the last plan year beginning before the effective date applicable to the plan.

(iii) Notwithstanding paragraph (l)(5)(ii) of this section, a change made after October 22, 1986, in the terms or conditions of a collectively bargained plan, pursuant to a collective bargaining agreement ratified before March 1, 1986, shall not be treated as a change in the terms and conditions of the plan.

(6) *Examples.* The provisions of this paragraph (l) may be illustrated by the following examples. In each example, assume that the plan contains no feature that would require a reduction under Revenue Ruling 71–446 (1971–2 C.B. 187) in the 37½ percent (of compensation in excess of covered compensation) total maximum disparity applicable to defined benefit flat benefit excess plans; the 1 percent (of compensation in excess of covered compensation) annual maximum disparity applicable to defined benefit unit benefit plans under which benefits are based on average annual compensation; or in the 83⅓ percent (of the primary insurance amount) maximum offset applicable to benefits provided under defined benefit offset plans. In each example, assume also that the participant's covered compensation and final average compensation remain the same from December 31, 1988, to the subsequent determination dates and that all participants have a social security retirement age of 65.

Example (1). (a) Employer X maintains a noncontributory defined benefit plan that is integrated with benefits provided by social security. The plan uses the calendar year as its plan year and provides that a participant's normal retirement age is 65. Under the benefit formula contained in the plan, a participant who has at least 15 years of credited service for X at normal retirement age is entitled to receive a benefit equal to the sum of (i) 20% of the participant's average annual compensation and (ii) 37½% of the participant's average annual compensation in excess of the participant's covered compensation. The plan provides that the 37½% excess benefit percentage is reduced by 2½ percentage points for each year of credited service less than 15 years the participant has at normal retirement age. The plan uses the fractional rule for purposes of determining a participant's accrued benefit.

(b) X elects to utilize the transitional rule described in paragraph (l)(2) of this section. Accordingly, during the 1989 plan year X amends the plan, effective for all years of credited service, to provide that each participant is entitled to receive a benefit equal to the sum of (i) .75% of the participant's average annual compensation up to the participant's covered compensation, multiplied by the participant's total years of credited service (not in excess of 35) for X and (ii) 1.5% of the participant's average annual compensation in excess of the participant's covered compensation, multiplied by the participant's total years of credited service (not in excess of 35) for X. Assume that, as of December 31, 1988, Participant A (who is age 50) has 20 years of credited service for X; has average annual compensation of $36,000; and has covered compensation of $31,200. Accordingly, as of December 31, 1988, A's accrued benefit under the plan is $5,143 ((20%×$36,000) + (37½×$4,800) × 20/35)). With respect to the transition rule set forth in paragraph (l)(2) of this section, under the amended plan formula (which is effective for A's total credited service for X), A's accrued benefit as of December 31, 1990 (A then having 22 years of credited service) is $6,732 ((.75% × 22 years × $31,200) + (1.5% × 22 years × $4,800)). Accordingly, under the transition rule set forth in paragraph (l)(2) of this section, if A separates from the service of X on December 31, 1990, the plan is required to provide A with an accrued normal retirement benefit of $6,732 (the greater of $5,143 or $6,732).

(c) With respect to the transition rule set forth in paragraph (l)(3) of this section, because A had 20 years of credited service for X as of December 31, 1988, the cumulative percentage limitation of the maximum excess allowance applicable to A for plan years beginning on January 1, 1989 and thereafter is reduced to 11.25% (.75%×15 (35 minus 20) years).

Example (2). (a) Assume the same facts as in *Example (1)*, except that the benefit formula contained in the plan provides that a participant who has 15 years of credited service for X at normal retirement age is entitled to receive a benefit equal to the sum of (i) 20% of the participant's average annual compensation and (ii) 25% of the participant's average annual compensation in excess of the participant's covered compensation.

(b) Accordingly, as of December 31, 1988, A's accrued benefit under the plan is $4,800 ((20% × $36,000) + (25% × $4,800 × 20/35)). With respect to the transitional rule set forth in paragraph (l)(2) of this section, under the amended plan benefit formula (which is effective for A's total credited service for X), A's accrued benefit under the plan as of December 31, 1990 (A then having 22 years of credited service) is $6,699 ((.75% × 22 years × $31,000) + (1.5% × 22 years × $4,800)). Accordingly, under the transitional rule described in paragraph (l)(2) of this section, if A separates from the service of X on December 31, 1990, the plan is required to provide A with an accrued normal retirement benefit of $6,699 (the greater of $6,699 and $4,800).

(c) Under the transition rule set forth in paragraph (l)(3) of this section, because A had 20 years of credited service for X as of December 31, 1988, the cumulative percentage limitation of the maximum excess allowance otherwise applicable to A for plan years beginning on January 1, 1989, and thereafter is reduced to 11.25% (.75% × 15 (35 minus 20) years).

Example (3). (a) Employer Y maintains a noncontributory defined benefit plan that is integrated with benefits provided by social security. The plan uses the calendar year as its plan year and provides that a participant's normal retirement age is 65. Under the benefit formula contained in the plan, a participant is entitled to receive a benefit equal to the sum of (i) 1% of the participant's average annual compensation, multiplied by the participant's years of credited service for Y and (ii) .5% of the participant's average annual compensation in excess of the participant's covered compensation, multiplied by the participant's years of credited service for Y. The plan uses the 133⅓% rule for purposes of determining a participant's accrued benefit. Assume that, as of December 31, 1988, Participant B (age 50) has 10 years of credited service for Y; has average annual compensation of $38,000, and has covered compensation of $30,000. Accordingly, as of December 31, 1988, B's accrued benefit under the plan is $4,200 ((1% × 10 years × $38,000) + (.5% × 10 years × $8,000)).

(b) Y elects to utilize the transitional rule set forth in paragraph (l)(2) of this section. Accordingly, Y amends the plan, effective for all years of credited service, to provide that each participant will receive a benefit equal to the sum of (i) .75% of the participant's average annual compensation up to the participant's covered compensation, multiplied by the participant's total years of credited service (not in excess of 35) for Y and (ii) 1.5% of the participant's average annual compensation in excess of the participants covered compensation, multiplied by the participant's years of credited service (not in excess of 35) for Y. With respect to the transition rule set forth in paragraph (l)(2) of this section, under the amended plan benefit formula (which is effective for B's total credited service for Y), B's accrued benefit under the plan as of December 31, 1990 (B then having 12 years of credited service) is $4,140 ((.75% × 12 years × $30,000) + (1.5% × 12 years × $8,000)). Accordingly, under the transitional rule set forth in paragraph (l)(2) of this section, if B separates from the service of Y on December 31, 1990, the plan is required to provide B with an accrued normal retirement benefit of $4,200 (the greater of $4,200 and $4,140).

(c) Under the transaction rule set forth in paragraph (l)(3) of this section, because B had 10 years of credited service for Y as of December 31, 1988, the cumulative percentage limitation of the maximum excess allowance applicable to B for plan years beginning January 1, 1989 and thereafter is reduced to 18.75% (.75% × 25 (35 minus 10) years).

Example (4). (a) Employer Z maintains a noncontributory defined benefit plan that is integrated with benefits provided by social security. The plan uses the calendar year as its plan year. The formula for determining benefits under the plan provides a benefit equal to 50% of the participant's average annual compensation, reduced or offset by 50% of the primary insurance amount payable to the participant under social security.

(b) Z elects to utilize the transitional rule set forth in paragraph (l)(2) of this section. Accordingly, Z amends the plan, effective for all years of credited service completed by a participant, to provide that the offset to each participant's benefit under the plan wil be ¾ of 1% of the participant's final average compensation up to covered compensation, multiplied by the participant's total years of credited service (not in excess of 35) for Z. Assume that, as of December 31, 1988, Participant C (who is age 45) has 15 years of credited service for Z; has final average compensation (up to covered compensation) of $24,000; and has an annual primary insurance amount, estimated as of December 31, 1988, of $5,000. Accordingly, as of December 31, 1988, C's accrued benefit under the plan is $9,500 ($12,000 (50% × $24,000)−$2,500 (50% × $5,000)). Under the amended plan offset formula (which is effective for C's total credited service for Z), C's accrued benefit under the plan as of December 31, 1990 (C then having 17 years of credited service) is $8,940 (($12,000 (50% × $24,000) − $3,060 (.75% × years × $24,000)). Accordingly, under the transition rule set forth in paragraph (l)(2) of this section, if C separates from the service of Z on December 31, 1990, the plan is required to provide C with an accrued normal retirement benefit of $9,500 (the greater of $9,500 or $8,940).

(c) Under the transition rule set forth in paragraph (l)(3) of this section, because C had 15 years of credited service for Z as of December 31, 1988, the cumulative percentage limitation of the maximum offset allowance applicable to C for plan years beginning January 1, 1989 and thereafter is 15% (.75% × 20 years) of C's final average compensation up to C' s covered compensation.

§ 1.401(l)–4 Combining and aggregating plans.

(a) *Overall permitted disparity*—(1) *In general.* In any case in which an employee participates or has participated in more than one qualified plan maintained by the employer, in order for the requirements of section 401(l) and §§ 1.401(l)–1 through 3 to be satisfied for a plan year, the sum of the defined benefit excess plan integration fraction (as defined in paragraph (a)(2) of this section), the defined benefit offset plan integration fraction (as defined in paragraph (a)(3) of this section) and the defined contribution plan integration fraction (as defined in paragraph (a)(4) of this section) may not exceed 1 for the plan year with respect to any employee. See paragraph (c) of this section for rules relating to the aggregation of plans maintained by affiliated employers.

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(2) *Defined benefit excess plan integration fraction.* For a plan year, the defined benefit excess plan integration fraction applicable to a participant in a defined benefit excess plan is a fraction—

(i) The numerator of which is the maximum excess allowance (or portion thereof) under § 1.401(l)–3(b)(6)] that has been utilized under the plan with respect to the participant's benefit for all years of the participant's credited service as of the close of the plan year, and

(ii) The denominator of which is the maximum excess allowance under § 1.401(l)–3(b)(6) applicable to the participant's benefit for the participant's total years of credited service as of the participant's normal retirement age.

(3) *Defined benefit offset plan integration fraction.* For a plan year, the defined benefit offset plan integration fraction applicable to a participant in a defined benefit offset plan is a fraction—

(i) The numerator of which is the accrued offset or offset rate under the plan that has been applied to the participant's benefit for all years of credited service as of the close of the plan year, and

(ii) The denominator of which is the maximum offset allowance under § 1.401(l)–3(c)(5) applicable to the participant's benefit for the participant's total years of credited service as of the participant's normal retirement age.

(4) *Defined contribution plan integration fraction.* For a plan year, the defined contribution plan integration fraction applicable to a participant in a defined contribution plan is a fraction—

(i) The numerator of which is the sum of the maximum excess allowance (or portion thereof) under § 1.401(l)–2(b)(5)] that has been utilized under the plan with respect to each year of the participant's credited service as of the close of the plan year, and

(ii) The denominator of which is the sum of the maximum excess allowance under § 1.401(l)–2(b)(5) applicable to the participant for each year of the participant's total years of credited service at the participant's normal retirement age.

(5) *Assumptions.* In calculating each of the fractions described in paragraph (a)(2), (3) or (4) of this section for a plan year, it shall be assumed that plan provisions in effect for the plan year remain the same for all future plan years and that a participant's compensation remains the same for all future plan years.

(b) *Combining plans.* For purposes of applying the permitted disparity limitations of section 401(l) and §§ 1.401(l)–1 through 1.401(l)–4 applicable to a participant for a plan year—

(1) All defined benefit excess plans maintained (or ever maintained) by the employer are treated as a single defined benefit excess plan subject to one defined benefit maximum excess allowance under § 1.401(l)–3(b)(6).

(2) All defined benefit offset plans maintained (or ever maintained) by the employer are treated as a single defined benefit offset plan subject to one defined benefit maximum offset allowance under § 1.401(l)–3(c)(5).

(3) All defined contribution excess plans maintained (or ever maintained) by the employer are treated as a single defined contribution excess plan subject to one defined contribution maximum excess allowance under § 1.401(l)–2(b)(5).

(c) *Affiliated employers*—(1) *In general.* For purposes of this section, any defined benefit plan or defined contribution plan maintained (or ever maintained) by any member of a group of affiliated employers is considered to be maintained by all members of such affiliated group.

(2) *Definition.* For purposes of paragraph (c)(1) of this section, a group of affiliated employers is—

(i) A controlled group of corporations (within the meaning of section 414(b) and the regulations thereunder);

(ii) Any trade or business (whether or not incorporated) under common control (within the meaning of section 414(c) and the regulations thereunder);

(iii) An affiliated service group (within the meaning of section 414(m) and the regulations thereunder), and

(iv) Any group of employers involved in an arrangement described in section 414(o) and the regulations thereunder.

(d) *Additional rules.* The Commissioner may prescribe such additional rules under this section as the Commissioner considers appropriate. Such additional rules may include (without being limited to) rules for computing the fractions described in paragraph (a) of this section with respect to benefits and contributions provided by, or made to, terminated plans and rules for determining such fractions with respect to benefits and contributions attributable to service before the effective date of section 401(l) and the regulations thereunder. Such additional rules may also include (without being limited to) rules for determining which plan or plans shall be deemed not to satisfy the applicable provisions of §§ 1.401(l)–1 through 1.401(l)–3 in the event paragraph (a) of this section is not satisfied for a plan year.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–26071 Filed 11–14–88; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[INTL–942–86]

Income Taxes; Subsidies by Foreign Governments Through Taxing Systems

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed Income Tax Regulations relating to denial of foreign tax credits for subsidies provided by foreign governments through the use of taxing systems. These regulations are proposed to implement the Tax Reform Act of 1986.

DATES: Written comments and requests for a public hearing must be delivered or mailed before January 17, 1989. These rules would apply to amounts paid or accrued in taxable years beginning after December 31, 1986.

ADDRESSES: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC: CORP:T:R (INTL–942–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol E. Murphy of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:COR:T:R). Telephone (202) 566–3160, (not a toll-fee call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations (26 CFR Part 1) under section 901(i) of the Internal Revenue Code of 1986, as added by section 1204 of the Tax Reform Act of 1986 (100 Stat. 2085, 2532, Pub. L. 99–514). The regulations are proposed to be issued under the authority contained in section 7805(a).

Discussion

Section 901(i) was added to the Code to deny foreign tax credits where the amount paid or accrued (and designated as a "tax" by the foreign government) is used to provide a subsidy. The proposed regulations would clarify the circumstances under which the foreign tax credit is denied for such amounts.

Under the proposed regulations, the amount of the tax would be treated as a subsidy and not as an amount of tax paid or accrued if the amount is used, directly or indirectly, by the foreign country imposing the tax to provide a subsidy to the taxpayer, to a related person (within the meaning of section 482), to any party to the transaction, or to any party to a related transaction. The subsidy may be provided by any means but must be determined, directly or indirectly, by reference to the amount of the tax, or to the base used to compute the amount of the tax.

The proposed regulations state that the method of providing a subsidy may include, but is not limited to, a rebate, a refund, a credit, a deduction, a payment, a discharge of an obligation, or any other method. The term "subsidy" is defined to include any benefit conferred, directly or indirectly, by a foreign country. Examples are provided that describe specific circumstances which give rise to a subsidy as contemplated by the regulations.

Under the proposed regulations, the use of an official exchange rate under certain circumstances would not be a subsidy determined, directly or indirectly, by reference to the amount of the tax, or to the base used to compute the amount of tax. Rev. Rul. 84–143, 1984–2, C.B. 127, held that the use of the official exchange rate of the Mexican Exchange Control Decree, effective December 20, 1982, is not a subsidy under prior law. The official exchange rate rule in the proposed regulations adopts the holding of Rev. Rul. 84–143. The fact pattern of Rev. Rul. 84–143 is addressed in example (3).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations as final, consideration will be given to any written comments that are submitted (preferably nine copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, it has been determined that the proposed regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Ch. 6) and a Regulatory Flexibility Analysis has not been prepared.

Drafting Information

The principal author of these regulations is Charles P. Besecky of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects in 26 CFR 1.861 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign Investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

PART 1 — [AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.901–2(e)(3) is revised to read as follows:

§ 1.901–2 Income, war profits, or excess profits tax paid or accrued.

* * * * *

(e) *Amount of income tax that is creditable.*

* * * * *

(3) *Subsidies*—(i) *General Rule.* An amount of foreign income tax is not an amount of income tax paid or accrued by a taxpayer to a foreign country to the extent that—

(A) The amount is used, directly or indirectly, by the foreign country imposing the tax to provide a subsidy by any means (including, but not limited to, a rebate, refund, credit, deduction, payment, discharge of an obligation, or other method) to the taxpayer, to a related person (within the meaning of section 482), to any party to the transaction, or to any party to a related transaction; and

(B) The subsidy is determined, directly or indirectly, by reference to the amount of the tax, or by reference to the base used to compute the amount of the tax.

(ii) *Subsidy.* The term "subsidy" includes any benefit conferred, directly or indirectly, by a foreign country to one of the parties enumerated in paragraph (e)(3)(i)(A) of this section. Substance and not form shall govern in determining whether a subsidy exists. The fact that the U.S. taxpayer may derive no benefit from the subsidy is irrelevant in determining whether a subsidy exists.

(iii) *Official exchange rate.* A subsidy described in paragraph (e)(3)(i)(B) of this section does not include the actual use of an official foreign government exchange rate converting foreign currency into dollars where a free exchange rate also exists if—

(A) The economic benefit represented by the use of the official exchange rate is not targeted to or tied to transactions that give rise to a claim for a foreign tax credit;

(B) The economic benefit of the official exchange rate applies to a broad range of international transactions, in all cases based on the total payment to be made without regard to whether the payment is a return of principal, gross income, or net income, and without regard to whether it is subject to tax; and

(C) Any reduction in the overall cost of the transaction is merely coincidental to the broad structure and operation of the official exchange rate.

In regard to foreign taxes paid or accrued in taxable years beginning before January 1, 1987, to which the Mexican Exchange Control Decree, effective as of December 20, 1982, applies, see Rev. Rul. 84–143, 1984–2 C.B. 127.

(iv) *Examples.* The provision of this paragraph (e)(3) may be illustrated by the following examples:

Example (1). (i) Country X imposes a 30 percent tax on nonresident lenders with respect to interest which the nonresident lenders receive from borrowers who are residents of Country X, and it is established that this tax is a tax in lieu of an income tax within the meaning of § 1.903–1(a). Country X remits to resident borrowers an incentive payment for engaging in foreign loans, which payment is an amount equal to 20 percent of the interest paid to nonresident lenders.

(ii) Because the incentive payment is based on the interest paid, it is determined by reference to the base used to compute the tax in lieu of an income tax that is imposed on the nonresident lender. The incentive payment is considered a subsidy under this paragraph (e)(3) since it is provided to a party (the borrower) to the transaction and is based on the amount of tax in lieu of an income tax that is imposed on the lender with respect to the transaction. Therefore, two-

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thirds (20 percent/30 percent) of the amount withheld by the resident borrower from interest payments to the nonresident lender is not a tax in lieu of an income tax.

Example (2). (i) A U.S. bank lends money to a development bank in Country X. The development bank relends the money to companies resident in Country X. A withholding tax is imposed by Country X on the U.S. bank with respect to the interest that the development bank pays to the U.S. bank. On the date that the tax is withheld, fifty percent of the tax is credited by Country X to an account of the development bank. Country X requires the development bank to transfer the amount credited to the borrowing companies.

(ii) The amount successively credited to the account of the development bank and then to the account of the borrowing companies is determined by reference to the amount of the tax and the tax base. Since the amount credited to the borrowing companies is a subsidy provided to a party (the borrowing companies) to a related transaction and is based on the amount of tax and the tax base, it is not a creditable tax (without regard to whether the U.S. bank derived any benefit from the subsidy).

Example (3). (i) A U.S. bank lends dollars to a Country X borrower. Country X imposes a withholding tax on the lender with respect to the interest. The tax is to be paid in Country X currency, although the interest is payable in dollars. Country X has a dual exchange rate system, comprised of a controlled official exchange rate and a free exchange rate. Priority transactions such as exports of merchandise, imports of merchandise, and payments of principal and interest on foreign currency loans payable abroad to foreign lenders are governed by the official exchange rate which yields more dollars per unit of Country X currency than the free exchange rate. The Country X borrower remits the net amount of dollar interest due to the U.S. bank (interest due less withholding tax), pays the tax withheld in Country X currency to the Country X government, and provides to the U.S. bank a receipt for payment of the Country X taxes.

(ii) The use of the official exchange rate by the U.S. bank to determine foreign taxes with respect to interest is not a subsidy described in paragraph (e)(3)(i)(B) of this section. The official exchange rate is not targeted to or ties to transactions that give rise to a claim for a foreign tax credit. The use of the official exchange rate applies to the interest paid and to the principal paid. Any benefit derived by the U.S. bank through the use of the official exchange rate is merely coincidental to the broad structure and operation of the official exchange rate.

(v) *Effective Date.* This paragraph (e)(3) shall apply to foreign taxes paid or accrued in taxable years beginning after December 31, 1986. For rules for taxable years beginning before January 1, 1987, see 26 CFR 1.901–2(e)(3) (Revised as of April 1, 1987).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–26343 Filed 11–14–88; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

38 CFR Part 1

Predisclosure Notification Procedures for Confidential Commercial Information

AGENCY: Veterans Adminitration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) proposed to add a new section to the regulation that repeats the statutory exemption which authorizes withholding of certain business records requested under the Freedom of Information Act (FOIA) if disclosure of such records could reasonably be expected to cause subtantial competitive harm. The proposed new section sets out the VA predisclosure procedures for notifying the submitters of such records which may contain confidential commercial information, as required by Executive Order 12600 dated June 23, 1987. Such notice enables submitters to object to any release which would cause them substantial competitive harm, and to demonstrate that such harm would result, prior to a VA disclosure decision. The proposed section simply sets out and standardizes VA procedures for providing such notice.

DATES: Comments must be received on or before December 15, 1988. Comments will be available for public inspection until December 27, 1988. It is proposed to make these regulations effective 30 days after final publication in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed regulation to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Doneld R. Howell, Management Analyst, Paperwork Management and Regulations Service (733), Office of Information Management and Statistics, (202) 233–3648.

SUPPLEMENTARY INFORMATION: Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, requires each executive department and agency subject to the FOIA to establish mandatory and uniform procedures for handling requests for records which may contain confidentail commercial information protected by FOIA exemption (b)(4), 5 U.S.C. 552(b)(4). This statutory exemption is repeated in VA regulations at 38 CFR 1.554(a)(4). Accordingly, a new section, 38 CFR 1.554a, is being added to spell out VA procedures for notifying submitters or records containing confidential commercial information that such records have been requested and may be released. The notification will give submitters an opportunity, prior to a VA disclosure decision, to object to the disclosure and to state all grounds upon which disclosure is opposed. The Order also requires that procedures be established whereby submitters may designate any information, which they reasonably believe may cause substantial competitive harm if it were released, at the time they submit such information to the VA. Such designations will assist the VA in identifying sensitive information, and in considering whether it qualifies for protection under FOIA exemption (b)(4).

The Administrator hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the new section simply repeats, and incorporates into VA regulations, the procedures required by Executive Order 12600. These procedures standardize the method by which submitters are given the opportunity to contribute to Agency disclosure decisions concerning certain requested records. This section primarily concerns procedures followed by Agency employees; no significant new administraive or regulatory burdens are imposed on others. Therefore, this proposed regulation will not have a significant economic impact on small entities (i.e., small businesses, small private and non-profit organizations, and small governmental jurisdictions).

The VA has determined that this proposed regulation is nonmajor as that term is defined by Executive Order 12291, entitled Federal Regulation. It will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

This new regulation requires a collection of information. The information collection requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments concerning the information collection should be addressed to: Mr. Joseph Lackey, Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Veterans Administration, 726 Jackson Place NW., Washington, DC 20503.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Claims, Employment, Government employees, Freedom of Information Act, Privacy, and Government property.

Approved: September 29, 1988.

By direction of the Administrator

James E. DeWire,

Chief of Staff.

PART 1—[AMENDED]

In 38 CFR Part 1, GENERAL § 1.554a is proposed to be added to read as follows:

§ 1.554a Predisclosure notification procedures for confidential commercial information.

(a) *General.* During the conduct of its business the Veterans Administration may acquire records which contain confidential commercial information, as defined in paragraph (b) of this section. Such records will not be released in response to a Freedom of Information Act request, except under the provisions of this section. This section establishes uniform Veterans Administration procedures for giving submitters predisclosure notice of requests for their records which contain confidential commercial information that may be exempt from disclosure under 38 CFR 1.554(a)(4). These procedures are required by Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, dated June 23, 1987.

(b) *Definitions.* (1) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552 (b)(4), as implemented by § 1.554 of this part, because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to corporations, State governments, and foreign governments.

(c) *Notification to submitters of confidential commercial information.* When a request is received, for a submitter's record(s) or information which contains confidential commercial information, and the request is being processed under the Freedom of Information Act, 5 U.S.C. 552, the submitter will be promptly notified in writing of the request when required by paragraph (d) of this section. The notification will advise the sumitter that a request for its record(s) has been received and is being processed under the Freedom of Information Act. The notice will dscribe the exact nature of the record(s) requested or will provide to the submitter copies of the record(s) or portions thereof containing the requested confidential commercial information. It will also inform the submitter of the opportunity to object to the disclosure in writing within 10 working days, and of the requirements for such a written objection, as described in paragraph (f) of this section. The notification will be sent by certified mail, return receipt requested.

(d) *When notification is required.* (1) For confidential commercial information submitted to the Veterans Administration prior to January 1, 1988, notification to submitters is required whenever:

(i) The records are less than 10 years old and the requested information has been designated by the submitter as confidential commercial information; or

(ii) The Veterans Administration facility, department or staff office which has custody of the requested records has reason to believe that disclosure of the requested information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted to the Veterans Administration on or after January 1, 1988, notification is required whenever:

(i) The submitter has in good faith designated the requested records as confidential information in accordance with paragraph (e) of this section; or

(ii) The Veterans Administration facility, department or staff office which has custody of the requested records has reason to believe that disclosure could reasonably be expected to cause substantial competitive harm.

(e) *Designation by submitters of information as confidential commercial information.* (1) When business records are provided to the Veterans Administration, the submitter may appropriately designate any records or portions thereof which contain confidential commercial information, the disclosure of which could reasonably be expected to cause substantial competitive harm. This designation may be made at the time the information or record is given to the Veterans Administration or within a reasonable period of time therefore, but not later than 60 days after receipt of the information by the Veterans Administration. Information so designated will be clearly identified by marking it with the words "confidential commercial information" or by an accompanying detailed written description of the specific kinds of information that is designated. If a complete document or record is designated, the cover page of the document or record will be clearly marked "This entire (document, record, etc.) consists of confidential commercial information." If any portions of documents are designated, only those specific designated portions will be conspicuously annotated as "confidential commercial information."

(2) A designation described in paragraph (e)(1) of this section will remain in effect for a period of not more than 10 years after submission to the Veterans Administration, unless the submitter provides acceptable justification for a longer specific period. If a shorter designation period is adequate, the submitter's designation should include the earlier expiration date. Whenever possible, the submitter's designation should be supported by a statement or certification by an officer or authorized representative of the submitter that the records are in fact confidential commercial information and have not been published or made available to the public.

(f) *Opportunity to object to disclosure.* (1) When notification to a submitter is made pursuant to paragraph (c) of this section, the submitter or designee may object to the disclosure of any specified portion of the record(s). Such objection will be in writing, will be addressed to the VA official who provided notice, will identify the specific record(s) or portion(s) of records that should not be disclosed, will specify all grounds upon which disclosure is opposed, and will explain in detail why the information is considered to be a trade secret or confidential commercial information, i.e., why disclosure of the specified records could reasonably be expected to cause substantial competitive harm. Information provided by a submitter pursuant to this paragraph may itself be

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subject to disclosure under the Freedom of Information Act.

(2) Any objection to disclosure must be submitted within 10 working days after receipt by the submitter of notification as provided for in paragraph (c) of this section.

(3) If an objection to disclosure is received within the 10-working-day time period, careful consideration will be given to all specified grounds for nondisclosure prior to making an administrative determination whether to disclose the record. When it is determined to disclose the requested record(s) or portions of records which are the subject of an objection, the submitter will be provided a written statement of the Agency decision, the reason(s) that the submitter's objections to disclosure were overruled, a description or copy of the exact information or record(s) to be disclosed which were the subject of an objection, and the specified date of disclosure. The date of disclosure will not be less than 10 working days from the date this notice is placed into mail delivery channels.

(g) *Notices to requester.* (1) When a request is received for records that may contain confidential commercial information protected by FOIA exemption (b)(4), 5 U.S.C. 552(b)(4), the requester will be notified that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response.

(2) Whenever a submitter is notified, pursuant to paragraph (c) of this section, that the VA has received a request for records which had been provided by such submitter, and that such request was being processed under the FOIA, the requester will be notified that the submitter is being provided an opportunity to comment on the request. The notice to the requester should not include any of the specific information contained in the records being requested.

(3) Whenever the VA notifies a submitter of a final decision, the requester will also be notified by separate correspondence. This notification to the requester may be contained in the VA's FOIA decision.

(h) *Notices of lawsuit.* Whenever a Freedom of Information Act requester brings suit seeking to compel disclosure of confidential commercial information, the submitter of the information will be promptly notified.

(i) *Exceptions to the notification requirements.* The predisclosure notification requirements in paragraph (c) of this section need not be followed if:

(1) It is determined that the record(s) or information should not be disclosed;

(2) The record(s) requested have been published or have been officially made available to the public;

(3) Disclosure of the record(s) or information is required by law (other than the Freedom of Information Act, 5 U.S.C. 552);

(4) Disclosure is required by an Agency rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the Agency that are to be released under the Freedom of Information Act; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The record(s) requested are not designated by the submitter as exempt from disclosure in accordance with paragraph (e) of this section, and the submitter had an opportunity to do so at the time of submission of the record(s) or a reasonable time thereafter, and the Agency does not have substantial reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter in accordance with paragraph (e) of this section appears obviously frivolous, except that, in such case, the Veterans Administration must still provide the submitter with advance written notice of any final administrative disclosure determination not less than 10 working days prior to the specified disclosure date.

(Authority: 38 U.S.C. 210(c); 5 U.S.C. 552(b)(4); E.O. 12600 (52 FR 23781))

[FR Doc. 88-26280 Filed 11-14-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 185 and 186

[PP7H5532/P470; FRL-3477-3]

Pesticide Tolerances for Metalaxyl; Certain Food and Feed Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposed that food and feed additive regulations be established to permit residues of the fungicide metalaxyl and its metabolites in or on dried hops at 20 parts per million (ppm) and spent hops at 20 ppm. This proposed regulation to establish a maximum permissible level for residues of metalaxyl in or on commodities was requested in a petition submitted by Ciba-Geigy Corp.

DATE: Comments, identified by the document control number (PP7H5532/P470), should be received on or before November 30, 1988.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In person, bring comments to: Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comments that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 246 at the address given above, for 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, submitted food/feed additive petition (FAP) 7H5532 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the fungicide metalaxyl, [N-(2,6-dimethylphenyl)-N-(methoxyacetyl)alanine methyl ester] and its metabolities containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl) alanine methyl ester, each expressed as metalaxyl, in or on the commodity dry hops at 10 ppm. The petitioner amended the petition to request a food additive tolerance at 50 ppm on dry hops and a feed additive tolerance on spent hops at 50 ppm.

Regulations (21 CFR 193.277 and 561.278 (redesignated as 40 CFR 185.4000 and 186.4000, respectively, in the **Federal Register** of June 29, 1988 (53 FR 24666)) were published in the **Federal Register** of October 28, 1987 (52 FR 41417), which established tolerance of 50 ppm on dry and spent hops for a period of 1 year from the date of publication of the rule in the **Federal Register**. The Agency stated in those regulations that the following information had to be submitted and found to be acceptable by the Agency before consideration would be given to extending the tolerance beyond the 1-year time period: Revised label with corrected calculations for total metalaxyl (ai) applied per year; residue data on samples with analysis by the *Pesticide Analytical Manual* (PAM-II) procedure or another proven procedure that determines parent and metabolites included in the U.S. tolerance expression (storage intervals between sampling and analysis and storage conditions should be reported for all residue data).

These data have been submitted and found to be acceptable. Based on these data, CIBA-GEIGY amended the petition by requesting food/feed additive tolerances for metalaxyl and its metabolites in or on dry and spend hops at 20.0 ppm.

The data submitted in this petition, PP7H5532, and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 12.5 milligrams per kilogram of body weight per day (mg/kg bwt/day) (250 ppm).

2. A teratology study in rats with a teratogenic NOEL of 400 mg/kg bwt (highest dose tested). Metalaxyl was not teratogenic, even in the presence of maternal toxicity. The NOEL for both developmental and maternal effects was 50 mg/kg.

3. A teratology study in rabbits with a teratogenic NOEL of 300 mg/kg/bwt (highest dose tested). Metalaxyl was not teratogenic and did cause developmental toxicity even in the presence of maternal toxicity.

4. A Salmonella mutagenicity study that was negative for reverse mutations with and without mammalian microsome activation.

5. A mouse dominant lethal study that was negative for mutagenicity.

6. Metalaxyl did not induce unscheduled DNA synthesis in rat hepatocytes or human fibroblasts.

7. A hamster *in vivo* nucleus anomaly test was negative for mutagenic activity.

8. A three-generation rat reproduction study with a NOEL of 62.5 mg/kg bwt/day (1,250 ppm, highest dose tested).

9. A 6-month dog feeding study with a NOEL of 6.3 mg/kg/bwt/day (250 ppm).

10. A 2-year rate chronic feeding/oncogenic study with no compound-related oncogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL for systemic effects is 12.5 mg/kg bwt/day (250 ppm) based upon vacuolation of hepatocytes at 1,250 ppm.

11. A 2-year mouse oncogenic study with no compound-related oncogenic effects under the conditions of the study at dietary levels up to 1,250 ppm.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 6.3 mg/kg bwt/day) and using a hundred-fold safety factor, is calculated to be 0.060 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for the U.S. population average is calculated to be 0.009847 mg/kg/day. The current action will increase the TMRC by 0.000449 mg/kg/day. Published tolerances utilize 16.4 percent of the ADI and the current action will utilize an additional 0.75 percent of the ADI.

The nature of the residues is adequately understood and analytical methodology is available in the *Pesticide Analytical Manual*, Vol. II (PAM-II), for enforcement purposes. The PAM II method involved gas-liquid chromatography (GLC) with alkali flame ionization detection (AFID), and with mass spectrometry for samples that show interference in the GLC/AFID.

Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, it is proposed that these tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 15 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, (PP 7H5532/P470). Written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 through 612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Section 408(e), 68 Stat. 514 (21 U.S.C. 346a))

List of Subjects in 40 CFR Parts 185 and 186

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 2, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

PART 185—[AMENDED]

1. In Part 185:

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.4000, paragraph (d) is revised to read as follows:

§ 185.4000 Metalaxyl.

* * * * *

(d) A food additive regulation is established for residues of the fungicide metalaxyl, [N-(2,6-dimethylphenyl)-N-(methoxyacetyl] alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl) alanine methyl ester, each expressed as metalaxyl, in or on the following processed foods when present therein as a result of application to growing hops:

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Foods	Parts per million
Hops, dried	20

PART 186—[AMENDED]

2. In Part 186:

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. § 186.4000, paragraph (d) is revised to read as follows:

§ 186.4000 Metalaxyl.

* * * * *

(d) A feed additive regulation is established for residues of the fungicide metalaxyl, [N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl) alanine methyl ester, each expressed as metalaxyl, in or on the following processed feeds when present therein as a result of application to growing hops:

Feeds	Parts per million
Hops, spent	20

[FR Doc. 88-26421 Filed 11-14-88; 8:45 am]

BILLING CODE 6560-50-M

ENVIROMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-3476-7]

Mining Waste Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; Public hearing location change.

SUMMARY: The Environmental Protection Agency published a notice of proposed rulemaking on the mining waste exclusion in the October 20, 1988 issue of the Federal Register (53 FR 41288). At this same time, a public hearing on the proposed rulemaking was announced (public participation section, 53 FR 41297). This public hearing was to be held on November 17, 1988 in conference room 10, U.S. EPA from 10:00 am to 12:00 noon. This public hearing will now be held from 10:00 am to 12:00 noon and 1:30 p.m. to 4:00 p.m. unless concluded earlier. Registration begins at 9:30 am. The hearing will now be held at the U.S. Environmental Protection Agency, South Conference Room 2, Ground Floor, Waterside Mall, 401 M Street, SW, Washington, DC.

Requests to speak at the public hearing should be submitted in writing to the Public Hearing Officer, Office of Solid Waste, (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict these to 15 minutes, and are requested to provide written comments for inclusion in the official record.

DATES: EPA will accept public comments on the proposed rulemaking until November 21, 1988. The Agency will hold a public hearing on November 17, 1988 from 10:00 am to 4:00 p.m.

ADDRESS: Comments should be sent to the RCRA/CERCLA Docket Clerk, Docket No. F-88-MWEP-FFFFF, Office of Solid Waste (WH-565A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9327. The public docket is available in the sub-basement at the above address for viewing from 9:00 a.m. to 3:30 p.m., Monday through Friday, except for Federal holidays. The public hearing is at the U.S. Environmental Protection Agency, South Conference Room 2, Waterside Mall, 401 M Street, SW, Washington, DC 20460, (202) 382-3608.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424-9344 or (202) 382-3000, or Dan Derkics, U.S. EPA 401 M Street, SW, Washington, DC 20460, (202) 382-3608.

Dated: November 8, 1988.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-26302 Filed 11-14-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-508; FCC 88-324]

Radio Broadcasting Services; Skywave Propagation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted this *Notice of Proposed Rule Making* in order to develop a record with respect to use of a new skywave propagation model and related procedures. Use of the new model, representing the latest understanding of skywave propagation, would result in greater accuracy in the determination of service and interference in the AM broadcast band.

DATES: Comments may be filed with the Secretary of the Commission no later than December 27, 1988; and reply comments may be filed no later than January 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Larry W. Olson, Policy and Rules Division, Mass Media Bureau (202) 632-6955.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 88-508, FCC 88-324, adopted October 13, 1988, and released November 4, 1988. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this *Notice of Proposed Rule Making* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of the Notice of Proposed Rule Making

1. As one step in the process to improve the AM broadcast service, the Commission issued a *Notice of Inquiry* in MM Docket No. 87-267, 52 FR 31795, August 24, 1987, which provided a comprehensive review of the Commission's AM broadcast assignment criteria and related matters. Its goal was to identify any needed changes to the Commission's Rules which would permit AM stations to improve their service to the public and enhance their ability to compete in the market place.

2. This *Notice of Proposed Rule Making* considers changes to the procedures for calculating skywave field strength. Field strength calculations for determining skywave service and interference are performed in accordance with § 73.182 of the FCC Rules and currently employ three sets of skywave field strength curves contained in § 73.190 of the FCC Rules. These three sets of skywave curves are derived from FCC skywave field strength measurement programs which were conducted at various times over the last several decades.

3. In our continuing efforts to develop a better understanding of skywave propagation phenomena, we have analyzed available skywave field strength measurement data collected during long term field strength measurement projects. As a result, we have identified shortcomings in all of the current FCC skywave field strength curves. The following proposed changes to the Commission's current Rules for calculating skywave field strength overcome these shortcomings and incorporate all of the skywave propagation characteristics observed during the Commission's most recent analysis of data. Comments are invited on these proposed changes, and, in addition, the Commission will consider alternative proposals which may provide potential improvements related to calculating skywave field strength in the AM broadcast service.

4. The Commission's staff has developed a new skywave propagation model. This new model is more accurate than the three sets of curves currently in § 73.190 of the FCC Rules and takes into account the effects of the geomagnetic latitude of the propagation paths, resulting in a more accurate depiction of skywave service contours for Class I clear channel stations as well as interference calculations on all channels.

5. We propose amending the Rules to incorporate the use of the new propagation model which is shown in the Appendix. We are proposing to use the geomagnetic latitude of the great-circle midpoint of the propagation path for these calculations. The proposed procedure also includes formulas for converting geographic latitude to geomagnetic latitude. Finally, we propose to make field strength calculations using the formula for the new skywave model, as well as associated formulas, controlling in order to avoid disputes that can result from inaccuracies resulting from graphical methods. Accordingly, we do not propose to include curves in the FCC Rules.

6. Currently, great-circle calculations are used for determining skywave field strength at a given distance. This method ignores the fact that skywave signals are usually reflected by the E layer of the ionosphere which is at an altitude of approximately 100 km. Thus, even for a receiving point only 1 km away from the transmitter, the skywave may travel 200 km to reach its destination.

7. To correct this deficiency, the new propagation model that we are proposing specifies use of a new term, slant distance, which is the total distance that a skywave signal travels along a propagation path, including the distance traveled to and from the E layer of the ionosphere. The elevation angle for the propagation path would continue to be determined on the basis of the actual great-circle distance in accordance with the formula in § 73.190(d) of the FCC Rules.

8. Several decades ago, the FCC adopted two hours after sunset (SS+2) as the reference hour for its propagation models in AM broadcasting. It was believed that the ionosphere was fully stabilized and field strength maximized at two hours after sunset. It is now known that skywave field strength continues to increase until approximately six hours past sunset (SS+6). In addition, recent findings indicate that skywave field strengths at approximately SS+2 display a certain degree of frequency dependence, greater attenuation by the ionosphere on east-west paths than that for paths in other directions, and greater attenuation of field strength corresponding to the number of sunspots. Our analysis indicates that these effects are significantly reduced for a reference hour of SS+6.

9. We have concluded that use of SS+6 as the reference hour for the new propagation model has merit and would ensure uniform calculations for all frequencies and propagation paths. Moreover, this reference hour would better represent the "worst case" for interference calculations, thus minimizing the levels of new interference that would be introduced in the future. The formula in the Appendix for the new skywave propagation model includes a 2.5 dB factor to account for the greater field strength that occurs at SS+6.

10. The new model being proposed depicts field strength values exceeded 50% of the time and is used for calculating the skywave service contours for Class I clear channel stations. It is necessary, however, to convert to field strength exceeded 10% of the time for calculating skywave interference for all classes of stations. Studies indicate that this conversion is a function of the midpoint geomagnetic latitude of the propagation path and varies from approximately 6 dB in low-latitude areas to more than 10 dB in high-latitude areas. A formula shown in the Appendix has been developed that depicts the conversion factor as a function of geomagnetic latitude. We are proposing use of this formula in determining the applicable conversion factor.

11. Recognizing the relationship between the skywave propagation model which we are considering in this *Notice* and other assignment criteria that may be considered in future rule making proceedings, we note that there may be practical reasons for considering a delay in implementing a new propagation model, if adopted, until consideration of other possible changes to interrelated technical assignment criteria is considered. Rather than implementing various changes to the technical assignment criteria in a "piece meal" fashion, there may be merit in considering implementing simultaneously all the interrelated changes that may ultimately be adopted. We seek comment on the advisability of such an approach.

12. It would not be our intent to require any modifications of existing operations as a result of the changes proposed in this *Notice*. Moreover, we believe that the same principle would apply to applications pending at the time any changes proposed herein are implemented.

13. This is a nonrestricted notice and comment rule making proceeding. *See* §§ 1.1201(b), 1.1202(f), 1.1203 and 1.1206(a) of the Commission's Rules, 47 CFR §§ 1.1201(b), 1.202(f), 1.1203 and 1.1206(a) for rules governing permissible *ex parte* contacts.

14. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities because the changes proposed only relate to the standards (curves and formulas) used to calculate skywave field strength. Actual interference is not expected to increase as a result of the specific changes proposed in this *Notice*.

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

16. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 27, 1988, and reply comments on or before January 11, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

17. Authority for the action taken is contained in sections 4(i), 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 307.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Appendix—Calculation of Skywave Field Strength

The following formulas are proposed to be used in place of the curves in § 73.190 of the FCC Rules. The methods used to determine other factors such as radiation value, elevation angle, and f(θ) are unchanged and can be determined by referring to the appropriate section of the FCC Rules.

1. Skywave field strength, 50% of the time (at SS+6):

The skywave field strength, $F_c(50)$, for a characteristic field strength of 100 mV/M at 1 km is given by:

$F_c(50) = (97.5 - 20 \log D) - (2\pi + 4.95 \tan^2 \theta_M)\sqrt{(D/1000)}$ dB(μV/m) (1)

The slant distance, D, is given by:

$D = \sqrt{40{,}000 + d^2}$ km (2)

The geomagnetic latitude of the midpoint of the path, ϕ_M, is given by:

$\phi_M = \arcsin[\sin a_M \sin 78.5° + \cos a_M \cos 78.5° \cos(69 + b_M)]$ degrees (3)

The short great-circle path distance, d, is given by:

$d = 111.18 d^\circ$ km (4)

Where:

$d^\circ = \arccos[\sin a_T \sin a_R + \cos a_T \cos a_R \cos(b_R - b_T)]$ degrees (5)

Where:

a_T is the geographic latitude of the transmitting terminal (degrees)

a_R is the geographic latitude of the receiving terminal (degrees)

b_T is the geographic longitude of the transmitting terminal (degrees)

b_R is the geographic longitude of the receiving terminal (degrees)

a_M is the geographic latitude of the midpoint of the great-circle path and is given by:

$$a_M = 90 - \arccos\left[\sin a_R \cos\left(\frac{d^\circ}{2}\right) + \cos a_R \sin\left(\frac{d^\circ}{2}\right)\left\{\frac{\sin a_T - \sin a_R \cos d^\circ}{\cos a_R \sin d^\circ}\right\}\right] \text{ degrees} \quad (6)$$

b_M is the geographic longitude of the midpoint of the great-circle path and is given by:

$$b_M = b_R + k\left[\arccos\left(\frac{\cos\left(\frac{d^\circ}{2}\right) - \sin a_R \sin a_M}{\cos a_R \cos a_M}\right)\right] \text{ degrees} \quad (7)$$

Note(1): If $|\theta_M|$ is greater than 60 degrees, equation (1) is evaluated for $|\theta_M| = 60$ degrees.

Note(2): North and east are considered positive; south and west negative.

Note(3): In equation (7), $k = -1$ if $b_R > b_T$, otherwise $k = 1$.

2. Skywave field strength, 10% of the time (at SS+6):

The skywave field strength, $F_c(10)$, is given by:

$F(10) = F(50) + \Delta$ dB(μV/M) (8)

Where:

$\Delta = 6$ when $|\theta_M| < 40$

$\Delta = 0.2|\theta_M| - 2$ when $40 < |\theta_M| < 60$

$\Delta = 10$ when $|\theta_M| > 40$

[FR Doc. 88-26109 Filed 11-14-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Property Destruction by Arson or Explosives

AGENCY: United States Parole Commission, Justice.

ACTION: Proposed rule and request for comments.

SUMMARY: The U.S. Parole Commission proposes to amend its paroling policy guideline that refers to property destruction by arson or explosives. The proposed amendment would expand the types of crimes covered by that guideline to include fires which are not "arsons," but which involve a danger or potential danger to human lives. This proposal reflects the Commission's current practice of rating most prison fires under this guideline, and makes it clear that a fire deliberately set in a prison is normally to be treated as equivalent in seriousness to an arson, even though the legal definition of "arson" may not be met, in every case.

DATE: Public comment must be received by December 15, 1988.

ADDRESS: Comments should be addressed to: Michael A. Stover, Acting General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, Acting General Counsel, U.S. Parole Commission, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission has traditionally considered any fire deliberately set in a prison to be equivalent in seriousness to an arson, and has rated such offenses on its guidelines at 28 CFR 2.20 under Chapter Three, Subchapter A, paragraph 301 ("Property Destruction by Arson or Explosives").

The heading of paragraph 301, however, is so drafted as to require the Commission to term every prison fire that fits the substantive definitions at 301 (a) or (b) to be an "arson," which is not always a legally defensible proposition. Arson (as commonly defined in the statutes of the states in which Federal prisons are located) is a term that does not cover every type of serious fire that can occur inside a prison. Yet, in the commission's view, the offenses are equivalent because a deliberate fire set in a prison has enormous potential for taking human life.

This potential may lie in an immediate danger to other prisoners because of the physical constraints of the prison setting (danger of smoke-inhalation, injury from attempts to escape the scene of the fire, and the like) or it may be secondary, in that even a fire with no immediately harmful potential tends to encourage the setting of more fires, either by the same inmate or others, if not adequately deterred.

The Commission's view of the seriousness of prison fires is based on a review of the many tragic episodes over the past twenty years, in which scores of lives have been lost in prison fires.

Therefore, the Commission proposes to delete the reference to "arson" in the heading of paragraph 301 and to substitute the more general term "fire". A fire that meets the definitions in paragraphs 301 (a) and (b) will necessarily include all serious prison fires, whether arson or not. If a prison fire is not serious enough to pose some potential danger to human lives or to property, it would be considered as an administrative violation only.

This proposed rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Proposed Amendment

Accordingly, the Commission proposes to amend Part 2 of 28 CFR as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. 28 CFR 2.20, Chapter Three, Subchapter A, Paragraph 301, is amended to substitute the word "fire" for the word "arson" in the heading of paragraph 301. This heading is revised to read as follows:

CHAPTER 3—OFFENSES INVOLVING PROPERTY

Subchapter A—Arson and Other Property Destruction Offenses

301 Property Destruction by Fire or Explosives

Issued in Chevy Chase, Maryland, on October 14, 1988.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 88-26325 Filed 11-14-88; 8:45 am]

BILLING CODE 4410-01-M

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Notices

Federal Register
Vol. 53, No. 220
Tuesday, November 15, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: General License GTE: Certifications for General License GTE (Temporary Exports).

Form Number: Agency—EAR 371.11(b)(1); OMB—0694–0029.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 154 respondents; 80 reporting/recordkeeping hours. Average hours per respondent is 31 minutes.

Needs and Uses: The Export Administration Regulations authorizes the temporary export of some controlled commodities without the requirement to obtain a validated license. This special authorization is the General License GTE. However, an exporter must supply certain information to BXA prior to shipping under the General License GTE. The information provided is used by BXA to make sure that the exporter is making proper use of the GTE license.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion/Recordkeeping.

Respndent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 2, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–26282 Filed 11–14–88; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of the Census

Annual Wholesale Trade; Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, I have determined the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides on a comparable classification basis annual sales and purchases for 1988 and inventories for 1987 and 1988. Starting this year, data on inventory related expenses required by the Tax Reform Act of 1986 also will be collected for 1987 and 1988. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales sizes determining the probability of selection) to report in the 1988 Annual Wholesale Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: November 8, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88–26320 Filed 11–14–88; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held December 6, 1988, 9:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provides for continuing review to update the Regulations as needed.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Introduction of members & Public Attendees.
3. Introduction of Invited Guests.
4. Presentation of Papers or Comments by the Public.
5. Summary of Committee Recommendation Regarding COCOM Participation.
6. Proposed New Approach to Control List Development Based on Military Requirements of Adversary Countries.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto. The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes contact Ruth D. Fitts, 202–377–2583.

Date: November 8, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–26329 Filed 11–14–88; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Taking of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of finding of conformance.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Government of Vanuatu has submitted information which demonstrates that Vanuatu and the tuna purse seine fishing vessels under its control are in conformance with U.S. marine mammal regulations. As a result of this finding, yellowfin tuna from Vanuatu may be imported into the United States.

DATES: This finding is effective November 14, 1988 and remains in effect until December 31, 1989.

ADDRESS: A copy of the administrative record for this determination may be obtained, at cost, by contacting the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NMFS at 213–514–6196.

SUPPLEMENTARY INFORMATION: On March 18, 1988 (53 FR 8910), the NMFS promulgated interim final rules concerning the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States, any nation which has purse seine vessels of 400 tons carrying capacity or greater operating in the ETP must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals (porpoise) in the tuna fishery and a resultant mortality rate of marine mammals which are comparable to that of the United States.

The Government of Vanuatu has submitted its laws for the protection of marine mammals involved in the tuna purse seine fishery and the required information relating to the tuna vessels fishing under its laws and marine mammal mortality performance of those vessels. The Assistant Administrator finds, after consultation with the Department of State, that the laws and program for the protection of porpoise are comparable to those of the United States (50 CFR 216.24). Data relating to fleet performance during 1986, 1987 and part of 1988, were prepared by the Inter-American Tropical Tuna Commission (IATTC) based on reports from observers placed aboard fishing vessels by the IATTC. The Assistant Administrator accepts these data as accurate and meet the requirements of the interim rule.

The interim rule does not require that a nation's fleet porpoise mortality performance meet either the negative trend test or the comparability test for 1988. Therefore, the Government of Vanuatu has met all of the current requirements for importing yellowfin tuna into the United States.

Date: November 9, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88–26286 Filed 11–14–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh; Correction

November 9, 1988.

Correction

In footnote 2 of the table in the letter to the Commissioner of Customs published on January 12, 1988 (53 FR 752), add TSUSA numbers 384.0505, 384.0511 and 384.0512 to the TSUSA's for Category 341pt.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–26327 Filed 11–14–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products From Taiwan; Correction

November 9, 1988.

Correction

In the table in the letter to the Commissioner of Customs published on January 4, 1988 (page 63, third column), correct the level for Category 659–C from 1,176,146 pounds to 1,178,146 pounds.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–26327 Filed 11–14–88; 8:45 am]

BILLING CODE 3510–DR–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 89–C0001]

Designs By Cyrena, Inc.; Provisional Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Flammable Fabrics Act.

SUMMARY: Under requirements of 16 CFR 1605.13, the Commission must publish in the **Federal Register** consent agreements which it provisionally accepts under the Flammable Fabrics Act. Published below is a provisionally-accepted Settlement Agreement with Designs By Cyrena, Inc., a corporation, and Cyrena Anne Nolan, individually and as an officer of the corporation.

DATE: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary by November 30, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Trial Attorney, Directorate for Compliance and Administrative Litigation, Consumer

BEST COPY AVAILABLE

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Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

SUPPLEMENTARY INFORMATION: (attached)

Date: November 8, 1988.

Sheldon D. Butts,

Deputy Secretary.

In the Matter of Designs By Cyrena, Inc., a corporation, and Cyrena Anne Nolan, individually and as an officer of the corporation, CPSC Docket No. 89–C0001.

Consent Order Agreement

Cyrena Anne Nolan and Designs By Cyrena, Inc., 3721 Fox Hollow, Fort Worth, Texas 76109 (hereinafter "Respondents"), enter into this Consent Order Agreement (hereinafter, "Agreement") with the staff (hereinafter, the "staff") of the Consumer Product Safety Commission (Commission) pursuant to the procedure for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondents sold children's sleepwear that is subject to, but failed to comply with, the Flammable Fabrics Act and the Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6x (FF 3–71, amended), 16 CFR 1615, and Sizes 7 Through 14 (FF 5–74), 16 CFR 1616 (hereinafter, the "Children's Sleepwear Standard"), issued thereunder, as more fully set forth in the complaint accompanying this Agreement.

Respondents And The Staff Agree

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Cyrena Anne Nolan is the President of the respondent corporation, Designs By Cyrena, Inc., incorporated under the laws of the State of Texas.

3. Respondents are engaged in the manufacture and sale of children's sleepwear with the principal place of business located at 3721 Fox Hollow, Fort Worth, Texas, 76109.

4. Respondents are now and have been engaged in one or more of the following: The manufacture for sale, the sale, or the offering for sale, in commerce, or the introduction, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, and the Children's Sleepwear Standard.

5. This Agreement is for settlement purposes only, does not constitute an admission by Respondents that they have violated the law, and becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondents.

6. Respondents waive (a) all requirements for findings of fact and conclusionsof law in the disposition of this matter, and (b) administrative and judicial review of the facts and proceedings.

7. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA, 15 U.S.C. 1196.

8. Violation of the provisions of the Order may subject Respondents to a civil penalty for each such violation, as prescribed by law.

9. The Commission may disclose the terms of this Consent Order Agreement.

10. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order.

11. No agreement, understanding, representation or interpretation not contained in this Agreement or Order may be used to vary or contradict the terms of the Order.

Upon acceptance of this Agreement, the Commission shall issue the following Order:

Order

I

It is Hereby Ordered That Respondents, and their successors and assigns, agents, representatives, and employees of the respondent corporation, directly or through any person, corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivery for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which fails to conform to the Standards for the Flammability of Children's Sleepwear, Sizes 0 through 6X (FF 3–71, amended) 16 CFR 1615, and Sizes 7 through 14 (FF 5–74), 16 CFR 1616.

II

It is Further Ordered That Respondents perform all flammability testing required by §§ 1615.3, 1615.4, 1615.32, 1615.35, 1616.3, 1616.4, 1616.5, 1616.32, and 1616.35 of the Children's Sleepwear Standard, 16 CFR 1615.3, 1615.4, 1615.32, 1615.35, 1616.3, 1616.4, 1616.5, 1616.32, and 1616.35.

III

It is Further Ordered That Respondents prepare and maintain all written records required by §§ 1615.31(e) and 1616.31(d) of the Children's Sleepwear Standard, 16 CFR 1615.31(e) and 1616.31(d).

IV

It is Further Ordered That Respondents shall forthwith distribute a copy of this Order to each contractor and subcontractor with whom they do business.

V

It is Further Ordered That Respondents shall, within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

VI

It is Further Ordered That for a period of five (5) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondents notify the Commission of any proposed change in the way Respondents do business which may affect their compliance obligations arising out of this Order. Respondents shall notify the Commission of each such change 24 hours after learning of same.

VII

It is Further Ordered That the Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**.

Any agreement, understanding, representation, or interpretation that is not contained in this Agreement and in the incorporated Order may not be used to vary or contradict the terms of the Order subsequently issued by the Commission.

Signed this 8th day of November 1988.

Cyrena Anne Nolan,

Individually and as President of Designs by Cyrena, Inc., 3721 Fox Hollow, Forth Worth, Texas 76109.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation.

William J. Moore, Jr.,

Trial Attorney, Division of Administrative Litigation, Counsel for the Commission Staff, Consumer Product Safety Commission. Washington, DC 20207.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

So Ordered by the Commission, this 8th day of November 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Complaint

Nature of Proceedings

In the matter of Cyrena Ann Noland, d/b/a Designs by Cyrena Ann Noland, CPSC Docket No. 89–C0001.

The staff of the Consumer Product Safety Commission believes that Cyrena Ann Noland, doing business as Designs by Cyrena Ann Noland, (hereinaffer "Respondent"), as a sole proprietorship under the laws of the State of Texas, is subject to and has violated provisions of the Flammable Fabrics Act, as amended, 15 U.S.C. 1191 *et seq.* (hereinafter, the "FFA"); the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.* (hereinafter, the "FTCA"); and the Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (FF 3–71, amended), 16 CFR Part 1615, and Sizes 7 Through 14 (FF 5–74), 16 CFR Part 1616 (hereinafter, the "Children's Sleepwear Standard"). It appears to the Commission from the information available to its staff that it is in the public interest to issue this complaint.

Therefore, by virtue of the authority vested in the Commission by section 30(b) of the Consumer Product Safety Act, as amended, 15 U.S.C. 2079(b) (hereinafter, the "CPSA"); the Commission pursuant to sections 3 and 5 of the FFA, 15 U.S.C. 1192 and 1194, and section 5 of the FTCA, 15 U.S.C. 45, and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, hereby issues this complaint and states the staff's charges as follows:

1. Respondent Cyrena Ann Noland is doing business as Designs by Cyrena Ann Noland, a sole proprietorship under the laws of the State of Texas.

2. Respondent's principal place of business is located at 3721 Fox Hollow, Fort Worth, Texas, 76109.

3. Respondent is engaged in the manufacturing for sale, sale, and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, as the term "commerce" is defined in section 2(b) of the FFA, 15 U.S.C. 1191(b), children's sleepwear.

4. Each article of children's sleepwear identified in paragraph 3 of the complaint is a product of wearing apparel, either size 0 to 6X or size 7 to 14, such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping, and is, therefore:

a. "Children's sleepwear" within the meaning of § 1615.1(a) or § 1615.2(a) of the Children's Sleepwear Standard;

b. An "article of wearing apparel" and a "product" as these terms are defined in sections 2 (d) and (h) of the Flammable Fabrics Act, as amended, 15 U.S.C. 1191 (e) and (h).

5. Respondent is subject to, but has failed to comply with, the Children's Sleepwear Standard in that:

a. Respondent failed to perform any of the flammability testing required by §§ 1615.3 and 1616.3 of the Children's Sleepwear Standard, 16 CFR 1615.3 and 1616.3.

b. Respondent failed to maintain any of the manufacturing specification or test records required by §§ 1615.31(e) and 1616.31(d) of the Children's Sleepwear Standard, 16 CFR 1615.31(e) and 1616.31(d).

c. Respondent made and sold in commerce children's sleepwear that failed to comply with the test criterion set forth at § 1615.3(b)(1) of the Children's Sleepwear Standard, 16 CFR 1615.3(b)(1).

6. The acts by Respondent set forth in paragraph 6 of the complaint are unlawful and constitute an unfair method of competition and an unfair and deceptive practice in commerce under the FTCA, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a cease and desist order may be issued against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 45 of the FTCA, 15 U.S.C. 45.

Relief Sought

Wherefore, the premises considered, the Commission hereby issues this Complaint on the _____ day of _____, 1988 for Respondent to show cause why an Order to cease and desist from engaging in any future violation of the Standards for the Flammability of Children's Sleepwear: Sizes 0 to 6X and 7 to 14, 16 CFR Parts 1615 and 1616, should not be issued.

By direction of the Commission.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation.

William J. Moore, Jr.,

Trial Attorney, Division of Administrative Litigation, Counsel for Commission Staff.

Consumer Product Safety Commission,

Washington, DC 20207.

[FR Doc. 88–26323 Filed 11–14–88; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

[84.116G]

Applications for New Awards Under a Targeted Competition of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1989

Purpose: Provides grants to or enters into cooperative agreements with institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education and educational opportunities.

Deadline for Transmittal of Applications: January 31, 1989.

Applications Available: November 22, 1988.

Available Funds: $30,000.

Estimated Size of Awards: $5,000.

Estimated Number of Awards: 6.

Project Period: 12 months.

Priorities: In accordance with 34 CFR 630.11(b)(5) and 34 CFR 75.105(c) (3), the Secretary establishes an absolute priority for applications proposing to support efforts by postsecondary educational practitioners to contibute to knowledge about postsecondary education, or to the improvement of postsecondary education, by producing a document or other product, or by engaging in an activity designed to share the practitioner's knowledge with others. Only applications meeting this absolute priority will be considered

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under this competition. Within this absolute priority, the Secretary establishes an invitational priority for application proposing to develop and present lectures on key issues in postsecondary education at conferences and educational institutions. However, other applications meeting the absolute priority are also eligible. Applications are invited on the issues listed below. However, applications that address other significant issues in postsecondary education are also eligible.

(1) Despite the increasing cost of a college education, and despite the decreasing population of young people, college enrollments have continued to increase. What has been the impact on the nature and quality of postsecondary education? What has been the influence of the changing workplace and economy?

(2) Demographers expect that the racial and ethnic composition of the United States will be markedly different in the near future. How can postsecondary education best respond? What can be learned from earlier responses to previous demographic shifts?

(3) What are the important changes in colleges' curricular offerings and students' curricular choices during the past decade? Are there significant commonalities in the way the disciplines have evolved during this period? What should be the content to postsecondary education in the future?

Selection Criteria

Applications will be evaluated on the basis of the following selection critieria chosen from those listed in 34 CFR 630.32.

(a) Significance for Postsecondary Education

Each proposed project will be reviewed for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purpose of the targeted competition as explained in the priorties section of this notice; and

(2) Address an important problem or need.

(b) *Feasibility.* Each proposed project will be reviewed for its feasibility by determining the extent to which the applicant is capable of carring out the proposed project, as evidenced by—

(1) The adequacy of resources, including money, personnel, facilities, equipment, and supplies; and

(2) The qualifications of key personnel who will conduct the project. The Secretary will give equal weight to the selection criteria on significance and feasibility. Within each of these criteria, the Secretary will give equal weight to each of subcriteria. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 80 with the exceptions noted in 34 CFR 630.4(b), and (b) the regulations for the Fund for the Improvement of Postsecondary Education, 34 CFR Part 630.

For Application or Information Contact: Brian Lekander, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 3100, ROB–3), Washington, DC 20202–5175. Telephone (202) 732–5750.

Program Authority: 20 U.S.C. 1135–1135a–3.

Dated: November 4, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–26386 Filed 11–14–88; 8:45 am]

BILLING CODE 4000–01–M

Office of Educational Research and Improvement

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics (ACES).

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 15–16, 1988.

ADDRESS: 555 New Jersey Avenue NW., AFT Conference Room, 9th Floor, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400J, Washington, DC 20208–5574, Telephone: (202) 357–6831.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public. The proposed agenda includes the following:

- Dropout Program
- Linkages Between CCD and Census Mapping
- National Cooperative Education Statistics System
- NCES Under New Legislation
- Library Statistics Program
- National Assessment of Educational Progress
- Council Business.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 400J, Washington, DC 20208–5574.

Date: November 4, 1988.

Patricia M. Hines,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–26271 Filed 11–14–88 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy; Meeting and Invitation for Public Views and Comments on Increasing Western Participation in the 1989 Clean Coal Technology Solicitation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of meeting to invite public views and comments on potential means to increase the number of proposed Western projects that respond to the 1989 Clean Coal Technology solicitation.

SUMMARY: The Department of Energy's (DOE) Office of Fossil Energy (FE) has issued two solications offering cost-shared financial assistance for Clean Coal Technology (CCT) demonstration projects: The first Program Opportunity Notice (PON), dated February 17, 1986, yielded 51 proposals, of which only 8 projects (16 percent) were located in Western states; the more recent PON, issued February 22, 1988, resulted in 55 submittals, with about 10 projects proposed for Western locations (18 percent). Since 55 percent of the Nation's demonstrated reserve base of coal is located in states that are west of the Mississippi River, DOE is concerned that the level of Western participation in the CCT Program is disproportionately low. Accordingly, the purpose of the DOE Meeting described in this Notice is to seek suggestions from the public for possible means to increase Western-project participation in the third solicitation, which will be issued by May 1, 1989.

Introduction

The third Clean Coal Technology (CCT) solicitation (to be issued by May 1, 1989), is related to the decision by President Reagan on March 18, 1987, to seek $2.5 billion to fund the demonstration of innovative clean coal technologies over a five-year period, provided that the appropriate projects are proposed that meet, among other things, cost sharing requirements similar to those that were provided in the first February 17, 1986) Clean Coal Technlogy (CCT) solicitation.

On December 22, 1987, Pub. L. 100–202, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1988, and for Other Purposes," was signed into law. This Act, among other things, provided $575 million to conduct cost-shared innovative clean coal technology (ICCT) projects to demonstrate emerging clean coal technologies that are capable of retrofitting or repowering existing facilities. Pub. L. 100–202, in its reference to Pub. L. 99–190 of December 19, 1985, also specifically addressed the levels and forms of cost sharing that were applicable to proposed projects. On February 22, 1988, the Innovative CCT Program Opportunity Notice (PON) was issued in accordance with the requirements of the Act. Proposals were due by May 23, 1988, and on September 28, 1988, DOE announced that 16 proposals that were selected to proceed to award cooperative agreements.

Public Law 100–446, an Act "Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1989, and for Other Purposes" (the "Act"), which was enacted on September 27, 1988, provides, among other things, that $575 million be made available for additional CCT demonstration projects. Guidance is provided in the accompanying Conference Report 100–862 (the "Report"), including the stipulation that, "Projects selected . . . shall be subject to all provisos contained under this head in Public Laws 99–190 and 100–202 as amended by this Act."

Furthermore, the Report stipulates that, "a request for proposals should be issued by May 1, 1989, with proposals due no later than 120 days after issuance of the request for proposals (by August 28, 1989), and that the Secretary of Energy should make project selections no later than 120 days after receipt of proposals (by December 26, 1989)."

Purpose of the Meeting:

Although 55 percent of the demonstrated United States coal reserve base is located in states west of the Mississippi River, relatively few of the proposals that have been submitted to DOE in response to the CCT solicitations have offered projects located in the West. In 1986, in response to the first CCT solicitation (entitled "Program Opportunity Notice for Clean Coal Technology Demonstration Projects"), which offered to provide cost-shared financial assistance for CCT demonstration projects, 51 proposals were received. Of these, one each was from the States of California, Colorado, Utah, and Wyoming, while two each were from Montana and Texas; in total, 8 proposals offered western projects. Similarly, when the second solicitation was issued in 1988 (entitled, "Program Opportunity Notice for Innovative Clean Coal Technology Demonstration Projects"), the result was a total of 55 proposals, of which 10 were located in the west: One in California, and three each in Montana, Texas, and Wyoming.

In planning for the third CCT solicitation, DOE is interested in identifying means of encouraging greater participation by western offerors. The December 2, 1988, meeting announced in this Notice will give interested persons an opportunity to present their views, comments, and recommendations with regard to western projects/western coal aspects of the forthcoming solicitation.

Additional Meetings

Interested parties should note that DOE is planning to convene a series of public meetings to discuss all issues pertaining to the May 1989 CCT solicitation. These meetings, which will be held in early 1989 in different cities, will provide opportunities for written comments and public participation. (See also the Section, "Public Participation: Written Comments," below.)

Meeting Date and Location

The public meeting will be held at 9:00 a.m. on Friday, December 2, 1988, at the Little America Cheyenne Hotel, at the Junction of Interstate Highway 80 and Interstate Highway 25, Cheyenne, Wyoming 82001 (Telephone 307–634–2771).

Format of the Meeting

The meeting will commence with a plenary session that will include introductory remarks and program overviews by government and private sector officials. After a brief recess, there will be concurrent Discussion Workshops led by panels of DOE officials. There will not be any formal presentations or statements in the Workshops. Attendees will be asked to engage in informal, unstructured, discussions with the panelists on how to increase the number of western projects that are proposed in response to the forthcoming solicitation.

Finally, attendees will meet in a closing plenary session. The chairperson of each Workshop will review and summarize the discussion that ensued in his/her Workshop, and the recommendation that resulted. The meeting is expected to adjourn in the late afternoon.

Public Participation

Individuals may attend the meeting without notification in advance to DOE, and there is no registration fee or other charge for attendance. Attendees are responsible for making their own travel and lodging arrangements. DOE will not provide any meals or other refreshments at the meeting. The public is further advised that DOE cannot reimburse those who attend this meeting (or the future public meetings) or otherwise submit views to DOE for any expenses that they may incur in responding to this Notice.

Written Comments

Written comments may be submitted by individuals who are not able to attend the public meeting, and also by persons who do not attend the meeting and subsequently wish to provide written material to DOE.

Written comments that include suggestions for the 1989 public meeting agendas will be considered if they are received by December 23, 1988. Written comments with suggestions for the May 1, 1989, CCT solicitation will be considered if they are received by February 26, 1989.

In all instances, written comments should be submitted in triplicate (if possible) to the address noted below.

Address for Comments

All written comments should be submitted to: Dr. C. Lowell Miller, Associate Deputy Assistant Secretary

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for Clean Coal Fossil Energy, FE–22, U.S. Department of Energy, Washington, DC 20585 (202) 586–7150.

Issued in Washington, DC, November 9, 1988.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 88–26356 Filed 11–14–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–61–NG]

Metro Gaz Marketing, Inc.; Application To Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 7, 1988, of an application filed by Metro Gaz Marketing, Inc. (Metro Gaz Marketing), requesting blanket authorization to export up to 150 Bcf of natural gas from the United States to Canada for short-term and spot market sales over a two-year period beginning on the date of first delivery.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than December 15, 1988.

FOR FURTHER INFORMATION:

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Metro Gaz Marketing, a Canadian corporation with its principal place of business in Calgary, Alberta, proposes to export quantities of United States natural gas secured from a variety of suppliers for short-term and spot market sales to Canadian purchasers, including commercial and industrial end users, and distribution companies. Applicant may also secure transportation arrangements for the gas to be exported or may act as agent on behalf of producers and purchasers.

The terms of each arrangement would be negotiated in response to prevailing U.S.-Canadian gas market conditions. Metro Gaz Marketing intends to use existing transmission systems and would not require the construction of new or separate facilities in order to export the natural gas. Metro Gaz Marketing also intends to comply with the ERA's quarterly reporting requirements.

This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–111. The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and other matters deemed to be appropriate by the Administrator. The applicant asserts that current excess gas supplies evidence a lack of need for this gas to serve regional and national markets. The applicant further asserts that this export arrangement would promote competition and have a beneficial impact on the balance of trade. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this export it may permit the export of the gas at any international border point where existing transmission facilities are located.

Metro Gaz Marketing requests that an authorization be granted on an expedited basis. An ERA decision on Metro Gaz Marketing's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F–056, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., December 15, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Metro Gaz Marketing's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 2, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–26357 Filed 11–14–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–68–NG]

Michigan Consolidated Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 2, 1988, of an application filed by Michigan Consolidated Gas Company (MichCon) to amend its existing import authorization to extend for an additional three years its authority to import up to 50,000 Mcf per day of Canadian natural gas, pursuant to exchange agreements with Esso Chemical Canada (ECC), a division of Imperial Oil Limited (Imperial), and Shell Western E&P Inc. (Shell).

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than December 15, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F–070–A, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9622.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: DOE/ERA Opinion and Order No. 96 (1 ERA Paragraph 70,614), issued December 20, 1985, and amended with DOE/ERA Opinion and Order No. 135 (1 ERA Paragraph 70,658), issued July 14, 1986, authorized this import for a three-year period beginning on the date of first delivery which occurred on January 23, 1986. The gas is purchased by Imperial from TransCanada PipeLines Limited (TransCanada) and transported from the point of importation to MichCon by Great Lakes Gas Transmission Company (Great Lakes). The import represents part of an energy exchange, on an equivalent Btu basis, of natural gas for ethane that is extracted by Shell from gas sold to MichCon. The ethane is transported to Canada for use as a feedstock by ECC, a division of Imperial. Under the arrangement, MichCon incurs no additional cost above what it pays Shell for the domestic natural gas prior to the energy exchange.

The operational problems to MichCon's system caused by excessive amounts of ethane in natural gas supplied by Shell, which give rise to the need for a natural gas/ethane exchange, are set out in DOE/ERA Order and Opinion No. 96 (1 ERA Paragraph 70,614). Those problems would continue without the energy exchange and therefore, MichCon asserts, it is necessary to continue the exchange for another three years.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the import authority. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F–056, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., December 15, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MichCon's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 4, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–26358 Filed 11–14–88; 8:45 am]

BILLING CODE 6450–01–M

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[ERA Docket No. 88-49-NG]

Transco Energy Marketing Co.; Order Extending Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Transco Energy Marketing Company (TEMCO) an extension of its existing blanket authorization to import up to 730 Bcf of natural gas over a two-year term beginning February 4, 1989, through February 4, 1991.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 7, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs of Economic Regulatory Administration.

[FR Doc. 88-26359 Filed 11-14-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP87-428-001 et al.]

CNG Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corporation

[Docket No. CP87-428-001]

November 4, 1988.

Take notice that on November 2, 1988,[1] CNG Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26302-2460, filed in Docket No. CP87-428-001 an amendment to its pending application filed in Docket No. CP87-428-000 pursuant to section 7(c) of the Natural Gas Act to change the proposed facilities for the requested firm transportation service for Tennessee Gas Pipeline Company, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In Docket No. CP87-428-001, Applicant proposes to make the following changes to its pending application filed in Docket No. CP87-428-000:

1. Eliminate the proposed 350 horsepower of compression at Applicant's State Line Compressor Station; and,

2. Change the proposed replacement of 12.48 miles of existing 20-inch pipeline with 30-inch pipe to 12.3 miles of 30-inch pipeline looping.

Applicant explains that a review of its seasonal storage patterns and its operational flexibility indicates that the 350 horsepower incremental compression is no longer needed. Also, Applicant states that the originally proposed pipeline replacement may present delays in obtaining permits necessary to remove the pipeline. To insure timely construction of the facilities, Applicant is now proposing to loop its pipeline.

Applicant is now proposing to loop its existing Lines 1 and 31 for 12.3 miles adjacent to existing right-of-way from Benjamin Hill Gate near Newfield, New York, to Applicant's Borger Compressor Station in Tompkins County, New York. Applicant has identified the new loop as TL-473. Applicant states that the overall facility costs will be reduced from $14,283,390 to $14,165,690 exclusive of filing fees.

Comment date: November 14, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] The petition to amend was tendered for filing on October 27, 1988; however, the fee required by § 381.207(b) of the Commission's Rules (18 CFR 381.207) was not paid until November 2, 1988. Section 381.103(b)(2)(iii) of the Commission's Rules provide that the filing date is the date on which the fee is paid.

2. Tennessee Gas Pipeline Company

[Docket No. CP89-81-000]

November 4, 1988.

Take notice that on October 24, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-81-000 as supplemented on October 31, 1988, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Chevron U.S.A. Inc. (Chevron), a producer, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Notice of the instant proposal was issued on October 27, 1988. By its supplement filed on October 31, 1988, Tennessee has changed (corrected) the docket number under which it reported the commencement of service from Docket No. ST89-202 to ST89-195.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88-838-000]

November 4, 1988.

Take notice that on September 26, 1988, Tennessee Gas Pipeline Company, (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-838-000, as supplemented on October 27, 1988, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Delta Pipeline Company (Delta), a marketer, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Notice of the instant proposal was issued on September 30, 1988. By its supplement filed on October 27, 1988, Tennessee has deleted the State of Arkansas from the proposed states of ultimate delivery of the natural gas to be transported for Delta.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Pelican Interstate Gas System

[Docket No. CP89-70-000]

November 7, 1988.

Take notice that on October 18, 1988, Pelican Interstate Gas System (Pelican), 1600 Smith Street, Suite 3075, Houston, Texas 77002, filed in Docket No. CP89-70-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Pelican to transport up to a maximum of 15,000 MMBtu of natural gas per day on an interruptible basis for the account of Total Minatome Corporation (TMC), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Pelican has entered into a Gas Transportation Agreement dated September 12, 1988, to provide transportation of up to a maximum of 15,000 MMBtu per day of natural gas for TMC for a primary term ending September 12, 1989, then continuing month to month thereafter.

Pelican states that it will receive volumes of gas for the account of TMC at the existing subsea interconnection of the pipeline facilities of Pelican and those of TMC in the West Cameron Area, Block 210, offshore Louisiana. Pelican proposes to transport and redeliver such gas at the existing onshore terminus of Pelican's pipeline facilities located at the Oxy NGL Cameron Meadows plant (formerly owned by Mobil) in Cameron Parish, Louisiana.

Pelican proposes to charge TMC a transportation fee of three and three-tenths cents (3.3 cents) per Mcf of gas received for transportation.

Comment date: November 28, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Pelican Interstate Gas System

[Docket No. CP88-834-000]

November 7, 1988.

Take notice that on September 26, 1988, Pelican Interstate Gas System (Pelican), 1600 Smith Street, Suite 3075, Houston, Texas 77002, filed in Docket No. CP88-834-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Pelican to transport up to a maximum of 15,000 MMBtu of natural gas per day on an interruptible basis for the account of Elf Aquitaine, Inc. (Elf), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Pelican has entered into a Gas Transportation Agreement dated August 23, 1988, to provide transportation of up to a maximum of 15,000 MMBtu per day of natural gas for Elf for a primary term ending August 23, 1989, then continuing month to month thereafter.

Pelican states that it will receive volumes of gas for the account of Elf at the existing subsea interconnection of the pipeline facilities of Pelican and those of Elf in High Island Block 129, offshore Texas. Pelican proposes to transport and redeliver such gas at the existing onshore terminus of Pelican's pipeline facilities located at the Mobil Cameron Meadows plant in Cameron Parish, Louisiana.

Pelican proposes to charge Elf a transportation fee of three and three-tenths cents (3.3 cents) per Mcf of gas received for transportation.

Comment date: November 28, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company

[Docket Nos. CP89-105-000,[1] CP89-106-000, CP89-107-000, CP89-108-000, CP89-109-000, CP89-110-000, CP89-111-000]

November 7, 1988.

Take notice that on October 31, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in the above referenced dockets, requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide interruptible transportation service for various shippers under United's blanket certificate issued in Docket No. CP86-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which are on file with the Commission and open to public inspection.

United indicates that it would provide the service for each shipper as provided by an executed transportation agreement. In each case United indicates that no new facilities would be required to implement the service. In addition, United States that in each case it would charge monthly fees based upon (a) a rate as shown on Exhibit B of the agreement for each unit of gas delivered by United and (b) such other charges as are specified in United's Rate Schedule ITs, or such other rate as may be just and reasonable and acceptable to United.

United has provided other information applicable to each transaction, including the identity of the shipper, the proposed term, the peak day, average day, and annual volumes, and the respective docket numbers and termination dates related to the 120-day transactions initiated under § 284.233 of the Commission's Regulations, which is attached as an appendix.

Comment date: December 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

[1] These applications are not consolidated.

APPENDIX

Docket No.	Proposed term	Shipper	Volumes (MMBtu) Peak day Average day Annual	Related ST docket No.	Expiration date 120-day transaction
CP89-105-000	Gas year primary	Tejas Power Corporation	51,500 51,500 18,797,500	89-275-000	01-29-89
CP89-106-000	Month to month	Tejas Power Corporation	51,500 51,500 18,797,500	89-271-000	01-29-89
CP89-107-000	Month to month	Louisiana State Gas Corporation	309,000 309,000 112,785,000	89-270-000	01-29-89
CP89-108-000	Month to month	Seagull Marketing Services	309,000 309,000 112,785,000	89-272-000	01-29-89
CP89-109-000	Month to month	Seagull Marketing Services	154,500 154,500 56,392,500	89-276-000	01-29-89
CP89-110-000	Month to month	Texaco Gas Marketing	103,000 103,000 37,959,000	89-273-000	01-29-89
CP89-111-000	Month to month	Houston Gas Exchange Corporation.	103,000 103,000 37,595,000	89-277-000	01-29-89

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7. Natural Gas Pipeline Company of America

[Docket No. CP89–90–000]

November 7, 1988.

Take notice that on October 26, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–90–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on an interruptible basis for Seagull Marketing Services, Inc. (Seagull), a marketer, under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it would perform the proposed transportation service for Seagull pursuant to a service agreement dated July 27, 1988, under Natural's Rate Schedule ITS. It is stated that the service would have a primary term ending September 30, 1988, and continue on a monthly basis thereafter. Natural proposes to transport 150,000 MMBtu of gas on a peak day; 20,000 MMBtu of gas on an average day; and 7,300,000 MMBtu of gas annually. Furthermore, Natural proposes to transport additional volumes of overrun gas pursuant to the overrun provisions of Rate Schedule ITS. Natural proposes to receive the gas at various specified points in the states of Louisiana, offshore Louisiana, and offshore Texas for delivery at various specified points in the state of Louisiana.

Natural states that it commenced transportation of natural gas for Seagull on August 26, 1988, as reported in Docket No. ST89–327–000 pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations.

Comment date: December 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Amoco Production Company

[Docket No. CP89–94–002]

November 7, 1988.

Take notice that on October 31, 1988, Amoco Production Company (Amoco), of P.O. Box 50879, New Orleans, Louisiana 70150, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment authorizing sales of uncommitted gas previously issued by the Commission for a term which expires December 30, 1988, to extend such authorization for an unlimited term and, to the extent necessary, to authorize Amoco to sell gas which was permanently abandoned prior to the effective date of Order No. 490, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: November 28, 1988, in accordance with Standard Paragraph J at the end of this notice.

9. BHP Gas Marketing Company

[Docket No. CI87–764–003]

November 7, 1988.

Take notice that on October 28, 1988, BHP Gas Marketing Company (BHP) of 5847 San Felipe, Suite 3600, Houston, Texas 77057, filed an application to amend its blanket certificate with pregranted abandonment in Docket No. CI87–764–001, to the extent necessary, to authorize sales for resale in interstate commerce of gas subject to the Natural Gas Act sold by BHP as an intrastate pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection. BHP states that it is contemplating the purchase within the next two months of certain assets including intrastate natural gas transportation facilities. BHP further states that if those transactions are consummated as planned, BHP will become an intrastate pipeline company as defined in section 2(16) of the Natural Gas Policy Act.

Comment date: November 28, 1988, in accordance with Standard Paragraph J at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP89–92–000]

November 8, 1988.

Take notice that on October 27, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–92–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of MidCon Marketing Corporation (MidCon), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 5,150 MMBtu/day for MidCon. United states that construction of facilities would not be required to provide the proposed service.

United further states that the estimated daily and annual quantities would be 5,150 MMBtu and 1,879,750 MMBtu respectively, and that service under § 284.223(a) commenced August 3, 1988, as reported in Docket No. ST89–141.

Comment date: December 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Northern Natural Gas Company

[Docket No. CP89–104–000]

Take notice that on October 31, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–104–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to utilize an existing delivery point to accommodate natural gas deliveries for the account of Peoples Natural Gas (Peoples), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern states that it seeks to utilize its existing delivery point located at Glenwood, Iowa (Glenwood) to deliver peak day and annual sales volumes of 6,000 Mcf and 421,000 Mcf, respectively, for the account of Peoples. The Greenwood delivery point was authorized by Commission order dated August 27, 1954 at Docket No. G–1994 and is currently used to measure Northern's deliveries to Natural Gas Pipeline Company of America (Natural). It is stated that no facility modifications are required at the Glenwood delivery point to accomplish delivery of the proposed volumes of natural gas. Finally, Northern advises that Natural would provide downstream transportation service for Peoples under Section 311 of the Natural Gas Policy Act.

Comment date: December 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Tennessee Gas Pipeline Company

[Docket No. CP89–114–000]

November 8, 1988.

Take notice that on November 1, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP89–114–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Policy Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas on an interruptible basis for Arkla Energy Marketing Company (Arkla Energy). Tennessee explains that service commenced October 18, 1988 under § 284.223(a)) of the Commission's Regulations, as reported in Docket No. ST89–370. Tennessee further explains that the peak day quantity would be 550,000 dekatherms, the average daily quantity would be 550,000 dekatherms, and that the annual quantity would be 200,750,000 dekatherms. Tennessee explains that it would receive natural gas for the account of Arkla Energy at points of receipt located in the states of Louisiana and Texas. Tennessee states that the points of delivery are located in the states of Louisiana, Mississippi, and Texas. Tennessee further explains that the location of the ultimate delivery further explains that the location of the ultimate delivery point is in the state of Mississippi.

Comment date: December 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. Williams Natural Gas Company

[Docket No. CP89–93–000]

November 8, 1988.

Take notice that on October 28, 1988, Williams Natural Gas Company (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–93–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's Regulations for authorization to construct, own and operate approximately 12.4 miles of 12-inch diameter pipeline, measuring, regulating and appurtenant facilities, all as more fully described in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed facilities would extend from an interconnection with its existing facilities located in Cleveland County, Oklahoma to a new cogeneration power plant being constructed in Oklahoma County, Oklahoma by Power Smith Cogeneration Project Limited Partnership (PowerSmith). Applicant further states that the facilities would be used to render gas transportation service on behalf of Ladd Gas Marketing, Inc. (Ladd) and PowerSmith, pursuant to a transportation service agreement executed September 19, 1988. The cost to construct the facilities is estimated to be $2,373,700. Applicant expects to recover this cost through the associated transportation revenues. Finally, applicant advises that the cost of the facilities would not be included in its rate base for determining its generally available rates.

Comment date: November 29, 1988, in accordance with Standard Paragraph F at the end of his notice.

14. Trunkline Gas Company

[Docket No. CP89–100–000]

November 8, 1988.

Take notice that on October 28, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–100–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for TranState Gas Service Company (TranState), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 275,000 dt of natural gas per day, on an interruptible basis, on behalf of TranState pursuant to a transportation agreement, dated August 25, 1988, between Trunkline and TranState. It is stated that the transportation agreement provides for Trunkline to receive gas from various existing points of receipt on its system and to transport and redeliver the gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkhart County, Indiana.

Trunkline states that the estimated daily and estimated annual quantities would be 275,000 dt and 100,375,000 dt, respectively. It is stated that service under § 284.223(a) commenced on September 1, 1988, as reported in Docket No. ST89–58.

Comment date: December 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

15. Tennessee Gas Pipeline Company

[Docket No. CP89–121–000]

November 8, 1988.

Take notice that on November 2, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–121–000 a request, pursuant to § 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Paragon Gas Corporation (Paragon), a marketer, under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated September 27, 1988, it proposes to transport natural gas for Paragon from receipt points located in the States of Texas, Louisiana and Mississippi, to various delivery points located on Tennessee's system, said points located in multiple states.

The Applicant further states that the maximum daily quantity is 40,000 dekatherms (dt), the average daily quantity is 40,000 dt, and the annual quantity is 14,600,000 dt. Service under § 284.223(a) commenced October 2, 1988, as reported in Docket No. ST89–371 (filed October 27, 1988).

Comment date: December 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

16. Natural Gas Pipeline Company of America

[Docket No. CP89–86–000]

November 8, 1988.

Take notice that on October 25, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed on Docket No. CP89–86–000 a request pursuant to §§ 157.205 amd 284.223 of the Commission's Regulations for authorization to transport natural gas on an interuptible basis for Hall-Houston Offshore (Hall-Houston), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it would perform the proposed transportation service for Hall-Houston pursuant to a service agreement dated May 26, 1988, under Natural's Rate Schedule ITS. It is stated that the service would have a primary term ending June 1, 1992, and continue on a monthly basis thereafter. Natural proposes to transport 25,000 MMBtu of gas on a peak day; 15,000 MMBtu of gas on an average day; and 5,475,000 MMBtu of gas annually. Furthermore, Natural proposes to transport additional volumes of overrun gas pursuant to the overrun provisions of Rate Schedule

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ITS. Natural proposes to receive the gas at a point in offshore Louisiana and for delivery at four points in Louisiana and Texas.

Natural states that it commenced transportation of natural gas for Hall-Houston on September 1, 1988, as reported in Docket No. ST89-360-000 pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations.

Comment date: December 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26312 Filed 11-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-18-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 8, 1988.

Take notice that on November 4, 1988, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's F.E.R.C. Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Fourth Revised Sheet No. 108
First Revised Sheet Nos. 235 through 238
Original Sheet Nos. 238a and 238b

Northern Border states these tariff sheets are filed to revise the method by which other revenue, generated by interruptible and overrun transportation service from Rate Schedules IT-1 and OT-1, is credited to the Rate Schedule T-1 shippers who are obligated to pay Northern Border's Cost of Service. Effective November 1, 1988, the firm capacity on Northern Border was fully contracted for the first time. In light of the full subscription of Northern Border's firm capacity, Nothern Border proposes to credit the revenue generated from Rated Schedules IT-1 and OT-1 directly to any shipper that makes such capacity available on any given day. Presently, Northern Border's tariff allocates the revenue credits from Rate Schedules IT-1 and OT-1 based on the Shipper's Allocable Share of Northern Border's Cost of Service. Northern Border submits that its proposed direct revenue credit method more equitably distributes these revenue credits to firm shippers that make capacity available to transport interruptible and overrun gas. Norther Border has requested that these revised tariff sheets be effective on January 1, 1989. Copies of this filing have been sent to all Rate Schedule T-1 Shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 88-26311 Filed 11-14-88; 8:45 am]

BILLING CODE 6714-01-M

[Docket Nos. RP88-267-000 and RP88-267-001]

South Georgia Natural Gas Co.; Technical Conference

November 8, 1988.

Pursuant to the Commission order which issued on October 28, 1988, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Tuesday, December 6, 1988, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26318 Filed 11-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-21-000]

Tennessee Gas Pipeline Co.; Assignment of New Docket Number

November 8, 1988.

Notice is hereby given of the assignment of a new docket number to the protest filing made by Tennessee Gas Pipeline Company (Tennessee) on September 8, 1987, as supplemented October 16, 1987, pursuant to Commission Order No. 473. Tennessee filed its protest in Docket No. RM86-7-000. For purposes of convenience and administrative control, Tennessee's filing is being assigned a new separate docket number, as set forth above.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26315 Filed 11-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-7-042 RP86-48-002]

Transcontinental Gas Pipe Line Corp.; Compliance Tariff Filing

November 8, 1988.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on November 2, 1988 certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, which tariff sheets are included in

Appendix A attached to the filing. The proposed effective dates of the revised tariff sheets are indicated in Appendix A.

Transco states Paragraph B of the Commission's order dated August 3, 1988 in the subject dockets, as clarified by the Commission's order dated October 3, 1988 in Docket Nos. RP87-7-038 and RP86-48-001, required that Transco file revised tariff sheets eliminating all of Transco's minimum commodity bills and file computations of refunds due any customer for minimum bill amounts collected for periods after March 31, 1987. The purpose of the instant filing is to comply with Ordering Paragraph B by eliminating, effective April 1, 1987, the minimum commodity bill and all references thereto from Transco's tariffs. Appendix B contains the computations and workpapers supporting the refunds due of all amounts collected pursuant to the minimum bill for the period April 1, 1987 through September 30, 1988.

Transco further states that copies of the instant filing are being mailed to its customers, State Commissions and interested parties. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26316 Filed 11-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-7-040 et al.]

Transcontinental Gas Pipe Line Corp. et al., Filing of Pipeline Refund Reports and Refund Plans

November 9, 1988.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown in the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before December 1, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

APPENDIX

Filing Date	Company	Docket No.
9/26/88	Transcontinental Gas Pipe Line Corp.	RP87-7-040
10/7/88	Bayou Interstate Pipeline Corp.	RP88-1-004
10/31/88	Columbia Gas Transmission Corp.	RP87-55-009
11/1/88	Northwest Pipeline Corp.	RP-85-13-025

[FR Doc. 88-26317 Filed 11-14-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP88-139-002]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 8, 1988.

Take notice that Williams Natural Gas Company (WNG) on November 3, 1988, tendered for filing Substitute Revised Second Revised Sheet Nos. 82 and 84 to its FERC Gas Tariff, Original Volume No. 1.

WNG states these tariff sheets are filed as an amendment to its compliance filing in Docket No. RP88-139-001 filed July 27, 1988. WNG was advised by Commission Staff that it should delete references to account numbers in these tariff sheets and include account names instead. The effective date of these tariff sheets is July 20, 1988. The tariff sheet numbers are different than in the original filing because WNG subsequently filed a repaginated tariff Volume No. 1 upon Commission approval of its open-access transportation plan in Docket No. RP86-32, et al., effective July 20, 1988.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211, 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26314 Filed 11-14-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of September 30 Through October 7, 1988

During the Week of September 30 through October 7, 1988, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written coments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 7, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 30 through Oct. 7, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 25, 1988	Kern Oil and Refining Company, Washington, DC.	KRZ-0523	Interlocutory. *If granted:* The Economic Regulatory Administration's response to Kern Oil and Refining Company's statement of objections would be stricken from the record (Case No. KRO-0520).
Sept. 29, 1988	National Helium/Maryland, Baltimore, MD	RM3-129	Request for modification/rescission. *If granted:* The April 27, 1984, Decision and Order issued to Maryland (Case No. RQ3-228) would be modified regarding the state's plan approved for expenditures of National Helium refund monies.
Oct. 23, 1988	Economic Regulatory Administration, Washington, DC.	KRZ-0524	Interlocutory. *If granted:* The Economic Regulatory Administration would be permitted to make a supplemental filing in the Kern Oil and Refining Co. proceeding (Case No. KRO-0520).
Oct. 7, 1988	Guam Energy Office, Agana, Guam	KEE-0167	Exception to the institutional conservation program. *If granted:* Guam Energy Office would receive an exception to the provisions of 10 CFR Part 455, concerning the institutional Conservation Program.
Do	M.A. Malik, Hartford, CT	KFA-0223	Appeal of an information request denial. *If granted:* The September 20, 1988 Freedom of Information Request Denial issued by the Office of Scientific and Technical Information would be rescinded and M.A. Malik would receive access to certain Unclassified Controlled Nuclear Information documents.

REFUND APPLICATIONS RECEIVED

[Week of Sept. 30 to Oct. 7, 1988]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
05/05/86	Boonville Oil Company	RF225-11048
05/05/86	Boonville Oil Company	RF225-11049
12/02/87	Charles L. Harner, Jr	RF300-10542
12/02/87	William E. Sanders	RF300-10543
06/28/88	Nicholas J. Santilli	RF300-10541
07/06/88	HW Brasington Sand & Gravel	RF300-10551
09/20/88	Modern Oil, Inc	RF300-10550
09/26/88	Dee's Gulf	RF300-10548
09/26/88	Hayes Ser. Central	RF300-10547
09/26/88	Wolverton Associates	RF300-10549
09/29/88	Amoco li/Maryland	RQ251-482

REFUND APPLICATIONS RECEIVED—Continued

[Week of Sept. 30 to Oct. 7, 1988]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
09/29/88	Raingy's Gulf Service	RF300-10540
09/29/88	West Raleight Gulf	RF300-10539
09/30/88	Cosme A. Bobadilla	RF300-10538
09/30/88	E.I. Du Pont De Nemours	RF300-10537
09/30/88	Cotton Service Station	RF241-6
09/30/88	Hardy Hill Grocer	RF241-7
09/30/88	Gordon's Food Store	RF241-8
09/30/88	Via Convenience Store	RF241-9
09/30/88	J and M Jobbers	RF241-10
09/30/88	Zipp-Hill Grocer	RF241-11
09/30/88	Pat Hill	RF241-12
10/03/88	Barrentine's Gulf	RF300-10544
10/03/88	R.C. Vaughan Oil Company	RF300-10545
10/03/88	Northeast Utilities Service	RF300-10546
10/03/88	Leonard W. Ferguson, Jr	RF307-1233
10/03/88	Kickeys Service Center, Inc	RF307-1134
10/03/88	Bosselman, Inc	RF310-303
10/03/88	Spruce Oil Corporation	RF310-304
10/03/88	Sinclair Marketing, Inc	RF310-305
10/04/88	Denslow, Inc	RF310-306
10/04/88	Amble Oil Company	RF310-307
10/04/88	Dilries Oil, Inc	RF310-308
10/04/88	Barbier Gas and Oil Company	RF310-309
09/30/88 thru 10/07/88	Crude Oil Refunds Applications Received	RF272-74944 thru RF272-74970
09/30/88 thru 10/07/88	Atlantic Richfield Refunds Applications Received	RF304-6463 thru RF304-6672
09/30/88 thru 10/07/88	Exxon Refunds Applications Received	RF307-5876 thru RF307-6017
09/30/88 thru 10/07/88	Murphy Refunds Applications Received	RF309-52 thru RF309-255

[FR Doc. 88-26363 Filed 11-14-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of October 3 Through October 7, 1988

During the week of October 3 through October 7, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

William Hyde, 10/4/88, KFA-0219

Mr. William Hyde filed an Appeal from a partial denial by the Idaho Operations Office of the DOE of a Request for Information which the firm has submitted under the Freedom on Information Act (the FOIA). In considering the Appeal, the DOE found that certain of the documents or part of certain documents were properly withheld under FOIA Exemptions 5, 6 and 7(c). Important issues that were considered in the Decision and Order were (i) whether the "Concurrence Chain" is exempt under the predecisional privilege of Exemption 5; and (ii) whether releasing the identity of certain individuals constitutes invasion of personal privacy under Exemptions 6 and 7(c).

Implementation of Special Refund Procedures

Power Test Petroleum Distributors, Inc. 10/3/88, KEF-0042

The DOE issued a Decision and Order implementing a plan for the distribution of $360,045 (plus accrued interest) received pursuant to a consent order entered into by Power Test Petroleum Distributors, Inc. and the DOE on December 13, 1983. Under the procedures adopted, purchasers of Power Test gasoline during the consent order period may file claims for refunds from the Power Test fund. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Aminoil U.S.A., Inc./Clayton Bottled Gas, 10/6/88, RF139-119

The DOE issued a Decision and Order concerning an Application for Refund filed by Clayton Bottled Gas in the Aminoil U.S.A., Inc. special refund proceeding. The firm submitted cost banks and market price data which indicated that it was forced to absorb Aminoil's alleged overcharges. Therefore, the firm has shown that it was injured, to the full extent of its volumetric allocation of the consent order fund, by Aminoil's alleged overcharges. After examining the firm's application and supporting documentation, the DOE concluded that it should receive a refund totaling $208,685, representing $117,820 in principal and $90,865 in interest.

Aminoil U.S.A. Inc./Fryman's Gas Sales, 10/5/88, RF139-103

The DOE issued a Decision and Order concerning an Application for Refund. filed by Fryman's Gas Sales in the Aminoil U.S.A., Inc. special refund proceeding. The firm submitted cost banks and market price data which indicated that it was forced to absorb Aminoil's alleged overcharges. Therefore, the firm has shown that it was injured, to the full extent of its volumetric allocation of the consent order fund, by Aminoil's alleged overcharges. After examining the firm's

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application and supporting documentation, the DOE concluded that it should receive a refund totaling $793,224, representing $447,840 in principal and $345,384 in interest.

Atlantic Richfield Company/ Chamberlain's Arco, et al., 10/5/88, RF304–163, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by three firms from a consent order fund made available by Atlantic Richfield Company. As resellers/retailers applying for small claims refunds and end-users, these firms were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $3,766, representing $3,015 in principal and $751 in accrued interest.

David Storms, et al., 10/4/88, RF272–8211, et al.

The DOE issued a Decision and Order denying applications for refund from crude oil overcharge funds filed by nine resellers and/or retailers of refined petroleum products. The denial was based on the fact that the applicants failed to establish that they were injured by crude oil overcharges.

Exxon Corporation/A.W. McWilliams et al., 10/6/88, RF307–1835 et al.

The DOE issued a Decision and Order concerning 47 Applications for Refund filed in the Exxon Corporation Special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $47,472 ($42,033 principal plus $5,439 interest).

Exxon Corporation/Bull City Oil Co., et al., 10/6/88, RF307–111 et al.

The DOE issued a Decision and Order concerning 4 Applications for Refund filed in the Exxon Corporation Special refund proceeding. Each of the Applicants is a reseller of Exxon whose allocable share is greater than $5,000 based on its purchases. Each elected to limit its claim to the greater of $5,000 or 40 percent of its allocable share. The DOE determined that each applicant was eligible to receive a refund of $5,000 plus interest. The sum of the refunds granted in this Decision is $22,588 ($20,000 principal plus $2,588 interest).

Exxon Corporation/Demmo's Lakeside Exxon et al., 10/4/88, RF307–2120 et al.

The DOE issued a Decision and Order concerning 30 Applications for Refund filed in the Exxon Corporation Special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $21,696 ($19,213 principal plus $2,483 interest).

Exxon Corporation/Fountain Oil Company, Inc., 10/3/88, RF307–1565 et al.

The DOE issued a Decision and Order concerning 29 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $14,751 ($13,062 principal plus $1,689 interest).

Exxon Corporation/Houston Bigelow Bus Lines et al., 10/5/88, RF307–1501 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $29,353 ($25,992 principal plus $3,361 interest).

Exxon Corporation/Interstate Exxon Servicecenter, et al., 10/5/88, RF307–1501 et al.

The DOE issued a Decision and Order concerning 34 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $19,363 ($17,144 principal plus $2,219 interest).

Exxon Corporation/Joe Lampo et al., 10/3/88, RF307–101 et al.

The DOE issued a Decision and Order concerning 29 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $25,584 ($22,654 principal plus $2,930 interest).

Exxon Corporation/L. C. Atkins, et al., 10/6/88, RF307–652 et al.

The DOE issued a Decision and Order concerning 37 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $27,695 ($24,524 principal plus $3,171 interest).

Exxon Corporation/Tarrytown Exxon et al., 10/5/88, RF307–400 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $33,107 ($29,311 principal plus $3,796 interest).

Getty Oil Company/Francis Sales and Service Jim's Skelly Service., 10/6/88, RF265–2666, RF265–2667, RF265–2719

The DOE issued a Decision and Order concerning Applications for Refund filed by two retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indiciating the volume of Getty refined petroleum products purchased indirectly during the consent order period. In cases where the supplier of an indirect purchaser has been granted a refund on the basis of a presumption of injury, the DOE has held that a qualified indirect purchaser submitting a small claim was itself overcharge by the full volumetric amount. *Marathon Petroleum Co./ Schroeder's Marathon,* 15 DOE 85,155 (1986). Both applicants fall within this class. The total amount of the refunds approved in the Decision and Order is $2,850, representing $1,390 in principal and $1,460 in accrued interest.

Getty Oil Company/S.B. Collins, Inc., 10/3/88, RF285–1673

The DOE issued a Decision and Order concerning an Application for Refund filed by S.B. Collins, Inc. (Collins), a reseller of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. Collins submitted documentation substantiating that during the consent order period it maintained banks of unrecovered costs. Collins also submitted purchase cost data for motor gasoline for the relevant period. Using the competitive disadvantage methodology, the DOE determined that Collins' refund should be limited to the gallons of Getty motor gasoline that the firm purchased after January 1, 1975, when it began to accumulate cost banks. The total refund approved in the Decision and Order is $92,762, representing $45,211 in principal and $47,551 in accrued interest.

Getty Oil Company/Universal Motor Fuels, Inc., 10/3/88, RF265–1352

The DOE issued a Decision and Order concerning an Application for Refund filed by Universal Motor Fuels, Inc. (Universal), a reseller of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. Universal submitted documentation substantiating that during the consent order period it maintained banks of unrecovered costs. Universal also submitted purchase cost data for motor gasoline for the relevant period. Using the competitive disadvantage methodology, the DOE determined that Universal's refund should be limited to the gallons of Getty motor gasoline that the firm purchased prior to November 1, 1973, and on or after November 1, 1976. The total refund approved in the Decision and Order is $182,107, representing $88,756 in principal and $93,351 in accrued interest.

Gulf Oil Corporation/Butane Propane Gas Co., et al., 10/7/88, RF300–1028 et al.

The DOE issued a Decision and Order concerning 29 applications for Refund filed in the Gulf Oil Corporation special refund proceeding. Each of the applicants claimed a refund of less than $5,000. Therefore, under the small claims presumption, each applicant was found eligible to receive a refund equal to its full allocable share without having to provide a detailed demonstration of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $52,124.

Gulf Oil Corporation/Glenn's Gulf Service, et al., 10/3/88, RF300–1410 et al.

The DOE issued a Decision and Order granting 10 Applications for Refund in the Gulf Oil Corporation refund proceeding. Each of the claimants demonstrated that it was a direct purchaser of Gulf covered products during the consent order period. Each of the claimants listed in the appendix to this Decision demonstrated that it was a retailer of the Gulf products it purchased. Accordingly, the claimants listed in the appendix were presumed injured and received their full allocable share. The total amount of refunds granted in this Decision, which includes both total principal and total interest, is $9,606.

Gulf Oil Corporation/Majette Grocery, et al., 10/7/88, RF300–1154 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed in the Gulf Oil Corporation special refund proceeding. Each of the Applicants demonstrated that it purchased less than 7,812,500 gallons of Gulf product during the consent order period. Therefore, under the small claims presumption, each applicant was found eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $14,546.

Gulf Oil Corporation/Appliances Company, et al., 10/7/88, RF300–1100 et al.

The DOE issued a Decision and Order granting 33 Applications for Refund in the Gulf Oil Corporation refund proceeding. Each of the claimants demonstrated that it was a direct purchaser of Gulf covered products during the consent order period. Each of the claimants listed in the appendix to this Decision demonstrated that it was an end-user of the Gulf products it purchased. Accordingly, the claimants listed in the appendix were presumed injured and eligible to receive their full allocable share. The total amount of refunds granted in this Decision, which includes both principal and interest, is $33,021.

Hastings Utilities, 10/5/88, RF272–12806

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Hastings Utilities (Hastings), a public utility serving the people of Hastings, Nebraska. The DOE found that Hastings had provided sufficient evidence of the volume of refined petroleum products that it purchased during the crude oil price control period, August 19, 1973 through January 27, 1981. Hastings certified that it would notify the applicable regulatory body of its receipt of the refund and would pass on the entirety of the refund through to its customers. Hastings was granted a refund of $3,920.

K & T Trucking, 10/5/88, RF272–12988

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to K & T Trucking based on its purchases of diesel fuel during the period August 19, 1973 through January 27, 1981. The firm estimated its purchase volume based upon the average miles per gallon attained by its fleet of trucks. The firm was an end-user of diesel fuel, and was therefore presumed injured by the DOE. K & T was granted a refund of $18.

Los Angeles Times, 10/6/88, RF272–7917

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to the Los Angeles Times (L.A. Times) a producer and distributor of newspapers in the Los Angeles, California metropolitan area. In reaching its determination, the DOE rejected the comments submitted by a group of states in opposition to the L.A. Times' claim. Specifically, the DOE restated its position that economic arguments which are general in nature cannot, per se, constitute a showing that a particular firm in an industry passed through petroleum product cost increases in the form of increased prices to its customers. The refund granted in this Decision is $2,481.

Mobil Oil Corporation/Jim's Mobil Servicenter et al., 10/6/88, RF225–373 et al.

The DOE issued a Decision and Order granting Applications for Refund filed by five purchasers of Mobil refined petroleum products in the Mobil Oil Corporation special refund proceeding. According to the procedures set forth in Mobil Oil Corp., 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund based on the volume of products it purchased from Mobil. The total amount of refunds approved in this Decision was $6,366, representing $5,087 in principal plus $1,279 in accrued interest.

Reed W. Smith, Jr., 10/3/88, RF272–72544

The DOE issued a Decision and Order denying an Application for Refund filed in the Subpart V crude oil refund proceedings. The Applicant owned four retail stations in Texas during the period

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August 19, 1973 through January 27, 1981. Because the Applicant failed to demonstate that it was injured due to the crude oil overcharges, it was ineligible for a crude oil refund.

Savory Oil Company, et al., 10/4/88, RF272–9164, et al.

The DOE issued a Decision and Order denying applications for refund from crude oil overcharge funds filed by 11 resellers and/or retailers of refined petroleum products. The denial was based on the fact that the unsupported, general statements submitted by the applicants did not establish that they were injured by crude oil overcharges.

Suburban Propane Gas Corporation/ Eastern Rulane Sales Corporation, et al., 10/5/88, RF299–44 et al.

The DOE issued a Decision and Order granting Applications for Refund filed by 11 purchasers of Suburban Propane refined petroleum products in the Suburban Propane Gas Corporation special refund proceeding. According to the procedures set forth in *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987), each applicant was found to be eligible for a refund based on the volume of products it purchased from Suburban. The total amount of refunds approved in this Decision was $35,098, representing $29,893 in principal plus $5,205 in accrued interest.

Waste Management of Ohio, et al., 10/7/88, RF272–1962, et al.

The DOE issued a Decision concerning five Applications for Refund in the Subpart V crude oil refund proceedings. The Applicants purchased various petroleum products during the period August 19, 1973 through January 27, 1981. The Applicants estimated their gallonage figures. The DOE found each Applicant's estimation technique reasonable and acceptable. Each of the Applicants was an end-user of petroleum products that it claimed; therefore, the applicants were presumed injured. The total refund approved in this Decision is $610.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-users applicants in the following Decision and Order:

Name	Case No.	Date	Number of Applicants	Total refund
Jon L. Neiman Trust et al.	RF272–16003	10/7/88	17	$6,937

Dismissal

The following submissions were dismissed:

Name	Case No.
Champion International Corp	RD272–12281
Joe Nicosia	RF307–818
Lawson's Apco	RF310–30
Pettyjohn Oil Co	RF225–6625
	RF225–6626
Thomas Oil Co	RF272–58090
451 Service Center	RF272–58095
City of Mesquite	RF272–58101
Central Brewing Company	RF272–58103
E Ritter Equipment Co	RF272–59709
E Ritter Oil Co	RF272–59712
Irving Mall Shell	RF272–59714
Grand Gulf, Inc	RF272–59715
Hoskins Service Station	RF272–58717
Franks Exxon and Wrecker Service.	RF272–62416
Windsor Shell	RF272–62418
Littles Texaco #2	RF272–62519
Getwell Amoco	RF272–62420
North Watkins Amoco	RF272–62421
Davis Bros Citgo	RF272–62426
Wilkerson Travelmart	RF272–62427
Ben Davis	RF272–62430
Ben Davis	RF272–62431
Walton Chevron	RF272–62432
Jarks Service Station	RF272–62434
Tom Breathett	RF272–62437
Getwell Amoco Service	RF272–62439
Oak Court Exxon	RF272–62440
Ray T Johnson and Sons Exxon	RF272–62441
Archers Balmoral 66 Service	RF272–62442
Virgil Suttons Exxon	RF272–62443
Amoco	RF272–62445
Taylor Shell	RF272–62446
Lamar Ave Amoco Station	RF272–62447
Hays Mobile	RF272–62448
Holmes Rose Valley	RF272–62449
Joe Holmes Fairway Gulf Station	RF272–62450
Skylake Gulf Care Center	RF272–62451
Franklin Freeway Service Station	RF272–62454
John Taylor Shell	RF272–62458
Franklin Filmore Station	RF272–62459
Walls Bros Oil Co	RF272–62460
Castlemans Oil Co	RF272–62462
East Memphis Gulf	RF272–62465
Balmoral Union 76	RF272–62467
Joe Matthew Exxon	RF272–62475
Cherry Rd Lion	RF272–62478
Spinolo Automotive	RF272–62481
Southaven Tire Center	RF272–62482
Scallion Texaco	RF272–62485
Robinson Mobile Service Station	RF272–62486
Myron Mobile	RF272–62487
Joe Williams Wrecker Service	RF272–62491
Matthew Exxon	RF272–62492
Ryder System Inc	RF272–64982
Baysinger Fast Lube	RF272–65044
Arena Service Center	RF272–65045
D–D Truck Repair Service	RF272–65049
Little Texaco #1	RF272–65053
Rodger Texaco Service Station	RF272–65054
Freedie Automotive Service Center.	RF272–65056
Svatek Distributing Co	RF272–65059
Moss Union 76	RF272–65060
Matlock Union 76	RF272–65063
Marvin Barr Service Station	RF272–65064
Gleave's Wrecker Service	RF272–65065
Fox Meadows Exxon	RF272–65068
Keystone Tire	RF272–65069
Sutton Exxon Service Station	RF272–65074
Sutton Exxon 2	RF272–65075
Cisco Market 3	RF272–65076
Bennett Exxon Service Center	RF272–65083
Sea Island Gulf Service	RF272–65084
Stewart Union 76	RF272–65085
Cupertino Transport	RF272–65089
Grady White Boats Inc	RF272–65091
Firestone Store	RF272–65101
Nevillis Brothers	RF272–66231
Albert Lea Oil	RF272–66232
Alexander Farmers Grain and Oil Co.	RF272–66234
Swan Market Inc	RF272–66237
H-H Western Store	RF272–66239
Jim Garage	RF272–66241
Commercial Truck Terminal Inc	RF272–66255
Gilly Truck Rental	RF272–66256
Mr. B Garage	RF272–66257
L F M Inc	RF272–66261
Gerard Oil and Parts Co.—Wrecker Service.	RF272–66262
Zlotnick Garage	RF272–66263
Philips Consumer Electronics Co	RF272–66265
Brussels Thandara Garage Inc	RF272–66268
Silva Tire Co	RF272–67295
Manzer Petroleum Co	RF272–67363
Rita Streit	RF272–67365
Jerome R. Weber	RF272–67372
Paul's Garage	RF272–67381
Gulf—Simon Oil	RF272–67392
Bryant Enterprises, Inc	RF272–67398
ELG Enterprises Corp	RF272–72388
Denius Oil	RF272–72393
Ports Petroleum Inc	RF272–72407
LAN Gas and Tire Shop	RF272–72408
Farmers Elevator Co	RF272–72409
Mystery Oil Co	RF272–72410
Davis Tire and Battery	RF272–72426
River Forest Manor	RF272–72428
Osuego Coop Station	RF272–72459
Millette Garage Inc	RF272–72460
Governors Drive Shell	RF272–72472
Jims Car Care Center	RF272–74318
Paul Hepfer Feed Hardware and Gas.	RF272–74321
Dr. Pepper of Dallas	RF272–74581
Shelby Petroleum Corp	RF272–74583
Mays Oil Co	RF272–74585
E. Ritter Oil Company	RF272–74595

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234. Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially loose leaf reporter system.

November 7, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–26362 Filed 11–14–88; 8:45 am]

BILLING CODE 6450–01–M

Objection to Proposed Remedial Orders Filed During the Period of April 25 Through October 14, 1988

During the period of April 25 through October 14, 1988, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 7, 1988.

Howell Corp., Houston, Texas; Howell, Hydrocarbons, Inc., San Antonio, Texas; Howell, Industries, Inc., Houston, Texas; Quintana Refinery Co., Houston, Texas; Quintana Petrochemical Corp., Houston, Texas; Quintana-Howell Joint Venture, Houston, Texas; KRO–0690, Crude Oil

On October 14, 1988, Howell Corporation, 1010 Lamar Street, Houston, Texas 77002; Howell Hydrocarbons, Inc., 7811 S. Presa, San Antonio, Texas 78233; Howell Industries, Inc., c/o C.T. Corporation, 811 Dallas Street, Houston, Texas 77002; Quintana Refinery Co. and Quintana Petrochemical Corp., P.O. Box 3331, Houston, Texas 77253; and Quintana-Howell Joint Venture, c/o 1010 Lamar Street, Houston, Texas 77002 and P.O. Box 3331, Houston, Texas 77253, filed a Notice of Objection to a Proposed Remedial Order (PRO) which the DOE Economic Regulatory Administration (ERA) issued jointly to those entities on September 23, 1988. In the PRO, the ERA alleges that during the period January 1, 1978 through December 31, 1980, those entities committed the following violations: (i) Howell Corporation and Quintana Refinery, joint venturers in the Quintana-Howell Joint Venture, evaded obligations under the Entitlements Program in violation of 10 CFR 205.202 and 10 CFR 210.62, with regard to their Corpus Christi, Texas refinery, and thereby received illicit revenues in the amount of $10,322,848.09; (ii) Howell Corporation and Howell Hydrocarbons evaded obligations under the Entitlements Program with regard to their San Antonio, Texas refinery, and thereby received illicit revenues in the amount of $11,818,263.38; and (iii) Howell Industries, Inc. violated the anti-layering and pricing provisions of the regulations applicable to crude oil resales, 10 CFR Part 212, Subpart L, in the amount to $7,017,576.00 (layering) and $4,691,391.34 (pricing).

Tesoro Petroleum Corporation, San Antonio, Texas, KRO–0680, Crude Oil

On October 11, 1988, Tesoro Petroleum Corporation (Tesoro), 8700 Tesoro Drive, San Antonio, Texas 78286, filed a Notice of Objection to a Proposed Remedial Order (PRO) which the DOE Economic Regulatory Administration (ERA) issued to the firm on March 18, 1988, as amended on May 25, 1988. In the PRO, the ERA determined that Tesoro underreported the receipt of substantial volumes of controlled crude oil at its Kenai, Alaska refinery, by reporting the oil as uncontrolled in violation of 10 CFR 211.66(b) and (h). The ERA also determined that these actions circumvented and contravened or resulted in the circumvention and contravention of the requirements of the Entitlements Program in violation of 10 CFR 205.202. According to the PRO, these violations resulted in losses to the Entitlements Program of $37,543,138, before interest.

[FR Doc. 88–26361 Filed 11–14–88; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $1,478,456 (plus accrued interest) obtained as a result of a Consent Order that the DOE entered into with Placid Oil Company (Case No. KEF–0007), a refiner and reseller of petroleum products located in Dallas, Texas. The monies will be available to purchasers of Placid refined petroleum products during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the Placid consent order fund must be submitted in duplicate and must be postmarked no later than June 30, 1989 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to case number KEF–0007.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decisions and Order set out below. The Decision relates to a February 22, 1984 Consent Order between the DOE and Placid Oil Company (Placid). That Consent Order settled certain disputes between the firm and the DOE concerning Placid's possible violations of DOE regulations in its sales of regulated petroleum products during the period August 19, 1973 through January 27, 1981 (consent order period).

The Decision sets forth the procedures and standards that the DOE has formulated to distribute the contents of an escrow account in the amount of $1,478,456, plus interest, funded by Placid pursuant to the Consent Order. Under the procedures adopted, purchasers of Placid covered products during the consent order period may file for refunds from the escrow fund. The amount of the refund available to an applicant will generally be a pro rata or volumetric share of the Placid consent order fund. In order to receive a refund, a claimant must furnish the DOE with evidence that it was conjured by the alleged overcharges. However, the Decision indicates that no separate, detailed showing of injury will be required of end-users of the relevant product, or of firms that file refund claims in amounts of $50.000 or less. The Decision further indicates that an applicant whose claim, if granted, would

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result in a refund greater than $5,000, but no greater than $50,000 may elect to receive a refund based on 40 percent of its volumetric share. The specific requirements for proving injury are set forth in the Decision and Order.

Applications for Refund must be postamarked no later than June 30, 1989. Refund applicants must file two copies of their submission. All applications will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 7, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

November 7, 1988.

Name of Firm: Placid Oil Company.
Date of Filing: October 18, 1985.
Case Number: KEF–0007.

On October 18, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Placid Oil Company (Placid). 10 CFR Part 205, Subpart V. This Decision and Order sets forth the procedures that the OHA has formulated to govern the distribution of the Placid settlement fund.

I. Background

Placid was a "refiner" and "reseller" of petroleum products as those terms were defined in 10 CFR 212.31.[1] The ERA audited Placid to determine the firm's compliance with the regulations applicable to refiners and resellers. On February 18, 1983, the ERA issued a Proposed Remedial Order (PRO) to Placid alleging that, from August 1973 through January 1976, the firm charged prices for motor gasoline, natural gas liquids, natural gas liquid products, middle distillates, and residual fuel in excess of the prices allowed under the DOE regulations. In order to settle the claims made in the PRO and certain other claims by the DOE that might have arisen, Placid and the DOE entered into a Consent Order on February 22, 1984 (Consent Order). Placid's first sales of crude oil were specifically excluded from the ambit of the Consent Order, as were Placid's obligations under the DOE Entitlements Program. *See* Consent Order, ¶ 302.501. Pursuant to the Consent Order, Placid agreed to remit a total of $1,400,000, plus interest, to the DOE to settle certain alleged violations of the applicable price regulations during the period August 19, 1973 through January 27, 1981 (the consent order period). The settlement amount was paid to the DOE in five installments which included interest on each payment. Placid made its final payment to the DOE on March 20, 1985. The total amount remitted by Placid available for distribution equals $1,478,456. This Decision and Order concerns the distribution of the $1,478,456 plus interest accrued during the period the funds have been held by the DOE.

On March 6, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Placid settlement fund. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments were solicited. 51 FR 9259 (March 18, 1986). We received comments concerning our proposed procedures from Energy Refunds, Inc. (ERI) and the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia (States).

II. Refund Procedures

In the PD&O, we noted that Placid may have acted as a reseller of crude oil during the consent order period. Although crude oil resales are not specifically excluded from the scope of the Consent Order, the DOE audit underlying the Consent Order apparently did not examine any crude oil resales Placid may have made. *See* Consent order, ¶ 302. Accordingly, we have concluded that the Placid consent order funds should be allocated to purchasers of Placid products other than crude oil (hereinafter referred to as covered products).

As we indicated in the PD&O, firms and individuals that purchased Placid covered products during the consent order period may file claims in this proceeding. From our experience with Subpart V refund proceedings, we believe that most potential claimants will fall into the following categories: (1) End-users, i.e., consumers that used Placid covered products; (2) regulated non-petroleum industry entities that used Placid covered products in their businesses, or cooperatives that purchased Placid covered products; and (3) resellers, retailers or refiners that resold Placid covered products.

As in many prior special refund cases, we are adopting certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider refund applications in the most efficient manner possible. *See* 10 CFR 205.282(e), Subpart V; *American Pacific International*, 14 DOE ¶ 85,158 at 88,293 (1986) (*API*). First, we are adopting the presumption that the alleged overcharges were spread evenly over all gallons of covered products that Placid sold during the consent order period. In the absence of better information, a volumetric refund presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[2]

Under this volumetric presumption, a claimant's potential refund generally will be computed by multiplying $0.000362 per gallon, the per-gallon refund amount, by the number of gallons of covered products that it purchased from Placid during the consent order period.[3] The resulting figure is referred to as the claimant's "volumeteric share" of the Placid consent order funds. Successful applicants will also receive proportionate shares of the interest that has accrued on the Placid escrow account.

A. *Determination of Injury.* The allocation of potential refund amounts to claimants is only the first step in the distribution process. In order to receive a refund, an applicant must

[1] According to documents in the DOE audit file, Toro Petroleum Corporation (Toro) operated a gasoline blending facility during 1973 and early 1974. In February 1974, Ryder Systems, Inc. (Ryder) acquired more than 50 percent of Toro's capital stock, and commenced building a refinery that by late 1974 allowed Toro to produce distillates and residual fuel. In December 1974, Placid Refining Company, a wholly-owned subsidiary of Placid Oil Company, purchased Toro from Ryder. Toro's and Ryder's activities are covered under the terms of the Placid Consent Order. *See* Consent Order, ¶ 203. We will therefore accept Applications for Refund from Toro's and Ryder's customers who purchased covered product during the consent order period.

[2] Nevertheless, we recognize, that the impact of Placid's pricing practices on an individual purchaser may have been greater than the apportioned amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharge that it incurred in order to be eligible for a larger refund. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[3] The volumetric factor of $0.000362 per gallon was computed by dividing the $1,478,456 received from Placid by the 4,083,904,613 gallons of covered products sold by the firm during the consent order period ($1,478,456/4,083,904,613 gallons = $0.000362).

demonstrate, that it did not pass through alleged overcharges to its customers during the consent order period. *See, e.g., Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981) (Vickers)*. As we have done in many prior refund cases, we are adopting specific injury persumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by Placid's alleged overcharges. We will discuss these presumptions below.

(1) *Showing of Injury.* In the PD&O we proposed adopting the presumption that resellers and retailers of Placid covered products claiming refunds of $5,000 or less, excluding accrued interest, were injured by Placid's alleged overcharges. In its comments to the PD&O, ERI suggests that we adopt an injury presumption for resellers and retailers with "mid-level" claims. Previously used only in large refund proceedings this mid-level presumption allows resellers and retailers to receive 40 percent of their full volumetric shares up to $50,000, without making detailed demonstrations of injury. *See Gulf Oil Corporation*, 16 DOE ¶ 85,381, (1987) (*Gulf II*).[4] By lowering the costs incurred by claimants participating in the refund process and easing the administrative burden placed on the OHA, the mid-level presumption has served to further the OHA's restitutionary duty in Subpart V refund proceedings. We see no reason why it should not also be applied prospectively in smaller refund proceedings. Accordingly, resellers and retailers of Placid covered products will be allowed to apply for refunds using a mid-level presumption of injury.[5]

In the PD&O, we also proposed adopting presumptions that spot purchasers of Placid covered products and those selling Placid products on consignment were not injured by the alleged overcharges. Citing *Tresler Oil Company/Swifty Oil Company*, 16 DOE ¶ 85,659 (1987) (*Tresler*), ERI suggests that we allow spot purchasers to receive 20 percent of their full volumetric shares without demonstrating injury. There is nothing in *Tresler*, however, to support such a suggestion,[6] and ERI has not provided any other reasoning that would support its suggestion regarding spot purchasers. Consequently, we will adopt the presumption of non-injury for spot purchasers outlined in the PD&O.

Similarly, citing *Gulf II*, ERI suggests that we allow Placid consignees to receive 10 percent of their full volumetric shares without demonstrating injury. We explicitly stated in *Gulf II*, however, that the decision to adopt a 10 percent injury level presumption for consignees was based solely on our previous experience in Gulf refund proceedings. *Gulf II*, 16 DOE at 88,739. There is no basis for assuming that the factual body underlying the consignee presumption in *Gulf II* is applicable to this case. Consequently, we will not adopt ERI's suggestion with regard to consignees. Each injury presumption that we will adopt in this proceeding is outlined below, along with the rationale underlying its use.

a. *End-Users.* End-users, i.e., ultimate consumers of Placid covered products, will be presumed to have been injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records the justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,450 (1986). Consequently, end-user applicants need only document their purchase volumes of Placid products to make a sufficient showing that they were injured by the alleged overcharges.

b. *Regulated Firms and Cooperatives.* Firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement will not be required to submit detailed proof of injury. Although such firms, e.g., public utilities and agricultural cooperatives, generally would pass through any overcharges to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a detailed explanation of how they plan to accomplish this restitution to their customers, and to explain how they will notify the appropriate regulatory body or membership group of the receipt of refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). However, utility claimants that are requesting a refund of $5,000 or less, excluding interest, will not be required to certify that they will pass the refunds through to their customers. We further note that a cooperative's sales of Placid products to non-members will be treated in the same manner as sales by other resellers.

c. *Reseller and Retailer Small Claims.* Resellers and retailers of Placid covered products claiming refunds of $5,000 or less, excluding accrued interest, are presumed to have been injured by Placid's alleged overcharges. Without this presumption, such an applicant would have to gather and analyze records dating as far back as 1973 to demonstrate that it absorded the alleged overcharges. The cost to the applicant of gathering this information, and to the OHA of analyzing it, could exceed the actual refund amount. Under this presumption, a small calimant must only document the volume of Placid covered products that it purchased in order to be eligible for a refund. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984).

d. *Reseller and Retailer Mid-Level Claims.* Resellers and retailers whose full volumetric shares of the Placid consent order funds exceed $12,501 may elect to receive 40 percent of their full volumetric shares up to $50,000, without providing detailed demonstrations of injury.[7] As we indicated above, *see supra* note 4, this option is based on the presumption that resellers and retailers absorbed 40 percent of Placid's alleged overcharges. Resellers and retailers that wish to receive refunds in excess of $50,000 must follow the non-presumption procedures outlined below in section (2).

e. *Spot Purchasers.* If a claimant made only sporadic purchases of significant volumes of Placid covered products, we will consider that claimant to be a spot

[4] Based on national average profit margin data for resellers and retailers and our experience in past proceedings, we presumed that resellers and retailers were injured by 40 percent of the alleged overcharges incurred in their purchases. *Gulf II*, 16 DOE at 88,737.

[5] Citing *Getty Oil Company*, 15 DOE ¶ 85,064 (1986) (*Getty*), ERI also suggests that when calculating refund amounts under the mid-level presumption, we adopt a variety of absorption fractions for the different products sold by Placid, i.e., 40% for motor gasoline, 50% for middle distillates, and 60% for L.P. gas. The different absorption fractions that we adopted in *Getty*, however, were based strictly on Getty's pricing data. *Getty*, 15 DOE at 88,117. They are not relevant to the present proceeding. Furthermore, the use of a single average absorption fraction simplifies the refund procedures for the benefit of both the claimants and the DOE. Therefore, we will not adopt ERI's suggestion in this regard.

[6] In *Tresler*, the applicant was granted a refund on its purchases that were made under a long-term contract with the consent order firm, but was denied a refund on its spot purchases.

[7] A reseller or retailer whose full volumetric share is $12,501 or less could receive a larger refund under the small claims presumption than under the 40-percent mid-level injury presumption. Large resellers and retailers, i.e., those whose full volumetric shares exceed $125,001, may elect to limit their claims to $50,000 and thereby qualify for a refund under the mid-level injury presumption.

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purchaser. We are adopting a rebuttable presumption that claimants who made only spot purchases from Placid were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases. Therefore, they generally would not have made spot purchases from Placid unless they were able to pass through the full amount of any price increases to their own customers. *See Vickers*, 8 DOE at 85,396 (1981). Therefore, a firm that made only sporadic purchases from Placid will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured.

f. *Consignees.* Finally, as in previous cases, we will presume that consignees of Placid covered products were not injured by the alleged overcharges. *See, e.g., Jay Oil Company*, 16 DOE ¶ 85,147 at 88,286 (1987). A consignee agent is an entity that distributed products pursuant to an agreement whereby its supplier established the prices to be paid and charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products distributed. This presumption may be rebutted by showing that the consignee's sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Placid's pricing practices. *See Gulf Oil Corporation/C.F. Canter Oil Company*, 13 DOE ¶ 85,388 at 88,962 (1986).

(2) *Non-Presumption Demonstration of Injury.* A reseller or retailer with a full volumetric share in excess of $5,000 that does not elect to receive a refund under either the small claims presumption or the 40-percent mid-level presumption will be required to document its injury. Such a claimant is generally required to provide a monthly schedule of its "banks" of unrecouped increased product costs for each product that it purchased from Placid during the consent order period.[8] Cost banks for a product should cover the period November 1, 1973, through the product's decontrol date.[9] In addition, a claimant must show that market conditions forced it to absorb the alleged overcharges. Such a showing might be made through a demonstration of lowered profit margins, competitive price analysis, decreased market share, or depressed sales volume during the period of purchases from Placid. *API*, 14 DOE at 88,295. If a claimant elects not to submit a detailed demonstration of injury, it may still apply for either the small claims refund or the mid-level presumption of injury.

[8] A "bank" must be equal to the amount of the refund claimed beginning with the first month of the period for which a refund is claimed through the date on which either that product was decontrolled or the banking regulations expired.

[9] Retailers and resellers of motor gasoline were required to maintain cost banks only until July 15, 1979, and April 30, 1980, respectively. Therefore, in showing injury with respect to their purchases of motor gasoline, such claimants will not be required to submit cost bank material up to the January 28, 1981 decontrol date of motor gasoline.

B. General Refund Application Requirements

We will now accept Applications for Refund from purchasers or covered products sold by Placid during the consent order period. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) The name of the consent order firm, Placid Oil Company, the case number, KEF–0007, and the Applicant's name should be prominently displayed on the first page.

(2) The name, title, address, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The manner in which the Applicant used the Placid product, i.e., whether it was a reseller-retailer or end-user.

(4) The volume of Placid product that the Applicant purchased during each month of the consent order period (August 19, 1973 through January 27, 1981) in which it claims that it was injured by the alleged overcharges. If the Applicant was an indirect purchaser, it must also submit the name of its immediate supplier and indicate why it believes the product was originally should by Placid, Toro, or Ryder.

(5) All relevant materials necessary to support its claim in accordance with the injury presumptions and requirements outlined in Section II, Part A.

(6) A statement of whether the Applicant was in any way affiliated with Placid Oil Company, Toro Petroleum Corporation, or Ryder Systems, Inc. If so, the Applicant should explain the nature of the affiliation.

(7) A statement of whether there has been any change in ownership of the entity that purchased the Placid, Toro or Ryder product. If so, the name and address of the current (or former) owner should be provided.

(8) A statement of whether the Applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the Applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the Applicant should describe the action and its current status. The Applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. *See* 10 CFR 205.9(d).

(9) The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be submitted *in duplicate* and must be postmarked no later than June 30, 1989. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC. Any Applicant that believes its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is privileged or confidential. All Applications should be sent to:

Placid Oil Company Special Refund Proceeding, Case No. KEF–0007, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

III. Distribution of the Remainder of the Consent Order Funds Attributable to Placid's Sales of Covered Products.

The States filed comments regarding the PD&O requesting that any monies remaining in the Placid escrow account after meritorious claims are processed be distributed to them for use in claims are process be distributed to them for use in energy-related projects. Subsequent to the filing of these comments by the States, a statute was enacted governing disbursal of these remaining funds called the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), H.R. 5400, Title III, 99th Cong. 2d Session., Cong. Rec. H11319–21, (Daily E. October 17, 1986). PODRA stated that in the event that money remains after all meritorious refund claims from a refined products Subpart V proceeding have been processed, those funds will be divided evenly between the state and federal governments. Therefore, in the event that money remains after all meritorious claims have been paid from the Placid fund, those funds in that account will be disbursed in accordance with the provisions of PODRA.

It Is Therefore Ordered That: (1) Applications for Refund from the funds remitted to the Department of Energy by Placid Oil Company pursuant to the Consent Order executed on February 22, 1984, may now be filed.

(2) All Applications must be postmarked no later than June 30, 1989.

Dated: November 7, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–26360 Filed 11–14–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3476–8]

Renewal for the Management Advisory Group to the Municipal Water Pollution Control Program

The U.S. Environmental Protection Agency announces the renewal for the Management Advisory Group to the Municipal Water Pollution Control Program following consultation with the Committee Management Secretariat, General Services Administration. EPA has determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the Agency by law. The charter which continues this advisory committee for two more years, unless otherwise sooner terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Mary Anne Beatty, EPA Committee Management Officer (PM–213), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 202/382–5037.

Date: October 28, 1988.

Kathy Petruccelli,

Director of Management and Organization Division VR.

[FR Doc. 88–26300 Filed 11–14–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59856; FRL–3476–4]

Toxic and Hazardous Substances; Certain Chemcial Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides a summary of each.

DATES: Close of Review Periods Y 89–16, 89–17, 89–18, November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89–16

Manufacturer. Confidential.

Chemical. (G) Chain stopped alkyd resin.

Use/Production. (S) Air dry implement finish. Prod. range: 511,000–680,000 kg/yr.

Y 89–17

Manufacturer. Confidential.

Chemical. (G) Polyester polyol.

Use/Production. (S) Water reducible ink resin. Prod. range: 68,600–127,000 kg/yr.

Y 89–18

Manufacturer. Confidential.

Chemical. (G) Acrylic alkyd copolymer.

Use/Production. (S) Resin component for implement finish. Prod. range: 85,000–102,000 kg/yr.

Date: November 2, 1988.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–26304 Filed 11–14–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140107; FRL–3476–5]

Access to Confidential Business Information by Syracuse Research Corp. and the Cadums Group, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Syracuse Research Corporation (SRC) of Syracuse, NY and SRC's subcontractor, The Cadmus Group, Incorporated (CAD) of Belmont, MA, for access to information which has been submitted to EPA under sections 4 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In accordance with 40 CFR 2.306(j), EPA has determined that SRC and CAD will require access to CBI submitted to EPA under sections 4 and 8 of TSCA to perform successfully work specified under the contract. EPA is issuing this notice to inform all submitters of information under sections 4 and 8 of TSCA that EPA may provide SRC and CAD access to these materials on a need-to-know basis.

Under contract No. 68–D8–0117, SRC, Merrill Lane, Syracuse, NY, and SRC's subcontractor, CAD, 375 Concord Ave., Belmont, MA will assist the Office of Toxic Substances' Existing Chemical Assessment Division in their review of data submitted under sections 4 and 8 of TSCA as part of the proper preparation of a section 4 support document. All access to TSCA CBI under this contract will take place at EPA Headquarters, contractor and subcontractor facilities.

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Upon completing review of the CBI materials, SRC and CAD will return all transferred materials to EPA.

Clearance of access to TSCA CBI under this contract is scheduled to expire on September 30, 1992.

SRC and CAD have been authorized for access to TSCA CBI at their facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved their security plans, has performed the required inspection of their facilities, and has found them to be in compliance with the requirements of the manual. SRC and CAD personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: November 3, 1988.

Charles Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-26303 Filed 11-14-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Paul Kelley, d/b/a American Teltronix Licensee of Station WNHM552; Petition for Reconsideration; Order Extending Time

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration; order extending time.

SUMMARY: The Chief, Private Radio Bureau has adopted an *Order* extending the time period in which to file an opposition to the petition for reconsideration of the *Memorandum Opinion and Order* in this proceeding. The filing date is extended one week from October 20, 1988 to October 27, 1988. This action is warranted because the petition for reconsideration was not served in a timely manner.

DATE: Opposition due October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Rudolfo Baca, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2444.

SUPPLEMENTARY INFORMATION: The summary of the *Memorandum Opinion and Order* in this proceeding was printed in the **Federal Register** on October 5, 1988, at 53 FR 39141.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 88-25755 Filed 11-14-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Advertising of Interest on Deposits

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: The General Counsel of the Federal Deposit Insurance Corporation ("FDIC") is amending Opinion No. 1, "Advertising of Interest or Dividends on Deposits," 38 FR 28288, October 11, 1973. The Opinion speaks throughout of a section of the FDIC's regulations that has been renumbered. The amendment corrects the citations in the Opinion.

DATE: The amendment to the General Counsel's Opinion is effective on November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Jules Bernard, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550—17th Street, NW, Washington , DC, 20429, (202) 898-3731.

SUPPLEMENTARY INFORMATION: The General Counsel of the FDIC is making a technical change to the citations found in General Counsel's Opinion No. 1, "Advertising of Interest or Dividends on Deposits." *See* 38 FR 28288, October 11, 1973. The Opinion speaks throughout of "§ 329.8" of Part 329 of the FDIC's regulations, 12 CFR Part 329. The FDIC has redesignated that section as § 329.3. *See* 51 FR 10808, March 31, 1986. The General Counsel is amending the citiations in his Opinion accordingly.

For information purposes, the text of Opinion No. 1, as corrected, is presented below:

The Board of Directors of the Federal Deposit Insurance Corporation has authorized the publication of the following interpretative statement setting forth the position of the Corporation's Legal Division with respect to the meaning and application of the provisions of § 329.3 of the rules and regulations of the Corporation.

Section 329.3 prescribes the manner in which insured nonmember banks (including insured nonmember mutual savings banks) may advertise the interest or dividends they pay on time and savings deposits. In enforcing the provisions of this section, the Corporation, for the most part, relies on a review of questionable advertisements brought to its attention. This approach, however, tends to provide an uneven measure of protection for depositors and at times, works a competitive inequity vis-a-vis those banks whose advertisements are not questioned.

The Legal Division believes it important that insured nonmember banks know the approach taken and the criteria applied by the staff in reviewing their advertisements for conformity with the requirements of § 329.3 of the Corporation's regulations. This knowledge should better enable insured nonmember banks to fashion advertisements that avoid violating any requirement of § 329.3.

Section 329.3 sets forth various specific requirements in paragraphs (a) through (e) and (h) capped by a general proscription in paragraph (f) against 'inaccurate' or 'misleading' advertisements or those which 'misrepresent' the deposit contracts offered. The Legal Division believes that the various specific requirements prescribed should be read and applied literally in accordance with their evident intent and purpose. The general proscription against inaccurate or misleading advertisements should be taken as prohibiting any statement or claim which incorrectly represents the terms and conditions of the deposit contracts offered or which has a tendency or capacity to deceive or to leave an erroneous impression. It is of the utmost importance, therefore, that insured nonmember banks avoid exaggerated, overly generalized or unsubstantiated claims or assertions or ambiguous statements reasonably susceptible to a contruction that is or may be false or erroneous. The Legal Division believes that every effort should be made to explain correctly, in simple direct language, the terms and conditions of the deposit accounts solicited, including the duration of a depositor's commitment of his funds and the existence of penalties for or restrictions on withdrawals prior to maturity so that he may appreciate the relative merits of the accounts offered and intelligently choose those that best suit his needs.

In reviewing questionable advertisements, the Legal Division staff has noted from time to time a variety of violations of § 329.3. The following are listed for the benefit and guidance of insured nonmember banks as examples of the type of advertising that should be avoided:

(1) Section 329.3(d) requires a *clear* statement of any time requirement to which an advertised rate is subject. Frequently, a rate is advertised as being "guaranteed" for a specified number of years. While the advertising of a rate as being "guaranteed" for a specified period may be permissible, the Legal Division, does not believe that the quoted language suffices as a clear statement of the minimum time requirement because it merely states the duration of the "guarantee" without

adequately informing a potential depositor that he must commit his funds for a minimum period in order to obtain the "guaranteed" rate. In order to suffice as a clear statement, language should be used which plainly indicates that a depositor must commit his funds for a definite *period* or *term* in order to obtain the advertised rate.

(2) Similarly, a rate is often advertised as being available on money "held," "kept" or "left" on deposit for a specified number of years. This language, without further explanation, is particularly objectionable because not only does it fail to inform a depositor that he must make a term commitment of funds to obtain the rate, but it affirmatively suggests that he may unilaterally withdraw his funds, without penalty, at any time during the period specified. The quoted language is also misleading because it fosters the false notion that the rate offered is dependent on the length of time a depositor chooses to permit funds to remain on deposit rather than on the fixed term for which he commits his funds.

(3) Section 329.3(d) also requires a *conspicious* statement of any time or amount requirements to which an advertised rate is subject. The Legal Division staff has often noted time or amount requirements printed in small or even minuscule type "buried" in the body of textual material or in coupons. The Legal Division believes that, in general, the visibility of any statement of time and amount requirements should bear some reasonable relationship to the visibility of the related advertised rate and where, for example, the advertised rate is printed in large bold-face type (although not necessarily the same size type) and placed in close proximity to the advertised rate.

(4) Rates are occasionally advertised as follows: "5½ percent for 90 days," "6 percent for 1 year" and "6½ percent for 2½ years." The Legal Division does not believe these expressions, without further explanation, suffice as clear statements of the minimum time requirements involved since they too emphasize the duration of the rate rather than the fixed term for which the depositor must commit his funds. Moreover, when stated in such a sequence, these expressions are misleading where the context in which they appear suggests that the increasingly higher rates are available on the *same* funds permitted to remain on deposit for succesively longer periods, rather than on *different* funds deposited for the definite terms indicated.

(5) The grace days feature of regular savings accounts is sometimes misdescribed to make it appear more advantageous than is actually the case. For example, regular savings accounts have been described as "Grace Day accounts" having "10 extra dividend earning days per month." Grace days permit funds deposited by the 10th of the month to earn interest from the first; however, once deposited they do not earn 10 extra days of interest every month thereafter.

(6) The interest rates available on dissimilar types of savings accounts are compared unfairly without disclosing that different types of accounts are involved. For example, the 5 percent rate available on regular savings accounts at commercial banks is compared to the 6¾ percent rate available on two and one-half year time deposits at savings banks while both types of accounts are referred to generically as "savings" accounts.

The foregoing represents the Legal Division's views on some of the advertising practices which have come to its attention. These views should be taken into account by all insured nonmember banks, their advertising agencies, and counsel when composing or reviewing advertisements for time and savings deposits. In the future, violations of § 329.3 will, in appropriate circumstances, result in a recommendation by the Legal Division to the Board of Directors of the Corporation that formal enforcement action be taken against the alleged violators. If any insured nonmember bank, its advertising agency or counsel has a specific question regarding the applicability of § 329.3, representatives of the Legal Division are available to discuss the matter.

Dated this 7th of November 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-2687 Filed 11-14-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, *et. seq.*). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Adminsitration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

Section 18 Carrier, Shipper and Port Surveys

FMC requests an extension of clearance for Forms FMC-17A, 17B, and 17C—carrier, shipper, and port surveys, respectively. These forms will be used to gather information from carriers, shippers, and ports, and certain other subject persons in the foreign oceanborne commerce of the United States about the impact of the Shipping Act of 1984 upon the international ocean shipping industry. The Commission estimates an annual respondent universe of 50 carriers with the total estimated 800 manhour burden; 50 ports with an estimated 350 manhour burden; and 1100 shippers with an estimated 4400 manhour burden. Total cost to the Federal Government is estimated at $24,000; total cost to respondents is estimated at $138,750.

Joseph C. Polking,

Secretary.

[FR Doc. 88-26264 Filed 11-14-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

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Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200163

Title: Gulf Seaports Marine Terminal Conference Agreement.

Parties: Ports of New Orleans, Lake Charles, Baton Rouge, Orange, Gulfport, Beaumont, Houston, Galveston South Louisiana, Brownsville, Port Arthur, Tampa, Pensacola, Panama City, Brazos River Harbor, Corpus Christi and Alabama State Docks

Filing Party: William Colburn, Director of Administration, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed agreement provides for the parties to consult with one another and to establish marine terminal rates, charges and rules in connection with marine terminal services and facilities. The agreement also provides that the parties may limit the agreement to the establishment of one rate, rule or regulation of a particular character.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 8, 1988.

[FR Doc. 88–26263 Filed 11–14–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corp., New York, NY; Proposal To Underwrite and Deal in Debt Securities and Preferred Stock to a Limited Extent

Bankers Trust New York Corporation, New York, New York ("Bankers Trust"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary BT Securities Corporation, New York, New York ("BTSC"), to underwrite and deal in, to a limited degree, all types of debt securities and preferred stock, including debt obligations convertible into equity securities, ownership interests in trusts or other vehicles (other than open-end investment companies) that are secured by or represent an interest in debt obligations, rights issued in connection with any of the foregoing to acquire interests in any other security and options and warrants on all of the foregoing securities. The new activities would be conducted on a nationwide and international basis from offices of BTSC located in New York, Atlanta, Chicago, Los Angeles and other offices that may be established in the future.

BTSC is currently authorized to underwrite and deal in, to a limited extent, 1–4 family mortgage-related securities, municipal revenue bonds, commercial paper and consumer-receivable-related securities ("ineligible securities"). *Citicorp, J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987) ("*Citicorp/Morgan/Bankers Trust*"); Citicorp, 73 Federal Reserve Bulletin 619 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation,* 73 Federal Reserve Bulletin 731 (1987). BTSC is also authorized to underwrite and deal in U.S. government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y ("bank-eligible securities"). 12 CFR 225.25(b)(16). In addition, BTSC has received approval to provide investment advisory and securities brokerage services on a combined basis to institutional customers. *Bankers Trust New York Corporation,* 74 Federal Reserve Bulletin 695 (1988).

Bankers Trust has applied to underwrite and deal in debt securities and preferred stock within the framework of limitations established in the *Citicorp/Morgan/Bankers Trust* Order, including the 5 percent gross revenue limitation. Accordingly, under this application the amount of gross revenue BTSC would receive from the proposed new ineligible underwriting activity and the previously approved ineligible activity would not exceed in the aggregate 5 percent of the total gross revenues of BTSC.

The Board has not previously determined that the proposed underwriting and dealing activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Bankers trust contends that the proposed activities are closely related to banking because banks have generally either engaged in the proposed activities or have provided services that are functionally and operationally similar to those involved in underwriting and dealing in debt securities and preferred stock. Bankers Trust stated that banks are active participants in underwriting and dealing in bank-eligible securities and that the techniques involved in underwriting and dealing in the proposed securities are substantially the same. Bankers Trust further stated that banks possess the experience to carry out the proposed activities as a result of banks' skills at assessing credit, interest rate and market risk, pricing securities, purchasing and selling longer-term certificates of deposit, arranging private placements, investing in corporate debt issues, and syndicating commercial loans.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Bankers Trust maintains that permitting bank holding companies to engage in the proposed activities would result in greater convenience for customers and increased competition, and could be expected to reduce borrowing costs to issuers, increase the liquidity of the secondary markets for the proposed securities, and lead to continued financial innovation. Bankers Trust contends that the proposed activities would not result in adverse effects because Bankers Trust would conduct the proposed activities within the framework of limitations previously established by the Board in its *Citicorp/Morgan/Bankers Trust* Order, and consistent with the securities laws, trust law, the anti-tying provisions of the banking and antitrust laws, ERISA and sections 23A and 23B of the Federal Reserve Act.

Bankers Trust maintains that any additional risks from underwriting and dealing in debt securities and preferred stock as proposed are not significant and that the proposed activity does not present materially greater risks than traditional bank activity in underwriting and dealing in bank-eligible securities and extending corporate loans. Bankers Trust also maintains that any potential conflicts of interest that might be said to arise from the proposed activities are no different from those arising from banks' existing securities activities and are adequately addressed by the existing laws.

Bankers Trust contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Bankers Trust Company, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Bankers Trust states that it would not be "engaged principally" in underwriting and dealing in securities in light of the 5 percent revenue limitation on these activities, previously adopted by the Board and upheld in court. *See, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System,* 839 F.2d 47 (2d Cir. 1988), *cert. denied,* 108 S. Ct. 2830 (1988); and *Securities Industry Association* v. *Board of Governors/Chase,* 847 F.2d 890 (D.C. Cir. 1988).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 8, 1988.

Board of Governors of the Federal Reserve System, November 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26266 Filed 11–14–88; 8:45 am]

BILLING CODE 6210–01–M

Bankers Trust New York Corp., New York, NY., Proposal to Underwrite and Deal in Equity Securities to a Limited Extent

Bankers Trust New York Corporation, New York, New York ("Bankers Trust"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary BT Securities Corporation, New York, New York ("BTSC"), to underwrite and deal in, to a limited degree, equity securities. These would include common stock or other ownership interests in domestic and foreign corporations or other entities, American Depository Receipts, all kinds of preferred stock, and options and warrants on the above securities, but would not include ownership interests in open-end investment companies. The new activities would be conducted on a nationwide and international basis from offices of BTSC located in New York, Atlanta, Chicago, Los Angeles, and other offices that may be established in the future.

BTSC is currently authorized to underwrite and deal in, to a limited extent, 1–4 family mortgage-related securities, municipal revenue bonds, commercial paper and consumer-receiveable-related securities ("ineligible securities"). *Citicorp, J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987) ("*Citicorp/Morgan/Bankers Trust*"); *Citicorp,* 73 Federal Reserve Bulletin 619 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation,* 73 Federal Reserve Bulletin 731 (1987). BTSC is also authorized to underwrite and deal in U.S. government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y ("bank-eligible securities"). 12 CFR 225.25(b)(16). In addition, BTSC has received approval to provide investment advisory and securities brokerage services on a combined basis to institutional customers. *Bankers Trust New York Corporation,* 74 Federal Reserve Bulletin 695 (1988).

Bankers Trust has applied to underwrite and deal in equity securities within the framework of limitations established in the *Citicorp/Morgan/Bankers Trust* Order, including the 5 percent gross revenue limitation. Accordingly, under this application the amount of gross revenue BTSC would receive from the proposed new ineligible underwriting activity and the previously approved ineligible activity would not exceed in the aggregate 5 percent of the total gross revenues of BTSC.

The Board has not previously determined that the proposed underwriting and dealing activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order of regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Bankers Trust contends that the proposed activities are closely related to banking because banks generally either have engaged in the proposed activities or have provided services that are functionally and operationally similar to those involved in underwriting and dealing in equity securities. Bankers Trust noted that banks currently underwrite and deal in equities outside the United States.

Bankers Trust also maintains that banks have considerable experience with equity securities, through investments, private placement and advisory activities, and investment management and advisory activities on behalf of customers. In addition, Bankers Trust maintains that the functions involved in underwriting and dealing in equity securities would be the same, or substantially the same, as those involved in underwriting and dealing in securities that banks are eligible to underwite and deal in. Bankers Trust further believes that banks possess the experience to carry out underwriting and dealing functions with respect to equity securities as a result of bank's skills at assessing credit, interest rate and market risk, pricing securities, purchasing and selling longer-term certificates of deposit, and syndicating commercial loans.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Bankers Trust maintains that permitting bank holding companies to engage in the proposed activities would result in greater convenience and innovation in services for customers and increased competition. Bankers Trust contends that the proposed activities would not result in adverse effects because Bankers Trust would conduct the proposed activities within the framework of limitations previously established by the Board in its *Citicorp/Morgan/Bankers Trust* Order, and consistent with the securities laws, trust law, the anti-tying provisions of the banking and antitrust laws, ERISA and sections 23A and 23B of the Federal Reserve Act.

Bankers Trust stated that any additional risks from underwriting and dealing in equity securities as proposed are not significant and that the proposed activity does not present materially greater risks than traditional bank lending activity. Bankers Trust stated that any potential conflict between the proposed activities and the fiduciary responsibilities of bank affiliates or

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prudent credit practices is already adequately dealt with by the limitations under which BTSC would conduct its activities.

Bankers Trust contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagal Act prohibits the affiliation of a member bank, such as Bankers Trust Company, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Bankers Trust states that it would not be "engaged principally" in underwriting and dealing in securities in light of the 5 percent revenue limitation on these activities, previously adopted by the Board and upheld in court. *See, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System* , 839 F.2d 47 (2d cir. 1988), *cert. denied*, 108 S. Ct. 2830 (1988); and *Securities Industry Association* v. *Board of Governors/Chase*, 847 F.2d 890 (D.C. Cir. 1988).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 8, 1988.

Board of Governors of the Federal Reserve System, November 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26265 Filed 11-14-88; 8:45 am]

BILLING CODE 6210-01-M

The Chase Manhattan Corp., New York, NY; Proposal To Underwrite and Deal in Debt Securities and Preferred Stock to a Limited Extent

The Chase Manhattan Corporation ("Chase"), New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary Chase Manhattan Capital Markets Corporation, New York, New York ("CMCMC"), to underwrite and deal in, to a limited degree, preferred stock and all types of debt securities, including without limitation, debt securities convertible into equity securities and ownership interests in trusts or other vehicles secured by or representing interests in debt obligations. The issuers of such securities may be foreign and domestic corporations, trusts, foreign governments, political subdivisions, agencies and instrumentalities of such governments, supranational organizations and other entities whose securities are not eligible for bank underwriting and dealing.

CMCMC is currently authorized to underwrite and deal in, to a limited extent, 1–4 family mortgage-related securities, municipal revenue bonds, commercial paper and consumer-receivable-related securities ("ineligible securities"). *Citicorp, J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) ("*Citicorp/Morgan/Bankers Trust*"); *Citicorp*, 73 Federal Reserve Bulletin 619 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987). CMCMC is also authorized to underwrite and deal in U.S. government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y ("bank-eligible securities"). 12 CFR 225.25(b)(16). In addition, CMCMC has received approval to provide investment advisory and securities brokerage services on a combined basis to institutional customers. *The Chase Manhattan Corporation*, 74 Federal Reserve Bulletin 704 (1988).

Chase has applied to underwrite and deal in the proposed securities within the framework of limitations established in the *Citicorp/Morgan/Bankers Trust* Order, including the 5 percent gross revenue limitation. Accordingly, under this application the amount of gross revenue CMCMC would receive from the proposed new ineligible underwriting activity and the previously approved ineligible activity would not exceed in the aggregate 5 percent of the total gross revenues of CMCMC.

The Board has not previously determined that the proposed underwriting and dealing activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Chase contends that the proposed activities are closely related to banking because banks have generally engaged in activities that are functionally and operationally similar to underwriting and dealing in debt securities and preferred stock. These services include corporate lending, underwriting and dealing in bank-eligible securities, providing advice for mergers and acquisitions and corporate financings generally, arranging private placements of securities and managing their own portfolios and fiduciary accounts.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Chase maintains that permitting bank holding companies to engage in the proposed activities would result in increased competition in highly concentrated markets, lower financing costs, more innovative financing, greater liquidity into the markets for the proposed securities and greater convenience for customers. Chase contends that the proposed activities would not result in adverse effects because any potential for conflicts of interests and other adverse effects is adequately addressed by the combination of various statutory protections as well as the conditions and limitations established in the *Citicorp/Morgan/Bankers Trust* Order. Moreover, Chase argues that underwriting and dealing in the proposed securities is not a risky activity.

Chase contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Chase Manhattan Bank, N.A., with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Citicorp states that it would not be "engaged principally" in underwriting and dealing in securities in light of the 5 percent limitation on these activities. *See, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2nd Cir. 1988), *cert. denied*, 108 S. Ct. 2830 (1988); and *Securities Industry Association* v. *Board of Governors/Chase*, 847 F.2d 890 (D.C. Cir. 1988).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 8, 1988.

Board of Governors of the Federal Reserve System, November 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26267 Filed 11-14-88; 8:45 am]

BILLING CODE 6210-01-M

Citicorp, New York, NY; Proposal To Underwrite and Deal in Debt Securities to a Limited Extent

Citicorp, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary Citicorp Securities Markets, Inc., New York, New York ("CSMI"), to underwrite and deal in, to a limited degree, all types of debt securities, including, but not limited to, (1) debt securities issued by a corporation, partnership, trust or other obligor, (2) debt securities issued by a foreign government or a political subdivision, agency or instrumentality thereof, and (3) securities directly or indirectly evidencing interests in a pool of underlying assets which are comprised of debt obligations (not including securities of open-end investment companies). The above securities would include debt securities which are convertible into equity securities as well as those which are investment grade, not-investment grade, or unrated securities.

CSMI is currently authorized to underwrite and deal in, to a limited extent, 1–4 family mortgage-related securities, municipal revenue bonds, commercial paper and consumer-receivable-related securities ("ineligible securities"). *Citicorp, J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) ("*Citicorp/Morgan/Bankers Trust*"); *Citicorp*, 73 Federal Reserve Bulletin 619 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987). CSMI is also authorized to underwrite and deal in U.S. Government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y ("bank-eligible securities"). 12 CFR 225.25(b)(16).

Citicorp has applied to underwrite and deal in debt securities within the framework of limitations established in the *Citicorp/Morgan/Bankers Trust* Order, including the 5 percent gross revenue limitation. Accordingly, under this application the amount of gross revenue CSMI would receive from the proposed new ineligible underwriting activity and the previously approved ineligible activity would not exceed in the aggregate 5 percent of the total gross revenues of CSMI.

The Board has not previously determined that the proposed underwriting and dealing activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Citicorp contends that the proposed activities are closely related to banking because banks have generally engaged in activities that are functionally and operationally similar to underwriting and dealing in debt securities. These services include corporate lending, underwriting and dealing in bank-eligible securities, private placement of debt and equity securities, investing in debt securities, overseas underwriting and dealing and issuing corporate debt.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Citicorp maintains that permitting bank holding companies to engage in the proposed activities would result in greater convenience for customers and increased competition, and will also produce a new source of income for bank holding companies, as well as increased liquidity of their balance sheets, and thereby increase their safety and soundness. Citicorp contends that the proposed activities would not result in adverse effects because Citicorp would conduct the proposed activities within the framework of limitations previously established by the Board in its *Citicorp/Morgan/Bankers Trust* Order. Moreover, Citicorp states that section 23B of the Federal Reserve Act (12 U.S.C. 371c-1), which was enacted after the *Citicorp/Morgan/Bankers Trust* Order was issued, will serve to provide additional protection in this area.

Citicorp contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Citibank, N.A., with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Citicorp states that it would not be "engaged principally" in underwriting and dealing in securities in light of the 5 percent limitation on these activities. *See, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S. Ct. 2830 (1988); and *Securities Industry Association* v. *Board of Governors/Chase*, 847 F.2d 890 (D.C. Cir. 1988).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 8, 1988.

Board of Governors of the Federal Reserve System, November 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26268 Filed 11-14-88; 8:45 am]

BILLING CODE 6210-01-M

J.P. Morgan & Co. Inc., New York, NY; Proposal To Underwrite and Deal in Debt Securities to a Limited Extent

J.P. Morgan & Co. Incorporated, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its

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subsidiary J.P. Morgan Securities Inc., New York, New York ("JPMS"), to underwrite and deal in, to a limited degree, all types of debt securities, including, without limitation, sovereign debt securities, corporate debt securities (including corporate debt securities convertible into equity securities), and securities issued by a trust or other vehicle secured by or representing interests in debt obligations (such as asset-backed securities secured by or representing interests in multi-family residential mortgages and commercial mortgages).

JPMS is currently authorized to underwrite and deal in, to a limited extent, 1–4 family mortgage-related securities, municipal revenue bonds, commercial paper and consumer-receivable-related securities ("ineligible securities"). *Citicorp, J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) ("*Citicorp/Morgan/Bankers Trust*"); *J.P. Morgan and Co. Incorporated*, 73 Federal Reserve Bulletin 875 (1987). JPMS is also authorized to underwrite and deal in U.S. government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y ("bank-eligible securities"). 12 CFR 225.25(b)(16). In addition, JPMS has received authorization to provide securities brokerage and investment advice on a combined basis to institutional customers. *J.P. Morgan and Co. Incorporated*, 73 Federal Reserve Bulletin 810 (1987).

J.P. Morgan has applied to underwrite and deal in debt securities within the framework of limitations established in the *Citicorp/Morgan/Bankers Trust* Order, including the 5 percent gross revenue limitation. Accordingly, under this application the amount of gross revenue JPMS would receive from the proposed new ineligible underwriting activity and the previously approved ineligible activity would not exceed in the aggregate 5 percent of the total gross revenues of JPMS.

The Board has not previously determined that the proposed underwriting and dealing activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

J.P. Morgan contends that the proposed activities are closely related to banking because banks have generally either engaged in the proposed activities or in activities that are functionally and operationally similar to underwriting and dealing in debt securities. These services included overseas underwriting and dealing, commercial lending, managing their own investment accounts, advising and assisting issuers in the private placement of securities, evaluating companies in connection with financial advisory activities and bank-eligible underwriting and dealing.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produced benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." J.P. Morgan maintains that permitting bank holding companies to engage in the proposed activities would result in increased competition, lower costs to issuers and investors, increased convenience to customers and a strengthened banking system through diversification of activities. J.P. Morgan contends that the proposed activities would not result in adverse effects, due to applicable state and federal securities laws and regulations, including financial reporting and antifraud and financial responsibility rules applicable to a broker-dealer; the framework of limitations contained in the *Citicorp/Morgan/Bankers Trust* Order; sections 23A and 23B of the Federal Reserve Act; and the relatively low risk associated with underwriting and dealing in securities as compared to bank lending.

J.P. Morgan contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Morgan Guaranty Trust Company of New York, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. J.P. Morgan states that it would not be "engaged principally" in underwriting and dealing in securities in light of the 5 percent limitation on these activities. *See, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System, 839 F.2d 47 (2d Cir. 1988), cert. denied*, 108 S. Ct. 2830 (1988); and *Securities Industry Association* v. *Board of Governors/Chase*, 847 F.2d 890 (D.C. Cir. 1988).

Any request for a hearing on this application must comply with 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC. 20551, not later than December 8, 1988.

Board of Governors of the Federal Reserve System, November 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26269 Filed 11–14–88; 8:45 am]

BILLING CODE 6210–01–M

J.P. Morgan and Co. Inc., New York, NY; Proposal To Underwrite and Deal In Equity Securities to a Limited Extent

J.P. Morgan and Co. Incorporated, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary J.P. Morgan Securities Inc., New York New York ("JPMS"), to underwrite and deal in, to a limited degree, all types of equity securities, including, without limitation, common stock, preferred stock, American Depositary Receipts, and other direct and indirect equity ownership interests in corporations and other entities.

JPMS is currently authorized to underwrite and deal in, to a limited extent, 1–4 family mortgage-related securities, municipal revenue bonds, commercial paper and consumer-receivable-related securities ("ineligible securities"). *J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) ("*Citicorp/Morgan/Bankers Trust*"); *Citicorp, J.P. Morgan and Co. Incorporated*, 73 Federal Reserve Bulletin 875 (1987). JPMS is also authorized to underwrite and deal in U.S. government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y ("eligible securities"). 12 CFR 225.25(b)(16). In addition, JPMS has received authorization to provide securities brokerage and investment advice on a combined basis to institutional customers. *J.P. Morgan and Co. Incorporated*, 73 Federal Reserve Bulletin 810.

J.P. Morgan has applied to underwrite and deal in equity securities within the framework of limitations established in the *Citicorp/Morgan/Bankers Trust* Order, including the 5 percent gross revenue limitation. Accordingly, under this application the amount of gross revenue JPMS would receive from the proposed new ineligible underwriting activity and the previously approved ineligible activity would not exceed in the aggregate 5 percent of the total gross revenues of JPMS.

The Board has not previously determined that the proposed underwriting and dealing activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

J.P. Morgan contends that the proposed activities are closely related to banking because banks generally either have engaged in the proposed activities or in activities that are functionally and operationally similar to underwriting and dealing in equity securities. These services include underwriting and dealing in bank-eligible securities, commercial lending, providing financial advice, managing investment portfolios, providing brokerage services for their trust or other investor clients, private placements of securities, underwriting and dealing in securities outside the United States and purchasing and selling equity securities for their account through affiliates within the limits of the BHC Act.

In determining wheher an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." J.P. Morgan maintains that permitting bank holding companies to engage in the proposed activities would result in increased competition, lower costs to issuers and investors, and a strengthened banking system through diversification of activities. J.P. Morgan contends that the proposed activities would not result in adverse effects, due to applicable state and federal securities laws and regulations; the framework of limitations contained in the *Citicorp/Morgan/Bankers Trust* Order; sections 23A and 23B of the Federal Reserve Act; and the relatively low risk associated with underwriting and dealing in securities.

J.P. Morgan contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Morgan Guaranty Trust Company of New York, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. J.P. Morgan states that it would not be "engaged principally" in underwriting and dealing in securities in light of the 5 percent limitation on these activities. *See, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S. Ct. 2830 (1988); and *Securities Industry Association* v. *Board of Governors/Chase*, 847 F.2d 890 (D.C. Cir. 1988).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 8, 1988.

Board of Governors of the Federal Reserve System, November 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26270 Filed 11–14–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Acquired Immunodeficiency Syndrome Research Review Committee; Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice of meeting.

Summary: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the agency's initial review committee in the month of December 1988. This committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. (552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH.

Date and Time: December 15–16: 8:30 a.m.

Place: Sheraton-Washington Hotel, 2660 Woodley Road, NW., Washington, DC 20008

Status of Meeting: Open—December 15: 8:30–9:15 a.m. Closed—Otherwise.

Contact: Irma Fisher, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of psychoneuro-immunological, psychosocial, behavioral, and psychological aspects of AIDS as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summary of the meeting, and roster of committee members may be obtained as follows: Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Date: November 8, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88–26276 Filed 11–14–88; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Advisory Committee for Injury Prevention and Control; Establishment

ACTION: Notice of establishment, Advisory Committee for Injury Prevention and Control.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Centers for Disease Control announces the establishment by the Secretary of Health and Human Services, on October

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28, 1988, of the following Federal advisory committee:

Designation: Advisory Committee for Injury Prevention and Control.

Purpose: This Committee will advise and make recommendations to the Secretary, the Assistant Secretary for Health, and the Director, Centers for Disease Control, concerning feasible goals for prevention and control of injury. The Committee shall make recommendations regarding policies, strategies, objectives, and priorities; advise on the development of a national plan for injury prevention and control and the development of new technologies and their subsequent application; and review progress toward injury prevention and control. The committee shall advise on the appropriate balance and mix of intramural and extramural research.

Authority for this Committee will expire October 28, 1990, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: November 8, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-26285 Filed 11-14-88; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

[BERC-625-N]

Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Thursday and Friday, December 1 and 2, 1988, from 9:00 a.m. to 5:00 p.m. Eastern Standard Time.

ADDRESS: The meeting will be held in the Multipurpose Room of the Altmeyer Building of the Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Jan Niessing, (301) 966-5319.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is co-chaired by the National Center for Health Statistics and the Health Care Financing Administration.

At this meeting, the Committee will discuss: gastrointestinal procedures, alcohol and drug rehabilitation, catheter issues, external fixation devices, cystotomy vs. cystostomy, update to revision of section 01-05 "Operations on the Nervous System" of the ICD-9-CM, reprogramming a pacemaker, peripheral laser angioplasty, thromboendarterectomy, radial keratomy, insertion of vessel-to vessel cannula, cardiac monitoring and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: November 9, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-26337 Filed 11-14-88; 8:45 am]

BILLING CODE 4120-01-M

[HSQ-167-N]

Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the fourth meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s). The Panel is responsible for the development of a standard method to be used to evaluate the post-hospitalization needs of patients. The meeting is open to the public.

DATE: December 7th and 8th, 1988.

Time: December 7: 8:00 a.m. to 5:00 p.m. PST; December 8: 8:00 a.m. to 5:00 p.m. PST.

ADDRESS: Marina International Hotel, 4200 Admiralty Way, Marina del Rey, California 90292.

FOR FURTHER INFORMATION CONTACT: Sue Nonemaker, (301) 966-6825.

SUPPLEMENTARY INFORMATION: Section 9305(h) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), in amending section 1861(e) of the Social Security Act, requires that hospitals, as a condition to participate in the Medicare program, provide discharge planning. Discharge planning activities vary and we currently lack a standardized method for evaluating a patient's need for health care after hospitalization. The development of a standardized method would allow more uniformity among those responsible for discharge planning and improve determination of a patient's need for post-hospital services.

Section 9305(h) of OBRA '86 requires the Secretary to develop a uniform needs assessment instrument in consultation with an advisory panel made up of experts in the delivery of post-hospital extended care services, home health services, and long term care services. The panel is made up of experts in the delivery of post-hospital extended care services, home health services, long term care services and representatives of physicians, Medicare beneficiaries, hospitals, skilled nursing facilities, home health agencies, long term care providers, and fiscal intermediaries.

Mr. Jay Rudman, Director of the Clinical Social Work Department at the University of California at Los Angeles Medical Center is the chair of the panel.

The Secretary must report to Congress no later than January 1, 1989 his recommendations for the appropriate use of a uniform needs assessment instrument to determine a beneficiary's need for post-hospital extended care.

The panel has had several meetings at which it has been:

- Developing a standard method to evaluate an individual's ability to function or engage in activities of daily living, the nursing and other care requirements necessary to meet health care needs, and the social and familial resources available to the individual;
- Constructing the standard method so that it could be used by discharge planners, hospitals, nursing facilities, other health care providers and fiscal intermediaries in evaluating an individual's needs for post-hospital extended care; and
- Evaluating the advantages and disadvantages of using the tool as a basis for determining whether payment should be made for post-hospital extended care services and home health services which are provided to Medicare beneficiaries.

At this meeting, the Advisory Panel will continue their deliberations regarding the development of the standard method and issues related to the process of implementing a uniform needs assessment instrument. The items of discussion are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program No. 13.773, Medicare—Hospital Insurance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: November 8, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-26338 Filed 11-14-88; 8:45 am]

BILLING CODE 4120-01-M

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirement of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the Medicare Alzheimer's Disease Demonstration," HHS/HCFA/ORD No. 09-70-0039. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice. See "Dates" section for comment period.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Mangement and Budget, on November 9, 1988. The new system of records, including routine uses, will become effective January 17, 1989, unless HCFA recives comments which would warrant modification of this notice.

ADDRESS: The public should address comments to Richard A. De Meo, Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G-M-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Coments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Dennis M. Nugent, Division of Long Term Care Experimentation, Office of Research and Demonstrations, Health Care Financing Administration, Room 2-E-5 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966-6663.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 9342 of the Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986 and 42 U.S.C. 1395b-1 note. The purpose of this system of records is to provide data necessary to evaluate HCFA's Medicare Alzheimer's Disease Demonstration. The demonstration will assess the costs and effects of several different models for including additional services for Alzheimer's victims under the Medical program. The demonstration will be conducted for 3 years in at least 5 (and not more than 10) demonstration sites located throughout the United States. The system will furnish information necessary to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services to Medicare-entitled individuals who are victims of Alzheimer's disease or related disorders.

The system of records is expected to include data collected from the Medicare claims files; Medicare Statistical Systems; patient intake forms; medical evaluation exams; physical and mental status assessments; interviews with formal and informal caregivers; and Medicaid claims systems (to the extent that certain demonstration participants are also entitled to Medicaid). Between 2,500 and 5,000 Medicare-entitled individuals with Alzheimer's diesase or related dementias are expected to enroll in the demonstration. This information will be collected by a contractor.

In order to fulfill the objective and complete tasks in this project, the contractor must have individually-identifiable records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for "routine use"—that is, disclosure for purposes that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for the purpose of administering the Medicare program for which we are responsible. We anticipate the disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: November 7, 1988.

Willliam L. Roper,

Administrator, Health Care Financing Administration.

09-70-0039

SYSTEM NAME:

Evaluation of the Medicare Alzheimer's Disease Demonstration.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Evaluation contractor to be selected by HCFA. Contact system's manager for the location of the contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries with Alzheimer's disease and related dementias who are participating as a treatment or control group member in one of the 5 to 10 demonstration sites to be chosen under this study. (Information will also be obtained from each participant's informal caregiver(s), but that information will be collected as a part of each participant's record.)

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain information concerning a participant's name, Health Insurance Claim number, demographic characteristics (e.g., age, education, income), medical diagnoses and conditions, receipt of services, functional status, and cost and utilization of health services. Medical, social, and other information is also expected to be collected from each patient's informal caregiver(s) as part of the participant's record in order to evaluate the impact of the demonstration on caregivers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9342 of Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986 and 42 U.S.C. 1395b-1 note

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PURPOSE(S):

To provide data necessary to evaluate the impact of HCFA's Medicare Alzheimer's Disease Demonstration on access, cost, utilization, and quality of services to the participants in this study as well as their informal caregivers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To the evaluation contractor, to be selected by HCFA, who will use this information to evaluate the Medicare Alzheimer's Disease Demonstration. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

2. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) The Department of Health and Human Services (HHS), or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To a contractor for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system, or for developing, modifying and/or manipulating it with ADP software. Data would also be available to users incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by beneficiary's name and health insurance claim number.

SAFEGUARDS:

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, the contractor will initiate automated data processing (ADP) system security procedures required by HHS *ADP Systems Manual*, Part 6, "ADP Systems Security" (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic tapes with identifiers will be retained in secure storage areas. Records will be retained for one year after the termination of the evaluation contract. The disposal techniques of degaussing will be used to strip magnetic tape of all identifying names and numbers. Hardcopy records will be destroyed at this time.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the system manager at the address indicated above. The requestor must specify the name, address, and health insurance number.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should reasonably specify the record contents being sought. These procedures are in accordance with Department Regulations 45 CFR 5b.5(a)(2).

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). These procedures are in accordance with Department Regulations 45 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system ar expected to include: Data collected from the Medicare claims files; Medicare Statistical Systems; patient intake forms; medical evaluation examinations; physical and mental status assessments; interviews with informal caregivers; and Medicaid claims systems (to the extent that certain participants are also entitled to Medicaid).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-26308 Filed 11-14-88; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Human Fetal Tissue Transplantation Research Panel; Meeting

Notice is hereby given that the Human Fetal Tissue Transplantation Research Panel, an ad hoc group of consultants to the Advisory Committee to the Director, NIH, will meet on December 5, 1988 to conclude its work in preparing a report on the use of human fetal tissue in transplantation research. The Panel met previously on September 14–16 and October 20–21. This meeting will conclude the work of the Panel in examining the scientific, legal, and ethical issues sourrounding this issue. The Panel will convene at 8:00 a.m. on Monday, December 5, 1988 and conclude at 5:00 p.m. The meeting will be held in the Shannon Building, Wilson Hall, at the National Institutes of Health in Bethesda, MD.

Public testimony on these issues has already been solicited and received by the Panel at its September meeting. This session is open to the public for observation on a first-come, first-seated basis. The Panel will present its report to the Advisory Committee to the Director, NIH, in a public meeting on December 14–15, 1988. This meeting also will be announced in the **Federal Register.**

Dated: November 4, 1988.

James B. Wyngaarden,

Director.

[FR Doc. 88-26275, Filed 11-14-88; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Statement of Organization, Functions and Delegation of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S1 is amended to add division and staff level subcomponents and functions within the Office of the Deputy Commissioner for Management (DCM). Notice is also given of the revision of Chapter S6, Office of the SSA Chief Financial Officer (OSSACFO), to change the name of the Program and Integrity Field Office (S6B–F1—S6B–FX) to the Office of Regional Program and Integrity Reviews (S6B–F1—S6B–FX). The new material and changes are as follows:

Section S1B.10 The Office of Budget—(Organization)

Add:

D. The Division of Administration Budget (S1BB).

E. The Division of Program Budget (S1BA).

Section S1B.20 The Office of Budget—(Functions)

Add:

D. The Division of Administrative Budget (S1BB).

1. Interprets administrative budgetary policies and limitations and develops and issues guidelines and instructions to SSA components for budget formulation and execution.

2. Formulates the total SSA administrative budget.

3. Executes the total administrative and program budgets for SSA through issuance of workyear and dollar controls, budgetary allotments/allowances for administrative and program expenditures and employment ceilings to SSA components, coordinating with the Office of Budget's (OB) Division of Program Budget, as appropriate.

E. The Division of Program Budget (S1BA).

1. Reviews and consolidates present statutory program cost estimates for trust fund and other Federal fund programs administered by SSA (Old Age, Survivors and Disability Insurance, Black Lung Benefits and Supplemental Security Income). Formualtes a unified Agency budget through consolidated or program and administrative budgets, coordinating with OB's Division of Administration Budget (DAB), as necess ıry.

2. Coordinates presentation of the SSA budget in total and by account; presents the proposed budget to the Commissioner; develops budget documents and briefing material for the Commissioner's budget presentation to HHS, the Office of Management and Budget (OMB) and Congress.

3. Reviews, coordinates and presents program cost estimates for proposed legislative, operational policy and regulatory changes. Formulates or directs the formulation of administrative cost estimates for proposed legislative, operational policy and regulatory changes, coordinating with OB's DAB and other SSA components, as necessary. Provides financial management advice to the Commissioner and other SSA officials in the policy development process.

4. Serves as the SSA focal point for budget information provided to HHS, OMB, congressional appropriations and budget staffs and, as requested by SSA's Office of Governmental Affairs, representatives of the media.

Section S1C.10 The Office of Civil Rights and Equal Opportunity—(Organization)

Add:

D. The Division of Complaints Analysis and Monitoring (S1CA).

E. The Division of Equal Opportunity Planning and Studies (S1CB).

Section S1C.20 The Office of Civil Rights and Equal Opportunity—(Functional)

Add:

D. The Division of Complaints Analysis and Monitoring (S1CA).

1. Directs implementation and evaluation of the SSA Equal Employment Opportunity Discrimination Complaint program for both Headquarters and the field; provides advice, guidance and assistance to SSA officials concerning the discrimination complaint program area and related management matters.

2. Provides leadership, guidance and direction in formulating and implementing SSA policies, regulations and procedures pertaining to the timely, accurate, fair and impartial processing of discrimination complaints throughout the Headquarters and field organizations.

3. Provides overall direction regarding all aspects of SSA's complaint system in order to ensure uniformity in complaint handling, resolution and disposition. Directs the preparation of guidelines on all complaint matters.

4. Prepares proposed dispositions on complaints of discrimination against SSA. Ensures compliance with any corrective or remedial action directed by SSA, HHS, Equal Employment Opportunity Commission (EEOC) or any other agency having authority to so direct.

5. Develops litigation information and documentation for the Office of the General Counsel and the U.S. Attorney's Office in employment discrimination court suits filed against SSA. Prepares the Agency's brief for complaints appealed to EEOC. Also, responds to interrogatories submitted in class complaints. Anaylzes new and recent court decisions, public laws and Federal regulations for their impact on SSA complaint processing.

6. Directs special projects and studies of the various aspects of SSA's nationwide discrimination complaint process to evaluate the overall effectiveness of the equal opportunity program. Directs the analysis of trends observed during projects and studies and implements new procedures as required.

7. Provides the authoritative interpretations on legal, regulatory and technical discrimination complaint matters to SSA management nationwide.

E. The Division of Equal Opportunity Planning and Studies (S1CB).

1. Directs the development and monitoring of SSA's equal opportunity action program.

2. Provides staff support and guidance to Headquarters and field components in the development of sound affirmative action programs. Approves, on behalf of the Deputy Commissioner, affirmative action plans prepared by components and regions. Develops the overall SSA affirmative action plan.

3. Develops guidelines and procedures for effective affirmative action planning and monitoring throughout SSA. Develops recommendations on affirmative action policy and operations for the Director of the Office of Civil Rights and Equal Opportunity.

4. Reviews equal opportunity policy issuances, EEOC and court decisions for applicability to SSA policy statements. Develops instructions and guidelines to transmit or implement equal opportunity policy decisions in SSA.

5. Conducts and coordinates studies or analyses on personnel policies, recruitment procedures, and developmental programs to assess equal opportunity impact.

6. Directs the maintenance of a minority employment informatin system for SSA employees.

7. Develops and tracks SSA's major initiatives that relate to civil rights and

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equal opportunity and oversees their implementation.

8. Plans, directs and implements special programs for minority, female, Hispanic and handicapped employees of SSA.

9. Directs the SSA-wide program of processing civil rights complaints, which involves applying standards under the civil rights statutes. Develops SSA standards, consistent with HHS guidance and standards, for delivering services to individuals and meeting other SSA commitments under civil rights statutes.

10. Develops SSA compliance program under civil rights statutes.

11. Coordinates with, and reports to, HHS' Office of Civil Rights on SSA's civil rights compliance function.

Section S1G.10 The Office of Materiel and Information Resources—(Organization)

Subsection C. The Office of Information Management (S1GA).

Add:

1. The Division of Office Systems (S1GA1).

2. The Division of Information Resource Management (S1GA2).

3. The Division of Information Systems Planning and Administration (S1GA3).

4. The Division of Administrative Systems Development (S1GA4).

5. The Division of Management Information Systems Development (S1GA5).

Subsection D. The Office of Communications and Facilities Management (S1GE).

Add:

1. The Division of Communications (S1GE1).

2. The Division of Facilities (S1GE2).

3. The Division of Environmental Protection and Security (S1GE3).

Subsection E. The Office of Publications and Logistics Management (S1GJ).

Add:

1. The Division of Logistics Services (S1GJ1).

2. The Division of Publications Management (S1GJ2).

Section S1G.20 The Office of Materiel and Information Resources—(Functions)

Subsection C. The Office of Information Management (S1GA).

Add:

1. Division of Office Systems (S1GA1)

a. Plans, implements, integrates and controls Office Automation (OA) functions at SSA and is responsible for development and dissemination of OA standards and policies.

b. Monitors technology trends and maintains current information on OA hardware, software and data communications.

c. Works with SSA users to provide solutions to OA needs that are consistent with Agency OA policies.

d. Assists SSA users in determining and refining OA requirements, configuring and engineering solutions, planning for future needs, coordinating implementation and evaluating effectiveness.

e. Assists SSA users in determining network and interfacing needs, implementing solutions, planning for expansion and determining staff training needs.

f. Provides a full range of initial and followup OA support for SSA users in requirements analysis, system design, network needs determination, engineering, implementation, application needs determination, network control, operations support and training.

2. Division of Information Resource Management (S1GA2).

a. Coordinates with the Offices of Acquisition and Grants, Budget, Chief Financial Officer and the staff components under the Deputy Commissioner, Operations on all areas within Division control (e.g., Information Technology Systems (ITS) budget, management information (MI) systems design and delivery, ongoing user support).

b. Directs the development and monitoring of the ITS budget for OA/end-user computing/MI-related hardware, software and services.

c. Directs the preparation, review and approval of OA/end-user computing/MI procurements.

d. Maintains knowledge of each MI area and monitors support provided by division.

e. Directs SSA-wide work measurement and performance management systems, as well as component work measurement systems for the field, State agencies and Regional Program and Integrity Review offices.

f. Directs audits and analyses of MI systems and reports to ensure adherence to users' and Agency needs, Federal and SSA guidelines and integrity standards.

g. Serves as initial point of user contact for MI delivery-related problems.

h. Directs the Office of Information Management's (OIM) total quality management program and manages OIM's production environment, including systems support.

3. Divison of Information Systems Policy and Administration (S1GA3).

a. Plans, formulates, develops and maintains SSA's MI Policy.

b. Develops and maintains strategic and technical level views and plans from an OIM automated information systems integration perspective (e.g., cross application area integration) to define how the various OIM automated information systems map into SSA's MI logical and physical information systems architectures as required by the Agency's MI Policy. Manages the technical aspects related to such views, plans and MI integration.

c. Plans, develops and coordinates MI Policy and integration among all involved SSA components, and plans for the transition to, and integration with, current SSA automated information systems and with those of the future.

d. Initiates and submits project proposals through the formal OIM review and approval process for development of new or modified automated information systems where necessary to facilitate integration among SSA's administrative and MI systems under the Agency's logical and physical MI systems architectures.

e. Represents SSA and works with HHS, other Government agencies and the private sector on issues involving MI policy, automated information systems, integration, software development, exchange of information, information systems data and data base topics, and other MI and automated information systems related matters.

f. Plans develops, administers and maintains SSA's administrative and MI data, and data base requirements and standards in consultation with internal OIM Divisions and external SSA components. Assists in the development, maintenance and enforcement of SSA's end-user computing policies, standards and procedures.

g. Responsible for SSA's Information Systems Data Administration Functions as well as providing support to other internal OIM Divisions and liaison with external components.

h. Responsible for SSA's Information Systems Data Base Administration functions as well as providing support to other internal OIM Divisions and liaison with external components.

4. Divison of Administrative Systems Development (S1GA4).

a. Is responsible for the entire administrative systems development life cycle.

b. Designs, develops, coordinates and implements new administrative application systems and enhancements to existing systems which include quality assurance, financial/physical

and human resources, and planning/policy and procedures.

c. Assists other parts of OIM in procurement associated with application projects.

5. Divison of Management Information Systems Development (S1GA5).

a. Is responsible for the entire MI systems life cycle.

b. Designs, develops, coordinates and implements new MI application systems and enhancements to existing systems which include workload management, work mesurement, program demographics, earnings and employee/employer statistics.

c. Assists other parts of OIM in procurements associated with application projects.

Subsection D. The Office of Communications and Facilities Management (S1GE).

Add:

1. The Division of Communications (S1GE1).

a. Directs the planning, analysis, design and operation of SSA's telecommunications system for the transmission of messages other than digital data. Develops and implements SSA-wide policies, objectives, standards and procedures for this system.

b. Directs the SSA mail management program and plans, develops and implements SSA-wide policies, objectives and standards governing mail and messenger operations. Conducts studies and analyses to improve mail service and to reduce SSA's mail costs, determines the most economical mailing methods for SSA components, beneficiaries and members of the general public. Represents SSA in negotiations with the U.S. Postal Service and provides mail processing and messenger services for SSA Headquarters.

2. The Division of Facilities (S1GE2).

a. Directs the SSA real property program including short- and long-range facilities planning; design, construction and leasing of central office facilities; maintenance, repair and construction projects and policy development related to these operations. Oversees the preventative maintenance program for all Government-owned, SSA-occupied buildings nationwide.

b. Responsible for SSA field facility planning and space management. Acquires, utilizes and manages space at SSA Headquarters and directs a comprehensive space inventory and utilization system. Directs conference and meeting planning efforts.

c. Provides technical guidance, consultation, coordination and advice on architectural and engineering design for SSA, manages a technical drafting service and design support function and provides an engineering resource to plan and review alterations, repairs and improvements to SSA facilities.

d. Develops and implements SSA-wide policies, objectives, standards and procedures in the areas of real property and space management.

3. The Division of Environmental Protection and Security (S1GE3).

a. Develops SSA policy and procedures and directs programs in the areas of protective security, suitability investigations for SSA contractor employees and emergency preparedness program plans.

b. Develops, implements and evaluates SSA's environmental protection and safety programs in conformance with appropriate laws, policies and regulations. Ensures that these programs are responsive to the needs of the Agency. Serves as a central SSA reference point for inquiries, guidance and interpretation and as liaison with HHS and other non-SSA entities and organizations on environmental protection and safety matters.

Subsection E. The Office of Publications and Logistics Management (S1GJ).

Add:

1. Division of Logistics Services (S1GJ1).

a. Administers the SSA logistics management program, including the formulation of SSA-wide policies, procedures and directives pertaining to logistics services.

b. Directs the SSA equipment management program and provides equipment maintenance and repair services to SSA Headquarters components.

c. Manages the operation of SSA warehousing facilities, including receipt, storage and issuance of forms, publications, supplies and equipment for SSA-wide use. Controls the maintenance of stock and provides general labor services for SSA Headquarters.

d. Directs activities related to employee transportation including providing Headquarters passenger, mail and freight transportation services. Develops transportation policies, procedures and standards that apply nationwide.

e. Plans, develops and reviews projects and studies relative to the automated Social Security Supply System and other automated systems related to logistics services.

2. The Division of Publications Management (S1GJ2).

a. Directs a comprehensive SSA printing and publications management program, including forms and publications management, phototype-setting, conventional printing and binding production, reprographics, micro-form publishing, distribution and acquisition.

b. Obtains printing, binding and distribution services from private vendors under contracts negotiated and entered into by the Government Printing Office (GPO).

c. Manages SSA's acquisition, leasing and utilization of reprographic/duplicating equipment and automatic copy-processing and copy-duplicating machines.

d. Develops policies, standards and procedures for SSA's forms and publications management, printing, reprographics and distribution programs. Provides SSA-wide services for these programs.

e. Provides SSA liaison on all matters concerning printing policy and acquisition of printing supplies, services and equipment with HHS, GPO and the Congressional Joint Committee on Printing.

f. Directs the administration and maintenance of the SSA library and the SSA historical research program. Coordinates the acquisition and dissemination of information resources in all formats.

g. Directs the SSA records management program, including the SSA vital records program and develops and implements SSA-wide policies, objectives, standards and procedures governing record retention and disposal, files and filing equipment and correspondence.

h. In coordination with SSA's Office of Program and Integrity Reviews, implements the records management aspects of the Privacy Act, including development of necessary records safeguards, review of the accuracy of SSA notices of new and changed records systems and provision of advice and assistance to SSA components on Privacy Act requirements for records management.

Section S1H.10 The Office of Acquisition and Grants—(Organization)

Add:

The Division of Automated Data Processing and Telecommunications Contracts (S1HA).

B. The Division of Contracts and Grants Operation (S1HB).

C. The Division of Acquisition Planning and Policy (S1HC).

Section S1H.20 The Office of Acquisition and Grants—(Functions)

Add:

A. The Division of Automated Data Processing and Telecommunications Contracts (S1HA).

1. Responsible for planning, solicitation, award and administration of contracts, purchase orders, delivery

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orders or other contractual instruments for the entire range of automatic data processing equipment, software and services; voice-grade telecommunications equipment and services and specialized training and computer support equipment.

2. Provides coordination, assistance and guidance in the development of complex procurement requirements and translates these needs into comprehensive solicitation packages to assure the maximum use of full and open competition.

3. Provides procurement advice, guidance and support for the development of acquisition strategies, evaluation techniques and negotiation of business and technical terms and conditions.

B. The Division of Contract and Grant Operations (S1HB).

1. Responsible for planning, solicitation, award and administration of contracts, purchase orders, delivery orders or other contractual instruments for specialized program needs (e.g., program research, development and demonstration through studies and surveys, consultants, systems designs and evaluations) and procurement of administrative supplies, equipment and services in support of SSA's overall operational mission (e.g., technical and professional services, office equipment, moving services, film processing, translations and transcription services).

2. Provides coordination, assistance and guidance in the development of complex procurement requirements and translates these needs into comprehensive solicitation packages to assure maximum use of full and open competition.

3. Provides procurement advice, guidance and support for the development of acquisition strategies, evaluation techniques and negotiation of business and technical terms and conditions.

4. Responsible for planning, placement and administration of grants under all SSA discretionary grants programs (including guidance and support in the selection strategy, evaluation process, budget negotiation, planning and development of policies, procedures, regulations and directives).

C. The Division of Acquisition Planning and Policy (S1HC).

1. Responsible for the planning, development and implementation of comprehensive policies, procedures, regulations and directives for the SSA-wide procurement function.

2. Provides for surveillance, review and evaluation of activities with delegated procurement authority.

3. Provides for audit support (through other Government resources or filed audit) and cost/price analysis support in conjunction with the award, administration and closeout of SSA contracts.

4. Responsible for the planning, analysis and implementation of office automation techniques and a procurement MI system which meets the needs of SSA, HHS, Federal Procurement Data System or others (including receipt, tracking and control of incoming procurement requests; collection, correlation and retrieval of procurement data for statistical reporting purposes; maintenance and operation of automated solicitation mailing list; workload analysis; procurement planning, etc.).

The changes to OSSACFO are as follows:

Section S6B.10 The Office of Program and Integrity Reviews—(Organization)

Revise title and material:

G. The Office of Regional Program and Integrity Reviews (S6B–F1–S6B–FX).

Section S6B.20 The Office of Program and Integrity Reviews—(Functions)

Revise title and material:

G. The Office of Regional Program and Integrity Reviews (ORPIR) (S6B–F1—S6B–FX) manages quality assurance and manages quality assurance and evaluation activities in the field. It conducts independent reviews to determine payment and eligibility error rates in Social Security programs, including errors in Federally-administered State supplementary payments. ORPIR conducts independent reviews to determine the quality of adjudication processes of Social Security programs. ORPIR implements study reviews as formulated by the Office of Program and Integrity Reviews and provides reports, data and analyses; it assists in identifying error trends and sources and recommends corrective actions. It also performs special assessment surveys and analysis.

Dated: October 28, 1988.

John R. Dyer,

Deputy Commissioner for Management.

[FR Doc. 88–26279 Filed 11–14–88; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Pesticide Use Proposal

OMB Approval Number: 1018–0052.

Abstract: The information collected from potential pesticide users is needed to determine the effects of such pesticides prior to its use. The information is used to control the use of pesticides on national wildlife refuges. The Service determines the pesticide's compatibility with refuge purposes, assures use of product as directed in order to protect resources and prevent environmental contamination.

Service Form Number: N/A.

Frequency: On occasion or annually.

Description of Respondents: Individuals and households (Respondents are cooperative farmers who hold permits issued for economic use on national wildlife refuges).

Estimated Completion Time: The reporting burden is estimated to be 6 minutes per response.

Annual Responses: 500.

Annual Burden Hours: 50.

Service Clearance Officer: James E. Pinkerton, 202–653–7500, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: October 27, 1988.

Marvin L. Plenert,

Assistant Director—Refuges and Wildlife.

[FR Doc. 88–26354 Filed 11–14–88; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CO–010–09–4320–02]

Craig, Colorado Advisory Council; Meeting

Time and Date: January 11, 1989 at 10:00 a.m.

Place: BLM-Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public: interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters to be Considered:

1. Recreation 2000.
2. Weed Control.
3. District Riparian Plan.

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, *Phone:* (303) 824–8261.

Dated: November 2, 1988.

William J. Pulford,

District Manager.

[FR Doc. 88–26353 Filed 11–14–88; 8:45 am]

BILLING CODE 4310–GB–M

National Park Service

National Register of Historic Place; Pending Nominations; Connecticut et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 5, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by November 30, 1988.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Fairfield County

Bush—Holley House, 39 Strickland Rd., Greenwich, 88002694.
Umpawaug District School, Umpawaug Rd., Redding, 88002695.

KENTUCKY

Hopkins County

Beulah Lodge, (Hopkins County MPS), KY 70, .5 mi. W of jct. with KY 109, Dawson Springs vicinity, 88002718.
Cox, John, House, (Hopkins County MPS), KY 502, .5 mi. N of Nebo, Nebo vicinity, 88002715.
Cranor School, (Hopkins County MPS), Buttermilk Rd., .2 mi. SE of jct. with Hamby Rd., St. Charles vicinity, 88002721.
Dawson Springs Historic District, (Hopkins County MPS), 100 blk. S. Main St., Dawson Springs, 88002710.
Edmiston, Bazle, House, (Hopkins County MPS), KY 291, .2 mi. W of jct. with KY 109, Nebo vincinity, 88002719.
Gardiner, Dr. Thomas, House, (Hopkins County MPS), 173 Sugg St., Madisonville, 88002727.
Hanson Historic District, (Hopkins County MPS), Roughly Main St. from US 41 to E. Railroad St., Hanson, 88002711.
Harvey, John, House, (Hopkins County MPS), 175 N. Seminary St., Madisonville, 88002731.
Hockersmith, L.D., House, (Hopkins County MPS), 218 S. Scott St., Madisonville, 88002729.
Hotel Earlington, (Hopkins County MPS), 118 E. Main St., Earlington, 88002725.
Jennings, Gabriel, House, (Hopkins County MPS), KY 70, 1 mi. E of jct. with KY 291, Dawson Springs vicinity, 88002720.
Kington, W.W. House, (Hopkins County MPS), 109 Crooked St., Mortons Gap, 88002724.
Madisonville Commercial Historic District, (Hopkins County MPS), Center and Main Sts., Madisonville, 88002712.
Madisonville Public Library, (Hopkins County MPS), 107 S. Union St., Madisonville, 88002728.
Miller, Frederick, House, (Hopkins County MPS), US 62, 2.1 mi. W of White Plains, White Plains vicinity, 88002723.
North Main Street Historic District, (Hopkins County MPS), Roughly 200 and 300 blks. N. Main St., Madisonville, 88002713.
Oakmoor, (Hopkins County MPS), E. Main St., Earlington, 88002726.
Porter, Bradford, House, (Hopkins County MPS), US 41A, 1 mi. W of jct. with KY 630, Nebo vicinity, 88002714.
Ruby, Turner, House, (Hopkins County MPS), 264 S. Union St., Madisonville, 88002730.
Salmon, Richard, House, (Hopkins County MPS), KY 112, Dawson Springs vicinity, 88002722.
Slaton, James E., House, (Hopkins County MPS), CH 1221, Madisonville vicinity, 88002717.
Zion Brick Missionary Church, (Hopkins County MPS), Crossroad Chapel Rd., .3 mi. N of jct. with KY 138, Hanson vicinity, 88002716.

Ohio County

Downtown Hartford Historic District, Roughly 100 and 200 blks. Main St. and Courthouse Sq., Hartford, 88002760.

MASSACHUSETTS

Middlesex County

Varnum Building, 401–405 Bridge St., Lowell, 88002752.

Worcester County

Linwood Mill Historic District, Roughly Linwood Ave., Maple Ct., and Pine Ct., Northbridge, 88002753.

MISSISSIPPI

Grenada County

Wild Wings Mounds (22GR713), Address Restricted, Holcomb vicinity, 88002704.

Hinds County

City Mound (22Hi672) Address Restricted, Jackson 88002703.

Issaquena County

Aden Site (22Is509;22M3), Address Restricted, Valley Park vicinity, 88002698.

Madison County

Strawberry Fields Site (22Md644), Address Restricted, Canton vicinity, 88002707.

Panola County

Batesville Mounds (22Pa500), Address Restricted, Batesville vicinity, 88002702.
Hunt Mound (22Pa980), Address Restricted, Pope vicinity, 88002701.

Sharkey County

Cary Site (22Sh507), Address Restricted, Cary, 88002705.
Leist A Site (22Sh520;22N1), Address Restricted, Rolling Fork vicinity, 88002700.

Tallahatchie County

Allison Mound (22Tl024), Address Restricted, Webb vicinity, 88002708.
Dell Bullion Mound (22T1996), Address Restricted, Grenada vicinity, 88002706.

Yazoo County

Fairview Landing (22Yz561), Address Restricted, Holly Bluff vicinity, 88002699.

NEBRASKA

Madison County

Hotel Norfolk, 108 N. Fourth St., Norfolk, 88002755.

Richardson County

Mount Zion Brick Church, Address Restricted, Barada vicinity, 88002763.

Thurston County

Picotte, Dr. Susan, Memorial Hospital, 505 Matthewson St., Walthill, 88002762.

NEW YORK

Essex County

First Congregational and Presbyterian Society Church of Westport, Main St/CR 10, Westport, 88002750.

Onondaga County

Onondaga County War Memorial, 200 Madison St., Syracuse, 88002754.

Orange County

Cornwall Friends Meeting House, 275 Quaker Ave., Cornwall, 88002751.

Suffolk County

Homan—Gerard House and Mills, Jct. Main St. and Yaphank Rd., Yaphank, 88002761.

NORTH CAROLINA

Wake County

Apex Union Depot, SE corner M. Salem St. and Center St., Apex, 88002697.

OHIO

Erie County

Kelleys Island Historic District, Address Restricted, Kelleys Island, 88002734.

Medina County

Hulburt, Halsey, Homestead, 5484 Seville Rd., Seville vicinity, 88002747.

Summit County

Ranney, Luther B., Farm, 6484 Old Rt. 8, Boston Heights vicinity, 88002749.

Tuscarawas County

Bernhard, Frederick House, 211 E. Front St., Dover, 88002748.

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TEXAS

Tarrant County

Westover Manor, 6 Westover Rd., Westover Hills, 88002709.

WASHINGTON

Chelan County

Lake Chelan Hydroelectric Power Plant (Hydroelectric Power Plants of Washington State, 1890–1938 MPS), Lake Chelan, Chelan vicinity, 88002739.

Clallam County

Elwha River Hydroelectric Power Plant (Hydroelectric Power Plants in Washington State, 1890–1938 MPS), N end of Lake Aldwell, Port Angeles vicinity, 88002741.
Emery Farmstead, Emery Rd., Port Angeles vicinity, 88002746.
Glines Canyon Hydroelectric Power Plant, (Hydroelectric Power Plants in Washington State, 1890–1938 MPS), N end of Lake Mills at Elwha River, Port Angeles vicinity, 88002742.

King County

Boeing, William E., House, Huckleberry Ln., Highlands, 88002743.

Mason County

Cushman No. 1 Hydroelectric Power Plant, (Hydroelectric Power Plants in Washington State, 1890–1938 MPS), S end of Lake Cushman, Hoodsport vicinity, 88002759.
Cushman No. 2 Hydroelectric Power Plant, (Hydroelectric Power Plants in Washington State, 1890–1938 MPS), Skokomish River, Hoodsport vicinity, 88002757.

Skagit County

Lower Baker River Hydroelectric Power Plant, (Hydroelectric Power Plants in Washington State, 1890–1938 MPS), Baker River at S end of Shannan Lake, Concrete vicinity, 88002736.
Minkler, Birdsey D., House, 201 S. Main St., Lyman, 88002745.

Spokane County

Clemmer Theater, W. 901 Sprague Ave., Spokane, 88002758.

Stevens County

Little Falls Hydroelectric Power Plant, (Hydroelectric Power Plants in Washington State, 1890–1938 MPS), Spokane River, Reardon vicinity, 88002737.
Long Lake Hydroelectric Power Plant, (Hydroelectric Power Plants in Washington State, 1890–1938 MPS), Spokane River, Ford vicinity, 88002738.

Whatcom County

Nooksack Falls Hydroelectric Power Plant, (Hydroelectric Power Plants in Washington State, 1890–1938 MPS), Rt. 542 on Nooksack River, Glacier vicinity, 88002735.
Wardner, James F., House, 1103 15th St., Bellingham, 88002744.

WISCONSIN

Ashland County

Trout Point Logging Camp, Address Restricted, Bayfield vicinity, 88002756.

Sheboygan County

Cole Historic District, 501 and 517 Monroe St. and 504, 508, and 516–518 Water St., Sheboygan Falls, 88002696.

The following property is also being considered for listing in the National Register:

CONNECTICUT

Hartford County

Blakeslee Forging Company, Historic Industrial Complexes of Southington TR, 100 W. Main St., Southington, 88002676.

The 15-day commenting period for the following property has been waived in order to assist in its preservation:

MISSISSIPPI

Adams County

Emerald Mound Site (22AD504), Address Restricted, Stanton vicinity, 88002618.

[FR Doc. 88–26226 Filed 11–14–88; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

[Federal Coal Lease M–15965]

Availability of the Final Environmental Impact Statement on the Proposed Area B Expansion of the Big Sky Mine, Rosebud County, MT

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of a final environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) and the Montana Department of State Lands (DSL) are making available a jointly prepared final environment impact statement (EIS) on the proposed Big Sky Area B mine. The EIS has been prepared to assist a decision on the application submitted by Peabody Coal Company (Peabody) for their proposed expansion of a surface coal mine, located approximately 5 miles south-southwest of Colstrip, Montana.

ADDRESSES: Copies of the EIS may be obtained for a limited time from Raymond L. Lowrie, Assistant Director, Office of Surface Mining Reclamation and Enforcement, Western Field Operations, Brooks Towers, Second Floor, 1020—15th street, Denver, Colorado 80202 (Attention: Floyd McMullen); or from Dennis Hemmer, Commissiner, Montana Department of State Lands, Capitol Station, Helena, Montana 59620 (Attention: Bonnie Lovelace).

FOR FURTHER INFORMATION CONTACT: Floyd McMullen, Big Sky Area B EIS Project Leader (telephone: 303–844–3104) at the Denver, Colorado, location given under **"ADDRESSES"**.

SUPPLEMENTARY INFORMATION:

Peabody's Big Sky mine is an existing surface coal mine located approximately 120 miles east of Billings, Montana, and 5 miles south-southwest of Colstrip, Montana. Peabody intends the mine to eventually cover 8,090 acres of land, of which approximately 2,500 acres have already been or are in the process of being mined within Area A of the mine.

Peabody is currently seeking approval to mine 64 million tons of coal at the Area B expansion of the mine over a 23-year period at an average rate of approximately 2.8 million tons per year. The proposed expansion would add 5,435 acrs to the Big Sky mine in sections 23, 24, and 25, T. 1 N., R. 40 E., and secs. 19, 21, 22, and 27 through 33, T. 1 N., R. 41 E., Montana Principle Meridian; 3,200 of these 5,435 acres would be disturbed by mining activities.

The EIS analyzes the probable impacts that would result should OSMRE and Montana DSL approve the application for, and Peabody subsequently expand into, the proposed mine area. The EIS also analyzes the probable cumulative impacts that would result from surface coal mining operations not only at the proposed Big Sky Area B mine but also at the Big Sky Area A mine, and the other 4 existing and 3 proposed mines in its vicinity in southeastern Montana. Three alternatives that treat the available range of decision are evaluated in the EIS. These include: Approval of the applicant's proposal with conditions; approval of the applicant's proposal with conditions and the addition of economic coal reserves in section 36; and disapproval of the applicant's proposal. OSMRE and Montana DSL have identified "approval of the applicant's proposal with conditions, and the addition of economic coal reserves in section 36" as the preferred alternative.

The agencies released a draft of the EIS for public review and comment on July 27, 1988, and received fourteen comment letters. The comments were carefully considered in the preparation of this final EIS. The substantive comments are summarized in the EIS, with specific responses from the agencies.

Date: November 7, 1988.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 88–26262 Filed 11–14–88; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88–37]

Mike's Pharmacy; Denial of Application

On March 7, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Mike's Pharmacy, Inc. (Respondent), 3610 Friday Road, Coloma, Michigan, 49038, proposing to deny its application, dated October 19, 1987, for registration as a pharmacy under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

By letter dated March 22, 1988, Respondent requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On October 3, 1988, Respondent, through counsel, withdrew its request for a hearing. Judge Bittner issued an Order Terminating Proceedings, on October 7, 1988. Accordingly, the Administrator now enters his final order in the matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that Mike's Pharmacy, predecessor of Mike's Pharmacy, Inc., was owned and operated by Michael L. Smith, R.Ph., who also acted as the pharmacy's chief pharmacist. The Sheriff's Department, of Berrien County, Michigan, initiated an investigation of Mike's Pharmacy after receiving information that the pharmacy had filled forged prescriptions. The investigation disclosed that from June 1986 to December 1986, approximately 100 forged controlled substance prescriptions were filled at Mike's Pharmacy. An individual who passed forged prescriptions at Mike's Pharmacy stated that it was "easy" to obtain controlled substances from Mr. Smith. The forged prescriptions were for the controlled substances, Dolophine, Dilaudid, Talwin and Tussionex Suspension.

Many of the prescriptions seized by investigators had no DEA numbers, doctors' signatures or patient addresses. Mr. Smith filled numerous call-in prescriptions for controlled substances without verifying their authenticity. Mr. Smith also repeatedly filled controlled substance prescriptions for an individual who misrepresented himself to be a doctor. Mr. Smith did not properly verify the "doctor's" credentials, and the individual was later arrested for obtaining controlled substances by fraud. The Administrator finds that Mr. Smith knew or should have known that these prescriptions were forged.

Investigators interviewed doctors whose signatures appeared on the prescriptions. These doctors denied seeing any of the alleged patients or writing any of the prescriptions. Mr. Smith did contact one doctor regarding a prescription that did not contain the doctor's signature or a DEA number. The doctor told Mr. Smith that the prescription was a forgery and should not be filled. Instead of notifying the police, Mr. Smith filled the prescription knowing it to be forged. Mr. Smith ignored both his professional obligations as a pharmacist and his legal responsibility as a registrant, when he chose to illegally fill prescriptions for controlled substances which he knew were forgeries or were not issued for a legitimate medical purpose.

As a result of the Michigan state investigation, on August 26, 1987, the Board of Pharmacy of the State of Michigan, Department of Licensing and Regulation, filed an administrative complaint and order for summary disposition against Mike's Pharmacy and Michael L. Smith, as owner. The board suspended Mr. Smith's pharmacist license as well as the pharmacy's license and its license to handle controlled substances. All controlled substances possessed by the pharmacy were seized by the state. On September 10, 1987, the Department entered an order continuing the suspension until further order.

Pursuant to this suspension, on October 17, 1987, Michael L. Smith voluntarily surrendered DEA Certificate of Registration BM0415693, previously issued to Mike's Pharmacy. To avoid the ramifications of the surrender of his DEA registration and the state actions, Mr. Smith then formed Mike's Pharmacy, Inc. Under the new incorporation, Mr. Smith retained 75 percent ownership and another party received 25 percent. Because Mr. Smith divested 25% ownership. Respondent pharmacy met state requirements for new ownership, and new licenses were issued by the Department of Licensing and Regulation. On October 19, 1987, Respondent applied for a new DEA registration, just two days after the voluntary surrender of his previously issued registration.

The Administrator notes that the pharmacy's new application for registration, dated October 10, 1987, bears the name of Richard A. Campbell, R.Ph. as 25% owner. The Administrator has long held that he can look behind a corporate entity to determine who has responsibility for the operation of the pharmacy. See *S & S Pharmacy*, 46 FR 13052 (1981); *Unarex of Plymouth Road d/b/a Motor City Prescriptions*, Docket No. 84–1, 50 FR 6077 (1985), and *Carriage Apothecary, Inc.*, 52 FR 27599 (1987). Mr. Campbell verified that the corporation agreement was simply an "act of friendship" so that Mr. Smith could acquire a DEA registration. To comply with Michgan state law, Mr. Campbell paid $25.00 each for 25 shares of stock in Respondent pharmacy. Mr. Campbell cannot sell or profit from the stock; he must return it to Mr. Smith. Mr. Campbell is not on the board of directors and does not work in or for the pharmacy.

Mr. Smith, on the other hand, is usually in the pharmacy office when the store is open. A registered pharmacist employed by Respondent stated that Mr. Smith does the bookwork, pays the bills and fills a prescription on occasion. No real change is affected by the incorporation and the temporary transfer of 25% ownership of the corporation. Given Mr. Smith's presence at the pharmacy and control of 75% of its stock, the Administrator concludes that Mr. Smith continues to influence and control the pharmacy to a degree which in no way abates the danger to the public presented by Mr. Smith's dispensing practices. The Administrator sees no probability that Mike's Pharmacy, Inc. will operate any differently than did Mike's Pharmacy. The registration of Mike's Pharmacy, Inc. is, therefore, not in the public interest.

In finding that Respondent's application for registration should be denied, the Administrator also relies on his decision in *K & B Successors, Inc.*, Docket No. 82–15, 49 FR 34588 (1984). In that case, a full transfer of ownership was insufficient to override the threat to the public interest created by authorizing the pharmacy to handle controlled substances. In *K & B* the Administrator denied a registration to a pharmacy whose owner had divested himself of ownership but remained as an employee of the pharmacy. The facts of the present case compel the same conclusion. The experience of the predecessor pharmacy in dispensing controlled substances is abysmal. Mr. Smith's incorporation of Respondent does not constitute an effective change in ownership or control. The Administrator finds that he cannot permit the registration of Respondent where it is operated by Mr. Smith, given his past experience dispensing controlled substances.

BEST COPY AVAILABLE

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Therefore, having concluded that the pending application for registration for Mike's Pharmacy, Inc. must be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that the application for registration, executed on October 10, 1987, be, and it hereby is, denied.

This order is effective December 15, 1988.

Dated: November 9, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-26335 Filed 11-14-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entgry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Department of Labor/Bureau of Labor Statistics

May 1989 CPS Supplement on Multiple Jobholding, Flexitime, and Volunteer Work.

One-time, nonrecurring.

Individual or households.

53,200 respondents; 3990 total hours; 4.5 minutes per response; 1 form GPS-1.

This supplement will provide data on flexible work schedules, multiple jobholding and volunteer work for individuals 15 years old or older. This information will be used to provide a more detailed analysis of work practices than is available from basic CPS data or other data sources.

Extension

Employment Standards Administration

Request for Employment Information.

1215-0105; CA-1026.

On occasion.

Businesses or other for-profit; Small businesses or organizations 1,000 respondents; 250 total hours; .25 hr. per response; 1 form. This report is used to collect information regarding Federal employees' wage earning capacities. Information is necessary for determination of continued eligibility for compensation payments under the FECA.

Reinstatement

Employment and Training Administration

Enrollment and Departure Report.

1205-0032; ETA 657.

On occasion.

State or local governments; Businesses or other for profit; Non-profit institutions.

63,000 respondents; 5,229 total hours; 50 minutes per response; 1 form.

This form is used to ascertain whether the applicant accepts assignment to a Job Corps Center. If the assignment is accepted, the form is completed and accompanies the enrollee to the Job Corps Center. It is also a vehicle for accounting for assignments refused by applicants.

Signed at Washington, DC this 8th day of November 1988.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 88-26381 Filed 11-14-88; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Job Corps Advisory Committee (Formerly Named the Job Corps Center Assessment Advisory Committee); Meeting

A public meeting of the Job Corps Advisory Committee will be held on December 12, 1988, commencing at 8:30 a.m., at the National Housing Center, 15th and M Streets, NW., Washington, DC.

The purposes of the meeting are to:

1. Review, discuss, amend, and adopt a formal action plan for the conduct of the balance of its current work on strategic planning for the Job Corps System which will provide a basis for its July report to the Secretary.

2. Discuss and recommend a process for constituting and appointing the membership of the Secretary's Advisory Committee on Job Corps for the future.

Individuals or organizations wishing to submit written statements pertaining to Job Corps center assessment should send 20 copies to Daniel L. Lowry, Acting Director, Office of Job Corps, U.S. Department of Labor, Room N-4508, Washington, DC 20210, telephone (202) 535-0550. Papers will be accepted and included in the record of the meeting if received on or before December 9, 1988.

Signed at Washington, DC, this 8th day of November 1988.

Robert T. Jones,

Assistant Secretary of Labor.

[FR Doc. 88-26382 Filed 11-14-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification; Kintzel Coal Co. et al.

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015, Wilson Boulevard, Arlington, Virginia 22203.

Dated: November 7, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M-81-41-C

FR Notice: 49 FR 13764.
Petitioner: Kintzel Coal Company.
Reg. Affected: 30 CFR 75.1714.
Summary of Findings: Petitioner's proposal to use filtertype self-rescuers in lieu of self-contained self-rescuers considered acceptable alternate method. Granted with conditions.

Docket No.: M-85-200-C

FR Notice: 51 FR 6603.
Petitioner: Mathies Coal Company.
Reg. Affected: 30 CFR 75.1101-8(a).
Summary of Findings: Providing a sprinkler over the electrical belt starter box would result in a diminution of safety. Petitioner's proposal to install the belt starter controls in fireproof steel housings with specific conditions and equipment as outlined in the petition considered acceptable alternate method. Granted with conditions.

Docket No.: M-86-5-C

FR Notice: 51 FR 6379.
Petitioner: Mid-Continent Resources, Inc.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal that whenever the configuration of intake air entries does not permit an underground transformer station to be ventilated by intake air that is coursed directly into the return, the station would be housed in a fireproof structure equipped with fireproof doors and a fire suppression system considered acceptable alternate method. Granted with conditions.

Docket No.: M-86-76-C

FR Notice: 52 FR 27881.
Petitioner: Southern Ohio Coal Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal that the length of trailing cables be increased to 900 feet; all shuttle car breakers be calibrated within 15% of any trip unit setting; breaker settings be checked each shift; and cables be inspected twice each week, considered acceptable alternate method. Granted with conditions.

Docket No.: M-86-90-C

FR Notice: 51 FR 26774.
Petitioner: Consolidation Coal Company.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to house pumps in a fireproof building and install an automatic fire suppression device activated by heat sensors considered acceptable alternate method. Granted with conditions.

Docket No.: M-86-202-C

FR Notice: 52 FR 2306.
Petitioner: Greenwood Mining.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternative method. Granted with conditions.

Docket No.: M-86-228-C

FR Notice: 52 FR 7335.
Petitioner: Pyro Mining Company.
Reg. Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to use a nonpermissible submersible pump in a sealed area with specific conditions acceptable alternative method. Granted with conditions.

Docket No.: M-86-230-C

FR Notice: 52 FR 2307.
Petitioner: BethEnergy Mines, Inc.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Due to roof falls and deteriorating roof support, certain areas of the mine are too difficult and hazardous to examine. Petitioner's proposal to establish monitoring stations at specific locations where examinations for hazardous conditions can be conducted considered acceptable alternate method. Granted with conditions.

Docket No.: M-86-234-C

FR Notice: 52 FR 13145.
Petitioner: Pyro Mining Company.
Reg. Affected: 30 CFR 75.303.
Summary of Findings: Petitioner's proposal to cut the southwest panel into the main aircourse (northeast submain) at the intake air shaft and to use the panel to ventilate number one and three units considered acceptable alternate method. Granted with conditions.

Docket No.: M-86-255-C

FR Notice: 52 FR 6404.
Petitioner: Arch of Kentucky, Inc.
Reg. Affected: 30 CFR 77.803.
Summary of Findings: Proposed use of a two circuit grounding system for petitioner's high voltage power system considered acceptable alternate method of assuring ground continuity. Granted with conditions.

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Docket No.: M–87–6–C

FR Notice: 52 FR 6246.
Petitioner: Tunnelton Mining Company.
Reg. Affected: 30 CFR 75.1100–3.
Summary of Findings: Petitioner's proposal to install a dry waterline along the slope belt for fire protection from October 10 through May 1 considered acceptable alternative method. Granted with conditions.

Docket No.: M–87–7–C

FR Notice: 52 FR 7044.
Petitioner: Consolidation Coal Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of metal locking devices in lieu of padlocks for the purpose of locking battery plugs to machine-mounted battery-powered machines, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–10–C

FR Notice: 52 FR 5218.
Petitioner: Old Ben Coal Company.
Reg. Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to locate a longwall mining unit, with cables and equipment designed to conduct 2400 volts a.c., in by the last open crosscut within 150 feet of pillar workings, with specific equipment and conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–11–C

FR Notice: 52 FR 6242.
Petitioner: The Florence Mining Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded locking metal device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–12–C

FR Notice: 52 FR 6244.
Petitioner: O'Donnell Coal Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–13–C

FR Notice: 52 FR 6242.
Petitioner: Helvetia Coal Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–14–C

FR Notice: 52 FR 6243.
Petitioner: Keystone Coal Mining Corporation.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–17–C

FR Notice: 52 FR 6245.
Petitioner: Preston Energy, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–18–C

FR Notice: 52 FR 6243.
Petitioner: Little Falls Mining Company, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–19–C

FR Notice: 52 FR 6245.
Petitioner: Statue Mining Company, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–20–C

FR Notice: 52 FR 6244.
Petitioner: Mohigan Mining Company, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–21–C

FR Notice: 52 FR 7948.
Petitioner: Sextet Mining Corporation.
Reg. Affected: 30 CFR 75.1103–4.
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–25–C

FR Notice: 52 FR 7335.
Petitioner: Smeltz Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–26–C

FR Notice: 52 FR 7336.
Petitioner: VP–5 Mining Company.
Reg. Affected: 30 CFR 75.1100–3.
Summary of Findings: Petitioner's proposal to install and electric solenoid switch in the waterline for fire protection from November 1 through May 1 and to keep the waterline pressurized during the remaining months considered acceptable method. Granted with conditions.

Docket No.: M–87–27–C

FR Notice: 52 FR 7944.
Petitioner: Consol Pennsylvania Coal Company.
Reg. Affected: 30 CFR 75.1101–8(a).
Summary of Findings: Petitioner's proposal to enclose all combinating belt starter boxes in fireproof steel housings and to properly ventilate with intake air coursed directly into the return aircourse considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–28–C

FR Notice: 52 FR 7945.
Petitioner: Consolidated Coal Company.
Reg. Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide (CO) detection system in all belt entries, utilized as intake aircourses with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–31–C

FR Notice: 52 FR 9969
Petitioner: B. and B. Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–33–C

FR Notice: 52 FR 7947.
Petitioner: Safety Coal Company, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–34–C

FR Notice: 52 FR 7948.
Petitioner: Westerman Coal Company, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–38–C

FR Notice: 52 FR 7946.
Petitioner: Golden Oak Mining Company.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–87–39–C

FR Notice: 52 FR 13775.
Petitioner: Snyder Coal Company.
Reg. Affected: 30 CFR 75.301.
Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–45–C

FR Notice: 52 FR 9971.
Petitioner: Castle Gate Coal Company.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to develop a two-entry system with the belt entry used as a return aircourse during longwall development, and as an intake aircourse during longwall extraction considered acceptable alternate method. Granted in part.

Docket No.: M–87–46–C

FR Notice: 52 FR 9970
Petitioner: Brush Creek Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–47–C

FR Notice: 52 FR 11142.
Petitioner: Terco, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–50–C

FR Notice: 52 FR 10272.
Petitioner: Meshach Coal Company.
Reg. Affected1: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–52–C

FR Notice: 52 FR 9972.
Petitioner: J & W Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–53–C

FR Notice: 52 FR 9970.
Petitioner: Calvary Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–55–C

FR Notice: 52 FR 11767.
Petitioner: H.L. & W. Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–58–C

FR Notice: 52 FR 13145.
Petitioner: McCoy Elkhorn Coal Corporation.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish two evaluation points where a qualified person can examine the quantity and quality of air used to ventilate the return aircourse on a daily basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–60–C

FR Notice: 52 FR 13147.
Petitioner: Scarab Energy Corporation.
Reg. Affected: 30 CFR 77.1605(k).
Summary of Findings: Petitioner's proposal to develop a specific traffic system and rules for the roads, to post them throughout the mine areas and to incorporate them into the training and retraining programs considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–61–C

FR Notice: 52 FR 12096.
Petitioner: Demotto Peerless Coal Company, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded metal locking device in lieu of padlocks for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–63–C

FR Notice: 52 FR 11769.
Petitioner: Peabody Coal Company.
Reg. Affected: 30 CFR 77.216–5.
Summary of Findings: Petitioner's proposal for abandonment which contained provisions to preclude the probability of future impoundment of water considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–65–C

FR Notice: 52 FR 11142.
Petitioner: Mt. Vernon Coal Company.
Reg. Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a single line of automatic water sprinklers for its fire

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protection system at main and secondary belt conveyor drives with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–66–C

FR Notice: 52 FR 11144.
Petitioner: Westmoreland Coal Company.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Due to differing degrees of stability to which roof conditions deteriorate in the tailgate entry as the longwall face is mined, application of the standard would result in a diminution of safety. Petitioner's proposal to establish air monitoring check points at specific locations considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–67–C

FR Notice: 52 FR 13774.
Petitioner: Ray Dean Mining Company, Inc.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–87–68–C

FR Notice: 52 FR 11770.
Petitioner: U.S. Steel Mining Company, Inc.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Due to deteriorating roof conditions and massive roof falls certain return aircourses of the mine cannot be safely traveled. Petitioner's proposal to establish measuring stations where air and methane readings will be taken daily considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–69–C

FR Notice: 52 FR 11143.
Petitioner: W & D Coal Company, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–70–C

FR Notice: 52 FR 12476.
Petitioner: Meadows Coal Company No. 4.
Reg. Affected: 30 CFR 75.1701.
Summary of Findings: Petitioner's proposal method of drilling boreholes in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–72–C

FR Notice: 52 FR 11767.
Petitioner: Abednego Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–76–C

FR Notice: 52 FR 27878.
Petitioner: Lady Blue Coal, Inc.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–77–C

FR Notice: 52 FR 12098.
Petitioner: Krystal Coal Company No. 2.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–79–C

FR Notice: 52 FR 13143.
Petitioner: Bailey Brothers Coal Company.
Reg. Affected: 30 CFR 75.1701.
Summary of Findings: Petitioner's proposed method of drilling boreholes in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–84–C

FR Notice: 52 FR 11767.
Petitioner: Eastern Coal Corporation.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to install a battery plug locking mechanism, which will be affixed by permanent weld to the frame of each scoop in lieu of padlocks considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–90–C

FR Notice: 52 FR 13146.
Petitioner: S.A.B. Coal Company No. 4.
Reg. Affected: 30 CFR 75.1701.
Summary of Findings: Petitioner's proposed method of drilling boreholes in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–91–C

FR Notice: 52 FR 13146.
Petitioner: Rhonda Coal Company.
Reg. Affected: 30 CFR 75.1701.
Summary of Findings: Petitioner's proposed method of drilling boreholes in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–92–C

FR Notice: 52 FR 13774.
Petitioner: Alfred Whited Coal Company No. 3.
Reg. Affected: 30 CFR 75.1701.
Summary of Findings: Petitioner's proposed method of drilling boreholes in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–93–C

FR Notice: 52 FR 13147.
Petitioner: Shannon Coal Company, Inc.
Reg. Affected: 30 CFR 75.1701.
Summary of Findings: Petitioner's proposed method of drilling boreholes in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–94–C

FR Notice: 52 FR 13144.
Petitioner: J and B Mining Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–97–C

FR Notice: 52 FR 13775.
Petitioner: S. and R. Coal Company.
Reg. Affected: 30 CFR 75.1405.
Summary of Findings: Due to the sharp radius curves in the track, undulating pitch of the slope, different types of small lightweight cars, and the system of haulage, the use of automatic couplers on underground mines cars would result in a diminution of safety. Granted with conditions.

Docket No.: M–87–103–C

FR Notice: 52 FR 16465.
Petitioner: Awacs Coal Company.
Reg. Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–105–C

FR Notice: 52 FR 16464.
Petitioner: A & J Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–110–C

FR Notice: 52 FR 18753.
Petitioner: Fox Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–111–C

FR Notice: 52 FR 21389.
Petitioner: C.R. Howard, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded locking device in lieu of padlocks for the purpose of locking battery plugs to machine mounted battery power machines, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–123–C

FR Notice: 52 FR 23373.
Petitioner: K. and H. Coal Company.
Reg. Affected: 30 CFR 75.301.
Summary of Findings: Proposed airflow reduction in petitioner's mine which would maintain a safe and healthful atmosphere considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–140–C

FR Notice: 52 FR 27876.
Petitioner: Consolidation Coal Company.
Reg. Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (not to exceed 4,160 volts) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions considered acceptable alternate method. Granted in part.

Docket No.: M–87–169–C

FR Notice: 52 FR 29087.
Petitioner: The NACCO Mining Company.
Reg. Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (not to exceed 4,160 volts) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

[FR Doc. 88–26365 Filed 11–14–88; 8:45 am]
BILLING CODE 4510–43–M

[Docket No. M–88–206–C]

R and B Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

R and B Mining Company, R.D. No. 4, Box 393–A, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 2 Slope (I.D. No. 36–07877) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extemely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet a minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet a minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet a minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 15, 1988. Copies of the petition are available for inspection at that address.

Dated: November 7, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–26384 Filed 11–14–88; 8:45 am]
BILLING CODE 4510–43–M

[Docket No. M–88–207–C]

R and B Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

R and B Mining Company, R.D. No. 4, Box 393–A, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 2 Slope (I.D. No. 36–07877) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on

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knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (December 15, 1988. Copies of the petition are available for inspection at that address.

Date: November 3, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-26383 Filed 11-14-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM

Public Review Meeting To Solicit Comment on Assessment Plan

ACTION: Notice of meeting.

DATE: Thursday, November 17, 1988; 9:00 a.m.

PLACE: Auditorium, U.S. Department of Health and Human Services (Cohen Bldg.), 4th and C Sts. SW., Washington, DC.

SUMMARY: This notice includes an agenda for a public review meeting of the National Acid Precipitation Assessment Program (NAPAP) to solicit public comment on its Assessment Plan.

FOR FURTHER INFORMATION CONTACT: Robert Downing, Office of the Director, National Acid Precipitation Assessment Program, 722 Jackson Place NW., Washington, DC 20503. Telephone (202) 395-5771.

BACKGROUND: The National Acid Precipitation Assessment Program is an interagency research program on acidic deposition. In 1989 and 1990, NAPAP will produce assessment reports on the causes and effects of acidic deposition in the United States, combined with analyses of the costs and effectiveness of various control measures.

A public review draft of NAPAP's Assessment Plan was released on October 12, 1988. The Plan outlines specific questions being addressed by NAPAP for its 1989 State of Science and State of Technology reports and its 1990 Integrated Assessment. The Plan also describes the data and analysis methods being used to answer the assessment questions, and the level of scientific confidence expected for the various answers. Copies of the public review draft of NAPAP's Assessment Plan are available upon written request from the NAPAP Office of the Director, 722 Jackson Place NW., Washington, DC 20503.

A public review meeting to receive comments on the Assessment Plan will be held November 17, 1988 in Washington, DC. Persons who registered their intent to present oral comments as of November 4, 1988 have been allotted speaking times. Additional persons wishing to present oral comments at the meeting can arrange to do so at the registration desk on the day of the meeting.

Public Review Meeting on the NAPAP Assessment Plan

Agenda

9:00 a.m. Overview of the NAPAP Assessment Plan—James R. Mahoney, Director, NAPAP.

9:45 a.m. The NAPAP Assessment Development Process—Patricia Irving, Senior Ecologist, NAPAP.

Statements by Pre-Registered Speakers

10:00 a.m. The Honorable Paul Heinbecker—Minister (Political), Embassy of Canada.

10:12 a.m. Mr. Howard L. Ferguson—Assistant Deputy Minister, Environment Canada.

10:24 a.m. Mr. John Leary—Colorado Department of Health.

10:36 a.m. Break.

11:00 a.m. Mr. Joseph Goffman—The Environmental Defense Fund.

11:12 a.m. Mr. John Jansen—Southern Company Services, Inc.

11:24 a.m. Mr. John McManus—American Electric Power Service Corp.

11:36 a.m. Mr. James E. Sullivan—The Ohio Electric Utility Institute.

11:48 p.m. Mr. Michael L. Teague—The Utility Air Regulatory Group.

12:00 p.m. Mr. Marchant Wentworth—The Izaak Walton League.

12:12 p.m. Additional speakers, lunch break (if necessary), and closing remarks—James R. Mahoney.

Additional requests to present oral comments will be filled on a first-come, first-served basis on the day of the meeting. Information will be available at the meeting registration desk.

Written comments on the Assessment Plan will also be accepted through November 30, 1988. Comments received during the public review period will be reflected in a revised Plan to be published in January 1989.

James R. Mahoney,

Director.

[FR Doc. 88-26339 Filed 11-14-88; 8:45 am]

BILLING CODE 3128-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services; Conservation Project Support Program; Grant Application Availability

AGENCY: Institute of Museum Services, NFAM.

ACTION: Grant application availability notice for Fiscal Year 1989.

This grant application announcement applies only to the Conservation Project Support program awards under 45 CFR Part 1180 for Fiscal Year 1989.

Nature of Program: IMS makes awards under the CP program to all types of museums (aquariums, arboretums and botanical gardens, art, children's, general, history, historic houses/sites, natural history, nature centers, planetariums, science/technology centers, specialized, and zoos) to assist with the conservation of their collections, both living and non-living. The purpose of these awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions. Section 206 of the Museum Sevices Act, Title II of Pub. L. 94-462, as amended, contains authority for this program. (20 U.S.C. 965)

Deadline Date For Transmittal of Applications: An application for a new grant must be mailed or hand-delivered by Friday, January 27, 1989.

Applications Delivered by Mail: An application sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-cancelled by the U.S. Postal Service.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the Institute of Museum Services, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506.

IMS will accept a hand-delivered application between 9:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

Program Information: Program information is contained in the following: Final regulations published June 17, 1983 in **Federal Register** Vol. 48, no. 118, pages 27727-27734; amendments published on April 10, 1984 **Federal Register** Vol. 49, no. 70, pages 14106-14111 and on June 15, 1984 **Federal Register** Vol. 49, no. 117, pages 24731-24733; notice of proposed rulemaking published on October 5, 1984 **Federal Register** Vol. 49, No. 195, pages 39346-39349; final guidelines and standards published July 5, 1985 in **Federal Register** Vol. 50, no. 129, pages 27584-27589; the Application forms and accompanying instructions in the Application Packet. See paragraph on Application form.

Available Funds: $3,200,000 is available for FY 1989. Normally, IMS makes matching conservation grants of no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstances warrant, the Director, with the advice of the Board, may award a conservation grant which obligates in excess of $25,000 in Federal funds. The Director may make such a determination with respect to a category of conservation grants by notice published in the **Federal Register**. IMS awards conservation grants only on a matching basis. At least 50% of the costs of a project must be met with non-federal funds. (See 45 CFR 1180.16(b)).

Application Forms: IMS mails application forms and program in a CP Application Packet to museums and other institutions on its mailing list. Applicants may obtain Application Packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506, (202/786-0539).

Applicable Regulations: Final regulations for the Conservation Project Support grant program were published in the **Federal Register** on June 17, 1983 FR Vol. 48, No. 118, pages 27727-27734. Amendments to these regulations were published on April 10, 1984, 49 FR 14110, on July 5, 1985 50 FR 27585-27588, and on December 2, 1986, FR Vol. 51, No. 231, pp. 43351-43354.

The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions and other terms for the administration of the Conservation Project Support Program and remove unneeded provisions. As amended, the regulations published on June 17, 1983 will apply to the award of grants for Fiscal Year 1989.

Further Information: For further information contact Theresa Michel, Public Information Officer, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone: (202) 786-0536.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: November 7, 1988.

Lois Burke Shepard,

Director, Institute of Museum Services.

[FR Doc. 88-26328 Filed 11-14-88; 8:45 am]

BILLING CODE 7036-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-6 for the Big Rock Point Plant, located in Charlevoix County, Michigan, and operated by Consumers Power Company (the licensee).

Environmental Assessment

Identification of Proposed Action

In accordance with the licensee's application dated July 5, 1988, as modified October 10, 1988, the proposed amendment would modify Big Rock Point Plant Technical Specifications by replacing the requirement to partial-stroke test the Reactor Depressurization System (RDS) depressurizing valves quarterly with a requirement to full-stroke test all four depressurizing valves each refueling outage.

The Need for the Proposed Action

The proposed amendment is necessary because the currently required partial-stroke test has been found to be both a less-than-optimum test of valve operability and a substantial contributor to the causes of RDS depressurizing valve pilot valve leakage. That leakage, in turn, has been the cause of a substantial proportion of the plant's forced outages. Because, in general, a plant in a stable state is inherently less public risk than a plant in a changing state, those cooldowns and heatups have created unnecessary public risk. The proposed full-stroke test cycle, although with less frequent testing, does provide the optimum test of valve operability with less inherent risk to the public.

Environmental Impacts of the Proposed Action

Based upon the analysis contained in the Safety Evaluation to be issued with the proposed amendment, the proposed action will not involve a significant change in the probability or consequences of any accident previously evaluated. Consequently, any radiological releases would not be significantly greater than previously determined, nor does the proposed amendment otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

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Agencies and Persons Consulted

The Commission's staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for amendment dated July 5, 1988, and October 10, 1988, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland, this 4th day of November 1988.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Assistant Director for Regions III and V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26333 Filed 11-14-88; 8:45 am]

BILLING CODE 7590-01-M

Backfit Analysis for Regulatory Guide; Selection, Design, Qualification, Testing, and Reliability of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants

AGENY: Nuclear Regulatory Commission.

ACTION: Backfit Analysis for Regulatory Guide 1.9, Proposed Revision 3, "Selection, Design, Qualification, Testing, and Reliability of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants."

SUMMARY: The Nuclear Regulatory Commission has amended its regulations to require that light-water-cooled nuclear power plants be capable of withstanding a total loss of alternating current (ac) electric power (called station blackout) for a specified duration and maintaining reactor core cooling during that period. That amendment, 10 CFR 50.63, was published in the **Federal Register**, June 21, 1988 (53 FR 23203).

The resolution of unresolved Safety Issue (USI) A-44, "Station Blackout," included a regulatory guide on station blackout (Regulatory Guide 1.155, "Station Blackout"), which identified a need for a reliability program designed to maintain and monitor the reliability level of each power source over time for assurance that the selected reliability levels are being achieved. Regulatory Guide 1.9, Revision 3, which is the resolution of Generic Safety Issue (GSI) B-56, will provide guidance for use by the staff or industry to review the adequacy of diesel generator programs consistent with the station blackout rule.

ADDRESSES: Copies of the documents mentioned in this backfit analysis are available for inspection or copying for a fee at the NRC Public Document Room (DPR), 2120 L Street NW., (Lower Level), Washington, DC. Copies of rules, NUREG documents, and regulatory guides may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5825 Port Royal Road, Springfield, VA 22161. Single copies of draft regulatory guides are available at no charge by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services.

FOR FURTHER INFORMATION CONTACT: Aleck W. Serkiz, Division of Safety Issues Resolution, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-3923.

SUPPLEMENTARY INFORMATION:

Backfit Analysis for Regulatory Guide 1.9, Revision 3, "Selection, Design, Qualification, Testing, and Reliability of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants"

Revision 3 to Regulatory Guide 1.9 is closely related to the resolution of USI A-44, "Station Blackout." The station blackout rule (10 CFR 50.63) was published in the **Federal Register** on June 21, 1988. Regulatory Guide 1.155, "Station Blackout" (which provides guidance for compliance with the rule), specifies that an emergency diesel generator (EDG) reliability program be implemented to maintain and monitor the reliability level of each power source over time for assurance that the selected reliability levels are being achieved. An EDG reliability of 0.95 (or higher) is needed to limit the frequency of station blackout events to an acceptable level. Regulatory Guide 1.155 identifies program elements that should be included in an EDG reliability program.

Revision 3 to Regulatory Guide 1.9 will not introduce any additional regulatory requirements or guidance beyond those required to meet 10 CFR 50.63 "Loss of All Alternating Current Power." The guide incorporates a "reference" EDG reliability program similar to that described in NUREG/CR-5078, Vol. 1, April 1988.

The regulatory analysis developed for USI A-44 is also applicable to the resolution of B-56. The regulatory analysis for USI A-44 is reported in NUREG-1109, June 1988.

The information that follows is provided in answer to specific requirements of 10 CFR 50.109(c).

(1) Statement of specific objectives that the proposed backfit is to achieve.

The objective of Revision 3 to Regulatory Guide 1.9 is to ensure that an adequate EDG reliability program will be implemented by licensees to achieve and maintain the EDG reliability levels selected for compliance with 10 CFR 50.63.

(2) General description of activity that would be required by the licensee or applicant in order to complete the backfit.

To conform with the guide, licensees must have a reliability program consisting of surveillance testing, reliability monitoring, and maintenance programs for the emergency diesel generators. An information and data collection system and a management oversight program are also specified.

Licensees currently have plant-specific EDG maintenance and operational procedures that result in industry-wide average reliability levels on the order of 98% or higher. Thus most licensees will have to make little or no changes.

(3) Potential change in the risk to the public from accidential offsite release of radioactive material.

The risk estimates provided in NUREG-1109 are applicable. In the absence of an adequate EDG reliability program, assurance would be lacking that proper levels of EDG reliability and these estimates of risk were being maintained.

(4) Potential impact of radiological exposure of facility employees.

No radiological exposure is projected. The implementation of an EDG reliability program is not expected to require personnel to be exposed to radiation.

(5) Installation and continuing costs associated with the backfit, the cost of facility downtime, or the cost of construction delay.

No facility downtime or construction delays due to the implementation of Revision 3 to Regulatory Guide 1.9 are envisioned. The continuing costs associated with maintaining a diesel reliability program should be small since most operating plants currently have some form of an EDG reliability and maintenance program. Cost estimates for improving EDG reliability were estimated at $150,000 to $400,000 per reactor (10 reactors affected) as part of the station blackout regulatory analysis (NUREG-1109).

(6) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements.

This guide will not increase operational complexity. This regulatory guide provides an acceptable means of ensuring that the reliability of the diesel generators used in determining the station blackout duration, as specified in 10 CFR 50.63, is maintained.

(7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources.

The principal cost to the NRC would be associated with reviewing EDG reliability programs at the respective plant sites via the temporary instructions. The estimates presented in NUREG-1109 are that such efforts would not exceed 0.5 person-months per site. At an estimated $12,000 per staff month and 50 sites, the total cost is projected to be $300,000.

If NUMARC's B-56 working group is involved during the comment period on Proposed Revision 3 to Regulatory Guide 1.9, a standardized (or industry-wide) EDG reliability program approach could be defined, and therefore NRC costs would be less than estimated above.

(8) the potential impact of differences in facility type, design, or age on the relevance and practicality of the proposed backfit.

There is no significant anticipated impact due to difference in plant type, design, or age.

(9) Whether the proposed backfit is interim or final, and if interim, the justification for imposing the proposed backfit on an interim basis.

The proposed action is final.

The factors discussed above support the determination that Regulatory Guide 1.9, Revision 3 as guidance for implementation of the station blackout rule (10 CFR 50.63) wold provide a substantial increase in the overall protection of the public health and safety, and the direct and indirect costs of the implementation are justified in view of this increased protection.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 4th day of November 1988.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 88-26203 Filed 11-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York, James A. FitzPatrick Nuclear Power Plant; Exemption

I

Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

10 CFR 50.62(c)(4) requires that each boiling water reactor have a Standby Liquid Control System (SLCS) with minimum flow capacity equivalent in control capacity to 86 gallons per minute (gpm) with a boron concentration of 13 weight percent sodium pentaborate. The licensee proposes to use a minimum flow rate of 50 gpm and a sodium pentaborate concentration of 11.5 weight percent. Therefore, an exemption from this regulation is required. The sodium pentaborate solution used by the licensee will be made up from boron enriched to 34.7 atom percent Boron-10 isotope.

The requirement established by the regulation was intended to provide for prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an anticipated transient without scram (ATWS) event. The reactor vessel size used to establish the required flow rate of 86 gpm and the sodium vessel size used to establish the required flow rate of 86 gpm and the sodium pentaborate concentration of 13 weight percent was the large 251-inch diameter vessel used in the BWR/5 and BWR/6 designs. The FitzPatrick reactor has a much smaller, 218-inch diameter, vessel. For the FitzPatrick reactor, a lesser flow rate will provide adequate shutdown margin in an ATWS event, equivalent to that called for by the regulation for the larger 251-inch diameter boiling water reactor vessel. The use of enriched boron would allow a concentration lower than 13 weight percent and still provide an equivalent shutdown margin. Refer to Generic Letter 85-03, "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," January 28, 1985.

III

In this case, the injection flow rate and boron concentration will provide the equivalent level of control capacity for the smaller FitzPatrick reactor pressure vessel as that called for by the rule based on larger reactor pressure vessels. Requiring FitzPatrick to provide the flow rate-boron concentration capacity specified by the rule would not, in these particular circumstances, serve the underlying purpose of the rule. The purpose of the rule is to reduce the risk from ATWS events by ensuring adequate shutdown margin. Thus, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii).

As discussed above, the underlying purpose of the requirements of paragraph (c)(4) of 10 CFR 50.62 is to ensure adequate shutdown margin in an ATWS event. The underlying purpose is achieved and served by an injection rate of 50 gpm of 11.5 weight percent sodium pentaborate solution.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the Exemption, as described in section III, is authorized by law and will not present an undue risk to the public health and safety and is consistent with common defense and security, and special circumstances are present for the Exemption, in that application of the regulation in these particular circumstances in not necessary to achieve the underlying purposes of 10 CFR 50.62(c)(4). Therefore, the Commission hereby grants the Exemption from paragraph (c)(4) of 10 CFR 50.62 to allow the use of an SLCS injection flow rate of 50 gpm of 11.5 weight percent sodium pentaborate solution, made up from boron enriched to 34.7 atom percent Boron-10 isotope.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 43954).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of November 1988.

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For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26334 Filed 11-4-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Commercial Activities Inventories

AGENCY: Office of Management and Budget.

ACTION: Publication of commercial activities inventories.

SUMMARY: This Notice contains the initial inventories of commercial activities for the Department of Agriculture, Department of Education, Department of Commerce, Department of Transportation and Department of Treasury.

Executive Order 12615, Performance of Commercial Activities, dated November 19, 1987, requires OMB to publish for public review agency inventories of commercial activities as they become available. This is the initial submission. Additions to these inventories and inventories from other agencies/departments will be forthcoming.

Interested parties are invited to nominate, in writing to the Privatization Officials listed below in the respective agencies/departments, with a copy to OMB, additional activities for inclusion on the inventories and for eventual study. There is no time limit for these nominations.

Privatization Officials are as follows:

Department of Agriculture—Robert D. Hausenfluck.
Department of Commerce—Kay Bulow.
Department of Education—Hazel Fiers.
Department of Transportation—Jon Seymour.
Department of Treasury—Jill E. Kent.

Specific questions relating to the A-76 inventories should be referred to the following individuals:

Department of Agriculture, Hugh Lovall, (202) 383-8998, 14th and Independence Avenue, SW., Room 248-W, Washington, DC 20250.
Department of Commerce, John O'Brien, (202) 377-4115, 14th and Constitution, NW., Washington, DC 20230.
Department of Education, Gordon Rairdin, (202) 732-1810, 400 Maryland Avenue, SW., Room 4054, Washington, DC 20202.
Department of Transportation, Michael Siviy, (202) 366-5132, 400 7th Street, SW., Room 10314, Washington, DC 20590.
Department of Treasury, Allen Zucker, (202) 566-0636, 1500 Pennsylvania Avenue, NW., Room 2454, Washington, DC 20220.
Office of Management and Budget, Office of Federal Procurement Policy, Linda Mesaros (202) 395-3300, 725 17th Street, NW., Room 9013, NEOB, Washington, DC 20503.

Joseph R. Wright, Jr.,

Director.

DEPARTMENT OF AGRICULTURE

[A-76 Inventory]

Units	Commercial	Location activity	FTE	Year
ARS	Facilities Spt	Albany, CA	40	89
ARS	Facilities Spt	Ames, IA	76	90
ARS	Facilities Spt	Washington, DC	31	89
ARS	Facilities Spt	Plum Island, NY	62	91
ARS	Facilities Spt	Stoneaville, MS	45	91
ARS	Facilities Spt	Beltsville, MD	164	89
ARS	Facilities Spt	Beltsville, MD	119	93
APH	Central Warehouse	Various	93	89
APH	Facilities, Grounds	Ames, IA	19	89
APH	Animal Import Center	Nationwide	40	89
APH	ADP Functions	Various	86	90
APH	Motor Pool and Vehicle Maint	Various	11	89
APH	Bird Station Technic	Various	40	89
FOR	Sewage Plant	Lufkin, TX	4	89
FOR	Photo Operations	Ogden, UT	10	89
REA	ADP	Wash, DC	24	89
REA	Loan Process	Wash, DC	45	90
OPS	USDA Copier Serv	Wash, DC	19	92
OPS	USDA Mail Serv	Wash, DC	57	93
OPS	Central Supply	Wash, DC	7	91
OPS	Total Veh. Mgmt	Nationwide	100	89
ASCS	Aerial Photography	Salt Lake City, Utah	102	89
FHA	Finance, Mail & File	St. Louis, MO	16	90

Affected Units: ARS—Agricultural Research Service; APH—Animal and Plant Health Inspection Service; FOR Serv.—Forest Service; REA—Rural Electrification Administration; ASCS—Agricultural Stabilization and Conservation Service; FHA: Farmers Home Administration; OPS—Office of Operations.

DEPARTMENT OF COMMERCE

[A-76 Inventory]

Units	Commercial activity	Location	FTE	Year
BEA	Data Conversion	Wash, DC	13	88
BEA	Computer Oper	Wash, DC	8	89
CEN	Warehouse/Motor Pool/Stock Maint	IN	54	92
EDA	Loan Applicate and Processing	Wash, DC/Field	59	88
EDA	Computer Operat	Wash, DC	9	89
EDA	Computer Support	Wash, DC	10	89
EDA	Accounting Svcs	Wash, DC	18	90
NBS	Instrument Shops	Gaithersburg	31	88
NBS	Instrument Shops	Boulder, CO	16	88
NBS	Technical Support	Gaithersburg	16	88
NBS	Plant Oper	Gaithersburg	125	88
NBS	Consol. Admin. Svcs	Gaithersburg	17	88
NBS	Consol. Admin. Svcs	Gaithersburg	23	88

DEPARTMENT OF COMMERCE—Continued

[A-76 Inventory]

Units	Commercial activity	Location	FTE	Year
NOAA	Metro Spt. Svcs	Rockville, MD	36	89
NOAA	Library	Boulder, CO	14	92
NOAA	Supply Svcs	Boulder, CO	31	92
NOAA	Satellite Oper Control Center	Suitland, MD	24	92
NOAA	Climatic Data Center	Asheville, NC	60	89
NOAA	ADP Operations	Wash, DC	16	90
NOAA	CDA Station	Wallops, VA	76	92
NOAA	Facilities Maint	Woods Hole, MA	21	88
NOAA	Financial Svcs	Wash, DC	51	88
NOAA	Facilities and Maintenance	Seattle, WA	13	89
NOAA	Marine Chart Branch	Rockville, MD	36	89
NOAA	Geodetic Resources Management	Rockville, MD	114	88
NOAA	Photogrammetry Br	Rockville, MD	57	92
NOAA	Chart Reproduction	Rockville, MD	68	89
NOAA	Hydrographic Field Parties	Wash, DC/Field	27	88
NOAA	Engineering Activities	Wash, DC/Field	64	89
NOAA	Computer Control Section	Suitland, MD	22	89
NOAA	Computer Operations Section	Suitland, MD	28	89
NOAA	O'Hare Airport Observations	Chicago, IL	6	88
NOAA	Integrated Systems Laboratory	Silver Spring, MD	37	89
NOAA	Training Center	Kansas City, MO	42	89
NOAA	Weather Chart Reproduction	Suitland, MD	11	90
NOAA	Logistics Sec	Silver Spring, MD	6	90
NOAA	Communications Oper. Br	Camp Springs, MD	21	91
NOAA	Test and Eval. Facility	Sterling, VA	22	91
NOAA	Hawaii Regional Activities	Honolulu, HI	6	92
NOAA	Alaska Regional Activities	Anchorage, AK	32	92
NOAA	Operations Division	Silver Spring, MD	65	91
OS	Computer Svcs	Springfield, VA	26	88
OS	Operations and Maintenance	Wash, DC	28	89

Affected Units: BEA—Bureau of Economic Analysis; CEN—Bureau of the Census; EDA—Economic Development Administration; NBS—National Bureau of Standards; NOAA—National Oceanic and Atmospheric Administration; OS—Office of the Secretary.

DEPARTMENT OF EDUCATION

[A-76 Inventory]

Commercial activity	Location	FTE	Year
Library Serv	Wash, DC	14	89
ADP	Wash, DC	12	90
Training	Wash, DC	35	90
Mail and File	Wash, DC	8	90
Audiovisual	Wash, DC	4	90
Motor Vehicle	Wash, DC	9	90
Operators Accounts Mgt	Wash, DC	40	91
Loan Processing	Wash, DC	47	91

DEPARTMENT OF TRANSPORTATION

[A-76 Inventory]

Units	Commercial activity	Location	FTE	Year
FAA	ADP Syst Sprt	Various areas	25	89
FAA	COMPT Ops	Various areas	205	92
FAA	Coding Clerks	OkCity, OK	20	90
FAA	Plant Maint	AtlCity, NJ	36	90
FAA	Supply/Warehouse	AtlCity, NJ	26	92
FAA	ACAD Maint	OkCity, OK	52	92
FAA	Facility Maint	Various areas	168	91
FAA	Training (ACAD)	OkCity, OK	154	91
FAA	Audiovisual	OkCity, OK	25	88
FAA	Payroll Operat	Regions	128	89
FAA	Aircraft Maint	Field	307	89
FAA	Med Serv	HQ, Regions	10	89
FAA	Depot	OkCity, OK	570	91
FAA	Op, Maint	AtlCity, NJ	55	92
FHWA	Equip Depot	Denver, CO	6	91
FHWA	ADP	Various areas	6	92
MRD	Ship Preserv	Various areas	244	89

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DEPARTMENT OF TRANSPORTATION—Continued

[A-76 Inventory]

Units	Commercial activity	Location	FTE	Year
MRD	Facilities Maint	Acad, NY	18	93
OST	Internal Dist	Wash, DC	13	90
OST	Library	Wash, DC	9	92
RSPA	Facility Ops	Cambridge, MA	7	90
SLS	Facility Maint	Messena, NY	54	89
SLS	Systems Engineer	Messena, NY	6	93
SLS	Marine Ops	Messena, NY	8	93
SLS	Lock Ops	Messena, NY	55	93
USCG	Warehousing	Baltimore, MD	22	90
USCG	Facility Maint	Cape May, NJ	94	88
USCG	Facility Maint	Cape Code, MA	62	88
USCG	Buoy Maint	San Fran, CA	5	88
USCG	Facility Maint	Sitka, AK	25	88
USCG	Industrial	Woods Hole, MA	23	89
USCG	Facility Maint	Baltimore, MD	23	89
USCG	Security	Petaluma, CA	10	89
USCG	Security	Alameda, CA	9	89
USCG	Facility Maint	Alameda, CA	10	89
USCG	Facility Maint	Seattle, Wash	17	89
USCG	Facilts Maint	Mobile, AL	39	89
USCG	Industrial	New Orleans, LA	52	89
USCG	Industrial	Boston, MA	69	89
USCG	Facilts Maint	Petaluma, CA	27	89
USCG	Ind/Fac Maint	Alameda, CA	87	89
USCG	Facilts Maint	Clearwater, FL	16	89
USCG	Facilts Maint	Chastn, SC	11	89
USCG	Facilts Maint	New London, CT	98	89
USCG	Facilts Maint	Boringuen, PR	29	89
USCG	Industrial	San Pedro, CA	31	89
USCG	Industrial	New York, NY	87	89
USCG	Facilts Maint	Cape May, NJ	3	89
USCG	Industrial	Portsmouth, VA	94	89
USCG	Warehousing	Brooklyn, NY	60	89
USCG	Warehousing	Detroit, MI	4	89
USCG	Ship/Rec	Cape May, NJ	3	89
USCG	Supply/Logtcs	N London, CT	9	90
USCG	Ind/Fac Maint	Honolulu, HI	65	90
USCG	Industrial	Miami, FL	46	90
USCG	Ind/Fac Maint	Ketch, AK	37	90
USCG	Supply & Log	Alex, VA	6	90
USCG	Facilts Maint	Alex, VA	8	90
USCG	Industr Funct	Corpus Chr, TX	9	90
USCG	Facilts Maint	Galveston, TX	15	90
USCG	Buoy Maint	Baltimore, MD	3	90
USCG	Industrial	Mobile, AL	5	90
USCG	Facilts Maint	Detroit, MI	11	90
USCG	Industr Funct	Gloucstr, MA	9	90
USCG	Industr Funct	Mobile, AL	14	90
USCG	Industr Funct	Mayprt, FL	8	90
USCG	ADP Services	Baltmore, MD	6	90
USCG	ADP Programming	Baltimore, MD	10	90
USCG	Shipg & Recvg	OkCity, OK	5	90
USCG	Industr Funct	Milwaukee, WI	12	90
USCG	Industr Funct	SS Marie, MI	12	90
USCG	Facilts Maint	Brooklyn, NY	7	90
USCG	Facilts Maint	St pete, FL	8	90
USCG	Industr Funct	San Juan, PR	30	90
USCG	Facilts Maint	Hmblt, Bay, GA	6	91
USCG	Facilts Maint	San Fran, CA	7	91
USCG	Industr Funct	Portland, ME	17	91
USCG	ADP Services	Brooklyn, NY	15	91
USCG	Electronic Maint	Brooklyn, NY	34	91
USCG	ADP Services	Wash, DC	39	92
USCG	ADP-Data Entry	Prtsmth, VA	2	94
USCG	Security	Kodiak, AK	21	94
USCG	ADP-Data Entry	Honolulu, HI	4	94
USCG	Base Operations	New York, NY	181	94
USCG	Fire Protection	Baltimore, MD	8	94
USCG	Security	Baltimore, MD	12	94
USCG	Buoy Maint	Katch, AK	3	94
USCG	Fire Protection	Ketch, AK	31	94

Affected Units: FAA—Federal Aviation Administration; FHWA—Federal Highway Administration; MRD—Maritime Administration; OST—Office of the Secretary; RSPA—Research and Special Programs Administration; SLS—Saint Lawrence Seaway; USCG—United States Coast Guard.

DEPARTMENT OF TREASURY

[A-76 Inventory]

Units	Commercial activity	Location	FTE	Year
IRS	Inventory and Distribution	Servicewide	720	90
IRS	Docket Room	Wash, DC	26	89
IRS	Mail Room Centralized Files	Wash, DC	21	89
IRS	Computer Center	Detroit	614	89
IRS	All Activities/Regional Offices	Servicewide	1332	91
IRS	All Activities/Service Centers	Servicewide	1750	89
IRS	ADP Services	Cincinnati	5	89
IRS	Mail, Files	Wash, DC	9	89
IRS	ADP Services	Wash, DC	15	89
IRS	Nat. Office Bldg. Oper	Wash, DC	21	89
MINT	Guard and Protect	San Francisco	229	89
MINT	Health Services	Philadelphia	7	89
MINT	Custodial Svcs	San Francisco	15	89
MINT	Exhibits and Sales	Denver	12	91
MINT	Exhibits and Sales	San Francisco	10	91
MINT	ADP Computer	Wash, DC	16	92
BEP	Mail and Copy	Wash, DC	4	90
BEP	Custodial Svcs	Wash, DC	30	89

Affected Units: IRS—Internal Revenue Service; MINT—United States Mint; BEP—Bureau of Engraving and Printing.

[FR Doc. 88-26355 Filed 11-14-88; 8:45 am]
BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No IC—16628; File No. 812-7149]

Application for Exemption American Skandia Life Assurance Corp. et al.

November 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicants: American Skandia Life Assurance Corporation ("Skandia Life"); Skandia Life Variable Account C (the "Account") and Skandia Life Equity Sales Corporation ("SLESCO").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27 (c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction from the assets of the Account of the mortality and expense risk charges imposed under certain variable annuity contracts (the "Contracts").

Filing Date: The application was filed on October 14, 1988.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 5, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Skandia Life, The Account and SLESCO: Tower One, Corporate Drive, P.O. Box 883, Shelton, Connecticut 06484-8932.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney (202) 272-3046 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representation

1. Skandia Life is a stock life insurance company incorporated under the laws of Connecticut, all of whose issued and oustanding shares of capital stock were acquired by Skandia U.S. Investment Holding Corporation ("SUSIH") on May 25, 1988. Prior to that date Skandia Life (then known as Hartford Variable Annuity Life Insurance Company) was a wholly owned subsidiary of Hartford Life Insurance Company. SUSIH is a wholly owned subsidiary of Skandia International Insurance Corporation, which in turn is wholly owned by Skandia International Holding A.B.

2. The Account is registered with the Commisison under the Act as a unit investment trust. The Contracts are individual flexible premium tax deferred variable annuity contracts.

3. SLESCO will serve as the distributor and principal underwriter of the Contracts. SLESCO is registered under the Securities Exchange Act of 1934 and with the National Association of Securities Dealers, Inc. as a broker-dealer.

4. The Account will invest in shares of one or more investment portfolios of The Alger American Fund or such other fund or funds as may be made available by Skandia Life and the Account (the "Funds").

5. During the accumulation and payout periods, Skandia Life will deduct from the Account on a daily basis, administration fees at the rate of 0.20 percent per annum. The administration fee cannot be increased by Skandia Life.

6. A mortality and expense risk charge will be deducted daily from the net asset value of the Account at a rate of 0.80 percent per annum of the daily net assets in the Account. Of that amount, approximatley 0.60 percent is allocable to Skandia Life's assumption of mortality risks and 0.20 percent is allocable to Skandia Life's assumption of the expense risks. Skandia Life assumes this mortality risk by virtue of annuity rates incorporated in the Contracts which cannot be changed. Additional mortality risks are assumed when the Sub-Accounts decline in value resulting in losses to Skandia Life on paying death benefits. The expense risk undertaken by Skandia Life is that the administration fee, which is guaranteed, may be insufficient to cover the actual costs of administering and maintaining the Contracts and the Account.

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7. Skandia Life represents that the charge of 0.80 percent for mortality and expense risks assumed by Skandia Life is within the range of industry practice with respect to comparable annuity products. This representation is based on Skandia Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

8. Applicants acknowledge that the sales charge may be insufficient to cover all costs relating to the distribution of the contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the sales charge. Skandia Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Skandia Life at its administrative offices and will be available to the Commission.

9. Skandia Life represents that the account will only invest in management investment companies which undertake to have boards or trustees, a majority of whom are not "interested perons" of such companies, formulate and approve any plan adopted under Rule 12b–1 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–26367 Filed 11–14–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26265; File No. 600–25]

Self-Regulatory Organizations; Application for Registration as a Clearing Agency; Participants Trust Co.

On October 3, 1988, the Participants Trust Company ("PTC") filed with the Commission an application for registration as a clearing agency under section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78a–1 ("Act"). MBS Clearing Corporation ("MBSCC"), a registered clearing agency, has agreed to sell its Depository Division to PTC. Upon the approval of PTC as a limited purpose trust company by the New York State Banking Department and as a registered clearing agency by the Commission, PTC will become the successor to MBSCC's Depository Division.

PTC's application is being submitted on behalf of PTC by the Participants Depository Association ("PDA"), an association of banks and dealers who are participants in the MBSCC Depository Division or who will be participant shareholders in PTC. PTC also has filed an application with the New York State Banking Department to be chartered as a limited purpose trust company under the Banking Law of New York State. Upon approval, PTC will come into independent existence. PTC will then issue stock to the subscribers and the entity will be capitalized.

You are invited to submit written data, views and arguments concerning the foregoing application within thirty days of the date of publication of this notice in the **Federal Register.** Such written data, views and argumetns will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File Number 600–25. Copies of the application and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 8, 1988.

[FR Doc. 88–26366 Filed 11–14–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Ft. Lauderdale Executive Airport, Ft. Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Ft. Lauderdale, Florida, for the Ft. Lauderdale Executive Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is October 28, 1988.

FOR FURTHER INFORMATION CONTACT: C. Ed Howard, Airport Planning Specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL, telephone (407) 648–6583.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Ft. Lauderdale Executive Airport are in compliance with applicable requirements of Part 150, effective October 28, 1988.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the City of Ft. Lauderdale, Florida. The specific maps under consideration are existing (1985) noise contours and future (1990) noise contours in the submission. The FAA has determined that these maps for Ft. Lauderdale Executive Airport are in compliance with applicable requirements. This determination is effective on October 28, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32827.

William H. Crouch, Airport Manager, Ft. Lauderdale Executive Airport, 1885 W. Commercial Boulevard, Suite 110, Ft. Lauderdale, FL 33309.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Flordia, October 28, 1988.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 88–26296 Filed 11–14–88; 8:45 am]

BILLING CODE 4910–13–M

Intent To Prepare an Environmental Impact Statement and To Hold an Environmental Scoping Meeting; New Taxiway, Worcester Municipal Airport, Worcester, MA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public environmental scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposal by the city of Worcester, Massachusetts to construct a new parallel Taxiway to Runway 11–29 at Worcester Municipal Airport. To ensure that all significant issues related to the proposed action are identified, a public scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: John Silva, Environmental Program Manager, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 0183. Telephone no.: 617–273–7060.

SUPPLEMENTARY INFORMATION: During November 1988, FAA, New England Region completed an Environmental Assessment (EA) of a proposed new Taxiway to serve Runway 11–29 at Worcester Municipal Airport. The assessment concluded in the need to prepare an EIS, because of the potential for significant adverse environmental effect, primarily to wetlands and community water supply, from changing drainage courses on and in the vicinity of Worcester Airport.

Comments and suggestions are invited from federal, state, and local agencies, and other interested parties, in order to ensure that a full range of issues related to the proposed project is identified and addressed in the scope of work for the project. Copies of the EA may be obtained by contacting FAA at the above address or telephone number. Comments and suggestions may be mailed to the same address.

Public Scoping Meetings

In order to provide public input, a scoping meeting for federal, state, and local agencies will be held on Thursday, January 5, 1989, at 9:30 a.m., at the third floor conference room of Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts. An additional meeting to receive citizen input will be held on Thursday, January 5, 1989, at 7:30 p.m., at Worcester City Hall, Personnel Training Room 405, Main Street, Worcester, Massachusetts. Federal, state, and local agency representatives are encourage to attend. Information about these meetings may be obtained by contacting FAA at the above address or telephone number.

Issued in Burlington, Massachusetts, on November 4, 1988.

Vincent A. Scarano,

Manager, Airports Division FAA, New England Region.

[FR Doc. 88–26298 Filed 11–14–88; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–88–44]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued; Rosenbaum Aviation, Inc., et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: December 1, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in

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the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 8, 1988.

Denise Donohue Hall,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 25029
Petitioner: Rosenbaum Aviation, Inc.
Regulations Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought: To extend Exemption No. 4748A, as amended, that allows petitioner to use Scandinavian Airlines System (SAS) to perform a complete airframe overhaul (C and D check) on its one DC-8-63 aircraft at the SAS overhaul facilities at Stockholm (Arlanda) and Stockholm-Bromma (Linta), Sweden. Exemption No. 4748A, as amended, expired on October 30, 1988.
Docket No.: 25499
Petitioner: National Air Transportation Association.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow pilots employed by petitioner's member air carrier companies to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft operating under Part 135.
Denial, October 11, 1988, Exemption No. 4990.
Docket No.: 25588
Petitioner: The Soaring Society of America, Inc.
Regulations Affected: 14 CFR 45.11(a) and (d) and 45.29(h)
Description of Relief Sought/ Disposition: To allow glider operations without external ID plates or owner-affixed external ID information and exemption from the size requirements for registration markings on aircraft penetrating an ADIZ or DEWIZ.
Partial Grant, October 31, 1988, Exemption No. 4988.
Docket No.: 25618
Petitioner: Giridhar Gopal.
Sections of the FAR Affected: 14 CFR 61.39(a)(4).
Description of Relief Sought: To allow petitioner to obtain a flight test for the Commercial Pilot Certificate before his 18th birthday.
Denial, October 28, 1988, Exemption No. 4989.
Docket No.: 25636
Petitioner: International Aero Engines.
Sections of the FAR Affected: 14 CFR 21.325(b)(1) and (3).
Description of Relief Sought/ Disposition: To allow export airworthiness approvals to be issued for Class I products (engines) assembled and tested in the United Kingdom (U.K.) and Class II and III products manufactured in the petitioner's consortium countries of Italy, West Germany, Japan, and the U.K.
Grant, November 4, 1988, Exemption No. 4991.

[FR Doc. 88-26297 Filed 11-14-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 8, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0008.
Form Number: W-2, W-2c, W-2P, W-2GU, W-2CNMI, W-2VI, W-3, W-3c, W-3PR, W-3SS, W-3CPR, W-2AS.
Type of Review: Revision.
Title: Wage and Tax Statement.
Description: Employers report income and withholding information on Form W-2. Payers report payments of pensions, annuities, retirement payments, or distributions from an IRA on Form W-2P. The Forms W-2AS, W-2GU, W-2NMI, and W-2VI are variations of the W-2 for use in U.S. possessions. The W-2 is used by the recipient to prepare his income tax return and by IRS to reconcile employment tax returns. W-3 series forms transmit W-2 series forms to the Social Security Administration (SSA) for processing.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 6,200,000.
Estimated Burden Hours Per Response:
W-2—14 minutes.
W-3—17 minutes.
W-2GU—31 minutes.
W-2VI—30 minutes.
W-3PR—18 minutes.
W-3c—20 minutes.
W-2P—17 minutes.
W-2A—28 minutes.
W-2CNMI—34 minutes.
W-3SS—19 minutes.
W-2c—47 minutes.
W-3CPR—20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26345 Filed 11-14-88; 8:45 am]
BILLING CODE 4810-25-M

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6-8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 7% for calendar year 1989.

DATES: The rate will be in effect for the period beginning on January 1, 1989 and ending on December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Cash Management Division (Agency Programs Branch), Financial Management Service, Department of the Treasury, 401 14th Street SW., Washington, DC 20277 (Telephone: (202) 287-0745).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Pub. L. 95-147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 1989 reflects the average investment rates for the 12-month period ended September 30, 1988.

To save agencies time, we have developed a chart to be used in determining whether the most likely to occur discount terms are advantageous to the government. The following chart is based on the conversion formula as contained in TFM 6-8040.30 Cash Discounts. Any discount terms not contained on the chart will require the continued use of the manual conversion formula.

Using the 7% CVFR this chart represents the minimum discount offers you should take for each of the specified discount periods.

Days in the discount period	Minimum discount you should take (percent)	Days in the discount period	Minimum discount you should take (percent)
1	00.56	16	00.27
2	.54	17	.25
3	.52	18	.23
4	.50	19	.21
5	.48	20	.19
6	.46	21	.17
7	.45	22	.16
8	.43	23	.14
9	.41	24	.12
10	.39	25	.10
11	.37	26	.08
12	.35	27	.06
13	.33	28	.04
14	.31	29	.02
15	.29		

Date: November 3, 1988.

Mitchell A. Levine,

Acting Assistant Commissioner, Federal Finance.

[FR Doc. 88-26342 Filed 11-14-88; 8:45 am]
BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175 entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** August 15, 1988.

Private Sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Botswana: Legislative Exchange

The Office of Private Sector Programs will assist in supporting a workshop that will bring members of Botswana's Parliament and other regional political leaders to the United States to gain a better understanding of the role of the legislature in the political process. This project will take place in the spring of 1988 and may include government officials from other countries which are members of the Southern Africa Development Coordination Conference. The project will be conceived and executed by a U.S. not-for-profit institution with expertise in the field of American political processes or African affairs. This exchange will include substantive meetings with elected representatives, committee leaders, and staff members, and an examination of legislative issues most relevant to the interests of the visiting African parliamentarians.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming and which are able to obtain private-sector funding in addition to USIA support. Organizations must have the expertise and logistical capability needed to develop and conduct the above project in a way which will have a lasting impact on the African participants.

Interested organizations should submit a request for complete application materials—postmarked no later than twenty-one days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest: Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Michael Ringler—Botswana Exchange), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: November 4, 1988.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-26321 Filed 11-14-88; 8:45 am]
BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department sponsoring the information collection; (2) the title of the information

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collection; (3) the agency form number, if applicable; (4) a description of the need and its use; (5) frequency of the information collection; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the study and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2282. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by December 15, 1988.

Dated: November 3, 1988

By direction of the Administrator

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Department of Medicine and Surgery.

2. Application for Medical Benefits for Dependents or Survivors—CHAMPVA.

3. VA Form 10–10d.

4. The spouse, child, or surviving spouse of a veteran who has a total disability, or who died as a result of a service-connected disability, may complete this application to obtain medical benefits available to them through the Veterans Administration.

5. On occasion.

6. Individuals or households

7. 9,600 responses.

8. 787 hours.

9. Not applicable.

[FR Doc. 88–28261 Filed 11–14–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 220

Tuesday, November 15, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting Wednesday, November 16, 1988, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Hot Air Paint Removal Tools, CP 87–2

The staff will brief the Commission on petition CP 87–2 from the Greater St. Louis Lead Poisoning Prevention Council requesting that hot air paint removal tools be required to have a warning label concerning the danger of lead fumes and dust.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

November 9, 1988.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88–26420 Filed 11–10–88; 1:25 pm]

BILLING CODE 6355–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 8, 1988.

TIME AND DATE: 10:00 a.m., Thursday, November 17, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Charles Conatser v. Red Flame Coal Co.*, Docket No. KENT 87–168–D. (Issues include whether the judge erred in finding that complainant was not discriminated against for engaging in rights protected by section 105(c)(1) of the Mine Act. 30 U.S.C. 815(c)(1).

2. *Missouri Rock, Inc.*, Docket No. CENT 87–65–M. (Issues include whether the judge erred in finding violations of 30 CFR 56.9003.)

Any person intending to attend this meeting, who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (2020 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–26351 Filed 11–9–88; 4:38 pm]

BILLING CODE 6735–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 8, 1988.

TIME AND DATE: 10:00 a.m., Wednesday, November 16, 1988.

PLACE: Room 600, 1,730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Bryan Pack v. Maynard Branch Dredging Company and Roger Kirk*, Docket No. KENT 86–9–D. (Issues include whether the judge erred in finding that the complainant was not discriminated against for engaging in rights protected by section 105(c)(1) of the Mine Act. 30 U.S.C. 815(c)(1).

2. *Freeman United Coal Mining Company*, Docket No. LAKE 86–67. (Issues include whether the judge erred in finding a violation of 30 CFR 75.316).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–26352 Filed 11–9–88; 4:38 pm]

BILLING CODE 6735–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, November 22, 1988.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last four items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Ryan Air Service, Inc., Flight 103 Beech Aircraft Corporation 1900C, N401RA, Homer, Alaska, November 23, 1987.

2. Safety Study: Braking Deficiencies on Heavy Trucks in 32 Selected Accidents.

3. Discussion of NTSB Reply to FAA re Mail Control 880579 (Safety Recommendation A–87–48).

4. Opinion and Order: Doty v. Administrator, Docket 42–EAJA–SE–7016; disposition of applicant's appeal.

5. Opinion and Order: Administrator v Leenerts, Docket SE–7827; disposition of the Administrator's appeal

6. Opinion and Order: Commandant v. Tombari, Docket ME–133; disposition of seaman's appeal.

7. Opinion and Order: Administrator v. Foster, Docket SE–7734; disposition of respondent's appeal.

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

November 10, 1988.

[FR Doc. 88–26432 Filed 11–10–88; 1:26 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 14, 21, 28, and December 5, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STUATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 14

Wednesday, November 16

10:00 a.m.
Briefing on Status of Location of Exploratory Shaft at Yucca Mountain (Public Meeting).

Thursday, November 17

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting).
a. Order on Shoreham (Tentative).

Week of November 21—Tentative

Wednesday, November 23

10:00 a.m.
Briefing on Effectiveness of Diagnostic Evaluations (Public Meeting).

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

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2:00 p.m.
Briefing on Accident Management Program (Public Meeting).

Week of November 28—Tentative

Thursday, December 1

10:00 a.m.
Meeting with State of Nevada on High Level Waste Program (Public Meeting).
11:30
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of December 5—Tentative

Friday, December 9

10:00 a.m.
Briefing by DOE on High Level Waste Program (Public Meeting).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

ADDITIONAL INFORMATION: By a vote of 3–0 (Commissioner Rogers was not present and Commissioner Curtiss did not participate) on November 9, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Order on Shoreham" scheduled for November 9, be held on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,
Office of the Secretary.
November 9, 1988.

[FR Doc. 88–26437 Filed 11–10–88; 2:40 pm]
BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 53, No. 220
Tuesday, November 15, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program; Proposed Power Rate Adjustment

Correction

In notice document 88-25821 beginning on page 44945 in the issue of Monday, November 7, 1988, make the following corrections:

1. On page 44945, in the third column, in the table, the heading "Proposed rule" should read "Proposed rate".

2. On page 44946, in the first column, in the first paragraph, in the 15th and 16th lines, "blend" should read "blended"; and in the 16th line, "to" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-463-NC]

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting on or After July 1, 1988

Correction

In notice document 88-23906 beginning on page 40771 in the issue of Tuesday, October 18, 1988, make the following corrections:

1. On page 40772, in the second column, in the fifth line, "amendment" should read "amendments".

2. On page 40773, in the third column, in the 15th line, "05334" should read "0.5334"; and in the 18th line, "92 percent" should read "93 percent".

3. On page 40776, in the third column, in the third paragraph, in the fifth line, "aids" should read "aide".

4. On page 40785, in the table, in the last column, the 12th entry should read "-1.728".

5. On page 40788, in the table, in the last column, the 19th entry should read "-9.289".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Realty Action; Competitive Sale of Public Land; Arizona

Correction

In notice document 88-25155 appearing on page 44130 in the issue of Tuesday, November 1, 1988, make the following correction:

In the second column, under *Tract APO-GR-11-56-3*, in the second paragraph, in the 11th line, "January 3, 1989" should read "December 30, 1988".

BILLING CODE 1505-01-D

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federal register

Tuesday
November 15, 1988

Part II

Committee for Purchase From the Blind and Other Severely Handicapped

Procurement List 1989; Notice of Establishment

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COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Establishment

The Committee for Purchase from the Blind and Other Severely Handicapped was established by Pub. L. 92-28, June 23, 1971 (85 Stat. 77, 41 U.S.C. 46-48c) (hereinafter the Act) for the purpose of directing the procurement of selected commodities and services by the Federal Government to qualified workshops serving blind and other severely handicapped individuals with the objective of increasing the employment opportunities for these individuals. The Committee is required to establish and publish in the **Federal Register** a procurement list of:

(1) Commodities produced by any qualified nonprofit agency for the blind or by any qualified nonprofit agency for other severely handicapped, and

(2) The services provided by any such agency

which the Committee determines are suitable for procurement by the Government pursuant to the Act.

The Act further provides that any entity of the Government which intends to procure any commodity or service on the procurement list shall procure such commodity or service, at the price established by the Committee, from a qualified nonprofit agency for the blind or such agency for the other severely handicapped if the commodity or service is available within the normal period required by that Government entity. However, this requirement shall not apply to the procurement of any commodity which is available from Federal Prison Industries, Inc.

A Government entity is defined as any entity of the legislative branch or judicial branch, any executive agency or military department (as such agency and department are respectively defined by sections 102 and 105 of Title 5, United States Code), the U.S. Postal Service, and any nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

Notice is hereby given pursuant to section 2 of the Act that Procurement List 1989 is established as set forth below. Procurement List 1989 supersedes Procurement List 1988, December 10, 1987 (52 FR 46926) and subsequent changes thereto through October 31, 1988.

Any proposed additions or deletions to Procurement List 1988 pending on this date shall be considered as pending and applicable to Procurement List 1989.

By the Committee.

Beverly L. Milkman,

Executive Director.

Assignment Codes

Central Nonprofit Agency	Code
National Industries for the Blind	IB
National Industries for the Severely Handicapped.	SH

Class 1005

Adopter Kit, Top Sling (IB)
1005-00-406-1570

Cover, Spare Barrel (SH)
1005-00-659-1031

Firing Attachment, Bland (SH)
1005-00-118-6192

Sling, Adjustable, Small Arms (IB)
1003-01-216-4510

Sling, Padded, Adjustable (IB)
1005-00-312-7177

Swab, Small Arms Cleaning (IB)
1005-00-912-4248
1005-00-288-3565

Class 1015

Staff Section (SH)
1015-00-699-0633

Class 1025

Staff Section (SH)
1025-01-563-7232
1025-01-044-2587

Class 1080

Lanyard, Camouflage (IB)
1080-00-571-5015

Class 1095

Scabbard, Bayonet-Knife (IB)
1095-00-508-0339

Class 1220

Case, Carrying (IB)
1220-00-765-5870
1220-00-937-8286

Class 1350

Arming Wire (SH)
1350-00-889-8165

Class 1440

Tarpaulin (SH)
1440-01-128-8966

Class 1660

Harness Assembly (SH)
1660-00-066-2078

Class 1670

Harness, Parachutist (SH)
1670-01-227-7992

Message Dropper (SH)
1670-00-797-4495

Strap, Quick Release (SH)
1670-01-074-1210

Class 1680

Belt, Aircraft Safety (SH)
1680-00-725-5827
1680-00-407-5335

Strap Assembly, Litter (SH)
1680-00-878-6864

Wire Bundle Assembles (SH)
1680-00-881-4215
1680-00-884-0409
1680-00-894-3991
1680-01-125-9646
1680-00-919-3706
1680-00-883-4467
1680-00-222-3876
1680-00-828-7752
1680-00-974-5275
1680-00-974-5276
1680-00-998-8594

Class 1730

Chock Wheel, Codit Reflecting (IB)
1730-00-294-3694
1730-00-063-4095
1730-00-294-3696
1730-00-294-3695
1730-00-945-8450
1730-00-163-8317 (4×6×24")
1730-00-NIB-001A 2×4×8" STD
1730-00-NIB-001B 6×8×18" STD
1730-00-NIB-001C 6×8×76" STD
1730-00-NIB-001D (8×12") U-SHAPED
1730-00-NIB-001E (10×20") U-SHAPED

Chock Wheel, Painted (IB)
1730-00-294-3694
1730-00-063-4095
1730-00-294-3696
1730-00-294-3695
1730-00-945-8450
1730-00-163-8317 (4×6×24")
1730-00-NIB-001A (2×4×8") STD
1730-00-NIB-001B (6×8×18") STD
1730-00-NIB-001C (6×8×76") STD
1730-00-NIB-001D (8×12") U-SHAPED
1730-00-NIB-001E (10×20") U-SHAPED

Chock Wheel, Reflective Tape (IB)
1730-00-294-3694
1730-00-063-4095
1730-00-294-3696
1730-00-294-3695
1730-00-945-8450
1730-00-163-8317 (4×6×24")
1730-00-NIB-001A (2×4×8") STD
1730-00-NIB-001B (6×8×18") STD
1730-00-NIB-001C (6×8×76") STD
1730-00-NIB-001D (8×12") U-SHAPED
1730-00-NIB-001E (10×20") U-SHAPED

Chock Wheel, Unpainted (IB)
1730-00-294-3694
1730-00-063-4095
1730-00-294-3696
1730-00-294-3695
1730-00-945-8450
1730-00-163-8317 (4×6×24")
1730-00-NIB-001A (2×4×8") STD

1730-00-NIB-001B (6×8×18") STD
1730-00-NIB-001C (6×8×76") STD
1730-00-NIB-001D (8×12") U-SHAPED
1730-00-NIB-001E (10×20") U-SHAPED

Class 2090

Weight, Canvas Bag (IB)
2090-00-845-9150

Class 2510

Side Rack, Vehicle (SH)
2510-00-535-6797
2510-00-860-0517
2510-00-860-0523

Class 2540

Belt, Automobile, Safety (IB)
2540-00-894-1273
2540-00-894-1275
2540-00-894-1274
2540-00-894-1276

Cover, Cushion Assembly (SH)
2540-01-245-2524
2540-01-245-2525
2540-01-245-2526
2540-01-246-6212

Cushion Assembly, Back Rest (SH)
2540-00-737-3308

Cushion Assembly, Seat Back (SH)
2540-01-065-6288

Cushion Seat, Vehicular (SH)
2540-00-808-3811
2540-00-904-5680
2540-01-074-6363

Cushion, Seat Back, Vehicular (SH)
2540-00-880-3925
2540-01-065-6289

Kit, Deep Water Fording (SH)
2540-00-473-0111
2540-00-780-0844
2540-00-181-8109

Mirror and Bracket Assembly (SH)
2540-00-575-8392

Class 3510

Net, Laundry (IB)
3510-00-273-9738
3510-00-273-9739

Class 3920

Truck, Hand (IB)
3920-00-847-1305

Class 3990

Pallet, Corrugated Fiberboard, Material Handling (SH)
3990-00-L77-0044
Navy Ships Parts Control Center, Mechanicsburg, PA only

Pallet, Material Handling (SH)
3990-01-M00-0075 Pine Bluff Arsenal, AR only
3990-00-892-4394 Mechanicsburg, PA; Memphis, TN; Richmond, VA and Columbus, OH Depots only

Pallet, Wood (SH)
3990-00-X77-1721 New Cumberland Army Depot only
3990-00-NSH-0001 48×40×36" Social Security Administration, Baltimore, MD only
3990-00-NSH-0005 24×20" New Cumberland Army Depot only
3990-00-366-6806

Class 4130

Filter, Air Conditioning (IB)
4130-00-870-8796
4130-00-274-7800
4130-00-541-3220
4130-00-756-1840
4130-00-720-4143
4130-00-249-0966
4130-00-203-3318
4130-00-203-3321
4130-00-542-4482
4130-00-959-4734
4130-00-756-0978
4130-00-951-1208

Class 4240

Bag, Waterproofing (IB)
4240-00-377-9401

Harness, Head (SH)
4240-00-961-1064
4240-01-M14-0174

Modification Kit, Head Harness (SH)
4240-01-220-3201

Winterization Kit (SH)
4240-00-065-0319 (40% OF Gov't Rqmt)

Class 4610

Bag, Drinking Water Storage (SH)
4610-00-268-9890

Class 4730

Fitting Kit (SH)
4730-00-470-6625

Class 4820

Valve, Ball (SH)
4820-00-052-4651
4820-00-052-4653

Class 4910

Creeper, Mechanic's (SH)
4910-00-251-6981
4910-00-106-7834
4910-00-NSH-0001

Class 5120

Screwdriver Set, Cross Tip (SH)
5120-00-357-7175
5120-00-580-0334

Screwdriver, Cross-Tip (SH)
5120-00-060-2004
5120-00-820-2995
5120-00-224-7370
5120-00-227-7293
5120-00-542-3438
5120-00-224-7375

Screwdriver, Flat-Tip (SH)
5120-00-287-2504
5120-00-278-1267
5120-00-288-7803
5120-00-274-1270
5120-00-227-7356
5120-00-596-8502
5120-00-062-0813
5120-00-293-3311
5120-00-293-0315
5120-00-227-7377
5120-00-236-2140

Vise, Multiposition (SH)
5120-00-991-1907

Class 5140

Bag, Tool (IB)
5140-00-772-4142

Bag, Tool (Satchel) (SH)
5140-00-473-6256

Belt, Tool, Repairman's (SH)
5140-00-529-2517
5140-00-529-2694
5140-00-529-2691

Tool Box, Portable (SH)
5140-00-288-8911
5140-00-289-8910

Class 5340

Clamp, Loop (SH)
5340-00-103-2945
5340-00-104-5060
5340-00-500-0403
5340-00-254-5025
5340-01-156-5483
5340-00-375-2091

Strap (SH)
5340-00-235-4433

Strap, Webbing (SH)
5340-00-286-6895

Class 5350

Cloth, Abrasive (IB)
5350-00-187-6270
5350-00-187-6275
5350-00-187-6272
5350-00-187-6269
5350-00-187-6268
5350-00-187-6286
5350-00-187-6285
5350-00-187-6284
5350-00-187-6283
5350-00-187-6281
5350-00-187-6280
5350-00-187-6297
5350-00-187-6296
5350-00-229-3088
5350-00-229-3085
5350-00-187-6295
5350-00-187-6294
5350-00-187-6293
5350-00-187-6292
5350-00-187-6291
5350-00-274-6209
5350-00-187-6290
5350-00-187-6289
5350-00-187-7986
5350-00-299-3097
5350-00-299-3094
5350-00-229-3095
5350-00-229-3080

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5350-00-229-3081
5350-00-229-3092
5350-00-192-9325

MAT, Abrasive (IB)

5350-00-967-5089
5350-00-967-5093
5350-00-967-5092

Class 5440

Ladder, Extension (Wood) (IB)

5440-00-223-6025
5440-00-242-1000
5440-00-223-6026
5440-00-242-0998
5440-00-223-6027

Ladder, Straight (Wood) (IB)

5440-00-242-7151
5440-00-816-2585
5440-00-814-5084
5440-00-242-0995
5440-00-816-2575
5440-00-223-6029
5440-00-223-6030

Stepladder (IB)

5440-00-514-4483
5440-00-514-4485
5440-00-514-4487
5440-00-171-9836
5440-00-227-1592
5440-00-227-1593
5440-00-227-1594
5440-00-227-1595
5440-00-227-1596
5440-00-531-2589

Class 5510

Lath, Wood (SH)

5510-00-NSH-0002 (⅜ X 1-½ X 36")
5510-00-NSH-0003 (⅜ X 1-½ X 48") BLM and U.S. Forest Service in Washington and Oregon only

Stake, Wood (Sh)

5510-00-NSH-0001 BLM at 5 Oregon locations only U.S. Forest Service in Washington and Oregon only

Stakes, Wood, Hub (SH)

5510-00-171-7733
5510-00-171-7732

Stakes, Wood, Location (SH)

5510-00-171-7701
5510-00-171-7700
5510-00-171-7734

Wedge, Wood (SH)

5510-00-640-9237

Class 5660

Fasteners, Fence Post (SH)

5660-00-148-7251

Stay, Fence (SH)

5660-00-943-9927
5660-00-904-8023
5660-00-607-0286
5660-00-607-0287

Class 5831

Amplifier Subassembly (SH)
5831-00-087-3408

Class 5855

Strap Assembly (SH)

5855-00-137-7767
5855-00-125-0762
5855-00-125-0713

Class 5940

Adapter, Battery Terminal (SH)

5940-00-549-6583
5940-00-549-6581

Class 5975

Rod, Ground (SH)

5975-00-878-3791

Class 6115

Cover, Generator Set (IB)

6115-00-960-2703
6115-00-945-7545

Cover, Generator Set (IB)

6115-00-941-1655

Class 6150

Cable Assembly, Electrical (IB)

6150-01-027-0125 (50% of Gov't Rqmt)

Class 6210

Fixture, Lighting Industrial (IB)

6210-00-888-4929

Class 6230

Flashlight (SH)

6230-00-163-1856
6230-00-781-3671

Lantern, Electric, Head (SH)

6230-00-643-3562

Light, Desk (SH)

6230-00-299-7771
6230-00-682-3423

Light, Marker, Distress (SH)

6230-00-892-5192

Light-Marker, -Distress (without pouch) (Sh)

6230-00-938-1778

Light-Marker, Distress (with pouch) (SH)

6230-00-067-5209

Class 6505

Ammonia Inhalant Solution, Aromatic (SH)

6505-00-106-0875

Class 6510

Bandage, Muslin, Compressed Camouflaged (SH)

6510-00-201-1755

Class 6515

Bag, Tube Feeding (SH)

6515-00-481-2049

Case, Ear Plug (SH)

6515-01-212-9452 (80% of Gov't Rqmt)

Kit, Suture Removal (IB)

6515-00-690-6911

Surgical Pack, Disposable (IBA)

6515-00-103-6659

Tourniquet, Non-Pneumatic (IB)

6515-00-383-0565

Class 6530

Bag, Urine Collection (SH)

6530-00-057-0953
6530-00-761-0932
6530-00-761-0936
6530-01-074-6600

Cover, Litter (IB)

6530-00-784-1250

Drape, Surgical (IB)

6530-00-299-9606
6530-00-299-9607
6530-00-299-9605
6530-00-299-9604

Kit, Shaving Surgical Preparation (IB)

6530-00—676-7372

Litter, Folding (IB)

6530-00-783-7905

Pad, Cooling, Chemical (SH)

6530-00-133-4299

Pad, Litter (IB)

6530-00-137-3016

Pad, Pre-Operative Preparation (IB)

6530-00-457-8193

Paper Sheeting, Examination Table (IB)

6530-01-092-3914
6530-00-289-3598
6530-00-788-4790

Spineboard (SH)

6530-01-119-0011
6530-01-119-0012

Spreader Bar and Stirrups, Litter (IB)

6530-00-784-3450

Strap, Webbing Patient Securing (IB)

6530-00-784-4205

Strap, Webbing Patient Securing (IB)

6530-00-784-4335

Surgical Dressing Set (IB)

6530-00-105-5826

Surgical Pack, Disposable (IB)

6530-01-174-8844

Towel Pack, Surgical (IB)

6530-00-110-1854

Urinal, Incontinent (IB)

6530-01-004-8969
6530-00-290-8292
6530-01-081-5303
6530-01-081-5304

Urinary Drainage Set (SH)

6530-01-056-3659

Wrapper, Sterilization (IB)

6530-00-299-9603
6530-00-197-9223
6530-00-197-9283
6530-00-926-4902
6530-00-926-4903
6530-00-926-4904

6530-00-296-4905
6530-00-197-9228
6530-01-246-1935
6530-01-248-4813
6530-01-244-2776
6530-01-244-9946
6530-01-246-0156

Class 6532

Cap—Operating, Surgical (SH)

6532-00-250-5042
6532-00-083-6545
6532-00-250-5041
6532-00-122-0468

Clothing, Operating Room (SH)

6532-00-172-3509
6532-00-172-3507
6532-00-172-3506
6532-00-158-9890
6532-00-009-7174

Coat, Women's Pajama (SH)

6532-01-216-3199
6532-01-215-8093
6532-01-222-6565
6532-01-222-3116

Gown, Hospital (SH)

6532-00-104-9895

FGown, Hospital, Patient's Bedshirt (SH)

6532-01-005-8411
6532-01-005-8412

Gown, Hospital, Personnel (SH)

6532-01-045-5380
6532-01-045-5381

Gown, Operating, Surgical (SH)

6532-00-009-2034
6532-00-009-2035

Gown, Patient Examining (SH)

6532-00-421-7828

Gown, Operating, Surgical (IB)

6532-01-058-2518
6532-01-058-2519
6532-01-058-2520
6532-01-058-2521
6532-01-058-2522
6532-01-058-2523
6532-01-058-2524
6532-01-058-2525

Pillowcase—Disposable (IB)

6532-01-125-3269

Robe, Dressing, Men's (SH)

6532-01-215-7963
6532-01-215-7964

Robe, Dressing, Women's (SH)

6532-01-215-7966
6532-01-215-7965

Shirt, Operating, Surgical (IB)

6532-00-299-9627
6532-00-299-9634
6532-00-299-9633
6532-00-299-9632

Shirt, Operating, Surgical (SH)

6532-00-149-0322
6532-00-149-0323
6532-00-149-0324

6532-00-149-0325

Smock, Man's Dental Operating (SH)

6532-00-159-4881
6532-00-926-0964
6532-00-926-0975
6532-00-926-0976

Smock, Medical Assistant (SH)

6532-00-117-7487
6532-00-117-7542
6532-00-117-7543
6532-00-117-7546

Suit, Convalescent (SH)

6532-01-076-8684
6532-01-076-8683
6532-01-076-7369
6532-01-076-9769

Trousers, Operating, Surgical (IB)

6532-00-299-9628
6532-00-299-9629
6532-00-229-9630
6532-00-229-9631

Trousers, Operating, Surgical (SH)

6532-00-149-0327
6532-00-149-0328
6532-00-149-0329
6532-00-149-0330

Trousers, Women's Pajama (SH)

6532-01-216-2425
6532-01-216-2426
6532-01-226-2961
6532-01-226-2962

Class 6540

Case, Spectacles (IB)

6540-01-131-7919
6540-01-131-7918

Class 6625

Test Set, Lead (SH)

6625-00-553-1442
6625-00-395-9313
6625-01-121-0510
(50% of Gov't Rpmt)

Class 6630

Micro Bleeder (IB)

6630-01-NIB-0002

Tube, Bleeding (IB)

6630-01-NIB-0001

Class 6645

Clock, Wall (IB)

6645-00-514-3523
6645-00-530-3342
6645-01-046-8848
6645-01-046-8849

Class 6695

Sampling Kit, Spectrometric Oil Analysis (IB)

6695-01-045-9820

Class 6840

Disinfectant, Detergent (IB)

6840-00-687-7904
6840-00-584-3129
6840-00-551-8346

Class 7105

Assembly, Support Panel (SH)

7105-00-NSH-0004

Base, Grooming Unit (SH)

7105-01-019-0375
7105-01-007-1830
7105-01-019-0376
7105-01-019-0379
7105-00-NSH-0001

Bookcase, Drop-Lid (SH)

7105-01-005-8409
7105-01-005-8408
7105-01-007-1760
7105-01-009-2567
7105-01-047-3559
7105-01-047-3557

Bookcase, Open-Shelf (SH)

7105-01-007-9796
7105-01-047-3558
7105-01-047-3556

Box, Vanity (SH)

7105-01-007-1831

Bracket, Overchest Support (SH)

7105-00-NSH-0003

Chest, Five-Drawer (SH)

7105-01-011-8397
7105-01-005-8403
7105-01-005-8404
7105-01-007-9797
7105-01-047-3555

Chest, Six-Drawer (SH)

7105-01-005-8407
7105-01-005-8405
7105-01-023-4636
7105-01-005-8406
7105-01-049-9587

Chest, Stereo (SH)

7105-01-019-0378
7105-01-005-8474
7105-01-017-6104
7105-01-019-0377
7105-01-047-3575
7105-01-047-3573

Chest, Three-Drawer (SH)

7105-01-046-8855

Frame, Picture (SH)

7105-00-053-0170
7105-00-081-5834
7105-00-052-8697
7105-00-052-8695
7105-00-465-6199
7105-00-297-3398
7105-00-903-1842
7105-00-903-1843
7105-00-149-1282
7105-00-149-1281
7105-00-641-4385
7105-00-297-3397
7105-00-052-8696
7105-00-149-1276
7105-00-051-1212
7105-00-052-8686
7105-00-052-8698

Overchest (SH)

7105-01-005-8475

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7105-01-047-3576
7105-01-047-3574

Table, Coffee (SH)

7105-00-139-7573
7105-00-139-7601

Table, End (SH)

7105-00-139-7598

Table, Lamp (SH)

7105-00-139-7600

Top, Grooming Unit (SH)

7105-01-005-8476

Class 7110

Blackboard (SH)

7110-00-132-6651

Bookcase, Steel, Contemporary (SH)

7110-00-601-9823
7110-00-149-1621

Bookcase, Wood, Executive (SH)

7110-00-973-5127

Credenza (SH)

7110-00-762-5513
7110-00-128-0098
7110-00-128-0546

Table, Office, Wood (SH)

7110-00-958-0780
7110-00-823-7675
7110-00-903-3061
7110-00-902-3052

Table, Steel (SH)

7110-00-113-0448
7110-00-113-0454
7110-00-149-2044
7110-00-149-2045
7110-00-149-2046

Class 7125

Cabinet, Storage (SH)

7125-00-449-6862
7125-00-378-4261
(50% of Gov't Rqmt)

Class 7195

Bulletin Board (IB)

7195-00-989-2370
7195-00-844-9036
7195-00-989-2371
7195-00-844-9037
7195-00-989-2372
7195-00-844-9038
7195-00-990-0615
7195-00-843-7938

Costumer, Wood, Executive (SH)

7195-00-132-6642

Class 7210

Bedspread (SH)

7210-00-728-0180
7210-00-728-0181
7210-00-728-0182
7210-00-728-0183
7210-00-728-0184
7210-00-728-0185

Bedspread (IB)

7210-00-728-0186
7210-00-728-0187
7210-00-728-0188
7210-00-728-0189
7210-00-728-0190
7210-00-728-0191
7210-00-728-0173
7210-00-728-0175
7210-00-728-0176
7210-00-728-0177
7210-00-728-0178
7210-00-728-0179
7210-00-408-2800

Bedspring (IB)

7210-00-582-7540
7210-00-582-0984
7210-00-110-8104
7210-00-582-7541
7210-00-110-8105

Blanket, Bed/Bath (Flame Resistant) (IB)

7210-01-141-2458

Boxspring (IB)

7210-01-228-5735
7210-01-228-5736
7210-01-228-5737
7210-01-228-5738
7210-00-NIB-0005
7210-00-NIB-0006

Cover, Bed (IB)

7210-01-116-7860
7210-01-120-0679
7210-01-116-7858
7210-01-116-7859
7210-01-118-4085
7210-01-116-7855
7210-01-116-7856
7210-01-116-7857
7210-01-116-7854
7210-01-116-7853
7210-01-120-8015
7210-01-124-7626
7210-01-120-8013
7210-01-120-8014
7210-01-120-8011
7210-01-120-8010
7210-01-120-8012
7210-01-125-9250
7210-01-120-8009
7210-01-123-5148
7210-01-120-8017
7210-01-120-8021
7210-01-120-8022
7210-01-120-8018
7210-01-124-8303
7210-01-120-8019
7210-01-120-8020
7210-01-123-5149
7210-01-120-8016

Cover, Mattress (IB)

7210-00-291-8419
7210-00-205-3083
7210-00-205-3082
7210-00-067-7969
7210-00-998-7745
7210-00-883-8492
7210-00-140-4231
7210-00-140-4234
7210-00-543-6001
7210-00-171-1091
7210-00-935-6619
7210-00-230-1041
7210-00-241-9718
7210-00-543-6002
7210-00-140-4233
7210-01-245-4392
7210-01-245-4393
7210-00-082-2081

Cover, Mattress (Plastic) (IB)

7210-00-082-5739

Insect Bar, Cot (SH)

7210-00-286-9740

Insect Bar, Nylon (SH)

7210-00-286-9736

Mattress, Innerspring (Nonappropriated Fund) (IB)

7210-01-228-5726
7210-01-228-5727
7210-01-228-5728
7210-01-228-5729
7210-00-NIB-0003
7210-00-NIB-0004

Mattress, Cotton-Felt (IB)

7210-00-139-6517
7210-00-139-6555
7210-00-139-6538

Mattress Foam (IB)

7210-00-290-8300
7210-00-275-5873
7210-00-275-5874
7210-00-290-8298
7210-00-290-8297
7210-00-052-7327
7210-00-889-3733
7210-00-290-8299
7210-00-682-6503
7210-00-682-6504
7210-01-244-9734
7210-01-244-9735

Mattress, Innerspring (IB)

7210-00-205-3585
7210-00-139-6424
7210-00-716-0706
7210-00-139-6411
7210-00-205-3534
7210-00-139-6434
7210-00-139-6428
7210-00-110-8102
7210-00-110-8103
7210-01-177-3627
7210-01-177-3628
7210-01-177-1491
7210-01-177-1492
7210-01-177-1494
7210-01-177-1495
7210-01-177-1496
7210-01-177-1497
7210-01-177-1498
7210-01-177-1499
7210-01-177-1500
7210-01-177-1501
7210-01-177-1503
7210-01-177-1504
7210-01-177-1505
7210-01-177-1506
7210-01-177-1507
7210-01-177-1508
7210-01-177-1509
7210-01-177-1510
7210-01-177-1512
7210-01-177-1513
7210-01-177-1514

7210-01-177-1515
7210-01-076-9031
7210-01-076-1087
7210-01-078-2593
7210-01-076-1082
7210-01-076-1089
7210-01-076-9029
7210-01-076-1083
7210-01-076-1085
7210-01-076-8730
7210-01-076-1086
7210-01-077-9358
7210-01-075-8358
7210-01-076-1088
7210-01-076-8359
7210-01-076-1084
7210-01-076-9030

Mattress, Plastic Coated Innerspring (IB)

7210-00-995-1093
7210-00-682-7146
7210-00-529-3709
7210-01-138-8177

Pad, Mattress (IB)

7210-00-227-1526
7210-00-753-3042

Pillow, Bed (IB)

7210-00-753-6228
7210-01-035-3342
7210-00-894-1144
7210-01-015-5190
7210-00-119-5358

Pillow, Bed (Feather) (IB)

7210-00-205-3205

Pillow, Passenger, Headrest (IB)

7210-00-682-6601

Pillowcase (SH)

7210-00-119-7357
7210-01-030-5311

Pillowcase, Cotton/Cotton Polyester (IB)

7210-00-054-7910
7210-00-259-9005
7210-00-259-9006
7210-00-119-7356
7210-00-231-2373
7210-00-259-9004
7210-00-259-8897
7210-00-081-1380

Pillowcase, Disposable (IB)

7210-00-883-8494
7210-00-852-3417

Protector, Hospital Bed, Pillow (IB)

7210-00-958-9118

Protector, Mattress, Hospital Bed (IB)

7210-00-761-1471
7210-00-761-1470

Sheet, Bed (IB)

7210-00-299-9611

Sheet, Bed—Disposable (SH)

7210-00-144-6082

Sheet, Bed, Disposable (IB)

7210-00-498-0512
7210-00-139-6376
Memphis, TN and Tracy, CA Depots only

Tablecloth (SH)

7210-00-492-8381

Towel, Bath, Disposable (IB)

7210-01-029-0370

Washcloth (IB)

7210-01-013-2824

Class 7220

Mat, Floor (SH)

7220-00-205-3192
7220-00-205-3182
7220-00-151-6516
7220-00-457-6046
7220-00-457-6054

Mat, Floor (IB)

7220-00-205-3099
7220-00-224-6487
7220-00-238-8852
7220-00-224-6486
7220-00-238-8854
7220-00-165-7020
7220-01-023-9489

Class 7230

Curtain, Shower (IB)

7230-00-205-1762
7230-00-247-1280
7230-00-849-9838
7230-00-849-9839

Class 7290

Cover, Ironing Board (IB)

7290-00-130-3271

Class 7330

Pad, Bakery (IB)

7330-00-379-4439

Tongs, Food Serving (SH)

7330-00-616-0997
7330-00-616-0998
7330-00-616-1000

Class 7340

Flatware, Plastic, Heavy Duty (IB)

7340-00-022-1315
7340-00-022-1316
7340-00-022-1317
7340-00-401-8041

Flatware, Plastic, Picnic (IB)

7340-00-170-8374
7340-00-205-3187
7340-00-205-3342

Medium Weight Plastic Cutlery (IB)

7340-00-NIB-0005
7340-00-NIB-0006
7340-00-NIB-0007
7340-00-NIB-0008
Army and Air Force Exchange Service only

Spoon, Picnic, Plastic (IB)

7340-00-J19-1300

Class 7360

Dining Packet (IB)

7360-00-935-6407
7360-00-935-6408
7360-00-935-6409
7360-00-935-6410
7360-00-935-6411
7360-00-935-6412
7360-00-935-6413
7360-01-J19-2026

Dining Packet (Dietetic) (IB)

7360-00-177-4958
7360-00-177-4959
7360-00-177-4960
7360-00-177-4961
7360-00-177-4962
7360-00-177-4963
7360-00-935-6416
7360-00-935-6417
7360-00-935-6420
7360-00-935-6421

Dining Packet, Inflight (IB)

7360-00-660-0526
7360-01-167-2610

Flatware Set, Plastic (IB)

7360-00-634-4800

Class 7510

Binder, Awards Certificate (IB)

7510-00-115-3250
7510-00-482-2994
7510-00-755-7077
7510-01-056-1927

Binder, Looseleaf, (Pressboard) (IB)

7510-00-281-4309
7510-00-281-4314
7510-00-582-4201
7510-00-281-4310
7510-00-281-4311
7510-00-281-4313
7510-00-281-4315
7510-00-286-7792
7510-00-286-7794
7510-00-582-5488
7510-00-286-7791
7510-00-582-3807

Binder, Looseleaf, Presentation (IB)

7510-00-582-5398
7510-00-582-5399
7510-00-582-5400

Binder, Looseleaf, Three Ring (IB)

7510-00-782-2663
7510-00-409-8646
7510-00-409-8647
7510-00-984-5787

Binder, Looseleaf, Printout (IB)

7510-00-965-2443

Binder, Looseleaf, Three Ring (SH)

7510-00-889-3494

Binder, Note Pad (IB)

7510-00-286-6954
7510-00-145-0296
7510-00-728-8060
7510-01-053-5591

Board, Wall Calendar (IB)

7510-00-789-2455

Calendar Pad (SH)

7510-01-225-9214 (1989)
7510-01-225-9215 (1990)

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Clip, Binder (SH)
7510-00-282-8201
7510-00-223-6807
7510-00-285-5995

Clip, Paper (SH)
7510-00-161-4292

Envelope, Crystal Clear Vinyl (IB)
7510-00-NIB-0003
7510-00-NIB-0004
7510-00-NIB-0005
7510-00-NIB-0006

Envelope, Transparent (IB)
7510-00-782-6274
7510-00-782-6275
7510-00-782-6276

Eraser, Blackboard (IB)
7510-00-244-9145

Eraser, Mechanical Pencil (IB)
7510-00-307-7885

File Back (IB)
7510-00-NIB-0002

File Backer, Paper (IB)
7510-00-285-2567

File Front (IB)
7510-00-NIB-0001

Pad, Typewriter (IB)
7510-00-257-2576
7510-00-530-6412
7510-00-849-1137

Paperweight, Shortfilled (IB)
7510-00-286-6985

Pencil (IB)
7510-00-286-5757
7510-00-281-5234
7510-00-281-5235

Pencil, Fine-Line Writing (IB)
7510-00-286-5755
7510-00-286-5750
7510-00-286-5751

Pencil, Woodcased, with Imprinting (IB)
7510-050-8LP-6521

Pocket Planning Set (SH)
7510-01-226-2954 (1989)
7510-01-226-2955 (1990)

Portfolio, Double Pocket (IB)
7510-00-584-2489
7510-00-584-2490
7510-00-584-2491
7510-00-584-2492

Portfolio, Plastic Envelope (IB)
7510-00-558-1572
7510-00-558-1573
7510-00-995-4856
7510-00-995-4852

Refill, Ballpoint Pen (IB)
7510-00-543-6792
7510-00-543-6793
7510-00-754-2687
7510-00-543-6795
7510-00-754-2688
7510-00-754-2689
7510-00-754-2690
7510-00-754-2691

Sheath, Pen and Pencil (IB)
7510-00-052-2664

Class 7520

Arch Board File (IB)
7520-00-240-5498
7520-00-191-1075
7520-00-225-7081

Ballpoint Pen (IB)
7520-00-935-7136
7520-00-935-7135
7520-00-543-7149

Ballpoint Pen, Stick-type (IB)
7520-01-058-9978
7520-01-058-9977
7520-01-058-9976
7520-01-059-4125
7520-01-060-5820
7520-01-058-9975
7520-01-060-8513
7520-01-060-5821

Ballpoint, Pen, with Imprinting (IB)
7520-00-8LP-6520

Book Ends (IB)
7520-00-264-5479
7520-00-139-6158

Box, Filing (SH)
7520-00-285-3147
7520-00-285-3143
7520-00-285-3144
7520-00-285-3145
7520-00-285-3146
7520-00-285-3148
7520-00-139-3734
7520-00-240-4830
7520-00-240-4831
7520-00-139-3743
7520-00-240-4839

Case, Maintenance and Operational Manuals (IB)
7520-00-559-9618

Clipboard File (IB)
7520-00-281-5918
7520-00-254-4610
7520-00-240-5503

Easel, Display and Training (IB)
7520-00-579-7013

File, Horizontal Desk (SH)
7520-00-139-4869
7520-00-728-5761

File, Work Organizer (SH)
7520-00-286-1722
7520-00-286-1723
7520-00-833-7343

Holder, Desk Memorandum (IB)
7520-00-139-3802
7520-00-290-6445

Marker, Tube Type, Broad Tip (IB)
7520-00-973-1059
7520-00-973-1060
7520-00-079-0285
7520-00-973-1061
7520-00-079-0286
7520-00-079-0287
7520-00-973-1062
7520-00-079-0288
7520-00-904-4476
7520-00-558-1501

Marker, Tube Type, Fine Tip (IB)
7520-00-904-1265
7520-00-904-1268
7520-00-935-0979
7520-00-904-1267
7520-00-935-0981
7520-00-935-0982
7520-00-904-1266
7520-00-935-0980
7520-00-051-5031
7520-00-051-5035
7520-00-116-2888
7520-00-051-5036
7520-00-116-2886
7520-00-116-2889
7520-00-051-5033
7520-00-116-2887
7520-00-138-7981

Pad, Desk, Paperboard (SH)
7520-00-224-7238

Pen Set, Desk (IB)
7520-00-106-9840

Pencil, Mechanical (IB)
7520-00-223-6672
7520-00-223-6673
7520-00-268-9913
7520-00-223-6675
7520-00-223-6676
7520-00-285-5826
7520-00-285-5822
7520-00-285-5823
7520-00-161-5664
7520-00-164-8950
7520-00-268-9915
7520-00-285-5818
7520-00-268-9916
7520-00-724-5606
7520-00-590-1878
7520-01-132-4996

Perforator, Paper, Desk (SH)
7520-00-139-4101
7520-00-263-3425

Stand, Calendar Pad (IB)
7520-00-162-6153
7520-00-162-6156
7520-00-139-4277
7520-00-139-4341

Tray, Desk (SH)
7520-00-232-6628
7520-00-286-5801
7520-00-285-5043

Trimmer, Paper (IB)
7520-00-224-7620 Rgns 1,2,3,W,4,5,6,7
7520-00-224-7621
7520-00-163-2568
7520-00-634-4675
7520-00-282-2137

Class 7530

Book, Memorandum (IB)
7530-00-286-6952

Card Set, Guide, File (IB)
7530-00-989-0698
7530-00-989-0697
7530-00-989-0683
7530-00-062-2635
7530-00-989-0684
7530-00-989-0686
7530-00-989-0692
7530-00-989-0694
7530-00-989-0693
7530-00-989-0695
7530-00-249-5969
7530-00-261-3813
7530-00-261-3801
7530-00-261-3804
7530-00-261-3818
7530-00-261-3819
7530-00-861-1263
7530-00-861-1270
7530-01-175-1553
7530-00-861-1272
7530-00-861-1275
7530-00-574-7172

Card, Guide, File (IB)
7530-00-989-0184
7530-00-989-2425
7530-00-988-6541
7530-00-988-6542
7530-00-988-6543
7530-00-988-6549
7530-00-988-6550
7530-00-988-6551
7530-00-988-6544
7530-00-988-6545
7530-00-988-6546
7530-00-988-6547
7530-00-988-6548
7530-00-988-6515
7530-00-988-6516
7530-00-988-6520
7530-00-988-6521
7530-00-988-6517
7530-00-988-6518
7530-00-988-6522

Card, Index (IB)
7530-00-238-4316
7530-00-244-7453
7530-00-244-7456
7530-00-244-7451
7530-00-244-7459
7530-00-238-4319
7530-00-949-2787
7530-00-238-4331
7530-00-243-9436
7530-00-247-0310
7530-00-281-1315
7530-00-247-0318
7530-00-264-3723
7530-00-247-0311
7530-00-244-7447
7530-00-247-0315
7530-00-243-9437

Envelope, Wallet (IB)
7530-00-281-5976
7530-00-281-4844
7530-00-281-4846

Folder, File, Kraft (IB)
7530-00-889-3555
7530-00-559-4512
7530-00-281-5907
7530-00-281-5908
7530-00-926-8978
7530-00-926-8980

Folder, File, Manila (IB)
7530-00-273-9845

Folder, File, Military Personnel Records Jacket (IB)
7530—DA Form 201

Folder, File, Pressboard (IB)
7530-00-926-8981
7530-00-286-6924
7530-00-926-8982
7530-00-926-8983
7530-00-926-8984
7530-00-043-1194
7530-00-739-7723
7530-00-990-8884
Chicago, IL Supply Distribution Facility only

Folder, File, Special-Purpose (IB)
7530-00-811-7169

Folder-Set, File, Pressboard (IB)
7530-00-286-6923
7530-00-286-7080
7530-00-286-7244
7530-00-286-7253
7530-00-286-7286
7530-00-286-7287
7530-00-286-8570
7530-00-286-8571
7530-00-286-8625
7530-00-286-8926

Index Sheet Set, Looseleaf Binder (IB)
7530-00-160-8476
7530-00-160-8474
7530-00-160-8475
7530-00-959-4441

Jacket, Filing, Wallet (IB)
7530-00-285-2913
7530-00-285-2914
7530-00-285-2915

Notebook, Stenographer's (IB)
7530-00-223-7939

Pad, Writing Paper (IB)
7530-00-285-3090 Rgns W,2,3,4,7,8,9,10
7530-00-239-8479 All Regions
7530-01-131-1889 All Regions
7530-01-124-5660 Rgns W,1,3,4,5,6,7,8
7530-01-131-0091 Rgns W,1,3,4,5,6,7,8
7530-01-124-7632 Rgns W,1,2,3,4,5,6,7

Pad, Writing Paper (Easel) (IB)
7530-00-619-8880

Paper Set, Manifold and Carbon (IB)
7530-00-401-6910 Rgns W,4,6,7,9
7530-01-072-2536 Rgns W,4,6,7,9
7530-01-072-2537 Rgns W,4,6,7,9
7530-01-072-2538 Rgns W,4,6,7,9
7530-01-072-2539 Rgns W,4,6,7,9

Paper, Looseleaf, Blank (IB)
7530-00-286-6983
7530-00-286-6984

Paper, Carbon, Typewriter (IB)
7530-00-244-4035 Rgns 1,2,3,6,7,8

Paper, Looseleaf, Blank (IB)
7530-00-286-5777
7530-00-286-5778
7530-00-286-5782
7530-00-286-5780
7530-00-286-5781
7530-00-286-5779

Paper, Looseleaf, Ruled (IB)
7530-00-286-6366
7530-00-286-4332
7530-00-286-4331
7530-00-286-4333
7530-00-286-4334
7530-00-286-4335
7530-00-198-6265
7530-00-286-4336
7530-00-286-4337
7530-00-286-4338
7530-00-286-4339

Paper, Teletypewriter, Roll (IB)
7530-00-019-6674
7530-00-019-6931
7530-00-019-7267
7530-00-019-7463
7530-00-223-7966
7530-00-056-2900
7530-00-721-9691
7530-00-223-7969
7530-00-262-9178
7530-00-142-9037
7530-00-943-7076
7530-00-272-9811
7530-00-285-3054
7530-00-285-5030
7530-00-286-7766
7530-00-019-7837
7530-00-019-7849
7530-00-019-7850
7530-00-019-8608
7530-00-019-8810
7530-00-142-9038

Paper, Writing (IB)
7530-00-285-5836
7530-01-047-3738

Refill, Appointment Book (SH)
7530-01-228-9703 (1989)
7530-01-231-6226 (1990)

Tape, Paper, Computing Machine (IB)
7530-00-286-9052
7530-00-222-3455
7530-00-286-9053
7530-00-286-9054
7530-00-238-8352
7530-00-222-3456
7530-00-286-9055

Tape, Postage Meter (IB)
7530-00-912-3924
7530-00-912-3925

Class 7670

Microfiche, Subject Headings and Name Authorities (SH)
7670-00-NSH-0001
Library of Congress only

Class 7690

Microfiche Programs (SH)
7690-00-NSH-0007 B212-S
7690-00-NSH-0008 B214-S
Library of Congress only

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Pamphlets (3229–S) (SH)

7690–00–NSH–0010 Government Printing Office, Philadelphia, Pennsylvania DLA Requisitions only

Class 7899

Innerspring Mattress Rehab (w/o handles) (IB)

Group I: Less than 36" wide
Group II: 36" to 41" wide
Group III: Over 41" to 49" wide
Group IV: Over 49" wide

Innerspring Mattress Rehabilitation (w/ handles) (IB)

Group I: Less than 36" wide
Group II: 36" to 41" wide
Group III: Over 41" to 49" wide
Group IV: Over 49" wide

Class 7910

Pad, Floor Polishing Machine (IB)

7910–00–685–6686
7910–00–685–6687
7910–00–685–3908
7910–00–685–6671
7910–00–685–3909
7910–00–685–6672
7910–00–685–3910
7910–00–685–6656
7910–00–685–6657
7910–00–685–3912
7910–00–685–6659
7910–00–685–3915
7910–00–685–6660
7910–00–685–3914
7910–00–685–4239
7910–00–685–4240
7910–00–685–4242
7910–00–685–4243
7910–00–685–4241
7910–00–685–4244
7910–00–685–4245
7910–00–820–7991
7910–00–820–7989
7910–00–820–7990
7910–00–820–9926
7910–00–820–9925
7910–00–820–9924
7910–00–820–9898
7910–00–820–7997
7910–00–820–7998
7910–00–820–9903
7910–00–820–9904
7910–00–820–9905
7910–00–820–9900
7910–00–820–9901
7910–00–820–9899
7910–00–820–9922
7910–00–820–9918
7910–00–820–9917
7910–00–820–9916
7910–00–820–9915
7910–00–820–9914
7910–00–820–9913
7910–00–820–9912
7910–00–820–9911
7910–00–820–9910

Class 7920

Applicator, Wax (SH)

7920–00–633–8774

Broom, Push (IB)

7920–00–267–2967

Broom, Upright (IB)

7920–00–292–4371
7920–00–292–4375
7920–00–292–4372
7920–00–291–6305

Broom, Whisk (IB)

7920–00–240–6350

Brush, Chassis and Running Gear (IB)

7920–00–255–7536

Brush, Cleaning, Aircraft (IB)

7920–00–051–4384

Brush, Dusting (IB)

7920–00–178–8315

Brush, Floor Sweeping (IB)

7920–00–243–3407
7920–00–292–2363
7920–00–292–2367
7920–00–264–4638
7920–00–292–2362
7920–00–292–2365

Brush, Plater's, Hand (IB)

7920–00–267–1215
7920–00–267–1213

Brush, Sanitary (IB)

7920–00–772–5800
7920–00–234–9317

Brush, Scrub (IB)

7920–00–240–7174
7920–00–951–8795
7920–00–282–2470 Tampico Fibers
7920–00–282–2470 Styrene Fibers
7920–00–297–1511
7920–00–061–0038

Brush, Shoe and Stove (IB)

7920–00–852–8170

Brush, Wire, Scratch (IB)

7920–00–291–5815
7920–00–282–9246
7920–00–246–8501
7920–00–223–7649
7920–00–269–1259
7920–00–255–5135
7920–00–269–0933

Brush, Wire, Stainless Steel (IB)

7920–00–958–1157

Brush-Set, Shoe and Stove (IB)

7920–00–205–0200

Cloth, Polishing (IB)

7920–00–205–1656

Cloth, Wiping (SH)

7920–LL–L03–6103
7920–LL–L03–6134

Pearl Harbor Naval Shipyard, Pearl Harbor, HI only

Cloth, Wiping ("Jean Cotton") (SH)

7920–LL–L01–0013
7920–LL–L01–0014

Portsmouth Naval Shipyard, Portsmouth, NH only

Handle, Mop (IB)

7920–00–205–1168
7920–00–267–1218
7920–00–205–1167
7920–00–550–9902
7920–00–550–9911
7920–00–550–9912
7920–00–998–2485
7920–00–998–2486
7920–00–851–0140
7920–00–851–0142
7920–00–246–0830
7920–00–205–1170

Handle, Paint Roller (IB)

7920–00–682–6512

Handle, Wood (IB)

7920–00–177–5106
7920–00–141–5452
7920–00–263–0328

Kit, Aircraft Cleaning (IB)

7920–00–490–6046

Mop, Dusting, Cotton (IB)

7920–00–205–0481
7920–00–205–0483
7920–00–245–8289
7920–00–205–0484

Mop, Wet (IB)

7920–00–224–8726

Mop, Wet, Cellulose (Sponge Refill) (IB)

7920–00–471–2676

Mop, Wet, Cellulose, Complete (IB)

7920–00–432–7117

Mophead, Dusting, Cotton (IB)

7920–00–634–0201
7920–00–267–4921
7920–00–998–2482
7920–00–998–2483
7920–00–998–2484
7920–00–205–0485
7920–00–851–0141
7920–00–205–0487
7920–00–205–0488

Mophead, Wet (IB)

7920–00–205–0425
7920–00–205–0426
7920–00–141–5549
7920–00–171–1148
7920–00–141–5550
7920–00–141–5547
7920–00–141–5548
7920–00–141–5544
7920–00–926–5492
7920–00–926–5493
7920–00–926–5494
7920–00–926–5495
7920–00–926–5496
7920–00–926–5497
7920–00–926–5498
7920–00–926–5499
7920–00–926–5501
7920–00–926–5502

Pad, Scouring (IB)

7920–00–753–5242
7920–00–151–6120

Pad, Wax Applicator (SH)

7920–00–633–9274

Rag, Wiping (SH)

7920–00–205–1711 Warner Robins, Georgia only

Scraper and Squeegee (IB)

7920–00–045–2556

Sponge, Cellulose (IB)

7920–00–161–6219
7920–00–633–9928
7920–00–240–2559
7920–00–884–1116
7920–00–884–1115
7920–00–633–9905
7920–00–240–2555
7920–00–633–9906

Sponge, Plastic (IB)

7920–00–633–9908
7920–00–633–9911
7920–00–633–9915
7920–00–685–4152

Squeegee (SH)

7920–00–224–8339

Squeegee, Window-Cleaning (IB)

7920–00–577–4744
7920–00–577–4745
7920–00–577–4746

Towel, Machinery Wiping (IB)

7920–00–260–1279

Towel, Paper (IB)

7920–00–823–9772
7920–00–823–9773

Class 7930

Cloth, Wiping (SH)

7930–LL–COO–3782 Mare Island Naval Shipyard, CA only
7930–LL–COO–2768 Mare Island Naval Shipyard, CA only
7930–00–NSH–0003 (w/o Lanyard) Charleston Naval Supply Center, SC only
7930–00–NSH–0004 (w/ Lanyard) Charleston Naval Supply Center, SC only

Detergent, General Purpose (IB)

7930–00–928–5280
7930–00–357–7386
7930–00–068–1660
7930–00–055–6122
7930–00–177–5243
8010–00–721–9744
8010–00–721–9745
8010–00–985–2380
8010–00–079–2756
8010–00–141–2951
8010–00–584–3149
8010–00–584–3154
8010–00–721–9483
8010–00–883–5329
8010–00–985–2390
8010–00–985–2392
8010–00–721–9746
8010–00–721–9747
8010–00–721–9748
8010–00–721–9753
8010–00–141–2956
8010–00–721–9749
8010–00–721–9750
8010–00–721–9754
8010–00–835–7215
8010–00–985–2391
8010–00–290–6983
8010–00–290–6984
8010–00–582–5382
8010–00–584–3150
8010–00–721–9487
8010–00–721–9751
8010–00–721–9752
8010–00–515–2487
8010–00–958–8147
8010–00–958–8148
8010–00–958–8151
8010–00–598–5455
8010–00–936–8389
8010–00–936–8371

Aerosol Paint, Primer Coating (IB)

8010–00–067–5434
8010–00–616–9181

Enamel (IB)

8010–00–067–5436
8010–00–067–5437
8010–00–079–2750
8010–00–079–2752
8010–01–203–7803
8010–01–203–7804
8010–00–079–3750
8010–00–079–3752
8010–00–079–3754
8010–00–079–3756
8010–00–079–3758
8010–00–079–3760
8010–00–079–3762
8010–00–079–3764
8010–00–159–4519
8010–00–159–4520
8010–00–159–4521
8010–00–159–4522
8010–00–060–6461
8010–00–935–7156

Enamel, Lacquer (IB)

8010–00–664–1914
8010–00–702–1053
8010–00–582–4743
8010–00–851–5525
8010–00–941–8712
8010–00–133–5901
8010–00–181–7791
8010–00–935–6609
8010–00–935–7064
8010–00–935–7075
8010–00–935–7079
8010–00–935–7085
8010–00–598–5936
8010–00–846–5117
8010–00–852–9033
8010–00–852–9034
8010–00–988–1458
8010–00–764–8434
8010–00–848–9272
8010–00–878–5761
8010–00–010–8154
8010–00–167–1139
8010–00–348–7715
8010–00–616–9143
8010–00–616–9144
8010–00–782–9356
8010–00–181–7371
8010–00–936–8366
8010–00–936–8367
8010–00–936–8370

Enamel, Primer Coating (IB)

8010–00–584–2426
8010–00–159–4518
8010–00–297–0593
8010–00–899–8825

Class 8105

Bag, Assembly, Crew Relief (IB)

8105–00–922–9469

Bag, Cloth (IB)

8105–00–282–8183

Bag, Cotton (IB)

8105–00–183–6981
8105–00–281–3924
8105–00–183–6982
8105–00–179–0089
8105–00–271–1511
8105–00–183–6985
8105–00–174–0836
8105–00–183–6989
8105–00–290–3360

Bag, Currency (IB)

8105–00–NIB–0006
Bureau of Engraving and Printing, Washington, DC only

Bag, Evidence (IB)

8105–00–NIB–0001
8105–00–NIB–0002
8105–00–NIB–0003
8105–00–NIB–0004
8105–00–NIB–0005

Bag, Motion Sickness (IB)

8105–00–835–7212

Bag, Plastic (IB)

8105–00–837–7753
8105–00–837–7754
8105–00–837–7755

Coin Bags (SH)

8105–00–NSH–0005
8105–00–NSH–0006
8105–00–NSH–0008
8105–00–NSH–0009
8105–00–NSH–0010
8105–00–NSH–0011
8105–00–NSH–0012

Class 8115

Box, Set-Up, Mailing Dental (IB)

8115–00–511–5750

Box, Shipping (IB)

8115–00–787–2142
8115–00–787–2147
8115–00–101–7847
8115–00–101–7638
8115–00–787–2146
8115–00–787–2148
8115–01–019–4085
8115–01–019–4084
8115–01–057–1244
8115–01–057–1243
8115–01–057–1245
8115–00–192–1603
8115–00–192–1604
8115–00–192–1605
8115–01–093–3730

Box, Wood (SH)

8115–00–935–5867
8115–00–935–6525
8115–00–935–6526
8115–00–935–6527

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8115-00-935-6528
8115-00-935-6530
8115-00-935-6532
8115-00-935-6531

Box, Wood, Nailed (SH)

8115-01-M00-0081
Pine Bluff Arsenal, AR only

Wood Container (SH)

8115-L1-599-7220
8115-L1-599-7320
8115-L1-599-8020
8115-L1-599-7920
8115-L1-465-1020
Robins Air Force Base, Georgia only

Class 8135

Block, Currency Packing (IB)

BEP Stock #L-1391

Chipboard (IB)

8135-00-290-0336
8135-00-782-3948
8135-00-782-3951
8135-00-579-8457

Class 8140

Pallet Assembly (SH)

8140-01-050-9789

Class 8305

Cloth, Filter (SH)

8305-LL-N01-7278
Naval Supply Center, WA only

Class 8315

Buckle, Belt (SH)

8315-00-598-6278
8315-00-664-9126
8315-01-069-4982
8315-00-275-4513

Sewing Kit (SH)

8315-01-090-5823
8315-01-222-0680
8315-01-222-0679

Class 8346

Cover, Tent (SH)

8340-00-262-2397

Line, Tent (SH)

8340-00-263-0254
8340-00-263-0255
8340-00-252-2268
8340-00-252-2271
8340-00-252-2273
8340-00-252-2291
8340-00-556-9689
8340-00-252-2280
8340-00-252-2282
8340-00-252-2297
8340-00-252-2293

Pin, Tent, Aluminum (SH)

8340-00-261-9749

Pin, Tent, Wood (SH)

8340-00-261-9750
8340-00-261-9751
8340-00-261-9752

Pole Section, Tent (SH)

8340-00-223-7849

Shelter Half, Tent, Incomplete (SH)

8340-00-577-4168

Shelter Half, Tent, Complete (SH)

8340-01-026-8096

Class 8345

Case, Flag, Interment (IB)

8345-00-782-3010

Flag, Signal (IB)

8345-00-935-0588
8345-00-935-0589
8345-00-935-0590
8345-00-935-0591
8345-00-935-0592
8345-00-935-0594
8345-00-935-0595
8345-00-935-0597
8345-00-935-0598
8345-00-935-0599
8345-00-935-0602
8345-00-935-0604
8345-00-935-0607
8345-00-935-0608
8345-00-935-0633
8345-00-935-1840
8345-00-935-0634
8345-00-935-0636
8345-00-935-0639
8345-00-935-0640
8345-00-926-9977
8345-00-926-9216
8345-00-926-9978
8345-00-926-6804
8345-00-926-6806
8345-00-926-9979
8345-00-926-6807
8345-00-926-6809
8345-00-926-9980
8345-00-926-9219
8345-00-935-0582
8345-00-926-9984
8345-00-926-6003
8345-00-926-9985
8345-00-935-0619
8345-00-935-1839
8345-00-935-0620
8345-00-935-0623
8345-00-935-0409
8345-00-935-0624
8345-00-935-0445
8345-00-926-6803
8345-00-935-0446
8345-00-926-6805
8345-00-935-0447
8345-00-926-9987
8345-00-935-0448
8345-00-926-6810
8345-00-926-9988
8345-00-935-0450
8345-00-935-0451
8345-00-935-0453
8345-00-926-6002
8345-00-926-6814
8345-00-935-0436
8345-00-935-0437
8345-00-935-0438
8345-00-935-0408
8345-00-935-0441
8345-00-935-0442
8345-00-935-0464
8345-00-935-0465
8345-00-935-0466
8345-00-935-0467
8345-00-935-0468
8345-00-935-0470
8345-00-935-0471
8345-00-935-0473
8345-00-935-0474
8345-00-935-0475
8345-00-935-0478
8345-00-935-0480
8345-00-935-0483
8345-00-935-0484
8345-00-935-0626
8345-00-935-1838
8345-00-935-0627
8345-00-935-0407
8345-00-935-0630
8345-00-935-0631

Flag, Signal, Vehicle, Danger Red (IB)

8345-00-260-2724

Flagstaff, Wood (SH)

8345-00-242-3850

Panel Marker, Aerial Liaison (SH)

8345-00-174-6865

Pennant, Signal, and Special Flags (IB)

8345-00-935-0420
8345-00-935-0517
8345-00-935-4755
8345-00-825-1847
8345-00-935-3201
8345-00-935-4756
8345-00-935-0522
8345-00-914-6086
8345-00-935-4753
8345-00-935-4754
8345-00-935-0404
8345-00-935-0514
8345-00-825-1868
8345-00-935-0406
8345-00-935-0509
8345-00-926-5988
8345-00-935-0512
8345-00-921-4497
8345-00-935-3190
8345-00-825-1839
8345-00-935-0526
8345-00-914-6078
8345-00-914-6080
8345-00-914-6083
8345-00-935-0524
8345-00-926-5987
8345-00-926-5989
8345-00-935-0539
8345-00-926-5991
8345-00-825-1840
8345-00-935-0521
8345-00-914-6087
8345-00-926-6026
8345-00-935-0403
8345-00-935-0536
8345-00-926-9210
8345-00-926-9213
8345-00-926-6028
8345-00-935-0508
8345-00-935-0519
8345-00-935-0415
8345-00-914-6085
8345-00-926-9215
8345-00-935-0411
8345-00-926-9212
8345-00-914-7411
8345-00-914-6079
8345-00-914-6082
8345-00-935-0523
8345-00-935-0417

8345-00-926-5990
8345-00-935-0421
8345-00-926-9207
8345-00-935-0542
8345-00-935-0520
8345-00-935-0492
8345-00-935-0493
8345-00-926-9214
8345-00-935-0513
8345-00-935-0490
8345-00-935-0495
8345-00-926-9208
8345-00-935-0518
8345-00-935-0511
8345-00-914-6084
8345-00-935-0405
8345-00-935-0410
8345-00-935-0525
8345-00-914-6075
8345-00-914-6077
8345-00-914-6081
8345-00-935-0419
8345-00-935-0416
8345-00-935-0537
8345-00-935-0538
8345-00-935-0540
8345-00-935-0541
8345-00-926-9211
8345-00-935-0499
8345-00-935-0500
8345-00-935-0501
8345-00-825-1818
8345-00-935-0497
8345-00-935-0504
8345-00-935-1841
8345-00-935-0418
8345-00-825-1819
8345-00-926-1551
8345-00-935-0503
8345-00-935-0534
8345-00-935-1843
8345-00-926-1548
8345-00-926-1549
8345-00-926-1552

Streamer, Warning, Aircraft (IB)

8345-00-883-0170

Class 8405

Cover, Service Cap (IB)

8405-01-046-8544
8405-01-046-8545

Liner, Poncho, Wet Weather (IB)

8405-00-889-3683
Memphis, TN Depot only

Poncho, Wet Weather (SH)

8405-01-100-0976

Class 8410

Skirt, Woman's (SH)

8410-01-187-1415
8410-01-187-1416
8410-01-187-1417
8410-01-187-1418
8410-01-187-1419
8410-01-187-1420
8410-01-187-1421
8410-01-187-1422
8410-01-187-1423
8410-01-187-1424
8410-01-187-1425
8410-01-187-1426
8410-01-187-1427
8410-01-187-1428
8410-01-187-1429
8410-01-187-1430
8410-01-187-1431
8410-01-187-1432
8410-01-187-1433
8410-01-187-1434
8410-01-187-1435
8410-01-187-1436
8410-01-187-1437
8410-01-187-1438
8410-01-187-1439
8410-01-187-1440
8410-01-187-1441

Slacks, Utility, Woman's (SH)

8410-01-074-6193
8410-01-074-6194
8410-01-074-6195
8410-01-074-6196
8410-01-074-6197
8410-01-074-6198
8410-01-074-6199
8410-01-074-6200
8410-01-074-7868
8410-01-074-7869
8410-01-074-7870
8410-01-074-7871
8410-01-074-7872
8410-01-074-7873
8410-01-074-7874
8410-01-074-7003
8410-01-074-7004

Class 8415

Apron, Construction Worker's (IB)

8415-00-205-3895
8415-00-257-4290

Apron, Food Handler's (IB)

8415-00-255-8577
8415-00-634-0205
8415-00-051-1173
8415-01-045-0587

Apron, Food Handler's (SH)

8415-00-899-3026

Apron, Impermeable (SH)

8415-00-082-6108

Apron, Laboratory (SH)

8415-00-634-5023

Band, Helmet, Camouflage (IB)

8415-01-110-9981

Cap, Food Handler's (IB)

8415-00-234-7677
8415-00-234-7678
8415-00-234-7679

Cover, Helmet (IB)

8415-00-105-0605

Cover, Helmet, Camouflage Pattern (IB)

8415-01-092-7514
8415-01-092-7515

Cover, Helmet, Chemical Protective (IB)

8415-01-111-9028 (75,000 each annually)

Cover, Helmet, Desert Camouflage (SH)

8415-01-103-1349
8415-01-103-1350

Coveralls, Disposable (SH)

8415-00-601-0792
8415-00-601-0793
8415-00-601-0794
8415-00-601-0797
8415-00-601-0801
8415-00-601-0802

Hood, Anti-Flash, Flame Resistant (SH)

8415-01-268-3473

Hood, Spray Painter's Protective (SH)

8415-00-NSH-0001
Pearl Harbor Naval Shipyard, HI only

Liner, Coat, Cold Weather (IB)

8415-00-782-2886
8415-00-782-2887
8415-00-782-2888
8415-00-782-2889
8415-00-782-2890
8415-01-062-0679
Mechanicsburg, PA Depot only

Liner, Flyer's Trousers (IB)

8415-00-844-9815
8415-00-844-9816
8415-00-844-9817
8415-00-844-9818

Liner, Trousers, Cold Weather (IB)

8415-01-180-0370
8415-01-180-0371
8415-01-180-0372
8415-01-180-0373
8415-01-180-0374
8415-01-180-0375
8415-01-180-0376
8415-01-180-0377

Mask, Extreme Cold Weather (SH)

8415-01-008-3468

Pad, Helmet, Flight Deck Crewman's (IB)

8415-00-178-6830
8415-00-178-6831

Socks, Extreme Cold Weather (SH)

8415-00-177-7992
8415-00-177-7993
8415-00-177-7994
8415-01-057-3503

Traffic Safety Clothing (See Class 8465 also) (IB)

8415-00-177-4978
8415-00-177-4974

Class 8430

Footwear Cover (IB)

8430-01-196-8394
8430-00-580-1205
8430-00-580-1206
8430-00-591-1359
8430-01-162-4453

Slide Fastener Unit, Laced Boot (IB)

8430-00-465-1888
8430-00-465-1889
8430-00-465-1890

Class 8440

Belt, Coat (IB)

8440-00-261-4965
8440-00-261-4966

Belt, Trousers (IB)

8440-00-270-0535

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8440–00–412–2309
8440–00–573–1666
8440–00–270–0536
8440–00–412–2312
8440–00–573–1765
8440–00–270–0537
8440–00–412–2314
8440–00–573–3727
8440–00–290–0567
8440–01–052–9738
8440–00–290–0568
8440–01–052–9739
8440–00–269–5311
8440–01–052–9740
8440–00–634–5632
8440–00–753–6363
8440–00–577–4177
8440–00–753–6364
8440–00–577–4178
8440–00–753–6365
8440–00–270–0541
8440–00–412–2328
8440–00–270–0542
8440–00–412–2341
8440–00–270–0543
8440–00–412–2342
8440–01–167–7246
8440–01–175–7851
8440–01–175–7853
8440–01–175–7850
8440–01–204–2610
8440–01–175–7854
8440–01–175–7852
8440–01–181–4410
8440–01–181–4411
8440–01–204–2610

Handkerchief, Man's (SH)

8440–00–261–4246

Neckerchief (IB)

8440–01–198–5175

Neckerchief, Camouflage, Desert (IB)

8440–01–148–4549

Necktie (IB)

8440–01–156–0373
8440–01–171–7571
8440–01–190–0066
8440–00–555–7194

Scarf, Man's, Wool (SH)

8440–01–005–2558
8440–00–180–6843
8440–00–823–7520

Suspenders, Trousers (IB)

8440–00–221–0852

Class 8445

Belt, Trousers, Cotton (IB)

8445–01–068–8339
8445–01–068–8340
8445–01–075–0013
8445–01–075–0014
8445–01–075–0015

Scarf, Neckwear (IB)

8445–00–549–5363

Class 8455

Holder, Identification (IB)

8455–00–898–9730

Medal (SH)

8455–00–261–4501

Medal Sets (SH)

8455–00–082–5528
8455–00–269–5761
8455–00–269–5783
8455–00–269–5763
8455–00–269–5764
8455–00–269–5782

Scarf, Branch of Service (IB)

8455–00–916–8398
8455–00–405–2294
8455–00–985–7336
8455–01–078–0745

Class 8460

Briefcase (SH)

8460–01–193–9769

Case, Map and Photograph (SH)

8460–00–368–4281

Cover, Map (SH)

8460–00–287–2137
8460–00–287–2140

Kit Bag, Flyer's (IB)

8460–00–606–8366

Class 8465

Bag, Soiled Clothes (IB)

8465–00–122–0362
8465–00–122–0363
8465–00–122–0364

Bag, Barrack (IB)

8465–00–530–3692

Bag, Chemical Protective Clothing Outfit (IB)

8465–01–216–6259

Bag, Laundry (SH)

8465–00–616–9576

Bag, Laundry, Self-Closing, Ropeless (SH)

8465–00–656–0816

Bag, Personal Effects (SH)

8465–00–174–0808

Bag, Sleeping, Firefighter's (IB)

8465–00–081–0798

Bag, Soiled Clothes (SH)

8465–00–122–3869

Bag, Soiled Clothes, Submarine (IB)

8465–00–762–7671

Belt, Individual, Equipment, Nylon, LC–1 (IB)

8465–00–001–6487
8465–00–001–6488
8465–01–120–0674
8465–01–120–0675

Belt, M.P. (IB)

8465–00–527–8843

Binding, Snowshoe, Universal (IB)

8465–00–965–2175

Canteen, Water, Plastic (IB)

8465–01–115–0028
Mechanicsburg, PA; Tracy, CA; & Oakland, CA DLA Depots only

Carrier, Intrenching Tool (IB)

8465–00–001–6474

Case, Field, First Aid (IB)

8465–00–935–6814

Case, Maintenance Equipment, Small Arms (IB)

8465–00–781–9564

Clipboard, Pilot's (SH)

8465–01–012–9174

Clothes Stop (IB)

8465–00–377–5701

Cover, Field Pack, Camouflage (IB)

8465–01–103–0659

Cover, Field-Pack, Camouflage, White (SH)

8465–00–001–6478

Cover, Water, Canteen (IB)

8465–00–118–4956

Fieldpack, Canvas (SH)

8465–00–205–3493

Lanyard, Pistol (SH)

8465–00–262–5237
8465–00–965–1705

Mat, Sleeping, Cold Weather (SH)

8465–01–109–3369

Necklace, Personnel, Identification (SH)

8465–00–261–6629

Pack, Personal Gear (SH)

8465–01–141–2321

Pocket, Ammunition Magazine (IB)

8465–00–782–2239
8465–00–261–4983

Protector, Trousers, Pistol Holster (IB)

8465–00–682–6741

Sheath, Ax (SH)

8465–01–110–2078

Sheath, Brush Hook (Bush) (SH)

8465–01–136–4720

Sheath, McLeod Tool (SH)

8465–01–136–4718

Sheath, Pulaski Tool (SH)

8465–01–067–9999

Sheath, Shovel, Hand (SH)

8465–01–136–4719

Strap, Shoulder, Quick Release, Right Hand (IB)

8465–01–078–9282
Mechanicsburg, PA & Richmond, VA Depots only

Strap, Waist, with Pad, LC–2 (IB)

8465–01–075–8164

Strap, Webbing, Cargo, Tie-Down (IB)

8465–00–001–6477

Strap, Webbing, Frame Attaching (IB)

8465–01–151–2891

Strap, Webbing, Waist, LC–1 (IB)

8465–00–269–0481

Strap, Shoulder, Quick Release, Left Hand (IB)

8465–00–269–0482
Richmond, VA Depot only

Suspenders, Individual Equipment Belt (IB)

8465–00–001–6471

Traffic-Safety Clothing (IB)

8465–00–177–4975
8465–00–177–4976
8465–00–177–4977

Water Bag, Nylon Duck (SH)

8465–01–185–5511

Whistle, Ball, Plastic (IB)

8465–00–254–8803

Class 8470

Headband, Ground-Troop'/Parachutists' Helmet (IB)

8470–01–092–8493
8470–01–092–8492

Neckband, G.T., Helmet Liner (IB)

8470–01–753–6166

Pad, Parachutists' Helmet (IB)

8470–01–092–8494

Strap, Chin, Ground Troops'/Parachutists' Helmet (IB)

8470–01–092–7534

Strap, Chin, Parachutist Steel Helmet (IB)

8470–00–032–2737

Strap, Retention, Parachutists' Helmet (IB)

8470–01–092–7524

Strap, Soldier's Steel Helmet M–1 (IB)

8470–00–030–8003

Suspension Assembly, Liner, Helmet (IB)

8470–00–880–8814

Suspension-Assembly, Ground Troops'/ Parachutist (IB)

8470–01–092–7516
8470–01–092–7517
8470–01–092–7518
8470–01–092–7519

Class 8520

Soap, Toilet (IB)

8520–00–228–0598
8520–01–058–7463
8520–00–141–2519

Class 8540

Paper, Toilet Tissue (IB)

8540–00–530–3770 GSA Zone 1 only
8540–01–055–6094

Class 8915

Potatoes, White, Fresh (SH)

8915–00–456–6111 Whole
8915–00–228–1945 Diced
DLA in North Carolina and South Carolina only

Class 8970

Food Packet, Survival, Aircraft, Life Raft, Indiv. (SH)

8970–01–028–9406

Class 9905

Holder, Card-Label (IB)
9905–00–866–0334

Plate, Marking, Blank (SH)

9905–00–473–6336

Sign-Kit, Vehicle (SH)

9905–00–565–6267

Tag, Key (SH)

9905–00–245–7826

Tag, Marker (SH)

9905–00–537–8954
9905–00–537–8955
9905–00–537–8956
9905–00–537–8957

Tree Shade (SH)

9905–00–NSH–0001 8' X 12'
9905–00–NSH–0153 8' X 16'
BLM and U.S. Forest Service, Washington and Oregon only

Class 9920

Ash Receiver, Tobacco (IB)
9920–00–682–6757

Cleaner, Tobacco Pipe (SH)

9920–00–292–9946

U.S. Postal Service Items

Divider, Separation (SH)

P.S. #01037–A
P.S. #01037–B

Lead Seal with Cord Attachment (SH)

P.S. #0815

Marker, I.D., Plastic (SH)

P.S. #01036
P.S. #01036–A
P.S. #01036–B
P.S. #01036–C
P.S. #01036–D
P.S. #01036–E
P.S. #01036–F

Pad, Shoulder Strap (SH)

P.S. #D–1212

Pallet, P.S., Material Handling (SH)

3990–00–NSH–0008 (62" X 48")
Postal Service, Western Area Supply Center only

Pocket, Imitation Leather (SH)

P.S. #D–1200–G

Safety Guard (SH)

P.S. #1075–B

Seal, Metal Band (SH)

P.S. #0816–A
P.S. #0816–B

Seat Assembly, Complete (SH)

P.S. #054–A

Seat Cover (SH)

P.S. #054–B

Stool (SH)

P.S. #127–A
P.S. #127–B
P.S. #127–C
P.S. #127–D

Strap, Mail Tray (IB)

P.S. Item #01067

Strap, Tie, Mail Carrier's, with buckle (IB)

P.S. #D1216–D
P.S. #D1216–E
P.S. #D1216–F

Tray, Fiberboard, Three-Sided (SH)

P.S. #D–3915

Military Resale Commodities

Procedures for ordering military resale commodities are contained in § 51–5.6, Code of Federal Regulations, Title 41.

Item No.	Item Name
040	Pen, twist action, black ink (IB).
041	Pen, twist action, blue ink (IB).
060	Roller ball pen, red (IB).
061	Roller ball pen, blue (IB).
062	Roller ball pen, black (IB).
063	Retractable pen, black (IB).
064	Retractable pen, blue (IB).
065	Ultra fine tip marker, red (IB).
066	Ultra fine tip marker, blue (IB).
067	Ultra fine tip marker, black (IB).
068	Pencil, mechanical, 0.5 mm lead (IB).
204	Cleaner, tobacco, pipe (SH).
500	Room air freshener (IB).
501	Deodorizer, toilet bowl (IB).
503	Bowl deodorizer (IB).
504	Bowl deodorizer (IB).
506	Air deodorizer, push-up type, floral spring (IB).
507	Air deodorizer, push-up type, lemon (IB).
510	Cleaner, all purpose (IB).
519	Fabric softener sheets, reusable, 8–3/4 x 4" (60 count) (IB).
520	Fabric softener sheets, reusable, 8–3/4 x 4" (40 count) (IB).
521	Candle, air freshening, fruit (IB).
522	Candle, air freshening, holiday (IB)
523	Candle, air freshening, floral (IB).
524	Candle, air freshening, berry (IB).
525	Candle, air freshening, forest (IB).
526	Candle, air freshening, carnival (IB).
527	Candle, air freshening, festival (IB).
528	Candle, air freshening, herbal (IB).
529	Candle, air freshening, assorted scents with holders (IB).
541	Scrubber, bathroom, with handle (IB).
542	Scrubber, kitchen, with handle (IB).
543	Scrubber, grill & garage, with handle (IB).
544	Scrubber, nylon net over polyurethane pad (IB).
554	Scrubber, nylon, rectangular (IB).
555	Scrubber, kitchen, 4–5/8 x 3–1/16 x 13/16" (IB).
556	Scrubber, bathroom, 4–5/8 x 3–1/16 x 13/16" (IB).
557	Scrubber, general household, 6–3/8 x 3–4/16 x 1" (IB).
563	Scrubber, plastic, for teflon (IB).
564	Scrubber, stainless steel (IB).
568	Board, ironing, table top (IB).
570	Clothespins, plastic (IB).
574	Clothesline, plastic, rayon reinforced, 100-ft. (IB).

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Item No.	Item Name
575	Sponge, cellulose, 5-1/2 x 3-5/8 x 1-1/8" (IB).
576	Sponge, cellulose, 7-3/8 x 4 x 1-3/4" (IB).
577	Sponge, cellulose, 5-1/2 x 3-5/8 x 1" (IB).
578	Sponge, cellulose, 5-1/2 x 3-5/8 x 5/8" (IB).
581	Flatware, assorted, PG of 24 (IB).
583	Flatware, forks, PG of 24 (IB).
584	Flatware, spoons, PG of 24 (IB).
593	Sponge, bath, circular (IB).
594	Swatter, fly, plastic (IB).
596	Cutlery set, plastic, heavy duty (8 ea knives, forks, spoons) (IB).
597	Knives, plastic, heavy duty (IB).
598	Forks, plastic, heavy duty (IB).
599	Spoons, plastic, heavy duty (IB).
620	Vest, safety, joggers, small (IB).
621	Vest, safety, joggers, medium (IB).
622	Vest, safety, joggers, large (IB).
650	Dryer, sweater (IB).
721	Paint roller cover, economy, 9" (IB).
723	Paint roller cover, all purpose, 9" (IB).
727	Paint roller cover, high pile, 9" (IB).
730	Paint roller cover, for rough surfaces, 9" (IB).
754	Pillow, Standard, 20" x 26" (IB).
755	Pillow, Queen, 20" x 30" (IB).
756	Pillow, King, 20" x 36" (IB).
820	Opener, can & bottle (IB).
824	Slicer, cheese (IB).
826	Peeler, vegetable (IB).
828	Cutter, pizza (IB).
832	Spatula, plate & bowl (IB).
850	Bib, baby, cotton (IB).
860	Hooks, laundry, plastic (IB).
862	Brush, lint, plastic (IB).
901	Broom, mixed fiber (IB).
902	Broom, push, indoor-outdoor, 54" handle (IB).
903	Broom, parlor, corn, medium weight (IB).
904	Broom, corn, plastic cap (IB).
905	Broom, plastic filament, flagged ends (IB).
907	Broom, plastic filament, angle cut (IB).
908	Broom, plastic filament, angle tilt (IB).
909	Broom, whisk, corn (IB).
912	Brush, lint, plastic filament (IB).
914	Brush, barbecue, with scraper (IB).
915	Brush, counter, plastic (IB).
916	Brush, bowl, sanitary, nylon filament (IB).
918	Brush, scrub, household (IB).
919	Brush, scrub, plastic block, vinyl filament (IB).
920	Handle, mop, spring lever, for wet mop-heads (IB).
921	Mop, anglematic (IB).
922	Applicator, wax, foam block (IB).
923	Mop, automatic, block sponge (IB).
924	Mop, block sponge, with scrub strip brush (IB).
925	Mop, dusting, nylon (IB).
926	Mop, stick, orlon/rayon yarn, wet (IB).
927	Mop, stick, rayon yarn, wet (IB).
928	Mop, stick, cotton yarn, wet (IB).
931	Refill, for #921 (IB).
933	Refill, mop, automatic, block sponge, for 923 (IB).
934	Refill, mop, block sponge, for 924 (IB).
936	Mophead, orlon/rayon yarn, wet (IB).
937	Mophead, cotton yarn, wet (IB).
941	Cloth, dish, knitted cotton (IB).
943	Towel, modern design (IB).
944	Dish cloth, modern design (IB).
945	Towel, kitchen, cotton (IB).
946	Potholder, quilted, cotton (IB).
947	Oven mitt, modern design (IB).
948	Potholder, modern design (IB).
949	Mitt, oven, quilted, cotton (IB).
950	Mop, dish and bottle, wood handle (IB).
955	Brush, vegetable/utility, plastic filament (IB).
956	Brush, bottle, nylon filament (IB).
957	Brush, dish and pan, nylon filament (IB).
959	Brush, pastry and basting (IB).
962	Cover, ironing board, silicone and pad, poly foam (IB).
964	Cover, ironing board, silicone, double coated (IB).
965	Cover, ironing board, color coated (IB).
970	Bag, washing machine, nylon with zipper (IB).
971	Towel dish, traditional design (IB).
972	Dish cloth, traditional design (IB).
973	Towel, contemporary design (IB).
974	Dish cloth, contemporary design (IB).
975	Oven mitt, traditional design (IB).
977	Oven mitt, contemporary design (IB).
978	Pot holder, contemporary design (IB).
979	Pot holder, traditional design (IB).
980	Cloth, all purpose, cotton (IB).
981	Towel, fashion design (IB).
982	Potholder, fashion design (IB).
983	Cloth, dusting (IB).
986	Cloth, wash, face (IB).
995	Dustpan, plastic (IB).

Administrative Services

Department of Commerce:
Herbert Hoover Building, 14th & Constitution Avenue NW., Washington, DC (SH)
Department of Defense:
DCASR Building B-95, 805 Walker Street, Marietta, Georgia (SH)
Department of Transportation:
FAA Regional Office, East Point, Field Facilities and Accounting Office, Hapeville, Georgia (SH)
Environmental Protection Agency:
1860 Lincoln Street, Denver, Colorado (SH)
Marfair/Fairchild Building, Washington, DC (SH)
Waterside Mall Complex, Washington, DC (SH)
345 Courtland Street NE., Atlanta, Georgia (SH)
General Services Branch, 230 South Dearborn Street, Chicago, Illinois (SH)
26 Federal Plaza, New York, New York (SH)
6th and Walnut Street, Philadelphia, Pennsylvania (SH)
Crystal Mall Complex, Arlington, Virginia (SH)

Assembly

Department of Army:
Kit Camouflage Support System, U.S. Army Troop Support Command, St. Louis, Missouri (IB)
Department of Defense:
Belt, Trousers (IB)
Food Packet, Assault Ration (8970-01-225-6504) (SH)
Food Packet, Survival, Abandon Ship (8970-00-299-1365) (IB)
Food Packet, Survival, General-Purpose, Individual (8970-00-082-5665) (IB)
General Services Administration:
Belt Weather Kit (8660-01-024-2838) (SH)
Canteen, Water Disposable (8465-01-062-5854) (SH)
Dinnerware Kit (7360-00-139-0480) (SH)
Living Kit, Basic and Supplemental (SH)
Mop-up Kit, Lateral Line (4210-01-029-0369) (SH)

Bursting and Packaging of Commemorative Stamps

U.S. Postal Service:
Washington, DC (SH)

Cage Cleaning

Department of Health and Human Services:
Food and Drug Administration, Federal Office Building #8, 200 C Street SW., Washington, DC (SH)

Cardboard and Paper Scrap Recovery

Department of Army:
New Cumberland Army Depot, Pennsylvania (SH)
Department of Energy:
Bonneville Power Administration, Portland, Oregon (SH)

Carpet Cleaning

General Services Administration:
Portland, Oregon, plus 10-mile radius (SH)

Carwash

Department of Interior:
Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon (SH)

Catering Service

Department of Air Force:
Military Entrance Processing Station, Jackson, Mississippi (SH)
Department of Army:
New Cumberland Army Depot, Military Entrance Processing Station, Building 521, New Cumberland, Pennsylvania (SH)

Commissary Shelf Stocking

Department of Navy:
Naval Air Station, Alameda, California (SH)
Naval Air Station, Long Beach, California (SH)
Naval Air Station, Miramar, San Diego, California (SH)
Naval Air Station, North Island, San Diego, California (SH)
Naval Station, San Diego, California (SH)
Naval Training Center, San Diego, California (SH)
Mare Island Naval Shipyard, Vallejo, California (SH)
Commissary Branch Store, Mayport, Florida (SH)
Naval Air Station, Pensacola, Florida (SH)
Naval Air Station, Barbers Point, Oahu, Hawaii (SH)
Naval Base, Pearl Harbor, Hawaii (SH)
Naval Training Center, Great Lakes, Illinois (SH)
Naval Air Station, Brunswick, Maine (SH)
Naval Air Station, Patuxent River, Maryland (SH)
Naval Construction Battalion Center, Gulfport, Mississippi (SH)
Naval Administrative Unit, Scotia, New York (SH)
Naval Station, Roosevelt Roads, Puerto Rico (SH)
Naval Education Training Center, Newport, Rhode Island (SH)
Naval Station and Naval Weapons Station, Charleston, South Carolina (SH)

Branch Commissary Store, Little Creek Naval Amphibious Base, Building 3324, Norfolk, Virginia (SH)
Naval Station, Norfolk, Virginia (SH)
Branch Commissary Store, Building 350, Norfolk Naval Shipyard, Portsmouth, Virginia (SH)
Naval Air Station, Oceana, Virginia Beach, Virginia (SH)
Naval Submarine Base, Bangor, Washington (SH)
Naval Air Station, Whidbey Island, Oak Harbor, Washington (SH)
Naval Support Activity, Sand Point, Seattle, Washington (SH)

Commissary Shelf Stocking and Custodial Service

Department of Air Force:
Gunter Air Force Station, Alabama (SH)
Maxwell Air Force Base, Alabama (SH)
Eielson Air Force Base, Alaska (SH)
Elmendorf Air Force Base, Alaska (SH)
Little Rock Air Force Base, Arkansas (SH)
George Air Force Base, California (SH)
Lowry Air Force Base, Colorado (SH)
Homestead Air Force Base, Florida (SH)
Hickam Air Force Base, Hawaii (SH)
Mountain Home Air Force Base, Idaho (SH)
Scott Air Force Base, Illinois (SH)
Nellis Air Force Base, Nevada (SH)
Kirtland Air Force Base, New Mexico (SH)
Griffiss Air Force Base, New York (SH)
Minot Air Force Base, North Dakota (SH)
Altus Air Force Base, Oklahoma (SH)
Shaw Air Force Base, South Carolina (SH)
Goodfellow Air Force Base, Texas (SH)
Lackland Air Force Base, Texas (SH)
Langley Air Force Base, Virginia (SH)
Francis E. Warren Air Force Base, Wyoming (SH)
Department of Army:
Fort Benjamin Harrison, Indiana (SH)
Fort Monmouth, New Jersey (SH)
Department of Navy:
Branch Commissary Store, Naval Support Activity, New Orleans, Louisiana (SH)

Commissary Warehousing Service

Department of Air Force:
Maxwell Air Force Base, Alabama (SH)
Mountain Air Force Base, Idaho (SH)
Scott Air Force Base, Illinois (SH)
Columbus Air Force Base, Mississippi (SH)
Minot Air Force Base, North Dakota (SH)
Altus Air Force Base, Oklahoma (SH)
Shaw Air Force Base, South Carolina (SH)
Langley Air Force Base, Virginia (SH)
Francis E. Warren Air Force Base, Wyoming (SH)

Commissary Shelf Stocking/Custodial/Warehousing

Department of Air Force:
McClellan Air Force Base, California (SH)
Robins Air Force Base, Georgia (SH)
McConnell Air Force Base, Kansas (SH)
Cannon Air Force Base, New Mexico (SH)
Sheppard Air Force Base, Texas (SH)
Hill Air Force Base, Utah (SH)

Completion of Form DD 1574 and DD 1574-1

Department of Air Force:
Robins Air Force Base, Georgia (SH)

Computer Tape Verification

Department of Air Force:
Tinker Air Force Base, Oklahoma (SH)

Currency Packaging

Department of Treasury:
Bureau of Engraving and Printing, Washington, DC (SH)

Document Destruction

Department of Treasury:
Internal Revenue Service, Cincinnati Service Center, 200 West Fourth Street, Covington, Kentucky (SH)

Drill Sharpening

Department of Navy:
Naval Supply Center, San Diego, California (SH)

Elevator Operation Service

General Services Administration:
Wyoming Valley Veterans Building, 19 North Main Street, Wilkes-Barre, Pennsylvania (SH)

Food Service

Department of Air Force:
Sheppard Air Force Base, Texas (SH)

Food Service Attendant

Department of Air Force:
914th Tactical Airlift Group (AFRFES), Niagara Falls International Airport, Niagara Falls, New York (SH)
Department of Army:
Consolidated Enlisted Dining Facility, Building 61, Fort McPherson, Georgia (SH)
Seneca Army Depot, Romulus, New York (SH)

Forms/Publication Storage and Distribution

Department of Agriculture:
Landover, Maryland (SH)
Department of Treasury:
Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC (SH)

Furniture Rehabilitation

General Services Administration:
Altus Air Force Base, Oklahoma (SH)
Lawton, Oklahoma including Fort Sill (SH)
Oklahoma City, Oklahoma, plus 25-mile radius, including FAA and Tinker Air Force Base (SH)
San Antonio, Texas, plus 40-mile radius (SH)
Wichita Falls, Texas, including Sheppard Air Force Base (SH)

Furniture Rehabilitation (Metal)

Department of Navy:
Naval Ordnance Station, Louisville, Kentucky (IB)

Ground Maintenance

Department of Air Force:
26 Buildings, 1 Area, and 4 Athletic Fields, Edwards Air Force Base, California (SH)
Department of Army:
5 Buildings and 6 Fields, Fort Ord, California (SH)
Lewiston Levee Parkway, Nez Perce County, Idaho (SH)
Bonneville Lock and Dam, Bonneville, Oregon (SH)
U.S. Army Reserve Facility-Portland (South), Sears Hall, 2731 SW. Multnomah Boulevard, Portland, Oregon (SH)
U.S. Army Reserve Facility-Portland (West), Sharff Hall, 6801 N. Chautauqua Boulevard, Portland, Oregon (SH)
Asotin Recreation Area, Asotin County, Washington (SH)
Cemetery Grounds (includes opening and closing of graves), Fort Lawton, Washington (SH)
U.S. Army Reserve Facility, Building 4306, Grant County Airport, Moses Lake, Washington (SH)
U.S. Army Reserve Facility, Mann Hall, N. 4415 Market Street, Spokane, Washington (SH)
U.S. Army Reserve Facility, N. 3800 Sullivan Road, Trentwood, Washington (SH)
Vancouver Army Barracks, Vancouver, Washington (SH)
Department of Commerce:
National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 2725 Montlake Boulevard East, Seattle, Washington (SH)
Department of Energy:
Morgantown Energy Technology Center, Morgantown, West Virginia (SH)
Department of Interior:
Wheeler National Wildlife Refuge, Decatur, Alabama (SH)
Ash Woods, French Drive & Independence Avenue to 17th Street & Independence Avenue, Washington, DC (SH)
National Park Service, LBJ Memorial Grove, Constitution Gardens, Washington, DC (SH)
Department of Navy:
Marine Corps Air Station, Yuma, Arizona (SH)
Naval Weapons Center, China Lake, California (SH)
Mare Island Naval Shipyard, Combat Systems Technical School Command, Vallejo, California (SH)
Naval Air Station Miramar, 15 Parcel Areas, San Diego, California (SH)
U.S. Naval Security Activity, Skaggs Island, Sonoma, California (SH)
Naval Ordnance Station, Nonindustrial Area, Indian Head, Maryland (SH)
Naval Weapons Station, 2 Parks, 5 Buildings, and 7 Areas, Yorktown, Virginia (SH)
Naval Air Station, Whidbey Island, Washington (SH)
Department of Transportation:
Federal Aviation Administration, AFSFO, 55 Midway Avenue, Daytona Beach, Florida (SH)
Federal Aviation Administration, Airway Facilities Sector, 1100 South Service Road, Atlanta, Georgia (SH)
Federal Aviation Administration, Air Route Traffic Control Center, Ronkonkoma, New York (SH)
Federal Aviation Administration, New York TRACON Facility, Westbury, New York (SH)
Federal Aviation Administration, Air Route Traffic Control Center, Leesburg, Virginia (SH)

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Department of Treasury:
U.S. Secret Service, Special Training Building and Complex, Beltsville, Maryland (SH)
General Services Administration:
Federal Center, 620 Central Avenue, Alameda, California (SH)
Federal Building and U.S. Post Office, 11000 Wilshire Boulevard, Los Angeles, California (SH)
U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California (SH)
Federal Building, 2800 Cottage Way, Sacramento, California (SH)
U.S. Court of Appeals, 7th and Mission Streets, San Francisco, California (SH)
Social Security Administration Complex, 6401 Security Boulevard, Baltimore, Maryland (SH)
Social Security Administration Computer Center, 6201 Security Boulevard, Baltimore, Maryland (SH)
Internal Revenue Service Center, 310 Lowell Street, Andover, Massachusetts (SH)
Federal Building, 1002 NE. Holladay, Portland, Oregon (SH)
Pioneer Courthouse, 520 SW. Morrison, Portland, Oregon (SH)
U.S. Courthouse, 620 SW. Main, Portland, Oregon (SH)
Wyatt Federal Building, 1220 SW. Third, Portland, Oregon (SH)
Federal Building, 500 West 12th, Vancouver, Washington (SH)
National Aeronautics and Space Administration:
Goddard Space Flight Center, Greenbelt, Maryland (SH)
U.S. Postal Service:
1088 Nandino Boulevard, Lexington, Kentucky (SH)
Veterans Administration:
Medical Center, Palo Alto, California (SH)

Janitorial/Custodial

Department of Agriculture:
Forest Service, Coeur d'Alene Nursery, 3600 Nursery Road, Coeur d'Alene, Idaho (SH)
Forest Service, Fernan Ranger Station, 2502 E. Sherman Avenue, Coeur d'Alene, Idaho (SH)
Wallace Ranger District of the Panhandle National Forest, Coeur d'Alene, Idaho (SH)
Targhee National Forest Supervisor's Office Building, 420 North Bridge Street, St. Anthony, Idaho (SH)
National Finance Center, NASA Facility, 13800 Old Gentilly Road, Building 350, New Orleans, Louisiana (SH)
The Rexnord Building, 4277 Poche Court West, New Orleans, Louisiana (SH)
Umpqua National Forest-Radio Shop, 2691 NE. Diamond Lake Boulevard, Roseburg, Oregon (SH)
Umpqua National Forest, Supervisor's Office, 2900 NW. Stewart Parkway, Roseburg, Oregon (SH)
Department of Air Force:
Buildings 46, 228 and 963, Robins Air Force Base, Georgia (SH)
Newark Air Force Base, Ohio (SH)
911th Tactical Airlift Group (AFRES), Greater Pittsburgh International Airport, Pittsburg, Pennsylvania (SH)
5 Buildings, Bergstrom Air Force Base, Texas (SH)
Ellsworth Air Force Base, South Dakota (SH)
Fairchild Air Force Base, Washington (excluding USAF Hospital, Air National Guard and Commissary) (SH)
Griffiss Air Force Base, New York (SH)
Building 1293, Hill Air Force Base, Utah (SH)
Building 1400, Hill Air Force Base, Utah (SH)
Department of Army:
Pueblo Army Depot Activity, Pueblo, Colorado (SH)
National Defense University, Health Fitness, Fort McNair, Washington, DC (SH)
Fort Gillem, Georgia (SH)
Pentagon Officers Athletic Center, The Pentagon, Washington, DC (SH)
Southern Maryland Memorial USAR Center, Dower House Road, Washington, DC (SH)
Prince Georges County Memorial USAR Center, 6600 Baltimore Avenue, Riverdale, Maryland (SH)
U.S. Army Reserve Center, John Williams Street, Attleboro, Massachusetts (SH)
U.S. Army Reserve Center, Belmont & Manley Streets, Brockton, Massachusetts (SH)
U.S. Army Reserve Center, 915 W. Chestnut Street, Brockton, Massachusetts (SH)
U.S. Army Reserve Center, 675 American Legion Highway, Roslindale, Massachusetts (SH)
U.S. Army Reserve Center, 130 Eldridge Street, Taunton, Massachusetts (SH)
U.S. Army Reserve Center, Fort Snelling, Minnesota (SH)
U.S. Readiness Group, Fort Snelling, Minnesota (SH)
U.S. Army Reserve Center #1, 4350 Kingshighway Boulevard, St. Louis, Missouri (SH)
U.S. Army Reserve Center #3, 4301 Goodfellow Boulevard, St. Louis, Missouri (SH)
U.S. Army Reserve Center, 111 Finney Boulevard, Malone, New York (SH)
U.S. Army Reserve Center, Burrstone Road, Utica, New York (SH)
U.S. Army Reserve Center, Watertown, New York (SH)
U.S. Army Reserve Center, Reserve Facility, Salem, Oregon (SH)
U.S. Army Reserve Center, Lock Haven, Pennsylvania (SH)
Lycoming Memorial USARC, 1605 Four Mile Drive, Williamsport, Pennsylvania (SH)
U.S. Army Reserve Center, 3273rd U.S. Army Reserve Hospital, Suites B & C, 1003 Grove Road, Greenville, South Carolina (SH)
U.S. Army Reserve Center, Center No. 1, 2201 Laurens Road, Greenville, South Carolina (SH)
U.S. Army Reserve Center, Kukowski-Donaldson Center, Perimeter Road, Greenville, South Carolina (SH)
Lewisville Lake Park, Lewisville, Texas (SH)
Fort Belvoir Billeting Building #505, Fort Belvoir, Virginia (SH)
Resources Management Office Building, 400 Riverside Drive, Clarkston, Washington (SH)
U.S. Army Reserve Facility, Grant County Airport, Moses lake, Washington (SH)
U.S. Army Reserve Facility, 14631 S.E. 1092nd Street, Renton, Washington (SH)
Hiram M. Chittenden Locks, Seattle, Washington (SH)
U.S. Army Reserve Facility, Mann Hall, North 4415 Market Street, Spokane, Washington (SH)
U.S. Army Reserve Facility, 3800 North Sullivan Road, Trentwood, Washington (SH)
Vancouver Army Barracks, Vancouver, Washington (SH)
Yakima Firing Center, Yakima, Washington (SH)
Departments of Army and Air Force:
Army and Air Force Exchange System, Fort Bliss Exchange, Main Store, Building 1735, Fort Bliss, Texas (SH)
Army and Air Force Exchange, Alamo Exchange Region, 5315 Summit Parkway, San Antonio, Texas (SH)
AAFES Distribution Center, Newport News, Virginia (SH)
Department of Defense:
DCASR Building B-95, 2 Buildings, Marietta, Georgia (SH)
Department of Energy:
The Computer Sciences Building (CSC), 1155 Foote Drive, Idaho Falls, Idaho (SH)
The Technical Support Building (TSB), 1580 Sawtelle, Idaho Falls, Idaho (SH)
The Technical Support Addition (TSA), 1520 Sawtelle, Idaho Falls, Idaho (SH)
Airport Building, 9120 NE 47th, Portland, Oregon (SH)
Bonneville Power Administration, 710 NE Hassalo Street, 5840 NE Hassalo Street, 5840 NE Hassalo Street, Portland, Oregon (SH)
Ross Complex, 5411 NE Highway 99, Vancouver, Washington (SH)
Morgantown Energy Technology Center, Morgantown, West Virginia (SH)
Department of Health and Human Services:
Roth Building, Social Security Administrataion Complex, 5536 Caswell Road, Baltimore, Maryland (SH)
Social Security Administration Computer Center, 6201 Security Boulevard, Woodlawn, Maryland (SH)
National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio (SH)
National Institute for Occupational Safety and Health, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio (SH)
Department of Interior:
Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana (SH)
Bureau of Land Management, District Building, Rosenburg, Oregon (SH)
Bureau of Land Management, Salem District Office, 1717 Fabry Road, SE., Salem, Oregon (SH)
Department of Navy:
Marine Corps Air Station, Yuma, Arizona (SH)

Naval Weapons Station, Concord, California (SH)
12 Buildings, Naval Research Laboratory, Washington, DC (SH)
Naval Communications Unit (Cheltenham), Washington, DC (SH)
Naval and Marine Corps Reserve Center, Jackson, Mississippi (SH)
Naval Resale and Support Office, Fort Wadsworth, Staten Island, New York (SH)
Naval and Marine Corps Reserve Center, Newport News, Virginia (SH)
Building 3504, Naval Amphibious Base, Little Creek, Norfolk, Virginia (SH)
Marine Corps Development and Education Command, Quantico, Virginia for All Family Housing Units and 38 Buildings (SH)
Marine Corps Development and Education Command, MCCDPA Building 3041A, SABRS Annex, Quantico, Virginia (SH)
Marine Corps Development and Education Command, Buildings 2034, 2079, 2035, 3096, and 3400, Quantico, Virginia (SH)
Puget Sound Naval Shipyard, Equipment Maintenance Shops, Bremerton, Washington (SH)
Building 2700, Naval Air Station, Whidbey Island, Washington (SH)
Naval Air Station, 37 Buildings, Whidbey Island, Washington (SH)
Department of Transportation:
Federal Aviation Administration, Air Traffic Control Tower, Atlanta, Georgia (SH)
Federal Aviation Administration Facilities, Air Route Traffic Control Center, Hampton, Georgia (SH)
Federal Aviation Administration Facilities, Albany County Airport, Albany, New York (SH)
Federal Aviation Administration, TRACON Facility, Westbury, New York (SH)
Federal Aviation Administration Facilities, 7 Buildings, Spokane, Washington (SH)
Department of Treasury:
Bureau of Engraving and Printing, Annex Building, 14th & C Streets, SW., Washington, DC (SH)
Bureau of Engraving and Printing, Main Building, 14th & C Streets, SW., Washington, DC (SH)
General Services Administration:
Federal Building, 3rd Avenue and 1st Street, Cullman, Alabama (SH)
Federal Building, 109 St. Joseph Street, Mobile, Alabama (SH)
GSA Motor Pool and Parking Garage, St. Joseph Street, Mobile, Alabama (SH)
John A. Campbell U.S. Courthouse, 113 St. Joseph Street, Mobile Alabama (SH)
Federal Building and U.S. Courthouse, 15 Lee Street, Montgomery, Alabama (SH)
Federal Building, 4th and F Street, Anchorage, Alaska (SH)
Federal Building, 55 East Broadway, Tucson, Arizona (SH)
U.S. Post Office and Courthouse, Sixth and Rogers Avenue, Fort Smith, Arkansas (SH)
U.S. Post Office, Courthouse and Social Security Administration District Office, Hot Springs, Arkansas (SH)
Federal Building and U.S. Courthouse, 1130 "O" Street, Fresno, California (SH)
Federal Building, 801 I Street, Sacramento, California (SH)
John E. Moss Federal Building, 650 Capital Mall, Sacramento, California (SH)
U.S. Court of Appeals and Post Office, 7th and Mission Streets, San Francisco, California (SH)
Denver Federal Center, Building 85, Denver, Colorado (SH)
Central, East and South Buildings, 2430 E Street, NW., Washington, DC (SH)
Federal Building, 1724 F Street, NW., Washington, DC (SH)
Potomac Annex Buildings 1-7, 23rd & E Streets, NW., Washington, DC (SH)
Federal Building-U.S. Courthouse, 401 SE. First Avenue, Gainesville, Florida (SH)
Brickell Plaza Federal Building, Miami, Florida (SH)
Federal Building, 51 SW. First Avenue, Miami, Florida (SH)
Federal Building, U.S. Courthouse, U.S. Post Office, 601 North Florida Avenue, Tampa, Florida (SH)
Federal Building, 355 Hancock Avenue, Athens, Georgia (SH)
Federal Building, 275 Peachtree Street, NE., Atlanta, Georgia (SH)
U.S. Court of Appeals, Forsyth and Walton Streets, Atlanta, Georgia (SH)
IRS Center, 4800 Buford Highway, Chamblee, Georgia (SH)
Federal Building—U.S. Courthouse, 125 Bull Street, Savannah, Georgia (SH)
Juliette Gordon Low Federal Buildings, Building A—120 Bernard Street, Building B—124 Bernard Street, Building C—100 W. Oglethorpe Avenue, Savannah, Georgia (SH)
Federal Building, U.S. Post Office and U.S. Courthouse, Thomasville, Georgia (SH)
Federal Regional Center, Pinetree Boulevard, Thomasville,Georgia (SH)
Federal Building, U.S. Post Office, 304 N. 8th, Boise, Idaho (SH)
Federal Building and U.S. Courthouse, 205 4th Street, Coeur d'Alene, Idaho (SH)
Federal Building, 536 South Clark Street, Chicago, Illinois (SH)
Federal Parking Facility, 450 South Federal Street, Chicago Illinois (SH)
Interagency Motor Pool, 701 South Clinton Street, Chicago, Illinois (SH)
U.S. Customhouse, 610 South Canal Street, Chicago, Illinois (SH)
OSHA Training Center, 1555 Times Drive, Des Plaines, Illinois (SH)
Federal Building and U.S. Courthouse, 121 W. Spring Street, New Albany, Indiana (SH)
Federal Building and U.S. Courthouse, 101 First Street, SE., Cedar Rapids, Iowa (SH)
Federal Building, 210 Walnut Street, Des Moines, Iowa (SH)
Leased Spaced, 603-11 East 2nd Street, Des Moines, Iowa (SH)
U.S. Courthouse, 123 East Walnut Street, Des Moines, Iowa (SH)
Federal Building, 400 South Clinton, Iowa City, Iowa (SH)
Federal Building U.S. Post Office and Courthouse, 330 Shawnee, Leavenworth, Kansas (SH)
U.S. Post Office-Courthouse, 601 Broadway, Louisville, Kentucky (SH)
Federal Building and Interagency Motor Pool, Louisville, Kentucky (SH)
Federal Building, U.S. Post Office, U.S. Courthouse, Frederica and 5th Streets, Owensboro, Kentucky (SH)
Hale Boggs Federal Building and U.S. Courthouse, 500 Camp Street, New Orleans, Louisiana (SH)
Federal Building and U.S. Courthouse, 500 Fannin Street, Shreveport, Louisiana (SH)
Federal Building and U.S. Post Office, 40 Western Avenue, Augusta, Maine (SH)
Garmatz Courthouse and Federal Building, 101 W. Lombard Street, Baltimore, Maryland (SH)
Social Security Complex, Woodlawn Annex and Supply Buildings, 6401 Security Boulevard, Baltimore, Maryland (SH)
Phillips Buildings Complex, 7900 and 7920 Norfolk Avenue, 4915 St. Elmo Avenue, Bethesda, Maryland (SH)
John F. Kennedy Federal Building-Low Rise, Boston, Massachusetts (SH)
John W. McCormack Post Office and Courthouse, Post Office Square, Boston, Massachusetts (SH)
U.S. Appraiser's Stores, 406 Atlantic Avenue, Boston, Massachusetts (SH)
Philip J. Philbin Federal Building, 685 Main Street, Fitchburg, Massachusetts (SH)
Springfield Federal Building, Main and Bridge Streets, Springfield, Massachusetts (SH)
Federal Records Center, 380 Trapelo Road, Waltham, Massachusetts (SH)
Waltham Federal Center, 424 Trapelo Road, Waltham, Massachusetts (SH)
Gerald R. Ford Museum, 303 Pearl Street, NW., Grand Rapids, Michigan (SH)
Federal Building, 212 3rd Avenue South, Minneapolis, Minnesota (SH)
Federal Building and U.S. Courthouse, 110 S. 4th Street, Minneapolis, Minnesota (SH)
Social Security Building, 1811 Chicago Avenue South, Minneapolis, Minnesota (SH)
Federal Building and U.S. Courthouse, 316 N. Robert Street, St. Paul Minnesota (SH)
Federal Building, U.S. Post Office, and U.S. Courthouse, Main and Popular Streets, Greenville, Mississippi (SH)
Federal Building, U.S. Post Office, 200 East Washington Street, Greenwood, Mississippi (SH)
William M. Colmer Federal Building-Courthouse, 701 Main Street, Hattiesburg, Mississippi (SH)
Federal Building, 100 West Capitol Street, Jackson, Mississippi (SH)
U.S. Post Office and U.S. Courthouse, 245 East Capitol Street, Jackson, Mississippi (SH)
Durward G. Hall Federal Building and Courthouse, 302 Joplin Street, Joplin, Missouri (SH)
Social Security Administration Building, Main and Second, Joplin, Missouri (SH)
Federal Building, 601 East 12th Street, Kansas City, Missouri (SH)
Federal Records Center, 9700 Page Boulevard, Overland, Missouri (SH)
Federal Building, Post Office and Courthouse, 200 East Broadway, Missoula, Montana (SH)

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Federal Building and U.S. Courthouse, 100 Centennial Mall North, Lincoln Nebraska (SH)
Social Security Administration District Office Building, 22 Morris Street, Hackensack, New Jersey (SH)
Social Security Administration District Office Building, 686 Nye Avenue, Irvington, New Jersey (SH)
Social Security Administration District Office Building, 398 Bloomfield Avenue, Montclair, New Jersey (SH)
Federal Building, 20 Washington Place, Newark, New Jersey (SH)
Federal Building, 3rd and Hill Avenue, Gallup, New Mexico (SH)
Leo W. O'Brien Federal Building, Clinton Avenue and N. Pearl Street, Albany, New York (SH)
U.S. Post Office and Courthouse, 455 Broadway, Albany, New York (SH)
Federal Building, 111 West Huron, Buffalo, New York (SH)
U.S. Courthouse, 68 Court Street, Buffalo, New York (SH)
Internal Revenue Service, 120 Church Street, New York, New York (SH)
Jacob K. Javits Federal Building, including U.S. Court of International Trade, 26 Federal Plaza and Centre Street Garage, 203-209 Centre Street, New York (SH)
U.S. Courthouse Annex, 1 St. Andrews Plaza, New York, New York (SH)
U.S. Courthouse, 40 Foley Square, New York, New York, (SH)
U.S. Mission to the United Nations, 799 U.N. Plaza, New York, New York (SH)
Kenneth B. Keating Federal Building and U.S. Courthouse, 100 State Street, Rochester, New York (SH)
Federal Building, 45 Bay Street, Staten Island, New York (SH)
U.S. Courthouse and Federal Building, Broad and Catherine Streets, Utica, New York (SH)
Federal Building, U.S. Post Office and Courthouse, Bryson City, North Carolina (SH)
Federal Building, 401 West Trade Street, Charlotte, North Carolina (SH)
Social Security Administration Building, 215 West Third Avenue, Gastonia, North Carolina (SH)
U.S. Courthouse and Customhouse, 1716 Spielbusch Avenue, Toledo, Ohio (SH)
Federal Building, 125 South Main Street, Muskogee, Oklahoma (SH)
Federal Building, and Courthouse, 5th and Okmulgee, Muskogee, Oklahoma (SH)
Federal Building, U.S. Courthouse, 211 East 7th Avenue, Eugene, Oregon (SH)
Edith-Green-Wendell Wyatt Federal Building, 1220 SW 3rd Avenue, Portland, Oregon (SH)
Federal Building, 511 NW Broadway, Portland, Oregon (SH)
Federal Building, Bonneville Power Administration, 1002 NE Holladay Street, Portland, Oregon (SH)
Federal Warehouse, 2760 NW Yeon Avenue, Portland, Oregon (SH)
Lloyd Group Buildings, 5 Locations, Portland, Oregon (SH)
Pioneer Courthouse, 520 SW. Morrison, Portland, Oregon (SH)
U.S. Courthouse, Broadway and Maine, Portland, Oregon (SH)
U.S. Coustoms House, 220 NE. 8th Avenue, Portland, Oregon (SH)
Federal Building, 6th and State Streets, Erie, Pennsylvania (SH)
Federal Building and Courthouse, 228 Walnut Street, Harrisburg, Pennsylvania (SH)
William J. Green, Jr. Federal Building, 600 Arch Street, Philadelphia, Pennsylvania (SH)
Federal Building, 240 West Third Street, Williamsport, Pennsylvania (SH)
L. Mendel Rivers Federal Building, 334 Meeting Street, Charleston, South Carolina (SH)
U.S. Post Office-Courthouse, Broad and Meeting Street, Charleston, South Carolina (SH)
C. F. Haynesworth Federal Building and U.S. Courthouse, 300 East Washington Street, Greenville, South Carolina (SH)
Federal Building/U.S. Courthouse, 515 9th Street, Rapid City, South Dakota (SH)
Federal Building-U.S. Courthouse, 400 South Phillips Street, Sioux Falls, South Dakota (SH)
Armed Forces Examining Station and Bureau of Mines Building, 1100 Filmore Street, Amarillo, Texas (SH)
J. Marvin Jones Federal Building and U.S. Courthouse, 295 E. 5th Street, Amarillo, Texas (SH)
3. Brides and 1 Building, El Paso, Texas (SH)
U.S. Courthouse, 511 E. San Antonio Avenue, El Paso, Texas (SH)
Federal Building, U.S. Post Office and Courthouse, 211 West Ferguson Avenue, Tyler, Texas (SH)
Forest Service Building, 507 25th Street, Ogden, Utah (SH)
Federal Executive Institute, Route #29 North, Charlottesville, Virginia (SH)
U.S. Customs House, 101 E. Main Street, Norfolk, Virginia (SH)
U.S. Post Office and Courthouse, 600 Granby Mall, Norfolk, Virginia (SH)
Federal Building, 400 N. 8th Street, Richmond, Virginia (SH)
U.S. Courthouse Annex, 1100 East Main Street, Richmond, Virginia (SH)
U.S. Courthouse, 10th and Main Streets, Richmond, Virginia (SH)
GSA Center, 2 Buildings, Auburn, Washington (SH)
Federal Building, 3002 Colby Avenue, Everett, Washington (SH)
Federal Center, 25th and Dover Streets, Moses Lake, Washington (SH)
Federal Building, U.S. Post Office, 403 West Lewis Street, Pasco, Washington (SH)
Federal Building, U.S. Post Office and Courthouse, 825 Jadwin Avenue, Richland, Washington (SH)
Federal Archives and Records Center, 6125 Sandpoint Way, Seattle, Washington (SH)
Federal Building, Immigration and Naturalization Services, 815 Airport Way, Seattle, Washington (SH)
Federal Center South, 4735 E. Marginal Way, Seattle, Washington (SH)
U.S. Courthouse, 1010 Fifth Avenue, Seattle, Washington (SH)
Federal Building, U.S. Post Office, W. 904 Riverside, Spokane, Washington (SH)
Federal Building, 500 W. 12th Street, Vancouver, Washington (SH)
U.S. Courthouse, West 920 Riverside Avenue, Spokane, Washington (SH)
Federal Center, 14 Buildings, Walla Walla, Washington (SH)
U.S. Courthouse, 120 North Henry Street, Madison, Wisconsin (SH)
Federal Building, 500 Quarrier Street, West Virginia (SH)
Federal Office Building, 225 W. King Street, Martinsburg, West Virginia (SH)
Federal Office Building and Joseph C. O'Mahoney Federal Center, Cheyenne, Wyoming (SH)

Smithsonian Institution:
National Zoological Park, Washington, DC (SH)
Smithsonian Institution Service Center, 1111 North Carolina Street, NE., Washington DC (SH)
Paul E. Garber Complex, 3904 Old Silver Hill Road, Suitland, Maryland (SH)

U.S. Postal Service:
Mailbag Facility, 7800 West Roosevelt Road, Forest Park, Illinois (SH)

Veterans Administration:
Domiciliary Buildings 8A, 10A, 14 A and B, 16 A and B, 25 and 34, VA Medical Center, Dublin, Georgia (SH)
Veterans Administration Medical Center, Building #32, Dublin, Georgia (SH)

Janitorial Grounds Maintenance

Department of Navy:
Naval Aviation Depot, Naval Air Station, Jacksonville, Florida (SH)

Janitorial/Mechanical

General Servcies Administration:
The Carter Presidential Library, Atlanta, Georgia (SH)
Federal Office Building, 501 Park Avenue, Idaho Falls, Idaho (SH)

JANITORIAL/ELEVATOR OPERATOR

Department of Treasury:
Bureau of Engraving and Printing, Public Debt Building, Washington, DC (SH)

General Services Administration:
3 Buildings, Navy Yard Annex, 2nd and M Streets, SE., Washington, DC (SH)
Veterans Administration Clinic Building, 17 Court Street, Boston, Massachusetts (SH)
Federal Building, 35 Ryerson Street, Brooklyn, New York (SH)
Federal Building, 201 Varick Street, New York, New York (SH)
Veterans Administration Building, 252 Seventh Avenue, New York, New York (SH)

Laundry

Department of Air Force:
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U.S. Army Medical Materiel Agency, Fort Detrick, Maryland (SH)

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Acoma/Canoncito/Laguna PHS Indian Hospital, Acomita, New Mexico (SH)
Zuni PHS Indian Hospital, Zuni, New Mexico (SH)

Department of Navy:

Naval Training Center, Great Lakes, Illinois (SH)

Litter Pick-Up

Department of Air Force:
Edwards Air Force Base, California (SH)
Tinker Air Force Base, Oklahoma (SH)

Machining Parts

Department of Navy:
Naval Supply Center, Charleston, South Carolina (IB)

Mailing

Department of Agriculture:
Washington, DC (Metropolitan area) (SH)

Department of Commerce:
National Oceanic and Atmospheric Administration, 5 Offices, Rockville, Maryland (SH)
National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia (SH)

Department of Defense:
Defense Supply Service, National Committee for Employer Support for Guard and Reserve, 1117 N. 19th Street, Arlington, Virginia (SH)

Department of Education:
Office for Civil Rights, Office of Program Review & Assistance, 300 C Street, SW., Washington, DC (SH)

Department of Energy:
Distribution, 12th and Pennsylvania, NW., Washington, DC (SH)

Department of Health and Human Services:
Office of the Secretary, Washington, DC (SH)
National Institutes of Health, Bethesda, Maryland (SH)
Alcohol, Drug Abuse, and Mental Health Administration, Rockville, Maryland (SH)
Food and Drug Administration, Rockville, Maryland (SH)
Health Resources Administration, Rockville, Maryland (SH)
Health Services Administration, Rockville, Maryland (SH)
Office of Assistant Secretary for Health, Rockville, Maryland (SH)

Department of Housing and Urban Development:
Washington, DC (SH)

Department of Interior:
16th and C Streets, NW., Washington, DC (SH)
U.S. Geological Survey, 2 Divisions, Reston, Virginia (SH)

Department of Labor:
200 Constitution Avenue, NW., Washington, DC (SH)
Manpower Administration, Washington, DC (SH)
President's Committee on Employment of the Handicapped, Washington, DC (SH)

Department of Transportation:
National Highway Traffic Administration, 400 7th Street, SW., Washington, DC (SH)
Office of the Secretary, Distribution Unit, 400 7th Street, SW., Washington, DC (SH)

Department of Treasury:
Bureau of Public Debt, 14th and C Streets, SW., Washington, DC (SH)
Architectural and Transportation Barriers Compliance Board: 330 C Street, SW., Washington, DC (SH)
Bureau of Public Debt, Parkersburg, West Virginia (SH)

Environmental Protection Agency:
Specialized Procurement Unit, 401 M Street, SW., Washington, DC (SH)

Federal Election Commission:
1325 K Street, NW., Washington, DC (SH)

Federal Trade Commission:
Pennsylvania Avenue and 6th Street, NW., Washington, DC (SH)

General Services Administration:
National Archives & Records Services, 7th and Pennsylvania Avenue, NW., Washington, DC (SH)

Library of Congress:
Washington, DC (SH)

Merit Systems Protection Board:
Office of Special Counsel, 1120 Vermont Avenue, NW., Washington, DC (SH)

National Credit Union Administration:
Printing Service, 1375 K Street, NW., Washington, DC (SH)

National Endowment for the Humanities:
1100 Pennsylvania Avenue, NW., Room 202, Washington, DC (SH)

National Science Foundation:
1800 G Street, NW., Washington, DC (SH)

Office of Personnel Management:
1900 E Street, NW., Washington, DC (SH)

Smithsonian Institution:
Supply Division, Washington, DC (SH)

U.S. Commission on Civil Rights:
1211 Vermont Avenue, NW., Washington, DC (SH)

U.S. Consumer Product Safety Commission:
Washington, DC (SH)

U.S. Information Agency:
400 C Street, SW., Washington, DC (SH)

Mailroom Service

Department of Defense:
Defense Logistics Agency–DCASR, 495 Summer Street, Boston, Massachusetts (SH)

Mattress and Box Spring Rehabilitation

General Services Administration:
Orders for renovated mattresses may be arranged through GSA regional offices. IB will provide requirements for mattress and box spring renovation for GSA Regions W, 2 ,3, 4, 5, 6, 7 and 8 only. (IB)

Microfiche Reproduction

Department of Navy:
Headquarters, USMC (Navy Annex), Washington, DC (SH)

Microfilm Reproduction

Department of Navy:
Naval Submarine Base Bangor, Silverdale, Washington (SH)

Operation of USDA Central Shipping and Receiving Facility

Department of Agriculture:
South Building, 12th and C Streets, SW., Washington, DC (SH)

Operation of The Postal Service Center

Department of Air Force:
Maxwell Air Force Base, Alabama (SH)
Elmendorf Air Force Base, Alaska (SH)
Barksdale Air Force Base, Louisiana (SH)
Minot Air Force Base, North Dakota (SH)
Sheppard Air Force Base, Texas (SH)
Gunter Air Force Station, Alabama (SH)

Operation of Visitors Center Gift Shop

Department of Treasury:
Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC (SH)

Pallet Repair

Department of Navy:
Naval Supply Center, Norfolk, Virginia (SH)
Naval Supply Center, Puget Sound, Bremerton, Washington (SH)

Parts Sorting

Department of Air Force:
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Robins Air Force Base, Georgia (SH)
Kelly Air Force Base, Texas (SH)
Hill Air Force Base, Utah (SH)

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Department of Agriculture:
National Agricultural Library Building, Beltsville, Maryland (SH)

Preservation and Packaging

Department of Army:
New Cumberland Army Depot, Pennsylvania (SH)

Publications Distribution

Department of Navy:
Naval Construction Battalion Center, Gulfport, Mississippi (SH)

Rehabilitation of Recorder Covers

Department of Interior:
U.S. Geological Survey, Bay St. Louis, Mississippi (SH)

Removal of Tool Identification Numbers

Department of Air Force:
Tinker Air Force Base, Oklahoma (SH)

Repair and Maintenance of Electric Typewriters Only

General Services Administration:
Syracuse, New York (including Onondaga County) (SH)

Repair and Maintenance of Manual Typewriters Only

General Services Administration:
Federal Court House Building, Syracuse, New York (SH)

Repair of Air Cargo Pallet Top and Side Nets

Department of Air Force:
Norton Air Force Base, California (SH)
Wright-Patterson Air Force Base, Ohio (SH)

Repair of Small Hand Tools

Department of Air Force:
Robins Air Force Base, Georgia (SH)

Repair of Tool Box and Rollaway

Department of Air Force:
Robins Air Force Base, Georgia (SH)

Repair Service

Department of Air Force:
Strap, Air Cargo (1670-00-725-1437), Robins Air Force Base, Georgia (SH)

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Department of Army:
Bag, Sleeping (8465–00–242–7855 and 8465–01–049–0088), Fort Bliss, Texas (SH)
Case, Sleeping Bag (8465–00–237–8719), Fort Bliss, Texas (SH)
Liner, Field Jacket (8415–00–782–2888), Fort Bliss, Texas (SH)
Bag, Barracks (8465–00–530–3692), Fort Bliss, Texas (SH)
Bag, Duffel (8465–00–141–0932), Fort Bliss, Texas (SH)
Department of Navy:
Electrode Holder Assemblies, Bremerton, Washington (SH)

Reproduction Service

Department of Army:
Army Materiel Command Headquarters, Alexandria, Virginia (SH)

Restocking Parts

Department of Air Force:
Kelly Air Force Base, Texas (SH)

Sewing

Department of Army:
Redstone Arsenal, Alabama (Provide specified end items produced through use of customized, heavy-duty sewing service) (SH)

Sponge Rubber Mattresses Rehabilitation

General Services Administration:
Requirements for GSA Region 3 (SH)

Tape Cleaning

Department of Air Force:
Robins Air Force Base, Georgia (SH)
Wright-Patterson Air Force Base, Ohio (SH)

[FR Doc. 88–26212 Filed 11–14–88; 8:45 am]
BILLING CODE 6820–33–M

federal register

Tuesday
November 15, 1988

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 872 et al.
Medical Devices; Proposed Classifications of 70 Electromedical Devices; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 872, 874, 878, 884, 886, 888, and 892

[Docket No. 78N-2847 et al.]

Medical Devices; Reproposed Classifications of 70 Electromedical Devices

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is reproposing the regulations to classify 70 electromedical devices of a type on the market before the Medical Device Amendments of 1976. In six previous proposed rules, FDA proposed to classify these devices into class II, the category of medical devices for which performance standards, as well as general controls, are contemplated. If FDA adopts a final rule based on this reproposal, the agency would classify the 70 devices into class I, the category of medical devices required to meet only the general controls of the Federal Food, Drug, and Cosmetic Act.

DATES: Comments by January 17, 1989. FDA is proposing that any final rule based on this proposed rule would become effective 30 days after its date of publication in the **Federal Register.**

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION:

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A. Background
B. List of Reproposed Classifications
C. Exemptions
D. Environmental Impact
E. Economic Impact

A. Background

Classification of medical devices in commercial distribution is required by section 513 of the Medical Device Amendments of 1976 (Pub. L. 94–295) (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c). The effect of classifying a device into class I is to require that the device continue to meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device.

Pursuant to section 513, FDA has published a series of proposed and final rules classifying devices which were in commercial distribution when the amendments were enacted (i.e., classifying preamendments devices and devices determined by FDA to be substantially equivalent to such devices). For purposes of classification, FDA categorized such devices into 16 medical specialty groups. By 1983, FDA had promulgated final rules classifying preamendments devices for 9 of the 16 medical specialty groups. In those nine rules, FDA classified most AC-powered devices into class II, and few comments had been received on the proposals that had preceded these classifications.

In 1980 and 1982, when FDA published the remaining seven proposed rules to classify devices, many comments were received which recommended that AC-powered devices be classified into class I instead of class II. The comments stated that the risks to health presented by electrical shock or leakage current from an AC-powered device could be controlled by the general controls of class I and that establishment of performance standards under section 514 of the act (21 U.S.C. 360d) for such AC-powered devices is unnecessary.

During the same period, as part of FDA's implementation of the amendments, FDA began to develop and evaluate its procedures and priorities for the establishment of performance standards for the hundreds of devices already classified into class II in the nine published final rules and for the devices that had been proposed for classification into class II in the seven remaining rulemaking proceedings. Based in part on the agency's evaluation of its procedures and priorities and its review of comments on the seven remaining proposed classification rules, FDA determined to reconsider its standards policy. As a result of this policy reconsideration, FDA published in the **Federal Register** of October 23, 1985 (50 FR 43060), its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II.

In the **Federal Register** of September 5, 1980 (45 FR 58970), FDA had published a notice of intent announcing that it would consider various alternative approaches in providing reasonable assurance of the safety and effectiveness of electromedical devices. To minimize electrical hazards, especially the hazard of electrical leakage current, FDA announced that it would consider three alternatives: establishing performance standards under section 514 of the act (21 U.S.C. 360d), endorsement of voluntary standards, or adoption of a guideline for electromedical devices. In the **Federal Register** of October 15, 1987 (52 FR 38276), FDA published a withdrawal of its notice of intent of September 5, 1980 (45 FR 58970). FDA's reasons for publishing the withdrawal are given in the 1987 document. FDA's withdrawal of that notice of intent is consistent with its tentative policy regarding classification of electromedical devices expressed in this reproposal.

In further implementation of its tentative policy of classifying AC-powered devices into class I, FDA, in six of the remaining final rules classifying preamendments devices, classified into class II only those AC-powered devices which present risks to health in addition to the risk of electrical leakage current. In those rules, FDA stated that it was postponing the classification of certain AC-powered devices which present only the risk of electrical leakage current and announced its tentative plans to repropose classification of these devices into class I.

Accordingly, in this reproposed rule, FDA is proposing to classify into class I the AC-powered devices whose classifications were omitted from the six final rules listed below:

Dental Devices

Proposed rule (**Federal Register** of December 30,1980; 45 FR 85982)
Final rule (**Federal Register** of August 12, 1987; 52 FR 30082)

Ear, Nose, and Throat Devices

Proposed rule (**Federal Register** of January 22, 1982; 47 FR 3280)
Final rule (**Federal Register** of November 6, 1986; 51 FR 40378)

General and Plastic Surgery Devices

Proposed rule (**Federal Register** of January 19, 1982; 47 FR 2810)
Final rule (**Federal Register** of June 24, 1988; 53 FR 23856)

Ophthalmic Devices

Proposed rule (**Federal Register** of January 26, 1982; 47 FR 3694)
Final rule (**Federal Register** of September 2, 1987; 52 FR 33346)

Orthopedic Devices

Proposed rule (**Federal Register** of July 2, 1982; 47 FR 29052)
Final rule (**Federal Register** of September 4, 1987; 52 FR 33686)

Radiology Devices

Proposed rule (**Federal Register** of January 29, 1982; 47 FR 4406)
Final rule (**Federal Register** of January 20, 1988; 53 FR 1554)

In 1980 and 1982, when FDA published the six proposed rules listed above, the agency had also published the recommendations of the six advisory committees (Panels) for these devices, as required by section 513 (c)(2) and (d)(1) of the act (21 U.S.C. 360 (c)(2) and (d)(1)). Because FDA has already published these Panel recommendations in the **Federal Register**, the agency believes it unnecessary to repeat the detailed recommendations for each device here. Essentially, FDA had originally proposed that all of the devices which are the subject of this proposed rule be classified into class II. FDA now is reproposing that these devices be classified into class I and is requesting comments on its reproposal. Some of the regulations would include both the AC-powered device proposed for classification and its already-classified non-AC-powered counterpart.

B. List of Reproposed Classifications

FDA is proposing that the following AC-powered devices be classified into class I:

Section and Device	Docket No.
Part 872—Dental Devices	
872.3100—Dental Amalgamator	78N–2647
872.3530—Mechanical denture cleaner	78N–2879
872.4200—Dental handpiece and accessories	78N–2918
872.4620—Fiber optic dental light	78N–2934
872.6250—Dental chair and accessories	78N–2980
872.6475—Heat source for bleaching teeth	78N–2994
872.6510—Oral irrigation unit	78N–2996
872.6640—Dental operative unit and accessories	78N–3002
872.6710—Boiling water sterilizer	78N–3009
872.6865—Powered toothbrush	78N–3020
Part 874—Ear, Nose, and Throat Devices	
874.1070—Short increment sensitivity index (SISI) adapter	78N–1552
874.1800—Air or water caloric stimulator	78N–1565
874.4750—Laryngostroboscope	78N–1622
874.4770—Otoscope	78N–1624
874.5300—Ear, nose, and throat examination and treatment unit	78N–1630
874.5550—Powered nasal irrigator	78N–1631
Part 878—General and Plastic Surgery Devices	
878.4635—Ultraviolet lamp for tanning	78N–2687
878.4700—Surgical microscope and accessories	78N–2691
878.4820—Surgical instrument motors and accessories/attachments	78N–2698
878.4960—Operating tables and accessories and operating chairs and accessories	78N–2705
Part 884—Obstetrical and Gynecological Devices	
884.2980—Telethermographic system	78N–2762
884.2982—Liquid crystal thermographic system	78N–2763
Part 886—Opthalmic Devices	
886.1050—Adaptometer (biophotometer)	78N–3130
886.1070—Anomaloscope	78N–3132
886.1090—Haidlinger brush	78N–3133
886.1120—Opthalmic camera	78N–3135
886.1140—Ophthalmic chair	78N–3137
886.1160—Color vision plate illuminator	78N–3140
886.1250—Euthyscope	78N–3145
886.1290—Fixation device	78N–3148
886.1300—Afterimage flasher	78N–3149
886.1340—Hapscope	78N–3295
886.1350—Keratoscope	78N–3153
886.1425—Lens measuring instrument	78N–3166
886.1430—Ophthalmic contact lens radius measuring device	78N–3167
886.1435—Maxwell spot	78N–3168
886.1450—Corneal radius measuring device	78N–3169
886.1605—Perimeter	78N–3178
886.1680—Ophthalmic projector	78N–3189
886.1690—Pupillograph	78N–3190
886.1700—Pupillometer	78N–3191
886.1780—Retinoscope	78N–3196
886.1810—Tangent screen (campimeter)	78N–3200
886.1860—Opthalmic instrument stand	78N–3208
886.1870—Stereoscope	78N–3210
886.1910—Spectacle dissociation test system	78N–3214
886.1940—Tonometer sterilizer	78N–3220
886.1945—Transilluminator	78N–3221
886.4070—Powered corneal burr	78N–3233
886.4250—Ophthalmic electrolysis unit	78N–3244
886.4335—Operating headlamp	78N–3252
886.4370—Keratome	78N–3255
886.4855—Ophthalmic instrument table	78N–3272
886.5820—Closed-circuit television reading system	78N–3285
886.5900—Electronic vision aid	78N–3290
886.5915—Optical vision aid	78N–3293
Part 888—Orthopedic Devices	
888.1500—Goniometer	78N–3043
888.5960—Cast removal instrument	78N–3124
Part 892—Radiology Devices	
892.1100—Scintillation (gamma) camera	78N–2743
892.1110—Positron camera	78N–2744
892.1130—Nuclear whole body counter	78N–2745
892.1300—Nuclear rectilinear scanner	78N–2750
892.1320—Nuclear uptake probe	78N–2752
892.1330—Nuclear whole body scanner	78N–2753
892.1350—Nuclear scanning bed	78N–2754
892.1410—Nuclear electrocardiograph synchronizer	78N–2760
892.1640—Radiographic film marking system	78N–2773
892.1890—Radiographic film illuminator	78N–2795
892.1900—Automatic radiographic film processor	78N–2796
892.1970—Radiographic ECG/respirator synchronizer	78N–2803

C. Exemptions

The Panels had recommended that all of the devices which would be classified into class I by this proposed rule should be subject to all of the controls of the current good manufacturing practice regulations at 21 CFR Part 820. FDA believes that all of the controls provided by Part 820 are necessary to provide reasonable assurance of the safety and effectiveness of these AC-powered devices. Accordingly, FDA is not proposing that any exemptions from Part 820 be granted for manufacturers of any of these devices.

D. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

E. Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules classifying devices into class I generally maintain the status quo: These devices are now subject only to the general controls provisions of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j) and under the final rule would remain subject only to such controls. Devices classified into class II also remain subject only to the general controls provisions of the act unless and until an applicable performance standard is established. In sum, device classification rules do not have a significant impact on a substantial number of small entities and are not major rules.

Interested persons may, on or before January 17, 1989, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received

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comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 872

Medical devices.

21 CFR Part 874

Medical devices.

21 CFR Part 878

Medical devices.

21 CFR Part 884

Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 888

Medical devices.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Chapter I of Title 21 of the Code of Federal Regulations, Parts 872, 874, 878, 884, 886, 888, and 892, be amended to read as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR Part 872 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Section 872.3100 is added to Subpart D to read as follows:

§ 872.3100 Dental amalgamator.

(a) *Identification.* A dental amalgamator is a device, usually AC-powered, intended to mix, by shaking, amalgam capsules containing mercury and dental alloy particles, such as silver, tin, zinc, and copper. The mixed dental amalgam material is intended for filling dental caries.

(b) *Classification.* Class I.

3. Section 872.3530 is added to Subpart D to read as follows:

§ 872.3530 Mechanical denture cleaner.

(a) *Identification.* A mechanical denture cleaner is a device, usually AC-powered, that consists of a container for mechanically agitating a denture cleansing solution. The device is intended to clean a denture by submersion in the agitating cleansing solution in the container.

(b) *Classification.* Class I.

4. Section 872.4200 is added to Subpart E to read as follows:

§ 872.4200 Dental handpiece and accessories.

(a) *Identification.* A dental handpiece and accessories is an AC-powered, water-powered, air-powered, or belt-driven hand-held device that may include a foot controller for regulation of speed and direction of rotation or a contraangle attachment for difficult to reach areas intended to prepare dental cavities for restorations, such as fillings, and for cleaning teeth.

(b) *Classification.* Class I.

5. Section 872.4620 is added to Subpart E to read as follows:

§ 872.4620 Fiber optic dental light.

(a) *Identification.* A fiber optic dental light is a device that is a light, usually AC-powered, that consists of glass or plastic fibers which have special optical properties. The device is usually attached to a dental handpiece and is intended to illuminate a patient's oral structures.

(b) *Classification.* Class I.

6. Section 872.6250 is added to Subpart G to read as follows:

§ 872.6250 Dental chair and accessories.

(a) *Identification.* A dental chair and accessories is a device, usually AC-powered, in which a patient sits. The device is intended to properly position a patient to perform dental procedures. A dental operative unit may be attached.

(b) *Classification.* Class I.

7. Section 872.6475 is added to Subpart G to read as follows:

§ 872.6475 Heat source for bleaching teeth.

(a) *Identification.* A heat source for bleaching teeth is an AC-powered device that consists of a light or an electric heater intended to apply heat to a tooth after it is treated with a bleaching agent.

(b) *Classification.* Class I.

8. Section 872.6510 is added to Subpart G to read as follows:

§ 872.6510 Oral irrigation unit.

(a) *Identification.* An oral irrigation unit is an AC-powered device intended to provide a pressurized stream of water to remove food particles from between the teeth and promote good periodontal (gum) condition.

(b) *Classification.* Class I.

9. Section 872.6640 is added to Subpart G to read as follows:

§ 872.6640 Dental operative unit and accessories.

(a) *Identification.* A dental operative unit and accessories is an AC-powered device that is intended to supply power to and serve as a base for other dental devices, such as a dental handpiece, a dental operating light, an air or water syringe unit, an oral cavity evacuator, a suction operative unit, and other dental devices and accessories. The device may be attached to a dental chair.

(b) *Classification.* Class I.

10. Section 872.6710 is added to Subpart G to read as follows:

§ 872.6710 Boiling water sterilizer.

(a) *Identification.* A boiling water sterilizer is an AC-powered device that consists of a container for boiling water. The device is intended to sterilize dental and surgical instruments by submersion in the boiling water in the container.

(b) *Classification.* Class I.

11. Section 872.6865 is added to Subpart G to read as follows:

§ 872.6865 Powered toothbrush.

(a) *Identification.* A powered toothbrush is an AC-powered or battery powered device that consists of a handle containing a motor that provides mechanical vibrations to the shaft of a manual toothbrush inserted in one end. The device is intended to remove adherent plaque and food debris from the teeth to reduce tooth decay.

(b) *Classification.* Class I.

PART 874—EAR, NOSE, AND THROAT DEVICES

12. The authority citation for 21 CFR Part 874 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

13. Section 874.1070 is added to Subpart B to read as follows:

§ 874.1070 Short increment sensitivity index (SISI) adapter.

(a) *Identification.* A short increment sensitivity index (SISI) adapter is a device used with an audiometer in diagnostic hearing evaluations. A SISI adapter provides short periodic sound pulses in specific small decibel increments that are intended to be superimposed on the audiometer's output tone frequency.

(b) *Classification.* Class I.

14. Section 874.1800 is added to Subpart B to read as follows:

§ 874.1800 Air or water caloric stimulator.

(a) *Identification.* An air or water caloric stimulator is a device that delivers a stream of air or water to the ear canal at controlled rates of flow and temperature and that is intended for vestibular function testing of a patient's body balance system. The vestibular stimulation of the semicircular canals produce involuntary eye movements that are measured and recorded by a nystagmograph.

(b) *Classification.* Class I.

15. Section 874.4750 is added to Subpart E to read as follows:

§ 874.4750 Laryngostroboscope.

(a) *Identification.* A laryngostroboscope is a device that is intended to allow observation of glottic action during phonation. The device operates by focusing a stroboscopic light through a lens for direct or mirror reflected viewing of glottic action. The light and microphone that amplifies accoustic signals from the glottic area may or may not contact the patient.

(b) *Classification.* Class I.

16. Section 874.4770 is added to Subpart E to read as follows:

§ 874.4770 Otoscope

(a) *Identification.* An otoscope is a device intended to allow inspection of the external ear canal and tympanic membrane under magnification. The device provides illumination of the ear canal for observation by using an AC- or battery-powered light source and an optical magnifying system.

(b) *Classification.* Class I.

17. Section 874.5300 is added to Subpart F to read as follows:

§ 874.5300 Ear, nose, and throat examination and treatment unit.

(a) *Identification.* An ear, nose, and throat examination and treatment unit is an AC-powered device intended to support a patient during an otologic examination while providing specialized features for examination and treatment. The unit consists of a patient chair and table, drawers for equipment, suction and blowing apparatus, and receptacles for connection of specialized lights and examining instruments.

(b) *Classification.* Class I.

18. Section 874.5550 is added to Subpart F to read as follows:

§ 874.5550 Powered nasal irrigator.

(a) *Identification.* A powered nasal irrigator is an AC-powered device intended to wash the nasal cavity by means of a pressure-controlled, pulsating stream of water. The device consists of a control unit and pump connected to a spray tube and nozzle.

(b) *Classification.* Class I.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

19. The authority citation for 21 CFR Part 878 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351 (f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

20. Section 878.4635 is added to Subpart E to read as follows:

§ 878.4635 Ultraviolet lamp for tanning.

(a) *Identification.* An ultraviolet light for tanning is a device that is a lamp (including a fixture) intended to provide ultraviolet radiation to tan the skin. See § 1040.20 of this chapter.

(b) *Classification.* Class I.

21. Section 878.4700 is added to Subpart E to read as follows:

§ 878.4700 Surgical microscope and accessories.

(a) *Identification.* A surgical microscope and accessories is an AC-powered device intended for use during surgery to provide a magnified view of the surgical field.

(b) *Classification.* Class I.

22. Section 878.4820 is added to Subpart E to read as follows:

§ 878.4820 Surgical instrument motors and accessories/attachments.

(a) *Identification.* Surgical instrument motors and accessories are AC-powered, battery powered, or air-powered devices intended for use during surgical procedures to provide power to operate various accessories or attachments to cut hard tissue or bone and soft tissue. Accessories or attachments may include a bur, chisel (osteotome), dermabrasion brush, dermatome, drill bit, hammerhead, pin driver, and saw blade.

(b) *Classification.* Class I.

23. Section 878.4960 is added to Subpart E to read as follows:

§ 878.4960 Operating tables and accessories and operating chairs and accessories.

(a) *Identification.* Operating tables and accessories and operating chairs and accessories are AC-powered or air-powered devices, usually with movable components, intended for use during diagnostic examinations or surgical procedures to support and position a patient.

(b) *Classification.* Class I.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

24. The authority citation for 21 CFR Part 884 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

25. Section 884.2980 is amended by adding new paragraph (a) to read as follows:

§ 884.2980 Telethermographic system.

(a) *Telethermographic system intended for adjunctive diagnostic screening for detection of breast cancer or other uses*—(1) *Identification.* A telethermographic system for adjunctive diagnostic screening for detection of breast cancer or other uses is an electrically powered device with a detector that is intended to measure, without touching the patient's skin, the self-emanating infrared radiation that reveals the temperature variations of the surface of the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(2) *Classification.* Class I.

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26. Section 884.2982 is amended by revising paragraph (a) to read as follows:

§ 884.2982 Liquid crystal thermographic system.

(a) *A nonelectrically powered or an AC-powered liquid crystal thermographic system intended for adjunctive use in diagnostic screening for detection of breast cancer or other uses*—(1) *Identification.* A nonelectrically powered or an AC-powered liquid crystal thermographic system intended for use as an adjunct to physical palpation or mammography in diagnostic screening for detection of breast cancer or other uses is a nonelectrically powered or an AC-powered device applied to the skin that displays the color patterns of heat sensitive cholesteric liquid crystals that respond to temperature variations of the surface of the body. This generic type of device may include patient and equipment supports, a means to ensure thermal contact between the patient's skin and the liquid crystals, component parts, and accessories.

(2) *Classsification.* Class I.

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PART 886—OPHTHALMIC DEVICES

27. The authority citation for 21 CFR Part 886 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574.

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576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

28. Section 886.1050 is added to Subpart B to read as follows:

§ 886.1050 Adaptometer (biophotometer).

(a) *Identification.* An adaptometer (biophotometer) is an AC-powered device that provides a stimulating light source which has various controlled intensities intended to measure the time required for retinal adaptation (regeneration of the visual purple) and the minimum light threshold.

(b) *Classification.* Class I.

29. Section 886.1070 is added to Subpart B to read as follows:

§ 886.1070 Anomaloscope.

(a) *Identification.* An anomaloscope is an AC-powered device intended to test for anomalies of color vision by displaying mixed spectral lines to be matched by the patient.

(b) *Classification.* Class I.

30. Section 886.1090 is added to Subpart B to read as follows:

§ 886.1090 Haidlinger brush.

(a) *Identification.* A Haidlinger brush is an AC-powered device that provides two conical brushlike images with apexes touching which are viewed by the patient through a Nicol prism and intended to evaluate visual function. It may include a component for measuring macular integrity.

(b) *Classification.* Class I.

31. Section 886.1120 is added to Subpart B to read as follows:

§ 886.1120 Ophthalmic camera.

(a) *Identification.* An ophthalmic camera is an AC-powered device intended to take photographs of the eye and the surrounding area.

(b) *Classification.* Class I.

32. Section 886.1140 is revised to read as follows:

§ 886.1140 Ophthalmic chair.

(a) *Identification.* An ophthalmic chair is an AC-powered or manual device with adjustable positioning in which a patient is intended to sit or recline during ophthalmological examination or treatment.

(b) *Classification.* Class I. The manual device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

33. Section 886.1160 is added to Subpart B to read as follows:

§ 886.1160 Color vision plate illuminator.

(a) *Identification.* A color vision plate illuminator is an AC-powered device that is a lamp intended to properly illuminate color vision testing plates. It may include a filter.

(b) *Classification.* Class I.

34. Section 886.1250 is revised to read as follows:

§ 886.1250 Euthyscope.

(a) *Identification.* A euthyscope is a device that is a modified AC-powered or battery-powered ophthalmoscope (a perforated mirror device intended to inspect the interior of the eye) that projects a bright light encompassing an arc of about 30° onto the fundus of the eye. The center of the light bundle is blocked by a black disk covering the fovea (the central depression of the macular retinae where only cones are present and blood vessels are lacking). The device is intended for use in the treatment of amblyopia (dimness of vision without apparent disease of the eye).

(b) *Classification.* Class I.

35. Section 886.1290 is added to Subpart B to read as follows:

§ 886.1290 Fixation device.

(a) *Identification.* A fixation device is an AC-powered device intended for use as a fixation target for the patient during ophthalmological examination. The patient directs his or her gaze so that the visual image of the object falls on the fovea centralis (the center of the macula retina of the eye).

(b) *Classification.* Class I.

36. Section 886.1300 is added to Subpart B to read as follows:

§ 886.1300 Afterimage flasher.

(a) *Identification.* An afterimage flasher is an AC-powered light that automatically switches on and off to allow performance of an afterimage test in which the patient indicates the positions of afterimages after the light is off. The device is intended to determine harmonious/anomalous retinal correspondence (the condition in which corresponding points on the retina have the same directional value).

(b) *Classification.* Class I.

37. Section 886.1340 is added to Subpart B to read as follows:

§ 886.1340 Haploscope.

(a) *Identification.* A haploscope is an AC-powered device that consists of two movable viewing tubes, each containing a slide carrier, a low-intensity light source for the illumination of the slides, and a high-intensity light source for creating afterimages. The device is intended to measure strabismus (eye muscle imbalance), to assess binocular vision (use of both eyes to see), and to treat suppression and amblyopia (dimness of vision without any apparent disease of the eye).

(b) *Classification.* Class I.

38. Section 886.1350 is revised to read as follows:

§ 886.1350 Keratoscope.

(a) *Identification.* A keratoscope is an AC-powered or battery-powered device intended to measure and evaluate the corneal curvature of the eye. Lines and circles within the keratoscope are used to observe the corneal reflex. This generic type of device includes the photokeratoscope which records corneal curvature by taking photographs of the cornea.

(b) *Classification.* Class I. The battery-powered device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

39. Section 886.1425 is added to Subpart B to read as follows:

§ 886.1425 Lens measuring instrument.

(a) *Identification.* A lens measuring instrument is an AC-powered device intended to measure the power of lenses, prisms, and their centers (e.g., lensometer).

(b) *Classification.* Class I.

40. Section 886.1430 is added to Subpart B to read as follows:

§ 886.1430 Ophthalmic contact lens radius measuring device.

(a) *Identification.* An ophthalmic contact lens radius measuring device is an AC-powered device that is a microscope and dial gauge intended to measure the radius of a contact lens.

(b) *Classification.* Class I.

41. Section 886.1435 is added to Subpart B to read as follows:

§ 886.1435 Maxwell spot.

(a) *Identification.* A Maxwell spot is an AC-powered device that is a light source with a red and blue filter intended to test macular function.

(b) *Classification.* Class I.

42. Section 886.1450 is added to Subpart B to read as follows:

§ 886.1450 Corneal radius measuring device.

(a) *Identification.* A corneal radius measuring device is an AC-powered device intended to measure corneal size by superimposing the image of the cornea on a scale at the focal length of the lens of a small handheld single tube penscope or eye gauge magnifier.

(b) *Classification.* Class I.

43. Section 886.1605 is revised to read as follows:

§ 886.1605 Perimeter.

(a) *Identification.* A perimeter is an AC-powered or manual device intended to determine the extent of the peripheral visual field of a patient. The device projects light on various points of a curved surface, and the patient indicates whether he or she sees the light.

(b) *Classification.* Class I. The manual device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

44. Section 886.1680 is added to Subpart B to read as follows:

§ 886.1680 Ophthalmic projector.

(a) *Identification.* An ophthalmic projector is an AC-powered device intended to project an image on a screen for vision testing.

(b) *Classification.* Class I.

45. Section 886.1690 is added to Subpart B to read as follows:

§ 886.1690 Pupillograph.

(a) *Identification.* A pupillograph is an AC-powered device intended to measure the pupil of the eye by reflected light and record the responses of the pupil.

(b) *Classification.* Class I.

46. Section 886.1700 is revised to read as follows:

§ 886.1700 Pupillometer.

(a) *Identification.* A pupillometer is an AC-powered or manual device intended to measure by reflected light the width or diameter of the pupil of the eye.

(b) *Classification.* Class I. The manual device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

47. Section 886.1780 is revised to read as follows:

§ 886.1780 Retinoscope.

(a) *Identification.* A retinoscope is an AC-powered or battery-powered device intended to measure the refraction of the eye by illuminating the retina and noting the direction of movement of the light on the retinal surface and of the refraction by the eye of the emergent rays.

(b) *Classification.* Class I. The battery-powered device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

48. Section 886.1810 is revised to read as follows:

§ 886.1810 Tangent screen (campimeter).

(a) *Identification.* A tangent screen (campimeter) is an AC-powered or battery-powered device that is a large square cloth chart with a central mark of fixation intended to map the central 30° of the patient's visual field on a flat surface. This generic type of device includes projection tangent screens, target tangent screens and targets, felt tangent screens, and battery-powered stereo campimeters.

(b) *Classification.* Class I. The battery-powered device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

49. Section 886.1860 is revised to read as follows:

§ 886.1860 Ophthalmic instrument stand.

(a) *Identification.* An ophthalmic instrument stand is an AC-powered or nonpowered device intended to store ophthalmic instruments in a readily accessible position.

(b) *Classification.* Class I. The nonpowered device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

50. Section 886.1870 is revised to read as follows:

§ 886.1870 Stereoscope.

(a) *Identification.* A stereoscope is an AC-powered or battery-powered device that combines the images of two similar objects to produce a three dimensional appearance of solidity and relief. It is intended to measure the angle of strabismus (eye muscle deviation), evaluate binocular vision (usage of both eyes to see), and guide a patient's corrective exercises of eye muscles.

(b) *Classification.* Class I. The battery-powered device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

51. Section 886.1910 is revised to read as follows:

§ 886.1910 Spectacle dissociation test system.

(a) *Identification.* A spectacle dissociation test system is an AC-powered or battery-powered device such as a Lancaster test system that consists of a light source and various filters, usually red or green filters, intended to subjectively measure imbalance of ocular muscles.

(b) *Classification.* Class I. The battery-powered device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

52. Section 886.1940 is added to Subpart B to read as follows:

§ 886.1940 Tonometer sterilizer.

(a) *Identification.* A tonometer sterilizer is an AC-powered device intended to sterilize by heat a tonometer (a device used to measure intraocular pressure).

(b) *Classification.* Class I.

53. Section 886.1945 is revised to read as follows:

§ 886.1945 Transilluminator.

(a) *Identification.* A transilluminator is an AC-powered or battery-powered device that is a light source intended to transmit light through tissues to aid examination of patients.

(b) *Classification.* Class I.

54. Section 886.4070 is revised to read as follows:

§ 886.4070 Powered corneal burr.

(a) *Identification.* A powered corneal burr is an AC-powered or battery-powered device that is a motor and drilling tool intended to remove rust rings from the cornea of the eye.

(b) *Classification.* Class I.

55. Section 886.4250 is revised to read as follows:

§ 886.4250 Ophthalmic electrolysis unit.

(a) *Identification.* An ophthalmic electrolysis unit is an AC-powered or battery-powered device intended to destroy ocular hair follicles by applying a galvanic electrical current.

(b) *Classification.* Class I.

56. Section 886.4335 is revised to read as follows:

§ 886.4335 Operating headlamp.

(a) *Identification.* An operating headlamp is an AC-powered or battery-powered device intended to be worn around the head of the user to provide a

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light source to aid visualization during surgical, diagnostic, or therapeutic procedures.

(b) *Classification.* Class I.

57. Section 886.4370 is revised to read as follows:

§ 886.4370 Keratome.

(a) *Identification.* A keratome is an AC-powered or battery-powered device intended to shave tissue from sections of the cornea for a lamellar (partial thickness) transplant.

(b) *Classification.* Class I.

58. Section 886.4855 is revised to read as follows:

§ 886.4855 Ophthalmic instrument table.

(a) *Identification.* An ophthalmic instrument table is an AC-powered or manual device on which ophthalmic instruments are intended to be placed.

(b) *Classification.* Class I. The manual device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

59. Section 886.5820 is added to Subpart F to read as follows:

§ 886.5820 Closed-circuit television reading system.

(a) *Identification.* A closed-circuit television reading system is a device that consists of a lens, video camera, and video monitor that is intended for use by a patient who has subnormal vision to magnify reading material.

(b) *Classification.* Class I.

60. Section 886.5900 is revised to read as follows:

§ 886.5900 Electronic vision aid.

(a) *Identification.* An electronic vision aid is an AC-powered or battery-powered device that consists of an electronic sensor/transducer intended for use by a patient who has impaired vision or blindness to translate visual images of objects into tactile or auditory signals.

(b) *Classification.* Class I.

61. Section 886.5915 is revised to read as follows:

§ 886.5915 Optical vision aid.

(a) *Identification.* An optical vision aid is a device that consists of a magnifying lens with an accompanying AC-powered or battery-powered light source intended for use by a patient who has impaired vision to increase the apparent size of object detail.

(b) *Classification.* Class I. The battery-powered device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 888—ORTHOPEDIC DEVICES

62. The authority citation for 21 CFR Part 888 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

63. Section 888.1500 is added to Subpart B to read as follows:

§ 888.1500 Goniometer.

(a) *Identification.* A goniometer is an AC-powered device intended to evaluate joint function by measuring and recording ranges of motion, acceleration, or forces exerted by a joint.

(b) *Classification.* Class I.

64. Section 888.5960 is added to Subpart E to read as follows:

§ 888.5960 Cast removal instrument.

(a) *Identification.* A cast removal instrument is an AC-powered hand-held device intended to remove a cast from a patient. This generic type of device includes the electric cast cutter and cast vacuum.

(b) *Classification.* Class I.

PART 892—RADIOLOGY DEVICES

65. The authority citation for 21 CFR Part 892 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

66. Section 892.1100 is added to Subpart B to read as follows:

§ 892.1100 Scintillation (gamma) camera.

(a) *Identification.* A scintillation (gamma) camera is a device intended to image the distribution of radionuclides in the body by means of a photon radiation detector. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

67. Section 892.1110 is added to Subpart B to read as follows:

§ 892.1110 Positron camera.

(a) *Identification.* A positron camera is a device intended to image the distribution of positron-emitting radionuclides in the body. This generic type of a device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

68. Section 892.1130 is added to Subpart B to read as follows:

§ 892.1130 Nuclear whole body counter.

(a) *Identification.* A nuclear whole body counter is a device intended to measure the amount of radionuclides in the entire body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class I.

69. Section 892.1300 is added to Subpart B to read as follows:

§ 892.1300 Nuclear rectilinear scanner.

(a) *Identification.* A nuclear rectilinear scanner is a device intended to image the distribution of radionuclides in the body by means of a detector (or detectors) whose position moves in two directions with respect to the patient. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

70. Section 892.1320 is added to Subpart B to read as follows:

§ 892.1320 Nuclear uptake probe.

(a) *Identification.* A nuclear uptake probe is a device intended to measure the amount of radionuclide taken up by a particular organ or body region. This generic type of device may include a single or multiple detector probe, signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class I.

71. Section 892.1330 is added to Subpart B to read as follows:

§ 892.1330 Nuclear whole body scanner.

(a) *Identification.* A nuclear whole body scanner is a device intended to measure and image the distribution of radionuclides in the body by means of a wide-aperture detector whose position moves in one direction with respect to the patient. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

72. Section 892.1350 is added to Subpart B to read as follows:

§ 892.1350 Nuclear scanning bed.

(a) *Identification.* A nuclear scanning bed is an adjustable bed intended to support a patient during a nuclear medicine procedure.

(b) *Classification.* Class I.

73. Section 892.1410 is added to Subpart B to read as follows:

§ 892.1410 Nuclear electrocardiograph synchronizer.

(a) *Identification.* A nuclear electrocardiograph synchronizer is a device intended for use in nuclear radiology to relate the time of image formation to the cardiac cycle during the production of dynamic cardiac images.

(b) *Classification.* Class I.

74. Section 892.1640 is added to Subpart B to read as follows:

§ 892.1640 Radiographic film marking system.

(a) *Identification.* A radiographic film marking system is a device intended for medical purposes to add identification and other information onto radiographic film by means of exposure to visible light.

(b) *Classification.* Class I.

75. Section 892.1890 is added to Subpart B to read as follows:

§ 892.1890 Radiographic film illuminator.

(a) *Identification.* A radiographic film illuminator is a device containing a visible light source covered with a translucent front that is intended to be used to view medical radiographs.

(b) *Classification.* Class I.

76. Section 892.1900 is added to Subpart B to read as follows:

§ 892.1900 Automatic radiographic film processor.

(a) *Identification.* An automatic radiographic film processor is a device intended to be used to develop, fix, wash, and dry automatically and continuously film exposed for medical purposes.

(b) *Classification.* Class I.

77. Section 892.1970 is added to Subpart B to read as follows:

§ 892.1970 Radiographic ECG/respirator synchronizer.

(a) *Identification.* A radiographic ECG/respirator synchronizer is a device intended to be used to coordinate an x-ray film exposure with the signal from an electrocardiograph (ECG) or respirator at a predetermined phase of the cardiac or respiratory cycle.

(b) *Classification.* Class I.

Dated: October 18, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-26210 Filed 11-14-88; 8:45 am]

BILLING CODE 4160-01-M

VOL
53

ISS
220

NO
15

1988

UMI

federal register

Tuesday
November 15, 1988

Part IV

Department of Health and Human Services

Food and Drug Administration

Drugs Containing Sulfamethazine etc., for Oral, Injectable, Intramammary, or Intrauterine Use in Food-Producing Animals; Opportunity for Hearing; Notice

VOL
53
ISS
220
NO
15
1988
UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0335]

Drugs Containing Sulfamethazine, Sulfaquinoxaline, Sulfamerazine, Sulfathiazole, Sulfapyridine, or Sulfanilamide for Oral, Injectable, Intramammary, or Intrauterine Use in Food-Producing Animals; Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is proposing to refuse approval of new animal drug applications (NADA's) for drugs containing sulfamethazine, sulfaquinoxaline, sulfamerazine, sulfathiazole, sulfapyridine, or sulfanilamide for oral, injectable, intramammary, or intrauterine use in food-producing animals. Each of the NADA's in question is for a sulfonamide-containing drug covered by interim marketing under § 510.450 (21 CFR 510.450). FDA has proposed to remove § 510.450 by notice of proposed rulemaking published in the **Federal Register** of September 15, 1988 (53 FR 35833). CVM is proposing to refuse approval of the NADA's following publication of that proposed rule and the publication on July 5, 1984 (49 FR 27543) of a notice advising the sponsors of those NADA's of the data, labeling, and other information necessary for approval under the Federal Food, Drug, and Cosmetic Act (the act). CVM has completed its review of the data, labeling, and other information submitted to each NADA and has concluded that none of the sponsors of the NADA's listed in this notice has submitted all the requisite data, labeling, and other information. For that reason, CVM is now proposing to refuse approval of all the NADA's under one or more of the provisions specified in the act.

Some of the sponsors of the NADA's listed in this notice previously requested a hearing on an earlier refusal to approve their NADA's. If those sponsors wish to avail themselves of the opportunity for a hearing provided by this notice, however, they are required to request and justify a hearing, as specified in this notice.

DATES: A written appearance requesting a hearing by December 15, 1988; data, information, and analysis on which the request for hearing relies by February 13, 1989.

ADDRESS: Written appearance, data, information, and analysis to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION:

I. Background Information

In the **Federal Register** of July 5, 1984 (49 FR 27543) (the July 1984 notice) (corrected August 7, 1984; 49 FR 31444), FDA announced plans for the termination of interim marketing under § 510.450 for drugs containing sulfamethazine, sulfaquinoxaline, sulfamerazine, sulfathiazole, sulfapyridine, or sulfanilamide for oral, injectable, intramammary, or intrauterine use in food-producing animals. The July 1984 notice listed the 23 firms that had submitted NADA's for sulfonamide-containing drugs under the provisions of § 510.450, and requested that sponsors of NADA's covered by interim marketing (1) submit by October 3, 1984, a statement of intent with regard to continued marketing of their products and, (2) submit by October 7, 1985, data, revised labeling, and other information necessary for approval of a NADA. (The requisite data, labeling and other information are described in detail in the July 1984 notice, which CVM hereby incorporates in this notice.)

The July 1984 notice stated that after evaluation of that information with respect to each NADA, CVM would either approve the NADA or publish a notice of opportunity for a hearing on denial of approval. Finally, the July 1984 notice stated that, at the same time, FDA would publish a proposed rule to remove § 510.450, and that after a final rule removing § 510.450 became effective, any sulfonamide-containing drug on the market intended for use in food-producing animals that was not the subject of an approved NADA would be in violation of the act and subject to regulatory action, unless covered by a statutorily provided exception to the requirement of an NADA. (Following publication of the July 1984 notice, FDA decided that publication of a proposed rule to remove § 510.450 should not await publication of this notice, and, in the **Federal Register** of September 15, 1988 (53 FR 35833), proposed to remove that section.)

When the July 1984 notice was published, 189 NADA's covered interim marketing of sulfonamide-containing products under § 510.450. FDA received letters from the 23 firms listed in the July 1984 notice. Eight firms requested termination of 32 NADA's. Twenty-one firms indicated their intent to furnish the information necessary for approval of 157 NADA's. Nine of the 21 firms submitted some of the necessary information (for 17 of their 64 NADA's); 14 of the 21 firms did not submit any of the information (for 92 NADA's). None of the 23 firms listed in the July 1984 notice furnished all the data, labeling, and other information necessary for approval of any of the 189 NADA's in question.

On May 23, 1988 (Refs. 1 through 142), CVM wrote the sponsors of each of the then pending 157 NADA's, once again advising each sponsor of deficiencies in the NADA and in the data, revised labeling, and other information necessary for NADA approval. At present, 142 NADA's cover interm marketing of sulfonamide-containing products under § 510.450; the sulfonamide-containing products covered by the remaining NADA's are no longer being marketed. None of the 142 pending NADA's listed in this notice contains all the data, labeling, and other information necessary for approval. In fact, only nine sponsors (for 17 of their 65 NADA's) submitted even part of the data, labeling, and other information specified in the July 1984 notice, and each of those NADA's is also deficient in one or more other respects, e.g., inadequate manufacturing and controls information, lack of an environmental assessment.

II. List of Firms Having NADA's Subject To This Opportunity for Hearing

FDA has not given interim marketing privileges to sponsors of sulfonamide-containing drugs for more than 13 years (53 FR 35834). Since publication of the July 1984 notice, however, several sponsors have transferred ownership of their NADA's or merged with other sponsors. According to CVM's records, the 11 firms listed below are all the current sponsors of all the pending NADA's for products covered by § 510.450 and subject to this notice of opportunity for a hearing. CVM cautions, however, that its records may not be wholly up to date and therefore advises that all pending NADA's for sulfonamide-containing drugs covered by interim marketing under § 510.450 are subject to this notice.

1. Quality Plus Essar Corp., P.O. Box 459, Fort Dodge, IA 50501
2. Frank Veterinary Laboratories, 7329 Washington Avenue South, Edina, MN 55435
3. Hess & Clark, Inc., 7th and Orange Street, Ashland, OH 44805
4. Illini Skylab, Inc., 1000 Macomb Road, Rushville, IL 62681
5. Fermenta Animal Health Co., 7410 NW. Tiffany Springs Parkway, P.O. Box 901350, Kansas City, MO 64190-1350
6. Norden Laboratories, Inc., 601 W. Cornhusker Highway, Lincoln, NE 68521
7. Purina Mills, Inc., 800 Chouteau Avenue, St. Louis, MO 63164
8. I.D. Russell Co., Laboratories, P.O. Box 411268, Kansas City, MO 64141
9. Salsbury Laboratories, Inc., 2000 Rockford Road, Charles City, IA 50616-0969
10. Vet-A-Mix, Inc., 604 West Thomas Avenue, P.O. Box A, Shenandoah, IA 51601
11. Veterinary Laboratories, Inc., 12340 Santa Fe Drive, Lenexa, KS 66215.

III. Affected NADA's and Grounds for Refusing Approval

All the pending NADA's for the sulfonamide-containing drugs known to CVM and affected by this notice are listed in the tables below, by the same drug groups and in the same format used in the July 1984 notice. The tables list each pending NADA, current sponsor, and product name. The grounds on which CVM proposes to refuse approval of each NADA under section 512(d)(1) of the act (21 U.S.C. 360b(d)(1)) and FDA's regulations are identified by one or more numbers in the column captioned "Grounds for Refusing Approval," corresponding to the numbered paragraphs set out below. If any one of these grounds applies to a given NADA, CVM is required to refuse approval of the application. *American Cyanamid Co.* v. *Young*, 770 F.2d 1213, 1218 (D.C. Cir. 1985), citing *Masti-Kure Products Co., Inc.* v. *Califano*, 587 F.2d 1099, 1104 (D.C. Cir. 1978).

1. The investigations, reports of which are required to be submitted to CVM pursuant to section 512(b) of the act, do not include adquate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof. Section 512(d)(1)(A); 21 CFR 514.111(a)(1). See 49 FR 27544-27546, 27551.

2. The methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity. Section 512(d)(1)(C); 21 CFR 514.111(a)(3). See 49 FR 27546.

3. Upon the basis of the information submitted to CVM as part of the application, or upon the basis of any other information before CVM with respect to such drug, CVM has insufficient information to determine whether such drug is safe for use under such conditions. Section 512(d)(1)D); 21 CFR 514.111(a)(4). See 49 FR 27544-27546, 27551.

4. Evaluated on the basis of the information submitted to CVM as part of the application and any other information before CVM with respect to such drug, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof. Section 512(d)(1)(E); 21 CFR 514.111(a)(5)(i). See 49 FR 27545-27546, 27551.

5. Based on a fair evaluation of all material facts, such labeling is false or misleading in any particular. Section 512(d)(1)(G); 21 CFR 514.111(a)(7). See 49 27547-27550.

6. The NADA (A) fails to include an environmental assessment as required by 21 CFR 25.31 or (B) fails to include sufficient information to permit a determination whether the manufacture and use of the product could cause significant environmental effects (see 21 CFR 25.31(a)). In other words, insufficient information has been provided concerning the introduction of substances into the environment (e.g., list of substances emitted during manufacturing, emission controls utilized at the manufacturing facility, quantities and concentrations of the substances expected to enter the environment), their fate in the environment (e.g., distribution, degradation, and accumulation) and their effects on the environment (e.g., toxicology data). 21 CFR 514 111(a)(9).

Safety includes not only safety to the target food-producing animal but also the safety for human consumption of edible products from that animal. Thus, in determining whether a drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, CVM is required to consider, among other relevant facts, (i) the probable consumption of such drug and of any substance formed in or on food because of the use of such drug, (ii) the cumulative effect on man or animal of such drug, taking into account any chemically or pharmacologically related substance, (iii) safety factors which in the opinion of experts, qualified by scientific training and experience to evaluate the safety of such drugs, are appropriate for the use of animal experimentation data, and (iv) whether the conditions of use prescribed, recommended, or suggested in the proposed labeling are reasonably certain to be followed in practice (section 512(d)(2) (21 CFR 514.111(a)(4)).

With respect to the NADA's for sulfamethazine-containing products, in addition to the information cited in paragraphs 1 and 3 above and in the tables below in support of its proposal to refuse approval under section 512(d)(1) (A) and (D) of the act and § 514.111(a) (1) and (4) of the regulations, CVM also relies on information that the conditions of use prescribed, recommended, or suggested in the proposed labeling are not reasonably certain to be followed in practice.

In 1987 and 1988, marketers and users of new screening methods of analysis, particularly for antimicrobial drugs, published papers in scientific journals (Ref. 143) and gave presentations (Ref. 144) suggesting that sulfamethazine is widely used in the dairy industry. Sulfamethazine is reportedly used illegally to treat lactating dairy animals for mastitis, bacterial pneumonia, bronchitis, coccidiosis, colibacillosis, metritis, and shipping fever. Although sulfamethazine is not approved for use in lactating dairy cattle, it is available to farmers as an over-the-counter drug. If a farmer or veterinarian uses sulfamethazine in lactating dairy cattle, illegal drug residues in milk can result.

As a result of the allegations, FDA formed a Milk Committee (the committee) with scientists from its CVM and its Center for Food Safety and Applied Nutrition to examine the possibility that milk might contain drug residues, including residues of sulfamethazine. The committee requested that CVM's Division of Veterinary Medical Research (DVMR) develop an analytical method for detecting residues of sulfamethazine in milk because there is no official method currently available. DVMR recently developed an analytical method, and that method is undergoing a methods trial evaluation. The committee also conducted a survey to determine whether residues of sulfamethazine are present in milk. In accordance with the survey, FDS collected from 10 large cities across the United States 49 retail samples of whole milk, representing products from 49 different processors of fluid milk. Preliminary analysis showed that 36 samples were positive for sulfamethazine with levels ranging from 0.8 parts per billion to 40.3 parts per billion (Ref. 145). The results are being confirmed by mass spectrometry.

At this time, CVM is not proposing to refuse approval of the NADA's for sulfamethazine-containing products under section 512(d)(1) (A), (B), (D), or (H) of the act of § 514.111(a) (1), (2), (4), or (8) of the regulations in reliance on the results of a chronic bioassay of sulfamethazine in mice conducted by the National Center for Toxicological Research (NCTR) (NCTR Technical Report 418: "Chronic Toxicity and Carcinogenesis Study of Sulfamethazine in B6C3F1 Mice"), the availability of which was announced in the **Federal Register** of March 23, 1988 (53 FR 9492), or in reliance on the results of a chronic bioassay of sulfamethazine in rats conducted by NCTR (NCTR Technical Report 420: "Chronic Toxicity and Carcinogenesis Study of Fischer 344

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Rats"), the availability of which was announced in a notice published in the **Federal Register** of May 18, 1988 (53 FR 17850). The mouse study is discussed in 53 FR 15886, 15888 (May 4, 1988); the rat study is discussed in 53 FR 17850 (May 18, 1988).

The data from NCTR's mouse and rat studies are undergoing review by the National Toxicology Program and FDA (including CVM), and CVM's conclusions on the presence or absence of tumors in the test animals and on the significance of any tumors in the test animals will not become final until the reviews are completed. CVM does not expect the reviews of the mouse and rat studies to be completed until December 1988, and early 1989, respectively. Given the numerous grounds on which CVM is proposing to refuse approval of each of the NADA's for the sulfamethazine-containing products, CVM has decided that it is unnecessary to rely on the results of either study in proposing to refuse approval of any of those NADA's. After the reviews of the mouse and rate studies are completed, CVM will decide whether to issue an amended notice of opportunity for hearing for those products.

With respect to effectiveness, the term "substantial evidence" means evidence consisting of adequate and well-controlled investigations, including field investigation, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and reasonably be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended or suggested in the labeling or proposed labeling thereof (section 512(d)(3); 21 CFR 514.111(a)(5)(ii)). Thus, efficacy data must include two well-controlled studies, one of which must be a field study. *American Cyanamid Co.* v. *Young*, 770 F.2d at 1219. In the case of a drug product that contains two or more active ingredients, the adequate and well-controlled investigations demonstrating the product's effectiveness must demonstrate not only the effectiveness of the product as a whole, but must also demonstrate that each of the active ingredients makes a contribution to that overall effectiveness. *Masti-Kure Products Co., Inc.* v. *Califano*, 587 F.2d at 1101–05; 21 CFR 514.1(b)(8)(v).

The claims for which the effectiveness requirements of the act and the regulations have been met are set out in the July 1984 notice (49 FR 27551). The sponsor of any sulfonamide-containing drug product that is covered by interim marketing under § 510.450 and that is labeled for any other claim must show, by "substantial evidence" in the NADA for the product, that the product is effective for such claim.

For each NADA, the column captioned "Grounds for Refusing Approval" also refers to, and CVM relies upon: (1) The letter dated May 23, 1986, that CVM sent to the sponsor advising of the deficiencies in the NADA that precluded approval, and of the data, revised labeling, and other information necessary for approval; and (2) the attachments (previous deficiency letters) to the May 23, letter.

TABLE OF PENDING NADA'S FOR SULFONAMIDE-CONTAINING PRODUCTS

NADA No.	Sponsor	Product name	Grounds for refusing approval
		A. Sulfamethazine Alone	
048–693	Vet-A-Mix	Veta-Meth Tablets	1, 2, 3, 5 (Ref. 1).
049–790	Vet-A-Mix	Veta-Meth Solution 12.5%	1, 2, 3, 4, 5, 6A (Ref. 2).
099–846	Salsbury Laboratories, Inc	Sodium Sulfamethazine 12.5% Drinking Water Solution	1, 2, 3, 4, 5, 6A (Ref. 3).
099–847	Salsbury Laboratories, Inc	Sodium Sulfamethazine Soluble Powder	1, 2, 3, 4, 5 (Ref. 4).
099–904	Veterinary Laboratories, Inc	Sulfamethazine Boluses 15 Grams	1, 2, 3, 4, 5, 6B (Ref. 5).
099–910	Veterinary Laboratories, Inc	Sulfamethazine Sodium Solution 25%	1, 2, 3, 4, 5, 6A (Ref. 6).
099–922	Quality Plus Essar Corp	Sulfamethazine Boluses 15 Grams	1, 2, 3, 4, 5, 6A (Ref. 7).
099–923	Quality Plus Essar Corp	Sulfamethazine Powder	1, 2, 3, 4, 5, 6A (Ref. 8).
099–925	Quality Plus Essar Corp	Quality 12.5% Sodium Sulfamethazine Drinking Water Solution	1, 2, 3, 4, 5, 6A (Ref. 9).
099–930	Quality Plus Essar Corp	Sulfamethazine 2.5 Grams	1, 2 3, 4, 5 (Ref. 10).
099–936	Quality Plus Essar Corp	Sulfamethazine Boluses	1, 2, 3, 4, 5, 6A (Ref. 11).
099–937	Quality Plus Essar Corp	Quality 25% Sodium Sulfamethazine Drinking Water Solution	1, 2, 3, 4, 5, 6A (Ref. 12).
099–938	Quality Plus Essar Corp	Sodium Sulfamethazine	1, 2, 3, 4, 5, 6A (Ref. 13).
099–953	Quality Plus Essar Corp	Metzol-25%	1, 2, 3, 4, 5, 6A (Ref. 14).
099–962	Quality Plus Essar Corp	Sulfamethazine Bolus Formula 113	1, 2, 3, 4, 5, 6B (Ref. 15).
099–969	Quality Plus Essar Corp	Sulfamethazine Sodium Injectable	1, 2, 3, 4, 5, 6A (Ref. 16).
099–977	Quality Plus Essar Corp	Sulfamethazine Boluses 5 Grams	1, 2, 3, 4, 5 (Ref. 17).
099–998	Illini Skylab, Inc	Liquid Vimethazine-25	1, 2, 3, 4, 5, 6A (Ref. 18).
100–006	Fermenta Animal Health Company	SM–25 Solution	1, 2, 3, 4, 5, 6B (Ref. 19).
100–011	Fermenta Animal Health Company	SM–25 Sodium Sulfamethazine Injectable Solution	1, 2, 3, 4, 5, 6B (Ref. 20).
100–014	Fermenta Animal Health Company	Sodium Sulfamethazine 12.5% Drinking Water Solution	1, 2, 3, 4, 5, 6A (Ref. 21).
100–024	Veterinary Laboratories, Inc	Sulfamethazine Solution 25%	1, 2, 3, 4, 5, 6A (Ref. 22).
100–028	Illini Skylab, Inc	Vimethazine	1, 2, 3, 4, 5, 6B (Ref. 23).
100–071	Frank Veterinary Laboratories	Frank Sodium Sulfamethazine Sorbitol Solution	1, 2, 3, 4, 5, 6B (Ref. 24).
100–095	Quality Plus Essar Corp	Sulfamethazine Boluses 15 Grams	1, 2, 3, 4, 5, 6B (Ref. 25).
100–126	Illini Skylab, Inc	Sulfamethazine Boluses	1, 2, 3, 4, 5, 6A (Ref. 26).
100–177	Quality Plus Essar Corp	SM–25 Per Cent	1, 2, 3, 4, 5, 6B (Ref. 27).
100–179	I.D. Russell Company, Laboratories	Sodium Sulfamethazine Drinking Water Solution 25%	1, 2, 3, 4, 5, 6B (Ref. 28).
		B. Sulfathiazole Alone or In Combination With Other Sulfa Products	
099–848	Salsbury Laboratories, Inc	Sodium Sulfathiazole, Sodium sulfathiazole sesquihydrate, 100%	1, 2, 3, 5, 6A (Ref. 29).
099–855	Salsbury Laboratories	Ar-Sulfa Soluble Powder, Sodium sulfathiazole sesquihydrate	1, 2, 3, 5, 6A (Ref. 30).
099–857	Salsbury Laboratories	Sodium Sulfathiazole Soluble Powder	1, 2, 3, 5, 6A (Ref. 31).
099–920	Quality Plus Essar Corp	Triple Sulfa Solution 24%, Sulfamethazine sodium, Sulfathiazole sodium, Sulfamerazine sodium.	1, 2, 3, 5, 6B (Ref. 32).
099–927	Quality Plus Essar Corp	Bi-Sulfa Boluses, Sulfamethazine, Sulfathiazole	1, 2, 3, 5, 6A (Ref. 33).
099–932	Quality Plus Essar Corp	Sulfathiazole Boluses	1, 2, 3, 5, 6B (Ref. 34).
099–947	Quality Plus Essar Corp	S G-Seven, Sulfamethazine, Sulfathiazole, Sulfamerazine	1, 2, 3, 4, 5, 6A (Ref. 35).

TABLE OF PENDING NADA'S FOR SULFONAMIDE-CONTAINING PRODUCTS—Continued

NADA No.	Sponsor	Product name	Grounds for refusing approval
099–952	Quality Plus Essar Corp	TS–543 Solution, Sulfamethazine sodium, Sulfathiazole sodium, Sulfamerazine sodium.	1, 2, 3, 4, 5, 6A (Ref. 36).
099–975	Quality)Plus Essar Corp	Sulfathiazole Sodium N.F	1, 2, 3, 5, 6A (Ref. 37).
099–999	Fermenta Animal Health Company	Sodium Sulfathiazole	1, 2, 3, 5, 6B (Ref. 38).
100–010	Fermenta Animal Health Company	Thi-Meth Bolus, Sulfamethazine, Sulfathiazole	1, 2, 3, 5, 6B (Ref. 39).
100–023	Hess & Clark, Inc	Sul-Trol-E, Sodium sulfathiazole, Ethylenediamine dihydroiodide, Sodium, Potassium.	1, 2, 3, 4, 5 (Ref. 40).
100–025	Veterinary Laboratories, Inc	Tri-Sul 2MT Triple Sulfa Solutioon 24%, Sulfamethazine sodium, Sulfathiazole sodium, Sulfamerazine sodium.	1, 2, 3, 4, 5, 6A (Ref. 41).
100–089	Quality Plus Essar Corp	Tnaul I Bolusee, Sulfamethazine, Sulfathiazole, Sulfamerazine	1, 2, 3, 5, 6B (Ref. 42).
100–091	Quality Plus Essar Corp	Triple Sulfa Solution 24%, Sulfamethazine sodium, Sulfathiazole sodium, Sulfamerazine sodium.	1, 2, 3, 5, 6B (Ref. 43).
100–099	Illini Skylab, Inc	Thiazole-Sodium, Sulfathiazole sodium	1, 2, 3, 4, 5, 6A (Ref. 44).
100–101	Quality Plus Essar Corp	Sulfathiazole Boluses	1, 2, 3, 4, 5, 6B (Ref. 45).
100–117	Illini Skylab, Inc	Thiazole-Sodium, Sulfathiazole sodium	1, 2, 3, 4, 5, 6B (Ref. 46).
		C. Sulfaquinoxaline Alone or in Combination with Other Sulfa Products	
099–867	Salsbury Laboratories, Inc	Sulquin-40 Medicated Premix, Sulfaquinoxaline	1, 2, 3, 4, 5, 6B (Ref. 47).
099–928	Quality Plus Essar Corp	Sulfaquinoxaline 3.2%	1, 2, 3, 4, 5, 6A (Ref. 48).
099–971	Quality Plus Essar Corp	Sulfaquinoxaline Boluses 16 Grams	1, 2, 3, 4, 5, 6B (Ref. 49).
099–974	Quality Plus Essar Corp	Sulfaquinoxaline 20% Concentrate	1, 2, 3, 4, 5, 6B (Ref. 50).
099–978	Quality Plus Essar Corp	Triple Sulfa for Poultry Sodium sulfamerazine, Sodium sulfamethazine, Sodium sulfaquinoxaline.	1, 2, 3, 5, 6A (Ref. 51).
100–017	Quality Plus Essar Corp	Bovo-Cox Calf Size Boluses, Sulfaquinoxaline	1, 2, 3, 4, 5, 6A (Ref. 52).
100–020	Quality Plus Essar Corp	Bovo-Cox Boluses, Sulfaquinoxaline	1, 2, 3, 5, 6A (Ref. 53).
100–021	Quality Plus Essar Corp	Bovo-Cox Powder, Sulfaquinoxaline	1, 2, 3, 5, 6A (Ref. 54).
100–022	Hess & Clark, Inc	20% Sulfaquinoxaline, Sodium Solution	1, 2, 3, 4, 5 (Ref. 55).
100–029	Illini Skylab, Inc	20% Sulfa-Pol Liquid Concentrate, Sulfamerazine, Sulfamethazine, Sulfaquinoxaline.	1, 2, 3, 4, 5, 6B (Ref. 56).
100–094	I.D. Russell Company, Laboratories	Russell Triple Sulfa, Sulfamerazine sodium, Sulfamethazine sodium, Sulfaquinoxaline sodium.	1, 2, 3, 4, 5, 6B (Ref. 57).
100–174	I.D. Russell Company, Laboratories	K Quad Sulfa Feed Mixture, Sulfamerazine, Sulfamethazine, Sulfathiazole, Sulfaquinoxaline.	1, 2, 3, 5, 6B (Ref. 58).
100–175	I.D. Russel Company, Laboratories	Liquid Sul-Q-Nox 3.2% and 20%, Sulfaquinoxaline	1, 2, 3, 4, 5 (Ref. 59).
100–176	I.D. Russel Company, Laboratories	Liquid Sul-Q-Nox 34.44%, Sodium sulfaquinoxaline	1, 2, 3, 4, 5 (Ref. 60).
		D. Sulfamerazine	
100–008	Quality Plus Essar Corp	Double-M 12.5% Solution, Sodium sulfamethazine, Sodium sulfamerazine	1, 2, 3, 4, 5, 6B (Ref. 61).
		E. Sulfapyridine Alone or In Combination With Other Sulfa Products	
099–921	Quality Plus Essar Corp	Triple Sulfa 80, Sulfamethazine, Sulfathiazole, Sulfapyridine	1, 2, 3, 5, 6B (Ref. 62).
099–935	Quality Plus Essar Corp	Sulfapyridine Boluses	1, 2, 3, 5, 6B (Ref. 63).
099–979	Quality Plus Essar Corp	Triple Sulfa 4 Injectable, Sulfamethazine sodium, Sulfathiazole sodium, Sulfapyridine sodium.	1, 2, 3, 6B (Ref. 65).
099–980	Quality Plus Essar Corp	Triple Sulfa Solution 8 Oral, Sulfamethazine sodium, Sulfathiazole sodium, Sulfapyridine sodium.	1, 2, 3, 5, 6B (Ref. 66).
099–982	Quality Plus Essar Corp	Oral Triple Sulfa Solution 12%, Sulfamethazine sodium, Sulfathiazole sodium, Sulfapyridine sodium.	1, 2, 3, 5, 6B (Ref. 67).
099–986	Norden Laboratories, Inc	Tri-Sulfa-G Sulfonamide Solution, Sulfamethazine, Sulfathiazole, Sulfapyridine.	1, 2, 3, 5, 6B (Ref. 68).
100–002	Quality Plus Essar Corp	Neutral Sulfa-7, Sulfamethazine sodium, Sulfathiazole sodium, Sulfapyridine sodium.	1, 2, 3, 4, 5, 6B (Ref. 69)
100–004	Fermenta Animal Health Company	Triple Sulfa 12% Oral Solution, Sulfamethazine sodium, Sulfathiazole sodium, Sulfapyridine sodium.	1, 2, 3, 5, 6B (Ref. 70).
100–007	Fermenta Animal Health Company	Triple Sulfa Injectable 24%, Sulfamethazine sodium, Sulfathiazole sodium, Sulfapyridine sodium.	1, 2, 3, 5, 6B (Ref. 71).
100–013	Fermenta Animal Health Company	Sulfapyridine Boluses	1, 2, 3, 5, 6B (Ref. 72).
100–070	Frank Veterinary Laboratories	Frank Triple Sulfa Solution (INJ), Sulfamethazine sodium, Sulfathiazole sodium, Sulfamerazine sodium.	1, 2, 3, 5, 6B (Ref. 73).
100–072	Frank Veterinary Laboratories	Frank Triple Sulfa Solution Oral 12%, Sulfamethazine sodium, Sulfathiazole sodium, Sulfapyridine sodium.	1, 2, 3, 5, 6B (Ref. 74).
100–092	Quality Plus Essar Corp	Oral Triple Sulfa Solution 12%, Sulfamethazine sodium, Sulfathiazole sodium, Sulfapyridine sodium.	1, 2, 3, 5, 6B (Ref. 75).
100–096	Quality Plus Essar Corp	Neutral Sulfa 50 Triple Solution, Sulfonamide, Sulfamethazine, Sulfathiazole, Sulfapyridine.	1, 2, 3, 5, 6B (Ref. 76).
100–100	Quality Plus Essar Corp	Trisul II Boluses, Sulfamethazine sodium, Sulfathiazole sodium, Sulfapyridine sodium.	1, 2, 3, 5, 6B (Ref. 77).
100–102	Quality Plus Essar Corp	Sulfapyridine Boluses	1, 2, 3, 5, 6B (Ref. 78).
100–178	Quality Plus Essar Corp	Sulfa-Plex Triple Sulfa Solution Oral 12.5%, Sulfamethazine sodium, Sulfathiazole sodium, Sulfapyridine sodium.	1, 2, 3, 5, 6B (Ref. 79).
		F. Sulfanilamide Alone or In Combination with Other Sulfa Products	
099–851	Salsbury Laboratories Inc.	Sulfanilamide	1, 2, 3, 4, 5, 6A (Ref. 80).
099–861	Salsbury Laboratories, Inc	Sulfanilamide Boluses	1, 2, 3, 4, 5, 6A (Ref. 81).

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TABLE OF PENDING NADA'S FOR SULFONAMIDE-CONTAINING PRODUCTS—Continued

NADA No.	Sponsor	Product name	Grounds for refusing approval
099-880	Veterinary Laboratories, Inc.	Tri-Metha Bolus Sulfanilamide, Sulfathiazole, Sulfamethazine	1, 2, 3, 4, 5, 6A (Ref. 82).
099-931	Quality Plus Essar Corp	Sulfanilamide	1, 2, 3, 4, 5, 6B (Ref. 83).
099-934	Quality Plus Essar Corp	Triple Sulfa Boluses, Sulfanilamide, Sulfathiazole, Sulfamethazine	1, 2, 3, 5, 6B (Ref. 84).
099-972	Quality Plus Essar Corp	Sulfanilamide Boluses	1, 2, 3, 4, 5, 6B (Ref. 85).
100-123	Illini Skylab, Inc	Triple Sulfa Bolus, Sulfanilamide, Sulfathiazole, Sulfamethazine	1, 2, 3, 4, 5, 6B (Ref. 86).
	G. New Animal Drugs Containing Sulfonamides in Combination With Nutrients or Other Drugs		
099-843	Salsbury Laboratories, Inc	Hog & Cattle Sulfa with Vitamins, Electrolytes, and EDDI, Sulfathiazole sodium sesquihydrate, Ethylenediamine dihydroiodide, Potassium Chloride, Sodium chloride, Sodium carbonate, Vitamin A, Vitamin D_3.	1, 2, 3, 4, 5, 6A (Ref. 87).
099-844	Salsbury Laboratories, Inc	Hog & Cattle Sulfa, Sulfathiazole sodium sesquihydrate, Ethylenediamine dihydroiodide, Potassium chloride, Sodium chloride, Sodium carbonate monohydrate.	1, 2, 3, 4, 5, 6A (Ref. 88).
099-845	Salsbury Laboratories, Inc	Triple-Sulfa Solution with Electrolytes, Sulfamethazine sodium, Sulfathiazole sodium, Sulfamerazine sodium, Potassium hydroxide, Sodium hydroxide, Potassium chloride, Sodium chloride, Calcium gluconate.	1, 2, 3, 4, 5, 6A (Ref. 89).
099-853	Salsbury Laboratories, Inc	Triple Sulfa Soluble Powder, Sulfamethazine sodium, Sulfamerazine sodium, Sulfathiazole sodium, Vitamin A, Vitamin D_3, Calcium lactate, Magnesium sulfate, Potassium chloride, Sodium chloride.	1, 2, 3, 4, 5, 6A (Ref. 90).
099-856	Salsbury Laboratories, Inc	Hog and Cattle Sulfa with Vitamins and Electrolytes, Sulfathiazole sodium sesquihydrate, Potassium chloride, Sodium chloride, Sodium carbonate, Vitamin A, Vitamin D_3.	1, 2, 3, 4, 5, 6A (Ref. 91).
099-859	Vet-A-Mix	SulElectro-Sol One, Sulfathiazole sodium, Potassium, Sodium present as carbonate, chlorides, citrate, and bicarbonate.	1, 2, 3, 4, 5, 6A (Ref. 92).
099-862	Salsbury Laboratories, Inc	SM-15 & SM-30 Sulfa Boluses with Electrolytes, Sulfamethazine, Sodium, Potassium, Calcium, Magnesium, Chloride.	1, 2, 3, 4, 5, 6A (Ref. 93).
099-863	Salsbury Laboratories, Inc	90-90-60 Sulfa Boluses with Electrolytes, Sulfathiazole, Sulfanilamide, Sulfamethazine, Calcium, Chloride, Magnesium, Potassium, Sodium.	1, 2, 3, 4, 5, 6A (Ref. 94).
099-864	Salsbury Laboratories, Inc	T-M-P 80 Boluses with Electrolytes, Sulfathiazole, Sulfamethazine, Sulfapyridine, Calcium, Chloride, Magnesium, Potassium, Sodium.	1, 2, 3, 4, 5, 6A (Ref. 95).
099-865	Salsbury Laboratories, Inc	Triple Sulfa Boluses with Electrolytes, 240 Grains & 480 Grains, Sulfathiazole, Sulfamethazine, Sulfanilamide, Calcium, Chloride, Magnesium, Potassium, Sodium.	1, 2, 3, 4, 5, 6A (Ref. 96).
099-868	Veterinary Laboratories, Inc.	Sulfa-Urea-Bolus, Urea, Sulfanilimide, Sulfathiazole	1, 2, 3, 4, 5, 6A (Ref. 97).
099-907	Veterinary Laboratories, Inc.	Sulfathiazole Uterine Boluses, Sulfathiazole, Urea	1, 2, 3, 4, 5, 6B (Ref. 98).
099-917	Quality Plus Essar Corp	Vi-Sul-Lyte, Sulfathiazole sodium, Sulfamethazine sodium, Vitamin A palmitate, Vitamin D, Riboflavin, Niacinamide, Vitamin B, Ethylenediamine dihydroiodide, Sodium, potassium, magnesium, calcium, chlorides, sulfates, and trace elements, iron, cobalt, zinc, copper and manganese.	1, 2, 3, 4, 5, 6B (Ref. 99).
099-918	Quality Plus Essar Corp	Uterine Boluses, Urea, Sulfanilamide, Sulfathiazole	1, 2, 3, 4, 5, 6B (Ref. 100).
099-919	Quality Plus Essar Corp	Sulfapyridine-Iodine Boluses, Sulfapyridine, Ethylenediamine dihydroiodide.	1, 2, 3, 4, 5, 6B (Ref. 101).
099-924	Quality Plus Essar Corp	Uterine Boluses with Acriflavine, Urea, Sulfathiazole, Sulfanilamide	1, 2, 3, 4, 5, 6B (Ref. 102).
099-929	Quality Plus Essar Corp	Triple Sulfa 80 with Electrolytes, Sulfamerazine, Sulfathiazole, Sulfamethazine, Calcium chloride, Sodium chloride, Potassium chloride, Magnesium chloride.	1, 2, 3, 4, 5, 6B (Ref. 103).
099-933	Quality Plus Essar Corp	Quality 12.5% Sodium, Sulfamethazine w/Electrolytes, Sodium sulfamethazine, Sodium hydroxide, Sodium chloride, Sodium bicarbonate, Potassium chloride, Calcium gluconate, Magnesium chloride.	1, 2, 3, 4, 5, 6B (Ref. 104).
099-939	Quality Plus Essar Corp	Cattle Scour Boluses, Neomycin sulfate, Sulfamethazine, Pectin, Vitamin A, Vitamin D_3, Attapulgite.	1, 2, 3, 4, 5, 6B (Ref. 105).
099-940	Purina Mills, Inc	Purina Electro-Zole, Sulfathiazole sodium, Sodium chloride, Sodium iodide, Potassium chloride.	1, 2, 3, 4, 5, 6A (Ref. 106).
099-943	Quality Plus Essar Corp	Bacterial Scour, Boluses, Sulfamethazine, Neomycin Base	1, 2, 3, 4, 5, 6B (Ref. 107).
099-946	Quality Plus Essar Corp	Calf Bacterial Scour Treatment 4-Way, Cattle Scour Treatment Solution, Sulfametazine, Neomycin, Kaolin, Pectin, Bismuth subcarongate, Homatropine methylbromide.	1, 3, 4, 6B (Ref. 108).
099-948	Quality Plus Essar Corp	Hubbard Triple Sulfa Solution, Sulfathiazole sodium, Sulfametahzine sodium, Sulfamerazine sodium, Potassium, Sodium, Magnesium, Calcium and chloride.	1, 2, 3, 4, 5, 6A (Ref. 109).
099-950	Quality Plus Essar Corp	Triple Sulfa-888 Boluses, Sulfamethazine, Sulfathiazole, Sulfamerazine, Electrolytes.	1, 2, 3, 4, 5, 6A (Ref. 110).
099-951	Quality Plus Essar Corp	Metzol Boluses, Sulfamethazine, Electrolytes	1, 2, 3, 4, 5, 6A (Ref. 111).
099-954	Quality Plus Essar Corp	Triple Sulfa with Electrolytes, Sulfamethazine sodium, Sulfathiazole sodium, Sulfamerazine sodium, Sodium, potassium magnesium, calcium, and chloride.	1, 2, 3, 4, 5, 6A (Ref. 112).
099-957	Quality Plus Essar Corp	Metzol Calf Size Boluses, Sulfamethazine, Electrolytes	1, 2, 3, 4, 5, 6A (Ref. 113).
099-958	Quality Plus Essar Corp	Triple Sulfa-699 Boluses, Sulfamethazine, Sulfathiazole, Sulfanilamide, Electrolytes.	1, 2, 3, 4, 5, 6A (Ref. 114).
099-960	Quality Plus Essar Corp	Triple Sulfa Bolus, Sulfamethazine, Sulfathiazole, Sulfanilamide, Sodium bicarbonate, Sodium chloride, Potassium chloride, Calcium diabasic phosphate.	1, 2, 3, 4, 5, 6B, (Ref. 115).
099-961	Quality Plus Essar Corp	Sulfa Urea Bolus Formula 109, Sulfanilamide, Sulfathiazole, Urea	1, 2, 3, 4, 5, 6B (Ref. 116).
099-963	Quality Plus Essar Corp	Scour-Out for Baby Pig Scours, Neomycin sulfate, Sulfamethazine, Homatropine methylbromide, Kaolin and psyllium.	1, 2, 3, 4, 5, 6B (Ref. 117).
099-964	Quality Plus Essar Corp	MKP Masti-Kure Insertory Formula 206 A, Nitrofurazone, Sulfathiazole, Sulfamethazine, Urea.	1, 2, 3, 4, 5, 6B (Ref. 118).

TABLE OF PENDING NADA'S FOR SULFONAMIDE-CONTAINING PRODUCTS—Continued

NADA No.	Sponsor	Product name	Grounds for refusing approval
099-965	Quality Plus Essar Corp	Triple Sulfa Bolus with Electrolytes, Formula 127, Sulfanilamide, Sulfathiazole, Sulfamethazine, Sodium, Potassium, Chloride, Calcium.	1, 2, 3, 4, 5, 6B (Ref. 119).
099-966	Quality Plus Essar Corp	Kendall Calf Scours Tablets (Formula 115), Neomycin base, Sulfamethazine, Kaolin, Niacinamide, Vitamin A, Vitamin D.	1, 2, 3, 4, 5, 6B (Ref. 10).
099.967	Quality Plus Essar Corp	Scour-Out 1400 (formerly known as MKP Giant Liquid-100 Formula 260), Neomycin sulfate, Sulfamethazine, Attapulgite, Pectin.	1, 2, 3, 4, 5, 6B (Ref. 121).
099-968	Quality Plus Essar Corp	Masti-Kure Calf-Caps (Formula 148), Neomycin sulfate, Sulfamethazine, Kaolin, Pectin.	1, 2, 3, 4, 5, 6B (Ref. 122).
099-970	Quality Plus Essar Corp	Sulyte Powder, Sodium sulfathiazole, Sodium, Potassium, Calcium, Magnesium, Chloride, Ethylenediamine dihydroiodide.	1, 2, 3, 4, 5, 6B (Ref. 123).
099-981	Quality Plus Essar Corp	Triple Sulfa with Electrolytes, Sulfathiazole sodium, Sulfameerazine sodium, Sulfamethazine sodium, Potassium, Calcium, Magnesium, Sodium, Chloride, Gluconate, Bicarbonate.	1, 2, 3, 4, 5, 6B (Ref. 124).
099-983	Illini Skylab, Inc	Triple Sulfa with Electrolytes, Sulfamethazine sodium, Sulfathiazole sodium, Sulfamerazine sodium, Sodium, Potassium, Calcium, Magnesium as chloride, carbonate, sulfate, and lactate, plus trace amounts of cobalt, zinc, copper, manganese, and iron.	1, 2, 3, 4, 5, 6B (Ref. 125).
099-987	Norden Laboratories, Inc	Sulkamycin-S Bolettes, Sulfamethazine, Neomycin	1, 2, 3, 4, 5 (Ref. 126).
099-988	Norden Laboratories Inc	Sulkamycin-S Bolettes, Sulfamethazine, Neomycin sulfate	1, 2, 3, 4, 5, 6B (Ref. 127).
100-001	Fermenta Animal Health Company	T-M-P 160 Improved Boluses w/Electrolytes, T-M-P 80 Improved Boluses w/Electrolytes, Sulfathiazole, Sulfamethazine, Sulfapyridine, Calcium, chloride, Magnesium, Potassium, Sodium.	1, 2, 3, 4, 5, 6B (Ref. 128).
100-003	Quality Plus Essar Corp	Merasul Soluble Powder, Sulfamerazine sodium, Sulfathiazole sodium, Vitamin A palmitate, Ethylenediamine, dihydroiodide, Sodium acetate, Sodium chloride, Potassium chloride, Magnesium sulfate, Calcium lactate.	1, 2, 3, 4, 5, 6B (Ref. 129).
100-005	Fermenta Animal Health Company	Medisol Soluble Powder, Sulfamerazine sodium, Sulfathiazole sodium, Ethylenediamine dihydroiodide, Vitamin A palmitate, Potassium acetate, Sodium acetate, Sodium chloride, Potassium chloride, Magnesium sulfate, Calcium lactate.	1, 2, 3, 4, 5, 6B (Ref. 130).
100-009	Fermenta Animal Health Company	SM-30 Boluses, SM-15 Boluses, SM-5 Boluses, SM-2.5 Boluses, Sulfamethazine, Sodium, Potassium, Calcium, Magnesium, Chloride ions.	1, 2, 3, 4, 5, 6B (Ref. 131).
100-012	Fermenta Animal Health Company	Neo-Sul, Sr. (Cattle Scour & Pneumonia Bolus), Neo-Sul, Jr. (Calf Scour & Pneumonia Bolus), Neomycin Sulfate, Sulfamethazine, Sulfathiazole.	1, 2, 3, 4, 5, 6B (Ref. 132).
100-015	Fermenta Animal Health Company	Triple Sulfa Improved Bolus, Sulfathiazole, Sulfamethazine, Sulfanilamide, Dicalcium phosphate, Magnesium sulfate, Potassium chloride, Sodium chloride.	1, 2, 3, 4, 5, 6B (Ref. 133).
100-016	Quality Plus Essar Corp	Methapyrin Boluses, Sulfamethazine, Neomycin, Pyrilamine maleate, Methyl atropine nitrate, Vitamin A, Electrolytes.	1, 2, 3, 4, 5, 6B (Ref. 134).
100-027	Illini Skylab, Inc	Sulfa-Pol Plus TA Soluble Concentrate, Sulfamethazine sodium, Sulfamerazine sodium, Sulfaquinoxaline sodium, Thiamine hydrochloride, Vitamin A palmitate water.	1, 2, 3, 4, 5, 6B (Ref. 135).
100-090	Quality Plus Essar Corp	Trisul, Sulfamethazine sodium, Sulfathiazole sodium, Sulfamerazine sodium, Sodium hydroxide, Sodium chloride, Sodium bicarbonate, Potassium chloride, Calcium chloride, Magnesium sulfate.	1, 2, 3, 4, 5, 6B (Ref. 136).
100-097	Quality Plus Essar Corp	Sulfa-Urea Boluses, Sulfathiazole, Sulfamethazine, Urea	1, 2, 3, 4, 5, 6B (Ref. 137).
100-098	Illini Skylab, Inc	Vi-Lite Sodium, Sulfathiazole with Electrolytes, Sodium sulfathiazole, Sodium, Potassium, Calcium, Magnesium, Ethylenediamine, dihydroiodide, Vitamin A, Vitamin D, Iron occurring as chloride, carbonate, sulfate, phosphate, and lactate plus trace amounts of cobalt, zinc, copper, and manganese.	1, 2, 3, 4, 5, 6B (Ref. 138).
100-118	Illini Skylab, Inc	Sulfamethazine Boluses with Electrolytes, Sulfamethazine, Sodium, Potassium, Calcium, Magnesium, Sodium, Trace amounts of cobalt, zinc, manganese, copper, and iron.	1, 2, 3, 4, 5, 6B (Ref. 139).
100-122	Illini Skylab, Inc	Triple Sulfa Boluses with Electrolytes, Sulfanilamide, Sulfathiazole, Sulfamethazine, Potassium, calcium, magnesium, sodium, and Trace amounts of cobalt, zinc, manganese, copper, and iron.	1, 2, 3, 4, 5, 6B (Ref. 140).
100-180	Quality Plus Essar Corp	Mer-A-Lite Soluble Powder, Sulfathiazole sodium, Ethylenediamine dihydroiodide, Vitamin A, Potassium acetate, Sodium acetate, Sodium chloride, Potassium chloride, Magnesium sulfate, Calcium lactate.	1, 2, 3, 4, 5, 6B (Ref. 141).
100-181	Quality Plus Essar Corp	Med-A-Sul, Sodium sulfathiazole, Sodium arsanilate anhydrous, Vitamin A (as palmitrate), Vitamin D_3, Menadione sodium bisulfite, Calcium pantothenate, Niacin, Riboflavin, Thiamine hydrochloride, Ethylenediamine dihydroiodide, Potassium acetate, Sodium acetate, Sodium chloride, Potassium chloride, Magnesium sulfate, Calcium lactate.	1, 2, 3, 4, 5, 6A (Ref. 142)

IV. Environmental Impact

FDA carefully considered the potential environmental effects of the termination of interim marketing under 21 CFR 510.450, and concluded that such termination would not have a significant impact on the human environment and, therefore, that an environmental impact statement was not required (53 FR 35833 at 35835). The agency's analysis and conclusion apply *in toto* to this action. Accordingly, CVM relies on FDA's finding of no significant impact and the evidence supporting that finding, which is contained in an environmental assessment under 21 CFR 25.31. The assessment may be seen in the Dockets Management Branch, Food and Drug

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Administration (address above) between 9 a.m. and 4 p.m., Monday through Friday, under Docket No. 84N–0036).

V. Economic Impact

CVM believes that a proposal to refuse approval of an NADA under section 512(d)(1) of the act is not required to take into account the economic costs and benefits of the action. This proceeding is an adjudication pursuant to a statutory provision in which actions are based on consideration of safety and effectiveness. *Cf. American Textile Manufacturers Institute* v. *Donavan*, 452 U.S. 490 (1981).

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), however, FDA examined the economic consequences of its rulemaking terminating interim marketing by the agency's proposed removal of 21 CFR 510.450, and concluded that such termination was neither a major rule nor one that imposed a substantial burden on a significant number of small entities (53 FR 35833 at 35835). That examination and conclusion would apply equally to the action initiated by this notice, if it were subject to a requirement to analyze costs and benefits.

VI. References

In addition to the NADA's identifed in Section III of this notice, copies of the other documents cited or referred to in Sections I, III, and IV of this notice have been placed on display in the Dockets Management Branch (address above). Copies of references cited or referred to in the July 1984 notice, which are also included in the record of this proceeding, remain on display in the Dockets Management Branch under Docket No. 84N–0036. Except for data and information prohibited from public disclosure under section 301(j) of the act (21 U.S.C. 331(j)), § 20.61 of FDA's regulations governing public information (21 CFR 20.61), § 514.11 of FDA's regulations governing NADA's (21 CFR 514.11), or 18 U.S.C. 1905, copies of the NADA's, the references, and the other documents may be examined in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of References

1. Letter from Gerald B. Guest, CVM, FDA, to W. Eugene Lloyd, Vet-A-Mix dated May 23, 1986, and attachments.
2. Letter from Gerald B. Guest, CVM, FDA, to W. Eugene Lloyd, Vet-A-Mix dated May 23, 1986, and attachments.
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24. Letter from Gerald B. Guest, CVM, FDA, to Nathan Frank, Frank Veterinary Laboratories, dated May 23, 1986, and attachments.
25. Letter from Gerald B. Guest, CVM, FDA, to Gregory P. Bergt Wendt Laboratories, Inc. (now known as Quality Plus Essar Corp.), dated May 23, 1986, and attachments.
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142. Letter from Gerald B. Guest, CVM, FDA, to David Wilson, Essar Corp. (now known as Quality Plus Essar Corp.), dated May 23, 1986, and attachments.
143. Brady, M. S., and S. E. Katz, "Antibiotic/Antimicrobial Residues in Milk." *Journal of Food Protection*, 51:8–11, 1988.
144. Charm, S. E., "Sulfonamide Contamination in U.S. Milk," Presented at the Colorado Dairy Technology Society, October 1987.
145. Memorandum from John D. Weber and Michael D. Smedley, CVM, to Norris Alderson, CVM, dated June 7, 1988, and attachments.

VII. Notice of Opportunity for Hearing

Therefore, notice is given to the sponsors listed in Section II of this notice, to all other sponsors of sulfonamide-containing drugs covered by interim marketing under § 510.450, and to all other interested persons, that CVM proposes, under section 512(d)(1) of the act and FDA's regulations, to refuse approval of the NADA's listed in Section III of this notice and of all other NADA's for sulfonamide-containing drugs covered by interim marketing under § 510.450, on the grounds set forth in Section III of this notice.

In accordance with provisions of section 512 of the act (21 U.S.C. 360b) and regulations promulgated under it (21 CFR Part 514) and under authority delegated to the Director of CVM (21 CFR 5.84), CVM hereby provides an opportunity for hearing to show why approval of the new animal drug applications listed in Section III of this notice and of all other NADA's for sulfonamide-containing drugs covered by interim marketing under § 510.450 should not be refused. Any hearing would be subject to the provisions of 21 CFR Part 12.

FDA has sent to the sponsor of each pending NADA listed in Section III of this notice, by certified mail—return receipt requested, a copy of this notice, a copy of the July 1984 notice, and a copy of CVM,'s May 23, 1986, letter concerning the sponsor's application, together with the attachments (previous deficiency letters) to each May 23, 1986, letter. For that reason, and because of the lengthy history of interim marketing of sulfonamide-containing products under § 510.450 (49 FR 27544), CVM advises that, absent extraordinarily compelling circumstances, it will not grant an extension of the time within which to file a written appearance requesting a hearing or the data, information, and analysis on which a request for a hearing relies. CVM also advises that if a sponsor wishes to avail itself of the opportunity for a hearing provided by this notice, the sponsor is required to request and justify a hearing, as specified in this notice, even if the sponsor has previously requested a hearing on an earlier refusal to approve an NADA.

If a sponsor decides to seek a hearing, the sponsor shall file (1) on or before December 15, 1988, publication in the **Federal Register**) a written notice of appearance and request for a hearing, and (2) on or before February 13, 1989, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 514.200.

Procedures and requirements governing this notice of opportunity for hearing, a notice of appearence and request for hearing, submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 514.200.

The failure of a sponsor to file timely written appearance and request for hearing as required by 21 CFR 514.200 constitutes and election by the sponsor not to avail itself of the opportunity for a hearing, as does the failure of the sponsor to submit any data, information, or analysis in support of its hearing request. In either of those circumstances, CVM will summarily enter a final order refusing approval of the application.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the refusal of approval of the application(s), or that the request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drug will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions, and denying a hearing. If a hearing is requested and is justified by the sponsor's response to this notice, the issues will be defined, an administrative law judge will be assigned, and a written notice of the time and place at which the hearing will begin will be issued as soon as practicable.

This notice of opportunity for a hearing encompasses all issues relating to the legal status of each sulfonamide-containing product subject to it. A written notice of appearance and request for a hearing is therefore required to contain any contention that a particular product is not subject to the new animal drug requirements of the act because it is generally recognized as safe and effective within the meaning of section 201(w) of the act (21 U.S.C. 321(w)) or for any other reason. Each such contention is required to be supported by the submission, on or before February 13, 1989, of the data, records, information, and analysis that are necessary and appropriate to support the contention. The failure of a sponsor or any other person to raise all such contentions constitutes a waiver of any contentions not raised, as does the failure to submit any data, information, records or analysis in support of any contentions raised.

All submissions under this notice shall be filed in four copies. All submission under this notice, except as provided in 21 CFR 10.20(j), may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b)) and under authority delegated to the Director, Center for Veterinary Medicine (21 CFR 5.84).

Dated: November 7, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–26344 Filed 11–14–88; 8:45 am]
BILLING CODE 4160–01–M

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federal register

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Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Years 1989–1990

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Funding Priorities.

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for Fiscal Years 1989–1990.

SUMMARY: The Secretary of Education proposes funding priorities for some of the research activities to be supported under the Rehabilitation Research and Training Center (RRTC), Rehabilitation Engineering Center (REC), Research and Demonstration (R&D), and Knowledge Dissemination and Utilization (D&U) programs of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal years 1989 and 1990.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before December 15, 1988.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue, SW., Rooms 3070, Switzer Building, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1139). Deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

SUPPLEMENTARY INFORMATION: NIDRR proposes funding priorities for two fiscal years under several of its programs. This presents each program separately, with a description of the program followed by the proposed priorities in that program.

Authority for the Rehabilitation Research and Training Center program of NIDRR is contained in section 204(b)(1) of the Rehabilitation Act of 1973, as amended. Under the RRTC program, awards are made to institutions of higher education, or to public and private organizations, including Indian tribes and tribal organizations, that are affiliated with institutions of higher education.

RRTCs conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. NIDRR's regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 352.32). The following proposed priorities represent areas of research derived from "state-of-the-art" meetings, planning conferences, and other participatory activities.

NIDRR invites public comment on the merits of the proposed priorities, including suggested modifications to the proposed priorities. The final priorities will be established on the basis of public comment, the availability of funds, and any other relevant Departmental considerations, and will be announced in a notice in the **Federal Register.** A closing date notice will be published at that time, after which application packages will be available. This Notice of Proposed Priorities does not solicit applications, and Department of Education staff will not review concept papers or pre-applications. The publication of these proposed priorities does not bind the Federal Government to fund projects in any of these areas, except as otherwise directed by statute. Funding of particular projects depends on final priorities, the availability of funds, and on the quality of the applications that are received.

A program of Rehabilitation Research and Training Centers has been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTCs must be opperated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination and training must be accessible to individuals with a range of handicapping conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers must also conduct state-of-the-art studies in relevant aspects of their priority areas. Each RRTC must also provide training to individuals with disabilities and their families in managing and coping wtih disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

Rehabilitation Research and Training Centers

Rehabilitation for Persons With Long-Term Mental Illness

There are over two million persons with long-term, severe mental illness. Improved rehabilitation interventions and service delivery models are needed to afford better opportunities for this population to remain out of institutions and to attain satisfactory lives in their communities. The population of adults with severe psychiatric disabilities spans all ages.

Results of research and practice indicate that specialized rehabilitative interventions can increase the likelihood of community adjustment for persons with long-term mental illness. It is important to continue to develop and test more effective rehabilitative interventions, including especially those that contribute to improvements in education, vocational status, and general health care.

NIDEE, with the cooperation of the National Institute of Mental Health, intends to fund an RRTC to address these issues. Any Center to be funded under this priority must involve persons with long/term mental illness and their family members in the planning, conduct, and evaluation of the research and training activities.

An absolute priority is proposed for an RRTC to:

- Analyze employment patterns, obstacles to employment, and employment options for individuals with long-term, severe mental illness;
- Develop and test model rehabilitative program interventions to improve employment outcomes, and assess the cost-effectiveness of these options;
- Analyze the role of rehabilitative interventions in the management of crisis episodes, study the relationship between crisis assistance programs and rehabilitation, and develop and test models for appropriate management of crises in rehabilitation;
- Analyze the relationship between psychiatric and mental health treatment regimens and rehabilitation interventions, and develop and test model programs for integrating mental health treatment with rehabilitation;
- Identify the most effective techniques to assist families with individuals with long-term severe mental illness both to maintain family functioning and to maximize the effective contribution of family members to the rehabilitation process;
- Develop and test new rehabilitation intervention techniques and systems of rehabilitative care, examining methods to integrate effectively a range of discrete community or hospital-based services in planning, implementing, financing, and evaluating client rehabilitation;
- Conduct at least one study of the state-of-the-art in one of the above areas; and
- Provide training to relevant parties, including vocational rehabilitation counselors, family members, and other service providers, and disseminate all findings to appropriate audiences.

Research and Training Center in Independent Living

The concept of Independent Living (IL) has emerged as an important service program as well as an important principle for individuals with disabilities. This concept embraces such goals as self-determination, self-help, deinstitutionalization, and barrier-free access to services and opportunities previously unavailable to persons with disabilities. The Congress acknowledged the importance of this theme in the passage of Title VII of the Rehabiliation Amendments of 1978, establishing a separate authority for Independent Living service programs.

The 1984 amendments to the 1978 Act appropriated funds to implement Part A of Title VII by State agencies to implement statewide IL delivery systems. The Rehabilitation Act Amendments of 1986 mandated the development of program standards and performance indicators to assess the performance of the Federally-funded Independent Living programs.

Implementation of the Independent Living programs of the Act requires an understanding of the boundaries of the program (e.g. eligibility, types of services), high quality program management, and of the goals, philosophy, and social policy implications of Independent Living. Continuing research is needed to support the development and refinement of the Independent Living concept and to enhance the quality of services and the success of the programs.

An absolute priority is proposed for an RRTC to:

- Assess the quality of community services available to individuals with disabilities, evaluate the impact of those services on independent living, and develop and test models to integrate general community services with IL services to enhance the ability of persons with disabilities to live independently;
- Develop methods to infuse IL and rehabilitation concepts into long-term care institutions for those who must have extended stays in such institutions and determine the optimum roles for IL programs in relation to such institutions.
- Develop and test models for IL programs to assist in the transition of individuals from both long-and-short-term rehabilitation care facilities into independent living in the community;
- Develop and test research-based models to coordinate IL with vocational rehabilitation programs and with supported employment programs in order to enhance the effectiveness of all three types of programs and improve outcomes for individuals with disabilities;
- Develop, on the basis of assessments and analyses, and test models whereby IL programs can be involved most effectively in the effort to improve the delivery of rehabilitation engineering services and technological aids and devices to persons with disabilities;
- Assess the potential of ILCs to provide services to previously underserved populations, such as those with cognitive impairments and emotional disorders, those with low-incidence disabilities;
- Conduct a comparative analysis of the characteristics of specialized and generic IL centers in terms of their effectiveness in assisting individuals with disabilities to live more independently;
- Develop model management training programs and provide technical assistance and training to IL program staff to enhance management performance;
- Analyze patterns of funding and the potential for alternative funding sources, such as local governments and private agencies; and
- Provide training to relevant staff of IL programs at the State and Center levels of the findings of the research and disseminate findings widely throughout the IL and rehabilitation fields.

Community Integration for Persons with Mental Retardation

Professionals and policymakers are realizing that children and adults with mental retardation fare best in natural community environments. It is no longer a matter of whether people with the most severe disabilities can be served in their communities. It is a question of how to best support people with severe mental retardation and other disabilities to enable them to remain and thrive in their communities. However, it is not good enough to be "in" the community; people with severe mental retardation have to be part of their communities. The objective of this Center is to develop and disseminate state-of-the-art technologies for achieving this goal.

Families and communities must have current information regarding best practices and creative funding mechanisms for developing and staffing family-scale living arrangements for people with mental retardation. One of the major problems facing the field is that of staff burn-out and excessive turnover. Effective strategies are needed to recruit, train, and retain direct care staff so that turnover rates, which now exceed twenty percent annually, can be reduced. Families need information that will help them identify the characteristics of high quality living environments and community-based vocational and recreational programs. States and communities need information that will enable them to modify service delivery systems and community-based programs in order to meet the individual needs of persons with mental retardation who are leaving large public and private institutions. They need to know how to identify and replicate existing programs and how to design new programs that will maximize the independence, productivity, and social integration of persons with mental retardation. In addition, social agencies need information to develop better methods to coordinate the delivery of social, educational, transportation, and vocational services and to reduce the existing fragmentation of services.

Generic community-based services and programs offer ideal settings for the enhancement of social networks for people with mental retardation. Community-based service providers need to learn how to identify generic programs that can be helpful to persons with mental retardation and help them to integrate the target group into general community social programs.

The proposed Center is to conduct a program of coordinated research and training activities and to disseminate rehabilitation approaches that will assist States, communities, and families to develop strategies for ensuring the full participation of people with mental retardation in their communities.

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Any Center to be supported in response to this priority should involve persons with mental retardation and their families in the design, implementation, and evaluation of Center activities.

An absolute priority is proposed for an RRTC to:

- Identify best practices and creative funding mechanisms that will allow for the development of family-scale living arrangements and develop and disseminate that will promote the adoption of the best practices;
- Develop and test research-based models for recruiting, training, and retraining direct care personnel in agencies providing services to individuals with mental retardation;
- Identify, develop, and evaluate strategies that will enable States and committees to facilitate successful integration into the community of persons leaving institutions;
- Conduct a study to identify and analyze Federal, State, and local funding available for the rehabilitation of persons with mental retardation and suggest ways to improve the coordination of funding mechanisms;
- Identify best practices and the characteristics of natural environments that are successful in enhancing the independence, productivity, and social integration of persons with mental retardation and develop materials that will help families and service providers design new and evaluate existing community-based programs;
- Develop and test research-based models for the integration of persons with mental retardation into generic social service programs;
- Develop a database on community integration information and serve as a national resource for information in this area; and
- Conduct at least two studies of the state-of-the-art on community integration of persons with mental retardation and disseminate the research findings.

Rehabilitation Engineering Centers (4 priorities)

Authority for the Rehabilitation Engineering Center Program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended. Under this program, awards are made to public and private agencies and organizations including institutions of higher education, Indian tribes, and tribal organizations.

NIDRR supports a program of Rehabilitation Engineering Centers (RECs) that conduct coordinated programs of advanced research of an engineering or technological nature. RECs work to develop systems for the exchange of technical and engineering information and to improve the distribution of technological devices and equipment to individuals with handicaps. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with instructions of higher education.

Each REC conducts a program of research, scientific evaluation, and training that advances the state of the art in technology or its application; contributes substantially to the solution of rehabilitation problems; and becomes an acknowledged center of excellence in a given subject area. RECs are encouraged to develop practical application for their research through scientific evaluation activities that validate their findings as well as related findings of other centers. RECs generally conduct training programs to disseminate and encourage utilization of new rehabilitation engineering knowledge through such means as development of or contribution to undergraduate and graduate texts and curricula, in-service training, continuing education, and the distribution of information and appropriate technology. Each REC must ensure that all training and information materials developed by the Center are presented in several formats that will be accessible to individuals with various types of sensory and mobile impairments.

NIDRR will conduct, not later than three years after the establishment of any REC, one or more reviews of the activities and achievements of the Center, to include review by peers. Continued funding depends at all times on satisfactory performance and accomplishment in accordance with the provisions of 34 CFR 375.253(a).

Priorities

Personal Licensed Transportation Systems for Disabled Persons

The ability to move from place to place rapidly, conveniently, safely, and economically is a prerequisite to full participation in American society. Although both private and public transportation systems exist, private transportation in a personal vehicle is frequently the only means of transportation available for the handicapped person. There are, however, no commonly accepted standards for the adaptation of personal vehicles to accommodate disabled individuals as drivers or passengers. Adaptations may compromise the structural stability and safety of the vehicle, may not provide easy boarding or safe and rapid exit from the vehicle, and may include unsafe or ineffective control devices. Seating systems and systems for securing wheelchairs in the vehicles are often unsafe and ineffective.

Any Center to be funded in response to this priority should include persons with disabilities, their families and the community rehabilitation service providers in the planning, implementation and assessment of Center activities, especially in the assessment of needs, the identification of devices and systems to be tested, and the dissemination of information.

The Center shall establish or be associated with a service delivery system that provides means of personal automotive transportation for persons with disabilities, and shall serve as a national model for the evaluation, testing, and collection of information regarding real-world performance of adapted vehicles as a mechanism for increasing the flow of information and communication between the researchers, consumers, service providers, and the automotive industry.

The Center shall establish and maintain mechanisms for collaborating and cooperating with: agencies and organizations responsible for the development and maintenance of any standards for adaptive motor vehicles; with the private sector to promote the manufacture, distribution, and testing of new devices and systems; with the REC in Wheelchair Modifications for technology sharing in wheelchair designs, and with the rehabilitation service delivery system to ensure the transfer of information to service providers.

The Center shall serve as a national resource for information on personal vehicle designs and adaptations for disabled persons and maintain a database on national and international research and development activities in this area for reference and dissemination.

An absolute priority is proposed for an REC to:

- Evaluate existing vehicle modification devices and equipment and develop and test new devices and systems that include personal vehicle safety systems such as wheelchair tie-downs, occupant restraints, emergency exit systems, alerting devices for hearing impaired drivers, and primary and secondary control systems that do not compromise the vehicle's compliance with standards set by the Society of Automotive Engineers and the United States Department of Transportation;

- Develop and evaluate access and exit systems including ramps, lifts, and wheelchair loading devices that provide access to personal vehicles while maintaining the structural integrity of the vehicle.
- Develop materials for national dissemination of information on the adaptive vehicle devices and provide training to engineers, disabled drivers, personal attendants, and rehabilitation counselors in the proper use of these devices.
- Disseminate materials to automobile manufacturers and educate them on the benefits of producing and marketing such devices; and
- Conduct at least one comprehensive study of the state-of-the-art in personal vehicle transportation systems for disabled persons to increase the knowledge base and to provide recommendations for future research in the area.

Applications of Technology to the Rehabilitation of Children with Orthopedic Disabilities

Orthopedic impairments sufficient to cause disability account for one-third of all disabilities in children. The aggregated prevalence of orthopedic impairments and musculoskeletal deformities for children aged 0–17 is estimated at 14.2 per 1,000 and frequently account for the greatest activity limitations and reductions in the quality of life.

Although technology is now available for restoring some lost functions, there continues to be a marked delay in the acquisition of devices needed to restore function and prevent further limitation in children. There is a lack of available professionally-trained clinicians to attend to the needs of disabled children for advanced technology as well as for maintenance and repair at local levels.

An absolute priority is proposed for an REC to:

- Develop and evaluate improved body-powered and externally-powered terminal devices for enhancing strength of grasp, externally-powered elbows and shoulders, and adjustable sockets for children;
- Develop and evaluate new control systems to enable children to operate externally-powered components more effectively;
- Develop and test an improved prosthetic foot for older children;
- Develop innovative strategies to enable children and their families to learn about, finance, and use the new technology; and
- Develop and demonstrate dissemination centers that enable children and families, as well as clinicians, to see and test available equipment.

The Application of Computer-Assisted Design and Computer-Assisted Manufacture Methods to Prosthetics and Orthotics

While the functional roles of prosthesis and orthoses are many and varied, a unifying commonality is the high degree of experience and skill required for the effective fitting of these devices. Because these devices require custom fitting, clinicians tend to use low technology and manual applications in the design and fabrication processes. Although the production of standardized components that the prosthetist or orthotist may use in the fabrication of the device may be automated; automation is still not widely used in the design, fabrication, assembly, fitting, or evaluation of a complete prosthetic or orthotic appliance.

This may be attributed to the fact that authomation previously has not been a reasonable method for the production of custom products. However, technological advances in recent years in the field of computer-assisted design and computer-assisted manufacture (CAD–CAM) have made possible a more widespread application of automation to design and manufacturing. Moreover, the rapidly declining prices and rapidly increasing power of computer technology make it feasible to introduce such automated methods into the clinical environment of the prosthetics-orthotics laboratory.

An absolute priority is proposed for an REC to:

- Design, develop, and evaluate computer-assisted methods for the analysis, design, and fabrication of prostheses and orthoses for clinical applications;
- Develop and demonstrate techniques to use CAD–CAM in the analysis of individual prosthetic and orthotic requirements in terms of shape, pressure and force.
- Explore the applications of CAD–CAM to the improvement of the cosmetic acceptability of prosthetic and orthotic devices;
- Investigate the use of CAD in the design of orthotic linkages for individuals;
- Demonstrate the possible uses of CAD–CAM to transmit data to distant sites for customized production of prosthetic and orthotic devices for individuals in remote areas;
- Assess the potential impact of use of CAD–CAM on reducing the labor intensiveness and long lead-times generally involved in custom prosthetic and orthotic applications;
- Assess the implications of CAD–CAM for the management of clinical prosthetic-orthotic practices, including accuracy, data storage and retrieval, measurement of use factors, and other aspects;
- Conduct at least two studies of the state-of-the-art on these specialized applications of CAD–CAM; and
- Provide training to engineers, prosthetics, orthotists, and computer professionals and make findings of the Center widely available to relevant parties.

Blindness and Low Vision Sensory Aids

Blindness and visual impairment lead to severe handicaps in education, employment, recreation and daily living. The national Center for Health Statistics and other authorities variously estimate the number of legally blind persons in the United States at 400,000 to 600,000, with another 1.4 million who are severely visually impaired. More than 10 million others have significant visual impairment which cannot be further improved with corrective lenses. Aside from those with reduced visual acuity and fields, there are also large and rapidly increasing numbers of older individuals with impairments in contrast, binocularity, and adaptation which handicap their performance in a wide variety of everyday tasks. Other increasingly complicating factors are the ever-greater numbers of persons with other (often auditory) impairments combined with visual disability, and the growing incidence of premature infants at risk for visual handicap.

Technological innovations arising from the development of new scientific and medical knowledge can have a positive impact on these problems. Progress has already been made in this field, including advances in communications, computer access, educational and vocational aids, and optical amplifiers for low vision, orientation and mobility aids, and improved functional vision assessment. However, in addition to further improvements in these areas, there are emerging areas of technology to be explored. Some of these new areas are related to the changing demographics of the visually impaired population, particularly the increasing need for rehabilitation of those whose visual impairments are due to progressive diseases. Other emerging challenges are due to the rapid advance in computer applications (including computer graphics), communications, and other technologies which must be made accessible to the blind individual for the future.

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An absolute priority is proposed for an REC to:

- Develop a range of electronic education aids to assist the teaching of perceptual, manipulative, and cognitive skills to the child with visual or multiple handicaps;
- Develop improved characterizations of the disease processes underlying such progressive visual disorders as age-related maculopathy (ARM), in order to adapt to the changing rehabilitation needs, including the relation of ARM to other diseases of the geriatric population;
- Develop a collaborative team approach incorporating clinicians in vision and audition, pediatricians, neurologists, and researchers, to develop innovative methods to refine diagnosis, prognosticate developmental anomalies, and devise optimal rehabilitative strategies for multifaceted problems such as vision/hearing multihandicaps and cortical blindness;
- Apply new scientific and medical knowledge to the design and selection of improved low vision aids for filtering, magnification, and illumination, with improved matching between the device, environmental modifications, and the underlying disease characteristics;
- Develop population data to better define the potential markets for various classes of sensory aid technology;
- Develop new technology and methods for improving access by blind and visually impaired persons to computers, including better approaches for obtaining overviews of screen and file contents and access to the increasingly graphics-oriented computer hardware and software coming into general use;
- Explore technology to promote easier access by blind persons to other computerized equipment and information such as bank teller machines, music synthesizers, bar code readers, electronic databases and communication systems, and to enable them to benefit from computer-assisted instruction;
- Evaluate reading machine technology to address the reasons for the present apparent under utilization of these systems.
- Develop and test specialized job-site modifications, using the latest available technology, to enhance employment opportunities for blind individuals;
- Develop and test new and responsive technology for communication, employment, and daily living to meet the needs of deaf-blind persons;
- Provide information on sensory aids to consumers and professionals, and develop a method to obtain feedback on needs and satisfaction; and
- Design and conduct appropriate training activities for rehabilitative personnel, clinicians, and consumers to disseminate and encourage utilization of new rehabilitation engineering knowledge.

Research and Demonstration Program

Research and Demonstration Projects (R&D) support research and/or demonstrations in single project areas on problems encountered by individuals with handicaps in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, psychiatric, psychological, recreational, economic, and other factors to improve the rehabilitation of individuals with disabilities.

Priorities

Supported Employment Programs for Persons With Long-Term Mental Illness

The Advisory Group on Psychiatric Disability and Supported Employment of the Rehabilitation Services Administration (RSA) has considered service and research needs for persons with long-term mental illness. Recent developments, including the Rehabilitation Act Amendments of 1986 and the supported employment "State-Change" demonstration projects, have greatly expanded the number of supported employment activities for persons with long-term mental illness. There has been a growing number of requests to the University of Oregon Supported Employment Technical Assistance project for assistance in organizing supported employment activities and in identification of project components for individuals with mental illness. State agencies and mental health organizations will benefit from research results at this time. Results are also needed to report to the Congress on program developments. Project materials will be used to implement and improve local and state-supported employment activities for persons with long-term mental illness.

An absolute priority is proposed for a project to:

- Examine the organizational configuration, staff training and characteristics, service population, service and caseload mix, caseload size, and funding approaches for supported employment programs for this target population;
- Identify organizational interrelationships of mental health, vocational rehabilitation, and psychosocial rehabilitation programs and test models for optimum services; and
- Identify effective program features and client outcomes, including types of employment, methods of long term support, service strategies, and funding patterns.

Chronic Low Back Pain

A major goal of the treatment of patients with chronic low back pain should be to increase functional capacity, probably the most important factor in preventing recurrence of low back injury. More directly, improved functional capacity allows the patient with chronic back pain to enter a more active and productive life, minimizing associated disbility. Current information on functional capacity is based primarily on data acquired on injured athletes, and the database should be expanded. There is a need for more information on the cost/benefit characteristics of various physical training programs as they relate to all patients with chronic back pain. There is little information available, as well, on the relative importance of specific muscle group and regional flexibility training compared to whole body work-hardening programs, which include more eccentric loading and coordination demands.

An absolute priority is proposed for a project to:

- Determine the relative importance of physical, psychological, and occupational components of the multidisciplinary programmatic approach to treatment of patients with chronic low back pain;
- Study the importance of patient independence and self care on rehabilitation of low back pain and prevention of recurrence;
- Evaulate successful rehabilitation programs to determine their cost/effectiveness;
- Determine minimum outcome criteria for grading pain versus disability, to include: Pain relief, level of function, return to work, medication, utilization of health care system, quality of life, litigation, recurrence, and profiles of health care providers.
- Conduct collaborative prospective studies of surgical interventions using controlled and randomized clinical trials;
- Conduct collaborative prospective studies on commonly used, but unproven, passive modalities of therapy;
- Develop a generic test battery to determine capability for return to work and activities of daily living without recurrence of low back pain, including minimal clinical evaluation, psychological evaluation, and physical (whole body), mechanical, and physiological tests; and
- Develop and test methods of early identification of those who will not return to work.

Research in Adventitious Hearing Impairment

Most research on adult onset hearing loss has focused on diagnostic and amplification technologies and on neurological, anatomical and physiological changes in the cochlea, auditory nerve, brain stem, and cortex. Aural rehabilitation models have been published. However, despite the prevalence of hearing loss, and despite abundant anecdotal accounts of its human and economic costs, there has been surprisingly little research to examine the psychosocial effects of hearing loss in adulthood.

In 1986, NIDRR convened a conference on aging and rehabilitation; in one segment of that conference, a number of research scientists, health care professionals and persons from service-delivery agencies met to discuss priorities for collaborative research on adult onset hearing loss. This priority is based on research needs identified at that conference. NIDRR announced this priority for competition in fiscal year 1988, but none of the applicants was deemed suitable for funding. Therefore, a new competition will be held.

An absolute priority is announced for a project to:

- Analyze characteristics of adults who have adjusted successfully to hearing impairment, including such variables as personality factors, nature and severity of the hearing loss, communication styles, support networks, and interventions with professionals;
- Identify successful rehabilitation strategies, emphasizing professional attitudes toward persons with hearing loss and behaviors that may impede or facilitate adjustment;
- Investigate interactions between biological and psychosocial phenomena, with an emphasis on assessing the extent to which these interactions exacerbate disability caused by hearing loss in middle and later life; and
- Evaluate existing databases on health status, psychological characteristics, and behavioral patterns to determine the impact of adventitious hearing impairment.

Rural Job Development and Job Placement

Small businesses are the primary sources of employment in rural areas. With the decline in the number of active farms, small businesses that depend on farms are also in economic jeopardy. Farmers who are disabled in farm accidents (200,000 disabling injuries occur in the agriculture industry each year, amounting to 58 per 1,000 active farmers) may not be able to return to farming. Alternative employment placements will have to be developed and retraining provided for primary employment or for secondary employment to supplement low farm prices for those who do go back to farming).

An absolute priority is proposed for a project to:

- Analyze employment patterns and the hiring practices of various categories of employers in rural areas and project future employment opportunities in various industry sectors and occupational classifications; and
- Develop and test research-based strategies for use by rehabilitation agencies and community-based organizations in developing new placement opportunities and providing training for those new opportunities.

Community-Based Rural Projects

There are fledgling community-based independent living and service delivery programs in rural areas that need technical assistance in order to develop or continue. Some have received RSA Independent Living or other Federal or state support in the start-up process, others are entirely community-level efforts.

Programs in rural areas encounter unique difficulties. For example, the lack of transportation and the high cost of communication and travel barriers are burdens to programs in rural communities. Rural independent living programs need assistance to develop mutual supports, combine mutual supports, combine resources, keep abreast of information resources, and implement new ideas into practice. It is important that such programs be "owned" by the communities and, therefore, continue when federal funding has expired.

An absolute priority is proposed for a project to:

- Identify exemplary rural independent living programs that have successfully assembled unique resources to increase the potential of persons with disabilities for living independently in rural areas;
- Verify the effectiveness of these programs and develop strategies to replicate these practices in other areas for similar groups, including an assessment of a variety of factors unique to rural areas such as cultural and historical patterns, unique employment settings, exceptional terrain or climatic conditions, and extremely depressed economic conditions; and
- Share information from this nationwide project with the Research and Training Center on Rural Rehabilitation Services at the University of Montana for further refinement and dissemination.

Effective Client-Counselor Interactions in Vocational Rehabilitation

Basic principles of rehabilitation formed in law and in professional training emphasize that the consumer of services must play an active, expressive role in reaching his or her objectives. All individuals served through the State-Federal vocational rehabilitation program must have an Individualized Written Rehabilitation Program (IWRP) that reflects their substantial involvement. The psychosocial rehabilitation approach that was designed to foster the independence and development of people with emotional disabilities has been described, in part, as directed to the development of full human capacity, self-determination and normalization through a deprofessionalized, non-medical model, environmentally sensitive work-centered process. Similar principles are incorporated in the ideals of supported employment. However, these idealistic models of active consumer self-determination often are not verified in empirical studies of client satisfaction and case management. Continuous identification and verification of these factors is essential to effective counseling.

An absolute priority is proposed for a project to:

- Identify specific techniques, attributes, skills, characteristics, features, and related factors of client-counselor interaction that increase the participation of individuals, particularly severely disabled people, in making decisions regarding their rehabilitation; and
- Develop models and recommendations for ongoing processes and information-sharing or training programs to promote effective client-counselor interaction and to reach the audiences concerned with enhanced individual client self-advocacy in rehabilitation.

Developing Vocational Rehabilitation Programming for Low-incidence, Geographically Dispersed Disabled Populations

Statistical compilations on the prevalence of need for assistance in

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activities of daily living (ADL) among disabled adults, the incidence of selected congenital malformations per 10,000 total births, and of handicapping conditions of persons enrolled in various education and rehabilitation programs reveal a pattern of numerous conditions for which there are not precise or reliable estimates of prevalence. Some examples of these low-incidence or low-prevalence conditions from National Health Interview Surveys, 1983–1985, include Spina Bifida, absence of arms or hands skin cancer, bone cancer, leukemia, absence of fingers-toes-feet, and certain anemias.

State vocational rehabilitation agencies, special education programs, medical rehabilitation facilities, disability income benefits programs, and disability researchers have identified the need for improved knowledge of the rehabilitation needs of, and effective programming for, such populations. There is particular need for collaborative planning models for human service provider organizations to use in developing and exchanging information, making individual referrals, supporting family members of low-incidence groups, and collaborating with self-help and advocacy organizations.

An absolute priority is proposed for a project to:

• Conduct an extensive literature review and programmatic survey to identify, classify, and prioritize for project investigation major problem areas in the rehabilitation of low-incidence disabled populations;

• Develop and demonstrate improved methods of programming for low-incidence, geographically dispersed, disabled populations, including information exchanges, referral networks, advocacy group involvement, and identification of "best practices"; and

• Convene a National State-of-the-Art Conference and implement a national dissemination and utilization plan to highlight findings of the project.

Issues in the Expansion of Private-Sector Rehabilitation Services

A recent report, *Private Sector Rehabilitation: Lessons and Options for Public Policy*, prepared for the U.S. Department of Education under contract No. 300–85–D141, identified a variety of innovative patterns of collaboration between proprietary rehabilitation providers and public rehabilitation agencies. In particular, "fee-for-service" units staffed by salaried state employees and operated with State funding appear to offer a viable, "Fair Competiton" public sector alternatives to private providers in areas such as rehabilitation of injured workers. Also, State use of private vendors to deliver case management in providing services to traditional state vocational rehabilitation agency clients was determined to be a possible option in an Arizona study. However, existing data are inadequate for determining long-term benefit-cost implications for these and related alternative in public-private rehabilitation collaboration.

An absolute priority is proposed for a project to:

• Analyze variables associated with use of "fee-for-service" and "vendor service" arrangements in the delivery of rehabilitation services to workers' compensation claimants, with special emphasis on the effects of litigation, settlements, re-entry to public rehabilitation services systems, availability of public versus private services, and eligibility questions;

• Analyze the extent to which disabled persons are served outside of the State vocational rehabilitation system, and determine the characteristics of the clients, the nature and costs of services, and outcomes; and

• Develop and assess research-based management strategies to assist public rehabilitation managers to operate services in collaboration with or parallel to those of private service providers.

Supported Employment and Enhanced Maximizing Human Potential

A number of research studies have identified the need to address the impact of supported employment on the "Quality of Life" of supported employees and their families. Although many studies have addressed the remunerative outcomes of supported employment, published reports have not yet fully explored "intangible benefits" or qualitative factors in individuals' lives that change as a result of supported employment. Suggested areas for study include those related to individual behavior and skills, physical health, community participation, mental health and self-concept, and family satisfaction of supported employees. Research on this topic has been impeded by the lack of accepted definitions of "Quality of Life," inadequate qualitative measures, and analytical problems such as unintrusive access to personal and job information and limitations in structuring comparison groups of individuals in supported employment versus comparable non-vocational or non-supported employment settings.

An absolute priority is proposed for a project to:

• Conduct an empirical investigation of one or more supported employment disability populations, such as developmentally disabled individuals, physically disabled individuals, persons who have traumatic brain injury or long-term mental illness, to determine the qualitative impact of supported employment in terms of behavior, physical and mental health, community integration, family satisfaction, and such additional areas as the investigator deem significant; and

• Report the results of the study in a national conference with substantial participation of consumers, providers, family members, employers, researches, and public officials.

Stress and Disability Management

Stress has been described as a feeling of being under pressure, of not being able to cope, of feeling irritable, anxious, and as if things are out of control (Department of Health and Human Services Employee Assistance Service). Stress affects individuals in different ways; some manifestations of stress include decreased job productivity, increased absenteeism, increased worker dissatisfaction, deteriorating health, problems in interpersonal relationships, and increased use of alcohol and drugs. Many of these same factors have been associated with the onset of disability in employed persons, whether due to accident on or off the job, a chronic health problem, or the sudden appearance of a health problem.

The combination of loss of control, emotional distress, and disability often becomes a constraint to communication and redress of difficulties for disabled workers. Disabled workers, due to the stress they may be experiencing, are often unwilling or unable to seek the help of disability management resources such as trained supervisors, employee assistance programs, or rehabilitation referrals. Moreover, cooperation of the disabled worker is necessary for active employee participation in achieving the optimum person-environment fit on the job based on individual and organizational characteristics.

An absolute priority is proposed for a project to:

• Analyze the relationship between stress factors and disability management components to identify barriers and incentives which, when addressed in employment settings, will improve on-the-job assistance to disabled workers in such areas as coping strategies, redesigning jobs, person-environment fit, relaxation training, and health risk awareness; and

• Conduct controlled demonstrations of the use of disability management techniques with "at risk" high stress groups (medical texts associate cardiovascular disease, gastro-intestinal disorders, musculoskeletal problems, and deficient immune systems with stress) providing appropriate measurement of results in productivity, absenteeism, employee satisfaction, employer satisfaction, benefits use, interpersonal communications between worker and supervisor, and related variables.

Knowledge Dissemination and Utilization Program

Knowledge Dissemination and Utilization Projects (D&U) ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of handicapped persons.

Priorities

Regional Information Exchanges

There is a need to promote the widespread use of new, validated rehabilitation practices and exemplary rehabilitation programs in selected priority areas in order to improve the service delivery system for disabled individuals. NIDRR proposes to address this need by establishing one or more regional information exchanges similar to the regional diffusion networks that are now operating. NIDRR believes that these exchanges will be most effective if they focus on facilitating the adoption of program models developed locally or within the same region. Also, NIDRR believes that this information exchange will be strengthened by the inclusion of expert consultants available to provide specific technical assistance aimed at rehabilitation agencies.

Priority areas for diffusion efforts during the period of this priority will include the use of rehabilitation technology in vocational rehabilitation, barrier-free environments, and transitional employment programs, and other topic areas that are of concern to the specific region or that are agreed upon by NIDRR and the recipient of the award.

An absolute priority is announced for one or more projects to:

• Develop criteria for identifying exemplary rehabilitation programs, and develop information collection instruments which include measurements related to the identified criteria;

• Solicit nominations of exemplary programs in the priority areas from program operators, consumer organizations, and other relevant parties in the selected region; giving consideration to inclusion of special demonstration projects funded by the Rehabilitation Services Administration or other Federal agencies;

• Develop and implement a procedure to select the most promising programs for further consideration and arrange independent peer reviews of those programs to determine exemplary programs for diffusion purposes;

• Develop public relations and marketing approaches to make the wide audience of rehabilitation service providers and special educators aware of the exemplary programs and stimulate their interest in adopting or adapting similar models, assisted by the diffusion network;

• Facilitate the exchange of technical assistance between the exemplary program and the requesting adopter program through onsite demonstrations, training materials, and direct consultation;

• Develop and maintain a referral system of expert consultants in these priority areas of the project to facilitate the linkage of service providers and disabled consumers to knowledgeable resources; and

• Maintain appropriate data on the diffusion network to support an evaluation of its effectiveness.

Networking With Centers for Independent Living and Independent Living Service Providers

There are approximately 360 independent living centers (ILCs) and independent living service providers (ILSPs), providing services on the local level throughout the United States. Over one-half of those receive funding from the Rehabilitation Services Administration.

For the past two years NIDRR has funded three projects to develop, demonstrate and evaluate the effectiveness and utilization of computer networking among ILCs and ILSPs. The projects surveyed ILCs and ILSPs regarding computer capacity, communication and information needs. The projects developed and provided information databases on management techniques and simplified software, resources, policy and program developments. The projects also created bulletin boards for communication and information sharing among centers and established access to national database.

These three projects demonstrated the interest and capability of ILCs and ILSPs to effectively utilize networks and databases, share techniques and data among centers, and serve as local information and referral sources for information compiled on the national level (e.g., the ABLEDATA and REHABDATA information bases). These projects also demonstrated a need for aggregating local and regional databases for use at the national level. Competent information brokers are needed to provide training and technical assistance and facilitate access to national databases and information.

Any project to be funded under this priority must directly involve disabled persons, including those who have experience with independent living service provision, in the planning, development and conduct of the project activities;

An absolute priority is proposed for one or more projects to:

• Establish criteria for selection of Centers for Independent Living (ILCs) and Independent Living Service Providers (ILSPs) on a multiregional basis that have or can acquire the hardware and software and personnel capability to participate in the network;

• Provide technical assistance and training to enable those Centers to provide information brokerage services to ILCs and ILSPs;

• Coordinate and collaborate development and implementation of networking efforts with the other NIDRR funded projects under this priority to promote consistency and cross-system capability including participation by the Project Director at an annual two day meeting in Washington, DC with the NIDRR Project Officer;

• Develop computer databases on available resources and information including management, planning and evaluation materials and software, employment opportunities, conferences and educational opportunities, funding opportunities, housing, IL services and resources, policy issues, and related resources important to independent living;

• Develop computer conferencing capability to enable network members to communicate among centers on issues and problems of concern and participate in group educational sessions;

• Facilitate access to national databases, including REHABDATA and ABLEDATA, and designate a knowledgeable and trained staff person to serve as the Project Information Broker to provide information, training and technical assistance on the databases to the IL based information broker;

• Develop a database system to collect and compile "experiential" data for systemwide information and referral. Such a system will require a use of consistent terminology and indexing for data input at the state and local levels;

• Facilitate creation of such databases among local ILCs and

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aggregate them on the multiregional basis; and

• Provide training and technical assistance to promote utilization of the system and conduct annual evaluations to ensure the system is meeting the needs of the participants.

Demographic Data Analysis

Effective planning for research, services, or policy related to the disabled population requires detailed information about the size and characteristics of the population. This information is needed by Federal, State, and local agencies to plan services, transportation, housing, income maintenance, and recreation.

Federal, State and private administrators and planners have identified a need for a central source for demographic and other data on disability, and a comprehensive system for the collection of those data. A number of Federal agencies, some states, and many private research institutions collect information, analyze some of it, and often produce public use tapes that also include great amounts of analyzed data. As a consequence, much of the most critical data on disability are not analyzed or are poorly disseminated, or both. There is a continuing demand for information on the incidence and prevalence of disability and its distribution among various population groups. Other data such as service use, distribution of benefits, earnings, and costs of care would be invaluable to disabled individuals and their organizations, planners, researchers and policymakers.

Information developed through this activity should be made available to a variety of potential users, and potential users should be involved in the planning, implementation and evaluation of the project.

An absolute priority is proposed for a project to:

• Develop and update estimates of the incidence, prevalence, and distribution of various disabilities, using existing data;

• Develop a database of information from governmental and nongovernmental data collection efforts, encompassing information on specific disability conditions, limitations in activities of daily living, patterns of service use, needs for assistive devices, employment and earnings, benefits payments, insurance, and demographic data;

• Conduct secondary analyses of major data files, such as the Survey of Income and Program Participation and the Health Interview Survey, and others to provide needed information; and

• Develop and disseminate to consumers and professionals information on the characteristics of the disabled population.

The International Exchange of Information and Experts in Rehabilitation

There are rehabilitation practices and research projects in other nations that can serve as the impetus for improvements in rehabilitation research and services delivery in the United States. For example, the now widely accepted practice of immediate post-surgical fitting of prostheses was developed in Poland; the concept of disability management at the workplace was brought to U.S. attention as a result of concepts uncovered in past international exchanges; and Functional Electrical Stimulation programs in the United States owe much to early work done in Yugoslavia. In addition, there are practices in the United States that could be extremely beneficial to foreign professionals and researchers.

Fostering such cross cultural collaboration and providing networks to maintain collegial contacts requires personal exposure of researchers and professionals to other cultures. In addition, the good practices and knowledge derived from abroad need to be disseminated to U.S. audiences through monographs and utilization conferences.

An absolute priority is proposed for a project to:

• Identify areas of policy and practice that are of significant concern to NIDRR and to disabled persons and the rehabilitation community generally in the United States and in which there are significant developments in other countries that could provide useful guidance for United States agencies;

• Develop and implement a plan for United States experts to study specific policies, practices, programs and research results in other nations;

• Provide for the preparation of monographs on rehabilitation research topics by foreign experts or U.S. experts, who have had beneficial study visits abroad;

• Conduct utilization conferences to disseminate information on selected topics of international significance to rehabilitation; and

• Evaluate the impact on specific rehabilitation practices in the United States of international exchange of information and experts arranged for under the project.

Developing Consumer Group Capacity to Facilitate Technology Transfer

There is a major new emphasis on delivering technological aids and devices to consumers in a timely, appropriate, and effective manner. The development of technological knowledge and assistive devices far exceeds the mechanisms for transferring those aids into regular use. NIDRR and OSERS are involved in major new efforts to improve the delivery and use of aids and devices.

Independent living organizations, parent organizations, and other consumer groups have direct contacts with individuals with disabilities and often first-hand knowledge of their technology needs. These groups could be invaluable resources in assisting in the spread of knowledge, the acquisition of technology, the appropriate use of technology, and consumer feedback on the effectiveness of the technology. The potential contributions of such organizations to the national effort to improve technology service delivery need to be explored and augmented.

An absolute priority is proposed for a project to:

• Explore the optimum roles for independent living programs, parent groups, and other consumer organizations in identifying and promoting the acquisition, use, and assessment of technological aids and assistive devices by persons with disabilities;

• Investigate opportunities for innovative involvement of consumer groups, with RECs, State rehabilitation agencies, and technology delivery programs; and

• Develop and test research-based models to involve organizations representing consumers in facilitating the appropriate use of assistive technology.

(Catalog of Federal Domestic Assistance Nos. 84.133A, 84.133B, 84.133D, and 843.133E, National Institute of Disability and Rehabilitation Research.)

Authority: 29 U.S.C. 6760–762.

Dated: November 8, 1988.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 88–26374 Filed 11–10–88; 10:29 am]

BILLING CODE 4000–01–M

federal register

Tuesday
November 15, 1988

Part VI

Department of Education

34 CFR Part 237

Christa McAuliffe Fellowship Program; Notice of Proposed Rulemaking

VOL 53 ISS 220 NO 15 1988 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 237

Christa McAuliffe Fellowship Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary amends the regulations for the Christa McAuliff Fellowship Program. This program is authorized by Title V, Part D, Subpart 2 of the Higher Education Act of 1965. These regulations would establish a minimum fellowship amount; clarify the redistribution method employed by the Department if States do not comply with certain requirements set by the Department or return unused funds; and clarify the terms and conditions that apply to recipients of the fellowship awards.

EFFECTIVE DATE: The regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Richard La Pointe, Deputy Assistant Secretary, Regulations, Innovation and Development, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732–5113.

SUPPLEMENTARY INFORMATION:

The Christa McAuliffe Fellowship Program is authorized by Title V, Part D, Subpart 2 of the Higher Education Act of 1965, as amended. It establishes a national fellowship program for outstanding full-time public and private school teachers. Christa McAuliff Fellows may use awards for projects approved by the Secretary to improve their knowledge or skills and the education of their students, including (1) sabbaticals for study or research directly associated with the objectives of the statute, or their own academic improvement, (2) consultation with or assistance to other school systems, (3) development of special innovation programs, or (4) model teacher programs and staff development.

The statute provides that fellowships are to be awarded to an eligible teacher in each congressional district in each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. (The eligibility of the individual entities within the former Trust Territory is governed by the 1986 Compact of Free Association.) The maximum amount of a fellowship may not exceed the national average salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary. If the appropriation for a fiscal year is not sufficient to provide this number of fellowships at the maximum amount, the Secretary publishes an alternative distribution that will permit fellowship awards at the maximum level and that is geographically equitable. The Secretary sends a notice of determinations to each statewide panel that has been established to select recipients.

The proposed regulation would amend § 237.3 by adding a paragraph (c)(1) to establish a procedure to follow if States do not meet established deadlines for forwarding their recommendations to the Department. The regulation specifies that the Secretary will not fund fellowships in any State that does not comply with the deadlines. Enforcing firm deadlines would enable the allocation process to run smoothly and efficiently. To make an award, the Program Office must work in cooperation with the Application Control Center, Finance Office, Grants and Contracts Service, and its own Management Operations Unit. When one office does not receive its information on time, each of the others must postpone processing its documents, and awards are delayed. If awards are not made on time (usually before the academic school year ends), fellows cannot make arrangements with their school systems for sabbaticals to cover their grant period the following year. The Department has received numerous requests to remedy this problem from both States and individual fellows. The Secretary believes that the proposed regulation best responds to these requests.

Proposed § 237.3(c)(2) would permit the Secretary to redistribute funds returned or unused by a State to other States. Based on circumstances that have occurred in the process of administering the program in the last two years, the proposed amendment specifies some of the factors that the Secretary may take into consideration if it is necessary to redistribute funds.

The proposed regulation would amend § 237.4 by adding a paragraph (b) to establish a minimum amount for fellowship awards that is half the national average salary of public school teachers; and by adding a paragraph (c) that would also permit statewide panels to award one partial fellowship that is less than the minimum amount established in § 237.4(b). The Department has found that States with larger teacher populations may be allotted funds that total more than the national average salary of public school teachers, but that are less than amounts that are exactly divisible by either the maximum amount or the proposed minimum amount for a fellowship. For example, a statewide panel may be notified that $35,000 is available for awarding fellowships in its State in a given year. In this circumstance, the panel may recommend one award in the maximum amount, *i.e.* $26,704, and one partial award, *i.e.* $8,796. These provisions would ensure that all appropriated funds will be used to the maximum extent possible.

The Secretary believes that these proposed amendments are necessary for several reasons. First, the Secretary does not believe that making many small awards best serves the purposes of the statute. The Congress clearly intended that Christa McAuliffe Fellows be able to use their fellowships for sabbaticals for study or research directly associated with objectives in the statute and regulations. If statewide panels recommend very small awards, those fellowship recipients will clearly be precluded from using their grants for that purpose because the grants will be insufficient to provide for a sabbatical. Secondly, the implementing statute and regulations also require fellowship recipients to return to a teaching position in the recipients' current school system for at least two years following the completion of their fellowships. The Secretary does not believe that the Congress expected fellows to make a commitment of this length in return for a very small fellowship award; therefore, the Secretary does not believe that the Department should make small awards and impose a greater burden on recipients than the Congress intended. In addition, because Christa McAuliffe Fellows are treated by the Department as direct grant recipients, the Secretary has determined that is administratively infeasible to make many small fellowship awards. Making small fellowship awards will also delay the grant allocation process.

The proposed regulation would amend § 237.33 by adding paragraph (b), which would allow fellows who experience unforeseen illness or other extenuating circumstances a time extension for fulfilling the service requirement following a fellowship award. By allowing fellows a reasonable amount of additional time to carry out the provisions of the statute, the Secretary believes that the intent of the law would still be upheld.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are local educational agencies. However, the regulations would not have a significant economic impact on the LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would affect State educational agencies. SEAs are not considered small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2189 FOB–6, 400 Maryland Avenue, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m, Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 237

Education, Elementary and secondary education, Scholarships and fellowships, Teachers.

(Catalog of Federal Domestic Assistance Number 84.190, Christa McAuliffe Fellowship Program)

Dated: November 8, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Part 237 of Title 34 of the Code of Federal Regulations as follows:

PART 237—[AMENDED]

1. The authority citation for part 237 continues to read as follows:

Authority: 20 U.S.C. 1113–1113e, unless otherwise noted.

2. Section 237.3 is amended by revising paragraph (a)(8), adding a new paragraph (c), and revising the authority citation to read as follows:

§ 237.3 How are awards distributed?

(a) * * *

(8) The Trust Territory of the Pacific Islands (Republic of Palau).

* * * * *

(c)(1) If a State fails to meet the applicable filing deadlines for fellowship recommendations established under this program, the Secretary does not make awards in that State.

(2) In redistributing any returned or unused funds from a State, the Secretary takes into consideration, but is not limited to, the following factors:

(i) The amount of funds available for redistribution.

(ii) The number of States that request additional funds.

(iii) The number of States that are willing to match fellowship funds.

(iv) The requirements in § 237.4(b) relating to minimum awards.

(Authority: 20 U.S.C. 1113b(a); 48 U.S.C. 1681)

3. Section 237.4 is revised to read as follows:

§ 237.4 In what amounts are fellowships awarded?

(a) *Maximum award.* A fellowship awarded under this part may not exceed the national average salary of public school.

(b) *Minimum award.* Except as provided in paragraph (c) of this section, a fellowship awarded under this part may not be less than half the national average salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary.

(c) *Partial award.* If, after awarding one or more fellowships that meet the requirements of paragraphs (a) and (b) of this section, a State has insufficient funds for a maximum or minimum award, the State may make one partial award that may be less than the minimum award.

(Authority: 20 U.S.C. 1113b(a)(2))

4. Section 237.33 is revised to read as follows:

§ 237.33 What is the service requirement for a fellowship?

(a) Except as provided in paragraph (b) of this section, a fellow must return to a teaching position in the fellow's current LEA, private school, or private school system for at least two years following the completion of the fellowship.

(b) In the case of extenuating circumstances (for example, temporary disability), a fellow has a five-year period in which to fulfill the two-year teaching requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1113b(a)(2), 1113d)

[FR Doc. 88–26371 Filed 11–14–88; 8:45 am]

BILLING CODE 4000–01–M

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ISS
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NO
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federal register

Tuesday
November 15, 1988

Part VII

Department of Education

Invitation for Applicants To Serve as Field Readers; Various Programs; Notice

VOL 53 ISS 220 NO 15 1988 UMI

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Invitations for Applicants To Serve as Field Readers for the Business and International Education Program

AGENCY: Department of Education.

ACTION: Invitation for applicants to serve as field readers for the Business and International Education Program.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the Business and International Education Program. The Business and International Education Program is designed to promote linkages between institutions of higher education and American businesses engaged in international economic activities. Regulations governing this program are found at 34 CFR Parts 655 and 661.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 5 days. Each field reader who is selected will receive compensation for certain travel expenses, and an honorarium.

Field Reader Qualifications: All field readers should be acknowledged experts in their particular field of study. Field readers are sought who have expertise in the following areas: (a) International business fields such as economics, marketing, management, finance, accounting, negotiations; (b) administration of international business programs and export education programs; (c) training, research and/or practical experience overseas in international business, international economics, or international education; (d) area studies and interdisciplinary international studies; (e) the development of programs to inform the public of the role of American business with respect to increasing international economic interdependence; and (f) development of international education curricula. Each field reader must have the expertise necessary to accurately assess the applicant institution's showing on each of the applicable selection criteria.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address listed below indicating the program in which he or she is interested in serving as a field reader.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Hines, International Studies Branch, U.S. Department of Education, ROB 3, Room 3054, 400 Maryland Avenue, SW., Washington, DC 20202–5332.

(Catalog of Federal Domestic Assistance Program Number 84.153)

Program Authority: 20 U.S.C. 1130–1130a.

November 3, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–26379 Filed 11–14–88; 8:45 am]

BILLING CODE 4000–01–M

Invitation for Applicants To Serve as Field Readers for the International Research and Studies Program

AGENCY: Department of Education.

ACTION: Invitation for Applicants to Serve as Field Readers for the International Research and Studies Program.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the International Research and Studies Program. The International Research and Studies Program provides grants to institutions, organizations, public and private agencies, and individuals to support studies and surveys to determine the need for increased or improved instruction in modern foreign languages, area and international studies. The program also provides grants to develop more effective methods or specialized materials for such training.

Regulations governing this program are found at 34 CFR Parts 655 and 660.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. Grant applications will be mailed to field readers. Each field reader who is selected to read grant proposals will receive an honorarium.

Field Reader Qualifications: All field readers should be acknowledged experts in their particular field of study. Field readers are sought who have expertise in the following areas: (a) Teaching, testing, and research methodologies; (b) modern foreign languages (including competency-based instruction); (c) language proficiency testing; and (d) the development of specialized materials for providing instruction in foreign language and area studies. In particular, field readers are sought who have expertise in the languages of the Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, East Asia, Africa, and Latin America. Each field reader must have the expertise necessary to accurately assess the applicant institution's showing on each of the applicable selection criteria.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address listed below indicating the program in which he or she is interested in serving as a field reader.

FOR FURTHER INFORMATION CONTACT: Mr. John Paul, Advanced Training and Research Branch, U.S. Department of Education, ROB 3, Room 3054, 400 Maryland Avenue, SW. Washington, DC 20202–5331.

(Catalog of Federal Domestic Assistance Program Number 84.017)

Program Authority: 20 U.S.C. 1125.

November 3, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–26376 Filed 11–14–88; 8:45 am]

BILLING CODE 4000–01–M

Invitation for Applicants To Serve as Field Readers for the National Resource Centers and Foreign Lanuage and Area Studies Fellowships Programs

AGENCY: Department of Education.

ACTION: Invitation for Applicants to Serve as Field Readers for the National Resource Centers and Foreign Language and Area Studies Fellowships Programs.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the National Resource Centers and Foreign Language and Area Studies Fellowships Programs.

The National Resource Centers Program provides assistance to institutions of higher education, or combinations of such institutions, to establish, strengthen, and operate centers which will serve as national resources for the teaching of modern foreign language(s); for instruction in fields needed to provide a full understanding of the areas, regions, or countries in which the modern language(s) is/are commonly used; or for training and research in international studies and the international aspects of professional and other fields of study.

The Foreign Language and Area Studies Fellowships Programs provides stipends to students who are engaged in an advanced program of competency-based language training or international studies.

Regulations governing these programs are found at 34 CFR Parts 655, 656, and 657.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 5 days. Each field reader who is selected will receive compensation for certain travel expenses, and an honorarium.

Field Reader Qualifications: All field readers should be acknowledged experts in their particular field of study. Field readers are sought who have expertise in the following areas: (a) Foreign language instruction (including familiarity with the concepts of competency-based instruction); (b) social sciences, humanities, or other professional fields with specialization in African, Asian, West and East European (including the U.S.S.R.), Middle Eastern, Latin American, or Canadian studies; or (c) international aspects of professional studies or contemporary issues. Applicants should also have experience in the administration of an institution of higher education, experience in curriculum development, and substantial records of research and publication. Each field reader must have the expertise necessary to accurately assess the applicant institution's showing on each of the applicable selection criteria.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address listed below indicating the program or programs in which he or she is interested in serving as a field reader.

FOR FURTHER INFORMATION CONTACT: Mr. John Paul, Advanced Training and Research Branch, U.S. Department of Education, ROB 3, Room 3054, 400 Maryland Avenue, SW., Washington, DC 20202–5331.

(Catalog of Federal Domestic Assistance Program Numbers 84.015A and 84.015B)

Program Authority: 20 U.S.C. 1122.

November 3, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–26375 Filed 11–14–88; 8:45 am]

BILLING CODE 4000–01–M

Invitation for Applicants To Serve as Field Readers for Fulbright-Hays Programs

AGENCY: Department of Education.

ACTION: Invitation for applicants to serve as field readers for the (1) Fulbright-Hays Doctoral Dissertation Research Abroad, (2) Fulbright-Hays Faculty Research Abroad, and (3) Fulbright-Hays Group Projects Abroad Programs.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the Fulbright-Hays Doctoral Dissertation Research Abroad, Fulbright-Hays Faculty Research Abroad, and Fulbright-Hays Group Projects Abroad Programs.

The Fulbright-Hays Faculty Research Abroad and Doctoral Dissertation Research Abroad Programs award fellowships, through institutions of higher education, to faculty and graduate students in the fields of modern foreign languages and area studies. The fellowships enable the recipients to conduct overseas research on projects designed to improve their foreign language competence and to develop knowledge about those societies on which their academic interests focus.

The Fulbright-Hays Group Projects Abroad Program awards grants to institutions of higher education, state departments of education, private non-profit educational organizations, and consortia of such institutions to conduct overseas group projects in research, training, and curriculum development that will enhance their programs in modern foreign languages and area studies in the United States.

Regulations governing these programs are found at 34 CFR Parts 662, 663 and 664.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 5 days. Each field reader who is selected will receive compensation for certain travel expenses, and an honorarium.

Field Reader Qualifications: All field readers should be acknowledged experts in their particular field of study. Field readers are sought who have expertise in the following areas: (a) Academic expertise in a discipline of the social sciences or humanities; and (b) foreign language and world area specialization focused on Africa, the Western Hemisphere, East Asia, Southeast Asia and the Pacific, Eastern Europe and the U.S.S.R., the Near East or South Asia. Each field reader must have the expertise necessary to accurately assess the applicant institutions showing on each of the applicable selection criteria.

Application Process: Any individual interested in serving as a field reader should mail his/her résumé to the address listed below indicating the program or programs in which he or she is interested in serving as a field reader.

FOR FURTHER INFORMATION CONTACT: For Doctoral Dissertation and Faculty Research Abroad; Mr. John Paul, and for Group Projects Abroad; Mr. Ralph Hines, U.S. Department of Education, ROB 3, Room 3054, 5400 Maryland Avenue, SW., Washington, DC 20202–5247.

(Catalog of Federal Domestic Assistance Program Numbers 84.019, 84.021, and 84.022)

Program Authority: 22 U.S.C. 2452(b)(6).

November 3, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary For Postsecondary Education.

[FR Doc. 88–26377 Filed 11–14–88; 8:45 am]

BILLING CODE 4000–01–M

Invitation for Applicants To Serve as Field Readers for the Undergraduate International Studies and Foreign Language Program

AGENCY: Department of Education.

ACTION: Invitation for applicants to serve as field readers for the Undergraduate International Studies and Foreign Language Program.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the Undergraduate International Studies and Foreign Language Program. This program awards grants to institutions of higher education, combinations of those institutions, and public and private non-profit agencies and organizations, including professional and scholarly associations, to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States. Regulations governing this program are found at 34 CFR Parts 655 and 658.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 5 days. Each field reader who is selected will receive compensation for certain travel expenses, and an honorarium.

Field Reader Qualifications: All field readers should be acknowledged experts in their particular field of study.

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Field readers are sought who have expertise in the following areas: (a) Disciplinary and foreign area specialization; (b) foreign language; (c) teaching, research and practical experience overseas; (d) experience in administering international education programs; (e) curriculum development in international studies and foreign languages; and (f) membership in associations with an international orientation. Each field reader must have the expertise necessary to accurately assess the applicant institution's showing on each of the applicable selection criteria.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address listed below indicating the program in which he or she is interested in serving as a field reader.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Hines, International Studies Branch, U.S. Department of Education, ROB 3, Room 3054, 400 Maryland Avenue, SW., Washington DC 20202-5331.

(Catalog of Federal Domestic Assistance Program Number 84.016)

Program Authority: 20 U.S.C. 1122.

November 3, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-26378 Filed 11-14-88; 8:45 am]

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H.R. 4211/Pub. L. 100–636

To reauthorize the National Ocean Pollution Planning Act of 1978 for fiscal years 1989 and 1990, and for other purposes. (Nov. 8, 1988; 102 Stat. 3324; 1 page) Price: $1.00

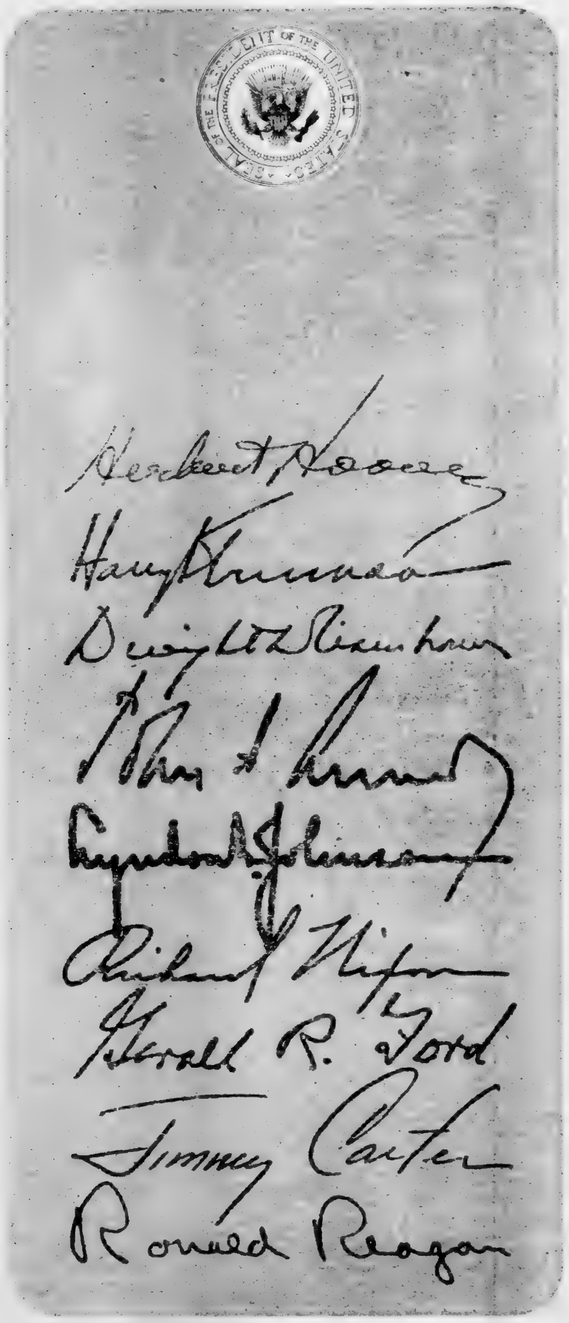
S. 2496/Pub. L. 100–637

To provide for the leasing of certain real property to the American National Red Cross, District of Columbia Chapter, for the construction and maintenance of certain buildings and improvements. (Nov. 8, 1988; 102 Stat. 3325; 2 pages) Price: $1.00

S. 2752/Pub. L. 100–638

To declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes. (Nov. 8, 1988; 102 Stat. 3327; 4 pages) Price: $1.00

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federal register

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11-16-88
Vol. 53 No. 221
Pages 46079-46426

federal register

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule would amend the Food Distribution Program Regulations (7 CFR Part 250) by permitting processors to pay refunds later than 10 days after receipt of the refund application for processed end products containing donated cheese. Since the surpluses of cheese have been reduced so drastically, the Department can no longer fill requests for cheese in unlimited amounts. Set amounts of cheese have been made available to each distributing agency. Current regulations require processors to make refund payments to recipient agencies within 10 days of receipt of a refund application. The Department anticipates delays in the delivery of cheese during the second and third quarter of school year 1988–1989. The Department plans to catch up with any delayed shipments during the fourth quarter. The intended effect of this action is to amend procedures to take into consideration delayed shipments of cheese.

EFFECTIVE DATE: This final rule is effective November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this rule will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Permitting processors to pay refunds later than 10 days after receipt of the refund application for processed end products containing cheese is necessary for the 1988–1989 school year. Shipments of donated cheese are expected to be behind schedule for the second and third quarters of the school year. The Department anticipates catching up with deliveries by the fourth quarter. The Administrator has determined pursuant to 5 U.S.C. 533(b), that prior notice and public procedure are impracticable, unnecessary and contrary to the public interest. A significant portion of the cheese available to States for this fiscal year will be delivered too late in the year for effective use. Without the change instituted by this rule, recipient agencies would be forced to buy products containing cheese at full price, because few processors will be willing to advance refunds if they have not received adequate donated cheese to account for the refunds. By allowing processors to delay payment of the refunds, recipient agencies can receive the processed products with the assurance that refunds for donated cheese will eventually be forthcoming. This rule must be put in place immediately to benefit recipient agencies and processors this school year. This rule relieves processors from having to pay refunds within 10 days if anticipated shipments of cheese are delayed. For this reason, the Administrator has also determined in accordance with 5 U.S.C. 553(d), that good cause exists for making this rule effective less than 30 days after publication.

This action has been reviewed with regard to requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and the final rule related notice published June 24, 1983 (48 FR 29112)).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the additional recordkeeping and reporting requirements contained in this rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for Part 250 were approved by OMB under control number 0584–0007.

Background

Section 250.30 of the current regulations sets forth the terms and conditions under which State distributing agencies, subdistributing agencies and recipient agencies may enter into contracts with food processors to incorporate government-donated commodities into processed end products.

Donated cheese has been available to schools and other outlets such as charitable institutions in any amounts that could be utilized without waste since 1981. As a result of the abundant supply of this commodity, many distributing agencies entered into numerous processing agreements for the conversion of donated cheese into end products such as pizza. Also, the Department established the National Commodity Processing Program to further increase the number of recipient agencies receiving the benefits of commodity assistance through processing agreements.

Since 1981, over 5 billion pounds of surplus dairy commodities have been distributed to low-income households. These distributions as well as ones made to schools and other outlets have substantially reduced the surplus of cheese available for various Food Distribution Programs. Moreover, modifications in agricultural price-support programs have brought supply

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and demand into better balance, thereby reducing the volume of commodities the Government has been required to purchase under price-support programs.

Since the surpluses of cheese have been reduced so drastically, the Department can no longer fill requests for cheese in unlimited amounts. Therefore, for the 1988–1989 School Year, State distributing agencies were notified in June of the total amount of cheese to be made available to them for the entire year. The cheese made available to States could be distributed directly to recipient agencies or furnished to processors to be used in the manufacture of end products. State agencies were also informed as to the total amount of cheese that could be ordered each quarter against the total available amount.

It was recommended that State agencies inform processors of the total amount of cheese to be furnished to them for the 1988–1989 contract year as well as the amounts of cheese to be delivered each quarter of the contract year. Processors were further to be informed that sales for the year could not exceed the total amount of cheese to be delivered for the year plus any carryover inventory from the previous year. If processors went into a negative inventory status (used more cheese than was available from the State), they did so at their own financial risk.

Section 250.30(k)(3) of the current regulations requires that processors make refund payments for the value of government commodities contained in processed end products to recipient agencies not later than 10 days after receipt of the refund application. The Department anticipates delays in the delivery of cheese during the second and third quarters of School Year 1988–1989. Because of these delays, processors may not receive the total amounts of cheese that are anticipated for these quarters. The Department, however, plans to catch up with any delayed shipments during the fourth quarter, ensuring that the total amount of cheese made available for 1988–1989 is delivered.

Processors who experience delays in shipments may not have physical inventory of cheese on hand to cover refund applications received during the second and third quarters. Section 250.30(k)(3) of this rule is being amended to permit processors to make refund payments to recipient agencies for end products containing cheese later than 10 days after receipt of the refund application in those quarters where cheese deliveries to the processor fell short of their allocation; *Provided however,* that the processor has first honored all requests for refunds received for end products sold during the period for which it had USDA cheese. Processors will be required to notify recipient agencies in writing that they are unable to process their refund payments at this time. This notification to the recipient agencies should take place within 10 days of receipt of the refund application. Once cheese is delivered, processors will be required to pay refunds which have been held based on the date the refund application was received. Those applications are to be processed on a first come first serve basis and payments must be processed within 10 days of receipt of the commodity.

Under no circumstances should processors make sales with a promise of a refund payment in excess of their cheese allocation for the entire 1988–1989 school year.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 250 is amended as follows:

PART 250—DONATIONS OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 is revised to read as follows:

Authority: Sec 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79–396, 60 Stat. 231, 233, (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 985–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304a, Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301); Pub. L. 100–237, 101 Stat. 1733 (7 U.S.C. 612 note).

2. In § 250.30, a new paragraph (k)(4) is added to read as follows:

§ 250.30 State processing of donated foods.

* * * * *

(k) *Refund payments* * * *

(4) State distributing agencies shall notify processors of the total amount of donated cheese they can receive during the 1988–1989 school year and shall inform processors of the amount of cheese to be delivered each quarter. During the 1988–1989 school year, processors shall be permitted to pay refunds later than 10 days after receipt of the refund application for processed end products containing donated cheese. However, the processor shall honor all requests for refunds received for end products sold during the period for which it had USDA cheese. Payment may only be delayed if delays in shipments of cheese to processors occur. Processors shall notify recipient agencies within 10 days of receipt of the refund application that the refund payment is being delayed. Once cheese has been delivered to the processor, the processor shall make refund payments to recipient agencies within 10 days of receipt of the commodity. Processors shall process refund applications in chronological order based on the date the applications were received. In no event shall the processors solicit or make sales to eligible recipient agencies which will cause them to exceed the total amount of cheese for which they have been allocated for the school year 1988–1989.

* * * * *

Date: November 9, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–26436 Filed 11–15–88; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket 87–181]

Tuberculosis in Cattle; State Designations; West Virginia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Clarification.

SUMMARY: This document clarifies the status of amendments contained in an interim rule published June 26, 1987, and in a final rule published October 23, 1987. It confirms the designation of West Virginia as an accredited-free state in the tuberculosis regulations governing the interstate movement of cattle.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 815, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective June 26, 1987 (52 FR 23936–23937, Docket Number 87–057), we amended the regulations in 9 CFR Part 77 governing the interstate movement of cattle because of tuberculosis. Specifically, we amended 9 CFR 77.4 by changing the classification of West Virginia from a modified accredited area to an accredited-free state. The comment period closed on August 25, 1987. We did not receive any comments.

As a result of a final rule published in the **Federal Register** on October 23, 1987 (52 FR 39613–39616), and effective November 23, 1987, the list of accredited-free states, including West Virginia, now appears in the definition of "accredited-free state" in 9 CFR 77.1. The facts presented in the interim rule still provide a basis for West Virginia's inclusion in this list of accredited-free states.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC this 9th day of November 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–26415 Filed 11–15–88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 88–71]

Reporting Requirements for Small Vessels

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement recent legislative changes to enhance Customs enforcement of the currency reporting and controlled substances laws and assist in preventing the importation of merchandise contrary to law. The statutory changes concern reporting requirements for individuals and various modes of transportation, penalties, searches and seizures. To clarify vessel reporting requirements and to implement new vessel reporting requirements for small vessels arriving in the Miami, Florida, Customs District, operators of small vessels arriving in that area will be required to stop at a designated reporting location and, through a clearly marked Customs telephone, report their arrival before proceeding in their destination. In addition to the reporting requirements, the amendments also implement legislative provisions of the Act which provide for civil and criminal monetary penalties and for the seizure and forfeiture of conveyances used to transport unmanifested merchandise or controlled substances as well as the merchandise thereon.

This action is being taken as part of Customs continuing efforts to interdict the smuggling of controlled substances and other merchandise being introduced contrary to law into the southern Florida area and to enforce the currency reporting laws. These regulations will close a loophole in interdiction efforts concerning the significant number of small vessels arriving in that area carrying controlled substances, unreported monetary instruments or undeclared merchandise.

EFFECTIVE DATE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: (Operational matters) Glenn Ross, Office of Passenger Enforcement and Facilitation (202) 566–5607 or (Legal matters) Larry L. Burton, Carrier Rulings Branch, Office of Regulations and Rulings (202) 566–5706.

SUPPLEMENTARY INFORMATION:

Background

The Anti-Drug Abuse Act of 1986 (Pub. L. 99–570) (the Act), made various changes to the Tariff Act of 1930 relating to the arrival and reporting to Customs of persons and transportation conveyances; penalties; search and seizure of persons and conveyances; forfeiture and disposition of articles and conveyances; the Customs Forfeiture Fund; aviation smuggling; preclearance; and investigation matters such as records production, undercover Customs operations, informer compensation and the exchange of information with domestic and foreign Customs and law enforcement agencies.

The reporting requirements are consolidated in section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), which provides, in pertinent part, that vessels must generally report to Customs immediately upon their arrival and in such manner as the Secretary of the Treasury may prescribe by regulation. The Act amended section 401(k), Tariff Act of 1930, as amended (19 U.S.C. 1401(k)), to clarify that vessels arriving in the United States after visiting a hovering vessel or a point or place where it has received merchandise is deemed to be arriving from a foreign port or place and that controlled substances are generally to be considered as prohibited merchandise. The Act amended section 594, Tariff Act of 1930, as amended (19 U.S.C. 1594), relating to the seizure and forfeiture of conveyances used for the importation of prohibited merchandise, by narrowing and clarifying the previously existing exceptions to the seizure and forfeiture provisions of that section. This document implements the arrival, reporting, and conveyance seizure and forfeiture provisions of the Act as to "small vessels", as defined. Initially, the special procedures for reporting arrival of small vessels are being limited to arrivals within the Miami, Florida, Customs District, as defined in § 101.3(b), Customs Regulations (19 CFR 101.3(b)). Operators of small vessels arriving in the United States in that area will be required to stop at a small vessel reporting location before proceeding to their intended destination and, through a clearly marked Customs telephone, immediately report their arrival to Customs. The Customs officer answering the call will ask for information such as: Registration number, name of vessel, owner name, operator/passenger name(s), date(s) of birth, foreign ports or places visited, duration of stay, foreign acquisitions, and user fee decal number, if any. The Customs officer will then instruct the vessel operator that the vessel may proceed or that further action, which may include inspection/examination at another location, is required. The District Director of Customs at Miami will retain the authority to change the reporting locations, their number, or location. The 14 small vessel reporting stations established within the Miami, Florida, Customs District by T.D. 87–150 for small vessel arrival reporting have been expanded to 24 in number. They are:

Vessels entering the Miami District southern intracoastal waterway.

1. A & B Marina, 700 Marina St., Key West, Florida 33040.

2. Tavernier Creek Marina, P.O. Box 1000, Tavernier, Florida 33070.

3. Faro Blanco Marine Resort, 1996 Overseas Highway, Marathon, Florida 33050.

4. Ocean Reef Club, 31 Ocean Reef Dr., Key Largo, Florida 33037.

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5. Oceanside Marina, 5950 Maloney Avenue, Key West, Florida 33040.

Vessels entering the Miami District northern intracoastal waterway.

1. Government Cut, Phillips 66 Marina, Waston Island, 1050 MacArthur Causeway, Miami, Florida 33132.

2. Haulover Cut, Bakers Haulover Marina, 10800 Collins Ave., Miami Beach, Florida 33154.

3. Port Everglades Cut, Lauderdale Marina, 1900 S.E. 15th St., Ft. Lauderdale, Florida 33316.

4. Hillsboro Inlet, Sands Harbor Marina/Hotel, 125 North Riverside Dr., Pompano Beach, Florida 33662.

5. The Cove Marina, 1755 S.E. 3rd Court, Deerfield Beach, Florida 33441.

6. Boynton Beach Inlet, Lake Worth Boating Center, 7848 South Federal Highway, Hypoloxo, Florida 33462.

7. Lake Worth Inlet (AKA Palm Beach), Sailfish Marina, 98 Lake Drive, Palm Beach Shores, Florida 33404.

8. Jupiter Inlet, Jupiter Marina, Route 1, Jupiter, Florida 33494.

9. St. Lucie Inlet, Sailfish Marina, 3565 Southeast St., Stuart, Florida 33477.

10. Ft. Pierce Inlet, Pelican Yacht Club, 1120 Seaway Dr., Ft. Pierce, Florida 33454.

11. Sebastian Inlet, Sebastian Inlet Marina and Trading, 1580 U.S. 1, P.O. Box 1507, Sebastian, Florida 32958.

12. Crandon Park Marina, 4000 Crandon Blvd.—Virginia Beach, Miami, Florida 33149.

13. Matheson Hammock Marina, 9610 Old Cutler Rd.—Matheson Hammock Park, Miami, Florida 33156.

14. Sunset Harbour Marina, 1928 Purdy Avenue, Miami Beach, Florida 33139.

15. Pier 66, 2301 S.E. 17 Street, Ft. Lauderdale, Florida 33316.

16. Bahia Mar, 801 Sea Breeze Blvd., Ft. Lauderdale, Florida 33316.

17. Light House Point Marina, 2830 N.E. 29 Avenue, Pompano Beach, Florida 33064.

18. Riviera Beach Municipal Marina, 200 E. 13 Street, Riviera Beach, Florida 33404.

19. Delray Harbour Club Marina, 1035 South Federal Highway, Delray Beach, Florida 33483.

The interim regulations established procedures for reporting the arrival of small vessels in the Miami District, see § 4.2a, Customs Regulations (19 CFR 4.2a). They also implemented the provisions of the Act which provide for civil monetary penalties for the failure to report arrival and additional civil monetary penalties if unmanifested merchandise was on board a non-reporting vessel. The vessel manifest penalties of section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), were made applicable if the merchandise on board a non-reporting vessel consists of controlled substances. Criminal monetary penalties and imprisonment were provided for if the failure to report arrival was intentional and if controlled substances were found on board the non-reporting vessel. The civil penalty included seizure and forfeiture provisions related to the vessel and the merchandise in addition to the monetary penalties.

These regulations, it was noted, were part of Customs continuing effort to combat the problem of drug smuggling by vessel and to more specifically deal with techniques developed by drug smugglers utilizing small vessels for that purpose. It was also noted that Customs would now have greater control over small vessels in the southern Florida area because those vessels will now be required to go to designated reporting locations and immediately report their arrival. Thus, smugglers will not be able to proceed to private docks and unload contraband before continuing to their intended destination and then reporting their arrival to Customs. This was possible under the previously existing law and regulations which permitted the report of arrival to be delayed for as long as 24 hours after arrival in the U.S.

The December 21, 1987, **Federal Register** notice solicited public comments on the new requirements. The comments received have been taken into consideration in formulating the final rule and are discussed in this document.

Analysis of Comments

On hundred sixteen comments were received in response to the solicitation of comments contained in the **Federal Register** notice. The comments noted operational difficulties caused by the implementation of the small boat reporting procedures in the Miami, Florida, District.

Several commenters indicated that the facilities at the Watson Island reporting station, the only Dade County, Florida, location, were inadequate and that the conditions there were unsafe and crowded. Repairs have been made to the docking area, and the city of Miami has been requested to enforce the "No Wake" provision around the Watson Island area. In addition, reporting facilities have been established at three new locations—Matheson Hammock, Sunset Harbour and Crandon Park Marinas.

Many commenters expressed concern about crowded conditions at reporting locations in the Miami and Ft. Lauderdale areas. A new reporting location near the entrance to Hillsboro Inlet was requested. The Customs Service has established ten additional reporting stations in the Miami District, with three in the Miami Area as indicated above, and two in the Ft. Lauderdale vicinity. A new reporting location has been established near the entrance to Hillsboro Inlet at the Light House Point Marina in Pompano Beach. In addition, Customs has established a Private Marina Visa Plan in the Miami District. The plan allows the clientele of a private marina, after the marina obtains prior approval from Customs, to discharge arrival reporting responsibilities, pursuant to § 4.2a, Customs Regulations (19 CFR 4.2a), at that location. This plan, along with the additional reporting locations, should relieve the crowded conditions which were the subject of these comments.

Several commenters complained of the inconvenience of having to go to a specific location to report their arrival. They believed that they were being discriminated against and that drug smugglers still were not going to report under the new system. We do not agree with the claim of discrimination. We note that prior to the new reporting requirements, private vessels had up to 24 hours to report their arrival. This created a large loophole in our interdiction efforts in that vessels involved in smuggling could off-load their contraband at a remote location and then report to Customs. With immediate reporting, private vessels are channeled into specific locations where they will report and possibly be subject to inspection. Customs, the Coast Guard, and State and local marine untis will be in a better position to more quickly distinguish suspect and non-suspect vessels. This more efficient targeting of suspect vessels will result in more efficient use of limited marine law enforcement resources which otherwise may be wasted on launches and boardings of no-suspect vessels.

One commenter stated that boaters should be permitted to utilize VHF radio aboard boats to report arrival. Customs disagrees with this proposal. We believe that such reporting scheme would recreate the situation that existed before the Anti-Drug Abuse Act of 1986 was enacted. Since section 433, Tariff Act of 1930, as amended by the Anti-Drug Abuse Act of 1986, requires an immediate report of arrival, and report by radio transmission can be made from an unfixed location at any time, Customs would be unable to confirm that the statutory requirement had been met.

After consideration of all the comments received, and following further review of the matter, it has been determined to adopt the interim regulations as published.

Executive Order 12291

Because this document does not meet the criteria for a "major rule" as defined in E.O. 12291, a regulatory impact analysis was not prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Coastal zone, Customs duties and inspection, Fishing vessels, Freight, Harbors, Imports, Maritime carriers, Reporting and recordkeeping requirements, Seamen, Vessels and yachts.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR Part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADE

1. The general authority for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, and 46 U.S.C. 3, 2103.

2. Section 4.2(a) is revised to read as follows:

§ 4.2 Report of arrival of vessels.

(a) The report of arrival required by section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), or as supplemented in local instruction by the district director and made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation, and other appropriate means, shall be made by any means of communication to the district director or to a Customs officer assigned to board a vessel. The Customs officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of a vessel, cargo, passengers, or crew.

* * * * *

3. Part 4 is amended by revising § 4.2a to read as follows:

§ 4.2a Small vessel reporting of arrival, Miami District.

(a) *Scope.* This section imposes special requirements for the report of arrival from any foreign port or place by small vessels whose intended destination is at a point within the jurisdiction of the Miami, Florida, Customs District, as defined in § 101.3(b) of this chapter. The operators of vessels will be required to immediately report their arrival in the U.S., as prescribed by § 4.2(a) of this chapter, or as supplemented in local instruction issued by the district director and made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation within the Miami District, and other appropriate means, by proceeding to locations designated by the District Director of Customs, Miami, Florida, prior to proceeding to their destination. The report will be made through a clearly marked Customs telephone. After securing some information from the person reporting, the Customs officer responding to the report of arrival will instruct the vessel operator that the vessel may proceed or that further action, which may include inspection at another location, is required.

(b) *Definitions.* For the purposes of this section:

(1) "*Foreign port or place*" includes a hovering vessels as defined in section 401(k)), Tariff Act of 1930, as amended (19 U.S.C. 1401(k)), and any point in the Customs waters beyond the territorial sea or on the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise.

(2) "*Small vessel*" includes any vessel of less than 5 net tons, and any private pleasure vessel, regardless of displacement.

(3) "*Arrival of a vessel*" occurs when a small vessel comes to rest within the waters of the Miami District, whether at anchor or at a dock, in any harbor or other location.

(c) *Vessels entering the southern and western portion of the Miami District.* The operators of vessels arriving from a foreign port or place with an intended destination at a point south of the entrance to Biscayne Bay known as Broad Creek, which is north of Key Largo between Swan Key and Broad Key or that portion of the west coast of the State of Florida within the Miami Customs District, as described in § 101.3(b), of this chapter, shall immediately report their arrival by the use of special clearly marked Customs telephones provided for that purpose, at the Customs designated location in the Florida Keys nearest to their intended destination point, before proceeding to the destination point.

(d) *Vessels entering the northern portion of the Miami District.* The operators of vessels arriving from a foreign port or place with an intended destination at or north of the entrance to Biscayne Bay known as Broad Creek, which is north of Key Largo and between Swan Key and Broad Key, shall immediately report their arrival by the use of special clearly marked Customs telephones provided for that purpose, at the Customs designated location nearest to point at which the Biscayne Bay may be first entered or the intracoastal waterway is first entered through a "cut", "channel" or "inlet", before proceeding to their destination point. This provision shall apply to vessels whose intended destination is on the Florida mainland or the barrier islands east of the intracoastal waterway.

(e) *Penalties*—(1) *Civil Penalty.* The master or person in charge of any vessel who fails to report arrival as required under this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation. Any vessel used in connection with any such violation is subject to seizure and forfeiture.

(2) *Criminal penalty.* In addition to the civil penalty prescribed for violation of this section, the master or person in charge who intentionally fails to report arrival as required by this section is liable, upon conviction, for a fine of not more than $2,000 or imprisonment for 1 year, or both. If the vessel is found to have or to have had on board any merchandise the importation of which is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(3) *Additional civil penalty.* If any merchandise, other than sea stores, is imported or brought into the U.S. aboard a vessel which has failed to report arrival as prescribed by this section, the master or person in charge shall be liable for a civil penalty equal to the value of the merchandise, and the merchandise may be seized and forfeited, unless properly entered by the importer or consignee. If any of the merchandise consists of a controlled substance listed in section 584, Tariff Act of 1930, as amended (19 U.S.C.

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1584), the penalties prescribed in that section shall apply.

William von Raab,

Commissioner of Customs.

Approved: October 7, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88-26385 Filed 11-15-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-88-1429; FR-2590]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA Section 235 insurance programs has been lowered from 10.50 percent to 10.00 percent.

Until recently, HUD regulated interest rates not only for the Section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this annnouncement of a change in interest rate ceilings for FHA-insured mortgages is limited to the Section 235 Program.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56286 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR Part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); Section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 10.00 percent per annum, except that where an application for commitment was received by the Secretary before November 1, 1988, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after November 1, 1988, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 10.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * *

Date: October 31, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-26433 Filed 11-15-88; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3597/R991; FRL-3477-4]

Pesticide Tolerance for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide 2-[1-(ethoxyimino)-butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites in or on the raw agricultural commodity lentils. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: November 16, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 8E3597/R991], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of September 28, 1988 (53 FR 37801), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 8E3597 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Idaho and Washington.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity lentils at 30.0 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.412(a) is amended by adding and alphabetically inserting the listing for the raw agricultural commodity lentils, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Lentils	30.0
* * * * *	

[FR Doc. 88-26423 Filed 11-15-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-407; RM-5606 and RM-5925]

Radio Broadcasting Services; Mandeville and Lacombe, LA and Long Beach, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a proposal to allot Channel 234A to Mandeville, Louisiana due to noncompliance with the principal city coverage requirement of § 73.315 of the Commission's Rules. The conflicting proposal to allot Channel 234A to Lacombe, Louisiana is granted. The document also denies a counterproposal by William Seiler for Channel 235A for Mandeville as well as a petition for reconsideration filed by William Seiler directed against an earlier action returning his petition for rule making for Channel 235A at Mandeville. These latter two actions are premised on the fact that a Channel 235A allotment at Mandeville would require a substitution of Channel 235A at Reserve, Louisiana, which was alloted in MM Docket No. 84-231. Finally, this document dismisses counterproposals filed by John Watkins and Beach Broadcasting Limited Partnership for the upgrade of the Channel 233A allotment at Long Beach, Mississippi, because there are merely pending applications for the Long Beach allotment and the upgrade procedure is only available to permittees or licensees. With this action, this proceeding is terminated.

DATES: Effective December 22, 1988. The window period for filing applications on Channel 234A at Lacombe, Louisiana will open on December 23, 1988, and close on January 23, 1989.

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FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 87–407, adopted October 18, 1988, and released November 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Louisiana by adding Lacombe, Channel 234A.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26464 Filed 11–15–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–475; RM–5905; RM–6209]

Radio Broadcasting Services; Broken Arrow and Bixby, OK and Coffeyville, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KCMA, Inc., substitutes Channel 221C2 for Channel 221A at Broken Arrow, OK, and modifies its license for Station KCMA(FM) to specify operation on the higher powered channel, and substitutes Channel 255A for Channel 221A at Coffeyville, Kansas, and modifies the license of Midwest Broadcasting Co. for Station KQQF(FM) to specify the new Coffeyville channel. The Commission found that the allotment of Channel 221C2 to Broken Arrow could provide increased FM service to the area while not significantly impacting noncommercial educational services in the area. It also found that Midwest Broadasting Co. had not presented a substantial and material question of fact which would warrant a hearing on the modification of Station KQQF(FM)'s license. In addition, the Commission denied the counterproposal of Midwest Broadcasting Co. to substitute Channel 287C2 for Channel 221A at Broken Arrow and substitute Channel 221A for Channel 287A at Bixby, Oklahoma. Channel 221C2 can be allotted to Broken Arrow in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.7 kilometers (12.4 miles) west to avoid a short-spacing to Station KKEG, Channel 221A, Fayetteville, Arkansas. The coordinates for this allotment are North Latitude 36–03–37 and West Longitude 96–00–57. Channel 255A can be allotted to Coffeyville in compliance with the Commission's minimum distance separation requirements and can be used at Station KQQF(FM)'s present transmitter site. The coordinates for this allotment are North Latitude 37–06–28 and West Longitude 96–43–22. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–475, adopted October 11, 1988, and released November 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by revising the entry for Coffeyville, Kansas, by deleting Channel 221A and adding Channel 255A, and by revising the entry for Broken Arrow, Oklahoma, by deleting Channel 221A and adding Channel 221C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26463 Filed 11–15–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–545; RM–6046, RM–6256, RM–6257]

Radio Broadcasting Services; Hereford and Littlefield, TX and Texico, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 278C2 to Hereford, Texas, Channel 238A to Littlefield, Texas, and Channel 243A to Texico, New Mexico, at the request Don Werlinger, d/b/a The Broadcast Development Group, Inc., James E. Tucker and Paul Abalos, respectively. The communities of Littlefield and Texico could receive a first local FM service and Hereford could be provided with its second local FM service. The allotments can be made consistent with the Commission's minimum distance separation requirements at the city reference coordinates which are 34–49–18; 102–23–54 (Hereford, TX), 33–55–12; 102–19–54 (Littlefield, TX); and 34–23–30; 103–02–48 (Texico, NM). With this action, this proceeding is terminated.

DATES: Effective December 22, 1988; The window period for filing applications will open on December 23, 1988, and close on January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–545, adopted October 14, 1988, and released November 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by, adding Channel 278C2 at Hereford, Texas; by adding Littlefield, Texas, Channel 238A; and by adding Texico, New Mexico, Channel 243A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26462 Filed 11–15–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–443; RM–5968, RM–6208]

Radio Broadcasting Services; Dishman and Spokane, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293A to Dishman, Washington, as that community's first FM service, at the request of Dishman Broadcasting. Also based on expressions of interest by P–N–P Broadcasting, Inc., and AliMar Communications, Inc., licensee of AM Station KRSS at Spokane, Washington, this document allots Channels 245A and 284A to Spokane, providing that community with its ninth and tenth local FM service. Channel 293A at Dishman requires a site restriction of 0.9 kilometer (0.6 mile) south of the city at coordinates 47–38–55 and 117–16–59. Channel 284A at Spokane requires a site restriction of 4.7 kilometers (2.9 miles) southwest of the city at coordinates 47–39–15 and 117–27–44. The reference coordinates at 47–40–18 and 117–24–18 can be used for Channel 245A at Spokane. In addition, the Canadian government has concurred. With this action, this proceeding is terminated.

DATES: Effective December 22, 1988; The window period for filing applications will open on December 23, 1988, and close on January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–443, adopted October 13, 1988, and released November 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by adding Dishman, Channel 293A and by adding Channels 245A and 284A at Spokane.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26461 Filed 11–15–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–167; RM–6125]

Radio Broadcasting Services; Staunton, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 232B1 for Channel 232A at Staunton, Virginia, and modifies the permit of Station WTON–FM to specify operation on the higher class co-channel, as requested by Ogden Broadcasting of Virginia, Inc. Staunton could receive its second wide coverage area FM service. A site restriction of 13.4 kilometers (8.3 miles) is required at coordinates 38–04–00 and 79–11–00. The upgrade must comply with § 73.1030(a) of the Commission's Rules. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–167, adopted October 12, 1988, and released November 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Virginia, by removing Channel 232A and adding Channel 232B1 at Staunton.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–26460 Filed 11–15–88; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1140

[Ex Parte No. 402]

Reasonably Expected Costs

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a technical revision to its final rules governing the computation of reasonably expected costs in connection with light density line surcharges. Specifically, the revised rules would recognize income tax liabilities, if any, in the determination of the investment base used to compute the return on investment component of reasonably expected costs. This rule change is being implemented without notice and comment, since it has already been approved (but never implemented) in *Reasonably Expected Costs*, 1 I.C.C.2d 252 (1984) (Ex Parte No. 402).

EFFECTIVE DATE: The rules are effective December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: The revised rules are set forth below.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

The rule modifications will not have a significant economic impact on a substantial number of small entities. Nor will this action significantly affect either the quality of the human environment or energy conservation.

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List of Subjects in 49 CFR Part 1140

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform system of accounts, Abandonment and discontinuances, Investigations, Public use conditions, Environmental protection, National trail system, National resources, Recreation and recreation areas.

Decided: November 8, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

Title 49, Subtitle B. Chapter X, Part 1140 of the Code of Federal Regulations is amended as follows:

PART 1140—REASONABLY EXPECTED COSTS UNDER 49 U.S.C. 10705a

1. The authority citation for 49 CFR Part 1140 is revised to read as follows:

Authority: 49 U.S.C. 10321, 11161, 11162, 11163, and 10705a; and 5 U.S.C. 559.

2. Section 1140.2 is amended by revising paragraph (b)(12)(i)(D) to read as follows:

§ 1140.2 Reasonably expected costs.

* * * * *

(b) * * *

(12) * * *

(i) * * *

(D) The amount of current income tax benefits the carrier could realize were it to abandon the line which would have been applicable to the period of the surcharge. (Conversely, if the railroad would incur an income tax liability from abandonment, the liability should be deducted from the investment base.) An average investment base value for the period of the surcharge shall be computed by the carrier by the method of its choice, provided that the method employed is reasonable and rational.

* * * * *

[FR Doc. 88-26319 Filed 11-15-88; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 53, No. 221
Wednesday, November 16, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Rule Amendments Concerning the Exchange of Futures for Cash Commodities or of Futures in Connection With Cash Commodity Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Commodity Futures Trading Commission proposes to amend its Regulation 1.35, 17 CFR 1.35, to require futures commission merchants ("FCMs"), introducing brokers ("IBs"), and other contract market members to obtain from their customers, and their customers to create, and to make available upon request of the Commission, the United States Department of Justice, or a contract market, documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions and to provide that documentation to the requesting body.[1] The Commission also proposes to amend Regulation 1.35 to require that all contract markets adopt, as necessary, corresponding rules requiring members to provide such documentation to the contract markets, the Commission, or the United States Department of Justice upon request.

DATE: Comments on the proposed amendments to Regulation 1.35 must be received on or before January 17, 1988.

ADDRESS: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Patricia C. Apfelbaum, Special Counsel, or Elizabeth A. Patterson, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

The legislative history of section 4c(a) reveals that the overall purpose of that section was to prohibit certain types of noncompetitive transactions that might facilitate fraud and manipulation.[2] The EFP exception to the section was added to preserve "a common and necessary practice" utilized by commercial market participants to facilitate basis trading, hedging, and the pricing of cash commodity transactions.[3] Section 4c(a) of the Commodity Exchange Act states in pertinent part that: [4]

> It shall be unlawful to offer to enter into, enter into or confirm the execution of, any transaction involving any commodity, * * * if [the] transaction is * * * a "wash sale", "cross trade", or "accommodation trade", or is a fictitious sale * * * or if [the] transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.
>
> Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules * * * approved by the Commission.

The Division of Trading and Markets ("Division") presented a report on EFPs to the Commission in October of 1987. In that report, the Division stated that the statutory exception for EFPs should be limited to bona fide transactions which strictly comply with the terms of section 4c(a) and exchange rules and which are not designed to accomplish some otherwise illegal purpose. At the same time, however, the Division stated that, subject to these requirements, the exception for EFPs contained in section 4c(a) should not be confined solely to those practices in existence at the time the statute was adopted. Rather, in the Division's view, permitting EFPs to accommodate the changing needs of market participants is consistent with the intent of Congress to preserve commercial transactions, so long as those transactions are in strict compliance with the requirements of section 4c(a) and exchange rules.[5] Under the Division's analysis, an evaluation of the bona fides of any EFP involves a determination of whether the cash transaction is consistent with commercial practices for other such transactions, independent of EFPs.[6] Accordingly, the Division concluded that the failure to conform to standard commercial practices may be an indication that the cash transaction, and thus the EFP, is not bona fide.

As a result of the importance of the cash transaction component of the EFP to the Division's analysis, the Division recommended the adoption of regulations specifically requiring disclosure of documentation of the cash

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[1] These transactions are referred to in section 4c(a) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6c(a) and Regulation 1.38(b), 17 CFR 1.38(b), as exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions, but are more commonly known as exchange of futures for physicals ("EFPs").

[2] *See* Amend the Grain Futures Act to Prevent and Remove Obstructions and Burdens Upon Interstate Commerce in Grain and Other Commodities by Regulating Transactions Therein on Commodity Futures Exchanges, To Limit or Abolish Short Selling, To Curb Manipulation, and for Other Purposes, S. Rep. No. 1431, 74th Cong., 1st Sess. 3 (1935).

[3] Commodity Short Selling, H.R. Rep. No. 1151, 72d Cong., 1st Sess. 3 (1932).

[4] Regulation 1.38(a) further provides: (a) *Competitive execution required; exceptions.* All purchases and sales of any commodity for future delivery, and of any commodity option, on or subject to the rules of a contract market shall be executed openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity or commodity option: *Provided, however,* That this requirement shall not apply to transactions which are executed noncompetitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the noncompetitive executive or such transactions.

[5] In this connection, the Division set forth three requirements of all EFPs derived from section 4c(a). In general, the Division concluded that all EFPs (1) must consist of integrally related cash and futures transactions, (2) must provide for a transfer of ownership of the cash commodity to the cash buyer upon performance of the terms of the contract, with delivery to take place within a reasonable period of time thereafter, and (3) must be between separate parties to the EFP.

[6] It is the existence of a cash commodity transaction which distinguishes EFPs from other types of futures transactions. Accordingly, other indicia of EFP bona fides discussed in the report relate to the nature of the cash component, the pricing of the cash and futures legs of the EFP, the seller's ability to fulfill the obligation to deliver the commodity, and the buyer's acquisition of the commodity following the EFP.

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portion of an EFP in order to ensure that the exchanges and the Commission have the means of assess fully the bona fides of such transactions and to monitor this limited exception to the prohibitions against noncompetitive trading. The Commission finds merit in this recommendation and therefore is proposing to amend Regulation 1.35 in order to ensure that records of the underlying cash transactions are fully accessible to the exchanges, the Commission, and the United States Department of Justice.

II. Recordkeeping Requirements Relating to EFPs

A. Current Rules

The present regulatory scheme broadly addresses the issue of EFP recordkeeping. Regulation 1.38(b) requires that:

> [e]very person handling, executing, clearing, or carrying trades, transactions or positions which are not competitively executed, including * * * trades involving the exchange of futures for cash commodities or the exchange of futures in connection with cash commodity transactions, shall identify and mark by appropriate symbol or designation all such transactions or contracts and all orders, records, and memoranda pertaining thereto.

Regulation 1.35(a) requires FCMs, IBs, and members of contract markets to "keep full, complete and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures, commodity options, and cash commodities," and to retain such records and produce them upon request of the Commission or the United States Department of Justice. In addition, Regulation 1.35(e)(4) directs that each contract market maintain a record showing "by appropriate and uniform symbols, any transaction which is made noncompetitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission in accordance with the provisions of [Regulation] 1.38." Further, Regulation 18.05, 17 CFR 18.05, provides that:

> [e]very trader who holds or controls a reportable futures position * * * shall keep books and records showing all details concerning all positions and transactions for future delivery in the commodity on all contract markets, * * * and all positions and transactions in the cash commodity, its products, and by-products and, in addition, commercial activities that the trader hedges in the commodity underlying the futures contract in which the trader is reportable,

and that the trader furnish information concerning the futures and cash commodity transactions to the Commission upon request.

Thus, under the Commission's current regulations, every person "handling, executing, clearing, or carrying" EFPs must identify those transactions and all related documents. Further, every FCM must keep systematic records of all transactions relating to its business of dealing in futures, options, or cash commodities, and each trader holding or controlling reportable futures positions ("large trader") must keep records of all futures and cash commodity positions and transactions. Finally, every contract market must maintain a record specifically noting all EFPs. Moreover, pursuant to sections 8 and 6(b) of the Act, 7 U.S.C. 12, 9, and Part 11 of the Commission's Regulations, 17 CFR Part 11, the Commission has access to a wide range documentation that may be relevant to matters under its jurisdiction.

The Commission believes that the availability of such documentation is essential to the success of exchange surveillance programs for monitoring EFPs and determining whether they are bona fide. It is equally necessary to the Commission's ability to monitor the effectiveness of the exchanges' surveillance programs with respect to EFPs and to the Commission's ability to review such trades in the course of routine trade practice surveillance or specific investigations. The present regulations, however, do not state specifically that customers who are not large traders must document cash transactions underlying EFPs. Further, they do not place responsibility for the collection of such documents on FCMs, IBs, and contract market members, nor do they provide the contract markets with express authority to request such documents. Accordingly, the Commission proposes to adopt rules intended to assure that specific documents evidencing cash transactions underlying EFPs are created and retained in accordance with cash market practices and that the contract markets and the Commission have an effective and efficient means of obtaining such documents upon request.

B. Proposed Rules

In light of the foregoing, the Commission proposes to amend Regulation 1.35 by adding a new paragraph (a–2), comprising subparagraphs (1), (2), (3), and (4), which relates to the production of documentation of cash transactions underlying EFPs.

1. *Proposed Subparagraph (a–2)(1)—Collection of customer Documentation by FCMs, IBs, and Members of Contract Markets*

The Commission proposes to add to Regulation 1.35 a new paragraph (A–2)(1) which would require that FCMs, IBs, and members of contract markets, upon request of the exchange, the Commission, or the United States Department of Justice, obtain from their customers and provide to the requesting body documentation of each transactions underlying exchanges of futures for physicals as such documentation is defined in proposed subparagraph (a–2)(4). The Commission believes that ready access to such documentation is necessary to the thorough evaluation of EFPs. The ability to obtain that documentation from customers will allow the contract markets to examine fully EFPs and to meet their self-regulatory duties under Commission Regulation 1.51, 17 CFR 1.51, to ensure the propriety of those transactions. The production of documents similarly will facilitate the Commission's task of monitoring the bona fides of EFPs.

2. *Proposed Subparagraph (a–2)(2)—Customer Production of Documentation Upon Reqeust*

Proposed subparagaph (a–2)(2) is designed to serve the same regulatory surveillance purposes as proposed subparagraph (a–2)(1). Proposed subparagaph (a–2)(2) would require all customers of FCMs, IBs, and contract market members to create, retain, and produce upon request of the FCM, the IB, the contract market member, the exchange, the Commission, or the United States Department of Justice documentation of the cash transactions underlying EFP transactions. Of course, a customer's inability to produce such documentation would create a strong inference that an EFP is not bona fide.[7]

The Commission believes that it would not be unreasonable or inappropriate to require customers, who are parties to the cash transactions and therefore have the best access to the requested documents, to produce those documents for examination. Without this corresponding duty upon all customers, FCMs, IBs, and contract market members may lack an enforceable means of fulfilling the regulatory requirement of proposed subparagraph (a–2)(1) and instead would be forced to rely on voluntary customer cooperation for access to documents. The Commission believes that the proposal as a whole would afford an appropriate division of responsibility for document retention, collection, and production between FCMs, IBs, contract market members, and their customers.

3. *Proposed Subparagraph (a–2)(3)—Requirement that Contract Markets Adopt Rules Pertaining to Document Production*

The Commission further proposes to add a new subparagraph (a–2)(3), which requires each contract market to adopt rules mandating that its members produce documentation of cash transactions underlying EFPs. Proposed subparagraph (a–2)(3) would provide contract markets with an enforceable right to demand the production of the documentation maintained in response to proposed subparagraphs (a–2)(1) and (a–2)(2) in furtherance of their self-regulatory responsibilities.

4. *Proposed Subparagraph (a–2)(4)—Definition of "documentation"*

The Commission finally proposes to add a new subparagraph (a–2)(4) which sets forth a definition of the term "documentation" as it is used in proposed paragraph (a–2). The proposed definition states that such documentation consists of those documents "customarily generated in accordance with cash market practices which demonstrate the existence and nature of the cash transactions, including, but not limited to, contracts, confirmation statements, telex printouts, invoices, and warehouse receipts or other documents of title."

C. Limited Additional Recordkeeping Burden Imposed by Proposed Recordkeeping Rules

The proposed amendment to Regulation 1.35 are intended to assure that the documentation necessary to effective investigation of EFPs is available to the exchanges and to the Commission, without imposing burdensome additional recordkeeping requirements on markets or market participants. It is important to note that FCMs and members of contract markets must keep records "of all transactions relating to its business of dealing in commodity options, and cash commodities." Moreover, FCMs and members are frequently parties to one or both sides of an EFP transaction. Thus, where an EFP relates to an FCM's or contract market member's business of dealing in futures or cash commodities, the proposed amendments would not impose additional recordkeeping obligations on those entities not already required by Regulation 1.35(a). Further, IBs, who normally would not be parties to cash transactions, would not be required to maintain records of transactions for customers, but only to obtain and produce them upon request. The Commission believes therefore that the proposed amendments would impose upon FCMs, IBs, and contract market members only the minimum requirements necessary to assure effective monitoring of EFPs by the exchanges and the Commission.

Further, the amendments would require customers to produce documents which should be readily accessible. In this regard, customers who maintain documents in accordance with accepted cash market practices should be able to comply with proposed subparagraph (a–2)(2). Moreover, customers who are large traders already must maintain and produce upon request the required documentation in accordance with Regulation 18.05. Thus, the proposed amendments will not impose a significant burden on these entities.

Finally, several of the exchanges presently require that their members maintain full and complete records of EFP transactions, including cash transactions, and that members provide those records to the exchange upon request.[8] The proposed Commission rule, however, will encourage consistent treatment of similar transactions by all exchanges. Of course, regardless whether exchanges now or in the future have such rules, exchanges may continue to request voluntary cooperation from market participants under existing programs relating to the exchange responsibility to monitor trading.

In addressing these proposals, commenters are encouraged to direct their comments particularly to the likely effectiveness of the amendments in achieving the Commissions stated goals.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of the rules on small businesses. The Regulation 1.35 amendments proposed here would affect contract markets, FCMs, IBs, contract market members, and the customers of FCMs, IBs, and contract market members. The Commission previously has determined that contract markets are not "small entities" for the purposes of the RFA, and that the Commission need not, therefore, consider the effect of proposed amendments on contract markets in relation to the RFA. 47 FR 18618, 18619, April 30, 1982. The Commission has also determined that FCMs should be excluded from the definition of "small entity" based upon the fiduciary nature of the FCM/customer relationships as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619, April 30, 1982.

With respect to IBs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered small entities and, if so, to analyze the economic impact on such entities at that time. 48 FR 35248, 35275–78, August 3, 1983. Proposed Regulation 1.35(a–2) will have little effect on IBs, regardless of size. Pursuant to existing Commission Regulation 1.57, 17 CFR 1.57, IBs will never handle customer EFPs independently. Regulation 1.57 requires that IBs open and carry customer accounts with FCMs and that they transmit customer orders to FCMs. Given this fact, the FCMs, not the IBs, would have primary responsibility for customer document collection. As a practical matter, an IB would be approached for customer documents only if an FCM failed in its document production duty. Thus, IBs of any size should not be significantly burdened by the proposed rules.

Like IBs, non-FCM members seldom will be called upon to produce documentation of customer EFPs. Non-FCM members generally transact EFPs for their own accounts. In those instances where non-FCM members may act as brokers to arrange EFPs between customers, those members will handle both the cash and the futures portions of the trade and will be acting as IBs. In some circumstances, however, the member may act as broker between customers only as to a cash transaction, which becomes part of an EFP cleared through an FCM. In such cases, which are likely to occur infrequently, the member only will be approached for the cash documentation if the FCM clearing the EFP fails to fulfill its document production duty. Therefore, the proposed rules should not place a significant burden on non-FCM members of any size.

Finally, the Commission does not believe that proposed Regulation 1.35(a–2) significantly will affect customers of FCMs, IBs, or exchange members that

[7] The Commission understands that commercial practices in the markets in which EFPs are transacted contemplate that some documentation of the cash transaction will be created.

[8] New York Mercantile Exchange ("NYMEX") Rule 6.12 requires that each seller and buyer satisfy the Exchange that the EFP is bona fide, and provides that clearing members shall obtain all documentation related to the EFP and make that documentation available at the Exchange's request. NYMEX also affirmatively requires that each clearing member routinely submit documentation of the cash transfer for every EFP. Chicago Mercantile Exchange Rule 538 requires that clearing members and brokers handling EFPs maintain full and clear records of the transactions along with all pertinent memoranda. The Chicago Board of Trade's Rule 444.01 is similar, as is Commodity Exchange, Inc. Rule 4.36.

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are also small businesses. For most EFPs, an FCM or contract market member will take the opposite side of a customer transaction and thus will be required to create and retain documentation and to report those transactions under existing Regulation 1.35(a). For most EFPs, then, the participation FCM or contract market member will be the primary source for documentation of cash transactions. Generally, only in those instances when two customers trade opposite one another would the customers be the originators of documentation of a cash transaction, although they must create and retain such documents for every transaction.

In most markets, customers using EFPs generally will be large entities such as commercial market participants (producers, users, etc.), trade houses, institutions, banks, pension funds, and dealers. Although EFP users in the currency and metals markets are also primarily large entitites (i.e., banks, bullion dealers, etc.), some participants, although not a substantial number—particularly professional traders, small trade houses, small corporations and other businesses—may be "small entitites." To the extent that any small entities do fall within the purview of the proposed Regulation 1.35(a–2), the recordkeeping required of those entities will be relatively minor. First, the proposed rules require only that customers create, retain, and produce those documents customarily generated in accordance with cash market practices.[9] Customers presumably create and retain these documents in the normal course of business for general business, financial, and tax reasons. Second, the proposed rules do not require that customers make routine submissions. The records of only a small number of transactions will be requested annually so the temporal and monetary impacts of document production on any single small entity should be minimal.

Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1168 (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comment from any small firms which believe that promulgation of these rules will have a significant economic impact on them.

[9] The proposed document retention would fall within the five-year retention requirement of Commission Regulation 1.31(a). 17 CFR 1.31(a). Regulation 1.31(a) provides that all books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501, *et seq.*, imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted the proposed Regulation 1.35(a–2), along with the associated information collection requirements, to the Director of the Office of Management and Budget. Further, pursuant to the Office of Management and Budget's Regulation 1320.15(a), 5 CFR 1320.15(a), the Commission has set forth in the following paragraph a summary of the public reporting burden related to the proposed amendments.

The public reporting burden for this collection of information is estimated to average one-half hour per response for each of the 96 FCMs, IBs, or contract market members expected to be required to collect documents from customers during a year. This estimate includes time to request, obtain, organize, and provide documents to the Commission or the exchange. Each of the estimated 96 customers asked to provide documentation annually will spend an estimated one hour per response in locating, photocopying, and providing requested documents to an FCM, IB, contract market member, contract market, the Commission, or the United States Department of Justice. Finally, each customer will be required to maintain documentation of cash transactions underlying EFPs in order to comply with this reporting requirement. Each of the 1700 customers transacting EFPs at reportable levels is expected to spend an average of two hours refining a large trader report document filing system and two hours actually filing documents in it during the course of a year. The estimated 570 other customers who would be required to maintain documents under proposed Regulation 1.35(a–2) are expected to devote an average of six hours to developing a filing system and two hours to filing documents annually. The total annual public burden related to proposed Regulation 1.35(a–2) is estimated to be 11,504 hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 17 CFR Part 1

Commodity futures, Commodity options, Contract markets, Customers, Exchanges of futures for physicals, Futures commission merchants, Introducing brokers, Members of contract markets, Noncompetitive trading, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4, 4c, 4g, 5, 5a, 8, and 8a therefore, 7 U.S.C. 6, 6c, 6g, 7, 7a, 12, and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Regulation 1.35 is proposed to be amended by adding paragraph (a–2) to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

(a–2)(1) *Futures commission merchants, introducing brokers, and members of contract markets.* Upon request of the contract market, the Commission, or the United States Department of Justice, each futures commission merchant, introducing broker, and member of a contract market shall obtain from its customers and provide to the requesting body documentation of cash transactions underlying exchanges of futures for cash commodities or exchange of futures in connection with cash commodity transactions.

(2) *Customers.* Each customer of a futures commission merchant, introducing broker, or member of a contract market shall create, retain, and produce upon request of the futures commission merchant, the introducing broker, the contract market member, the contract market, the Commission, or the United States Department of Justice documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions.

(3) *Contract markets.* Every contract market shall adopt rules with require its members to provide documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions upon request of the contract market.

(4) *Documentation.* For the purposes of this paragraph, documentation means those documents customarily generated in accordance with cash market practices which demonstrate the existence and nature of the underlying cash transactions, including, but not limited to, contracts, confirmation statements, telex printouts, invoices, and warehouse receipts or other documents of title.

* * * * *

Issued in Washington, DC on November 9, 1988 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–26474 Filed 11–15–88; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Adverse Effect Wage Rate Methodology; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; correction.

SUMMARY: The Department of Labor is correcting an error in the preamble of the proposed rule for the adverse effect wage rate methodology for the temporary alien agricultural labor certification (H–2A) program. The proposed rule appeared in the Federal Register on October 28, 1988 (53 FR 43722).

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening; Telephone: 202–535–0163 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor has published a proposed rule for the adverse effect wage rate methodology for the temporary alien agricultural labor certification (H–2A) program. The proposed rule appeared in the Federal Register on October 28, 1988 (53 FR 43722). The proposed rule contained an error, which is discussed briefly below and is corrected by this document.

Dated: November 10, 1988.

Ann McLaughlin,

Secretary of Labor.

The following correction is made in the preamble to the proposed rule for the adverse effect wage rate methodology for the labor certification process for the temporary employment of aliens in agriculture in the United States (H–2A program), published in the Federal Register at 53 FR 43722 (FR Doc. 88–24954), on October 28, 1988.

In the third full paragraph in the first column on page 43723, the following words shall be deleted, "That court recently rules [*sic*] that the new explanation was unaccepted because it was based, in part, on information not in the rule-making record on June 1. While the DOL disagrees with the ruling and continues to litigate that issue,".

For an additional correction to this document see the Corrections section of this issue.

[FR Doc. 88–26409 Filed 11–15–88; 8:45 am]

BILLING CODE 4510–30–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3475–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA proposes to disapprove a revision to the Illinois State Implementation Plan (SIP) for ozone. The revision provides an alternative compliance schedule for Printpack, Incorporated (Printpack) which is located in Elgin, Illinois. This SIP revision would allow Printpack additional time to reformulate to low-solvent adhesives for its adhesive laminating equipment.

USEPA today is proposing to disapprove this SIP revision because the requested compliance date extension is inconsistent with relevant portions of the Clean Air Act and USEPA policy.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 16, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.):

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION PLEASE CONTACT: Uylaine E. McMahan, (312) 886–6031.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for Printpack. This SIP revision is in the form of a February 5, 1981, Opinion and Order of the Illinois Pollution Control Board (IPCB) PCB 80–148. It grants a variance from the existing SIP requirements until December 31, 1985, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, Printpack's paper coating operation is subject to the 2.9 pounds of VOC per gallon emission limitation contained in IPCB Rule 205(n)(1)(C) of Chapter 2: Air Pollution of the IPCB Rules and Regulations. Final compliance is required by December 31, 1982.

In lieu of the compliance date contained in the federally approved SIP, the State is proposing an extended compliance schedule for Printpack.

Printpack manufactures flexible packaging for use primarily by the food industry. Printpack is located in the Northeastern Illinois urban ozone nonattainment area, which has obtained an extension to December 31, 1987, to attain the ozone national ambient air quality standard. USEPA may approve compliance date extensions for sources in such areas, if the State demonstrates that the extension is as expeditious as practicable and will not prevent the area from attaining the ozone standard as expeditiously as practicable, but no later than the end of 1987.

On August 15, 1984, the IEPA submitted Printpack's documentation of its efforts to convert to low-solvent adhesives. Additional information was

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submitted by Printpack on November 7, 1984. This documentation included:

1. Internal research and development reports which cover the period from January 1979 to January 1984, which describe Printpack's continuing efforts and progress in developing low solvent adhesives;

2. Reports which describe numerous trials to develop low-solvent adhesives;

3. A description of the company's correspondence with numerous suppliers of adhesives coatings; and

4. Information demonstrating progress made by the company in substantially reducing VOC emissions between 1981 and 1984, as a result of their research and development efforts.

This documentation does not satisfy the Clean Air Act and USEPA's policy on compliance date extensions. In particular, the State has not adequately researched the compliance status of other similar sources to determine if compliance by the original deadline was reasonable.

In the March 20, 1984, Federal Register (49 FR 10277), USEPA proposed to disapprove this proposed SIP revision because the Illinois Ozone SIP lacked an approved attainment demonstration for the Chicago nonattainment area. Since the publication of the March 20, 1984, Notice of Proposed Rulemaking, IEPA has submitted a revised ozone attainment demonstration which USEPA proposed to approve on August 15, 1984 (49 FR 32601). However, USEPA recently proposed to disapprove the State attainment demonstration (52 FR 26404), July 14, 1987). For this reason USEPA believes that the State has not adequately demonstrated that this extension will not interfere with timely attainment of the ozone standard and RFP in the intermin.

Proposed Actions

USEPA is proposing that Printpack's schedule to achieve final compliance by December 31, 1985, is not approvable because it does not conform with the requirements of the Clean Air Act and policy on compliance schedules. First, the State has not shown that the requested compliance date is as expeditious as practicable. In addition, this source is located in the Chicago nonattainment area which lacks an approved attainment demonstration. A more detailed discussion of the rationale for proposing disapproval of the State submission and of the Clean Air Act and USEPA policy related to compliance date extensions appears in Appendix A of the proposed rulemaking published on November 8, 1988 at 53 FR 45103.

USEPA is providing a 30-day comment period on this notice of supplemental proposed rulemaking. Public comments received on or before December 16, 1988, will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office at the front of this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities because it applies only to Printpack.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: March 31, 1987.

Robert Springer,

Acting Regional Administrator.

Editorial Note: This document was received by the Office of the Federal Register, November 10, 1988.

[FR Doc. 88–26424 Filed 11–15–88; 8:45 am]

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40 CFR Part 52

[FRL 3475–8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA announces proposed rulemaking to disapprove a site-specific State Implementation Plan (SIP) revision to the ozone portion of the Ohio SIP. This SIP revision would allow the ATEC Industries, Incorporated (ATEC) architectural aluminum extrusion coating line (KOO1) in Mahoning County, Ohio to meet the volatile organic compounds (VOC) limitation of 3.5 pounds of VOC per gallon of coating, minus water (3.5 lbs of VOC/gal), as required by Ohio Administrative Code (OAC) 3745–21–09 (U)(1)(a)(iii), on a monthly volume-weighted average in lieu of the daily volume-weighted average reqired by OAC Rule 3745–21–09 (B). USEPA's action is based upon one revision request and several amendments that were submitted by the State.

USEPA is proposing to disapprove this revision because the State did not demonstrate that it is infeasible to use add on controls to comply with the reasonably available control technology (RACT) emission limit on a daily basis and that an averaging period shorter than 1 month is not practicable.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 16, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Coments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On June 17, 1985, July 30, 1985, and October 25, 1985, the Ohio Environmental Protection Aency (OEPA) submitted a revision request, with several amendments to its ozone SIP for ATEC. This revision consists of (1) a monthly volume-weighted average limitation (3.5 lbs. of VOC/gal), and (2) a never-to-be-exceeded (5.5 lbs of VOC/gal for any coating used) limit for an architectural aluminum extrusion coating line (KOO1) located at ATEC in Mahoning County, Ohio, which is an urban nonattainment area for the national ambient air quality standard (NAAQS) ozone. OEPA also submitted a request to revise the attainment status designation for Mahoning County from nonattainment to attainment for the ozone NAAQS. This redesignation request is under USEPA's review, and USEPA will propose action on it in the near future.

Under the existing federally approved SIP, each architectural aluminum extrusion coating line is subject to the VOC limitation containe din OAC Rule 3745–21–09 (U)(1)(iii) [3.5 lbs of VOC/gal] and is subject to the daily volume-weighted average compliance requirements contained in OAC Rule 3745–21–09 (B). USEPA approved these rules as meeting the RACT requirements of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

In lieu of the daily volume-weighted average limitation required by the SIP, the State is proposing that the coatings used in this line (KOO1), which applies a wide variety of coatings to various types of architectural aluminum extrusions, shall not exceed 3.5 lbs of VOC/gal as a monthly volume-weighted average, and 5.5 lbs of VOC/gal for any coating used.

USEPA's January 20, 1984, policy memorandum entitled "Averaging Times for Compliance with VOC Emission Limits" contains the criteria for evaluating VOC requests for extended averaging which are as follows:

Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

The first point is not an issue is this case because ATEC has never claimed that it is not possible to determine daily emissions. As to the second point, control could be obtained either from the use of complying low solvent coatings or by add-on controls. OEPA submitted documentation from two coating suppliers to demonstrate that complying aluminum coatings are not currently available. However, USEPA believes this information is inconclusive.

OEPA believes that add-on control is not economically reasonable for this source because the cost per ton of controlling the noncomplying coatings (which exceed the SIP allowable by less than 10 tons of VOC per year) would be excessive. In particular, OEPA noted that (1) only about 20 percent of the paints being used exceed 3.5 lbs of VOC/gal and, therefore, add-on controls would not be needed for most operations, (2) less than 20 percent of the VOC emissions are emitted from the paint bake oven, and control equipment on the oven would not bring ATEC into compliance on a daily basis, and (3) control of the spray booth emissions would require a change in the parts loading area to enclose the spray area. Additionally, control of the spray booth emissions would also require a large volume of air to be treated due to the large size of parts being painted. However, OEPA has not provided any documentation of the costs for add-on control for this source.

If the State demonstrates conclusively that complying low-solvent coatings are unavailable, then the USEPA would consider an alternative RACT determination for the existing coatings. USEPA is proposing to disapprove this revision because such a demonstration has not been submitted.

A detailed discussion on the extent of such an investigation is contained in Appendix A of the proposed rulemaking published on November 9, 1988 at 53 FR 45285.

Criterion 2

The area must not lack an approved SIP and there must not be any measured violations of the ozone standard.

ATEC is located in Mahoning County, which has an approved 1979 ozone SIP and has had no measured violations of the ozone NAAQS from 1982 through 1985. Therefore, this SIP revisicn request is consistent with this criterion.

Criterion 3

A demonstration must be made that the use of monthly averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area. This must be accomplished by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP for the area.

OEPA has demonstrated that the growth margin for the Youngstown area is able to accommodate the maximum daily increase in emissions caused by this revision.

Criterion 4

Averaging times must be as short as practicable and in no case longer than 30 days.

OEPA did not submit an adequate demonstration that it is not feasible for ATEC to meet the proposed limit using a shorter averaging period (e.g., 7 days or 15 days).

USEPA has reviewed this variance and has determined that it does not meet all of USEPA's criteria for monthly averaging. Therefore, USEPA is proposing disapproval of this variance.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before December 16, 1988, will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. 605(b), I certify that this SIP revision, if disapproved, will not have a significant economic impact on a substantial number of small entities because it applies to only one source, ATEC, and does not impose any new requirement on this source.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: March 31, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note: This document was received by the Office of the Federal Register November 10, 1988.

[FR Doc. 88–26425 Filed 11–15–88; 8:45am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3476–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a request for monthly averaging for volatile organic compound (VOC) emissions for an architectural aluminum extrusion coating line (K001) at Astro Shapes, Incorporated (Astro Shapes). This facility is located in Mahoning County, Ohio.

USEPA is proposing to disapprove this SIP revision, because it has not been demonstrated that (1) complying coatings are unavailable, (2) that the increase in daily emissions are consistent with the SIP for Youngstown, and (3) that the application of reasonably available control technology (RACT) is infeasible on a less than monthly basis.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 16, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V Office.

U.S. Environmental Protection Agency, Regional V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

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FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On May 15, 1986, the Environmental Protection Agency (OEPA) submitted a proposed revision to its ozone SIP, allowing monthly averaging for an architectural aluminum extrusion coating line (K001). This operation is located at the Astro Shapes facility in Mahoning County,[1] Ohio, a nonattainment area for ozone.

On July 17, 1986, USEPA notified OEPA that the May 15, 1986, submittal requesting a monthly average for Astro Shapes was deficient, as stated in USEPA's technical support document (TSD) dated July 2, 1986. OEPA submitted supplemental information on August 28, 1986, to support this revision.

Existing SIP Requirements

Under the existing federally approved SIP, the architectural aluminum extrusion coating line (K001) is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U)(1)(a)(iii), which limits the VOC content of extreme performance coatings to 3.5 pounds of VOC per gallon of coating, minus water. OAC Rule 3745–21–04(C)(28) requires compliance with the limit by December 31, 1982. Compliance is to be determined on a 24-hour basis. USEPA approved these rules as meeting the RACT [2] requirement of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

Extended Averaging Time Criteria

USEPA's January 20, 1984, policy memorandum, entitled "Averaging Times for Compliance With VOC Emission Limits", contains the following criteria for evaluating VOC requests for extended averaging:

Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

Criterion 2

Sources in areas lacking approved SIP's or in areas with approved SIP's but showing measured violations, cannot be considered for longer term averages until the SIP has been revised documenting ambient standards attainment and maintenance of reasonable further progress (RFP) (reflecting the maximum daily emissions from the source with long-term averaging).

Criterion 3

A demonstration must be made that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the RFP plan for the area. This must be accomplished by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP.

Criterion 4

Averaging times must be short as practicable, and in no case longer than 30 days.

Analysis

For monthly averaging to be approved, it must be demonstrated that it is infeasible to meet a daily VOC RACT emission limit, e.g., through the use of add-on control or low solvent technology. If the State demonstrates conclusively that complying low-solvent coatings are available, then the USEPA would consider an alternative RACT determination for the existing coatings. In addition, it must be demonstrated that a monthly averaging period is the shortest period that is practicable and that the increase in daily emissions is consistent with the SIP. OEPA has demonstrated that add-on controls for this source would be economically unreasonable, but it has not been demonstrated that the source has completely analyzed the possibility of low solvent coatings.

A detailed discussion of the extent of such an analysis appears in Appendix A of the proposed rulemaking published on November 9, 1988 at 53 FR 45285.

Further, it has not been demonstrated that the application of RACT is infeasible on a less than monthly basis, and that the maximum increase in daily emissions associated with monthly averaging is consistent with the approved SIP for the Youngstown area.

USEPA is proposing to disapprove this SIP revision for these reasons.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before December 16, 1988, will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V Office address provided at the front of this notice.

Under 5 U.S.C. 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities, because the effect of this disapproval is to leave in effect existing emission limitations. Therefore, there is no change or any impact on any source or community. Additionally, it applies to only one corporation, Astro Shapes.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: February 10, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note: This document was received by the Office of the Federal Register November 10, 1988.

[FR Doc. 88–26428 Filed 11–15–88; 8:45 am]

BILLING CODE 6560–50–M

[1] OEPA submitted a request to revise the attainment status designation, at 40 CFR 81.336, for Mahoning County for nonattainment to attainment for the ozone national ambient air quality standard (NAAQS). Mahoning County, at this time, is designated a nonattainment area. However, there have been no measured violations of the ozone NAAQs from 1982 through 1985.

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defiend as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

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40 CFR Part 52

[FRL–3477–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a relaxation of reasonably available control technology (RACT) for volatile organic compounds (VOC) involving the Paper Products Company (PPC) roll coating line. This facility is located in Hamilton County, Ohio, an area designated as nonattainment for ozone.

USEAP is today proposing to disapprove this SIP because (1) it has not been demonstrated that it is technically or economically infeasible for PPC to meet the RACT limit, and (2) the State has not shown that this variance is consistent with an approvable attainment demonstration for the Cincinnati area.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 16, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On July 16, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a proposed relaxation of RACT for a roll coating line at PPC, located in Hamilton County, Ohio. The roll coating line produces paperboard used in the food industry. The proposed relaxation of RACT includes the following conditions:

1. The source shall not apply more than 10 gallons of coatings in any one day.
2. PPC must keep monthly records for all coating material used by the source.
3. PPC must submit annual reports on source emissions.

The variance contains no limits on emissions or emission rates.

On October 2, 1986, USEPA notified that the July 16, 1986, submittal was deficient (see USEPA's September 15, 1986, technical support document (TSD)). The OEPA has not responded to USEPA's October 2, 1986, letter.

Current VOC SIP

Under the existing federally approved SIP, each roll coating line is subject to the control requirements contained in OAC Rule 3745–21–09(F), and the compliance schedule contained in OAC Rule 3745–21–04(C)(5). These rules require PPC to meet a limit of 2.9 pounds of VOC per gallon of coating, excluding water, by April 1, 1982, USEPA approved these rules as meeting the RACT requirements of the Clean Air Act (CAA) on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 20897).

Deficiencies in the RACT Relaxation

An exemption from the VOC regulations for this source constitutes a site-specific relaxation of RACT (i.e., a source-specific redefinition of RACT). In order for such a relaxation to be approved by USEPA, PPC must demonstrate that compliance with the applicable limit is technically or economically infeasible.

PPC believes that it is technically infeasible to meet the emission limits of 2.9 pounds of VOC per gallon of coating (excluding water) through the use of complying coatings. According to the supplier of the vinyl resin used to formulate the coating used for PPC's paperboard product, it is technically infeasible to formulate a high solids coating using this resin due to solubility constraints. The other available options are waterbased coatings and coatings using an exempt solvent.

Although it may be technically feasible to formulate a complying coating using the vinyl resin and an exempt solvent (methlyene chloride), the manufacturer of the application equipment used by PPC believes that use of this solvent would probably make the existing equipment impossible to use. Therefore, PPC believes the only remaining alternative approach is waterbased coatings. However, any waterbased coating used by PPC for its bakery trays must be approved by the Food and Drug Administration (FDA). According to the resin supplier, there are very few water-based resins and polymers available that are FDA approvable. PPC claims that it is continually testing new water-based coatings as it becomes aware of them; but so far, nothing meets all of the criteria.

USEPA has reviewed this site-specific revision for PPC and determined that the company has not provided any documentation to demonstrate that it has been looking for and testing water-based coatings. In addition, PPC must provide documentation showing either that add-on control is not cost-effective (on an annualized dollars per ton of VOC controlled basis), or that the added cost of such equipment would make it more profitable to shut down the line than to remain operating. A detailed discussion of the extent of an acceptable investigation of the feasibility of meeting a SIP limit using complying coatings or other controls is contained in Appendix A of the proposed rulemaking published on November 9, 1988 at at 53 FR 45285.

Air Quality Considerations

PPC is located in Hamilton County and is part of the Cincinnati ozone demonstration area. The area is designated nonattainment for ozone and currently does not have an approved attainment demonstration.

The OEPA believes that approval of this revision generally will not interfere with attainment or maintenance of the ozone NAAQS due to the small quantity of noncomplying emissions (average of 11.6 kilograms per day in 1985); however, because the variance does not limit PPC to any specific level of emissions, it is not possible to determine the effect of this revision on air quality in the Cincinnati area. This determination would have to be based on the highest emitting coating that could be used.

A State seeking to revise an USEPA approved emission limit for a source in a nonattainment area should demonstrate that the requested revision would not interfere with attainment of the ozone standard by December 31, 1987, or with RFP in the interm. If, as here, the requested revision is an uncompensated relaxation of an emission limit, the State can meet this burden by, among other means, demonstrating that the unrevised SIP provides for a sufficient "cushion" to accommodate the relaxation. In other words, the State could demonstrate that the unrevised SIP provides a greater level of control than is necessary to ensure RFP and timely attainment. The State has not attempted to show that the demonstration of attainment that it submitted for Hamilton County account in this way for this relaxation of the emission limit.

Based upon the above information, USEPA is proposing to disapprove this site-specific SIP revision.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before December 16, 1988, will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Authority: 42 U.S.C. 7401–7642.

VOL 53 ISS 221 NO 16 1988 UMI

Dated: December 31, 1986.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note. This document was received by the Office of the Federal Register November 10, 1988.

[FR Doc. 88-26427 Filed 11-15-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5E3160/P467; FRL-3477-5]

Pesticide Tolerances for Dimethyl Tetrachloroterephthalate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide dimethyl tetrachloroterephthalate and its metabolites (referred to in this document as "DCPA") in or on the raw agricultural crop group *Brassica* (cole) leafy vegetables. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodities within the group was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 5E3160/P467], must be received on or before December 16, 1988.

ADDRESSES: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Programs (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 5E3160 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of Florida.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for combined residues of the herbicide dimethyl tetrachloroterephthalate (DCPA) and its metabolites monomethyl tetrachloroterephthalate (MTP) and tetrachloroterephthalic acid (TPA), all calculated as dimethyl tetrachloroterephthalate, in or on the raw agricultural crop group *Brassica* (cole) leafy vegetables, as defined in 40 CFR 180.34(f)(9)(v)(A), at 5.0 parts per million (ppm).

Tolerances are currently established for residues of the herbicide in or on the following raw agricultural commodities in the crop group *Brassica* (cole) leafy vegetables: Broccoli, Brussels sprouts, cabbage, and cauliflower at 1 ppm; collards and kale at 2 ppm; and mustard greens at 5 ppm. Broccoli, cabbage and mustard greens are the representative commodities of the proposed crop group. With the establishment of the crop group tolerance, tolerances would be established at a uniform level for residues of the herbicide at 5 ppm in or on broccoli, Brussels sprouts, cabbage, cauliflower, collards, kale, and mustard greens and, additionally, in or on the remaining commodities within the crop group including kohlrabi, Chinese broccoli, Chinese cabbage, Chinese mustard cabbage, broccoli raab, and rape greens at 5 ppm. Although the crop group tolerance for residues at 5 ppm will apply to all members of the *Brassica* leafy vegetable crop group for purposes of uniformity, actual residues based on registered use patterns are not expected to exceed existing tolerances already established for the specific commodities listed above. The incremental risk resulting from the proposed use of DCPA on the remaining commodities in the group will not significantly increase dietary risk.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year rat feeding study with a systemic no-observed-effect level (NOEL) of 50 mg/kg/day (1,000 ppm, highest dose tested). The study is not acceptable under persent EPA Guidelines.

2. A 2-year dog feeding study with a NOEL greater than 250 mg/kg (10,000 ppm).

3. A rat teratology study with maternal and fetotoxic NOELs of 2,000 mg/kg/day (highest dose tested).

Data considered desirable but lacking include: a chronic feeding study and a teratology study, each in a second species; oncogenicity studies in two species; a reproduction study; and mutagenicity studies.

DCPA and its metabolites appear to have low acute and chronic toxicity based on the limited studies that have been submitted to support the currently registered pesticide products. However, the Agency's recent evaluation of DCPA raised concerns about the chronic toxicological effects of two manufacturing impurities, hexachlorobenzene (HCB) and 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD). The Agency performed a preliminary risk assessment based on the assumption that the impurities are found in DCPA residues in the same proportion as they are found in the technical product. The agency calculates the potential dietary oncogenic risk from registered uses of DCPA at 2×10^{-6} for HCB and 1×10^{-5} for 2,3,7,8-TCDD.

The provisional acceptable daily intake (PADI), based on the 2-year rat feeding study (NOEL of 50 mg/kg/day, or 1,000 ppm) and using a 100-fold safety factor, is calculated to be 0.5 mg/kg/day. The theorectical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.006574 mg/kg/day; the current action for *Brassica* leafy vegetables will increase dietary exposure by 0.0000012 mg/kg/day, 0.02 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography, is available in the *Pesticide Analytical Manual* (PAM), Vol. II, for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that there are no animal feed items involved, there will be no secondary residues in meat, milk, poultry, or eggs; the tolerance established by amending 40 CFR 180.185 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 5E3160/P4671]. All written comments filed in response to this petition will be available in the Public Document and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 31, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.185(a) is amended by deleting the entries for the commodities broccoli, Brussels sprouts, cabbage, cauliflower, collards, kale, and mustard greens and by adding and alphabetically inserting the entry for the raw agricultural commodity crop group *Brassica* (cole) leafy vegetables, to read as follows:

§ 180.185 Dimethyl tetrachloroterephthalate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Vegetables, leafy, *Brassica* (cole)	5
* * * * *	

[FR Doc. 88-26428 Filed 11-15-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-520, RM-6516]

Radio Broadcasting Services; Woodstock and Broadway, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ruarch Associates licensee of Station WAZR(FM), Channel 240A at Woodstock, Virginia, proposing the substitution of Channel 241B1 for Channel 240A at Woodstock, and the modification of its license to specify operation on the higher class channel, as a first wide coverage are FM service. A site restriction of 23.4 kilometers (14.5 miles) southwest of the community is required. The restricted site coordinates are 38-45-29 and 78-43-36. In addition, in order to accomplish this proposal Channel 226A must be substituted for Channel 238A at Broadway, Virginia.

DATES: Comments must be filed on or before December 29, 1988, and reply comments on or before January 13, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Howard W. Simcox, Jr., Esquire, Borsari & Paxson, 2100 M Street NW., Suite 610, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-520, adopted October, 11, 1988, and released November 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-26465 Filed 11-15-88; 8:45 am]

BILLING CODE 6712-01-M

VOL 53 ISS 221 NOV 16 1988 UMI

Notices

Federal Register
Vol. 53, No. 221
Wednesday, November 16, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 10, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested, (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

• *Farmer's Home Administration*

7 CFR 1980–E, Business and Industrial Loan Program
FmHA 449–2, –4, –22, 1980–68, –70
Recordkeeping; On occasion; Quarterly
State or local governments; Businesses or other for-profit
17,562 responses; 71,693 hours; not applicable under section 3504(h)
Jack Holston (202) 382–9736.

Extension

• *Agricultural Stabilization and Conservation Service*

CFR 1423 Processed Commodities Warehouse Standards
CCC–56, CCC–29, 29–1, 29–2, 29–3; CCC–32, CCC–32–1, 32–2; CCC–560, CCC–55, CCC–513, CCC–56–1, 56–2
On occasion
Business or other for-profit; Small businesses or organizations; 2,528 responses; 2,275 hours; not applicable under section 3504(h)
Barry Klein (202) 447–4647.

New

• *Rural Electrification Administration*

Detail of Investment in Affiliated Companies
REA Form 479d
Annually
Small businesses or organizations; 1,000 responeses; 500 hours; not applicable under section 3504(h)
Monte Heppe, Jr. (202) 382–8530.

Larry K. Roberson,
Action Departmental Clearance Officer.

[FR Doc. 88–26490 Filed 11–15–88; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Establishment of Agricultural Technical Advisory Committee for Trade in Processed Foods

ACTION: Notice.

Notice is hereby given that Secretary of Agriculture, after consultation with the United States Trade Representative, proposes to establish an Agricultural Technical Advisory Committee for Trade in Processed Foods.

The purpose of this committee is to provide advice to the Secretary and the Trade Representative with respect to the trade policy of the United States pursuant to section 135(c) of the Trade Act of 1974 (Pub. L. 93–618), as amended by the Trade Agreements Act of 1979 (Pub. L. 96–39). Meetings of this committee will be open only to members of the committee in accordance with section 135(f)(2) of the Act unless otherwise determined.

The establishment of this committee is in the public interest in connection with the duties of the Department imposed by the Trade Act of 1974, as amended by the Trade Agreements Act of 1979.

Comments may be submitted to Eileen M. Rainey, Assistant to the Administrator for Advisory Committees, Foreign Agricultural Service, U.S. Department of Agriculture, Room 5056 South Building, Washington, DC 20250 until December 1, 1988.

John J. Franke, Jr.,
Assistant Secretary for Administration.

Issued at Washington, DC, this 8th day of November, 1988.

[FR Doc. 88–26414 Filed 11–15–88; 8:45 am]
BILLING CODE 3410–10–M

CIVIL RIGHTS COMMISSION

Nevada Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Nevada Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon on December 2, 1988, at the University of Nevada, Las Vegas, Wright Hall, Gold Room #112, 4505 Maryland Parkway, Las Vegas, Nevada 89154. The purpose of the meeting is to discuss the draft of the Committee's casino employment study and to review data on casino employment collected from the U.S. Equal Employment Opportunity Commission.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth C. Nozero or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five

(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 8, 1988.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 88–26387 Filed 11–15–88; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency.

Title: Minority Vendor Profile System.

Form Number: Agency—MBDA 136; OMB–0640–0002.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 100 respondents; 5,000 reporting hours.

Average Hours Per Response: .5 hours or 30 minutes.

Needs and Uses: This form is used to collect information on minority business capabilities for referral to procurement officials interested in extending contract bidding opportunities to minority firms. Respondents are minority owners of business firms capable of and interested in selling goods and services to government agencies and other businesses.

Affected Public: Businesses or other for-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, 202/377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: November 10, 1988.

Edward Michals,
Department of Clearance Officer, Office of Management and Organization.

[FR Doc. 88–26469 Filed 11–15–88; 8:45 am]
BILLING CODE 3510–CW–M

Export Now Advisory Committee; Open Meeting

A meeting of the Export Now Advisory Committee will be held on January 12, 1989, 10:00 a.m.—1:00 p.m. at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. The meeting will be open to the public with a limited number of seats available. Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting.

The Committee was established by the Secretary of Commerce on February 25, 1988 to advise Department officials on the objectives and conduct of the Export Now Program, including methods of increasing public awareness of the advantages of exporting, improving Federal coordination with state, local and private sector export activities, and implementing programs of education and training to increase the export effectiveness of all segments of the U.S. economy.

The purpose of the meeting is to report on the status of the Export Now Program and to receive advice from the public on the conduct and future implementation of the program. A more specific agenda will be available to the public at the beginning of the meeting.

For further information or copies of the minutes, contact Lew W. Cramer or John Hayes, Export Now Program, Herbert C. Hoover Building, Room 1066, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–2073.

Date: November 10, 1988.

Robert H. Brumley,
General Counsel.

[FR Doc. 88–26447 Filed 11–15–88; 8:45 am]
BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Docket 36–88]

Greater New Haven Chamber of Commerce; Application for Subzone; Miles Pharmaceutical Plant, West Haven, CT

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater New Haven Chamber of Commerce, requesting special-purpose subzone status for the pharmaceutical plant of Miles, Inc., in West Haven, Connecticut. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–91u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 7, 1988. The applicant has an application pending with the Board for a general-purpose foreign-trade zone in North Haven, Connecticut (FTZ Doc. 16–88, 53 FR 9132, 3/21/88).

The Miles plant (51 acres) is located at 400 Morgan Lane in West Haven. The facility employs some 1,500 persons and is used to produce a number of pharmaceutical products such as antibiotics, antifungals, anti-infectives, and beta blockers. Miles sources many of the bulk active ingredients and materials abroad, such as nifdipine, azlocillin, nitrendipine, ciprofloxacin, desonide, diethylstilbestrol ipsapiron, mezocillin sodium, mycospor, niclocide, nimodipine, nisoldipine, praziquantel, biltricide, applicators, and gauze. The foreign material accounts for some 65 percent of direct costs. Some of the products are exported.

Zone procedures would exempt Miles from Customs duty payments on foreign materials used in its exports. On its domestic sales, the company will be able to choose the same duty rate that applies to finished pharmaceutical products. Although the active ingredients have the same duty rate as the finished products under the current tariff schedule, the applicant indicates that under the Harmonized Tariff System, which goes into effect on January 1, 1989, the ingredients will have rates ranging from 7.4 to 81. percent, whereas the end products will have rates of 6.2 or 6.3 percent. The application indicates that zone savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, Massachusetts 02110; and Colonel Thomas A. Rhen, Division Engineer, U.S. Army Engineer Division New England, 420 Trapelo Road, Waltham, Massachusetts 02254.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be

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addressed to the Board's Executive Secretary at the address below and postmarked on or before December 28, 1988.

A copy of the application is available for public inspection at each of the following locations.

Port Director's Office, U.S. Customs Service, Federal Building, 150 Court Street, New Haven, Connecticut 06511

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th and Pennsylvania Avenue NW., Washington, DC 20230

Dated: November 8, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-26472 Filed 11-15-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-583-008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination to Revoke in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative determination to revoke in part.

SUMMARY: In response to requests by the petitioner and two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers four manufacturers/exporters of this merchandise to the United States and the period May 1, 1986 through April 30, 1987. The review indicates the existence of dumping margins for one manufacturer and zero dumping margins for a second manufacturer. Two respondents had no shipments.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value. The Department has tentatively determined to revoke the antidumping duty order with respect to Yieh Hsing. Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 41218) the final results of its last administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The petitioner and two respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review for the period May 1, 1986 through April 30, 1987. We published a notice of initiation of the antidumping duty administrative review on June 19, 1987 (52 FR 23330). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

On July 25, 1988, the petitioner withdrew its request for review with respect to Kao Hsing Chang Iron and Steel Corp., Ltd. The Department has not honored the petitioner's withdrawal of their request since this request was received 404 days after initiation of the review and after the receipt of Kao Hsing Chang's response.

Scope of the Review

Imports covered by the review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inches, and 0.375 inches or more but not over 4.5 inches in outside diameter, which are currently classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243 and 610.3252 of the Tariff Schedules of the United States Annotated ("TSUSA"), and under item 7306.30.50 of the Harmonized Tariff Schedule ("HTS").

The review covers four manufacturers/exporters of certain Taiwan circular welded carbon steel pipes and tubes.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed f.o.b. or c. & f. price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, ocean freight, brokerage and handling charges, warehouse charges, taxes not collected by reason of the exportation to the United States, and duty drawback. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value for Yieh Hsing Enterprise Co., Ltd., the Department used home market sales, as defined in section 773 of the Tariff Act, since there were sufficient sales of such or similar merchandise in the home market. We used constructed value, as defined in section 773 of the Tariff Act, as the basis for calculating foreign market value for An Mau Steel Co., Ltd., since there were no sales of such or similar merchandise in the home market or to third countries.

Home market price was based on the packed delivered price to unrelated customers in the home market. Where applicable, we made adjustments for inland freight, and differences in the credit expenses and the physical characteristics of the merchandise. No other adjustments were claimed or allowed.

We calculated constructed value as the sum of materials and fabrication costs, general expenses, profit, and the cost of packing. Since An Mau's actual general expenses were less than ten percent of the sum of materials and fabrication costs, we used the ten percent statutory minimum for general expenses, as provided by section 773 of the Tariff Act. We examined the industry profit rate since An Mau does not sell the same general class or kind of merchandise in the home market or to third countries. Since that profit rate less than eight percent of the sum of materials costs, fabrication costs, and general expenses, we used the eight percent statutory minimum, as provided by section 773 of the Tariff Act.

Preliminary Results of the Review and Tentative Determination to Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/ exporter	Time period	Weighted-average margin (percent)
An Mau Steel	05/01/86-04/30/87	0.89
Far East Machinery	05/01/86-04/30/87	[1] 0.00
Kao Hsing Chang Iron and Steel	05/01/86-04/30/87	[1] 0.00

Manufacturer/ exporter	Time period	Weighted-average margin (percent)
Yieh Hsing Enterprise	05/01/86-04/30/87	0.00

[1] No shipments during the review period; margin from last review in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above for An Mau. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by 19 CFR 353.48(b), a cash deposit of estimated antidumping duties based on the above margin shall be required for An Mau. Because there was no margin for Yieh Hsing, Far East Machinery, and Kao Hsing Chang Iron and Steel, no cash deposit shall be required for those companies. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after April 30, 1987 and who is unrelated to any reviewed firm, a cash deposit of .89 percent shall be required. These deposit requirements are effective for all shipments of certain Taiwanese circular welded carbon steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Yieh Hsing has requested partial revocation of the order and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement of the order under circumstances specified in the written agreement. Yieh Hsing has had no sales at less than fair value for two years. Therefore, we tentatively determine to revoke in part the order on certain circular welded carbon steel pipes and tubes from Taiwan with respect to Yieh Hsing. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured by Yieh Hsing and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1) and (c)) and 19 CFR 353.53a and 353.54.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: November 8, 1988.

[FR Doc. 88-26470 Filed 11-15-88; 8:45 am]

BILLING CODE 3510-DC-M

[C-357-052]

Non-Rubber Footwear From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 27, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on non-rubber footwear from Argentina. We have now completed that review and determine the total bounty or grant during the period January 1, 1986 through December 31, 1986 to be zero for 24 firms 3.13 percent *ad valorem* for all other firms.

EFFECTIVE DATE: November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 15094) the preliminary results of its administrative review of the countervailing duty order on non-rubber footwear from Argentina (44 FR 3474, January 17, 1979). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Argentine footwear described in Part 1A of Schedule 7 of the Tariff Schedules of the United States Annotated, excluding items 700.5100 through 700.5400, 700.5700 through 700.7100, and 700.9000. These produces are currently classifiable under the Harmonized Tariff Schedule (HTS) item number listed in the Appendix to this notice.

The review covers the period January 1, 1986 through December 31, 1986 and three programs: (1) A rebate of indirect taxes; (2) post-export financing; and (3) pre-export financing.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Argentine Footwear Industry Federation ("the Federation").

Comment 1: The Federation argues that the appropriate benchmark for measuring the benefits from pre- and post-export financing is the yearly average of only the regulated interest rates, not the average of both the regulated and the unregulated rates. The Federation points out that, according to the Subsidies Appendix (49 FR 18016) (1984), the Department's practice of using a national average commercial interest rate to measure the benefit from short-term preferential loan programs was adopted to avoid the administrative burden of having to compute company-specific benchmarks. The Federation maintains that it is not requesting the Department to use company-specific benchmarks. Rather, because non-rubber footwear producers provided evidence that they were able to secure standard commercial loans at the regulated interest rates, it is asking the Department to compute the benchmark using only those interest rates that were available to the specific exporters covered by this review.

Department's Position: We disagree. The benchmark rate should reflect the predominant alternative sources of short-term financing available to an average firm in Argentina. Since unregulated interest rate loans make up a significant portion of the lending in Argentina, it is appropriate to include them in the national average

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benchmark. (*See Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Review* (53 FR 846, January 9, 1987); and *Roses and Other Cut Flowers from Colombia: Final Results of Countervailing Duty Administrative Review* (52 FR 248, December 28, 1987).)

Comment 2: The Federation requests that the Department correct certain clerical errors in its calculations of the benefits from the pre- and post-export financing programs in the preliminary results.

Department's Position: With regard to Mocassino, we have revised our calculations in those instances where we used the incorrect loan value to determine the pre-export financing benefit. We have also weight-averaged Cerro's pre-export financing benefits based on its non-rubber footwear exports to the United States.

In our preliminary results, we based our benchmark rate on a six-month average of the regulated and unregulated interest rates because the level of pre- and post-export lending to most of the footwear producers was disproportionately spread between the first and second half of the year. Since the monthly regulated and unregulated rates did not vary greatly during the review period, we have now used a yearly average benchmark. (*See Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Certain Welded Carbon Steel Pipe and Tube Products from Argentina*, (53 FR 37619, September 27, 1988).)

Adjusting for all these changes, we determine the benefit to be 2.57 percent *ad valorem* for pre-export financing and 0.56 percent *ad valorem* for post-export financing.

Comment 3: The Federation argues that the Department should grant a zero duty deposit rate to new companies that did not export to the United States during the period of review. The new exporters have individually certified that they have not received, and will not apply for, either pre- or post-export financing, the two programs preliminarily found countervailable by the Department in this review. Similarly, the Department should grant a zero duty deposit to three companies found to have received benefits during the review period that have also certified they will not receive either pre- or post-export financing in the future.

Department's Position: Generally, to be considered for a zero rate for purposes of cash deposit of estimated coutervailing duties, a company must have exported during the review period. If a company has not exported during the review period, we have no "track record" on which to rely in determining the appropriate cash deposit rate. Therefore, until the new companies demonstrate otherwise, the "all other" rate is our best estimate of the countervailable benefits received by these companies. This has long been our practice, not only for new companies, but also for all unknown exporters. (*See e.g., Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review* (52 FR 45010, November 24, 1987); *cf. Asahi Chemical Industry Co. v. United States*, 548 F. Supp. 1261, 1267 (Ct. Int'l Trade 1982) (*Asahi*), holding reasonable the Department's use of most recent price and value information to establish margins when there were no entries during the period of review.)

Our policy regarding the companies that did export during the review period is to set a cash deposit rate that reflects our best estimate of the current benefit that those companies receive from countervailable programs. We normally change the cash deposit rate if a program-wide change has occurred before the publication of our preliminary results, or if some other change has occurred that we are able to verify before publishing the preliminary results. In this case, neither has occurred with respect to the new companies or the companies found to have received benefits during the period of review. Therefore, we conclude that the cash deposit rate should be the same as the assessment rate for all companies.

Comment 4: The Federation contends that the cash deposit requirements of the Commerce Regulations do not apply to new exporters because new exporters were not subject to an administrative review. Therefore, it is not logical for the Department to assign the "all other" rate to new exporters. If the Department believes it must set a cash deposit rate for new exporters, it should base that rate on any relevant facts collected during the review, including the renunciation certifications. In this way, the duty deposit rate will realistically correspond to the established facts.

Department's Position: We disagree with the Federation's contention that the cash deposit rate set in an administrative review does not apply to new exporters. Section 701 of the Tariff Act provides for the imposition of countervailing duties on *all* merchandise imported into the United States, the production or exportation of which receives a subsidy. Consequently, in an administrative review, we review exports of all merchandise except exports of merchandise from companies that have been excluded. We cannot exclude a company from a countervailing duty order once the order is issued. Requests for company exclusions must be submitted within 30 days of publication of a ntoice to initiate an investigation, and the decision as to the exclusion must be made in the Department's final determination (19 CFR 355.38). No company has been excluded from this order. All Argentine firms exporting non-rubber footwear to the United States are subject to the results of this review, including the new exporting firms. Consequently, the "all other" rate for duty deposit purposes applies to the merchandise exported to the United States by all firms, whether or not the firms exported during the period of review. (*Cf. Asahi.*)

Comment 5: The Federation claims that the Department's selection of the "all other" rate as the duty deposit rate for the new exporters is arbitrary and capricious. Since the Trade and Tariff Act of 1984 provides for the automatic assessment of countervailing duties in the amount of the estimated duty required at the time of entry, the duty deposit rate could become the final assessed countervailing duty rate if a review is not requested. The countervailing duties actually assessed on current entries by the new exporters could reflect a "benefit" that bears no relation whatsoever to reality.

Due process is denied the new exporters if the duty deposits required for 1988 and 1989 entries are based on outdated or erroneous information for 1986.

Department's Position: We disagree with the Federation's claim that our selection of the "all other" rate as the duty deposit rate for new exporters is arbitrary and capricious. (*See* our positions on Comments 3 and 4.) The Federation has the opportunity in January 1989 to request a review of 1988 entries, and in January 1990, of 1989 entries. If we receive review requests for those years, we will collect updated information. Whether we conduct reviews or follow the automatic liquidation procedure, we believe that due process is fully served.

Final Results of Review

After considering all of the comments received, we determine the total bounty or grant to be zero for the 24 firms listed below and 3.13 percent *ad valorem* for all other firms for the period January 1, 1986 through December 31, 1986.

The following firms received no benefits during the period of review:

1. Alarsu S.A.
2. Alikon
3. Alpargatas S.A.I.C.
4. Armeny S.A.
5. Balassi E Hijos S.A.
6. Bartolome Blengio y Cia
7. Bonsoir S.R.L.
8. Borcal S.A.
9. Camboriu S.R.I.
10. Casa Corazon Cueros S.R.L.
11. Costa S.A.
12. Creaciones Ketal S.R.L.
13. Dinor S.A.
14. E-Meu S.R.L.
15. Fabrica De Calzado M.B. S.A.
16. Jose Cabrabs E Hijos
17. Jose Gravagna S.A.
18. La Scarpa S.A.
19. Linea Vanguard S.A.
20. Macri Calz S.A.
21. Mocasineria Morganti S.R.L.
22. Orlando Asan
23. Pell-Cuer S.R.L.
24. Vogue Shoes S.R.L.

The Department therefore will instruct the Customs Service to liquidate, without regard to countervailing duties, entries of this merchandise from the 24 firms listed above and to assess countervailing duties of 3.13 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms exported on or after January 1, 1986 and on or before December 31, 1986.

Further, as provided by section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise from the 24 firms listed above and to collect a cash deposit of estimated countervailing duties of 3.13 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: November 8, 1988.

Appendix—Non-Rubber Footwear HTS Classifications

6115.91.00.00	6115.93.20.00
6209.90.40.00	6401.92.30.00
6401.92.60.00	6401.99.80.00
6402.11.00.00	6402.19.10.00
6402.19.50.00	6402.30.30.00
6402.30.50.00	6402.91.40.00
6402.91.50.00	6402.99.05.00
6402.99.10.00	6402.99.15.00
6402.99.70.00	6402.99.80.00
6403.11.30.00	6403.11.60.00
6403.19.15.00	6403.19.45.00
6403.19.60.00	6403.20.00.00
6403.30.00.00	6403.40.30.00
6403.40.60.00	6403.51.30.00
6403.51.60.00	6403.51.0.00
6403.59.15.00	6403.59.30.00
6403.59.60.00	6403.59.90.00
6403.91.30.00	6403.91.60.00
6403.91.90.00	6403.99.20.00
6403.99.40.00	6403.99.60.00
6403.99.75.00	6403.99.90.00
6404.11.20.00	6404.19.15.00
6404.19.20.00	6404.19.25.00
6404.19.30.00	6404.19.35.00
6404.19.509.00	6404.19.60.00 [1]
6404.19.70.00 [1]	6404.19.35.00
6404.19.50.00	6404.19.60.00
6404.19.70.00	6404.20.20.00
6404.20.40.00	6404.20.60.00
6405.10.00.00	6405.20.30.00
6405.20.60.00	6405.20.90.00
6405.90.90.00	6406.10.05.00
6406.10.10.00	6406.10.20.00
6406.10.45.00	6812.50.10.00
9021.19.80.00	

[FR Doc. 88-26471 Filed 11-15-88; 8:45 am]

BILLING CODE 3510-DS-M

Caribbean Basin Business Promotion Council; Open Meetings

AGENCIES: International Trade Administration and the Office of the U.S. Trade Representative.

SUMMARY: This is the fourth meeting of the Caribbean Basin Business Promotion Council (Council). The Council consists of 30 private sector members and nine U.S. Government representatives. The Council was established to advise the Secretary of Commerce on matters pertinent to implementation of the Caribbean Basin Initiative (CBI). The Council's advice will also be forwarded to the interagency CBI Task Force.

Prior to the meeting of the full Council, there will be an open meeting of the 936 Subcommittee which consists of several members of the Caribbean Business Promotion Council.

Time and Place: The 936 Subcommittee will meet at 1:00 p.m. on Tuesday, November 29, 1988 in the Escorial Room of the Intercontinental Hotel, 100 Chopin Plaza, Miami, Florida. Immediately following that meeting, the entire Caribbean Basin Business Promotion Council will meet from 2:00 p.m. to approximately 5:00 p.m. on Tuesday, November 29, 1988 in the Escorial Room of the Intercontinental Hotal, 100 Chopin Plaza, Miami, Florida.

[1] Except footwear which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics.

Proposed Agenda—936 Subcommittee

A discussion of Puerto Rico's Caribbean Development (936) Program, methods by which the Council can further promote the program, and ways to support its continued implementation.

Proposed Agenda—Caribbean Basin Business Promotion Council

Members' country visits reports and a general discussion on identifying Council's goals for 1989.

Public Participation: The meetings will be open to public participation and a period will be set aside for oral comments or questions. Any member of the public may submit written comments concerning the Subcommittee and Council's affairs at any time before or after the meetings. Limited seating is available to the public.

FOR FURTHER INFORMATION CONTACT: Paul D. Bucher, Caribbean Basin Information Center, U.S. Department of Commerce, Main Commerce Building, Room 3203, Washington, DC 20230. Telephone (202) 377-0703. Copies of the minutes of the Council's meetings will also be available at the above office 30 days after the meetings.

Date: November 10, 1988.

Gordon Studebaker,

Director, CBI Center.

[FR Doc. 88-26468 Filed 11-15-88; 8:45 am]

BILLING CODE 3510-FP-M

Applications for Duty-Free Entry of Scientific Instruments; Louisiana State University and A&M College et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

Docket No.: 88-211. *Applicant:* Louisiana State University and A&M College, Department of Biochemistry, 314 A.R. Choppin Hall, Baton Rouge, LA 70803. *Instrument:* 252-CF-Plasma Desorption T-O-F Mass Spectrometer,

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Model BIN–20K. *Manufacturer:* Bio-Ion Nordic AB, Sweden. *Intended Use:* The instrument will be used to examine carbohydrates and peptides in the mass range of 1000 to 15 000 for mass estimation. In addition, the instrument will be used for instructing graduate students and postdoctoral fellows in its use. *Application Received by Commissioner of Customs:* May 17, 1988.

Docket No.: 88–311. *Applicant:* Vanderbilt University Medical Center, 1161 21st Avenue South, Nashville, TN 37232. *Instrument:* Two (2) Radioisotope Hot Cells. *Manufacturer:* Von Gahlen International, Inc., The Netherlands. *Intended Use:* The instrument will be used to determine the clinical utility of the diagnostic imaging modality known as Positron Emission Tomography (PET). The PET process concentrates on biochemical and metabolic processes to characterize normal and abnormal cellular activity. This type of analysis may enable more precise determination of the extent and type of brain tumor and tissue blood flow and energy metabolism within the heart. The objectives of the investigations will be to determine the instrument's potential as a diagnostic tool in the following areas of medicine: brain tumors, coronary artery disease, epilepsy, dementia (Alzheimer's disease), and trauma. *Application Received by Commissioner of Customs:* September 29, 1988.

Docket No.: 89–001. *Applicant:* The University of Texas at Austin, Department of Chemistry, Welch Hall, 26th & Speedway, Austin, TX 78712. *Instrument:* Mass Spectrometer, Model VG ZAB–2E. Manufacturer: VG Instruments, United Kingdom. *Intended Use:* The instrument will be used to determine the molecular weight and chemical structure for inorganic and organic compounds with masses in range up to and in excess of 10 000 dalton. *Application Received by Commissioner of Customs:* October 3, 1988.

Docket No.: 89–002. *Applicant:* The Johns Hopkins University, 3400 N. Charles Street, Baltimore, MD 21218. *Instrument:* Rapid Kinetics Instrument, SFM 3/PC. *Manufacturer:* Biologic Co., France. *Intended Use:* The instrument will be used for determining kinetics of protein association and dissociation by subunits of human hemoglobin, and for reactions with other molecules. The objectives of these studies are to understand basic mechanisms that will lead to the design of artificial blood substitutes that could be used in civilian disasters, blood banking deficits or military defense. *Application Received by Commissioner of Customs:* October 12, 1988.

Docket No.: 89–003. *Applicant:* The Catholic University of America, 620 Michigan Avenue, NE., Washington, DC 20064. *Instrument:* DMDP High Resolution Spectrometer, Model 2000 with Accessories. *Manufacturer:* SOPRA, France. *Intended Use:* The instrument will be used for a wide range of studies including collision-induced Rayleigh light scattering spectra studies to determine the structural relaxation times in liquids composed of complex molecules, and raman spectra very close to the exciting line will be studied in solutions containing DNA to discover if the prediction of low lying resonances in DNA is true. The instrument will also be used in the training of graduate students in physics, chemistry and biology. *Application Received by Commissioner of Customs:* October 12, 1988.

Docket No.: 89–004. *Applicant:* North Shore University Hospital, 300 Community Drive, Manhasset, NY 11030. *Instrument:* Electron Microscope, Model JEM 100CX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used in the following research projects:

1. Studies on diabetic glomerular disease in an animal model.

2. Stereological analysis of monocytes in leukemic patients and normal individuals.

3. Studies on intestinal structure, fluid transport and malnutrition.

The objectives of thes studies will be to evaluate quantitative structural alterations in absorptive epithelial cells that may play a role in the mechanism of the fluid transport inhibition, to investigate the role of vesicle mediated exchanges in intestinal fluid transport regulation by determining the extent of endocytosis utilizing extracellular tracers, to determine the effect of malnutrition on structural alterations occurring during fluid transport alterations. In addition, the instruments will be used for post-graduate training of Anatomic Pathology medical residents and M.D. Fellows in laboratory research. *Application Received by Commissioner of Customs:* October 19, 1988.

Docket No.: 89–005. *Applicant:* Florida Department of Business Regulation, Division of Pari Mutuel Wagering, Bureau of Laboratory Services, 725 South Bronough Street, Tallahassee, FL 32399–1039. GC/Mass Spectrometer/DS, MAT 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* The instrument will be used to develop new methodology to determine whether any drugs or medication are present in the body fluids of racing animals and to develop and validate new methodology in order to detect and positively identify micro-quantities of drugs or medications present in the body fluids of animals. Compounds of interest will include synthetic drugs and those of bio-organic origin (e.g., steroids). A great deal of effort will be spent attempting to identify unknown compounds and drugs from confiscated items such as hypodermic needles or syringes, in which only a drop of thin film of drug remains in the barrel or needle. *Application Received by Commissioner of Customs:* October 19, 1988.

Docket No.: 89–006. *Applicant:* Louisiana State University Medical Center, School of Medicine in Shreveport, Department of Anatomy, P.O. Box 33932/1501 Kings Highway, Shreveport, LA 71130–3932. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for a wide range of research projects which include but are not limited to the following:

(1) Identification of the various subtypes of T-lymphocytes in the mammary gland during pregnancy and lactation.

(2) Identification of the mechanism of tranist of leukocytes through epithelia.

(3) Experiments designed to ascertain transferrin localization in erythroid cells during the critical period in which iron is being released from transferrin.

(4) Studies of vascular smooth muscle and peripheral nerve ultrastructure.

(5) Visualization of the membranes of the epithelial cells and bacteria as they translocate the gut membranes.

(6) Research to delineate the three-dimensional arrangement of cytoskeletal elements in the supranuclear Golgi region of the goblet cell.

In addition, the instrument will be used by students in the anatomy Graduate Program to conduct various research projects. *Application Received by Commissioner of Customs:* October 20, 1988.

Docket No.: 89–007. State University of New York at Albany, 1400 Washington Avenue, Albany, NY 12222. *Instrument:* Cryo-Stop-Flow Spectrofluorimeter, Model SF–41. *Manufacturer:* Hi-Tech, United Kingdom. *Intended Use:* The instrument will be used for detailed studies of the reversible binding and activating characteristics of copper(I) compounds containing organic polyamine organic ligands. These include studies to determine oxygen affinities and carbon monoxide affinities, i.e., thermodynamic parameters (by temperature dependent studies), rates (kinetics) of oxygen binding, detailed mechanisms of the binding process as a function of the particular materials (compound), ability to oxidize organic compounds and mechanism of such processes. *Application Received by Commissioner of Customs:* October 20, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–26473 Filed 11–15–88; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications; Tennessee

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $216,776 for the project performance of 04/1/89 to 03/31/90. The MBDC will operate in the Memphis, Tennessee, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $184,260 in Federal Funds and a minimum of $32,516 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying. The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications December 14, 1988. Applications must be postmarked on or before December 14, 1988.

ADDRESS: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Suite 505, Atlanta, Georgia 30309, 404/347–3438.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of The Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Note.—A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Tuesday, November 29, 1988, at 10:00 a.m.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 88–26406 Filed 11–15–88; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the German Democratic Republic, East Germany

November 10, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and the German Democratic Republic is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedules of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements

Committee For The Implementation of Textile Agreements

November 10, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton Textile Agreement, effected by exchange of notes dated December 10, 1986 and February 27, 1987, between the Governments of the United States and the German Democratic Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 334, produced or manufactured in Germany and exported during the twelve-month period beginning on

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January 1, 1989 and extending through December 31, 1989, in excess of 19,500 dozen.

Imports charged to the category limit for the period January 1, 1988 through December 31, 1988 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The restraint limit set forth above is subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Democratic Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-26455 Filed 11-15-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

November 10, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral agreement between the Governments of the United States and the Arab Republic of Egypt is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Catergories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

November 10, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and the Arrangement Regarding International Trade in Textiles done in Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated December 7 and 28, 1977, as amended and extended, between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
218-220, 224-227, 313-317 and 326, as a group	56,683,000 square meters equivalent.
Sublevels in the group:	
218	2,508,000 square meters.
219	14,421,000 square meters.
220	14,421,000 square meters.
224	14,421,000 square meters.
225	14,421,000 square meters.
226	14,421,000 square meters.
227	14,421,000 square meters.
313	23,073,600 square meters.
314	14,421,000 square meters.
315	14,421,000 square meters.
317	14,421,000 square meters.
326	2,508,000 square meters.
Limits not in a group:	
300/301	5,315,253 kilograms of which not more than 788,587 kilograms shall be in Category 301.
339	536,230 dozen.

Imports charged to the category limits for the period January 1, 1988 through December 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Arab Republic of Egypt.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-26454 Filed 11-15-88; 8:45 am]

BILLING CODE 3510-DP-M

Amendment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Uruguay

November 10, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending limits.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: Based upon the implementation of the Harmonized Commodity Code on January 1, 1989, the current limits for Categories 433, 435 and 442 are being amended.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 24121, published on June 27, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 22, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and wool textile products, produced or manufactured in Uruguay and exported during the period July 1, 1988 through June 30, 1989.

Effective on January 1, 1989, the limits for wool textile products in the following categories are being increased:

Category	Amended twelve-month restraint limit [1] (dozen)
433	15,487
435	45,172
442	29,560

[1] The limits have not been adjusted to account for any imports exported after June 30,1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-26456 Filed 11-15-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Military/Industry Mobile Homes Symposium; Open Meeting

Announcement is made of meeting of the Military/Industry Mobile Homes Symposium. This meeting will be held on November 28, 1988 at Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda

The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation, DOD 4500.34-R, and the handling of other matters of mutual interest concerning the Department of Defense Personnal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before November 18, 1988.

Dated: October 31, 1988.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer for the Federal Register.

[FR Doc. 88-26416 Filed 11-15-88; 8:45 am]

BILLING CODE 3710-08-M

U.S. Army Laboratory Command; Availability of a High-Q Stress-Compensated Crystal Device for Exclusive Licensing

In accordance with 37 CFR 404.7, announcement is made of the availability of a high-Q stress-compensated crystal device for exclusive licensing. An inventor at the U.S. Army Electronics Technology and Devices Laboratory (USAETDL) has been granted a patent on a new type of quartz crystal resonator. The rights to the resonator belong to the United States Government.

In addition to the desirable properties of temperature and stress compensation exhibited by the well known SC-cut, this new resonator (provisionally designated the SK-cut) is designated to have the highest possible Q for a quartz crystal resonator, almost double that of the SC-cut. Such an improvement in Q implies the potential for over 20dB reduction in close-in phase noise with this device. Laboratory tests of prototype resonators have been completed.

Under the authority of section 11 (a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of Title 35, United States Code, the Department of the Army as represented by USAETDL wishes to exclusively license rights to the new resonator to a party interested in manufacturing and selling the resonator.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Kosinski, U.S. Army Electronics Technology and Devices Laboratory, ATTN: SLCET-MA, Fort Monmouth, NJ 07703-5000; (201) 544-2843

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-26389 Filed 11-15-88; 8:45 am]

BILLING CODE 3710-08-M

U.S. Army Laboratory Command; Availability of a Method of Making a Low Aging Piezoelectric Resonator for Exclusive Licensing

In accordance with 37 CFR 404.7, announcement is made of the availability of a method of making a low aging piezoelectric resonator for exclusive licensing. An inventor at the U.S. Army Electronics Technology and Devices Laboratory (USAETDL) has been granted a patent on a technique for reducing contaimination transfer within the enclosure of a precision resonator. The rights to the technique belong to the United States Government.

The new technique involves appropriate application of a d.c. electric field to the resonator and package in order to reduce unwanted transfer of residual contaminants within the resonator enclosure. The technique may readily be applied to existing package types.

Under the authority of section 11 (a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of Title 35, United States Code, the Department of the Army as represented by USAETDL wishes to exclusively license rights to the new method to a party interested in employing the method in the manufacture and sale of piezoelectric resonators.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Kosinski, U.S. Army Electronics Technology and Devices Laboratory, ATTN: SLCET-MA, Fort Monmouth, NJ 07703-5000; (201) 544-2843

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-26388 Filed 11-15-88; 8:45 am]

BILLING CODE 3710-08-M

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.117E]

Notice Inviting Applications for New Awards for Field-Initiated Studies Under the Educational Research Grant Program for Fiscal Year 1989

Purpose: To support field-initiated studies designed to advance educational theory and practice.

Weighting for Selection Criteria: The program regulations at 34 CFR 700.20(b)(4) authorize the Secretary to distribute an additional 25 points among the criteria described in the regulations at § 700.22 to bring the total to a maximum of 100 points. The Secretary will distribute the reserved 25 points as follows: 15 additional points to the criterion at § 700.22(f) (Significance), bringing the total for this criterion to 30 points; and 10 additional points to the criterion at § 700.22(g) (Technical soundness), bringing the total for this criterion to 25 points.

Deadline for Transmittal of Applications: March 3, 1989

Applications Available: December 2, 1988

Available Funds: $500,000

Estimated Range of Awards: $30,000 to $70,000

Estimated Average Size of Awards: $50,000

Estimated Number of Awards: 10

Project Period: 12 to 18 months

Applicable Regulations: (a) The regulations for the Educational Research Grant Program, 34 CFR Part 700. Final regulations for this program were published in the **Federal Register** on July 18, 1988 (53 FR 27108). (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Ms. Delores Monroe, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Washington, DC 20208–5646. Telephone Number (202) 357–6223.

Program Authority: 20 U.S.C. 1221e.

Dated: November 10, 1988.

Patricia M. Hines,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–26506 Filed 11–15–88; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Educational Research and Improvement; Meeting, Education

AGENCY: National Advisory Council on Educational Research and Improvement.

ACTION: Full council meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: December 8 and 9, 1988.

ADDRESS: The Council will meet on December 8 from 10:30 a.m. to 4 p.m. at the President's Room of the University of Miami Faculty Club, 1550 Brescia Avenue, Coral Gables, Florida 33124. The Council will continue its meeting in the same location from 9 a.m. to 3:30 p.m. on December 9.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street SW., Room 4076, Washington, DC 20202–7579, (202) 732–1205.

SUPPLEMENTARY INFORMATION: The Council is authorized by section 405 of the 1972 Education Amendments, Pub. L. 92–318, as amended by the Higher Education Amendments of 1986 (Pub. L. 99–498, 20 U.S.C. 1221e). The Council advises the President, the Secretary of Education, and the Congress on policies and activities carried out by the Office of Educational Research and Improvement.

Meetings of the Council are open to the public. The agenda for December 8 includes briefings on the initiatives undertaken by the Dade County School System to assist students at risk and to prevent dropping out, and reports on efforts to prevent drug abuse and illiteracy. On December 9 members will discuss character education, academic and career counseling and issues in bilingual education.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street SW., Room 4076, Washington, DC 20202–7579, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Dated: November 10, 1988.

Mary Grace Lucier,

Executive Director.

[FR Doc. 88–26444 Filed 11–15–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

National Petroleum Council; Open meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council.

Date and Time: December 13, 1988, 9 a.m.

Place: The Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order by Edwin L. Cox, Chairman, National Petroleum Council.

—Remarks by the Honorable John S. Herrington, Secretary of Energy.

—Report of the NPC Committee on Petroleum Storage and Transportation.

—Consideration of administrative matters.

—Discussion of any other business properly brought before the National Petroleum Council.

—Public comment (10-minute rule).

—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 9, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–26496 Filed 11–15–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–45–NG]

Consolidated Fuel Corp.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada and Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import and export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Consolidated Fuel Corporation (Consolidated) blanket authorization to import and export natural gas from and to Canada and Mexico. The order issued in ERA Docket No. 88–45–NG authorizes Consolidated to import and export up to a total of 100 Bcf of natural gas from and to Canada and Mexico, over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 8, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–26497 Filed 11–15–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3476–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Operations and Maintenance Excellence Awards Program Questionnaire (EPA ICR # 1287).

Abstract: This program awards publicly owned treatment works (POTWs) for outstanding operation and maintenance of their plants. POTWs submit questionnaires only if they would like to be considered for an award. An EPA panel selects award-winners based on established criteria. States review questionnaires before forwarding them to EPA.

Burden Statement: The estimated public reporting burden for this collection of information is 2 hours per POTW and 3.2 hours per State each year. This estimate includes the time to read instructions, gather necessary data, and complete and review the questionnaires.

Respondents: States and PTOWs.

Estimated No. of Respondents: 320.

Estimated Total Annual Burden on Respondents: 640 hours.

Frequency of Collection: 1 response per year.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 1221; Milk Cow and Population Survey; was approved 10/19/88; OMB # 2080–0017; expires 10/31/91.

EPA ICR # 1230.04; New Source Review and Prevention of Significant Deterioration Permitting Programs; was approved 10/13/88; OMB # 2060–0003; expires 8/31/89.

EPA ICR # 0824.04; Ocean Dumping Regulation—Reports and Recordkeeping to Obtain Permit, Request Designation, and Report on Permitted Dumping Activities; was approved 10/11/88; OMB # 2040–0008, expires 10/31/91.

EPA ICR # 0002.03; General Pretreatment Regulations For Existing And New Sources; was approved 10/11/88; OMB # 2040–0009, expires 4/30/90.

EPA ICR # 0801; Uniform Hazardous Waste Manifest For Generators, Transporters, and Disposal Facilities; was approved 10/14/88; OMB # 2050–0039, expires 12/31/88.

EPA ICR # 1473; Health Significance of Bacteria Found In Point-Of-Entry Granular Activated Filters; was approved 10/25/88; OBM #2080–0034; expires 3/31/90.

Date: November 2, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88–26429 Filed 11–15–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3475–3]

Chetco River, OR; Ocean Dredged Material Disposal Site; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental protection Agency (EPA), Region 10.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the final designation of an interim Ocean Dredged Material Disposal Site (ODMDS) located off the Chetco River, Oregon.

PURPOSE: The U.S. EPA, Region 10, in accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), and with the cooperation of the U.S. Army Corps of Engineers, Portland District, will prepare a draft EIS on the designation of an ODMDS off the Chetco River, Oregon. The EIS will provide the information necessary to designate an ODMDS. This Notice of Intent is issued pursuant to section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1977, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Mr. John Malek, Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue WD–138, Seattle, Washington, 98101–3188. Phone (206) 442–1286. Questions regarding

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disposal site studies may also be directed to: Mr. Rudd Turner, U.S. Army Engineer District, Planning Division, P.O. Box 2946, Portland, Oregon 97208–2946, Phone (503) 221–6463.

SUMMARY: The Chetco River navigation channel requires periodic maintenance dredging to ensure safe navigation. Disposal of dredged sediments at an interim designated ODMDS has occurred in the past. Studies to support final site designation were conducted by the Corps of Engineers, Portland District, and coordinated with EPA, Region 10. Designation of a final ODMDS site at this location will provide a feasible and environmentally acceptable disposal site for present and anticipated future maintenance work in the area.

Need for Action

The Corps of Engineers, Portland District, has requested that EPA designate an ODMDS offshore the Chetco River, Oregon, for disposal of sediments dredged to maintain the federally authorized navigation project and for disposal of materials during other actions authorized in accordance with section 103 of the MPRSA. EPA has voluntarily committed to prepare EISs in conjunction with ocean dumping site designations. This EIS will provide the necessary information to evaluate alternatives and designate a preferred ODMDS.

Alternatives

1. No action: The no action alternative is defined as not designating an ocean disposal site and termination of ocean disposal for this area.

2. Alternative disposal options in the nearshore, mid-shelf, and shelf break region of the Pacific Ocean, and on the uplands.

Scoping

A scoping meeting is not contemplated. Scoping will be accomplished with affected federal, state, and local agencies, and with interested parties by correspondence, telephone contract, etc.

Estimated Date of Release

The draft EIS will be available in Spring 1989.

Responsible Official

Gary L. O'Neal for Robie G. Russell, Regional Administrator, Region 10.

Dated: November 8, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88–26419 Filed 11–15–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3477–2]

National Drinking Water Advisory Council; Open Meeting

Under section (10)(a)(2) of Pub. L. 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (Pub. L. 99–339), will be held at 9:00 a.m. on December 1, 1988, and at 8:30 a.m. on December 2, 1988, at the St. James Hotel, 650 24th Street, NW., Washington, DC, in the St. James Room. Council Subcommittees will hold meetings on November 29 and 30, 1988.

The main purpose of this meeting is to update the Council on the status of and comments received on the Proposed Primary Enforcement Responsibility Regulation and the Proposed Lead and Copper Regulation. The Council will receive a briefing on the Draft Primary Drinking Water Regulations for Radionuclides, Synthetic Organic Chemicals and Inorganic Chemicals (Phase II), and Disinfection/Disinfection By-Products. The Council will also hear a panel discussion on the cost implications of Agency regulations on the water supply community.

This meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382–2295. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before November 28, 1988.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after a meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, Office of Drinking Water (WH–550A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The telephone number is: Area Code 202/382–2285.

James R. Elder,

Acting Assistant Administrator for Water.

Date: November 9, 1988.

[FR Doc. 88–26430 Filed 11–15–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–240083; FRL–3477–6]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 32 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT:

Owen F. Beeder, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 410 M Street SW., Washington, DC.

Office location and telephone number: Rm. 716A, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–7893.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in July and August of 1988. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant change include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application,

terrestial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 88 0004. Ciba-Geigy Corp., Agriculture Div. Registration is for Triumph 4E Insecticide to be used on golf courses and sod farms to control white grubs, mole crickets, and billbugs. July 13, 1988.

Arizona

EPA SLN No. AZ 88 0019. Hopkins Agricultural Chemical Co. Registration is for Ramik Green to be used on levee and ditch banks, around farm buildings, along fence lines, in orchards, or in other crop or noncrop areas to control rats and mice. July 6, 1988.

EPA SLN No. AZ 88 0020. Mobay Corp. Agricultural Chemicals Division. Registration is for Guthion 2L to be used on cotton to control cotton boll weevils. July 6, 1988.

EPA SLN No. AZ 88 0021. Fairfield American Corp. Registration is for Permanone VC 40 to be used for treatment of rodent nesting and bedding materials to control fleas and other ectoparasites associated with ground squirrels, chipmunks, and domestic rats and mice. July 6, 1988.

EPA SLN No. AZ 88 0022. Fairfield American Corp. Registration is for Permanone Pyrenone Liquid Dust to be used only in insecticide-bait tubes to control fleas and other ectoparasites associated with ground squirrels, tree squirrels, chipmunks, and wild and domestic rats and mice. July 6, 1988.

EPA SLN No. AZ 88 0023. Fairfield American Corp. Registration is for Pyrenone and Permanone 0.5 Dust to be used only in insecticide-bait tubes or in direct application to rodent burrow openings for control of fleas and other ectoparasites associated with ground squirrels, tree squirrels, chipmunks, and wild and domestic rats and mice. July 6, 1988.

Arkansas

EPA SLN No. AR 88 0003. Fermenta Plant Protection Co. Registration is for DSMA Liquid to be used on cotton, turf, and noncrop areas to control various weeds. August 26, 1988.

California

EPA SLN No. CA 88 0014. Santa Barbara County Agricultural Commissioner. Registration is for Dupont Lannate Insecticide to be used on greenhouse-grown bell peppers to control armyworms. June 28, 1988.

EPA SLN No. CA 88 0016. Rincon-Vitova Insectaries. Registration is for Vinco Formaldehyde Solution to be used on sitotroga eggs to control predatory mites. July 18, 1988.

EPA SLN No. CA 88 0017. Santa Barbara County Agricultural Commissioner. Registration is for Rout Ornamental Herbicide to be used on field-grown gypsophilia to control various weeds. July 6, 1988.

EPA SLN No. CA 88 0018. Contra Costa County Dept. of Agriculture. Registration is for Neamcur 3 to be used on greenhouse-grown roses to control nematodes. July 11, 1988.

EPA SLN No. CA 88 0019. Modoc County Dept. of Agriculture. Registration is for Rovral Fungicide to be used on potatoes to control white mold. July 13, 1988.

EPA SLN No. CA 88 0021. Sutter County Dept. of Agriculture. Registration is for Monitor 4 Liquid Insecticide to be used on several citrus crops to control rindworm complex. August 9, 1988.

Connecticut

EPA SLN No. CT 88 0008. Ciba-Geigy Corp., Agricultural Div. Registration is for Triumph 4E Insecticide to be used on golf courses and sod farms to control armyworms, chinchbugs, clover mites, and sod webworms. July 5, 1988.

EPA SLN No. CT 88 0009. FMC Corp., Agricultural Chemical Group. Registration is for Furadan 4F Insecticide to be used on strawberries to control root weevils. July 12, 1988.

Delaware

EPA SLN No. DE 88 0002. Delaware Dept. of Agriculture Plant Industry Section. Registration is for Menthol to be used on honey-bee hives to control tracheal mites. July 11, 1988.

Florida

EPA SLN No. FL 88 0006. Chevron Chemical Co. Registration is for Orthene 75S Soluble Powder to be used on nonbearing citrus to control imported fire ants. July 19, 1988.

EPA SLN NO. FL 88 0007. Sun Refining and Marketing Co. Registration is for Sunspray 9E to be used on citrus to control several bugs, mites, and scales. July 25, 1988.

EPA SLN NO. FL 88 0008. Hi-Acres, Inc., Fertilizer Div. Registration is for Hi-Acres Soluble Oil Spray to be used on citrus to control spider mites, whiteflies, and certain scale insects. July 25, 1988.

EPA SLN NO. FL 88 0009. Farmbelt Chemicals, Inc. Registration is for Farmbelt 455 Soluble Oil to be used on citrus trees to control certain insect pests. July 25, 1988.

EPA SLN No. FL 88 0011. Platte Chemical Co. Registration is for Clean Crop Spray Oil 9E to be used on various citrus crops to control scales, spider mites, and whiteflies. August 17, 1988.

EPA SLN No. FL 88 0012. Asgrow Florida Co. Registration is for Citrus Oil 455 to be used on various crops of citrus to control scale insects in post bloom. August 25, 1988.

EPA SLN FL 88 0013. Agra Chem Sales Co., Inc. Registration is for Soluble 97 Oil–455 to be used on citrus to control spider mites, whiteflies, and certain scale insects. September 2, 1988.

Georgia

EPA SLN No. GA 88 0005. ICI Americas, Inc., Agricultural Products. Registration is for Relex 2LC Herbicide to be used on pine seedling nurseries to control yellow nutsedge (*Cyperus esculeutus*). July 28, 1988.

EPA SLNB No. GA 88 0007. Ciba-Geigy Corp., Agricultural Div. Registration is D-Z-N Diazinon 50 W to be used on nursery stock to control fire ants. August 10, 1988.

EPA SLN No. GA 88 0008. Ciba-Geigy Corp., Agricultural Div. Registration is D-Z-N Diazinon AG500 to be used on nursery stock to control fire ants. August 10, 1988.

Hawaii

EPA SLN No. HI 88 0006. Rohn and Haas Co. Registration is for Goal 1.6E Herbicide to be used on bearing and nonbearing macadamia nuts plantings to control certain annual broadleaf weeds. July 27, 1988.

Idaho

EPA SLN No. ID 88 0006. Platte Chemical, Inc. Registration is for Clean Crop Dimethoate 400 to be used on lentils to control aphids and lygus bugs. July 11, 1988.

EPA SLN No. ID 88 0008. Wilbur-Ellis Co. Registration is for Sulfur DF to be used on sugar beets to control red spider mites. July 20, 1988.

Indiana

EPA SLN No. IN 88 0004. FMC Corp. Registration is for Dimethoate 267 systemic insecticide to be used on soybeans to control spider mites. July 13, 1988.

EPA SLN No. IN 88 0005. Drexel Chemical Co. Registration is for Drexel Dimethoate 2.67 to be used on soybeans to control spider mites. July 14, 1988.

EPA SLN No. In 88 0006. Platte Chemical Co. Registration is for Clean Crop Dimethoate 267 EC Systemic Insecticide to be used on soybeans to control spider mites. July 14, 1988.

EPA SLN No. In 88–0007. Pennwalt Corp. Registration is for Penncap-M Microencapsulated Insecticide to be

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used on soybeans to control spider mites. July 25, 1988.

EPA SLN No. IN 88 0008. J.R. Simplot Co. Registration is for Dimethoate 25 WP to be used on soybeans to control spider mites. July 28, 1988.

EPA SLN No. IN 88 0009. Universal Cooperatives, Inc. Registration is for Dimethoate 267 EC Systemic Insecticide to be used on soybeans to control spider mites. July 29, 1988.

EPA SLN No. IN 88 0010. Gowan Co. Registration is for Prokil Dimethoate W-25 Insecticide to be used on soybeans to control spider mites. July 29, 1988.

EPA SLN No. IN 88 0012. Dow Chemical U.S.A. Registration is for Lorsban 50 W Insecticide to be used on soybeans to control spider mites. August 3, 1988.

Iowa

EPA SLN No. IA 88 0003. FMC Corp. Registration is for Talstar 10 WP to be used on commercial outdoor ornamental plants to control spider mites. July 14, 1988.

EPA SLN No. IA 88 0004. Ciba-Geigy Corp., Agricultural Div. Registration is for Triumph 4E Insecticide to be used on golf courses and sod farms to control numerous turf pests. July 14, 1988.

EPA SLN No. IA 88 0005. Gowan Co. Registration is for Prokil Dimethoate E267 to be used on soybeans to control spider mites. July 14, 1988.

EPA SLN No. IA 88 0006. Drexel Chemical Co. Registration is for Drexel Dimethoate 2.67 to be used on soybeans to control spider mites. July 14, 1988.

EPA SLN No. IA 88 0007. FMC Corp. Registration is for Dimethoate 267 Systemic Insecticide to be used on field corn to control spider mites. July 18, 1988.

EPA SLN No. IA 88 0008. Platte Chemical Co. Registration is for Clean Crop Dimethoate 267 EC Systemic Insecticide to be used on soybeans to control spider mites. July 22, 1988.

EPA SLN No. IA 88 0009. J.R. Simplot Co. Registration is for Dimethoate 25 WP to be used on soybeans to control spider mites. July 26, 1988.

EPA SLN No. IA 88 0010. Aceto Agricultural Chemicals Co. Registration is for Dimethogon 25 WP Dimethoate Insecticide to be used on soybeans to control spider mites. July 28, 1988.

Louisiana

EPA SLN No. LA 88 0006. Rohm and Haas Co. Registration is for Goal 1.6E Herbicide to be used as premergence application on fallow beds to control various weeds. July 7, 1988.

EPA SLN No. LA 88 0007. Rohm and Haas Co. Registration is for Kelthane MF Agricultural Miticide to be used on pecans to control mites. July 20, 1988.

Maine

EPA SLN No. ME 88 0003. Chevron Chemical Co. Registration is for Ortho Diquat Herbicide to be used on potatoes for desiccation to facilitate harvest. August 18, 1988.

Michigan

EPA SLN No. MI 88 0008. Uniroyal Chemical Co. Registration is for Omite 6E to be used on apples to control European red and two-spotted spider mites. August 4, 1988.

EPA SLN No. MI 88 0009. Ciba-Geigy Corp., Agricultural Div. Registration is for Triumph 4E Insecticide to be used on tees, greens, and aprons of golf courses to control various insects. August 4, 1988.

EPA SLN No. MI 88 0010. Dow Chemical U.S.A. Agricultural Products Div. Registration is for Lorsban 50W Insecticide to be used on soybeans to control spider mites. August 4, 1988.

Minnesota

EPA SLN No. MN 88 0001. Metropolitan Mosquito Control District, St. Paul. Registration is for Zoecon Altosid Liquid Larvicide Mosquito Growth Regulator to be used on field sites as a larvicide growth regulator for control of mosquitos. June 6, 1988.

Mississippi

EPA SLN No. MS 88 0007. Ciba-Geigy Corp., Agricultural Div. Registration is for Triumph 4E Insecticide to be used on golf courses and sod fames to control various insects. July 12, 1988.

Missouri

EPA SLN No. MO 88 0004. FMC Corp. Registration is for Talstar 10 WP to be used on field-grown ornamental trees, shrubs, plants, and flowers to control mites. July 11, 1988.

EPA SLN No. MO 88 0005. Coopers Animal Health, Inc. Registration is for Saber™ Insecticide Ear Tags to be used on cattle to control horn flies. September 9, 1988.

Nebraska

EPA SLN No. NE 88 0005. Natural Fibers Corp. Registration is for Poast to be used on milkweed to control arious weeds and grass species. June 27, 1988.

Nevada

EPA SLN No. NV 88 0007. Uniroyal Chemical Co., Inc. Registration is for Comite-Alfalfa to be used on alfalfa grown for seed only to control two-spotted spider mite complex. July 14, 1988.

New Hampshire

EPA SLN No. NH 88 0001. Uniroyal Chemical, Inc. Registration is for Omite-6E to be used on apples to control European red and two-spotted spider mites. July 20, 1988.

New Jersey

EPA SLN No. NJ 88 0002. American Cyanamid Co. Registration is for Cythion Insecticide Malathion ULV Concentrate Insecticide to be applied in cities, towns, and other areas where automobiles, trailers, trucks, and pleasure boats are present to control mosquitoes. July 5, 1988.

EPA SLN No. NJ 88 0003. Fairfield American Corp. Registration is for Derringer Insecticide for use in mosquito abatement districts to control mosquitoes. July 7, 1988.

EPA SLN No. NJ 88 0004. Fairfield American Corp. Registration is for Permanone Tick Repellent to be used on domestic animals to control ticks, mosquitoes, and chiggers. July 20, 1988.

North Carolina

EPA SLN No. NC 88 0007. Ciba-Geigy Corp., Agricultural Div. Registration is for Triumph 4E Insecticide to be used on golf courses and sod farms to control various insects. July 14, 1988.

Ohio

EPA SLN No. OH 88 0003. Drexel Chemical Co. Registration is for Drexel Dimethoate 2.67 to be used on soybeans to control spider mites. August 1, 1988.

EPA SLN No. OH 88 0005. Drexel Chemical Co. Registration is for Drexel Diazinon Insecticide to be used on soybeans to control spider mites. August 1, 1988.

EPA SLN No. OH 88 0006. Dow Chemical U.S.A., Agricultural Products Dept. Registration is for Lorsban 50W Insecticide to be used on soybeans to control spider mites. August 2, 1988.

EPA SLN No. OH 88 0007. Platte Chemical Co., Inc. Registration is for Clean Crop Diazinon 500-Ag to be used on soybeans to control spider mites. August 3, 1988.

EPA SLN No. OH 88 0009. Gowan Co. Registration is for Prokil Dimethoate E267 to be used on soybeans to control two-spotted spider mites. August 16, 1988.

Oregon

EPA SLN No. OR 88 0007. J.T. Eaton & Co., Inc. Registration is for Eaton's Answer for the Control of Pocket Gophers to be used on rangeland, cropland, forest, and noncrop areas to control pocket gophers. August 19, 1988.

EPA SLN No. OR 88 0010. Platte Chemical Co., Inc. Registration is for Clean Crop Diazinon 500-AG to be used on grass and seed fields to control cranberry girdlers. June 24, 1988.

EPA SLN No. OR 88 0012. McLaughlin Gormley King Co. Registration is for MGK Big Game Repellent Powder BGR-P to be used on conifer seedlings to control black-tailed deer and Roosevelt elk. June 27, 1988.

EPA SLN No. OR 88 0014. Platte Chemical Co. Registration is for Clean Crop Cheat Stop 90 WDG to be used on deep furrow seeded wheat for preplant preemergence control of downy brome (cheat grass). September 9, 1988.

EPA SLN No. OR 88 0015. Oregon Clover Association. Registration is for Mertect 340-F to be used to control seed-borne northern anthracnose (Kabatiella caulivora). August 31, 1988.

Pennsylvania

EPA SLN No. PA 88 0004. Fairfield American Corp. Registration is for Permanone Tick Repellent to be used on clothing to control ticks, chiggers, and mosquitoes. June 27, 1988.

EPA SLN No. PA 88 0005. Ciba-Geigy Corp., Agricultural Div. Registration is for Triumph 4E Insecticide to be used on golf courses and sod farms to control various insects. July 15, 1988.

EPA SLN No. PA 88 0006. B&W Quality Growers, Inc. Registration is for Kocide 101 to be used on watercrest to control cercospora. August 23, 1988.

South Carolina

EPA SLN No. SC 88 0004. Rohm & Haas Co. Registration is for Goal 1.6E Herbicide to be used on field corn to control witchweed (*Striga asiatica*). July 12, 1988.

EPA SLN No. SC 88 0005. Ciba-Geigy Corp. Agricultural Division. Registration is for Triumph 4E Insecticide to be used on tees, greens, and aprons of golf courses and sod farms to control several insects. August 5, 1988.

Tennessee

EPA SLN No. TN 88 0005. Ciba-Geigy Corp., Agricultural Div. Registration is for Triumph 4E Insecticide to be used on tees, greens, and aprons of golf courses and on sod farms to control several worms, bugs, and mites. August 17, 1988.

Virginia

EPA SLN No. VA 88 0004. Ciba-Geigy Corp., Agricultural Div. Registration is for Triumph 4E Insecticide to be used on golf courses and sod farms to control several insects. July 14, 1988.

EPA SLN No. VA 88 0005. Rhone-Poulenc Ag Co. Registration is for Larvin® Brand 3.2 Thiodicarb Insecticide to be used on soybeans to control several caterpillar worms. August 2, 1988.

EPA SLN No. VA 88 0006. Ciba-Geigy Corp., Agricultural Div. Registration is for Ridomil 2E Fungicide to be used on snap beans to control *pythium*. August 11, 1988.

Washington

EPA SLN No. WA 88 0013. Fermenta Plant Protection Co. Registration is for Bravo 720 to be used on nonbearing strawberries and nursery plants to control common leafspot. June 30, 1988.

EPA SLN No. WA 88 0015. ICI Americas, Inc. Agricultural Products. Registration is for Prefar 4E Herbicide to be used on bulb onions to control various grasses and weeds. July 20, 1988.

EPA SLN No. WA 88 0016. Drexel Chemical Co. Registration is for Dimethoate 4EC to be used on lentils to control alpha and lygus bugs. July 27, 1988.

EPA SLN No. WA 88 0017. Platte Chemical Co., Inc. Registration is for Thiodan 3EC to be used on seed alfalfa to control alfalfa aphids. July 27, 1988.

EPA SLN No. WA 88 0018. Platte Chemical Co., Inc. Registration is for Endocide 3EC to be used on seed alfalfa to control spotted alfalfa aphids. July 27, 1988.

EPA SLN No. WA 88 0019. Platte Chemical Co. Registration is for Clean Crop Cheat Stop 90 WDG to be used on deep furrow seeded winter wheat to control downy brome. August 25, 1988.

EPA SLN No. WA 88 0020. Abbott Laboratories, Chemical and Agricultural Products Div. Registration is for Dipel 2X to be used on hops to control loopers. August 3, 1988.

EPA SLN No. WA 88 0021. Gowan Co. Registration is for Phosphamidon 8 Spray to be used on apples to control green apple aphids. September 6, 1988.

Wisconsin

EPA SLN No. WI 88 0009. Wilbur-Ellis Co. Registration is for Red-Top Diazinon 14G to be used on cranberries to control cranberry girdler. July 18, 1988.

EPA SLN No. WI 88 0011. Rhone Poulenc Ag Co. Registration is for Butyrac 200 to be used on established birdsfoot trefoil grown for seed production to control weeds. August 1, 1988.

EPA SLN No. WI 88 0012. Agtrol Chemical Products. Registration is for Champion Wettable Powder to be used on gingseng to control *Alternaria* leaf and stem blight. August 13, 1988.

EPA SLN No. WI 88 0013. Wilbur-Ellis Co. Registration is for Wilbur-Ellis Snail & Slug Bait to be used on gingseng to control slugs. September 9, 1988.

West Virginia

EPA SLN No. WV 88 0002. B&W Quality Growers, Inc. Registration is for Kocide 101 to be used on watercress to control leaf spot. August 25, 1988.

EPA SLN No. WV 88 0003. Ciba-Geigy Crop., Agricultural Div. Registration is for Triumph 4E Insecticide to be used on golf course trees, greens, and aprons and on sod farms to control various insect pests. August 31, 1988.

(Sec. 24 as amended, 92 Stat. 835 (7 U.S.C. 136).)

Dated: November 4, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-26431 Filed 11-15-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 8, 1988.

The Federal Communications Commisson has submitted the following information collecton requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0187

Title: Section 73.3594, Local public notice of designation for hearing

Action: Extension

Respondents: Businesses (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 1,070 responses; 4,280 total hours; avg. 4 hour each.

Veeds and Uses: Applicants of any AM, FM, or television broadcast station designated for hearing by the Commisison must give notice of such designation to the public. This notice gives interested parties as opportunity to respond.

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Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 88-26467 Filed 11-15-88; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Arsenal Savings Association, FA, Indianapolis, IN; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Arsenal Savings Association, FA, Indianapolis, Indiana, on September 26, 1988.

Dated: November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26487 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

Banc Home Savings Association, Midland, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Banc Home Savings Association, Midland, Texas, on October 14, 1988.

Dated: November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26478 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Amarillo, Amarillo, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First Federal Savings and Loan Association of Amarillo, Amarillo, Texas, on October 14, 1988.

Dated November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26484 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

Heart O'Texas Savings Association, San Saba, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Heart O'Texas Savings Association, San Saba, Texas, on October 14, 1988.

Dated November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26486 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

Odessa Savings Association, Odessa, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Odessa Savings Association, Odessa, Texas, on October 14, 1988.

Dated: November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26489 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

Olney Savings Association, Olney, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Olney Savings Association, Olney Texas, on October 14, 1988.

Dated: November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26485 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

Petroplex Savings Association, Midland, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Petroplex Savings Association, Midland, Texas, on October 14, 1988.

Dated: November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26488 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

San Angelo Savings Association, San Angelo, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for San Angelo Savings Association, San Angelo, Texas, on October 14, 1988.

Dated: November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26483 Filed 11-15-88; 8:45 am]
BILLING CODE 6730-01-M

Security Federal Savings and Loan Association, Pampa, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Security Federal Savings and Loan Association, Pampa, Texas, on October 14, 1988.

Dated: November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26480 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

Shamrock Federal Savings Bank, Shamrock, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Shamrock Federal Savings Bank, Shamrock, Texas, on October 14, 1988.

Dated: November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26479 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

Southern Savings and Loan Association, Brownwood, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Southern Savings Loan Association, Brownwood, Texas, on October 14, 1988.

Dated: November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26482 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

Southwest Savings and Loan Association, Abilene, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Southwest Savings and Loan Association, Abilene, Texas, on October 14, 1988.

Dated November 10, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-26481 Filed 11-15-88; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010270-030.
Title: Gulf-European Freight Association.
Parties:
Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Company, Inc.
Gulf Container Line (GCL), B.V.
Sea-Land Service, Inc.
Hapag-Lloyd AG
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification would set forth rules of general applicability relating to the negotiations of specific service contract charges.

Agreement No.: 202-010656-030.
Title: North Europe Gulf Freight Association.
Parties:
Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Company, Inc.
Gulf Container Line (GCL), B.V.
Sea-Land Service, Inc.
Hapag-Lloyd AG
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification would further clarify the parties' authority regarding open rates. Adherence to any agreement reached would be voluntary.

Agreement No.: 202-010656-031.
Title: North Europe Gulf Freight Association.
Parties:
Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Company, Inc.
Gulf Container Line (GCL), B.V.
Sea-Land Service, Inc.
Hapag-Lloyd AG
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification would clarify the rights and obligations of members electing not to participate in specific service contracts and to propose rules of general applicability relating to the negotiations of specific service contract charges.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.

Dated: November 10, 1988.
[FR Doc. 88-26413 Filed 11-15-88; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200170.
Title: Port of Bellingham Terminal Lease Agreement.
Parties: State of Alaska (State) Port of Bellingham (Lessor).
Filing Party: Hugh M. Wilson, Manager Marine Terminals, Port of Bellingham, 625 Cornwall Avenue, Bellingham, Washington 98227-1737.
Synopsis: The agreement authorizes the lease of approximately six acres of property (Fanhaven Terminal) to State by Lessor for exclusive use of the

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terminal ticketing/office area including managers office, staff toilet, and storage area, and the warehouse and port administration areas. The State will have priority use of the staging area, transfer bridge and morring structures. The term of this lease shall be for a period of twenty years from the first day of occupancy of the lease premises.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 10, 1988.

[FR Doc. 88-26476 Filed 11-15-88; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0006, Statement of Personal History. This form is used to investigate the suitability of guards, cleaners, and other persons applying for employment under GSA contracts.

AGENCY: Law Enforcement Division (PML), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Individuals responding, 12,000; responses, 1 per year; average hours per response, .41; burden hours, 5,000.

FOR FURTHER INFORMATION CONTACT: Irene M. Arvey, 202-566-0494.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: November 7, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-26390 Filed 11-15-88; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

National Center for Health Services Research and Health Care Technology Assessment; Briefing Sessions

Name: Development of Assessment Teams—A Briefing Session for Prospective Grant Applicants

Date and Time: December 9, 1988—11:00 a.m. to 4:30 p.m.

Place: Parklawn Building, Conference Room D, 5600 Fishers Lane, Rockville, Maryland.

Supplementary Information: The National Center for Health Services Research and Health Care Technology Assessment (NCHSR) will conduct a briefing session to inform the research community of its interest in supporting Assessment Teams as a means to identify and analyze the outcomes and costs of alternative practice patterns as an extension of the Patient Outcome Assessment Research Program (POARP) during FY 1989.

The session is open to the general public. Expenses involved with attendance at the session will be the responsibility of the attendees.

For further information, please call Mr. Gerald Cohen, (301) 443-2080.

Dated: November 8, 1988.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 88-26452 Filed 11-15-88; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 87D-0119]

In Vitro Diagnostic Devices (IVD's) Intended for Home Use; Draft Points To Consider Regarding Labeling and Premarket Submissions; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Assessing the Safety and Effectiveness of Home-Use In Vitro Diagnostic Devices (IVD's): Draft Points to Consider Regarding Labeling and Premarket Submissions." The draft document was prepared by FDA's Center for Devices and Radiological Health (CDRH) to assist persons manufacturing, importing, or distributing IVD's intended for home use to comply with FDA's current regulations and thereby ensure that such devices are safe and effective. FDA also is making the draft document available to describe to interested persons the issues involved with marketing IVD's intended for home use. FDA is taking this action under the Federal Food, Drug, and Cosmetic Act.

DATE: Comments received by February 14, 1989, will be considered by FDA in preparing a final points to consider document. The draft document and comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

ADDRESS: Written requests for single copies of the draft points to consider document and any written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Thomas M. Tsakeris, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7234.

SUPPLEMENTARY INFORMATION: IVD's, as defined in FDA's regulations (21 CFR 809.3(a)), are those reagents, instruments, and systems intended for use in the diagnosis of disease or other conditions, including a determination of the state of health, in order to cure, mitigate, treat, or prevent disease or its sequelae. IVD's are intended for use in the collection, preparation, and examination of specimens taken from the human body.

In most cases in the past, a physician supervised the collection of specimens from a patient's body and submitted the specimens to a clinical laboratory with instructions regarding which in vitro tests were to be done. Trained laboratory technicians performed the tests using IVD's. The clinical laboratory reported the test results to the patient's physician who then explained and interpreted the meaning of the test results to the patient.

There has been an increasing interest in recent years in the development of certain IVD's for consumers to purchase and use to perform tests on their own body specimens and interpret the results of their own diagnostic tests.

Accordingly, FDA is making available a document entitled "Assessing the Safety and Effectiveness of Home-Use In Vitro Diagnostic Devices (IVD's): Draft Points to Consider Regarding Labeling and Premarket Submissions." Interested persons may submit to the Docket Management Branch (address above) written comments on the draft document at any time; however, comments submitted by February 14, 1989, will be considered by FDA in preparing a final points to consider document. The comments submitted will be used to determine whether any revisions of the document are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft document and comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 5, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-26405 Filed 11-15-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Dental Products Panel

Date, time, and place. December 16, 1988, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; Gregory Singleton, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of dental products and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 1, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a guide for the preparation and submission of dental endosseous implant premarket approval applications.

Oncologic Drugs Advisory Committee

Date, time, and place. December 19 and 20, 1988, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, December 19, 1988, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; open committee discussion, December 20, 1988, 8:30 a.m. to 5 p.m.; David F. Hersey, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in cancer patients.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 5, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 19, 1988, the committee will discuss: (1) NDA 19-880 Paraplatin® (carboplatin), Bristol Myers, for treatment of stages III and IV ovarian cancer, and (2) FDA requirements for approval of new drugs for treatment of superficial bladder cancer. On December 20, 1988, the committee will discuss: (1) NDA 19-884 Uromitexan® (mesna), Asta Pharma AG, for use with ifosfamide as a uroprotective agent, and (2) supplemental NDA 17-970/S-018 Nolvadex® (tamoxifen), Stuart Pharmaceutical Co., for treatment of premenopausal advanced breast cancer.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of

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Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 9, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–26403 Filed 11–15–88; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. November 18, 1988, 8:30 a.m., Lister Hill Auditorium, Bldg. 38A, National Library of Medicine, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 12:30 p.m.; open public hearing, 12:30 p.m. to 1:30 p.m., unless public participation does not last that long; Jack Gertzog, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person as soon as possible.

Open committee discussion. The committee will discuss a treatment IND request for IMREG (an immunosupportive biologic agent). Seating capacity is limited and seating for the public will be on a first-come basis.

FDA is giving less than 15 days public notice of this Vaccines and Related Biological Products Advisory Committee meeting because it involves an expedited review of a biologic intended for a life-threatening illness, consistent with FDA's new initiative for expediting the review of such products. The next regularly scheduled meeting of the committee is January 30 to February 1, 1989. FDA did not believe it appropriate to wait that long. Attempts were made to schedule a committee meeting later in November or in early December to permit sufficient time for at least a 15-day public notice of the meeting. However, it was not possible to find a date during that period on which a quorum of committee members could meet. The agency decided that it was in the public interest to hold this scientific review on November 18, 1988, even if there was not sufficient time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 14, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–26556 Filed 11–11–88; 11:47 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0387]

Public Meeting; Seafood Safety as Related to Cooked and Processed Seafood

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting with the seafood industry and other interested persons to discuss a number of agency concerns relating to public health aspects of cooked and processed seafood.

DATES: The meeting will be held Friday, December 16, 1988, 9:30 a.m. to 3 p.m. Interested persons who will be unable to attend the meeting may submit written comments on the issues outlined in this notice by January 16, 1989.

ADDRESSES: The meeting will be held in the auditorium of the Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201. Written comments should be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, referencing the Docket No. found in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: John M. Tisler, Center for Food Safety and Applied Nutrition (HFF–326), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0255.

SUPPLEMENTARY INFORMATION: The meeting is being sponsored by FDA, in accordance with 21 CFR 10.65(b), to discuss with the seafood industry and other interested persons the agency's concerns raised by its inspectional and analytical findings relating to cooked and processed seafood.

Issues to be discussed will include:

1. Microbiological contamination of ready-to-eat or heat-and-serve seafood products.
2. Public health concerns relating to these products.
3. Improved processing practices for these products.
4. Strategies for protecting the consumer from associated health risks.

FDA is inviting all interested persons to participate in this meeting. Interested persons who will be unable to attend the meeting may submit to FDA written comments that set forth their views on the issues outlined in this notice.

Dated: November 9, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–26402 Filed 11–10–88; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting:

Dallas District Office, chaired by Gerald E. Vince, District Director. The topic to be discussed is new drug development in the United States.

DATE: Monday, November 28, 1988, 1:30 p.m. to 3:30 p.m.

ADDRESS: Texas Pharmaceutical Association, 1624 East Anderson Lane, Austin, TX 78723.

FOR FURTHER INFORMATION CONTACT: Juan A. Tijerina, Consumer Affairs Officer, Food and Drug Administration, 727 East Durango, Rm. B–406, San Antonio, TX 78206–1200, 512–229–6737.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 9, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–26404 Filed 11–15–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Final Funding Priority for Grants for Predoctoral Training in Family Medicine

The Health Resources and Services Administration announces the final funding priority for Grants for Predoctoral Training in Family Medicine which will be applied in the review of applications for Fiscal Year 1989.

Section 786(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the education purposes of section 786(a) of the Act;
2. The degree to which the project plan adequately provides for meeting the requirements;
3. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and
4. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferernces—Funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.
2. Funding priorities—favorable adjustment of review scores by HRSA staff when applications meet specified objective criteria.
3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

A proposed funding priority was published in the **Federal Register** of August 15, 1988, (53 FR 30719) for Grants for Predoctoral Training in Family Medicine. One comment was received during the 30 day comment period in support of increasing primary care services to special populations.

Therefore, the funding priority as proposed is retained as follows:

A funding priority will be given to projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center of PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved populations.

This program is listed at 13.986 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Integovernmental Review of Federal

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Programs (as implemented through 45 CFR Part 100).

Dated: November 9, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-26401 Filed 11-15-88; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Division of Research Resources; General Research Support Review Committee; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), on November 18, 1988, which was published in the **Federal Register**, August 12, 1988, (53 FR 30472-30473).

This meeting was to have met in closed session on November 18, from 8:30 a.m. to 12:00 noon. The meeting will now be open to the public from 8:30 a.m. to 11:00 a.m. in Conference Room 9, Building 31C, National Institutes of Health, to discuss policy matters relating to the Minority Biomedical Research Support Program. The meeting will be closed to the public from 1:00 p.m. to adjournment for the review of grant applications.

Dated: November 10, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-26669 Filed 11-15-88; 10:15 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Records for Saginaw Chippewa Indian-Owned Lands in the State of Michigan

ACTION: Notice; Transfer of custody.

SUMMARY: This notice is published in accordance with 25 CFR 150 and in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs under 209 DM 8.1. As of January 1, 1989, the official custody of all Saginaw Chippewa land records and title documents pertaining to Indian-owned trust or restricted lands under the jurisdiction of the Minneapolis Area Office, Minneapolis, Minnesota, and the Michigan Agency, Sault Ste. Marie, Michigan, whether within or outside the boundaries of the Isabella or Saginaw Chippewa Indian Reservation is transferred from the Central Office, Washington, DC, to the Aberdeen Land Titles and Records Office, Bureau of Indian Affairs, 115 4th Avenue SE., Aberdeen, South Dakota 57401. The Aberdeen Land Titles and Records Office is thereafter the official office of record for the recording and maintenance of these records.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Quentin M. Jones, Land Records Officer, Division of Real Estate Services, Bureau of Indian Affairs, 18th and C Streets NW., Washington, DC 20245.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88-26391 Filed 11-15-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[ID-943-09-4214-10; I-18246]

Termination of Recreation and Public Purpose Classification; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification termination.

SUMMARY: This order terminates a Bureau of Land Management classification affecting 120 acres of public land near Portneuf, Idaho. After termination of the classification, the underlying lands will immediately become available for disposal through a pending public sale action.

EFFECTIVE DATE: November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1471.

By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4; it is ordered as follows:

1. Pursuant to the regulations in 43 CFR 2091.7-1(b)(1) and the authority delegated to me by BLM Manual Section 1203 (48 FR 85), the classification decision of February 28, 1983, which classified 120 acres of public land as suitable for recreation and public purposes under the Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, under serial number I-18246, is hereby revoked insofar as it affects the following-described lands:

Boise Meridian

T. 7 S., R. 35 E.
Sec. 28, W½SW¼, SE¼SW¼.

The area described contains 120 acres in Bannock County.

2. Upon termination of the classification, the underlying lands will immediately become available for disposal through a pending public sale action under section 203 of the Federal Land Policy and Management Act of 1976.

Delmar D. Vail,

State Director.

Dated: November 9, 1988.

[FR Doc. 88-26408 Filed 11-15-88; 8:45 am]

BILLING CODE 4310-66-M

[UT-040-09-4830-12]

Cedar City District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Cedar City District Advisory Council will be held Friday, December 2, 1988. The meeting will begin at 9:30 a.m. in the BLM office at 176 East DL Sargent Drive, Cedar City, Utah. The agenda will include: Dixie Resource Area land use planning; riparian policy; Recreation 2000 program; and updates on the Desert Tortoise program.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 9:45 a.m., or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 176 East DL Sargent Drive, Cedar City, Utah 84720 by November 30, 1988. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or the Council Chairman.

Date: November 7, 1988.

David F. Everett,

Acting District Manager.

[FR Doc. 88-26394 Filed 11-15-88; 8:45 am]

BILLING CODE 4310-00-M

[NM-040-09-4212-08]

Kansas Supplemental Planning Analysis; Availability and Public Meeting

AGENCY: Bureau of Land Management, Interior, Tulsa District, Oklahoma.

ACTION: Notice of availability/notice of public meeting.

SUMMARY: The Bureau of Land Management (BLM), Oklahoma Resource Area of the Tulsa District, has prepared a Supplement to the 1987 document Planning for Proposed Disposal of Public Lands in Kansas. This Supplemental Planning Analysis (SPA) addresses the disposal of Federally owned surface estate managed by the BLM within the State of Kansas. The known BLM managed Federal surface estate within Kansas consists of 1,023.49 acres, located on 21 isolated tracts, within 15 Kansas Counties. The Proposed Action analyzed by the SPA is the transfer of public lands with fish and wildlife values to the Kansas Department of Wildlife and Parks (KDWP), and the transfer into private ownership of those tracts of public lands meeting the provisions of the Color-of-Title Act of December 22, 1928 (45 Stat. 1069; 43 U.S.C. 1068, 1068a).

Availability: The subject document has been sent to all persons on the SPA mailing list. Additional copies of the SPA are available upon request from the Resource Area Manager at the address below.

Public Meeting: A public meeting/open house will be held to provide the public an opportunity to comment on the proposed action. BLM representatives will receive both oral and written comments at this public meeting/open house. The public meeting/open house will be held December 14, 1988, in Great Bend, Kansas at the Best Western Angus Inn, Second floor meeting room, 2920 10th Street, from 3:00 p.m. to 7:00 p.m.

Comments: In addition to the public meeting/open house, written comments and suggestions concerning the proposed action will be received until close of business, December 21, 1988, at the Oklahoma Resource Area Office.

ADDRESS: Comments and suggestions concerning this Proposed Action should be sent to: Area Manager, Bureau of Land Management, Oklahoma Resource Area, 200 W. Fifth Street, Room 548, Oklahoma City, Oklahoma 73102.

FOR FURTHER INFORMATION CONTACT: Brian Mills, Oklahoma Resource Area, (405) 231-5491.

Dated: November 9, 1988.

Monte G. Jordan,

Associate State Director.

[FR Doc. 88-26407 Filed 11-15-88; 8:45 am]

BILLING CODE 4310-FB-M

[AZ 020-41-5410-ZAFA; AZA-23560]

Receipt of Conveyance of Mineral Interest Application; Arizona

ACTION: Notice of receipt of conveyance of mineral interest application, AZA-23560.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, ANAM, Inc., has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 12 E.,
Sec. 33, S½S½;
Sec. 34, S½.
T. 7 S., R. 11 E.,
Sec. 25, all.
T. 7 S., R. 12 E.,
Sec. 3, lots 1, 2, S½NE¼.
T. 7 S., R. 13 E.,
Sec. 12, S½;
Sec. 13, E½;
Sec. 27, SW¼SW¼.
T. 7 S., R. 14 E.,
Sec. 17, E½, S½NW¼, SW¼;
Sec. 21, N½NW¼;
Sec. 26, S½NW¼, S½;
Sec. 27, W½;
Sec. 28, E½, SW¼;
Sec. 29, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 30, NE¼NE¼;
Sec. 31, lots 1 to 4, incl., SE¼SW¼, S½SE¼;
Sec. 32, W½;
Sec. 33, W½, SE¼,
Sec. 35, N½N½, SE¼NE¼, SW¼NW¼.
T. 8 S., R. 13 E.,
Sec. 8, E½;
Sec. 9, S½;
Sec. 11, E½;
Sec. 12, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 13, N½N½;
Sec. 14, SW¼, S½SE¼;
Sec. 15, E½SW¼, W½SE¼;
Sec. 22, all;
Sec. 23, E½NE¼, SW¼NE¼, N½NW¼, SW¼NW¼, S½;
Sec. 25, all;
Sec. 26, N½;
Sec. 27, all.
T. 8 S., R. 14 E.,
Sec. 2, S½;
Sec. 5, all;
Sec. 6, lot 6, NE¼SW¼;
Sec. 7, E½;
Sec. 8, all;
Sec. 11, N½;
Sec. 14, all;
Sec. 18, lots 1, NE¼, NE¼NW¼;
Sec. 20, W½;
Sec. 22, SE¼;
Sec. 23, S½S½;
Sec. 24, E½, SW¼;
Sec. 26, N½N½;
Sec. 27, NE¼;
Sec. 29, N½NW¼;
Sec. 30, NE¼, N½SE¼.

Containing 15,207.25 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, October 5, 1988, whichever occurs first.

Henri R. Bisson,

District Manager.

Date: October 27, 1988.

[FR Doc. 88-26395 Filed 11-15-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-020-09-4050-90; CA20656]

Realty Action; Classification of Public Lands in Lassen County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; classification of Public Lands under the Recreation and Public Purposes Act, in Lassen County, CA, (CA20656).

SUMMARY: The following described public lands are hereby classified as suitable for lease under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*):

T. 30N., R. 13E., M.D.M., California

Section 17: W½ N½ NW¼ NE¼, W½ E½ N½ NW¼ NE¼.

Total: 15 acres.

These lands are proposed to be leased to the Lassen County Board of Supervisors for 20 years, with option to renew the lease, for the construction and operation of a flying site and landing field for radio controlled model airplanes. The lease shall be subject to the standard terms and conditions of a Recreation and Public Purposes Act Lease as contained on BLM Form 2912-1. In addition, the lease will contain special stipulations designed to mitigate environmental impacts and to protect valid existing rights.

These stipulations will require the lessee to: (1) Develop the site in accordance with the Plan of Development and Site Plan; (2) close livestock control gates or install cattle guards if needed; (3) paint all buildings in colors that blend with the area and to maintain all structures in good repair; (4) locate facilities at least 100 feet from a nearby county road; (5) cause no interference with existing road right-of-way CA 12431, and to maintain that portion of CA 12431 that runs through the lease; (6) carry liability insurance covering all use at the site; (7) design and install sanitary facilities in accordance with local health codes; (8) remove all trash or refuse from the site; (9) reclaim and rehabilitate the site in the event the lease is relinquished or terminated.

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The above described public lands are hereby segregated from all other forms of disposal, entry or appropriation under the public land laws, including locations under the mining laws, but not to leasing under the mineral leasing laws. Any minerial leases issued would contain a no surface occupancy clause. The segregative effect of this notice shall automatically expire 18 months after publication of this notice, if no application is filed or if no lease is issued. If a lease is issued, the segregation will continue for the term of the lease, unless this notice is amended or revised.

Comments: For a period of 45 days after publication of this notice in the **Federal Register**, comments may be sent to the District Manager, Bureau of Land Management, 705 Hall St., Susanville, CA 96130. Comments will be evaluated by the California State Director of the Bureau of Land Management, who may affirm, vacate or modify this classification.

Information: For additional information on this matter call or write the Eagle Lake Area Manager, Bureau of Land Management, 2545 Riverside Drive, Susanville, CA 91630. Telephone (916) 257-0456.

Richard H. Stark, Jr.,

Eagle Lake Area Manager.

November 2, 1988.

[FR Doc. 88-26392 Filed 11-15-88; 8:45 am]

BILLING CODE 4310-40-M

[ID-943-09-4212-13; I-23055]

Realty Action; Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Larry M. Bull, Jr., Pocatello, Idaho 83204, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian

T. 7 S., R. 35 E.,
Sec. 23, SW¼SE¼;
Sec. 26, N½NW¼, NW¼NE¼.
Comprising 160.00 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian

T. 7 S., R. 35 E.,
Sec. 36, SE¼SW¼, SW¼SE¼,
Sec. 35, NE¼NW¼, NW¼NE¼.
Comprising 160.00 acres of private land.

The purpose of the exchange was to acquire the non-federal lands for use in wildlife habitat and riparian management. The public interest was well served through completion of this exchange.

The values of the federal public land and the non-federal land in the exchange were both appraised at the equal value of $32,000.00.

John Davis,

Deputy State Director for Operations.

Dated: November 4, 1988.

[FR Doc. 88-26393 Filed 11-15-88; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Deborah D. Sorkin, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigation instead of Gary J. Rinkerman, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

Dated: November 10, 1988.

[FR Doc. 88-26492 Filed 11-15-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Deborah D. Sorkin, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigation instead of Gary J. Rinkerman, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

Dated: November 10, 1988.

[FR Doc. 88-26493 Filed 11-15-88; 8:45 am]

BILLING CODE 7020-02-M

[332-265]

United States-Israel Free-Trade Agreement; Probable Effects on U.S. Industry and Consumers of Certain Remaining U.S. and Israel Tariff Reductions

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on September 28, 1988, of a request from the U.S. Trade Representative made at the direction of the President, the Commission instituted investigation No. 332-265 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to—

1. Advise the President, with respect to each article contained in the attached annex 1, as to the probable economic effect on domestic industries in the United States producing like or directly competitive products, and on consumers, of the removal of the duties on these products of Israel in six equal annual stages commencing on January 1, 1990, compared with the probable economic effect of the elimination of these duties without staging on January 1, 1995, the latest date for duty elimination provided in the implementing legislation for the Agreement.

2. Report on the likely economic benefits to U.S. exporters of products in the attached annex 2 of a similar six-stage elimination of the Israeli duties over the period in question. Annex 2 lists the products in terms of the headings in the Israeli tariff schedule prior to Israel's adoption of the Harmonized System.

EFFECTIVE DATE: November 8, 1988.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. Doug Newman (202-252-1328)
(2) Textiles and apparel, Mr. Larry Butler (202-252-1470)
(3) Chemical products, Mr. Edward Matusik (202-252-1356)
(4) Minerals and metals, Ms. Ann Reed (202-252-1428)
(5) Machinery and equipment, Mr. John Cutchin (202-252-1396)
(6) General manufactures, Mr. Richardo Witherspoon (202-252-1489)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-252-1091.

Background

The Agreement on the establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, entered into in April 1985, provides that all products of Israel imported into the United States and all products of the United States imported into Israel which conform to the conditions specified in the Agreement shall be free of duty by January 1, 1995.

Duties on a large number of articles were removed immediately upon implementation of the Agreement on September 1, 1985. For virtually all remaining articles, staged removal of the duty began on September 1, 1985. For a short list of articles, however, the Agreement specified that the most-favored-nation rate would continue to apply until January 1, 1990, and that the rates to be applied on and after January 1, 1990, shall be determined after consultation between the Governments of Israel and the United States. Nevertheless, effective January 1, 1995, these articles are to be free of duty. Any reduction of these duties prior to January 1, 1995, however, requires Congressional approval.

Preparatory to entering into consultations with the Government of Israel on the U.S. and Israel rates of duty to be applied on the articles in Annex 1 and Annex 2 when imported on and after January 1, 1990, the USTR requested the assistance of the Commission in providing probable economic effects advice.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on January 24, 1989, and continuing as required on January 25. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than 5:00 p.m., January 10, 1989. Post-hearing briefs are required by February 7, 1989.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on February 7, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 10, 1988.

ANNEX 1.—U.S. TARIFF ITEMS

HTS No.	Brief description	Col. 1 duty rate
0603.10.60	Fresh cut roses	8% ad val
0711.20.20	Olives, not pitted, provisionally preserved	7.7¢/kg
0711.20.40	Olives, pitted or stuffed, provisionally preserved	11.3¢/kg
0712.20.20	Onion powder or flour	35% ad val
0712.20.40	Dried onions, other than power or flour	25% ad val
0712.90.40	Dried garlic	35% ad val
0712.90.75	Dried tomatoes	13% ad val
2002.10.00	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid	14.7% ad val
2002.90.00	Tomatoes, other than whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid	13.6% ad val
2005.70.10	Olives, in brine, green, not pitted	7.7¢/kg
2005.70.20	Olives, in brine, green, pitted or stuffed, placed packed	11¢/kg
2005.70.25	Olives, in brine, green pitted or stuffed, other than placed packed	11.3¢/kg
2005.70.50	Olives, in brine, not green canned not pitted	11.6¢/kg
2005.70.60	Olives, in brine, not green, canned other than pitted	11.9¢/kg
2005.70.70	Olives, in brine, not green, other than canned, in airtight containers of glass or metal	11.6¢/kg
2005.70.75	Olives, in brine, not green, other than canned, other than in airtight containers of glass or metal	5.1¢/kg
2005.70 80	Olives, prepared or preserved other than in brine	11¢/kg
2009.11.00	Organge juice, frozen	9.25¢/liter
2009.19.20	Orange juice, other than frozen, not concentrated	5.3¢/liter
2009.19.40	Orange juice, other than frozen, concentrated	9.25¢/liter
2009.20.20	Grapefruit juice, not concentrated	5.3¢/liter
2009.20.40	Grapefruit juice, concentrated	9.25¢/liter
2009.30.40	Citrus fruit juice, n.e.s.i., not concentrated	5.3¢/liter
2009.30.60	Citrus fruit juice, n.e.s.i., concentrated	9.25¢/liter
2103.20.40	Tomato sauces other than ketchup	13.6% ad val
2827.51.10	Sodium Bromide	6.6¢/kg
2903.59.05	Dibromoethyldibromocyclohexane	13.5% ad val
2903.69 25	Pentabromoethylbenzene; and Tribromocumene	9.1% ad val
2907.19.50	Other monophenols	7.2% ad val
2907.22.50	Other polyphenols	7.2% ad val
2907.29.50	Polyphenols, n.e.s.	7.2% ad val
2907.30.00	Phenol-alcohols	7.2% ad val
2908.10.25	Tetrabromobisphenol A	1.5¢/kg. +19.4% ad val
2908.10.30	Other halogenated phenol or phenol-alcohol derivatives, n.e.s.	13.5% ad val
2908.20.20	Halogenated phenol or phenol-alcohols with sulfo groups, their salts and esters, n.e.s.	13.5% ad val
2908.90.40	Other specified derivatives of phenol and phenol-alcohols	13.5% ad val

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ANNEX 1.—U.S. TARIFF ITEMS—Continued

U.S. Tariff Items

HTS No.	Brief description	Col. 1 duty rate
2909.30.07	Decabromodiphenyl oxide; and Octabromodiphenyl oxide	20% ad val.
2917.39.17	Tetrabromophthalic anhydride	20% ad val.
2925.19.10	Ethylenebistetrabromophthalimide	15% ad val.
7113.11.10	Silver rope or chain	7% ad val.
7113.19.10	Precious Metal rope or chain, other than silver	7% ad val.
7113.19.21	Gold rope necklaces and neck chains	6.5% ad val.
7113.19.25	Gold Mixed link necklaces and neck chains	6.5% ad val.
7113.19.29	Gold necklaces and neck chains, nes	6.5% ad val.
7113.20.10	Rope or chain of base metal clad with precious metal	7% ad val.
7113.20.21	Rope necklaces and neck chains clad with precious metal	6.5% ad val.
7113.20.25	Mixed link necklaces and neck chains clad with gold	6.5% ad val.
7113.20.29	Necklaces and neck chains, nes, clad with gold	6.5% ad val.

Annex 2—Israel Tariff Items[1]

Israel Customs Tariff (CCN-based nomeclature)

01040000	02011010	02011020
02020000	02030000	02050000
03011000	03011500	03014020
03014090	03019900	03029900
03030000	04010000	04021000
04023000	04029000	04030000
04040000	04059900	04060000
04070000	05159900	06019900
06029900	06030000	06049900
07013000	07014000	07019900
07020000	07039900	07042000
07044000	07044990	08011000
08019911	08019919	08019920
08021000	08031000	08041000
08042000	08059900	08061000
08069900	08071000	08079900
08080000	08090000	08100000
08120000	09040000	10040000
11021000	11029900	11050000
11080000	12012000	12013000
12013500	12014000	12015000
12019900	12100000	15010000
15020000	15031000	15039900
15071031	15071032	15071034
15121000	15122000	15129900
15130000	16010000	16020000
16030000	16042090	16049900
16050000	17041000	17042000
17043000	17045000	18069910
18069990	19030000	19071000
19079900	19089900	20019900
20024010	20024090	20029900
20030000	20050000	20061000
20063000	20069900	20079900
21030000	21042000	21049900
21052000	21059910	21059990
21071000	21071500	21072000
21073000	21077000	21078000
21079900	22040000	22051000
22059900	22070000	22080000
22091000	22099900	23010000
23040000	23060000	23072000
23073000	23079900	24010000
24023000	27101510	27101590
27102500	27103000	27105090
27106000	27109990	27110000
27120000	27130000	27160000
29021040	29041010	29041020
29111000	29151000	29253000
30039910	30039990	30041000
30042010	30042090	30043000
30044000	30045000	30049900
31021000	32130000	33069900
34039990	36061000	36069900
37039999	37089900	38111090
38160000	39011053	39013520
39013540	39017000	39017590
39019900	39021019	39021021
39021029	39021033	39021036
39021039	39021040	39021069
39021090	39024000	39024500
39025010	39025059	39025060
39025591	39025592	39029990
39039941	39039949	39071010
39071300	39071420	39071430
39071449	39074460	39071471
39071479	39071481	39071489
39071490	39075100	39075621
39076530	39076540	39079920
39079930	39079941	39079990
40090000	40100000	40113099
40114090	40119900	40132010
40132091	40141090	41021090
41029920	41029990	41039900
41049900	41059900	41080000
41100000	42022000	42023000
42029900	44151500	44152000
44159900	44189900	44230000
48012090	48019910	48019990
48071090	48078000	48079910
48153000	48159990	48169900
41189900	41192000	48212000
48219900	49109900	64019900
64029900	64030000	64040000
68049990	68090000	68109900
70089900	70171090	79172000
70181010	73103500	73183010
73184090	73203090	73204010
73204090	73209990	73219900
73359900	74031120	74079900
74103000	74150000	74160000
76029990	76049990	76069900
76089900	82049900	82059900
82062000	83151090	84069990
84115091	84116090	84120000
84151000	84172000	84205090
84224000	84612000	84612500
84614000	84619900	84631021
85011089	85012140	85012189
85019990	85029900	85049900
85131090	85151000	85179900
85193590	85197090	85197500
85202020	85228099	85233000
85234090	85239929	85239990
85269990	86080000	87051000
90177090	90261020	90269900
90283690	97034000	98055000
98059900		

[1] Annex 2 lists the products in terms of the headings in the Israeli tariff schedule prior to Israel's adoption of the Harmonized System. Contact Ms. Monica Lane of the Commission's Office of Industries (202–252–1296) for complete descriptions of the articles listed and the Israel rates of duty.

[FR Doc. 88–26494 Filed 11–15–88; 8:45 am]

BILLING CODE 7020–02–M

[TA–131(b)–13, TA–503(a)–17, and 332–266]

Probable Economic Effect of Providing Duty-Free Treatment for Watches Under the Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on October 18, 1988, of a request from the U.S. Trade Representative made in part at the direction of the President, the Commission instituted investigation Nos. TA–131(b)–13, TA–503(a)–17, and 332–266 under sections 503(a) and 131(b) of the Trade Act of 1974 (19 U.S.C. 2463(a) and 2151(b)) and section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g))—

(1) Pursuant to sections 503(a) and 131(b) of the Trade Act, and the authority of the President delegated to the U.S. Trade Representative by sections 4(c) and 8(c) and (d) of Executive Order 11846, as amended, to advise the President, with respect to the watches provided for in each 8-digit subheading under the Harmonized Tariff Schedule of the United States (HTS) heading 9101 and 9102, as to the probable economic effect on U.S. industries producing or assembling watches and U.S. industries producing or assembling watch bands, straps or bracelets and on U.S. consumers of the elimination of U.S. import duties under the U.S. Generalized System of preferences (GSP). Separate advice will be provided for the watch manufacturing and assembly industry and the watch band, strap and bracelet manufacturing and assembly industry and for each of two geographic areas (the United States and U.S. insular possessions). In providing its advice, the USTR requested the Commission to assume that benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the "competitive need" limitations specified in section 504(c) of the Act.

The Commission will provide, to the degree possible, data on the following factors for the most recent three year period for each of the aforementioned U.S. industries: Annual production, capacity, capacity utilization, domestic shipments, exports, inventories, employment, wages, and financial experience (including prices). Data will also be provided, to the extent possible, on the following factors for current and potential foreign producers: current and potential production capacity and capacity utilization, domestic shipments, and exports to U.S. and other markets.

(2) Pursuant to section 332(g) of the Tariff Act and at the direction of the President, to advise the President, with respect to whether articles like or directly competitive with the watches described in each 8-digit subheading of headings 9101 and 9102 of the HTS were being produced in the United States on January 3, 1985 for purposes of section 504(d) of the Trade Act.

EFFECTIVE DATE: November 7, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Linkins (202–252–1499), Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–252–1091.

Background

The USTR announced the items which have been sent to the Commission for probable economic effect advice in the **Federal Register** of October 7, 1988 (53 FR 39576).

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m. on January 10, 1989. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than noon, December 29, 1988. Posthearing briefs must be filed by January 17, 1989.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on January 17, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 10, 1988.

[FR Doc. 88–26495 Filed 11–15–88; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Cumberland, KY

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on August 3, 1988, a proposed consent decree in *United States v. City of Cumberland, Kentucky, et al.*, Civ. No. 87–265, was lodged with the United States District Court for the Eastern District of Kentucky. The action was brought pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.* and alleged violations by the City of its National Pollutant Discharge Elimination System (NPDES) permit. The complaint prayed for civil penalties and injunctive relief.

The consent decree requires the City to pay a civil penalty of $7,500, to employ two Class II operators or one, Class II operator and one Class II operator trainee, to submit a revised Municipal Compliance Plan (MCP) which will contain a schedule to bring the City into compliance with its NPDES permit by February 28, 1990, to obtain a portable chlorinator and chlorinate all bypasses, to initiate and complete construction in accordance with the schedule in the revised MCP and to pay stipulated penalties for violations of the schedule.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land & Natural Resources Division, Department of Justice, Washington, DC. All comments should refer to *United States v. City of Cumberland*, D.O.J. Ref. 90–5–1–1–2949.

The proposed consent decree may be examined at the office of the United States Attorney, Fourth Floor, Federal Building, Limestone and Barr Streets, Lexington, Kentucky 40507 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed decree can be obtained by mail from the Environmental Enforcement Section, Land & Natural Resources Division, United States Department of Justice, Washington, DC 20530. Any request for a copy should be accompanied by a check in the amount of $2.80 for copying costs payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–26396 Filed 11–15–88; 8:45 am]

BILLING CODE 4410–10–M

Antitrust Division

National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Bell

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Communications Research, Inc. ("Bellcore") has filed written notifications, on behalf of Bellcore and FUJITSU LIMITED and FUJITSU LABORATORIES, LTD. (hereinafter collectively known as "FUJITSU") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

FUJITSU is a Japanese corporation with its registered office at 1015, Kamikodanaka, Nakahara-ku, Kawasaki-shi, Kanagawa-ken 211, Japan.

Bellcore and FUJITSU entered into an agreement on August 10, 1988 to collaborate on research to gain further knowledge and understanding of technologies for telecommunication services, systems, interfaces and equipments, with application to exchange and exchange access services, including:

(a) Concepts of new communication services,

(b) Case studies of new services based on the above concepts and studies of man-machine interfaces for accessing them,

(c) Studies of interfaces between terminals and communications systems, and

(d) Opto-electronic devices.

This agreement replaces the one entered into between Bellcore and FUJITSU on November 13, 1986. This notification supplements the notification submitted to the Department of Justice and Federal Trade Commission on December 22, 1986 the notice of which was published in the **Federal Register** on February 13, 1987.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-26397 Filed 11-15-88; 8:45 am]

BILLING CODE 4410-07-M

National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications, on behalf of Bellcore and Graphics Communication Technologies, Ltd., (hereinafter known as "GCT") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

GCT is a Japanese corporation with its principal place of business at Column M.A. 6-11-1, Minami-Aoyama, Minato-ku, Tokyo 107, Japan.

Bellcore and GCT entered into an agreement effective September 1, 1988 to collaborate on research to understand the application of video compression algorithms and new technology and equipment in the area of Low Bit-Rate Video Codecs for exchange and exchange access service, and specifically for ISDN, demonstrating the feasibility of research concepts by means of experimental prototypes and experimental systems of such technology and equipment, and undertaking research to provide a basis of related submissions to public standards organizations.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-26398 Filed 11-15-88; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; X/Open, Ltd.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), X/Open, Ltd. ("X/Open") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of involing the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and X/Open's general areas of planned activities, are given below.

X/Open is a nonprofit international organization consisting at present of many of the world's leading manufacturers of computer systems. X/Open was organized in England and began operations as Kirkstock Limited in 1984. It was incorporated on May 28, 1987, Kirkstock became X/Open on June 24, 1987 and began business on September 10, 1987.

The purpose of X/Open is to research, establish and publish standards for the development of computer software in order to promote software compatibility among different hardware systems. Its efforts seek to achieve customer acceptance of the computer systems and software of many different vendors worldwide. By responding to user demands for greater efficiency and ease of use among different computer systems. X/Open's activities are aimed at promoting the maximum use of computer systems resources in the United States and abroad by providing users with consistent functional utility in a wide number of applications irrespective of system vendor. X/Open's ultimate goal is the broad portability of software application programs throughout a broad range of different hardware systems. This goal would be achieved through the establishment and industry acceptance of a common user interface and a common programmer interface among a large number of hardware systems, thereby enhancing the choices available to computer systems users and increasing the market opportunities and creative efforts of software developers.

X/Open engages in research, compilation and testing of design and operational features of a wide variety of systems and programs as part of analyzing and recommending optimum multi-vendor, user-friendly, software compatibility standards.

X/Open presently consists of the following 15 firms: AT&T Informations Systems Inc., Companie des Machines Bull, Digital Equipment Corporation, Fujitsu Limited, Hewlett-Packard Company, International Business Machines Corporation, International Computers Limited. NCR Corporation, Nixdorf Computer AG, Nokia Data System AB, N.V. Philips' Gloeilampenfabrieken, Olivetti International S.A., Siemens Aktiengesellschaft, Sun Microsystems, and Unisys Corporation.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-26399 Filed 11-15-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts in Schools Basic Education Grants Section) to the National Council on the Arts will be held on December 1, 1988, from 9:15 a.m.—5:00 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW. Washington, DC 20506.

A portion of this meeting will be open to the public on December 1, 1988, from 1:45 p.m.-5:00 p.m. The topic for discussion will be policy.

The remaining sessions of this meeting on December 1 from 9:15 a.m.-1:45 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

November 9, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-26498 Filed 11-15-88; 8:45 am]

BILLING CODE 7537-01-M

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (State Arts in Education Grants Section) to the National Council on the Arts will be held on December 7-8, 1988, from 8:00 a.m.—8:00 p.m. and December 9, 1988, from 8:00 a.m.—5:00 p.m. in Room M09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 9, 1988, from 2:00 p.m.—5:00 p.m. The topic for discussion will be policy.

The remaining sessions of this meeting on December 7-8 from 8:00 a.m.—8:00 p.m. and December 9 from 8:00 a.m.—2:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

November 9, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-26499 Filed 11-15-88; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Presenters Section) to the National Council on the Arts which was to have been held on November 17-18, 1988, from 9:00 a.m.—8:00 p.m. and November 19, 1988, from 9:00 a.m.—6:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 has been changed. It will be held on November 29-30 from 9:00 a.m.—8:00 p.m. and December 1, 1988, from 9:00 a.m.—6:00 p.m.

The portion of the meeting which was to be open to the public on November 19, 1988, from 4:00—6:00 p.m. for a policy and guidelines discussion has been changed. The open portion of this meeting will be held on December 1, 1988, from 4:00—6:00 p.m.

The remaining sessions of this meeting on November 29-30, 1988, from 9:00 a.m.—8:00 p.m. and December 1, 1988, from 9:00 a.m.—4:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9) (b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained form Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-26500 Filed 11-15-88; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that the following meetings of the Humanities Panel will be held at the Old

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Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsectons (c)(4), (6) and (9)(B) of section 552 of Title 5, United States Code.

(1) *Date:* December 1, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: The meeting will review Summer Stipends applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(2) *Date:* December 2, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review Summer Stipends applications in Archaeology; Ancient, Medieval, and Renaissance History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(3) *Date:* December 2, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in American History I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(4) *Date:* December 2, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Sociology, Psychology, and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(5) *Date:* December 5, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review State and Regional Exemplary Award proposals submitted by state humanities councils, submitted to the Division of State Programs, for projects beginning after April 1, 1989.

(6) *Date:* December 5, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Music and Dance, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(7) *Date:* December 5, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Anthropology, Folklore, and New World Archaeology, submitted to the Division of Fellowships and Semianrs, for projects beginning after May 15, 1989.

(8) *Date:* December 6, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(9) *Date:* December 6, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Philosophy I, submitted to the Division of Fellowships and Seminars, for proejcts beginning after May 15, 1989.

(10) *Date:* December 7, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Art History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(11) *Date:* December 8, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Communication, Rhetoric, Theater, and Film, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(12) *Date:* December 8, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Political Science, Law and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(13) *Date:* December 9, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(14) *Date:* December 9, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in American History II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(15) *Date:* December 12, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Philosophy II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(16) *Date:* December 12, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in African, Asian, and Latin American History and Politics, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(17) *Date:* December 13, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Modern American and Modern British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(18) *Date:* December 13, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Classical, Medieval, and Renaissance Languages and Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(19) *Date:* December 14, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Hispanic Languages and Literatures; Linguistics submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(20) *Date:* December 15, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(21) *Date:* December 15, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Foreign Languages and Literatures; Comparative Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

(22) *Date:* December 16, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in French and Italian Languages and Literatures; Theory and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after May 15, 1989.

Stephen J. McCleary,
Advisory Committee Management Officer.
[FR Doc. 88–26435 Filed 11–15–88; 8:45 am]
BILLING CODE 7536–01–M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Section) to the National Council on the Arts will be held on December 7–9, 1988, from 9:00 a.m.–5:30 p.m. and on December 10, 1988, from 9:00 a.m.–3:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

November 10, 1988.
Yvonne M. Sabine,
Director Council and Panel Operation National Endowment for the Arts.
[FR Doc. 88–26502 Filed 11–15–88; 8:45 am]
BILLING CODE 7537–01–M

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on December 8–9, 1988, from 9:00 a.m.–6:00 p.m. and on December 10, 1988, from 9:00 a.m.–2:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 10, 1988, from 1:00–2:30 p.m. The topic for discussion will be policy and guidelines.

The remaining sessions of this meeting on December 8–9 from 9:00 a.m.–6:00 p.m. and on December 10 from 9:00 a.m.–1:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

November 10, 1988.
Yvonne M. Sabine,
Director Council and Panel Operation National Endowment for the Arts.
[FR Doc. 88–26502 Filed 11–15–88; 8:45 am]
BILLING CODE 7537–01–M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Challenge II Section) to the National Council on the Arts will be held on December 6, 1988, from 9:00 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

November 9, 1988.
Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 88–26501 Filed 11–15–88; 8:45 am]
BILLING CODE 7537–01–M

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on December 8–9, 1988, from 9:00 a.m.–6:00 p.m. and on December 10, 1988, from 9:00 a.m.–2:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 10, 1988, from 1:00–2:30 p.m. The topic for discussion will be policy and guidelines.

The remaining sessions of this meeting on December 8–9 from 9:00 a.m.–6:00 p.m. and on December 10 from 9:00 a.m.–1:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

November 9, 1988.
Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 88–26503 Filed 11–15–88; 8:45 am]
BILLING CODE 7537–01–M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Museum Purchase Plan Section) to the National Council on the

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Arts will be held on December 6, 1988, from 9:00 a.m.–5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applicants for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

November 9, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations. National Endowment for the Arts.

[FR Doc. 88–26504 Filed 11–15–88; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater Overview Section) to the National Council on the Arts will be held on December 5–6, 1988, from 9:00 a.m.–5:30 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will include guidelines.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

November 8, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations. National Endowment for the Arts.

[FR Doc. 88–26505 Filed 11–15–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The NRC has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new revision or extension:* New.
2. *Title of the information collection:* Pilot Program on Quality Assurance on Medical Use of Byproduct Material.
3. *The form number if applicable:* Not applicable.
4. *How often the collection is required:* One time.
5. *Who will be required or asked to report:* NRC medical licensees.
6. *An estimate of the number of responses:* 50 licenses.
7. *An estimate of the total number of hours needed to complete the requirements or request:* 3,500 hours.
8. *The average burden per response is:* 70 hours.
9. *An indication of whether section 3504(h), Pub. L. 96–511 applies:* Not applicable.
10. *Abstract:* The NRC is proposing to amend its regulations that would require its medical licensees to implement quality assurance (QA) procedures in order to avoid, detect, and correct simple human errors involving medical use of byproduct material. The pilot program is designed to test the proposed QA procedures clinically in order to minimize any potential interference with the proper delivery of medical care.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions should be directed to the OMB reviewer, Nicholas B. Garcia, (202) 395–3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 5th day of November, 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Mangement.

[FR Doc. 88–26438 Filed 11–15–88; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–315 and 50–316]

Indiana Michigan Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–58 and DPR–74, issued to the Indiana Michigan Power Company (the licensee) for operation of Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise provisions in the D.C. Cook Technical Specifications (TSs) relating to milk sampling for radiological analysis.

The Need for the Proposed Action

The current TSs concerning milk sampling, Item 4.a of Table 3–12.1, require milk samples to be collected for radiological analysis from the following specific areas:

A. Stevensville, Michigan.
B. Bridgman, Michigan.
C. Galien, Michigan.
D. Dowagiac, Michigan.
E. South Bend, Indiana.

However, no milk samples are collected in Stevensville or South Bend or sectors in which these cities are located because there are no willing farmers who wish to participate in the milk sampling program. Literal TS noncompliance was caused by listing the specific towns where samples were to be taken.

The proposed changes to the TSs are more consistent with the NRC guidelines. Specifically, the proposed changes require sampling at each indicator farm and each background farm. Indicator farm and background farm are defined as follows:

Indicator Farm Nearest milk producer in each of the land sectors within 8 miles of the plant site who is willing to participate in the radiological environmental monitoring program.

Background Farm A milk producer in one of the less prevalent wind directions at a distance greater than 15 miles but less than 25 miles who is willing to participate in the radiological environmental monitoring program.

The number of locations sampled may vary due to the number of sectors which contain farms willing to participate in the milk sampling program. The possibility exists that no willing participants may be found within 8 miles of the plant site. In order to address this possibility, the proposed TSs require broad leaf vegetation sampling. Specifically, if fewer than three willing indicator farms are found, borad leaf vegetation samples will be collected and analyzed when available.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the TSs. The proposed changes would correct the licensee's current TSs. They would make the TSs more restrictive and more in line with NRC guidelines concerning milk sampling for radiological analysis. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact.

With regard to potential nonradiological impacts, the proposed amendments do not involve systems located within the restricted area as defined in 10 CFR Part 20. The proposed amendments only change the TXs in relation to obtaining milk samples for analysis and correct editorial errors. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 14, 1988 (53 FR 26695). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendments, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendments. This would result in the licensee being in noncompliance with the TSs concerning milk sampling.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 1, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 4th day of November 1988.

For the Nuclear Regulatory Commission.

Theodore Quay,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–26439 Filed 11–15–88; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–315 and 50–316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, located at the licensee's site in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TSs) and License Conditions relating to fuel enrichment.

The proposed action is in accordance with the licensee's application dated August 19, 1988.

The Need for the Proposed Action

The proposed amendment is needed so that the licensee can use higher enrichment fuel and provides the flexibility of extending the fuel irradiation and permitting operation of longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed amendment. The proposed revisions would permit use of fuel enriched with Uranium 235 in excess of 4 weight percent and up to 4.23 weight percent, and license would expect the fuel to be irradiated to levels above 33 gigwatt days per metric ton (GWD/MT) but not to exceed 50 GWD/MT. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the Commission's staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increase burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes involve systems located within the restricted area, as defined 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the Commission's assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and

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Irradiation," dated July 7, 1988 (53 FR 30355). As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c).

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on October 11, 1988 (53 FR 39679). No request for hearing or petition for leave to intervene was filed following this notice.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973.

Agencies and Person Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated August 19, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland this 8th day of November 1988.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–26446 Filed 11–15–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–3054]

Finding of No Significant Impact; Amendment of Materials License No. SNM–1977; Philadelphia Electric Co., Montgomery County, PA

The U.S. Nuclear Regulatory Commission (the Commission) is considering the revision of Special Nuclear Material License No. SNM–1977 to Philadelphia Electric Company (the applicant) for the Limerick Generating Station Unit 2, located in Montgomery County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would authorize applicant to receive, possess, inspect, and store special nuclear material in the form of unirradiated fuel assemblies. The discussion below will be limited to assessing the potential for environmental impacts resulting from the handling and the storage of new fuel at Limerick, Unit 2.

The Need for the Proposed Action

The proposed action will allow the applicant to receive and store fresh fuel prior to issuance of the Part 50 operating license in order to inspect the fuel and finalize fuel preparation needed to load the fuel into the reactor vessel. Actual core loading, however, will not be authorized by the proposed license amendment.

Environmental Impacts of the Proposed Action

Once at Limerick, Unit 2, the new fuel will be stored outdoors in the new fuel storage area. The fuel will be stored in the outer wooden shipping containers in piles stacked four high. Each pile of fuel will be covered by a five-sided box manufactured out of corrugated steel. This temporary storage of assemblies in their shipping containers will present no significant environmental impact or significant radiation exposure to plant workers.

Assemblies are then moved to the refueling floor and stored in a predesignated storage area. Assemblies are removed from their shipping containers, inspected, and the fuel is then transferred to their designated storage location in the spent fuel storage pool. Criticality safety in the storage location is maintained by limiting interaction between adjacent fuel assemblies. The staff has evaluated the spent fuel pool and found it to be critically safe for all conditions of water moderation and/or reflection. The design of this storage location, combined with plant procedures, will ensure acceptable protection of the general public and plant personnel under either normal or abnormal conditions.

Since the fresh fuel assemblies are sealed sources, the principal exposure pathway to an individual is via external radiation. For low-enriched uranium fuel (<4 percent U-235 enrichment), the exposure rate at 1 foot from the surface is norally less than 1 mR/hr; therefore, it is estimated that the exposure level to workers handling the fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR Part 20. Because of the low radiation levels associated with the requested materials and activities and the applicant's radiation protection procedures, the staff concludes that fuel handling and storage activities can be carried out without any significant occupation dose to workers or radiological impact to the environment.

Only a small amount, if any, of radioactive waste (e.g., smear papers and/or contaminated packaged material) is expected to be generated as a result of fuel handling and storage operations. Any waste that is produced will be properly stored onsite until it can be shipped to a licensed disposal facility.

In the event the assemblies must be returned to the fuel fabricator, all packaging and transport of fuel will be in accordance with 10 CFR Part 71. No significant external radiation hazards are associated with the unirradiated fuel, because the radiation level from the clad fuel pellets is low and the shipping packages must meet the external radiation standards in 10 CFR Part 71. Therefore any shipment of unirradiated fuel is expected to have an insignificant environmental impact.

In the unlikely event that an assembly (either within or outside its shipping container) is dropped during transfer, fuel cladding is not expected to rupture. Even if the fuel rod cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of a ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release of UO_2 aerosol is unlikely except under conditions of deliberate grinding.

Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extremely unlikely.

Conclusion

The environmental impacts associated with the handling and storage of new fuel at Limerick, Unit 2, are expected to be insignificant. Essentially no effluents, liquid or airborne, will be released, and acceptable controls will be implemented to prevent a radiological accident. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternative to the Proposed Action

The principal alternative would be to deny the requested license amendment. Assuming the operating license will eventually be issued, denial of the storage only license would merely postpone new fuel receipt at Limerick, Unit 2. Although denial of the special nuclear material license for Limerick, Unit 2, is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement (NUREG–0974) related to this facility.

Agencies and Persons Contacted

The Commission's staff reviewed the applicant's request of May 6, 1988 and supplement dated October 28, 1988, and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the revision of Special Nuclear Material License No. SNM–1977. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the May 6, 1988, application related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Dated at Rockville, Maryland, this 7th day of November, 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88–26440 Filed 11–15–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York; Environmental Assessment And Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of Appendix J of 10 CFR Part 50 to the Power Authority of the State of New York (PASNY/the licensee), for the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirements of Section III.A.6(b) of Appendix J to 10 CFR Part 50 to the extent that a Type A Primary Containment Integrated Leak Rate Test (PCILRT) would not have to be performed during the Reload 8/Cycle 9 refueling outage (which commenced in August 1988) and that the normal PCILRT retest schedule specified in Section III.D(a) of Appendix J would be restored.

In addition, the licensee would be exempted from the requirements of Section IV.A of Appendix J to the extent that a Type C test would not be performed during the Reload 8/Cycle 9 refueling outage on the welds of a containment isolation valve located on the High Pressure Coolant Injection (HPCI) turbine exhaust line. This valve is to be replaced during the outage.

The Need for the Proposed Action

The PCILRTs performed during the 1982, 1985, and 1987 refueling outages were deemed failures in the "as-found" condition. Section III.A6(b) of Appendix J states that, should two consecutive PCILRTs fail to meet the applicable acceptance criteria, a retest must be performed during each subsequent refueling outage until two consecutive tests are deemed acceptable, after which time the retest schedule specified in Section III.D(a) may be resumed. Accordingly, the licensee would be required to perform a PCILRT during the August 1988 refueling outage. As an alternative to performing this test, the licensee has submitted a Corrective Action Plan which entails the replacement of 33 containment isolation valves which previously were identified as having excessive leakage. Replacement of 21 of these valves would take place during the Reload 8/Cycle 9 outage. Implementation of the Corrective Action Plan will ensure that the intent of Section III.A.6(b) is met, in that unacceptable containment leakage is identified and corrected.

In accordance with Section IV.A of Appendix J, a Type A, B or C test (as applicable) is required to be performed following any major modification or replacement of a component which is part of the primary reactor containment boundary. The licensee has determined that the welds of one of the valves to be replaced, located on the HPCI turbine exhaust line, cannot be pressure tested. Also, since the replaced manual valve is not used for containment isolation, it is not subject to PCILRT requirements. Accordingly, the licensee has requested an exemption from Section IV.A. In lieu of a Type A, B or C tests, the licensee has proposed 100 percent radiography of the affected weld as well as dye penetrant or magnetic particle tests. This will ensure that the intent of Section IV.A, (the identification of leakage resulting from replacement of a component which is part of the primary containment boundary) is met.

Environmental Impact of the Proposed Action

The proposed action would ensure that excessive leakage from containment isolation valves is identified and corrected and would provide a level of safety at least equivalent to that attained by compliance with Sections III.A.6(b) and IV.A of Appendix J to 10 CFR Part 50. On this basis, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

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Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated April 8, 1988 and the supplements dated June 17, 1988, July 14, 1988 and October 28, 1988, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Rockville, Maryland, this 10th of November 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects, I/II.

[FR Doc. 88–26441 Filed 11–15–88; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 26, 1988 through November 4, 1988. The last biweekly notice was published on November 2, 1988 (53 FR 44247).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 16, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment requests: May 27, 1988

Description of amendment requests: The amendments would modify the Technical Specifications (TSs) for each unit by adding operability and surveillance requirements for the core-exit thermocouples (CETs). The CET system is one of the inadequate core cooling (ICC) monitoring systems. These systems and the associated TSs are required by NUREG-0737, Section II.F.2, as specified by Generic Letter 83-37.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (ii), A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: e.g., "a more stringent surveillance requirement."

The new operability and surveillance requirements for the CET system of each unit constitute additional limitations, restrictions, and controls not presently included in the Technical Specifications. Therefore, the proposed amendments are within the scope of the example.

Since the applications for amendment involve proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the applications involve no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Jose A. Calvo

Carolina Power & Light Company et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit No. 1, Brunswick County, North Carolina

Date of application for amendment: May 27, 1988

Description of amendment request: The proposed amendment would change the reactor water level setpoint for the isolation of the Group 1 primary containment isolation valves from low level 2 to low level 3. The proposed amendment also reflects plant modifications that are necessary. New slave units will be added for the low level 3 instrumentation and their tag numbers will be identified in the Technical Specifications. Master trip units will be upgraded and the Technical Specifications will reflect the new tag numbers for low level 2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes in accordance with the standards in 10 CFR 50.92(c) and provided the following analysis:

1. The setpoint change has been evaluated with respect to several operating parameters, including the minimum critical power ratio (MCPR), peak vessel pressure, radiation release, and shutdown capability during abnormal operating transients. Fuel cladding integrity during a loss-of-coolant accident (LOCA) and the reactor response during an anticipated transient without scram (ATWS) event were also evaluated. Results of this evaluation are provided in the GE Topical Report NEDC-30601-P, "Safety Review of Water Level Setpoint Change for Brunswick Steam Electric Plant, Units 1 and 2." As

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stated in Section 4.2.3 and 4.2.4 of that report, the change will not cause a reduction in MCPR, an increase in the peak pressure, an increase in radiation release, a cause of equipment damage, a reduction in plant shutdown capability, or a decrease in core cooling capability. The main steam isolation valve (MSIV) water level setpoint change has no impact on LOCA events previously evaluated, nor does it cause consequences of accidents previously evaluated to be increased.

2. Several operating parameters have been evaluated to support the setpoint change, including MCPR, peak vessel pressure, radiation release, and shutdown capability during abnormal operating transients. Fuel cladding integrity during a LOCA and reactor response during an ATWS event were also evaluated. Results of this evaluation are provided in the GE Topical Report NEDC-30601-P, "Safety Review of Water Level Setpoint Change for Brunswick Steam Electric Plant, Units 1 and 2." None of these evaluations indicated that any new or different type of accident would be created by the change. In addition, the present function and structure of the Group 1 isolation valves remains unchanged, thereby eliminating possible operator confusion and training problems that could lead to a new or different type of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3. The effects of the setpoint change for LOCA events has been reviewed, and it has been determined that the change has no impact. As stated in NEDC-30601-P, large and intermediate LOCA events will not be affected because the rapid depressurization and rapid inventory loss will cause the MSIV to close almost immediately after the accident, before any fuel failure could occur. Thus, the lower MSIV trip will not increase inventory loss from the reactor core or radiation release to the environment. For a small break LOCA, the highest peak cladding temperature for the worst case single failure (i.e., failure of the high pressure coolant injection (HPCI) system) is considerably less than the 2200° F peak clad temperature limit. Therefore, the setpoint change will have no effect on the limiting maximum average planar linear heat generation rate (MAPLHGR).

For a loss of feedwater flow event under the proposed amendment, the reactor would not be isolated while HPCI and reactor core isolation [cooling] (RCIC) are operating. Reactor core isolation cooling system flow would compensate for steam flow through the turbine control valves to the main condenser, thereby maintaining water level above low level 3, keeping the MSIVs open, and preventing the S/RVs from opening. Thus, the MSIV setpoint change will not compromise core cooling capability for the loss of feedwater flow event. Furthermore, it reduces suppression pool heatup for this event because the main condenser is available for a longer time.

The low level 3 reactor water level setpoint for the Group 1 primary containment isolation system valves still "ensures the effectiveness of the instrumentation used to mitigate the consequences of accidents" as demonstrated by the evaluation in Sections 4 and 5 of NEDC-30601-P. Thus, for the reasons described above, the margin of safety is not reduced and may actually be increased.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit No. 1, Brunswick County, North Carolina

Date of application for amendment: June 9, 1988

Description of amendment request: The proposed change to Brunswick Steam Electric Plant, Unit No. 1, (BSEP) Technical Specification Tables 3.3.5.2-1 and 4.3.5.2-1 is requested to address alternate shutdown capability requirements associated with 10 CFR Part 50, Appendix R.

Reactor vessel water level transmitter B21-LT-N026A currently provides indication on the remote shutdown panel (B21-LI-R604AX), as well as on the control panel in the control room (via B21-LT-604A), and level transmitter B21-LT-N026B provides indication only on the control panel (via B21-LI-R604B). The remote shutdown panel is located in the reactor building. The proposed modification would have level transmitter B21-LT-N026A providing indication to only the control panel in the control room (on B21-LI-R604A) and level transmitter B21-LT-N026B will provide indication on the remote shutdown panel (B21-LI-R604BX) and, via the remote shutdown panel, on the control panel (B21-LI-R604B).

The licensee states that these modifications are being made to address alternate shutdown capability requirements associated with 10 CFR Part 50, Appendix R, Section III.G. The above described level transmitters and indicators are identified in the Technical Specifications and, subsequently, need to be changed to support the modification.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (the Company) has reviewed this proposed license amendment request and determined that its adoption would involve no significant hazards consideration for the following reasons:

1. The instrumentation being rewired provides reactor water level indication as part of the plant monitoring instrumentation required for 10 CFR Part 50, Appendix, R, Section III.G. It provides no direct protection against any of the accidents identified in Chapter 15 of the Updated Final Safety Analysis (UFSAR). By rewiring these instruments, the Train A instrumentation will feed the control room and the Train B instrumentation will feed the remote shutdown panel thereby satisfying the requirements of 10 CFR Part 50, Appendix R, Section III.G. The purpose and function of the instrumentation will not change; only the indication point will be exchanged between instrument trains. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Rewiring of level transmitter loops B21-LT-N026A and B21-LT-N026B will allow the Company to safely shutdown the unit using the Alternate Safe Shutdown Procedures. The possibility of a new or different kind of accident from any accident previously evaluated will not be created because this instrumentation will not be performing any different function from its current function. This modification is being made to address the commitments associated with 10 CFR Part 50, Appendix R, Section III.G which require the Train A instrumentation to feed the control room and the Train B instrumentation to feed the remote shutdown panel. The new configuration will ensure consistent indication, i.e., Train A or Train B, in both the control room and at the remote shutdown panel. The necessary indication will be available to the operator at the proper location under fire scenarios which would take out either the Train A or Train B instrumentation.

3. The proposed modification will ensure proper indication in the appropriate area in the event of a fire that takes out either the Train A or Train B instrumentation. Currently, transmitter B21-LT-N026A feeds the remote shutdown panel, and transmitter B21-LT-N026B feeds the control room. Commitments associated with compliance with 10 CFR Part 50, Appendix R, Section III.G requires that Train A feed the control room and Train B feed the remote shutdown panel. This is to ensure that in the event of a fire that takes out Train A, there will be indication to the remote shutdown panel from Train B, and in a fire that takes out Train B, there will be indication to the control room from Train A. Thus, the proposed amendment does not involve a significant reduction in the margin of safety.

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit No. 1, Brunswick County, North Carolina

Date of application for amendment: June 27, 1988

Description of amendment request: The proposed amendment would change Technical Specification (TS) Tables 3.3.5.6-1, 3.3.5.6-2 and 4.3.5.6-1 to replace instrument tag number TS-CR-863 with TS-CIT-863-3. This change is needed as a result of planned upgrading of instrumentation during the Brunswick Steam Electric Plant, Unit 1, refueling outage of November 1988. Item 2 in each of the above tables lists chloride leak detection instrumentation in the condensate pump discharge. This instrumentation provides indication of chloride intrusion in the feedwater and condensate systems. Chlorides pose a long-term threat to the integrity of stainless steel piping systems. The change is necessary due to a plant modification that will replace the instrument represented by TS-CR-863-3 with an upgraded conductivity cell and analyzer represented by tag number TS-CIT-863-3. The upgraded components are capable of detecting and compensating for temperature transients that may occur in the sample being analyzed. The new conductivity analyzer will provide a direct and continuous reading without relying on a recorder, and will also provide an output to a recorder for trending purposes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that:

1. The accidents analyzed in Chapter 15 of the Updated FSAR are not affected by the chloride leak detection instrumentation change because the function of the instrument is not altered and the chloride limits established in TS 3/4.4.4 are not being changed. In addition, the new instruments being installed are capable of detecting and compensating for temperature transients which may occur in the sample being analyzed. The current system requires additional data processing to achieve the same results. Based on this reasoning, CP&L has determined that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. As stated above, the chloride leak detection instrumentation provides protection from long-term piping degradation in the feedwater and condensate systems caused by chloride intrusion. No possibility of a new or different kind of accident is created because the new instruments perform the same basic function as the ones they are replacing. Also, the reactor coolant system chloride limits established in TS 3/4.4.4 are not being changed. The new instrument has enhanced capabilities; it processes the data into a more useful form prior to readout. Based on the above reasoning, CP&L has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The margin of safety is not reduced because, as stated above, the new instruments perform the same basic function as the ones they are replacing and the chloride limits established in TS 3/4.4.4 are not being changed. In fact, the new instruments have enhanced capabilities which may provide the user with better data, thereby providing earlier indication of chloride intrusion, and perhaps avoiding long-term problems with pipe degradation due to chloride intrusion. Based on this reasoning, CP&L has determined that the proposed amendment does not involve a significant reduction in the margin of safety.

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-456 and 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 26, 1986 and January 14, 1988

Description of amendments request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Braidwood Nuclear Power Station Security Plan to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.F of Facility Operating License Nos. NPF-72 and NPF-77 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection and Plants and Materials," to clarify plant security requirements to afford and increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 26, 1986 and January 14, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

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In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments are appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards consideration (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket No. 50-374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of application for amendment: September 14, 1988

Brief description of amendment: The proposed amendment to Operating License No. NPF-18 would revise the LaSalle Unit 2 Technical Specifications in support of the second reload for LaSalle Unit 2. Startup for Cycle 3 is currently scheduled for January 1989. The proposed reload fuel and analyses including the previously approved SAFER/GESTR-LOCA Loss-of-Coolant Accident (LOCA) Analysis are changes resulting from analyses performed to expand the operating region and allow equipment out-of-service and changes that are administrative or provide clarification. The proposed changes for LaSalle Unit 2 are identical to those previously submitted and approved for use at LaSalle Unit 1, except for minor calculation differences in the results for transient analyses and include:

1. Provision for operation in the expanded operating domain including revised APRM and RBM setpoint changes incorporated using standard and previously approved methodology.
2. Use of extended burnup fuel (GE 8x8EB) with increased LHGR limit of 14.4 Kw/ft.
3. Use of improved transient and LOCA analysis methods which allow use of a lower tau-B value in determining the MCPR operating limit as a function of scram time, and deletion of the single loop MAPLHGR limit multiplier of 0.85.
4. Provision for operation with certain equipment inoperable or out of service. Specifically, one of the following systems or components may be out of service when the appropriate Technical Specification Actions are satisfied:
   a. Turbine Bypass System
   b. End-of-Cycle Recirculation Pump Trip (EOC-RPT)
   c. One Safety Relief Valve (SRV)
   d. Feedwater Heaters
5. Several changes for clarification or administrative purposes were proposed including:
   a. Deletion of GEXL correlation and GETAB statistical model in the bases of the safety limit section.
   b. Revision to the Control Rod Program Controls Technical Specification to require the RWM to be demonstrated operable in Operational Condition 1, prior to reaching 20% power, when reducing thermal power.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the use of the proposed operating limits is specifically analyzed to ensure that the input assumptions of all existing transient and accident analyses remain valid. These analyses are performed using a methodology which has received review and approval for other similar plants including LaSalle Unit 1. The Technical Specification Actions included in the proposed revisions do not significantly affect the probability of an accident previously analyzed because the required time intervals for corrective action are consistent with the existing specifications.
2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed MCPR, MAPLHGR, and LHGR limits represent limitations on reactor operating state which do not directly affect the operation, or function of any system or component. As a result, there is no impact on or addition of any systems or equipment whose failure could initiate an accident. The proposed operating domain is evaluated to retain the originally required design margins to system integrity during normal operation, transients and accidents and therefore, do not cause significant new loads or stresses on mechanical systems or boundaries. The proposed allowances for operating with prescribed equipment inoperable or out-of-service do not cause physical changes to any systems and therefore do not induce new failure modes.
3. Involve a significant reduction in the margin of safety because no changes to safety limits protective system logic or design are involved. The analyses used to evaluate reactor and system performance are performed using standard methods and the calculated operating limits maintain conservative margin to safety limits to accommodate the anticipated performance during transients and accidents. Changes which are administrative in nature do not affect the operating limits of the plant or the consequences of analyzed transients.

Local Public Document Room location: Public Library of Illinois, Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company (CECo), Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendments: July 7, 1988

Description of amendments request: There are two changes associated with the proposed license amendment. The first change results from the completion of a Unit 2 Detailed Control Room Design Review (DCRDR) Human Factors modification which resulted in the relocation of the drywell temperature indicator from the 902-21 (back) panel to the 902-3 (front) panel. Such a change would be incorporated into Technical Specifications (TS) Table 3.2-4 and 4.2-2 of DPR-30. The remaining proposed changes would correct typographical errors associated with the same TS tables.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists. As stated in 10 CFR 50.92(c), a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Pursuant to 10 CFR 50.91(a) the licensee has provided the following evaluation of their amendment application addressing these three standards.

CECo has evaluated the proposed Technical Specifications changes and determined that they do not present a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of QCNPS in accordance with the proposed changes:

(1) Will not involve a significant increase in the probability or consequences of an accident previously evaluated because only the location of the drywell temperature indication has been changed (from the back to the front panel) in the Control Room. This is an enhancement over the previous location to make it more observable for operators. Functions and range of the drywell instrument remain the same. This modification was considered to be a change in the conservative direction.

(2) Will not create the possibility of a new or different kind of accident from any accident previously evaluated because there were no hardware changes (addition or deletion of equipment) per-se, nor are there any new modes of operation associated with this amendment. The changes to Tables 3.2-4 and 4.2-4 reflect changes to equipment (instrumentation) location only.

(3) Will not involve a significant reduction in the margin of safety because revising an instrument location readout in the control room does not adversely affect the operation of any plant systems. Therefore, the margin of safety has not been unchanged as a result of this change.

The NRC staff has reviewed the licensee's evaluation related to the proposed changes and concurs with their conclusions.

In addition, administrative and editorial TS changes are considered representative of example (i) in the Commission's guidance (51 FR 7751) for examples of no significant hazards, which is defined as "a purely administrative change to TS; for example a change to achieve consistency throughout the Technical Specification, correction of an error, or change in nomenclature."

Therefore the NRC staff proposes to determine that this amendment request does not involve significant hazards considerations based upon a preliminary review of the application, the licensee's evaluation of no significant hazards, and NRC guidance.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 5, 1988

Description of amendments request: This amendment would delete Figure 6.1-1, 'Corporate Organization," and Figure 6.1-2, "Station Organization," from the Technical Specifications (TS) and would revise Section 6 to require inclusion of these organization charts in the QA Topical Report. However, the NRC will continue to be notified of licensee organization changes through other regulatory controls. In accordance with 10 CFR 50.34(b)(6)(i), the applicant's organizational structure is required to be included in the Final Safety Analysis Report (FSAR). Chapter 13 of the FSAR provides a description of the station organization and a detailed organization chart. Updates to the FSAR are required by 10 CFR 50.71(e) to be submitted annually to the NRC. Even though Figures 6.1-1 and 6.1-2 would be deleted from TS, Section 6 of the TS would be revised to require inclusion of these organization charts in the CECo QA Topical. Whereupon, Appendix B to 10 CFR Part 50, and 10 CFR 50.4(b)(7), will govern any changes made to the organization as it is described in the Quality Assurance (QA) Program. Finally, it is CECo's normal practice to inform the NRC of organizational changes affecting their nuclear facilities prior to implementation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. CECo evaluated the proposed TS changes and determined, and the NRC staff agrees that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the TS does not affect plant operation, nor does it involve any physical modification of the plant. Furthermore, the aforementioned administrative and regulatory controls remain in force to ensure that organizational changes are reviewed by the NRC.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature; and does not physically alter any systems or components, or the way they are operated.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because CECo through its Quality Assurance programs, and its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety-related operations will be performed at a high level of competence. Futhermore, this amendment does not change any setpoints or operating parameters. Consequently, removal of organization charts from the Technical Specifications will not affect the margin of safety. The NRC staff has reviewed the licensee's evaluation related to the proposed changes and concurs with their conclusions.

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In addition, the associated editorial TS changes proposed by CECo are considered representative of example (i) in the Commission's guidance (51 FR 7751) for examples of no significant hazards, which is defined as "a purely administrative change to TS; for example a change to achieve consistency throughout the Technical Specifications, correction of an error, or change in nomenclature."

Therefore the NRC staff proposes to determine that this amendment request does not involve significant hazards considerations based upon a preliminary review of the application, the licensee's evaluation of no significant hazards, and NRC guidance.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 26, 1988

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.7.6 to clarify the emergency power requirements for the Control Room Area Ventilation System. The word "train" is substituted for the word "system" where reference is made to one of the two independent trains which comprise the ventilation system for the control room area shared by the two Catawba units. Also, TS 3/4.7.6 and its Bases are revised to eliminate the possibility of misinterpreting the existing TS requirements for diesel generator (D/G) operability when one or both Catawba units are shutdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of July 26, 1988, provided the following discussion and analysis with regard to the three 10 CFR 50.92 standards:

The Control Room Area Ventilation (VC) and Chilled Water (YC) Systems combine to form one system which is designed to maintain a suitable environment in the following plant areas at all times: Control Room, Cable Room, Battery Room, Switchgear Rooms, Motor Control Center Rooms, and the Electrical Penetration Rooms at elevation 594+0. The VC/YC System is shared between both Units. There are two 100% redundant trains of VC/YC equipment. Each is capable of being powered by Unit 1 or Unit 2 Essential Auxiliary Power, but under normal conditions both trains are aligned to Unit 1. Two diesel generators (D/Gs) are provided per Unit to energize the Essential Auxiliary Power buses during emergency conditions.

Technical Specification 3.7.6 specifies that two independent trains of VC/YC shall be Operable during all operational modes. If one train becomes Inoperable while either Unit is in Mode 4, Hot Shutdown, or above, the Inoperable train must be restored to Operable status within seven days, or the operating Units must be shutdown. If both Units are below Mode 4 and one train is Inoperable, the train must be restored to Operable status within seven days or the Operable train must be operated in the filter mode. If both trains are Inoperable, or with the Operable train not capable of being powered by an Operable emergency power source, all core alterations and positive reactivity changes must be suspended on both Units. The requirement for an Operable emergency power source is only specifically stated for Units operating below Mode 4. However, the bases for Technical Specification 3.7.6 states that the operability of VC/YC ensures that ambient air temperature does not exceed allowable limits for equipment and instrumentation, and the Control Room will remain habitable, during and following all credible accident conditions. This implies that an Operable emergency power supply should be a prerequisite to VC/YC operability in all modes.

Technical Specification 3.8.1.1 specifies for each individual Unit that two separate and independent D/Gs are required to be Operable per Unit, if the Unit is in Mode 4, or above. Below Mode 4, Technical Specification 3.8.1.2 applies and only one D/G is required Operable per Unit. Action Statement c. for Technical Specification 3.8.1.1 specifies that when one D/G becomes Inoperable, all required systems (or trains) that depend on the remaining Operable D/G as a source of emergency power, must be verified Operable within two hours, or the Unit must be shutdown. This is intended to provide assurance that a loss of offsite power event, while one D/G is Inoperable, will not result in a complete loss of safety function of critical systems. it is also the reason Technical Specification 3.7.6 does not specifically require that VC/YC have an Operable emergency power source in Mode 4, or above. This action statement is deficient with respect to VC/YC because VC/YC is a Unit shared system, and Technical Specification 3.8.1.1 applies only to individual Units. In order for VC/YC operability to be protected by this Action Statement, the D/G must become Inoperable while the Unit is in Mode 4, or above. There is no such Action Statement in Technical Specification 3.8.1.2 since only one D/G is required Operable, and the Unit is already shut down.

This amendment request would remove the ambiguity as to the emergency power source requirements for the VC System by stating the requirements in the VC System Technical Specification.

To clarify the requirements the Specification is to be split into two separate Specifications. The first Specification (Technical Specification 3.7.6.1) would state the requirements for the VC System when either unit is in Modes 1, 2, 3 or 4. This Specification will now specifically require that each train of the VC System be capable of being powered by an Operable emergency power source whenever either unit is in Mode 1, 2, 3 or 4. This will alleviate the confusion which is currently contained in the Specification as to the emergency power source requirements when one unit is in Modes 1, 2, 3 or 4 and the other unit is in Modes 5 or 6.

Technical Specification 3.7.6.2 is being proposed to clearly state the VC System requirements when both units are in Modes 5 or 6.

The proposed changes to the VC System Specification will also specify that the requirements are to be performed on a per train basis. The VC System is comprised of two independent and redundant trains. The current wording is that which appears in the Standard Technical Specification and should be changed to more clearly reflect what is in place at Catawba.

These proposed changes will add clarification to the requirements of the VC System Specification. The changes will not delete any current requirements or operating restrictions contained in the Specifications and will not allow the plant to be operated in any different mode or configuration. As such, these changes are considered to be administrative in nature and do not involve any Significant Hazards Considerations.

The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident. The operating parameters and the design of the VC System are unchanged and no new modes of operation will be introduced by this amendment request. All previous accident analyses are still applicable and remain unchanged by this proposal.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes will not change the design or allowed modes of operation of the VC System. As such, no new failure modes are introduced and no new types of accidents are possible.

The proposed amendment does not involve a significant reduction in a margin of safety. These changes will add clarification to the existing Specification without changing any of the current requirements.

For the above reasons, Duke Power concludes that this proposed amendment does not involve any Significant Hazards Considerations.

The staff has reviewed the proposed changes to TS 3/4.7.6, and agrees with the licensee's evaluation of each of these changes with respect to the three standards of 10 CFR 50.92.

On this basis, the Commission has concluded that the requested changes meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: October 6, 1988

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Table 3.3-3, Item 14.g., to reflect a proposed modification to the pumphouse pit level instrumentation of the Nuclear Service Water (RN) System. The system is designed to supply cooling water to various heat loads in both the safety and non-safety portions of each unit. This modification would change the swapover logic of the RN system.

There are currently four level transmitters per pit at the RN pumphouse. Two are safety-related and two are not safety-related. The modification will upgrade 1 out of the 2 non-safety level transmitters per pit to safety grade. This would accommodate a 2 out of 3 logic instead of the present 1 out of 2 logic. Past experience has shown that a single spurious failure to the "low" position of one level transmitter can initiate a swapover when there is an adequate water level in the RN pits. Inadvertently challenging the system with numerous valves changing position and starting all RN pumps is unnecessary and reduces the reliability of the system.

The failure mode of all the safety grade level transmitters is the same. They fail low on loss of power. This is desirable in order to realign suction from Lake Wylie to the Standby Nuclear Service Water Pond (SNSWP) which is the ultimate heat sink.

The proposed amendments would also temporarily waive the requirements of the Action Statement for Item 14.g. in Table 3.3-3, for 48 hours per pit, on a one time basis in order to allow orderly implementation of this modification. During this time at least one RN pit will be available. The 48 hours is needed for implementation of the modification on each pit separately. During this period, the pit will be inoperable only from the standpoint of automatic realignment to the SNSWP from its normal supply if low level is sensed in the affected pit. All necessary automatic functions would still occur in the opposite pit. The only automatic valve actuation which is activated by train specific pit level instrumentation is the loop cross-over isolation valves. Closure of these valves is only required in the event of design basis accident accompanied by a failure of a pit supply valve to open when an emergency diesel generator or nuclear service water pump is out-of-service for extended maintenance. All four diesel generators and nuclear service water pumps will be maintained in an operable status for the duration of the requested 48 hour period. Therefore, the RN system would be capable of performing its design function during any design basis event, including any concurrent postulated single failure, throughout the requested 48 hour period.

In a letter to Duke Power Company dated September 30, 1987, the NRC staff noted that this proposed modification would improve the overall reliability of the RN System.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR Part 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possiblity of new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed modification would increase the reliability of the RN system by eliminating unnecessary actuations of the swapover instrumentation and components, and during implementation of the modification the system would be capable of performing its intended function during any design basis event.

The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated because the RN system design basis would not be changed as a result of this modification, and the proposed modification would improve the reliability of the system.

The proposed amendments do not involve a significant reduction in a margin of safety because the modification would enhance the reliability of the RN system by decreasing the likelihood of inadvertent actuations, and during implementation of the modification the RN system would be capable of performing its intended function during any design basis event.

Accordingly, the Commission has concluded that the requested changes meet the three standards and, therefore, has made a proposed determination that the requested license amendments do not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: October 7, 1988

Description of amendment request: The proposed amendment would revise Section 6.2 "Organization" of the Technical Specifications (TS) to delete the offsite and onsite organization charts, Figures 6.2-1 and 6.2-2. In place of the charts, the revision would add general requirements which capture the essential features of the organizational structure that are defined by the existing organization charts.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility

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in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of October 7, 1988, provided the following discussion and analysis with regard to the three 10 CFR 50.92 standards:

This proposed amendment would incorporate the guidance contained in the NRC's Generic Letter 88-06, dated March 22, 1988. The Generic Letter provided for deletion of the organization charts contained within Section 6 of the Technical Specifications provided certain statements be added to cover particular administrative control requirements.

This proposed amendment has been developed based on the Generic Letter guidance.

The NRC Staff concluded and Duke Power concurs that the removal of organization charts from the Technical Specifications will provide greater flexibility to implement changes in organization structure but will not reduce plant safety.

The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident. This amendment is administrative in nature and does not change the design or operation of the facility. The accident analyses are therefore unaffected by this proposal.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The design and operation of the facility will not be changed by this amendment and no new modes of operation will be introduced.

The proposed amendment does not involve a significant reduction in a margin of safety. This change is administrative in nature and therefore has no effect on any margin of safety.

The NRC's discussion in their Generic Letter 88-06 concluded that any facility incorporating the changes outlined in the Generic Letter will have greater flexibility to implement changes to their organizational structures and will not reduce plant safety.

For the above reasons, Duke Power concludes that this proposed amendment does not involve any Significant Hazards Considerations.

The NRC staff has reviewed the licensee's submittal against the guidance provided in Generic Letter (GL) 88-06, "Removal of Organization Charts from Technical Specification Administrative Control Requirements." The proposed TS revisions, deleting the organization charts and adding more flexible provisions regarding organizational structure, are in accord with this guidance. As also recommended in GL 88-06, the Final Safety Analysis Report (FSAR) contains the offsite and onsite organization charts (Figures 13.1.1-1 and l3.1.2-1) and the qualifications for those positions designated by the charts as requiring a Senior Reactor Operator or Reactor Operator license (FSAR, Section 13.1.3.1). The staff therefore finds that the proposed revisions do not adversely affect the organizational characteristics which are important to the safe operation of the facility. The staff also agrees with the licensee's evaluation of the proposed revisions with respect to the three standards of 10 CFR 50.92.

On this basis, the Commission has concluded that the requested amendment meets the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: October 24, 1988

Description of amendment request: The proposed amendment would extend the interval for several 18-month surveillances: reactor trip system response time, reactor trip bypass breakers automatic undervoltage trip check, engineered safety feature (ESF) logic response time, manual actuation switches for several ESF systems, reactor trip P-4 interlock, seismic monitoring instruments, containment isolation check valve lift tests, containment isolation phase B isolation valve actuations, containment recirculation spray valve actuations, diesel generator maintenance inspection, and battery discharge test. To perform these surveillances, the licensee would have to shutdown the unit. Therefore, the licensee requested that the surveillances specified above be permitted to be done at the first refueling outage, but no later than April 1, 1989. If approved, the amendment would permit extension of the 18-month intervals by several days to about three months. The amendment would thus avert a reactor shutdown only to perform surveillances. The licensee agreed to perform these surveillances if there is an unscheduled shutdown of sufficient duration before the refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed schedular extensions are not made as a result of, nor would they lead to any design changes. When approved by the staff, only certain surveillance intervals would be extended. The affected systems will continue to perform as stated in the licensee's Final Safety Analysis Report (FSAR); other requirements regarding these components/systems are not changed. From experience in the past, surveillances were performed usually to confirm that components were operable as designed. The probability of finding inoperable components was not high, and consequently, the probability of occurrence of an accident can only be increased by an insignificant amount if the surveillance interval is extended by a small amount. Therefore, the answers to questions (1) and (2) would be negative. The safety limits assumed in FSAR analyses are not affected by the proposed amendment since all assumptions are expected to remain unchanged. Hence the answer to question (3) is also negative.

On such basis, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: October 20, 1988

Description of amendment request: The amendment would change the maximum allowable control element assembly (CEA) drop time from 2.7 seconds to 3.1 seconds. The application is the result of the licensee's review of NRC Information Notice No. 88-47 entitled, "Slower-than-Expected Rod-Drop Time Testing."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application and made a no significant hazards consideration determination. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change does not affect any active hardware involving plant operation; rather it affects an acceptance criterion for confirming the required performance of the existing control element assembly (CEA) hardware. Therefore, the proposed change does not increase the probability of an accident previously analyzed.

The impact of changing the CEA drop time from 2.7 to 3.1 seconds on all safety analysis related Design Basis Events (DBE's), for which a scram of the CEA's is predicted, was assessed by specifically re-analyzing only the most limiting events with respect to the various safety analysis fuel and system criteria. In particular, the following events were re-analyzed:

Loss of Condenser Vacuum (LOCV)
Loss of Forced Reactor Coolant Flow
Pre-Trip Steam Line Break (SLB)
Hot Full Power CEA Ejection (CEA Ejection)

It has been demonstrated that the events are either totally unrelated to CEA drop time considerations or are not significantly impacted. Additionally, it was demonstrated for each potentially impacted analysis that the consequences of the analysis remain unchanged or are bounded by the existing analysis. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

With respect to the second standard, the licensee stated:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change in the Technical Specifications does not affect any active hardware involving plant operation; rather it affects only an acceptance criterion for confirming the required performance of the existing CEA hardware. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

With regard to the third standard, the licensee provided the following rationale:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The increased CEA drop time has been evaluated for its impact on the current licensed safety analysis. The results of the re-analysis for those transients which are potentially impacted by the proposed change show that the reference analyses are valid or that the new analysis results still show acceptable results with respect to the acceptance criteria. Therefore, there is no significant reduction in the margin of safety.

The staff has reviewed the analysis provided by the licensee in support of a no significant hazards consideration determination. The staff believes that the licensee has met the standards for such a determination. Therefore, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: October 24, 1988

Description of amendment request: The amendment would expand the Departure from Nucleate Boiling and Linear Heat Rate-related Axial Shape Index limits contained in Figures 3.2-4 and 3.2-2, respectively. In addition, a similar expansion of limits is proposed for the Linear Heat Rate-related Limited Safety System Setpoints as contained in Figure 2.2-2. The licensee is requesting these changes to give the plant greater flexibility at low and intermediate power levels.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application and provided a no significant hazards consideration determination. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Axial Shape Index (ASI) limits are used as initial assumptions for all Design Basis Events (DBEs) evaluated in the safety analysis. The expansion of these ASI limits for lower powers is applicable only to those DBEs that are evaluated between hot full and hot zero power. Events are not typically analyzed at intermediate power levels. Events initiated from intermediate power levels (100% greater than initial power greater than 0%) are unaffected since these are bounded by the results of events initiated from either the full power or zero power events.

The existing safety analyses for these events use input parameters that are axial shape dependent, such as scram reactivity insertion curves, which are more adverse (conservative) than the Technical Specification Limiting Condition for Operation (LCO) and Limiting Safety System Setpoint (LSSS) axial shape limits at all power levels in order to bound future cycles' operation. It was verified, using current methodology and the proposed ASI limits, that the current safety analysis remains valid.

The current ASI limits allowed by the Departure from Nucleate Boiling (DNB) and Linear Heat Rate (LHR) LCOs and LSSSs are expanded for greater operational flexibility at lower powers. [These] proposed change[s] will not increase the probability or consequences of an accident previously evaluated because the proposed limits are still conservative with respect to the actual calculated limiting values.

With regard to the second standard, the licensee stated:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes in the Technical Specifications do not affect any active hardware involving plant operation, nor do they alter the assumptions or methodology of the safety analyses. Therefore, they will not create the possibility of a new or different

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kind of accident from any previously evaluated.

With regard to the third standard, the licensee provided the following rationale:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The wider ASI bands allowed at lower powers have been reviewed for their impact upon the current licensed safety analysis. The licensed safety analysis of record remains unchanged due to the expanded ASI range for low powers. Therefore, there is no significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon the review, the staff believes that the licensee has met the three standards. Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: October 24, 1988

Description of amendment request: The proposed amendment would relax the maximum allowable primary loop resistance temperature detector (RTD) delay time from 8 seconds to 16 seconds. This delay time is a factor that must be considered in the thermal margin/low pressure reactor trip. According to the licensee, this change would provide increased operational flexibility without decreasing the margin of safety.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application and provided a no significant hazards consideration determination. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Resistance Temperature Detector (RTD) response time affects only measurement hardware which passively ascertains the coolant temperature condition, not active hardware impacting the plant's physical thermal-hydraulic operations. Therefore, the proposed change does not increase the probability of occurrence of any accident. As described before, the safety analyses demonstrate that the same degree of protection is available at the longer RTD response times since the ex-core power detectors (which do not depend on RTD response time) now provide the required protection when more realistic physics inputs are used. With regard to operations, it should be noted that the plant will be operated in the same manner as before. Therefore, the calculated consequences of the accidents will not increase due to this change.

With regard to the second standard, the licensee stated:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Technical Specifications does not affect any active hardware involving plant operation, nor does it alter the basic methodology of the safety analyses. Therefore, it will not create the possibility of a new or different kind of accident from those accidents previously evaluated.

With regard to the third standard, the licensee provided the following rationale:

Use of the modified specification would not involve significant reduction in a margin of safety.

The value of the RTD response time affects the ability of the delta T-power calculator to accurately measure power during a transient. It has been demonstrated that the ex-core power detectors will provide an adequate power measurement input to the Thermal Margin/Low Pressure (TM/LP) trip for the full spectrum of possible power excursions associated with the CEA withdrawal events with a slight increase in margin to the TM/LP trip setpoint. Thus, the margin of safety is not reduced.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards. Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc. (the licensees), Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: September 23, 1988

Description of amendment request: This proposed amendment would revise Technical Specification Sections 3.8.1.1 and 3.8.1.2, which are the Limiting Conditions for Operation specified for the AC electrical power sources, to change the number of gallons of fuel oil specified for the Division II diesel generator (1B). These Technical Specifications indicate the minimum amount of diesel fuel that should be available for the diesel generators. The licensees have requested to change the number of gallons of fuel oil specified for the Division II diesel generator (1B) from 41,500 to 45,000.

The licensees have prepared a plant modification to replace the Fuel Pool Cooling and Cleanup (FC) System pump motors (1A and 1B) and remove the associated LOCA shunt trips. This modification is in accordance with their commitment "Until the first refueling, the pump motors will be tripped on a LOCA signal.... By the first refueling, replacement motors qualified to the maximum environment conditions will be installed and the LOCA-trip signal will be removed." Removing the associated LOCA shunt trips and ensuring the FC pump motors are qualified to operate in a post-LOCA environment allows the pump motors to be regarded as safety-related essential loads powered from the Class 1E emergency busses. This effectively increases the maximum expected emergency loading for the associated diesel generators (1A and 1B). The resultant increase in the maximum expected loading thus requires a revision of the minimum fuel oil volume specified in the Technical Specifications to ensure that the diesels are capable of supplying and maintaining emergency power for all essential loads.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change will ensure that an adequate volume of diesel fuel is available for the diesel generator (1B) to perform its intended function in mitigating the consequences of the design basis accident while carrying the maximum expected load (including the associated FC pump motor). The increased maximum expected loading for the diesel generator(s), resulting from the plant modification, does not exceed the rated capacity of the diesel generators.

The impact of the proposed change is confined to two areas of concern: diesel generator operability and the ability to maintain an adequate supply of high quality cooling water in the spent fuel storage pool(s) under post-accident conditions. The changes associated with the plant modification have been evaluated and found to have no adverse impact on the diesel generators' capability to perform their intended function during or following a design basis accident (DBA-LOCA). With respect to any concerns regarding the spent fuel storage pool, including the FC pump motors as essential loads, will ensure that an FC pump is available for cooling and maintaining the volume and quality of water in the spent fuel storage pools under post-accident conditions. The proposed change therefore does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety because the increased minimum amount of diesel fuel to be stored for diesel generator 1B is well within the storage capacity of the fuel storage tank. In addition, the added electrical load requiring the extra amount of diesel fuel does not cause the maximum expected load for diesel generator 1B to exceed its rated capacity. The electrical loading and fuel storage demand for diesel generator 1B will still be in compliance with the original design requirements.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensees: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Daniel R. Muller

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of amendment request: May 19, 1988

Description of amendment request: This amendment would revise Technical Specifications 3.5.2a.2.b, Emergency Core Cooling Systems - Shutdown, and 3.5.3.1b.3 Suppression Pool Water Level, to read "...equivalent to an indicated level of 11.5 feet" rather than "...equivalent to a level of 9 feet". This change reduces the potential for operator misinterpretation but does not affect the minimum 100,000 gallons of water availability requirement for the condensate storage tank.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In accordance with 10 CFR 50.92 the licensee has reviewed the proposed changes and has concluded as follows:

The proposed change does not involve a significant hazards consideration because operation of Shoreham Nuclear Power Station - Unit 1 in accordance with this change would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely clarifies and identifies the Condensate Storage Tank (CST) level (indicated level) which meets or exceeds the technical specification requirement of maintaining 100,000 gallons of water available for Core Spray system use. The CST low-low level alarm (since May 19, 1982) has always been set at an indicated level of 13 feet as measured from the bottom of the tank. This was always the intended level which was to be used for ECCS reserve.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different kind of accident will not be possible due to this change. Design documentation specifically calls out a low-low level alarm and a CST transfer pump trip at an indicated level of 13 feet of tank evaluation. Without the foregoing pumps to drain the tank, the ECCS systems are the only users of the water volume below the 13 foot level. If the suction line elevation (approximately 1.75 ft.) is deducted from the 13 ft., a useable volume of 11.25 ft. is achieved. This is equivalent to an approximate available volume of 133,800 gallons.

(3) involve a significant reduction in a margin of safety. The use of an 11.5 ft. indicated level as proposed in the technical specification change clarifies the 1.5 foot (i.e., 13 ft.-11.5 ft) operational deviation that has always existed. If the CST transfer pumps do not deenergize - due to malfunction - at the 13 ft. level, the operator is permitted the same period of time to deenergize the pumps and not place himself in a technical specification violation.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analyses. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697

Attorney for licensee: W. Taylor Reveley, III, Esq., Hunton and Williams, P. O. Box 1535, Richmond, Virginia 23212

NRC Project Director: Walter R. Butler

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of amendment request: June 13, 1988

Description of amendment request: The amendment would delete Figure 6.2.1-1, "Corporate-Nuclear Organization," and Figure 6.2.2-1, "Unit Organization," from the Technical Specifications and revise sections 6.2.1 and 6.2.2 to include appropriate changes to the administrative control requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating

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License for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The Long Island Lighting Company (LILCO) reviewed the proposed change and determined, and the NRC staff agrees, that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. The NRC will continue to be informed of organizational changes through other required controls.

• 10 CFR 50.34(b)(6)(i) requires that the applicant's organizational structure be included in the Final Safety Analysis Report. Chapter 13 of the SNPS Final Safety Analysis Report provides a description of the LILCO/SNPS organization and detailed organization charts.

• As required by 10 CFR 50.71(e), LILCO submits annual updates to the FSAR.

• Appendix B to 10 CFR 50 and 10 CFR 50.54(a)(3) govern changes to organization described in LILCO's Quality Assurance Program.

LILCO is mindful that some organizational changes may require prior NRC approval. Also, it is LILCO's practice to inform the NRC of organizational changes affecting the nuclear facility prior to implementation. LILCO intends to continue this practice for future organizational changes.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change is administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety. Through the Company's strong Nuclear Quality Assurance Program and its commitment to maintain only qualified personnel in positions of responsibility, it is assured that safety functions performed by the nuclear organizations will continue to be performed at a high level of performance.

Accordingly, the Commission proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786

Attorney for licensee: W. Taylor Reveley, III, Esq., Hunton and Williams, P. O. Box 1535, Richmond, Virginia 23212

NRC Project Director: Walter R. Butler

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 21, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications by deleting the Ammonia Detection System. Ammonia detection would be provided by the Broad Range Toxic Gas Detection System which is currently in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The Broad Range Toxic Gas Detection (BRTGD) system provides toxic gas chemical protection for the control room. The BRTGD system detects ammonia and thereby duplicates the function of the ammonia detection system. Deleting the ammonia detection system will not significantly reduce the protection to the control room envelopment from an ammonia toxic chemical release. The BRTGD system will isolate the control room before the Immediately Dangerous to Life and Health (IDLH) concentrations for ammonia is reached. The technical specifications for the BRTGD system is equivalent to those for the Ammonia Detection System and either system provides for control room isolation as the availability of the system declines. Deletion of the ammonia system as a duplicate to the BRTGD system does not involve a significant increase in the probabilities or consequences of any accident previously evaluated.

The function of both the BRTGD and ammonia systems is solely to isolate the control room in the unlikely event of a toxic chemical release in the area. The BRTGD and ammonia system do not provide any other protective function. Since the BRTGD system will provide ammonia detection, the deletion of the ammonia detection system will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The ammonia detection system setpoint is 50 ppm ammonia and will respond in .33 seconds for concentration at and above 50 ppm. The BRTGD system responds at different times for any concentration above environmental background; the higher the concentration, the faster the response time. For concentration of ammonia of concern at the control room, the BRTGD system will have a faster response time than the ammonia system and while the BRTGD will respond below 50 ppm, the ammonia detection system will not. Such a comparison evaluation demonstrates equivalent or better protection by the BRTGD system. Therefore, the deletion of the ammonia detection system will not involve a significant reduction in a margin of safety.

Based on the above, the staff proposes to determine that the amendment does not involve a no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Dates of amendment request: October 19, 1988, as supplemented October 31, 1988

Description of amendment request: The amendment would authorize the sale and leaseback of an individual interest in the Grand Gulf Nuclear Station, Unit 1 (GGNS Unit 1).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations in its request for a license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

a. The proposed change will not increase the probability or consequences of an accident previously evaluated. As a result of the proposed amendment, there will not be physical changes to the facility, and all Operating Procedures, Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. SERI will continue in its present role under the Operating Agreement and Ownership Agreement. There will be no changes to the operating organization or personnel as a result of the transaction(s) described herein.

b. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The design and design bases of GGNS Unit 1 will remain the same. Therefore, the current plant safety analyses will remain complete and accurate in addressing the licensing basis events and in analyzing plant response and consequences. Further, the Operating Procedures, Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications are not affected. As such, the plant conditions for which the design basis accident analyses were performed are still valid.

c. The proposed amendment will not involve a reduction in any margin of safety. Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Because there will be no change to either the physical design of the plant or to any of these settings and limits, there will be no change to any of the margins of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: October 5, 1988

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3/4.1.1.3, "Moderator Temperature Coefficient," to allow a more negative moderator temperature coefficient in the Limiting Condition for Operation, TS 3.1.1.3b, and in the associated Surveillance Requirement, TS 4.1.1.3b.

Basis for proposed no significant hazards consideration determination: The Moderator Temperature Coefficient (MTC) represents the relationship between the reactor coolant system (RCS) temperature and core reactivity. Near the end of the operating cycle the MTC is strongly negative, that is, decreasing RCS temperature causes a substantial increase in core reactivity. Thus, for accidents that involve a significant decrease in RCS temperature, such as a steam line break accident, the MTC strongly influences the severity of the accident. The purpose of TS 3/4.1.1.3b is to assure that the facility will not operate with an MTC more negative than the value incorporated in the safety analyses. The following MTC values are presently in the TS:

• TS 3.1.1.3b - The Limiting Condition for Operation (LCO) for the end-of-life MTC is -4.0 x 10^{-4} delta K/K/° F. Should the MTC be more negative than the LCO MTC, the reactor would have to be shutdown within 12 hours.

• TS 4.1.1.3b - The Surveillance Requirement (SR) MTC for the end-of-life MTC is -3.1 x 10^{-4} delta K/K/° F. The SR MTC must be measured within 7 effective full power days (EFPD) after reaching an equilibrium RCS boron concentration of 300 ppm. If the SR MTC is more negative than -3.1 x 10^{-4} delta K/K/° F, the MTC must be remeasured at least every 14 EFPD during the remainder of the fuel cycle.

Accident analyses do not explicitly input an MTC, but rather a constant moderator density coefficient (MDC). Converting the MDC used in the accident analyses to an MTC is a simple calculation which accounts for the rate of change of moderator density with temperature at the conditions of interest; namely, hot full power. In addition, the MTC that is measured must be corrected to reflect the assumptions used in the safety analysis which includes control rod positions. In this regard, the MDC used in the Millstone Unit 3 accident analysis would be equivalent to an MTC of -5.5 x 10^{-4} delta K/K/° F.

Westinghouse has recently developed a refined methodology for comparing the measured MTC with the accident analysis MDC. The method developed by Westinghouse is documented in WCAP-11951, "Safety Evaluation Supporting a More Negative EOL Moderator Temperature Coefficient Technical Specification for the Millstone Nuclear Power Station Unit 3," September 1988. By using the methodology of WCAP-11951 for Millstone Unit 3, the following changes are proposed by the licensee for TS 3/4.1.1.3b:

• TS 3.1.1.3b - The LCO MTC would be changed from -4.0 to -4.75 x 10^{-4} delta K/K/° F.

• TS 4.1.1.3b - The SR MTC would be changed from -3.1 to -4.0 x 10^{-4} delta K/K/° F.

No change in the safety analysis is involved and the safety analysis MTC value of -5.5 x 10^{-4} delta K/K/° F is still considered bounding.

Title 10 CFR Part 50, Section 50.92 contains standards for determining whether a proposed license amendment involves significant hazards considerations. In this regard, the proposed changes to the TS does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to the LCO and SR MTCs provide adequate assurance that Millstone Unit 3 will not be operated with an MTC more negative than the equivalent MDC assumed in the safety analysis. The proposed license amendment does not create the possibility of a new or different kind of accident since no changes to plant equipment or operating modes are involved. Finally, no safety margins are reduced since there are no changes in the safety analyses.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit 1, Washington County, Nebraska

Date of amendment request: December 2, 1986 as supplemented January 9, 1988 and September 30, 1988.

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an

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amendment to the Physical Security Plan for the Fort Calhoun Station, Unit 1, to reflect recent changes to that regulation. The proposed amendment would modify paragraph 3.C of Facility Operating License No. DPR-40 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, with additional information on January 9, 1988 and September 30, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: September 29, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to: (1) delete the primary containment isolation valves and instrumentation associated with the permanent removal of the RHR head spray piping and (2) modify the reportability requirements for seismic monitor XR-VA-151 whenever the reactor head has been removed.

Basis for proposed no significant hazards consideration determination: Limerick Units 1 and 2 are BWR-4 reactors. All BWR-4s were designed with three penetrations at the top of the reactor vessel head, one four-inch and two six-inch penetrations. One of the six-inch penetrations was intended to provide a water spray to the space at the top of the reactor vessel. Located above the reactor core are the steam separators and dryers. It was postulated that during cooldown of the reactor system, a spray of water would be required to cool the large mass of metal in the separators and dryers. The source of water was primary coolant from the residual heat removal (RHR) system. Over 15 years ago, it was found that this RHR head spray was not needed and is no longer used during system cooldown. Keeping the system in place poses a number of potential safety and economic disadvantages. Each time the reactor vessel head is removed (e.g., during refueling), the array of piping and valves has to be disassembled and removed and then reinstalled after the head is replaced. Since the piping contains "stagnant" primary coolant at system temperature and pressure, there exists the potential for intergranular stress corrosion cracking of the many welds in the system, increasing the potential for leakage. Consequently, these welds are subject to the augmented inspection requirements of NUREG-0313. The piping constitutes one more potential source for a high energy line break and for pipe whip. Since all of the BWR-4s have demonstrated that there is no need for the RHR head spray and since removing the piping inside containment enhances plant safety, the NRC has approved removal of this system in most BWR-4s. Limerick Unit 1 is one of the minority that has so far retained the RHR head spray system.

The proposed application requests NRC approval for removal of the RHR head spray piping and associated valves, and for blanking off the associated primary containment penetration and the existing reactor head spray piping stubout used for the head spray. At present, there is a seismic monitor (XR-VA-151) located on the head spray piping. The licensee proposes to relocate this monitor to place it directly on the reactor head at the nozzle presently used for the head spray piping penetration. This seismic monitor has to be removed (and subsequently replaced) each time the vessel head is removed. The present TSs require that whenever the seismic monitor is inoperable - and disconnecting the monitor renders it inoperable - a special report has to be submitted to the Commission.

The proposed changes to the TSs would eliminate all references to the RHR head spray piping and isolation valves, instruments and controls. The changes would also eliminate the requirement for a special report to the Commission when the seismic monitor XR-VA-151 is inoperable because it had to be disconnected to remove the reactor vessel head.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analysis contained in their September 29, 1988 letter states the following in response to the three NRC criteria referenced above with respect to the changes to the TSs to delete the isolation valves and instrumentation associated with permanent removal of the RHR head spray piping:

(1) Operation of the plant under the proposed Technical Specifications after removal of the RHR Head Spray piping and associated valves along with blanking the associated primary containment penetration, would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Three areas were previously evaluated in the FSAR regarding the reactor head spray piping:

- Primary Containment Isolation - FSAR Section 6.2
- Seismic Analysis - FSAR Section 3.7.4
- Pipe Whip Analysis - FSAR Section 3.6

The Reactor Head Spray piping removal modification was reviewed and found to be acceptable in the above referenced FSAR areas.

- The primary containment isolation will be maintained after removal of the Reactor Head Spray piping by welding a closure on the outboard containment side of penetration 17. The penetration is included in the Inservice Inspection (ISI) program and the integrity of the welded closure will be verified by periodic testing.
- Seismic Category I piping, hangers and snubbers on the RHR Head Spray would be removed by the proposed modification. Stress calculations have been reviewed and appropriately revised to assure that any remaining components are not impacted.
- Any potential pipe whip problems would be eliminated by removal of the pipe and pipe supports, as proposed. Further, Licensee has reviewed the potential effects of the proposed removal in previous evaluations in the areas of Fire Protection, Electrical Separation, Environmental Qualification, Inservice Inspection, and Piping Stresses. Evaluations in these areas did not uncover any areas of safety significance.

Based on these reviews, the Licensee concludes that the RHR Head Spray modifications do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the plant under the proposed Technical Specifications after removal of the Reactor Head Spray System along with blanking the primary containment penetration would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removal of the RHR Head Spray piping and blanking the primary containment penetration eliminates the piping from being a potential pipe whip problem and removes the containment penetration as a potential leakage source. No credit has been taken for the RHR Head Spray in the mitigation or prevention of an accident, therefore, the modification does not create the possibility of new or different kind of accident from any accident previously evaluated.

(3) Operation of the plant under the proposed Technical Specifications after removal of the RHR Head Spray and associated valves along with blanking the primary containment penetration, would not involve a significant reduction in a margin of safety.

The integrity of the reactor pressure boundary after removal of the RHR Head Spray would be maintained by a blank flange installed over the Reactor Head Spray nozzle. The reactor pressure boundary would then become part of the Inservice Inspection (ISI) program and would be hydrostatically tested each time the reactor head is reinstalled on the reactor vessel. The primary containment penetration will be welded closed on the outboard side of the containment penetration and will be periodically tested for integrity during scheduled integrated leak rate testing. The seismic category I piping, hangers and snubbers and containment isolation valves on the Head Spray piping would be removed by the proposed modification.

Therefore, the RHR Head Spray modification would not involve a reduction in a margin of safety. Based on the three standards discussed above, operation of the facility subsequent to removal of the RHR Head Spray along with the associated primary containment isolation valves, involves No Significant Hazard Considerations.

The licensee separately evaluated the deletion from the TSs of the special report when seismic monitor XR-VA-151 is inoperable solely because it has to be disconnected to remove the reactor vessel head. With respect to the three NRC criteria in 10 CFR 50.92, the licensee stated:

(1) Operation of the plant under the proposed Technical Specifications in regard to changing the operability reporting requirements for seismic monitor XR-VA-151 whenever the reactor head has been removed, would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Seismic monitor would continue to function under the proposed amendment whenever the reactor head is installed on the reactor vessel. When the reactor head has been removed from the reactor vessel, the seismic monitor will become inoperable by necessity and presently is reportable after 30 days under the existing Technical Specifications.

The purpose of the existing requirement is to report unexpected seismic monitor malfunctions during periods when monitors are required to be operable. Eliminating the requirement for submission of a special report when only one seismic monitor becomes inoperable for more than 30 days, during the course of normal activities taking place with the reactor head removal, will not affect the reporting requirements for the monitor under any other operating conditions. Following the reinstallation of the reactor head, the seismic monitor will be reconnected and its operability re-established. The reporting requirements for other seismic monitors would not be affected by this proposed change.

The intent of the specification for reporting seismic monitor malfunction would continue under the proposed amendment. Lack of a report whenever the reactor head is removed, does not affect the intent of the specification which is to accrue data on unexpected seismic monitor malfunctions and on the reliability of the monitors, rather than on intentional disconnections of a monitor.

Therefore, deletion of the reportability requirement under these expected conditions would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the plant under the proposed Technical Specifications in regard to changing the operability reporting requirements for Seismic Monitor XR-VA-151 whenever the reactor head has been removed would not create the possibility of a new or different kind of an accident from any accident previously evaluated.

After completion of the proposed Head Spray removal modification, a blanking flange on the reactor nozzle would maintain the reactor pressure boundary. Seismic monitor XR-VA-151 would be remounted at the time to the new blanking flange on top of the reactor vessel head. No other changes are being proposed for seismic monitor XR-VA-151. Also, the reportability requirements would not be changed for any other monitor except XR-VA-151 under the proposed amendment. Changing the reportability requirements for seismic monitor XR-VA-151 when the reactor head has been removed does not affect any plant safe shutdown capabilities.

Therefore, elimination of the reportability requirements without making changes to the location or to the normal operability status of the seismic monitor would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the plant under the proposed Technical Specification in regard to changing the operability reporting requirements for Seismic Monitor XR-VA-151 whenever the reactor head has been removed would not involve a significant reduction in a margin of safety.

The Seismic Monitoring System provides information to the operators after a seismic event and does not perform any direct plant shutdown function or affect plant operation. When monitor XR-VA-151 becomes inoperable during times the RPV head is removed, it does not provide any information following a seismic event occurring during that period. Other monitors in the plant remain operable and would provide this information. The lack of post-seismic data from seismic monitor XR-VA-151 would remain the same whether or not a special report was submitted to the Commission. Elimination of the Special Report when seismic monitor XR-VA-151 is inoperable during times when the RPV head is removed, does not involve a significant reduction in a margin of safety. The lack of seismic information from seismic monitor XR-VA-151 after any seismic event when the reactor head is removed, would not affect the safety of the plant. Seismic monitors provide information to reinforce and verify previous seismic calculations. Other monitors in the plant would provide this information when XR-VA-151 is not operable.

Based on the three standards discussed above, operation of the facility after changing the seismic monitor reportability requirements in the Technical Specifications, involves No Significant Hazards Considerations.

The staff has reviewed the licensee's analyses and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92(c). Based on that conclusion, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

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NRC Project Director: Walter R. Butler

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: April 14, 1988

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Section 4.6.G.1 to resolve a conflict with the corresponding Bases section. Section 4.6.G.1 specifies surveillance requirements to verify jet pump performance. The revision would reduce the maximum permissible recirculation loop flow imbalance between recirculation loops from 15 percent to 10 percent when the recirculation pumps are operated at the same speed, which would then agree with the limits stated in the TS Bases section. The 10 percent value is consistent with the TS Bases, NRC staff and industry guidance.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has determined, that the proposed TS change will not involve a significant hazards consideration. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated in that the effect is to bring the TS section into agreement with the actual practice and the TS Bases section. The proposed change is administrative in nature and as such does not involve hardware or procedural changes to the facility. The proposed change will not create the possibility of a new or different kind of accident since it does not involve an actual change to present operating criteria and as stated previously does not involve any facility hardware or procedural changes. The proposed change does not involve a reduction in the margin of safety because the change is administrative in nature. In fact, the proposed change increases the probability that a jet pump failure will be promptly identified by the operators since the effect is to reduce the jet pump performance surveillance acceptance limit. The 10 percent figure complies with the General Electric Company's Service Information Letter No. 330, which verifies that the 10 percent value is the proper limit.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: September 13, 1988

Description of amendment request: The licensee provided, in part, the following description: The application for amendment proposes changes to page 4, Table 3.1-1 and Table 3.2-1 of the Technical Specifications (TS). The change to page 4 would delete the reactor protection scram bypass from the definition of Startup/Hot Standby. The change to Table 3.1-1 would delete the requirement for a reactor scram on main steam isolation valve (MSIV) closure in the refuel and the startup modes. Also note 3 to this Table, which established 1005 psig as the reactor pressure below which the scram is bypassed, will be deleted. The change to Table 3.2-1 involves adding a reference to note 7 for the low condenser vacuum trip of the MSIVs to indicate that the trip is functional only in the run mode. Note 8 to Table 3.2-1, which already refers to the low condenser vaccum trip of the MSIVs, would be changed to read, "Bypassed when mode switch is not in run mode and turbine stop valves are closed." This would remove the requirement that reactor pressure be less than 1005 psig before the bypass occurs.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and the licensees' findings are summarized below:

1. The proposed change does not increase the probability or consequences of an accident previously evaluated. Pressure switches set at 1005 psig were installed a few years ago after instability was observed in an early European Boiling Water Reactor during its startup. However, a series of recent reactivity and pressue perturbation tests conducted as part of the startup test program at Browns Ferry (a typical BWR 4 design of the FitzPatrick type) showed that following the initial disturbance, all parameters returned to steady state values and the reactor stabilized.

In addition, since the switches are set to bypass up to the normal reactor operating pressure of 1005 psig, the pressures which would allow the scram on MSIV closure and main steam line isolation on low condenser vacuum when the turbine stop valves are closed are outside the range of pressures for the refuel and startup modes. Thus, scram and isolation functions are bypassed and the pressure switches are not necessary. The consequences of inadvertent MSIV closure in the refuel or startup modes at or below 1005 psig will remain unchanged with the removal of the switches. In the startup mode, the reactor power is between approximately 0-15% of full power and the peak reactor pressure and the critical power ratio responses are significantly below the limits established for transients during full power operation.

In startup mode, the Intermediate Range Monitor (IRM) subsystem and the Average Power Range Monitor (APRM) subsystem provide signals to the Reactor Protection System (RPS) to shutdown the reactor. If MSIV closure occurs while the reactor is in the startup mode, the reactor will scram on high neutron flux or high reactor pressure. The overpressure protection analysis, for the limiting event of MSIV closure at 100% power terminated by the high neutron flux scram, provides the bounding analysis for the pressure transient. If a loss of condenser vacuum event occurs during refuel or startup modes, the turbine bypass valves would close to isolate the condenser, and operator action can be taken to manually close the MSIVs if necessary. Therefore, removal of pressure switches and deletion of scram and isolation functions does not increase the probability or the consequences of an accident.

2. The proposed change will not create the possibility of a new or different kind of accident from any previously evaluated. The purpose for which the pressure switches were installed does not exist (as discussed above). With the switches set for bypass at 1005 psig (which is above the full range of reactor pressures for refuel and startup modes), scram on MSIV closure and isolation on low condenser vacuum during refuel and startup modes of operation are bypassed. Therefore, the pressure switches are not used for any safety function and no new or different kind of accident can be created by the removal of these switches and deletion of the scram and isolation functions.

3. The proposed amendment will not involve a significant reduction in the margin of safety. The current setpoint for the pressure switches bypass the scram and isolation functions for the full range of reactor pressures in the refuel and startup modes. Furthermore, the operating limits of the plant are not determined by the setpoint of these switches. The limiting plant transients are still those initiated from full power operation and not from operation in the refuel or startup modes with the scram and isolation bypass. Therefore, the operating limits and the limiting safety system settings remain unchanged and the margin of safety is not reduced.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: August 16, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications to streamline the Monthly Operating Report to conform to that of the Standard Technical Specifications. Redundancy within the current Monthly Operating Report will be eliminated, and the reporting of safety and relief valve challenges will be provided on a more frequent basis by including this information within the monthly rather than the annual report. The Monthly Operating Report will continue to provide the information outlined in Regulatory Guide 1.16.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of an accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee made the following analysis of these changes:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The proposed changes described and evaluated above do not involve a significant increase in the probability or consequences of an accident previously evaluated. Revising the wording of the section on Monthly Operating Reports does not alter any system or subsystem and will not change the conclusions of either the FSAR or SER accident analysis.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response

These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any changes to the hardware, operability, surveillance, or record-keeping requirements of the facility. In addition, safety and relief valve challenges will subsequently be reported on a more frequent basis.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response

The proposed changes do not involve a reduction in a margin of safety since they do not in any way affect the availability, operability, or surveillance requirements of any equipment within the facility. The changes revise the wording of the IP3 Technical Specifications section concerning monthly reporting requirements to conform to that of the Standard Technical Specifications.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: August 23, 1988

Description of amendment request: By NRC Generic Letter 84-13 dated May 3, 1984, "Technical Specifications for Snubbers," an option was provided to delete snubber listings from a plant's Technical Specifications. The proposed amendment will revise the Technical Specifications by deleting the snubber listing (Table 3.13-1) while maintaining operability, surveillance, and record-keeping requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee made the following analysis of these changes:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The proposed changes described and evaluated above do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not alter any system or subsystem and will not change the

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conclusions of either the FSAR or the SER accident analysis.

2. Does the proposed license amendment create the possibility of a different kind of accident from any accident previously evaluated?

Response

These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not involve hardware or procedural changes to the facility. Deletion of the snubber listing from the Technical Specifications does not affect safety-related snubber operability, surveillance or record-keeping requirements, and thus cannot create the possibility of a new or different kind of accident. A listing of all the safety-related snubbers is maintained as part of the surveillance performance test procedures, which is a controlled document.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response

The proposed changes do not involve a reduction in a margin of safety since they do not in any way reduce the availability of the snubbers that are provided to ensure that the structural integrity of the reactor coolant and all other safety-related systems are maintained during and following a seismic or other event that induces dynamic loads.

Based on the above discussion, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: September 23, 1988

Description of amendment request: This amendment request results from the licensee's need to have a 500 curie source of cesium-137 on site to perform calibration of a high range detection instrumentation. Amendment 41 to the Fort St. Vrain Technical Specifications directed Public Service Company of Colorado to, at a future time, replace the listing of specific isotopes with a statement similar to that now requested in 2.c.(4). The current Radiological Control Program maintains adequate control of the use and storage of calibration sources. This will serve to place the Fort St. Vrain License in a format more similar to the recently issued Licenses.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The proposed change does not involve a significant hazards consideration because operation of FSV in accordance with this change would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The use of sources for calibration purposes does not effect the design or function of any plant system/component. The updating of this license condition to not specify individual isotopes will allow more flexibility, and is being done based on an NRC recommendation.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated. The calibration of detection instrumentation does not create the possibility of any accident different from those already analyzed. Non-specific designation of the calibration sources will not create any new failure modes.

(3) involve a significant reduction in a margin of safety. There is no margin of safety associated with calibration source strength.

Further, reformatting the license does not alter the requirements expressed in the License.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve significant hazards considerations.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: James K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Jose A. Calvo

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: October 13, 1988

Description of amendment request: The proposed Amendment would modify Technical Specification Section LCO 4.4.1, which provides a listing of the Plant Protective System (PPS) instrumentation parameters and the associated bases. The PPS is the reactor protective circuitry and the circuitry oriented towards protecting various plant components from major damage.

The Technical Specification LCO 4.4.1 has been modified to clarify the time permitted to reset trip setpoints per the detector decalibration curve, Figure 3.3-1, for the linear channel - high neutron flux channels following a power reduction.

If the linear channel - high neutron flux channels are outside their Allowable Values, they must be considered inoperable and the appropriate actions apply. The linear channel - high neutron flux RWP and scram will be available but may not be set properly. The Technical Specifications currently requires a plant shutdown within 12 hours. There are various plant situations where power level is automatically reduced and the applicable Trip Setpoints for the linear channel - high neutron flux channels change.

To avoid unnecessary shutdown requirements after control rod runback or power reduction events, the licensee proposes that an action be added to the Technical Specifications that allows 12 hours after a power reduction to regain compliance with Figure 3.3-1 for linear channel - high neutron flux. This added action provides a reasonable period of time to regain compliance, either by adjusting the Trip Setpoints or by changing power level. During this time, the linear channel - high neutron flux RWP and scram, (which may improperly set), and the reheat steam temperature-high scram provide protection against an unexpected increase in power level. The likelihood of a rod withdrawal accident (for which these scram parameters provide protection) is small. The 24 hour orderly shutdown requirement reduces rapid transients on plant components and is consistent with actions included in the Technical Specification Upgrade Program.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The proposed amendment does not involve a significant hazards consideration because operation of the Fort St. Vrain Nuclear Generating Station in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The linear channel - high neutron flux parameters are part of the Plant Protective System (PPS). The primary function of the linear channel - high neutron flux parameters is to provide a scram prior to reactor power exceeding 140% of rated power. Additional protection is provided by a rod withdrawal prohibit prior to reactor power exceeding 120% of rated power. These high neutron flux scram and RWP actions are backed up by the PPS reheat steam temperature - high scram. Section 14.2.2 of the FSAR analyzes accident scenarios that would produce reactor power levels of 140% of rated power. The condition that is most likely to cause an increase in power level of this nature is a rod withdrawal accident. Section 14.2.2.6 analyzes maximum worth control rod pair withdrawal at full power. Included are scenarios where the reactor is scrammed 88 seconds and 105 seconds after accident initiation by the reheat steam temperature - high scram. These accident analyses are not modified by this amendment.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

FSAR Section 14.2.2 contains the analysis of core reactivity accidents. Permitting a reasonable amount of time to regain compliance with Figure 3.3-1 for the linear channel - high neutron flux channels and a reasonable amount of time to shut down the reactor in an orderly manner does not change that analysis.

(3) Involve a significant reduction in a margin of safety.

The margin of safety against an increase in reactivity accident is provided by five protective actions identified in FSAR Section 14.2.2.1. This amendment clarifies the time that is available to regain compliance with Figure 3.3-1 for two of these protective actions following a power reduction that changes the applicable trip setpionts for the linear channels. Any reduction of safety during this time is not significant in that all five protective actions are available. (The RWP and scram for the linear channels may be improperly set on an interim bases.) The effectiveness of the other three protective actions is analyzed in FSAR Section 14.2.2.6. The other protective actions include reheat steam temperature - high scram, manual scram, and manual actuation of the reserve shutdown system.

In this requested revision to LCO 4.4.1 for the power reduction situation, 12 hours would be permitted to ensure proper trip setpoints for the linear channel - high neutron flux channels. This could include either adjusting the trip setpoints for the lower power level, or increasing reactor power, if appropriate. Also, 24 hours would be permitted to effect an orderly shutdown of the reactor in the unlikely event that compliance with Figure 3.3-1 could not be regained. Interim Technical Specification LCO 3.1.5 permits 4 hours to restore the control rods to an acceptable configuration following a control rod runback. The resetting of the trip setpoints must be done after the control rods are restored to an acceptable configuration. The twelve hours includes time to position the control rods to conform to the requirements of interim Technical Specification LCO 3.1.5.

PSC considers this change to LCO 4.4.1 justified because adequate protective actions remain in place and a rod withdrawal accident is a low probability event. During the interval in which the high neutron flux scram trip setpoint may not be in compliance with Figure 3.3-1, the reheat steam temperature - high scram would be available to protect against an unexpected increase in reactor power. The RWP and scram due to high neutron flux would be available but mat not actuate by the 120% or 140% analyzed values. The manual scram is also available in addition to the automatic scram and RWP actions.

The staff has reviewed the licensee's no significant hazards considerations determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards determination.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Jose A. Calvo

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: October 14, 1988

Description of amendment request: The amendment would make certain changes to Section 7 of the Technical Specifications, concerning Administrative Controls. The changes include deletion of the organizational charts from the Technical Specifications as per Generic Letter 88-06 dated March 22, 1988. AC 7.1.1 is reformatted to better conform with the Standard Technical Specifications (based on Westinghouse plants). AC 7.1.1, 7.1.2, 7.1.3, and 7.2 have changes made to position titles reflecting a recent reorganization at Fort St. Vrain.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

A. Specification AC 7.1.1 is revised as follows:

Section 1, "RESPONSIBILITY," was added delegating control room command responsibility and corporate responsibility for overall nuclear plant safety. This section directly correlates to Section 6.1 of the Westinghouse Standard Technical Specifications (STS), NUREG-0452.

Section 2.a, "Onsite and Offsite Organization," was added to provide a directive for the establishment and definition of lines of authority, responsibility, and communication for onsite and offsite organizations. This section directly correlates to Section 6.2.1 of the STS, as amended by Generic Letter 88-06 for deletion of the organization charts from the Technical Specifications (Tech. Specs.).

Section 2.b(1) designates on-duty shift minimum shift crew composition per Table 7.1-1. This section follows the guidelines of Generic Letter 88-06, and incorporates the requirements of Generic Letter 88-06, and incorporates the requirements of current Section 2.a.

Section 2.b(2,3,4) discuss licensed operator on-shift requirements. These sections are added to conform to the formatting effort of this amendment; and include part of the current clarification text following Table 7.1-1 and the requirements of current Section 2.b.

Sections 2.b(5,6,7,8,9) are reformatting and editorial corrections, which incorporate the requirements of current Sections 2.c, 2.d, 2.e, 2.i, and the position titles of the Fort St. Vrain (FSV) reorganization.

Section 2.b(10) was added to delineate those requiring a Senior Reactor Operator's (SRO) license and those requiring a Reactor Operator's (RO) license; and follows the guidelines of Generic Letter 88-06.

Section 2.b(11) discusses shift crew composition and incorporates the requirements of the current final clarification paragraph following Table 7.1-1, which were not included in proposed Sections 2.b(2,3,4).

Section 2.b(12) was added to delineate control room command responsibility in the absence of the Shift Supervisor, and further expounds on proposed Section 1.b.

Table 7.1-1 was relocated within Specification AC 7.1.1. The table retains the same requirements as the current Table 7.1-1.

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However, the page is reformatted to include the applicable notes.

Section 3, "TECHNICAL ADVISORS," is a reformatting addition. This section incorporates the requirements of current Section 1.c and 2.f, with position titles per the FSV reorganization.

Section 4, "UNIT STAFF QUALIFICATIONS," is a reformatting addition and incorporates the requirements of current Sections 2.g and 2.h, "upon commencement of commercial operation" is deleted since this stipulation is not necessary.

Section 5, "TRAINING," reformats and incorporates the requirements of current Section 3, "Compliance with Section 5.5 of ANSI 18.1-1971 shall be achieved no later than 6 months following commencement of commercial operation" is deleted since this stipulation is not necessary.

B. Specification AC 7.1.2 is revised as follows:

Section 1, Plant Operations Review Committee (PORC) Membership, is revised to incorporate position titles of the FSV reorganization. No expertise is deleted from the PORC, and the positions meet the description of ANSI N18.1.

Sections 5.a, 5.3, 6.d and 7 contain a position title change only. Responsibility and expertise remain the same.

Sections 3, 4, 9, and 10 contain position title change only. Responsibility and expertise remain the same.

Section 5.k, relative to PORC review of every unplanned onsite release of radioactive material to the environs, is deleted. This requirement is considered to be adequately covered in Sections 5.a through 5.g. Also, several recent plant Technical Specifications have been found not to include this requirement: River Bend 1, Grand Gulf 1, Nine Mile Point 2, and Palo Verde 1. Deletion of Section 5.k is also consistent with the Tech. Spec. Upgrade Program draft.

C. Specification AC 7.1.3 is revised as follows:

Section 1 contains only formatting changes.

Section 2 contains revisions to the Nuclear Facility Safety Committee (NFSC) Membership relative to position titles per the FSV reorganization. The actual membership and areas of responsibility/ expertise remain the same.

Sections 3, 4, and 9 contain a position title change only. Responsibility and expertise remain the same.

Section 10.a is revised to delete the requirement that each NFSC meeting's minutes be approved within 30 days following each meeting. Section 10.b was added to direct the preliminary approval of the NFSC meeting minutes by the Senior Vice President, Nuclear Operations. It also directs the distribution of the minutes to the NFSC members, and approval of the minutes at the next NFSC meeting. These revisions will ensure that the entire NFSC membership will be given the opportunity to vote on the approval of the minutes of the last NFSC meeting.

D. Pages 7.1-20, 7.1-21, 7.1-22, and 7.1-23 are deleted:

Pages 7.1-20 and 7.1-21 contain Table 7.1-1 and its associated notes and clarification information. All this information is included elsewhere in the proposed amendment.

Pages 7.1-22 and 7.1-23 contain the organization charts (Figures 7.1-1 and 7.1-2). These charts are deleted from the Tech. Specs., based on the recommendation of Generic Letter 88-06.

E. Specification AC 7.2 is revised as follows:

Sections b. and d. contain a position title change only. Responsibility and expertise remain the same.

Except as otherwise noted above, this proposed amendment reformats current Administrative Controls Specification 7.1.1 requirements to better conform to STS formatting; deletes organization charts per the guidelines of Generic Letter 88-06; and retitles certain positions in AC 7.1.1, 7.1.2, 7.1.3, and 7.2 to conform to the FSV reorganization begun May 12, 1988.

Based on the above, this proposed change does not involve a significant hazards consideration because operation of FSV in accordance with this change would not: involve a significant increase in the probability or consequences of an accident previously evaluated; create the possibility of a new or different kind of accident from any accident previously evaluated; involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Jose A. Calvo

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: October 14, 1988

Description of amendment request: The proposed changes would modify SR 5.0 to add a new inservice inspection criterion. SR 5.2.1, Prestressed Concrete Reactor Vessel (PCRV) and PCRV Penetration Overpressure Surveillance and its basis would be modified. The modifications would require testing of the overpressure protection assembly in accordance with Subsection IGV or IWV of Section XI of the ASME Code.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve a significant hazards consideration (51 FR 7751). These examples include "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement."

The proposed change would require the licensee to test the PCRV overpressure assembly in accordance with the widely accepted ASME code. This constitutes an additional and more stringent restriction that is not currently included in the Technical Specifications and is therefore within the scope of the example cited above.

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Jose A. Calvo

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 28, 1988

Description of amendment request: This amendment would revise Technical Specification Tables 2.2.1-1, 3.3.2-1, and 3.3.2-2 to replace the footnote created with the issuance of Amendment 8 (restrictions associated with the hydrogen injection test) with the necessary requirements associated with the installation of a permanent Hydrogen Water Chemistry (HWC) System. These changes would permit the operation of an HWC system by creating two separate main steam line background radiation levels and associated trip setpoints while restricting operation to power levels greater than 20% of Rated Thermal Power.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed

amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92 the licensee has reviewed the proposed changes and has concluded as follows that they do not involve a significant hazards consideration:

Significant Hazards Analysis Consideration

The proposed changes to the Technical Specifications:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only accident scenario which takes credit for the MSL high radiation scram and isolation setpoint is the Control Rod Drop Accident (CRDA) as described in the Updated Final Safety Analysis Report (UFSAR) Section 15.4.9. Specifically, the Main Steam Isolation Valves (MSIVs) are assumed to receive an automatic closure signal at 0.5 seconds after detection of high radiation in the main steam lines and to be fully closed at 5 seconds from the receipt of the closure signal. The MSL radiation monitors are provided to detect a gross failure of the fuel cladding. When high radiation is detected, a trip is initiated to reduce the continued failure of fuel cladding. At the same time, the MSIVs are closed to limit the release of fission products. The trip setting is high enough above background radiation levels to prevent spurious trips yet low enough to promptly detect gross failures in the fuel cladding.

NEDO-10527, Supplement 1, "General Electric Rod Drop Accident Analysis for Large Boiling Water Reactors" dated July 1972 concluded that the consequences of the CRDA are most severe under Hot Standby conditions. Furthermore, the consequences of the CRDA are increasingly less severe above 10 percent power due to a faster Doppler response and a lower rodworth. Finally and most importantly, this report concluded that above 20 percent power the consequences of the CRDA are minimal. Therefore, the Guidelines (Section 8.2.1 and Table 2-1) indicate that the hydrogen injection system should not be operated below the limiting low power setpoint for the CRDA as discussed in the UFSAR. HCGS UFSAR Section 15.4.9 does not actually specify this low power limit; however, Sections 7.7.1.1.5.4 and 7.7.1.1.5.4.1 do-20% of Rated Thermal Power. This limit is known as the Low Power Setpoint (LPSP) and is contained in Technical Specifications 3/4.1.4.1 (Rod Worth Minimizer) and 3/4.1.4.2.(Rod Sequence Control System).

As a result, the MSL radiation monitor setpoint will only be adjusted upward when the hydrogen water chemistry system is operated. HWC system operation is restricted to power levels greater than 20 percent of Rated Thermal Power. This power level differs from the 22 percent of Rated Thermal Power level contained in Amendment 8 for the hydrogen injection test for two main reasons. First, the hydrogen injection test was only a test, the permanent system is a complete, long-term system with the necessary instrumentation, controls and trips to more accurately control hydrogen injection. Since the HWC system is designed in accordance with the Guidelines and utilizes the experience gained during the hydrogen injection test and from systems installed at other utilities, system operation is closely and accurately controlled and monitored. Second, the Guidelines specify that injection should occur at the LPSP and does not require an additional margin. The hydrogen injection test added an additional 2% power margin simply to assure that the system was not operated below the LPSP. The permanent HWC system will contain sufficient controls to assure operation above the LPSP. Therefore, operating the HWC system at HCGS with such a setpoint (i.e. 20% of Rated Thermal Power) provides adequate assurance that the consequences of a CRDA are negligible when the system is in operation.

Furthermore, in order to assure that the setpoint adjustment process itself does not have any impact on the plant, if a power reduction event occurs so that the reactor power is below 20% of Rated Thermal Power without the required setpoint change, control rod motion will be suspended (except for scrams or other emergency conditions) until the necessary setpoints adjustment is adjusted. This restriction further assures that the possibility of a CRDA occurring while the setpoints are being adjusted is precluded.

Therefore, it can be concluded that the proposed changes to the Technical Specifications do not increase the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the design of any safety related systems and as such do not affect the performance of any safety related functions. The proposed changes do permit the operation of the station with a new system, namely a hydrogen water chemistry system. However, this system has been extensively analyzed by EPRI, approved for use by the NRC (reference the Guidelines and the associated NRC SER on them cited in Item III above), and is in operation at a variety of utilities including the Dresden-2, FitzPatrick and Duane Arnold stations. Attachment 4 [of the licensee's submittal] contains a graphical comparison of the operation of HWC systems at these and other utilities which have utilized the services of General Electric in the design and operation of the hydrogen injection test and hydrogen water chemistry system.

The decision to seek a permanent change to the HCGS Technical Specifications is plant specific since a change is necessary only if the increase in the MSL radiation levels does not provide an acceptable margin to the MSL radiation monitor setpoint established without operation of a HWC system. Although the operation of a HWC system introduces hydrogen in the recirculation system, this condition has already been analyzed in UFSAR Sections 6.2.5 (Combustible Gas Control System), 10.4.2 (Main Condenser Evacuation System), and 11.3.2.1 (Offgas System). In addition, the level of hydrogen in the offgas system is controlled and monitored in accordance with Technical Specifications 3/4.3.7.11 and 3/4.11.2.6, respectively.

PSE&G is evaluating the impact of slightly increased radiation levels in the plant against the equipment qualification criteria for systems and components located in the affected areas. Any changes in qualified life or service will be accounted for in the design/installation of the HWC system and reflected in [on] the plant prior to HWC system operation.

With regard to the presence of hydrogen and oxygen in the yard, the two mediums meet the requirements of NPFA 50 and 50A for separation from the facility as discussed in Item III.3 above [of the licensee's submittal]. UFSAR Section 9.5.1.1.11 has analyzed the presence and storage of combustible materials in the yard and the HWC hydrogen and oxygen storage facilities do not affect the conclusions reached (other than the incorporation of the storage information in Table 9.5-3). Finally, in following the EPRI Guidelines and addressing the NRC staff requirements in Item III above, PSE&G concludes that the probability for an explosion, flammable vapor cloud or fire is minimized. Even if such an accident were to occur, there would be no impact of the station due to the separation distance to the storage vessels from safety related structures. Thus the information contained in UFSAR Section 2.2.3.1 is not affected due to the presence of a HWC system.

Finally, extensive safety features for the HWC system have been established which provide assurance that the operation of the system at HCGS will not create an unacceptable situation nor adversely impact the operation of any other system. Therefore, since the changes to the Technical Specifications themselves do not affect existing system function nor create a situation which has not been previously analyzed and appropriately designed for, the changes do not create any new or different kinds of accidents than previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications contain specific requirements regarding their applicability:

- Operation of the HWC system is only permitted above 20 percent of Rated Thermal Power.
- When the HWC system is in operation the MSL radiation monitor setpoints can be adjusted upward, to levels previously determined during the hydrogen injection test, to account for the increase in the background MSL radiation levels.
- Prior to decreasing reactor power to below 20% of Rated Thermal Power, the setpoints must be readjusted to their pre-HWC system operation levels.
- If the power level fails below 20% without the setpoint change, control rod motion is suspended (except for scrams or other

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emergency situations) until the setpoint adjustment is made.

These requirements will assure that the HWC system is operated safely and with sufficient margin such that spurious MSL isolations are precluded while still assuring that any gross failures in the fuel cladding remain detectable.

As discussed in Item IV.1 above [of the licensee's submittal], the CRDA is the only accident which takes credit for the MSL isolation trip function; however, above 20 percent power, the consequences of the CRDA are so minimal that they may be considered negligible (reference the above cited NEDO report.) Therefore, the change in the Technical Specification setpoint has no significant effect on the margins of safety for this accident scenerio and the restriction regarding suspending control rod motion further assures that during setpoint adjustments, a CRDA is minimized.

Finally as discussed in Item III.8 above [of the licensee's submittal], the increase in background radiation levels has been analyzed and PSE&G has concluded that neither plant personnel nor the health and safety of the public are at risk when operating with the HWC system. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analyses. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 28, 1988

Description of amendment request: This amendment would revise Technical Specification Table 3.3.7.5-1 to permit actions consistent with Technical Specification 3.6.3 regarding allowable out-of-service times for inoperable primary containment isolation valves and their associated position indication instrumentation. The change would avert the currently required plant shutdown in the event that position indication instrumentation for a primary containment isolation valve in an otherwise isolated penetration is declared inoperable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In accordance with 10 CFR 50.92 the licensee has reviewed the proposed changes and has concluded as follows that they do not involve a significant hazards consideration.

The proposed change to the HCGS Technical Specifications:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

As required by Action (a) of Technical Specification 3.6.3, should a primary containment isolation valve be declared inoperable the affected penetration must be isolated. This isolation can be accomplished by either deactivating at least one automatic valve, closing at least one manual valve or installing a blind flange in the affected penetration. Furthermore, the system for which the inoperable valve provides containment isolation must also be declared inoperable and the appropriate Action statements for that system performed. Assuming that the plant can continue to operate under these conditions, the concern which must be addressed as a result of this proposed change is whether or not the probability or consequences of an accident previously evaluated are significantly increased when the position indication instrumentation for an otherwise inoperable containment isolation valve is permitted to remain inoperable longer than the currently imposed 30 or 7 days, per Action 82(a) and 82(b) of Technical Specification Table 3.3.7.5-1, respectively.

The requirement to isolate the affected penetration due to an inoperable valve establishes containment isolation for that penetration. This action establishes a safe configuration for continued operation assuming of course that the affected system is not required to remain Operable. For those systems which can be isolated without jeopardizing continued safe operation, the need for monitoring containment isolation is no longer necessary as isolation has already been achieved.

Therefore, it can be concluded that if the provisions of Technical Specification 3.6.3, Action a.2 or a.3 are in effect:

(i) the penetration is in a safe configuration with regards to the provisions for containment isolation - closed,

(ii) spurious movement of the valve is precluded by either the lack of power, the need for local manual operation, or the presence of an installed blind flange, and

(iii) administrative controls and surveillance requirements exist to assure continued containment isolation.

The current requirements of ACTION 82 of Technical Specification Table 3.3.7.5-1 regarding AOT for primary containment isolation valve position indication instrumentation serve no purpose with regard to assurance of containment integrity if and only if the associated penetration is isolated pursuant to Technical Specification 3.6.3, Action a.2 or a.3. This function is adequately controlled under the auspices of Technical Specifications 4.6.1.1 and the administrative controls already in place. Consequently, extending the AOT for inoperable position indication in penetrations isolated as described above does not represent an increase in the probability or consequences of a previously evaluated accident since containment isolation (the accident function of concern) is already achieved and assured.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not negate the requirement for containment integrity or isolation but simply makes use of the existing Technical Specifications which require such. By (sic) extending the provisions for isolated penetrations to the required actions for associated inoperable position indication simply takes advantage of the physical constraints and administrative controls already imposed.

Furthermore, the proposed change does not require any plant modification nor (sic) design change but merely permits a specific case of inoperability to exist while plant operation continues. This condition is well bounded in terms of the extent to which inoperability is permitted. Additionally, the flexibility provided by this proposed change will not result in a change to the operational characteristic of any system or process. The inoperability of primary containment isolation valve position indication instrumentation is already permitted for the currently identified AOT. This change simply extends the AOT as long as other compensating measures are in effect.

Therefore, it can be concluded that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does not involve a significant reduction in a margin of safety.

The increase in AOT for an inoperable primary containment isolation valve position indication instrument from either 7 or 30 days to an unlimited time does not decrease the margin of safety since a more restrictive compensating measure is in effect, namely the subject penetration is in the safe configuration with regard to containment isolation provisions - closed. Therefore, the margin of safety remains the same as that permitted by Technical Specification 3.6.3, Action a.2 or a.3. With the penetration in an isolated position and the assurances available that such a position will be maintained, the maximum margin of safety has been achieved, i.e. the penetration has been placed in the post accident configuration.

The length of time that either or both position indication instrumentation channels for either or both containment isolation valves remain inoperable has no bearing on the position of the valves in the subject penetration. Realizing that the information provided by the position indication instrumentation is simply indication only, i.e. no automatic isolation or actuation function results from loss of or change in position indication, further substantiates the proposed change. Therefore, it can be concluded that the proposed change does not involve a significant reduction in a margin of safety.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analyses. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: September 19, 1988 as supplemented November 4, 1988.

Description of amendment request: The proposed changes would delete the requirement to perform local leak rate tests (LLRT) on containment penetration pipes associated with two systems, high pressure injection and decay heat removal systems. The licensee contends that the penetrations being removed from the LLRT requirements would be filled with water and pressurized to a pressure greater than the maximum containment pressure associated with accident conditions. As a result, these penetrations would not provide a pathway for radioactive contaminants in the containment atmosphere to escape to the environment.

The proposed change would also increase the interval between LLRT's from 18 months to a maximum of 24 months.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The proposed amendment does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated because based on the licensee's evaluation, the containment penetrations being deleted from the LLRT program are not potential release pathways for airborne activity during accident conditions and therefore will not change accident consequences; increasing the LLRT interval from 18 months to 24 months is in accordance with regulatory guidance and is not a significant change in terms of accident consequences; (2) create the possibility of a new or different kind of accident from any accident previously evaluated because containment penetrations and LLRT's are an integral part of accident evaluations, and the proposed changes do not create new or different accident concerns; (3) involve a significant reduction in a margin of safety. The proposed changes are relatively minor changes to the LLRT program. The penetrations being deleted from the LLRT requirements are a small fraction of all containment penetrations and even under worst conditions, radioactive releases through these penetrations would constitute a small fraction of releases from all pathways.

Based on the above discussion, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813.

NRC Project Director: George W. Knighton

Virginia Electric and Power Company, Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of amendment request: October 19, 1988

Description of amendment request: The proposed change involves an amendment, in the form of a license condition, to Operating License No. NPF-4 for NA-1. Specifically, the proposed license condition allows a one-time extension of the surveillance test intervals for certain surveillance tests as specified in the NA-1 Technical Specifications (TS) for the seventh cycle of operation. NA-1 completed applicable Mode 4, 5 and 6 surveillance tests during the sixth refueling outage which ended on June 29, 1987. It was not considered reasonable to repeat these surveillance tests during the time frame that Unit 1 was shutdown for steam generator repairs which occurred from July 15, 1987 to October 13, 1987. However, this unplanned outage did serve to impact the surveillance test intervals between the sixth and the forthcoming seventh refueling outages. This delay, together with additional time allowed for an optimum fuel burn-up before the next refueling, has resulted in a deferral of the next refueling outage for NA-1 until April 1989.

Currently, NA-1 TS require the performance of certain surveillance tests at 18, 36, and 60 month intervals to coincide with normal 18-month refueling cycles.

The proposed change would extend these surveillance test intervals for the NA-1 seventh cycle by 6 months to compensate for several unanticipated outages including the steam generator tube rupture event and to permit optimum fuel burn-up prior to refueling. Use of the allowable extension of the surveillance intervals in accordance with Specification 4.0.2 of the TS would require an extension corresponding to the 3-month unplanned outage. Rather than use the extension allowed by Specification 4.0.2 and request an additional extension, a 6-month extension for the affected surveillance test intervals is requested for the seventh cycle only to preserve the extension allowed by Specification 4.0.2 for future refueling cycles.

One-time changes to the surveillance test intervals associated with a plant shutdown or refueling outage as specified in the TS for License Number NPF-4 are requested as follows:

(1) The 18-month surveillance test cycle requirement as specified in the following TS sections would be changed to 24 months for the seventh cycle of unit operation only:

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4.1.2.2.c	4.3.2.1.2	4.3.3.9.c	4.4.3.2.1.b
4.9.3.1.b	4.4.10.1.1	4.5.1.d	4.5.2.e
4.6.1.3.c	4.6.2.1.c	4.6.2.2.1.c	4.6.2.3.c
4.6.3.1.2	4.7.1.2.b	4.7.4.1.c	4.7.7.1.d
4.7.8.1.d	4.7.9.1.b	4.7.10.c	4.7.10.f
4.8.1.1.1.b	4.8.1.1.2.d	4.8.1.1.3.e	4.8.2.3.2.d
4.8.2.3.2.f			

(2) The 18/36-month surveillance test cycle requirement as specified in the following TS sections would be changed to 24/42 months for the seventh cycle of unit operation only:

4.3.1.1.3 4.3.2.1.3

(3) The 60-month surveillance test interval requirement as specified in the following TS section would be changed to 66 months for the seventh cycle of unit operation only:

4.8.1.1.3.d

(4) Table 1.2 of Section 1.0, Definitions, which defines "R" as "At least once per 18 months" as it applies to the following TS sections and related tables, and the 18-month requirement in the note in the tables indicated below, would be changed to 24 months for the seventh cycle of unit operation only:

Section	Table	Note
4.3.1.1.1	4.3-1	(4)
4.3.2.1.1	4.3-2	(1)
4.3.3.1	4.3-3	—
4.3.3.3.1	4.3-4	—
4.3.3.5	4.3-6	—
4.3.3.6	4.3-7	—

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the change request against the standards provided above and has determined that this change will not:

Involve a significant increase in the probability or consequences of an accident previously evaluated. Current monitoring instrumentation and ongoing [TS] surveillance tests ensure the equipment and systems involved in the extended surveillance interval will remain in an operable condition until their inspection at the next refueling outage.

Create the possibility of a new or different kind of accident from any accident previously evaluated. Extending the interval for the performance of specific surveillance tests does not create the possibility of a new or different kind of accident. Periodic surveillance tests have been performed since the sixth outage to monitor system and component performance and to detect degradation. Surveillance tests will continue to be performed during the extension interval.

Involve a significant reduction in the margin of safety. Extending the interval for these specific surveillance tests for the [seventh] cycle of [NA-1] does not significantly degrade the margin of safety. Surveillance tests will continue to be performed during the extension interval. Current monitoring instrumentation and ongoing [TS] surveillance tests ensure the affected equipment and systems remain in an operable condition.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: July 20, 1988

Description of amendment request: The proposed change would clarify the current NA-1&2 Technical Specifications (TS) regarding reactor coolant system leakage detection systems. Specifically, the change would clarify the NA-1&2 TS 3.4.6.1 regarding reactor coolant system leakage detection systems and bring the present TS into closer agreement with Regulatory Guide 1.45 and Revision 4 of the Westinghouse Standard TS which are appropriate to NA-1&2.

The current TS Limiting Condition of Operation (LCO) is difficult to understand and can be interpreted to require two leakage detection systems to be operable, whereas the associated action statement can be interpreted to require three separate and independent methods to be operable. Regulatory Guide 1.45 requires three separate detection methods of which two of the methods should be: (1) the containment particulate radioactivity monitoring system and (2) the containment sump level and discharge flow measurement system. Regulatory Guide 1.45 also requires a third method which is satisfied by the containment gaseous radioactivity monitoring system.

The proposed change would clarify the TS such that the containment particulate and gaseous monitoring system are considered as two separate detection methods but are not considered as two independent systems. Specifically, the monitors share a common piping system, power supply and piping arrangement that do not make them truly independent. Therefore, the action statement would be modified to achieve consistency with the LCO. Specifically, if either of the two required leakage monitoring systems are inoperable, a compensatory leakage measurement using the RCS water inventory balance method would be specified instead of obtaining grab samples. The current TS does not require a compensatory leakage measurement if the containment sump discharge measurement system is inoperable whereas the revised TS does. This compensatory leakage measurement along with a fully operable leakage detection system is the basis for extending the action statement from 6 hours to 30 days when one leakage detection system is inoperable. The surveillance requirements have also been rewritten to require a periodic calibration of the containment sump level monitor.

The proposed TS changes are consistent with the regulatory position of Regulatory Guide 1.45, "Reactor Coolant Pressure Boundary Leakage Detection Systems" and NUREG-0452, "Westinghouse Standard Technical Specifications." Specifically, three separate detection methods are provided but they are grouped as two separate and redundant detection systems. The loss of a single system would not result in the loss of detection capability. Therefore, regulatory position 9 of Regulatory Guide 1.45 is fully met.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the change request against the standards provided above and has determined that the proposed changes would not:

(a) result in a significant increase in the probability or consequence of an accident previously evaluated, i.e., a loss of coolant accident, because the specification continues to require two redundant and diverse means of continuously monitoring for reactor coolant system leakage. In addition, an operability requirement for the containment sump level monitor has been added to the LCO, and a requirement to implement a compensatory leakage measurement (i.e., inventory mass balance) if either or both of the sump leakage monitors are inoperable has been added to the Action Statement. Finally, the requirement to obtain and analyze appropriate containment grab samples if one of the radioactivity monitors is inoperable has been replaced with a requirement to perform a compensatory leakage measurement using the mass balance method. This method is considered equivalent to the grab sample method in terms of leakage detection sensitivity and therefore will provide the same level of protection as previously provided.

(b) create the possibility of a new or different kind of accident. The additional required reactor coolant system leakage monitor (i.e., sump level) is already required by the related [TS] 3/4.4.6.2 regarding reactor coolant system leakage limits (see [TS] 4.4.6.2.1b) and therefore does not introduce any new or unique accident precursors. Similarly, the additional required compensatory leakage measurement (i.e., inventory mass balance) is a test that is routinely performed in accordance with [TS] 4.4.6.2.1d and existing station period test procedures, and therefore does not create any new or unique accident precursors.

(c) result in a significant reduction in the margins of safety as defined in the bases for any [TS] because the proposed [TS] continue to require two redundant and diverse means of leakage monitoring as well as a compensatory leakage measurement every 24 hours if either of the two required leakage monitoring systems is inoperable, and therefore the [TS] Bases and the recommendations of Regulatory Guide 1.45 (regulatory position 9 regarding [TS]) continue to be satisfied.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 30, 1988

Description of amendment request: The proposed change would support full power operation for NA-1&2 at steam generator (SG) tube plugging levels of up to 18%. The results of the analysis supporting the increase in SG tube plugging limits also support a new maximum core peaking factor (FQ) of 2.19. To support the proposed change a reanalysis of the Emergency Core Cooling System (ECCS) performance for the postulated large-break loss-of-coolant accident (LOCA) has been performed in compliance with Appendix K to 10 CFR Part 50. The results of the reanalysis are presented in compliance with 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems for Light Water Reactors." The analysis was performed with the NRC-approved 1981 model with BART version of the Westinghouse LOCA-ECCS evaluation model. The analysis includes the evaluation model revisions described in WCAP-9561-P, Addendum 3, Revision 1, "Addendum to BART-A1: A Computer Code for the Best Estimate Analysis of Reload Transients," dated July 1986 and approved by NRC letter dated August 25, 1986. The analytical techniques used are in full compliance with 10 CFR Part 50 Appendix K.

As required by Appendix K of 10 CFR Part 50, certain conservative assumptions were made for the LOCA-ECCS analysis. The assumptions pertain to the conditions of the NA-1&2 reactors and associated safety system equipment at the time that the LOCA is assumed to occur. These assumptions include such items as the core peaking factors, the containment pressure, and the performance of the ECCS. All assumptions and initial operating conditions used in this reanalysis were the same as those used in previous LOCA-ECCS analyses, with two exceptions. The steam generator plugging level was increased to 18% (from 7% and 15%) and the maximum core peaking factor, FQ, was increased from 2.15 to 2.19. With these changes incorporated into the analysis, it was found that the LOCA analysis results continue to meet the 10 CFR 50.46 acceptance criteria.

The large-break LOCA transient is divided, for analytical purposes, into three phases: blowdown, refill, and reflood. There are three distinct transients analyzed in each phase, including the thermal-hydraulic transient in the reactor coolant system, the pressure and temperature transient within the containment and the fuel clad temperature transient of the hottest fuel rod in the core. Based on these considerations, a system of interrelated computer codes were used for the analysis.

The description of the various aspects of the LOCA analysis methodology is provided in WCAP-8339, "Westinghouse ECCS Evaluation Model-Summary," dated July 1974. This document describes the major phenomena modeled, the interfaces among the computer codes, and the features of codes that ensure compliance with 10 CFR Part 50, Appendix K. The SATAN-VI, COCO, WREFLOOD, BART, and LOCTA-IV codes, which are used in the LOCA analysis, are described in detail in WCAP-8306, WCAP-8326, WCAP-8171, WCAP-9695, WCAP-10062 and WCAP-8305, respectively. These codes assess whether sufficient heat transfer geometry and core amenability to cooling are preserved during the time spans applicable to the blowdown, refill, and reflood phases of the LOCA. The SATAN-VI computer code analyzes the thermal-hydraulic transient in the reactor coolant system (RCS) during blowdown, and the COCO computer code calculates the containment pressure transient during all three phases of the LOCA analysis. The thermal-hydraulic response of the RCS during refill and reflood is calculated by the WREFLOOD computer code. A mechanistic estimate of the heat transfer coefficient in the core during reflood is provided by the BART computer code. For the three phases of the LOCA, the

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LOCTA-IV computer code is used to compute the thermal transient of the hottest fuel rod.

SATAN-VI is used to determine the RCS pressure, enthalpy, and density, as well as the mass and energy flow rates in the RCS and steam-generator secondary side, as a function of time during the blowdown phase of the LOCA. SATAN-VI also calculates the accumulator mass and pressure and the pipe break mass and energy flow rates that are assumed to be vented to the containment during blowdown. At the end of the blowdown, the mass and energy release rates during blowdown are transferred to the COCO code for use in the determination of the containment pressure response during the first phase of the LOCA. Additional SATAN-VI output data from the end of the blowdown, including the core inlet flowrate and enthalpy, the core pressure, and the core power decay transient, are input to the LOCTA-IV code.

With input from the SATAN-VI code, WREFLOOD uses a system thermal-hydraulic model to determine the core flooding rate (i.e., the rate at which coolant enters the bottom of the core), the coolant pressure and temperature, and the quench front height during the refill and reflood phases of the LOCA. WREFLOOD also calculates the mass and energy flow rates that are assumed to be vented to the containment. Since the mass flowrate to the containment depends upon the core pressure, which is a function of the containment backpressure, the WREFLOOD and COCO codes are interactively linked. With the input and boundary conditions from WREFLOOD, the mechanistic core heat transfer model in BART calculates the fluid and heat transfer conditions in the core during reflood.

LOCTA-IV is used throughout the analysis of the LOCA transient to calculate the fuel and clad temperatures of the hottest rod in the core. The input to LOCTA-IV consists of appropriate thermal-hydraulic outputs from SATAN-VI, WREFLOOD and BART, and conservatively selected initial RCS operating conditions.

The COCO code, which is also used throughout the LOCA analysis, calculates the containment pressure. Input to COCO is obtained from the mass and energy flowrates assumed to be vented to the containment, as calculated by the SATAN-VI and WREFLOOD codes. In addition, conservatively chosen initial containment conditions and an assumed mode of operation for the containment cooling system are input to COCO.

The NA-1&2 LOCA-ECCS reanalysis has evaluated plant operation at SG tube plugging levels of up to 18% based on the acceptance criteria delineated in 10 CFR 50.46. The evaluation concluded that reanalysis of non-LOCA accidents is not required to support this increased tube plugging level provided the measured RCS flow rate remains above the thermal design flow rate assumed for the safety analyses. SG tube plugging in sufficient quantity can potentially affect non-LOCA safety analysis due to reduced primary system flow, more severe pump coastdown characteristics, and the reduction of the reactor primary coolant system volume. Primary flowrate becomes a key parameter in the Departure from Nucleate Boiling Ratio (DNBR) limited events (e.g., uncontrolled RCCA bank withdrawal at power) when it falls below the thermal design flowrate. Pump coastdown characteristics impact analysis results when they become more severe than the conservative values used in the loss-of-flow related analyses. The reduced primary coolant system volume affects dilution times in uncontrolled boron dilution events.

A conservative estimate of the NA-1&2 RCS flow versus tube plugging is based on past flow measurements taken at NA-1&2 for several levels of steam generator tube plugging. More recent NA-1 measurements at greater tube plugging levels validate the conservatism of RCS flow versus tube plugging curve. A re-evaluation of the projection indicates that the conservatively estimated flow rate at the proposed 18% plugging level is approximately equal to the North Anna thermal design flow. Therefore, while measured flow exceeds the thermal design flow, the current docketed licensing analyses remain valid for those events in which flow rate is an important concern.

The impact of 18% tube plugging on dilution times in the uncontrolled boron dilution events was also evaluated. Relative to the boron dilution events, the evaluation indicated: (1) for uncontrolled dilution during startup, time to criticality is 37 minutes. This is more than adequate time for the operator to recognize the high count rate signal and terminate the dilution flow, and (2) for uncontrolled dilution at power, the operator has ample time (greater than 15 minutes) after the over-temperature delta T alarm or trip to determine the cause of dilution, isolate the water source, and initiate reboration before total shutdown margin is lost due to dilution.

Tube plugging levels exhibit no influence on dilution times for the refueling mode of operation, since the SG volumes are not a part of the active system. The evaluation shows that for SG tube plugging levels of up to 18 percent, no reanalysis of the DNBR related non-LOCA safety events is necessary and that the currently licensed analyses remain valid. In the case of the uncontrolled boron dilution events, the available operator response times for the startup and at power evaluations are reduced but remain well above the minimum acceptance values.

Based on the large break LOCA analysis, a double-ended cold-leg guillotine break with a discharge coefficient (C_D) of 0.4 was found to be the limiting break size and location. The analysis resulted in a limiting peak clad temperature of 2165.2° F for the $C_D = 0.4$ case, a maximum local cladding oxidation level of 5.77%, and a total core metal-water reaction of less than 0.3%.

For breaks up to and including the double-ended rupture of a reactor coolant pipe, the ECCS will meet the acceptance criteria as presented in 10 CFR 50.46, as follows: (1) the calculated peak fuel rod clad temperature is below the requirement of 2200° F, (2) the amount of fuel element cladding that reacts chemically with water or steam does not exceed 1% of the total amount of Zircaloy in the reactor, (3) the clad temperature transient is terminated at a time when the core geometry is still amenable to cooling. The localized cladding oxidation limits of 17% are not exceeded during or after quenching, (4) the core remains amenable to cooling during and after the break, and (5) the core temperature is reduced and the long-term decay heat is removed for an extended period of time.

The effects of increasing the allowable steam generator tube plugging to 18% has been assessed for existing non-LOCA event analyses. This evaluation has concluded: (1) current analyses for which RCS flow is an important concern remain valid as long as measured flow is greater than the thermal design flow assumed in safety analyses, (2) the existing loss-of-flow related analyses assume a conservative reactor coolant pump flow coastdown characteristic which accommodates the effect of increased tube plugging on loop flow resistance, and (3) boron dilution analyses assuming the reduced RCS volume associated with tube plugging result in dilution times which remain adequate for the required operator actions to be performed.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the change request against the standards provided above and has determined that:

1. Since the proposed changes involve parameters which are not accident initiators, they will not increase the probability of occurrence of any malfunction or accident previously addressed. The reanalyzed large break LOCA analysis verifies that operation under the revised specifications would also not result in any increase in accident consequences over those in previously accepted analyses.

2. No new accident types or equipment malfunction scenarios will be introduced as a result of operating in accordance with the revised specifications. The change which potentially affects physical components in the plant systems (steam generator tube plugging) was explicitly included in the analysis and shown not to produce any new or unique accident precursors.

3. The margin of safety, as defined in the basis for the plant Technical Specifications, is not reduced. The revised ECCS analysis meets the acceptance criteria of 10 CFR 50.46. Additionally, since evaluation of non-LOCA accidents concluded that acceptance criteria are met when considering the proposed changes, the current margin of safety is maintained for LOCA and non-LOCA accidents.

Based on the above evaluation, the licensee has determined that the proposed change involves no significant hazards considerations.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 30, 1988

Description of amendment request: The proposed change would increase the allowable enrichment of fuel assemblies irradiated at NA-1&2 to 4.3 weight percent (w/o) U-235. An increase in the current NA-1&2 Technical Specifications (TS) limit of 4.1 w/o U-235 to 4.3 w/o U-235 would allow an increase in batch average discharge burnup to levels approaching the currently licensed limit of 45,000 Mega-Watt Days per Metric Ton Uranium (MWD/MTU). The enrichments currently used limit the batch average burnup to a value from 38,000 MWD/MTU to 42,000 MWD/MTU depending on the number of fuel assemblies loaded each cycle. An increase in the enrichment limit would result in significant fuel cycle cost savings and enhance fuel management plans to increase batch average discharge burnups.

The safety impact for operation of NA-1&2 with high burnup fuel was previously addressed by the licensee in letters to the NRC dated December 4, 1980, March 6 and 26, 1981 and July 24, 1981. By letter dated April 9, 1984, the NRC approved operation of NA-1&2 to a batch of discharge of 45,000 MWD/MTU. A generic impact of extended burnup on the design and operation of Westinghouse fuel was addressed in WCAP-10125-P-A, "Extended Burnup Evaluation of Westinghouse Fuel," dated December 1985. In addition, the NRC made an independent assessment of the environmental and economic impacts of the use of extended burnup fuel in light water power reactors. This assessment was dated February 1988 and entitled "Assessment of the Use of Extended Burnup Fuel in Light Water Power Reactors," Pacific Northwest Laboratory, NUREG/CR-3009. The overall findings of NUREG/CR-3009 were that no significant adverse effects would be generated by increasing the present batch-average burnup level to values of 50,000 MWD/MTU or above, as long as the maximum rod average burnup of any rod is no greater than 60,000 MWD/MTU. Since the findings of these evaluations provided in NUREG/CR-3009 concerning the impact of extended burnup fuel are valid for an enrichment of 4.3 w/o U-235, and since the NA-1&2 spent fuel storage facility is currently licensed to 4.3 w/o U-235, the license's submittal addresses only the impact of increased enrichment on the requirements for the currently approved new fuel storage racks at NA-1&2.

The specific 10 CFR Part 50 Appendix A General Design Criteria for new fuel storage facilities are listed in Section 9.1.1 of the Standard Review Plan (NUREG-0800). Since no physical modifications are being made to the current NA-1&2 new fuel racks, the licensee's analysis only addresses the impact of the increased enrichment on the requirement of subcriticality under normal and postulated abnormal rack conditions (General Design Criterion 62). The highest K-effective allowable by Section 9.1.1 of NUREG-0800 for all conditions is 0.98.

The computer modeling of the storage racks was performed in three-dimensions (3-D) to minimize unnecessary conservatism and uncertainty. All K-effective calculations were performed with the Monte-Carlo program KENO V.a and contained within the modular code system SCALE. KENO V.a is addressed in ORNL-NUREG-CSD-2-VI-R2 entitled "KENO V.a, An Improved Monte Carlo Criticality Program with Supergrouping," dated December 1984. SCALE is addressed in ORNL-NUREG-CSD-2-VI-R3, "SCALE: A Modular Code System for Performing Standardized Computer Analysis for Licensing Evaluation," dated December 1984. The SCALE package automatically processes cross sections to create a set of resonance self shielded cross sections for use by KENO. Because all calculations for this analysis were made using a discrete pin representation, no spatial self shielding was performed prior to the KENO execution. The cross section set chosen was the 27 group ENDF/B-IV data contained in the SCALE package. Sufficient neutron histories were run for each case to limit the statistical uncertainties in the K-effective to less than 0.4% delta K/K.

The results of the licensee's analysis indicate that for a fuel enrichment of 4.3 w/o U-235, the NA-1&2 fuel storage area meets the criticality limit of K-effective less than 0.98 and is safe under the criticality specifications set forth in the NRC Standard Review Plan (NUREG-0800).

Basis for proposed no significant hazards consideration determination. The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a

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significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change does not involve a significant hazards consideration because operation of NA-1&2 in accordance with the proposed change would not:

1. Involve a significant increase in the probability or consequences of accidents previously evaluated. The only accident scenarios for which the probability of occurrence are potentially affected by fuel enrichments involve criticality events during fuel handling and storage. The criticality safety analyses demonstrates that K-effective during fuel handling and storage of new fuel is low enough to ensure subcriticality during postulated accident conditions. The probability of occurrence of criticality during fuel handling or storage is therefore not increased. Since subcriticality is maintained, no releases would result from the fuel handling and storage accident scenarios. In addition, since the burnup limit will not be increased beyond that already approved in NRC letter dated April 9, 1984, the radiological consequences of the accidents discussed in WCAP-10125-P-A and NUREG/CR-3009 will not be increased.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any previously evaluated. The only potential impact of increased enrichment upon fuel storage and handling involves the potential for criticality and the licensee's analyses that has determined that subcriticality will be maintained.

3. The proposed amendments do not involve a significant reduction in the margin of safety. The criticality analysis demonstrates that there is adequate margin to ensure subcriticality of the fuel during storage and handling of new fuel. The NRC safety analysis provided in a letter dated December 21, 1984, provides the same assurance for spent fuel.

Therefore, pursuant to 10 CFR 50.92, based on the above considerations, it has been determined that these changes do not constitute a significant safety hazards consideration.

The NRC staff has made a preliminary review of the proposed change and concludes that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 30, 1988

Description of amendment request: The proposed change would allow the direct reactor trip on turbine trip to be blocked below 30% of the rated thermal power. Currently, Permissive Setpoint P-7 is used to block the reactor trip on turbine trip below 10% of rated thermal power. The proposed modification would rewire the Solid State Protection System so that Permissive Setpoint P-8 is used to block the reactor trip on turbine trip below 30% power. A licensee review of historical trip data shows that the most commonly occurring reactor trip on turbine trip events are well below 30% of rated thermal power. Thus, it was concluded that the use of the existing P-8 bistable to block the direct reactor trip on turbine trip would be an effective means of reducing unneeded trips at low power. Direct reactor trip on turbine trip would be available above 30% power. The plant's designed load rejection capability is 50% of full load.

At present, for all power levels above 10% (the P-7 permissive setpoint) of Rated Thermal Power (RTP), the NA-1&2 nuclear reactors are tripped directly on turbine trip from a signal derived from the turbine autostop oil pressure or turbine stop valve position. A direct reactor/turbine trip at low power is unnecessary and unduly stresses plant systems. Thus, the licensee is proposing a change which would allow for a block of the direct reactor trip on turbine trip below 30% of rated thermal power.

The proposed modification would rewire the Solid State Protection System so that Permissive P-8 is also used to block the reactor trip on turbine trip instead of Permissive P-7. It was concluded that the use of the existing P-8 bistable to block the direct reactor trip on turbine trip would be an effective means of eliminating unneeded low power transient reactor trips. Direct reactor trip on turbine trip would still be available above 30% power.

Three items were considered in the licensee's safety analysis and were addressed in the licensee's submittal.

(1) The results of the worst-case analyses show that a total loss of external electrical load without a direct or immediate reactor trip below 30% of RTP presents no hazards to the integrity of the reactor coolant system or the main steam system. Pressure-relieving devices incorporated in the two systems are adequate to keep the maximum pressure within the design limits. The licensee concluded that the results of this analysis demonstrates that plant parameters are maintained within the design limits previously analyzed for the loss-of-load accident from full power described in Section 15.2.7 of the NA-1&2 Updated Final Safety Analysis Report (UFSAR).

(2) An analysis was also performed for a complete loss of forced reactor coolant flow initiated from the most adverse preconditions of a turbine trip, and demonstrated that the integrity of the core is maintained by operation of the reactor protection system, i.e., the DNBR will be maintained above the design limit value. Thus, there will be no cladding damage and no release of fission products to the reactor coolant system. The licensee concluded that plant parameters are maintained within design limits and that this analysis is bounded by the results of a complete loss of flow from full power as described in Section 15.3.4 of the UFSAR.

(3) Finally, an analysis was conducted to verify that the applicable NUREG-0737 requirements were met. NUREG-0737 required that the frequency of a small break loss-of-coolant-accident (LOCA) caused by a stuck-open pressurizer power operated relief valve (PORV) be reduced and that it be demonstrated not to be a significant contributor to the probability of a small break LOCA. Both the loss-of-load and the loss-of-flow accidents have the potential of causing the PORV to open. The licensee has conducted an analysis which demonstrates that the PORVs are not normally challenged during this event and thus the NUREG-0737 requirements are met.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the change request against the standards provided above and has determined that:

1. No significant increase in the probability of occurrence or consequences of an accident analyzed in the UFSAR will result from elimination of reactor trip on turbine trip below 30% of Rated Thermal Power (RTP). The analyses results show that the DNBR does not decrease below the design limit at any time. The analysis also shows that, except under [most] conservative assumptions, the pressurizer PORVs are not challenged during the transient. Pressure-relieving devices incorporated in the primary and the secondary systems are adequate to keep the maximum pressure within the design limit. Since the predicted results are within the range of existing safety analysis values, it is concluded that operation with the proposed Technical Specification changes will neither significantly increase the probability of occurrence nor the consequences of initiating events for any known accident.

2. No new or different accident type not previously considered in the UFSAR is created by this proposed change. The complete loss of unit load without a direct reactor trip on turbine trip is a design event and is addressed in Section 15.2.7 of the UFSAR. The results for a loss of flow due to fast bus transfer failure after a turbine trip are bounded by the results for a complete loss of flow from full power, which is discussed in Section 15.3.4 of the UFSAR. Thus, the results of all the relevant accident analyses show that operation with this modification does not create a new or different accident type than any evaluated previously in the UFSAR.

3. The margin of safety is not reduced. The proposed Technical Specification changes have been incorporated in the safety analyses. These analyses have demonstrated that calculated results meet all design acceptance criteria as stated in the UFSAR.

Based on the above evaluation, the licensee has determined that the proposed change involves no significant hazards considerations.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: January 6, 1987 as supplemented April 14 and May 15, 1987.

Description of amendments request: The licensee proposes to change Technical Specification Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations and Tests of Instrument Channels," to increase the period of the logic channel test of the reactor trip on low reactor coolant flow in both loops from monthly to each (annual) refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In 51 FR 7751, the Commission cited examples of amendments that are considered not likely to involve significant hazards considerations. Example (vi) involves a change which may either result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

The amendment proposed by the licensee would increase the logic testing period on the two-loop reactor coolant loss of flow reactor trip from monthly to every refueling outage (currently annually). However, the surveillance frequency for the logic channel test of the relays/contacts which initiate the reactor trip on low reactor coolant flow in either loop will remain monthly. Since all bistables and relay coils will still be tested monthly, the net effect of the proposed amendment would be to slightly increase the risk of failing to get a reactor trip upon simultaneous detection of low reactor coolant flow in both loops, due to failure of both of the specific relay contacts which initiate the trip during the increased period between surveillances. Although a numerical quantification of the increase in risk has not been performed, the staff believes that it would be quite small since the event of concern would require two contact failures (one in each loop) between refueling outages and a loss of flow condition occurring while the reactor is between 10% and 50% power.

Section 7.2 of the Standard Review Plan discusses various aspects of the Reactor Trip System. Section 7.2 references Regulatory Guide 1.22, "Periodic Testing of Protection System Actuation Functions." Regulatory Guide 1.22 provides for acceptable methods of testing protection systems during reactor operation. In its May 15, 1987 letter, the licensee states that all actuation devices and all actuated devices which are part of the reactor trip logic for loss of flow in both loops are tested in accordance with the guidance contained in Safety Guide 1.22 (Safety Guide 1.22 and Regulatory Guide 1.22 are identical). Therefore, the proposed change is in conformance with guidance endorsed by the Standard Review Plan.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

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Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al, Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: March 16, 1988, as supplemented by letter dated July 6, 1988.

Brief description of amendments: The amendments revise Technical Specification Surviellance Requirement 4.5.2.h which specifies flow requirements that the Low Pressure Safety Injection subsystem must meet during flow balance testing.

Date of issuance: October 17, 1988

Effective date: October 17, 1988

Amendment Nos.: 37, 24, and 13

Facility Operating License Nos. NPF-41, NPF-51 and NPF-74: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30126). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Arizona Public Service Company, et al, Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: May 27, 1988

Brief description of amendments: The Amendments revise the technical specification to modify the azimuthal power tilts to require the measured power tilt to be equal to or less than the Core Protection Calculation allowance and the limit in Figure 3.2-1A when the Core Operating Limit Supervisory System is in service. The wording of the surveillance requiment was revised for clarity. In addition, the azimuthal power tilt limit is increased for Unit 2.

Date of issuance: October 17, 1988

Effective date: October 17, 1988

Amendment Nos.: 36, 25, and 14

Facility Operating License Nos. NPF-41, NPF-51 and NPF-74: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26518). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Arizona Public Service Company, et al, Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: September 6, 1988

Brief description of amendments: The amendments revise Technical Specification 6.3.1, "Unit Staff Qualifications," to modify the Senior Reactor Operator license requirements for the Operations Manager.

Date of issuance: October 24, 1988

Effective date: October 24, 1988

Amendment Nos.: 39, 26 and 15

Facility Operating License Nos. NPF-41, NPF-51 and NPF-74: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 36668). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Arizona Public Service Company, et al, Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: August 25, 1988, as supplemented by letter dated October 18, 1988.

Brief description of amendments: The amendments delete the organization charts from the technical specifications in accordance with guidance provided by the NRC in Generic Letter 88-06.

Date of issuance: October 25, 1988

Effective date: October 25, 1988

Amendment Nos.: 40, 27 and 16

Facility Operating License Nos. NPF-41, NPF-51 and NPF-74: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 36667). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: May 25, 1988

Brief description of amendment: The amendment changes the Technical Specifications to remove the offsite and facility organization charts consistent with the guidance of Generic Letter 88-06, "Removal of Organization Charts from Technical Specifications."

Date of issuance: November 3, 1988

Effective date: November 3, 1988

Amendment No. 120

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24508). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units No. 2 and 3, Grundy County, Illinois

Date of application for amendments: August 31, 1988

Brief description of amendments: These amendments modify Section 3.5.F of the Technical Specifications to include more prescriptive requirements for Emergency Core Cooling Systems operability during cold shutdown and refueling operational modes.

Date of issuance: October 26, 1988

Effective date: October 26, 1988 and to be implemented within 60 days.

Amendment Nos.: 101, 97

Provisional Operating License Nos. DPR-19 and DPR-25. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 36669). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated Ocotber 26, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. 50-237/249, Dresden Nuclear Power Station, Unit Nos. 2, and 3 Grundy County, Illinois

Date of application for amendments: June 20, 1988

Brief description of amendments: The amendments change Technical Specifications for Dresden Units 2 and 3 to reflect instrumentation enhancements for post-accident monitoring completed per Regulatory Guide 1.97 and NUREG-0737 Supplement 1. In addition several minor corrections and clarifications and have been incorporated.

Date of issuance: November 3, 1988

Effective date: November 3, 1988 and to be implemented within 60 days

Amendment Nos.: 102, 98

Provisional Operating License No. DPR-19 and DPR-25. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30128). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al; Nos. 1, 2, and 3, New London County, Connecticut

Date of application for amendment: April 29, 1988 as supplement by letter dated July 21, 1988.

Brief description of amendment: The changes affect the TSs which specify the qualifications and conduct of the Nuclear Review Board (NRB) for all Units and the Site Nuclear Review Board for Millstone Units 1, 2 and 3.

Date of issuance: October 26, 1988

Effective date: October 26, 1988

Amendment Nos.: 108, 25, 144, 26

Facility Operating License Nos. DPR-61, DPR-21, DPR-65 and NPF-49. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32292). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 26, 1988

No significant hazards consideration comments received: No.

Local Public Document Room locations: Russell Library, 123 Broad Street, Middletown, Connecticut 06457 and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 30, 1988 as supplemented April 12, 1988 and September 22, 1988.

Brief description of amendment: The amendment modified Section 3.10 of the Technical Specifications to accommodate the Cycle 12 Core Reload. Specifically, the Minimum Critical Power Ratio (MCPR) and the maximum average planar linear heat generator rated (MAPLHGR) limit was changed. It also permitted the use of GE 8x8EB fuel.

Date of Issuance: October 31, 1988

Effective date: October 31, 1988

Amendment No.: 129

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15912). The September 22, 1988 submittal provided additional clarifying information and did not change the determination of the initial notice. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 31, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: June 14, 1988, as supplemented September 27, 1988.

Brief description of amendment: The amendment modified the Technical Specifications to make training requirements be in accordance with 10 CFR 55.

Date of issuance: November 1, 1988

Effective date: November 1, 1988

Amendment No.: 12

Facility Operating License No. NPF-68: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26523). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: March 7, 1988, as supplemented April 13, 1988.

Brief description of amendment: This amendment revises Technical Specification 3.1.2 and 4.1.2 for the liquid poison system to comply with the requirements of 10 CFR 50.62, "Requirements for Reduction of Risk from Anticipated Transients without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants."

Date of issuance: October 31, 1988

Effective date: October 31, 1988

Amendment No.: 101

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 1, 1988 (53 FR 20044). The staff has found one of the requested changes, the revision to Figure 3.1.2b, to be unacceptable and has issued a Notice of Denial. The Commission's related evaluation of the amendment is

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contained in a Safety Evaluation dated October 31, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 19, 1988

Brief description of amendment: The amendment modified the Technical Specifications to provide the addition of a Table of Contents for Tables and Figures and to correct an error to a location reference found in Section 2.19.

Date of issuance: November 3, 1988

Effective date: November 3, 1988

Amendment No.: 116

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32294). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of applications for amendments: November 21, 1986 and November 9, 1987

Brief description of amendments: The amendments modified paragraph 2.E of the licenses to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: October 17, 1988

Effective date: October 17, 1988

Amendment Nos.: 32 and 31

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the licenses.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34609). The Commission's related evaluation of the amendments is contained in a Safeguards Evaluation dated October 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: December 18, 1987

Brief description of amendments: Miscellaneous Technical Specification Changes; (a) correct errors; (b) delete redundant information; and (c) change organizational nomenclature.

Date of issuance: October 20, 1988

Effective date: As of the date of issuance.

Amendment Nos.: 83 and 51

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30141). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: June 3, 1988

Brief description of amendment: The amendment revised the Technical Specifications for material withdrawal schedule and lead factor ratio.

Date of issuance: October 31, 1988

Effective date: October 31, 1988

Amendment No.: 84

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30140). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: November 18, 1987

Brief description of amendment: This amendment modified Section 6 of the Technical Specifications to reflect (I) a new Corporate and (II) a new plant staff organizational structure and (III) a revised composition of the Plant Operations Review Committee.

Date of issuance: October 31, 1988

Effective date: October 31, 1988

Amendment No.: 10

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1987 (52 FR 48589). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: December 2, 1986 as supplemented October 22, 1987 and July 15, 1988.

Brief description of amendment: The amendment modified paragraph 2.(D)(3) of the license to require compliance with the amended Physical Security Plan. The Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: October 24, 1988

Effective date: October 24, 1988

Amendment No.: 65

Facility Operating License No. DPR-34. Amendment revised the Technical license.

Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 36673). The Commission's related evaluation of the amendment is contained in a Safeguards Evaluation Report dated October 24, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location. Greeley Public Library, City Complex Building, Greeley, Colorado

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 7, 1988

Brief description of amendment: This amendment deleted license condition 2.C.(3) concerning relief from certain pump and valve testing requirements.

Date of issuance: October 26, 1988

Effective date: October 26, 1988

Amendment No.: 20

Facility Operating License No. NPF-57. This amendment revised the License.

Date of initial notice in **Federal Register:** June 1, 1988 (53 FR 20045). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 6, 1985 as supplemented on August 29, 1986 and August 16, 1988. The supplemental letters did not make technical changes to the original application.

Brief description of amendments: The amendments changed the Technical Specifications regarding air lock leakage testing.

Date of issuance: October 21, 1988

Effective date: October 21, 1988

Amendment Nos.: 89 and 62

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38921). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: March 8, 1988 as supplemented August 31, and September 30, 1988.

Brief description of amendment: The amendment changes the Technical Specifications by revising Figures 3.9-1 and 3.9-2 of Section 3.9.12. These figures establish the minimum required fuel assembly exposure as a function of initial enrichment to permit storage of fuel assemblies in Regions 2 and 3 of the spent fuel assembly storage racks. In addition, the amendment revises Sections 5.3.1 and 5.6 of the Technical Specifications in terms of maximum initial enrichment of U-235 and minimum required burnup for Regions 2 and 3 of the spent fuel pool.

Date of issuance: October 28, 1988

Effective date: October 28, 1988

Amendment No.: 74

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 1, 1988 (53 FR 20046). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Dates of application for amendment: May 20, 1988, as supplemented June 20, 1988, July 8, 1988, August 5, 1988, September 16, 1988, September 30, 1988, October 11, 1988, October 13, 1988, and October 24, 1988.

Brief description of amendment: The amendment changes the Technical Specifications to allow refueling and operating with (1) Vantage 5 (V5) improved fuel design in combination with the Westinghouse low parasitic fuel assemblies remaining in the core from Cycle 4 and (2) subsequent operating cycles with up to a full core of V5 fuel.

Date of issuance: October 28, 1988

Effective date: October 28, 1988

Amendment No.: 75

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30144) The submittals dated August 5, 1988, September 16, 1988, September 30, 1988, October 11, 1988, October 13, 1988, and October 24, 1988 provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: May 26, 1988

Brief description of amendment: The amendment revised Technical Specification Section 3.5.2, "Control Rod Insertion Limits," to assure reactor operation is consistent with core design analysis, in that the Control Group I (Shutdown Group) is precluded from insertion during power operation.

Date of issuance: October 21, 1988

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 111

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 27, 1988 (53 FR 28295). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1988.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: June 9, 1988

Brief description of amendment: The amendment revises Table 3.8.4.1-1 of the Technical Specifications to delete spare

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circuit breakers from the Table and correct typographical errors.

Date of issuance: October 24, 1988
Effective date: October 24, 1988
Amendment No.: 17.
Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 15, 1988 (53 FR 35941). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1988.
No significant hazards consideration comments received: No
Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 28, 1988.
Brief description of amendment: The amendment changed the TS to reflect recent organizational changes. All references regarding the "Vice President, Nuclear" are changed to the "Senior Vice President, Nuclear." The position of General Manager, Engineering (Nuclear) has been deleted from the Nuclear Safety Review Board (NSRB) and the Manager, Licensing and Fuels, has been appointed Chairman of the NSRB.
Date of issuance: October 27, 1988.
Effective date: October 27, 1988.
Amendment No.: 39
Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32299). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1988.
No significant hazards consideration comments received: No.
Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 2, 1986 as supplemented February 18 and August 2, 1988.
Brief description of amendment: The amendment modified paragraph 2.E of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of the amendment.
Date of Issuance: October 24, 1988
Effective date: October 24, 1988
Amendment No.: 21
Facility Operating License No. NPF-42. Amendment revised the license.
Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 36674). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1988.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: June 27, 1988
Brief description of amendment: The amendment changes the Technical Specifications to permit an increase in the nitrogen pressure in the safety injection accumulator.
Date of issuance: October 25, 1988
Effective date: October 25, 1988
Amendment No.: 119
Facility Operating License No. DPR-3: Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32304). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 1988.
No significant hazards consideration comments received: No.
Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket no. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: June 27, 1988
Brief description of amendment: The amendment revises the technical specifications to enable piping modifications needed to allow for installation of the Water Clean-Up System.
Date of issuance: November 1, 1988
Effective date: When the Water Clean-Up System is declared operable.
Amendment No.: 120
Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32304). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1988.
No significant hazards consideration comments received: No
Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make

available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By December 16, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the

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factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of Application for amendment: October 10, 1988

Brief description of amendment: The amendment changed the Technical Specifications to allow an alternate sampling method of steam generator tube inspections, limited to the fourth refueling outage. Telephone authorization was granted on an emergency basis on October 14, 1988, and confirmed by letter dated October 14, 1988.

Date of Issuance: November 1, 1988

Effective Date: October 14, 1988

Amendment No.: 63

Facility Operating License No. DPR-75: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State of New Jersey and final no significant hazards considerations determination are contained in a Safety Evaluation dated November 1, 1988.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, Washington, DC 20006

Local Public Document Room Location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

NRC Project Director: Walter R. Butler

Dated at Rockville, Maryland, this 9th day of November, 1988.

For the Nuclear Regulatory Commission

Bruce A. Boger,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 88-26331 Filed 11-15-88; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-155]

Consumers Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 93 to Facility Operating License No. DPR-6, issued to Consumers Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Big Rock Point Plant (the facility), located in Charlevoix County, Michigan. The amendment became effective on October 14, 1988.

This amendment modifies the TSs by replacing the requirements to partial-stroke test the Reactor Depressurization System depressurizing valves quarterly with a requirement to full-stroke test all four depressurizing valves each refueling outage.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 23, 1988 (53 FR 32123). No request for a hearing or petition for leave to intervene was filed following this notice.

Also in connection with this action, the Commission issued an Environmental Assessment and Finding of No Significant Impact.

For further details with respect to this action, see (1) the application for amendment dated July 5, 1988, as modified October 10, 1988, (2) Amendment No. 93 to License No. DPR-6, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the North Central Michigan College, 1515 Howard Street, Petosky, Michigan 49770. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 4th day of November 1988.

For the Nuclear Regulatory Commission.

Wayne E. Scott, Jr.,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-26442 Filed 11-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302, License No. DPR-72, EA 88-34]

Florida Power Corp., Crystal River Unit 3, Crystal River, FL; Order Imposing Civil Monetary Penalty

I

Florida Power Corporation, Crystal River, Florida (licensee) is the holder of Operating License No. DPR-72 (license) issued by the Nuclear Regulatory Commission (Commission or NRC) on January 28, 1977. The license authorizes the licensee to operate the Crystal River facility in accordance with the conditions specified therein.

II

An NRC inspection of the licensee's activities under the license was conducted on November 30–December 4, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated May 4, 1988. The Notice stated that nature of the violation, the provision of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated June 2, 1988. In its response, the licensee admits the violation and does not take issue with the Severity Level, but requests mitigation of the civil penalty on the basis that the mitigation factors in 10 CFR Part 2, Appendix C, Section V.B. were not appropriately applied in assessing the penalty.

III

After consideration of the licensee's response and the statements of fact, explanations, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the original penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be mitigated by 50 percent.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295) and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Twenty-Five Thousand Dollars ($25,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement, the Regional Administrator, Region II, and to the NRC Resident Inspector, Crystal River, Unit 3.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions to this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether on the basis of the violations set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, which the licensee has admitted, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Operations.

Dated at Rockville, Maryland, this 31st day of October 1988.

Appendix—Evaluation and conclusion

On May 4, 1988 a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Florida Power Corporation responded to the Notice on June 2, 1988. The licensee admits the violation, but requests mitigation of the civil penalty.

Restatement of Violation

10 CFR Part 50, Appendix B, Cirterion XVI, requires measures be established to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective materials and equipment, and non-conformances are promptly identified and corrected.

Contrary to the above, from May 1980 until October 1987, the licensee failed to assure that a condition adverse to quality, namely, a potentially overloaded emergency diesel generator (EDG), was promptly identified and corrected. Specifically: (a) The load on EDG/A, for certain design basis events, would have been approximately 3545 kw which is above the manufacturer's published 30-minute rating of 3300 kw; (b) on several occasions, the licensee performed the 18-month surveillance testing of both A and B diesel generators with loads above the 3000 kw rating, and the licensee failed to identify and perform, after each such run, the manufacturer's recommended inspection of certain critical components; and (c) the licensee had not identified that surveillance testing was performed at a maximum of 3100 kw even though the worst case design basis accident load given in the Final Safety Analysis Report is 3180 kw.

Summary of Licensee's Response

Florida Power Corporation (FPC) admits that the violation occurred and does not take issue with its Severity Level. However, FPC requests mitigation of the civil penalty on the basis that the mitigation factors in 10 CFR Part 2, Appendix C, Section V.B., were not appropriately applied in assessing the penalty. Its arguments in support of mitigation are that its corrective actions were timely and aggressive, that it identified the violation, and that proper credit was not given for its Configuration Management Program.

NRC Evaluation

Under the NRC's Enforcement Policy, in effect at the time of the violation was identified, reductions of up to 50% of the base civil penalty may be given when a licensee identifies the violation and promptly reports it to the NRC. In weighing this factor, consideration will be given to, among other things, the length of time the violation existed prior to discovery, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. In addition, the staff gives credit for effective comprehensive licensee programs for detection of problems that may constitute, or lead to violation of regulatory requirements.

With respect to the problem as described in the NOV, the staff credits the licensee with identifying the problem. The staff recognizes that the problem existed for approximately seven years as a result of a fundamental error that was incorporated at the time of a design modification (January 1980), but notes that there was not a reasonable opportunity to discover the problem prior to the time when the licensee began a detailed review of the EDG loading in June 1987. The staff has reconsidered the complexity of the problem as it related to the length of time that it took the licensee to fully realize and understand the extent of the problem, and the promptness and completeness with which the licensee submitted the required reports. While the licensee argues that mitigation for identification is appropriate based on their comprehensive Configuration Management Program (CMP), the NRC notes that in the case of this violation, the problem was not discovered from the CMP, but rather while determining the setting for an emergency diesel generator directional power relay which was being added to correct problems disclosed during an event described in LER 84-003-00. Nevertheless, the staff has concluded to mitigate the original civil penalty by 50% for this factor.

Mitigation of 50% may also be given for corrective actions which are unusually prompt and extensive. On the other hand, the civil penalty may be increased by as much as 50% if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the timeliness of the corrective action, degree of licensee initiative, and the comprehensiveness of the corrective action—such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

Although the special testing which was conducted to empirically confirm the loading calculations was an important part of the licensee's corrective action, the performance of these tests was only done at the insistence of the NRC to support the licensee's request for an exemption from the requirements of GDC-17. Furthermore, which the licensee is complying with the terms of the exemption, the licensee has not yet implemented the long-term solution to bring the facility into compliance with GDC-17. As noted in the staff's NOV, the CMP represents a positive commitment to programmatic configuration enhancement; however, weaknesses still exist and need to be remedied in your planned efforts to improve the effectiveness of the CMP for prompt corrective action in the resolution of design problems. Therefore, based on a review of the above considerations for the factor of corrective actions, the base amount was not mitigated or escalated.

NRC Conclusion

For reasons set forth herein, the NRC Staff has concluded that the licensee has provided an adequate basis for mitigation of the civil penalty by 50%. Consequently, the civil penalty in the amount of $25,000 should be imposed.

[FR Doc. 88-26443 Filed 11-15-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26263; File No. SR-Amex-88-26]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendments to Sections 712 and 713 of the Amex Company Guide To Modify the Circumstances Under Which Shareholder Approval Is Required as a Condition to Exchange Approval and Listing of Additional Stock Issuances

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 24, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit

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comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is proposing to amend Sections 712 and 713 of the Amex Company Guide to modify the circumstances under which shareholder approval is required as a condition to Exchange approval and listing of additional stock issuances.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under current Amex rules, shareholder approval is required pursuant to Section 712 of the Amex Company Guide as a condition to listing additonal shares of common stock (or securities convertible into common stock) where such shares are to be used:

(*1*) as the sole or partial consideration in acquiring the stock or assets of another company, if:

(a) the number of shares to be issued could increase the company's outstanding stock by 20% or more, or

(b) any single officer, director or substantial stockholder of the listed company has a 5% or greater interest (or such persons collectively have a 10% or greater interest) in the company or assets to be acquired or in the consideration to be paid in the transaction and the issuance could result in an increase in outstanding common shares of 50% or more; or

(*2*) pursuant to Section 713 of the Amex Company Guide for any other purpose, if:

(a) the sale or issuance by the company of common stock is to be effected at a price less than the greater of book or market value, and such sale, together with the sale of securities by officers, directors, or principal stockholders, equals 20% or more of the presently outstanding common stock, or

(b) if 20% or more of the company's outstanding common stock is to be sold for less than the greater of book or market value.

Representatives of the business and legal communities have from time to time commented that these requirements, and similar New York Stock Exchange requirements, are unnecessarily arbitrary and restrictive.[1]

The Exchange is now proposing to change its requirements. While the revision will result in fewer transactions being submitted for shareholder approval, other rules and policies, some of which were not fully developed when these requirements were first adopted, provide significant protection for investors. In this regard, it is noted that today's investors benefit from significantly enhanced corporate disclosure which is more comprehensive and timely than in the past. This is reflected in mandatory Commission filings, issuer press releases (which the Amex requires for every material event) and the rapid and independent dissemination of information by the various news services. Further, the great majority of Amex companies now have audit or comparable committees of disinterested directors which, under Amex rules, are required to approve transactions raising potential conflicts of interest.[2]

For these reasons, the Exchange believes that it would be appropriate to limit the extent to which its requirements intrude on corporate decision-making, and, therefore, proposes an increase of the present 20% threshold to 25%.

Similarly, it would also be appropriate to increase the triggering threshold for shareholder approval of acquisitions in which officers and directors have a financial interest from 5% individually (10% collectively) to 10% individually (20% collectively).

A new subsection is proposed to acknowledge the long-standing policy of the Exchange not to require strict application of the requirements to a transaction undertaken by a financially distressed company, where time is of the essence. Where a company ask for an exception based upon financial need, it would be required to (a) publicly acknowledge its financial difficulty at least ten days prior to the closing of the proposed transaction; and (b) obtain approval of the transaction either by its audit committee or by a similar committee of disinterested directors.

Finally, in the interest of simplicity and greater readability, we are proposing to combine Sections 712 and 713 into a single section.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it promotes just and equitable principles of trade, facilities transactions in securities and perfects the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Annex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the

[1] *See e.g.*, SEC File No. SR–NYSE–88–19 where the New York Stock Exchange cited such criticism in connection with an analogous proposal to revise its threshold for requiring sharehold approval from 18½% to 25%.

[2] *See* Section 12 of the Amex Company Guide, and Form SD–1 Listing Agreement.

Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by December 7, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

November 8, 1988.

[FR Doc. 88–26417 Filed 11–15–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26266; File No. SR–PSE–88–23]

Self-Regulatory Organizations; Proposed Rule Change by The Pacific Stock Exchange Inc. Relating to a Policy for Allocating Booth Space on the PSE Options Trading Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 11, 1988, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange"), pursuant to Rule 19b–4 of the Securities and Exchange Act of 1934 ("the Act"), is submitting this rule filing for the purpose of adopting the following policy for the allocation of booth space on the options trading floor.

Options Floor Booth Allocation Policy Formula

The Booth Allocation Formula is comprised of three components: (1) Monthly trades; (2) monthly contracts; and (3) number of employees. The three components are averaged to obtain a percentage for each member firm (*e.g.*, If a particular firm executed 17.53% of the Exchange's monthly contracts, 16.16% of the trades and employed 9.45% of the floor personnel, the average would be 14.38% of all three components (17.53 + 16.16 + 9.45 / 3 = 14.38%)).

The booth figures for both clearing firms and retail/stock execution firms are compiled on a monthly as well as quarterly basis. A rolling six-month evaluation is used for purposes of determining the allocation of booth space. The quarterly figures constitute the primary data used for the evaluation of a booth space, which is done using the Booth Utilization Guidelines. Booth space for clearing firms and retail/stock execution firms is then allocated as follows:

Clearing Firms—The clearing firms' percentages are separated and adjusted to reflect the average number of booths allocated to the clearing firms. For example, a clearing firm entitled to an allocation of 30% of 200 booths available on the options floor (60 booths) would only be allocated 63.3% of the 60 booths (38 booths, or 19% of the 200 booths), based on the current booth space it is allocated. A particular clearing firm that has an overall average of 5% of the Booth Allocation Formula's three components is therefore entitled to 63.3% of the 5% or 6 booths. Assuming there is a 15% residual of the total 200 booths from the clearing firms, this 15% residual (30 booths) would be divided among the retail/stock execution firms according to the percentage within the group.

Retail/Stock Execution Firms—The same Booth Allocation Formula used for clearing firms is applied to retail/stock execution firms. In addition, the residual of the clearing firms' percentages is allocated among the retail/stock execution firms. For example, the clearing firm residual of 15% (30 booths) would be divided among the retail/stock execution firms based upon the percentages within the group. If a given retail/stock firm's three components have an average of 11%, the allocation is 11% of the residual 15% or 1.65%. The additional percentage would then provide the retail/stock firm with a 12.65% allocation. The retail/stock firm would be entitled to hold, based upon the formula, 25 booths (200 × 12.65%).

Booth Utilization Guidelines

The evaluation of booth utilization involves several factors applied only to the member firm leasing the booth space. First, effective use of the booth requires that it be occupied at least 50% of the trading day by the staff of the member firm that is leasing the booth.

Second, a booth must have at a minimum an operational phone. Further consideration is given to support equipment located in the booth space, such as Quotron, Bridge, inhouse systems and order support facilities. Each booth should have a minimum of between three to five working voice lines, not including any second party lines, as allowed under Subordinate Issues/Subleasing.

The evaluation of booth space utilization does not include a firm's use of the space for trade matching or any other type of trading support operation that may effectively be carried out elsewhere.

The aforementioned criteria are listed below in order of priority. They are:

1. Effective utilization of booth by personnel (50% occupancy).
2. Operational phone.
3. Member firm supported equipment (i.e., order machines).
4. Interrogation devices.
5. Three to five operating voice lines.

Booths which are not sufficiently utilized using the objective criteria listed above are subject to forfeiture and reassignment, notwithstanding any entitlement pursuant to the Booth Allocation Formula.

Subordinate issues

Subleasing—The subleasing of booth space by one member to another member firm is prohibited. The Exchange has established direct leasing agreements with all firms qualifying for booth space. This prohibits any arrangements with regard to booth rental occupancy, or use other than with a direct written agreement with the Exchange. A member firm may allow another member firm to install either a single phone or drop line in its booth space. Prior to installation of a single phone or drop line, the member firm wishing to install the telephone or drop line must seek written approval from the Exchange. Exchange approve phones or drop lines will not be considered in evaluating booth utilization of the member firm allocated the booth space. Phone or drop lines may not be staffed by the member firm that installed the phone or drop line.

Booth alterations—Booth alterations are made at the expense of the member firm leasing the booth, and the member firm, at its expense, is required to return the booth to its original condition upon vacating the space. Physical alteration of a booth requires the Exchange's prior approval.

Merger—Booth space occupied by a member firm that merges with another member firm will revert back to the Exchange. Any reallocation will be at the discretion of the Exchange. The surviving member firm will be considered for possible reallocation of booth space pursuant to the Booth Allocation Formula. The surviving

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member firm will be given a higher degree of consideration for the reallocation of booth space.

Vacated booth space—Booth space that is vacated for any reason will automatically revert back to the Exchange for reallocation. Booth space that is vacated must be returned to its original condition by the vacating member firm before booth space fees are terminated.

Anticipated volume—A member firm may request additional booth space based upon the anticipation of increased volume (e.g., the merger of two firms, increased operational needs). A member firm's request for additional booth space will be evaluated by the Exchange. Any additional booth space that is allocated will be done so on a provisional basis. After a period not to exceed six months, the Exchange will conduct an evaluation of the member firm's booth space to determine if the additional booth space is being utilized pursuant to the booth utilization factors.

Stock firms—Booth space allocated to stock execution firms or to other firms that will be utilizing the booth space for stock execution will be at the discretion of the Exchange. Allocated booth space may not be contiguous.

Exchange allocation of space—The Exchange reserves the right to reallocate to member firms as needed 5% of the total booth space presently allocated to member firms. In reallocating booth space the Exchange will evaluate the utilization of a member firm's booth space.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the policy is to provide a fair and equitable procedure for allocating approximately 200 booth spaces to member firms on the PSE options trading floor. A majority of these booths are presently leased to member firms.

There have been increasing requests by member firms for additional booth space on the Exchange's options floor. The requests substantially outnumber the booth space that is now available. Many of the presently vacant booths are located in non-prime areas (prime area is defined as a booth either near a trading crowd, near posts that are active, or near a central passageway). There are also a number of booth spaces which are not being effectively utilized by member firms. In some cases, member firms are unwilling to vacate underutilized booth space for real-location to other member firms that have shown a substantial business need for more booth space. Consequently, staff has found it necessary to formulate a policy that would allocate the booth space on the Exchange's options floor based on a member firm's utilization of such booth space.

The Booth Allocation Formula was devised to allocate booth space to member firms by taking into consideration historical trading data (number of trades and contracts) and the number of employees used to support each operation. The formula also takes into consideration the differing space requirements of the market maker clearing firms and the retail/stock execution firms. The formula is to be used in conjunction with Booth Utilization and Subordinate Issues.

The Booth Utilization Guidelines were devised to define effective use of booth space by specifying requirements such as the support equipment (e.g., Quotron), the number of operational phone lines, and the occupancy levels in each booth.

Additional issues are addressed in the Subordinate Issues section. The practice of one firm subleasing to another is prohibited in this section. Subleasing is considered ineffective utilization of booth space by the primary firm renting the space. However, a firm may place a telephone or drop line in another firm's booth space. The Exchange will control the placement of a member firm's equipment in a booth space it is not leasing, as well as charge an installation fee.

The Booth Alteration section allows the Exchange to control any alterations a lessee member firm may wish to make to its allocated booth space. It also requires that a member firm pay for booth space alterations and restore the booths to their original conditions when vacated.

If any member firms merge, the booth space of the member firm merging into the surviving firm, either operationally or otherwise, will revert back to the Exchange for reallocation as the Exchange deems appropriate.

Member firms may request booth space under the Anticipated Volume section when they are not entitled to it based upon the Booth Allocation Formula or the Booth Utilization Guidelines. The Exchange will determine if the reason for the request is warranted (i.e., new accounts, projected business growth, etc.). Any booth space allocation is subject to review by the Exchange at a later date.

The requirements of firms who primarily provide equity stock execution services to the market makers are lower than the retail or market maker clearing firms and must therefore be controlled so as to avoid the allocation of contiguous booth space whenever possible.

In addition to regular reviews of each member firm's order flow (trades, contracts), the Exchange expressly reserves the right to maintain or recall 5% of the total booth space available in order to satisfy any new or additional requests for booth space on the options floor. However, the Exchange will evaluate any recall of booth space based on the Utilization Guidelines. Any booth space vacated by a member firm will revert back to the Exchange for allocation.

The proposed Booth Allocation Policy is consistent with the requirements of the Securities and Exchange Act of 1934 ("the Act") and the rules and regulations thereunder applicable to the Exchange in that it will provide for an equitable allocation of booth space among its members utilizing the facilities of the PSE.

The PSE believes that this booth space alocation policy is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 7, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 9, 1988.

[FR Doc. 88-26475 Filed 11-15-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1239]

Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on November 30, 1988 in Room 521J of the National Aeronautics and Space Administration (NASA), 600 Independence Avenue, SW., Washington, DC. The meeting will begin at 1:00 p.m.

Study Group 2 deals with communications for scientific satellites, space probes, exploration satellites (e.g., meteorological and geodetic) and with interference problems concerning the radio and radar astronomy services. The purpose of the meeting is to discuss preparations for the Final Meeting of Study Group 2 in the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

Date: November 9, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88-26512 Filed 11-15-88; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1237]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on December 2, 1988 at the U.S. Naval Observatory, Room 300, Building 52, 34th and Massachusetts Avenue, NW., Washington, DC. The meeting will begin at 9:30 a.m.

Study Group 7 deals with time-signal services by means of radiocommunications. The purpose of the meeeting is to discuss preparations for the Final Meeting of Study Group 7 in the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Roger E. Beehler, National Institute of Standards and Technology, 325 Broadway, Boulder, CO 70303; phone (303) 497-3281.

Dated: November 9, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88-26510 Filed 11-15-88; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1238]

Study Groups 10 and 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Groups 10 and 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on December 1, 1988 at the National Association of Broadcasters, 1771 N Street, NW., Washington, DC. The meeting of Study Group 11 will begin at 10:00 a.m.; Joint Groups at 12:00 noon; and 10 at 2:00 p.m.

Study Group 10 deals with sound broadcasting; Study Group 11 with television broadcasting; and the Joint Groups with program recording and the use of satellites for broadcasting. The purpose of the meeting is to discuss preparations for the Final Study Group Meetings in the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. John W. Reiser, Federal Communications Commission, Washington, DC 20554; telephone (202) 254-3394.

Date: November 9, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88-26511 Filed 11-15-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-096]

Subcommittee on Marine Occupational Safety and Health, Chemical Transportation Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Notice is given here of a meeting of the Subcommittee on Marine Occupational Safety and Health of the Chemical Transportation Advisory Committee (CTAC). The meeting will be held on Tuesday, December 13, 1988, in Room 4234, U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. and end by 3:30 p.m. The Subcommittee is expected to discuss the application of marine occupational safety and health programs

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recommended to the Coast Guard by Southwest Research Institute. In addition to these discussions, a presentation will be given on a national network of medical monitoring and hazard communication training services which are commercially available for the merchant marine industry.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Joseph Ocken, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street, SW., Washington, DC 20593, (202) 267–1577.

Dated: November 7, 1988.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–26477 Filed 11–15–88; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

[Docket S–838]

International Shipholding Corp.; Application for Permission To Acquire Waterman Marine Corp. and Waterman Industries Corp.

In connection with its planned acquisition of Waterman Marine Corporation and Waterman Industries Corporation, including certain of its subsidiaries (Waterman), International Shipholding Corporation and its subsidiaries (ISC) by letter dated November 4, 1988, requested all consents, waivers, and permissions required pursuant to sections 608, 804, and 805(a) of the Act. ISC further requested all other administrative approvals or waivers that the Maritime Administration (MARAD) may require pursuant to the Act or any provisions contained in the operating-differential subsidy (ODS) contracts held by Waterman Steamship Corporation, the vessel operating subsidiary of Waterman.

ISC is a publicly-held Delaware Corporation with its headquarters located in New Orleans, Louisiana. Through its subsidiaries, ISC also maintains principal offices in New York and Rotterdam, plus a network of agents in other major cities around the world. ISC states that it is a citizen of the United States as defined by section 905(c) of the Act for Title VI purposes.

ISC was formed in 1978 as a holding company and its only significant assets consist of the capital stock of its corporate subsidiaries. ISC's principal operating subsidiaries are Central Gulf Lines, Inc. (Central Gulf), a Delaware Corporation, and LCI Shipholdings, Inc. (LCI), a Liberian Corporation.

Central Gulf owns and operates eight U.S.-flag ocean-going vessels, including three LASH vessels and a full complement of U.S.-flag LASH barges, two pure car carriers, two breakbulk vessels and one RO/RO vessel. The two car carriers are under contract to carry Toyota Motor Corporation and Honda Motor Corporation vehicles from Japan to the United States. One of the Central Gulf LASH vessels is on charter to Waterman Steamship Corporation for operation on Trade Route (TR) 18/17, pending MARAD approval. Central Gulf's other five U.S.-flag ocean-going vessels are presently on charter to the Military Sealift Command (MSC). Central Gulf also owns three and charters-in 147 river barges, plus 14 U.S.-flag towboats.

LCI owns and operates a fleet of ten Liberian-flag ocean-going vessels, including three LASH vessels and a full complement of LASH barges, two pure car carriers, one breakbulk vessel, three LASH feeder vessels, and one self-propelled LASH feeder vessel. LCI's vessels generally operate around the world under medium to long-term contracts.

ICS, through its subsidiaries New Combo, Inc. and Second Probo, Inc. also owns a 50 percent interest in two foreign corporations that will own and charter-out three specialized product/bulk/ore vessels scheduled for delivery during the next four months. These vessels will be under long-term charter to a European marketing pool that primarily deals in foreign-to-foreign markets. ISC claims it will have no involvement in the operating or marketing of these vessels. ISC also owns a minority (one-third) investment in A/S Havtor (Havtor), a Norwegian company that in turn owns minority interests, through Norwegian limited partnerships, in highly-specialized ships that carry liquid petroleum gas, ethylene, and ammonia, plus several dry bulk ships. All of the Havtor ships are under long-term charter to European marketing pools.

ISC has several subsidiaries that provide chartering, brokerage, fleeting, loading, and husbanding services to their ISC affiliates, and a subsidiary that provides brokerage services to exporters. ISC also owns a minority equity interest in two management firms offering ship services in Norway, the Netherlands, and Singapore. ISC claims that these companies do not materially contribute to ISC's profits or revenues, but they facilitate vessel operations by avoiding reliance on unaffiliated third parties for services.

Through its subsidiary, Waterman Steamship Corporation, Waterman currently operates three U.S.-flag LASH vessels (two of which it charters under capitalized leases) and one C5–S–75a cargo vessel chartered from American President Lines, Ltd. on TR 18/17 between U.S. Atlantic and Gulf ports and ports in the Middle East and South and Southeast Asia. Under long-term agreements with unaffiliated vessel owners, Waterman also operates three U.S.-flag RO/RO vessels that are time chartered to the MSC under the TAKX Program. Waterman's TR 18/17 service is operated pursuant to a Waterman Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB–115, which expires on June 3, 1991. Waterman also is a party to two other existing ODSAs with MARAD, Contracts MA/MSB–378 and MA/MSB–450 which continue in effect until 1996 and 1998, respectively.

ISC states that following the proposed acquisition, Waterman will be separately operated, with separate accounting, under its own name, as a wholly-owned subsidiary of ISC. The membership of the Board of Directors of Waterman will be revised, but senior Waterman executives will retain their positions pursuant to the terms of 13 employment contracts for periods ranging from three to five years. Absent unforeseen changes in the ODS program or the TAKX programs, ISC has no current plans to alter significantly the operations of Waterman. However, ISC's subsidiaries have extensive experience operating vessels identical or similar to the vessels operated by Waterman, and ISC believes that its acquisition of Waterman will lead to long-term improvement in waterman's financial performance and stability. ISC believes that this, in turn, will serve to strength the overall standing and performance of the U.S. merchant marine.

Any person, firm, or corporation having any interest in the application for sections 608, 804, and 805(a) permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, by the close of business 5:00 p.m. on Wednesday, December 7, 1988. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief.

If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations: (a) Could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or international service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS) and 20.800 Construction-Differential Subsidies (CDS))

By order of the Martime Administrator.

Dated: November 14, 1988.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 88–26619 Filed 11–15–88; 8:45 am]

BILLING CODE 4910–61–M

[Docket No. M–009]

Identification of American Market Capacity for Marine Hull Insurance

On June 20, 1988, MARAD published in the **Federal Register** a final rule to govern the placement of marine hull insurance on subsidized and Title XI program vessels (53 FR 23112). This rule became effective July 20, 1988. Section 249.9 of the rule requires that the American insurance market be given an opportunity to compete for the placement of marine hull insurance on each vessel. This section requires that owners or insurance brokers certify to the Maritime Administration (MARAD) in certain situations that American markets have been offered the business. When more than 50 percent of the placement is foreign, the broker must now certify that at least 50 percent of the American market (measured in terms of capacity) was offered the risk. If more than 75 percent is placed foreign, the broker must certify that 75 percent of the American market was offered the risk.

This procedure requires MARAD to identify all qualified American underwriters and their respective capacities, and to make such information available to vessels owners and brokers. On August 2, 1988, a notice was published in the **Federal Register** for the purpose of soliciting this information from American underwriters. Shown below is a list of American market underwriters which MARAD has compiled from the responses received. The list indicates the separate capacities for Blue Water. Non Blue Water and Drill Rig marine hull insurance.

Date: November 9, 1988.

Joel C. Richard,

Assistant Secretary, Maritime Administration.

U.S. MARKET CAPACITY

	Blue water	Non blue water	Drill rigs
AIG Oil Rig Division			$50,000,000
American Home Assurance Company			
New Hampshire Insurance Company			
National Union Fire Insurance Company			
All American Marine Slip	$5,000,000	$5,000,000	27,500,000
Continental Insurance Company			
The fidelity Casualty Company of New York			
The Firemen's Insurance Company of Newark, N.J.			
Allianz Insurance Company		500,000	
American Hull Insurance Syndicate	30,000,000		
American International Marine Agency	5,000,000	5,000,000	
American Home Assurance Company			
New Hampshire Insurance Company			
National Union Fire Insurance Company			
Atlantic Mutual Companies		2,000,000	
Atlantic Mutual Insurance Company			
Centennial Insurance Company			
American Offshore Insurance Syndicate			25,000,000
Commercial Union Insurance Companies		2,000,000	
Donald H. Miller, Inc	10,000,000	10,000,000	
Peerless Insurance Company			
Excelsior Insurance Company			
The Netherlands Insurance Company			
Fireman's Fund Insurance Companies		5,000,000	
Firemans Fund Insurance Company			7,500,000
National Surety Corporation			
American Insurance Company thru Frank B. Wetzel & Company			10,000,000
Highlands Insurance Company	4,000,000	4,000,000	
The Home Insurance Company	7,000,000	7,000,000	
Houston Casualty Company	2,000,000	2,000,000	2,000,000
Insurance Company of North America	15,000,000	5,000,000	10,000,000
International Marine Underwriters	1,000,000	2,000,000	
United States Fire Insurance Company			
Marine Office of America Corp	1,250,000	5,000,000	
Mutual Marine office, Inc	8,000,000	2,000,000	14,000,000
Arkwright Mutual			
Utica Mutual			
New York Marine and General			
Navigators Management Corp	5,000,000		
Navigators Insurance Company			
Colonia Insurance Company—U.S. Branch			
New York Marine Managers Inc	6,000,000	2,000,000	15,000,000

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U.S. MARKET CAPACITY—Continued

	Blue water	Non blue water	Drill rigs
Progressive Casualty Insurance Company			
Reinsurance Corporation of New York			
Christiania General Insurance Corp.			
Pennsylvania Lumbermans Mutual Ins. Co.			
Colonia Insurance Company—U.S. Branch			
United Reinsurance Corporation of N.Y.			
United Fire and Casualty Company			
Reliance Insurance Company		4,000,000	
Royal Insurance Company		25,000,000	
St. Paul Fire and Marine Insurance Company	2,500,000	2,000,000	
Talbot, Bird & Co., Inc.		2,000,000	
Albany Insurance Company			
Texas Marine Underwriters Agency, Inc. (SEE New York Marine Managers Inc.)			
Wausau Insurance Companies	2,000,000	5,000,000	
Wm. H. McGee & Co., Inc		1,000,000	
Wm. H. McGee & Co., Inc		1,000,000	
Sun Insurance Company of New York			
	103,750,000	97,000,000	161,000,000

[FR Doc. 88-26418 Filed 11-15-88; 8:45 am]
BILLING CODE 4910-61-M

National Highway Traffic Safety Administration

Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices

AGENCY: National Highway Safety Administration (NHTSA), DOT.
ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List of instruments which have been found to conform to the Model Specifications for Evidential Breath Testing Devices (49 FR 48854).

EFFECTIVE DATE: November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366-9825.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published in Appendix D to that notice (49 FR 48864), a conformig products list (CPL) of instruments that were found to conform to the Model Specifications. Amendments to the CPL have been published in the **Federal Register** since that time.

Since the last publication of the CPL, a number of devices have been tested in accordance with the Model Specifications. These tests indicate that four (4) evidential breath testing instruments, not previously on the CPL, conform to the Model Specifications. These instruments include: CMI, Inc.'s Intoxilyzer PAC 1200, Intoxilyzer 5000 (CAL DOJ), and Intoxilyzer 5000 (VA); and Intoximeters, Inc.'s Intoximeter 3000 (rev B1).

Further, since the manufacturer of the BAC Datamaster has changed from Verax Systems, Inc., to National Patent Analytical Systems, Inc., the agency has retested the instrument. This device remains in conformance with the Model Specifications, and the CPL has been revised to include both the previous and current manufacturer. In addition, several typographical errors found in prior Conforming Products Lists have been corrected.

The Conforming Products list is therefore amended as follows:

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Non-mobile
Alcohol Countermeasures System, Inc. Port Huron, MI:		
Alert J3AD	X	X
BAC Systems, Inc., Ontario, Canada:		
Breath Analysis Computer		X
CAMEC Ltd., North Shields, Tyne and Ware, England:		
IR Breath Analyzer	X	X
CMI, Inc., Mintum, CO:		
Intoxilyzer Model:		
4011	X	X
4011A	X	X
4011AS	X	X
4011AS-A	X	X
4011AS-AQ	X	X
4011 AW	X	X
4011A27-10100	X	X
4011A27-10100 with filter	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ)	X	X
5000 (w/3/8" ID Hose option)	X	X
5000 (CAL DOJ)	X	X
5000 (VA)	X	X
PAC 1200	X	X
Decator Electronics, Decator, IL:		
Alco-Tector mode 500		X
Intoximeters, Inc., St. Louis, MO:		
Photo Electric Intoximeter		X
GC Intoximeter MK II	X	X
GC Intoximeter MK IV	X	X
Auto Intoximeter	X	X
Intoximeter Model:		
3000	X	X
3000 (rev B1)	X	X
3000 (rev B2)	X	X
3000 (rev B2A)	X	X
Alco-Sensor III	X	X
Alco-Sensor IIIA	X	X
RBT III	X	X
Komyo Kitagawa, Kogyo, K.K.:		
Alcolyzer DPA-2	X	X
Breath Alcohol Meter PAM 1018.	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK:		
Alcolmeter Model:		
AE-D1	X	X
SD-2	X	X
EBA	X	X
Auto-Alcolmeter		X
Luckey Laboratories, San Bernadino, CA:		
Alco-Analyzer Model:		
1000		X
2000		X
National Draeger, Inc., Pittsburg, PA		
Alcotest Model:		
7010	X	X
7110	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Non-mobile
Breathalyzer Model:		
900	X	X
900A	X	X
900BG	X	X
National Patent Analytical Systems, Inc., East Hartford, CT:		
BAC Datamaster	X	X
Omicron Systems, Palo Alto, CA:		
Intoxilyzer Model:		
4011	X	X
4011AW	X	X
Siemans-Allis, Cherry Hill, NJ:		
Alcomat	X	X
Alcomat F	X	X
Smith and Wesson Electronics, Springfield, MA:		
Breathalyzer Model:		
900	X	X
900A	X	X
1000	X	X
2000	X	X
2000 (no-Humidity Sensor)	X	X
Stephenson Corp.:		
Breathalyzer 900	X	X
Verax Systems, Inc., Fairport, NY:		
The BAC Verifier	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II	X	X

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.)

George Reagle,
Associate Administrator for Traffic Safety Programs.

[FR Doc. 88-26400 Filed 11-10-88; 11:49 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 9, 1988.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0134
Form Number: 1128
Type of Review: Resubmission
Title: Application for Change in Accounting Period
Description: Form is needed in order to process taxpayers' requests to change their accounting period. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.
Respondents: Individuals or households Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 20,000
Estimated Burden Hours Per Response:
Recordkeeping, 16 hours 1 minute
Learning about the law or the form, 6 hours 56 minutes
Preparing the form, 8 hours 5 minutes
Copying, assembling, and sending the form to IRS, 16 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 632,800 hours

OMB Number: 1545-1004
Form Number: 1120-REIT
Type of Review: Resubmission
Title: U.S. Income Tax Return for Real Estate Investment Trusts
Description: Form 1120-REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120-REIT to determine whether the REIT has correctly reported its income, deductions, and tax liability.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 250
Estimated Burden Hours Per Response:
Recordkeeping, 53 hours 49 minutes
Learning about the law or the form, 22 hours 38 minutes
Preparing the form, 63 hours 35 minutes
Copying, assembling, and sending the form to IRS, 11 hours 6 minutes
Frequency of Response: Annually
Estimated Total Reprting Burden: 37,820 hours
Clearance Officer: Garrick Shear , (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Officer of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 88-26412 Filed 11-15-88; 8:45 am]
BILLING CODE 4810-25-M

Fiscal Service

1989 Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held at Federal Reserve Banks

AGENCY: Department of the Treasury, Fiscal Service, Bureau of the Public Debt.
ACTION: Notice.

SUMMARY: The Department of the Treasury has revised the schedule of fees that will be used in 1989 for assessing charges on the transfer of book-entry Treasury securities between accounts of depository institutions maintained at Federal Reserve Banks and Branches. The revised fee schedule is based on an anticipated increase in the cost of providing the Treasury book-entry securities transfer service.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Carl M. Locken, Jr., Assistant Commissioner (Financing), Bureau of the Public Debt, Room 534, E Street Building, Washington, DC 20239-0001, (202) 376-4350.

Kerry Lanham, Government Securities Specialist, Bureau of the Public Debt, Room 534, E Street Building, Washington, DC 20239-0001, (202) 376-4350.

William A. Saunders, Government Securities Specialist, Bureau of the Public Debt, Room 534, E Street Building, Washington, DC 20239-0001, (202) 376-4350.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee schedule for the transfer of Treasury book-entry securities between accounts of depository institutions maintained at Federal Reserve Banks and Branches. The fees, which have remained unchanged since 1985, apply to on-line Treasury transfers originated, off-line Treasury transfers originated, and off-line Treasury transfers received. Treasury transfer reversals are not currently assessed fees.

Based on a recent review of book-entry costs and volumes, the Treasury determined that the cost of providing the Treasury book-entry transfer service in 1989 will increase, even though the volume of Treasury book-entry transfers processed between accounts is expected to remain virtually unchanged. To the extent possible, Treasury attempts to establish fees that will recover the cost of processing book-entry transfers.

Consequently, effective January 3, 1989, the Treasury will: (1) Increase the fee for on-line Treasury transfers originated from $1.50 to $1.65 per

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transfer; (2) increase the fee for off-line Treasury transfers originated and off-line Treasury transfers received from $6.25 to $6.40 per transfer; and (3) charge a fee to receivers of on-line and off-line Treasury transfer reversals ($1.65 per on-line Treasury transfer reversal received and $6.40 per off-line Treasury transfer reversal received).

No fees are currently proposed for: (1) On- and off-line reversals originated or (2) transfers to and from collateral accounts supporting borrowings from the Federal Reserve or Treasury deposits (i.e., transfers to and from Discount, Treasury Tax & Loan, and Circular 176 accounts).

The determination to charge fees for Treasury transfer reversals received is based on the premise that the purpose of transfer reversals is to enable the receiver (the original sender) to correct original transfers that were sent in error, and that the original sender should absorb the cost of processing the transfer reversal. Because the processing and associated costs of transfer reversals are identical to those of regular securities transfers, the Treasury intends to charge the same fee for transfer reversals received that it currently charges for regular securities transfers.

The cumulative effect of these developments is expected to be a net increase in total Treasury transfer fees for 1989 commensurate with the anticipated increase in the cost of providing the Treasury transfer service. The Treasury expects that the new fees will result in the full recovery of the costs associated therewith.

The fees described in this notice apply only to the transfer of Treasury book-entry securities. The Federal Reserve System assesses fees to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, and the costs associated with providing book-entry services for Government agencies. The Federal Reserve fees for these services are set out in a separate notice published November 4, 1988, by the Board of Governors of the Federal Reserve System.

While Treasury book-entry tranfer fees will increase, Federal Reserve fees for the funds component of Treasury book-entry tranfers will decrease, leaving the combined fees for Treasury book-entry tranfers unchanged for 1989.

The following is the Treasury fee schedule that will be effective January 3, 1989, for the Treasury book-entry transfer service:

1989 Fee Schedule

On-line transfers originated: $1.65 per tranfer
Off-line transfers originated: $6.40 per tranfer
Off-line transfers received: $6.40 per tranfer
On-line reversal transfers received: $1.65 per tranfer
Off-line reversal transfers received $6.40 per tranfer

Gerald Murphy,
Fiscal Assistant Secretary.

Date: November 9, 1988.

[FR Doc. 88-26506 Filed 11-15-88; 8:45 am]
BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 221
Wednesday, November 16, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION:

November 10, 1988.

FCC to Hold Open Commission Meeting, Thursday, November 17, 1988

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 17, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Title: Report on the Status of Frequency Coordination in the Private Land Mobile Radio Services. Summary: The Report examines the current status of the frequency coordination process.
Common Carrier—1—Title: Contel ASC Request for Reassignment of its ASC-2 Satellite. Summary: The Commission will consider Contel ASC's application for reassignment of its ASC-2 Satellite from its current location at 83° W.L. to 99° W.L.

Agenda Item No. Subject

Common Carrier—2—Title: Authorization of New Domestic Fixed-Satellites and Assignment of Orbit Locations. Summary: The Commission will consider applications for authority to construct and launch new space stations in the Domestic Fixed-Statllite Service. It also will consider an orbit assignment plan for new and previously authorized space stations.
Common Carrier—3—Title: In the Matter of Filing and Review of Open Network Architecture (ONA) Plans, CC Docket No. 88-2, Phase I. Summary: The Commission will consider whether to approve the Open Network Architecture (ONA) plans filed by the Bell Operating Companies.
Common Carrier—4—Title: In the Matter of Filing and review of Open Network Architecture (ONA) Plans. CC Dock No. 88-2, Phase II. Summary: The Commission will consider whether to approve the Open Network Architecture (ONA) plan filed by AT&T.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Audrey Spivack, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 88-26521 Filed 11-11-88; 11:17 am]
BILLING CODE 6712-01-M

FEDERAL ENERGY REGULATORY COMMISSION

November 9, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME: November 16, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note.**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 886th Meeting—November 16, 1988, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 2520-001, Great Northern Nekoosa Corporation
CAP-2.
Project No. 2680-007, Consumers Power Company and The Detroit Edison Company
CAP-3.
Project No. 6780-004, Enviro Hydro Incorporated
CAP-4.
Project No. 10405-004, Craig W. Scott
CAP-5.
Docket No. UL88-24-001, City of Martinsville, Virginia
CAP-6.
Project No. 2785-005, Wolverine Power Corporation
CAP-7.
Project No. 6456-005, Village of Green Island, New York
CAP-8.
Project No. 8763-003, Power Mining, Inc.
CAP-9.
Docket No. UL87-30-001, Kirkway Electric Corporation
CAP-10.
Project No. 7269-004, James B. Boyd and Janet A. Boyd
CAP-11.
Project No. 7707-001, Souhegan Hydropower Company
Project No. 8714-000, Pennichuck Water Works, Inc.
CAP-12.
Docket No. ER88-619-000, Gulf States Utilities Company
CAP-13.
Docket Nos. ER82-774-006 and 008, Nantahala Power and Light Company and Tapoco, Inc.
CAP-14.
Docket No. ER84-560-004, Union Electric Company
CAP-15.
Docket No. EC87-19-000, Southwestern Public Service Company and Black Mesa Power Company
CAP-16.
Docket No. EL87-55-001, City of Holyoke Gas and Electric Department, City of Westfield Gas and Electric Light Department, Marblehead Municipal Light Department, Middleborough Municipal Gas and Electric Department, North Attleboro Electric Department, Peabody Municipal Light Plant, Shrewsbury Electric Light Department, Templeton Municipal Light Plant, Town of Boylston Municipal Light Department, Town of Hudson Light and Power Department, Town of Littleton Municipal Light and Water Department, Town of Wakefield Municipal Light Department, and West Boylston Municipal Lighting Plant v. Boston Edison Company
CAP-17.
Docket Nos. ER87-72-003 and ER87-73-002, Orange & Rockland Utilities, Inc.
CAP-18.
Docket No. QF88-262-001, Everett Energy Corporation
CAP-19.
Docket Nos. ER81-179-025 and 026, Arizona Public Service Company
CAP-20.
Docket No. ER87-365-000, Sourhtern California Edison Company
CAP-21.
Docket No. ER88-261-000, Centel Electric-Kansas
CAP-22.
Docket No. EL88-14-000, Montaup Electric Company
CAP-23.
Docket No. EL88-1-000, Indiana and Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigna Power Company

Docket Nos. ER88-30-000, ER88-33-000 and ER88-34-000, Indiana Michigan Power Company
CAP-24.
Omitted

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CAP–25.
Docket No. QF88–378–000, Empire Energy-Niagara Cogeneration, Inc.

Consent Miscellaneous Agenda

CAM–1.
Docket Nos. RM88–21–000 and RM86–5–002, Amendment to Regulations Governing Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less
CAM–2.
Docket No. RM88–27–001, Procedure for Filing Petitions for Review with the Federal Energy Regulatory Commission
CAM–3.
Docket No. GP88–13–000, Oklahoma Corporation Commission
CAM–4.
Docket No. GP87–77–000, Lowry Exploration, Inc.
CAM–5.
Docket No. GP84–23–029 (Phase 2), Stowers Oil & Gas Company, Panhandle Energy Corp., Prairie Oil Co., Sharon Oil Co., Almac Oil Co., Judy Oil Co., Kim Petroleum Co. Inc., Komanche Oil & Gas Co., Omega Energy, Tumbleweed Production, Panstar Oil & Gas, Inc., Dennis Mills Enterprises, Wy-Vel Corp., Walker Operating Corp. and 3W Oil, Inc.
CAM–6.
Docket No. GP86–51–001, Northern Natural Gas Company, Division of Enron Corp. v. Cabot Pipeline Corporation and Texaco Producing Inc.
CAM–7.
Docket No. GP84–56–008, Northwest Central Pipeline Corporation
Docket No. RP83–42–007, Midwest Gas Users Association v. Northwest Central Pipeline Corporation

Consent Gas Agenda

CAG–1.
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CAG–2.
Docket Nos. RP88–187–007, 001, 003, 004 and 005, Columbia Gas Transmission Corporation
CAG–3.
Docket No. RP88–223–001, Texas Eastern Transmission Corporation
CAG–4.
Docket Nos. RP89–4–000 and 001, Tennessee Gas Pipeline Company
CAG–5.
Docket No. RP88–81–003, Texas Eastern Transmission Corporation
CAG–6.
Docket Nos. RP88–197–003, RP88–236–000, TA88–1–49–002, TA88–3–49–002 and RP88–197–000, Williston Basin Interstate Pipeline Company
CAG–7.
Docket Nos. RP88–93–005 and RP88–40–005, Questar Pipeline Company
CAG–8.
Docket No. RP88–39–000, Williams Natural Gas Company
CAG–9.
Docket Nos. RP88–163–000, 001 and TA88–3–6–000, South Georgia Natural Gas Company
CAG–10.
Docket No. RP89–2–000, Natural Gas Fipeline Company of America
CAG–11.
Docket No. RP89–5–000, Northwest Pipeline Corporation
CAG–12.
Docket Nos. TA88–2–15–002 and TM89–1–15–001, Mid Louisiana Gas Company
CAG–13.
Docket Nos. RP88–138–001, 002, 003, TQ88–1–6–001, 002, 003, RP88–181–003, RP86–94–009 and TM89–1–6–000, Sea Robin Pipeline Company
CAG–14.
Docket No. RP88–248–001, Arkla Energy Resources Company
CAG–15.
Docket No. RP88–203–000, Panhandle Eastern Pipe Line Company
CAG–16.
Docket Nos. RP88–118–000, 001, 002 and 003, Mid Louisiana Gas Company
CAG–17.
Docket Nos. RP88–154–003 and RP88–154–004, Northwest Pipeline Corporation
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Docket Nos. RP88–127–001, 002, TQ88–1–63–000, 001, RP88–90–001, TA88–2–63–000, 001 and 002, Carnegie Natural Gas Company
CAG–19.
Docket No. RP87–15–024, Trunkline Gas Company
CAG–20.
Docket No. RP88–229–001, Southern Natural Gas Company
CAG–21.
Docket Nos. CP–81–107–028 and CP83–403–011, CNG Transmission Corporation
CAG–22.
Docket Nos. CP84–7–006 and 007, National Fuel Gas Supply Corporation
CAG–23.
Docket No. RP88–217–005, CNG Transmission Corporation
CAG–24.
Docket Nos. RP88–236–001 and RP88–197–004, Williston Basin Interstate Pipeline Company
CAG–25.
Docket No. RP88–44–011, El Paso Natural Gas Company
CAG–26.
Docket No. RP88–117–003, Northern Natural Gas Company, a Division of Enron Corp.
CAG–27.
Docket Nos. RP88–125–003, TQ88–1–22–003 and TA87–3–22–005, CNG Transmission Corporation
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Docket No. RP88–251–001, Texas Eastern Transmission Corporation
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Docket No. RP88–80–010, Texas Eastern Transmission Corporation
CAG–30.
Docket Nos. TQ88–2–17–001, TQ88–2–17–002, TM88–1–17–001 and RP88–67–010, Texas Eastern Transmission Corporation
CAG–31.
Docket No. TA88–4–29–002, Transcontinental Gas Pipe Line Corporation
CAG–32.
Docket Nos. TA85–1–16–006 and TA85–2–16–004, National Fuel Gas Supply Corporation
CAG–33.
Docket No. TA87–1–35–003, West Texas Gas, Inc.
CAG–34.
Docket No. RP88–201–002, East Tennessee Natural Gas Company
CAG–35.
Docket Nos. RP88–81–008, RP88–67–007 and RP88–175–001, Texas Eastern Transmission Corporation
CAG–36.
Docket No. RP86–142–001, Natural Gas Pipeline Company of America
CAG–37.
Docket No. RP86–42–002, El Paso Natural Gas Company
CAG–38.
Docket No. RP88–92–003, United Gas Pipe Line Company
CAG–39.
Docket No. RP88–92–001, United Gas Pipe Line Company
CAG–40.
Docket No. RP88–106–001, Northern Natural Gas Company, Division of Enron Corporation
CAG–41.
Docket Nos. RP88–210–001, 002, 000 and RP88–96–006, Southern Natural Gas Company
CAG–42.
Docket No. RP88–205–002, Alabama-Tennessee Natural Gas Company
CAG–43.
Docket No. RP88–80–009, Texas Eastern Transmission Corporation
CAG–44.
Docket No. RP85–122–012, Colorado Interstate Gas Company
CAG–45.
Docket Nos. RP87–70–011 and TA87–2–2–004, East Tennessee Natural Gas Company
CAG–46.
Docket Nos. RP85–122–006, 011 and RP87–30–014, Colorado Interstate Gas Company
CAG–47.
Docket No. RP87–34–004, United Gas Pipe Line Company
CAG–48.
Docket No. ST81–90–003, Natural Gas Pipeline Company of America
CAG–49.
Docket No. RP80–97–058, Tennessee Gas Pipeline Company
CAG–50.
Docket Nos. RP86–35–000, 004 and 005, Great Lakes Gas Transmission Company
CAG–51.
Docket No. RP85–194–000, Panhandle Eastern Pipe Line Company
Docket No. RP86–49–000, East Ohio Company v. Panhandle Eastern Pipe Line Company
CAG–52.
Omitted
CAG–53.
Docket Nos. TA83–1–37–003, TA83–2–37–003, TA84–1–37–004, TA84–2–37–010, TA85–1–37–004, TA85–2–37–007 and RP82–56–018, Northwest Pipeline Corporation
CAG–54.
Docket Nos. RP85–122–005 and RP87–30–010, Colorado Interstate Gas Company
CAG–55.
Docket No. RP87–87–000, Granite State Gas Transmission, Inc.
CAG–56.
Docket Nos. ST88–3342–000 and ST88–4552–000, Wintershall Pipeline Corporation
CAG–57.
Docket No. ST88–4360–000, Somerset Gas Service
CAG–58.
Docket No. IS85–15–000, Southern Pacific Pipe Lines, Inc.
CAG–59.
Docket No. IS88–24–000, Texas Eastern Products Pipeline Company
CAG–60.
Docket No. CP73–184–003, Colorado Interstate Gas Company, a Division of Colorado Interstate Company
Docket No. CI73–485–002, CIG Exploration, Inc.
CAG–61.
Docket Nos. CP86–578–015 and RP85–13–020, Northwest Pipeline Corporation
CAG–62.
Docket No. G–4579–057, Mobil Exploration and Producing North America Inc.
CAG–63.
Docket Nos. RI88–614–000 and RI88–934–000, DCD, Inc. and Samedan Oil Corporation
CAG–64.
Docket No. CP88–656–002, MexUS Interstate Pipeline Company, Inc.
CAG–65.
Docket No. CP88–519–001, Questar Pipeline Company
CAG–66.
Docket No. CP87–451–011, Northeast U.S. Pipeline Projects
CAG–67.
Docket No. GP88–11–001, Hadson Gas Systems, Inc.
CAG–68.
Docket No. CP88–286–001, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation, Chevron Chemical Company, Intermountain Gas Company, Hadson Gas Systems, Inc., Llano, Inc., Corpus Christi Industrial Pipeline Company and Transco Energy Marketing Company
CAG–69.
Docket No. CP84–183–005, Transcontinental Gas Pipe Line Corporation
CAG–70.
Omitted
CAG–71.
Docket Nos. CP86–286–000 and 002, Williams Natural Gas Company
Docket Nos. CP86–606–000 and 001, Pacific Gas Transmission Company
CAG–72.
Docket Nos. CP86–531–002 and 003, Texas Gas Transmission Corporation
CAG–73.
Docket No. CP86–344–002, CNG Gas Transmission Corporation
CAG–74.
Docket No. CP87–547–001, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–75.
Docket No. CP87–442–002, ANR Pipeline Company
CAG–76.
Docket Nos. CP85–511–002 and 003, Northern Natural Gas Company, Division of Enron Corp.
CAG–77.
Docket No. CP87–176–001, Panhandle Eastern Pipe Line Company
Docket No. CP83–159–001, National Helium Corporation
CAG–78.
Docket No. CP88–106–002, Transcontinental Gas Pipe Line Corporation
CAG–79.
Docket No. CP87–175–001, Texas Eastern Transmission Corporation
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Docket No. CP87–524–001, Texas Gas Transmission Corporation
CAG–81.
Docket No. CP87–174–001, Panhandle Eastern Pipe Line Company and Trunkline Gas Company
Docket No. CP87–455–001, KN Energy, Inc.
CAG–82.
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CAG–84.
Omitted
CAG–85.
Docket No. CP87–36–000, Colorado Interstate Gas Company
CAG–86.
Docket No. CP87–516–000, Washington Natural Gas Company
Docket No. CP88–200–000, Northwest Pipeline Company
CAG–87.
Omitted
CAG–88.
Omitted
CAG–89.
Docket Nos. CP87–224–000 and 001, Northwest Gas Pipeline Corporation
CAG–90.
Omitted
CAG–91.
Omitted
CAG–92.
Docket Nos. CP88–490–000 and CP88–548–000, Panhandle Eastern Pipe Line Company
CAG–93.
Omitted
CAG–94.
Docket No. CP88–367–000, Southern Natural Gas Company
CAG–95.
Docket No. CP87–451–015, Northeast U.S. Pipeline Projects
CAG–96.
Docket No. CP88–701–000, Amoco Gas Company
CAG–97.
Docket No. CP88–700–000, Windward Energy and Marketing Company and ARCO Oil and Gas Company
CAG–98.
Docket No. CP87–433–000, Oklahoma Natural Gas Company v. Williams Natural Gas Company and Quivira Gas Company
CAG–99.
Docket No. CP88–42–000, Kansas Power and Light Company v. Williams Natural Gas Company
Docket No. CP61–29–001, Williams Natural Gas Company
CAG–100.
Docket No. RP88–191–004, Tennessee Gas Pipeline Company

I. Licensed Project Matters

P–1.
Docket No. HB03–75–1–001, Alabama Power Company. Protest of headwater benefits determination regarding the treatment of costs and energy associated with pumped storage operations at the upstream project.

II. Electric Rate Matters

ER–1.
Reserved

Miscellaneous Agenda

M–1.
Docket No. FA84–15–002, Minnesota Power & Light Company. Order on court remand concerning fuel adjustment clause.
M–2.
Docket No. RM87–24–001, Procedures for the Assessment of Civil Penalties under section 31 of the Federal Power Act. Rehearing.
M–3.
Reserved
M–4.
Reserved
M–5.
Docket No. RM88–14–001, Interpretation of section 5 of the Outer Continental Shelf Lands Act. Rehearing.
Docket No. RM88–15–000, Regulations under section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf. Final rule.

I. Pipeline Rate Matters

RP–1.
Docket No. RP88–182–000, Gas Research Institute. Opinion concerning 1989 funding unit.
RP–2.
(A) Docket No. RP88–27–003, United Gas Pipe Line Company. Order on rehearing concerning the take-or-pay cost passthrough.
(B) Docket Nos. RP88–68–003 and RP87–7–033, Transcontinental Gas Pipe Line Corporation. Order on rehearing concerning passthrough of Order No. 55 take-or-pay buyout and buydown settlement costs.
RP–3.
Docket Nos. RP81–85–000, RP83–93–003 and FA85–01–000, Trunkline LNG Company and Trunkline Gas Company. Opinion concerning prudence, AFUDC, deferred taxes, and cash working capital.
RP–4.
(A) Docket No. RP88–184–001, El Paso Natural Gas Company. Rehearing order concerning Order No. 500 prudence and El Paso's appeal.
(B) Docket Nos. RP88–198–001, 002 and 003, Transwestern Pipeline Company.

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Rehearing order concerning Order No. 500, take-or-pay and direct billing.

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Reserved

Lois D. Cashell,
Secretary.
[FR Doc. 88–26582 Filed 11–14–88; 1:16 pm]
BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Monday, November 21, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: .

1. Publication for comment of proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding activities of nonbank subsidiaries of state bank subsidiaries of bank holding companies.
2. Any items carried forward from a previously announced meeting.

Note. —This meeting will be recoreded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 14, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–26557 Filed 11–14–88; 11:17 am]
BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Monday, November 21, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: November 14, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–26558 Filed 11–14–88; 11:17 am]
BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on November 9, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, November 16, 1988.

CHANGES IN THE MEETING: Change in the time of the open meeting to 9:30 a.m., Wednesday, November 16, 1988.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 4552–3204.

Date: November 10, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88–26509 Filed 11–10–88; 5:03 pm]
BILLING CODE 6210–01–M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: Thursday, November 17, 1988 at 2:30 p.m.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Discuss the evidence and argument in Docket No. C87–2.
2. Discuss the Postal Service response to the Complaint, Docket No. C89–1, which is due on November 16, 1988.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,
Secretary.
[FR Doc. 88–26519 Filed 11–14–88; 11:17 a.m.]
BILLING CODE 7715–01–M

Corrections

Federal Register
Vol. 53, No. 221
Wednesday, November 16, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program; Thrifty Food Plan (TFP) and Income Eligibility Standards and Deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands

Correction

In notice document 88-25419 beginning on page 44505 in the issue of Thursday, November 3, 1988, make the following corrections:

1. On page 44507, in the second table, under "Rural II Alaska", in the last entry, "+113" should read "+133". Also, in footnote 3, "138.52 percent" should read "128.52 percent".

2. On the same page, in the third column, beginning in the seventh line, remove the sentence, "The allotment for rural I areas is the higher of the allotment that was in effect in each area on October 1, 1985 or 100.79 percent of the Anchorage TFP."

3. On the same page, in the same column, in the third line under the footnotes to the table, "BLs" shoud read "BLS". Also, in the fourth line, "adjustments" was misspelled.

4. On page 44508, in the first column, in the first paragraph, in the second line, "amended" was misspelled. Also, in the ninth line, "disable" should read "disabled".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Adverse Effect Wage Rate Methodology

Correction

In proposed rule document 88-24954 beginning on page 43722 in the issue of Friday, October 28, 1988, make the following corrections:

1. On page 43722, in the second column, in the **SUMMARY**, in the 10th line, "employees" should read "employers".

2. On page 43723, in the first column, in the third complete paragraph, in the 16th line, "United States of Appeals" should read "United States Court of Appeals".

3. On the same page, in the second column, in the first complete paragraph, in the fourth line, "H-24" should read "H-2A", and in the 20th line, "H-2A should read "H-2".

4. On page 43724, in the second column, in paragraph (b), in the fourth line, "of" should read "or".

5. On the same page, in the third column, under "3. Post-war Program", in the 13th line, "information" should read "informally".

6. On page 43728, in the third column, in the last complete paragraph, in the second line, "eage rates" should read "wage rates".

Note: For a Department of Labor correction to this document see the Proposed Rules section of this issue.

BILLING CODE 1505-01-D

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federal register

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Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 331

Antacid Drug Products for Over-the-Counter Human Use; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 331

[Docket No. 88N-0003]

Antacid Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking to amend the final monograph for over-the-counter (OTC) antacid drug products to revise the conditions for marketing combination antacid/analgesic drug products, to add a section on the labeling of permitted combinations of active ingredients, and to redesignate the professional labeling section to conform to the format of other OTC drug final monographs. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products and public comments on the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products that was based on those recommendations. The agency's proposal concerning OTC internal analgesic, antipyretic, and antirheumatic drug products is published elsewhere in this issue of the **Federal Register**. These proposals are part of the ongoing review of OTC drug products conducted by FDA.

DATE: Written comments or objections by March 16, 1989.

ADDRESS: Written comments or objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 4, 1974 (39 FR 19862), FDA issued a final monograph for OTC antacid drug products (21 CFR Part 331). Section 331.15(b) (21 CFR 331.15(b)) of the monograph provides for the combination of an antacid and any generally recognized as safe and effective analgesic ingredient(s) if the combination is indicated for use solely for concurrent symptoms, e.g., headache and acid indigestion, and is marketed in a form intended for ingestion as a solution. These combinations were limited to administration in solution because all the evidence of safety submitted for review under the rulemaking for OTC antacid drug products was derived from studies and experience with products administered as solutions (39 FR 19869).

Subsequent to the publication of the final rule for OTC antacid drug products, the Advisory Review Panel for OTC Internal Analgesic and Antirheumatic Drug Products (Internal Analgesic Panel) reviewed data on OTC antacid/analgesic combinations and recommended conditions for their safe and effective use in its report on OTC internal analgesic, antipyretic, and antirheumatic drug products (July 8, 1977; 42 FR 35348). This Panel recommended that acetaminophen could be combined with a Category I antacid ingredient provided the product was labeled for the concurrent symptoms involved, e.g., "For the temporary relief of occasional minor aches, pains, and headache, * * *, and for acid indigestion." The Panel did not specify any specific dosage form. The Panel also recommended as Category I an antacid/aspirin combination, labeled only for analgesic-antipyretic indications. However, in this case the combination was limited to marketing as a highly buffered aspirin for use as a solution (42 FR 35370).

In the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products published elsewhere in this issue of the **Federal Register**, FDA states for the first time its position on the establishment of a monograph for these drug products. In formulating its proposals on conditions for marketing combinations of antacid and analgesic ingredients in the internal analgesic, antipyretic, and antirheumatic drug products tentative final monograph, the agency considered the recommendations of both the Antacid Panel and the Internal Analgesic Panel as well as all currently-available data on such combinations. As discussed in comments 47, 76, 94, 95, and 96 of the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, the agency has determined that (1) acetaminophen may be combined with any antacid ingredient(s) and may be labeled only for concurrent symptoms, (2) aspirin may be combined with any antacid ingredient(s) when marketed in a form intended for ingestion as a solution and may be labeled for concurrent symptoms as well as analgesic indications alone, and (3) combinations of other proposed generally recognized as safe and effective internal analgesic-antipyretic ingredients (i.e., carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate) and antacid ingredients have not existed previously in the marketplace and lack supporting data.

Based on these findings, the agency has determined that the antacid final monograph should be updated to be consistent with the proposals being made in Part 343 (the internal analgesic, antipyretic, and antirheumatic tentative final monograph), published elsewhere in this issue of the **Federal Register**. Therefore, the agency is proposing to revise § 331.15(b) of the antacid monograph to read as follows:

(1) *Antacid and acetaminophen combinations.* See § 343.20(b)(1) of this chapter.

(2) *Antacid and aspirin combinations.* See § 343.20(b)(3) of this chapter.

In addition, the agency is proposing the addition of new § 331.60 to the antacid final monograph in order to provide for the labeling of permitted combinations of active ingredients and is redesignating the professional labeling section from § 331.31 to § 331.80 in accordance with the format of other recently published tentative final and final monographs for OTC drug products. Further, the agency is revising the *Scope* section (21 CFR 331.1) of the antacid final monograph in accordance with the format of other recently published monographs. Because of the interrelationship of this amendment to the antacid final monograph and the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, the agency does not intend to finalize this amendment until the comments to the internal analgesic, antipyretic, and antirheumatic tentative final monograph have been fully evaluated.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antacid drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antacid drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antacid drug products. Comments regarding the impact of this rulemaking on OTC antacid drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before March 16, 1989, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments or objections. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 331

Antacid drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 331 as follows:

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

1. The authority citation for Part 331 is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 331.1 is revised to read as follows:

§ 331.1 Scope.

(a) An over-the-counter antacid drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

3. Section 331.15 is amended by revising paragraph (b) to read as follows:

§ 331.15 Combination with nonantacid active ingredients.

* * * * *

(b)(1) *Antacid and acetaminophen combinations.* See § 343.20(b)(1) of this chapter.

(2) *Antacid and aspirin combinations.* See § 343.20(b)(3) of this chapter.

* * * * *

4. Section 331.60 is added to Subpart D to read as follows:

§ 331.60 Labeling of permitted combinations of active ingredients.

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs.

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (b). Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For permitted combinations identified in § 331.15(b)(1).* The indications in § 343.60(b)(2) of this chapter should be used.

(2) *For permitted combinations identified in § 331.15(b)(2).* The indications in § 343.60(b)(4) of this chapter should be used.

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs.

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (d). When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph.

§ 331.31 [Redesignated as § 331.80]

5. Section 331.31 *Professional labeling* is redesignated as § 331.80.

Dated: August 5, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-26156 Filed 11-15-88; 8:45 am]

BILLING CODE 4160-01-M

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VOL
53
ISS
221
NO
16
1988
UMI

federal register

Wednesday
November 16, 1988

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 357

Orally Administered Menstrual Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 357

[Docket No. 82N-0165]

Orally Administered Menstrual Drug Products for Over-the Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) orally administered menstrual drug products (drugs taken internally to relieve symptoms relating to a woman's menstrual period) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by March 16, 1989. Because this document is being published concurrently with the notice of proposed rulemaking on OTC internal analgesic, antipyretic, and antirheumatic drug products elsewhere in this issue of the **Federal Register**, the agency is allowing a period of 120 days for comments and objections instead of the normal 60 days. New data by November 16, 1989. Comments on the new data by January 16, 1990. Written comments on the agency's economic impact determination by March 16, 1989.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 7, 1982 (47 FR 55076), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC orally administered menstrual drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by March 7, 1983. Reply comments in response to comments filed in the initial comment period could be submitted by April 6, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking, five drug manufacturers, two consulting firms, and the Panel chairman submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Subpart K of Part 357 (21 CFR Part 357), FDA states for the first time its position on the establishment of a monograph for OTC orally administered menstrual drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC orally administered menstrual drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC orally administered menstrual drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

After reviewing and evaluating the Panel's recommendations regarding the use of OTC internal analgesic ingredients during the premenstrual and menstrual periods, the agency has decided to include premenstrual and menstrual claims for these ingredients as part of the rulemaking for OTC internal analgesic drug products rather than to retain them as part of the rulemaking for OTC menstrual drug products. In this way, the various conditions for which an OTC internal analgesic drug product is effective will be listed in one monograph. Elsewhere in this issue of the **Federal Register**, the agency is proposing in the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products to include premenstrual and menstrual claims. Final agency action on OTC internal analgesic ingredients for premenstrual and menstrual use will occur with publication of the final rule establishing a monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products. Comments relevant to OTC internal analgesics are discussed in that document.

Although this tentative final monograph contains indications for antihistamine and smooth-muscle relaxant active ingredients, no ingredients from either of these pharmacologic groups are included in Category I at this time. In the event that no new data are submitted to the agency during the allotted 12-month new data period or if submitted data are not sufficient to establish "monograph conditions" for these classes of ingredients, those classes will not be included in the final monograph. Should new data be sufficient to establish "monograph conditions" for these classes of ingredients, appropriate warnings and directions will be included in the final monograph.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch (address above).

I. The Agency's Tentative Conclusions on the Comments

A. Comments on Orally Administered Menstrual Active Ingredients

1. One comment stated that, although the pharmacologic literature contains anecdotal evidence of the diuretic activity of ammonium chloride, the Panel did not consider or have available any quantitative data on ammonium chloride at the dosage of 1 gram (g) three times a day that it recommended as Category I.

The agency has reviewed the available data and information and believes that there is sufficient support for general recognition of ammonium chloride's effectiveness at the Panel's recommended dosage. The scientific literature contains several published clinical studies demonstrating ammonium chloride's mechanism of action as a diuretic (Refs. 1 through 5). Greenhill and Freed (Ref. 6) also reported that ammonium chloride is effective in relieving premenstrual and menstrual symptoms. In this study, ammonium chloride administered in doses of 1 g three times a day produced relief in 34 of 40 patients. Those patients who usually showed visible edema did not do so after therapy. Similar results have also been reported by Tecoz (Ref. 7) and Provenzano (Ref. 8). In addition, several pharmacology textbooks state that a dosage of 1 g of ammonium chloride three times a day is useful in treating premenstrual and menstrual symptoms (Refs. 9 through 12). Based on the above, the agency believes that ammonium chloride can be generally recognized as safe and effective for use as a diuretic in OTC menstrual drug products.

References

(1) Lyons, R.H., S.D. Jacobson, and N.L. Avery, "The Effect on the Plasma Volume of Dehydration Produced by a Low-Salt Diet and Ammonium Chloride," *American Heart Journal*, 27:353-359, 1944.

(2) Gamble, J.L., K.D. Blackfan, and B. Hamilton, "A Study of the Diuretic Action of Acid Producing Salts," *Journal of Clinical Investigation*, 1:359-388, 1925.

(3) Wiley, F.H., L.L. Wiley, and D.S. Waller, "The Effect of the Ingestion of Sodium, Potassium, and Ammonium Chlorides and Sodium Bicarbonate on the Metabolism of Inorganic Salts and Water," *Journal of Biological Chemistry*, 101:73-82, 1933.

(4) Folling, A., "On the Mechanism of the Ammonium Chloride Acidosis," *Acta Medica Scandinavica*, 71:221-257, 1929.

(5) Keith, N.M., C. W. Barrier, and M. Whelan, "The Diuretic Action of Ammonium Chlorid and Novasurol in Cases of Nephritis with Edema," *Journal of the American Medical Association*, 85:799-806, 1925.

(6) Greenhill, J.P., and S.C. Freed, "The Electrolyte Therapy of Premenstrual Distress," *Journal of the American Medical Association*, 117:504-507, 1941.

(7) Tecoz, R.M., "Traitement des Troubles Pre-Menstruels par Le Chlorure d' Ammonium," *Praxis*, 34:617-619, 1945.

(8) Provenzano, M.I., "Tensao Pre-Menstrual Seu Tratamento," *Revista de Ginecologia e D'Obstetricia*, 38:268-274, 1944.

(9) Beckman, H., "Pharmacology (The Nature, Action and Use of Drugs)," 2d Ed., W.B. Saunders Co., Philadelphia, pp. 466-467, 1961.

(10) Krantz, J.C., and C.J. Carr, editors, "The Pharmacological Principles of Medicinal Practice," 7th Ed., the Williams and Wilkins Co., Baltimore, pp. 639-640, 1969.

(11) "The Merck Manual," 11th Ed., Merck, Sharp, and Dohme Research Laboratories, Rahway, NJ, p. 659, 1966.

(12) Israel, S.L., "Diagnosis and Treatment of Menstrual Disorders and Sterility," 5th Ed., Harper and Row, New York, p. 158, 1967.

2. One comment stated that although the pharmacologic literature includes anecdotal evidence of the diuretic activity of caffeine, the Panel did not consider or have available any quantitative data for caffeine at the dose of 100 to 200 milligrams (mg) that it recommended as Category I. The comment noted that the results of the one study cited by the Panel to support its conclusions (Ref. 1) did show a significant increase in sodium output, but did not show a significant increase in urine volume following a 300-mg dose of caffeine. Another comment also noted an absence of data demonstrating caffeine's effectiveness in relieving subjective symptoms of the menstrual period.

The agency has reviewed the data and information cited by the Panel (Refs. 1 through 5), as well as other data and information in the scientific literature (Refs. 6, 7, and 8) and tentatively concludes that the data are adequate to support the effectiveness of the Panel's recommended dose of caffeine (100 to 200 mg) for use in OTC menstrual drug products.

The rationale for the use of diuretics during the premenstrual and menstrual periods was discussed by the Panel at 47 FR 55086. Although the Panel did not specifically discuss clinical studies that would support the recommended diuretic dose, the agency finds that caffeine's diuretic activity is well known and generally recognized (Refs. 2 through 5). Studies reported in the literature also support the Panel's conclusion regarding caffeine's diuretic action (Refs. 6, 7, and 8). In a double-blind, placebo-controlled, randomized, crossover study conducted by Robertson et al. (Ref. 6), 250 mg caffeine was found to produce a greater volume of urine in all patients as compared with placebo, with a mean increase of 29 percent. Eddy and Downs (Ref. 7) reported the minimum effective diuretic dose of caffeine to be 0.48 milligram per kilogram (mg/kg) in persons who were not coffee drinkers and 1.12 mg/kg in persons who were coffee drinkers (equivalent to 33 mg and 76 mg, respectively, in a 150-pound person). Victor, Lubetsky, and Greden (Ref. 8) reported that of 124 patients studied, 60 percent reported diuresis when

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consuming less than 249 mg of caffeine per day.

As discussed in comment 3 below, in addition to caffeine's diuretic activity, its stimulant effect can provide additional benefit to persons suffering from fatigue during the premenstrual and menstrual periods.

Based on the above, the agency concurs with the Panel's recommendations and is including caffeine as an active ingredient in the tentative final monograph for OTC menstrual drug products.

References

(1) Dorfman, L.J., and M.E. Jarvik, "Comparative Stimulant and Diuretic Actions of Caffeine and Theobromine in Man," *Clinical Pharmacology and Therapeutics*, 11:869–872, 1970.

(2) Grollman, A., "Pharmacology and Therapeutics," 6th Ed., Lea and Febiger, Philadelphia, p. 555, 1965.

(3) de Stevens, G., "Diuretics, (Chemistry and Pharmacology)," Academic Press, New York, p. 12, 1963.

(4) Modell, W., editor, "Drugs of Choice, 1968–1969," C.V. Mosby Co., St. Louis, p. 88, 1967.

(5) Osol, A., R. Pratt, and M.D. Altschule, editors, "The United States Dispensatory," 27th Ed., Lippincott, Philadelphia, pp. 206–208, 1973.

(6) Robertson, D., et al., "Effects of Caffeine on Plasma Renin Activity, Catecholamines and Blood Pressure," *New England Journal of Medicine*, 298:181–186, 1978.

(7) Eddy, N.B., and A.W. Downs, "Tolerance and Cross-Tolerance in the Human Subject to the Diuretic Effect of Caffeine, Theobromine and Theophylline," *Journal of Pharmacology and Experimental Therapeutics*, 33:167–174, 1928.

(8) Victor, B.S., M. Lubetsky, and J.F. Greden, "Somatic Manifestations of Caffeinism," *Journal of Clinical Psychiatry*, 42:185–188, 1981.

3. One comment requested that the agency resolve certain inconsistencies relating to caffeine between the proposed rulemaking for OTC stimulant drug products and the advance notice of proposed rulemaking for OTC menstrual drug products. The comment noted that the stimulant tentative final monograph stated that caffeine could be expected to increase nervousness associated with premenstrual tension (43 FR 25561) and that the proposed labeling for caffeine included a warning advising that the use of caffeine may be associated with increased nervousness, anxiety, irritability, and other side effects (43 FR 25602). The comment pointed out that these same symptoms occur in the menstrual syndrome, a condition for which caffeine is being indicated for use as a diuretic. The comment implied that it is inappropriate to use a drug for a condition that includes symptoms that the drug itself caused as side effects.

The agency does not believe that the proposed rulemaking for OTC stimulant drug products and the advance notice of proposed rulemaking for OTC menstrual drug products are inconsistent with respect to caffeine. The agency notes that the proposed warning for caffeine in the tentative final monograph on OTC stimulant drug products (43 FR 25544) advises against excessive intake of caffeine, informs consumers to use caution when taking caffeine-containing drug products with other caffeine-containing products such as coffee or cola, and states that certain side effects such as anxiety, nervousness, and irritability may occur if the recommended dose is exceeded. The amount of caffeine that causes the side effects varies greatly among individuals, and the side effects are not expected to occur in most people from the usual stimulant or diuretic therapeutic dose of caffeine (100 to 200 mg).

As the Miscellaneous Internal Panel acknowledged in its report, caffeine can serve two purposes in OTC menstrual drug products (47 FR 55087). First, through its mild diuretic action, caffeine can relieve the symptoms of bloating, swelling, and water-weight gain during the premenstrual and menstrual periods. Second, the Panel acknowledged that fatigue is also a symptom of the premenstrual period, and caffeine's stimulant effect could relieve the fatigue. Although the premenstrual and menstrual syndrome may include the symptoms of nervousness, anxiety, and irritability, these symptoms do not necessarily occur in every individual (47 FR 55080). Even in those who are experiencing these symptoms, caffeine's diuretic effect may still provide a therapeutic benefit for the water-retention symptoms. Therefore, the agency does not believe it is inappropriate to use caffeine during the premenstrual and menstrual periods. However, to provide fully informative labeling to the consumer, the agency is proposing the following warning for OTC menstrual drug products containing caffeine: "The recommended dose of this product contains about as much caffeine as a cup of coffee. Limit the use of caffeine-containing medications, foods, or beverages while taking this product because too much caffeine may cause nervousness, irritability, sleeplessness, and, occasionally, rapid heart rate." The agency believes this warning is more appropriate for OTC menstrual drug products than the warnings recommended by the Panel in § 357.1054(c)(2) and is consistent with the warning in the final monograph for OTC stimulant drug products published in the **Federal Register** of February 29, 1988 (53 FR 6100).

4. Although phenyltoloxamine citrate was not reviewed by the Miscellaneous Internal Panel, one comment requested that products containing this ingredient in combination with acetaminophen or with acetaminophen and caffeine, which have been marketed for many years, be placed in Category III for relief of menstrual pain. The comment stated that the recommendations of the Miscellaneous Internal Panel concerning pyrilamine are equally applicable to other antihistamines and specifically to phenyltoloxamine because of their similarity in action. The comment pointed out that these products were reviewed by the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (Internal Analgesic Panel) and that clinical studies submitted to that Panel support this use of phenyltoloxamine. A reply comment stated that, whether or not other antihistamines share the effectiveness demonstrated by pyrilamine in relieving menstrual symptoms, all antihistamines should be subject to clinical investigations on an individual basis.

The agency has reviewed the administrative record of the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products and determined that products containing phenyltoloxamine in combination with acetaminophen or acetaminophen and caffeine have been marketed OTC for relief of menstrual pain. Therefore, the agency agrees with the comment that it is reasonable to include phenyltoloxamine citrate in Category III in the review of OTC menstrual drug products. However, the data are insufficient to demonstrate that phenyltoloxamine citrate in combination with acetaminophen or acetaminophen and caffeine provides any contribution to the product's effectiveness. The agency is placing phenyltoloxamine in Category III, and additional data will be necessary to establish the effectiveness of this ingredient for use in OTC menstrual drug products. (For a discussion of pyrilamine in OTC menstrual drug products, see comment 5 below.)

5. Two comments responded to the agency's concern that the Panel's conclusions on the use of pyrilamine maleate in OTC menstrual drug products may be inconsistent with the final order for OTC daytime sedative drug products. The comments contended that the agency's conclusions with respect to antihistamines in the daytime sedative final order (44 FR 36378) were not relevant to the use of pyrilamine maleate in products for premenstrual syndrome because the pharmacological basis for pyrilamine's use in the premenstrual and menstrual syndrome relates to its effects as an H_1 histamine antagonist and possibly to its ability to reduce prolactin levels, with consequent reduction in prostaglandin synthesis, but not to its drowsiness side effect. The comments also argued that although a target population that could benefit from the drowsiness effect for use as a daytime sedative had not been demonstrated, the target population that can benefit from an effective menstrual drug product is well defined. The comments added that the results of two studies submitted to the Panel provide the necessary evidence demonstrating the effectiveness of pyrilamine maleate alone or in combination with pamabrom in relieving symptoms of the premenstrual and menstrual periods (Refs. 1 and 2).

The agency has reviewed all of the available data and acknowledges that the conclusions regarding antihistamines in the daytime sedative final rule may not be relevant to the use of pyrilamine maleate in products used for the premenstrual and menstrual syndrome. However, the agency does not believe the data are sufficient to establish the effectiveness of pyrilamine maleate alone or in combination for use in relieving symptoms of the premenstrual and menstrual syndromes. Therefore, the agency is classifying pyrilamine maleate (and its combinations) in Category III in this document.

Two studies were cited by the Panel in support of the effectiveness of pyrilamine maleate. The Boston study, a randomized, double-blind, crossover study, was conducted to compare the effectiveness of pyrilamine maleate vs placebo in the treatment of the premenstrual syndrome (Ref. 1). Although several parameters were analyzed, the sponsor indicated that water retention, negative affects (anxiety, irritability, depression, and tension), and pain were of primary concern. However, because the sponsor's statistical analysis of the study results (Ref. 3) did not take into consideration the crossover design of the study, the results cannot be relied upon as proof of effectiveness. In addition, patients should not have been excluded from the efficacy population for failing to receive each treatment for the same length of time.

The Wisconsin study, also a placebo-controlled, double-blind, randomized crossover study, was conducted to assess the effects of pamabrom and pyrilamine maleate alone and in a fixed combination in the treatment of the premenstrual syndrome (Ref. 2). As in the Boston study, the statistical analysis did not take into consideration the crossover design of the study (Ref. 4). Consequently, the results cannot be relied upon.

Although both of these studies appeared to be well-controlled clinical trials, the lack of sufficient data precluded a proper analysis of the studies. For example, in the Wisconsin study, although the raw data were submitted, the protocol was not included. In addition, the fact that the treatment order was based on whether the patient's study number was odd or even indicated that a proper randomization procedure was not employed. In the Boston study, individual patient data were not provided. The agency's detailed comments and evaluations of the data are on file in the Dockets Management Branch (address above) (Refs. 5 and 6). For the reasons above, the agency concludes that the studies are inadequate to establish effectiveness for pyrilamine maleate alone or in combination with pamabrom. Therefore, the agency is reclassifying pyrilamine maleate alone or in combination with pamabrom in Category III at this time.

In the preamble to the advance notice of proposed rulemaking for OTC menstrual drug products (47 FR 55076), the agency stated that it was not aware of any product on the OTC market containing pyrilamine maleate as the only ingredient and indicated for menstrual or premenstrual symptoms. The agency concluded that, because of its concerns regarding pyrilamine maleate, products containing pyrilamine maleate as a single ingredient and indicated for any menstrual or premenstrual symptoms should not be marketed at that time. The agency reaffirms in this document that products containing pyrilamine maleate as the sole ingredient and indicated for any menstrual or premenstrual symptoms should not be marketed as OTC menstrual drug products until the agency considers the ingredient to be generally recognized as safe and effective (Category I) for such use.

References

(1) "The Effect of Pyrilamine Maleate on the Relief of Symptoms Associated with the Premenstrual Syndrome (Boston Study 1981)," unpublished study, OTC Volume 170218.

(2) "Wisconsin Study (1978)," unpublished study, OTC Volume 170209 (pp. 163–186).

(3) OTC Volume 170224 (Section 4).

(4) OTC Volume 170221.

(5) Letter from W.E. Gilbertson, FDA, to C.N. Jolly, Chattem, Inc., dated February 22, 1985, coded LET009, Docket No. 82N–0165, Dockets Management Branch.

(6) Letter from W.E. Gilbertson, FDA, to C.N. Jolly, Chattem, Inc., dated July 29, 1988, coded LET011, Docket No. 82N–0165, Dockets Management Branch.

B. Comments on Labeling of Orally Administered Menstrual Drug Products

6. One comment noted that the Panel's recommended labeling for OTC menstrual drug products would provide for a distinction between products for use in the premenstrual and menstrual periods. The comment stated that because the Panel itself recognized that there was not a clear distinction between the symptoms occurring during these two periods, it would be simpler and less confusing to label all products in this category for relief of symptoms associated with "menstruation" or "the menstrual period," without attempting to distinguish between "premenstrual" and "menstrual" products.

The agency does not agree that the products should be indicated for "menstruation" only. Although the premenstrual and menstrual periods are two distinct syndromes, the symptoms that occur during these periods overlap significantly, and the ingredients used to relieve these symptoms would be the same whether the symptoms occurred during the menstrual or the premenstrual periods. Therefore, the agency does not believe it would be beneficial to the consumer to distinguish between these two periods in the indications. In this tentative final monograph, the agency is proposing that the products be indicated for the particular symptoms of the "premenstrual and menstrual periods" rather than distinguishing between the two periods. However, this would not preclude the selective use of these terms as part of the product name or as part of other promotional labeling statements, e.g., "premenstrual pain relief formula," "menstrual pain relief," etc. Such terms would be considered descriptive terms advising consumers of the product's benefits. While not included in the monograph, these terms are subject to the provisions of section 502 of the act (21 U.S.C. 352) relating to labeling that is false or misleading and will be evaluated by the agency in conjunction with normal enforcement activities relating to that section of the act.

In reviewing the labeling claims recommended by the Panel, the agency also notes that the Panel placed the term "dysmenorrhea" in Category I. The agency does not believe that "dysmenorrhea", when used alone, is a

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word that is commonly understood by consumers, nor was this word used in any of the OTC drug product labeling submitted to the Panel. Therefore, the agency has not provided for its use as a sole indication but has provided for its optional use parenthetically with other terms, e.g., "For the relief of painful premenstrual and menstrual cramps" [which may be followed by: "(dysmenorrhea)."]

7. The Miscellaneous Internal Panel Chairman commented that the Panel's Category III classification of "skin-disorder" claims for antihistamine-containing ingredients (47 FR 55086) was an apparent oversight. He explained that although the classification accurately reflected the Panel's deliberations during the October 16–17, 1981 meeting, it was his personal opinion that such claims should be Category II. He was concerned that such claims would invite teenage girls to use these menstrual products to treat acne.

The agency has reviewed the administrative record for this rulemaking and has found no data to substantiate "skin disorder" claims for OTC menstrual drug products. Therefore, the agency concurs with the Panel Chairman. Skin disorder claims for OTC menstrual drug products are considered Category II.

C. Comments on Combinations

8. Two comments stated that the advance notice of proposed rulemaking for OTC menstrual drug products did not properly reflect all of the Panel's conclusions. The comments pointed out that at its October 16–17, 1981 meeting, the Panel classified the combination of a Category I analgesic and pyrilamine maleate in Category I, but the published document did not reflect this determination.

The agency has reviewed the transcripts of the meeting and concludes that the comments are correct in stating that the Panel classified the combination of a Category I analgesic and pyrilamine maleate as a Category I menstrual drug product. However, due to an editorial omission, the advance notice of proposed rulemaking did not reflect this conclusion. Nonetheless, as discussed in comment 5 above, the agency disagrees with the Panel's recommendation to include such a combination in Category I and has placed this combination in Category III. Therefore, the combination is not included in this tentative final monograph.

Criteria for establishing combinations as Category I are provided in the General Guidelines for OTC Drug Combination Products (Ref. 1). Paragraph 6 of these guidelines states, "In those cases where the data are sufficient to support a finding by the agency that several ingredients in a therapeutic category can be considered interchangeable for purposes of formulating combinations, the monograph will so state and list those ingredients. This is the preferred approach and will be done whenever supported by data and the opinion of experts." Therefore, the agency agrees with the Panel's concept of listing combination drug products by pharmacological class, but does not agree that sufficient data have been provided to allow for all of the ingredients in the various pharmacologic classes to be interchanged for the purpose of forming combinations. Therefore, only those combinations for which the agency has determined that adequate data exist have been included in the tentative final monograph. Data are necessary to establish the safety and effectiveness of other specific combinations or to demonstrate that the specific ingredients in a pharmacological class are chemically and pharmacologically interchangeable.

References

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products, September 1978," Docket No. 78D-0322, Dockets Management Branch.

9. One comment requested that the combination of acetaminophen, pyrilamine maleate, ammonium chloride, caffeine, and iron be classified as a Category I combination for the relief of menstrual discomfort. The comment contended that this would be a reasonable combination because it is a merger of two Category I combinations recommended by the Panel, with the addition of iron. The comment added that the iron is included in the combination because of the "known menstrual iron losses" that were identified in the advance notice of proposed rulemaking for OTC vitamin and mineral drug products. (See the **Federal Register** of March 16, 1979; 44 FR 16183.)

One reply comment questioned whether this product would be intended for use even in the absence of symptoms, in order to provide iron supplementation, or whether the inclusion of iron in the formula has a symptom-specific role.

The comment did not provide any data, and the agency is unaware of any evidence, demonstrating that a suitable target population exists that could benefit from the short-term use of OTC menstrual drug products containing the four proposed ingredients plus iron. The Advisory Review Panel on OTC Vitamin and Mineral Drug Products stated in its report (44 FR 16183) that a daily extradietary iron supplement to supplement the dietary stores and to preserve iron stores seems reasonable because of the prevalance of iron deficiency in menstruating females. Menstrual drug products, however, are not taken daily for long-term dietary supplementation, but are intended for occasional short-term use to alleviate symptoms associated with the premenstrual and menstrual periods. Therefore, the addition of iron as a concurrent therapy in OTC menstrual drug products does not appear warranted.

In addition, pyrilamine maleate and the combinations containing pyrilamine maleate have been reclassified as Category III because of the lack of evidence of effectiveness. (See comment 5 above.) Therefore, the combination requested by the comment would also be considered a nonmonograph combination.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and is proposing one change in the categorization of orally administered menstrual active ingredients recommended by the Panel. The agency has also reviewed the ingredient phenyltoloxamine citrate, which was not submitted to the Panel, and is proposing Category III status for this ingredient. (See comment 4 above.) As a convenience to the reader, the following list is included as a summary of the categorization of orally administered menstrual active ingredients recommended by the Panel and the proposed categorization by the agency.

Menstrual active ingredients	Panel	Agency
Analgesics: [1]		
Acetaminophen	I	
Aspirin	I	
Caffeine	III	
Carbaspirin calcium	I	
Choline salicylate	I	
Codeine	II	
Magnesium salicylate	I	
Sodium salicylate	I	
Antihistamines:		
Phenyltoloxamine citrate.	Not Reviewed	III

Menstrual active ingredients	Panel	Agency
Pyrilamine maleate	I	III
Diuretics:		
Ammonium chloride	I	I
Caffeine	I	I
Pamabrom	I	I
Theobromine sodium salicylate.	III	III
Theophylline	III	III
Smooth muscle-relaxants:		
Cinnamedrine hydrochloride	III	III
Homatropine methylbromide.	II	II
botanical or vegetable herbs:		
Asclepias tuberosa (pleurisy root).	II	II
Cimicifuga racemosa (black cohosh).	II	II
Piscidia erythrina (Jamaica dogwood).	II	II
Senecio aureus (life root).	II	II
Taraxacum officinale (dandelion root).	II	II
Vitamins:		
Pyridoxine hydrochloride.	III	III
Other ingredients:		
Cnicus benedictus (blessed thistle).	II	II
Corn silk	II	II
Couch grass	II	II
Dog grass extract	II	II
Extract buchu	II	II
Extract uva ursi	II	II
Hydrastis canadensis (golden seal).	II	II
Oil of juniper	II	II
Pipsissewa	II	II
Triticum	II	II

[1] The agency's conclusions regarding the use of internal analgesic active ingredients for menstrual and premenstrual symptoms are presented elsewhere in this issue of the FEDERAL REGISTER.

2. *Testing of Category II and Category III conditions.* Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any orally administered menstrual active ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. Because of the changes summarized below, many of the section and paragraph numbers have been redesignated in this tentative final monograph.

2. The agency's conclusions regarding the use of internal analgesic active ingredients for menstrual and premenstrual symptoms are presented elsewhere in this issue of the **Federal Register**.

3. The word "precaution" has been deleted from the recommended warning for ammonium chloride in § 357.1052(c)(1)(ii). The agency considers the word "warning" alone to be the simplest, clearest signal to alert consumers and has routinely used the word "warning" in the labeling sections of other OTC drug tentative final and final monographs.

4. The recommended warnings relevant to the use of caffeine as an OTC menstrual drug have been revised. (See comment 3 above.)

5. Phenyltoloxamine citrate has been added to the menstrual rulemaking as a Category III ingredient. (See comment 4 above.)

6. Pyrilamine maleate as an individual ingredient and in combination has been reclassified from Category I to Category III. (See comments 5 and 8 above.)

7. The agency has modified the indications for OTC menstrual drug products to eliminate the distinction between the premenstrual and menstrual periods. (See comment 6 above.)

8. Skin disorder claims for OTC menstrual drug products have been reclassified from Category III to Category II. (See comment 7 above.)

9. The Panel recommended that the combination of ammonium chloride (650 mg) and caffeine (200 mg) given three times a day be classified in Category I. The Panel concluded this to be a rational combination because the diuretic mechanisms of action are different and adjunctive (47 FR 55095). The agency agrees that the combining of ingredients from the same therapeutic category with different mechanisms of action is rational and is provided for in the agency's general guidelines for OTC drug combination products (Ref. 1) which state that "* * * ingredients from the same therapeutic category that have different mechanisms of action may be combined to treat the same symptoms or condition if the combination meets the OTC combination policy in all respects and the combination is on a benefit-risk basis equal to or better than each of the active ingredients used alone at its therapeutic dose." However, the study cited by the Panel to support the combination of ammonium chloride (650 mg) and caffeine (200 &g) (Ref. 2) was not designed to assess the individual contribution of each ingredient to the combination. Such data are necessary to satisfy the requirements of 21 CFR 330.10(a)(4)(iv), i.e., that each active ingredient must make a contribution to the claimed effect of the product, particularly in light of the fact that the product contains 200 mg caffeine, which has been shown to be effective alone at this dose. The contribution of ammonium chloride in a subtherapeutic dose to a product already containing an effective ingredient at an effective dose level needs to be demonstrated. This is particularly important in this case because, as discussed in comment 1 above, the agency is unaware of any evidence of the effectiveness of ammonium chloride at doses less than the recommended dose of 1 g. Likewise, the agency is unaware of any evidence to establish that the addition of subtherapeutic amounts of ammonium chloride to caffeine would provide any effect above the caffeine alone. Therefore, the agency is classifying the combination of ammonium chloride (650 mg) and caffeine (200 mg) in Category III. However, because the agency considers ammonium chloride in combination with caffeine to be rational for use as an OTC menstrual drug product, the agency has no objections to a drug product that would contain each of these ingredients at their therapeutic dose. Therefore, provisions for ammonium chloride and caffeine in combination at their therapeutic dose have been included in the monograph.

References

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products, September 1978," Docket No. 78D-0322, Dockets Management Branch.

(2) Hoffman, J.J., "A Double-Blind Crossover Clinical Trial of an OTC Diuretic in the Treatment of Premenstrual Tension and Weight Gain," Current Therapeutic Research, 26:575–580, 1979.

10. The agency has expanded the combination section of the monograph to provide for allowable combinations of analgesics (as identified in § 343.20(a)) to be combined with a diuretic.

11. The agency has not included several of the Panel's recommended indications statements for OTC menstrual diuretic drug products (§ 357.1054(b)(2) through (5)) in this

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tentative final monograph because they duplicate information already contained in the statement of identity and the primary indications statement.

12. The Panel's recommended directions for OTC menstrual diuretic drug products containing pamabrom have been clarified to include a time interval as follows: Adult oral dosage is 50 milligrams four times a day, not to exceed 200 milligrams per day.

13. The Panel provided indications and directions for two specific combination products in § 357.1058 (a)(1) and (2) and (b)(1) of its proposed monograph. However, it did not provide labeling information for all of the combinations it recommended as Category I. Therefore, the agency is replacing the Panel's recommended § 357.1058 with a new general section (renumbered § 357.1060 in this tentative final monograph) for labeling of permitted combinations of active ingredients that conforms with the format of other recently published tentative final monographs. This combination labeling section contains provisions for combining duplicative words or phrases in the indications, warnings, and directions for each active ingredient in the combination, and contains a paragraph covering "Statement of identity," "Indications," "Warnings," and "Directions."

The information recommended by the Panel in § 357.1058(a) is not being included in this tentative final monograph because pyrilamine has been reclassified from Category I to Category III. (See comments 5 and 8 above.)

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph where exact language has been established and identified by quotation marks in an applicable monograph or other regulation, e.g., 21 CFR 201.63 or 330.1(g). The proposed rule in this document is subject to the labeling provisions in § 330.1(c)(2).

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC orally administered menstrual drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC orally administered menstrual drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC orally administered menstrual drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by March 16, 1989. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before November 16, 1989, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before March 16, 1989. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before March 16, 1989, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before January 16, 1990. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on January 16, 1990. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 357

Labeling, Orally administered menstrual drug products, Over-the-counter drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 357 as follows:

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 357 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. A new Subpart K consisting of §§ 357.1001 through 357.1060 is added to read as follows:

Subpart K—Orally Administered Menstrual Drug Products

Sec.

357.1001 Scope.
357.1003 Definitions.
357.1010 Antihistamine active ingredients. [Reserved]
357.1012 Diuretic active ingredients.
357.1014 Smooth muscle-relaxant active ingredients. [Reserved]
357.1020 Permitted combinations of active ingredients.
357.1050 Labeling of orally administered menstrual drug products containing antihistamine ingredients identified in § 357.1010.
357.1052 Labeling of orally administered menstrual drug products containing diuretic ingredients identified in § 357.1012.
357.1054 Labeling of orally administered menstrual drug products containing smooth muscle-relaxant ingredients identified in § 357.1014.
357.1060 Labeling of permitted combinations of active ingredients.

Subpart K—Orally Administered Menstrual Drug Products

§ 357.1001 Scope.

(a) An over-the-counter menstrual drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1 of this chapter.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 357.1003 Definitions.

As used in this subpart:

(a) *Diuretic.* A drug that increases the excretion of water.

(b) *Menstrual period.* The period of time from onset to stoppage of cyclic, physiologic uterine bleeding which (in the absence of pregnancy) normally recurs, usually at approximately 4-week intervals.

(c) *Menstruation.* The monthly flow of blood from the genital tract of women.

(d) *Premenstrual period.* The period of time approximately 1 week before onset of menstruation.

(e) *Premenstrual syndrome.* A recurrent symptom complex which begins during the week prior to menstruation and usually disappears soon after the onset of the menstrual flow. This symptom complex consists predominately of edema, lower abdominal pain (including cramps), breast tenderness, headache, abdominal bloating, fatigue, and the feelings of depression, irritability, tension, and anxiety.

§ 357.1010 Antihistamine active ingredients. [Reserved]

§ 357.1012 Diuretic active ingredients.

The active ingredients of the product consist of the following within the dosage limits established for each ingredient in § 357.1052(d):

(a) *Acidifying diuretic.* Ammonium chloride.

(b) *Xanthine diuretics.* (1) Caffeine. (2) Pamabrom.

§ 357.1014 Smooth muscle-relaxant active ingredients. [Reserved]

§ 357.1020 Permitted combinations of active ingredients.

The following combinations are permitted provided each active ingredient is present within the established dosage limits and the product is labeled in accordance with § 357.1060.

(a) Any analgesic identified in § 343.10 of this chapter or any combination of analgesics identified in § 343.20(a) of this chapter and any diuretic identified in § 357.1012.

(b) Ammonium chloride identified in § 357.1012(a) with any one ingredient identified in § 357.1012(b).

§ 357.1050 Labeling of orally administered menstrual drug products containing antihistamine ingredients identified in § 357.1010.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "premenstrual/menstrual symptom reliever."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph (b). Other truthful and nonmisleading statements describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "For the relief of" ("emotional changes" or "mood changes") "related to the premenstrual and menstrual periods."

(2) "For the relief of" ("emotional changes" or "mood changes") "such as anxiety, nervous tension, and irritability related to the premenstrual and menstrual periods."

(3) "For the relief of water-retention symptoms related to the premenstrual and menstrual periods."

(4) "For the relief of temporary weight gain or swelling due to water retention during the premenstrual and menstrual periods."

(5) "For the relief of cramps and backache of the premenstrual and menstrual periods."

(c) *Warnings.* [Reserved]

(d) *Directions.* [Reserved]

§ 357.1052 Labeling of orally administered menstrual drug products containing diuretic ingredients identified in § 357.1012.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "diuretic."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "For the relief of temporary water-weight gain, bloating, swelling, and/or full feeling associated with the premenstrual and menstrual periods."

(2) In addition to the indication in paragraph (b)(1) of this section, products

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containing caffeine identified in § 357.1012(b)(1) may also contain the following indication: "For the relief of fatigue associated with the premenstrual and menstrual periods."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing ammonium chloride identified in § 357.1012(a).* (i) "Do not use if you have kidney or liver disease."

(ii) "This drug may cause nausea, vomiting, and gastrointestinal distress."

(2) *For products containing caffeine identified in § 357.1012(b)(1).* "The recommended dose of this product contains about as much caffeine as a cup of coffee. Limit the use of caffeine-containing medications, foods, or beverages while taking this product because too much caffeine may cause nervousness, irritability, sleeplessness, and occasionally rapid heart rate."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing ammonium chloride identified in § 357.1012(a).* Adult oral dosage is 1 gram three times a day for no longer than 6 days.

(2) *For products containing caffeine identified in § 357.1012(b)(1).* Adult oral dosage is 100 to 200 milligrams every 3 to 4 hours while symptoms persist.

(3) *For products containing pamabrom identified in § 357.1012(b)(2).* Adult oral dosage is 50 milligrams four times a day, not to exceed 200 milligrams per day.

§ 357.1054 Labeling of orally administered menstrual drug products containing smooth muscle-relaxant ingredients identified in § 357.1014.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "muscle relaxant."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph (b). Other truthful and nonmisleading statements describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "For the relief of painful premenstrual and menstrual cramps" [which may be followed by: "(dysmenorrhea)."]

(2) "For the relief of premenstrual and menstrual cramps."

(3) "For the relief of backache associated with premenstrual and menstrual cramps."

(4) "For the relief of cramps associated with the premenstrual and menstrual periods."

(c) *Warnings.* [Reserved]

(d) *Directions.* [Reserved]

§ 357.1060 Labeling of permitted combinations of active ingredients.

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs.

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (b). Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For the permitted combinations identified in § 357.1020(a).* "For the temporary relief of minor aches and pains and temporary water-weight gain, bloating, swelling, and full feeling associated with the premenstrual and menstrual periods."

(2) *For the permitted combinations identified in § 357.1020(a) that contain caffeine identified in § 357.1012(b)(1) the following indication may be used as an alternative to the one identified in § 357.1060(b)(1) above.* "For the temporary relief of minor aches and pains and temporary water-weight gain, bloating, swelling, full feeling, and fatigue associated with the premenstrual and menstrual periods."

(c) *Warnings.* The labeling of the product states, under the heading "Warning," the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs.

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs. When the time intervals or age limitations of administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph. For example, an appropriate direction for a tablet containing 25 milligrams pamabrom and 325 mg aspirin would be "Two tablets every 4 to 6 hours not to exceed 8 tablets per day."

Dated: August 5, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-26155 Filed 11-15-88; 8:45 am]

BILLING CODE 4160-01-M

federal register

Wednesday
November 16, 1988

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310, 343, and 369

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Parts 310, 343, and 369

[Docket No. 77N-0094]

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the reports and recommendations of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products and the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and the public comments on the advance notices of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products and OTC menstrual drug products that were based on the Panels' respective recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by May 16, 1989. Because of the length and complexity of this proposed regulation, the agency is allowing a period of 180 days for comments and objections instead of the normal 60 days. New data by November 16, 1989. Comments on the new data by January 16, 1990. Written comments on the agency's economic impact determination by May 16, 1989.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 8, 1977 (42 FR 35346), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, together with the recommendations of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (Internal Analgesic Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug classes. Interested persons were invited to submit comments by December 5, 1977. Reply comments in response to comments filed in the initial comment period could be submitted by February 6, 1978.

In a notice published in the **Federal Register** of March 21, 1980 (45 FR 18401), the agency advised that it had reopened the administrative record for OTC internal analgesic, antipyretic, and antirheumatic drug products to allow for consideration of data and information that had been filed in the Dockets Management Branch after the date the administrative record previously had officially closed. The agency concluded that any new data and information filed prior to March 21, 1980 should be available to the agency in developing a proposed regulation in the form of a tentative final monograph.

In the **Federal Register** of December 7, 1982 (47 FR 55076), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC orally administered menstrual drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by March 7, 1983. Reply comments in response to comments filed in the initial comment period could be submitted by April 6, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panels were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information. Data and information received after the administrative record for OTC internal analgesic, antipyretic, and antirheumatic drug products was reopened have also been put on display in the Dockets Management Branch.

In response to the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products, two trade associations, several drug manufacturers, many health professionals, several consumers, a drug-standard-setting association, two health professional associations, a health foundation, and one consumer group submitted comments. Copies of the comments received are also on public display in the Dockets Management Branch.

In response to the advance notice of proposed rulemaking for OTC menstrual drug products, the agency received two comments from drug manufacturers relevant to OTC internal analgesic drug products.

After reviewing and evaluating the Miscellaneous Internal Panel's recommendations regarding the use of OTC internal analgesic ingredients during the premenstrual and menstrual periods, the agency has determined that it is appropriate to include premenstrual and menstrual claims for these ingredients as part of the rulemaking for OTC internal analgesic drug products rather than to retain them as part of the rulemaking for OTC menstrual drug products and has transferred the comments relevant to those claims to this rulemaking. In this way, the various conditions for which an OTC internal analgesic drug product is safe and effective will be listed in one monograph. The agency's proposed regulation in the form of a tentative final monograph for OTC orally administered menstrual drug products is published elsewhere in this issue of the **Federal Register**.

In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Part 343 (21 CFR Part 343) FDA states for the first time its position on the establishment of a monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products and the use of these products for premenstrual and menstrual symptoms. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products.

This proposal constitutes FDA's tentative adoption of the Internal Analgesic Panel's conclusions and recommendations on OTC internal analgesic, antipyretic, and antirheumatic drug products and the Miscellaneous Internal Panel's conclusions and recommendations on the use of OTC internal analgesic drug products for premenstrual and menstrual symptoms,

as modified on the basis of the comments received and the agency's independent evaluation of the Panels' reports. Modifications have been made for clarity and regulatory accuracy and to reflect any new information that has come to the agency's attention. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The Panel's conclusions and recommendations on the ingredient phenacetin are not addressed in this document. OTC drug products containing phenacetin are subject to the notice that FDA published on phenacetin in the **Federal Register** of October 5, 1983 (48 FR 45466), which requires removal of phenacetin from all prescription and OTC drug products (except for one prescription product on which a hearing request is pending).

The agency published an advance notice of proposed rulemaking on the reported association of the use of salicylates with Reye syndrome in the **Federal Register** of December 28, 1982 (47 FR 57886). Reye syndrome is a rare, acute, life-threatening condition, which primarily occurs in children or teenagers during the course of or while recovering from a mild respiratory tract infection, flu, chicken pox, or other viral illness. In the **Federal Register** of December 17, 1985 (50 FR 51400), the agency published a proposed rule to require the labeling of oral OTC aspirin and aspirin-containing drug products to bear a warning that such products should not be used to treat chicken pox or flu symptoms in children and teenagers before consulting a doctor about Reye syndrome. In addition to the warning statement, the agency proposed to prohibit OTC salicylate-containing drug products labeled solely for use by children (pediatric products) from recommending that the products be used in treating flu or chicken pox. The final rule was published in the **Federal Register** of March 7, 1986 (51 FR 8180). The final rule requires the labeling of orally or rectally administered OTC aspirin-containing drug products to prominently bear the following warning: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness." In addition, the regulation states that OTC drug products covered by the rule and labeled solely for use by children (pediatric products) shall not recommend the product for use in treating flu or chicken pox. This required warning statement and restriction on use of the drug were scheduled to expire June 6, 1988 unless extended by the agency through publication for notice and comment in the **Federal Register**. In the **Federal Register** of January 22, 1988 (53 FR 1796) the agency published a proposal to make the labeling provision permanent. A final rule was published in the **Federal Register** of June 9, 1988 (53 FR 21633), which expanded the required warning sratement to make clear that aspirin use in children and teenagers has been reported to be associated with Reye syndrome and made the labeling provision permanent. Therefore, the agency will incorporate the Reye syndrome warning into the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products. The agency notes that one provision of the Reye syndrome labeling regulation, i.e., 21 CFR 201.314(h)(3) states that OTC drug products subject to the regulation and labeled solely for use by children (pediatric products) shall not recommend the product for use in treating flu or chicken pox. Because the Reye syndrome warning in § 201.314(h)(1) applies to both children and teenagers, and teenagers may use other than pediatric products, the agency is not proposing to include flu in the labeling indication for any oral OTC aspirin and aspirin-containing drug products. In addition, FDA noted in the final rule (53 FR 21635) that scentific research to date focuses on the association between Reye syndrome and aspirin, rather than on the broader category of drug products containing nonaspirin salicylates. FDA stated that it will consider extending the warning to nonaspirin salicylates if warranted by further research. Therefore, at this time the agency is not proposing to include flu in the labeling indication for any salicylate preparation. However, the agency is including "flu" in the indications allowed for products containing acetaminophen.

The agency is also aware of the National Institutes of Health (NIH) Consensus Development Conference on analgesic-associated kidney disease held February 27 to 29, 1984. The NIH Conference issued a statement concluding that considerable evidence indicates that combinations of antipyretic analgesics, taken in large doses over a long period of time, cause a specific form of kidney disease and chronic renal failure. Persons so exposed may be more susceptible to the subsequent development of uroepithelial tumors. The Conference also concluded that, in contrast, there is little evidence that preparations containing a single analgesic ingredient have been similarly abused and similarly harmful. The Conference recommended that serious consideration should be given to limiting OTC drug products to those containing a single antipyretic-analgesic agent. The agency advises that the final Conference report is being included in this administrative record (see OTC volume 03BTFM), which has now been reopened with publication of this tentative final monograph. The agency invites specific comment on this issue and will address the Conference's recommendations in the final rule.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate

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commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products (published in the **Federal Register** of July 8, 1977 (42 FR 35346)), the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the **Federal Register** and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace. If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of July 21, 1972 (37 FR 14633) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch (address above).

I. The Agency's Tentative Conclusions on the Comments and Reply Comments

A. General Comments

1. Several comments contended that OTC drug monographs are interpretative, as opposed to substantive, regulations.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464), and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association v. Weinberger*, 512 F.2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers v. FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).

2. One comment stated that FDA should provide better physician education on the treatment of drug toxicity, as well as on the potential toxicity of medications currently on the market. Other comments suggested that an educational program should be jointly initiated by FDA, the pharmaceutical industry, and the medical and pharmacy professions to better educate consumers on the appropriate use of analgesic products, e.g., the use of aspirin during pregnancy.

The agency supports and is actively engaged in educational programs for consumers, physicians, and health professionals. One way in which FDA provides information on drug interactions, toxicities, and other pertinent topics is through the "FDA Drug Bulletin." This publication is routinely mailed to physicians and other health professionals. One issue, for example, was devoted to alcohol-drug interactions, including possible interactions of alcohol with aspirin, other salicylates, and acetaminophen (Ref. 1). Another issue, which discussed the use of aspirin in patients with a previous myocardial infarction or unstable angina pectoris, included a discussion of adverse reactions that occurred from the doses of aspirin used in the studies (Ref. 2).

FDA also has consumer education programs on human drugs. Each program is implemented by FDA consumer affairs officers who provide health-related information, through talks, films, or slides, to diverse groups of people, such as health professionals, parents, teachers, and others. These groups, in turn, often help to disseminate the information further. The consumer education programs on human drugs consist of subprograms such as "Drugs and Pregnancy" and "Safe and Effective Use of Drugs," which include publications that provide information on the use of OTC internal analgesic drug products among others. Additional agency publications are also available to consumers. For example, "FDA Consumer" and "FDA Consumer Memo" have contained articles on drugs and pregnancy and the uses and dangers of OTC drugs that relieve pain (Refs. 3 through 6).

As new information becomes available, FDA updates these programs to assure continuing education of both consumers and health professionals. In addition, the agency participates in cooperative private-public programs through such organizations as the National Council on Patient Information and Education, which involves industry, health professionals, and consumers in a variety of education and information programs.

References

(1) Food and Drug Administration, "FDA Drug Bulletin," Vol. 9, No. 2, June 1979.

(2) Food and Drug Administration, "FDA Drug Bulletin," Vol. 15, No. 4, December 1985.

(3) Postotnik, P., "Drugs and Pregnancy," *FDA Consumer*, 12:6–10, 1978.

(4) Hecht, A., "Painkillers: Their Uses and Dangers," *FDA Consumer*, 2:6–11, 1977.

(5) Food and Drug Administration, "Nonprescription Pain Relievers," *FDA Consumer Memo*, HEW Publication No. (FDA) 78–3078.

(6) Food and Drug Administration, "Self-Medication," *FDA Consumer Memo*, HEW Publication No. (FDA) 73–3025.

3. One comment urged that future OTC drug monograph documents of more than 10 pages include a table of contents, an index, and boldface headings throughout the text for ease of reading and locating information in the text.

In publishing documents in the **Federal Register**, FDA follows guidelines established by the National Archives and the Office of the Federal Register in an effort to make all government documents consistent in format and style.

Since the comment was written, **Federal Register** format has changed. The new format now includes headings in bold and italic type which make it easier to read and locate information in OTC Panel reports, tentative final monographs, and final monographs. However, no provision has been made for including either tables of contents or indexes in documents published in the **Federal Register**.

4. Two comments stated that neither a gastroenterologist nor a hematologist served on the Panel and that the expertise of such specialists was essential to the development of the Panel's report. Several other comments questioned the scientific validity of the Panel's report. These comments argued that the Panel frequently misinterpreted information and data to support its conclusions, reached conclusions contrary to the data submitted or testimony presented to it, and relied too heavily on references that are secondary, out-of-date, and unavailable to the scientific community (i.e., not published in scientific journals).

The agency points out that, although the Internal Analgesic Panel did not include a gastroenterologist or a hematologist, experts in the fields of gastroenterology and hematology appeared before the Panel to express their views and present data for the Panel's consideration. Thus, the Panel was not denied expertise in these areas in developing its report.

In evaluating the scientific validity of the Panel's report, the agency has considered the views expressed in the comments, reviewed current scientific literature, and consulted experts outside the agency when necessary. All data on which the Panel based its conclusions, including published and unpublished references, are available to interested persons, including the scientific community, through the Dockets Management Branch (address above).

5. Two comments believed that the Panel recommended changing the marketing status of aspirin products from OTC to prescription only. The comments opposed such a change and expressed concern that making aspirin products available by prescription only would limit consumers' access to these products and would greatly increase their cost. A third comment asserted that aspirin should be available only by prescription, but gave no reasons.

The Panel found aspirin to be safe and effective for OTC use as an analgesic and antipyretic and did not recommend making aspirin products available only by prescription. The agency agrees with this conclusion and emphasizes that aspirin products will continue to be available OTC.

6. One comment stated that the Panel should have deferred caffeine, as it deferred other ingredients in its report (42 FR 35350), to the Advisory Review Panel on OTC Sedative, Sleep-Aid, and Tranquilizer Drug Products (Sleep-Aid Panel) "for uses other than an analgesic adjuvant."

The Internal Analgesic Panel reviewed submissions for caffeine-containing analgesic products that were labeled as analgesics or as analgesic-stimulants. The Panel reviewed caffeine for its safety and effectiveness as an analgesic and as an analgesic adjuvant, but not as a stimulant because stimulant use was reviewed by the Sleep-Aid Panel in its report published in the **Federal Register** of December 8, 1975 (40 FR 57292). The agency presented its tentative conclusions on caffeine in the OTC nighttime sleep-aid and stimulant products notice of proposed rulemaking in the **Federal Register** of June 13, 1978 (43 FR 25544). In the **Federal Register** of February 29, 1988 (53 FR 6100), the agency published a final monograph for OTC stimulant drug products. Any OTC analgesic product containing caffeine for use in restoring alertness or wakefulness will have to follow the dosage and labeling requirements for caffeine established by the agency in that final monograph.

7. One comment from a pharmaceutical firm noted that the firm's name was not included in the list of submissions by firms (42 FR 35348 and 35349). The comment stated that, although this firm did not formally submit data, it presented oral evidence regarding OTC analgesics and underwrote the cost of statistical evaluation of several papers and editorials. To ensure that FDA is aware of the oral evidence that was presented, the comment provided copies of the transcripts of the sessions at which this company presented testimony.

The agency is aware that certain individuals appeared before the Panel to present testimony on behalf of this firm. Their names are included in the list of persons who presented their views to the Panel (42 FR 35347). Because this firm did not submit written data and information in response to the Panel's call-for-data and did not formally submit any data during the course of the Panel's deliberations, it is not included in the list of submissions by firms.

8. One comment, supporting the inclusion of "minor aches and pains of arthritis" in OTC drug analgesic labeling, argued that the Panel decided at an early stage of its review to limit the indications of antirheumatic products to "minor aches and pains" and remove all mention of the minor aches and pains of arthritis. The comment also stated that during the remainder of its review the Panel did not seriously consider any submission or presentation that was not in accord with the Panel's original decision.

The Panel considered the arthritis labeling issue several times during its review, including its April 1976 meeting. The Panel gave reasons for its recommendations on arthritis labeling under its general discussion of the labeling of OTC analgesic, antipyretic, and antirheumatic drug products and also in the discussion of antirheumatic agents (42 FR 35354 and 35453). However, because the agency has decided to allow the phrase "minor pain from arthritis" as an example in the monograph indication for OTC analgesic drug products, the comment's point is moot. (See comment 17 below.)

9. Two comments from the same source requested that the administrative record for the internal analgesic proposed monograph be kept open so that the transcripts or tapes of the closed meetings of the Panel could be reviewed and commented on. The comments stated that these transcripts and tapes were not released by FDA until after the comment period closed.

The original comment's request was dated December 1977. In response to a Freedom of Information (FOI) request (FOI file number F77–15,747), the transcripts and tapes of the Internal Analgesic Panel's closed meetings were made available to the comment source on May 17, 1978, after being reviewed by FDA for deletion of trade secrets, patient names, and other nondisclosable information. Since then the agency has not received from the comment source any new data or information relating to the transcripts or any petition to reopen the administrative record. Transcripts of panel meetings are not included in the administrative record. See 21 CFR 330.10(a)(10). The reasons for this are stated in the preamble to the "Proposal to Designate the Contents and the Time of Closing of the Administrative Record," published in the **Federal Register** of June 4, 1974 (39 FR 19878), and published as a final rule in the **Federal Register** of November 8, 1974 (39 FR 39556).

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Because of the length of time since the FOI request was granted, the agency sees no reason at this point to consider having the record "kept open." All interested persons may submit written comments for a period of 180 days after the publication of this tentative final monograph. Any comments relating to the transcripts of the panel meetings should state the reasons that would warrant the agency's consideration of the transcripts, notwithstanding the reasons given by the agency for not ordinarily considering them.

B. Comments on Internal Analgesic, Antipyretic, and Antirheumatic Labeling

10. Several comments contended that there is no statutory authority for the codification of exact words to be used in describing the modes of action and the symptoms to be relieved by an OTC drug. The comments stated that existing statutory provisions (15 U.S.C. 1453(a), 21 CFR 201.61, and sections 508 and 502(e) of the Federal Food, Drug, and Cosmetic Act (hereafter referred to as the act) (21 U.S.C. 358 and 352(e)) do not show a congressional intent to authorize FDA to legislate the exact wording of OTC drug claims to the exclusion of other equally accurate and truthful claims for these products, and that section 502(c) of the Act (21 U.S.C. 352(c)) demonstrates a congressional intent to the contrary. The comments argued that any language fulfilling the statutory requirement should be satisfactory, and recommended that FDA provide for more flexibility of wording in OTC drug product labeling by adding the following statement to each list of approved indications: "or similar indication statements which are in keeping with the Panel's Report."

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks, e.g., 21 CFR 201.63 or 330.1(g). The proposed rule in this document is subject to the labeling provisions in § 330.1(c)(2).

11. One comment argued that the labeling proposed by the Panel contains extensive and complicated wording and may well be contrary to the intention of section 502(c) of the act (21 U.S.C. 352(c)), which states that OTC drug labeling is to be written in terms that consumers can easily understand.

In all of its decisions on labeling, the agency seriously considers the consumer's comprehension of the intended message in the labeling. The agency has thoroughly reviewed the Panel's recommended labeling and has modified it where necessary to make it clearer to consumers. Specific comment is invited on the labeling in this tentative final monograph, including comments on consumer understanding of the wording.

12. Two comments objected to the Panel's recommendation that all inactive ingredients be listed in the labeling of OTC analgesic, antipyretic, and antirheumatic drug products. The comments argued that a list of inactive ingredients in the labeling would be meaningless, confusing, and misleading to most consumers. The comments noted that the act does not require that inactive ingredients of drug products be included on a label and argued that listing these ingredients would crowd out information that is more meaningful to consumers.

The agency agrees that the Federal Food, Drug, and Cosmetic Act does not require the identification of all inactive ingredients in the labeling of OTC drug products. Section 502(e) of the act (21 U.S.C. 352(e)) does require disclosure of active ingredients and of certain ingredients, whether included as active or inactive components in a product. Although the act does not require the disclosure of all inactive ingredients in the labeling of OTC drug products, the agency agrees with the Panel that listing of inactive ingredients in OTC drug product labeling would be useful information for some consumers. Consumers with known allergies or intolerances to certain ingredients would then be able to identify substances that they may wish to avoid.

The Proprietary Association, the trade association that represents approximately 85 OTC drug manufacturers who reportedly market between 90 and 95 percent of the volume of all OTC drug products sold in the United States, has established guidelines (Ref. 1) for its member companies to list voluntarily inactive ingredients in the labeling of OTC drug products. Under another voluntary program begun in 1974, the member companies of The Proprietary Association have been including the quantities of active ingredients on OTC drug labels. The agency is not at this time proposing to require the listing of inactive ingredients in OTC drug product labeling. However, the agency commends these voluntary efforts and urges all other OTC drug manufacturers to similarly label their products.

References

(1) "Guidelines for Disclosure of Inactive Ingredients in OTC Medicines," The Proprietary Association, Washington, July 12, 1984, in OTC Volume 03BTFM.

13. One comment supported, while others objected to, the 10-day limitation on aspirin use recommended by the Panel in § 343.50(c)(1)(i): "Do not take this product for more than 10 days." The supporting comment stated that this recommended warning is consistent with the current medical knowledge of aspirin. Other comments objected to the warning on the grounds that it implies to consumers that aspirin products are unsafe or toxic if taken for more than 10 days; that there is no scientific, medical, or legal justification for the recommendation that chronic arthritis patients see a physician every 10 days; and that a delay of much longer than 10 days is needed before consulting a physician because early examination to rule out serious rheumatoid disease is expensive and does not yield results. The opposing comments also argued that many physicians recommend the use of aspirin beyond 10 days and that the consumer, after reading the 10-day warning, might be reluctant to follow the physician's advice. The following alternative wording was suggested, with the explanation that this warning directs that self-medication should not exceed 10 days: "If pain persists for more than 10 days . . . consult a physician immediately."

The agency points out that the 10-day warning was not intended to apply only to arthritic patients, as one comment appears to have interpreted it. As another comment stated, "* * * self-medication (with analgesic drug products) should not continue for more than 10 days at one time." The intent of the 10-day warning is to inform all consumers, including arthritic patients, that analgesic drug products should not be taken for more than 10 days "unless directed by a doctor," so that serious conditions do not go undiagnosed and untreated. (See 42 FR 35351.) To reflect this intent, the agency is adding the words "unless directed by a doctor" to the warning for adults in § 343.50(c)(1)(i) and the corresponding warning for children in § 343.50(c)(2)(i). The agency does not believe that these warnings will imply to consumers that analgesic products are unsafe or toxic if taken for more than 10 days (or 5 days for children).

14. One comment supported, and others opposed, that portion of the recommended warning for analgesic and antipyretic products in § 343.50(c)(1)(i) that advises the consumer to consult a physician if symptoms persist or new ones occur. The comment that favored the warning stated that it is consistent with the state of medical knowledge concerning aspirin. One comment opposing the warning argued that informing the consumer to consult a physician if new symptoms occur may unduly alarm the consumer and could burden doctors with additional inquiries from consumers. Another comment stated that new but not unusual symptoms that respond to self-treatment may be expected during the normal course of a self-limited disease, e.g., the fever that develops during a stage of the common cold. The comments suggested the following alternative wording for § 343.50(c)(1)(i) and (ii): "If symptoms persist or get worse, consult your physician"; or "If symptoms persist, or new *unexpected* ones occur, consult your physician."

The agency agrees that worsening symptoms should be mentioned in the warning because this alerts the consumer to consult a doctor when one is needed, e.g., upon the development of secondary infection, rather than only after a 10-day (adults) or 5-day (children) maximum limit for self-treatment. The warning has been amended accordingly. The agency does not believe that informing the consumer to consult a doctor if new symptoms occur would unduly frighten consumers or further burden doctors. For clarity and precision, the agency is revising this portion of the warning to read, "If pain or fever persists or gets worse, if new symptoms occur * * *," in proposed § 343.50(c) (1)(i) and (2)(i). (See comment 18 below for further revision in the warnings.)

15. Two comments agreed with, and many comments objected to, the Panel's recommended Category I labeling indication for internal analgesic active ingredients in § 343.50(a)(1), "For the temporary relief of occasional minor aches, pains, and headache." The comments supporting this limited indication argued that indications that describe specific types of pain mislead the consumer because they imply a treatment of these conditions and encourage inappropriate self-diagnosis and self-treatment. The comments also argued that such labeling suggests to consumers that one product offers unique advantages over another for the specific indications stated on the label.

Some comments objected to the terms "occasional," "minor," or "temporary" because they are unnecessary, indefinite, or meaningless to consumers. Many comments that opposed the recommended indication supported more specific indications that currently appear on many OTC internal analgesic drug products, e.g., "for low back pain," "for muscular aches," "for sinusitis pain," "for pain of sprains," "for functional menstrual pain," "for the relief of minor sore throat pain," and "for pains caused by colds." A consumer survey was submitted to show the need for expanding the recommended indication (Ref. 1).

The comments argued that expanding the labeling would not imply treatment of these conditions, but would aid the consumer in selecting OTC internal analgesic drug products, thereby avoiding the expense of unnecessary visits to a physician and overburdening the health care system. The comments asserted that it is inconsistent for the Internal Analgesic Panel to prohibit the indication "For cold symptoms," while the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Products (Cough-Cold Panel) allows this indication for Category I combination products containing internal analgesics. Two comments contended that the use and effectiveness of analgesic ingredients in relieving the pain of sore throat is generally recognized and submitted excerpts of several references to support their statement (Ref. 2).

The Panel recommended a limited indication for OTC internal analgesic-antipyretic drug products in the belief that it was preferable to listing all of the various types of minor pain that these products could be used for. The Panel found that the various claims on the labels it reviewed were often vague and lacked clarity. The Panel was concerned that a plethora of claims would be confusing and misleading to the consumer (42 FR 35355). However, the agency does not believe that a statement describing one or more specific types of pain on an analgesic-antipyretic drug product properly labeled with the active ingredient and with the statement of identity (e.g., "pain reliever-fever reducer") would mislead consumers. Such labeling would be helpful to consumers to provide them with examples of the general types of pain for which OTC internal analgesic drug products are useful. Therefore, the agency is providing manufacturers the option of providing a limited or an expanded indications statement.

For the reasons described below, the agency is proposing the following indications for OTC internal analgesic drug products: "For the temporary relief of minor aches and pains" [which may be followed by one or more of the following: ("associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," "toothache," "muscular aches," "backache," "the premenstrual and menstrual periods" (which may be followed by: "(dysmenorrhea)"), or "premenstrual and menstrual cramps" (which may be followed by: "(dysmenorrhea)"))), ("and for the minor pain from arthritis.")] (This statement is further expanded in comment 16 below to include fever labeling.) The types of pain described above are the only ones now being proposed to be allowed in the labeling of OTC internal analgesic drug products. A similar expanded indication is being proposed for products labeled for pediatric use. Minor pain from arthritis is not included as an example in the labeling for pediatric products because when this type of pain occurs in children, it should be treated by a doctor. For the same reason, minor pain associated with backache or muscular aches is not included in the labeling; the underlying cause of these kinds of pain in children should be determined by a doctor. Because the agency does not consider indications concerning premenstrual and menstrual pain appropriate for pediatric analgesic products, these claims are also not being included in the proposed labeling for products for pediatric use.

The terms "muscular aches" and "backache" adequately represent most musculoskeletal aches and pains and are preferable to listing all the specific areas of the body that could be involved. The Panel classified "low back pain" as Category II because it believed that the indication implied to consumers that OTC analgesic drug products could be used to treat arthritic conditions (42

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FR 35454 and 35467). However, the agency recognizes that low back pain is not necessarily due to arthritis but may be due to causes amenable to OTC treatment such as minor strains or overexertion. The agency believes that low back pain amenable to treatment with OTC analgesic drug products is appropriately described by the terms "muscle aches" and "backache" in the proposed indication and therefore is not including the claim "low back pain" in the proposed monograph. Because the agency believes that consumers are familiar with the words "low back pain" and proposes to require labeling that would warn consumers against the use of OTC analgesic drug products for more than 10 days and to consult a doctor if symptoms persist or get worse or if new symptoms occur (in § 343.50(c)(1)(i)), the agency would not object to the use of the claim "low back pain" elsewhere on the label provided it is not intermixed with labeling established by the monograph. Similarly, the agency is not proposing to include the claim "pain of sinusitis" in the proposed monograph because it believes that this type of pain is adequately described by the term "headache" in the proposed indication. However, the agency also would not object to the use of this claim provided it is not intermixed with labeling established by the monograph.

Claims relating to sinusitis are addressed in the tentative final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products, published in the **Federal Register** of August 12, 1988 (53 FR 30522). (For a discussion of the agency's decision to include "minor pain from arthritis" in the statement of indications, see comment 17 below.)

Claims relating to menstrual pain were classified in Category II by the Panel (42 FR 35434). However, these claims were also reviewed by the Miscellaneous Internal Panel. The agency has reviewed that Panel's recommendations regarding OTC internal analgesic active ingredients for use during the premenstrual and menstrual periods and concurs with the Panel that any Category I OTC internal analgesic ingredient is safe and effective for the relief of pain associated with the premenstrual and menstrual periods and/or with premenstrual or menstrual cramps. In reviewing the various menstrual claims recommended by the Panel, the agency notes that the Panel placed in Category I a claim "for the relief of pain of dysmenorrhea." However, the agency does not believe that "dysmenorrhea," when used alone, is a word that is commonly understood by consumers. In addition, this word was not used in any of the OTC drug product labeling submitted to the Panel. Therefore, the agency has not provided for its use as a sole indication, but has provided for its optional use parenthetically with other terms, e.g., "* * * minor aches and pains * * * associated with the premenstrual and menstrual periods" (which may be followed by: "(dysmenorrhea)").

For the reasons discussed in comment 6 of the tentative final monograph for OTC menstrual drug products (published elsewhere in this issue of the **Federal Register**), the labeling being proposed for these products does not distinguish between the menstrual and premenstrual periods.

The agency is including the claim "sore throat" in the proposed indication after reviewing the various panels' recommendations, and applicable current and proposed regulations. The agency notes that sore throat in most cases is due to a self-limiting condition that resolves itself without treatment. However, the agency is aware that sore throat, mild as it may seem, may be a symptom of a more serious condition that is not amenable to self-diagnosis or self-treatment, such as a streptococcal infection ("strep throat"), which if left untreated may progress to rheumatic fever or acute glomerulonephritis (47 FR 22773). Because of the risk of serious illness if appropriate treatment of a sore throat is unduly delayed, the agency currently recommends that all OTC drug products indicated for the relief of sore throat display the following warning statement: "Warning—severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use for more than 2 days or administer to children under 3 years of age unless directed by physician," (21 CFR 369.20). Although the Internal Analgesic Panel did not specifically address this warning, the agency is proposing to include a modified version in § 343.50 (c)(1)(ii) and (c)(2)(ii) of this tentative final monograph. The agency is proposing to revise the current warning to make it consistent in format with warnings proposed in other current OTC drug tentative final monographs and is proposing that any analgesic drug product labeled for the relief of minor sore throat pain include the following warning. "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly."

Because sore throat accompanied by rash could be indicative of several illnesses not amenable to OTC drug self-treatment, such as rheumatic fever or measles (Ref. 2), the agency believes that consumers should be warned against the use of aspirin when a rash is present. Therefore, the agency is proposing to include the word "rash" in the new proposed warning. The agency is not proposing to include the word "high" as descriptive of fever, as contained in the current warning in 21 CFR 369.20, because the agency believes that it is important for the consumer to recognize the presence of fever associated with sore throat regardless of whether the fever is high or low. The agency is also not proposing to include that portion of the current warning against administering the drug to children 3 years of age without consulting a physician. The Internal Analgesic Panel recommended labeling that provided for the use of analgesics in children 2 years of age. In the tentative final monograph for OTC oral health care drug products, the agency concluded that most Category I anesthetic/anaglesic ingredients, such as benzocaine and dyclonine hydrochloride, could be labeled for the temporary relief of minor sore throat in children 2 years of age or older (53 FR 2458). Therefore, the agency is proposing in this tentative final monograph for the labeling to provide for the use of analgesics for minor sore throat pain in children 2 years of age or older.

The agency is retaining the term "minor" to describe the aches and pains that are amenable to OTC treatment, as opposed to more severe symptoms that should be treated by a doctor. The term "temporary" remains in the indications statement to indicate the type of relief given by OTC internal analgesic drug products.

The term "occasional" is being deleted from the Panel's recommended labeling because the agency believes that the warnings included in the tentative final monograph are sufficient to warn consumers against the chronic use of OTC analgesics unless advised by a doctor.

References

(1) Comment No. C00043, Docket No. 77N–0094, Dockets Management Branch.

(2) Comment No. M00006, Docket No. 77N–0094, Dockets Management Branch.

(3) Berkow, R., editor, "The Merck Manual of Diagnosis and Therapy," 14th Ed., Merck and Co., Rahway, NJ, pp. 81–87, 1976.

16. Several comments objected to the antipyretic active ingredient labeling recommended in § 343.50(a)(2), "For the reduction of fever," because it does not include the common cold and flu. The comments stated that fever associated with colds and flu is the most common type of fever for which self-medication is appropriate, and that eliminating the terms "common cold" and "flu" from the labeling would deny the consumer necessary information for safe and effective self-medication.

The agency believes that manufacturers should be able to inform consumers of the relationship between the common cold and fever, and is providing a number of options for labeling analgesic-antipyretic drug products so that this can be done if the manufacturer desires. With regard to the term "flu," the agency published a final rule on Reye syndrome and salicylate drug products entitled "Labeling for Oral and Rectal Over-the-Counter Aspirin and Aspirin-Containing Drug Products; Reye Syndrome Warning" in the **Federal Register** of June 9, 1988 (53 FR 21633). This rule provides that such products labeled solely for use by children (pediatric products) shall not recommend the product for use in treating flu or chicken pox. Because the warning required on all aspirin-containing products includes both children and teenagers (see discussion of final rule earlier in this document) and because of the possibility of teenagers using other than pediatric products, the agency has decided not to add "flu" to the label indications for any aspirin-containing product at this time.

In addition, while FDA noted in the final rule (53 FR 21635) that scientific research to date focuses on the association between Reye syndrome and aspirin, concerns have been raised about the use of the broader category of drug products containing nonaspirin salicylates in children and teenagers with "flu." Therefore, at this time the agency is not proposing to include flu in the labeling indication for any salicylate preparation. However, the labeling prohibition on this "flu" claim does not apply to the internal analgesic-antipyretic ingredient acetaminophen. Therefore, the agency is proposing to include the term "flu" in the indication for acetaminophen.

Section 343.50(a) (2) and (3), as recommended by the Panel, are being deleted, and the Panel's recommended indication for any Category I analgesic/antipyretic ingredient in § 343.50(a)(3) (redesignated § 343.50(b)(1)) is being revised as follows: "For the temporary relief of minor aches and pains" [which may be followed by one or more of the following: ("associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," "toothache," "muscular aches," "backache," "the premenstrual amd menstrual periods" (which may be followed by: "(dysmenorrhea)"), or "premenstrual and menstrual cramps" (which may be followed by: "(dysmenorrhea)")))), ("and for the minor pain from arthritis"), and ("and to reduce fever.")] The labeling being proposed for products marketed exclusively for children is as follows: "For the temporary relief of minor aches and pains" [which may be followed by: ("associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," or "toothache")) and/or ("and to reduce fever".)] The agency is also proposing that the term "flu" may be added to these revised indications for products containing acetaminophen.

In addition, the agency is proposing that all OTC analgesic-antipyretic drug products bear a statement of identity as a "pain reliever" or "analgesic (pain reliever)." If the product is also labeled to include the indication "to reduce fever," then the statement of identity is "pain reliever-fever reducer" or "analgesic (pain reliever)-antipyretic (fever reducer)."

17. One comment agreed with the Panel's recommendation that OTC analgesic drugs should not be labeled for the relief of pain from arthritis, adding that such labeling could be misleading to consumers. The comment stated that consumers may equate relief of pain with effective treatment of self-diagnosed "arthritis," thus preventing or delaying the diagnosis and proper treatment of a rheumatic disease and that OTC dosages of aspirin "rarely if ever" have anti-inflammatory activity.

Other comments disagreed with the Panel's recommendation and urged that labeling of OTC antirheumatic products include their use for the temporary relief of minor aches and pains from arthritis and rheumatism for the following reasons: (1) Consumers should not be denied such information, and to do so would place increasing demands on doctors and economic burdens on consumers and the health care system; (2) aspirin has an anti-inflammatory effect at OTC dosages, but the Panel's recommended labeling may lead some consumers to believe that aspirin products are unsuitable for relieving arthritis pain, and they may turn to undesirable treatment alternatives, such as diet fads or copper jewelry; (3) minor arthritic syndromes can be managed by self-medication with OTC internal analgesics without leading to serious medical consequences from delays in treatment of progressive diseases such as rheumatoid or gonococcal arthritis.

The agency agrees that arthritis cannot be self-diagnosed, but recognizes that OTC analgesics are effective in relieving "minor pain" associated with arthritic conditions. Descriptive labeling of this nature is now widely used in the labeling of OTC analgesic drug products, e.g., "for the temporary relief of minor arthritic pain." The agency does not believe that such labeling is misleading to consumers. As discussed in comment 15 above, the agency is proposing to expand the indications for OTC analgesic drug products to include examples of pain amenable to self-treatment, i.e., "headache," "toothache," "muscular aches," "backache," "sore throat," "pain associated with the common cold," "pain associated with the premenstrual or menstrual periods," or "minor pain from arthritis." Although the terms "arthritis" and "rheumatism" are used interchangeably by some consumers, the agency believes that "arthritis" is more accurate, more precise, and more readily understood by the majority of consumers.

Instead of denying consumers information on the use of OTC analgesics for relieving the minor pain from arthritis, the agency believes it would be more appropriate to provide such labeling. Consumers are warned against use for more than 10 days and to consult a doctor if pain persists or gets worse, if new symptoms occur, or if redness or swelling is present. These warnings should be sufficient to encourage consumers with persistent pain or inflammation who believe they have arthritis to consult a doctor for diagnosis and treatment. (See comments 18 and 19 below.)

18. One comment recommended a warning for OTC analgesic drug products that would alert consumers with symptoms of arthritis to consult a doctor if pain persists for more than 5 days or if redness is present.

Because the agency is expanding the indications labeling for analgesic ingredients to include minor pain from arthritis, the warnings recommended by the Panel in § 343.50(c)(1) (i) and (ii) are being revised to alert consumers to symptoms of inflammation (redness or swelling), which may appear in conditions such as arthritis and which signal the need to consult a doctor. Because the indications for pain and fever may be combined, the warnings are also being combined to inform consumers to consult a doctor if pain or fever persists or worsens and to include the 3-day limit for fever. The comment submitted no data to support its request

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to shorten the limit of OTC analgesic use for symptoms of arthritis to 5 days. In the absence of such data, the agency proposes to retain the 10-day limit for self-medicating for pain.

Recognizing that certain OTC analgesic drug products may be labeled for use in adults and children, for use in children only, or for use in adults only, the agency is proposing the following warnings in the tentative final monograph to replace those recommended by the Panel in § 343.50(c)(1) and (2):

(1) *For products labeled for adults*—(i) *For products containing any ingredient in § 343.10.* "Do not take this product for pain for more than 10 days or for fever for more than 3 days unless directed by a doctor. If pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a doctor because these could be signs of a serious condition."

(2) *For products labeled for children 2 years to under 12 years of age*—(i) *For products containing any ingredient in § 343.10.* "Do not give this product for pain for more than 5 days or for fever for more than 3 days unless directed by a doctor. If pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a doctor because these could be signs of a serious condition."

(3) *For products labeled both for adults and for children 2 years to under 12 years of age* * * *. "Do not take this product for pain for more than 10 days (for adults) or 5 days (for children), and do not take for fever for more than 3 days unless directed by a doctor. If pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a doctor because these could be signs of a serious condition. Do not give this product to children for the pain of arthritis unless directed by a doctor."

19. Several comments disagreed with the arthritis warning for OTC aspirin drug products recommended by the Panel in § 343.50(c)(3)(i): "Take this product for the treatment of arthritis only under the advice and supervision of a physician." The comments also disagreed with the warning for acetaminophen products recommended in § 343.50(c)(5)(ii): "Do not take this product for the treatment of arthritis except under the advice and supervision of a physician." One comment questioned why the warnings were different and recommended that the warning for aspirin in § 343.50(c)(3)(i) also be used for acetaminophen because both drugs are commonly recommended by physicians for the pain from arthritis.

Other comments opposed identical warnings for aspirin and acetaminophen, but also opposed the warnings recommended by the Panel for both drugs (i.e., § 343.50(c) (3)(i) and (5)(ii)), arguing that these warnings are so similar that consumers probably would not perceive their intended difference. These comments added that the Panel's recommended arthritis warning for acetaminophen may lead consumers to believe that acetaminophen is effective in treating arthritis. Emphasizing that acetaminophen, unlike aspirin, has no anti-inflammatory effect and cannot be used to treat arthritis, one comment suggested that the recommended warning in § 343.50(c)(5)(ii) be replaced with the following: "Do not take this product for the treatment of arthritis." As an alternative to this warning, a comment suggested the following warning: "Do not take this product for the relief of arthritis symptoms except under the advice and supervision of a physician." Another comment suggested that, because aspirin can be used to treat arthritis, the following statement be incorporated with the dosage schedule of OTC aspirin drug products in place of the recommended warning in § 343.50(c)(3)(i): "Dosage for arthritis and rheumatic conditions should be only under the advice and supervision of a physician."

The agency agrees that it may be difficult for consumers to distinguish between the warnings recommended by the Panel for aspirin and acetaminophen. Although aspirin is an anti-inflammatory agent, acetaminophen is not. Consumers might incorrectly interpret the Panel's acetaminophen warning (§ 343.50(c)(5)(ii)) to mean that acetaminophen is effective in the treatment of arthritis. To avoid misinterpretation and confusion, the agency is not including this warning in the monograph. Similarly, the agency does not believe that acetaminophen products should bear the warning recommended by the Panel for aspirin products in § 343.50(c)(3)(i), because consumers could also misinterpret this warning to mean that acetaminophen can be used to treat arthritis. An indication for the relief of "minor pain from arthritis" is being proposed for the labeling of both aspirin and acetaminophen products. However, an indication for the treatment of the arthritis itself is not being proposed for any OTC internal analgesic drug product because such treatment should be conducted only under the supervision of a doctor. Different labeling statements on aspirin and acetaminophen drug products regarding arthritis, as suggested by some of the comments, might encourage self-diagnosis and self-treatment of arthritis. The warning being proposed in § 343.50(c)(1)(i) of this document for all Category I ingredients should lead consumers with arthritis symptoms to consult a doctor for diagnosis and treatment of the condition. (See comments 17 and 18 above.) For these reasons, the agency proposes not to adopt the comments' suggestions and is not including either the Panel's recommended § 343.50(c)(3)(i) or § 343.50(c)(5)(ii) in the tentative final monograph.

20. Two comments maintained that the agency should permit the names of OTC analgesic drug products to reflect the uses of the products. The comments specifically requested permission to include the term "arthritis" in certain product names. One comment disagreed, arguing that product names which specifically refer to "arthritis," such as "arthritis strength," "arthritis pain formula," or "rheumatism preparation," imply that these products are uniquely effective for arthritis and will encourage improper self-diagnosis and inappropriate and potentially hazardous therapy.

The agency agrees that product names can be informative and that they should not be misleading. Medically descriptive product names, e.g., "arthritis pain formula," are not required and are not included in the monograph. These names are considered to be outside the scope of the OTC drug review, but are subject to the provisions in section 502 of the act (21 U.S.C. 352) relating to labeling that is false or misleading. Such terms will be evaluated by the agency in conjunction with normal enforcement activities relating to that section of the act.

21. One comment stated that the labels of OTC analgesic and antipyretic drug products should include a warning that these products suppress the body's defense mechanisms. The comment explained that, although the antipyretic and anti-inflammatory effects of aspirin cause a temporary relief of unpleasant symptoms, the disease process is disguised; valuable defense mechanisms such as inflammation and increased body temperature are impaired; and the illness is thereby prolonged.

The comment submitted no evidence to support the statement that analgesic and antipyretic drug products suppress the body's defense mechanisms and thereby prolong illness, and the agency is aware of none. Therefore, the agency is not proposing to include a warning in the monograph as suggested by the comment. The agency considers the revised 10-day and 5-day warnings for analgesic drug products in § 343.50(c)(1)(i), (2)(i), and (3) in this tentative final monograph adequate to warn consumers to obtain professional help if symptoms persist or get worse or if new symptoms occur.

22. Two comments objected to the 5-day limitation of use of analgesic and antipyretic drug products by children under 12 years of age in the Panel's recommended warning statement in § 343.50(c)(1)(ii). The comments agreed with the Panel that the period of OTC use of analgesic and antipyretic drugs in children under 12 years of age should be limited, but disagreed over the length of time. Suggested alternatives were 2 or 3 days. One comment argued that this warning implies that OTC analgesic drug products are unsafe or toxic if used longer than 5 days.

The agency is proposing the following revised warning for children 2 years to under 12 years of age in § 343.50(c)(2)(i): "Do not give this product for pain for more than 5 days or for fever for more than 3 days unless directed by a doctor. If pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a doctor because these could be signs of a serious condition," (see comment 18 above).

The comments submitted no data to support their suggestions for shorter time limitations. The Internal Analgesic Panel based its recommendation of a 5-day limitation for children on reports from poison control center data and on computer simulations that demonstrated that the plasma salicylate level could exceed 20 milligrams per 100 milliliters (mg/mL) (a toxic level) "among some smaller children of a particular age category following the recommended dosage schedule after 5 days" (42 FR 35368). The agency believes these data provide sufficient reason to propose the Panel's recommended 5-day use limitation for children.

23. Several comments opposed the number and length of warning statements the Panel recommended for OTC analgesic and antipyretic drug products. One comment expressed concern that an extensive list of warnings for products containing aspirin, compared to a shorter list for acetaminophen drug products, will lead consumers to conclude that aspirin drug products are more toxic and less useful than acetaminophen drug products. Other comments urged FDA to limit warning statements to those that are scientifically documented, clinically significant, and important to the appropriate use of the products by the average consumer. These comments further urged that the statements be combined and condensed for ease of consumer understanding and to avoid label clutter that may cause consumers to ignore cautions and warnings in the labeling. One comment suggested the use of supplementary circulars, etc.

FDA agrees that the warning statements for OTC drug products should be limited to those that are scientifically documented, clinically significant, and important for the safe and effective use of the products by consumers. The agency is requiring warning statements for each ingredient on this basis, not on the basis of a comparable number of warnings for each ingredient. Warning statements are also being combined and condensed whenever possible for ease of consumer understanding. In addition, manufacturers are free to design ways of incorporating all required information in labeling, e.g., using flap labels, redesigning packages, or using a package insert.

24. Many comments opposed warnings that cite organs of the body as possible sites of damage by internal analgesic drug products, with some comments referring specifically to the Panel's recommended liver warning for acetaminophen in § 343.50(c)(5)(i). These comments argued that naming an organ that may be injured from an acute overdose or from excessive use of an analgesic drug would place the responsibility of recognizing organ damage on the consumer, who would then be assuming the role of a physician. The comments further argued that this kind of label warning may be misunderstood and may either alarm or cause anxiety in consumers who use drugs rationally. On the other hand, the comments added, such labeling may provide information that may induce individuals to harm themselves.

The comments favored a single, more general warning for all OTC internal analgesic drug products, such as the following: "Do not take this product for more than 10 days unless directed by a physician. Excessive use over a long period of time may cause permanent injury." One comment suggested that, if such a general warning is not adopted, all OTC drug products should bear labeling which fully discloses the conditions under which damage may occur.

The agency is not proposing to include the general warning suggested by the comments in this tentative final monograph. FDA believes that the self-medicating consumer should be made aware of potential risks of a particular OTC drug product through label warnings. As discussed in comment 25 below, the agency agrees that the warnings need not specify the toxic effects on particular organs of the body that can be caused by acute overdose of a drug, as in a suicide attempt, and is not proposing the Panel's recommended liver warning for acetaminophen in this tentative final monograph. However, the agency concludes that the warnings should include specific information on the known side effects or adverse reactions that may occur from use of the drug according to labeled directions, as well as potential dangers that may occur if the labeled directions are exceeded.

The agency concludes that when medical evidence shows that toxicity is associated with the use of an OTC drug, either within its recommended dosage or when used beyond its recommended time limit or dosage (except for acute overdose), it is appropriate to warn consumers of the potential toxicity. In such cases it may be necessary to include organ-specific warnings as well as general labeling statements.

25. Many comments opposed the liver warning recommended by the Panel for acetaminophen drug products in § 343.50(c)(5)(i), "Do not exceed recommended dosage because severe liver damage may occur." Some comments argued that acetaminophen taken in recommended OTC dosage ranges shows no evidence of hepatotoxicity and that the labeling required in § 330.1(g), "Keep this and all drugs out of the reach of children. In case of accidental overdose, seek professional assistance or contact a poison control center immediately," provides sufficient warning to consumers. The comments expressed concern that the liver warning recommended by the Panel may discourage consumers from ever using acetaminophen and that this warning may also encourage suicidal persons to abuse acetaminophen drug products. The comments also argued that the liver warning is especially inappropriate for children's acetaminophen drug products because there is a lack of documented fatalities and serious liver damage in children from acute acetaminophen overdose. The comments stated there may be differences between the metabolism and pharmacokinetics of acetaminophen in children and adults that would cause children to be less vulnerable to acetaminophen toxicity.

Other comments endorsed the recommended liver warning and pointed out that there are no unique signs of acetaminophen toxicity, such as ringing in the ears (tinnitus), and that symptoms of acetaminophen toxicity do not appear until a few days after the overdose.

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Noting that consumers are increasing their use of acetaminophen and that fatalities and liver damage have occurred in children, the comments argued that the recommended warning may discourage consumers from exceeding the recommended daily OTC dosage of acetaminophen and make consumers and doctors aware of the consequence of acetaminophen overdose. One comment, concerned about toxicity from the chronic use of acetaminophen in dosages of less than 4 grams (g) per day, suggested that the proposed liver warning be revised to place additional emphasis on the recommended limit of self-treatment with acetaminophen as follows: "Do not exceed recommended dosage or take for more than 10 days, because severe liver damage may occur." Another comment suggested that the recommended warning be revised to state the dosage that will cause hepatotoxicity, for example, 40 or more 325-mg tablets taken as a single dose.

After evaluating the data and information submitted, the agency has tentatively decided not to adopt the liver warning recommended by the Panel in § 343.50(c)(5)(i). The agency is aware that liver damage can occur from acetaminophen overdosage, as explained by the Panel (42 FR 35414). However, the agency believes that warnings need not include information on the specific toxic effects on organs of the body caused by acute overdose of a drug, as in suicide. (See comment 24 above.) The agency also considers it inadvisable to specify hepatotoxic dosage levels in consumer labeling, as one comment suggested, because such labeling could be suggestive to suicidal individuals.

The agency has noted two reports of hepatotoxicity in children who overdosed on acetaminophen. Arena, Rourk, and Sibrack (Ref. 1) described a 3-year-old girl who ingested 35 tablets of acetaminophen 325 mg and suffered decreased consciousness, vomiting, and enlargement of the liver and spleen. At that time the serum ammonia level was 82 micrograms per deciliter (μg/dL). She was admitted to the hospital about 24 hours after ingestion. The serum acetaminophen level was 94 micrograms per milliliter (μg/mL) 24 hours after ingestion; 48 hours after ingestion it dropped to 26 μg/mL. Seventy-two hours after the overdose, serum transaminase (liver enzyme) levels revealed a peak serum g1utamic-oxaloacetic transaminase of 20,376 International Units (I.U.) and a peak serum glutamic-pyruvic transaminase of 13,303 I.U. The patient was alert and in good spirits by the second day in the hospital and was discharged 1 week later. Seven weeks after discharge her liver enzymes were normal.

Although this child weighed only 31 pounds and had ingested 11.375 g acetaminophen, resulting in phenomenal transaminase levels and a high plasma level of acetaminophen at 24 hours, she survived without any aftereffects. As one comment noted, this case suggests that a child's liver may be less vulnerable to the hepatotoxic effects of acetaminophen overdosage than an adult's. The agency points out, however, that before conclusions can be made on the potential toxicity of acetaminophen in children, more data are needed on the metabolism of acetaminophen and clinical observations in children (Ref. 2).

Carloss (Ref. 3) reported the death of a 3½-year-old girl who had an upper respiratory infection and was being treated with acetaminophen. The child was given 120 mg of acetaminophen syrup every 4 hours for three doses. Her doctor later increased the dose to 720 mg every 3 hours. During the next 24 hours she took 5.04 g acetaminophen and was hospitalized for nausea and vomiting. Fourteen hours after the last dose, the acetaminophen level was 5.3 mg/dL (therapeutic range, 1 to 3 mg/dL), well in the range of hepatotoxicity. The child was discharged from the hospital the next morning, but was readmitted 16 hours later with a serum glutamic-oxaloacetic transaminase level of 22,000 I.U. and subsequently died.

The child described by Carloss (Ref. 3) was approximately the same age as the one described by Arena, Rourk, and Sibrack (Ref. 1). Neither child had been treated with an antidote for acetaminophen poisoning, such as *N*-acetylcysteine. It is difficult to explain why the child who had ingested 5.04 g acetaminophen died, and the child who had ingested 11.375 g acetaminophen survived.

Regarding chronic use of acetaminophen within recommended OTC dosages, the agency at this time does not believe that the labeling suggested by the comment, "Do not exceed recommended dosage or take for more than 10 days, because severe liver damage may occur," is needed. The warnings proposed in § 343.50(c) (1)(i) and (3) in this tentative final monograph already state a 10-day limitation for adults on OTC analgesic self-medication. Furthermore, the agency is aware of only one somewhat convincing case report of acetaminophen hepatotoxicity associated with chronic acetaminophen usage in a normal individual (Ref. 4). A second case has been reported, but rechallenge results were inconsistent (Ref. 5). As discussed in detail in comment 27 below, Olsson (Ref. 4) described a 55-year-old male who was hospitalized for a flareup of hepatitis while taking a product containing acetaminophen and chlormezanone. He had no recent history of drug or alcohol use, but had a 1-year history of alcohol abuse 7 years before hospitalization. Because this individual developed hepatotoxicity on a low dose of acetaminophen, it is possible that some other problem was also present. (This patient was using a drug containing acetaminophen and chlormezanone, which could have induced the liver injury.) No similar report has appeared despite the wide use of acetaminophen.

A case of chronic use of 325 mg acetaminophen (12 tablets daily for 1 year) was described in which the patient's serum glutamic-oxaloacetic transaminase level was normal before acetaminophen use (Ref. 5). After 1 year of acetaminophen use, liver function tests showed an abnormal serum glutamic-oxaloacetic transaminase level and enlargement of the liver and spleen. After the drug was discontinued, the patient's serum glutamic-oxaloacetic transaminase level returned to normal. After being discharged from the hospital, the patient resumed using 12 tablets of 325 mg acetaminophen daily. Within 2 months he developed pain and was rehospitalized. A monitored rechallenge with one dose of 1,325 mg acetaminophen caused a rise in liver enzyme levels (serum glutamic-oxaloacetic transaminase and serum glutamic-pyruvic transaminase levels) within 12 to 18 hours. A liver biopsy revealed "bridging necrosis, spanning two portal and two central areas." After discontinuing acetaminophen for 4 months, the individual developed abdominal pain and enlargement of the spleen and had to be treated with azathioprine and prednisone. One year later, when liver function tests were back to normal, the individual again was rechallenged with 1,325 mg acetaminophen without any development of symptoms or rise in liver enzyme levels. This raises the possibility that this patient might have been developing chronic active hepatitis exacerbated by acetaminophen.

Rosenberg et al. (Ref. 6) described two individuals who had taken 3.6 g acetaminophen daily for 1 to 2 weeks. One person had a history of Gilbert's disease (characterized by mild jaundice). Both developed jaundice during a course of infectious mononucleosis. However, because jaundice can occur in 5 to 10 percent of patients with infectious mononucleosis, the jaundice in these two patients could not definitely be attributed to acetaminophen.

Johnson and Tolman (Ref. 7) described a patient who had been taking 3 g acetaminophen daily and complained of fatigue and loss of appetite. The patient had used no other drugs and was not exposed to toxins other than unidentified cleaning solvents used occasionally. On medical examination there was liver tenderness, and a liver function test showed abnormal results. A liver biopsy revealed evidence of chronic active hepatitis with cirrhosis. The patient had a positive rechallenge, and the liver enzymes increased during the 2 weeks following the rechallenge, indicating that acetaminophen may have caused this elevation. It is possible that the patient had chronic active hepatitis and that acetaminophen exacerbated it. This case was also complicated by the concomitant occasional use of unidentified cleaning solvents.

The agency has noted instances where only a mild overdose of 5 to 7 g of acetaminophen may have produced hepatotoxicity. Ware et al. (Ref. 8) described a person who developed disorientation, jaundice, and fever after using acetaminophen and prescription drugs daily for headaches. Liver enzyme levels were elevated, and a liver biopsy showed centrilobular fibrosis and bridging necrosis with evidence of both an acute and a chronic process. The patient improved after 8 days of unspecified conservative treatment. This case does not prove acetaminophen hepatotoxicity because the other drugs the patient had been taking can cause hepatitis.

Toxic hepatitis was reported in three persons who were regularly ingesting acetaminophen in higher amounts than the recommended OTC dosage (Ref. 9). One patient was an alcoholic who for years had used up to 10 300-mg tablets of acetaminophen daily. During the 4 days before admission to the hospital, this individual drank no alcohol, but used about 100 tablets of acetaminophen. On admission to the hospital, the patient's liver enzymes were elevated, but they fell rapidly over the next 2 to 3 days. The amount of acetaminophen ingested and the subsequent pattern of serum liver enzyme abnormality found in this patient were consistent with a substantial overdose of acetaminophen 2 to 3 days before admission.

The second individual used as much as 5.2 g acetaminophen daily. This patient had disseminated bronchial cancer, with general ill health and malnutrition. This patient's liver enzymes were elevated while using acetaminophen. After the liver enzymes returned to normal, the patient was rechallenged. The rechallenge of 5.2 to 6.5 g acetaminophen daily produced elevated liver enzyme levels. The plasma acetaminophen level at 24 hours was 37 μg/mL, corresponding to an overdose of the drug.

The third individual had reportedly used 5.2 to 6.5 g acetaminophen daily for 3 weeks before hospitalization. Forty hours after the last dose, the plasma acetaminophen concentration was 15 μg/mL, consistent with an overdose.

Although it is not inconceivable that chronic use of acetaminophen within recommended OTC dosage ranges produces chronic active hepatitis in a very low percentage of people, and although it is possible that acetaminophen can exacerbate preexisting chronic active hepatitis, the agency concludes that the above data do not provide an adequate basis for requiring a labeling statement on liver damage from chronic use of acetaminophen, that is, within recommended daily OTC dosages for longer than 10 days.

Although the liver warning recommended by the Panel in § 343.50(c)(5)(i) is being deleted, the agency shares the comments' concern that symptoms of acetaminophen toxicity do not appear until a few days after an overdose. Following acetaminophen overdosage, there is a 24- to 48-hour period of relative well-being, when symptoms of hepatotoxicity do not appear despite the occurrence of liver damage. This "silent period" may create a false sense of security that could delay the use of an antidote, which must be administered promptly in order to be effective (Refs. 10 and 11). To alert consumers that prompt medical attention is essential to the proper management of acetaminophen overdose, the agency is proposing the following overdose warnings for acetaminophen drug products: For products labeled for adults (§ 343.50(c)(1)(iii)), "Prompt medical attention is critical for adults as well as for children even if you do not notice any signs or symptoms," or for products labeled for children (§ 343.50(c)(2)(iii)), "Prompt medical attention is critical even if you do not notice any signs or symptoms." For products labeled both for adults and children, the warning for adults would apply, as described in § 343.50(c)(3). Both warnings would be required to follow the general overdose warnings in § 330.1(g) that are required for all OTC drugs.

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26. Several comments urged the adoption of a warning statement that advises consumers who have preexisting liver disease, such as hepatitis or infectious mononucleosis, or who may have Reye syndrome, against the use of acetaminophen unless directed by a doctor. The comments cited reports in the medical literature concerning acetaminophen toxicity in persons with liver disease (Refs. 1 through 13). Two comments asserted that there is no evidence to warrant a warning regarding acetaminophen and preexisting liver disease. One of these comments submitted two clinical studies (Refs. 14 and 15) and a report (Ref. 16) to support its position.

In reviewing and evaluating the data and information submitted by the comments, the agency has concluded that there is insufficient evidence at present to propose a warning against the use of acetaminophen at recommended OTC dosages by individuals with preexisting liver disease.

The data and information in Refs. 1 through 7, Refs. 9 through 13, and Ref. 16 presented no evidence to show that OTC dosages of acetaminophen cause

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hepatotoxicity in persons with preexisting liver disease. Rosenberg et al. (Ref. 8) described two persons who developed jaundice during a course of infectious mononucleosis. As discussed in comment 25 above, the jaundice cannot be confidently ascribed to acetaminophen.

One of the clinical studies (Ref. 14) presents an open study of six male adults with chronic liver disease who were given 1 g acetaminophen every 4 hours four times a day. After 5 days of acetaminophen administration, there were no significant changes in liver enzyme laboratory values. The mean half-life of acetaminophen in these six subjects was 3.42±2.5. Ten hours after an initial dose of 1 g acetaminophen was administered on the first day, the plasma acetaminophen level was 1.9±1.5 μg/mL. There was no evidence of any significant accumulation of acetaminophen in the plasma of these individuals.

The other clinical study (Ref. 15) presents a placebo-controlled, double-blind, crossover study in which placebo or 4 g acetaminophen (1 g every 4 hours for four doses per day) was administered daily to 20 adults with preexisting liver disease of various types. The individuals were treated for 13 days and crossed over to the alternate regimen without a washout period. In comparing liver enzyme levels of the individuals during acetaminophen administration with those during placebo administration, no statistically significant differences were found. Three patients were excluded from the final analysis. One had changes in liver enzymes which could be attributed to the erratic course of his chronic active hepatitis. Although it is difficult to distinguish enzyme changes because of the erratic course of chronic active hepatitis versus drug-induced changes, the resulting rise in transaminases after rechallenge with acetaminophen raises the question of whether acetaminophen exacerbated this individual's chronic active hepatitis.

Additional data regarding the plasma half-life of acetaminophen in individuals with liver disease were presented at a meeting of FDA's Gastrointestinal Drugs Advisory Committee (Ref. 17). These data appeared to document prolonged serum half-life for acetaminophen in patients with liver disease. Nonetheless, the results of the placebo-controlled crossover study (Ref. 15) gave no evidence that this prolongation results in hepatotoxic levels of the drug. It should be pointed out, however, that prolonged acetaminophen half-life in the patients in this study was not documented, and thus it is not certain that the patients were at risk for possible adverse effects related to such prolongation.

Data pertaining to cytochrome P-450 enzyme levels in patients with liver disease may also be relevant to determining acetaminophen hepatotoxicity. Available data attribute the production of the hepatotoxic metabolite of acetaminophen to the cytochrome P-450 system. A reduction in activity of the cytochrome P-450 system then might result in reduced risk of hepatotoxicity.

The following data show decreased cytochrome P-450 levels in individuals with chronic liver disease. Farrell, Cooksley, and Powell (Ref. 18) showed that the cytochrome P-450 concentrations in patients taking enzyme-inducing drugs such as phenobarbital, phenytoin, and glutethimide are no different in control subjects than in persons with mild-to-moderate hepatitis or inactive cirrhosis. The patients with severe hepatitis or active cirrhosis who were taking enzyme-inducing drugs did have decreased cytochrome P-450 concentrations and may have lost the ability to respond to inducing agents.

Schoene et al. (Ref. 19) measured the cytochrome P-450 content in needle biopsies of the human liver and found that in individuals with severe hepatitis and cirrhosis, the cytochrome P-450 level was 50 percent of the control value. In individuals with either mild or moderate hepatitis, there was no change in the cytochrome P-450 level. Gabrielle et al. (Ref. 20) found no change in the cytochrome P-450 content in individuals with alcoholic steatosis and in those recovering from viral hepatitis compared with normal individuals. The cytochrome P-450 level in chronic persistent hepatitis was 10 percent of the level in the normal individuals. In chronic active hepatitis, the cytochrome P-450 level was 30 percent of that of a normal individual. Although these data suggest that the activity of the cytochrome P-450 system is reduced in individuals with severe liver disease, the relevance of this finding to acetaminophen hepatotoxicity in such individuals is not clear. It is possible that low cytochrome P-450 levels would protect against acetaminophen hepatotoxicity, but the evidence is conflicting on whether acetaminophen exacerbates liver disease.

In summary, the agency believes that at present there are insufficient data to support a warning against the use of acetaminophen by persons with preexisting liver disease such as hepatitis, liver function affected by infectious mononucleosis, or liver disease resulting from Reye syndrome.

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(17) Minutes of the FDA Gastrointestinal Drugs Advisory Committee, Fifteenth Meeting, December 12-13, 1979, included in OTC Volume 03BTFM.

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27. Several comments cited data to express concern that certain drugs which induce microsomal enzyme activity (e.g., alcohol and barbiturates) may increase the potential for acetaminophen-induced hepatotoxicity (Refs. 1 through 14). The comments recommended that warnings such as the following be required on the labeling of all products containing acetaminophen:

> Do not take this product if you use alcohol or barbiturates unless directed by a physician.
>
> Caution: Do not take this product if you are presently taking a prescription drug for epilepsy, barbiturates, or ethacrynic acid except under the advice and supervision of a physician.

A reply comment opposed the suggested warnings, stating that there is no evidence of any significant drug interaction of acetaminophen when used at recommended doses with drugs which induce microsomal enzyme activity.

The agency is not adopting the suggestion that consumers be warned against the use of ethacrynic acid with acetaminophen. The comments submitted no data to support such a warning, and the agency is not aware of data that indicate a need to warn consumers against the use of ethacrynic acid with acetaminophen.

After reviewing the data cited by the comments, the agency has determined that the results are conflicting and that there is insufficient evidence at this time to warrant a label warning against the use of OTC dosages of acetaminophen products with alcohol, barbiturates, or prescription drugs used for epilepsy.

One comment cited a commentary on acetaminophen which recommended that drugs such as phenobarbital and alcohol should not be used with acetaminophen because they appear to potentiate acetaminophen-induced hepatotoxicity (Ref. 1). However, no firsthand data were presented to support this recommendation. A report by Wilson et al. (Ref. 2) concerned a 13-year-old epileptic who took an overdose of acetaminophen and phenobarbital, subsequently developed hepatic encephalopathy, and died. These authors emphasized the seriousness of dealing with acetaminophen overdose, complicated in this case by the role of phenobarbital in potentiating the hepatotoxicity of acetaminophen.

Wright and Prescott (Ref. 3) retrospectively analyzed data on 16 individuals with hepatic necrosis following acetaminophen overdose. Eight of these individuals showed evidence of ingestion of either alcohol or barbiturates used in the treatment of epilepsy. Three individuals were chronic alcoholics. Wright and Prescott stated that their findings suggest that acetaminophen causes more severe hepatic necrosis in patients who have previously taken drugs that may cause induction of hepatic microsomal enzymes, such as barbiturates and alcohol. However, they conceded that their results must be interpreted cautiously because of the small number of individuals studied and because of uncontrollable factors such as age and nutritional state of the individuals, as well as the possibility of their ingesting other drugs.

Mitchell et al. (Ref. 4) concluded, as a result of their studies in rats and mice, that pretreatment of these animals with phenobarbital potentiates both the incidence and the severity of acetaminophen-induced hepatic necrosis. However, Prescott (Ref. 5) conducted a study on acetaminophen metabolism in 12 healthy volunteers and 15 individuals who were chronically using microsomal enzyme-inducing agents such as phenobarbital and diphenylhydantoin, drugs used in treating epilepsy. Prescott concluded that the production of hepatotoxic metabolites of acetaminophen was not increased in those individuals who used hepatic enzyme-inducing agents. These studies have produced conflicting results which are difficult to reconcile and from which firm conclusions cannot be drawn.

Scott and Stewart (Ref. 6) reported that most of the cases of acetaminophen overdose which they had seen were accompanied by some alcohol use and said that the time available for effective treatment of overdose may be "much reduced" in individuals with alcohol-damaged livers. Barker, de Carle, and Anuras (Ref. 7) observed severe liver damage in an alcoholic who had ingested "moderately excessive" amounts of acetaminophen (100 tablets of 300 mg acetaminophen 4 days before admission to the hospital). These investigators concluded that this individual's use of alcohol induced the formation of toxic acetaminophen metabolites, which made him more susceptible to liver injury from the "moderately excessive" dose of acetaminophen.

Emby and Fraser (Ref. 8) reported on two cases of acetaminophen overdose in alcoholics and concluded that "* * * the enhanced hepatotoxity of paracetamol (acetaminophen) in the presence of enzyme-inducing agents * * * has perhaps not been adequately emphasized." McClain et al. (Ref. 9) conducted studies in mice and also observed the clinical course of three chronic alcoholics who ingested therapeutic, rather than excessive, dosages of acetaminophen. McClain et al. stated that their findings "* * * suggest that alcohol enhances acetaminophen hepatotoxicity in mice and provides supportive evidence that these three alcoholic patients probably had a similar pathophysiological basis for their liver disease." Goldfinger et al. (Ref. 10) reported hepatic damage in an alcoholic who had ingested 9.75 g acetaminophen over a 2-day period prior to hospitalization. Vilstrup et al. (Ref. 11) reported on fulminant liver failure in a woman who was a known abuser of alcohol, diazepam, and barbiturates. The woman had taken a total of 5.4 g acetaminophen over a 2-day period for premenstrual pain and subsequently died.

The agency points out that the amount of acetaminophen ingested by the woman described by Vilstrup et al. is subject to question. It is also difficult to determine the exact daily dosage of acetaminophen ingested by those individuals observed by McClain et al. (Ref. 9) and Goldfinger et al. (Ref. 10). However, it appears that the individuals reported on by McClain et al. and Goldfinger et al. had ingested more than 4 g acetaminophen, which is the recommended maximum daily OTC dosage. In addition, the individual observed by Goldfinger et al. was using meprobamate, another hepatic microsomal enzyme inducer, in addition to alcohol and acetaminophen.

Olsson (Ref. 12) described an individual who had a 1-year history of alcohol abuse (occurring 7 years before hospitalization) and who was hospitalized with jaundice, hepatic cholestasis, and hepatic steatosis. This individual was using a drug containing acetaminophen and chlormezanone. Olsson acknowledged that it was impossible to obtain a reliable drug history from the patient. The role of alcohol is unclear, and chlormezanone could have induced the liver injury seen in this individual. Furthermore, no plasma acetaminophen determination was performed on this individual. Thus it is difficult to implicate acetaminophen and alcohol use positively as the causative factors in this case.

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Shamszad et al. (Ref. 13) compiled data that suggest that the half-life of acetaminophen is significantly prolonged in patients with liver disease from alcohol use. However, these investigators noted that when alcohol is used simultaneously with acetaminophen the plasma disappearance curve of acetaminophen is unchanged.

In considering the wide use of acetaminophen in the United States, and after evaluating the above data, the agency concludes that the evidence available to warrant a label warning against the use of OTC dosages of acetaminophen with barbiturates, prescription drugs for epilepsy, or alcohol is conflicting and insufficient. However, if additional data demonstrate the need for such warnings in the future, the agency will reconsider its present position.

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28. Citing reports in the literature (Refs. 1 through 9) to substantiate their argument, several comments stated that acetaminophen has many adverse effects that should be included in label warnings for products containing this ingredient. These adverse effects include allergic reactions with clinical signs such as skin rashes, drug-induced fever, or asthma attacks associated with cross-sensitivity between aspirin and acetaminophen. Other adverse effects include blood dyscrasias, which are abnormal conditions of the blood. An example is thrombocytopenia, a decrease in the number of platelets. The comments attributed these adverse effects either to allergic reactions or idiosyncratic reactions, which are abnormal reactions peculiar to the individual. They also recommended a label warning to advise consumers who are allergic to acetaminophen not to use products containing that drug, and a label warning to advise consumers who have asthma or are sensitive or allergic to aspirin to consult their physician before using acetaminophen drug products.

Two reply comments disagreed, arguing that clinical experience and the medical literature indicate that adverse effects from acetaminophen are rare and do not support the need for such warning statements. These comments also maintained that some of the references cited are single-case, anecdotal reports and that there is insufficient evidence in most of the cases to establish a cause-and-effect relationship between acetaminophen and the reported reactions.

The agency believes that the warnings which the comments requested are not warranted at this time because there is insufficient evidence that these adverse effects are being caused by acetaminophen. However, if sufficient evidence is presented to warrant new warnings in the future, the agency will act accordingly.

Two of the reports on adverse effects of acetaminophen cited by the comments had also been cited by the Panel and presented no new data for the agency's consideration (Refs. 3 and 4). Some of the reports cited by the comments were single-case reports of thrombocytopenia, which may have resulted from a number of factors, including idiosyncracy, or which may have been caused by agents other than acetaminophen (Refs. 1, 3, and 7). There were three single-case reports of skin rash following the use of acetaminophen (Refs. 4, 5, and 9), but no cases of drug-induced fever.

Studies present conflicting data on the occurrence of cross-sensitivity between aspirin and acetaminophen (Refs. 2, 6, 8, 10, and 11). Fisherman and Cohen's study (Ref. 2) contained five cases of cross-sensitivity between aspirin and acetaminophen. These researchers calculated an "intolerance index," which can be used to compare the tendency of various drugs to produce allergic reactions. The index is based on the usual therapeutic dose divided by the minimal dose needed to produce clinical symptoms of intolerance. This result is multiplied by the percent of patients showing intolerance. The calculated "intolerance index" of aspirin was 368 compared with 13.5 for acetaminophen, indicating that there is a low degree of cross-reactivity to acetaminophen in aspirin-sensitive patients.

The Smith study (Ref. 8) also contained five cases of cross-sensitivity between aspirin and acetaminophen. A challenge dose of several common analgesics was given to five aspirin-sensitive patients, two of whom indicated they were sensitive to acetaminophen. Smith measured the change in forced expiratory volume, which is a measure of air flow and pulmonary function, and noted whether rhinitis was present. Three of the patients had statistically significant drops in forced expiratory volume, and four patients also developed rhinitis following acetaminophen administration. This study indicates a potential problem in a person who is highly sensitive to aspirin and who uses analgesic drugs, including acetaminophen, but it does not explain the clinical significance of changes in the forced expiratory volume.

Other studies, not cited by the comments, found no sensitivity to acetaminophen among aspirin-sensitive patients (Refs. 10 and 11). Sampter and Beers (Ref. 10) tested acetaminophen in 182 aspirin-sensitive patients and found no adverse reactions. Other investigators tested 11 aspirin-sensitive patients with therapeutic doses of acetaminophen and found no reaction to acetaminophen (Ref. 11).

Because of the conflicting data on the incidence of cross-sensitivity between aspirin and acetaminophen, the agency is not proposing a warning about cross-sensitivity to other analgesics on the acetaminophen label. Although the potential for allergic reactions to acetaminophen does exist, the agency believes that the following statement in the warnings in § 343.50(c) (1)(i), (2)(i),

and (3) will adequately inform consumers to consult a doctor if an allergic reaction, such as a rash, should occur following the use of acetaminophen: "* * * if new symptoms occur * * * consult a doctor because these could be signs of a serious condition."

References

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(2) Fisherman, E.W., and G.N. Cohen, "Aspirin and Other Cross-Reacting Small Chemicals in Known Aspirin Intolerant Patients," *Annals of Allergy*, 31:476–84, 1973.

(3) Heading, R.C., "Purpura and Paracetamol" (letter to the editor), *British Medical Journal*, 3:743–44, 1968.

(4) Henriques, C.C., "Acetaminophen Sensitivity and Fixed Dermatitis" (letter to the editor), *Journal of the American Medical Association*, 214:2336, 1970.

(5) Michelson, P.A., "Rash, Weakness, and Acetaminophen," *Annals of Internal Medicine*, 83:374, 1975.

(6) Schmid, W.H., "Acetaminophen-Induced Bronchospasm," *Southern Medical Journal*, 70:590 and 612, 1977.

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(8) Smith, A.P., "Response of Aspirin-Allergic Patients to Challenge by Some Analgesics in Common Use," *British Medical Journal*, 2:494–498, 1971.

(9) Wilson, H.T.H., "A Fixed Drug Eruption Due to Paracetamol," *British Journal of Dermatology*, 92:213–214, 1975.

(10) Samter, M., and R.F. Beers, "Intolerance to Aspirin: Clinical Studies and Consideration of Its Pathogenesis," *Annals of Internal Medicine*, 68:975–983, 1968.

(11) Szczeklik, A., R.J. Gryslewski, and G. Czneriawska-Mysik, "Relationship of Inhibition of Prostaglandin Biosynthesis by Analgesics to Asthma Attacks in Aspirin-Sensitive Patients," *British Medical Journal*, 1:67–69, 1975.

29. One comment suggested that the professional labeling recommended by the Panel (§ 343.80) be revised to include the indications that the Panel did not place in Category I because of its concern about self-diagnosis. The comment argued that, although self-diagnosis is a valid concern for consumer-oriented labeling, this concern is irrelevant to professional labeling. Another comment suggested that the Panel's recommended warnings listed below be moved from consumer labeling to professional labeling because these statements refer to conditions that should be diagnosed and supervised by a physician. The comment concluded that these warnings are irrelevant to a consumer with an undiagnosed condition, and are not needed once the condition is diagnosed because the consumer is then under the care of a physician who will recommend proper medication and advise against inappropriate medication.

The warnings recommended by the comment for inclusion in professional labeling are as follows:

Section 343.50(c)(3)(i): "Take this product for the treatment of arthritis only under the advice and supervision of a physician."

Section 343.50(c)(3)(iv): "*Caution:* Do not take this product if you have stomach distress, ulcers, or bleeding problems except under the advice and supervision of a physician."

Section 343.50(c)(3)(v): "*Caution:* Do not take this product if you are presently taking a prescription drug for anticoagulation (thinning the blood), diabetes, gout, or arthritis except under the advice and supervision of a physician."

Section 343.50(c)(4)(i): "This product contains aspirin. Do not take this product if you are allergic to aspirin or if you have asthma except under the advice and supervision of a physician."

Section 343.50(c)(4)(ii): "Do not take this product during the last 3 months of pregnancy except under the advice and supervision of a physician."

Section 343.50(c)(4)(iii): "Do not take this product for at least 7 days after tonsillectomy or oral surgery except under the advice and supervision of a physician."

The request made by the first comment did not specify the indications it was referring to; therefore, the agency cannot respond.

The agency disagrees with the second comment's suggestion that the warnings listed above be moved to the professional labeling section of the monograph. These warnings are essential for the safe and effective use by consumers of the products to which they apply (with the exception of § 343.50(c)(3)(i), which is being deleted for reasons stated in comment 19 above), and the agency proposes to require them in consumer labeling.

30. One comment stated that the following warnings recommended by the Panel in § 343.50(c) should be eliminated from OTC analgesic and antipyretic drug products that are marketed in children's dosage units as children's products: "Adults: Do not take this product for more than 10 days. If symptoms persist, or new ones occur, consult your physician." "Adults: Drink a full glass of water with each dose." "Do not take this product during the last 3 months of pregnancy except under the advice and supervision of a physician."

The comment contended that these statements, clearly intended for adults, are unnecessary and inappropriate for analgesic and antipyretic drug products labeled for children. The comment added that requiring these warnings on small containers (e.g., the 36-tablet size limitation for pediatric aspirin products) will result in smaller print that will make the labeling message less conspicuous, less legible, and less likely to be read and understood by the consumer.

The comment also stated that the words "Children under 12 years" should be eliminated from the recommended warnings in § 343.50 (c)(1)(ii) and (c)(3)(iii)(b), for the reasons given above as well as the reason that the statement is superfluous because pediatric products are defined by the Panel in § 343.3(e) as products for children under 12 years.

The pregnancy warning recommended by the Panel in § 343.50(c)(4)(ii) is obviously not needed in products intended only for use in children. In addition, the pregnancy-nursing warning required for all OTC drugs intended for systemic absorption specifically provides for an exemption for drugs that are labeled exclusively for pediatric use. (See 21 CFR 201.63(c)(2).)

The agency agrees that the warnings for adults limiting use to not more than 10 days and directing them to drink a full glass of water with each dose (§ 343.50(c)(1)(i) and (c)(3)(iii)(a)) are unnecessary in the labeling of products intended only for use in children, as the warnings in § 343.50(c)(1)(ii) and (c)(3)(iii)(b) provide the necessary information for children under 12 years of age. The warnings recommended by the Panel in § 343.50(c)(1)(i) and (c)(1)(ii) are being revised and expanded into three warnings appearing in the tentative final monograph under the following sections: § 343.50(c)(1)(i), for products labeled for adults; § 343.50(c)(2)(i), for products labeled for children 2 years to under 12 years of age; and § 343.50(c)(3), for products labeled both for adults and for children 2 years to under 12 years of age. (See comment 18 above.)

The agency agrees that products that are clearly identified for use in children, e.g., infant drops, children's aspirin or acetaminophen tablets, do not have to be labeled with a statement in the warnings or in the directions specifying that they are for children under 12 years, as had been recommended by the Panel. Because the directions for use for such products do not include dosages for people over 12 years of age or under 2 years of age, further labeling specifying

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that these products are intended for use by children from 2 to 12 years of age appears to be unnecessary. Accordingly, new § 343.50(b)(4) is being proposed in the tentative final monograph as follows:

(4) *Other required statements*—(i) *For products labeled only for children 2 to under 12 years of age containing any ingredient identified in § 343.10.* (*A*) The labeling of the product contains, on the principal display panel, either of the following:

(*1*) "Children's (*trade name of product or generic name of ingredient(s)*)."

(*2*) "(*Trade name of product or generic name of ingredient(s)*) for Children."

(*B*) The labeling for adults in § 343.50(d) and the statement "Children 2 to under 12 years of age" in § 343.50(d)(3)(ii) are not required.

31. One comment supported and two comments opposed the part of the warning recommended by the Panel for aspirin drug products in § 343.50(c)(3)(iv) which states, "* * * Do not take this product if you have stomach distress * * *."

The supporting comment stated that aspirin drug products cause gastrointestinal distress at therapeutic doses and that their labeling should bear a warning to this effect. The opposing comments recommended deleting the term "stomach distress," contending that it has little meaning to consumers. The term is so all-inclusive, the comment maintained, it may discourage consumers from using aspirin for symptoms for which it is indicated. The comments explained that "stomach distress" often accompanies symptoms such as headache or fever, as with the common cold or flu, and that the warning may discourage consumers from using aspirin for these concurrent symptoms. One comment suggested that, as alternative labeling, consumers be warned against the use of aspirin "in cases of stomach ulcer and related symptoms."

Because the agency shares the comments' concern that the general term "stomach distress" can be applied to various symptoms and may have little meaning to consumers, the agency is proposing to delete this term from the warning recommended by the Panel in § 343.50(c)(3)(iv).

Although the agency believes that alternative labeling is warranted, it is not adopting the alternative labeling suggested by one of the comments because the term "related symptoms" is vague and probably has little meaning to consumers. As the Panel pointed out, plain aspirin products can cause stomach discomfort or "stomach problems," such as heartburn, upset stomach, or stomach pain, in certain individuals (42 FR 35387). Plain aspirin can also exert adverse effects on the gastrointestinal tract (i.e., mucosal erosion, ulceration, minor occult bleeding, etc.) which may exacerbate stomach problems associated with underlying gastrointestinal disease. These effects can also be produced by salicylates other than aspirin (42 FR 35417 to 35421).

Regarding buffered aspirin products, the Panel stated that "* * * evidence seems to indicate that buffered aspirin produces a lower incidence of gastric intolerance in some patients but not in all patients who exhibit gastric intolerance with regular (plain) aspirin products" (42 FR 35470). However, the agency notes that the Panel also stated that this evidence is conflicting. In addition, the investigators of another study on the incidence of gastric lesions in rheumatic patients using plain, buffered, or enteric-coated aspirin concluded that buffered aspirin with an acid-neutralizing capacity of 1.9 milliequivalents (mEq) per 325 mg aspirin did not appear to prevent aspirin-induced gastric damage (Ref. 1). However, these investigators stated that more definitive studies are needed which compare various aspirin preparations before any final conclusions are reached.

Another study showed that OTC doses of buffered aspirin tablets containing 6.4 mEq of antacid, which exceeds the amount of buffering present in most currently marketed buffered aspirin products, produced gastric mucosal injury. The investigators of this study concluded that such products offer little protection to the gastric and duodenal mucosa (Ref. 2). Furthermore, the Panel stated that there is evidence that highly buffered aspirin for solution will reduce, but not eliminate, the acute gastric erosions and occult blood loss produced by the local effects of aspirin in animals and humans with no predisposing gastrointestinal disease (42 FR 35471).

For these reasons, the agency tentatively concludes that it is necessary to advise consumers who have persistent or recurring stomach problems (such as heartburn, upset stomach, or stomach pain), which may be symptoms of an underlying gastrointestinal disorder, against using products containing aspirin (plain or buffered) or other salicylates unless directed by a doctor. Accordingly, the Panel's recommended warning in § 343.50(c)(3)(iv) (redesignated § 343.50(c)(1)(v)(B)) is being revised as follows: "Do not take this product if you have stomach problems (such as heartburn, upset stomach, or stomach pain) that persist or recur, or if you have ulcers or bleeding problems, unless directed by a doctor." This warning is also being revised in § 343.50(c)(2)(v)(B) for products labeled for children 2 years to under 12 years of age.

References

(1) Silvoso, G.R., et al., "Incidence of Gastric Lesions in Patients with Rheumatic Disease on Chronic Aspirin Therapy," *Annals of Internal Medicine*, 91:517–520, 1979.

(2) Lanza, F.L., G.L. Royer, Jr., and R.S. Nelson, "Endoscopic Evaluation of the Effects of Aspirin, Buffered Aspirin, and Enteric-Coated Aspirin on Gastric and Duodenal Mucosa," *New England Journal of Medicine*, 303:136–138, 1980.

32. One comment asserted that warning statements for aspirin drug products should be stated separately. The comment stated that the following warning is the most important warning to the consumer and should be displayed alone on the label so that its effect is not diminished: "Warning: Keep this and all medicines out of children's reach. In case of accidental overdose, contact a physician immediately." The comment stated that all other cautions on the use of aspirin drug products should be under a section designated "Cautions."

The agency agrees that the general warnings quoted above are among the most important provided for all OTC drugs to consumers. These warnings are required for OTC drug products in § 330.1(g) (21 CFR 330.1(g)). The agency agrees that manufacturers should consider displaying these warnings separately from other label warnings or highlighting them to attract consumers' attention.

Concerning the use of the terms "warning" and "caution," section 502(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(f)(2)) states, in part, that any drug marketed OTC must bear in labeling "* * * such adequate warnings * * * as are necessary for the protection of users * * *." Section 330.10(a)(4)(v) of the OTC drug regulations provides that labeling of OTC drug products should include "* * * warnings against unsafe use, side effects, and adverse reactions * * *."

The agency notes that historically there has not been consistent usage of the signal words "warning" and "caution" in OTC drug labeling. For example, in §§ 369.20 and 369.21 (21 CFR 369.20 and 369.21), which list "warning" and "caution" statements for drugs, the signal words "warning" and "caution" are both used. In some instances either

of these signal words is used to convey the same or similar precautionary information.

FDA has considered which of these signal words would be most likely to attract consumers' attention to that information describing conditions under which the drug product should not be used or its use should be discontinued. The agency concludes that the signal word "warning" is more likely to flag potential dangers so that consumers will read the information being conveyed. Therefore, FDA has determined that the signal word "warning," rather than the word "caution," will be used routinely in OTC drug labeling that is intended to alert consumers to potential safety problems. Accordingly, the signal word "caution" is being deleted from the Panel's recommended warnings in § 343.50(c)(3) (iv) and (v), redesignated § 343.50(c)(1)(v) (B) and (C) in this proposed monograph.

33. One comment stated that the first sentence of the aspirin hypersensitivity warning recommended in § 343.50(c)(4)(i), "This product contains aspirin," is redundant for products that display the word "aspirin" in the product name or are clearly labeled as containing "aspirin." The comment stated that part of the next sentence in the warning, "Do not take this product if you are allergic to aspirin * * *," is adequate to warn consumers and that the first sentence should be deleted.

The agency agrees with the comment. Because section 502(e)(1) of the act (21 U.S.C. 352(e)(1)) requires that the established name of the active ingredients contained in a product be included in the label, the statement, "This product contains aspirin," would be redundant. Therefore, in the tentative final monograph this statement is being deleted from the warning.

34. Two comments urged that all children's aspirin products be labeled to include a warning that salicylate intoxication can occur from a therapeutic overdose when "aspirin is repetitively administered to infants and young children *at commonly recommended doses and time intervals.*" The comments argued that parents have been inadequately alerted to the hazards associated with the cumulative effects of salicylate in infants and young children and that parents frequently ignore recommended dosage schedules for aspirin because they think this drug can be administered with relative impunity. The comments further argued that parents will often continue to give aspirin to relieve a child's fever when the fever actually may be due to aspirin toxicity. One comment noted that ringing in the ears (tinnitus) has no value as a warning of toxicity in the pediatric age group because it is subjective, and infants and young children cannot alert the parent to its occurrence. For these reasons the following warning was suggested for all aspirin drug products for children: "Do not exceed recommended doses unless directed by your physician. More than six consecutive doses at four-hour intervals can lead to serious complications in a feverish dehydrated infant or young child."

Two reply comments disagreed with these comments. One argued that the Panel's pediatric dosage schedule and its recommended warnings in § 343.50 (c)(1)(ii) and (c)(2) contain instructions that, when heeded by parents, are adequate to prevent overdosage. These comments also stated that overdoses may occur with any drug and that parents must be alerted not to exceed the recommended dosages of aspirin as well as other drugs. The comments agreed that tinnitus has no value as a warning symptom because it cannot be adequately described by infants and children. However, the comments pointed out that there are observable symptoms of aspirin toxicity, such as hyperpnea, which can be described in labeling as "deep and rapid breathing." The reply comments also stated that dehydration should not be included in the labeling because parents cannot diagnose this condition, which is rare and should be diagnosed by a doctor. The comments also maintained that such labeling would confuse the consumer and obscure other necessary information on the label.

The agency does not believe that children's aspirin drug products should be labeled with a warning stating that salicylate intoxication can occur when aspirin is taken in doses within the recommended dosage schedule (therapeutic overdose). The reports of overdose of salicylates cited by the comments showed that poisoning from accidental ingestion occurs more commonly in children over 2 years of age and that therapeutic overdose is more likely to affect children under 2 years of age (Refs. 1, 2, and 3). The label directions recommended by the Panel for aspirin state, "For children under 2 years of age, there is no recommended dosage except under the advice and supervision of a physician." Thus, parents are alerted to consult a physician before giving aspirin to children under 2 years of age. The physician is responsible for giving parents specific dosage instructions for aspirin given to children under 2 years of age and for warning parents of the potential dangers of exceeding the recommended dose.

For children 2 years of age and older, the Panel developed a new dosage schedule to help prevent therapeutic salicylate overdose. This dosage schedule not only is based upon a maximal dose that provides effective plasma levels for analgesic and antipyretic effects, but also has a safety margin in case of an inadvertent 50-percent increase in dosage. The agency believes that this children's dosage schedule, which has been slightly revised (see comment 58 below), and the revised warnings in § 343.50(c) (2)(i) and (3) provide adequate guidance to parents to prevent overdosage.

As for the additional labeling suggested by the comments, the agency believes that terms such as "dehydrated" and "deep and rapid breathing" have little meaning to consumers and are not appropriate for consumer labeling of aspirin drug products, although they may be used by doctors in diagnosing conditions due to toxicity. The information in the suggested labeling, "Do not exceed recommended doses unless directed by your physician," is provided in the directions for use by the phrase "or as directed by a doctor" or "unless directed by a doctor" after the usual recommended OTC dosage of the product.

References

(1) Craig, J.O., I.C. Ferguson, and J. Syme, "Infants, Toddlers, and Aspirin," *British Medical Journal*, 1:757–761, 1966.

(2) Done, A.K., and A.R. Temple, "Treatment of Salicylate Poisoning," *Modern Treatment*, 8:528–551, 1971.

(3) Tschetter, P.N., "Salicylism," *American Journal of Diseases of Children*, 106:134–146, 1963.

35. One comment contended that the warning not to take aspirin if taking a prescription drug for arthritis should not be included in the Panel's recommended warning in § 343.50(c)(3)(v). The comment further contended that the major responsibility of warning the consumer of drug interactions should rest with the prescribing physician and that the following statement by the Panel (42 FR 35372) should apply: "* * * physicians always carefully control the patient's use of all other medications, thereby negating the need for a warning."

The agency believes that many consumers who take prescription drugs will also use OTC analgesics and antipyretics, such as salicylates, without a physician's advice. These consumers may be unaware of possible interactions between the salicylates and prescription

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drugs and need to be alerted to this possibility in the labeling. Based upon the Panel's discussion of the increased potential for gastric ulceration if aspirin is taken along with another anti-inflammatory agent (42 FR 35409), the agency tentatively concludes that the warning on the concurrent use of salicylates with prescription drugs for arthritis is needed and therefore should be retained. The warning is not intended to prohibit such concurrent use, but to alert consumers to consult a doctor first.

36. Two comments objected to the Panel's recommended warning in § 343.50(c)(3)(v) that advises against the use of salicylates concurrently with prescription drugs for the treatment of gout. The comments asserted that the warning should be modified to apply only to the use of salicylates and uricosuric drugs, which are drugs that promote the excretion of uric acid in the urine. The comments argued that allopurinol, commonly prescribed for gout, is a nonuricosuric drug and is compatible with salicylates.

The agency endorses the labeling recommended in § 343.50(c)(3)(v) to alert consumers to consult a physician before using OTC salicylates with several types of prescription drugs, including those used in the treatment of gout. The agency concludes that differentiating between uricosuric and nonuricosuric drugs in the warnings for OTC salicylate drug products would be meaningless and confusing to consumers. Because the agency believes that it is important for consumers to understand the reason for this warning, it is proposing in the tentative final monograph that the information in § 343.50(c)(3)(v) (redesignated § 343.50(c)(1)(v)(C) in this monograph) be identified as a drug interaction precaution and appear as follows: "*Drug Interaction Precaution.* Do not take this product if you are taking a prescription drug for anticoagulation (thinning the blood), diabetes, gout, or arthritis unless directed by a doctor." This precaution has been modified in § 343.50(c)(2)(v)(C) for products labeled for children 2 years to under 12 years of age. For products labeled both for adults and children, the precaution for adults will apply. (See § 343.50(c)(3).)

37. One comment objected to the warning recommended by the Panel for aspirin and salicylate products in § 343.50(c)(3)(v), asserting that the potential for drug interaction is greater than that expressed in this labeling. The comment explained that because the information on drug interactions is increasing, the consumer who is using prescription medication should consult a physician before using any pain reliever. The comment suggested the following alternative labeling, explaining that it is broader and more inclusive than the Panel's labeling and will provide safer coverage to the consumer: "If you are taking any prescription medication, consult your physician before using any pain reliever."

Another comment suggested the general drug interaction warning, "If you are taking any prescription medications, consult your physician before taking this medication."

The agency believes the labeling suggested by the comments is too general, and consumers might completely ignore its message. In addition, the suggested warnings would not alert consumers to the specific types of drugs that may interact with OTC analgesics. As discussed in comment 35 above, the agency will propose specific drug interaction warnings to consumers when necessary for the safe use of an OTC drug product.

38. Some comments opposed and others favored the Panel's recommended warning in § 343.50(c)(4)(i) against the use of aspirin drug products by consumers who have asthma. The opposing comments stated that the references the Panel cited to support the need for the warning were outdated and included no reports of fatal asthma attacks. The comments argued that the warning is unnecessary because only about 2 percent of asthmatics experience an adverse reaction to aspirin. Asthmatics are under a doctor's care, the comments stated, and the doctor should warn them of possible adverse reactions.

A comment from a consumer, who suffers from asthma and had been unaware that aspirin could precipitate asthma attacks, supported the Panel's warning. The comment insisted that it is necessary to warn asthmatics who may also be unaware that an asthma attack may occur with the use of aspirin drug products. Another supporting comment suggested the following alternative warning to avoid creating consumer anxiety: "If you have asthma * * * consult your physician before using any pain reliever."

The agency is proposing the following warning in § 343.50(c)(1)(iv) for products containing aspirin or carbaspirin calcium: "Do not take this product if you are allergic to aspirin or if you have asthma unless directed by a doctor." The Panel stated that aspirin has long been associated with allergic-type reactions, such as asthma in hypersensitive individuals. In certain instances these reactions can be life-threatening and even fatal (42 FR 35397). The consumer's comment reaffirmed the need to warn asthmatic consumers who may not always be alerted to this danger by a doctor.

The agency is not proposing the warning suggested by one comment because it refers to "any pain reliever" and is thus too broad. The medical literature includes a few reports that certain pain relievers other than aspirin may precipitate asthmatic attacks in aspirin-sensitive patients. However, these reports do not agree on the analgesic drugs implicated and the mechanism of action involved (Refs. 1 through 7). The agency concludes that more data and information are needed to determine the need for an asthma warning for pain relievers other than aspirin drug products.

References

(1) "Analgesics and Asthma," *British Medical Journal*, 3:419–420, 1973.

(2) Assem, E.S.K., "Immunological and Non-Immunological Mechanisms of Some of the Desirable and Undesirable Effects of Anti-Inflammatory and Analgesic Drugs," *Agents and Actions*, 6:212–218, 1976.

(3) Fisherman, E.W., and G.N. Cohen, "Aspirin and Other Cross-Reacting Small Chemicals in Known Aspirin Intolerant Patients," *Annals of Allergy*, 31:476–484, 1973.

(4) Smith, A. P., "Response of Aspirin-allergic Patients to Challenge by Some Analgesics in Common Use," *British Medical Journal*, 2:494–496, 1971.

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(6) Szczeklik, A., and C. Czerniawska-Mysik, "Prostaglandins and Aspirin-Induced Asthma" (letter to the editor), *Lancet* 1:488, 1976.

(7) Weinberger, M., "Analgesic Sensitivity in Children With Asthma.," *Pediatrics*, 62:910–915, 1978.

39. One comment disagreed with the wording in the Panel's recommended warning for aspirin and other salicylate products in § 343.50(c)(3)(ii), "Stop taking this product if ringing in the ears or other symptoms occur." The comment argued that the consumer should not be advised to stop taking the product if tinnitus develops because many doctors use tinnitus as a guideline for adjusting a patient's dosage level of aspirin to a therapeutically effective and tinnitus-free level. The comment stated that the phrase "or other symptoms occur" should be deleted from the warning because it is vague and confusing to the consumer. The comment suggested the following alternative: "If ringing in the ears develops, consult your physician before taking any more medication."

The agency agrees that it is more appropriate to direct consumers with tinnitus to consult a doctor before taking more medication than to "stop taking" the product. The warning is being revised accordingly in the tentative final monograph. In addition, the phrase "or other symptoms occur" is being deleted from the warning because this phrase is synonymous with the phrase "if new symptoms occur," which has been included in the warnings in § 343.50(c)(1)(i), (2)(i), and (3).

The Panel noted that because aspirin or other salicylates produce a reversible ototoxicity manifested by deafness, it is important that patients who are regularly receiving salicylates at higher dosages be monitored by a physician for hearing loss as well as tinnitus. It is particularly important that patients with preexisting hearing loss be frequently monitored because they will not report tinnitus as plasma salicylate levels increase to toxic levels. An example of this was shown in a report from a consumer with a preexisting hearing loss who described a severe additional loss of hearing after using 50 grains (3,250 mg) of enteric-coated aspirin daily for a month (Ref. 1).

In view of the above considerations, the agency proposes to revise the warning, "Stop taking this product if ringing in the ears or other symptoms occur," to read as follows in § 343.50(c)(1)(v)(A) and (2)(v)(A): "If ringing in the ears or a loss of hearing occurs, consult a doctor before taking (giving) any more of this product."

Reference

(1) Letter from a consumer, included in OTC Volume 03BTFM.

40. One comment suggested that the term "bleeding problems" in the Panel's recommended warning in § 343.50(c)(3)(iv) be changed to "blood clotting problem." The comment argued that the term "blood clotting problem" is more accurate medically and would be more useful to consumers than "bleeding problems," which could be interpreted to include a minor cut that bleeds somewhat longer than usual. The comment provided three references to support its position (Refs. 1, 2, and 3).

The references provided by the comment do not suggest that the term "blood clotting problem" has more meaning to consumers than the term "bleeding problems." Two discuss bleeding time and other laboratory measurements (Refs. 1 and 2); the third discusses the side effect of gastrointestinal bleeding from aspirin use (Ref. 3).

The agency believes that the term "bleeding problems" as used in the warning in § 343.50(c)(3)(iv) (redesignated § 343.50(c)(1)(v)(B)) is accurate and useful to consumers. The Panel recommended the wording in this section to warn persons who have bleeding problems that they should not take aspirin except under the advice and supervision of a physician. Persons with bleeding problems such as hemophilia, von Willebrand's disease, thrombosthenia, or thrombocytopathia may react to aspirin drug products with a markedly prolonged bleeding time that might lead to a significant loss of blood in the gastrointestinal tract or elsewhere.

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(1) Ingelfinger, F. J., "The Side Effects of Aspirin," *New England Journal of Medicine*, 290:1196–1197, 1974.

(2) Kaneshiro, M. M., et al., "Bleeding Time After Aspirin in Disorders of Intrinsic Clotting," *New England Journal of Medicine*, 281:1039–1042, 1969.

(3) Sanfelippo, M. J., and C. V. Hussey, "Thrombopathy: Identification and Distribution," *American Journal of Clinical Pathology*, 61:628–638, 1974.

41. One comment urged that the labeling of aspirin tablets direct consumers to take these products with food or milk. The comment personally attributed an incident of gastrointestinal bleeding to taking aspirin tablets with water rather than with milk or food, and maintained that food or milk would have coated the stomach and prevented the bleeding.

The comment submitted no data to support its viewpoint. The Panel considered whether salicylates should be taken with food, but concluded that it was most important that solid, oral dosage forms containing salicylates be taken with water to lessen the chance of gastric irritation (42 FR 35356). In fact, the Panel recommended the following warnings in § 343.50(c)(3)(iii): (*a*) "Adults: Drink a full glass of water with each dose," and (*b*) "Children under 12 years: Drink water with each dose."

The Panel specified a full glass of water for adults for each dose of salicylates. At gastric pH, 8 ounces or more of water is required to dissolve a dose of aspirin, the most commonly used salicylate. Undissolved salicylate in contact with the gastric mucosa is one cause of gastric irritation following salicylate ingestion. Although salicylate solution is less irritating than undissolved salicylate, the solution could also be irritating to the highly sensitive individual (42 FR 35387). Solid foods would delay the dissolution of salicylates, allowing the undissolved salicylate to remain in contact with the gastric mucosa longer, but liquid foods, such as juice or milk, dissolve salicylate. However, the agency is concerned that, because of their acidity, taking some juices with aspirin may cause more irritation to the stomach than taking aspirin with water. Also, the agency is unaware of any data showing that milk will lessen the gastric irritation caused by aspirin. Therefore, the agency concurs with the Panel that consumers should be advised to take solid, oral dosage forms of salicylates with water to lessen the chance of gastric irritation. The agency believes that these statements belong under the directions for use, rather than in the warnings. Consequently the warnings recommended by the Panel in § 343.50(c)(3)(iii) (*a*) and (*b*) have been designated as directions in § 343.50(d)(3)(i) and (ii) of this tentative final monograph.

42. Two comments urged Category II status for the following labeling claims for buffered aspirin: "Buffering agents to help make the pain reliever more gentle to the stomach," "helps prevent the stomach upset often caused by plain aspirin," "* * * provides ingredients that may prevent the stomach distress that plain aspirin occasionally causes but should not be taken by certain individuals with stomach disorders as cautioned elsewhere on the label," "faster to the bloodstream than plain aspirin," and claims implying more rapid analgesia as a result of an increased absorption rate.

The comments pointed out that the Panel concluded that there is insufficient evidence to substantiate the claims that buffered aspirin or highly buffered aspirin for solution (aspirin and antacid) can be safely used by persons who should not use plain aspirin. The comments stated that these claims may lead consumers to think that buffered aspirin products either give faster or greater pain relief than plain aspirin or cause less or no stomach distress. The comments expressed concern that reliance on claims relating to less stomach distress with buffered aspirin products could lead to a clinical danger in alcoholics and in persons who are prone to ulcers. Referring to claims such as "gets to the bloodstream faster than plain aspirin," the comments argued that blood level studies do not constitute acceptable scientific evidence to show that buffered products of this type are therapeutically superior to plain aspirin.

Other comments urged Category I status for the above labeling claims for buffered aspirin, stating that consumers should be informed of the purpose of buffering, and requested that the agency

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provide specific information on the criteria for achieving Category I status for these Category III labeling claims. The comments noted that the Panel stated that the evidence, although conflicting, seems to show a lower incidence of stomach upset produced by buffered aspirin in some patients who exhibit gastric intolerance to plain aspirin (42 FR 35470). The comments also noted that such labeling claims are qualified or modified by the words "may" and "occasionally" and the phrase "* * * but should not be taken by certain individuals with stomach disorders as cautioned elsewhere on this label." The comments contended that the Panel classified stomach upset claims for buffered aspirin as Category III because the Panel believed that the benefits from the use of buffered aspirin in such instances affect only a few consumers, and not because such claims imply that buffered aspirin products have a therapeutic advantage over plain aspirin.

The comments also contended that there is no proof of a lack of relationship between variations in bioavailability of aspirin products and their resultant clinical effect. The comments argued that if a buffered aspirin product is absorbed more rapidly than plain aspirin and provides the consumer with some therapeutic advantage, labeling claims regarding faster absorption, such as "faster to the bloodstream than plain aspirin," would not be misleading to consumers and should be allowed.

The agency's response to these comments covers all buffered aspirin products, including aspirin with antacid products (such as highly buffered aspirin for solution), because the labeling claims apply to all such products.

The Panel found (1) "Comparisons of the most commonly used plain and buffered aspirin show that salicylate blood levels are twice as high in the first 10 to 20 minutes for the buffered aspirin product compared to regular aspirin," (2) "The basic problem is that there are no well-controlled clinical studies that unequivocally prove or disprove that these differences in absorption will result in clinically important differences in the onset, intensity or incidence of relief of pain or fever," and (3) Category III should be used to classify claims which cannot be fully evaluated with present data but have some reasonable basis and can probably be evaluated by further testing, perhaps involving more sensitive methodology." (See 42 FR 35480.) The Panel also expressed concerns that such claims could be confusing to the public.

The agency concurs that the studies submitted to the Panel are inconclusive to support a claim of more rapid action. The agency concludes that although there were apparent higher blood salicylate levels for buffered aspirin in some studies, there remains insufficient evidence on the basis of controlled clinical analgesic studies, that buffered aspirin products provide a more rapid onset, greater peak intensity, or a more prolonged duration of analgesia than unbuffered aspirin. Because no new data have been submitted to answer the Panel's concerns, claims such as "faster to the bloodstream than plain aspirin" remain classified in Category III.

Further, based upon the data submitted to the Panel, the agency concludes that there is not sufficient evidence to clearly demonstrate that buffered aspirin may help those individuals subject to stomach upset associated with aspirin ingestion. The Panel noted that the results, of the clinical studies comparing buffered aspirin to plain aspirin in which the symptom of gastric intolerance was evaluated, appear to be conflicting, but that the data seemed to indicate that buffered aspirin produces a lower incidence of gastric intolerance in some sensitive individuals. (See 42 FR 35480.) Accordingly, the Panel classified the following label claim in Category III: "Provides ingredients that may prevent the stomach distress that plain aspirin causes but should not be taken by certain individuals with stomach disorders as cautioned elsewhere on the label."

Citing the significant variation in dissolution rates among marketed formulations of buffered and unbuffered aspirin products, the Panel stated that the clinical evidence for a given buffered aspirin product could not necessarily be extrapolated to other buffered aspirin formulations. In addition, the Panel noted studies that suggest that an adequately buffered aspirin product may not have an advantage over a well formulated unbuffered product (42 FR 35375). The Panel recommended that specific standards be established for both buffered and unbuffered aspirin products (42 FR 35469). The Panel was uncertain about whether the observed decrease in gastric intolerance of buffered aspirin products was due to the buffering effect on the pH of the microenvironment surrounding the dissolving particles on the stomach lining, the increased dissolution rate, or both. Based on these uncertainties, the Panel stated its opinion that the Category III label claim could be used provided the minimum requirements for buffering capacity (1.9 mEq of acid neutralizing capacity per 325 mg aspirin) are met and the product had a dissolution rate similar to the buffered aspirin used in most of the clinical studies reviewed by the Panel (42 FR 35469 and 35470).

At this time, based upon the data that have been reviewed, the agency agrees that the clinical evidence is inconclusive to support a claim of better gastrointestinal tolerance for buffered aspirin products. However, industry has provided additional data in the form of three new clinical studies (Ref. 2). Detailed information on the disolution profiles and acid neutralizing capacity of the formulations used in these studies were also provided. These data are currently undergoing review by the agency, and will be discussed in the preamble to the final rule for OTC internal analgesic, antipyretic, and antirheumatic drug products.

It should be further noted that after the Panel's report was published, standards for acid neutralization (which is the Panel's recommended standard for acid neutralization for buffered aspirin products) and dissolution rates of buffered aspirin tablets were added to the United States Pharmacopeia (U.S.P.) (Ref. 1). As discussed in comment 98 below, the agency is proposing to incorporate these standards in the internal analgesic monograph. Products that meet these U.S.P standards are identified as "Buffered Aspirin." Accordingly, for buffered aspirin products meeting these standards, the agency is providing for the optional statement "contains buffering ingredients" in this tentative final monograph.

The agency agrees with the comment that consumers should be informed of the purpose of buffering. However, the clinical studies reviewed by the Panel and the Agency, are inconclusive. Until the new data (Ref. 2) are fully evaluated, claims regarding decreased gastric irritation are classified in Category III.

References

(1) "United States Pharmacopeia XXI—National Formulary XVI," Supplement 4, United States Pharmacopeial Convention, Inc., Rockville, MD, p. 2131, 1986.

(2) Comment No. SUP00032, Docket No. 77N–0094, Dockets Management Branch.

43. One comment requested that the claim "faster to the bloodstream than plain aspirin" be allowed for powder dosage forms of aspirin. The comment noted that the Panel acknowledged the rapid absorption of powders by stating: "They [powders] are rapidly absorbed however, often reaching peak blood levels more rapidly than the tablet dosage form" (42 FR 35376). The comment stated that clinical studies comparing the absorption of an aspirin powder with absorption of aspirin tablets were submitted to the Panel, but there is no indication in the monograph that the Panel considered these studies. The comment also provided a more recent clinical study to support its contention that aspirin in powder form is more quickly absorbed than plain aspirin tablets (Ref. 1).

The studies to which the comment referred were reviewed by the Panel (Ref. 2). Based on these studies and other information, the Panel stated that powders, because of their large surface area, are rapidly absorbed and may often reach peak blood levels more rapidly than tablets.

The additional study submitted by the comment compares the rate of absorption of five different oral aspirin formulations—three in tablet form and two in powder form (Ref. 1). Three minutes after dosing, blood concentrations were higher with the powdered formulations than the tablet formulations. Over a 15-minute period, the powdered aspirin formulations and one buffered aspirin tablet formulation provided the highest blood levels of aspirin.

After considering the above data and information, the agency concurs with the Panel's statement that powders may often reach peak blood levels more rapidly than a tablet dosage form. However, the Panel also concluded that there was a lack of clinical studies that would prove or disprove that such differences in absorption will result in clinically important differences in the onset, intensity, or incidence of relief of pain or fever (42 FR 35480). As discussed in comment 42 above, the agency agrees with the Panel. Because the comment provided no clinical data that demonstrate a relationship between faster absorption and faster or enhanced pain relief, the claim "faster to the bloodstream than plain aspirin" is classified in Category III for powder dosage forms of aspirin. The agency has determined that for this claim to have clinical significance to consumers and to be included in the monograph, data are needed that establish that this effect makes a difference in the onset, intensity, or incidence of relief of pain or fever.

References

(1) Babish, J.G., "A Blood Absorption Study on Aspirin Formulation," draft of unpublished report in Comment No. C00032, Docket No. 77N–0094, Dockets Management Branch.

(2) OTC Volume 030058.

44. One comment requested that the following Category III labeling claims for buffered aspirin products be allowed for carbaspirin calcium: "Faster to the bloodstream than plain aspirin" and "provides ingredients that may prevent the stomach distress that plain aspirin occasionally causes but should not be taken by certain individuals with stomach disorders as cautioned elsewhere on the label." To support its request, the comment pointed out that the Panel concluded that carbaspirin calcium (formerly calcium carbaspirin) has a more rapid dissolution rate than aspirin and that slightly less gastrointestinal bleeding may result from its use (42 FR 35417).

Although carbaspirin calcium may produce slightly less gastrointestinal bleeding than aspirin, the agency notes that the Panel found no evidence that gastric bleeding is related to gastric upset (see comment 46 below); therefore, decreased gastrointestinal bleeding is not sufficient evidence to prove that carbaspirin calcium may be indicated when aspirin cannot be tolerated. With regard to rate of dissolution, the Panel reported on a study by Levy and Hayes that showed that the dissolution half-time of calcium acetylsalicylate carbamide complex (carbaspirin calcium) is the same as that of aspirin buffered with aluminum glycinate and magnesium carbamide (Ref. 1). The authors stated that the incidence of local gastric irritation and the absorption rate of a drug is a function of its dissolution rate (in its particular dosage form). While the results of the study by Levy and Hayes (Ref. 1) are indicative of the rapid dissolution of the product used in the study, an in vitro dissolution test alone is not adequate to support the use of the stomach distress claim for this ingredient. Moreover, because dissolution rates can be significantly influenced by product formulation, the results cannot be extrapolated to other formulations containing carbaspirin calcium. In the absence of any supporting clinical data, the agency is not proposing to include the claim, "provides ingredients that may prevent the stomach distress that plain aspirin occasionally causes but should not be taken by certain individuals with stomach disorders as cautioned elsewhere on the label" for this ingredient in the tentative final monograph and classifies the claim in Category III.

As discussed in comment 42 above, the agency agrees with the Panel that there is a lack of clinical studies to demonstrate that differences in absorption will result in clinically important differences in the onset, intensity, or incidence of the relief of pain or fever. Similarly, the agency concludes that the data are not sufficient to demonstrate that differences in dissolution will result in a clinically important difference in analgesia. Therefore, the agency classifies the claim "faster to the bloodstream than plain aspirin" in Category III for this ingredient. The agency has determined that for this claim to have clinical significance to consumers and to be included in the monograph, data are needed that establish that this effect makes a difference in the onset, intensity, or incidence of relief of pain or fever.

Reference

(1) Levy, G., and B.A. Hayes, "Physicochemical Basis of the Buffered Acetylsalicylic Acid Controversy," *New England Journal of Medicine*, 262:1053–1058, 1960.

45. One comment requested that the following claims for choline salicylate be permitted as Category I labeling: "Acts five times faster than aspirin," "reaches peak action twelve times faster than aspirin," "does not cause the gastrointestinal bleeding associated with the administration of aspirin and other salicylate compounds," "causes less gastric irritation," and "may be taken on an empty stomach and may prevent the stomach distress that aspirin occasionally causes but should not be taken by certain individuals with stomach disorders as cautioned elsewhere on the label." The comment pointed out that the Panel referred to studies showing that choline salicylate does not cause as much gastric bleeding as aspirin and that there is a lower incidence of gastrointestinal distress after choline salicylate administration than after aspirin administration (42 FR 35418). The comment noted that the claims "acts five times faster than aspirin" and "reaches peak action twelve times faster than aspirin" are included in the approved new application (NDA) labeling of choline salicylate.

The OTC drug product referred to by the comment as being the subject of an NDA was approved in 1959. The product was further evaluated under the Drug Efficacy Study Implementation (DESI) Program by the Panel on Neurological Drugs and the Panel on Drugs Used in Rheumatic Diseases. The agency published the Panels' findings in the **Federal Register**, of April 20, 1972 (37 FR 7820). The Panel on Neurological Drugs concluded that adequate studies showed that blood salicylate levels after choline salicylate administration were 5 times as high in 12 minutes and twice as high in 30 minutes but that there were no clinical studies to show that the onset of analgesic action was sooner, greater, or

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more prolonged than with aspirin (37 FR 7823). In the same **Federal Register**, the agency stated that any further action on the product was deferred pending completion of the OTC drug review (37 FR 7820).

The Internal Analgesic Panel reported on several studies that indicated that choline salicylate is more rapidly absorbed than aspirin. However, the Panel reached the same conclusion as the DESI Panel on Neurological Drugs that there is a lack of clinical studies to demonstrate that more rapid absorption will result in a significant clinical effect (42 FR 35418). As discussed in comment 42 above, the agency concludes that the claim "faster to the bloodstream than plain aspirin" is a Category III claim because of the lack of such clinical data. Similarly, the agency concludes that the data are not adequate to support the claims "acts five times faster than aspirin" and "reaches peak action twelve times faster than aspirin." The agency notes that the Panel concluded that such claims should be classified in Category II. However, the Panel also concluded that Category III should be used to classify claims that have a reasonable basis and probably can be evaluated by further testing (42 FR 35435 and 35480). The agency concludes that such a reasonable basis exists and that such claims should be classified in Category III. The agency has determined that for this claim to have clinical significance to consumers and to be included in the monograph, data are needed that establish that this effect makes a difference in the onset, intensity, or incidence of relief of pain or fever.

Regarding the claims concerning the effect of choline salicylate on the stomach, the Internal Analgesic Panel concluded that based on its review of the submitted data further testing was required to substantiate claims such as "may be taken on an empty stomach and may prevent the stomach distress that aspirin occasionally causes" and proposed a Category III classification for such statements (42 FR 35418). The Panel did note that choline salicylate like highly buffered aspirin is ingested as a solution and may have a performance action similar to highly buffered aspirin for that reason. In the absence of any new supporting clinical data, the agency is placing the above labeling statement and the related claim "causes less gastric irritation" in Category III.

The agency is not proposing to include in the monograph the claim "does not cause the gastrointestinal bleeding associated with the administration of aspirin and other salicylate compounds." This statement refers to occult bleeding. The agency believes that allowing this claim may confuse or unduly alarm consumers by implying that aspirin frequently or commonly causes overt bleeding (or hemorrhaging) from the gastrointestinal tract. The agency believes that this claim is not appropriate for use in the labeling of OTC internal analgesic drug products containing choline salicylate and therefore proposes that this claim be classified as Category II.

46. One comment requested that products containing magnesium salicylate be allowed to claim that this ingredient has less potential to cause irritation of the gastrointestinal tract than aspirin. The comment contended that a submission to the Panel contained enough data to justify this claim (Ref. 1) and provided a letter from a physician stating that his clinical experience shows that patients tolerate magnesium salicylate better than aspirin. The comment also cited magnesium salicylate's physicochemical characteristics as additional support for the claim that it produces less gastrointestinal irritation than aspirin, explaining that magnesium salicylate goes into solution at a higher pH than aspirin and the magnesium ions may provide some buffering capacity.

The data reviewed by the Panel and cited by the comment included a human study in which a gastrocamera showed that both magnesium salicylate and aspirin caused some irritation of the mucous membranes of the stomach. However, the Panel concluded that the results of the study showed no significant difference in the degree of irritation between the ingredients. From other human studies, using radioactive chromate labeling of red blood cells, the Panel concluded that magnesium salicylate might produce less gastrointestinal bleeding than aspirin (42 FR 35419). However, the Panel concluded that there is no evidence that gastric bleeding is related to gastric upset and that these studies are not sufficient to prove that magnesium salicylate may be indicated when aspirin cannot be tolerated. The agency agrees with the Panel's conclusions. Because no new information has been submitted, the agency is placing the claim that magnesium salicylate has less potential for causing gastrointestinal irritation than does aspirin in Category III. Adequate clinical studies are necessary to support such a claim.

Reference

(1) OTC Volume 030042.

47. Several comments supported the Panel's recommendation against concurrent analgesic-antacid labeling claims for highly buffered aspirin for solution and urged adoption of the stomach distress warning recommended in § 343.50(c)(3)(iv). The comments stated that highly buffered aspirin for solution can cause gastrointestinal distress (stomach distress), peptic ulceration, and massive gastrointestinal bleeding and that the risk of gastrointestinal bleeding increases when this product is used with alcohol. The comments cited a "personal communication" and published studies (Refs. 1 through 5) to support this concern.

Other comments opposed the Panel's recommendation and argued that highly buffered aspirin for solution can be safely used to relieve concurrent symptoms of headache and upset stomach. The comments stated that this drug product does not cause mucosal erosions, and does not cause massive gastrointestinal bleeding, with or without alcohol. The comments stated that the "stomach distress" warning would preclude the marketing of these products for concurrent symptoms of headache and upset stomach. One comment expressed concern that if a highly buffered aspirin for solution cannot be marketed for concurrent symptoms of headache and upset stomach, consumers will substitute less widely used and tested products containing acetaminophen and antacid.

Highly buffered aspirin for solution contains a sufficient quantity of buffering ingredients to conform to the specifications for antacids established in the final monograph for OTC antacid drug products (21 CFR 331.10). Such products have been marketed for consumers with symptoms that require both an analgesic and an antacid, such as headache with heartburn or headache with "upset stomach."

In the final monograph for OTC antacid drug products published in the **Federal Register** of June 4, 1974 (39 FR 19869), the agency concluded that there is a significant target population for which a combination product containing a salicylate and an antacid provides rational concurrent therapy. The agency further concluded that because the safety evidence for the use of analgesic-antacid combination products is derived from studies and experience with products intended for administration as a solution, the use of these combinations for concurrent symptoms should be limited to these types of products (39 FR 19869 and 19875). When the final monograph for OTC antacid drug products was published, the agency had received no data to show that such a combination product would be unsafe to use for concurrent symptoms, nor have such data been received since publication of the advance notice of proposed rulemaking for OTC internal analgesic drug products. The agency has also not received any data showing that highly buffered aspirin for solution presents the risk of massive gastrointestinal hemorrhage or that using these products with alcohol increases the risk of massive gastrointestinal bleeding in normal individuals. References 1 through 5, cited by one comment, discuss the association of alcohol and aspirin products with gastrointestinal bleeding, but do not provide sufficient evidence that the use of highly buffered aspirin and alcohol is associated with massive gastrointestinal bleeding. The agency could not assess the "personal communication" because the comment did not provide a copy.

The agency concurs with the Internal Analgesic Panel's recommendation that aspirin products should not be used by consumers who have ulcers, bleeding problems, or recurring or persistent stomach problems. This recommendation is supported by the findings of a study on gastrointestinal hemorrhage in persons with stomach problems who used an aspirin-antacid for solution combination product (Ref. 6). However, the agency finds a lack of data to preclude the use of aspirin-antacid products as an analgesic-antacid for concurrent symptoms of headache and heartburn, etc., provided the product is intended for ingestion as a solution and provides at least 5 mEq of acid-neutralizing capacity (as specified in § 331.10(a)). Therefore, the agency is proposing that any highly buffered aspirin for solution or other aspirin-antacid product for solution be identified as a "pain reliever-fever reducer" (or the variation permitted in § 343.50(a)) and "antacid." (Products containing acetaminophen with antacid, identified in § 343.20(b)(1) in the tentative final monograph, are also being identified in the same manner.) However, the agency is not proposing to restrict acetaminophen-antacid products to dosage forms intended for ingestion as a solution because acetaminophen does not have the adverse effects on the gastrointestinal tract that are associated with aspirin (see 42 FR 35413).

The agency recognizes that in addition to a target population which uses highly buffered aspirin for solution and other aspirin with antacid products for concurrent symptoms of minor aches and pains and acid indigestion, there are consumers who also use such products just for analgesic-antipyretic use alone. The agency concludes that these products are safe and effective for both uses and that the labeling of these products should provide for use of the product for either concurrent symptoms or analgesic-antipyretic use alone. The agency notes that currently marketed products are labeled for both uses.

Therefore, the agency is proposing the following statements of indications for products containing aspirin with antacid, based on the indications for analgesic-antipyretic ingredients in § 343.50(b)(1) and the indications for antacids in § 331.30(b). New § 343.60(b)(4) for aspirin with antacid products (aspirin and antacid combinations) is being added to the tentative final monograph as follows:

(4) *For permitted combinations identified in § 343.20(b)(3).* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") [which may be followed by: "and upset stomach associated with" (select one of the following, as appropriate: "this symptom" or "these symptoms")] and "Also may be used for the temporary relief of minor aches and pains alone" [which may be followed by one or more of the following: ("such as associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," "toothache," "muscular aches," "backache" "the premenstrual and menstrual periods" (which may be followed by: "(dysmenorrhea)"), or "premenstrual and menstrual cramps" (which may be followed by: "(dysmenorrhea)")]), ("and for the minor pain from arthritis"), and ("and to reduce fever.")]

Although the above indications apply to aspirin with antacid products, such products should not be used by persons who have persistent or recurring stomach problems, such as acid indigestion, or who have ulcers or bleeding problems, as stated in the warnings in § 343.50(c) (1)(v)(8) and (2)(v)(8). (See comment 31 above.)

The agency is proposing that products containing acetaminophen with antacid be identified according to §§ 331.30 and 343.50 and bear labeling indications in accordance with § 343.60(b)(2). The agency believes that the proposed labeling for acetaminophen with antacid products and for aspirin with antacid products (including highly buffered aspirin for solution products) provides for the safe and effective OTC use of both combinations.

The agency is aware that the Antacid Panel recommended that any generally recognized as safe and effective analgesic ingredient could be combined with any antacid for concurrent symptoms (38 FR 8724) and that this recommendation is included in the final monograph for OTC antacid drug products (21 CFR 331.15(b)). However, this recommendation was based on data submitted for an aspirin-antacid combination product and an acetaminophen-antacid combination product both in forms intended for ingestion as a solution. No data were submitted to either the Antacid Panel or the Internal Analgesic Panel to support combinations of other Category I analgesics, especially non-aspirin salicylates, e.g., magnesium salicylate with an antacid. Because there are not sufficient data to support such combinations and because of a lack of evidence of the marketing of these combinations, the agency is not proposing to include combinations of non-aspirin salicylates (i.e., choline salicylate, magnesium salicylate, and sodium salicylate) and carbaspirin calcium with antacids in this tentative final monograph and is classifying such combinations in Category III. The final monograph for OTC antacid drug products currently provides for antacid-analgesic combinations marketed in a form intended for ingestion as a solution only (21 CFR 331.15(b)). That monograph, which was developed many years ago, provides for an antacid to be combined with any generally recognized as safe and effective analgesic ingredient(s). However, as discussed above, certain possible combinations have never been marketed and lack supporting data. Therefore, elsewhere in this issue of the **Federal Register**, the agency is proposing to amend the antacid final monograph so that it and the internal analgesic monograph will be consistent.

References

(1) Needham, C.D., et al., "Aspirin and Alcohol in Gastrointestinal Haemorrhage," *Gut*, 12:819–821, 1971.

(2) Jennings, G.H., "Causal Influences in Haematemesis and Melaena," *Gut*, 6:1–13, 1965.

(3) Astley, C.E., "Gastritis, Aspirin, and Alcohol" (letter to the editor), *British Medical Journal*, 4:484, 1967.

(4) Mould, G., "Faecal Blood-Loss after Sodium Acetylsalicylate Taken with Alcohol" (letter to the editor), *Lancet*, 1:1268, 1969.

(5) Croft, D.N., "Gastritis," *British Medical Journal*, 4:164–166, 1967.

(6) Innes, J.A., M.J. Ford, and J.F. Munro, "Gastro-Intestinal Haemorrhage Following

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Ingestion of 'Alka-Seltzer,'" *Scottish Medical Journal*, 25:105–106, 1980.

48. One comment asserted that the terms "extra strength" and "extra pain relief" should be allowed in describing products containing 500 mg acetaminophen. The comment contended that these terms are justified because 1,000 mg (two 500-mg tablets) acetaminophen provides greater pain relief than 650 mg acetaminophen (two 325-mg tablets). Other comments opposed the use of such labeling claims. One comment proposed that the labeling of products containing nonstandard dosage units contain a statement denying the therapeutic advantage of products labeled in this manner.

The agency recognizes, as the Panel did, that the OTC drug market currently includes many different products containing analgesic-antipyretic drugs, either as single active ingredients or in combination with other active ingredients. Most of these products contain either aspirin or acetaminophen in varying amounts of active ingredients(s) per dosage unit.

The Panel believed that the availability of products containing different amounts of aspirin per dosage unit is confusing to consumers and encouraged the current use of claims such as "higher levels of pain reliever." To inform the consumer more fully of the contents and therapeutic capabilities of these products and to minimize confusion, the Panel recommended that products be clearly labeled as to the amount of active ingredient per dosage unit. The Panel further recommended the establishment of standard dosage units for aspirin, acetaminophen, and sodium salicylate (42 FR 35357). Based on these criteria, the Panel proposed that these ingredients and comparable analgesic drugs be labeled as containing either a "standard" or "nonstandard" dosage unit. As discussed in comment 53 below, the agency will not require the terms "standard" and "nonstandard" in labeling.

The Panel did not specifically address the terms "extra strength" and "extra pain relief," but did recommend a wide dosage range for which OTC analgesic-antipyretic drug products are safe and effective. The Panel recommended a 325-mg minimum effective dose, but also recognized 650 mg as the usual single dose. Furthermore, the Panel found that there may be circumstances when more than the usual single dose may be needed for an adequate effect, provided the daily dosage does not exceed 4,000 mg in a 24-hour period (42 FR 35360), and thus recommended OTC dosage ranges of 325 to 650 mg every 4 hours, more than 325 mg to 500 mg every 3 hours, or 842 to 1,000 mg every 6 hours.

In general, the agency concurs with the Panel's recommended dosage schedule, which is flexible and which provides for a wide dosage range per dosage unit. (See comment 53 below for further discussion.) Terms such as "extra strength" may be helpful to consumers by alerting them to the fact that products bearing such labeling may not necessarily contain the quantity of analgesic-antipyretic that is contained in other products they have purchased. However, the agency tentatively concludes that "extra strength," "maximum strength," "extra pain relief," and similar terms that are only peripherally related to product safety and effectiveness are outside the scope of the OTC drug review. Therefore, these terms will not be included in labeling required by the monograph, but may be used elsewhere in labeling, but not intermixed with monograph labeling, subject to the provisions of section 502 of the act. The agency encourages drug manufacturers voluntarily to provide consumers with an explanation of terms such as "extra strength" and "maximum strength" when they are used in labeling.

49. One comment requested that the professional labeling recommended in § 343.80 be amended to include an indication for the use of aspirin for transient ischemic attacks. Another comment requested that buffered aspirin also be included in this indication. The comments presented data to support their requests (Ref. 1).

A transient ischemic attack is a sudden onset of a focal neurologic dysfunction that may precede a stroke. It affects the brain or retina and clears after a period lasting from a few seconds up to 24 hours. The data submitted by the comments included two multicenter clinical studies as follows: a 37-month trial conducted by Fields et al. (Ref. 2) and a 55-month trial conducted by The Canadian Cooperative Study Group (Ref. 3).

The study by Fields et al. was a randomized, double-blind trial comparing aspirin with placebo in 178 patients to determine the incidence of subsequent transient ischemic attack, death, cerebral infarction, or retinal infarction. Only persons with episodes of monocular blindness or hemispheric-type transient ischemic attacks were eligible for admission to the study. Persons with symptoms in the carotid area were included, and those with only vertebrobasilar symptoms were excluded. Another requirement was that the most recent transient ischemic attack had occurred not more than 3 months prior to randomization. The absolute endpoints studied were mortality, retinal infarctions, and cerebral infarctions.

The analysis of the absolute endpoints, i.e., death or cerebral or retinal infarction, failed to show a statistically significant differential between aspirin and placebo. However, because the primary objective of the study was to determine whether aspirin would result in a reduction of transient ischemic attacks, a second class of endpoints was used to evaluate the patients' experience during the first 6 months of follow-up (after randomization). Endpoints included not only infarctions (cerebral or retinal) but also the number of transient ischemic attacks reported. When the absolute endpoints were coupled with the occurrence of transient ischemic attack in the first 6 months of follow-up, there was a statistically significant differential (p 0.01) in favor of aspirin. When the patients were separately grouped according to whether they had a single carotid transient ischemic attack or multiple attacks before admission to the study, a life table analysis of absolute endpoints revealed a statistical significance in favor of aspirin within the group of patients with multiple attacks. When the occurrence of carotid transient ischemic attacks during the first 6 months of follow-up was also taken into consideration, analysis of patients who had single or multiple transient ischemic attacks revealed a statistically significant differential in favor of aspirin.

The study conducted by the Canadian Cooperative Study Group was a randomized, four-treatment, double-blind trial to determine whether aspirin or sulfinpyrazone, singly or in combination, was superior to placebo in preventing transient ischemic attacks, stroke, or death in patients afflicted with transient ischemic attacks or partial nonprogressing stroke in either carotid or vertebral territory (Ref. 3). Approximately 65 percent of the 585 subjects had symptoms suggesting brain ischemia in the area supplied by the carotid artery; 25 percent of the subjects were affected in the area supplied by the vertebrobasilar artery; and 10 percent of the subjects had both the vertebrobasilar and carotid arteries affected. Patients with hemodynamic (pertaining to the movements involved in the circulation of the blood) or cardiac causes were excluded from the study. The average period of followup was 28 months. The compliance rate was 92 percent.

Three endpoints were assessed in the study: Transient ischemic attack, stroke, and death. If any of these endpoints occurred by the end of the trial, or within 6 months of withdrawal where treatment had been terminated, they were counted against their randomly assigned treatment regimen. None of the 3 drug treatment groups was significantly different from the placebo treatment group for any endpoint, but when the 2 treatment groups taking aspirin (i.e., aspirin alone and aspirin with sulfinpyrazone) were compared with the two groups that were not taking aspirin (i.e., the groups taking sulfinpyrazone alone or placebo) for the combined endpoints of stroke and death, the reduction with aspirin was 31 percent ($p<0.05$). In subset analysis, the benefit from aspirin therapy was confined to males, with a 48-percent reduction in stroke and death ($p<0.005$). There was no significant benefit in females in either treatment category.

Based upon the data described above, the agency's Peripheral and Central Nervous System (CNS) Drugs Advisory Committee concluded that there is evidence that aspirin is safe and effective for reducing the risk of recurrent transient ischemic attacks or stroke in men who have had transient ischemia of the brain due to fibrin platelet emboli (Refs. 2, 3, and 4). In concluding that aspirin is safe and effective in reducing these risks in males, the Committee recommended a dosage of 1,300 mg aspirin per day in divided doses of 650 mg twice a day or 325 mg four times a day.

Studies were submitted on the absorption characteristics of buffered aspirin and plain aspirin products (Refs. 5 and 6). Nayak et al. (Ref. 5) conducted three blinded studies (A, B, and C) on the effect of antacids on aspirin dissolution and bioavailability. The 12 normal adult subjects (8 male, 4 female) abstained from using any medication 1 week before and during the studies.

Study A was conducted to determine the absorption characteristics of four aspirin formulations with different buffering capacity and in vitro dissolution profile. Each subject abstained from solid food and liquids, except water, from midnight of each study day. The subjects were randomly divided into four equal groups assigned to the rows of a selected 4 x 4 Latin square. On each of the test days, which were 1 week apart, a single dose (2 tablets) of each of the following formulations was given: 325 mg aspirin; 325 mg aspirin with 150 mg aluminum hydroxide gel and 150 mg magnesium hydroxide; 325 mg aspirin with 75 mg aluminum hydroxide gel and 75 mg magnesium hydroxide; and 325 mg aspirin with 50 mg aluminum glycinate and 100 mg magnesium carbonate. A pretest blood sample was collected, and each subject was given a single dose of the formulations with 200 mL water.

Blood samples were collected at various intervals; the plasma was separated and frozen before being analyzed. Results were expressed as the total salicylate concentration in salicylic acid equivalents, and a pharmacokinetic analysis of data was performed. The results showed that the buffered formulations produced significantly higher peak concentrations of plasma salicylate than the unbuffered formulation. However, a comparison of the area-under-curve values showed no statistically significant difference among formulations.

Study B was conducted to assess the effect that doubling the aspirin and antacid dose would have on the absorption of aspirin. The subjects and methods were identical to study A except that each subject was given a single dose of four tablets containing 325 mg aspirin, 150 mg aluminum hydroxide gel, and 150 mg magnesium hydroxide per tablet. A pharmacokinetic analysis of data was performed.

In study C, 2 hours after a meal of 1 cup of dry cereal, 8 oz of whole milk, 6 oz of orange juice, sugar, and 1 cup of coffee or tea, three male subjects received four tablets of the same formulation used in study B (Ref. 5). The subjects swallowed the tablets with 200 mL water. The blood sampling and analysis were the same as in study A, except that blood was collected without anticoagulant and processed for serum.

The results of studies B and C showed that the concentration-time profile and the bioavailability were similar in both studies. Thus, there was no evidence of a lower or erratic absorption of aspirin due to the antacids used as compared with unbuffered aspirin.

A study was conducted to determine whether the aspirin in a commercial buffered aspirin product containing 325 mg aspirin and 150 mg magnesium-aluminum hydroxide was as effective as 325 mg plain aspirin in inhibiting platelet aggregation in vitro (Ref. 6). The methodology was collagen-induced aggregation of guinea pig or human platelets (in vitro). Separate solutions of aspirin and the buffered aspirin product were prepared using sterile saline solution. Each solution contained 3.25 mg aspirin per mL, equivalent to a molar aspirin concentration of 1.8×10^{-2}. Subsequent dilutions were used at a log concentration ratio of 1.5. Nonfasted male guinea pigs weighing 300 to 500 g were used throughout the study. When human platelets were used, they were separated and handled in the same way as those collected from guinea pigs.

Platelet aggregation assays were conducted, and the data were quantified by calculating area-under-curve values for each dilution. Aspirin and the buffered aspirin product were first compared in an experiment to find a dose range.

The results showed that both the plain aspirin and the buffered aspirin product would produce dose-related inhibitory effects on the aggregation of guinea pig platelets in the range of 1.8×10^{-4} to 1.8×10^{-5} molar concentration. The concentration for 50 percent inhibition (IC_{50}) was found to be 1.3×10^{-4} molar for the aspirin in the plain aspirin product. In the buffered aspirin product the IC_{50} was found to be 1.4×10^{-4} molar. The investigators concluded that the similarity of the IC_{50} values indicates there is no difference between the effect of plain aspirin and the effect of the buffered aspirin product on platelet aggregation. The IC_{50} values for aspirin and the buffered aspirin product on human platelets (1.4×10^{-4} and 1.3×10^{-4}, respectively) were close to those found for guinea pig platelets. The slopes of the respective regression lines were similar, indicating no specific differences.

The investigators concluded that plain aspirin and the buffered aspirin product are equally effective in inhibiting collagen-induced aggregation of both guinea pig and human platelets in vitro and that the buffered aspirin product would be as useful as plain aspirin in the prevention of transient ischemic attacks.

Based upon the Peripheral and CNS Drugs Advisory Committee's recommendation on aspirin and transient ischemic attacks and the agency's review of the data submitted to show that buffered aspirin would be expected to have similar effects, the agency concludes that both aspirin and buffered aspirin can be used for reducing the risk of recurrent transient ischemic attacks or stroke in males. This use of aspirin and buffered aspirin is being proposed for incorporation into the professional labeling section of the tentative final monograph, with the recommended dosage of 1,300 mg aspirin per day in divided doses of 650 mg twice a day or 325 mg four times a day. The agency believes that sodium-containing buffered aspirin should not be used for this purpose because the chronic ingestion of sodium is ill-advised in this patient population.

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The agency also points out that aspirin or buffered aspirin without sodium is not indicated in all forms of sudden onset of focal neurologic dysfunction simulating transient ischemic attacks. Also, the effects of concurrent administration of therapeutic amounts of antacids on the absorption and the elimination of aspirin must be considered, but the current literature contains minimal information on these effects.

Levy et al. (Ref. 7) conducted a study on three children with rheumatic fever to determine whether serum salicylate concentrations are affected by an antacid containing aluminum and magnesium hydroxide. Aspirin bioavailability (completeness of absorption) was estimated from the amount of total salicylate excreted in the children's urine over a 2-hour period, with urine specimens collected during the antacid and control periods. The investigators found that the estimated daily excretion was in reasonably good agreement with the daily dose and did not decrease during antacid administration.

Levy et al. (Ref. 7) also investigated the effect of an antacid containing aluminum and magnesium hydroxide on the bioavailability of aspirin in five healthy adult males. Each subject received two 325-mg tablets of aspirin 1 hour after a breakfast of 28 g corn flakes and 500 mL milk. The tablets were swallowed whole with 50 mL water. Two of the subjects first received only aspirin; the other three were given 20 mL aluminum and magnesium hydroxide suspension with 50 mL water immediately after the aspirin was ingested. No food or coffee was permitted for 4 hours, and each subject's urine was collected periodically for 48 hours.

About 1 week later, crossover experiments compared the percentage of salicylate recovered in each subject's urine with aspirin given alone to the percentage recovered when the aspirin-antacid was given. Results (expressed as total salicylate recovered) showed that the antacid product containing aluminum and magnesium hydroxide had no apparent effect on aspirin absorption.

In addition, while reviewing data on the use of aspirin for myocardial infarction, the agency identified certain information that it considers pertinent to the use of aspirin for the prevention of transient ischemic attacks (see comment 50 below). In the Aspirin Myocardial Infarction Study (AMIS) (Ref. 8), the dosage of 1,000 mg per day of aspirin was associated with small increases in blood pressure, blood urea nitrogen, and serum uric acid levels. This dosage was also associated with increased incidences of gastrointestinal symptoms including stomach pain, heartburn, nausea and/or vomiting, as well as gross gastrointestinal bleeding. Because the dosage of aspirin proposed for the prevention of transient ischemic attacks is 1,300 mg, the agency believes that this information should be included in the proposed professional labeling for aspirin for transient ischemic attacks.

References

(1) Comment Nos. SUP005, SUP011, and CP, Docket No. 77N-0094, Dockets Management Branch.

(2) Fields, W.S., et al., "Controlled Trial of Aspirin in Cerebral Ischemia," *Stroke* 8:301–316, 1977.

(3) The Canadian Cooperative Study Group, "A Randomized Trial of Aspirin and Sulfinpyrazone in Threatened Stroke," *New England Journal of Medicine*, 299:53–59, 1978.

(4) Minutes of the FDA Peripheral and CNS Drugs Advisory Committee, August 28, 1979, included in OTC Volume 03BTFM.

(5) Nayak, R.K., et al., "Effect of Antacids on Aspirin Dissolution and Bioavailability," *Journal of Pharmacokinetics and Biopharmaceutics*, 5:597–613, 1977.

(6) W.H. Rorer, Inc., Research Division, "The Inhibition by Ascriptine of Collagen-Induced Aggregation of Guinea Pig and Human Platelets in Vitro," unpublished report in Vol. 2 of Citizen's Petition (CP), Docket No. 77N-0094, Dockets Management Branch.

(7) Levy, G., et al., "Decreased Serum Salicylate Concentrations in Children with Rheumatic Fever Treated with Antacid," *New England Journal of Medicine*, 293:323–325, 1975.

(8) Aspirin Myocardial Infarction Study Research Group, "A Randomized, Controlled Trial of Aspirin in Persons Recovered from Myocardial Infarction," *Journal of the American Medical Association*, 243:661–669, 1980.

Based upon the above discussion, the agency is proposing in § 343.80(b) the following indications, precautions, and dosage in the professional labeling:

For products containing aspirin identified in § 343.10(b) or permitted combinations identified in § 343.20(b)(4) except those containing sodium. The labeling states, under the heading "ASPIRIN FOR TRANSIENT ISCHEMIC ATTACKS," the following:

Indication:

For reducing the risk of recurrent transient ischemic attacks (TIA's) or stroke in men who have had transient ischemia of the brain due to fibrin platelet emboli. There is inadequate evidence that aspirin or buffered aspirin is effective in reducing TIA's in women at the recommended dosage. There is no evidence that aspirin or buffered aspirin is of benefit in the treatment of completed strokes in men or women.

Clinical Trials:

The indication is supported by the results of a Canadian study [1] in which 585 patients with threatened stroke were followed in a randomized clinical trial for an average of 26 months to determine whether aspirin or sulfinpyrazone, singly or in combination, was superior to placebo in preventing transient ischemic attacks, stroke, or death. The study showed that, although sulfinpyrazone had no statistically significant effect, aspirin reduced the risk of continuing transient ischemic attacks, stroke, or death by 19 percent and reduced the risk of stroke or death by 31 percent. Another aspirin study carried out in the United States with 178 patients, showed a statistically significant number of "favorable outcomes," including reduced transient ischemic attacks, stroke, and death.

Precautions:

Patients presenting with signs and symptoms of TIA's should have a complete medical and neurologic evaluation. Consideration should be given to other disorders that resemble TIA's. Attention should be given to risk factors: It is important to evaluate and treat, if appropriate, other diseases associated with TIA's and stroke, such as hypertension and diabetes.

Concurrent administration of absorbable antacids at therapeutic doses may increase the clearance of salicylates in some individuals. The concurrent administration of nonabsorbable antacids may alter the rate of absorption of aspirin, thereby resulting in a decreased acetylsalicylic acid/salicylate ratio in plasma. The clinical significance of these decreases in available aspirin is unknown.

Aspirin at dosages of 1,000 milligrams per day has been associated with small increases in blood pressure, blood urea nitrogen, and serum uric acid levels. It is recommended that patients placed on long-term aspirin treatment be seen at regular intervals to assess changes in these measurements.

Adverse Reactions:

At dosages of 1,000 milligrams or higher of aspirin per day, gastrointestinal side effects include stomach pain, heartburn, nausea and/or vomiting, as well as increased rates of gross gastrointestinal bleeding. (Other applicable warnings related to the use of aspirin as described in § 343.50(c) may also be included here.)

Dosage and Administration:

Adult oral dosage for men is 1,300 milligrams a day, in divided doses of 650 milligrams twice a day or 325 milligrams four times a day.

References

(1) The Canadian Cooperative Study Group, "A Randomized Trial of Aspirin and Sulfinpyrazone in Threatened Stroke," *New England Journal of Medicine*, 299:53–59, 1978.

(2) Fields, W.S., et al., "Controlled Trial of Aspirin in Cerebral Ischemia," *Stroke*, 8:301–316, 1977.

50. One comment submitted data (Ref. 1) and requested that the professional labeling recommended in § 343.80 be

expanded to include an indication for the use of aspirin in the prophylaxis of secondary myocardial infarction. Another comment submitted data (Ref. 2) and requested the agency to issue professional labeling guidelines that provide for the use of highly buffered aspirin in solution to prevent myocardial infarction in men with unstable angina.

The agency has reviewed the submitted data and determined that aspirin is effective in reducing the risk of death and/or non-fatal myocardial infarction in patients with a previous infarction or unstable angina pectoris. The agency evaluated six secondary prevention trials (Refs. 3 through 8) and one controlled clinical trial of unstable angina (Ref. 9). Although none of the six secondary prevention trials individually showed a significant aspirin effect on mortality, the pooled results did show a moderately impressive statistically significant reduction in the occurrence of death and/or non-fatal myocardial infarction. Five of the six secondary prevention trials showed a favorable trend. Two of the individual studies showed a significant effect, and two others showed a near significant effect ($p=0.06$, $p=0.08$) on the combined endpoint of non-fatal infarction and/or death, as well as on non-fatal infarction alone. The pooled results showed a highly significant aspirin treatment effect on the combined or non-fatal infarction endpoint. The post-infarction and unstable angina trials, while studies of different diseases, mutually support each other by showing effects on the same endpoint. The trials also provide pertinent dosing information.

Five of the six secondary prevention trials used doses of 1,000 mg per day or more; one of these trials and the unstable angina trial used about 300 mg per day. The latter two trials, along with considerable pharmacologic evidence that platelet-induced thrombogenesis can be reduced by doses near 300 mg and the expectation that gastrointestinal bleeding would likely be less prominent at lower dosages, have led the agency to conclude that 300 mg (or a conventional 325 mg dose) of aspirin per day is effective for the prevention of myocardial infarction in patients with a previous myocardial infarction or unstable angina.

In the secondary prevention trials, aspirin treatment was started at intervals after the onset of acute myocardial infarction varying from less than three days to more than five years and continued for periods of from less than one year to four years. Treatment within a week of onset of myocardial infarction was not shown to be beneficial in the cases presenting with acute infarction in the unstable angina trial. The data did show beneficial trends for stronger effects in the first six months after acute infarction and for the first two years after starting treatment. However, these trends were not well enough established to justify limiting treatment to these intervals. Due to this uncertainty, the labeling that the agency is proposing does not include any specific recommendation regarding when to start or stop aspirin treatment.

Most of the subjects in the secondary prevention trials and all of those in the unstable angina trials were male. Due to the small numbers of females in the studies, the use of aspirin for this indication in women cannot be supported by available data. However, the agency does not believe that use in women is necessarily unreasonable and the professional labeling that the agency is proposing does not discourage such use, but simply notes the limitation on the number of females in the clinical trials.

In the Aspirin Myocardial Infarction Study (AMIS) (Ref. 3), the aspirin-treated group showed a small increase in blood pressure after adjustment for baseline pressure. Similar findings for other United States aspirin trials of secondary prevention were also found. While these blood pressure elevations were clinically small, the agency believes that this finding should be included in the labeling. The agency also believes that it should be kept in mind that only about 10 percent of the subjects were hypertensive at baseline and that the blood pressure eligibility restrictions in these trials were such that severely hypertensive subjects were not entered (Refs. 4 and 5). Aspirin treated groups in both the AMIS trial and the United States aspirin studies showed small but definite increases in blood urea nitrogen and uric acid; thus, the agency concludes that during the course of long-term aspirin therapy users of this drug should be monitored regularly to assess changes in these measurements.

Based on the data from the unstable angina trial of Lewis et al. (Ref. 9), which used one 325 mg dose of aspirin in a highly buffered solution, the agency has concluded that highly buffered aspirin for solution (aspirin/antacid combination (see comment 76 below)) as well as buffered aspirin in a solid dosage form is safe and effective to reduce the risk of death and/or non-fatal myocardial infarction in patients with a previous myocardial infarction or unstable angina. However, the agency believes that sodium intake should be considered in this patient population and has included a statement concerning the amount of sodium in the aspirin/antacid combination in the Lewis trial (Ref. 9) and how much this amount of sodium adds to the intake suggested as appropriate for the dietary treatment of essential hypertension in the "1984 Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure" (Ref. 10).

In conclusion, the agency is proposing that the professional labeling section of the tentative final monograph (i.e., information provided to health professionals only, and not to the general public) should include aspirin for the indication, "to reduce the risk of death and/or non-fatal myocardial infarction in patients with a previous myocardial infarction or unstable angina pectoris." The agency is proposing in § 343.80(c) the following professional labeling:

For products containing aspirin identified in § 343.10(a) or permitted combinations identified in § 343.20(b),(3) and (4). The labeling states, under the heading "ASPIRIN FOR MYOCARDIAL INFARCTION," the following: *Indication:*

Aspirin is indicated to reduce the risk of death and/or non-fatal myocardial infarction in patients with a previous infarction or unstable angina pectoris. *Clinical Trials:*

The indication is supported by the results of six large, randomized multicenter, placebo-controlled studies involving 10,816, predominantly male, post-myocardial infarction (MI) patients and one randomized placebo-controlled study of 1,266 men with unstable angina [1-7]. Therapy with aspirin was begun at intervals after the onset of acute MI varying from less than 3 days to more than 5 years and continued for periods of from less than 1 year to 4 years. In the unstable angina study, treatment was started within 1 month after the onset of unstable angina and continued for 12 weeks, and patients with complicating conditions such as congestive heart failure were not included in the study.

Aspirin therapy in MI patients was associated with about a 20-percent reduction in the risk of subsequent death and/or non-fatal reinfarction, a median absolute decrease of 3 percent from the 12- to 22-percent event rates in the placebo groups. In aspirin-treated unstable angina patients the reduction in risk was about 50 percent, a reduction in the event rate of 5 percent from the 10-percent rate in the placebo group over the 12-weeks of the study.

Daily dosage of aspirin in the post-myocardial infarction studies was 300 milligrams in one study and 900 to 1,500 milligrams in 5 studies. A dose of 325 milligrams was used in the study of unstable angina.

Adverse Reactions:

Gastrointestinal Reactions:

Doses of 1,000 milligrams per day of aspirin caused gastrointestinal symptoms and bleeding that in some cases were clinically

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significant. In the largest post-infarction study (the Aspirin Myocardial Infarction Study (AMIS) with 4,500 people), the percentage incidences of gastrointestinal symptoms for the aspirin (1,000 milligrams of a standard, solid-tablet formulation) and placebo-treated subjects, respectively, were: stomach pain (14.5 percent; 4.4 percent); heartburn (11.9 percent; 4.8 percent); nausea and/or vomiting (7.6 percent; 2.1 percent); hospitalization for gastrointestinal disorder (4.8 percent; 3.5 percent). In the AMIS and other trials, aspirin-treated patients had increased rates of gross gastrointestinal bleeding. Symptoms and signs of gastrointestinal irritation were not significantly increased in subjects treated for unstable angina with buffered aspirin in solution.

(Other applicable warnings related to the use of aspirin as described in § 343.50(c) may also be included here.)

Cardiovascular and Biochemical:

In the AMIS trial, the dosage of 1,000 milligrams per day of aspirin was associated with small increases in systolic blood pressure (BP) (average 1.5 to 2.1 millimeters) and diastolic BP (0.5 to 0.6 millimeters), depending upon whether maximal or last available readings were used. Blood urea nitrogen and uric acid levels were also increased, but by less than 1.0 milligram percent.

Subjects with marked hypertension or renal insufficiency had been excluded from the trial so that the clinical importance of these observations for such subjects or for any subjects treated over more prolonged periods is not known. It is recommended that patients placed on long-term aspirin treatment, even at doses of 300 milligrams per day, be seen at regular intervals to assess changes in these measurements.

Sodium in Buffered Aspirin for Solution Formulations:

One tablet daily of buffered aspirin in solution adds 553 milligrams of sodium to that in the diet and may not be tolerated by patients with active sodium-retaining states such as congestive heart or renal failure. This amount of sodium adds about 30 percent to the 70- to 90-millequivalents intake suggested as appropriate for dietary treatment of essential hypertension in the "1984 Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure".

Dosage and Administration:

Although most of the studies used dosages exceeding 300 milligrams, 2 trials used only 300 milligrams and pharmacologic data indicate that this dose inhibits platelet function fully. Therefore, 300 milligrams or a conventional 325 milligram aspirin dose is a reasonable, routine dose that would minimize gastrointestinal adverse reactions. This use of aspirin applies to both solid, oral dosage forms (buffered and plain aspirin) and buffered aspirin in solution.

References

(1) Elwood, P.C., et al., "A Randomized Controlled Trial of Acetylsalicylic Acid in the Secondary Prevention of Mortality from Myocardial Infarction," *British Medical Journal*, 1:436-440, 1974.

(2) The Coronary Drug Project Research Group, "Aspirin in Coronary Heart Disease," *Journal of Chronic Diseases*, 29:625-642, 1976.

(3) Breddin K., et al., "Secondary Prevention of Myocardial Infarction: A Comparison of Acetylsalicylic Acid, Phenprocoumon or Placebo," *Homeostasis*, 470:263-268, 1979.

(4) Aspirin Myocardial Infarction Study Research Group, "A Randomized, Controlled Trial of Aspirin in Persons Recovered from Myocardial Infarction," *Journal of the American Medical Association*, 243:661-669, 1980.

(5) Elwood, P.C., and P.M. Sweetnam, "Aspirin and Secondary Mortality after Myocardial Infarction," *Lancet*, II:1313-1315, December 22-29, 1979.

(6) The Persantine-Aspirin Reinfarction Study Research Group, "Persantine and Aspirin in Coronary Heart Disease," *Circulation*, 62:449-461, 1980.

(7) Lewis, H.D., et al., "Protective Effects of Aspirin Against Acute Myocardial Infarction and Death in Men with Unstable Angina, Results of a Veterans Administration Cooperative Study," *New England Journal of Medicine*, 309:396-403, 1983.

(8) "1984 Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure," United States Department of Health and Human Services and United States Public Health Service, National Institutes of Health, Publication No. NIH 84-1088, 1984.

The agency's detailed comments and evaluations of the data are on file in the Dockets Management Branch (Refs. 11 and 12).

References

(1) Comments Nos. C00108, SUP015, SUP020, and SUP026, Docket No. 77N-0094, Dockets Management Branch.

(2) Comment No. CP0005, Docket No. 77N-0094, Dockets Management Branch.

(3) Aspirin Myocardial Infarction Study Research Group, "A Randomized Controlled Trial of Aspirin in Persons Recovered From Myocardial Infarction," *Journal of the American Medical Association*, 245:661-669, 1980.

(4) The Coronary Drug Project Research Group, "Aspirin in Coronary Heart Disease," *Journal of Chronic Diseases*, 29:625-642, 1976.

(5) The Persantine-Aspirin Reinfarction Study Research Group, "Persantine and Aspirin in Coronary Heart Disease," *Circulation*, 62:449-461, 1980.

(6) Elwood, P.C., et al., "A Randomized Controlled Trial of Acetylsalicylic Acid in the Secondary Prevention of Mortality From Myocardial Infarction," *British Medical Journal*, 1:436-440, 1974.

(7) Breddin, K., et al., "Secondary Prevention of Myocardial Infarction: A Comparison of Acetylsalicylic Acid, Phenprocoumon or Placebo," *Homeostasis*, 470:263-268, 1979.

(8) Elwood, P.C., and P.M. Sweetnam, "Aspirin and Secondary Mortality After Myocardial Infarction," *Lancet*, II:1313-1315, December 22-29, 1979.

(9) Lewis, H.D., et al., "Protective Effects of Aspirin Against Acute Myocardial Infarction and Death in Men With Unstable Angina, Results of a Veterans Administration Cooperative Study," *New England Journal of Medicine*, 309:396-403, 1983.

(10) "1984 Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure," United States Department of Health and Human Services and United States Public Health Service, National Institutes of Health, Publication No. NIH 84-1088, 1984.

(11) Letter from W.E. Gilbertson, FDA, to G.R. Pflug, Miles Laboratories, Inc., coded LET049, Docket No. 77N-0094, Dockets Management Branch.

(12) Letter from W.E. Gilbertson, FDA, to E.J. Hiross, Sterling Drug, Inc., coded LET048, Docket No. 77N-0094, Dockets Management Branch.

C. Comments on Advertising of Internal Analgesic Drug Products

51. Several comments suggested that changes be made in the quality and quantity of advertisements for OTC internal analgesic drug products to eliminate "excessive claims for minor differences in drug properties" and to reduce the likelihood of consumers being unduly persuaded or misled by such inappropriate statements. Another comment contended that consumers often do not realize from current OTC analgesic drug advertising that many of these products contain aspirin. An example of such advertising is as follows: "Contains more of the pain killer which doctors prescribe most." The comment urged that FDA require manufacturers to state in their advertising that their products contain aspirin.

The Federal Trade Commission (FTC) has the primary responsibility for regulating OTC drug advertising, and FDA has forwarded copies of the comments concerning internal analgesic advertising to the FTC for its consideration (Ref. 1). FDA does, however, have the authority to regulate OTC drug advertising that constitutes labeling under the Federal Food, Drug, and Cosmetic Act. See, e.g., *United States* v. *Article of Drug * * * B-Complex Cholinos Capsules*, 362 F.2d 923 (3d Cir. 1966); *V.E. Irons, Inc.* v. *United States*, 244 F.2d 34 (10th Cir.), *cert. denied*, 354 U.S. 923 (1957). In addition, for an OTC drug to be generally recognized as safe and effective and not misbranded, the advertising for the drug must satisfy the FDA regulations in § 330.1(d) (21 CFR 330.1(d)), which state that the advertising may prescribe, recommend, or suggest the drug's use only under the conditions stated in the labeling. If advertising for an OTC internal analgesic drug product offers the drug product for conditions not included in the final monograph labeling, the drug product may be subject to regulatory action by FDA.

Reference

(1) Letter from L. Geismar, FDA, to W.B. Fisherow, FTC, June 18, 1981, included in OTC Volume 03BTFM.

52. Several comments asserted that the Panel extended its review beyond its charter by making statements concerning the advertising of the products under its review. The comments stated that FDA did not grant such authority in the procedures established for OTC drug advisory review panels. The comments further argued that the Panel's statements on OTC drug advertising were not only inappropriate for inclusion in the report, but also were based on inadequate information because, according to FDA procedures, data and information pertaining to advertising were not submitted to the Panel.

The OTC drug review procedures do not preclude a panel from expressing its concern about OTC drug advertising. The statements of opinion on advertising and the media were included by the Panel in its report upon the recommendation of the Panel's consumer liaison representative (Ref. 1). These statements were partly based on a transcript of the proceedings of a conference sponsored by the Federal Communications Commission and the FTC and attended by representatives of consumer advocate groups, pharmaceutical associations and manufacturers, the broadcast media, and the academic community.

The Panel discussed OTC drug advertising in its report in order to make its concerns known to the FTC, as well as to FDA.

Reference

(1) Summary Minutes of the 20th Meeting of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products, June 25, 26, and 27, 1975, incorporated in OTC Volume 030173.

D. Comments on Standard Dosage Unit and Analgesic Equivalence Value

53. Some comments supported the Panel's recommendation for standard dosage units and standard dosage schedules for all marketed OTC internal analgesic drug products containing aspirin, acetaminophen, and sodium salicylate as single ingredients. The comments stated that adopting this recommendation would benefit consumers by reducing the confusion and misuse that result from the current availability of various dosage strengths and dosage schedules of these ingredients. The comments argued that consumers are used to taking "two (325-mg) aspirin tablets" for pain relief and could ingest toxic amounts of aspirin from using dosage units larger than 325 mg. The comments maintained that dosages greater than 650 mg (two 325-mg tablets) do not provide "substantial benefit to a sufficient portion of the public" to justify making dosage unit strengths greater than 325 mg generally available.

Several comments opposed the standard and nonstandard labeling recommended by the Panel in § 343.50(d), arguing that such labeling implies differences in quality or therapeutic effect, would confuse consumers, and crowd information on the label. Several comments also opposed the concept of standard dosage units and standard dosage schedules, arguing that adopting them would deprive consumers of products with which they have been satisfied and would result in dosage changes in the labeling that may be overlooked by consumers. Some comments also argued that the concept of standard dosage unit is unsupported because various dosage levels of aspirin, acetaminophen, and sodium salicylate are safe and effective and show increasing effectiveness with increased dosages. To resolve "inconsistencies" in the dosage units and schedules, one comment recommended that the adult dosage unit for aspirin, acetaminophen, and sodium salicylate be 325 mg (standard) and 500 mg or 650 mg (nonstandard). The comment also recommended a maximum single dose of 1,000 mg for each of these ingredients with a 4-hour dosage interval and a maximum daily dose of 4,000 mg.

The agency agrees with the comments in opposition to the Panel's recommendation on standard and nonstandard labeling. The agency does not believe that use of the terms "standard" and "nonstandard" would simplify the comparison of various products containing different quantities of active ingredients or would aid consumers in selecting an OTC analgesic-antipyretic drug product. In addition, the agency is not aware that the existing manner of labeling these products has caused consumer confusion or resulted in misuse of these products. Therefore, the Panel's recommendation on standard and nonstandard labeling is not being included in this tentative final monograph.

The Panel was aware that degrees of pain and analgesic responses vary and thus provided for safe and effective OTC adult analgesic dosage ranges for aspirin and sodium salicylate of 325 to 650 mg every 4 hours, more than 325 to 500 mg every 3 hours, or 842 to 1,000 mg every 6 hours. (See the Panel's recommended § 343.10 (a) and (f).) For acetaminophen, the Panel's recommended dosage ranges were 325 to 650 mg every 4 hours, 500 mg every 3 hours, or 1,000 mg every 6 hours. (See the Panel's recommended § 343.10(b).) As stated in comment 63 below, the agency believes that it is reasonable for acetaminophen to have the same dosage and frequency of administration as aspirin. The agency is revising the dosage schedule for acetaminophen to conform to that of aspirin. In addition, the dosage of "more than" 325 mg to 500 mg every 3 hours is being restated as 325 mg to 500 mg every 3 hours to include the 325-mg minimal effective dose. Likewise, in consideration of the various analgesic dosage unit strengths currently being marketed, the agency is proposing that the dosage of 842 to 1,000 mg every 6 hours be revised to 650 to 1,000 mg every 6 hours to include the maximum recommended dose to be taken every 4 hours (i.e., 650 mg) as a minimum dose taken every 6 hours. The agency invites specific comment on this proposal.

Based upon the above conclusions and dosage recommendations, the dosage schedules for aspirin, acetaminophen, and sodium salicylate recommended by the Panel in § 343.10 (a), (b), and (f) are being revised to eliminate the concepts of "standard" and "nonstandard" schedules and are being combined under § 343.50(d)(2). The Panel's definitions of standard dosage units for these ingredients in § 343.3 (c), (m), and (p) are not being proposed in this tentative final monograph.

The agency notes that the Panel discussed a maximum initial single dose of 975 mg (15 grains (gr)) (three dosage units of 325 mg each) in a 4-hour dosing regimen (43 FR 35361) and recommended this loading dose for aspirin, acetaminophen, and sodium salicylate (§ 343.12 (a)(ii), (b)(ii), and (f)(ii)). The agency is not proposing a loading dose for these ingredients because it believes that such a provision may confuse consumers and lead to repeated dosing of 975 mg every 4 hours instead of 325 mg to 650 mg every 4 hours. For reasons stated in comments 62 and 63 below, the agency is not proposing an OTC dose of 975 mg (15 gr) or 1,000 mg every 4 hours.

54. Two comments objected to the standard dosage unit concept because it is not applicable to liquid products or a product containing aspirin in a gum base. One comment argued that it is inappropriate to use the standard

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dosage unit concept for certain liquids that contain combinations of analgesic ingredients and cough/cold ingredients. The other comment, noting that the advance notice of proposed rulemaking did not provide for a nonstandard dosage unit of 227.5 mg (3.5 gr) aspirin, requested that §§ 343.10(a) and 343.12(a) be expanded to include this nonstandard dosage unit, which is identical to that of the gum base product.

As stated in comment 53 above, the agency is not adopting the Panel's recommendation for a standard dosage unit of 325 mg for OTC analgesic drug products. However, the dosage schedules of all OTC internal analgesic drug products, including liquid and gum base dosage forms, will have to comply with the final monograph when it is published. (See comments 53 above and 58 below.)

55. One comment stated that in establishing standard and usual doses the agency should not limit manufacturers to the exact metric equivalent of 10 gr, or its approximation, 650 mg. The comment pointed out that because the "United States Pharmacopeia" (U.S.P) (Ref. 1) recognizes 600 mg as the approximate metric equivalent of 10 gr, products containing either 600 or 650 mg (or the exact equivalent of 648 mg) should be allowed to use the term "usual dose."

Although the U.S.P recognizes 600 mg as an approximate equivalent to 10 gr (Ref. 2), the agency is not including the comment's suggestion that quantities other than 650 mg be equivalent to 10 gr because it agrees with the Panel's recommendation that the system of weight measurement for OTC internal analgesic drug products should be based on 1 gr being equivalent to 65 mg (42 FR 35357.)

The "usual dose" of OTC analgesic-antipyretic drugs is any of the doses that conform with the dosages specified in this tentative final monograph in the section on directions. However, the agency is not allowing use of the term "usual dose" as a descriptive term for the same reasons that it did not adopt the use of the terms "standard" and "nonstandard." (See comment 53 above.)

References

(1) "United States Pharmacopeia XX—National Formulary XV." United States Pharmacopeial Convention, Inc., Rockville, MD (inside back cover), 1980.

(2) "United States Pharmacopeia XXI—National Formulary XVI. United States Pharmacopeial Convention, Inc., Rockville, MD (inside back cover), 1985.

56. Several comments opposed the adoption of the Panel's recommended labeling statement in § 343.50(e) on analgesic equivalence value for calcium carbaspirin, choline salicylate, and magnesium salicylate. The comments contended that such labeling would crowd the required information on the label, confuse consumers, and imply that one product is more, or less, effective than another when in fact all products included in the monograph are safe and effective. Other comments, although not opposed to analgesic equivalence labeling, stated that such labeling is confusing and suggested alrernative labeling statements.

The agency agrees with the comments that such statements could be misleading to consumers. All products that meet the specifications of the monograph are safe and effective. Therefore, the agency is not adopting the analgesic equivalence value labeling statements recommended by the Panel, and § 343.50(e), statement on analgesic equivalence value, and § 343.3 (a), (i), and (o), definitions of acetaminophen, aspirin, and sodium salicylate equivalence values, are not being included in this tentative final monograph.

57. One comment argued that the 325-mg (5 gr) unit dose restriction recommended by the Panel was not appropriate for analgesic powders. The comment contended that analgesic powders represent a dosage form in which the dosage and dosage unit are equivalent. For example, one powder envelope usually contains the equivalent of two tablets of "standard" aspirin. Because the Panel allowed an initial maximum dosage of 1,000 mg and also a 1,000-mg dosage every 6 hours, the comment requested that the agency permit a dosage of 1,000 mg or less in one powder envelope, provided the Panel's dosage schedule is followed and the total daily dose does not exceed 4,000 mg.

As discussed in comment 53 above, the agency is proposing not to adopt the Panel's recommendation for a specific adult dosage unit strength. Thus, OTC analgesic-antipyretic powders may be formulated with a 1,000-mg dosage unit strength per powder envelope. However, the dosage schedules of analgesic-antipyretic powders must be in conformance with the final monograph.

E. Comments on Recommended Dosage Schedules

58. One comment urged that the Panel's recommendation in §§ 343.10(a)(2) and 343.12(a)(2) be revised by increasing the children's dosage unit for aspirin products from 80 mg (1.23 gr) to 81 mg (1.25 gr) and revising the children's dosage schedule accordingly. The comment contended that the 80-mg dosage unit is unavailable in aspirin products and that conversion to an 80-mg dosage unit would invalidate all currently available stability data for children's aspirin products. The comment argued that the availability of the 81-mg (1¼ gr) dosage unit is recognized in §§ 201.314(c) (1) and (2) (21 CFR 201.314(c) (1) and (2)) and in the USP (Ref. 1). The comment concluded that a dosage schedule based on the 81-mg dosage unit is consistent with the dosage schedules for aspirin in §§ 343.10(a)(1)(i) and 343.12(a)(1)(i) because 325 mg is a more accurate multiple of 81 mg than of 80 mg.

The agency acknowledges that there has been longstanding acceptance of the 81-mg (1¼ gr) children's dosage unit for aspirin and agrees with the comment that it should be retained. Children's acetaminophen products are marketed in an 80-mg dosage unit strength, but the difference between 80-mg and 81-mg dosage unit strengths is of no therapeutic consequence. Thus, the agency believes that the children's dosage unit for aspirin, acetaminophen, and sodium salicylate should be either 80 mg or 81 mg, and the dosage schedule for children's products is being revised accordingly.

In addition, the agency notes that the recommended dose of aspirin, acetaminophen, and sodium salicylate for children 6 to 9 years of age is 325 mg (or 320 mg when four 80-mg dosage units are used and 324 mg when four 81-mg dosage units are used). Because this dose (i.e., 325 mg) is also the minimal effective dose for adults, the agency sees no reason to exclude it from the children's dosage schedule as the minimal effective dose for children over 9 years of age. The agency has no data to show that a minimal effective dose for children over 9 years of age poses a danger of therapeutic failure and subsequent overdose with resultant toxicity, as is the case with younger age groups.

In view of the above discussion, the children's dosage schedule for aspirin, acetaminophen, and sodium salicylate that is based upon the children's dosage unit of 80 mg or 81 mg is as follows:

Age (years)	Number of 80-mg or 81-mg dosage units	Dosage (mg) [1]
Under 2	Consult a doctor.	
2 to under 4	2	160 or 162
4 to under 6	3	240 or 243
6 to under 9	4	320 or 324
9 to under 11	4 to 5	320 to 405
11 to under 12	4 to 6	320 to 486

[1] Dose may be repeated every 4 hours while symptoms persist, up to five times a day or as directed by a doctor.

The children's dosage schedule for aspirin, aceaminophen, and sodium salicylate that is based upon the adult dosage unit of 325 mg is as follows:

Age (Years)	Number of 325-mg dosage units	Dosage (mg) [1]
Under 2	Consult a doctor.	
2 to under 4	1/2	162.5
4 to under 6	3/4	243.8
6 to under 9	1	325
9 to under 11	1 to 1¼	325 to 406.3
11 to under 12	1 to 1½	325 to 487.5

[1] Dose may be repeated every 4 hours while symptoms persist, up to five times a day or as directed by a doctor.

In § 343.50(d)(1) in the tentative final monograph, the agency is converting the dosage information in the schedules above to directions that provide concise instructions for the consumer. The agency proposes that adult dosage unit strengths exceeding 325 mg, particularly in solid dosage forms, are not suitable for use in children, because of the difficulty in dividing such dosage units to obtain an accurate children's dose.

Children's dosage units comparable to the 80-mg and 81-mg units discussed above are being proposed for carbaspirin calcium, choline salicylate, and magnesium salicylate in § 343.50(d) (4), (5), and (6) in this tentative final monograph.

Reference

(1) "United States Pharmacopeia XIX," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 39, 1975.

59. Two comments objected to the Panel's recommendation that dosage schedules for children should be based on age, asserting that they should be based on weight instead. The comments argued that dosages based on age are inaccurate because any group of children of the same age will vary in size and weight, and that the dosage schedules of virtually all other drugs are based on weight rather than age. A comment also stated that the recommended children's dosages, with relatively slight differences between adjacent age groups, are unduly complex and unwarranted.

The Panel, in reaching its recommendation on a children's dosage schedule, considered extensive data and information on pediatric dosage regimens, including toxicity potential, dosage calculation based on weight versus body surface area, and adequacy of product labeling (42 FR 35366). The agency agrees with the Panel that a children's dosage schedule based on age is acceptable because it correlates closely with dosages calculated on the basis of surface area, and because the average consumer will more readily understand such a schedule, as people usually know the child's age but do not always know the child's weight.

In addition, the agency has published a notice of intent requesting comments concerning pediatric dosing information for all OTC drug products. (See the **Federal Register** of June 20, 1988; 53 FR 23180.) This notice invites public comment on how pediatric dosing information can best be presented in OTC drug product labeling. This notice mentions that comments made in response to several OTC cough-cold tentative final monographs requested that pediatric dosages for cough-cold drug products provide a greater subdivision of age ranges that more closely approximate weight-based dosages and that are similar to the age ranges recommended by the Internal Analgesic Panel for OTC internal analgesic-antipyretic drug products for children. The notice also discusses requests that the use of weight ranges be allowed, on an optional basis, in OTC drug pediatric labeling in addition to age range labeling (53 FR 23183). The agency has not proposed any regulatory changes in this notice, but will consider all aspects for pediatric dosing information, including the use of weight ranges, for all OTC drug products in a future **Federal Register** publication.

60. One comment suggested that children aged 2 to 3 years be excluded from the children's dosage schedule for OTC aspirin drug products because they cannot communicate symptoms of disease, and these symptoms are often difficult for parents to recognize. The comment suggested that the directions for children aged 2 to 3 years should be "as directed by a physician" because illness can develop rapidly within this age group.

The agency agrees with the Panel's recommendation that the minimum age for OTC use of analgesic-antipyretic drugs is 2 years. Aspirin is used in children 2 to 3 years of age primarily to reduce fever and relieve the aches and pains that often accompany it—symptoms that children can communicate to parents or that parents can readily recognize. Based upon pharmacokinetic considerations and clinical data, the Panel recommended a safe and effective dosage schedule that could be followed by parents in treating children over 2 years of age. The agency concurs with this dosage schedule. However, the agency emphasizes that if the fever persists, the underlying cause of the fever should be determined and treated by a physician. The warnings in § 343.50(c) (2)(i) and (3) for analgesic-antipyretic drug products, limiting use for fever in children to 3 days unless directed by a doctor and advising physician consultation for persistent or worsening fever or new symptoms, are guides to parents in the safe and effective use of these products in children, as are the directions for use in § 343.50(d).

61. One comment suggested that the children's dosage schedule be more clearly displayed and that duplicate words and phrases be eliminated. Another comment stated that the dosage schedule recommended by the Panel is confusing and complex because dosage regimens are provided for ingredients as analgesics and as antipyretics, with doses listed in exact figures (such as 7.38 gr and 59.68 gr) rather than rounded figures.

The children's dosage schedule is intended to indicate clearly to drug manufacturers the specific dose of particular ingredients for specific age groups. However, these dosage schedules are not intended to appear on the label in the format they appear in the monograph. Rather, the label directions should use dosage form units (tablets, capsules, measure of liquid) and should specify, based on the monograph, the quantity of drug in each children's dosage unit and the dosage intervals.

In addition, information contained in the monograph labeling directions may be condensed on the label to provide concise dosage instructions for the consumer. Duplicated words and phrases may be eliminated. The children's dosage schedules for 80-mg, 81-mg, and 325-mg dosage units have been converted to directions that provide concise instructions for the consumer. (See § 343.50(d)(1).)

62. One comment requested that the agency allow a dosage schedule of 15 gr (975 mg) aspirin every 4 hours up to four doses (4 g) per day. The comment provided data to support its view that such a dosage regimen does not present a serious threat of toxicity (Ref. 1). The comment also maintained that this dosage schedule, rather than a 6-hour schedule, would offer consumers the convenience of undisrupted sleep.

A reply comment stated that the dosage schedule recommended by the

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Panel should be followed and that no deviations from this schedule should be allowed. The reply comment expressed concern that the 975-mg dose of aspirin might be used beyond the daily maximum of four doses and present a toxicity problem.

The agency disagrees with the comment's request for an aspirin dosage regimen of 15 gr (975 mg) aspirin every 4 hours, not to exceed four doses per day. The agency concurs with the Panel's statement that this dosage regimen would not provide any significant improvement in analgesic or antipyretic effectiveness (42 FR 35361). Furthermore, although the total daily dosage of this regimen does not exceed the maximum aspirin daily dosage of 4 g (60 gr), the agency is concerned that a four-hour dosage interval for a 975 mg dose may result in consumers ignoring the daily maximum limit of four doses with continued use possibly leading to salicylate toxicity. (See also comment 63 below.)

Reference

(1) Comment No. C00060, Docket No. 77N-0094, Dockets Management Branch.

63. Two comments objected to the Panel's recommendation that following an initial dose of 1,000 mg acetaminophen (two dosage units of 500 mg each), subsequent doses should be restricted to 500 mg every 3 hours or 1,000 mg every 6 hours. Stating that this recommendation was based upon the dosage recommended for aspirin, the comments contended that, given the linear pharmacokinetics of acetaminophen, it is irrational to base acetaminophen's dosage and frequency of administration on the nonlinear pharmacokinetics of aspirin. One comment urged that the dosage for acetaminophen be 1,000 mg every 4 to 6 hours, not to exceed 4 g in 24 hours.

The agency is not adopting the comment's recommendation of an acetaminophen dosage regimen of 1,000 mg every 4 hours for the same reason it is not adopting the regimen of 975 mg aspirin every 4 hours. (See comment 62 above.)

The agency believes at this time that it is reasonable for acetaminophen and aspirin to have the same dosage and frequency of administration because, based upon the data submitted to the Panel, the safe and effective OTC dosage ranges for acetaminophen and aspirin are the same—325 mg to 650 mg every 4 hours, not to exceed 4 g in 24 hours. Also, aspirin and acetaminophen are indicated for the same OTC uses, have been extensively promoted as comparable OTC analgesics (with different side effects), and are widely and interchangeably used by consumers.

The agency concurs with the Panel's recommended acetaminophen dosage regimens of 500 mg every 3 hours and 1,000 mg every 6 hours because these dosages are in accord with the safe and effective dosage range for acetaminophen, i.e., 325 mg to 650 mg every four hours (not to exceed 4 g in 24 hours). Based on computer simulations (Ref. 1), pharmacokinetic parameters obtained from the literature (Refs. 2 through 5), and bioavailability data comparing a 650-mg dose with a 1,000-mg dose of acetaminophen (Ref. 6), the agency has determined that a 1,000-mg dose of acetaminophen every 6 hours yields a pharmacokinetic profile equivalent to that of a 650-mg dose of acetaminophen every 4 hours. A 500-mg dose of acetaminophen every 3 hours yields a blood level profile that also is similar to that of a 650-mg dose of acetaminophen every 4 hours. Therefore, the agency is proposing alternative dosage regimens for acetaminophen of 500 mg every 3 hours and 1,000 mg every 6 hours as part of the dosage schedule in § 343.50(d)(2) of the tentative final monograph. As discussed in comment 53 above, the agency is proposing the following dosages for acetaminophen, aspirin, and sodium salicylate: 325 to 650 mg every 4 hours, 325 to 500 mg every 3 hours, or 650 to 1,000 mg every 6 hours.

References

(1) OTC Volume 03BTFM.

(2) Albert, K.S., A.J. Sedman, and J.G. Wagner, "Pharmacokinetics of Orally Administered Acetaminophen in Man," *Journal of Pharmacokinetics and Biopharmaceutics*, 2:381–393, 1974.

(3) Cummings A.J., B.K. Martin, and G.S. Park, "Kinetic Considerations Relating to the Accrual and Elimination of Drug Metabolites," *British Journal of Pharmacology and Chemotherapy*, 29:136–149, 1967.

(4) Slattery, J.T., and G. Levy, "Acetaminophen Kinetics in Acutely Poisoned Patients," *Clinical Pharmacology and Therapeutics*, 25:184–195, 1979.

(5) Prescott, L. F., and N. Wright, "The Effects of Hepatic and Renal Damage on Paracetamol Metabolism and Excretion Following Overdosage: A Pharmacokinetic Study," *British Journal of Pharmacology*, 49:602–613, 1973.

(6) Research Division, McNeil Laboratories, Inc., "Acetaminophen Plasma Level Profile Following Tylenol Acetaminophen Extra Strength Capsules and APAP/R.S. Acetaminophen Tablets, Metabolic Study No. 54," Biochemical Research Report No. 199 (780306), unpublished report, included in OTC Volume 03BTFM.

64. One comment requested that the Panel's recommended monograph be revised to state that 377 mg magnesium salicylate is equivalent to 325 mg sodium salicylate rather than the 325-mg quantity of magnesium salicylate specified by the Panel (42 FR 35420). The comment explained that commercial sodium salicylate is substantially anhydrous (Refs. 1 and 2), but that magnesium salicylate is commercially available as the tetrahydrate, which contains the equivalent of about 74.5 percent salicylic acid. Assuming that the salicylic acid content is the active moiety of analgesic salicylates and because sodium salicylate contains 86.3 percent salicylic acid, the comment calculated that about 1.16 times more magnesium salicylate tetrahydrate, or 377 mg (325 mg x 1.16), is needed to be equivalent to 325 mg sodium salicylate.

The comment also pointed out that the Panel's recommended monograph does not state the molecular composition of magnesium salicylate and requested that it be clarified to state that 377 mg magnesium salicylate tetrahydrate is equivalent to 325 mg sodium salicylate. The comment concluded that, as stated in the Panel's monograph, one could assume that the difference in the salicylic acid content between 325-mg doses of magnesium salicylate and sodium salicylate could affect the therapeutic response, especially in a multidose regimen.

The agency agrees that 377 mg magnesium salicylate tetrahydrate is equivalent to 325 mg sodium salicylate. The Panel's recommendation of 325 to 650 mg magnesium salicylate every 4 hours for analgesic effect was based on data submitted on a product containing 325 mg of the tetrahydrate form of magnesium salicylate (Ref. 3). However, for adult dosage schedules for aspirin, acetaminophen, and sodium salicylate, the Panel recommended a minimum effective dosage of 325 mg for each of these ingredients (42 FR 35358), with which the agency concurs. Based upon a minimum effective dosage of 325 mg sodium salicylate, the minimum effective dosage of magnesium salicylate tetrahydrate that would contain an equivalent amount of salicylic acid is 377 mg. Therefore, the maximum dosage for magnesium salicylate should be 754 mg instead of 650 mg, and the dosages for magnesium salicylate are being revised accordingly in this tentative final monograph, which now also specifies that the dosages are based on the tetrahydrate form of magnesium salicylate (§ 343.50(d)(6)).

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 1120, 1976.

(2) "National Formulary XIV," American Pharmaceutical Association, Washington, p. 656, 1975.

(3) OTC Volume 030042.

F. Comments on Combination Drug Products and Inactive Ingredients

65. One comment objected to the Panel's recommendation in § 343.20 for combining 325 mg each of aspirin and acetaminophen in a single dosage unit for OTC use. The comment contended that because of the complex pharmacokinetics of aspirin, any combination of aspirin and acetaminophen should be subject to the requirements of a new drug application (NDA). Referring to a study by Cotty et al. (Ref. 1), the comment stated that using acetaminophen and aspirin together results in higher blood levels of aspirin than when the same quantity of aspirin is administered alone.

Other comments supported the recommended provision for combining aspirin and acetaminophen. These comments stated that such a combination should not be precluded and may be useful by sparing the side effects of each ingredient. One comment also referred to the srudy by Cotty et al. (Ref. 1) and argued that concomitant use of aspirin and acetaminophen resulted in higher blood levels of unhydrolyzed aspirin, and not total salicylate, and that except for "very specific side effects" this should not be associated with an increase in overall toxicity.

The study by Cotty et al. (Ref. 1) indicates that acetaminophen administered with aspirin appeared to increase blood concentrations of unhydrolyzed aspirin. These investigators expected no increase in toxicity because the toxicities of salicylic acid and aspirin are similar. They concluded that the increase in aspirin blood concentration and duration would be expected "to produce a net increase in pharmacologic activity over the sum of the activities of the individual drugs administered alone" because aspirin is a more potent analgesic than salicylic acid. However, this conclusion is not supported by the results of a study by Wallenstein (Ref. 2). This study demonstrated that a subtherapeutic combination of 210 mg aspirin and 150 mg acetaminophen (a 360-mg total) was essentially equivalent in analgesic effect to 360 mg of either ingredient alone and that 420 mg aspirin combined with 300 mg acetaminophen was essentially equivalent in analgesic effect to 720 mg of either ingredient alone.

After evaluating the studies discussed above, the agency concludes that the combination containing 325 mg each of aspirin and acetaminophen does not increase the overall toxicity of either ingredient in adults. (For a discussion of the use of OTC internal analgesic-antipyretic combination drug products in children, see comment 66 below.) The data provided do not support the comment's contention that because of the "complex pharmacokinetics of aspirin," combinations of aspirin and acetaminophen should be subject to the requirements of an NDA. Therefore the Panel's provision for a combination containing a 325-mg minimal effective dose each of aspirin and acetaminophen is being proposed in this monograph. However, unlike the Panel's recommendation in § 343.20(a) (1) and (2), the tentative final monograph does not require that 325 mg of each ingredient be contained in a single dosage unit. (See comment 72 below.)

References

(1) Cotty, V.O.F., et al., "Augmentation of Human Blood Acetylsalicylate Concentrations by the Simultaneous Administration of Acetaminophen with Aspirin," *Toxicology and Applied Pharmacology*, 41:7–13, 1977.

(2) Wallenstein, S.L., "Analgesic Studies of Aspirin in Cancer Patients," *Proceedings of the Aspirin Symposium*, The Aspirin Foundation, London, pp. 5–10, 1975.

66. Two comments urged that dosage schedules for children under 12 years of age be provided in § 343.20 (b) and (c) for the permitted OTC internal analgesic combination drug products recommended by the Panel in § 343.20(a). The comments asserted that the Panel's recommendations unnecessarily restrict product use by specifying only adult dosages for analgesic or antipyretic combinations and that this position contradicts other sections of the recommended monograph in which children's dosages are specified by age groups for single ingredient products, e.g., § 343.10(a)(1)(i) and (2).

The agency is concerned about the risks that may be associated with the use of analgesic-antipyretic combinations in children. For example, Bickers and Roberts observed a case of intoxication in a 5½-year-old child after a combined regimen of 300 mg aspirin and 300 mg acetaminophen, alternating every 2 hours for fever (Ref. 1). (Each drug was given individually every 4 hours.) The authors pointed out that, although many of the findings in the patient were characteristic of "simple" poisoning with either drug alone, this particular case presented difficulties in diagnosis, prognosis, and treatment strategy.

Although this patient's medication history involved more than the combined regimen of aspirin and acetaminophen, the agency shares the authors' concerns about intoxication from a combined regimen of aspirin and acetaminophen in children and notes their contention that the basis for prescribing such a regimen is wholly inadequate. In addition, the only combinations provided for in this tentative final monograph contain acetaminophen with aspirin or other salicylates. Because the agency is not aware of any data supporting the safe use of such analgesic combinations in children or any such combinations marketed for children, combinations of analgesic-antipyretic ingredients in § 343.20(a) are not being proposed for use by children under 12 years of age in the tentative final monograph.

Internal analgesic combinations containing nonanalgesic ingredients in § 343.20(b) in this tentative final monograph and the pediatric (or children's) dosages of such products will have to comply with the children's analgesic dosages included in the final monograph for OTC internal analgesic drug products. (See comment 67 below for further discussion of combination drug products containing analgesic and cough/cold ingredients.)

Reference

(1) Bickers, R.G., and R.J. Roberts, "Combined Aspirin/Acetaminophen Intoxication," *Journal of Pediatrics*, 94:1001–1003, 1979.

67. One comment objected to the Panel's recommendation that combination products be labeled to reflect all of the approved pharmacological activities of the active ingredients (42 FR 35370). The comment maintained that such labeling on a combination product containing active ingredients intended to relieve different symptoms, such as those of the common cold, would be confusing and misleading to consumers because they might think the product should be used only when all the symptoms are present. The comment stated that a combination product containing an analgesic-antipyretic ingredient should not be avoided because a single symptom of only pain or fever is present rather than both symptoms. The comment recommended that the phrase in § 343.20(d)(1), (2), (3), and (4) that states "* * * the product is labeled for the concurrent symptoms involved, * * *"

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be replaced by the following statement: "The product must be labeled to reflect all of the proven pharmacological activities of the active ingredient(s) consistent with the recommended use of the product."

The agency agrees that a combination product containing an analgesic-antipyretic ingredient should not be avoided just because an individual has a single symptom of pain or fever, rather than both symptoms. As discussed in comment 16 above, the indications statement for analgesic-antipyretic ingredients in § 343.50(a)(1) is being revised to allow manufacturers flexibility in stating the uses for these ingredients.

The agency recognizes that combination products may be intended for use by a specific target population, such as consumers who are suffering from the common cold with minor pain or fever. The agency believes that the labeling for such combinations should reflect the principal intended use(s) of the product (e.g., pain reliever-fever reducer and nasal decongestant). Such labeling should be consistent with the approved indications for the active ingredients, but would not be required to contain all of the indications.

The agency believes that labeling specific to analgesic/cough-cold combinations need only appear in one monograph, which should be the one most pertinent to the intended target population of the combination product. Therefore, the agency has determined that the labeling for analgesic/cough-cold combination products should be included in the combinations segment of the cough-cold tentative final monograph, which was published in the **Federal Register** of August 12, 1988 (53 FR 30522). Accordingly, the Panel's specific recommendations in § 343.20(d)(1), (2), (3), and (4) of its monograph are not being addressed in this tentative final monograph. However, the agency has included a statement in the combinations section (§ 343.60(b)) of this tentative final monograph stating basically what the comment requested, i.e., that the labeling of the product states the indications for each ingredient in the combination, as established in the indications section of the applicable OTC drug monographs. Further, the agency has stated in § 343.60(b)(3) that for analgesic-antipyretic/cough-cold combinations, the indications stated in the cough-cold monograph should be used.

68. One comment objected to the word "essential" in the following statement in the Panel's report (42 FR 35370):

"* * * that marketed products contain only those ingredients essential to the product." The comment argued that the word "essential" is too restrictive for OTC drug products. The comment maintained that some consumers might consider inactive ingredients nonessential, but other consumers consider these ingredients, such as a color or a flavor, essential to their acceptance of the product and their compliance with the directions for use. The comment recommended that excipients that contribute to patient acceptance of a product be permitted, along with those excipients necessary to prepare the final dosage form and provide stability and availability.

The phrase regarding essential ingredients was actually part of a recommendation by the Cough-Cold Panel, with which the Internal Analgesic Panel concurred (43 FR 35370). The Internal Analgesic Panel stated that it was aware of the inclusion of inactive ingredients in marketed drug products as "fillers, coatings, colorants, vehicles, aromatics, binders, sweeteners, flavoring agents, etc." and that "Such inactive ingredients are acceptable for marketing purposes provided they are pharmacologically inert and do not adversely affect the bioavailability of the active ingredients * * *." (See 43 FR 35370.)

The OTC drug review is an active, not an inactive, ingredient review. The OTC panels occasionally made recommendations with respect to inactive ingredients; however, these recommendations were made for public awareness and comment and were not intended to be included in the OTC drug monographs. Although not included in OTC drug monographs, inactive ingredients must meet the requirements of § 330.1(e) that they be ingredients that are safe and do not interfere with the effectiveness of the product or with tests to be performed on the product.

69. One comment stated that §§ 343.10(a)(2) and 343.12(a)(2) of the Panel's recommended monograph are inconsistent with § 341.20(e) of the Cough-Cold Panel's recommended monograph. The comment requested that § 341.20(e) be revised to allow children's dosages for combination products containing phenylpropanolamine, a nasal decongestant, and analgesic-antipyretic active ingredients. The comment suggested a revision in the phenylpropanolamine dosage to be consistent with the children's dosage of analgesic-antipyretic active ingredients.

This comment was submitted to both the OTC internal analgesic and the OTC cough-cold rulemakings. Adjustment of the dosage of phenylpropanolamine will be addressed in a future issue of the **Federal Register** in an amendment to the nasal decongestant portion of the cough-cold tentative final monograph. The comment was also addressed in the cough-cold combination drug products tentative final monograph (see comment 60 at 53 FR 30550).

70. Citing sections 201(p), 502(f), and 505(b) of the act (21 U.S.C. 321(p), 352(f), and 355(b)), one comment contended that the safety and effectiveness of a combination drug product as a whole should be the criteria by which it is judged, rather than the safety and effectiveness of its individual active ingredients. The comment stated that clinical testing of the contribution of each ingredient in a combination drug product would cause unnecessary expense for the manufacturer of the product. The comment suggested an alternative combination policy that would allow any number of ingredients to be included in a combination drug product in any quantity up to their maximum OTC dosage level as single ingredients, provided that the ingredients would not add a significant risk of harm from use or neutralize the effectiveness of other ingredients in the product. Based upon this suggestion, the comment requested Category I status for a combination drug product containing aspirin, acetaminophen, salicylamide, and caffeine, noting that the Panel classified as Category III both salicylamide and caffeine as analgesic adjuvants (42 FR 35483 and 35486).

The OTC drug review regulation for OTC combination drug products in § 330.10(a)(4)(iv) (21 CFR 330.10(a)(4)(iv)), which implements provisions of the act, states that:

> An OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population.

The requirements for OTC combination drug products have been further delineated in the agency's "General Guidelines for OTC Drug Combination Products" (Ref. 1). Item 4 under these guidelines states:

> An ingredient claimed to be a pharmacological adjuvant (i.e., to enhance or otherwise alter the effect of another active ingredient) will be considered an active ingredient. Such an ingredient may be included in addition to one or more principal active ingredients only if it meets the combination policy in all respects.

Item 5 under the OTC combination drug product guidelines states:

> In some cases an ingredient may be appropriate for use only in a specific combination or data may be available only to support the use of the ingredient in combination but not as a single ingredient. In such cases the ingredient will be placed in Category I for use only in permissible combinations and not as a single ingredient.

Both salicylamide and caffeine are being classified as Category III ingredients in this tentative final monograph (see comments 91 and 93 below). However, if data were submitted to show that either or both of these ingredients contributed to the claimed effect of the combination, the ingredient(s) could be included in the combination in accordance with the guidelines.

Reference

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D-0322, Dockets Management Branch.

71. One comment argued that although the Panel placed aspirin, acetaminophen, and several other analgesics in Category I, none of the combinations that are commonly used for headache has been classified as Category I. The comment urged that such combinations be kept on the OTC market because they have been commonly used and have met individual needs where single-ingredient products did not. (The comment did not name any specific products.)

Because the comment did not name any specific combination drug products or provide data on them, the agency is unable to consider the comment's arguments at this time. As previously mentioned, the regulations for OTC combination drug products have been supplemented by "General Guidelines for OTC Drug Combination Products" (see comment 70 above). The status of OTC analgesic combinations will be determined according to the regulations and these supplementary guidelines.

72. Several comments disagreed with the Panel's recommendations in §§ 343.20 (a), (b), and (c) that would permit combinations of two Category I internal analgesic-antipyretic ingredients only at the dosage limits specified and in a single large dosage unit. One comment contended that each analgesic ingredient in a combination should be permitted in lower than effective doses when such a combination can achieve a therapeutic effect similar to the higher quantity of a single ingredient. Other comments objected to combining the ingredients into a single large dosage unit. These comments requested that pharmaceutical manufacturers be allowed to divide the dosage between two smaller dosage units, with labeling directing consumers to take two dosage units per dose. The comments contended that one large dosage unit would be difficult to swallow and may lead to overdosage by consumers who are used to taking two tablets per dose. The comments also argued that such a requirement would burden pharmaceutical manufacturers and consumers with increased costs associated with retooling machinery used to make the larger dosage unit, redesigning packaging, etc.

The Panel recommended that only combinations containing the minimal effective adult dose of each analgesic-antipyretic ingredient be permitted. In the absence of data demonstrating that amounts less than the minimum effective dose contribute to effectiveness, the agency concurs with this recommendation as it applies to dosage level. However, the agency does not believe it is necessary to place specific restrictions on the amounts of active ingredients to be contained in a single dosage unit, provided the product's recommended dosage meets monograph conditions. The agency agrees with the comment that pharmaceutical manufacturers should be allowed to divide the dose of a combination product into more than one dosage unit with compensating directions for use. For example, the dosage for a tablet containing 162.5 mg of aspirin and 162.5 mg of acetaminophen would be two tablets per dose, thus meeting the minimum effective dosage requirements for each ingredient. Thus, the Panel's recommendation for a single dosage unit to contain the minimal effective dosage of each analgesic ingredient in § 343.20(a) is not being included in the tentative final monograph.

In addition, the agency has expanded the allowable combinations recommended by the Panel by proposing in § 343.20(a) to permit a range of acceptable amounts of active ingredients beyond the minimum effective dose to be contained in combination products. Based on the quantities of active ingredients in the products, the dosage schedules for analgesic-antipyretic combinations must comply with the dosages provided in § 343.60(d)(1) (i) or (ii) under the directions for use. (See also comment 65 above.)

With regard to the combinations of analgesic-antipyretic ingredients, the Panel based its recommendations on the review of single Category I ingredients as well as on data submitted on combination products. After the Panel's report was published in July 1977, the agency published "General Guideline for for OTC Drug Combination Products" (Ref. 1). The guidelines include a description of the criteria for the combination of Category I active ingredients from the same therapeutic category having the same or different mechanisms of action.

The agency believes that the Panel's recommendations for Category I classification of combining acetaminophen with aspirin or other Category I salicylates is in accordance with Item 2 of the OTC combination drug product guidelines, which states:

> Category I active ingredients from the same therapeutic category that have different mechanisms of action may be combined to treat the same symptoms or condition if the combination meets the OTC combination policy in all respects and the combination is on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose. Such combinations may utilize each active ingredient in full therapeutic dosage or sub-therapeutic dosage, as appropriate.

Therefore, the agency proposes to include combinations of acetaminophen with aspirin or other Category I salicylates in this monograph under § 343.20(a).

With regard to the Panel's recommendations of combining aspirin and other Category I salicylates with each other, the agency finds no data referred to in the Panel's report to support such combinations and further finds that such combinations are not in accordance with the guidelines as described in Item 3, which states:

> Category I active ingredient from the same therapeutic category that have the same mechanism of action should not ordinarily be combined unless there is some advantage over the single ingredients in terms of enhanced effectiveness, safety, patient acceptance, or quality of formulation. They may be combined in selected circumstances to treat the same symptoms or conditions if the combination meets the OTC combination policy in all respects, the combination offers some advantage over the active ingredients used alone, and the combination is, on the benefit-risk basis, equal to or better than each of the active ingredients used alone at this therapeutic dose.

In addition, following publication of the Panel's report the agency has received no data or information on such combinations, nor is aware of any such OTC drug products on the market.

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Therefore, the agency is proposing not to include analgesic-antipyretic combinations that contain only salicylates in this monograph. The agency invites comment on this position.

Reference

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D–0322, Dockets Management Branch.

73. One comment noted that the Panel's recommendation in § 343.20 does not provide for combinations of analgesic-antipyretic ingredients with both nasal decongestants and antihistamines, although provision was made for combination drug products containing an analgesic-antipyretic ingredient with either a nasal decongestant or an antihistamine. The comment asserted that information regarding a combination drug product containing analgesic-antipyretic ingredients, a nasal decongestant, and an antihistamine was submitted to the Panel and that such a product is consistent with the Category I combination drug products allowed in § 341.40(c) of the advance notice of proposed rulemaking on OTC cough-cold drug products. The comment requested that such a combination be incorporated into § 343.20 of the recommended OTC internal analgesic monograph.

The agency has determined that the categorization of combinations containing antihistamine and nasal decongestant ingredients properly falls within the scope of the OTC cough-cold drug product rulemaking. As mentioned in comment 67 above, the agency addressed combination drug products containing antihistamine, nasal decongestant, and analgesic-antipyretic active ingredients in the tentative final monograph for cough-cold combination drug products. (See comment 47 at 53 FR 30540.)

74. One comment opposed the 3-hour to 6-hour dosage interval recommended by the Panel for acetaminophen in § 343.10(b)(3) because it is incompatible with the 4-hour dosage interval for nasal decongestants and precludes the manufacture of a combination drug product containing acetaminophen and a nasal decongestant. The comment also argued that a 3-hour or a 6-hour dosage interval would be "foreign" to the habits of consumers, physicians, and pharmacists and would undesirably affect patient compliance.

The tentative final monograph on OTC internal analgesic drug products contains dosage schedules of acetaminophen based on 4-hour as well as 3-hour and 6-hour intervals. Thus, dosage schedules for this ingredient that are compatible with those specified for Category I oral nasal decongestants can be achieved. The agency does not believe that a dosage interval of every 6 hours would be foreign to the habits of consumers or would have an undesirable effect on patient compliance because many drugs are taken at 6-hour intervals.

G. Comments on Definitions.

75. One comment proposed that the following definition be included in § 343.3: "*Powdered aspirin analgesic.* A powdered form of aspirin packaged in individual unit doses."

The agency notes that the definitions recommended by the Panel in § 343.3 are general in nature and applicable to all dosage forms, and thus there would have been no reason for the Panel to include a definition of powdered aspirin. The agency sees no need to include this definition, and, in order to conform with format and style of recently published monographs, the definition section is being revised in the tentative final monograph to contain only one definition: analgesic-antipyretic drug.

76. One comment requested that the definition of highly buffered aspirin for solution in recommended § 343.3(k) be amended from "* * * contains at least 20 mEq of acid neutralizing capacity per 325 mg of aspirin and results in a pH of 3.5 or greater at the level of the initial 10 minute period as measured by the method established in § 331.25 of this chapter * * *." to "* * * provides at least 15 mEq of acid neutralizing capacity as measured by the method established in § 331.26 of this chapter * * *." The comment also requested that recommended § 343.20(d)(6), which refers to the combination of aspirin with an antacid, be revised accordingly. The comment presented data to show that a currently marketed highly buffered aspirin for solution product has less than 20 mEq of acid-neutralizing capacity per 325 mg aspirin and cited a submission to the Panel showing that the acid-neutralizing capacity of this product is 16.5 mEq when tested by the method in § 331.26 (Ref. 1).

After reviewing the submission to the Panel and testing the marketed product mentioned by the comment, the agency agrees that the product has less than 20 mEq of acid-neutralizing capacity per 325 mg aspirin. The agency points out that an average of 5 mEq is the minimal acid-neutralizing capacity required for an antacid to combine with the residual gastric acid and to maintain an elevated pH for 15 minutes in a normal subject. (See the advance notice of proposed rulemaking on OTC antacid drug products published in the **Federal Register** of April 5, 1973 (38 FR 8717).) Thus, a finished product must have an acid-neutralizing capacity of at least 5 mEq (§ 331.10) (21 CFR 331.10) to be labeled as an antacid. Highly buffered aspirin for solution exceeds this requirement. However, this is only one example of currently marketed drug products that contain aspirin with antacid ingredients (identified in § 331.11) in sufficient concentration to provide at least 5 mEq of acid-neutralizing capacity, thereby providing antacid activity in addition to analgesic activity.

The agency is not including the Panel's definition in § 343.3(k) because this information is contained in § 343.20(b)(3) of this tentative final monograph and is being revised to include all products containing aspirin with antacids that are generally recognized as safe and effective (i.e., those products providing at least 5 mEq of acid-neutralizing capacity) instead of highly buffered aspirin for solution only: "Aspirin identified in § 343.10(b)(1) may be combined with any antacid ingredient identified in § 331.11 or any combination of antacids permitted in accordance with § 331.10(a) provided that the finished product meets the requirements of § 331.10, is marketed in a form intended for ingestion as a solution, and bears labeling indications in accordance with § 343.60(b)(4)." Elsewhere in this issue of the **Federal Register** the agency is proposing to amend § 331.15 of the final monograph on OTC antacid drug products so that the combinations of antacids with nonantacid active ingredients listed therein will be consistent with the combinations being proposed in this tentative final monograph. (See also comment 47 above.)

The comment gave no reason for excluding the antacid test in § 331.25. This test should precede the test to determine the acid-neutralizing capacity of a product as specified in § 331.26. Both tests are required under § 331.10 for antacid products and have been retained here for aspirin with antacid products.

Reference

(1) OTC Volume 030104.

77. One comment recommended deleting the pH requirement from the definition of buffered aspirin in § 343.3(j), i.e., "* * * results in a pH of 3.5 or greater at the level of the initial 10-minute period as measured by the method established in § 331.25 of this chapter * * *." The comment argued that the requirement is unnecessarily restrictive because it is not crucial to the definition. Another comment stated it is unclear whether the 1.9 mEq in the definition is meant to be measured or calculated, and whether it refers to 1.9 mEq of antacid ingredients per 325 mg aspirin or to 1.9 mEq of acid-neutralizing capacity above what is needed to neutralize the aspirin. This comment also stated that the pH requirement is an antacid requirement and is inappropriate for a buffered aspirin product because buffered aspirin products currently on the market theoretically do not contain sufficient antacid to raise the pH of 10 mL of 0.5 Normal hydrochloric acid to 3.5.

The comment suggested a revised definition of buffered aspirin to replace the one recommended in § 343.3(j) and gave details for a testing procedure to replace the one in the Panel's report at 42 FR 35488, which is the same as the procedure specified in § 331.26. The comment stated that the test it suggested would eliminate poorly formulated or unstable products that contain an ineffective or partially reactive antacid.

The agency is proposing only one definition in the tentative final monograph: Analgesic-antipyretic drug. Therefore the comment's request will not be discussed in the context of the monograph definitions. However, § 343.10(b)(2) of this tentative final monograph contains the same information as the Panel's definition and specifies for buffered aspirin that "* * * the finished product contains at least 1.9 millequivalents of acid-neutralizing capacity per 325 mg aspirin * * *." Because the finished product is to be tested, there must be sufficient antacid ingredients added to the product so that the finished product provides the specified acid-neutralizing capacity.

As to whether the acid-neutralizing capacity should be measured or calculated, it is apparent the Panel intended the acid-neutralizing capacity to be measured, i.e., experimentally determined, because it specified a test for measuring acid-neutralizing capacity (42 FR 35487 and 35488). Because the method of manufacture or other factors may affect the acid-neutralizing capacity, the theoretical acid-neutralizing capacity of a buffered aspirin product may be different from the experimentally determined capacity. Therefore, the acid-neutralizing capacity is to be experimentally determined (measured).

The requirements for initial pH determination in § 331.25 were devised for antacids, and not all buffered aspirin products contain sufficient quantities of antacid ingredients so that the finished product provides antacid activity. Consequently, buffered aspirin products should not be required to meet all of the standards of the antacid monograph.

To determine the acid-neutralizing capacity of the product, however, the procedure established in § 331.26 must be followed. The agency points out that data submitted to the Panel show that a well-formulated buffered aspirin product provides 1.9 mEq of acid-neutralizing capacity when measured by the method established in § 331.26 (Refs. 1 and 2). After testing buffered aspirin products according to § 331.26 and the comment's method, the agency has determined that the products provide 1.9 mEq of acid-neutralizing capacity when measured by either method. However, the method in § 331.26 is more discriminating. The agency concludes that the comments have not presented sufficient reasons for replacing the established procedure in § 331.26 with the suggested procedure. Accordingly, the agency will retain the procedure in § 331.26.

Based upon the above discussion and for clarity, the Panel's recommended § 343.20(d)(7) (redesignated § 343.10(b)(2) in this tentative final monograph) is being revised as follows: "Buffered aspirin. Aspirin identified in paragraph (b)(1) of this section may be buffered with any antacid ingredient(s) identified in § 331.11 provided that the finished product contains at least 1.9 millequivalents of acid-neutralizing capacity per 325 milligrams of aspirin in accordance with § 331.26."

References

(1) OTC Volume 030136.
(2) OTC Volume 030137.

H. Comments on Effects of Product Formulations on Drug Absorption and Pharmacologic Effectiveness

78. One comment argued that OTC aspirin rectal suppositories should be classified as Category I. The comment maintained that their long history of use and administration to hospital patients who are unable to use oral dosage forms of aspirin have shown that they are effective analgesic-antipyretic drug products and have produced no evidence of rectal irritation.

The comment submitted no data in support of its argument. The Panel noted that the rate of absorption of aspirin from suppositories was slow compared with its absorption from the oral tablet form (42 FR 35377). The Panel noted that because suppositories may have different melting or dissolution rates, therapeutic levels of the active ingredients contained in these dosage forms can be unpredictably high or low, ranging potentially from therapeutically ineffectual results to toxicity. Thus, the Panel placed OTC analgesic rectal suppositories in Category III, concluding that additional bioavailability data and evidence concerning possible rectal irritation are needed for each suppository formulation.

The agency specifically invites comment and submission of data on OTC analgesic rectal suppositories, particularly data on bioavailability and possible rectal irritation, in accordance with the discussion on testing guidelines in part II, paragraph A.2. below and with the feedback procedures published in the **Federal Register** of September 29, 1981 (46 FR 47740). In the absence of such data at this time, the agency is proposing that OTC analgesic rectal suppositories remain in Category III.

79. One comment stated that a certain timed-release aspirin product with an approved NDA dating from 1965 should not be included in an OTC drug monograph, but should be maintained as a new drug subject to an approved NDA.

The agency agrees with the comment. The particular product in question contains 650 mg aspirin in a timed-release dosage unit, a safe amount for a single dose. However, the recommended dose of the product is two tablets, followed by one to two tablets every 8 hours. A 2-tablet dose (1,300 mg) represents a quantity of active ingredient which, if released from the tablets at one time, is not generally recognized as safe for a single dose in OTC drug products. (The safe maximum single OTC doses for aspirin, as discussed in comment 53 above, are 650 mg every 4 hours or 1,000 mg every 6 hours.)

The agency concludes that this timed-release aspirin product is a new drug under § 200.31 (21 CFR 200.31), and will remain the subject of an approved NDA and not be included in the monograph. Each NDA must contain, among other information, bioavailability data showing that the total dose of the active ingredient is released at a safe rate—that is, not too quickly or too slowly.

I. Comments on Aspirin

80. One comment stated that the amount of aspirin in an OTC internal analgesic drug product should be listed both in grains and milligrams, with grains shown first and milligrams shown parenthetically.

Although manufacturers may voluntarily list quantities of active ingredients in either grains or metric units or both, the agency believes that it would be useful for manufacturers to list ingredients in metric units. The Metric Conversion Act of 1975 (80 Stat. 1007) was enacted to increase voluntarily the use of the metric system of weights and

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measures in the United States. In support of this policy, the agency has developed a Compliance Policy Guide (Ref. 1) to establish general and specific guidance for the voluntary use of metric units of quantity on the labeling of FDA-regulated commodities. This guide states that a declaration of quantity of contents in units of weight is expressed in terms of the kilogram, gram, milligram, or microgram. While historically the amount of aspirin in an OTC internal analgesic drug product was listed in apothecary units (grains), based on the Metric Conversion Act of 1975, the agency is encouraging use of milligram units. This approach is consistent with current labeling policy for FDA-regulated commodities.

Reference

(1) "Metric Declaration of Quantity of Contents on Products Labels," reprint of Food and Drug Administration Compliance Policy Guide 7150.17, 1987.

81. One comment stated that the number of tablets in an aspirin product container should be shown on the label.

The agency points out that the declaration of net quantity of contents of an OTC drug package is already provided for in § 201.62(a) (21 CFR 201.62(a)), which states that the "* * * quantity of drugs in tablet, capsule, * * * or other unit form * * * shall be expressed in terms of numerical count * * *." Thus the number of tablets in an aspirin product container is required to be shown on the label.

82. Several comments stated that menstrual blood flow might be increased by the ingestion of aspirin products. One comment stated that many women use products containing aspirin to relieve pain from menstrual cramps and that warnings for these products should indicate that aspirin might increase menstrual blood flow. Another comment stated that aspirin, which appears to be the most commonly used analgesic for menstrual cramps, is not a cause of massive uterine bleeding.

Based on available information, aspirin does not appear to affect normal menstrual blood flow, and there are no data demonstrating that a warning to that effect is necessary. The agency is aware that the Miscellaneous Internal Panel reviewed the use of aspirin for the relief of pain of menstrual cramps and concluded that it is safe for such use. (See the **Federal Register** of December 7, 1982; 47 FR 55076.) Neither that Panel nor the Internal Analgesic Panel was aware of any evidence that aspirin increases menstrual blood flow.

The direct irritant effects of aspirin upon the gastric mucosa and its effects upon platelet aggregation have been well described in the medical literature, and the possible adverse effects of aspirin upon postoperative bleeding have been well discussed in the literature. It is recognized that doses of aspirin greater than the recommended therapeutic doses may reduce plasma prothrombin by interfering with the role of vitamin K in the production of prothrombin and decreasing platelet aggregation, thus prolonging the coagulation process (42 FR 35384). However, these effects seem to be unrelated to those involved in normal menstrual blood flow.

83. One comment stated that there was no mention in the Panel's recommended monograph of the "unique safety" of the powder dosage form of aspirin compared with other dosage forms. The comment attributed the safety of aspirin powders to their physical form and packaging and presented data to show that there have been only a few accidental ingestions of aspirin powders compared with a large number of accidental ingestions of other forms of aspirin. The comment also pointed out that the Consumer Product Safety Commission (CPSC) exempted aspirin powders from the safety packaging requirements of the Poison Prevention Packaging Act.

No attempt has been made in the tentative final monograph to compare the safety of dosage forms; such a comparison is not the intent of the OTC drug review. The comment's discussion is not related to the Panel's or the agency's conclusions on the absorption and pharmacologic effectiveness of aspirin powders and therefore provides no basis for revising the Panel's recommended monograph.

J. Comment on Acetaminophen

84. One comment disagreed with the Panel's recommendation that the standards for child-resistant safety closures for aspirin products, as set forth in regulations (16 CFR 1700.15 (a), (b), and (c)) established according to the Poison Prevention Packaging Act of 1970, should apply to acetaminophen products as well. This comment requested an exemption for liquid dosage forms of acetaminophen containing less than 1 g of acetaminophen per fluid ounce (oz). Several comments agreed with the Panel and noted that the CPSC proposed in the **Federal Register** of February 3, 1978 (43 FR 4632) to require child-resistant packaging for acetaminophen preparations containing more than 1 g of acetaminophen in a single package.

CPSC, and not FDA, regulates child-resistant packaging. CPSC issued a final rule in the **Federal Register** of August 31, 1979 (44 FR 51211), requiring child-resistant packaging for acetaminophen-containing preparations in oral dosage form containing more than 1 g of acetaminophen in a single package. This requirement became effective on February 27, 1980 for acetaminophen products packaged after that date, with the following exceptions: Effervescent acetaminophen preparations and acetaminophen preparations in powder form. The comment requesting an exemption for liquid acetaminophen products with less than 1 g of acetaminophen per fluid oz submitted the same request to CPSC, which, in turn, addressed this issue in its final rule and denied the comment's request for exemption (44 FR 51213). FDA concurs with that decision.

K. Comment on Antipyrine

85. One comment submitted data to upgrade the Category III status of antipyrine to Category I and to eliminate the Panel's recommendation of a single 975-mg dose of antipyrine per 24-hour period. The data consisted of three papers on the metabolism, including the half-life, of antipyrine in animals and humans and addressed the metabolism of antipyrine in blacks (Refs. 1, 2, and 3). The comment stated that "these studies provide assurance that a total daily dosage schedule of 3,000 mg or even 4,000 mg of antipyrine would not result in excessively high blood levels, in spite of the acknowledged extended half-life of the drug."

The agency has reviewed the data cited by the comment and concludes that the data are insufficient to justify Category I status for antipyrine. None of the studies provided any significant data to show that antipyrine is safe after repeated doses or to justify changing the Panel's recommendation of one single 975-mg dose per 24 hours.

The agency agrees with the Panel that more data are needed on the safety of antipyrine and is proposing that this ingredient remain classified as Category III. Because of its long half-life, studies on antipyrine should address the amount of this drug that can be safely given within 24 hours and determine an appropriate dosage interval to prevent a toxic amount of the drug from accumulating in the body. In addition, in order to determine sensitivity to antipyrine, epidemiological studies should be conducted that consider pharmacogenetic factors and include several racial groups.

The agency's detailed comments and evaluations on the data are on file in the Dockets Management Branch (Ref. 4).

References

(1) Fraser, H.S., et al., "Factors Affecting Antipyrine Metabolism in West African Villagers," *Clinical Pharmacology and Therapeutics*, 20:369–376, 1976.

(2) Breckenridge, A., and M. Orme, "Clinical Implications of Enzyme Induction," *Annals New York Academy of Sciences*, 179:421–431, 1971.

(3) Vesell, E.S., et al., "Relationship Between Plasma Antipyrine Half-Lives and Hepatic Microsomal Drug Metabolism in Dogs," *Pharmacology*, 10:317–328, 1973.

(4) Letter from W.E. Gilbertson, FDA, to T.E. Watson, T.E. Watson Company, coded LET015 to C00102, Docket No. 77N–0094, Dockets Management Branch.

L. Comment on Quinine

86. One comment stated that despite the side effects (such as ringing in the ears, headache, nausea, and visual disturbances) of quinine in large doses (e.g., 2 g per day), it is effective at much lower doses for nocturnal leg cramps and should remain available OTC for this use. In support of its position, the comment cited "The Pharmacological Basis of Therapeutics," edited by Goodman and Gilman (Ref. 1), which states that the dose of quinine for nocturnal leg cramps is 200 to 300 mg before retiring.

The agency is aware of the nocturnal leg cramp dosage for quinine given in the reference cited by the comment. The use of quinine for nocturnal leg cramps has been addressed by the Miscellaneous Internal Panel in the advance notice of proposed rulemaking entitled, "Quinine for the Treatment of Nocturnal Leg Muscle Cramps for Over-the-Counter Human Use," published in the **Federal Register** of October 1, 1982 (47 FR 43562). The agency concurred in the Panel's classification of quinine for this use in Category III in the tentative final monograph published in the **Federal Register** of November 8, 1985 (50 FR 46588).

The agency also agrees with the Internal Analgesic Panel's conclusions that the risk of toxic effects of quinine on the skin (e.g., rashes) and on the gastrointestinal, nervous, and cardiovascular systems outweighs its benefit in relieving pain or fever. In fact, the reference cited by the comment describes the toxicity of quinine and does not include analgesic, antipyretic, or antirheumatic actions as therapeutic uses for this drug (Ref. 1). The agency concurs with the Panel, and is proposing in this tentative final monograph that quinine is Category II when labeled for any OTC antipyretic or internal analgesic use other than the treatment and/or prevention of nocturnal leg muscle cramps.

Reference

(1) "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L.S. Goodman, and A. Gilman, MacMillan Publishing Co., Inc., New York, pp. 1062–1065, 1975.

M. Comments on Salsalate

87. One comment requested clarification of the status of salsalate, stating that in the table of active ingredients (42 FR 35350) this ingredient is classified as Category III for analgesic effectiveness, but is classified in the active ingredients section as a Category III analgesic for both safety and effectiveness (42 FR 35443).

The table of active ingredients should have shown Category III status of salsalate as an antirheumatic, antipyretic, and analgesic for both safety and effectiveness. The Panel's classification of salsalate as an analgesic is correct (42 FR 35443), but it should have also been shown as Category III for both safety and effectiveness as an antipyretic and an antirheumatic (42 FR 35452 and 35468).

The Panel's position on the categorization of salsalate can be clarified by reviewing the minutes of the Panel's 28th meeting. These minutes state that "the Panel concluded that salsalate should remain in Category III on the basis of insufficient evidence of safety and effectiveness." Furthermore, the Panel's discussion on the safety of salsalate on pages 35452 and 35468 consists of reference to the safety discussion on page 35443, in which the Panel concluded that there were insufficient data to determine salsalate's safety as an OTC analgesic. Because FDA has received no further data on salsalate to warrant a change if its Category III classification, the agency concurs with the Panel that salsalate is a Category III OTC analgesic, antipyretic, and antirheumatic ingredient.

88. One comment objected to the Panel's recommendation that additional toxicology data, such as teratogenicity studies and effects on various organs, may be needed on salsalate. The comment pointed out that because salsalate is an ester of two molecules of salicylic acid, there is no reason to consider it other than "pharmacologically equivalent to salicylic acid" or to expect metabolites other than those found with sodium salicylate. The comment further argued that, as a salicylate analgesic, salsalate should be considered a "salt or similar variant" of a Category I analgesic and that the crossover bioavailability studies for evaluating analgesic effectiveness (42 FR 35445) should be adequate to establish its effectiveness. Because of the acknowledged difference in absorption rates between salsalate and other salicylates, the comment suggested that a crossover bioavailability study should measure the rates of hydrolysis or dissociation of aspirin, sodium salicylate, and salsalate, and determine the peak plasma levels, the times of peak levels, the fractions of doses absorbed, and the half-life during the recommended dosage period of 10 days for an OTC analgesic.

As the Panel pointed out, data on the pharmacokinetics of salsalate are conflicting and incomplete. The study proposed in the comment should be conducted using analytical procedures that differentiate between parent drug (intact salsalate), salicylic acid, and other metabolites that may be formed. If the study shows that any amount of salsalate is absorbed intact and is present in the blood, then salsalate cannot be considered equivalent to salicylic acid, or a "salt or similar variant" of salicylic acid, and a general toxicological profile will be needed.

89. One comment from a manufacturer inquired whether pharmacokinetic data alone can be used to establish the effectiveness of a Category III antirheumatic active ingredient (salsalate). The firm proposed to use a method that differentiates and quantitates levels of salsalate and salicylic acid in serum. The proposed study would compare the pharmacokinetics of salicylate derived from aspirin with the pharmacokinetics of salicylate derived from salsalate after administration of a single dose each of aspirin and salsalate.

The Panel recommended that effectiveness data on salsalate be required according to its guidelines for antirheumatic drugs, which state that antirheumatic studies should be designed to test the anti-inflammatory activity of an ingredient separate from any other action the ingredient may have and that the studies should be double-blind crossover in design, with aspirin as the standard drug (42 FR 35468). The agency concludes that pharmacokinetic data alone are inadequate to establish the effectiveness status of salsalate as an antirheumatic agent and that controlled clinical studies are needed (Ref. 1).

Reference

(1) Letter from W.E. Gilbertson, FDA, to J. Schaefer, Jr., Fisons Corporation, July 18, 1978, included in OTC Volume 03BTFM.

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N. Comment on General Discussion of Antirheumatic Agents

90. One comment stated that, although there is extensive literature on fibrositis, the Panel devoted only one paragraph to this subject in its report and cited no references relating to fibrositis. The comment stated that it appeared that the Panel had deliberately ignored this subject because it would drastically weaken its argument that all inflammatory arthritis is malignant rheumatoid arthritis. The comment pointed out that fibrositis is self-limited and treatable by self-medication, and that much of what is initially diagnosed as probable rheumatoid arthritis is later found to be fibrositis.

The agency notes that the Panel did not suggest that all inflammatory conditions are malignant (progressively degenerating) rheumatoid arthritis. Many of the rheumatic conditions listed in the Panel's report are not malignant conditions. Fibrositis was not discussed in the report because the Panel chose to discuss in detail only the more commonly occurring rheumatic diseases. The agency believes that including a discussion of fibrositis would not have affected the Panel's conclusions on OTC arthritis labeling. Fibrositis is not amenable to self-diagnosis because the presenting symptoms are similar to those of the more serious rheumatic diseases. An indication for fibrositis is being included in the professional labeling section of this tentative final monograph (§ 343.80(a)). The agency's proposals on consumer labeling claims concerning arthritis are discussed in comments 17, 18, and 19 above.

O. Comments on Adjuvants and Corrective Agents

91. Several comments urged that caffeine as an OTC analgesic adjuvant be reclassified from Category III to Category I. The comments cited several studies to support their contention that caffeine is an effective analgesic adjuvant, and also to dispute the Panel's concern that in humans caffeine may interfere with the effectiveness of the antipyretic component in combination drug products containing caffeine and an antipyretic ingredient.

After reviewing the studies cited by the comments, the agency agrees with the Panel that there are insufficient data to reclassify caffeine as an analgesic adjuvant from Category III to Category I or to show that it does nor interfere with the antipyretic activity of analgesic-antipyretic ingredients. Of the studies cited, three presented new data and information (Refs. 1, 2, and 3). In a study by Cass and Frederik (Ref. 1), the investigators concluded that it could not be determined whether the addition of caffeine was a positive or negative factor in assessing analgesic effect. The agency concurs with the authors and concludes that the study fails to demonstrate the contribution of caffeine as an analgesic adjuvant.

Thomas et al. (Ref. 2) studied the metabolism of phenacetin and acetaminophen as single ingredients as well as when each ingredient was combined with aspirin, caffeine, and codeine. This study did not address the effectiveness of caffeine as an analgesic or antipyretic adjuvant and cannot be used as evidence of effectiveness.

Wojcicki et al. (Ref. 3) reported on a double-blind, crossover trial that compared the clinical relief of headache and postoperative pain in patients using three analgesic preparations. The authors concluded that the analgesic effectiveness demonstrated by the preparation containing 500 mg acetaminophen and 50 mg caffeine "suggests that this medication is superior to the preparations that did not contain caffeine. This study is not a true crossover study because only patients who felt that they needed additional analgesics crossed over to the second treatment.

The agency proposes that, in order to establish Category I status for caffeine's effectiveness as an analgesic adjuvant, it must be demonstrated that caffeine makes a positive contribution to the effectiveness of the combination product as an analgesic. If the product also makes antipyretic claims, it must be shown that caffeine does not decrease its antipyretic effectiveness.

The agency's detailed comments and evaluations on the data are on file in the Dockets Management Branch (address above) (Refs. 4 to 7).[1]

References

(1) Cass, L.J., and W.S. Frederik, "The Augmentation of Analgesic Effect of Aspirin with Phenacetin and Caffeine," *Current Therapeutic Research*, 4:583–588, 1962.

(2) Thomas, B.H., et al., "Effect of Aspirin, Caffeine, and Codeine on the Metabolism of Phenacetin and Acetaminophen," *Clinical Pharmacology and Therapeutics*, 13:906–910, 1972.

(3) Wojcicki, J., et al., "A Double-Blind Comparative Evaluation of Aspirin, Paracetamol and Paracetamol + Caffeine (Finimal) for their Analgesic Effectiveness," *Archivum Immunologiae et Therapiae Experimentalis*, 25:175–179, 1977.

(4) Letter from W.E. Gilbertson, FDA, to T.H. Chambers, Goody's Mfg. Corp., coded LET011 to C00033, Docket No. 77N–0094, Dockets Management Branch.

(5) Letter from W.E. Gilbertson, FDA, to M.A. Bass, the National Association of Pharmaceutical Manufacturers, coded LET012 to C00046, Docket No. 77N–0094, Dockets Management Branch.

(6) Letter from W.E. Gilbertson, FDA, to C.F. Baker, Burroughs Wellcome Co., coded LET013 to C00048, Docket No. 77N–0094, Dockets Management Branch.

(7) Letter from W.E. Gilbertson, FDA, to R.M. Palmes, Bristol-Myers Products, coded LET014 to C00060 and LET010, Docket No. 77N–0094, Dockets Management Branch.

(8) Comment Nos. LET00021, LET00024, LET00029, RPT, SUP00025, SUP00027, SUP00028, SUP00030, and CR00002, Docket No. 77N–0094, Dockets Management Branch.

92. One comment requested that the agency permit the use of caffeine as an adjuvant at dosage levels up to 150 mg per single adult dose, or 75 mg per dosage unit, instead of the Panel's recommended 65 mg per single dose. The comment stated that the Panel's single dose of caffeine (65 mg) in combination with analgesics was inconsistent with the Panel's allowable maximum daily dose of 600 mg caffeine. The comment also pointed out that a 65-mg single dose of caffeine seems inconsistent with the dosage of 100 mg to 200 mg recommended by the Advisory Review Panel on OTC Sedative, Tranquilizer, and Sleep-Aid Drug Products.

The Sleep-Aid Panel recommended dosages for caffeine's use as a stimulant, not as an analgesic-antipyretic adjuvant. The Internal Analgesic Panel, however, reviewed caffeine both as an analgesic-antipyretic active ingredient and as an analgesic-antipyretic adjuvant. Caffeine used alone as an OTC analgesic-antipyretic active ingredient was classified by the Panel as Category II. As an analgesic-antipyretic adjuvant, it was classified by the Panel as Category III.

The agency agrees with the comment that the Panel's report is inconsistent with respect to caffeine dosages. The agency has no objection to a dosage level of 150 mg per single adult dose, which is within the dosage range recommended for restoring alertness or wakefulness by the Sleep-Aid Panel and included by the agency in the final monograph for OTC stimulant drug products which was published in the **Federal Register** of February 29, 1988 (53 FR 6100). However, because data are still needed to demonstrate effectiveness of caffeine as an adjuvant in combination with analgesic, antipyretic, and antirheumatic ingredients, the agency proposes to classify it as Category III for this use. (See comment 91 above.)

[1] Industry has responded to FDA's concern and provided additional data (Ref. 8) which are currently undergoing review by the agency.

Reference

(1) OTC Volume 030049.

93. One comment disagreed with the Panel's recommendation that salicylamide be placed in Category III for safety and effectiveness as an OTC analgesic adjuvant. The comment argued that the harmful effects of salicylamide cited by the Panel occur only at doses of 1,000 mg or more and not at the lower doses (650 mg or less) used as an OTC analgesic adjuvant. The comment also stated that the Panel failed to consider 35 submitted references substantiating the safety of salicylamide and that nothing in the Panel's report presents reasons for suspecting that the addition of salicylamide would either detract from the effectiveness of the combination or present any safety risk.

The agency agrees with the Panel that there is insufficient information to determine the safety and effectiveness of salicylamide as an adjuvant or as a single ingredient in internal analgesic drug products. The comment submitted no new data or information to alter this decision.

The Panel did consider the 35 submitted references along with all the other data available on salicylamide in concluding that salicylamide was Category III for safety and effectiveness as an adjuvant and as a single-ingredient internal analgesic (Refs. 1 and 2). Deficiencies in the data on salicylamide available to the Panel are discussed in the Panel's report (42 FR 35439 and 35486).

To justify the inclusion of an adjuvant, such as salicylamide, in a combination drug product, the adjuvant must make a positive contribution to the safety and effectiveness of the combination. (See comment 70 above for further discussion of this subject.) Salicylamide in high doses (600 mg or more) has been shown to inhibit salicylate and acetaminophen metabolism by competing for the glucuronidation pathway (Refs. 2, 3, and 4). This inhibition of the metabolism may result in a prolonged therapeutic effect, which is why salicylamide is claimed to be an adjuvant. Whether salicylamide in low doses (less than 600 mg) in combination with salicylate salts or acetaminophen also delays the metabolism of these analgesics and, if so, to what degree, is not known. Therefore, more data are needed on the pharmacokinetics of salicylamide to establish the safety and effectiveness of this ingredient as an internal analgesic adjuvant in such a formulation.

References

(1) OTC Volume 030069.

(2) OTC Volume 030072.

(3) Levy, G., and J.A. Procknal, "Drug Biotransformation Interactions in Man. I. Mutual Inhibition in Glucuronide Formation of Salicylic Acid and Salicylamide in Man," *Journal of Pharmaceutical Sciences*, 57:1330–1335, 1968.

(4) Levy, G., and H. Yamada, "Drug Biotransformation Interactions in Man. III. Acetaminophen and Salicylamide," *Journal of Pharmaceutical Sciences*, 60:215–221, 1971.

P. Comments on Antacid or Buffering Ingredients

94. One comment questioned which antacid or buffering agents may be used as corrective agents with aspirin. The comment noted that the Panel gave a specific list of ingredients of buffering systems (42 FR 35469), but that the Panel's recommendations in § 343.3 (j) and (k) state that antacid active ingredients identified in § 331.11 may be added to aspirin. The comment urged that any of the antacid active ingredients listed in § 331.11 be permitted in combination with aspirin and that these ingredients not be restricted to those listed at 42 FR 35469.

The agency wishes to clarify that the list of ingredients in the Panel's report (42 FR 35469) was not meant to exclude other ingredients identified in § 331.11 of the antacid final monograph as ingredients of buffering systems for use with aspirin as antacids or correctives. As recommended by the Panel in § 343.20(d) (6) and (7) and § 343.3 (j) and (k) and proposed by the agency in the tentative final monograph, the antacid or buffering agents permitted in buffered aspirin or highly buffered aspirin drug products include all of the ingredients identified in § 331.11 of the final monograph for OTC antacid drug products (21 CFR 331.11).

95. Comments expressed opposing views on whether the agency should reconsider the use of highly buffered aspirin for solution products for the concurrent symptoms of headache and acid indigestion as part of the internal analgesic rulemaking, in view of the agency's final decision to allow such a combination in the final monograph for OTC antacid drug products. The antacid final monograph states in § 331.15(b), "An antacid may contain any generally recognized as safe and effective analgesic ingredient(s), if it is indicated for use solely for the concurrent symptoms involved, e.g., headache and acid indigestion, and is marketed in a form intended for ingestion as a solution."

The agency stated in the preamble to the final rule for OTC antacid drug products (39 FR 19862) that the Internal Analgesic Panel was reviewing OTC internal analgesics for their safety, effectiveness, and appropriate labeling, and that the analgesic component of an antacid-analgesic combination drug product would remain under consideration and would be the subject of a further review and determination by the agency according to the procedures specified in § 330.10. Because a panel may also find it necessary to review the safety, effectiveness, and rationality of combination drug products within which the individual ingredients are contained, it is possible that a particular drug combination may be reviewed by more than one panel. In such instances, the agency subsequently considers each panel's recommendations in determining whether the combination is appropriate for the relief of specific concurrent symptoms, is subject to the labeling requirements of more than one monograph, or whether special labeling is needed for the combination.

The data submitted to the Internal Analgesic Panel for its evaluation of the analgesic component of highly buffered aspirin for solution, an analgesic-antacid combination drug product, included the same information that had been submitted to the Antacid Panel. The agency concludes that it was appropriate for the Internal Analgesic Panel to reconsider some of the issues that the Antacid Panel had considered. Furthermore, it is appropriate for the agency to consider recommendations from both Panels, as well as the comments and reply comments received in response to the Internal Analgesic Panel's recommended monograph.

96. Two comments stated that because most consumers do not know that a popular OTC highly buffered aspirin for solution product contains aspirin, they are unaware of the potential risks in using this product.

The comments provided no evidence to support the statement that "most consumers" are unaware of the presence of aspirin in the product to which they referred. Section 502(e) (1) of the act (21 U.S.C. 352(e)) requires that the labeling of all OTC drugs contain the established name of each active ingredient in the product. In addition, consumers are alerted to the potential side effects of aspirin-containing products by the label warnings proposed for such products in this tentative final monograph.

Section 502(c) of the act (21 U.S.C. 352(c)) also provides that information required to appear on the labeling be placed thereon prominently and with such conspicuousness as to render it likely to be read and understood by the ordinary individual under customary

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conditions of purchase and use. The requirements for labeling ingredient information are spelled out more fully in the regulations at 21 CFR 201.10.

The agency believes that products labeled in accord with existing regulations and the requirements being established by this monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products will not present consumers with the potential problem described by the comments.

Q. Comment on Antihistamine-Analgesic Combinations

97. One comment argued that a currently marketed OTC drug product containing acetaminophen and phenyltoloxamine dihydrogen citrate is effective in treating tension headache and relieving musculoskeletal pain associated with anxiety and is more effective than acetaminophen alone in relieving pain. The comment mentioned studies by de Sola Pool (Ref. 1) and Gilbert (Ref. 2) that were submitted to the Panel. In response to the Panel's criticism of de Sola Pool's study, the comment submitted Drummond's reanalysis of this study (Ref. 3) and an independent analysis of Wallenstein (Ref. 4). The comment also submitted the results of a new study conducted by Scheiner (Ref. 5). The comment concluded that these studies show that phenyltoloxamine dihydrogen citrate in combination with acetaminophen should be classified as a Category I adjuvant.

The agency has reviewed the new data submitted and concludes that the data remain insufficient to support the effectiveness of phenyltoloxamine dihydrogen citrate as an analgesic adjuvant. The statistical reanalyses of the de Sola Pool study performed by Drummond (Ref. 3) and Wallenstein (Ref. 4) conclude that acetaminophen with phenyltoloxamine dihydrogen citrate is more effective than acetaminophen alone for the relief of headache. However, the study did not use a standardized scoring system to rate symptoms and the symptom complex being treated was not clearly defined. Therefore, the study is not acceptable as proof of the effectiveness of the ingredient as an analgesic adjuvant.

Gilbert's study (Ref. 2) did not show that the combination of acetaminophen and phenyltoloxamine dihydrogen citrate enhanced pain relief over acetaminophen alone. Drug differences were not detected until 48 hours after treatment started, an unacceptably long delay in a pain study. In addition, many pain states will spontaneously resolve over this period of time, and this effect may bias the study. There were a number of technical problems with the study, e.g., the patient population was too heterogeneous, and only 1 of 19 measures used for rating drug effects was concerned with pain. The agency's detailed comments and evaluations on the data are on file in the Dockets Management Branch (address above) (Ref. 6).

The agency did not review the new study by Scheiner (Ref. 5) because the investigator was disqualified by FDA. The accuracy and reliability of the data from this study would need to be validated before the agency could accept this study in support of claims for the effectiveness of phenyltoloxamine dihydrogen citrate as an analgesic adjuvant.

Therefore, the agency proposes to classify phenyltoloxamine dihydrogen citrate as a Category III internal analgesic adjuvant in this tentative final monograph.

Regarding labeling, the agency proposes to classify as Category II any claims that represent or suggest relief of or treatment for tension or anxiety, including "for the treatment of tension headache." The agency proposes to classify such labeling claims as Category II because these claims imply the treatment of tension and anxiety rather than the amelioration of the pain that may be associated with such symptoms. In the final monograph for OTC daytime sedative drug products, the agency concluded that based on the available data any products labeled, represented, or promoted for indications such as "calmative," "soothes away the tension," and "calming down" are regarded as new drugs for which approved new drug applications would be required for marketing (44 FR 36380).

The Internal Analgesic Panel classified the term "nervous tension headache" in Category II (42 FR 35435). In its discussion of headache, the Panel identified the psychogenic headache as a major type of headache and stated that these "muscle contraction" or "tension headaches" may account for up to 90 percent of the chronic headaches seen by the physician. The Panel further recommended that the cause of chronic and recurrent headaches requires diagnosis by a physician. However, the Panel also stated that the occasional headache may be due to a variety of causes, including tension, and concluded that analgesics are safe and effective for the symptomatic relief of the occasional headache (42 FR 35352).

The agency concurs with the Panel that chronic and recurrent headaches require diagnosis by a physician. However, the agency also believes that consumers are familiar with headaches perceived to be due to tension. Because the warnings proposed in § 343.50(c) (1) and (2) of this tentative final monograph will adequately warn consumers against self-use of analgesics for pain that continues to persist, the agency has no objection to the use of the phrase "pain of tension headache" as acceptable additional information for the labeling of analgesic-containing products provided that additional words are not used that imply any treatment for tension or anxiety. Because the agency believes that the proposed indication "For the temporary relief of minor aches and pains associated with * * * 'headache '* * *." is sufficiently broad to encompass headache from a variety of causes, the agency is not proposing to include the phrase "pain of tension headache" in its proposed indication for OTC internal analgesic drug products. This information may be included elsewhere in the labeling provided the phrase is not intermixed with labeling established by the monograph.

In addition, the Panel placed the claim "for the relief of musculoskeletal pain associated with anxiety" in Category II (42 FR 35486). The agency agrees with the Panel's classification because it believes that the term "musculoskeletal pain" is not readily understood by consumers. Furthermore, the agency is not aware of any OTC analgesic product labeled with such an indication. Therefore, the agency does not propose to include the claim "for the relief of musculoskeletal pain" in the monograph.

References

(1) De Sola Pool, N., "Analgesic/Calmative Effects of Acetaminophen and Phenyltoloxamine in the Treatment of Simple Nervous Tension Accompanied by Headache," draft of unpublished paper, in OTC Volume 030155.

(2) Gilbert, M.M., "The Efficacy of Percogesic in Relief of Musculoskeletal Pain Associated with Anxiety," draft of unpublished paper, in OTC Volume 030154.

(3) Drummond, C., "Re-analysis of the Study, "'Analgesic/Calmative Effects of Acetaminophen and Phenyltoloxamine in the Treatment of Simple Nervous Tension Accompanied by Headache'," draft of unpublished paper, Comment No. SUP-3, Docket No. 77N-0094, Dockets Management Branch.

(4) Wallenstein, S.L., "Statistical Evaluation of Clinical Protocol Associates Study," draft of unpublished paper, Comment No. SUP-3, Docket No. 77N-0094, Dockets Management Branch.

(5) Scheiner, J.J., "The Efficacy of Percogesic in Treating Anxiety Caused by Musculoskeletal Trauma," draft of unpublished paper, Comment No. SUP03, Docket No. 77N-0094, Dockets Management Branch.

(6) Letter from W.E. Gilbertson, FDA, to E.B. Adams, Endo Laboratories, Inc., coded ANS 80/11/17 to C00045 and SUP003, Docket No. 77N-0094, Dockets Management Branch.

R. Comments on Data Required for Evaluation

98. Several comments objected to the Panel's recommended aspirin tablet dissolution-testing procedure (42 FR 35488). One comment questioned the applicability of the procedure for any use other than quality control because of the variable results that can be obtained. A few comments criticized the methodology, such as the dissolution medium and the apparatus, and noted the disparity between the Panel's recommended dissolution-testing procedure and that of the United States Pharmacopeial Convention (USPC). Other comments stated that the procedure did not provide for combination drug products containing aspirin.

The Panel concluded that "significant variation in dissolution rate and absorption rate between aspirin products demonstrates the need for a standard dissolution test which can be used to detect preparations which will be so slowly absorbed as to potentially increase local adverse effects on the gastric mucosa or decrease therapeutic effects due to decreased bioavailability" (42 FR 35374). Therefore, the Panel recommended its testing procedure to elicit public comments for the development of a dissolution standard for aspirin tablets that would assure that these drug products are properly formulated. Since the Panel's report was published, the agency and the USPC have worked to develop a dissolution standard for aspirin tablets and capsules. Dissolution tests for aspirin capsules, aspirin tablets, and buffered aspirin tablets have become official in the U.S.P. (Refs. 1, 2, and 3). The agency is proposing to require this dissolution testing in new § 343.90.

Dissolution tests have also become official in the U.S.P. for acetaminophen and aspirin tablets (Ref. 4) and for combination drug products containing aspirin, alumina, and magnesia (Ref. 5). The agency is also proposing to require this testing in new § 343.90. Dissolution tests for other OTC aspirin combination drug products have not yet been formulated, and FDA is deferring to the USPC to develop compendial dissolution standards for such combinations. As appropriate tests are developed, FDA intends to propose to require them as part of this monograph or related monographs. Until appropriate dissolution standards are in place, other OTC aspirin combination products are classified as Category III. Interested persons are invited to submit data in support of appropriate dissolution tests for any such combination products for potential inclusion in the final monograph.

References

(1) "United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 77, 1985.

(2) "United States Pharmacopeia XXI—National Formulary XVI," Supplement 4, United States Pharmacopeial Convention, Inc., Rockville, MD, 2130, 1986.

(3) "United States Pharmacopeia XXI—National Formulary XVI," Supplement 4, United States Pharmacopeial Convention, Inc., Rockville, MD, 2131, 1986.

(4) "United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 14, 1985.

(5) "United States Pharmacopeia XXI—National Formulary XVI," Supplement 2, United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 1812 and 1813, 1985.

99. Noting that the Panel's recommended monograph contains no guidelines for studies needed to reclassify enteric-coated aspirin from Category III to Category I, one comment submitted proposed guidelines for studies to demonstrate the bioavailability of aspirin in an enteric-coated dosage form. The guidelines referred to an in vitro dissolution methodology for enteric-coated tablets, which the comment stated will be published in the U.S.P., and included a general proposal for designing a clinical protocol to test the bioavailability of enteric-coated aspirin. Two comments also submitted clinical protocols for bioavailability studies for enteric-coated aspirin products and requested that the protocols be approved by FDA for reclassifying enteric-coated aspirin from Category III to Category I.

The agency is aware that in vitro dissolution methodology for enteric-coated aspirin tablets and capsules has now been included in the U.S.P. (Ref. 1). However, the "enteric-coated" designation has been deleted in the U.S.P., and the products are now referred to as "Aspirin Delayed-Release Tablets" and "Aspirin Delayed-Release Capsules." FDA believes that the newly adopted U.S.P. test is an appropriate standard to support the reclassification of enteric-coated aspirin products from Category III to I. Therefore, the agency is proposing to include this dissolution test in the internal analgesic tentative final monograph in new § 343.90(c).

The agency had previously responded to the comments' clinical protocols for bioavailability studies (Refs. 2 and 3). Copies of these responses are on file in the Dockets Management Branch (address above). The need for bioavailability studies is superseded by the methodology recently included in the U.S.P.

The agency proposes that any other enteric-coated analgesics, e.g., sodium salicylate, remain in Category III until adequate specifications are established for these products.

References

(1) "United States Pharmacopeia XXI—National Formulary XVI," Supplement 3, United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 1972 and 1973, 1985.

(2) Letter from W.E. Gilbertson, FDA, to D. Marcus, Norcliff Thayer Inc., coded LET009 to C00109, Docket No. 77N-0094, Dockets Management Branch.

(3) Letter from W.E. Gilbertson, FDA, to E.J. Hiross, Sterling Drug Inc., coded ANS to C00110, Docket No. 77N-0094, Dockets Management Branch.

100. One comment, noting that the Panel recommended a dissolution test for plain as well as buffered aspirin tablets (42 FR 35488), expressed concern that there is no provision for a comparable test method for aspirin powder dosage forms.

The agency points out that the statement to which the comment referred is in the Panel's discussion of tablet dosage forms (42 FR 35374), in which the Panel expressed concern about significant variations in dissolution rate and absorption rate in buffered and unbuffered aspirin tablets. This concern prompted the Panel to recommend a dissolution test for aspirin tablets (buffered and unbuffered). The Panel did not recommend a dissolution test for powders because it concluded that they are rapidly absorbed and often reach peak blood levels more rapidly than the tablet dosage form (42 FR 35376).

As stated in comment 98 above, the agency is proposing to include in new § 343.90 of the internal analgesic tentative final monograph all of the dissolution tests for aspirin products that are in the U.S.P. There are no official dissolution tests for aspirin powders. Based on the Panel's discussion of powders and the fact that the agency is unaware of any problems of absorption with aspirin powders, the agency concludes that dissolution testing is not needed for either buffered or unbuffered aspirin powders.

101. One comment observed that the Panel's recommended buffered aspirin acid-neutralizing testing procedure (42 FR 35487) did not provide for the removal of aspirin. The comment stated that because aspirin interferes with the

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assay, it should be removed before determining the buffering capacity.

The agency disagrees with the comment's suggestion that aspirin be removed from buffered aspirin drug products before testing their acid-neutralizing capacity. As stated in § 343.10(b)(2) of this tentative final monograph, the finished product must provide 1.9 mEq of acid-neutralizing capacity, which exceeds the amount needed to neutralize the aspirin. Therefore, no provision for the removal of aspirin is needed in the testing procedure.

102. One comment pointed out that measurement of the acid-neutralizing capacity of combination drug products containing buffered aspirin and other active ingredients may require modifications in the standard method used for testing buffered aspirin products in § 331.25.

The comment did not provide any specific examples of needed modifications. However, the agency has revised § 331.29 to establish a mechanism for requesting specific modifications in the test procedure. This revision was published as a final rule in the **Federal Register** of August 31, 1982 (47 FR 38480) and states that any proposed modification and the data to support it should be submitted as a petition according to § 10.30. The revision further provides for a redelegation of authority to grant or deny such petitions in order to facilitate prompt action.

S. Comments on Additional Ingredients for Monograph

103. One comment requested that the lysine salt of aspirin, which has been marketed in a number of countries for several years, be included in the tentative final monograph with an indication for the temporary relief from occasional minor aches, pains, and headaches. The comment provided information on the chemical and physical properties, toxicity, bioavailability, pharmacokinetics, and gastrointestinal tolerance of a lysine aspirin product. The comment stated that lysine aspirin is a readily soluble salt of aspirin that dissociates in water into lysine and acetylsalicylic acid, that the product is intended for solution in water prior to administration, and that acetylsalicylic acid is the active moiety that exists in the gastrointestinal tract and is absorbed.

The agency has determined that the lysine salt of aspirin is a "new drug" as defined in section 201(p)(2) of the act (21 U.S.C. 321(p)(2)) as follows:

Any drug (except a new animal drug or an animal feed bearing or containing a new animal drug) the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

FDA interprets the terms "material extent" and "material time" to mean availability in the United States marketplace. The agency is unaware that lysine aspirin has ever been marketed as a drug in the United States. The comment provided no evidence to show otherwise. Thus, the agency regards this ingredient to be a new drug, requiring an approved application prior to OTC marketing.

104. One comment submitted information on calcium salicylate and requested that it be included as an analgesic ingredient in the tentative final monograph.

The Panel did not review calcium salicylate because no data were submitted on this ingredient. The comment provided information on the historical use, physical properties, and chemical preparation of calcium salicylate, but supplied no evidence that it has been marketed in the United States and provided no substantive data to demonstrate the safety and effectiveness of this ingredient as an OTC analgesic-antipyretic. FDA is not aware that calcium salicylate has ever been marketed as an OTC analgesic-antipyretic in the United States. Thus, calcium salicylate falls within the definition of a new drug within the meaning of section 201(p) of the act, as discussed in comment 103 above, and requires an approved application prior to marketing as an OTC analgesic-antipyretic drug.

The agency's detailed comments and evaluations on the data are on file in the Dockets Management Branch (Ref. 1).

Reference

(1) Letter from W.E. Gilbertson, FDA, to C. Schreur, Schreur Investments Inc., coded LET026 Docket No. 77N-0094, Dockets Management Branch.

105. One comment to the Miscellaneous Internal Panel requested that potassium salicylate be included as a Category I ingredient for use in OTC menstrual drug products. The comment argued that potassium salicylate is a naturally occurring substance and is equivalent to sodium salicylate and salicylic acid in terms of salicylate activity.

The comment did not include any data on this ingredient nor were any submitted to the Miscellaneous Internal Panel or to the Internal Analgesic Panel. The agency is aware that potassium salicylate has been marketed in the United States as an ingredient in OTC and prescription analgesic drug products (Refs. 1 through 6). Until data on potassium salicylate are submitted for review, however, the agency has an insufficient basis to consider further the request to include this ingredient in an OTC drug monograph. Based on its marketing history, potassium salicylate is classified as Category III in this tentative final monograph.

References

(1) Van Tyle, W.K., "Chapter 10—Internal Analgesic Products," *in* "Handbook of Nonprescription Drugs," 5th Ed., American Pharmaceutical Assoc., Washington, pp. 132–133, 1977.

(2) Van Tyle, W.K., "Chapter 10—Internal Analgesic Products," *in* "Handbook of Nonprescription Drugs," 7th Ed., American Pharmaceutical Assoc., Washington, p. 204 and p. 367, 1982.

(3) Korbethy, S.H., C.A. Sohn, and R.P. Tannenbaum, "Chapter 17—Menstrual Products," *in* "Handbook of Nonprescription Drugs," 7th Ed., American Pharmaceutical Assoc., Washington, p. 367, 1982.

(4) Sohn, C.A., B.H. Korbethy, and R.P. Tannenbaum, "Chapter 17—Menstrual Products," *in* "Handbook of Nonprescription Drugs," 7th Ed., American Pharmaceutical Assoc., Washington, p. 382, 1986

(5) Billings, N.F., and S.M. Billings, editors, "American Drug Index," 31st Ed., J.B. Lippincott Co., Philadelphia, p. 495, 1987.

(6) Huff, B.B., editor, "Physicians' Desk Reference," 41st Ed., Medical Economics Co., Inc., Oradell, NJ, p. 1631, 1987.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. *Summary of ingredient categories.* The agency has reviewed all the claimed active ingredients submitted to the Internal Analgesic and Miscellaneous Internal Panels, as well as other data and information available at this time, and concurs with the Panels' categorization of ingredients. In addition, the agency has reviewed three ingredients not reviewed by the Panels. For the convenience of the reader, the following table is included as a summary of the categorization of analgesic-antipyretic active ingredients by the Panels and the proposed classification by the agency.

Analgesic-antipyretic active ingredients	Panels	Agency
Acetaminophen	I	I
Acetanilide [1]	II	II
Aluminum aspirin	III	III
Antipyrine	III	III
Aspirin	I	I
Calcium salicylate	([2])	([2])
Carbaspirin calcium	I	I
Choline salicylate	I	I
Codeine	II	II
Iodoantipyrine [4]	II	II
Lysine aspirin	([2])	([2])
Magnesium salicylate	I	I
Potassium salicylate	([2])	III
Phenacetin	II	II
Quinine	II	II
Salicylamide	III	III
Salsalate	III	III
Sodium salicylate	I	I

[1] Formerly acetanilid.
[2] Not reviewed by the Internal Analgesic or Miscellaneous Internal Panels.
[3] Determined by the agency to be a "new drug."
[4] Identified by the Panel as iodopyrine.

After reviewing the available data and information, the agency has concluded that the Internal Analgesic Panel's categorization of ingredients for safety and effectiveness as analgesic-antipyretic adjuvants will remain unchanged, except for methapyrilene fumarate. The agency's reasons for recategorizing methapyrilene salts are presented in paragraph B. 32 below.

The following table is included as a summary of the categorization of analgesic-antipyretic adjuvant ingredients.

Analgesic-antipyretic adjuvants	Panel	Agency
Aminobenzoic acid	II	II
Caffeine	III	III
Methapyrilene fumarate	III	II
Pheniramine maleate	III	III
Phenyltoloxamine dihydrogen citrate.	III	III
Pyrilamine maleate	III	III
Salicylamide	III	III
Sodium para-aminobenzoate	II	II

The tables above do not address antirheumatic use, which appears only in professional labeling. The tables also do not address dosage forms, such as timed-release products, rectal suppositories, and enteric-coated aspirin. These dosage forms are discussed in comments 78, 79, and 99 above.

2. *Testing of Category II and Category III conditions.* The Panel recommended testing guidelines for analgesic, antipyretic, and antirheumatic drug products (42 FR 35444, 35453, 35468, and 35487). The agency is offering these guidelines as the Panel's recommendations without adopting them or making any formal comment on them unless otherwise noted in this document. (See comments 85, 88, 89, 91, 93, 97, 98, and 101 above.)

Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any internal analgesic, antipyretic, or antirheumatic ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). This policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. The Panel recommended as a statement of indications for OTC analgesic drug products: "For the temporary relief of occasional minor aches, pains and headache," and as a statement of indications for OTC antipyretic drug products: "For the reduction of fever." The agency is expanding and combining these statements to allow the inclusion of representative types of pain and causes of fever that are amenable to OTC treatment. (See comments 15, 16, and 17 above.) Accordingly, the statements in §§ 343.50(a) (2) and (3) are being deleted, and the labeling statement recommended in § 343.50(a)(1) is being changed to the following statement in this tentative final monograph (§ 343.50(b)(1)): "For the temporary relief of minor aches and pains" [which may be followed by one or more of the following: ("associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," "toothache," "muscular aches," "backache," "the premenstrual and menstrual periods" (which may be followed by: "(dysmenorrhea)"), or "premenstrual and menstrual cramps" (which may be followed by: "(dysmenorrhea)")), ("and for the minor pain from arthritis"), and ("and to reduce fever.")] The agency is also proposing to include "flu" as an indication for analgesic-antipyretic products containing acetaminophen. In addition, the agency is proposing that an OTC analgesic-antipyretic drug product may be identified as a "pain reliever," "analgesic (pain reliever)," "pain reliever-fever reducer," or "analgesic (pain reliever)-antipyretic (fever reducer)" (§ 343.50(a)).

2. The agency is proposing combined analgesic-antipyretic labeling for analgesic-antipyretic drug products labeled only for use in children, e.g., children's acetaminophen. Based upon representative types of pain and causes of fever that are amenable to OTC treatment in children over 2 years of age, the indications statement for OTC children's analgesic-antipyretic drug products is being proposed as follows (§ 343.50(b)(2)): "For the temporary relief of minor aches and pains" [which may be followed by: ("associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," or "toothache")) and/or ("and to reduce fever.")] The agency is also proposing to include "flu" as an indication in the labeling of products that contain acetaminophen. (See comments 15 and 16 above.)

3. The agency is proposing in §§ 343.50 (c)(1)(ii) and (c)(2)(ii) of this tentative final monograph that internal analgesic drug products labeled for the relief of sore throat pain bear a modified version of the warning statement currently recommended in 21 CFR 369.20 for "throat preparations for temporary relief of minor sore throat: Lozenges, troches, washes, gargles, etc." (See comment 15 above.) In the tentative final monograph for OTC oral health care drug products, the agency has proposed to remove the existing recommended warning statement in § 369.20 as well as the suggested warning for OTC drugs for minor sore throats in § 201.315. (See 53 FR 2456.)

4. The warnings recommended by the Panel in §§ 343.50(c)(1) (i) and (ii) are being revised and proposed as three warnings as follows in § 343.50(c):

(1) *For products labeled for adults*—(i) *For products containing any ingredient in § 343.10.* "Do not take this product for pain for more than 10 days or for fever for more than 3 days unless directed by a doctor. If pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a doctor because these could be signs of a serious condition."

(2) *For products labeled for children 2 years to under 12 years of age*—(i) *For products containing any ingredient in § 343.10.* "Do not give this product for pain for more than 5 days or for fever for more than 3 days unless directed by a doctor. If pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a

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doctor because these could be signs of a serious condition."

(3) *For products labeled both for adults and for children 2 years to under 12 years of age.* * * * "Do not take this product for pain for more than 10 days (for adults) or 5 days (for children), and do not take for fever for more than 3 days unless directed by a doctor. If pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a doctor because these could be signs of a serious condition. Do not give this product to children for the pain of arthritis unless directed by a doctor."

These warnings are being revised for clarity, to distinguish between products used by adults and/or children, and to alert consumers to appropriate time limitations on self-treatment with OTC analgesic-antipyretic drug products as well as to symptoms that require professional treatment. (See comments 13, 14, 18, and 30 above.)

5. Because the agency is combining the indications for pain and fever into a single statement and because dosage schedules are the same for analgesic and antipyretic ingredients, the agency is proposing a single dosage schedule in § 343.50(d) for each analgesic-antipyretic ingredient. (See comments 16 and 53 above.) Section § 343.10 is being revised to list all active ingredients, and §§ 343.12 and 343.14 are being deleted.

6. The agency is proposing deletion of the warning recommended in § 343.50(c)(5)(ii) because consumers might interpret it to mean that acetaminophen can be used to treat arthritis. The agency is also proposing deletion of the warning recommended for aspirin in § 343.50(c)(3)(i) because the agency is concerned that different labeling statements on acetaminophen and aspirin products concerning arthritis might encourage consumers to self-diagnose and self-treat arthritis. (See comment 19 above.)

7. The agency is proposing the following in § 343.50(b)(4)(i) to provide for children's labeling: *For products labeled only for children 2 to under 12 years of age containing any ingredient identified in § 343.10.* (A) The labeling of the product contains, on the principal display panel, either of the following:

(*1*) "Children's (*trade name of product or generic name of ingredient(s)*)."

(*2*) "(*Trade name of product or generic name of ingredient(s)*) for Children."

(B) The labeling for adults in § 343.50(d) and the statement "Children 2 to under 12 years of age" in § 343.50(d)(3)(ii) are not required. (See comment 30 above.)

8. The following are agency-initiated changes in the Panel's recommended monograph based on the format and style of recently published monographs:

(a) The signal word "warning" has been used routinely in all labeling in OTC drug monographs instead of the signal word "caution." Accordingly, the word "caution" is not being included in § 343.50(c)(1)(v) (B) and (C) in this proposed monograph. (See comment 32 above.)

(b) The definition section contains only one definition: analgesic-antipyretic drug. Other definitions appearing in the advance notice of proposed rulemaking are not considered necessary for this tentative final monograph.

(c) The agency is redesignating proposed Subpart D of the monograph as Subpart C, placing the labeling sections under Subpart C.

(d) In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and other applicable OTC drug regulations will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

9. The agency is proposing to delete the first sentence of the aspirin hypersensitivity warning recommended in § 343.50(c)(4)(i) (redesignated § 343.50(c) (1)(iv)(A) and (2)(iv)(A)), "This product contains aspirin." (See comment 33 above.) This sentence is unnecessary because section 502(e)(1) of the act (21 U.S.C. 352(e)(1)) requires all drug products to bear on the label the established name of the active ingredient or ingredients contained in the product.

10. The agency is proposing that the warning recommended in § 343.50(c)(3)(v) (redesignated § 343.50(c)(1)(v)(C)) be identified as a drug interaction precaution (see comment 36 above) as follows: "*Drug Interaction Precaution.* Do not take this product if you are taking a prescription drug for anticoagulation (thinning the blood), diabetes, gout, or arthritis unless directed by a doctor." This precaution is being modified in § 343.50(c)(2)(v)(C) for products labeled for children 2 years to under 12 years of age. For products labeled both for adults and children, the precaution for adults will apply. (See § 343.50(c)(3).)

11. The agency is revising the warning recommended in § 343.50(c)(3)(ii) (redesignated § 343.50(c) (1)(v)(A) and (2)(v)(A)) to read: "If ringing in the ears or a loss of hearing occurs, consult a doctor before taking any more of this product." The agency believes this wording more clearly conveys the appropriate course of action to the consumer. (See comment 39 above.)

12. The statements recommended by the Panel in § 343.50(c)(3)(iii) (*a*) and (*b*) are being moved to § 343.50(d)(3) (i) and (ii) in the tentative final monograph because they are directions for use, not warnings. (See comment 41 above.)

13. The agency is proposing deletion of the term "stomach distress" from § 343.50(c)(3)(iv) (redesignated § 343.50(c)(1)(v)(B)) and is revising the warning as follows: "Do not take this product if you have stomach problems (such as heartburn, upset stomach, or stomach pain) that persist or recur, or if you have ulcers or bleeding problems, unless directed by a doctor." This warning is being further revised in § 343.50(c)(2)(vi)(B) for products labeled for children 2 years to under 12 years of age. For products labeled for both adults and children, the warning for adults will apply. (See § 343.50(c)(3). See also comment 31 above.)

14. The Panel classified the claims "acts five times faster than aspirin" and "reaches peak action twelve times faster than aspirin" in Category II for choline salicylate. However, the agency finds a reasonable basis to classify such claims in Category III. (See comment 45 above.) This classification is consistent with the Panel's treatment of similar claims for buffered aspirin, i.e., the data are not sufficient to support such claims as "faster to the bloodstream than plain aspirin."

15. The agency finds that labeling claims such as "extra-strength," "extra pain relief," "maximum strength," and "arthritis strength" are outside the scope of the OTC drug review. (See comment 48 above.)

16. The Panel recommended a children's dosage unit of 80 mg for aspirin and acetaminophen. The agency is proposing that the children's dosage unit for aspirin, acetaminophen, and sodium salicylate be 80 mg or 81 mg because both strengths are marketed, and the difference between these strengths is of no therapeutic consequence. In addition, a minimal effective dose for children over 9 years of age (i.e., 320 mg for the 80-mg dosage unit, 324 mg for the 81-mg dosage unit, or 325 mg for the 325-mg dosage unit) is being added to the children's dosage schedule. (See comment 58 above.)

17. Quantities of active ingredients are expressed in the tentative final monograph in metric units only. Manufacturers may voluntarily list quantities of active ingredients in both apothecary and metric units. (See comment 60 above.)

18. The agency is not adopting the analgesic equivalence value labeling statements recommended by the Panel in § 343.50(e) because they do not appear to serve their intended purpose and could be confusing to consumers. (See comment 56 above.)

19. The statements on dosage units recommended in § 343.50(d) are also being deleted in this tentative final monograph. The agency believes that the terms "standard" and "nonstandard" would not serve their intended purpose of simplifying comparisons among various products and may confuse consumers. (See comment 53 above.)

20. The dosage schedules for aspirin, acetaminophen, and sodium salicylate recommended by the Panel in § 343.10 (a), (b), and (f) are being revised to eliminate the concepts of "standard" and "nonstandard" schedules and are being combined under § 343.50(d)(2). (See comment 53 above.) In accordance with the agency's changes discussed in this paragraph and in paragraph number 18 above, the Panel's recommended definitions in § 343.3 (c), (m), and (p) are not being included in this tentative final monograph.

21. The agency concurs with the Panel's recommendation on dosages of aspirin, acetaminophen, and sodium salicylate for adults and has incorporated this information in the directions section of the tentative final monograph (§ 343.50(d)), except that the agency is not including in the tentative final monograph a maximum initial dose of 975 mg for these ingredients when given in a 4-hour dosage regimen. (See comments 53 and 63 above.)

22. The Panel recommended a dosage of 325 to 650 mg magnesium salicylate every 4 hours, based upon data submitted on a product containing 325 mg of the tetrahydrate form of magnesium salicylate. This is the same as the dosage range established for sodium salicylate. However, the agency has determined that 377 mg magnesium salicylate tetrahydrate, and not 325 mg, is equivalent to 325 mg sodium salicylate. Given a minimum effective dosage of 325 mg sodium salicylate, the dosage of magnesium salicylate tetrahydrate that would contain an equivalent amount of salicylic acid is 377 mg. Therefore, the agency concludes that the minimum effective dosage of magnesium salicylate should be 377 mg, and the maximum dosage for this ingredient should be 754 mg. The dosages for magnesium salicylate are being revised accordingly, and this tentative final monograph specifies in § 343.50(d)(6) that the dosages are based on the tetrahydrate form of magnesium salicylate. (See comment 64 above.)

23. The agency is not including analgesic-antipyretic combinations that contain only salicylates in this monograph because such combinations are not in accordance with general OTC combination drug product guidelines. (See comment 72 above.) However, the agency has expanded the allowable combinations recommended by the Panel by providing a range of acceptable amounts of active ingredients that may be contained in a combination product. The agency discussed combination products containing analgesic and cough-cold ingredients in § 341.40 of the cough-cold combinations tentative final monograph (53 FR 30522). Accordingly, the Panel's recommendations in § 343.20(d) (1), (2), (3), and (4) of its monograph are not being addressed in this tentative final monograph, and appropriate cross-references to Part 341 are being included. (See comment 67 above.)

24. Based on the recommendations of the Miscellaneous Internal Panel, the agency has expanded the combination section of the monograph to provide for allowable combinations of analgesic ingredients or combinations of analgesic ingredients with a diuretic when the product is labeled for "menstrual" claims. (See the tentative final monograph for OTC menstrual drug products published elsewhere in this issue of the **Federal Register**.)

25. The agency notes that the Panel concluded that OTC acetaminophen products for children should be packaged in containers containing no more than 36 tablets (42 FR 35415). This recommendation was based on an existing regulation recommending a 36-tablet limitation of 1¼ gr children's aspirin tablets in § 201.314(c)(2) (21 CFR 201.314(c)(2)) and not on data pertaining to the toxicity of acetaminophen in children. No comments were submitted in response to the Panel's recommendation. The agency has evaluated currently marketed pediatric acetaminophen products (Ref. 1) and does not believe it necessary to include this packaging limitation in the tentative final monograph. The agency specifcally invites comments on the need for a regulation to limit the number of dosage units per container for pediatric dosage forms of acetaminophen in light of child proof closures and the degree of voluntary compliance in effect at this time among the manufacturers of these products. The agency also invites comments on the need for a regulation requiring the 36-tablet limitation for pediatric aspirin products which is recommended in 21 CFR 201.314(c)(2).

Reference

(1) Cardinale, V.A., Editor, "1987 Redbook," Medical Economics Company Inc., Oradell, NJ, pp. 100–103, 130, 253, 452, 563, 600, 1987.

26. The agency is changing the Panel's recommended single dose of 65 mg caffeine to 75 mg caffeine as an analgesic adjuvant, not to exceed a single adult dose of 150 mg or a maximum daily dose of 600 mg. Caffeine remains in Category III as an analgesic adjuvant. However, industry has responded to FDA's concern and provided additional data which are currently under review by the agency. (See comment 92 above.)

27. The agency is proposing to include by reference the dissolution testing procedures for aspirin capsules, as contained in U.S.P. XXI at page 77, for aspirin tablets as contained in U.S.P. XXI Supplement 4 at page 2130, and for buffered aspirin tablets, as contained in U.S.P. XXI Supplement 4 at page 2131, as part of this tentative final monograph. (See comment 98 above.) Furthermore, the agency is also including by reference the dissolution standard for acetaminophen and aspirin tablets as contained in U.S.P. XXI at page 14, the dissolution standard for one aspirin combination product as contained in U.S.P. XXI Supplement 2 at pages 1812 and 1813, and the dissolution standard for enteric coated aspirin tablets (delayed-release tablets) as contained in U.S.P. XXI Supplement 3 at pages 1972 and 1973. (See comments 98 and 99 above.)

28. The agency is deleting the Panel's recommended definition for buffered aspirin in § 343.3(j) and is including the definition in the active ingredients section (§ 343.10(b)(2)) of this tentative final monograph as a result of the establishment of a U.S.P. monograph for buffered aspirin tablets in U.S.P. XXI Supplement 4 at page 2131. The definition of buffered aspirin in § 343.10(b)(2) of this tentative final monograph is being proposed as follows: Buffered Aspirin "Aspirin identified in paragraph (b)(1) of this section may be buffered with any antacid ingredient(s) identified in § 331.11 provided that the finished product contains at least 1.9 milliequivalents of acid-neutralizing capacity per 325 milligrams in accordance with § 331.26." (See comments 42 and 77 above.)

29. The agency is deleting the Panel's recommended definition in § 343.3(k) because the same information is

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contained in § 343.20(d)(6) (see comment 76 above) which is being redesignated § 343.20(b)(3) in this tentative final monograph and is being revised to include all products containing aspirin with antacid as follows: "Aspirin identified in § 343.10(b)(1) may be combined with any antacid ingredient identified in § 331.11 or any combination of antacids permitted in accordance with § 331.10(a) provided that the finished product meets the requirements of § 331.10, is marketed in a form intended for ingestion as a solution, and bears labeling indications in accordance with § 343.60(b)(4)."

In addition, the agency is proposing that such products be identified as follows: "pain reliever/fever reducer" (or the variation permitted in § 343.50(a)) and "antacid." (See comments 42 and 76 above.)

30. The agency is proposing indications for products containing aspirin with antacid that are based upon the aspirin indications for pain and fever in § 343.50(b)(1) and the antacid indications in § 331.30(b). (See comment 47 above.)

31. The labeling for products containing acetaminophen with antacid (acetaminophen and antacid combinations), provided for in recommended § 343.20(d)(5) and redesignated § 343.20(b)(1) in this tentative final monograph, is being modified to include a statement of identity and the revised indications labeling in § 343.60. (See comment 47 above.)

32. The agency is including in § 343.80 proposed professional labeling on the use of aspirin, buffered aspirin, or aspirin in combination with an antacid in the prevention of myocardial infarction in patients with a previous infarction or unstable angina pectoris. The agency is also proposing to incorporate labeling on the use of aspirin and buffered aspirin without sodium for transient ischemic attacks. (See comments 49 and 50 above.)

A number of other professional labeling indications also are being proposed in § 343.80(a) of the tentative final monograph. The agency is aware that some manufacturers have included statements in the labeling of their internal analgesic-antipyretic drug products that advise consumers to see their doctor for other (or new) uses of aspirin (or name of product). Such information may be beneficial to consumers, and the agency has no objection to a general statement of this type being included in the labeling of OTC internal analgesic-antipyretic drug products. The agency is also aware that information about these other uses of these products has appeared in newspapers and magazines and on television and radio. The agency is concerned that consumers may read or hear this information and self-medicate with an OTC drug product for one of these conditions without consulting with their doctor. Consumers should not self-medicate with an OTC analgesic-antipyretic drug product for any of these professional indications, and use for any of these conditions should be only under a doctor's supervision because serious side effects may occur. The agency believes that it is important that any information provided to consumers about other (professional) uses of these products be accompanied by a counterbalancing statement that the consumer should not use the product for more than 10 days (consistent with the allowable OTC labeling being proposed in this tentative final monograph) without consulting their doctor because serious adverse effects may occur. Examples include possible bleeding and stroke.

Based upon these new uses of aspirin and recognizing the evolving nature of this issue, the agency is proposing the following optional statement in this tentative final monograph: "See your doctor for other uses of [insert name of ingredient or trade name of product], but do not use for more than 10 days without consulting your doctor because serious side effects may occur." The agency believes that such information should be provided to consumers in the most effective manner and should be prominently displayed in labeling so that it may readily be seen and understood. At this time, the agency is proposing this as optional (allowable) labeling. The agency invites comment on this statement or other alternative labeling, appropriate placement in labeling, and whether the 10 day limitation on use should be an integral part of any such statement. The agency also invites comment on whether this information should be part of the required labeling for these products.

33. The agency is not adopting the liver warning in § 343.50(c)(5)(i), but is proposing that one of the following overdose warnings appear on all acetaminophen products to follow those general overdose warnings required in § 330.1(g) (21 CFR 330.1(g)): for products labeled for adults (§ 343.50(c)(1)(iii)), "Prompt medical attention is critical for adults as well as for children even if you do not notice any signs or symptoms" or for products labeled for children (§ 343.50(c)(2)(iii)), "Prompt medical attention is critical even if you do not notice any signs or symptoms." For products labeled for both adults and children, the warning for adults will apply, as described in § 343.50(c)(3). (See comment 25 above.)

34. The agency has reclassified methapyrilene fumarate from Category III to Category II as an OTC analgesic, antipyretic, and antirheumatic adjuvant ingredient. A tentative final rule for nighttime sleep-aids, published in the Federal Register of June 13, 1978 (43 FR 25544), proposed to place methapyrilene in Category II because of preliminary studies implicating this drug as a carcinogen, or a carcinogen synergist with nitrates, in rats. However, at that time, the studies were too preliminary to support a definitive finding of carcinogenicity for methapyrilene that would necessitate its immediate removal from all products in the OTC drug market.

On May 1, 1979, the agency received an interim report from the National Cancer Institute (NCI) regarding carcinogenicity studies performed with methapyrilene at the Frederick Cancer Research Center. The results of these studies have been published by Lijinsky, Reuber, and Blackwell (Ref. 1). The NCI interim report stated that methapyrilene is a potent carcinogen in rats and must be considered a potential carcinogen in man. FDA reviewed this report and concurred with its conclusions. In June 1979, the agency initiated a recall letter to all manufacturers holding an approved new drug application (NDA) for products containing methapyrilene. This voluntary recall has eliminated drug products containing methapyrilene from the marketplace. Products containing methapyrilene are now considered to be misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) and "new drugs" under section 201(p) of the act (21 U.S.C. 321(p)).

The agency received no comments on methapyrilene fumarate, which was classified as Category III by the Panel as an analgesic adjuvant. Based on the studies discussed above, the agency has reclassified methapyrilene fumarate from Category III to Category II.

Reference

(1) Lijinsky, W., M.D. Reuber, and B.N. Blackwell, "Liver Tumors Induced in Rats by Chronic Oral Administration of the Common Antihistamine Methapyrilene Hydrochloride," *Science*, 209:817–819, 1980.

35. The agency is expanding the Panel's recommended warning on salicylate allergy in § 343.50(c)(6) (redesignated § 343.50(c)(1)(v) and (2)(v)) to include aspirin in an effort to assure that consumers, most of whom are apt to be familiar with aspirin, will understand that aspirin is also a salicylate and that the allergic reaction that they may associate with aspirin is a salicylate allergy and can be caused by any of the ingredients in this drug group.

36. The Panel was concerned with the effects of aspirin or carbaspirin calcium on increasing duration of labor, changing hemostatic mechanisms in the newborn and increasing maternal blood loss (42 FR 35404). The latter may be a hazard particularly in premature labor and thus at any time during the last 3 months of pregnancy. For these reasons, the Panel concluded that there is a potential hazard to the use of aspirin during pregnancy and recommended the following warning on all aspirin-containing products: "Do not take this product during the last 3 months of pregnancy except under the advice and supervision of a physician." The agency received no comments on this issue, but is expanding the Panel's labeling recommendation to inform consumers of the reason for the warning. In addition, in the Federal Register of December 3, 1982 (47 FR 54750), the agency published a final rule to amend the general drug labeling provisions in Part 201 by adding new § 201.63, which includes the following warning to pregnant and nursing women concerning the use of OTC drugs that are intended for systemic absorption: "As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product." Because of this more recent general warning, the agency is proposing that the following revised warning follow the warning required in § 201.63(a): "IMPORTANT: Do not take this product during the last 3 months of pregnancy unless directed by a doctor. Aspirin taken near time of delivery may cause bleeding problems in both mother and child."

37. After reviewing the conclusions stated in three Panel reports (Oral Cavity at 42 FR 22796, Internal Analgesic at 42 FR 35376, and Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment at 44 FR 69845) concerning aspirin's ability to exert a topical effect as well as the available data, the agency concluded that there are not sufficient data available to permit final classification of aspirin as a topical analgesic/anesthetic in the tentative final monograph for OTC oral health care drug products, published in the Federal Register of January 27, 1988 (53 FR 2436). In that tentative final monograph, the agency deferred the systemic effectiveness of aspirin in a chewing gum dosage form for the relief of many kinds of pain including sore throat to this rulemaking (53 FR 2442). Although the topical analgesic effect of aspirin is not being specifically addressed in this rulemaking, the agency tentatively accepts the conclusion of the majority of the Oral Cavity Panel and the Internal Analgesic Panel that aspirin in a chewing gum base is safe for the relief of sore throat pain when labeled with adequate directions and warnings against misuse.

Although the Internal Analgesic Panel concluded that the topical effect of aspirin or any analgesic in a chewing gum dosage form has not been adequately tested for the treatment of sore throat pain, it found the marketing of an OTC analgesic in a chewing gum formulation acceptable for its systemic analgesic effect if the product provides the minimum effective dose (325 to 650 mg aspirin/dose) and is labeled according to the Panel's proposed monograph. The Panel also stated its concern about the possibility of oral mucosal damage and the effect of aspirin on blood clotting after oral surgery or tonsillectomy and recommended that the labeling of such product formulations include the warning, "Do not take this product for at least 7 days after tonsillectomy or oral surgery except under the advice and supervision of a physician." The Panel further recommended that aspirin for a local topical effect be deferred to the Oral Cavity Panel for evaluation (42 FR 35376).

The Oral Cavity Panel concluded that OTC anesthetic/analgesic ingredients are useful for the treatment of the symptoms of occasional minor sore throat and mouth but was divided in its conclusions about the safety and effectiveness of aspirin as an anesthetic/analgesic ingredient for topical use on the mucous membranes of the mouth and throat (47 FR 22769 and 22796). The majority of the Panel concluded that aspirin incorporated in a chewing gum base is safe and effective as an OTC anesthetic/analgesic ingredient for topical use on the mucuous membranes of the mouth and throat. However, the minority of the Panel concluded that there were insufficient data available to permit final classification of the safety and effectiveness of aspirin as an OTC anesthetic/analgesic ingredient. The minority of the Panel had reservations about the safety of topically applied aspirin used in the oral cavity and believed that aspirin has no known topical anesthetic or analgesic activity. It also believed that any analgesic effect from aspirin applied topically in the oral cavity is ultimately due to systemic absorption and not to topical application. Both the majority and minority of the Panel concluded that aspirin should not be used following operative procedures of the mouth or throat.

Because the agency is aware that aspirin increases bleeding time and inhibits platelet aggregation (42 FR 35384 and 47 FR 22797) and because aspirin-related hemorrhage after oral surgery and tonsillectomy is a well documented occurrence (Refs. 1, 2, and 3), the agency agrees with both the Internal Analgesic and Oral Cavity Panels that aspirin in a chewing gum form or chewable tablet form should not be used for at least 7 days after oral surgery or tonsillectomy (42 FR 35377 and 47 FR 22798 and 22801). The agency is therefore proposing the following warning for these dosage forms of aspirin: "Do not take this product for at least 7 days after tonsillectomy or oral surgery unless directed by a doctor."

References

(1) Hersh, R.A., "A Clinical Study Comparing the Incidence of Postoperative Bleeding in Patients Using Salicylate Containing Analgesics Versus Acetaminophen Analgesics," *The Bulletin of the Bergen County Dental Society*, 40:6–8 and 16, 1974.

(2) Reuter, S.H., and W.W. Montogomery, "Aspirin vs Acetaminophen After Tonsillectomy," *Archives of Otolaryngology*, 42:214–217, 1964.

(3) Singer, R., "Acetylsalicylic Acid: A Probable Cause for Secondary Tonsillectomy Hemorrhage," *Archives of Otolaryngology*, 42:19–20, 1945.

38. Section 201.314 (21 CFR 201.314) sets forth certain labeling requirements regarding warnings on OTC drug products containing salicylates and statements of policy on labeling such drugs. Several provisions of § 201.314 may be superseded by the requirements established in several OTC drug final monographs (e.g., internal analgesic, external analgesic, and overindulgence in alcohol and food). When those monographs are finalized, the agency will revise the appropriate portions of § 201.314. In addition, the agency may incorporate some of the requirements of § 201.314 into the appropriate monographs.

In addition, the agency is proposing to remove paragraph (a)(1) of § 310.201 and reserve paragraph (a)(1) for future use. The provisions of § 310.201(a)(1) will be superseded by the requirements of the internal analgesic final monograph. For the same reason, those portions of §§ 369.20 and 369.21 applicable to salicylates and acetaminophen are also proposed for removal.

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The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC internal analgesic, antipyretic, and antirheumatic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any impact that this rulemaking would have on OTC internal analgesic, antipyretic, and antirheumatic drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC internal analgesic, antipyretic, and antirheumatic drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on internal analgesic, antipyretic, and antirheumatic drug products, a period of 180 days from the date of publication of this proposed rulemaking in the Federal Register will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Sections 343.50(c)(1)(viii)(A) and 343.50(c)(2)(viii)(A) of this proposed rule contain collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) or its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Shannah Koss.

Interested persons may, on or before May 16, 1989, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before May 16, 1989. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the Federal Register.

Interested persons, on or before November 16, 1989, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before January 16, 1990. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the Federal Register of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on January 16, 1990. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the Federal Register unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Prescription exemption.

21 CFR Part 343

Internal analgesics, Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Over-the-counter drugs, Warning and caution statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 is revised to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057–1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

§ 310.201 [Amended]

2. In Subpart C, § 310.201 *Exemption for certain drugs limited by new-drug applications to prescription sale* is amended by removing paragraph (a)(1) and reserving it.

3. Part 343 is added to read as follows:

PART 343—INTERNAL ANALGESIC, ANTIPYRETIC, AND ANTIRHEUMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
343.1 Scope.
343.3 Definitions.

Subpart B—Active Ingredients

343.10 Analgesic-antipyretic active ingredients.
343.20 Permitted combinations of active ingredients.

Subpart C—Labeling

343.50 Labeling of analgesic-antipyretic drug products.
343.60 Labeling of permitted combinations of active ingredients.
343.80 Professional labeling.

Subpart D—Testing Procedures

343.90 Dissolution Testing.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

Subpart A—General Provisions

§ 343.1 Scope.

(a) An over-the-counter analgesic-antipyretic drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part in addition to each of the general conditions established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 343.3 Definitions.

As used in this part:

Analgesic-antipyretic drug. An agent used to alleviate pain and to reduce fever.

Subpart B—Active Ingredients

§ 343.10 Analgesic-antipyretic active ingredients.

The active ingredients of the product consist of any of the following when used within the dosage limits established for each ingredient in § 343.50(d):

(a) Acetaminophen.

(b) *Aspirin ingredients.* (1) Aspirin.

(2) Buffered aspirin. Aspirin identified in paragraph (b)(1) of this section may be buffered with any antacid ingredient(s) identified in § 331.11 of this chapter provided that the finished product contains at least 1.9 milliequivalents of acid-neutralizing capacity per 325 milligrams of aspirin in accordance with § 331.26 of this chapter.

(c) Carbaspirin calcium.

(d) Choline salicylate.

(e) Magnesium salicylate.

(f) Sodium salicylate.

§ 343.20 Permitted combinations of active ingredients.

The following combinations are permitted provided each active ingredient is present within the established dosage limits and the product is labeled in accordance with § 343.60. Combinations containing aspirin must also meet the standards of an acceptable dissolution test, as set forth in § 343.90.

(a) *Combinations of acetaminophen with other analgesic-antipyretic active ingredients.* Acetaminophen identified in § 343.10(a) may be combined with any one ingredient listed below provided that each dose of the product contains 325 to 500 milligrams acetaminophen and the amount of the other ingredient as follows and provided that the product is not labeled for use by children under 12 years of age:

(1) Aspirin 325 to 500 milligrams.

(2) Carbaspirin calcium 414 to 637 milligrams.

(3) Choline salicylate 435 to 669 milligrams.

(4) Magnesium salicylate 377 to 580 milligrams.

(5) Sodium salicylate 325 to 500 milligrams.

(b) *Combinations of analgesic-antipyretic active ingredients with nonanalgesic-nonantipyretic active ingredients—*(1) *Acetaminophen and antacid combinations.* Acetaminophen identified in § 343.10(a) may be combined with any antacid ingredient identified in § 331.11 of this chapter or any combination of antacids permitted in accordance with § 331.10(a) of this chapter provided that the finished product meets all the requirements of § 331.10 of this chapter and bears labeling indications in accordance with § 343.60(b)(2).

(2) *Analgesic-antipyretic and cough-cold combinations.* See § 341.40 of this chapter.

(3) *Aspirin and antacid combinations.* Aspirin identified in § 343.10(b)(1) may be combined with any antacid ingredient identified in § 331.11 of this chapter or any combination of antacids permitted in accordance with § 331.10(a) of this chapter provided that the finished product meets the requirements of § 331.10 of this chapter, is marketed in a form intended for ingestion as a solution, and bears labeling indications in accordance with § 343.60(b)(4).

(4) *Analgesic and diuretic combinations.* Any analgesic identified in § 343.10 or any combination of analgesics identified in § 343.20(a) may be combined with any diuretic identified in § 357.1012 of this chapter provided the product bears labeling indications in accordance with § 357.1060(b) of this chapter.

Subpart C—Labeling

§ 343.50 Labeling of analgesic-antipyretic drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "pain reliever" or "analgesic (pain reliever)." If the product is also labeled to include the indication "to reduce fever," then the statement of identity of the product consists of the established name of the drug, if any, and identifies the product as a "pain reliever-fever reducer" or "analgesic (pain reliever)-antipyretic (fever reducer)."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph, as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing any ingredient identified in § 343.10.* "For the temporary relief of minor aches and pains" [which may be followed by one or more of the following: ("associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," "toothache," "muscular aches," "backache," "the premenstrual and menstrual periods" (which may be followed by: "(dysmenorrhea),") or "premenstrual and menstrual cramps" (which may be followed by: "(dysmenorrhea)))", ("and for the minor pain from arthritis"), and ("and to reduce fever.")]

(2) *For products labeled only for children 2 years to under 12 years of age.* "For the temporary relief of minor aches and pains" [which may be followed by: ("associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," or "toothache")) and/or ("and to reduce fever.")]

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(3) *For products containing acetaminophen as identified in § 343.10(a).* The term "flu" may be added to the indications identified in paragraphs (b) (1) and (2) above.

(4) *Other required statements—(i) For products labeled only for children 2 to under 12 years of age containing any ingredient identified in § 343.10.* (A) The labeling of the product contains, on the principal display panel, either of the following:

(*1*) "Children's *(trade name of product or generic name of ingredient(s)).*"

(*2*) *"(Trade name of product or generic name of ingredient(s))* for Children."

(B) The labeling for adults in § 343.50(d) and the statement "Children 2 to under 12 years of age" in § 343.50(d)(3)(ii) are not required.

(ii) *For products labeled only for adults containing any ingredient identified in § 343.10 and any combination identified in § 343.20.* (A) The labeling of the product contains, on the principal display panel, either of the following:

(*1*) "Adult's *(trade name of product or generic name of ingredient(s)).*"

(*2*) *"(Trade name of product or generic name of ingredient(s)) for adults."*

(B) The labeling for children in § 343.50(d) and the word "Adults" in § 343.50(d)(3)(i) are not required.

(C) The product should not contain any labeling for children under 12 years of age except the following statement under the heading "Directions," "Children under 12 years of age: consult a doctor."

(c) *Warnings.* The labeling of the product contains the following statements under the heading "Warnings." If applicable, warnings may be combined to eliminate duplicative words or phrases so the resulting warning(s) are clear and understandable.

(1) *For products labeled for adults*—(i) *For products containing any ingredient in § 343.10.* "Do not take this product for pain for more than 10 days or for fever for more than 3 days unless directed by a doctor. If pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a doctor because these could be signs of a serious condition."

(ii) *For products containing any ingredient in § 343.10 and labeled for the relief of sore throat pain.* "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly."

(iii) *For products containing acetaminophen identified in § 343.10(a).* The following statement must follow the general warning identified in § 330.1(g) of this chapter: "Prompt medical attention is critical for adults as well as for children even if you do not notice any signs or symptoms."

(iv) *For products containing aspirin or carbaspirin calcium identified in §§ 343.10 (b) and (c).* (A) "Do not take this product if you are allergic to aspirin or if you have asthma unless directed by a doctor."

(B) The following warning must follow the general warning identified in § 201.63(a) of this chapter: "IMPORTANT: Do not take this product during the last 3 months of pregnancy unless directed by a doctor. Aspirin taken near the time of delivery may "cause bleeding problems in both mother and child."

(C) *For products in a chewable dosage form.* "Do not take this product for at least 7 days after tonsillectomy or oral surgery unless directed by a doctor."

(v) *For products containing aspirin, carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate identified in §§ 343.10 (b), (c), (d), (e), and (f).* (A) "If ringing in the ears or a loss of hearing occurs, consult a doctor before taking any more of this product."

(B) "Do not take this product if you have stomach problems (such as heartburn, upset stomach, or stomach pain) that persist or recur, or if you have ulcers or bleeding problems, unless directed by a doctor."

(C) *"Drug Interaction Precaution.* Do not take this product if you are taking a prescription drug for anticoagulation (thinning the blood), diabetes, gout, or arthritis unless directed by a doctor."

(vi) *For products containing choline salicylate, magnesium salicylate, or sodium salicylate identified in § 343.10 (d), (e), and (f).* "Do not take this product if you are allergic to salicylates (including aspirin) unless directed by a doctor."

(vii) *For products containing magnesium salicylate identified in § 343.10(e) in an amount more than 50 milliequivalents of magnesium in the recommended daily dosage.* "Do not take this product if you have kidney disease unless directed by a doctor."

(viii) *For products containing sodium salicylate identified in § 343.10(f)*—(A) *For products containing 0.2 milliequivalent (5 milligrams) or higher of sodium per dosage unit.* The labeling of the product contains the sodium content per dosage unit (e.g., tablet, teaspoonful) if it is 0.2 milliequivalent (5 milligrams) or higher.

(B) *For products containing more than 5 milliequivalents (125 milligrams) sodium in the maximum recommended daily dosage.* "Do not take this product if you are on a sodium restricted diet unless directed by a doctor."

(2) *For products labeled for children 2 years to under 12 years of age*—(i) *For products containing any ingredient in § 343.10.* "Do not give this product for pain for more than 5 days or for fever for more than 3 days unless directed by a doctor. If pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a doctor because these could be signs of a serious condition."

(ii) *For products containing any ingredient in § 343.10 and labeled for the relief of sore throat pain.* "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly."

(iii) *For products containing acetaminophen identified in § 343.10(a).* The following statement must follow the general warning identified in § 330.1(g) of this chapter: "Prompt medical attention is critical even if you do not notice any signs or symptoms."

(iv) *For products containing aspirin or carbaspirin calcium identified in § 343.10 (b) and (c).* (A) "Do not give this product to children who are allergic to aspirin or who have asthma unless directed by a doctor."

(B) *For products in a chewable dosage form.* "Do not give this product for at least 7 days after tonsillectomy or oral surgery unless directed by a doctor."

(v) *For products containing aspirin, carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate identified in § 343.10 (b), (c), (d), (e), and (f).* (A) "If ringing in the ears or a loss of hearing occurs, consult a doctor before giving any more of this product."

(B) "Do not give this product to children who have stomach problems (such as heartburn, upset stomach, or stomach pain) that persist or recur, or who have ulcers or bleeding problems, unless directed by a doctor."

(C) *"Drug Interaction Precaution.* Do not give this product to children who are taking a prescription drug for anticoagulation (thinning the blood), diabetes, gout, or arthritis unless directed by a doctor."

(vi) *For products containing choline salicylate, magnesium salicylate, or sodium salicylate identified in § 343.10 (d), (e), and (f).* "Do not give this product to children who are allergic to salicylates (including aspirin) unless directed by a doctor."

(vii) *For products containing magnesium salicylate identified in § 343.10(e) in an amount more than 50 milliequivalents of magnesium in the recommended daily dosage.* "Do not give this product to children who have kidney disease unless directed by a doctor."

(viii) *For products containing sodium salicylate identified in § 343.10(f)*—(A) *For products containing 0.2 milliequivalent (5 milligrams) or higher of sodium per dosage unit.* The labeling of the product contains the sodium content per dosage unit (e.g., tablet, teaspoonful) if it is 0.2 milliequivalent (5 milligrams) or higher.

(B) *For products containing more than 5 milliequivalents (125 milligrams) sodium in the maximum recommended daily dosage.* "Do not give this product to children who are on a sodium restricted diet unless directed by a doctor."

(3) *For products labeled both for adults and for children 2 years to under 12 years of age.* The labeling of the product contains the warnings identified in § 343.50(c)(1) except that the warning in § 343.50(c)(1)(i) is replaced with the following: "Do not take this product for pain for more than 10 days (for adults) or 5 days (for children), and do not take for fever for more than 3 days unless directed by a doctor. If pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a doctor because these could be signs of a serious condition. Do not give this product to children for the pain of arthritis unless directed by a doctor."

(d) *Directions.* The labeling of the product contains the following statements under the heading "Directions."

(1) *"For products labeled only for children 2 years to under 12 years of age."* The dosage information for children in paragraphs (d) (2), (4), (5), and (6) of this section should be converted to directions that are easily understood by the consumer. For example, the number of 80-milligram, or 81-milligram, or 325-milligram dosage units corresponding to the children's doses in paragraph (d)(2) of this section can be expressed in the labeling as follows:

DIRECTIONS

Age (years)	Number of 80-mg or 81-mg [1] dosage units	Number of 325-mg [1] dosage units
Under 2	Consult a doctor.	Consult a doctor.
2 to under 4	2	½.
4 to under 6	3	¾.
6 to under 9	4	1.
9 to under 11	4 to 5	1 to 1¼.

DIRECTIONS—Continued

Age (years)	Number of 80-mg or 81-mg [1] dosage units	Number of 325-mg [1] dosage units
11 to under 12	4 to 6	1 to 1½.

[1] Dose may be repeated every 4 hours while symptoms persist, up to four times a day or as directed by a doctor.

(2) *For products containing acetaminophen, aspirin, or sodium salicylate identified in § 343.10(a), (b), and (f).* Adults: Oral dosage is 325 to 650 milligrams every 4 hours or 325 to 500 milligrams every 3 hours or 650 to 1,000 milligrams every 6 hours, while symptoms persist, not to exceed 4,000 milligrams in 24 hours, or as directed by a doctor. Children 11 to under 12 years of age: Oral dosage is 320 to 487.5 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 2,437.5 milligrams in 24 hours. Children 9 to under 11 years of age: Oral dosage is 320 to 406.3 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 2,031.5 milligrams in 24 hours. Children 6 to under 9 years of age: Oral dosage is 320 to 325 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 1,625 milligrams in 24 hours. Children 4 to under 6 years of age: Oral dosage is 240 to 243.8 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 1,219 milligrams in 24 hours. Children 2 to under 4 years of age: Oral dosage is 160 to 162.5 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 812.5 milligrams in 24 hours. Children under 2 years: Consult a doctor. The dosage schedules above are followed by "or as directed by a doctor."

(3) *For products containing aspirin, carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate identified in § 343.10(b), (c), (d), (e), and (f) intended for oral administration as a solid dosage form.* (i) "Adults: Drink a full glass of water with each dose."

(ii) "Children 2 to under 12 years of age: Drink water with each dose."

(4) *For products containing carbaspirin calcium identified in § 343.10(c).* Adults: Oral dosage is 414 to 828 milligrams every 4 hours or 414 to 637 milligrams every 3 hours or 828 to 1,274 milligrams every 6 hours, while symptoms persist, not to exceed 5,096 milligrams in 24 hours. Children 11 to under 12 years of age: Oral dosage is 408.8 to 621 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 3,105 milligrams in 24 hours. Children 9 to under 11 years of age: Oral dosage is 408.8 to 517.5 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 2,587.5 milligrams in 24 hours. Children 6 to under 9 years of age: Oral dosage is 408.8 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 2,070 milligrams in 24 hours. Children 4 to under 6 years of age: Oral dosage is 306.6 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 1,552.5 milligrams in 24 hours. Children 2 to under 4 years of age: Oral dosage is 204.4 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 1,035 milligrams in 24 hours. Children under 2 years: Consult a doctor. The dosage schedule above is followed by "or as directed by a doctor."

(5) *For products containing choline salicylate identified in § 343.10(d).* Adults: Oral dosage is 435 to 870 milligrams every 4 hours or 435 to 669 milligrams every 3 hours or 870 to 1,338 milligrams every 6 hours, while symptoms persist, not to exceed 5,352 milligrams in 24 hours. Children 11 to under 12 years of age: Oral dosage is 430 to 652.5 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 3,262.5 milligrams in 24 hours. Children 9 to under 11 years of age: Oral dosage is 430 to 543.8 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 2,719 milligrams in 24 hours. Children 6 to under 9 years of age: Oral dosage is 430 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 2,175 milligrams in 24 hours. Children 4 to under 6 years of age: Oral dosage is 322.5 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 1,632.5 milligrams in 24 hours. Children 2 to under 4 years of age: Oral dosage is 215 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 1,087.5 milligrams in 24 hours. Children under 2 years: Consult a doctor. The dosage schedule above is followed by "or as directed by a doctor."

(6) *For products containing magnesium salicylate identified in § 343.10(e).* Dosages are based on the tetrahydrate form of magnesium salicylate. Adults: Oral dosage is 377 to 754 milligrams every 4 hours or 377 to 580 milligrams every 3 hours or 754 to 1,160 milligrams every 6 hours, while symptoms persist, not to exceed 4,640 milligrams in 24 hours. Children 11 to under 12 years of age: Oral dosage is 372.4 to 65.5 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 2,827.5 milligrams in 24 hours. Children 9 to under 11 years of age: Oral

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dosage is 372.4 to 471.3 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 2,356.5 milligrams in 24 hours. Children 6 to under 9 years of age: Oral dosage is 372.4 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 1,885 milligrams in 24 hours. Children 4 to under 6 years of age: Oral dosage is 279.3 milligrams every 4 hours while symptoms persist, not to exceed 5 doses or 1,414 milligrams in 24 hours. Children 2 to under 4 years of age: Oral dosage is 186.2 milligrams every 4 hours while symptoms exist, not to exceed 5 doses or 942.5 milligrams in 24 hours. Children under 2 years of age: Consult a doctor. The dosage schedule above is followed by "or as directed by a doctor."

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

(f) *Optional statement. For products containing aspirin, carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate identified in § 343.10 (b), (c), (d), (e), and (f).* The labeling may state in a prominent place the following statement: "See your doctor for other uses of" [insert name of ingredient or trade name of product]", but do not use for more than 10 days without consulting your doctor because serious side effects may occur."

§ 343.60 Labeling of permitted combinations of active ingredients.

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs.

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (b). Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For permitted combinations identified in § 343.20(a).* The indications in § 343.50(b)(1) should be used.

(2) *For permitted combinations identified in § 343.20(b)(1).* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") (which may be followed by: "and upset stomach associated with" (select one of the following, as appropriate: "this symptom" or "these symptoms."))

(3) *For permitted combinations identified in § 343.20(b)(2).* The indications in § 341.85 of this chapter should be used.

(4) *For permitted combinations identified in § 343.20(b)(3).* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") [which may be followed by: "and upset stomach associated with" (select one of the following, as appropriate: "this symptom" or "these symptoms")] and "Also may be used for the temporary relief of minor aches and pains alone" [which may be followed by one or more of the following: ("such as associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," "toothache," "muscular aches," "backache," "the premenstrual and menstrual periods" (which may be followed by: "(dysmenorrhea)") or "premenstrual and menstrual cramps" (which may be followed by: "(dysmenorrhea)")), ("and for the minor pain from arthritis"), and ("and to reduce fever.")]

(5) *For permitted combinations identified in § 343.20(b)(4).* The indications in § 357.1050(b) of this chapter should be used.

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs.

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (d). When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph.

(1) *For products containing permitted combinations identified in § 343.20(a)—*

(i) *When each ingredient is present in the minimum allowable amount.* Adults: Oral dosage is every 4 hours while symptoms persist, not to exceed 6 doses in 24 hours or as directed by a doctor. Children under 12 years of age: Consult a doctor.

(ii) *When either ingredient is present in an amount above the minimum allowable quantity.* Adults: Oral dosage is every 6 hours while symptoms persist, not to exceed 4 doses in 24 hours or as directed by a doctor. Children under 12 years of age: Consult a doctor.

(e) *Optional labeling statements for permitted combinations identified in § 343.20(b)(3).* The labeling may state "Contains buffering ingredients." The labeling may also contain the statement in § 343.50(f).

§ 343.80 Professional labeling.

The labeling of a product provided to health professionals (but not to the general public) may contain the following statements:

(a) *For products containing aspirin, carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate identified in § 343.10 (b), (c), (d), (e), and (f) except those buffered with sodium.* "For rheumatoid arthritis, juvenile rheumatoid arthritis, systemic lupus erythematosus, osteoarthritis (degenerative joint disease), ankylosing spondylitis, psoriatic arthritis, Reiter's syndrome, and fibrositis."

(b) *For products containing aspirin identified in § 343.10(b) except those buffered with sodium.* The labeling states, under the heading "ASPIRIN FOR TRANSIENT ISCHEMIC ATTACKS," the following:

"Indication:

For reducing the risk of recurrent transient ischemic attacks (TIA's) or stroke in men who have had transient ischemia of the brain due to fibrin platelet emboli. There is inadequate evidence that aspirin or buffered aspirin is effective in reducing TIA's in women at the recommended dosage. There is no evidence that aspirin or buffered aspirin is of benefit in the treatment of completed strokes in men or women.

Clinical Trials:

The indication is supported by the results of a Canadian study (1) in which 585 patients with threatened stroke were followed in a randomized clinical trial for an average of 26 months to determine whether aspirin or sulfinpyrazone, singly or in combination, was superior to placebo in preventing transient ischemic attacks, stroke, or death. The study showed that, although sulfinpyrazone had no statistically significant effect, aspirin reduced the risk of continuing transient ischemic attacks, stroke, or death by 19 percent and reduced the risk of stroke or death by 31 percent. Another aspirin study carried out in the United States with 178 patients, showed a statistically significant number of "favorable outcomes," including reduced transient ischemic attacks, stroke, and death (2).

Precautions:

Patients presenting with signs and symptoms of TIA's should have a complete medical and neurologic evaluation. Consideration should be given to other disorders that resemble TIA's. Attention should be given to risk factors: it is important to evaluate and treat, if appropriate, other diseases associated with TIA's and stroke, such as hypertension and diabetes.

Concurrent administration of absorbable antacids at therapeutic doses may increase the clearance of salicylates in some individuals. The concurrent administration of nonabsorbable antacids may alter the rate of absorption of aspirin, thereby resulting in a decreased acetylsalicylic acid/salicylate ratio in plasma. The clinical significance of these decreases in available aspirin is unknown.

Aspirin at dosages of 1,000 milligrams per day has been associated with small increases in blood pressure, blood urea nitrogen, and serum uric acid levels. It is recommended that patients placed on long-term aspirin treatment be seen at regular intervals to assess changes in these measurements.

Adverse Reactions:

At dosages of 1,000 milligrams or higher of aspirin per day, gastrointestinal side effects include stomach pain, heartburn, nausea and/or vomiting, as well as increased rates of gross gastrointestinal bleeding."

(Other applicable warnings related to the use of aspirin as described in § 343.50(c) may also be included here.)

Dosage and Administration:

Adult oral dosage for men is 1,300 milligrams a day, in divided doses of 650 milligrams twice a day or 325 milligrams four times a day.

References

(1) The Canadian Cooperative Study Group, "A Randomized Trial of Aspirin and Sulfinpyrazone in Threatened Stroke," *New England Journal of Medicine*, 299:53–59, 1978.

(2) Fields, W.S., et al., "Controlled Trial of Aspirin in Cerebral Ischemia," *Stroke* 8:301–316, 1977."

(c) *For products containing aspirin identified in § 343.10(b) or permitted combinations identified in § 343.20(b)(3).* The labeling states, under the heading "ASPIRIN FOR MYOCARDIAL INFARCTION," the following:

"Indication

Aspirin is indicated to reduce the risk of death and/or non-fatal myocardial infarction in patients with a previous infarction or unstable angina pectoris.

Clinical Trials

The indication is supported by the results of six large, randomized multicenter, placebo-controlled studies involving 10,816, predominantly male, post-myocardial infarction (MI) patients and one randomized placebo-controlled study of 1,266 men with unstable angina (1–7). Therapy with aspirin was begun at intervals after the onset of acute MI varying from less than 3 days to more than 5 years and continued for periods of from less than 1 year to 4 years. In the unstable angina study, treatment was started within 1 month after the onset of unstable angina and continued for 12 weeks, and patients with complicating conditions such as congestive heart failure were not included in the study.

Aspirin therapy in MI patients was associated with about a 20-percent reduction in the risk of subsequent death and/or non-fatal reinfarction, a median absolute decrease of 3 percent from the 12- to 22-percent event rates in the placebo groups. In aspirin-treated unstable angina patients the reduction in risk was about 50 percent, a reduction in the event rate of 5 percent from the 10-percent rate in the placebo group over the 12-weeks of the study.

Daily dosage of aspirin in the post-myocardial infarction studies was 300 milligrams in one study and 900 to 1,500 milligrams in 5 studies. A dose of 325 milligrams was used in the study of unstable angina.

Adverse Reactions

Gastrointestinal Reactions

Doses of 1,000 milligrams per day of aspirin caused gastrointestinal symptoms and bleeding that in some cases were clinically significant. In the largest post-infarction study (the Aspirin Myocardial Infarction Study (AMIS) with 4,500 people), the percentage incidences of gastrointestinal symptoms for the aspirin (1,000 milligrams of a standard, solid-tablet formulation) and placebo-treated subjects, respectively, were: stomach pain (14.5 percent; 4.4 percent); heartburn (11.9 percent; 4.8 percent); nausea and/or vomiting (7.6 percent; 2.1 percent); hospitalization for gastrointestinal disorder (4.8 percent; 3.5 percent). In the AMIS and other trials, aspirin-treated patients had increased rates of gross gastrointestinal bleeding. Symptoms and signs of gastrointestinal irritation were not significantly increased in subjects treated for unstable angina with buffered aspirin in solution."

(Other applicable warnings related to the use of aspirin as described in § 343.50(c) may also be included here.)

"Cardiovascular and Biochemical

In the AMIS trial, the dosage of 1,000 milligrams per day of aspirin was associated with small increases in systolic blood pressure (BP) (average 1.5 to 2.1 millimeters) and diastolic BP (0.5 to 0.8 millimeters), depending upon whether maximal or last available readings were used. Blood urea nitrogen and uric acid levels were also increased, but by less than 1.0 milligram percent.

Subjects with marked hypertension or renal insufficiency had been excluded from the trial so that the clinical importance of these observations for such subjects or for any subjects treated over more prolonged periods is not known. It is recommended that patients placed on long-term aspirin treatment, even at doses of 300 milligrams per day, be seen at regular intervals to assess changes in these measurements.

Sodium in Buffered Aspirin for Solution Formulations

One tablet daily of buffered aspirin in solution adds 553 milligrams of sodium to that in the diet and may not be tolerated by patients with active sodium-retaining states such as congestive heart or renal failure. This amount of sodium adds about 30 percent to the 70- to 90-milliequivalents intake suggested as appropriate for dietary treatment of essential hypertension in the "1984 Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure" (8).

Dosage and Administration

Although most of the studies used dosages exceeding 300 milligrams, 2 trials used only 300 milligrams and pharmacologic data indicate that this dose inhibits platelet function fully. Therefore, 300 milligrams or a conventional 325 milligram aspirin dose is a reasonable, routine dose that would minimize gastrointestinal adverse reactions. This use of aspirin applies to both solid, oral dosage forms (buffered and plain aspirin) and buffered aspirin in solution.

References

(1) Elwood, P.C., et al., "A Randomized Controlled Trial of Acetylsalicylic Acid in the Secondary Prevention of Mortality from Myocardial Infarction," *British Medical Journal*, 1:436–440, 1974.

(2) The Coronary Drug Project Research Group, "Aspirin in Coronary Heart Disease," *Journal of Chronic Diseases*, 29:625–642, 1976.

(3) Breddin K., et al., "Secondary Prevention of Myocardial Infarction: A Comparison of Acetylsalicylic Acid, Phenprocoumon or Placebo," *Homeostasis*, 470:263–268, 1979.

(4) Aspirin Myocardial Infarction Study Research Group, "A Randomized, Controlled Trial of Aspirin in Persons Recovered from Myocardial Infarction," *Journal of the American Medical Association*, 243:661–669, 1980.

(5) Elwood, P.C., and P.M. Sweetnam, "Aspirin and Secondary Mortality after Myocardial Infarction," *Lancet*, II:1313–1315, December 22–29, 1979.

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(6) The Persantine-Aspirin Reinfarction Study Research Group, "Persantine and Aspirin in Coronary Heart Disease," *Circulation*, 62:449–461, 1980.

(7) Lewis, H.D., et al., "Protective Effects of Aspirin Against Acute Myocardial Infarction and Death in Men with Unstable Angina, Results of a Veterans Administration Cooperative Study," *New England Journal of Medicine*, 309:396–403, 1983.

(8) "1984 Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure," United States Department of Health and Human Services and United States Public Health Service, National Institutes of Health, Publication No. NIH 84–1088, 1984."

Subpart D—Testing Procedures

§ 343.90 Dissolution Testing.

(a) *Acetaminophen and aspirin tablets.* Acetaminophen and aspirin tablets must meet the dissolution standard for acetaminophen and aspirin tablets as contained in U.S.P. XXI at page 14.

(b) *Aspirin capsules.* Aspirin capsules must meet the dissolution standard for aspirin capsules as contained in U.S.P. XXI at page 77.

(c) *Aspirin delayed-release capsules and aspirin delayed-release tablets.* Aspirin delayed-release capsules and aspirin delayed-release tablets must meet the dissolution standard for aspirin delayed-release capsules and aspirin delayed-release tablets as contained in U.S.P. XXI Supplement 3 at pages 1972 and 1973, respectively.

(d) *Aspirin tablets.* Aspirin tablets must meet the dissolution standard for aspirin tablets as contained in U.S.P. XXI Supplement 4 at page 2130.

(e) *Aspirin, alumina, and magnesia tablets.* Aspirin in combination with alumina and magnesia in a tablet dosage form must meet the dissolution standard for aspirin, alumina, and magnesia tablets as contained in U.S.P. XXI Supplement 2 at pages 1812 and 1813.

(f) *Buffered aspirin tablets.* Buffered aspirin tablets must meet the dissolution standard for buffered aspirin tablets as contained in U.S.P. XXI Supplement 4 at page 2131.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

4. The authority citation for 21 CFR Part 369 continues to read as follows:

Authority: Secs. 502, 503, 506, 507, 701, 52 Stat. 1050–1052 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 352, 353, 356, 357, 371); 21 CFR 5.10 and 5.11.

§ 369.20 [Amended]

5. In Subpart B, § 369.20 *Drugs; recommended warning and caution statements* is amended by removing the entry for "SALICYLATES, INCLUDING ASPIRIN AND SALICYLAMIDE (EXCEPT METHYL SALICYLATE, EFFERVESCENT SALICYLATE PREPARATIONS, AND PREPARATIONS OF AMINOSALICYLIC ACID AND ITS SALTS)."

§ 369.21 [Amended]

6. In Subpart B, § 369.21 *Drugs; warning and caution statements required by regulations* is amended by removing the entry for "ACETAMINOPHEN (N-ACETYL-*p*-AMINOPHENOL)."

Dated: August 5, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–26157 Filed 11–15–88; 8:45 am]

BILLING CODE 4160-01-M

federal register

Wednesday
November 16, 1988

Part V

Environmental Protection Agency

Twenty-Third Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments

40 CFR Parts 712 and 716

Preliminary Assessment Information and Health and Safety Data Reporting; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41030; FRL-3476-6]

Twenty-Third Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twenty-Third Report to the Administrator of EPA on November 1, 1988. This report, which revises and updates the Committee's priority list of chemicals, adds six chemicals to the list for priority consideration by EPA in promulgation of test rules under section 4(a) of the Act. The Twenty-Third Report is included with this notice. The new chemicals are tris(2-chloroethyl)-phosphate (CAS No. 115-96-8), three tris(2-chloropropyl)-phosphate, (CAS Nos. 6145-73-9, 13674-84-5, and 13674-87-8), tetrakis(2-chloroethyl)-ethylene diphosphate (CAS No. 33125-86-9) and butyraldehyde (CAS No. 123-72-8). These chemicals are not designated for response within 12 months. Crotonaldehyde (CAS No. 4170-30-3), which was recommended with intent-to-designate by the ITC in its Twenty-Second Report (53 FR 18196; May 20, 1988), now is designated for response within 12 months. In response to ITC's designation, EPA will either initiate rulemaking under section 4(a) of TSCA, or publish a Federal Register notice explaining the reasons for not initiating such rulemaking within 12 months. EPA invites interested persons to submit written comments on the report, and to attend Focus Meetings to help narrow and focus the issues raised by the ITC's recommendations.

Additionally, EPA is soliciting interest in public participation in the consent agreement process for tris(2-chloroethyl)-phosphate, three tris(2-chloropropyl)-phosphates, and tetrakis(2-chloroethyl)-ethylene diphosphate.

The ITC also has removed two chemicals, ethylbenzene and methyl ethyl ketoxime, from the priority list.

DATES: Written comments should be submitted by December 16, 1988. Submit written notice of interest in being designated an "interested party" to development of consent agreements for tris(2-chloroethyl)-phosphate, three tris(2-chloropropyl)-phosphates and tetrakis(2-chloroethyl)-ethylene diphosphate by December 16, 1988.

Focus Meetings will be held on December 13, 1988.

ADDRESS: Send written submissions to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE G-004, 401 M Street SW., Washington, DC 20460.

Submissions should bear the document control number (OPTS-41030).

The public record supporting this action, including comments, is available for public inspection in Rm. NE G-004 at the address noted above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Focus Meetings will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M Street SW., Washington, DC. Persons planning to attend the Focus Meetings, and/or seeking to be informed of subsequent public meetings on these chemicals, should notify the TSCA Assistance Office at the address listed below. To ensure seating accommodations at the Focus Meetings, persons interested in attending are asked to notify EPA at least one week ahead of the schedule date.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Report to the Administrator.

I. Background

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq*; 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemical substances and mixtures may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA on chemical substances and mixtures to be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the ITC to revise its list of recommendations at least every 6 months as necessary. The ITC may "designate" up to 50 substances and mixtures at any one time for priority consideration by the Agency. Crotonaldehyde is a designated chemical. For such designations, the Agency must within 12 months either initiate rulemaking or issue in the **Federal Register** its reasons for not doing so. The ITC's Twenty-Third Report was received by the Administrator on November 1, 1988, and follows this Notice. The Report adds six substances to the TSCA section 4(e) priority list.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice is published elsewhere in today's **Federal Register** adding the substances recommended in the ITC's Twenty-Third Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. These chemicals also will be added to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712) published elsewhere in this issue. The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

Focus Meetings will be held to discuss relevant issues pertaining to these chemicals and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meetings will be held on December 13, 1988, as follows:

9:30 a.m. Tris(2-chloroethyl)-phosphate, three tris(chloroprophyl)-phosphates, and tetrakis(2-chloroethyl)-ethylene disphosphate

1:00 p.m. Butyraldehyde

They will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. These meetings are intended to supplement and expand upon written comments submitted in response to this notice.

Persons wishing to attend these meetings, or subsequent meetings on these chemicals, should call the TSCA Assistance Office at the telephone number listed above at least one week in advance.

This notice also serves to invite persons interested in participating in or monitoring negotiations for consent agreements for tris(2-chloroethyl)-phosphate, three tris(chloropropyl)-phosphates, and tetrakis(2-chloroethyl)-ethylene diphosphate to notify EPA no later than December 16, 1988. The procedures for negotiations are described in 40 CFR 790.22. All written submissions should bear the identifying docket number (OPTS-41030).

III. Status of List

In addition to adding the six recommendations to the priority list, the ITC's Twenty-Third Report notes the removal of two chemicals from the list. Ethylbenzene has been removed from the list because the data gaps previously identified by the ITC have been satisfactorily resolved. Subsequent to ITC's preparation of its Twenty-Second Report, EPA responded to the ITC's recommendation for methyl ethyl ketoxime by publishing a Notice of Proposed Rulemaking in the **Federal Register** (53 FR 35838; September 15, 1988). The current list contains two designated substances, five chemicals recommended with intent-to-designate, and fourteen recommended substances.

Authority: 15 U.S.C. 2603.

Dated: November 4, 1988.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

TWENTY-THIRD REPORT OF THE TSCA INTERAGENCY TESTING COMMITTEE TO THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee (ITC), composed of representatives from eight designated Federal agencies, to recommend chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the EPA Administrator chemicals to which the Administrator should give priority consideration for the promulgation of testing rules pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. At least every 6 months, the Committee makes those revisions in the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of 6 chemicals.

The Priority List is divided into three parts: Part A contains those recommended chemicals and groups designated for priority consideration and response by the EPA Administrator within 12 months. Part B contains chemicals and groups of chemicals recommended with intent-to-designate. This category was established by the Committee in its seventeenth report (50 FR 47603; November 19, 1985) to take advantage of rules promulgating automatic reporting requirements for non-designated ITC recommendations under the section 8(a) Preliminary Assessment rule and the TSCA section 8(d) Health and Safety Data Reporting rule. Information received following recommendation with intent-to-designate may influence the Committee to either designate or not designate the chemicals or groups of chemicals in a subsequent report to the Administrator. Part C contains chemicals and groups of chemicals that have been recommended for priority consideration by EPA without being designated for response within 12 months. The changes to the Priority List are presented, together with the types of testing recommended, in the following Table 1:

TABLE 1.—ADDITIONS TO THE SECTION 4(E) PRIORITY LIST

[November 1988]

Chemical/Group	Recommended studies
A. *Designated for response within 12 months:*	
Crotonaldehyde [1] CAS No. 4170-30-3.	Chemical Fate: Volatilization rate from water; aerobic aquatic biodegradation rate. Health Effects: None. Ecological Effects: Acute toxicity to algae, fish and aquatic invertebrates.
B. *Recommended with Intent-to-Designate:*	
Tris(2-chloroethyl)-phosphate [2] CAS No. 115-96-8.	Chemical Fate: Environmental monitoring; vapor pressure; biodegradation. Health Effects: None. Ecological Effects: Acute toxicity to fish, algae and aquatic invertebrates.
Tris(chloropropyl)-phosphates, including the following:	Ecological Effects: Acute toxicity to aquatic and terrestrial plants; chronic toxicity to fish. Chemical Fate: Environmental monitoring; water solubility; vapor pressure; octanol/water partition coefficient; biodegradation.
Tris(2-chloro-1-propyl) phosphate [3] CAS No. 6145-73-9	Health Effects: Acute and subchronic effects, including cholinesterase inhibition, 90-day subchronic effects and reproductive effects. Health effects recommendations apply only to CAS Nos. 6145-73-9 and 13674-84-5.
Tris(1-chloro-2-propyl) phosphate [4] CAS No. 13674-84-5; and	
Tris(1,3-dichloro-2-propyl) phosphate [5] CAS No. 13674-87-8.	Ecological Effects: Acute toxicity to fish, aquatic invertebrates and algae; chronic toxicity to fish.
Tetrakis(2-chloroethyl)-ethylene diphosphate [6] CAS No. 33125-86-9.	Chemical Fate: Environmental monitoring; water solubility; vapor pressure; octanol/water partition coefficient; biodegradation. Health Effects: None. Ecological Effects: Acute toxicity to fish, algae and aquatic invertebrates.
C. *Recommended Without Being Designated for Response Within 12 Months:*	
Butyraldehyde [7] CAS No. 123-72-8.	Chemical Fate: Monitoring in the vicinity of major manufacturing and use sites. Health Effects: In depth toxicology evaluation if warranted by monitoring data. Ecological Effects: Toxicity studies with representative biota if warranted by monitoring data.

CA Index Names (9 CI)
1. 2-Butenal
2. Ethanol, 2-chloro-, phosphate (3:1)
3. 1-Propanol,2-chloro-, phosphate (3:1)
4. 2-Propanol,1-chloro-, phosphate (3:1)
5. 2-Propanol,1,3-dichloro-, phosphate (3:1)
6. Phosphonic acid,1,2-ethanediyl tetrakis(2-chloroethyl) ester
7. Butanal

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Note: Crotonaldehyde was recommended with intent-to-designate by the Committee in the twenty-second report (53 FR 18196; May 20, 1988).

TSCA Interagency Testing Committee

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Raimundo Prat, Alternate
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National Cancer Institute
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Norma Williams, ITC Program Specialist

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Alan Carpien—Office of the General Counsel, EPA

Notes

(1) Appointed on July 27, 1988.
(2) Appointed on September 9, 1988.
(3) Appointed on April 29, 1988.
(4) Appointed on June 3, 1988.

The Committee acknowledges and is grateful for the assistance and support given the ITC by the staff of Dynamac Corporation (technical support contractor) and personnel of the EPA Office of Toxic Substances.

Chapter 1—Introduction

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94–469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority consideration for the promulgation of testing rules to determine their potential hazard to human health and/or the environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the **Federal Register.** The Committee is directed by section 4(e)(1)(A) of TSCA to designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) *or* publishing the Administrator's reason for not initiating such a proceeding. There is no statutory time limit for EPA response regarding chemicals that ITC has recommended but not designated for response within 12 months.

At least every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is composed of representatives from eight statutory member agencies and seven liaison agencies. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and priority recommendations are described in previous reports (Refs. 1 through 7).

1.2 *Committee's previous reports.* Twenty-two previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register** (Refs. 1 through 7). Ninety-six entries (seventy-six chemicals and twenty groups of chemicals) were recommended for priority consideration by the EPA Administrator and designated for response within 12 months. In addition, 24 chemicals and one group of chemicals were recommended without being so designated. Overall, in the 22 reports to the EPA Administrator, the Committee has recommended testing for 100 chemicals and 21 groups of chemicals. A complete list of recommended chemicals may be obtained by contacting the ITC Executive Secretary at the following address/telephone number: Robert Brink, U.S. Environmental Protection Agency (TS–792), 401 M St., SW., Washington, DC 20460, (202) 382–3820.

1.3 *Committee's activities during this reporting period.* Between April 22, 1988 and October 20, 1988, the Committee continued to review chemicals from its fifth and sixth scoring exercises, and from nominations by Member Agencies, Liaison Agencies and State Agencies.

The Committee contacted chemical manufacturers and trade associations to request information that would be of value in its deliberations. Most of those contacted provided unpublished information on current production, exposure, uses, and effects of chemicals under study by the Committee.

During this reporting period, the Committee reviewed available information on 54 chemicals. Six were selected for addition to the section 4(e) Priority List, and twenty-one were deferred indefinitely. The remaining chemicals are still under study.

In its twentieth report to the EPA Administrator (Ref. 5, ITC, 1987), the Committee placed ethylbenzene (CAS No. 100–41–4) on the Priority List in the "Recommended with Intent-to-Designate" category. The Committee recommeded that ethylbenzene be tested for acute toxicity to freshwater algae and invertebrates and to saltwater algae, invertebrates and fish. Subsequently, the Committee learned that acute toxicity testing of ethylbenzene with freshwater invertebrates had recently been completed at the University of Wisconsin. As noted in the twenty-first and twenty-second reports, the Committee also was informed that a consortium of ethylbenzene producers, the Styrene and Ethylbenzene Association, voluntarily sponsored studies on the other acute toxicity tests recommended by the Committee. The Committee deferred a decision on whether or not to designate ethylbenzene pending a review of the data developed during the above studies. The Committee has reviewed the data developed in those studies and has concluded that all of the data gaps identified in the twentieth report have been satisfactorily resolved. Therefore, the Committee has decided that ethylbenzene should be removed from the Priority List.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: "* * * make such revisions in the [priority] list as it determines to be necessary and * * * transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by adding six chemicals: tris(2-chloroethyl)phosphate (CAS No. 115–96–8), tris(2-chloro-1-propyl)-phosphate (CAS No. 6145–73–9), tris(1-choloro-2-propyl)phosphate (CAS No. 13674–84–5), tris(1,3-dichloro-2-propyl)phosphate (CAS No. 13674–87–8), tetrakis(2-chloroethyl)ethylene diphosphate (CAS No. 33125–86–9), and butyraldehyde (CAS No. 123–72–8). In addition, the Committee is designating, for repsonse within 12 months, crotonaldehyde, which was recommended with intent-to-designate in the twenty-second report. Two chemicals are being removed from the Priority List at this time. Methyl ethyl ketoxime (CAS No. 96–29–7) was the subject of a Notice of Proposed Rulemaking (53 FR 35838; September 15, 1988) and ethylbenzene (CAS No. 100–41–4) is being removed for the reasons given in section 1.3.

With the six new recommendations and two removals noted in this report, twenty-one entries now appear on the section 4(e) Priority List. The Priority List is divided in the following Table 2 into three parts; namely, A. Chemicals and Groups of Chemicals Designated for Response Within 12 Months, B. Chemicals and Groups of Chemicals Recommended with Intent-to-Designate, and C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months. Table 2 follows:

TABLE 2—THE TSCA SECTION 4(E) PRIORITY LIST, NOVEMBER 1988

Entry	Date of designation
A. Chemicals and Groups of Chemicals Recommended and Designated for Response Within 12 Months:	
1. 1,6-Hexamethylene diisocyanate.	May 1988
2. Crotonaldehyde	Nov. 1988
B. Chemicals and Groups of Chemicals Recommended with Intent-to-Designate:	
1. Tris(2-chloroethyl phosphate	Nov. 1986
2. Tris(2-chloro-l-propyl) phosphate.	Nov. 1986
3. Tris(1-choloro-2-propyl) phosphate.	Nov. 1988
4. Tris(1,3-dichloro-2-propyl) phosphate.	Nov. 1988
5. Tetrakis(2-chloroethyl) ethylene diphosphate.	Nov. 1986
C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months:	
1. Diisodecyl phenyl phosphite	Nov. 1985
2. C.I. Disperse Blue 79	Nov. 1986

TABLE 2—THE TSCA SECTION 4(E) PRIORITY LIST, NOVEMBER 1988—Continued

Entry	Date of designation
3. *N*-[5-[bis[2-(acetyloxy) ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl) azo]-4-methoxy phenyl]-acetamide.	May 1987
4. *N*-[5-[bis[2-(acetyloxy) ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl) azo]-4-methoxy phenyl]-acetamide.	May 1987
5. *N*-[5-[bis[2-(acetyloxy) ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl) azo]-4-ethoxy phenyl]-acetamide.	May 1987
6. Imidazolium compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), Me sulfates.	May 1988
7. Ethanaminium,2-amino-N-(2-aminoethyl)-N-(2-hydroxyethyl)-N-methyl-N,N'-ditallow acyl derivs., Me sulfates (salts).	May 1988
8. Poly(oxy-1,2-ethanediyl)α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-dicoco acyl derivs., Me sulfates (salts).	May 1988
9. Poly(oxy-1,2-ethanediyl),α-[2- [bis (2-aminoethyl)-methylammonio]-ethyl]-ω-, N,N'-bis(hydrogenated tallow acyl) derivs., Me sulfates (salts).	May 1988
10. Poly(oxy-1,2-ethanediyl), α-[2-[bis (2-aminoethyl)-methyl-ammonio-ethyl]-ω-hydroxy-, N,N'-ditallow acyl derivs., Me sulfates (salts).	May 1988
11. Poly[oxy(methyl-1,2-ethanediyl)],α-[2-[bis(2-aminoethyl)-methylammonio]-methyl ethyl]-ω-hydroxy-, N,N'-ditallow acyl derivs., Me sulfates (salts).	May 1988
12. Poly(oxy-1,2-ethanediyl),α-[3-[bis(2-aminoethyl)-methylammonio]-2-hydroxypropyl]-ωhydroxy-, N-coco acyl derivs., Me sulfates (salts).	May 1988
13. Poly(oxy-1,2-ethanediyl),α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ωhydroxy-, N,N'-di-C_{14-18} acyl derivs., Me sulfates (salts)D May 1988.	May 1988
14. Butyraldehyde	Nov. 1988.

REFERENCES

(1) Sixteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 21, 1985, 50 FR 20930–20939. Includes references to Reports 1 through 15 and an annotated list of removals.

(2) Seventeenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 19, 1885, 50 FR 47603–47612.

(3) Eighteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 19, 1986, 51 FR 18368–18375.

(4) Nineteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 14, 1986, 51 FR 41417–41432.

(5) Twentieth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1987, 52 FR 19020–19026.

(6) Twenty-first Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 20, 1987, 52 FR 44830–44837.

(7) Twenty-second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1988, 53 FR 18196–18210.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following chemical substances to the section 4(e) Priority List: tris(2-chloroethyl)phosphate (CAS No. 115–96–8), tris(2-chloro-1-propyl)phosphate (CAS No. 6145–73–9), tris(1-chloro-2-propyl)phosphate (CAS No. 13674-84-5), tris(1, 3-dichloro-2-propyl]phosphate (CAS No. 13674–87–8), tetrakis(2-chloroethyl)ethylene diphosphate (CAS No. 33125–86–9), and butyraldehyde (CAS No. 123–72–8). In addition, the Committee is designating for response within 12 months one chemical that was recommended with intent-to-designate in the twenty-second report. The designated chemical is crotonaldehyde (CAS No. 4170–30–3). The recommendation of these chemicals is made after considering the factors identified in section 4(e)(1)(A) and other relevant information, as well as the professional judgment of Committee members.

2.2 *Chemicals designated for response within 12 months*—2.2.a *Crotonaldehyde.* In the twenty-second report to the Administrator of EPA (53 FR 18196) crotonaldehyde was recommended with intent-to-designate. The rationale for that recommendation appears in the twenty-second report. Information reviewed by the Committee in response to the twenty-second report includes any public comments on the Committee's recommendations; production volume, use, exposure and release information reported by

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manufacturers of crotonaldehyde under the TSCA section 8(a) Preliminary Assessment rule; health and safety studies submitted under TSCA 8(d) Health and Safety Data Report rule; and any unpublished and published data available to the Committee.

After reviewing the information, the Committee concluded that data are still lacking on certain chemical fate factors and ecological effects. For these reasons and for the reasons previously presented (53 FR 18196) the Committee is now designating crotonaldehyde for response within 12 months and recommending that it be tested for the following:

1. *Chemical fate.* Volatilization rate from water; aerobic aquatic biodegradation rate.

2. *Health effects.* None.

3. *Ecological effects.* Acute toxicity to algae, fish and aquatic invertebrates.

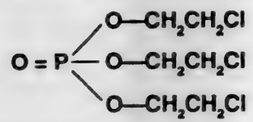
2.3 *Chemicals recommended with intent-to-designate*—2.3.a *Tris(2-chloroethyl)phosphate—Summary of recommended studies.* It is recommended that tris(2-chloroethyl)phosphate (TCEP) be tested for the following:

1. *Chemical Fate.* Environmental monitoring; vapor pressure; biodegradation.

2. *Health Effects.* None.

3. *Environmental Effects.* Acute toxicity to aquatic and terrestrial plants; chronic toxicity to fish.

PHYSICAL AND CHEMICAL INFORMATION

CAS No. 115-96-8	
Synonyms:	Ethanol, 2-chloro, phosphate (3:1) (9Cl); Tris (β-chloroethyl) phosphate; FYROL CEF; FYROL PCF; Celluflex CEF; Disflamol TCA; Niax Flame Retardant 3CF.
Acronym:	TCEP.
Structural Formula:	
Empirical Formula	$C_6H_{12}Cl_3O_4P$.
Molecular Weight	285.5.
Melting Point (°C)	−55 (Ref. 25, Sandmeyer and Kirwin, 1981)
Boiling Point (°C)	330 (Ref. 2, Aldrich, 1986).
Vapor Pressure (mmHg)	No information was found.
Solubility in Water (mg/L)	7,943 (Ref. 31, Yoshioka et al., 1986).
Specific Gravity	1.425 @ 20/20° (Ref. 28, Sax and Lewis, 1987).
Log Octanol/Water Partition Coefficient (log P)	1.7 (Ref. 31, Yoshioka et al., 1986).
Henry's Law Constant	1.81×10^{-7} atm m^3/mol (Ref. 21, Muir, 1984).
Adsorption Coefficient (Koc)	5.2 (Estimated; Ref. 4, CHEMEST, 1988).
Description of Chemical	Colorless liquid with slight odor (Ref. 17, Lefaux, 1968).

Rationale for Recommendations

I. Exposure Information

A. *Production/use/release to the environment.* Tris (2-chloroethyl) phosphate (TCEP) is produced in substantial but CBI annual amounts in the U.S. Actual production volumes are considered to be confidential business information. It is used as a flame retardant additive for flexible and rigid polyurethane and polyisocyanurate foams, carpet-backing, flame-retardant paints and lacquers, various resins, coatings and adhesives (Ref. 15, Kirk-Othmer, 1980). The major use appears to be in foams such as the flexible foams used in automobiles and furniture and rigid foams for building insulation materials. It is unlikely that there is any natural production of TCEP. Most of the production eventually will be released to the environment as furniture, and landfills. Some may be released during thermal decomposition (accidental fires and waste incineration). Muir (Ref. 21, 1984) cited a report by Cho and Klaus (1980) stating that 41 percent of TCEP remains intact after thermal oxidation in air at 370°C. However, Paciorek et al. (Ref. 23, 1976) reported that 85 percent of the TCEP chlorine was accounted for in volatile products of degradation at 370°C, which indicates that no more than 15 percent of the TCEP was left undegraded.

B. *Evidence for environmental exposure.* TCEP, in common with many similar tris(haloalkyl)phosphates, has been found in numerous environmental samples throughout the world, at very low concentrations. TCEP was found in river waters in Japan at 17 to 350 ng/L at 14 of 16 sites at Kitakyushu (Ref. 12, Ishikawa et al., 1985b) and in Canadian rivers at 13 sites, with a mean concentration of 8.7 ng/L (Ref. 29, Williams and LeBel, 1981). TCEP was detected in the Netherlands in the river Waal (Ref. 19, Meijers and Van der Leer, 1976) and the Rhine (Ref. 24, Piet et al., 1987). TCEP was present in ground water from two wells at Fort Devens, MA at concentrations of 0.28 and 0.81 ug/L (Ref. 3, Bedient et al., 1983; Ref. 10, Hutchins et al., 1984). Water from the Great Lakes contained TCEP at a mean concentration of 1.7 ng/L at ten Canadian sites (Ref. 30, Williams and LeBel, 1981) and at concentrations of 3 to 9.6 ng/L at 4 of 5 sites in a later report (Ref. 16, LeBel et al., 1987). Samples from 10 coastal sites in Japan contained 14 to 60 ng/L in the seawater (Ref. 12, Ishikawa et al., 1985b). Sewage treatment facilities in Japan contained from 540 to 1,200 ng/L TCEP in the influent to the plants and 500 to 1,200 ng/L in the effluents. Similarly, at night soil treatment facilities, the influent contained 190 to 1,500 ng/L TCEP and the effluents were found to have 190 to 1,500 ng/L (Ref. 13, Ishikawa et al., 1985c). Five river and ocean sediment samples from Japan contained 13 to 28 ng TCEP/g of sediment. None was detected in a sixth sample (Ref. 12, Ishikawa et al., 1985b). TCEP was detected but not quantified in ambient air at Kitakyushu, Japan (Ref. 9, Haraguchi et al., 1985).

In a survey of infant and toddler dietary intake from October 1978 through September 1979, Gartrell et al. (Ref. 7, 1985a) reported finding TCEP in composite U.S. drinking water at an average concentration of 0.3 ug/L. Drinking water in Japan, examined over a 1-year period, contained 2 to 60.5 ng/L TCEP, with a mean concentration of 17.4 ng/L (Ref. 1, Adachi et al., 1984). Fifteen pooled U.S. drinking water samples contained an average of 2.6 ng/L TCEP (Ref. 18, Lucas, 1984) and Millington et al. (Ref. 20, 1983) reported finding TCEP on activated carbon filter beds used at 40 U.S. drinking water treatment plants. In a study of drinking water samples in England, Fielding et al. (Ref. 6, 1981) found TCEP in one of fourteen samples. LeBel et al. (Ref. 16, 1987) found TCEP at 0.3 to 9.2 ng/L in duplicate drinking water samples from six sites in eastern Ontario. Drinking water from 22 other Canadian cities contained TCEP at 0.3 to 52 ng/L while water from 7 other cities contained no detectable TCEP (Ref. 29, Williams and LeBel, 1981). In a survey of drinking water from the Great Lakes at twelve Canadian cities, Williams et al. (Ref. 30, 1982) found concentrations of TCEP at 0.3 to 13.8 ng/L in water at 11 of the cities. In a survey of infant and toddler diets from October 1979 through September 1980, Gartrell et al. (Ref. 8, 1985b) reported TCEP in composite fruit and fruit juice samples at an average concentration of 0.2 ug/L. It was not detected in other foods tested. Fish from the Okayama Prefecture in Japan contained from less than 0.005 ug/g up to 0.019 ug/g TCEP (Ref. 14, Kenmochi et al., 1981).

TCEP and other widely used tris(chloroalkyl)phosphate flame retardants appear to be widely distributed in the environment, especially in water, at low concentrations. It is not known whether the environmental concentrations are increasing with time or whether these anthropogenic phosphates have attained some steady-state, low-level concentrations.

II. Chemical Fate Information

A. *Transport.* The water solubility of TCEP is reported to be from 7,000 (Ref. 17, LeFaux, 1968) to 8,300 mg/L (Ref. 11, Ichikawa et al., 1985a). A measured value of 7,943 mg/L was reported by Yoshioka et al. (Ref. 31, 1986). A measured value for the log octanol/water partition coefficient was reported as 1.7 (Ref. 31, Yoshioka et al., 1986). These data indicate that TCEP, following release to the environment, will partition largely to water with little accumulation in sediments or biota. Vapor pressure data at environmentally relevant temperatures were not found, but the Henry's Law constant reported by Muir (Ref. 21, 1984) indicates no significant volatilization from water. The monitoring evidence (see preceding paragraph I.B.) demonstrates widespread occurrence of TCEP in water with some partitioning to air, sediments and biolipids.

B. *Persistence.* The trialkylphosphates, in general, are resistant to hydrolysis and free-radical oxidations although hydrolysis at the pH of sea water (approximtely 8.5) may be significant. TCEP is expected to demonstrate similar resistance to hydrolysis and oxidation, although no data were found. Biodegradation is probably the major degradation mechanism in nature but the available data, which indicate that biodegradation is slow, are mostly circumstantial. There are reports of very little biodegradation of TCEP as it passes through drinking water sand filtration units (Ref. 24, Piet et al., 1981) and through sewage treatment and night soil treatment facilities (Ref. 11, Ishikawa et al., 1985a). TCEP was reported to be hardly degraded after 50 hours in activated sludge (Ref. 11, Ishikawa, et al., 1985a).

C. *Rationale for chemical fate recommendations.* There is widespread contamination of the environment by TCEP (and other tris(chloroalkyl)phosphates) at very low concentrations. There is some evidence that TCEP may be resistant to biodegradation. Based on its water solubility and octanol/water partition coefficients, TCEP released to the environment is expected to partition largely to water. No data were found on its vapor pressure at ambient temperatures. Since TCEP has been and will continue to be released to both water and soil (landfill) environments, there is a need to obtain measured vapor pressure data and to evaluate its biodegradability in natural waters. It also is recommended that appropriate follow-on monitoring studies be conducted at sites sampled in the 1970's and early 1980's in an attempt to determine whether environmental concentrations are increasing with time.

III. Biological Effects of Concern to Human Health

A two-year gavage study with rats and mice has recently been completed under the National Toxicology Program (Ref. 22, NTP, 1988) and is currently in the histopathology stages. Given this information, the Committee has deferred its review of TCEP for health effects pending receipt and review of data from the NTP study.

IV. Ecological Effects of Concern

A. *Acute and subchronic (short-term) effects.* The 96-hour LC50 of TCEP was reported to be 210 mg/L with killifish (*Orizias latipes*) and 90 mg/L with goldfish (*Carassius auratus*) (Ref. 26, Sasaki et al., 1981). These authors also reported spine deformations (caused by convulsive muscle contractions) in killifish with exposure to 200 mg/L of TCEP for 72 hours and protrusion of killifish eyes after 24 to 72 hours exposure to 200 mg/L. Yoshioka et al. (Ref. 31, 1986) reported LC50 values of 251 mg/L with red killifish (*Orizias latipes*), 1,000 mg/L with a daphnia species (*Moina macrocopa*) and 158 mg/L with a flatworm (*Dugesia japonica*). Another literature report (Ref. 5, Eldefrawi et al., 1977) stated that 5 mg/L TCEP had no observable effects on goldfish after 7 days exposure.

B. *Chronic (long-term) effects.* No information on chronic effects was found. Sasaki et al. (Ref. 26, 1981), as noted in the preceding paragraph, reported spine deformations and eye bulging in killifish exposed to 200 mg/L for 72 hours. Eldefrawi et al. (Ref. 5, 1977) reported that TCEP is a weak inhibitor of acetyl-cholinesterase and this may produce some chronic effects.

C. *Other ecological effects (biological, behavioral, or ecosystem processes).* No information was found.

D. *Bioconcentration and food-chain transport.* The bioconcentration of TCEP was examined by Sasaki et al. (Ref. 26, 1981 and Ref. 27, 1982) in both static and continuous-flow studies. Static tests with killifish and goldfish showed bioconcentration factors (BCFs) of 2 and 1, respectively. A BCF of 1 was observed for killifish in continuous-flow studies over a 10-day period. When the fish were placed in clean water there was rapid depuration with half gone in 0.7 hours after cessation of exposure.

E. *Rationale for ecological effects recommendation.* The widespread occurrence of TCEP in environmental samples raises concerns for its

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ecological effects. On the other hand, the available data indicate that acute toxicity levels for fish and aquatic invertebrates are 1,000 times or more greater than observed environmental concentrations. However, there were no data on plants and it is recommended that TCEP be tested for acute toxicity to aquatic and terrestrial plants. There appear to be chronic exposures to low concentrations of TCEP in aquatic environments and reports of spine deformations raise concerns for chronic effects. Therefore, it is recommended that TCEP also be tested for chronic toxicity to fish.

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2.3.b *Tris(chloropropyl)phosphates—Summary of recommended studies.* It is recommended that tris(2-chloro-1-propyl)phosphate (CAS No. 6145–73–9) and tris(1-chloro-2-propyl)phosphate (CAS No. 13674–84–5) be tested for the following:

1. *Chemical fate.* Environmental monitoring; water solubility; vapor pressure; octanol/water partition coefficient; biodegradation.

2. *Health effects.* Acute and subchronic effects; including cholinesterase inhibition, 90-day subchronic effects and reproductive effects.

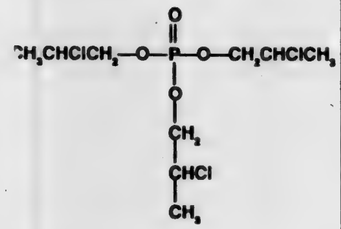
3. *Ecological effects.* Acute toxicity to fish, aquatic invertebrates and algae; chronic toxicity to fish. It is further recommended that tris(1,3-dichloro-2-propyl)phosphate (CAS No. 13674–87–8) be tested for the following:

1. *Chemical fate.* Environmental monitoring; water solubility; vapor pressure; octanol/water partitioning coefficient; biodegradation.

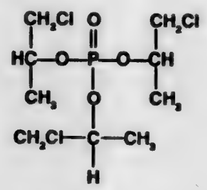
2. *Health effects.* None.

3. *Ecological effects.* Acute toxicity to fish, aquatic invertebrates and algae; chronic toxicity to fish.

PHYSICAL AND CHEMICAL INFORMATION

CAS No. 6145-73-9	
9 CI Name	1-Propanol, 2-chloro-, phosphate (3:1).
Synonyms	2-Chloro-1-propanol phosphate; Tris(beta-chloropropyl)-phosphate; Tris(2-chloropropyl)phosphate; FYROL PCF.
Acronym	TCPP.
Structural Formula:	
Empirical Formula	$C_9H_{18}Cl_3O_4P$.
Molecular Weight	327.55.
Melting Point (°C)	No information was found.
Boiling Point (°C)	No information was found.
Vapor Pressure (mmHg)	No information was found.
Solubility in Water (mg/L)	No information was found.
Specific Gravity	No information was found.
Log Octanol/Water Partition Coefficient	No information was found.

Physical and Chemical Information

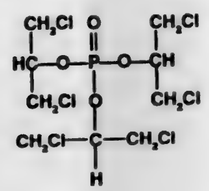
CAS No. 13674-84-5	
9 CI Name	2-Propanol, 1-chloro-, phosphate (3:1).
Synonyms	1-Chloro-2-propanol phosphate; Tris(2-chloroisopropyl)-phosphate; Phosphoric acid, tris(2-chloro-1-methylethyl) ester; Tris(1-chloromethylethyl)-phosphate.
Acronym	TCIP.
Structural Formula:	
Empirical Formula	$C_9H_{18}Cl_3O_4P$.
Molecular Weight	327.55.
Melting Point (°C)	No information was found.
Boiling Point (°C)	No information was found.
Vapor Pressure (mmHg)	No information was found.
Solubility in Water (mg/L)	No information was found.
Specific Gravity	No information was found.
Log Octanol/Water Partition Coefficient	No information was found.

Physical and Chemical Information

CAS No. 13674-87-8	
9 CI Name	2-Propanol, 1,3-dichloro-,phosphate (3:1)

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PHYSICAL AND CHEMICAL INFORMATION—Continued

Synonyms	1,3-Dichloro-2-propanol phosphate; Tris(1,3-dichloro-2-propyl)-phosphate; Tris(1,3-dichloroisopropyl)-phosphate; Tris(1-chloromenthyl-2-chloroethyl)phosphate; FYROL FR2; PF38
Acronyms	TDCP; TDCPP.
Structural Formula:	
Empirical Formula	$C_9H_{15}Cl_6O_4P$.
Molecular Weight	430.88.
Melting Point (°C)	26.7 (Ref. 18, Stauffer, 1979).
Boiling Point (°C)	No information was found.
Vapor Pressure (mmHg)	No information at environmentally relevant temperatures and pressures was found.
Solubility in Water (mg/L)	7 at 24°C (Ref. 2, Hollifield 1979); 100 at 25°C (Ref. 11, Muir, 1984); 1000 at 30°C (Ref. 18, Stauffer, 1979).
Specific Gravity	1.515 at 20/20° (Ref. 18, Stauffer, 1979).
Log Octanol/Water Partition Coefficient (log P)	3.8 (Ref. 13, Sasaki et al., 1981).

Rationale for Recommendations

I. Exposure Information

A. *Production/use/release to environment.* TCPP, TCIP and TDCP are each produced in substantial annual amounts in the U.S. but actual production volumes are classified as confidential business information. TCPP and TDCP are used as additive flame retardants in various plastic materials. TDCP is known to be used primarily in flexible polyurethane foams. No information was found on the use of TCIP but it appears likely that it too is used as an additive flame retardant. Most of the production eventually will be released to the environment as the plastic materials containing them are scrapped or disposed of in dumps and landfills. Some may be released during thermal decomposition (accidental fires and waste incineration). A report by Cho and Klaus (1980) stating that 32 percent of TDCP remains intact after thermal oxidation in air at 370° C was cited by Muir (Ref. 11, 1984). It was reported by Paciorek et al. (Ref. 12, 1978) that TDCP underwent 68 percent thermal oxidation at 370° C. It is unlikely that there is any natural production of these phosphates.

B. *Evidence for environmental exposure.* No information was found on TCPP or TCIP and there was no indication that they have been looked for in the environment. TDCP, in common with many similar tris(haloalkyl)phosphates, has been found in many environmental samples throughout the world, at very low concentrations. TDCP was found in Great Lakes water at 4 of 5 Canadian sites (Ref. 9, LeBel et al., 1987). TDCP was found by LeBel et al. (Ref. 7, 1981) at 0.2 to 1.8 ng/L in drinking water at six eastern Ontario sites. Drinking water from 15 other Canadian cities contained TDCP at 0.3 to 23 ng/L while water from 14 other cities contained no detectable TDCP (Ref. 21, Williams and LeBel, 1981). In a survey of drinking water from the Great Lakes at twelve Canadian Cities, Williams et al. (Ref. 22, 1982) found concentrations of TDCP at 0.1 to 15.7 ng/L. A study of activated carbon filter beds used at 40 U.S. drinking water treatment plants found tris(chloropropyl)phosphate (not further identified) on the carbon (Ref. 11, Millington et al., 1983).

Fish and shellfish from the Okayama prefecture in Japan were reported to contain tris(2, 3-dichloropropyl)phosphate (Ref. 6, Kenmochi et al., 1981).

In an examination of Swedish products thought to contain additive flame retardants (Ref. 16, Sellestroem and Jansson, 1987), 11 of 104 samples were found to contain TDCP. It was most common in polyurethane products such as sound absorbing materials and liners for cars and buses. These same authors also examined the contents of vacuum cleaner bags from one new and one older (15-year old) house and found TDCP in the dust from the older house.

In analyses of human adipose tissues, LeBel and Williams (Ref. 8, 1983) found TDCP in 5 of 16 samples at 0.5 to 110 ng/g. TDCP also was found at 5 to 50 ppb in 34 of 123 human seminal plasma samples (Ref. 3, Hudec et al. 1981).

Japanese studies have reported finding tris(chloropropyl)-phosphate (CAS No. 26248–87–3) and tris(dichloropropyl)phosphate (CAS No. 26604–51–3) (Ref. 1, Haraguchi et al., 1985) and tris(3-chloropropyl)phosphate (CAS No. 1067–98–7) and tris(2, 3-dichloropropyl)phosphate (CAS No. 78–43–3) (Ref. 4, Ishikawa et al., 1985a) in air and treatment plant influents and effluents in Japan. The first three CAS numbers are not listed in the TSCA Inventory and the fourth CAS number is a compound that is produced in low amounts in the U.S. It may be that Japanese industry uses tris(chloropropyl)phosphate flame retardants not commonly used in the U.S. and that those compounds may be introduced into the U.S. environment from imported products.

TDCP and other widely used tris(chloroalkyl)phosphate flame retardants appear to be widely distributed in the environment. When they are looked for, they often are found. No information was found on monitoring studies designed to look for TCPP or TCIP and monitoring should be conducted if continued high production and use are confirmed. Additional monitoring studies to evaluate the concentrations of TDCP in the environment should be conducted to determine whether its concentration in the environment is increasing with time.

I. Chemical Fate Information

A. *Transport.* The water solubility of TDCP is reported to be from 7 to 1,000 mg/L (Ref. 2, Hollifield, 1981, Ref. 11, Muir, 1984, Ref. 18, Stauffer, 1979). The log octanol/water partition coefficient is reported to be 3.8 (Ref. 14, Sasaki et al., 1981). No information was found for TCPP and TCIP. The monitoring evidence (see I.B., above) for TDCP demonstrates widespread occurrence of TDCP in water with some partitioning to sediments and biolipids. TCPP and TCIP are expected to behave similarly.

B. *Persistence.* No information was found for TCPP, TCIP or TDCP. However, Ishikawa et al. (Ref. 5, 1985b) reported that influent and effluent data for activated sludge treatment showed no biodegradation of tris(chloropropyl)phosphate (CAS No. 1067–98–7) and tris(2,3-dichloropropyl)phosphate (CAS No. 78–43–3).

C. *Rationale for chemical fate recommendations.* There is widespread contamination of the environment by TDCP. There may be persistent background levels of TCPP and TCIP in the environment but this is unknown. There is a need to conduct appropriate monitoring studies to determine if TCDD and TCIP, like similar tris(chloroalkyl)phosphate flame retardants, are present in the environment at low concentrations and whether the environmental concentrations of TDCP are increasing. There also is a need to obtain reliable, measured water solubility, vapor pressure and octanol/water partition coefficient data on these flame retardants to better estimate their transport in the environment and to evaluate their biodegradability in natural waters.

III. Biological Effects of Concern to Human Health

The Committee determined that tris(1,3-dichloro-2-propyl)phosphate (CAS No. 13674–87–8) has been studied extensively for health effects and concluded that additional studies are not required. Therefore, health effects testing is not being recommended at this time.

A. *Metabolism and toxicokinetics.* No information was found for TCPP or TCIP.

B. *Acute (short-term) effects.* No information was found for TCPP. An LD50 of 56 mg/kg, administered intravenously in mice, was found for TCIP (U.S. Army data, cited in Ref. 13, RTECS, 1988). The reliability of this information cannot be assessed since experimental details are not available.

Stauffer (cited in Ref. 20, USEPA, 1981) reported studies on the neurotoxic potential of TDCP, a structurally similar phosphate, on adult hens. At 10 g/kg, the maximum tolerated dose, there was 7 percent inhibition of brain neurotoxic esterase. In positive controls, treated with tri-o-cresyl phospate at 0.5 g/kg, there was an 85 percent inhibition.

No subchronic effects data were found for TCIP. The neurotoxic potential of TCPP in adult white Leghorn hens was evaluated by Sprague et al. (Ref. 17, 1981). A group of 18 hens received an initial oral dose of 13.23 g TCPP/kg, followed by the same treatment 3 weeks later. The animals were sacrificed 3 weeks after the second dose. Loss of body weight, transient reductions in food consumption and one death were reported for the treated animals. Egg production ceased shortly after the first dose and there was severe feather loss. No behavioral or histological evidence of delayed neurotoxicity was observed.

C. *Genotoxicity.* No information was found for TCPP or TCIP.

D. *Oncogenicity.* No information was found for TCPP or TCIP. A structurally similar compound, TDCP, was tested for oncogenicity in rats of both sexes and produced a significantly increased incidence of hepatocellular carcinoma and interstitial cell tumors of the testes (Ref. 19, Stauffer, 1981).

E. *Chronic (long-term) effects.* No information was found for TCPP or TCIP.

F. *Reproductive and developmental effects.* No information was found for TCPP or TCIP.

G. *Observations in humans.* No information was found for TCPP or TCIP.

H. *Rationale for health effects recommendations.* Three tris(chloropropyl)phosphates (TCPP, TCIP and TDCP) are produced in substantial amounts in the U.S. and used as additive flame retardants. TDCP is widely distributed in the environment at low concentrations. No exposure information (occupational, consumer or environmental) is available for TCPP or TCIP. It is assumed that use of the latter two compounds as flame retardants will eventually lead to the release of TCPP and TCIP to the environment. TDCP appears to be well studied for potential health effects but there is very little health effects information on TCIP and TCPP. The health effects information is limited to a LD50 for TCIP in mice by intravenous exposure and a subchronic evaluation of the neurotoxic potential of TCPP in hens. An evaluation of neurotoxicity should be conducted for a period of 90 days.

In view of the lack of health effects information on TCIP and TCPP and given the acute effects, oncogenicity and neurotoxicity of TDCP, it is recommended that TCIP and TCPP be tested for acute effects, including cholinesterase inhibition, 90-day subchronic effects and reproductive effects. Based on the results of the recommended studies, the need for long-term studies should be considered.

IV. Ecological Effects of Concern

A. *Acute and subchronic (short-term) effects.* No information was found for TCPP or TCIP.

The 96-hr LC50 for TDCP was reported to be 3.6 mg/L with killifish and 5.1 mg/L with goldfish (Ref. 14, Saaski et al., 1981). These authors also reported spine deformations (caused by convulsive muscle contractions) in killifish after 24 hours exposure at 3.5 mg/L TDCP.

B. *Chronic (long-term) effects.* No information on chronic effects was found. However, as noted in the preceding paragraph, Sasaki et al. (Ref. 14, 1981) reported spine deformations in killifish exposed to 3.5 mg/L TDCP for 24 hours.

C. *Other ecological effects.* No information was found.

D. *Bioconcentration and food-chain transport.* The bioconcentration of TDCP was examined by Sasaki et al. (Ref. 14, 1981 and Ref. 15, 1982) in both static and continuous flow studies. Static tests with killifish and goldfish showed bioconcentration factors of 47 to 107 with killifish and 3 to 5 with goldfish. In continuous-flow studies, the bioconcentration factor for TDCP was 31 to 59 for up to 32 days exposure. There

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was a rapid depuration following cessation of exposure to TDCP in the continuous-flow studies, with half gone in 1.7 hours.

E. *Rationale for ecological effects recommendations.* The widespread occurrence of TDCP in environmental samples and the likely contamination of the environment by TCPP and TCIP raise concerns for their ecological effects. Each should be tested for acute toxicity to fish, aquatic invertebrates and algae to better evaluate the hazard associated with chronic exposures to low environmental concentrations. The observation of spine deformations in fish exposed to TDCP and the widespread occurrence of TDCP at low concentrations also raises concerns for chronic effects. It is recommended that each of these tris(chloropropyl)-phosphates be tested for chronic toxicity to fish.

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2.3.c *Tetrakis(2-chloroethyl)ethylene diphosphate—Summary of recommended studies.* It is recommended that tetrakis(2–chloroethyl)ethylene diphosphate (TCEED) be tested for the following:

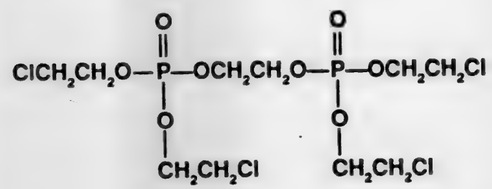
1. *Chemical fate.* Environmental monitoring; water solubility; vapor pressure; octanol/water partition coefficient; biodegradtion.

2. *Health effects.* None.

3. *Ecological effects.* Acute toxicity to fish, algae and aquatic invertebrates.

PHYSICAL AND CHEMICAL INFORMATION

CAS No. 33125–86–9	
Synonyms	Phosphoric acid, 1,2-ethanediyl (2-chloro-ethyl) ester (9CI); Thermolin 101.
Acronym	TCEEP.
Structural Formula:	



PHYSICAL AND CHEMICAL INFORMATION—Continued

CAS No. 33125–86–9	
Empirical Formula	$C_{18}H_{36}Cl_4O_8P_2$.
Molecular Weight	471.9.
Melting Point (°C(	No information was found.
Boiling Point (°C)	No information was found.
Vapor Pressure (mmHg)	0.85 at 25°C (Ref. 3, Olin, 1987).
Solubility in Water (mg/L)	3000 at 24°C (Ref. 3, Olin, 1987).
Specific Gravity	1.45 at 25°C (Ref. 3, Olin 1987).
Log Octanol/Water Partition Coefficient (log P)	1.16, estimated (Ref. 2, CLOGP, 1987).
Henry's Law Constant	1.76×10^{-4} atm m³/mol (calculated)
Log Adsorption Coefficient	2.0 (Ref. 1, CHEMEST, 1987)
Description of Chemical	Dark liquid under ambient conditions. (Ref. 3, Olin, 1987).

Rationale for Recommendations

I. Exposure Information

A. *Production/use.* Tetrakis(2-chloroethyl)ethylene diphosphate (TCEEP) is produced in substantial annual amounts in the U.S. but actual production volumes are classified as confidential business information. TCEEP is used as an additive flame retardant in flexible polyurethane foams and may be used as a flame retardant in various resins. There is no known natural production of TCEEP.

B. *Environmental release.* It is likely that most of the TCEEP production is eventually released to the environment as furniture, automobiles, construction materials, etc. are scrapped and disposed of in dumps and landfills. Some TCEEP may be released during thermal decomposition (in accidental fires and incinerators) but no information was found on thermal decomposition.

C. *Evidence for environmental exposure.* No information was found. Related chloroalkyl phosphate flame retardants (e.g., tris(2-chloroethyl)phosphate and tris(1,3-dichloropropyl)-phsophate), when looked for in the environment, have been found at low concentrations in a wide variety of environmental media in industrialized countries. It is not known whether anyone has looked for TCEEP in the environment.

II. Chemical Fate Information

A. *Transport.* The water solubility, vapor pressure and estimated octanol/water partition coefficient for TCEEP suggest significant transport to both air and water, with little sorption to soil or sediment. The calculated Henry's law constant, if true, would produce a half-life for volatilization from water of about 1 to 2 days. A related phosphate, the tris(2-chloroethyl)-phosphate, has a reported Henry's constant of 1.81×10^{-7} atm m³/mol for a predicted half-life in water of about 1.4 years. It is difficult to believe that there would be such a great difference between these two phosphates and the water solubility and vapor pressure used to calculate the Henry's constants should be reliably measured. If this phosphate behaves similarly to the tris(chloroalkyl)phosphate flame retardants, it will partition largely to water following release to the environment.

B. *Persistence.* No information was found.

C. *Rationale for chemical fate and recommendations.* TCEEP, like the related tris(chloroalkyl)phosphate flame retardants, may partition largely to the aquatic environment and be relatively persistent. The related tris(chloroalkyl)phospates have been found throughout the industrialized world in a variety of environmental media at low concentrations. There is a need for monitoring studies that look for TCEEP to determine if it also appears at low concentrations in the environment. In addition, it is recommended that studies be conducted to determine the water solubility, vapor pressure and octanol/water partition coefficient of TCEEP and to evaluate its biodegradability in natural waters.

III. Biological Effects of Concern to Human Health

The Committee, at the conclusion of its Sixth Scoring Exercise, concluded that it would not review TCEEP for health effects (52 FR 10409, April 1, 1987). Therefore, no health effects studies are being recommended at this time.

IV. Ecological Effects of Concern

A. *Acute and subchronic (short-term) effects.* No information was found.

B. *Chronic (long-term) effects.* No information was found.

C. *Other ecological effects.* No information was found.

D. *Bioconcentration and food-chain transport.* No information was found.

E. *Rationale for ecological effects recommendations.* It is likely that TCEEP has been and will continue to be released to the environment in significant quantities where it may persist and accumulate. Studies should be conducted to evaluate the acute toxicity of TCEEP to fish, aquatic invertebrates and algae.

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2.4 *Chemicals recommended without being designated for response within 12 months—*

2.4.a *Butyraldehyde—Summary of recommended studies.* It is recommended that butyraldehyde be tested for the following:

1. *Chemical fate.* Monitoring in the vicinity of major manufacturing and use sites.

2. *Health effects.* In depth toxicology evaluation if warranted by monitoring data.

3. *Ecological effects.* Toxicity studies with representative biota if warranted by monitoring data.

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PHYSICAL AND CHEMICAL INFORMATION

CAS No. 123-72-8	
Synonyms	Butanal (9CI); Butyraldehyde (8CI); n-Butyraldehyde; Butal; Butyric aldehyde; n-Butyraldehyde; Butanaldehyde; Butyric aldehyde.
Structural Formula: $CH_3CH_2CH_2CHO$	
Empirical Formula	C_4H_8O.
Molecular Weight	72.10.
Melting Point (°C)	−99 (Ref. 61, Windholz, 1983).
Boiling Point (°C)	−74.8 (Ref. 61, Windholz, 1983).
Vapor Pressure (mmHg)	92 @ 20° (Ref. 14, Eastman, (1988).
Solubility in water (mg/L)	6,000 (Ref. 14, Eastman, 1988).
Specific Gravity	0.8016 (Ref. 61, Windholz, 1983).
Log Octanol/Water Partition Coefficient (log P)	0.88 (Ref. 15, ENVIROFATE, 1988).
Henry's Law Constant	1.4×10^{-4} (calculated).
Vapor Density in Air (air=1)	2.5 (Ref. 14, Eastman, 1988).
Description of Chemicals	Colorless liquid with characteristic pungent, aldehyde odor (Ref. 25, Hawley, 1987).

Rationale for Recommendations

I. Exposure Information

A. *Production/use/release to environment.* Butyraldehyde is produced and used in the U.S. at a rate in excess of one billion pounds per year. SRI reported U.S. production of butyraldehyde in 1987 at 1.835 billion pounds by five manufacturers at six sites spread across Texas (Ref. 52, SRI International, 1987). Greater than 90 percent of the production is used as a chemical intermediate to synthesize n-butanol and 2-ethylhexanol. Domestic production of n-butanol and 2-ethylhexanol was 935 million and 638 million pounds, respectively, in 1987 (Ref. 9, C&EN, 1988). Other important uses for butyraldehyde include its use as a solvent for surface coatings and its combination with polyvinyl alcohol to form a resin in laminated safety glass (Ref. 8, CEH, 1985).

Butyraldehyde occurs naturally in many plants, including fruits and vegetables, and in cheese, meats and wines. It has FDA approval as a direct food additive for use as a synthetic flavoring substance and as an indirect food additive as a component of packaging (21 CFR 172.515; 21 CFR 175.105; and Ref. 44, Opdyke, 1979).

The major releases of butyraldehyde to the environment will occur at the manufacturing sites in Texas and at major use sites elsewhere in the U.S. This volatile water soluble chemical may be released to water and air in significant quantities. One company (Ref. 14, Eastman, 1988) reported 1987 emissions at its Texas plant of about 831,000 pounds with 90 percent of the emissions listed as fugitive emissions to air. Toxic chemical release inventory reporting forms submitted to the EPA in response to the Toxic Chemical Release Reporting rule (53 FR 4500; February 16, 1988) provide information on substantial releases to air (from 54,000 to 836,000 lbs. per year) at six manufacturing and use sites (Ref. 55, USEPA, 1988).

B. *Evidence for human and environmental exposure.* According to the National Occupational Hazard Survey (NOHS) conducted by the National Institute for Occupational Safety and Health (NIOSH) from 1972 to 1974, 1,259 workers were potentially exposed to butyraldehyde in the workplace in 1970 (Ref. 38, NIOSH, 1976). Preliminary data available from the National Occupational Exposure Survey (NOES), conducted by NIOSH from 1980 to 1983, indicate that 5,392 workers, including 950 women, were potentially exposed to butyraldehyde in the workplace in 1980 (Ref. 39, NIOSH, 1984). Since domestic production has been increasing since 1982 (Ref. 56, USITC 1983) it is expected that more workers are exposed today.

Occupational exposure limits have not been established by the American Conference of Governmental Industrial Hygienists or the Occupational Safety and Health Administration.

One company (Ref. 14, Eastman, 1988) reported that the major points of worker exposure to n-butyraldehyde are in sampling, loading, and unloading shipping containers, and maintaining the equipment. Also, during production at its Texas plant, from 4 to 8 workers are potentially exposed daily, and from 1 to 2 maintenance workers are potentially exposed for approximately 120 days per year. The same company reported that during use of n-butyraldehyde to manufacture other chemicals, 12 to 18 workers are potentially exposed at its Tennessee plant. These processes run from 180 to 360 days per year. Personal monitoring of production workers (42 samples) indicated air concentrations of n-butyraldehyde averaging less than 1.0 ppm (8-hour TWA) with no sample above 1.25 ppm. Personal monitoring of materials handling workers (7 samples) indicated a geometric mean (8-hour TWA) of 3.7 ppm n-butyraldehyde. Five of the seven samples were under 1.0 ppm, the other two were 21.3 and 4.57 ppm. (Ref. 14, Eastman, 1988).

Another company (Ref. 26, Hoechst-Celanese, 1988) reported that 120 employees were working in the butyraldehyde unit of its Texas processing plant. It reported no monitoring data collected in previous years, and only one sample collected in 1988 which "was 1 ppm for an 8 hour period." It was not reported whether this was a personal or area sample. Its Texas purification plant (Ref. 26, Hoechst-Celanese, 1988) reported 4 to 6 workers exposed to n-butyraldehyde with monitoring data indicating exposure levels less than 10 ppm. However, no information was given concerning the collection of monitoring data.

There are no monitoring data available showing general population exposure to n-butyraldehyde. Exposures may be significant for populations living near major manufacturing sites since

toxic release information indicates substantial fugitive emissions from manufacturing and use sites (Ref. 14, Eastman, 1988; Ref. 55, USEPA, 1988). One company (Ref. 26, Hoechst-Celanese, 1988), however, reported community exposure near its Texas processing plant to be less than 0.0004 ppm n-butyraldehyde although fugitive emissions of butyraldehyde at the plant exceeded 106,000 pounds per year. Details of the sampling and other procedures used to determine this number were not reported.

Butyraldehyde was detected but not quantified in the respired air of a heterogenous nonsmoking control population living in Chicago and the surrounding suburbs; however, it was not detected in the respired air of two other populations examined in the study: A prediabetic group and a diabetic group. The total sample was 62 persons. The authors classified butyraldehyde as a physiologic volatile metabolite but did not suggest a mechanism for its generation (Ref. 34, Krotoszynski and O'Neill, 1982).

No information was found concerning drinking water exposures to n-butyraldehyde.

Many of the monitoring studies that report environmental concentrations of butyraldehyde have dealt with urban air in areas where smogs are a problem. This appears to be due to the presence of butyraldehyde in the emissions from internal combustion engines and the involvement of butyraldehyde in smog formation. Grosjean et al. have conducted several of these studies in Southern California (Ref. 17, Fung et al., 1981; Ref. 21, Grosjean, 1982; Ref. 22, Grosjean et al., 1983; Ref. 23, Grosjean and Wright, 1983; and Ref. 24, Grosjean and Fung, 1984). Similar studies have been conducted in Sweden (Ref. 31, Jonsson et al., 1985). Isodorov (Ref. 28, 1985) reported on the emissions of butyraldehyde into the atmosphere by ferns in the forests of northern Russia. Little or no monitoring data were found on the presence of butyraldehyde in the air near major manufacturing and use sites although toxic release information reveals substantial fugitive emissions at manufacturing and use sites.

Some monitoring studies have looked for butyraldehyde in surface, ground and drinking waters and it has been found at very low concentrations in a few samples (Ref. 11, Corwin, 1969; Ref. 16, Ewing et al., 1977; and Ref. 58, Viar, 1988). No data were found on monitoring conducted on water samples obtained near manufacturing and use sites.

Ito et al. (Ref. 29, 1980) reported finding butyraldehyde in fish in Japan.

II. Chemical Fate Information

A. *Transport.* Based on its vapor pressure, water solubility and log P, butyraldehyde released to the environment will partition to both water and air. The Henry's law constant for butyraldehyde indicates that butyraldehyde in surface waters will volatilize rapidly with a half-life in water of about 12 hours.,

B. *Persistence.* Butyraldehyde released to the environment will not persist. It will be rapidly degraded in the atmosphere by reaction with hydroxyl radicals with an atmospheric half-life of 4 to 9 hours (Ref. 14, Eastman, 1988). Butyraldehyde is readily biodegraded under both aerobic and anaerobic conditions by acclimated microorganisms.

C. *Rationale for chemical fate recommendations.* Butyraldehyde released to the environment will not persist and concerns for potential adverse effects are low in most parts of the U.S. However, the large production volumes at sites in Texas and the toxic release data on substantial releases to air at manufacturing and use site raise concerns with respect to environmental concentrations of butyraldehyde in air and water at those sites. Those emissions will occur on a nearly continuous basis and butyraldehyde may be present in the air and water at significant concentrations that represent a balance between rates of release and rates of removal by degradation processes. It is recommended that monitoring studies be conducted to determine butyraldehyde concentrations in air and water in the vicinity of the major manufacturing and use facilities. Monitoring for the presence of low molecular weight, volatile, hydrophilic compounds in water samples, as noted by Ogawa and Fritz (Ref. 43, 1985), can be very difficult and special care should be taken to assure realistic results.

III. *Biological Effects of Concern to Human Health*

A. *Metabolism and pharmacokinetics.* Aldehydes are oxidized to the corresponding acid by the enzyme aldehyde dehydrogenase (Ref. 59, Weiner, 1980) Three isozymes have been identified from human liver, all of which oxidized several aldehydes, including n-butyraldehyde (Ref. 30, Jones and Teng, 1983).

Butyraldehyde has been detected in mother's milk (6 or 8 samples) obtained from urban areas in the U.S. (Ref. 45, Pellizzari et al., 1982) and in the sera of normal and diabetic patients (Ref. 62, Zlatkis et al., 1980).

In virto studies indicate that butyraldehyde at concentrations of 0.1 to 1 mM inhibits multiplication of mouse sarcoma cells in culture (Ref. 46, Pilotti et al., 1975; Ref. 13, Curvall et al., 1984), and inhibits chemotaxis and reduces viability of human polymorphonuclear leukocytes at 90 mM (Ref. 3, Bridges et al., 1977). Other *in vitro* effects included: damage to the cell membranes of human fibroblasts at 25 mM (Ref. 54, Thelestam et al., 1980; Ref. 13, Curvall et al., 1984) and human red blood cells at 1mM (Ref. 47, Poli et al., 1987), and interference with lipolysis and glucose metabolism in adipose tissue cells at concentrations of 1 to 20 mM (Ref. 20, Giudicelli et al., 1973).

B. *Acute and subchronic (short-term) effects.* The acute toxicity data for butyraldehyde are summarized in the following Table 3.

TABLE 3.—TOXICITY OF BUTYRALDEHYDE IN LABORATORY ANIMALS

Species	LC50		LD50		Reference
	Duration (hours)	Concentration (mg/m³)	Oral (mg/kg)	Dermal (mg/kg)	
Rat			2,490		Marhold (1972, as cited in RTECS, Ref. 48).
Rat	4	[a] >23,590	5,890		Smyth et al. (1951, Ref. 51).
Rat	0.5	174,000			Skog (1950, Ref. 50).
Mouse	2	44,610			Izmerov (1982, as cited in RTECS, Ref. 48).
Rabbit				3,560	Union Carbide Data Sheet (1967, as cited in RTECS, Ref. 48).
Guinea pig				>16	Brabec (1981, Ref. 2).

[a] One of six animals died.

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Inhalation toxicity in males of two mouse strains was defined by a 50 percent reduction in respiratory rate (RD50) following exposure of 3 or 4 mice per dose (dose range not specified) for 10 minutes (Ref. 53, Steinhagen and Barrow, 1984). An RD50 of 1,532 ppm (4,518 mg/m^3) was determined for B6C3F$_1$ mice, and an RD50 of 1,015 ppm (2,993 mg/m^3) was determined for Swiss-Webster mice. An RD50 of 5,572 ppm (16,431 mg/m^3) was determined for male rats under similar conditions (Ref. 1, Babiuk et al., 1985).

Inhalation exposure of ten Sprague-Dawley derived CD rats to measured concentrations of 1,820 ppm (5,367 mg/L) butyraldehyde for 4 hours caused irritation of the ocular and respiratory mucous membranes during the exposure and subsequent 4 hours (Ref. 26, Hoechst-Celanese, 1988). No other treatment-related effects were reported during the 14-day observation period or at necropsy.

Inhalation exposure of rats to 1,000 ppm (2,949 mg/m^3) butyraldehyde for twelve 6-hour exposures produced no observable toxic signs (Ref. 18, Gage, 1970.

Oral administration of butyraldehyde to rats at dose levels of 0.075, 0.15, 0.3, 0.6, or 1.2 g per kg, daily for 5 days per week for 13 weeks caused irritation, inflammation, necrosis, hyperplasia, and lesions in the forestomach and gastric mucosa (Ref. 40, NTP, 1988). The increased incidence of these lesions was dose-related and affected 100 percent of the males and 90 percent of females at the highest does level, 1.2 g/kg.

Dermal exposure of rabbits to butyraldehyde (2.5 mL/kg) for 24 hours caused severe dermal lesions that became infected and led to termination of the study after 7 days (Ref. 26, Hoechst-Celanese, 1988). Extensive necrosis and severe edema were exhibited by all animals at 24 hours; eschar developed about day 4 or 5. Toxic signs evident in several animals during the 24-hour application period included ataxia, fine tremors, hypoactivity, and respiratory anomalies. Tremors, hypoactivity, hypopnea and respiratory arhythmia persisted in a few aniamls for an unspecified period of time. Apart from the dermal lesions, no other treatment-induced changes were evident at necropsy.

Butyraldehyde is a severe skin and eye irritant in rabbits (Ref. 26, Hoechst-Celanese, 1988). It exhibits little or no potential to produce dermal sensitization in guinea pigs (Ref. 26, Hoechst-Celanese, 1981). After a 3-week induction period consisting of nine 6-hour applications of butyraldehyde, there was no dermal response from guinea pigs challenged with 10 percent butyraldehyde. A second challenge at 25 percent elicited an equivocal response in only 2 of 20 animals.

C. *Genotoxicity.* In the *Salmonella* assay, butyraldehyde was not mutagenic in strains TA1535, TA1537, TA98, or TA100, with or without activation (Ref. 35, Mortelmans et al., 1986). No increase in chromosomal aberrations was detected in Chinese hamster ovary cells at butyraldehyde concentrations of 59 to 135 ug/mL with or without metabolic activation, but sister chromatid exchange was induced in these cells at nontoxic levels ranging from 9 to 90 ug/mL (Ref. 19, Galloway et al., 1987). The lowest effective doses were less than 9 ug/mL without activation and 30 ug/mL with activation. When butyraldehyde was administered to male mice (Q strain) in the drinking water at 0.2 mg/L for 50 days, chromosomal aberrations were evident as polyploidy at all stages of spermatogenesis and abnormal pairing of chromosomes at metaphase I (Ref. 37, Moutschen-Dahmen, 1976). Butyraldehyde did not increase sister chromatid exchange in human lymphocytes treated *in vitro* at a concentration of 2×10^{-3} percent (v/v) without metabolic activation (Ref. 42, Obe and Beck, 1979). No increase was reported in sex-linked recessive lethals of *Drosophila melanogaster* fed butyraldehyde at a concentration of 2,000 ppm in 5 percent aqueous sucrose (Ref. 57, Valencia et al., 1985).

D. *Oncogenicity.* No information was found on the subject compound. Plans for a chronic inhalation bioassay of butyraldehyde were dropped by NTP because of technical difficulties in generating the atmosphere for exposure (Ref. 41, NTP, 1988). A related compound, isobutyraldehyde, is scheduled for a chronic inhalation bioassay starting in February 1989 under the National Toxicology Program. Other structural analogues of n-butyraldehyde including formaldehyde and acetaldehyde have shown sufficient evidence for carcinogenicity in animal studies; the evidence in humans is considered by IARC to be limited for formaldehyde and inadequate for acetaldehyde (Ref. 27, IARC, 1987).

E. *Chronic (long-term) effects.* No information was found.

F. *Reproducitve and developmental effects.* A single intraperitoneal injection of 1 mg butyraldehyde per animal produced chromosomal damage and meiotic anomalies including degenerative nuclei, multispindle cells and polyploid cells at all stages of spermatogenesis in male mice 1 month following the treatment (Ref. 36, Moutschen-Dahmen et al., 1975). In a later study (Ref. 37, Moutschen-Dahmen et al., 1976), one group of male mice received a single intraperitoneal dose of 30 mg butyraldehyde per kg, and a second group received 0.2 mg/L in their drinking water for 50 days. Administration of butyraldehyde by either route damaged the spermatogenic cells of the seminiferous tubules. In addition to gross degeneration, polyploidy was observed at all stages of spermatogenesis and abnromal pairing of sex chromosomes occurred at metaphase I; there was increased incidence of spermatozoa without acrosomes in the vas deferens.

G. *Observations in humans.* Among 12 individuals of Oriental ancestry characterized as susceptible to cutaneous flushing after ingestion of ethanol, all reacted positively (with erythema) to patch testing with 75 percent butyraldehyde (Ref. 60, Wilkin and Fortner, 1985).

Butyraldehyde was found to be mildly irritating when applied in epicutaneous tests (Ref. 44, Fiser and Pokorny, 1965, as cited in Opdyke, 1979), whereas 1 percent butyraldehyde in petrolatum produced no irritation after a 48-hour closed patch test (Ref. 44, Kligman 1977, as cited in Opdyke, 1979). One out of 25 tested with 1 percent butyraldehyde in petrolatum had a positive but nonspecific sensitization reaction in a maximization test.

Butyraldehyde vapor (230 ppm) was nonirritating to the eyes of 15 men during a 30 minute exposure (Ref. 49, Sim and Pattle, 1957).

H. *Rationale for health effects recommendations.* Annual domestic production of n-butyraldehyde is about 1.8 billion pounds by five manufacturers at six sites in Texas. Preliminary data indicate that over 5,000 workers (including 950 women) were potentially exposed to n-butyraldehyde in the workplace in 1980. Since domestic production has been increasing since 1982, it is expected that more workers are exposed today.

Sizeable airborne fugitive emissions have been reported (from 54,000 to 836,000 lbs. per year) from six major manufacturing and use sites. Therefore, there is potential for significant community population exposure in the vicinity of manufacturing and use sites.

Structural analogues of n-butyraldehyde including formaldehyde and acetaldehyde have shown carcinogenic effects in animals. IARC considers that there is sufficient evidence from animal studies for the carcinogenicity of formaldehyde and acetaldehyde whereas the evidence in humans is limited or inadequate,

respectively. The National Toxicology Program is scheduled to perform a 2-year inhalation study with isobutyraldehyde. There are, however, no data available to assess the carcinogenicity of n/butyraldehyde itself. The Committee noted the data indicating impaired spermatogenesis in male mice. Considering the lack of definitive data, the Committee recommends that testing addressing carcinogenicity and reproductive and developmental effects of butyraldehyde should be conducted if warranted by monitoring data.

IV. Ecological Effects of Concern

A. *Acute and subchronic (short-term) effects.* Acute toxicity (LC50) values have been reported as shown below.

Organism	Endpoint	Butyraldehyde Conc. (mg/L)	Reference
Fathead minnow	96-hr LC50	25.8	Ref. 12, Curtis and Ward, 1981.
Golden Orfe	96-hr LC50	57 & 114	Ref. 32, Juhnke and Ludemann, 1978.
Aedes aegypti larva	4-hr LC50	2,000	Ref. 33, Kramer et al., 1983.

B. *Chronic (long-term) effects.* No information was found.

C. *Other ecological effects.* In a series of articles, Bringmann and Kuhn reported on minimum inhibitory concentrations for a large number of chemicals and a variety of aquatic organisms. The definition of minimum inhibitory concentration varied according to the organism being tested. For daphnids it was described as the maximum tested concentration at which all of the daphnids were able to retain their swimming capability following 24 hours exposure to the test chemical. For protozoa the minimum inhibitory concentration was the concentration that caused cell counts in test cultures to be 5 percent or more below the counts in control cultures with 48 hours exposure. For algae, the minimum inhibitory concentration was the concentration of test material that inhibited cell multiplication in test versus control cultures during 8 days exposure. For the bacterium, *Pseudomonas putida,* the endpoint was inhibition of cell multiplication after 24 hours exposure, as determined by turbidity measurements of test versus control cultures (Ref. 4, Bringmann, 1978; Ref. 5, Bringmann and Kuhn, 1980; Ref. 6, Bringmann and Kuhn, 1981; and Ref. 7, Bringmann and Kuhn, 1982). Their results with butyraldehyde are summarized below:

Organism	Minimum inhibitory concentration (mg/L)
Microcystis aeruginosa algae	19
Scenedesmus quadricauda algae	83
Entosiphon sulcatum protozoa	4.2
Uronema parduczi protozoa	98
Chilomonas paramaecium protozoa	44
Daphnia magna	100
Pseudomonas putida bacterium	100

The butyraldehyde concentrations that inhibited the swimming capability of 50 percent and 100 percent of *Dephnia magna* populations after 24-hours exposure also were reported by Bringmann and Kuhn (Ref. 7, 1982) to be 195 and 383 mg/L, respectively.

Chou et al. (Ref. 10, 1978) reported that butyraldehyde was relatively non-toxic to methanogenic bacteria.

In a study on the use of bacteria as an indication of toxicity to fish, Curtis et al. (Ref. 12, 1981) reported a 5-minute EC50 of 16.4 mg/L for *Photobacterium phosphoreum* exposed to butyraldehyde.

D. *Bioconcentration and food-chain transport.* An examination of fish in Japan revealed the presence of butyraldehyde at low concentrations (Ref. 29, Ito et al., 1980). The significance of this information in unclear since butyraldehyde is produced naturally and is found in many food products. Based on its high water solubility and low octanol/water partitioning coefficient, butyraldehyde is not expected to bioconcentrate.

E. *Rationale for ecological effects recommendations.* Butyraldehyde is produced in very large annual quantities at several locations in Texas. There are reports of substantial emissions of butyraldehyde to air at manufacturing and use sites. There may be significant concentrations of butyraldehyde in the air and surface waters in the vicinity of one or more of the manufacturing and use sites. Few data are available on the acute toxicity of butyraldehyde to aquatic species and none were found for terrestrial plants and animals. No chronic toxicity information was found. It is recommended that appropriate toxicity studies be conducted with representative species of biota if warranted by monitoring data.

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[FR Doc. 88–26306 Filed 11–15–88; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[OPTS–84029; FRL–3476–3]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its Twenty-third Report to EPA recommended that EPA give priority consideration to six chemical substances in proposing chemical test rules. To assist EPA in its determination of which, if any, tests are needed for these substances, EPA is adding the six substances to two model information-gathering rules: The Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR), and the TSCA section 8(d) Health and Safety Data Reporting Rule.

EFFECTIVE DATE: This rule shall become effective on December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202–554–1404), TDD: (202–554–0551).

SUPPLEMENTARY INFORMATION: This rule adds six chemical substances to the PAIR and the section 8(d) Health and Safety Data Reporting Rule. Manufacturers, processors, and importers of these chemicals will be required to report end use, exposure, volume, and unpublished health and safety data to the Agency.

Public reporting burden for this collection of information is estimated to average 32.7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures (chemicals) to be given priority consideration in proposing chemical test rules. For some of these chemicals the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the chemical or publish in the **Federal Register** its reasons for not doing so. For the remainder of the recommended substances, no time limit for Agency response is imposed.

Elsewhere in today's issue of the **Federal Register**, EPA is announcing the receipt of the Twenty-third Report of the ITC, which was transmitted to EPA on November 1, 1988. The Twenty-third Report revises and updates the Committee's priority list of chemicals and adds six substances to the section 4(e) priority list. This rule adds these six substances to the PAIR and the section 8(d) Health and Safety Data Reporting Rule which will require manufacturers, importers, and processors to report volume, end use, exposure, and unpublished health and safety data to EPA. In addition, one chemical substance which had been recommended with intent-to-designate by the ITC in its Twenty-second Report, 2-Butenal, CAS No. 4170–30–3, is now designated for response within 12 months. This revision does not trigger any new reporting requirements because following the recommendation with intent-to-designate, 2-Butenal (also known as Crotonaldehyde), was added to the PAIR (53 FR 18211, May 20, 1988) and the section 8(d) Health and Safety Data Reporting Rule (51 FR 2890, January 22, 1986), as published in the **Federal Register** of May 20, 1988 (53 FR 18196).

To assist EPA in responding to the ITC recommendations, EPA has developed two model information-gathering rules (PAIR and the section 8(d) Health and Safety Data Reporting Rule) which provide for the automatic addition of ITC priority list substances. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without notice and comment, amend the two model information-gathering rules by adding the recommended substances. The amendment adding these substances to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication.

EPA issued PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR Part 712. This model section 8(a) rule established standard reporting requirements for manufacturers and importers of the chemicals listed in the rule. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure information using the Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35). EPA uses this model section 8(a) rule to gather current information on substances of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR Part 716. EPA revised the section 8(d) model rule on September 15, 1986 (51 FR 32720). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

II. Chemicals to be Added

The following ITC priority list substances for which reporting is required under 40 CFR Parts 712 and 716 are listed by ITC designation in ascending Chemical Abstracts Service Registry Number (CAS No.) order:

A. *Designated for response within 12 months:*

CAS No. and Name	
4170–30–3	2-Butenal (also known as Crotonaldehyde)

B. *Recommended with Intent-to-Designate:*

CAS No. and Name	
115–96–8	Ethanol, 2-chloro-, phosphate (3:1) (also known as Tris(2-chloroethyl)-phosphate)
6145–73–9	1-Propanol, 2-chloro-, phosphate (3:1) (also known as Tris(2-chloro-1-propyl)phosphate)
13674–84–5	2-Propanol, 1-chloro-, phosphate (3:1) (also known as Tris(1-chloro-2-propyl)phosphate)
13674–87–8	2-Propanol, 1,3-dichloro-, phosphate (3:1) (also known as Tris(1,3-dichloro-2-propyl)phosphate)
33125–86–9	Phosphoric acid, 1,2-ethanediyl tetrakis(2-chloroethyl) ester (also known as Tetrakis(2-chloroethyl)ethylene disphosphate).

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C. *Recommended without being designated for response within 12 months*:

CAS No. and name

123–72–8 Butanal (also known as Butyraldehyde).

III. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the substances named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each manufacturing or importing site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency no later than February 14, 1989. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA should read § 712.30(a)(3). This section allows these persons to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission.

Complete details of the reporting requirements, including exemptions and a facsimile of the reporting form, are fully described in 40 CFR Part 712. Copies of the form are available from the TSCA Assistance Office at the address which procedes Unit I.

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years proceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed substance must submit to EPA:

A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, proposed to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

Detailed guidance for reporting unpublished health and safety data is provided in the section 8(d) Health and Safety Data Reporting Rule published in the **Federal Register** of September 15, 1986 (51 FR 32720) (40 CFR 716.60). Also found there are the reporting exemptions.

C. Submission of PAIR Reports and Section 8(d) Studies

PAIR reports and section 8(d) health and safety studies must be sent to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: (insert either PAIR or 8 (d) Reporting).

D. Removal of Chemicals From the Rules

Any person who believes that section 8(a) or (d) reporting required by this rule is unwarranted, should promptly submit to the Agency in detail the reasons for that belief. EPA may then remove the substance from the rule, EPA will issue a rule amendment for publication in the **Federal Register.**

IV. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a rule related notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than February 14, 1989.

V. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates the PAIR reporting cost of this rule is $33,635. To calculate this figure EPA used the TSCA Inventory to generate a list of manufacturers and importers of these substances. Since no companies qualify as small businesses as defined in 40 CFR 712.25(c), EPA expects thirteen firms to report a total of twenty-five reports.

Reporting cost (dollars):	
(a) 25 reports expected at $807/report	$20,175
(b) 20 familiarization cases at $673/case	13,460
Total	33,635
Average cost per site	$1,681
Average cost per firm	2,587
Reporting burden (hours):	
(a) familiarization: 18 hours per site × 20 sites	360
(b) reporting: 16 hours per report × 25 reports	400
Total (hours)	760
EPA cost:	
Processing Cost = 25 reports × $91/report	$2,275

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for these substances is $19,680. This cost estimate is relatively high, because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the data is not current. Therefore, EPA intends to overestimate rather than underestimate the reporting burden.

Nevertheless, the cost of this rule is low in comparison with its potential benefits. Health and safety studies concerning these substances would improve EPA's ability to identify potential public health and environmental problems with regard to these chemicals. The Agency therefore would be better able to determine whether further regulatory action would be necessary.

The estimated reporting costs are broken down as follows:

Initial corporate review	$3,510
Site identification	2,430
File searches at affected sites	5,022
Title listing	252
Photocopying	842
Managerial review	4,860
Reporting on newly-initiated studies	120
Submissions after initial reporting period	2,060
Total	19,680

VI. Rulemaking Record

The following documents constitute the record for this rule (docket control number OPTS–84029). All of these documents are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC.

1. This final rule.
2. The economic analyses for this rule.
3. The Twenty-third Report of the ITC.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 712.30(c) and 716.18(b)—final rules which have been previously reviewed by OMB under the terms of the Executive Order.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers 2070–0054 and 2070–0004.

Public reporting burden for this collection of information is estimated to average 32.7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Hazardous substance, Health and safety data, Recordkeeping and reporting requirements.

Dated: November 4, 1988.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

PART 712—[AMENDED]

1. The authority citation for Part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Section 712.30 is amended by adding the following substances to paragraph (w) in CAS Number order as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(w) * * *

CAS No.	Substance	Effective date	Reporting date
•	•	•	•
115–96–8	Ethanol, 2-chloro-, phosphate (3:1)	12/16/88	2/14/89
•	•	•	•
123–72–8	Butanal	12/16/88	2/14/89
•	•	•	•
6145–73–9	1-Propanol, 2-chloro-, phosphate (3:1)	12/16/88	2/14/89
•	•	•	•
13674–84–5	2-Propanol, 1-chloro-, phosphate (3:1)	12/16/88	2/14/89
13674–87–8	2-Propanol, 1,3-dichloro-, phosphate (3:1)	12/16/88	2/14/89
33125–86–9	Phosphoric acid, 1,2-ethanediyl tetrakis(2-chloroethyl) ester	12/16/88	2/14/89
•	•	•	•

(Approved by the Office of Management and Budget under control number 2070–0054.)

PART 716—[AMENDED]

1. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. By adding substances to § 716.120(a) numerically by CAS Number to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
•	•	•	•	•
115–96–8	Ethanol, 2-chloro-, phosphate (3:1)		12/16/88	12/16/98

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CAS No.	Substance	Special exemptions	Effective date	Sunset date
•	• • • • • • •			
123-72-8	Butanal		12/16/88	12/16/98
•	• • • • • • •			
6145-73-9	1-Propanol, 2-chloro-, phosphate (3:1)		12/16/88	12/16/98
•	• • • • • • •			
13674-84-5	2-Propanol, 1-chloro-, phosphate (3:1)		12/16/88	12/16/98
13674-87-8	2-Propanol, 1,3-dichloro-, phosphate (3:1)		12/16/88	12/16/98
33125-86-9	Phosphoric acid, 1,2-ethanediyl tetrakis (2-chloroethyl) ester		12/16/88	12/16/98
•	• • • • • • •			

(Approved by the Office of Management and Budget under control number 2070-0004.)

[FR Doc. 88-26305 Filed 11-15-88; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
November 16, 1988

Part VI

Department of Transportation

Research and Special Programs Administration

14 CFR Parts 217 and 241

Aviation Economic Regulations; Report of Traffic and Capacity Statistics; Collection of Service Segment and Charter Data; The "T-100 System"; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

14 CFR Parts 217 and 241

[Docket No. 44999; Amendment No. 217-2; 241-57]

[RIN 2137-AA97, 2137-AB01]

Aviation Economic Regulations; Report of Traffic and Capacity Statistics; Collection of Service Segment and Charter Data; The "T-100 System"

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule prescribes the collection of scheduled and nonscheduled service traffic data from foreign air carriers which provide service to and from the United States and for the domestic and international operations of United States carriers. These data will augment the charter data already reported by foreign air carriers serving the United States. At the same time, the Department of Transportation, hereafter referred to as DOT or the Department, is establishing a single automated system for collecting traffic data from both U.S. and foreign air carriers. This system: (1) Replaces the collection of U.S. and foreign air carriers' charter data on Form 217; (2) eliminates most of the burden associated with the recurrent hard-copy submissions of Form 217 and Form 41 "T" schedules; (3) reduces the number of traffic and capacity data elements for U.S. air carriers; and (4) through summarization, it simplifies submissions from all reporting air carriers. This more closely aligns the data collected by the Department with that necessary to fulfill its aviation responsibilities under the Federal Aviation Act of 1958, as amended.

EFFECTIVE DATES: January 1, 1989, for foreign air carriers; January 1, 1990 for U.S. air carriers.

FOR FURTHER INFORMATION CONTACT: Donald Bright or Richard King, Office of Aviation Information Management, DAI-10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4384, or 366-4375, respectively.

SUPPLEMENTARY INFORMATION:

Periodic Review

The Department plans to review the reporting results experienced under the T-100 data collection system after two years, and to request comments on the effectiveness of these regulations in achieving the DOT objectives, including whether there are less burdensome reporting methods. These may include some data alternatives, impracticable today, that become possible due to future technological or other advances, such as the rapidly evolving computer innovations and reservations processes, which may enable air carriers to provide these market-oriented traffic data with much less burden than presently feasible systems.

Background

The Airline Deregulation Act (Pub. L. 95-504, October 24, 1978) (ADA), as amended by the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443, October 4, 1984), revised section 329(b)(1) of Title 49 of the United States Code to require the Secretary of Transportation to collect and disseminate information on civil aeronautics and to continue certain data collection activities of the former Civil Aeronautics Board (CAB). These activities include continuing the collection and dissemination of data on the number of passengers traveling by air in interstate and overseas (i.e., domestic) air transportation without flight number identification, unless the flight is providing domestic essential air service, in which case flight numbers may be required.

In 1970 the CAB adopted Economic Regulation ER-586 to provide for the collection of traffic and capacity data on a service segment basis (a pair of airports served by a single flight stage), from certificated air carriers, with submission of the data on computer magnetic tape or other Automatic Data Processing (ADP) media. A few air carriers did submit modified service segment data on a hard-copy form. Although much of the economic regulation over domestic air transportation was eliminated by the ADA, and other changes have taken place within the aviation industry, the Department continues to need data for nonstop segments and for on-flight markets, but in much less detail than has been reported in Service Segment Data (SSD). Besides Service Segment Data, the Department has collected traffic and capacity data from large certificated air carriers on nine Research and Special Programs Administration (RSPA) Form 41 "T" (traffic) schedules, and on RSPA Form 217 "Report of Civil Aircraft Charters Performed by U.S. Certificated and Foreign Air Carriers." Other sources of air carrier traffic data have included: foreign trade data collected from importers by the Department of Treasury's Customs Service and from exporters by the Department of Commerce's Bureau of Census; and the passenger data collected by the Department of Justice's Immigration and Naturalization Service (INS) on Form I-92.

This final rule implements a consolidated set of schedules and procedures for reporting all traffic and capacity statistics that both modernizes the process and significantly reduces air carrier burden. The new set of schedules includes only (1) the Schedule T-100(f) for foreign air carriers, and (2) for large U.S. air carriers holding 401 certificate authority, it includes the T-100 Schedule, plus the reduced and redesignated supplemental Form 41 Schedules T-1, T-2 and T-3. The T-100(f) collects from foreign air carriers for the first time certain limited data related to scheduled service operations in the U.S. market. As a whole, these schedules are known as the T-100 system.

For U.S. air carriers, the T-100 system replaces the former Form 41 Schedules T-1(a,b,c), T-2, T-3(a,b,c) and T-9, along with the ER-586 Service Segment Data and Form 217 reporting. The heart of the final rule is the T-100 report, which collects nonstop segment data and on-flight market information by equipment type and by service class. In the T-100 system, air carriers are no longer required to submit data on down-line deplanements or to report specific flight numbers for international operations (consistent with the previous elimination of flight numbers in domestic U.S. operations). Much of the information formerly collected on hard-copy Schedules T-1(a,b,c), T-2, and T-3(a,b,c) will be derived directly from the computerized T-100 detail reports, thus eliminating much of the air carrier burden associated with the preparation of these reports. However, the Department still finds it necessary to retain portions of these supplemental schedules to obtain summary data elements not collected on the Schedule T-100.

Foreign air carriers holding 402 permits, or exemption authority, and using aircraft with a maximum seat capacity of more than sixty seats or a maximum payload capacity of more than 18,000 pounds, will file Schedule T-100(f). The T-100(f) only applies to nonstop segments and on-flight markets where one or both points are within the U.S. and its possessions. When carriers are granted a foreign carrier permit or exemption authority by the Department, they will also receive a letter from the Department of Transportation, Research and Special Programs Administration, Office of Aviation Information Management (DOT, RSPA, OAIM) advising them of their reporting obligations.

Public Comments

Forty-seven public comments were received, including six U.S. air carriers (Air Berlin, American, Delta, Northwest, USAir and United); three trade associations (Aerospace Industries Association of America, Inc. (AIA), Air Transport Association of America (ATA) and the International Air Transport Association (IATA)); one embassy (British); four U.S. Government agencies (Department of State-Office of Aviation Programs and Policy, Department of Labor-Bureau of Labor Statistics, Department of Commerce-U.S. Travel and Tourism Administration and Department of Commerce-Bureau of Economic Analysis); thirty foreign air carriers; one airport (Stewart); one data service firm; and one data user (USAF).

Initial Reporting and Phase-in Period Before Reporting Begins

Avensa wants a 6 month interval between adoption of a final rule and the first period for which reports are due, and it requested a quarterly report, rather than monthly, particularly for the first year, to ease the transition.

Singapore Airlines, Lufthansa and ATA ask that the effective date of the final T-100 rule be delayed for at least 6 months after it is published to provide time for all interested persons and governments to act.

Swissair wants foreign carrier reporting delayed at least a year after the final rule is enacted, to allow sufficient time for reprogramming.

The T-100 reporting system will be implemented in two stages over a year. Foreign air carriers will be required to begin reporting on January 1, 1989, while U.S. carriers will begin a year later. The Department feels that several months lead time is sufficient for foreign carriers to design their initial reporting systems to report 11 data items monthly. However, since it is a completely new system for foreign carriers, the Department's limited staff resources can be used to their fullest extent in helping them with any problems they may have before the U.S. carriers are brought on board. Further, the need for data from foreign air carriers is much more critical, since the Department has no data on their scheduled operations in the U.S. market, but does have data for U.S. carriers. The Department does not expect as many implementation problems from U.S. carriers, because they will be modifying existing systems instead of implementing new systems. Finally, the Department feels a year is necessary for assisting foreign carriers, because there are potentially about three times more foreign carriers than U.S. carriers, there could be language problems, the communicating distance is much greater, and not as much is known about their information systems. This approach will produce the greatest benefits and correctly focus the Department's efforts while preserving the flow of U.S. carrier data.

Costs and Burdens

In general, the U.S. air carriers did not express significant concerns about cost burdens or about personnel training and procedural changes that may impact them as a result of the T-100 system. Burden did figure more prominently in foreign air carrier responses.

United said that the T-100 system for foreign air carriers is long overdue, but Delta is opposed to the T-100 system, which it considers very burdensome to U.S. carriers, and unnecessary; separating tickets by three classes of service instead of the current two sorts would cost almost $200,000 in reprogramming effort alone, it estimates. Delta believes that the revenue data by fare class that are included in the current DOT data collection, "Passenger Origin-Destination Survey," could be used to derive middle cabin data, if DOT will reformat the information already reported. Codes for services such as middle cabin vary so widely that inconsistent data would be the end result; although DOT treats the terms "middle cabin" and "business class" as though they were interchangeable, they are not, Delta contends.

The Air Transport Association (ATA) is concerned about burden. ATA estimates that to implement the new T-100 system would result in an aggregate cost to its members that would be in excess of $1,000,000. More than 20 U.S. air carriers are members of ATA, including Delta.

British Airways (BA) estimated a cost of 180 man-hours per year, plus computer time and associated costs, which would appear to indicate a cost estimate of several thousand dollars annually. BA disputes that monthly traffic and capacity data of such detail is necessary to bilateral negotiations, and said DOT has not stated the changed circumstances that would justify imposition of new regulatory burdens. BA said that INS reductions will not reduce these costs, and that the I-92 is already a "batching" document for I-94. Since British Airways has a large presence in U.S. markets relative to many other foreign air carriers, it may be expected that only a few other foreign carriers would equal or exceed its burden hours.

Air Canada, Air Jamaica, Balair, Condor and Philippines believe that the T-100 system is, contrary to assertions, enormously burdensome and unnecessary. For an annual period, these 5 carriers allege that their burden will increase from 94 forms to 3,056 and for all foreign air carriers reporting would increase from a few hundred to 75,000 forms annually, since they must include scheduled service on the T-100(f) reports. Air Afrique opposed the T-100 system as an unjustifiable reporting burden, 6 separate reports each month for its 2 weekly flights to the U.S., 72 a year.

Canadian Airlines International (CAI) said the proposal is burdensome and redundant; it suggested that such data can be derived from true O&D exchanged quarterly by the U.S. and Canada. CAI said the burdensome, costly T-100(f) would not be offset by I-92 report reductions, because Canadian carriers do not file the INS data.

Caricargo believes its reporting burden will increase; although Form 217 will be eliminated, the 217 data will continue to be reported on T-100(f). Caricargo has no ADP capability, and would submit burdensome manual reports.

Finnair considers T-100(f) a burden that is not justified by any need for additional data; the statistics supplied to ICAO and to IATA should be sufficient. If collected, the T-100(f) should be collected quarterly, not monthly, to reduce reporting burden. IATA said there would be unnecessary duplication and conflicting data requirements; it suggested that DOT satisfy its data needs through existing IATA data collection programs. IATA said it may be possible for IATA to expand its programs to collect the data that DOT needs. Japan Air, Lufthansa, Singapore Airlines, and Swissair want DOT to defer the final T-100 rule pending revision of the IATA/ICAO data reporting systems, which they believe will provide market data that will satisfy DOT's needs. Avianca, Mexicana, LAV, LACSA, and VASP also feel that the current ICAO data, or INS data, or data exchanges between governments are adequate, and that the portion of the rulemaking (14 CFR Part 217) applicable to foreign air carriers should be withdrawn. Avianca, Finnair, Japan Air, LACSA, Lufthansa, Mexicana, Swissair and VASP are members of IATA.

Aeromexico, TAP and Nippon Cargo believe that burden is not reduced, but

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will increase. Air France said the T-100(f) would be very burdensome and opposed the burden as a step backward from the deregulation championed by the U.S. Alitalia believes burdens to foreign carriers are greater than benefits to DOT; *ad hoc* information should be sufficient. KLM objects to burden, saying much of the requested T-100(f) data is not currently available to KLM, and would have to be generated. Avensa considers the proposal more complex and costly than the present level of reporting and is opposed to the T-100 system.

The British Embassy said that the Schedule T-100(f) reporting in the T-100 system would be an unjustified expense and staff burden.

The Department is not convinced there would be an overwhelming paper reporting burden, since foreign carriers would not be faced with a manual system if they adopt the modern, efficient computer oriented system that DOT envisions. It is likely that only the smallest foreign air carriers, or those with very little U.S. traffic volume, and hence a very small burden, would elect to submit the manual paper reports.

An analysis of 12 foreign carriers' reporting on the Schedule T-100(f) using the June 1988 Official Airline Guide schedules discloses that one of the largest carriers would only have 61 lines of entry for its scheduled service operation in the U.S. market for June using the redesigned Schedule T-100(f) (see next paragraph on the redesigned form). This carrier serves 17 U.S. points from 3 homeland points with 4 different aircraft types and had over 1300 departures. The number of lines would be considerably decreased if the number of points were less and/or the number of different aircraft types were less. A typical small carrier would have only 6 lines of data for 18 departures serving 1 U.S. point from 3 homeland points. The average number of lines of data for the whole group was about 20. This analysis included a cross section of foreign carriers ranked into 12 groups based on scheduled service passenger volumes for calendar year 1987. The groups ranged from under 10,000 passengers (smallest group) to over 2 million passengers (largest group). The reporting for one carrier was analyzed from each group. A review of reporting for several purely charter carriers disclosed that the number of line entries generally would be the same as for Form 217. For those carriers which reported different flight stages, the T-100 would require 50 percent fewer line entires than previously.

Twenty lines of data per month for a foreign carrier is not an unreasonable burden in view of the Department's need for the data. Nevertheless, the Department is sensitive to foreign carrier concerns in this area and wants to minimize any potential reporting burden on carriers as much as possible. In this context, the Schedule T-100 has been redesigned to permit 20 lines of data on each form in lieu of multiple submissions on separate forms. In an "extreme" case scenario, even the foreign air carriers with the most extensive service in U.S. markets should not expect to submit more than 12 monthly ADP reports each, per annum, or a few hundred lines of data each year. Virtually all foreign carriers except Canadian carriers should realize a substantial decrease in INS reporting burden. Reporting burden is related to the size of a carrier's U.S. operations, and the sophistication of its data retrieval system. We believe most foreign carriers do generate this data for their own business purposes. The burden is to conform their data to the DOT rule, and that burden is justified in light of the benefits to be derived for aviation information collection, use and dissemination.

Data collections conducted by ICAO or IATA are not viable alternatives to the T-100 system as some carriers suggest for a many reasons. All foreign carriers are not members of IATA, and all carriers are not reporting to ICAO. Either data base might suffice if the broad picture was the focus. The Department's needs are much more narrow. That is, country to country is the primary focus and if a carrier is not reporting and is the only carrier of that country, then the Department has no data to use. See caption entitled "Alternative Data Sources" for more information.

The Department does not dispute that there will be some costs to reprogram for U.S. carriers, whether it is approximately $50,000 per carrier as ATA estimates or $200,000 as Delta estimates for its own program, the Department believes in the long run that there will be cost savings since there is less data to report to the Department and INS.

The Department considers as quite reasonable both the potential costs to each foreign carrier of reporting (which are estimated at from $100 to $2,000 per each monthly submission, based upon the size of the carrier's reported operations) and the possible manpower burdens to the air carriers (which are estimated at from 1 to 20 staff hours per submission). Further, it may be somewhat disingenuous for carriers to suggest that the Department wants thousands of reports each year when only one ADP submission or a few pages of a hardcopy report per month is required.

The Department has reexamined its need to collect two capacity data elements (available seats and available payload weight) from foreign air carriers. In lieu of requiring that these elements be reported to DOT, the Department will rely, for a trial period, upon existing data sources in the private sector. The Department will generate estimated seat capacity data from the Official Airline Guides (OAG) semiannual seat configuration data voluntarily supplied by the foreign air carriers. Similarly, the Depatment will also estimate available payload weight. If the experiment is only partially successful and private sector data gaps exist for a very few carriers, the Department may employ *ad hoc* reporting pursuant to 14 CFR 385.27. However, if the private sector data are substantially inadequate, DOT may require foreign air carriers to submit actual capacity data on Form 41 Schedule T-100(f), as originally proposed.

Eliminating collection of capacity information reduces the proposed 13 data elements to 11. Several of these data elements are merely labels (namely: Air carrier, report date, origin airport, destination airport, service class, and aircraft type), and only the remaining few (passengers, freight kilograms, and aircraft departures) represent hard data items that foreign carriers must report.

Confidentiality and Access to Detail T-100 System Information

Many of the carrier comments dealt with the question whether limited or permanent confidential treatment should be accorded the T-100 system's detailed data by carrier. Comments ranged from urging immediate release to permanent confidentiality.

Avensa wants the data collected to be released immediately; it said DOT should require simultaneous disclosure of all individual carrier market data as to a particularly country to each carrier, U.S. or foreign, serving the market.

American would make the T-100 data of U.S. and foreign carriers public 90 days after the end of the reporting month—or not collect it at all. American does not believe that the data can be kept confidential or that it should be restricted from release to the public. American urged that prompt public dissemination of on-board and on-flight market data of both U.S. and foreign air carriers will assist the nation's airlines in more intelligently distributing their capacity and enhancing competition, leading to a more efficient national airline industry. Keeping the data confidential for 3 years will deny airline management the information that allows them to optimize their resources and offer the best service to the traveling public.

USAir would permanently preclude the availability of its data to its competitors because it contends that detailed on-board and on-flight market data remain valuable to potential competition even after 36 months. It believes that such data would not be disclosed in an unregulated industry.

Aeromexico objects to any disclosure before or after a 3-year period, because it has fundamental problems regarding public disclosure of highly sensitive competitive information. Both Aeromexico and British Airways feel disclosure should be limited to the U.S. government and to parties who have obtained the prior written consent of the foreign air carrier owning the data. Air Canada, Air Jamaica, Balair, Condor and Philippine (Joint comment) and Qantas also make the same argument concerning sensitivity and would object to the U.S. releasing their data to other governments. They would prefer an absolute veto power regarding any request for their data. Cathay Pacific also does not want the U.S. to be able to release one foreign government's data to another country.

Air Afrique wants assurances the data will be kept confidential for 3 years, with no exceptions. Canadian Airlines International is concerned that sensitive data must be held in strict confidence. KLM said it is anti-competitive for governments to collect and disseminate such sensitive commercial information. Jointly, Avianca, Mexicana, LAV, LACSA, and VASP expressed their concern for adequate safeguards ensuring the confidentiality of data.

Japan Air, Lufthansa, Singapore Airlines, and Swissair are concerned with safeguarding sensitive data, but want the U.S. to share the data, to the extent that it is collected, with affected foreign governments with whom the U.S. is involved in bilateral negotiations, and they object to the data being available to any other party, such as their U.S. carrier competitors.

Nippon Cargo wants protection for its confidential traffic data, including restrictions on release by an Administrative Law Judge. The carrier said that the proposed regulations provide intolerable latitude for DOT to release Nippon Cargo's data to anyone who can show significant need, if DOT finds it in the public interest.

IATA said individual market share data should not be publicly disclosed. Such data are often protected by privacy and confidentiality laws in an airline's own country. There should be no exception to confidentiality unless the foreign government concerned specifically concurs.

The Aerospace Industries Association (AIA) said it would prefer to have access to the T-100 data within 12 months. Stewart International Airport said that the final rule should include provisions that assure access to T-100 data for U.S. airports.

The Department has decided to keep U.S. carrier data confidential for 3 years with limited access, as proposed. The T-100 final rule conforms with the DOT policy on "confidential commercial information" which provides business submitters of data both notification and an opportunity to object before a disclosure determination is made. Therefore, the Department will take into account the views of the carriers providing data before deciding whether to release it to non-U.S. Government parties requesting access. Certainly, the Department has no intention of prematurely releasing sensitive carrier data to competing carriers or other governments. The objective is to collect limited data that DOT needs, and to provide adequate safeguards while allowing reasonable current releases of aggregate data. The Department intends to continue publishing summary level data, as it has in the past, that are derived from the reported data, such as the Airport Activity Statistics and the Monthly Air Carrier Traffic Statistics. Also, the Department will release country-to-country passenger data without carrier detail, similar to INS data.

The Department has established a reasonable period of time during which it will prevent unauthorized access to detail traffic data that the reporting carriers consider to be sensitive commercial information. However, the Department cannot accept that these data should be kept confidential forever, or even after 3 years, because there are public interest benefits in making these data available. A 3-year restricted release period is considered to be adequate protection to the reporting carriers, and to the extent that subsequent release may lead to constructive competition, that is found to be in the public interest.

The Department assures foreign governments and foreign air carriers that the data carriers submit will not be released prematurely to other airlines or other foreign governments. Further, the reporting carriers' views will be sought regarding public requests for access to their data, and these views will be accorded significant weight by the Department in its decision whether to release the requested data. The IATA noted that ICAO does not publish on-flight O&D data where only one carrier provides service in a market, which eliminated about one-half of all origin/destination city pairs. The Department's final rule is more stringent than ICAO (which has no restrictions on disclosure of its annual Form C "Traffic by Flight Stage" data and does not publish monopoly markets or release individual carrier data from its quarterly Form B "On-Flight Origin and Destination"), because T-100 detail traffic data by carrier will not be available to the public during the 3-year restricted release period; even summary data in an on-flight market (country-to-country data) will not be available, unless three or more carriers are represented.

On balance, the Department's considered opinion is that these regulations provide adequate protection to sensitive commercial information during the 3-year period when release would be most critical and potentially harmful to the interests of the reporting carriers, while still making them public after that restricted release period so that they are available for relevent research and academic studies to enhance and promote healthy competition in the industry.

International Reciprocity

A number of foreign carriers expressed the common theme that the T-100 data collection system would reduce reliance on current cooperative data endeavors and may impact bilateral negotiation policy on data exchanges. Some foreign carriers believe Congress did not intend for DOT to collect foreign carrier data on a regular, recurrent basis as is proposed, although wide latitude in data collection authority is conferred upon the Department in section 407(a) of the Act. Their opinion is that international principles of comity and reciprocity preclude such unilateral data collection efforts. Some question the legality of the T-100 system under current bilaterals and suggest their governments would forbid their compliance. Further, potential foreign "retaliation" was raised as an issue in that some countries that do not already collect data from U.S. carriers may opt to collect equivalent data or more.

American expects foreign governments to require similar data of U.S. air carriers. British Airways said the T-10 system is "pregnant" with

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international controversy; scheduled data have not been needed for 50 years, except in limited, episodic bilateral negotiations, and many years may pass between negotiations. Therefore, the T-100(f) is unnecessary and will provoke similar requirements from foreign governments on U.S. air carriers. The British Embassy said the T-100(f) was unnecessary and will lead to the imposition of similar burdens by many other governments; it urges that DOT reconsider. Her Majesty's Government does not consider that the case for seeking this information has been made and would therefore question the need for it.

Aeromexico says T-100(f) data are needed only on a country-to-country basis, not on an expensive carrier-by-carrier basis, and they are too sensitive to be collected in the form prescribed by DOT. Nippon Cargo said such data should be submitted, if at all, on a bilateral, government-to-government basis; Nippon Cargo considered the requirement to be unprecedented and inconsistent with the principles of international comity and reciprocity.

Air Afrique sees no basis or justification for not continuing the reciprocal exchange of market data on a government-to-government basis. Air France said bilateral and competitive implications of reporting such data could require it to obtain detailed instructions from its government. Air France alleges that the T-100 system is a complex change of reporting responsibilities, much of which would be first time requirements for foregin flag carriers. The complex pattern of services operated by Air France to the U.S., or via the U.S. to third countries, would probably be misinterpreted in such reports. Due to the magnitude of potential for competitive damage, the only data Air France would even consider reporting are market data, limited to passenger statistics. Sabena said the U.S./Belgium Air Agreement does not provide for such statistical data; therefore, any request for data by DOT would not be in accord with the Agreement, and it must put the matter before Belgian authorities.

Air Indian said DOT must defer to the recently concluded bilateral agreement between the U.S. and India, which provides for a far more detailed exchange of traffic data than DOT proposes. It suggests a waiver from the T-100 system reports in cases where an aviation bilateral agreement provides for an exchange of substantially equivalent detail. Alitalia questioned DOT's authority to collect such data, and questioned the propriety of attempting to implement the T-100 system in view of the existence of the U.S./Italian bilateral agreement. Alitalia believes such collection should be implemented only after bilateral consultations and negotiations. Canadian Airlines International said the Canada/U.S. Air Transport Agreement has no provision for Canadian carriers to submit data such as would be reported on Schedule T-100(f). Even if it did, Canadian carriers should be exempted, due to the current informal bilateral exchange of true O&D data. KLM cited Netherlands/U.S. air transport agreement which agreed to minimize the administrative burdens of filing requirements. KLM objects to the T-100 system, believing it is against the interests of competition in international aviation to have governments collect and disseminate market information.

Alitalia, Japan Air, Lufthansa, Singapore Airlines, Swissair, Air Canada, Air Jamaica, Balair, Condor, and Philippine Airlines indicated that the unilateral imposition of T-100(f) by DOT may violate existing international aviation agreements. Government-to-government consultations under existing aviation agreements are considered necessary. They believe the data collection is contrary to the intent of Congress, and cited the legislative history of the International Air Transportation Competition Act of 1979 (IATCA) (Pub. L. 96-192, 94 Stat. 38, (1979)). The authority granted by section 407(a) of the FAAct, with respect to foreign air carriers, was to be exercised with great discretion. Some carriers cited statements in that legislative history by former officials of the State Department, CAB and DOT who said the U.S. must use great caution in asking for data from foreign air carriers. The carriers said foreign retaliation is likely, as well as bilateral confrontations.

In a separate comment, in addition to the joint statement with other carriers, Lutfhansa said the Department should be aware that, pursuant to its operating authority granted by the Federal Republic of Germany, Lufthansa is precluded from submitting data, such as would be required, without the consent of its Government. Accordingly, Lufthansa might be unable to comply. Further, it believes the T-100 system is contrary to the intent of Congress; Lufthansa said Congress did not intend in section 407(a) "to authorize a wide-ranging periodic reporting requirement such as is proposed in the NPRM."

It is clear that section 407(a) of the FAAct authorizes the T-100 system of data collection. The T-100 element for scheduled service traffic as adopted in this rule are designed to impose the least practicable amount of burden. Also, foreign air carriers have been submitting detail charter flight traffic statistics under DOT/CAB regulations for many years without substantial objections.

The Department promulgated this reporting requirement to obtain information enabling it more adequately to meet its statutory requirements in a number of program areas. It is not the intention of the Department to impose an unreasonable burden on foreign carriers or to require a more onerous report which represents a dramatic deviation from those commonly collected from U.S. carriers by foreign aviation authorities. In exercising its authority under section 407(a) of the FAAct to require the T-100 system, the Department conducted a thorough study that concluded that the T-100 system was absolutely essential to the efficient and effective performance of the Department's responsibilities under the law. Several persuasive factors have influenced the Department's decision, not the least of which is the increasing technological sophistication of the air carrier information systems, which tends to facilitate better reporting, at less cost than a munual system. While the T-100 system data may have been somewhat burdensome for larger U.S. or foreign carriers if it could only be submitted manually, the increasing computerization of the aviation industry information systems greatly facilitate the carriers' accumulation of these data at minimal cost.

While it is true that DOT and before it, the CAB, has used estimates, it can no longer continue to collect less than it needs, given the current intense competition in the marketplace, the maturity of the industry, and the ability of the air carriers to report more detailed data. The Administration is on record as taking a closer look at the trade between countries to ensure that U.S. trade interests are properly protected in negotiations on air routes and other rights. In order to carry out the U.S. international aviation policy effectively, as required by the Congress and the Administration, the Department requires more precise data as prescribed in the T-100 reporting system.

With the cooperation of the U.S. Department of State (DOS), the Department conducted a survey, in May and June 1988, of foreign country traffic reports submitted by U.S. airlines to determine whether the complexity and reporting requirements proposed in the T-100 system represented a more onerous reporting burden or dramatic deviation from the information customarily collected from U.S. carriers by other countries.

The survey analyzed the traffic reporting requirements of 20 countries which represented a broad geographical distribution. While most of these countries are among the United States' major aviation trading partners, there was a wide range in the volume of traffic in the United States market. In total, these 20 countries in 1987 represented about two-thirds of the U.S.'s international air passenger volume and almost 60 percent of the U.S. international air freight tonnage. While the reports are quite diverse in terms of content, the survey concluded that the T-100 system is well within the limits of common international reporting practices, and is by no means as extensive as many of the reports that U.S. carriers are required to file abroad. Of the 20 countries, only 2 do not have periodic traffic reporting requirements. Two other countries' requirements are slightly less than those of the T-100. Of the remaining 18 country reports, all have one or more significant features which make them as detailed and in most cases more extensive or budensome than the T-100 system. For example, 13 have daily or per flight reporting requirements. Like the T-100 system, two provide for monthly reporting, while one is an annual report. Eight require two or more different reports. While 15 of the 18 reports have more data elements than the T-100 system, we have decided to reduce the number of data elements on the Form 41 Schedule T-100(f) from 13 to 11. Three of the foreign governments even require financial reporting of U.S. carrier operations. Some countries, that do not require detailed traffic reports, require that U.S. air carriers submit copies of each flight passenger manifest and copies of all airway bills and tickets, from which the government has the ability to compile exact traffic and revenue statistics.

Therefore, the Department has concluded that the T-100 system is not unduly budensome to foreign carriers and that it is well within the scope of the types of data that foreign countries commonly collect form U.S. air carriers.

Need for Aviation Data by Other U.S. Government Agencies

The United States' Department of State—Office of Aviation Programs and Policy (DOS) believes DOT should collect data on passenger traffic originating or destined for foreign points "behind" or "beyond" those homeland points served by non-stop flights to/from the U.S. DOS said carriers operating directly to the U.S. appear, incorrectly, to carry a much larger share of total traffic than do those serving points via connections at intermediate stops; thus, SAS appears to carry most of the traffic from Scandinavia, while U.S. carriers serving Scandinavia as a beyond point through, for instance, connections in London, do not appear to carry Scandinavian traffic. DOS also suggested that DOT require reporting in the T-100 system of traffic to "behind" or "beyond" points involving international air cargo services.

The U.S. Department of Commerce-U.S. Travel and Tourism Administration (USTTA) opposes loss of citizenship on Form I-92 and flight number detail from Service Segment Data, saying that the data needs of other agencies require consideration. It may be easier for DOT to collect a few supplemental data items from air carriers to meet their needs than for USTTA to create a whole new air carrier data collection.

The U.S. Department of Commerce-Bureau of Economic Analysis (BEA) wants the number of U.S. citizens on foreign air carriers, the number of foreign citizens on U.S. air carriers, and the total number of U.S. citizens traveling by air. These data are used in computing the U.S. balance of payments, gross national product, and U.S. input-output account.

The U.S. Department of Labor-Bureau of Labor Statistics (BLS) International Price Program (IPP) and the Consumer Price Index (CPI) are current users of DOT data for their air passenger fare price indexes. The IPP uses Form I-92 data to calculate the balance-of-payments expenditure weights for the export air passenger fares indexes, and as the sampling frame for the foreign carrier and import air passenger fares series. Since BLS' programs need U.S. resident and alien passenger counts for U.S. and foreign gateway port pairs in order to calculate accurate balance-of-payment weighing factors, it strongly opposes loss of citizenship data. BLS also asks for data that DOT did not porpose in the T-100 system—a fourth fare class (coach discount), in addition to first class, business and coach. BLS has found it difficult to obtain information about the fare class seating distributions for foreign carriers, and asks DOT to extend its reporting of on-flight markets connected to a U.S. gateway to include points beyond the homeland of the foreign carrier.

The United States Air Force (USAF) said the T-100 proposal posed no problems for its military Airlift Command (MAC) ratemaking, but expressed concern that DOT should not futher reduce the Form 41.

The Department is acutely aware of the importance of the DOT aviation data bases to other Federal Government agencies. However, with the exception of two service class codes (N and R) collected specifically for the Department of Defense-United States Air Force (USAF) with the concurrence of OMB, the rule provides for only the data needed by the Department.

Reporting Period

Avensa, Qantas and Swissair request 45 days following the subject month, in which to submit the form 41 Schedule T-100(f) data. Qantas believes that, in view of the volume of data requested by the Department, the processing time needed to accurately produce data in the format specifically required, and the time required to deliver the data to the Department, the 30 day filing requirement is unreasonably short.

Finnair wants the T-100(f) data to be submitted quarterly, similar to the reporting period prescribed for Form 217.

The Department understands the carriers' desire for a longer interval to submit the report. Once the reporting system is in place, we feel the carriers will be able to submit the data to the Department within 30 days. The majority of carriers are meeting the 30 day deadline on the Form 217 report. Carriers are able to report within 30 days without undue difficulties, since many carriers have traffic data systems that provide fully-edited, final traffic data to management within 5 to 15 days after the end of the reporting month. The comment suggesting an increase in the reporting period, from monthly to quarterly, is not a viable alternative. The first month's data of the quarter would be several months old when the Department receives it. This is to much of a lag for the Department to keep on top of the changes taking place in the scheduled service sector.

Collection of T-100 Data by Cabins (First, Middle, Coach)

The Notice of Proposed Rulemaking proposed adding a middle cabin (business class) category to the existing data elements (first class and coach) collected from Group III U.S. air carriers; that is, these carriers would report passengers enplaned and transported, and available seats by these classes.

American believes both foreign and U.S. carriers should identify three separeate cabins (classes) for domestic and international routes. On the other hand, Delta opposes the T-100 proposal

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to collect middle cabin data, and supports simply continuing the first class and coach class data collection.

The ability to gauge the increasing significance of middle (business) cabin service within the international sector of the industry is an important feature of the T–100 collection system. The Department historically has needed U.S. carrier data by cabin, and continues to need such data to make decisions and to analyze the relative costs and revenues of U.S. air carriers and their foreign competitors.

Foreign carriers are not required to report any traffic statistics by cabin, or passenger revenue data.

Because business class fares are more extensively used in the air carriers' international operations (versus domestic operations), the Department has decided that business class, along with first class and coach class cabins, will be reported by Group III air carriers in the international sector only. Also, the Department has decided that no cabin distinctions are needed for domestic operations of any air carrier group. To the extent that the Department needs domestic traffic data segregated into first class, middle (business class) and coach cabin categories, it will rely upon *ad hoc* requests as provided by the authority in 14 CFR 385.27.

In summary, Group III U.S. air carriers will report first, coach and middle (business class) cabin data only for international operations. All domestic operations and the international operations of Groups I and II U.S. air carriers will be reported by summarizing the three classes and reporting them on Schedule T–100 in the total category provided for Available Seats, Passengers Transported, and Passengers Enplaned.

Because of the many innovative air fares developed since deregulation, and the heavy use of discount air fares, the Department's definition of fare classes (first class, coach, etc.) may very well be outmoded for statistical purposes. The Department plans ro review the fare class definitions and propose any necessary revisions or additions in the traffic and revenue requirements commensurate with the Department's needs (Regulatory Agenda, 53 FR 14040, RIN 2137–ABOO).

Form 41 Revenue Passenger Data by Fare Class

In an issue not a part of the T–100 system, the Department proposed in the NPRM to combine the two passenger revenue categories (Accounts 3901.1 First Class and 3901.2 Coach) on Form 41 Schedule P–1.2 "Statement of Operations" into a single revenue account, "3901 Transport Revenues—Passenger." Based upon further analysis, the Department has decided to retain Accounts 3901.1 and 3901.2 on Schedule P–1.2 and to require the reporting of these data only for international operations of Group III air carriers. In all other instances, a single category of passenger revenue is reported in Account 3901. However, U.S. air carriers may continue to report first class and coach revenue data, if they conclude that such voluntary reporting would be less burdensome than changing their existing financial reporting system.

Classes of Service

On a T–100 issue, American wants foreign carriers to have the same charter and scheduled service categories (service classes) as required from U.S. carriers.

Although IATA suggests its system as a supplement to or a substitute for aspects of the T–100 system, the Department has not found any alternative data collection system from IATA, ICAO, or any other source, that could substitute for the T–100 system. IATA said its ODS (On-Flight Origin and Destination Traffic Statistics) system is similar in most respects to the T–100 system proposed by DOT, except that it contains only scheduled service data, and IATA does not collect capacity data (such as tons and seats available for sale) by segments (city pairs). IATA's ODS system does have passengers segregated into cabins (First, Business, and Economy).

The Department recognizes the merit in American Airlines's position that U.S. and foreign carrier data service classes should be aligned as closely as possible for scheduled or charter service operations, and has adopted uniform service class codes for both.

INS Reports

Stewart International Airport wants DOT to collect citizenship data or to ensure that INS Form I–92 is continued because access to such data is critical to Stewart's promotional efforts to attract more airlines and develop a full pattern of service, including scheduled service airlines.

USDOC–USTTA wants "I–92" data continued, or replicated in the T–100 reports, so it will have citizenship and flight number data. These data are essential to USTTA's programs to promote tourism.

USDOC–BEA requests that citizenship data be transferred from the I–92 data collection to the T–100 reporting system. BEA programs rely on these data.

USDOL–BLS wants INS Form I–92 continued, because it needs citizenship data for the International Price Program (IPP) and Consumer Price Index (CPI).

American Airlines is opposed to discountinuing the submission of the INS Form I–92 to INS. It said these reports are necessary to help identify the U.S. citizen/alien distribution for the various on-off (on-flight market) segments of international journeys. Understanding this mix is important to a successful international marketing effort and should be protected or enhanced rather than potentially reduced, according to American Airlines.

TAP is concerned INS may not eliminate I-92 data, and it believes it will have to submit duplicate data to INS and to DOT.

The Department cannot provide any assurances as to INS actions regarding its data collections on INS Forms I–92 and I–94. Whether these data systems will continue unchanged, or will be greatly reduced, must be decided by INS (although we note that INS has informed DOT of its continuing efforts to reduce the number of data elements in these data collections and that I–92 data are no longer required by them, except as batch control totals). The Department has identified the data required by its programs. Except for citizenship data, the T–100 system virtually eliminates the Department's need for INS data.

Reporting of "Freedom" Traffic

Northwest suggested that the T–100 should divide traffic between locally enplaned and through traffic. Northwest views the lack of this data as a concession to foreign airlines that all traffic to and from the homeland point is "third" and "fourth freedom".

The term "freedom" refers to various transit or transport rights existing and negotiated among sovereign nations. The "Freedoms of the Air" deal with the passage of aircraft within the airspace of a nation; for example, the first freedom is the freedom of an air carrier to fly across the airspace of another country without landing; the second freedom provides for non-traffic technical and refueling stops; the third freedom regards transport of traffic between an air carrier's homeland and a foreign country; the fourth freedom regards transport of traffic from a foreign county to the air carrier's homeland; the fifth freedom regards transport of traffic between two foreign countries, neither of which is the air carrier's homeland; and the sixth freedom is a traffic right that is exercised from behind the air carrier's homeland gateway.

The provisions of this final rule are a reflection of the Department's data needs rather than a concession to foreign air carriers. Where the Department needs to segregate locally enplaned and through traffic into the various "freedom" categories, it will.

DOS said DOT should collect passenger traffic originating or destined for foreign points "behind" or "beyond" those served by non-stop flights to/from the U.S. Its concerns also extended to "behind" and "beyond" cargo traffic, as well. DOS said a strong U.S. negotiating posture depends in part on having accurate information on traffic volume to and from the U.S., and the improved data collection procedures to account for "sixth freedom" traffic is of paramount concern. Both the current data and the proposed T–100 system are distorted, because connecting traffic from third countries is not well documented, and the relative importance of such countries to the U.S. as traffic generators and actual market shares by air carriers are not apparent.

The Department has decided that it will not separately collect in the T–100 system data for city-pairs behind a foreign homeland or for city-pairs beyond a third country to another country. Although these behind and beyond homeland data by city pairs will not be separately reported, these data will be included with the homeland data and reported as traffic enplaned or deplaned at the homeland. The Department does require all U.S.-related market data to be reported for any nonstop market that includes a U.S. airport. The data which are not reported by foreign carriers are, for instance, homeland-to-homeland markets. In its decision not to specifically identify such behind and beyond markets, the Department took into consideration the fact that it is extremely rare for other countries to collect such information.

Foreign Carrier Available Capacity by Aircraft Type and Airport

Lufthansa argues that available capacity data cannot be prepared on a meaningful basis, because only partial segments (to and from the U.S., involving homeland Germany) on a flight are reported. Such piecemeal capacity data would be misleading and useless, Lufthansa believes.

Swissair wants to report the typical seating pattern of the relevant aircraft type, rather than the slightly varying number of seats available for sale. Thus, Swissair would prefer to report available capacity, if at all, as a standard number of seats for each aircraft type—and asks to report all required traffic data by city-pairs, as opposed to the required airport-pairs.

As stated under another caption, the Department has re-evaluated its proposal to collect foreign air carrier available capacity information. Accordingly, data on the number of available seats and available payload weight for sale by aircraft type and flight segment will not be reported to DOT. Instead, the Department will rely upon private sector data, and to the extent that the Official Airline Guides or other private sector data are not sufficient, may rely upon *ad hoc* reporting, under the authority in 14 CFR 385.27.

Other Comments

Data Base Products was in favor of the T–100 system, but said DOT would make a serious policy mistake to restrict public availability of the T–100 data for 3 years, since in a deregulated environment, immediate public access to data should improve market efficiencies and ensure the benefits of deregulated competition to consumers. Air Berlin asked to be excused from T–100 reporting. Canadian Airlines International asked for a waiver from the T–100(f) reporting, citing voluntary exchanges of true O&D data between the U.S. and Canada; they also noted they are not required to file INS Form I–92 data.

While Data Base Products' view is understandable, the provisions in this rule, as further explained under the caption on confidentiality, represent the appropriate balance in the Department's judgment between the legitimate security needs of the data providers and the public benefits from disclosure of the data. Air Berlin will not report data under the T–100 reporting system, because its current operations are not performed pursuant to a 401 certificate, and thus do not meet the reporting criteria of the rule. Regarding Canadian carrier data, the Department still requires the T–100 system while fully aware of the benefits of the exchanges of true O&D data with Canada.

Reporting of Code Sharing, Wet Leases, Part Charters and Blocked Space

The Department will use *ad hoc* reporting under the authority in 14 CFR 385.27 to collect data for joint services, rather than complicating the regular monthly reporting for a few international arrangements dealing with code sharing, wet leases, part charters and blocked space agreements. *Ad hoc* reporting will only be used if additional data is needed. That is, there could be occasions where the Department does not need any additional data on the joint service agreement. When *ad hoc* reporting is used it will normally be on an annual basis with sufficient lead time for the carrier to make the necessary adjustments in its information system to provide the data at a minimum cost and burden.

Collection of Military Charter Data by Aircraft Type

The Department's objective is to collect only the data required for its programs. In addition, the Department will collect data required for the programs of other Federal agencies, if OMB has determined that it is less burdensome for the Department to collect for those agencies and has designated DOT as the central collection point. The Department only needs summary data on military flights by U.S. air carriers for industry analysis purposes (for instance, total revenue passengers enplaned on Schedule T–1 and total aircraft departures in the Airport Activity Statistics on Schedule T–3). Therefore, an overall military summary service class (V, Nonscheduled) is adequate for the Department's needs. However, in a prior rulemaking (50 FR 232), the Department of the Air Force (USAF) specified a need for the breakout by aircraft type of military charter data on Schedule T–1 by Service Class Codes N (Nonscheduled Military Passenger/Cargo) and R (Nonscheduled Military Cargo). In the proposed rule, the Department requested USAF to reaffirm its need for service class codes N and R.

The USAF submitted a statement in the docket which indicated that the Department should continue collecting separate military service classes (N and R). The Department interprets the USAF statement as being a request for data collection that is subject to the provisions in 5 CFR 1320.15. Therefore, with OMB approval, the Department will continue to require air carriers to segregate service class codes N and R in reporting nonscheduled data on Form 41 Schedule T–1, rather than reporting an overall summary service class (V, Nonscheduled), as proposed in the NPRM.

Traffic Data Collection (Foreign Air Carriers)

RSPA Form 41 Schedule T–100(f)

Prior to this final rule, foreign air carrier recurrent reporting of traffic data to the Department was limited to charter operations to and from the United States. Charter traffic flow information was reported quarterly to the Department by foreign air carriers on RSPA Form 217 "Report of Civil Aircraft Charters Performed by U.S. Certificated and Foreign Air Carriers." These charter

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data are required to assess the impact of charter traffic on specific international markets for use in international aviation negotiations, evaluating foreign air carrier requests for operating authority to serve U.S. points, and monitoring international fares and rates. In addition to Form 217, the Department has used the Immigration and Naturalization Service's INS Form I–92 "Aircraft Vessel Report" and freight data obtained from the Department of Commerce to estimate foreign air carriers' scheduled operations activity. Form I–92 has provided arriving and departing passenger count data at gateways, and has been used as a measure of the scheduled passenger traffic for such points. Both U.S. and foreign air carriers, excluding Canadian carriers, operating to and from the U.S. are required to file INS Form I–92. The Department of Commerce, Bureau of Census "Airborne Trade" data provided a similar measure for freight data, although these statistics combine sheduled and charter traffic, and a differentiation between the two services has not been possible, although DOT needs this data.

Under the provisions of the International Air Transportation Competition Act of 1979, the Secretary of Transportation is charged with developing an international air transportation negotiating policy which includes, among other responsibilites:

(1) The strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers;

(2) The freedom for U.S. air carriers and foreign air carriers to offer fares and rates corresponding with consumer demand;

(3) The fewest possible restrictions on charter air transportation;

(4) The maximum degree of multiple and permissive international authority for United States air carriers so that they will be able to respond quickly to shifts in market demand;

(5) The elimination of operational and marketing restrictions to the greatest extent possible;

(6) The provision of opportunities for foreign air carriers to increase their access to United States points if exchanged for benefits of similar magnitude for United States carriers or the traveling public with permanent linkage between rights granted and rights given away; and

(7) The elimination of discrimination and unfair competition.

In carrying out this mandate in the highly competitive international marketplace, the Department operates mainly within the framework of bilateral aviation agreements which exist between the United States and most foreign countries. In evaluating existing and proposed changes to bilateral air service agreements, a determination is made of the air transportation commerce between the U.S. and foreign countries. Examples of traffic data elements needed to make these evaluations include passenger and freight traffic volume. Within today's continuously changing competitive environment, these determinations have become an item of critical importance in U.S. aviation relations with foreign governments.

This environment has created an awareness of the importance of the availability of timely and accurate aviation information in discovering and responding to short-notice changes in the marketplace. In addition to timeliness and accuracy, the Department has also identified certain inherent problems with the data available for estimating foreign air carrier scheduled traffic flows to/from the United States. In estimating traffic for scheduled service operations, the Department has been forced to use diverse and somewhat incompatible data sources, such as INS Form I–92 data, even though such sources were not always directly responsive to program needs. Such data are used to supplement the foreign air carrier charter data reported on Form 217. Because Form I–92 is an INS, not a DOT, data collection, the Department has not had the flexibility to quickly revise the data collected in order to respond to changing information needs.

In reviewing its overall aviation responsibilities and related data requirements, the Department has concluded that it may increase the reliability of its international aviation information data base while mitigating foreign carrier reporting burden. To accomplish this, the Department is prescribing a Schedule T–100(f) reporting system for foreign air carriers. This system is a minimum-level uniform nonstop segment and on-flight market data collection system that is compatible with the Schedule T–100 reporting system for U.S. air carriers that may reduce their reporting burden-hours by 48%.

By comparison, foreign air carriers are required to report on a monthly basis only 11 of the total 24 data items that are reported by Group III U.S. air carriers. The 11 items fall into 3 major informational groupings:

Service Pattern Information: Carrier code, Report date, Origin airport code, Destination airport code, and Service class code;

Nonstop Segment Information: Aircraft type code, Revenue aircraft departures performed, Total revenue passengers transported and Revenue freight transported; and

On-Flight Market Information: Total revenue passengers in market, and Total revenue freight in market.

The 11 items encompass scheduled, charter and nonscheduled operations. Foreign air carriers do not separate behind homeland traffic from homeland traffic since for the purpose of the T–100(f) report, traffic is considered to enplane or deplane at the first or last homeland point reportable on the segment or market report.

The above data base closes critical data gaps for scheduled passenger and scheduled cargo services affecting the U.S. that are operated by foreign air carriers. While providing for data collections more consistent with current needs, the Department also is taking advantage of technological innovations in computer reporting and processing capabilities to reduce carrier burden. Under the T–100 system, foreign air carriers are able to (and are urged to) report their traffic data by using ADP media. The Schedule T–100(f) automated reporting system is designed to be an essential part of the Department's integrated traffic and capacity reporting system.

Adoption of the T–100 system eliminates the need for foreign and U.S. air carriers to report their charter operations on Form 217. Except for citizenship data, it also virtually eliminates the Department's need for INS Form I–92.

Traffic And Capacity Data Collection (U.S. Air Carriers)

RSPA Form 41 Schedule T–100 System

The Department is continuously reviewing its aviation information requirements and data collection activities to ensure that the data collected are sufficient to meet the Department's program needs at a minimum of reporting burden to the affected air carriers. To this end, various data collection alternatives, such as ADP media instead of hardcopy formats, were considered. The Department identified the Form 41 traffic and capacity system as an area for burden reduction. During the course of its review, the Department reassessed the specific traffic and capacity data it requires for meeting its program responsibilities and concluded that, beyond the data now collected and used, it requires a standard aircraft size cutoff of 18,000 pounds of available capacity payload; a limited amount of traffic information from foreign air carriers; and some additional information on service classes operated by those large U.S. certificated air carriers reporting as Group III air carriers.

Essentially, the Department is prescribing a reporting system, hereafter referred to as the RSPA Form 41 Schedule T–100 Reporting System (T–100 system), to collect scheduled, nonscheduled, and charter traffic and capacity data from both U.S. and foreign air carriers that is assembled into a uniform data base. This new system eliminates most of the burden from filing the current Form 41 "T" schedules for U.S. air carriers. Of the Form 41 "T" schedules, only Schedule T–8 "Report of Domestic All-Cargo Operations" remains unchanged. Schedule T–8 is still needed to provide critical financial and traffic information on domestic all-cargo operations.

This final rule incorporates the Form 217 charter reporting into the T–100 system. This new system consists of the Form 41 Schedule T–100 and three simplified supplemental schedules for U.S. air carriers. The supplemental schedules would collect miscellaneous data not provided for in the basic Schedule T–100, such as "Aircraft Days Assigned to Service-Carrier's Equipment". On the Schedule T–100, U.S. air carriers would report nonstop segment and on-flight market information. On the new supplemental schedules (T–1, T–2, and T–3), U.S. air carriers would report data for domestic passenger and cargo charters, domestic scheduled all-cargo, and domestic or international military charters excluded from the Schedule T–100.

The T–100 system also replaces the current Service Segment Data collection system. Under the T–100 system, Group III U.S. air carriers submit a maximum of 24 data items (only 18 data items for carriers other than Group III), representing a significant reduction in the 49 SSD data elements previously collected. Collection of downline deplaning data is also eliminated.

Burden reductions also result from the elimination of data elements that are no longer required due to the summarization of data by on-flight market without regard to intermediate stops, and summarizing data by nonstop segment without regard to international flight numbers. The Department has not required flight numbers to be reported in the domestic entity since 1984.

Overall, the traffic and capacity data elements reported by U.S. air carriers are reduced by 61% and the burden hours are reduced by 48%. The Group III U.S. carriers have 24 Schedule T–100 data items (18 for other U.S. air carriers that do not report multiple cabin data—First, Coach and Middle) that are reported in 3 categories:

Service Pattern Information: Carrier entity code, Report date, Origin airport code, Destination airport code, and Service class code;

Nonstop Segment Information: Aircraft type code, Revenue aircraft departures scheduled (520), Revenue aircraft departures performed (510), Available capacity payload (270), Available seats—first cabin (311), Available seats—middle (business) cabin (313), Available seats—coach (312), Revenue passengers transported—Frist Cabin (133), Revenue passengers Transported—middle (business) cabin (133), Revenue passengers transported—coach (132), Revenue freight transported (237), Revenue mail transported (239), Revenue aircraft hours (ramp-to-ramp) (630), Revenue aircraft hours (airborne) (610); and

On-Flight Market Information: Total revenue passengers enplaned in market—First cabin (111), Total revenue passengers enplaned in market—middle (business) cabin (113), and revenue passengers enplaned in market—coach (112), Total revenue freight enplaned in market (217), and Total revenue mail enplaned in market (219).

The T—100 system eliminates the filing of much of the data now reported on Form 41 Schedules T–1(a,b,c), T–2, and T–3(a,b,c,). However, there are two areas in domestic service not covered by the Schedule T–100 detail reports: (1) Domestic all-cargo operations, and (2) domestic charter operations. Also, domestic and international military charter data are not collected in the Form 41 Schedule T–100 reports. To provide statistics needed for assessing total air carrier operations, the Department is prescribing revised Schedules T–1 and T–3 for carriers to report only the data elements needed for these operations that are not otherwise reported. Schedule T–2 will also be retained, in part, to collect miscellaneous factors by aircraft type not required in the detail T–100 schedule.

In general, the traffic and capacity statistical elements previously reported on the eliminated hard-copy Form 41 schedules that are still needed will be submitted in computer media, such as magnetic tape or "floppy" diskette. T–100 data entry forms (paper) will be provided for those U.S. carriers without any computer capability that obtain a "hardship" waiver to submit data in noncomputer media. The Department plans to produce computer outputs from the T–100 data system in essentially the same formats as are now available in the hardcopy Form 41 "T" schedules. Thus, the Department is simplifying and modernizing data collection procedures to eliminate even minor duplicate data collections from air carriers, resulting in substantial burden reductions in terms of reports submitted by carriers.

Alternatives Data Sources

As previously stated in response to the IATA public comment, the Department has considered various alternatives to the T–100 system. In reviewing its requirements for RSPA Form 41 Schedules T–100, T–1, T–2, T–3 and T–100(f) data, the Department was unable to identify any viable alternative data sources.

In this research, the Department investigated the possible use of alternative international data sources to determine whether the information contributed by member carriers of the International Air Transport Association (IATA) and the data collections of the International Civil Aviation Organization (ICAO) could be used by the Department, in whole or in part, in lieu of the T–100 system.

The Department compared these potential alternatives with its data needs in areas involving content, frequency and coverage and found that these data did not meet its requirements.

As a result, the Department has decided that reliance upon nonair carrier entities as suppliers of data (such as IATA or ICAO) would present insurmountable problems for the Department, such as the timely availability of data, and therefore the T–100 system has been designed as a stand-alone system for the Department only.

Executive Orders 12291, 12612 and 12630, Regulatory Flexibility Act, Paperwork Reduction Act of 1980, Federalism, and Takings

This final rule has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographical regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, and will enhance the ability of United States based enterprises to compete with foreign based enterprises in domestic or exports markets. This proposed regulation would result in a

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net reduction in reporting burden. Accordingly, a regulatory impact analysis is not required.

This regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies. Its economic impact should be minimal and a full regulatory evaluation is not required.

It is certified that this rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments would affect only large U.S. certificated and large foreign air carriers.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that it does not pose the risk of a taking of constitutionally protected private property.

Public reporting burden for this collection of information is estimated to vary from 1 hour to 20 hours per monthly response, depending upon the size of the carriers' operations subject to the reporting requirement, with an average of 7 hours per monthly response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Director, Office of Aviation Information Management, DAI-1, U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 14 CFR Parts 217 and 241

U.S. air carriers, Foreign air carriers, Reporting and recordkeeping requirements.

Final Rule

Accordingly, the Department of Transportation amends Chapter II of 14 CFR, as follows:

1. Part 217 is revised to read:

PART 217—REPORTING TRAFFIC STATISTICS BY FOREIGN AIR CARRIERS IN CIVILIAN SCHEDULED, CHARTER, AND NONSCHEDULED SERVICES

Sec.

217.1 Definitions.
217.2 Applicability.
217.3 Reporting requirements.
217.4 Data collected (service classes).
217.5 Data collected (data elements).
217.6 Extension of filing time.
217.7 Certification.
217.8 Reporting procedures.
217.9 Waivers from reporting requirements.
217.10 Instructions.
217.11 Reporting compliance.

Authority: 49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482.

§ 217.1 Definitions.

As used in this part:

"Foreign Air Carrier" means a non-U.S. air carrier holding a foreign air carrier permit or exemption authority from the Department of Transportation.

"Large Aircraft" means an aircraft designed to have a passenger capacity of more than 60 seats or a payload of more the 18,000 pounds.

"Small Aircraft" means an aircraft that is not a large aircraft.

"Statement of Authorization" under this Part means a statement of authorization from the Department, pursuant to 14 CFR Part 207, 208, or 212, as appropriate, that permits joint service transportation, such as blocked space agreements, part-charters, code-sharing or wet-leases, between two direct air carriers holding underlying economic authority from the Department.

§ 217.2 Applicability.

This part applies to foreign air carriers that are authorized by the Department to provide civilian passenger and/or cargo scheduled, nonscheduled and charter services to or from the United State, whether performed pursuant to a permit or exemption authority. Operations conducted wholly with small aircraft are exempt from the requirements of this part. Where the service operations involve both large and small aircraft, only the large aircraft services must be reported.

§ 217.3 Reporting requirements.

(a) Each foregin air carrier shall file RSPA Form 41 Schedule T-100(f) "Foreign Air Carrier Traffic Data by Nonstop Segment and On-flight Market." All traffic statistics shall be compiled in terms of each flight stage as actually performed.

(b) The traffic statistics reported on Schedule T-100(f) shall be accumulated in accordance with the data elements prescribed in § 217.5 of this part, and these data elements are patterned after those in section 19-5 of Part 241 of this chapter.

(c) One set of Form 41 Schedule T-100(f) data shall be filed.

(d) Schedule T-100(f) shall be submitted to the Department within thirty (30) days following the end of each reporting month.

(e) Schedule T-100(f) shall be filed with the Research and Special Programs Administration at the address referenced in § 217.10 and the Appendix to § 217.10 of this part.

§ 217.4 Data collected (service classes).

(a) The statistical classifications are designed to reflect the operating elements attributable to each distinctive class of service offered for scheduled, nonscheduled and charter service.

(b) The service classes that foreign air carriers shall report on Schedule T-100(f) are:

(1) F Scheduled Passenger/Cargo
(2) G Scheduled All-Cargo
(3) L Nonscheduled Civilian Passenger/Cargo Charter
(4) P Nonscheduled Civilian All-Cargo Charter
(5) Q Nonscheduled Services (Other than Charter). This service class is reserved for special nonscheduled cargo flights provided by a few foreign air carriers under special authority granted by the Department.

§ 217.5 Data collected (data elements).

(a) Within each of the service classifications prescribed in § 217.4, data shall be reported in applicable traffic elements.

(b) The statistical data to be reported on Schedule T-100(f) are:

(1) *Air carrier.* The name and code of the air carrier reporting the data. The carrier code is assigned by DOT. The Office of Aviation Information Management (OAIM) will confirm the assigned code upon request; OAIM's address is in the Appendix to § 217.10 of this part.

(2) *Reporting period date.* The year and month to which the reported data are applicable.

(3) *Origin airport code.* This code represents the industry designator as described in the Appendix to § 217.10 of this part. A common private industry source of these industry designator codes is the *Official Airline Guides* (OAG). Where none exists, OAIM will furnish a code upon request. OAIM's address is in the Appendix to § 217.10 of this part.

(4) *Destination airport code.* This represents the industry designator, from the source described in § 217.5(b)(3).

(5) *Service class code.* For scheduled and other services, the applicable service class prescribed in § 217.4 of this part shall be reported.

(6) *Aircraft type code.* This code represents the aircraft type, as specified in the Appendix to § 217.10 of this part. Where none exists, OAIM will furnish a code upon request.

(7) *Revenue aircraft departures performed (Code 510).* The number of revenue aircraft departures performed in scheduled service and extra sections.

(8) *Revenue passengers transported (Code 130).* The total number of revenue passengers on board over a flight stage, including those already on the aircraft from previous flight stages. Includes both local and through passengers on board the aircraft.

(9) *Revenue freight transported (kilograms) (Code 237).* The volume, expressed in kilograms, of revenue freight that is transported. As used in this part, "Freight" means revenue cargo other than passengers or mail.

(10) *Total revenue passengers in market (Code 110).* The total number of revenue passengers enplaned in a market, boarding the aircraft for the first time. While passengers may be transported over several flight stages in a multi-segment market, this data element (code 110) is an unduplicated count of passengers originating within the market.

(11) *Total revenue freight in market (kilograms) (Code 217).* The amount of revenue freight cargo (kilograms) that is enplaned in a market, loaded on the aircarft for the first time.

§ 217.6 Extension of filing time.

(a) If circumstances prevent the filing of a Schedule T-100(f) report on or before the due date prescribed in section 22 of part 241 of this chapter and the Appendix to § 217.10 of this part, a request for an extension must be filed with the Director, Office of Aviation Information Management.

(b) The extension request must be received at the address provided in § 217.10 at least 3 days in advance of the due date, and must set forth reasons to justify granting an extension, and the date when the report can be filed. If a request is denied, the air carrier must submit the required report within 5 days of its receipt of the denial of extension.

§ 217.7 Certification

The certification for RSPA Form 41 Schedule T-100(f) shall be signed by an officer of the air carrier with the requisite authority over the collection of data and preparation of reports to ensure the validity and accuracy of the reported data.

§ 217.8 Reporting procedures.

Reporting guidelines and procedures for Schedule T-100(f) are prescribed in the Appendix to § 217.10 of this part.

§ 217.9 Waivers from reporting requirements.

(a) A waiver from any reporting requirement contained in Schedule T-100(f) may be granted by the Department upon its own initiative, or upon the submission of a written request of the air carrier to the Director, Office of Aviation Information Management, when such a waiver is in the public interest.

(b) Each request for waiver must demonstrate that: Existing peculiarities or unusual circumstances warrant a departure from the prescribed procedure or technique; a specifically defined alternative procedure or technique will result in substantially equivalent or more accurate portrayal of the operations reported; and the application of such alternative procedure will not adversely affect the uniformity in reporting applicable to all air carriers.

§ 217.10 Instructions

(a) Foreign air carriers shall submit Form 41 Schedule T-100(f) on either floppy discs produced on microcomputers or on other ADP media, such as magnetic tape, or hardcopy reports.

(b) The detailed instructions for preparing Schedule T-100(f) are contained in the Appendix to this section. Blank copies of Schedule T-100(f) are available from the Office of Aviation Information Management, DAI-1, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

APPENDIX to Section 217.10 of 14 CFR Part 217—Instructions to Foreign Air Carriers for Reporting Traffic Data on Form 41 Schedule T-100(f)

(a) General instructions.

(1) Description. Form 41 Schedule T-100(f) provides flight stage data covering both passenger/cargo and all cargo operations in scheduled and nonscheduled services. The schedule is used to report all flights which serve points in the United States or its territories as defined in this part.

(2) Applicability. Each foreign air carrier holding a 402 permit, or exemption authority, and operating aircraft with seating configurations of more than sixty seats and/or available capacity (payload of passengers and cargo) of more than 18,000 pounds shall file Form 41 Schedule T-100(f). Reference to 402 is to section 402 of the Federal Aviation Act of 1958, as amended (FAAct).

(3) Address for filing reports: Data Administration Division, DAI-2, Room 4125, Office of Aviation Information Management, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(4) Filing period. Form 41 Schedule T-100(f) shall be filed monthly and is due at the Department thirty (30) days following the end of the reporting month to which the data are applicable.

(5) Number of copies. A single set of legible Form 41 Schedule T-100(f) data and certification shall be submitted.

(6) Foreign air carrier certification. Each foreign air carrier shall submit a certification statement (illustrated at the end of this Appendix) as an integral part of each monthly Schedule T-100(f), as prescribed in § 217.5 of this part.

(7) Alternative filing on Automatic Data Processing (ADP) media. Foreign air carriers are encouraged to use ADP equipment to reduce the manual effort of preparing Schedule T-100(f). Foreign air carriers may use the floppy disk medium. ADP submission requirements for floppy discs are prescribed in paragraph (f).

(b) Preparation of Form 41 Schedule T-100(f):

(1) Explanation of nonstop segments and on-flight markets. There are two basic categories of data, one pertaining to nonstop segments and the other pertaining to on-flight markets. For example, the routing (A-B-C-D) consists of three nonstop segment records A-B, B-C, and C-D, and six on-flight market records A-B, A-C, A-D, B-C, B-D, and C-D.

(2) Guidelines for reporting a nonstop segment. A nonstop segment is reported when one or both points are in the United States or its territories. These data shall be merged with that for all of the other reportable nonstop operations over the same segment. Nonstop segment data must be summarized by aircraft type, under paragraph (h)(1), and class of service, paragraph (g)(1)(v).

(3) Rules for determining a reportable on-flight market. On-flight markets are reportable when one or both points are within the U.S., with the following exceptions: (i) Do not report third country to U.S. markets resulting from flight itineraries which serve a third country prior to a homeland point in flights passing through the homeland bound for the U.S.; and (ii) do not report U.S. to third country markets resulting from itineraries serving third country points subsequent to a homeland point in flights outbound from the U.S. and passing through the homeland. In reporting data pertaining to these two exceptions, the traffic moving to or from the U.S. relating to the applicable prior or subsequent third countries (referred to as "behind" or "beyond" traffic) is to be combined with the applicable foreign homeland gateway point, just as though the traffic were actually enplaned or deplaned at the homeland gateway, without disclosure of the actual prior or subsequent points. Applicable flights are illustrated in examples (6) and (7) under paragraph (c).

(c) Examples of flights. Following are some typical flight itineraries that show the reportable nonstop segment and on-flight market entries. The carrier's homeland is the

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key factor in determining which on-flight markets are reportable.

(1) SQ flight # 11 LAX—NRT—SIN. This is an example of a flight with an intermediate foreign country. It is not necessary to report anything on the NRT—SIN leg.

SQ—Singapore Airlines
LAX—Los Angeles, USA
NRT—Tokyo-Narita, Japan
SIN—Singapore, Singapore

A-3—Airport code	A-4—Airport code	A-5—Service class (mark an X)					By aircraft type—				Sum of all aircraft types—	
Origin	Destination	F	G	L	P	Q	B-1—Aircraft type code	B-2—Revenue aircraft departures	B-3—Revenue passengers transported	B-4—Revenue freight transported (kg)	C-1—Total revenue passengers in market	C-2—Total revenue freight in market (kg)
LAX	NRT	X					8161	12	2400	4800	400	500
LAX	SIN	X									2000	4300

(2) SQ flight #15 LAX— HNL— TPE— SIN. This is an example of two U.S. points, an intermediate third country, and a homeland point. Information is reportable on only the on-flight markets and nonstop segments that consist of one or both U.S. points.

SQ—Singapore Airlines
LAX—Los Angeles, USA
HNL—Honolulu, USA
TPE—Taipei, Taiwan
SIN—Singapore, Singapore

A-3—Airport code	A-4—Airport code	A-5—Service class (Mark an x)					By aircraft type—				Sum of all aircraft types—	
Origin	Destination	F	G	L	P	Q	B-1—Acft. type code	B-2—Revenue aircraft departures	B-3—Revenue passengers transported	B-4—Revenue freight transported (kg)	C-1—Total revenue passengers in market	C-2—Total revenue freight in market (kg)
LAX	HNL	X					8161	12	2700	5300	0	0
LAX	TPE	X									700	1300
LAX	SIN	X									2000	4000
HNL	TPE	X					8161	12	2200	6800	1200	800
HNL	SIN	X									1000	6000

(3) LB flight # 902 LPB-VVI-MAO-CCS-MIA. This flight serves two homeland points and two different foreign countries before terminating in the U.S. Nonstop segment information is required only for the nonstop segment involving a U.S. point. On-flight market information is required in 4 of the 10 markets, LPB-MIA and VVI-MIA, since these involve homeland and U.S. points; MAO-MIA is necessary to show traffic carried into the U.S., and CCS-MIA for the same reason, and also because in all cases where a nonstop segment entry is required, a corresponding on-flight market entry must also be reported.

LB—Lloyd Aero Boliviano
LPB—La Paz, Bolivia
VVI—Santa Cruz-Viru Viru, Bolivia
MAO—Manaus, Brazil
CCS—Caracas, Venezuela
MIA—Miami, USA

A-3—Airport code	A-4—Airport code	A-5—Service class (mark an x)					By aircraft type—				Sum of all aircraft types—	
Origin	Destination	F	G	L	P	Q	B-1—Acft. type code	B-2—Revenue aircraft departures	B-3—Revenue passengers transported	B-4—Revenue freight transported (kg)	C-1—Total revenue passengers in market	C-2—Total revenue freight in market (kg)
CCS	MIA	X					8161	31	6900	71000	0	0
LPB	MIA	X									1100	20000
VVI	MIA	X									4000	30000
MAO	MIA	X									1000	12000

(4) LY flight #005 TLV-AMS-ORD-LAX. This flight serves a single foreign intermediate point and two U.S. points after its homeland origination. The information on the TLV-AMS leg is not reportable.

LY—El Al Israel Airlines
TLV—Tel Aviv, Israel
AMS—Amsterdam, Netherlands
ORD—Chicago, USA
LAX—Los Angeles, USA

A-3—Airport code	A-4—Airport code	A-5—Service class (mark an x)					By aircraft type—				Sum of all aircraft types—	
Origin	Destination	F	G	L	P	Q	B-1—Acft. type code	B-2—Revenue aircraft departures	B-3—Revenue passengers transported	B-4—Revenue freight transported (kg)	C-1—Total revenue passengers in market	C-2—Total revenue freight in market (kg)
AMS	ORD	X					8161	1	350	10000	50	1500
TLV	ORD	X									150	4000
TLV	LAX	X									125	3000
ORD	LAX	X					8161	1	150	4500	0	0
AMS	LAX	X									25	1500

(5) QF flight #25 SYD—BNE—CNS—HNL—YVR. This flight serves three homeland points, a U.S. point, and a subsequent third country. Nonstop segment information is required on the respective legs into and out of the United States. All on-flight market entries involving the U.S. point HNL are also required. Data are not required on the homeland to homeland markets, or the homeland—third country markets.

QF—Qantas Airways (Australia)
SYD—Sydney, Australia
BNE—Brisbane, Australia
CNS—Cairns, Australia
HNL—Honolulu, USA
YVR—Vancouver, Canada

A-3—Airport code	A-4—Airport code	A-5—Service class (mark an x)					By aircraft type				Sum of all aircraft types	
Origin	Destin.	F	G	L	P	Q	B-1—Acft. type code	B-2—Revenue aircraft departures	B-3—Revenue freight transported	B-4—Revenue freight transported (kg)	C-1—Total revenue passengers in market	C-2—Total revenue freight in market (kg)
CNS	HNL	X					8161	5	2200	41000	400	8000
SYD	HNL	X									600	10000
BNE	HNL	X									600	9000
HNL	YVR	X					8161	5	750	15700	150	1700

(6) JL flight #002 HKG—NRT—SFO. This flight originates in a third country prior to the homeland. No data is required on the HKG-NRT leg, but the HKG-SFO passengers and cargo shall be shown as enplanements in the NRT-SFO on-flight market entry. These volumes are included by definition in the passenger and cargo transported volumes of the NRT-SFO nonstop segment entry.

JL—Japan Air Lines
HKG—Hong Kong, Hong Kong
NRT—Tokyo-Narita, Japan
SFO—San Francisco, USA

A-3—Airport code	A-4—Airport code	A-5—Service class (mark an x)					By aircraft type				Sum of all aircraft types	
Origin	Destin.	F	G	L	P	Q	B-1—Acft. type code	B-2—Revenue aircraft departures	B-3—Revenue passengers transported	B-4—Revenue freight transported (kg)	C-1—Total revenue passengers in market	C-2—Total revenue freight in market (kg)
NRT	SFO	X					8161	3	1200	18000	1200	18000

(7) JL flight # 001 SFO–NRT–HKG. This flight is the reverse sequence of flight # 002 above; it requires a nonstop segment entry covering SFO–NRT, and a single on-flight market entry also for SFO–NRT. In this case, the on flight traffic enplaned at SFO and destined for HKG, a beyond homeland point, shall be included in the SFO–NRT entry; a separate SFO–HKG entry is not required.

JL—Japan Air Lines
SFO—San Francisco, USA
NRT—Tokyo-Narita, Japan
HKG—Hong Kong, Hong Kong

A-3—Airport code	A-4—Airport code	A-5—Service class (mark an x)					By aircraft type				Sum of all aircraft types	
Origin	Destin.	F	G	L	P	Q	B-1—Acft. type code	B-2—Revenue aircraft departures	B-3—Revenue passengers transported	B-4—Revenue freight transported (kg)	C-1—Total revenue passengers in market	C-2—Total revenue freight in market (kg)
SFO	NRT	X					8161	1	400	20000	400	20000

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(8) BA flight # 5 LHR–ANC–NRT–OSA. This example contains a single homeland point and a single U.S. point followed by two third country points. It is necessary to report the nonstop segments into and out of the U.S., and all three of the on-flight markets which have the U.S. point ANC as either an origin or destination.

BA—British Airways
LHR—London, England
ANC—Anchorage, USA
NRT—Tokyo-Narita, Japan
OSA—Osaka, Japan

A-3—Airport code	A-4—Airport code	A-5—Service class (mark an x)					By aircraft type			Sum of all aircraft types		
ORIGIN	DESTIN.	F	G	L	P	Q	B-1—Acft. type code	B-2—Revenue aircraft departures	B-3—Revenue passengers transported	B-4—Revenue freight transported (kg)	C-1—Total revenue passengers in market	C-2—Total revenue freight in market (kg)
LHR	ANC	X					8161	10	3000	50000	100	1000
ANC	NRT	X					8161	10	3150	55000	100	2500
ANC	OSA	X									150	1500

(d) Provisions to reduce paperwork:

(1) Nonstop Segment Entries. The flight stage data applicable to nonstop segment entries must be summarized to create totals by aircraft equipment type, within service class, within pairs-of-points.

(2) On-flight Market Entries. The applicable on-flight market entries shall be summarized to create totals by service class within pair-of-points.

(e) Preparation of hard copy Schedule T-100(f):

(1) Section A—Indicative and flight pattern information. A copy of Schedule T-100(f) is shown at the end of this Appendix. Section A defines the origin and destination points and the service class code to which the nonstop segment data in Section B and the on-flight market data in Section C are applicable. Section A information, along with the carrier code and report date, must be included on each schedule.

(2) Section B—Nonstop segment information. Section B of the schedule is used for reporting nonstop segment information by aircraft type. To reduce the number of schedules reported, space is provided for including data on multiple different aircraft types. Similarly, the on-flight market section has been included on a single Schedule T-100(f), along with the nonstop segment data, rather than on a separate schedule.

(3) Section C—On-flight market information. Section C of the schedule is used for reporting on-flight market data. There will always be an on-flight market that corresponds to the nonstop segment. Because the on-flight market data are reported at the service class level rather than by aircraft type, a specific flight may produce more on-flight markets than nonstop segments, (see examples in paragraph (c) of this Appendix), resulting in data reported in sections A and C only.

(f) ADP media reports:

(1) ADP report format. A foreign air carrier may, in accordance with the following guidelines, use personal computers (and in some cases mainframe or minicomputers) to report Schedule T-100(f) data.

(i) Reporting medium. ADP data submission of T-100(f) information must be on IBM compatible floppy disk, including diskettes, floppy disks, or flexible disks. The particular type of acceptable minidisk is 5¼ inch, double-sided/double density, with a capacity of approximately 360,000 characters of data (360K). Carriers using mainframe or minicomputers shall download (transcribe) the data to the required floppy disk. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the Director, OAIM, under the waiver provisions in § 217.9 of this part. Requests for approval to use alternate methods must disclose the proposed data transmission methodology.

(ii) File characteristics. OAIM files are reported in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (") and separated by a comma (,); numeric data elements are recorded without editing symbols and separated by a comma. The data is identified by its juxtaposition within a given record. Each record submitted by an air carrier shall contain the specified number of data elements all of which must be juxtapositionally correct.

(iii) Schedule T-100(f) record layout. Each minidisk record shall consist of data fields for recording a maximum of eleven (11) elements. The order and description of the data fields are as follows:

(1). Carrier code: Alphanumeric
(2). Report date: Numeric
(3). Origin airport: Alphabetic
(4). Destination airport: Alphabetic
(5). Service class code: Alphabetic
(6). Aircraft type code: Numeric
(7). Aircraft departures performed: Numeric
(8). Revenue passengers transported: Numeric
(9). Revenue freight transported: Numeric
(10). Total revenue passengers in market: Numeric
(11). Total revenue freight in market: Numeric

(A) Fields numbered 1 through 11 must always be provided. Therefore, enter a zero (0) or space when there is no reportable data for a given element. See paragraph (g)(1) through (g)(3) for a detailed definition of each data element.

(B) The following are sample disk records:

	1	2	3	4	5	6	7	8	9	10	11
Sample No. 1	"CCC"	8701	"JFK"	"LHR"	"F"	8161	29	59	69	79	89
Sample No. 2	"CCC"	8701	"JFK"	"LHR"	"F"	6901	299	599	0	0	0
Sample No. 3	"CCC"	8701	"JFK"	"LHR"	"G"	7102	299	0	599	0	799
Sample No. 4	"CCC"	8701	"JFK"	"LHR"	"F"	0	0	0	0	699	799

Sample No. 1 represents a full record, using the applicable fields for reporting both the nonstop segment (6 through 9) and the on-flight market information (10 and 11). The service class is "F" indicating scheduled passenger/cargo service; the aircraft type code is 8161; the 816 indicates a Boeing 747-100, and the 1 in the units position indicates the standard "passengers-above and cargo-below" configuration.

Sample No. 2 contains nonstop segment information only. It is needed in this example to report the volumes transported on the same nonstop segment, but with a second aircraft type.

Sample No. 3 contains nonstop segment and on-flight market information for the same points, but for another service class (code letter "G" indicates all-cargo service). Also, the units position of aircraft type is a 2, indicating a cargo cabin. Field numbers 8 and 10 are for reporting passengers. In this case both contain a zero, indicating no passengers, while at the same time maintaining the required juxtaposition.

Sample No. 4 shows the reporting of only on-flight market information for a pair-of-points for which there is no corresponding nonstop segment information.

(2) External labeling requirements: Physical label. The following data must be clearly printed on a label affixed to the minidisk or its container.

Carrier Name
Carrier code (as prescribed by DOT, RSPA, OAIM)
File identification = "T-100(F) DATA"
Report date (year, month to which data applies)

(3) Collating sequence, optional. If practical, the records should be sorted by origin and destination airport codes, service class, and aircraft type. However, the sequence is optional. Data may be submitted in any sequence including random.

(4) Summarization. See summarization rules as specified in paragraph (d)(1).

(g) Data element definitions:

(1) Service pattern information.

(i) Line A–1 Carrier code. Use the carrier code established by the Department. This code is provided to each carrier in the initial reporting letter from the Office of Aviation Information Management (OAIM). If there are any questions about these codes, contact the OAIM Data Administration Division at the address in paragraph (a)(3) of this Appendix.

(ii) Line A–2 Report date. This is the year and month to which the data are applicable. For example, 8901 indicates the year 1989, month of January.

(iii) Line A–3 Orgin airport code. This is the departure airport, where an aircraft begins a flight segment, and where the passengers originate in an on-flight market. Use the 3-letter code from the City/Airport Codes section of the *Official Airline Guide Worldwide Edition*. If no 3-letter code is available, OAIM will assign one; the address is in paragraph (a)(3) of this Appendix.

(iv) Line A–4 Destination airport code. This is the arrival airport, where an aircraft stops on a flight segment, and where passengers deplane (get off the flight) after reaching their destination in a market. Use the 3-letter code from the source described in paragraph (g)(1)(iii) of this Appendix.

(v) Line A–5 Service class code. Select one of the following single letter codes which describes the type of service being reported on a given flight operation.

F = Scheduled Passenger/cargo Service
G = Scheduled All-cargo Service
L = Nonscheduled Civilian Passenger/Cargo Charter
P = Nonscheduled Civilian All-Cargo Charter
Q = Nonscheduled Services (Other than Charter)

(2) Nonstop segment information:

(i) Line B–1 Aircraft type code. Use the four digit numeric code prescribed in paragraph (h)(1) of this Appendix. If no aircraft type code is available, OAIM will assign one. The address is in paragraph (a)(3) of this Appendix.

(ii) Line B–2 Aircraft departures performed. This is the total number of physical departures performed with a given aircraft type, within service class and pair-of-points. For information concerning joint service operations, refer to § 217.12.

(iii) Line B–3 Revenue passengers transported. This is the total number of revenue passengers transported on a given nonstop segment. It represents the total number of revenue passengers on board over the segment without regard to their actual point of enplanement.

(iv) Line B–4 Revenue freight transported. This item is the total weight in kilograms (kg) of the revenue freight transported on a given nonstop segment without regard to its actual point of enplanement.

(3) On-flight market information:

(i) Line C–1 Total revenue passengers in market. This item represents the total number of revenue passengers, within service class, that were enplaned at the origin airport and deplaned at the destination airport.

(ii) Line C–2 Total revenue freight in market. This item represents the total weight in kilograms (kg) of revenue freight enplaned at the origin and deplaned at the destination airport.

(h) Aircraft type codes and carrier codes. These codes are effective as of the date of issuance. Thereafter, as the carriers or their equipment types change, additional codes will be assigned. The Department may update these codes by Reporting Directives from the Office of Aviation Information Management. If there are any questions about these codes, contact the OAIM Data Administration Division on (202) 366–4391.

(1) Aircraft type codes. The aircraft type code is made up of four positions, in the format "TTTx" where "TTT" indicates the aircraft type code as shown in the table below, an "x" indicates cabin configuration. Each code must include the cabin configuration (a fourth position), as follows: A numeric "1" indicates a normal passenger/cargo aircraft configuration with passengers on the main deck and cargo below; a "2" indicates all-cargo (freighter); and a "3" indicates a main deck configuration that includes separate compartments for both cargo and passengers.

Aircraft Type Name and Aircraft Type Code

Aerospatiale Caravelle SE–210....680x
Aerospatiale-British Aerospace (SSC–BAC) Concorde....675x
Airbus Industrie Euro Airbus A300–B4....690x
Airbus Industrie A310–200....692x
Airbus Industrie A310–300....693x
Airbus Industrie A320–200....694x
Airbus Industrie Euro Airbus A300–B2....695x
Aviation Traders ATL–98 Carvair....222x
Boeing 707–100....800x
Boeing 720....812x
Boeing 727–100....710x
Boeing 727–100C–QC....711x
Boeing 727–200....715x
Boeing 737–100/200....620x
Boeing 737–300....619x
Boeing 737–200C....621x
Boeing 747F....820x
Boeing 747C....818x
Boeing 747–100....816x
Boeing 747–300 SUD....819x
Boeing 747–200....817x
Boeing 747SP....822x
Boeing 757–200....622x
Boeing 767–200....625x
Boeing 767–300....626x
British Aerospace (BAC) One-Eleven BAC–1–11–400....610x
British Aerospace (Hawker Siddeley) Trident....780x
British Aerospace (Hawker Siddeley) Comet–4....781x
British Aerospace 146 BAE–146–100....866x
Canadair CL–44D....520x
Convair CV–540....420x
Convair CV–990....830x
Dassault-Breguet Mercure....662x
Dassault-Breguet Mystere-Falcon....681x
DeHavilland Dash-Eight DHC–8....483x
Fokker-VFW F28 Fellowship F–28–4000/6000....602x
Ilyushin IL62....888x
Ilyushin IL86....889x
Lockheed Electra L–188A–08/188C....550x
Lockheed L1011 L–1010–1100/200....760x
Lockheed L1011–500 Tristar....765x
McDonnell Douglas DC4/C54....210x
McDonnell Douglas DC6....216x
McDonnell Douglas DC7....225x
McDonnell Douglas DC10–10....730x
McDonnell Douglas DC8–10....840x
McDonnell Douglas DC8–50F....850x
McDonnell Douglas DC8–71....860x
McDonnell Douglas DC8–63F....852x
McDonnell Douglas DC9–10....630x
McDonnell Douglas DC9–30....640x
McDonnell Douglas DC9–50....650x
McDonnell Douglas DC9–15F....635x
McDonnell Douglas MD–80....655x

(2) Foreign air carrier name and DOT code. Each reporting air carrier, based upon authority granted by the Department, will be advised of its reporting requirements by letters of instruction from the Office of Aviation Information Management (OAIM).

Foreign air carrier	Code	Homeland
Aer Turas Teoranta	QTQ	Ireland.
Aer Lingus P.L.C.	EI	Ireland.
AeroPeru—Empressa the Tran. Aer. del Peru	DPL	Peru.
Aeros Transportes Panamenos	ATQ	Panama.
GDIAS—Aeroflot Soviet Airlines	SU	USSR.
Aerolineas Argentinas	AR	Argentina.
Aerolineas Dominicanas, S.A.	YU	Dominican Republic.
Aerolineas El Salvador, S.A.	SZQ	El Salvador.
Aeromar, C. Por A.	ABQ	Dominican Republic.

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Foreign air carrier	Code	Homeland
Aeronaves del Peru	ADQ	Peru.
Aerotransportes Entre Rios	RSQ	Argentina.
Aereo Transporti Italiani—A.T.I.-S.p.A.	BM	Italy.
Aeroservicios Equatorianos, C.A.	EOQ	Ecuador.
Aerotours Dominicanos, C. por A.	RTQ	Dominican Republic.
Avianca—Aerovias Nac. de Colombia	AV	Colombia.
Avense—Aerovias Venezolanas	VE	Venezuela.
Air Afrique	RK	10 African nations.
Air Canada	AC	Canada.
SAFA—Air Charter	AQQ	France.
Air Europe	AE	United Kingdom.
Air France	AF	France.
Air Haiti, S.A.	HJQ	Haiti.
Air India	AI	India.
Air Jamaica Limited	JM	Jamaica.
Air Nauru	ON	Nauru.
Air New Zealand	TE	New Zealand.
Air Niugini	PX	Papua New Guinea.
Air Ontario	GX	Canada.
Air Pacific	FJ	Fiji.
Air Panama Internacional, S.A.	OP	Panama.
Alitalia—Linee Aree Italiane	AZ	Italy.
ANA—All Nippon Airways Co., Ltd.	NH	Japan.
ALM Dutch Antillean Airlines	LM	Netherlands-Antilles.
Anglo Airlines	AZQ	United Kingdom.
Andes Airlines	EDQ	Ecuador.
APA International Air, S.A.	7P	Dominican Republic.
Argo, S.A.	AGQ	Dominican Republic.
AVIACO—Aviacion Y Comercio	AO	Spain.
Aviateca—Empresa Guatemalteca	GV	Guatemala.
Bahamasair Holdings Ltd.	UP	Bahamas.
Balair Ag	BBQ	Switzerland.
Belize Air International Ltd.	ST	Belize.
Bradley Air Service d/b/a/ First Air	7F	Canada.
British Airtours Limited	BRQ	United Kingdom.
British Airways PLC	BA	United Kingdom.
Caledonian Airways/BCAL Air	BR	United Kingdom.
British Midland Airways Limited	BD	United Kingdom.
BWIA—British West Indian Airways	BW	Trinidad & Tobago.
CAAC—Civil Av. Admin. of China	CA	China.
Caicos Caribbean Airways	QW	Turks & Caicos—U.S.
Canadian Airlines Int'l. Ltd	CP	Canada.
Cargolux Airlines Int'l., S.A.	CV	Luxembourg.
Caribbean Air Cargo Co.—Caricargo	DC	Barbados.
British Caribbean Airways	TXQ	British V.I./Barbados.
Cathay Pacific Airways, Ltd.	CX	United Kingdom—Hong Kong.
Cayman Airways Limited	KX	United Kingdom—Cayman Islands.
C.L.T.M. Airlines, Inc.—Caraibische	CJQ	Netherlands Antilles.
CAL—China Airlines, Ltd.	CI	Taiwan.
Conair	SIQ	Denmark.
COPA—Co. Panamena de Aviacion	CM	Panama.
Condor Flugdienst	DFQ	West Germany.
CSA—Czechoslovak Airlines	OK	Czechoslovakia.
Dan-Air Services, Ltd.	DA	United Kingdom.
CDA—Dominicana De Aviacion, Compania	DO	Dominican Republic.
Ecuatoriana de Aviacion	EU	Ecuador.
Egyptair	MS	Egypt.
El Al Israel Airlines Ltd.	LY	Israel.
Faucett Peruvian, Compania de Aviacion	CF	Peru.
Finnair o/y	AY	Finland.
Garuda Indonesia Airways	GA	Indonesia.
German Cargo Services GMBH	GE	West Germany.
Guyana Airways Corporation	GY	Guyana.
Haiti Air Freight Int'l.	HAI	Haiti.
Hapag-Lloyd Flug	HAQ	West Germany.
Heavylift Cargo Airlines Ltd.	HLQ	United Kingdom.
Iberia Int'l. Air Lines of Spain	IB	Spain.
Icelandair	FI	Iceland.
Japan Air Lines Company, Ltd.	JL	Japan.
Japan Air System (formerly TOA Domestic)	JD	Japan.
Kar-Air o/y	KR	Finland.
KLM Royal Dutch Airlines	KL	Netherlands.
Korean Air Lines Co., Ltd.	KE	Korea, Republic of.
Kuwait Airways Corporation	KU	Kuwait.
LACSA—Lineas Aereas Constricenses	LR	Costa Rica.
LADECO—Lines Aerea del Cobre	UC	Chile.
LAN—Chile Airlines	LA	Chile.
Le Pointe Air	LEQ	France.
Liat (1974) Limited	LI	Antigua.
LAV—Linea Aerospostal Venezolana	LV	Venezuela.
Lineas Aereas Del Caribe, S. A.	LAQ	Colombia.
Lineas Aereas Paraguayas	LPQ	Paraguay.

Foreign air carrier	Code	Homeland
LAM—Linhas Aereas the Mocambique	TM	Mozambique.
LAB—Lloyd Aereo Boliviana	LB	Bolivia.
Lufthansa German Airlines	LH	West Germany.
Luftransport-Unternehmen	LTQ	West Germany.
Maersk Air A/S	DM	Denmark.
MALEV—Magyar—Hungarian Airlines	MA	Hungary.
Martinair Holland	MSQ	Netherlands.
Mexicana de Aviacion, Compania	MX	Mexico.
Minerve	MVQ	France.
Nationair Int'l.	NX	Canada.
National Aviation Consultants, Ltd.	NTQ	Canada.
Nigeria Airways, Ltd.	WT	Nigeria.
Nippon Cargo Airlines Company, Ltd.	KZ	Japan.
Nordair Limited	ND	Canada.
North Coast Air Services Ltd.	NSQ	Canada.
Olympic Airways	OA	Greece.
Pacific Western Airlines, Ltd.	PW	Canada.
PIA—Pakistan Int'l Airlines Corp.	PK	Pakistan.
TAMPA—Panamericanos, S.A.	TMQ	Colombia.
Philippine Airlines, Inc.	PR	Philippines.
LOT—Polskie Linie Lotnicze	LO	Poland.
Polynesian Airlines Holdings, Ltd.	PH	Western Samoa.
Pomair, N.V.	PPQ	Belgium.
Qantas Airways Ltd.	QF	Australia.
Quebecair	QB	Canada.
Royal Air Maroc. Co. Nat. de Trans. Aeriens	AT	Maroc.
Royal Jordanian Airline—Alia	RJ	Jordan.
Sabena Belgian World Airlines	SN	Belgium.
SAHSA—Serv. Aereo de Honduras	SH	Honduras.
Saudia—Saudi Arabian Airlines	SV	Saudi Arabia.
Scanair	CIQ	Denmark/Norway/Sweden.
SAS—Scandinavian Airlines System	SK	Denmark/Norway/Sweden.
Seagreen Air Transport	ESQ	Antigua.
Servicio de Carga Aerea, S. A.	CMQ	Costa Rica.
Serv. de Transp. Aereos Fueguinos	SXQ	Argentina.
SIA—Singapore Airlines, Limited	SQ	Singapore.
Soc. Ecuatoriana de Transportes Aereos Saeta	EH	Ecuador.
SAM—Soc. Aeronautica de Medellin	MM	Colombia.
St. Lucia Airways Limited	SDQ	St. Lucia.
Spantax, S. A.	BXQ	Spain.
Sterling Airways A/S	NBQ	Denmark.
Surinam Airways Limited	PY	Surinam.
Swissair Transport Co., Ltd.	SR	Switzerland.
TACA Int'l. Airlines	TA	El Salvador.
TAR—Tran. Aer. Rioplatense	HRQ	Argentina.
Tarom—Romanian Air Transport	RO	Romania.
Thai Airways Int'l Limited	GTG	Thailand
Time Air, Ltd.	9X	Canada.
Tradewinds Airways, Ltd.	MI	Singapore.
Trans-Meridian Airways	KKQ	United Kingdom.
Transvia Holland	HV	Netherlands.
Transbrasil Linhas Aereas	TR	Brazil.
TACV—Tran. Aereos de Cabo Verde	VR	Cape Verde.
TAN—Transportes Aereos Nacionales	TX	Honduras.
TAP—Transportes Aereos Portugueses	TP	Portugal.
Transportes Aereos Bolivianos	BOQ	Bolivia.
THY—Turkish Airlines, Turk Hava Yollari	TK	Turkey.
UTA—Union de Transports Aeriens	UT	France.
VARIG—Empresa de Via. Aer. Rio Grande	RG	Brazil.
VIASA—Venezuelan Int'l. Airways	VA	Venezuela.
VASP Brazilian—Via. Aer Sao Paulo	VP	Brazil.
Virgin Atlantic Airways, Ltd.	VS	United Kingdom.
Wardair Canada, Inc.	WD	Canada.
Wordways Canada, Ltd.	WWQ	Canada.
Worldwide A.C.T.S. d/b/a/ Air Charter	WLQ	Canada.
JAT—Yugoslavia Airlines	JU	Yugoslavia.
Zambia Airways Corp.	QZ	Zambia.
Zas—Zas Airlines of Egypt	ZAQ	Egypt.

(i) Joint Service.

(1) The Department may authorize joint service operations between two direct air carriers. Examples of these joint service operations are:

Blocked-space agreements;

Part-charter agreements;

Code-sharing agreements;

Wet-lease agreements, and similar arrangements.

(2) Joint service operations shall be reported in Form 41 Schedules T–100 and T–100(f) within the following guidelines: (i) Blocked space, part-charters and code-sharing arrangements shall be reported by the carrier in operational control of the flight. The traffic moving under those agreements is reported the same as any other traffic on board the aircraft. (ii) Wet lease agreements shall be reported by the lessee as though the leased aircraft and crew were a part of the lessee's own fleet. (iii) If there are questions about reporting a joint service operation, contact the Director, Office of Aviation

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Information Management at the address in paragraph (a)(3) of this Appendix. (iv) The Department may require information pertaining to joint service operations in addition to that reported in Schedules T–100 and T–100(f) by U.S. and foreign air carriers. If additional information is needed, *ad hoc* reporting will be used by the Director, Office of Aviation Information Management (OAIM), under authority delegated in § 385.27 (b) and (d) of this chapter. *Ad hoc* reporting requirements will be communicated to the applicable carriers by letter.

(j) Schedules.

BILLING CODE 4910-62-M

SCHEDULE T-100(f)

FOREIGN AIR CARRIER TRAFFIC DATA

BY NONSTOP SEGMENT AND ON-FLIGHT MARKET

A-1. Air Carrier Name:_____Code_____

A-2. Report Date:(Year)_____ (Month) _____

	A. SERVICE PATTERN						B. NONSTOP SEGMENT INFORMATION				C. ON-FLIGHT MARKET	
Line	A-3 Airport Code	A-4 Airport Code	A-5 Service Class (Mark an x)				B-1 Air-Craft Type Code	B-2 Revenue Aircraft Departures	B-3 Revenue Passengers Transported	B-4 Revenue Freight Transported (kg)	C-1 Total Revenue Passengers In Market	C-2 Total Revenue Freight In Market (kg)
No.	ORIGIN	DESTIN.	F	G	L	P	Q	--- By aircraft type ---			-- Sum of all aircraft types --	
1.												
2.												
3.												
4.												
5.												
6.												
7.												
8.												
9.												
10.												
11.												
12.												
13.												
14.												
15.												
16.												
17.												
18.												
19.												
20.												

RSPA Form 41 Schedule T-100(f)

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FOREIGN AIR CARRIER TRAFFIC DATA
BY NONSTOP SEGMENT AND ON-FLIGHT MARKET
SCHEDULE T-100(f)

FOREIGN AIR CARRIER CERTIFICATION

Carrier name _____

Address _____

_____

_____

_____

Carrier code _____

Report date (Year/Month) _____

I, the undersigned,

Title _____

Signature _____ Date _____

Print or type name _____

do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR Part 217 and 241. I affirm that, to the best of my knowledge and belief, this is a true, correct and complete report.

RSPA Form 41 Certification for Schedule T-100(f)

BILLING CODE 4910-62-C

§ 217.11 Reporting compliance.

(a) Failure to file reports required by this part will subject an air carrier to civil and criminal penalties prescribed in sections 901 and 902 of the Federal Aviation Act of 1958, as amended.

(b) Title 18 U.S.C. 1001, Crimes and Criminal Procedure, makes it a criminal offense subject to a maximum fine of $10,000 or imprisonment for not more than 5 years, or both, to knowingly and willfully make, or cause to be made, any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR LARGE CERTIFICATED AIR CARRIERS

2. The authority for Part 241 continues to read as follows:

Authority: Secs. 101, 204, 401, 402, 403, 404, 407, 411, 416, 417, 901, 902, 1002, 1601, Pub. L. 85-726, as amended, 72 Stat. 737, 743, 754, 758, 766, 769, 774, 783, 788; 76 Stat. 145; 92 Stat. 1744; 49 U.S.C. 1301, 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1472, 1482, 1551; sec. 43, Pub. L. 95-504, 92 Stat. 1750, 49 U.S.C. 1552.

3. Section 03 is amended by revising the definitions of *Airport-to-airport distance*, and *Freight* to read as follows:

Section 03—Definitions for Purposes of This System of Accounts and Reports

* * * * *

Airport-to-airport distance. The great-circle distance between airports, measured in statute miles in accordance with Part 247 of this Chapter.

* * * * *

Freight. Property, other than mail, transported by air.

* * * * *

4. Section 19—*UNIFORM CLASSIFICATION OF OPERATING STATISTICS* is amended by revising sections 19-1 through 19-6 to read as follows:

Sec. 19-1 Applicability.

(a) *United States air carrier.* Each large certificated U.S. air carrier shall file with the Department, on a monthly basis, Form 41 Schedule T-100 "U.S. Air Carrier Traffic and Capacity Data By Nonstop Segment and On-flight Market," and summary data as prescribed in this section and in sections 22 and 25 of this part. A carrier conducting only domestic all-cargo operations under Section 418 of the Act is not required to file Schedule T-100. The "Instructions to U.S. Air Carriers for Reporting Traffic and Capacity Data on Form 41 Schedules T-100, T-1, T-2 and T-3" (Instructions-U.S. Air Carriers) are contained in the Appendix to section 25 of this part.

(b) *Foreign (non-U.S.) air carrier.* Each foreign air carrier as required by Part 217 of this chapter shall file Form 41 Schedule T-100(f) "Foreign Air Carrier Traffic Data by Nonstop Segment and On-flight Market." The "Instructions to Foreign Air Carriers for Reporting Traffic Data on Form 41 Schedule T-100(f)," (Instructions-Foreign Air Carriers) are included in the Appendix to § 217.10 of this chapter.

(c) Each U.S. air carrier shall use magnetic computer tape or "floppy disc" for transmitting the prescribed data to the Department. Upon good cause shown, OAIM may approve the request of a U.S. air carrier, under section 1-2 of this part, to use hardcopy data input forms.

(d) On-flight market and nonstop segment detail data by carrier shall be made public only as provided in section 19-6.

Sec. 19-2 Maintenance of data.

(a) Each air carrier required to file Form 41 Schedule T-100 data shall maintain its operating statistics, covering the movement of traffic in accordance with the uniform classifications prescribed. Codes are prescribed for each operating element and service class. All traffic statistics shall be compiled in terms of each flight stage as actually performed.

(b) Each carrier shall maintain data applicable to the specified traffic and capacity elements prescribed in section 19-5 and section 25, and by general service classes prescribed in section 19-4 of this part.

(c) Operating statistics shall be maintained in accordance with the type of record, either nonstop segment or on-flight market.

Sec. 19-3 Accessibility and transmittal of data.

(a) Each reporting air carrier shall maintain its prescribed operating statistics in a manner and at such locations as will permit ready accessability for examination by representatives of the Department. The record retention requirements are prescribed in Part 249 of this chapter.

(b) Individual nonstop segment and on-flight market data for section 418 domestic all-cargo, domestic charter and military charter operations are not required to be reported on the Schedule T-100, but summary data for such operations shall be included in the T-1, T-2 and T-3 schedules that each U.S. air carrier shall transmit to the Department on a monthly or quarterly basis as prescribed in sections 22 and 25. For international military charters, only the U.S. airports are reported on Schedule T-3, and the foreign airports are combined and reported on a single line, as Airport "NON." International civilian charter and civilian all-cargo operations shall be reported in the T-100 data format, by nonstop segment and on-flight market.

(c) Form 41 Schedule T-100 reports shall be transmitted in accordance with the standard practices established by the Department, and must be received by the Department within 30 days following the end of each reporting month.

Sec. 19-4 Service classes.

The statistical classifications are designed to reflect the operating elements attributable to each distinctive class of service offered. The operating elements shall be grouped in accordance with their inherent characteristics as follows:

(a) Scheduled services. Scheduled services shall include traffic and capacity elements applicable to air transportation provided pursuant to published schedules and extra sections to scheduled flights. Scheduled Passenger/Cargo (Service Class F) is a composite of first class, coach, and mixed passenger/cargo service. The following classifications shall be reported, as applicable:

U.S. Air Carriers:
- K—Scheduled Services (F+G)
- F—Scheduled Passenger/Cargo
- G—Scheduled All-Cargo

Foreign Air Carriers:
- F—Scheduled Passenger/Cargo
- G—Scheduled All-Cargo

(b) Nonscheduled services. Nonscheduled services shall include all traffic and capacity elements applicable to the performance of nonscheduled aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules. The following classifications shall be reported, as applicable:

U.S. Air Carriers:
- V—Nonscheduled Services (L+N+P+R)
- L—Nonscheduled Civilian Passenger/Cargo
- P—Nonscheduled Civilian Cargo
- N—Nonscheduled Military Passenger/Cargo
- R—Nonscheduled Military Cargo

Foreign Air Carriers:
- L—Nonscheduled Civilian Passenger Cargo
- P—Nonscheduled Civilian All-Cargo Charters
- Q—Nonscheduled Services (Other

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than Charter)

(c) All Services. This classification shall reflect, for the applicable elements, the aggregate amounts for all services performed by the operating entity:

U.S. Air Carriers:

Z—All Services (V+K)

Sec. 19–5 Air transport traffic and capacity elements.

(a) Within each of the service classifications prescribed in section 19–4, data shall be reported as applicable to specified air transport traffic and capacity elements.

(b) These reported items are as follows:

Code	Description	Type of Record: Segment	Type of Record: Market	Applicable Form 41 Schedule Number
	Carrier, carrier entity code	S	M	T–100(f)1,2,3
	Reporting period date	S	M	T–100(f)1,2,3
	Origin airport code	S	M	T–100(f)3
	Destination airport code	S	M	T–100(f)
	Service class code	S	M	T–100(f)1,2,3
	Aircraft type code	S		T–100(f)1,2,3
110	Revenue passengers enplaned		M	T–100(f)1,3
111	Total psgrs. in market—first cabin		M	T–100
113	Total psgrs. in market—middle cabin		M	T–100
112	Total psgrs. in market—coach cabin		M	T–100
130	Revenue passengers transported	S		T–100(f)
131	Passengers transported—first cabin	S		T–100
133	Passengers transported—middle cabin	S		T–100
132	Passengers transported—coach cabin	S		T–100
140	Revenue passenger-miles			CFD* 1,2
210	Revenue cargo tons enplaned			CFD*
217	Enplaned freight		M	T–100(f),3
219	Enplaned mail		M	T–100 3
230	Revenue tons transported			CFD*
237	Transported freight	S		T–100(f)
239	Transported mail	S		T–100
240	Revenue ton-miles			CFD* 1,2
241	Revenue ton-miles passenger			CFD* 1
247	Revenue ton-miles freight			CFD* 1,2
249	Revenue ton-miles mail			CFD* 1,2
270	Available capacity payload	S		T–100
280	Available ton-miles			CFD* 1,2
310	Available seats, total	S		T–100
311	Available seats—first cabin	S		T–100
313	Available seats—middle cabin	S		T–100
312	Available seats—coach cabin	S		T–100
320	Available seat-miles			CFD* 1,2
410	Revenue aircraft miles flown			CFD* 1,2
430	Revenue aircraft miles scheduled			CFD* 1
501	Interairport distance			CFD* 2
510	Revenue aircraft departures performed	S		T–100(f)1,2,3
520	Revenue aircraft departures scheduled	S		T–100 3
610	Revenue aircraft hours (airborne)	S		T–100 1,2
630	Aircraft hours (ramp-to-ramp)	S		T–100 1,2
650	Total aircraft hours (airborne)			2
810	Aircraft days assigned to service-equip			2
820	Aircraft days assigned to service-routes			2
921	Aircraft fuels issued (U.S. gallons)			2

*CFD = Computed by DOT from detail Schedule T–100 and T–100(f) data.
T–100 = Form 41 Schedule T–100 for U.S. air carriers
(f) = Form 41 Schedule T–100(f) for foreign air carriers
1 = Form 41 Schedule T–1; 2 = Schedule T–2; 3 = Schedule T–3
NOTE: Cabin data are reported only in Group III international operations; in all other instances, totals are reported in items 110, 130 and 310.

(c) These reported items are further described as follows:

(1) *Reporting period date.* The year and month or quarter to which the reported data are applicable.

(2) *Carrier, Carrier entity code.* Each foreign air carrier shall report its name and code (assigned by DOT). Each U.S. air carrier shall report its name and entity code (a five digit code assigned by DOT that identifies both the carrier and its entity) for its particular operations. The Office of Aviation Information Management (OAIM) will assign or confirm codes upon request; OAIM's address is in the Appendix to section 25 of this part and the Appendix to § 217.10 of this chapter.

(3) *Service class code.* The service class codes are prescribed in section 19–4 of this part. In general, classes are divided into two broad categories, either K (scheduled) or V (nonscheduled), where K=F+G for all carriers and V=L+N+P+R for U.S. air carriers and comprises L+P and Q for foreign air carriers. Refer to section 19–4 for the more information on service class codes F, G, L, N, P, R and Q.

(4) *Record type code.* This code indicates whether the data pertain to nonstop segment (record type S) or on-flight market (record type M).

(5) *Aircraft type code.* This code represents the aircraft types, as described in the Appendix to section 25 of this part.

(6) *Origin, Destination airport code(s).* These codes represent the industry designators described in the Appendix to section 25 of this part. A common private industry source of these industry designator codes is the *Official Airline Guides* (OAG). OAIM will assign codes upon request if not listed in the OAG.

(7) *110 Revenue passengers enplaned.* The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market. Under the T–100 system of reporting, these enplaned passengers are the sum of the passengers in the individual on-flight markets. In the domestic entity, report only the total revenue passengers enplaned in item 110. Nonscheduled revenue passengers enplaned in any entity are reported in item 110. Cabin data (items 111 First, 112 Coach and 113 Middle, sometimes referred to as business class) are reported only for international operations of Group III air carriers; in all other instances, item 110 Revenue passengers enplaned is reported on Form 41 Schedule T–100 in column C–1, as follows.

Col.		Group III International Entity
C–1	111	Revenue psgrs. enplaned-total psgrs. in market-first cabin.
C–2	113	Revenue psgrs. enplaned-total psgrs. in market-middle cabin.
C–3	112	Revenue psgrs. enplaned-total psgrs. in market-coach cabin.
		All Other Carrier Groups and Entities
C–1	110	Revenue passengers enplaned.

(8) *130 Revenue passengers transported.* The total number of revenue passengers transported over single flight stage, including those already on board the aircraft from a previous flight stage. In the domestic entity, report only the total revenue passengers transported in item 130. Nonscheduled revenue passengers transported in any entity are reported in item 130. Cabin data (items 131 First, 132 Coach and 133 Middle) are reported only for international operations of Group III air carriers; in all other instances, item 130 Revenue passengers transported is reported on Form 41 Schedule T–100 in column B–7, as follows.

Col.		Group III International Entity
B–7	131	Revenue psgrs. transp.-total psgrs. transported-first cabin.
B–8	133	Revenue psgrs. transp.-total psgrs. transp.-middle cabin.
B–9	132	Revenue psgrs. transp.-total psgrs. transp.-coach cabin.
		All Other Carrier Groups and Entities
B–7	130	Revenue passengers transported.

(9) *140 Revenue passenger-miles.* Computed by multiplying the interairport distance of each flight stage by the number of passengers transported on that flight stage.

(10) *210 Revenue cargo tons enplaned.* The total number of cargo tons enplaned. This data element is a sum of the individual on-flight market figures for each of the following categories: 217 Freight and 219 mail. This element represents an unduplicated count of the revenue traffic in a market.

(11) *230 Revenue tons transported.* The number of tons of revenue traffic transported. This element is the sum of the following elements: 231 Passengers transported-total, 237 Freight, and 239 Mail.

(12) *240 Revenue ton-miles—total.* Ton-miles are computed by multiplying the revenue aircraft miles flown (410) on each flight stage by the number of tons transported on that stage. This element is the sum of 241 through 249.

(13) *241 Revenue ton-miles—passenger.* Equals the number of passengers times 200, times interairport distance, divided by 2000. A standard weight of 200 pounds per passenger, including baggage, is used for all operations and service classes.

(14) *247 Revenue ton-miles—freight.* Equals the volume of freight in whole tons times the interairport distance.

(15) *249 Revenue ton-miles—mail.* Equals the volume of mail in whole tons times the interairport distance.

(16) *270 Available capacity-payload.* The available capacity is collected in pounds. This figure shall reflect the payload or total available capacity for passengers, mail and freight applicable to the aircraft with which each flight stage is performed.

(17) *280 Available ton-miles.* The aircraft miles flown on each flight stage multiplied by the available capacity on the aircraft in tons.

(18) *310 Available seats.* The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. In the domestic entity, report the total available seats in item 130. Nonscheduled available seats in any entity are reported in item 130. Cabin data (items 311 First, 312 Coach and 313 Middle) are reported only for international operations of Group III air carriers; in all other instances, item 310 Available seats, total is reported on Form 41 Schedule T–100 in column B–4, as follows.

Col.		Group III International Entity
B–4	311	Available seats-first cabin.
B–5	313	Available seats-middle cabin.
B–6	312	Available seats-coach cabin.
		All Other Carrier Groups and Entities
B–4	310	Available seats, total.

(19) *320 Available seat-miles.* The aircraft miles flown on each flight stage multiplied by the seat capacity available for sale.

(20) *410 Revenue aircraft miles flown.* Revenue aircraft miles flown are computed in accordance with the airport pairs between which service is actually performed; miles are generated from the data for scheduled aircraft departures (Code 520) times the interairport distances (Code 501).

(21) *430 Revenue aircraft miles scheduled.* The number of revenue aircraft miles scheduled. All such data shall be maintained in conformity with the airport pairs between which service is scheduled, whether or not in accordance with actual performance.

(22) *501 Interairport distance.* The great circle distance, in official statute miles as prescribed in Part 247 of this chapter, between airports served by each flight stage. Official interairport mileage may be obtained from the Office of Aviation Information Management at the address included in section 25 of this part.

(23) *510 Revenue aircraft departures performed.* The number of revenue aircraft departures performed in revenue scheduled service, including extra sections of scheduled flights.

(24) *520 Revenue aircraft departures scheduled.* The number of revenue aircraft departures scheduled, whether or not actually performed.

(25) *610 Revenue aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until its next landing.

(26) *630 Aircraft hours (ramp-to-ramp).* The elapsed time, computed from the moment the aircraft first moves under its own power from the boarding ramp at one airport to the time it comes to rest at the ramp for the next point of landing. This data element is also referred to as "block" and block-to-block aircraft hours.

(27) *650 Total aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until it touches down at the next landing. This includes flight training, testing, and ferry flights.

(28) *810 Aircraft days assigned to service—carrier's equipment.* The number of days that aircraft owned or

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acquired through rental or lease (but not interchange) are in the possession of the reporting air carrier and are available for service on the reporting carrier's routes plus the number of days such aircraft are in service on routes of others under interchange agreements. Includes days in overhaul, or temporarily out of service due to schedule cancellations. Excludes days that newly acquired aircraft are on hand, but not available for productive use, days rented or leased to others (for other than interchange) and days in possession but formally withdrawn from air transportation service.

(29) *820 Aircraft days assigned to service—carrier's routes.* The same as "aircraft days assigned to service—carrier's equipment," but excluding the number of days that the reporting carrier's owned or rented equipment are in the possession of others under interchange agreements and including the number of days aircraft of others are in the possession of the reporting air carrier under interchange agreements.

(30) *921 Aircraft fuels issued (gallons).* The amount of aircraft fuels issued, in U.S. gallons, during the reporting period for both revenue and nonrevenue flights.

Section 19–6—Public disclosure of traffic data.

(a) Detailed air carrier on-flight market and nonstop segment data in Schedule T–100 and T–100(f) reports submitted to the Department shall not be publicly available for a period of 3 years, although industry and carrier summary data may be made public provided there are three or more carriers in the summary data disclosed. Further, at any time, the Department may publish T–100 international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the 3 years as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country;

(2) To parties to any proceeding before the Department under Title IV of the FAAct as required by the Administrative Law Judge or other decision-maker of the Department. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility of evidence.

(3) To agencies and other components of the U.S. Government for their internal use only.

(4) To such other persons and in such other circumstances as the Department determines to be in the public interest, consistent with regulatory functions and responsibilities, upon submission by the requesting party of a written statement of significant need.

(b) Before it makes a decision on requests for access to detail carrier information under section (a)(4), the Department shall contact the carrier whose data have been requested, and determine whether the carrier will consent to the release of its data. The Department's determination regarding confidential information will be made in writing, and a copy of this written determination will be made publicly available. The Department intends to give considerable weight to the reporting carrier's views in making determinations whether to release its data before the end of the 3 year restricted release period.

(c) Where access to restricted data is approved, the Department may release the requested nonstop segment and on-flight market data through firms of data service providers who agree to abide by these disclosure restrictions. There are established procedures for accessing restricted data in the pamphlet "Access to Restricted Release Aviation Economic Data." Copies are available from the Office of Aviation Information Management (OAIM) at the address in the Appendix to section 25 of this part.

5. Section 22 is amended by revising the List of Schedules in CAB Form 41 Report and the Due Dates of Schedules in CAB Form 41 Report in paragraph (a) to read:

Section 22—General Reporting Instructions

(a) * * *

LIST OF SCHEDULES IN RSPA FORM 41 REPORT

[See footnotes at end of table]

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
A	Certification	Q	(1)	X	X
B–1	Balance sheet	Q	(1)	X	X
B–1.1	Balance sheet	SA	(2)	NA	NA
B–7	Airframe and aircraft engine acquisitions and retirements	Q	NA	X	X
B–12	Statement of changes in financial position	Q	(1)	X	X
B–43	Inventory of airframes and aircraft engines	A	X	X	X
P–1.1	Statement of operations	SA	(2)	NA	NA
P–1.2	Statement of operations	Q	(1)	X	X
P–1(a)	Interim operations report	M	X	X	X
P–2	Notes to RSPA Form 41 report	Q	(1)	X	X
P–5.1	Aircraft operating expenses	Q(1), SA(2)	X	NA	NA
P–5.2	Aircraft operating expenses	Q	NA	X	X
P–6	Operating expenses by objective groupings	Q	(1)	X	X
P–7	Operating expenses by functional groupings—Group III air carriers	Q	NA	NA	X
P–10	Employment statistics by labor category	A	(1)	X	X
P–12(a)	Fuel consumption by type of service and entity	M	(1)	X	X
T–100	U.S. air carrier traffic and capacity data by nonstop segment and on-flight market	M	X	X	X
T–100(f)	Foreign air carrier traffic data by nonstop segment and on-flight market	M (see 14 CFR...217)			
T–1	U.S. air carrier traffic and capacity summary by service class	M	X	X	X
T–2	U.S. air carrier traffic and capacity by aircraft type	Q	X	X	X
T–3	U.S. air carrier airport activity statistics	Q	X	X	X

LIST OF SCHEDULES IN RSPA FORM 41 REPORT—Continued

[See footnotes at end of table]

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
T–8	Report of all-cargo operations	A	(3)	(3)	(3)

M = Monthly, Q = Quarterly, SA = Semiannually, A = Annually, NA = Not Applicable, X = All Carriers.
(1) Applicable to Group I Air Carriers with annual operating revenues of $10 million or more.
(2) Applicable to Group I Air Carriers with annual operating revenues below $10 million.
(3) Applicable to Air Carriers conducting Section 418 all-cargo operations.

DUE DATES OF SCHEDULES IN RSPA FORM 41 REPORT

Due dates[1]	Financial data on schedule No.	Traffic and capacity data on schedule No.
January 20	P–12(a)	
January 30	P–1(a)	T–100, T–100(f), T–1, T–2, T–3
February 10[2]	A, B–1, B–1.1, B–7, B–12, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–10.	
February 20	P–12(a)	
March 1	P–1(a)	T–100, T–100(f), T–1
March 20	P–12(a)	
March 30	B–43, P–1(a).	T–100, T–100(f), T–1, T–8
April 20	P–12(a)	
April 30	P–1(a)	T–100, T–100(f), T–1, T–2, T–3
May 10	A, B–1, B–7, B–12, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7.	
May 20	P–12(a)	
May 30	P–1(a)	T–100, T–100(f), T–1
June 20	P–12(a)	
June 30	P–1(a)	T–100, T–100(f), T–1
July 20	P–12(a)	
July 30	P–1(a)	T–100, T–100(f), T–1, T–2, T–3
August 10	A, B–1, B–1.1, B–7, B–12, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7.	
August 20	P–12(a)	
August 30	P–1(a)	T–100, T–100(f), T–1
September 20	P–12(a)	
September 30	P–1(a)	T–100, T–100(f), T–1
October 20	P–12(a)	
October 30	P–1(a)	T–100, T–100(f), T–1, T–2, T–3
November 10	A, B–1, B–7, B–12, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7.	
November 20	P–12(a)	

DUE DATES OF SCHEDULES IN RSPA FORM 41 REPORT—Continued

Due dates[1]	Financial data on schedule No.	Traffic and capacity data on schedule No.
November 30	P–1(a)	T–100, T–100(f), T–1
December 20	P–12(a)	
December 30	P–1(a)	T–100, T–100(f), T–1

[1] Due dates falling on a Saturday, Sunday or national holiday will become effective the first following work day.
[2] Reporting due dates on Form 41 Schedules B and P are extended to March 30 if preliminary schedules are filed at the Department by February 10

6. Section 24 is amended by renumbering paragraph (f) as paragraph (g) and adding (e) and (f) in Schedule P–1.2, to read as follows:

Section 24—Profit and loss elements

* * * * *

Schedule P–1.2—Statement of Operations

* * * * *

(e) Group III air carriers shall subdivide total Transport Revenues-Passenger [Account 3901) between Accounts 3901.1, Passenger-Flight Class and Account 3901.2 Passenger-Coach, only for operations that are reported in the international entity (Atlantic, Pacific and Latin American). First class and coach passenger revenues associated with transport operations reported in the domestic entity shall be reported as a combined total in Account 3901 Transport Revenues-Passenger.

(f) All Group I and Group II air carriers shall report first class and coach passenger revenues as a combined total in Account 3901 Transport Revenues-Passenger, for both domestic and international entity operations. However, U.S. air carriers in any carrier group that elect to do so may continue to report first class and coach revenue data, if they consider such voluntary reporting to be less burdensome than changing their existing financial reporting system.

(g) Any air carrier that does not file Schedule P–1(a) in accordance with the filing option described in section 22—General Reporting Instructions shall, for the third month of any calendar quarter during which the option is exercised, type in the bottom margin of the system statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P–1(a).

* * * * *

Section 25—[Amended]

7. Section 25 *Traffic and Capacity Elements* is amended by:

A. Revising paragraphs (a) and (b) of the *General Instructions* to read:

General Instructions. (a) All prescribed reporting for traffic and capacity elements shall conform with the data compilation standards set forth in section 19—Uniform Classification of Operating Statistics.

(b) Schedules T–1, T–2, T–3 and T–100 for U.S. air carriers shall be submitted in magnetic computer tape or floppy disc as provided in section 19–1(c) of this Part. As prescribed in section 1–02 of this part, air carriers may request a waiver from the Director, Office of Aviation Information Management, RSPA , to allow the submission of hardcopy reports.

B. Schedules T–1(a), T–1(b), T–1(c), T–2, T–3(a), T–3(b) and T–3(c) are removed and new Schedules T–1, T–2 and T–3 are added to read as follows:

Schedule T–1 U.S. Air Carrier Traffic and Capacity Summary-By Service Class

(a) Schedule T–1 collects summary statistics to supplement the detail Schedule T–100 data. This schedule shall be filed monthly by each large certificated U.S. air carrier conducting domestic charter, or domestic cargo operations, or military charters in each applicable entity. Traffic and capacity data are reported on this schedule for the following service classes.

(1) G—Scheduled All-Cargo.

(2) L—Nonscheduled Civilian Passenger/Cargo.

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(3) P—Nonscheduled Civilian Cargo.

(4) N—Nonscheduled Military Passenger/Cargo.

(5) R—Nonscheduled Military Cargo.

(b) Separate schedules shall be filed for each operating entity.

(c) Detailed instructions for preparing Schedule T–1 are included in the Appendix to this section.

(d) The reported data shall be compiled as aggregates of the basic data prescribed in section 19, Uniform Classification of Operating Statistics.

(e) The schedule shall include the following items:

Code	Service/class	Elements
.....	.....	Air carrier.
.....	.....	Operating entity.
.....	.....	Report date (month ended).
.....	G,L,N,P,R	Service class code.
.....	N, R	Aircraft type code.
110	L,N	Revenue passengers enplaned.
140	L,N	Revenue passenger-miles (000).
240	G,L,N,P,R	Revenue ton-miles.
241	L,N	Revenue ton-miles passenger.
247	G,L,N,P,R	Revenue ton-miles freight.
249	G,L, P	Revenue ton-miles mail.
280	G,L,N,P,R	Available ton-miles.
320	L,N	Available seat-miles.
410	G,L,N,P,R	Revenue aircraft miles flown.
430	G	Revenue aircraft miles scheduled.
510	G,L,N,P,R	Revenue aircraft departures performed.
610	G,L,N,P,R	Revenue aircraft hours (airborne).
630	G,L,N,P,R	Revenue aircraft hours (ramp-to-ramp).

Schedule T–2 U.S. Air Carrier Traffic and Capacity Statistics-By Aircraft Type

(a) Schedule T–2 collects summary statistics to supplement the detail Schedule T–100 data. This schedule shall be filed for each calendar quarter by each large certificated U.S. air carrier.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) Detailed instructions for preparing Schedule T–2 are included in the Appendix to this section.

(d) The reported data shall be compiled as aggregates of the data prescribed in section 19, Uniform Classification of Operating Statistics.

(e) This schedule shall include the following items:

Code	Service class	Elements
.....	.....	Air carrier.
.....	.....	Operating entity.
.....	.....	Report date (quarter ended).
.....	G,V	Aircraft type code.
.....	G,V	Service class code (G or V).
.....	G,V	Airport code.
110	V	Revenue passengers enplaned.
217	G,V	Revenue cargo tons enplaned—freight.
219	G,V	Revenue cargo tons enplaned—mail.
510	G,V	Revenue departures performed, by aircraft type.
520	G	Revenue aircraft departures, scheduled, by aircraft type.

Schedule T–3 U.S. Air Carrier Airport Activity Statistics

(a) This schedule supplements the detail Schedule T–100 data. Schedule T–3 collects supplementary airport activity statistics as follows: The domestic entity report covers summary statistics on domestic all-cargo operations and both civilian and military charters. The international entity report covers summary information on military charter operations only. Further, only the U.S. airport is identified for international military charter operations, and airports outside the U.S. are summarized as a one-line total, coded "NON" in lieu of the airport code; these data are collected only on this schedule, not in the detail Schedule T–100.

(b) Separate schedules shall be filed for each air carrier entity, as prescribed under section 19–5(c)(2) of this part.

(c) In addition to the following general information, more detailed instructions for completing schedule T–3 are included in the Appendix to this section.

(d) The data shall be compiled as aggregates of the basic data prescribed in section 19, Uniform Classification of Operating Statistics.

(e) This schedule shall include the following items:

Code	Service class	Elements
.....	.....	Air carrier.
.....	.....	Operating entity.
.....	.....	Report date (quarter ended).
.....	G,Z	Aircraft type code.
.....	G,Z	Service class code.
140	Z	Revenue passenger-miles (000).
240	G,Z	Revenue ton-miles.
247	Z	Revenue ton-miles freight.
249	Z	Revenue ton-miles mail.
280	G,Z	Available ton-miles.
320	Z	Available seat-miles.
410	G,Z	Revenue aircraft miles flown.
510	V,G,Z	Revenue aircraft departures performed.
610	Z	Revenue aircraft hours (airborne).
630	Z	Revenue aircraft hours (ramp-to-ramp).
650	Z	Total aircraft hours airborne.
810	Z	Aircraft days assigned to service—carrier's equipment.
820	Z	Aircraft days assigned to service—carrier's routes.
921	Z	Aircraft fuels issued (gallons).

C. Removing Schedule T–9 *Nonstop Market Report.*

D. Adding new Schedules T–100 and T–100(f) to read as follows:

Schedule T–100 U.S. Air Carrier Traffic and Capacity Data By Nonstop Segment and On-Flight Market.

(a) This Schedule T–100 collects detail on-flight market and nonstop segment data. This schedule shall be filed monthly by each large certificated U.S. air carrier except for a charter air carrier or an all-cargo carrier with only domestic operations. Separate data shall be reported on Schedule T–100 for each operating entity (Latin America, Atlantic, Pacific, International or Domestic) of the air carrier in the five digit entity code prescribed under section 19–5(c)(2) of this part. Domestic scheduled passenger/cargo operations and all international operations of scheduled and nonscheduled passenger/cargo and all cargo services shall be reported on Schedule T–100, except that international military charters shall not be reported on Schedule T–100.

(b) Guidelines for reporting the automated monthly Schedule T–100 are included in the Appendix to this section.

(c) Reported data shall be compiled as aggregates of the basic data elements and service classes contained in sections 19–4 and 19–5 of this part.

Schedule T–100(f) Foreign Air Carrier Traffic Data by Nonstop Segment and On-Flight Market

(a) This Schedule T–100(f) collects detail on-flight market and nonstop segment data. This schedule shall be filed monthly by each foreign (non-U.S.) air carrier conducting operations to or from the United States with large aircraft pursuant to 402 permits or exemption authority. Reported traffic data shall include all services affecting the United States, as prescribed in this part.

(b) Guidelines for reporting the monthly Schedule T–100(f) are included in the Appendix to § 217.10 of this chapter. Copies of these instructions are provided to each foreign air carrier submitting the traffic data. Copies are also available from the Office of Aviation Information Management, DAI–1, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

(c) The reported data shall be compiled as aggregates of the basic data elements and service classes prescribed in sections 19–4 and 19–5 of this part.

E. A new Appendix is added to § 241.25 to read as follows:

Appendix to Section 241.25 of CFR Part 241—Instructions to U.S. Air Carriers for Reporting Traffic and Capacity Data on Form 41 Schedules T–100, T–1, T–2, and T–3

(a) Applicability. Each large U.S. air carrier that holds a 401 certificate and operates aircraft designed with a maximum capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds must file these schedules. A carrier that conducts all of its operations under section 418 of the Act (all-cargo certificates) does not file. Each air carrier will be advised of its reporting requirements by letters of instruction from the Office of Aviation Information Management (OAIM).

(b) Schedules, frequency, and entity:

(1) Schedule T–100, Monthly. Schedule T–100 collects summarized flight stage data by reporting entity as follows: International entity reports cover scheduled and nonscheduled passenger/cargo and all cargo services. Domestic entity reports cover passenger/cargo operations in scheduled services only. The term entity refers to the geographic location designator prescribed by the Department in section 19–5(c)(2) of this part, such as, for instance, domestic entity air transport operations as distinguished from international entity air transport operations.

(2) Schedule T–1, Monthly. For the domestic entity, Schedule T–1 collects summary statistics on domestic all-cargo operations, and on both civilian and military charters. For international entities, it collects summary information on military charter operations only.

(3) Schedule T–2, Quarterly. Schedule T–2 collects summary information for all reporting entities. It contains data elements for which there are no corresponding details in T–100 reports. It is submitted for each operating entity prescribed by the Department for each air carrier.

(4) Schedule T–3, Quarterly. For the domestic entity, Schedule T–3 collects summary statistics on all-cargo operations and on both civilian and military charters; and for international entities, it collects summary information on military charter operations only. Further, only the U.S. airport must be identified for international military charter operations, and airports outside the U.S. are summarized as a one-line total, coded "NON" in lieu of the airport code, since international military charters are not reported in the detail international Schedule T–100 data.

(c) Format of reports:

(1) Automatic Data Processing (ADP) magnetic tape. Refer to paragraph (f) below for instructions pertaining to mainframe and minicomputer reporting. The Department will issue "Reporting Directives" to make necessary technical changes to these T–100 instructions, where no policy issues are involved that would require a new rulemaking, or where only a few air carriers are affected.

(2) Microcomputer diskette.

(i) Optional specification. If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply:

(ii) Reporting medium. Microcomputer ADP data submission of T–100 information must be on IBM compatible floppy disk, including diskettes, floppy disks, or flexible disks. The particular type of acceptable minidisk is on 5¼ inch, double-sided/double-density, with a capacity of approximately 360,000 characters of data (360K). Carriers wishing to use a different ADP procedure must obtain written approval to do so from the Director, OAIM, under the waiver provisions in section 1–2 of this part. Requests for approval to use alternate methods must disclose the proposed data transmission methodology. Refer to paragraph (k) for microcomputer record layouts.

(iii) Microcomputer file characteristics. The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (" ") and separated by a comma (,) and numeric data elements that are recorded without editing symbols are also separated by a comma. The data is identified by its juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(d) Filing data for reports. The reports must be received at DOT within 30 days following the end of each reporting period. Refer to § 241.22 of this part for more information on date requirements.

(e) Address for filing: Data Administration Division, DAI–20, Room 4125, Office of Aviation Information Management, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

(f) ADP format for magnetic tape:

(1) Magnetic tape specifications. IBM compatible 9-track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

Volume label.
Header label.
Data records.
Trailer label.
(g) External tape label information.
Carrier name.
Report date.
File identification.
Carrier address for return of tape reel.

(h) Standards. It is the policy of the Department to be consistent with the American National Standards Institute and the Federal Standards activity in all data processing and telecommunications matters. It is our intention that all specifications in this application are in compliance with standards promulgated by these organizations.

(i) Volume, header, and trailer label formats:

(1) Use standard IBM label formats. The file identifier field of the header labels should be "T–100.SYSTEM".

(j) Magnetic tape record layouts for T–100, T–1, T–2, and T–3.

(1) Nonstop segment record layout:

Field No.	Positions	Mode	Description
1	1	1A	Record type code (S=nonstop segment).
2	2–6	5A/N	Carrier entity code.
3	7–10	4N	Report date (YYMM).
4	11–13	3A	Origin airport code.
5	14–16	3A	Destination airport code.
6	17	1A	Service class code (F,G,L, or P).
7	18–21	4N	Aircraft type code.
8	22–26	5N	Revenue aircraft departures performed (F,G,L,P510).
9	27–36	10N	Available capacity payload (pounds) (F,G,L,P270).
10 [1]	37–43	7N	Available seats—first cabin (F310, F311, L310).
11 [1]	44–50	7N	Available seats—middle cabin (F313).
12 [1]	51–57	7N	Available seats—coach cabin (F312).
13 [1]	58–64	7N	Passengers transported—first cabin (F130, F131, L130).
14 [1]	65–71	7N	Passengers transported-middle cabin (F133).
15 [1]	72–78	7N	Passengers transported—coach cabin (F132).
16	79–88	10N	Revenue freight transported (F,G,L,P237) (in pounds).
17	89–98	10N	Revenue mail transported (F,G,L,P239) (in pounds).
18	99–103	5N	Revenue aircraft departures scheduled (F,G,L,P520).
19	104–113	10N	Revenue aircraft ramp hours, ramp-to-ramp (F,G,L,P630) (in minutes).

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Field No.	Positions	Mode	Description
20	114–123	10N	Revenue aircraft hours, airborne (F,G,L,P610) (in minutes).

[1] Cabin data (First, Coach and Middle) are not reported by any carrier group in the domestic entity, where total available seats are reported in 310 and total passengers transported are included in 130; these totals are also used for the international operations of Group I and II carriers; cabin data are reported only for Group III international operations. All carrier groups will report total nonscheduled passengers in the summary data item L130, and nonscheduled available seats in L310.

(2) On-flight market record layout:

Field No.	Positions	Mode	Description
1	1	1A	Record type indicator: M = on-flight market record.
2	2–6	5A	Carrier entity code.
3	7–10	4N	Report data (YYMM).
4	11–13	3A	Origin airport code.
5	14–16	3A	Destination airport code.
6	17	1A	Service class code (F,G,L or P).
7 [1]	18–24	7N	Total passengers in market—first cabin (F110 F111 L110).
8 [1]	25–31	7N	Total passengers in market—middle cabin (F113).
9 [1]	32–38	7N	Total passagers in market—coach cabin (F112).
10	39–48	10N	Revenue freight in market (F,G,L, P217) (in pounds).
11	49–58	10N	Revenue mail in market (F,G,L, P219) (in pounds).

[1] Cabin data (First, Coach and Middle) are not reported by any carrier Group in the domestic entity, where total passengers enplaned in a market are included in F110; cabin data are reported only for international operations of Group III air carriers; in international entity operations of Group I and Group II air carriers, total passengers enplaned are included in 110. All carrier groups will include nonscheduled passengers enplaned in L110.

(3) T–1, T–2, and T–3 Summary record layout:

Field No.	Positions	Mode	Description
1	1	1A	Record Type Code: 1 = T–1 data 2 = T–2 data 3 = T–3 data.
2	2–6	5A	Air Carrier Entity Code.
3	7–10	4N	Report Date (YYMM).
4	11–14	4A	Data Element Code (T–1, T–2, and T–3).
5	15–18	4A	Aircraft Type Code (T–1, T–2, and T–3).
6	19–21	3A	Airport Code (T–3).
7	22–31	10N	Data Value—Right justified with leading zeros.

(4) T–1 data elements:

1. Revenue passengers enplaned	L110	N110				
2. Revenue passenger-miles (000)	L140	N140				
3. Revenue ton-miles total	G240	L240	P240	N240	R240	
4. Revenue ton-miles passenger	L241	N241				
5. Revenue ton-miles mail	G249	L249	P249			
6. Revenue ton-miles freight	G249	L247	P247	N247	R247	
7. Available ton-miles	G280	L280	P280	N280	R280	
8. Available seat-miles (000)	L320	N320				
9. Revenue aircraft miles flown	G410	L410	P410	N410	R410	
10. Revenue departures performed	G510	L510	P510	N510	R510	
11. Revenue aircraft miles scheduled	G430					
12. Revenue aircraft hours airborne	G610	L610	P610	N610	R610	
13. Revenue aircraft hours ramp-to-ramp	G630	L30	P630	N630	R630	
14. Revenue aircraft miles scheduled	G430					
15. Carrier code			.....			
16. Report date			.....			
17. Operating entity			.....			
18. Aircraft type code (Military charters)			.....			

(5) T–2 Data elements (by aircraft type):

1. Revenue ton-miles	G240	
2. Available ton-miles	G280	
3. Revenue aircraft miles flown	G410	
4. Revenue aircraft departures performed	G510	
5. Revenue aircraft departures performed	V510	
6. Revenue passenger-miles (000)		Z140
7. Available seat-miles (000)		Z320
8. Revenue ton-miles total		Z240
9. Revenue ton-miles mail		Z249
10. Revenue ton-miles freight		Z247
11. Available ton-miles		Z280
12. Revenue aircraft miles flown		Z410
13. Revenue aircraft departures performed		Z510
14. Revenue aircraft hours airborne		Z610
15. Revenue aircraft hours ramp-to-ramp		Z630
16. Total aircraft hours (airborne)		Z650
17. Aircraft days assigned to service equipment		Z810
18. Aircraft days assigned to service routes		Z820
19. Aircraft fuels issued		Z921
20. Aircraft type code	.....	
21. Carrier code	.....	
22. Report date	.....	
23. Operating entity	.....	

(6) T–3 Data elements (by origin airport):

1. Airport code	.....	.....
2. Revenue passengers enplaned		V110
3. Revenue tons enplaned mail	G219	V219
4. Revenue tons enplaned freight	G217	V217
5. Revenue aircraft departures performed	G510	V510
6. Revenue aircraft departures scheduled	G520	
7. Aircraft type code		.....
8. Carrier code		.....
9. Report date		.....
10. Operating entity		.....

(k) Record layouts for microcomputer diskettes. The record layouts for diskette are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) File characteristics. The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (") and separated by a comma (,) and numeric data elements that are recorded without editing symbols are also separated by a comma. The data is identified by its juxtaposition within a given record. Therefore it is critical that each record contain the exact number of data elements, all of which data must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisks files in this format.

(2) File naming conventions for diskettes. For microcomputer reports, each record type should be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions should be followed:

Record type S = SEGMENT.DAT
Record type M =MARKET.DAT
Record type 1 = T–1.DAT
Record type 2 = T–2.DAT
Record type 3 = T–3.DAT

(l) Discussion of reporting concept.

(1) The detail T–100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. First, the nonstop segment information which is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type of flight number.

(2) The Schedules T–1 and T–3 information is applicable only to operations that are not required in the detail T–100 report. The Department will derive other necessary summary data directly from the detail T–100. The T–1 and T–3 data pertaining to domestic entities is for scheduled all-cargo service and charter operations. The T–1 for international entities contains data on military charter operations only.

(3) The Schedule T–2 information is required from each carrier and for each reporting entity. It contains some data elements for which there is no corresponding detail in T–100.

(4) A single tape file shall be submitted containing nonstop segment and on-flight market records for all applicable entities. The summary data pertaining to schedules T–1, T–2, and T–3 should be submitted on a second tape reel. A carrier reporting on diskette should create separate files for each record type, using DOS file naming conventions to identify them.

(5) An air carrier who submits middle cabin data may be confronted by a situation resulting from a change of gauge or other considerations wherein a given leg of a flight may not offer the same classes of service that is available on the remainder of the legs. When preparing on-flight market records applicable to this situation, the carrier should consider passengers transported as though the entire trip was configured as the first segment. The passenger cabin where the passenger is seated at the beginning of the flight determines the classification for the whole trip.

(m) Joint Service.

(1) The Department may authorize joint service operations between two direct air carriers. Examples of these joint service operations are: blocked-space agreements; part-character agreements; code-sharing agreements; Wet-lease agreements, and similar arrangements.

(2) Joint service operations shall be reported in Form 41 Schedule T–100 and T–100(f) within the following guidelines:

(i) Blocked space, part-charters and code-sharing arrangements shall be reported by the carrier in operational control of the flight. The traffic moving under those agreements is reported the same as any other traffic on board the aircraft.

(ii) Wet lease agreements shall be reported by the lessee as though the leased aircraft and crew were a part of the lessee's own fleet.

(iii) If there are questions about reporting a joint service operation, contact the Director, Office of Aviation Information Management at the address in paragraph (d) of this Appendix.

(iv) The Department may require information pertaining to joint service operations in addition to that reported by in Schedules T–100 and T–100(f) by U.S. and foreign air carriers. If additional information is needed, *ad hoc* reporting will be used by the Director, Office of Aviation Information Management (OAIM), under authority delegated in §§ 385.27 (b) and (d) of this chapter. *Ad hoc* reporting requirements will be communicated to the applicable carriers by letter.

(m) Glossary of data elements. Sections 19–5 and 03 of 14 CFR Part 241.

(n) Schedules.

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FORM 41 SCHEDULE T-100
U. S. AIR CARRIER
TRAFFIC AND CAPACITY DATA BY NONSTOP SEGMENT AND ON-FLIGHT MARKET

	A. SERVICE PATTERN						B. NONSTOP SEGMENT INFORMATION									
Line No.	A-3 Airport Code	A-4 Airport Code	A-5 Service Class Code				B-1 Aircraft Type Code	B-2 Revenue Aircraft Depart. Performed F,L510 G,P510	B-3 Avail. Capacity Payload F,L270 G,P270	B-4 * Avail. Seats TOTAL/ First F,L310 F311	B-5 Avail. Seats Middle F313	B-6 Avail. Seats Coach F312	B-7 * Revenue Psgrs. Transp. TOTAL/ First F,L130 F131	B-8 Revenue Psgrs. Transp. Middle F133	B-9 Revenue Psgrs. Transp. Coach F132
	Origin	Destin.	F	G	L	P	---------- By aircraft type ----------									
1.																
2.																
3.																
4.																
5.																
6.																
7.																
8.																
9.																
10.																
11.																
12.																
13.																
14.																
15.																
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17.																
18.																
19.																
20.																

* Note: The multiple cabin (First, Middle and Coach Class) data for Available Seats, Revenue Passengers Transported and Revenue Passengers Enplaned are reported only for the International entity operations of Group III U.S. air carriers. In all other instances, air carriers will report total Available Seats, Revenue Passengers Transported and Revenue Passengers Enplaned.

RSPA Form 41 Schedule T-100

A-1. Air Carrier Name: _____ Code_____

A-2. Report Date:(Year) _____ (Month)_____

					C. ON-FLIGHT MARKET				
B-10 Revenue Freight Transp. (Pounds) F,L270 G,P270	B-11 Revenue Mail Transp. (Pounds) F,L239 G,P239	B-12 Revenue Acft. Dept. Sched. F,L520 G,P520	B-13 Revenue Aircraft Hours Ramp F,L630 G,P630	B-14 Revenue Aircraft Hours Airborne F,L610 G,P610	C-1 * Revenue Psgrs. Enplaned TOTAL/ First F,L110 F111	C-2 Revenue Psgrs. Enplaned Middle F113	C-3 Revenue Psgrs. Enplaned Coach F112	C-4 Revenue Freight Enplaned (Pounds) F,L217 G,P217	C-5 Revenue Mail Enplaned (Pounds) F,L219 G,P219
----------					-- Total for all aircraft types in market---				

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FORM 41 SCHEDULE T-1
TRAFFIC AND CAPACITY SUMMARY
BY SERVICE CLASS

Air Carrier Name: _____ Code: ____

Entity Code: _____

Report Date: (Year) _____ (Month)_____

This schedule is used to report only: 1. Domestic all cargo scheduled service. 2. Domestic civilian charters. 3. International and domestic military charters.		Scheduled	Nonscheduled Civilian		Nonscheduled Military	
		All Cargo Service (G)	Passenger/ Cargo (L)	All Cargo (P)	Passenger/ Cargo By Aircraft Type (N)	All Cargo By Aircraft Type (R)
TRAFFIC ON REVENUE FLIGHTS					Aircraft Type Code _____	Aircraft Type Code _____
Revenue passengers enplaned	110	xxxxxx		xxxxxx		xxxxxx
Revenue passenger-miles (000)	140	xxxxxx		xxxxxx		xxxxxx
Revenue ton-miles	240					
Passenger	241	xxxxxx		xxxxxx		xxxxxx
Freight	247					
Mail	249				xxxxxx	xxxxxx
AIRCRAFT CAPACITY OPERATED						
Available ton-miles	280					
Available seat-miles	320	xxxxxx		xxxxxx		xxxxxx
Revenue aircraft-miles flown	410					
Revenue aircraft miles scheduled	430		xxxxxx	xxxxxx	xxxxxxx	xxxxxx
Revenue aircraft departures performed	510					
Revenue aircraft hours (airborne)	610					
Revenue aircraft hours (ramp-to-ramp)	630					

RSPA Form 41 Schedule T-1

FORM 41 SCHEDULE T-2
U.S. AIR CARRIER
TRAFFIC AND CAPACITY BY AIRCRAFT TYPE

Air Carrier Name:_____ Code:_____

Entity Code: _____

Report date: (Year)_____ (Month)_____

		Aircraft Type Code: _____	Aircraft Type Code: _____	Aircraft Type Code: _____	Aircraft Type Code: _____
SCHEDULED ALL-CARGO SERVICES:					
Revenue ton-miles	G240				
Available ton-miles	G280				
Revenue aircraft miles flown	G410				
Aircraft departures performed	G510				
NONSCHEDULED SERVICES:					
Aircraft departures performed	V510				
ALL SERVICES:					
Revenue passenger-miles (000)	Z140				
Available seat-miles (000)	Z320				
Revenue ton-miles	Z240				
Mail revenue ton-miles	Z249				
Freight revenue ton-miles	Z247				
Available ton-miles	Z288				
Revenue aircraft miles flown	Z410				
Aircraft departures performed	Z510				
Revenue aircraft hours (airborne)	Z610				
Revenue aircraft hours (ramp)	Z630				
Total aircraft hours (airborne)	Z650				
Aircraft days - equipment	Z810				
Aircraft days - routes	Z820				
Aircraft fuels issued	Z921				

RSPA Form 41 Schedule T-2

FORM 41 SCHEDULE T-3 U.S. AIR CARRIER AIRPORT ACTIVITY STATISTICS							Air Carrier Name:_____ Code_____ Report Date: (Year)____ (Month)_____ _____ (Entity Code)						
Line No.	Airport Code	Revenue Passengers Enplaned V110	Mail Tons Enplaned V219	Freight Tons Enpl. V217	Mail Tons Enpl. G219	Freight Tons Enpl. G217	Aircraft Departures Scheduled G520	Acft. Departures Performed — G510 — Aircraft Type Code —			Acft. Departures Performed — V510 — Aircraft Type Code —		
								____	____	____	____	____	____
1.													
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
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19.													
20.													

RSPA Form 41 Schedule T-3

Included as Exhibit A to this final rule is a revised Form 41 Schedule P-1.2 Statement of Operations which includes a category combining first class and coach passenger revenues into Account 3901 Transport Revenues-Passenger in all instances except for international operations of Group III air carriers.

Issued in Washington, DC, on November 7, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration, DOT.

Editorial note: This exhibit will not appear in the Code of Federal Regulations.

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Exhibit A

US Department of Transportation
Research and Special Programs
Administration

Air Carrier _____

Operation _____

STATEMENT OF OPERATIONS

	Account No.	Quarter Ended _____, 19__	12 Months Ended _____, 19__
OPERATING REVENUES			
Passenger-First Class	3901.1		
Passenger-Coach	3901.2		
Transport Revenues-Passenger	3901		
Mail	3905		
Property-freight	3906.1		
Property-excess passenger baggage	3906.2		
Charter-passenger	3907.1		
Charter-property	3907.2		
Reservation cancellation fees	3919.1		
Miscellaneous operating revenues	3919.2		
Public service revenues (subsidy)	4808		
Transport related revenues	4898		
Total Operating Revenues	4999		
OPERATING EXPENSES			
Flying operations	5100		
Maintenance	5400		
Passenger Service o	5500		
Aircraft and traffic servicing o	6400		
Promotion and sales o	6700		
General and administrative o	6800		
Depreciation and amortization *	6900		
Transport related expenses	7100		
Total Operating Expenses	7199		
Operating Profit or Loss	7999		
NONOPERATING INCOME AND EXPENSE			
Interest on long-term debt and capital leases	8101		
Other interest expense	8102		
Foreign exchange gains and losses	8105		
	8108.5		
Capital gains and losses	8108.6		
Other income and expenses-net	8109		
Nonoperating income and expense	8199		
Income before Income Taxes	8999		
INCOME TAXES FOR CURRENT PERIOD	9100		
Income before discontinued operations, extraordinary items and accounting changes	9199		
DISCONTINUED OPERATIONS	9600		
EXTRAORDINARY ITEMS	9796		
Income taxes applicable to extraordinary items	9797		
ACCOUNTING CHANGES	9800		
Net Income	9899		

* Denotes inverse amount; in accounts 8100, 9600, 9700, and 9800 denoted debit amount.

RSPA Form 41 Schedule P-1.2

* Group I Air Carriers Only
o Group II and Group III Air Carriers Only

[FR Doc. 88-26322 Filed 11-15-88; 8:45 am]
BILLING CODE 4910-62-C

federal register

Wednesday
November 16, 1988

Part VII

Department of Defense

Department of the Army

32 CFR Part 651

Environmental Effects of Army Actions; Notice of Adoption of Final Rule

VOL 53 ISS 221 NO 16 1988 UMI

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 651

[Army Reg. 200-2]

Environmental Effects of Army Actions

AGENCY: Department of the Army, DOD.

ACTION: Notice of adoption of final rule.

SUMMARY: The Department of Army hereby gives notice that it is adopting revised policy and procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. These guidelines replace policy and procedures found in current Army Regulation 200-2 (32 CFR Part 651), Environmental Effects of Army Actions. The revision is necessary to clarify and update the current regulation. The revision clarifies organizational responsibilities, revises the list of actions which are categorically excluded from environmental impact analyses, clarifies public involvement procedures, and provides new guidance on mitigation and monitoring of environmental impacts. The final rule provides new guidance on the Army policy of integrating NEPA procedures into the Remedial investigation/Feasibility Study (RI/FS) stages of hazardous substance cleanup actions required under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (SARA). The final rule provides Army policy relative to compliance with NEPA in airspace proposals. The revised regulation incorporates field and other experiences since the publication of the last publication of the regulation.

EFFECTIVE DATE: These procedures are effective December 16, 1988.

ADDRESS: Office of the Assistant Chief of Engineers, Army Environmental Office, Room 1E671, Pentagon, Washington, DC 20310-1000. Comments or request for changes may be submitted on a Department of Defense Form 2028, Recommended Changes to Publications and Blank Forms.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Julius, Army Environmental Office, (202) 272-0596 or Mr. Ray Clark, Office of the Assistant Secretary of the Army (I&L), (202) 695-7824.

SUPPLEMENTARY INFORMATION:

Classification

The Secretary of the Army has determined that this revision is not a "major" rule within the meaning of Executive Order 12291. The effect on the economy will be less than $100 million. The rule will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governmental agencies. The rule will not have a significant adverse effect on competition, employment, investment productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Costs and Benefits

This rule has been reviewed under E.O. 12291 and the Secretary of the Army has classified the action as non-major. The effect of the rule on the economy will be less than $100 million. Therefore, neither a regulatory impact analysis nor a full regulatory evaluation was required.

Small Business Impact

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this section does not have a significant impact on a substantial number of small entities.

Background

On 17 February, 1988, a notice of proposed rule 32 CFR Part 651, Environmental Effects of Army Actions, was published in the **Federal Register** (53 FR 4647-4671). A 30 day comment period for public review was provided. During that period seven (7) letters were received. Two letters were from state agencies, three were from federal agencies, and two letters were from Army field agencies. The seven letters provided 53 comments. The largest category of comments were related to administrative processing of environmental documentation through Army channels (16). The comments generally were from the Army field agencies who chose to respond to the proposed rule. A second category dealt with the inclusiveness of regulation, i.e.; the regulation should cover broader categories of actions which require environmental impact analysis (13). A third category also received 13 comments, that the regulation required clarification. Five comments were in the category of typographical/grammatical errors. Three comments suggested changes in terminology to ensure Army is using proper criteria for determining the level of environmental documentation required for Army actions.

The following discusses the comments and Army's responses to the general and specific concerns expressed on the proposed rules. Copies of all written comments have been provided to CEQ and are available for public review at the Army Environmental Office, Room 1E671, Pentagon, Washington, DC.

Specific Comments on the Rule

1. *Section 651.4 Policy.* One commenter suggested the rule cite other environmental laws and where they can be found. This comment was not adopted because this rule is not the appropriate place to cite all environmental regulations. The scope of this rule is confined to implementing NEPA. The Army has a regulation (AR 200-1) concerning compliance with other environmental laws and regulations.

2. *Section 651.5 Responsibilities.* One commenter suggested sentence structure change to enhance clarity and that suggestion was adopted (§ 651.5(b)). The same commenter suggested the responsibilities of the Program Executive Officer's responsibilities be defined in this section. This is an inappropriate place to define the PEO responsibilities. All the Army organizations which appear in this section have a special responsibility in the environmental program. The PEO has responsibilities which mirror those of HQDA staff agencies and those responsibilities are defined in § 651.5(c).

3. *Section 651.6 Records and Documents.* One commenter suggested that the regulation should specifically note that using a Categorical Exclusion does not exclude compliance with other environmental laws. This suggestion was not adopted because there is no instance in this rule that intimates that the rule repeals or usurps any other environmental law or regulation. In fact, many of the Categorical Exclusions (CX) are predicated upon compliance with other environmental laws and regulations. It is inherent that a CX does not exclude compliance with other environmental laws. Likewise, even though one prepares an environmental assessment or environmental impact statement, the proponent is not exempt from other environmental laws and regulations. A second comment on this part refuted the need for Army to require a Record of Environmental Consideration (REC) for actions that are CXs. this suggestion is not adopted because CXs are broad, by design, to cover many Army actions that have no potential for environmental impact. The RECs are for those CXs that must be rigidly defined to be properly excluded. There is very little paperwork associated with a CX, yet the REC provides the proponent a vehicle to document his/her consideration of the potential environmental impacts. The Army finds these RECs useful.

4. *Section 651.7 Definitions.* One commenter requested clarification of the sentence "major federal action is not a determinate in a decision to prepare or not prepare environmental documentation". While it is true that a "major federal action significantly affecting the quality of the human environment" clearly requires an EIS, a major federal action with merely "potential" may not have significant effects on the environment, and therefore may require only an EA. It is conceivable that even a "major federal action" could be excluded because of its category. Another commenter suggested that the definition of "significantly affecting the environment" should also include that positive impacts, as well as negative environmental impacts, require environmental impact analysis. This is true and has been incorporated in the final rule.

5. *Section 651.8 Responsibilities.* Several commenters recommended additional Army agencies be added to this section. One state military agency pointed out that the National Guard Bureau (NGB) responsibilities are not incorporated, nor is the relationship between the NGB and the state Adjutant Generals (AG) clearly defined. The NGB responsibilities are the same as any other Headquarters, Department of Army (HQDA) staff agency and are therefore defined in § 651.5(c) 1-9. No change to the rule is required. The relationship of the NGB and the State AGs has been clarified in several sections of the rule.

6. *Section 651.9 (a). Applicability.* One respondent expressed concern that installation restoration projects pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (SARA) would not be adequately assessed under the Army's proposed rule. As a matter of policy, the Army will comply with the 40 CFR Parts 1500-1508 and the final rule has incorporated this revision. Another commenter suggested that applicability of the regulation should extend to Section 802 housing projects, as well as Section 801 housing. This suggestion has been adopted and incorporated in the final rule.

7. *Section 651.10 Categories of Actions.* One commenter suggested that paragraph (b) of this section, which deals with emergencies, did not provide relief for those emergency actions where the impacts may not be significant, but require preparation of an EA and publication of a FNSI. The intent of the proposed rule was to note that *even* projects with significant impacts may be undertaken without the benefit of an EIS. It was intended to be inclusive. However, the final rule clarifies this point.

8. *Section 651.11 Classified Actions.* One federal agency offered to participate in review of classified actions at the Army's request and noted the agency had reviewers with appropriate security clearances for such review. The Army appreciates the offer and will consider it for use in the future.

9. *Section 651.12 Integration with Army Planning.* One commenter noted that while the Army requires publication of a Finding of No Significant Impact (FNSI), it fails to mention the circulation of the EA which is the basis of the FNSI. It has always been Army policy and practice that the EA is available for public review. However, the sentence in § 651.12(b)(2) has been changed to amplify this policy. A federal agency noted that the proposed rule stated that EPA accepts Notices of Availability until noon on Friday, when the EPA actually accepts NOAs until the close of business each Friday. This information will be incorporated into the final rule. One respondent asked for criteria to understand what triggers a 30 day waiting period described in § 651.12(b)(2)(ii). It is Army policy that there is a 30 day waiting period after a FNSI is published before a decision is made. It should be noted that although CEQ does not require a 30 day waiting period, it is Army policy. There may be peculiar circumstances where the 30 day comment period is not followed, but those are rare. To clarify, this final rule states the Army policy to wait 30 days for comments. Another comment suggested that Historic Preservation Plans were mentioned twice in the same section for the same purposes and that one reference should be deleted. This suggestion was adopted.

10. *Section 651.13 Mitigation and Monitoring.* One respondent requested the rule incorporate guidance on the types of mitigation measures that should be included as line items in the budget. This suggestion was adopted and the wording has been revised. The final rule clarifies the responsibility of the proponent with respect to funding mitigations.

11. *Section 651.16 Categorical Exclusions (Procedures).* Respondent suggests the final rule explain why some CXs require RECs and others do not. The final rule states the rationale for this requirement in § 651.16(a). Another commenter suggested that § 651.16(b)(5) does not include other safety regulations with which Army agencies will comply besides AR 385-10. This suggestion is adopted and the final rule adds the phrase "* * * and all other applicable Army safety and preventive medicine regulations", in order to be more inclusive.

12. *Section 651.22 Components of the EA.* One commenter stated that the Army should not require both the EA and the FNSI to be signed. If the EA and the FNSI are integrated and never separated, only the FNSI would need to be signed. However, there are cases where the two are separated and requires that reviewers are aware that both have been reviewed and approved by the decisionmaker. It is Army policy that both will be signed.

13. *Section 651.23 Decision Process.* One commenter suggested that the preface to this section should include provisions for the proponent to go directly to a decision to prepare an EIS without first preparing an EA. Although Army believes this has not been a point of confusion within the agency, explicit wording has been incorporated in the final rule to reflect that a proponent may determine to prepare an EIS at any point in the decision process.

14. *Section 651.27 Criteria.* Two commenters pointed out that the criteria to prepare an EIS should not be based solely on "degradation" of the environment, but may also include "beneficial" impacts. It is true that a more appropriate term is "significantly affect" and the final rule has adopted this comment. Another commenter pointed out that paragraph (b) in this subsection needed a rewrite to create a complete second sentence. This was adopted. One respondent suggested the Army will prepare an EIS when an action "affects the environment, or parts of it, in ways or by means found by other federal agencies to be significant and to require an EIS." This suggestion was not adopted. The Army is responsible for its actions and must decide when an EIS is appropriate.

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15. *Section 651.28 Actions Normally Requiring an EIS.* One respondent urged a rewrite of the provision dealing with Life Cycle Environmental Documentation (LCED) of weapon systems to incorporate the broader concept of "research and development systems". It is not clear that all research and development systems require an EIS. However, the point the respondent makes is well taken, i.e.; that not just weapon systems will be subject to EISs. Therefore, the final rule incorporates the phrase "materiel, such as weapon systems", to broaden the concept. It remains the responsibility of the proponent to determine the level of environmental documentation required to comply with NEPA and CEQ regulations.

16. *Section 651.30 Steps on Preparing and Processing an EIS.* Six comments were received regarding this section. One commenter suggested Army provide more information on internal processing of EISs through Army channels. This comment was adopted and guidelines were expanded in § 651.30(a). However, it is anticipated that a Department of Army pamphlet will be initiated in 1989 which will contain more how-to instructions than a policy rule can accommodate. A state military agency requested that the final rule indicate how lead agency is determined for an action initiated by the State Adjutant General. This regulation is meant for Department of Army Actions. The National Guard Bureau is always the proponent, and lead agency, when the action is accomplished with federal dollars. The state may be either a joint lead or cooperating agency. Language has been incorporated to clarify this point. Another commenter suggested the rule should not discuss the Final Environmental Impact Statement (FEIS) in the section on public review of the Draft EIS (DEIS). Army agrees with this comment and will move this paragraph to § 651.30(g). Another commenter suggested Army point out that Final EISs should be mailed to the commenters on the Draft EIS before filing the NOA with EPA. This was a shortcoming in the proposed rule and new language is incorporated in the final rule. The last comment is this section suggested that a paragraph should be added to provide guidance on preparation and coordination procedures for Supplemental EISs. This has been added in this section.

17. *Section 651.31 Existing EISs.* Commenter recommends that the final rule add a paragraph that will facilitate adoption of other agencies NEPA documents when appropriate. This language is included in the final rule.

18. *Appendix A—Categorical Exclusions.* Two comments were received on the Appendix. One respondent suggested the Army change the "Screening Questions" to "Screening Criteria". Since the 10 statements in the screen do represent criteria for using a CX, this suggestion was adopted. CEQ requested the Army delete CX A–28 because of its broadness and the potential for abuse. The proposed rule had incorporated stricter measures and provided a greater internal control on the use of A–28. The Army believes the elimination of A–28 will require additional specific CXs and therefore the list will be expanding periodically in the first one-two years after the final rule. However, the Army has removed CX A–28.

19. As a result of comments regarding the presentation of the material, Subpart A—Introduction was reorganized and Subpart B—Records and Documents was transposed with Subpart C—NEPA and the Decision Process to ensure logical presentation of the material. In addition, the CFR section numbers have been revised for format consistency.

List of Subjects in 32 CFR Part 651

Environmental protection, Environmental impact statements, Natural resources, Ecology.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

For the reasons set forth in the preamble, 32 CFR Part 651 is revised as follows:

PART 651—ENVIRONMENTAL EFFECTS OF ARMY ACTIONS (AR200–2)

Subpart A—Introduction

651.1 Purpose.
651.2 References.
651.3 Explanation of abbreviations and terms.
651.4 Responsibilities.
651.5 Policies.
651.6 Procedures.

Subpart B—National Environmental Policy Act (NEPA) and the Decision Process

651.7 Introduction.
651.8 Actions requiring evaluation.
651.9 Environmental review categories.
651.10 Determining appropriate environmental documentation.
651.11 Classified actions.
651.12 Integration with Army planning.
651.13 Mitigation and monitoring.

Subpart C—Required Records and Documents

651.14 Introduction.
651.15 Optional documents.

Subpart D—Categorical Exclusions (CX)

651.16 Introduction.
651.17 Determining when to use a CX.
651.18 CX actions.
651.19 Modification of the CX list.

Subpart E—Environmental Assessment (EA)

651.20 Introduction.
651.21 Conditions requiring an EA.
651.22 Actions normally requiring an EA.
651.23 EA Components.
651.24 Decision process.
651.25 Public involvement.
651.26 Public availability.
651.27 Existing environmental assessments (EAs).

Subpart F—Environmental Impact Statement (EIS)

651.28 Introduction.
651.29 Conditions requiring an EIS.
651.30 Actions normally requiring an EIS.
651.31 Format of the EIS.
651.32 Steps in preparing and processing an EIS.
651.33 Existing EISs.
651.34 Major Army command (MACOM) processing of an EIS.

Subpart G—Public Involvement and the Scoping Process

651.35 Public involvement.
651.36 Scoping process.
651.37 Preliminary phase.
651.38 Public interaction phase.
651.39 The final phase.
651.40 Aids to information gathering.
651.41 Modifications of the scoping process.

Subpart H—Environmental Effects of Major Army Actions Abroad

651.42 Introduction.
651.43 Global commons.
651.44 Army policy on global commons and foreign nations.
651.45 Responsibilities.
651.46 Implementation guidance.

Appendix A—List of Categorical Exclusions (CX)

Appendix B—References

Appendix C—National Environmental Policy Act

Appendix D—Contents of the Environmental Impact Statement (EIS)

Appendix E—Council for Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)

Appendix F—Implementing a Monitoring and Methodology Program

Appendix G—Requirements for Environmental Considerations—Global Commons

Appendix H—Requirements for Environmental Considerations—Foreign Nations and Protected Global Resources

Appendix I—Glossary

Authority: National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*

Council on Environmental Quality Regulations, 40 CFR Parts 1500–1508, 43 FR 55978–56007, November 29, 1978, as amended at 51 FR 15625, April 25, 1986, and E.O. 12114.

Subpart A—Introduction

§ 651.1 Purpose.

This regulation sets forth policy, responsibilities, and procedures for integrating environmental considerations into Army planning and decisionmaking. It establishes a criteria for determining what Army actions are categorically excluded from requirements to prepare an Environmental Impact Statement (EIS) and lists applicable categorical exclusions (CX) in Appendix A.

§ 651.2 References.

Required and related publications and referenced forms are listed in Appendix B.

§ 651.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in the Glossary.

§ 651.4 Responsibilities.

(a) The Secretary of the Army (SA) has designated the Assistant Secretary of the Army (Installations and Logistics (ASA (I&L)) to serve as the Army's responsible official for National Environmental Policy Act (NEPA) matters.

(b) The Chief of Engineers (COE) has the responsibility for coordinating and monitoring NEPA activities within the Army. Through the Assistant Chief of Engineers (DAEN–ZC), the Army Environmental Office is the Army Staff (ARSTAF) point of contact (POC) for environmental matters.

(c) The Assistant Chief of Engineers (ACE) will—

(1) Provide assistance to Army agencies in completing environmental analysis and documentation through identifying and quantifying environmental impacts and selecting impact mitigation techniques.

(2) In cases of multiple Army agency involvement, designate a single agency or lead office with responsibility for preparing and processing environmental documentation; assign Army lead agency responsibility in cases of non-Army agency involvement.

(3) Review and comment on Environmental Impact Statements (EISs) submitted by Army, other Department of Defense (DOD) components, and other Federal agencies.

(4) Monitor proposed Army policy and program documents that have environmental implications to determine compliance with NEPA requirements and to ensure integration of environmental considerations into the decisionmaking process.

(5) Maintain liaison with the Office of Management and Budget, Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), and other Federal, State, and local agencies on environmental policies that may affect the Army. This liaison assists in identifying and evaluating applicable regulatory policies for proposed actions.

(6) Maintain a current record from which access to EISs may be obtained from the proponent. Also, maintain a record of actions of national concern that resulted in a Finding of No Significant Impact (FNSI).

(7) Establish procedures for retention of EISs prepared by the Department of the Army (DA).

(8) Require the revision or preparation of environmental documents, as appropriate, to ensure adequate consideration of environmental impacts when a proponent has failed to do so.

(9) Comment on EISs within those areas of assigned staff responsibility and technical capability.

(10) Resolve issues in determining if a public hearing or public scoping meeting is appropriate for the proposed action and assign the responsibility to an appropriate office.

(d) Heads of Headquarters, Department of Army (HQDA) agencies will—

(1) Apply policies and procedures herein to programs and actions within their staff responsibility except for State funded operations of the Army National Guard (ARNG).

(2) Task the appropriate component with preparation of environmental assessments (EAs) and/or EISs. Proponents (defined in the Glossary) may conduct their preparation in-house, through contract, or pursue indirect preparation with the assistance of supporting U.S. Army Corps of Engineers (USACE) Districts.

(3) Initiate the preparation of necessary environmental documentation, assess proposed programs and projects to determine their environmental consequences, and initiate environmental documents for circulation and review along with other planning or decisionmaking documents. These documents include a completed DD Form 1391 (Military Construction Project Data), Case Study and Justification Folder, Integrated Program Summary, and other documents proposing or supporting proposed programs or projects.

(4) Coordinate appropriate environmental documents with ARSTAF agencies.

(5) Designate, record, and report the identity of the agency's single POC for NEPA considerations to the Army Environmental Office.

(6) Assist in the review of environmental documents prepared by DOD and other Army or Federal agencies, as requested.

(7) Coordinate proposed directives, instructions, regulations, and major policy publications that have environmental implications with the Army Environmental Office.

(8) Maintain the capability (personnel and other resources) to comply with the requirements of this regulation.

(9) Prepare and maintain a record of decision (ROD) on each EIS for which they are the staff proponent.

(e) The Assistant Secretary of the Army (Financial Management) will establish procedures to ensure compliance with requirements for environmental exhibits and displays of data in support of annual authorization requests.

(f) The Judge Advocate General will provide legal advice and assistance in interpreting NEPA and CEQ regulations. The Judge Advocate General will interface with the Army General Counsel, Corps of Engineers General Counsel, and the Department of Justice on NEPA related litigation.

(g) The Surgeon General is responsible for environmental review related to the health and welfare aspects of proposed EISs submitted to HQDA.

(h) The Chief of Public Affairs is the POC for media inquiries of national significance. The Chief will—

(1) Provide guidance on issuing public announcements such as FNSI, Notices of Intent (NOI), scoping procedures, Notices of Availability (NOA), and other public involvement activities.

(2) Review and coordinate planned announcements on actions of local or national interest with appropriate ARSTAF elements and the Assistant Secretary of Defense for Public Affairs (OASD (PA)).

(3) Provide public affairs guidance in conducting environmental programs.

(4) Be POC for media inquiries that are of national significance.

(5) Issue press releases that coincide with the publication of FNSIs, NOIs, and NOAs.

(i) The Chief of Legislative Liaison will notify members of Congress of impending EISs and EAs of national concern.

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(j) Major Army command (MACOM) commanders, Chief, National Guard Bureau, and heads of agencies will—

(1) Monitor proposed actions and programs within their commands.

(2) Task the appropriate component with preparation of EAs and EISs and development of public involvement activities. Proponents may delegate authority to conduct their preparation in-house, through contract, or pursue indirect preparation with the assistance of supporting U.S. Army Corps Engineers Districts.

(3) Assure that appropriate environmental documentation is prepared and forwarded to the appropriate proponent.

(4) Apply policies and procedures set forth in this regulation to programs and actions within their command and staff responsibility.

(5) Initiate the preparation of necessary environmental documentation and assess the environmental consequences of proposed programs and projects.

(6) Circulate and review environmental documents at the same time with other planning or decisionmaking documents. These related documents include a completed DD Form 1391, Case Study and Justification Folder, Integrated Program Summary, and other documents proposing or supporting proposed programs or projects.

(7) Coordinate appropriate environmental documents and public affairs initiatives with HQDA agencies and the Army Environmental Office.

(8) Designate, record, and report the identity of the agency's single POC for NEPA considerations to the Army Environmental Office.

(9) Assist in the review of environmental documents prepared by DOD and other Army or Federal agencies, as requested.

(10) Coordinate proposed directives, instructions, regulations, and major policy publications that have environmental implications with the Army Environmental Office.

(11) Maintain the capability (personnel and other resources) to comply with the requirements of this regulation (See 40 CFR 1507.2.)

(12) Prepare and maintain a ROD on EISs for which they are the staff proponent.

(13) Develop public affairs initiatives, when appropriate, for actions requiring EAs and EISs.

(k) Installation, activity, and unit commanders will accomplish responsibilities listed in paragraphs (j) (1) through (3), (5), (7), and (9) of this section.

§ 651.5 Policies.

(a) The DA will endeavor to ensure the wise use of natural resources on Army land. The DA will match military mission activities with the ecological compatibility of the land and natural resources in order to maintain resources for realistic training, while minimizing the adverse impact on the human and natural environment. Decisionmakers will be cognizant of, and responsible for, the impact of their decisions on cultural resources; soils, forests, rangelands, water and air quality, and fish and wildlife; as well as other natural resources under their stewardship. The DA will identify significant environmental effects of proposed programs and projects in adequate detail. These effects will be considered in the decision process along with technical, economic, and other necessary factors. DA will carry out the mission of national security in a manner consistent with NEPA and other applicable environmental standards, laws, and policies. DA will employ all practicable means consistent with other essential considerations of national policy to minimize or avoid adverse environmental consequences and attain the goals and objectives stated in sections 101 and 102 of NEPA. (See Appendix C.)

(b) Environmental considerations will be integrated into the decisionmaking process to ensure that—

(1) Major decision points are designated for principal programs and proposals likely to have a significant effect on the quality of the human environment, while providing for the NEPA process to coincide with these decision points.

(2) Relevant environmental documents, comments, and responses accompany the proposal through the existing Army review and the decisionmaking process. The Army will integrate NEPA requirements with other planning and environmental review procedures required by law or Army practice so that review of environmental considerations is concurrent rather than consecutive.

(3) The alternatives considered are within the range of alternatives discussed in relevant environmental documents.

(c) Worldwide and long-range character of environmental problems will be recognized, and where consistent with national security requirements and United States (U.S.) foreign policy, appropriate support will be given to initiatives, resolutions, and programs designed to maximize international cooperation in protecting the quality of the world human environment. In accordance with Executive Order 12114, DOD Directive 6050.7, and Subpart H of this regulation, an environmental planning and evaluation process will be incorporated into Army actions that may significantly affect global commons, environments of other nations, or any protected natural or ecological resources of global importance. (See Subpart H.)

(d) Laws, other than NEPA, that require the Army to gain approval of other Federal, State, or local Government agencies before taking actions that may have environmental consequences will be obeyed. However, compliance does not relieve the responsible official from preparing environmental impact analyses and processing necessary environmental documents. NEPA compliance is required unless existing law, applicable to a specific action or activity, prohibits, exempts, or makes compliance impossible.

(e) When appropriate, environmental documentation to consider operations security principles and procedures described in AR 530–1 will be reviewed and documented on the cover sheet or signature page.

§ 651.6 Procedures.

(a) The Assistant Chief of Engineers retains a copy of each draft and final EIS (Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS)) prepared by the Army. The EIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid. The EIS is then deposited in the National Archives and Records Administration.

(b) DA agencies are encouraged to draw upon the special expertise that is available within the medical department, including the U.S. Army Environmental Hygiene Agency (AEHA), to identify and evaluate environmental health impacts.

(c) Military Construction Army/Military Construction ARNG (MCA/MCAR) funds may not be used for preparation of environmental documents. Operations and Maintenance/Operation and Maintenance, ARNG (OMA/OMAR) or other operating funds are the proper sources of funds for environmental document preparation.

(d) The proponent for federally funded ARNG actions is the National Guard Bureau (NGB) division in whose area of responsibility the action rests. For instance, National Guard Bureau-Installations Division (NGB-ARI) would

be the proponent for proposed training activities. The NGB division proponent performs the actions described in this section with the States or territories affected by the proposed action.

(e) In specific cases, such as the construction of a water treatment facility or a flood control plan, the engineer could be the proponent. The engineer and/or his environmental management staff should advise proponents as to the format and technical data that must be considered in the environmental document. The engineer's environmental management staff is, however, responsible for reviewing each environmental document for compliance with NEPA and appropriate Army and/or ARNG regulations. No matter who prepares the environmental document, the proponent remains responsible for its content and conclusions.

(f) The decisionmaking process often subjects proposal decisions to review and/or approval by higher level authorities including HQDA proponent (defined in the Glossary); therefore, the review and approval of the environmental document follows the same channel of review and approval as that of the proposed action. This does not apply to federally funded ARNG actions since the NGB division, which is the proponent for such actions, is also the HQDA proponent.

Subpart B—National Environmental Policy Act (NEPA) and the Decision Process

§ 651.7 Introduction.

(a) NEPA establishes policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. (See Appendix C for a copy of NEPA.) The CEQ issued regulations to implement the procedural provisions of NEPA and they are provided in Appendix E. Implementing procedures to CEQ regulations are contained in DOD Directive 6050.1 (applicable in the continental United States (CONUS)) and DOD Directive 6050.7 (applicable outside the continental United States (OCONUS)).

(b) The NEPA process includes the systematic examination of possible and probable environmental consequences of implementing a proposed action. To be effective, integration of the NEPA process with other Army project planning will occur at the earliest possible time to ensure—

(1) Planning and decisionmaking reflect environmental values.

(2) Policies and goals of § 651.4 are implemented.

(3) Delays and potential conflicts later in the process are minimized.

(c) To achieve these actions, all Army decisionmaking that may have an impact on the human environment will use a systematic, interdisciplinary approach that ensures the integrated use of the natural and social sciences, planning, and the environmental design arts. (Pub. L. 91–190; sec. 102(2)(A)). This approach allows timely identification of environmental effects and values in sufficient detail for evaluation concurrently with economic, techical, and mission-related analyses at the earliest possible step in the decision process. When EAs or EISs are undertaken, the economic and social impacts will be included in the analysis of total environmental impacts. However, these secondary impacts, unaccompanied by physical environmental impacts, should not determine whether or not to prepare an environmental document.

(d) NEPA also requires the proponent of an action or project to identify and describe all reasonable alternatives to the proposed action or project. To assist in identifying reasonable alternatives, the proponent must consult appropriate Federal, State, and local agencies, and the general public.

(e) These procedures will assist the decisionmaker in selecting a preferred couse of action. They provide the relevant background information and subsequent analyses of the proposal's positive and negative environmental effects. The decisionmaker's written environmental evaluation is either a CX with a record of consideration (REC), an EA with a FNSI, or an EIS with a ROD. (See Subpart C.)

§ 651.8 Action requiring evaluation.

(a) The types of projects or actions to evaluate for environmental impact include—

(1) Policies, regulations, and procedures (for example, Army regulations and circulars).

(2) New management and operational concepts and programs in areas such as logistics, research, development, test and evaluation, procurement, and personnel assignment.

(3) Projects (for example, facilities construction, research and development for weapons, vehicles, and other equipment).

(4) Activities (for example, individual and unit training, flight operations, overall operation of installation, or facility test and evaluation programs).

(5) Requests for a Nuclear Regulatory Commission license (new, renewal, or amendment) or an Army radiation authorization.

(6) Materiel development, acquisition, and/or transition.

(7) Research and development in areas such as genetic engineering, laser testing, and electromagnetic pulse generation.

(8) Installation restoration projects undertaken pursuant to section 104 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA). The National Oil and Hazardous Substances Contingency Plan (40 CFR Part 300), implements the requirements of CERCLA/SARA, and describes a formal process, the feasibility study (FS).

(i) The FS provides substantive and procedural standards to ensure full consideration of environmental issues and alternatives, and an opportunity for the public to participate in evaluating environmental factors and alternatives before a final decision is made.

(ii) In most cases, when a FS is prepared in accordance with 40 CFR Part 300, a second NEPA document is not required. As a matter of policy, the organization preparing the FS will ensure the document also complies with 40 CFR Parts 1500–1508. The cover of the FS document and the subsequent ROD will contain the legend "This document is intended to comply with the National Environmental Policy Act of 1969." All public notices announcing the availability of the FS will also note this intent. Installation Restoration Program actions in which an FS is not prepared in accordance with 40 CFR 300 will require appropriate environmental documentation.

(9) Requests for special use airspace in accordance with AR 95–50 that require Federal Aviation Administration approval (new, renewal, or amendment).

(b) In addition to the above, certain activities supported by the Army through the following actions require proper environmental documentation:

(1) Federal contracts, grants, subsidies, loans, or other forms of funding such as Government owned contractor operated industrial plants and section 801/802 Housing, Military Appropriations Act of 1984, construction, (via third-party contracting).

(2) Leases, easements, permits, licenses, certificates, or other entitlement for use (for example, grazing lease and grants of easement for highway right-of-way).

(3) Request for approval to use or store materials, radiation sources,

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hazardous and toxic material, or wastes on Army land. If the requester is non-Army, the responsibility to prepare the proper environmental documentation is that of the non-Army requester. If required, the requester will provide information needed for the Army review. The Army reviews and approves all environmental documentation before approving the request.

§ 651.9 Environmental review categories.

The following are the five broad categories into which a proposed action may fall for environmental review:

(a) *Exemption by law.* The law must apply to DOD and/or Army and must prohibit, exempt, or make impossible full compliance with NEPA (40 CFR 1500.6). (See § 651.11 for security exemptions).

(b) *Emergencies.* (1) In the event of an emergency, the Army may need to take immediate actions that have environmental impacts, that may include immediate actions to promote national defense or security and actions necessary for the protection of life or property. In such cases the HQDA proponent will notify the Army Environmental Office, which in turn will notify the Office of the Assistant Secretary of the Army, Installations and Logistics (OASA (I&L)) who will coordinate with the Assistant Secretary of Defense for Production and Logistics (ASD (P&L) regarding the emergency action. Time is of the essence so that OASA (I&L) may consult with the CEQ if necessary. A public affairs plan should be developed as soon as possible so that channels of communication remain open between the media, public, and the installation. In no event will Army delay an emergency action necessary for national defense, security, or preservation of human life or property to comply with this regulation or the CEQ regulations. State call-ups of ARNG during a natural disaster are excluded from this consultation requirement.

(2) These notifications apply only to actions necessary to control immediate effects of the emergency; other actions remain subject to NEPA review. (40 CFR 1506.11)

(3) After action reports may be required at the discretion of the OASA (I&L).

(c) *Categorical exclusions (CX).* These actions (Subpart D and Appendix A) normally do not require an EA or an EIS. The Army has determined that they do not individually or cumulatively have a significant effect on the human environment. Qualification for a CX is described in Subpart D of this regulation.

(d) *Environmental assessment (EA).* (See section for actions normally requiring an EA.)

(1) If the proposed action is adequately covered within an existing EA or EIS, prepare a REC to that effect. (See Figure 1).

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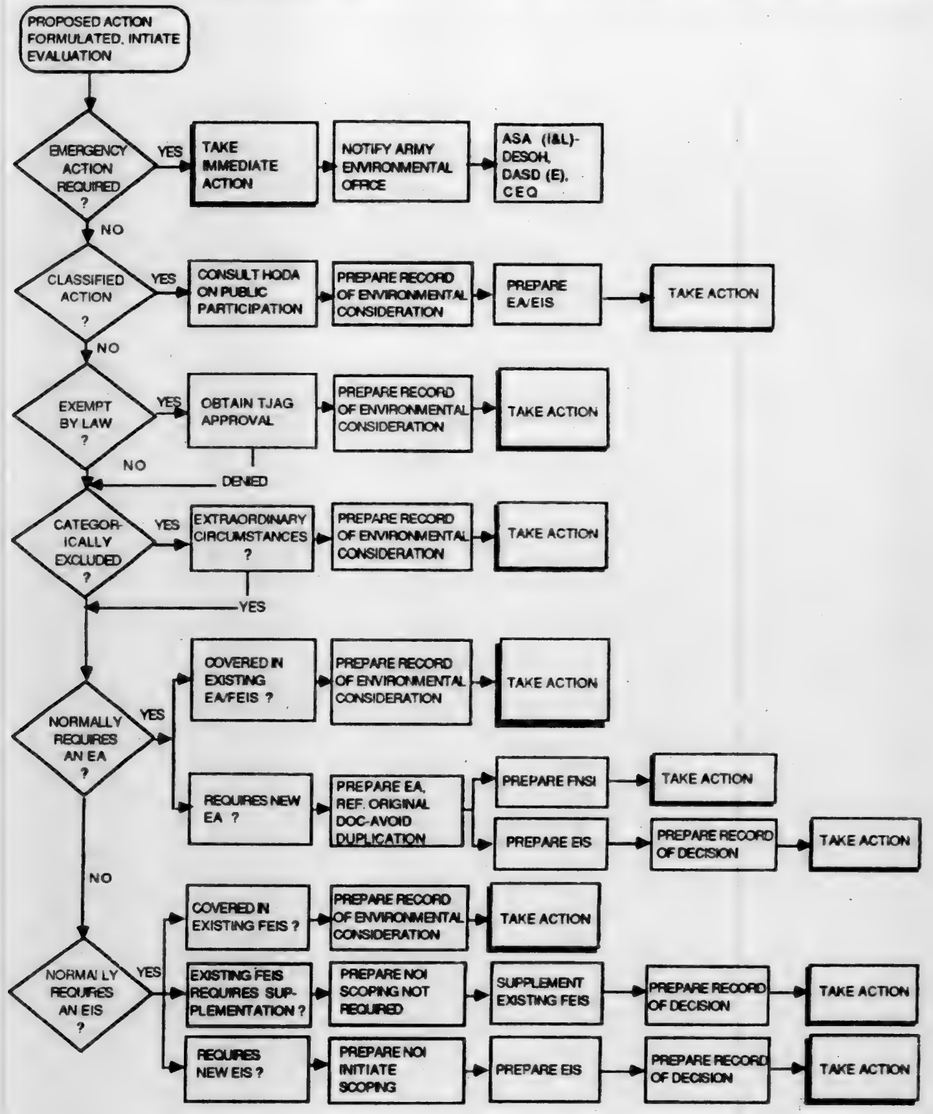


Figure 1. Flow chart summarizing process for determination of document requirements

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(2) If the proposed action is within the general scope of an existing EA or EIS, but requires additional information, prepare a new environmental document that considers the new, modified, or missing information. Incorporate by reference, existing documents and publish the conclusion (FNSI or NOI).

(3) If the proposed action is not covered adequately in any existing EA or EIS, or is of significantly larger scope than that described in the existing document, then prepare an EA followed by either a FNSI or a new EIS.

(e) *Environmental Impact Statement (EIS).* (See § 651.30 for actions normally requiring an EIS.)

(1) If it is determined that the action is covered adequately in a previously filed FEIS, the REC must so state, citing the applicable FEIS by name and date. The REC is then attached to the proponent's record copy of that FEIS. As a general rule, a FEIS older than 3 years cannot be used in this manner, but must be supplemented.

(2) If the proposed action is within the scope of an existing FEIS, but was not covered in that document or not covered adequately, then the proponent must prepared supplemental documentation to that FEIS.

(3) If the proposed action is not within the scope of any existing EIS, then the proponent must begin the preparation of a new EIS.

§ 651.10 Determining appropriate environmental documentation.

(a) The flowchart shown in Figure 1 summarizes the process for determining documentation requirements.

(b) The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will retain its own record keeping for RECs and RODs. (See 40 CFR 1506.3 for procedures to follow when adopting other documents.)

(c) When an existing adequate EA or EIS is used in lieu of preparation of a new document, the REC should state the document title, date, and where it may be reviewed.

§ 651.11 Classified actions.

(a) For public dissemination of environmental documents containing classified information, AR 380–5 will be followed.

(b) Classified facts will be separated from unclassified facts and conclusions related to the proposed action. Unclassified portions of the action may then be processed routinely in accordance with this regulation. Classified portions will be kept separate for reviewers and decisionmakers with need-to-know as defined in AR 380–5 and (c) of this section.

(c) Classification does not relieve a proponent of the necessity to assess and document the environmental effects of the proposed action. The HQDA proponent, in coordination with the Army Environmental Office and the Deputy Chief of Staff for Intelligence, Security Division (DAMI–CIS), may select a review team. The team may be drawn from the Army agency or office not connected with the proponent agency, or from agencies outside the Army. The review team's purpose is to provide an external review of classified environmental documents.

§ 651.12 Integration with Army planning.

(a) *Early integration.* The Army goal to integrate environmental reviews concurrently with other Army planning and decisionmaking actions avoids delays in mission accomplishments. To achieve this goal, proponents should provide complete environmental documents for early inclusion with any recommendation or report to decisionmakers (Master Plan, Natural Resource Management Plan, Remedial Investigation, FS, etc.).

The same documents will be forwarded to the planners, designers, and/or implementers so that recommendations and mitigations on which the decision was based may be carried out.

(b) *Time limits.* The timing of the preparation, circulation, submission, and public availability of environmental documents is of great importance in ensuring that environmental values are integrated in the planning and decision processes. It is important to remember that next to the project itself, a properly prepared EIS may require the longest time to complete.

(1) Categorical exclusions (CX). When a proposed action is categorically excluded from further environmental review (Subpart D and Appendix A), the proponent may proceed immediately with that action.

(2) Findings of no significant impact (FNSI).

(i) If the proposed action is one of national concern, is unprecedented, or normally requires an EIS, the proponent will make the EA and FNSI available for public review 30 or more days prior to making a final decision. A news release is required to publicize the availability of the FNSI. If the action is of national significance, a simultaneous announcement that includes publication in the **Federal Register** (FR) must be made by HQDA.

(ii) For proposed actions referred to in paragraph (b)(2)(i) of this section, the proponent must allow a 30-day period for public comment between the time that the FNSI is publicized (40 CFR 1506.6(b)) and the time the proposed action begins. In those cases where the 30 day wait jeopardizes the project, the additional comment period provides no public benefit, and none of the conditions of paragraph (b)(2)(i) apply, the period may be shortened with MACOM approval. In no circumstances should the public comment period for an EA/FNSI be less than 15 days.

(iii) A deadline and POC must be included for receipt of comments in the FNSI and the news release.

(3) Environmental Impact Statements (EIS). The EPA publishes a weekly notice in the FR of the EISs filed during the preceding week. This notice usually occurs each Friday. A NOA reaching EPA on a Friday will be published in the following Friday issue of the FR. (Failure to deliver a NOA to EPA by close of business on Friday will result in an additional one week delay.) A news release publicizing the action will be made in conjunction with the notice in the FR. The following time periods calculated from the publication date of the EPA notice will be observed:

(i) Not less than 45 days for public comment on DEISs (40 CFR 1506.10(c)).

(ii) Not less than 15 days for public availability of DEISs prior to any public hearing on the DEISs (40 CFR 1506.(c)(2)).

(iii) Not less than 90 days total for public availability of the DEIS and FEIS prior to any decision on the proposed action. These periods may run concurrently (40 CFR 1506.10 (b) and (c)).

(iv) The time periods prescribed here may be extended or reduced in accordance with 40 CFR 1506.10(b)(2) and 1506.10(d).

(v) When variations to these time limits are set, the Army agency should consider the factors in 40 CFR 1501.8(b)(1).

(vi) The proponent may also set time limits for other procedures or decisions related to DEISs and FEISs as listed in 40 CFR 1501.8(b)(2).

(vii) The entire EIS process could require more than 1 year. (See Figure 2.) Thus, it is important that the process begin as soon as the project is conceptualized and that the proponent coordinate with all staff elements who may have a role to play in the NEPA process. Most of this time is taken by the preparation of the DEIS and the revision and response to comments to prepare the FEIS.

(viii) A public affairs plan should be developed that provides for periodic interaction with the community. There is a minimum public review time of 90 days between the publication of the DEIS and the announcement of the ROD. Army EISs are not normally processed in so short a time due to the internal staffing required for this type of action. After the availability of the ROD is announced, the action may proceed. Figure 2 indicates typical and required time periods for EISs.

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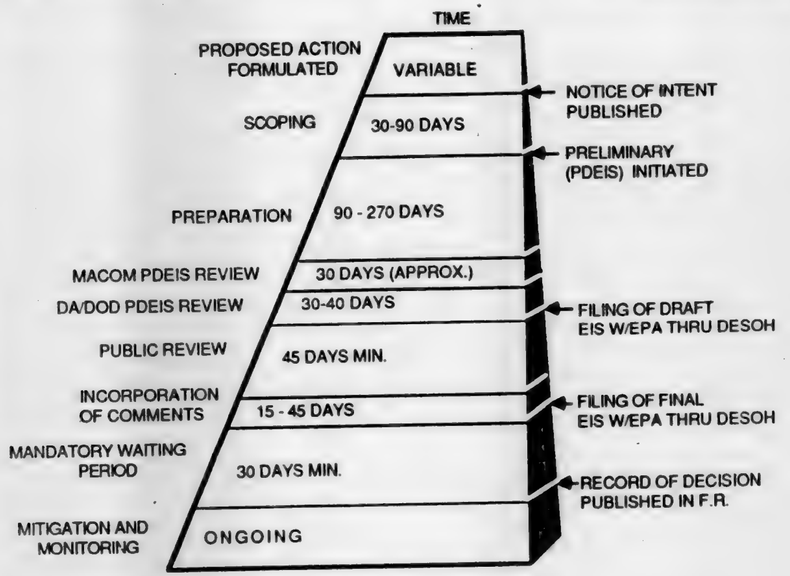


Figure 2. Time involved for preparing and processing an Environmental Impact Statement (EIS)

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(c) *Programmatic environmental review (tiering).* (1) Army agencies are encouraged to write programmatic environmental analyses when such programs are being considered for general application (40 CFR 1502.4(c), 1502.20 and 1508.23). This will eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad EIS or EA has been prepared and a subsequent EIS or EA is then prepared on an action included within the entire program or policy (particularly a site-specific action), it need only summarize issues discussed in the broader statement and concentrate on the issues specific to the subsequent action. This subsequent document will state where the earlier document is available.

(2) An example would be the assessment of a proposed major weapon system program. Development of an overall programmatic EIS or EA for the life cycle of the system is recommended. Tiered EAs and EISs, as appropriate, would evaluate specific subphases such as testing, production, development, use, and ultimate disposal.

(d) *Scoping.* (1) When the planning for an Army project or action indicates a need for an EIS preparation, the proponent initiates the scoping process. (See Subpart G for procedures and actions to be taken durtng the scoping process.) This process determines the scope of issues to address in the EIS and identifies the significant issues related to the proposed action. During the scoping process the participants identify the range of actions, alternatives, and impacts to consider in the EIS (40 CFR 1508.25). For an individual action, the scope may depend on the relationship of the proposed action to other environmental documents.

(2) The extent of the scoping process, including public involvement, will depend on several factors. These factors include—

(i) The size and type of the proposed action.

(ii) Whether the proposed action is of regional or national interest.

(iii) Degree of any associated environmental controversy.

(iv) Size of the affected environmental parameters.

(v) Significance of any effects on them.

(vi) Extent of prior environmental review.

(vii) Involvement of any substantive time limits.

(viii) Requirements by other laws for environmental review.

(3) The proponent may incorporate scoping in the public involvement or environmental review process other than that required for an EIS. If so, a significant reduction in the extent of scoping incorporated is at the proponent's discretion.

(e) *Analyses and documentation.* Environmental analyses and documentation required by this regulation will be integrated as much as practical with other environmental reviews, laws, and executive orders (40 CFR 1502.25) and—

(1) Environmental analysis and documentation required by various State laws.

(2) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(3) Permitting and licensing procedures required by Federal and State law. For instance, the Clean Air Act, as amended (42 U.S.C. 57401 *et seq.*) and the Clean Water Act, as amended (33 U.S.C. 125 *et seq.*).

(4) Installation and Army Master Planning functions and plans.

(5) Installation management plans, particularly those that deal directly with the environment. These include the Natural Resource Management Plans (Fish and Wildlife Management Plan, Forest Management Plan, and Range Improvement or Maintenance Plan).

(6) Stationing and installation planning, force development planning, and materiel acquisition planning.

(7) Installation Compatible Use Zone (ICUZ) program.

(8) Hazardous waste management plans.

(9) Historic Preservation Plan as required by AR 420–40.

(10) Intergovernmental coordination as required by AR 210–10.

(11) Asbestos Management Plans.

(f) *Relations with local and regional agencies.* (1) Installation, agency, or activity environmental officers or planners should establish planning relations with other agencies. These agencies include the staffs of adjacent local governments and State agencies. This will promote cooperation and resolution of mutual land use and environment-related problems.

(2) Preparation of a Memorandum of Understanding is desirable for promoting cooperation and coordination. This memorandum will identify areas of mutual interest, establish POCs, identify lines of communication between agencies, and specify procedures to follow in conflict resolution. Additional coordination is available from State and area-wide planning and development agencies, including those designated by AR 210–10. Thus, the proponent may gain insights on other agencies' approaches to EAs, surveys, and studies of the current proposal. These other agencies would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

§ 651.13 Mitigation and monitoring.

(a) Identification in environmental documents. Only those mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified in environmental documentation (EA, FNSI, or EIS). Measures that the proponent implements as part of the selected action will be included in the environmental documentation. Mitigation measures that appear practicable, but unobtainable within expected resources or that some other agency (including non-Army agencies) should perform, will be identified as such in the environmental document. "Practicable" measures include, among others, actions that appear capable of being accomplished. Complete development or testing of the exact means of performing the action may not have occurred.

(b) Consideration throughout the National Environmental Policy Act (NEPA) process. Consider mitigation throughout the NEPA process. When an EIS or EIS Supplement is prepared, the ROD will state specific mitigation measures taken to reduce or avoid the selected action's adverse environmental effects. For EAs, the FNSI will state, when applicable, the appropriate mitigation measures that will be implemented. The proponent must ensure such mitigation measures become a project line item in the proposal budget. Mitigations that are committed to in an EA, but that are eventually not funded, must lead to reevaluation of the project and the significance of its impacts. In addition, the FNSI will state those practicable mitigation measures that have not been adopted. (40 CFR 1505.2(c)).

(c) Assistance from cooperating non-Army agencies. Proponents may request assistance with mitigation when appropriate. Whether it is appropriate to request assistance is determined by whether the requesting agency—

(1) Was a cooperating agency during preparation of an environmental document, or

(2) Has the technology, expertise, time, funds, or familiarity with project or local ecology necessary to implement the mitigation measure more effectively than the lead agency.

(d) Implementing the decision.

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(1) The proponent agency or other appropriate cooperating agency will implement mitigation and other conditions established in the EA or EIS or during its review, and committed as part of the FNSI or the ROD.

(2) Legal documents implementing the action (contracts, permits, grants, and so forth) will specify mitigation measures to be performed. Penalties against the contractor for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(3) A monitoring and enforcement program will be adopted and summarized in the ROD where applicable for any mitigation. (See Appendix F for guidelines on implementing such a program.) Whether adoption of a monitoring and enforcement program is applicable (40 CFR 1505.2(c)) and whether the specific adopted action is an important case (40 CFR 1505.3) may depend on such factors as the following:

(i) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited).

(ii) Cases when the outcome of the mitigation measure is uncertain (for example, new technology).

(iii) Projects in which major environmental controversy remains associated with the selected alternative.

(iv) Cases when failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to Federal or State listed endangered or threatened species; important historic or archaeological sites that are either on, or meet eligibility requirements for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. Evaluation and determination of what constitutes serious harm in coordination with the appropriate Federal, State or local agency responsible for each particular program must be made.

(v) The proponent will respond to inquiries from the public or other agencies regarding the status of mitigation measures adopted.

Subpart C—Required Records and Documents

§ 651.14 Introduction.

The following records and documents are required:

(a) Record of Environmental Consideration (REC). The REC describes the proposed action and anticipated timeframe, identifies the proponent, and explains why further environmental analysis and documentation is not required. It is a signed statement to be submitted with project documentation. It is used when the proposed action is exempt from the requirements of NEPA, or has been adequately assessed in existing documents and determined not to be environmentally significant. A REC is also used to document the use of those CX that require such records. (See Figure 3 for format.)

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Record of Environmental Consideration (REC)

To: (Environmental Officer)

From: (Proponent)

Project title:

Brief description:

Anticipated date and/or duration of proposed action: (Month/year)

Reason for using record of environmental consideration (choose one):

a. Adequately covered in an (EA, EIS) entitled _____, dated _____.
The EA/EIS may be reviewed at _____. (location)

OR,

b. Is categorically excluded under the provisions of CX _____, AR 200-2, appendix A, (and no extraordinary circumstances exist as defined in paragraph 4-3), because _____.

_____
Date Project Proponent

_____
Date Installation Environmental Coordinator

Variation from this format is acceptable provided basic information and approvals are included in any modified document.

Figure 3. Format for record of environmental consideration (REC)

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(b) Environmental assessment (EA). An EA is a document that—

(1) Briefly provides the decisionmaker with sufficient evidence and analysis for determining whether a FNSI or an EIS should be prepared.

(2) Assures compliance with NEPA, if an EIS is not required and a CX is inappropriate.

(3) Facilitates preparation of a required EIS.

(4) Includes brief discussions of the need for the proposed action, alternatives to the proposed actions (NEPA, sec. 102(2)(e)) (see Appendix C), proposed and alternative actions environmental impacts, and a listing of persons and agencies consulted. (See Suppart E for requirements.)

(c) *Finding of no significant impact (FNSI).* A FNSI is a document that briefly states why an action will not significantly affect the environment, thus voiding the requirement for an EIS. The FNSI will include a summary of the conclusions of the EA and will note any environmental documents related to it. If the EA is attached, the FNSI need not repeat any of the EA's discussion, but may incorporate it by reference. A FNSI is always signed by the decisionmaker. (See § 651.24 for processing.)

(d) *Notice of intent (NOI).* An NOI is a public notice that an EIS will be prepared and considered. The NOI will briefly—

(1) Describe the proposed and alternative actions.

(2) Describe the proposed scoping process, including whether, when, and where any public meetings will be held.

(3) State the name and address of the POC who can answer questions on the proposed action and its EIS. (See §§ 651.32(a), 651.34(a), and 651.37 for application.)

(e) *Environmental impact statement (EIS).* An EIS is a detailed written statement required by NEPA for major Federal actions with significant environmental effects (42 U.S.C. 4321, sec. 102(2)(c). (See Appendix C.) (See Subpart F for requirements.)

(f) *Life cycle environmental document (LCED).* The LCED is intended to be a programmatic assessment that addresses the known and reasonably foreseeable environmental impacts of a proposed item/system during all phases of development, production, use, and ultimate disposal of the item/system. The LCED may be in the form of an EA or an EIS, and must be supplemental to address additional significant environmental impacts as conditions change. The LCED will be prepared by the DA proponent/developer (or program manager) and is most frequently used within the materiel research, development, and acquisition community.

(g) *Record of Decision (ROD).* A public ROD is required under the provisions of 40 CFR 1505.2 after completion of an EIS. Nevertheless, the ROD is not considered to be an environmental document since the decision considers other factors in addition to environmental issues. (See § 651.32(i) for application.)

§ 651.15 Optional documents.

The following additional documents may assist in the implementation of this regulation. These documents are optional, but their use is encouraged.

(a) *Environmental planning guide.* Prepared prior to or at the outset of a major program concept exploration. It is a concise (for example, 10-page) document intended for use by the program planners and designers. It provides guidelines and supporting rationale by which planners and designers could prevent, avoid, or minimize adverse environmental effects through environmentally sensitive design and planning. Through appropriate language in the scope of work, contractors can be encouraged or required to use such an environmental planning guide.

(b) *Environmental planning record.* This records the progress and process of environmental considerations throughout a given program's development. Ideally, it is a document that is written when the program commences. There is no set form; it may be a journal with periodic entries, a file of memoranda, trip reports, and so forth. This document is a visible track record of how environmental factors have actually been considered and incorporated throughout the planning process. Through appropriate language in the scope of work, contractors can be encouraged or required to prepare an environmental planning record, or parts thereof.

(c) *Environmental monitoring report.* This report is prepared at one or more points after program or action execution. Its purpose is to determine the accuracy of impact predictions. It can serve as the basis for adjustments in mitigation programs and to adjust impact predictions in future projects.

Subpart D—Categorical Exclusions (CX)

§ 651.16 Introduction.

(a) The use of CX is intended to reduce paperwork and delay and eliminate unnecessary EA and EIS preparation. CX is defined in the Glossary.

(b) The following criteria will be used to determine those categories of actions that normally do not require either an EIS or EA:

(1) Minimal or no individual or cumulative effect on environmental quality.

(2) No environmentally controversial change to existing environmental conditions.

(3) Similarity to actions previously examined and found to meet the above criteria.

§ 651.17 Determining when to use a CX.

In order to use the CX provision, the proponent must take the following actions:

(a) Determine whether the proposal is encompassed by one of the categories not normally requiring the preparation of an EA or EIS. (See Appendix A.)

(b) Determine if there are any extraordinary circumstances that may result in the proposed action having an impact on the human environment that would require an EA or EIS. These circumstances include—

(1) Greater scope or size than normally experienced for a particular category of action.

(2) Potential for degradation, even though slight, of already existing poor environmental conditions. Also, initiation of degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(3) Employment of unproven technology.

(4) Presence of threatened or endangered species and their habitats, archaeological materials, historical places, or other protected resources.

(5) Use of hazardous or toxic substances that may come in contact with the surrounding natural environment. Nevertheless, a categorical exclusion exists for use of hazardous and toxic substances under adequately controlled conditions within established laboratory buildings that are designed for, and in compliance with, regulatory standards. Adequately controlled conditions includes complying with AR 385–10 and all other applicable Army safety and preventive medicine regulations for the processing of hazardous and toxic substances, and complying with the Resource Conservation and Recovery Act (RCRA) for their disposal.

(6) Proposed actions affecting areas of critical environmental concern. These include, but are not limited to, prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, aquifers, floodplains, or wild and scenic river areas.

(c) Determine whether all the screening criteria in Appendix A are true for the proposal.

(d) If the proposed action qualifies for one of the CX, no analytical environmental document is necessary. However, if a REC (Figure 3) is required by the CX listing in Appendix A, a REC will be completed and signed by the proponent. Consultation between the proponent and the installation environmental coordinator is required.

§ 651.18 CX actions.

Types of actions that normally qualify for CX are listed in Appendix A.

§ 651.19 Modification of the CX list.

The Army list of CXs is subject to continual review and modification. Send, for review, requested additional modifications to the Army Environmental Office. Subordinate Army headquarters may not modify the CX list through supplements to this regulation. Upon approval, proposed modifications to the list of CXs will be published in the **Federal Register** by the Army Environmental Office. This provides an opportunity for public review and comment.

Subpart E—Environmental Assessment (EA)

§ 651.20 Introduction.

An EA is made to determine the extent of environmental impacts of a project and decide whether or not those impacts are significant. It is not required for actions that are subject to categorical exclusion or exclusion from environmental review by law. (See 40 CFR 1508.9.) The EA is described in § 651.14(b).

§ 651.21 Conditions requiring an EA.

An EA is required when the proposed action has the potential for—

(a) Cumulative impact on environmental quality when combining effects of other actions or when the proposed action is of lengthy duration.

(b) Release of harmful radiation or hazardous/toxic chemicals into the environment.

(c) Violation of pollution abatement Standards.

(d) Some harm to culturally or ecologically sensitive areas.

§ 651.22 Actions normally requiring an EA.

The following actions normally require an EA:

(a) Special field training exercise or test activity on Army land of a nature or magnitude not within the annual installation training cycle.

(b) Military construction, including contracts for off-post construction.

(c) An installation pesticide, fungicide, herbicide, insecticide, and rodenticide-use program.

(d) Changes to established installation land use that generates impacts on the environment.

(e) Proposed changes in doctrine or policy that may have a potential environmental impact. (40 CFR 1508.18 (*b*) (1)).

(f) Repair or alteration projects affecting historically significant structures, archaeological sites, or places on, or meeting, the criteria for nomination to the National Register of Historic Places.

(g) Acquisition or alteration of, or space for, a laboratory that will use hazardous chemicals, drugs, or biological or radioactive materials.

(h) Actions that could potentially cause soil erosion, affect prime or unique farmland, wetlands, floodplains, coastal zones, wilderness areas, aquifers or other water supplies, or wild and scenic rivers.

(i) New weapon systems development and acquisition, including the materiel acquisition, transition, and release processess.

(j) Development of installation master plan.

(k) Development of natural resource management plans (land, forest, fish, and wildlife).

(l) Proposals that may lead to the excessing of Army real property.

(m) Actions that take place in, or adversely affect, wildlife refuges.

(n) Proposals for energy conversion through forest harvest.

(o) Field activities on land not controlled by the military. This includes firing of weapons, missiles, or lasers over navigable waters of the United States, or extending 45 meters or more above ground level into the national airspace. It also includes joint air attack training that may require participating aircraft to exceed 250 knots at altitudes below 3000 feet above ground level.

(p) An action with local or regional effects on energy availability.

(q) An activity that affects any species on, or proposed for, the U.S. Fish and Wildlife Service list of Threatened and Endangered Plant and Animal Species. Also, activities affecting any species on an applicable State or territorial list of threatened or endangered species.

(r) Production of hazardous or toxic materials.

(s) Installation restoration projects undertaken in response to the CERCLA. (See § 651.8(a)(8) for a full discussion of the integration of NEPA and CERCLA/SARA.)

(t) Operations and Maintenance/Army National Guard projects that will impact environmental quality.

(u) Site specific deployment of life cycle systems meeting the threshold criteria for requiring an EA.

(v) Special field training excercises or test activities off Army or DOD property that extend into the national airspace (45 meters above ground level).

(w) Changes to established airspace use that generates impacts on the environment or socioeconomic systems, or creates a hazard to nonparticipants.

§ 651.23 EA components.

(a) The EA will be the responsibility of the proponent. The Army Environmental Office will advise and assist in the preparation of the EA. In the case of United States Army Reserve (USAR) environmental documentation, the supporting installation facility engineer is responsible for ensuring proper environmental documentation is prepared and will comply with the provisions of AR 140–475. The EA will include brief discussions of—

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) The alternatives considered (always including the "no action" alternative).

(4) Affected environment (baseline conditions).

(5) Environmental consequences of the proposed action and the alternatives.

(6) Listing of agencies and persons consulted.

(7) The conclusion, or finding, on whether the environmental impacts are significant. If the finding is that there are no significant impacts, a FNSI will be published. If the finding is that impacts are potentially significant, the EA should state that a NOI will be published leading to preparation of an EIS.

(b) The EA, the FNSI, and all other appropriate planning documents will be provided to the appropriate decisionmaker for review and consideration. The signature page for the EA and FNSI package will be signed by the decisionmaker to indicate his or her review and approval.

§ 651.24 Decision process.

Every EA results in a FNSI or a NOI to prepare an EIS. Initiation of a NOI to prepare an EIS should occur at any time in the decision process when significant effects are determined.

(a) The FNSI is a separate document (40 CFR 1508.13) that briefly presents reasons why an action will not have a

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significant effect on the human environment and, thus, will not be the subject of an EIS. The FNSI will contain a summary of the EA or have the EA attached. If the EA is attached, the FNSI may incorporate it by reference, thus avoiding duplication of discussion. The FNSI will reference other relevant environmental documents that are being or have been prepared. The FNSI must contain the following:

(1) The name of the action.

(2) A brief description of the action (including any alternatives considered).

(3) A short discussion of the anticipated environmental effects.

(4) The facts and conclusions that have led to the FNSI.

(5) A deadline and POC for further information or receipt of public comments. (See § 651.35.)

(b) The FNSI should not exceed two typewritten pages in length.

(c) The FNSI will be made available to the public prior to initiation of the proposed action, unless it is excluded on a security basis. (See § 651.11 for security exclusions.) FNSIs that have national interest should be submitted with the proposed press release through command channels to Deputy of Environment, Safety, and Occupational Health (DESOH) for approval and subsequent publication in the FR. FNSIs having national interest will be coordinated with Office of the Chief of Public Affairs (OCPA). Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

(d) For actions of only regional or local interest, the FNSI will be publicized in accordance with 40 CFR 1506.6(b) and § 651.12(b)(2) of this regulation. Distribution of the FNSI (30 days prior to intitiation of the proposed action) should include any agencies, organizations, and individuals who have expressed interest in the project and others whom the proponent and preparers (defined in the Glossary) deem appropriate.

§ 651.25 Public involvement.

(a) Environmental agencies, applicants, and the public should be involved to the extent practical in the preparation of an EA. When considering the extent practicable of public interaction (40 CFR 1501.4(*b*)), some of the factors to be weighed are—

(1) Magnitude of the proposed project/action.

(2) Extent of anticipated public interest.

(3) Urgency of the proposal.

(4) Any relevant questions of national security classification.

(b) See § 651.35 for additional public involvement information.

§ 651.26 Public availability.

Documents incorporated into the EA or FNSI by reference will be available for public review. Where possible, use of public libraries is encouraged. Operating hours of the chosen depository should extend beyond normal business hours.

§ 651.27 Existing environmental assessments (EAs).

EAs are dynamic documents. To ensure that the setting, actions, and effects described remain substantially accurate, the proponent or installation environmental officer will periodically review existing documentation (environmental impact assessment (EIA) or (EA)) as an action continues. Preparation of a new environmental document is necessary if substantive changes have occurred.

Subpart E—Environmental Impact Statement (EIS)

§ 651.28 Introduction.

An EIS is a public document with a primary purpose of ensuring that NEPA policies and goals are incorporated early into the programs and actions of Federal agencies. An EIS is required to provide a full and fair discussion of significant environmental impacts. Along with other project documentation, the EIS provides a basis for informed decisionmaking. Further, it allows public review and comment on the proposal.

§ 651.29 Conditions requiring an EIS.

An EIS is required when a proponent, preparer, or approving authority determines that the proposed action has the potential to—

(a) Significantly affect environmental quality or public health or safety.

(b) Significantly affect historic or archaeological resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, or aquifers.

(c) Have significant adverse effect on properties listed or meeting the criteria for listing in the National Register of Historic Places, or the National Register of Natural Landmarks. (The National Park Service, U.S. Department of the Interior maintains the National Register.)

(d) Cause a significant impact to prime and unique farm lands, wetlands, floodplains, coastal zones, or ecologically or culturally important areas or other areas of unique or critical environmental concern.

(e) Result in potentially significant and uncertain environmental effects or unique or unknown environmental risks.

(f) Significantly affect a species or habitat listed or proposed for listing on the Federal list of endangered or threatened species.

(g) Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(h) Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

(i) Involve the production, storage, transportation, use, treatment, and disposal of hazardous or toxic materials that may have significant environmental impact.

§ 651.30 Actions normally requiring an EIS.

The following actions normally require an EIS:

(a) Significant expansion of a military facility, such as a depot, munitions plant, or major training installation.

(b) Construction of facilities that have a significant effect on wetlands, coastal zones, or other areas of critical environmental concern.

(c) The disposal of nuclear materials, munitions, explosives, industrial and military chemicals, and other hazardous or toxic substances that have the potential to cause significant environmental impact.

(d) The life cycle development of new material such as weapon systems that requires the construction and operation of new fixed facilities or the significant commitment of natural resources.

(e) Land acquisition, leasing or other actions that may lead to significant changes in land use.

(f) Continental United States (CONUS) realignment or stationing of a brigade or larger table of organization and equipment (TOE) unit during peacetime (except where the only significant impacts are socioeconomic with no significant biophysical environmental impact).

(g) Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.

(h) Major changes in the mission of facilities either affecting areas of critical environmental concern or causing significant environmental impact.

§ 651.31 Format of the EIS.

(a) The EIS must contain the following:

(1) Cover sheet.

(2) Summary.

(3) Table of contents.

(4) Purpose of and need for the action.

(5) Alternatives considered, including proposed action.

(6) Affected environmental (baseline conditions).

(7) Environmental and socioeconomic consequences.

(8) List of preparers.

(9) Distribution list.

(10) Index.

(11) Appendixes (if any).

(b) The content of each section is discussed in greater detail in Appendix D.

§ 651.32 Steps in preparing and processing an EIS.

(a) *Notice of intent (NOI).* (1) Prior to preparing an EIS (see Figure 4), a NOI will be published in the FR and in newspapers with appropriate or general circulation in the areas potentially affected by the proposed action. The Office of Legislative Liaison (OCLL) will be notified by the ARSTAF proponent of pending EISs so that congressional coordination may be effected. After the NOI is published in the FR, copies of the notice may also be distributed to agencies, organizations, and individuals, as the responsible official deems appropriate.

(2) Forward the NOI and the proposed press release to the HQDA proponent for coordination prior to publication. The ARSTAF proponent will coordinate the NOI with HQDA (Army Environmental Office, OCLL, and OCPA). The DESOH is the only person authorized to release an NOI to the FR for publication. A cover letter similar to Figure 5 will accompany the NOI. An example NOI is at Figure 6. The NOI initiates the scoping process; therefore, provide adequate response time for those wishing to comment on the NOI or participate in the scoping process. Subpart G discusses public participation requirements and options.

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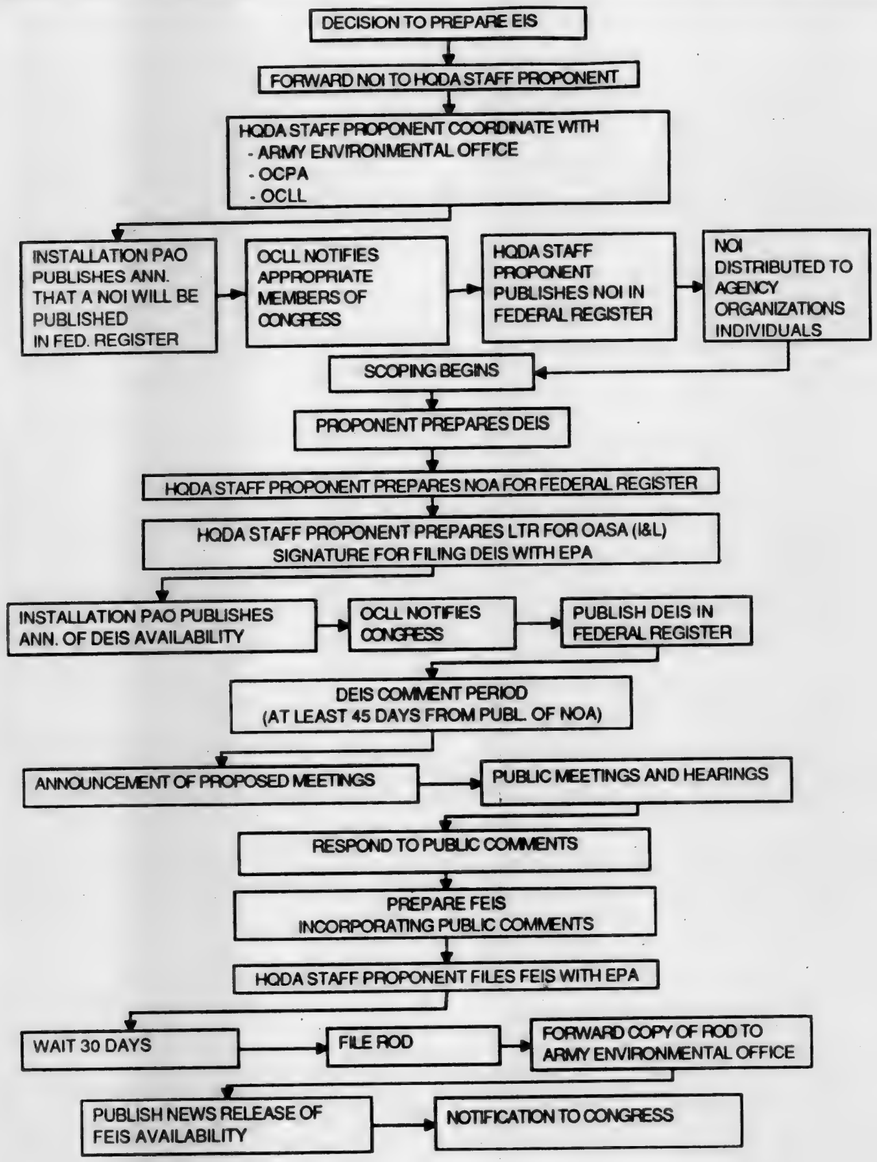


Figure 4. Steps in preparing and processing an Environmental Impact Statement (EIS)

Director
Office of the Federal Register
National Archives and Records ~~Service~~ Administration
~~1100 L Street, NW~~
Washington, DC 20408

Dear Sir:

The attached Notice of Intent is submitted for publication in the Notice Section of the Federal Register.

Please publish this Notice of Intent in the earliest edition of the Federal Register possible. This notice is required for the Department of Army to perform its military mission and comply with the National Environmental Policy Act and the President's Council on Environmental Quality regulations.

Please bill this to charge code 3710-08-M.

Sincerely,

Lewis D. Walker
Deputy for Environment, Safety
and Occupational Health
OASA (I&L)

1 encl. (3 copies)

CC: HQDA (SAIL-DESOH)
HQDA ()
HQDA (Staff Proponent)

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3 Originals must be signed
The charge code 3710-08-M must appear in the letter.

Figure 5. Sample Notice of Intent (NOI) transmittal letter.

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Department of Army
Notice of Intent (NOI)

To prepare a Draft Environmental Impact Statement (DEIS) for proposed barracks construction, at Ft. Jefferson, CA.

Agency: DOD, U.S. Army, Ft. Jefferson, California.

Summary: Proposed Action: A series of three barracks are proposed for construction at Ft. Jefferson, California in order to provide adequate housing for bachelor enlisted personnel assigned to the installation. These facilities are proposed to replace existing substandard facilities for personnel who currently live in expensive rental units within the community or in inadequate quarters on the installation. The inadequate quarters are deficient in seismic design and do not meet DOD standards for privacy, space, or security. The requirements for these projects are not the result of new or expanded missions. The location of the proposed barracks is between M and N Streets on Wisconsin Avenue. Alternatives:

a. No Action
b. Rehabilitation of existing facilities
c. Alternate site locations

Scoping Process: Comments received as a result of this notice will be used to assist the Army in identifying potential impacts to the quality of the environment. Individuals or organizations may participate in the scoping process by written comment or by attending a scoping meeting to be held on May 23, 1989, 8 PM, at the Norwood Avenue Elementary School, 123 Norwood Avenue. Written comments may be forwarded to: Commander, U.S. Army Engineer School, Attention: Director of Facilities Engineering, Fort Jefferson, California. Comments and suggestions should be received not later than 15 days following the public scoping meeting to be considered in the DEIS. Questions regarding this proposal may contact Ms. Jane McIntyre, (900) 555-9876.

Lewis D. Walker
Deputy for Environment, Safety
and Occupational Health
OASA (I&L)

Figure 6. Sample Notice of Intent (NOI)

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(b) *Lead and cooperating agency determination.* As soon as possible after the decision is made to prepare an EIS, the proponent, if necessary, will contact appropriate Federal, State, and local agencies to identify lead or cooperating agency responsibilities concerning EIS preparation. At this point, a public affairs plan must be developed. In State ARNG actions that have any Federal funding, the National Guard Bureau (NGB) will be the lead agency for the purpose of Federal compliance with NEPA. The State may be either a joint lead or a cooperating agency, as determined by NGB.

(c) *Scoping.* If determined that Army is the lead agency, the proponent will begin the scoping process described in § 651.36. Portions of the scoping process may take place prior to publication of the NOI.

(d) *Draft Environmental Impact Statement (DEIS) preparation and processing.*

(1) Preliminary DEIS (PDEIS). Based on information obtained and decisions made during the scoping process, the proponent will prepare the PDEIS. Forward 15 copies of the PDEIS to the HQDA proponent for circulation to OASA (I&L), Office of the Assistant Chief of Engineers (OACE), Office of the Judge Advocate General (OTJAG), Office of the Surgeon General (OTSG), Office of the Chief of Public Affairs (OCPA), and other interested offices for review and comment. The PDEIS is then returned to the preparer for revision as required and printing of the DEIS for filing.

(2) DEIS. The Army proponent will advise the DEIS preparer of the number of copies to be forwarded for final HQDA review (see paragraph (d)(1) of this section for distribution list) and those for filing with EPA. Distribution may include interested Congressional delegations and committees, governors, national environmental organizations, the DOD and Federal agency headquarters, and other selected entities. The Army proponent will prepare the FR NOA, the proposed news release, and the EPA filing letter for signature of the DESOH. When the DEIS has been formally approved by the DESOH, the HQDA proponent will notify the preparer to distribute the DEIS to the remainder of the distribution list. The DEIS must be distributed prior to, or simultaneous to, filing with EPA. The list includes Federal, State, regional, and local agencies, private citizens, and local organizations. The EPA will publish the NOA in the FR. The 45-day comment period begins on the date of the EPA notice in the FR.

(e) *Public review of DEIS.* (1) The length of the DEIS public comment period will normally be no less than 45 days from publication of the NOA in the FR. If the statement is unusually long, circulate a summary with an attached list of locations where review of the entire DEIS may take place (for example, local public libraries).

(2) However, EIS distribution must include the following:

(i) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, or local agency authorized to develop and enforce environmental standards.

(ii) The applicant, if any.

(iii) Any person, organization, or agency requesting the entire environmental impact statement.

(3) Hold public meetings or hearings on the DEIS in accordance with the criteria established in 40 CFR 1506.6 (c) and (d) or for any other reason the proponent deems appropriate. News releases should be prepared and issued to publicize the meetings or hearings.

(f) *Response to comments.* Incorporate responses to comments in the DEIS by modification of the text and/or written explanation. Where possible, group similar comments for a common response. The preparer or a higher authority may make individual response, if considered desirable.

(g) *Prepare Final Environmental Impact Statement (FEIS).* If the changes in the DEIS are exclusively factual corrections, prepare and circulate only an errata sheet containing DEIS comments, responses, and changes. Nevertheless, the entire document and new cover sheet will be filed with EPA (40 CFR 1503.4(c)). If broader modifications are necessary, the proponent will prepare a preliminary FEIS incorporating these modifications. Processing the FEIS is essentially the same as the process outlined for the DEIS transmittal. The FEIS distribution must include any person, organization, or agency that submitted substantive comments on the EIS. Also, distribution to commenting agencies and the public must occur prior to, or simultaneously with, filing the NOA for the EIS with EPA. There is no need to invite public comment during the 30 day post-filing waiting period. (40 CFR 1503.1(b).)

(h) *Decision.* Make no decision on a proposed action until 30 days after EPA has published the NOA of the FEIS in the FR, or 90 days after the NOA of the DEIS, whichever is later. EPA publishes NOAs weekly. Those NOAs ready for EPA by close of business Friday are published in the next Friday's issue of the FR.

(i) *Record of decision (ROD).* When a decision is made, the decisionmaker will prepare a ROD (40 CFR 1505.2 and 1505.3) which will become a part of the environmental documentation presented for the final decision. Forward a copy of the signed ROD to the Army Environmental Office. The ROD will—

(1) State the decision.

(2) Identify all alternatives considered by the Army in reaching its decision, specifying the preferred alternatives as well as the environmental alternatives, if they are not the same. The Army may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions.

(3) Identify and discuss all such factors, including any essential considerations of national policy that were balanced by the Army in making its decision. Because economic and technical analyses are balanced with environmental analysis, the agency preferred alternative will not necessarily be the environmentally preferred alternative.

(4) State how those considerations entered into the final decision.

(5) State whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why they were not. A monitoring and enforcement program will be adopted and summarized for any mitigation. (See Appendix F.)

(j) *Pre-decision referrals.* 40 CFR Part 1504 specifies procedures to resolve Federal agency disagreements on the environmental effects of a proposed action. Pre-decision referrals apply to interagency disagreement on a proposed action's potential unsatisfactory effects.

(k) *Changes during preparation.* If there are substantial changes in the proposed action, or significant new information relevant to environmental concerns during the proposed action's planning process, the proponent will prepare revisions or a supplement to any environmental document or prepare new documentation as necessary.

(l) *Mitigation.* All measures planned to minimize or mitigate expected significant environmental impacts will be identified in the EIS. Implementation of the mitigation plan is the responsibility of the proponent (See Appendix F.) The proponent will make available to the public, upon request, the status and results of mitigation measures associated with the proposed action.

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(m) *Implementing the decision.* The Army may provide for monitoring to assure that its decisions are carried out and should do so in controversial cases or environmentally sensitive areas. (See Appendix F.) Mitigation and other conditions established in the EIS or during its review, and comment as part of the decision, will be implemented by the lead agency or other appropriate consenting agency. The proponent will—

(1) Include appropriate conditions in grants, permits, or other approvals.

(2) Condition funding of actions on mitigation.

(3) Upon request, inform cooperating or commenting agencies on the progress in carrying out adopted mitigation measures that they have proposed and that were adopted by the agency making the decision.

(4) Upon request, make the results of relevant monitoring available to the public and Congress.

(n) *Supplemental EIS (SEIS).* SEISs (40 CFR 1502.9(c)) are processed in the same way as draft and final EISs. Scoping is not required for an SEIS.

§ 651.33 Existing EISs.

A newly proposed action must be the subject of a separate EIS. The proponent may extract and revise the existing environmental documents in such a way as to bring them completely up to date, in light of the new proposals. Such a revised EIS will be prepared and processed entirely under the provisions of this regulation. If an EIS of another agency is adopted, it must be processed in accordance with 40 CFR 1506.3.

§ 651.34 Major Army command (MACOM) processing of an EIS.

In certain cases where the scope of the EIS is limited, the HQDA proponent may authorize a MACOM to process an EIS.

(a) *NOI.* When the NOI is forwarded to the HQDA proponent (§ 651.32(a)(2)), the proponent may determine that the MACOM should accomplish EIS processing. The HQDA proponent will consult with the Army Environmental Office, who will gain approval from DESOH. Proponent will return the NOI with any comments and a letter authorizing the MACOM to process the EIS in accordance with the guidance in this chapter. The MACOM is responsible for preparing the NOI, proposed news release, and a transmittal letter as described in Figure 5, and for forwarding that material to the Army Environmental Office. After a review to ensure acceptability of the document, the OASA (I&L) will forward the NOI to the FR.

(b) *PDEIS.* When the PDEIS is staffed at the unit Headquarters, copies will be provided for concurrent review to the following HQDA elements to ensure that HQDA interposes no objection: JALS–RL, OGC, OCPA, OCLL, DASG–PSP–E, the Army Environmental Office, and the HQDA proponent.

(c) *Filing the EIS.* The unclassified portions of the DEIS and FEIS will be filed with the EPA Federal Activities Office by forwarding five copies with a transmittal letter as described in Figure 7. An additional five copies will be sent to the applicable EPA regional office for its review of the proposed action. One copy will be forwarded to Office of the Secretary of Defense (OSD) (Figure 8). Distribution of HQDA EIS copies will follow that of the PDEIS list. (See paragraph (b) of this section.) Copies will be coordinated for Congressional delegations and committees with the HQDA (OCLL) to meet Congressional notification procedures. Remaining distribution is for interested governors, Federal agency headquarters, national environmental organizations, regional, State and local agencies and organizations, and interested private citizens. The proponent is responsible for developing the distribution list; advice is available from the Army Environmental Office. A NOA may be published in the FR by forwarding the notice, a proposed news release, and a transmittal letter by the same method used for the NOI (See paragraph (a) of this section.)

(d) *ROD.* At the time of decision, a ROD will be prepared. (40 CFR 1505.2 and 1505.3.) A copy of the ROD will be provided to the Army Environmental Office.

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Director
Office of Federal Activities
U.S. Environmental Protection Agency
Room 2119, West Tower
Waterside Mall
Washington, DC 20460

Dear Sir:

Enclosed are five copies of the Draft Environmental Impact Statement (DEIS), Proposal to Construct Barracks at Fort Jefferson, California.

These copies are forwarded for filing in accordance with the Council on Environmental Quality regulations for implement the provisions of the National Environmental Policy Act (40 CFR Part 1500-1508).

Lewis D. Walker
Deputy for Environment, Safety
and Occupational Health
OASA (I&L)

1 Enclosure (5 copies)

DEISs and the accompanying NOA reaching EPA by noon Friday will be published in the Federal Register the following Friday. Failure to deliver documents to EPA by Friday noon will result in an additional 1 week delay.

Figure 7. Sample letter of transmittal of draft Environmental Impact Statement (DEIS) to Environmental Protection Agency (EPA)

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MEMORANDUM FOR: Secretary of Defense, Production and Logistics (P&L), Washington, DC 20301

SUBJECT: Availability of Draft Environmental Impact Statement

In accordance with Department of Defense Directive 6050.1, Environmental Considerations in DOD Actions, attached is one (1) copy of the Draft Environmental Impact Statement (DEIS), Proposal to Construct Barracks at Fort Jefferson, California.

Lewis D. Walker
Deputy for Environment, Safety
and Occupational Health
OASA (I&L)

1 Enclosure
as

Figure 8. Sample letter of transmittal of draft Environmental Impact Statement (DEIS) to Office of the Secretary of Defense (OSD)

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Subpart G—Public Involvement and the Scoping Process

§ 651.35 Public involvement.

(a) The requirement (40 CFR 1506.6) for public involvement recognizes that all potentially affected parties will be involved, when practical, whenever developing environmental documentation. This requirement can be met at the very beginning of the environmental analysis and documentation process by developing a plan to include all affected parties. (See also AR 360–5.) The plan will include the following:

(1) Information disseminated to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. Such information may be subject to Freedom of Information Act and operations security review.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, State, and Federal Government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above.

(4) Public affairs officers at all levels will be kept informed.

(b) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(c) Preparation of EAs will incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(d) Persons and agencies to be consulted include the following:

(1) Municipal, township, and county elected and appointed officials.

(2) State, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(3) Local and regional administrators of other Federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different Federal agencies whose effects must be considered with the proposed Army action (for example, the U.S. General Services Administration (GSA)).

(4) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Indian tribes.

(5) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(6) Any person or group that has specifically requested involvement in the specific action or similar actions.

(e) The public involvement processes and procedures by which participation may be solicited include the following:

(1) The direct individual contact process identifies persons expected to express an opinion and participate in later public meetings. Direct contact may also identify the preliminary positions of such persons on the scope of issues that the EIS will address. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of very limited scope.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(4) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(f) The meetings described in paragraph (e) of this section should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent of a above.

(g) Public surveys or polls to identify public opinion of a proposed action will be performed. (AR 335–15, chapter 10).

§ 651.36 Scoping process.

(a) Introduction. The scoping process, required for EIS preparation (40 CFR 1501.7), should aid the proponent in determining the scope and significant issues related to the proposed action. The process requires appropriate public participation immediately following publishing the NOI in the FR. The Army policy is that EISs for legislative proposals significantly affecting the environment will go through scoping unless extenuating circumstances make it impractical.

(b) Scoping procedures. Scoping procedures fall into preliminary, public interaction, and final phases. These phases are discussed in §§ 651.37, 651.38, and 651.39, respectively.

§ 651.37 Preliminary phase.

In the preliminary phase, the proponent agency or office identifies as early as possible, how it will accomplish scoping and with whose involvement. Key points will be identified or briefly summarized as appropriate in the NOIs. The proponent will—

(a) In the NOI, identify the significant issues to be analyzed in the EIS.

(b) In the NOI, identify the office or person responsible for matters related to the scoping process. If they are not the same as the proponent of the action, make that distinction.

(c) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5–6).

(d) Identify the method by which the agency will invite participation of affected parties and identify a tentative list of the affected parties to be notified.

(e) Identify the proposed method for accomplishing the scoping procedure.

(f) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decisionmaking schedule including—

(1) The scoping process itself.

(2) Collecting or analyzing environmental data, including studies required of cooperating agencies.

(3) Preparation of DEISs and FEISs.

(4) Filing of the ROD.

(5) Taking the action.

(6) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions that will involve separate environmental analysis.

(g) If applicable, in the NOI, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this regulation, including scoping.

§ 651.38 Public interaction phase.

(a) During this portion of the process, the proponent will invite comments from all affected parties and respondents to the NOI to assist in developing issues for detailed discussion in the EIS. Assistance in identifying possible participants is available from the Army Environmental Office.

(b) In addition to the affected parties identified above, participants should include the following:

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(1) Technical representatives of the proponent. Such persons must be able to describe the technical aspects of the proposed action and alternatives to other participants.

(2) One or more representatives of any Army-contracted consulting firm, if one has been retained to participate in writing the EIS or providing reports that the Army will directly use to create substantial portions of the EIS.

(3) Experts in various environmental disciplines, if any area where impacts are foreseen is not already represented among the other scoping participants.

(c) In all cases, provide the participants with information developed during the preliminary phase and with as much of the following information that may be available:

(1) A brief description of the environment at the affected location. When descriptions for a specific location are not available, use general descriptions of the probable environmental effect. Also include the extent to which the environment has been modified or affected in the past.

(2) A description of the proposed alternatives. The description will be sufficiently detailed to enable evaluation of the range of impacts that may be caused by the proposed action and alternatives. The amount of detail that is sufficient will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be familiar.

(3) A tentative identification of "any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration" (40 CFR 1501.7(a)(5)).

(4) Any additional scoping issues or limitations on the EIS, if not already described during the preliminary phase.

(d) The public involvement may begin with the NOI to publish an EIS. The NOI may indicate when and where a scoping meeting will take place and whom to contact to receive preliminary information. The purpose of the scoping meeting is to be an informal public meeting. It is a working session where the gathering and evaluation of information relating to potential environmental impacts can proceed.

(e) Starting with the above information, the person conducting the scoping process will use input from any of the involved or affected parties. This will aid in developing the conclusions. The proponent determines the final scope of the EIS. If the proponent chooses not to require detailed treatment of significant issues or factors in the EIS, in spite of relevant technical or scientific objections by any participant to the contrary, the proponent will clearly identify (in the environmental consequences section of the EIS) the criteria that were used to eliminate such factors from detailed consideration.

§ 651.39 The final phase.

(a) The scope used in the preparation of DEIS consists of the determinations made by the proponent during and after the public interaction phase of the process, as follows:

(1) The scope and the significant issues for detailed analysis in the EIS (40 CFR 1501.7(a)(2)). To determine the scope of EISs, the proponent will consider three types of actions, alternatives, and impacts.

(2) The three actions (other than unconnected single actions) are as follows:

(i) Connected actions, that are closely related and should be discussed in the same impact statement. Actions are connected if they automatically trigger other actions that may require EISs, cannot or will not proceed unless other actions are taken previously or simultaneously, are interdependent parts of a larger action, and depend on the larger action for their justification.

(ii) Cumulative actions, when viewed with other proposed actions, have cumulatively significant impacts and should be discussed in the same impact statement.

(iii) Similar actions, that have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography, may be analyzed in the EIS. Agencies should do so when the best way to assess such actions is to treat them in a single EIS.

(3) The three alternatives are as follows:

(i) No action.

(ii) Other reasonable courses of action.

(iii) Mitigation measures (not in the proposed action).

(4) The three types of impacts are as follows:

(i) Direct.

(ii) Indirect.

(iii) Cumulative.

(5) Indentification and elimination from detailed study of issues that are not significant or have been covered by prior environmental review. This narrows the discussion of these issues to a brief presentation of why they will not have a significant effect on the human environment. It may also provide a reference to their coverage elsewhere. (40 CFR 1501.7(a)(3)).

(6) Allocation of assignments for preparation of the EIS among the lead and any cooperating agencies, with the lead agency retaining responsibility for the statement. (40 CFR 1501.7(a)(4)).

(7) Indication of any public EAs and other EISs, prepared by the Army or another Federal agency, related to, but not part of, the EIS under consideration. (40 CFR 1501.7(a)(5)).

(8) Identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with the EIS. (40 CFR 1501.7(a)(6)).

(b) As part of the scoping process the lead agency may—

(1) Set time limits, as provided in § 651.12(b), if they were not already indicated in the preliminary phase.

(2) Prescribe overall page limits to the EIS in accordance with the CEQ regulations that emphasize conciseness.

(c) All determinations reached by the proponent during the scoping process will be clearly conveyed to the preparers of the EIS in a Scope of Statement. The Scope of Statement will be made available to participants in the scoping process and to other interested parties on request. Any conflicts on issues of a scientific or technical nature that arise between the proponent and scoping participants, cooperating agencies, other Federal agencies, or preparers of the document will be identified during the scoping process and resolved or discussed by the proponent in the DEIS.

§ 651.40 Aids to information gathering.

The proponent may use or develop graphic or other innovative methods to aid information gathering, presentation, and transfer during the three scoping phases. These include methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and organizing its own determinations on scope for use during preparation of the DEIS.

§ 651.41 Modifications of the scoping process.

(a) If a lengthy period exists between a decision to prepare an EIS and the time of preparation, the proponent will initiate the NOI at a reasonable time in advance of preparation of the DEIS. The NOI will state any tentative conclusions regarding the scope of the EIS made prior to publication of the NOI. Reasonable time for public participation will be allowed before the proponent makes any final decisions or commitments on the EIS.

(b) The proponent of a proposed action may use scoping during preparation of environmental review documents other than EIS, if desired. The proponent may use the above procedures or may develop modified procedures at his or her discretion.

Subpart H—Environmental Effects of Major Army Actions Abroad

§ 651.42 Introduction.

Protection of the environment is an Army priority, no matter where the installation is located. The Army is committed to pursuing an active role in addressing environmental quality issues in our relations with neighboring communities and assuring that consideration of the environment is an integral part of all decisions. This subpart assigns responsibilities for review of environmental effects abroad of major Army actions. It is a requirement of E. O. 12114, "Environmental Effects Abroad of Major Federal Actions," dated 4 January 1979. This chapter applies to HQDA and Army agencies' actions that would significantly affect the quality of the human environment outside the United States.

§ 651.43 Global commons.

Environmental effects of actions that affect the global commons require environmental analyses and documentation. (See enclosures 1 and 2 of DOD Directive 6050.7) (Appendices G and H.) These relate to environmental effects abroad of major military actions.

§ 651.44 Army policy in global commons and foreign nations.

(a) Act with care in the global commons. All the nations of the world share the stewardship of these areas. Take account of environmental considerations when acting in the global commons in accordance with the procedures set out in Appendix G.

(b) Act with care within the jurisdiction of a foreign nation. Respect treaty obligations and the sovereignty of other nations. Exercise restraint in applying U.S. laws within foreign nations unless Congress has expressly provided otherwise. Evaluate environmental considerations in accordance with Appendix H when the prepared action could affect the environment of a foreign nation.

(c) Coordinate with the Department of State on formal communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments. Consult with the Department of State regarding use of additional exemptions from this directive as specified in Appendix H. Coordinate and consult with the Department of State through the Assistant Secretary of Defense (International Security Affairs) (ASD (ISA)).

§ 651.45 Responsibilities.

(a) Army agencies that control actions abroad (as defined within the limitations of Status of Forces Agreements) will—

(1) Ensure that regulations and other major policy issuances receive a review by the Army Environmental Office for consistency with E.O. 12114, DOD Directive 6050.7, and this regulation.

(2) Consult with HQDA Strategy, Plans and Policy Directorate-Politico-Military Division (DAMO–SSM) on significant or sensitive actions or decisions affecting relations with other nations.

(3) Prepare and consider environmental documents for proposed actions required by this regulation.

(4) Ensure that regulations and other policies which affect global commons are subject to review for consistency with this regulation.

(5) Designate a single POC for matters regarding this regulation.

(b) The Assistant Secretary of the Army, Installation and Logistics (ASA (I&L)) will—

(1) Serve as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintain liaison with the Assistant Secretary of Defense for Production and Logistics (ASD (P&L)) on matters concerning E.O. 12114, DOD Directive 6050.7, and this regulation.

(3) Coordinate actions with other Secretariat offices as appropriate.

(c) The Chief of Engineers will—

(1) Serve as ARSTAF proponent for implementation of E.O. 12114, DOD Directive 6050.7, and this regulation.

(2) Apply in planning and executing overseas construction activities where appropriate in light of applicable statutes and SOFAs.

(d) Deputy Chief of Staff for Organizations and Plans (DCSOPS) will—

(1) Serve as the focal point on the ARSTAF for integrating environmental considerations required by E.O. 12114 into Army plans and activities. Emphasis is on those reasonably expected to have widespread, long-term, and severe impacts on the global commons or the territories of foreign nations.

(2) Consult with the Office of Foreign Military Rights Affairs of Assistant Secretary of Defense (International Security Affairs) (ASD (ISA)) on significant or sensitive actions affecting relations with another nation.

(e) The Judge Advocate General (TJAG), in coordination with the Office of the General Counsel, will provide advice and assistance concerning the requirements of E.O. 12114 and DOD Directive 6050.7.

(f) The Chief of Public Affairs (CPA) will provide advice and assistance on public affairs as necessary.

§ 651.46 Implementation guidance.

(a) Environmental documents prepared under the provisions of this chapter should use the format for such documents found in Appendixes G and H. Otherwise, use a format appropriate in light of the applicable statutes and SOFAs.

(b) Submit nominations for inclusions in the list of CX through DAMO–SSM to the Army Environmental Office.

Appendix A—List of Categorical Exclusions (CX)

Section I: Categorical exclusions (CX)

A–1. Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

A–2. Law and order activities performed by military police and physical plant protection and security personnel, excluding formulation and/or enforcement of hunting and fishing policies or regulations that differ substantively from those in effect on surrounding non-Army lands.

A–3. Recreation and welfare activities not involving off-road recreational vehicle management.

A–4. Commissary and Post Exchange (PX) operations, except where hazardous material is stored or disposed.

A–5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities, to include the layaway of facilities, except when requiring application or disposal of hazardous or contaminated materials.

A–6. Routine procurement of goods and services, including rotine utility services.

A–7. Construction that does not significantly alter land use, provided the operation of the project when completed would not of itself have a significant environmental impact; this includes grants to private lessees for similar construction. (REC required.)

A–8. Simulated war games and other tactical and logistical exercises without troops.

A–9. Training entirely of an administrative or classroom nature.

A–10. Storage of materials, other than ammunition, explosives, pyrotechnics, nuclear, and other hazardous or toxic materials.

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A–11. Operations conducted by established laboratories within enclosed facilities where—

a. All airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing Federal, State, local laws, and regulations.

b. No animals that must be captured from the wild are used as research subjects, excluding reintroduction projects. (REC required.)

A–12. Developmental and operational testing on a military installation, where the tests are conducted in conjunction with normal military training or maintenance activities so that the tests produce only incremental impacts, if any and provided that the training and maintenance activities have been adequately assessed, where required, in other Army environmental documents. (REC required.)

A–13. Routine movement of personnel; routine handling and distribution of nonhazardous and hazardous materials in conformance with DA, EPA, Department of Transportation, and State regulations.

A–14. Reduction and realignment of civilian and/or military personnel that fall below the thresholds for reportable actions as prescribed by statute or AR 5–10. (REC required).

A–15. Conversion of commercial activities (CA) to contract performance of services from in-house performance under the provisions of DOD Directive 4100.15.

A–16. Preparation of regulations, procedures, manuals, and other guidance documents that implement, without substantive change, the applicable HQDA or other federal agency regulations, procedures, manuals, and other guidance documents that have been environmentally evaluated.

A–17. Acquisition, installation, and operation of utility and communication systems, data processing, cable and similar electronic equipment that use existing rights of way, easements, distribution systems, and facilities.

A–18. Activities that identify or grant permits to identify, the state of the existing environment (for example, inspections, surveys, and investigations) without alteration of that environment or capture of wild animals.

A–19. Deployment of military units on a temporary duty (TDY) basis where existing facilities are used and the activities to be performed have no significant impact on the environment. (REC required.)

A–20. Grants of easements for the use of existing rights-of-way for use by vehicles; electrical, telephone, and other transmission and communication lines; transmitter and relay facilities; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar public utility and transportation uses. (REC required.)

A–21 Grants of leases, licenses, and permits to use existing Army controlled property for non-Army activities, provided there is an existing land-use plan that has been environmentally assessed and the activity will be consistent with that plan. (REC required.)

A–22. Grants of consent agreements to use a Government-owned easement in a manner consistent with existing Army use of the easement; disposal of excess easement areas to the underlying fee owner. (REC required.)

A–23. Grants of licenses for the operation of telephone, gas, water, electricity, community television antenna, and other distribution systems normally considered as public utilities. (REC required.)

A–24. Transfer of real property administrative control within the Army, to another military department, or other Federal agency, including the return of public domain lands to the Department of Interior and reporting of property available for outgranting; and grants of leases, licenses, permits, and easements for use of excess or surplus property without significant changes in land use. (REC required.)

A–25. Disposal of uncontaminated buildings and other improvements for removal off-site. (REC required.)

A–26. Studies that involve no commitment of resources other than manpower. (REC required.)

A–27. Study and test activities within the procurement program for Military Adaptation of Commercial Items for items manufactured in the U.S. (REC required.)

A–28. Development of table organization and equipment documents, r.o fixed location or site.

A–29. Grants of leases, licenses, and permits to use DA property for or by another governmental entity when such permission is predicated upon compliance with the NEPA. (REC required.)

Section II: Screening Criteria

A–30. A CX is a category of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required.

A–31. A CX may be used only when the criteria of paragraphs 4–1 and 4–2 have been applied and each of the following are true:

(a) This action is not a major federal action significantly affecting the quality of the human environment.

(b) There are minimal or no individual or cumulative effects on the environment as a result of this action.

(c) There is no environmentally controversial change to existing environmental conditions.

(d) There are no extraordinary conditions associated with this project.

(e) This project does not involve the use of unproven technology.

(f) This project involves no greater scope or size than is normal for this category of action.

(g) There is no potential of an already poor environment being further degraded.

(h) This action does not degrade an environment that remains close to its natural condition.

(i) There are no threatened or endangered species (or critical habitat), significant archaeological resources, National Registered or National Register eligible historical sites, or other statutorily protected resources.

(j) This action will not adversely affect prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, aquifers floodplains, wild and scenic rivers, or other areas of critical environmental concern.

Appendix B—References

Section I

Required Publications

AR 360–5
Army Public Affairs, Public Information.

Section II

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand the regulations.

AR 5–10
Reduction and Realignment Actions.
AR 11–27
Army Energy Program.
AR 95–50
Airspace and Special Military Operation Requirements.
AR 140–475
Real Estate Selection and Acquisition: Procedures and Criteria.
AR 200–1
Environmental Protection and Enhancement.
AR 210–10
Administration.
AR 210–20
Master Planning for Army Installations.
AR 335–15
Management Information Control System.
AR 380–5
Department of the Army Information Security Program.
AR 385–10
Army Safety Program.
AR 420–40
Historic Preservation.
AR 530–1
Operations Security (OPSEC).
DODD 4100.15
Commercial Activities Programs.
DODD 6050.1
Environmental Effects in the United States of Department of Defense Actions.
DODD 6050.7
Environmental Effects Abroad of Major Department of Defense Actions.

Section III

Related Form

DD Form 1391
Military Construction Project Data.

Appendix C—National Environmental Policy Act

(42 U.S.C. 4321 *et seq.*)

Appendix D—Contents of the Environmental Impact Statement (EIS)

D–1. Cover Sheet

The cover sheet will not exceed one page (40 CFR 1502.11) and will include—

(a) A cover sheet preceded by a protective cover sheet that contains the following statement: "The material contained in the attached (final or draft) Environmental Impact Statement is for internal coordination use only and may not be released to non-Department of Defense Agencies or

individuals until coordination has been completed and the material has been cleared for public release by appropriate authority." This sheet will be removed prior to filing the document with EPA.

(b) A list of responsible agencies including the lead agency and any cooperating agency.

(c) The title of the proposed action that is the subject of the statement and, if appropriate, the titles of related cooperating agency actions, together with State and county (or other jurisdiction as applicable) where the action is located.

(d) The name, address, and telephone number of the person at the agency who can supply further information, and, as appropriate, the name and title of the major approval authority in the command channel through HQDA staff proponent.

(e) A designation of the statement as a draft, final, or draft or final supplement.

(f) A one-paragraph abstract of the statement that should describe only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

(g) The date by which comments must be received, computed in cooperation with the EPA. (See example cover sheet, Figure D–1.)

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LEAD AGENCY: Department of the Army, TRADOC.

COOPERATING AGENCY(IES): (if any) U.S. Forest Service, U.S. Department of Agriculture.

TITLE OF THE PROPOSED ACTION: Development of training area, Fort Pleasant, Maryland.

AFFECTED JURISDICTION: State of Maryland; Smith, Taylor, and Jones Counties.

PREPARER/PROPONENT APPROVED (OR REVIEWED BY): Name, address and telephone number, name and title of proponent. (i.e., Installation Commander or program manager).

REVIEWED BY: Name and title of the environmental coordinator

APPROVED BY: Name and title of any intermediate proponent (i.e., MACOM commander); Name and title of Army Staff proponent (i.e., Director of program affected by EIS).

ABSTRACT: One paragraph summary.

REVIEW COMMENT DEADLINE: (Computed in cooperation with EPA guidance).

Figure D-1. Example cover sheet

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D-2. Summary

The summary will stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. It should list all Federal permits, licenses, and other entitlements that must be obtained prior to proposal implementation. Further, a statement of compliance with the requirements of other Federal environmental protection laws will be included (40 CFR 1502.25).

In order to simplify consideration of complex relationships, every effort will be made to present the summary of alternatives and their impacts in a graphic format with the narrative. This summary should not exceed 10 pages.

D-3. Table of Contents

This section will provide for the table of contents, list of figures and tables, and a list of all referenced documents, including a bibliography of references within the body of the EIS. The table of contents should have enough detail so that searching for sections of text is not difficult.

D-4. The Purpose of and Need for the Action

This section should clearly state the nature of the problem and discuss how the proposed action or range of alternatives would solve the problem. This section is designed specifically to call attention to the benefits of the proposed action. If a cost-benefit analysis has been prepared for the proposed action, it may be included here, or attached as an appendix and referenced here. This section will briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives.

D-5. Alternatives Considered

This section presents all reasonable alternatives and their environmental impacts. An examination of each specific proposal in clear terms is required. This section should be written in simple, nontechnical language for the lay reader. A no action alternative will be included (40 CFR 1502.14(d)). For actions other than construction, the term no action is often misleading because a continuation of the status quo is implicit. This section needs no examination of the status quo. A preferred alternative need not be identified in the DEIS; however, a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)).

A simple title or a letter or numerical symbol may be used for each of the discussed alternatives (for example, alternative A). Reference to the title or designation will be continued uniformly throughout the document in the appropriate sections. The environmental impacts of the alternatives will be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided the decisionmaker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of tabular or matrix format is encouraged to provide the reviewer with an at-a-glance review. In sum, the following points are required:

(a) A description of all reasonable alternatives including the preferred action, alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the no action alternative.

(b) A comparative presentation of the environmental consequences of all reasonable alternative actions including the preferred alternative.

(c) A description of the mitigation measures nominated for incorporation into the proposed action and alternatives, as well as mitigation measures that are available but not incorporated.

(d) Listing of any alternatives that were eliminated from detailed study. A brief discussion of the reasons for which each alternative was eliminated.

D-6. Affected Environment

This section will contain information about existing conditions in the affected areas necessary to understand the potential effects of the alternatives under consideration (40 CFR 1502.15). Environments created by the implemented proposal will be included as appropriate. Affected elements could include, for example, biophysical characteristics (ecology and water quality); land use and land use plans; architectural, historical, and cultural amenities; utilities and services; and transportation. This section will not be encyclopedic. It will be written clearly and the degree of detail for all points covered will be related to the significance and magnitude of expected impacts. Elements not impacted by any of the alternatives need only be presented in summary form or referenced.

D-7. Environmental and Socioeconomic Consequences

This section of the EIS forms the scientific and analytic basis for the summary comparison of effects discussed in D-5. The following will be discussed (40 CFR 1502.16):

(a) Direct effects and their significance. Include in the discussion the direct impacts on human health and welfare and on other forms of life and related ecosystems. Examples of direct effect might include noise from military helicopter operations or the benefits derived from the installation of wet scrubbers to meet air quality control standards.

(b) Indirect effects and their significance. Include here socioeconomic impacts. Many Federal actions attract people to previously unpopulated areas and indirectly induce pollution, traffic congestion, and haphazard land development. Conversely, other actions may disperse the existing population. Aircraft noise often affects future development patterns, and air pollution abatement operations may result in secondary water pollution problems.

(c) Possible conflicts between the proposed actions and Federal, regional, State, and local (including indian tribe) land and airspace use plans, policies, and controls for the area concerned. Compare the land use aspects of the proposed action and discuss possible conflicts, such as siting an extremely noisy activity adjacent to a residential area, leasing land for purposes inconsistent with State wildlife management, or creating conflicts with prime and unique farmland policies.

(d) The environmental effects of alternatives, including the proposed action.

(1) Impacts of the alternatives, including a worst case analysis where there are gaps in relevant information or scientific uncertainty.

(2) Adverse environmental effects that cannot be avoided should the proposal be implemented. Include the relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity. The section should discuss the extent to which the proposed action and its alternatives involve short-term vs. long-term environmental gains and losses. In this context, short-term and long-term do not refer to any rigid time period and should be viewed in terms of the environmentally significant consequences of the proposed action. Thus, short-term can range from a very short period of time during which an action takes place to the expected life of a facility.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures. Consult the Energy Resource Impact Statement (AR 11-27), when applicable, to satisfy this requirement. Account for the energy consumption of each proposed alternative and associated economics. Discuss, where appropriate, the uses of renewable and nonrenewable energy resources. Conservation techniques that could attenuate energy consumption should also be discussed within this section; for example, the use of insulation for newly constructed family housing that would reduce the long-term consumption of fuel oil or natural gas.

(f) Natural or depletable resource requirements and conservation potential of various mitigation measures. Include discussion of any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented. The term resources should include—

(1) Materials. Discuss materials in short supply such as metals and wood, but do not include materials that are plentiful or have competitive alternatives (for example, aggregate or fill materials).

(2) Natural. Discuss the use of natural resources resulting in irrevocable effects such as ecosystem imbalance, destruction of wildlife, loss of prime and unique farmlands. Specifically include consumption of natural energy resources in short supply, such as oil or natural gas.

(3) Cultural. Discuss destruction of human interest sites, archaeological and historical, scenic views or vistas, or valued open space. Reiterate lasting socioeconomic effects the proposed action might have on the surrounding community.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including reuse and conservation potential of various alternatives and mitigation measures. Discuss the effect on adjacent neighborhoods and the city at large. Examine the effects on physical design features (also known as the built environment) and resultant impacts on social interaction areas such as privacy, public opinion, personnel perceptions, and other aspects of the social environment. Review the

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reuse potential of existing building space and its time-use allocation, usually referred to as time and spatial management. (Time and spatial management allows for conservation of energy and other resources by discouraging new construction and operation until all existing building and time allocations have been fully scrutinized for alternate reuse.)

(h) Means to mitigate adverse environmental effects. Include mitigation not already included as part of the various alternatives. Also, specify migitations that require action by other agencies or outside parties.

D–8. List of Preparers

The EIS will list the names of its preparers, together with their qualifications (expertise, experience, and professional disciplines.) (40 CFR 1502.17). Include those people who were primarily responsible for preparing (research, data collection, and writing) the EIS or significant background or support papers, and basic components of the statement. When possible, the people who are responsible for a particular analysis, as well as an analysis of background papers, will be identified. If some or all of the preparers are contractors' employees, they may be identified as such. Identification of the firm that prepared the EIS is not, by itself, adequate to meet the requirements of this point. Normally, the list will not exceed two pages.

D–9. Distribution List

For the DEIS, a list will be prepared indicating from whom review and comment is requested. The list will include public agencies and private parties or organizations. The FEIS will normally only list those who have commented or shown an interest in the proposed action.

D–10. Index

The index will be an alphabetical list of topics in the EIS, especially of the types of effects induced by the various alternative actions. Reference may be made to either page number or paragraph number.

D–11. Appendices

If an agency prepares an appendix to an EIS, the appendix will—

(a) Consist of material prepared in connection with an EIS (as distinct from material that is not so prepared and incorporated by reference).

(b) Consist only of material that substantiates any analysis fundamental to an impact statement.

(c) Be analytic and relevant to the decision to be made.

(d) Be circulated with the EIS or readily available upon request.

Appendix E—Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)

(40 CFR Parts 1500–1508)

Appendix F—Implementing a Monitoring and Methodology Program [1]

F–1. Mitigation

(a) The 1978 CEQ regulations for implementing NEPA recognizes the following five means of mitigating an environmental impact:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the effect on the environment.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

(b) The intention of mitigation is to reduce the effects of the action on the environment. The five means of mitigation (see (a), above) are discussed in (1) through (5) below.

(1) Avoidance. This method avoids environmental impact by not performing certain activities; for example, allowing tracked vehicles to cross only at designated improved stream crossings. This restriction would reduce the effects on a stream resulting from random access, such as increased turbidity caused by bank erosion and bottom disturbance caused by the tracks.

(2) Limitation of action. The extent of an impact can be reduced by limiting the degree or magnitude of the action; for example, changing the firing time or the number of rounds fired on artillery ranges to reduce the noise impact on nearby residents. In the example in (a) above, the number of authorized stream crossings would have been limited or minimized.

(3) Restoration of the environment. This method restores the environment to its previous condition or better. Movement of troops and vehicles across vegetated areas often destroys vegetation. This impact can be mitigated by either reseeding or replanting the areas with native plants after the exercise.

(4) Preservation and maintenance operations. This method designs the action so as to reduce adverse environmental effects. Examples include maintaining erosion control structures, using air pollution control devices, and encouraging car pools in order to reduce transporation effects such as air pollution, energy consumption, and traffic congestion.

(5) Replacement. This method replaces the resource or environment that will be impacted by the action. Replacement can occur in-kind or otherwise; for example, replace deer habitat in the project area with deer habitat in another area; or, replace fisheries habitat with deer habitat. This replacement can occur either on the site of impact or at another location. This type of mitigation is often used in water resources projects. For example, if an action were destroying some of the installation's best deer habitat, a potential mitigation would be developing another section of the installation into deer habitat. This is an example of an in-kind replacement at a different site.

F–2. Identification of Mitigation Techniques

(a) Introduction. Identifying and evaluating mitigation techniques involves using experts familiar with the predicted environmental impacts. A single mitigation measure will often alleviate several different impact.

(b) Sources of information. Many potential sources of information exist concerning the mitigation of various environmental effects. The following sources of information are available on post: Other sources are as follows:

(1) Within the DA, there are sources such as the Army Environmental Hygiene Agency (AEHA), the major Army command (MACOM) environmental office, the Army Environmental Office, U.S. Army Corps of Engineers (USACE) research laboratories (for example, U.S. Construction Engineering Research Laboratory [USA–CERL], U.S. Army Waterways Experiment Station, and U.S. Cold Regions Research Laboratory), USACE Huntsville Division, and the military assistance offices in certain districts.

(2) State agencies are another potential source of information. The appropriate POC within these agencies may be obtained from the installation environmental office.

(3) Another source is directories such as USA–CERL Technical Report N–40,[2] as discussed in Engineering Technical Note 79–6.[3]

(4) Another source on mitigation procedures is Ramifications/Mitigation statements from USA-CERL's Environmental Impact Computer System (EICS).[4]

(5) Local interest groups may also be able to help identify potential mitigation measures.

(c) Example mitigation techniques. Several different mitigation techniques have been used on military installations for a number of years. The following examples illustrate the variety of possible measures:

(1) There are maneuver restrictions in areas used extensively for tracked vehicle training. These restrictions are not designed to infringe on the military mission, but rather to reduce the amount of damage to the training area.

(2) Aerial seeding has been done on some installations to reduce erosion problems.

(3) Changing the time and/or frequency of operations has been used. This may involve changing the season of the year, the time of day, or even day of the week for various activities. This avoids noise impacts as well as aesthetic, transportation, and some ecological problems.

(4) Reducing the effects of construction has involved using techniques that keep heavy equipment away from protected trees and quickly reseeding areas after construction.

(d) Mitigation alternatives. Consideration of all practical mitigation alternatives are considered. The emphasis is not on what can be theoretically accomplished, but on what can be accomplished for each alternative.

(1) Practical mitigations are those that the proponent can accomplish with the project's constraints such as manpower and money. Practical measures must be defined at the installation level; what may be practical on one post or at one time may not be practical on another. A number of items determine what is practical, including military mission, manpower restrictions, cost, institutional barriers, technical feasibility, and public acceptance. Practicality does not necessarily ensure resolution of conflicts among these items, rather it is the degree of conflict that determines practicality.

(2) The previous examples involved some amount of conflict in all these areas. Although mission conflicts are inevitable, they are not insurmountable. Therefore, the proponent should be cautious about declaring all mitigations impracticable and should carefully consider any manpower requirements. This may be a greater restriction than military mission conflicts.

(3) There is no standard rule of thumb applicable to mitigation activities. The key point concerning both the manpower and cost constraints is that unless money is actually budgeted and manpower assigned, the mitigation does not exist. This will require coordination by the proponent office early in the process to allow enough time to get the mitigation activities into the budget cycle. If the mitigation is not funded on schedule with the action, the action can be judicially stopped.

(4) Mitigations that do not fall directly within the definition of practical must still be considered, including those to be accomplished by other agencies. The proponent must coordinate with these agencies so that they can plan to obtain the necessary manpower and funds. Mitigations that were considered but rejected must be discussed, along with the reason for the rejection, within the EIS.

F–3. Monitoring

Monitoring is an integral part of any mitigation system and a way to examine an enviromental mitigation. The two basic types of monitoring are as follows:

(a) Enforcement monitoring. Enforcement monitoring ensures that mitigation is being performed as described in the environmental document and ensuring that mitigation requirements and penalty clauses are written into any contracts. It also includes ensuring that these provisions are enforced. Before mitigation can take place on-post, it must be budgeted, scheduled, and the necessary manpower must be assigned. Any changes required in post regulations must be completed and enforced. The actual mitigation (for example, aerial seeding of a training area) must be performed. Enforcement monitoring involves the monitoring of all these activities.

(b) Effectiveness monitoring. Effectiveness monitoring measures the success of the mitigation effort and/or the environmental effect. This must be a scientifically based quantitative investigation. Generally, qualitative measurements are not acceptable. However, it is not necessary to measure everything that may be affected by the action, only enough information to judge the method's effectiveness.

F–4. Establishing a Monitoring System

Establishment of a monitoring system must involve all appropriate offices that will be involved in its implementation. When evaluating several different potential monitoring systems, the ability to perform the monitoring is the most critical factor. This means that manpower—both on post and outside expertise—must be available. Sufficient funds must also be available for the monitoring process. Figures F–1 through F–3 illustrate the steps in establishing a monitoring system. Figure F–1 is designed to help select the type of monitoring system needed. Figure F–2 shows the responsibilities of the lead agency in establishing an enforcement monitoring program. Figure F–3 illustrates the steps necessary to establish an effectiveness monitoring program.

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[1] From: John Fittipaldi, et al., Handbook for Environmental Impact Analysis and Planning, Technical Report N–130, U.S. Army Construction Engineering Research Laboratory (USA–CERL), October 1982, pp. 133–143.

[2] R. Lacey, et al., Compendium of Administrators of Land Use and Related Programs, Technical Report N–40/ADA057226 (USA–CERL July 1978).

[3] Coordination with Federal and State Land Use Agencies, Engineer Technical Note 70–6 (Department of the Army (DA), 8 February 1979).

[4] L. V. Urban, et al., Computer-aided Environmental Impact Analysis for Construction Activities: User Manual, Technical Report E–50/ADA008988 (USA–CERL, March 1975).

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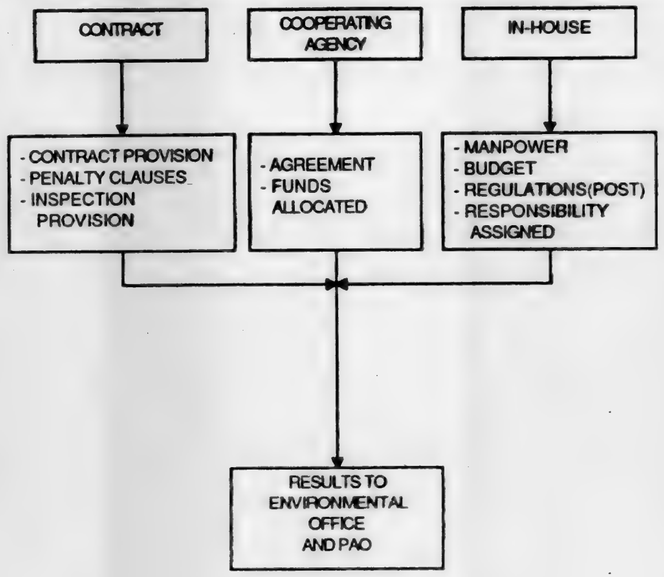


Figure F-1. Monitoring mitigations

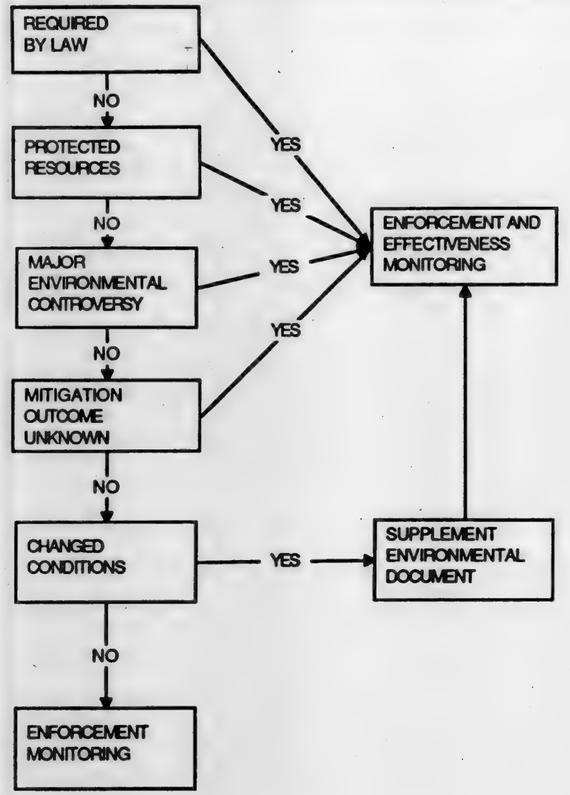


Figure F-2. Enforcement monitoring

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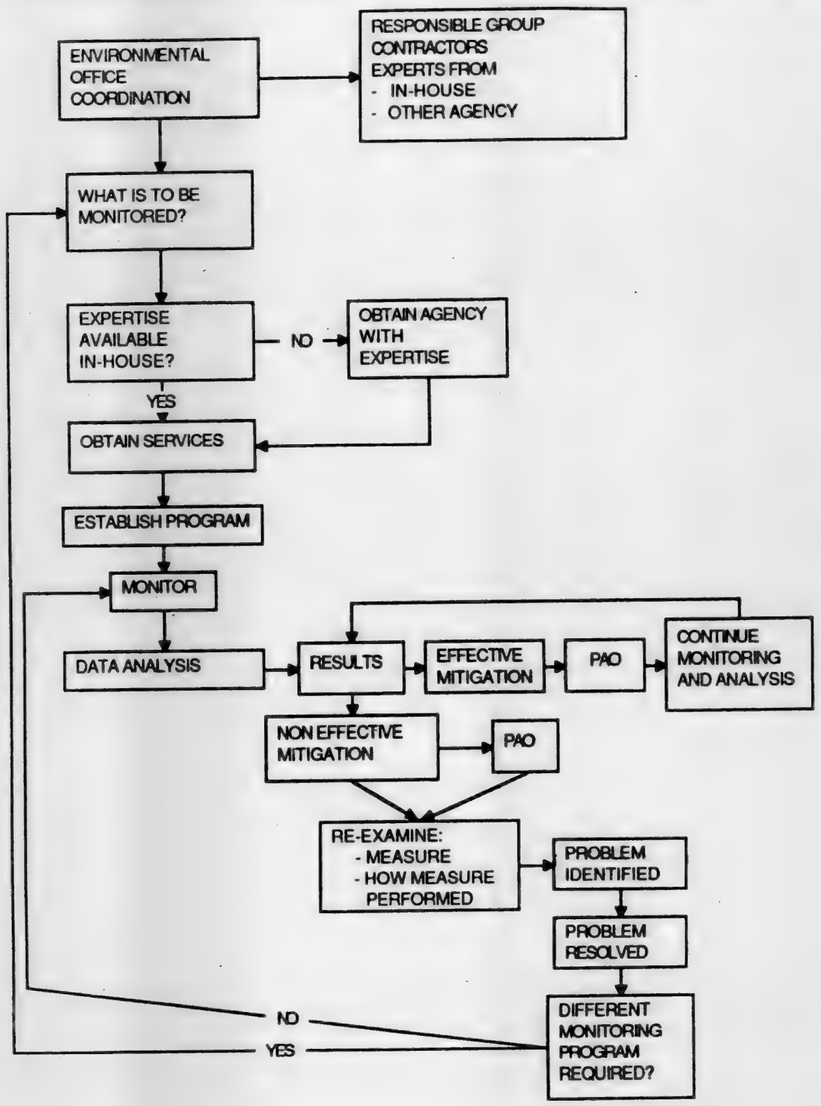


Figure F–3. Effectiveness monitoring

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F–5. Type of Monitoring Program

AR 200–1 and other laws and regulations help determine the types of monitoring program. There are five basic considerations for monitoring programs (Figure F–1):

(a) Legal requirements. Permits for some actions will require that a monitoring system be established, for example, dredge and fill permits from the Corps of Engineers. These will generally require both enforcement and effectiveness monitoring programs.

(b) Protected resources. These include Federal- or State-listed endangered or threatened species, important historic or archaeological sites (whether or not these are included on the National Register of Historic Places), wilderness areas, wild and scenic rivers, and other public or private protected resources. Private protected resources include areas such as Audubon Society Refuges, Nature Conservancy lands, or any other land that would be protected by law if it were under Government ownership, but is privately owned. If any of these resources are affected, an effectiveness and enforcement monitoring program must be undertaken in conjunction with the Federal, State, or local agency that manages the type of resource.

(c) Major environmental controversy. If a controversy remains regrading the effect of an action or the effectiveness of a mitigation, an enforcement and effectiveness monitoring program must be undertaken. Controversy includes not only scientific disagreement about the mitigation's effectiveness, but also public interest or debate.

(d) Mitigation outcome. The probability of the mitigation's success must be carefully considered. The proponent must know if the mitigation has been successful elsewhere. The validity of the outcome should be confirmed by expert opinion. However, the proponent should note that a certain technique, such as artificial seeding with the natural vegetation, that may have worked successfully in one area, may not work in another.

(e) Changed conditions. The final consideration is whether any condition, such as the environmental setting, have changed (for example, a change in local land use around the area, or a change in project activities, such as increased amount of acreage being used or an increased movement of troops). Such changes will require preparation of a supplemental impact evaluation and additional monitoring. If none of these conditions are met (that is, requirement by law, protected resources, no major controversy is involved, effectiveness of the mitigation is known, and the environmental or project conditions have not changed), then only an enforcement monitoring program is needed. Otherwise, both an enforcement and effectiveness monitoring program will be required.

F–6. Enforcement Monitoring Progam Development

The development of an enforcement monitoring program is governed by who will actually perform the mitigation (Figure F–2). The following three different groups may actually perform the work: a contractor, a cooperating agency, or a lead agency (in-house) However, the lead agency is ultimately responsible for performing any mitigation activities.

(a) Contract performance. Several provisions must be made in work to be performed by contract. The lead agency must ensure that contract provisions include the performance of the mitigation activity and that penalty clauses are written into the contracts. It must provide for timely inspection of the mitigation measures and is responsible for enforcing all contract provisions.

(b) Cooperating agency performance. The lead agency must ensure that if a cooperating agency performs the work, it understands its role in the mitigation. The lead agency must determine and agree upon how the mitigation measures will be funded. It must also ensure that any necessary formal paperwork such as cooperating agreements are complete.

(c) Lead agency performance. If the lead agency performs the mitigation, the proponent has several responsibilities to—

(1) Ensure that needed tasks are performed.

(2) Provide appropriate funding in the project budget.

(3) Make arrangements for necessary manpower allocations.

(4) Make any necessary changes in the agency (installation) regulations (such as, environmental or range regulations).

(d) Results. In any case, whether the mitigation is performed by contract, a cooperating agency, or the lead agency, all results will be sent to the Public Affairs Office and the Environmental Office on post.

F–7. Effectiveness Monitoring Program Development

Effectiveness monitoring is the most difficult to establish (Figure F–3). The responsible agent, such as the Director of Training, should coordinate the monitoring with the Environmental Office.

(a) Determination of what is to be monitored. The first step in this type of monitoring program is to determine what must be monitored. This determination should be based on criteria discussed during the establishment of the system; for example, the legal requirements, protected resources, area of controversy, known effectiveness, or changed conditions. Initially, this can be a very broad statement, such as reduction of impacts on a particular stream by a combination of replanting, erosion control devices, and range regulations.

(b) Finding expertise. The next step is finding the expertise necessary to establish the monitoring system. The expertise may be available on-post; Table F–1 lists potential sources on a military installation. If it is not available, it must be obtained from an outside source. Directories such as USA-CERL Technical Report N–40 [5] may provide the needed information. In addition, local universities may have specialists and local interest groups who can identify experts within a particular field. This may be particularly helpful if a mitigation is considered controversial.

(c) Establishment of a program. After a source of expertise is located, the program can be established, using the following five technical criteria:

(1) Any parameters used must be measurable; for example, the monitor must be quantitative and statistically sound.

(2) A baseline study must be completed before the monitoring begins in order to identify the actual state of the system prior to any disturbance.

(3) The monitoring system must have a control, so that it can isolate the effects of the mitigation procedures from effects originating outside the action.

(4) The system's parameters and means of measuring them must be replicable.

(5) Parameter results must be available in a timely manner so that the decisionmaker can take any necessary corrective action before the effects are irreversible.

Table F–1. Potential Monitoring and Mitigation Expertise

Ecology	
	Installation Environment Specialist
	Installation Wildlife Officer
	Installation Forester
	Installation Natural Resource Committee
	Corps District Environmental Staff
Health and Safety	
	Installation Preventive Medicine Officer
	Installation Safety Officer
	Installation Hospital
	Installation Mental Hygiene or Psychiatry Officer
	Chaplain's Office
Air Quality	
	Installation Environmental Specialist
	Installation Preventive Medicine Officer
Water Quality	
	Installation Environmental Specialist
	Installation Preventive Medicine Officer
	Corps District Environmental Staff
Socioeconomic	
	Personnel Office
	Public Information Officer
	Corps District Economic Planning Staff
Earth Science	
	Installation Environmental Specialist
	Corps District Geotechnical Staff
Land Use Impacts	
	Installation Master Planner
	Corps District Community Planners
Noise	
	Preventive Medicine Officer
	Directorate of Engineering and Housing
	Installation Master Planner

[5] R. Lacey, et al., Compendium of Administrators of Land Use and Related Programs, Technical Report N–40/ADA057228 (USA-CERL, 1978)

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Table F-1. Potential Monitoring and Mitigation Expertise—Continued

Aesthetics
- Installation Landscape Architect
- Corps District Landscape Architects

Energy and Resource Conservation
- Installation Environmental Specialist

Historic and Archaeological Resources
- Installation Environmental Specialist
- Installation Historian or Architect
- Corps District Archaeologist

Airspace
- Installation Air Traffic and Airspace Officers
- Department of the Army Regional Representative to the Federal Aviation Administration
- Department of the Army Aeronautical Services Office
- Military Airspace Management System (MAMS)
- Installation Range Control Officer

(d) Program management. There are several program management considerations. First, not every mitigation has to be monitored separately. The effectiveness of several mitigation actions can be determined by one measurable parameter. For example, the turbidity measurement from a stream can include the combined effectiveness of mitigation actions such as reseeding, maneuver restrictions, and erosion control devices. However, if a method combines several parameters and a critical change is noted, each mitigation measurement must be examined to determine the problem.

(e) Initiation of program. The next step is to initiate the monitoring program. In most cases, a monitor should be established well before the action begins, particularly when biological variables are being measured and investigated. At this stage, any necessary contracts, funding, and manpower assignments must be initiated.

(f) Sample collection, data analysis, and coordination. The next step in the monitoring program is sample collection and data analysis. A nontechnical summary of the data analysis should be provided to the Public Affairs Office, which will handle routine information requests related to the program. Technical results from the analysis should be sent to the installation environmental office, which will coordinate them with the proponent. Other related coordination with the concerned public and other agencies, as arranged through development of the mitigation plan, will be handled through the environmental office.

(g) Continuation of program.

(1) If the mitigations are effective, the monitoring should be continued. However, even if a noneffective result is obtained, a nontechnical summary should still be sent to the Public Affairs Office. The Environmental Office and the responsible group should reexamine the mitigation measures with the experts. The problem may be either inadequacy of the mitigation measure, in the performance, or in the monitoring.

(2) Once the problem is identified, the responsible group and the experts should determine whether more detailed information is needed, whether the monitoring is being implemented incorrectly, or whether the mitigation is inadequate.

(3) After the problem is resolved, the group must determine whether a different monitoring system should be established. If the old program is adequate, it should be continued; however, if a different program is required, then a new system must be established.

Appendix G—Requirements for Environmental Considerations—Global Commons

(Refer to Department of Defense, Final Procedures, 32 CFR Part 197, Enclosure 1.)

Appendix H—Requirements for Environmental Considerations—Foreign Nations and Protected Global Resources

(Refer to Department of Defense, Final Procedures issued April 12, 1979 (44 FR 21786), 32 CFR Part 197, Enclosure 2. Adopted herewith except that references to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) are changed to Assistant Secretary of Defense (Production and Logistics).)

Appendix I—Glossary

Section I

Abbreviations

ARNG
Army National Guard
ARSTAF
Army Staff
ASA (I&L)
Assistant Secretary of the Army (Installations and Logistics)
CEQ
Council on Environmental Quality
CERCLA
Comprehensive Environmental Response Compensation and Liability Act
CX
Categorical exclusions
DA
Department of the Army
DEIS
Draft Environmental Impact Statement
DESOH
Deputy of Environment, Safety, and Occupational Health
DOD
Department of Defense
EA
Environmental assessment
EIS
Environmental Impact Statement
EPA
Environmental Protection Agency
FEIS
Final Environmental Impact Statement
FNSI
Finding of No Significant Impact
FR
Federal Register
FS
Feasibility study
HQDA
Headquarters, Department of Army
I&L
Installation and logistics
MACOM
Major Army command
NEPA
National Environmental Policy Act
NOA
Notice of availability
NOI
Notice of Intent
OASA (I&L)
Office of the Assistant Secretary of the Army, (Installation and Logistics)
OCLL
Office of the Chief of Legislative Liaison
OCPA
Office of the Chief of Public Affairs
OSD
Office of the Secretary of Defense
POC
Point of contact
REC
Record of environmental consideration
ROD
Record of decision
SARA
Superfund Amendments and Reauthorization Act
SOFA
Status of Forces Agreement

Section II

Terms

Categorical exclusion (CX)
A category of actions that do not require an EA or an EIS because DA has determined that the actions do not have an individual or cumulative impact on the environment. (Refer to Subpart D for further discussion.)

Closure of a majority installation
(Except where the only significant impacts are socioeconomic with no significant biophysical environmental impact). "Majority military installation" is defined in chapter 2 of "Department of Defense Base Structure Report" as "A contiguous parcel of land with facilities and improvements thereon having a command and control organization providing a full range of BASOPS (base operations) functions in support of assigned missions." Compare with the definition of a "minor installation," which is "under the command of and receives resources support from the commander of another installation which is geographically distant."

Foreign government
A government regardless of recognition by the United States, political factions, and organizations that exercises governmental power outside the United States.

Foreign nations
Any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments. It also refers to any area under military occupation by the United States alone or jointly with any other foreign government. Includes any area that is the responsibility of an international organization of governments also includes contiguous zones and fisheries zones of foreign nations.

Global commons
Geographical areas outside the jurisdiction of any nation. They include the oceans outside territorial limits and Antarctica. They do not include contiguous zones and fisheries zones of foreign nations.

HQDA proponent
As the principal planner, implementer, and decision authority for a proposed action, the HQDA proponent is responsible for the substantive review of the environmental documentation and its thorough consideration in the decisionmaking process.

Major Federal action
Reinforces, but does not have a meaning independent of, "significantly affecting the environment," and will be interpreted in that context. A Federal proposal with "significant effects" requires an environmental impact statement, whether it is "major" or not. Conversely, a "major federal action" without "significant effects" does not necessarily require an EIS.

Preparers
Personnel from a variety of disciplines who write environmental documentation in clear and analytical prose. They are primarily responsible for the accuracy of the document.

Proponent
Proponent identification is dependent on the nature and scope of a proposed action as follows:

(1) Any Army structure may be a proponent. For instance, the installation/activity Facility Engineer (FE)/Director of Engineering and Housing becomes the proponent of installation-wide Military Construction Army (MCA) and Operations and Maintenance (O&M) Activity; Commanding General, U.S. Army Training and Doctrine Command (TRADOC) becomes the proponent of a change in initial entry training. The proponent may or may not be the preparer.

(2) In general, the proponent is the lowest level decisionmaker. It is the unit, element, or organization that is responsible for initiating and/or carrying out the proposed action. The proponent has the responsibility to prepare and/or secure funding for preparation of the environmental documentation.

Significantly affecting the environment
An action, program or project that would violate existing pollution standards; cause water, air, noise, soil or underground pollution; impair visibility for substantial periods of any day; cause interference with the reasonable peaceful enjoyment of property or use of property; create an interference with visual or auditory amenities; limit multiple use management programs for an area; cause danger to the health, safety, or welfare of human life; or cause irreparable harm to animal or plant life in an area. Significant beneficial effects also do occur and must be addressed if applicable. (See 40 CFR 1508.27.)

[FR Doc. 88-26005 Filed 11-15-88; 8:45 am]
BILLING CODE 3710-08-M

VOL
53

ISS
221

NO
16

1988

UMI

federal register

Wednesday
November 16 1988

Part VIII

Environmental Protection Agency

Federal Agency Hazardous Waste Compliance Docket; First Six-Month Update of List of Federal Facilities and Revision to Initial List

VOL
53
ISS
221
NO
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UMI

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3468-5]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: First six-month update of list of Federal facilities under CERCLA Section 120(c) and revisions to initial list.

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket that contains certain information regarding Federal facilities that manage hazardous waste or have potential hazardous waste problems. CERCLA requires that the docket be updated every six months as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in the first six-month update of the docket. For each Federal facility that appears on the docket, the responsible Federal agency must complete, at a minimum, a Preliminary Assessment (PA) and, if warranted, a Site Inspection (SI) to determine if response actions are necessary. In addition to the update list, this notice includes a section comprising revisions to the initial list published earlier. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 1,170.

DATE: This list is current as of October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Federal Facilities Docket Hotline, Telephone: (800) 548-1016 toll-free.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Revisions to the Initial Docket
III. Process for Compiling the Updated Docket
IV. Facilities Not Included
V. Information Contained on Docket Listing

I. Introduction

The Federal Agency Hazardous Waste Compliance Docket ("docket") was required to be established under Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency ("EPA" or "the Agency") under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under Section 103 of CERCLA. The purpose of the docket is three-fold: (1) to identify the universe of Federal facilities that must be evaluated to determine if they pose risk to public health and the environment sufficient to warrant a response action and/or inclusion on the National Priorities List; (2) to compile and maintain the information submitted to EPA on these facilities under the provisions listed in Section 120(c) of CERCLA; and (3) to provide a mechanism to make this information available to the public.

The initial list of Federal facilities to be included in the docket was published on February 12, 1988 (53 FR 4280). This list must be updated every six months, beginning with the publication of the February notice, to include new facilities on the docket that are subsequently reported to EPA by Federal agencies. The first six month update of the docket is being published today. The definition of facility for docket purposes remains unchanged from that employed for the initial docket list (see 53 FR 4280 (1988)).

Today's notice is divided into two major sections: "Docket Revisions" and "Docket Update". The Docket Revisions section is a listing of corrections that are being made to the initial docket published on February 12, 1988. The Docket Update section is the list of newly identified facilities that have been reported to EPA since the compilation of the initial docket.

The information submitted to EPA on each Federal facility, as required by the above provisions, is contained in docket repositories located in the EPA Regional office where the facility is found. (See 53 FR 4280 (1988) for a description of the information required under these provisions.) All docket repositories are currently operational and available to the public. Each repository contains the documents submitted to EPA under the reporting provisions (and/or correspondence relevant to the reporting provisions) indicated for each facility. A complete national index of the information found in the Regional docket repositories will be maintained at EPA Headquarters in Washington, DC, and made available to the public. This index will also be available for public review at each Regional repository. Contact the Federal Facilities Docket Hotline for information on how to arrange for review and copying of specific documents.

II. Revisions to the Initial Docket

Revisions to the initial docket can be divided into three overall categories: (1) facilities being removed from the list; (2) facilities being added to the list; and (3) corrections. Each entry in the Revisions section has been labelled with a code indicating the reason for the change. A key to these codes is found below.

Necessary revisions to correct the initial docket were identified by both EPA and Federal agencies. These revisions vary from simple address and spelling changes to facility name changes and ownership corrections. Many are simply typographical or typesetting errors. The affected Federal agencies have been notified previously of the revisions being published today.

Facilities are being removed from the docket for a number of reasons, such as the facility is not Federally owned, incorrect reporting of hazardous waste activity, change in Federal ownership, exemption as a Small Quantity Generator (SQG), etc. Facilities being removed will no longer be required to conduct a Preliminary Assessment (PA) as required by CERCLA Section 120(d) for docket facilities.

Some facilities are being added to the docket now because they were inadvertently not included on the initial list. In most cases, the additions are the result of new information obtained by EPA indicating that a facility should have been listed in the February notice. For all facilities being added in this section, the responsible agency will have 18 months from the date of this publication to complete the required PA and Site Inspection (SI), if warranted.

EPA is today clarifying its policy of not listing SQGs under RCRA on the docket. The intent of the original policy was to exempt facilities from docket listing that were *solely* SQGs and had never produced more than 1,000 kg in any month. EPA did not include on the initial docket a number of SQGs that had also reported under RCRA Section 3016 or CERCLA Section 103. The Agency believes that if a facility reports a release under Section 103 or other hazardous waste activity, it is no longer considered to be solely a SQG. EPA believes that these facilities must be assessed to determine if cleanup actions are necessary. Therefore, today the Agency is adding to the docket SQGs that had previously reported to EPA under other reporting provisions. Again, these facilities will have 18 months to complete the appropriate assessment.

The corrections subsection is shown in a slightly different format due to the nature of the revisions, which include typographical errors, name and address changes, and changes in the reporting mechanisms. For each facility, the original entry as it appeared in the February notice is shown directly above the corrected entry for easy comparison. These entries are organized alphabetically by state instead of by Federal agency.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted a PA report, SI report, or in the case of some Defense facilities, an Installation Restoration Program (IRP) report, yet had not submitted a Section 103 notification form. Section 120(c)(3) of CERCLA requires that EPA include information submitted under Section 103 in the docket. In general, Section 103 requires any person who has knowledge of known, suspected, or likely releases of hazardous substances from a facility to notify EPA. Thus, the Agency believes that information it has received by means of the above-mentioned reports should be included in the docket regardless of the absence of formal Section 103 notification. Therefore, the docket record for each of these facilities is being corrected to indicate this reporting.

III. Process for Compiling the Updated Docket

In compiling the newly-reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from the three EPA data bases (the RCRA Section 3016 inventory data base, the Hazardous Waste Data Management System, and the CERCLA data base) that contain Federal facility information submitted under the four provisions listed in Section 120(c).

Extensive computer checks compared the initial docket list with the information obtained from the above data bases to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. The Agency has found it extremely difficult to reconcile the file structures and reporting differences in the various data bases for docket purposes. Consequently, it is possible that some individual sites were included in this update instead of, or in addition to, the overall facility as required. It is also possible that state-owned or privately-owned facilities have been included in spite of the quality assurance efforts that EPA has undertaken. These potential problems are the result of historical procedures used to report and track Federal facility data and the Agency is working to resolve them. Federal agencies are requested to contact EPA's Docket Coordinator in writing at the following address if revisions to the update information being published are necessary:

Federal Facilities Docket Coordinator, US EPA, 401 M Street SW. (OS-503), Washington, DC 20460.

IV. Facilities Not Included

EPA is not including the following categories of facilities in the docket at this time:

1. Facilities formerly owned by a Federal agency and now privately owned. However, facilities that are now owned by another Federal agency will remain on the docket with the responsibility resting with the current owner. The agency is still considering listing formerly-owned DOD facilities on the docket at a later time. However, a number of related policy issues have not yet been resolved. Therefore, formerly-owned facilities will not be listed on this update.

2. Any facilities not currently owned by a Federal agency. For example, facilities that are *operated* by the Federal government under state or private ownership will not be listed on the docket.

3. Small Quantity Generators that have never produced more than 1,000 kg in any month and have not reported spills under Section 103 or other hazardous waste activities under Section 3016.

4. Facilities that are solely transporters as reported under RCRA Section 3010.

5. Any facilities not reported by a Federal agency.

The agency will be collecting additional information in the coming months on whether or not to include one or more of these categories in future updates to the docket, and may solicit public comment on the issues at a later date.

V. Information Contained on Docket Listing

As discussed above, the information below is divided into two separate sections. The first section is comprised of revisions to the list published on February 12, 1988. The revisions Section is broken into the following categories: facility removals, facility additions, corrections, and miscellaneous. Each facility on the revisions list is coded. This code refers to the code key preceding the lists, and indicates the specific reason(s) for revision. The second section is the list of new facilities (not facilities added as corrections) that are being added at this six month update.

All facilities added to the docket today, either as revisions or newly added facilities have a "date of listing" indicator, shown as "* *" in this column. All facilities with "* *" in the date of listing column must submit PAs and SIs, if warranted, to EPA within 18 months of the date of this publication. This includes any facility changing responsible agencies (codes 21 and 22). These reports should be submitted to the CERCLA Federal Facility Coordinator in the appropriate EPA Regional office. Facilities listed in the corrections subsection do not have a date of listing column since the correction(s) for these facilities as shown in this notice do not affect the statutory assessment deadline; these facilities should have already submitted the required assessment(s) to EPA by April 17, 1988.

Facilities in both the revisions section and the update section are organized by State and then grouped alphabetically within each State by the Federal agency responsible for the facility, except for the corrections. As mentioned before, these entries are organized alphabetically by state. This information is then followed by the facility name and address, the statutory provision(s) under which the facility was reported to EPA (indicated by an "x" in the appropriate column(s)), the EPA Region where the facility is located, the correction code, and date of listing if appropriate.

The complete list of Federal facilities that now comprises the docket is not being published today. However, the list is available to interested parties and can be obtained by calling the Federal Facilities Docket Hotline. As today, the total number of Federal facilities that appear on the docket is 1,170.

J. Winston Porter,

Assistant Administrator.

Date: October 21, 1988.

I. DOCKET REVISIONS

Categories of Revisions for Docket Update by Correction Code

Categories for Facility Removal

1 Small Quantity Generator
2 Not Federally Owned
3 Formerly Owned
4 No Hazardous Waste Generated
5 Temporary Storage/One Time Permitted Disposal
6 Redundant Listing/Site on Facility
7 Combining Sites into One Facility/Entries Combined

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8 Does not Fit Facility Definition (all are vessels)
9 No Hazardous Waste (Reponsible Agency Changed)
10 Small Quantity Generator (Responsible Agency Changed)
11 No Hazardous Waste (Temporary Storage Only)
12 Not Federally Owned (Small Quantity Generator)
13 Redundant Listing/Site on Facility (Agencies will Coordinate)
14 Small Quantity Generator (Never Actually Built)

Categories for Facility Addition

15 Small Quantity Generator w/either a 3016 or 103
16 One Entry Being Split into Two/ Agency Responsibility Being Split
17 New Information Obtained Showing that Facility Should be Included
18 Facility was a Site on a Facility that was Disbanded, Now a Separate Facility
19 Sites was Combined into one Facility

Corrections

20 Typo Correction/Name Change/ Address Change/Reporting Provisions Change

Miscellaneous

21 Changing Responsible Agencies (New Responsible Agency has 18 mos. to submit PA)
22 Changing Responsible Agencies and Title (New Responsible Agency has 18 mos. to submit PA)

REVISIONS TO 2/12/88 DOCKET.—REMOVALS

Agency	Facility Name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA Reg	Corr Code
Army	US Army National Guard Alaska CSMS.	5300 E Tudor Rd.	Anchorage	AK	99507		X			10	2
Army	US Army National Guard 4th SCT BN HQ.	The Armory	Juneau	AK	99801		X			10	2
Army	US Army National Guard 1st BN SCT HQ.	433 Front St.	Nome	AK	99762		X		X	10	2
Army	US Army National Guard 5th SCT BN HQ.	4902 Jewel Lake Rd.	Anchorage	AK	99502		X			10	2
Army	US Army National Guard 2nd BN SCT HQ.	The Armory 370 4th Ave.	Bethel	AK	99559		X			10	2
Army	US Army Whittier Oil Storage Tank.	¾ Mi N of Town.	Whittier	AK	99693				X	10	2
Corps of Engineers, Civil.	US Army–COE Long Island.	Long Island (Ft. Tidball).	Long Island	AK	99506		X			10	3
Transportation	US Coast Guard Cutter Sedge (WLB–402).	Homer Spit	Homer	AK	99603		X			10	8
Transportation	US Coast Guard Cutter Sweetbriar WLB–405.	Coast Guard Dock.	Cordova	AK	99574		X		X	10	8
Transportation	US Coast Guard Cutter Woodrush WLB–407.	Government Pier.	Sitka	AK	99835		X			10	8
Army	US Army Phosphate Development Works.	Natl Fertilizer Dev Center.	Muscle Shoals	AL	35660				X	4	13
NASA	Marshall Space Flight Center.	AB 44	Marshall Space Flight Ctr.	AL	35812	X	X	X	X	4	13
Army	Millwood Resevoir.	Route 1	Ashdown	AR	71822			X	X	6	4
Army	161st AREFG Air National Guard.	2001 S 32nd Street.	Phoenix	AZ	85034		X			9	10
Army	NI IND INC Riverbank Plt.	5300 Claus Rd.	Riverbank	CA	95367	X	X			9	6
Housing and Urban Development.	Oakland City of Housing Authority.	1180 25th Ave.	Oakland	CA	94601		X			9	2
Interior	US Bureau of Reclamation.	5520 Knoxville Rd.	NAPA	CA	94558		X			9	1
Interior	BLM-Washington Mine No. 5.	T33NR7WSEC17 St. NW.	French Gulch	CA	96033					9	2
Justice	US Border Patrol Station.	225 Kenney	El Cajon	CA	92020		X			9	9

REVISIONS TO 2/12/88 DOCKET.—REMOVALS—Continued

Agency	Facility Name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA Reg	Corr Code
NASA	NASA JPL Goldstone Tacking Facil.	36 Mi N of Barstow & Ft. Irwin.	Barstow	CA	92311		X			9	13
NASA	H.L. Dryden Flight Research Facility.	PO Box 273	Edwards	CA	93523–5000	X	X	X	X	9	13
Navy	Naval Training Center Camp Nimitz.		San Diego	CA	92133				X	9	6
Navy	Public Works Center San Francisco.	Naval Supply Cetner Oakland.	Oakland	CA	94623		X			9	4
Air Force	Dept. of Military Affairs.	1400 S. 3rd Ave.	Sterling	Co	80751		X			8	1
Commerce	Delta Air Lines—Denver.	Stapleton Intl Airport.	Denver	CO	80238		X			8	2
Interior	Rocky Mountain Nat'l Park.	Rocky Mtn. Nat'l Park.	Estes Park	Co	80517		X			8	1
Interior	BLM–Standard Metals Corp. (Mayflower Mill).	T41NR7WSEC21 Hwy 110.	Silverton	CO	81433				X	8	2
Postal Service	US Postal Service.	915 Housatonic Ave.	Bridgeport	CT	06604		X			1	2
General Services Admin.	National Archives & Records Admin.	7th & Pennsylvania Ave NW.	Washington	DC	20408		X			3	10
Health and Human Services.	Food and Drug Administration.	Second & C Streets SW.	Washington	DC	20204		X			3	1
Health and Human Services.	Saint Elizabeth's Hospital.	2700 Martin L King Ave SE.	Washington	DC	20032		X			3	2
Agriculture	Osceola Forest Site #3.	Cortez Rd., South of Hwy 90.	Unincorporated Lake City.	FL	32055				X	4	7
Agriculture	Osceola Forest Site #4.	West of Dirt Rd., off Rte. 772.	Unincorporated Lake City.	FL	32055				X	4	7
Agriculture	Osceola Forest Site #6.	S. of Hwy 90 on Possum Trot Rd.	Unincorporated Lake City.	FL	32055				X	4	7
Agriculture	Osceola Forest Site #2.	North of Hwy 100.	Unincorporated Lake City.	FL	32055				X	4	7
Agriculture	Osceola Forest Site #1.	Hwy 100	Unincorporated Lake City.	FL	32055				X	4	7
Agriculture	Osceola Forest Site #5.	Hwy 90 to Osceola Forest Off ?.	Unincorporated Lake City.	FL	32055				X	4	7
Army	USA Palatka AMSA 55–M.	4300 St. Johns Ave.	Palatka	FL	32077	X	X			4	3
Interior	Everglades National Park.	PO Box 279	Homestead	FL	33030		X			4	1
Navy	Naval Air Station Trumbo PT.	Palm Ave Causeway.	Key West	Fl	33040		X			4	6
Navy	Naval Air Station Richmond.	Coral Reef Dr	Perrine	FL	33157			X	X	4	2
Navy	Naval Supply Center Fuel Depot Jacksonville.	Somers Road	Jacksonville	FL	32208		X		X	4	6
Army	USA AMSA 54G–Augusta.	DFAE AFZP–FEC.	Fort Stewart	GA	31314	X	X		X	4	6
EPA	US EPA Environmental Research Lab.	College Station Road.	Athens	GA	30613		X			4	1
Health and Human Services.	Center for Disease Control.	Bldg 4 RM 232 1600 Clifton Rd.	Atlanta	GA	30333		X			4	1
Health and Human Services.	Centers for Disease Control.	447 Buford Highway.	Chamblee	GA	30341		X			4	1

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REVISIONS TO 2/12/88 DOCKET.—REMOVALS—Continued

Agency	Facility Name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA Reg	Corr Code
Army	Army Aviation Support Facility #2.	General Lymanb Field Bldg 619.	Hilo	HI	96720		X			9	2
Labor	Chevron USA Inc. Hawaiian Refinery.	91–480 Malakole Rd.	Ewa Beach	HI	96706	X				9	2
Energy	Burley Maint HQ.	1247 W Main	Burley	ID	83318		X			10	1
Energy	Idaho Falls Dist Maint HQ.	2275 N Yellowstone Ave.	Idaho Falls	ID	83401		X			10	1
Interior	Owyhee CO, Marshing/ Homedale LF.	Johnson Rd–T4N R5W S 32 SW¼.	Marsing-Homedale	ID	83639				X	10	6
Interior	BLM-Bunker Hill.	834 McKinley Avenue.	Shoshone	ID				X	X	10	2
Transportation	USDOT–FAA Mica Peak.	Cougar Gulch Rd.	Coeur D'Alene	ID	83814				X	10	1
Army	US Army Joliet Lap Honeywell.	Highway 53 & Arsenal Ave.	Joliet	IL	60436	X	X			5	6
Corps of Engineers, Civil.	US Army–COE IL ANG Maint Cir.	8660 W. Cermak Road.	North Riverside	IL	60546		X			5	2
Energy	ICGG Pipeline Gas Demonstration Plant:	Trico Rd 1 Mile South of Pyatt Road.	Perry County	IL	62272	X	X			5	14
Energy	US DOE Radiation Lab Univ of Notre Dame.	University of Notre Dame.	Notre Dame	IN	46556		X			5	1
Army	National Guard Armory & Parking Lot.	18th & Ridge	Kansas City	KS	67201				X	7	2
Veterans Administration.	VA Medical Center.	4104 S. 4th St Trafficway.	Leavenworth	KS	66048		X		X	7	2
Energy	US DOE Kentucky Ordinance Works.	Kentucky Wildlife Area.	Paducah	KY	42001				X	4	2
Agriculture	US Department of Agriculture.	4115 Gourrier	Baton Rouge	LA	70808		X			6	1
Health and Human Services.	Food and Drug Administration.	4298 Elysian Fields.	New Orleans	LA	70122		X			6	1
Health and Human Services.	Gillis Long Hansen's Disease Center.	River Rd 2 M SE H–75.	Carville	LA	70721			X		6	1
Army	General Electric Co.—Everett.	62 Tremont Street.	Everett	MA	02149					1	3
Army	General Electric—Lynn.	40 Federal Street.	Lynn	MA	01901					1	3
Navy	Boston Naval Shipyard.		Charlestown	MA	02129				X	1	9
Postal Service	US Postal Service.	Post Office Square.	Lowell	MA	01853		X			1	2
Army	Fort Ritchie	Fort Ritchie	Fort Ritchie	MD	21719		X			3	1
Army	National Security Agency.	9800 Savage Road.	Fort Meade	MD	20755		X			3	13
Defense	Granite-Control	2845 Herwood Road.	Woodstock	MD	21163				X	3	2
Health and Human Services.	FDA Center of Veterinary Medicine.	Muirkirk & Odell Rd.	Beltsville	MD	20705		X			3	13
Health and Human Services.	FDA Beltsville Research Com.	8301 Muirkirk Rd Rte 2.	Beltsville	MD	20705		X			3	4
Health and Human Services.	NIH Animal Center.	Elmer School Road.	Poolesville	MD	20837		X			3	1
Health and Human Services.	FDA Center for Devices and Radiation Health.	12709 Twinbrook Pkwy.	Rockville	MD	20857		X			3	12

REVISIONS TO 2/12/88 DOCKET.—REMOVALS—Continued

Agency	Facility Name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA Reg	Corr Code
Health and Human Services.	NIH–NIA Gerontology Research.	4940 Eastern Ave.	Baltimore	MD	21224		X			3	1
Navy	Naval Air Facility.	Andrews Air Force Base.	Camp Springs	MD	20390		X			3	13
Interior	Isle Royale National Park.	87 N. Ripley St	Houghton	MI	49931		X			5	1
Postal Service	US Postal Service Garage.	10325 Lyndon	Detroit	MI	48238		X			5	1
Postal Service	USPS Allen Park Garage.	17500 Oakwood Blvd.	Allen Park	MI	48101		X			5	1
Agriculture	US Dept of Agri. Chipewa Nat. Forest.	Rt. 1	Cass Lake	MN	56633		X	X		5	5
Health and Human Services.	Red Lake PHS Indian Hospital.	PHS Hospital	Red Lake	MN	56671		X			5	1
Interior	US DOI Tamarac National Wildlife Refuge.	Rural Route	Rochert	MN	56578		X			5	1
Interior	US Fish & Wildlife Regional Sign Center.	Front and Kansas.	Winona	MN	55987		X			5	1
Army	MO Aviation Classification & Repair Activity Depot.	2501 Lester Jones Ave. RFD 6 Box 383.	Springfield	MO	65803		X		X	7	2
Army	US Corp of Engineers.	Clear Water Lake.	Piedmont	MO	63956		X			7	1
Army	Ft. Leonardwood.	Artillery Firing Range.	Ft. Leonardwood	MO	65473	X	X		X	7	6
Army	Jefferson Barracks LDF.	Gregg and South Road.	St. Louis	MO	63123				X	7	2
Interior	Jefferson National Expansion.	2nd & Poplar Street.	St. Louis	MO	63102		X			7	1
Agriculture	USDA Sea IFA Research Laboratory.	3505 25th Ave PO Box 3209.	Gulfport	MS	39503	X	X			4	1
Army	Mt. ANG OMS #5.	Gallitin County Airport.	Belgrande	MT	59714		X			8	2
Agriculture	US Forest Service.	Swain County Landfill SR 1311.	Bryson City	NC	28713			X		4	7
Agriculture	USDA–FS Graham County Landfill.		Graham County	NC				X	X	4	7
Army	MD ANG Army Aviation Support Facility.	Bismark City Airport-Bldg. 100.	Bismarck	ND	58502		X			8	2
Army	ND ANG Combined Support Maint. Shop.	Camp Gilbert Grafton-Bldg. 5800.	Devils Lake	ND	58201		X			8	2
Army	ND ANG Organ. Maint Shop No. 3.	2013 No. Washington Street.	Grand Forks	ND	58206		X			8	2
Army	ND ANG Organ. Maint Shop No. 4.	Fraine Baracks, Bldg. 250.	Bismarck	ND	58502		X			8	2
Army	ND ANG Organ. Maint Ship.	US Hwy 281 North and 15th.	Jamestown	ND	58402		X			8	2
Army	ND ANG Organ. Maint Shop No. 7.	Old at Hwy. 21 & Indiana Ave.	Mott	ND	58646		X			8	2
Army	MD ANG Organ. Maint Shop No. 6.	Valley City Municipal Airport.	Valley City	ND	58072		X			8	2

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REVISIONS TO 2/12/88 DOCKET.—REMOVALS—Continued

Agency	Facility Name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA Reg	Corr Code
Army	ND ANG Unit Training Equipment Shop.	Camp Gilbert Grafton Bldg. 6900.	Devils Lake	ND	58301		X			8	2
Army	Unit Training and Equipment Site.	P.O. Box 278, County Hwy 539.	Plumstead TWP	NJ	08533		X			2	2
Army	Fort Dix Landfill	Juliustown-Browns Mills Road.	Wrightstown	NJ	08562				X	2	6
Commerce	Macom Laser Diode.	130 Somerset Street.	New Brunswick	NJ	08901		X			2	2
Interior	Morristown National Historical Park.	Jockey Hollow Road.	Morristown	NJ	07960		X			2	1
Transportation	USCG Station—Barnegat.	6th and Bayview.	Barnegat Light	NJ	08006		X			2	1
Army	US Prop Fiscal Ofc for NV.	2601 S. Carson St.	Carson City	NV	89701		X			9	2
Army	USA-Comb Spt Main Shop "C".	1500 East Henrietta Rd.	Rochester	NY	14623		X			2	1
Army	Organizational Maint Shop 45.	70 Brentwood Rd.	Bayshore	NY	11706		X			2	2
Army	McDonald USARC.	168 Goethals Ave.	Jamaica	NY	11432		X			2	1
Army	Air Force Plant #68.	Lutts Road	Model City	NY	14107				X	2	3
Army	U.S. Army Engineer District.	1776 Niagra St	Buffalo	NY	14127		X			2	1
Corps of Engineers, Civil.	USCOE-East Sidney Lake.	NY State Route 357.	Franklin	NY	13775		X			2	1
Corps of Engineers, Civil.	USCOE-Troy Lock & Dam.	Bond St	Troy	NY	12180		X			2	1
Energy	Lake Ontario Ordnance Works.	1397 Pletcher Rd.	Model City	NY	14107				X	21	3
General Services Admin.	Federal Building	111 West Huron St.	Buffalo	NY	14202		X			2	1
General Services Admin.	Jacob K. Javitz Fed Bldg.	26 Federal Plaza.	New York	NY	10278		X			2	1
Health & Human Services.	U.S. Food & Drug Adm.	850 Third Ave	Brooklyn	NY	11232		X			2	1
Postal Service	U.S. Postal Service.	550 Manor Rd	Staten Island	NY	10314		X			2	1
Postal Service	U.S. Postal Service Western Nassau.	830 Stewart Ave.	Garden City	NY	11599		X			2	1
Postal Service	Hicksville Post Office.	260 Engineers Drive.	Hicksville	NY	11802		X			2	2
Transportation	USCG Base Buffalo.	1 Frihmann Blvd.	Buffalo	NY	14203		X			2	1
Veterans Administration.	VA Medical Center.	800 Irving Ave	Syracuse	NY	13201		X			2	1
Veterans Administration.	VA Medical Center.	800 Poly Place	Brooklyn	NY	11209		X			2	1
Veterans Administration.	VA Extended Health Care Center.	179th Street and Linden Blvd.	St. Albans	NY	11425		X			2	1
Veterans Administration.	VA Medical Center.	113 Holland Ave.	Albany	NY	12208		X			2	1
Agriculture	Ohio Agri Research and Devel Center.	1680 Madison Ave Wayne County.	Wooster	OH	44691			X	X	5	2
Health and Human Services.	US FDA Cincinnati CFSAN Food Res. Lab.	1090 Tusculun Ave.	Cincinnati	OH	45226		X			5	1
Health and Human Services.	US NIOSH Ridge Avenue.	5555 Ridge Avenue.	Cincinnati	OH	45213		X			5	1

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Agency	Facility Name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA Reg	Corr Code
Health and Human Services.	US NIOSH Taft Laboratories.	4676 Columbia Parkway.	Cincinnati	OH	45226		X			5	1
Postal Service	USPS-Cleveland.	3695 Green Road.	Cleveland	OH	44122		X			5	1
Interior	USODI-NPS Crater Lake National Park.	Hwy 62	Crater Lake	OR	97604		X			10	1
Navy	LSC Marine INC/USNS Wilkes T-AGS.	Dillingham Yard, Swan Island.	Portland	OR	97208		X			10	8
Army	AJCC-Fort Ritchie.	Harbaugh Valley Rd.	Blue Ridge Sum	PA	17214		X			3	1
Army	PA Army Natl Guard Maint Shop 28.	1300 Penn St	Williamsport	PA	17702		X			3	2
Army	PA Army Natl Guard Maint Shop.	14th & Calder St.	Harrisburg	PA	17105		X			3	2
Army	PA Army Natl Guard Maint Shop 10.	2736 Southhampton.	Philadelphia	PA	19154		X			3	2
Army	Willow Grove ASF.	Off of US Rte 611.	Hatboro	PA	19090				X	3	6
Corp of Engineers, Civil.	USA-COE Shenango Lake.	2442 Kelly Road.	Sharpsville	PA	16150			X		3	11
Transportation	USCG Base—San Juan.	Santo Toribio	San Juan	PR	00903		X			2	1
Army	US Army N. Smithfield Nike Site.	Poundhill Rd	N. Smithfield	RI	02876				X	1	6
Army	RI ANG	Old Oxford Road.	North Smithfield	RI	02876					1	2
Navy	Naval Air Station Quonset Point.		North Kingston	RI	02854	X	X		X	1	2
Army	SD ANG.OMS 4 Webster.	120 W. 11th Ave.	Webster	SD	57274		X			8	2
Army	SD ANG-OMS 2 Rapid City.	City Limits	Rapid City	SD	57702		X			8	2
Army	SD ANG-OMS 3 Lemmon.	Armory	Lemmon	SD	57638		X			8	2
Army	SD ANG-OMS 10 Sioux Falls.	Fairgrounds	Sioux Falls	SD	57107		X			8	2
Army	SD ANG-OMS 7 Pierre.	3440 E-W Hwy. 34.	Pierre	SD	57501		X			8	2
Army	SD ANG-OMS 8 Brookings.	300 Fifth Ave. S.	Brookings	SD	57006		X			8	2
Energy	USDOE Y-12 Plant.	Bear Creek Rd	Oak Ridge	TN	37830	X	X		X	4	6
Interior	Great Smoky Mtns Natl Park.	USNPS Rt2	Gatlinburg	TN	37738	X	X			4	1
NASA	NASA Ellington Field.	Highway 3	Houston	TX	77088		X	X		6	1
Army	US Army Reserve HQ 25G Petroleum BTN.	1355 No 200 West.	Provo	UT	85601		X			8	4
Army	Arlington National Cemetery.	Unobtainable	Arlington	VA	22211		X			3	1
Interior	US Geological Survey.	12201 Sunrise Valley Drive.	Reston	VA	22092		X			3	1
Army	Washington Army Natl Guard.	298 Clemons Rd.	Montesano	WA	98430		X			10	2
Army	Washington Army National Guard.	1702 Pacific Way.	Yakima	WA	98901		X			10	2
Army	Washington Army National Guard.	1st & East Street Corner.	Ephrata	WA	98823		X			10	2

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Agency	Facility Name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA Reg	Corr Code
Army	Washington Army National Guard.	309 Byrd Street	Centralia	WA	98531		X			10	2
Interior	USDOI–FWS Nisqually Natl Wildlife Refuge.	Brown Farm Rd, End of.	Olympia	WA	98506		X			10	1
Justice	USDOJ–DEA/ Seattle.	Pier 37	Seattle	WA	98134		X			10	5
Transportation	USDOT–CG Cutter Confidence (WMEC 619).	City Pier	Port Angeles	WA	98362		X			10	8
Army	WI Army National Guard OMS 14.	1710 Second Street.	Wisconsin Rapids	WI	54494		X			5	2
Army	WI Army National Guard 13.	833 S. 17th Avenue.	Wausau	WI	54401		X			5	2
Army	WI Army National Guard AASF 1.	2079 Highway 33 E.	West Bend	WI	53905		X			5	2
Army	WI Army National Guard OMS 12.	735 Iowa Avenue.	Hayward	WI	54843		X			5	2
Army	WI Army National Guard OMS 5.	1225 E. Henry Clay Street.	Whitefish Bay	WI	53217		X			5	2
Army	WI Army National Guard AASF 2.	1950 Peatson Street.	Madison	WI	53704		X			5	2
Army	WI Army National Guard OMS 8.	1120 S. Academy Street.	Janesville	WI	53545		X			5	2
Army	WI Army National Guard OMS 11.	800 N. Military Avenue.	Green Bay	WI	54304		X			5	2
Army	WI Army National Guard OMS 6.	4200 43rd Street.	Kenosha	WI	53141		X			5	2
Interior	Horicon National Wildlife Refuge.	Rural Rt. 2	Mayville	WI	53050		X			5	1
Health and Human Services.	National Inst for Occupational Safety.	944 Chestnut Ridge Road.	Morgantown	WV	26505		X			3	1

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Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA reg	Corr code	Date of listing
Air Force	USAF—Aniak AFB LDFL.	Head Shank Kuskokwim, Riv/Slogh.	Aniak	AK	99557				X	10	15	**
Air Force	USAF—Bethel AFS LDFL.	Airport—W End of Main Road.	Bethel	AK	99559		X		X	10	15	**
Air Force	USAF—Big Mountain AFS LDFL.	S Shoure Iliamma/S Side Big Mtn.	Big Mountain AFS	AK	99501		X		X	10	15	**
Air Force	USAF—Clear AFS LDFL.	Hwy 3 & Nenana Rd.	Anderson	AK	99704		X		X	10	15	**
Air Force	USAF—Dewline Site LIZ–2.	Kasegalik Lagoon—Chukchi Sea.	Point Lay	AK	99766		X		X	10	15	**
Air Force	USAF—Dewline Site POW–3.	E of Flaxman Island	Bullen Point	AK	99723				X	10	15	**

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Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA reg	Corr code	Date of listing
Air Force	USAF—Driftwood Bay AFS LDFL.	N Coast Unalaska Island.	Driftwood Bay	AK	99553				X	10	15	**
Air Force	USAF—Duncan Canal LDFL.	12 mi SW of cy	Petersburg	AK	99883				X	10	15	**
Air Force	USAF—Fort Yukon AFS LDFL.	N of Yllota Slough.	Fort Yukon	AK	99740				X	10	15	**
Air Force	USAF—Kalakaket Creek.	S Shore of Kala Creek.	Galena	AK	99741		X		X	10	15	**
Air Force	USAF—North River AFS LDFL.	Mouth of North River.	Unalakleet	AK	99684				X	10	15	**
Air Force	USAF—Port Heiden AFS LDFL.	NW Shore of Heiden Bay.	Port Heiden	AK	99549				X	10	15	**
Air Force	USAF-White Alice Site Kotzebue.	NW Corner of Baldwin Peninsula.	Kotzebue	AK	99752				X	10	15	**
Air Force	USAF-White Alice Site Nome.	Anvil Mt 6.5 mi N of Nome.	Nome	AK	99762				X	10	15	**
Air Force	USAF—Dewline Site POW–1.	Lonely	Lonely	AK	99999		X		X	10	15	**
Air Force	USAF—Dewline Site Pow—Main.	Point Barrow	Point Barrow Station.	AK	99723		X		X	10	15	**
Air Force	USAF—Dewline Site-L12–3.	Wainwright	Wainwright	AK	99782		X		X	10	15	**
Air Force	USAF-King Salmon Airport.	5071 CSS/CC	King Salmon Airport.	AK	99613		X	X	X	10	17	**
Army	US—Army National Guard 3rd SCT BN HQ.	Kotzebue Air Force Site.	Kotzebue	AK	99752		X		X	10	15	**
Transportation	USCG—Point Spencer USCG Dump Site.	Port Clarence—60 mi NW of cy.	Nome	AK	99762				X	10	15	**
Transportation	USDOT—CG Kodiak san LDFL.	USCG Support Center.	Kodiak	AK	99619				X	10	15	**
Air Force	USAF Maxwell Air Force Base.	3800 Air Base Group DEE.	Maxwell AFB	AL	36112	X	X		X	4	17	**
Army	USA Redstone Arsenal.	CMDR USAMICOM DRSMI—K.	Huntsville	AL	35898	X	X	X	X	4	17	**
Commerce	Central Foundry		Tuscaloosa	AL				X		4	17	**
Air Force	USAF Blytheville Air Force Base.	97 CSG/DEE	Blytheville	AR	72315	X	X		X	6	17	**
Air Force	Arizona Air Natl Guard 162 TAC Ftr Gp.	1500 E. Valencia Road.	Tucson	AZ	85706	X	X		X	9	17	**
Air Force	Lawndale Annex LAAFB.	6592 ABG/CC	Hawthorn	CA	90260				X	9	15	**
Air Force	Los Angeles Air Force Station.	2400 El Segundo Blvd.	Los Angeles	CA	90009		X		X	9	15	**
Air Force	Camp Kohler	Roseville Road	Sacramento	CA	95652				X	9	17	**
Air Force	Davis Transmitter Site.		Davis	CA	95620				X	9	17	**
Army	Presidio of San Francisco.	Presidio of San Francisco.	San Francisco	CA	94129		X		X	9	15	**
Army	Camp Roberts Nat. Guard Unit.	Hwy. 101 12 mi N of Paso Robles.	Paso Robles	CA	93446		X		X	9	15	**
Defense	Defense Fuel Supply Center-Estero Bay.	3300 Panoroma Drive.	Morro Bay	CA	93442		X	X	X	9	15	**
Energy	Oxnard Facility	1235 E Wooley Street.	Oxnard	CA	93031		X		X	9	17	**
General Services Admin.	Chet Holifield Federal Energy Building.	24000 Avila Road	Laguna Niguel	CA	92677		X		X	9	17	**
Interior	Sequoia & Kings Canyon Natl Park.		Three Rivers	CA	93271	X	X	X	X	9	17	**

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Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA reg	Corr code	Date of listing
Interior	BLM—Clainete Resource Area, Parcel No. 147-090-06.	520 Butte Street	Bakersfield	CA	93305				X	9	17	**
Justice	Federal Correctional Institute LOMPOC.	US Penitentiary	Lompoc	CA	93436			X	X	9	15	**
Navy	Naval Industrial Reserve Ordinance Plant.	PO Box 3504	Sunnyvale	CA	94088-3504				X	9	17	**
Navy	Sere Camp		Warner Springs	CA					X	9	17	**
Transportation	Fort MacArthur	Pacific Avenue	San Padro	CA	90731				X	9	15	**
Transportation	USCG Loran C Sta Middletown.	Loran C Sta	Middletown	CA	95461				X	9	15	**
Air Force	Peterson Air Force Base.	All Bldgs. On base.	Colorado Springs	CO	80914		X		X	8	15	**
Air Force	US Air Force Academy.	10 mi. N. Colorado Springs on I-25.	Colorado Spring	CO	80912		X		X	8	15	**
Army	Fitzsmons Army Medical Ctr.	Corner of Colfax and Peoria.	Aurora	CO	80045		X		X	8	15	**
Energy	Western Area Power Adm. Power Operations.	1800 S. Rio Grande Ave.	Montrose	CO	81401				X	8	15	**
Interior	Water & Power Resources Serv.	910 Van Buren	Loveland	CO	80537		X		X	8	15	**
Transportation	FHWA Central Direct Fed. Div. Materals.	6th St., Bldg. 52, DFC.	Denver	CO	80225		X		X	8	15	**
Transportation	Us Coast Guard—Avery Point.		Groton	CT	06340				X	1	15	**
Air Force	Bolling Air Force Base.	HG110th Air Base Wing.	Washington	DC	20331				X	3	15	**
Agriculture	Osceola National Forest.		Unincorporated Lake City.	FL	32055				X	4	19	**
Air Force	USAF Hurlburt Field.	Terry & Lokasik Ave.	Hurlburt Field	FL	32544		X	X	X	4	15	**
Air Force	Kaena Pt Sat Tracking Sta.	33 mi NW of Honolulu on Rte 930.	Waianae	HI	96792				X	9	15	**
Air Force	Kokee Air Force Station.	Kokee State Park	Waimea	HI	96796				X	9	15	**
Air Force	Punamano Air Force.	28 mi NNE Honolulu On Rte 83.	Kahuku	HI	96731				X	9	15	**
Energy	Kauai Test Facility.	PO Box 478	Waimea	HI	96796				X	9	17	**
Navy	Naval Communication Area Master Station, Eastern.		Honolulu	HI				X	X	9	17	**
Agriculture	USDA-FS Forestry Sciences Lab.	1221 S Main St	Moscow	ID	83843				X	10	15	**
General Services Admin.	Federal Bldg	205 N 4th Street	Coeur D'Alene	ID	83814		X		X	10	15	**
Air Force	US Air Force 183 Tactical Fighter Group.	Capitol Airport	Springfield	IL	62707	X	X	X		5	17	**
Commerce	Wisconsin Steel	E. 106th & Torrence Avenue.	Chicago	IL			X			5	17	**
Army	USA Lexington Blue Grass Depot Activity.	US Hwy 421	Richmond	KY	40475				X	4	16	**
Veterans Administration.	Bedford VA Hospital.	200 Springs Road.	Bedford	MA	02173		X		X	1	15	**
Defense	Davidsonville—Launch.	3737 Elmer Hagner Lane.	Davidsonville	MD	21035				X	3	15	**

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Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA reg	Corr code	Date of listing
Defense	David Taylor/ Annapolis—Control.	640A Broadneck Road.	Annapolis	MD	21401				X	3	15	**
Defense	David Taylor-Annapolis-Launch.	Bay Head Road	Annapolis	MD	21401				X	3	15	**
Defense	Gaithersburg-Control.	8510 Snouffers School Road.	Gaithersburg	MD	20879				X	3	15	**
Defense	Gaithersburg-Launch.	Off Snouffers School Road.	Gaithersburg	MD	20879				X	3	15	**
Defense	Granite-Launch	3085 Hernwood Road.	Woodstock	MD	21163				X	3	15	**
Defense	Greenspring Control.	Greenspring Road.	Greenspring	MD	21117				X	3	15	**
Defense	Laytonsville-Launch.	5321 Riggs Road	Laytonsville	MD	20879				X	3	15	**
Defense	Pomonkey-Launch.	Bumpy Oak Road	Pomonkey	MD	20646				X	3	15	**
Defense	Rockville-Control	10901 Darnstown Road.	Gaithersburg	MD	20878				X	3	15	**
Defense	Rockville-Launch	Muddy Branch	Gaithersburg	MD	20879				X	3	15	**
Defense	US Naval Research Lab—Control.	End of Laurel Branch Drive.	Waldorf	MD	20601				X	3	15	**
EPA	EPA Central Regional Laboratory.	839 Bestgate Road.	Annapolis	MD	21401		X			3	17	**
Navy	NSWC Solomons Island.	Dept of the Navy	Solomons	MD	20688				X	3	15	**
Transportation	USCG Air Sta (Ave "E" Groundwater Contamination).	Aeropark Dr. Sec 12 T27A R1 1W Grand Traverse County.	Traverse City	MI	45685		X		X	5	17	**
Air Force	Twin Cities Air Force Reserve Base.	Minneapolis/St. Paul Hennepin County.	Minneapolis	MN	54450		X		X	5	17	**
Commerce	Brainerd Foundry	10th & Pine Streets.	Brainerd	MN				X		5	17	**
Agriculture	Nantahala National Forest.	Post & Otis Streets, PO Box 2750.	Asheville	NC	28802			X		4	19	**
Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	2144 Lakeshore Dr.	Wilmington	NC	28401		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	804 Fairview Rd	Rocky Mount	NC	28701		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	E. French Broad St.	Brevard	NC	28712		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	1300 Westover Dr.	Charlotte	NC	28205		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	1228 Carrol St	Durham	NC	27701				X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	224 Louisiana	Asheville	NC	28806		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	2017 Garner St	Garner	NC	27529		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	156 Parris Ave	High Point	NC	28307		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	1825 Woodleaf Rd, PO Box 1927.	Salisbury	NC	28114		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	1816 E Main St	Albermarle	NC	28001		X		X	4	15	**

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Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA reg	Corr code	Date of listing
Army	USA Army Reserve XVIII ARBN Corps.	405 Fisher St	Morehead City	NC	28557		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	3115 Western Blvd.	Raleigh	NC	27606				X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	1500 12th Street NW.	Hickory	NC	28601		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	1412 Westover Dr.	Charlotte	NC	28205				X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	1391 N Mem Dr	Greenville	NC	27834		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	1120 Church St	Greensboro	NC	27405		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	1400 Carthage Rd.	Lumberton	NC	28358		X		X	4	15	**
Army	USA Army Reserve XVIII ARBN Corps.	724 Foster St	Durham	NC	27701		X		X	4	15	**
Agriculture	NE National Forest.	State Rt 2 West	Halsey	NE	69142			X		7	17	**
Army	Fort Monmouth—Evans Area #1.	Marconi Road	Wall Twp	NJ	07719				X	2	16	**
EPA	GSA Raritan Depot.	4700 Woodbridge Avenue.	Edison	NJ	08817	X	X	X	X	2	16	**
General Services Admin.	GSA/VA Depot	Route 206	Somerville	NJ	08876				X	2	16	**
Transportation	U.S. Coast Guard—Sandy Hook Station.	Hartshorne Drive	Highlands	NJ	07732		X		X	2	15	**
Air Force	Hancock Field	Taft and Thompson Roads.	North Syracuse	NY	13212		X	X	X	2	15	**
Energy	Niagra Falls Storage Site.	E. of Rt 18, N. Of Fletcher RD.	Lewistown	NY	14092				X	2	18	**
Navy	Fort Wadsworth	Ft. Wadsworth	Staten Island	NY	10305		X		X	2	15	**
Defense	US DOD Defense Electronic Supply Center.	1507 Wilmington Pike Montgomery County.	Dayton	OH	45444	X	X	X	X	5	15	**
Air Force	USAF Altus Air Force Base Landfill.	443 ABG/DEEV	Altus	OK	73521		X		X	6	15	**
Energy	USDOE—BPA Alvey Substation.	86000 Franklin	Eugene	OR	97405		X		X	10	15	**
Energy	USDOE—BPA Troutdale Substation.	Sundial Rd	Troutdale	OR	97060		X		X	10	15	**
Army	Camp Santiago	Route 1	Salinas	PR	00751				X	2	15	**
Energy	Western Area Power Admin. Watertown Sub.	1 mi. E. of I-29	Watertown	SD	57201		X		X	8	15	**
Tennessee Valley Authority.	TVA Silver King Mines Inc.	US Hwy. 18	Edgemont	SD	57735		X		X	8	15	**
Energy	US DOE K-25 Site.	Oak Ridge Turnpike at Blair Road.	Oak Ridge	TN	37830	X	X	X		4	17	**
Air Force	USAF Brooks Air Force Base.	N Gollad Road	San Antonio	TX	78235	X	X	X	X	6	17	**
Air Force	USAF Ellington Air Force Base Hazardous Waste.	Clothier Avenue	Houston	TX	77209				X	6	15	**
Air Force	USAF Goodfellow Air Force Base.	Fort McKavitt Road NS.	San Angelo	TX	76903		X	X	X	6	15	**
Army	US Army Fort Sam Houston.	Bldg 1183 Taylor Road.	San Antonio	TX	78234	X	X	X	X	6	17	**
Army	US Army McAllen Reserve Center.	600 South Second.	McAllen	TX	78501			X		6	15	**

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Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA reg	Corr code	Date of listing
Interior	Padre Island National Seashore Bone Yard.	Park Road 22	Corpus Cristi	TX	78418		X	X	X	6	15	**
Navy	Fleet Combat Training Ctr.	Dam Neck	Virginia Beach	VA	23461		X	X	X	3	15	**
Navy	NSC Cheatham Annex.	Naval Supply Center, NORF.	Williamsburg	VA	23185	X	X	X		3	17	**
Air Force	Vermont ANG	Burlington IAP	Burlington	VT	05401		X		X	1	15	**
Energy	USDOE—BPA Bell Substation 3.	2400 Hawthorne	Mead	WA	98218		X	X	X	10	15	**
Energy	USDOE—BPA Columbia Substation	St Hwy 28 6 mi S of cy	Rock Island	WA	96850			X	X	10	15	**
Energy	USDOE-BPA Covington Substation.	28401 Covington Way SE.	Kent	WA	98031		X	X	X	10	15	**
Energy	USDOE—BPA Custer Substation.	Portal Way 1 mile So of cy.	Custer	WA	98240		X		X	10	15	**
Energy	USDOE-BPA Midway Substation.	Priest Rapids off Hwy 24.	Vernia	WA	98944		X	X	X	10	15	**
Energy	USDOE—BPA Olympia Substation.	5240 Trosper St SW.	Opympia	WA	98502		X	X	X	10	15	**
Energy	USDOE—BPA Ross Complex.	5411 NE Hwy 99	Vancouver	WA	98666		X	X	X	10	15	**
Energy	USDOE—BPA Snohomish Substation.	10th & D St	Snohomish	WA	98290		X	X	X	10	15	**
Agriculture	US DOA—FS Chequamegon National Forest.	157 N. 5th Avenue.	Park Falls	WI			X	X		5	15	**
Air Force	Wake Island Air Field.		Wake Island Air Field.	WQ	96798				X	9	15	**
Veterans Administration.	VA Medical Ctr	None Per V.A.M.C.	Sheridan	WY	82801				X	8	15	**

REVISIONS TO 2/12/88 DOCKET—MISCELLANEOUS

[** = Date of Publication

Agency	Facility name	Facility address	City	State	Zip Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA Reg	CORR code	Date of listing
Air Force	Port Moller	55 59'22" N 160 34' 29.374" W.	Port Moller	AK	99999		X		X	10	22	**
Interior	Amchitka Island.	51-32 N 179-00 E.	Amchitka Island	AK	99502		X			10	22	**
Energy	Naval Petroleum Reserve #1.	ELK HILLS	Tupman	CA	93276			X	X	9	21	**
Navy	Moffett Field ANG.	129 ARRG/CC.	Sunnyvale	CA	94031		X			9	21	**
Energy	Anvil Points	7 mi W. of Rifle.	Rifle	CO	81650				X	8	21	**
Defense	US Soldiers and Airmens Home.	Unobtainable.	Washington	DC	20317		X	X		3	21	**
Air Force	US Air Force Plant 85.	4300 E. 5th Avenue.	Columbus	OH	43216	X	X	X	X	5	21	**
Corps of Engineers, Civil	US Army Engineer District Pittsburgh.	Ohio Rt. 88 County Road 225.	Vernon Township	OH	44428		X	X		5	21	**

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REVISIONS TO 2/12/88 DOCKET—MISCELLANEOUS—Continued

[** = Date of Publication

Agency	Facility name	Facility address	City	State	Zip Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA Reg	CORR code	Date of listing
Corps of Engineers, Civil.	USA-COE Willam-ette.	West Linn	West Linn	OR	97068				X	10	21	**
Interior	Charlestown NAS.	PO Box 307	Charlestown	RI	02813			X	X	1	21	**
Navy	Defense Printing Service Office.	RMBE 854 The Pentagon.	Arlington	VA	20301		X			3	21	**
Corps of Engineers, Civil.	USA-COE Lake Washing-ton.	3015 NW 54th St.	Seattle	WA	98107		X		X	10	21	**
Treasury	Customs Service-Seattle.	909 First Ave.	Seattle	WA	98174		X			10	21	**

CORRECTIONS TO DOCKET LISTING

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
Corrections to Docket Listing (O=Original Listing published in February; C=Corrected Listing)									
O—Air Force	Cape Newenham AFS.	11 TCG/CC Bay	Elmendorf AFB	AK	99506				X
C—Air Force	Cape Newenham AFS.	11 TCG/CC Bay	Elmendorf AFB	AK	99506		X		X
O—Air Force	Cape Romanzof AFS	11 TCG/CC	Elmendorf	AK	99506		X		X
C—Air Force	Cape Romanzof AFS	11 TCG/CC	Elmendorf	AK	99506		X		X
O—Air Force	Eielson AFB	5010 CSG/DE	Eielson AFB	AK	99702				X
C—Air Force	Eielson AFB	5010 CSG/DE	Eielson AFB	AK	99702	X			X
O—Air Force	Elmendorf AFB	215 CSG/DEEV	Anchorage	AK	99506		X		
C—Air Force	Elmendorf AFB	21 CSG/DE	Elmendorf AFB	AK	99506-5000	X	X		
O—Air Force	Galena Air Force Station.	5072 CSS/CC	Galena AFS	AK	99741		X		X
C—Air Force	Galena Air Force Station.	5072 CSF/CC	Galena AFS	AK	99741		X		X
O—Air Force	Shemya AFB	5073rd ABG/CC	Shemya AFB	AK	98736				X
C—Air Force	Shemya AFB	5073rd ABG/CC	Shemya AFB	AK	98736		X		X
O—Air Force	Tatalina AFS	11 TCG/CC	Elmendorf AFB	AK	99506				X
O—Air Force	Tatalina AFS	11 TCG/CC	Elmendorf AFB	AK	99506		X		X
O—Air Force	Tin City AFS	11 TCG/CC	Elmendorf AFB	AK	99506				X
C—Air Force	Tin City AFS	11 TCG/CC	Elmendorf AFB	AK	99506		X		X
O—Air Force	USAF Cape Lisbourne AFS.	40 Miles NE of Point Hope.	Cape Lisbourne AFB	AK	99766		X		
C—Air Force	USAF Cape Lisbourne AFS.	11 TCG/CC	Elmendorf AFB	AK	99506		X		X
O—Army	US Army Gerstle River Test Site.	T13S R14E Sec 9, 15, 16.	Fort Greely	AK	98733				X
C—Army	US Army Gerstle River Test Site.	T13S R14E Sec 9, 15, 16.	Fort Greely	AK	98733	X	X		X
O—Army	US Army National Guard Alaska USPFO.	Army Guard Rd & Davis Hwy.	Fort Richardson	AK	99505				
C—Army	Fort Richardson	Army Guard Rd & Davis Hwy.	Fort Richardson	AK	99505	X	X	X	
O—Corps of Engineers, Civil.	US Army-COE Port Moller.	55 59'22 N 160 34'29.374 W.	Port Moller	AK	99999		X		
C—Air Force	Port Moller	55 59'22 N 160 34'29.374 W.	Port Moller	AK	99999		X		
O—Corps of Engineers, Civil.	US-COE Amchitka Island.	51-32 N 179-00 E	Amchitka Island	AK	99502		X		
C—Interior	Amchitka Island	51-32 N 179-00 E	Amchitka Island	AK	99502		X		
O—Interior	FWS—Kenai National Wildlife Refuge.	Ski Hill Road	Soldotna	AK	99669				X
C—Interior	FWS—Kenai National Wildlife Refuge.	Ski Hill Road	Soldotna	AK	99669			X	X
O—Navy	US Navy Adak Naval Station.	51-54N, 176-45W	Adak Island	AK	99599				X
C—Navy	US Navy Adak Naval Station.	51-54N, 176-45W	Adak Island	AK	99599	X	X	X	X

CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—Transportation	USDOT-CG Kodiak Support Ctr.	Womans Bay Kodiak Isl.	Kokiak	AK	99619				X
C—Transportation	USDOT-CG Kodiak Support Ctr.	Womans Bay Kodiak Isl.	Kodiak	AK	99619		X		X
O—Transportation	USDOT—FAA Fire Is Air Warning Station.	Cook Inlet Section 7 & 8 Rnge.	Anchorage	AK	99506				X
C—Transportation	USDOT—FAA Fire Is Air Warning Station.	Cook Inlet Section 7 & 8 Rnge.	Anchorage	AK	99506		X		X
O—Tennessee Valley Authority.	TVA Bellefonte Nuclear Plt.	Off US Hwy 72	Hollywood	AL	36401				X
C—Tennessee Valley Authority.	TVA Bellefonte Nuclear plt.	Off US Hwy 72	Hollywood	AL	36401		X		X
O—Tennessee Valley Authority.	TVA Guntersville Hydro Plant.	Off US Hwy 431, 11 Mi. NW of.	Guntersville	AL	35976		X		
C—Tennessee Valley Authority.	TVA Guntersville Hydro Plant.	Off US Hwy 431, 11 Mi. NW of Guntersville.	Guntersville	AL	35976		X		
O—Tennessee Valley Authority.	TVA Muscle Shoals Power Stores.	AL Hwy 133	Muscle Shoals	AL	35660		X		X
C—Tennessee Valley Authority.	TVA Muscle Shoals Power Stores.	AL Hwy 133	Muscle Shoals	AL	35660	X	X		X
O—Tennessee Valley Augnority.	TVA National Fertilizer Dev Ctr.	Wilson Dam Road	Muscle Shoals	AL	35660		X	X	X
C—Tennessee Valley Augnority.	TVA National Fertilizer Dev Ctr.	Wilson Dam Road	Muscle Shoals	AL	35660	X	X	X	X
O—Tennessee Valley Authority.	TVA Wilson Hydro Plant.	Al Hwy 133	Florence	AL	35660				X
C—Tennessee Valley Authority.	TVA Wilson Hydro Plant.	Al Hwy 133	Florence	AL	35660		X		
O—Army	US Army Fort Chaffee.		Fort Chaffee	AR	72905	X	X	X	X
C—Army	US Army Fort Chaffee.	Building 239	Fort Chaffee	AR	72905	X	X	X	X
O—Air Force	Air Force Plant 44	Emery Port Station	Tucson	AZ	85734			X	
C—Air Force	Air Force Plant 44 (Hughes Aircraft Co.).	Emery Port Station	Tucson	AZ	85734	X		X	
O—Air Force	Davis-Monthan AFB	836 CSG/CC	Tucson	AZ	85707	X	X	X	X
C—Air Force	Davis-Monthan AFB	836 CSG/CC	Davis-Monthan AFB	AZ	85707	X	X	X	X
O—Air Force	Luke Air Force Base	832 CSG/DE	Luke Air Force Base	AZ	85309	X	X	X	X
C—Air Force	Luke Air Force Base	832 CSG/DE	Luke Air Force Base	AZ	85309	X	X	X	X
O—Army	Ft Huachuca, US Army.		Fort Huachuca	AZ	85613		X		X
C—Army	Ft Huachuca, US Army.		Fort Huachuca	AZ	85613		X	X	X
O—Army	Yuma Proving Ground US Army.	US Army Yuma Providing Ground.	Yuma	AZ	85364	X	X		X
C—Army	Yuma Proving Ground US Army.	US Army Yuma Providing Ground.	Yuma	AZ	85364	X	X	X	X
O—Interior	BLM—Asarco Inc., Silver Bell Mine & Mill.	T12SR8ESEC2		AZ	85658				X
C—Interior	BLM—Asarco Inc., Silver Bell Mine & Mill.	T12SR8ESEC2 Avra Vly Rd.	Silver Bell	AZ	85658				X
O—Interior	BLM—Congress Con Gold Mine.	T10NR6WSEC22,23		AZ	85442				X
C—Interior	Blm—Congress Con Gold Mine.	T10NR6WSEC22,23	Congress	AZ	85332				X
O—Interior	BLM-Cyprus Bagdad Copper Co.	T14NR9WSEC8,9		AZ	86321				X
C—Interior	BLM—Cyprus Bagdad Copper Co.	T14NR9WSEC8,9		AZ	86321		X		X
O—Interior	BLM—DateLand Landfill.	T78SR13WSEC3		AZ	85333				X
C—Interior	BLM—DateLand Landfill.	T17SR13WSEC3	Dateland	AZ	85333				X
O—Interior	BLM—Dome Landfill	T8SR20WSEC13		AZ	85369				X
C—Interior	BLM—Dome Landfill	T8SR20WSEC 13	Dome	AZ	85364				X
O—Interior	BLM—Golden Valley Landfill.	T21NR17WSEC17		AZ	86401				X
C—Interior	BLM-Golden Valley Landfill.	T21NR17WSEC17	Kingman	AZ	86401				X
O—Interior	BLM-Inspiration Con. Copper—Oxhide Area.	T1NR15ES2, 5, 13, 15, 18.		AZ	85501				X

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CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
C—Interior	BLM–Inspiration Con. Copper—Oxhide Area.	T1NR15SES2, 5, 13, 15, 18.	4 Mi W of Inspiration	AZ	85501				X
O—Interior	BLM–Inspiration Con. Copper—Inspir Area.	T1NR4ES2, 7, 9		AZ	85532				X
C—Interior	BLM–Inspiration Con. Copper—Inspir Area.	T1NR4ES2, 7, 9	Inspiration	AZ	85532				X
O—Interior	BLM–Kennecott Minerals Co. Mines Pit.	T2SR13ESEC36		AZ	85273				X
C—Interior	BLM–Kennecott Minerals Co. Mines Pit.	T2SR13ESEC36		AZ	85273				X
O—Interior	BLM–Lake Havasu San. District.	T14NR2OWSEC13, 14.		AZ	86403				X
C—Interior	BLM–Lake Havasu San. District.	T14NR2OWSEC13,14	Lake Havasu	AZ	86403				X
O—Interior	BLM–Ranchers Explo & Dev Corp. Bluebird.	T1NR14ESEC35, 36		AZ	85501				X
C—Interior	BLM–Ranchers Explo & Dev Corp. Bluebird Mine.	T1NR124ESEC35,36		AZ	85501				X
C—Interior	BLM–Roll Landfill	T7SR17WSEC34		AZ	85343			X	
C—Interior	BLM–Roll Landfill	T17SR17WSEC34		AZ	85343				X
O—Interior	BLM–Zonia Copper Mine.	T11NR4WSEC12, 13, 14.		AZ	86332				X
C—Interior	BLM–Zonia Copper Mine.	T11NR4WSEC12, 13, 14 Star Rt.	Kirkland	AZ	86332				X
O—Interior	Yuma Desalting Plt	7301 Calle Agua Salado.	Yuma	AZ	85364				
C—Interior	Yuma Desalting Plt	7301 Calle Agua Salado.	Yuma	AZ	85364	X	X		
O—Navy	Marine Corps Air Station, Yuma.	Ave 3–E	Yuma	AZ	85364	X	X	X	
C—Navy	Marine Corps Air Station, Yuma.	Ave 3–E	Yuma	AZ	85364	X	X	X	X
O—Air Force	Air Force Plant 42	20th Street & Aves. D & M.	Palmdale	CA	93550	X	X		X
C—Air Force	Air Force Plant 42 (Rockwell International).	20th Street & E Aves. D & M.	Palmdale	CA	93550	X	X		X
O—Air Force	George Air Force Base.	331 CSG/DE	Victorville	CA	92392	X	X	X	X
C—Air Force	George Air Force Base.	331 CSG/DE	George AFB	CA	92392	X	X	X	X
O—Air Force	Norton Air Force Base.	63ABG/DE	Norton AFB	CA	92409	X	X		X
C—Air Force	Norton Air Force Base.	63ABNG/DE	Norton AFB	CA	92409	X	X	X	X
O—Air Force	Sunnyvale Air Force Station.	6594 ABS/CC	Sunnyvale	CA	94088		X		X
C—Air Force	Camp Parks Communication Annex.	6594 ABS/CC	Pleasanton	CA	94088			X	X
O—Army	Oakland Army Base	Bldg–1 Alaska St	Oakland	CA	94626		X		X
C—Army	Oakland Army Base	Bldg–1 Alaska St	Oakland	CA	94626	X	X	X	X
O—Army	Riverbank Army Ammunition Depot.	5300 Claus Rd	Riverbrook	CA	95367–0676				X
C—Army	Riverbank Army Ammunition.	5300 Claus Rd	Riverbank	CA	95367–0678	X	X	X	X
O—Defense	Defense Fuel Supply Center Ozol.	Carquinez Scenic Drive.	Martinez	CA	94533		X	X	X
C—Defense	Defense Fuel Supply Center Ozol.	Carquinez Scenic Drive.	Martinez	CA	94553		X	X	X
O—Energy	Energy Technology Engineering Center.	Woolsey Canyon	Ventura County	CA	93063	X			
C—Energy	Energy Technology Engineering Center.	Santa Susana Mtn	Chatsworth County	CA	93063	X		X	
O—General Services Admin.	GSA Federal Building	450 Golden Gate Avenue.	San Francisco	CA	94102		X		
C—General Services Admin.	GSA Philip Burton Federal Building.	450 Golden Gate Avenue.	San Francisco	CA	94102		X		

CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—Interior	BLM—Shell Oil Co. of California Gore B.	T31SR22ESEC21	Taft	CA			X	X	X
C—Interior	BLM—Shell Oil Co. of California Gore B.	T31SR22ESEC21	Taft	CA					X
O—NASA	H.L. Dryden Flight Research Facility.	PO Box 273	Edwards	CA	93523–5000	X	X		
C—NASA	H.L. Dryden Flight Research Facility.	PO Box 273	Edwards	CA	93523–5000	X	X	X	
O—Navy	Marine Corps Air Station, El Toro.	EEPB Fac Mgmt Dept.	Santa Ana	CA	92709		X	X	X
C—Navy	Marine Corps Air Station, El Toro.	EEPB Fac Mgmt Dept.	Santa Ana	CA	92709	X	X	X	X
O—Navy	Marine Corps Air Station, Tustun.	USMC Air Station	Tustin	CA	92710–5001	X			X
C—Navy	Marine Corps Air Station, Tustin-Helicopter.	USMC Air Station	Tustin	CA	92710–5001	X	X		X
O—Navy	Marine Corps Mountain Warfare Training Center.	Pickle Meadows	Bridgeport	CA	92517		X		X
C—Navy	Marine Corps Mountain Warfare Training Center.	Pickle Meadows	Bridgeport	CA	93517		X		X
O—Navy	Naval Air Facility, El Centro.	Route 80	El Centro	CA	92234	X	X		
C—Navy	Naval Air Facility, El Centro.	Route 80	El Centro	CA	92234	X	X		X
O—Navy	Naval Air Logistics Force, Crows.	Nalf Crows Landing	Crows Landing	CA	95313		X		
C—Navy	Naval Air Logistics Force, Crows Landing.	Nalf Crows Landing	Crows Landing	CA	95313		X		
O—Navy	Naval Communication Station, Stockton.	Rough & Ready Island.	Stockton	CA	95203	X	X		X
C—Navy	Naval Communication Station, Stockton.	Rough & Ready Island.	Stockton	CA	95203	X	X	X	X
O—Navy	Naval Petroleum Reserve #1.	Elk Hills	Tupman	CA	93276	X	X	X	
C—Energy	Naval Petroleum Reserve #1.	Elk Hills	Tupman	CA	93276				X
O—Navy	Naval Shipyard, Mare Island.	W. End Of Tennessee St.	Vallejo	CA	94592	X	X		X
C—Navy	Naval Shipyard, Mare Island.	W. End Of Tennessee St.	Vallejo	CA	94592	X	X	X	X
O—Navy	Naval Station, San Diego.	Bldg 3275, P.O. Box 113.	San Diego	CA	92136	X	X		
C—Navy	Naval Station, San Diego.	Bldg 3275, P.O. Box 113.	San Diego	CA	92136	X	X	X	X
O—Navy	Naval Submarine Base, San Diego.	Naval Station	San Diego	CA			X		
C—Navy	Naval Submarine Base, San Diego.	Naval Station Building 545.	San Diego	CA			X	X	
O—Navy	Naval Supply Center, Oakland.	7th & Maritime Building 311 East.	Oakland	CA	94623	X	X		X
C—Navy	Naval Supply Center, Oakland.	7th & Maritime Building 311 East.	Oakland	CA	94623	X	X	X	X
O—Navy	Naval Supply Center, Point Loma Annex.	NAVSUBSUPPFAC San Diego.	San Diego	CA	92152	X	X		X
C—Navy	Naval Supply Center, Point Loma Annex.	NAVSUBSUPPFAC San Diego Bldg 546.	San Diego	CA	92152	X	X		X
O—Navy	Naval Weapons Station, China Lake.	Code 2632	China Lake	CA	93555	X	X		X
C—Navy	Naval Weapons Station, China Lake.	Code 2632	China Lake	CA	93555	X	X	X	X
O—Navy	Naval Weapons Station, Concord.	Port Chicago Hwy	Concord	CA	94520	X			X
C—Navy	Naval Weapons Station, Concord.	Port Chicago Hwy	Concord	CA	94520	X		X	X

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CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—Navy	Nav Weapons Station, Seal Beach-Fallbrook.	600 Fallbarook W/ Ammunition Rd.	Fallbrook	CA	92028		X		
C—Navy	Nav Weapons Station, Seal Beach-Fallbrook.	600 Fallbrook W/ Ammunition Rd.	Fallbrook	CA	92028	X	X	X	X
O—Navy	Pacific Missile Test Center, Point Mugu.		Point Mugu	CA					
C—Navy	Pacific Missile Test Center, Point Mugu.		Point Mugu	CA	93042	X	X		X
O—Transportation	Twelfth Coast Guard, District FLP.	Coast Guard, Government Island.	Alameda	CA	94501		X		
C—Transportation	US Coast Guard Support Center, Alameda.	Coast Guard, Government Island.	Alameda	CA	94501		X		
O—Transportation	US Coast Guard Base.	Yerba Buena Island	San Francisco	CA	94130		X		
C—Transportation	US Coast Guard Base, San Francisco.	Yerba Buena Island	San Francisco	CA	94130		X		
O—Transportation	USCG Base Terminal Island.	1801 Seaside Ave	San Pedro	CA	90731		X		
C—Transportation	US Coast Guard Support Center, San Pedro.	1801 Seaside Ave	San Pedro	CA	90731		X		
O—Air Force	Air Force Plant Pjks	12250 S. Hwy 75	Waterton	CO	80120			X	X
C—Air Force	Air Force Plant Pjks Property.	12250 S. Hwy 75	Waterton	CO	80120			X	X
O—Army	Ft. Carson—U.S. Army.	DFAE Bldg. 304, AFZC–FE–EQ.	Ft. Carson	DO	80913	X	X		X
C—Army	Ft. Carson—U.S. Army.	DFAE Bldg. 304, AFZC–FE–EQ.	Ft. Carson	CO	80913	X	X	X	X
O—Energy	Solar Energy Research Inst.	1617 Cole Blvd	Golden	CO	80401		X		X
C—Energy	Solar Energy Research.	1617 Cole Blvd	Golden	CO	80401	X	X		X
O—EAP	US EPA–Nat'l Enforcement Invest Ctr..	DFC	Denver	CO	80225	X			
C—EPA	National Enforcement Investigation Center.	DFC	Denver	CO	80225	X			
O—Interior	BLM-Orchard Mesa Landfill.	T2SR1ESEC4, 5	Grand Junction	CO	81506				X
C—Interior	BLM-Orchard Mesa Landfill.	T2SR1ESEC4, 5 Hwy 5.–SW of 29¾ RD.	Grand Junction	CO	81506				X
O—Interior	BLM-Placerville Tram Site.	T44NR11WSEC35	Placerville	CO					X
C—Interior	BLM-Placerville Tram Site.	T44NR11WSEC35 HWY 62.	Placerville	CO	81430				X
O—Interior	BLM-Sawpit Tram Site.	T43NR10WSEC18		CO					X
C—Interior	BLM-Sawpit Tram Site (Ore Storage).	T43NR10WSEC18	Saw Pit	CO					X
O—Interior	US Bureau of Rec.-Engineering Lab/ Wtr&Pwr Resrces.	Denver Federal Center, Bldg. 56.	Denver	CO	80225	X	X		
C—Interior	US Bureau of Rec-Engineering & Research Center.	Denver Federal Center, Bldg. 56.	Denver	CO	80225	X	X		
O—Energy	Knolls Atomic Power Laboratory Windsor Site.	Prospect Hill Road	Windsor	CT	06095	X	X		
C—Energy	US DOE Knolls Atomic Power Laboratory Windsor Site.	Prospect Hill Road	Windsor	CT	06095	X	X		
O—Navy	Naval Underwater Systems Center.	New London Laboratory.	New London	CT	06302		X		
C—Navy	Naval Underwater Systems Center.	New London Laboratory.	New London	CT	06320		X		
O—Treasury	US Bureau of Engraving & Printing.	14th & C Sts SW	Washington	CD	20228	X	X		
C—Treasury	US Bureau of Engraving & Printing.	14th & C Sts SW	Washington	CD	20228		X		

CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—Corps of Engineers, Civil.	USA—COE Canal Site.	Main St. North St Georges.	Newcastle	E	19733			X	
C—Corps of Engineers, Civil.	USA—COE Canal Site.	Main St. North St Georges.	Newcastle	DE	19733			X	X
O—Air Force	Avon Park AFB	56 Combat Support Group/DE.	MacDill AFB	FL	33608		X		
C—Air Force	Avon Park AFB	56 Combat Support Group/DE.	MacDill AFB	FL	33608		X		
O—Air Force	Cape Canaveral	6550 ABW DER	Patrick AFB	FL	32925		X	X	X
C—Air Force	Cape Canaveral	6550 ABW/DER	Patrick AFB	FL	32925	X	X	X	X
O—Air Force	Eglin AFB	ADTC/CCN	Eglin AFB	FL	32542	X	X	X	X
C—Air Force	Eglin AFB	ADTC/CCN	Eglin AFB	FL	32542	X	X	X	X
O—Air Force	Homestead Air Force Base.	31 CSG/DE	Homestead AFB	FL	33039	X	X	X	
C—Air Force	Homestead Air Force Base.	31 CSG/DE	Homestead AFB	FL	33039	X	X	X	
O—Air Force	MacDill Air Force Base.	56 Combat Support Group/DE.	MacDill AFB	FL	33608	X	X	X	X
C—Air Force	MacDill Air Force Base.	56 Combat Support Group/DE.	MacDill AFB	FL	33608	X	X	X	X
O—Air Force	Patrick Air Force Base.	Base Civil Engineer	Patrick AFB	FL	32925		X	X	
C—Air Force	Patrick Air Force Base.	Base Civil Engineer	Patrick AFB	FL	32925	X	X	X	
O—Air Force	Tyndall Air Force Base.	4756 ABG/DE	Tyndall AFB	FL	32403		X	X	X
C—Air Force	Tyndall Air Force Base.	325 CSB/DE	Tyndall AFB	FL	32403	X	X	X	X
O—Army	USA AMSA 53G/ Tampa.	4823 N Hubert Ave	Tampa	FL	33614		X		
C—Army	USA AMSA 53G/ Tampa.	4823 N Hubert Ave	Tampa	FL	33614	X	X		
O—Energy	US Department of Energy—Pinellas Plant.	7887 Bryan Dairy Rd	Largo	FL	34294		X	X	
C—Energy	US Department of Energy—Penellas Plant.	7887 Bryan Dairy Rd	Largo	FL	34294	X	X	X	
O—EPA	US EPA/Research Laboratory.	Sabin Island	Gulf Breeze	FL	32561		X		
C—EPA	Environmental Research Facility.	Sabin Island	Gulf Breeze	FL	32561	X			
O—NASA	Kennedy Space Center.	NASA Mail Code DF-EMS.	Kennedy Space Center.	FL	32889		X		
C—NASA	Kennedy Space Center.	NASA Mail Code DF-EMS.	Kennedy Space Center.	FL	32889	X	X		
O—Navy	Naval Air Sta, Jacksonville.	Code 184 Public Wks Dept Box 5.	Jacksonville	FL	32212		X		
C—Navy	Naval Air Sta, Jacksonville.	Code 184 Public Wks Dept Box 5.	Jacksonville	FL	32212	X	X		
O—Navy	Naval Air Station, Cecil Field.	103rd St. & Normandy Blvd.,	Jacksonville	FL	32215		X	X	
C—Navy	Naval Air Station, Cecil Field.	103rd St. & Normandy Blvd..	Jacksonville	FL	32215	X	X	X	
O—Navy	Naval Air Station, Key West.	Naval Air Station	Key West	FL	33042		X		
C—Navy	Naval Air Station, Key West.	Naval Air Station	Key West	FL	33042	X	X		
O—Navy	Naval Coastal Systems Ctr, Panama City.	Code 631OMC	Panama City	FL	32407		X	X	
C—Navy	Naval Coastal Systems Ctr, Panama City.	Code 631OMC	Panama City	FL	32407	X	X	X	X
O—Navy	Naval Station Mayport.	PO Box 265 Naval Station.	Mayport	FL	32228		X	X	X
C—Navy	Naval Station Mayport.	PO Box 265 Naval Station.	Mayport	FL	32228	X	X	X	X
O—Transportation	USCG Base, Miami Beach.	100 MacArthur Cswy	Miami Beach	FL	33139		X		
C—Transportation	USCG Base, Miami Beach.	100 MacArthur Cswy	Miami Beach	FL	33139		X	X	
O—Air Force	Moody Air Force Base/GA TAC.	347 CSG/DE	Moody AFB	GA	31669		X	X	X
C—Air Force	Moody Air Force Base/GA TAC.	347 CSG/DE	Moody AFB	GA	31669	X	X	X	X

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CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—Air Force	Robins Air Force Base.	2853 CES/DE	Robins Air Force Base.	GA	31098		X	X	X
C—Air Force	Robins Air Force Base.	2853 CES/DE	Robins Air Force Base.	GA	31098	X	X	X	X
O—Air Force	USAF Plant No. 6 Lockheed.	86 S Cobb Drive	Marietta	GA	30063		X	X	X
C—Air Force	USAF Plant No. 6 Lockheed.	86 S Cobb Drive	Marietta	GA	30063	X	X	X	X
O—Army	USA Fort Benning	GA. Hwy 1 & US 27	Fort Benning	GA	31905		X		X
C—Army	USA Fort Benning	GA. Hwy 1 & US 27	Fort Benning	GA	31905	X	X		X
O—Army	USA Fort Gillem	Attn AFZK-EH-C	Forest Park	GA	30330		X	X	X
C—Army	USA Fort Gillem	Attn AFZK-EH-C	Forest Park	GA	30330		X	X	X
O—Army	USA Fort Gordon & HQ USA Signal Ctr.	ATZHFE EC	Fort Gordon	GA	30905		X		
C—Army	USA Fort Gordon & HQ USA Signal Ctr.	ATZHFE EC	Fort Gordon	GA	30905		X		X
O—Army	USA Fort Stewart	24th Infantry Div AFZP-DEN-E.	Fort Stewart	GA	31314		X	X	X
C—Army	USA Fort Stewart	24th Infantry Div AFZP-DEN-E.	Fort Stewart	GA	31314	X	X	X	X
O—Navy	Marine Corps Logistics Base, Albany.	Fleming Rd	Albany	GA	31704		X	X	X
C—Navy	Marine Corps Logistics Base, Albany.	Fleming Rd	Albany	GA	31704	X	X	X	X
O—Navy	Naval Submarine Base, Kings Bay.	GA State Hwy Spur	Kings Bay	GA	31547		X	X	X
C—Navy	Naval Submarine Base, Kings Bay.	GA State Hwy Spur	Kings Bay	GA	31547	X	X	X	X
O—Navy	Apra Harbor Naval Complex.	Apra Harbor Naval	Piti	GU	96630				X
C—Navy	Apra Harbor Naval Complex.	Apra Harbor Naval Complex.	Piti	GU	96630				X
O—Navy	Naval Air Station Agana.		Agana	GU	96637		X		X
C—Navy	Naval Air Station Agana.		Agana	GU	96637	X	X		X
O—Navy	Naval Station, Guam	Navy Public Wks Ctr.	Agana	GU	96630	X	X		X
C—Navy	Naval Station, Guam	Navy Public Wks Ctr.	Agana	GU	96630	X	X	X	X
O—Air Force	Johnston Atoll Nat'l Wildlife Refuge.	P.O. Box 50167	Honolulu	HI	96850			X	
C—Air Force	Johnston Atoll Nat'l Wildlife Refuge.	P.O. Box 50167	Honolulu	HI	96850		X	X	
O—Interior	Howland Island National Wildlife Refuge.	P.O. Box 50167	Honolulu	HI					X
C—Interior	Howland Island National Wildlife Refuge.	P.O. Box 50167	Honolulu	HI				X	
O—Navy	Kaneohe Bay Marine Corps Air Station.	MCAS Kaneohe Base Moakapu Penin.	Kaneohe Bay	HI	96863	X	X		
C—Navy	Kaneohe Bay Marine Corps Air Station.	MCAS Kaneohe Base Moakapu Penin.	Kaneohe Bay	HI	96863	X	X		X
O—Navy	Naval Magazine Lualualei.		Westloch	HI	96860	X	X		
C—Navy	Naval Magazine Lualualei.	Naval Magazine Demilitarization Furnace.	Westloch	HI	96860	X	X		X
O—Navy	Naval Shipyard, Pearl Harbor.		Pearl Harbor	HI	96860	X	X		X
C—Navy	Naval Shipyard, Pearl Harbor.		Pearl Harbor	HI	96860	X	X	X	X
O—Navy	Pacific Missile Range Facility.	Pacific Missile Range Facility.	Kekaha	HI	96752	X	X		
C—Navy	Pacific Missile Range Facility.	Pacific Missile Range Facility.	Kekaha	HI	96752	X	X	X	
O—Navy	Pearl Harbor Navy Public Works Ctr.	Naval Station Area	Pearl Harbor	HI	96860	X	X		X
C—Navy	Pearl Harbor Navy Public Works Ctr.	Naval Station Area	Pearl Harbor	HI	96860	X	X	X	X
O—Army	Iowa Army Ammunition Plant.	Hwy 79 Off Middletown Road.	Middletown	IA	52636	X	X		X
C—Army	Iowa Army Ammunition Plant.	Hwy 79 Off Middletown Road.	Middletown	IA	52636	X	X	X	X

CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—Agriculture	USDA FS Clayton Creek Dump.	T 39 N, R 11E, SEC 21.	Headquarters	ID	83534				X
C—Agriculture	Clearwater National Forest.	T 39 N, R 11E, SEC 21.	Headquarters	ID	83534				X
O—Air Force	Mountain Home AFB	366 CSG/DE	Mountain Home	ID	83648				X
C—Air Force	Mountain Home AFB	366 CSG/DE	Mountain Home AFB	ID	83648	X	X	X	X
O—Energy	USDOE Idaho Nat'l Engineering Lab.	AEC Testing Reservation.	Scoville	ID	83401				X
C—Energy	USDOE Idaho Nat'l Engineering Lab.	US Hwy 20/26, 40 mi west of Idaho Falls.		ID	83401	X	X		X
O—Interior	BLM-Champagne Creek Mine.	T3N R24W SEC15	Grouse	ID	83242			X	X
C—Interior	BLM-Champaigne Creek Mine.	T3N R24E SEC15	Grouse	ID	83242			X	X
O—Interior	BLM Shoshone (Glen Cave).	T4S R17E S14	Shoshone	ID	83352				X
O—Interior	BLM Shoshone (Gwinn Cave).	T4S R17E S14	Shoshone	ID	83352				X
O—Interior	BLM-Delmar Silver Mine.	T.15sS.R.35E		ID					X
C—Interior	BLM-Delamar Silver Mine.	T.15S.R.35E		ID					X
O—Interior	BLM-Owyhee Co. Marsing/Homedale Lf.	T2NR5WSEC8		ID					X
C—Interior	BLM-Owyhee Co. Marsing/Homedale Lf.	Johnson Rd. T4N R5W S32 SW ¼.	Marsing-Homedale	ID	83639				X
O—Air Force	Chanute Air Force Base.	3345 ABG/DE	Rantoul	IL	61858	X	X	X	X
C—Air Force	Chanute Air Force Base.	3345 ABG/DE	Rantoul	IL	61868	X	X	X	X
O—Army	Joliet Army Ammo Plant Uniroyal Mfg Area.	6 Miles S. of Elwood Off Rte. 53, Will County.	Joliet	IL	60634		X		X
C—Army	Joliet Army Ammunition Plant.	6 Miles S. of Elwood Off Rte. 53, Will County.	Joliet	IL	60634	X	X		X
O—EPA	US EPA Central Regional Lab.	536 S. Clark Street, 10th Floor.	Chicago	IL	60605		X		
C—EPA	Region 5, Environmental Services Division Laboratory.	536 S. Clark Street, 10th Floor.	Chicago	IL	60605		X		
O—Air Force	McConnell AFB	384 CSG/DE	Wichita	KS	67221	X	X		
C—Air Force	McConnell AFB	384 CSG/DE 2801	Wichita	KS	67221	X	X	X	X
O—Army	Combined Arms Cnt. & Ft. Leavenworth.	Ft. Leavenworth Reservation.	Leavenworth	KS	66027	X	X		
C—Army	Combined Arms Cnt. & Ft. Leavenworth.	Ft. Leavenworth Reservation.	Leavenworth	KS	66027	X	X	X	
D—Army	Ft. Riley 1st Infantry Div (M).	Dickmon Ave.	Junction City	KS	66442	X	X		
C—Army	Ft. Riley 1st infantry Div (M).	Dickman Ave.	Junction City	KS	66442	X	X	X	X
O—Army	Kansas AAP	3 Miles East of Town	Parsons	KS	67357	X	X		X
C—Army	Kansas AAP	3 Miles East of Town	Parsons	KS	67357	X	X	X	X
O—Army	Sunflower Army Ammunition Plant.	103 Rd St. South of Desoto.	Desoto	KS	66018	X	X		
C—Army	Sunflower Army Ammunition Plant.	103 Rd St. South of Desoto.	Desoto	KS	66018	X	X	X	X
O—Army	Lexington-Bluegrass Army Depot.	Haley Rd	Lexington	KY	40511		X	X	X
C—Army	Lexington-Bluegrass Army Depot.	Haley Rd	Lexington	KY	40511	X	X	X	X
O—Army	USA ARMC & Fort Knox.	Hwy 31 W	Fort Knox	KY	40121		X	X	
C—Army	USA ARMC & Fort Knox.	Hwy 31 W	Fort Knox	KY	40121	X	X	X	
O—Army	Fort Cambell	AFZB-FE-ECE	Fort Campbell	KY	42223			X	X
C—Army	Fort Cambell	AFZB-FE-ECE	Fort Campbell	KY	42223	X	X	X	X
O—Energy	US DOE Paducah Gas Diffusion Plt.	PO Box 1410	Paducah	KY	42001		X	X	
C—Energy	US DOE Paducah Gas Diffusion Plt.	PO Box 1410	Paducah	KY	42001	X	X	X	
O—Navy	Naval Ordinance Station, Louisville.	Southside Dr. MDS 42.	Louisville	KY	40214		X	X	

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CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
C—Navy	Naval Ordinance Station, Louisville.	Southside Dr. MDS 42.	Louisville	KY	40214	X	X	X	
O—Air Force	Columbus Air Force Base.	14 ABG/DE	Columbus AFB	MS	39701	X	X	X	X
C—Air Force	Columbus Air Force Base.	14 ABG/DE	Columbus AFB	MS	39701		X	X	X
O—Air Force	Barksdale Air Force Base.	2CSG/CC	Barksdale AFB	LA	71110	X	X	X	X
C—Air Force	Barksdale Air Force Base.	2CSG/CC	Bossier City	LA	71110	X	X	X	X
O—Air Force	England Air Force Base.	23 CSG/DE	Alexandria	LA	71311	X	X	X	X
C—Air Force	England Air Force Base.	23 CSG/DE	England AFB	LA	71311	X	X	X	X
O—Army	IUS Army Fort Polk and Peason Ridge.	HQ. 5th Infantry Div. & Fort Polk.	Fort Polk	LA	71459		X	X	
C—Army	IUS Army Fort Polk and Peason Ridge.	HQ. 5th Infantry Div. & Fort Polk.	Fort Polk	LA	71459	X	X	X	X
O—NASA	NASA—Martin Marietta Aerospace.	13800 Old Gentilly Road.	New Orleans	LA	70129		X	X	
C—NASA	NASA—Martin Marietta Aerospace.	13800 Old Gentilly Road.	New Orleans	LA	70129	X	X	X	
O—Navy	Naval Air Station, New Orleans.	32 Belle Chase Hwy	Belle Chase	LA	70037		X		
C—Navy	Naval Air Station, New Orleans.	32 Belle Chase Hwy	Belle Chase	LA	70037		X		X
O—Air Force	Hascom Air Force Base.	3245 ABG/CC	Hanscom AFB	MA	01731		X		X
C—Air Force	Hascom Air Force Base.	3245 ABG/CC	Bedford	MA	01731		X		X
O—Army	US Army Fort Devens.	Buena Vista St	Ayer	MA	01433	X	X	X	X
C—Army	US Army Fort Devens.	Buena Vista St	Ayer	MA	01433	X	X	X	X
O—Army	US Army Research Devel and Engineering Ctr.	Kansas St	Natick	MA	01760		X	X	
C—Army	US Army Research Devel and Engineering Ctr..	Kansas St	Natick	MA	01760		X	X	
O—Army	USW Army Fort Devens Sudbury, Anex.	Hudson Rd	Sudbury	MA	01776				X
C—Army	USW Army Natick R&D Labs, Sudbury, Anx.	Hudson Rd	Sudbury	MA	01776				X
O—Army	US Army Matls Tech Lab.	Arsenal St	Watertown	MA	02172	X	X	X	X
C—Army	US Army Matls and Mech Res Ctr.	Arsenal St	Watertown	MA	02172	X	X	X	X
O—Interior	Cape Cod Seashore	East off Route 6	Well Fleet	MA	02667				X
C—Interior	Cape Cod Seashore—Camp Wellfleet.	East off Route 6	Well Fleet	MA	02667				X
O—Navy	USN NAS S Weymouth.		Weymouth	MA	02190		X		
C—Navy	Naval Air Station South Weymouth.	NAS S Weymouth PWD Code 72.3.	South Weymouth	MA	02190		X		
O—Transportation	Coast Guard, S. Weymouth Bouy Det.	Trotter Road	Weymouth	MA	02190	X	X		
C—Transportation	Coast Guard, S. Weymouth Bouy Depot.	Trotter Road	South Weymouth	MA	02190	X	X		
O—Transportation	USCG Base, Woods Hole.	Little Harbor Road	Falmouth	MA	02543		X		
C—Transportation	USCG Base, Woods Hole.	Little Harbor Road	Falmouth	MA	02543		X		
O—Agriculture	FDA—Beltsville Agricultural Res. Ctr.	Buildings 1321 & 204 BARL Muirkirk Rd.	Beltsville	MD	20705		X	X	X
C— Agriculture	Beltsville Agricultural Res. Ctr.	Buildings 1321 & 204 BARC Muirkirk Rd.	Beltsville	MD	20705		X	X	X
O—Defense	NSA (FANX I, II, III,)	Elkridge Landing Rd	Linthicum	MD	21090	X			
O—Defense	NSA (FANX I, II, III)	Elkridge Landing Rd	Linthicum	MD	21090		X		
O—Navy	David W Taylor Naval R&D Yard.	Old Severn River Bridge.	Annapolis	MD	21402		X		X

CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
C—Navy	US Naval Station, Annapolis.	Old Severn River Bridge.	Annapolis	MD	21402		X		X
O—Navy	Naval Communication Unit, Washington.	Dangerfield & Common Rd.	Clinton	MD	20735		X		
C—Navy	Naval Communication Unit, Washington.	Dangerfield & Common Rd.		MD	20735		X		
O—Navy	Naval Research Lab Launch.	Berry Road	Waldorf	MD					
C—Navy	US Naval Research Lab Launch.	Berry Road	Waldorf	MD	20601				X
O—Navy	NAVSUPPFAC Thurmont.	Box 1000	Thurmont	MD	21788				X
C—Navy	Naval Support Facility Thurmont.	Box 1000	Thurmont	MD	21788				X
O—Navy	NSWC White Oak	10901 New Hampshire Ave.	White Oak	MD	20903	X	X	X	X
C—Navy	Naval Systems Weapons Center White Oak.	10901 New Hampshire Ave.	Silver Spring	MD	209003	X	X	X	X
O—Defense	Fuel Support Pt Casco Bay.	Rt 123 South Harpswell Neck.	Cumberland	ME	04079		X	X	X
C—Defense	Defense Fuel Support Pt Casco Bay.	Rt 123 South Harpswell Neck.	Cumberland	ME	04079		X	X	X
O—Defense	Fuel Support Pt Searsport.	Trundy Road	Searsport	ME	04974		X	X	X
C—Defense	Defense Fuel Support Pt Searsport.	Trundy Road Box 112.	Searsport	Me	04974		X	X	X
O—Navy	USN Naval Communications Unit.		Cutler	ME	04626		X		
C—Navy	USN Naval Communications Unit Cutler.		Cutler	ME	04626		X		
O—Air Force	Richards Gebaur AFB.	424 CSG/DE	Belton	MO	64030			X	
C—Air Force	Richards Gebaur AFB.	424 CSG/DE	Belton	MO	64030			X	X
O—Air Force	Whiteman AFB	357 CSG/CC	Knobnoster	MO	65305	X	X		
C—Air Force	Whiteman AFB	357 CSG/CC	Knobnoster	MO	65336	X	X		X
O—Army	St. Louis Ordnance Plant.	4300 Goodfellow Blvd.	St. Louis	MO	63120		X		X
C—Army	St. Louis Army Ammo Plant.	4300 Goodfellow Blvd..	St. Louis	MO	63120			X	X
O—Defense	Defense Mapping—FEE.	3200 S. Second Street.	St. Louis	MO	63118		X		
C—Defense	Defense Mapping—FEE.	3200 S. Second Street.	St. Louis	MO	63118		X		X
O—Defense	Defense Mapping Agency—FEE.	8900 S. Broadway	St. Louis	MO	63118		X		
C—Defense	Defense Mapping Agency—FEE.	8900 S. Broadway	St. Louis	MO	63118		X		X
O—Energy	Weldon Spring Chemical Plant.	St Hyw 94 2 Mi S of US 40.		MO	63301		X		
C—Energy	Weldon Spring Chemical Plant.	St Hwy 94 2 Mi S of US 40.	St. Charles	MO	63301		X		X
O—EPA	US EPA Laboratory	25 Funston Road	Kansas City	MO	66115	X	X	X	
C—EPA	Region 7, Environmental Services Division Laboratory.	25 Funston Road	Kansas City	KS	66115	X	X	X	X
O—EPA	US EPA Mobile Incineration System.	SE ¼ NW ¼ NW ¼ SEC 20.	McDowell	MO	65769		X		
C—EPA	EPA Mobile Incinerator.	SE ¼ NW ¼ NW ¼ SEC 20.	McDowell	KS	65769		X		X
O—General Services Admin.	Federal Center	2306 East Bannister Road.	Kansas City	MO	64131			X	
C—General Services Admin.	Federal Center	2306 East Bannister Road.	Kansas City	MO	64131		X	X	X
O—General Services Admin.	General Services Administration.	1500 Bannister Road	Kansas City	MO	64131		X		
C—General Services Admin.	General Services Administration.	1500 Bannister Road	Kansas City	MO	64131		X	X	X

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CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—Air Force	Keesler AFB	3380 CES/DE	Keesler AFB	MS	39534		X	X	X
C—Air Force	Keesler AFB	3380 CES/DE	Keesler AFB	MS	39534	X	X	X	X
O—Army	Mississippi Army Ammo Plant.	Bldg 9101 NASA NSTL.		MS	39529		X		X
C—Army	Mississippi Army Ammo Plant.	Bldg 9101 NASA NSTL.	Bay St. Louis	MS	39529		X		X
O—Army	USA Engr Environ Lab Waterways Exp Sta..	PO Box 631	Vicksburg	MS	39180		X	X	X
C—Army	USA Engr Environ Lab Waterways Exp Sta..	PO Box 631	Vicksburg	MS	39180	X	X	X	X
O—Interior	BLM—Ermont Mill Tailings.	T6SR11WSEC35		MT					X
C—Interior	BLM—Ermont Mill Tailings.	T6SR11WSEC35	Argenta	MT	59725				X
O—Interior	BLM—Thorium City Waste Dump.	T10SR15WSEC21		MT					X
C—Interior	BLM—Thorium City Waste Dump.	T10SR15WSEC21, 22, 27, 28.	Grant	MT	59734				X
O—Interior	BLM—Tungsten Mill Tailings.	T4WR9WSEC4, 5, 9		MT					X
C—Interior	BLM—Tungsten Mill Tailings.	T4WR9WSEC4, 5, 9	Glen	MT	59732				X
O—Air Force	Seymour Johnson Air Force Base.	4 CSG/DE	Seymour Johnson Air Force Base.	NC	27531		X	X	X
C—Air Force	Seymour Johnson Air Force Base.	4 CSG/DE	Seymour Johnson Air Force Base.	NC	27531	X	X	X	X
O—Health and Human Services.	Nat Inst. of Environ. Health Sci.	S on Alexander Dr	Research Tri Park	NC	27709		X		X
C—Health and Human Services.	Nat Inst. of Environ. Health Sci.	S on Alexander Dr	Research Triangle Park.	NC	27709	X	X		X
O—Navy	Marine Corps Air Station, Cherry Point.	NC Hwy 101	Cherry Point	NC	28533	X	X	X	X
C—Navy	Marine Corps Air Station, Cherry Point.	NC Hwy 101	Cherry Point	NC	28533	X	X	X	X
O—Navy	Marine Corps Air Station, New River.	Fire Fighting Training Pitt.	Jacksonville	NC			X		
C—Navy	Marine Corps Air Station, New River.	Fire Fighting Training Pitt.	Jacksonville	NC			X		X
O—Navy	Marine Corps Base, Camp Lejeune.	NC Hwy 24 & US Hwy 16.	Camp Lejeune	NC	28542		X	X	X
C—Navy	Marine Corps Base, Camp Lejeune.	NC Hwy 24 & US Hwy 16.	Camp Lejeune	NC	28542	X	X	X	X
O—Transportation	USCG Support Center.	Hwy 34 S/4 Mi. S of	Elizabeth City	NC	27909		X	X	
C—Transportation	USCG Support Center.	Hwy 34 S/4 Mi. S of Elizabeth City.	Elizabeth City	NC	27909	X	X	X	
O—Agriculture	Roman L. Hruska Meat Animal Resource Cntr	State Spur 18D		NE	66933		X		X
C—Agriculture	Roman L. Hruska Meat Animal Resource Cntr	State Spur 18D	Clay Center	NE	66933		X		X
O—Air Force	Offut Air Force Base	55 CSG/CC	Offutt AFB	NE	68113	X	X		X
O—Air Force	Offut Air Force Base	55 CSG/CC	Offutt AFB	NE	68113	X	X	X	
O—Interior	McMurtry Marsh	South Highway 6, 10 Miles East of Hastings.	Hastings	NE					X
C—Interior	McMurtry Marsh	South Highway 6, 10 Miles East of Hastings.	Hastings	NE	68939				X
O—Navy	Naval Support Activity.	Fort Omaha	Omaha	NE					X
C—Navy	Naval & Marine Corp Reserve Center.	Fort Omaha	Omaha	NE	68102				X
O—Defense	Defense Fuel Support Point Melville.	Route 114	Portsmouth	NH	02871		X	XI	X
C—Defense	Defense Fuel Support Point Melville.	Route 114	Portsmouth	RI	02871		X	X	X
O—Defense	US Defense Fuel Support Pt. Newington.	Patterson Lane	Newington	NH	03801		X	X	X

CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
C—Defense	Defense Fuel Support Pt. Newington.	Patterson Lane	Newington	NH	03801		X	X	X
O—Army	U.S. Army Training Center at Ft Dix.	Juliustown—Browns Mill Road.	Wrightstown	NJ	08562	X	X	X	
C—Army	U.S. Army Training Center & Ft Dix.	Juliustown—Browns Mill Road.	Wrightstown	NJ	08562	X	X	X	X
O—Energy	WR Grace and Co	868 Black Oak Ridge	Pompton Plains	NJ	07444				X
C—Energy	Wayne Interim Storage Site (WR Grace and Co).	868 Black Oak Ridge	Wayne	NJ	07444				X
O—General Services Admin.	GSA Supply Depot	Belle Mead #1 Route 206.	Belle Mead	NJ	08502		X		X
C—General Services Admin.	GSA Supply Depot	Belle Mead #1 Route 206.	Belle Mead	NJ	08502		X		X
O—Interior	Edwin B. Forsythe Nat'l Wildlife Refuge.	700 West Bay Avenue.	Barnegat	NJ	08005			X	
C—Interior	Edwin B. Forsythe Nat'l Wildlife Refuge.	700 West Bay Avenue.	Barnegat	NJ	08005			X	X
O—Air Force	Cannon Air Force Base.	275 CSG/DE	Cannon AFB	NM	88103	X	X	X	X
C—Air Force	Cannon Air Force Base.	27 CSG/DE	Cannon AFB	NM	88103	X	X	X	X
O—Air Force	Holloman Air Force Base.	833 CSG/DE	Holloman AFB	NM	88330	X	X	X	X
C—Air Force	Holloman Air Force Base.	833 CSG/DE US Hwy 70.	Holloman AFB	NM	88330	X	X	X	X
O—Army	US Army—Fort Wingate Depot Activity.	10 Miles East of Gallup on 1–10.	Gallup	NM	87310	X	X		X
C—Army	US Army—Fort Wingate Depot Activity.	10 Miles East of Gallup on 1–10.	Gallup	NM	87310	X	X	X	X
O—Army	US Army—White Sands Missile Range.		White Sands	NM	88002	X	X		X
C—Army	US Army—White Sands Missile Range.	STEWS–FE	White Sands	NM	88002	X	X		X
O—Energy	US DOE Sandia National Laboratories.		Albuquerque	NM	87116	X	X	X	X
C—Energy	US DOE Sandia National Laboratories.	Kirkland AFB East	Albuquerque	NM	87116	X	X	X	X
O—Energy	US DOE Tonopah Test Range.	Albuquerque Operations Office PO Box 5400.	Albuquerque	NM	87115		X		
C—Energy	US DOE Tonopah Test Range (Sandia Nat'l Lab).	PO Box 10359	Tonopah	NV	89049	X	X		X
O—Interior	BLM—International Materials & Chemical.	Roswell	Roswell	NM					X
C—Interior	BLM—International Materials & Chemical.	Roswell	Roswell	NM					X
O—Interior	BLM—Marathon Oil Co., Indian Basin Plant.	Not Found in Region		NM					
C—Interior	BLM—Marathon Oil Co., Indian Basin Plant.	Not Found in Region		NM					X
O—Interior	Monterey Construction Company.	Highway 285	Carlsbad	NM	88220		X		
C—Interior	Monterey Construction Company.	12 Mi. N of Carlsbad Off Highway 285.	Carlsbad	NM	88220		X		
O—Interior	U of NM Haz Waste Storage Facility.	T23SR2ESEC23	Las Cruces	NM	88001	X		X	X
C—Interior	U of NM Haz Waste Storage Facility.	T23SR2ESEC23	Las Cruces	NM	88001	X	X	X	X

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CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—NASA	NASA—JSC Whitesands Test Facility.	Las Cruces	Las Cruces	NM	88004	X	X	X	X
C—NASA	NASA—JSC Whitesands Test Facility.	14 Mi E. & 6 Mi N. of Las Cruces.	Las Cruces	NM	88004	X	X	X	X
O—Veterans Administration.	Veterans Administration Hospital.	2100 Ridgecrest	Albuquerque	NM	87106		X	X	
C—Veterans Administration.	Veterans Administration Hospital.	2100 Ridgecrest	Albuquerque	NM	87106	X	X	X	X
O—Army	Hawthorne Army Ammunition Plant.		Hawthorne	NM	89416	X	X	X	X
C—Army	Hawthorne Army Ammunition Plant.		Hawthorne	NV	89416	X	X	X	X
O—Energy	US DOE Nevada Test Site.	PO Box 98518	Las Vegas	NV	89193-8518	X	X	X	X
C—Energy	US DOE Nevada Test Site (Reynold's Elect).	Nevada Operations Office PO Box 98518.	Las Vegas	NV	89193-8518	X	X	X	X
O—Energy	US DOE Tonopah Test Range.	Albuquerque Operations Office PO Box 5400.	Albuquerque	NM	87115		X		
C—Energy	US DOE Tonopah Test Range (Sandia Nat'l Lab).	PO Box 10359	Tonopah	NV	89049	X	X		X
O—Interior	BLM-Antelope Valley Pesticide.	T25NR42ESEC18	Lander	NV	89310				X
C—Interior	BLM-Antelope Valley Pesticide Site.	T25NR42ESEC18	Lander	NV	89310				X
O—Interior	BLM-Candelaria Partners OMC.	T34NR35ESEC2233435		NV					
C—Interior	BLM-Candelaria Partners OMC.	T34NR35ESEC2233435		NV			X		X
O—Interior	BLM-Cortez Joint Venture.	T27NR47ESEC13		NV					
C—Interior	BLM-Cortez Joint Venture.	T27NR47ESEC13		NV			X		X
O—Interior	BLM-IMCO Services Inc.	T28NR44SEC4 and T28NR46ESEC32.		NV	89620				X
C—Interior	BLM-IMCO Services Inc.	T28NR44ESEC4 and T28NR46ESEC32.		NV	89620				X
O—Interior	BLM-Mound Mineral, Argentum.	T3NR365SSEC85	Esmereida	NV	89049				X
C—Interior	BLM-Minerals Manage, Argentum Mill.	T3NR365SSEC85	Esmereida	NV	89049				X
O—Interior	BLM-West Coast Oil & Gas Corp.	T19NR22ESEC26,36	Storey	NV					X
C—Interior	BLM-West Coast Oil & Gas Corp.	T19NR22ESEC26,36	Storey	NV		X		X	
O—Interior	BLM-Western States Minerals.	T36NR50ESEC29,30	Eureka	NV					X
C—Interior	BLM-Gold Strike Mine.	T36NR50ESEC29,30	Eureka	NV					X
O—Interior	Date Street Complex	500 DAte St.	Boulder City	NV	89005		X		X
C—Interior	Date Street Complex (Boulder City Eng. Lab).	500 Date St.	Boulder City	NV	89005	X	X		X
O—Interior	Hope Mine	T22NR51ESEC12	White Pine	NV	89301				X
C—Interior	Mt Hope Mine	T22NR51ESEC12	White Pine	NV	89301				X
O—Navy	Naval Air Station, Fallon.	Naval Air Station	Fallo	NY	89406	X	X	X	X
C—Navy	Naval Air Station, Fallon.	Naval Air Station	Fallon	NV	89406	X	X	X	X
O—Agriculture	Plum Island Animal Desease Center.	Plum Island	Orient Point	NY	11957				X
C—Agriculture	Plum Island Animal Disease Center.	Plum Island	Orient Point	NY	11957			X	X
O—Air Force	Air Force Plant #59	600 Main Street	Johnson city	NY	113790			X	X
C—Air Force	Air force Plant #59	600 Main Street	Johnson City	NY	13790				X
O—Air Force	US Air Force Plant #38.	Porter & Balmer Rds	Porter Twp	NY	14131	X	X		X
C—Air Force	US Air Force Plant #38.	Porter & Balmer Rds	Porter Twp	NY	14131	X	X		X
O—Army	Fort Drum #8	Btwn Rts 3 & 11	Watertown	NY	13601	X	X	X	X

CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
C—Army	Fort Drum #8	Btwn Rts 3 & 11	Watertown	NY	13601	X	X	X	X
O—Energy	Colonie Interim Storage/NL Nuclear Metals Div.	1130 Central Ave	Colonie	NY	11205		X	X	
C—Energy	Colonie Interim Storage Site.	1130 Central Ave	Colonie	NY	12205		X	X	
O—Transportation	CG Ant Red Beech-Saugerties.		Saugerties	NY	12477		X		
C—Transportation	USCG Aids to Navigation Team.		Saugerties	NY	12477		X		
O—EPA	Environmental Research Center.	26 W. St. Clair Street	Cincinnati	OH	45268	X	X	X	
C—EPA	Andrew W. Breidenbach Environmental Research Center.	25 W. St. Clair Street	Cincinnati	OH	45268	X	X	X	
O—EPA	US EPA Center Hill Solid Waste Lab.	5595 Center Hill Road.	Cincinnati	OH	45268	X	X	X	
C—EPA	Center Hill Hazardous Waste Engineering Research Laboratory.	5595 Center Hill Road.	Cincinnati	OH	45268	X	X	X	
O—EPA	US EPA T & E Facility.	1600 Gest Street	Cincinnati	OH	45203	X	X	X	
C—EPA	Testing and Evaluation Facility.	1600 Gest Street	Cincinnati	OH	45203	X	X	X	
O—Corps of Engineers, Civil.	Robert S. Kerr Lick Dam & Reservoir.	Star Route 4	Sallisaw	OK	74063		X		
C—Corps of Engineers, Civil.	Robert S. Kerr Lock Dam & Reservoir.	Star Route 4	Sallisaw	OK	74063		X		
O—Air Force	Kingsley Field	114 TFTS/CC	Klamath Falls	OR	97601		X		X
C—Air Force	Kingsley Field	114 TFTS/CC	Klamath Falls	OR	97601		X		X
O—Army	US Army Umatilla Depot Activity.	I-84 & Exit 178	Hermiston	OR	97838				X
C—Army	US Army Umatilla Depot Activity.	I-84 & Exit 178	Hermiston	OR	97838	X	X	X	X
O—Agriculture	US Dept of Agriculture Wyndmo°.	600 E Mermaid Ln	Wyndmoor	PA	19118		X		
C—Agriculture	US Dept of Agriculture Wyndmoor.	600 E Mermaid Ln	Wyndmoor	PA	19118		X		
O—Army	New Cumberland Army Depot.	Harrisburg	Harrisburg	PA	17070	X	X	X	X
C—Army	New Cumberland Army Depot.	Harrisburg	New Cumberland	PA	17070	X	X	X	X
O—Army	USA Support Oakdale.	US Army	Oakdale	PA	15071				X
C—Army	Chas Kelly Support Ctr..	US Army	Oakdale	PA	15071		X		X
O—Commerce	DOC Econ Dev Adm-Robins Footwe.	208 N Division St	Mt Union	PA	17066			X	
C—Commerce	DOC Econ Dev Adm-Robins Footwear.	208 N Division St	Mt Union	PA	17066			X	
O—Navy	Naval Station Philadelphia.	NAVFAC North Div Code 114.	Philadelphia	PA	19112	X	X		X
C—Navy	Naval Station Philadelphia.	Broad St.-North Div Code 114.	Philadelphia	PA	19112	X	X		X
O—Army	Hayes Army Ammunition Plant.	U.S. Army	Pittsburgh	PA	15207			X	
C—Army	Hayes Army Ammunition Plant.	300 Mufflin Road	Pittsburgh	PA	15207			X	
O—Army	Fort Buchanan-U.S. Army Garrison.	Route 28	San Juan	PR	00934	X			X
C—Army	Fort Buchanan-U.S. Army Garrison.	Route 28	San Juan	PR	00934	X	X		X
O—Navy	Naval Ammunition Facility, Vieques.	Route 70	Vieques	PR	00765			X	X
C—Navy	Naval Ammunition Facility, Vieques.	Route 70	Vieques	PR	00765	X	X	X	X
O—Defense	Defense Fuel Support Point Melville.	Route 114	Portsmouth	NH	02871		X	X	X
C—Defense	Defense Fuel Support Point Melville.	Route 114	Portsmouth	NH	02871		X	X	X

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[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—EPA	Environmental Research Laboratory.	South Ferry Road	Narragansett	RI	02882		X		
C—EPA	Narragansett Environmental Research Laboratory.	South Ferry Road	Narraganset	RI	02882		X		
O—Interior	Ninigret National Wildlife Refuge.	Third Beach Road, Sachvest Point.	Middletown	RI	02840				X
C—Interior	Ninigret National Wildlife Refuge.	Third Beach Road, Sachvest Point.	Middletown	RI	02840				X
O—Navy	Naval Construction Battalion Ctr, Davisville.	Off Quionessett Road.	North Kingston	RI	02854				X
C—Navy	Naval Construction Battalion Ctr, Davisville.	Off Quionessett Road.	North Kingston	RI	02854				X
O—Navy	Navy Marine Corps Reserve Center.	One Narragansett Ave.	Cranston	RI	02905		X		
C—Navy	Navy Marine Corps Reserve Center.	One Narragansett Ave.	Cranston	RI	02905		X		
O—Navy	US Naval Education and Training Center.		Newport	RI	02840	X	X	X	X
C—Navy	US Naval Education and Training Center.	Public Works Dept. Code 42.	Newport	RI	02840	X	X	X	X
O—Air Force	Charleston Air Force Base.	437 ABG/DE	Charleston	SC	29404		X	X	X
C—Air Force	Charleston Air Force Base.	437 ABG/DE	Charleston	SC	29404	X	X	X	X
O—Air Force	Myrtle Beach Air Force Base.	354 CSG/DE	Myrtle Beach	SC	29577		X	X	X
C—Air Force	Myrtle Beach Air Force Base.	354 CSG/DE	Myrtle Beach	SC	29577	X	X	X	X
O—Air Force	Shaw Air Force Base	363 CSG/DE	Shaw AFB	SC	29152		X	X	X
C—Air Force	Shaw Air Force Base	363 CSG/DE	Shaw AFB	SC	29152	X	X	X	X
O—Defense	Defense Fuel Supply Point—Charleston.	N Rhett Ave	Hanahan	SC	29406		X	X	X
C—Defense	Defense Fuel Supply Point—Charleston.	N Rhett Ave	Hanahan	SC	29406		X	X	X
O—Energy	US DOE Savannah River Plt.	PO Box A	Aiken	SC	29802		X	X	X
C—Energy	US DOE Savannah River Plt.	PO Box A	Aiken	SC	29802	X	X	X	X
O—Navy	Marine Corps Air Station, Beaufort.	Lafrene Road	Beaufort	SC	29904		X	X	X
C—Navy	Marine Corps Air Station, Beaufort.	Lafrene Road	Beaufort	SC	29904	X	X	X	X
O—Navy	Marine Corps Recruit Depot, Parris Island.	Marine Corps Recruit Depot.	Parris Island	SC	29905		X	X	X
C—Navy	Marine Corps Recruit Depot, Parris Island.	Marine Corps Recruit Depot.	Parris Island	SC	29905	X	X	X	X
O—Navy	Naval Shipyard, Charleston.	Viaduct Road	Charleston	SC	29408		X	X	X
C—Navy	Naval Shipyard, Charleston.	Viaduct Road	Charleston	SC	29408	X	X	X	X
O—Navy	Naval Weapons Station, Charleston.	Redbank Road	Charleston	SC	29408			X	X
C—Navy	Naval Weapons Station, Charleston.	Redbank Road	Charleston	SC	29408	X	X	X	X
O—Air Force	Arnold Engr Devlp Ctr.	Commander AEDC	Arnold Air Force Base.	TN	37389		X		X
C—Air Force	Arnold Engr Devlp Ctr.	Commander AEDC	Arnold Air Force Base.	TN	37389	X	X		X
O—Army	Milan Army Ammunition Plant.	Hwy 104	Milan	TN	38358		X	X	X
C—Army	Milan Army Ammunition Plant.	Hwy 104	Milan	TN	38358	X	X	X	X
O—Army	US DOD Defense Depot, Memphis.	2163 Airways Blvd.	Memphis	TN	38114				X
C—Army	US DOD Defense Depot, Memphis.	2163 Airways Blvd.	Memphis	TN	38114	X	X		X
O—Army	USA Holston Army Ammunition Plant.	West Stone Drive	Kingsport	TN	37660		X	X	X

CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
C—Army	USA Holston Army Ammunition Plant.	West Stone Drive	Kingsport	TN	37660	X	X	X	X
O—Army	USA Volunteer Army Ammo Plant.	Bonny Oaks Drive	Chattanooga	TN	37416		X	X	X
C—Army	USA Volunteer Army Ammo Plant.	Bonny Oaks Drive	Chattanooga	TN	37416	X	X	X	X
O—Navy	Naval Air Station Memphis.	Millington-Arlington Road.	Millington	TN	38054		X	X	X
C—Navy	Naval Air Station Memphis.	Millington-Arlington Road.	Millington	TN	38054	X	X	X	X
O—Tennessee Valley Authority.	TVA Bull Run Steam Plant.	Edgemoor Rd, 6 Mi SE of Oak Ridge.	Oak Ridge	TN	37930		X		X
C—Tennessee Valley Authority.	TVA Bull Run Steam Plant.	Edgemoor Rd, 6 Mi SE of Oak Ridge.	Oak Ridge	TN	37930		X		
O—Tennessee Valley Authority.	TVA Kingston Steam Plant.	Natural Resources Building.	Norris	TN	37828				X
C—Tennessee Valley Authority.	TVA Kingston Steam Plant.	Natural Resources Building.	Norris	TN	37828		X		X
O—Air Force	Air Force Plant #4 (General Dynamics).	Grants Lane	FortWorth	TX	76106	X	X		X
C—Air Force	Air Force Plant #4 (General Dynamics).	Grants Lane	Fort Worth	TX	76106	X	X	X	X
O—Air Force	Bergstrom Air Force Base.	67 CSG/DE	Austin	TX	78743	X	X	X	X
C—Air Force	Bergstrom Air Force Base.	67 CSG/DE	Bergstrom AFB	TX	78743	X	X	X	X
O—Air Force	Dyess Air Force Base.	96 CSG/CC	Abilene	TX	79607	X	X	X	X
C—Air Force	Dyess Air Force Base.	96 CSG/CC	Abilene	TX	79607	X	X	X	X
O—Air Force	Lackland Air Force Base.	3700 ABG/DE	San Antonio	TX	78236		X	X	X
C—Air Force	Lackland Air Force Base.	3700 ABG/DE	San Antonio	TX	78236	X	X	X	X
O—Air Force	Randolph Air Force Base.	12 ABG/DE	San Antonio	TX	78150		X	X	X
C—Air Force	Randolph Air Force Base.	12 ABG/DE	San Antonio	TX	78150	X	X	X	X
O—Army	Fuels and Lub Rsh Facility.	6220 Cuevra	San Antoni	TX	78284				X
C—Army	Belvoir Fuels and Lubricant Research Facility.	6220 Cuevra	San Antonio	TX	78284				X
O—Army	US Army Air Defense Center & Fort Bliss.	Pershing Drive	Fort Bliss	TX	79916	X	X	X	
C—Army	US Army Air Defense Center & Fort Bliss.	Pershing Drive	Fort Bliss	TX	79916	X	X	X	X
O—Army	US Army, Camp Stanley Storage.	Ralph Fair Road	San Antonio	TX	78204		X		
C—Army	US Army, Camp Stanley Storage.	Ralph Fair Road	San Antonio	TX	78229	X	X		
O—Army	US Army, Corpus Christi AMSA/AEC.	2022 Saratoga	Corpus Christi	TX	78415		X		X
C—Army	US Army, Corpus Christi AMSA/AEC.	2022 Saratoga	Corpus Christi	TX	78415	X	X		X
O—Army	US Army, Houston Armed Forces Center.	1850 Old Spanish Trail.	Houston	TX	77054		X		
C—Army	US Army, Houston Armed Forces Center.	1850 Old Spanish Trail Drive.	Houston	TX	77054	X	X	X	
O—Army	US Army, Longhorn Army Ammunition Plant.	Highway 43	Karnack	TX	75670	X	X	X	X
C—Army	US Army, Longhorn Army Ammunition Plant.	Highway 419 East	Karnack	TX	75661	X	X	X	X
O—Army	US Army, Saginaw Air Craft Plant.	Blue Mound Road East, Highway 156.	Saginaw	TX	76100		X		
C—Army	US Army Plant #2, Bell Helicopter Textron.	Blue Mound Road, Highway 156.	Saginaw	TX	76131		X		
O—Energy	Pantex Plant	2000 South Houston	Amarillo	TX	75142	X	X	X	X
C—Energy	US DOE Pantex Plant.	2000 South Houston	Amarillo	TX	79120	X	X	X	X

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CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—General Services Admin.	General Services Administration 7FS.	501 Felix Street	Fort Worth	TX	78753		X		
C—General Services Admin.	GSA Federal Center 7FS.	501 Felix Street	Fort Worth	TX	78753		X		
O—NASA	NASA Ellington Field	Highway 3	Houston	TX	77088		X		
C—NASA	NASA Ellington Field	Highway 3	Houston	TX	77088		X		
O—Navy	Naval Air Station Chase Field.	Highway 202	Beeville	TX	78102		X		X
C—Navy	Naval Air Station Chase Field.	SW Hwy 202 5 Mi E. of Beeville.	Beeville	TX	78103	X	X		X
O—Navy	Naval Weapons Ind Res Plant, Dallas.	9314 W. Jefferson	Grand Prairie	TX	75222	X	X	X	X
C—Navy	Naval Weapons Ind Res Plant, Dallas.	9314 W. Jefferson	Dallas	TX	75211	X	X	X	X
O—Air Force	Air Force Plant 78	35 Mi. NW of Brigham City, Mail Stop 250.	Brigham City	UT	84302			X	X
C—Air Force	Air Force Plant 78	35 Mi. NW of Bngham City, Mail Stop 250.	Brigham City	UT	84302		X	X	X
O—Army	Dougway Proving Ground, US Army.	45 Mi. W. of Tooele	Dougway	UT	84022		X	X	X
C—Army	Dougway Proving Ground, US Army.	45 Mi. W. of Tooele	Dugway	UT	84022		X	X	X
O—Interior	BLM—Deseret Mound Mine.	T35NR13WSEC35	Cedar City	UT	84720				X
C—Interior	BLM—Deseret Mound & Mine.	T35NR13WSEC35	Cedar City	UT	84720				X
O—Interior	BLM—Ore Buying Station—Moab.	T26SR22ESEC6 Moab PARLABC.	Moab	UT	84532				X
C—Interior	BLM—Ore Buying Station—Moab.	T26SR22ESEC6 Moab PARLABC.	Moab	UT	84532				X
O—Interior	BLM—Frye Canyon Tailing.	T36SR16ESEC34	Blanding	UT	84511				X
C—Interior	BLM—Frye Canyon Tailing.	T36SR16ESEC34	Hite	UT	84511				X
O—Interior	BLM—Silver Maple Claims.	T2SR4ESEC3, 4	Park City	UT	84060			X	X
C—Interior	BLM—Silver Maple Claims.	T2SR4ESEC3, 4 Utah Hwy 248.	Park City	UT	84060			X	X
O—Interior	Ireco Chemical	17SR1ESEC5, 6, 7		UT		X			X
C—Interior	Ireco Chemical	17SR1ESEC5, 6, 7 Pelican Pt. Site A&B.	Lehi	UT	84043	X			X
O—Air Force	Langley AFB	1 CSG/DE	Hampton	VA	23665	X	X		X
C—Air Force	Langley AFB	1 CSG/DE	Langley	VA	23665	X	X		X
O—Army	Defense Printing Service Office.	RMBE 854	The Pentagon	VA	20301		X		
C—Army	Defense Printing Service Office.	RMBE 854 The Pentagon.	Arlington	VA	20301		X		
O—Army	DGSC Richmond	Jefferson Davis Highway.	Richmond	VA	23297	X	X	X	X
O—Army-Defense Logistics Agency.	Defense General Supply Center Richmond.	Jefferson Davis Highway.	Richmond	VA	23297	X	X	X	
O—Army	Harry Diamond Labs, Woodbridge.	US Army	Warrenton	VA	22186			X	X
C—Army	Harry Diamond Labs, Woodbridge.	US Army	Woodbrige	VA	22186			X	X
O—Army	US Army Engineer District Boydton.	John H Kerr Reservoir.	Boydton	VA	23917		X		
C—Army	US Army Engineer District Boydton.	John H Kerr Reservoir.	Boydton	VA	23917		X		
O—EPA	EPA Environmental Photo Int.	Bldg 166–Vint Hill Farm.	Warrenton	VA	22186		X		
C—EPA	EPA Environmental Photo graphic interpretation Center.	Bldg 166–Vint Hill Farm.	Warrenton	VA	22186		X		
O—Interior	E. Shore VA Fisherman Island.	RD 1 Box 1228	Cape Charles	VA	23310			X	
C—Interior	E. Shore VA Fisherman Island.	RD 1 Box 1228	Cape Charles	VA	23310			X	X
O—Navy	Naval Supply Center, Norfolk.	Craney Island	Norfolk	VA	23512	X	X	X	X
C—Navy	Naval Supply Center, Norfolk.	Craney Island	Portsmouth	VA	23703	X	X	X	X

CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
O—Navy	NWS Yorktown	N/A	Yorktown	VA	23691	X	X	X	
C—Navy	Naval Weapons Station Yorktown.	N/A	Yorktown	VA	23691	X	X	X	X
O—Interior	BLM-ENLO Powerhouse AKA Similkameen.	T40NR27ESEC13	Oroville	OR	98844				X
C—Interior	BLM-ENLO Powerhouse AKA Similkameen.	T40NR27ESEC13	Oroville	WA	98844				X
O—Agriculture	Holden Mine Tailing/ Wenaches NF.	T31NR17E WM SEC7.	Holden	WA	98816				X
C—Agriculture	Wenaches National Forest.	T31R17E WM SEC7	Holden	WA	98816				X
O—Agriculture	Yakima Agricultural Res Lav-U.	3706 W Nob Hill Blvd.	Yakima	WA	98902		X		
C—Agriculture	Yakima Agricultural Res Lav-U.	3706 W Nob Hill Blvd.	Yakima	WA	98902		X	X	
O—Air Force	Fairchild AFB	92 CSG/CC	Spokane	WA	99011		X		
C—Air Force	Fairchild AFB	92 CSG/CC	Fairchild AFB	WA	99011	X	X		
O—Air Force	USAF McChord AFB	62 ABG/DE	Tacoma	WA	98438				X
C—Air Force	USAF McChord AFB	62 ABG/DE	Fairchild AFB	WA	98438	X	X	X	X
O—Army	USA-COE Lake Washington.	3015 NW 54th St.	Seattle	WA	98017				X
C—Army	USA-COE Lake Washington.	3015 NW 54th St.	Seattle	WA	98017			X	X
O—Army	US Army Fort Lewis	Attn AFZH-FEQ	Fort Lewis	WA	98433				
C—Army	US Army Fort Lewis	9th Inf Div Attn AFZH-FEQ.	Fort Lewis	WA	98433	X	X	X	X
O—Commerce	USDOC-NOAA Western Regional Center.	7600 Sandpoint Way	Seattle	WA	98115		X		
C—Commerce	USDOC-NOAA Western Regional Center.	7600 Sandpoint Way	Seattle	WA	98115		X	X	
O—Defense	USDOD-DLA Defense Fuel Support Pt.	Front St & Loveland Ave.	Mukilteo	WA	98275				X
C—Defense	USDOD-DLA Defense Fuel Support Pt.	Front St & Loveland Ave.	Mukilteo	WA	98275		X	X	X
O—Energy	USDOE Hanford Site	Hanford Site	Richland	WA	99352				X
C—Energy	USDOE Hanford Site	Hanford Site	Richland	WA	99352	X	X		X
O—EPA	USEPA Manchester Laboratory.	7411 Beach Dr E	Manchester	WA	98353		X		
C—EPA	Region 10, Environmental Services Division Laboratory.	7411 Beach Dr E	Manchester	WA	98353		X		
O—Navy	Naval Air Station Whidbey Island.	Hwy 20 & Ault Field Rd.	Oak Harbor	WA	98278				X
C—Navy	Naval Air Station Whidbey Island.	Hwy 20 & Ault Field Rd.	Oak Harbor	WA	98278	X	X		X
O—Navy	Naval Shipyard Puget Sound.	1st Street Code 106	Bremerton	WA	98314				X
C—Navy	Naval Shipyard Puget Sound.	1st Street Code 106	Bremerton	WA	98314	X	X		X
O—Navy	Naval Undersea Warfare Eng Sta, Keyport.	Code 073 Hwy 306, E End.	Keyport	WA	98345				X
C—Navy	Naval Undersea Warfare Eng Sta, Keyport.	Code 073 Hwy 306, E End.	Keyport	WA	98345	X	X		X
O—Navy	US Navy-Naval Supply Center, Puget Snd.	Orchard Pt/Little Clam Bay.	Bremerton	WA	98353		X		
C—Navy	US Navy-Naval Supply Center, Puget Snd.	Orchard Pt/Little Clam Bay.	Bremerton	WA	98353	X	X	X	X
O—Navy	US Navy Bangor Submarine Base.	Clear Creek Rd	Bangor	WA	98315				
C—Navy	US Navy Bangor Submarine Base.	Clear Creek Rd	Bangor	WA	98315	X	X		
O—Navy	Nav Comm Area	10 mi off Rte 33	Sugar Grove	WV	26815		X		X
C—Navy	Naval Radio Station LF#1.	10 mi off Rte 33	Sugar Grove	WV	26815		X		X
O—Navy	USN Allegheny Ballistics Lab.	West Virginia Secondary R.	Rocket Center	WV	26753	X	X	X	X

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CORRECTIONS TO DOCKET LISTING—Continued

[Code 20]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103
C—Navy	USN Allegheny Ballistics Lab.	West Virginia Secondary Route 9.	Rocket Center	WV	26753	X	X	X	X

II. DOCKET UPDATE

UPDATE TO 2/12/88 DOCKET—NEW FACILITIES

[** = DATE OF PUBLICATION]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA reg	Date of listing
Air Force	USAF—Bear Creek AFS LDFL.	Yukon River on N Shore.	Tanana	AK	99777				X	10	**
Air Force	USAF—Nikolski AFS LDFL.	W Coast of Umnak Is.	Nikolski	AK	99638				X	10	**
Air Force	USAF—Dewline Site Bar-Main.	Barter Isl., ½ mi E of NE Shr.	Kaktovik	AK	99747				X	10	**
Air Force	USAF—Granite Mountain AFS LDFL.	14 mi NW of Cy.	Haycock	AK	99762				X	10	**
Air Force	USAF—Dewline Site POW-2.	Simpson Lagoon-Beaufort Bay.	Oliktok	AK	99599				X	10	**
Army	Fort Greely		Fort Greely	AK	98733			X		10	**
Army	Fort Wainwright.		Fort Wainwright	AK	99793-5500	X	X	X	X	10	**
Interior	Glacier Bay National Park and Preserve.	PO Box 140	Gustavus	AK	99826			X		10	**
Interior	Denali National Park and Preserve.	PO Box 9	Denali Park	AK					X	10	**
Interior	USDOI–BLM Cape Sabine Dewline Site.	Point Hope, 65 mi SE.	Point Hope	AK	99766				X	10	**
Army	DA/Wheeler National Wildlife Refuge.	PO Box 1643	Decatur	AL	35602			X		4	**
Tennessee Valley Authority	TVA Colbert Steam Plant.	Off US Hwy 72 W.	Tuscumbia	AL	35674				X	4	**
Agriculture	South Central Family Farm Research Center.	Rt. 2, Box 144A Hwy 23 South.	Booneville	AR				X		6	**
Air Force	Little Rock AFB.	314 CSG/CG	Little Rock AFB AR	AR	72979	X	X	X	X	6	**
Interior	US Dept of Interior Hope Wildlife Area.	4 Mi N off Hwy 32.	Hope	AR	71801				X	6	**
Interior	Glen Canyon Dam.	805 Hemlock	Page	AZ	86040			X		9	**
Agriculture	Aquatic Weed Research Facility.	University of CA.	Davis	CA	95616			X		9	**
Agriculture	Fresno Research Center.	2021 South Peach Ave.	Fresno	CA	93727			X		9	**

UPDATE TO 2/12/88 DOCKET—NEW FACILITIES—Continued

[** = DATE OF PUBLICATION]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA reg	Date of listing
Air Force	Los Angeles Air Force Station.	2400 El Segundo Blvd.	Los Angeles	Calif	90009		X		X	9	**
Interior	Afton Canyon/ Union Pacific Railroad.			CA				X		9	**
Interior	Lassen College Site.	Hwy 139 PO-Box 3000.	Susanville	CA	96130			X		9	**
Interior	Cuyama Drug Lab.	T10N,R28W, sec15, NESE.		CA				X		9	**
Interior	Stateline Dump (landfill).	N/A		CA				X		9	**
NASA	Canoga Manufacturing Facility.	6633 Canoga Ave.	Canoga Park	CA	91303			X		9	**
Air Force	Buckley Air National Guard Base (ANGB).	Buckley Road and East 6th Ave.	Aurora	CO	80011-9599			X	X	8	**
Energy	Grand Junction Projects Office.	3597 B-3/4 Rd PO2567.	Grand Junction	CO	81502-5504			X		8	**
Transportation	Transportation Test Center.	212 Miles NE Pueblo Mem Airport.	DOT Test Track Rd	CO	81001	X	X	X		8	**
Transportation	US Coast Guard Bldg 37 Anx.	Avery Pt	Groton	CT	06340				X	1	**
Army	Walter Reed Army Medical Center.	16th Steet, NW.	Washington	DC	20307-5001			X		3	**
Interior	Bombay Hook National Wildlife Refuge.	Marshtown Rd.	Little Creek	DE	19977				X	3	**
Navy	Naval Dental Clinic Guam.	FPO	San Francisco	GU	96630-1670			X		9	**
Army	Ordinance Disposal Area, Makua Mil Res.		Waianae	HI	97692			X		9	**
Navy	Defense Reutilization & Mktg Reg-Pac.	Waimano Home Rd/ P.O. Box 580.	Pearl Harbor	HI	96782-0580	X	X		X	9	**
Agriculture	National Animal Disease Center.	2300 Dayton Road PO Box 70.	Ames	IA	50010			X		7	**
Corps of Engineers	US Army Corps of Engr. OD-Rm.	67 & Dam #14 Rd.	Pleasant Valley	IA	52767		X			7	**
Energy	Ames Laboratory.	107 Office & Lab ISU.	Ames	IA	50011			X	X	7	**
Energy	Hinton Hazardous Waste Storage Facility.	PO Box 1012	Hinton	IA	51024	X	X	X		7	**
Air Force	US Air Force Scott AFB.	375 ABG/ DEEY Bldgs 59 & 540.	Scott Air Force Base.	IL	62225	X			X	5	**

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UPDATE TO 2/12/88 DOCKET—NEW FACILITIES—Continued

[** = DATE OF PUBLICATION]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA reg	Date of listing
Army	Defense Industrial Plant, Equipment Facil.	Old Rte 1	Atchison	KS	66002				X	7	**
Agriculture	Kisatchie Work Center.			LA				X		6	**
Energy	Weeks Island Spr.	2 Mi NW of Cypremont.	Cypremont	LA	70560				X	6	**
Interior	Iberville Land Company, Well #3.	2.2 mi E of H-975,5.5 mi W I10.	Henderson	LA	70517				X	6	**
Interior	Iberville Land Co. Well #1.	3.03 Mi E of LA975 & 5.5 Mi N of I-10.	Henderson	LA	70517				X	6	**
NASA	Michoud Assembly Facility.	13800 Old Gentily Rod.	New Orleans	LA	70129			X		6	**
Navy	Navpro Bedford.	Hartwell Road.	Bedford	MA	01730			X		1	**
Army	Harry Diamond Lakes, Blossom Point Facility.	Blossom Point Rd.	La Plata	MD				X		3	**
Transportation	USCG Back Creek Rear, Range Structure.	25 Ft Square Position.	Chesapeake City	MD	21915				X	3	**
Agriculture	Regional Poultry Research Laboratgory.	3606 East Mount Hope.	Rd., East Lansing	MI	48823			X		5	**
Air Force	US AFB Duluth Intl Airport.	Stebner Rd	Duluth Intl Airport	MN	55814				X	5	**
Army	Goodfellow US Army Reserve Cnt Area #2.	E Natural Bridge, Goodfellow Rd.	St Louis	MO	63120				X	7	**
Army	Ft Crowder Military Installation.	D Hwy	Neosho	MO	64850				X	7	**
Interior	Rolla Research Center-US Bureau of Mines.	1300 Bishop Ave.	Rolla	MO	65401				X	7	**
Navy	Naval Air Facility Midway Island.	FPO	San Francisco	MQ	96614-1200			X		9	**
Agriculture	Fort Keogh Livestock and Range Research Lab.	Route 1, Box 2021.	Miles City	MT	59301			X		8	**
Energy	Component Development and Integration Facility.	Industrial Park	Butte	MT	59702			X		8	**
Army	Fort Bragg	AFZA-DE-D	Fort Bragg	NC	28307			X		4	**
Agriculture	Northern Great Plains Research Lab.	PO Box 459, Hwy 6 S.	Mandan	ND	58554			X		8	**
Corps of Engineers	Garrison Project.	201 First St., Box 517.	Riverdale	ND	58565			X		8	**

UPDATE TO 2/12/88 DOCKET—NEW FACILITIES—Continued

[** = DATE OF PUBLICATION]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA reg	Date of listing
Energy	Great Plains Coal Gasification PLant.	7 Mi NW of Beulah.	Beulah	ND	58523	X	X	X		8	**
Army	Cornhusker Army Ammunition Plant.	6 Mi W of	Grand Island	NE	68802			X	X	7	**
Air Force	BOMARC/ McGuire Msl.	Rt 539	New Egypt	NJ	08533				X	2	**
Agriculture	JORNADA Experimental Range.	1700 Jornada Road.	Las Cruces	NM	88001			X		6	**
Agriculture	Cobb Resources Corp.	Cibola National Forest.	Magdalena	NM	87825				X	6	**
Agriculture	Mineral Creek Tailing.	Forest Route 701 3.5 Mi E of Hwy 180.	Alma	NM	88039				X	6	**
Interior	Hyde Mine		Gallup	NM	87301				X	6	**
Interior	High Rolls Mining Dist.-US Forest Service.	3.3 M S of Inter. of W US 82.	High Rolls	NM	88325				X	6	**
Small Business Admin	US Sml Business Admin Cal West.	West Frontage Road.	Lemitar	NM	87801	X	X			6	**
Army	United States Military Academy.	Stewart Army Subpost.	West Point	NY	10996			X		2	**
Interior	Fire Island National Seashore.	120 Laurel Street.	Patchogue	NY	11772			X		2	**
Navy	Naval Facil N Div/ Engineering Command.	Camp Hreo Military Reservation.	Montauk	NY	11954				X	2	**
Agriculture	Nursery Crops Research Laboratory.	359 Main Road.	Delaware	OH	43015			X		5	**
Air Force	US Air Force Youngstown map Ohio.	King Graves Rd.	Vienna Twp	OH	44473				X	5	**
Agriculture	Forage and Livestock Research Laboratory.	PO Box 1199...	El Reno	OK	73036			X		6	**
Agriculture	Plant Sciences and Water Conservation Laboratory.	1301 N. Western Rd.	PO Box 1029 Stillwater.	OK	74076			X		6	**
Interior	Wichita Mountains National Wildlife Refuge.			OK				X		6	**
Interior	Caddo County Landfill #1.	SE/4 SEC7 T5N R11W SW/4 SEC8.	Apache	OK	73006				X	6	**
Air Force	USAF-Portland Air National Guard Base.	6801 NE Corn Foot Rd.	Portland	OR	97208				X	10	**

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UPDATE TO 2/12/88 DOCKET—NEW FACILITIES—Continued

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Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA reg	Date of listing
Energy	Center for Energy and Environmental Research.	Road 108 Km 1.1.	Mayaquez	PR	00708			X		2	**
Defense	Memphis Defense Depot.	Perey & Elliston Rd.	Memphis	TN	38106				X	4	**
Agriculture	Conservation and Production Research Laboratory.	½Mile W., T-40 S.	Bushland	TX	79012			X		6	**
Agriculture	Livestock Insects Laboratory.	SH 16/IH 10	Kerrville	TX				X		6	**
Agriculture	US Dept Agri Livestock Insects.	Fredericksburg Road.	Kerrville	TX	78028	X	X			6	**
Agriculture	Unidentified Site.	US Forest Service Property.	Huntsville	TX	77340				X	6	**
Air Force	USAF Perrin Air Force Base.	Grayton Cnty	Sherman	TX	75090				X	6	**
Army	US Army Fuels & Lubricant Research Lab.	6220 Cuevra	San Antonio	TX	78284				X	6	**
Army	US Army Canyon Lake Recreation Area.	North Side of Canyon Lake (by Dam).	San Antonio	TX	78234				X	6	**
Army	Terrell Nike Missile Site.	½Mi E. of Hwy 205.	Terrell	TX	75160				X	6	**
Corps of Engineers	Southwestern Division Laboratory.	4815 Cass St.	Dallas	TX	75235			X		6	**
Corps of Engineers	Lake Lavon-St Paul-Site 2.	S End Rolling Meadows St.	Wylie	TX	75098				X	6	**
Energy	US Doe Spr Big Hill Site.	23 Mi SW of Pt. Arthur.	Port Arthur	TX	77641				X	6	**
Interior	Amarillo Shipping Terminal.	US Hwy 66, 6 Mi W of Amarillo.	Amarillo	TX	76106				X	6	**
Treasury	U.S. Customs-Millington Addition.	East of FM 170.	Presidio	TX	79845				X	6	**
Agriculture	Only Chance Mining Claim.	Vernal Ranger Dist.	Uintah County	UT				X		8	**
Energy	Monticello Uranium Mill Tailings Site.	SE of Monticello.	Monticello	UT				X		8	**
Interior	East Summit Mining Claims.			UT				X		8	**
Interior	Plumtree Island National Wildlife Refuge.	East of Poquoson.	Poquoson	VA	23662				X	3	**
Agriculture	USDA Pac NW Forest Range Exp Sta.	3625 93rd Ave S.	Tumwater	WA	98501				X	10	**
Army	US Army Yakima Firing Center.	Yakima Firing Center.	Yakima	WA	98901	X	X			10	**

UPDATE TO 2/12/88 DOCKET—NEW FACILITIES—Continued

[** = DATE OF PUBLICATION]

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA reg	Date of listing
Interior	Smith Wasteway.			WA				X		10	**
Interior	USDOI-WPR Chandler Power & Pumping Plant.	Old Inland Empire Hwy.	Benton City	WA	99320				X	10	**
Agriculture	Clam Lake		Clam Lake	WI				X		5	**
Agriculture	Northwoods Sanitary Landfill.			WI				X		5	**
Air Force	Wake Is Air Fld.	Wake Is	Wake Is	WQ	96798				X	9	**
Energy	Morgantown Energy Tech Center.		Morgantown	WV					X	3	**
Air Force	F.E. Warren Air Force Base.	I-25 and Randall Avenue.	Cheyenne	WY	82005-5000			X	X	8	**

[FR Doc. 88-24828 Filed 11-15-88; 8:45 am]

BILLING CODE 6560-50-M

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ISS
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UMI

federal register

Wednesday
November 16, 1988

Part IX

Department of Education

34 CFR Part 250 et al.

Indian Education General Provisions and Discretionary Grants; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Parts 250, 252, 253, 254, 255, 256, 257, and 258

Indian Education General Provisions and Discretionary Grants

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations governing the Indian Education Act general provisions and the Indian Education discretionary grant programs to incorporate new provisions of the Indian Education Act of 1988. The proposed regulations include amended definitions and requirements for grants under a new gifted and talented program. Regulations governing Indian-Controlled Schools—Establishment Grants have been deleted because the program is unfunded.

DATE: Comments must be received on or before January 17, 1989.

ADDRESS: All comments concerning these proposed regulations should be addressed to Mr. Brian Stacey, Acting Director, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177 (Mail Stop 6267), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Wright, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177 (Mail Stop 6267), Washington, DC 20202. Telephone (202) 732-1938.

SUPPLEMENTARY INFORMATION: The Indian Education Act (The Act) was amended and reauthorized by Part C of Title V of Pub. L. 100-297 (Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988). The Act subsequently was amended by Pub. L. 100-427. These proposed regulations incorporate technical amendments to the Act.

Changes to Implement Amendments to the Act

- These proposed regulations would revise Part 250, General Provisions, and would include consortia of higher education institutions, local educational agencies, and Indian tribes and organizations as eligible applicants for special programs to encourage Indian students to acquire a higher education and to reduce the dropout rate among elementary and secondary school students.
- Under section 5324(c) of the Act, the Secretary is authorized to provide five grants to schools fudned or operated by BIA for program research, development and dissemination in several areas, including programs for gifted and talented students. The proposed regulations establish requirements and funding criteria for this small discretionary program. The regulations also clarify the extent to which recipients must coordinate certain activities with other recipients of funds under section 5324 of the Act. In addition, as required by section 5324(c)(4)(B) of the Act, the Secretary proposes a definition of the term "gifted and talented students." For the purpose of this program, the Secretary proposes to define that term as that term is defined in section 4103 of the Elementary and Secondary Education Act of 1965, as amended by section 1001 of Pub. L. 100-297. That definition includes children and youth who give evidence of high performance capabilities in a variety of areas and who require services or activities not ordinarily provided by the school, in order to develop those capabilities fully. This definition is inclusive and should accommodate any special requirements or criteria needed to serve gifted and talented Indian children.

Other Changes

- The proposed regulations would delete the current Part 252, governing the Indian-Controlled Schools—Establishment Program which is unfunded.
- The proposed regulations would delete the regulations governing what information an applicant must include in an application. These deletions would be consistent with the Department's policy that this information is not regulatory and more appropriately belongs in each program's application package.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small school districts, tribal schools, schools operated by BIA, Indian tribes, and Indian organizations receiving Federal financial assistance under these programs. However, the regulations would not have a significant economic impact on these small entitites because the regulations would impose minimal requirements to ensure the proper expenditure of program funds, and would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

Section 255.31 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

(44 U.S.C. 3504(h))

Intergovernmental Review

Other than the Indian-Controlled Schools—Enrichment Projects, The Gifted and Talented Program and The Educational Personnel Development Program, the programs covered by these proposed regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2177, FOB #6 (Mail stop 6267), 400 Maryland Avenue, SW., Washington, DC 20202 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 250 and 252 through 258

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers 84.061 Indian Education—Special Programs and Projects; 84.062 Indian Education—Adult Indian Education; and 84.072 Indian Education—Grants to Indian-Controlled Schools)

Dated: October 25, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to remove Part 252, add a new Part 255 and amend Parts 250, 253, 254, 256, 257, and 258 of Title 34 of the Code of Federal Regulations as follows:

PART 250—INDIAN EDUCATION ACT—GENERAL PROVISIONS

1. The authority citation for Part 250 is revised to read as follows:

Authority: 25 U.S.C. 2601-2651, unless otherwise noted.

2. Section 250.1 is revised to read as follows:

§ 250.1 What programs are governed by these regulations.

The regulations in this part apply to all programs conducted under the Indian Education Act except the Indian Fellowship Program (34 CFR Part 263). Programs governed by these regulations and their applicable program regulations are as follows:

(a) Formula Grants—Local Educational Agencies (34 CFR Part 251).

(Authority: 25 U.S.C. 2601-2606)

(b) Indian-Controlled Schools—Enrichment Projects (34 CFR Part 252).

(Authority: 25 U.S.C. 2602(c))

(c) Educational Services for Indian Children (34 CFR Part 253).

(Authority: 25 U.S.C. 2621 (a), (c))

(d) Planning, Pilot, and Demonstration Projects for Indian Children (34 CFR Part 254).

(Authority: 25 U.S.C. 2621 (a), (b))

(e) Gifted and Talented Program (34 CFR Part 255).

(Authority: 25 U.S.C. 2624(c))

(f) Educational Personnel Development (34 CFR Part 256).

(Authority: 25 U.S.C. 2621(d), 2622)

(g) Educational Services for Indian Adults (34 CFR Part 257).

(Authority: 25 U.S.C. 2631(b))

(h) Planning, Pilot, and Demonstration Projects for Indian Adults (34 CFR Part 258).

(Authority: 25 U.S.C. 2631(a))

3. Section 250.3(e) is amended by removing "253" and adding, in its place, "255" and by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2601-2551)

4. In § 250.4, paragraph (a) is amended by removing "Local educational agency (LEA) (except as used in 34 CFR Parts 257 and 258)"; by removing "(except as used in 34 CFR Parts 254, 255, and 256)" following "Secondary school"; and by removing "(except as used in 34 CFR Parts 251, 252, and 253)" following "State". Paragraph (b) is amended by adding "except as defined in 34 CFR 251.32", after the words " "Free public education" "; and by revising the definitions of "Adult", "Adult education", "Indian" paragraph (1), "Local educational agency," and "Parent" paragraph (1) (introductory text), and adding new definitions of "Bureau school", "Bureau-funded school", "Gifted and talented students", and "Tribal school" in alphabetical order to read as follows:

§ 250.4 What definitions apply to these programs?

* * * * *

(b) * * *

"Adult" means any individual who is sixteen years old or older, or who is beyond the age of compulsory school attendance under State law.

* * * * *

"Adult education" means instruction or services below college level for adults who are not enrolled in a secondary school and who do not have—

(1) The basic skills to enable them to function effectively in society; or

(2) A certificate of graduation from a school providing secondary education, and who have not achieved an equivalent level of education.

* * * * *

"Bureau school" means an elementary or secondary day or boarding school operated by the Bureau of Indian Affairs (BIA) of the Department of the Interior.

"Bureau-funded school" means a Bureau school or an elementary or secondary school that receives Pub. L. 93-638 (Indian Self-Determination and Education Assistance Act) contract funds or assistance under the Tribally Controlled Schools Act of 1988 from the Bureau of Indian Affairs.

* * * * *

"Gifted and talented students" means children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic, or leadership capacity or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to develop such capabilities fully.

* * * * *

"Indian" * * *

(1) A member (as defined by an Indian tribe, band, or other organized group) of such Indian tribe, band, or other organized group of Indians, including those Indian tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

* * * * *

"Local education agency" (LEA) means—

(1) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties recognized in a State as an administrative agency for its public elementary or secondary schools. The term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(2) As used in 34 CFR Part 251 the term also includes tribal schools and Bureau schools.

"Parent"—

(1) Includes a legal guardian or other individual standing *in loco parentis* (in the place of the parent) other than by virtue of being a school administrator or official. Examples of individuals who

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may stand *in loco parentis* with respect to a child are—

* * * * *

"Tribal school" means any school operated by an Indian tribe, or an organization controlled or sanctioned by an Indian tribal government for the children of that tribe if the school either—

(1) Provides its students an educational program that meets the standards estabished by the Secretary of the Interior in accordance with the Indian Self-Determination and Education Assistance Act; or

(2) Is operated by that tribe or organization under a contract with the Department of the Interior in accordance with the Indian Self-Determination and Education Assistance Act.

5. The authority citation for § 250.4 is revised to read as follows:

(Authority: 25 U.S.C. 2601–2651)

§ 250.20 [Amended]

6. The authority citation for § 250.20 is revised to read as follows:

(Authority: 25 U.S.C. 2601–2651)

PART 252—[Removed]

7. Part 252 is removed.

PART 253—[REDESIGNATED AS PART 252 AND AMENDED]

8. Part 253 is amended by redesignating it as Part 252 and revising the authority citation to read as follows:

Authority: 25 U.S.C. 2602(c), unless otherwise noted.

§ 252.1 [Amended]

9. The authority citation for § 252.1 is revised to read as follows:

(Authority: 25 U.S.C. 2602(c)) **§ 252.2 [Amended]**

10. The authority citation for § 252.2 is revised to read as follows:

(Authority: 25 U.S.C. 2602(c))

§ 252.3 [Amended]

11. In § 252.3, paragraph (b)(1)(iii) is amended by removing "and Tribal Schools) or a grant under 34 CFR Part 252 (Indian-Controlled Schools—Establishment)," inserting a closing parenthesis after "Agencies," removing paragraph (b)(3), redesignating paragraphs (b)(4) as (b)(3), and by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2602(c))

§ 252.4 [Amended]

12. The authority citation for § 252.4 is revised to read as follows:

(Authority: 25 U.S.C. 2601–2606, 2651)

§ 252.10 [Amended]

13. The authority citation for § 252.10 is revised to read as follows:

(Authority: 25 U.S.C. 2602(c))

Subpart C—[Removed and Reserved]

14. Subpart C (consisting of § 252.20) is removed and reserved.

§ 252.30 [Amended]

15. In § 252.30, paragraph (a) is amended by removing "253.31" and adding, in its place, "252.31", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2602(c), 2604)

§ 252.31 [Amended]

16. Section 252.31 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2602(c), 2604)

PART 254—[REDESIGNATED AS PART 253 AND AMENDED]

17. Part 254 is redesignated as Part 253.

18. The authority citation for redesignated Part 253 is revised to read as follows:

Authority: 25 U.S.C. 2621 (a), (c), unless otherwise noted.

§ 253.1 [Amended]

19. The authority citation for § 253.1 is revised to read as follows:

(Authority: 25 U.S.C. 2621 (a), (c))

20. Section 253.2 is amended by adding a new paragraph (f) and revising the authority citation to read as follows:

§ 253.2 Who is eligible for assistance under this program?

* * * * *

(f) Consortia of Indian tribes or Indian organizations, local educational agencies, and institutions of higher education for projects described in § 253.10(c).

(Authority: 25 U.S.C. 2621(c))

21. Section 253.3 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 253.3 What regulations apply to the program?

* * * * *

(b) The regulations in this Part 253.

(Authority: 25 U.S.C. 2621 (a), (c))

§ 253.4 [Amended]

22. The authority citation for § 253.4 is revised to read as follows.

(Authority: 25 U.S.C. 2621 (a), (c))

23. Section 253.10 is amended by adding a new paragraph (c) and revising the authority citation to read as follows:

§ 253.10 What types of projects may be funded?

* * * * *

(c) Consortia of eligible applicants described in § 253.2(f) may receive grants to develop, improve, and implement programs to—

(1) Encourage Indian students to acquire a higher education; and

(2) Reduce the incidence of dropouts among Indian elementary and secondary school students.

(Authority: 25 U.S.C. 2621 (a)(2), (c))

Subpart C—[Removed and Reserved]

24. Subpart C (consisting of § 253.20) is removed and reserved.

§ 253.30 [Amended]

25. In § 253.30, paragraph (a) is amended by removing "254.32" and adding, in its place, "253.32", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 3621 (a), (c), (f)(1), (2))

§ 253.31 [Amended]

26. Section 253.31 is amended by removing "254.32" and adding, in its place, "253.32", removing the period and adding ", or from a consortium that includes an Indian tribe, Indian organization, or Indian institution of higher education." after the word "institution" and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(f)(2)(B))

§ 253.32 [Amended]

27. Section 253.32 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621 (c), (f)(1), (2))

PART 255—[REDESIGNATED AS PART 254 AND AMENDED]

28. Part 255 is redesignated as Part 254.

29. The authority citation for redesignated Part 254 is revised to read as follows:

Authority: 25 U.S.C. 2621 (a)(1), (b), unless otherwise noted.

§ 254.1 [Amended]

30. The authority citation for § 254.1 is revised to read as follows:

(Authority: 25 U.S.C. 2621 (a)(1), (b))

§ 254.2 [Amended]

31. The authority citation for § 254.2 is revised to read as follows.

(Authority: 25 U.S.C. 2621(b))

32. Section 254.3 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 254.3 What regulations apply to this program?

* * * * *

(b) The regulations in this Part 254.

(Authority: 25 U.S.C. 2621 (a), (b))

§ 254.4 [Amended]

33. The authority citation for § 254.4 is revised to read as follows:

(Authority: 25 U.S.C. 2621 (a), (b))

§ 254.10 [Amended]

34. In § 254.10, paragraph (a)(2) is amended by removing "for one or more of the types of grants listed in 255.20(a)(2)" and adding, in its place, "separately for one or more planning grant, pilot grant, or demonstration grant." and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621 (a)(1), (b))

Subpart C—[Removed and Reserved]

35. Subpart C (consisting of § 254.20) is removed and reserved.

§ 254.30 [Amended]

36. In § 254.30, paragraph (a) is amended by removing "§ 255.32, 255.33, or 255.34" and adding, in its place, § 254.32, 254.33 or 254.34" and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(b))

§ 254.31 [Amended]

37. Section 254.31 is amended by removing "§ 255.32, 255.33, or 255.34" from the undesignated introductory text and adding, in its place, "§ 254.32, 254.33, or 254.34", removing "255.10(d)" in paragraph (b) and adding, in its place, "254.10(d)", and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(f)(2)(B))

§ 254.32 [Amended]

38. Section 254.32 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621 (b), (f)(1), (2))

§ 254.33 [Amended]

39. Section 254.33 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621 (b), (f)(1), (2))

§ 254.34 [Amended]

40. Section 254.34 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621 (b), (f)(1), (2))

41. A new Part 255 is added to read as follows:

PART 255—GIFTED AND TALENTED PROGRAM

Subpart A—General

255.1 What is the Gifted and Talented Program?
255.2 Who is eligible for an award?
255.3 What regulations apply?
255.4 What definitions apply?
255.10 What activities may the Secretary fund?
255.11 Must the applicant or grantee coordinate activities with other entities?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

255.30 How does the Secretary evaluate an application?
255.31 What selection criteria does the Secretary use?
255.32 What other factors does the Secretary consider in selecting grantees?

Authority: 25 U.S.C. 2624(c), unless otherwise noted.

Subpart A—General

§ 255.1 What is the Gifted and Talented Program?

This program provides five grants to Bureau-funded schools for gifted and talented program research, development and dissemination.

(Authority: 25 U.S.C. 2624(c))

§ 255.2 Who is eligible for an award?

Bureau-funded schools are eligible for grants under this program.

(Authority: 25 U.S.C. 2624(c), 2651)

§ 255.3 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 250.

(b) The regulations in this Part 255.

(Authority: 25 U.S.C. 2624(c))

§ 255.4 What definitions apply?

The definitions in 34 CFR 250.4 apply to this program.

(Authority: 25 U.S.C. 2624(c))

§ 255.10 What activities may the Secretary fund?

The Secretary may fund program research and development, the development and dissemination of curriculum materials, and the development and dissemination of teacher training materials regarding one or more of the following:

(a) Gifted and talented students.

(b) College preparatory studies (including programs for Indian students interested in teaching careers).

(c) Students with special culturally related academic needs, including social, lingual, and cultural needs.

(d) Mathematics and science education.

(Authority: 25 U.S.C. 2624(c))

§ 255.11 Must the applicant or grantee coordinate activities with other entities?

(a) The supervisor of a Bureau school shall undertake jointly its application for, or administration of, a grant under this part with the supervisor of the local school board.

(b) Each grantee will work cooperatively with other recipients of funds under section 5324 of the Indian Education Act as part of a national network.

(Authority: 25 U.S.C. 2624 (c), (d))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 255.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the applicable criteria in § 255.31.

(b) The Secretary awards up to 100 possible total points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(Authority: 25 U.S.C. 2624(c))

§ 255.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points). The Secretary assesses the need for the proposed project, including—

(1) The soundness of the rationale for the project and the extent and severity among Indian children of the educational needs to be addressed;

(2) The extent to which the educational approach to be developed is likely to be successful in meeting the needs;

(3) The extent to which the applicant is knowledgeable about other projects that address similar needs or have tried similar approaches; and

(4) The likelihood that the project will serve as a model for communities with similar educational needs.

(b) *Plan of operation.* (20 points). The Secretary reviews the plan of operation to ensure that—

(1) The purpose of the project is consistent with the needs identified and the purpose of the funding program;

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(2) The design of the project is of high quality;

(3) The objectives of the project—

(i) Relate to the purpose of the project;

(ii) Will provide clear and measurable indices of the project in progress in achieving its purpose; and

(iii) Are capable of being achieved within the project period;

(4) The activities are appropriate and should result in the accomplishment of the project objectives; and

(5) The plan of management is effective and ensures proper and efficient administration of the project.

(c) *Parental and community involvement.* (10 points). The Secretary determines whether parents of the children to be served and other members of the Indian community will be involved in the project, including the extent of their involvement in—

(1) Planning and developing the project; and

(2) Operating and evaluating the project.

(d) *Quality of key personnel.* (15 points). The Secretary reviews the key personnel the applicant plans to use on the project to ensure that—

(1) The project director has the experience and training needed for the position;

(2) Other key personnel have the experience and training needed for their positions in the project; and

(3) Sufficient time will be committed to the project by key personnel.

(e) *Budget and cost effectiveness.* (5 points). The Secretary reviews the budget to ensure that—

(1) The budget is adequate to support the project activities; and

(2) The costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (15 points). The Secretary reviews the evaluation plan to ensure that—

(1) The evaluation will measure the project's effectiveness in meeting each objective;

(2) The evaluation will measure the impact of the project on the children involved, if applicable;

(3) The instruments for collecting data and the methods for analyzing the data are appropriate;

(4) There is an appropriate timetable for collecting, analyzing, and reporting data;

(5) Procedures have been established for modification of the project, if necessary, as a result of periodic progress assessments; and

(6) Adequate provision has been made to cooperate with recipients of funds under section 5324 of the Indian Education Act in evaluating the project.

(g) *Dissemination.* (10 points). The Secretary reviews the plan for disseminating information about the project, including the results of the project and any materials developed by the project to ensure that—

(1) The dessemination plan is effective and efficient;

(2) The materials disseminated are appropriate in terms of quality and utility;

(3) The methods and techniques used by the project will be demonstrated;

(4) Schools interested in adapting or adopting the project's materials or methods will be assisted; and

(5) The findings of the project will be published at the local, State, or national level, and provision has been made to coordinate dissemination activities with recipients of funds under section 5324 of the Indian Education Act.

(h) *Adequacy of resources.* (5 points). The Secretary reviews the resources to be devoted to the project to ensure that—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 25 U.S.C. 2624(c), (d))

§ 255.32 What other factors does the Secretary consider in selecting grantees?

In addition to using the selection criteria in § 255.31 the Secretary selects projects that achieve a mixture of projects described in § 255.10 to ensure that students at all grade levels and students in all geographic areas of the country are able to participate in some projects funded under this program.

(Authority: 25 U.S.C. 2624(c), (d))

PART 256—EDUCATIONAL PERSONNEL DEVELOPMENT

42. The authority citation for Part 256 is revised to read as follows:

Authority: 25 U.S.C. 2621(d), 2622, unless otherwise noted.

43. Section 256.1 is amended by revising paragraphs (b)(1) and (b)(2) and the authority citation to read as follows:

§ 256.1 Educational Personnel Development.

* * * * *

(b) * * *

(1) The program authorized by section 5321(d) of the Indian Education Act and referred to in this part as the section 5321(d) Program; and

(2) The program authorized by section 5322 of the Indian Education Act and referred to in this part as the section 5322 Program.

Authority: 25 U.S.C. 2621(d), 2622)

§ 256.2 [Amended]

44. The § 256.2, paragraph (a) is amended by removing "1005(d)" and adding, in its place, "5321(d)", paragraph (b) is amended by removing "422" and adding, in its place, "5322", and the authority citation is revised to read as follows:

Authority: 25 U.S.C. 2621(d), 2622)

§ 256.3 [Amended]

45. The authority citation for § 256.3 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.4 [Amended]

46. The authority citation for § 256.4 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.10 [Amended]

47. The authority citation for § 256.10 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

48. Section 256.20 is revised to read as follows:

§ 256.20 What provisions for participation must an applicant make?

Prior to the submission of an application under this Part, each applicant shall—

(a) To the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools and whose needs are of the type that the program is intended to meet, make provision for the participation on an equitable basis of persons serving or preparing to serve these children as educational personnel or ancillary educational personnel; and

(b) Have provided for adequate participation by relevant tribal communities, including parents of Indian children, in planning and developing this project and have made provision for their participation in operating and evaluating the project.

(Authority: 25 U.S.C. 2621(d), (f)(1), (2), 2622)

49. Section 256.30 is amended by revising paragraph (a) and the authority citation to read as follows:

§ 256.30 How does the Secretary evaluate an application?

(a) The Secretary reviews and approves applications under the Section 5321(d) Program separately from applications under the Section 5322 Program.

* * * * *

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.31 [Amended]

50. In § 256.31, paragraph (b) is amended by removing "1005(d)" and adding, in its place, "5321(d)", paragraph (c) is amended by removing "1005(d)" and adding, in its place, "5321(d)", paragraph (d) is amended by removing "422" and adding, in its place "5322", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2621(d) and (f)(2)(B), 2622)

§ 256.32 [Amended]

51. Section 256.32 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(d), and (f)(1), (2), 2622)

52. A new § 256.33 is added to read as follows:

§ 256.33 What other factors does the Secretary consider in selecting grantees under the section 5321(d) program?

In addition to using the selection criteria in § 256.32, the Secretary considers the prior performance of a grantee under the section 5321(d) program in selecting grantees for new awards under the section 5321(d) program.

(Authority: 25 U.S.C. 2621(d)(4))

§ 256.40 [Amended]

53. The authority citation for § 256.40 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

54. A new § 256.41 is added to read as follows:

§ 256.41 What other conditionis must a grantee meet?

Each grantee shall provide adequate information to participants about the intent of the training program.

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.50 [Amended]

55. The authority citation for § 256.50 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

PART 257—EDUCATIONAL SERVICES FOR INDIAN ADULTS

56. The authority citation for Part 257 is revised to read as follows:

Authority: 25 U.S.C. 2631, unless otherwise noted.

§ 257.1 [Amended]

57. The authority citation for § 257.1 is revised to read as follow:

(Authority: 25 U.S.C. 2631(b))

§ 257.2 [Amended]

58. The authority citation for § 257.2 is revised to read as follows:

(Authority: 25 U.S.C. 2631(b))

§ 257.3 [Amended]

59. The authority citation for § 257.3 is revised to read as follows:

(Authority: 25 U.S.C. 2631)

§ 257.4 [Amended]

60. The authority citation for § 257.4 is revised to read as follows:

(Authority: 25 U.S.C. 2631)

§ 257.10 [Amended]

61. The authority citation for § 257.10 is revised to read as follows:

(Authority: 25 U.S.C. 2631)

Subpart C—[Removed and Reserved]

62. Subpart C (consisting of § 257.20) is removed and reserved.

§ 257.30 [Amended]

63. The authority citation for § 257.30 is revised to read as follows:

(Authority: 25 U.S.C. 2631(b))

§ 257.31 [Amended]

64. Section 257.31 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2631 (b), (d))

PART 258—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN ADULTS

65. The authority citation for Part 258 is revised to read as follows:

Authority: 25 U.S.C. 2631(a), unless otherwise noted.

§ 258.1 [Amended]

66. The authority citation for § 258.1 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.2 [Amended]

67. The authority citation for § 258.2 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.3 [Amended]

68. The authority citation for § 258.3 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.4 [Amended]

69. The authority citation for § 258.4 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.10 [Amended]

70. In § 258.10, paragraph (a)(2) is amended by removing "for one or more of the types of grants listed in § 258.20(a)(1)" and adding, in its place, "separately for one or more planning grants, pilot grants, or demonstration grants." and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2631(a))

Subpart C—[Removed and Reserved]

71. Subpart C (consisting of § 258.20) is removed and reserved.

§ 258.30 [Amended]

72. The authority citation for § 258.30 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.31 [Amended]

73. The authority citation for § 258.31 is revised to read as follows:

(Authority: 25 U.S.C. 2631(d), (3))

§ 258.32 [Amended]

74. Section 258.32 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2631 (a), (d))

§ 258.33 [Amended]

75. Section 25.33 is amended by revising the authority citaion to read as follows:

(Authority: 25 U.S.C. 2631 (a), (d))

§ 258.34 [Amended]

76. Section 258.34 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2631 (a), (d))

[FR Doc. 88-26370 Filed 11-15-88; 8:45 am]
BILLING CODE 4000-01-M

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NO
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UMI

federal register

Wednesday
November 16, 1988

Part X

Department of Education

34 CFR Part 251
Formula Grant Program; Local Educational Agencies; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 251

Formula Grant Program; Local Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations governing the Indian Education formula grant program to incorporate new provisions of the Indian Education Act of 1988. The proposed regulations include as eligible applicants (under certain circumstances) schools operated by the Bureau of Indian Affairs (BIA) and clarify the requirements for including children in the applicant's count of Indian students to generate funds under the program.

DATE: Comments must be received on or before January 17, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mr. Brian Stacey, Acting Director, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202–6139.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Wright, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202–6139. Telephone (202) 732–1938.

SUPPLEMENTARY INFORMATION: The Indian Education formula grant program was amended and reauthorized by Part C of Title V of Pub. L. 100–297 (Indian Education Act of 1988; the Act). The Act subsequently was amended again by Pub. L. 100–427. Under Section 5312(b) of the Act, formula grants may be awarded to local educational agencies, certain tribal schools and, under certain circumstances, schools operated by the BIA. Except where noted, the term "LEA" includes tribal schools and schools operated by BIA.

- **Student Eligibility**

The Act also directs the Secretary to require that each application for a grant be supported by a student certification form, maintained in the applicant's files, for each eligible Indian child included in the applicant's count of children to generate formula grant funds. In order for a child to be counted to generate formula grant funds, the form must contain the name of the child, the name of the tribe, band or other organized group of Indians in which membership is claimed, and the parent's dated signature. The proposed regulations would permit LEAs to obtain the parent's signature and date as late as 90 days after the beginning of the relevant grant period if the signature and date cannot be obtained by the date the LEA compiles its Indian student count.

Other clarifications of the requirements for including students in the Indian student count are provided to assist LEAs in complying with the requirements. The proposed regulations would require each applicant to establish a specific date or period, not to exceed 30 days, to conduct its Indian student count, and would require that only students who are enrolled in the LEA and receiving a free public education from the LEA on the count date or during the count period be counted. The proposed regulations also describe the effect that failure to meet the minimum certification requirements would have on the grantee.

Section 251.22 has been removed because the information collection requirements described in that section are adequately prescribed in the authorizing statute and application package.

- **Program Improvement**

A new § 251.43 is proposed to encourage program improvement through the use of a grantee's self-evaluation of its project, in order to provide the best possible educational services to Indian children.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small school districts, tribal schools, and schools operated by the BIA receiving Federal financial assistance under this program. The regulations clarify current recordkeeping requirements and impose penalties for failure to maintain proper records. The recordkeeping requirements are not excessively burdensome or expensive, and the penalties will affect only the limited number of entities found not to be in compliance with the regulations.

Paperwork Reduction Act of 1980

Sections 251.23, 251.50, 251.51, and 251.52(a)(2) contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

(44 U.S.C. 3504(h))

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2177, FOB #6 (Mail stop 6267), 400 Maryland Avenue, SW., Washington, DC 20202 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 251

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.060 Development Awards Program—Indian Education—Local Educational Agencies and Tribal Schools)

Dated: November 8, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Part 251 of Title 34 of the Code of Federal Regulations as follows:

1. The title of Part 251 is revised to read as follows:

PART 251—FORMULA GRANTS—LOCAL EDUCATIONAL AGENCIES

2. The authority citation for Part 251 is revised to read as follows:

Authority: 25 U.S.C. 2601–2806, unless otherwise noted.

§ 251.1 [Amended]

3. Section 251.1 is amended by removing the words "and Tribal Schools" in the section heading and text and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2601)

4. Section 251.2 is revised to read as follows:

§ 251.2 Who is eligible for assistance under this program?

(a) An LEA is eligible for assistance under this program.

(b)(1) An LEA other than a tribal school or a Bureau school is entitled to receive a grant only if the number of Indian children enrolled in the LEA's schools is either—

(i) At least 10; or

(ii) At least one-half of the total enrollment for that agency.

(2) However, an LEA may apply without regard to the enrollment requirements of paragraph (b)(1) of this section if it is located—

(i) In Alaska, California, or Oklahoma; or

(ii) On, or in proximity to, an Indian reservation.

(c) An LEA that is a Bureau school is eligible only if funds are available in accordance with section 5312(b)(3) of the Act.

(Authority: 25 U.S.C. 2602 (a), (b))

5. Section 251.3 is amended by revising paragraph (b)(2) introductory text, redesignating paragraph (b)(2)(iii) as (b)(2)(iv), adding a new paragraph (b)(2)(iii), and revising redesignated paragraph (b)(2)(iv) and the authority citation to read as follows:

§ 251.3 What regulations apply to this program?

* * * * *

(b) * * *

(2) However, the following provisions of this part do not apply to tribal schools or Bureau schools:

* * * * *

(iii) Sections 251.31 and 251.32 relating to free public education.

(iv) Sections 251.40–251.42 relating to the maintenance of effort required for LEAs.

(Authority: 25 U.S.C. 2601–2806, 2651)

§ 251.4 [Amended]

6. The authority citation for § 251.4 is revised to read as follows:

(Authority: 25 U.S.C. 2601–2806)

7. Section 251.10 is amended by revising paragraph (a) and the authority citation to read as follows:

§ 251.10 What types of projects may be funded?

(a) The Secretary may fund applications proposing the—

(1) Establishment, maintenance, or operation of projects specifically designed to meet the special educational or culturally related academic needs, or both, of Indian children; or

(2) Training of counselors at the applicant's school in counseling techniques relevant to the treatment of alcohol and substance abuse.

* * * * *

(Authority: 25 U.S.C. 2603)

§ 251.20 [Amended]

8. Section 251.20 is amended by adding the words "—other than a tribal school or a Bureau School—" after the word "LEA" in paragraph (a) and by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2604(b)(2)(B), 2651)

§ 251.21 [Amended]

9. In § 251.21, paragraph (b) is amended by removing the words "other than school administrators or officials" and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2604(b)(2)(B)(i), 2651)

10. Section 251.22 is revised to read as follows:

§ 251.22 How does the LEA determine the student count?

(a) Before including a student in the count of Indian children to generate funds under this part, an LEA shall—

(1) Establish a date or a period, not exceeding 30 days, during which the LEA conducts the count;

(2) Determine that the child was enrolled in the LEA's elementary or secondary schools on the count date or during the count period;

(3) Determine that the child received a free public education in the LEA's schools on the count date or during the count period; and

(4) Obtain for each child included in the count the student certification form prescribed by the Secretary.

(b) Before including a student in the count of Indian children to generate funds under this part, the LEA shall determine that the student certification form referred to in paragraph (a)(4) of this section includes, at a minimum,—

(1) The student's name;

(2) The name of the eligible Indian tribe, band, or group of which the student, the parent, or the grandparent is a member, as defined by the tribe, band, or group; and

(3) The parent's signature and date.

(c) The LEA may include in the count a student whose student certification form does not have the parent's signature and date, provided that the parent's signature and date are obtained within 90 days of the start of the grant period for which the student is counted to generate funds under this part.

(Authority: 25 U.S.C. 2602(b), 2604(d), 2651)

§ 251.30 [Amended]

11. In § 251.30, paragraph (a) is amended by removing "303(a), Part A", and adding, in its place, "5312(b)"; paragraph (b)(2) is amended by removing "303(a)(2)(C), Part A", and adding, in its place, "5312(b)(2)(C)"; and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2602(b), 2606)

§ 251.31 [Amended]

12. In § 251.31, the introductory text is amended by removing "303(a), Part A", and adding, in its place, "5312(b)"; authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2602(b), 2651)

§ 251.32 [Amended]

13. In § 251.32, paragraph (a) introductory text is amended by removing "§ 251.30 and", paragraph (d)(2) is amended by removing "§ 303(a), Part A", and adding, in its place, "5312(b)", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2602(b), 2651)

14. Section 251.40 is amended by removing the words "does not make" in paragraph (a) and adding, in their place, the words "makes full"; removing the word "unless" in paragraph (a) and adding, in its place, the word "if"; redesignating paragraphs (b) and (c) as

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(d) and (e), respectively; adding new paragraphs (b) and (c); and revising the authority citation to read as follows:

§ 251.40 What is the maintenance of effort requirement?

* * * * *

(b) The requirement of paragraph (a) of this section does not apply to an LEA that is a tribal school or a Bureau school.

(c) Subject to the granting of a waiver under § 251.41, if the Secretary determines that the LEA has failed to maintain the combined fiscal effort as required under paragraph (a) the Secretary reduces the LEA's award in the exact proportion by which the LEA failed to meet the combined fiscal effort requirement.

* * * * *

(Authority: 25 U.S.C. 2605(c), 2651)

§ 251.41 [Amended]

15. The authority citation for § 251.41 is revised to read as follows:

(Authority: 25 U.S.C. 2605(c))

§ 251.42 [Amended]

16. The authority citation for § 251.42 is revised to read as follows:

(Authority: 25 U.S.C. 2605(c))

17. A new § 251.43 is added to read as follows:

§ 251.43 How must a grantee use the results of its evaluations?

(a) If an evaluation under section 5314(a)(4) of the Act shows that a project is not making substantial progress toward meeting the goals of the project and this part, the granted shall amend its application in accordance with section 5314(c) of the Act.

(b) The amendments to the application must include changes that will enable the grantee to meet those goals.

(Authority: 25 U.S.C. 2604(a)(4), (c))

§ 251.50 [Amended]

18. Section 251.50 is amended by adding the words "in accordance with § 251.22 and" after the words "Indian students" and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2604(d))

19. A new § 251.51 is added to read as follows:

§ 251.51 How does the Secretary determine a grantee's compliance with the student certification requirements?

Periodically, the Secretary reviews a grantee's records to determine, for the current fiscal year and for prior fiscal years for which the grantee is required to maintain records, if—

(a) The requirements in § 251.22 were met;

(b) A certification form that meets the requirements of § 251.22 is on file for each child included by the grantee in the count of children to generate funds under this part; and

(c) Each child counted by the grantee is otherwise eligible to be counted under this part.

(Authority: 25 U.S.C. 2601–2606)

20. A new § 251.52 is added to read as follows:

§ 251.52 What action does the Secretary take if a grantee fails to meet the student certification requirements?

(a) If the Secretary determines under § 251.51 that a grantee is not in compliance with the student certification requirements, the grantee shall repay to the Department the amount of funds improperly generated. The Secretary may—

(1) Collect the funds awarded for each child inappropriately counted in the fiscal year or years at issue by—

(i) Demanding direct repayment from the grantee;

(ii) Reducing the grantee's current grant award where the Secretary's determination under paragraph (a) of the section concerns the current fiscal year; or

(iii) Offsetting the equivalent amount from the grantee's award for a fiscal year following the determination; and

(2) For one to three years following that determination, require the grantee to submit with its application for funds under this part a verification by an independent auditor that student certification forms have been completed and maintained by the grantee for each child included in the count in the application.

(b) In applying an administrative offset under § 251.52(a)(1)(iii), the Secretary uses the procedures contained in 34 CFR Part 30.

(Authority: 25 U.S.C. 2601–2606) I40[FR Doc. 88–26372 Filed 11–15–88; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
November 16, 1988

Part XI

Department of Education

Office of Postsecondary Education

34 CFR Part 659

Direct Individual Foreign Language and Area Studies Fellowships Program; Notice of Proposed Rulemaking

VOL 53 ISS 221 NO 16 1988 UMI

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Part 659

Direct Individual Foreign Language and Area Studies Fellowships Program

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to govern the Direct Individual Foreign Language and Area Studies Fellowships Program. This fellowship program was added to Title VI of the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1986, Pub. L. 99-498. Under this program, the Secretary awards fellowships directly to graduate students who have completed at least two years of graduate study to further their foreign language training.

DATE: Comments must be received on or before January 3, 1989.

ADDRESS: All comments concerning these proposed regulations should be addressed to Joseph F. Belmonte, Deputy Director, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3054, ROB 3), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte, Telephone: (202) 732-3283.

SUPPLEMENTARY INFORMATION: Under the Direct Individual Foreign Language and Area Studies Fellowships Program, the Secretary awards fellowships of up to four years, on the basis of a national competition, to graduate students entering their third year of graduate study at an institution of higher education to enable them to continue their foreign language and area studies at that institution. Those studies may include language training and the conduct of research outside the United States.

The Secretary is authorized to award fellowships under this part in a fiscal year only when the funds appropriated for the Foreign Language and Area Studies Fellowships Program authorized under 34 CFR Part 657 for that fiscal year are at least equal to the amount necessary to award 720 academic year fellowships and 400 summer fellowships.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These regulations will not affect a substantial number of small entities. Only a small number of awards is anticipated if funding becomes available for this program, and the proposed regulations would impose minimal burdens on applicants and grantees.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3054, Regional Office Building No. 3, 7th and D Streets SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 659

Colleges and universities, Education, Educational study program, Fellowships, Grant program—education, Reporting and recordkeeping requirements.

Dated: November 8, 1988.

(Catalog of Federal Domestic Assistance Number not yet assigned).

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 659 to read as follows:

PART 659—DIRECT INDIVIDUAL FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

Subpart A—General

Sec.

659.1 What is the Direct Individual Foreign Language and Area Studies Fellowships Program?
659.2 Who is eligible to receive a fellowship?
659.3 What regulations apply?
659.4 What definitions apply?

Subpart B—How Does a Student Apply for a Fellowship?

659.10 How does a student submit an application?

Subpart C—How Is a Graduate Student Selected to Receive a Fellowship?

659.20 How is a student selected for a fellowship?
659.21 What criteria are used to select students for fellowship awards?
659.22 What priorities may the Secretary establish?

Subpart D—What Conditions Apply to a Fellowship?

659.30 What is the duration of and what are the limitations on an individual fellowship?
659.31 What is the amount of a fellowship?
659.32 What is the payment method for a fellowship?
659.33 What are the conditions for the use of an individual fellowship outside the United States?
659.34 Under what circumstances must the Secretary terminate an individual fellowship?

Authority: 20 U.S.C. 1122, unless otherwise noted.

Subpart A—General

§ 659.1 What is the Direct Individual Foreign Language and Area Studies Fellowships Program?

Under the Direct Individual Foreign Language and Area Studies Fellowships Program, the Secretary awards fellowships of up to four years, on the basis of a national competition, to graduate students entering their third year of graduate study at an institution of higher education to enable them to continue their foreign language and area studies at that institution. Those studies may include the conduct of research and language training outside the United States.

(Authority: 20 U.S.C. 1122)

§ 659.2 Who is eligible to receive a fellowship?

(a) A student is eligible to receive a fellowship if the student—

(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Republic of Palau);

(b) Is enrolled in a graduate program at an institution of higher education which provides advanced training in a foreign language combined with—

(1) Area or international studies; or

(2) Research and training in the international aspects of professional and other fields of study;

(c) Shows high academic achievement, based on indices such as grade point average, class ranking, or standardized achievement tests;

(d) Has provided evidence of—

(1) Exceptional performance in the foreign language or languages being studied as part of the student's graduate program; and

(2) Substantial multidisciplinary area training in activities described in paragraph (b) of this section; and

(e) Is beginning his or her third year of graduate study.

(Authority: 20 U.S.C. 1122, 1132; 48 U.S.C. 1661)

(Approved by the Office of Management and Budget under control No. 1840-0610.)

§ 659.3 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 655.

(b) The regulations in this Part 659.

(Authority: 20 U.S.C. 1122)

§ 659.4 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) "Fellow" means a person who receives a fellowship under this part.

(c) "Fellowship" means the payment a fellow receives under this part.

(d) "Multidisciplinary area training" means training in three or more academic disciplines that contribute to a fuller understanding of the region or field of international studies; and

(e) "Secretary" means the United States Secretary of Education.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does a Student Apply for a Fellowship?

§ 659.10 How does a student submit an application?

(a) A student applies to the Secretary for a fellowship by providing sufficient information to enable the Secretary to determine—

(1) Whether he or she is eligible to receive a fellowship; and

(2) Whether he or she should be selected for a fellowship on the basis of the selection criteria listed in § 659.21.

(b) The information to be submitted for each application must include—

(1) Transcripts of the student's undergraduate and graduate academic record;

(2) References from at least three people familiar with the student's accomplishments and potential;

(3) Information from the institution at which the student is enrolled about his or her performance on a nationally-referenced language test, if available, or other evidence of language competency, in the proposed language of award;

(4) A statement of the student's goals and plan of study during his or her fellowship tenure, including the number of years for which the fellowship is requested and plans for language study or research outside the United States; and

(5) Endorsement of the student's plan of study by his or her academic advisor.

(Authority: 20 U.S.C. 1122)

(Approved by the Office of Management and Budget under OMB control No. 1840-0610.)

Subpart C—How Is a Graduate Student Selected To Receive a Fellowship?

§ 659.20 How is a student selected for a fellowship?

(a) The Secretary awards fellowships to graduate students selected by a panel of nationally recognized scholars.

(b) The panel of scholars evaluates an application for a fellowship on the basis of the quality of the applicant's record, language proficiency, and plan of study in accordance with the criteria listed in § 659.21.

(c) In general, the panel awards up to 100 possible points for these criteria. However, if priority criteria are used the panel awards up to 120 possible points. The maximum possible number of points for each criterion is shown in parentheses following the heading for the criterion.

(Authority: 20 U.S.C. 1122)

§ 659.21 What criteria are used to select students for fellowship awards?

The panel of scholars uses the following criteria in evaluating applications for fellowships under this part:

(a) *Qualifications of the applicant.* [40] The panel of scholars reviews each application to determine—

(1) The strength of the applicant's undergraduate and graduate record; and

(2) The extent of the applicant's preparation for the proposed course of study through evidence of substantial multidisciplinary training.

(b) *Foreign language skills.* [30] The panel of scholars reviews each application to determine—

(1) The excellence of the applicant's performance on either a nationally-referenced test, if available, or on other commonly accepted tests, in the foreign language to be studied;

(2) The relevance of the language to be studied for the applicant's overall proposed course of study; and

(3) Evidence of the applicant's skills in other foreign languages.

(c) *Proposed plan of study.* [30] The panel of scholars reviews each application to determine—

(1) The feasibility of the applicant's proposed plan of study; and

(2) The quality of the proposed plan of study in relation to the applicant's preparation and goals.

(d) *Priorities.* [20] The panel of scholars reviews each application to determine the extent to which the priorities established under § 659.22 will be met by the applicant.

(Authority: 20 U.S.C. 1122)

(Approved by the Office of Management and Budget under OMB control no. 1840-0610.)

§ 659.22 What priorities may the Secretary establish?

(a) The Secretary may establish one or more of the following priorities for selecting fellows:

(1) Languages, such as Chinese.

(2) World areas, or countries, such as East Asia, or Indonesia.

(3) Academic disciplines, such as linguistics or economics.

(4) Topics, such as population growth and planning, modernization, economic development, security issues, the arts, or international trade.

(5) A combination of any of these categories.

(b) The Secretary announces any priorities in the annual application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Apply to a Fellowship?

§ 659.30 What is the duration of and what are the limitations on an individual fellowship?

(a) The Secretary awards a fellowship for the period requested by the fellow, which may not exceed four years.

(b) The continuation of a fellowship is contingent upon the fellow's—

(1) Periodically demonstrating a high level of proficiency in the language or languages being studied as part of the fellow's graduate program;

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(2) Remaining in good standing at the institution in which the fellow is enrolled;

(3) Demonstrating satisfactory progress in the fellow's approved plan of graduate study; and

(4) Obtaining the Secretary's prior approval before making significant changes in the fellow's program of graduate study.

(Authority: 20 U.S.C. 1122)

§ 659.31 What is the amount of a fellowship?

(a) The Secretary awards a fellowship in an amount that does not exceed the cost of tuition and fees and an allowance for subsistence.

(b) The Secretary may also include an allowance for travel and an allowance for dependents.

(c) The Secretary announces in the annual application notice published in the Federal Register—

(1) The expected amount of subsistence allowances;

(2) Whether dependents' and travel allowances will be permitted; and

(3) The expected amount of the allowances.

(Authority: 20 U.S.C. 1122)

§ 659.32 What is the payment method for a fellowship?

(a) The Secretary may enter into an agreement with the institution in which the fellow is enrolled under which the institution agrees to disburse fellowship funds to the fellow, and the Secretary agrees to advance funds to the institution to enable it to make those payments.

(b) The institution shall pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship.

(c) A fellow shall notify the institution of any overpayment or underpayment and the institution shall make appropriate adjustments.

(Authority: 20 U.S.C. 1122)

§ 659.33 What are the conditions for the use of an individual fellowship outside the United States?

(a) Before using a fellowship outside the United States a fellow must obtain the approval of the Secretary.

(b) The Secretary approves the use of a fellowship outside the United States if—

(1) The institution in which the fellow is enrolled approves the fellow's engaging in research or undergoing advanced foreign language training in a country outside the United States; and

(2) The fellow—

(i) Is engaged in research that cannot be done effectively in the United States; and

(ii) Is affiliated with an institution of higher education or another appropriate organization in the foreign country.

(Authority: 20 U.S.C. 1122)

§ 659.34 Under what circumstances must the Secretary terminate an individual fellowship?

The Secretary terminates a fellowship if the fellow fails to satisfy the requirements of § 659.30(b).

(Authority: 20 U.S.C. 1122)

[FR Doc. 88-26373 Filed 11-15-88; 8:45 am]
BILLING CODE 4000-01-M

federal register

Wednesday
November 16, 1988

Part XII

Department of Agriculture

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1989; Solicitation of Applications; Notice

VOL
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ISS
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NO
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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1989; Solicitation of Applications

Notice is hereby given that under the authority contained in section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research Service (CSRS) of the United States Department of Agriculture (USDA) anticipates awarding standard grants for basic studies in certain areas of rangeland research. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The total amount available for this program during Fiscal Year 1989 is $454,991.

Under this program, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research. Except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support.

Applicable Regulations

This program is subject to the provisions found at 7 CFR Part 3401 (51 FR 16152, April 30, 1986). These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, processes regarding the awarding of grants, and regulations relating to the post-award administration of grant projects. Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition remission costs. Since these costs are not allowable costs for purposes of this program, such costs incurred by a grant recipient may not be used to meet the matching funds requirement. In addition, USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015, as amended, apply to this program.

How to Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions for this program (7 CFR Part 3401) may be obtained by writing to the address or calling the telephone number which follows:

Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Building, 901 D Street, SW., Washington, DC 20251–2200, Telephone: (202) 475–5048.

What to Submit

An original and nine copies of each proposal submitted under this program are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made. Each copy of each proposal must include a Form CSRS–661, "Grant Application." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Grant Application Kit.)

Members of review committees and CSRS staff expect each project description to be complete in itself. Grant proposals must be limited to 10 pages (single-spaced) exclusive of required forms, bibliography and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Attachment of appendices is discouraged and should be included only if pertinent to an understanding of the proposal.

All copies of each proposal must be mailed in one package. Please see that each copy of each proposal is *stapled securely* in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the regulations contained in the Administrative Provisions which govern the Rangeland Research Grants Program, 7 CFR Part 3401. If applicable, the research grant proposal must state that the 50 percent non-Federal funding requirement will be met.

Where and When to Submit Grant Applications

Each research grant application must be submitted to:

Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Building, 901 D Street, SW., Washington, DC 20251–2200.

To be considered for funding during fiscal year 1989, *proposals must be received* in the Proposal Services Unit *by close of business on Monday, February 6, 1989.* One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Specific Areas of Research to be Supported in Fiscal Year 1989

Standard grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undersirable species of plants.

If necessary, further information may be obtained by calling Dr. Wayne K. Murphey, CSRS-USDA; telephone: (202) 447–2044.

Supplementary Information

The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 10th day of November 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–26491 Filed 11–15–88; 8:45 am]

BILLING CODE 3410-22-M

federal register

Wednesday
November 16, 1988

Part XIII

Department of the Interior

Minerals Management Service

Outer Continental Shelf Lease Sale 119; Central California; Call for Information and Nominations and Intent To Prepare an Environmental Impact Statement; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Central California
Outer Continental Shelf Lease Sale 119
Call For Information and Nominations
and
Notice of Intent To Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call for Information and Nominations

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1356 (1982)), as amended by the OCSLA Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256) with regard to proposed OCS Lease Sale 119 in the Central California Planning Area, tentatively scheduled for March 1991.

This initial information gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decision points in the leasing process. This Call does not indicate a preliminary decision to lease in the area described below.

Information submitted in response to this Call will be used for several purposes. Responses will be used to identify the areas of potential for oil and gas development. Comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. Particular consideration will be given to tracts identified as environmentally sensitive as a result of the comments received. Together, this information will be analyzed for future determinations of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation and the relative environmental sensitivity of tracts being reviewed for this sale. Thus, it may be possible to make key decisions in connection with subsequent steps in the planning process (beginning with the Area Identification step) to further resolve conflicts by deleting additional blocks or conducting special environmental analyses where there is sufficient information to justify such actions.

The Call also initiates the scoping process for the EIS and is used to identify and analyze alternatives to the proposed action. The Notice of Intent to Prepare an EIS which includes a description of the scoping process is located later in this document. There will be a series of public meetings as part of EIS scoping. These will be announced at a future date in the Federal Register and by press release. Comments may be used in developing lease terms and conditions to ensure safe offshore operations. Comments may also be used to point out potential conflicts between offshore oil and gas activities and California coastal zone management policies as established by the California Coastal Act of 1976, as amended, and approved local coastal plans.

The DOI made a commitment in the 5-Year OCS Oil and Gas Leasing Program (1987-1992) to provide environmental protection offshore California similar to the levels provided in OCS Lease Sales 73, Santa Maria Basin, and 80, Southern California. The mitigating measures to be developed and analyzed during the prelease process for proposed OCS Lease Sale 119, Central California, will address such issues as: air quality, transportation of hydrocarbons, oil spills, fisheries, hazardous waste dumps, biological resources, timing of operations, navigational safety, archaeological resources, military conflicts, water use, drilling discharges, onshore oil processing, sea otters, and marine biota. The Minerals Management Service (MMS) will consider in the more detailed scoping review conducted for proposed OCS Lease Sale 119 the stipulations included in the separate proposals of California Governor Deukmejian, Congressman Regula, and Congressman Panetta on the 5-year program.

Additionally, special attention will be focused on the resolution of any military conflicts. This will be carried out under the procedures of the 1983 Memorandum of Agreement between the DOI and the Department of Defense and may involve further block deferrals and the adoption of special protective measures.

Description of Area

The general area of this Call is Central California from 3 to 45 miles offshore the counties of San Mateo, Marin, Sonoma, and a small portion of Santa Cruz. The area is shown on the map at the end of this Call. A more detailed map of the Call for Information and Nominations is available free from the Regional Supervisor, Office of Leasing and Environment, MMS, Pacific OCS Region, at the address listed at the end of this section.

The following areas in the Central California Planning Area were deferred from leasing in the 5-year leasing program, approved in July 1987:

1. Deepwater areas beyond the 900-meter isobath;

2. A coastal buffer offshore the Kelp Beds at Saunders Reef Area of Special Biological Significance (ASBS), the Del Mar Ecological Reserve, and Gerstle Cove ASBS;

3. The area offshore Point Reyes, the Point Reyes - Farallon Islands National Marine Sanctuary, offshore San Francisco Bay, and the immediate vicinity of Cordell Bank;

4. A coastal buffer offshore the James V. Fitzgerald Marine Reserve;

5. A coastal buffer extending south of the Point Ano Nuevo Point and Island ASBS and overlapping the northern portion of the Sea Otter Range;

6. The large area offshore Monterey Bay and Big Sur; and

7. A coastal buffer south of the Big Sur proposed deferral, overlapping the southern portion of the Sea Otter Range and adjacent to the Mouth of Salmon Creek ASBS.

One Federal OCS lease sale encompassing Northern and Central California was held in 1963. Twenty-nine blocks within the present Central California Planning Area were leased: 27 off Bodega Bay south to Point Reyes, and 2 off Point Ano Nuevo. Of the 29 blocks leased, 11 are included in this Call. The mapping system has been revised since the 1963 Sale; the old blocks overlap portions of many blocks on the new system. Therefore, those 11 old leases encompass portions of 24 blocks in the Sale 119 Call area. Seven wells were drilled on 5 of those 11 leases. The other 18 blocks are within the deferred areas mentioned above. All the leases were relinquished in 1967 and 1968, prior to the expiration of their 5-year lease terms. An OCS Report, MMS 87-018, entitled "Northern and Central California Lease Sale/May 14, 1963," details the leasing and drilling history of this early sale. Copies of the report are available from the source listed for diagrams in the paragraph below.

The following list identifies the OCS Official Protraction Diagrams and blocks which comprise the Call area. For blocks that overlap deferral areas, the Call includes only those non-deferred portions in Federal waters. The diagrams may be purchased for $2.00 each from the Regional Supervisor, Office of Leasing and Environment, Pacific Region, MMS, 1340 West 6th Street, Los Angeles, California 90017, telephone (213) 894-7107. The purpose of these diagrams is not to delineate the Call area (the Call map mentioned above serves the purpose of delineating the Call area) but to more clearly show small blocks.

Official Protraction Diagram NJ 10-5 - Santa Rosa (Approved November 2, 1976) Blocks:

223-228, 267-273, 311-318, 356-362, 401-407, 445-452, 489-497, 534-542, 578-587, 622-632, 667-675, 711-719, 756-762, 800-807, 845-851, 889-895, 933-938, 977-982

Official Protraction Diagram NJ 10-8 - San Francisco (Approved November 2, 1976) Blocks:

10-14, 54-57, 99-100, 143-144, 332-334, 376-378, 419-422, 457, 462-466, 501-511, 544-555, 588-600, 632-644, 677-688, 721-732, 765-777, 809-822, 853-866, 899-911, 945-956, 992-1000

Official Protraction Diagram NJ 10-11 - Santa Cruz (Approved March 26, 1976) Blocks:

24-32, 70-77, 120-121, 164

Instructions on Call

Respondents are requested to nominate any or all of the Federal blocks within the Call area for inclusion in proposed OCS Lease Sale 119. Although the identities of those submitting nominations become a matter of public record, the individual indications of interest are considered to be proprietary and confidential information.

Those indicating such interest are required to do so on the Call map by listing block numbers or outlining the area(s) of interest along block lines. As stated in paragraph 1 under "Description of Area," the Call map is available free from the Regional Supervisor, Office of Leasing and Environment, MMS, Pacific OCS Region, at the address stated under "Description of Area."

Respondents may submit a detailed list of whole and partial blocks nominated (by OCS Official Protraction Diagram designations) to ensure correct interpretation of their nominations. The telephone number and name of a person to contact in the respondent's organization for additional information should be included.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). We encourage respondents to be specific in listing blocks by priority. This information is very helpful in assessing the area to be identified for further study

at future sale decision points. Blanket nominations on large areas are not as useful in providing information pertinent to analysis of industry interest. Areas where interest has been indicated but which have no specified priorities will be considered priority 3. Information concerning both location and priority of interest submitted by individual respondents will be held proprietary and confidential and will help determine the area upon which the EIS analysis will be focused. In addition to indications of interest by respondents, further consideration of areas for analysis in the EIS will be based on hydrocarbon potential and environmental, economic, and multiple-use (including military use) conditions.

In addition to nominations (indications of interest), comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or socioeconomic conditions or conflicts, or other information that might bear upon potential OCS leasing and development in the Call area. In particular, respondents are requested to identify and characterize tracts of particular environmental sensitivity and to provide suggestions on the criteria that should be used in evaluating the relative environmental sensitivity of such tracts.

Comments are also sought on potential conflicts that may result from the proposed sale between future OCS oil and gas activities and California coastal zone management policies as established by the California Coastal Act and approved local coastal management plans. If possible, these comments should identify specific California Coastal Management Plan policies of concern, the nature of the conflict foreseen, and steps that MMS can take to avoid or mitigate the potential conflict. Comments may be either in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the Call map.

Comments are requested within the entire Call Area. All nominations and comments will be considered at the Area Identification stage for identification of the proposal to be analyzed in the EIS.

Nominations and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed Central California OCS Lease Sale 119," or "Comments on Proposed Central California OCS Lease Sale 119," as appropriate. The original Call map showing indications of interest and/or comments must be submitted to the Regional Supervisor, Office of Leasing and Environment, MMS, Pacific OCS Region, at the address stated under "Description of Area," and a copy of the Call map showing indications of interest and a copy of any comments are to be sent to the Chief, Offshore Leasing Management Division, Department of the Interior, Minerals Management Service, Room 4230, 18th and C Streets, NW., Washington, D.C. 20240.

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date only after compliance with established departmental procedures and applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and the OCSLA, as amended.

If a decision to offer blocks is made, a final Notice of Sale will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede this sale, proposed for March 1991:

Comments Due on the Call	--January 1989
Area Identification	--February 1989
Draft EIS Published	--January 1990
Public Hearings on Draft EIS	--February 1990
Final EIS Published	--August 1990
Proposed Notice of Sale Published	--October 1990
Governor's Comments Due on Proposed Notice	--December 1990
Final Notice of Sale Published	--February 1991
Sale	--March 1991

Existing Information

Information already available on the Call area includes that gathered during the EIS process for the 5-Year OCS Oil and Gas Leasing Program (1987 - 1992). Also, the DOI has received extensive information from Congress and industry during negotiations over OCS leasing offshore California during development of the 5-year program. In addition, comments previously received by the DOI from State and local governments, other Federal Agencies, environmental groups, and the oil and gas industry concerning past OCS actions will be considered. The following is a list of additional information which will be available for consideration regarding proposed OCS Lease Sale 119.

Pacific OCS Region Summary Reports and Indices

Summary Reports	Indices
May 1980	October 1980
May 1982	June 1981
December 1982	March 1983
September 1983	October 1984
July 1984	
April 1985	
May 1986	
July 1987	

Summary Reports and Indices are available for review at the MMS, Pacific OCS Region (see address under "Description of Area"). Also available for review are technical and geologic reports. For more information, please contact Ms. Freida Star of that office at (213) 894-2062. Copies of the Pacific OCS Region Summary Reports and Indices may also be obtained from the following:

OCS Information Program
Office of Offshore Information and Publications
Minerals Management Service
1951 Kidwell Drive, Suite 601
Vienna, Virginia 22180

Environmental Studies - Central California Planning Area

A list of completed, active, and proposed environmental studies conducted by the MMS Environmental Studies Program in the Central California Planning Area is available. Completed study reports may be reviewed at the MMS, Pacific OCS Region, at the address listed under "Description of Area" and at many depositories throughout the State. Also, many reports may be purchased from the National Technical Information Service (NTIS). For a list of studies, depositories, or to obtain an NTIS phone number, please contact Ms. Ora Woods, Environmental Studies Section, MMS, Pacific OCS Region at (213) 894-6626.

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Central California OCS Lease Sale 119. This Notice of Intent also serves to announce the scoping process which will follow for this EIS. Throughout the scoping process, Federal, State, and local governments, and other interested parties aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

Following a decision on Area Identification, the public may present comments and recommendations at scoping meetings which will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the scope of the EIS. In addition, comments and recommendations may be submitted in writing. The times and locations of these scoping meetings and the date scoping comments are due will be announced at a future date in the Federal Register and by press release.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal which may be considered include cancel the sale and modify the sale.

Robert E. Kallman
Director, Minerals Management Service

Approved:

Deputy James E. Cason
Assistant Secretary - Land and Minerals Management

11/10/88
Date

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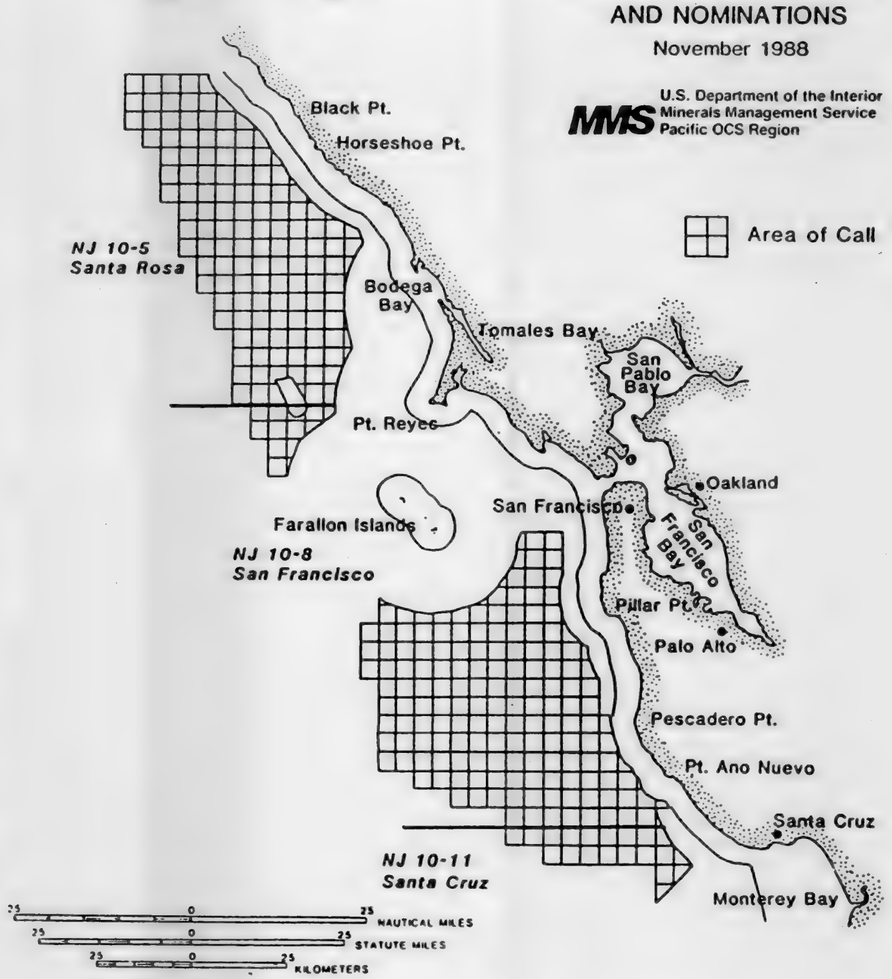
Central California Planning Area

LEASE SALE 119

CALL FOR INFORMATION AND NOMINATIONS

November 1988

MMS U.S. Department of the Interior
Minerals Management Service
Pacific OCS Region



This map has been carefully prepared from the best existing data sources available at the time of its drafting, but the Minerals Management Service, U.S.D.I. does not guarantee the accuracy and is not responsible or liable for reliance thereon. It is not a legal document for federal leasing purposes nor is it to be used for navigation. Official OCS Leasing Maps and OCS Protraction Diagrams should be consulted for area measurements and locations of individual blocks.

[FR Doc. 88-26507 Filed 11-15-88; 8:45 am]
BILLING CODE 4310-MR-C

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H.R. 593/Pub. L. 100-639

To request the President to award a gold medal on behalf of Congress to Andrew Wyeth, and to provide for the production of bronze duplicates of such medal for sale to the public. (Nov. 9, 1988; 102 Stat. 3331; 2 pages) Price: $1.00

H.R. 1149/Pub. L. 100-640

To amend the Foreign Sovereign Immunities Act with respect to admiralty jurisdiction. (Nov. 9, 1988; 102 Stat. 3333; 2 pages) Price: $1.00

H.R. 3327/Pub. L. 100-641

To designate the Federal building located at 324 West Market Street in Greensboro, North Carolina, as the "L. Richardson Preyer, Jr. Federal Building and United States Courthouse and Post Office." (Nov. 9, 1988; 102 Stat. 3335; 2 pages) Price: $1.00

H.R. 4236/Pub. L. 100-642

To amend the Act of June 6, 1900, to increase the number of trustees of the Frederick Douglass Memorial and Historical Association. (Nov. 9, 1988; 102 Stat. 3337; 1 page) Price: $1.00

H.J. Res. 137/Pub. L. 100-643

Designating the month of May, 1989, as "National Asparagus Month." (Nov. 9, 1988; 102 Stat. 3338; 1 page) Price: $1.00

H.J. Res. 604/Pub. L. 100-644

Designating February 5 through 11, 1989, as "National Burn Awareness Week." (Nov. 9, 1988; 102 Stat. 3339; 1 page) Price: $1.00

H.J. Res. 626/Pub. L. 100-645

Designating September 13, 1989, as "Uncle Sam Day." (Nov. 9, 1988; 102 Stat. 3340; 1 page) Price: $1.00

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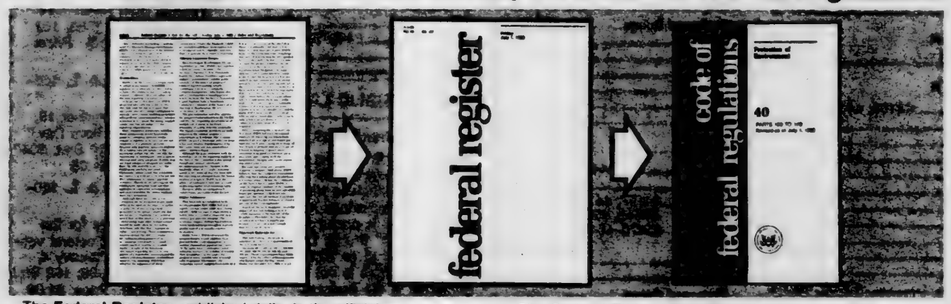
Changing the date for the counting of the Electoral vote by Congress to January 4, 1989. (Nov. 9, 1988; 102 Stat. 3341; 1 page) Price: $1.00

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11-17-88
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Pages 46427-46600

federal register

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Presidential Documents

Title 3—

The President

Presidential Determination No. 89-6 of October 31, 1988

Determination To Authorize the Furnishing of Immediate Military Assistance to Jamaica

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 506(a) of the Foreign Assistance Act of 1961, as amended ("the Act"), 22 U.S.C. 2318(a), I hereby determine that:

1) an unforeseen emergency exists which requires immediate military assistance to Jamaica; and

2) the aforementioned emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except Section 506(a) of the Act.

Therefore, I hereby authorize the furnishing of up to $10 million in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training to Jamaica under the provisions of Chapters 2 and 5 of Part II of the Act.

You are authorized and directed to report this determination to the Congress immediately and publish it in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, October 31, 1988.

[FR Doc. 88-26753
Filed 11-15-88; 4:12 pm]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary to reflect the assignment of responsibility for the Drought and Disaster Guaranteed Loan program under the Disaster Assistance Act of 1988 to the Under Secretary for Small Community and Rural Development and the Administrator of Farmers Home Administration.

EFFECTIVE DATE: November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Loan Specialist, Farmers Home Administration, USDA, Washington, DC 20250, telephone (202) 475–3811.

SUPPLEMENTARY INFORMATION: Departmental responsibility for guarantees of loans to rural business entities to further rural development and to save or create jobs in rural areas has been located in the Farmers Home Administration (FmHA) and its Business and Industrial (B&I) Loan Division. Sec. 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387) provides the Secretary new authority to guarantee such loans for disaster assistance purposes. Authority to administer this new loan guarantee authority is being delegated to the Under Secretary for Small Community and Rural Development, and further redelegated to the Administrator of Farmers Home Administration.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency managment, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegation (Government agencies).

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

2. Section 2.23 is amended by adding a new paragraph (a)(18) to read as follows:

§ 2.23 Delegations of authority to the Under Secretary for Small Community and Rural Development.

* * * * *

(a) * * *

(18) Administer the Drought and Disaster Guaranteed Loan program under section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387).

* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

3. Section 2.70 is amended by adding new paragraph (a)(33) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) *Delegations.* * * *

(33) Administer the Drought and Disaster Guaranteed Loan program under section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387).

* * * * *

Dated: November 9, 1988.

For Subpart C.

Peter C. Myers,

Acting Secretary of Agriculture.

For Subpart I.

Dated: November 9, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88–26569 Filed 11–16–88; 8:45 am]
BILLING CODE 3410–07–M

Food Safety and Inspection Service

9 CFR Parts 307 and 308

[Docket No. 82–008F]

Safety and Sanitation Requirements for Electrical Stimulating Equipment

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal meat inspection regulations to specify safety and sanitation requirements for electrical stimulating (EST) equipment. Federally inspected establishments may use EST equipment to accelerate rigor mortis in slaughtered meat animals (cattle, sheep, swine, goats, horses, mules or other equines). The safety requirements will protect inspection personnel working near that equipment from the hazard of potentially lethal electric shock or other injury. The sanitation requirements will prevent adulteration of the carcasses.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Wesson, Director, Facilities, Equipment and Sanitation Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–5627.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been designated a "non-major" rule E.O. 12291. It will not result in an annual effect on the economy of $100 million or more. There

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will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have a significant effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule makes existing guidelines on the safe use and appropriate sanitation of EST equipment mandatory. Any resulting costs would be voluntarily assumed by individual establishments which choose to use EST equipment.

Effect on Small Entities

The Administrator has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601 *et seq.*) because it simply serves to codify guidelines currently in effect for the safe and sanitary use of all EST equipment.

There are approximately 200 EST units currently in operation. The Food Safety and Inspection Service (FSIS) has concluded that all EST equipment, even the more recent lower voltage EST equipment, presents an unacceptable hazard unless its use is regulated. Therefore, this rule applies to all EST equipment. FSIS's position on EST equipment has evolved from consultations with the Occupational Safety and Health Administration OSHA), National Electric Code (NEC) members and the National Aeronautics and Space Administration (NASA).

FSIS has determined that barriers, warning devices and signs for EST equipment not already in voluntary compliance with FSIS guidelines are necessary to provide Federal inspectors adequate safety. Although FSIS has no record of any injuries to Federal inspectors since EST equipment was first found acceptable for use in 1979, FSIS has concluded that the potential hazards to inspectors justify preventive regulatory action.

To meet the safety requirements, stimulator manufacturers have estimated costs of a maximum of $5000 and a minimum of $200. The estimated costs would include any necessary equipment modifications, and purchase and installation of the safety devices and signs. Costs could be less and will vary for each establishment and would depend on the type of equipment and safety features currently in place.

Background

On April 16, 1987, FSIS published a proposed rule (52 FR 12422) to amend the Federal meat inspection regulations to specify safety and sanitation requirements for EST equipment. The proposal addressed both safety and sanitation requirements when EST equipment is used in federally inspected establishments.

FSIS reviews the equipment used in official establishments to ensure its use will not render meat and meat food products adulterated within the meaning of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(m)) and does not pose a safety hazard to Department employees. This rule is consistent with existing guidelines used to review this equipment and its operation.[1]

Electrical stimulating equipment consists of two separate pieces—the control system and the applicator. The EST control system contains the circuitry to generate pulsed DC or AC voltage for stimulating the livestock carcass. The applicator delivers the voltage to the carcass. The voltage can be applied by inserting a probe that penetrates the carcass or is inserted in the rectum, placing a clamp in the nose, a carcass rub-bar, a conveyor with energized surfaces traveling with the carcass or any other method approved by the Administrator. This pulsating current hastens certain chemical reactions in the muscle tissues producing a stiffening of the muscles known as rigor mortis. If meat is chilled or frozen before the onset of rigor mortis, a toughening of the muscle tissue known as "cold shortening" may occur. "Cold shortening" may not be important if the meat is to be ground, but it would be economically important if the meat is to be used as steaks, chops or roasts. Without electrical stimulation, rigor mortis may not occur for eight hours or more after death. With electrical stimulation, the time may be as short as one hour.

Another benefit of the use of EST equipment is that blood is removed more quickly and completely from the animal due to the strong muscle contractions which occur when the carcass is stimulated. FSIS has recently learned that some pork producers are using EST equipment for this purpose. Since EST equipment for blood removal is used in the same manner and under the same conditions as that used to enhance meat quality, FSIS has determined that this rule applies to EST equipment used to accelerate rigor mortis for the purpose of enhancing meat quality and to EST equipment used for the purpose of facilitating blood removal.

Other claims [2] have been made for the application of EST that it makes the muscle tissue release natural proteolytic enzymes which chemically tenderize the meat; that it tenderizes meat by breaking muscle bonds; that it reduces shrinkage; accelerates the visibility by marbling; prevents a type of discoloration known as "heat ring;" improves the color of the meat; and increases the chill rate.

Safety Considerations in the Installation and Use of EST Equipment

Fifteen EST systems made by six manufacturers have been found acceptable for use in official establishments. There are two general types of systems: (1) Manually operated for use in plants with lower slaughter rates, and (2) automatic for stimulating more than one carcass at a time up to approximately 400 per hour. Both types of systems apply pulses of direct or alternating current to the carcass through electrodes. Stimulation of each carcass may last from 10 seconds to 3 minutes.

To date, the approved voltage varies from 10 to 600. The high voltage electrical stimulators operate at a voltage between 500 and 600, a potentially lethal electrical shock. Concern about this danger resulted in the development of later models that operate below 50 volts. Acceptance by FSIS of the use of below 50 volt EST equipment in establishments without mandating the safety precautions specified in this rule was based in part on earlier discussions with electrical safety personnel in OSHA and the interpretation of provisions in the NEC. The NEC is the nationally accepted minimum electrical construction and safety standard. At the time, the use of below 50 volt EST equipment did not appear to pose a significant threat to human safety that required shock hazard protection. However, Underwriters Laboratory, a recognized national standards organization, has cited research stating that 0.5 percent of the population would be unable to release from contact (handgrip) with a surface emitting 10.5 volts alternating current, and that as the electrical voltage increases, a progressively larger segment of the population is unable to release from such contact. The wet

[1] Written guidelines are available from the Facilities, Equipment and Sanitation Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] Articles are available for viewing at the Policy Office, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

conditions prevalent in the slaughterhouse environment increase the likelihood and seriousness of electrical shock.

In addition, NASA, after conducting extensive testing of the effect of voltage on bodily functions of astronauts in space, determined that exposure to very low voltage levels can be hazardous to humans. After discussing this information with NEC specialists, FSIS has determined that exposure to any voltage may be unsafe and exposure to any unprotected stimulating voltage should not be permitted.

This rule provides the safety requirements needed to eliminate or minimize the possibility of electrical shock to Federal inspectors. The safety provisions are designed to protect Federal inspectors who are exposed to EST equipment from potentially lethal electrical shock and from being struck by a carcass while it is undergoing the violent contractions caused by the electrical current. The safety provisions are basic electrical safety provisions adapted to the slaughterhouse environment. The circuit grounding and electrical source provisions were developed with the assistance and concurrence of some manufacturers of EST equipment and are consistent with the NEC.

Consistency with OSHA Requirements

Under the FMIA (21 U.S.C. 601 *et seq.*) and the regulations, the Administrator must provide a safe workplace for Federal inspectors. To avoid conflicting or inconsistent regulatory requirements, FSIS consulted with officials of OSHA to develop appropriate safety procedures. The Director of Federal Compliance and State Programs, OSHA, has concurred in the safety procedures set forth in this rule. A directive reflecting these procedures has been issued by OSHA and forwarded to all national, regional, and area OSHA offices. However, this rule will not preclude any rulemaking that OSHA may find necessary.

Equipment Utilization Area

Use of electrical stimulating equipment must occur in an area that will prevent persons from contacting an energized surface. This area may be enclosed by either physical, sound or light barriers. If the area is surrounded by physical barriers, the barriers must be either electrically grounded or they must be made of materials that do not conduct electricity. The interior of the stimulating area must be visible from the start switch so that the operator can be assured before the equipment is started that there is no thing or person present that should not be there. If sound or light barriers are used to completely or partially form an enclosure, they must automatically shut off EST equipment when the sensor signals are interrupted or broken.

Warning Device and Sign Provisions

At each opening to the equipment utlization area through which a person would normally enter, the following warning devices, designed to attract attention and to alert persons to an electrical hazard or dangerous situation, must be installed.

1. Flashing Red Light—Installation and use of a red light that flashes a distinct warning during the equipment operating cycle.

2. Warning Signs—Warning signs reading "Danger Electrical Hazard" for posting with use of low voltage (under 50 volts) equipment and "Danger High Voltage" for posting with use of high voltage (over 50 volts) equipment. OSHA requires that warning signs follow American National Standards Institute (ANSI) standard Z53.1-Color Code which prescribe the wording, color and size of lettering needed to attract attention to the sign's message. These signs must be posted conspicuously at eye level, between 4½–5½ feet high, to have the maximum warning effect.

3. Optional Warning Horn or Bell—A warning horn or bell may be installed in or near the stimulating area. Installation and use of a warning horn or bell is optional, but if used, the signal must be loud enough to be heard distinctly above all background noises. Each establishment has its own unique noise level because of such factors as differences in equipment, numbers of animals slaughtered and number of employees. Therefore, the Agency has determined that establishing a specific decible level would be impractical. To provide an adequate warning, the horn or bell signal must sound for at least one second before each manual stimulation or before the carcass chain is started in an automatic system.

Emergency Disconnect Provision

Emergency Stop Button—By their nature, emergency stop buttons are noticeable and can be easily operated in case of equipment malfunction or sudden hazard.

Additional Provisions for Reducing Shock Hazard

To minimize the possibility of electrical shock to personnel, the length and location of electric wires attached to a clamp or probe must reduce the likelihood of contact between the probe or clamp and an electrical ground and must not extend outside the enclosure.

When EST equipment is not in use, stimulating probes or clamps must be disinfected and stored in a sanitary insulated container. Probes or clamps may be disinfected by rinsing in 180°F. water or by applying a chemical agent such as chlorine. Storage of the probes or clamps in an insulated container will prevent any accidental contact with the stimulating surface and will keep the probes or clamps sanitary.

Sanitary Considerations in the Installation and Use of EST Equipment

EST may be applied at any of three stages during the slaughtering operation: (1) Before hide removal (after or during bleeding, but before any other cuts have been made in the hide, except stick wound and foot removal), (2) after hide removal and before evisceration, or (3) after removal of both the hide and viscera.

When electrical stimulation is used before hide removal, the electrodes should be designed so that the hide is not penetrated. Hide penetration will force surface contamination from the hide into tissue. If hide penetration occurs, the penetrated tissue must be trimmed during the dressing operation. Explusion of feces, ingesta, and/or urine before hide removal will not cause contamination because the hide protects the edible parts of the carcass.

In the proposal, it was stated that if EST is used after hide removal, the equipment's carcass contact surfaces (electrodes) would have to be disinfected after each stimulation to prevent the transfer of possible contaminants to the next carcass. The regulation has been revised to clarify that this provision only applies when EST is used to stimulate uninspected carcasses. If carcasses are stimulated after they have been inspected and passed, the carcass contact surfaces do not need to be disinfected between stimulation of inspected carcasses. However, the carcass contact surfaces must be maintained in a clean and sanitary manner. FSIS policy is that if the carcass is inspected and passed, then the carcass has been deemed wholesome and, therefore, disease and other contamination would not be present and would not be transferred to the next carcass.

EST voltage causes strong muscle contractions in the carcass. For those carcasses that have not been eviscerated, contraction of the abdominal muscles may force the expulsion of feces from the rectum and/or urine from the bladder and/or

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contents from the stomach which will contaminate edible tissue. There are several alternatives to prevent contamination: (1) Leave the sphincter muscles intact so they will contract during stimulation and provide a natural barrier; (2) cut the rectum and the urethra free from surrounding tissue and securely tie them off to prevent leakage; (3) partially open the mid-line and/or saw the brisket to reduce pressure on the visceral organs; or (4) use any other pressure-relieving or discharge-restricting alternatives that are acceptable to the Administrator. Alternatives should be presented in writing, through the inspector-in-charge, to the Program for approval.

Some early EST equipment was used on partially skinned carcasses. This proved to be insanitary. Apart from the flopping hide, caused by muscle contractions when the carcass is stimulated, contaminates the exposed surfaces of the carcass. Consequently, EST equipment may not be used on partially skinned carcasses.

Summary of Comments

FSIS received three comments in response to the proposal (52 FR 12422): two from industry members and one from a trade association. All of the commenters supported the general intent of the proposed rule, citing support for requirements that would assure that electrical stimulating equipment is safely operated in a manner that will prevent adulteration of the carcass. However, the three commenters raised the issue of whether the rule would apply to EST equipment used for purposes other than tenderizing, and one commenter raised the issue of FSIS duplicating OSHA's requirements. The following are the issues raised by the commenters and FSIS's response to each.

Comment: The three commenters asked whether the proposed requirements would apply to electrical equipment/devices used for purposes other than tenderizing the carcass. This type of equipment is also used in the industry to stun and/or slaughter animals, to accelerate the bleeding process and to assist in the removal of hides. The commenters felt that the proposal should be limited to those electrical devices used to enhance meat quality.

Response: These safety and sanitation requirements are intended to apply only to electrical equipment used to stimulate the carcass for the purpose of accelerating rigor mortis or for the purpose of facilitating blood removal. The final rule has been revised to clearly state that § 307.7 does not apply to electrical equipment used to stun and/or slaughter animals or to facilitate hide removal.

Comment: One of the commenters stated that safety standards are the responsibility of OSHA, whose mission is to establish industry-wide standards for safety in the workplace to protect the safety of workers. The commenter felt that since they were required to meet current OSHA standards, any attempt by FSIS to separately regulate safety would be duplicative and would contribute to confusion and inconsistent application of safety requirements. The commenter also stated that if OSHA's standards were inadequate, that Agency should amend current provisions. This commenter did feel that FSIS should establish any sanitation requirements deemed necessary.

Response: OSHA has jurisdiction over workplaces, both private and public. However, heads of Federal departments are also responsible for providing a safe working environment for their own employees just as private sector employers are responsible for the safety of their employees. The Secretary of Agriculture has not only express responsibilities to provide a safe workplace under the Occupational Safety and Health Act, he also has the authority to establish or supplement safety standards not specifically addressed by OSHA, if deemed necessary.

Therefore, FSIS, in cooperation with OSHA, has taken the lead in developing and implementing regulations concerning the safe and sanitary operation of EST equipment because this equipment is is already subject to FSIS review—indeed it is unique to the meat industry—and because of the hazard it presents to Federal inspectors working in establishments with such equipment. Special regulatory provisions for use of this equipment are reasonable under these circumstances. The Agency's purpose in consulting with OSHA was to assure that its requirements would not conflict with or duplicate OSHA requirements.

Final Rule

For the reasons discussed in the preamble, FSIS is amending Parts 307 and 308 of the Federal meat inspection regulations (9 CFR Parts 307 and 308), by adding two new sections, §§ 307.7 and 308.16, to the current regulations. These new sections provide safety and sanitation requirements for uses of electrical stimulating equipment.

List of Subjects

9 CFR Part 307

Meat inspection, Equipment, Official establishments.

9 CFR Part 308

Meat inspection, Equipment, Official establishment, Sanitation.

PART 307—FACILITIES FOR INSPECTION

1. The authority citation for Part 307 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695.

2. Part 307 is amended by adding a new § 307.7 to read as follows:

§ 307.7 Safety requirements for electrical stimulating (EST) equipment.

(a) *General.* Electrical stimulating (EST) equipment is equipment that provides electric shock treatment to carcasses for the purpose of accelerating rigor mortis of facilitating blood removal. These provisions do not apply to electrical equipment used to stun and/or slaughter animals or to facilitate hide removal. Electrical stimulating equipment consists of two separate pieces—the control system and the applicator. The EST control system contains the circuitry to generate pulsed DC or AC voltage for stimulation and is separate from the equipment used to apply the voltage to the carcass. The voltage is applied by inserting a probe that penetrates the carcass or is inserted in the rectum, placing a clamp in the nose, a carcass rub-bar, a conveyor with energized surfaces traveling with the carcass, or any other method found to be acceptable by the Administrator. The Administrator will evaluate EST equipment to determine its acceptability for its proposed use before it is installed in an official establishment as set forth in § 308.5 of this subchapter.

(b) *Safety requirements*—(1) *Circuits, grounding.* Either a bonded grounding conductor shall lead from each section of the carcass rail within the stimulating enclosure to the service ground, or the secondary voltage (stimulating circuit) shall be insulated from the service ground. If the stimulating section of the carcass rail and carcass drive mechanisms are insulated from the service ground then the stimulating rail or the return path shall be electrically bonded to the transformer secondary to isolate the stimulation voltage.

(2) *Enclosure.* Electrical stimulation shall occur in an area that will prevent persons from contacting an energized surface. If the area is surrounded by physical barriers, the enclosure shall be either electrically grounded or it shall be made of materials that do not conduct electricity. The interior of the stimulating area shall be visible from the start switch so the operator can be assured that there is no person, equipment or material present that should not be there prior to starting the stimulating sequence. If light or sound beam sensors form the enclosure, the stimulating equipment shall be automatically shut off when the sensor signals are broken.

(3) *Mandatory Warning Devices and Signals.* The following warning devices or signals shall be installed at each opening to the stimulating area through which a person would normally enter:

(i) A red light that flashes distinctly during the operating cycle of the stimulating equipment.

(ii) An ANSI Z53.1-Color Code sign reading (a) "Danger Electrical Hazard" for stimulating voltage below 50 or (b) "Danger High Voltage" for stimulating voltage above 50.

(iii) An emergency stop button.

(4) *Optional Warning Device—Horn or Bell.* If a warning horn or bell is installed, the signal shall be audible above background noises in the vicinity, and it shall sound for at least 1 second before each manual stimulation or before the carcass chain is started in an automatic system.

(c) Operation—

(1) *Training.* Only persons who have received safety instruction by the equipment manufacturer or designee may operate electrical stimulating equipment.

(2) *Cleaning and Maintenance.* To prevent an electrical shock to personnel, the electricity supplied to the stimulating surfaces shall be locked-off when cleaning, mechanical inspection, maintenance or testing are performed.

(3) *Water.* To prevent an electrical shock, personnel shall not spray streams of water on energized carcasses or on energized stimulating surfaces.

(d) Special provisions for manually operated equipment.

(1) Stimulating probes or clamps shall be stored in a sanitary container which is insulated with a material approved by the Administrator.[1]

(2) The electric wires attached to a clamp or probe shall not allow for contact between the probe or clamp and an electrical ground and shall not extend outside the enclosure.

[1] A list of approved insulation materials is available upon request from the Facilities, Equipment and Sanitation Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

PART 308—SANITATION

3. The authority citation for Part 308 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903 as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

4. Part 308 is amended by adding a new § 308.16 to read as follows:

§ 308.16 Sanitation requirements for electrical stimulating (EST) equipment.

(a) *Hide-on stimulation.* Automatic and manually operated equipment may be used to apply electrical stimualtion to the hide-on surface of slaughtered carcasses provided no opening cuts other than the stick wound or foot removal have been made in the carcass. If the hide is penetrated by electrodes, the penetrated tissue shall be trimmed. Disinfection of electrodes between each hide-on carcass stimulation is not necessary.

(b) *Hide-off stimulation.* (1) Automatic or manually operated equipment may be used to apply electrical stimulation to carcasses after complete hide removal. Partially skinned carcasses shall not be stimulated.

(2) If stimulation is applied before the carcass has been inspected, the carcass contact surfaces of the equipment shall be disinfected with a disinfectant approved by the Administrator [1] before stimulation of the next carcass. In the event that carcass contact surfaces of the equipment cannot be cleaned and disinfected between carcass stimulations, those surfaces shall be immediately removed from contact with the exposed carcass and cleaned and disinfected before carcass contact is resumed.

(3) If stimulation is applied after the carcass has been inspected, carcass contact surfaces of the equipment need not be disinfected with a disinfectant approved by the Administrator before stimulation of the next carcass. Carcass contact surfaces shall be maintained in a clean and sanitary condition.

(c) *Preventing product contamination.* Carcass contamination of edible tissue by stomach contents, feces and/or urine is unacceptable. To prevent such occurrences, any of the following optional procedures may be used before stimulation to prevent this contamination:

(1) Leave the sphincter muscles intact;

[1] A list of approved disinfectants is available upon request from the Facilities, Equipment and Sanitation Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(2) Cut the rectum and the urethra free from surrounding tissue and securely tie each off;

(3) Partially open the mid-line and/or saw the brisket to reduce pressure on the visceral organs; or

(4) Any other pressure-relieving or discharge-restricting alternative acceptable to the Administrator. Alternatives should be presented in writing, through the inspector-in-charge, to the Program for approval.

(d) *Cleaning.* All equipment must be thoroughly cleaned at least daily.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-26608 Filed 11-16-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-172-AD; Amdt. 39-6071]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 series airplanes, which requires eddy current inspections for skin and longeron cracks. This amendment is prompted by reports of skin and longeron cracks in the upper fuselage over the wing. This condition, if not corrected, could result in degradation of the structural integrity of the fuselage and rapid decompression of the airplane.

EFFECTIVE DATE: December 8, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglass Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1-750 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O'Neil, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, 3229

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East Spring Street, Long Beach, California 90808; telephone (213) 988-5320.

SUPPLEMENTARY INFORMATION: On May 19, 1987, the FAA issued AD 87-14-07, Amendment 39-5630 (52 FR 25589; July 8, 1988) to require supplemental structural inspections of principal structural elements as defined in the Supplemental Inspection Document (SID) for certain McDonnell Douglas Model DC-9-30 series airplanes. During these supplemental structural inspections conducted in accordance with AD 87-14-07, an operator found skin cracks at 4 locations near longeron 1 at overwing stations on a Model DC-9-30 series airplane that had accumulated a total of approximately 69,000 landings. On another airplane with 65,000 landings, cracked skin fasteners were noted, and upon further inspection, 14 longeron cracks were found. Subsequent inspections have revealed skin cracks on 4 airplanes and longeron cracks on 23 airplanes. Preliminary investigation has revealed that the cracks are attributed to fatigue.

This condition, if not corrected, could degrade the structural integrity of the fuselage and lead to possible rapid decompression.

The FAA has reviewed and approved McDonnell Douglas DC-9 Alert Service Bulletin A53-230, dated November 2, 1988, which describes the areas to be inspected, methods of inspection, and repair instructions.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive external eddy current inspections for cracks in the fuselage skin and longerons, and repair, if necessary, in accordance with the McDonnell Douglas service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Based on the reports of cracking described above, the FAA has issued a separate rulemaking action, Docket 88-NM-178-AD, which proposes to require repetitive aided visual inspections of the longerons in the area of the upper fuselage over the wing. However, the proposed initial compliance time for those inspections is sufficient so as to afford the public an opportunity to comment on the proposed rule.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further detemined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-10, -20, -30, -40, -50, and C-9 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished. To prevent fatigue cracking and failure of fuselage skin and longerons, accomplish the following:

A. Prior to the accumulation of 55,000 landings, or within the next 30 days, whichever occurs later, unless accomplished within the last 1,000 landings, perform external eddy current inspections of the fuselage skin and longerons from longeron 7 left through 7 right, in accordance with the accomplishment instructions of McDonnell Douglas DC-9 Alert Service Bulletin A53-230, dated November 2, 1988, within the range of fuselage stations for the particular series airplane as specified in Table I of that service bulletin.

B. Conduct repetitive inspections in accordance with paragraph A., above., according to the following schedule:

1. For Model DC-9-40 series airplanes: repeat the inspections at intervals not to exceed 2,500 landings.

2. For Model DC-9-10, -20, -30, -50, and C-9 series airplanes: repeat the inspections at intervals not to exceed 5,800 landings.

C. If cracks are detected, prior to further flight, repair in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A53-230, dated November 2, 1988.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21-197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

This amendment becomes effective December 8, 1988.

Issued in Seattle, Washington, on November 8, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 88-26622 Filed 11-14-88; 3:59 pm]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-18-AD; Amdt. 39-6063]

Airworthiness Directives: Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 707/720 series airplanes, which currently requires inspections of the inboard engine nacelle strut attach structure to detect cracks, and repair, if necessary. This amendment reduces the repetitive inspection interval for those operators who use the airplanes for short flights by adding a flight cycle upper limit as well as the current flight time limit. Further, a repair procedure listed in the current AD as terminating action is not adequate to prevent further cracking. Airplanes that have been repaired without the installation of the improved nacelle strut support fittings must be repetitively inspected. This action is prompted by a report of an engine separating from an airplane.

DATE: Effective December 21, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Scott F. Romer, Airframe Branch, ANM-120S; telephone (206) 431-1966. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 77-09-03, Amendment 39-2888 (42 FR 22863; May 5, 1977), to require inspections of the inboard engine nacelle strut attach structure to detect cracks, and repair, if necessary, on certain Boeing 707/720 airplanes, was published in the **Federal Register** on June 17, 1988 (53 FR 22657).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter suggested that the words "6,000 flight cycles, whichever comes first," should be added to the 12,000 hours time-in-service compliance threshold for the visual inspections required by paragraph D. This change would bring the AD in line with inspection requirements of the Supplemental Structural Inspection Document (SSID) program for the Model 707/720, as required by the AD 85-12-01. The FAA has considered this request and concurs that such a change is appropriate. The final rule has been revised accordingly. The FAA has determined that this change (1) does not increase the scope of the AD, and (2) will not increase the economic burden on any affected operator, since the average flight length these airplanes, as operated by U.S. operators, is greater than 2 hours.

The service bulletin date has been corrected in paragraph B. of the final rule to reflect "May 13, 1977." Additionally, paragraphs E. and F. of the final rule have been revised to include Revision 2 of Boeing Service Bulletin 3183, as an alternate service document reference. The FAA has determined that these changes do not increase the economic burden on any affected operator, nor do they increase the scope of the AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change noted above.

It is estimated that 80 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,600.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 707/720 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 77-09-03, Amendment 39-2888 (42 FR 22863; May 5, 1977), with the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to Boeing Model 707/720 series airplanes listed in Boeing Service Bulletin No. 3183, Revision 2, dated January 28, 1988, certificated in any category. Compliance required as indicated, unless already accomplished.

To prevent separation of an inboard engine, accomplish the following:

A. Except as provided in paragraphs B., C., and D., below, prior to the accumulation of 12,000 hours time-in-service, visually inspect the mid-spar support fittings of the inboard nacelles for cracks in accordance with Boeing Service Bulletin No. 3183, Revision 2, dated January 28, 1988. Thereafter, repeat the inspection at intervals not to exceed 1,500 hours time-in-service or 600 flight cycles for Models 707-300, -400, and -300B/C series airplanes, or 750 flight cycles for Models 707-100, -200, and 720 series airplanes, whichever occurs first. If any cracks are found, repair prior to further flight, in accordance with paragraph E., below.

B. If the mid-spar support fittings are currently being inspected in accordance with Boeing Service Bulletin No. 3183, Revision 1, dated May 13, 1977, or Revision 2, dated January 28, 1988, then continue the inspection program in accordance with Boeing Service Bulletin No. 3183, Revision 2, dated January 28, 1988. Repeat the inspections at intervals not to exceed 1,500 hours time-in-service or 600 flight cycles for Models 707-300, -400, and -300B/C series airplanes, or 750 flight cycles for Models 707-100, -200, and 720 series airplanes, whichever occurs first. For Model 707-300, -400, and -300B/C series airplanes with more than 500 flight cycles, and Model 707-100, -200, and 720 series airplanes with more than 650 flight cycles, since the last inspection on the effective date of this AD, inspect within the next 100 flight cycles or prior to the accumulation of 1,500 hours time-in-service since the last inspection, whichever occurs first. If any cracks are found, repair prior to further flight, in accordance with paragraph E., below.

C. If inspections had been terminated under paragraph D. of AD 77-09-03 by repairing the mid-spar support fittings, within the next 100 hours time-in-service after the effective date of this AD, visually inspect the mid-spar support fittings for cracks in accordance with Boeing Service Bulletin No. 3183, Revision 2, dated January 28, 1988. Repeat the inspection at intervals not to exceed 1,500 hours time-in-service or 600 flight cycles for Models 707-300, -400, and -300B/C series airplanes, or 750 flight cycles for Models 707-100, -200, and 720 series airplanes, whichever occurs first. If any

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cracks are found, repair prior to further flight, in accordance with paragraph E., below.

D. If inspections had been terminated under paragraph D. of AD 77-09-03, by the replacement of the mid-spar support fittings with new like fittings, then prior to the new fittings having accumulated 12,000 hours time-in-service or 6,000 flight cycles, whichever occurs first, or within the next 100 hours time-in-service after the effective date of this AD, whichever occurs later, visually inspect the fittings for cracks in accordance with Boeing Service Bulletin No. 3183, Revision 2, dated January 28, 1988. Repeat at intervals not to exceed 1,500 hours time-in-service or 600 flight cycles for Models 707-300, -400, and -300B/C series airplanes, or 750 flight cycles for Models 707-100, -200, and 720 series airplanes, whichever occurs first. If any cracks are found, repair prior to further flight, in accordance with paragraph E., below.

E. If any cracks are found in the mid-spar support fittings, prior to further flight remove the fairings over the inboard nacelle strut upper support fittings and conduct an eddy current inspection of the fittings and the upper wing skin at the two most forward fastener holes on the inboard flange of the fittings common to the fittings, the front spar upper chord, and the upper wing skin, in accordance with Boeing Service Bulletin No. 3183, Revision 1, dated May 13, 1977, or Revision 2, dated January 28, 1988. Repair all cracks prior to further flight, in accordance with the service bulletin.

F. Terminating action for the requirements of this AD is replacement of the inboard nacelle strut inboard and outboard mid-spar support fittings, with improved fittings, in accordance with Boeing Service Bulletin No. 3183, Revision 1, dated May 13, 1977, or Revision 2, dated January 28, 1988, and inspection, modification, or replacement, if necessary, of the inboard nacelle strut overwing fittings to the front spar upper chord in accordance with that service bulletin.

Note: Inspections in this area required by AD 85-12-01 are not terminated by this paragraph.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

H. Airplanes with no more than one tang of one inboard nacelle strut mid-spar support fitting failed may be flown in accordance with FAR 21.197 and 21.199 to a base where repairs required by this AD may be performed.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 77-09-09, Amendment 39-2888.

This amendment becomes effective December 21, 1988.

Issued in Seattle, Washington, on October 31, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26524 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-73-AD; Amdt. 39-6068]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires replacement of the existing bolt and self-locking nut that attaches the downlock forward pushrod assembly to the downlock torque shaft of the main landing gear with a new bolt, castellated nut, and cotter pin. This action is prompted by reports of incidents involving loosening of the self-locking nut which resulted in loss of the nut and, in one case, loss of the bolt. This condition, if not corrected, could lead to separation of the forward pushrod from the downlock torque shaft, which could result in door jamming that could prevent the extension of the affected landing gear.

DATE: Effective December 23, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 727 series airplanes, which requires replacement of the existing bolt and self-locking nut that attaches the downlock forward pushrod assembly to the downlock torque shaft of the main landing gear (MLG) with a new bolt, castellated nut, and cotter pin, was published in the **Federal Register** on July 5, 1988 (53 FR 25171). The comment period for the proposal closed on August 25, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the five comments received.

The first commenter stated that the accomplishment of the modification requires more work than currently indicated in the service bulletins; therefore, the AD should be revised to allow 3,000 or 4,000 hours to accomplish the modification. Subsequent to the issuance of the Notice, the manufacturer advised the FAA of additional work required to accomplish the modification. The manufacturer has revised the applicable service bulletin to include this additional work. Part of the criteria used by FAA in establishing the proposed compliance time was a determination that the modification could be accomplished during an overnight check. In light of the foregoing, the additional time required to accomplish the modification will prevent accomplishment during an overnight check. Therefore, the FAA has determined the compliance time may be extended to permit compliance during a routine "C" check, and that safety will not be compromised by this increase. Accordingly, the final rule has been revised to extend the compliance time from 2,000 flight hours to 3,500 flight cycles.

One commenter requested that a provision be included to permit continued operation if repetitive checks of the security of the fastener are performed at 500-landing intervals; accomplishment of the modification would then terminate the need for these repetitive checks. The FAA does not concur. The FAA has determined that modification is necessary to correct the unsafe condition addressed. However, under the provisions of paragraph C. of the final rule, any operator may propose use of an alternate means of compliance or adjustment of the compliance time, if an acceptable level of safety can be proven.

Another commenter stated that the loosening of the self-locking nut is a function of flight cycles instead of flight hours and that the final rule should be expressed in flight cycles. The FAA concurs that the loosening of the self-locking nut is a function of flight cycles and the final rule has been revised to refer to flight cycles. Since the average flight time for the Model 727 is approximately one hour, this change will not significantly impact the affected operators.

Another commenter stated that the Boeing Service Bulletin 727-32-0353 was incorrect in requiring aircraft jacking during the modification procedure. FAA discussions with the manufacturer have confirmed that jacking of the aircraft is required and the service bulletin is correct in including this procedure. The requirement to jack the aircraft is based upon the gear retraction check that is required to assure proper gear retraction and extension after the system has been disconnected. Accordingly, no changes are necessary in the final rule.

The final commenter requested that the final rule specify equivalent parts to the ones identified in the service bulletin to eliminate the requirement to petition the FAA for use of equivalent parts. The FAA notes that, as discussed below, the service bulletins have been revised to specify an equivalent bolt; therefore, the FAA does not consider it necessary to include a statement in the final rule concerning equivalent parts. Furthermore, if a petitioner does find another equivalent part, it still can petition the FAA for an alternate means of compliance under the provisions of paragraph C. of the final rule.

Since issuance of the NPRM, Boeing has revised the service bulletins to modify the procedure used to accomplish the modification. The FAA has reviewed and approved Boeing Service Bulletins 727-32-0353, Revision 1, and 727-32-0237, Revision 5, both dated July 7, 1988, to correct the procedure for replacing the existing bolt and self-locking nut that attaches the downlock forward pushrod assembly to the downlock torque shaft with a new bolt, castellated nut, and cotter pin. The final rule references the later Boeing Service Bulletins. The FAA has determined that this change will not increase the economic burden on any operator, nor does it increase the scope of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes previously noted.

There are approximately 1,603 Model 727 series airplanes in the worldwide fleet. It is estimated that 1,018 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $651,520.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 727 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to all model 727 series airplanes, prior to line number 1620, not equipped with the safety bar modification described in Boeing Service Bulletin 727-32-275, Revision 2, dated March 30, 1984, certificated in any category. Compliance required within the next 3,500 flight cycles after the effective date of this AD, unless previously accomplished.

To prevent failure of the main landing gear (MLG) to extend as a result of loosening of the self-locking nut at the attachment of the downlock forward pushrod assembly to the downlock torque shaft, accomplish the following:

A. Modify airplanes listed in Boeing Service Bulletin 727-32-0237, Revision 5, dated July 7, 1988, by installing the bolt, washer, nut, and cotter pin called out in Item 5 of Figure 5 of that service bulletin.

B. Modify airplanes listed in Boeing Service Bulletin 727-32-0353, Revision 1, dated July 7, 1988, by installing the bolt, washer, nut, and cotter pin in accordance with that service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O., Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 23, 1988.

Issued in Seattle, Washington, on November 2, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26525 Filed 11-16-88; 8:45 am]

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14 CFR Part 39

[Docket No. 88-NM-92-AD; Amdt. 39-6064]

Airworthiness Directives: Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Fokker Model F-27 series airplanes, which would require a one time inspection of the main landing gear torque links, and repair, if necessary. This amendment is prompted by reports of a number of torque links that were improperly machined during manufacture. This condition, if not corrected, could lead to jamming of the main landing gear in a position other than full extension.

DATE: Effective December 21, 1988.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Fokker Model F-27 series airplanes, which requires a one-time inspection of the main landing gear torque links, and repair, if necessary, was published in the **Federal Register** on August 8, 1988 (53 FR 29695).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,040.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

§ 39.13 [AMENDED]

Fokker: Applies to Model F-27 series airplanes Serial Numbers 10102 to 10692, inclusive, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent jamming of the main landing gear, accomplish the following:

A. Within 90 days after the effective date of this AD, perform a one-time inspection of the main landing gear torque links, and repair, if necessary, in accordance with Fokker Service Bulletin F27/32-157, dated December 18, 1987.

Note: Fokker Service Bulletin F27/32-157, dated December 18, 1987, references Dowty-Rotol Service Bulletins 32-49SW, 32-82S, and 32-161B for procedures for the inspection and repair.

B. An alternate means of compliance or adjustments of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who may have not already received the appropriate service document from the manufacturer may obtain copies upon request to Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 21, 1988.

Issued in Seattle, Washington, on October 31, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26526 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-91-AD; Amdt. 39-6070]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Fokker Model F-28 series airplanes, which requires a visual inspection of the flap track beam support bracket and rear spar web and boom, and repair, if necessary. This amendment is prompted by reports of cracks detected in the rear spar web. This condition, if not corrected, could lead to structural failure in the flap and rear spar web, and fuel leakage.

EFFECTIVE DATE: December 27, 1988.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft U.S.A., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Model Fokker F-28 series airplanes, which requires a visual inspection of the flap track beam support bracket and rear spar web and boom, and repair, if necessary, was published in the **Federal Register** on August 23, 1988 (53 FR 32078).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received. The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 56 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $114,240.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F-28 airplanes are operated by small entities.

A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F-28 series airplanes, Serial Numbers 11003 to 11241 inclusive, 11991, and 11992, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure in the flap or rear spar web and fuel leakage, accomplish the following:

A. Prior to the accumulation of either 10,000 flight hours or 20,000 flight cycles (landings), or within 500 flight cycles (landings) after the effective date of this AD, whichever occurs later: Conduct an external visual inspection of the flap track beam support bracket for position in accordance with Part 1 of Fokker Service Bulletin F28/57-81, dated May 27, 1988.

B. If the flanges of the flap track beam support bracket are found during the inspection specified in A., above, to be parallel to the rear spar, no further action is required.

C. If the flanges of the flap track beam support bracket are found during the inspection specified in A., above, not to be parallel to the rear spar, inspect for cracks in the web of the rear spar, in accordance with Part 2 of Service Bulletin F28/57-81, dated May 27, 1988, before further flight.

1. If no cracks are found, repeat the inspection every 1,000 flight cycles (landings) until an internal inspection is conducted in accordance with Part 3 of Service Bulletin F28/57-81, dated May 27, 1988.

2. If, during the inspections accomplished in accordance with Part 3 of Service Bulletin F28/57-81, dated May 27, 1988, it is determined that the bolts are installed properly, a spotface is not found, and cracking does not exist, reseal or reinstall the bolts in accordance with Part 3 of that service bulletin. No further action, other than restoration to normal, is required.

3. If cracks are found during the inspections required by paragraph C., C.1., or C.2., above, or if a spotface is found during the inspections required by paragraph C.1., or C.2., prior to further flight, repair in a manner approved by the Manager, FAA Brussels Aircraft Certification Office, AEU-100. Under conditions noted in the Service Bulletin F28/57-81, dated May 27, 1988, temporary repairs may be made in accordance with Part 4 and the associated table and figures of that service bulletin.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft U.S.A., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 27, 1988.

Issued in Seattle, Washington, on November 4, 1988.

Leroy A. Keith,

Manager, Transportation Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26527 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-55-AD; Amdt. 39-6062]

Airworthiness Directives; Garrett Turbine Engine Company Models TSCP 700-4B and TSCP 700-5 Auxiliary Power Units, Installed in, but not Limited to, McDonnell Douglas Model DC-10 and Airbus Industrie Model A-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Garrett Models TSCP 700-4B and TSCP 700-5 Auxiliary Power Units (APU) as installed in McDonnell Douglas Model DC-10 and Airbus Industrie Model A-300 series airplanes,

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respectively, which requires either an increase in the tie rod stretch, or placing a life limit on in-service first stage low pressure compressor disks of 8,000 cycles, and replacement at that time with an improved disk. This amendment is prompted by a report of an APU compressor tie rod separation, following a first stage compressor disk rim separation, that resulted in an uncontained release of rotor components. This condition, if not corrected, could lead to additional uncontained APU rotor failures and the potential for compartment fires.

EFFECTIVE DATE: December 21, 1988.

ADDRESSES: The applicable service information may be obtained from Garrett Airline Service Division, A Division of the Allied-Signal Aerospace Company, Technical Publications, Dept. 65–70, P.O. Box 29003, Phoenix, Arizona 85038. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90808–2425; telephone (213) 988–5247.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD), which would have required an increase in tie rod stretch of Garrett Models TSCP 700–4B and TSCP 700–5 APU's, was published in the **Federal Register** on July 6, 1987 (52 FR 25237).

Numerous commenters to that proposal requested the FAA consider an alternate method of compliance with the proposed AD. Specifically, commenters suggested that, as an alternative to performing the tie rod stretch, operators could instead replace the existing low pressure disk with a new deflector-peened disk. As a result of those comments, a supplemental NPRM was published in the **Federal Register** on June 21, 1988 (53 FR 23253), which provided for this alternate method of compliance. The period for public comment closed August 1, 1988.

Several commenters to the initial NPRM suggested various changes to the proposed rule. The FAA concurred previously with these suggestions, as listed below, and included them as revisions in the supplemental NPRM. These changes included:

a. Permitting N_1 cycles to be calculated using the Garrett method of counting cycles (see paragraphs A. and C. of the final rule);

b. Replacing the date of Figure 1 of Garrett Alert Service Bulletin TSCP700–49–A5666 with the effective date of the final rule (see paragraph A.1. of the final rule);

C. Permitting an optional method of compliance by installation of an improved deflector peened disk (see paragraphs B. and C. of the final rule).

One commenter to the initial NPRM stated that the proposed AD was not justified and should be withdrawn, since there has been only one uncontained failure reported. The FAA disagrees. The FAA has determined that the potential for an uncontained disk separation exists on any of the affected airplanes equipped with the subject APU's. In view of the potential damage that could occur, the FAA maintains that the actions required by this AD are necessary to correct an unsafe condition.

Two commenters had concerns regarding use of the restretch procedure in accordance with Garrett Alert Service Bulletin TSCP700–49–A5666. One commenter stated that the restretching procedure takes the tie rod to the 80% yield point; this would increase loads on the nut and threads; which may induce unknown failure modes and create a potential hazard to shop personnel. The other commenter expressed concerns about the potential for N_1 unbalance, possible first stage disk runout, increased deflections, possible uneven curvic coupling deformations, and the like. The FAA ackowledges these concerns, but is not aware of any service history that would support them. Other commenters have reported successful restretches using the procedure described in the Garrett Service Bulletin, with no problems encountered.

Another commenters stated that there have been a number of "infant mortality" removals on restretched APU's, and the reliability of the APU will deteriorate as a result of restretching. The FAA does not concur. The APU manufacturer has advised FAA that such problems have been encountered by only one operator, and it was determined that those difficulties were the result of other problems not attributable to the tie rod restretch.

Another commenter suggested that the proposed AD be applicable exclusively to the Airbus Model A300 series airplanes, since the only known failure occurred on that model airplane and there has never been a similar failure on a McDonnell Douglas Model DC–10 series airplane. This commenter also stated that Garrett has issued service bulletins to address severe frettage of the low pressure compressor disk assemblies installed on Model A300 airplanes; and Airbus has issued service bulletins describing procedures to smooth the inlet airflow and eliminate the adverse effect of the APU inlet on the APU low compressor. The FAA does not concur. Since the same APU is installed on both airlane models, the potential for the same unsafe conditions exists. Further, Garrett has advised FAA that the service bulletins issued on the Model A300, referenced by this commenter, address blade failures at the root caused by high cycle fatigue. The current problem addressed by this AD action is that of disk failure due to low cycle fatigue in which disk rim segments, including one or more blades, may be released. Therefore, the FAA does not consider these comments to be applicable to this AD.

This commenter also requested that compliance with paragraph B. of the proposed AD (disk replacement at 8,000 cycles) be on the same schedule as compliance with paragraph A. (increased tie rod stretch). As written in the proposal, some operators who decide to accomplish the disk replacement would be required immediately to remove from service those APU's with disks having more than 8,000 cycles. The FAA has considered this request and has determined that the initial replacement of the disk under the provisions of paragraph B. may be accomplished using the same schedule as specified in paragraph A., and the final rule has been revised accordingly. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

Another commenter suggested that the proposed AD be revised to require the tie rod restretch to be performed "at the next shop visit." The FAA does not concur. Due to the wide range in maintenance cycles employed by the affected operators, the FAA has determined that the schedule and compliance time for the accomplishment of the restretch, as proposed, is appropriate to ensure that the unsafe condition is corrected in a timely manner.

Finally, one commenter supported the proposal, but suggested an alternative method of complying with the intent of the proposed AD. The FAA notes that use of an alternate means of compliance may be permitted in accordance with paragraph D. of the final rule.

Paragraph A. of the final rule has been revised to reflect the correct issue date of Revision 2 of Garrett Alert Service Bulletin TSCP700–49–A5666 as July 27, 1987, rather than April 10, 1987, as was noted in the supplemental NPRM.

A note has been added to paragraph A. to clarify that all APU installations which are capable of permitting the N_1 speed to go above 91% for main engine start, even though this is done infrequently, are included in either paragraph A.1. or A.3. of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously described.

It is estimated that 229 APU's installed in airplanes of U.S. registry will be affected by this AD, that it will take approximately three manhours per unit to accomplish the tie rod restretch, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators who elect to perform the restretch is estimated to be $27,480. This cost would be reimbursed by the manufacturer. The cost to those operators who elect to replace the disk at 8,000 cycles would be approximately $3,037 per disk.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($120 or $3,037). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new Airworthiness Directive:

Garrett Turbine Engine Company: Applies to Garrett Model TSCP 700–4B Auxiliary Power Units (APU), prior to serial number P–80670; and Model TSCP 700–5 APU's, prior to serial number P–80441; as installed in, but not limited to, McDonnell Douglas DC–10 and Airbus Industries A300 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent compressor tie rod separation in the event of disk rim separation, accomplish the following:

A. Relieve the tie rod stretch and restretch the tie rods in accordance with the Accomplishment Instructions of Garrett Alert Service Bulletin TSCP 700–49–A5666, Revision 2, dated July 27, 1987, in accordance with the following schedule:

Note: For the purpose of this AD, the Garrett method of cycle counting may be used on the first stage low compressor disk.

1. If the first stage low pressure compressor disk has been allowed to run above 91% and has accumulated more than 6,000 cycles, after the effective date of the AD, complete the tie rod restretch in accordance with the Accomplishment Instructions, and within the cycle times defined by Figure 1, of the above Service Bulletin. The date shown in Figure 1 is replaced by the effective date of this AD.

2. If the first stage low pressure compressor disk has accumulated more than 6,000 cycles since new (CSN), but the N_1 speed has been limited to 91% maximum, the tie rod restretch must be accomplished within 3,000 cycles after the effective date of this AD, but not to exceed the disk life limit of 12,000 CSN.

3. If the first stage low pressure compressor disk has accumulated 6,000 CSN or less, and the N_1 speed has been allowed to go above 91%, the tie rod restretch must be accomplished prior to the accumulation of 8,000 CSN.

4. If the first stage low pressure compressor disk has accumulated 6,000 CSN or less, but the N_1 speed has been limited to 91% maximum, the tie rod restretch must be accomplished prior to the accumulation of 9,000 CSN.

Note: All APU installations which are capable of permitting the N_1 speed to go above 91% for main engine start, even though this is done infrequently, are included in either paragraph A.1. or A.3., above.

B. Compliance with Option 2, "Disk Replacement at 8,000 Cycles," of the Accomplishment Instructions of Garrett Service Bulletin TSCP 700–49–A5666, Revision 3, dated December 15, 1987, is considered an acceptable alternate means of compliance with the requirements of this AD. This replacement may be accomplished in accordance with the compliance schedule specified in paragraph A., above.

C. Replacement of the disk with a deflector-peened disk, in accordance with Garrett Service Bulletin TSCP 700–49–5695, Revision 1, dated December 22, 1987, constitutes terminating action for the requirements of this AD.

D. Alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Garrett Airline Service Division, A Division of the Allied-Signal Aerospace Company, Technical Publications, Dept. 65–70, Phoenix, Arizona 85038. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

This amendment becomes effective December 21, 1988.

Issued in Seattle, Washington, on October 31, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–26528 Filed 11–16–88; 8:45 a.m.]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–151–AD; Amdt. 39–6066]

Airworthiness Directives; McDonnell Douglas Models DC–9, C–9, and DC–9–80 (MD–80) Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas

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Models DC–9, C–9, and DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, which requires checking of the aft accessory compartment for fuel after every Auxiliary Power Unit (APU) false start, and removal of fuel, if necessary. This amendment is prompted by a report of a fire in the aft accessory compartment. This condition, if not corrected, could result in a fire hazard due to fuel leaking into the aft accessory compartment.

EFFECTIVE DATE: December 2, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 E. Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5245.

SUPPLEMENTARY INFORMATION: A Model DC–9–30 airplane recently experienced a fire in the aft accessory compartment. Investigation revealed that during an APU false start, fuel leaked into the aft accessory compartment through holes chafed in the APU exhaust outer elbow. During the subsequent start cycle, the flame in the fuel wetted APU exhaust propagated through the holes and ignited the leaked fuel which had puddled in the aft accessory compartment. The holes in the APU exhaust outer elbow were caused by chafing with the baffles installed in accordance with McDonnell Douglas DC–9 Service Bulletin 49–25, dated November 10, 1987, which was the subject of AD 80–03–04. The baffles were intended to divert fuel away from the APU exhaust expansion joint to prevent fuel from entering the aft accessory compartment. The operator performed leak checks of all 80 Model DC–9 airplanes in its fleet and found 5 cases of fuel leaking in the aft accessory compartment. This condition, if not corrected, can result in a fire hazard in the aft accessory compartment.

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin A49–40, dated September 26, 1988, which describes procedures for repair and modification of the APU exhaust system.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires installation of a placard and a revision to the FAA-approved Airplane Flight Manual (AFM) to require inspection of the aft accessory compartment for fuel, and removal of fuel, if necessary. Further, this AD provides for an optional terminating action of repair and modification of the APU exhaust system, in accordance with the previously mentioned service bulletin. Although this modification is currently an optional requirement, the FAA is considering further rulemaking to require its installation.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures or Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Models DC–9, C–9, and DC–9–80 (MD–80) series airplanes, and Model MD–88 airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a fire hazard in the aft accessory compartment, accomplish the following:

A. Within 30 days or 300 flight hours time-in-service after the effective date of this AD, whichever occurs first, or upon the accumulation of 3,000 flight hours time-in-service since new, whichever occurs later, accomplish the following:

1. Check for evidence of fuel on the APU exhaust ducting, and in the surrounding area in the aft accessory compartment, including the insulation blankets. Remove any fuel before the next APU start attempt.

2. Install a placard on or above the center instrument panel in a location that allows it to be in full view of both pilot and co-pilot, and on the Aircraft Logbook, stating the following: "Do not attempt to restart APU after a false start until check of aft accessory compartment for fuel is accomplished."

3. Add the following to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM: Do not attempt to restart APU after a false start until check of aft accessory compartment for fuel is accomplished.

B. Accomplishment of the repair and modification of the APU exhaust system, in accordance with McDonnel Douglas DC–9 Service Bulletin A49–40, dated September 26, 1988, constitutes terminating action for the requirments of this AD; the placard and AFM change required by paragraph A., above, may then be removed.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 E. Spring Street, Long Beach, California.

This amendment becomes effective December 2, 1988.

Issued in Seattle, Washington, on November 2, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–26530 Filed 11–16–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–148–AD; Amdt. 39–6067

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Through –80 Series, Model MD–88, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–10 through –80 series, Model MD–88, and C–9 (Military series airplanes, which requires inspection and replacement, if necessary, of the attachment hardware for the forward passenger and aft service door assist handle. This amendment is prompted by reports of loose attachment hardware and separation of the door assist handle located forward of the doors on the bulkhead. This condition, if not corrected, could lead to injury of the cabin crew when opening or closing the door.

EFFECTIVE DATE: December 2, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L65 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California 90806–2425.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Salas, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5324.

SUPPLEMENTARY INFORMATION: An operator of a McDonnell Douglas Model DC–9–80 Series airplane has reported that a flight attendant was attempting to release the forward passenger door from the open position when the door assist handle she was holding, located forward of the door on the bulkhead, separated from the aircraft structure, causing her to fall from the aircraft to the tarmac, resulting in a severe head injury. Subsequent investigation has revealed loose assist handles found on eight other Model DC–9 series airplanes. Incorrect attachment hardware apparently has been installed, and may be installed on other airplanes.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A25–302 dated September 21, 1988, which describes inspection and replacement procedures for door assist handle hardware.

Since this condition is likely to exist or develop in other airplanes of the same type design, this AD requires inspection and replacement, if necessary, of attachment hardware in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulations, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–10 through –80 series, Model MD–88, and C–9 (Military) series airplanes, Fuselage Numbers 2 through 1510, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude separation of the forward passenger or aft service door assist handle, accomplish the following:

A. Within 45 days after the effective date of this AD, inspect the forward entry and aft service doors assist handles and attachment hardware to ascertain if the proper assist handle retaining parts are installed and if the self-locking plate nuts retain appropriate locking torque, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A25–302, dated September 21, 1988. If any part is found to be improperly installed, replace prior to further flight, in accordance with the Service Bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846; Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at

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the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective December 2, 1988.

Issued in Seattle, Washington, on November 2, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26529 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-55-AD; Amdt. 39-6065]

Airworthiness Directives; McDonnell Douglas Model DC-10-10 and -30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to all McDonnell Douglas Model DC-10-10 and -30 series airplanes, which requires inspection and modification of the passenger service unit (PSU), and the removal, inspection, and replacement of PSU oxygen canisters, if necessary. This amendment is prompted by reports that the chemical oxygen generator canisters have been punctured by the existing standoff bracket within the PSU. This condition, if not corrected, could result in loss of the use of the emergency oxygen system during rapid depressurization of the airplane.

EFFECTIVE DATE: December 22, 1988.

ADDRESSES: The applicable service information may be obtained from Jepson-Burns Corporation, 1455 Fairchild Road, Winston-Salem, North Carolina 27105-4588. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Chaplin, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5335.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires inspection and modification of the passenger service unit (PSU), and the removal, inspection, and replacement of the PSU oxygen canisters, as necessary, on McDonnell Douglas Model DC-10-10 and -30 airplanes, was published in the **Federal Register** on July 15, 1988 (53 FR 26787).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

No commenters objected to the technical content of the amendment; all commenters agreed that the subject modification was necessary and appropriate.

One commenter requested that the proposed compliance time be extended from 90 days to 180 days after the effective date of the AD because of a potential parts shortage problem. FAA does not concur. The manufacturer has advised FAA that brackets and canisters are readily available, and further stated that all necessary hardware had been supplied to most of its affected customers over a year ago. In light of this, the FAA has determined that 90 days is sufficient for compliance. The urgency of the problem also merits this compliance time.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 105 airplanes of U.S registry will be affected by this AD. There are approximately 88 PSU's on each airplane. It will take approximately .5 manhours per PSU to accompliah the required actions, and the average labor cost will be $40 per manhour. The cost of modification parts is estimated to be $192 per PSU. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,656 per airplane, or $1,958,880 for the U.S. fleet.

The regulations adopted herein will not have substantial direct effects on the states, of the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC-10-10 and -30 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10 and -30 series airplanes equipped with Jepson-Burns Corporation seat Model FBC-2000UHDE-( ), certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure proper operation of the passenger emergency oxygen system, accomplish the following:

A. Within 90 days after the effective date of this AD, remove and inspect all 3-man oxygen generators, Scott Aviation Part Number 801386-06, within the passenger service unit (PSU) of the seat. Replace, prior to further flight, any generator showing evidence of food tray latch and cotter pin contact and wear on the canister.

B. Within 90 days after the effective date of this AD, remove existing brackets and install new bracket assemblies, Jepson-Burns Part Number 42703001, in accordance with the Implementation Instructions of Jepson-Burns Service Bulletin Number 25-20-618, dated June 10, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons effected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Jepson-Burns Corporation, 1455 Fairchild Road, Winston-Salem, North Carolina. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective December 22, 1988.

Issued in Seattle, Washington, on November 1, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26531 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 382

[Docket No. RM88-29-000; Order No. 507]

Annual Charges Under the Omnibus Budget Reconciliation Act of 1986

Issued November 7, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interpretive rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) clarifies certain procedures governing the calculation and assessment of annual charges for certain classes of regulated entities. The Commission adopted these procedures in May 1987, pursuant to the requirements of section 3401 of the Omnibus Budget Reconciliation Act of 1986 (52 FR 21263 (June 5, 1987)).

This interpretive rule addresses two issues: (1) The treatment of a firm whose failure to comply with annual charges procedures results in distortion of annual charges bills and/or deficiencies in the Commission's annual charges receipts; and (2) the finality of the Commission's recalculation and adjustment of annual charges for one fiscal year at the time it calculates initial annual charges for the following fiscal year.

The Commission clarifies in this rule that it may take appropriate and equitable action to recoup deficiencies in annual charges receipts due to failure of a firm to file data required for calculation of annual charges, late filing of such data, or filing of incorrect data. The Commission also clarifies that the recalculation and adjustment of the most recent annual charges, routinely conducted at the time the Commission initially computes annual charges for the following year, is the sole adjustment and that charges based on that adjustment are final. Therefore, corrective data and any request for adjustment for the prior fiscal year must be filed in time to be considered during that process.

EFFECTIVE DATE: This interpretive rule is effective November 7, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this interpretive rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Interpretive Rule

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler, and Jerry J. Langdon.

The Federal Energy Regulatory Commission (Commission) established regulations governing the calculation and assessment of annual charges for certain classes of regulated entities to recover the outstanding costs of the Commission's regulatory programs for those entities. In Order No. 472, the Commission adopted regulations establishing annual charges for public utilities, power marketing agencies, natural gas pipeline companies, and oil pipeline companies.[1] This regime of annual charges, required by section 3401 of the Omnibus Budget Reconciliation Act of 1986 (1986 Budget Act),[2] is intended to reimburse the United States for all the costs incurred by the Commission, other than costs recovered through the Commission's filing fees[3] or costs incurred in administrating Part I of the Federal Power Act (FPA). The latter costs, largely resulting from the Commission's hydropower regulatory authority, are recovered through a different annual charges regime authorized by section 10(e) of the FPA.[4]

The Commission is statutorily required to assess and collect annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year. The 1986 Budget Act permits the Commission's cost assessment to be based on data available at the time of assessment and requires charges to be paid by the end of the fiscal year for which they were assessed. The same act requires the Commission, after the completion of that fiscal year, to adjust those preliminary assessments in order to eliminate any overrecovery or underrecovery of the Commission's total costs and any overcharging or undercharging of any person assessed annual charges.[5]

In Order No. 472, the Commission adopted a procedure for calculation and assessment of annual charges, pursuant to the statutory directive. The Commission determined that the most accurate available data on which to base its calculations are the Commission's expenses for the prior fiscal year and company sales, transportation volumes, and operating revenues, as appropriate, for the prior reporting year.[6] The Commission issues

[1] Order No. 472, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, 52 FR 21263 (June 5, 1987), FERC Stats. and Regs. ¶ 30,746 (May 29, 1987); Order No. 472-A, 52 FR 23650 (June 24, 1987), FERC Stats. and Regs. ¶ 30,750 (June 17, 1987); Order No. 472-B, 52 FR 36013 (September 25, 1987), FERC Stats. and Regs. ¶ 30,767 (September 16, 1987); Order No. 472-C, 42 FERC ¶ 61,013 (January 14, 1988).

[2] 42 U.S.C. 7178 (Supp. 1988).

[3] The Commission's filing fees are authorized by the Indepedent Offices Appropriations Act, 31 U.S.C. 9701 (1982). The Commission's fee structure and procedures for collection of those fees are codified in 18 CFR Part 381 (1988).

[4] 16 U.S.C. 803(e) (1982). The Commission's regulations for those annual charges are codified in 18 CFR Part 11 (1988).

[5] 42 U.S.C. 7178(a), (c), (d), and (e) (Supp. 1988).

[6] Annual charges are based on sales during the preceding reporting year for public utilities (either a

Continued

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annual charges bills, calculated on the basis of this prior data at least 45 days before the end of the fiscal year for which the charges are assessed and requires payment within 45 days of issuance. The Commission's regulations provide that the Commission may refuse to process any petition, application, or other filing submitted by or on the behalf of any person that does not pay the annual charge assessed when due, or take any other appropriate action permitted by law.[7]

In Order No. 472, the Commission adopted a procedure of recalculating and adjusting the most recent annual charges assessment at the time it assesses charges for the following year by using actual Commission cost and company data for the previous completed year. The Commission includes adjustments of the prior year's charges as debits or credits on the firms' annual charges bills for the following year.

This interpretive rule addresses two issues: (1) The treatment of a firm whose failure to comply with annual charges procedures results in distortion of annual charges bills and/or deficiencies in the Commission's annual charges receipts; and (2) the finality of the Commission's recalculation and adjustment of annual charges for one fiscal year at the time it calculates initial annual charges for the following fiscal year. Both issues arise from the statutory requirements in section 3401 of the 1986 Budget Act that the Commission assess and collect annual charges for each fiscal year during that fiscal year and that it adjust those assessments after the completion of that fiscal year.

The Commission clarifies that, should an entity subject to assessment of annual charges distort the annual charges calculation for the members of its class of entity by failure to file data, by late filing of data, or by filing of incorrect data, the Commission may take appropriate and equitable action to compensate itself for any deficiencies in its receipts. In two recent procedings,[8] the failure of firms to comply with the Commission's annual charges procedures caused distortions in the initial annual charges bills of all firms in their respective class of regulated entity and delayed collection of the full amount due until the routine recalculation and adjustment conducted one year later. Therefore, the Commission assessed the two companies interest on the amount whose receipt was delayed. The Commission determined to calculate that interest on the amount of the delayed receipt in accordance with §§ 382.103 and 154.67(c)(2)(iii) of its regulations for the period until the date on which the delayed receipts could be collected.

The Commission also clarifies that the recalculation and adjustment of annual charges that it routinely conducts at the time that it initially computes annual charges for the following year is the sole adjustment and that charges based on that adjustment are final. Accordingly, any corrective data or request for adjustment for the prior fiscal year must be filed in time to be considered during that process.

The congressional intent that the Commission recover its costs through annual charges supports the assessment of interest to recoup the time value of delayed receipts due to an entity's failure to comply with the annual charges procedures. The need to impose a measure of finality on the process of assessing annual charges, a fixed-pie calculation in which adjustment of the charge for one entity usually requires changes in the charges for all others in its class, is self-evident. It is a reasonable implementation of the statutory scheme to draw that line after the routine adjustment during the following fiscal year.

Effective Date

The Administrative Procedure Act exempts interpretive rules from both the notice and comment requirements of section 4(b) of the Administrative Procedure Act [9] and the requirement that publication be made 30 days before the effective date of the rule.[10] This rule is properly characterized as an interpretive rule because it states the Commission's interpretation of section 3401 of the Omnibus Budget Reconciliation Act of 1986 and its regulations for the assessment of annual charges. Therefore, this rule is effective November 7, 1988.

By the Commission. Commissioner Langdon voted present.

Lois D. Cashell,

Secretary.

FR Doc. 88-26591 Filed 11-16-88; 8:45 am]

BILLING CODE 6717-01-M

calendar year or a fiscal year depending on the accounting convention used by the particular public utility); on sales during the preceding fiscal year for power marketing agencies; on sales and volumes transported during the previous calendar year for natural gas pipelines; and on revenues for the previous calendar year for oil pipelines. 18 CFR 382.201-382.203 (1988).

[7] 18 CFR 382.104 (1988).

[8] Texas Utilities Electric Company, 45 FERC ¶ 61,007 (1988); Southwest Gas Corporation, 43 FERC ¶ 61,290 (1988).

[9] 5 U.S.C. 533(b) (1982)

[10] 5 U.S.C. 533(d) (1982)

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 356

[DoD Directive 5110.4]

Washington Headquarters Services

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part is revised to reflect current organizational arrangements within the Office of the Secretary of Defense. The Director, Administration and Management serves also as the Director, Washington Headquarters Services.

EFFECTIVE DATE: November 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone (202) 697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 159

Organization and functions (Government agencies).

Accordingly, 32 CFR Part 356 is revised as follows:

PART 356—WASHINGTON HEADQUARTERS SERVICES

Sec.

356.1 Purpose.
356.2 Definition.
356.3 Mission.
356.4 Organization and management.
356.5 Functions and responsibilities.
356.6 Relationships.
356.7 Authorities.
Appendix-Delegations of Authority

Authority: 10 U.S.C. 113(d)

§ 356.1 Purpose.

This part:

(a) Reissues 32 CFR Part 356.

(b) Pursuant to the authority vested in the Secretary of Defense under 10 U.S.C., updates the Washington Headquarters Services (WHS) with functions, responsibilities, relationships, and authorities as outlined in the following.

§ 356.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD); the Military Departments; the Joint Chiefs of Staff; the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense (OIG, DoD); the Defense Agencies; and the DoD Field Activities.

§ 356.3 Mission.

The WHS shall provide administrative and operational support to specified activities in the National Capital Region (NCR) and elsewhere as required.

§ 356.4 Organizations and management.

(a) The WHS is established as a Field Activity of the Department of Defense. It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

(b) The Director of Adminstration and Management (DA&M) also shall serve as the Director, WHS.

§ 356.5 Functions and responsibilities.

The *Director, Washington Headquarters Services,* shall:

(a) Organize, direct, and manage the WHS and all resources assigned to the WHS.

(b) Provide administrative support to the OSD, and those Defense Agencies, DoD Field Activities, and specified activities that do not have an internal administrative support capability. This support shall include all or part of the following:

(1) Budget and accounting.

(2) Civilian and military personnel management.

(3) Office services.

(4) Personnel and information security.

(5) Correspondence, cables, Directives, and records management.

(6) Travel.

(7) Other miscellaneous administrative support, as required.

(c) Administer information and data systems in support of the OSD decision and policymaking processes. This involves management information collection and reports preparation to areas including, but not limited to, procurement, logistics, manpower, and economics.

(d) Manage DoD reports, forms, and data elements and data codes standardization programs.

(e) Manage DoD-occupied, GSA-controlled administrative space in the NCR and DoD common support facilities. This includes space management, law enforcement, maintenance, repair and alteration of assigned buildings, custodial services, physical security, building administation, graphics, contracting, property management, concessions, and other support services.

(f) Manage activities in support of the responsibilities of the Secretary of Defense for the Federal Voting Assistance Program.

§ 356.6 Relationship.

For the performance of assigned functions, the Director, WHS, shall:

(a) Coordinate and exchange information and advice with elements of the OSD and other DoD Components having collateral or related responsibilities.

(b) Make use of established facilities and services in the Department of Defense and other Government Agencies, whenever practical, to avoid duplication and achieve maximum efficiency and economy.

(c) Consult and coordinate with other governmental and nongovernmental agencies on matters related to the WHS mission.

§ 356.7 Authorities.

The Director, WHS, or designee, specifically is delegated authority to:

(a) Obtain such information, consistent with the policies and criteria of DoD Directive 7750.5 [1] advice, and assistance from DoD Components, as necessary.

(b) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M that implement approved policies in the functions assigned to the Director, WHS. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to the Unified and Specified Commands shall be issued through the Chairman, Joint Chiefs of Staff (CJCS).

(c) Communicate directly with appropriate DoD Component personnel on matters related to the mission and programs of the WHS.

(d) Exercise the delegations of authority contained in Appendix of this Part.

Appendix—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DOD policies, Directives, and Instructions, the Director, WHS, or the person properly designated to act for him or her, is hereby delegated authority with respect to the WHS and activities receiving administrative support from the WHS to:

1. Exercise the power vested in the Secretary of Defense by 5 U.S.C. 302 and 3101 pertaining to the employment, direction, and general administration of civilian personnel.

2. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Federal Wage System. In fixing such rates, the Director, WHS, shall follow the wage schedule established by the DOD Wage Fixing Authority.

3. Establish such advisory committees and employ such part-time advisers as approved by the Secretary of Defense pursuant to 10 U.S.C. 173, 5 U.S.C. 3109(b), and the June 21, 1977 agreement between the Department of Defense and the Civil Service Commission on employment of experts and consultants.

4. Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903(b).

5. Establish an Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government for suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, in accordance with 5 U.S.C. 4503 and applicable Office of Personnel Management (OPM) regulations.

6. In accordance with 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; DOD Directive 5200.2; and DOD 5200.2-R, as appropriate:

a. Designate positions as "sensitive."

b. Authorize, in case of an emergency, the appointment to a sensitive position, for a limited period of time, of a person for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension of, but not terminate the services of, an employee in the interest of national security.

d. Initiate investigations, issue personnel security clearances and, if necessary in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned, detailed to, or employed by DOD Components for which the Director, WHS, has been delegated responsibility or has consented by written agreement to provide personnel security support. Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DOD 5200.2-R, "DOD Personnel Security Program," January 1987.

7. Act as agent for the collection and payment of employment taxes imposed by appropriate statutes.

8. Authorize and approve overtime work for civilian officers and employees in accordance with subchapter V, Chapter 55, Title 5, U.S. Code, and applicable OPM regulations.

9. Authorize and approve:

a. Travel for civilian employees in accordance with Joint Travel Regulations, Volume 2, Department of Defense Civilian Personnel.

b. Temporary duty travel for military personnel in accordance with Joint Travel

[1] Copies may be obtained if needed, from the U.S. Naval Publication and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

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Regulations, Volume I, for members of the Uniformed Services.

c. Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required, pursuant to 5 U.S.C. 5703.

10. Approve the expenditures of funds available for travel by military personnel for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances when the approval of the Secretary of Defense, or his designee, is required by law (37 U.S.C. 412, 5 U.S.C. 4110 and 4111).

11. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

12. Establish and use imprest funds for making small purchases of material and services, other than personal, when it is determined to be more advantageous and consistent with the best interest of the Government, in accordance with DOD Instruction 5100.71, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

13. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals, consistent with 44 U.S.C. 3702.

14. Establish and maintain appropriate property accounts and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unservicable, in accordance with applicable laws and regulations.

15. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of this Directive, pursuant to DOD Directive 5200.8, "Security of Military Installations and Resources," July 29, 1980.

16. Establish and maintain, for the Department of Defense, an appropriate publications system for the promulgation of Regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DOD Directive 5025.1, "Department of Defense Directives System," October 16, 1980.

17. Enter into support and service agreements with the Military Departments, other DOD Components, or other Government Agencies, as required for the effective performance of assigned responsibilities and functions.

18. Enter into and administer contracts, directly or through a Military Department, a DOD contract administration services component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish assigned responsibilities and functions. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

19. Approve contractual instruments for commercial-type concessions at the seat of Government, and maintain general supervision over commercial-type concessions operated by or through the Department of Defense at the seat of Government, in accordance with DOD Directive 5120.18, "DOD Concessions Committee," April 8, 1980.

20. Act as custodian of the seal of the Department of Defense and attest to the authenticity of official records of the Department of Defense under said seal (10 U.S.C. 132).

The Director, WHS, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

These delegations of authority are effective immediately.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 10, 1988.

[FR Doc. 88-26641 Filed 11-16-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11-88-05]

Temporary Drawbridge Operation Regulations; Cerritos Channel, CA

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of California Department of Transportation, the Coast Guard is amending the temporary drawbridge operation regulations for the Schuyler Heim drawbridge across Cerritos Channel at Long Beach, California. The temporary regulations are being amended to facilitate repairs to the bridge electrical and fendering systems and replacement of the bridge deck. The regulations prohibit openings for recreational vessels, require advance notice for commercial vessel passages, and provide that the draw need not be opened for the passage of vessels for 90 days during the construction/repair period from October 1, 1988 to March 31, 1989. The temporary regulations originally provided only a 60 day closure during the construction period, but electrical repairs are now estimated to take 90 days. This action will accommodate the reasonable needs of navigation. Small boats and some commercial vessels will be able to pass under the closed bridge, and larger vessels have an alternate channel available. The distance from one side of the bridge, around Terminal Island, to the other side is about 11 miles.

EFFECTIVE DATES: These regulations become effective on November 28, 1988 and terminate on March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Sharol Taylor, Bridge Administrator, Eleventh Coast Guard District at (415) 437-3514.

SUPPLEMENTARY INFORMATION: On June 16, 1988, the Coast Guard published a proposed temporary rule concerning this amendment (53 FR 22506). The Commander, Eleventh Coast Guard District, also published the proposal as a Public Notice 11-64 dated June 17, 1988. In each notice, interested persons were given until August 1, 1988 to submit comments. On September 19, 1988, the Coast Guard published a temporary rule concerning an amendment to the permanent operating regulations (53 FR 36273). Subsequent to that final rulemaking, CALTRANS requested an additional 30 day closure which is needed to complete the repairs. The Coast Guard met with CALTRANS, Crowley Towing and Transportation Co., Fossee Towing/PACTOW, LA Pilots, Jacobsen Pilot Service, and various port authorities, and determined the time extension was necessary for the completion of repairs and is reasonable for the needs of navigation. The 90 day closure is currently scheduled to begin on November 28, 1988, upon receipt of necessary materiel. The actual closure dates will be published in the Eleventh Coast Guard District Local Notice to Mariners. Good cause exists for making the regulation effective in less than 30 days after **Federal Register** publication. Bridge repairs are necessary and the contract for repairs has been issued and construction commenced October 1, 1988. Delaying the effective date of the regulation would be contrary to the public interest since immediate action is needed to keep the bridge in service.

Drafting Information

The drafters of this rule are Sharol E. Taylor, project officer, and Lieutenant Commander J.J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The only impact would be on the larger vessels not able to pass under the closed bridge and they have an alternate channel available. Crowley Towing and Transportation Co. had objected to the six month closure originally requested, stating that use of the alternate channel would increase costs by $500,000. After meetings with Crowley and California Department of Transportation an alternative of only a three month closure was agreed on. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

Subpart B—Specific Requirements

2. Section 117.147 is amended by adding (a)(1) to read as follows:

§ 117.147 Cerritos Channel.

(a) * * *

(1) During the period October 1, 1988 to March 31, 1989, the draw of the Commodore Schuyler F. Heim Highway bridge, mile 4.5, at Long Beach, shall open on a signal if at least one hour notice is given. Openings will only be provided for public vessels of the United States, state or local vessels used for public safety, tugs with tows, and commercial vessels. During this period, a complete closure of the bridge in the down position for up to 90 days will be authorized; those dates will be advertised in the Eleventh Coast Guard District Local Notice to Mariners.

* * * * *

Dated: November 9, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

FR Doc. 88-26616 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6814]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION:

The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is not available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Managment Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Tennessee	Tiptonville, town of, Lake County	470350	Aug. 11, 1975, Emerg.; Mar. 16, 1981, Reg.; Mar. 16, 1981, Susp.; Feb. 2, 1987, Rein.	Mar. 16, 1981.
Oklahoma	Hughes County, unincorporated areas	400467	Aug. 6, 1988, Emerg.	Aug. 9, 1977.
Pennsylvania	Mount Joy, township of, Adams County	421257	July 24, 1975, Emerg.; July 4, 1988, Reg.; July 4, 1988, Susp.; Sept. 2, 1988, Rein.	July 4, 1988.

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State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Iowa	Hornick, city of, Woodbury County	190291	July 6, 1975, Emerg.; Sept. 27, 1985, Reg.; June 3, 1988, Susp.; Sept. 5, 1988, Rein.	Sept. 27, 1985.
Louisiana	Iota, town of, Acadia Parish	220005	Jan. 21, 1975, Emerg.; July 18, 1985, Reg.; Aug. 16, 1988, Susp.; Sept. 6, 1988, Rein.	
Oklahoma	Forest Park, city of, Oklahoma County	400379	Mar. 16, 1983, Emerg.; July 3, 1985, Reg.; Aug. 4, 1988, Susp.; Sept. 6, 1988, Rein.	
Do	Reydon, town of, Roger Mills County	400322	Nov. 16, 1983, Emerg.; July 18, 1985, Reg.; Aug. 4, 1988, Susp.; Sept. 6, 1988, Rein.	
Do	Wright City, city of, McCurtain County	400109	Nov. 29, 1976, Emerg.; Aug. 4, 1988, Susp.; Sept. 6, 1988, Rein.	
Texas	Fruitvale, city of, Van Zandt County	481041	Jan. 12, 1982, Emerg.; Aug. 16, 1988, Reg.; Sept. 9, 1988, Rein.	July 19, 1976.
Louisiana	Port Vincent, village of, Livingston County	220119	May 17, 1977, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp.; Sept. 8, 1988, Rein.	Aug. 16, 1988.
Do	Ferriday, town of, Concordia County	220055	Apr. 28, 1973, Emerg.; Dec. 15, 1977, Reg.; May 4, 1988, Susp.; Sept. 8, 1988, Rein.	Dec. 15, 1977.
North Carolina	Washington Park, town of, Beaufort County	370268	Sept. 29, 1972, Emerg.; Nov. 22, 1976, Reg., Feb. 4, 1988, Susp.; Sept. 8, 1988, Rein.	Nov. 22, 1976
Texas	Bowie County, unincorporated areas	481194	Feb. 17, 1981, Emerg.; Aug. 16, 1988, Reg.; Sept. 8, 1988, Rein.	Aug. 15, 1978.
Do	Gregg County, unincorporated areas	480261	Mar. 3, 1981, Emerg.; Aug. 16, 1988, Susp.; Sept 6, 1988, Rein.	
Tennessee	Dunlap, city of, Sequatchie County	470270	Sept. 29, 1975, Emerg.; Mar. 4, 1988, Reg.; Mar 4, 1988, Susp.; Sept. 6, 1988, Rein.	Mar. 4, 1988.
Texas	Hawley, town of, Jones County	480885	Sept. 15, 1980, Emerg.; July 1, 1987, Reg.; Aug. 16, 1988, Susp.; Aug. 26, 1988, Rein.	July 1, 1987
New York	Hartsville, town of, Steuben County	361602	Mar. 18, 1980, Emerg.; Sept. 17, 1982, Reg.; May 17, 1988, Susp.; Sept. 9, 1988, Rein.	Oct. 17, 1982
Iowa	Maquoketa, city of, Jackson County	190160	Sept. 10, 1976, Emerg.; Aug. 5, 1986, Reg.; June 3, 1988, Susp.; Sept. 12, 1988, Rein.	Aug. 5, 1986
Arkansas	Damascus, town of, Faulkner County	050404	Dec. 28, 1982, Emerg.; July 3, 1985, Reg.; Aug. 16, 1988, Susp.; Sept. 12, 1988, Rein.	July 3, 1985.
New York	Ovid, town of, Seveca County	360754	Jan. 12, 1976, Emerg.; Jan. 15, 1988, Reg.; Jan. 15, 1988, Susp.; Sept. 14, 1988, Rein.	Jan. 15, 1988.
Do	Worcester, town of, Otsego County	361283	Jan. 26, 1977, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.; Sept. 14, 1988, Rein.	June 1, 1988.
Texas	Browndell, town of, Jasper County	481542	Mar. 30, 1982, Emerg.; July 3, 1985, Reg.; Aug. 16, 1988, Susp.; Sept. 16, 1988, Rein.	July 3, 1985
Do	Groveton, city of, Trinity County	481032	Dec. 29, 1980, Emerg.; June 19, 1985, Reg.; Aug. 16, 1988, Susp.; Sept. 16, 1988, Rein.	June 19, 1985
Arkansas	Cotton Plant, city of, Woodruff County	050231	Aug. 11, 1975, Emerg.; Oct. 12, 1982, Reg.; Aug. 16, 1988, Susp.; Sept. 16, 1988, Rein.	Oct. 12, 1982
Iowa	Oakland, city of, Pottawattamie County	190237	May 30, 1975, Emerg.; Aug. 3, 1981, Reg.; June 3, 1988, Susp.; Sept. 15, 1988, Rein.	Aug. 3, 1981
Georgia	Woodstock, city of, Bedford County	130264	Jan. 20, 1976, Emerg.; July 15, 1988, Reg.; Sept. 2, 1988, Susp.; Sept. 17, 1988, Rein.	Sept. 2, 1988
Pennsylvania	Bedford, Borough of Bedford County	421228	July 30, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp.; Sept. 16, 1988, Rein Sept. 2, 1988..	
Texas	Needville, town of, Fort Bend County	480820	Feb. 8, 1980, Emerg.; Dec. 20, 1977, Reg.; Sept. 2, 1988, Susp.; Sept. 16, 1988, Rein.	Dec. 20, 1977
Do	Martin County, unincorporated areas	481236	Sept. 22, 1988	
Tennessee	Huntsville, town of, Scott County	470387	Sept. 26, 1988	
Arizona	Pinetop-Lakeside, town of, Navajo County	040127	Sept. 22, 1988, Emerg.; Sept. 22, 1988, Reg	Aug. 16, 1988
New York	[1]Birdsall, town of, Allegany County	361362	June 4, 1981, Emerg.; July 16, 1982, Reg	July 16, 1982.
Texas	Arcola, city of, Fort Bend County[2]	481619	Sept. 26, 1988, Emerg.; Sept. 26, 1988, Reg	Aug. 5, 1986
California	Marina, city of, Monterey County	060727	Sept. 26, 1988, Emerg.; Sept. 26, 1988, Reg	Feb. 17, 1988
Do	Los Gatos, city of, Santa Clara County	060343	June 12, 1975, Emerg.; Jan. 17, 1979, Reg.; Aug. 16, 1988, Susp.; Sept. 22, 1988, Rein.	Jan. 17, 1979
Kentucky	Augusta, city of, Bracken County	210022	Feb. 26, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp.; Sept. 21, 1988, Rein.	Sept. 16, 1988
Alabama	Tallassee, town of, Elmore/Tallassee Counties	010069	Sept. 5, 1975, Emerg.; Sept. 15, 1983, Reg.; Sept. 2, 1988, Susp.; Sept. 23, 1988, Rein.	Sept. 15, 1983
Pennsylvania	Price, township of, Monroe County	421984	Sept. 29, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp.; Sept. 16, 1988, Rein.	Sept. 2, 1988
Florida	Cross City, city of, Dixie County	120074	June 26, 1975, Emerg.; Sept. 16, 1982, Reg.; Feb. 17, 1988, Susp.; Sept. 27, 1988, Rein.	Sept. 16, 1982.
Tennessee	Roane County, unincorporated areas	470267	Oct. 21, 1974, Emerg.; Sept. 30, 1980, Reg.; Sept. 2, 1988, Susp.; Sept. 27, 1988, Rein.	Sept. 30, 1980
California	Newman, city of, Stanislaus County	060388	Nov. 7, 1974, Emerg.; Sept. 29, 1978, Reg.; Aug. 16, 1988, Susp.; Sept. 29, 1988, Rein.	Sept. 29, 1978
New York	Huntington, town of, Suffolk County	360798	Nov. 1, 1973, Emerg.; Nov. 1, 1978, Reg.; Sept. 16, 1988, Susp.; Sept. 29, 1988, Rein.	Nov. 1, 1978
Missouri	Oronogo, city of, Jasper County	290185	May 6, 1975, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.; Sept. 8, 1988, Rein.	Mar. 4, 1985
Idaho	Blaine County, unincorporated areas	165167	May 14, 1971, Emerg.; Mar. 16, 1981, Reg.; July 4, 1988, Susp.; Sept. 30, 1988, Rein.	Mar. 16, 1981
Texas	San Diego, city of, Duval County	481199	Dec. 26, 1975, Emerg.; Mar. 1, 1987, Reg.; Sept. 2, 1988, Susp.; Oct. 3, 1988, Rein.	Mar. 1, 1987
Mississippi	Clark County, unincorporated areas	280220	Apr. 26, 1979, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp.; Oct. 3, 1988, Rein.	Aug. 16, 1988

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Michigan	Ely, township of, Marquette County	260449	Nov. 9, 1981, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp.; Oct. 3, 1988, Rein.	Sept. 1, 1988.
Texas	Nash, city of, Bowie County	480058	Apr. 7, 1975, Emerg.; June 21, 1977, Reg.; Sept. 2, 1988, Susp.; Oct. 5, 1988, Rein.	June 21, 1977.
Arkansas	Fulton, town of, Hempstead County	050086	Apr. 22, 1975, Emerg.; Aug. 3, 1982, Reg.; Aug. 16, 1988, Susp.; Oct. 5, 1988, Rein.	Aug. 3, 1982.
Do	Palestine, city of, St. Francis County	050359	June 17, 1975, Emerg.; Oct. 12, 1982, Reg.; Aug. 16, 1988, Susp.; Oct. 5, 1988, Rein.	Oct. 12, 1982.
Louisiana	Grand Cane, village of, DeSoto Parish	220291	Feb. 19, 1979, Emerg.; Mar. 23, 1982, Reg.; Aug. 16, 1988, Susp.; Oct. 5, 1988, Rein.	Mar. 23, 1982.
Do	Independence, town of, Tangipahoa Parish	220209	July 25, 1975, Emerg.; July 5, 1977, Reg.; Aug. 16, 1988, Susp.; Oct. 5, 1988, Rein.	July 5, 1977.
Do	Newellton, town of, Tensas Parish	220216	May 16, 1973, Emerg.; Mar. 16, 1982, Reg.; Aug. 16, 1988, Susp.; Oct. 5, 1988, Rein.	Mar. 16, 1982.
Do	Zwolle, town of, Sabine County	220353	Nov. 12, 1976, Emerg.; July 18, 1985, Reg.; Aug. 16, 1988, Susp.; Oct. 5, 1988, Rein.	July 18, 1985.
Georgia	Fayetteville, city of, Fayette County	130431	May 25, 1976, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp.; Oct. 5, 1988, Rein.	Aug. 4, 1988.
Mississippi	Georgetown, town of, Copiah County	280045	Oct. 16, 1979, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp.; Oct. 5, 1988, Rein.	Aug. 4, 1988.
Oklahoma	Bowlegs, town of, Seminole County	400468	May 20, 1980, Emerg.; Aug. 19, 1985, Reg.; Aug. 4, 1988, Susp.; Oct. 6, 1988, Rein.	Aug. 19, 1985.
Do	Cameron, town of, Leflore County	400271	Feb. 8, 1977, Emerg.; Apr. 19, 1983, Reg.; Aug. 4, 1988, Susp.; Oct. 6, 1988, Rein.	Apr. 19, 1983.
Do	Freedom, town of, Woods County	400227	Nov. 24, 1975, Emerg.; June 5, 1985, Reg.; Aug. 4, 1988, Susp.; Oct. 6, 1988, Rein.	May 5, 1985.
Do	McCurtain, city of, Haskell County	400397	Feb. 8, 1977, Emerg.; Aug. 19, 1985, Reg.; Aug. 4, 1988, Susp.; Oct. 6, 1988, Rein.	Aug. 19, 1985.
Do	Picher, city of, Ottawa County	400159	May 25, 1976, Emerg.; Sept. 21, 1982, Reg.; Aug. 4, 1988, Susp.; Oct. 6, 1988, Rein.	Sept. 21, 1982.
Do	Pond Creek, city of, Grant County	400433	Apr. 15, 1985, Emerg.; Mar. 1, 1987, Reg.; Aug. 4, 1988, Susp.; Oct. 6, 1988, Rein.	Mar. 1, 1987.
Do	Red Bird, town of, Wagoner County	400321	Oct. 21, 1976, Emerg.; Oct. 9, 1979, Reg.; Aug. 4, 1988, Susp.; Oct. 6, 1988, Rein.	Oct. 2, 1979.
Pennsylvania	Ross, township of, Monroe County	421895	June 1, 1976, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.; Oct. 6, 1988, Rein.	Feb. 17, 1988.
New York	Gallatin, town of, Columbia County	361316	Dec. 8, 1975, Emerg.; Oct. 16, 1984, Reg.; Sept. 16, 1988, Susp.; Oct. 7, 1988, Rein.	Oct. 16, 1984.
Florida	Gilchrist County, unincorporated areas	120094	Sept. 3, 1975, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp.; Oct. 10, 1988, Rein.	Aug. 16, 1988.
Oklahoma	Brooksville, city of, Pottawatomie County	400469	Sept. 19, 1979, Emerg.; Aug. 19, 1985, Reg.; Aug. 4, 1988, Susp.; Oct. 10, 1988, Rein.	Aug. 19, 1985.
Pennsylvania	South Newton, township of, Cumberland County	421586	Apr. 25, 1977, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp.; Oct. 11, 1988, Rein.	Aug. 4, 1984.
Alabama	Dauphin Island, town of, Mobile County[3]	010418	Dec. 11, 1970, Emerg.; Dec. 11, 1970, Reg	
Missouri	Chesterfield, city of, St. Louis County[4]	290896	Sept. 3, 1971, Emerg.; Sept. 15, 1978, Reg	
Michigan	Union, township of, Isabella County	260812	Oct. 13, 1988	
Missouri	Iron Mountain Lake, city of, St. Francois County	290897	Oct. 13, 1988	
Oklahoma	Hoffman, town of, Okmulgee County	400285	Sept. 30, 1976, Emerg.; Aug. 5, 1985, Reg.; Aug. 4, 1988, Susp.; Oct. 13, 1988, Rein.	Aug. 5, 1985.
Do	Watts, town of, Adair County	400002	Nov. 14, 1975, Emerg.; Aug. 5, 1985, Reg.; Aug. 4, 1988, Susp., Oct. 13, 1988, Rein.	Aug. 5, 1985.
Wisconsin	Bayfield County, unincorporated areas	550539	June 6, 1974, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp.; Oct. 11, 1988, Rein.	Sept. 1, 1988.
New York	Grafton, town of, Rensselaer County	361150	Oct. 1, 1975, Emerg.; Oct. 13, 1978, Reg.; Sept. 16, 1988, Susp.; Oct. 13, 1988, Rein.	Oct. 13, 1978.
Ohio	Bettsville, village of, Seneca County	390500	Dec. 21, 1978, Emerg.; Sept. 30, 1988, Reg.; Sept. 30, 1988, Susp.; Oct. 14, 1988, Rein.	Sept. 30, 1988.
Pennsylvania	Liberty, township of, Adams County	421255	Nov. 13, 1975, Emerg.; July 4, 1988, Reg.; July 4, 1988, Susp.; Oct. 19, 1988, Rein.	July 4, 1988.
Iowa	Melrose, city of, Monroe County	190465	Sept. 16, 1981, Emerg.; July 2, 1987, Reg.; June 3, 1988, Susp.; Oct. 20, 1988, Rein.	July 2, 1987.
New York	Madison, town of, Madison County	361292	Oct. 26, 1976, Emerg.; Jan. 19, 1983, Reg.; Sept. 16, 1988, Susp.; Oct. 21, 1988, Rein.	Jan. 19, 1983.
Do	East Otto, town of, Cattaraugus County	360067	July 24, 1975, Emerg.; Apr. 20, 1984, Reg.; Sept. 16, 1988, Susp.; Oct. 21, 1988, Rein.	Apr. 20, 1984.
Idaho	Post Falls, city of, Kootenai County	160083	June 16, 1975, Emerg.; Feb. 17, 1982, Reg.; July 4, 1988, Susp.; Oct. 21, 1988, Rein.	Feb. 17, 1982.
Texas	Hudspeth County, unincorporated areas	480361	Dec. 19, 1977, Emerg.; Nov. 1, 1985, Reg.; Aug. 16, 1988, Susp.; Oct. 17, 1988, Rein.	Nov. 1, 1985.
Nebraska	Eustis, village of, Frontier County	310276	Oct. 24, 1988	Sept. 19, 1975.
Ohio	Cumberland, village of, Guernsey County	390824	Oct. 26, 1988	Sept. 15, 1978.
Do	Wiltshire, village of, Van Wert County	390867	Oct. 26, 1988	Oct. 20, 1978.
Do	Munroe Falls, village of, Summit County	390843	Oct. 26, 1988	Oct. 13, 1978.
Florida	Hernando County, unincorporated areas	120110	Aug. 27, 1974, Emerg.; Apr. 17, 1984, Reg.; Sept. 30, 1988, Susp.; Oct. 25, 1988, Rein.	Apr. 17, 1984.

[1] The Town of Birdsall, (Allegany County) New York has been participating in the NFIP under State regulation. However, effective September 1, 1988, State regulations were suspended. The Town of Birdsall will continue its participation in the NFIP based upon self-regulation.
[2] The City of Arcola has adopted Fort Bend County's FIRM dated August 5, 1986.
[3] The Town of Dauphin Island, is a newly incorporated community eligible October 13, 1988. It was participating in the Regular Program as an unincorporated area of Mobile County. The Town has adopted the county's FIRM for floodplain management and insurance purposes.

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[4] The Town of Chesterfield is a newly incorporated community eligible October 13, 1988. It was participating in the Regular Program as an unincorporated area of St. Louis County. The Town has adopted the county's FIRM for floodplain management and insurance purposes.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region II:				
New York	Carlisle, town of, Schoharie County	361193	Sept. 1, 1988 Suspension Withdrawn	Sept. 1, 1988
Region V:				
Indiana	White County, unincorporated areas	180447	do	Do.
Do	Attica, city of, Fountain County	180085	do	Do.
Do	Austin, town of, Scott County	180233	do	Do.
Do	Covington, city of, Fountain County	180086	do	Do.
Do	Tipton County, unincorporated areas	180475	do	Do.
Minnesota	Todd County, unincorporated areas	270551	do	Do.
Do	Douglas County, unincorporated areas	270623	do	Do.
Do	Martin County, unincorporated areas	270641	do	Do.
Do	Meeker County, unincorporated areas	270280	do	Do.
Wisconsin	Adams, city of, Adams County	550002	do	Do.
Do	Neskoro, village of, Marquette County	550267	do	Do.
Do	Rosholt, village of, Portage County	550377	do	Do.
Region VII:				
Nebraska	Bayard, city of, Morrill County	310347	do	Do.
Region I: Regular Program.				
Connecticut.	Canaan, town of Litchfield County	090044	Sept. 2, 1988, Suspension Withdrawn	Sept. 2, 1988
Maine	Hallowell, town of, Kennebec County	230069	do	Do.
Region II:				
New York	Union Vale, town of, Dutchess County	361146	do	Do.
Region III:				
Pennsylvania.	Barrett, township of, Monroe County	421884	do	Do.
Do	Carroll Valley, borough of, Adams County	422835	do	Do.
Do	Rockland, township of, Berks County	421098	do	Do.
Region IV:				
North Carolina.	Mitchell County, unincorporated areas	370161	do	Do.
Tennessee	Lexington, city of, Henderson County	470089	do	Do.
Region V:				
Illinois	Elkhart, village of, Logan County	171010	do	Do.
Do	Greenview, village of, Menard County	170754	do	Do.
Do	Lincoln, city of, Logan County	170428	do	Do.
Do	Logan County, unincorporated areas	170427	do	Do.
Do	Menard County, unincorporated areas	170505	do	Do.
Do	Morton, village of, Tazewell County	170652	do	Do.
Minnesota	Mahnomen, city of, Mahnomen County	270266	do	Do.
Region III: Minimals.				
West Virginia.	Pennsboro, city of, Ritchie County	540182	Sept. 16, 1988, Suspension Withdrawn	Sept. 16, 1988
Region V:				
Indiana	Huntingburg, city of, Duboise County	180362	do	Do.
Michigan	Cannon, township of, Kent County	260734	do	Do.
Wisconsin	Brandon, village of, Fond du Lac County	550132	do	Do.
Do	Pigeon Falls, village of, Trempealeau County	550448	do	Do.
Region V:				
Michigan	Colon, township of, St. Joseph County	260510	do	Do.
Do	Colon, village of, St. Joseph County	260511	do	Do.
Minnesota	Stearns County, unincorporated areas	270546	do	Do.
Ohio	Zanesville, city of, Muskingum County	390427	do	Do.
Region VI:				
Arkansas	White Hall, city of, Jefferson County	050375	do	Do.
Region VIII:				
North Dakota.	Valley City, city of, Barnes County	380002	do	Do.
Arizona	Mohave County, unincorporated areas	040058	do	Do.
California	Redland, city of, San Bernardino County	060279	do	Do.
Hawaii	Hawaii County, unincorporated areas	155166	do	Do.
Region V: Minimal Conversions.				
Illinois	Monmouth, city of, Warren County	170676	Sept. 30, 1988, Suspension Withdrawn	Sept. 30, 1988
Michigan	Bruce, township of, Chippewa County	260375	do	Do.
Do	Centerville, village of, St. Joseph County	260509	do	Do.
Do	Clark, township of, Mackinac County	260759	do	Do.
Do	Croton, township of, Newaygo County	260468	do	Do.
Do	Elk Rapids, village of, Antrim County	260699	do	Do.
Do	Evart, township of, Osceola County	260810	do	Do.
Do	Fabius, township of, Fabius County	260781	do	Do.
Do	Greenbush, township of, Alcona County	260001	do	Do.
Do	Houghton, township of, Keweenaw County	260799	do	Do.
Do	Hudson, township of, Mackinac County	260807	do	Do.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Do	Long Lake, township of, Grand Traverse County	260782	do	Do.
Do	Marquette, city of, Marquette County	260716	do	Do.
Do	Nahma, township of, Delta County	260688	do	Do.
Do	Norvell, township of, Jackson County	260424	do	Do.
Do	Osceola, township of, Osceola County	260797	do	Do.
Do	Otsego, township of, Allegan County	260740	do	Do.
Do	Raber, township of, Chippewa County	260786	do	Do.
Do	Reynolds, township of, Montcalm County	260743	do	Do.
Do	Rubicon, township of, Huron County	260789	do	Do.
Do	Stronach, township of, Manistee County	260801	do	Do.
Do	Turner, village of, Arenac County	260550	do	Do.
Do	Union, township of, Grand Traverse County	260805	do	Do.
Ohio	Greenwich, village of, Huron County	390282	do	Do.
Do	Russia, village of, Shelby County	390880	do	Do.
Wisconsin	Birchwood, village of, Washburn County	550574	do	Do.
Do	Edgar, village of, Marathon County	550248	do	Do.
Do	Oakfield, village of, Fond du Lac County	550139	do	Do.
Do	Plain, village of, Sauk County	550440	do	Do.
Do	Reedsville, village of, Manitowoc County	550242	do	Do.
Do	Wild Rose, village of, Waushara County	550507	do	Do.
Do	Wonewoc, village of, Juneau County	550208	do	Do.
Region X:				
Washington.	Lind, town of, Adams County	530003	do	Do.
Do	Washtucna, town of, Adams County	530006	do	Do.
Region I: Regular Conversions.				
Maine	Damariscotta, town of, Lincoln County	230216	do	Do.
Region II:				
New York	Seneca Nation of Indians, Cattaraugus County	361591	do	Do.
Region III:				
Pennsylvania.	Albany, township of, Berks County	421046	do	Do.
Do	Damascus, township of, Wayne County	422163	do	Do.
Maryland	Baltimore, city of	240087	do	Do.
Pennsylvania.	Neville, township of, Allegheny County	425385	do	Do.
Virginia	Big Stone Gap, town of, Wise County	515521	do	Do.
Pennsylvania.	Liberty, township of, Bedford County	421343	do	Do.
Do	Washington, township of, Northampton County	421156	do	Do.
Region IV:				
Alabama	Choctaw County, unincorporated areas	010310	do	Do.
Georgia	Brantley County, unincorporated areas	130012	do	Do.
Do	Wayne County, unincorporated areas	130417	do	Do.
Kentucky	Berea, city of, Madison County	210156	do	Do.
North Carolina.	Stokes County, unincorporated areas	370362	do	Do.
Do	Greensboro, city of, Guilford County	375351	do	Do.
South Carolina.	Eastover, town of, Richland County	450173	do	Do.
Do	Myrtle Beach, city of, Horry County	450109	do	Do.
Region V:				
Illinois	Iroquois County, unincorporated areas	170731	do	Do.
Do	Morrison, city of, Whiteside County	170691	do	Do.
Do	Woodland, village of, Iroquois County	170819	do	Do.
Ohio	Middlefield, village of, Geauga County	390192	do	Do.
Do	Paulding, village of, Paulding County	390438	do	Do.
Illinois	Watseka, city of, Iroquois County	170297	do	Do.
Region VI:				
Arkansas	Horseshoe Bend, city of	050256	do	Do.
Louisiana	Livingston Parish	220113	do	Do.
New Mexico.	Monarty, city of, Torrance County	350083	do	Do.
Texas	Dayton, city of, Liberty County	480440	do	Do.
Do	Roscoe, city of, Nolan County	481558	do	Do.
Oklahoma	Miami, city of, Ottawa County	400157	do	Do.
Region VIII:				
Colorado	Teller County, unincorporated areas	080173	do	Do.
Do	Woodland Park, town of, Teller County	080175	do	Do.
Do	Westminster, city of, Adams and Jefferson Counties	080008	do	Do.
South Dakota.	Aberdeen, city of, Brown County	460007	do	Do.
Region IX:				
California	Desert Hot Springs, city of, Riverside County	060251	do	Do.
Region X:				
Idaho	Mountain Home, city of, Elmore County	160058	do	Do.
Do	Soda Springs, city of, Caribou County	160193	do	Do.
Oregon	Troutdale, city of, Multnomah County	410184	do	Do.

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State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Washington.	Almira, town of, Lincoln County	530107	....do	Do.
Do	Ephrata, city of, Grant County	530051	....do	Do.
Do	Lincoln County, unincorporated areas	530106	....do	Do.
Do	Sprague, city of, Lincoln County	530113	....do	Do.
Do	Wilbur, town of, Lincoln County	530114	....do	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: November 10, 1988.

[FR Doc. 88-26580 Filed 11-16-88; 8:45 am]
BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13 and 80

[Gen. Docket No. 88-37; FCC 88-334]

Ship Radio Officer Qualifying Service Endorsements

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The amended rules simplify both the substantive requirements and the documentation necessary for issuance of six months service endorsements to radio officers. Radio officers are required to have such an endorsement to serve as the sole radiotelegraph operator on board certain large ocean-going ships.

EFFECTIVE DATE: December 15, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR INFORMATION CONTACT: Robert P. DeYoung, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order (R&O)* adopted October 14, 1988, and released October 31, 1988. The full text of this Commission document and the amended rules are available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

Summary of Report and Order

These rule amendments concern the criteria used to determine a radio officer's eligibility for a six months service endorsement. A cargo ship equipped with an auto alarm is permitted to carry a single radio officer who has at least six months previous service as a radio officer on board a United States ship. The amended Rules simplify the requirements and documentation needed to determine qualifying service while adhering to the letter and intent of the Communications Act. The amended Rules allow time spent on board a ship performing maintenance duties, training, operating radiotelephone stations and time in port during normal ship operations to be included within the six months service period. Additionally, experience on board U.S. Government ships would qualify for the six months service endorsement. The *R&O* also propose to allow vessel owners, operators, captains and masters to certify that the applicant has successfully completed the six months qualifying service requirements. Further, the definition of "radio officer" is changed to be consistent with the Communications Act.

Ordering Clauses

We certify that section 605(b) of the Regulatory Flexibility Act of 1980, (Pub. L. 96-354), 5 U.S.C. 605(b) does not apply to these Rules because these Rules will not have a significant economic impact on a substantial number of small entities. The Rules relax the six months qualifying service certification procedures applicable to radiotelegraph operators seeking to serve as radio officers on large ocean-going ships. Since 1982 the Commission has issued 50 six month endorsements.

The rule amendments adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection the Commission imposes on the public. This proposed reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act. The authority for this action is contained in 47 U.S.C. 154(i) and 303 (l) and (r).

It is ordered, That Parts 13 and 80 are amended as shown at the end of this document.

It is further ordered, That these rule amendments shall become effective as indicated in the **"EFFECTIVE DATE"** paragraph of this document.

It is further ordered, That this proceeding is terminated.

List of Subjects

47 CFR Part 13

Commercial radio operators.

47 CFR Part 80

Maritime radio services, Ship stations.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

Amended Rules

Parts 13 and 80 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 13—COMMERCIAL RADIO OPERATORS

1. The authority citation for Part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. In § 13.12, paragraphs (b) (2) and (3) are revised to read as follows:

§ 13.12 Additional requirements for first class radiotelegraph operator's certificate and six months service endorsements.

* * * * *

(b) * * *

(2) To qualify for the six months service endorsement the applicant must show that:

(i) The applicant was employed as a radio operator on board a ship or ships of the United States for a period totaling at least six months;

(ii) The ships were equipped with a radio station complying with the provisions of Part II of Title III of the Communications Act, or the ships were owned and operated by the U.S. Government, for example the U.S. Navy of U.S. Coast Guard, and equipped with radio stations;

(iii) The ships were in service during the applicable six month period; however, any portion of single in port periods that exceed seven days must be excluded from the qualifying six months period;

(iv) The applicant held a first or second class radiotelegraph operator's certificate issued by the FCC during this entire six month qualifying period; and

(v) The applicant holds a radio officer's license issued by the U.S. Coast Guard at the time the six month endorsement is requested.

(3) To satisfy the showing required in paragraph (b)(2) of this section, the applicant must submit documents signed by the ship station licensees, masters or commanding officers of U.S. ships stating that the applicant performed the duties of a radio operator in a satisfactory manner under each of the conditions listed in paragraph (b)(2) of this section.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.157 is revised to read as follows:

§ 80.157 Radio officer defined.

A "radio officer" means a person holding a first or second class radiotelegraph operator's certificate issued by the Commission who is employed to operate a ship radio station in compliance with Part II of Title III of the Communications Act. Such a person is also required to be licensed as a "radio officer" by the U.S. Coast Guard when employed to operate a ship radio*telegraph* station.

[FR Doc. 88-26457 Filed 11-16-88; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 215, 216, 242, 245, 247, and 253

[Defense Acquisition Circular (DAC) 88-1]

Department of Defense Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 88-1 amends the DoD FAR Supplement (DFARS) with respect to deviations from the FAR and the DFARS; acquisition streamlining, best and final offers (BAFOs); production special tooling and production special test equipment (PST/PSTE); thresholds—fixed-price contracts; Contractor Insurance/Pension Review (CIPR); accountability for Government property; computer-generated Standard Forms and DD Forms; use of DD Forms; DD Forms 1653, 1654, 1921 and 1921-1; updated DD Forms; editorial corrections; and changes to DFARS (DAR) Supplement No. 1. This DAC includes an information item regarding the 1988 edition of the DFARS.

EFFECTIVE DATE: November 1, 1988, unless otherwise noted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1987 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86-1 through 86-5. Amendments made by DAC 86-6 through 86-16 were published in the Federal Register at 53 FR 38171, Sept. 29, 1988 and will be included in the Oct. 1, 1988 revision of the CFR.

B. Public Comments

DAC 88-1, Item I

This item is for informational purposes and does not contain revisions to the DFARS.

DAC 88-1, Items II, IV, and VI Through XV

Public comments were not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures. However, comments from small entities concerning the affected DoD FAR Supplement coverage will be considered. Please cite DAR Case 88-610D.

DAC 88-1, Item III

A proposed rule was published in the Federal Register on January 28, 1988 (53 FR 2514) and public comments were solicited. Comments were considered in formulating this final rule.

DAC 88-1, Item V

Public comments were solicited in an interim rule published on April 5, 1988 (53 FR 11073). Comments were considered in formulating this final rule.

C. Regulatory Flexibility Act

DAC 88-1, Items I, II, IV, VI, VII, and IX Through XV

Comments were not solicited with respect to these items. The Regulatory Flexibility Act does not apply.

DAC 88-1, Item III

This rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the program primarily involves the engineering and design of systems and equipment which ordinarily is not accomplished by small businesses.

DAC 88-1, Item V

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because small entities are not usually involved with Government prime contracts which require PST or PSTE with a cost in excess of $1 million.

DAC 88-1, Item VIII

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. because deleting the requirement for contractors to include additions and deletions of military property will not require contractors to modify existing reporting or recording systems.

D. Paperwork Reduction Act

DAC 88-1, Items I through VII, and IX Through XV

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88-1, Item VIII

On October 8, 1987, the Office of Management and Budget approved a paperwork burden package for 434,350 hours which included a burden of 38,000 hours for the reporting requirement

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generated as a result of the final rule published at 52 FR 39535, dated October 22, 1987 for DAR Case 87–28. The DAR Council realizes that that estimate and subsequent approval was low. The changes in this final rule will reduce the burden on contractors to be more in line with the hours approved for OMB Control Number 0704–0246 on October 8, 1987. Therefore, a new burden package has not been prepared and submitted to OMB for their review and approval.

List of Subjects in 48 CFR Parts 201, 215, 216, 242, 247, and 253

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88–1]

November 1, 1988.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective November 1, 1988.

This DAC, Number 88–1, is the first DAC issued to the 1988 edition of the DoD FAR Supplement (DFARS) and will be filed in that edition. The 1988 edition of the DFARS will be distributed on or about 28 October 1988.

Defense Acquisition Circular (DAC) 88–1 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 Edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—1988 Edition of the DoD FAR Supplement (DFARS)

DAC #88–16, Item I, referenced publication of the 1988 edition of the DFARS. The projected date for distribution of the new edition is October 28, 1988. This DAC #88–1 is the first DAC issued to the new edition, and replacement pages contained herein should be filed with the 1988 edition.

Item II—Deviations from the FAR and the DFARS

DFARS 201.403(a) is revised to delete the requirement for written notice of individual deviations to be furnished to the Members of the DAR Council.

Item III—Acquisition Streamlining

Revisions are made to DFARS 207, 210, and 215 to add coverage to implement DoD Directive 5000.43, Acquisition Streamlining. Acquisition streamlining is any effort related to ensuring that only necessary and cost-effective requirements are included in solicitations and contracts. It applies not only to the design, development, and production of new systems, but also to modifications of existing systems that involve the redesign of systems or subsystems. As related clause is added at 252.210–7005. A final rule was published in the **Federal Register** on September 12, 1988 (53 FR 35201).

Item IV—Best and Final Offers (BAFOs)

DFARS 215.611 is added with respect to Best and Final Offers (BAFOs). This coverage imposes new restrictions and approvals for the use of second and subsequent BAFOs and ensures that multiple BAFOs are only used when necessary in the acquisition process and then under specific management controls. A final rule was published in the **Federal Register** on August 26, 1988 (53 FR 32620).

Item V—Production Special Tooling and Production Special Test Equipment (PST/PSTE)

Section 810 of the 1988 DoD Authorization Act (Pub. L. 100–180) revised previous legislative requirements (Pub. L. 99–500) regarding the reimbursement of defense contractors for the costs of production special tooling (PST) and production special test equipment (PSTE). While Pub. L. 99–500 had restricted reimbursement to no more than 50% of the acquisition cost for PST/PSTE on the instant contract, Pub. L. 100–180 now provides that at least 50% of the total amount negotiated for PST/PSTE will be reimbursed on the instant contract. DFARS 215.873 has been revised accordingly. An interim rule with request for comments was published in the **Federal Register** on April 5, 1988 (53 FR 11073). Comments were considered in developing this final rule.

Item VI—Thresholds—Fixed-Price Contracts

The thresholds at DFARS 216.203–4 (a) and (b) are increased from $5,000 to "the small purchase threshold in FAR Part 13".

Item VII—Contractor Insurance/ Pension Review (CIPR)

DFARS Subpart 242.73 is added to provide procedural guidance to DoD personnel for conducting a Contractor Insurance/Pension Review (CIPR). The new coverage includes responsibilities for scheduling and performing CIPRs and issuing reports.

Item VIII—Accountability for Government Property

DFARS 245.505–14 is revised to require contractors to report only the fiscal year ending and beginning balances of military property. Additions and deletions made during the year are no longer required.

Item IX—Computer-Generated Standard Forms and DD Forms

DFARS Subpart 253.1 is revised to state that DoD contracting offices may computer-generate Standard Forms and DD Forms provided there is no change to the content or sequence of the data elements and the form contains the form number and edition date.

Item X—DAR Section XVI—Use of DD Forms

It has been determined not to update DAR Section XVI. Accordingly, DFARS 253.270 is deleted.

Item XI—DD Forms 1653 and 1654 (Transportation)

DD Forms 1653 and 1654 have been revised. The title of DD Form 1653 has been changed to "Transportation Data for Solicitations", and the form is updated to coincide with FAR terminology and to delete obsolete references. DD Form 1654 has been revised to provide for the bid opening or proposal closing date, whether FMS is involved, and buyer's name and location, and the tariff authority from which rates are obtained. User of the DD Form 1654 has been made optional. DFARS 247.372 and 247.373 are revised to reflect these changes. Copies of the revised forms are included in this DAC.

Note.—Department of Defense Forms are not published in the **Federal Register** or the Code of Federal Regulations. A list containing DD Form Numbers and Titles follows section 253.270.

Item XII—DD Forms 1921 and 1921–1

DFARS 215.804–6(b)(2)(i) prescribes the use of DD Forms 1921 and 1921–1 to support the SF 1411. DD Forms 1921 and 1921–1 are added to Part 253. (See Note following Item XI regarding publication of DD Forms.)

Item XIII—Updated DD Forms

Updated DD Forms 375–2 and 1664 are included in this DAC to replace former editions of the forms. (See Note following Item XI regarding publication of DD Forms.)

Item XIV—Editorial Corrections

The following editorial corrections are made:

(a) DFARS 215.811–78(b)(8)(i) is revised to change the referenced paragraph to read (4) instead of (6).

(b) DFARS 245.608–70(b), (c), (d), (e), and (f) are revised to reflect the correct address and organizational change for the Defense Reutilization and Marketing Service.

Item XV—Revisions to DFARS (DAR) Supplement No. 1

The changes made to DAR Supplement No. 1, Contractor Purchasing System Review (CPSR) Program (DARS No. 1) (31 Mar 82), are interim changes to reflect the need for prime contractors to conduct market surveys as a means to stimulate subcontract competition. A complete update of the Supplement is in process.

Note.—DAR Supplement No. 1 is not codified in the Code of Federal Regulations, and it is not part of the subscription to the DoD FAR Supplement. It must be purchased separately from the Government Printing Office.

Adoption of Amendments

Therefore the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Parts 201, 215, 216, 242, 245, 247, and 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.403 is amended by revising paragraph (a) to read as follows:

201.403 Individual deviations.

(a) Except where elsewhere prohibited, deviations from the FAR or this supplement or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures. A copy shall be furnished to: The Deputy Assistant Secretary of Defense (Procurement), OASD (P&L) Attention: DAR Council, Washington, DC 20301–3082.

(b) * * *

PART 215—CONTRACTING BY NEGOTIATION

215.611 [Amended]

3. Section 215.611 is amended by substituting in the first sentence of paragraph (c) (S–72) between the word "and" and the word "under" the word "recorded" in lieu of the word "documented".

215.811–78 [Amended]

4. Section 215.811–78 is amended by substituting in the first sentence of paragraph (b)(8) in the referenced paragraph in parentheses the number "(6)" in lieu of the number "(4)".

5. The interim rule published on April 5, 1988 (53 FR 11073) is adopted as final with the following changes:

6. Section 215.873 is revised to read as follows:

215.873 Production Special Tooling and Production Special Test Equipment (PST/PSTE).

(a) *General.* (1) Pursuant to 10 U.S.C. 2329, when a contractor, in order to perform a production contract, is required to acquire or fabricate production special tooling (PST) and production special test equipment (PSTE) at a total cost to a contractor of $1 million or more, the contracting officer shall comply with the procedures in paragraph (c) below, unless one of the exceptions in paragraph (d) below applies.

(2) When a contractor, in order to perform a production contract, is required to acquire or fabricate PST and PSTE at a total cost to the contractor of less than $1 million, the instant contract will generally provide for full payment.

(b) *Definitions.* (1) "Production special tooling" and "production special test equipment", as used in this subpart, are those subsets of "special tooling" and "special test equipment" (as defined in FAR 45.101) that support production rates and quantities.

(2) "Maximum amount", as used in this subpart, means the total amount to be paid to the contractor on the instant and any future contracts as a direct cost for the PST and PSTE to be acquired or fabricated to perform the instant contract as negotiated with the contractor. The total amount can be a specific dollar amount or dollar ceiling

(c) *Procedures.* (1) When the criteria specified in paragraph (a) above apply, the contract shall include a special provision negotiated between the contractor and the Government, which specifies, as a minimum, the following:

(i) A listing of, or reference to a listing of, the PST and PSTE which the contractor will acquire or fabricate to perform the contract;

(ii) The maximum amount the contractor may be paid on the instant and future contracts for the PST and PSTE;

(iii) The amount to be paid to the contractor on the instant contract for the PST and PSTE being acquired or fabricated;

(iv) An amortization schedule for the payment, subject to availability of funds, of the balance of the amount specified in paragraph (c)(1)(ii) above;

(v) That, in the event the contract or program is terminated before the maximum amount specified for the PST and PSTE has been paid, for reasons other than the contractor's failure to perform, the contractor shall be paid the balance of the maximum amount, or the actual direct costs incurred, whichever is less, subject to the availability of funds;

(vi) That costs incurred by the contractor for the acquisition and fabrication of the PST and PSTE shall be treated as direct changes under the instant and future contracts. If the instant contract does not provide for payment of the maximum amount in paragraph (c)(1)(ii) above, the balance of these costs shall not be shifted, assigned to other programs, or charged to indirect cost pools;

(vii) The respective parties' rights to title.

(2) Where it is anticipated that future contracts will be awarded to the same contractor for the same or similar items for which the contractor will be able to use the PST and PSTE, the instant contract will provide for payment of at least 50 percent of the maximum amount specified for the PST and PSTE, except when the Head of the Agency determines, in advance of contract award, that the use of a percentage less than 50 percent is in the best interests of the Government and the use of that lower percentage will not cause an undue financial burden on the contractor.

(3) Whenever it is anticipated that no future contracts will be awarded as provided in paragraph (c)(2) above, the instant contract will provide for full payment of the maximum amount specified for the PST and PSTE.

(4) When a contract does not provide for payment of the maximum amount specified for the PST and PSTE under the instant contract and an amortization schedule is established in accordance with paragraph (c)(1)(iv) above, the contracting officer shall make the following adjustments for calculating profit objectives and facilities capital cost of money on the instant and future contracts:

(i) The contracting officer shall separately calculate a cost of money amount for the unamortized portion of PST and PSTE costs by multiplying the unamortized portion of the PST and PSTE costs by the current cost of money rate by the period of time (years or portions thereof) until the next contract is awarded for which charges for the PST and PSTE will be reimbursed. This cost of money amount computed above shall be included in the price of the instant contract. When the weighted guidelines method is used, this amount shall not be included on the DD Form

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1861, but will be added to Line 32 of the DD Form 1547.

(ii) When establishing a profit objective using DFARS Subpart 215.9, only those PST and PSTE costs being priced for payment under the instant contract action will be profit-bearing on that contract. These costs shall be included as part of the cost base for performance risk and contract type risk (including working capital adjustment). The unamortized balance of the PST and PSTE costs shall not be profit-bearing on the instant contract, nor shall they be included in the facilities capital employed base.

(iii) For future contract actions on which the unamortized balance of the PST and PSTE costs (or portions thereof) will be paid thereunder, cost of money and profit shall be calculated in accordance with the procedures of paragraphs (c)(4) (i) and (ii) above.

(d) *Exceptions.* The procedures set forth in paragraph (c) above do not apply to contracts:

(1) Where the PST and PSTE will be used by the contractor solely for final production acceptance testing;

(2) Awarded as a result of sealed bidding procedures contained in FAR Part 14;

(3) Where prices are, or are based on, established catalog or established market prices of commercial items sold in substantial quantities to the general public; or

(4) Where price is set by law or regulation.

PART 216—TYPES OF CONTRACTS

216.203–4 [Amended]

7. Section 216.203–4 is amended by substituting in paragraph (a) and in paragraph (b) the words "the small purchase threshold in FAR Part 13" in lieu of the dollar figure "$5,000" in both places.

PART 242—CONTRACT ADMINISTRATION

8. A new subpart 242.73 is added to read as follows:

Subpart 242.73—Contract Insurance/Pension Review (CIPR)

Secs.
242.7300 Objective.
242.7301 Requirements.
242.7302 Responsibilities.

Subpart 242.73—Contract Insurance/Pension Review (CIPR)

242.7300 Objective.

(a) This subpart sets forth the requirements for conducting a Contractor Insurance/Pension Review (CIPR). A CIPR is an in-death evaluation of a contractor's insurance program, pension plan(s), other deferred compensation plans, and related policies, procedures, practices, and costs. The Defense Logistics Agency (DLA) is the designated Department of Defense Executive Agency for CIPRs. The Administrative Contracting Officer (ACO) is responsible for determining the reasonableness of insurance/pension costs to be considered on government contracts. Insurance/Pension Specialists (I/PSs) assigned to certain DLA Defense Contract Administration Services Regions (DCASRs) are responsible for assisting contracting officers in making these determinations by conducting CIPRs.

(b) The CIPR should be the only formal review of a contractor's insurance/pension program, except for periodic tests of the system performed by contract administration and DCAA, or any special reviews which the ACO may initiate. If any organization believes that additional reviews of the contractor's insurance/pension program should be performed, that request should be conveyed to the ACO. The ACO should perform the review as part of an ACO-initiated special review, or, if possible, as part of the CIPR if one is scheduled to be conducted in the near future.

242.7301 Requirements.

(a) Initial and biennial CIPRs will be performed at contractor locations that have actual or anticipated annual sales to the Government of $10 million or more on negotiated prime contracts, contract modifications, and subcontracts under Government prime contracts. However, it may be appropriate to conduct CIPRs on a more or less frequent basis under certain circumstances, e.g., prior to a major contract award, in conjunction with in-depth overhead reviews or subsequent to mergers or divestitures.

(b) Special reviews may be performed on selected insurance and pension elements at those contractors that do not meet the criteria for an initial review, but where significant problems have been identified. Also, these reviews may be performed to follow-up contractor implementation of recommendations from prior reviews and to verify Government recovery of credits.

(c) During the period of time between team reviews, the Government may perform any additional review necessary to establish the validity of Government costs.

242.7302 Responsibilities.

(a) The ACO is responsible for:

(1) Determining the need for a CIPR in accordance with sections 242.7300 and 242.7301.

(2) Requesting and scheduling the reviews with the appropriate DLA activity.

(3) Notifying the contractor of the proposed date, purpose of the CIPR, and obtaining from the contractor information needed by the I/PS.

(4) Advising the contractor of the results of the CIPR after receipt of the approved CIPR report.

(5) Providing other interested contracting officers copies of letters to the contractor or reports detailing the results of the CIPR.

(6) Advising the contractor that any significant changes in insurance/pension plans must be submitted to the ACO for review and acceptance prior to making the changes.

(7) Assuring adequate follow-up on all CIPR recommendations.

(b) DLA is responsible for:

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the Military Departments and DCAA a copy of the schedule.

(2) Heading the team that conducts the review.

(3) Reviewing the documentation and ensuring that documentation (e.g., CIPR work papers and files) is complete.

(4) Reviewing and approving all CIPR reports.

(5) Preparing and distributing the final CIPR reports. In the event there is a discrepancy between the audit report and the draft CIPR report, every effort will be made to resolve such discrepancy before a final CIPR report is issued to the contracting officer.

(6) Providing the final audit report as an attachment to the CIPR report.

(7) Preparing the draft letter for the contracting officer's use in notifying the contractor of CIPR results.

(8) Advising the ACO and other DCASRs or Military Department representatives concerning any insurance/pension matters when requested.

(c) The Defense Contract Audit Agency (DCAA) is responsible for:

(1) Participating as a member of the CIPR team.

(2) Submitting information and advice to the team based on DCAA's analysis of the contractor's books, accounting records and procedures or other related data.

(3) Issuing an audit report to the CIPR Team Captain for incorporation into the final CIPR report.

PART 245—GOVERNMENT PROPERTY

245.505–14 [Amended]

9. Section 245.505–14 is amended by removing paragraph (a)(3)(vii); and by substituting at the end of paragraph (a)(3)(vi) a period in lieu of a semi-colon.

245.607–72 [Amended]

10. Section 245.607–72 is amended by substituting in paragraph (e) the address "Defense Reutilization and Marketing Service, ATTN: DRMS–OCR, 74 N. Washington Avenue, Battle Creek, Michigan 49017–3092" in lieu of the address "Defense Property Disposal Service, DPDS–R, Federal Center, Battle Creek, Michigan 49016".

245.608–70 [Amended]

11. Section 245.608–70 is amended by substituting at the end of paragraph (b) before the word "and" the words "Region—Battle Creek (DRMR–Battle Creek)" in lieu of the words "Region-Memphis (DRMR-Memphis"; by substituting at the beginning of paragraph (c) the words "DRMR-Battle Creek" in lieu of the words "DRMR-Memphis"; by substituting at the beginning of the third sentence of paragraph (d) the words "DRMR-Battle Creek" in lieu of the words "DRMR-Memphis"; by substituting at the beginning of paragraph (e) the words "DRMR-Battle Creek" in lieu or "DRMR-Memphis"; by substituting in the second and third sentences of paragraph (e) the words "DRMR-Battle Creek" in lieu of the words "DRMR-Memphis" in both places; and by substituting in paragraph (f) the words "DRMR-Battle Creek" in lieu of the words "DRMR-Memphis".

245.610–1 [Amended]

12. Section 245.610–1 is amended by substituting in the second sentence of paragraph (a)(1)(viii) the address "Defense Reutilization and Marketing Service, ATTN: DRMS–OCR, 74 N. Washington Avenue, Battle Creek, Michigan 49017–3092" in lieu of the address "Defense Property Disposal Service (DPDS–R), Federal Center, Battle Creek, Michigan 49016."

PART 247—TRANSPORTATION

247.372 [Amended]

13. Section 247.372 is amended by changing the title to read "DD Form 1653 (JUN 88), Transportation Data for Solicitations" in lieu of "DD Form 1653 (1 MAR 68), Transportation Data for IFBs and RFPs."

247.373 [Amended]

14. Section 247.373 is amended by changing the date in the title to read "(JUL 88)" in lieu of "(1 MAR 68)"; by substituting in the first sentence the word "allows" in lieu of the word "permits"; and by adding a sentence at the end of the section to read: "Use of the DD Form is optional."

PART 253—FORMS

253.105 [Added]

15. Section 253.105 is added to subpart 253.1 to read as follows:

253.105 Computer preparation.

The Department of Defense has notified the FAR Secretariat that it will computer-generate the standard and optional forms prescribed by the FAR. Accordingly, contracting offices in the Department of Defense are not required to provide further notice to the FAR Secretariat.

253.170 [Amended]

16. Section 253.170 is amended by adding a sentence at the end of the section to read: "Contracting offices may computer-generate DD Forms provided there is no change to the content or sequence of the data elements and the form carries the DD Form number and edition date."

253.270 [Removed]

17. Section 253.270 is removed.

18. The list of forms following section 253.204–70 is amended by removing from the title of the form under the listing "253.303–70–DD–375–2" after the word "Delivery" the words "(Flash Notice)"; by substituting in the title of the form under the listing "253.303–70–DD–1653" the word "Solicitation" in lieu of the words "IFBs and RFPs"; and by adding between the listing "253.303–70–DD–1861 DD Form 1861: Contract Facilities Capital Cost of Money" and the listing "253.303–70–DD–2025 DD Form 2025: Packaging Change Recommendation/Approval" the following listings:

"253.303–70–DD–1921 DD Form 1921: Cost Data Summary Report", "253.303–70–DD–1921–1 DD Form 1921–1: Functional Cost-Hour Report (page 1)", and "253.303–70–DD–1921–1: Functional Cost-Hour Report (page 2)".

19. DAR Supplement No. 1 is amended as follows:

S1–102 Definitions.

(a) Section S1–102.13 is added to read as follows: S1–102.13 *Market Survey* is defined at FAR 7.101.

S1–307 Selecting the source.

(b) Section S1–307.1 is amended by revising paragraph (b)(5) to read as follows:

S1–307.1 Source selection.

* * * * *

(b) * * *

(5) Other Sources of Information. Market Survey is an ongoing process of investigating the market in order to obtain available qualified sources in the market place. Market surveys may be appropriate for competitive as well as for noncompetitive procurements. The following are some resources through which contractors might locate potential suppliers:

* * * * *

[FR Doc. 88–26453 Filed 11–16–88; 8:45 am]
BILLING CODE 3810–01–M

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Proposed Rules

Federal Register
Vol. 53, No. 222
Thursday, November 17, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-130-AD]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require inspection of the fuselage between body station (BS) 940 and BS 1000 body crown crease beam and the intercoastal structure, and repair, if necessary. This proposal is prompted by reports of body crease beam web and/or outer tee chord cracks between BS 940 and BS 1000, between stringers 8 left and right. The cracking is attributed to cyclic loading. This condition, if not corrected, could cause in-flight airplane depressurization and inability to sustain fail-safe loads.

DATE: Comments must be received no later than January 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-130-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposasl will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-130-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The manufacturer has notified the FAA of reports of cracks in the body crease beam web and/or outer tee chord between body station (BS) 940 and BS 1000 on Model 747 airplanes. Approximately 22 cracks up to 3 inches long were found on 11 airplanes. The cracking is attributed to cyclic loading. Failure to detect and repair cracking in the crease beam, and possible resultant adjacent frame and skin cracking, could cause in-flight airplane depressurization and inability to sustain fail-safe loads.

The FAA has reviewed and approved Boeing Service Bulletin 747-53-2297, dated June 30, 1988, which defines the specific inspection procedures to be used to check for cracks in the body crease beam web and outer tee chord between BS 940 and BS 1000, from stringer S-8L to stringer S-8R, on certain Boeing Model 747 airplanes. A modification is also described in the service bulletin, which consists of verifying that the crown crease beam, intercoastals, and adjacent frames, stringers, and skin from BS 940 to BS 1000 are free of cracks, and reinforcing the beam-to-frame and skin connections with new channels, angles, and fillers. The inspections continue after modification, but the initial inspection would not be required until 10,000 landings after modification.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would require inspection and repair, if necessary, of certain Boeing 747 series airplanes, in accordance with the service bulletin previously mentioned.

There are aproximately 700 Model 747 series airplanes affected in the worldwide fleet. It is estimated that 260 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $166,400.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes listed in Boeing Service Bulletin 747-53-2297, dated June 30, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent depressurization as a result of failure of the crease beam and resultant adjacent frame failure, accomplish the following:

A. For airplanes not modified in accordance with Boeing Service Bulletin 747-53-2297, dated June 30, 1988, or Boeing Service Bulletin 747-53-2244, dated September 20, 1985:

1. Perform detailed visual and penetrant inspections of the body crown crease beam for cracks, from BS 940 to BS 1000 and from stringers S-8L to S-8R, at the times specified in the table below, in accordance with Boeing Service Bulletin 747-53-2297, dated June 30, 1988. In addition, perform a detailed visual inspection for cracks in all adjacent intercostals, stringers, and skins in the same area, in accordance with the aforementioned service bulletin.

For unmodified airplanes: Accumulated landings as of effective date of AD	Initial compliance period for paragraph A. of this AD
13,000 or more	Within 1,000 landings after the effective date of this AD.
Between 7,500 and 13,000.	Within 2,500 landings after the effective date of this AD, but not to exceed 14,000 total landings on the airplane.
7,500 or less	Prior to accumulation of 10,000 landings.

2. If no cracks are found, repeat the detailed visual and penetrant inspections required by paragraph A.1., above, at intervals not to exceed 6,000 landings.

3. If cracks are found, repair in accordance with an FAA-approved procedure prior to further flight, except as noted in paragraph A.4. below.

4. Repair of cracks less than 1.5 inches: If there are no more than three cracks in the web and no more than three cracks in any one flange of the outer tee chord, repair of the crease beam crack may be deferred for up to 1,500 landings by stop-drilling crack ends in accordance with Boeing Service Bulletin 747-53-2297, dated June 30, 1988, and repeating the detailed visual and penetrant inspection required by paragraph A.1., above, at intervals not to exceed 250 landings until repair in accordance with paragraph A.3., above, is accomplished.

5. Prior to the accumulation of 6,000 landings after a repair and thereafter at intervals not to exceed 6,000 landings, perform the detailed visual and penetrant inspections for cracks required by paragraph A., above, including any crease beam area where cracks were found. Before further flight, repair any additional cracks found, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

B. For airplanes that have been modified in accordance with Boeing Service Bulletin 747-53-2297, dated June 30, 1988, or Boeing Service Bulletin 747-53-2244, dated September 20, 1985: Prior to the accumulation of 10,000 landings after the modification, or within the next 500 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 6,000 landings, perform the body crown crease beam detailed visual and penetrant inspections for cracks as required by paragraph A., above. If cracks are found, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 4, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26821 Filed 11-14-88; 3:56 pm]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-153-AD]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require modification of the off-wing escape slide compartment door latching mechanism by replacing the hook in the integrator assembly. This proposal is prompted by reports of the off-wing escape slide deploying in flight. In two of the these incidents the off-wing slide hit the stabilizer and elevator which may affect airplane controllability. Additionally, in this situation this escape slide would not be available in the event of an emergency evacuation.

DATE: Comments must be received no later than January 9, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-153-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young, Airframe Branch, ANM-120S; telephone (206) 431-1929. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

BEST COPY AVAILABLE

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SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-153-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Boeing Model 767 off-wing escape slides are installed in a compartment in the wing-to-body fairing. Normally, when an overwing exit is opened, the escape slide is deployed from the compartment and inflates to provide an escape route from the wing to the ground.

The off-wing escape slide compartment door latching mechanism consists primarily of the latch train, system integrator, and latch opening actuator. When the overwing exist is opened, the actuator pulls on the latch train through the system integrator and unlatches the compartment door. The latch train consists of four latches to hold the compartment door closed and associated connecting hardware. When the actuator fires, the system integrator opens the latches and initiates the door opening/snubbing actuators. The system integrator also provides a means of manually opening the compartment for maintenance. The integrator, when properly rigged, will prevent the latches from opening inadvertently by means of a hook.

There have been several incidents of the off-wing escape slide inadvertently deploying in flight due to an incorrectly rigged nut on the door opening actuator, which prevents the system integrator hook from properly engaging. The close rigging tolerance on the actuator nut leaves the system susceptible to mis-rigging. If the integrator hook is not engaged, the latches may vibrate open in flight and escape slide compartment will open, deploying the escape slide. The escape slide then inflates and tears loose from the airplane. In one incident, the off-wing slide damaged the inboard flap and the elevator, and in another incident, the slide hit and slightly damaged the fuselage and stabilizer.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-25A0104, Revision 1, dated September 29, 1988, which contains instructions for replacement of the integrator hook and instructions for rigging the system. The new hook will make the system less susceptible to mis-rigging and the new rigging instructions will assure proper installation of the actuator. Those airplanes listed in Group 2 and those in Group 1 with Boeing Service Bulletin 767-25-0051 incorporated would be required to have the integrator hook replaced. The optional integrator assembly rework is not required.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the integrator hook and rigging of the escape slide system in accordance with the service bulletin previously mentioned.

There are approximately 150 Model 767 series airplanes in the worldwide fleet. It is estimated that 60 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 767 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to all Model 767 series airplanes, identified in Boeing Alert Service Bulletin 767-25A0104, Revision 1, dated September 29, 1988, certificated in any category. Compliance required within 6 months after the effective date of this AD, unless previously accomplished.

To ensure that the off-wing escape slide does not inadvertently deploy due to a disengaged integrator hook, accomplish the following:

A. Replace the integrator hook and rig the escape slide system, in accordance with Boeing Alert Service Bulletin 767-25A0104, Revision 1, dated September 29, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 1, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26533 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-149-AD]

Airworthiness Directives: Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require inspection and replacement, if necessary, of roller fittings used on flight attendant seats. This proposal is prompted by reports of fatigue cracks discovered in one of the affected seats during an accident investigation. Fatigue cracks in the seat pan roller can result in seat failure in emergency landing conditions and injury to the occupant, and potentially rendering the adjacent exit unusable.

DATE: Comments must be received no later than January 10, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-149-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Trans Aero Industries, Inc., 502 North Oak Street, Inglewood, California 90302-2942, and from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing data for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-149-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During the accident investigation following an accident in which a Boeing Model 737 airplane overran the runway during landing, it was discovered that the seat pan roller fitting on one of the flight attendant seats had evidence of fatigue. The seat had failed in the accident after experiencing very high loads.

The flight attendant seat is a fold-down retractable type that is spring-loaded to the stowed position when not occupied. The roller fitting guides the retraction motion. If the roller fitting fails, the seat could pivot downward and cause injury to the occupant. In addition, if the seat fails in the down position, it may not be possible to retract the seat. Since some seats are positioned near floor level exists, such that seat retraction is necessary to open the exist, failure of the roller fitting could result in an exist being unavailable in an emergency.

The NTSB has issued Safety Recommendation A-87-109 to recommend that the FAA issue an airworthiness directive to require a one-time inspection of the affected seat pan roller assembly.

The FAA has attempted to obtain information regarding the status of in-service flight attendant seats, but has been unable to obtain sufficient information to determine that a fleet-wide problem does not exist. In addition, the seat manufacturer has issued Trans Aero Service Bulletin No. 113, dated May 11, 1988, advising operators of the potential fatigue problem and describing an inspection to determine if fatigue is present. However, the manufacturer has been unable to obtain meaningful feedback from operators as to whether or not they are accomplishing the inspection recommended in the service bulletin.

Due to the potential hazards if the roller fitting fails, and in the absence of sufficient data to show that a fleet-wide fatigue problem is not present, the FAA has determined that an airworthiness directive is warranted, requiring inspection and replacement, if necessary, of Trans Aero seat pan roller assembly, part number (P/N) 90862-3 and -4.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive inspections of seat pan rollers fittings for evidence of fatigue in accordance with Trans Aero Service Bulletin No. 113, dated May 11, 1988. The AD would also require replacement of the fitting if fatigue is present. In addition, a requirement to report the results of the inspections would be included.

There are approximately 1,600 Model 737 series airplanes in the worldwide fleet. It is estimated that 600 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,000.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship

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between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to Model 737 series airplanes, equipped with flight attendant seats, Trans Aero part number (P/N) 90835, certificated in any category. Compliance required as indicated.

To prevent possible failure of flight attendant seats, accomplish the following:

A. Within the next 12 months after the effective date of this amendment, unless previously accomplished within 6 months prior to the effective date of this amendment, inspect the P/N 990882–3 and –4 seat pan roller fittings for evidence of fatigue and/or deformation, in accordance with Trans Aero Service Bulletin No. 113, dated May 11, 1988. Repeat the inspection at intervals not to exceed 18 months.

B. If evidence of fatigue or deformation is found, prior to further flight, replace the seat pan roller fitting with an airworthy part.

Inspect the new fitting, in accordance with paragrah A., above, at intervals not to exceed 18 months.

C. Within 10 days after completion of the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note. The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Trans Aero Industries, Inc., 502 North Oak Street, Inglewood, California 98302–2942, or to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 2, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–26535 Filed 11–16–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–156–AD]

Airworthiness Directives: Fokker Model F–27 Series Airplanes

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Fokker Model F–27 series airplanes, which would require a one-time inspection of the upper brace strut in the nacelle center section, to ensure the struts are the correct configuration, and replacement, if necessary. This proposal is prompted by a report of a broken upper brace strut due to fatigue cracking. This condition, if not corrected, could result in engine separation and subsequent structural damage to the airplane aft of the engine.

DATE: Comments must be received no later than January 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administation, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Fokker Model F–27 Series airplanes.

The manufacturer has received one report of a broken upper nacelle brace strut on a Model F–27 series airplane found during a transit check. Investigation revealed that the brace strut probably failed due to fatigue cracking that initiated at the hole of a self-tapping screw. The broken brace strut was found to deviate from the production configuration by not having a welded washer with a screw at both ends of the brace strut tube. This condition, if not corrected, could result in engine separation and subsequent structural damage to the airplane aft of the engine.

Fokker has issued Service Bulletin F27/54–44, dated July 7, 1988, which describes procedure for a one-time inspection of the upper nacelle brace struts to determine the brace strut configuration, and replacement if the brace strut is in the improper configuration. The RLD has classified this service bulletin as mandatory, and has issued Netherlands Airworthiness Diréctive BLA No. 88–44.

This airplane is manufactured in Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require a one-time inspection of the upper nacelle brace struts to ensure the struts are the correct configuration, and replacement, if necessary.

It is estimated that 11 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor costs would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,760.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($160). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

§ 39.13 [Amended]

Fokker: Applies to Model F–27 series airplanes, Serial Numbers 10102 through 10307, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent engine separation and subsequent structural damage to the airpline aft of the engine, accomplish the following:

A. Within 60 days after the effective date of this AD, inspect both the right and left upper nacelle brace struts, in accordance with Fokker Service Bulletin F27/54–44, dated July 7, 1988. If any brace strut is found with a self-tapping screw, prior to the accumulation of 30,000 landings on the strut, or within the next 500 landings after the effective date of this AD, whichever occurs later, replace the brace strut in accordance with the referenced service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an accepable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspection required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 4, 1988.

Leroy A. Keith, Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–26538 Filed 11–16–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–124–AD]

Airworthiness Directives: McDonnell Douglas Model DC–8 Series Airplanes Equipped with Control Columns, P/N's 5614272–1 and/or –2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive, applicable to all McDonnell Douglas Model DC–8 series airplanes, which currently requires inspection of specific areas of the control columns for cracks, and rework or replacement, as necessary. This action would require inspection of additional areas of the control columns for cracks, and rework or replacement, as necessary. This action is prompted by reports of additional cracking found in areas outside of those required to be inspected by the existing AD. Such cracking, if not detected and corrected, could lead to failure of the control column which, if it occurred during a critical flight regime, could result in loss of control of the airplane.

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DATE: Comments must be received no later than January 10, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, AMN-103, Attention: Airworthiness Rules Docket No. 88-NM-124-AD, 17900 Pacific Highway South, C-68966 Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 E. Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace Engineer, Airframe Branch, AMN-1221, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-124-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On April 5, 1973, FAA issued AD 73-07-09, Amendment 39-1967 (39 FR 33791; September 20, 1974), to require inspections of specific areas of the control columns (P/N's 5614272-1 and -2) on McDonnell Douglas DC-8 series airplanes for cracks, and rework or replacement, as necessary. The requirements of the existing AD are intended to detect early fatigue cracking of the pilot's and/or copilot's control column. Such cracking, when left undetected, may propagate and reach critical crack length, resulting in failure of the control column. Failure of a control column during critical flight regime could result in the loss of airplane control.

Since issuance of that AD, fatigue cracks have been identified at new locations not previously described and addressed by the existing AD and the applicable service information (McDonnell Douglas All Operator Letter 8-632). Recently, operators of Model DC-9 series airplanes have reported three incidents of fatigue cracking of both captain's and first officer's control columns. In one case, the captain's control column failed during a preflight check; the failed control column had accumulated 26,225 flight hours and 32,263 landings. The control columns used on the Model DC-9 are identical to those installed on the Model DC-8. During the past 14 years, operators of Model DC-8 series airplanes have found cracks or indications of cracks in at least 40 control columns during dye penetrant inspection. Three other instances were found on Model DC-8 series airplanes during the same time frame, where one captain's and two first officers' control columns failed completely during preflight checks. One of the Model DC-8 first officer's control columns that failed had accumulated only 13,275 flight hours. Analysis by McDonnell Douglas attributes the cracks and failures to fatigue.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-267, issued February 18, 1987, and Revision 1, dated May 22, 1987, which describes a procedure for inspection for fatigue cracks at locations including and in addition to those previously addressed in AD 73-07-09. Accomplishment of this inspection will determine the condition of the control columns. The allowable limits and blendout criteria established in AD 73-07-09 for surface crack indications are retained.

The FAA has also reviewed and approved McDonnell Douglas DC-8 Service Bulletin 27-267, dated January 20, 1988, which provides instructions for replacement of both the captain's and first officer's control columns with new columns having improved fatigue life.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 73-07-09 to require repetitive inspections of the control columns for cracks, and rework or replacement, as necessary, in accordance with the McDonnell Douglas Service bulletins previously described. Replacement of both control columns with the new improved columns would constitute terminating action for the requirements of the AD.

There are approximately 350 model DC-8 series airplanes in the worldwide fleet. It is estimated that 256 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14 manhours per airplane to accomplish the initial inspection, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $143,360 for the initial inspection cycle.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($560). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 73-07-09, Amendment 39-1967 (39 FR 33791; September 20, 1974), with the following new airworthiness directive:

§ 39.13 [Amended]

McDonnel Douglas: Applies to Model DC-8 series airplanes equipped with control columns, P/N's 5614272-1 and/or -2, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of airplane control in critical flight regimes due to fatigue failure of the control column, accomplish the following:

A. Within the next 1,250 hours time-in-service after September 25, 1974 (the effective date of Amendment 39-1967), unless already accomplished within the last 1,250 hours time-in-service, and thereafter at intervals not to exceed 2,500 hours time-in-service, except as provided below, conduct a dye penetrant or eddy current inspection of the control columns in accordance with the instructions in McDonnell Douglas All Operators Letter 8-632, issued October 11, 1972, or equivalent inspection technique approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

1. If surface indications of cracking exist, consisting of small specks not yet joined to form a linear crack of at least ⅛-inch in length, no rework is required, but the inspection interval is thereafter reduced to 2,000 hours time-in-service.

2. If linear cracks of ⅛-inch or more exist, blendout may be accomplished, in lieu of replacement, subject to the following qualifications: Blendout shall not exceed .030-inch in depth from the original surface and shall be blended over an area 10 times the depth. The defect shall not exceed an initial length of ¼-inch. No more than two defects can occur in the same horizontal plane, and the defects shall be separated by at least 2-inch center-to-center spacing. Additional defects may be blended if the vertical distance between horizontal planes is at least 1/4-inch and the 2-inch center-to-center spacing requirement in the same horizontal plane is observed. After this rework, inspect at intervals not to exceed 2,500 hours time-in-service.

3. If cracks which exceed the limits described in paragraph A2 of this AD are discovered as a result of any inspection, remove and replace the control columns, P/N's 5614272-1 and/or -2, in accordance with paragraph C. of this AD, or rework in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Within the next 1,250 hours time-in-service after the effective date of this AD, unless already accomplished within the last 1,250 hours time-in-service, conduct a dye penetrant or eddy current inspection of the control columns, in accordance with the instructions in McDonnell Douglas DC-8 Alert Service Bulletin A27-267, dated February 18, 1987, or Revision 1, dated May 22, 1987, or equivalent inspection technique approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

1. If no cracks are found, accomplish repetitive inspections at intervals not to exceed 2,500 hours time-in-service.

2. If cracks are found, prior to further flight, remove and replace the control column(s) in accordance with paragraph C. of this AD.

C. Replacement of pilot's or copilot's control column, P/N's 5614272-1 or 5614272-2, with new control columns, SB 09270288-3 or SB 09270288-4, respectively, in accordance with McDonnell Douglas DC-8 Service Bulletin 27-267, issued January 20, 1988, constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on November 2, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26534 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-178-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 series airplanes, which would require repetitive aided visual inspections for cracks in certain longerons. This action is prompted by reports of fuselage skin and longeron cracks in the upper fuselage over the wing. This condition, if not corrected, could result in degradation of the structural integrity of the fuselage and rapid decompression of the airplane.

DATES: Comments must be received no later than December 23, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-178-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1-750 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O'Neil, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90808; telephone (213) 988-5320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public

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contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–178–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On May 19, 1987, the FAA issued AD 87–14–07, Amendment 39–5630 (52 FR 25589; July 8, 1988) to require supplemental structural inspections of principal structural elements as defined in the Supplemental Inspection Document (SID) for certain McDonnell Douglas Model DC–9–30 series airplanes. During these supplemental structural inspections conducted in accordance with AD 87–14–07, an operator found skin cracks at 4 locations near longeron 1 at overwing stations on a Model DC–9–30 series airplane that had accumulated a total of approximately 69,000 landings. On another airplane with 65,000 landings, cracked skin fasteners were noted, and upon further inspection, 14 longeron cracks were found. Subsequent inspections have revealed skin cracks on 4 airplanes and longeron cracks on 23 airplanes. Preliminary investigation has revealed that the cracks are attributed to fatigue.

This condition, if not corrected, could degrade the structural integrity of the fuselage and lead to possible rapid decompression.

The FAA has reviewed and approved McDonnell Douglas DC–9 Alert Service Bulletin A53–230, dated November 2, 1988, which describes the areas to be inspected, methods of inspection, and repair instructions.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed that would require repetitive aided visual inspections for cracks in the longerons of the area in the upper fuselage over the wing, and repair, if necessary, in accordance with the McDonnell Douglas service bulletin previously mentioned.

Based on the same reports of cracking described above, the FAA has issued a separate final rule, Amendment 39–6071, Docket 88–NM–172–AD, to require repetitive external eddy current inspections of this same area of the longerons and the fuselage skin.

There are approximately 267 Model DC–9 series airplanes of the affected design in the worldwide fleet. It is estimated that 245 airplanes of U.S. registry would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $470,400 for the initial inspection cycle.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC–9 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–9–10, –20, –30, –40, –50, and C–9 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished. To prevent fatigue cracking and failure of fuselage skin and longerons, accomplish the following:

A. Prior to the accumulation of 55,000 landings, or within 1,500 landings after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 2,500 landings, perform an aided visual inspection (3x to 5x magnification) of the longerons from longeron 7 left through 7 right from inside the fuselage, in accordance with the accomplishment instructions of McDonnell Douglas DC–9 Alert Service Bulletin A53–230, dated November 2, 1988, within the range of fuselage stations for the particular series airplane as specified in Table I of that service bulletin.

B. Conduct repetitive inspections in accordance with paragraph A. above, according to the following schedule:

1. For Model DC–9–40 series airplanes: repeat the inspections at intervals not to exceed 2,500 landings.

2. For Model DC–9–10, –20, –30, –50, and C–9 series airplanes: repeat the inspections at intervals not to exceed 5,800 landings.

C. If cracks are detected, prior to further flight, repair in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A53–230, dated November 2, 1988.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21–197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on November 8, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–26823 Filed 11–14–88; 4:02 pm]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–155–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require a periodic operational check to manually open and close all entry/service doors to verify the integrity of the door counterbalance torsion springs, and replacement, if necessary. This proposal is prompted by reports of several instances of broken graphite composite counterbalance torsion springs which inhibit normal door operation. This condition, if not corrected, would require extra effort to unlatch the door, and manual assistance to open the door in the emergency mode, or would render the door inoperable should the broken spring jam the counterbalance assembly. A jammed counterbalance assembly would prevent the door from opening when required during an emergency evacuation.

DATE: Comments must be received no later than January 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–155–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Airframe Branch, ANM–120S; telephone (206) 431–1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–69866, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–155–AD, 17900 Pacific Highway South, C–69866, Seattle, Washington 98168.

Discussion

Several operators of Boeing Model 767 airplanes have reported instances in which an entry/service door was inoperable in the normal opening mode. Investigation revealed that the door counterbalance inner graphite composite torsion spring had fractured, resulting in a loss of approximately 50% of the mechanical assist capability. Those doors, having counterbalance assemblies in which the inner torsion spring has fractured, are operable in the emergency mode, providing that the broken spring does not jam the counterbalance assembly. This operation requires extra effort to be applied to the operating handle to unlatch the door and release the emergency evacuation slide/raft pack, and manual assistance to lift the door. Doors with jammed counterbalance assemblies would prevent the doors from opening when required for emergency evacuation.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–52A0053, dated August 25, 1988, which describes an operational check to detect a broken counterbalance torsion spring, and replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require a periodic operational check of entry/service doors and replacement of the counterbalance torsion spring, if necessary, in accordance with the service bulletin previously mentioned. This is considered interim action until an improved counterbalance torsion spring is developed, at which time the FAA may consider further rulemaking to address it as terminating action for the periodic checks.

There are approximately 104 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 50 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,000 per inspection or $24,000 per year.

The regulation proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA had determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, is promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of

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the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line position 132, 136, 140, and subsequent, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure opening of entry/service doors when required for emergency evacuation, accomplish the following:

A. Within 350 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 350 flight hours, perform an operational check on each entry/service door to detect a broken counterbalance graphite torsion spring, and replace with an airworthy part, if necessary, before further flight, in accordance with Boeing Alert Service Bulletin 767–52A0053, dated August 25, 1988. After replacement of any counterbalance graphite torsion spring, continue to perform the operational checks at interval not to exceed 350 flight hours.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 4, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–26536 Filed 11–16–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–154–AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes, which would require a one-time inspection of the aileron and elevator trim screwjack assemblies to determine the presence of a circlip, and installation of the circlip if it is missing. This proposal is prompted by reports that some of the aileron and elevator trim screwjacks have been assembled without a circlip during production. This condition, if not corrected, could lead to a hazardous trim system configuration in the event of a single failure in the trim tab system.

DATE: Comments must be received no later than January 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–154–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletin, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 431–1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–154–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on British Aerospace Model BAe 146 series airplanes.

Quality control inspection by the manufacturer revealed that, during production of these airplanes, some of the aileron and elevator trim screwjacks may have been assembled without the circlip. This circlip retains a sleeve in place that provides a second load path in the attachment of the screwjacks. Absence of this circlip degrades the dual load path design of the trim tab system. This condition, if not corrected, could lead to a hazardous trim system configuration in the event of a single failure in the trim tab system.

British Aerospace has issued Model BAe 146 Inspection Service Bulletin 27–74, dated April 8, 1988, which describes procedures for a one-time inspection of the right and left aileron and elevator trim screwjacks, and installation of the missing circlip, if necessary. The CAA has classified the BAe service bulletin as mandatory.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require a one-time inspection of the aileron and elevator trim screwjack assemblies to determine the presence of a circlip, and installation of the circlip if it is missing, in accordance with the British Aerospace service bulletin previously mentioned.

It is estimated that 45 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $9,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane because few, if any, Model BAe 146 airplanes are operated by small entities. A copy of the draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace

Applies to all British Aerospace (BAe) Model 146 100A series airplanes, serial numbers up to and including E1101; and 200A series airplanes, serial numbers up to and including E2100; certified in any category. Compliance required as indicated, unless previously accomplished.

To prevent a hazardous trim system configuration, accomplish the following:

A. Within 60 days or 600 landings after the effective date of this AD, whichever occurs first, inspect the right and left aileron and elevator trim screwjack assemblies for the presence of a circlip, in accordance with BAe Inspection Service Bulletin 27–74, dated April 8, 1988. If the circlip is missing, prior to further flight, install a circlip in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 4, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 88–26537 Filed 11–16–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–119–AD]

Airworthiness Directives, McDonnell Douglas Model DC–6, –6A, –6B, R6D, C–118A (Military), and DC–7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–6 and DC–7 series airplanes, which would require inspection and replacement, if necessary, of wing center spar main landing gear fittings. This proposal is prompted by reports of stress corrosion cracking in the wing center spar main landing gear fittings. This condition, if not corrected, could lead to failure of the main landing gear.

DATES: Comments must be received no later than January 6, 1989.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–119–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5228.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the

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Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-119-Ad, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. DISCUSSION: There have been recent reports by operators of three incidents of cracking found in the wing center spar main landing gear fittings of McDonnell Douglas Model DC-6 airplanes. This cracking has been attributed to stress corrosion. Such cracking, if not detected and corrected, could lead to failure of the fitting, which could result in failure of the main landing gear.

The Model DC-7 series airplane is identical to the Model DC-6 in this area and, therefore, may be susceptible to the same type of stress corrosion cracking.

The FAA has reviewed and approved McDonnell Douglas Rework Drawing SR06578001, "NC," dated July 25, 1988, which describes procedures for inspection of the wing center spar main landing gear fitting, and rework or replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive inspections and, if necessary, rework or replacement of wing center spar main landing gear fittings, in accordance with the McDonnell Douglas rework drawing previously described.

It is estimated that 255 airplanes of U.S. registry would be affected by this AD, that it would take approximately 36 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $367,200.

The regulations proposed herein would not have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, small entities operate McDonnell Douglas Models DC-6 and DC-7 series airplanes. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects: 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-6, -6A, -6B, R6D, C-118A (Military), and DC-7 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect stress corrosion cracks and prevent failure of the wing center spar main landing gear fittings, accomplish the following:

A. Within 1 month after the effective date of this AD, unless already accomplished within the last 5 months, and thereafter at intervals not to exceed 6 months, perform a dye penetrant inspection of the wing center spar main landing gear fittings around the bore and up to the lower wing skin, paying particular attention to the milled pocket in the outboard fitting, in accordance with Douglas Rework Drawing SR 06578001, "NC." After each inspection apply LPS-3 corrosion inhibiting oil or equivalent to each fitting.

B. If a crack is found as a result of the inspection required by paragraph A., above, prior to further flight, accomplish the following:

1. If a crack is found inside the recessed pocket areas, perform an eddy current inspection to determine if the crack extends above or below recessed pocket areas.

2. If cracks are found in the recessed pocket areas which are within the limits shown on McDonnell Douglas Rework Drawing SR06578001, "NC," dated July 25, 1988, accomplish the trimout rework in accordance with that drawing. Thereafter, conduct inspections in accordance with paragraph A., above, at intervals not to exceed 3 months.

3. If cracks are found in the main landing gear cylinder bore or cracks are found which extend beyond the rework limits shown on McDonnell Douglas Rework Drawing SR06578001, "NC," dated July 25, 1988, replace the fitting(s), prior to further flight, with airworthy parts. If cracked fittings are replaced with new fittings made from 7075-T6 forging material, inspect the fittings in accordance with paragraph A., above, within 60 months after installation and thereafter at intervals not to exceed 12 months.

C. Installation of new fittings made of 7050-T7452 hand forging material constitutes terminating action for the inspections required by this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base to comply with the repair requirement of this AD when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 E. Spring Street, Long Beach, California 90806-2425.

Issued in Seattle, Washington, on October 31, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 88-26539 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-MN-139-AD]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes Equipped With Rudder Drive Torque Tube Crank Assembly, P/N 5647102-1 or 501

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-8 series airplanes, which would require inspection of the rudder drive torque tube crank assembly for fatigue cracking, and replacement, as necessary. This AD is prompted by two reported failures of that crank assembly. In one case, the pilot aborted takeoff at about V_1 speed due to a broken rudder crank assembly, which resulted in the loss of directional control. This condition, if not corrected, could result in the loss of directional flight control of the airplane during a critical flight regime.

DATE: Comments must be received no later than January 6, 1989.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-MN-139-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-MN-139-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Two operators have reported two instances of fatigue failure of the rudder drive torque tube crank. In one case, on takeoff, the captain experienced a stiff rudder at 110 knots, which resulted in his decision to reject the takeoff. Inspection of the airplane revealed that the rudder crank assembly had broken in two.

Fatigue cracking of the rudder drive torque tube crank assembly, if left undetected, could propagate and cause the assembly to fail, resulting in the loss of directional flight control of the airplane in a critical flight regime.

The FAA has reviewed and approved McDonnell Douglas DC-8 Service Bulletin 27-268, dated February 9, 1988, which describes procedures for repetitive inspections and replacement, as necessary, of the rudder drive torque tube crank assembly (P/N 5647102-1 or -501) for fatigue cracking.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and replacement, as necessary, of the rudder drive torque tube crank assembly in accordance with the service bulletin previously mentioned. Replacement of the crank assembly with an improved crank assembly (P/N 5647102-503) would constitute terminating action for the repetitive inspection requirements.

There are approximately 350 model DC-8 series airplanes in the worldwide fleet. It is estimated that 256 airplanes of U.S. registry would be affected by this AD, that it would take approximately 0.8 manhours per airplane to inspect the crank assembly for cracks, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,144 for the initial inspection cycle.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($24). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects: 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8 series airplanes, equipped with rudder drive torque tube crank assembly, P/N 5647102-1 or -501 certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of directional control of the airplane in critical flight regimes due to fatigue failure of the rudder drive torque tube crank assembly, accomplish the following:

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A. Within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished within the last 2,600 hours time-in-service, conduct an eddy current inspection of the rudder drive torque tube crank assembly, in accordance with the accomplishment instructions in McDonnell Douglas DC-8 Service Bulletin 27-268, dated February 9, 1988, or equivalent inspection technique approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. If no cracks are found, repeat the inspection in accordance with paragraph A. of this AD at intervals not to exceed 3,600 hours time-in-service.

C. If cracks are found, accomplish one of the following:

1. Replace cracked rudder drive crank assembly (P/N 5647102-1 or -501) with P/N 5647102-501, in accordance with McDonnell Douglas DC-8 Service Bulletin 27-268, dated February 9, 1988, and repeat inspections in accordance with paragraph B. of this AD; or

2. Replace the rudder drive crank assembly with P/N 5647102-503 in accordance with McDonnell Douglas DC-8 Service Bulletin 27-268, dated February 9, 1988.

D. Replacement of the rudder drive crank assembly with P/N 5647102-503, in accordance with McDonnell Douglas DC-8 Service Bulletin 27-268, dated February 9, 1988, constitutes terminating action for the repetitive inspections required by this AD.

E. Alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on October 31, 1988.

Leroy A. Keith,

Manager Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 88-26540 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Withdrawal of Proposed Interpretive Rule Relating to Classification of Motor Vehicles as Automobile Trucks

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of withdrawal.

SUMMARY: This document withdraws a notice that Customs published in the **Federal Register** on June 1, 1988 (53 FR 19933), stating that it was reviewing the criteria it considers in determining the classification of certain motor vehicles as "automobile trucks" under item 692.02, Tariff Schedules of the United States (TSUS). The recently enacted Omnibus Trade and Competitiveness Act of 1988 provides that the Harmonized Tariff Schedule of the United States (HTS), a new tariff nomenclature, will replace the TSUS on January 1, 1989. As the TSUS will not be applied for entries made after January 1, 1989, review of the criteria for prospective classification of motor vehicles under provisions of the TSUS is no longer necessary.

EFFECTIVE DATE: Withdrawal effective November 17, 1988.

FOR FURTHER INFORMATION CONTACT: John L. Valentine, Commercial Rulings Division (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

The Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), provide in Subpart B, Part 6, schedule 6, for the classification and rate of duty for motor vehicles imported into the U.S. Automobile trucks valued at $1,000 or more are classified in item 692.02, TSUS, and pursuant to a temporary rate increase under item 945.69, TSUS, are dutiable at 25 percent ad valorem. Motor vehicles for the transport of persons or articles, other than motor buses (item 692.04), and trucks specifically described in item 692.02, TSUS, are classified in item 692.10, TSUS, and are dutiable at 2.5 percent ad valorem.

On June 1, 1988, Customs published a document in the **Federal Register** (53 FR 19933), stating that it was reviewing the criteria it used in classifying certain motor vehicles as "automobile trucks" in item 692.02, TSUS, and that it was seeking comments on its review of the criteria.

On August 23, 1988, the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), was enacted. This act provides for a new tariff nomenclature, the Harmonized Tariff Schedule of the United States (HTS), which becomes effective on January 1, 1989. In general, the relevant HTS headings are 8703 and 8704. Heading 8703 provides for "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars;" heading 8704 provides for "Motor vehicles for the transport of goods." All entries of vehicles on or after January 1, 1989, will be made under the appropriate HTS subheading.

The tariff nomenclature under the HTS is different from the TSUS nomenclature and will be interpreted according to all relevant rules of interpretation, legal notes, and if necessary, any relevant legislative history.

Because Customs will be addressing the classification of all motor vehicles under the HTS, rather than the TSUS, after January 1, 1989, review of the criteria Customs should use in the future in classifying certain motor vehicles under the provisions of the TSUS is no longer necessary.

In accordance with the above, no further action is necessary on the TSUS classification issue raised in the Customs notice of June 1, 1988.

Dated: November 14, 1988.

William von Raab,

Commissioner of Customs.

[FR Doc. 88-26824 Filed 11-15-88; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 270

[FRL-3477-9]

Modifications of Hazardous Waste Management Permits

AGENCY: Environmental Protection Agency.

ACTION: Request for further comment.

SUMMARY: .On August 14, 1987 (57 FR 30570), the Environmental Protection Agency (EPA) proposed a rule under the Resource Conservation and Recovery Act (RCRA) that would simplify procedural requirements for interim status facilities that needed to add new hazardous waste management processes and for permitted facilities that wanted to manage newly listed or identified hazardous wastes. In the course of developing land disposal restrictions for the First Third scheduled wastes (53 FR 31138, August 17, 1988) and the California list wastes (52 FR 25760, July 8, 1987) EPA received several comments on the need to provide similar flexibility in the RCRA permitting regulations for facilities that need to make changes to comply with RCRA's land disposal restrictions. In particular, commenters expressed concern about the time that would be required for EPA to modify permits to allow facilities to handle restricted wastes, including treated contaminated leachate and groundwater, that meet best demonstrated available technology (BDAT) standards. In addition, members of the regulated community cited a need for increased flexibility in adding treatment processes at permitted facilities, where those processes were used to treat restricted waste to BDAT, or to facilitate such treatment. Today's notice solicits further comments on these issues, particularly on whether such changes should be classified as Class 1 modifications under the Agency's new permit modification regulations (53 FR 37912, September 28, 1988).

DATE: Comments on this notice should be submitted on or before December 19, 1988.

ADDRESSES: Comments should be addressed to the docket clerk at the following address: Environmental Protection Agency, RCRA Docket (S-212) (OS-305), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified by regulatory docket reference number FY-87-RIPP-FFFF. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 475-9327. Copies of docket materials may be made at no cost, with a maximum of fifty pages of material from any one regulatory docket. Additional copies are $0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information about the regulatory requirements under RCRA, contact the RCRA Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, Washington, DC, 20460, (800) 424-9346 (toll-free) or (202) 382-3000 (local).

Specific questions about issues discussed in this notice should be directed to Frank McAlister, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4740.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice is issued under the authority of section 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6924 and 67925.

II. Background

On August 14, 1987, the Agency proposed a rule that would provide increased flexibility for interim status facilities making changes necessary to comply with new requirements (52 FR 30570). Under the current § 270.72(a), interim status facilities may handle new wastes without specific EPA approval, and under § 270.72(c) they may add new processes, with approval, if the processes are necessary to comply with Federal, State, or local requirements. However, § 270.72(e) generally prohibits changes at an interim status facility if they would constitute a "reconstruction" of the facility—that is, if the changes would cost more than 50% of the capital cost of a comparable new facility. The August 14 proposal would lift this reconstruction limit for changes in processes necessary to comply with Federal, State, or local requirements, as long as the processes took place in tanks or containers. In addition, the August 14 notice proposed new permit modification procedures to allow permitted facilities to handle newly identified hazardous wastes. Today's notice solicits additional comment on the issue of whether permitted facilities also need greater flexibility in making changes necessary to comply with the land disposal restrictions.

These restrictions were enacted by Congress in the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA, which prohibited the land disposal of hazardous waste that does not meet specified treatment standards (or is not disposed of in land disposal units that satisfy the statutory "no-migration" standard contained in RCRA sections 3004(d), (e), and (g)). Sections 3005(d) through (g) of RCRA set out a schedule according to which specific wastes are subject to land disposal restrictions. At the same time, section 3005(m) requires EPA to set treatment standards for restricted wastes; wastes which meet these standards are not prohibited from land disposal. EPA has been implementing these restrictions in a series of rulemakings, including rules establishing standards based on Best Demonstrated Available Technology (BDAT) for solvents and dioxins (51 FR 40572, November 7, 1986), California list wastes (52 FR 25760, July 8, 1987), and First Third Wastes (53 FR 31138, August 17, 1988). Additional wastes will be subject to Land Disposal Restrictions as of June 8, 1989, and all pre-HSWA listed and characteristic wastes will be subject to the restrictions by May 8, 1990.

To meet these new requirements, RCRA treatment, storage, and disposal facilities are finding it necessary to make significant modifications in their handling of hazardous waste. For example, many facilities have sought to add new processes not identified in their permits or interim status authorizations so that they can treat restricted wastes and meet the land disposal restriction standards. Other facilities, which have treatment processes already in place, have sought to add new waste codes, allowing them to receive restricted wastes for treatment, or in certain cases to dispose of restricted wastes after treatment. Finally, some generators have experienced difficulty in finding permitted facilities than can handle specific treatment residues without permit modifications. The Agency recognizes that a flexible permitting system, expediting such modifications, is necessary for the effective implementation of the land disposal restrictions.

In developing these restrictions, therefore, the Agency took specific steps to increase flexibility in permit modifications. In the solvents and dioxins rule (51 FR 40572), the Agency amended § 270.42 of the permitting regulations to allow the addition of a new waste code as a "minor" permit modification, if the waste was restricted from land disposal under Part 268, the waste met the applicable land disposal restriction treatment standards, and handling of the waste did not present risks substantially different from the handling of wastes already listed in the permit (40 CFR 270.42(o)). In the California list rule (52 FR 25792), the Agency further expanded the list of minor permit modifications in § 270.42 to include the addition of new processes used to treat restricted waste to BDAT levels, as long as those processes took place in tanks or containers § 270.42(p)). At the same time, however, facilities were required to apply for a major permit modification.

EPA's new permit modification regulations, published on September 28, 1988 (53 FR 37912), recently superseded these amendments. In the permit modification regulations, EPA replaced the major-minor permit modification system of § 270.41 and 270.42 with a three-tiered system of modifications. Under this new system, Class 1 modifications, which are generally

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routine or technically narrow changes, are analogous to the minor modifications of the earlier regulations. Class 2 and 3 modifications, which involve more substantial changes to the facility, require more time-consuming and elaborate approval procedures, including prior public notice and comment. These changes are generally analogous to the former major modifications of § 270.41. Neither of the two minor modifications established for restricted wastes in § 270.42(o) and (p) were categorized as Class 1 in the new permit modification rules. However, the new rules allow the Agency to issue "temporary authorizations" for several changes potentially relevant to land disposal restrictions, including the treatment or storage of restricted wastes in tanks or containers and changes to protect human health and the environment. In this respect, the permit modification regulations maintain some flexibility for facilities to comply with the land disposal restrictions.

III. Summary of Comments on Permit Flexibility

In the course of the land disposal restriction rulemakings, the Agency received a number of comments on the need to further expedite permit modification procedures. As a result of these comments, the Agency began to consider that it might be desirable to restore the "minor modification" status established in the solvents and dioxins and California list rules. The Agency also noted that the flexibility these commenters request is similar to changes proposed in the August 14, 1987 "facility changes" rule for interim status facilities. Consequently, the Agency decided to transfer these comments to the docket for that proposal and will consider them further before issuing the final rule on facility changes. EPA is today soliciting comment on the two issues described below.

First, members of the regulated community have argued that the land disposal restrictions impose unexpected difficulties for owners and operators of facilities that treat, store, or dispose of mixtures of several wastes with separate EPA hazardous waste codes which are subject to the land disposal restrictions. These difficulties have two sources. First, the land disposal restrictions impose new rules for tracking and recordkeeping that require waste generators and treaters to list in an accompanying document (although not in the separate manifest) all waste codes applying to wastes in an individual batch or shipment. See 40 CFR 268.7. Second, the preamble to the proposed and final First Third land disposal rules focused on two particular types of complex wastes, "derived from" wastes and "contained in" wastes. This discussion reminded the regulated community that regulations promulgated in 1980 provide that any waste "derived from" the treatment, storage, or disposal of a listed hazardous waste is considered to be the same listed waste. These derived from wastes include leachates and residues from all types of waste treatment, including BDAT under the land disposal restrictions. See § 261.3(c)(2). A similar principle applies to wastes found in non-waste matrices, such as groundwater. See § 261.3(d)(2). Generators and treaters of derived from and contained in wastes subject to the land disposal restrictions must list all of the waste codes applying to the original wastes.

Commenters on the First Third rule, as well as members of the regulated community who have challenged that rule, have informed EPA that the combination of the new waste code requirements and the renewed focus on the nature of derived from and contained in wastes may seriously disrupt the operations of many facilities that treat or dispose of the treated residues. They maintain that the regulated community was not accustomed to listing all waste codes for these wastes with such particularity. Consequently, some permits for facilities that treat or dispose of these wastes may not contain the full array of waste codes needed to describe these complex waste matrices. According to at least one member of the regulated community, modifying permits to reflect all of the waste codes involved would take several years under current procedures for modifications. (Although interim status facilities may face similar problems, there is no need for a national rulemaking because the interim status rules already provide very flexible procedures for adding new wastes. See 40 CFR 270.72(a).)

Second, commenters have repeatedly stressed that permitted facilities need flexibility to add new treatment processes that would allow facilities to treat wastes to BDAT standards. EPA has recognized the need for this flexibility in other contexts. As explained above, EPA originally promulgated a final rule that provided such flexibility for the treatment of solvents, dioxins, and California list wastes, although the rule was later replaced by the new permit modification scheme. EPA also proposed similar flexibility for facilities operating under interim status in its August 14, 1987 facility changes proposal.

Finally, EPA notes that similar problems exist for derived from and contained in wastes that are subject to the "soft hammer" rules which now apply to First Third wastes and which will apply to some Second Thirds wastes after June 8, 1989. If EPA fails to set a treatment standard for a First Third or Second Third waste by the statutory deadline, the waste may not be placed in a landfill or surface impoundment unless the unit meets certain minimum technological requirements (relating to leachate collection and double liners). Furthermore, the waste must be treated to the most protective level achievable by practically available technologies. See 53 FR 31138, 33171–33181. Soft hammer wastes are also subject to the waste code reporting requirements described above. Consequently, EPA believes owners and operators of facilities that manage these wastes may need the same flexibility for adding new treatment processes to their facilities, and new waste codes to facility permits.

IV. Request for Further Comment

As explained above, EPA's interim status rules already provide simple procedures for adding new waste codes to a facility's interim status authorization. Also, EPA proposed in August 1987 to simplify procedures for adding new processes at interim status facilities when such processes were needed to provide treatment for restricted wastes, and when treatment took place in tanks and containers. EPA is today soliciting comment on the concept of expanding that rulemaking to provide flexiblity for permitted facilities that need to add waste codes or treatment processes to comply with the land disposal restrictions.

First, to address the treatment residue and contaminated environmental media issue, the Agency solicits comment on whether it would be appropriate to allow as a Class 1 modification, with prior Agency approval, the following change: The addition of new waste codes to a permit where the added waste is a restricted waste that meets the applicable treatment standards. This change would include treatment residues derived from restricted wastes treated to BDAT levels, as well as leachate, contaminated groundwater, or contaminated soils that are derived from or which contain restricted wastes and that meet the treatment standards. In addition, the Agency requests comment on whether these modifications should be restricted to cases where the receiving unit (if it is a landfill or surface impoundment) meets minimum technology requirements.

EPA also solicits comment on the issue of whether a permit modification allowing the receipt of residues from treating soft hammer wastes should also be a Class 1 modification. The logic for allowing Class 1 modifications for residues from treatment technologies which are BDAT for similar wastes could apply as well to soft hammer waste treatment residues. Soft hammer wastes must be treated by the practically available technologies that yield the greatest environmental benefit (§ 268.8(a)(2)(ii)). In many cases these will be technologies which approximate those which eventually will be BDAT. Thus, allowing expedited permit amendments to accommodate receipt of "soft hammer" treatment residues serves the ultimate purpose of the land disposal restrictions and RCRA in general, in the same way as it would for residues resulting from BDAT processes. In addition, the Agency has been informed that the same type of practical problem can exist for soft hammer treatment residues as for other treatment residues. For example, incinerators could commingle first third soft hammer wastes (such as small batches of § 261.33 commercial chemical products) with other prohibited wastes so that the resulting incinerator ash carries the waste codes of the soft hammer wastes as well as the other prohibited wastes. It may prove difficult finding disposal facilities with all of the § 261.33 waste codes already in the disposal permit (assuming the facility has chosen to draft its permit application by using waste codes rather than narrative description).

On the issue of soft hammer wastes, the Agency particularly requests comments on whether Class 1 modifications should be available only to *treatment* residues for which a valid certification has been submitted pursuant to § 268.8. Allowing Class 1 modifications for untreated soft hammer wastes or wastes that have not been treated by the practically available technology that yields the greatest environmental benefit does not appear to advance the ultimate goals of the land disposal restrictions statutory provisions.

EPA is requesting comment on whether these waste code modifications should be limited to wastes meeting the treatment standards or treated soft hammer wastes for which EPA has received a valid certification. The rationale for this limitation would be that such treatment will reduce risks to levels where Class 1 modifications are appropriate.

Second, there may be situations where other types of wastes carrying multiple waste codes not presently subject to a treatment standard or to a soft hammer are sent to treatment facilities. Although the facility's level of treatment may approximate eventual BDAT, if the waste carries too many waste codes the treatment facility's permit could preclude immediate receipt. An example is leachate derived from the disposal of wastes in the second or third third of the schedule. EPA solicits comment on whether the rules should be amended to allow treatment facilities to add waste codes for such wastes to their permits by means of a Class 1 modifiction with prior Agency approval. To avoid potential abuses, and link any such modification to non-land-based treatment approximating BDAT, the Agency suggests limiting the modification to situations where only tank treatment, or treatment in enclosed devices like incinerators is involved and the treatment method involves metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction. This contemplated rule change thus draws on principles in the now-superseded § 270.42(p), and the rescheduling in § 268.12 (b) and (c) (53 FR 31215, August 17, 1988).

EPA emphasizes that Federal RCRA regulations do not require that waste codes be listed in permits. The issue discussed in today's notice, however, arises in situations where a permit restricts a facility or unit to specific waste codes. These situations could be avoided if treatment residues were listed in the permit by a narrative description—such as, incinerator ash or other treatment residue derived in whole or in part from BDAT or certified (and valid) soft hammer treatment. In modifying existing permits, therefore, instead of adding waste codes, facilities may wish to incorporate a narrative description circumscribing the type of waste received, along the lines described above. EPA believes this action would be protective, given that any such residue could be measured against an objective benchmark of proper treatment—namely, meeting BDAT (or having a valid soft hammer certification) for any prohibited waste from which the treatment residue is derived. Under the approach described in today's notice, such a change could take place as a Class 1 modification, with prior Director approval.

Finally, the Agency solicits further comment on whether it should allow as a Class 1 modification, with prior Agency approval, the addition of new treatment processes, as long s those proceses are necessary to treat restricted wastes to meet treatment standards and the treatment processes are to take place in tanks or containers. This amendment would in effect reinstate the concept contained in the now superseded § 270.42(p).

The Agency is allowing a thirty-day comment period on these issues and, after review of comments, intends to move promptly to a final decision. In the meantime, it shoud be noted that the temporary authorization provisions in the permit modification rules are frequently available for facilities seeking to make changes necessary to comply with the land disposal restrictions. Because these authorizations are available for a six-month period (with the possibility of extension), the agency believes that permitted facilities have sufficient flexibility to comply with the land disposal restrictions until the issues discussed above are resolved.

V. State Authorization

No States have yet been authorized to carry out the new permit modifications regulations, and therefore authorized states do not now have the authority under RCRA to modify permits according to these procedures. However, as the Agency pointed out in the preamble to the final permit modification rule, EPA may authorize permit modifications to EPA-administered permits or permit conditions through the new procedures, where the changes are necessary to implement HSWA requirements, i.e., to achieve compliance with corrective action requirements or land disposal restrictions (53 FR 37933). Because the land disposal restrictions qualify as a HSWA requirement, the Agency now has the authority to approve temporary authorizations when necessary to allow compliance with the land disposal restrictions. Similarly, if the Class 1 modifications described above are adopted, the Agency would have the authority to approve them for EPA-administered permits or permit conditions until States were authorized for the procedures. It should be noted, however, that Federal authority in this area would not preempt more stringent authorized State standards. Where authorized State regulations or enforcement policies prohibit such

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temporary authorizations or permit modifications, they would be precluded. Those states whose rules have the earlier major modifications—minor modification scheme may, however, be able as a matter of state law to consider the changes discussed in this notice to be minor permit modifications so long as doing so is no less stringent than the federal program. Facilities in authorized States seeking temporary authorizations to comply with the land disposal restrictions, therefore, should consult both with the appropriate EPA Regional office and the State permitting authority.

List of Subjects in 40 CFR Part 270

Administrative practice and procedure, Permit modifiction procedures.

Date: November 9, 1988.

J. Winston Porter,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-26588 Filed 11-16-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6920]

Proposed Flood Elevation Determinations; Florida; Correction

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 52 FR 46799 on December 10, 1987. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Edgewater, Volusia County, Florida.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION:

The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Edgewater, Volusia County, Florida previously published at 52 FR 46799 on December 10, 1987, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
		Existing	Modified
Atlantic Ocean.	About 1,600 feet northwest of the intersection of Park Avenue and Flagler Road.	None.	*6
	About 500 feet northeast of the intersection of Virginia Street and Riverside Drive.	*6	*9

Issued: November 10, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-26579 Filed 11-16-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6923]

Proposed Flood Elevation Determinations; Florida; Correction

AGENCY: Federal Insurance Administration; Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 53 FR 4687 on February 17, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Volusia County, Florida.

FOR FURTHER INFORMATION CONTACT: John L. Matticks Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Volusia County, Florida previously published at 53 FR 4687 on February 17, 1988, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
		Existing	Modified
Atlantic Ocean/ Intra-coastal Waterway.	Just west of intersection of John Anderson Drive and Highbridge Road.	*4	*4
	About 1800 feet east of the intersection of U.S. Route 1 and Joselyn Road.	*7	*8
	About 250 feet east of State Road A1A, south of the Flagler County/ Volusia County Boundary.	*11	*13

Issued: November 10, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-26577 Filed 11-16-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6920]

Proposed Flood Elevation Determinations; Florida; Correction

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 52 FR 46799 on December 10, 1987. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Ormond Beach, Volusia County, Florida.

FOR FURTHER INFORMATION CONTACT: John L. Matticks Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION:

The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Ormond Beach, Volusia County, Florida previously published at 52 FR 46799 on December 10, 1987, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
		Existing	Modified
Intra-coastal Waterway/ Halifax River.	About 400 feet east of the intersection of North Beach Street and Cameo Circle.	*4	*5
	About 500 feet east of the intersection of Wilmette Avenue and North Beach Street.	*6	*6

Issued: November 10, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-26578 Filed 11-16-88; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Arabis Serotina (Shale Barren Rock Cress) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list a plant, *Arabis serotina* (shale barren rock cress) as an endangered species. It is found only in western Virginia and eastern West Virginia. Presently, 26 populations, totaling fewer than 1,000 reproductive individuals, are known. Many populations are adversely affected by deer browsing, construction and maintenance of roads and railroads, and livestock grazing. Several populations occur on Federal lands in the Monongahela and George Washington National Forests. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Arabis serotina*. Critical habitat is not proposed at this time. The Service seeks data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by January 17, 1989. Public hearing requests must be received by January 3, 1989.

ADDRESS: Comments and materials concerning this proposal should be send to the Supervisor, Ecological Services Field Office, Suite 322, 315 S. Allen Street, State College, Pennsylvania 16823. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sharon W. Morgan, Fish and Wildlife Biologist (see **ADDRESSES** section) (814/ 234-4090).

SUPPLEMENTARY INFORMATION:

Background

Shale barren rock cress (*Arabis serotina* Steele), a member of the mustard family, is one of several plant species endemic to dry, exposed, and mid-Appalachian habitats known as shale barrens (Keener 1983). These unique shale of Paleozoic age are found in the Ridge and Valley Section of the Appalachian Mountains from Pennsylvania south to Virgina and West Virginia. Usually surrounded by deciduous forest woodlands, shale barrens are isolated islands of habitat characterized by steep southern exposures (generally greater than 20 degree slopes), relatively sparse vegetative cover, high temperatures and low moisture in the summer, and are usually undercut by a stream at the base (Keener 1983). Eighteen endemic plant taxa are recorded from the shale barrens, including *Arabis serotina* and three other Federal candidate plant species (*Allium oxyphilum, Taenidia montana, Trifolium virginicum*) (Keener 1983).

This species is biennial, with populations usually consisting of two age-classes: young, nonreproductive individuals present in basal rosette form; and second-year plants that are potentially reproductive individuals present in the form of erect, flowering plants lacking a basal rosette of leaves. Another component of populations is the seed bank, consisting of dormant, ungerminated seeds found either at the ground surface or buried in the soil. *A serotina* may not be a strict biennial, meaning that rosettes may persist longer than one year, resulting in a delay of flowering and fruiting beyond the second year. Plants typically grow to a height of one to two feet, with a spreading, compound inflourescence of many tiny whitish flowers, each less than one quarter-inch in length.

Originally described by Edward Steele in 1911, the species has been confused with the morphologically similar *Arabis Laevigata* (Muhl.) Poir var. *burkii* Porter. Hopkins (1937) reduced *Arabis serotina* to synonymy under *Arabis laevigata* var. *burkii*. Both taxa occur on shale barrens, although the latter is not an endemic. Wieboldt (1987a, 1987b) has shown that *Arabis serotina* is distinguished from *Arabis laevigata* var. *burkii* by several key characteristics. *A. serotina* is taller with wider and more-branched inflorescences, and has smaller flowers and more narrowly winged seeds than *A. laevigata* var. *burkii*. There are also considerable differences between the flowering periods of the two taxa. All varieties of *A. laevigata*, including var. *burkii*, bloom in April and May and set seed before *Arabis serotina* begins to bloom in late June or early July. *Arabis serotina* continues to bloom into September (Wieboldt 1987b).

Arabis serotina is presently known from only 26 populations in five Virginia counties (Allegheny, Augusta, Bath, Highland and Rockbridge) and three West Virginia counties (Greenbrier, Hardy and Pendleton). An additional 1934 record from Shenandoah County,

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Virginia has not been relocated and is considered historic. The species has never been documented to be more widespread, and the reported distribution in seven West Virginia counties (Strausbaugh and Core 1978) was based on collections of *A. laevigata* var. *burkii* (Bartgis 1985). The species' highly restricted range appears to be a result of biogeographic events and not due to recent land-use changes or the lack of suitable habitat elsewhere. During 1983–85, a survey of 70 shale barrens in eight West Virginia counties resulted in only a few new populations (Bartgis 1985). Searches of 15–20 barrens in the range of *A. serotina* in Virginia revealed few additional populations (M. Lipford, Virginia Natural Heritage Program, pers. comm. 1988).

In both Virginia and West Virginia, all populations occur on Brallier Formation shales on south- to southwest-facing slopes at elevations of 1300 to 2500 feet. Most of the known populations occur partially or completely in the George Washington and Monongahela National Forests.

Populations are fairly small at all 26 locations. Since plants in the rosette stage are inconspicuous and easily overlooked, most population counts refer to only flowering and/or fruiting plants. Approximately 130 reproductive plants were found at the 13 Virginia sites in 1987 (M. Lipford, pers. comm. 1987) and only about 700 reproductive individuals comprised the 13 West Virginia populations in 1985 (Bartgis in press). Although a few additional populations may be located in the future, the typically small population sizes suggest that the total number of individuals will remain small. In both states, most populations are moderately to severely browsed by deer. Rangewide, sites have been affected to some degree by road or railroad construction, small flood-control projects, and grazing by livestock.

The U.S. Fish and Wildlife Service (Service) recognized *Arabis serotina* as a Category 2 candidate for listing in the Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species published in the **Federal Register** on November 28, 1983 (48 FR 53641). Category 2 comprises those taxa for which listing is possibly appropriate but for which existing information is insufficient to support a proposed rule. The updated notice of review for plant taxa published on September 27, 1988 again included *Arabis serotina* in Category 2.

In 1985, the Service contracted with The Nature Conservancy's Eastern Regional Office to conduct status survey work on *Arabis serotina* and other Federal candidate species. Those reports (Bartgis 1985, Rawinski and Cassin 1986) documented a high degree of threat at most *Arabis serotina* sites and recommended immediate listing by the Service.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (codified at 50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Arabis serotina* Steele (shale barren rock cress) are as follows:

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* In West Virginia, five of the shale barrens supporting known populations of *Arabis serotina* have been partially destroyed by road construction and sixth was affected by a small flood-control dam which degraded the habitat available for the species (Bartgis in press). In Virginia, three shale barrens supporting known *Arabis serotina* populations were partially destroyed by road construction, two were damaged by railroad construction, and one is crossed by a hiking trail (T. Wieboldt, Virginia Polytechnic Institute, pers. comm. 1987). The extent of the impacts of all these projects upon the *Arabis serotina* populations is unknown. Two of the West Virginia populations have been grazed by sheep or goats in the past. While no longer grazed by livestock, presently both sites have little vegetation, marked erosional features, and very few *Arabis serotina* individuals (Bartgis in press).

B. *Overutilization for commercial, recreational, scientific or educational purposes. Arabis serotina* is not known to be used for any commercial or recreational purpose. Because of its rarity, it may be subject to collection by botanists and curiosity seekers. Since most populations consist of 20 or fewer individuals, collection or vandalism at those sites could eliminate populations.

C. *Disease or predation.* The larvae of the butterfly Olympia marble (*Euchloe olympia*) have been reported to feed on *Arabis serotina* (Clench and Opler 1983), but the report is believed erroneous. Timing of larval emergence suggests that they feed on *A. laevigata* var. *burkii* (Bartgis in press). White-tailed deer (*Odocoileus virginianus*) are known to heavily browse *Arabis serotina* populations.

As in many northeastern states, deer populations are increasing in both Virginia and West Virginia, resulting in greater browsing pressure on many herbaceous plants. In West Virginia, eight of eleven *A. serotina* populations surveyed in 1985 had been browsed by deer resulting in partial or complete loss of 15 to 70% (average 30%) of the inflorescences in those populations. For example, in an unusually large population of 124 plants only 47 plants successfully set seed (Bartgis in press). At three Virginia populations with only one or two reproductive individuals each, all were browsed in 1987 (M. Lipford pers. comm. 1987). Since the plant is a biennial inhabiting a stressful environment, such a significant loss of propagules in any given year could lead to lower reproductive success. As the median reproductive population size observed in West Virginia during 1985 was 17 plants, and in Virginia during 1987 was seven plants, any minor decreases in reproductive potential through grazing or other means could completely eliminate populations.

D. *Inadequacy of existing regulatory mechanisms. Arabis serotina* is not currently protected by any state or local laws or regulations. Four populations in West Virginia and seven in Virginia occur in established National Forest Special Interest Areas (U.S. Dept. of Agriculture 1986a, 1986b). These areas are managed by the Forest Service to protect the habitat and species present. Some of these populations extend onto adjacent private land. Special Interest Areas (SIA) are not permanent designations and may be revoked by the administrating national forest. Although the SIA designation prevents habitat alteration, it does not provide protection from threats such as deer predation that may adversely affect these populations.

One West Virginia population occurs on a shale barren leased by The Nature Conservancy (TNC), and that organization is also securing voluntary protection of at least two additional populations. These voluntary agreements have no binding legal status. The ten populations on private land are not protected by any laws or regulations.

E. *Other natural or manmade factors affecting its continued existence.* Shale barren communities are relatively long-term features of the landscape, but may gradually be replaced by woodlands through succession (Keener 1983). However this process is slow and is unlikely to affect more than a very few *Arabis serotina* populations in the near future.

A. serotina is the most sporadic and rarest of the shale barren endemics (Wieboldt *in* Rawinski and Cassin 1986) and recent surveys show that populations have declined in the past few years. In addition to predation by deer, populations have been adversely affected by severe droughts in 1987 and 1988. One Virginia shale barren supported 100 reproductive individuals in 1985, but in 1987 only nine were found. Another Virginia shale barren showed three individuals in 1984 but none was found in 1987 (M. Lipford, pers. comm. 1987). At one West Virginia barren which had 136 reproductive individuals in 1985, only 12 plants set fruit in 1987 (Bartgis in press).

Many biennial species typically exhibit fluctuations in population numbers from year to year; however, repeated loss of reproductive individuals several seasons in succession poses a serious threat to long-term survival of the species. Low population numbers combined with continually decreasing contributions to the seed bank result in the species being particularly vulnerable to any natural or human-caused stresses. No attempt has been made to assess the size of the seed bank at any population. If present trends continue, the future of smaller populations will be highly uncertain.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Arabis serotina* as endangered. Habitat degradation and loss of reproduction through grazing pose severe problems to the continued existence of the species. Although 26 populations are known, 15 of these populations number 20 or fewer individuals, making the species particularly vulnerable to any threats. In addition, most of the available shale barren habitat for this species has been inventoried, making it unlikely that many new populations will be found.

Critical Habitat

Section 4(a)3 of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Arabis serotina* at this time. Very small population sizes make this species particularly threatened by any vandalism or collecting. Since it occurs in unique, easily-identified habitats, publication of critical habitat maps may result in vandalism and collection by curiosity seekers. Although listing would prohibit removal and reduction to possession, or malicious damage or destruction, on Forest Service lands, and removal, cutting, digging up, or damaging in knowing violation of any State law or regulation, including State criminal tresspass law, publishing critical habitat maps would increase enforcement problems. The Forest Service, The Nature Conservancy and landowners of major populations on private land have been informed of population locations and the importance of protecting the species' habitat. Listing will result in habitat protection through the recovery process and Section 7 consultations. Therefore, it would not be prudent to determine critical habitat for *Arabis serotina*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisitions and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act were codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The U.S. Department of Agriculture, Forest Service partially or completely owns sixteen of the known *Arabis serotina* populations. Activities in these areas that may affect the species would require Section 7 consultation.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Arabis serotina*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Arabis serotina;*

(2) the location of any additional populations of *Arabis serotina* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) additional information concerning the range and distribution of this species; and

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(4) current or planned activities in the subject area and their possible impacts on *Arabis serotina*.

Final promulgation of the regulations on *Arabis serotina* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Supervisor, Ecological Services Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Author

The primary author of this proposed rule is Sharon W. Morgan (see **ADDRESSES** section) using substantial information provided by Rodney L. Bartgis, West Virginia Department of Natural Resources.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation of Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) for plants by adding the following, in alphabetical order, under the family Brassicaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard family:						
Arabis serotina	Shale barren rock cress	USA (VA, WV)	E		NA	NA

Dated: October 25, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–26637 Filed 11–16–88; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 81008–8208]

Fee Schedule for Foreign Fishing; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; corrections.

SUMMARY: This document corrects errors in the proposed foreign fee schedule for 1989 which was published November 1, 1988 (53 FR 44047) in FR Doc. 88–25260. An outdated telephone number was given for the telephone contact in the preamble and an incorrect list of proposed poundage fees was published in Table 1 in the regulatory text. The correct proposed poundage fees were listed in the next to last column of Table 2 of the preamble.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 301–427–2339.

SUPPLEMENTARY INFORMATION: The following corrections are made:

1. On page 44047, column 1, under the **"FOR FURTHER INFORMATION CONTACT"** heading, the telephone number is corrected to read "301–427–2339."

§ 611.22 [Corrected]

2. In § 611.22(b)(1), page 44050, column 3 replace "Table 1. Species and Poundage Fees" with the following, corrected "Table 1. Species and Poundage Fees".

TABLE 1.—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.63
4. Herring, river	61.76
5. Mackerel, Atlantic	68.43
6. Other groundfish	119.09
7. Squid, *Illex*	103.98
8. Squid, *Loligo*	245.73
Atlantic and gulf fisheries:	
9. Shark, Atlantic	187.96
10. Shrimp, royal red	(1)
Alaska fisheries:	
11. Pollock, Alaska	95.09
12. Cod, Pacific	143.97
13. Pacific ocean perch	195.96
14. Rockfish, other	326.15
15. Mackerel, Atka	118.64
16. Squid, Pacific	75.10
17. Flounders	83.09
18. Sablefish (Gulf of Alaska)	399.03
19. Sablefish (Bering Sea and Aleutian Islands)	210.18
20. Groundfish, other	106.64
21. Snails	128.42
Pacific fisheries:	
22. Whiting, Pacific	78.21
23. Sablefish	415.47
24. Pacific ocean perch	320.38
25. Rockfish, other	335.93
26. Flounders	316.82
27. Mackerel, jack	254.61
28. Groundfish, other	406.56
Western Pacific fisheries:	
29. Coral [2]	91.54
30. Dolphin fish	2,450.59
31. Wahoo	980.24
32. Sharks	490.12
33. Marlin, striped	823.82
34. Billfish	882.03
35. Swordfish	1,038.45

[1] Reserved.
[2] Dollars per kilogram.

Authority: 16 U.S.C. *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, 16 U.S.C. 1361 *et seq.*

Dated: November 9, 1988.

Bill Matuszeski,

Executive Director.

[FR Doc. 88–26520 Filed 11–16–88; 8:45 am]

BILLING CODE 3510–22–M

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Notices

Federal Register
Vol. 53, No. 222
Thursday, November 17, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Meeting

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATE: The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 4:00 p.m. on January 10, 1989.

Place: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, Room 912, Arlington, Virginia.

Status: The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

Matters to be considered: The agenda for the meeting is as follows:

(1) Implementation of Trademark Reform Act of 1988
(2) Public Access to PTO Trademark Automated Systems
(3) Miscellaneous Issues Regarding Application Examination and Registration Maintenance

Contact person for more information: For further information, contact Carlisle E. Walters, Office of the Assistant Commissioner for Trademarks, Room CPK2–910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557–7464.

Donald J. Quigg,
Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88–26583 Filed 11–16–88; 8:45 am]
BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Export Visa and Exempt Certification Arrangement for Certain Textiles and Textile Articles Produced or Manufactured in the People's Republic of Bangladesh

November 14, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a new export visa and exempt certification arrangement.

EFFECTIVE DATE: November 17, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: During recent negotiations, the Governments of the United States and the People's Republic of Bangladesh agreed to establish a new export visa and exemption certification arrangement.

A copy of the arrangement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Sehedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988.)

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986, as amended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 17, 1988, entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of textiles and textile articles of cotton, wool and man-made fibers in Categories 200–239, 300–369, 400–438, 439, 440–469 and 600–670, including merged Categories 338/339, 340/640, 342/642, 347/348, 638/639, 645/646 and 647/648, produced or manufactured in Bangladesh and exported on and after November 17, 1988 from Bangladesh for which the Government of the People's Republic of Bangladesh has not issued an appropriate visa or exempt certification fully described below. Should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category or categories shall be automatically included in the coverage of the visa arrangement. Merchandise exported on or after the date the category(s) is added to the agreement or becomes subject to import quotas shall require a visa. Notification will be provided when additions or changes are made.

A visa must accompany each commercial shipment of the aforementioned textiles and textile articles. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the commercial invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be the standard nine digit numbers and letters, beginning with one numerical digit for the last digit of the calendar year in which the shipment was exported, followed by the International Organization for Standardization (ISO) code for Bangladesh, and six digit numerical serial number identifying the shipment; e.g., 9BD123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity provided for in the U.S. Department of Commerce CORRELATION and in the U.S. Tariff Schedule(s) of the United States Annotated (e.g., "Cat. 340–510 DZ").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable to the U.S. Customs Service, a new visa must be obtained from the Government of the People's Republic of Bangladesh or a visa waiver issued by the Bangladeshi Government through the U.S. Department of Commerce and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, does not waive any applicable quota requirements.

If the visa is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Bangladesh has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Certain textiles and textile articles shall be exempt from levels of restraint and visa requirements if properly certified by the Government of the People's Republic of Bangladesh by the placing of the original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. The original copy of the invoice with the original exempt certification will be required to enter the shipment into the United States. Duplicate copies of the invoice and/or exempt certification may not be used.

The exempt products include (1) floor coverings provided for in TSUS items 360.06, 360.10, 360.12, 360.76, 360.78, 361.42, 361.45 and 361.54; (2) handloomed fabrics of the cottage industry; (3) handmade textile products made in the cottage industry from handloomed fabrics; and (4) traditional forklore handicraft products designated as "Bangladeshi Items" (Annex A).

Each exempt certification stamp will include (1) date of issuance; (2) signature of issuing official; and (3) the basis for the exemption. The basis for exemption shall be noted as: (a) floor coverings (including the applicable TSUSA or HTS item); (b) handloomed fabric; (c) handmade textile products; or (d) the name of the particular traditional forklore handicraft product (Bangladeshi item).

Should a shipment be exported from Bangladesh without an exempt certification being issued prior to the date of exportation or the certification is incorrect (i.e., the date of issuance, signture or basis for exemption is missing, incorrect or illegible or have been crossed out or altered in any way), then the exempt certification will not be accepted and entry shall not be permitted.

If the exempt certification is not acceptable then a visa or visa waiver must be obtained prior to release of any portion of the shipment by the U.S. Customs Service. An exempt certification may not be issued after exportation of the shipment from Bangladesh. If quotas are in force, the shipment will be charged to the appropriate quota level.

An invoice may cover visaed merchandise or exempt certified merchandise, but not both.

Any shipment which requires a visa but which is not accompanied by a valid and correct visa or an exempt certification in accordance with the foregoing provisions shall be denied entry by U.S. Customs Service unless the Government of the People's Republic of Bangladesh authorizes the entry and any charges to the agreement levels through the visa waiver process.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments values at U.S. $250 or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels.

Facsimiles of the visa and certification stamps (Annex B) and a list of officials authorized by the Government of the People's Republic of Bangladesh (Annex C) are enclosed with this letter.

The actions taken with respect to the Government of the People's Republic of Bangladesh and with respect to imports of textiles and textile articles of cotton, wool and man-made fibers from Bangladesh have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the Federal Register.

Sincerely,

Ronald I. Levin.

Acting Chairman, Committee for the Implementation of Textile Agreements.

Annex A—Bangladeshi Items

These are items that are uniquely and historically traditional Bangladeshi products. All these items mentioned in this list are made from woven fabric. Additional items may be included after consultation and mutual agreement of both governments.

1. Embroidered Kaftan.	Ankle length loose fitting dress with embroidery around top and bottom with side slits of about 18 inches from the lower hem and with traditional Bangladeshi hand embroidery or hand batik printing.
2. Panjabi	This is a men's and boys' shirt type garment made from cotton or man-made fabric, plain or colored, hand embroidered, or painted, or batik decorated, or batik printed, without collar and with half or full sleeve, with partial front opening with or without buttons. The tails extend from finger tip to knee. This is a typical Muslim ceremonial dress of Bangladeshi men and boys; and has been used from ancient times for Muslin festivals.
3. Bell-Sleeve Evening Blouse.	A women's garment traditionally used by Bangladeshi women and girls for covering upper part of the body and traditionally worn under a sari, made from cotton or man-made fabric, patterned or plain, embroidered or printed. A short, tight fitting blouse ending above the waist with untapered half sleeves without collar. This is a women's folklore blouse, having a long Bangladeshi tradition.
4. Salwar	Plain or designed or printed, loose fitting trousers secured with drawstring or hooks with legs that are straight or baggy with extra fullness at the thighs made from cotton or man-made fiber fabrics, traditionally worn with kameez. Must be imported with a kameez, and if for women or girls, with a dopatta.
5. Kameez	Long tunic, untapered, plain or printed or embroidered, half, three quarter, or full sleeve, made form cotton or man-made fiber fabric traditionally worn with salwar with length down to knee level, with partial opening with buttons in front or back. Must be imported with a salwar, and, if for women or girls, with dopatta.
6. Dopatta	A long scarf measuring from 72 to 120 inches long and 36 to 40 inches wide traditionally worn by Muslim women and girls in Bangladeshi with salwar and kameez. Must be imported with a salwar and kameez.

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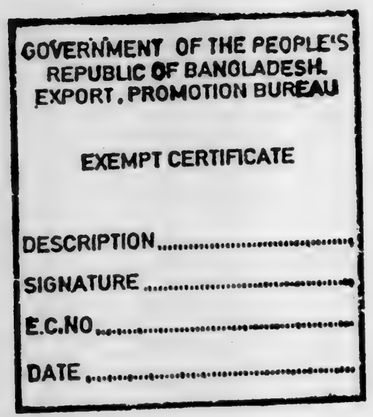
7. Lungi	A traditional garment worn as outerwear from waist-down to ankle, 45 to 50 inches in width and having a circumference of 70 to 80 inches, in tubular form, made from cotton or man-made fiber fabric.
8. Borka	A loose overall, two piece garment dress, ankle length, with hood portion containing veil for covering face worn by Muslim women and girls of Bangladesh when going out of the house. Made from cotton or man-made fiber of a solid color, with a full front opening with buttons.
9. Kurta	A men's and boys' shirt type garment similar to a panjabi, or mid-thigh length of cotton or man-made fiber fabric, with no collar or a one inch stand up collar, with full or half sleeves, with a partial front opening with or without buttons.
10. Batwa	Small drawstring pouches used by women and girls for carrying betel nut and small personal things. Printed and hand embroidered.
11. Nakshi Kantha.	Traditional hand stitched, extensively hand embroidered, wall hanging with a design depicting rural life or folkore motifs made from cotton, silk, or man-made fibers.
12. Batik Wall Hangings.	Cut pieces of cotton, silk, or man-made fiber fabric that have been printed using the batik process.

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ANNEX B

Specimen of Textile Visa Stamp and Textile Visa Exempt Certificate





BILLING CODE 3510-DR-C

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Annex C—Officials Authorized To Sign Visas and Exempt Certifications

Mr. Ziaul Islam Choudhury, Director (Tex) Export Promotion Bureau, Dhaka
Mr. Kazi Mahbubur Rahman, Dy. Director (Tex), Export Promotion Bureau, Dhaka
Mr. K.M. Saleheen, Dy. Director (Tex), Export Promotion Bureau, Dhaka

[FR Doc. 88-26678 Filed 11-15-88; 11:56 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement Part 245, "Government Property"; Supplement 3 to the DoD FAR Supplement; DD Forms 1149, 1342, 1419, 1640, 1651, and 1662; and OMB Control Number 0704-0246.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 8.58 Hours.

Frequency of Response: On occasion; annually.

Number of Respondents: 163,322.

Annual Burden Hours: 1,044,450.

Annual Responses: 238,175.

Needs and Uses: The information collection concerns 5 areas: (1) Resubmission of basic approval for DFARS Part 245; (2) resubmission of the collection regarding DD Form 1662; (3) resubmission of the collection regarding DD form 1861-1; (4) resubmission of a collection regarding No Cost Storage Agreements; and (5) a new collection regarding Contractor Material Management and Accounting Systems.

Affected Public: Businesses or other for-profit.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

November 10, 1988.

[FR Doc. 88-26642 Filed 11-16-88; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday, 6 and 7 December 1988.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

November 10, 1988.

[FR Doc. 88-26643 Filed 11-16-88; 8:45 am]
BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Friday, 9 December 1988.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc. 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 10, 1988.

[FR Doc. 88-26644 Filed 11-16-88; 8:45 am]
BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 15 December 1988.

ADDRESS: The meeting will be held at Headquarters 6th Army, Bldg. 35, Command Conference Facility, Keyes Street, The Presidio of San Francisco, California 94129-7000.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charged coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 10, 1988.

[FR Doc. 88-26645 Filed 11-16-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack (FOFA); Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Follow-on Forces Attack (FOFA) scheduled for November 16, 1988 as published in the **Federal Register** (Vol. 53, No. 185, Page 37027, Friday, September 23, 1988, FR Doc 88-21800) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 14, 1988.

[FR Doc. 88-26646 Filed 11-16-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on December 2, 1988 and February 14-15, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

November 14, 1988.

[FR Doc. 88-26647 Filed 11-16-88; 8:45 am]
BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, December 6, 1988; Tuesday, December 13, 1988; Tuesday, December 20, 1988; and Tuesday, December 27, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 10, 1988.

[FR Doc. 88-26648 Filed 11-16-88; 8:45 am]
BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committeee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 6-7 December 1988.

Time: 0900-1600 hours, 6 December 1988; 0900-1200 hours, 7 December 1988.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Space Systems will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort. The subgroup is tasked with a comprehensive review of space concepts, technology, and related issues. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude

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opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–26606 Filed 11–16–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 13 December 1988, 0900–1630 hours; 14 December 1988, 0900–1300 hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Toxic and Hazardous Waste Management will conduct its first meeting. Briefings will be conducted by various members of the Army research community with respect to the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–26607 Filed 11–16–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Scoping Meeting on the Environmental Impact Statement on Proposed Siting, Construction and Operation of New Production Reactor Capacity

AGENCY: Department of Energy (DOE).

ACTION: Announcement of additional public scoping meeting.

SUMMARY: DOE announces its intent to hold an additional public scoping meeting on the Environmental Impact Statement (EIS) to be prepared on the proposed siting, construction and operation of new production reactor (NPR) capacity. The additional public scoping meeting will be held in Moscow, Idaho on December 2, 1988. The DOE previously announced the schedule of public scoping meetings on September 16, 1988 (53 FR 36094) and October 25, 1988 (53 FR 43003). This amendment is intended to provide all interested parties with advance notice of the additional meeting to assure full and informed public participation.

DATES: An additional public scoping meeting will be held at the following time and place:

Date: December 2, 1988

Place: Moscow Community Center, 206 East 3rd Street, Moscow, Idaho

Times: 1–5 p.m. and 7–10 p.m.

For those persons who wish to make oral statements at any of the remaining NPR public scoping meetings, the deadlines for preregistration are as follows:

Meeting location/ date	Preregistration deadline	Sponsoring site
Chubbock, ID/Nov. 18, 1988.	Nov. 15, 1988.	Idaho.
Richland, WA/Nov. 29, 1988.	Nov. 22, 1988.	Hanford.
Aiken, SC/Nov. 29, 1988.	....do	Savannah River.
Moscow, ID/Dec. 2, 1988.	Nov. 28, 1988.	Idaho.
Spokane, WA/Dec. 1, 1988.	Nov. 25, 1988.	Hanford & Idaho.
Augusta, GA/Dec. 1, 1988.	....do	Savannah River.
Savannah, GA/Dec. 5, 1988.	Nov. 29, 1988.	Savannah River.
Portland, OR/Dec. 6, 1988.	Nov. 30, 1988.	Hanford.
Columbia, SC/Dec. 7, 1988.	Dec. 1, 1988	Savannah River.
Seattle, WA/Dec. 8, 1988.	Dec. 2, 1988	Hanford.

The end of the EIS public scoping period (Dec. 15, 1988) remains unchanged. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Requests to speak at the public scoping meetings and written comments on the scope of the EIS should be submitted to:

Mr. Peter J. Dirkmaat (Idaho Site), U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402, (208) 525–6666

or

Mr. Tom Bauman (Hanford Site), U.S. Department of Energy, Richland Operations Office, 823 Jadwin Avenue, Room 157, Richland, WA 88352, (509) 376–7501

or

Mr. S.R. Wright (Savannah River Site), U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802, (803) 725–3957.

SUPPLEMENTAL INFORMATION: On September 16, 1988, DOE published a Notice of Intent (NOI) in the **Federal Register** announcing the Department's intent to prepare an EIS on the siting, construction and operation of NPR capacity. The NOI provided background information on the proposed action, reasonable alternatives, and a list of potential issues to be considered in preparation of the EIS. In the NOI, DOE invited all interested parties to submit written comments on the proposed scope of issues to be analyzed in the EIS and announced a schedule of public scoping meetings where persons may present oral comments on the scope of the EIS. Comments and suggestions received during the scoping period will be considered in preparing the draft EIS

The NOI was amended on October 25, 1988, in the **Federal Register** to announce the addition of a scoping meeting in Chubbock, Idaho; various administrative changes; and clarification of language used in the NOI.

This amendment to the NOI announces that a public scoping meeting will also be held in Moscow, Idaho. The preregistration deadlines are intended to allow the Department sufficient time (three working days) to prepare and post the lists of preregistered speakers for each meeting location. Persons wishing to speak at the scoping meetings who do not register before these deadlines may still register at the door of a particular meeting and be given an opportunity to speak after all preregistered speakers have presented their comments, as time permits. Written and oral comments will be given equal weight in the scoping process.

Signed in Washington, DC, this 15th day of November, 1988, for the United States Department of Energy.

Ernest C. Baynard, III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–26762 Filed 11–16–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee

Date and Time: Tuesday, December 6, 1988, 8:30 a.m.–5:00 p.m.; Wednesday, December 7, 1988, 8:30 a.m.–12:00 p.m.

Location: U.S. Department of Energy, Forrestal Building, Room 6E–069, 1000 Independence Avenue S.W., Washington, DC 20585.

Contact: N. Anne Davies, Office of Fusion Energy, Office of Energy Research, ER–51, U.S. Department of Energy, Mail Stop J–204, Washington, DC 20545, Phone: (301)–353–4941.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

MFAC—Agenda Outline

December 6, 1988

1. 8:30 a.m. Welcome and Announcements—F. Ribe
2. Address to MFAC and new MFAC charge 22—R. Hunter
3. Recent Office of Fusion Energy programmatic activities—J. Clarke
4. Panel 21, ECH report (Lunch, Forrestal Cafeteria)—J. Leiss, L. Berry
5. ITER Status Report—J. Gilleland CIT Status Report—H. Furth, D. Montgomery
6. Report on DOE Confinement Task Force—J. Callen
7. Auburn University Program—G. Swanson
8. MFAC Panel 21 Discussion
9. New Charge 23
10. National Academy of Sciences Plasma Science Committee—D. Baldwin
11. Public Comments—(Adjourn 5:30 p.m.)

MFAC—2nd Day

December 7, 1988

1. 8:30 a.m. Summary of Tokamak Results from the Nice, France, IAEA Meeting—R. Parker
2. Summary of Alternate Concepts from Nice, France, IAEA Meeting—J. Sheffield
3. MFAC Panel 21 Finalization
4. American Physical Society Panel on Priorities in Science—H. Furth
5. Public Comments—(Adjourn 12:00 Noon)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Anne Davies at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 10, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–26649 Filed 11–16–88; 8:45 a.m.]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–463–000 et al.]

Connecticut Light and Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Connecticut Light and Power Company

[Docket No. ER88–463–000]

November 8, 1988.

Take notice that on October 24, 1988, Connecticut Light and Power Company (CL&P) tendered for filing an amendment to a proposed initial rate schedule with respect to a Transmission Service, transformation and Distribution Agreement dated May 15, 1988 between CL&P and Aetna Life Insurance Company (Aetna).

CL&P states that the amendment was filed in response to a deficiency letter from the Commission in which the Commission raised several questions regarding justification of CL&P's transmission rate. CL&P states that it proposes to revise the formula for the transmission rate and it is providiing backup for this new formula in response to the Commission's letter.

CL&P states that a copy of this material has been mailed to Aetna.

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: November 17, 1988, in accordance with Standard Paragrpah E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER87–612–002]

November 9, 1988.

Take notice that on November 3, 1988, Niagara Mohawk Power corporation (Niagara Mohawk) tendered for filing, pursuant to the Commission's letter order dated September 20, 1988, its Compliance Refund Report. Niagara Mohawk states that on October 19, 1988, as corrected on Ocober 25, 1988 and November 1, 1988, it tendered a total of $605,091.27 (principal and interest) to the New York Power Authority for ultimate refund to the affected customers.

Niagrara Mohawk states that copies of its Report were served on the New York Public Service Commission, all parties to the proceeding, and all entities entitled to receive the rate change application initiating this proceeding.

Comment Date: November 28, 1988, in accordance with standard Paragraph E at the end of this notice.

3. Duke Power Company

[Docket No. ER84–177–006]

November 9, 1988.

Take notice that on October 18, 1988, Duke Power Company tendered for filing a Compliance and Refund Report. Duke Power Company states that this refund is applicable to three customers: the City of Abbeville, the Town of Seneca, and Lockhart Power Company. Although the refund period includes March 1984 through the Auugst 1988 bill, it was applicable to each customer for a different period of time.

Comment dated: November 18, 1988, in accordance with standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–26570 Field 11–16–88; 8:45 am]

BILLING CODE 6717–01–M

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[Project No. 2335-006 Maine]

Central Maine Power Company, Availability of Environmental Assessment

November 9, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a change in land rights for the Williams Hydroelectric Project, on the Kennebec River, Maine, and has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed amendment and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26568 Filed 11-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2232 et al.]

Hydroelectric Applications, Duke Power Co. et al.; Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Request for authorization to issue permits to construct marina facilities on Lake Norman.

b. Project No.: 2232-180, -181, -196, -203, -204, -205, -208, & -210.

c. Date Filed: January 21 and 25, May 13, June 17, and 30, July 1, and September 2 and 29, 1988, respectively.

d. Applicant: Duke Power Company.

e. Name of Project: Catawba-Wateree Hydroelectric Project.

f. Location: Lake Norman, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. John E. Lansche, Associate General Counsel, Duke Power Legal Department, P.O. Box 33189, Charlotte, NC 28242, (704) 373-4871.

i. FERC Contact: Mr. Brian Romanek, (202) 376-9042.

j. Comment Date: December 15, 1988.

k. Description of Request: Duke Power has requested authorization to issue permits for the construction and operation of marina facilities at seven locations on Lake Norman (Lake). Duke Power states that it would be in the best interest of all parties to approve the marina facilities. In total, the proposed facilities would consist of: (1) 33 boat dock facilities with 681 boat slips; (2) four boardwalks having a total length of about 1,700 feet; (3) approximately 7,000 feet of shoreline stabilization (rip-rap or bulkheads) would be installed; and (4) one causeway about 130 feet in length.[1]

P-2232-180

Seawood Properties proposes to expand their existing boat dock facility by constructing and operating an additional boat dock facility with 32 boat slips to serve the Spinnaker Bay Condominiums. The floating dock would extend from the existing dock facility. The dock would extend about 160 feet into the Lake Norman.

P-2232-181

The Regatta Group proposes to construct and operate a new marina to serve the Pointe Regatta Community. The marina would consist of five separate dock facilities with a total of 55 boatslips. The dock facilities would extend from about 100 to 140 feet into the lake.

In addition to the boat slips, the Regatta Group proposes to build a 80-foot-wide, 130-foot-long causeway to connect two portions of the community (one part of the community is located on an island). The causeway would be built by placing about 2,600 cubic yards of fill into shallow wetland waters of Lake Norman. Rip-rap would be used to stabilize 4,680 feet of shoreline at the proposed marina and causeway areas.

In addition, an eight inch diameter sanitary sewer and 6-inch-diameter water lines would be installed at the marina and connected to an existing sewer and water system.

P-2232-196

The Boat Rack, Inc. proposes to expand their existing commercial marina facilities by constructing and operating an additional boat dock facility with 40 boat slips. The floating dock facility would extend about 200 feet into the lake. Ten of the proposed slips would be covered and 30 would be uncovered.

P-2232-203

The Admiral Quarers, Ltd. proposes to construct and operate a new commercial marina. The floating dock facility would consist of 100 boat slips. The dock would be about 370 wide and extend about 220 feet into the lake. A 420-foot-long steel seawall would be installed to stabilize the shoreline.

P-2232-204

M. K. L., Inc. proposes to expand their existing commercial marina, known as Skipper's Marina, by adding a bulkhead and five floating boat dock facilities. The M. K. L., Inc. proposes to construct a bulkhead (about 170-feet-long) to facilitate loading and unloading boats with a forklift. A portion of the bulkhead would extend into the lake where 0.14 acre of the lake would be backfilled and paved to form a ramp area for the forklift operation. Two "L" shaped floating docks would extend from the bulkhead about 80 feet into the lake for temporary docking of boats that have been loaded or unloaded from dry storage. Another floating boat dock facility would extend about 70 feet into the lake consisting of eight boat slips. In addition, two floating boat docks with gas services extending 95 feet into the lake, each accommodating 10 boats, would also be constructed.

A boardwalk, about 320 feet in length, would be constructed along the shoreline to form a walkway connecting the boat dock facilities. About 480 feet of shoreline would be stabilized by rip-rap or bulk heading.

P-2232-205

The Lake Norman Company proposes to construct and operate two new marinas, known as South Harbor and Stone Harbor, to accommodate the residents of the Davidson Landing Community. This proposal would be Phase I of the dock facility development. Each marina would be located at the point of two separate peninsulas that protrude into Lake Norman.

The Stone Harbor Marina would consist of three boat dock facilities extending from about 100 to 175 feet in the lake, consisting of 80 boat slips. In addition, 475-foot-long boardwalk would be constructed along the shoreline to form a walkway connecting the three dock facilities.

The South Harbor Marina would consist of seven boat dock facilities extending from about 100 to 175 feet into the lake consisting of 152 boat slips. In addition, 500-foot-long boardwalk would be constructed along the shoreline to form a walkway connecting the seven dock facilities.

Rip-rap would be used to stabilize the shoreline of both peninusulas. The total length of shoreline to be stabilized would be 975 feet.

P-2232-208

The Lake Norman Company proposes to construct and operate Phase II of the proposed Stone Harbor Marina which would accommodate the residents of the Davidson Landing Community. Phase II consists of five floating boat dock facilities extending from about 100 to 140 feet into the lake. The Phase II boat dock facilities would consist of 104 boat slips. This would bring the total number of slips in Phase I and II for Stone Harbor to 184.

A 475-foot-long boardwalk facility would be constructed along the shoreline to connect the five dock facilities of Phase II. In addition, rip-rap would be used to stabilize 475 feet of shoreline.

P-2232-210

The Land's End Development Company proposed to construct and operate a new marina which would accommodate the residents of the 100 Norman Place Community. The proposal consists of three clusters of floating boat dock facilities (with a total of six separate boat dock facilities). Two clusters would be located immediately south of Norman Island Drive and one cluster would be located immediatley north of Lake Norman Drive. The boat dock facilities would extend from 180 to 220 feet into Lake Norman. Collectively, the six boat dock facilities would consist of 90 boats slips.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

2a. Type of Application: Amendment of License to Revise Project Boundary.

b. Project No.: 2579-007.

c. Date Filed: October 11, 1988.

d. Applicant: Indiana & Michigan Electric Company.

e. Name of Project: Twin Branch Project.

f. Location: On the St. Joseph River in St. Joseph and Elkhart Counties, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Robert W. Harmon, American Electric Power Service Corp., 1 Riverside Plaza, Columbus, OH 43215, (614) 223-1638.

i. FERC Contact: Hossein Ildari (202) 376-9060.

j. Comment Date: December 15, 1988.

k. Description of Application: The licensee has learned of certain ambiguities in the ownership of a small tract of land within the project boundary. It has conducted a survey and, in order to include in the project boundary only the lands owned by the licensee and lands necessary for operation of the project, proposes a land exchange with the adjacent land owner, H&S Industries, Inc. (H&S). The exchange would convey to the H&S the licensee's interest in approximately 32 acres of land in exchange for H&S conveying an easement over approximately 55 acres of land to the licensee.

The parcels of lands involved are situated in Cleveland Township, Elkhart County, City of Elkhart, State of Indiana, being a part of the south half of section 1, and north half of section 12, Township 37 North, Range 4 East.

l. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: Transfer of License.

b. Project No.: 4354-004.

c. Date Filed: September 16, 1988.

d. Applicants: Gem Irrigation District, Ridgeview Irrigation District, Owyhee Irrigation District, Advancement Irrigation District, Payette-Oregon Slope Irrigation District, Crystal Irrigation District, Bench Irrigation District, and Slide Irrigation District (transferors), and Gem Irrigation District, Ridgeview Irrigation District, and Owyhee Irrigation District (transferees).

e. Name of Project: Owyhee Dam.

f. Location: On the Bureau of Reclamation's Owyhee Dam on the Owyhee River, in Malheur County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Gene Stunz, Secretary, Owyhee Irrigation District, Stunz, Fonda, Pratt, Nichols, Kiyuna & Okai, Box 1565, Nyssa, OR 97913, (503) 372-2268.

i. FERC Contact: William Roy-Harrison, (202) 376-9830.

j. Comment Date: December 21, 1988.

k. Description of Application: The transferors, as listed in paragraph (d) propose to transfer the license issued on May 9, 1984, to the transferees. Each of the transferees is an Oregon irrigation district operating and existing under and pursuant to Chapter 545 of the Oregon Revised Statutes, except for Gem Irrigation District, which is an Idaho irrigation district organized and existing under the provisions of title 43, of the Idaho Code.

l. This notice also consists of the following standard paragraphs: B & C. (except for notice of intent to file competing application and competing application filings, which are not applicable to transfer of license applications).

4a. Type of Filing: Transfer of License.

b. Project No.: 4359-006.

c. Date Filed: September 16, 1988.

d. Applicants: Gem Irrigation District, Ridgeview Irrigation District, Owyhee Irrigation District, Ontario-Nyssa Irrigation District, Advancement Irrigation District, Payette-Oregon Slope Irrigation District, Crystal Irrigation District, Bench Irrigation District, and Slide Irrigation District (transferors), and Gem Irrigation District, Ridgeview Irrigation District, and Owyhee Irrigation District (transferees).

e. Name of Project: Owyhee Tunnel No. 1.

f. Location: On the Bureau of Reclamation's Owyhee Dam on the Owyhee River, in Malheur County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Gene Stunz, Secretary, Owyhee Irrigation District, Stunz, Fonda, Pratt, Nichols, Kiyuna & Okai, Box 1565, Nyssa, OR 97913, (503) 372-2268.

i. FERC Contact: William Roy-Harrison, (202)(376-9830.

j. Comment Date: December 21, 1988.

k. Description of Application: The transferors, as listed in paragraph (d) propose to transfer the license issued on April 27, 1987, to the transferees. Each of the transferees is an Oregon irrigation district operating and existing under and pursuant to Chapter 545 of the Oregon Revised Statutes, except for Gem Irrigation District, which is an Idaho irrigation district organized and existing under the provisions of title 43, of the Idaho Code.

l. This notice also consists of the following standard paragraphs: B & C (except for notice of intent to file competing application and competing application filings, which are not applicable to transfer of license applications).

5a. Type of Filing: Transfer of License.

b. Project No.: 5357-005.

c. Date Filed: September 16, 1988.

d. Applicants: Owyhee Irrigation District, Ontario-Nyssa Irrigation District, Advancement Irrigation District, Payette-Oregon Slope Irrigation District, Crystal Irrigation District, Bench Irrigation District, Slide Irrigation District (transferors), and Owyhee Irrigation District (transferee).

e. Name of Project: Mitchell Butte Power Project.

f. Location: On the Bureau of Reclamation's Mitchell Butte Lateral, an

[1] The term "dock facility", as used in this notice, is defined as interconnecting walkways extending from the shoreline into the water to smaller u-shaped walkways that form slips for boat dockage (figure 1).

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irrigation canal near the town of Adrian, in Malheur County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Gene Stunz, Secretary, Owyhee Irrigation District, Stunz, Fonda, Pratt, Nichols, Kiyuna & Oaki, Box 1565, Nyssa, OR 97913, (503) 372-2288.

i. FERC Contact: Thomas Dean, (202) 376-9562.

j. Comment Date: December 22, 1988.

k. Description of Application: The transferors, as listed in paragraph (d) proposes to transfer its license issued on December 14, 1984, and amended on June 30, 1988, to the Owyhee Irrigation District (transferee). The transferee is an Oregon irrigation district operating and existing under and pursuant to Chapter 545 of the Oregon Revised Statutes.

l. This notice also consists of the following standard paragraphs: B, and C.

6a. Type of Application: Surrender of License.

b. Project No.: 7484-002.

c. Date Filed: May 3, 1988.

d. Applicant: Willow River Hydro Associates.

e. Name of Project: Little Falls Hydro Project.

f. Location: On the Willow River in St. Croix County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. David M. Coombe, 410 Severn Ave., Suite 313, Annapolis, MD 21403, (301) 268-6820.

i. FERC Contact: Ed Lee on (202) 376-5786.

j. Comment Date: December 19, 1988.

k. Description of Application: The license for this project was issued on February 26, 1985, for an installed capacity of 270 kW. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B and C.

7a. Type of Application: Major License.

b. Project No.: 9170-003.

c. Date Filed: March 3, 1988.

d. Applicant: Great Western Power & Light, Inc.

e. Name of Project: G.W.P. #13 & Associates Hydroelectric.

f. Location: At the Bureau of Reclamation's Boise Diversion Dam on the Boise River, in Ada County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Michael J. and Kristine M. Graham, P.O. Box N, Manti, Utah 84642, (202) 376-1943.

i. FERC Contact: Mr. James Hunter, (202) 376-1943.

j. Comment Date: December 27, 1988.

k. Description of Application: The proposed project would consist of: (1) A 20-foot-long by 14-foot-wide reinforced concrete, gated intake structure; (2) three 450-foot-long, 60-inch-diameter penstocks; (3) a 50-foot-long by 26-foot-wide powerhouse containing three identical generating units with a total rated capacity of 2250 kW and an average annual output of 14.6 GWH; (4) a tailrace returning flows to the Boise River at a normal water surface elevation of 2,773 feet; and (5) a 2,000-foot-long transmission line connecting to an existing Idaho Power Company line. The estimated cost of the project is $2,269,960.

l. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

8 a. Type of Filing: Transfer of License.

b. Project No.: 10198-003.

c. Date Filed: September 23, 1988.

d. Applicants: Pelican Utility Company and Inlet Utility Company.

e. Name of Project: Pelican Hydroelectric Water Power Project.

f. Location: On Pelican Creek within the Tongass National Forest in the borough of Sitka, on Chichagof Island, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Applicant Contact: Paul F. Norris, Esq., Davis Wright & Jones, 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101 (206) 622-3150.

i. FERC Contact: Thomas Dean, (202) 376-9562.

j. Comment Date: December 8, 1988.

k. Description of Application: Pelican Utility Company (transferor) proposes to transfer its license issued on May 27, 1988, to Inlet Utility Company (transferee). The transferee is a corporation organized under the laws of the State of Alaska, and domesticated in the State of Alaska, with its head office in Seattle, Washington.

l. This notice also consists of the following standard paragraphs: B & C (except for notice of intent to file competing application and competing application filings, which are not applicable to transfer of license applications).

9 a. Type Application: License (under 5 MW).

b. Project No.: 10493-000.

c. Date Filed: October 13, 1987.

d. Applicant: Whitmore Hydroelectric Company.

e. Name of Project: Whitmore Upper & Lower Hydro Project.

f. Location: On Little Cottonwood Creek in T3S, R2E, Sec. 7, 8, 9, SLM, partially within the Wasatch-Cache National Forest near Sandy in Salt Lake County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Applicant Contact: Mr. Michael J. Graham, P.O. Box 1929, Lake Havasu, AZ 86403, (602) 855-1615.

i. FERC Contact: Ms. Julie Bernt, (202) 376-1936.

j. Comment Date: December 15, 1988.

k. Competing Application:
Project No. 10113-000
Date Filed: October 2, 1986

l. Description of Project: The proposed project would consist of: (1) An existing, concrete, upper diversion at elevation 6,245 feet MSL; (2) an existing 24-inch-diameter, 2,500-foot-long upper penstock; (3) an existing upper powerhouse at 6,045 feet MSL containing one new generating unit with a rated capacity of 500 kW; (4) an existing tailrace connected to the lower diversion; (5) an existing, concrete, lower diversion at elevation 6,040 feet MSL; (6) a 24-inch-diameter, 5,000-foot-long lower penstock; (7) an existing lower powerhouse at elevation 5,630 feet MSL containing two new generating units, one with a rated capacity of 750 kW and one with a rated capacity of 500 kW; (8) an existing 10,000-foot-long transmisson line which will be upgraded; and (9) appurtenant facilities. The average annual energy production is estimated to be 8,405 MWh and the estimated cost of the project is $1,374,450.

m. Purpose of Project: The power produced would be sold to a local power company.

n. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specifiy the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this pubic notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub.L. No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 14, 1988,
Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26571 Filed 11-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-125-000 et al.]

Interstate Power Company et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket No. CP89-125-000]

November 9, 1988.

Take notice that on October 24, 1988, Interstate Power Company (IPW), 1000 Main Street, Dubuque, Iowa 52001, filed a request for a waiver of the requirements to file its Annual Report of Natural Gas Companies (Form No. 2 and Form No. 2A), as well as a waiver for the Annual Report of Gas Supply for Certain Natural Gas Companies (Form No. 15), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

IPW states that it owns and operates an interstate pipeline which extends from Hooppole, Illinois, across the Iowa border to Clinton, Iowa. IPW also owns a pipeline which extends from Jackson County, Iowa, across the Illinois border to Savanna, Illinois. All gas transported by these two pipelines is for the benefit of residential, commercial and industrial consumption according to IPW.

It is for these reasons the IPW believes it qualifies as a local distributor of natural gas and therefor requests waiver of the filing requirements.

Comment date: November 30, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP89-120-000]

November 9, 1988.

Take notice that on November 2, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 776252, filed in Docket No. CP89-120-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for The Polaris Pipeline Corporation (Polaris), a marketer, under the certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request tht is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated September 22, 1988, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for Polaris from a point of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Tennessee and various transporters Tennessee states that it would receive the gas at an existing point on its system in West Monroe, Ouachita Parish, Louisiana, and that it would transport and redeliver the gas in multiple states at various delivery points.

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Tennessee advises that service under Section 284.223(a) commenced September 23, 1988, as reported in Docket No. ST89–231 (filed October 18, 1988). Tennessee further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company

[Docket No. CP89–117–000]

November 9, 1988.

Take notice that on November 1, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–117–000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of Tejas Power Corporation, a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 under section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to the public inspection.

Northern states that it would transport, on an interruptible basis, up to a maximum of 20,000 MMBtu of natural gas per day for Tejas. The receipt and delivery points are listed in Appendix A of the Septermber 1, 1988, transportation agreement which provides for this service, and on file with the Commission and open to public inspection. Northern indicates that the total volumes of gas to be transported for Tejas on a peak day would be 20,000 MMBtu; on an avrage day would be 15,000 MMBtu and on an annual basis would be 7,300,000 MMBtu. Northern indicates that it would perform the proposed transportation service for Tejas pursuant to a service agreement dated Septermber 1, 1988 between Northern and Tejas.

Northern states that it commenced the transportation of natural gas for Tejas at Docket No. ST88–5864 for a 120-day period, pursuant to § 284.223(a)(1) of the Commission's Regulations. This service commenced on September 1, 1988 with the 120-day period ending December 29, 1988. Northern states that no new facilities are proposed in order to provide this transportation service.

Northern also states that it is not aware of any agency relationship under which a local distribution company or an affiliate of Tejas is to receive natural gas on behalf of Tejas, and that it has no other applications and is not aware of any others that are related to this transaction.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. El Paso Natural Gas Company

[Docket No. CP89–113–000]

November 9, 1988.

Take notice that on November 1, 1988, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request for authorization in Docket No. CP89–113–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a sales tap to permit the delivery of natural gas to Southern Union Gas Company (SUG) for resale to the Headwaters Ranch in Yavapai County, Arizona, under El Paso's blanket authorization issued in Docket No. CP82–435–000, which is on file with the Commission and open to the public inspection.

El Paso proposes to install a 1-inch O.D. tap and valve assembly, with appurtenances, at a point on El Paso's 6⅝-inch O.D. Prescott Line in Yavapai County, Arizona at a cost of $5,000. El Paso indicates that SUG has advised that the requested volumes would be used to serve irrigation and residential natural gas requirements of the Headwaters Ranch. El Paso states that the peak day and annual volumes using the new tap would be 46 Mcf and 4,740 Mcf, respectively. El Paso states that SUG has advised it would install other minor related facilities as needed, for ultimate distribution of the requested volumes. El Paso indicates that the volumes delivered at the proposed sales tap are within the certificated entitlements of SUG.

El Paso states that SUG would pay for each dekatherm sold at the Headwaters Ranch Sales Tap delivery point the ABD–L–AZ rate reflected from time to time on Sheet No. 100 of El Paso's Volume No. 1 Tariff. El Paso indicates that the proposed sale of natural gas to SUG at the proposed tap would have a negligible effect upon El Paso's peak day and annual deliveries.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–126–000]

November 10, 1988.

Take notice that on November 3, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–126–000 a request for authorization to transport gas for Shell Gas Trading Company (Shipper) under the prior notice procedure prescribed in §§ 157.205 and 284.223 of the Commission's Regulations and Transco's blanket certificate issued in CP88–328–000, all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day would be 200,000 dt; on an average day would be 100,000 dt; and on an annual basis would be 5,475,000 dt.

Transco states it would receive the gas at South Timbalier Block 300/301, offshore Louisiana and deliver the gas at St. Helena Parish, Louisiana.

Transco states that it would construct no new facilities in order to provide this transportation service. Transco would utilize existing facilities as reflected in Exhibit A of the transportation agreement.

Transco Gas Gathering Company (TGGC) would be required to construct a meter station and appurtenant facilities in Ship Shoal Block 261(259), offshore Louisiana at a projected cost of approximately $2,450,000 to interconnect with TGGC's pipeline in Ship Shoal Block 261, offshore Louisiana.

Transco states that service for Shipper commenced September 1, 1988 pursuant to the 120-day automatic authorization as reflected in Docket No. ST89–23.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Arkla Energy Resources, a Division of Arkla, Inc., Mississippi River Transmission Corporation

[Docket No. CP89–101–000]

November 10, 1988.

Take notice that on October 28, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, and Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis Missouri 63124, jointly filed in Docket No. CP89–101–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, for authorization to continue through March 31, 1989, on a fee-free basis and with pre-granted abandonment an exchange of up to 30,000 Mcf per day through previously certificated facilities in order to avoid the suspension of natural gas service to approximately 9,700 residential, commercial and industrial customers in the City of Pine Bluff, and environs, Jefferson County, Arkansas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

AER and MRT state that under the arrangement MRT would deliver the gas to AER at an existing 8-inch tap where MRT's main transmission line intersects with AER's Line AM–145. It is indicated that AER would then redeliver equivalent volumes to MRT at three existing points of delivery located in Caddo Parish, Louisiana, and in Jackson and Jefferson Counties, Arkansas.

AER and MRT state that they have been conducting the existing exchange pursuant to the Commission's emergency regulations (Subpart I of Part 284) in order to avoid suspension of service from AER's Line AM–145 while AER repairs a section of that line. It is indicated that unexpected right-of-way problems have caused significant delays and AER estimates that an additional two to three months would be required to complete the necessary repairs of Line AM–145. It is also indicated that authorization under the Commission's emergency transactions would terminate on November 5, 1988.

Comment date: December 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–26563 Filed 11–16–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT89–3–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

November 10, 1988.

Take notice that on November 7, 1988, Columbia Gas Transmission Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 22
Third Revised Sheet No. 22A
Third Revised Sheet No. 22B
Fourth Revised Sheet No. 22C
Fourth Revised Sheet No. 22D
Fourth Revised Sheet No. 22E
Second Revised Sheet No. 22E1
Third Revised Sheet No. 22E2
Third Revised Sheet No. 22E3
Fourth Revised Sheet No. 22F
Third Revised Sheet No. 22G
Third Revised Sheet No. 22H
Fourth Revised Sheet No. 22I
Third Revised Sheet No. 22J
Third Revised Sheet No. 22K
Third Revised Sheet No. 22L
Third Revised Sheet No. 22M
Third Revised Sheet No. 22N
Fifth Revised Sheet No. 22O
Fourth Revised Sheet No. 22P
Second Revised Sheet No. 22P1
Second Revised Sheet No. 22P2
Third Revised Sheet No. 22P3
Fifth Revised Sheet No. 22Q
Third Revised Sheet No. 22R
Third Revised Sheet No. 22S
Fourth Revised Sheet No. 22T
Third Revised Sheet No. 22U
Third Revised Sheet No. 22V
Second Revised Sheet No. 22W
Original Sheet No. 72R
Original Sheet No. 72R1
Original Sheet No. 72R2
Original Sheet No. 72R3
Original Sheet No. 72R4
Original Sheet No. 72R5

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by November 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–26564 Filed 11–16–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT89–4–000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

November 10, 1988.

Take notice that on November 7, 1988, Columbia Gulf Transmission Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 157
Original Sheet No. 157A
Fourth Revised Sheet No. 163
Third Revised Sheet No. 164
Third Revised Sheet No. 167
Third Revised Sheet No. 169
Original Sheet No. 169A
Third Revised Sheet No. 196
Original Sheet No. 196A
Third Revised Sheet No. 203
Third Revised Sheet No. 204
Third Revised Sheet No. 207

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Third Revised Sheet No. 209
Original Sheet No. 209A
Third Revised Sheet No. 233
Original Sheet No. 233A
Fourth Revised Sheet No. 239
Third Revised Sheet No. 240
Third Revised Sheet No. 243
Original Sheet No. 243A
Third Revised Sheet No. 245
Original Sheet No. 245A
Third Revised Sheet No. 281
Original Sheet No. 281A
Fourth Revised Sheet No. 287
Third Revised Sheet No. 288
Third Revised Sheet No. 291
Third Revised Sheet No. 293
Original Sheet No. 293A
Original Sheet Nos. 329 Through 224

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by November 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26565 Filed 11-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-17-000]

Northwest Pipeline Corp.; Petition To Suspend "Sunset Date" and Request for Expedited Action

November 10, 1988.

Take notice that on October 31, 1988, Northwest Pipeline Corporation ("Northwest") filed a petition requesting expedited Commission action to suspend for Northwest the "sunset date" of December 31, 1988 for recovery of Northwest's eligible contract reformation costs under Order No. 500 which are in litigation, and to clarify that Northwest may be permitted to project and include in its contract reformation cost recovery proposal known and measurable contract reformation costs to be paid or incurred through September 30, 1989.

A copy of this filing has been mailed to Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.2314 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26567 Filed 11-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84-42-000 et al.]

United Gas Pipeline Co.; Informal Settlement Conference

November 9, 1988.

In the Matter of United Gas Pipeline Company, Docket Nos. RP84-42-000, RP85-209-009, RP86-93-005, RP86-158-008, RP87-34-003, RP88-6-005, RP88-27-000, RP88-92-000, RP88-263-000, RP88-264-000, RP88-265-000, CP86-256-002, CP87-17-000, CP87-125-000, CP87-524-000, CP88-6-001, CP88-124-000, CP88-329-000, CP88-440-000, CP478-000, IN86-5-001, and TC88-6-000.

Take notice that an informal settlement conference will be convened in the above proceedings on November 16, 1988, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above referenced dockets. Further informal conferences may be convened November 17, 1988, through November 23, 1988, as needed.

Any party, as defined by 18 CFR 385.102(c) (1988), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations. 18 CFR 385.214 (1988).

For additional information, contact Andrew P. Mosier, Jr. (202) 357-8410 or David Cain (202) 357-8418.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26572 Filed 11-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-258-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 10, 1988.

Take notice that on November 3, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective October 1, 1988:

Substitute First Revised Sheet No. 30L
First Revised Sheet No. 30L.1
First Revised Sheet No. 45R.8b
Third Revised Sheet No. 45R.9

Southern states that on Oct. 19, 1988, the Commission issued its Order Accepting For Filing Tariff Sheets Subject to Conditions, Rejecting Other Tariff Sheets and Granting Waiver (Order) in which the Commission addressed a filing tendered by Southern in this docket on September 19, 1988, to simplify administrative procedures and give shippers additional flexibility in transporting on Southern's system. The Order accepted Southern's filing subject to Southern filing certain revised tariff sheets in accordance with the discussion therein within 15 days of such Order. Accordingly, Southern has submitted the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective October 1, 1988, as indicated above.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before November 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26566 Filed 11-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-26-000 et al.]

Long Island Lighting Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Long Island Lighting Company

[Docket Nos. ER89-26-000]

November 9, 1988.

Take notice that on October 25, 1988, Long Island Lighting Company (LILCO) tendered for filing proposed changes in its FERC Rate Schedule 32, pursuant to which LILCO transmits power and energy from the New York Power Authority to the three municipal electricity utilities on Long Island: The Villages of Greenport, Rockville Centre and Freeport. The proposed changes would decrease revenues from such service by $10,196.00 based on the 12-month period ending May 31, 1988.

LILCO proposes to change the rates in order to reflect the Tax Reform Act of 1986. The rate also reflects changes in the Company's cost of service.

Copies of this filing were served upon the New York Power Authority, the Municipal Electric Utilities Association of New York State, the Incorporated Villages of Greenport, Freeport and Rockville Centre, and the New York State Public Service Commission.

Comment date: November 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

November 9, 1988.

2. Long Island Lighting Company

[Docket No. ER89-24-000]

November 9, 1988.

Take notice that on October 25, 1988, Long Island Lighting Company (LILCO) tendered for filing proposed changes in its FERC Rate Schedule 34, pursuant to which LILCO transmits power and energy from the New York Power Authority to Brookhaven National Laboratory and Grumman Corporation on Long Island. The proposed changes would decrease revenues from such service by $21,408.00 based on the 12-month period ending May 31, 1988.

LILCO proposes to change the rates in order to reflect the Tax Reform Act of 1986. The rate also reflects changes in the Company's cost of service.

Copies of this filing were served upon the New York Power Authority, Grumman Corporation in Bethpage, New York, Brookhaven National Laboratory in Upton, New York, and the New York State Public Service Commission.

Comment date: November 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Green Mountain Power Corporation

[Docket No. ER89-53-000]

November 9, 1988.

Take notice that on November 4, 1988, Green Mountain Power Corporation (GMP) tendered for filing a rate schedule in accordance with Part 35 of the Commission's Regulations:

Agreement for the Purchase of Power between Green Mountain Power Corporation (GMP) and Fitchburg Gas and Electric Light Company (FG&E) for the period November 1, 1988, through October 31, 1991.

GMP requests that the Commission waive the notice requirements set forth in § 35.3 of its Regulations in order to permit the rate schedule to become effective November 1, 1988.

Copies of this filing have been served on FG&E, the Vermont Public Service Board, and the Vermont Department of Public Service

Comment date: November 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Kentucky Utilities Company

[Docket No. ER89-51-000]

November 9, 1988.

Take notice that on November 2, 1988, Kentucky Utilities Company (KU) tendered for filing "Rescission and Termination of Agreement" of December 14, 1971 among Big Rivers Rural Electric Cooperative Corporation (now Big Rivers Electric Corporation) (BR) East Kentucky Rural Electric Cooperative Corporation (now East Kentucky Power Cooperative, Inc.) (EK) and Kentucky Utilities Company (KU). The instrument is dated August 31, 1988. Waiver of prior notice was requested to permit an effective date of August 31, 1988.

Copies of the filing was served on BR, EK, and the Public Service Commission of Kentucky.

Comment date: November 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER89-52-000]

November 10, 1988.

Take notice that on November 3, 1988, Southern California Edison Company (Edison) tendered for filing a twenty Year Sale and Exchange Agreement (Agreement) between Edison and Bonneville Power Administration (BPA). Service under the Agreement commences July 1, 1989 and continues, unless terminated in accordance with the Agreement's terms, until May 31, 2009.

The Agreement generally operates as a power sale by BPA to Edison. However, under specified conditions, the transaction converts to a seasonal capacity-energy exchange. Under the exchange Edison returns associated energy to BPA on a daily basis and provides Exchange Energy during the winter in amounts determined by negotiated ratios set forth in the Agreement. The Agreement also provides BPA with the right to purchase specified amounts of Supplemental Energy from Edison during periods when the Agreement operates as an exchange, at 115 percent of Edison's incremental costs. In addition, the Agreement provides BPA with the right, subject to termination by Edison on five years' notice, to purchase up to 624,000 MWh of Option Energy each winter at 115 percent of Edison's incremental costs.

A copy of this filing has been served upon Bonneville Power Administration and the California Public Utilities Commission.

Comment date: November 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER89-50-000]

November 10, 1988.

Take notice that on November 3, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an Agreement between Niagara Mohawk and Niagara County (Public Body) dated September 1, 1988. Niagara Mohawk proposes an effective date of October 28, 1988 for the Agreement.

This Agreement provides for Niagara Mohawk to allow the use of such portions of its electric system and facilities as are required for the delivery of Preference Power to Eligible Customers of the Public Body. The Public Body's agent purchases the Preference Power from the Power Authority of the State of New York.

Niagara Mohawk further states that the proposed rate is the rate per kWhr charged under Niagara Mohawk's applicable, residential rate tariff, minus the cost of fuel included in the retail rates, plus additional A&G expenses incurred by Niagara Mohawk as a result of the services provided the Agency under the Agreement. Niagara Mohawk states that the rate was arrived at through arms-length negotiations between the parties, and that the proposed rate is intended to produce a return to Niagara Mohawk essentially equivalent to which Niagara Mohawk would have received had it supplied at its residential retail rates the amount of power delivered as Preference Power. Niagara Mohawk seeks waiver of the notice requirements, stating that its metering and billing cycle starts on

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October 28 and that service to other Public Bodies will commence that day.

Copies of this filing were served upon the Public Service Commission of the State of New York and Niagara County Attorney.

Comment date: November 28, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Washington Water Power Company

[Docket No. ER89-25-000]

November 10, 1988.

Take notice that on October 25, 1988, Washington Water Power Company (WWP) tendered for filing a revision to a Transmission Wheeling Tariff, Schedule 62. This tariff is related to transmission wheeling service for borderline customer loads provided only to the Bonneville Power Administration and the United States Bureau of Reclamation (U.S.B.R.) under a currently existing General Transfer Agreement. Revision #2 to Schedule 62 revises the methodology used to calculate charges for borderline transmission wheeling service to U.S.B.R. loads. The U.S.B.R. provides power to the Spokane Indian Tribe at Little Falls, Washington and to the East Greenacres Irrigation District near Post Falls, Idaho.

Washington states that the proposed revision is submitted for the purpose of compensating Washington for U.S.B.R. settlement costs and revising wheeling charges for U.S.B.R. loads at Little Falls, Washington. The revision to Schedule 62 would decrease yearly revenues from transmission wheeling service provided to the U.S.B.R. by $35,631/year based on the 12-month period ending December 31, 1989.

Washington requests that the requirements of prior notice be waived and that the effective date be made July 8, 1988, which is the effective date of the revised contract.

Comment date: November 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service

[Docket No. ER89-15-000]

November 10, 1988.

Take notice that on October 19, 1988, Northeast Utilities Service Company (NUSCO), as Agent for the Connecticut Light and Power (CL&P) and Western Massachusetts Electric Company (WMECO) tendered for filing pursuant to Part 35 of the Commission's Regulations, a Notice of Termination of the following rate schedule:

Transmission Service Agreement between CL&P and WMECO, and Vermont Public Power Supply Authority (VPPSA), dated June 1, 1986 (CL&P Rate Schedule FERC 383 and WMECO Rate Schedule FERC 300).

The rate schedule is to be terminated because it is no longer being utilized by the parties to the Agreement. On behalf of CL&P and WMECO, NUSCO requests that the Commission allow the termination to take effect on May 1, 1988, the date on which the Agreement terminated in accordance with its own terms pursuant to Section 1, "Effective Date and Term," of the Agreement.

Copies of this filing have been served upon the Vermont Public Power Supply Authority, CL&P, WMECO c/o NUSCO.

Comment date: November 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER89-54-000]

November 10, 1988.

Take notice that on November 4, 1988, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an executed electric service agreement between itself and Badger Power Marketing Authority of Wisconsin (BPMA). According to Wisconsin Electric, the agreement is in partial fulfillment of a letter of intent between the parties that provides for both parties to construct transmission facilities which will allow BPMA to receive service at 138 kV. Currently, Wisconsin Electric provides total requirements service to BPMA's member municipals, Shawano and Clintonville, at its standard voltage under executed electric service agreements.

Wisconsin Electric requests that the Commission waive the sixty-day notice requirements of its Regulations in order to allow a proposed effective date coincident with the energization of the Shawano East Substation. Wisconsin Electric states that BPMA joins in the requested effective date. The Company advises that it will promptly notify the Commission of this event, which is expected in May or June, 1989.

Copies of the filing have been served on BPMA and the Public Service Commission of Wisconsin.

Comment date: November 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 26562 Filed 11-16-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3477-8]

Air Pollution Control; Motor Vehicle Emission Factors; Public Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop.

SUMMARY: This notice announces a public workshop which the Environmental Protection Agency (EPA) will conduct regarding the Agency's motor vehicle emission factors. These emission factors are used by the States in the development of emissions inventories and the revision of State Implementation Plans, and by other parties having an interest in modeling the air quality impact of motor vehicle emissions. The purposes of this workshop are (1) to present technical aspects of EPA's efforts in terms of review of the data sources, analytical techniques employed, and the resulting emission factors, and (2) to provide a final opportunity for interested parties to participate in an informal review of these analyses and their results.

DATE: The workshop is scheduled for Wednesday, November 30, 1988, from 9:00 a.m. to 4:00 p.m. (EST).

ADDRESS: The workshop will be held in the conference room of the U. S. EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: Terry P. Newell, Test and Evaluation Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105 (Phone: 313/668-4462 or FTS 374-8462).

SUPPLEMENTARY INFORMATION: EPA's current emission factor model, MOBILE3, was released in mid-1984. This model uses the results of in-use vehicle emission tests to estimate fleet emission factors for three gaseous pollutants (hydrocarbons (HC), carbon monoxide, and oxides of nitrogen), taking into account the influence on emissions of such variables as vehicle speed and ambient temperature, among others. The emission factors projected using MOBILE3, for a number of different years under a variety of assumptions, have been published in the report "Compilation of Air Pollutant Emission Factors, Volume II: Mobile Sources" (4th Edition).

Since the release of MOBILE3, much additional emission data from in-use vehicle testing have been collected and analyzed, particularly from later model year, newer technology vehicles. In addition, EPA has conducted testing aimed at characterizing "running loss" emissions, which are those evaporative HC emissions originating from vehicles while they are being driven (as versus diurnal or hot soak emissions). EPA has been working on incorporating this new information into an updated emission factor model, MOBILE4. This model will be used by States and localities in developing new emissions inventories and State Implementation Plan (SIP) revisions required by the post-1987 attainment strategy, as well as by EPA in evaluating potential regulatory strategies and by others interested in modeling the air quality impact of motor vehicle emissions.

EPA has previously held two workshops on the subject of MOBILE4, in April and November of 1987. At those workshops, EPA presented various proposals for the incorporation of new data and analyses into MOBILE4. Comments received by EPA following these workshops have also been taken into consideration in the further development of the updated emission factors. The November 30 workshop will provide additional information on the final emission factor analyses to be used in MOBILE4.

Specific topics that will be addressed at the November 30 workshop include:

—1981 and later model year basic emission rates
—Tampering rates
—Anti-tampering program emission credits
—Inspection and maintenance program emission credits
—Updated temperature correction factors
—Running losses
—The effect of temperatures on the projection of HC emission factors
—Revisions to hot soak and diurnal emissions estimates

Information on topics for which there is insufficient time to make formal presentations will be made available in the form of handouts to be distributed at the workshop.

Due to the highly technical nature of the agenda, participants should be familiar with the existing emission factors and MOBILE3 in order to benefit from the discussions. The November 30 workshop is not a "user workshop," and so will not address the mechanics of implementing the running MOBILE4. Workshops intended to address user questions and provide user guidance are currently planned for sometime after the release of MOBILE4 (currently slated for early 1989). Also this workshop will not include discussions of programming aspects of MOBILE4, such as its interface with other programs used in creating emissions inventories and air quality plans or its language and equipment requirements.

This workshop is intended to be a forum for the exchange of information and has no direct connection to any rulemaking actions. Consequently, the workshop will be very informal. There will not be opportunities for prepared statements by attendeees, although comment will be welcomed on specific topics as they are brought up for discussion. Although no public docket will be kept, written submissions are welcome at any time and may be brought to the workshop or mailed to Terry Newell, at the address shown above.

Date: November 10, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-26590 Filed 11-16-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 20, 1988

In accordance with § 271.5 of its Rules Regarding Availabiliy of Information (12 CFR 271, *et seq.*), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 20, 1988.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the expansion in economic activity may be moderating from the vigorous pace earlier in the year. Total nonfarm payroll employment grew more slowly in July and August, though the increases in the two months were still sizable. The civilian unemployment rate rose to 5.6 percent in August. Industrial production advanced slightly further in August after a sharp increase in July. Retail sales were flat in July and August. Recent indicators of business capital spending suggest some moderation from the especially rapid growth in earlier months of the year. Preliminary data for the nominal U.S. merchandise trade deficit in July showed some further reduction from the improved second-quarter rate. The latest information on prices suggests little if any change from recent trends.

Most interest rates have declined somewhat since the Committee meeting on August 16. Over the intermeeting period, the trade-weighted foreign exchange value of the dollar in terms of the other G-10 currencies was about unchanged on balance.

Expansion of M2 and M3 moderated further in August. For the year through August, M2 has grown at a rate slightly above, and M3 at a rate more noticeably above, the midpoints of the ranges established by the Committee for 1988. M1 was unchanged in August after registering relatively strong growth in June and July. Expansion of total domestic nonfinancial debt for the year thus far appears to be at a pace somewhat below that in 1987.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in late June reaffirmed the ranges it had established in February for growth of 4 to 8 percent for both M2 and M3, measured from the fourth quarter of 1987 to the fourth quarter of 1988. The monitoring range for growth of total domestic nonfinancial debt was also maintained at 7 to 11 percent for the year.

For 1989, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1988 to the fourth quarter of 1989, of 3 to 7 percent for M2 and 3½ to 7½ percent for M3. The Committee set the associated monitoring range for growth of total domestic nonfinancial debt at 6½ to 10½ percent. It was understood that all these ranges were provisional and that they would be reviewed in early 1989 in the light of intervening developments.

With respect to M1, the Committee reaffirmed its decisions in February not to establish a specific target for 1988 and also decided not to set a tentative range for 1989. The behavior of this aggregate will continue to be evaluated in the light of movements in its velocity, developments in the economy and financial markets, and the nature of emerging price pressures.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of indications of inflationary pressures, the strength of the business expansion, the

[1] Copies of the record of policy actions of the Committee for the meeting of September 20, 1988, are available upon requet to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

BEST COPY AVAILABLE

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behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint would, or slightly lesser reserve restraint might, be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from August through December at annual rates of about 3 and 5 percent, respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, November 9, 1988.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 88-26543 Filed 11-16-88; 8:45 am]

BILLING CODE 6210-01-M

Evans Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 5, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Evans Bancorp, Inc.*, Angola, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Evans National Bank of Angola, Angola, New York.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *B/W Bancshares, Inc.*, Erlanger, Kentucky; to acquire 100 percent of the voting shares of First National Bank and Trust Company, Georgetown, Kentucky.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Abess Properties, Ltd.*, Miami, Florida; to become a bank holding company by acquiring 97.81 percent of the voting shares of City National Bancshares, Inc., Miami, Florida, and thereby indirectly acquire 100 percent of the voting shares of City National Bank Corporation, Miami, Florida, and 99.76 percent of the voting shares of City National Bank of Florida, formerly City National Bank of Miami, Miami, Florida.

2. *Ready Bancorp*, Hialeah, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of Ready State Bank, Hialeah, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First National Bancorp, Inc.*, Joliet, Illinois; to acquire 100 percent of the voting shares of Southwest Suburban Bank, Bolingbrook, Illinois.

E. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Bankers Trustshares, Inc.*, Quincy, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Midwest Bank/M.C., National Association, Quincy, Illinois.

2. *Peoples Investment Corporation*, Cuba, Missouri; to acquire 100 percent of the voting shares of Peoples Bank of Steelville, Steelville, Missouri, a *de novo* bank.

F. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *American Community Bank Group, Inc.*, Minnetonka, Minnesota; to become a bank holding company by acquiring 96.26 percent of the voting shares of American State Bank of Bloomington, Bloomington, Minnesota.

2. *American Community Bank Group, Inc.*, Minnetonka, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of National City Bank of Ridgedale, Minnetonka, Minnesota.

3. *Cleveland Bancshares, Inc.*, Cleveland, Minnesota; to become a bank holding company by acquiring 82.63 percent of the voting shares of Peoples State Bank of Cleveland, Cleveland, Minnesota, a *de novo* bank.

4. *Lakeside Bank Holding Company*, New Town, North Dakota; to merge with McKenzie County Bancorp, Inc., Watford City, North Dakota, and thereby indirectly acquire 96.38 percent of the voting shares of McKenzie County National Bank, Watford City, North Dakota.

G. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *W.T.B. Financial Corporation*, Spokane, Washington; to acquire an additional 10 percent of the voting shares of Norban Financial Group, Inc., Coeur d'Alene, Idaho, thereby owning 31.4 percent of the voting shares, and thereby indirectly acquiring Northern State Bank, Coeur d'Alene, Idaho, and Seaport Citizens Bank, Lewiston, Idaho.

Board of Governors of the Federal Reserve System, November 10, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-26545 Filed 11-16-88; 8:45 am]

BILLING CODE 6210-01-M

Farmers National Bank Corp. of Cynthiana, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under §225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Farmers National Bank Corp of Cynthiana, Inc.*, Cynthiana, Kentucky; to engage *de novo* through its subsidiary, J.B. Finance Company, Inc., Cynthiana, Kentucky, in the business of consumer finance pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y. These activities will be conducted in the geographic area of Cynthiana, Harrison County, and counties contiguous to Harrison County, all within the State of Kentucky.

Board of Governors of the Federal Reserve System, November 10, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-26546 Filed 11-16-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; William C. Murphy, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 1, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *William C. Murphy*, University Park, Texas; to acquire 39.25 percent of the voting shares of Fidelity Resources Company, Dallas, Texas, and thereby indirectly acquire Fidelity National Bank, Dallas, Texas.

2. *Robert B. Sharples*, and Larry J. Jurica, both of George West, Texas; to each acquire 6.35 percent of the voting shares of Luling Bancshares, Inc., Luling, Texas, and thereby indirectly acquire the First National Bank in Luling, Luling, Texas.

Board of Governors of the Federal Reserve System, November 10, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-26547 Filed 11-16-88; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corporation, Los Angeles, CA; Proposal To Underwrite and Deal in Debt Securities to a Limited Extent

Security Pacific Corporation, Los Angeles, California, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary Security Pacific Securities, Inc., Los Angeles, California ("SPSI"), to underwrite and deal in, to a limited degree, debt securities of all types (including corporate, governmental and other debt securities, convertible debt securities and asset-related securities secured by, or representing interests in, secured or unsecured loans, receivables and other debt securities) including, in particular, (1) corporate debt securities (including both unsecured and secured corporate debt securities); and (2) mortgage-backed securities secured by, or representing interests in, mortgages secured by commercial real estate, including multi-family residential projects.

SPSI is currently authorized to underwrite and deal in, to a limited extent, 1-4 family mortgage-related securities, municipal revenue bonds, commercial paper and consumer-receivable-related securities ("ineligible securities"). *Security Pacific Corporation*, 73 Federal Reserve Bulletin 622 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987). SPSI is also authorized to underwrite and deal in U.S. government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y ("bank-eligible securities"). 12 CFR 225.25(b)(16).

Security Pacific has applied to underwrite and deal in debt securities within the framework of limitations established in the Board's *Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation* Order, including the 5 percent gross revenue limitation. 73 Federal Reserve Bulletin 473 (1987). Accordingly, under this application the amount of gross revenue SPSI would receive from the proposed new ineligible underwriting activity and the previously approved ineligible activity would not exceed in the aggregate 5 percent of the total gross revenues of SPSI.

The Board has not previously determined that the proposed underwriting and dealing activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto".

Security Pacific contends that the proposed activities are closely related to banking because banks have generally engaged in activities that are functionally and operationally similar to underwriting and dealing in debt securities. These services include underwriting and dealing in bank-eligible and ineligible securities; investing, buying and selling investment quality corporate debt securities, as permitted by the Office of the Comptroller of the Currency; arranging private placements of securities; providing investment advisory, investment management and trust services; providing letters of credit and other credit enhancements for private and public issues of corporate debt; organizing loan syndications as well as purchasing and selling loans; and overseas underwriting and dealing.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices". Security Pacific maintains that permitting bank holding companies to engage in the proposed activities would result in

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increased competition which would lower underwriting spreads, greater liquidity of the proposed securities, greater customer convenience and increased efficiency. The proposed activities would also permit bank holding companies to further diversify income. Security Pacific contends that the proposed activities would not result in adverse effects because of the similarities in the general nature of the proposed activity and its current ineligible activity which the Board has previously determined would not result in adverse effects when undertaken in compliance with the *Citicorp/Morgan/Bankers Trust* conditions and existing laws and regulations.

Security Pacific contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Security Pacific National Bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Security Pacific states that it would not be "engaged principally" in underwriting and dealing in securities in light of the 5 percent limitation on these activities. *See, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System,* 839 F.2d 47 (2d Cir. 1988), *cert. denied,* 108 S. Ct. 2830 (1988); and *Securities Industry Association* v. *Board of Governors/Chase,* 847 F.2d 890 (D.C. Cir. 1988).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 10, 1988.

Board of Governors of the Federal Reserve System, November 10, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-26544 Filed 11-16-88; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corporation, Los Angeles, CA; Proposal To Underwrite and Deal in Equity Securities to a Limited Extent

Security Pacific Corporation, Los Angeles, California, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary Security Pacific Securities, Inc., Los Angeles, California ("SPSI"), to underwrite and deal in, to a limited degree, equity securities, including, without limitation, common stock or other ownership interests in domestic and foreign corporations or other entities, American Depositary Receipts, all types of preferred stock, and options and warrants on the above securities, but not including ownership interests in open-end investment companies.

SPSI is currently authorized to underwrite and deal in, to a limited extgent, 1–4 family mortgage-related securities, municipal revenue bonds, commercial paper and consumer-receivable-related securities ("ineligible securities"). *Security Pacific Corporation,* 73 Federal Reserve Bulletin 622 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation,* 73 Federal Reserve Bulletin 731 (1987). SPSI is also authorized to underwrite and deal in U.S. government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y ("bank-eligible securities"). 12 CFR § 225.25(b)(16).

Security Pacific has applied to underwrite and deal in equity security within the framework of limitations established in the Board's *Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation* Order, including the 5 percent gross revenue limitation. 73 Federal Reserve Bulletin 473 (1987). Accordingly, under this application the amount of gross revenue SPSI would receive from the proposed new ineligible underwriting activity and the previously approved ineligible activity would not exceed in the aggregate 5 percent of the total gross revenues of SPSI.

The Board has not previously determined that the proposed underwriting and dealing activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Security Pacific contends that the proposed activities are closely related to banking because banks have generally engaged in activities that are functionally and operationally similar to underwriting and dealing in equity securities. These services include underwriting and dealing in bank-eligible and ineligible securities; investing in, buying and selling investment quality corporate debt securities as well as selling asset-related securities as permitted by the Office of the Comptroller of the Currency; bidding in U.S. Treasury and state and local government auctions; placing commercial paper with institutional investors; negotiating with issuers of asset-related securities; dealing in all of the above securities; corporate lending; and investing in equity securities pursuant to section 4(c)(6) of the BHC Act.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Security Pacific maintains that permitting bank holding companies to engage in the proposed activities would result in increased competition, lower underwriting spreads, greater liquidity of the proposed securities, greater customer convenience and increased efficiency. The proposed activities would also permit bank holding companies to further diversify income. Security Pacific contends that the proposed activities would not result in adverse effects because of the similarities in the general nature of the proposed activity and its current ineligible activity which the Board has previously determined would not result in adverse effects when undertaken in compliance with the *Citicorp/Morgan/Bankers Trust* conditions and existing laws and regulations.

Security Pacific contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Security Pacific National Bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Security Pacific states that it would not be "engaged principally" in underwriting and dealing in securities in light of the 5 percent limitation on these activities. *See, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System,* 839 F.2d 47 (2d Cir. 1988), *cert. denied,* 108 S. Ct. 2830 (1988); and *Securities Industry Association* v. *Board of Governors/Chase,* 847 F.2d 890 (D.C. Cir. 1988).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 10, 1988.

Board of Governors of the Federal Reserve System, November 10, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-26549 Filed 11-16-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Board of Tea Experts; Rechartering

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the rechartering of the Board of Tea Experts by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this board will expire on January 3, 1991, unless the Commissioner formally determines that rechartering is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: November 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-26602 Filed 11-16-88; 8:45 am]

BILLING CODE 4160-01-M

Anti-Infective Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Anti-Infective Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on October 7, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: November 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-26603 Filed 11-16-88; 8:45 am]

BILLING CODE 4160-01-M

Dermatologic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Dermatologic Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on October 7, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: November 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-26604 Filed 11-16-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0303]

Sigma Coatings: Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sigma Coatings has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,3-benzenedimethanamine, 1,4-benzenedimethanamine, 3-diethylaminopropylamine, benzyl alcohol, salicylic acid, N-*beta*-aminoethyl-*gamma*-aminopropyltrimethoxysilane, and castor oil, hydrogenated, polymer with ethylenediamine, 12-hydroxyoctadecanoic acid, and sebacic acid as components of coatings that contact food.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4067) has been filed by Sigma Coatings, Harvey, LA 70059, proposing that § 175.300 *Resinous and polymeric coatings* be amended to provide for the safe use of 1,3-benzenedimethanamine, 1,4-benzenedimethanamine, 3-diethylaminopropylamine, benzyl alcohol, salicylic acid, N-*beta*-aminoethyl-*gamma*-aminopropyltrimethoxysilane, and castor oil, hydrogenated, polymer with ethylenediamine, 12-hydroxyoctadecanoic acid, and sebacic acid as components of coatings that contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the

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Federal Register in accordance with 21 CFR 25.40(c).

Dated: November 4, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-26555 Filed 11-16-88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Funding Priorities for Grants for Preventive Medicine Residency Training Programs

The Health Resources and Services Administration announces the final funding priorities for Grants for Preventive Medicine Residency Training Programs which will be used in making grants awards in Fiscal Year 1989.

Section 793 authorizes the award of grants to accredited schools of medicine, osteopathy and public health to meet the costs of projects to:

(1) Plan and develop new approved residency training programs and to maintain or improve existing approved residency training programs in preventive medicine; and

(2) Provide financial assistance to residency trainees enrolled in such programs.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 793 of the PHS Act;

(2) The extent of responsiveness to the project requirements;

(3) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(4) The degree to which the proposed training program emphasizes health promotion and disease prevention;

(5) The degree to which the applicant demonstrates institutional commitment to the proposed program; and

(6) The history of the program including number of residents who successfully completed the program.

Proposed funding priorities were published in the **Federal Register** of August 17, 1988 (FR 53 31103). Three comments were received during the 30-day comment period. The comments received and responses to the comments are presented below:

Proposed priority for enrollment of underrepresented minorities.

One respondent recommended continuing efforts to increase enrollment of women physicians.

This comment is appreciated and the need to continue to attract women physicians to the specialty of preventive medicine is recognized. The proposed priority, however, is based on race/ethnicity rather than sex. It did not appear that the respondent was suggesting that the priority be amended.

The respondent also commented that underrepresented minorities are more likely to choose a medical specialty offering more (financial) reward than preventive medicine/public health. Again, it is realized that other medical specialties may be more financially rewarding in most instances, but it is also understood that preventive medicine can be professionally rewarding. Further, data indicate a continuing disparity in the burden of death and illness experienced by blacks and other minorities. Studies have concluded that minority physicians have helped to alleviate imbalances in health care availability by increasing minority groups' access to health care, and by providing health care in medically underserved areas. The proposed priority reflects an interest in increasing the representation of minorities in all medical residency grant programs administered by the Health Resources and Services Administration.

Another respondent suggested that the priority proposed to train four residents in the academic year and four residents in the field year be changed to reduce the number to three in each year. It is acknowledged that it may be difficult for some small programs to achieve this number in a consistent manner for each year of training. However, this number should be achievable for the majority of programs, especially with trainee support available through the grant program. The number previously used in addressing this priority was increased for the 1986 application cycle from three to four. Most applicants that requested consideration of the priority during the 1986 grant cycle were awarded the priority based on evidence presented that the numbers could be achieved. Therefore, the priority should be applied based on enrollment of four residents in the academic year and four residents in the field year.

Therefore, the final funding priorities as proposed will be retained as follows:

Priority will be given to those projects which will:

(1) Increase enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent of demonstrated net increase of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in postgraduate year (PGY) trainees.

(2) Conduct residency training in areas of general preventive medicine or public health.

(3) Train at least four residents in the academic year and four residents in the field year and provide evidence that the projected number can be realized from a current or projected applicant pool.

This program is listed at 13.117 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental. Review of Federal programs (as implemented through 45 CFR Part 100).

Dated: November 10, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-26554 Filed 11-16-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-010-09-4320-18]

Arizona; Arizona Strip District, Designated Closure Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Formal closure of selected public lands to use by all members of the Suidae (Swine) Family including domestic and feral hogs, and wild boar.

SUMMARY: In accordance with 43 CFR Part 8364 and 43 CFR Part 4140, and in order to protect soils, vegetation, livestock, wildlife resources and wildlife habitat, riparian systems, wilderness lands, public safety, and other values found on certain public lands located within the Arizona Strip District of northwestern Arizona, it is necessary to close certain areas to all swine. This closure notice will expedite future actions to impound, sell, or destroy all swine found on the subject public lands.

EFFECTIVE DATE: December 19, 1988.

Inquiries should be sent to District Manager, Bureau of Land Management, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770.

FOR FURTHER INFORMATION CONTACT: Robert D. Roudabush or George W. Cropper. (801) 628-4491.

SUPPLEMENTARY INFORMATION: Feral and exotic wild swine are neither part of the natural biota of this area nor

compatible with maintenance of natural systems in designated wilderness areas. Their foraging habits result in destructive soil disturbance and uprooting of perennial plants. In addition to competing with wildlife for food, they can also prey upon other animals including wild turkeys and young deer.

The public land affected by this closure notice are administered by the Bureau of Land Management located within the following described areas (Gila and Salt River Meridian) of Mt. Trumbull and the Virgin River, including Mt. Trumbull and the Mt. Logan Wilderness areas.

Township	Range	Section
33 North	8 West	All.
33 North	9 West	All.
34 North	7 West	All.
34 North	8 West	All.
34 North	9 West	All.
35 North	7 West	All.
35 North	8 West	All.
35 North	9 West	All.
39 North	16 West	All.
40 North	15 West	All.
40 North	16 West	All.
41 North	15 West	All.

Anyone claiming ownership of any swine on the subject lands will have thirty (30) days after the effective date of this order to remove their animals.

This closure order will remain in effect until lifted or modified by the authorized officer. The closure applies only to federal land administered by the Bureau of Land Management.

Dated: November 7, 1988.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 88-26551 Filed 11-16-88; 8:45 am]

BILLING CODE 4310-32-M

Iditarod National Historic Trail Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 90-543 that a meeting of the Iditarod National Historic Trail Advisory Council will be held December 13 and 14, 1988 beginning 8:30 a.m. each day at the BLM Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska. The council will discuss rights-ways and trail administration and management issues.

The agenda is as follows:

1. Approve last meeting's minutes.
2. Introduce new anchorage district manager.
3. Trail management issues.
4. Public comment.
5. Discussion.
6. Adjourn.

The meeting is open to the public. The public may present oral testimony to the Council by making prior arrangements with the Anchorage District Manager's office at (907) 267-1246.

FOR FURTHER INFORMATION CONTACT: Dean Littlepage, (907) 267-1225, BLM Anchorage District, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

Richard Vernimen,

Anchorage District.

[FR Doc. 88-26518 Filed 11-16-88; 8:45 am]

BILLING CODE 4310-JA-M

[U-59069]

Utah; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-59069 for lands in Grand County, Utah, was timely filed and required rentals and royalties accruing from December 1, 1987, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-59069 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-26553 11-16-88; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-942-09-4520-12]

Colorado; Filing of Plats of Survey

November 7, 1988.

The plats of survey of the following described lands, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., November 7, 1988.

The plat representing the dependent resurvey of a portion of the south boundary, the west boundary, and portions of the north boundary and subdivisional lines, and the subdivision of section 7, T. 50 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group No. 825, was accepted October 31, 1988.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of section 12, T. 50 N., R. 3 W., New Mexico Principal Meridian, Colorado, Group No. 825, was accepted October 31, 1988.

The plat representing the dependent resurvey of portions of the Second Standard Parallel South (south boundary), west boundary, and subdivisional lines, and the subdivision of certain sections, T. 10 S., R. 94 W., Sixth Principal Meridian, Colorado, Group No. 800, was accepted October 31, 1988.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 4 and 5, T. 11 S., R. 94 W., Sixth Principal Meridian, Colorado, Group No. 800, was accepted October 31, 1988.

These surveys were requested by the U.S. Forest Service, Rocky Mountain Region, to identify the National Forest boundaries and to support its timber sales program.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-26552 Filed 11-16-88; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9534, Block 15, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with

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support activities to be conducted from an existing onshore base located at Fresh Water City, Louisiana.

DATES: The subject DOCD was deemed submitted on November 4, 1988. Comments must be received on or before December 2, 1988 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: November 7, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–26550 Filed 11–16–88; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31343]

North Carolina & Virginia Railroad, Lease Exemption, Southern Railway Co.'s Line Between Burkeville, VA, and O&H Junction, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, et seq., the lease by the North Carolina & Virginia Railroad from the Southern Railway Company of 72.15 miles of line and rail-related property between Burkeville, VA and O&H Junction, NC, subject to standard employee protection conditions.

DATES: This exemption will be effective on November 24, 1988. Petitions for reconsideration must be filed by December 7, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31343 to:.

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representatives: William L. Slover, Kelvin J. Dowd, 1224 Seventeenth St., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721].

Decided: November 10, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Simmons did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88–26581 Filed 11–16–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. City of Lowell* has been lodged with the United States District Court for the District of Massachusetts. The consent decree addresses violations by the City of Lowell, Massachusetts of the Clean Water Act in regard to its National Pollutant Discharge Elimination System ("NPDES") permits, including effluent limitation, operation, maintenance, staffing, and bypass violations.

The proposed Consent Decree establishes schedules to remedy Lowell's violations and requires payment of a civil penalty of $180,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Lowell*, D.J. Ref. 90–5–1–1–2709.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6317, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $2.40 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–26548 Filed 11–16–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Cascade Locks Lumber Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 24, 1988–October 28, 1988 & October 31, 1988–November 4, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–20,894; Cascade Locks Lumber Co., Cascade Locks, OR

TA–W–20,925; Pinebrook Hat Co., Inc., Jersey City, NJ

TA–W–20,882; Discovery Systems, Dublin, OH

TA–W–20,909; APV Chemical Machinery, Saginaw, MI

TA–W–20,880; Accurate Die Casting Co., Fayetteville, NY

TA–W–20,873; Newcor, Inc., Bay City, MI

TA–W–20,907; Tecumseh Products Co., Engine & Transmission Group, Grofton, WI

TA–W–20,920; Kidde Automated Systems, Inc., Pawcatuck, CT

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20,901; Lacey Plywood, Lacey, WA

U.S. imports of softwood plywood are negligible.

TA–W–21,162; Bethenergy Mines, Inc., Marianna Mines #58, Marianna, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,918; H.H. Robertson Co., Ambridge, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,878; U.S. Can Co., Plant #23, Passaic, NJ

U.S. imports of metal containers are negligible.

TA–W–20,904; Poco Graphite, Inc., Decatur, TX

The investigation revealed that criterion (1) has not been met. Sales or production or both did not decline during the relevant period as required for certification.

TA–W–20,288; ITT Penninsula Plywood Div., Port Angeles, WA

U.S. imports of softwood plywood are negligible.

TA–W–20,903; Oxford Sportswear & Apparel, Toccoa, GA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,995–TA–W–20996; Eastman Whipstock Mfg, Abilene, TX

Imports of oilfield machinery into the U.S. are negligible.

TA–W–20,899; Dow Corning Corp., Springfield Plant, Springfield, OR

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,912; Champion International Corp., Bonner Sawmill & Planner, Bonner, MT

U.S. imports of softwood, plywood are negligible.

Affirmative Determinations

TA–W–20,893; Caterpillar Industrial, Inc., Dallas, OR

A certification was issued covering all workers separated on or after July 15, 1988.

TA–W–20,921; L.B. Simmons, Energy, Inc., Ratliff City, OK

A certification was issued covering all workers separated on or after January 1, 1988.

TA–W–20,895; Coleco Industries, Inc., Gloversville, NY

A certification was issued covering all workers separated on or after August 10, 1987.

TA–W–20,897; Coleco Industries, Inc., Amsterdam, NY

A certification was issued covering all workers separated on or after August 10, 1987.

TA–W–20,917; Goldstar Hat and Cap Co., Union City, NJ

A certification was issued covering all workers separated on or after August 22, 1987.

TA–W–21,177; Dreiling Oil, Inc., Victoria, KS

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20,914; Cincinnati Microwave, Inc., Cincinnati, OH

A certification was issued covering all workers separated on or after July 31, 1987.

TA–W–20,949; Gillespie Oil Co., Abilene, TX

A certification was issued covering all workers separated on or after August 30, 1987.

TA–W–21,121; Mon-Dak Tank, Inc., Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA–W–20,869; Devon Apparel, Inc., Philadelphia, PA

A certification was issued covering all workers separated on or after August 2, 1987.

TA–W–20,879; Wilshire Knitting Mills, Philadelphia, PA

A certification was issued covering all workers separated on or after August 3, 1987.

TA–W–20,936; Conseis, Inc., Houston, TX

A certification was issued covering all workers separated on or after January 1, 1986 and before January 1, 1988.

TA–W–21,011; Klaus & Son Machine & Engine Works, Hill City, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA–W–20,915; Dikmark, Ltd, Perth Amboy, NJ

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A certification was issued covering all workers separated on or after August 22, 1987.

TA-W-21,019; Norton Drilling Co., Labbock, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,020; Norton Drilling Co., Rock Springs, WY

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,000; Felderhoff Brothers Drilling Co., Inc.

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,001; Felderhoff Production Co., Inc., Gainesville, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-20,908; Wenner Petroleum Corp., Englewood, CO

A certification was issued covering all workers separated on or after December 1, 1987.

TA-W-20,908A; Wenner Petroleum Corp., At Various Locations in Colorado

A certification was issued covering all workers separated on or after December 1, 1987.

TA-W-20,908B; Wenner Petroleum Corp., At Various Locations in Michigan

A certification was issued covering all workers separated on or after December 1, 1987.

TA-W-20,908C; Wenner Petroleum Corp., At Various Locations in Ohio

A certification was issued covering all workers separated on or after December 1, 1987.

TA-W-20,905; Reading & Bates Petroleum Co., Headquartered in Tulsa, OK

TA-W-20,905A	OK
TA-W-20,905B	CO
TA-W-20,905C	IL
TA-W-20,905D	LA
TA-W-20,905E	MS
TA-W-20,905F	NM
TA-W-20,905G	ND
TA-W-20,905H	OK
TA-W-20,905I	TX
TA-W-20,905J	WY

A certification was issued covering all workers separated on or after January 1, 1988.

TA-W-20,926; Randleman Manufacturing Co (Formerly Known As Woodlawn Manufacturing Co.), Woodlawn, NC

A certification was issued covering all workers separated on or after August 17, 1987.

I hereby certify that the aforementioned determinations were issued during the period October 24, 1988—October 28, 1988 and October 31, 1988—November 4, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: November 8, 1988.

[FR Doc. 88-26635 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,956]

Marline Petroleum Corp., Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 12, 1988 in response to a worker petition which was filed on behalf of workers at Marline Petroleum Corporation, Houston, Texas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

All workers were separated from Marline Petroleum Corporation more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker of whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed on this 3rd day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-26628 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,124]

OWS, Inc., Plainville, KS; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 28, 1988 in response to a worker petition received on September 26, 1988 which was filed on behalf of workers at OWS, Inc., Plainville, Kansas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-21,126). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 2nd day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-26626 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,971]

Recovery Resources Corp., Gorham, KS; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 12, 1988 in response to a worker petition which was filed on behalf of workers at Recovery Resources Corporation, Gorham, Kansas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

All workers were separated from Recovery Resources Corporation more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 7th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-26625 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,215]

R. K. McLeory, Inc., Abilene, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 3, 1988 in response to a worker petition received on October 3, 1988 which was filed on behalf of workers at R. K. McLeory, Incorporated, Abilene, Texas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, begin on October 1, 1985 R. K. McLeory, Incorporated terminated on December 31, 1984 prior to the applicable period of consideration under the Omnibus Trade and Competitiveness Act of 1988. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-26627 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,032]

Stahlco Drilling Co., Amarillo, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 19, 1988 in response to a worker petition received on September 19, 1988 which was filed on behalf of workers at the Stahlco Drilling Company, Amarillo, Texas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, begin on October 1, 1985. The Stahlco Drilling Company ceased operations on February 19, 1985 prior to the retroactive provisions of the Omnibus Trade and Competitiveness Act of 1988. Consequently, further investigation in this cas would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 7th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-26629 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-30-M

Reestablishment; Federal Committee on Apprenticeship

Notice is hereby given that after consultation with the General Services Administration, it has been determined that the Federal Committee on Apprenticeship, whose charter expired September 27, 1988, is hereby reestablished. This action is necessary and in the public interest.

The Committee will be an effective instrument for providing assistance through advice and counsel to the Secretary of Labor and the Assistant Secretary of Labor for Employment and Training in their development and implementation of administration policies resulting from a review of the apprenticeship system, which includes a series of key questions impacting on apprenticeship and its future role in meeting America's needs for a skilled work force; furnishing recommendations in the following five issues surrounding the review and possible expansion of the apprenticeship concept:

- Should/can the apprenticeship concept be broadened to all industries?
- What should be the limitations or parameters, in terms of occupations, of an expanded apprenticeship effort?
- What should be the delivery system for an expanded apprenticeship system?
- What should be the role of government in an expanded apprenticeship system?
- How can apprenticeship be more effectively linked to the education system?

The Committee will consist of 8 representatives of employers, 8 representatives of labor, and 9 representatives of the public, including one or more educators.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the renewal of the Federal Committee on Apprenticeship. Such comments should be addressed to: Mrs. M.M. Winters, Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-4644, Washington, DC 20210.

Signed at Washington, DC, this 10th day of November 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-26573 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-215-C]

D & J Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

D & J Coal Company, P.O. Box 683, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Madco No. 6 Mine (I.D. No. 15-15980) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three-wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposed to use hand held continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

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(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manfuacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 19, 1988. Copies of the petition are available for inspection at that address.

Date: November 10, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-26630 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-208-C]

Fido Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Fido Coal Company, P.O. Box 75, Emlyn, Kentucky 40730 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Madco No. 3 Mine (I.D. No. 15-15872) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three-wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 20% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 10, 1988.

[FR Doc. 88-26631 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-199-C]

McElroy Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to seal the Pittsburgh No. 8 Coal Seam from the surrounding strata at the affected wells by using specific techniques and procedures as outlined in the petition.

3. In addition, petitioner states that—

(a) Before the well is plugged to the Pittsburgh coalbed, a directional survey would be run on the well to determine the exact location of the wellbore in the coalbed; but if it does not penetrate the wellbore in mining, petitioner would within reason, continue mining until the well is located. A suite of geophysical logs would be run through the hole, if physically possible, to determine the exact depth of the coalbed. These logs would consist of a caliper survey, resistivity log and a background gamma ray log;

(b) Petitioner would, during its normal mining cycle, mine through and remove that segment of the plug existing between the mine pavement and roof. A Federal Mine Inspector would be notified and have the opportunity to be present during the mining through operation;

(c) All personnel in the affected area would be instructed to proceed with caution when mining into and through the well-support pillar; and especially, diligent efforts would be made at all times to assure a gas-free atmosphere in the affected area; and

(d) Methane examinations would be made by qualified pesonnel using approved methane detection equipment at least once during each shift during development and retreat mining and the date and time of such examinations would be recorded on a fireboss date board which would be placed in the area.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 9, 1988.

[FR Doc. 88-26632 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-12-M]

Pluess-Staufer (California) Inc.; Petition for Modification of Application of Mandatory Safety Standard

Pluess-Staufer (California), Inc., P.O. Box 825, Lucerne Valley, California 92356 has filed a petition to modify the application of 30 CFR 56.9022 (berms or guards) to its Pluess-Staufer (California), Inc., Mine (I.D. No. 04-00167) located in San Bernardino County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.

2. Petitioner states that the use of high berms on certain parts of the roadway would result in a diminution of safety because:

(a) The road is too narrow, in many areas, to increase berm height and width due to vertical walls on the inside and outside edges of the road; and

(b) High berms would make it impossible to sidecast snow during the winter months.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 9, 1988.

[FR Doc. 88-26633 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-205-C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Pyro No. 9 Slope, William Station Mine (I.D. No. 15-13881) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that except where permissible power connection units are used, all power-connection points outby the last open crosscut be in intake air.

2. As an alternate method, petitioner proposes to use a non-permissible submersible pump in a return air shaft.

3. In support of this request, petitioner states that—

(a) The pump would be a Jacuzzi Submersible Turbine Line-Slow Style Pump, Model 8LC, driven by a 85 HP, 3 phase, 460 volt, 3450 RPM submersible motor, and

(b) The pump would be installed with the motor and all motor connections below water level. The pump would be controlled by liquid level sensors through an intrinsically safe relay mounted in an Ensign permissible enclosure, X/P-1696-35, with a size 4 starter. Power would be provided through #1-3GGC mine power cable. All of the required circuit protection would be provided at the power center plus motor overloads would be located in the line starter. The ground circuit would be monitored from the power center to the pump motor and all of the electrical equipment would be accessible for inspection.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: November 10, 1988.

[FR Doc. 88-26634 Filed 11-16-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONATUICS AND SPACE ADMINISTRATION

[Notice (88-96)]

Performance Review Board; Senior Executive Service

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Pub. L. 95-454 (sec. 405) requires that appointments of individual members to a Performance Review Board be published in the **Federal Register**.

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals are serving on the Committee and the Board:

Senior Executive Committee

Noel W. Hinners, Chairperson, Associate Deputy Administrator, NASA Headquarters.

Manuel Peralta, Associate Administrator for Management, NASA Headquarters.

C. Howard Robins, Jr., Deputy Associate Administrator for Management, NASA Headquarters.

Thomas P. Murphy, Non-NASA Member.

Performance Review Board

C. Howard Robins, Jr., Chairperson, Deputy Associate Administrator for Management, NASA Headquarters.

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Ann P. Bradley, Executive Secretary, Assistant Associate Administrator for Personnel and General Management, NASA Headquarters.

Lawrence J. Ross, Deputy Director, NASA Lewis Research Center.

Louis B. DeAngelis, Director, Human Resources and Organization Development Division, NASA Headquarters.

Charles T. Force, Deputy Associate Administrator for Space Operations, NASA Headquarters.

Gary L. Tesch, Deputy General Counsel, NASA Headquarters.

Paul F. Holloway, Deputy Director, NASA Langley Research Center.

Franklin D. Martin, Deputy Associate Administrator for Space Station, NASA Headquarters.

William C. Keathley, Associate Director for Programs, NASA Goddard Space Flight Center.

Robert Rosen, Deputy Associate Administrator for Aeronautics and Space Technology, NASA Headquarters.

Thomas E. Utsman, Deputy Director, NASA Kennedy Space Center.

Richard J. Wisniewski, Deputy Associate Administrator for Space Flight (Institutions), NASA Headquarters.

Paul J. Weitz, Deputy Director, NASA Johnson Space Center.

Thomas N. Tate, Aeronautics Industries Association, Non-NASA Member.

November 8, 1988.

James C. Fletcher,

Administrator.

[FR Doc. 88-26522 Filed 11-16-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before December 19, 1988.

ADDRESSES: Send comments to Ms. Ingrid Reyes, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-786-0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202-395-7316).

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Reyes, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786-0233 from whom copies of forms and supporting documents are available.

Category: Revisions

Title: Guidelines, Application Materials, and Administrative Requirements for NEH Challenge Grants

Form Number: OMB 3136-0062, Expires 10/31/90 and OMB 3136-0063, Expires 11/30/89

Frequency of Collection: Annually

Respondents: Applicants for, and Recipients of, NEH Challenge Grants

Use: Application for grants; administration of grants

Estimated Number of Respondents: 160 Applicants Annually; 40 Grant Recipients Annually

Frequency of Response: Once to submit an application; Annually for Grant Recipients

Estimated Hours for Respondents to Provide Information: 50 hours for respondents to prepare and submit an application; 80 hours for grant recipients to administer a grant annually

Estimated Total Annual Reporting and Recording Burden: 8,000 hours for applicants (50 hours × 160 applicants) + 12,800 hours for grant recipients (80 hours annually × 40 grants × 4 years [duration of average grant]) = 20,800 hours.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 88-26636 Filed 11-16-88; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL ECONOMIC COMMISSION

Meeting

AGENCY: National Economic Commission.

ACTION: Notice of commission meeting.

SUMMARY: The National Economic Commission ("the commission") will hold a public meeting on November 30, 1988. The commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

DATE, TIME AND PLACE: November 30, 1988, 9:00 a.m.-2:00 p.m., Room 406 Dirksen Senate Office Building, Washington, DC.

Agenda: The November 30 meeting will provide an opportunity for invited witnesses to present their views on how the commission should meet its mandate.

FOR ADDITIONAL INFORMATION CONTACT: Jim Hildreth at (703) 425-8966, National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, page 14671.

Drew Lewis,

Co-Chairman.

Robert Strauss,

Co-Chairman.

[FR Doc. 88-26617 Filed 11-16-88; 8:45 am]

BILLING CODE 6820-45-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-409]

Dairyland Power Cooperative, La Crosse Boiling Water Reactor (LACBWR); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Dairyland Power Cooperative (the licensee) for the La Crosse Boiling Water Reactor (LACBWR) located at the licensee's site in Vernon County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(50(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be requried to carry $180 million insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not conslut other agencies or persons in connection with the proposed exemption.

Finding of no Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statment for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Dated at Rockville, Maryland this 8th day of November 1988.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power, Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26594 Filed 11-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-16]

Detroit Edison Co., Enrico Fermi Atomic Power Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Detroit Edison Company (the licensee) for the Enrico Fermi Atomic Power Plant, Unit 1 located at the licensee's site in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1,

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1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of section 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance for the reactor station site. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropraite enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Ellis Reference and Information Center, Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland this 8th day of November 1988.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–26595 Filed 11–16–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF–47 issued to Gulf States Utilities Company, (the licensee), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments would revise the provisions in the Technical Specifications (TS) relating to the setpoints and limits associated with recirculation loop operation to allow single recirculation loop operation.

The proposed action is in accordance with the licensee's application for amendment dated April 6, 1988, as supplemented October 20, 1988.

Need for the Proposed Action

The proposed change to the TS is required in order to provide the licensee with the capability to operate with one operable recirculation loop in the event that the second recirculation loop becomes inoperable.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would specify setpoint and limit requirements for single loop operation. The safety limit minimum critical power ratio would be not less than 1.08 (1.07 for two loop operation) to maintain adequate margin to boiling transition; the maximum average planar linear heat generation rate would be 84% of the two-loop valves to limit the peak clad temperature to 2200°F as required by 10 CFR 50.46 in case of a loss of coolant accident; the recirculation pump drive flow would be limited to 33,000 gallons per minute based on measurements regarding vibration at a foreign reactor; and other requirements for single loop operation regarding thermal-hydraulic stability limits, limits to avoid thermal stratification of reactor coolant in the bottom head because of thermal stress considerations, thermal power limit, recirculation flow control mode, jet pump operability, recirculation flow mismatch, and average power range monitor biased scram and rod block setpoints. These changes would assure that adequate safety margins would be maintained during single loop operation. No changes to the TSs would be made regarding two loop operation. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiologicl plant effluents and has no other environmental impact. Therefore, the Commission concludes tht there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 13, 1988 (53 FR 17131). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there is no significant adverse environmental effect that would result from the proposed action, alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. this would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the River Bend Station, Unit 1, dated January 1985.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 6, 1988, as supplemented October 20, 1988, which is available for public inspection at the Commission's Public Document Room 2130 L Street, NW., Washington, DC, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rocvkville, Maryland, this 4th day of November, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Dirctorate IV, Division of Reactor Projects #III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–26596 Filed 11–16–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–133]

Pacific Gas and Electric Co., Humboldt Bay Power Plant, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Pacific Gas and Electric Company (the licensee) for the Humboldt Bay Power Plant, Unit No. 3 located at the licensee's site in Humboldt County, California.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $100 million insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

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Alternative Use of Resoures

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding Of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Eureka-Humboldt County Library, 636 F Street, Eureka, California 95501.

Dated at Rockville, Maryland, this 8th day of November 1988.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26597 Filed 11-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-171]

Philadelphia Electric Co., Peach Bottom Atomic Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Philadelphia Electric Company (the licensee) for the Peach Bottom Atomic Power Station, Unit 1 located at the licensee's site in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance for the reactor station site. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident given rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemtpion will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland this 8th day of November, 1988.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26598 Filed 11-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power and Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 113 to Facility Operating License No. DPR-51, to Arkansas Power and Light Company, which revised the Technical Specifications for operation of the Arkansas Nuclear One, Unit No. 1, located in Pope County, Arkansas. The amendment was effective as of the date of its issuance.

The amendment approved changes necessary to permit operation of ANO-1 for Cycle 9. The significant changes for Cycle 9 are the replacement of "black" axial power shaping rods (APSRs) with gray APSRs, use of a mixed core of fuel assemblies with Inconel and Zircaloy spacer grids and use of a low leakage fuel cycle design. A change in the variable low pressure trip setpoint, which is based on the Cycle 9 reload analysis, is also included in this amendment.

The applicants for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 16, 1988 (53 FR 36141). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No. Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributed to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated February 1973.

For further details with respect to this action, see (1) the applications for amendment dated July 20 and August 31, 1988, (2) Amendment No. 113 to Facility Operating License No. DPR-51, and (3) the Environmental Assessment and Finding of No Significant Impact (53 FR 44684). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—II, IV, V and Special Projects.

Dated at Rockville, Maryland, this 8th day of November 1988.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Project Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26599 Filed 11-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power & Light Co., Oyster Creek Nuclear Generating Station; Denial of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by GPU Nuclear Corporation (GPUN/licensee) for an amendment to Provisionsal Operating License No. DPR-16, issued to the licensee for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey. Notice of Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing was published in the **Federal Register** on June 13, 1988 (53 FR 22062).

The purpose of the licensee's amendment request was to (1) amend paragraph 2.C(7) of Provisional

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Operating License No. DPR-16 to eliminate the requirement for the docketing of inspection results related to the core spray spargers, and obtain NRC restart authorization for each refueling outage, (2) eliminate the submittal of a special report presenting the results of inservice inspection of the core spray spargers during each refueling outage, and (3) propose visual inspections of accessible surfaces in accordance with ASME Code, Section XI.

The staff has denied the licensee's request because the licensee has not provided adequate justification to resolve the staff's concern over the long term behavior of the core spray sparger system. Our denial is based on the following considerations:

(1) During the 1978 and 1980 inspections, crack indications were found in the spargers and annulus piping. The worst crack reported was a through wall circumferential crack extending about the halfway around an upper sparger. Ten clamp assemblies were installed as an interim repair. This repair is not a Code-approved repair and is acceptable only on an interim basis. GPUN currently has no plan to replace these defective components. Therefore, for continued operation of the repaired core spray sparger system, we consider the NRC review and approval of the test methods and results during each refueling outage is necessary to ensure that the integrity of the repaired core spray sparger system is maintained during each cycle of operation.

(2) Although the two latest inspections (1983 and 1986) did not find any new cracks in the core spray sparger system, there is no evidence that the driving forces for the crack initiation and propagation have been completely removed from the system. The residual stresses from welding, cold work and fit-up are usually considered as the main driving forces for the reported cracking. Since these driving forces may be still present, cracking would continue. Therefore, because of the uncertainties in the long term behavior of the repaired core spray sparger system, we require that the license condition as stipulated in the license for the inspection of sparges and piping should be retained to ensure that there is no unacceptable degradation in the system.

(3) The license proposed to perform visual inspections in accordance with ASME Code, section XI (VT-1 for spargers and VT-3 for piping) without NRC review of the inspection method. The staff considers that this may not provide an adequate examination of the core spray sparger system. The staff requires that normal methods be used with resolution required by IE Bulletin 80-13. Staff review of the licensee's inspection methods is necessary to ensure that the method used for the inspection is adequate and to ensure meaningful comparisons of results with those from previous inspections can be made.

The licensee was notified of the Commission's denial of the proposed amendment change by letter dated November 7, 1988.

By December 19, 1988, the licensee may demand a hearing with respect to denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 13, 1988, and (2) the Commission's letter to the licensee dated November 7, 1988.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, 20555, and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 7th day of November 1988.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26600 Filed 11-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co., et al.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 113 to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The amendment was effective as of the date of issuance.

The amendment deletes the requirement to conduct a turbine deck load test every four years and prohibits use of the air pallet system for spent fuel cask handling.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with the amendment requests, of which this action is a part, was published in the **Federal Register** on June 24, 1988 (53 FR 23820). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to this action and has concluded that an environmental impact statement need not be prepared because operation of the facility in accordance with this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 28, 1988, (2) Amendment No. 113 to License No. DPR-13, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 8th day of November, 1988.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26601 Filed 11-16-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of a Form

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed extension of a form submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44 U.S.C. Chapter 35), this notice announces a proposed extension of OPM Form 1170, which collects information from the public. The Supplemental Qualifications Statement in conjunction with the SF 171, Application for Federal Employment, collects detailed information from the applicant on his/her qualifications. The Office of Personnel Management then uses the information to examine the applicant's qualifications for Federal positions throughout the Federal Government. It is estimated that approximately 157,741 persons complete OPM Form 1170 at 40 minutes per response, for a total annual burden of 105,160.667 hours. For copies of this proposal, call Grace Butler, on (202) 632-0259.

DATE: Comments on this proposal should be received within 10 working days from the date of this notice.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW, Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard R. Wood, (202) 632-0728.

U.S. Office of Personnel Management.

Hugh Hewitt,

Deputy Director.

[FR Doc. 88-26587 Filed 11-16-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

November 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Delta Woodside Industries, Inc.
Common Stock, $.01 Par Value (File No. 7-4020)
Kemper Municipal Income Trust
Common Stock, $.01 Par Value (File No. 7-4021)
Massmutual Participation Investors
Shares of Beneficial Interest, $.01 Par Value (File No. 7-4022)
National City Corp.
Common Stock, $4.00 Par Value (File No. 7-4023)
Patriot Premium Dividend Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-4024)
Templeton Value Fund Inc.
Common Stock, $.01 Par Value (File No. 7-4025)
Medusa Corporation
Common Stock, No Par Value (File No. 7-4026)
The L.S. Starrett Company
Class A Common Stock, No Par Value (File No. 7-4027)
ACM Managed Income Fund Inc.
Common Stock, $.01 Par Value (File No. 7-4028)
Beazer PLC
American Depositary Shares, No Par Value (File No. 7-4029)
Coles Myer, Ltd
American Depositary Shares, No Par Value (File No. 7-4030)
Gitano Group, Inc., (THE)
Common Stock, $.10 Par Value (File No. 7-4031)
Intertan, Inc.
Common Stock, $1.00 Par Value (File No. 7-4032)
Racal Telecom PLC
American Depositary Shares, No Par Value (File No. 7-4033)
Lomas Financial Corporation
Common Stock, $2.00 Par Value (File No. 7-4034)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 30, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26584 Filed 11-16-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

November 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Eastern Airlines, Inc.
$3.24 Cumulative Preferred (File No. 7-4010)
Apache Corporation
Common Stock, $1.25 Par Value (File No. 7-4011)
Avon Products, Inc.
$2.00 Equity Redeemable Preferred (File No. 7-4012)
BankAmerica Corporation
7.36% Cumulative Preferred, Series A
6.00% Cumulative Preferred, Series B
$2.875 Cumulative Special Preferred Series C (File No. 7-4013)
Neiman Marcus Group, Inc.
Common Stock, $.01 Par Value (File No. 7-4014)
TCBY Enterprises, Inc.
Common Stock, $.10 Par Value (File No. 7-4015)
Hanson PLC

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Warrants to purchase American Depositary Receipts (File No. 7–4016)
Cyprus Minerals Company
Common Stock, No Par Value (File No. 7–4017)
Acuson Corporation
Common Stock, No Par Value (File No. 7–4018)
India Growth Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4019)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 30, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–26585 Filed 11–16–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

November 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f) (1) (B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Acuson Corp.
Common Stock, $.0001 Par Value (File No. 7–4035)
Racal Telecom PLC
American Depositary Shares (File No. 7–4036)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 30, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if its finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–28586 Filed 11–16–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26274; File Nos. SR–Amex–87–09; SR–PSE–87–21; SR–Phlx–87–05; SR–CBOE–88–21; NYSE–87–40]

Self-Regulatory Organizations, American Stock Exchange, Inc., et al.; Order Granting Accelerated Approval to Proposed Rule Changes Relating to Extension of the Market Index Option Escrow Receipt Pilot Program

On October 18, 1988, the American and Pacific Stock Exchanges, Inc. ("Amex" and "PSE") (collectively the "Exchanges"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] Amendments Nos. 4 and 3, respectively, to proposed rule changes to extend the market index option escrow receipt ("MIOER") pilot program until April 30, 1989.[3]

In August 1985, the Commission approved a one-year pilot program to permit the use of cash, cash equivalents, one or more qualified securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options.[4] The proposed rule changes are designed to extend the pilot program until such time as the exchanges and the Options Clearing Corporation ("OCC") resolve certain matters concerning the format of the receipt and administration of the program.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** for several reasons. First, the extension will allow for uninterrupted continuation of a program designed to reduce operational difficulties of banks and trust companies while the options exchanges and the OCC continue their review of the receipt format. Second, the extension will allow the Commission to continue its evaluation of the program's effectiveness. Third, the pilot was previously approved by the Commission and no adverse comments have been received regarding its operation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [5] that the proposal to extend the operation of the pilot through April 30, 1989, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

Dated: November 10, 1988.

[FR Doc. 88–26638 Filed 11–16–88; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] On October 31 and November 1 and 7, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the New York Stock Exchange, Inc. ("NYSE") respectively, submitted substantially identical proposals for the extension of the MIOER pilot. *See* File Nos. SR–Phlx–87–05, Amendment No. 4; SR–CBOE–88–21; SR–NYSE–87–40, Amendment No. 3.

[4] *See* Securities Exchange Act Release No. 22323 (August 13, 1985), 50 FR 33439 for a description of the pilot.

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1988).

[Rel. No. IC–16634; File No. 812–7082]

Golden American Life Insurance Co., et al.

November 10, 1988.

AGENCY: The Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act")

Applicants: Golden American Life Insurance Company ("Golden American"), Western Capital Specialty Managers Separate Account B (the "Account"), and Directed Services, Inc. ("DSI") (collectively, the "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction of mortality and expense risk charges and a guaranteed death benefit charge from the Account in connection with the sale of certain variable annuity contracts.

Filing Date: The Application was filed on July 27, 1988 and amended on October 6, 1988, October 21, and November 7, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on December 5, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Goldn American Life Insurance Company, 909 Third Avenue, 19th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272–3450 or Clifford E. Kirsch, Special Counsel, at (202) 272–2061.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Golden American is a stock life insurance company organized under the laws of the State of Minnesota. From January 2, 1973 through December 31, 1987, the name of the company was St. Paul Life Insurance Company. On December 31, 1987, after all of St. Paul Life Insurance Company's business was sold, the name was changed to Golden American Life Insurance Company. The Account is a separate investment account of Golden American established to act as a funding vehicle for a deferred annuity contract (the "Deferred Annuity") and an annuity certain contract (the "Annuity Certain") (referred to collectively as the "Contracts").

2. The Account is divided into divisions. Each division will invest in shares of a designated series of the Western Capital Specialty Managers Trust (the "Trust") which is an open-end management investment company. The Trust is a series-type mutual fund that contains seven series, each of which will pursue different investment objectives and policies.

3. The Contracts provide for the accumulation of values on a variable basis except to the extent that a portion of the accumulation value is allocated to the Guaranteed Interest Division of the general account. Payment of annuity benefits will be on a fixed or variable basis depending on the annuity option chosen.

4. The Deferred Annuity is an individual flexible premium payment contract which provides for an initial premium payment and for subsequent premium payments if the Contract owner so desires. There is, however, no obligation to make additional payments. The Annuity Certain is an immediate annuity which provides for payments of a single premium and allows for variable annuity payments over a fixed period of time. At any time while a Contract is in effect, part or all of the value under a Contract may be surrendered for cash payment, or alternatively, the value under the Contracts may be applied to annuity options available at the time of surrender.

5. Deferred loading at a maximum rate of 5.00% of purchase payments is deducted from each premium payment for distribution expenses. If the premium received at issue on one Contract or several simultaneously purchased Contracts exceeds specified limits, Golden American may reduce this load. All deferred loading applicable to initial, single, or additional premium payments is deducted at the time of payment but is advanced to the divisions and recovered from the accumulation value in equal installments on the first and subsequent contract processing dates following the receipt and acceptance of the payment over a period specified in the Contracts. If the Contract owner surrenders a Contract, any remaining deferred loading will be deducted at that time. For the purpose of the sales load provisions of the 1940 Act, the deferred loading is a front-end sales load. Applicants are not relying on Rule 6c–8 in connection with this charge.

6. In the Deferred Annuity, an administrative charge of $40 will be deducted from the accumulation value of a Contract each year to reimburse Golden American for the anticipated actual cost of administrative expenses relating to the Contract. The amount of the administrative charge may be changed by Golden American to meet the anticipated actual cost of administrative expenses relating to the Contract, however, the amount of the administrative charge is guaranteed not to exceed $60 annually.

7. The Contracts provide that a maximum mortality and expense risk charge equal to 0.002477% of the asset values in each division of the Account will be deducted on a daily basis (equivalent to an annual charge of 0.90%). For the Deferred Annuity, approximately 0.55% is allocated to the mortality risk and 0.35% is allocated to the expense risk. In the Annuity Certain, approximately 0.45% is allocated to the mortality risk and 0.45% is allocated to the expense risk. The mortality risk assumed by Golden American arises from its obligations to continue to make annuity payments under the Contracts or income plan provisions of the Contracts, determined in accordance with the guaranteed annuity tables and other provisions of the Contract, regardless of how long each annuitant lives and regardless of how long all payees as a group live. The mortality risk under the Deferred Annuity is the risk that, after annuitization or upon selection of an annuity option with a life contingency, annuitants will possibly live longer than Golden American's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since the payment options are guaranteed not to be less than the tables discussed in the Deferred Annuity. In the Annuity Certain, the mortality risk assumed by Golden American relates to the fact that, at all times, Golden American will offer the option to convert the Annuity Certain, which does not provide for payments based on life contingencies, to one or more annuity contracts that provide for payments based on life contingencies. The mortality risk assumed by Golden American is the risk that annuitants, or beneficiaries after the death of the annuitant, will choose one such option and will possibly live longer than Golden American's actuarial projections indicate, resulting in higher than expected payments during the payment phase, since any payment option is guaranteed not to be less than the tables discussed in the Annuity Certain. In addition, Golden American assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses.

8. The Deferred Annuity also provides for a guaranteed death benefit annually. The guaranteed death benefit charge for the Contracts is based on the amount of the guaranteed death benefit and is

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imposed at a rate of $1.20 per $1,000 of guaranteed death benefit per year. However, the Account may offer other variable annuity contracts in the future. These variable annuity contracts may charge up to $1.20 per $1,000 of guaranteed death benefit per year.

9. Applicants represent that they have reviewed publicly available information regarding the level of the mortality and expense risk and guaranteed death benefit charges under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, Applicants represent that the maximum charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

10. Applicants do not believe that the deferred load imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any "shortfall" will be made up from the general account assets which includes amounts derived from risk charges. Golden American has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Account and the contract owners. Golden American will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

11. Applicants further represent that the Account will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of the company, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–26639 Filed 11–16–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24745]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 10, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 5, 1988 to the Secretary, Securities and Exchange commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the Address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact of law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Cedar Coal Company (70–7181)

Cedar Coal Company ("Cedar"), 40 Franklin Road, P.O. Box 2021 Roanoke, Virginia 24022, an indirect subsidiary of American Electric Power, Inc. ("AEP"), a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a), 10, and 13 of the Act and Rules 86, 90, and 91 thereunder.

Cedar maintains a central Rebuilding Shop ("Shop") to renovate, rebuild and modify major pieces of mining equipment for the mining operations of companies in the AEP system. By order of the Commission dated December 31, 1985 (HCAR No. 23973), Cedar was authorized, through December 31, 1988, to perform those services for AEP system companies at cost, and for non-associated entities at other than cost. Revenues from non-associated companies will not exceed in any calendar year revenues from associated companies. Cedar now requests authorization to continue this business for AEP system companies and for non-associate companies until December 31, 1991.

American Electric Power Company, Inc., et al. (70–7550)

American Electric Power Company, Inc. ("AEP"), a registered holding company, AEP Generating Company ("Generating"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, Appalachian Power Company ("Appalachian"), 40 Franklin Road, SW., Roanoke, Virginia 24011, Columbus Southern Power Company ("Columbus"), 215 North Front Street, Columbus, Ohio 43215, Indiana Michigan Power Company ("Indiana"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, Kanawha Valley Power Company ("Kanawha"), 301 Virginia Street East, Charleston, West Virginia 25327, Kentucky Power Company ("Kentucky"), 1701 Central Avenue, Ashland, Kentucky 41101, Kingsport Power Company ("Kingsport"), 40 Franklin Road, SW., Roanoke, Virginia 24011, Michigan Power Company ("Michigan"), P.O. box 413, Three Rivers, Michigan 49093, Ohio Power Company ("Ohio"), Central Ohio Coal Company ("Central"), both located at 301 Cleveland Avenue SW., Canton, Ohio 44701, and Wheeling Power company ("Wheeling"), 51 Sixteenth Street, Wheeling, West Virginia 26003, subsidiaries of AEP, have filed an application-declaration pursuant to section 6(a), 6(b), 7 and 12(b) of the Act and Rules 45 and 50 thereunder.

During the period from January 1, 1989 through December 31, 1990, Appalachian, Columbus, Indiana, Kentucky and Ohio propose to issue and sell to banks and dealers in commercial paper short-term notes in aggregate principal amounts not exceeding $10 million, $150 million, $200 million, $50 million, and $157 million respectively, at any one time outstanding. Generating, Central, Kanawha, Kingsport, Michigan and Wheeling propose to issue and sell to banks short-term notes in aggregate principal amounts not exceeding $50 million, $27 million, $8 million, $5 million, $12 million and $15 million, respectively, at any one time outstanding. Appalachian, Columbus, Indiana, Kentucky and Ohio request that the proposed issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

Notes to be issued to banks will mature in not more than 270 days. The notes to banks will be sold under various lines of credit. The maximum effective annual interest cost will not exceed 125% of the prime commercial rate in effect from time to time.

AEP requests authorization during the same period to make cash capital contributions from time to time to provide equity capital of up to $80 million for Columbus and $3 million each to Kingsport, Michigan, and Wheeling.

Middle South Utilities, Inc. et al. (70–7561)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its wholly owned generating subsidiary, System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson, Mississippi 39225 and Middle South's other electric utility subsidiaries ("Electric Utility Subsidiaries"), Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39215, and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112 have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Act and Rules 44, 45 and 50(a)(5) thereunder.

On October 13, 1988 (HCAR No. 24738) the Commission issued a notice of a proposal by SERI to sell and leaseback approximately 10–15% of its 90% undivided ownership interest ("Undivided Interest") in Unit 1 of the Grand Gulf Steam Electric Generating Station ("Grand Gulf 1"). SERI plans to enter into Participation Agreements providing for the sale of its Undivided Interest to a trustee ("Owner/Trustee") acting on behalf of equity investors ("Owner Participants"), and the simultaneous lease of such Undivided Interest pursuant to separate net lease agreements ("Lease") to be entered into with the Owner Trustee/Lessor. In connection with equity funding of the proposed transaction, letters of credit ("Letter of Credit") may be provided by one or more banks or other financial institutions. Upon the occurrence of certain adverse operating events with respect to Grand Gulf 1, the Owner Participants would be entitled to draw on the Letter of Credit in amounts equal to amounts owned by SERI under the Lease. In such case, SERI will become obligated, pursuant to a reimbursement agreement ("Reimbursement Agreement") to be entered into between SERI and the banks to repay the amount drawn under the Letter of Credit.

In order to provide security for its obligations under the Reimbursement Agreement, SERI now states that it will enter into an assignment, for the benefit of the LOC Banks, of its rights under an Availability Agreement among SERI and Middle South's other Electric Utility Subsidiaries and under a Capital Funds Agreement between SERI and Middle South. Both the Electric Utility Subsidiaries and Middle South Propose to consent to and join in such assignment.

The amendment also indicates that 10–25% of the aggregate cost of their Undivided Interest will be provided by the Owner Participants and 75–90% of the cost will be borrowed by them as opposed to the previously stated 15–25% and 75–85%, respectively.

Pennsylvania Electric Company (70–7576)

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, a subsidiary of General Public Utilities Corporation, a registered holding company ("GPU"), has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

Penelec proposes to issue and sell from time to time through December 31, 1989 up to $100 million of additional first mortgage bonds ("Bonds") and up to $100 million of medium term securities either as first mortgage bonds or unsecured notes ("MTNs") provided that the total principal amount of such Bonds and MTNs does not exceed $100 million.

The Bonds and any MTNs issued as first mortgage bonds are to be issued under Penelec's Mortgage and Deed of Trust ("Mortgage"). The Bonds will have a term of not less than one and not more than 35 years but will be subject to earlier redemption or retirement upon the occurrence of certain events. In addition, the Bonds may be subject to optional redemption in whole or in part, by Penelec beginning not earlier than one year after issuance thereof, at various premiums above the principal amount thereof. The Bonds may also be entitled to mandatory sinking fund provisions.

Unsecured MTNs would be issued under an indenture between Penelec and a trustee to be selected. Penelec will publicly offer the MTNs from time to time as the need for funds arises through one or more agents. The MTNs will be sold primarily based on their credit ratings with interest rates negotiated at the time of sale based on spreads over comparable maturity U.S. Treasury securities. The maturity dates of the MTNs will range from 9 months to 10 years to be determined by agreement between Penelec and the respective purchasers. The MTNs will not be redeemable by Penelec except that MTNs with a maturity in excess of five years will be redeemable at Penelec's option five years after issuance.

Penelec request authorization to begin negotiations to place the Bonds and MTNs. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–26540 Filed 11–16–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Draft Change 2, Advisory Circular 27–1, Certification of Normal Category Rotorcraft, and Draft Change 1, Advisory Circular 29–2A, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Availbility of draft advisory circular (AC) changes and notice of meeting.

SUMMARY: This notice announces the availability of and request for comments on Draft Change 2, AC 27–1, Certification of Normal Category Rotorcraft, and Draft Change 1, AC 29–2A, Certification of Transport Category Rotorcraft. The draft changes contain guidance material for demonstrating compliance with Parts 27 and 29 of the Federal Aviation Regulations (FAR). Included in the draft material is information regarding the evaluation of emergency medical service designs. In addition, the Rotorcraft Directorate is sponsoring a 1-day public meeting to discuss the draft changes.

DATE: Comments must identify Draft Change 2, AC 27–1, or Draft Change 1, AC 29–2A, and must be received by February 24, 1989.

The public meeting will begin at 9 a.m. on January 26, 1989.

ADDRESSES: The public meeting will be held in the Training Room (Room 167), Building 3B, FAA, 4400 Blue Mound Road, Fort Worth, Texas.

Comments may be mailed to FAA, Rotorcraft Standards Staff, ASW–110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110.

FOR FURTHER INFORMATION CONTACT: Ms. Debra H. Myers, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, telephone (817) 624–5118.

SUPPLEMENTARY INFORMATION: Copies of the draft changes have been mailed to all known affected industry and government entities, both foreign and domestic. Any interested person not

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receiving these draft changes may obtain a copy by contacting the person named under "FOR FURTHER INFORMATION CONTACT."

Interested persons are invited to submit comments on these draft changes. Comments received may be inspected at the office of the Rotorcraft Standards Staff, FAA, Building 3B, Room 143N, 4400 Blue Mound Road, Fort Worth, Texas.

Issued in Fort Worth, Texas, on October 26, 1988.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 88-26532 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

Intention To Prepare an Environmental Impact Statement and To Hold an Environmental Scoping Meeting for Airport Expansion, Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to Hold a Public Scoping Meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for 2750' extension of Runway 4/22 to the southwest at Minneapolis-St. Paul International Airport. To ensure that all significant issues related to the proposed action are identified, a public meeting will be held.

FOR FURTHER INFORMATION CONTACT: Glen Orcutt, Airport Planner, Federal Aviation Administration, Minneapolis Airports Office, 6301 34th Avenue South, Room 111, Minneapolis, Minnesota 55450. Telephone number (612) 725-4221.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Minnesota Department of Transportation and the Metropolitan Airports Commission will prepare an EIS for development at Minneapolis-St. Paul International Airport. The development involves the extension of the southwest end of Runway 4/22 by 2750'. The landing thresholds for both runway ends would be displaced 2750' from the ends of pavement. Construction of new taxiways and lighting system changes related to the extension and threshold displacements are also part of the proposed project. Flight track modification will also be established as part of the project.

Comments and suggestions are invited from Federal, State, local agencies, and other interested parties to ensure the full range of issues related to this proposed project are addressed and all significant issues identified. Copies of material to be evaluated can be obtained by contacting the FAA informational contact listed above. Comments and suggestions may be mailed to the same address.

Public Scoping Meeting

In order to provide public input, a scoping meeting for Federal, State and local agencies and other interested parties will be held Thursday, December 15, 1988, at 1 pm at the Richfield City Hall Council Chambers, 6700 Portland Avenue, Richfield, Minnesota. Information about the meeting may be obtained by contacting the FAA.

Issued in Des Plaines, Illinois, on November 3, 1988.

Stanley Rivers,

Manager, Airports Division, FAA, Great Lakes Region.

[FR Doc. 88-26523 Filed 11-15-88; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 25727]

Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces a series of meetings to solicit information from the public concerning the need and utilization of Special Use Airspace (SUA). The United States Congress has directed that the Secretaries of Transportation and Defense, in consultation with aviation users, jointly conduct a national review of the need and utilization of SUA with a view to determining its impact on civil aviation operations and on the quality of the environment. In compliance with this request and consistent with the principles of consultation, the FAA and DOD now seek factual information from the public to determine what, if any, impact SUA has on civil aviation operations and the quality of the environment. The objective of these meetings is only to obtain public input on these topics for the required report to Congress, which is due June 30, 1989.

DATES: Comments must be received on or before February 11, 1989.

The public meetings will be held on November 30, 1988, in Dayton, OH; December 1, 1988, in Washington, DC; December 7, 1988, in Fort Worth, TX; December 12, 1988, in Reno, NV; December 13, 1988, in Las Vegas, NV; December 14, 1988, in Salt Lake City, UT; December 15, 1988, in Ontario, CA; January 10, 1989, in Fayetteville, NC; and January 11, 1989, in Pensacola, FL.

ADDRESSES: Send or deliver comments in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Docket [ ], 800 Independence Avenue SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

The public meeting locations are as follows:

Dayton, OH

Date: November 30, 1988
Time: 7:00 p.m.
Location: Sinclair Community College, 444 West Third Street, Room 4011, Dayton, OH

Fayetteville, NC

Date: January 10, 1989
Time: 7:00 p.m.
Location: Fayetteville Technical Community College Auditorium, 2201 Hull Road, Fayetteville, NC

Fort Worth, TX

Date: December 7, 1988
Time: 7:00 p.m.
Location: Holiday Inn North, 2540 Meacham Boulevard (I35 at Meacham Boulevard), Fort Worth, TX

Las Vegas, NV

Date: December 13, 1988
Time: 7:00 p.m.
Location: Gold Coast Hotel, 4000 West Flamingo Road, Las Vegas, NV

Ontario, CA

Date: December 15, 1988
Time: 7:00 p.m.
Location: Chaffey Union High School, Merton E. Hill Auditorium, 211 West 5th Street, Ontario, CA

Pensacola, FL

Date: January 11, 1989
Time: 7:00 p.m.
Location: Pensacola Junior College, Fine Arts Auditorium, 1000 College Boulevard, Room 8, Pensacola, FL

Reno, NV

Date: December 12, 1988
Time: 7:00 p.m.
Location: Reno Convention Center, 4590 South Virginia Street, Reno, NV

Salt Lake City, UT

Date: December 14, 1988
Time: 7:00 p.m.
Location: Utah Air National Guard Theater, 765 North 2200 West, Salt Lake City, UT

Washington, DC

Date: December 1, 1988
Time: 7:00 p.m.
Location: Federal Aviation Administration, Third Floor Auditorium, 800 Independence Avenue SW., Washington, DC

FOR FURTHER INFORMATION CONTACT: For advance requests to be heard at the meetings and for questions regarding the logistics of the meetings, contact Mr. Robert G. Burns or Mr. Paul Gallant, Airspace Branch (ATO-240), Room 415, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-3075 or Lt. Col. Charles R. Linn, DOD/USAF, HQ USAF/XOORF, Washington, DC 20330-5054; telephone (202) 697-4399.

SUPPLEMENTARY INFORMATION:

Background

The Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100-223, directs the Departments of Transportation and Defense to jointly conduct a special use airspace (SUA) review and provide a report of this review to Congress. Specifically:

> The Secretary (of Transportation) and the Secretary of Defense, in consultation with aviation users, shall jointly conduct a national review of the need and utilization of special use airspace with a view to determining its impact on civil aviation operations and on the quality of the environment.

Meeting Procedures

(a) The meetings will be informal in nature and will be conducted jointly by a representative of the Administrator of the FAA in behalf of the Secretary of Transportation and representatives of the Secretary of Defense. Each participant will be given an opportunity to make a presentation.

(b) The meetings will be open to all persons on a space-available basis. All efforts will be made to provide a meeting site with sufficient seating capacity for the expected participation. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Any person who wishes to present a position paper to the panel pertinent to the topic of special use airspace for consideration with public presentation may do so.

(e) Persons wishing to hand out pertinent position papers to the attendees should present three copies to the representatives from the FAA and DOD. The FAA and DOD representatives will retain one copy each, with the third being placed in the meeting files. There should be an adequate number of copies of each handout available for all attendees.

(f) The meetings will not be formally recorded. However, informal tape recordings will be made of presentations to ensure that each respondent's comments are accurately noted. A summary of the comments at each meeting will be made and used in the final report.

Materials relating to this subject for presentation at the meetings will be accepted at the individual meetings. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the docket up to 30 days after the close of the last meeting.

Agenda

Opening Remarks and Discussion of Meeting Procedures.

Public Presentations.

Closing Comments.

Issued in Washington, DC, on November 11, 1988.

John P. Cuprisin,

Acting Director, Air Traffic Operations Service, Federal Aviation Administration.

Charles R. Linn, Lt. Col.,

USAF, Acting Chairman, Airspace Subgroup, DOD Advisory Committee on Federal Aviation.

[FR Doc. 88-26542 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

Flight Standards District Office at San Diego, CA; Relocation

Notice is hereby given that on or about November 14, 1988, the Flight Standards District Office at 8665 Gibbs Drive, Suite 110, San Diego, California 92123 will be relocating to 8525 Gibbs Drive, Suite 120, San Diego, California 92123. Services to the general public will continue to be provided by this office without interruption. This information will be reflected in the FAA Organization Statement the next time it is reissued. (Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Hawthorne, CA, on November 4, 1988.

Jerold M. Chavkin,

Regional Administrator, Western-Pacific Region.

[FR Doc. 88-26541 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 10, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0119.
Form Number: None.
Type of Review: Extension.
Title: Trade Name Recordation.
Description: Trade name owners who choose to record their trade names with Customs for import protection must establish that they have the exclusive right to use that trade name, pay the required fee, and provide other information that will aid Customs officers in their enforcement effort, such as a description of the merchandise with which the trade name is associated.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Response: 4 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 80 hours.
Clearance Officer: B. J. Simpson, (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management

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and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26574 Filed 11-16-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 10, 1988.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub L. 96-511. Copies of the submission(s) may be obtainted by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0013.
Form Number: 56.
Type of Review: Revision.
Title: Notice Concerning Fiduciary Relationship.
Description: Form is used to inform IRS that a person is acting for another person in a fiduciary capacity so that IRS may mail to the fiduciary tax notices concerning the person for whom the fiduciary is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail or discontinue mailing designated tax notices to the fiduciary.
Respondents: Individuals or households, Businesses or other for profit, Small businesses or organizations.
Estimated Number of Respondents: 173,944.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—8 hours 37 minutes.
Learning about the law or the form—1 hour 32 minutes.
Preparing the form—3 hours 36 minutes.
Copying, assembling, and sending the form to IRS—32 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 2,483,920 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26575 Filed 11-16-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 10, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0949.
Form Number: 2587.
Type of Review: Extension.
Title: Application for Special Enrollment Examination.
Description: This information relates to the determination of the eligibility of individuals seeking enrollment status to practice before the Internal Revenue Service.
Respondents: Individuals or Households.
Estimated Number of Respondents: 8,000.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: One time filing.
Estimated Total Reporting Burden: 800 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26576 Filed 11-16-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 29-88]

Treasury Notes, Series D-1998

Washington, November 10, 1988.

The Secretary announced on November 9, 1988, that the interest rate on the notes designated Series D-1998, described in Department Circular—Public Debt Series—No. 29-88 dated November 3, 1988, will be 8⅞ percent. Interest on the notes will be payable at the rate of 8⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-26592 Filed 11-16-88; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 28-88]

Treasury Notes, Series U-1991

Washington, November 9, 1988.

The Secretary announced on November 8, 1988, that the interest rate on the notes designated Series U-1991, described in Department Circular—Public Debt Series—No. 28-88 dated November 3, 1988, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-26593 Filed 11-16-88; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 222
Thursday, November 17, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board Meeting

TIME AND DATE: 4:00 p.m.—Tuesday, November 22, 1988 (Rescheduled).

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW.-Suite 800, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Nance Frazier, Director of Communications, 376-3224.

AGENDA:

1. Approval of Minutes, August 4, 1988.
2. Executive Director's Activity Report.
3. Treasurer's Report.
4. Appointment of Assistant Secretary.
5. Establishment of CY 1989 Board Meeting Dates.

Carol J. McCabe,

Secretary.

[FR Doc. 88-26650 Filed 11-15-88; 10:49 am]

BILLING CODE 7570-01-M

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Corrections

Federal Register
Vol. 53, No. 222
Thursday, November 17, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeowners in Certain Industries; Records To Be Kept by Employers

Correction

In rule document 88-26041 beginning on page 45706 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45707, in the second column, in the first complete paragraph, in the sixth line, remove "the".

2. On page 45708, in the first column, in the 21st line, "certificate" should read "certification".

3. On page 45709, in the third column, in the first complete paragraph, in the eighth line, "assurance" should read "assurances".

4. On page 45711, in the first column, in the second complete paragraph, in the 14th line, "administrator" should read "Administrator".

5. On the same page, in the second column, in the first line, "suites" should read "suits".

6. On the same page, in the same column, in the first complete paragraph, in the 22nd line, "administrator" should read "Administrator".

7. On the same page, in the same column, in the second complete paragraph, in the first line, "administrator's" should read "Administrator's".

8. On page 45713, in the second column, in the 16th line from the bottom of the column, "difference" was misspelled.

9. On page 45714, in the first column, in the first complete paragraph, in the 3rd line, "employers" should read "employees"; and in the 13th line, insert "the" after "least".

10. On the same page, in the second column, in the first complete paragraph, in the second line, "proposed" should read "proposal".

11. On the same page, in the same column, in fourth complete paragraph, in the fourth line, "homeworker" should read "homeworkers"; and in the 10th line "homeworkers" should read "homeworker".

12. On page 45718, in the first column, in the sixth line, "provided" should read "provide".

13. On the same page, in the same column, in the first complete paragraph, in the 15th line, remove "foot".

14. On page 45721, in the first column, in the second complete paragraph, in the eighth line, "certificate" should read "certificates".

15. On the same page, in the second column, in the fourth line, "homeworker" should read "homeworkers".

PART 516—[AMENDED]

16. On page 45726, in the second column, in the authority citation for Part 516, after "211" add ". Section".

BILLING CODE 1505-01-D

Thursday
November 17, 1988

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Administration

48 CFR Parts 2401 et al.

Acquisition Regulation; Solicitation Provisions, Contract Clauses, Forms, and Other Miscellaneous Amendments; Final Rule and Provisional Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2401, 2402, 2406, 2409, 2412, 2413, 2414, 2415, 2416, 2417, 2419, 2422, 2424, 2426, 2427, 2432, 2434, 2437, 2442, 2446, 2451, 2452, and 2453

[Docket No. R-88-1351; FR2131]

Acquisition Regulation; Solicitation Provisions, Contract Clauses, Forms, and Other Miscellaneous Amendments

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Final rule and provisional rule with request for comments.

SUMMARY: This final rule adopts, without substantive change, the proposed HUDAR rule of December 8, 1987, that supplemented the Federal Acquisition Regulation (FAR) by adding solicitation provisions, contract clauses, and HUD forms to the HUDAR. In addition, the final rule amends the proposed rule by removing some clauses due to subsequent issuance of FAR coverage; reorganizing the existing text in different sections; and in making minor technical corrections. Comment is being requested on seven provisional clauses which are being considered for Governmentwide application by the FAR councils.

DATES: *Effective Date:* Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule and provisional rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the final rule and provisional rules publication. HUD will publish a notice of the effective date of this final rule and provisional rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this final rule and provisional rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

The following sections are provisional: 2409.508, 2416.504, 2437.110, 2452.209-71, 2452.209-72, 2452.216-75, 2452.237-71, 2452.237-72, 2452.237-74 and 2452.237-75.

Comments: Comments must be submitted on or before January 17, 1989.

ADDRESS: Send comments to FAR Secretariat, Ms. Margaret Willis, Room 4041, GS Building, Washington, DC. 20405, (202) 523-4755.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Deputy Director, Policy and Evaluation Division, Office of Procurement and Contracts, Room 5260, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, DC, telephone (202) 755-5294. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 CFR 42102). The FAR was codified in Title 48, Chapter 1 of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696). The HUD Acquisition Regulation (HUDAR) was revised in an interim rule published in the **Federal Register** of November 8, 1985 (50 FR 46572) to implement the Competition in Contracting Act of 1984.

II. Proposed Rule for the Addition of Parts 2452 and 2453

The proposed HUDAR rule of December 8, 1987, supplemented the FAR by adding solicitation provisions, contract clauses, and HUD forms to the HUDAR. In addition, the proposed rule implemented the Prompt Payment Act (31 U.S.C. 3901-3906) and OMB Circular A-109, "Major Systems Acquisition." Because of the impact of the rule on the public, the Department published these HUDAR changes as proposed rulemaking and provided for a public comment period of 60 days. No public comments were received. However, HUD has determined that several revisions to the proposed rule are necessary in light of recent changes to the FAR and to reflect the Department's current procurement procedures.

III. Revisions to the Proposed Rule

A. Ratification of Unauthorized Commitments

Federal Acquisition Circular (FAC) 84-33 (53 FR 3688), dated February 8, 1988, amended the FAR by adding section 1.602-3, Ratification of Unauthorized Commitments. HUDAR 2401.602-70 is therefore removed and a new 2401.602-3 is added to provide necessary internal procedures. In addition, a paragraph (c)(5) is added to establish that the Contracting Officer or Head of the Contracting Activity authorized payments and, at their discretion, may seek legal concurrence when there is a concern regarding the propriety of the funding source, appropriateness of the expense, or a legal issue is involved.

B. Prompt Payment Act

FAC 84-33 also implemented the Prompt Payment Act (31 U.S.C. 3901-3906) and OMB Circular A-125, "Prompt Payment." Proposed HUDAR coverage at 2432.900-2432.903 is therefore removed. HUDAR clauses at 2432.232-70, "Payment (Fixed-Price)," and 2432.232-71, "Payment (Cost-Reimbursement)," have been revised and renamed "Payment Schedule and Invoice Submission (Fixed-Price)" and "Voucher Submission (Cost-Reimbursement)," respectively. All duplicative language as reflected in FAR 52.232-25 has been removed. The clauses as now written merely contain instructions on where invoices/vouchers are to be submitted. HUDAR 2452.232-72, "Method of Payment," has been removed in its entirety in light of the FAR coverage.

C. Addition and Modification of Clauses

A prescription at 2422.1408(c) and the related clause at 2452.222-70, "Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities," are added to require that contractors ensure that any meetings, conferences, and seminars conducted under the contract are accessible to disabled persons, per Section 504 of the Rehabilitation Act of 1973, as amended.

HUDAR 2452.237-75, "Clearance of Personnel," has been amended to add the requirement that contractor staff working on-site must have temporary identification/building passes. This reflects current Departmental procedure.

IV. Other HUDAR Revisions

The Office of Housing reorganized in 1986. All references to Chief, Reconditioning and Contracting Branch, Office of Multifamily Housing Management, are therefore revised to Chief, Management Branch, Office of Multifamily Housing Management, to reflect the reorganization.

The definition of "Head of Contracting Activity" at 2402.101 has been revised to add the Regional Director, Office of Housing, for decentralized procurement for acquired properties in co-located Regional/Field Offices.

HUDAR 2419.503 pertaining to small business class set-asides for construction has been revised to state that this set-aside only pertains to contracts awarded under the Acquired Property Program. When the HUDAR was first published, only the Acquired Property Program awarded construction contracts. However, since that time, HUD has engaged in other construction contracts pertaining to HUD's management and operation of its Headquarters building. Therefore, the clarification is required to reflect the original intent.

Part 2470, "Special Programs Affecting Acquisition," has been changed to Part 2426, "Other Socioeconomic Programs." This change was required to implement FAC 84-32 (53 FR 660), dated January 11, 1988, which created FAR Part 26. The text, however, has not been revised.

The prescription at 2427.305-2 for use of the Form HUD 770, "Report of Inventions and Subcontracts," has been modified to state that the Contracting Officer need only send the form if the work conducted under the contract was such that patents or inventions may have been developed.

HUDAR 2432.410 has been removed. This passage stated that the Determination and Findings required by FAR 32.402(c)(1)(iii) regarding advance payments could be issued by the Head of the Contracting Activity (HCA) only if a specific delegation of authority has been issued. However, proposed 2432.402 states that the Director of the Office of Procurement and Contracts (OPC) makes these determinations. Upon reviewing delegations of authority, it was discovered that the Director, OPC, is the only HCA with the specific delegated authority. Therefore, 2432.410 is unnecessary and is hereby removed.

HUDAR 2434.001, which establishes the Department's threshold for a "major system" to $15,000,000, has been revised to state that the Senior Procurement Executive may waive the requirements of OMB Circular A-109 if an acquisition exceeds the dollar threshold but does not otherwise meet the definition of a major system. In addition, a section 2434.003 has been added to designate the Senior Procurement Executive as the individual responsible for implementation of A-109. This designation is consistent with internal Departmental directives.

V. Provisional Portion of Regulation

The following clauses/provisions have been submitted to the FAR Councils for consideration for FAR coverage:

Clause/Provision	HUD cite
Organizational Conflict of Interest Certification	2452.209-71
Organizational Conflict of Interest Clause	2452.209-72
Unpriced Task Orders	2452.216-75
Reproduction of Reports	2452.237-71
Coordination of Data Collection Activities	2452.237-72
Technical Direction	2452.237-74
Clearance of Personnel	2452.237-75

These provisions/clauses are therefore designated as "provisional". Should the FAR Councils adopt a rule based on these provisions/clauses, HUD will rescind the provisional rule in favor of the FAR coverage.

VI. Miscellaneous

This rule would not constitute a "major rule" as the term is defined in section 1(b) of Executive Order 12291. This rule does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The revisions in this rule would involve modifications of various Departmental procedures for HUD procurement activities. These modifications primarily involve the codification of procedures involving certain solicitation provisions, contract clauses, and forms that have been implemented by HUD for many years.

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities because this rule merely codifies current Departmental procedures.

The information collection burdens associated with these procurement procedures have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2502-0278, 2535-0306, 2535-0085, and 2535-0091.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule is listed as item 1050 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 42008) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Parts 2401, 2402, 2406, 2409, 2412, 2413, 2414, 2415, 2416, 2417, 2419, 2422, 2424, 2426, 2427, 2432, 2434, 2437, 2442, 2446, 2451, 2452, and 2453

Government procurement.

Accordingly, Title 48, Chapter 24 of the Code of Federal Regulations is proposed to be amended as follows:

SUBCHAPTER A—GENERAL

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for Part 2401 is revised to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2401.403 [Amended]

2. Section 2401.403 is corrected by revising the parenthetical statement "(see 2401.601-1)" to read "(see 2401.601-70)."

3. The Table of Contents for Subpart 2401.6 is revised to read as follows:

Subpart 2401.6—Contracting Authority and Responsibilities

Sec.
2401.601 General.
2401.601-70 Senior Procurement Executive.
2401.601-71 Office of Procurement and Contracts.
2401.601-72 Acquired Property Program of the Office of Housing.
2401.601-73 Government National Mortgage Association (GNMA).
2401.601-74 Regional Offices.
2401.602 Contracting Officers.
2401.602-3 Ratification of unauthorized commitments.
2401.603 Selection, appointment and termination of appointment.
2401.603-2 Selection.
2401.603-3 Appointment.

2401.602-70 [Removed]

4. HUDAR 2401.602-70 is removed.

5. A new HUDAR 2401.602-3 is added, to read as follows:

2401.602-3 Ratification of unauthorized commitments.

(b)(4) A request for ratification shall be sent to the Contracting Officer through the Head of the Contracting Activity (HCA). The request will include an explanation as to the need for the service, the reason why normal procurement procedures were not

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followed, to what extent price competition was received or the price otherwise justified, and, corrective management actions to avoid ratifications in the future. If the justification is adequate, the ratification will be signed by the Contracting Officer and approved by the HCA. When circumstances warrant, the HCA may establish more stringent ratification procedures.

(c)(5) If the amount involved is less than $1,000, the Contracting Officer shall recommend payment. If the amount involved exceeds $1,000, the HCA shall recommend payment. In either case, legal concurrence may be requested if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when a legal issue is involved.

PART 2402—DEFINITIONS OF WORDS AND TERMS

6. In section 2402.101 the definition of "Head of Contracting Activity" is revised to read as follows:

2402.101 Definitions.

* * * * *

"Head of Contracting Activity" is defined in accordance with the FAR. The following HUD officials are designated HCAs:

(1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement and the Consolidated Supply Program;

(2) The Regional Directors, Offices of Administration for Regional Office procurements;

(3) The Chief, Management Branch, Office of Multifamily Housing Management, for Headquarters acquired properties operations;

(4) The Regional Director, Office of Housing, for decentralized procurement for acquired properties in co-located Regional/Field Offices;

(5) The Managers, HUD Field Offices, for decentralized procurement in Field Offices for acquired properties; and

(6) The President, Government National Mortgage Association (GNMA), for procurements related to GNMA's programmatic functions.

* * * * *

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2406—COMPETITION REQUIREMENTS

7. The authority citation for Part 2406 continues to read as follows:

Authority: Competition in Contracting Act of 1984 (41 U.S.C. 253); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2406.304-70 [Amended]

8. The phrase *"Chief, Reconditioning and Contracting Branch"* in HUDAR 2406.304-70(a)(1) is corrected to read *"Chief, Management Branch."*

PART 2409—CONTRACTOR QUALIFICATIONS

9. The authority citation for Part 2409 is revised to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. The table of contents is amended by adding sections 2409.508, 2409.508-1 and 2409.508-2 to read as follows:

Subpart 2409.5—Organizational Conflicts of Interest

Sec.

* * * * * *

2409.508 Solicitation provisions and contract clause.
2409.508-1 Solicitation provisions.
2409.508-2 Contract clause.

Subpart 2409.5—Organizational Conflicts of Interest

11. Section 2409.504 is amended by revising paragraph (a)(5), removing paragraph (b), redesignating paragraph (c) as (b) and revising the first sentence of newly redesignated paragraph (b)(1), redesignating paragraphs (d) and (e) as (c) and (d) and revising newly redesignated paragraph (d) to read as follows:

2409.504 Contracting Officer responsibilities.

* * * * *

(a) * * *

(5) Refusal to provide the disclosure or representation and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant interest shall disqualify the offeror or contractor for award or provide the rationale for post-award default action if the exercise of due diligence would have disclosed an apparent conflict. This provision applies equally to post-award disclosure requirements contained in the clause required by HUDAR 2409.508-2.

* * * * *

(b) * * *

(1) The disclosure or certification required by HUDAR 2409.508-1 and 2409.508-2 is designed to alert the Contracting Officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor.

* * * * *

(d) Action in Lieu of Termination. If the Contracting Officer determines that it would not be in the best interest of the Government to terminate a contract as provided in the clause cited at HUDAR 2409.508-2, the Contracting Officer shall take every reasonable action to eliminate, or otherwise neutralize the organizational conflict of interest.

12. Sections 2409.508, 2409.508-1, and 2409.508-2 are added to read as follows:

2409.508 Solicitation provisions and contract clause.

2409.508-1 Solicitation provisions.

The Contracting Officer shall insert the provisions at 2452.209-70, Organizational Conflicts of Interest Notification, and 2452.209-71, Organizational Conflicts of Interest Certification, in all solicitations over the small purchase limitation.

2409.508-2 Contract clause.

The Contracting Officer shall insert the clause at 2452.209-72, Organizational Conflicts of Interest, in all contracts.

13. Part 2412 is added to read as follows:

PART 2412—CONTRACT DELIVERY OR PERFORMANCE

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2412.1—Delivery or Performance Schedules

2412.104 Contract clause.

(a) The Contracting Officer may insert the clause at 2452.212-70, Contract Period, in all term form cost-reimbursement and fixed-price service solicitations and contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

14. The authority citation for Part 2413 is revised to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. The table of contents for Part 2413 is amended by adding Subparts 2413.1 and 2413.5 to read as follows:

Subpart 2413.1—General

Sec.
2413.107 Solicitation and evaluation of quotations.

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.
2413.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

16. Subpart 2413.1, consisting of section 2413.107, is added to read as follows:

Subpart 2413.1—General

2413.107 Solicitation and evaluation of quotations.

(a)(4) Contracting Officers may use HUD Form 24007, Purchase/Delivery Order Data File, to record all relevant data pertaining to a small purchase, including recording written and oral quotations received and documenting orders against GSA contracts.

17. Subpart 2413.5, consisting of sections 2413.505 and 2413.505-2, is added to read as follows:

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.

2413.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Contracting Officers may use the HUD Form 24001, Order for Supplies or Services, in lieu of Optional Form 347 for individual purchases not exceeding the small purchase limit.

(b) For small purchases under the Acquired Property Program, Contracting Officers shall use HUD Form 2542, Purchase Order and Payment Authorization. This form shall not be used for construction purchases expected to exceed $2,000. It shall not be used for purchases above the small purchase limit.

PART 2414—SEALED BIDDING

18. The authority citation for Part 2414 continues to read as follows:

Authority: Competition in Contracting Act of 1984 (41 U.S.C. 253); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2414.406-3 [Amended]

19. In HUDAR 2414.406-3(e)(3), the phrase *"Chief, Reconditioning and Contracting Branch"* is corrected to read *"Chief, Management Branch."*

PART 2415—CONTRACTING BY NEGOTIATION

20. The authority citation for Part 2415 continues to read as follows:

Authority: Competition in Contracting Act of 1984 (41 U.S.C. 253); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

21. Section 2415.407 is added to read as follows:

2415.407 Solicitation provisions.

(a) The Contracting Officer shall insert the provision at 2452.215-70, Proposal Content and Outline, in all negotiated solicitations over the small purchase limitation.

(b) The Contracting Officer shall insert the provisions at 2452.215-71, DUNS Contractor Establishment Number, in all solicitations that exceed the small purchase limitation.

22. Sections 2415.411 and 2415.411-70 are added to read as follows:

2415.411 Receipt of proposals and quotations.

2415.411-70 Recording of proposals.

HUD Form 4056, Abstract of Proposals, may be used to record the names and addresses of offerors whose proposals are received before the stated deadline. The offerors total price, including any estimated cost and fixed fee are to be recorded after the deadline at the time the proposals are opened.

PART 2416—TYPES OF CONTRACTS

23. The authority citation for Part 2416 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

24. Section 2416.405 is revised to read as follows:

2416.405 Contract clauses.

(e)(1) The Contracting Officer shall insert the clauses at 2452.216-70, Estimated Cost, Base Fee, and Award Fee; 2452.216-71, Payment of Base and Award Fee; 2452.216-72, Determination of Award Fee Earned; 2452.216-73, Performance Evaluation Plan; and 2452.216-74, Distribution of Award Fee, in all award fee contracts. The Contracting Officer may modify the clauses to meet individual situations and any clause or specific requirement therein may be deleted when it is not applicable to a given contract.

25. Section 2416.504 is added to read as follows:

2416.504 Indefinite-quantity contracts.

(e) The Contracting Officer shall insert the clause at 2452.216-75, Unpriced Task Orders, in all indefinite-quantity contracts.

26. Part 2417 is added to read as follows:

PART 2417—SPECIAL CONTRACTING METHODS

Authority: Economy Act (31 U.S.C. 1535); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

(b) The Contracting Officer shall use HUD Form 730, Award/Modification of Interagency Agreement, when placing or modifying an order for supplies or services from another Government agency.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

27. The authority citation for Part 2419 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)) sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

28. The heading and first sentence in HUDAR 2419.503(a) are revised to read as follows:

2419.503 [Amended]

(a) *Class set-aside for construction under the Acquired Property Program.* A class set-aside is hereby made for each proposed procurement for construction under the Acquired Property Program with an estimated cost of less than $1,000,000.

* * * * *

29. A new Part 2422 is added as follows:

PART 2422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

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Subpart 2422.14—Employment of the Handicapped

2422.1408 Contract clause.

(c) The Contracting Officer shall insert the clause at 2452.222–70, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in all solicitations and contracts.

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

30. The authority citation for Part 2424 is revised to read as follows:

Authority: Freedom of Information Act (5 U.S.C. 552); Privacy Act of 1974 (5 U.S.C. 552a); Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

31. Section 2424.202–70 is added to read as follows:

2424.202–70 Solicitation provision.

The Contracting Officer shall insert the provisions at 2452.224–70, Freedom of Information Act Notification, in all negotiated solicitations exceeding the small purchase limitation.

32. A new Part 2426 is added to read as follows:

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

Subpart 2426.1—Minority Business Enterprises

2426.101 Policy.
2426.102 Responsibility.
2426.103 Solicitation provision.

Subpart 2426.2—Historically Black Colleagues and Universities

2426.201 Policy.

Subpart 2426.1—Minority Business Enterprises

2426.101 Policy.

It is the policy of the Department to foster and promote Minority Business Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission. A "minority business enterprise" is a business which is at least 51 percent owned by one or more minority group members; or, in case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members are Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.

2426.102 Responsibility.

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) develops Departmental MBE plans and policies in accordance with Executive Orders 11625 and 12432 and by directive from the Secretary. He or she provides advice and guidance to the Secretary and Primary Organization Heads on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals, monitors and evaluates the Department's MBE program, and reports on MBE program performance to the Department of Commerce.

2426.103 Solicitation provision.

All contracting activities shall request all interested contractors, bidders, or offerors (including those responding to requests for quotations) to complete the certification at 2452.226–70, Certification of Status as a Minority Business Enterprise. Completion of this certification is voluntary and is not a condition of eligibility for contract award.

Subpart 2426.2—Historically Black Colleges and Universities

2426.201 Policy.

Executive Order 12320, September 15, 1981 ((46 FR 46107), 3 CFR 1981 Comp., P.176), directed the Department to establish annual plans to increase the ability of Historically Black Colleges and Universities to participate in Federally sponsored programs including contracts, grants and cooperative agreements. OSDBU is responsible for developing the annual plans regarding the participation of Historically Black Colleges and Universities in Departmental programs. OSDBU is responsible also for ensuring that the reporting requirements are fulfilled.

33. Part 2427 is added to read as follows:

PART 2427—PATENTS, DATA, AND COPYRIGHTS

Subpart 2427.3—Patent Rights Under Government Contracts

Sec.
2427.305 Administration of patent rights clauses.
2427.305–2 Follow-up by contractor.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2427.3—Patent Rights Under Government Contracts

2427.305 Administration of patent rights clauses.

2427.305–2 Follow-up by contractor.

(b) Contractor reports. Contractors shall complete and submit to the Contracting Officer HUD Form 770, Report of Inventions and Subcontracts, upon receipt of said form. The Contracting Officer shall send the form to those contractors whose contract work may have required the development of inventions upon physical completion of the contract.

Subchapter E—General Contracting Requirements

34–35. Part 2432 is revised to read as follows:

PART 2432—CONTRACT FINANCING

Subpart 2432.4—Advance Payments

Sec.
2432.402 General.

Subpart 2432.9—Prompt Payment

2432.908 Contract clauses.

Authority: Prompt Payment Act (31 U.S.C. 3901–3906); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2432.4—Advance Payments.

2432.402 General.

(e)(1) The Determination and Findings required by FAR 32.402(c)(1)(iii) shall be made by the Director, Office of Procurement and Contracts.

(2) Each advance payment situation shall be coordinated with the Office of Finance and Accounting before authorization may be given.

Subparty 2432.9—Prompt Payment

2432.908 Contract clauses.

(a) The Contracting Officer shall insert the clause at 2452.232–70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts. The clause with its Alternate I shall be used for solicitations and contracts issued by the Regional Contracting Officers.

(b) The Contracting Officer shall insert the clause at 2452.232–71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office. The clause with its Alternate I shall be used for solicitations and contracts issued by the Regional Contracting Officers.

36. Part 2434 is added to read as follows:

PART 2434—MAJOR SYSTEM ACQUISITIONS

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2434.001 Definition.

(b) The Department's dollar threshold for a "major system", under OMB Circular A–109, "Major System Acquisitions", is $15,000,000. The Senior Procurement Executive may, however, designate any acquisition as a "major system acquisition" if its priority to the Department's overall mission warrants such emphasis or may waive the requirements of the Circular if an acquisition exceeds $15,000,000, but does not otherwise meet the definition of a major system.

2434.003 Responsibilities.

(a) The Senior Procurement Executive is responsible for establishing written procedures for implementation of A–109. Such procedures have been set out in internal Departmental directives.

Subchapter F—Special Categories of Contracting

PART 2437—SERVICE CONTRACTING

37. The table of contents is amended by adding the following subpart:

Subpart 2437.1—Service Contracts—General

Sec.
2437.101 Definitions.
2437.110 Solicitation provisions and contract clauses.

38. The authority citation for Part 2437 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

39. Subpart 2437.1, consisting of sections 2437.101 and 2437.110, is added to read as follows:

Subpart 2437.1—Service Contracts—General

2437.101 Definitions.

"Government Technical Representative" (GTR) means that individual responsible for the technical direction, oversight, and evaluation of the Contractor's performance.

2437.110 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause at 2452.237–70, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor Key personnel.

(b) The Contracting Officer shall insert the clause at 2452.237–71, Reproduction of Reports, in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

(c) The Contracting Officer shall insert the clause at 2452.237–72, Coordination of Data Collection Activities, in solicitations and contracts where the Contractor is required to collect information from ten or more public respondents.

(d) The Contracting Officer shall insert the clause at 2452.237–73, Conduct of Work, in all service contracts.

(e) The Contracting Officer shall insert the clause at 2452.237–74, Technical Direction, in all cost-reimbursement solicitations and contracts for services.

(f) The Contracting Officer shall insert the clause at 2452.237–75, Clearance of Personnel, in all solicitations and contracts where Contractor personnel will be working on-site in any HUD office. Contractors shall be required to complete Forms FD–258, "Fingerprinting Charts" and GSA–176, "Statement of Personal History."

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2442—CONTRACT ADMINISTRATION

40. Part 2442 is added to read as follows:

Subpart 2442.7—Indirect Cost Rates

Sec.
2442.705 Final indirect cost rates.
2442.705–70 Contract clause.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.
2442.1107 Contract clause.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2442.7—Indirect Cost Rates

2442.705 Final indirect cost rates.

2442.705–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.242–70, Indirect Costs, in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.

(a) All contracts for professional or technical services exceeding $100,000.00 shall use HUD Form 441.1, "Project Management System Baseline Plan," to outline how the Contractor proposes to carry out the contract work and HUD Form 661.1, "Project Management System Progress Report," to monitor quantitative progress against the baseline plan. Each of these forms shall be accompanied by a narrative description. The Contracting Officer may waive the requirement to use these forms if he or she believes the Statement of Work or contractor's technical proposal are sufficiently specific or another acceptable means for project management is substituted. Contracts awarded under the Acquired Property Program are exempt from use of this reporting requirement.

2442.1107 Contract clause.

The Contracting Officer shall insert the clause at 2452.242–71, Project Management System, in solicitations and contracts for professional or technical services exceeding $100,000 unless the Contracting Officer determines that the Statement of Work or technical proposal is sufficiently specific or another acceptable method for project management is substituted.

41. Part 2446 is added to read as follows:

PART 2446—QUALITY ASSURANCE

Subpart 2446.5—Acceptance

Sec.
2446.502 Responsibility for acceptance.
2446.502–70 Contract clause.

Subpart 2446.6—Material Inspection and Receiving Reports

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2446.5—Acceptance.

2446.502 Responsibility for acceptance.

2446.502–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.246–70, Inspection and Acceptance, in solicitations and contracts unless inspection and acceptance will be performed by

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someone other than the Government Technical Representative (GTR).

Subpart 2446.6—Material Inspection and Receiving Reports

Note: Inspection of contractor's performance shall be performed as often as necessary to protect HUD's interest. HUD Form 9519, Acquired Property Inspection Report, shall be used to document inspection and acceptance for work performed on properties under the Acquired Property Program. Distribution shall be as indicated on the form.

42. Part 2451 is added tc read as follows:

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2451.3—Contractor Use of Government Discount Air Passenger Transportation Rates

2451.303 Contract clause.

The Contracting Officer shall insert the clause at 2452.251–70, Contractor Employee Travel, in all cost-reimbursement contracts involving airline travel.

SUBCHAPTER H—CLAUSES AND FORMS

43. Part 2452 is added to read as follows:

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2452.2—Texts of Provisions and Clauses

Sec.

2452.209–70 Organizational conflicts of interest notification.
2452.209–71 Organizational conflicts of interest certification.
2452.209–72 Organizational conflicts of interest.
2452.212–70 Contract period.
2452.215–70 Proposal content and outline.
2452.215–71 DUNS Contractor establishment number.
2452.216–70 Estimated cost, base fee, and award fee.
2452.216–71 Payment of base and award fee.
2452.216–72 Determination of award fee earned.
2452.216–73 Performance evaluation plan.
2452.216–74 Distribution of award fee.
2452.216–75 Unpriced task orders.
2452.222–70 Accessibility of meetings, conferences, and seminars to persons with disabilities.
2452.224–70 Freedom of Information Act notification.
2452.226–70 Certification of status as a minority business enterprise.
2452.232–70 Payment schedule and invoice submission (fixed-price).
2452.232–70 Payment schedule and invoice submission (fixed-price)—Alternate I.
2452.232–71 Voucher submission (cost-reimbursement).
2452.237–70 Key personnel.
2452.237–71 Reproduction of reports.
2452.237–72 Coordination of data collection activities.
2452.237–73 Conduct of work.
2452.237–74 Technical direction.
2452.237–75 Clearance of personnel.
2452.242–70 Indirect costs.
2452.242–71 Project management system.
2452.246–70 Inspection and acceptance.
2452.251–70 Contractor Employee Travel.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2452.2—Texts of Provisions and Clauses

2452.209–70 Organizational conflicts of interest notification.

As prescribed in 2409.508–1, insert the following solicitation provision in all solicitations.

Organizational Conflict of Interest Notification (Feb 1987)

(a) It is the Department of Housing and Urban Development's policy to avoid situations which place an offeror in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to this solicitation or where the offeror's performance of such work may provide it with an unfair competitive advantage.

(b) Offerors shall provide a statement which describes in a concise manner all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the offeror has a possible organizational conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict. (Offerors should refer to FAR Subpart 9.5 and HUDAR Subpart 2409.5 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest).

(c) In the absence of any relevant interests referred to above, the offeror shall complete the certification at 2452.209–71, Organizational Conflicts of Interest Certification.

(d) No award shall be made until the disclosure or certification has been evaluated by the Contracting Officer. Failure to provide the disclosure or certification will be deemed to be a minor infraction and the offeror will be permitted to correct the omission within a time frame established by the Contracting Officer.

(e) Refusal to provide the disclosure or certification and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant information shall disqualify the offeror.

(f) If the Contracting Officer determines that a potential conflict exists, the selected offeror shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

2452.209–71 Organizational conflict of interest certification.

As prescribed in 2409.508–1, insert the following solicitation provision in all solicitations.

Organizational Conflicts of Interest Certification (Apr 1984)

The bidder or offeror certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed Government contract and the bidder or offeror's organizational, financial, contractual or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the offeror; or

(b) Impair the offeror's objectivity in performing the contract work.

☐ In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to

Offeror(s) or Bidder(s)

_____ possible performance of this procurement.

(End of provision)

2452.209–72 Organizational conflicts of interest.

As prescribed in 2409.508–2, insert the following contract clause in all contracts.

Organizational Conflicts of Interest (Apr 84)

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a Government contract and a Contractor's organizational, financial, contractual or other interests are such that:

(1) Award of the contract may result in an unfair competitive advantage; or

(2) The Contractor's objectivity in performing the contract work may be impaired.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict.

The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

(End of clause)

2452.212–70 Contract period.

As prescribed in 2412.104(a), insert the following clause in all term form cost-reimbursement and fixed-price service solicitations and contracts.

Contract Period (Apr 1984)

The Contractor shall complete all work hereunder, including delivery of the final report, if required, within _____ months from the effective date of the contract.

(End of clause)

2452.215–70 Proposal content and outline.

As prescribed in 2415.407(a), insert the following solicitation provision in all solicitations over the small purchase limitation.

Proposal Content and Outline (Apr 1984)

(a) Proposals shall be submitted in two separate parts as further described below and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The envelope must show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror. Part I shall consist of the technical and management submittal of the proposed work. Part II shall consist of complete cost and pricing data. Each part of the proposal shall be complete in itself so that the evaluation of both parts can be accomplished concurrently, and the evaluation of the technical and management submittal can be made strictly on the basis of its merit.

(b) *Part I—Technical and Management.*

Section 1: *Proposal Coverage.* Cover the scope of work and general objectives which the proposal addresses.

Section 2: *Tasks and Methods.* Describe the principal tasks or sub-projects to be undertaken together with a discussion of their relationships to each other. Discuss the considerations for selecting, performing and the time sequencing of the tasks or sub-projects. Describe and discuss the method of personnel training and field personnel recruitment and the method of project control to be applied to the project to ensure timely, professional and quality performance. The Contractor must clearly state his/her plans for project management and in providing current and updated project progress to HUD during those phases of Contractor performance that require substantial coordination with HUD personnel.

Section 3: *Organization and Staffing.* Include an organizational chart for the project showing the name of the project manager and the names of key personnel. Include a brief resume for each person shown on the special qualifications applicable to the performance of the project. Describe the specific effort to be contributed to the project by each of the key personnel and include a statement expressed either in percentage or person-hours that each will devote to the effort. Include a summation of the minimum person-hours or person-months of professional effort to be used in completing the project. Describe the physical facilities to be used. If consultants, advisors or subcontractors are to be used, describe the arrangements and include resumes of the key personnel.

Section 4: *Prior and Current Experience.* Include a list of projects currently in progress and completed within the last two years which are relevant to this procurement. Include names, addresses and telephone numbers of contact points with these clients. The Government reserves the right to request information from any source so named.

Section 5: *Conflicting or Multiple Use of Contractor Resources.* Include a description of the contractor's current or planned projects that may draw upon resources or personnel, including top management, proposed to be committed to this project. Explain how such conflicting or multiple uses will be resolved to avoid impairing the timely, professional, and high-quality performance of this project. If the proposer has one or more existing HUD projects that will run concurrently with this project, explain how the level of attention described in the proposal will be preserved across projects.

The Government reserves the right to downgrade the related Factor for Award score for any proposal that does not adequately and credibly address such conflicts or multiple uses.

(c) *Part II—Cost and Pricing Data.*

Furnish cost or pricing data using the forms provided in Part III, Section J of this solicitation, SF–1411, Contract Pricing Proposal. Instructions for using that form are also in Section J. Round all amounts to the nearest dollar. Also execute the "Certifications and Representations" included in Part IV, Section K, and, where appropriate, a "Certification of Current Cost or Pricing Data". Furnish the names and telephone number of the Government audit organization having cognizance of your activity.

(d) Proposals shall be submitted in six (6) copies each of Part I and II.

(End of provision)

2452.215–71 DUNS contractor establishment number.

As prescribed in 2415.407(b), insert the following solicitation provision in all solicitations which exceed the small purchase limitation.

DUNS Contractor Establishment Number (Apr 1984)

Offerors or Bidders are required to complete the following for all solicitations which exceed the small purchase limitation. DUNS Contractor Establishment Number _____.

(End of provision)

2452.216–70 Estimated cost, base fee, and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Estimated Cost, Base Fee, and Award Fee (Apr 1984)

The estimated cost of this contract is $ (Insert Amount). A base fee of $ (Insert Amount) is payable in accordance with the clause entitled Payment of Base and Award Fee. In addition, a maximum Award Fee of $ (Insert Amount) is available for payment in accordance with the clause entitled Payment of Base and Award Fee.

(End of clause)

2452.216–71 Payment of base and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Payment of Base and Award Fee (Aug 1987)

(a) *Base Fee.* The Government will make payment of the base fee in (insert number) increments on the schedule set forth in the Performance Evaluation Plan established by the Government. The amount payable shall be based on the progress toward completion of contract tasks as determined by the Contracting Officer. Payment of the base fee is subject to any withholdings as provided for elsewhere in this contract.

(b) *Award Fee.* The Government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

(End of clause)

2452.216–72 Determination of award fee earned.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Determination of Award Fee Earned (Aug 1987)

(a) At the conclusion of each evaluation period specified in the Performance Evaluation Plan, the Government shall evaluate the contractor's performance and determine the amount, if any, of award fee

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earned by the contractor. The amount of award fee to be paid will be determined by the designated Fee Determination Official's (FDO) judgmental evaluation in accordance with the criteria set forth in the Performance Evaluation Plan. This decision is made unilaterally by the Government and is not subject to the disputes clause or the provisions of the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.* In reaching this decision, the FDO may consider any justification of award fee the Contractor submits, provided that the justification is submitted within (*insert number*) days after the end of an evaluation period. The FDO determination shall be in writing, shall set forth the basis of the FDO's decision, and shall be sent to the Contractor within (*insert number*) days after the end of the evaluation period.

(b) The FDO may specify in any fee determination that fee not earned during the period evaluated may be accumulated and be allocated for award during a later evaluation period. The Distribution of Award Fee clause shall be amended to reflect the allocation.

(End of clause)

2452.216-73 Performance evaluation plan.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Performance Evaluation Plan (Aug 1987)

(a) The Government shall unilaterally establish a Performance Evaluation Plan that will provide the basis for the determination of the amount of award fee awarded under the contract. The Plan shall set forth evaluation criteria and percentage of award fee available for (1) technical functions, including schedule requirements if appropriate, (2) management functions; and, (3) cost functions. The Government shall furnish a copy of the Plan to the Contractor (*insert number*) days before the start of the first evaluation period.

(b) The Government may initially revise the Performance Evaluation Plan at any time during the contract term. The Contractor shall be notified at least (*insert number*) days before the start of the evaluation period to which the change will apply.

(End of clause)

2452.216-74 Distribution of award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Distribution of Award Fee (Apr 1984)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period: ——— ———

Available Award Fee: ——— ———

(b) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official as designated in the contract. The contract clauses required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(1) The term "base fee and award fee" should be substituted for "fixed-fee" where it appears in the clause at FAR 52.243-2, Changes.

(2) The term "base fee" should be substituted for "fee" where it appears in the clauses at FAR 52.232-20, Limitation of Costs, and FAR 52.232-22, Limitation of Funds.

(3) The phrase "base fee, if any, and such additional fee as may be awarded as provided for in the Schedule"; should be substituted for the term "fee" whenever it appears in the clause at FAR 52.216-7, Allowable Cost and Payment.

(End of clause)

2452.216-75 Unpriced task orders.

As prescribed in 2416.504(e), insert the following clause in all indefinite-quantity contracts.

Unpriced Task Orders (Apr 1984)

(a) Although it is anticipated that the Government and the Contractor will reach agreement on the total cost and fee or profit (if applicable) for the effort to be undertaken, prior to the issuance of a Task Order, there may be occasions when the Government wishes to authorize commencement of work prior to agreement on price. If this is the case, a Task Order may be issued which provides that the Contractor shall immediately commence performance of the services specified in the order, and shall submit a pricing proposal within fifteen days of receipt of the Task Order. Upon negotiations of the cost, a supplemental agreement shall be executed to make specific all terms and conditions of the Task Order. Failure to agree for costs ordered under this procedure shall be considered a dispute within the meaning of the clause of this contract entitled Disputes.

(b) Unpriced Task Orders shall indicate a "not-to-exceed" amount for the order; however, such amount shall not exceed 50 percent of the estimated cost of the Task Order. The Task Order shall only require the Contracting Officer's signature, but shall comply with all other Task Order requirements.

(End of clause)

2452.222-70 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 2422.1408(c), insert the following clause in all solicitations and contracts.

Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities (Jul 1988)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

2452.224-70 Freedom of information Act notification.

As prescribed in 2424.202-70, insert the following provision in all solicitations.

Freedom of Information Act Notification (Apr 1984)

Proposals submitted in response to this solicitation are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether or not to release information contained in a proposal in the event a FOIA request is received, offerors may, through clear earmarking or otherwise, indicate those portions of their proposals which they believe should not be disclosed. While an offeror's advice will be considered by the Department in its determination whether to release requested information or not, it must be emphasized that the Department is required by the FOIA to make an independent evaluation as to the information, notwithstanding the offeror's views. It is suggested that if an offeror believes that confidential treatment is appropriate, the basis for this view should be provided, where possible, because general assertions or blanket requests for confidentiality, without more information, are not particularly helpful to the Department in making determinations concerning the release of information under the Act. It should also be noted that the Department is required to segregate disclosable information from non-disclosable items, so particular care should be taken in the identification of each portion of which confidential treatment is requested. Offeror's views concerning confidentiality will be used to aid the Department in preparing its response to FOIA requests. Further, offerors should note that the presence or absence of such comments or earmarking regarding confidential information will have no bearing whatsoever on the evaluation of proposals submitted pursuant to this solicitation, nor will the absence of this earmarking automatically result in greater disclosure.

(End of provision)

2452.226-70 Certification of status as a minority business enterprise.

As prescribed in 2426.103, insert the following solicitation provision in all solicitations.

Certification of Status as a Minority Business Enterprise (Jun 1988)

[ ] Bidder, Offeror or Supplier certifies that he or she [ ] is, [ ] is not, (check one), a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the box applicable to you)

[ ] Black Americans
[ ] Hispanic Americans
[ ] Native Americans
[ ] Asian Pacific Americans
[ ] Asian Indian Americans
[ ] Hasidic Jewish Americans

(End of Provision)

2452.232-70 Payment schedule and invoice submission (fixed-price).

As prescribed in 2432.908(a), insert the following clause in all fixed price solicitations and contracts.

Payment Schedule and Invoice Submission (Fixed-Price) (Mar 1988)

(a) *General.* The Government shall pay the Contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Part I, Section B of this contract.

(USE PARAGRAPH (b) ONLY IF PARTIAL PAYMENTS APPLY. OTHERWISE PARAGRAPH (a) ABOVE ASSUMES THE CONTRACTOR WILL BE PAID THE FULL AMOUNT UPON COMPLETION OF ALL CONTRACT REQUIREMENTS)

(b) *Payment Schedule.* Payments will be made in accordance with the following partial payment schedule:

Partial payment number	Specific deliverable	Delivery date	Payment amount
1. [ ]			
2. [ ]			
3. [ ]			

(Continue as necessary)

(c) *Submission of Invoices.* Invoices shall be submitted in an original and three (3) copies to the payment office identified in Block 12 of the SF-26 or Block 25 of the SF-33. To constitute a proper invoice, the invoice must include all items per FAR 52.232-25, "Prompt Payment."

To assist the Government in making timely payments, the Contractor is also requested to identify the appropriation number (from Block 14 if award is made on the SF-26 or Block 21 if award is made on the SF-33) on each invoice. The Contractor is also requested to identify on the envelope that an invoice is enclosed.

(d) *Contractor Remittance Address.* Payment shall be made to the Contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(Insert appropriate address)

(End of clause)

Alternate I (Mar 1988).

This alternate is required for all fixed-price contracts issued by Regional Contracting Officers. In such cases, substitute the following paragraph (c) for that in the basic clause:

(c) Invoices shall be submitted in an original and three (3) copies to the office identified in Block 5 of the SF-26 or Block 7 of the SF-33. To constitute a proper invoice, the invoice must include all items per FAR 52.232-25, "Prompt Payment."

2452.232-71 Voucher submission (cost-reimbursement).

As prescribed in 2432.908(b), insert the following clause in all cost-reimbursement solicitations and contracts.

Voucher Submission (Cost-Reimbursement) (Mar 1988)

(a) The Contractor shall submit, on a monthly basis (Contracting Officer may substitute a different time frame, if appropriate), an original and two (2) copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment," the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be distributed as follows, except for the final voucher which shall be submitted in all copies to the Contracting Officer.

Interim vouchers	Attention of	Address shown on face of contract in block
Original	Voucher Examiner	12
One copy	Contracting Officer	5
One copy	GTR	11

To assist the Government in making timely payments, the Contractor is requested to identify the appropriation number (from Block 14 of the SF 26) on each voucher. The Contractor is also requested to identify on the envelope that a voucher is enclosed.

(b) Contractor Remittance Address.

Payment shall be made to the Contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(Insert appropriate address)

(End of clause)

Alternate I (Mar 1988)

This alternate is required for all cost-reimbursement contracts issued by Regional Contracting Officers. In such cases, substitute the following paragraph (a) for that in the basic clauses:

(a) The Contractor shall submit, on a monthly basis (Contracting Officer may substitute a different time frame, if appropriate), an original and three (3) copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment," the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the Contracting Officer specified in Block 5 of the contract.

2452.237-70 Key personnel.

As prescribed in 2347.110(a), insert the following clause in solicitations and contracts when it is necessary for contract performance to identify the Contractor's key personnel.

Key Personnel (Apr 1984)

The personnel specified below are considered to be essential to the work being performed under this contract. Prior to diverting any of the specified individuals to other projects, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

(List Key Personnel)

(End of clause)

2452.237-71 Reproduction of reports.

As prescribed in 2437.110(b), insert the following clause in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

Reproduction of Reports (Apr 1984)

In accordance with Title I of the Government Printing and Binding Regulations, printing of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is determined by multiplying pages times copies. A production unit is one set, size 8½ by 11 inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used in single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written materials.

(End of clause)

2452.237-72 Coordination of data collection activities.

As prescribed in 2437.110(c), insert the following clause in solicitations and contracts where the Contractor is required to collect identical information from ten or more public respondents.

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Coordination of Data Collection Activities (Apr 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten or more public respondents, the Paperwork Reduction Act (44 U.S.C. 3501–3520) applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting Officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

2452.237–73 Conduct of work.

As prescribed in 2437.110(d), insert the following clause in all contracts for services.

Conduct of Work (Apr 1984)

(a) The Government Technical Representative (GTR) for liaison with the Contractor as to the conduct of work is _____, or a successor designated in writing by the Contracting Officer.

(b) The Contractor's work hereunder shall be carried out under the supervision of _____.

(End of clause)

Alternate I. This alternate is required for all fixed-price contracts for services. In such cases, add the following paragraph (c):

(c) The GTR shall provide direction on contract performance. Such direction must be within the contract scope of work and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in FAR 52.243–2; (3) causes an increase or decrease in the cost of the contract; (4) alters the period of performance or delivery dates; or, (5) changes any of the other express terms or conditions of the contract.

2452.237–74 Technical direction.

As prescribed in 2437.110(e), insert the following clause in all cost-reimbursement type solicitations and contracts.

Technical Direction (Jun 1985)

(a) The GTR will provide technical direction on contract performance. Technical direction includes:

(1) Direction to the contractor as to which areas the Contractor is to emphasize or pursue.

(2) Comments on and approval of reports or other deliverables.

(b) Technical direction must be within the contract Statement of Work.

The GTR does not have the authority to issue technical direction that: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in FAR 52.243–2; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the period of performance; or (5) changes any of the other express terms or conditions of the contract.

(c) Technical direction will be issued in writing by the GTR or confirmed by him or her in writing within five calendar days after verbal issuance.

(End of clause)

2452.237–75 Clearance of personnel.

As prescribed in 2437.110(f), insert the following clause in solicitations and contracts where contractor personnel will be working on-site in any HUD office.

Clearance of Personnel (Jun 1985)

(a) The Contractor shall submit to the Contracting Officer within five days after contract award, two (2) completed Forms FD–258, "Fingerprinting Charts" and one (1) GSA Form 176, "Statement of Personal History," for the Contractor and all employees who have access to the building in performance of the contract work. These forms must be submitted for all replacement employees prior to entrance on duty. Necessary forms will be furnished by HUD. If the Contracting Officer receives an unsuitable report on any employee after processing of these forms or if the Contracting Officer finds a prospective employee to be unsuitable or unfit for his/her assigned duties, the Contractor shall be advised immediately that such employee cannot continue to work or be assigned to work under the contract.

(b) HUD shall have and exercise full and complete control over granting, denying, withholding, or terminating employment eligibility of contractor employees.

(c) Temporary identification/building passes shall be issued to each Contractor employee working on-site. The Contractor shall submit to the GTR a list of those employee(s) with their Social Security number(s). Building passes, when issued, shall indicate an expiration date not exceeding the first-year term of the contract. The passes shall be renewed for each succeeding option year, if any. The Contractor shall return, to the GTR, all building passes upon expiration of the contract, whenever the employment of any such employee is terminated, or when an employee no longer has a need for access to the building.

(End of clause)

2452.242–70 Indirect costs.

As prescribed in 2442.705–70, insert the following clause in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

Indirect Costs (Apr 1984)

(a) Pursuant to the provisions of the clause of this contract entitled, "Allowable Cost and Payment" the rates listed below are established. If the column entitled, "Ceiling Rate" has rates listed, the ceiling applies for those rates only. If there are no ceiling rates listed, ceilings do not apply to this contract and the provisions of paragraph (b) of this clause are not applicable.

Period	Category	Provisional rate	Ceiling rate	Base

Effective date until amended:

(b) For the term of this contract, the final indirect rates shall not exceed the ceiling rates listed above, if any. However, in the event the indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less then the ceiling rates agreed to herein, then the rates established by such cognizant audits shall apply (downward adjustment only). The Government shall not be obligated to pay any additional amounts on indirect rates above the ceiling rates set forth for the applicable period.

(End of clause)

2452.242–71 Project management system.

As prescribed in 2442.1107, insert the following clause in solicitations or contracts for professional or technical services exceeding $100,000. Use of this system may be waived by the Contracting Officer if he or she believes the Statement of Work or technical proposal are sufficiently specific or another acceptable means of project management is substituted.

Project Management System (Jun 1984)

The Contractor shall provide to the GTR and Contracting Officer a project management system workplan and regular status reports showing actual progress against the workplan. The project management system utilizes two reporting forms (the HUD 441.1 Baseline Plan and the HUD 661.1 Progress Report), in addition to a narrative description. Briefly, the workplan and progress reports shall consist of the following:

Workplan

The workplan shall consist of a narrative description and a graphic summary (HUD 441.1) of the schedule and financial elements of the contract. The narrative shall: (1) describe the planned schedule; (2) identify each step in the work process required for completing the contract work and the period of time needed to accomplish each step, expressed in terms of calendar dates; (3) provide the staff, financial, and other resources allocated to each task; and, (4) provide the rationale for project organization, staff utilization, and other resources allocated to each task or activity. The HUD 441.1 shall show: (1) cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract; and (2) the planned project schedule that traces, by reporting period, the task or sub-task start dates, periods of work in progress, and completion dates.

Progress Reports

Progress reports shall consist of a narrative report and the HUD 661.1 which depicts actual progress against planned progress. The narrative report shall: (1) provide a brief, factual summary description of technical progress made and costs incurred for each task (or group of tasks) during the reporting period; and, (2) identify significant problems and their impacts, causes, proposed corrective actions, and the effect that such corrective actions will have on the accomplishment of the contract objectives. The HUD 661.1 reproduces the Baseline Plan (HUD 441.1) and shall show: (1) the schedule status or the degree of completion of tasks/activities by time intervals; and, (2) cost status or the actual costs of work performed in accomplishing the tasks.

Specific and detailed guidance on preparing the forms and the narratives may be obtained from the GTR.

(End of clause)

2452.246–70 Inspection and acceptance.

As prescribed in 2446.502–70, insert the following clause in solicitations and contracts unless inspection and acceptance will be performed by someone other than the GTR.

Inspection and Acceptance (Apr 1984)

Inspection and acceptance of all work required under this contract shall be performed by the Government Technical Representative (GTR) identified in Block 11 of the SF–26, or other individual as designated by the Contracting Officer of GTR.

(End of caluse)

2452.251–70 Contractor employee travel.

As prescribed in 2451.303, insert the following clause in all cost-reimbursement solicitations and contracts involving airline travel.

Contractor Employee Travel (Feb 1987)

(a) In the event that travel is required by this contract, the Contractor shall, to the maximum extent practical, utilize the travel discounts offered to Federal travelers, through use of contracted airline discount air fares, hotel and motel lodging rates, and car rental companies, which are available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the Contracting Officer.

(b) The Contractor shall provide the Contracting Officer with the names of those individuals who are required to travel per the contract terms. The Contracting Officer shall provide the Contractor with an identification letter for presentation to the participating vendors.

(c) The Contractor shall bill the Government for the actual costs incurred for travel in accordance with FAR 31.205–46, ensuring that other savings achieved through the use of any discount fares accrue to the Government.

(End of clause)

44. Part 2453 is added to read as follows:

PART 2453—FORMS

Spec.

2453.000 Scope of part.

Subpart 2453.2—Prescription of Forms

2453.213 Small purchases and other simplified purchase procedures.
2453.213–70 HUD Form 24007, Purchase/Delivery Order Data File.
2453.213–71 HUD Form 24001, Order for Supplies or Services.
2453.213–72 HUD Form 2542, Purchase Order and Payment Authorization.
2453.215 Contracting by negotiation.
2453.215–70 HUD Form 4056, Abstract of Proposals.
2453.217 Special contracting methods.
2453.217–70 HUD Form 730, Award/Modification of Interagency Agreement.
2453.227 Patents, data, and copyrights.
2453.227–70 HUD Form 770, Report of Inventions and Subcontracts.
2453.242–70 HUD Form 441.1, Project Management System Baseline Plan.
2453.242–71 HUD Form 661.1, Project Management System Progress Report.
2453.246 Quality Assurance.
2453.246–70 HUD Form 9519, Acquired Property Inspection Report.

Authority: Section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2453.000 Scope of part.

This part prescribes Agency forms for use in acquisition and contains requirements and information generally applicable to the forms.

Subpart 2453.2—Prescription of Forms

2453.213 Small purchases and other simplified purchase procedures.

2453.212–70 HUD Form 24007. Purchase/Delivery Order Data File

As prescribed in 2413.107(a)(4), HUD Form 24007 may be used by the Contracting Officer to record all relevant data pertaining to a small purchase, including recording written and oral quotations received and documenting orders against GSA contracts.

2453.213–71 HUD Form 24001, Order for Supplies or Services.

As prescribed in 2413.505–2(a), Contracting Officers may use HUD Form 24001 in lieu of Optional Form 347 for individual purchases not exceeding the small purchases limit.

2453.213–72 HUD Form 2542, Purchase Order and Payment Authorization.

As prescribed in 2413.505–2(b), Contracting Officers shall use HUD Form 2542 for small purchases under the Acquired Property Programs.

2453.215 Contracting by negotiation.

2453.215–70 HUD Form 4056, Abstract of Proposals.

As prescribed in 2415.411–70, HUD Form 4056 may be used by the Contracting Officer to record the names and addresses of offerors whose proposals are received before the stated deadline.

2453.217 Special contracting methods.

2453.217–70 HUD Form 730, Award/Modification of Interagency Agreement.

As prescribed in 2417.504(b), HUD Form 730 shall be used by Contracting Officers when placing or modifying an order for supplies or services from another Government agency.

2453.227 Patents, data, and copyrights.

2453.227–70 HUD Form 770, Report of Inventions and Subcontracts.

As prescribed in 2427.305–2, HUD Form 770 shall be completed by the Contractor, and submitted to the Contracting Officer, if requested, upon completion of the contract.

2453.242 Contract administration.

2453.242–70 HUD Form 441.1, Project Management System Baseline Plan.

As prescribed in 2442.1106(a), HUD Form 441.1 shall be used in contract for professional or technical services exceeding $100,000.00 by Contractors to show how they propose to carry out the contract work. The requirement may be waived by the Contracting Officer if he or she believes that the Statement of Work or Contractor's technical proposal is sufficiently specific or another acceptable means for project management is substituted.

2453.242–71 HUD Form 661.1, Project Management System Progress Report.

As prescribed in 2442.1106(a), HUD Form 661.1 shall be used in conjunction with the HUD Form 441.1 to monitor quantitative progress against the baseline plan. The 661.1 need not be used if use of HUD Form 441.1 has been

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waived by the Contracting Officer; however, some acceptable means of progress reporting must be substituted.

2453.246 Quality Assurance.

2453.246-70 HUD Form 9519, Acquired Property Inspection Report.

As prescribed in 2446.6, HUD Form 9519 shall be used to document inspection and acceptance for work performed on properties under the Acquired Property Program.

45. Subchapter U consisting of Part 2470 is removed in its entirely.

Dated: October 27, 1988.

Judith L. Hofmann,

Assistant Secretary for Administration.

[FR Doc. 25427 Filed 11-16-88; 8:45 am]

BILLING CODE 4210-01-M

federal register

Thursday
November 17, 1988

Part III

Department of Health and Human Services

Public Health Service

42 CFR Part 57
Health Professions Student Loan Program; Final Regulations

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule revises existing regulations governing the Health Professions Student Loan (HPSL) program to implement amendments made to the Public Health Service Act (the Act) by the Health Professions Training Assistance Act of 1985, to clarify the definition of "default," add a paragraph on reallocation of funds, and establish hearing procedures. Also, this rule incorporates an update of the definition of exceptional financial need used for determining eligibility for students of medicine and osteopathic medicine, and to require schools to verify information provided by the student on the loan application.

EFFECTIVE DATE: These regulations are effective November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301–443–4540.

SUPPLEMENTARY INFORMATION: On June 3, 1987, the Department published a Notice of Proposed Rulemaking (NPRM) (52 FR 20989) to incorporate amendments to the HPSL program made by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985. The Department received 13 written comments on the NPRM from 9 schools and 4 professional associations. The comments and the Department's responses are discussed below. For clarity, the comments and responses are arranged according to the section numbers and headings of the rule to which they pertain.

Section 57.202 Definitions.

Respondents were generally in favor of the statutory definition of "default." However, they objected to the proposal that if a borrower has failed to make an installment payment when due, the school may reasonably conclude that the borrower intends to repay the loan and thus exclude the loan from the default category only in the following situations: (1) If the loan is in forbearance, or (2) if the borrower's repayment schedule has been renegotiated and the borrower is complying with the renegotiated schedule. The respondents believed the proposal to be unnecessarily restrictive and suggested that payments of significant portions of the loan or contacts by a credit counseling organization on behalf of a borrower should also be evidence of a borrower's intent to repay the loan.

Three respondents supported the proposal, stating that loans in forbearance or under renegotiated repayment schedules generally involved borrowers of good faith who had sustained temporary setbacks of some kind and did not not merit the label of defaulter.

The Secretary believes that responsible borrowers who have temporary financial problems, but who plan to fulfill their obligations, will enter into a renegotiation or forbearance agreement, and abide by the agreement. Therefore, the Department has retained this provision as proposed.

Section 57.204 Payment of Federal capital contributions.

Generally, the respondents supported the proposed amendment in § 57.204(c) to reallocate funds returned to the Department under procedures consistent with those used to allocate new Federal capital contributions. One respondent opposed the amended language because it limits schools eligible for the reallocation of remitted funds to only those institutions which established an HPSL program between July 1, 1972, and September 30, 1985, and where institutions have multiple HPSL programs, it prohibits the transfer of funds from overfunded programs to those which are underfunded.

The Secretary notes that this provision is consistent with the existing requirements in section 742(b) of the Act, as amended by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985. That section authorizes the Department to reallocate remitted HPSL funds to schools which established an HPSL fund during the period July 1, 1972–September 30, 1985. It does not provide in any way for the transfer of funds from one school to another in an institution with multiple HPSL programs. Since the major concerns with this provision relate directly to statutory requirements it has been retained as proposed under the new heading entitled "*Payment of Federal capital contributions and reallocation of funds remitted to the Secretary*".

Section 57.206 Eligibility and selection of health professions student loan applicants.

Respondents generally supported the increase in the maximum allowable level of resources from $5,000 to $6,000 or one-half the cost of attendance, whichever is lesser, as proposed in § 57.206(a)(1)(iv) for determining eligibility for students of medicine and osteopathic medicine. However, they suggested that the Department conduct frequent reviews of the costs of health education to determine if the definition of exceptional financial need remains appropriate in future years. One respondent opposed the proposed level of the increased threshold for maximum allowable resources. This respondent noted that $6,000 no longer represents half the costs of attendance at public schools of medicine, since the average total expenses at public medical schools for the 1987–88 school year were expected to reach $12,951. The respondent recommended that $6,500 would therefore be a more accurate threshold.

According to more recent information from the Association of American Medical Colleges, the average total cost for attending a public school of medicine was $13,432 for the 1987–1988 school year. Using the Department's rationale for proposing the $6,000 level, the maximum allowable level of resources should therefore by $6,700, which represents approximately half the average cost of attendance at a public medical school. The Department accepts the recommendation for the increased level and has revised the maximum allowable level of resources to $6,700 or one-half the cost of attendance, whichever is lesser.

Eight respondents were generally in favor of verification of financial aid information as proposed in § 57.206(d). However, the respondents expressed strong concerns with the vagueness of the wording of the proposal. The respondents believed that the proposal as presented leaves the impression that the school is responsible for verifying all the data on every application for financial aid, which would impose a significant administrative burden on schools. Most of the respondents noted that the Department of Education (ED) imposes a requirement to verify 30 percent of applications for financial aid and suggested that it would be appropriate for the Department to similarly limit the number of applications that must be verified. In addition, it was believed that the 30 percent limit on verification would permit schools to focus verification efforts on those applications with the greatest potential for error. Further, since the Department requires that schools use a need analysis system approved by ED, and many of these systems have incorporated ED's computer edit check system, respondents encouraged the Department to adopt the verification procedures required by ED. Finally, the respondents explained that the adoption of ED's verification system would permit schools to use a single system of verification for all Federal student aid applicants rather than verify one set of data for student aid administered by ED and additional data for the HPSL program.

One respondent who requested clarification of this provision indicated that her institution currently requires certified copies of Internal Revenue Service (IRS) tax returns to verify both tax filing status and Social Security numbers, compares the admissions records to check for ineligible students and collects information annually on a personal data sheet prior to loan disbursement for skiptracing

Another respondent requested that the Secretary clarify what is meant by verification. The respondent asked the following questions: Would verification for the HPSL program be in the same manner that ED uses for its student assistance programs under Title IV of the Higher Education Act? What information should be verified that will assist in skiptracing? Does processing through a nationally approved need analysis system satisfy the verification requirement? Should the applicant's financial information (that which is used to determine eligibility) be verified even though it is not used in the skiptracing process? Is 100 percent verification of all applicants required or expected?

One respondent believed that schools are already gathering excessive documentation for a variety of checks on student eligibility and that the procedures currently in place should satisfy the intent of this paragraph. The respondent noted that parental tax information for HPSL students is currently requested by the school. The respondent suggested that the word "must" in the requirement be replaced by the word "should" or "is strongly encouraged to."

The Secretary believes that the school has an obligation to verify, to the best of its ability, the information provided by the student on the loan application. The Secretary does not, however, intend for a school to verify all data on every application for financial aid. The Secretary points out that the provision was not intended to be a new system of verification, but was intended to give schools the authority to require documents which the schools deem appropriate for verification and to require, to the extent possible, that verification be performed using information that is accessible within the school system (e.g., foreign student advisors, registrar's office, etc.).

In response to the suggestions that the Department adopt ED's verification system and the suggestions in favor of a single verification system for all Federal student aid programs, the Secretary notes that ED's verification system focuses on need analysis data. Further, the Secretary reiterates that the intent of this provision is to provide broad authority for schools to require from applicants information necessary to verify other parts of the student's application information, such as citizenship and skiptracing information as well as need analysis data. Accordingly, the Department has retained the provision in § 57.206(d) with clarification that a school may require that an applicant provide documentation to support information provided as part of the loan application process. Examples of supporting documentation include, but are not limited to: Photocopies of the parents', student's and spouse's Federal income tax forms with original signatures for the most recent tax year (or certification that no Federal income tax return was filed); tax returns that are certified as having been received by the IRS; certified copies of birth certificates; copies of alien registration cards; or other documentation that the school considers necessary to help assure that the information on the loan application is correct.

Section 57.213a Loan cancellation and reimbursement.

There was general agreement with the provision which would permit a school to assess a charge on HPSL loans to insure against the loss of its institutional contribution for loans made on or after October 22, 1985, that are canceled due to the borrower's death or permanent and total disability. However, there was much opposition to the maximum insurance premium which was proposed at .3 percent of the loan amount, because it was thought not to be cost effective. Two respondents stated that the dollar value involved in reimbursing a school for its portion of loans canceled, due to the borrower's death or permanent and total disability, is not significant. Further, the cost to implement and maintain this proposed procedure outweighs any benefits.

One respondent was in favor of the concept, but believed that the time and expense it would take to charge, bill, and record the transactions for each disbursement could make the proposed provision less than cost effective. In addition, the respondent noted that the change would probably need to be included in the Regulation Z, Truth in Lending Statement. Another respondent was concerned with the negative impact of an insurance fee on the overall costs of education, a student's indebtedness, and the financial aid administrators and their resources. The Secretary reminds these respondents that implementation of this provision, including the maximum or minimum rate at which the amount of the premium will be assessed, is at the discretion of the school. The Secretary agrees that if schools decide to implement this provision, the information must be included in the Truth in Lending disclosure statement required by Regulation Z (12 CFR Part 226).

One respondent stated that an institution should be allowed to set and define a maximum insurance premium rate based on the history of its program. This respondent explained that the calculated insurance rate for his school would be .629 percent for the period ending June 30, 1985, and .499 percent for the period ending June 30, 1986.

Since the primary purpose of this provision is to allow schools, at their discretion, to adequately cover the losses of their institutional contributions for loans appropriately canceled, the Secretary accepts the recommendation that a school should be allowed to use a rate in calculating the insurance premiums that reflects its cancellation experience and does not exceed .6 percent of the loan amount. The provision has been modified accordingly.

Section 57.215 Records, reports, inspection, and audit, and Section 57.216a Performance standard.

Four respondents were in favor of the revisions to paragraph (a) of § 57.215 and paragraph (d) of § 57.216a which allow a school to request a hearing with an administrative law judge prior to being terminated and provide procedures for determination by the Department of whether a hearing is warranted. Five respondents opposed the provisions because they believed that the procedures for determining if a hearings is warranted deny due process. Some of the respondents commented that allowing the Secretary to dismiss requests for hearing if the basis for the requests were judged to be frivolous or

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inconsequential, runs counter to the essential purpose of a hearing and that any determination that the issues in dispute are frivolous or inconsequential should be made by the administrative law judge. They stated that providing a statement of the material, factual issues in dispute narrows the scope of review so dramatically as to render it meaningless for many, if not most, schools.

Another respondent commented that the Secretary's judgment regarding the decision to accept or deny the hearing is a conflict of interest, since the Secretary would be a party in the hearing proceedings and suggested authorizing a third party to determine if in fact the statement of factual issues is frivolous or inconsequential. One respondent took exception to the proposed provision, believing that as proposed it is contrary to the intent of Congress. The respondent believed that the intent was that the Department should consider administrative problems beyond the control of current school officials responsible for loan collection and intended that termination should be reserved for recalcitrant institutions that do not make good faith efforts to redress previous administrative shortcomings. A final concern of two other respondents was for clarification of the precise situation that would be untimely in requesting a hearing.

The Department emphasizes that the intent of the proposal is to assure that the hearing process is administered as efficiently and cost-effectively as possible for the schools and the Department, and concludes that it is consistent with both due process and legislative requirements. We note that under administrative hearing procedures, an administrative law judge can rule only on issues in dispute. Existing regulations have the effect of law and are not subject to dispute through a hearing before an administrative law judge.

A determination of what constitutes a factual issue in dispute is directly tied to the reporting requirements in § 57.215 or the performance standard in § 57.216a of the regulations. An example of a factual issue in dispute would be a case where a school alleges facts which, if true, would undercut the Department's determination that it has not met the requirements of the performance standard provision. Such a case would involve a material, factual issue in dispute that would be appropriate for resolution through a hearing by an administrative law judge.

The proposed procedure for determining whether a hearing must be conducted is essentially an administrative "summary judgment" proceeding. It is a well-settled principle that an agency has the authority to deny a hearing when it appears from the request that no substantial issue of fact is in dispute. *Weinberger v. Hynson, Westcott & Dunning,* 412 U.S. 609 (1973); *United States v. Storer Broadcasting Co.,* 351 U.S. 192, 202–205 (1956); *Pineapple Growers Association of Hawaii v. F.D.A.,* 673 F.2d 1083 (9th Cir. 1982).

Section 746 of the Act which requires the Secretary to provide an opportunity for a hearing does not constitute a bar to such summary judgment. When it is apparent from a request that there are no substantive issues in dispute, no purpose could be served by holding a public hearing. In upholding a similar summary judgment provision promulgated by the Food and Drug Administration, the Eighth Circuit articulated the rationale for the provision as follows:

> * * * The hearing is solely for the purpose of receiving evidence "relevant and material to the issues raised by such objections." Certainly, then the objections, in order to be effective and necessitate the hearing requested, must be legally adequate so that, if true, the order complained of could not prevail. The objections must raise "issues." The issues must be material to the question involved; that is, the legality of the order attacked. They may not be frivolous or inconsequential. Where the objections stated and the issues raised thereby are, even if true, legally insufficient, their effect is a nullity and no objections have been stated. Congress did not intend the governmental agencies created by it to perform useless or unfruitful tasks. If it is perfectly clear that the petitioner's appeal for a hearing contains nothing material and the objections stated do not abrogate the legality of the order attacked, no hearing is required by law. *Dyestuffs and Chemicals, Inc., v. Flemming,* 271 F.2d 281, 286 (6th Cir. 1959), *cert. denied* 362 U.S. 911 (1960).

One respondent suggested that the notice of intent to terminate be mailed by registered mail. In response, the Secretary notes that notification of termination status is currently being accomplished through certified mail, return receipt requested, and addressed to the authorized official as indicated by the school.

Finally, with regard to the comments concerning clarification of timely requests for a hearing, section 746 of the Act provides a 30-day period after receipt of the written notice of the Secretary's intent to terminate within which the school must request a hearing. The NPRM proposed an expansion of this period to 90 days to allow additional time for a school to prepare and submit material factual issues in dispute to warrant a hearing. The Department has clarified the time frame in the final regulations. The regulations state that the Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed requirements in these regulations are minimal. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant economic impact on a substantial number of HPSL schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act

Sections 57.215 and 57.216a contain information collection requirements which have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980 and have been assigned control number 0915–0115.

List of Subjects in 42 CFR Part 57

Dental health, Grant programs-health, Education of disadvantaged, Health facilities, Educational facilities, Health professions, Educational study programs, Loan programs-health, Emergency medical services, Medical and dental schools, Grant programs-education, Scholarships and fellowships, Student aid.

Accordingly, Subpart C of 42 CFR Part 57 is amended as follows:

Dated: August 8, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: September 19, 1988.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance,* No. 13.342, Health Professions Student Loan Program).

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart C—Health Professions Student Loans

1. The authority for Subpart C continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–747, Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920, 99 Stat. 532–536 (42 U.S.C. 294m–q).

2. Section 57.202 is amended by revising the definition for "default" as follows:

§ 57.202 Definitions.

* * * * *

"Default" means the failure of a borrower of a loan made under this subpart to make an installment payment when due, or comply with any other term of the promissory note for such loan, except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy, the borrower's repayment schedule has been renegotiated and the borrower is complying with the renegotiated schedule, or the loan is in forbearance.

* * * * *

3. Section 57.204 is amended by revising the heading of the section and adding a new paragraph (c) as follows:

§ 57.204 Payment of Federal capital contributions and reallocation of funds remitted to the Secretary.

* * * * *

(c) *Reallocation of funds remitted to the Secretary.* All funds from a student loan fund established under this subpart which are remitted to the Secretary in any fiscal year shall be available for allotment under this subpart, in the same fiscal year and the succeeding fiscal year, to schools which, during the period beginning on July 1, 1972, and ending on September 30, 1985, established student loan funds with Federal capital contributions under this subpart. The Secretary will from time to time set dates by which the schools must file applications to receive a portion of these funds. If the total of the amounts requested for any fiscal year by eligible schools exceeds the amount of funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller:

(1) The amount requested in the application, or

(2) An amount which bears the same ratio to the total amount of returned funds determined by the Secretary at the time of payment to be available for that fiscal year for the Health Professions Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in all eligible schools during that year.

Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, with whatever adjustments may be necessary to prevent the total paid to any school from exceeding the total requested by it.

4. Section 57.206 is amended by revising paragraph (a)(1)(iv) and adding a new paragraph (d) as follows:

§ 57.206 Eligibility and selection of health professions student loan applicants.

(a) * * *

(1) * * *

(iv) Of exceptional financial need in the case of students of medicine or osteopathic medicine. A student will be considered to demonstrate exceptional financial need if the school determines that his or her resources, as described in paragraph (b)(1) of this section, do not exceed the lesser of $6,700 or one-half of the costs of attendance at the school. Summer earnings, educational loans, veterans (G.I.) benefits and earnings during the school year will not be considered as resources in determining whether an applicant meets the eligibility criteria for exceptional financial need, but will be considered in determining the amount of funds a student may receive; and

* * * * *

(d) *Verification of loan information.* The school must verify, to the best of its ability, the information provided by the student on the loan application. To comply with this requirement, a school may require that a student provide, for example: Photocopies of the parents', student's, and spouse's Federal income tax forms with original signatures for the most recent tax year (or certification that no Federal income tax return was filed); tax returns that are certified as having been received by the Internal Revenue Service; or other documentation that the school considers necessary to help assure that information on the loan application is correct.

5. Section 57.213a is revised as follows:

§ 57.213a Loan cancellation reimbursement.

(a) For loans made prior to October 22, 1985, in the event that insufficient funds are available to the Secretary in any fiscal year to enable him or her to pay to all schools their proportionate shares of all loans and interest canceled under this subpart for practice in a shortage area, death, or disability:

(1) Each school will be paid an amount bearing the same ratio to the total of the funds available for that purpose as the principal of loans canceled by that school in that fiscal year bears to the total principal of loans canceled by all schools in that year; and

(2) Any additional amounts to which a school is entitled will be paid by the Secretary at the time of distribution of the assets of the school's Fund under section 743 of the Act.

(b) For loans made on or after October 22, 1985, a school may assess the borrower a charge to insure against the loss of the institutional share of a loan canceled due to the borrower's death or permanent and total disability. The school must develop annually a rate which reflects its cancellation experience. This charge shall not exceed .6 percent of the loan amount. Funds collected under this provision must be maintained by the school in an insured, interest-bearing account (with any earned interest credited to this insurance fund), and used only to reimburse the school for the institutional share of any HPSL loan made on or after October 22, 1985, that is canceled due to the borrower's death or permanent and total disability. A school is not required to establish a separate bank account, but is required to maintain separate accountability.

6. Section 57.215 is amended by revising paragraph (a) and the OMB control number statement to read as follows:

§ 57.215 Records, reports, inspection, and audit.

(a) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan funds as the Secretary may find necessary to carry out the purposes of the Act and these regualtions. A school must submit required reports to the Secretary within 45 days of the close of the reporting period.

(1) A school which fails to submit a required report for its Federal capital contribution fund within 45 days of the close of the reporting period:

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(i) Shall be prohibited from receiving new Federal capital contributions;

(ii) Must place the revolving fund and all subsequent collections in an insured interest-bearing account; and

(iii) May make no loan disbursements.

The above restrictions apply until the Secretary determines that the school is in compliance with the reporting requirement.

(2) A school that fails to submit a complete report within 6 months of the close of the reporting period will be subject to termination. The Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(ii) The school does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(iii) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the school will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for failure to submit a complete report within 6 months of the close of the reporting period must continue to pursue collections and may reapply for participation in the program once it has submitted the overdue report.

(3) The school must also comply with the requirements of 45 CFR Part 74 and section 705 of the Act concerning recordkeeping, audit, and inspection.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915–0094 and 0915–0115)

7. Section 57.216a is amended by revising paragraph (d) and adding an OMB control number to read as follows:

§ 57.216a Performance standard.

* * * * *

(d) Any school subject to the provisions of paragraph (c)(3) of this section which fails to comply with those requirements will be subject to termination. The Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(2) The school does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the school will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for failure to comply with the provisions of paragraph (c)(3) of this section must continue to pursue collections and may reapply for participation in the program only when it has attained a default rate of 5 percent or less.

(Approved by the Office of Management and Budget under control number 0915–0115)

[FR Doc. 88–26448 Filed 11–16–88; 8:45 am]
BILLING CODE 4160–15–M

federal register

Thursday
November 17, 1988

Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Nursing Student Loan Program; Final Regulations

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Nursing Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule revises existing regulations governing the Nursing Student Loan (NSL) program to implement amendments made to the Public Health Service Act (the Act) by the Nurse Education Amendments of 1985, to clarify the definition of "default," add a paragraph on reallocation of funds, and establish hearing procedures. Also, this rule will require schools to verify the information provided by the student on the loan application.

EFFECTIVE DATE: These regulations are effective November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: On June 5, 1987, the Department published a Notice of Proposed Rulemaking (NPRM) (52 FR 21486) to incorporate amendments to the NSL program made by Pub. L. 99–92, the Nurse Education Amendments of 1985. The Department received written comments on the NPRM from 8 schools and 1 professional association. The comments and the Department's responses are discussed below. For clarity, the comments and responses are arranged according to the section numbers and headings of the rule to which they pertain.

Section 57.302 Definitions.

Respondents were generally in favor of the statutory definition of "default." However, they objected to the proposal that if a borrower has failed to make an installment payment when due, the school may reasonably conclude that the borrower intends to repay the loan and thus exclude the loan from the default category only in the following situations: (1) If the loan is in forbearance, or (2) if the borrower's repayment schedule has been renegotiated and the borrower is complying with the renegotiated schedule. The respondents believed the proposal to be unnecessarily restrictive and suggested that payments of significant portions of the loan or contacts by a credit counseling organization on behalf of a borrower should also be evidence of a borrower's intent to repay the loan.

The Secretary believes that responsible borrowers who have temporary financial problems, but who plan to fulfill their obligations, will enter into a renegotiation or forbearance agreement, and abide by the agreement. Therefore, the Department has retained this provision as proposed.

Section 57.304 Payment of Federal capital contributions.

One respondent objected to the proposed amendment in § 57.304(c) to reallocate funds returned to the Department under procedures consistent with those used to allocate new Federal capital contributions. This respondent opposed the amended language because it limits schools eligible for the first reallocation of remitted funds to those institutions which established an NSL program after September 30, 1975, and where institutions have more than one NSL program it prohibits the transfer of funds from overfunded programs to those which are underfunded.

The Secretary notes that this provision is consistent with the requirements in section 838(a)(3) of the Act, as amended by Pub. L. 99–92, the Nurse Education Amendments of 1985. That section authorizes the Department to reallocate remitted NSL funds, giving priority to schools which established an NSL fund after September 30, 1975. It does not provide in any way for the transfer of funds from one school to another within an institution with more than one NSL program. However, under the proposed provision, if there are funds remaining after fully funding the priority schools, remaining funds are awarded to other eligible schools. Since the major concern with this provision relates directly to statutory requirements, it has been retained as proposed under the new heading entitled *"Payment of Federal capital contributions and reallocation of funds remitted to the Secretary."*

Section 57.306 Eligibility and selection of nursing student loan applicants.

Eight respondents were generally in favor of verification of financial aid information as proposed in § 57.306(c). However, the respondents expressed strong concerns with the vagueness of the wording of the proposal. The respondents believed that the proposal as presented leaves the impression that the school is responsible for verifying all the data on every application for financial aid, which would impose a significant administrative burden on schools. Most of the respondents noted that the Department of Education (ED) imposes a requirement to verify 30 percent of applications for financial aid and suggested that it would be appropriate for the Department to similarly limit the number of applications that must be verified. In addition, it was believed that the 30 percent limit on verification would permit schools to focus verification efforts on those applications with the greatest potential for error. Further, since the Department requires that schools use a need analysis system approved by ED, and many of these systems have incorporated ED's computer edit check system, respondents encouraged the Department to adopt the verification procedures required by ED. Finally, the respondents explained that the adoption of ED's verification system would permit schools to use a single system of verification for all Federal student aid applicants rather than verify one set of data for student aid administered by ED and additional data for the NSL program.

One respondent stated that schools are currently gathering excessive documentation, such as Federal tax information, statements of non-taxable income, household size, etc., while another respondent asked what information should be verified that will assist in skiptracing and whether processing through a nationally approved need analysis system would satisfy the verification requirement.

One respondent recommended that schools be allowed to use their institutions' overall quality control programs where such programs exist to simplify the verification of applicants' information.

The Secretary believes that the school has an obligation to verify, to the best of its ability, the information provided by the student on the loan application. The Secretary does not, however, intend for a school to verify all data on every application for financial aid. The Secretary points out that this provision was not intended to be a new system of verification, but was intended to give schools the authority to require documents which the schools deem appropriate for verification and to require, to the extent possible, that verification be performed using information that is accessible within the school system (e.g., foreign student advisors, registrar's office, etc.). If a school already has in place a system it uses to verify applicants' information, this provision will allow the school to expand on that system as appropriate for effective verification. In response to the suggestions that the Department adopt ED's verification system and the suggestions in favor of a single verification system for all Federal student aid programs, the Secretary notes that ED's verification system focuses on the need analysis data. Further, the Secretary reiterates that the intent of this provision is to provide broad authority for schools to require from applicants information necessary to verify other parts of the student's application information, such as citizenship and skiptracing information as well as need analysis data. Accordingly, the Department has retained the provision in § 57.306(c) with clarification that a school may require that an applicant provide documentation to support information provided as part of the loan application process. Examples of supporting documentation include, but are not limited to: Photocopies of the parent's, student's and spouse's Federal income tax forms with original signatures for the most recent tax year (or certification that no Federal income tax return was filed); tax returns that are certified as having been received by the Internal Revenue Service; certified copies of birth certificates; copies of alien registration cards; or other documentation that the school considers necessary to help assure that the information on the loan application is correct.

Section 57.315 Records, reports, inspection, and audit, and section 57.316a Performance standard.

Respondents were generally in favor of the revisions to paragraph (a) of § 57.315 and paragraph (d) of § 57.316a which allow a school to request a hearing with an administrative law judge prior to being terminated. However, they opposed the procedures for determination by the Department of whether a hearing is warranted because they believed that the procedures would deny due process. The respondents commented that allowing the Secretary to dismiss requests for hearings if the basis for the requests were judged to be frivolous or inconsequential runs counter to the essential purpose of a hearing and that any determination that the issues in dispute are frivolous or inconsequential should be made by the administrative law judge. One of the respondents commented that the Secretary's judgment regarding the decision to accept or deny the hearing is a conflict of interest, since the Secretary would be a party in the hearing proceedings and suggested authorizing a third party to determine if in fact that the statement of factual issues is frivolous or inconsequential.

One respondent took exception to the proposed requirement that hearings be held in the Washington, DC metropolitan area. The respondent stated that the requirement will limit many schools' opportunity for adequate representation during termination proceedings and recommended that there be regional hearings instead.

The Department emphasizes that the intent of the proposal is to assure that the hearing process is administered as efficiently and cost-effectively as possible for the schools and the Department, and concludes that it is consistent with both due process and legislative requirements. We note that under administrative hearing procedures, an administrative law judge can rule only on issues in dispute. Existing regulations have the effect of law and are not subject to dispute through a hearing before an administrative law judge.

A determination of what constitutes a factual issue in dispute is directly tied to the reporting requirements in § 57.315 or the performance standard in § 57.316a of the regulations. An example of a factual issue in dispute would be a case where a school alleges facts which, if true, would undercut the Department's determination that the school has not met the requirements of the performance standard provision. Such a case would involve a material, factual issue in dispute that would be appropriate for resolution through a hearing by an administrative law judge.

The proposed procedure for determining whether a hearing must be conducted is essentially an administrative "summary judgment" proceeding. It is a well-settled principle that an agency has the authority to deny a hearing when it appears from the request that no substantial issue of fact is in dispute. *Weinberger v. Hynson, Westcott & Dunning*, 412 U.S. 609 (1973); *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 202–205 (1956); *Pineapple Growers Association of Hawaii v. F.D.A.*, 673 F.2d 1083 (9th Cir. 1982).

Section 746 of the Act which requires the Secretary to provide an opportunity for a hearing does not constitute a bar to such summary judgment. When it is apparent from a request that there are no substantive issues in dispute, no purpose could be served by holding a public hearing. In upholding a similar summary judgment provision promulgated by the Food and Drug Administration, the Eighth Circuit articulated the rationale for the provision as follows:

> • • • The hearing is solely for the purpose of receiving evidence "relevant and material to the issues raised by such objections." Certainly, then the objections, in order to be effective and necessitate the hearing requested, must be legally adequate so that, if true, the order complained of could not prevail. The objections must raise "issues." The issues must be material to the question involved; that is, the legality of the order attacked. They may not be frivolous or inconsequential. Where the objections stated and the issues raised thereby are, even if true, legally insufficient, their effect is a nullity and no objections have been stated. Congress did not intend the governmental agencies created by it to perform useless or unfruitful tasks. If it is perfectly clear that the petitioner's appeal for a hearing contains nothing material and the objections stated do not abrogate the legality of the order attacked, no hearing is required by law. *Dyestuffs and Chemicals, Inc., v. Flemming*, 271 F.2d 281, 286 (8th Cir. 1959), *cert. denied* 362 U.S. 911 (1960).

With regard to the recommendation for regional hearings, the Secretary continues to believe that the location of hearings must be limited to the Washington, DC, metropolitan area due to constraints in departmental resources. However, the Secretary notes that where the school is unable to attend a hearing in the Washington, DC, metropolitan area, it may be possible for the administrative law judge to conduct the hearing by mail.

Finally, the Secretary believes that clarification is necessary in determining what constitutes a timely request for a hearing. Section 842 of the Act provides a 30-day period after receipt of the written notice of the Secretary's intent to terminate within which the school must request a hearing. The NPRM proposed an expansion of this period to 90 days to allow additional time for a school to prepare and submit material, factual issues in dispute to warrant a hearing. The Department has clarified the time frame in the final regulations. The regulations state that the Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must, within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the

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proposed requirements in these regulations are minimal. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant economic impact on a substantial number of NSL schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act

Sections 57.315 and 57.316a contain information collection requirements which have been approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980 and assigned control number 0915–0115.

List of Subjects in 42 CFR Part 57

Dental health, Grant programs-health, Education of disadvantaged, Health facilities, Educational facilities, Health professions, Educational study programs, Loan programs-health, Emergency medical services, Medical and dental schools, Grant programs-education, Scholarships and fellowships, Student aid.

Accordingly, Subpart D of 42 CFR Part 57 is amended as follows:

Dated: August 8, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: September 6, 1988.

Otis R. Bowen,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.364, Nursing Student Loan Program)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart D—Nursing Student Loans

1. The authority for Subpart D continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 67 Stat. 631(42 U.S.C. 216); secs. 835–842, Public Health Service Act, 78 Stat. 913–916, as amended, 99 Stat. 397–400, 536–537 (42 U.S.C. 297a–i).

2. Section 57.302 is amended by revising the definition for "default" as follows:

§ 57.302 Definitions.

* * * * *

"Default" means the failure of a borrower of a loan made under this subpart to make an installment payment when due, or comply with any other term of the promissory note for such loan, except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy, the borrower's repayment schedule has been renegotiated and the borrower is complying with the renegotiated schedule, or the loan is in forbearance.

* * * * *

3. Section 57.304 is amended by revising the heading of the section and adding a new paragraph (c) as follows:

§ 57.304 Payment of Federal capital contributions and reallocation of funds remitted to the Secretary.

* * * * *

(c) *Reallocation of funds remitted to the Secretary.* (1) All funds from a student loan fund established under this subpart which are remitted to the Secretary in any fiscal year shall be available for allotment under this subpart, in the same fiscal year and the succeeding fiscal year, to eligible nursing schools. In making these allotments, the Secretary shall give priority to nursing schools which established a student loan fund under this subpart after September 30, 1975. The Secretary will make payments to eligible schools at a time determined by him or her, according to the procedures indicated in paragraphs (c)(2) and (c)(3) of this section.

(2) *Eligible schools which established a nursing student loan fund after September 30, 1975.* The Secretary will make awards first to those eligible schools that established a nursing student loan fund after September 30, 1975. If the total of the amounts requested for any fiscal year by these schools exceeds the amount of funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller:

(i) The amount requested in the application, or

(ii) An amount which bears the same ratio to the total amount of returned funds determined by the Secretary at the time of payment to be available for that fiscal year for the Nursing Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in these eligible schools during that year.

Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, with whatever adjustments may be necessary to prevent the total paid to any school from exceeding the total requested by it.

(3) *Eligible schools which established a nursing student loan fund prior to October 1, 1975.* If there are funds remaining after making awards as specified by paragraph (c)(2) of this section, the Secretary will make awards to eligible schools which established a nursing student loan fund prior to October 1, 1975. If the total of the amounts requested for any fiscal year by these schools exceeds the amount of funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller:

(i) The amount requested in the application, or

(ii) An amount which bears the same ratio to the total amount of returned funds determined by the Secretary at the time of payment to be available for that fiscal year for the Nursing Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in these eligible schools during that year.

Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, with whatever adjustments may be necessary to prevent the total paid to any school from exceeding the total requested by it.

4. Section 57.306 is amended by adding a new paragraph (c) as follows:

§ 57.306 Eligibility and selection of nursing student loan applicants.

* * * * *

(c) *Verification of loan information.* The school must verify, to the best of its ability, the information provided by the student on the loan application. To comply with this requirement, a school may require that a student provide, for example: Photocopies of the parents', student's, and spouse's Federal income tax forms with original signatures for the most recent tax year (or certification that no Federal income tax return was filed); tax returns that are certified as having been received by the Internal Revenue Service; or other documentation that the school considers necessary to help assure that information on the loan application is correct.

5. Section 57.315 is amended by revising paragraph (a)(1) and the OMB control number statement as follows:

§ 57.315 Records, reports, inspection, and audit.

(a) * * *

(1) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its nursing student loan funds as the Secretary may find necessary to carry out the purposes of the Act and these regulations. A school must submit required reports to the Secretary within 45 days of the close of the reporting period.

(i) A school which fails to submit a required report for its Federal capital contribution fund within 45 days of the close of the reporting period:

(A) Shall be prohibited from receiving new Federal capital contributions;

(B) Must place the revolving fund and all subsequent collections in an insured interest-bearing account; and

(C) May make no loan disbursements.

The above restrictions apply until the Secretary determines that the school is in compliance with the reporting requirement.

(ii) A school that fails to submit a complete report within 6 months of the close of the reporting period will be subject to termination. The Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(A) The request for a hearing is untimely (ie., fails to meet the 30-day requirement);

(B) The school does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(C) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the school will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for failure to submit a complete report within 6 months of the close of the reporting period must continue to pursue collections and may reapply for participation in the program once it has submitted the overdue report.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915–0047 and 0915–0115)

6. Section 57.316a is amended by revising paragraph (d) and adding an OMB control number as follows:

§ 57.316a Performance standard.

* * * * *

(d) Any school subject to the provisions of paragraph (c)(3) of this section which fails to comply with those requirements will be subject to termination. The Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(2) The school does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the school will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for failure to comply with the provisions of paragraph (c)(3) of this section must continue to pursue collections and may reapply for participation in the program only when it has attained a default rate of 5 percent or less.

(Approved by the Office of Management and Budget under control number 0915–0115).

[FR Doc. 88–26449 Filed 11–16–88; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 253
Guideline for Federal Procurement of Retread Tires; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 253

[SWH-FRL FR 3467-8]

Guideline for Federal Procurement of Retread Tires

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is issuing a guideline for Federal procurement of retread tires. The guideline implements section 6002(e) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), which requires EPA (1) to designate items which can be produced with recovered materials and (2) to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002. Once EPA has designated a procurement item, section 6002 requires that any procuring agency using Federal funds to procure that item must purchase such items containing the highest percentage of recovered materials practicable.

The guideline issued today designates tires as products for which the procurement requirements of section 6002 apply. The guideline also contains recommendations for implementing the section 6002 procurement requirements as well as the requirements for revising specifications.

EFFECTIVE DATES: The guideline is effective November 17, 1988. Procuring agencies must implement the requirements of RCRA section 6002 with respect to procurement of tires according to the following schedule:

Completion of specification revisions and development of affirmative procurement programs: November 17, 1989.

Commencement of procurement of tires in accordance with RCRA section 6002: November 17, 1989.

ADDRESS: The public docket is available for viewing in Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. Materials may be copied from any regulatory docket at a cost of 15 cents per page. Copying totaling less than $15 is free.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, OS-330, U.S. EPA, 401 M Street, SW., Washington, DC 20460, telephone: (202) 382-4502.

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I. Authority

This guideline is issued under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Introduction

A. Purpose and Scope

The Environmental Protection Agency (EPA) today is issuing one in a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a Federal, State, or local procuring agency uses Federal funds to procure certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate these items and to prepare guidelines to assist procuring agencies in complying with the requirements of Section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230; 40 CFR Part 249). EPA issued a guideline for paper and paper products containing recovered materials on October 6, 1987 (52 FR 37293; 40 CFR Part 250) with concurrently proposed amendments (52 FR 37335). A revised final paper guideline was promulgated on June 22, 1988 (53 FR 23546). EPA promulgated a final guideline for lubricating oils containing re-refined oil on June 30, 1988 (53 FR 24699; 40 CFR Part 252). A guideline for asphalt materials containing ground tire rubber was proposed on February 20, 1986 (51 FR 6202), a guideline for retread tires was proposed on May 2, 1988 (53 FR 15624), and a guideline for building insulation products was proposed on August 2, 1988 (53 FR 29165). Today, EPA is promulgating the final retread tires guideline.

This preamble describes the requirements of section 6002, explains the basis for designating tires as a procurement item subject to section 6002, discusses EPA's recommendations for implementing section 6002 with respect to procurement of tires, and responds to comments on the proposed guideline. It also provides information regarding the price, availability, and performance of retread tires.

B. Requirements of Section 6002

Section 6002 of RCRA, "Federal Procurement," directs all procuring agencies which use Federal funds to procure items composed of the highest percentage of recovered materials practicable, considering competition, availability, technical performance, and cost. Two factors trigger this requirement. First, EPA must designate the items to which this requirement applies. Second, the requirement only applies when the purchase price of the item exceeds $10,000 or when the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

Section 6002(c) requires procuring agencies to obtain from suppliers an estimate of and certification regarding the percentage of recovered materials contained in their products.

Federal agencies responsible for drafting or reviewing specifications for procurement items were required under section 6002(d)(1) to review and revise the specifications by May 8, 1986 in order to eliminate both exclusions of recovered materials and requirements that items be manufactured from virgin materials. In addition, within one year after the date of publication of a procurement guideline by EPA, the Federal agencies must revise their specifications to require the use of recovered materials in such items to the maximum extent possible without jeopardizing the intended end use of the item.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616) added paragraph (i) to section 6002 of RCRA. This provision requires procuring agencies to develop an affirmative procurement program for purchasing items designated by EPA. The program must assure that items composed of recovered materials will be purchased to the maximum extent practicable, be consistent with applicable provisions of Federal procurement law, and contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification of recovered material content; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

Under section 6002(e), EPA is required to issue guidelines for use by procuring agencies in complying with the requirements of section 6002. The EPA guidelines must designate those items which can be produced with recovered materials and whose procurement by procuring agencies will fulfill the objectives of section 6002. They also must provide recommendations for procurement practices and information on availability, relative price, and performance.

Section 6002 is designated to promote materials conservation and thereby to reduce the quantity of materials in the solid waste stream. By using products containing recovered materials, Federal procurement can demonstrate their technical and economic viability. In addition, Federal procurement guidelines can provide guidance to state and local governments interested in procuring products containing recovered materials, and Federal procurement of such products is expected to result in increased procurement of them by these other groups as well.

C. Rationale for Selecting Tires for a Procurement Guideline

In the preamble to the fly ash guideline, EPA established criteria for the selection of procurement items for which guidelines will be prepared. However, section 6002(e) of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984, specifically directs the EPA Administrator to issue procurement guidelines for tires. The portion of the Conference Committee report describing the amendments to section 6002 explains that the term "tires" includes "the use of retreaded tires." [H.R. 2867 Conference Report, p.1, Cong. Rec. H11138 (October 3, 1984).] Since Congress already has selected tires as an appropriate subject for a procurement guideline, it is not necessary for EPA to demonstrate that tires satisfy the EPA criteria for selecting procurement items.

However, commenters on the proposed retread tires guideline stressed to EPA that by providing information on the environmental benefits of using retread tires, EPA would help to convince buyers to purchase retread tires. EPA agrees and is providing the following summary of information on tires as a solid waste disposal problem.

In 1986, 220 million tires were discarded. Passenger car and light truck tires account for approximately 80 percent of the total number of tires scrapped, the remainder being bus, truck, and off-road tires (e.g., construction equipment and agricultural equipment tires). While scrap tires often can be retreaded, sold as used tires, or otherwise reused or recycled, they generally wind up in landfills, tire stockpiles, and along roadsides or waterways.

Tires cannot be easily managed in landfills. They do not biochemically degrade and tend to rise or float to the surface after burial, create voids in the landfills, and provide a home for rodents and insects. Some landfills have equipment to shred or slice tires prior to burial, but shredding is a costly process. As a result, many landfills will not accept tires at all or charge additional tipping fees for tires, often at a level high enough to discourage tires from being brought to the facility.

Scrap tires often are disposed of on private property in tire stockpiles. The tire industry estimates that there are between 2 and 3 billion tires in piles scattered throughout the United States and that these piles are increasing by 150 to 200 million tires per year. Efforts to regulate or to eliminate these piles have been largely unsuccessful. While some of these tires will be recycled into crumb rubber or used as fuel, the majority of the tires have no known use.

The tire piles pose a serious threat to both public health and the environment as a home for rodents and insects and as fuel for fires. For example, a 4 million tire pile ignited in Winchester, Virginia in 1983. It took eight months and the combined efforts of the Federal, State, and county governments to contain the fire, which ultimately burned itself out. EPA alone spent $1.2 million of Superfund monies to contain and remove the oily residue generated by the burning tires.

Thus, it is desirable to encourage a reduction in used tire disposal, and tire retreading is one means of accomplishing this end.

D. Background Information on Tire Retreading

The retreading industry was started in the 1910s. Today there are approximately 2,600 retreading plants in the United States. They retread tires for aircraft (commercial and military), agricultural equipment, automobiles, light- and heavy-duty trucks, buses (school and mass transportation), off-road, vehicles (i.e., earthmovers, graders, loaders, and dozers) and racing cars.

Tire retreading is the application of a new tread to a worn tire. The tire retreading process involves the following steps:

- Inspection and selection of tires suitable for retreading.
- Removal of the old tire tread through a buffing process.
- Repair of the tire casing, if necessary.
- Application of rubber cement.
- Application of a new tread.
- Curing.
- Inspection of the retreaded tire.

There are two methods for applying a new tread: the mold-cured process, in

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which an uncured rubber tread is applied, and the pre-cured process, in which a pre-cured, pre-molded rubber tread is applied.

During the mold-cured process, uncured (i.e., nonvulcanized) rubber is applied to the tire. The tire then is placed in a mold to form the tread pattern, the tire is internally pressurized, and the mold is heated. The combination of heat and air pressure applied for an appropriate period of time vulcanizes the rubber and bonds it to the tire body.

During the pre-cure process, a thin layer of uncured rubber (the bonding layer) is applied to the tire body. The pre-cured, pre-molded rubber tread is applied over the bonding layer. The tire is then placed in an autoclave to bond the tread to the tire body. Again, the combination of heat and air pressure applied over time vulcanizes the bonding layer and bonds it and the tread to the tire body.

Two U.S. manufacturers use a bead-to-bead process, which involves replacing the sidewall and shoulder rubber in addition to the tread. These processes, which are also known as remolding or remanufacturing, are used to manufacture passenger car tires and ligh truck tires.

A properly retreaded tire can provide the same mileage as a new tire, thus substantially extending a tire's useful life. Tires also can be retreaded multiple times. Truck tires, for example, are often retreaded two or three times.

E. Current Retread Tire Procurement Procedures

Procuring agencies can procure either a service—tire retreading—or a product—retread tires. Agencies currently use different methods for procuring retreading services than for procuring retread tires as a product. These approaches are described below.

1. *Procurement of Services.* The U.S. General Services Administration (GSA) awards contracts for tire retreading services. Retreading contracts are awarded by the GSA regional offices. The regional offices then issue a supply schedule, Federal Supply Schedule No. 753II, Tire Retreading and Repairing, identifying the vendors of tire retreading services within the GSA region. The individual Federal agencies [1] can bring their tires to these vendors for retreading. The vendor retreads the tire and returns it to the procuring agency. If the tire is not retreadable (e.g., the casing is damaged), the vendor returns it to the agency for disposal.

Vendors retread tires in accordance with GSA Specification ZZ–T–441, which details the retreading procedures to be followed, including inspection of the worn tire casing for suitability for retreading, and inspection of the finished product. It applies to both the mold-cured and pre-cured retreading processes and to tire repairs. It covers four groups of tires: (1) Passenger car and cycles, (2) light truck and high speed industrial, (3) truck, bus and trailer, and (4) special service (including military, agricultural, off-highway, and slow speed industrial).

The specification also requires that the retreader receive a mandatory pre-award facility certification of approval. According to the specification, there are two acceptable approaches that a retreader may use to have his facility certified: either a GSA inspector can perform the retreading facility inspection or the retreader can provide evidence that within the previous 12 months the facility has received an approved certification from a nationally recognized retread tire trade association. While the specification does not identify any particular association, EPA knows of two such organizations, the National Tire Dealers and Retreaders Association (NTDRA) and the American Retreaders Association (ARA).

With the exception of the Department of Defense, very few Federal government agencies have central motor pools to maintain and repair vehicles. Nor are tires stockpiled in Federal government warehouses or depots. Instead, replacement tires are obtained from the commercial marketplace.

For example, replacement tires for GSA Interagency Fleet Management System vehicles are, for the most part, obtained from retail tire distribution outlets. In a limited number of locations where GSA has in-house maintenance and repair facilities, a small number of replacement tires may be stored. Operators of GSA fleet vehicles contact one of eleven GSA maintenance control centers for authorization of maintenance and repairs, including tire replacement. GSA automotive technicians, using established criteria on minimum tread depth, and in conjunction with other relevant information provided by the operator, make the decisions on tire replacement. Retread tires may be purchased depending on the type of vehicle (non-passenger carrying), the intended vehicle use, cost, and the availability of retread tires through the retail distribution system.

GSA has issued two policy statements regarding use of retread tires, which provide vehicle operators with some criteria to use in making the decision to procure a new tire or a tire retreading service [2] GSA does not monitor procuring agencies' use of the retreading contracts, however.

Several states also procure tire retreading services. Some states use prison retreading facilities, while others use contractors. For example, the State of Vermont procures retreading services for truck and aircraft tires. The state uses a specification which identifies the retreading process to be used (mold-cured), retread size, and tread design. It requires that the retreader use the state's casings. The state invites bids to supply retreading services in accordance with the specification and awards one-year contracts with two options to renew.

Vermont has a central motor pool which warehouses replacement parts, including a mix of new and retreaded tires. The motor pool staff are trained in tire inspection procedures. Each tire casing is inspected to determine whether it can be retreaded; if it is suitable for retreading, it is sent to the contract retreader.

2. *Procurement of Products.* Several methods can be used to procure retread tires as products. They generally are purchased through open competition (although the Federal Government does not use this method of procurement for retread tires). The procuring agency invites bids from both vendors of new tires and vendors of retread tires. The contract is awarded to the lowest-priced responsible bidder.

One method is to invite bids to sell a mix of new and retread tires, in which agencies identify particular types or sizes of tires that they wish to purchase as retreads. Vendors then bid against the mixed list.

Another method of procuring retread tires as a product is through mileage guarantees. The tire specification requires the contractor to guarantee an average mileage and to submit a performance bond. The price of each tire is divided by the guaranteed mileage to obtain a guaranteed cost per mile. If the tire does not perform for the guaranteed mileage, the cost per mile is used to adjust the price of the tire. The difference between the actual tire price and the adjusted price is the amount the contractor must reimburse the procuring agency. Both vendors of new tires and vendors of retread tires can submit bids using this type of procurement specification.

[1] The Department of Defense uses Schedule No. 753II for retreading of tactical equipment and heavy-duty truck tires, as well as for administrative and light-duty vehicle tires.

[2] GSA's written policies provide that truck, bus and heavy equipment tires should be examined for retreadability. Tires of 6 ply or greater with a minimum remaining tread depth of at least 2/32" should be submitted to a government retread contractor for possible retreading. Retreads are recommended for use on low speed (25 miles per hour or less) on- and off-road vehicles. GSA recommends that retreads not be used on steering axles of high speed, over-the-road vehicles. Further, GSA policies prohibit use of retreads on passenger carrying vehicles or on the steering axle of any Interagency Fleet Management Vehicle used on public highways but allows use of retreads on the rear wheels of large trucks, truck tractors, trailers, and off-road vehicles.

III. Contents of the Guideline

This portion of the preamble explains each section of the final guideline.

A. Purposes and Scope

The purposes of this guideline are (1) to designate tires as an item subject to the procurement requirements of section 6002 of RCRA and (2) to recommend procedures for complying with section 6002.

This guideline applies to purchases of the following types of tires: Passenger car tires, light- and heavy-duty truck tires, high speed industrial tires, bus tires, and special service tires (including Military, agricultural, off-the-road, and slow speed industrial). Commenters questioned several exclusions from the scope of the guideline as discussed below.

1. *Airplane Tires.* The guideline does not apply to airplane tires. In the proposed guideline, EPA explained that because agencies that procure airplane tires already use retread tires extensively, it did not believe that designating airplane tires would result in increased use of retreaded airplane tires. EPA further stated that when Congress directed EPA to issue a procurement guideline for tires, it intended EPA to focus on automobile, truck, and other vehicle tires because they are a significant solid waste problem; the bulk of the tires in the solid waste stream are automobile tires and, to a lesser extent, truck and other vehicle tires.

Several commenters stated that EPA should include airplane tires within the scope of the guideline. These commenters argued that airplane tires might not be retreaded to the maximum extent practicable, that including them in the guideline would insure their continued use, and that there is no data showing that airplane tires are not a significant solid waste disposal problem. None of the commenters submitted data supporting their arguments.

EPA has data, which has been placed in the docket for this guideline, demonstrating that airplane tires are not a significant solid waste disposal problem. In addition, EPA believes that if an item is already extensively recycled, so that an EPA procurement guideline will not have a significant impact on recycling, it is preferable to use EPA's resources to develop guidelines which will have a significant impact on recycling. For these reasons, EPA is not including airplane tires within the scope of the final guideline issued today. If EPA receives information indicating that issuing a guideline would have an impact on retreading of airplane tires or that the volume of airplane tire retreading is decreasing, then EPA will consider the feasibility of a guideline for this item.

In the proposed guideline, § 253.3(d)(3) provided that the guideline did not apply to purchases of airplane tires. Since exclusion of these tires is really a scope issue, EPA has placed the exclusions in § 253.2 of the final guideline and deleted § 253.3(d)(3).

2. *Original Equipment Tires.* In the proposed guideline, EPA noted that RCRA section 6002(i) provides that affirmative procurement programs should be consistent with applicable provisions of Federal procurement law, that Federal procurement law requires Federal procuring agencies to purchase commercial products and to use commercial distribution systems whenever such products or systems are adequate to meet the government's needs, and that new vehicles are purchased in accordance with this requirement. Because new vehicle manufacturers are required by National Highway Traffic Safety Administration (NHTSA) regulations to use new tires (49 CFR 571.110 and 571.120), the vehicles purchased by Federal procuring agencies will be equipped with new tires. Therefore, EPA concluded that requiring retread tires would be contrary both to the NHTSA regulations and the FAR, and thus contrary to the requirement of RCRA section 6002(i)(1) that procuring agencies must comply with applicable Federal laws.

Several commenters questioned EPA's conclusion. They maintained that the NHTSA regulations do not require the use of new tires on new motor vehicles but, rather, are performance standards which could be met equally well by retread tires or new tires. EPA has reexamined this issue and reconfirmed that the NHTSA requirements foreclose EPA from including original equipment tires on new motor vehicles within the scope of the guideline.

The NHTSA regulations require that new motor vehicles must meet either Federal Motor Vehicle Safety Standard (FMVSS) 109, "New Pneumatic Tires—Passenger Cars." or FMVSS No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars." Discussions with NHTSA verified EPA's earlier conclusion that these standards require that new passenger vehicles be equipped with new tires and do not allow the use of retread tires. It is NHTSA's position that manufacturers who supplied new motor vehicles with retread tires would be in violation of the National Traffic and Motor Vehicles Safety Act of 1966 and consequently subject to fines.

RCRA section 6002(d)(1) requires Federal agencies with the responsibility for drafting "specifications for procurement items" to eliminate from the specifications any exclusion of recovered materials and any requirement that items be manufactured from virgin material. A commenter has suggested that the NHTSA standards are discriminatory specifications prohibited by section 6002(d). EPA, however, has determined that the NHTSA standards are not procurement specifications. NHTSA promulgated its Federal Motor Vehicle Safety Standards under express Congressional direction. Safety, not procurement, is the "overriding consideration in the issuance of standards" under the National Traffic and Motor Vehicle Safety Act of 1966. [Senate Rep. No. 1301, 89th Cong., 2d Sess. 6 (1966).]

Certain commenters submitted evidence that some retread tires could meet the NHTSA standards prescribed for new tires. EPA urges these commenters to petition NHTSA to revise its regulations so as to allow a manufacturer to equip new motor vehicles with qualifying retread tires. If the NHTSA standards are revised, Federal agencies which write procurement specifications must then assure that these specifications meet the requirements of section 6002(d) and do not exclude the procurement of motor vehicles equipped with retread tires. However, until NHTSA standards permit this, EPA will not, under section 6002(i), recommend to procuring agencies an affirmative procurement program which would direct them to revise their motor vehicles specifications to require retread tires on new vehicles.

Because the NHTSA standards ban the use of retread tires on new passenger vehicles, it is unnecessary for EPA to exclude tires on new cars from the guideline. Moreover, in the event the NHTSA standards are changed so as to permit the use of retread tires on new motor vehicles, the exclusion would be inappropriate. Therefore, § 253.3(d)(1) of the proposed guideline has been deleted

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in the final guideline, and § 253.2, Designation, no longer specifically excludes original equipment tires.

3. *Tires Manufactured With Recovered Rubber.* A commenter stated that the guideline should apply to procurement of tires manufactured with recovered rubber. EPA plans to study the feasibility of a procurement guideline for this item and will consider issuing a separate guideline when the feasibility study is completed.

B. Applicability

Many of the requirements of section 6002 apply to "procuring agencies," which is defined by RCRA section 1004(17) as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under section 6002(a), the procurement requirements apply to any purchase by a procuring agency of an item costing $10,000 or more or when the procuring agency purchased $10,000 worth of the item or of a functionally equivalent item during the preceding fiscal year. Both direct and indirect purchases are covered.

1. *Procuring Agencies.* Commenters asked EPA to include in this guideline the discussion of the applicability of section 6002 to procuring agencies that was included in EPA's other procurement guidelines. EPA agrees that the discussion is germane to this guideline.

The statutory definition of procuring agency identifies three types of agencies: (1) Federal agencies, (2) State or local agencies using appropriated Federal funds, and (3) contractors. Federal agencies should note that under this definition, the requirements of section 6002 apply to them whether or not *appropriated* Federal funds are used for procurement of items designated by EPA. Section 253.3(a)(2) has been added to the final guideline to clarify this point.

In addition, the requirements of section 6002 apply to each Federal agency as a whole; see § 253.3(a)(2)(iii) of the final guideline. This point is particularly important in determining whether the $10,000 threshold has been reached. For example, GSA, as a whole, purchases more than $10,000 worth of tires during each fiscal year. Therefore, the requirements of section 6002 will apply to all of GSA's tire procurements, including procurements by individual regional offices, even if a regional office procured less than $10,000 worth of tires.

2. *Direct Purchases.* This guideline applies to tire purchases made directly by a procuring agency or by a government contractor for use in government vehicles and equipment. Direct purchases by a contract would include purchases for maintaining a government fleet.[3]

A commenter suggested that EPA provide guidance, such as recommending use of ratios, to contractors who do work which is funded by commingled Federal and non-Federal funds. Nothing in section 6002 and its legislative history suggests that Congress contemplated use of ratios to determine the applicability of section 6002 to procuring agencies, including contractors. In fact, Congress simply stated that the procurement requirements apply to any purchase or acquisition. EPA further believes that the use of ratios would be unnecessarily burdensome. EPA has concluded that determining the applicability of section 6002 to a procuring agency in a given instance should be simple and direct. If a State or local procuring agency or a contractor is using Federal funds, even if such funds are commingled with non-Federal funds, then the requirements of section 6002 apply. See § 253.3(a)(2)(ii) of the final guideline.

3. *Indirect Purchases.* The definition of "procuring agency" in RCRA section 1004(17) makes it clear that the requirements of section 6002 apply to "indirect purchases," i.e., purchases by a State or local agency using appropriated Federal funds or by contractors. Thus, the guideline applies to tire purchases meeting the $10,000 threshold made by States and their localities or their contractors, subcontractors, grantees, or other persons which are funded by grants, loans, or other forms of disbursements of monies from Federal agencies.

In the proposed guidelines, EPA stated that the guideline does not apply to tire purchases by State and local procuring agencies or contractors if they are unrelated to or incidental to the Federal funding, i.e., not the direct result of the grant, loan, or funds disbursement. Several commenters disagreed with EPA's interpretation, noting that RCRA section 6002(a) states simply that section 6002 applies to "*any* purchase or acquisition of a procurement item" (emphasis added) when the $10,000 threshold is reached. These commenters raise an issue of general applicability to all the procurement guidelines. The Agency plans further review and consideration of this issue and will publish detailed guidance on this subject within the near term. However, at this time, EPA is retaining the proposed language (in § 253.3(c) of the final guideline) which provided that the guideline did not apply to purchases that were not the direct result of a Federal grant, loan, or funds disbursement.

EPA solicited comments on whether this guideline should exempt block grants from the section 6002 procurement requirements or exempt block grants only when it is not possible to account separately for such funds. A commenter suggested that EPA require all Federal grants to have specific line item allocations for any item designated under section 6002(e) or that procuring agencies apply the ratio of Federal to non-Federal funding to each individual product category covered by a procurement guideline. EPA believes that both of these suggestions go beyond the scope of RCRA section 6002. Section 6002(e) clearly gives EPA authority to recommend guidelines but not to require compliance with them. As discussed above, nothing in section 6002 and its legislative history suggest that Congress contemplated use of ratios to determine the applicability of the procurement requirements to procuring agencies.

Thus, EPA believes that the guidelines should apply whenever Federal monies, including block grants, are used, whether or not they are commingled with non-Federal funds. In other words, if any Federal funds are used, then the requirements of section 6002 apply.

4. *The $10,000 Threshold.* RCRA section 6002(a) provides that the requirements of section 6002 apply (1) when the purchase price of an item exceeds $10,000 or (2) when the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. Section 253.3(a)(1) of the guideline provides that procuring agencies *should* consider all sizes and types of tires to be functionally equivalent items. Thus, when determining if the $10,000 threshold has been reached, procuring agencies should tally the cost of all tires purchased, rather than each size or category of tire (e.g., truck tires, automobile tires) purchased. EPA believes that restricting the applicability of section 6002 based upon a narrow, technical definition of functional equivalency would limit the effectiveness of the guideline in meeting the objectives of RCRA, because an agency may purchase less than $10,000 of each size or category of tire. EPA

[3] The term "government fleet" includes (1) vehicles owned by a procuring agency and operated or maintained on behalf of the agency by a contractor, (2) vehicles owned by a contractor or a third party and leased to or used by a procuring agency, and (3) vehicles owned by a contractor and used by the contractor with respect to work performed under contract to a procuring agency.

recommended a similar approach in the guideline for procurement of lubricating oil containing re-refined oil, 53 FR 24705 (June 30, 1988).

A commenter stated that EPA should *require* procuring agencies to consider all sizes and types of tires to be functionally equivalent, noting that it is EPA's job to flesh out the statutory requirements. While EPA agrees that it has the authority to flesh out the statutory requirements, such authority is found in RCRA section 6002(e)(2), which provides that EPA guidelines shall "set forth *recommended* practices" (emphasis added). The commenter has failed to cite any statutory provision which empowers EPA to require a given practice. In addition, the commenter is incorrect in stating that EPA's final paper and lubricating oils guidelines *required* a procuring agency to consider its paper or lubricating oil purchases as functionally equivalent for purposes of determining the guidelines' applicability; both guidelines state that specified items should, not must, be considered to be functionally equivalent. (See 53 FR 23551, June 22, 1988, and 53 FR 24705, June 30, 1988.)

EPA noted in the preamble to the lubricating oil procurement guideline that while RCRA section 6002(a) provides that Section 6002 and EPA guidelines apply whenever a procuring agency purchases $10,000 or more worth of an item in the course of the preceding fiscal year, it does not provide that the procurement requirements are triggered when the quantity of items purchased *during the current fiscal year* is $10,000 or more (emphasis added) (53 FR 24705, June 30, 1988). In other words, Congress did not intend to require procuring agencies to keep a running tally during the current year of procurements of items designated by EPA. Section 6002 clearly sets out a two-step procedure for determining whether the $10,000 threshold has been reached. First, a procuring agency must determine whether it purchased $10,000 worth of an item or of functionally equivalent items during the preceding fiscal year. Second, if a procuring agency did not procure $10,000 worth of an item during the preceding fiscal year, it is not subject to section 6002 unless it makes a $10,000 purchase of the item in the current fiscal year. The requirements of section 6002 then apply to the $10,000 purchase of the item; to all subsequent purchases of the item made during the current fiscal year, regardless of size; and to all procurements of the item made in the following fiscal year (*Ibid.*).

However, it has been brought to EPA's attention that the regulation portion of the lubricating oil, paper, and retread tires procurement guideline do not reflect this interpretation. EPA has corrected § 253.3(a)(1) in the final guideline issued today and will be issuing corrections to the lubricating oil and paper guidelines to remove any ambiguity on this issue.

Finally, EPA notes that the FAR contains a $25,000 small procurement provision, 48 CFR Part 13. This provision should not be confused with the $10,000 threshold because their purposes are different. The $10,000 threshold determines when the affirmative procurement provisions of RCRA section 6002 apply, whereas the $25,000 threshold triggers small procurement procedures. Procuring agencies must use the $10,000 threshold when determining the applicability of RCRA section 6002 and the final guideline issued today.

C. Definitions

No comments were received on the proposed definitions, and EPA is issuing them as proposed.

D. Requirements vs. Recommendations

RCRA section 6002 requires procuring agencies and contracting officers to perform certain activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" section 6002. EPA has incorporated the section 6002 requirements into the guidelines for the benefit of procuring agencies. As a result, the guidelines contain two types of provisions: Requirements (mandated by Congress in section 6002) and recommendations (EPA's guidance for complying with the requirements of section 6002). As used in this guideline, the verbs "shall" and "must" indicate section 6002 requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations for complying with those requirements.

Procuring agencies are required to comply with the requirements of section 6002, whereas EPA's recommendations for meeting those statutory requirements are advisory in nature. Procuring agencies may choose to use other approaches which satisfy the section 6002 requirements. However, EPA believes that if a procuring agency chooses to follow EPA's recommendations, that agency will be in compliance with the section 6002 requirements.

E. Specifications

1. *Federal Agencies.* RCRA section 6002(d) contains two requirements for revising specifications for procurement items. As discussed above, Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications by May 8, 1986, to eliminate exclusions of recovered materials and requirements that items be manufactured from virgin materials [section 6002(d)(1)].[4] Second, within one year after the date of publication of a guideline as a final rule, Federal agencies must assure that their specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item [section 6002(d)(2)].

Section 253.10 of the guideline contains these requirements as they apply to retread tires. Section 253.21(a) provides that by May 8, 1986, Federal agencies were required to eliminate from their specifications exclusions of retread tires and any requirement that tires be manufactured from virgin materials. Section 253.10(b) provides that agencies must assure that their specifications require the use of retread tires to the maximum extent possible without jeopardizing the intended end use of the item. In addition, in response to coments, EPA has added to § 253.10(b) a recommendation that specifications indicate the functional requirements of tires to be procured, including the performance criteria, any desired mileage guarantees, and the size and type of tire required. By identifying functional requirements, rather than limiting the applicability of a specification to new tires or to retread tires, such specifications will allow retread tires and new tires to compete on an equitable basis.

EPA believes that the second specification requirement in RCRA section 6002(d) is more extensive than the first requirements. Simply eliminating discriminatory provisions, as required by section 6002(d)(1), is not sufficient to meet all of the obligations of section 6002(d). EPA believes, however, that compliance with the affirmative procurement requirements of section 6002(i), coupled with use of specifications identifying functional requirements, will fulfill the section 6002(d)(2) requirements because an affirmative procurement program should result in procurement to the maximum extent practicable.

EPA has not reviewed all of the new tire specifications used by Federal procuring agencies. EPA believes that

[4] In the case of tires, specifications must not require that only virgin rubber can be used nor must they specify that reclaimed rubber cannot be used.

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the ones that it has reviewed violate RCRA section 6002 because they exclude retread tires. Specifically, EPA believes that GSA would be required to revise its specifications for new tires so that they apply both to new tires and to retread tires. There may be other specifications of which EPA is unaware that do not violate section 6002; it is the responsibility of the procuring agencies that prepare these specifications to review them and to determine whether they are in compliance with RCRA.

2. *Procuring Agencies.* EPA believes that the second specification revision requirement also applies to non-Federal procuring agencies which procure tires with appropriated Federal funds. Unless their specifications are revised to require the use of retread tires, these agencies will be unable to implement the affirmative procurement requirements of RCRA section 6002(c)(1) and (i). For this reason, § 253.10(b) of the guideline provides that all *procuring agencies* (rather than "Federal agencies" as provided in the Act) must assure that their specifications require the use of retread tires to the maximum extent possible without jeopardizing the intended use of the item.

3. *Public Comments on the Proposed Specifications Provisions.* Commenters primarily discussed whether EPA should recommend specification revisions, whether NHTSA regulations precluded development of specifications for certain uses of retread tires, and whether one specification could be developed for new and retread tires. EPA also received miscellaneous comments pertaining to the specifications portion of the proposed guideline.

a. *EPA recommendations for specification revisions.* A commenter did not agree that EPA should be recommending specification revisions to GSA, stating that EPA should only specify the end result and leave the method of achieving this result to the procuring agencies. EPA disagrees. EPA is required by statute to "set forth recommended practices with respect to the procurement of recovered materials" (section 6002(e)(2) of RCRA). EPA thus believes that Congress intended for EPA to do more than merely reiterate the content of the statute, including suggesting specification revisions, as appropriate.

b. *Impact of NHTSA regulations.* The GSA Interagency Fleet Management System has strongly urged EPA to "advise Federal agencies that retread tires are not required by NHTSA to meet the standards for tire endurance or high-speed performance. This will ensure that Federal agencies have relevant information available to them in designing their procurement program." In addition, a commenter has strongly urged EPA to reconsider making the guideline apply to passenger carrying vehicles or steering axles of other vehicles engaged in high-speed, over-the-road operations, in light of the fact that NHTSA does not require retread tires to meet tire endurance or high-speed performance requirements which apply to new tires.

EPA concurs that tires which do not meet standards for endurance or high-speed performance should not be used for those purposes. EPA notes, however, that GSA has not provided any documentation showing that retread tires *cannot* meet these performance standards, and RCRA section 6002(d)(2) requires agencies to assure that specifications require the sue of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item. EPA therefore urges procurement agencies to develop standards, in conjunction with GSA and the retreading industry, that can be used to test the endurance and high-speed performance capabilities of retread tires. The NHTSA standard for new tires, 49 CFR 571.109, could serve as a starting point. EPA is aware that at least one retreader has successfully tested its tires in accordance with the new tire endurance and high-speed performance standards in § 571.109, so it is possible that these performance standards either can be used for retread tires or can be adapted for retread tire use. Furthermore, EPA knows of no NHTSA regulation which prohibits procuring agencies from doing so.

A commenter suggested that the absence of NHTSA standards for a particular end use (e.g., high speed retread tires) precludes that use. On the contrary, EPA believes that the absence of a NHTSA standard for a particular use cannot be used by a procuring agency as a reason for not developing its own specifications for that use. Specification revision or specification development must be in accordance with RCRA section 6002(d)(2). In other words, a determination that use of recovered materials (e.g., retread tires) will jeopardize the intended end use (e.g., high speed) should be supported by test data.

c. *Use of a single specification for new and retread tires.* A commenter stated the belief that retread tires and new tires are two different products requiring two different specifications. EPA believes that one performance standard identifying the properties and/or performance requirements of tires can and should be developed. It is not necessary that one specification be developed, however, as long as the performance standard in each specification is the same. The issue of concern is that there be one performance standard against which both new and retread tires can compete on an equitable basis. For example, at least one major American retailer uses the same performance requirements for retread tires as for new tires. The tires also are sold with the same warranties as new tires. Thus, as discussed above, EPA is recommending in § 253.21(b) of the final guideline that specifications identify the functional requirements of tires to be procured.

d. *Miscellaneous comments.* Section 253.10(a) of the guideline states that Federal agencies were required to eliminate any exclusion of retread tires from their specifications by May 8, 1986. A commenter objected to EPA's use of "retread tires" rather than "recovered materials" as used in RCRA section 6002(d)(1). One purpose of EPA guidelines is to inform procuring agencies as to what the law requires them to do. In the case of tires, the law requires them to eliminate exclusions of products manufactured with recovered materials, including retread tires; therefore, it is appropriate for EPA to use the term "retread tires."

Section 253.10(b) of the guideline provides that procuring agencies must revise their specifications to require the use of retread tires to the maximum extent possible "without jeopardizing the intended end use of these items," which is the limitation on use permitted by RCRA section 6002(d)(2). A commenter stated that by using the statutory language, EPA is implying that there may be problems with retread tires. EPA is implying nothing about the performance of retread tires; instead, EPA is informing procuring agencies that they may restrict use of retread tires if such use will jeopardize the intended end use of the tires. (Exclusions of retread tires are discussed further below.)

A commenter stated that a procuring agency is not free merely to cite its own specifications as a reason, under RCRA section 6002(c)(1), for failing to buy retread tires *unless* the specifications have been revised to require the use of retread tires to the maximum extent practicable. EPA agrees. Procuring agencies may not continue to use discriminatory specifications when purchasing tires, nor may they cite such discriminatory specifications as the basis for their failure to purchase retread tires, unless and until the basis for the restrictive provisions in such specifications has been reviewed and found to be justified. In the final guideline issued today, EPA has revised § 253.21(d)(3) accordingly.

4. *Sources of Specifications.* The retreading industry has developed standards which can be obtained by contacting the industry trade associations. The addresses and telephone numbers of the associations are as follows:

American Retreaders Association, Inc., P.O. Box 17203, Louisville, KY 40217, (502) 361–9219.

National Tire Dealers and Retreaders Association, Inc., Suite 400, 1250 I Street NW., Washington, DC 20005, (202) 789–2300.

Tread Rubber Manufacturers' Group, 1200 19th Street NW., Washington, DC 20036, (404) 546–0221.

The American Retreaders' Association, Inc. has prepared a booklet on bid specifications, *How to prepare bid specifications for retread and repaired tires,* which outlines in some detail major areas that should be considered when preparing bid specifications. A copy of the booklet has been placed in the docket for this guideline and is available from the ARA.

5. *Exclusions.* Under section 6002(d)(2) of RCRA, specifications need not be revised if the agency determines that, for technical reasons, a product containing recovered materials will jeopardize the end use of the product. EPA recommends that such determinations be documented, be based on technical performance information, and identify any performance criteria that cannot be satisfied by retread tires. (See § 253.11 of the guideline.) If the agency subsequently issues a restrictive specification, the basis for the restriction should be documented when the specification is issued.

Although RCRA section 6002(d)(2) permits an agency to limit the use of an item containing recovered materials, there must be a legitimate, factual basis for such limitation. Use cannot be limited without reason or based simply on prejudice, whim, or speculation. For this reason, § 253.11 of the final guideline provides that procuring agencies should document the basis for any limitations.

In the proposed guideline, EPA provided the following example of a specification that would satisfy RCRA section 6002(d)2): Draft Army Regulation (AR) 750–36, which contains the Army's policy and procedures for use of retread tires, excludes use of retread tires on the front wheels of buses and on emergency vehicles and heavy-lift vehicles.[6] Commenters objected to the restrictions in this regulation for a variety of reasons. EPA was not endorsing this regulation. Rather, EPA's purpose in citing it was to provide an example of the type of specification that would conform to RCRA section 6002(d)(2) if and only if there is a justifiable basis for such limitations.

F. Affirmative Procurement Program

RCRA section 6002(i) requires procuring agencies to adopt an affirmative procurement program to ensure that retread tires are purchased to the maximum extent practicable. The program must contain four elements: (1) A recovered materials preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification of recovered materials content; and (4) procedures for annual review and monitoring of the program's effectiveness. The program must be established within one year of the date of publication of this guideline as a final rule.

Federal procuring agencies should note that while GSA executes tire contracts, it is not responsible for actual procurement by other agencies and therefore is not responsible for development and implementation of affirmative procurement programs under RCRA section 6002 for any agency other than itself. Individual procuring agencies must develop, implement, and monitor their own affirmative procurement programs. EPA has added § 253.20(b) to the final guideline to make this clear.

The following sections explain EPA's recommendations for each element of an affirmative procurement program for retread tires.

1. *Recovered Materials Preference Program.* Under section 6002(i)(3), procuring agencies have three options for implementing the preference program. They can employ a case-by-case approach, adopt minimum content standards, or choose an approach that is substantially equivalent to the preceding approaches. In general, the minimum content standard approach is appropriate when the quantity of recovered material used can vary. For example, the quantity of recycled paper used in manufacturing paper and paper products can be varied. In the case of retread tires, where the recovered material is the used tire casing, the quantity of recovered material used does not vary. For this reason, minimum content standards are inapplicable to retread tire procurement.

a. *Proposed recommendations for a preference program.* In the proposed guideline, EPA recommended two approaches to procurement of retread tires: procurement of tire retreading services and procurement of retread tires as a product. EPA recommended that agencies procuring retreading services record specified information for each procurement of new tires and each procurement of retreading services. This information would be reviewed as part of the statutorily mandated annual review and would be used to identify unjustifiable resistance to use of tire retreading contracts. EPA further recommended that agencies procuring retread tires as a product use case-by-case procurement through open competition between vendors of retread tires and vendors of new tires. In the case of a tie bid, all other factors being equal, preference would be given to the vendor of retread tires.

After reviewing the public comments on the proposed guideline and further researching state and commercial tire procurement, EPA has concluded that procuring agencies should use a combination of the two recommended approaches. For example, a commenter stated that use of retreading services, by itself, does not satisfy an agency's obligations under section 6002 to procure retread tires to the maximum extent practicable because only a portion of an agency's tires can be retreaded and the agency will, therefore, be required to procure some replacement tires, which could be retread tires. EPA agrees. Agencies should procure retreading services for their used carcasses *and* procure retread tires as a product.

EPA recognizes, however, that it might not always be practical or possible for a procuring agency to purchase retread tires or retreading services in all cases. As described below, the final guideline also addresses procurement using one but not both components in such cases.

b. *Final recommendations for a preference program.* EPA recommends that procuring agencies establish preference programs consisting of two components: (1) Procurement of retreading services for the agencies' used carcasses and (2) procurement of retread tires as a product. In addition, EPA recommends that procuring agencies establish a tire procurement policy that gives priority to retreading the agencies' used tires. In other words, under the policy, a procuring agency will first procure tire retreading services to

[6] The Army has informed EPA that Draft AR 750–36 was not issued. Retread tires are now included in AR 750–1 which, among other things, identifies limitations on use of retreads. EPA believes that the basis for these limitations should be documented.

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the maximum extent practicable. If retreading services are not practicable, for example because the tire carcass is not retreadable, then the procuring agency will obtain a replacement tire from the product vendor.

If a procuring agency finds that it is unable to implement one of these components, then it must document the basis for this and continue to implement the other component. The basis for not implementing one of the components must be one of the reasons provided in RCRA section 6002(c)—i.e., unsatisfactory competition, unreasonable availability, failure to meet performance standards or specifications, or unreasonable price. In addition, the procuring agency must continue to attempt to implement the component that it is unable to implement at this time.

As explained in section II.E.2 of this preamble, procuring agencies purchasing retread tires as products can solicit bids from both vendors of new tires and vendors of retread tires. The decision to purchase retread tires is made on a case-by-case basis, and the contract is awarded to the lowest-priced responsible bidder. EPA recommends that this component of the preference program include a preference to the vendor offering to supply the greatest number of retread tires in the event that tie bids are submitted by a vendor of retread tires and a vendor of new tires, all other factors being equal. Section 253.21(a)(2) of the final guideline recommends that procuring agencies adopt such a preference.

A commenter stated that the proposed tie bid provision was ambiguous in light of the equal low bids provision of FAR 14.407–6 and requested clarification. It is EPA's view that RCRA section 6002 did not authorize procuring agencies, in their preference programs, to supersede applicable provisions of Federal procurement law, including the FAR. EPA believes, however, that the recovered materials preference authorized by RCRA section 6002 should be incorporated into the preferences established in the equal low bids provision of the FAR. Therefore, EPA recommends that Federal entities responsible for periodic revision of the FAR consider modifying the provision at 48 CFR 14.407–6 to integrate a preference for vendors offering to provide procurement items which have been designated by EPA under RCRA section 6002(e).

In the final paper and lubricating oil guidelines, EPA noted that it believed that a case-by-case program might not satisfy the section 6002(i) requirement for an affirmative procurement program because it would only award contracts to the product containing a higher percentage of recovered materials in the event of a tie. [See 52 FR 37299, 27302 (October 6, 1987), and 52 FR 38844 (October 19, 1987).] In light of these previous statements by EPA, several commenters objected to EPA's recommendation to use the case-by-case approach for procuring tires as products because it would have little or no effect on the procurement of retread tires.

EPA has concluded that the case-by-case approach can be used successfully to procure retread tires and should be used as one component of a preference program. As long as retread tires provide similar service to new tires—as promoters of their use, including the commenters, maintain that they will—at a lower cost, procuring agencies must procure them.

Because RCRA section 6002(i) requires the procurement program to be affirmative, and because procuring agencies must promote their programs, agencies using the case-by-case approach are required to seek out vendors of retread tires. Clearly, this will be a change in the status quo, in which most procuring agencies neither consider using retread tires nor seek out vendors of retread tires. As a result, the case-by-case approach can have a significant impact on retread tire procurement.

A commenter stated that it is not feasible to allow a retread tire to be bid against a new tire because of cost and requirement differences, although the commenter failed to explain how and why this is true. In fact, EPA believes that requirements can be the same for new and retread tires, an example being the use of mileage guarantees. In addition, EPA notes that one of the purposes of RCRA Section 6002 and procurement guidelines is to require procuring agencies to treat products made from virgin materials and products made from recovered materials in the same manner to the extent consistent with the intended end use. EPA believes that it is possible to meet this goal by developing an affirmative procurement program that treats new and retread tires alike even while acknowledging that there are differences between them. Therefore, EPA has retained the case-by-case recommendation in the final guideline.

A commenter suggested that EPA revise the preference program provision to recommend that a procuring agency show that its procurement satisfies the statutory requirements, including use of non-discriminatory specifications. In response, EPA is adding § 253.21(c) to the final guideline to recommend that procuring agencies document which of the statutory limitations is the reason for not procuring retreading services.[6]

While GSA prepares tire specifications and awards contracts to tire vendors, the individual Federal operator, in conjunction with GSA's Fleet Management, decides whether to purchase retreading services or to buy a new tire. Except for Department of Defense activities, the agencies do not maintain records on procurement of new tires or tire retreading services. EPA believes that recordkeeping is necessary to obtain information on cost savings, performance of retread tires, and use of retread tire or tire retreading services contracts. Therefore, EPA recommends that as part of the preference program, agencies institute the practice of monitoring tire procurement by agency subgroups or individuals by requiring them to record their decisions to procure replacement tires and tire retreading services. The record should identify the type and quantity of tires procured; whether new tires, retread tires, or retreading services were procured; the cost per tire; and if new tires are procured, the reasons for not procuring retreading services or retread tires. This recommendation is in § 253.21(d) of the final guideline.

A commenter objected to the proposed recordkeeping recommendation on the grounds that it would mean two separate actions for every tire purchase, would increase the administrative workload, and would be very difficult to control or manage. EPA disagrees. First, when a replacement tire is needed, a decision is made whether to procure a new tire or retreading services; EPA's recommendation simply is that the decision be documented so that procurement can be reviewed annually as required by section 6002. Second, because the recommended documentation is minimal, EPA does not believe that the administrative workload will be more than minimal, nor that it will be very difficult to control or manage. EPA also notes that the affirmative procurement provisions of RCRA section 6002 clearly envision at least some increases in the administrative workload; for example, administrative effort is needed in order to implement the estimation, certification, verification, and annual review requirements.

[6] As discussed above in section III.E. of the preamble, a procuring agency cannot cite its specifications as a reason for failing to procure retreads unless the specifications have been reviewed and revised in accordance with RCRA section 6002(d) and Subpart B of the guideline.

Very few Federal agencies operate central motor pools, and the civilian agencies no longer store replacement automotive parts, including tires, in warehouses. Instead, vehicle maintenance and replacement parts are purchased from commercial establishments on an as needed basis. GSA contracts with vendors to provide parts and services. A commenter stated that in light of this lack of central motor pools, it would be impossible for most agencies to obtain tire retreading services.

EPA believes that procurement of retreading services is possible without government warehousing. For example, GSA can require that contract retreaders store used government tires until there is a predetermined, economically feasible quantity to be retreaded.[7] The retreader can also store the retreaded government tires and provide them to the government vehicle operator on an as-needed basis. Some retreaders operate wholesale or retail outlets for tires in addition to their retreading operations and thus might be willing to enter into such warehousing arrangements.

c. *Other preference program recommendations.* A commenter indicated to EPA that GSA's use of small business procurement procedures for procurement of tire retreading services contributes to quality assurance problems. EPA believes that such procurement practices constitute specifications and must be reviewed and revised by procuring agencies, as necessary. EPA previously stated in the lubricating oils guideline that the term "specifications" in RCRA section 6002(d) refers to all procurement practices related to specifying what a procuring agency intends to purchase, 53 FR 24710 (June 30, 1988). Therefore, as part of developing a lubricating oil procurement program under section 6002(i), procuring agencies were required to examine their procurement practices and revise those which inhibit or preclude procurement of products containing recovered materials. EPA believes that this is equally applicable to procurement of retread tires. EPA, therefore, has added § 253.21(e) to the final guideline to inform procuring agencies that they must review and revise any procurement practices which inhibit or preclude procurement of retread tires or tire retreading services.

The Federal (i.e., GSA) approach to using retread tires employs a combination of (1) a retreading facilities specification describing the procedures to be used for retreading and (2) policies limiting the use of retread tires. GSA's written policies recommend that retread tires not be used on the steering axles of high speed, over-the-road vehicles and prohibit use of retreads on passenger-carrying vehicles or on the steering axle of any Interagency Fleet Management vehicle used on public highways. Use of retread tires is recommended on the rear wheels of large traucks, truck tractors, trailers, and off-road vehicles.

Commenters stated that there are no means at GSA's disposal to assure the quality of retread tires. According to the commenters, barriers to quality assurance include the standard operating procedures of the retreading industry, lack of government and/or industry test methods, and infeasibility of using batch testing on retread tires. The commenters also stated that these factors precluded development of one specification to be used for both new and retread tires.

EPA discussions with the retreading industry and tire retailers have uncovered retreading programs that employ both production quality control and performance quality control. The performance quality control involves performance testing that is the same as or similar to testing required by government specifications for new tires. Batch testing using random sampling also is used. These manufacturers produce passenger car tires which are intended to be sold for the same usage as new tires (e.g., there are no limitations on their use on steering axles or at highway speeds). Regular, high performance, and speed-rated tires are produced. At least one major American retailer sells these tires with the same warranties as new tires. In light of these programs, EPA has concluded that it is possible for GSA to develop specifications and procurement practices that assure tire quality.[8]

In this regard, a commenter stated that the Federal government is encumbered by a myriad of Federal statutes and a variety of Federal Procurement Regulations which preclude procurement of high quality retread tires. EPA points out that one of the underlying purposes of section 6002 is to require procuring agencies to revise their procedures so that they can procure items containing recovered materials.

d. *Other procurement approaches considered.* In the final paper guideline, 52 FR 37298–37299 (October 6, 1987), EPA discussed the section 6002(i) requirement that any affirmative procurement program be consistent with applicable provisions of Federal procurement law. From time to time, Congress has established preferential procurement programs in order to attain socioeconomic goals. Among those are the Small Business, Labor Surplus Area, and Minority Business procurement programs. EPA considered applying either or both of the mechanisms used in those programs—price preferences and set-asides—to this guideline. A price preference allows the procuring agency to pay a higher price, if necessary, for a specified product from preferred vendors. A set-aside requires the procuring agency to award a certain percentage of its contracts to preferred vendors of a product regardless of price. Price preferences and setasides are currently being used in some state programs for the procurement of paper and paper products containing recovered materials. As of January 1988, five states and two cities use price preference programs in which products containing recovered materials may cost from 5 to 10 percent more than virgin materials. Two states have set-aside programs, one for paper and paper products, the other for all types of products. These states report that they successfully procure products containing recovered materials.

EPA has considered recommending these programs at the Federal level. However, in the case of existing Federal preferential procurement programs that allow a price preference or set-aside, the Agency found that each had been established under explicit statutory authority or a specific Executive Order. Neither the statutory language nor the legislative history of Section 6002 seems to contemplate the adoption of either price preferences or set-asides, and doing so would conflict with existing Federal procurement law. Therefore, rather than recommending price preferences or set-asides, EPA is recommending that procuring agencies use the procurement mechanisms provided in RCRA section 6002(i)(3).

2. *Promotion Program.* The second requirement of the affirmative procurement program is a promotional effort by procuring agencies. The guideline recommends several methods for procuring agencies to use for disseminating information about their preference programs, such as placing statements in invitations to bid, discussing the program at bidders'

[7] Current GSA contracts require agencies to submit a batch of 200 tires for retreading. This quantity can be reduced, however. EPA knows of a State that supplies batches of 25 tires for retreading.

[8] The basis for EPA's conclusion is described in *Background Document for Final Retread Tires Procurement Guideline* (E.H. Pechan & Associates, Inc., September 1988), which has been placed in the docket for this rulemaking.

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conferences, and informing industry trade associations about the program. No commenters suggested revisions to this section of the guideline.

3. *Estimates, Certification, and Verification.* The third requirement of the affirmative procurement program set forth in section 6002(i) concerns estimates, certification, and verification. Many questions have been raised about the certification and estimation of recovered material content, such as when they should be provided, who is to provide them, how the information is to be obtained, and how it is to be verified. To clarify this subject, it is necessary to review the requirements of the law.

a. *Estimation.* RCRA sections 6002(c)(3)(B) and 6002(i)(2)(C) require that after the effective date of an EPA guideline, contracting officers must require vendors who supply Federal procuring agencies with items covered by the guideline to provide an estimate of the total percentage of recovered materials contained in the items. EPA believes that this requirement is for the purpose of gathering statistical information on price, recovered material content, and availability, and applies regardless of whether the procurement solicitation specifies that recovered materials can or must be used.

In the case of tires, procuring agencies either purchase a product containing recovered tire casings, or contract for a retreading service for government casings, rather than purchasing a product containing a certain percentage of recovered materials. In the proposed guideline, EPA stated that the statistical information that procuring agencies need to obtain the number of retread tires to be a supplied by the vendor. A commenter pointed out, however, that when a procuring agency purchases tire retreading services using an indefinite quantity contract, it would be impossible for the vendor to estimate the quantity of tires to be supplied. EPA agrees and has concluded that the estimation provision does not apply in this limited situation. EPA has revised § 253.23(a) accordingly.

For all other procurements of retread tires or tire retreading services, however, the contracting officer must require the vendor to estimate the number of retread tires to be supplied. EPA is recommending that procuring agencies retain these data for three years from the date they are received.

b. *Certification.* RCRA section 6002(i)(2)(C) provides that contracting officers must require vendors to supply certifications of recovered materials content, where appropriate. EPA believes that, in general, *written* certifications are inappropriate for retread tire procurement because retreaders already use another certification procedure which is required by Department of Transportation regulations. Newly retreaded tires are inspected to determine that they are free of defects and that they comply with Federal Motor Vehicle Safety Standards. Tires passing the retreaders' inspection are certified by stamping the retreading plant's identification number and the symbol DOT–R on the sidewall. The identification number indicates that the plant is a retreading operation. This is in accordance with section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 and 49 CFR 571.117 and 574.5.

EPA recognizes, however, that vendors offering tires as a product might offer to supply a set number of retread tires or to supply retread tires as a set percentage of the total number of tires to be supplied. In this instance, a certification of the quantity or percentage to be supplied is needed. Therefore, EPA has added a certification recommendation in the final guideline; see § 253.23(b).

A commenter stated that vendors should be required to supply the certification number (i.e., the retreader's DOT identification number) on their bids as a means of meeting the certification requirement. EPA disagrees, because the relevant information needed by a procuring agency is the quantity of tires to be supplied, and the DOT identification number will not provide this information. Therefore, EPA has not included the commenter's recommended revision in the final guideline.

c. *Verification.* Section 6002(i) also requires procuring agencies to establish reasonable procedures to verify the estimates and certification. For retread tires, verification will be relatively easy because the certification number stamped on the sidewall of the tire identifies the tire as a retread. Procuring agencies need only to spot check these numbers to verify that a retread tire has been supplied.

4. *Annual Review and Monitoring.* The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program. EPA recommends that the review include an estimate of the number of retread tires purchased during the year, assessment of the effectiveness of the agency preference program, and an assessment of remaining barriers to procurement of retread tires.

In other procurement guidelines, EPA has recommended that procuring agencies keep specified records in order to monitor the progress of their affirmative procurement programs. Through an inadvertent oversight, EPA failed to include this recommendation in the proposed retread tires guideline. Several commenters asked EPA to include the recordkeeping recommendations. EPA agrees that this provision should be added to the retread tires guideline. EPA notes that the recommendations were available for public comment during development of the final paper and lubricating oil guideline and the proposed building insulation products guideline. See 52 FR 37335, October 6, 1987; 52 FR 38838, October 19, 1987; and 53 FR 29185, August 2, 1988. Therefore, in the final guideline issued today, EPA has revised § 253.24 to incorporate the recordkeeping recommendations. The following discussion explains the recommendations.

EPA has concluded that one purpose of the requirement that vendors provide estimates is to provide information to procuring agencies that can be used in future procurements. Further, procuring agencies need to keep up-to-date on changes in recycling practices and availability of products containing recovered materials. EPA believes that unless a procuring agency compiles such data, it will not be fulfilling its statutory obligations.

A program for gathering statistics need not be elaborate to be effective. However, agencies should monitor their procurements to compile data on the following:

(a) Comparative price information on competitive procurements;

(b) The quantity of each item procured over a fiscal year;

(c) The availability of retread tires or tire retreading services to procuring agencies;

(d) Type of performance tests conducted, together with the categories of retread tires that failed the tests, the percentage of all new tires and retread tires procured, respectively, that failed each test, and the nature of the failure;

(e) Agency experience with the performance of the procured products.

EPA recommends that each procuring agency prepare a report on its annual review and monitoring of the effectiveness of its procurement program. As part of the report, agencies should demonstrate that their preference program results in procurement of retread tires or tire retreading services to the maximum extent practicable. The basis for these determinations should be a review of the data compiled on price, availability, and performance, as well as a comparison of estimates and certifications provided by the vendors. Agencies should also document

specification revisions made during the reporting period.

EPA believes that this information will be useful to the public. EPA notes that this guideline will apply to State and local procuring agencies and contractors, as explained in Section III.B of the preamble. Information drawn from the experience of Federal procuring agencies about purchases of retread tires and tire retreading services would therefore be useful to State and local purchasing officials and contractors. Accordingly, EPA encourages Federal procuring agencies to make their reports available to the public.*

Finally, EPA notes that while the annual review and monitoring requirements of RCRA Section 6002 apply to State and local procuring agencies and to contractors, EPA's recommendation for recordkeeping and reporting is less pertinent for these persons than for Federal agencies. Most EPA recommendations are germane to implementing section 6002. In the case of the recordkeeping and reporting recommendations, however, the recommendations are more germane to the Federal agencies, which are required to report to the Office of Federal Procurement Policy regarding implementation of section 6002. In addition, reports generated by the Federal agencies are available to the public through Freedom of Information Act requests, and the experience of Federal agencies will serve as an important teaching tool for non-Federal agencies trying to implement affirmative procurement programs.

In the case of non-Federal procuring agencies and contractors, there is no reporting requirement in section 6002, and the Freedom of Information Act does not extend to their documents (although there might be a similar state provision). EPA believes that reporting is less relevant when the report is unavailable unless the agency or contractor chooses to make it available. Therefore, EPA continues to recommend recordkeeping and reporting but acknowledges that these recommendations do not apply equally to non-Federal agencies and contractors.

IV. Price, Competition, Availability, and Performance

Section 6002(c)(1) of RCRA provides that a procuring agency may decide not to purchase an item designated by EPA if it determines that (1) the item is available only at an unreasonable price, (2) a satisfactory level of competition cannot be maintained, (3) the item is not reasonably available within a reasonable period of time, or (4) the item fails to meet the applicable specifications. This portion of the preamble discusses the effect of these limitations on retread tire procurement.

Commenters asked EPA to compile information on availability, price (including relative price of retread tires by geographic regions), and performance of retread tires and to distribute this information to all Federal agencies that purchase tires and to every state. They also asked EPA to sponsor seminars to share this information with interested persons. EPA agrees that further guidance will need to be provided to procuring agencies and vendors regarding the implementation of this as well as the other procurement guidelines. Therefore, the Agency will be developing a plan for educating the various procuring agencies and vendors.

A commenter objected to EPA's placing information on availability, price, and performance of retread tires in the docket supporting the guideline instead of in the guideline itself. While EPA acknowledges that the docket is not readily accessible to persons located outside of the Washington, DC area, EPA disagrees that additional information should be placed in the guideline. First, the **Federal Register** is not necessarily readily available to persons needing retread tires information. Second, EPA expects the information to be constantly changing, rendering the information published in the **Federal Register** obsolete. Third, the process for updating the information through notices in the **Federal Register** is not as cost-effective as other mechanisms. As a result, EPA plans to use other, less formal, highly available mechanisms to disseminate and update price, performance, and availability information.

A. Price

Section 6002 provides that a procuring agency may not purchase a designated item if the price is "unreasonable." Commenters on several of the procurement guidelines stated that a "reasonable price" includes price preferences. However, as EPA stated in the paper guideline, 52 FR 37298–37299 (October 6, 1987), RCRA section 6002 does not provide explicit authority to EPA to authorize or recommend payment of a price preference or to create a set-aside. Therefore, unless an agency has an independent authority to provide a price preference or to create a set-aside, EPA believes that a price is "unreasonable" if it is greater than the price of a competing product made of virgin material.

A commenter stated that EPA's interpretation of the unreasonable price provision is a decision not to buy recycled products in every instance except those in which the price is either lower than that for a virgin product or in which there is a tie between the virgin and recycled product. The commenter is incorrect. A recycled product might not be purchased in every case, even using price premiums as the commenter proposes, due to unavailability or lack of satisfactory competition. A recycled product also might not be purchased in every instance due to unreasonable discrimination, which is the problem that RCRA section 6002 and EPA's procurement guidelines are intended to eliminate. In attempting to overcome this problem, however, EPA cannot require or recommend that procuring agencies use price premiums.

A commenter disagreed with EPA's interpretation of "unreasonable" and noted that the legislative materials upon which EPA relies for this interpretation post-date by several years the original enactment of RCRA, do not indicate any intention on the part of Congress that section 6002 only apply in the rare situation of a tie bid, and only refer to recycled paper. While the commenter has correctly characterized the legislative materials, EPA disagrees that one should thus conclude that Congress intended for procuring agencies to pay a premium price for products procured pursuant to section 6002. EPA believes that if Congress had meant to authorize price premiums, then Congress would have explicitly said so in section 6002 and/or the legislative history. In the absence of this explicit authority, EPA can neither require nor recommend that procuring agencies pay a premium price.

Several commenters stated that procuring agencies should use life-cycle costing and factor in the avoided cost of tire disposal. These commenters failed either to suggest how this should be done or to supply any mechanism or methodologies for life-cycle costing in the context of procurement of tire retreading services and tires. EPA has researched the issue, which proved to be a complex problem. EPA has not been able to develop at this time a satisfactory methodology for determining life-cycle costing in this case. Therefore, EPA has not added a life-cycle costing recommendation to the final guideline.

* Of course, reports generated by Federal agencies are available to the public through the Freedom of Information Act. EPA believes that Federal agencies should take affirmative steps to make the reports readily available, such as making the reports available for purchase from the Government Printing Office or the National Technical Information Service.

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B. Competition and Availability

EPA believes that there will be a satisfactory level of competition and availability of retread tires. Currently, there is an abundant supply of worn tires in the waste stream that are candidates for retreading, and there are approximately 2,600 retreading plants located across the country. Therefore, there should be a satisfactory level of competition and availability.

The Federal retreading services contracts are awarded on a regional basis through small business set-aside procurements. A commenter stated that it would be impossible for the retreading industry at this small business level and even at the larger business level to handle the volume of demand that would be generated by all government agencies that are currently supplied with new tires; this commenter did not provide any documentation to support this assertion, however. EPA notes that procuring agencies are responsible for reviewing this type of procurement practice and revising it if it has a negative impact on procurement of retread tires or tire retreading services. EPA has added a recommendation to § 253.21 of the final guideline with respect to procurement practices. In addition, if retread tires or tire retreading services are not available, then procuring agencies are not required to buy them.

Several commenters asked EPA to provide a list of retreaders in the final guideline. EPA believes that it is inappropriate to do so. First, the Federal Register is not readily available to all procuring agencies affected by this guideline. Second, the list would require constant updating. EPA plans to establish other less formal, highly available mechanisms for disseminating this information, such as a telephone hotline. In the meantime, procuring agencies can contact the industry trade associations for assistance in identifying retreaders serving their geographic area; the addresses and telephone numbers of the associations can be found in section III.E.3. of the preamble.

C. Performance

As discussed elsewhere in this preamble, GSA's retread facility specification requires that retreaders have their production facilities certified either by GSA or by a nationally recognized retreader association. Once the plant is certified, it is periodically recertified to ensure that it is maintaining satisfactory operating procedures. In addition, newly retreaded tires are inspected by the retreader to determine that they are free of defects and that they comply with the Federal Motor Vehicle Safety Standards. These inspection and certification procedures help to assure the performance of retread tires, just as new tire inspection and certification procedures do.

A commenter stated that retread tires are not equivalent to new tires for all applications and all tire designs. This commenter also noted that the use of retread or unmatched tires on government vehicles decreases the value of the vehicles at the time of resale. Since this commenter did not provide any data, it is impossible for EPA to respond directly to these comments. EPA does note, however, that procuring agencies can prepare specifications that limit the use of retread tires where there is a factual, documented basis for such limitation. If unmatched tires is a concern, then agency specifications should require matched tires, whether they be new or retread tires.

A commenter also objected to use of retread tires of tire retreading services because retread tires do not carry a mileage guarantee, as new tires do. This is not correct. EPA knows of retreaders that provide mileage guarantees and/or warranties similar to or identical to new tire warranties. Procuring agencies interested in mileage guarantees or warranties should require them as part of their specifications.

Commenters also criticized the retread facility inspection and certification programs required by Federal specifications as inadequate to assure performance of retread tires. EPA believes that this criticism is unfounded. The inspection and certification provisions in the Federal specifications are required by GSA, the Federal agency charged with responsibility for developing specifications to assure tire performance. They were developed by GSA, in conjunction with the retreading industry as a means of assuring performance.

A commenter questioned the strength of used tire carcasses as compared to new tires. Information has been submitted to EPA by the American Retreaders Association documenting the burst strength of both passenger car tires and truck tires compared to similar new tires. EPA has placed the test reports, *The Study of Burst Strength New Versus Worn Radial Passenger Tires* (ARA, 1988) and *The Study of Burst Strength New Versus Worn Steel Radial Truck Tires* (ARA, 1988) in the docket for this guideline. Both studies are available from the ARA. EPA recommends that agencies concerned with used tire carcass strength obtain and evaluate these reports.

Finally, some commenters documented performance problems with use of retread tires. As EPA has discussed above and under the discussion of specifications, RCRA section 6002(d) provides that procuring agencies must revise their specifications to maximize use of retread tires without jeopardizing the intended end use of the tires. Use of retread tires can thus be limited as long as there is a factual, justifiable basis for the limitation.

V. Miscellaneous Comments

A commenter stated that the use of retread tires will only have a temporary affect on disposal of used tires. EPA does not follow the logic of this argument. Since retreading extends the life of a tire and allows the tire to be used again as a tire, it will not be necessary for the user to purchase a new replacement tire. Therefore, there will ultimately be fewer tires requiring disposal.

Commenters also argued that retreading will not address the long term problem with tire disposal and that EPA should address other uses of scrap tires. EPA is actively considering other means of recycling scrap tires, is studying the feasibility of procurement guidelines for them, and will decide whether to pursue guidelines after the feasibility study is completed.

A commenter suggested that EPA obtain information on the implementation of the guideline from other agencies to be used to revise the guideline from time to time. EPA plans to do this.

Section 253.21(d) of the proposed guideline recommended that procuring agencies make determinations regarding competition, availability, and price in accordance with applicable provisions of the FAR and other applicable Federal law. Commenters suggested that this provision should be deleted as unnecessary and possibly counterproductive. After reconsideration, EPA agrees with the commenters and has deleted this provision.

VI. Implementation

Different parts of section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1988 (i.e., 18 months after enactment of HSWA), (2) one year after the date of publication of an EPA guideline, and (3) the date specified in an EPA guideline. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the preamble explains these deadlines.

First, under section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items must eliminate from such specifications any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was to be completed by May 8, 1988.

Second, procuring agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item [section 6002(d)(2)]. In addition, procuring agencies must develop an affirmative procurement program for purchasing items designated by EPA, in this instance, retread tires [section 6002(i)(1)]. Both of these activities must be completed within one year after the date of publication of this guideline as a final rule.

Third, procuring agencies which procure items designated by EPA must begin procurement of such items containing the highest percentage of recovered materials practicable [section 6002(c)(1)]. In addition, contracting officers must require vendors to submit estimates and certifications of recovered materials content [section 6002(c)(3)]. Both of these activities must begin after the date specified by EPA in the applicable guideline.

EPA believes that procuring agencies should begin to procure retread tires or tire retreading services as soon as the specification revisions have been completed and the affirmative procurement programs have been developed. Since these latter activities must be completed within one year after publication of this guideline as a final rule, affirmative procurement should begin no later than one year from publication as well. Section 253.26 specifies this implementation date.

EPA expects cooperation from affected procuring agencies in implementing this guideline. Under section 6002(g) of RCRA, the Office of Federal Procurement Policy (OFPP), in cooperation with EPA, is responsible for overseeing implementation of the requirements of section 6002 and for coordinating it with other Federal procurement policies. OFPP is required to report to Congress on actions taken by Federal agencies to implement section 6002.

VII. Regulatory Analyses

A. Environmental and Energy Impacts

The environmental and energy impacts of the retread tires guideline are discussed in *Background Document for the Guideline for Federal Procurement of Retread Tires* (E.H. Pechan & Associates, Inc., July 1987), which was included in the docket for the proposed guideline. In response to comments asking EPA to discuss the impacts in the guideline, the following summary of information in the background document is provided.

Each tire that is retreaded is one less tire disposed of in a landfill or tire pile or otherwise discarded. In addition, because a retread tire substitutes for a new replacement tire, there are ultimately less tires requiring disposal. Although not all scrap tires can be successfully retreaded, the initial acceptance rate of casings for retreading is between 40 and 50 percent, indicating that at least twice as many tires could be retreaded each year as are currently retreaded.

As discussed in section II.C of the preamble, tires are difficult to landfill, and both tires in landfills and tires in piles present threats to human health and the environment. The tires become home to mosquitos and vermin. They also settle unevenly in the landfill, creating problems for future development of the landfill site. They also are a potential fire hazard; the fires are expensive to control or contain and result in both air pollution and potential water pollution from run-off of oily residues.

While tire retreading operations generate some pollutants, there is a net environmental gain when tires are retreaded instead of discarded.

Tire retreading uses significantly less energy than manufacturing of new tires. For example, for each new tire produced, between 7 and 10 gallons of crude oil are required; tire retreading requires approximately 30 to 35 percent of this amount because of the bulk of the crude oil used in new tire manufacturing goes into the fabrication of the casing.

Similarly, production of a new tire requires about 14.7 thousand British thermal units (Btus) per pound versus about 2.2 Btus per pound for production of a retread tire. Each retread tire produced, therefore, is capable of reducing energy consumption by more than 12 thousand Btu/pound, or, assuming an average weight of 25 to 30 pounds for a passenger tire, between 310 and 375 thousand Btus of domestic energy consumption can be saved per retread passenger tire. The per-tire Btu saving is even greater for truck tires because of their heavier weight.

B. Executive Order No. 12291

Under Executive Order No. 12291, EPA must determine whether a regulation is major or nonmajor. This guideline is not a major rule because it is unlikely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domesetic or export markets.

Increased usage of retread tires and tire retreading services addressed by this guideline is not expected to produce recurring annual effects of $100 million or more on the economy. The Federal Procurement Data Center reported Federal tire purchases of $39,400,000 for 1985, which represented less than ⅓ of 1 percent of the estimated tire production for the year. The majority of DOD tire procurements are for speciality, heavy-truck, and military equipment vehicles. DOD actively procures retreading services for this equipment already. The impact of this guideline would, therefore, primarily involve the GSA schedule purchases of other agencies. The 1986 GSA tire procurements were approximately $4,000,000. If *all* of these new replacement tires were replaced by using retreading services, the economic effect would be less than 10 percent of the $100,000,000 criteria of Executive Order No. 12291.

An expanded potential market for retread tires by increased government procurement is not expected to increase costs of retreading services or prices of retread tires. The retread tire industry is currently characterized by intense cost competitiveness and excess production capacity. Therefore, an increase in prices for retreading services will be expected to result in market share losses and decreased profits. Increased prices to government agencies may similarly mean loss of that market share.

The current goal of the declining retreading industry is to increase net profits through the reduction of operating expenses. Simply increasing sales will not increase net profits in this industry. A commenter asked EPA to define the circumstances under which profits would increase for the retreading industry. EPA cannot provide this

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information. It is outside the scope of EPA's responsibility, but even if it were not, the factors must be determined by the industry itself, which is most familiar with its operating expenses and procedures.

In conclusion, the guideline by itself will have neither adverse effects nor be significantly advantageous in terms of competitiveness, employment levels, capitalization, productivity or innovation in this industry. The guideline is consistent with the cost-benefit standard of E.O. 12291.

This rule was submitted to the Office of Management and Budget for review as required by Executive Order No. 12291.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As described in th background document prepared for this guideline, the economic impact on both small businesses and small governmental jurisdictions is expected to be in some cases, negligible and in other instances, beneficial, because there will be no net change in the number of small businesses supplying tires to procuring agencies and most small govenment jurisdictions use non-Federal funds to procure tires. An extremely limited number of business and governmental entities are affected at all by the guideline. Therefore, the guideline is not expected to have significant economic impact on a substantial number of small entities.

For the above reasons, EPA certifies that this guideline will not have a significant economic impact on a substantial number of small entities. As a result, the guideline does not require a Regulatory Flexibility Analysis.

List of Subjects in 40 CFR Part 253

Government, procurement, Recycling, Resource recovery, Retreading, Tires.

Dated: November 9, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended by adding a new Part 253 to read as follows:

PART 253—GUIDELINE FOR FEDERAL PROCUREMENT OF RETREAD TIRES

Subpart A—General

Sec.
253.1 Purpose.
253.2 Designation.
253.3 Applicability.
253.4 Definitions.

Subpart B—Specifications

253.10 Revisions.
253.11 Exclusions.

Subpart C—Affirmative Procurement Program

253.20 General.
253.21 Preference program.
253.22 Promotion program.
253.23 Estimation, certification, and verification.
253.24 Annual review and monitoring.
253.25 Implementation.

Authority: 42 U.S.C. 6912(a) and 6962.

Subpart A—General

§ 253.1 Purpose.

(a) The purposes of this guideline are:

(1) To assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, as that section applies to procurement of tires and

(2) To designate tires as a procurement item subject to RCRA section 6002.

(b) This guideline contains recommendations for use in implementing the requirements of section 6002, including revision of specifications and development of an affirmative procurement program.

(c) The Environmental Protection Agency (EPA) believes that adherence to the recommendations in the guideline constitutes compliance with section 6002. However, procuring agencies may adopt other types of procurement programs consistent with section 6002.

§ 253.2 Designation.

EPA designates tires as items which are or can be produced with recovered materials (i.e., used tire casings) and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA. For purposes of this guideline, the term "tires" does not include airplane tires.

§ 253.3 Applicability.

(a)(1) This guideline applies to all procuring agencies and to all procurement actions involving tires when the procuring agency makes a purchase, in the current fiscal year, worth $10,000 or more, or when the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. For purposes of the $10,000 threshold, all sizes and types of tires should be considered to be "functionally equivalent."

(2) This guideline applies to Federal agencies, to State or local agencies using appropriated Federal funds, and to persons contracting with any such agencies with respect to work performed under such contracts.

(i) Federal agencies should note that the requirements of RCRA section 6002 apply to them whether or not appropriated Federal funds are used for procurement of items designated by EPA.

(ii) This guideline also applies to State and local agencies and to contractors whenever commingled Federal and non-Federal funds are used to procure tires.

(iii) The $10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies.

(b) The term "procurement actions" includes purchases made directly by a procuring agency and purchases made by any person directly in support of work being performed for a procuring agency (e.g., by a contractor).

(c) This guideline does not apply to purchases which are not the direct result of a contract, grant, loan, funds disbursement, or agreement with a procuring agency.

§ 253.4 Definitions.

As used in this guideline:

"Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*

"Federal agency" means any department, agency or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body.

"Practicable" means capable of being used consistent with: performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and

maintenance of a satisfactory level of competition.

"Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, which is the subject of any purchase, barter, or other exchange made to procure such item.

"Procuring agency" means any Federal agency, or any State agency or agency of a political subdivison of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

"Retread tire" means a worn automobile, truck, or other motor vehicle tire whose tread has been replaced.

"Specification" means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references.

"Tire" means the following types of tires: passenger car tires, light- and heavy-duty truck tires, high speed industrial tires, bus tires, and special service tires (including Military, agricultural, off-the-road, and slow speed industrial).

Subpart B—Specifications

§ 253.10 Revisions.

(a) By May 8, 1986, Federal agencies were required to eliminate from their specifications any exclusion of retread tires and any requirement that tires be manufactured from virgin materials unless there is a technical basis for such exclusion or requirement.

(b) Within one year after the date of publication of this guideline, each procuring agency must assure that its specifications require the use of retread tires to the maximum extent possible without jeopardizing the intended end use of these items. Specifications should indicate the functional requirements of tires to be procured, including the performance criteria (e.g., high speed tires), any desired mileage guarantees, and the size and type of tire required.

§ 253.11 Exclusions.

Any procuring agency which prepares a specification which excludes retread tires should document its determination that use of retread tires will jeopardize the intended end use of the tire. Such determinations should be based on technical performance information and identify any performance criteria that cannot be satisfied by retread tires.

Subpart C—Affirmative Procurement Program

§ 253.20 General.

(a) Within one year after the date of publication of this guideline as a final rule, each procuring agency which procures tires must establish an affirmative procurement program for procuring retread tires to the maximum extent practicable. The program must meet the requirements of section 6002(i) of RCRA, including the establishment of a preference program; a promotion program; procedures for estimation, certification, and verification; and procedures for conducting an annual review of the affirmative procurement program. This subpart provides recommendations for implementing section 6002(i).

(b) Federal agencies should note that while the U.S. General Services Administration executes tire contracts, it is not responsible for developing and implementing an affirmative procurement program under RCRA section 6002 for any agency but itself. Each Federal agency is responsible for its own section 6002 affirmative procurement program.

§ 253.21 Preference program.

(a) EPA recommends that procuring agencies establish preference programs consisting of two components:

(1) Procurement of tire retreading services for the agencies' used carcasses, such as from persons identified on the U.S. General Services Administration's Federal Supply Schedules.

(2) Procurement of tires through competition between vendors of new tires and vendors of retread tires. Procuring agencies should provide a preference to the vendor offering to supply the greatest number of retread tires in the event that identical low bids are received in response to a solicitation, all other factors being equal.

(b) EPA further recommends that procuring agencies establish a tire procurement policy stating that the agency will first procure retreading services for its used tires to the maximum extent practicable and, if such services are not practicable, obtain replacement tires from the vendor(s) awarded the contract(s) to supply tires.

(c) EPA recommends that a procuring agency that is unable to implement one of the components listed in paragraph (a) of this section document that it is unable to purchase retread tires or tire retreading services due to one or more of the following limitations:

(1) Unsatisfactory level of competition;

(2) Unavailability within a reasonable period of time;

(3) Inability to meet the specifications in the invitation for bids, provided that such specifications satisfy RCRA section 6002(d) and Subpart B of this part;

(4) Unavailability at a reasonable price.

The agency also must continue to attempt to implement the component.

(d) EPA recommends that procuring agencies record the following information for each procurement:

(1) Type and quantity of tires,

(2) Whether new tires, retread tires, or retreading services were procured,

(3) Cost per tire, and

(4) If new tires are procured, the reason for not procuring retreading services or retread tires.

(e) Procuring agencies must review their procurement practices and eliminate those which would inhibit or preclude use of retread tires.

§ 253.22 Promotion program.

Procuring agencies must develop a promotion program to promote the preference program. EPA recommends that procuring agencies use the following methods, at a minimum, to promote their preference programs:

(a) Place a statement in procurement invitations in the *Commerce Business Daily* describing the preference program.

(b) Describe the preference program in tire procurement solicitations or invitations to bid.

(c) Discuss the preference program at bidders' conferences.

(d) Inform industry trade associations about the preference program.

§ 253.23 Estimation, certification, and verification.

(a)(1) Except as provided in paragraph (a)(2) of this section, contracting officers must require vendors who supply tires to procuring agencies to estimate the number of retread tires to be supplied. EPA recommends that procuring agencies retain these estimates for three years from the date they are received.

(2) The estimation requirement does not apply when a procuring agency purchases tire retreading services using an indefinite quantity contract.

(b) EPA recommends that as part of a solicitation for tires as products, procuring agencies require vendors to certify the number of retread tires to be supplied or the percentage of the total tires to be supplied that will be retread tires.

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(c) Procuring agencies must establish reasonable procedures to verify the estimates. EPA recommends that procuring agencies randomly check the numbers stamped on tire sidewalls to verify that retread tires have been supplied. (In accordance with U.S. Department of Transportation regulations, the tire will be stamped with the symbol DOT–R.)

§ 253.24 Annual review and monitoring.

(a) Each procuring agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program. EPA recommends that the annual review include the following items:

(1) An estimate of the number of retread tires purchased.

(2) An assessment of the effectiveness of the preference program.

(3) An assessment of remaining barriers to procurement of retread tires to determine whether they are internal (e.g., resistance to use) or external (e.g., unavailability) barriers.

(4) A program to gather statistics. Procuring agencies should monitor their procurements to provide data on the following:

(i) Comparative price information on competitive procurements;

(ii) The quantity of each item procured over a fiscal year;

(iii) The availability of retread tires or tire retreading services to procuring agencies;

(iv) Type of performance tests conducted, together with the type of retread tires that failed the tests, the percentages of all new tires and retread tires procured, respectively, that failed each test, and the nature of the failure;

(v) Agency experience with the performance of the procured products.

(b) Procuring agencies should prepare a report on their annual review and monitoring of the effectiveness of their procurement programs and make these reports available to the public. The reports should contain the following information:

(1) A discussion of how the procuring agency's approach procures retread tires or tire retreading services to the maximum extent practicable. The basis for this discussion should be a review of the data compiled on price, availability, and performance, as well as a comparison of estimates and certifications provided by the vendors.

(2) Documentation of specification revisions made during the year.

§ 253.25 Implementation.

(a) Federal agencies were required to review and revise their specifications, as set forth in § 253.10(a), by May 8, 1986.

(b) Procuring agencies are required to revise their specifications as set forth in § 253.10(b), and to establish affirmative procurement programs, as set forth in Subpart C, by November 17, 1989.

(c) Procuring agencies must begin procurement of retread tires, in compliance with this guideline by November 17, 1989.

[FR Doc. 88–26422 Filed 11–16–88; 8:45 am]
BILLING CODE 6560–50–M

federal register

Thursday
November 17, 1988

Part VI

Department of Education

Grants to Institutions to Encourage Minority Participation in Graduate Education Program; Applications Invited; Notice

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DEPARTMENT OF EDUCATION

[CFDA NO: 84.202]

Grants to Institutions to Encourage Minority Participation in Graduate Education Program; Applications Invited for New Awards for Fiscal Year 1989

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of program: To provide grants to enable institutions of higher education to make available fellowship aid to eligible undergraduate students from minority groups in order to provide those students with effective preparation for graduate study.

Deadline for Transmittal of Applications: December 29, 1988.

Available Funds: $3,476,000.

Estimated Range of Awards: $29,150–$120,000.

Estimated Average Size of Awards: $86,900.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: 6 weeks to 1 year.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), and 34 CFR Part 77 (Definitions that Apply to Department Regulations).

Description of Program: The Grants to Institutions to Encourage Minority Participation in Graduate Education Program is authorized under Pub. L. 99–498, Part A of Title IX of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (HEA). (20 U.S.C. 1134–1134b) Grants under this program are designed to enable institutions of higher education to identify, recruit, and make available fellowship aid to talented, under-graduate students who demonstrate financial need and are from minority groups that are traditionally underrepresented in graduate education in order to provide those students with an opportunity to participate in a program of research and scholarly activities designed to provide them with effective preparation for graduate study. The program of study may consist of summer research internships augmented by seminars and other educational experiences. All funds received under this program must be used for direct fellowship aid. Fellowships should provide an opportunity for fellows to spend six to ten weeks on a grantee's campus participating in research and scholarly activities in an environment that is encountered in graduate and professional programs.

NOTE: For guidance purposes only, the Secretary suggests that applicants consider "minority" to mean American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander, or other ethnic groups, that have traditionally been underrepresented in graduate education.

Eligibility: (a) An institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended, is eligible to apply for a grant to conduct a fellowship program.

(b) An individual is eligible to apply for a fellowship if the individual—

(1) Is a talented undergraduate student;

(2) Demonstrates financial need;

(3) Is from a minority group that has traditionally been underrepresented in graduate education; and

(4)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Republic of Palau or the Commonwealth of the Northern Mariana Islands.

(c) the institution of higher education is responsible for making accurate determinations concerning the criteria in paragraph (b) of this section of the notice.

(d) Additional eligibility requirements may be established by the institution of higher education.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points). The Secretary reviews each application to determine how well the project will meet the purpose of the authorizing statute, Part A of Title IX of the HEA, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

Note: A statement of the purpose of the authorizing statute is found in the Purpose of Program section of this notice.

(2) *Extent of need for the project.* (20 points). The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (28 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Note: The authorizing statute requires that fellowship awards be made to students from minority groups traditionally underrepresented in graduate education.

(4) *Quality of key personnel.* (7 points) (i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director [if one is to be used];

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without

regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(c)(1) In making awards under this program, the Secretary shall consider the quality of an applicant's plan for recruiting students, and the quality of the program of study and of the research in which the students will be involved.

(2) The Secretary will ensure an equitable geographic distribution among public and private institutions of higher education.

Note: The authorizing statute provides that all funds received under this program must be used for direct fellowship aid.

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.202), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.202), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information.

Part III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (NOTE: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Mr. Walter T. Lewis, Program Manager, Minority Participation in Graduate Education Program, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., ROB–3, Washington, DC 20202–5251. Telephone: (202) 732–4393.

Program Authority: 20 U.S.C. 1134–1134b.

Dated: November 10, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

BILLING CODE 4000–01–M

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Appendix

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 0 2
TITLE: Grants to Institutions to Encourage Minority Participation in Graduate Education

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - —"New" means a new assistance award.
   - —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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FORM APPROVED:
OMB NO.:
EXPIRATION DATE:

PART II
BUDGET INFORMATION

GRANTS TO INSTITUTIONS TO ENCOURAGE MINORITY PARTICIPATION IN GRADUATE EDUCATION

AWARDS MADE TO INSTITUTIONS UNDER THIS PROGRAM MUST BE USED EXCLUSIVELY TO PROVIDE DIRECT FELLOWSHIP AID. INCLUDE BELOW THE BREAKDOWN OF FEDERAL FUNDS REQUESTED FOR STUDENT EXPENSES:

	TOTAL COSTS
STUDENTS COST:*	
A. ROOM AND BOARD	
B. TRANSPORTATION	
C. TUITION	
D. OTHER APPLICABLE EXPENSES	
TOTAL FEDERAL REQUEST	
TOTAL NUMBER OF FELLOWSHIPS REQUESTED	
NUMBER OF WEEKS OF SEMINAR/INSTITUTE	

LIST ACADEMIC AREA or AREAS:
BEGINNING AND END DATES OF STUDENTS' FELLOWSHIP ACTIVITIES
INSTRUCTION.

* CALCULATE EACH STUDENT'S NEED-BASED STIPEND FOR APPLICABLE EXPENSES, INCLUDING ROOM AND BOARD, TRANSPORTATION AND TUITION FOR COURSES FOR WHICH CREDIT IS GIVEN, FOLLOWING THE PROCEDURES USED BY THE APPLICANT'S STUDENT FINANCIAL AID OFFICE. THE STUDENTS' NEED SHOULD BE CALCULATED PURSUANT TO PART F OF TITLE IV OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED.

INDICATE WITHIN THE TOTAL COST OF THE STUDENTS COST THE AMOUNTS CHARGED FOR EACH OF THE SPECIFIC CATEGORIES LISTED ABOVE.

B. TRANSPORTATION COSTS MAY INCLUDE THE COST OF ONE ROUND-TRIP FROM THE STUDENT'S RESIDENCE TO CAMPUS AND RETURN, IF APPLICABLE, AND OTHER TRAVEL REQUIRED AS PART OF THE PROGRAM OF STUDY.

NOTE: Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Margaret B. Webster, Director of Information Management and Compliance Division, U.S. Department of Education, Washington, D.C., 20202-4651, and to the Office of Management and Budget, New Executive Office Building, Room 3002, Washington, D.C., Attention: James D. Houser.

INSTRUCTIONS FOR PART III-- Application Narrative

Before preparing the Application Narrative an applicant should read carefully the purpose of the program, description of the program and the selection criteria the Secretary uses to evaluate applications. Applicants should address the selection criteria in the order the criteria are listed in this application notice.

The narrative should encompass each function or activity for which funds are being requested.

1. Begin with a one-page Abstract; that is, a summary of the proposed project.

2. Include information regarding (a) the program of study to take the form of summer research internships, seminars, and other educational experiences; (b) the institution's plan for identifying and recruiting talented minority undergraduates; (c) the participation of faculty in the program and a detailed description of the research in which the students will be involved; and (d) a plan for the evaluation of the effectiveness of the program.

3. Applications should include a description of the financial need analysis system or method to be used in determining the level of each fellow's financial need-based stipends, room and board costs, transportation costs, and tuition for courses for which credit is given.

4. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 25 double-spaced, typed pages or less (on one side only).

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exctuded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, 6/88

[FR Doc. 88-26559 Filed 11-16-88; 8:45 am]
BILLING CODE 4000-01-C

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November 17, 1988

Part VII

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Proposed Southern California Sale 95, Supplemental Call for Information and Nominations; Notice

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4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Proposed Southern California Sale 95
Supplemental Call for Information and Nominations

Purpose of Supplemental Call

As part of the Minerals Management Service's (MMS) analysis and planning for Southern California Outer Continental Shelf (OCS) Sale 95, all interested parties are invited to provide additional information on 17 blocks (see "Description of Area") in the Southern California Planning Area which were not included in the Sale 95 Call for Information and Nominations (Call) as published in the July 9, 1987, Federal Register. This information may assist the MMS and the Department of Defense (DOD) in ongoing discussions intended to establish appropriate multiple-use arrangements pursuant to a Memorandum of Agreement between the two Agencies.

Initial discussions with the DOD resulted in the exclusion from the original Call of several lease blocks thought to be in an area of potential conflict with national defense related activities. As a result of subsequent discussions, alternative approaches are being examined to better resolve these multiple-use issues. To assist in this analysis, the MMS is requesting information on 17 additional blocks, totaling an estimated 76,735 acres, not included in the Call for proposed Sale 95. Respondents who have an interest in nominating or commenting on this area are now requested to do so.

Use of Information from Supplemental Call

Information received in response to this Supplemental Call will be used to help assess the area for further study during the Sale 95 prelease process. Blocks considered for the Sale 95 proposal as a result of this Supplemental Call will be fully analyzed in the Environmental Impact Statement (EIS) being prepared for the proposed sale. A Notice of Intent to Prepare an EIS for Sale 95 was published in the Federal Register on July 9, 1987.

Description of Area

This Supplemental Call is targeted at the 17 blocks or portions of these blocks within the OCS Leasing Map 6C not included in the Sale 95 Call described in the following text and shown on the attached map. The area covered includes the following blocks:

All or portions of blocks: 2525, 2524, 2426, 2425, 2424, 2423, 2327, 2326, 2325, 2324, 2323, 2227, 2226, 2225, 2224, 2223, and 2222.

A copy of the Call published in the Federal Register on July 9, 1987, on pages 25956 through 25962, is available and will be forwarded free upon request from the Regional Supervisor, Office of Leasing and Environment, Minerals Management Service, Pacific Region, 1340 West 6th Street, Suite 244, Los Angeles, California, 90017, telephone number (213) 894-7107.

Instructions on Supplemental Call

Nominators are asked to designate any of the blocks covered by this Supplemental Call that they wish to have included in Sale 95. Expressions of interest should be as specific as possible and should be shown by outlining the area(s) of interest along block lines. A detailed list of whole and partial blocks nominated should be submitted to ensure correct interpretation of nominations. Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities submitting indications of interest and/or comments will be a matter of public record.

Nominators should rank selected blocks according to the priority of their interest (high, medium, or low). The telephone number and name of a person to contact in the respondent's organization for additional information should be included. In addition, respondents with information (on the area covered by this Supplemental Call) that would assist in determining the scope of the EIS and in the preparation of the document are encouraged to submit comments. Comments may be used to point out potential conflicts and mitigation measures between offshore oil and gas activities; California coastal zone management policies as established by the California Coastal Act of 1976, as amended; and approved local coastal plans.

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Respondents' nominations and/or comments must be submitted no later than 30 days following publication of this document in the Federal Register in envelopes labeled "Supplemental Call for Information and Nominations for Proposed Sale 95 - Southern California." Letters and maps should be submitted to the Regional Supervisor, Leasing and Environment, at the address stated under "Description of Area."

Robert E. Kallman

Director, Minerals Management Service

~~Nov~~ 10, 1988

Date

Approved:

James E. Cason

Deputy Assistant Secretary - Land and Minerals Management

11/10/88

Date

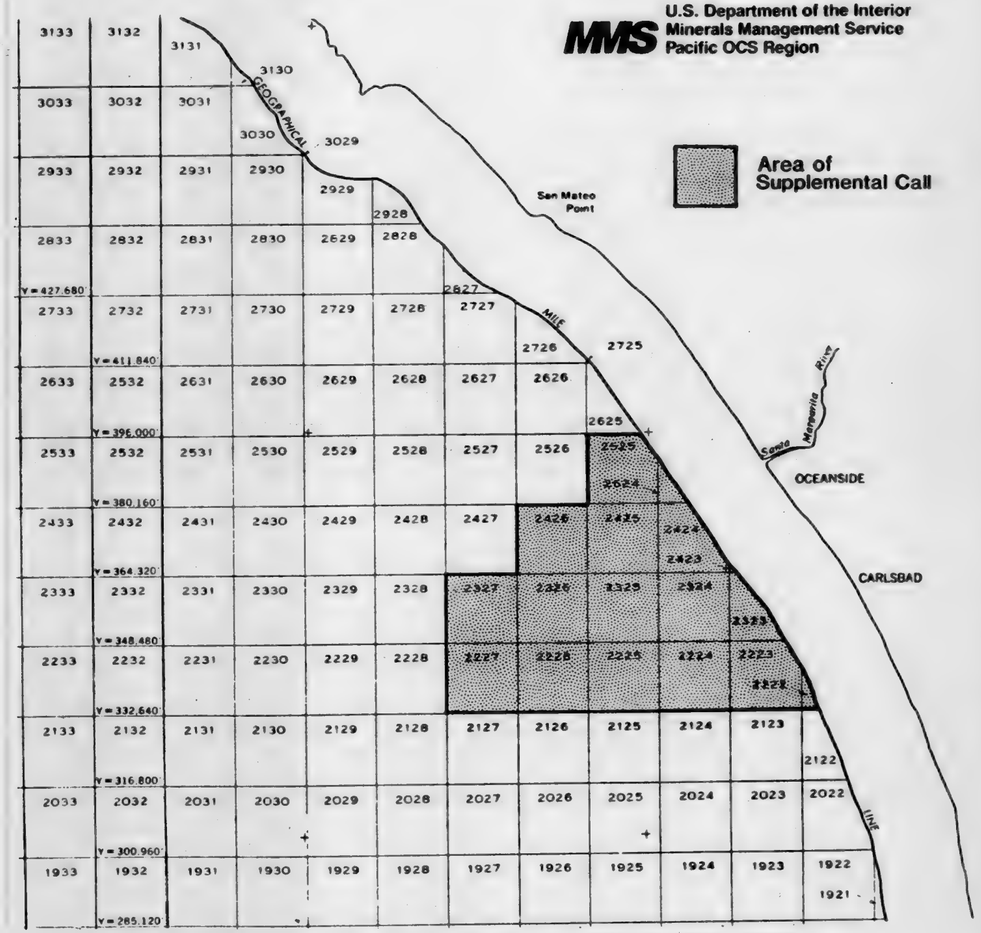
Southern California Planning Area

LEASE SALE 95

SUPPLEMENTAL CALL

November 1988

MMS U.S. Department of the Interior
Minerals Management Service
Pacific OCS Region



This map has been carefully prepared from the best existing data sources available at the time of its drafting, but the Minerals Management Service, U.S.D.I. does not guarantee the accuracy and is not responsible or liable for reliance thereon. It is not a legal document for federal leasing purposes nor is it to be used for navigation. OCS Leasing Map 6C should be consulted for area measurements and locations of individual blocks.

[FR Doc. 88-26605 Filed 11-16-88; 8:45 am]
BILLING CODE 4310-MR-C

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Part VIII

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Reports; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

November 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of November 1, 1988 of 10 deferrals contained in the first special message of FY 1989. There have been no rescissions proposed. This message was transmitted to the Congress on September 30, 1988.

Rescissions (Table A and Attachment A)

As of November 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of November 1, 1988, $1,762.5 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the Federal Registered listed below:

Vol. 53, FR p. 39879, Wednesday, October 12, 1988.

Joseph R. Wright, Jr.,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1989 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	0
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	0

****

TABLE B

STATUS OF 1989 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	2,024.2
Routine Executive releases through November 1, 1988 (OMB/Agency releases of $261.7 million and cumulative adjustments of $0)	-261.7
Overturned by the Congress.....	0
Currently before the Congress.....	1,762.5

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1989

As of November 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1989

As of November 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 11-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance Economic support fund	D89-1	592,760		09-30-88	255,500				337,260
Special Assistance for Central America Promotion of stability and security in Central America	D89-2	1,000		09-30-88					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service Expenses, brush disposal	D89-3	144,649		09-30-88					144,649
Cooperative work	D89-4	335,263		09-30-88					335,263
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations Wildlife conservation, Defense	D89-5	1,212		09-30-88	154				1,058
DEPARTMENT OF ENERGY									
Power Marketing Administration Southwestern Power Administration, Operation and maintenance	D89-6	2,800		09-30-88					2,800
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration Limitation on administrative expenses (construction)	D89-7	6,745		09-30-88					6,745
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund	D89-8	90,000		09-30-88					90,000

Attachment B - Status of Deferrals - Fiscal Year 1989

As of November 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 11-1-88
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive.....	D89-9	26,135		09-30-88	6,001				20,134
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....	D89-10	823,608		09-30-88					823,608
TOTAL, DEFERRALS.....		2,024,171	0		261,654	0		0	1,762,517

[FR Doc. 88-26616 Filed 11-16-88; 8:45 am]
BILLING CODE 3110-01-C

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 4333/Pub. L. 100–647
Technical and Miscellaneous Revenue Act of 1988. (Nov. 10, 1988; 102 Stat. 3342; 471 pages) Price: $13.00

H.R. 4362/Pub. L. 100–648
Recreation and Public Purposes Amendment Act of 1988. (Nov. 10, 1988; 102 Stat. 3813; 3 pages) Price: $1.00

H.R. 4445/Pub. L. 100–649
Undetectable Firearms Act of 1988. (Nov. 10, 1988; 102 Stat. 3816; 3 pages) Price: $1.00

H.R. 4879/Pub. L. 100–650
Management Interlocks Revision Act of 1988. (Nov. 10, 1988; 102 Stat. 3819; 3 pages) Price: $1.00

H.J. Res. 649/Pub. L. 100–651
Designating November 12, 1988, as "National Firefighters Day." (Nov. 10, 1988; 102 Stat. 3822; 1 page) Price: $1.00

S.J. Res. 395/Pub. L. 100–652
To designate January 4, 1989, as "National Commissioned Corps of the Public Health Service Centennial Day." (Nov. 10, 1988; 102 Stat. 3823; 2 pages) Price: $1.00

H.R. 4030/Pub. L. 100–653
To reauthorize and amend certain wildlife laws, and for other purposes. (Nov. 14, 1988; 102 Stat. 3825; 12 pages) Price: $1.00

H.R. 5102/Pub. L. 100–654
Federal Employees Health Benefits Amendments Act of 1988. (Nov. 14, 1988; 102 Stat. 3837; 12 pages) Price: $1.00

S.J. Res. 192/Pub. L. 100–655
To designate the month of October 1988, as "National AIDS Awareness and Prevention Month. (Nov. 14, 1988; 102 Stat. 3849; 4 pages) Price: $1.00

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Pages 46601-046842

federal register

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Presidential Documents

Title 3—

The President

Presidential Determination No. 89–5 of October 24, 1988

Determination Under Section 143b(3) of Public Law 99–93, as Amended by Section 702 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100–204)

Memorandum for the Secretary of State

Pursuant to Section 143(b)(3) of Public Law 99–93, as amended by Section 702 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100–204), I hereby determine that the International Civil Aviation Organization, the International Labor Organization, the United Nations Industrial Development Organization, the World Health Organization, and the World Meteorological Organization have made substantial progress toward the adoption and implementation of decision-making procedures on budgetary matters that assure that sufficient attention is paid on these matters to the views of the United States and other member states which are major financial contributors.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 24, 1988.

[FR Doc. 88–26881
Filed 11–16–88; 4:13 pm]
Billing code 3195–01–M

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 640]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 640 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 281,875 cartons during the period November 20 through November 26, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 640 (§ 910.940) is effective for the period November 20 through November 26, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is used under Marketing Order No., 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on November 15, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Commitee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.940 is added to read as follows:

[This section will not appear in the Code of Federal Regulations.]

§ 910.940 Lemon Regulation 640.

The quantity of lemons grown in California and Arizona which may be handled during the period November 20, 1988, through November 26, 1988, is established at 281,875 cartons.

Dated: November 16, 1988.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–26836 Filed 11–17–88; 8:45 am]
BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

Commission Policy Statement on Training and Qualification of Nuclear Power Plant Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Amended Policy Statement.

SUMMARY: On March 20, 1985, the Nuclear Regulatory Commission (NRC) published a "Commission Policy Statement on Training and Qualifications of Nuclear Power Plant Personnel" (50 FR 11147). The policy statement provided guidance for the training and qualification of nuclear power plant personnel, communicated that the NRC would refrain from new training regulation during an evaluation period of two years, and endorsed the Training Accreditation Program managed by the Institute of Nuclear Power Operations (INPO). The NRC monitored industry initiatives to upgrade training programs through the INPO-managed Training Accreditation Program for a two year period. The

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staff's evaluation of this program indicates that it is generally an effective program for ensuring that nuclear power plant personnel have qualifications commensurate with the performance requirements of their jobs. This statement amends the Commission's policy statement that was published on March 20, 1985 regarding the training and qualification of nuclear power plant personnel.

It remains the continuing responsibility of the NRC to independently evaluate applicants' and licensees' implementation of improvement programs to ensure that desired results are achieved. Nothing in this policy statement shall limit the authority or responsibility of the NRC to follow up on operational events or place any limit on NRC's enforcement authority when regulatory requirements are not met.

The amendments are (1) the addition of information regarding the NRC's experience with industry accreditation, (2) a change in the enforcement section to normalize inspection and enforcement in the areas covered by the policy statement, and (3) minor changes to conform to the current status of Commission and industry guidance.

DATE: The amendments to the policy statement are effective November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Jack W. Roe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–1004.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Waste Policy Act (Pub. L. 97–425), section 306, directed the Nuclear Regulatory Commission (NRC) to promulgate regulations or other regulatory guidance for the training and qualifications of civilian nuclear power plant operators, supervisors, technicians and other appropriate operating personnel (including instructional requirements, simulator training requirements, and requirements for requalification examinations and operating tests). On March 20, 1985, the NRC published a policy statement which is responsive to the mandate of the Nuclear Waste Policy Act for regulatory guidance on training and qualifications of nuclear power plant personnel. Regulations or regulatory guidance in the remaining areas have been developed separately as a revision to 10 CFR Part 55—Operators' Licenses.

Following the accident at Three Mile Island, Unit 2 (TMI–2), the NRC continually emphasized the need to upgrade training and qualifications of nuclear power plant personnel. In the "NRC Action Plan Developed as a Result of the TMI–2 Accident" (NUREG–0660 July 1980),[1] the NRC cited its ongoing study of accreditation of training as a possible means of upgrading training programs in the industry. Since that time, the Institute of Nuclear Power Operations (INPO), with its associated National Academy for Nuclear Training (Academy), has developed a training accreditation program which the NRC has found to be an acceptable means of self-improvement in training. On March 20, 1985, the NRC published the Commission Policy Statement on Training and Qualification of Nuclear Power Plant Personnel,[2] allowing the industry a minimum of two years of accreditation activity without the introduction of new NRC training regulations. The two-year evaluation period ended March 20, 1987.

The staff evaluated the results of the INPO accreditation program between March 1985 and March 1987. The staff's evaluation consisted of participating as observers when utilities' training programs were under evaluation by an INPO accreditation team, observing accrediting board activities, and site inspections as described in SECY–85–201.[3] The staff also developed criteria and procedures that were used to assess whether accredited utility training programs include five critical elements. The review criteria have been published as "Training Review Criteria and Procedures" (NUREG–1220).[4] The criteria were applied by the staff in auditing training programs at eight utilities with accredited training programs. The results of these post-accreditation reviews are included in the "Annual Status Report on Implementation of the Commission Policy Statement on Training and Qualification" (SECY–86–119) [5] and "The 2-Year Evaluation on Implementation of the Commission Policy Statement on Training and Qualification," (SECY–87–121) [6] which provided the findings from the evaluations of the INPO-managed Training Accreditation Program over the two-year evaluation period.

Based on the staff's evaluation of the INPO training accreditation program, the NRC concludes that the program is effective in ensuring that personnel have qualifications commensurate with the performance requirements of their jobs. However, the Commission has determined that the policy statement should be amended to reflect the minor modifications made by the National Academy for Nuclear Training to its accreditation program and the NRC staff to the methods by which it monitors the industry training program. In addition, the Commission has determined that the industry has had sufficient time to establish the accreditation program and it is no longer necessary to exercise extra discretion in enforcement when regulatory requirements are not met. Accordingly, the policy statement is amended to eliminate the extra discretion currently provided in the policy statement and to normalize inspections and enforcement actions in the areas covered by the policy statement.

The following sets forth the amendments to the policy of the NRC with respect to training and qualification of nuclear power plant personnel.

Amendments to Policy Statement

(1) The Commission recognizes that the National Academy for Nuclear Training has expanded its accreditation program by establishing an eleventh program for continuing training of licensed personnel.

(2) The NRC staff will expand the methods by which it monitors the industry's training program and its results by performing post-accreditation reviews at selected sites.

(3) The section of the 1985 policy statement entitled "Enforcement Policy" is withdrawn. The NRC will conduct inspections as deemed necessary and take appropriate enforcement action in accordance with the Commission's enforcement policy in 10 CFR Part 2, Appendix C, when regulatory requirements are not met.

Dated at Rockville, MD, this 14th day of November 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–26731 Filed 11–17–88; 8:45 am]

BILLING CODE 7590–01–M

[1] Copies of NUREG–0660 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37062, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5258 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

[2] Commission Policy Statement on Training and Qualification of Nuclear Power Plant Personnel (50 FR 11147; March 20, 1985).

[3] [4] [5] [6] Copies of NUREG–1220, SECY–85–201, SECY–86–119, and SECY–87–121 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37062, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5258 Port Royal Road, Springfield, VA 22161. Copies are available for inspections and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–122–AD; Amdt. 39–6077]

Airworthiness Directives; Airbus Model A300 and A310–200 Series Airplanes; and Boeing Model 737–200, 737–300, 757–200, 767–200, and 767–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of final rule.

SUMMARY: This amendment clarifies an existing airworthiness directive (AD), applicable to the two-engine transport category airplanes indicated above that are used in operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations (FAR), referred to as "extended range," "EROP," or "ETOP" operations; which currently requires a repetitive check of the fuel crossfeed valve operation during the last hour of cruise on each extended range flight, and replacement of the valve, if necessary. This amendment is necessary to clarify that the requirement for an airplane log book entry of the fuel crossfeed valve operational check is for valve failures only, and to clarify the repair requirements. This clarification is prompted by comments received after the issuance of the AD which indicate confusion over the intent of the AD.

EFFECTIVE DATE: November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Steven P. Clark, Propulsion Branch, ANM–140S: telephone (206) 431–1963. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the FAA issued AD 88–21–03, Amendment 39–6045 (53 FR 39449; October 7, 1988), applicable to the Airbus Model A300 and A310–200 series airplanes, and Boeing Model 737–200, 737–300, 757–200, 767–200, and 767–300 series airplanes, which are used in extended range operations. Extended range operation with two engine airplanes is defined in FAA Advisory Circular 120–42 as an operation over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport and is also referred to as "EROP" or "ETOP" operations. The AD requires a check of fuel crossfeed valve operation during the last hour of cruise on each extended range flight. The AD includes a requirement to enter the operational check outcome in the airplane log.

Comments received after the issuance of that AD indicate that there exists confusion over the FAA's intent with respect to the log book entry requirement. The log book entry is intended to be made only when the fuel crossfeed valve fails to function during the operational check. This is consistent with existing failure reporting requirements. The FAA has determined the wording used in the existing AD does not adequately relay this intent and that the AD must be clarified by specifically stating the airplane log book entry requirement.

In addition, based on comments received, the FAA has determined that paragraph B. of the AD must be reworded to clarify that only the fuel crossfeed valve system component(s) found to be inoperative (not necessarily the entire fuel crossfeed valve) would be required to be repaired or replaced.

Since this action only clarifies instructions in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Clarification

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By providing clarification of the requirements of paragraphs A. and B. of AD 88–21–03, Amendment 39–6045 (53 FR 39449, October 7, 1988), as follows:

Airbus Industrie and Boeing: Applies to all Airbus Model A300 and A310–200 series airplanes, and Boeing Models 737–200, 737–300, 757–200, 767–200, and 767–300 series airplanes, certificated in any category, which are approved for operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations, referred to as "extended range," "EROP," or "ETOP" operations. Compliance required within 30 days after the effective date of the AD, unless previously accomplished.

To prevent failure of the fuel crossfeed valve during a single engine diversion on an extended range flight, which could result in the inability of the airplane to stay within the airplane lateral imbalance limit or in fuel starvation in the operating engine before the airplane is able to reach the diversion airport, accomplish the following:

A. Revise the LIMITATIONS SECTION of the FAA-approved Airplane Flight Manual (AFM) or Flight Manual Appendix, as appropriate, by adding the following instructions. This may be accomplished by inserting a copy of this AD in the AFM.

Fuel Crossfeed Valve. Perform an operational check of the fuel crossfeed valve during the last hour of cruise flight during each extended range operation. Enter valve failure conditions resulting from the operational check in the airplane log.

B. Repair or replace, prior to next flight, any fuel crossfeed valve system component not exhibiting proper operation.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Operations Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Operations Inspector (POI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

This clarification becomes effective November 18, 1988.

Issued in Seattle, Washington, on November 10, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–26702 Filed 11–17–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–ASO–8]

Amendment to Transition Area; Monroe, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

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ACTION: Final rule.

SUMMARY: This amendment to the Monroe, NC, Transition Area is to delete an arrival area extension. The Wesley RBN has been relocated off-airport and the NDB RWY 23 Standard Instrument Approach Procedure, which required the arrival area extension, has been cancelled. This action raises the floor of controlled airspace from 700 to 1,200 feet above the surface in this particular area.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On August 1, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Transition Area, Monroe, NC (53 FR 28889). An arrival area extension has been required to accommodate the NDB RWY 23 Standard Instrument Approach Procedure (SIAP). The Wesley RBN, which supported the SIAP, has been relocated to an off-airport site and the NDB RWY 23 SIAP has been cancelled. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is to delete an arrival area extension to the Monroe, NC, Transition Area and raise the floor of controlled airspace from 700 to 1,200 feet above the surface in this particular area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Monroe, NC [Amended]

By deleting the phrase, "within 3 miles each side of the 057° bearing from the Wesley RBN (latitude 35°01'25" N; longitude 80°37'01" W), extending from the 6.5-mile radius to 8.5 miles northeast of the RBN" from the present description.

Issued in East Point, Georgia, on November 7, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–26703 Filed 11–17–88; 8:45 am]

BILLING CODE 4910–13–M

VETERANS ADMINISTRATION

38 CFR Parts 3 and 17

Automobile Allowance and Adaptive Equipment Eligibility; and, Devices To Overcome the Handicap of Deafness

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments.

SUMMARY: The Veterans Administration (VA) has amended its adjudication and medical regulations concerning the automobile allowance and adaptive equipment program for certain severely disabled individuals. These amendments are necessary to implement provisions of law and to properly divide regulatory responsibility for these programs consistent with organizational and functional alignments. The effect of these amendments will be to extend automobile adaptive equipment eligibility for certain severely disabled persons, more clearly define program responsibility, and more accurately described prerequisites for devices to overcome the handicap of deafness.

EFFECTIVE DATE: These regulatory amendments are effective December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005, regarding amendments to 38 CFR Part 3, or Frederick Downs, Jr., Director, Prosthetics and Sensory Aids Service (121), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2011, regarding amendments to 38 CFR Part 17.

SUPPLEMENTARY INFORMATION: On pages 28020–22 of the **Federal Register** of July 26, 1988, the VA published proposed amendments to 38 CFR 3.807 and 3.808 as well as to 38 CFR 17.115d and 17.119a through 17.119d. Interested persons were invited to submit comments, suggestions or objections by August 19, 1988. No comments were received with respect to the proposed changes to 38 CFR Part 3. Only one comment was received regarding the proposed changes to 38 CFR Part 17.

The commenter suggested a somewhat technical change be made in one provision of the regulations to clarify that active duty military personnel may be eligible for automobile adaptive equipment for a disability aggravated by active duty. We agree and have amended proposed 38 CFR 17.119a(a)(2) to add the words "or aggravated by" immediately preceding the words "active military service."

The proposed changes are adopted as amended. We appreciate the interest of the commenter.

The Administrator hereby certifies that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these final regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Number is 64.100.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—Health, Health care, Health facilities, Health professions—Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: October 31, 1988.

Thomas K. Turnage,

Administrator.

PART 3—ADJUDICATION

38 CFR Part 3, ADJUDICATION, and 38 CFR Part 17, MEDICAL, are amended as follows:

§ 3.807 [Amended]

1. In the cross-references at the end of § 3.807, the words "Husband or widower. See § 3.51" are removed.

2. In § 3.807 the introductory text, paragraphs (a)(4), (b), (d)(2) and (d)(3) are revised to read as follows:

§ 3.807 Dependents' educational assistance-certification.

For the purposes of dependents' educational assistance under 38 U.S.C. Chapter 35 (see § 21.3020), the child, spouse or surviving spouse of a veteran or serviceperson will have basic eligibility if the following conditions are met:

(a) * * *

(4) Died as a result of a service-connected disability; or (if a serviceperson) * * *

(b) *Service.* Service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898. (Pub. L. 89–358) Effective September 30, 1966, educational assistance for a child (but not for a spouse or surviving spouse) may be authorized based on service in the Philippine Commonwealth Army or as a Philippine Scout as defined in § 3.8(b), (c), or (d) of this part.

(Authority: 38 U.S.C. 1765)

* * * * *

(d) * * *

(2) "Spouse" means a person whose marriage to the veteran meets the requirements of §3.50(a) of this part.

(3) "Surviving spouse" means a person whose marriage to the veteran meets the requirements of §§ 3.50(b) or 3.52 of this part.

3. In § 3.808, the introductory text, paragraph (c) and paragraph (d) are revised and paragraph (b)(1)(iv) is added to read as follows:

§ 3.808 Automobile or other conveyances-certification.

A certification of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding the amount specified in 38 U.S.C. 1902 (including all State, local, and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be made where the claimant meets the requirements of paragraphs (a), (b) and (c) of this section.

* * * * *

(b) * * *

(1) * * *

(iv) For adaptive equipment eligibility only, ankylosis of one or both knees or one or both hips.

(Authority: 38 U.S.C. 1902)

* * * * *

(c) *Claim for conveyance and certification for adaptive equipment.* A specific application for financial assistance in purchasing a conveyance is required which must contain a certification by the claimant that the conveyance will be operated only by persons properly licensed. The application will also be considered as an application for the adaptive equipment to insure that the claimant will be able to operate the conveyance in a manner consistent with safety and to satisfy the applicable standards of licensure of the proper licensing authorities. Simultaneously with the certification provided pursuant to the introductory text of this section, a claimant for financial assistance in the purchase of an automobile will be furnished a certificate of eligibility for financial assistance in the purchase of such adaptive equipment as may be appropriate to the claimant's losses unless the need for such equipment is contraindicated by a physical or legal inability to operate the vehicle. There is no time limitation in which to apply. An application by a claimant on active duty will be deemed to have been filed with the VA on the date it is shown to have been placed in the hands of military authority for transmittal.

(Authority: 38 U.S.C. 1902)

(d) *Additional eligibility criteria for adaptive equipment.* Claimants for adaptive equipment must also satisfy the additional eligibility criteria of §§17.119a through 17.119c of this chapter.

(Authority: 38 U.S.C. 1902)

* * * * *

PART 17—MEDICAL

4. Section 17.115d is revised to read as follows:

§ 17.115d Devices to assist in overcoming the handicap of deafness.

Devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) may be furnished to any veteran who is profoundly deaf (rated 80% or more disabled for hearing impairment by the Veterans Administration) and is entitled to compensation on account of such hearing impairment.

(Authoriry: 38 U.S.C. 1902)

5. Section 17.119a is redesignated as § 17.119d and new §§ 17.119a, 17.119b and 17.119c are added to read as follows (§ 17.119d is republished for the convenience of the reader):

§ 17.119a Eligibility for automobile adaptive equipment.

Automobile adaptive equipment may be authorized if the Chief Medical Director or designee determines that such equipment is deemed necessary to insure that the eligible person will be able to operate the automobile or other conveyance in a manner consistent with such person's safety and so as to satisfy the applicable standards of licensure established by the State of such person's residency or other proper licensing authority.

(a) Persons eligible for adaptive equipment are:

(1) Veterans who are entitled to receive compensation for the loss or permanent loss of use of one or both feet; or the loss or permanent loss of use of one or both hands; or ankylosis of one or both knees, or one of both hips if the disability is the result of injury incurred

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or disease contracted in or aggravated by active military, naval or air service.

(2) Members of the Armed Forces serving on active duty who are suffering from any disability described in paragraph (a)(1) of this section incurred or contracted during or aggravated by active military service are eligible to receive automobile adaptive equipment.

(b) Payment or reimbursement of reasonable costs for the repair, replacement, or reinstallation of adaptive equipment deemed necessary for the operation of the automobile may be authorized by the Chief Medical Director or designee.

(Authority: 38 U.S.C. 1902)

§ 17.119b Definition-adaptive equipment.

The term, adaptive equipment, means equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant, and enable that person to meet the applicable standards of licensure. Adaptive equipment includes any term specified by the Chief Medical Director or designee as ordinarily necessary for any of the classes of losses or combination of such losses specified in § 17.119a of this part, or as deemed necessary in an individual case. Adaptive equipment includes, but is not limited to, a basic automatic transmission, power steering, power brakes, power window lifts, power seats, air-conditioning equipment when necessary for the health and safety of the veteran, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and any modification of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle.

(Authority: 38 U.S.C. 1901, 1902)

§ 17.119c Limitations on assistance.

(a) An eligible person shall not be entitled to adaptive equipment for more than two automobiles or other conveyances at any one time or during any four-year period except when due to circumstances beyond control of such person, one of the automobiles or conveyances for which adaptive equipment was provided during the applicable four-year period is no longer available for the use of such person.

(1) Circumstances beyond the control of the eligible person are those where the vehicle was lost due to fire, theft, accident, court action, or when repairs are so costly as to be prohibitive or a different vehicle is required due to a change in the eligible person's physical condition.

(2) For purposes of paragraph (a)(1) of this section, an eligible person shall be deemed to have access to and use of an automobile or other conveyance for which the Veterans Administration has provided adaptive equipment if that person has sold, given or transferred the vehicle to a spouse, family member or other person residing in the same household as the eligible person, or to a business owned by such person.

(Authority: 38 U.S.C. 1903)

(b) Eligible persons may be reimbursed for the actual cost of adaptive equipment subject to a dollar amount for specific items established from time to time by the Chief Medical Director.

(Authority: 38 U.S.C. 1902)

(c) Reimbursement for a repair to an item of adaptive equipment is limited to the current vehicles of record and only to the basic components authorized as automobile adaptive equipment. Reimbursable amounts for repairs are limited to the cost of parts and labor based on the amounts published in generally acceptable commercial estimating guides for domestic automobiles.

(Authority: 38 U.S.C. 1902)

§ 17.119d Obtaining vehicles for special driver training courses.

The Administrator may obtain by purchase, lease, gift or otherwise, any automobile, motor vehicle, or other conveyance deemed necessary to conduct special driver training courses at Veterans Administration health care facilities. The Administrator may sell, assign, transfer or convey any such automobile, vehicle or conveyance to which the Veterans Administration holds title for such price or under such terms deemed appropriate by the Administrator. Any proceeds received from such disposition shall be credited to the applicable Veterans Administration appropriation.

(Authority: 38 U.S.C. 1903(e)(3))

[FR Doc. 88-26696 Filed 11-17-88; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3461-2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces actions on revisions to the Indiana State Implementation Plan (SIP) for ozone. The actions are: (1) To approve Indiana's Transportation Control Plan (TCP) for Lake and Porter Counties, because it will result in progress towards attainment of the National Ambient Air Quality Standard (NAAQS) for ozone, (2) to disapprove the ozone attainment demonstration for Lake and Porter Counties, (3) to disapprove Indiana's overall ozone plan for these counties, and (4) to impose in Lake and Porter Counties a construction ban on new or modified major sources of volatile organic compounds (VOCs), as required by section 110(a)(2)(I) of the Clean Air Act (Act). (VOCs are precursors to the formation of ozone.)

USEPA's actions are based upon revisions to the Indiana SIP which were submitted by the State to satisfy the requirements of Part D of the Act.

EFFECTIVE DATE: This final rulemaking becomes effective on December 19, 1988.

ADDRESSES: Copies of the SIP revisions, public comments on the notices of proposed rulemaking, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Rober B. Miller, at 353-0396, before visiting the Region V Office.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

A copy of today's revisions to the Indiana SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353-0396.

SUPPLEMENTARY INFORMATION: The Act, as amended in 1977, required States to submit ozone SIPs for nonattainment areas by January 1, 1979 (1979 SIP), which demonstrated attainment of the ozone NAAQS by no later than December 31, 1982. Provisions for attainment date extensions to December 31, 1987, were available for ozone if States could demonstrate that, despite the implementation of all reasonably available control measures (RACM), the 1982 attainment deadline could not be met. States failing to demonstrate attainment by December 31, 1982, were required to submit revised SIPs by July 1, 1982 (1982 SIP).

Lake and Porter Counties were designated nonattainment for ozone on March 3, 1978 (43 FR 8962), and, thus, Indiana was required to submit a Part D ozone plan for the area. The State of Indiana submitted its 1979 ozone (and carbon monoxide (CO)) plan on June 26, 1979, and provided supplemental submittals on: May 19, 1980; September 24, 1980; October 9, 1980; and October 15, 1980. The June 26, 1979, SIP submittal requested that UEPA extend the ozone attainment deadline to 1987 for Lake and Porter Counties, the Indiana portion of the Chicago-Gary-Hammond urban ozone demonstration area,[1] and committed to submit a supplemetal 1982 ozone plan for this area.

The USEPA approved or conditionally approved portions of Indiana's 1979 plan in four rulemakings: January 2, 1981 (46 FR 36); February 11, 1982 (47 FR 6274); October 22, 1982 (47 FR 47552); and January 18, 1983 (48 FR 2124). On February 11, 1982 (47 FR 6274), USEPA approved Indiana's request to extend the ozone attainment deadline for Lake and Porter Counties to December 31, 1987.

On September 2, 1982, Indiana submitted a draft version of its 1982 supplemental Part D ozone plan. Subsequent versions and partial modifications were submitted on: December 2, 1983; February 8, 1985; July 3, 1985; and December 13, 1985.

The USEPA proposed rulemaking on the draft version of the 1982 supplemental Part D ozone plan on February 3, 1983 (48 FR 5106), following a comment letter sent to the State on November 10, 1982. The USEPA proposed additional, related rulemaking on: August 3, 1983 (48 FR 35316); October 9, 1984 (49 FR 39574); January 21, 1986 (51 FR 2732); and April 7, 1986 (51 FR 11576).

On January 26, 1987, USEPA proposed to: (1) Disapprove Indiana's TCP, unless the State provided additional supporting information; (2) defer action on the vehicle inspection and maintenance (I/M) portion of the Indiana plan; and (3) approve Indiana's ozone attainment demonstration for Lake and Porter Counties. This proposed approval of the attainment demonstration was based on (1) Indiana's adoption of Illinois' analysis of Volatile Organic Compound (VOC) emission reduction requirements necessary in the Chicago area; [2] and (2) Indiana's commitment to adopt sufficient VOC emission control measures in Indiana to achieve the percentage emission reduction requirement. The USEPA proposed to disapprove Indiana's ozone attainment demonstration if the State failed to adopt the necessary VOC emission control measures prior to USEPA's final rulemaking.

Following the January 26, 1987, proposed rulemaking, USEPA continued to review the Indiana ozone plan. These reviews were consolidated and summarized in a Technical Support Document (TSD), dated April 15, 1987. This TSD evaluated the status of the State's adoption and implementation of its stationary source Reasonably Available Control Technology (RACT) regulations for control of VOC emissions and reviewed the implications of the most recent 3 years (1984-1986) of ozone air quality data. USEPA concluded that full RACT regulation adoption and implementation were unlikely to occur by December 31, 1987, in Indiana (and Illinois) and that, based on air quality and VOC emissions estimates, the ozone NAAQS was unlikely to be attained by December 31, 1987, in the Chicago-Gary-Hammond area or downwind in Southeastern Wisconsin.

USEPA received additional Transportation Control Measure (TCM) materials on May 14, 1986, June 10, 1986, March 30, 1987 and April 6, 1987. In accordance with the January 26, 1987 proposal, these documents were to provide: (a) Sufficient documentation to support the basis for choosing to implement certain TCMs for the purposes of VOC emission reductions in Lake and Porter Counties, pursuant to section 108(f) of the Act; (b) a commitment to provide a yearly assessment of implemented TCMs in these two counties, including technical analysis of emission reductions resulting from the implementation of each measure or group of measures; (c) discussion of how the basic transportation needs of these counties were being met, including funding provisions and commitment for such needs; (d) sufficient documentation to support emission reduction benefits for the TCMs included in the State's 1982 TCP for Lake and Porter Counties (these TCMs include speed limit review, placing traffic signals on flash at certain lightly traveled intersections, removing unnecessary stop signs, carpooling, and vanpooling); and (e) a list of planned transportation measures and projects that might adversely affect air quality and that would be delayed if expected emission reductions or air quality improvements do not occur. In a TSD dated May 13, 1987, USEPA reviewed the information submitted by the State. USEPA concluded at that time that the State had provided all requested information and documentation concerning its TCP.

Based on its continuing review of the status of Indiana's adoption of VOC control measures and of the more recent ozone air quality data for the years 1984-1986, USEPA changed its position on the approvability of Indiana's overall ozone plan. On July 14, 1987 (52 FR 26439), USEPA proposed to: (1) Approve Indiana's TCP because the State had resolved the deficiencies noted in the January 26, 1987, proposed rulemaking; (2) approve the I/M portions of the Indiana plan, except for the I/M portions dealing with the funding of the enforcement elements of the program; (3) disapprove Indiana's ozone attainment demonstration for Lake and Porter Counties; and (4) find that Indiana's Lake and Porter Counties ozone plan as a whole did not adequately demonstrate attainment of the ozone NAAQS by the end of 1987 or a fixed near term date, and, therefore, did not meet the requirements of Part D of the Act.[3] Based on a lack of an acceptable ozone attainment demonstration, USEPA proposed to implement a construction ban on new and modified major VOC sources in

[1] The Chicago-Gary-Hammond urban 1982 ozone demonstration area (also sometimes referred to hereinafter as the greater Chicago area or the Chicago area) consists of Lake and Porter Counties in Indiana and Cook, DuPage, Kane, Lake, McHenry, and Will Counties in Illinois. Highest ozone levels resulting from emissions from this area were found in Racine and Kenosha Counties, Wisconsin, and Lake County, Illinois.

[2] VOCs photochemically react with other substances in the air to form ozone. The Illinois Environmental Protection Agency determined through ozone modeling that a VOC emission reduction of 46 percent from a 1979 baseline emissions level in the Chicago-Gary-Hammond urban demonstration area was required by 1987 to attain the ozone NAAQS in the demonstration area and its downwind environs.

[3] USEPA discussed the legal rationale for its disapproval of the Indiana ozone plan for Lake and Porter Counties in its General Preamble to the various SIP proposals issued on July 14, 1987. See 52 FR at 26404-26410.

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Lake and Porter Counties under section 110(a)(2)(I) of the Act. (USEPA also proposed to disapprove Indiana's plan for Floyd and Clark Counties and impose the construction ban there. USEPA will take further rulemaking action on Floyd and Clark Counties in a future notice.)

A number of comments were received by the USEPA regarding its July 14, 1987, proposed rulemaking. It is the purpose of this final rulemaking to respond to the public comments, to present information on relevant Indiana submittals subsequent to the July 14, 1987, proposal, and to announce USEPA's final rulemaking action. (USEPA will repropose rulemaking on the I/M portion of Indiana's plan in a future **Federal Register** notice.)

Since the proposed revised rulemaking on July 14, 1987 (52 FR 26439), USEPA has conducted reviews of Indiana's subsequent submittals which relate to the Indiana ozone plan for Lake and Porter Counties, Indiana. These reviews were consolidated and summarized in USEPA TSDs dated December 7, 1987, July 5, 1988, and September, 1988. The December 7, 1987, TSD reviewed public comments and suggested revisions to the rulemaking action, as appropriate, in response to the public comments. The July 5, 1988, TSD reviewed peak ozone concentrations for 1985 through 1987 for worst-case monitoring sites in the Chicago area and its downwind environs. USEPA concluded in the July 5, 1988, TSD and in a further addendum of September 1988, that, based on the magnitude and number of monitored exceedances of the ozone standard in Southeastern Wisconsin, violations of the ozone standard in the Chicago area would continue well beyond the 1987 attainment deadline, even if all of the stationary source RACT and I/M measures, that Illinois and Indiana were to adopt as a part of their plans, were fully adopted and implemented in the near term.

Comments on the Proposed Rulemaking

The following summarizes and responds to all public comments received in response to the July 14, 1987, proposed rulemaking on Indiana's Lake and Porter Counties ozone plan. Comments relating to the Indiana vehicle I/M program and Clark and Floyd Counties will be addressed in separate rulemaking actions.

Comment: As part of its basis for a SIP disapproval, USEPA cites violations of the ozone NAAQS in Southeastern Wisconsin, with violations believed to be due to emissions from the Chicago-Northwest Indiana area. USEPA proposed a major source construction ban in Northwest Indiana. The proposed construction ban in Northwest Indiana is expected to have little impact on ozone concentrations in Southeastern Wisconsin, because Chicago is currently under a construction ban, which has had little effect upon air quality in Northwest Indiana.

Response: As the commenter notes, there currently exists a construction ban on new and modified major sources of VOCs and CO which are located in the Illinois portions of the greater Chicago area designated nonattainment for these pollutants.[4] It is impossible to determine precisely the impact this construction ban has had on air quality conditions in the Chicago area.

Moreover, USEPA believes that, regardless of impact it must impose a construction ban on new and modified major sources of VOCs in Lake and Porter Counties, because it is disapproving the Indiana ozone plan for this area. Section 110(a)(2)(I) of the Act requires that each SIP prohibit the construction or modification of major sources of pollution in any nonattainment area whose SIP does not meet the requirements of Part D to Title I of the Act, sections 171–177. On July 2, 1979 (44 FR 39471), USEPA published a regulation that inserted the section 110(a)(2)(I) construction ban into SIPs that lacked them and clarified the scope of bans in SIPs that had them.

Under section 172 of the Act, Indiana's ozone SIP for Lake and Porter Counties was required to provide for attainment of the ozone NAAQS by December 31, 1987. Since USEPA has today decided that Indiana's plan did not provide for attainment by the statutory deadline or any fixed near-term date beyond the deadline, the plan does not meet the requirements of Part D. The section 110(a)(2)(I) construction ban on new or modified sources of VOCs located in Lake and Porter Counties therefore must be imposed.

Comment: The USEPA is warranted in disapproving the Indiana plan due to the State's administrative failure to adopt regulations covering coke oven by-product recovery emissions control. The USEPA, however, is not warranted in imposing third-party source construction bans as the solution to an administrative problem.

Response: See the response to the previous comment.

Comment: A commenter questioned the consistency of USEPA's actions. On January 26, 1987 (52 FR 2728), USEPA proposed to approve Indiana's ozone attainment demonstrations for Clark, Floyd, Lake, and Porter Counties, based on the State's commitments to adopt sufficient VOC control measures to achieve the ozone NAAQS by the end of 1987. On March 13, 1987, the Indiana Department of Environmental Management (IDEM) submitted its non-CTG RACT rules for marine vessel surface coating and wood furniture/cabinet coating to the USEPA for parallel processing. The rule had been preliminarily adopted by the Indiana Air Pollution Control Board (IAPCB). The State is progressing toward fulfilling its commitments to develop acceptable VOC control rules under its 1982 SIP revision.

USEPA's July 14, 1987, proposed rulemaking appears to prejudge Indiana's ability to meet the State's commitments by the end of 1987 or a fixed near term date. The commenter believes USEPA's July 14, 1987, proposed action is premature and inconsistent with previous proposals, especially given the State's recent progress.

Response: USEPA acknowledges that it proposed to approve Indiana's ozone attainment demonstrations for Lake and Porter Counties on January 26, 1987 (52 FR 2728), and then on July 14, 1987 (52 FR 26442), proposed to disapprove these demonstrations. This reversal in positions was due to the availability of new ozone air quality data for the Chicago area that persuaded USEPA that, even when VOC control measures adopted prior to July 1987 were considered, VOC emissions in Indiana would not be reduced enough to provide for attainment of the ozone NAAQS by December 31, 1987, or any near-term date thereafer. The July 14, 1987, proposed rulemaking (and today's final disapproval of the ozone attainment demonstrations for Lake and Porter Counties) does not in any way prejudge Indiana's ability to ultimately adopt rules that will provide for attainment and maintenance of the ozone NAAQS.

It is true that during the past 15 months Indiana has continued to submit stationary source RACT rules to USEPA that will, when implemented, result in further VOC emissions reductions. However, the 1985 through 1987 ozone air quality data confirm that attainment by a near-term date and maintenance will not occur with only the measures that Indiana and Illinois have previously committed to adopt and implement in the near term. Based on this, on May 26, 1988, USEPA issued a notice of SIP deficiency under section 110(a)(2)(H) of the Act to Indiana for ozone for Lake and Porter Counties.

[4] Prior to today, EPA's imposition of the section 110(a)(2)(I) construction ban was due solely to the lack of an approved Illinois Part D new source review program. EPA's disapproval today of the Illinois SIP for ozone in the Chicago area now serves as an additional basis for the construction ban or new and modified sources of VOCs, however.

Comment: The IDEM commented that it would maintain an expeditious track for final resolution of deficient elements in its ozone plan. IDEM presented the following schedule for rule development and promulgation:

Limitation of Benzene Emissions from Coke Oven By-Product Recovery Plants: This rule was preliminarily adopted by the IAPCB on July 1, 1987, and submitted to the USEPA for parallel processing on July 17, 1987. IDEM reviewed public comments from a hearing held on August 26, 1987. The provisions of the rule were to be presented for final IAPCB adoption on November 4, 1987. Following final IAPCB adoption on November 4, 1987, the rule was to be sent to the USEPA as a SIP revision.

Indiana postponed rule development for coke oven by-product recovery plants, in anticipation of Federal adoption and promulgation of a National Emission Standard for Hazardous Air Pollutants (NESHAP) rule for this source category. This promulgation is behind schedule. Even though USEPA's delay is not cause for Indiana's inaction, any State attempt to develop a parallel set of rules for these plants would no doubt be frustrated by the potential for inconsistency with any eventual Federal rule and by the complexity of these plants. Nevertheless, Indiana did adopt and will initiate implementation of a coke oven by-product recovery plant rule. Although it was not possible to implement the controls required by the rule before December 31, 1987, the State believes it is requiring emission reductions as expeditiously as practicable.

Response: As IDEM noted, any delay in promulgation of a federal NESHAP for coke oven by-product recovery plants did not excuse Indiana from placing emission controls on these sources of VOCs (or other sources of VOCs with equivalent reductions) by December 31, 1987. Indiana submitted its coke oven by-product recovery plant rule to USEPA on April 11, 1988. (This rule will be the subject of future rulemaking by USEPA.) Even if the rule is fully approved, however, recent ozone air quality data demonstrate that the resulting decrease in VOC emissions from these sources will not lower Indiana VOC emissions sufficiently to provide for attainment and maintenance of the ozone standard in the greater Chicago area in the near-term future.

Comment: A final disapproval of Indiana's 1982 ozone plan seems to be inconsistent with the likely contents of USEPA's post-1987 ozone policy, which will recognize good faith efforts.

Response: USEPA has not yet published its final policy on treatment of areas that did not attain the ozone NAAQS by December 31, 1987, the statutory deadline. USEPA is currently reviewing public comments on its proposed post-1987 ozone policy, which was published on November 24, 1987 (52 FR 45044). It is therefore impossible to judge the contents of the final policy.

Contrary to the commenter's suggestion, however, USEPA's disapproval of the attainment demonstration (and, therefore, the plan) for Lake and Porter Counties is fully consistent with the proposed policy. USEPA stated in the proposed policy that it "believes that the Act permits USEPA to grant full approval to a plan * * * only if it includes a persuasive demonstration that the affected area will attain the relevant standard by a fixed date in the near term." See 52 FR 45049, col. 3. The Indiana ozone plan failed to provide for attainment of the NAAQS in the Chicago area by December 31, 1987, nor does it contain a persuasive demonstration that the area will attain the standard in the near-term, with maintenance thereafter. Thus, USEPA's action to disapprove the Indiana ozone plan is not inconsistent with the proposed post-1987 ozone policy.

Comment: A commenter noted that, through the promulgation process for the proposed National Emission Standard for Hazardous Air Pollutants (NESHAP) for coke oven by-product recovery plants, Indiana has abdicated most of its responsibility for the Lake and Porter Counties' ozone SIP to the Federal Government. Such an action does not constitute reasonable and satisfactory progress. Therefore, it recommended that USEPA take all available steps to obtain the required VOC reductions.

Response: USEPA agrees that Indiana's delay in adopting emissions controls for VOC emissions from coke oven by-product recovery plants has impeded progress in reducing VOC emissions in the State. Indiana did, however, adopt a coke oven by-product recovery rule on February 3, 1988, and submitted the rule to USEPA for its approval on April 11, 1988. USEPA currently is reviewing the rule, and will decide upon its adequacy in a separate rulemaking in the future.

Comments: A commenter requested that its comments submitted in response to USEPA's January 26, 1987, proposed rulemaking on the Indiana SIP, be incorporated with comments on the July 14, 1987, proposed rulemaking. These incorporated comments are summarized as follows:

a. Based on Indiana's failure to achieve a sufficient VOC emission reduction to attain the ozone NAAQS by December 31, 1987, it is recommended that USEPA disapprove the Lake and Porter Counties' ozone plan.

b. If the Indiana plan is disapproved, USEPA should impose sanctions against Lake and Porter Counties.

c. USEPA, under section 110(c) of the Act, should promulgate an approvable ozone control plan for Lake and Porter Counties.

d. Tardiness on the part of Indiana to develop an approvable plan for Northwestern Indiana, as well as USEPA's lack of diligence in assuring that Indiana complete its SIP development, raises significant doubts about attainment of the ozone NAAQS by December 31, 1987.

e. The ozone demonstration of attainment for Lake and Porter Counties is overwhelmingly based upon the Federal promulgation of a NESHAP for coke oven by-product recovery plants. The 95,316 kilograms of VOC/day emission reduction projected to occur between 1979 and 1987 for this source category is 80 percent of the 1979 through 1987 VOC emission reduction in Indiana required to attain the ozone NAAQS in Lake and Porter Counties. There is no assurance that the NESHAP will be promulgated by USEPA in time to assure attainment of the NAAQS. In addition, USEPA anticipates that almost all affected facilities will apply for a waiver of up to 2 years from compliance requirements. Northwest Indiana will realize little, if any, VOC reduction from the Indiana plan's predominant control measure by the 1987 attainment deadline.

f. The Indiana Air Pollution Control Board (IAPCB), in an October 25, 1985, letter to the USEPA, states that, should a delay occur in the USEPA promulgation of the coke oven by-product recovery plant NESHAP, Indiana would "commit to evaluate and adopt, as necessary, a mix of control strategies to assure that the required (VOC emission) reduction would be achieved." The IAPCB listed the potential control strategies as State regulation of coke oven by-product recovery plants, Stage II vapor recovery (gasoline service station vehicle refueling emissions), expansion of the applicability of current VOC RACT rules to smaller sources, control of consumer solvent use, and control of architectural surface coating emissions.

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However, mid-March 1987 discussions between IAPCB and USEPA indicated that Indiana had yet to take any action on any of these strategies, despite USEPA's delay in promulgating the NESHAP. The State had committed to evaluate and adopt alternate control measures if USEPA did not promulgate the NESHAP by January 1986. The commenter questions the original intent and sincerity of Indiana's SIP commitments.

g. In an October 22, 1985, submittal, Indiana takes credit for emission reductions from RACT III and RACT IV (major source non-CTG RACT). The commenter questions the legitimacy of this emission reduction credit because the State has yet to develop rules for any RACT III or RACT IV sources in Lake and Porter Counties.

h. The October 22, 1985, submittal lists VOC emission credits from stationary and area source emissions inventory decreases. The commenter believes this claim runs counter to the development of a SIP that accommodates growth. A Reasonable Further Progress (RFP) report must document such emission decreases. No such documentation exists at this time. An RFP report is required by the Act. Approval of the Indiana plan without this documentation is not acceptable.

i. Full source compliance with any VOC control rule before December 31, 1987, is a prerequisite to claiming VOC reduction credits for the ozone SIP. The VOC control commitments contained in an October 25, 1985, Indiana submittal will not be fulfilled before the attainment deadline.

j. Indiana decided to abdicate much of its ozone SIP development responsibility for Lake and Porter Counties to the Federal Government by allowing the proposed NESHAP for coke oven by-product recovery plants to become the overwhelmingly major VOC control strategy for these two counties. However, when this regulation failed to materialize in a timely fashion, Indiana has not taken the initiative to follow through on the necessary commitments made in an October 25, 1985, submittal. (This is similar to point f. above.)

k. Based on available evidence, the commenter was convinced that the Indiana plan's attainment demonstration could not be met by the December 31, 1987, deadline date. The commenter recommends that the entire Indiana 1982 ozone plan for Lake and Porter Counties be proposed for disapproval based on the State's failure to comply with sections 110 and 172 of the Act. It appears that Indiana may act to correct its plan if the USEPA proposes to disapprove the SIP revision.

Responses: a. As indicated in the July 14, 1987, proposed rulemaking, further evaluation of 1984 through 1986 ozone concentrations in the Chicago and southeastern Wisconsin area led the USEPA to conclude that the ozone standard would not be attained in the Chicago-Gary-Hammond ozone demonstration area, which includes Lake and Porter Counties, Indiana, until well after December 31, 1987. Peak ozone concentrations monitored during the time period 1985 through 1987 at worst case sites in the greater Chicago area showed that the 1-hour ozone standard has been violated in the 3 most recent years of quality-assured data collection. The magnitude of the exceedances, particularly those monitored in the City of Waukegan (Lake County, Illinois), Racine County (Wisconsin), and Kenosha County (Wisconsin), are such that USEPA does not expect the ozone NAAQS to be attained in the Chicago area by any date in the near-term future. Thus, USEPA must disapprove Indiana's ozone plan for Lake and Porter Counties.

b. In its July 14, 1987, proposal disapproval of the Indiana plan, USEPA proposed to impose a construction ban on new and modified sources of VOCs in the non-attainment areas, as is required by section 110(a)(2)(I) of the Act. Consistent with that proposal, USEPA is imposing the construction ban in Lake and Porter Counties with today's notice. USEPA believes that the imposition of other sanctions (based on the other alleged State failures to which the commenter refers) is not appropriate at this time, but is continuing to evaluate the necessity for these sanctions.

c. USEPA is currently a defendant in a lawsuit brought by the State of Wisconsin, in which Wisconsin seeks an order requiring USEPA to promulgate a federal implementation plan (FIP) under section 110(c) of the Act for the Indiana and Illinois portions of the Chicago nonattainment area. See *Wisconsin v. Thomas*, Civil Action No. 87–C–0395 (E.D. WI). Based on USEPA's disapproval of the Indiana ozone plan today for failure to provide for attainment of the ozone NAAQS and on USEPA's May 26, 1988, issuance of a notice of SIP deficiency, USEPA believes it now could begin work preparatory to promulgating a FIP for the Indiana portion of the Chicago nonattainment area. In any case, however, the question of whether USEPA should proceed with a FIP for this area is outside the scope of today's rulemaking.

d. As noted in the July 14, 1987, proposed rulemaking, USEPA believes that Indiana's delay in adopting and implementing required VOC control measures is partially responsible for the greater Chicago area's failure to attain the ozone NAAQS by December 31, 1987. This belief has been substantiated by 1985 through 1987 monitoring data cited in the USEPA TSD dated July 5, 1988.

e. USEPA agrees that the NESHAP for coke oven by-product recovery plants was not promulgated in time to assist in attainment of the ozone NAAQS by December 31, 1987. USEPA also agrees that it is possible that the coke oven by-product recovery plant facilities affected by the NESHAP or by Indiana's non-CTG RACT rule may apply for a temporary waiver from compliance with either rule. However, rulemaking on USEPA's NESHAP is on a substantially slower path than Indiana's rule and will not affect the Indiana plan (nor attainment of the ozone standard) in the near future. Further, although no source to date has requested a delay in implementing Indiana's rule, the rule does not require final compliance with all of its requirements until December 31, 1990, and, thus, did not provide needed emission reductions by December 31, 1987. USEPA will rulemake on Indiana's coke oven by-product recovery plants rule in future notices.

f. USEPA sees little to be gained by questioning the original intent of Indiana's SIP commitments. USEPA, however, does agree with the commenter that Indiana has failed to carry out many commitments made in its finally adopted SIP revision dated October 25, 1985, in a timely fashion.

g. USEPA agrees that the emission reductions claimed for RACT III and major source non-CTG RACT in the Indiana plan (which are essentially those from the coke oven by-product recovery plant rule) were not fully achieved by December 31, 1987, and still have not been achieved to date. This failure is one of the reasons why USEPA is disapproving Indiana's demonstration of attainment today.

h. USEPA disagrees that the lack of an RFP report is an adequate basis for the disapproval of an ozone SIP revision. A SIP revision provides a plan and related commitments for a future attainment of a NAAQS. An RFP report is needed *after* a SIP is adopted to track the progress towards attaining a NAAQS. An RFP report may point toward needed mid-course SIP revisions. Indiana has submitted annual air quality reports. Such air quality reports may be a component of RFP reports, which should also track emission changes

i. USEPA disagrees that full source compliance with a VOC control rule, prior to December 31, 1987, is a prerequisite for accepting a claimed emission reduction credit. Delay in compliance simply delays when credit for an emission reduction can be applied towards an ozone demonstration of attainment. Such a delay can jeopardize an approval of a demonstration of attainment by causing a delay in NAAQS attainment beyond a specified deadline. USEPA agrees that many of the VOC emission control commitments made in Indiana's October 25, 1985, submittal were not fulfilled by December 31, 1987. Further, even when these reductions are obtained, ozone data from 1985–1987 indicate that the greater Chicago area will still not attain the ozone NAAQS without further reductions. This is one reason why USEPA is disapproving Indiana's 1982 ozone plan today. Also, USEPA notified the Governor of Indiana of the SIP's inadequacy by issuing a notice of ozone SIP deficiency under section 110(a)(2)(H) of the Act for Lake and Porter Counties, *inter alia*, on May 26, 1988.

j. USEPA agrees. See responses f and g, above.

k. USEPA agrees that it must disapprove the Indiana ozone SIP revision for failure to provide for the attainment and maintenance of the ozone NAAQS by the December 31, 1987, deadline or any other fixed date in the near-term. This is the action proposed by USEPA on July 14, 1987, and made final today.

Vehicle Inspection and Maintenance (I/M)

This portion of the Indiana plan will be addressed in separate rulemaking.

Final Rulemaking Action

In consideration of Indiana's 1982 ozone plan and the public comments received in response to USEPA's July 14, 1987, (52 FR 26439) proposed rulemaking, USEPA takes the following final actions.

1. Indiana's Ozone Transportation Control Plan is approved.

2. The ozone attainment demonstration for Lake and Porter Counties, Indiana is disapproved.

3. The overall ozone plan for those counties is disapproved. (USEPA is retaining, however, its previous approval of the various individual measures in the Indiana ozone SIP, because they are effective means to limit VOC emissions and, thus, minimize the frequency and magnitude of ozone violations in the greater Chicago area. These measures remain federally enforceable.)

4. A construction ban on new and modified major sources of VOCs located in Lake and Porter Counties, Indiana, is hereby imposed as provided for by section 110(a)(2)(I) of the Act.

Regulatory Impact

Under Executive Order 12291 today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V Office listed above.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate Circuit by January 17, 1989. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Date: September 30, 1988.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(68) and (c)(69) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(68) On December 2, 1983, Indiana submitted its transportation control plans as an element in its ozone strategy for Lake and Porter Counties. Further information was submitted on June 10, 1986.

(i) *Incorporation by reference.* (A) Chapter 7, Mobile Source Strategies and Reductions, Sections A.1.a., 2, and 3 and Exhibits 7–1 and 7–3 of Indiana's 1982 ozone and carbon monoxide plan, as adopted by the Indiana Air Pollution Control Board at its November 2, 1983, meeting.

(B) [Reserved]

(ii) *Additional material.* (A) On June 10, 1986, Indiana submitted a May 23, 1986, letter from the Northwestern Indiana Regional Planning Commission discussing the Lake and Porter Counties' transportation control plans and their implementation.

(B) [Reserved]

(69) On December 2, 1983, Indiana submitted its ozone plan for Lake and Porter Counties, as adopted by the Indiana Air Pollution Control Board on November 2, 1983. On March 2, 1984, Indiana submitted as its attainment demonstration for Lake and Porter Counties, Illinois' attainment demonstration for the greater Chicago area. The greater Chicago attainment demonstration, as submitted by Indiana, and Indiana's overall ozone plan for Lake and Porter Counties is disapproved. See §§ 52.773(i) and 52.777(d). The disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Indiana's ozone plan, and they remain approved. See § 52.770(c) (20), (21), (29), (33), (38), (39), (55), (58), and (59).

3. Section 52.773 is amended by adding paragraph (i) to read as follows:

§ 52.773 Approval status.

* * * * *

(i) The Administrator finds that Indiana's ozone plan for Lake and Porter Counties, which was required to be submitted by July 1, 1982, does not satisfy all the requirements of Part D, Title I of the Clean Air Act and, thus, is disapproved. See §§ 52.770(c)(69) and 52.777(d). No major stationary source, or major modification of a stationary source, of volatile organic compounds may be constructed in Lake and Porter Counties, unless the construction permit application is complete on or before December 19, 1988. The disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Indiana's ozone plan, and they remain approved.

4. The introductory text of § 52.777(c) is amended by adding the date "1979" between the word "The" and the continuation of the sentence: "Indiana plan for Clark * * *".

5. Section 52.777 is amended by adding paragraph (d) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(d) *Part D—Disapproval.* The 1982 Indiana plan for Lake and Porter County is disapproved because it does not assure the attainment and maintenance of the NAAQS there. See

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§§ 52.770(c)(69) and 52.773(i). No major stationary source, or major modification of a stationary source, of volatile organic compounds may be constructed in Lake and Porter Counties, unless the construction permit application is complete on or before December 19, 1988. The disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Indiana's ozone plan, and they remain approved.

* * * * *

[FR Doc. 88-23473 Filed 11-17-88; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[FRL-3478-5]

Delegation of Authority to the State of New Mexico for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The Environmental Protection Agency (EPA) announces the delegation of full authority to the State of New Mexico to implement and enforce additional source categories of the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) including the subsequent revisions and amendments to the standards for which full authority had been delegated to the State by the previous delegation agreement of March 15, 1985. The last coverage update of the delegation agreement was approved on February 2, 1988, and a notice of it was published in the **Federal Register** (53 FR 3891). Based on the State's request of July 15, 1988, the EPA has now granted full authority to the State for the NSPS and NESHAP through January 28, 1988, applicable only in certain areas of the State.

This delegation of authority does not apply to the sources located in Bernalillo County, New Mexico, or to the sources located on Indian lands as specified in the delegation agreement and in this notice. This delegation of authority is not applicable to the NESHAP radionuclide standards specified under 40 CFR Part 61.

EFFECTIVE DATE: November 10, 1988.

ADDRESSES: The State's request and delegation agreement may be requested by writing to one of the following addresses:

Chief, SIP New Source Section (6T-AN), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone: (214) 655-7214.

Chief, Air Quality Bureau, New Mexico Environmental Improvement Division, P.O. Box 968, Santa Fe, New Mexico 87504-0968, Telephone: (505) 827-0020.

All other requests, reports, applications and such other communications which are required to be submitted under 40 CFR Part 60 and 40 CFR Part 61 (including the notifications required under Subpart A of the regulations) for the affected facilities, in areas outside of Indian lands or Bernalillo County, should be sent directly to the State of New Mexico at the above address. Sources located on Indian lands or in Bernalillo County, should submit the information specified above to the EPA Region 6 Office at the address given in this notice.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., SIP New Source Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone number (214) 655-7214.

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allows the Administrator of the EPA to delegate EPA's authority to any State which can submit adequate regulatory procedures for implementation and enforcement of the NSPS and NESHAP programs.

On October 19, 1984, New Mexico requested full delegation of authority for the implementation and enforcement of NSPS through March 14, 1984, and NESHAP through December 9, 1983. The State also requested partial delegation of authority for the technical and administrative review of new or amended NSPS and NESHAP in the October 19, 1984 letter. The delegation request was granted to the State subject to the conditions and limitations specified in the delegation agreement which was approved on March 15, 1985. The March 15, 1985, delegation agreement provided full authority for the State to implement and enforce the NSPS and NESHAP through March 14, 1984, and December 9, 1983, respectively. Also, the State received partial authority for implementation of NSPS and NESHAP subparts effective after the specified dates in the State regulations and for amendments of fully delegated NSPS and NESHAP subparts after the dates specified above. The State's authority was approved only for the areas outside of Indian lands and Bernalillo County. The last coverage update of the delegation agreement was approved on February 2, 1988, and a notice of it was published in the **Federal Register** (53 FR 3891).

On July 15, 1988, the NMEID requested the EPA to grant full authority for additional source categories and amendments to the fully delegated NSPS and NESHAP subparts by extending the coverage date through January 28, 1988, for the NSPS and NESHAP. Based on review of State's Air Quality Control Regulations (AQCR) 750 (for NSPS) and 751 (for NESHAP), the EPA delegated full authority to the State as requested in the letter of July 15, 1988. AQCRs 750 and 751 incorporate the Federal NSPS and NESHAP by reference through the date specified above. The provisions and conditions specified in the March 15, 1985, delegation agreement shall remain unchanged and effective except the revision of the appropriate dates as cited above. The revised authorized dates have been listed in Table 1 for NSPS and Table 2 or NESHAP. These tables noting the revise effective dates have been approved by the Regional Administrator, and are thereby incorporated as part of the March 15, 1985, delegation agreement. This delegation of authority is not applicable to the NESHAP radionuclide standards specified under 40 CFR Part 61.

Today's notice informs the public that the EPA has expanded the State's full authority to implement and enforce the NSPS and NESHAP through January 28, 1988. All reports required pursuant to the Federal NSPS and NESHAP (40 CFR Part 60 and 40 CFR Part 61) by sources located in the State of New Mexico, in areas outside of Indian lands or Bernalillo County, should be submitted directly to the New Mexico Health and Environment Department, Environmental Improvement Division, Air Quality Bureau, P.O. Box 968, Santa Fe, New Mexico, 87504-0968. Sources located on Indian lands or in Bernalillo County, should apply to the EPA Region 6 Office at the address given in this notice.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

This delegation is issued under the authority of sections 111(c) and 112(d) of the Clean Air Act, as amended (42 U.S.C. 7411(c) and 7412(d)).

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Fossil-fuel fired steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Fertilizer, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Date: November 10, 1988.

Robert E. Layton Jr.,
Regional Administrator.

[FR Doc. 88-26730 Filed 11-17-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[Gen Docket No. 85-301; FCC 88-331]

Standards for Cable System Terminal Devices

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The Commission revises its recently adopted regulations in GEN Docket 85-301, concerning standards for cable system terminal devices. This action is taken in response to petitions for reconsideration filed by the General Instrument Corporation, the National Cable Television Association, Oak Communications, Inc. and Scientific-Atlanta, Inc. The objective is to diminish the economic impact that the new regulations might have had on some businesses, and to modify the technical specifications recently adopted for cable system terminal devices to account for the design variations currently found in the marketplace for such products.

EFFECTIVE DATE: December 16, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Liliane Volcy, Technical Standards Branch, Office of Engineering Technology, tel: (202) 653-7316 or 653-6288.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum, Opinion, and Order, Gen Docket 85-301, FCC 88-331, adopted October 13, 1988, released November 9, 1988.

The full texts of the Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Memorandum, Opinion, and Order

1. By this Memorandum, Opinion, and Order, the Commission revises its standards recently adopted for cable system terminal devices ("CSTDs") under Parts 15 and 76 of its Rules. This action is taken in response to petitions for reconsideration filed by the General Instrument Corporation, the National Cable Television Association, Oak Communications, Inc., and Scientific-Atlanta, Inc. The petitioners have requested that the Commission reconsider its new regulations adopted in the *Report and Order*, 52 FR 22459 (June 12, 1987), in particular with respect to radiated emission limits, output signal limits, authorization procedures, and the rights of cable system operators. The Commission concludes that reconsideration of its decision in the *Report and Order* is warranted in part, and, therefore, amends its rules.

2. The Commission finds that most of the requests made by the petitioners stem from the need for additional clarification of the Commission's actions in the *Report and Order*, or for a more gradual implementation of the regulations. In response to the petitions for reconsideration filed, changes are being made to the new rules as follows: (1) CSTDs are placed under notification instead of certification; (2) the technical standards for CSTDs are to be applied in a more gradual phase-in period with some relaxation of the conducted output limits, in particular for heterodyne CSTDs; (3) the rights of cable system operators to disconnect interfering CSTDs are more clearly defined; and (4) other terminal devices with similar operating characteristics as CSTDs are to be subject to the same technical requirements. Part 15, Subpart H is rewritten in its entirety to avoid any possible confusion regarding the applicability of the regulations to cable system terminal devices or other types of TV interface devices. In addition, changes recently made in Part 15, Subpart H, in Gen Docket 87-107, are incorporated in this *Memorandum, Opinion, and Order*. These changes concern the use of cable input selector switches.

3. Moreover, the Commission notes that the problem outlined by the petitioners are not restricted to CSTDs used with cable systems, but apply to TV interface devices used with a Master Antenna. These devices have similar operating characteristics as CSTDs, and will be treated in a similar fashion as CSTDs.

Procedural Matters

4. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's revised final analysis is as follows:

I. Need For and Purpose of the Rules

The Commission's rules inconsistently apply different standards to cable system terminal equipment based on their ownership and design considerations. These differences range anywhere from the technical standards themselves, to the operating conditions, and authorization requirements. The purpose of the rules adopted herein is to overcome these discrepancies.

II. Summary of Issues Raised by Petitioners in Response to the Final Regulatory Flexibility Analysis, Commisssion Assessment and Changes Made as a Result.

A. Issues Raised

No petitioning or commenting parties specifically addresses the final regulatory flexibility analysis. However, most petitioning parties did address the probable economic burden that they would incur as a result of the new regulatory plan. The necessary design modifications on cable system terminal equipment would not only have an impact on the manufacturing industry, but on the subscriber as well. The petitioners estimated that the additional circuitry needed to bring equipment into compliance with the new regulations would increase the retail cost of a unit anywhere from 12% to 40%. Such an impact would be considerable when up to 75% of the equipment would need to be modified. The revised regulatory plan is expected to resolve these concerns.

B. Assessment

The revised regulatory plan will reduce the burden of compliance significantly since it will be implemented more gradually and will not require manufacturing companies to redesign their products immediately, if redesign is necessary. Although the revised regulatory plan will still impose certain burdens on manufacturing companies, these burdens are the minimum necessary to ensure that terminal devices are more readily available and that such devices do not cause interference.

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C. Changes Made as a Result of Petitions and Comments

While no reconsideration or comments concerning the final regulatory flexibility analysis were filed, alternate regulatory plans were presented. Our revised plan takes these suggestions into account and considers the impact of our regulations on business entities (small included) in both the cable and manufacturing industries. The impact of the revised plan will be easier for the manufacturing industry, in particular, to absorb since it will be implemented over a relatively long period of time, and will permit existing inventories to be depleted.

III. Significant Alternatives Considered and Rejected

We have considered all the arguments and alternatives presented in the petitions and comments applicable to the *Report and Order*. After consideration of the issues raised herein, we have revised the rules to resolve the petitioners' concerns where possible, consistent with our objective of ensuring that cable system terminal equipment does not cause interference to authorized radio services.

5. The Secretary shall cause a copy of this *Memorandum, Opinion, and Order* to be sent to the Chief Counsel for Advocacy of the Small Business Administration.

6. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget by that Act.

Ordering Clauses

7. Pursuant to the authority contained in sections 4(i) and 303 of the Communications Act and Section 1.106 of the Commission's Rules, *It Is Ordered* That the petitions for reconsideration of the *Report and Order* filed by parties named herein *Are Granted* to the extent indicated above, and *Are Denied* in all other respects. In addition *It Is Ordered* That Parts 15 and 76 be amended, as shown below, effective December 19, 1988.

8. *It Is Further Ordered* That this proceeding *Is Terminated.*

List of Subjects

47 CFR Part 15

Communications equipment.

47 CFR Part 76

Cable television.

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 is revised to read as follows:

Authority: Secs. 4, 302, 303 and 307 of the Communications Act of 1934, as amended; 47 U.S.C. 154, 302, 303 and 307.

2. Section 15.4 is amended by revising paragraph (u), and by adding a paragraph (x) to read as follows:

§ 15.4 General definitions

* * * * *

(u) *TV interface device:* A restricted radiation device that produces or translates in frequency a radio frequency carrier modulated by a video signal derived from an external or internal signal source, and which feeds the modulated radio frequency energy by conduction to the antenna terminals of a television receiver. Examples of TV interface devices are video cassette recorders, and terminal devices attached to a cable system or used with a Master Antenna (including those used for central distribution video devices in apartment or office buildings).

Note: A TV interface device may be a stand-alone RF modulator, or a composite device consisting of an RF modulator, video source and other components devices.

* * * * *

(x) *Cable system terminal device:* A TV interface device that serves, as its primary function, to connect a cable system operated under Part 76 of this Chapter to a television receiver or other subscriber premise equipment. Any device which functions as a cable system terminal device in one of its operating modes must comply with the technical requirements for such devices when operating in that mode.

* * * * *

3. Subpart H of Part 15 of Title 47 of the Code of Federal Regulations is revised to read as follows:

Subpart H—TV Interface Devices (Cable System Terminal Devices) and Associated Accessories

Sec.
15.602 Cross reference.
15.604 General operating conditions.
15.606 Additional operating conditions for cable system equipment.
15.608 Equipment authorization.
15.610 Specific authorization requirements for TV interface device kits.
15.612 Composite devices.
15.614 Compliance schedule.
15.620 General technical requirements.
15.622 Field strength limits.
15.624 Conducted voltage limits.
15.626 Output signal limits.
15.630 Transfer switch requirements.
15.640 Identification of equipment.
15.642 Identification of TV interface device kits.
15.644 Information to the user for cable system terminal devices.
15.646 Requirements for wires and coaxial cables.
15.650 Methods of measurements.

§ 15.602 Cross reference.

The provisions of Subparts A and B of this part and Subparts I, J and K of Part 2 of this chapter shall apply to a TV interface device. Also, a cable system terminal device and a cable input selector switch shall be subject to the relevant provisions of Part 76 of this chapter.

§ 15.604 General operating conditions.

(a) Operation of a TV interface device is subject to the general operating conditions set forth in § 15.3 of this part.

(b) The operator of a TV interface device shall promptly stop operating the device when that operator is advised by the Commission that the TV interface device is causing harmful interference, and shall not resume its operation until the condition causing the harmful interference has been corrected.

(c) A TV interface device shall at all times comply with the requirements of this subpart.

§ 15.606 Additional operating conditions for cable system equipment.

The provisions of Part 76 of this chapter concerning responsibility for interference shall apply to cable system terminal devices and cable input selector switches.

§ 15.608 Equipment authorization.

(a) A device operating under the provisions of this subpart shall be authorized pursuant to Subpart J of Part 2 of this chapter showing compliance with the technical specifications in this subpart. To determine compliance, a device must be fully exercised with all the external devices and accessories that are intended to be used with it.

Type of device	Authorization.
TV interference device, unless otherwise specified.	Certification.
Cable system terminal device	Notification.
Stand-alone cable input	Verification.

(b) An external device or accessory that is intended to be attached to a TV interface device shall comply with the technical and administrative requirements set out in the rules under which it operates. For example, a personal computer must be certificated to show compliance with Subpart J of this part.

(c) A device operating under the provisions of this subpart that is submitted to the Commission as a composite device in a single enclosure containing an RF modulator, video source and other component devices shall be submitted on a single application (FCC Form 731) and shall be authorized as a single device.

§ 15.610 Specific equipment authorization requirements for TV interface device kits.

A TV interface device marketed as a kit shall comply with the following requirements:

(a) All parts necessary for the assembled TV interface device to comply with the technical requirements of this subpart must be supplied with the kit. No mechanism for adjustment that causes operation in violation of the requirements of this subpart shall be made accessible to the builder.

(b) Assembly of two TV interface device units of a specific type shall be made in accordance with the instructions being supplied with the product being marketed. If all components required to fully complete the kit (other than those specified in paragraph (a) of this section) are not normally furnished with the kit, assembly shall be made using the recommended components. The assembled unit shall be authorized as any other TV interface device.

(c) The measurement data required for equipment, authorization shall be obtained for both of these units and submitted, when required, with an application for authorization.

(d) A copy of the exact instructions that are provided for assembly of the device shall be submitted with the application for authorization in addition to other material required in Part 2 of this chapter.

§ 15.612 Composite devices.

A composite TV interface device shall comply with the requirements of this subpart, except for the following:

Type of composite TV interface device.	Applicable technical standards.
TV interference device with TV broadcast tuner and antenna terminals, unless otherwise specified.	Subpart C of Part 15 for TV broadcast tuner (including all-channel requirements of §§ 15.65–15.68) and Subpart H of Part 15.
TV interface device with field disturbance sensor.	Subpart F of Part 15 for sensor emanations and Subpart H of Part 15 for other emanations whichever are higher for each frequency.
Cable system terminal device with TV broadcast tuner and antenna terminals.	Subpart H of Part 15 and all-channel requirements of §§ 15.65–15.68.
Cable system terminal device with a low power communication device.	Subpart H of Part 15 and emanation limits for the low power communication device whichever are higher for each frequency.

§ 15.614 Compliance schedule.

(a) *For TV interface devices.* TV interface devices that have been type approved as Class I TV devices prior to April 28, 1983, and that have been labeled with an FCC type approval number may be marketed and operated indefinitely subject only to the non-interference and general requirements of §§ 15.3, 15.604 and 15.620. TV interface devices that have been authorized as such prior to April 28, 1983 by a grant of a waiver of the Rules, may continue to be marketed and operated under the provisions of this subpart without further action on the part of the grantee.

(b) *For cable system terminal devices.* Cable system terminal devices manufactured or imported on and after July 1, 1990 shall comply with the provisions of this subpart. Cable system terminal devices manufactured or imported prior to July 1, 1990, shall have the option of complying either with the provisions of this subpart or with the technical specifications of Part 76 of this chapter.

(c) *For cable input selector switches.* Stand-alone mechanical switches manufactured or imported on or after August 19, 1988, and stand-alone electronic switches manufactured or imported on or after October 28, 1988, shall be subject to the provisions of this subpart. Switches manufactured or imported prior to the dates given in this paragraph need only to comply with the provisions of § 15.3 and Part 76 of this chapter.

§ 15.620 General technical requirements.

(a) A TV interface device shall incorporate circuitry to automatically prevent emanations from the device from exceeding the technical specifications in this subpart. These circuits shall be adequate to accomplish their function when the TV interface device is presented, if applicable, with video input signal levels in the range of 1 to 5 volts; this requirement is not applicable to TV interface devices that use RF input signals or that incorporate built-in signal sources and have no provisions for the connection of external signal sources.

(b) The TV interface device must be so constructed that adjustments of any control accessible to the user will not cause operation in violation of the requirements of this subpart.

(c) The TV interface device shall be designed and constructed, to the extent practicable, so as to preclude the possibility that the consumer may inadvertently attach the output of the device to the receiving antenna, if any.

§ 15.622 Field strength limits.

The field strength of any electromagnetic energy radiated from the cabinet, control circuitry and power leads of a device including that radiated from any associated accessories or attachments shall not exceed the following limits:

Frequncy (MHz)	Field strength measured CISPR quasi-peak (uV/m at 3 meters)
30–88	100
88–216	150
216–1,000	200

Notes: 1. The lower limit shall apply at the edge of two frequency bands.

2. The output terminal of a device shall be terminated by a resistance equal to the rated output impedance.

§ 15.624 Conducted voltage limits.

The RF voltage measured between each power line and ground at the power terminals of a TV interface device shall not exceed 250 microvolts at any frequency between 450 kHz and 30 MHz, inclusive.

§ 15.626 Output signal limits.

(a) The output signals of a TV interface device shall be coupled to the TV receiver by either wires or coaxial cable.

(b) The voltage corresponding to the peak envelope power of the modulated signal during maximum amplitude peaks across a resistance (R ohms) matching the impedance of a TV interface device shall not exceed the following:

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Type of equipment	Maximum voltage measured RMS (microvolts)	
	Video	Audio
TV interface device, unless otherwise specified.	346.6 square root(R).	77.5 square root(R).
Terminal device attached to a cable system or used with a Master Antenna (including those used for central distribution in apartments or office buildings).	692.8 square root(R).	155 square root(R).

(c) At any RF output terminal, the maximum voltage of any emission appearing on frequencies removed by more than 4.6 MHz below or 7.4 MHz above the video carrier frequency on which the TV interface device is operated shall not exceed the following:

Type of equipment	Maximum voltage measured RMS (microvolts)
TV interface device, unless otherwise specified.	10.95 square root(R).
Terminal device attached to a cable system or used with a Master Antenna (including those used for central distribution in apartments or office buildings).	692.8 square root(R).

Notes: 1. R (in ohms) is the resistance matching the rated output impedance of the device.

2. Heterodyne terminal devices attached to a cable system (including those used for central distribution in apartments or office buildings) manufactured or imported prior to July 1, 1990, do not have to meet the levels specified in paragraphs (b) and (c) of this section.

§ 15.630 Transfer switch requirements.

When measured in either position, transfer switches shall comply with the following requirements:

Type of equipment	Transfer switch	Required isolation (dB)	Maximum voltage at receiving antenna input terminals (microvolts)
TV interface device, unless otherwise specified.	Mandatory...	Not applicable.	0.346 square root(R).
Terminal device attached to a cable system.	Mandatory, if equipped with antenna input capability.	80 dB from 54 to 216 MHZ. 60 dB from 216 to 550 MHz.	Not applicable.

Notes: 1. R (in ohms) is a resistance matching the rated impedance of the antenna input of the switch.

2. The maximum voltage corresponds to the peak envelope power of the video modulated signal.

3. A transfer switch is not required for a TV interface device that, when connected, results in the user no longer having any need to receive standard over-the-air broadcast signals via a separate antenna.

4. A transfer switch is not required for a device that is intended to be used as an accessory to an approved TV interface device.

§ 15.640 Identification of equipment.

Type of equipment	Language on name plate or label
TV interface device, unless otherwise specified.	This device complies with FCC Rule Part 15. Operation is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation.
TV interface device that does not receive standard over-the-air broadcast signals.	This device is intended to be attached to a TV receiver, which does not receive over the air broadcast signals. Connection of this device in any other fashion may cause harmful interference to radio communications and is in violation of the FCC Rules, Part 15. *See* 47 CFR Part 15, Subpart H.
Stand-alone cable input selector switch.	This device is verified to comply with FCC Rules Part 15 for use with cable television service.

§ 15.642 Identification of TV interface device kits.

In lieu of the labeling requirements of § 15.640, the following label shall be included in the kit with instructions to the builder that it should be attached to the complete kit:

CERTIFICATION LABEL

(Manufacturers Name)

FCC ID—

This assembled device can be expected to comply with Subpart H of Part 15 of FCC Rules, provided it is assembled in exact accordance with the instructions provided with this kit.

Name, Title, and Signature of Company Official

Statement of Compliance

I certify that I have constructed this kit in exact accordance with the instructions provided with this kit using only the parts provided or recommended by the manufacturer. I understand that the operation of the assembled device is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation.

§ 15.644 Information to the user for cable system terminal devices.

Information shall be provided to the user of a cable system terminal device about its interference potential and simple measures that a user can take to correct interference. Such information shall be included in a conspicuous place in the instruction manual. If a manual is not provided to the user then such information should be on a pamphlet, on the device itself, or on the packaging.

§ 15.646 Requirements for wires and coaxial cables.

(a) *For TV interface devices.* Wires or coaxial cables to couple the output signals to the TV receiver shall be provided by the manufacturer.

(b) *For cable system terminal devices.* The holder of the grant of authorization for a cable system terminal device shall specify in the instruction manual or pamphlet, if a manual is not provided, the type of wires or coaxial cables necessary to ensure that the unit complies with the requirements of this subpart. The holder of the grant of authorization must provide any wires, coaxial cables or other accessories which are not readily available to the user via retail outlets or mail-order catalogs.

§ 15.650 Methods of measurements.

To determine compliance with the provisions of this subpart the following procedures or equivalent, provided the applicant or manufacturer can demonstrate to the Commission that such procedures are, in fact, equivalent shall be used.

(a) *For TV interface devices:* FCC/OST MP–3, "FCC Methods of Measurements of Output Signal Level, Output Terminal Conducted Spurious Emissions, Transfer Switch Characteristics, and Radio Noise Emissions," (1985).

(b) *For cable input selector switches:* FCC/OET MP–9, "FCC Procedure for Measuring Cable Television Switch Isolation," (September 1987).

Note: MP–3 and MP–9 are available from the National Technical Information Service (NTIS), 5285 Port Road, Springfield, VA 22161 or from the Commission's current duplicating contractor whose name and address are available from the Commission's Consumer Assistance Office.

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TEVEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 76.5(x) is amended by revising the note as follows:

§ 76.5 Definitions.

* * * * *

(x) * * *

Subscriber terminal.

Note: Terminal devices interconnected to subscriber terminals of a cable system shall comply with Subpart H of Part 15.

* * * * *

3. Section 76.617 is revised to read as follows:

§ 76.617 Responsibility for interference.

Interference resulting from the use of cable system terminal equipment (including subscriber terminal, input selector switch and any other accessories) shall be the responsibility of the cable system terminal equipment operator in accordance with the provisions of Part 15 of this chapter: provided, however, that the operator of a cable system to which the cable system terminal equipment is connected shall be responsible for detecting and eliminating any signal leakage where that leakage would cause interference outside the subscriber's premises and/or would cause the cable system to exceed the Part 76 signal leakage requirements. In cases where excessive signal leakage occurs, the cable operator shall be required only to discontinue service to the subscriber until the problem is corrected.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88–26458 Filed 11–17–88; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Ex Parte No. 393 (Sub-No. 2)]

Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes

AGENCY: Interstate Commerce Commission.

ACTION: Final Rule.

SUMMARY: This decision adopts new reporting requirements for Class I railroads to accommodate revenue adequacy standard changes adopted in Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy* (not printed), served December 31, 1986). Additionally, the Commission has adopted the Railroad Accounting Principles Board's Entity Principle. The intended effect of the changes is to improve our determination of revenue adequacy. The Final Rule calculates Return on Investment (ROI) for revenue adequacy on a consolidated basis using the RAPB's definition of entity, adopts a methodology for adding interest income on the working capital allowance to net railway operating income (NROI) and adopts a methodology for excluding income taxes on nonoperating income. These changes are accomplished by adding a new schedule to railroad Annual Report Form R–1. Further, new recordkeeping requirements are set forth for affiliated companies to support and document the ROI methodology.

DATES: *Effective date:* November 18, 1988.

The revised reporting requirement is effective for the 1988 reporting year and is due 30 days after the March 31, 1989 R–1 deadline.

FOR FURTHER INFORMATION CONTACT: Brian A. Holmes, (202) 275–7510. [TDD for hearing impaired (202) 275–1721.]

SUPPLEMENTARY INFORMATION: The Commission proposed to incorporate certain changes adopted in its Notice of Proposed Rulemaking (NPR) served May 11, 1987, and published in the **Federal Register** on May 12, 1987 (52 FR 17792). Based on the comments received and due to the issuance of the Final Report on Railroad Accounting Principles by the Railroad Accounting Principles Board (RAPB) new issues were raised. Accordingly, the Commission issued a Supplemental Notice of Proposed Rulemaking (SNPR), served February 25, 1988 and published in the **Federal Register** on February 26, 1988 (53 FR 5807).

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc. in Room 2229 at Commission headquarters).

This revision will not have a significant economic impact on a substantial number of small entities and this decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is estimated that an average of 16 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission and the Office of Information and Regulatory Affairs, Office of Management and Budget.

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments on any paperwork burden to OMB by addressing them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Interstate Commerce Commission.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

Decided: October 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Vice Chairman Andre and Commissioner

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Lamboley dissented in part with separate expressions.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1201 — RAILROAD COMPANIES

Subpart A—Uniform System of Accounts

1. The authority citation for Part 1201 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 11166.

General Instructions [Amended]

2. Instruction 1–9 *Transactions with affiliated companies,* is amended by adding paragraph (f) as follows:

Instruction 1–9 Transactions With Affiliated Companies

* * * * *

(f) Carriers reporting information on a consolidated or combined basis in railroad Annual Report Form R–1 shall maintain a file with appropriate records and supporting data. This shall include work sheets showing revenues, expenses, earnings, investment in assets and accumulated depreciation for all affiliated railroads and rail-related affiliated companies. The work sheets shall also disclose any eliminations. Carriers shall also disclose the methodology used to support segregation of rail-related or other items as appropraite. Further, a file shall be maintained to support and reconcile entity sales, transfers and reclassifications as well as taxes deducted from gains or losses.

* * * * *

Editorial note.—Schedule 250 form and instructions will not be published in the Code of Federal Regulations.

250 CONSOLIDATED INFORMATION FOR REVENUE ADEQUACY DETERMINATION

[Dollars in thousands]

Line No.	Item (a)	Amount (b)
	Adjusted Net Railway Operating Income for Reporting Entity	
1	Combined/Consolidated Net Railway Operating Income for Reporting Entity.	
2	Add: Interest Income from Working Capital Allowance—Cash Portion.	
3	Income Taxes Associated with Non-Rail Income and Deductions.	
4	Gain or (loss) from transfer/reclassification to nonrail-status (net of income taxes).	

250 CONSOLIDATED INFORMATION FOR REVENUE ADEQUACY DETERMINATION—Continued

[Dollars in thousands]

Line No.	Item (a)	Amount (b)
5	Adjusted Net Railway Operating Income.	
	Adjusted Investment in Railroad Property for Reporting Entity	
6	Combined Investment in Railroad Property Used in Transportation Service.	
7	Less: Interest During Construction.	
8	Other Elements of Investment (if debit balance).	
9	Add: Net Rail Assets of Rail Related Affiliates.	
10	Working Capital Allowance	
11	Net Investment Base before Adjustment for Deferred Taxes.	
12	Less: Accumulated Deferred Income Tax Credits.	
13	Net Investment Base	

List of Qualifying Affiliates and Nature of Business

Instructions for Schedule 250

This schedule is to be completed by all railroads unless a consolidated schedule is filed. When a consolidated schedule is filed, only one Class I railroad in the affiliated group need file this schedule. Nonfiling carriers within the group should indicate which affiliated railroad is filing the consolidated schedule. If companies are added or subtracted from the railroad entity during the current year then the new entity must footnote this fact and provide restated information for the prior year.

The following instructions should be followed in completing this schedule:

Line

1—Combined/Consolidated Net Railway Operating Income (NROI) should be prepared following the format appearing at the end of Schedule 210 and include all affiliated railroad companies (Classes I, II, III, line-haul and switching and terminal) and all rail-related affiliated companies.

Revenues and expenses from rail-related affiliates should include only rail-related revenues and expenses. If rail-related and nonrail-related revenues and expenses cannot be segregated, or if such segregation is impractical, they may be included in or excluded from NROI in their entirety based on whether the affiliate is predominantly rail-related (i.e., whether the affiliate could exist except for the revenue derived from, or the support provided for, railroad operations). Consolidation procedures should follow generally accepted accounting principles.

2—Interest Income is the actual interest earned on the cash and cash equivalents (Accounts 701 and 702). The average annual balance for the cash and cash equivalents using the format in Schedule 245 to determine interest income shall be determined by averaging the reported figures for Accounts 701 and 702 extracted from the four quarterly Condensed Balance Sheet Reports for the year. If the cash working capital required using the format of Schedule 245 is less than the average cash and temporary cash investment accounts, then a ratio of cash working capital required/cash and temporary cash investments may be applied to actual interest earned on these accounts to arrive at interest income associated with cash working capital allowance. This format does not impact the calculation of working capital.

3—Income taxes (both current and deferred) associated with significant nonrail income and deductions would include items such as the tax impact of the sale of property or income and/or deductions from nonrail sources.

4—Any railroad-related transaction between the railroad entity and others (including affiliates that are not a part of the consolidated entity), or any reclassification of property from carrier to noncarrier status within the entity, shall be reflected at fair market value at the time of the transaction or reclassification. Gain or loss shall be recognized at the same time and reported on this line net of income taxes.

6—This line should include the total investment in railroad property used in transportation service for the consolidated entity, including Class II, III line-haul and switching and terminal affiliated railroads, net of accumulated depreciation. Schedule 352A may be used as a guide.

7—This should include total interest during construction for the railroads in the consolidated entity.

8—This should include total account 80 *debit* balances for the railroads in entity.

9—This is the total rail assets, net of accumulated depreciation, of rail-related affiliated companies in the consolidated entity.

10—This line represents the working capital allowance calculated for railroads (i.e. Class I, II and III) in the consolidated entity. Procedures in Schedule 245 should be used for this calculation.

12—Self-explanatory.

In the space provided at the bottom of this schedule, please list all railroads and rail-related affiliated companies which are being reported in this consolidation, along with the nature of the business of each company.

[FR Doc. 88–26728 Filed 11–17–88; 8:45 am]
BILLING CODE 7035–01–M

VOL 53 ISS 223 NOV 18 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 223
Friday, November 18, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-34; Notice No. SC-88-9-NM]

Special Conditions; Boeing 747-400, Flight Deck Displays and Propulsion Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 747-400 airplane. This airplane will have novel or unusual design features associated with the display of certain airplane system information that is not addressed in the existing regulations. In addition, the propulsion certification requirements of Part 33 and Part 25 do not contain adequate standards by which to determine an acceptable level of safety for a full authority digital electronic control system installed on a transport category airplane. This notice contains additional safety standards which will require proper displays and alerts of sufficient capacity to enable the crew to identify and perform required remedial action and will aslo require full authority digital electronic control (FADEC) systems to have a level of integrity and reliability of current hydromechanical systems. The Administrator finds these special conditions necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 25.

DATE: Comments must be received on or before December 8, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-34, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-34. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-2157.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-34." The postcard will be date/time stamped, and returned to the commenter.

Background

On May 17, 1985, the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124-2207, submitted an application to amend Type Certificate A20WE to conclude the Boeing Model 747-400 series airplane. This airplane is a derivative version of the existing Model 747-300 series airplane. The 747-400 will be delivered with PW4000, CF6-80C2, or RB211-524G engines with full authority digital engine controls. Maximum takeoff gross weight will be increased to 870,000 lbs. Cockpit controls will be simplified and automated for operation by a crew of two. Appropriate hydraulics, avionics, pneumatic, and environment control system changes will be made. An optional fuel tank is being offered in the horizontal tail section. Carbon brakes with digital anti-skid will be incorporated. Scheduled completion date for certification is December 1988.

Discussion

1. The Boeing 747-400 uses six Cathode Ray Tubes (CRT) to display all flight, navigation, powerplant, and systems instrumentation, and information. The lower center CRT is shared by displays of secondary engine parameters, fuel system, hydraulic system, and electrical system information. The use of shared display space for displaying various system parameters and schematics is being used on Boeing transport airplanes for the first time. It is not covered by the current regulations.

Part 25 of the FAR was written prior to the development of multipurpose cockpit displays. Sections 25.1303, 1305, and 1307 lists only the required instruments because individual gauges were all that existed at that time. With the introduction of CRT displays, it became possible to display the operating information from many different systems on a single CRT. This diplay allows the operating information to be centralized and displayed in many different formats. Some of the operating parameters presented on these displays share the display space with others or are not permanently displayed. When displays are shared or inhibited, means to alert the crew of parameter exceedances or other information requiring crew awareness must be provided so the crew can take corrective action. In addition to alerting the crew that corrective action is required, the display must have sufficient capacity so that all the information needed by the crew to conduct safe operation of the airplane can be simultaneously displayed. In the event of a failure condition, the data presented to the crew must be arranged and displayed in a manner so as not to cause confusion. The displayed parameters or alerts need to be arranged and edited in a form that effectively communicates to the flightcrew information necessary for selection of the appropriate corrective actions following a single event, condition, or combination of events.

2. The proposed Propulsion Control System for the Boeing 747-400 airplane is made up of: (1) A dual channel FADEC mounted on each engine's fan case; (2) an array of interfacing aircraft computers which provide data necessary for thrust management, data validation and reversion modes; (3) power levers in the aisle stand; (4) the hydromechanical interfaces on the engines; (5) the power supplies; and (6) the interconnecting wiring. While the software function contained in the engine's FADEC has been validated to a "critical" level, the overall level of integrity and reliability of the installed propulsion control system has not been evaluated to satisfy Part 25 requirements. Unlike conventional hydromechanical controls, the electronic control does not exhibit a "wear out" characteristic but rather exhibits an in-service failure rate which may be somewhat random with time. Therefore, endurance tests or other "mechanical" type evaluations and subsequent tear downs do not establish any significant degree of implied or inherent system design integrity as has been the case with mechanical systems previously evaluated in accordance with Part 25. Therefore, current regulations do not provide for an adequate level of safety for propulsion control system similar to the proposed 747-400 FADEC system and special conditions are necessary to provide system safety levels equivalent to a hydromechanical system. These proposed special conditions would require that the components of the propulsion control system that are directly associated with setting thrust and continued safe operation of each engine must demonstrate a level of system integrity and reliability commensurate with current standards for transport category airplanes.

Type Certification Basis

The type certification (TC) basis for the Boeing Model 747-400 series airplane is proposed to be Part 36 of the Federal Aviation Regulations (FAR); Special Federal Aviation Regulation (SFAR) No. 27-6; and Part 25 of the FAR, as amended by Amendments 25-1 through 25-59, except that the applicable amendment numbers for the following sections are those indicated as follows: Section 25.571 through Amendment 25-9; §§ 25.251; 25.305, 25.607, 25.657, and 25.683 through Amendment 25-22; § 25.1401 through Amendment 25-26; § 25.787 and 25.812 through Amendment 25-31; § 25.675 through Amendment 25-37; § 25.1438 through Amendment 25-40; § 25.107, 25.109 and 25.149 through Amendment 25-41; § 25.331, 25.351, 25.789, and 25.809 through Amendment 25-45; § 25.772 through Amendment 25-46; and § 25.785 through Amendment 25-50 and §§ 25.365 and 25.783 through Amendment 25-53. As proposed, the requirements of the following sections do not apply to this type design because the original certification basis, which did not include these sections, has been determined to be adequate: Sections 25.631, 25.832, 25.858, and 25.1529. The TC basis includes special conditions, exemptions, and equivalent safety findings which are part of the model 747-300 series certification basis. These exceptions, existing exemptions and the noise and environmental requirements are not pertinent to these special conditions. Special conditions concerning flight deck electronic displays, overhead crew rest accommodations, and the reliability of electronic engine controls and thrust management systems are also being considered.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

As the intended type certification (TC) date for the first B-747-400 to install the flight deck display system and the full authority digital electronic control system is in early December 1988, the FAA has shortened the comment period to 20 days in order to make the final special conditions effective prior to that TC date.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Boeing Model 747-400 series airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. The required displays and alerts for each phase of flight must be provided in a timely manner and form that enables the crew to identify and carry out necessary remedial actions.

3. Sufficient display capacity should be provided so that any parameter display or alerting will not suppress another display or alerting that also requires immediate crew awareness necessary for continued safe flight and landing.

4. Displays of parameters or alerts that could cause the subsequent activation of other displays or alerts must be presented in a manner and form to ensure appropriate identification of the most significant hazards and required crew actions.

5. In addition to the requirements of §§ 25.901(c) and 25.903(b) of the FAR, the components of the propulsion control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must at least have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

Issued in Seattle, Washington, on November 8, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26704 Filed 11-17-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Service Field Organization—Houston-Galveston, Laredo, Dallas/Fort Worth, Port Arthur, TX

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations governing the Customs field

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organization by changing the boundaries of the Houston-Galveston, Laredo, Dallas/Fort Worth, and Port Arthur Districts, which lie within the Southwest Region. The purpose of the changes is to place all of the Texas interior ports within the Dallas/Fort Worth District; to move supervision of the port of San Antonio, Texas, and the user-fee airport at Midland, Texas, from the Laredo District to the Dallas/Fort Worth District; and to make minor alterations to the Port Arthur and Houston-Galveston Districts for simplification of administrative functions. Under these proposed changes, ports with similar types of operations will be situated in the same districts. The public and importers will thereby be better served and Customs personnel and resources more efficiently used.

DATE: Comments must be received on or before January 17, 1989.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service (202) 566-9425.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by realigning the boundaries of several districts in the Southwest Region. This will place all of the current Texas interior ports of entry within the Dallas/Fort Worth District. It will move supervision of the port of San Antonio, Texas, and the user-fee airport at Midland, Texas, from the Laredo District to the Dallas/Fort Worth District. San Antonio, an inland port/airport operation, is functionally similar to the Dallas/Fort Worth operation and is more easily accessible to the Dallas/Fort Worth District than it is to the Laredo District due to better air transportation. The user-fee operations at Midland will have more in common with Dallas/Fort Worth's ports than with Laredo's User fee airports are those which, while not qualifying for designation as an international or landing rights airport, have been approved by the Commissioner to receive the services of Customs officers fo processing aircraft entering the U.S. With this proposed change, Laredo will have supervision of functionally similar border ports. These ports are sufficiently large and spread out over such a large geographical area as to require the full attention of the district director. Other alterations in boundaries are minor and for the purpose of simplification of administrative functions.

The proposed revised district boundaries are as follows:

Houston-Galveston District

That part of the State of Texas south of 32 degrees north latitude, east of 97 degrees west longitude, and west of the Neches River except Jefferson County; and the territory included in the port limits of Corpus Christi, Texas. Ports would include: Houston-Galveston, Corpus Christi, Port Lavaca-Point Comfort, and Freeport (all in Texas).

Note: The only changes are to transfer to the Port Arthur District a narrow strip east of the Neches River running along 32 degrees north latitude and to transfer from the Port Arthur District a small portion of Chambers County. This simplifies the boundaries of both districts.

Laredo District

That part of the State of Texas east of the Pecos River, south of 31 degrees north latitude and west of 99 degrees west longitude and that part of the State of Texas south of 28 degrees 30 minutes north latitude and west of 97 degrees west longitude, except the territory within the port limits of Corpus Christi, Texas. Ports would include: Laredo, Brownsville, Del Rio, Eagle Pass, Hidalgo, Progresso, Rio Grande City, and Roma (all in Texas).

Dallas/Fort Worth District

The State of Oklahoma; that part of the State of Texas north of 32 degrees north latitude; that part of the State of Texas which is north of 28 degrees 30 minutes north latitude and between 97 and 99 degrees west longitude; and that part of the State of Texas which is north of 31 degrees north latitude and between the Pecos River and 99 degrees west longitude. Ports would include: Dallas/Fort Worth, San Antonio, Amarillo, Austin and Lubbock, all in Texas; and Oklahoma City and Tulsa in Oklahoma.

Port Arthur District

That part of the State of Texas south of 32 degrees north latitude and east of the Neches River; and the territory included in Jefferson County. Ports would include the consolidated port of Beaumont, Orange, Port Arthur and Sabine, Texas.

Note: The only changes are to raise the northern boundary to 32 degrees and to include all of Chambers County in the Houston-Galveston District. This simplifies boundaries for both districts. No ports are affected.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Authority

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101-5, dated February 17, 1987 (52 FR 6282).

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. For the same reason, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely makes adjustments to its field organization throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country and to facilitate internal operational controls. Although the proposal may have a limited effect upon some small entities in the areas affected, it is not expected to be significant because adjusting the field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Proposed Amendments

It is proposed to amend § 101.3, Customs Regulations (19 CFR 101.3), as set forth below:

PART 101—[AMENDED]

1. The authority citation for Part 101 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1, 66, 1202 (Gen Hdnote. 11), 1624; Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. It is proposed to amend the list of Customs regions, districts and ports of entry in § 101.3(b) in the following manner:

a. In the South West Region under the column headed "Area", directly opposite "Houston-Galveston, Texas" the description would be revised to read as follows: "That part of the State of Texas south of 32 degrees north latitude, east of 97 degrees west longitude, and west of the Neches River except Jefferson County; and the territory included in the port limits of Corpus Christi, Texas."

b. In the South West Region under the column headed "Area", directly opposite "Laredo, Texas" the description would be revised to read as follows: "That part of the State of Texas east of the Pecos River, south of 31 degrees north latitude and west of 99 degrees west longitude and that part of the State of Texas south of 28 degrees 30 minutes north latitude and west of 97 degrees west longitude, except the territory within the port limits of Corpus Christi, Texas." Under the column headed "Ports of entry", the listing of San Antonio would be deleted.

c. In the South West Region under the column headed "Area", directly opposite "Dallas/Fort Worth, Texas" the description would be revised to read as follows: "The State of Oklahoma; that part of the State of Texas north of 32 degrees North latitude; that part of the State of Texas which is north of 28 degrees 30 minutes north latitude and between 97 and 99 degrees west longitude; and that part of the State of Texas which is north of 31 degrees north latitude and between the Pecos River and 99 degrees west longitude. Under the column headed "Ports of entry", the port of San Antonio is added.

d. In the South West Region under the column headed "Area", directly opposite "Port Arthur, Texas" the description would be revised to read as follows: "That part of the State of Texas south of 32 degrees north latitude and east of the Neches River; and the territory included in Jefferson County."

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 5, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88-26737 Filed 11-17-88; 8:45 am]

BILLING CODE 9100-61-M

19 CFR Part 152

Application of Criteria Utilized in Determining the Eligibility of Planetaria for Duty-Free Admission Under Item 862.10, Tariff Schedules of the United States (TSUS)

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: Under item 862.10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), articles may be imported free of duty under bond for permanent exhibition by nonprofit institutions established to encourage science or education. Under Customs established criteria for determining the eligibility of merchandise for duty-free entry under this TSUS item, demonstration was considered necessary for planetaria to be fully and effectively exhibited. This conclusion has not been applied to other articles. Accordingly, Customs proposes to align its application of the criteria in the case of planetaria to its application of the same criteria to other articles for which duty-free entry under bond is sought in accordance with the provisions of item 862.10, TSUS. It is anticipated that some planetaria which heretofore would have qualified for duty-free entry will no longer qualify therefor, but will be subject to duty at varying rates, depending on the tariff item number in the TSUS under which each article will be classifiable.

This document invites public comment with respect to the Customs proposed action.

DATE: Comments must be received on or before January 17, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2119, Washington, DC 20229. (202) 566-8237.

FOR FURTHER INFORMATION CONTACT: Kenneth Paley, Entry Rulings Branch, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

Item 862.10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), provides for the duty-free entry of articles for permanent exhibition under bond when they are imported by certain types of organizations or for any State or municipal corporation for exhibition. Headnote 1 of Part 5B, Schedule 8, TSUS, which covers articles for permanent exhibition under bond, including item 862.10, TSUS, states that the provisions therein "do not apply to articles intended for sale or for any purpose other than exhibition or erecting a public monument * * *." The subject provision essentially replicates provisions dealing with the duty-free entry for exhibition of works of art and similar articles which have appeared in tariff acts at least as far back as 1897 (paragraph 702, Tariff Act of 1897). These provisions have dealt with items that, normally, were only viewed and did not have moving parts. Over the years criteria evolved which Customs has utilized to determine the eligibility of merchandise for duty-free entry under item 862.10, TSUS. These criteria, detailed in Treasury Decision (T.D.) 78-420 (file 055134), published in 12 Cust. Bull. 929, provide: (1) That the article must be imported for exhibition itself—an educational use of it can only be incidental; (2) the article must be imported by the qualifying institution or its agent; (3) admission can only be charged to defray expenses and the article cannot be used in connection with a commercial venture. Although these criteria have been applied in all cases, it appears that they have not been applied in the same way. The multiple daily use of planetaria, for example, has been considered as part of exhibition because it was felt that demonstration was necessary for full and effective exhibition. This conclusion has not been applied to other articles. For example, a concert organ to be installed in a music hall was considered as a musical instrument and primarily utilitarian rather than an exhibition object. The reasons for the historical distinction between planetaria and other articles

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which are imported for permanent exhibition under bond and for which duty-free status is claimed is uncertain. It, however, seems to date back to a time when there were no U.S. manufacturers of planetaria and when the facilities housing such equipment, sometimes donated to the public by philanthropists, were in the nature of governmental culture centers. We recently had occasion to review the application of the above-noted criteria in connection with a request for the duty-free entry of a planetarium projector for a university an inquiry which noted that planetaria are usually purchased for the purpose of making presentations rather than serving as an exhibit to be viewed. Also, the insititutions importing planetaria and seeking duty-free entry, often educational institutions, appear to be using these planetaria primarily for research, teaching, testing or classroom study which is the reason for the existence of these institutions. It appears that persons attending a demonstration of these articles or presentations utilizing them have come to view the pictures, images, lights, sounds, etc., produced by the articles rather than the articles themselves. While the articles may be viewed during such presentations or demonstrations, it is not the purpose for which the articles were obtained by the institution or the reason the persons have attended such presentations or demonstrations. We have, as previously discussed, noted that the utilization of other articles which have a utilitarian purpose, e.g., a concert organ to be installed in a music hall for presentations or demonstrations, have been considered as being primarily imported for such utilitarian purpose even though the article is subject to viewing. We have concluded that the criteria in T.D. 78–420 should be applied in the same manner to all articles for which duty-free entry is sought under item 862.10, TSUS.

Proposed Action

Customs will apply the criteria presented in T.D. 78–420 in a uniform manner. Planetaria which are to be utilized for the making of presentations or demonstrations will normally be considered as being imported for that purpose. The observation of the planetaria, in connection with these presentations or demonstrations, will be considered as being incidental to the purpose for which they are imported. Such position, while resulting from the application of the criteria in T.D. 78–420 in the same manner they are applied to other articles, could produce a result contrary to the substantive finding in the Treasury Decision. That decision considered extensive use to be incidental to the observation of the technical part of a planetarium film projection system. This change regarding the application of the criteria in T.D. 78–420 could result in the disqualification of planetaria, which are primarily used for the making of presentations or demonstrations, from the duty-free treatment under item 862.10, TSUS, that they have heretofore received.

Comments

Before making a determination of this matter, Customs will consider any written comments timely submitted. comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11, Customs Regulations (19 CFR 103.11(b)), between (9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved October 7, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88–26707 Filed 11–17–88; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 152

Dutiability of Quota Charges

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: Pursuant to certain bilateral trade agreements, a foreign country may voluntarily restrict the amount of a specified merchandise that it allows to be exported from that country. One of the means of controlling the export of that merchandise is by requiring that an export license, visa, or other quota document be obtained for the exportation. The charge paid to obtain the license, visa or document is known as a quota charge.

In order to properly assess duty on imported merchandise, the value of the merchandise must be determinied by Customs. Generally, the customs value of imported merchandise is the transaction value, which is the price actually paid or payable for imported merchandise that is sold for exportation to the U.S. Currently, when Customs determines the value of imported merchandise, it distinguishes between quota charges which are paid by the buyer to the seller of the merchandise and those paid by the buyer to a party urelated to the foreign seller. If paid by the buyer to the seller, Customs considers the quota charges part of the transction value and accordingly, dutiable. If paid to an unrelated party, Customs has not considered the quota charges dutiable.

This document proposes that all quota charges paid as a prerequisite to the exportation of foreign merchandise to the U.S. will be dutiable, regardless of to whom they are paid. They will be considered part of the transaction value. This change is proposed as a result of Customs recent examination of "quota charge" transactions revealing that payments for quota charges are directly linked to the price actually paid or payable for imported merchandise.

DATE: Comments must be received on or before January 17, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Classification and Value Division (202–566–2938).

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs officers are required by law to appraise imported merchandise to determine its value. Duty rates are usually assessed on the value of the merchandise. The valuation provisions of the Tariff Act of 1930 are found in section 402 (19 U.S.C. 1401a), as amended by section 201, Trade Agreements Act of 1979 (Pub. L. 96–39). Sections 152.100 *et seq.*, Customs Regulations (19 CFR 152.100 *et seq.*), set forth the regulations governing the appraisement and valuation of merchandise.

Generally, pursuant to 19 U.S.C. 1401a, the customs value of imported merchandise is the transaction value. Pursuant to 19 U.S.C. 1401a(b), transaction value is the price actually paid or payable for imported

merchandise when it is sold for exportation to the U.S., plus certain additions not relevant here. Pursuant to § 152.103, Customs Regulations (19 CFR 152.103), the price actually paid or payable will be considered without regard to its method of derivation. Among other things, transaction value may be the result of discounts, increases, or negotiations. The "price actually paid or payable" is defined in § 152.102(f), Customs Regulations (19 CFR 152.102(f)), as the total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the U.S.) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

Quotas

A quota is a control set on the amount of certain merchandise that is either allowed to be imported into the U.S. or exported from another country to the U.S. for a certain period of time so that a domestic interest can be protected. Import quotas are generally established by legislation, by international agreements implemented through directives and by proclamations issued under the authority contained in specific legislation. Quotas on the amount of merchandise permitted to be exported from a specific foreign country to the U.S. are usually negotiated under bilateral or multilateral agreements between the U.S. and other countries.

A prime example of a trade agreement leading to a foreign country restricting its exportations is the Arrangement Regarding International Trade in Textiles, known as the Multi-Fiber Arrangement (MFA). Section 204, Agricultural Act of 1956 (7 U.S.C. 1854), authorizes the President to negotiate agreements with other countries to limit their exports of "any agricultural commodity or product manufactured therefrom or textiles or textile products" and to limit U.S. importation of such articles. Under the authority of 7 U.S.C. 1854, the U.S. is a party to the MFA. According to this trade agreement, the governments of textile supplier countries have agreed with the U.S. to control the exportation of textiles and apparel from those countries. If imports of a particular textile product from a participating exporting country are causing a market disruption in the U.S., the U.S. may suggest to the exporting country that a restraint level be set for the particular product by that country. If a bilateral agreement is not worked out within a certain time frame, the U.S. may then take unilateral action by establishing an import quota for that product.

Pursuant to the MFA, bilateral agreements with various exporting countries have been entered into by the U.S., providing for a limitation or voluntary restraint by the foreign country on the amount of exports of specified categories of textile products for specified periods.

A variety of procedures have been instituted by foreign countries to restrain the level of their exports.

Some bilateral agreements provide that specific merchandise from a specific exporting country will not be permitted entry into the U.S. unless accompanied by a visa from the exporting country. Other procedures involve the exporting country requiring the seller to obtain an export license or a quota document before the merchandise can be exported.

Sometimes, the exporting country grants the export licenses, visas, or quota documents without charge on a first come-first serve basis until the voluntary restraint level is met. In other isntances, it merely allocates quotas on the basis of past performance (prior year's production), or the exporting country sells the export license, visa, or quota document to various manufacturers, middlemen, and/or importers.

In some situations, the exporting country only allows the producer of the specified merchandise to whom the quota was allocated by issuance of an export license, visa or quota document to export the merchandise. In other cases, the exporting country permits the producer to transfer or resell his quota allocation in total or in part to another producer of the specified merchandise. In yet other cases, the exporting country may not require that the person/company to whom quota is allocated be a producer of that commodity. In this situation, that person/company obviously resells the quota allocation to another party.

Quota Charges

The charge paid to obtain an export license, visa, or any kind of quota document entitling specified merchandise to be exported when a limitation on exports for that commodity has been set is called a "quota charge". A quota charge is, in effect, a charge for the privilege of exporting the specified merchandise to the U.S.

Customs Current Practice

In determining the transaction value of merchandise imported into the U.S. from foreign countries that have export controls on merchandise which result in the payment of a quota charge by a producer, shipper or seller, Customs has held that such charges are dutiable as part of the "price actually paid or payable for merchandise when sold for exportation to the United States," if the charges are included as part of the price for the merchandise paid by the buyer to the seller. However, quota charges have not been considered part of "the price actually paid or payable" and, therefore, not considered dutiable, when such merchandise has been bought by a buyer from one seller while the quota charge is paid by the same buyer to someone unrelated to the seller. See, for example, ORR ruling letter 542169 dated September 18, 1980 (TAA #6) and ORR ruling letter 542150 dated January 6, 1981 (TAA #14). Customs rationale for this view has been that moneys paid for quota charges directly to the seller by the buyer are part of the "price actually paid or payable" for the merchandise, but moneys paid for quota charged by the buyer to an unrelated party to the seller are not paid for the merchandise.

Reasons for Proposed Change

Customs' experience leads it to conclude that payments for quota charges are directly linked to the payments made for imported merchandise. Where quota status is a condition of export, and the importer cannot complete the transaction without obtaining quota, a transaction which does not include quota charges does not reflect the complete price of a sale for export to the United States within the meaning of transaction value under 19 U.S.C. 1401a(b). Therefore, payments for quota charges are part of "the price actually paid or payable when sold for export to the United States" and should be considered part of the transaction value. This conclusion is reflected in the three following situations:

(1) Where the seller obtains quota, and includes the cost of obtaining it in the sales price paid by the buyer, the cost of quota is part of the price actually paid when the merchandise is sold for export.

(2) Where the seller obtains quota on behalf of the buyer, and the buyer makes a separate payment to the quota holder for the cost of quota, the cost of obtaining quota, combined with the cost of purchasing the merchandise, constitute the price when sold for export.

(3) Where the buyer independently obtains its own quota from a party unrelated to either the buyer or the seller, the cost of obtaining quota, combined with the cost of purchasing

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the merchandise, constitutes the price actually paid when sold for export.

Proposed Action

In accordance with this reasoning, Customs is proposing that quota charges necessary to export merchandise be included as part of "the price actually paid or payable when sold for exportation to the United States," regardless of which party initially pays the quota charge. Accordingly, it is proposed that all payments of quota charges be considered as part of the transaction value of the merchandise and therefore dutiable.

If this proposed interpretive rule is adopted, all prior Customs rulings which exempted from transaction value quota charges paid as a prerequisite to the exportation of merchandise from foreign countries would be revoked, to the extent that they are inconsistent with this rule. Each of the recipients of those rulings would be notified of Customs reversal of its position pursuant to § 177.9(d), Customs Regulations (19 CFR 177.9(d)).

In making this proposal, Customs has taken note of previous Court cases, such as *Panation Trade Co.* v. *United States*, 54 Cust. Ct. 758, A.R.D. 181 (1965), and *Sternfold* v. *United States*, 12 Cust. Ct. App. 172, T.D. 40065 (1924), which have held certain export taxes or charges paid to a foreign government not to be part of dutiable value in a sale for export. However, these cases were so inherently tied to the concept of export value that they are not relevant to the issue of whether quota charges should be deemed to be dutiable for purposes of transaction value.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Services. However, personnel from other offices participated in its development.

Michael H. Lane,
Acting Commissioner of Customs.

Approved: September 26, 1988.

Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 88-26708 Filed 11-17-88; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 410, 416, and 422

Federal Old-Age, Survivors, and Disability Insurance Benefits; Black Lung Benefits; Supplemental Security Income for the Aged, Blind, and Disabled; Organization and Procedures; Application of Circuit Court Law

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations withdraw the Notice of Proposed Rulemaking (NPRM) published at 52 FR 2557 on January 23, 1987. That NPRM described a new type of Social Security ruling (Social Security Acquiescence Ruling or "Acquiescence Ruling"), which is available to the public. These proposed regulations reflect a new proposed policy explaining the manner in which we will apply decisions of the United States Courts of Appeals that we determine conflict with Social Security Administration (SSA) policy in adjudicating claims under title II and title XVI of the Social Security Act (the Act) and title IV, Part B of the Federal Mine Safety and Health Act of 1977. The regulation changes will become effective on the date of publication of final regulations.

DATE: To be sure that your comments are considered, we must receive them no later than January 17, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7452.

SUPPLEMENTARY INFORMATION:

Background

In June 1985, the Social Security Administration first announced a change in the way it would respond to United States Courts of Appeals decisions affecting its programs. This policy provided for the issuance of Social Security Acquiescence Rulings which explain the manner in which we will apply decisions of the United States Courts of Appeals that we determine conflict with SSA policy. As originally announced, these rulings were to be applied only at the administrative law judge hearing level and by the Appeals Council. In January 1986, before we issued any Social Security Acquiescence Rulings, we revised this policy to provide that Acquiescence Rulings would apply at all levels of administrative adjudication (i.e., initial, reconsideration, administrative law judge and Appeals Council) so long as they met certain criteria.

We published a Notice of Proposed Rulemaking (NPRM) at 52 FR 2557 on January 23, 1987, describing the new type of ruling. The NPRM provided that Acquiescence Rulings would apply within the appropriate circuit at all administrative levels of adjudication if:

(1) (a) No prompt relitigation of the policy at issue was to be sought in the relevant circuit; *and*

(b) Application of the ruling at all administrative levels would be workable (i.e., would not result in administrative inefficiency) and feasible *and* would not have an unacceptably adverse effect on Social Security programs or disadvantage individuals already on the Social Security benefits rolls; *or*

(2) A regulatory change to conform national policy to a circuit court ruling was being pursued and there was little doubt of its ultimate publication.

The NPRM provided further that if a ruling did not meet one of these criteria, it would be applied only at the administrative law judge hearing level and by the Appeals Council. However, if we determined that a particular case would be suitable for relitigation, the Acquiescence Ruling would not be binding on the Appeals Council. We received several comments on that NPRM, which we considerd in developing the new proposed policy announced in these proposed regulations.

These proposed regulations withdraw the NPRM published at 52 FR 2557 on January 23, 1987, introduce a new proposed policy for applying decisions of the United States Courts of Appeals that we determine conflict with SSA policy, explain the manner in which we will apply those decisions, and as part of that policy, describe the limited conditions under which we may decide to relitigate the issue(s) decided by a circuit court in a particular case.

SSA reserved the authority in the previous NPRM to limit the application of Social Security Acquiescence Rulings to the administrative law judge hearing level of and the Appeals Council because of concerns that adjudicators at the initial and reconsideration level would have difficulty in applying some circuit court decisions in a uniform manner. We also were concerned about the potential impact of this new policy on SSA program administration. However, since this policy has been in effect, we have not used these criteria to limit the applicability of any ruling. We have concluded based on our experience with the acquiescence policy that making Social Security Acquiescence Rulings applicable at all levels of administrative adjudication will not have a significant adverse impact on the agency or on the programs we administer.

In reviewing circuit court decisions, we have found that the vast majority of them consider only the issue of whether the Secretary's decision is supported by substantial evidence (the statutory standard for judicial review of the Secretary's final decision). By definition, this type of decision requires no specific action by SSA except to effectuate the court order in question. Accordingly, most circuit court decisions do not conflict with SSA policy; however, a few do conflict with SSA's interpretation of a provision of the Social Security Act or the regulations. Our new policy provides that as to this type of decision, unless we appeal, we will promptly publish a Social Security Acquiescence Ruling. That ruling will apply at all levels of administrative adjudication within the applicable circuit so long as it is in effect, unless the decision, by its nature, applies only at certain levels of adjudication such as a case dealing with the conduct of an administrative law judge hearing.

Some circuit court decisions do not conflict with SSA policy but nevertheless establish an evidentiary or procedural requirement which the Secretary must satisfy in his decisions; for example, requiring specific language in an administrative law judge decision. These decisions may not warrant that a Social Security Acquiescence Ruling be issued since they do not conflict with SSA's policys; however, SSA adjudicators will apply the requirements of this type of decision in deciding claims of individuals residing within the applicable circuit. We may issue written instructions to our adjudicators regarding cases affected by such a decision.

Proposed Regulations

The proposed regulations provide that we will apply United States Court of Appeals decisions that we determine conflict with SSA policy unless the government appeals the decision. We generally will not issue an Acquiescence Ruling for a particular decision until the government has timely exhausted all avenues of judicial review or has decided to refrain from pursuing further judicial review in the particular case.

When the government does not appeal, or is unsuccessful on appeal, we will publish a Social Security Acquiescence Ruling and we will apply the circuit court decision at all levels of administrative adjudication within the applicable circuit to all claims presenting the issue(s) addressed in the ruling unless the decision, by its nature, applies only to certain levels of adjudication. The ruling will describe the case, identify the issue(s) considered, and explain how we will apply the decision within the applicable circuit, including, as necessary, how the decision relates to other decisions within the applicable circuit. We will publish all rulings, including Social Security Acquiescence Rulings as well as all other rulings, in the **Federal Register**. In the past, Social Security Rulings and Social Security Acquiescence Rulings have been published singly and in cumulative annual editions, but have not appeared in the **Federal Register**. All rulings will also be published for sale by the Government Printing Office and made available at district and branch offices as well as the field offices of the Office of Hearings and Appeals. Generally, the rulings will be effective on the date of publication in the **Federal Register**.

If we make a determination or decision on a claim after the date of a circuit court decision, but before we publish an Acquiescence Ruling, and after the publication of the ruling, the claimant requests application of the ruling to the prior determination or decision and can demonstrate that application of the ruling could change the prior determination or decision, we will readjudicate the claim at the same level it was last adjudicated, in accordance with the requirements of the ruling. The readjudication in this circumstance will be limited to consideration of the issue(s) addressed by the ruling. Any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with our regulations. Our conclusion that readjudication is not appropriate will not be subject to further administrative or judicial review.

Although we will apply a circuit court decision which conflicts with our interpretation of the Social Security Act on regulations, circumstances may arise which bring into question whether the circuit court would reach the same conclusion as it did in its prior decision if the issue(s) were relitigated within the circuit. Accordingly, the proposed regulations also establish a process for the relitigation of issues whereby we may apply our interpretation of the Social Security Act or regulations in the future administrative adjudication of claims.

The first step in this relitigation process requires the occurrence of an activating event which raises the question of whether the circuit court would reach the same decision if the issue(s) previously decided were presented to it again. In general, these activating events are:

1. An action by both Houses of Congress that indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law; or

2. A statement in a majority opinion of the same circuit that indicates the court might no longer follow its previous decision if a particular issue were presented again; or

3. Subsequent circuit court precedent in other circuits that supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

4. A subsequent Supreme Court decision that presents a reasonable legal basis for questioning a circuit court decision on which we based a Social Security Acquiescence Ruling.

The second step in the relitigation process requires that the General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concur that relitigation of an issue and application of our interpretation of the

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Social Security Act or regulations at the administrative level within the circuit would be appropriate.

The third step in the relitigation process requires publication of a notice in the **Federal Register** that we will apply our interpretation of the Social Security Act or regulations as to the issue that was the subject of the Acquiescence Ruling at the administrative level within the circuit. The notice will explain why we made this decision. We propose to continue the policy of applying our interpretation of the Act or regulations in order to relitigate an issue. This policy allows us to acquiesce in circuit court precedent while still preserving the option to relitigate.

We view Acquiescence Rulings and related **Federal Register** notices as interpretative rules which would be exempt from the notice of proposed rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. section 553(b). If this view is made subject to legal challenge, the Department will not apply the policy statement it issued in 1970 as regards the public's participation in rulemaking with respect to the Ruling or notice at issue. This policy statement noted that although the Administrative Procedure Act exempts from the notice of proposed rulemaking requirements matters relating to public property, loans, grants, benefits or contracts, the Department would waive this exemption and would use the notice of proposed rulemaking procedures in the exempt categories. See 36 FR 2532 (1971).

After we have published a notice in the **Federal Register** of our intent to relitigate an issue that is the subject of an Acquiescence Ruling, we will take steps to expedite administrative and judicial review and resolution of the issue in question and ensure that we are able to comply with any subsequent circuit court or Supreme Court decision. First, any claimant in the appropriate circuit whose claim is made subject to the relitigation procedure established in this regulation will receive a separate notice with the determination or decision on the claim. That notice will explain the difference(s) in policy between the Acquiescence Ruling and our interpretation of the Social Security Act or regulations and inform the claimant that the agency is seeking to relitigate the issue in the circuit. Claims not subject to relitigation will continue to be decided in accordance with the circuit standard contained in the Acquiescence Ruling. Second, the agency will maintain a listing of all claimants who receive such notices so that any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently.

We will attempt to maintain national uniformity in the administration of our programs by seeking Supreme Court review of adverse circuit court decisions which have a major impact on program administration, by clarifying our regulations when their ambiguity has resulted in a circuit court decision interpreting them differently than the way we intended them to be interpreted, by issuing a new regulation(s) if a circuit court decision concerns an issue(s) which the current regulations do not address, and by seeking corrective legislation from the Congress. Accordingly, we will rescind as obsolete a Social Security Acquiescence Ruling when: The Supreme Court overrules or limits a circuit court decision on an issue that was the basis of an Acquiescence Ruling; or a circuit court overrules or limits its prior decision on an issue that was the basis of an Acquiescence Ruling; or a Federal law is enacted that removes the basis for the decision of a circuit court that was the subject of an Acquiescence Ruling; or we subsequently clarify, modify or revoke a regulation or ruling that was the subject of a circuit court decision that conflicts with our interpretation of the Social Security Act or regulations. We will also rescind as obsolete a Social Security Acquiescence Ruling when we subsequently issue a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue was the subject of a circuit court decision that conflicts with our interpretation of the Social Security Act or regulations and that decision is not one which is compelled by the statute or the Constitution.

We are not proposing the acquiescence policy outlined in this NPRM because we believe that this policy, or any acquiescence policy, is legally compelled. Rather, we believe that the particular policy we are proposing is an appropriate exercise of our responsibility to administer the vast and complex Social Security benefit programs in a manner that is least burdensome to Social Security claimants and preserves our ability to attempt to maintain the national uniformity of program administration. We solicit public comment on all aspects of our proposed acquiescence policy, particularly on the manner in which claims subject to relitigation should be selected.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under E.O. 12291 because it will not have annual effect on the economy of 100 million dollars or more, or otherwise meet the threshold criteria. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

These proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because these rules will only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.804 Social Security-Survivors Insurance; 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, survivors and disability insurance.

20 CFR Part 410

Administrtive practice and procedure, Black lung benefits, Death benefits, Disability benefits, Miners.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

20 CFR Part 422

Freedom of information, Administrative practice and procedure, organization and functions (Government agencies), Social Security.

Dated: August 19, 1988.

Dorcas R. Hardy

Commissioner of Social Security.

Approved: August 25, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Parts 404, 410, 416, and 422 of 20 CFR are proposed to be amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart J of Part 404 continues to read as follows:

Authority: Secs. 201(j), 205 (a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), and 1302; sec. 5 of Pub. L. 97-455, 96 Stat. 2500; sec. 6 of Pub. L. 98-460, 98 Stat. 1802.

2. New § 404.984 is added to read as follows:

§ 404.984 Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) We will apply a United States Court of Appeals decision which we determine conflicts with our interpretation of a provision of the Social Security Act or regulations unless the government appeals or we relitigate the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. We will apply the decision to claims at all levels of administrative adjudication within the applicable circuit unless the decision, by its nature, applies only at certain levels of adjudication.

(b) When we determine that a United States Court of Appeals decision conflicts with our interpretation of a provision of the Social Security Act or regulations and the government does not appeal or appeals unsuccessfully, we will issue a Social Security Acquiescence Ruling that describes the case, identifies the issue(s) involved, and explains how we will apply the decision including, as necessary, how the decision relates to other decisions within the applicable circuit. These rulings will generally be effective on the date of publication in the **Federal Register**. If we make a determination or decision after the date of a circuit court decision, but before we issue an Acquiescence Ruling, and after the publication of the ruling a claimant requests application of the ruling to the prior determination or decision and can demonstrate that application of the ruling could change the prior determination or decision, we will readjudicate the claim at the level at which it was last adjudicated, in accordance with the ruling. Any readjudication will be limited to consideration of the issue(s) covered by the ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. Our conclusion not to readjudicate will not be subject to further administrative or judicial review.

(c) After we have published a Social Security Acquiescence Ruling to reflect a decision of a United States Court of Appeals on an issue, we may decide under certain conditions to relitigate that issue within the same circuit. We will relitigate only when the conditions specified in paragraphs (c) (2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section, occurs.

(1) *Activating events.* (i) An action by both Houses of Congress indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law; or

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again; or

(iii) Subsequent circuit court precedent in other circuits supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court decision upon which we base a Social Security Acquiescence Ruling.

(2) The General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concurs that relitigation of an issue and application of our interpretation of the Social Security Act or regulations at the administrative level within the circuit would be appropriate.

(3) We publish a notice in the **Federal Register** that we intend to relitigate an Acquiescence Ruling issue and that we will apply our interpretation of the Social Security Act or regulations at the administrative level within the circuit. The notice will explain why we made this decision.

(d) When we decide to relitigate an issue, we will provide a notice explaining our action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply our interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, we will maintain a listing of all claimants who receive this notice.

(e) We will rescind as obsolete a Social Security Acquiescence Ruling and apply our interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occurs:

(1) The Supreme Court overrules or limits a circuit court decision on an issue that was the basis of an Acquiescence Ruling; or

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling; or

(3) A Federal law is enacted that removes the basis for the decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court decision that we determine conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court decision that conflicts with our interpretation of the Social Security Act or regulations and that decision is not one which is compelled by the statute or Constitution.

PART 410—[AMENDED]

3. The authority citation for Subpart F of Part 410 is revised to read as follows:

Authority: Secs. 413(b), 426(a), 507, and 508 of the Federal Mine Safety and Health Act of 1977; 30 U.S.C. 923(b), 936(a), 956, and 957.

4. New § 410.670c is added to read as follows:

§ 410.670c Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) The Administration will apply a United States Court of Appeals decision which it determines conflicts with its interpretation of a provision of the Social Security Act or regulations unless the government appeals or the Administration relitigates the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. The Administration will apply the decision to claims at all levels of administrative adjudication within the applicable circuit unless the decision, by its nature, applies only at certain levels of adjudication.

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(b) When the Administration determines that a United States Court of Appeals decision conflicts with the Administration's interpretation of a provision of the Social Security Act or regulations and the government does not appeal or appeals unsuccessfully, the Administration will issue a Social Security Acquiescence Ruling that describes the case, identifies the issue(s) involved, and explains how the Administration will apply the decision including, as necessary, how the decision relates to other decisions within the applicable circuit. These rulings will generally be effective on the date of publication in the **Federal Register.** If the Administration makes a determination or decision after the date of a circuit court decision, but before it issues an Acquiescence Ruling, and after the publication of the ruling a claimant requests application of the ruling to the prior determination or decision and can demonstrate that application of the ruling could change the prior determination or decision, the Administration will readjudicate the claim at the level at which it was last adjudicated, in accordance with the ruling. Any readjudication will be limited to consideration of the issue(s) covered by the ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. An Administration conclusion not to readjudicate will not be subject to further administrative or judicial review.

(c) After the Administration has published a Social Security Acquiescence Ruling to reflect a decision of a United States Court of Appeals on an issue, the Administration may decide under certain conditions to relitigate that issue within the same circuit. The Administration will relitigate only when the conditions specified in paragraphs (c) (2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section, occurs.

(1) *Activating events.* (i) An action by both Houses of Congress indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law; or

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again; or

(iii) Subsequent circuit court precedent in other circuits supports the Administration's interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court decision upon which the Administration bases a Social Security Acquiescence Ruling.

(2) The General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concurs that relitigation of an issue and application of the Administration's interpretation of the Social Security Act or regulations to a claim or a small number of claims within the circuit would be appropriate.

(3) The Administration publishes a notice in the **Federal Register** that it intends to relitigate an issue, and that it will apply its interpretation of the Social Security Act or regulations at the administrative level within the circuit. The notice will explain why the Administration made this decision.

(d) When the Administration decides to relitigate an issue, it will provide a notice explaining its action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply the Administration's interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, the Administration will maintain a listing of all claimants who receive this notice.

(e) The Administration will rescind as obsolete a Social Security Acquiescence Ruling and apply its interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occur:

(1) The Supreme Court overrules or limits a circuit court decision on an issue that was the basis of an Acquiescence Ruling; or

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling; or

(3) A Federal law is enacted that removes the basis for the decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) The Administration subsequently clarifies, modifies or revokes the regulation or ruling that was the subject of a circuit court decision that the Administration determine conflicts with its interpretation of the Social Security Act or regulations, or it subsequently publishes a new regulation(s) addressing an issue(s) not previously included in its regulations when that issue(s) was the subject of a circuit court decision that conflicts with its interpretation of the Social Security Act or regulations and that decision is not one which is compelled by the statute or Constitution.

PART 416—[AMENDED]

5. The authority citation for Subpart N of Part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

6. New § 416.1484 is added to read as follows:

§ 416.1484 Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) We will apply a United States Court of Appeals decision which we determine conflicts with our interpretation of a provision of the Social Security Act or regulations unless the government appeals or we relitigate the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. We will apply the decision to claims at all levels of administrative adjudication within the applicable circuit unless the decision, by its nature, applies only at certain levels of adjudication.

(b) When we determine that a United States Court of Appeals decision conflicts with our interpretation of a provision of the Social Security Act or regulations and the government does not appeal or appeals unsuccessfully, we will issue a Social Security Acquiescence Ruling that describes the case, identifies the issue(s) involved, and explains how we will apply the decision including, as necessary, how the decision relates to other decisions within the applicable circuit. These rulings will generally be effective on the date of publication in the **Federal Register.** If we make a determination or decision after the date of a circuit court decision, but before we issue an Acquiescence Ruling, and after the publication of the ruling a claimant requests application of the ruling to the prior determination or decision and can demonstrate that application of the ruling would change the prior determination or decision, we will readjudicate the claim at the level at which it was last adjudicated, in accordance with the ruling. Any readjudication will be limited to consideration of the issue(s) covered by the ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. Our conclusion not to readjudicate will not be subject to further administrative or judicial review.

(c) After we have published a Social Security Acquiescence Ruling to reflect a decision of a United States Court of Appeals on an issue, we may decide under certain conditions to relitigate that issue within the same circuit. We will relitigate only when the conditions specified in paragraphs (c) (2) and (3) of this section, are met, and, in general, one of the events specified in paragraph (c)(1) of this section occurs.

(1) *Activating events.* (i) An action by both Houses of Congress indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law; or

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again; or

(iii) Subsequent circuit court precedent in other circuits supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court decision upon which we base a Social Security Acquiescence Ruling.

(2) The General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concurs that relitigation of an issue and application of our interpretation of the Social Security Act or regulations at the administrative level within the circuit would be appropriate.

(3) We publish a notice in the **Federal Register** that we intend to relitigate an Acquiescence Ruling issue, and that we will apply our interpretation of the Social Security Act or regulations at the administrative level within the circuit. The notice will explain why we made this decision.

(d) When we decide to relitigate an issue, we will provide a notice explaining our action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply the Administration's interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, we will maintain a listing of all claimants who receive this notice.

(e) We will rescind as obsolete a Social Security Acquiescence Ruling and apply our interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occur:

(1) The Supreme Court overrules or limits a circuit court decision on an issue that was the basis of an Acquiescence Ruling; or

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling; or

(3) A Federal law is enacted that removes the basis for the decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of circuit court decision that we determine conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court decision that conflicts with our interpretation of the Social Security Act or regulations and that decision is not one which is compelled by the statute or Constitution.

PART 442—[AMENDED]

7. The authority citation for Subpart E of Part 442 is revised to read as follows:

Authority: Secs. 205, 1102, 1106, and 1871 of the Social Security Act, 42 U.S.C. 405, 1302, 1306, and 1395hh; Section 413(b) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 923(b); 8 U.S.C. 1360; 26 U.S.C. 6103; 5 U.S.C. 552 and 552a.

8. Section 442.406 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 422.406 Publication.

* * * * *

(b) *Publication of rulings.* Although not required pursuant to 5 U.S.C. 552(a)(1) and (a)(2), the following rulings will be published in the **Federal Register** as well as by other forms of publication:

(1) Social Security Rulings are published in the **Federal Register** under the authority of the Commissioner of Social Security and are finding on all components of the Administration. These rulings represent precedent final opinions and orders and statements of policy and interpretations that have been adopted by the Administration.

(2) Social Security Acquiescence Rulings are published in the **Federal Register** under the authority of the Commissioner of Social Security and are binding on all components of the Administration, except with respect to claims subject to the relitigation procedures established in § 404.984 (c) and (d), § 410.610c (c) and (d), and § 416.1484 (c) and (d). For a description of Social Security Acquiescence Rulings, see § 404.984(b), § 410.610c(b) and § 416.1484(b) of this title.

* * * * *

§ 422.408 [Removed]

9. Section 422.408 *Statements of policy and interpretations not published in the Federal Register* is removed.

10. Section 422.410 is amended by adding new paragraph (l) to read as follows:

§ 422.410 Publications for sale.

* * * * *

(l) Social Security Acquiescence Rulings.

11. Section 422. 416 *Availability of Records* is amended by adding an "and" between the words "policy," and "other" and by deleting ", such as Social Security Rulings," in paragraph (a).

10. Section 422.430 is amended by adding a new paragraph (a)(6) to read as follows:

§ 422.430 Materials available at district offices and branch offices.

(a) * * *

(6) Social Security Acquiescence Rulings.

11. Section 422.432 is amended by adding a new paragraph (a)(7) to read as follows:

§ 422.432 Materials in field offices of the Office of Hearings and Appeals.

(a) * * *

(7) Social Security Acquiescence Rulings.

[FR Doc. 8–26620 Filed 11–17–8; 8:45 am]
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DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Regarding the International Transportation and Receipt of Monetary Instruments; Correction

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking; Correction.

SUMMARY: This notice corrects a typographical error contained in the Notice of Proposed Rulemaking published on November 14, 1988, which proposed a definition of "at one time" for the purposes of the international transportation and receipt of monetary instruments and proposed to amend § 103.11(k), the definition of "monetary instruments," to include all forms of traveler's checks.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566–9947.

In FR Doc. 88–26189, appearing in the **Federal Register** of Monday, November 14, 1988, on page 45776, amendatory item three is corrected to read as follows:

3. It is proposed to further amend § 103.11 by redesignating paragraphs (l)(1)(ii) through (l)(1)(iv) as (1)(1)(iii) through (1)(1)(v); by removing the words "traveler's checks" from newly redesignated paragraphs (l)(1)(iii) and (l)(1)(iv); and by adding a new paragraph (l)(1)(ii) to read as follows:

§ 103.11 Meaning of Terms.

* * * * *

(l) *Monetary instruments.*

(1) * * *

(ii) Traveler's checks in any form;

* * * * *

Dated: November 14, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88–26718 Filed 11–17–88; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

38 CFR Part 3

Definitions of Former Prisoner of War

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to amend its regulation defining former prisoner of war (POW) and establish criteria for deciding such status. The Veterans' Benefits and Service Act of 1988 provides the basis for redefinition. The effect of the change will be to permit the VA to decide POW status for an extended class of veterans.

DATES: Comments must be received on or before December 19, 1988. Comments will be available for public inspection until December 28, 1988. This change is proposed to be effective May 20, 1988, in accordance with law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this change to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulaitons Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The regulation defining the term "former prisoner of war" is being amended, consistent with recent change of law (38 U.S.C. 101(32)) to set criteria for deciding POW status for a new class of eligible individuals. Before enactment of Pub. L. 100–322, the term POW did not cover individuals interned or detained during a wartime period by a non-enemy government or its agents. Such individuals generally were detained by neutral governments; however, under the recent revision any detainee may be considered for POW status, including even those held by allied governments.

Mere detention does not automatically convey POW staus. While the circumstances of a detention are not pertinent to a decision conveying POW status, the reason for the detention is pertinent.

Previoulsy, the VA had set criteria for deciding POW status for veterans detained during peacetime. These criteria are being adopted for decisions under the expanded authority granted to recognize POW status for individuals detained during wartime by a non-enemy government or its agents.

The criteria require that for a favorable decision, i.e., one which grants POW status, the reason for a detention must have been signficantly to foster anti-American goals or to embarrass the United States.

The Administrator hereby certifies that this proposed regulatory amendment will not have significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. The reason for this certification is thast this proposed amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibiity analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this proposed regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers for this amendment are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 1, 1988.

Thomas K. Turnage,

Administrator.

In 38 CFR Part 3, Adjudication, § 3.1 is amended by revising paragraph (y) to read as follows:

§ 3.1 Definitions.

* * * * *

(y) *"Former prisoner of war."* The term "former prisoner of war" means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in the line of duty by an enemy or foreign government, the agents of either, or a hostile force.

(1) *Decisions based on service department findings.* The Veterans Administration shall accept the finding of the appropriate service department that a person was a prisoner of war during a period of war unless a reasonable basis exists for questioning it. Such findings shall be accepted only when detention or internment is by an enemy government or its agents.

(2) *Criteria.* The Veterans Administration shall use the following factors to determine prisoner of war status.

(i) *Reasons for forcible detainment or internment.* To be considered a former prisoner of war, a serviceperson shall have been forcibly detained or interned by an enemy or foreign government, the agents of either, or a hostile force, primarily to further or enhance anti-American military, political or economic objectives or views, or to embarrass the United States. A serviceperson who is detained or interned by a foreign government for an alleged violation of its laws is not entitled to be considered a former POW based on that period of detention or internment, unless the charges are a sham intended to legitimize anti-American military, political or economic objectives or views, or actions embarrassing to the United States.

(ii) *Treatment during detainment or internment.* The manner in which a serviceperson is treated during detainment or internment is immaterial in determining whether a serviceperson was a POW.

(iii) *In line of duty.* The Veterans Administration shall consider that a serviceperson was forcibly detained or interned in line of duty unless the evidence of record discloses that forcible detainment or internment was proximately caused by the serviceperson's willful misconduct. Willful misconduct means an act involving conscious wrongdoing or known prohibited action. It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

(iv) *Hostile force.* The term "hostile force" means any entity other than an enemy of foreign government or the agents of either whose actions are taken to further or enhance anti-American military, political or economic objectives or views, or to attempt to embarrass the United States.

(v) *Determinations of POW status.* The Director of the Compensation and Pension Service, VA Central Office, shall approve all VA regional office determinations, except those accepted under paragraph (y)(1) of this section, either establishing or denying POW status.

(Authority: 38 U.S.C. 101(32))

* * * * *

[FR Doc. 88–26697 Filed 11–17–88; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 3

Basic Eligibility Determinations: Education

AGENCY: Veterans Administration.

ACTION: Proposed Regulation.

SUMMARY: The Veterans Administration (VA) is amending the regulation which provides authority and guidelines for making a service-connected discharge determination needed to determine eligibility for educational assistance under the Vietnam Era GI Bill and the Post-Vietnam Era Veterans Educational Assistance Program (VEAP). The amended regulation adds a rule for deciding when such a determination must be made for a veteran who has applied for benefits under the Montgomery GI Bill-Active Duty.

DATES: Comments must be received on or before December 19, 1988. Comments will be available for public inspection until December 28, 1988.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until December 28, 1988.

FOR FURTHER INFORMATION CONTACT: William Susling, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2668.

SUPPLEMENTARY INFORMATION: The Montgomery GI Bill-Active Duty contains minimum periods of active duty and minimum periods of service in the Selected Reserve which a veteran must serve in order to maintain eligibility for educational assistance following discharge from active duty or discharge from the Selected Reserve. The length of the minimum period of active duty and minimum periods of service in the Selected Reserve varies according to the circumstances of the veteran's enlistment. It also provides two different monthly rates of full-time basic educational assistance. Maintaining eligibility for the higher of these two rates following discharge from the Selected Reserve sometimes requires that the veteran has served a minimum period of time in the Selected Reserve.

The law provides some exceptions to the requirements for a minimum period of active duty or a minimum period of service in the Selected Reserve. One of these exceptions is for veterans who are discharged for a service-connected disability. This amendment to § 3.315(c) provides authority for making disability discharge determinations needed to determine eligibility for benefits under the Montgomery GI Bill-Active Duty.

The VA has determined that this proposed regulation does not contain a major rule as that term is defined by Executive Order 12291, entitle Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. Pursuant to 5 U.S.C. 605(b), the proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entitites, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed regulation is 64.124.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: October 31, 1988.

Thomas K. Turnage,

Administrator.

PART 3—[AMENDED]

In 38 CFR Part 3, Adjudication, § 3.315 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.315 Basic eligibility determinations-dependents, loans, education

* * * * *

(c) *Veterans' educational assistance:* (1) A determination is required as to whether a veteran was discharged or released from service because of a

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service-connected disability (or that the official service department records show that the veteran had at time of separation from service a service-connected disability which in medical judgment would have warranted discharge for disability) whenever a veteran applies for educational benefits under—

(i) 38 U.S.C. Chapter 32 or Chapter 34 and is eligible for such benefits except for the 181 days active duty requirement; or

(ii) 38 U.S.C. Chapter 30 when any of the following circumstances exist.

(A) The veteran is eligible for basic educational assistance except for the minimum length of active duty service requirements of § 21.7042(a) or § 21.7044(a) of this chapter.

(B) The veteran is eligible for basic educational assistance except for the minimum length of service in the Selected Reserve requirements of § 21.7042(b) or § 21.7044(b) of this chapter.

(C) The veteran is eligible for basic educational assistance and except for the minimum length of service in the Selected Reserve requirements of § 21.7042(b) or § 21.7044(b) of this chapter is entitled to receive that assistance at the monthly rates states in § 21.7136(a) or § 21.7137(a) of this chapter.

(2) This determination is subject to the presumptions of incurrence under § 3.304(b) and aggravation under §§ 3.306 (a) and (c) of this part, based on service rendered after January 3, 1955, and before August 5, 1964, or after May 7, 1975, and § 3.306(b) of this part based on service rendered during the Vietnam era.

(Authority: 38 U.S.C. 1411(a)(1)(A)(ii); 1412(b)(1); 1602(1)(A); 1652(a))

* * * * *

[FR Doc. 88-26698 Filed 11-17-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3478-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Extension of the Public Comment Period.

SUMMARY: On September 7, 1988 (53 FR 34557), the U.S. Environmental Protection Agency (USEPA) proposed to disapprove the State of Ohio's request to redesignate the air quality status of Montgomery County, Ohio to attainment for Total Suspended Particulates (TSP).

At the time of the proposed rulemaking, a 30-day comment period was provided. The Ohio Regional Air Pollution Control Agency requested a 45-day extension of the public comment period. Based upon this request, USEPA is extending the public comment period for an additional 45 days to November 23, 1988.

DATE: Comments must be postmarked on or before November 23, 1988.

ADDRESS: If possible please send an original and three copies of all comments. Comments should be submitted to: Gary Gulezian, Regulatory Analysis Section (5AR-26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

Authority: 42 U.S.C. 7401-7642.

Dated: November 1, 1988.

David Kee,

Acting Regional Administrator.

[FR Doc. 88-26723 Filed 11-17-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3478-8]

Alternative Emission Control Plan for American Cyanamid Company Fortier Plant, Westwego, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing disapproval of the American Cyanamid Company Fortier Plant Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana State Implementation Plan (SIP). The proposed trade would have used emission reduction credits from incineration of the absorber off-gas (AOG) vent at their acrylonitrile plant to avoid controlling thirteen bulk and crude acrylonitrile storage tanks. The thirteen tanks have since been controlled by State order. EPA determined that incineration of the AOG vent stream was already required under current EPA-approved State Regulations and that the emission reduction used for credit in the trade does not qualify as surplus under the present SIP. Hence, the bubble does not meet the requirements of EPA's proposed Emissions Trading Policy Statement (ETPS) of April 7, 1982 [47 FR 15076], and the basic direction of the final ETPS. A relaxation of the SIP to create surplus emission reductions for the trade is not justifiable based on current air quality.

DATE: Comments must be received at the Region 6 office by December 19, 1988.

ADDRESSES: Copies of the State's submittals are available for review during normal business hours at the following locations:

Air Quality Division, Louisiana Department of Environmental Quality, Land and Natural Resources Bldg., 625 N. 4th St., Box 44066, Baton Rouge, Louisiana 70804

Environmental Protection Agency, Region 6, Air Programs Branch, 1201 Elm St., Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Bill Riddle, State Implementation Plan Section, Air Programs Branch, Air, Pesticides & Toxics Division, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202, (214) 655-7214.

SUPPLEMENTARY INFORMATION: On July 22, 1982 the Governor of Louisiana submitted a request to revise the Louisiana SIP to include an Alternative Emission Reduction Plan ("Bubble") for the American Cyanamid Company Fortier Plant located at Westwego, Jefferson Parish. The submittal contained certification of adequate notice and a public hearing for the proposed alternate controls. Additional information necessary for review of the proposal was submitted March 3, 1983 and February 21, 1984, by the Air Quality Division of the Louisiana Department of Environmental Quality, and the bubble was revised on March 3, 1983 and again on October 19, 1984. EPA is proposing to disapprove the trade and invites comments from all interested persons. Comments received by the Region 6 office within 30 days of the publication of this notice will be considered by EPA.

Background

American Cyanamid's Fortier Plant proposed to use emission reduction credit from the incineration of the acrylonitrile plant absorber off-gas (AOG) vent to indefinitely delay controlling the emissions from thirteen crude and bulk acrylonitrile fixed roof storage tanks. The tanks were not equipped with any of the emission control devices required by Louisiana Air Quality Regulation (LAQR) 22.3. As a negotiated RACT level of emissions agreed upon by the company and the State, the State would allow the AOG vent to have baseline emissions of 3960 tons per year (TPY) of volatile organic compounds (VOC). Since actual emissions after incineration are estimated to be 1500 TPY the State would allow a creditable emission reduction of 2460 TPY of VOC.

To compensate for the increased allowable emissions of 108 TPY at the thirteen storage tanks, the State proposes to use 150 TPY of American Cyanamid's available 2460 TPY of credit. This would amount to a 42 TPY net air quality benefit. The entire American Cyanamid trade is summarized below:

State Position—Credit from AOG vent incineration −(2460 TPY) + Increased emissions allowed at storage tanks (108 TPY) + Net air quality benefit (42 TPY) = Credit Balance −(2310 TPY)

EPA Position—0 TPY + 108 TPY + 42 TPY = +150 TPY

Sources	Emissions (tons/year)						
	Actual			Allowable			
	Before bubble	After bubble	Change	Before bubble	After bubble	State position change	EPA position change
Absorber off gas (State position)	13,200	#1500		*3960	#1500	−2460	
Absorber off gas (EPA position)	13,200	#1500		#1500	#1500		0
Storage Tank Emission	120	120		12	120	+108	+108
Air Quality benefit						+42	+42
Total						−2310	+150

* Negotiated RACT level of emissions between Company and State based on 70% control of the AOG vent. The currently applicable regulation, however, is an equipment standard for incineration. Control efficiencies for incineration of AOG vent streams commonly range as high as 99%, and the level of removal evidenced by American Cyanamid in this instance is within the expected range for a normal incinerator under normal operation. Hence, in the absence of any evidence from the State that extra steps were undertaken to enhance the control effectivness of the incinerator, or that a 70% reduction reflects the actual level of control envisioned for the AOG vent stream by the State and EPA when the incinerator requirement was adopted and approved into the SIP, EPA has concluded that substitution of the current incineration requirement with a 70% reduction requirement would constitute a relaxation of the SIP. This is the point upon which EPA bases its disapproval recommendation.

Estimated emissions after incineration.

The current air quality designation is still nonattainment for ozone. Although EPA proposed to call for a new SIP for the area in 1983 based on air quality violations through 1982, since no violations were recorded in 1983, EPA withheld final action on that SIP call. The last five years of data for the three parishes (Jefferson, Orleans, and St. Bernard) in the New Orleans urban nonattainment area is as follows:

Year	NAAQS (ppm)	Highest exceedance (ppm)	Number of exceedances for that year
1983	.12	NA	0
1984	.12	.130	[1] 2
1985	.12	NA	0
1986	.12	NA	0
1987	.12	.137	1

[1] Different sites.

The New Orleans urban nonattainment area has had less than one exceedance per year average over the 1985-1987 time period. EPA is monitoring the air quality situation further before making any decision to call for a revised SIP. The State has not requested that the area be redesignated from nonattainment.

Review

Ths Bubble qualifies as a "pending bubble" under EPA's final Emissions Trading Policy Statement (ETPS) and Technical Issues Document published in the **Federal Register** of December 4, 1986 [51 FR 43814]. It was accordingly reviewed from compliance with the requirements of section 110 of the Clean Air Act, 40 CFR Part 51, EPA's proposed ETPS and Technical Issues Document published in the **Federal Register** on April 7, 1982 [47 FR 15076], and the pending bubble provisions of the final ETPS. EPA has reviewed the State submittal and developed an Evaluation Report.[1] This report is available for inspection by interested parties during normal business hours at the EPA Region 6 office and at the Louisiana Air Qaulity Division office in Baton Rouge. Briefly, the most significant portion of the review are summarized below.

The ETPS requires that emission reductions relied on for credit be surplus-i.e., reductions beyond the appropriate baseline level of emissions for the unit in question. At a minimum, only emission reductions not required by current regulations in the SIP, not already relied on for SIP planning purposes, and not used by the source to meet any other regulatory requirement, can be considered surplus. The appropriate baseline depends on, among other things, the attainment designation and SIP approval status of the area in which the affected unit is located. Jefferson Parish is part of a designated urban ozone nonattainment area. EPA approved the explanation in the SIP that showed how the area would attain the ozone national ambient air quality standard by December 31, 1982 (referred to as the demonstration of attainment) on February 14, 1980 [45 FR 9903]. Because the area continued to experience violations of the ozone standard through 1982, EPA proposed on February 3, 1983 to find the New Orleans SIP to be deficient and call for a revised SIP under section 110(a)(2)(H) of the Clean Air Act. No violations were recorded in 1983, however, and EPA withheld final action on the SIP call. Two exceedances of the standard in 1984 and one in 1987, indicate a continuing air quality problem which may not have been fully corrected by the approved SIP. EPA is monitoring the air quality situation further before making any decision on a call for a revised SIP.

The Louisiana Air Quality Regulation (LAQR) 22.8 was approved by EPA as part of the SIP and requires the application of reasonably available control technology (RACT) on VOC waste gas disposal. This regulation requires that nonhalogenated hydrocarbons like those in the AOG vent stream be burned at 1300°F (740 °C) for 0.3 second or greater in a direct flame afterburner or an equally effective device.

The AOG vent had uncontrolled emissions in 1980 of 13,200 tons per year (TPY) of VOC. An incinerator was

[1] Evaluation Report for Alternative Emission Control Plan for American Cyanamid Company, Westwego, Louisiana, EPA-Region 6, December 1986.

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installed in 1981, and now the total emissions after control are estimated by the State at 1,500 TPY. It is EPA's position that incineration of the vent stream was required by the SIP. Since incineration is the method of control being employed, and in the absence of evidence to demonstrate that any steps have been taken to enhance the control effectiveness of the incinerator beyond minimum legal requirements, and in the absence of underlying documentation to show that a level of control as low as 70% was envisoned by the State and EPA when the incineration regulation was initially adopted and approved into the SIP, EPA has concluded that no surplus credits have been created.

The state claims that incineration for the AOG vent was waived under LAQR 22.8(c) and that 70 percent control is all that is required. At 70 percent control, allowable emissions from the vent would be 3960 TPY. By this reasoning, American Cyanamid would have 2460 TPY of emission reduction credits (3960 minus 1500), much more than needed to balance the emissions increase that the bubble would allow from the tanks. The basis for this claim is the approximately 70 percent facility-wide emission reduction expected from American Cyanamid in the 1979 SIP demonstration of attainment for New Orleans. That demonstration, however, does not contain enforceable emissions limits for any individual pieces of equipment. The demonstration was intended only to show that, by application of the State's control requirements, the NAAQS for ozone would be attained in New Orleans by December 31, 1982. The enforceable means of actually achieving those reductions are the Louisiana Air Quality Regulations. The requirement for the AOG vent is therefore an equipment standard, i.e., incineration, not the approximately 70 percent rollback expected for the facility as a whole in the attainment demonstration. In order to subsitute an emission limit (70 percent reduction) for an equipment standard, (incineration), a SIP revision based on a new permit or other legally enforceable instrument incorporating that limit would be required. The State maintains this is not necessary because the incineration requirement was waived by the Assistant Secretary of the Louisiana Environmental Control Commission under LAQR 22.8(c). This waiver clause reads as follows:

"Where it can be demonstrated to the Department that the waste gas stream:

1. Is not significant (i.e. is less than one hundred TPY),

2. Will not support combustion without auxiliary fuel, or

3. Disposal cannot be practically or safely accomplished by other means without causing economic hardship, the Assistant Secretary may waive the requirement."

A brief history on EPA's approval of this regulation is in order here. On reading the waiver provision when it was submitted by the State for incorporation into the SIP, EPA raised a question as to whether criteria 1 and 2 together, or 1 and 3 together, or instead only one of either 1 or 2 or 3, must be met.

During the period between EPA's proposed approval of § 22.8(c) and its final action on that provision, the Louisiana Environmental Control Commission adopted a resolution stating, among other things, that:

> The correct interpretation and intent of § 22.8(c) by the State is that . . . consideration for exemption by the Assistant Secretary (previously Technical Secretary) is based on a combination of the three conditions stated in § 22.8(c) . . . .

Thus, the State committed to adopting exemptions only for streams that met a combination of the three criteria in § 22.8(c), not just one. Because of "or" is located between criteria 2 and 3, EPA read the Commission's resolution to mean that, at minimum, criterion 1 must always be met, and either criterion 2 or criterion 3 must also be met. When EPA granted final approval to the exemption provision [see 47 FR 6015, 6016], it relied expressly on this LECC resolution:

> The State has submitted a resolution defining its interpretation of the section. Upon consideration of the comments received and the State's resolution, EPA has determined that the exemption clause in § 22.8(c) is appropriate (see Evaluation Report, available at addresses listed in Addresses section). Therefore EPA is granting final approval to § 22.8(c) as submitted by the State.

In the EPA Evaluation Report referenced in this statement, the Agency said:

> The State submitted a resolution defining its interpretation of the Section, which explained that an exemption for an individual waste gas stream is allowed only on a case by case basis and only if a combination of three conditions are met, one being that a stream's emissions must be less than 100 tones per year. Upon consideration of the public comments received and the State's resolution, EPA has determined that the exemption clause in § 22.8(c) is appropriate as submitted by the State.

Thus, it is clear from the LECC resolution and the statements on which EPA's approval of § 22.8(c) was based, that EPA approved that section's waiver provision only to the extent it permitted the State to adopt waivers for sources emitting less than 100 TPY and meeting one or both of the other listed criteria. Any other waivers would be inconsistent with the terms of the resulting EPA-approved SIP and would therefore require a revision of the SIP. Under sections 110(a) and 110(i) of the Clean Air Act, such revisions must receive EPA approval before they change the SIP.

The AOG vent emits well over 100 TPY of VOC, and therefore does not meet the first of the three criteria listed in the § 22.8(c) waiver provision. Hence, under the terms of that provision as it was incorporated into the EPA-approved SIP, the waiver the state adopted for the vent will not change the otherwise applicable incineration requirement unless and until EPA approves the waiver. EPA has not yet approved the waiver as a SIP revision, so the incineration requirement still applies to the vent, and accordingly forms the trading baseline. Since, as discussed above, the vent emission reductions are equivalent to, and not beyond, the baseline, no surplus emission reductions have been created.

Since under EPA emissions trading policy the baseline for the AOG vent is the SIP requirement, EPA would have to approve a relaxation of that requirement before it could approve the bubble the state has submitted. Such a relaxation could be approvable, however, only if either (1) the state were to submit a new demonstration that such a relaxation would not interfere with maintaining the standard, as required by the Clean Air Act, or (2) EPA could conclude, based on the 1979 demonstration and in light of the area's current air quality and the expected ambient effect of the relaxation, that an approximately 30 percent (i.e. from the 70% control to 99% + incinerator control) increase in emissions will not interfere with maintenance. Since the state did not submit a new demonstration, EPA analyzed whether the second of these alternatives has been satisfied.

As noted above, the 1979 demonstration lists emission reduction projections for the area's sources. However, even though most of those reductions have already been achieved, and even though, through incineration of the AOG vent, the American Cyanamid facility has achieved more than the approximately 70 percent reduction projected in the demonstration, air quality monitoring shows that the area still experiences marginal nonattainment. A relaxation of the AOG vent requirement from incineration to only 70 percent control would provide American Cyanamid authority potentially to increase actual emissions by as much as 2,310 TPY of VOC through a series of bubbles involving other emissions units in the three-parish New Orleans urban nonattainment area. This would amount to approximately 10 percent of the total 1982 emissions projected for all point sources in the area. EPA believes that an increase of this magnitude would have a significant negative impact on ozone concentrations and hence on the area's ability to maintain the ozone standard.[2] For this reason, and because the state has presented no evidence that the greater emissions reduction resulting from incineration is not RACT, EPA cannot rely on the 1979 demonstration to conclude that a relaxation of the incineration requirement to a 70 percent control requirement would not interfere with maintenance of the standard.

The submittal may also contain other deficiencies not noted. This notice does not discuss these deficiencies because the submission does not meet the fundamental baseline requirements discussed previously, which in themselves provide enough reason to disapprove the action. To determine the applicable requirements and ascertain how this action may be rewritten as an approvable emission trade, the applicant or State agency should consult the Emissions Trading policy of December 4, 1986 (51 FR 43814), Appendix D of the proposed Ozone/Carbon Monoxide Nonattainment policy of November 24, 1987 (52 FR 45105), and the enforceability checklist included in a September 23, 1987, memorandum from J. Craig Potter, Thomas L. Adams Jr., and Francis S. Blake re: "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency."

In sum, because (1) the emissions reductions relied on for this bubble is not surplus under the current EPA-approved SIP, and (2) it has not been demonstrated the the SIP incineration requirement can be relaxed to create a surplus reduction based on the 1979 demonstration without jeopardizing maintenance of the ozone standard in the New Orleans area, EPA must disapprove this trade.

Interested parties are invited to submit comments on this proposed disapproval. EPA will consider all comments received within thirty days of the publication of this notice.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certifies that this proposed disapproval will not have a significant impact on a substantial number of small entities because it applies only to one firm, American Cyanamid Company.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

This notice of disapproval is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Editorial note.—This document was received at the Office of the Federal Register November 15, 1988.

Dated: Mar. 3, 1987.

Robert E. Layton Jr.,

Regional Administrator (6a).

[FR Doc. 88–26722 Filed 11–17–88; 8:45 am]

BILLING CODE 6560–50–M

[2] Pending the results of further monitoring in the area, EPA has not yet decided whether the current SIP requirements are "substantially inadequate" to maintain the ozone standard within the meaning of Section 110(a)(2)(H) of the Act. For the reasons discussed above, however, EPA can conclude now that while the current SIP may be found adequate, a relaxation of the SIP to allow the greater emissions assumed in the 1979 demonstration may not protect the standard.

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Notices

Federal Register
Vol. 53, No. 223
Friday, November 18, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agricultural Commodities To Be Made Available for Donation Overseas in Fiscal Year 1989

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This Notice sets forth the determination of the Secretary of Agriculture of the types and quantities of agricultural commodities to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1989.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 447–3573.

SUPPLEMENTARY INFORMATION: Section 416(b) of the Agricultural Act of 1949, as amended, 7 U.S.C. 1431(b) ("section 416(b)"), requires the Secretary of Agriculture to make available for donation overseas for each of the fiscal years 1986–1990 not less than certain minimum quantities of Commodity Credit Corporation ("CCC") uncommitted stocks. The minimum quantity of grains (wheat, rice, and feed grains) and oilseeds required to be made available shall be the lesser of 500,000 metric tons of CCC's uncommitted stocks or 10 percent of the estimated year-end levels of CCC's uncommitted stocks. The minimum quantity of dairy products shall be 10 percent of CCC's uncommitted stocks of dairy products, but not less than 150,000 metric tons to the extent that uncommitted stocks are available. The minimum quantity requirements may be waived by the Secretary if the Secretary determines and reports to Congress there are insufficient valid requests for eligible commodities under section 416(b) for any fiscal year, or if the Secretary determines the restrictions in furnishing of commodities under section 416(b)(3) prevent the making available of commodities in such quantities.

Section 416(b) also requires the Secretary to estimate the expected year-end levels of CCC's uncommitted stocks of grains and oilseeds, and dairy products for each of the fiscal years 1986–1990.

The Secretary is required to publish in the **Federal Register** his determination of the quantities of commodities that shall be made available for each fiscal year along with a breakdown by kind of commodity and the quantity of each commodity.

Determination

In accordance with section 416(b), I have determined that 900,000 metric tons of grains and 4,500 metric tons of butter (frozen form only) shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1989.

The kinds of quantities of commodities that shall be made available for donation are as follows:

Commodity	Quantity (Metric tons)
Grains and Oilseeds:	
Corn	400,000
Sorghum	500,000
Total	900,000
Dairy Products:	
Butter (frozen form only)	4,500
Total	4,500

Done at Washington, DC, this 24th day of October 1988.

Peter C. Myers,

Acting Secretary.

[FR Doc. 88–26717 Filed 11–17–88; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Douglas-Fir Tussock Moth Management, Lossen National Forest, Plumas, Tehama and Lassen Counties, CA and Plumas National Forest, Sierra, Lassen and Plumas Counties, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for the Douglas-fir tussock moth outbreak on approximately 100,000 acres of the Lassen and Plumas National Forests.

A range of alternatives for this project will be considered. One of these will be not to do anything. Other alternatives will consider aerial application of synthetic insecticides or biological control agent.

Federal, State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Forest Supervisors will hold the following public meetings: Chester, California on November 30 at the Civic Center; Quincy, California on November 29 at the Plumas County Library; Greenville, California on December 1 at the Elementary School Library; La Porte, California on November 22 at the Union Hotel; Graeagle, California on November 21 at thee Graeagle Community Hall. All meetings will begin at 7:00 p.m.

Paul Barker, Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

The analysis is expected to take about 2 months. The draft environmental impact statement is scheduled to be completed by January 1988.

Written comments and suggestions concerning the analysis should be sent to Laurence Crabtree, District Silviculturist, Box 767, Almanor Ranger District, Chester, California 96020 by December 15, 1988.

Questions about the proposed action and the environmental impact statement should be directed to Laurence Crabtree at the above address or phone 916–258–2141.

D. Keith Crummer,

Almanor District Ranger.

Date: November 14, 1988.

[FR Doc. 88–26714 Filed 11–17–88; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Oglethorpe Power Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact relating to the construction of a 230 kV transmission line in Richmond County, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to construction of a 4.2 mile, 230 kV transmission line on single steel support structures. Oglethorpe Power Corporation (OPC), of Tucker, Georgia, has requested approval to use general funds to construct the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area-Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8436.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that OPC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impacts of the proposed project. The project will allow OPC to continue to meet its responsibilities to serve its load in a reliable and economical manner.

The length of the proposed transmission line is approximately 4.2 miles. It will be connected to the end of the existing 230 kV Boykin Road Transmission Line and terminate at the existing 230/115/46 kV Goshen Substation. The line will require new right-of-way (ROW) 65 feet in width.

REA has concluded that the proposed project will have no significant impact on wetlands, prime farmland, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals. Floodplains, wetlands, and prime farmland are located in the preferred line ROW. Some transmission line support structures may be located within these areas; however, REA believes that transmission line structure placement will have no significant impact to these areas. No practical alternative routes that could avoid these areas were identified. Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Alternatives examined for the proposed project included no action, electrical alternatives, and alternative line routes. REA determined that there is a demonstrated need for the project and constructing it within the preferred ROW will have no significant impact to the environment. Therefore, REA has concluded that its approval to allow OPC to use general funds to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. REA has reached a FONSI with respect to the proposed project.

Copies of the EA and FONSI can be obtained from the offices of REA in the South Agriculture Buildings, Room 0270, 14th and Independence Avenue SW., Washington, DC 20250 or at the office of Oglethorpe Power Corporation, P.O. Box 1349, Tucker, Georgia 30085–1349.

In accordance with REA Environmental Policies and Procedures, 7 CFR 1794, OPC has a notice and advertisement published in *The Agusta Herald* which has a general circulation in Richmond County. The notice appeared in the October 7, 1988 issue. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by OPC or REA.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.8509–Rural Electrification Loans and Loan Guarantees. In accordance with 7 CFR Part 3015, Subpart V, and its related **Federal Register** notice (48 FR 29115), this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Date: November 15, 1988.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 88–26754 Filed 11–17–88; 8:45 am]

BILLING CODE 3410–15–M

Seminole Electric Cooperative, Inc.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to prepare environmental impact statement and hold scoping meetings.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794) plans to act as lead agency and prepare a Draft (DEIS) and subsequently a Final Environmental Impact Statement (FEIS) for its Federal action related to a proposal by Seminole Electric Cooperative, Inc. (Seminole) of Tampa, Florida, to construct a 440 MW electric generating station. REA may consider providing financing assistance, construction approval, and/or approval of contractual agreements between Seminole and other parties to allow project construction. Notice is also given of public scoping meetings to be held in conjunction with the review of the possible environmental consequences and the determination of potentially significant environmental issues associated with the REA, U.S. Environmental Protection Agency (EPA), and Federal Energy Regulatory Commission's (FERC) Federal action related to the proposed project.

EPA is planning to act as a cooperating agency in the preparation of the DEIS and FEIS for the proposed project. EPA's Federal action related to the project will be the possible issuance of a new source National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits regulate the discharge of pollutants to the waters of the United States.

FERC is also planning to act as a cooperating agency in the preparation of the DEIS and FEIS for its possible Federal action related to issuance of a Certificate of Convenience and Necessity for an interconnection to a gas pipeline associated with the proposed project.

FOR FURTHER INFORMATION CONTACT: The primary point of contact for this

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project is Mr. Alex M. Cockey, Jr., Director, Southeast Area—Electric, Rural Electrification Administration, room number 0270, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–1500, telephone number (202) 382–8436. For more information on the NPDES permit, contact Mr. Robert Howard, Chief, NEPA Compliance Branch, EPA, Region IV, 345 Courtland Street, Atlanta, Georgia 30365, telephone (404) 347–7109. For information on the Certificate of Convenience and Necessity, contact Mr. Richard Hoffman, Chief, Environmental Analysis Review Branch, Federal Energy Regulatory Commission, 825 North Capital Street, Washington, DC 20246, telephone (202) 357–9066. For information on specific aspects of Seminole's proposal, contact Mr. Michael Opalinski, Manager of Environmental Affairs, Seminole Electric Cooperative, Inc., P.O. Box 272000, Tampa, Florida 33688–2000, telephone number (813) 963–0994.

SUMMARY INFORMATION: Seminole tentatively proposes that the generating facilities be located in the State of Florida and is investigating sites in Hardee, Polk, and Sumter Counties and has a plan of study for a macro-corrider analysis containing alternative routes in Polk, Hardee, De Soto, Charlotte, and Lee Counties where a transmission line associated with the station may be located. The area being considered for generating facilities in Hardee and Polk counties is made up of a large area at the junction of both counties controlled by the phosphate mining industry and previously impacted by mining operations. The area being considered in Sumter County is in the vicinity of Sumterville. The sites are being investigated for a 440 MW combined cycle electric generating station with capability for expansion to ultimately support 660 MW of generating capacity. The station would be primarily fired with natural gas with a fuel oil backup. The site will be evaluated as a potential location for an on-site gasification plant that may be considered at a future date. Associated with the proposed generating station will be two fuel oil storage tanks, a 30 mile natural gas supply pipeline, a mechanical draft cooling tower or a 575 acre cooling reservoir, an administration building and approximately 85 miles of 230 KV transmission line.

Alternatives to be considered by REA and Seminole may include, among other options: (a) no action, (b) conservation measures, (c) purchase power from other sources, (d) shared generating units with other utilities, (e) construction of generation facilities by an independent power producer for the purpose of selling power to Seminole, (f) alternative sites for the proposed plant and alternative routes for the associated transmission line or lines, (g) alternative fuels, and (h) alternative methods of generation.

Public scoping meetings will be held at The American Legion Building, 25 West Palmetto Street, Wauchula, Florida 33873 on Tuesday, December 20, 1988 at 7:00 p.m. and at the Best Western Robert E. Lee Motor Inn, 6611 North U.S. 41, North Fort Myers, Florida 33903 on Wednesday, December 21, 1988 at 7:00 p.m.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meetings or within 30 days after the December 21 meeting to REA at the address provided in this notice.

Government agencies, other organizations, and the public are invited to participate in the planning and anaylsis of the proposed project. Issues to be discussed at the scoping meetings include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of significant environmental issues and the scope of those issues, delineation of issues which are not significant and do not warrant detailed study, and identification of other environmental reviews, analysis or study requirements that REA or other Federal, State of Florida, or local agencies may require to be conducted concurrently with the Environmental Impact Statement. To be presented at the meeting will be a Siting Study and an Alternative Evaluation Study prepared by Seminole and reviewed by REA. Seminole also intends to present a Plan of Study detailing the scope, quantity and specifically of information to be contained in its Environmental Analysis. The Environmental Analysis will be used as input to the DEIS and the FEIS. The Siting Study Alternative Evaluation and Plan of Study are available for public review at REA or Seminole at the address provided herein. They can also be reviewed at the following libraries:

Bartow Public Library, 315 E. Parker Street, Bartow, Florida 33830.
Charlotte-Glades, Library System, 18400 Murdock Circle, Port Charlotte, Florida 33948.
Hardee County Library, 315 N. 6th Avenue, Suite 114, Wauchula, Florida 33837.
De Soto County Library, 519 Hickory Street, Arcadia, Florida 33821.
Lee County/Fort Myers, Public Library, 2050 Lee Street, Ft. Myers, Florida 33901.

Any final action by REA, EPA, or FERC related to the proposed project will be subject to and contingent upon compliance with all relevant Federal environmental laws and regulations and completion of the environmental procedures as prescribed by CEQ, REA environmental policies and procedures and those of EPA and FERC, as applicable.

John H. Arnesen,
Assistant Administrtor-Electric.
Date: November 15, 1988.
[FR Doc. 88–26755 Filed 11–17–88; 8:45 am]
BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

Subcommittee on Export Administration of the President's Export Council; Closed Meeting

A closed meeting of the President's Export Council Subcommittee on Export Administration will be held December 14, 1988, 9 a.m. to 3 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue, NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Executive Session: 9:00 a.m.—3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 27, 1987, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Subcommittee, dealing with the classified materials listed in 5 U.S.C. 552b (c) (1) shall be exempt from the provisions relating to public meetings found in section 10 (a) (1) and (a) (3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Sharon A. Gongwer (202) 377–3586.

Date: November 14, 1988.

Michael E. Zacharia,
Assistant Secretary for Export Administration.
[FR Doc. 88–26677 Filed 11–17–88; 8:45 am]
BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Duke University Marine Laboratory (P371A)

On June 8, 1988, notice was published in the **Federal Register** (50 FR 21508) that an application had been filed by the Duke University Marine Laboratory, Pivers Island, Beaufort, North Carolina 28516–9721, for a permit to take up to 300 Atlantic bottlenose dolphins (*Tursiops truncatus*) by harassment for the purposes of scientific research.

Notice is hereby given that on November 4, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Silver Spring Metro Center No. 1, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.
Date: November 4, 1988.
[FR Doc. 88–26744 Filed 11–17–88; 8:45 am]
BILLING CODE 3510–22–M

National Marine Fisheries Service; Marine Mammals; Application for Permit; Ocean Park Corp. (43C)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Ocean Park Corporation, Wong Chuk Hang Road, Aberdeen, Hong Kong.

2. *Type of Permit:* Public display.

3. *Name and Number of Marine Mammals:*

Harbor seals (*Phoca vitulina*), 12.
California sea lions (*Zalophus californianus*), 8.

4. *Type of Take:* Permanent maintenance from captive born stock.

5. *Location and Duration of Activity:* Sea World over a 2 year period.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Silver Spring, MD 20910; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.
Date: November 11, 1988.
[FR Doc. 88–26745 Filed 11–17–88; 8:45 am]
BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; Ringling Bros.-Barnum and Bailey Circus (P384A)

On September 29, 1988, notice was published in the **Federal Register** (53 FR 38049) that an application had been filed by Ringling Bros.-Barnum and Bailey Circus, Executive Offices, 3201 New Mexico Avenue NW., Washington, DC 20016, to import South American (Patagonian) sea lions (*Otaria flavescens*) for public display.

Notice is hereby given that on November 9, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Silver Spring, Maryland 20910;
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702;
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415;
Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;
Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington, 98115; and
Director, Alaska Region, National Marine Fisheries Services, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.
Date: November 9, 1988.
[FR Doc. 88–26746 Filed 11–17–88; 8:45 am]
BILLING CODE 3510–22–M

VOL 53 ISS 223 NOV 18 1988 UMI

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

November 15, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limit for Category 659–C is being increased for special carryforward, carryforward and swing.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 161, published in the **Federal Register** on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 30, 1987 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 15, 1988, the directive of December 30, 1987 is amended further to increase to 552,202 pounds [1] the current limit for man-made fiber textile products in Category 659–C,[2] as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–26679 Filed 11–15–88; 4:02 pm]

BILLING CODE 3510–01–M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

November 15, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: November 22, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The Governments of the United States and the Federative Republic of Brazil, agreed to establish a new Bilateral Textile Agreement for the period which began on April 1, 1988 and extends through March 31, 1992. The sublimit for Category 410 is being increased only for the first year of the agreement to 3,900,000 square yards, but is still subject to the merged limit for Categories 410/624 negotiated in the agreement.

A copy of the agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). For a description in terms of HTS numbers see the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see FRN 53 FR 44937, published on November 7, 1988. The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1988

Commissioner of Customs,
Department of the Treasury, Washington, DC. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 15 and 19, 1988, between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on Nov. 22, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Federative Republic of Brazil and exported during the twelve-month period which began on April 1, 1988 and extends through March 31, 1989, in excess of the following levels of restraint:

Category	12-month restraint limit [1]
200–239, 300–369, 400–469 and 600–670, as a group. Sublevels in the Group	325,000,000 square yards equivalent.
218	4,000,000 square yards.
219	13,000,000 square yards.
225	7,000,000 square yards.
300/301	10,000,000 pounds.
313	36,800,000 square yards.
314	5,500,000 square yards.
315	16,500,000 square yards.
317/326	15,000,000 square yards.
334/335	90,000 dozen.
336	50,000 dozen.
337	67,000 dozen.
338/339/638/639	900,000 dozen.
342/642	265,000 dozen.
347/348	650,000 dozen.
350	85,000 dozen.
361	680,000 numbers.
363	16,200,000 numbers.
369–D [2]	714,610 pounds.
410/624	8,000,000 square yards of which not more than 3,900,000 square yards shall be in Category 410.
433	16,832 dozen.
445/446	65,939 dozen.
604	700,000 pounds of which not more than 535,000 pounds shall be in Category 604–A.[3]
607	6,500,000 pounds.
647/648	300,000 dozen.
669/P [4]	2,382,032 pounds.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 659–C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

Category	12-month restraint limit [1]
225	7,000,000 square yards.
300/301	10,000,000 pounds.
313	36,800,000 square yards.
314	5,500,000 square yards.
315	16,500,000 square yards.
317/326	15,000,000 square yards.
334/335	90,000 dozen.
336	50,000 dozen.
337	67,000 dozen.
338/339/638/639	900,000 dozen.
342/642	265,000 dozen.
347/348	650,000 dozen.
350	85,000 dozen.
361	680,000 numbers.
363	16,200,000 numbers.
369–D [2]	714,610 pounds.
410/624	8,000,000 square yards of which not more than 3,900,000 square yards shall be in Category 410.
433	16,832 dozen.
445/446	65,939 dozen.
604	700,000 pounds of which not more than 535,000 pounds shall be in Category 604–A.[3]
607	6,500,000 pounds.
647/648	300,000 dozen.
669/P [4]	2,382,032 pounds.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1988.

[2] In Category 369–D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[3] In Category 604–A, only TSUSA numbers 310.5049 and 310.6045.

[4] In Category 669–P, only TSUSA number 385.5300.

You are directed to retain the charges already made to the limits establishes in this directive for the foregoing categories. For goods imported during the period April 1, 1988 through August 31, 1988, the following additional amounts shall be charged:

Category	Amounts to be charged
200	3,314 pounds.
219	169,996 square yards.
220	27,450 square yards
224	234,707 square yards.
229	967 pounds.
239	34 pounds.
300	355,126 pounds.
314	2,472 square yards.
317	113,750 square yards.
326	7,590 square yards.
332	1,800 dozen pairs.
334	1,720 dozen.
335	6,454 dozen.
336	86 dozen.
337	220 dozen.
338	654 dozen.
339	86,164 dozen.
340	3,287 dozen.
341	2,606 dozen.
342	5,144 dozen.
345	157 dozen.
347	1,011 dozen.
348	5,344 dozen.
349	52 dozen.
350	700 dozen.
351	529 dozen.
352	10,049 dozen.
359	9,664 pounds.
360	35,000 numbers.
361	20,000 numbers.
363	106,624 numbers.
369–D [1]	10,703 pounds.
369–O [2]	51,408 pounds.
400	20,177 pounds.
410	43,646 square yards.
414	1,120 pounds.
433	50 dozen.
435	1 dozen.
442	1 dozen.
444	8 numbers.
445	75 dozen.
446	100 dozen.
465	1,528 square yards.
600	2,121 pounds.
604–A [3]	466 pounds.
606	27,804 pounds.
607	124,489 pounds.
624	27,809 square yards.
629	521 square yards.
635	2 dozen.
637	195 dozen.
639	1 dozen.
641	9 dozen.
642	3,002 dozen.
648	2,870 dozen.
649	47,610 dozen.
659	119 pounds.
665	519 square feet.
669–P [4]	117,057 pounds.
669	16,704 pounds.
670	318 pounds.

[1] In Category 369–D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[2] In Category 369–O, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, and 366.2860 in Category 369–D.

[3] In Category 604–A, only TSUSA numbers 310.5049 and 310.6045.

[4] In Category 669–P, only TSUSA number 385.5300.

Imports charged to these category limits for the period January 1, 1988 through March 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limtis may be adjusted in the future under provisions of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil.

The square yard equivalent factor for Categories 338/339/638/639 is 12.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–26680 Filed 11–17–88; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 19, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, November 15, 1988 (53 FR 46018).

Mirror and Bracket Assembly, Rearview, RH—2540–00–575–8391
Bag, Drinking Water Storage—4610–01–117–8271
Sea Marker, Fluorescein Dye—6850–00–270–9986
Table Leg—7110–00–NSH–0023
Binder, Looseleaf, Flight Crew—7510–00–240–6012
Buckle, Belt—8315–01–075–1818

Beverly L. Milkman,

Executive Director.

[FR Doc. 88–26797 Filed 11–17–88; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and Deletions from Procurement List.

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SUMMARY: This action adds to and deletes from Procurement List 1989 commodities to be purchased by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 2 and September 16, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 34140 and 36091) of proposed additions to and deletions from Procurement List 1989, November 15, 1988 (53 FR 46018).

Additions

No comments were received in response to the notice; however, in the early development stage for the writing paper pads, the Committee requested annual sale data from a contractor for one of the pads. That contractor in responding to the request indicated that the inclusion of the pad on the Procurement List would severely impact his firm. The Committee has considered those comments and has determined that the addition to the Procurement List of the writing paper pads does not constitute severe adverse impact on that firm or any other current contractor for the pads being added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1989:

Pad, Writing Paper—7530–01–124–5660 (GSA Regions 9, 10 and New Cumberland Army Depot)
7530–01–131–0091 (GSA Regions 2, 9, 10 and New Cumberland Army Depot)

Deletions

After considertion of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government 41 U.S.C. 46–48c and 41 CFR 51–2.6.

Accordingly the following commodities are hereby deleted from Procurement List 1989:

Mop, Dusting, Cotton—7920–00–245–8289
Mophead, Dusting, Cotton—7920–00–634–0201; 7920–00–267–4921

Beverly L. Milkman,
Executive Director.

[FR Doc. 88–26798 Filed 11–17–88; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On July 29, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 28681) of proposed additions to Procurement List 1989, November 15, 1988 (53 FR 46018).

Comments were received from the current contractor for the long sleeve women's shirts (hereinafter, shirts) as a result of the Committee's notice in the **Federal Register** of proposed addition to the Procurement List. The commenter indicated that this type of shirt is particularly difficult to produce and that compliance with the Government's quality tests is also difficult. The Committee has determined that the workshop is capable of producing the shirts in compliance with the Government's requirements based on the results of workshop inspections. The procuring activity inspected the workshop and reported that it has the technical expertise and resources necessary to manufacture the shirts and its personnel understand the principles and processes necessary for their manufacture. The National Industries for the Severely Handicapped also inspected the workshop and certified that it is capable of producing these shirts in compliance with the Government's specifications. The value of the shirts contract of the current contractor represents approximately 14% of the total annual sales of that firm. This is not considered to be serious adverse impact. A preliminary analysis of impact on the then current contractor led the Committee to request that firm to provide data on its sales. After assessing the data provided by the firm and other comments resulting from the Committee's request, the Committee determined that there was no severe impact on any other entity. After consideration of the material presented to it concerning the capability of a qualified workshop to produce the commodities at a fair market price and impact of the addtion on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the Commodities procured by the Government. Accordingly, the following commodities are hereby added to Procurement List 1989:

Shirt, Woman's

8410–01–104–7947	8410–01–104–7948
8410–01–104–7949	8410–01–104–7950
8410–01–104–7951	8410–01–104–7952
8410–01–104–7953	8410–01–104–7954
8410–01–104–7955	8410–01–104–7956
8410–01–104–7957	8410–01–104–7958
8410–01–104–7959	8410–01–104–7960
8410–01–104–7961	8410–01–104–7962
8410–01–105–2494	8410–01–105–2495
8410–01–105–2496	8410–01–105–2497
8410–01–105–2498	8410–01–105–2499
8410–01–105–2500	8410–01–105–2501
8410–01–105–2502	8410–01–105–2503
8410–01–105–2504	8410–01–105–2505
8410–01–105–2506	8410–01–105–2507
8410–01–105–2508	8410–01–105–2509
8410–01–105–2510	8410–01–105–2511
8410–01–105–2512	8410–01–105–2513
8410–01–105–2514	8410–01–105–2515
8410–01–105–2516	8410–01–105–2517
8410–01–105–2518	8410–01–105–2519
8410–01–105–2520	8410–01–105–2521
8410–01–105–2522	8410–01–105–2523
8410–01–105–2524	8410–01–105–2525
8410–01–105–2526	8410–01–105–2527
8410–01–105–2528	8410–01–105–2529
8410–01–105–2530	8410–01–105–2531
8410–01–105–2532	8410–01–105–2533
8410–01–105–2534	8410–01–105–4713
8410–01–224–6075	8410–01–224–6076
8410–01–224–6077	8410–01–224–6078
8410–01–224–6079	8410–01–224–6080
8410–01–224–6081	8410–01–224–6082
8410–01–224–6083	8410–01–224–6084
8410–01–224–6085	8410–01–224–6086
8410–01–224–6087	8410–01–224–6088
8410–01–224–6089	8410–01–224–6090
8410–01–224–6091	8410–01–224–6092
8410–01–224–6093	8410–01–224–6094
8410–01–224–6095	8410–01–224–6096
8410–01–224–6097	8410–01–224–6098
8410–01–224–6099	8410–01–224–6100
8410–01–224–6101	8410–01–224–6102
8410–01–224–6103	8410–01–224–6104
8410–01–224–6105	8410–01–224–6106
8410–01–224–6107	8410–01–224–6108
8410–01–224–6109	8410–01–224–6110
8410–01–224–6111	8410–01–224–6112
8410–01–224–6113	8410–01–224–6114
8410–01–224–6115	8410–01–224–6116
8410–01–224–6117	8410–01–224–6118
8410–01–224–6119	8410–01–224–6120
8410–01–224–6121	8410–01–224–6122
8410–01–224–6123	8410–01–224–6124
8410–01–224–6125	8410–01–224–6126
8410–01–224–6127	8410–01–224–6128
8410–01–224–6129	8410–01–224–6130
8410–01–224–6131	8410–01–224–6132
8410–01–224–6133	8410–01–224–6134
8410–01–224–6135	8410–01–224–6136
8410–01–224–6137	8410–01–224–6138
8410–01–224–6139	8410–01–224–6140
8410–01–224–6141	8410–01–224–6142

Beverly L. Milkman,
Executive Director.

[FR Doc. 88–26799 Filed 11–17–88; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning certification of commercial pricing.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3201, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition and Regulatory Policy, (202) 523–3781, or Mr. Owen Green, Defense Acquisition Regulatory Council, (202) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

This clearance covers the reporting requirements as required by Pub. L.'s 98–577 and 99–591 on Certificates of Commercial Pricing. The clauses at FR 52.215–32 and 52.215–35 require that offerors/contractors certify to the best of their knowledge and belief that prices offered for those spare or repair parts that the contractor offers for sale to the public are no higher than the lowest commercial sales price at which such parts were sold during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available; provided, that in no event shall this period be less than 30 days induration. All items for which prices offered are higher than the lowest commercial sales price discussed above must be identified and a written justification for the difference supplied. This information required by Pub. L's 98–577 and 99–591 and is a new requirement for Part 15. The rule would apply to acquisitions involving major systems for civilian agencies and for all parts and components under DOD, NASA, and Coast Guard acquisitions.

The commercial pricing information is used by contracting officers to ensure that the Government does not pay prices for commercial spare and repair parts that exceed the lowest commercial sales prices at which such items are sold by the contractor to the general public unless the price differences are justified. Without the information, the government may pay prices for such supplies that are higher than prices paid by other customers.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *3,030;* responses per respondent, *10;* total annual responses, *30,300;* hours per response, *12;* and total response burden hours, *363,600.*

c. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *3,030;* hours per recordkeeper, *160,* and total recordkeeping burden hours, *484,800.*

d. Additional Data

An approval request for this information collection was submitted to OMB on June 25, 1985. On November 8, 1985, and on April 16, 1986, none of the submissions were approved.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–00xx, Certification of Commercial Pricing.

Dated: November 14, 1988.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 88–26674 Filed 11–17–88; 8:45 am]
BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 1 December 1988 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92–463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Linda M. Bynum,
Alternate OSD Federal Register Liaison, Department of Defense.

November 15, 1988.

[FR Doc. 88–26740 Filed 11–17–88; 8:45 am]
BILLING CODE 3810–01–M

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Department of the Navy

Range Closure Regulations for Bravo-20 Bombing Range, Naval Air Station, Fallon, NV

Authority: 50 U.S.C. 797; DoD Dir. 5200.8 of August 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714; 43 CFR 8364; Pub. L. 99-606, section 3(b).

Purpose

The purpose of this document is to promulgate regulations providing for closure of Bravo-20 Bombing Range (Bravo-20), Naval Air Station, Fallon, Nevada.

Definition

For the purpose of this subpart, Bravo-20 Bombing Range shall include the area of land comprising approximately 21,576.40 acres in Churchill County, State of Nevada, which has been withdrawn from all forms of appropriation under the public land laws and reserved for use by the Secretary of the Navy by Act of Congress, Public Law 99-606, Section 1, November 6, 1986. The legal description is as follows:

Mount Diablo Meridian, NV

T. 23 N., R. 32 E.,
Sec. 2,4,6,8,10,12,14,16,18,20,22,24,26,28,30.
T. 24 N., R. 32 E.,
Sec. 20,22,24,26,28,30,32,34,36.
T. 23 N., R. 33 E.,
Sec. 6,8,18,20,30;
Sec. 17 SE ¼;
Sec. 19 S ½.
T. 24 N., R. 33 E.,
Sec. 20,30,32.

Background

(a) Bravo-20 Bombing Range has been in use since 1942 as a live impact bombing range and as a west coast jettison range. The range is contaminated with an undetermined amount of unexploded ordnance including high explosive bombs up to 2,000 pounds. The Navy continually sanitizes the surface of the range. However, due to the geotectonic substratum associated with a dry lake bed, it is not possible to safely sanitize the subsurface area. It is vital to national defense that the operation and use of Bravo-20 be continued without undue and unnecessary interruption. (b) To prevent the interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of Bravo-20 Bombing Range, and to prevent injury to any such person as a consequence of the dangerous conditions which exist, it is necessary to close Bravo-20 Bombing Range to all persons except those specifically associated with the operation and maintenance of the bombimg range.

Closure Provisions

Except for military personnel and civilian employees of the United States in the performance of their official duties and employees of contractors engaged in the execution of a bombing range clean-up contract, entry upon Bravo-20 Bombing Range or remaining thereon by any person whatsoever for any purposes without the advance consent of the Commanding Officer, Naval Air Station, Bravo-20 Bombing Range or his authorized representative, is prohibited. *See*, Pub. L. 99-606, section 3(b); 43 CFR 8364; the Internal Security Act of 1950, section 21 (50 U.S.C. 797).

Entry Procedures

(a) Any person or group of persons desiring to enter onto the Bravo-20 Bombing Range or portion thereof, shall submit a written request to the Commanding Officer, Naval Air Station, Fallon, Nevada, providing the following information:

(1) The purpose for which entry is requested;

(2) A listing of the activities that will be conducted to accomplish that purpose;

(3) The area of the range to which access is sought; and

(4) The identify of each individual for whom permission to enter is sought.

(b) Requests for entry will be granted only under extraordinary circumstances or in situations of compelling need. Approval of entry requests will be at the discretion of the Commanding Officer or his authorized representative and entry shall be conditioned upon the execution of a document releasing the United States from liability for any injury suffered to person or property as a result of entry onto the Bravo-20 Bombing Range.

(c) Failure to comply with the terms of the letter granting approval for entry will be grounds for immediate cancellation of the permission to enter Bravo-20 Bombing Range and will be the basis for immediate expulsion from the range.

Date: November 15, 1988.

Jane M. Virga,

Lt. JAGC, USNR, Assistant Federal Register Liaison Officer.

[FR Doc. 88-26709 Filed 11-17-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement on the East Fork Poplar Creek Remedial Action Project at the Oak Ridge Reservation; TN

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on the East Fork Poplar Creek (EFPC) Remedial Action Project, Oak Ridge, Tennessee.

SUMMARY: DOE announces its intent to prepare an EIS in accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), as amended, to assess the environmental implications of remedial action projects for the EFPC and its associated floodplain, in the environs of Oak Ridge, Tennessee. This EIS also will integrate the requirements of both NEPA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as described below.

Throughout the operational history of the Y-12 Plant, located on the Oak Ridge Reservation (ORR), production of radioactive and/or chemically hazardous wastewaters has occurred as a result of normal facility operations. Over the years, various treated and untreated portions of these wastewaters have been discharged to EFPC, which has its headwaters at the Y-12 Plant. These discharges have led to contamination of EFPC and its associated floodplain.

DOE is investigating the potential need for remedial action for the EFPC and the associated floodplain to mitigate the environmental impact from existing and potential surface and ground water contamination as well as contamination in the sediments. A floodplain/wetlands assessment will be prepared under 10 CFR 1022, the DOE regulations that implement Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands), which will describe impacts, altenatives for remediation, and mitigating measures to be employed in the action. In addition, DOE will consider potential environmental impacts, as well as engineering and cost considerations, in its decisions by preparing an EIS on potential remedial actions for EFPC and its floodplain.

This environmental review and analysis process will integrate the requirements of both NEPA and CERCLA, as amended by the Superfund Amendments and Reauthorization Act (SARA), to satisfy the policy requirements of DOE Notice 5400.4. All EIS requirements under NEPA will be incorporated into the Remedial Investigation/Feasibility Study (RI/FS) documents of CERCLA. The purpose of this Notice of Intent is to present pertinent background information on the proposed scope and content of the RI/FS-EIS and to solicit comments and suggestions for consideration in their preparation. DOE invites interested agencies, organizations, and members of the general public to submit comments or suggestions to assist DOE in identifying significant environmental issues and determining the appropriate scope of the EIS.

Comments may be submitted to DOE by mail or presented at a scoping meeting to be held at the Main Auditorium of the American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, Tennessee, on Tuesday, December 6, 1988, starting at 7:30 p.m.

Upon completion of the draft EIS, its availability will be announced in the **Federal Register** and local news media. Comments will be solicited from Federal, State, and local agencies and interested members of the public. Comments on the draft EIS will be considered in preparing the final EIS.

ADDRESS: Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting may be submited to: Mr. Thomas S. Tison, Y-12 Site Office, Oak Ridge Operations, Post Office Box 2001, Oak Ridge, TN 37831-8775, (615) 576-9855.

Envelopes should be marked "Offsite East Fork Poplar Creek Floodplain Remedial Action Project."

General information on the process followed by DOE in preparing EISs may be obtained from: Office of NEPA Project Assistance, EH-25, Office of Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585, Attn.: Carol M. Borgstrom, Director, or call (202) 586-4600.

General information on the process followed by DOE in preparing RI/FSs may be obtained from: Office of Environmental Guidance and Compliance, Environmental Compliance Division, EH-232, Office of Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Attn.: Kathleen I. Taimi, Director, or call (202) 586-2113.

DATES: Written comments postmarked within 30 calendar days following the date of this notice will be considered in preparation of the draft EIS. Comments postmarked after that date will be considered to the maximum extent practicable.

Requests to speak at the scoping meeting should be received by Mr. Thomas Tison at the given address by November 29, 1988. Requests to speak may also be submitted at the meeting.

Background

The Y-12 Plant, located 40 km (24 miles) west of Knoxville, Tennessee, began operations in 1943. Initiailly, as part of the Manhattan Project, its functions was to separate U-235 from other isotopes of uranium. After World War II, the Y-12 Plant became engaged in other activities including research in nuclear products applications, energy research, and metallurgy. One component of these efforts was the use of mercury at Y-12 as part of the production of enriched lithium for use in thermonuclear weapons. Millions of pounds of mercury were used in this effort.

Mercury is the most significant contaminant found in the EFPC and the associated floodplain. An estimated 239,000 pounds of mercury were released to EFPC during the period 1950-1982. In addition, other heavy metals, radionuclides, and some organic compunds also have been found in EFPC. Releases of mercury to the environment have occurred both during production and since cessation of production operations. During Y-12 operations, spills and maintenance operations resulted in losses to land, air, and surface water.

A number of wasterwater collection and storage facilities have been constructed or are planned that will mitigate releases to EFPC. These collection facilities are an integral part of the Y-12 Plan Water Pollution Control Program. Wastewaters having volumes too large to justify a storage system at the point of generation (e.g., coal pile runoff and plating rinse waters from the main plating shop) are directly piped to their corresponding treatment facilities. Some Process wastewaters are permitted to discharge with minimal treatment; these waste streams will continue to discharge to EFPC as long as toxicity testing deems the effluent nontoxic.

In addition to the strategy for eliminating wastewater discharged to EFPC, strategies exist for minimizing pollutants reaching waters of the State. For example, the use of best management practices (BMPs) will minimize the discharge of pollutants to receiving waters. BMPs include, but are not limited to, the use of better process controls, preventive maintenance programs, inspection programs, and adequate planning to mitigate accidental spills. In addition, various spill prevention programs have been initiated to reduce the potential for accidental spills in those areas where there is a risk.

Even though the process buildings are no longer used to conduct mercury separation activities, the process equipment, contaminated switch gear, building materials, floors, and building and storm drains remain a source of potential contamination, and a potential for release of mercury to the environment. Steps have been taken to mitigate these potential releases. These potential sources and pathways to the environment will be a separate remedial action for the Y-12 Plant and will be assessed in separate documentation.

After release by DOE in May 1983 of information which documented mercury contamination offsite, DOE initiated sampling in EFPC in the Oak Ridge Community. DOE also requested the Tennessee Valley Authority (TVA) to participate in studies to evaluate soil and sediment contamination in the EFPC environs. Analysis of 394 soil and sediment samples from 130 locations in the channel and floodplain of EFPC indicate approximately 126 million ft3 (760,000 tons) of mercury contaminated sediment and soil with mercury concentrations exceeding five parts per million (ppm). This sediment and soil contains an estimated 170,000 pounds of mercury. Approximately 80 percent of the total mercury is contained in 25 percent of the contaminated sediment and soil (i.e., in sediment and soil with a concentration exceeding 100 ppm). Other contaminants in the floodplain include: Arsenic, barium, beryllium, cadmium, chromium, copper, lead, nickel, lithium, selenium, silver, thorium, uramium zinc, and PCBs. Organic constituents may also be present.

The community and floodplain studies are originally coordinated by the Oak Ridge Task Force (ORTF) consisting of representatives from the DOE, the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Tennessee Department of Health and Environment (TDHE), the City of Oak Ridge, and the TVA.

Remedial actions currently are being conducted on the ORR according to Resource Conservation and Recovery Act (RCRA) Sections 3004 (u) and 3004 (v) permit requirements. When the ORR is placed on the National Priorities List, some cleanup activities will be performed under CERCLA, as amended, not RCRA. The U.S. Environmental Protection Agency is developing a

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strategy to integrate remedial actions under RCRA and CERCLA to minimize duplication of effort and to ensure that corrective actions are consistent with the National Contingency Plan.

Preliminary Definition of Alternatives To Be Addressed in the RI/FS–EIS

DOE intends to conduct a comprehensive environmental process to meet the requirements of CERCLA and NEPA for implementing response actions in the EFPC area. the environmental review and analysis process has two major parts, a Remedial Investigation (RI) and a Feasibility Study (FS).

The purpose of the RI is to characterize the site and the nature and extent of contamination. The FS then is designed to assess a range of remedial action alternatives to address contamination at the site. The results of each are presented in a report. During the FS phase, bench or pilot tests of potential waste treatment technologies will be conducted as appropriate. Also, a baseline risk assessment will be conducted to identify the primary health and environmental threats at this site.

In addition to elimination or stabilization of mercury in the process areas and building drains, DOE already has begun evaluation of several remedial action alternatives for EFPC and its floodplain. During the FS screening of waste treatment technologies, several remedial alternatives will be identified and screened, general performance criteria for each alternative will be developed, and a detailed evaluation and comparison of reasonable (i.e., screened) alternatives will be performed. A specific preferred alternative will not be identified until the FS is complete. However, the RI/FS–EIS will at a minimum consider the proposed alternatives listed below.

Alternative 1: Passive Remediation. This alternative depend on the natural dynamics of the ecosystem to correct any adverse conditions in the EFPC stream bed and associated floodplain and is essentially the "no action" alternative.

Alternative 2: Dredge and Dispose of all Loose Sediment in the Creek by Mechanical or Suction Dredging. This alternative would use mechanical or suction dredging to remove the loose sediments in EFPC in conjunction with proper disposal of the dredged sediments. These dredged sediments would be dewatered prior to disposal, in accordance with applicable requirements, and the liquid effluent would be collected and, if required, treated at a Y–12 Plant wastewater treatment facility.

Alternative 3: Remove, Dispose, and Replace Floodplain Soils to Various Depths. This alternative would remove and replace floodplain soils. The removed contaminated soil would be properly disposed of in an approved facility. The replacement soils would be tested to confirm they are not contaminated prior to placement at the remediation site.

Alternative 4: Cover Floodway Fringe Soils with Various Media. In this alternative, the floodway fringe soils would be covered to provide protection against runoff erosion of the surface soils and against direct human contact where necessary. Riprap would be used to cover the floodway fringe soils to a depth of 1 foot. For vegetation support, additional general fill would be put in place with a layer of top soil cover. This alternative would require removel of all trees and shrubs befor putting the material in place.

Alternative 5: Permanently Reroute the Creek within the Floodplain and Remediate Abandoned Area with One of the Other Alternatives. This alternative would permanently reroute the EFPC within the confines of the existing floodplain. One of the other identified alternative would be implemented to remediate the abandoned area. Material excavated from the construction of the new creek would be properly disposed of in an approved facility.

Alternative 6: Permanently Reroute the Creek Outside of the Floodplain and Remediate the Abandoned Area with One of the Other Alternatives. This alternative considers permanent rerouting of the creek outside the existing floodplain, in conjunction with one of the other alternatives to remediate the abandoned area. Uncontaminated materials excavated from the construction of the new creek would be distributed over the floodway fringe.

Alternative 7: Stabilize Soil in Areas Where Entering Storm Drains Traverse the Floodplain. This alternative proposes to stabilize storm drains traversing the floodplain to prevent bank erosion. The use of riprap may be an effective method for stabilizing the creek bank.

Alternative 8: Stabilize Existing Stream Channel Banks. This alternative proposes the stabilization of the existing creek by preventing the erosion of the banks due to in-channel flow and overflow from stream blockage. An effective method for bank stabilization is riprap protection. However, in general, fill would not be used in the floodway unless an equivalent volume of material is removed. This alternative would require the removal of all trees and shrubs within 25 feet of the creek bank.

Alternative 9: Dredge and Dispose of all Sediments in Creek and Remove, Dispose, and Replace Floodplain Soils to Various Depths. This alternative combines alternatives 2 and 3 and involves mechanical dredging of the creek sediments and excavation of the floodplain soil.

Alternative 10: Stabilize Existing Stream Channel Banks, Dredge and Dispose of all Loose Sediments in Creek, and Stabilize Soil in Areas Where Entering Storm Drains Traverse the Floodplain. This alternative combines 2, 7, and 8. The description of these alternatives may be found in the appropriate sections.

Preliminary List of Potential Issues

There are a number of potential issues associated with the previously mentioned remedial action alternatives. Some of these issues deal with environmental and public health impacts, whereas others are factors which may influence or be influenced by implementation of one or more of the alternatives. The following is a description of major issues which may require analysis in the RI/FS–EIS. This list is not intended to be all inclusive or to preclude additional issues from consideration.

1. Potential Environmental Impacts

The potential impacts of the described alternatives can be grouped into three major categories as follows: Impacts to human health, ecological impacts, and socioeconomic impacts. Also of concern are engineering and technical issues and potential institutional issues. The actual impacts have yet to be determined. Areas of interest within each of these identified topics include:

A. Potential Impacts on Human Health

- Associated with cleanup, transport, treatment, and/or disposal of contaminated material:
- Associated with accidental worker exposure;
- Associated with a resuspension of contaminated sediments and soils through remedial activities that may increase the potential exposure to the general public through the air, water, and food-chain pathways;
- Associated with leaving the contaminated soil and sediment in place; and
- Associated with potential contamination of the aquifers underlying and recharged by the EFPC floodplain.

B. Potential Ecological Impacts

- Associated with effects of contaminants on aquatic and terrestrial flora and fauna;
- Associated with changes in flow of EFPC due to remedial activities; and
- Associated with the destruction of the floodplain ecosystem by the removal of all vegetation in connection with some of the remedial actions options.

C. Potential Socioeconomic Impacts

- Associated with marketability of properties potentially contaminated, especially located on the EFPC floodplain; and
- Associatred with near- and short-term costs and benefits of remediation alternatives.

2. Potential Engineering and Technical Issues

Several technical and engineering issues are associated with each of the potential alternatives. One involves the logistics problems associated with using the required heavy equipment in the saturated areas of the floodplain. This problem consists of two parts: first, construction will slow down due to difficulty with groundwater, slowing down the effort and potentially creating a greater environmental problem than originally present. The second part of this problem is associated with the operation of equipment on the floodplain that may cause the contaminated sediments to be resuspended and buried contamination to resurface. Appropriate control measures will be considered to mitigate the potential effects of such activities.

3. Potential Institutional Issues

The investigation of remedial action alternatives will involve decisions by DOE, the TDHE, and the EPA on several public policy and regulatory issues. In addition, the U.S. Army Corps of Engineers must be consulted for possible permit requirements in order to work and possibly modify the creek channel and/or floodplain during remediation.

One issue is the definition of the level of cleanup (or how clean is clean?) for the creek sediments and floodplain soils. In addition, the means for proper disposal of the removed sediments (if sediment removal is the remediation of choice) must be addressed prior to initiation of the effort.

Scoping

The scoping process will involve all interested agencies (Federal, State, and local), groups, and members of the general public. Oral and written comments are invited at the public scoping meeting on both the preliminary list of alternatives and the issues to be considered in the RI/FS–EIS.

This will be an informal meeting with a presiding officer and established procedures governing the conduct of the meeting. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements will not be cross-examined by other speakers or the presiding officer. To ensure that everyone who wishes to speak has a chance to do so, 5 minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations.

Persons wishing to speak on behalf of an organization should identify the organization in their request. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting and will be called upon to present their comments as time permits. Both oral and written comments will be given equal consideration.

A transcript of the public scoping meeting will be taken and retained by DOE and made available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, during business hours, Monday through Friday. Additional copies of the public scoping meeting transcript and other NEPA documents and major references used in the preparation of the RI/FS–EIS also will be available during normal business hours at the following locations:

The Oak Ridge Federal Building Reading Room, 200 Administration Road, Oak Ridge, Tennessee 37830.

The Oak Ridge Public Library, Civic Center, Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

A notice of locations where these documents will be available will be published in the **Federal Register** along with the announcement of availability of the draft RI/FS–EIS. In addition, copies of the public scoping meeting transcript will be made available for purchase.

Those interested parties who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the draft EIS should notify Mr. Tom Tison accordingly.

Related NEPA Documentation

NEPA documents have been or are being prepared for other activities on the Oak Ridge Reservation that are related to but not within the scope of the proposed action. These EIS's are:

1. U.S. Department of Energy, Final Environmental Impact Statement, Incineration Facility for Radioactively Contaminated Polychlorinated Biphenyls and Other Wastes, Oak Ridge Gaseous Diffusion Plant, Oak Ridge, Tennessee, DOE/EIS–0084. June 1982. U.S. Department of Energy, Washington, DC.

2. U.S. Department of Energy, Draft Environmental Impact Statement (in preparation), Management of Hazardous, Mixed, and Low-Level Waste on the U.S. Department of Energy Oak Ridge Reservation. Notice of Intent issued on October 26, 1988. U.S. Department of Energy, Washington, DC.

Signed in Washington, DC, this 14th day of November 1988, for the U.S. Department of Energy.

Ernest C. Baynard III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–26763 Filed 11–17–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CI89–38–000 et al.]

Elf Aquitaine, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Elf Aquitaine, Inc.

[Docket No. CI89–38–000]

November 10, 1988

Take notice that on November 1, 1988, Elf Aquitaine, Inc. (Elf Aquitaine) of 1000 Louisiana, Suite 3800, Houston, Texas 77002, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term, blanket certificate with pregranted abandonment authorization to authorize sales of uncommitted gas by Elf Aquitaine and by Elf Aquitaine as operator and/or co-working interest owner on behalf of other working interest owners, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: November 29, 1988, in accordance with Standard Paragraph J at the end of this notice.

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2. Williams Natural Gas Company

[Docket No. CP89–124–000]

November 10, 1988

Take notice that on November 2, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–124–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Continental Natural Gas, Inc. (Continental) under WNG's blanket certificate issued in Docket No. CP86–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to transport on an interruptible basis, up to 40,000 MMBtu equivalent of natural gas on a peak day, 40,000 MMBtu equivalent on an average day, and 14,600,000 MMBtu equivalent on an annual basis for Continental. It is stated that WNG would receive the gas for Continental's account at various receipt points in Kansas, Missouri, Oklahoma, Texas, and Wyoming, and would deliver equivalent volumes of gas at various delivery points in Kansas, Oklahoma, Texas and Wyoming. It is asserted that WNG commenced the transportation service September 1, 1988, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–79.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89–136–000]

November 10, 1988

Take notice that on November 4, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–136–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis for LaSER Marketing Company (LaSER). United explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–298. United explains that the peak day quantity would be 618,000 MMBtu the average daily quantity would be 618,000 MMTtu, and that the annual quantity would be 225,570,000 MMBtu.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Natural Gas Pipe Line Company of America

[Docket No. CP89–115–000]

November 10, 1988

Take notice that on November 1, 1988, Natural Gas Pipe Line Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–115–000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas, on an interruptible basis, on behalf of Amoco Production Companmy (Amoco), a producer of natural gas, under its blanket certificate issued in Docket No. CP86–582–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to transport, on an interruptible basis pursuant to a gas transportation agreement dated August 15, 1988, up to a maximum of 400,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS).

Natural proposes to receive the gas in the states of Texas, Oklahoma, Illinois, Louisiana, New Mexico, Arkansas, Kansas, Missouri, Wyoming, Nebraska, and in offshore Texas and Louisiana. Natural then proposes to redeliver the gas to a point in Texas. Natural states that service commenced on September 1, 1988, as reported in Docket No. ST89–484, pursuant to § 284.223(a) of the Commission's Regulations. Natural further states that the average day and annual quantities would be 150,000 MMBtu and 54,750,000 MMBtu, respectively.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89–135–000]

November 10, 1988

Take notice that on November 4, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP89–135–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act for LaSER Marketing Company (LaSER), all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for LaSER, a marketer. United explains that service commenced October 4, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–299. United further explains that the peak day quantity would be 103,000 million Btu, the average daily quantity would be 103,000 million Btu, and the annual quantity would be 37,595,000 million Btu. United explains that it would receive natural gas for LaSER's account at numerous points in States of Louisiana and Texas. United further explains that, it would redeliver natural gas for the account of LaSER in the States of Alabama, Louisiana, Texas, Mississippi, and Florida.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP89–122–000]

November 14, 1988

Take notice that on November 2, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–122–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Caporale Energy Corporation (Caporale) under the blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to transport on an interruptible basis up to 2,433 MMBtu equivalent of natural gas on an average day, 2,433 MMBtu equivalent on a peak day, and 888,045 MMBtu equivalent on an annual basis for Caporale. It is stated that WNG would receive the gas for Caporale's account at various receipt points in Kansas and would deliver equivalent volumes of gas at various delivery points in Kansas. It is asserted that WNG commenced the transportation service September 6, 1988, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–96.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–116–000]

November 14, 1988

Take notice that on November 1, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–116–000 a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act for authorization to transport natural gas on behalf of Energy Marketing Exchange, Inc. (Energy Marketing), a marketer of natural gas, on an interruptible basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it would transport natural gas for Energy Marketing, through existing facilities, as follows:

30,000 MMBtu on a peak day
22,500 MMBtu on an average day
10,950,000 MMBtu on an annual basis

It is further stated that service commenced on September 1, 1988, under the 120 day automatic authorization provisions of § 284.223(a), as reported in Docket No. ST88–5861.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. ANR Pipeline Company

[Docket No. CP89–134–000]

November 14, 1988

Take notice that on November 4, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center Detroit, Michigan 48243, filed in Docket No. CP89–134–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP887–532–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport natural gas on an interruptible basis for Coastal Gas Marketing Company (Coastal). ANR explains that service commenced September 3, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–552. ANR further explains that the peak day quantity would be 125,000 dekatherms, the average daily quantity would be 125,000 dekatherms, and that the annual quantity would be 45,625,000 dekatherms. ANR explains that it would receive natural gas for Coastal's account from existing points of receipt in onshore and offshore Louisiana, offshore Texas, and Michigan. ANR states that the points of delivery are located in the states of Louisiana and Michigan.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP89–123–000]

November 14, 1988

Take notice that on November 2, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–123–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Kansas City Power & Light Company (KCPL) under the blanket certificate issued in Docket No. CP86–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to transport, on an interruptible basis, up to 100,000 MMBtu equivalent of natural gas on a peak day, 5,500 MMBtu equivalent on an average day and 36,500,000 MMBtu equivalent on an annual basis for KCPL. It is stated that WNG would receive the gas for KCPL's account at various receipt points in Kansas, Missouri, Oklahoma and Wyoming, and would deliver equivalent volumes of gas at various delivery points in Kansas and Missouri. It is asserted that WNG commenced the transportation service September 4, 1988, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–78.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–116–000]

November 14, 1988

Take notice that on November 1, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–116–000, a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, for authorization to transport natural gas on behalf of Apache Marketing, Inc. (Apache), a marketer of natural gas, on an interruptible basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it would transport natural gas for Apache, through existing facilities, as follows:

100,000 MMBtu on a peak day
75,000 MMBtu on an average day
36,500,000 MMBtu on an annual basis

It is further stated that service commenced on September 2, 1988, under the 120 day automatic authorization provisions of § 284.223(a), as reported in Docket No. ST88–5865.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

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authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26760 Filed 11-17-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3479-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 31, 1988 through November 4, 1988 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. DA-AFS-L65096-AK, 1981-86 and 1986-90 Alaska Pulp Long-Term Timber Sale Operating Plan, Updated Information and Reanalysis of Alternatives, Implementation, Coast Guard Bridge Permit, Section 10 and 404 Permits, Tongass National Forest; Juneau and Sitka Boroughs, AK.

Summary: EPA will defer its official review of the Phase I draft supplemental EIS until the Phase II draft supplemental EIS is filed. The final supplemental EIS is expected to combine both phases in one document.

ERP No. D-COE-E32069-FL, Rating EO2, Miami Harbor Channel Navigation Improvements, Implementation, Dade County, FL.

Summary: EPA has identified potential significant environmental impacts associated with the selected alteranative B. While the selected alternative is smaller than the originally permitted facility, the quality of the seagrasses which would have to be sacrificed for the new alignment is much greater. The relative scarcity of these submerged aquatics, their importance as a habitat/food source to numerous marine species, and the practical impossibility of replacing them in-kind form the basis of our objections to destroying these seagrasses when there are practical alternatives. EPA has environmental concerns with reconfiguration alternative A.

(Note: The above summary should have appeared in the 11-10-88 FR Notice.)

ERP No. D-COE-F-36155-IL, Rating LO, Liverpool Village Flood Control Project, Implementation, Illinois River, Fulton County, IL.

Summary: EPA has no objection to the proposed project in this document providing that 1) the proposed plan contains erosion control measures to prevent soils from entering the river during construction phase, and 2) that after exacavation, the borrow site be converted into wetlands to offset the loss of wetlands due construction of the levee.

Final EISs

ERP No. F-FHW-E40700-FL, FL-5/US 1 Upgrading, FL-922/NE-123rd Street to NE 203rd Street, Funding, Section 404 and Coast Guard Bridge Permits, Dade County, FL.

Summary: EPA recommends that clean-up actions at 8 to 13 potential hazardous waste site within project boundaries is boundaries is need that it be coordinated with county and state agencies.

(Note: The above summary should have appeared in the 11-04-88 FR Notice.)

ERP No. F-NPS-L61179-AK, Katmai National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of this document has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F-NPS-L61180-AK, Denali National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F-SCS-E36161-MS, Town Creek Watersheed Flood Protection Plan, Funding and Implementation, Lee, Pontotoc, Prentiss and Union Counties, MS.

Summary: EPA has no objections to the project as proposed.

ERP No. FS-SFW-L64027-AK, Becharof National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisafactory. No formal comments were sent to the agency.

ERP No. FS-SFW-L64027-AK, Becharof National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. FS-SFW-L64028-AK, Alaska Peninsula National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. FS-SFW-L64408-AK, Alaska Peninsula National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EPA has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

Dated: November 15, 1988.

Armand Lepage,

Acting Director, Office of Federal Activities.

[FR Doc. 26766 Filed 11-17-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3479-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed November 7, 1988 Through November 11, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880375, Draft, SCS, CA, Upper Penitencia Creek Watershed Flood Damage Reduction Plan, Funding, Implementation and 404 Permit, Cities of San Jose and Milpitas, Santa Clara County, CA, Due: January 9, 1989, Contact: Eugene E. Andrencitti (916) 449-2883.

EIS No. 880376, Draft, FHW, NY, NY-96 Improvement, Meadow Street in the City of Ithaca to Duboise Road in the Town of Ithaca, Funding, Tompkins County, NY, Due: January 3, 1989, Contact: Harold J. Brown (518) 472-3616.

EIS No. 880377, Final, BLM, AK, Beaver Creek Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, White Mountain National Recreation Area, Anchorage, AK, Due: December 19, 1988, Contact: Michael J. Penfold (907) 271-3114.

EIS No. 880378, Final, IBR, TX, San Jacinto River Basin Water Supply Project, Municipal and Industrial Water Use, Implementation, Montgomery, Harris, Grimes, Walker, San Jacinto, Fort Bend, Liberty and Waller Counties, TX, Due: January 3, 1989, Contact: Nicolas Palacios (512) 482-5641.

EIS No. 880379, Final, COE, MI, Ecorse Creek Drainage Basin Flood Protection, Due: January 3, 1989, Contact: Les E. Weigum (313) 226-6752.

EIS No. 880380, Draft, BLM, WY, Amoco Carbon Dioxide Projects, Construction and Operation, Plan Approval, Big Horn, Carbon, Fremont, Hot Springs, Lincoln, Natrona, Park, Washakie and Sweetwater Counties, WY, Due: January 6, 1989, Contact: Glen Nebeker (307) 261-5101.

Amended Notices

EIS No. 880293, Draft, COE, MS, Upper Yazoo Basin Fish and Wildlife Mitigation Study for Fish and Wildlife Losses, Implementation, Due: January 31, 1989, Contact: Marvin Cannon (601) 634-5437. Published FR 9-9-88 — Review period extended.

EIS No. 880366, Final, FHW, ME, Fore River Bridge/Million Dollar Bridge/ME-77 Rehabilitation or Replacement, Broadway in South Portland to York Street in Portland, Section 10 and 404 Permits, USCG Bridge Permit and Funding, Fore River, Cumberland Co., Due: December 19, 1988, Contact: William Richardson (207) 622-8487. Published FR 11-10-88 — Review period reestablished.

EIS No. 880369, DRevised, COE, MS, Gulfport Harbor Deep Draft Navigation Project, Channel Improvements, Implementation, Garrison County, MS, Due: December 30, 1988, Contact: Susan Invester Rees (205) 690-2724. Published FR 11-10-88 — Review period extended.

Dated: November 15, 1988.

Armand Lepage,

Acting Director, Office of Federal Activities.

[FR Doc. 88-26767 Filed 11-17-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00269A; FRL-3478-1]

FIFRA Scientific Advisory Panel Subpanel; Correction of Open Meeting Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Meeting notice; correction.

SUMMARY: In the November 1, 1988 issue of a **Federal Register**, EPA announced a meeting of the FIFRA Scientific Advisory Panel Subpanel to be held on November 22, 1988 (53 FR 44118). This notice corrects the first paragraph of the Supplementary Information.

DATE: The date and time of meeting remain unchanged: Tuesday, November 22, 1988, from 9:00 a.m. to 2:00 p.m.

ADDRESS: The meeting will be held at: U.S. Environmental Protection Agency, Room 1112, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By Mail: Robert B. Jaeger, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-769C), 401 M Street SW., Washington, DC 20460.

Office location and phone number: Rm. 816G, CM #2, Arlington, VA, (703-557-4369).

SUPPLEMENTARY INFORMATION:

EPA announced a public meeting of the SAP Subpanel in a **Federal Register** notice (FR Doc. 88-25197) on November 1, 1988. The first paragraph of the Supplementary Information should be replaced with the following:

Scientific issues will be reviewed concerning EPA's proposal to amend the Experimental Use Permit (EUP) regulation for pesticides. The proposed amendments clarify the circumstances under which an EUP is presumed not to be required and specify that the presumption is based upon risk. EPA also proposes to require notification before initiation of small-scale testing of certain genetically modified microbial pesticides in the environment. Each notification will be reviewed by the Agency, and a determination made as to whether an EUP will be required. Environmental Biosafety Committees approved by EPA may participate in the review process. This notification scheme would implement provisions of the Agency's policy statement of June 26, 1986 (51 FR 23302), with some modifications, and is intended to provide sufficient oversight of the early testing of these microbial pesticides to mitigate any adverse human health or environmental effects.

The first paragraph of the Supplemental Information published in the November 1, 1988 **Federal Register** notice (FR Doc. 88-25197) described an alternative option which was considered by the Agency during development of the proposed rule. As indicated in the Preamble (V. Request for Comments, page 15) to the draft proposed rule, the Agency is requesting comment on this alternative option.

Dated: November 9, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-26724 Filed 11-17-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51718;FRL-3478-9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of six such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-63, 89-64, 89-65	January 22, 1989.
P 89-66, 89-67, 89-68	January 24, 1989.
Written comments by:	
P 89-63, 89-64, 89-65	December 23, 1988.
P 89-66, 89-67, 89-68	December 25, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS-51718]" and the specific PMN number should be sent to: Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room 201 East Tower, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATON CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

P 89-63

Manufacturer. Confidential.

Chemical. (G) Poly acrylate/ methacrylate.

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Use/Production. (G) Dispersively used coating. Prod. range: 80,000–100,000 kg/yr.

P 89–64

Manufacturer. Confidential.
Chemical. (G) Styrenated functionalized methacrylic polymer.
User/Production. (S) Vehicle in automotive refinished topcoat. Prod. range: 215,000–259,000 kg/yr.

P 89–65

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–66

Importer. Confidential.
Chemical. (G) Ethanaminum.
Use/Import. (G) Ambient suspended particle collector/conditioner. Import range: Confidential.

P 89–67

Importer. Confidential.
Chemical. (G) Styrnen acryl copolymer.
Use/Import. (G) Binder resin of toner. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat).

P 89–68

Manufacturer. Confidential.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (G) Coatings. Prod. range: Confidential.

Date: November 8, 1988.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Toxic Substances.

FR Doc. 88–26726 Filed 11–17–88; 8:45 am]
BILING CODE 6560–50–M

[FRL 3478–4]

Proposed Determination to Prohibit, or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site: Ware Creek, James City County, VA

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: EPA Region III is proposing to take action under section 404(c) of the Clean Water Act (CWA) to prohibit, deny, or restrict specification or use of certain Ware Creek waters in the area of James City County, Virginia, as a disposal site for dredged or fill materials in connection with construction of an impoundment for County Water Supply. The waters of the United States which are subject to the proposed section 404(c) action include those which would be affected by a dam proposed to be constructed across Ware Creek approximately 1,000 feet downstream from the confluence of Ware Creek and France Swamp. This section 404(c) action is being proposed because EPA Region III has reason to believe that filling and inundating the above-described waters of the United States, including wetlands, would have an unacceptable adverse effect on fishery areas, wildlife and recreational areas. Furthermore, the EPA has reason to believe that alternatives are available to James City County which will meet projected water supply needs at less environmental cost and which are economically feasible. In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator has determined that a public hearing on this proposed section 404(c) action would be in the public interest.

Purpose of Public Notice: The Regional Administrator of EPA Region III is giving notice of this proposed section 404(c) action and of a public hearing to consider the action. EPA Region III is soliciting information, comments and observations on any and all aspects of this issue and particularly on whether filling and/or inundating the above-described Ware Creek waters, including wetlands, would have an unacceptable adverse effect on fishery areas, wildlife and recreational areas. Data or observations of particular concern to this proposed section 404(c) action include the vegetative, hydrologic and other ecological characteristics of the project area including the proposed lake impact area and balance of the Ware Creek watershed and observations of, or information concerning, fish and wildlife (including but not limited to endangered, or threatened species) utilizing the project area and recreational use (including hunting and fishing) of the project area.

Public Comment: Notice of the location and date for the public hearing for this proposed section 404(c) action will be published in the **Federal Register** within 21 days of the date of this notice. Comments may be submitted prior to the hearing or presented orally and/or in writing at the hearing. The hearing record will remain open until close of business 15 days following the public hearing. Written comments will be accepted until that time. Comments submitted prior to, or after the hearing, or requests for copies of the proposed determination should be submitted to EPA Region III's designated Record Clerk, Ms. Clara Haraburda, Environmental Assessment Branch (3ES40), U.S. EPA, 841 Chestnut Bldg., Philadelphia, PA, 19107. All comments will be fully considered in reaching a decision to either withdraw the proposed determination or prepare a recommended determination to prohibit, deny or restrict the specification or use of all or portions of Ware Creek and its tributaries as a disposal site for construction of the Ware Creek reservoir. The Regional Administrator will either withdraw the proposed determination or forward a final Regional recommendation and the administrative record to the EPA Assistant Administrator for Water in Washington, DC, for review and a final determination. The procedures to be used in making the final determination are specified at 40 CFR 231.6.

Copies of all comments submitted in response to this notice will be available for public inspection during normal working hours (8:00 a.m. to 5:00 p.m.) at the EPA Region III office.

SUPPLEMENTARY INFORMATION

Background

A. Section 404(c) Procedure and Criteria

Section 301(a) of the CWA, 33 U.S.C. 1311(a), prohibits the discharge of pollutants, including dredged and fill material, into waters of the United States (including wetlands) except as in compliance with, among other things, section 404 of the CWA, 33 U.S.C. 1344. Section 404 of the CWA authorizes the Secretary of the Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites through the application of environmental guidelines developed by EPA in conjunction with the Secretary under section 404(b) of the CWA, 33 U.S.C. 1344(b), or where warranted by economics of anchorage and navigation, except as provided by section 404(c) of the CWA, 33 U.S.C. 1344(c). Section 404(c) of the CWA states that the Administrator of the U.S. EPA is authorized to prohibit the specification of any defined area as a disposal site and he is authorized to deny or restrict the use of any defined area for specification as a disposal site, whenever he determines, after notice and opportunity for public hearing, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. The procedures for implementation of section 404(c) are set forth in the Code of Federal Regulations, 40 CFR Part 231. Under those procedures, if the Regional Administrator has reason to believe that use of a site for the discharge of dredged or fill material may have an unacceptable adverse effect on applicable resources, he may begin the section 404(c) process by notifying the Corps of Engineers and the applicant that he intends to issue a proposed determination. Unless within 15 days the applicant or the Corps has demonstrated to the satisfaction of the Regional Administrator that no unacceptable adverse effects will occur, or that corrective action to prevent an unacceptable adverse effect satisfactory to the Regional Administrator will be taken, the Regional Administrator publishes a notice in the **Federal Register** of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator decides whether to withdraw his proposed determination or prepare a recommended determination. A decision to withdraw may be reviewed at the discretion of the Assistant Administrator for Water at EPA Headquarters. If the Regional Administrator prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for Water at EPA Headquarters for a final decision affirming, modifying, or rescinding the recommended determination. In accordance with the regulations at 40 CFR 231.6, the U.S. Army Corps of Engineers and the applicant are provided with another opportunity for consultation before the final determination is made.

With this notice, the Regional Administrator is issuing a proposed determination that specification of the site should be prohibited, withdrawn or restricted for use as a disposal site because of unacceptable adverse environmental effects. Specifically, this notice is the Regional Administrator's proposed determination covering the discharge of dredged or fill material into waters of the United States, (including wetlands), to wit, Ware Creek, by James City County, Virginia. This proposed determination does not represent a judgement that discharge of dredged or fill material will result in unacceptable adverse effects; it merely means that the Regional Administrator believes that, after evaluating the information available to him, an unacceptable adverse effect could result from the specification or use for specification of the area for disposal of dredged or fill material.

B. Nature of Proposed Discharge

James City County proposes to discharge dredged and/or fill material into Ware Creek and its adjacent wetlands in order to construct an earthen dam to impound water for a water supply reservoir. The dam will measure 1,450 feet in length with a crest elevation of +48 feet mean sea level (msl). The reservoir is designed for a normal pool elevation of +35 feet msl, with an average depth of 16 feet. It will store 6.355 million gallons of water and provide a safe yield of 9.4 million gallons per day (mgd). For construction of the 1,217 acre lake, 1,325 acres of land will be inundated and/or cleared.

C. Characteristics of the Site

The Ware Creek watershed is approximately 14,600 acres in size and contains a mix of land uses and habitat types. The primary upland habitat types are hardwood forest (5,808 acres), mixed pine-hardwood forest (3,914 acres) and mixed agricultural residential (3,706 acres). Dominant upland hardwood trees include various species of oaks (*Quercus* spp.), hickories (*Carya* spp.), American beech (*Fagus grandifolia*), black gum (*Nyssa sylvatica*), red maple (*Acer rubrum*), sweetgum (*Liquidambar styraciflua*) and tulip poplar (*Liriodendron tulipifera*). The understory and shrub layers are characterized by sassafrass (*Sassafrass albidum*), flowering dogwood (*Cornus florida*) serviceberry (*Amelanchier* sp.), blueberry (*Vaccinium* spp.), huckleberry (*Gaylussacia* spp.) and mountain laurel (*Kalmia latifolia*). Conifer trees distributed throughout the predominantly hardwood and mixed pine-hardwood forests include loblolly pine (*Pinus taeda*), shortleaf pine (*P. echinata*) and Virginia pine (*P. virginiana*).

There are approximately 986 acres of vegetated wetlands and 184 acres of open water habitat within the Ware Creek watershed. The mixture of habitat types results in a complex mosaic of interspersed wetland communities and adjacent uplands. A total of 44 wetland community types have been identified. At the juncture of Ware Creek and the York River the wetlands are estuarine, intertidal and comprise a mixture of smooth cordgrass (*Spartina alterniflora*), big cordgrass (*S. cynosuroides*) and black needlerush (*Juncus roemerianus*). As one proceeds upstream, the influence of the tides diminishes and the salinities decrease. In this vicinity the marshes are dominated by mixtures of wild rice (*Zizania aquatica*), cattails (*Typha* spp.), arrowarum (*Peltandra virginica*), pickerel weed (*Pontederia cordata*), bulrushes (*Scirpus* spp.) and rushes (*Juncus* spp.).

Beaver (*Castor canadensis*) have had a profound impact within the non-tidal freshwater portions of Ware Creek and its tributaries. The result has been a complex mixture of forested, scrub/shrub and herbaceous wetlands dominated by sycamore (*Platanus americana*), green ash (*Fraxinus pennsylvania*), sweet gum, red maple, black gum, holly, river birch (*Betula nigra*), willow (*Salix* spp.), blueberry, alder, buttonbush (*Cephalanthus occidentalis*), viburnums (*Viburnum* spp.), spicebush (*Lindera benzoin*), ferns (*Osmunda* spp.; *Woodwardia* spp.; *Onoclea sensibilis*), rice cutgrass (*Leersia oryzoides*), wild rice, bulrushes, rushes, sedges (*Carex* spp.), cattails, burreeds (*Sparganium* spp.) and smartweeds (*Polygonum* spp.)

In addition to beaver, the wetlands are utilized by a variety of migrating and resident songbirds, migratory waterfowl, game birds (e.g. woodcock—*Philohela* minor), wading birds and (probably) river otter (*Lutra canadensis*). Of particular note is the location of an 81-nest great blue heron rookery (*Ardea herodias*—a species of special concern) within the Ware Creek wetlands, and the sighting of bald eagles (*Haliaeetus leucocephalus*—an endangerd species) in and around the Ware Creek basin.

The adjacent uplands provide adequate food and shelter to support game species such as white-tailed deer (*Odocoileus virginiana*), grey squirrel (*Sciurus carolinensis*) and turkey (*Meleagris gallopavo*) as well as a variety of non-game vertebrates.

Game fish found in the aquatic portions of the watershed include largemouth bass (*Micropteris salmoides*) and sunfish (*Lepomis* spp.) in freshwater areas and white perch (*Roccus americana*) in estuarine reaches. Although Ware Creek is not used by anadromous fish species to any great extent, the organic material which is produced, processed and exported from Ware Creek wetlands creates a direct ecosystem linkage to the downstream wetlands, the York River system and the Chesapeake Bay.

D. Proceedings to Date

During the first half of 1981 a series of meetings were held between representatives of James City County, their consultants and relevant Federal and State agencies to evaluate proposals to impound Ware Creek for a water supply reservoir. Since the proposed plan would have significant environmental impacts and because a

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CWA Section 404 permit issued for the project would institute a major Federal action, all of the Federal agencies involved concluded that an Environmental Impact Statement (EIS) would be required in accordance with the National Environmental Policy Act (NEPA; 40 CFR Part 1500).

After considerable consultation, field evaluation and study, a Draft Environmental Impact Statement (DEIS) was written and released by the Norfolk District, Corps of Engineers in July 1985. The EPA reviewed the document and rated it EU–3 (Environmentally Unsatisfactory, Inadequate Information). The primary basis for the rating of the DEIS was that EPA believes the adverse environmental impacts associated with the proposed project are severe and had not been adequately minimized, and that the full range of feasible water supply alternatives had not been adequately investigated or fully discussed in the document. In view of the inadequacies of the document, EPA concluded by recommending that a supplement to the DEIS be prepared to address the outstanding issue.

The Corps of Engineers determined that preparation of a supplemental DEIS was not necessary. In proceeding with final EIS (FEIS) preparation, the Corps enlisted three Federal Agencies (EPA, Fish and Wildlife Service, National Marine Fisheries Service) to serve as cooperating agencies to address questions which were raised during the DEIS review.

Considerable effort was subsequently expended to inventory and classify the biological communities of the basin, to evaluate the current habitat value and potential impacts through the Habitat Evaluation Procedures (HEP), and to investigate mitigative measures and alternatives to the proposed plan.

In September, 1987 the Corps of Engineers issued the FEIS. The recommended alternative remained essentially the same although measures to mitigate the environmental impacts were expanded. The environmental conditions and impacts were described in more detail and several alternatives were discussed more fully. On November 23, 1987, in formal comments on the FEIS, EPA found that the FEIS preferred alternative, construction of the Ware Creek impoundment, was environmentally unsatisfactory, mitigative matters were inadequate and alternatives had not been adequately addressed. Those comments also stated that EPA was considerating the CWA section 404(c) option. EPA recommended to the Corps that the Ware Creek permit be denied and that all concerned Federal, State and local parties work together toward a viable, environmentally satisfactory comprehensive water-supply solution.

On July 11, 1988 the Corps of Engineers issued a notice of intent to issue the permit for the proposed Ware Creek reservoir. In response to that notice, EPA informed the District Engineer on August 5, 1988 that it was initiating a section 404(c) action. During the following 15 day period, no information was received which demonstrated to the satisfaction of the Regional Administrator that no unacceptable adverse effects would occur and the District Engineer did not notify the Regional Administrator of his intent to take corrective action to prevent an unacceptable adverse effect. EPA proceeded to prepare the public notice which is published herewith.

Before and after EPA's initiation of this section 404(c) action, efforts have been made by the project proponent to minimize the environmental impacts of the Ware Creek impoundment. Informal proposals included acquisition and/or enhancement of off-site wetlands. Formal proposals include construction of wetlands in tributary branches of Ware Creek by the use of check dams. The primary mitigation effort is a proposal to breach a dam on Yarmouth Creek to reestablish connections between upstream wetlands and the Chickahominy River. This will result in the conversion of lacustrine to palustrine habitat and create the potential for the reestablishment of an anadromous fishery in Yarmouth Creek.

Mitigation measures have fallen short in EPA's view for two reasons. First, the environmental resource values of the Ware Creek site are very high and practicably irreplaceable. Second, the use of mitigation to obtain approval for avoidable destruction of viable habitat is inappropriate.

E. Other Proceedings to Date: Regional Water Supply

In addition to the investigation of solutions to the water supply needs of James City County, other studies were conducted concerning water supply issues throughout southeastern Virginia. In December 1984 the Norfolk District, Corps of Engineers issued a feasibility report and FEIS for a Water Supply Study for Hampton Roads, Virginia. With regard to the long-term needs for the northside of Hampton Roads (including James City County) the Corps determined that a withdrawal of water from the James River above Richmond was the preferred alternative. Other alternatives involving Ware Creek were considered secondary alternatives, but rejected based upon severe adverse environmental consequences.

In addition, water supply impoundments were proposed during the 1980's for Beaverdam Swamp (Gloucester Co.), Crump Creek (Hanover Co.) and Crump's Millpond (City of Suffolk) and there were indications that other, local alternatives would likely be proposed in the future. In an effort to forestall a profusion of locally-oriented water supply solutions that would lead to unacceptable environmental impact to local watersheds and ultimately the Chesapeake Bay, EPA proceeded to investigate alternative sources of supply (e.g. reverse osmosis of brackish groundwater) and attempted to encourage regional plans which would maximize efficiency. In the case of Beaverdam Swamp, an EPA-funded study demonstrated that reverse-osmosis of groundwater was feasible. With regard to the City of Suffolk, the study provided sufficient incentive for the City to conduct their own successful pilot study for a desalination process. The City of Suffolk is proceeding with a full-scale non-conventional water treatment plant.

Other ongoing studies concerned investigations into the availability of groundwater for either conventional or nonconventional treatment. The net result of these studies is that alternatives were identified which are available to James City County and which would meet projected water supply demands without a Ware Creek reservoir. Several options (e.g. groundwater treated in several ways, a smaller but environmentally damaging 3-dam configuration) were available for unilateral County action. In addition, the need for a regional approach to solve long-term, large-scale water supply issues was demonstrated at a water supply symposium which was held on June 20, 1988, in Gloucester Point, Virginia. The symposium was jointly sponsored by the EPA, the Commonwealth of Virginia and the Corps of Engineers. EPA is of the opinion that sufficient alternatives are available to obviate the need for the environmentally unacceptable Ware Creek reservoir.

F. Basis for Proposed Determination

1. Section 404(c) Criteria. The CWA requires that exercise of the final section 404(c) authority be based on a determination of unacceptable adverse effect on municipal water supplies, shellfish beds, fisheries, wildlife or recreational areas. The regulations define "unacceptable adverse effect" in 40 CFR 231.2(e) as:

Impact on an aquatic or wetland ecosystem which is likely to result in significant degradaion of municipal water supplies or significant loss or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) Guidelines (40 CFR Part 230).

The preamble to 40 CFR Part 231 (44 FR 58076, 10/9/79) explains that one of the basic functions of section 404(c) is to oversee the application of the section 404(b)(1) Guidelines. Those portions of the Guidelines relating to the availability of less environmentally damaging practicable alternatives [40 CFR 230.10(a)], significant degradation of waters of the United States [40 CFR 230.10(c)] minimizing adverse impacts to aquatic resources [40 CFR 230.10(d)] and to the determination of cumulative effects on the aquatic ecosystem [40 CFR 230.11(g)], are of particular importance in the evaluation of the unacceptability of environmental impacts in this case.

In summary, the Regional Administrator believes that there are less environmentally damaging alternatives to the Ware Creek Reservoir, that the Ware Creek reservoir will result in significant degradation of waters of the United States, that the proposed mitigation plan is appropriate and nevertheless does not compensate for the adverse environmental impacts associated with the project and that insufficient consideration was given to potential cumulative impacts during the regulatory permit process.

2. Adverse Impacts of Permit Issuance. The proposed project will result in the destruction of 425 acres of wetlands. The balance of the habitat destruction will be in forested uplands. The proposed Ware Creek impoundment will destroy a diverse wetland-upland complex which has high fish and wildlife value and replace that with primarily an open water lacustrine habitat. In addition to the destruction caused by inundation, the processes which link much of the entire existing Ware Creek wetland system (currently 1,170 acres of wetlands and open water) will be disconnected, further reducing the existing productivity and habitat value.

As a result of project implementation, a viable heron rookery would be destroyed with the probability for an adequate replacement site currently uncertain. Information available concerning proposed project impacts indicates that the impoundment would significantly alter present fish and wildlife habitat and would result in unacceptable adverse effects to fishery areas and wildlife.

Given the state of the Chesapeake Bay and future conditions, the cumulative adverse impacts associated with this project will contribute negatively to the Bay ecology. Long term water withdrawal trends have already been identified by the Baltimore District, Corps of Engineers as a significant threat to the ecology of the Chesapeake Bay. Moreover, permit issuance would continue a process which has resulted in a loss of 63,300 acres of wetlands in Virginia from 1956–1977 (18% due to lake construction). Furthermore, during that time period, the southeastern section of Virginia (including Ware Creek) has experienced a 14% loss of inland vegetated wetlands, fully 80% of the total loss of Virginia's inland wetlands.

G. Unresolved EPA Concerns

To date, EPA has been involved in the NEPA and CWA section 404 processes for the Ware Creek project as a reviewer and cooperating agency. Agency representatives have attended numerous meetings, reviewed many relevant reports, sponsored studies to investigative alternatives, and jointly chaired a symposium to evaluate the long-term water needs of the region. A thorough review of these data has shown that viable water supply alternatives exist which would avoid the proposed impounding of Ware Creek and the destruction of the ecosystem as it is currently functioning. The project as currently proposed will cause significant degradation to wetlands.

1. Groundwater alternatives—the FEIS acknowledges that approximately 9.8 mgd of groundwater is available to the County which does not require extraordinary treatment. In addition, reverse-osmosis treatment and comparable technologies have been shown to be feasible in the EPA-sponsored study and Suffolk pilot demonstration. The U.S. Geological Survey indicates that sufficient groundwater availability is probable if well spacing and other variables are factored into the project design.

2. Regional Alternatives—the Corps' 1984 study of regional water needs identified one primary and two secondary alternatives to meet project water supply shortfalls for Northside Hampton Roads. Some of the data to verify these recommendations are lacking. In addition, pursuit of these alternatives will require substantially more participation on the part of the State of Virginia and cooperation among local jurisdictions. The current state of events is leading to conventional solutions to meet the needs of single governmental units, or at the most, small groups, of governmental bodies.

3. Significant Degradation—the project will inundate 425 acres of wetlands and adjacent aquatic habitat and will disrupt ecosystem processes which connect the existing basin communities. A heron rookery will be destroyed and a major segment of wetlands within the Ware Creek watershed itself will be disrupted or isolated. Under the best of mitigation scenerios much of the Ware Creek system will be destroyed and mitigation, much of it off-site, will still result in over a 30% loss of the average wetland-based habitat values. Given the continued loss of wetland habitat in Virginia (a significant proportion of which has been lost to lake inundation) and the value of the existing Ware Creek system, such losses are significant and unacceptable.

4. Mitigation—Substantive commitments and proposals have been made to address creation or alteration of existing wetlands to compensate for the lost functions of Ware Creek wetlands. In addition, the applicant has offered proposals to purchase easements as a means of "protecting" existing wetlands. EPA believes that such actions are inappropriate because they do not address the least environmentally damaging alternative and inadequate because they do not replace the wetland functions that will be lost with construction of the project as proposed.

For Further Information Contact: Ms. Barbara D'Angelo, Environmental Assessment Branch (3ES40), U.S. Environmental Protection Agency, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9301.

James M. Seif,

Regional Administrator, Region III.

[FR Doc. 88–26727 Filed 11–17–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Existing collection in use without an OMB control number.

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Title: CAC and CAV Forms on the Effectiveness of a Community Implementation of the NFIP.

Abstract: National Flood Insurance Program communities provide States and FEMA information on their implementation of the NFIP at least every five years. States, funded under the NFIP's Community Assistance Program, provide this information to FEMA in order to assess the effectiveness of a community's NFIP implementation. Information submitted within 30 days.

Type of Respondents: State or local governments, Federal agencies or employees.

Estimate of Total Annual Reporting and Recordkeeping Burden: 5,050.

Number of Respondents: 1

Estimated average burden hours per response:

Frequency of response: Other: Once every 5 years on the part of the community.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: November 9, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–26710 Filed 11–17–88; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Reinstatement of a previously approved collection for which approval has expired.

Title: FEMA Nuclear Power Plant Alert and Notification System: Public Telephone Survey.

Abstract: The Federal Emergency Management Agency shall randomly telephone survey the residents within the Emergency Planning Zone (EPZ) of 4 nuclear power plans as stipulated in Appendix 3 of NUREG 0654/FEMA–REP–1, Rev. 1. From an approximate sample of 2,500 households, between 250 and 385 residences will be voluntarily surveyed following the attached standardized questionnaire.

Type of respondents: Individuals or households.

Estimate of total annual reporting and recordkeeping burden: 58.

Number of respondents: 4.

Estimated average burden hours per response: .008.

Frequency of response: Once per survey.

Copies of the information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: November 3, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–26711 Filed 11–17–88; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007590–050.

Title: United States/Colombia Conference.

Parties:

Flota Mercante Grancolombia, S.A.
Lykes Bros. Steamship Co., Inc.
CTMT, Inc.

Synopsis: The proposed modification would reduce the number of days from 5 to 3 a member has to respond to a telephone poll concerning northbound cargo. The parties have requested a shortened review period.

Agreement No.: 202–010776–038.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Lines, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed modification would prohibit any party, either individually or jointly with any other carrier or carriers, from entering into an individual loyalty contract in the agreement trade. It would also prohibit any party from taking independent action with respect to loyalty contracts.

Agreement No.: 212–011213–001.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Nordana Line AS
Sea-Land Service, Inc.

Synopsis: The proposed modification would revise the formula to which initial cash payments are made to the Pool Operating Fund by the members.

By Order of the Federal Maritime Commission.

Dated: November 15, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–26675 Filed 11–17–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp.; Acquisition of Company Engaged in Permissable Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissable for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Bank of Boston Corporation, Boston, Massaschusetts; to acquire First Union Commercial Corporation, Charlotte, North Carolina, and thereby engage in factoring activities pursuant to § 225.25(b)(1)(v) of the Board's Regulation Y. These activities will be conducted on a worldwide basis.

Board of Governors of the Federal Reserve System, November 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26604 Filed 11–17–88; 8:45 am]

BILLING CODE 6210–01–M

The Bank of Nova Scotia et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissable for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of Nova Scotia*, Toronto, Canada; to expand the existing authority of its subsidiary, ScotiaMcLeod (USA) Inc., New York, New York, to engage in securities brokerage activities to include the incidental securities credit activities pursuant to Regulation T as specified in § 225.25(b)(15) of the Board's Regulation Y.

2. *The Hongkong and Shanghai Banking Corporation*, Hong Kong, HSBC Holdings, B.V., Amsterdam, The Netherlands; Kellett N.V., Curacao, Netherlands Antilles; and Marine Midland Banks, Inc., Buffalo, New York; to engage *de novo* through its subsidiary, Kidde Credit Corporation, in equipment financing, including lease financing and conditional sale contract financing pursuant to §§ 225.25(b)(1 and 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Cortland Bancorp.*, Courtland, Ohio; to engage *de novo* through its subsidiary, New Resources Leasing Co., Cortland, Ohio, in leasing personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in Eastern Portage, Southern Ashtabula County and all of Trumbull County, Ohio.

Board of Governors of the Federal Reserve System, November 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26684 Filed 11–17–88; 8:45 am]

BILLING CODE 6210–10–M

China Trust Holdings, N.V., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set froth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 7, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. China Trust Holdings, N.V., Curacao, The Netherlands Antilles, China Trust Capital B.V., The Netherlands, and China Trust Holdings Corp., New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of China

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Trust Bank, New York, New York, a *de novo* bank.

B. **Federal Reserve Bank of Richmond.** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. **Mountain-Valley Bancshares, Inc.,** Parsons, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Parsons, Parsons, West Virginia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. **Panhandle Aviation, Inc.,** Clarinda, Iowa; to acquire 86.33 percent of the voting shares of Humboldt Trust & Savings Bank, Humboldt, Iowa.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis Missouri 63166:

1. **Baxter County Bancshares, Inc.,** Mountain Home, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Peoples Bank Corporation, Mountain Home, Arkansas, and thereby indirectly acquire Peoples Bank and Trust Company, Mountian Home, Arkansas.

2. **State Bancshares, Inc.,** Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Southwest Missouri, Springfield, Missouri.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. **First Dakota Financial Corporation,** Yankton, South Dakota; to become a bank holding company by acquiring 96.29 percent of the voting shares of First Dakota National Bank, Yankton, South Dakota.

Board of Governors of the Federal Reserve System, November 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26686 Filed 11-17-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Dennis H. White et al.

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and §225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 2, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dennis H. White,* Valley City, North Dakota; to acquire 4.76 percent of the voting shares of First Bancshares of Valley City, Inc., Valley City, North Dakota, and thereby indirectly acquire First National Bank, Valley City, North Dakota.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Cyr Family Trust,* to acquire 37.54 percent of the voting shares of United Kansas Bank Group, Inc., Merriam, Kansas, and thereby indirectly acquire United Kansas Bank & Trust, Merriam, Kansas.

2. *Luther C. Graham,* Sand Springs, Oklahoma; to acquire an additional 1.26 percent of the voting shares of Limestone Bancshares, Inc., Sand Springs, Oklahoma, and thereby indirectly acquire Lime Stone National Bank, Sand Springs, Oklahoma.

3. *M. L. and Jamie Wooldridge,* to acquire an additional 11.27 percent; M. L. Wooldridge—IRA, to acquire 4.87 percent; and Jamie Wooldridge—IRA, all of Carrollton, Missouri, to acquire 2.08 percent of the voting shares of First Carrollton Bancshares, Inc., Carrollton, Missouri, and thereby indirectly acquire First National Bank of Carrollton, Carrollton, Missouri.

Board of Governors of the Federal Reserve System, November 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26683 Filed 11-17-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following is submitted to OMB since the last list was published on November 4, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package.)

1. Budget Summary and Certification—0960-0422—The information is used by SSA to budget for funds to sustain the State Disability Determination Staff (DDS). Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: 1; Average Burden per response: 30 minutes; Estimated Annual Burden: 27 hours.

2. Physicians/Medical Officer's Statement (Patient's Capability to Manage Benefits)—0960-0024—The information collected by the SSA-787 is used by the Social Security Administration to help determine an individual's capability to handle his or her own benefits. Respondents: Businesses or other for-profit; Number of Respondents: 120,000; Frequency of Response: On occasion; Average burden per response: 5 minutes; Estimated Annual Burden: 10,000 hours.

OMB Desk Officer: Justin Kopca.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package.)

1. Medicaid Management Information System—0938-0458—The implementation of these hospital billing requirements will enable the Medicaid program to develop meaningful data for use by the Federal Government in order to reduce medical care costs. These required data are needed to make the States' Management Information Systems more compatible with systems used to administer the Medicare program, which will further reduce costs and burden on the provider community. Respondents: State and local governments, Businesses or other for-profit, Non-profit institutions; Number of Respondents: 58,000,000; Frequency of Response: 1; Average burden per response: 5-9 minutes; Estimated Annual Burden: 6,236,000 hours.

OMB Desk Officer: Allison Herron.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package.)

1. Product License Application for the Manufacture of Source Plasma—0910-0040—These reports are mandated by Section 351 of the Public Health Service Act; the Federal Food, Drug and Cosmetic Act, Sections 502 and 505; and Title 21 CFR Part 600.—"No license may be granted unless this completed application has been received." Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

	1st Collection Title: Product License Application Manuf. of Source Plasma/ Reporting.	2nd Collection Title: Product License Application for Manuf. of Source Plasma/Record-Keeping
Recordkeeping		
Number of Responses	100	365
Frequency of Response	2	1
Average Burden	2	40
Total Annual Burden: 15,000 Reporting.		

2. Blood Establishment Registration and Product Listing—0910-0052—Information requested is necessary to ensure Agency inspection and regulation of all blood establishments collecting, processing, storing, and distributing blood and blood products. Information also provides list for mailing important public health recommendations concerning AIDS, bio-safety, etc., and indicates industry trends in product development and manufacture. Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations; Number of Respondents: 2500; Number of Responses per response: 1; Average burden per response: 30 min.—new report and 15 min.—subsequent reports; Estimated Annual Burden: 675 hours.

3. Transmittal of Labels and Circulars—0910-0039—Labels and circulars for biological products must be reviewed and approved by the Office of Biologics Research and Review prior to marketing of the licensed product. Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations; Number of Respondents: 469; Frequency of Response: 7; Average Burden per response: 10 minutes; Estimated Annual Burden: 547 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245-2100
HCFA: (301) 966-2088
FSA: (202) 252-5605
SSA: (301) 965-4149
OS: (202) 245-6511
OHDS: (202) 472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: November 9, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88-26450 Filed 11-17-88; 8:45 am]

BILLING CODE 4150-04-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on November 4, 1988.

Social Security Administration

(Call Reports Clearance Office on 301-965-4149 for copies of package.)

1. State Mental Institution Policy Review—0960-0110—The information is needed to determine whether an institution's policies conform to the Social Security Administration's regulations on the use of benefits. Respondents: Non-profit institutions; Number of Respondents: 183; Frequency of Response: 1; Average burden per response: 1; Estimated Annual Burden: 183 hours.

OMB Desk Officer: Justin Kopca.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package.)

1. Medical Device Registration—0910-0060—Section 510(b) of the Food Drug and Cosmetic Act requires manufacturers and certain other persons engaged in distribution of medical devices to annually register the location of their manufacturing facility. This information is used by the Food and Drug Administration (FDA) to identify establishments subject to regulation by the Agency. In addition, registration information is linked to data collected by the medical device listing enabling FDA to ensure that medical devices were manufactured in accordance with good manufacturing practices. Respondents: Businesses or other for-profit; Small businesses or organizations; Number of Respondents: 9,000; Number of Responses: 1; Average burden per response: .17; Estimated Annual Burden: 1,530 hours.

2. Food Canning Establishment Registration and Process Filing—NEW—The information will provide FDA with Data needed for Review and Evaluation of processes for acidified/thermally processed low-acid canned foods. This information will permit FDA to exercise better control and appreciably increase assurance that safe practices are being followed by the processors. The following reflects the breakdown of the burden associated with this information collection. Respondents: Businesses or other for-profit, Small businesses or organizations.

	No. of respondents	No. of hrs. per response	No. of responses per respondent
Forms FDA 2541 (Registration)	300	0.17	1
Form FDA 2541a (Process Filing)	1,200	0.333	4.16
Form FDA 2541c (Process Filing)	1,200	0.75	.42
Total annual burden	2,090		

OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package.)

1. Freestanding Federally—Funded Health Center Cost Report—0938-0235—This standard cost report is used by Federally funded health centers that are freestanding to determine their rate of payment under the medicare program. Respondents: Businesses or other for-profit, Non-profit institutions; Number of Respondents: 145; Frequency of

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Response: 3; Average burden per response: 18; Estimated Annual Burden: 7,830 hours.

OMB Desk Officer: Allison Herron.

Family Support Administration

(Call Reports Clearance Officer on 202–252–5605 for copies of package.)

1. Reporting and Recordkeeping for the Refugee Program—0970—0059—Maintenance of such records is necessary to ensure compliance with legislative requirements, accurate reporting and effective program monitoring. Respondents: State or local governments; Number of Respondents: 51; Frequency of Response: 1; Average burden per response: 1; Estimated Reporting Burden: 51 hours; Estimated Recordkeeping Burden: 11,904 hours; Total Burden Hours: 11,955.

OMB Desk Officer: Justin Kopca.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: November 9, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–26451 Filed 11–17–88; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topics to be discussed are cholesterol labeling, salmonella in eggs, sulfites, and tampon labeling.

DATE: Monday, November 28, 1988, 10 a.m. to 12 m.

ADDRESS: Mount Mary College, Caroline Hall, Multipurpose Room, Milwaukee, WI 53222.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–334–4103.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 14, 1988.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–26681 Filed 11–17–88; 8:45 am]

BILLING CODE 4160–01–M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming small business exchange meeting to be chaired by Edward J. McDonnell, Director, Boston District Office. The topic to be discussed is small business relationships with FDA.

DATE: The meeting will be held on Thursday, December 8, 1988, 1 p.m. to 4:30 p.m.

ADDRESS: The meeting will be held at the Department of Transportation, Transportation Systems Center Auditorium, 55 Broadway Kendall Sq., Cambridge, MA 11232.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Assistance Program (HFR–NE17), Food and Drug Administration, 830 Third Ave., Brooklyn, NY 11232, 718–965–5528.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small business and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, and increase participation by small business persons in FDA's decisionmaking process. The meeting will also allow FDA to convey knowledge about the agency's operations and procedures to owners and operators of small businesses and answer any questions.

Dated: November 14, 1988.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–26682 Filed 11–17–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, December 5–6, 1988, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. The entire Board meeting and meetings of its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and rosters of the Board members, upon request.

Name of Committee: Subcommittee on Cancer Centers.

Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496–5515).

Date of Meeting: December 5.

Place of Meeting: Building 31C, Conference Room 6.

Open: Immediately following adjournment of NCAB.

Agenda: A continuation of ongoing reviews of Cancer Centers Program.

Name of Committee: Subcommittee on Minority Manpower Development.

Executive Secretary: Dr. Vincent Cairoli, Executive Plaza North, Room 232, Rockville, MD 20892 (301/496–8580).

Date of Meeting: December 5.

Place of Meeting: Building 31C, Conference Room 6.

Open: 6 p.m. to adjournment.

Agenda: To establish guidelines for the Subcommittee and consider plans for implementation of the NIH policy regarding recruitment of minority trainees on institutional training grants.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Ms. Barbara Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496–5147).

Date of Meeting: December 5 and 6.

Place of Meeting: Building 31C, Conference Room 6.

Open: December 5, 8:30 a.m. to recess, December 6, 8:30 a.m. to adjournment.

Agenda: Reports on activities of the President's Cancer Panel; the Acting Director's Remarks on the National Cancer Institute; Program Review of the NCI Divisions; Subcommittee Reports; and New Business.

Dated: November 15, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–26764 Filed 11–17–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung and Blood Institute; Meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung and Blood Institute, January 30–31, 1989, Building 31, Conference Room 9, C–Wing, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from approximately 8:30 a.m. to 5:00 p.m. on Monday, January 30, and from 8:30 a.m. to adjournment on Tuesday, January 31, to evaluate program support in arteriosclerosis, hypertension and lipid metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4235, will provide a summary of the meeting and a roster of the committee members.

Dr. G.C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C12, Federal Building, national Institutes of Health, Bethesda, MD 20892, (301) 496–1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 9, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–26670 Filed 11–17–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Diabetes Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be December 12, 1988. The meeting will begin at 8:30 a.m. and end at approximately 4:30 p.m. The Board will meet at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: November 9, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–26671 Filed 11–17–88; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Advisory Committee; Definitions Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee—Definitions Subcommittee at the National Institutes of Health, Building 31, Room 2A52, Bethesda, Maryland 20892, on December 5, 1988, from approximately 9:00 a.m. to adjournment at approximately 12:00 noon to discuss the definition of "recombinant DNA" under the NIH Guidelines for Research Involving Recombinant DNA Molecules. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Mr. Robert J. Crawford, Executive Secretary, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room B1C34, Bethesda, Maryland 20892, telephone (301) 496–9838.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official governments programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: November 10, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–26672 Filed 11–17–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Delegation of Authority to the Administrator, Health Resources and Services Administration

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981 (46 FR 10016) by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated all of the authorities under section 315 of the Public Health Service Act, as amended, pertaining to the Grants for Treatment Drugs for Acquired Immune Deficiency Syndrome, to the Administrator, Health Resources and Services Administration, with authority to redelegate.

Redelegation: These authorities may be redelegated.

Effective Date: This delegation became effective on November 8, 1988.

Date: November 8, 1988.

Robert E. Windom,

Assistant Secretary for Health.

FR Doc. 88–26676 Filed 11–17–88; 8:45 am]

BILLING CODE 4160–15–M

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–88–1892]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act.

ADDRESS: Interested persons who wish to submit comments regarding the paperwork request, may do so. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: November 4, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Approval of a Budget Work Sheet and Rent Increase Spreadsheet for Use in Calculating Rent Increases for Certain of HUD's Subsidized and Direct Loan Projects.

Office: Office of the Assistant Secretary of Housing-Federal Housing Commissioner.

Description of the need for the information and its proposed use: The budget worksheet provides current expense levels and owner estimates of future expenses to be used in HUD's automated system to calculate rent increases. The spread sheet provides the project owner's current rent structure and his requested rent levels which HUD will review, and if appropriate, will approve. The owners are required, by legislation and by regulation, to obtain HUD approval for said rent increases.

Form Number: Two forms (unnumbered), Budget Worksheet, Rent Increase Spread Sheet.

Respondents: HUD Projects Owner or Management Agents.

Frequency: Annually when requesting a rent increase.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Budget worksheet	12,500		1		2		25,000
Spread sheet	1,500		1		½		750

Total Estimated Burden Hours: 25,750

Status: Revision

Contact: James Tahash, (202) 426–3944
John Allison, OMB, (202) 395–6880

Date: November 4, 1988.

Supporting Statement Requesting OMB Approval of the Budget Worksheet and Rent Increase Spread Sheet

Part A

Justification

Background. Owners of all cooperative and subsidized rental projects not adjusting rents using the Section 8 Annual Adjustment Factor must submit the Budget Worksheet and the Spread Sheet as a part of the rent increase request. Said project owners are required, by legislation and regulations, to obtain HUD approval for rent increases.

1. In return for our insuring, subsidizing or making direct loans for project mortgages, owners agree to: (1) Let HUD regulate rents; (2) purchase goods and services on terms most advantageous to the project; and (3) assure that project expenses are reasonable. Tying rents to costs helps HUD assure that rent levels and related Federal subsidy outlays are not higher than needed to support operations and to pay a reasonable return on the owner's investment. HUD's authority to require owners to submit documentation supporting a rental increase request are contained in Pub. L. 479, 48 Stat. 1246, Sect. 207 and 24 CFR 207.19. Attachments include a copy of the worksheet and the spread sheet.

2. Worksheet: Project owners enter actual operating expenses on the Budget Worksheet and project the increase or decrease in expenses expected during the next 12 month period. Consideration of historical operating costs is the best starting point for estimating future expense levels. In support of the estimated expenses, owners must also attach a brief narrative to the Worksheet explaining how each expense estimate was derived where it exceeds 5 percent. A sample owner explanation is included in this package. Field Staff assess the reasonableness of estimated expenses using line by line guidance provided by Headquarters then, calculate the project's rent potential and spread the rent potential by bedroom size

Without the worksheet, HUD would be unable to carry out the regulation which authorizes use of anticipated expenses for setting project rents. Establishing rents based on expected expense levels helps assure that: (1) HUD tenant assistance outlays are no higher than necessary; and (2) rents are sufficient to cover ongoing expenses and project debt service. Insufficient rent potential could result in mortgage assignments costing the government millions of dollars in mortgage insurance claims.

Spread Sheet: Project owners enter information on current unit sizes, current rents and utility allowances and requested rent increase levels on the spread sheet. This basic information along with the projections on the worksheet is required to calculate the nature of any rent increase.

3. We encourage the use of automated accounting systems when the cost of the system is less than the cost of hiring a project bookkeeper. Many management agents now use privately developed software packages adapted to the HUD Chart of Accounts. These systems significantly reduce the time needed to establish amounts included on the Budget Worksheet. Some automated systems also compare actual project expenses against monthly budget expense projections. This information is useful to owners when estimating expense levels on the worksheet. Field Offices may accept automated reports in lieu of the Worksheet or the Spread Sheet as long as the entries are grouped in the categories used in the respective forms and the owner clearly identifies which accounts are included on each line.

4. The requirements for the information on these forms are not duplicated by requirements imposed by other regulatory or State and local governments.

5. Worksheet: Estimated project expenses and rent potential spread shown on the HUD-worksheet is not available to HUD from other sources. The information must be derived or estimated from project books and records kept by the owner. Only the owner can provide this information because he/she is most aware of inflationary increases in project expense levels or increases in service contracts executed on behalf of the project.

Spread Sheet: The estimated rent potential shown on the Spread Sheet is not available to HUD from other sources. As in the case of the worksheet the information must be estimated from project books and records kept by the owner. The owner is the sole best source of this information.

6. No small business or other small entities are involved in this information collection.

7. Information is collected only when the owner requests a rental increase. Without the Worksheet or the Spread Sheet HUD would be less able to consider the owner's input in rent increase processing. Project rents may be set at inflated levels resulting in excessive subsidy outlays or at insufficient levels potentially resulting in a mortgage assignment.

It should be noted that information is collected on the Spread Sheet only when the owner requests a rental increase and the project is not subject to tenant participation requirements of 24 CFR Part 245. Thus the Spread Sheet is not required in every case that the Budget Worksheet is required.

8. Information collection is conducted in a manner consistent with the guidelines of 5 CFR 1320.6.

9. Over the past several years, we have been discussing with the housing industry and HUD Field Offices how we could improve rent increase processing procedures for subsidized and cooperative projects. In a previous submission (1987) for the OMB approval of the form HUD–92457B we mentioned some of industry contacts we made to discuss rent increase processing. All of these representatives supported the new forward budget approach and the automated calculation of rents. They appreciated the need to gather expense data projections from project owners.

In addition to contacts made in 1987 (see below) the Department is carrying on continuing discussions with the National Association of HUD Management Agents, The National Corporation of Housing Partnerships and The National Housing Partnership.

Dan Grady, Monfric, Inc., 1915 Morena Blvd, San Diego, CA 92110, (619) 276–6271.

Barron Rush, CPM, Barron Builders and Management Company, 18333 Egret Bay Blvd, Suite 680, Houston, Texas 77058, (713) 333–5211.

Charles A. Achilles, Vice President, Institute of Real Estate Management, 430 N. Michigan Ave., Chicago, IL 60611, (312) 661–1930.

10. We do not assure confidentiality to respondents.

11. Neither the Worksheet nor the Spread Sheet include questions of a sensitive nature.

12/13. Estimated Annualized Cost of Form to the Federal Government and Respondents:

Total estimated annual cost to the Federal Government: $292,500 ($281,250+$11,250)

Total estimated annual cost to Respondents: $336,813 ($325,938+$10,875). See breakdown below.

RENT INCREASE BUDGET WORKSHEET

Program type	Number of respondents	x	Frequency of response	x	Hourly rate [1]	Hours per statement
Cooperatives	1,135		1		15.00	1½
Subsidized (except sec. 8)	9,600		1		15.00	1½
Section 202	1,600		1		15.00	1½
Other elderly	165		1		15.00	1½
Total respondents	12,500					

[1] Above figure assumes a GS–11–5 Loan Servicer reviews owner's estimates of expenses on the Worksheet and calculates approved project rent potential.

Estimated annual costs to the Federal government: $281,250

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Estimated Annual Costs to Respondents:

	Number of respondents	×	Frequency of response	×	Hourly rate [1]	×	Hours per statement
Project bookkeeper	12,500		1		8.65		½
Project manager	12,500		1		14.50		1½

Estimated Annual Costs to Respondents: $325,938.

[1] Above figures assume that the: (1) Project bookkeeper with an annual salary of $18,000 prepares amounts in Column 1 and 2 of the Worksheet; and (2) property manager with an annual salary of $30,000 prepares estimates of expenses in Column 3 supported by any necessary justification for increases in expense line items. A review of our files indicates that our current estimates 12,500 responses/25,000 burden hours are accurate.

RENT INCREASE SPREAD SHEET

Number of respondents	Frequency of Response	×	Hourly Rate [1]	×	Hours per statement
1,500	1		15.00		½

Estimated annual costs to the Federal government: $11,250.

[1] Above figure assumes a GS–11–5 Loan Servicer reviews owners's estimates on the Spread Sheet and calculates approved project rent potential.

Estimated Annual Costs to Respondents:

	Number of respondents	×	Frequency of response	×	Hourly rate [1]	×	Hours per statement
Project manager	1,500		1		14.50		½

Estimated Annual Costs to Respondents: $10,875.

[1] Above figures assume that the property manager with an annual salary of $30,000 prepares estimates.

14. The Rent Increase Budget Worksheet and the Rent Increase Spread Sheet will be used to implement the Department's policy of basing rent increases on estimated future expenses. This method replaces the previous policy and the form which it utilized. Specifically, HUD form 92457B (OMB Control # 2502–0324) will no longer be used to process rent increases for the projects effected by the new approach. Therefore, the approval of these forms represents a net reduction in paperwork burden hours for those projects.

Previous burden hours approved for the HUD 92457B: 50,000
Requested total burden hours for the new Worksheet and Spread Sheet: 25,750
Net reduction in hours: 24,250
Annual cost to the Federal Government for the HUD 92457B: $412,500
Net reduction in cost for the new forms: $120,000
Annual cost to respondents for the HUD 92457B: $651,875
Net reduction in cost for respondents with the new forms: $315,062

15. HUD does not publish any of the project expense data or rent potential included on these forms.

Part B

Collection of Information Employing Statistical Methods. The collection of information on the Work Sheet and Spreadsheet does not employ statistical methods.

DRAFT

RENT SPREAD SHEET

Project Name ..... FHA #
Management Agent ..... % Fee
Fee Capped (Y/N)
PUPM

RENT STRUCTURE

Current potential—			Requested monthly potential—		
Unit type	Current unit rents	Utility allowance	Number units	Proposed unit rents	Proposed utility Allowance

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CHAPTER 7 APPENDIX 4

BUDGET WORKSHEET

Income and Expense Projections				
Project No. Name of Project				
Description of Account	Acct. No.	HUD-92410 Audited - Last FY	Current FY FY #MOs.	Budget - From / / To / /
Rental Income 5100				
Apartments or Member Carrying Charges (Coops)	5120			
Tenant Assistance Payments	5121			
Furniture and Equipment	5130			
Stores and Commercial	5140			
Garage and Parking Spaces	5170			
Flexible Subsidy Income	5180			
Miscellaneous (specify)	5190			
Total Rent Revenue Potential at 100% Occupancy				
Vacancies - 5200				
Apartments	5220			
Furniture and Equipment	5230			
Stores and Commercial	5240			
Garage and Parking Spaces	5270			
Miscellaneous (specify)	5290			
Total Vacancies				
Net Rental Rent Revenue Less Vacancies				
Elderly and Congregate Services Income - 5300†	5300			
Total Services Income † (Schedule Attached)-	5300			
Financial Revenue- 5400				
Interest Income-Project Operations	5410			

Income from Investments -Residual Receipts	5430			
Income from Investments Reserve for Replacement	5440			
Income from Investments Miscellaneous	5490			
Total Financial Revenue				
Other Revenue - 5900				
Laundry and Vending	5910			
NSF and Late Charges	5920			
Damages and Cleaning Fees	5930			
Forfeited Tenant Security Deposits	5940			
Other Revenue (specify)	5990			
Total Other Revenue				
Total Revenue				
Administrative Expenses 6200/6300				
Advertising	6210			
Other Renting Expense	6250			
Office Salaries	6310			
Office Supplies	6311			
Office or Model Apartment Rent	6312			
Management Fee	6320			
Manager or Superintendent Salaries	6330			
Manager or Superintendent Rent Free Unit	6331			
Legal Expenses(project)	6340			
Auditing Expenses (Project)	6350			
Bookkeeping Fees/Accounting Services	6351			
Telephone and Answering Service	6360			

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Bad Debts	6370			
Miscellaneous Administrative Expense specify	6390			
Total Administrative Expenses				
Utilities				
Fuel Oil Coal - 6400	6420			
Electricity	6450			
Water	6451			
Gas	6452			
Sewer	6453			
Total Utilities Expense				
Operating and Maintenance Exp - 6500				
Janitor and Cleaning Payroll	6510			
Janitor and Cleaning Supplies	6515			
Janitor Cleaning Contracts	6517			
Exterminating Payroll	6519			
Exterminating Contract	6520			
Exterminating Supplies	6525			
Garbage and Trash Removal	6530			
Security Payroll/ Contract	6535			
Flexible Grounds Payrol	6536			
Grounds Supplies	6537			
Grounds Contract	6540			
Total Repairs Payroll	6541			
Repairs Material	6542			
Repairs Contract	6545			
Elevator Maintenance/ Contract				

Heating/Cooling Repairs and Maintenance	6546			
Swimming Pool Maintenance/ Contract	6547			
Snow Removal	6548			
Decorating Payroll/ Contract	6560			
Decorating Supplies	6561			
Vehicle & Maint. Equip Operations and Repairs	6570			
Miscellaneous Operating Maintenance Expenses	6590			
Taxes and Insurance - 6700				
Real Estates Taxes Interest	6710			
Payroll Taxes (FICA)	6711			
Miscellaneous Taxes, License and Permits	6719			
Property and Liability Insurance (hazzard)	6720			
Fidelity Blood Insurance	6721			
Workmen's Compensation	6722			
Health Insurance & Other Employee Benefits	6723			
Other Insurance specify	6729			
Total Taxes and Insurance				
Financial Expenses 6300				
Interest on Bonds Payable	6310			
Interest on Mortgagee Payable	6320			
Interest on Notes Payable (Long-Term) *	6330			
Interest on Notes Payable (Short-Term) *	6340			
Mortgage Insurance Premium/Service Charge	6350			
Miscellaneous Financial Expenses	6890			
Total Financial Expense				
Elderly and Congregate Service Expenses-6900	6900			
Total Service Expenses Schedule Attached				
Reserve for Replacement Dep. Req.				
Painting Reserve				
Principal Payments Req.				
Debt Service on Sec 241 and Other Approved Loans				
Debt Service Reserve (202)				
General Operating Reserve	(GOR)			
Excess (Deficiency) Income over expenses				
Total Cost of Operation				

* HUD approved Secondary Financing only for Budget Projections

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HANDBOOK NO.: 4350.1

Draft Transmittal

Special Attention of: Regional Administrators, Regional Housing Commissioner, Directors of Regional Housing, Managers, Category A and B Offices, Directors of Housing Management Division, Loan Management Branch Chiefs, Assisted Housing Management Branch Chiefs, PHA Contract Administrators, State Agencies and Owners and Management Agents and Resident Managers of Projects Covered by this Handbook.

1. *This Transmits* A New Chapter 7 to Handbook 4350.1 Insured Project Servicing Handbook.

2. *Explanation of Materials Transmitted.* This revises procedures for the processing of rent increases and fees for commercial space and services in insured, direct loan and non-regulated HUD projects. The new Chapter 7 replaces Chapter 4, Section 3, Rents and carrying charges, which is now reserved. The new chapter incorporates:

a. The budget method for the calculation and processing of rent increases rather than the formula method previously used. It introduces such new forms and procedures, as are necessary to the processing of rents under the new methodology.

b. The application and processing for projects subject to the alternative rent mechanism explained in HUD notice 84–12.

c. All changes made in the regulations affecting decontrol of rents, including the application of Section 425 of the Housing Act of 1987.

d. Procedures and practices which allow for the systematic application of MIPS programs to the rent increase process.

e. The contents of certain notices affecting rent increases including: HM 75–61 (10/9/75); HM 75–14 (3/3/75); H 76–131 (12/2/76) and H 79–107 (11/13/79).

3. Also enclosed are Table of Contents pages for Chapters 8, 9, 10, 11, and 12

4. Effective date: upon receipt

5. Filing instructions:

Remove	Insert
Handbook 4350.1, Chapter 4, Section 3 pages 1 through 24 and appendices.	Chapter 4, Section 3 RESERVED, page 1 Handbook 4350.1 Chapter 7, pages 1 through 38 plus appendices, dated _____
Table of Contents, page iii and vi, dated 2/80.	Table of Contents, page iii, dated _____ and page vi, dated 2/80
Table of Contents, page xi, dated 6/88.	Table of Contents, pages xi, xii, xiii, xiv, xv, and xvi dated _____

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Chapter 7. Processing Budgeted Rent Increases and Fees for Commercial Space and Services in Insured, Direct Loan and Non-regulated HUD projects

Section 1. Overview

1. *Purpose.* This chapter provides procedures for processing budgeted rent increases in certain HUD projects and outlines guidance in the calculation of utility allowances and charges for commercial facilities and services provided in those projects. Included in the chapter are the relevant tenant participation procedures which must be followed in processing these increases and charges. In preparing the procedures in this chapter, HUD's prime interest is in promoting the efficient management and continued financial viability of its projects. In reviewing requests from owners concerning rents and charges, the Field Office should be guided by the fact that these rents and fees should and must provide sufficient and adequate funding to operate the projects. This chapter gives guidance on program evaluation used in conjunction with required procedures for MIPS budgeted rent increases.

2. *Applicability.* These procedures for processing a gross potential rent increase, increases in charges for commercial space and charges for services apply to the projects listed below:

A. Section 231, 232 and 221(d)(3) market rate projects: 231 projects (LDs) whose rents are still controlled or who have opted for the alternate rent mechanism.

B. Section 202 projects, except those that use the Section 8 Annual Adjustment Factor (AAF).

C. Section 213, Section 236 (including cooperatives), Rent Supplement, 221(d)(3) market rate and 221(d)(3) BMIR rental and cooperative projects, Sections 810 and 908 (military housing);

D. Projects that have converted from Rent Supplement to Section 8 Loan Management Set-Aside;

E. Previously HUD-owned projects that have been sold to nonprofit owners or that use a budget (rather than the Section 8 AAF) to compute rents;

F. Section 207's and 231's both regulated and controlled by alternative rent mechanism; Section 220 and 221(d)(4)'s that are regulated; and 234 rentals that did not convert to condominiums;

G. Those projects listed in paragraph 2(A) through (F) that are not automatically preempted by HUD and request exemption from local rent control.

Note: Regulatory agreements require Section 202, Section 231 and cooperative projects to *annually* submit operating budgets and obtain HUD approval of rents or carrying charges. Field Offices shall enforce this requirement in lieu of the requirement that budgets be submitted only when the owner believes a rent increase is needed.

The Field Office in enforcing the regulatory agreement requirement for annual budget submissions, shall require the owner to include in their submission any information required by Section 4, paragraph 2 of these procedures.

3. *Projects Subject to the Alternate Rent Determination Mechanism.*

For projects insured under Section 207, 231(c)(4), 213 Rental 223(f), and 234 Rental prior to November 30, 1983, and for 221(d)(4) projects, regardless of when the project was insured, the owners may request an amendment to the Regulatory Agreement subject to Section 3 of this chapter requiring HUD to determine their rents using the alternative rent mechanism described in Section 4.

4. *Definitions.*

A. *HUD Authorized Rent.* These are the unit rents shown in column 3 of the most recently approved Rent Schedule (Form HUD–92458). In the Section 236 program these rents are called basic rents. Depending on income, some 236 tenants will pay market rent or something between basic and market rents which represents 30 percent of adjusted income.

B. *Maximum Allowable Rent Potential.* The maximum annual rent the owner may collect by charging the rents authorized by HUD on the Form 92458.

C. *Utility Allowance.* (APPLIES ONLY FOR PROJECTS RECEIVING SUBSIDY ASSISTANCE WHERE ALL OR SOME UTILITIES ARE PAID DIRECTLY BY THE TENANT). An estimate of utility costs (except telephone) for an average family occupying a unit.

Clarification: Section 221(d)(3) DMIR projects that were built with tenant paid utilities (separate meters) do not need utility allowances. If the project has Rent Supplement or LMSA units, those units however, receive an allowance.

D. *Section 8 Contract Rents.* The rent level called for under the subsidy contract and adjusted annually subject to comparability. Rent used for units subsidized under Section 8 New Construction (880), Substantial Rehabilitation (881) and Section 8 (LMSA) where the owner has had his rent decontrolled or used the alternative rent mechanism.

E. *Services.* This refers to such benefits as may be provided by the project owner to tenants that are not included in the rent and are optional on the tenant's part (i.e. cable T.V., laundry facilities and use of community space in the project.)

Section 2. Tenant Comment Procedures for a Rent Increase

1. *General.* Tenant comment procedures for the rent increase process are provided for in Section 202(b)(1) of the 1978 Housing and Community Development Amendments (HCDA) and Section 329(F) of the 1981 HCDA. Regulations at 24 CFR 245 set the Department's policy on the subject (See Appendix 1). These requirements for tenant comment on rent increases and utility allowance reductions apply to all projects listed in Paragraph 2 except

those rentals under Section 207, 213, 234, Section 231, 220 and Section 221(d)(4). They also do not affect cooperatives whose residents elect a Board of Directors which must approve any proposed increase in carrying charges. This mechanism more than provides a means of comment in the management of the project.

2. *Applicability.* The requirements of this section affect ONLY those owners whose requested rent potential would *exceed* the Maximum Allowable Rent Potential for that project. If the proposed rent potential is less than or equal to the Maximum Allowable Rent Potential, the tenant comment procedures outlined in this section do NOT apply. (See Section 4.)

3. *Owner Responsibilities:* Owners must issue a Notice to Tenants of any proposed rent increase. The Notice must contain all of the information included in the sample notice shown in the Appendix 1. Initial submission of the request to HUD for a rent increase shall go forward at the same time as the Notice is being given to tenants. The HUD Field Office shall receive a copy of the Notice to Tenants along with the documents and information that will be used to justify the rent increase as part of formal rent increase request.

A. For high-rise projects, owners must "post" *or* "deliver" the Notice to each tenant. For all other types of projects, owner need only "deliver" the Notices.

B. *Delivery.* A copy of the Notice must be mailed to each tenant or hand carried directly to each unit. **Important:** The Notice should also be delivered to those tenants who pay market rent and to tenants who would not be affected by an increase because they pay a percentage of income.

C. *Posting.* If applicable, the owner must post the Notice in at least three conspicuous places in each high-rise building in which dwelling units are located AND in one conspicuous place at the address where the material supporting the owner's request will be available for tenant review and copying. **Important:** Owners must keep the posted Notices in place and in legible form for the tenant comment period.

4. *Tenant Review and Comment.* During the 30 days following the date the Notice to Tenants was given, the owner must make all of the materials listed in Section 4, paragraph 2 plus any additional information used to justify the increase available to tenants or their representatives to review and/or copy. For the purposes of computing tenant comment periods, owners must consider the date the Notice was given to be the date by which all notices had been hand-carried or mailed and all required copies had been initially posted. The materials must be available at least during normal business hours and at a place reasonably convenient to the tenants.

5. *Comment Submission.* Tenants may submit written comments on the increase request to the owner or to the HUD Field Office or both. In cases where comments are submitted to the owner, all such comments must be reviewed and evaluated. The comments and evaluations should then be forwarded to the HUD Field Office as part of the formal rent increase request.

6. *Changes to Supporting Documentation.* If during the 30-day comment period the owner makes a material change in any of the documents submitted in support of the increase, the owner must notify the tenants of the change(s) in a notice to be distributed in the *exact* same manner as the original Notice to Tenants. The owner must make the revised materials available for the tenants to review and/or copy for the LONGER of 15 days after the revised notice was given or the days remaining in the initial 30-day comment period.

7. *Submitting the Formal Request for an Increase.* At the conclusion of the tenant comment period as defined in either paragraph 4 or paragraph 6 above the owner must forward in addition to the tenant comments and evaluations, an executed copy of the owner's Certification as to Compliance with 24 CFR Part 245's Review and Comment Procedures. (See Appendix 2)

Section 3—Decontrol of Rents

1. *Decontrol of Section 220/221.* On April 19, 1983 the Department issued regulations (effective 6/1/83) which changed the requirements for HUD control of rents and other charges in Section 207, 220, and 221(d)(4). First, HUD used the discretion it already had under Sections 220 and 221(d)(4) to decontrol rent and other charges in unassisted projects. Regulation would continue only for projects receiving certain types of Section 8 assistance, projects receiving Section 8 LMSA and projects insured under Section 221(d)(3). The regulation of certain charges for facilities and services continued for each of these units and projects, as well as for Section 221(d)(4) elderly and handicapped projects. Second, HUD implemented the Alternative Rent Mechanism (discussed in Section 4 of this chapter) for determining maximum allowable rents for unsubsidized projects insured under Sections 207, 213 (rental), 223(f), 231(c)(4) and 234 (rental).

2. *HURRA of 1983.* In November 1983, Section 431(a)(1) of the Housing and Urban-Rural Recovery Act of 1983 amended section 207(b)(2) of the National housing Act (NHA) to make discretionary the Secretary's authority to regulate rents and other charges for multifamily housing projects insured under Section 207 on or after November 30, 1983. The owner needed only to submit an amended regulatory agreement and HUD would sign it.

3. *Decontrol of Section 207.* Exercising the discretion granted by the change in 431(a)(1), the Department implemented regulations on June 4, 1986 (effective 7/21/86) which deregulated rents and other charges for mortgages insured under Section 207 on or after November 30, 1983. Regulation continued for Section 236 subsidized projects refinanced under Section 223(f). HUD also authorized owners of 221(d)(4) and 220 projects with LMSA to decontrol rents provided they amended the Regulatory agreement and to have its Section 8 rents determined annually by the applicable annual adjustments factor.

4. *Section 207/LMSA.* For those projects insured before November 30, 1983, the 1986 regulations gave Section 207, 220, and 221(d)(4) project owners receiving Section 8 LMSA assistance the option to request the Alternative Rent Mechanism, provided they agree to amend the Regulatory agreement, and have the Section 8 rents determined by the applicable annual adjustment factor.

5. *1987 Housing Act.* The Housing Act of 1987 imposed restrictions on the decontrol of rent and use of the alternative rent mechanism which affected owners who had not requested changes in their regulatory agreements. For those owners whose request for a regulatory change was received before 12/1/87, HUD will process the request and sign the new agreement. However, for owners of projects who were eligible under the 1983/86 regulations BUT who did not request the necessary amendment prior to 12/1/87, the Act requires that the project meet the following tests before the amendment can be approved: (1) The project may not have a project-based Section 8 contract; and (2) no more than 50 percent of its tenants can be defined as lower income.

6. *Projects Not Covered by the Act.* Projects endorsed and insured (or co-insured on or after 11/30/83 under Section 207 and 223 are NOT covered by the 1987 Housing Act. This is notwithstanding any language presently contained in the regulatory agreement.

7. *Projects Covered by the Act.* The Field Office will apply the tests required in the 1987 Act to:

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(A) Unsubsidized Section 207, 213(rental), 223(f), 231(c)(4), and 234(rental) projects that could have elected the Alternative Rent Mechanism under the April 1, 1983 rule, but did not do so before 12/1/87.

(B) Unsubsidized 220 ands 221(d)(4) projects insured prior to 6/1/83 who could have elected to deregulate charges for rents, facilities, or services under April 19, 1983 rule, but did not do so before 12/1/87.

(C) Section 207, 213(rental), 223(f), 231(c)(4), and 234(rental), 220 and 221(d)(4) projects insured prior to 11/30/83 and assisted by Section 8 LMSA that were permitted by the June 4, 1986 regulation to request the Alternative Rent Mechanism or decontrol as applicable, but did not do so before 12/1/87.

8. *Special Cases.* HUD continues to regulate a certain limited class of projects which would otherwise be eligible under regulations to request decontrol. This group consists of those projects discussed in this Section where the mortgagor opts to remain controlled in order to maintain the project's tax exempt status and those projects where deregulation would result in the imposition of local and state rent control which is inapplicable as long as HUD is regulating the rent. In both cases the maximum permissible rent charges are determined by the Alternative Rent Mechanism.

9. *PMMs.* Regulation of rents at projects with Purchase Money Mortgages sold with insurance will be in accordance with the rules for Section 221(d)(4).

Section 4. Owner Request for a Rent Increase

1. *Procedures for Requesting a Rent Increase.* Owners are allowed to charge only the rents shown on the rent schedule they submitted and which have most recently been authorized by HUD. When current rent levels are NOT sufficient to cover anticipated or unavoidable increases in operating costs, owners should request that HUD approve an increase in rents. If the increase in proposed potential rent is less than or equal to the Maximum Allowable Rent Potential, owners need only submit a new Rent Schedule 92458. Tenant comment procedures in 24 CFR Part 245 do NOT apply. If the HUD Form proposed rent increase exceeds the Maximum Allowable Rent Potential, owners must take the actions discussed in this Section.

2. *Initial Submission.* In addition to the proposed rent potential, the initial submission to request a rent increase should include the materials listed below, plus any additional documents being used to support the request.

A. A cover letter that briefly does all of the following:

(1) Summarizes the reasons why a rent increase is needed and the date the increase will be effective. Describe the project's physical condition and any improvements that have been budgeted for. The letter may refer to the reasons stated in the Notice or elaborate on those reasons. (The main reasons stated in the letter must be the same as the main reasons stated in the Notice to Tenants, if the project was subject to the tenant comment procedures in Section 2.)

(2) Identifies any proposed change in services, equipment or charges and the reasons for the change.

B. A budget worksheet (Appendix 4(e) format) providing income and expenses for the 12 months following the anticipated effective date of the proposed rent increase. Owners not subject to tenant comment procedures will also submit the Budget Sheet found in Appendix 4(c) which outlines rent structure. (Project owners subject to the tenant comment procedures of CFR Part 245 will have already provided rent structure information when they forwarded HUD a copy of their Notice to Tenants (see Section 2, paragraph 3.)

C. A brief statement explaining the basis for any increase in the expense line items on the budget work sheet. Generally, if an increase amounts to 5 percent or more, it must be documented. If the income or expense was estimated at the prior annual period's actual, or the increase is less than $500, no explanation is required. (Appendix 4(b) provides a sample owner explanation of budget items.)

D. Where applicable, a copy of the Notice to Tenants annotated to show where and how the Notice was distributed (e.g., posted, mailed, hand carried).

E. An executed copy of the Owner's Certification Regarding Purchasing Practices and Reasonableness of Expenses (Appendix 3).

F. A status report on the project's implementation of its current Energy Conservation Plan (See Chapter 12). This may be: (1) A narrative report coded to facilitate references to the plan; or (2) copy of the plan annotated to show the current status of all items that were scheduled to be completed within 60 days after the rent increase is proposed to be effective. THIS APPLIES ONLY TO SECTION 236 AND BMIR PROJECTS, PROJECTS THAT RECEIVE RENT SUPPLEMENT ASSISTANCE, AND PROJECTS THAT CONVERTED FROM RENT SUPPLEMENT TO SECTION 8. This requirement is to assure compliance with Section 329(c) of the Housing and Community Development Amendments of 1981.

G. A signed request for an increase in the Reserve for Replacement if such an increase is contemplated as part of the rent increase request (Appendix 7).

H. *For Projects with Utility Allowances,* a recommendation is to what utility allowance is appropriate for each unit type and a summary of how the owner/agent arrived at that amount with appropriate documentation as prescribed by paragraph 4 of this section.

3. *Use of the Alternate Rent Mechanism.* For projects insured under Section 207, 231(c)(4), 213 Rental, 234 Rental, 223(f) and 221(d)(4), where the necessary amendment to the regulatory agreement has been executed (See Section 3), owners may request that HUD determine a rent increase using the Alternative Rent Mechanism. These steps are to be followed:

A. *Owner Submission for Alternative Rent Determination Mechanism.*

In addition to the information required in Section 4, paragraph 2, the owner who chooses the Alternative Rent Determination process must submit the following:

(1) Appraisal of the value of the property performed by a qualified real estate appraiser of the mortgagor's choice which includes the comparable rents for units in similar projects.

(2) A request for HUD approval of a rent increase.

B. *Processing Procedures for Budgeted Rent Determination.*

(1) Section 207, 231, 213, 220, 221(d)(4) owners or owners of projects which are required to have their rents approved by HUD, who do not choose to use the Alternative Rent Determination procedures will continue to have their rents determined as prescribed in this chapter and no Regulatory Agreement amendment is necessary.

(2) Section 207 owners or owners of projects who require HUD approval of rents or owners of projects who otherwise could chose not to have HUD control rents, that wish to use the Alternative Rent Determination Procedures provided for, shall have their rents determined by HUD based on the submission required in paragraph 3(A) of this section. HUD will approve the lower of the folloiwing two rent potentials: (1) Apply the original debt service factor to the current market appraisal covering the residential value of the property. Then process the rents as outlined in this chapter, to determine

Gross Potential Rent; or the comparable rents submitted as part of the appraisal.

Note: The independent organization or person hired by the owner to conduct and provide the certified appraisal must be a rcognized professional appraiser. The appraiser in making his/her rental analysis must determine the residential rental income separate from the commercial income and provide a delienation in the value of the residential portion separate from the commercial portion of the value. The Field Office in determining the Gross Potential Rents using the new appraisal will use the residential rent portion of the certified appraisal to apply the original debt service factor set at the time of final endorsement in determining the new debt service allowed in the rent computation and insert the new appraised residential value in Box H of the Rent Calculation Worksheet. Offices shall follow outstanding instructions contained in this chapter in processing the expenses used in determining the final Gross Potential Rent.

C. *HUD's Approval of Alternative Rent Increase Method.*

(1) Based on the analysis submitted and assuming the owner is otherwise eligible for a rent increase as covered in this chapter, the Loan Management Branch Chief (LMBC) shall approve in writing the lesser of the rents computed in paragraph 3(B)(2) of this section.

(2) If the LMBC determines that the owner is not entitled to a rent increase as covered in this Handbook, the LMBC shall submit the finding(s) to the Director of Housing Management or Director of Housing for review. The Director will deny or approve the LMBC finding in writing providing the reasons for the final decision if it reverses or alters the LMBC recommendation.

D. *Future Processing After Initial Determination of Rents Using Alternative Mechanism.*

(1) If the rent based on comparables and supported by the appraisal as defined in paragraph 3(B)(2) are less than the processed rent utilizing the appraised value, use the comparable rents submitted by the owner as the approved rent. The Field Office in NOT to become involved in determining comparable rents. This should already have been done as part of the appraisal package.

(2) If the budgeted rents in paragraph 3(B)(2) using the most recent appraisal and budgeted operating costs are less than comparable rents, the bugeted rent level shall be approved. For future requests, continue this process until such time as the comparable rents are less than budgeted rents. When this happens, the comparable rents shall be approved as the Rent Level.

(3) As long as the owner submits a comparable Rent Level which is less or equal to the rent level that would be provided using the last appraised value in determining rents as described in paragraph 3(B)(2) of this Section, a new appraisal is not required. However, when the comparable rents exceed the rents allowed using the last appraised value, then the owner must either submit a new appraisal showing that the rents based on the appraisal are more than the rents based on comparables in order to charge the comparable rents or he/she must charge the rent as determined by using the new appraisal which is less than the comparables.

E. *Thirty Day Processing of Alternative Rent.*

The LMBC must (in writing) approve, disapprove or approve for a different amount requested by the owner, within 30 days of receipt. Failure on ther part of the LMBC to notify the owner in writing of the findings will provide temporary authority to the owner to charge the proposed rents. In the event that the owner implemented the rents at the end of 30 days without HUD's written approval, the additional rents shall be placed in an escrow account or a letter of credit shall be provided so that in the event HUD fails to approve the rent increase, or approves the increase for less than requested, the owner shall immediately return to the tenants that portion of the rent collected which HUD later disapproved. *This applies only to rents processed using the alternative rent mechanism.*

F. *Allowable Project Costs.*

While the cost of the appraisal and/or market analysis can be paid for out of project income, it is not to be used as an allowable project expense in the rent determination defined in Section 5 of this chapter.

4. *Determination of a Utility Allowance.* (see Section 1, para 4C for applicability) For each request for an increase in the HUD-authorized rent potential, the owner must recommend an utility allowance for each unit type. The recommended utility allowance should represent the owner's best estimate of the average monthly utility cost that an energy conscious resident will incur for the year. The utility allowance is not meant to pay all actual utility costs, but rather it is to reimburse a prudent utility consumer for their utility expense. Both the proposed and the current allowance levels should be included in the notices to the tenants.

A. As part of the submission for an increase or decrease in the utility allowance, each owner must submit a summary supporting the proposed change to the utility allowance. That summary should:

(1) Identify the type of utilities covered by the utility allowance (e.g., gas for heating).

(2) State whether any utility rate increases or decreases where implemented during the past 12 months or are expected to be implemented during the next 12 months and the amount of those increases or decreases.

(3) State how any energy conservation initiatives have or will impact consumption.

B. In addition, the owner must request HUD approval of revised utility allowances whenever a utility rate change would cause a cumulative increase of 10 percent or more in the most recently approved utility allowances.

C. Owners must recommend additional utility allowances if the project's design is such that utility costs will vary significantly for units of the same size (e.g., end units vs. interior units).

5. *Field Management of the Rent Request Process.* HUD Field Offices must establish a tracking system that will facilitate and monitor compliance with the following processing times:

A. *When the Proposed Potential does NOT exceed the Maximum Potential.* In these instances, the Field Office need only review the proposed utility allowances and the Rent Schedule. Field staff should complete these actions and return the signed Form 92458 within 10 working days of receiving the owner's request.

B. *When the Rent Increase Exceeds the Maximum Potential.*

(1) *All Projects.* The Field Office should check the completeness of the owners' initial submission within 5 working days of its receipt. Doing so will expedite any required reposting and reduce processing delays.

(2) *Projects NOT subject to 24 CFR Part 245 Tenant Comment requirements.* Complete these reviews and issue a decision letter within 30 days after receipt of all materials required by Section 4, paragraph 2.

(3) *Projects subject to 24 CFR Tenant Comment procedures.* Issue decision letters within 30 days after receipt of the formal rent increase request which includes the tenant comments and other materials required by Section 2, paragraph 7. Final approval cannot take place before the tenant comment period has ended.

C. *Check the completeness of the Owner's Initial Submission.* Within 5 working days of receipt of the owner's initial submission, answer the following questions where applicable.

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(1) Does the Notice to Tenants contain all of the information included in the sample notice in Appendix 1? If it doesn't, require the owner to revise the Notice and distribute it as directed.

(2) Has the owner submitted ALL of the materials required by Section 4, paragraph 2? If not, do the following.

(a) Call the owner/agent and ask them to submit the missing materials and follow up in writing.

(b) Be sure the missing materials are made available for any required tenant review. (See Section 2, paragraphs 4, 5 and 6.)

D. You may NOT require that projects routinely submit materials NOT listed in Section 4, paragraph 2. You may require additional submissions ONLY if the actual or projected expense estimates appear to be excessive and the narrative without additional information, cannot support requested expense levels. Special requests should only be made in cases where estimates will have significant monetary impact on the authorized rent potential.

Note.—Your requests for additional information must be made in writing and within 30 days of receipt of initial package. The owner must distribute a second Notice to tenants and comply with Section 2, paragraph 6 where applicable. Be flexible, consider the needs of the project tenants and protection of government interest before requesting additional information.

6. *Seasonal Rents.*

A. *Housing programs of HUD contemplate* relatively permanent occupancy at rents within the ceilings established for year-round occupancy, hence seasonal rents are not generally in accord with the objectives of those programs. In particular, occupancy charges at seasonal rates would be inconsistent with the objectives for which projects are built for cooperative use or for use by families of low and moderate income, or for elderly occupants. In the case of elderly housing projects, there may be isolated instances in which seasonal rates would be in order.

B. *Conversely, in areas where seasonal rents are customary,* there may be rental housing projects which are likely to be in financial difficulty because year-round occupancy cannot be maintained. In such circumstances, HUD will not object to the establishment of seasonal rents for a temporary period provided that:

(1) With respect to all units in the project, preference at all times will be given to permanent tenants at the established year-round rental rate.

(2) None of the units in the project will be rented for a period of less than 30 days.

(3) There will be no increase in existing maximum permissible gross rent by reason of seasonal rates being allowed, and as to the individual units, the aggregate gross rent collected during any fiscal year should not exceed the established maximum rent.

C. *If examination of the project operations* supports the need for seasonal rents, the Housing Management Division (or Insuring Office) Director will grant approval in the form of a letter agreement which shall define the number and type of units so covered, and shall evidence the mortgagor's acceptance of the foregoing conditions under which approval is given. Deviations from the terms under which approval was obtained will operate to breach the agreement.

7. *BMIR Rents Paid by Over-Income Tenants.* HUD–91709, Schedule of Computation of Rental Income in Excess of BMIR Rent Paid by Over-Income Tenants, is a monthly schedule to be completed by BMIR mortgagors in order to compute the amount of rent in excess of BMIR rent paid by over-income tenants and available for credit to the residual receipts account. The completed form shall be used by Housing Management Division personnel and project accountants to arrive at this amount without having to review all of the project's records by lease, Form HUD–91705, etc. This will not, however, eliminate the need to spot-check these records when determined necessary to assure correctness of the schedule. Unless requested by HUD, this form is retained as a part of the mortgagor's record.

8. *Section 236 Projects, Rents Collected in Excess of Basic Rent.* For all types of Section 236 projects, including noninsured projects (see Circular 4530.1, dated 2–7–73), the Regulatory Agreement or the Interest Reduction Contract provide that, subsequent to the commencement of the term of the Interest Reduction Contract, the project owner shall remit each month directly to the Billing and Receivable Division, Office of Finance and Accounting, Department of Housing and Urban Development, Washington, D.C. 20410, together with the appropriate reporting form, the amount by which the total rentals collected on the dewelling units exceed the sum of the approved basic rentals for all occupied units. The prescribed reporting form, Monthly Report of Excess Income, Form HUD–93104, page 1 for insured and Secretary-held projects, and Form HUD–93104A, page 1 for noninsured projects, must be submitted by the tenth of each month, whether or not a remittance is required.

A. *Determining the Amount of Excess Income.* In order to determine the amount of excess income, if any, which must be remitted to HUD, the project owner must prepare page 2 of Form HUD–93104 (or Form 93104A), as of the end of the reporting month, or have the same information shown on this detailed schedule readily available from some other source, such as a computer print-out sheet. This schedule must be attached to the retained copy of page 1, Form HUD–93104 (or HUD–93104A), and made available, upon request, for audit by HUD or the Comptroller General of the United States.

B. *Collecting Excess Rentals Prior to the Commencement of the Interest Reduction Contract.* Any excess rentals collected prior to the commencement of the term of the Interest Reduction Contract shall not be treated as a return of subsidy to HUD but as regular project income.

C. *Adhering to Excess Income Requirements.* The Section 236 law states that the project owner "* * * shall accumulate, safeguard, and periodically pay to the Secretary all rental charges collected in excess of the basic rental charges." HUD's continued payment of interest reduction subsidy to the mortgagee is contingent on the owner's strict adherence to program requirements. Should an owner fail to submit to HUD by the 10th of the reporting month page 1 of Form HUD–93104 or HUD–93104A together with any amount due, the following steps shall be taken:

(1) The Multifamily Mortgage Branch, Office of Finance and Accounting, shall send to the mortgagor a demand letter, and one follow-up letter if no answer is received within 15 days. Copies of these letters shall be sent to the appropriate Housing Management Division Director and the Assistant Regional Administrator for Housing Management (ARA for HM).

(2) Upon receipt of his copy of the first copy of the first demand letter to the mortgagor, the Housing Management Division Director shall immediately take whatever action is deemed appropriate to obtain compliance.

(3) Upon receipt of his copy of the second demand letter to the mortgagor, the Housing Management Division Director shall intensify his efforts to obtain compliance. These efforts shall include, but not necessarily be limited to, immediate notification to the mortgagor by certified mail, return receipt requested, that the interest reduction payment to the mortgagee will be subject to suspension or termination, thus rendering the mortgagor liable for

the full amount of the mortgage payments, unless and until the required page 1 of Form HUD–93104, or HUD–93104A, and any amount due, are received by the Multifamily Mortgage Branch, Office of Finance and Accounting, within 30 days of the date of the letter. Copies of the letter shall be sent to the mortgagee; the Multifamily Mortgage Branch, Office of Finance and Accounting; the Office of Loan Management; and the ARA for HM. The Housing Management Division Director shall continue his efforts to obtain compliance during the 30-day period.

(4) If page 1 of Form HUD–93104, or HUD–93104A, and any amount due are not received by the Office of Finance and Accounting by the date set forth in the Housing Management Division Director's letter to the mortgagor, the Office of Finance and Accounting shall automatically suspend the interest reduction payments beginning with the next payment due to be paid. Notification of this action, and that the mortgagor shall be liable for the full amount of the next mortgage payment falling due, shall be sent by the Office of Finance and Accounting to the mortgagor and mortgagee by certified mail, return receipt requested, with copies to the Housing Management Division Director, the ARA for HM, and the Office of Loan Management.

(5) Any circumstances beyond the mortgagor's control or of an unusual or special nature shall be made known by the Housing Management Division Director to the Director, Office of Loan Management, who may, if circumstances warrant, stop the automatic suspension of the interest reduction payments. The ARA for HM shall be kept informed by copy of related correspondence.

(6) If the mortgagor complies with submission requirements subsequent to the automatic suspension, the interest reduction payments, including back payments, shall be automatically reinstated by the Office of Finance and Accounting.

Section 5. Review of Project Income and Expenses

1. *Focusing the Review.* Determine if the project has any special conditions that will affect income and expense estimates.

A. Access the project's physical condition. To do so, review any:

(1) Recent HUD or mortgagee on-site inspection;

(2) Tenant complaints on maintenance;

(3) Energy Conservation Plan on file for the project;

(4) Recent replacement reserve analysis or withdrawals;

(5) Repair schedules required by TPAs, flexible subsidy contracts, or workout arrangements. (Determine whether project income or other funds will pay for these repairs.)

B. Review available financial information. If applicable, include any recent monthly accounting reports (Form HUD–93479, 80, 81 or reports comparing budgeted and actual expense) and the MIPS Financial Summary Reports; and the servicer's and IPA's review of the most recent audited annual report.

C. Review any recent GAO/IG reviews of this project or the agent's management procedures for this or other projects.

D. Determine if the owner is requesting any change in the services or equipment to be included in the rent. (See the Rent Schedule and cover letter transmitting owner's rent increase request.)

E. Assess the impact of any procedural changes, repair schedules, escrows, or owner contributions required by any TPA, workout or flexible subsidy contract.

F. *Review the Field Office's files on other projects managed by the owner.* Have the owner's past expense projections significantly exceeded actual expenses later reported on the project's financial statements? Have HUD's on-site reviews, the IPA's Report on Internal Controls and Compliance, or GAO's or IG's audits detected serious weakness in cost controls or purchasing procedures (e.g., failure to compare prices or take advantage of discounts)? Is the owner requesting a rent increase to cover expenses and physical improvements for which previous rental increases were authorized? If so, why? If you answered "yes" to any of the above questions, you should determine why those conditions exist and document this for the record.

(1) If the conditions are caused by agent's practices, you must scrutinize the budget. You may need to reduce the projections. If reduced, make appropriate notes for the Administrative Review as to why and how you adjusted these expense items.

(2) If past expenses were excessive and the amount will not be offset by legitimate increases, you will need to allow even less than the prior period's expense. If reduced, again make notes as to why and how you adjusted these expense items.

G. *Analyze the Owner's Income and Expense Projections.* Make an initial assessment during the tenant comment period. If applicable, when tenant comments are later submitted, evaluate whether the tenant comments would change your initial conclusions.

(1) Compare the project's past and present project expenses. Be concerned if the owner's choice of delivery systems causes higher expenses; (i.e., use of an identity-of-interest company or use of contract rather than project staff to do things that might be done by staff. Relatively high costs or rates of increase can be due to special circumstances (vandalism, large number of evictions, emergency repairs). It is project management's responsibility to show that high costs are due to special circumstances rather than to inefficiency or abuse. (Regulatory agreements require that the owner provide for management which is satisfactory to HUD and "* * * give specific answers to questions * * * relative to the income, assets, liabilities, contracts, operations, and condition of the property * * *.")

(2) *Review the owner's expense projections.* Enter the amount you will allow in Column I, of the Rent Increase Worksheet. Be flexible, consider the needs of the project, tenants, the owner's return on investment and maintaining HUD's security interest. Keep in mind that both underestimating and overestimating expenses can have undesirable impacts. If expenses are underestimated, deferred maintenance and defaults can result. If expenses are overestimated, the rents charged will be higher than needed which could result in HUD paying more subsidy than necessary. If the project charges rents which aren't competitive in the market then vacancies result. This could cause a possible default or an insurance claim. Consider utilizing existing residual receipts to offset repairs not covered by the Reserve for Replacement or other costs that are of one time occurrence. Allow reasonable amounts for inflationary increases. But before doing so assess whether the actual expense base is reasonable for the level of maintenance expected during the next year and whether the project is taking reasonable efforts to control costs and is complying with the terms of the Certification in Appendix 3. If the prior period's actual expenses were unjustifiably excessive, adjust the prior period's actual expense before adjusting for inflation. Document this is the record.

(3) *Review the Income Adjustments* using the guidance in the next paragraph. For each line, enter the adjustment you will allow. If your allowance significantly differs from the amount the owner entered, carefully documented the reasons for the difference.

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2. *Guidance for Evaluating the Appropriateness of Project Expenses.*

A. *Administrative Expense.*

(1) *Renting Expense.* Amount allowed should be reasonably related to vacancy pattern and marketing area. Weigh impact of increased expenditures on reducing vacancy. If expense increase is due to poor marketing procedures or appears to be a cushion, adjust down to expense of similar projects. If rental expense appears low, some upward adjustments may be made if the project is experiencing high vacancy.

(2) *Salaries.* To evaluate reasonableness consider:

(a) Whether salary is for project employee or employee of agent. Recertification clerk or similar clerical employees may be considered project employees even if work is performed in agent's office. Other project employees will normally be located on site. Where employees working in the agent's office have their salaries attributed in whole or in part to the project, owner must present documentation outlining exactly how the expense was computed.

(b) Number of project employees. Number of employees will depend on size and condition of project and whether maintenance or other services are contracted.

(c) Salary levels. Salaries should be commensurate with the size of the project and duties required and comparable to similar positions at other similar projects in the same area.

(d) Identity-of-interest relationships. Where such relationships exist salary levels should be closely reviewed to ensure they do not exceed rates in arms-length relationships.

(3) *Office Supplies.* Inflationary increases should be allowed if prior year amount was adequate.

(4) *Legal.* If legal expenses are significant, determine reason(s): (1) Large number of evictions; (2) above average fees to attorney (may be caused by lack of shopping around for adequate counsel); or (3) including legal services that should be borne by the owner and not the project. Since the amount of legal fees should normally be within owner/agent's control (i.e., effective managers should screen prospective tenants and shop around for reasonably priced legal services), the amount allowed should not exceed the norm for similar projects in similar locations unless there was a problem unique to that project.

(5) *Auditing.* Keep in mind that audit costs can vary according to the type of project and its requirements, the size of the accounting firm and the quality of the project's records and accounting systems. (See page 7–4 of Handbook 4370.4, *Basic Accounting Desk Guide*, for a further discussion of how audit costs vary.) If this project's audit costs are high determine the cause of the higher costs. To do so, talk with a IPA or review prior management or occupancy review reports and the IPA's comments on the Internal Control and Compliance Questionnaire. If costs are out of line, require future audits to be conducted by auditors who bid on the job. Note: Reasonable fees for preparing any Federal, state or local tax return information required of the project may be charged against the project account and paid from project income without regard to surplus cash computations. For example, if the mortgagor entity is a partnership, the cost of preparing both the Form 1065 and the related Schedules K and K–1 may be paid from project funds. However, projects funds may not be used to pay for tax advice rendered to the mortgagor entity or its principals or for preparation of the personal returns of the project principal.

(6) *Bookkeeping Fees/Accounting Services.* If a computer is used, amounts allowed should be adequate to cover the cost of such services. These charges must be approved by HUD prior to the project paying. If identity-of-interest firms are used, the cost paid by the project should not exceed what it would cost to use a non-identity-of-interest firm.

(7) *Telephone.* Allow amount for local and long distance calls related to project operations. Long distance calls from the project to the office of the management agent are chargeable to the management fee not the project.

(8) *Miscellaneous Administrative.* If the MIPS Financial Flag Report indicates this expense category exceeds 5% of the subgroup require the owner to justify the need.

B. *Operating and Maintenance Expense.*

(1) *Supplies.* Check management review reports to determine if owner/agent is shopping around for lowest possible prices and is taking advantage of quantity discounts and discounts for early payment of bills. Consider need for supplies and owner/agent efficiency. The budget cost of one-time repairs should be listed under project improvements. The quality of the purchase must be considered when looking at the cost. Purchasing a superior product with a longer life span at a higher cost might very well be more cost-effective then purchasing a lower quality item which does not last. Cost is not the only thing you should consider when allowing an expense item.

(2) *Contracts.* Consider the trade off between salary costs and contract costs. A high level of contract repairs may indicate a need for improved maintenance capability, identity-of-interest relation with vendor, a one-time rehabilitation, or a cost-effective business decision.

(3) *Security.* To determine reasonableness of expenses, the Loan Specialists should consider: (1) Need for expense, (i.e., is there a security problem), (2) reason for security problem, (i.e., lighting, location, layout of physical structure, or need for better project management); (3) extent to which security problems are within the control of the agent, (i.e., would stricter enforcement of lease provisions reduce security problem); (4) trade off between security services (agents) and security devices (locks, alarms, lightings, etc.); and (5) is security expense cost effective, i.e., does security expense result in reduced turnover and vacancy.

(4) *Decorating.* Determine whether new items should be budgeted for under the Reserve for Replacement Account. Consider trade offs. Is project using most cost effective decorating items, i.e., would blinds be cheaper than shades in the long run? Are additional decorative items such as drapes needed to improve or maintain occupancy?

(5) *Miscellaneous Maintenance.* If amount is large, identify source and determine need and reasonableness of expense.

C. *Payroll Taxes, Licenses and Insurance.*

(1) *Payroll Taxes.* Payroll taxes will generally be about 12–15 percent of project payroll costs. Included in this category are FICA, State and federal unemployment and workers compensation. In some areas the high costs of workman's compensation can drive payroll taxes up to as high as 20 percent. In cases where this occurs, owners must document these costs. Known increases in rates, as well as increases in salary base, will be justification for budget increases in this expense.

(2) *Other Taxes.* Identify source and assess reasonableness of expected increases and cause for increase. For example, in some states there is an intangible tax on liquid assets. The Field Office should consider assets that will be taxed during the upcoming year instead of accepting last year's estimate expense. Field offices should be cognizant of the outcome of any tax appeals and adjust costs accordingly.

(3) *Isurance.* In assessing reasonableness consider the following: (a) Types of coverage (b) deductibles and (c) claim history. Rates vary among carriers and owners should seek the lowest rates available for equivalent coverage.

(d) *Utility Expense.* Only utilities paid by the project may be included. To determine reasonable consumption levels, review the justification from owner, energy conservation survey, energy conservation plan, and other related information.

(1) Ensure that the owner has analyzed utility rates and requested the rates most advantageous to the project. (Rates vary accordingly to consumption levels and types of usage—e.g., commercial or residential. Often projects can apply for either residential or commercial rates, whichever will be cheaper.)

(2) If the owner has taken the action required by the preceding paragraph above, allow rate increases which have been, or are expected to be approved and implemented. Document the rates and effective dates used in your projections.

(3) Generally, do *NOT* project for increased consumption. Consumption should increase only because of severe weather. Project for consumption levels to decrease below prior periods if: The prior period had severe extremes of weather that are not expected to occur during the period the rents will be in effect; or recent energy conservation initiatives can reasonably be expected to reduce consumption levels.

(4) THIS PARAGRAPH APPLIES ONLY TO BMIR AND SECTION 236 PROJECTS, PROJECTS THAT RECEIVE RENT SUPPLEMENT, AND PROJECTS THAT CONVERTED FROM RENT SUPPLEMENT TO SECTION 8. Section 329(C) of the 1981 HCDA requires HUD to consider whether the mortgagor could control utility costs by securing more favorable utility rates or undertaking feasible, cost-effective actions to increase energy efficiency or energy consumption. Section 329(C) provides that HUD may reduce budgeted utility expenses if the owner has not taken reasonable action to do so. (See 4350.1, Chapter 12 for more guidance on energy conservation measures.)

E. *Property Tax.* Review requirements of Chapter 5, Section 4, in HUD Handbook 4350.1. Allow only verified increases in rates. If taxes have decreased due to changes in State or local tax laws, use effective rates. Consider also any changes in how the project is evaluated. Even if there is a tax rate decrease, this could be offset by a change in the appraisal process which increased the net value of the project for tax purposes.

F. *Morgage Principal, Interest, MIP.* Include principal, interest and any MIP (or service charge on HUD-held mortgages). Follow the instructions in either part F(2)(a) or F(2)(b) as follows:

(1) If the project will NOT be under a workout during the period covered by the budget, use the amount required by the mortgage. If the mortgage has been permanently modified, use the payment due under the new mortgage terms.

(2) If the project will be under a workout during the period covered by the budget, follow the instructions below.

(a) Budget for any change in monthly payment that will be required during the year covered by the budget.

(b) If the workout will require monthly payments in excess of the amount required by the mortgage, budget for the amount required by the workout agreement.

(c) Otherwise, budget for the amount required by the mortgage.

G. *Other Notes/Loan Payments.* The owner's narrative must identify the loan terms and the purpose of the loans. (For more guidance on what loans may be charged against the project operating account, see Paragraph 2–14a of Handbook 4370.1.

H. *Reserve for Replacement.* Use amount normally requried by HUD, not a lesser amount that may have been approved as the result of a workout agreement. Even if the owner/agent does not request any changes in reserve for replacement deposit, this may be a good time for the Loan Specialist to check the adequacy of the account and level of deposits. **Note:** The Field Office should consider very carefully any increase in the Reserve for Replacement requirements for projects that are eligible or will be eligible over the next ten years to prepay their mortgages and are likely to do so. Since the reserve is an asset of the mortgagor after repayment, this is an especially important issue in projects where the reserve is paid or fed by deep subsidy.

I. *Owner Return.* Projects Owned by Non-profit Mortgagors and projects that have converted from non-profit to limited dividend (LD) ownership, must budget only for the non-profit contingency allowed in the Rent Computation Worksheet.

(1) This policy for LDs is required by the regulations that govern transfers of ownership from non-profit to profit motivated entities (see 24 CFR 265.14(a)). While these projects may NOT budget for a distribution, if surplus cash is available 24 CFR 265.15 permits the new limited dividend owners to collect a distribution of up to 6 percent of the cash contribution THEY MADE AT THE TIME OF THE TRANSFER.

(2) *For other LD projects not covered under 24 CFR 265.* Distribution remains constant from year-to-year. Multiply the owner's initial equity investment by the rate of return HUD allows—e.g., 6 or 10 percent whichever is appropriate.

J. *Project Improvement Needs.* Includes: (1) Non-recurring repair expense; (2) amounts needed to correct financial deficiencies; and (3) project improvements. Examples of eligible items include amounts needed to: (1) Restore units that have deteriorated to the point they no longer can be rented; (2) correct code violations; and (3) pay accounts payable that affect overall viability of the project (e.g., delinquent utility bills). Ineligible items include luxury improvements such as swimming pools and tennis courts. While HUD does not prescribe a specific dollar amount that may or may not be allowed, the Field Office should keep in mind the following when reviewing project improvement needs requests: (1) Amount of lump sum contribution (see Item 2 below); (2) causes of problems and proposals to prevent reoccurrence (for major cost items a MIO plan is recommended); (3) management performance (check prior management review, physical inspection, audit reports); (4) impact of expenditures on rents and subsidy funds and (5) payback or potential benefits from approving the project improvements.

(1) Do *NOT* allow for costs that will be paid from project improvement funds (e.g., Flexible Subsidy or TPA proceeds) or reimbursed from residual receipts or a painting, replacement, or general operating reserve.

(2) Owners should: Identify the total cost and scope of work and provide a written schedule for completing any capital improvements included here. List payee's name, purpose amount and date incurred for each account payable included.

(3) Generally, allow amounts to clear accounts payable only on troubled projects having significant operating deficits. Allow for accounts payable only if the project's purchasing procedures are acceptable, expenses are reasonable and management is satisfactory.

(4) Prorate capital improvements over an appropriate period of time.

K. *Lump Sum Source.* Consider availability of all lump sum sources. If owner is unaware of lump sum sources, the Field Offices should advise the owner. Listed below are some of the most used lump sum sources to fund project improvement needs.

(1) Section 241 HUD Insured Supplemental Loans or conventional financing for capital improvements, etc. (The debt service should be shown on

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Section 2, Line 4 of the Rental Computation Form.)

(2) Owner's loan to the project. (The terms of such a loan would have to be approved by the Field Office as repayment of the loan is to be made out of project income as an allowable line item in the rent formula, rather than from surplus cash or residual receipts.)

(3) Advances by the owners. (See HUD Handbook 4370.2, Chapter 2, paragraph 8 for guidance.)

(4) Regular Flexible Subsidy loan for troubled projects.

(5) Change in ownership. (New owner equity investment can be designated for this purpose.)

(6) Release from the residual receipts account, if applicable. Advances from the replacement reserve account, provided a HUD-approved repayment plan is included.

(7) Energy grants from such sources at State, county, city agencies. (Field Offices should attempt to keep abreast of what types of assistance are available in the area.)

(8) Energy loans and grants from the Department of Energy.

L. *Assess Non-Rental Income.*

(1) Estimates Should be Conservative. If non-rental income is significantly overstated, rent potential will not be sufficient to cover project operating costs and owner distributions. Use previous year figures adjusted where solid projections are not available.

(2) Includes income from all sources except: (1) Apartment rents, (2) facilities and services (such as furniture, air-conditioning) provided by the owner to tenants on a voluntary basis and (3) interest earned on funds invested in replacement and residual receipts reserve accounts. To assess reasonableness, compare with income from prior years.

(a) *Laundry and Concession Income.* Include income from laundry facilities (only if they are leased), parking space, and leased commercial space in subsidized projects only (see Section 8). Make appropriate adjustments for existing commercial vacancies.

(b) *Investment Income*

1. Do *NOT* include security deposit interest that must be paid to tenants or retained in the security deposit account and income that is retained in a painting or replacement reserve or in a residual receipts account.

2. If the project has large reserve balances and interest income is not shown on the HUD–92410 or the owner's budget, ask the owner why the reserves are not invested. While only some projects are required to invest replacement reserves or residual receipts, all projects are encouraged to do so. Paragraph 3 of Mortgage Letter 83–24 tells you which projects must invest and how the interest must be distributed (see Appendix ___). Note: Interest income should not be used to reduce expenses for the purpose of granting rent increases.

3. *Other Miscellaneous Income.* Do NOT include: "excess rents" collected from Section *236* tenants paying above Basic rent; (exclude these amounts even if the HUD–93104, Excess Income Report, shows the project is not required to submit excess income to HUD;) late charges or damage charges; (if these are collected, they will generate distributions/residual receipts or cover unexpected costs;) generally, these amounts should be relatively small. The owner must identify the purpose of any sizable amounts. (If these amounts were not classified in accordance with IG Handbook 4372.1, require the owner to properly classify all future expenses.)

M. *Vacancy Loss on Apartments.* Use the vacancy rate that was used at the time of final endorsement. This will be 7 percent or 5 percent, whichever is applicable.

N. *Management Fees.* Include only the management fee approved in the appropriate HUD–9839, i.e., the fee that is expressed as a percentage of apartment rents/coop carrying charges collected. This applies also to the fees whose yields have been capped under paragraph 2–34, HUD Handbook 4381.5. If a fee percentage will change during the budget period, use a percentage that represents the weighted average of the fee percentages that will be in effect during the year covered by the budget.

O. *General Operating Reserve (GOR). (THIS APPLIES ONLY TO COOPERATIVES.)* While GOR deposits are always a percentage of the carrying charges, the percent varies between 0 and 3 percent according to the GOR balances. To determine the GOR deposit requirements for the year covered by the budget, use the carrying charge potential now in effect and the instructions in paragraph 2–12b(2)(a) of Handbook 4370.1.

P. *Contingency for Non-profit Owners.* A 2 percent contingency reserve is required for projects owned by non-profits and those projects once owned by non-profit but which have been sold to limited dividend partnerships.

3. *Quality Control.* In order to encourage uniform policy, Branch Chiefs/Supervisors should try as much as is possible to inform their staffs of: any proposed increases in property taxes, payroll taxes, and utility rates; the percentage of any inflationary increases that should be allowed for supplies, etc.; and any property tax abatements for which different types of projects are eligible. When reviewing the administrative process Supervisor/Branch Chief should consider the following.

A. The servicer's comments should be consistent with other information—e.g., project conditions, recent servicing actions taken on this project, tenant comments, the Field Office's experience with this agent?

B. Are the servicer's comments dated and firmly attached to the Rent Computation Worksheet? Do the servicer's comments: explain any significant differences between the owner's and the servicer's income, expense or utility allowance estimates? Do they adequately support the servicer's projections?

C. Are all staff making the same projections as to increases in property taxes, utility rates, and other expenses?

D. Does the servicer's decision letter identify; any physical improvements for which operating funds were budgeted for in the Rent Increase Budget Worksheet; or any special conditions imposed on the owner in conjunction with approval of the rent increase request?

E. Evaluate the rent increase's or utility allowance adjustment's impact on any tenant-based subsidy contract? Are funds available in the current contract? If not, has action been initiated to obtain necessary funding?

Section 6. Computing Rent Potential and Utilities

1. *Maximum Allowable Monthly Rate Potential.* To compute the maximum allowable rent potental, select the appropriate formula from Box E of Rent Computation Worksheet and then complete Box F. In the case of Section 236 Projects, also compute the maximum allowable market rent protential and Market Rent Factor using Box G of the Rent Computation Worksheet. The first time you use the Rent Computation Worksheet for a particular project, use Appendix 4(d) to compute the monthly HUD subsidy. For subsequent rent increases, enter the monthly subsidy you computed on the prior Rent Computation Worksheet.

2. *New Maximum Unit Rents.* (Section 236 Only.) Where a basic and market rent for each unit type must be computed, spread the monthly rent potential across the different unit types. Follow the procedures in Box H of the Rent Computation Worksheet. The Worksheet's procedures give each unit type the same percentage increase in rent. Also, compute new maximum rents, and new maximum *market* rents.

3. *Review the Owner/Agent Estimate of Non-Rental Income.*

A. *Assess the reasonableness of the incomes the owner entered.* Compare them with the actual amounts shown on financial statements the project has previously submitted. Note that any over-estimation of these amounts could result in a rent potential insufficient to support both operating expense and owner distributions. Enter in the column the amounts HUD will allow. If these amounts significantly differ from the owner's estimates, document why you did not accept the owner's estimates.

B. *Document your reasons for approving other than the owner's estimated expense or income.* Since the Rent Increase Worksheet does not provide much space for comments, write any comments on a separate sheet of paper. COMMENTS MUST BE DATED, LABELED WITH THE FHA PROJECT NUMBER AND *FIRMLY* ATTACHED TO THE RENT COMPUTATION WORKSHEET and signed by the Servicer and LMBC.

If HUD's analysis results in a reduction of the rent level requested the owner/manager must be given an opportunity to support their request prior to HUD approving a rent level.

4. *Determine the New Utility Allowance.* Complete the following steps and then the new allowances on the Rent Computation Worksheet.

A. Review the owner's utility analysis and recommended allowances. (See Section 4, paragraph 4(A)) for a description of the information the owner must submit.)

B. Answer the following questions.

(1) Are the owner's comments on recent and proposed rate increases consistent with any information you have obtained from other projects, utility supplies, news reports?

(2) Has the owner appropriately adjusted for recent and planned rate increases?

(3) Has the owner appropriately adjusted consumption estimates to reflect any significant savings likely to result from recent energy conservation efforts?

(4) Does the owner's sampling and analysis of tenants' actual utility costs appear reasonable?

C. If the owner's analysis does not appear to support the request, discuss your concerns with the owner/agent and request additional information, if needed. KEEP IN MIND THAT BOTH UNDERESTIMATING AND OVERESTIMATING CAN HAVE AN ADVERSE IMPACT.

D. You should usually be able to set allowances at the levels recommended by the owner. If you approve utility allowances that deviate from those recommended by the owner, document your reasons for doing so.

Section 7. Notification and Implementation

1. *Notifying the Owner.* Once a decision has been reached on a rent request, the owner should be notified by letter.

A. The letter must:

(1) Explain the reasons for your decision to approve the increase or to deny all or part of the increase. The increase approved can be greater than what the owner requested if justified by your analysis.

(2) Identify any project improvements for which funds were budgeted on the Rent Computation Worksheet—e.g., paintg exterior of four buildings by Spring.

(3) Confirm the amount and effective date of any revised replacement reserve deposit and complete the HUD 9250. (A recorded amendment to the regulatory agreement is not needed.) Transmit copies of the HUD 9250 to the owner, to the mortgagee and to the Management Agent.

(4) Require owners to give tenants 30 days written notice of any increase in the tenant's rent under the terms of the lease.

(5) Remind owners, who are subject to 24 CFR Part 245's tenant comment procedures, to notify tenants of HUD's decision.

(6) Require the owner to complete parts A and F of the Form 92548 Rental Schedule reflecting unit rents not to exceed the maximum rent potential authorized, and transmit the original and one copy to HUD for signature. A signed copy will be returned to the owner.

B. Send the original letter to the owner and a copy to the Management Agent, unless the owner has requested a different distribution.

C. If the mortgage is HUD-held and *delinquent,* send the following to your desk officer in the Office of Multifamily Housing Managemnt.

(1) Your decision letter;

(2) Rent Schedule;

(3) Rent Computation Worksheet.

2. *Review the Owner's Submission of the Rent Schedule (Form HUD-92458) When the Proposed Increase Won't Exceed the HUD Approved Gross Rent Potential.*

A. *Proposed rent potential is LESS than or EQUAL* to the maximum allowable potential computed on the last Rent Computation Worksheet. The owner should have completed all of the Rent Schedule, except Parts F and I.

(1) Check the accuracy of the owner's entries. Be sure: Parts D and E agree with the assumptions you made on the Rent Computation Worksheet regarding non-revenue producing space and commercial space. The effective date is correct.

(2) Enter the Maximum Allowable Potential in Part F. (Obtain this amount from the last Rent Increase Worksheet you completed.)

(3) Sign and date the Rent Schedule in Part I and distribute it as directed in paragraphs 1(B) and 1(C) of this section.

3. *If the Proposed Potential Exceeds the Maximum Monthly Rent Potential* computed in the last Rent Increase Worksheet, complete Columns 3 through 8 of Part A. If the owner will charge the maximum allowable rents, enter the rents computed by the owner in the Rent Increase Worksheet. (Note: HUD will prepare the rents by bedroom type in the case of Section 236.) Otherwise, enter the reduced rents you are authorizing the owner to charge. Complete Steps 1, 2 and 3 under the preceding paragraph.

4. *Increase Implementation.* Owners may implement HUD approved changes in rents or utility allowances only after they have: complied with tenant notice requirements; and completed any HUD–50059 or HUD–50059 Worksheet required by Exhibit 3–4 Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs.* (Note: These forms are not required for Section 231 or Section 202 tenants who do *NOT* receive tenant-based subsidies.) Owners must implement the new utility allowances for all tenants within 75 days after HUD approves them. Owners may NOT stagger implementation to coincide with tenant's annual recertifications. If a reduction in utility allowances causes the Tenant Rent to increase, the owner must give the tenant at least 30 days advance written notice of the increase.

5. *Notifying Tenants.*

A. *All projects.* If the rent increase or utility allowance reduction will cause an increase in the Tenant Rent, the owner must give the tenants *30 days* advance written notice of the increase. The Notice must specify the new Tenant Rent and the date it will be effective.

B. *Projects subject to 24 CFR Part 245's Tenant Comment Procedures.* The owner must notify tenants of the HUD Field Office decision. The owner's Notice must be written and must:

(1) Be distributed in the manner required by Section 2, paragraph 3.

(2) Tell tenants what rents and utility allowances HUD has approved and any special conditions HUD imposed on the increase (e.g., completion dates for

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project improvements or procedural changes required of the management agent).

(3) Tell tenants if HUD's decision will cause an increase in their rent and when that increase will be effective.

6. *Subsidy Contract Amendments.* If a rent increase is approved, owners must check to be sure that subsidy contract authority is sufficient to avoid a shortfall. If a shortfall is likely, the owner should submit a request for an amendment to the contract.

Section 8. Charges for Commercial Facilities

1. *Determining Charges.* Generally, Field Offices should require owners to set commercial rents at least at levels that will cover the commercial space's share of project debt service and operating expenses. (Page 1, Part C of Form 92264 shows how the gross square footage is distributed between residential and commercial space.)

A. Field Offices may authorize project owners to set commercial rents at less than break-even levels if:

1. The owner has taken or is taking all reasonable steps to lease the space at market rents or break-even rates and the reduced rates will not jeopardize the financial condition of the project.

2. The Field Office determines that the proposed use of the space will offer significant benefits to the project and would be more beneficial than other alternatives.

B. Field Offices must NOT approve rents that are less than the market rents for comparable space unless it results in other compensatory financial benefits for the project.

C. Owners must use either the minimum rents required by paragraph 6a or 6b in Part E of the rent schedule. If the owner is recommending a commercial rent that is less than the market rent for comparable space or less than the rent needed to cover the commercial space's share of debt service and operating expenses, the owner must:

1. Certify whether there is an identity-of-interest relationship between the operating of the commercial space and the owner, the agent or any principal of either the owner or agent; and

2. Attach the certification to the Rent Schedule.

D. If owners lease commercial space for periods in excess of 1 years, the leases should provide for any rent increases needed to keep rents at the levels required by this paragraph.

Section 9. Charges for Facilities and Services

1. *Facilities and Services Subject to Charge.* Owners may NOT charge separately tenants for equipment and services that are included in the rent. Part B of the Rent Schedule lists these services and equipment.

A. Owners may offer congregate services *only on terms that have been approved by HUD.*

B. Owners *may* charge tenants for other services or facilities (e.g., parking (see E below), cable TV, use of community space in the project) ONLY if ALL of the conditions listed below are met.

1. The services, facilities and charges have been included in Part C of the most recently approved Rent Schedule.

2. A schedule of those charges has been posted or distributed to the tenants.

3. Use of those facilities or services is optional on the part of the tenant.

4. If not previously authorized the charges must be approved to HUD prior to implementation.

5. Owners can charge for parking *only* in unsubsidized projects where HUD previously approved it. The owner can charge in both subsidized and unsubsidized projects in cold climates where parking spaces are equipped with heating units.

C. All income derived from service and facility charges must be deposited in the project operating account.

Section 10. Preemption of Local Rent Control

1. *Introduction.* For those projects that are subject to State or local Rent Control, CFR 24 Part 246 (Local Rent Control) provides for preemption as follows:

A. *Subsidized projects* are preempted entirely by the regulations in CFR 24, Part 246—Local Rent Control.

B. *Unsubsidized projects* are preempted under the regulations when the Department determines that the delay or decision of the local rent control Board, or other authority regulating rents pursuant to State or local law jeopardizes the Department's economic interest.

All requests for HUD preemption of the local Board's rent controls must be processed in accordance with the procedures discussed in this section.

2. *Projects Automatically Preempted.* This part applies to all projects with mortgages insured or held by HUD that receive a subsidy in the form of:

A. Interest Reduction Payment under Section 236 of National Housing Act.

B. Below Market Interest Rates under Section 221(d)(5) of National Housing Act.

C. Direct Loans at below-market interest rates under Section 202 of the Housing Act of 1959.

D. Rent Supplement Payments under Section 101 of the Housing and Urban Development Act of 1965.

E. Housing Assistance Payments under 24 CFR Part 886.

F. Those units in a project receiving Housing Assistant Payments pursuant to a contract under Section 8 of the United States Housing Act of 1937 or Section 23 of the Act, as in effect before January 1, 1975. Units not assisted are not subject to automatic pre-emption under this part but are covered by paragraph 50 below.

3. *Actions Owner Must Take Before Submitting a Formal Request for Preemtion of Unsubsidized Projects.* If an owner decides to request HUD's preemption, the owner must first have asked the local rent control Board for whatever relief or redetermination is permitted under State or local law. The owner's request must advise the Board of the owner's intent to request HUD-preemption, if necessary. When filing the request for relief, the owner must notify the project residents that it intends to request HUD's preemption if the Board does not respond to the request within 30 days or renders a decision which is unacceptable to the owner..

A. *Notice to Residents.* The owner's Notice must contain all the information in the format shown at Appendix 11. The owner must: (1) Hand deliver or mail a copy of the Notice to each resident; and (2) post the Notice in at least three conspicuous places within each high-rise building in which the affected dwelling units are located. The owner must comply with all representations made in the Notice to Residents, and must give residents 30 days to review materials that will be submitted to justify the preemption request. The owner may post the Notice as soon as it has submitted a request for relief or redetermination to the Board.

B. *Tenant Review and Comment.* Procedures outlined in Section 2 of this chapter are to be followed for tenant comment on preemption applications.

C. *Notice to HUD.* Immediately after distributing and posting the Notice to Residents, the owner must advise HUD that it intends to request HUD's preemption of the Board's actions. To do so, the owner must provide HUD with copies of all of the materials listed below.

(1) A copy of the Notice to Residents, annotatied to show the date(s) the Notice was posted and distributed.

(2) An audited Statement of Profit and Loss (Form HUD–92410) prepared in accordance with HUD Handbook 4370.2 and covering the project's most recently ended fiscal year. If more than 4 months have elapsed since the end of the project's fiscal year, the owner must also submit, and certify to the accuracy of, an unaudited Form HUD–92410 for the period elapsed since the end of the project's last fiscal year.

(3) A copy of the relief application the owner submitted to the Board with supporting documentation.

(4) A certified statement which provides for Itemization of resident turnover rates and percentages of rent potential lost to vacancies and to nonpayment of rent on occupied units during the period covered by the Forms HUD–92410 and by the fiscal year preceeding those periods. Each type of loss and each fiscal period must be reported separately. The following format is suggested:

	Since end of last FY	FY ending -/-/-	FY ending -/-/-
Number of units vacated	____	____	____
Percentage of rent potential lost to:			
(a) Vacancies	____ %	____ %	____ %
(b) Collection loss	____ %	____ %	____ %

(5) A certified statement covering known or approved rate or cost increases or decreases during the 12 months preceding the date of the owner's Notice to Residents. If such changes did occur, the owner must give the date the changes were or will become effective and the old and new rates and provide documentation for following.

(a) Property tax assessment or valuation rates;

(b) Utility rates;

(c) Employee salaries or benefits;

(d) Insurance;

(e) Contract for services.

4. *Processing an Exemption.* The owner/agent shall file a request for approval of an increase in rental charges with HUD and in accordance with procedures detailed in Section 4 of this chapter. The local HUD Office will process the request in accordance with procedures detailed in this chapter. Upon receipt of authorized rents, the owners will comply with the posting requirements detailed in this chapter.

5. *Initial HUD Review for Completeness.* Immediately upon receipt of the owner's submission, HUD must check the package for completeness. If the submission does not contain all of the information required by paragraph 3(C) of this section, HUD must request the missing information from the owner within 48 hours of review. When the submission is complete it will be held on abeyance until the owner submits a formal preemption request. If the materials omitted from the initial submission or any changes to material previously submitted were not previously made available to the project residents, the owner must give residents an additional 30 days to review these materials.

6. *Owner's Formal Preemption Request.* After the resident comment period has expired and the owner had evaluated any resident comments received, the owner may submit a formal request for HUD preemption. The request to HUD should include all of the materials listed below.

A. Copies of all of the written comments the residents submitted to the owner;

B. The owner's evaluation of the resident's comments;

C. The Board's decision and a statement as to the insufficiency of the funds or a statement from the owner certifying that a decision from the Board has not been received;

D. The owner's certification that:

(1) The Notice to Residents required by paragraph 3(A) of this section was given as required.

(2) The owner has taken reasonable steps to assure that: (a) the substance of the Notice has been conveyed to each resident household; and (b) the posted notices were maintained intact and in legible form for the full resident comment period;

(3) Copies of the materials submitted in support of the preemption request were located in a place reasonably convenient to residents during normal business hours and at least one evening a week during business hours;

(4) Requests by residents to inspect such materials, as provided for in the Notice, were honored; and

(5) Copies of all comments received from the residents were considered and are being transmitted to HUD.

E. A cover letter which is signed by the owner and includes a statement that "under the penalties and provisions of Title 18 U.S.C. Section 1001, the statements contained in this application and its attachments have been exmained by me and, to the best of my knowledge and belief, are true, correct and complete."

7. *Evaluating the Formal Request.* HUD must determine if the owner's package includes all of the information required by the previous paragraph and must request any missing materials from the owner. HUD must carefully review any residents comments, the owner's analysis of those comments and any Board decision already received. After reviewing those materials, HUD must within 10 days determine what rent levels are necessary to operate the project.

A. If the rent levels computed by the Field Office are greater than those permitted by the local Board or if the local Board has not yet rendered a decision on the owner's request for relief, the Field Office must discuss the project's needs with the Rent Control Board. If the Field Office and Board are able to reach agreement on a rent level, the Field Office should confirm the agreement in writing and provide the Board and the owner a copy of the agreement. If the Board and the Field Office cannot reach agreement on a rent level, the Field Office must forward the case to the Office of Multifamily Housing Management in Headquarters. The Field Office must clearly explain both its own and the Board's positions and recommend what aciton Headquarters should take. The Office of Multifamily Housing Management will review the case and issue a decision establishing the maximum rent level the owner may charge. HUD Headquarters will send copies of its decision to all parties—the HUD Field Office, the owner and the Board.

B. If the rent potential computed by the Field Office is less than the potential authorized by the Board, the Field Office should deny the owner's request for preemption. The Field Office must give the owner a letter specifying the maximum monthly rent potential the Field Office will approve. The Field Office must send a copy of the letter to the Board and to the Office of Multifamily Housing Management in Headquarters.

Note.—If the owner receives the Board's decision after filing its preemption request with HUD, the owner must immediately notify HUD that a decision has been received and must forward a copy of the Board's decision.

8. *Owner Implementation of HUD's Decision on Preemption.* The owner must notify residents of HUD's final decision on the preemption request. The owner's notice must be: (a) Hand delivered or mailed to each resident; and (b) posted in at least three conspicuous places within each structure in which the affected units are located. The owner's notice must convey HUD's reasons for approval or disapproval of the preemption request.

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The owner may implement the HUD approved rent levels only after giving the project residents at least 30 days written notice of the increase and complying with any other applicable terms of the tenants' leases.

9. Preemption of Rent Control Board's Lease Requirements. Some rent control Boards specify minimum lease terms which are in excess of one year. If HUD decides to preempt the Board's rent controls and it will take the project more than 60 days to reach the rent levels authorized by HUD, HUD will preempt the local Board's requirements on minimum lease terms. Until the project is charging the HUD approved rent potential, the owner may not offer residents leases with terms in excess of one year.

Chapter 7 Appendix 1

In Handbook 4350.1, Chapter 7 Appendix 1, see 24 CFR Part 245, Subparts D and E.

Chapter 7 Appendix 2

OWNER'S CERTIFICATION AS TO COMPLIANCE WITH TENANT COMMENT PROCEDURES IN 24 CFR 245 (FORMERLY IN 24 CFR 401)

Project Name _____
FHA or Non-Insured Project No. ____

Acting on behalf of _____, the Project Owner, I certify that project management has taken ALL of the actions listed below.

(1) Distributed a Notice to Tenants, in the forms and manner required by 24 CFR 245.310 and 245.410. (24 CFR 245.410 applies only if a reduction in utility allowances is proposed.)

(2) Took reasonable steps to assure that any posted Notices remained intact and in legible form for the full comment period required by 24 CFR 245.

(3) Made all materials submitted to justify the increase available during normal business hours in a place reasonably convenient to project residents.

(4) Honored any resident's request to inspect those materials.

(5) Reviewed and evaluated all comments received from project residents or their authorized representatives.

(6) Examined all materials submitted to HUD/the State Agency in support of the rent increase request.

I also certify, that all information submitted with my rent increase request is true, correct and complete.

Signed by:

_____
Name

_____
Title

_____
Signature

_____
Date

Chapter 7 Appendix 3

CERTIFICATION AS TO PURCHASING PRACTICES AND REASONABLENESS OF EXPENSES

Project Name _____
FHA or Non-Insured Project No. ____

Acting on behalf of _____, the Project Owner, I certify that ALL of the following statements are true.

(1) The project is obtaining utilities at the lowest rates available.

(2) The project has received or requested any tax relief for which it is eligible and management has analyzed the project's property tax bills and appealed any assessments which appeared unreasonable.

(3) Amounts paid to individuals or companies having an identity-of-interest with the owner or the management agent were not in excess of the costs that would have been incurred in making arms-length purchases on the open market.

(4) Management has exerted reasonable effort to take advantage of discounts and has credited the project with all discounts, rebates or commissions received with respect to purchases, service contracts and other transactions made on behalf of the project.

(5) Management has obtained contracts, materials, supplies and services, including the preparation of the annual audit, on terms most advantageous to the project and at costs not in excess of amounts ordinarily paid for comparable contracts, materials, supplies and services in the area in which such services, supplies, or materials are furnished.

(6) Management has solicited verbal or written cost estimates, as necessary to comply with the Paragraphs 3 through 5 above. Management has documented the reasons for accepting other than the lowest bid and will make the documentation available to HUD, upon request.

Warning:

• 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years, or both.

• 12 U.S.C. 1715z–4 provides in part: "Whoever, as an owner of a property which is security for a mortgage (covering multifamily housing, as defined in the regulations of the Secretary) or as a stockholder * * * beneficial owner * * * trust * * * or as an officer, director or agent of any such owner (1) willfully uses or authorizes use of any part of the rents or other funds derived from the property covered by such mortgage in violation of a regulation * * * (2) willfully and knowingly uses or authorizes the use, while such mortgage is in default, of any part of the rents or expense * * *shall be fined not more than $5,000 or imprisoned not more than 3 years or both.

Signed by:

_____
Name

_____
Title

_____
Signature

_____
Date

Chapter 7—Appendix 4(a)

Rent Increase Budget Sheet Instructions For Completion

A. Instructions for Owner/Agent.

1. Enter the following:

a. Project Name;

b. FHA #;

c. Management Agent—if managed by Property Management Agent;

d. Percentage fee or PUPM Cap. Agent certification contains authorized percent fee or PUPM Cap.

2. If Applicable, complete the Rent Structure—current and proposed and compute monthly potential.

3. Income and Expense Projections.

a. Enter Actual Expenses for prior FY in column 1.

b. Enter Expense from current FY to date and number of months covered. (Do not annualize) in column 2.

c. Enter Budget Projections in column 3.

d. Cash Requirements provides for entry of the following payments.

(1) Mortgage (principal)
(2) Reserve for Replacement
(3) Painting Reserve
(4) Distribution
(5) Other—Cash expenditures no expensed.
(a) Capital expenditures
(b) Other Reserves

Note.—Account codes should parallel those on the HUD–92410.

Chapter 7—Appendix 4(b)

SAMPLE

Owner Explanation of Income and Expense Estimates

6210—*Advertising and Renting Expense.* This includes: (1) $200 for periodic ads in local newspaper; and (2) the cost of credit reports on new applicants.

6351—*Bookkeeping Payroll and Services.* Includes this project's share of centralized accounting operation. Costs are prorated over all of the 20 projects managed by our agent, Professional Management, Inc. Costs are prorated according to each project's relative volume of transactions.

6310—*Clerical and Occupancy Salaries.* Includes one-fourth of one occupancy clerk's time. Occupancy clerk also works for XYZ Apartments and Evergreen Apartments.

6311—*Office Supplies.* Projects a 4 percent inflationary increase over the prior year's actual expense.

6330—*Manager's Salary.* Includes manager's salary plus contract rent on a 2-bedroom apartment. As payroll schedule shows, manager will receive a $100 per month increase for cost-of-living and performance bonuses.

6340—*Legal.* This represents retainer for an attorney who handles all routine project matters. This is less than last year's actual expense. Last year, a larger than usual number of evictions were required because of the former agent's failure to effectively screen applicants. That agent was removed 6 months ago.

6350—*Auditing.* Represents the contract price for the annual audit required by Handbook 4372.1. After obtaining proposals from two other firms, we executed a contract with Jones and Smith, Inc. Their bid was $1,200 less than the other bids and we understand that HUD Field Offices have found their work acceptable.

6360—*Telephone and Anwsering Services.* Includes local telephone service and answering service for evenings and Sundays. Allows for $15 per month increase in answering service, effective November 1, and $5 increase in base telephone service rate.

6390—*Miscellaneous Administrative.* Last year's actual.

6450—*Electricity.* Reflects 4 percent rate increase and 5 percent decrease in consumption because are described in our cover letter. *Note:* Utility company has requested a 6 percent increase. Since the Commissioner usually approves only about ⅔ of the requested rate, we are budgeting for only a 4 percent increase. We are assuming that the increase will become effective February 1, 1986, the date requested by the utility company.

6451—*Water.* This is a 10 percent decrease over last fiscal year's actual costs. While no rate changes are expected, consumption should decline somewhat. Last year's consumption was increased by: (1) Drought conditions; and (2) watering of newly seeded lawns.

6452—*Gas.* Reflects 5 percent rate increase that has been approved by the utility commission and will become effective December 1985.

6453—*Sewer.* Represents a 10 percent decrease from last year's actual. Sewer expense is one-third of the water expense is expected to decrease for reasons discussed above.

6545—*Elevator.* Cost of service contract with Elevators, Inc. This amount was the lowest of the three bids we obtained last Spring.

6510—*Janitorial and Cleaning.* Last year's actual, plus 4 percent inflationary increase.

6570—*Motor Vehicle.* Last year's actual.

6519—*Exterminating.* Project's contract with Bug-Off provides for one visit per month at cost of $100 each. This amount was $10 higher per visit than other proposals but we accepted this proposal because contractor's performance over past 3 years has been excellent.

6525—*Trash Removal.* Contract rate increased by $30 to $380/month, effective last May. This increase is partly reflected in the partial year's HUD–92410 and fully reflected in the budget. Trash is removed twice a week.

6530—*Security.* Cost of new deadbolt locks for 15 units on Evans Street. There have been several break-ins at single family homes near that side of the project. We also have asked the police department to increase patrols in that area.

6537—*Grounds.* Contract with Evergreen Grounds covers supplies and labor at $6,000/year. Contract expires in December 1986.

6560—*Decorating and Interior Painting.* Represents cost of repainting 12 units. Apartments of long-term residents are repainted every 4 years. Replacement reserves will pay for any needed drapery or carpet replacement.

6541—*Repairs Materials.* Represents last year's repairs plus a 4 percent inflationary increase. None of the prior period's repair expenses were reimbursed out of replacement reserves; all were routine repairs.

6540—*Repairs Payroll.* Includes: (a) Salary expense for two maintenance men at rates shown in the attached payroll schedule; and (b) a 50 percent discount on one maintenance men's rent.

6710—*Property Taxes.* The county has increased the assessed value by 5 percent; tax rate is unchanged. Two years ago, we successfully appealed the county's calculation of the project's assessed value. At that time, the calculation has used incorrect assumptions on income and expense levels. Since the new, increased assessed value used the revised assumptions agreed to in the appeal, we are accepting the assessed value as accurate.

6711—*Payroll Taxes.* Budgeted at 11 percent (6.7 percent FICA, 4.3 percent combined State and Federal unemployment) of salaries listed in the attached payroll schedule. Increased cost is due to cost-of-living increases in employee's base pay.

6719—*Miscellaneous Taxes and License.* Includes local licensing fees for project elevators.

6720—*Property and Liability Insurance.* Cost of an all-risk policy with Safeguard, Inc.

6722—*Workmen Compensation.* Policy covers all of agent's employees. This is project's prorated share of the total cost of the policy; the proration covers the employees listed on the attached payroll schedule.

Replacement Reserve. Includes $15 PUM increase in monthly deposits to be implemented with this rent increase. Deposits have not been increased since project commenced occupancy in 1978. Attached is an Agreement formalizing this increase in deposits.

Project Improvements. Includes one-fourth of the cost of painting the project exterior. (Future exterior painting costs will be paid from the replacement reserve. Costs of exterior painting were considered in establishing the new deposit.)

Service Income. Average of actual income for last 2 years. Laundry machines are leased from Wash and Dry, Incorporated. Income has consistently stayed at this level.

Investment Income. $8,000 to the $48,000 replacement reserve (balance as of *May 31, 1985*) will be withdrawn for roof repairs. The remaining $42,000 will be invested as follows:

$34,000 in Treasury Notes at 9.24 percent.
$8,000 in insured money market account at 8.5 percent.

Note.—All replacement reserve interest is deposited in the project operating account. State law requires that interest earned on tenant security deposits be passed through to tenants.

Vacancy Loss. Decreased from prior year because we expect new agent to reduce tenant turnover and more aggressively market units.

Management Fees. Will request a one-half percent increase in fees, effective March 1, 1983, if new agent performs as expected. Agent has already made significant progress in turning the project around.

Note.—Line items should reference the specific HUD–92410 Account Code. Where the increase is less that 5 percent, no justification is required. Capital expenditures should not be included in 92410 line item Budget but in other Cash expense.

If the rent increase is based on capital expenditures (non-reoccuring) a reserve analysis should be included.

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APPENDIX 4(c)

RENT SPREAD SHEET

PROJECT NAME _____ FHA # _____

MANAGEMENT AGENT _____ % FEE _____

Fee Capped (Y/N)____

PUPM _____

RENT STRUCTURE

Unit Type	Current Unit Rents	Utility Allowance	Number Units	Proposed Unit Rents	Proposed Util. All.
Current Monthly Potential			Requested Monthly Potential		

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CHAPTER 7 APPENDIX 4(d)

Original Interest Rate on Mortgage

	6.75%	7.00%	7.25%	7.50%	7.75%	8.00%	8.25%	8.50%
40	4.7021	4.9192	5.1383	5.3594	5.5821	5.8067	6.0328	6.2604
35	4.5639	4.7735	4.9851	5.1987	5.4141	5.6314	5.8054	6.0711
30	4.4152	4.6160	4.8189	5.0237	5.2303	5.4389	5.6492	5.8613
25	4.2560	4.4469	4.6397	4.8343	5.0307	5.2290	5.4290	5.6307
20	4.0864	4.2662	4.4476	4.6307	4.8155	5.0019	5.1898	5.3794

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BUDGET WORKSHEET

Income and Expense Projections

Project No. Name of Project

Description of Account	Acct. No.	HUD-92410 Audited - Last FY	Current FY FY #MOs.	Budget - From / / To / /
Rental Income 5100				
Apartments or Member Carrying Charges (Coops)	5120			
Tenant Assistance Payments	5121			
Furniture and Equipment	5130			
Stores and Commercial	5140			
Garage and Parking Spaces	5170			
Flexible Subsidy Income	5180			
Miscellaneous (specify)	5190			
Total Rent Revenue Potential at 100% Occupancy				
Vacancies - 5200				
Apartments	5220			
Furniture and Equipment	5230			
Stores and Commercial	5240			
Garage and Parking Spaces	5270			
Miscellaneous (specify)	5290			
Total Vacancies				
Net Rental Rent Revenue Less Vacancies				
Elderly and Congregate Services Income - 5300†	5300			
Total Services Income † (Schedule Attached)-	5300			
Financial Revenue- 5400				
Interest Income-Project Operations	5410			

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CHAPTER 7 Appendix 4(e)

Income from Investments -Residual Receipts	5430			
Income from Investments Reserve for Replacement	5440			
Income from Investments Miscellaneous	5490			
Total Financial Revenue				
Other Revenue - 5900				
Laundry and Vending	5910			
NSF and Late Charges	5920			
Damages and Cleaning Fees	5930			
Forfeited Tenant Security Deposits	5940			
Other Revenue (specify)	5990			
Total Other Revenue				
Total Revenue				
Administrative Expenses 6200/6300				
Advertising	6210			
Other Renting Expense	6250			
Office Salaries	6310			
Office Supplies	6311			
Office or Model Apartment Rent	6312			
Management Fee	6320			
Manager or Superintendent Salaries	6330			
Manager or Superintendent Rent Free Unit	6331			
Legal Expenses(project)	6340			
Auditing Expenses (Project)	6350			
Bookkeeping Fees/Accounting Services	6351			
Telephone and Answering Service	6360			

Total on Lines Carried to Next Page

Bad Debts	6370			
Miscellaneous Administrative Expense specify	6390			
Total Administrative Expenses				
Utilities				
Fuel Oil Coal - 6400	6420			
Electricity	6450			
Water	6451			
Gas	6452			
Sewer	6453			
Total Utilities Expense				
Operating and Maintenance Exp - 6500				
Janitor and Cleaning Payroll	6510			
Janitor and Cleaning Supplies	6515			
Janitor Cleaning Contracts	6517			
Exterminating Payroll Contract	6519			
Exterminating Supplies	6520			
Garbage and Trash Removal	6525			
Security Payroll/ Contract	6530			
Flexible Grounds Payrol	6535			
Grounds Supplies	6536			
Grounds Contract	6537			
Total Repairs Payroll	6540			
Repairs Material	6541			
Repairs Contract	6542			
Elevator Maintenance/ Contract	6545			

Heating/Cooling Repairs and Maintenance	6546			
Swimming Pool Maintenance/ Contract	6547			
Snow Removal	6548			
Decorating Payroll/ Contract	6560			
Decorating Supplies	6561			
Vehicle & Maint. Equip Operations and Repairs	6570			
Miscellaneous Operating Maintenance Expenses	6590			
Taxes and Insurance - 6700				
Real Estates Taxes Interest	6710			
Payroll Taxes (FICA)	6711			
Miscellaneous Taxes, License and Permits	6719			
Property and Liability Insurance (hazzard)	6720			
Fidelity Blood Insurance	6721			
Workmen's Compensation	6722			
Health Insurance & Other Employee Benefits	6723			
Other Insurance specify	6729			
Total Taxes and Insurance				
Financial Expenses 6800				
Interest on Bonds Payable	6810			
Interest on Mortgagee Payable	6820			
Interest on Notes Payable (Long-Term) *	6830			
Interest on Notes Payable (Short-Term) *	6840			
Mortgage Insurance Premium/Service Charge	6850			

* HUD approved Setondary Financing only for Budget Projections

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4350.1 TYPING GUIDE SHEET

CHAPTER 7 Appendix 4(e)

Miscellaneous Financial Expenses	6890				
Total Financial Expense					
Elderly and Congregate Service Expenses-6900	6900				
Total Service Expenses Schedule Attached					
Reserve for Replacement Dep. Req.					
Painting Reserve					
Principal Payments Req.					
Debt Service Reserve (202)					
General Operating Reserve	(GOR)				
Excess (Deficiency) Income over expenses					
Total Cost of Operation					

(Six More Typing Lines Left on This Page)

5

Fee notes HUD-21C (6-67) which may be used

HUD-21-C (9.82)

BILLING CODE 4210-01-C

Rent Computation Worksheet Instructions for Completion

A. *Enter the following:*

1. Project Name.
2. FHA Number.
3. Management Agent.
4. Management Fee—Enter percent or PUPM Fee if capped—Information can be obtained from Management Certification.
5. Initial Mortgage—For 236's 221(d)(3) and 202's.
6. Replacement Cost for 221(d)(4)'s, 207 and 231's.
7. Modified Mortgage—If modified indicates YES and enter Debt Service (P & I and MIP).
8. Under workout—If project under workout enter YES and workout Payment and ending date.
9. Initial Equity—Enter for 236's and 221(d)(3) only.
10. Debt Service Rate—Enter for 221(d)(3)'s, 207's, 221(d)(4)'s, 231's and 202's.

B. *Compute the following*

1. Box A—Substitute requested valves and compute Debt Service that will be allowed.
   (a) Use formula that pertains to specific section of Act.
   (b) Deregulated projects under alternative mechanism *insure you enter appraised Replacement Cost.*
   (c) 207's, 221(d)(4) and 231's not deregulated add 2 percent mortgage to Replacement Cost.
2. Box B—Compute allowed return or income Reserve for 236's and 221(d)(3).
   (a) Non-profit projects transfered to limited dividend *use Income Reserve* computation not distribution computation.
3. *Total Cash needs less Management*—Box C.
   (a) Enter allowed amounts from Rent Increase Budget Worksheet less Management.
   (b) Enter Funding to Reserve that will be authorized.
   (c) Enter computed Debt Services.
   (d) Enter computed return or Income Reserve.
4. *Management/Vacancy Factor,* Box D—If Fee is not capped factor equals (1-Mortgage Fee) × (1-Vacancy). If Fee is capped factor equals (1-Vacancy).
5. *Compute Authorized Monthly Rent Potential,* Box E and F.
   (a) Rent Potential (includes other Income) equals total cash (Box E) divided by Mortgage/Vacancy Factor (Box D).
   (b) Authorized Potential equals Rent Potential less other Income.
   (1) Other Income equals commercial income and garage/parking and laundry.
   (2) Monthly potential equals Authorized Potential divided by 12.
   (3) Percentage Increase equals (Authorized Potential less Current Potential) divided by Current Potential.
6. *Market Rent Potential,* Box C—(236's only).
   (a) Compute annual HUD subsidy (See Attachment ___).
   (b) New Market Potential equals new Authorized Potential plus HUD subsidy.
   (c) Market Rent Ratio equals new Market Potential divided by new Authorized Potential.
7. *United Rent Computations.* Box H.
   (a) Authorized Rent levels—for each unit type multiply current unit rent by percent increase.
   (b) Market Rate (236 projects only) multiply Authorized Rent times Market Rent Ratio.

Rent Computation Worksheet

Project Name _____ FHA # _____ Date _____

Management Agent _____ Fee _____ (Capped Y/N) _____

Mortgage _____ Replacement Cost _____

(236, 221(d)(3) and 202) (207, 221(d)(4), 231)

Modified Mortgage (Y/N) _____ Under Workout (Y/N) _____

(If yes) Debt service _____ If yes w/o Payment _____ (P & I & MIP)

Ending Date _____

Initial Equity _____ Debt Service Rate _____

(If NP, Total Initial Equity=0) (Line 5d 2264A)

(236 & 221(d)(3) Only)

Box A Debt Service Computation

236=Mortgage × .03034273.....
221(d)=Mortgage × Debt Service Rate.....
207/231=Replacement Cost × Debt Service Rate.....
(Replacement Cost is new appraised cost).....
207/221/231=(Replacement Cost=Working Capital) × Debt Service Rate.....
(Projects not deregulated).....
Working Capital=2 percent mortgage.

Box B Distribution Computation

236/221(d)(3)=Initial Equity × .06.....
207/231/221(d)(4)=Allowance calculated in conjunction with Debt Service.....
Income Reserve (Non-Profits)
236 NP=Mortgage Payment × .06393.....
221(d)(3) NP=Mortgage Payment × .05263.....

Box C Rent Potential Computation

Allowed Expenses less Management
Plus
Reserves
Debt Service
Return/Income Reserve
Total Cash less Management

Box D Management Vacancy Factor

Authorized Management Fee _____ (1)
Allowed Vacancy Percent _____
Factor=(1 —Management Fee)x(1—Vacancy)
(1) PUPM Cap (Y/N) _____
If yes Fee=0
Allowed PUPM _____

Box E

RENT POTENTIAL=Total Cash/Factor (No PUPM Cap)
RENT POTENTIAL (PUPM Cap)=Total Cash/Factor+(PUPM Management Fee x 12 x Number of Units)

Box F

1. RENT POTENTIAL
2. Less Other Income
3. Authorized Potential
4. Monthly Potential (Authorized Potential/12)
   Percent Increase (Authorized Potential—Current Potential divided by
5. Current Potential

Box G Market Rent Potential (236's only)

Annual HUD Subsidy (Interest Reduction Payment)
Authorized Annual Rent Potential (BOX F)
New Annual Market Rent Potential
Market Rent Ratio (New Annual Market Rent Potential Divided by Authorized Annual Rent Potential [BOX F]

Box H Unit Rent Computations

Unit type
Current Unit Rent
1 + % Increase
Authorized Unit Rent

Market Rent (236 Only)

Authorized Unit Rent
Market Ratio
New Market Rent

Utility Allowances

Current Utility Allowances
Approved Utility Allowance

Request To Increase Monthly Replacement Reserve Deposits

Project Name _____ Mortgagee _____
FHA or Non-Insured Project Number _____

I hereby request an increase in the monthly deposits to the Replacement Reserve/Painting from the current amount as of

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_____ Attached is the Reserve Analysis in support of this request.

Signed by:

Owner

Name

Title

Signature

Date

Chapter 7 Appendix 7

AMENDMENT TO REGULATORY AGREEMENT FOR SECTION 220 AND 221(d)(4) PROJECTS (FORMS 92466)

4. (a) The owner shall not rent the units for a period of less than thirty (30) days. Commercial facilities shall be rented for such use and upon such terms as determined by the owner. Subleasing of dwelling accommodations, except for subleases of single dwelling accommodations by the tenant thereof, shall be prohibited without prior written approval of the owner and the Secretary and any lease shall so provide. Upon discovery of any unapproved sublease, owner shall immediately demand cancellation and notify the Secretary thereof.

*(For projects constructed for family use and do not have a Section 8 Contract.)

(b) Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the owner for any rental accommodations, facilities and/or services which may be furnished by the Owner or others to such tenant upon his request.

*(For projects constructed exclusively for handicapped tenants or who receive assistance under Section 8.)

(b) Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and owner for accommodations. Tenants receiving Section 8 assistance shall have their rents determined by the HAP Contract. No charge shall be made, however, for facilities for services without the approval of the Secretary.

(c) In the event the project is under jurisdiction of a local rent control law or ordinance and the owner desires the Secretary to preempt those controls, the owner shall comply with applicable regulations or instructions in effect at the time of application or preemption, currently 24 CFR Part 246, Subpart B.

*Delete the paragraph which does not pertain to the project at hand. Do not delete paragraphs (a) and (b). Your choice is limited to (b).

Chapter 7 Appendix 8

REGULATORY AGREEMENT AMENDMENT FOR MORTGAGES LIMITED DISTRIBUTION PROJECT

1. Subparagraph _____ [6(e)(1) in Form 92466, or its counterpart] of the Regulatory Agreement dated _____ in connection with FHA Project No. _____ is hereby amended to read as follows:

(e) Make, or receive and retain, any distribution of assets or any income of any kind of the project except surplus cash and except on the following conditions:

(1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction; all distributions in any one fiscal year shall be limited to [1] ____ per centum on the initial equity investment, as determined by the Secretary which shall be cumulative;

2. The Regulatory Agreement is further amended by adding a new paragraph at the end of the Regulatory Agreement (i.e. #18 in Form 2466) as follows:

(18) Owners shall establish and maintain, in addition to the Reserve Fund for Replacements, a Residual Receipts Fund by depositing thereto, with the mortgagee, the Residual Receipts within 60 days after the end of the semi-annual or annual fiscal period within which such receipts are realized. Residual receipts shall be disbursed only at the direction of the Secretary, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purposes as the Secretary may determine.

The term "residual receipts" means any cash remaining at the end of a semi-annual or annual fiscal period after deducting from surplus cash the amount of distribution as limited by paragraph 6(e) hereof.

Chapter 7 Appendix 9

ADDENDUM TO REGULATORY AGREEMENT AND/OR CORPORATE CHARTER FOR 207, 233(f), 608, 213 RENTAL, 234 RENTAL, 803, 810, 231(c)4 OR OWNERS OF 220 OR 221(d)(4) PROJECTS WHOSE OWNERS CHOOSE THE ALTERNATE METHOD

Paragraph _____ of the Regulatory Agreement (Corporate Charter) _____ dated _____ in connection with FHA Project No. _____ is hereby amended by adding the following:

As an alternative to the determination of rents by the Secretary based on increases in taxes and operating and maintenance costs, the owner may request and the Secretary shall approve rent levels determined by the owner, provided that:

1. The owner submits a certified appraisal of the property as a rental project.

2. The owner provided a schedule of proposed unit rents and gross potential income.

3. The owner for the initial determination shall [provide an appraisal conducted by a licensed appraiser of the property (based on its use as residential rental property) which includes a rental analysis of comparable conventionally financed rental properties in the area and which shows the proposed rent. For subsequent submissions, the owner may use as qualified appraiser, a certified public accountant, or a certified member of an national housing management organization to perform the rental analysis.

4. The owner agrees that if any units in a project are assisted under the United States Housing Act of 1937, the determination of rent levels for those units receiving such assistance shall be processed in accordance with the applicable section of that Act.

5. Upon request by the owner, and provided there are no violations of this agreement, the Secretary shall approve rental rates based on the lesser of the following methods:

(A) By using the sum of the operating costs as determined by the Secretary and the amount derived by multiplying the debt service factor by the projects' appraised market value as residential rental property to determine the approved Gross Potential Rent; or

(B) By using the comparable rents for similar conventionally financed projects to determine the Gross Potential Rents allowed

6. The owner agrees that in the event the alternative method of maximum rent determination is requested pursuant to 24 CFR 207.19(e)(2)(ii), which results in the project being or becoming subject to local rent control and, further, that should preemption of those controls be requested, he/she must fully comply with applicable regulations in effect at the time of the request.

Chapter 7 Appendix 10

In Handbook 4350.1, Chapter 7, Appendix 10, see 24 CFR part 246.

Chapter 7 Appendix 11

September 14, 1988

MEMORANDUM FOR: ALL APPROVED MORTGAGES

ATTENTION: Multifamily Mortgagees

FROM: W. Calvert Brand, General Deputy Assistant Secretary

SUBJECT: Requirements for Multifamily Insured Projects

1. Property Insurance Requirements
2. Increases in Replacement Reserve Deposits
3. Investment of Replacement Reserves and Residual Receipts
4. Distribution of Form HUD–9807, Request for Termination of Multifamily Mortgage Insurance

1. *Clarification of Property Insurance Requirements.* 24 CFR 207.260(c) requires that all projects encumbered by FHA insured mortgages must carry hazard insurance policies which meet the requirements of the Federal Housing Commissioner. Since those regulations also make mortgagees responsible for monitoring the adequacy of the coverage and for obtaining insurance when mortgagors fail to do so, several mortgage companies have asked the Department to clarify its insurance requirements for multifamily projects. That clarification follows.

Section 207.10 of the Regulations requires that multifamily projects carry a fire and extended coverage insurance policy in an amount that meets the coinsurance requirements of the insurer and is at least equal to 80 percent of the acutal cash value of the project's insurable improvements and equipment. These insurance requirements apply as long as the mortgage is insured by HUD and regardless of the unpaid principal balance of the mortgage. To determine the amount of insurance required at project completion, mortgagees must use the estimate

of insurable value shown in Form HUD–92329, Property Insurance Schedule. In later years Form HUD–92329's insurable value figures must be updated to reflect changes in construction costs that have occurred since project completion. After the first year of project operation, HUD will consider insurance coverage to be adequate if the insurance coverage met the insurer's coinsurance requirements at the time the policy was issued and:

(a) the policy is endorsed with an agreed amount clause in which the insurer acknowledges the adequacy of the insurance coverage and agrees not to invoke any coinsurance penalty;

(b) the insurer annually certifies that the insurance coverage meets its coinsurance requirements; or

(c) the mortgagor/the insurance agent/the mortgagee annually correctly recomputes the project's insurable clause by applying cost factors published in one of the nationally recognized building cost indices and insurance coverage is increased to 89% (or any higher percentage required by the insurer's coinsurance clause) of the revised insurable value.

If the mortgagor refuse to pay any higher premiums associated with required increases in insurance coverage, the mortgagee must pay the additional premiums and bill the mortgagor for those premiums.

2. *Increase in Monthly Deposits to the Reserve for Replacements.* All projects subject to the replacement reserve provisions of the revised Section 8 New Construction or Substantial Rehabilitation regulations must increase their monthly deposits to the replacement reserve annually by the percentage amount of the annual adjustment approved for that project. The revised regulations apply to all older Section 8 projects whose owners voluntarily opted to be bound by those regulations and, except as noted below, all insured and non-insured projects for which Agreements to Enter Into Housing Assistance Payments Contracts (AHAPs) where executed on or after November 5, 1979 for New Construction projects or February 20, 1980 for Substantial Rehabilitation projects. The replacement reserve requirements of the revised Section 8 regulations do not apply to previously HUD-owned projects sold pursuant to Section 886 (Subpart C), partially assisted projects, or Section 202/8 projects.

While HUD regulations do not require increases in deposits on other projects, regulatory agreements on insured and HUD-held projects do authorize HUD Field staff to approve changes in the amounts of the monthly deposits. When processing rental increases, HUD staff will analyze the adequacy of the deposits and suggest that owners increases the deposits if the increases are needed to meet replacement needs of the project.

Whenever deposits are increased pursuant to either of the two preceding paragraphs, the Field Office will send the mortgagee fee a Form HUD–9250, Reserve for Replacements Authorization. This Form will specify the amount and effective date of the new deposit.

3. *Investment of Reserves for Replacements and Residual Receipts.*

a. Replacement Reserves. The revised Section 8 regulations require that projects subject to those regulations invest the Reserve for Replacements. While HUD regulations do not mandate that other projects invest their Replacement Reserves, HUD encourages owners to do so as prudent investment can offset inflationary increases in repair costs and enhance a project's financial condition. If an owner elects to invest the Replacement Reserve, the Mortgagee's Certificate (Form HUD–92434) provides that the mortgagee must permit the investment. Either the mortgagee or the mortgagor may effect the investment. Mortgagors subject to the revised Section 8 regulations must retain any investment earnings in the Reserve.

Mortgagors not subject to the revised Section 8 regulations must deposit investment earnings in either the project's operating account for the Reserve for Replacements; the choice rests with the mortgagor. Investment earnings may not be distributed directly to mortgagors without regard to surplus cash considerations.

b. *Residual Receipts.* In the past only projects subject to Subpart F of the revised Section 8 regulations were required to invest Residual Receipts. While the Regulatory Agreements for other projects give HUD control over the use and investment of Residual Receipt funds, in the past HUD has elected to allow those mortgagors to choose to invest or not to invest these funds. We are now changing our policy for these projects. Effective immediately, we are requiring that all projects' Residual Receipts be invested and that any earnings on the investment be credited to the Residual Receipts account. Residual Receipts may be invested only in the accounts or securities listed under Paragraph c below. While mortgagors relinquished control over Residual Receipts when they signed the project Regulatory Agreement, at the present time HUD will allow the mortgagors to select among the authorized forms of investment so long as the mortgagor exercises due care and attempts to maximize earnings to the extent consistent with the project's liquidity needs.

c. *Forms of Investment.* Reserves for Replacement and Residual Receipts may be invested in Treasury securities, securities issued by a Federal agency or deposits which are insured by an agency of the Federal government. Acceptable forms of investments are listed in Paragraphs (1) through (4) below. Neither Residual Receipts nor Replacement Reserves may be invested in Repurchase Agreements (REPOS). Investments must be established so as to: (1) Permit the mortgagee to convert the investment to cash at any time; and (2) provide that the investments will at all times be under the control of the mortgagee.

(1) *Direct Obligations of the Federal Government Backed by the Full Faith and Credit of the United States.* These include U.S. Treasury Bills, Notes and Bonds.

(2) *Obligations of Federal Government Agencies.* These include, for example, GNMA Mortgage-Backed Securities, GNMA Participation Bonds and Farm Credit Administration issues.

(3) Demand and Savings Deposits. Demand and savings deposits at commercial banks, mutual savings and loan associations and credit unions are permitted, provided that the entire deposit is insured by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Share Insurance Fund (NCUSIF), or the Federal Savings and Loan Insurance Corporations (FSLIC).

(4) Insured Money Market Deposit Accounts. Investment in money market accounts is permitted, provided that the account is insured by one of the Federal agencies identified in Subparagraph 3c(3) above.

(d) *Choosing Among Available Forms of Investment.* Except as noted below, the mortgagor has the right to determine which of the investments discussed in Paragraph 3c will be used and a mortgagee may not restrict the mortgagor's choice. A mortgagor may authorize a lender to select the form of investment, if the lender is willing to accept that responsibility. If a mortgagor retains the authority to choose among authorized forms of investment, the mortgagee may require the mortgagor to provide written directions as to the type of investment desired. A mortgagee may refuse to honor mortgagor's request for a specific investment only if:

(1) The mortgagee determines that the mortgagor's choice of investment will significantly increase the lender's cost of administering the reserve, and the mortgagee identifies another investment which offers liquidity, security and yield equal to or better than that proposed by the mortgagor; or

(2) The proposed investment does not meet the criteria discussed in Paragraph 3.c. above.

e. *Mortgagee Fees.* The mortgagee may charge a fee for administering invested residual receipts or replacement reserves if the fee is acceptable to the mortgagor. If there is an identity-of-interest between the mortgagee and either the mortgagor or its management agent, the mortgagor must assure that such fees do not exceed the amounts commonly charged when there is no identity-of-interest between the mortgagee and mortgagor. The mortgagor must disclose any such fees in the Replacement Reserve or Residual Receipts supporting schedules to the annual financial statement.

4. *Distribution of Form HUD–9807, Request for Termination of Multifamily Mortgage Insurance.* The mortgagee is required to submit Form HUD–9807 when the mortgage is prepaid or the mortgagor and mortgagee agree to terminate the mortgage insurance. Instructions printed on Form HUD–9807 direct mortgagees to mail the form only to HUD Headquarters. To increase the accuracy of Field Office portfolio listings and address lists, we are now asking that mortgagees mail all HUD–9807 requests to both HUD Headquarters and the HUD Field Office having jurisdiction over the project in question. The Field Office's copy should be sent to the attention of the Housing Division Director.

Chapter 7 Appendix 12

Suggested form of letter for use with appropriate modifications for type of project and situation by Housing Management Division Directors in accordance with Section 4, Paragraph 8(c)(3).

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Certified Mail

Return Receipt Requested

According to our records, you have received a previous letter from the Office of Finance and Accounting, Department of Housing and Urban Development, requesting submission of page 1 of Form (HUD–93104) (HUD–93104A), Monthly Report of excess of Income, and the excess income collected, if any, for the month(s) * * *. This report is required to be submitted monthly from all projects even in cases where there is no excess income.

You are hereby notified that, unless the requested page 1 of Form (HUD–93104) (HUD–93104A), Monthly Report of Excess Income, and any excess income collected for the month(s) of * * * are remitted to the Office of Finance and Accounting, Department of Housing and Urban Development, Attention: Billing and Receivable Division, 451 7th Street, S.W., Washington, D.C. 20410, within thirty (30) days of the date of this letter, the interest reduction payments to the mortgagee on behalf of this project, beginning with the next payment falling due, will be suspended or terminated in accordance with paragraph * * * of the (Regulatory Agreement) (Interest Reduction Contract).

Should such suspension occur, you will be liable to the mortgagee for the full amount of the next mortgage payment falling due. Your failure to make the full mortgage payment within the usual time limit may result in a default under the terms of the Mortgage which will be handled in accordance with regular default procedures. (This last sentence is applicable to insured and HUD-held projects only.)

You are strongly urged to contact this office immediately if there are any factors beyond your control or of an unusual nature which will prevent your immediate compliance with the above requirements. (To be signed by Housing Management Division Director.)

Chapter 7 Appendix 13

INSTRUCTIONS FOR OWNERS TO USE IN PREPARING RENT SCHEDULE (FORM HUD–92458)—FOR NON-PROFIT AND LIMITED DIVIDEND PROJECTS

Part A. Does the monthly potential you are proposing exceed the Maximum Allowable Potential HUD most recently approved?

a. If *YES*, complete ONLY COLUMNS 1 and 2 of this Part. HUD or the State Agency will complete Part A after processing your request for an increase.

b. If *NO*, complete ALL of Part A.

Column 1. Show each type of unit for which rents will vary. Show the number of bedrooms and bathrooms and other features that cause rents to vary (e.g., 2 BDM, 1 B, DA, KETTE, vs 2 BDM, 2 B, DR, K). Use the following symbols:

BDM—Bedroom
B—Bath
K—Kitchen
KETTE—Kitchenette
LR—Living Room
DR—Dining Room
DA—Dining Alcov

Column 2. Show the number of units for each unit type. Include non-revenue producing units.

Important: Complete columns 3 through 8 only if the instructions in part A, paragraph b direct you to do so.

Column 3.

a. *BMIR, section 236, rent supplement and section 8 projects.* Enter the CONTRACT rent for each unit type. (For a definition of contract rent, see Paragraph 3–23 of Handbook 4350.3)

b. *All other projects.* Enter the rent you intend to charge for each unit type.

Column 4.

a. For each line, multiply the contract rent in Column 3 by the number of units in Column 2.

b. Compute the monthly and annual *contract* rent potential. Follow the instructions on the form.

Columns 5 and 6. Complete these columns only for subdidized projects that use utility allowances.

BILLING CODE 4210-01-M

Rent Schedule

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0012 (Exp. 2-28-90)

Project Name	FHA Project Number	Date Rents Will Be Effective (Month Year)

Part A – Apartment Rents

Show the actual rents you intend to charge, even if the total of these rents is less than the Maximum Allowable Monthly Rent Potential.

Col. 1 Unit Type (Include Non-revenue Producing Units)	Col. 2 Number of Units	Contract Rents: Col. 3 Rent Per Unit	Contract Rents: Col. 4 Monthly Contract Rent Potential (Col. 2 × Col. 3)	Col. 5 Utility Allowances (Effective Date: __/__/__)	Col. 6 Gross Rent (Col. 3+Col.5)	Market Rents (Sec. 236 Projects Only): Col. 7. Rent Per Unit	Market Rents (Sec. 236 Projects Only): Col. 8 Monthly Market Rent Potential (Col. 2 × Col. 7)
Total Units		Monthly Contract Rent Potential (Add Col. 4) *				Monthly Market Rent Potential (Add Col. 8) *	
		Yearly Contract Rent Potential (Col. 4 Sum x 12) *				Yearly Market Rent Potential (Col. 8 Sum x 12) *	

* These amounts may not exceed the Maximum Allowable Monthly Rent Potential approved on the last Rent Computation Worksheet or requested on the Worksheet you are now submitting. Market Rent Potential applies only on Section 236 Projects.

Part B – Items Included in Rent

Equipment/Furnishings in Unit: (Check those included in rent.)

☐ Range	☐ Dishwasher	☐ _____
☐ Refrigerator	☐ Carpet	☐ _____
☐ Air Conditioner	☐ Drapes	☐ _____
☐ Disposal	☐ _____	☐ _____

Utilities: (Check those included in rent. For each item, (even those not included in rent), enter E, F, or G on line beside that item): E = electric; G = gas; F = fuel oil or coal.

☐ Heating _____	☐ Hot Water _____	☐ Lights, etc. _____
☐ Cooling _____	☐ Cooking _____	☐ _____

Services/Facilities (check those included in rent)

☐ Parking	☐ _____	☐ Nursing Care
☐ Laundry	☐ _____	☐ Linen/Maid Svc.
☐ Swimming Pool	☐ _____	☐ _____
☐ Tennis Courts	☐ _____	☐ _____

Part C – Charges in Addition to Rent (e.g., parking, cable TV., meals)

Purpose	Monthly Charge
	$
	$
	$
	$
	$
	$
	$

Part D – Non-Revenue Producing Space

Col. 1 Use	Col. 2 Unit Type	Col. 3 Contract Rent
Total Rent Loss Due to Non-Revenue Units		$

Part E. – Commercial Space (retail, offices, garages, etc.)

Col. 1 Use	Col. 2 Monthly Rent Potential	Col. 3 Square Footage	Col. 4. Rental Rate Per Sq. Ft. (Col. 2 ÷ Col. 3)
	$	Total Commercial Rent Potential	

Part F. – Maximum Allowable Rent Potential

Enter Maximum Allowable Monthly Rent Potential From Rent Computation Worksheet (to be completed by HUD or lender) $ _____

Previous Editions are Obsolete

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Part G - Information on Mortgagor Entity

Name of Entity

Type of Entity

Individual ☐ General Partnership ☐ Joint Tenancy/Tenants in Common ☐ Other (specify) _____

Corporation ☐ Limited Partnership ☐ Trust

List all Principals Comprising Mortgagor Entity: provide name, title and Social Security Number or Employer Identification Number (EIN) of each principal. Use extra sheets, if needed. If mortgagor is a:

- corporation, list: (1) all officers; (2) all directors; and (3) each stockholder having a 10% or more interest.
- partnership, list: (1) all general partners; and (2) limited partners having a 25% or more interest in the partnership.
- trust, list: (1) all managers, directors or trustees and (2) each beneficiary having at least a 10% beneficial interest in the trust.

Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number

Part H - Owner Certification

I certify that all of the information on this form is accurate. I also understand that 18 U.S.C. 1001 provides, amo ,g other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000, or imprisoned for not more than five years, or both.

Name and Title	Authorized Official's Signature and Date

Part I - HUD/Lender Approval

Loan Servicer's Signature and Date	Branch Chief/Lender Official Signature and Date

BILING CODE 4210-01-C

BOARD FOR INTERNATIONAL BROADCASTING

SES Performance Review Board; Membership

Section 4314 (c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Because of the Board for International Broadcasting's small size, a Performance Review Board register is established in which SES members from other small agencies participate. This notice is to establish a PRB for the Board for International Broadcasting. The members whose names appear are:

Lindley S. Sloan, Executive Director, Japan/U.S. Friendship Commission (PRB Chairman).

Jeffrey S. Lubbers, Research Director, Administrative Conference of the U.S.

Gary Edles. Legal Counsel, Administrative Conference of the U.S.

Dated: November 10, 1988.

Bruce D. Porter,

Executive Director.

[FR Doc. 88-26765 Filed 11-17-88; 8:45 am]

BILLING CODE 6155-01-M

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

[UT-940-09-4212-11; U-49006]

Classification Termination and Opening Order, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Recreation and Public Purposes classification and provides for a limited opening order.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303, (801) 524-4036.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2450.6, the Bureau of Land Management hereby terminates Recreation and Public Purposes Classification U-49006 which involves the following described lands:

Salt Lake Meridian

T. 11 N., R. 18 W.,

Sec. 10, E½SE¼NW¼

The area described contains 20 acres located in Box Elder County.

In response to an application filed by the County of Box Elder in 1981, the subject lands were classified as suitable for disposal under Recreation and Public Purposes Act (43 U.S.C. 869 et seq).

The classification provided for segregation of the lands against all forms of appropriation under the public land laws, including location under mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws. A 25-year lease was subsequently issued to Box Elder County for sanitary landfill purposes.

The County would now like to acquire unrestricted title to the lands pursuant to section 203 of the Federal Land Policy and Management Act (43 U.S.C. 1713). At 10:00 a.m., on December 15, 1988, the Recreation and Public Purposes classification will be terminated and the lands described above will be open only to disposal pursuant to section 203 of the Federal Land Policy and Management Act, to Box Elder County at fair market value, subject to any valid existing rights, and the requirements of applicable laws, rules and regulations.

William R. Papworth,

Acting State Director.

[FR Doc. 88-26716 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-DQ-M

Bureau of Land Management

Beaver Creek Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) prepared a final environmental impact statement (FEIS) covering placer mining within the drainage of the Beaver Creek National Wild River.

The drainage area is located approximately 50 air miles north of Fairbanks, Alaska, and constitutes nearly 1.2 million acres of land, encompassing most of the White Mountains National Recreation Area.

Primarily, the issues addressed are the cumulative impacts of multiple mining operations on the environment (particularly water quality), subsistence uses in and around the study area, and BLM permitting and monitoring procedures under the Alaska National Interest Lands Conservation Act.

Comments on the draft EIS have been considered in the preparation of this document. A proposed action and four alternatives present management options ranging from emphasis on enforcement of regulations under 43 CFR 3809 to a "no mining" alternative. The proposed action has been modified from the draft document to include enforcemerlt of water quality standards of the Environmental Protection Agency and the State of Alaska, and to emphasize reclamation. The environmental consequences of all the alternatives are analyzed and presented.

DATES: The 30-day wait period for the FEIS will begin on the day that the Environmental Protection Agency publishes its Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Page Spencer, Project Manager, U.S. Bureau of Land Management, Alaska State Office, section 918, 701 C Street, Box 13, Anchorage, AK 99513 or at (907) 271-3114.

Michael J. Penfold,

State Director.

[FR Doc. 88-25984 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-JA-M

[CA-930-08-4341-09]

Availability of Record of Decision: California Vegetation Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of record of decision for the California Vegetation Management Program.

SUMMARY: Notice is hereby given of the availability of the Record of Decision for the California Vegetation Management Program on BLM administered lands in California and northwest Nevada. The Record of Decision adopts the Proposed Action from the California Vegetation Management Final EIS. Copies of the decision may be obtained by writing to the address below.

DATE: Appeals must be filed with the State Director, California State Office at the address below on or before December 19, 1988 in accordance with the requirements of 43 CFR Part 4, Subpart E.

ADDRESS: Copies of the decision may be obtained from: Mark Blakeslee, Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825, (916) 978-4725.

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FOR FURTHER INFORMATION CONTACT: Mark Blakeslee, California State Office, (916) 978–4725.

Date: November 9, 1988.

Ed Hastey,

State Director.

[FR Doc. 88–26666 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–40–M

[CO–030–09–4351–081]

Gunnison Basin Management Framework Plan; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) proposes to change the 1980 Gunnison Basin Management Framework Plan (MFP). The proposed changes address potential reintroductions of bighorn sheep and pronghorn into areas that presently do not contain these animals.

DATE: Comments must be received by December 19, 1988.

ADDRESS: Submit written comments to: Bureau of Land Management, Gunnison Resource Area, 216 N. Colorado, Gunnison, Colorado 81230; telephone (303) 641–0471.

FOR FURTHER INFORMATION CONTACT: Joe Capodice, BLM Gunnison Resource Area; telephone (303) 641–0471.

SUPPLEMENTARY INFORMATION: In April 1987, the Colorado Division of Wildlife (DOW) requested authorization to transplant bighorn sheep into Cochetopa Canyon and pronghorn into Chance Gulch area. Both sites are located southeast of Gunnison, Colorado.

An interagency team of BLM and DOW staff specialists will analyze issues and concerns relating to the proposed action. Anticipated issues and management concerns include: 1) Habitat suitability to support these new herds, 2) competition between the proposed herds and other game animals now using these areas, 3) competition between pronghorn, bighorn sheep and livestock, and 4) future and existing constraints on other resources.

Planning criteria include: A) Provide for the maintenance of health viable breeding populations of bighorn sheep and pronghorn antelope, B) provide habitat to maintain 250 pronghorn in the Chance Gulch area and 150 bighorn in Cochetopa Canyon, and C) consider designating the class of livestock in the Cochetopa Canyon area to reduce future conflict with bighorn sheep. An environmental assessment (EA) addressing the proposed action and a non-action alternative will be prepared.

Information on the proposed plan amendment will be sent to affected grazing permittees, local newspapers and other interested parties. Additional information is available at the BLM Gunnison Resource Area Office.

Dated: November 10, 1988.

Alan L. Kesterke,

District Manager, Montrose.

[FR Doc. 88–26748 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–JB–M

[ID–020–09–4212–13]

Intent To Amend the Twin Falls Management Framework Plan; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Amend the Twin Falls Management Framework Plan.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1610.2(c) that the Burley District is proposing to amend the Twin Falls Management Framework Plan to allow for disposal of the following described public lands through private exchange:

T.14S., R.15E., B.M.
Section 13: SE¼NE¼,S½
Section 24: E½,E½,W½
Section 25: All
Section 26: E½NE¼
T.15S., R.15E., B.M.
Section 2: Lot 1, SE¼NE¼, NE¼SE¼
T.14S., R.16E., B.M.
Section 18: Lot 7, E½SW¼,W½SE¼
Section 19: Lots 1,2,3,4, E½W½
Section 29: NW¼
Section 30: Lot 1, N½NE¼, NE¼NW¼
T.15S., R.16E., B.M.
Section 17: SW¼NE¼,W½SE¼, SE¼SE¼
Section 20: NE¼
Comprising 2923.19 acres of public land.

The subject lands are located south and southwest of Rogerson, Idaho. Highway 93 transects a portion of the subject lands approximately three miles southwest of Rogerson.

A land use plan amendment and environmental assessment document will be prepared for the subject lands. The documents will be prepared by a BLM interdisciplinary term representing the wildlife, range, watershed, recreation, cultural resources, and realty disciplines. Public participation will involve the publication of this notice in the Federal Register and local newspapers. The adjoining landowners, grazing permittees, Twin Falls County Commissioners, Burley District Grazing Advisory Board, Burley District Advisory Council, and the Idaho Department of Fish and Game will be asked for comments. As public controversy is anticipated to be low for the proposed action, no public meetings, hearings, or conferences are planned.

The issues anticipated for the exchange proposal include whether it is in the public's best interest to transfer deer winter range and sagegrouse habitat out of public ownership through the exchange, and will deer and fishing access to the Shoshone Basin area be adversely affected by the proposed exchange. The exchange will block up public and privage lands in the Shoshone Basin area, and allow for the acquisition of three miles of perennial stream and riparian habitat.

The existing land use plan and maps are available for review at the Burley District Office, Burley, Idaho.

The public may obtain additional information about the exchange proposal by contacting the Bureau of Land Management, Attn. Ted S. Milesnick, Route 3, Box 1, Burley, Idaho 83318, (208) 678–5514.

Date: November 10, 1988.

Gerald L. Quinn,

District Manager.

[FR Doc. 88–26750 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–GG–M

[ID–040–4320–10]

Salmon District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATE: The meeting will be held on Thursday, January 5, 1989, at the Salmon District Office, Bureau of Land Management, Conference Room, Highway 93 South, Salmon, Idaho 83467. The meeting will begin at 10:00 a.m.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92–463. The meeting is open to the public; public comments on agenda items will be accepted from 1:00 to 1:30 p.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 by December 27, 1988. The agenda items are (1) purchasing of materials, (2) FY 88 completed projects, (3) advisory board proposed projects, (4) 8100 Projects, (5) allotment management plans, (6) drought, (7) any other issues dealing with grazing management in the Salmon District.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:15 p.m.) within 30 days after the meeting.

FOR FURTHER INFORMATION, CONTACT: Robert W. Heidemann, Acting District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467 (phone 208/756–5400).

Dated: November 9, 1988.

Robert W. Heidemann,

Acting District Manager.

[FR Doc. 88–26668 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–GG–M

[(NV–930–09–4212–11; N–41565–14)]

Realty Action; Lease/Purchase For Recreation and Public Purposes Clark County, NV

The following described public land in the City of Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T.21S., R.60E.,
Sec. 4, lots 49 and 50
Aggregating 10.350 acres (gross)

This parcel of land contains approximately 10.350 acres. The Clark County School District intends to use the land for an elementary school The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.
2. Those rights for transmission line purposes which have been granted to Nevada Power Company by Permit No. NEV–044109 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any deverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this notice will become effective 60 days from the date of publication in the **Federal Register.**

Date: November 7, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 88–26661 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–09–4212–11; N–41565–11]

Realty Action; Lease/Purchase For Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T.21S., R.60E.,
Sec. 15, NW¼SW¼
Aggregating 40 acres (gross)

This parcel of land contains approximately 40 acres. The Clark County School District intends to use the land for a high school site. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.
2. Those rights for telephone and powerline purposes which have been granted to Central Telephone Company/Nevada Power Company by Permit No. N–24663 under the Act of October 21, 1976 (90 Stat. 2776); 43 U.S.C. 1761.
3. Those rights for waterline purposes which have been granted to the Las Vegas Valley Water District by Permit No. N–24659 under the Act of October 21, 1976 (90 Stat. 2776); 43 U.S.C. 1761.
4. Any development and proposed development of a parcel affected by the 100-year flood plain shall be subject to review and regulations by Clark County Department of Public Works, Flood Control Division for flood control and storm water management.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 5765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

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For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: November 7, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV).

FR Doc. 88-26662 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-11; N-41565-08]

Realty Action; Lease/Purchase For Recreation And Public Purposes Clark County, NV

The following described public land in the City of Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T.20S., R.60E.,
Sec. 22, SE¼NW¼SE¼

Aggregating 10 acres (gross)

This parcel of land contains approximatley 10 acres. The Clark County School District intends to use the land for an elementary school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: November 7, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 88-26663 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-11; N-41565-12]

Realty Action; Lease/Purchase for Recreation and Public Purposes; Clark County, NV

The following described public land in the City of Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The land will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T.20S., R.60E.,
Sec. 22, NE¼NW¼

Aggregating 40 acres (gross)

This parcel of land contains approximately 40 acres. The Clark County School District intends to use the land for a high school site. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States;

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.
2. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. Nev-061618 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).
3. Those rights for powerline and telephone line purposes which have been granted to the Las Vegas Valley Water District by Permit No. N-17000 under Pub. L. 83-666.
4. Those rights for flood detention basin purposes which have been granted to the City of Las Vegas by Permit No. N-37223 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: November 7, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 88-26664 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-11; N-48674]

Realty Action; Lease/Purchase For Recreation and Public Purposes Clark County, NV

The following described public land in Moapa, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 14 S., R. 66 E.,
Sec. 34, N½SW¼NW¼SE¼, S½NW¼-NW¼SE¼, SE¼SW¼NW¼SE¼.

Aggregating 15 acres (gross)

This parcel of land contains approximately 15 acres. The Clark County School District intends to use the land for an elementary school site. The lease and/or patent, when issued, will be subject to the provision of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All mineral shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.
2. Those rights for transmission line purposes which have been granted to Overton Power District by Permit No. NEV-044096 under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).
3. Those rights for transmission line purposes which have been granted to Overton Power District by Permit No. CC-020948 under the Act of December 21, 1928 (45 Stat. 1057; 43 U.S.C. 617D).
4. Those rights for highway purposes which have been granted to Nevada Department of Transportation by Permit No. NEV-060130 under the Act of November 9, 1921 (42 Stat. 216).
5. Those rights for a range improvement fence which have been granted to Charles Hester by Permit No. 4019 under Section 4 of the Taylor Grazing Act.
6. An easement 80 feet in width, 40 feet on each side of the centerline, for the existing county road known as Henry Road, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: November 7, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 88-26665 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-14; N-41595]

Realty Action; Non-Competitive Sale of Public Land in Lyon County, NV

The following described parcels, comprising 170 acres, have been examined and identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the fair market value:

Parcel A

T. 20 No., R. 24 E.,
Sec. 36, NW¼NW¼SE¼, S½NW¼SE¼, S½SE¼.

Aggregating 110 acres.

Parcel B

T. 20 N., R. 25 E.,
Sec. 32, N½NE¼SW¼, NW¼SW¼.

Aggregating 60 acres.

Upon publication of this notice in the **Federal Register**, the described land shall be segregated from appropriation under the public land and mining laws, excepting the mineral leasing laws. This segregative effect shall terminate upon issuance of a patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of this publication, whichever comes first.

The parcel will be offered by direct sale to Nevada Cement Company. Nevada Cement Company has utilized this property in the past in conjunction with a limestone quarry operation located on adjacent private land, and has made a substantial investment in improvements on this public land.

The proposed sale is consistent with Bureau land use plans and local government planning. The land, because of its location and other characteristics, is difficult and uneconomic to manage as a part of the public lands and is not suitable for management by another Federal department or agency.

Patent for the parcel when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. (A more detailed description of this reservation which will be incorporated in the patent document, is available for review at this BLM Office.)

The reservation will be modified if the patentee elects to purchase the mineral interests of the United States in accordance with section 209(b)(1)(l) of Pub. L. 94-579.

Acceptance of an offer will constitute an application to purchase the mineral estate having no known mineral values, and will require payment of a $50.00 nonrefundable fee.

Since Parcel A has no known mineral values, all mineral interests may be conveyed simultaneously with the surface estate. Parcel B is classified prospectively valuable for geothermal steam and associated geothermal resources and sodium and potassium compounds. All mineral interests in Parcel B excepting geothermal steam and sodium and potassium may be purchased simultaneously with the surface estate. The geothermal and

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sodium and potassium portions of the mineral estate can only be sold in accordance with section 209b(l)(2) of Pub. L. 94–579 at fair market value.

The patent will also be subject to: Those rights for highway purposes which have been granted to the State of Nevada, Department of Transportation, its successors or assigns, by right-of-way grant CC–020699.

Detailed information concerning the sale is available for review at the Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701.

The land will be offered for sale no earlier than 60 days from the date of publication of this notice in the **Federal Register**. For a period of 45 days from the publication of this notice, interested parties may submit comments to the Carson City District Manager. Any adverse comments will be evaluated and this notice will be upheld, modified or vacated.

In the absence of any objections, this Realty Action will become the final determination of the Department of the Interior.

Dated this 9th day of November, 1988.

James W. Elliott,

District Manager.

[FR Doc. 88–26751 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–09–4212–11; N–41986]

Realty Action; Lease or Conveyance of Public Lands for Recreation and Public Purposes Washoe County, NV

The following described public land has been identified as suitable and will be classified for lease or conveyance under the Recreation and Public Purposes Act (43 U.S.C. 869, et seq.):

Mt. Diablo Meridian, Nevada

T. 20 N., R. 20 E.,
Sec. 28, SW¼SE¼SW¼, W½SE¼S E¼SW¼.

The land aggregates 15 acres. The applicant, the City of Sparks, Nevada proposes to use the land for a recreational park.

The land is not required for a federal purpose. Disposal is consistent with the bureau's planning for the area and would be in the public interest.

The lease when issued will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of Interior. Patent if issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States pursuant to the Act of August 30, 1890 (43 USC 945).

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of Interior may prescribe.

And will be subject to:

1. Powerline rights-of-way CC–025152, NEV–065144 and N–30813—Sierra Pacific Power Company.

2. Access Road right-of-way N–39897—City of Sparks.

3. The rights associated with the operation and maintenance of the Cinnabar Hill ditch under the Legislative Act of 1866.

Detailed information concerning this action is available for review at the Bureau of Land Management Office, Carson City District Office.

Upon publication of this Notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws and the general mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89406. Any adverse comments will be reviewed by the State Director. In the absence of adverse comments the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Dated this 3rd day of November 1988.

James W. Elliott,

District Manager.

[FR Doc. 88–26699 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–050–9–4212–13]

Arizona: Resource Management Planning; Yuma District Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Notice of Intent to File Category I Amendment to Yuma District Resource Management Plan and Notice of Availability of Yuma District Resource Management Plan Amendment, Decision Record, and Public Comment Period.

This corrects **Federal Register** notices printed in Vol. 53, No. 16, January 26, 1988, p. 2095, and Vol. 53, No. 105, June 1, 1988, p. 20025. Additional acres of public land now identified for disposal are 445 acres instead of 425 acres as identified in the Notice of Intent and 432 acres as identified in the Notice of Availability. In legal description for T. 3 N., R. 21 W., G&SRM, AZ, add lot 10 to the already identified lot 9 in sec. 3. The acreage designated for disposal is increased to 56,205 from 56,192 acres.

Herman L. Kast,

District Manager.

Date: November 10, 1988.

[FR Doc. 88–26667 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–32–M

[AA 340 09 4332 02]

Interim Management Policy and Guidelines for Lands Under Wilderness Study Review

AGENCY: Bureau of Land Management, Interior.

ACTION: Reissuance of the interim management policy and guildelines for lands under wilderness study review.

SUMMARY: The Interim Management Policy and Guldelines for Lands Under Wilderness Review, first published in the **Federal Register** on December 12, 1979 (44 FR 72014), and revised on July 12, 1983 [48 FR 31854), has been reissued as a Bureau of Land Management Manual and a Handbook for Field Office use. The Manual and Handbook are now included in the Bureau of Land Management Directives system under the 8550 subject function series.

FOR FURTHER INFORMATION CONTACT: Elizabeth Owen, Division of Recreation, Cultural and Wilderness Resources, Bureau of Land Management, 18th and C Sts., NW., Room 3360 Main Interior Bldg., Washington, DC. 20240. Telephone (202) 343–6064.

EFFECTIVE DATE: November 18, 1988.

SUPPLEMENTARY INFORMATION: Copies may be obtained by contacting the appropriate BLM State Office. Addresses are listed below:

Terry O'Sullivan, Wilderness Coordinator, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.
Jim Currivan, Wilderness Coordinator, Bureau of Land Management, 3707 N. 7th Street, P.O. Box 16563, Phoenix, Arizona 85011.
Richard Barbar, Acting Wilderness Coordinator, Bureau of Land Management, 2800 Cottage Way, E–2841, Sacramento, California 95825–1889.
Eric Finstick, Wilderness Coordinator, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.
George Nelson, Wilderness Coordinator, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.
Bob Lund, Wilderness Coordinator, Bureau of Land Management, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107.
Dave Wolf, Wilderness Coordinator, Bureau of Land Management, 850 Harvard Way, Reno, Nevada 89520.
Jon Joseph, Wilderness Coordinator, Bureau of Land Management, P.O. Box 1449, South Federal Place, Santa Fe, New Mexico 87504–1449.
Dave Harmon, Wilderness Coordinator, Bureau of Land Management, P.O. Box 2965, 825 N.E. Multnomah Street, Portland, Oregon 97208.
Greg Thayn, Wilderness Coordinator, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111–2303.
Wayne Erickson, Wilderness Coordinator, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

Robert F. Burford,

Director, Bureau of Land Management.

November 7, 1988.

[FR Doc. 88–26739 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–84–M

[ES–940–09–4520–13; (ES–039797, Group 81)]

Arkansas; Filing of Plat of Dependent Resurvey

Novembr 10, 1988.

1. The plat, in eight sheets, of the dependent resurvey of the south boundary, Township 15 North Range 22 West, the east boundary, Township 14 North, Range 23 West. the east boundary, the subdivisional lines and survey of the subdivision of sections, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 15 and 17, and certain exceptions to U.S. Forest tracts in sections 3, 5, and 8, and U.S. Forest Service Tract No. 1454 in section 17, Township 14 North, Range 22 West, Fifth Principal Meridian, Arkansas will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on December 27, 1988.

2. The survey was made at the request of the U.S. Forest Service.

3. All inquires or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., December 27, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–26749 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–GJ–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31344]

900 Partners' Investments; Control Exemption; Amfac, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, acquisition of control by 900 Partners' Investments, of Amfac, Inc., and through Amfac, Inc., its control of Fred Harvey Transportation Company, subject to the conditions for the protection of railroad employees in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

DATES: This decision is effective November 21, 1988. Petitions for reconsideration must be filed by December 8, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31344 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representative: Scott N. Stone, 2550 M Street, NW., Washington, DC 20037–1350.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: November 10, 1988.

By the Commission: Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Simmons did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88–26729 Filed 11–17–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–240 (Sub-2X)]

Cambria and Indiana Railroad Co.—Abandonment Exemption—in Indiana and Cambria Counties, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 14.447-mile line of railroad between Manver (milepost 20.746) and Holmen (milepost 6.299), and its 2.52-mile Nanty-Glo Branch that intersects the main line at I.C.C. Station 7+702, all located in Indiana and Cambria Counties, PA.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective December 18, 1988 (unless stayed pending reconsideration). Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by November 28, 1988. Petitions to stay regarding matters that do not involve environmental issues [2] and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 8, 1988 with: Office of the Secretary, Case Control Branch,

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440—48446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

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Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph M. O'Malley, 1275 Daly Avenue, Bethlehem, PA 18015.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 23, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 9, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-26516 Filed 11-17-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-22X)]

The Georgia Midland Railway Co.—Abandonment Exemption—Between Towalaga and Griffin, GA

The Georgia Midland Railway Company (Georgia Midland) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.78-mile line or railroad between milepost 9.72-M near Towalaga and milepost 16.5-M near Griffin, GA.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective December 18, 1988, unless stayed pending reconsideration. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by November 28, 1988. Petitions to stay regarding matters that do not involve environmental issues [2] and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 8, 1988, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Attorney, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 23, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 10, 1988.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-26517 Filed 11-17-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31352]

Gloster Southern Railroad Co.; Modified Rail Certificate

November 9, 1988.

The Gloster Southern Railroad Company (Gloster) filed for a modified certificate of public convenience and necessity under 49 CFR 1150.23. By contract with the Marion County Railroad Authority (Authority), Gloster was authorized to provide rail service between milepost 94 at Columbia, MS, and the interchange with the Illinois Central Railroad Company (Illinois Central) at milepost 121.14 at Silver Creek, MS, a distance of approximately 28.78 miles.

The line was formerly owned and operated by Illinois Central and was authorized for abandonment in Docket No. AB-43 (Sub-No. 71), dated September 10, 1981, served September 14, 1981. Subsequent to the abandonment becoming effective on December 31, 1981, the abandoned line was purchased by Authority and operated by the Columbia and Silver Creek Railroad Company (CSC) under a modified certificate of public convenience and necessity. Authority entered into a lease and operating agreement with Gloster. The agreement is for a 10-year period with two additional renewal options each for 5 years. Gloster, Authority, and CSC have agreed that on November 1, 1988, Gloster will replace CSC as operator of the line.

A copy of this modified certificate notice shall be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-26514 Filed 11-17-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31319]

Indiana & Ohio Central Railroad, Inc.; Modified Rail Certificate

November 8, 1988.

The Indiana & Ohio Central Railroad, Inc. ("IOC") filed for a modified certificate of public convenience and necessity under 49 CFR 1150.23. By contract with the City of Greenfield, OH, IOC was authorized to provide rail freight service on 29.49 miles of rail line between milepost 44.96 near Midland City, OH and milepost 74.45, at Thrifton, OH, in Highland, Clinton, and Ross Counties.

This line was formerly owned and operated by CSX Transportation, Inc. (CSX) and was authorized for abandonment between Thrifton and Midland City in Docket No. AB-55 (Sub-No. 243), *CSX Transportation, Inc.—Abandonment—Between Thrifton and Midland City in Highland, Clinton, and Ross Counties, OH* (not printed), served May 31, 1988, as corrected by notice to the parties served June 24, 1988.

The City of Greenfield acquired the line from CSX and entered into a lease and operating agreement with IOC, which was to have taken effect on October 28, 1988. The agreement is for a 15-year period.

A copy of this modified certificate notice shall be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-26515 Filed 11-17-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modification issued, must be made part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General Wage determinations under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of November 1988.

Robert V. Setera,
Acting Director, Division of Wage Determinations.

[FR Doc. 88-26513 Filed 11-17-88; 8:45 am]
BILLING CODE 4510-27-M

Occupational Safety and Health Administration

[Docket No. S-024]

Shipyard Employment Standards Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Appointment of members of Shipyard Employment Standards Advisory Committee (SESAC); notice of meeting.

SUMMARY: This Notice announces the selection of the 15 members of the Shipyard Employment Standards Advisory Committee and schedules the first meeting of that committee.

DATES: The first meeting of SESAC will begin on Tuesday, December 13, 1988, at 9:30 a.m. The meeting will continue on Wednesday, December 14, 1988.

Persons wishing to make presentations to the committee at this meeting should submit written requests by Tuesday, December 6, 1988.

ADDRESSES: The SESAC meeting will be held at the Washington Court Hotel (formerly the Sheraton Grand), 525 New Jersey Avenue, NW., Washington, DC.

Persons wishing to make presentations to the committee should submit written requests to Mr. Thomas Hall, OSHA Division of Consumer Affairs, U.S. Department of Labor, Room N3647, Docket S-024, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, at the address listed above, telephone (202) 523-8617.

SUPPLEMENTARY INFORMATION: The Shipyard Employment Standards Advisory Committee (SESAC) was established by the Secretary of Labor on June 27, 1988 (53 FR 24156), in accordance with the provision of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. I).

Authority to establish SESAC is found in sections 4(b)(2), (6)(b), and 7(b) of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 656); section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); and by general agency authority in Title 5 of the United States Code. The committee was established to advise the Assistant Secretary of Labor for Occupational Safety and Health in the preparation of a comprehensive body of standards for the ship building, shipbreaking, and ship repairing industries. The June 27 notice also solicited nominations for membership on the committee.

The fifteen members selected to serve as members of SEAC, together with the interests represented, are as follows:

Name	Representing
Gasper C. D'Anna, Platzer Shipyard	Management
Charles K. Klein, Newport News Shipyard.	Do.
Wayne P. LaGrange, Jeffboat Shipyard.	Do.
Robert Secor, General Dynamics	Do.
Russell Axsom, Steelworkers	Labor
Louis S. D'Ambrosio, Boilermakers	Do.
Bedros Dostoomian, Sheet Metal Workers.	Do.
Frank Terranova, Plumbing & Pipe Fitting.	Do.
Pete Schmidt, State of Washington	State
Bernard C. Stapor, U.S. Navy	Federal
Joseph J. Ocken, U.S. Coast Guard	Do.
Laurence D. Reed, NIOSH	Do.
Thomas H. Vodicka, Maritime Administration.	Do.
Linwood E. Temple, Marine Chemists Association (Chairman).	Professional
James R. Thornton, American Industrial Hygiene Association.	Do.
Alternates:	
Joseph P. Eagan, Bethlehem Steel.	Management
James D. Bishop, Paiters	Labor

Alternatates will serve only if a member representing that interest should resign or be removed from the committee.

The proposed agenda for the first meeting of SESAC is as follows:

I. Call to Order; II. Opening Remarks by OSHA Assistant Secretary John A. Pendergrass; III. Swearing-in Ceremony; IV. Purpose/Role of SESAC; V. Methodology to be Used; VI. Background Information; VII. Work Rules: VIII. Discussion of Standards Package; IX. Planning for Future Meetings.

As noted in 29 CFR Part 1912, the Chairman of the Advisory Committee will have the authority to permit oral presentations for the public with regard to agenda items, as time permits. Persons wishing to make such presentations should submit a written request by close of business, December 6, 1988 (see ADDRESS section, above). The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed.

Signed at Washington, DC, this 14th day of November 1988.

John A. Pendergrass,
Assistant Secretary.

[FR Doc. 88-26660 Filed 11-17-88; 8:45 am]
BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION

Materials Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: National Science Foundation Proposal/Award Information.

Affected Public: Individuals, state or local governments, businesses or other for profit, non-profit institutions, and small businesses or organizations.

Responses/Burden Hours: 37,000 responses; 120 burden hours each.

Abstract: The National Science Foundation supports research in all scientific disciplines, science education and research policy. This support is made through grants, contracts, and other agreements awarded to universities, university consortia, nonprofit, and other research organizations. These awards are based on proposals submitted to the Foundation.

Dated: November 14, 1988.

Herman G. Fleming,
NSF Clearance Officer.

[FR Doc. 88-26758 Filed 11-17-88; 8:45 am]
BILLING CODE 7555-01-M

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: National Science Foundation Proposal Evaluation Process.

Affected Public: Individuals.

Responses/Burden Hours: 145,500 responses; 5 burden hours each.

Abstract: The National Science Foundation's scientists, engineers and other officials evaluate all proposals submitted to the agency. To assist them in the evaluation process, the Foundation obtains the advice of scientists, engineers and others who are specialists in the fields covered in the proposals. Assistance is obtained through mail review and assembled panels.

Dated: November 14, 1988.

Herman G. Fleming,
NSF Clearance Officer.

[FR Doc. 88-26759 Filed 11-17-88; 8:45 am]
BILLING CODE 7555-01-M

Materials Submitted For OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Expedited Clearance Request: NSF is requesting an expedited clearance from OMB for a two week turn-around after receipt at OMB (See following telephone questionnaire).

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Research Opportunities for Women (telephone survey)

Affected Public: Individuals.

Responses/Burden Hours: 560 respondents; 30 minutes each.

Abstract: This survey will gather views of several groups of women (e.g., ROW awardees, declinees, regular program awardees and declinees, and non-applicants) to assess initial impacts of Research Opportunities for Women program and investigate several questions related to program's importance to the targeted group, its development, and its management.

Dated: November 8, 1988.

Herman G. Fleming,
NSF Clearance Officer.

BILLING CODE 7555-01-M

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DRAFT

Edit check _____

Time start: ____:____ Time end: ____:____ Minutes: |____|____|

Sample group assignment: |____| Interviewer: |____|____|____|____|

Major field code: |____|____| Observation #: |____|____|____|____|

Institution code: |____|____|____|____|
d4 d5 d6 d7

ROW AWARDS/DECLINES

Hello. My name is _____ from the Public Policy Resources Lab at Texas A&M University. We are helping the National Science Foundation to evaluate their program known as Research Opportunities for Women. According to the information we have between 1985 & 1987 ... [REFER TO PROPOSAL PROFILE]. Is that correct? [IF INCORRECT, ASCERTAIN CORRECT CLASSIFICATION] I'd like to ask several questions about your experiences with NSF, and how NSF can improve research support for women.

The interview will take about 20 minutes. Is it convenient to talk with you now, or should we schedule a later time?
Your responses will be treated confidentially. Your future contacts with NSF cannot be influenced by your responses. Our records regarding your proposal activity with the foundation are complete only between 1985 and 1987.
So, the first thing I'd like to ask is...

R1. Since October, 1987, how many grant proposals have you submitted to NSF as a principal or co-principal investigator?

|____| [DON'T KNOW = 8, REFUSE/NA = 9]
[RECORD VERBATIM]
[IF NONE, SKIP TO R3]

R1a. Of those, how many were to the NSF's "ROW" program?

|____| [DON'T KNOW = 8, REFUSE/NA = 9]
[RECORD VERBATIM]

R2. Could you tell me for each NSF proposal you've submitted since October, 1987 if it is pending, awarded, or declined?

a) |____| pending [DON'T KNOW = 98, REFUSE/NA = 99]

b) |____| awarded [DON'T KNOW = 98, REFUSE/NA = 99]

c) |____| declined [DON'T KNOW = 98, REFUSE/NA = 99]

R3. We are also interested in your proposal activity with the foundation prior to 1985. Between 1980 and 1985, about how many grant proposals did you submit to NSF as a principal or co-principal investigator?

|____|____| [DON'T KNOW = 98, REFUSE/NA = 99]
[RECORD VERBATIM]
[IF NONE, SKIP TO R5]

R4. How many of those between 1980 and 1985 were awarded?

|____|____| [DON'T KNOW = 98, REFUSE/NA = 99]
[RECORD VERBATIM]

R5. About how many times have you served as a mail or panel reviewer for NSF proposals?

|____|____| [DON'T KNOW = 98, REFUSE/NA = 99]
[RECORD VERBATIM]

R6. [MARK WITHOUT ASKING IF R1 = 1]
Was the ROW proposal your first proposal to NSF?

Yes	1	
No	2	[SKIP TO R8]
Don't know	8	[SKIP TO R8]
Refuse/NA	9	[SKIP TO R8]

R7. What would you say is the main reason that you did not submit a proposal to NSF previously?

_____ |____|____|

_____ |____|____|

R8 At the time you submitted your ROW proposal... [READ LIST]

	Yes	No	Don't Know	Refuse/ NA
a) Had you previously been a principal or co-principal investigator on a Federal grant?	1	2	8	9
b) At the time you submitted the ROW proposal were you returning to your career after an interruption?	1	2	8	9

c) [IF YES] Why was there a career interruption? [FIELD CODE.]

family	1
teaching	2
took another job	3
husband's job	4
denied tenure	5
other	6

[DESCRIBE] _____ |____|____|

R9. How did you first hear about the ROW grant program? [FIELD CODE.]

NSF Program Office	01
Campus research office	02
Dean	03
Department Head	04
Colleagues	05
Conference	06
Ad or notice in publication	07
Other	08

[DESCRIBE] _____ |__|__|

Don't know	98
Refuse/NA	99

R9a. And about what year was that?

|____|____|

Don't know	98
Refuse/NA	99

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R10. Who first suggested that you submit a proposal to ROW? [FIELD CODE RESPONSE]

self	1
colleague	2
NSF disciplinary program officer	3
ROW program manager	4
Other	5 --> _____ (DESCRIBE)
Don't know	8
Refuse/NA	9

R11. Why did you decide to apply through the ROW program instead of directly through the regular NSF programs? [FIELD CODE]

met eligibility criteria for ROW	1
applied to ROW as one of several funding alternatives (eg. applied to both)	2
better chance of success at ROW	3
advised to apply by NSF program officer	4
Other	5
[DESCRIBE] _____ |____|____|	
_____ |____|____|	
Don't know	98
Refuse/NA	99

R12. How important would you say that the existence of the ROW program was in your decision to submit a research proposal when you did? Would you say it was [READ LIST]:

Very important	1
Moderately important	2
Slightly important, or	3
Not important at all in your decision to submit a research proposal at that time	4
Don't know	8
Refuse/NA	9

R13. What were your general impressions of the ROW program before submitting your proposal? [RECORD VERBATIM]

a) _____ |____\|____\|

b) _____ |____\|____\|

Don't know	98
Refuse/NA	99

R14. Would you say that information about how to go about getting a project funded by NSF was [READ LIST]:

very easy to obtain,	1
somewhat easy to obtain,	2
neither easy nor hard to obtain,	3
fairly hard to obtain, or	4
very hard to obtain?	5
Don't know/no contact	8
Refuse/NA	9

R15. How long did it take you to prepare your ROW proposal for NSF?

1 month or less	1	5 months	5
2 months	2	6 or more months	6
3 months	3	Don't know	8
4 months	4	Refuse/NA	9

R16. What did you learn from your experience applying for the ROW research grant during the 1985-87 period? [PROMPT WITH What else? RECORD VERBATIM.]

_____ |____\|____\|

_____ |____\|____\|

_____ |____\|____\|

Don't know	98
Refuse/NA	99

R17. How would you characterize your experience with the ROW program. [PROBE FOR DESCRIPTIVE ADJECTIVES. PROBE: Do you have any further thoughts regarding your experience with ROW? PROBE FOR COMPLETE RESPONSE] [RECORD VERBATIM]

_____ |____\|____\|

_____ |____\|____\|

_____ |____\|____\|

Don't know	98
Refuse/NA	99

R18. How would you characterize your experiences with NSF other than ROW? [PROBE FOR DESCRIPTIVE ADJECTIVES. PROBE FOR COMPLETE RESPONSE. RECORD VERBATIM.]

_____ |____\|____\|

_____ |____\|____\|

Don't know	98
Refuse/NA	99

R19. To what extent would you recommend the ROW program to eligible women? Would you [READ LIST]:

definitely recommend it,	1
mildly recommend it,	2
mildly discourage it, or	3
definitely discourage it?	4
Don't know	8
Refuse/NA	9

R20. Having gone through the ROW proposal process, if you were eligible, how seriously would you consider submitting a proposal to ROW again? [DO NOT READ LIST]

definitely consider	1
might consider	2
definitely would not consider	3
Don't know	8
Refuse/NA	9

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R21. Do you think that your colleagues regard an ROW award differently from a regular award?

Yes	1	
No	2	[SKIP TO R22]
Colleagues don't know about ROW	3	[SKIP TO R22]
Don't know	8	[SKIP TO R22]
Refuse/NA	9	[SKIP TO R22]

R21a. In what way? _____ |__|__|
[RECORD VERBATIM]
_____ |__|__|

[IF 1987 PLANNING GRANT APPLICANT: IF AWARDEE, SKIP TO R23
IF DECLINEE, SKIP TO R25]

[IF 1987 OR LATER ROW APPLICANT: IF AWARDEE, SKIP TO R26,
IF DECLINEE, SKIP TO R27.]

[IF 1985 OR 1986 ROW APPLICANT, ASK]:

R22. In 1987, ROW was expanded to include small grants to support activities associated with planning a research project. How useful would such a small planning grant have been, had it been available at the time you applied for research support? [READ LIST]

Very useful	1
Moderately useful	2
Not very useful	3
Not useful at all	4
Don't know	8
Refuse/NA	9

<----------[IF ROW AWARDEE, SKIP TO R26]----------
[IF ROW DECLINEE, SKIP TO R27]

[IF 1987 PLANNING GRANT AWARDEE, ASK]:

R23. I am going to ask you about some areas in which you may have been affected as a result of having received an ROW Planning Grant. Please indicate for each item whether you feel the impact of the award has been great, moderate, none at all, or too soon to tell.

		Great	Moderate	None	Soon	D/K	RF/NA
a.	In terms of helping you find collaborators for future research, would you say the impact of the award was... [READ OPTIONS.]?	1	2	3	4	8	9
b.	How about for helping you establish the precise direction of your future research?	1	2	3	4	8	9
c.	For helping you discover the major weaknesses in your research idea?	1	2	3	4	8	9
d.	For helping you discover that you needed to spend more time developing your idea?	1	2	3	4	8	9
e.	In terms of providing a good proposal writing experience, would you say the impact of the award was... [READ OPTIONS.]	1	2	3	4	8	9
f.	How about for encouraging you to seek further research funding?	1	2	3	4	8	9
g.	For helping you get tenure or promotion?	1	2	3	4	8	9
h.	For helping you get a salary increase?	1	2	3	4	8	9
i.	Are there any other ways in which you have been affected as a result of the planning grant?	1	2	3	4	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM] _____ |_____|_____|
_____ |_____|_____|

R24. As a result of the planning grant

a.	Are you currently preparing or did you submit a research proposal to ROW?	1	2	8	9
b.	Are you currently preparing or did you submit a research proposal through regular NSF program?	1	2	8	9
c.	Are you currently preparing or did you submit a proposal for another funding source?	1	2	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM] _____ |_____|_____|
_____ |_____|_____|

<----------[SKIP TO R30]----------

[IF 1987 PLANNING GRANT DECLINEE, ASK]:

R25. I am going to ask you about some areas in which you may have been affected as a result of not having received an ROW Planning Grant. Please indicate for each item whether you feel the impact of the award decision has been great, moderate, none at all, or too soon to tell.

		Great	Moderate	None	Soon	D/K	RF/NA
a.	In terms of helping you find collaborators for future research, would you say the impact of the experience was... [READ OPTIONS.]?	1	2	3	4	8	9
b.	How about for helping you refine the direction of your future research?	1	2	3	4	8	9
c.	For helping you discover the major weaknesses in your research idea?	1	2	3	4	8	9
d.	For helping you discover that you needed to spend more time developing your idea?	1	2	3	4	8	9
e.	How much impact did the decline have in terms of discouraging you from seeking further research funding?	1	2	3	4	8	9
f.	How much impact did it have on your ability to get tenure or promotion?	1	2	3	4	8	9
g.	How much impact did it have on your chance of receiving a salary increase?	1	2	3	4	8	9
h.	Are there any other ways in which you have been affected as a result of not having received the planning grant?	1	2	3	4	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM] _____ |_____|_____|

<----------[SKIP TO R30]----------

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[IF ROW AWARDEE, ASK]:

R26. I am going to ask you about some areas in which you may have been affected as result of having received an ROW award. Please indicate for each item whether you feel the impact of ROW has been great, moderate, none at all, or too soon to tell.

		Great	Moderate	None	Soon	D/K	RF/NA
a)	In terms of enhancing your understanding of how to locate research funding, would you say the impact of the award was... [READ OPTIONS]	1	2	3	4	8	9
b)	How about for enhancing your understanding of the NSF proposal process?	1	2	3	4	8	9
c)	For increasing your ability to spend time doing research?	1	2	3	4	8	9
d)	In terms of increasing the respect of you colleagues would you say the impact of the ROW award was [READ OPTIONS]	1	2	3	4	8	9
e)	How about for improving your reputation in your field?	1	2	3	4	8	9
f)	For increasing your access to laboratory equipment or instrumentation?	1	2	3	4	8	9
g)	For increasing your available support for students?	1	2	3	4	8	9
h)	For enhancing your publication record?	1	2	3	4	8	9
i)	In terms of providing a good proposal writing experience, would you say the impact of the award was... [READ OPTIONS]	1	2	3	4	8	9
j)	How about for encouraging you to seek further research funding?	1	2	3	4	8	9
k)	For helping you get tenure or promotion?	1	2	3	4	8	9
l)	For helping you get a salary increase?	1	2	3	4	8	9
m)	Are there any other ways in which you have been affected as a result of having received the ROW award?	1	2	3	4	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM.] _____ |____|____|

_____ |____|____|

<----------[SKIP TO R30]---------->

[IF ROW DECLINEE, ASK]:

R27. Why do you think that your proposal was not funded?

_____ |____|____|
[RECORD VERBATIM]

Don't know 98
Refuse/NA 99

R28. What did you do after your proposal was declined? [READ LIST]

		Yes	No	Don't Know	Refuse/ NA
a)	Did you contact NSF to question or try to understand their decision?	1	2	8	9
b)	Did you revise and resubmit your proposal to the ROW program?	1	2	8	9
c)	Did you look for funding elsewhere?	1	2	8	9
d)	Did you continue working on the idea without funding?	1	2	8	9
e)	Did you respond in any other ways?	1	2	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM] _____ |____|____|

_____ |____|____|

R29. I am going to ask you about some areas in which you may have been affected as result of not having received the ROW award. Please indicate for each item whether you feel the impact of the award decision has been great, moderate, none at all, or too soon to tell.

		Great	Moderate	None	Soon	D/K	RF/NA
a)	In terms of enhancing your understanding of how to locate research funding, would you say the impact of the experience was... [READ OPTIONS]	1	2	3	4	8	9
b)	How about for enhancing your understanding of the NSF proposal process?	1	2	3	4	8	9
c)	How much impact did the decline have on your ability to get tenure or promotion?	1	2	3	4	8	9
d)	How much impact did it have on your chance of receiving a salary increase?	1	2	3	4	8	9
e)	How much impact did it have on the level of respect your colleagues have for your work?	1	2	3	4	8	9
f)	In terms of providing a good proposal writing experience, would you say the impact of applying for the award was... [READ OPTIONS]	1	2	3	4	8	9
g)	How much impact did the decline have in terms of discouraging you from seeking further research funding?	1	2	3	4	8	9
h)	Are there any other ways in which you have been affected as a result of not having received the ROW award?	1	2	3	4	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM.] _____ |____|____|

_____ |____|____|

[ASK OF ALL RESPONDENTS]

R30. When applying for research grants from NSF in your field, do you feel women have a great advantage, some advantage, are on equal per compared to men, some disadvantage, or a great disadvantage?

great advantage	1	
some advantage	2	
on equal par	3	
some disadvantage	4	
great disadvantage	5	
Don't know	8	[SKIP TO R32]
Refuse/NA	9	[SKIP TO R32]

R31. Why do you feel this way?

_____ |____|____|

_____ |____|____|

Don't know 98
Refuse/NA 99

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R32. Now let's turn to some questions about improving research opportunities. How do you think NSF can improve its support of female scientists and engineers? [FIELD CODE]

more information on research opportunities	1
more planning grant or seed money options	2
training for NSF program officers regarding opportunities for women	3
more female proposal reviewers	4
sponsoring training for graduate students on how to obtain research support	5
provide more money/support	6
Other	7

[DESCRIBE]:_____|____|____|

_____|____|____|

R33. Thinking of your own research opportunities, are you spending as much time conducting research as you would like?

Yes	1
No	2
Don't know	8
Refuse/NA	9

R34. I'm going to read a list of things that might make it difficult to spend time doing research. Please tell me for each item whether or not it is a problem for you. [READ LIST.]

	Yes	No	Don't Know	Refuse/ NA	N12-Most important barriers for women.
a) Does availability of research funding limit your ability to do research?	1	2	8	9	a. 1
b) How about an excessive teaching load?	1	2	8	9	b. 1
c) Inadequate clerical support?	1	2	8	9	c. 1
d) Insufficient support from TA's & graders?	1	2	8	9	d. 1
e) Does an excessive advising load limit your ability to do research?	1	2	8	9	e. 1
f) How about committee assignments?	1	2	8	9	f. 1
g) Other administrative duties?	1	2	8	9	g. 1
h) Do public service obligations limit your ability to do research?	1	2	8	9	h. 1
i) Family responsibilities?	1	2	8	9	i. 1
j) Is there anything else that limits your ability to do research?	1	2			j. 1

[DESCRIBE]:_____|____|____|

R35. [IF NO "YES" ANSWERS ABOVE, SKIP TO R36. OTHERWISE, ASK:]
Of all the barriers you just indicated were problems, which, if any, would you say are more of a problem for women than for men? Would you like me to read your responses again? [IF YES, READ ALL "YES" AND "OTHER" RESPONSES AGAIN, PAUSING AFTER EACH FOR RESPONDENT'S REPLY.]

[CIRCLE NUMBER ABOVE FOR BARRIERS NAMED]

R36. I am going to read a list of the kinds of help some researchers receive in preparing proposal(s), I would like you to tell me which ones, if any, you receive in writing a proposal. [READ LIST]

Would you receive...	Yes	No	Don't Know	Refuse/ NA	R42-ASSISTANCE
a) clerical support in preparing a proposal?	1	2	8	9	a. 1
b) budget preparation assistance?	1	2	8	9	b. 1
c) a review of proposal content by a colleague?	1	2	8	9	c. 1
d) a review of proposal content by a sponsored research office official?	1	2	8	9	d. 1
In preparing a proposal, would you receive...					
e) format or presentation guidance from a colleague?	1	2	8	9	e. 1
f) format or presentation guidance from a sponsored research office official?	1	2	8	9	f. 1
g) seed money to collect preliminary data?	1	2	8	9	g. 1
In preparing a proposal, have you used assistance from...					
h) a discussion with the NSF program manager?	1	2	8	9	h. 1
i) comments from reviewers on an unsuccessful proposal?	1	2	8	9	i. 1
j) a successful NSF proposal to help format your proposal?	1	2	8	9	j. 1
k) the NSF grant proposal preparation guide?	1	2	8	9	k. 1
l) Is there any other form of assistance you have found helpful when preparing proposals?	1	2	8	9	l. 1

[DESCRIBE]:_____|____|____|

_____|____|____|

R37. Of the kinds of assistance you just listed, what are the TWO most important forms of assistance in preparing proposals? Would you like me to read your responses again? [IF YES, READ ALL "YES" AND "OTHER" RESPONSES AGAIN]

[CIRCLE NUMBER ABOVE FOR TYPES OF ASSISTANCE USED.]

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I'd like to ask a few questions now about your history of research support.

R38. Other than NSF, what are the major sources of funding for your research interests.

[RECORD VERBATIM AND WRITE IN CLASSIFICATION CODE FROM LIST BELOW.]

		CLASS. CODE			CLASS. CODE
a)	_____	_____	b)	_____	_____
c)	_____	_____	d)	_____	_____
e)	_____	_____	f)	_____	_____

Classification Codes:

Federal agencies	
NASA	1
DOE	2
NIH	3
ONR	4
OTHER FED AGENCIES	5
State	6
Private foundation	7
Industry	8
Other	9

R39. About how many grant proposals have you submitted to non-NSF funding sources as a principal or co-principal investigator since 1980? Do not include small grants you may have received from your university or department.

|_____|_____| [DON'T KNOW = 98, REFUSE/NA = 99]
[RECORD VERBATIM]

R40. How many awards in which you were principal investigator or co-principal investigator have you received from non-NSF sponsors since 1980? Again, do not include small grants you may have received from your university or department.

|_____|_____| [DON'T KNOW = 98, REFUSE/NA = 99]
[RECORD VERBATIM]

R41. How much difficulty do you have understanding differences between the types of research NSF supports and research supported by other federal agencies in your field? [READ LIST]

great difficulty	1
moderate difficulty	2
slight difficulty, or	3
no difficulty?	4
Don't know	8
Refuse/NA	9

R42. Have you had a mentor -- that is, a person who has taken a particular interest in your career and has been willing to provide guidance and/or support for you?

Yes	1	
No	2	[SKIP TO R45]
Don't know	8	[SKIP TO R45]
Refuse/NA	9	[SKIP TO R45]

R43. [IF YES] How did your mentor influence your decision to pursue academic research?

_____ |_____|_____|
_____ |_____|_____|

Don't know	98
Refuse/NA	99

R44. [RECORD SEX OF MENTOR. IF SEX HAS NOT BEEN MENTIONED, ASK]: Is your mentor male or female?

Male	1
Female	2
Don't know	8
Refuse/NA	9

R45. For how many female students and other female faculty members have you served as a mentor, if any?

|_____|_____| [DON'T KNOW = 98, REFUSE/NA = 99]----> [SKIP TO R46]
[IF NONE, SKIP TO R46]

R45a. From your perspective as a mentor, what issues affecting women do you have to address? [RECORD VERBATIM]

a) _____ |_____|_____|
b) _____ |_____|_____|
c) _____ |_____|_____|

Now I have a few final questions about your background and your current career status.

R46. Are you currently employed in a medical school?

Yes	1
No	2
Don't know	8
Refuse/NA	9

R47. What is your highest academic degree?

BA/BS	1
MA/MS	2
PhD	3
MD	4
EdD	5
Other	6
[DESCRIBE]	_____ |___|___|
Don't know	8
Refuse/NA	9

R47a. What institution did you receive it from?

_____ |_____|_____|_____|_____|

Don't know	9998
Refuse/NA	9999

R47b. What year did you receive it?

|_____|_____| year

Don't know 8
Refuse/NA 9

R47c. What field was it in?

Field: _____|___|___|

Don't know 98
Refuse/NA 99

R48. [RECORD ANSWER. DO NOT ASK IF OBVIOUS.] What is your major field of research now?

_____|____|____|____|____|
[RECORD VERBATIM]

Don't know 98
Refuse/NA 99

R49. [RECORD ANSWER. DO NOT ASK IF KNOWN.] Would you describe your current position as primarily teaching or research oriented?

teaching 1
research 2

Don't know 8
Refuse/NA 9

R50. [RECORD ANSWER. DO NOT ASK IF KNOWN.] Is it a tenure track position?

Yes 1
No 2 [SKIP TO R52]

Don't know 8
Refuse/NA 9

R51. Do you have tenure?

Yes 1
No 2

Don't know 8
Refuse/NA 9

R52. That concludes this interview. Do you have any additional comments which you feel are appropriate for this study?

_____

_____

_____

R53. Would you like to receive a copy of the final report from this study of the ROW program?

Yes 1 --> [CONFIRM ADDRESS. IF INCORRECT, RECORD CORRECT ADDRESS ON BACK PAGE.]
No 2

On behalf of the National Science Foundation, I would like to thank you for participating in this study. Your responses will be of great interest to the Foundation.

ADDRESS: _____

_____

_____

[FR Doc. 88-26772 Filed 11-17-88; 8:45 am]
BILLING CODE 7555-01-C

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Advisory Committee for Computer and Computation Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Computation Research.

Date and time: December 8, 1988, 9:00 a.m. to 5:00 p.m.; December 9, 1988, 8:30 a.m. to 3:00 p.m.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: All Open—December 8, *Open*—9:00 a.m. to 5:00 p.m.; December 9, *Open*—8:30 a.m. to 3:00 p.m.

Contact Person: Peter Freeman, Division Director, Division of Computer and Computation Research, Room 304, National Science Foundation, 1600 G Street, NW., Washington, DC 20550. *Telephone:* (202) 357–9747 email: pfreemannote.nsf.gov Anyone planning to attend this meeting should notify Dr. Freeman no later than December 5, 1988.

Summary Minutes: May be obtain from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning support of Computer Research.

November 14, 1988.

M. Rebecca Winkler,

Committee Management Officer.

Advisory Committee for Computer and Computation Research—Agenda

Thursday, December 8, 1988, Room 543—9:00 a.m. to 5:00 p.m.—Open

9:00—Introductions; CISE Status.
9:30—CCR Status.
10:30—Software Research Panel.
12:30—Lunch.
1:45—Software Research Panel.
4:00—Issues in computer science.

Friday, December 9, 1988, Room 543—8:30 a.m. to 3:00 p.m.—Open

8:30—Software research agenda.
9:30—CCR and OCDA reports.
10:30—Report on Symbolic Computation Workshop.
12:30—Lunch.
1:30—Future Planning Issues.
3:00—Adjourn.

[FR Doc. 88–26653 Filed 11–17–88; 8:45 am]

BILLING CODE 7555-01-M

Task Force on Women, Minorities, and the handicapped in Science and Technology; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Task Force on December 13, 1988.

Meeting

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date: December 13, 1988.

Time: 9:00 a.m. to 1:00 p.m.

Place: Federal Emergency Management Agency, C Street, SW., Room 401, Washington, DC 20472.

Type of Meeting: Open.

Purpose: Receive reports from Task Force members on progress toward implementing recommendations of the Task Force.

October 20, 1988.

Sue Kemnitzer,

Executive Director (202) 245–7477.

[FR Doc. 88–26654 Filed 11–17–88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–281]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Virginia Electric and Power Company (the licensee) for the Surry Power Station, Unit No. 2, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant a one-time relief from the schedular requirements of 10 CFR Part 50, Appendix J, paragraph III.A.6(b) to perform a Type A test every outage until two consecutive tests meet the acceptance criteria. The requested exemption would allow the licensee to resume their normal retest schedule in accordance with paragraph III.D. of Appendix J.

The licensee's request for exemption and bases therefore are contained in a letter dated August 12, 1988, as supplemented on August 15 and 31, 1988. The licensee had previously submitted information on this subject by letter dated February 29, 1988.

The Need for the Proposed Action

The proposed exemption would allow a one-time relief from performing a Type A test for the current refueling outage and enable Surry Unit 2 to resume the normal retest schedule specified in section III.D. of 10 CFR Part 50, Appendix J, and therefore prevent unnecessary pressurization of the containment to design pressure basis.

The purpose of the Type A testing is to measure and ensure that the leakage through the primary reactor containment does not exceed the maximum allowable leakage rate. It also provides assurance that periodic surveillance, maintenance and repairs are made to systems or components penetrating the containment. The last three Type A tests that the licensee performed have demonstrated that containment integrity has not significantly degraded over the operating cycle. In addition, the licensee has replaced containment sump isolation valves which were major contributors to containment leakage problems, and resolved the staff's concern about leakage from water-filled containment penetrations which are expected to operate during post-accident conditions. Therefore, the licensee has requested a one-time exemption from the schedular requirements of paragraph III.A.6(b) of Appendix J to 10 CFR Part 50.

Environmental Impacts of the Proposed Action

The proposed exemption would allow a one-time relief from the schedular requirements to perform a Type A test every outage until two consecutive tests meet the acceptance criteria. The licensee's last three Type A tests have demonstrated that there has been no significant degradation of containment integrity over the operating cycle. The proposed exemption will not negatively impact containment integrity and will not significantly change the risk from facility accidents. Therefore, post-accident radiological releases will not be significantly greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the proposed exemption would not affect nonradiological plant effluents and would have no other environmental impacts. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there are no measurable impacts associated with the proposed exemption, any alternative to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of the Surry Unit 2 operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Surry Power Station, Unit 2.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption from 10 CFR Part 50, Appendix J, dated August 12, 1988, as supplemented on August 15 and 31, 1988, and previous information submitted by letter dated February 29, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 10th day of November, 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–26732 Filed 11–17–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–498]

Houston Lighting & Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 2 to Facility Operating License No. NPF–76, issued to the Houston Lighting & Power Company, (the licensee), which revised the Technical Specifications for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas. The amendment was effective as of the date of its issuance.

The amendment allows the expansion of the spent fuel pool storage capacity form the current 196 fuel assemblies to 1969 fuel assemblies. The expansion is to be achieved by removing the existing racks and installing new, high density ones.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

The Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on June 23, 1988 (53 FR 230707) and amended on September 14, 1988 (53 FR 35570). No request for a hearing or petition for leave to intervene was filed following the notices.

The Commission has prepared an Environmental Assessment related to the action and has concluded that an evnironmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement related to the Operation of South Texas Project, Units 1 and 2 dated August 1986.

For further details with respect to the action, see: (1) The application for amendment dated March 8, 1988, as supplemented by letter dated March 26, 1988; (2) additional information supplied in the licensee's letters of August 9, 10, 19, 30, and September 21, 22, and 29, 1988; (3) Amendment No. 2 to License No. NFP–76; and (4) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555; at Wharton Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488; and the Austin Public Library, 810 Gaudalupe Street, Austin, Texas 78701. A copy of items (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 1st day of November, 1988.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–26733 Filed 11–17–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–382A; 50–313A; 50–368A]

Waterford Steam Electric Station, Unit 3; Arkansas Nuclear One, Units 1 and 2; Proposed License Amendments

By separate applications dated July 1, 1988, Louisiana Power and Light Company and Arkansas Power and Light Company (LP&L, AP&L or licensees) requested that Operating License No. NPF–38 for the Waterford Steam Electric Station, Unit 3 (Waterford) and Operating License Nos. DPR–51 and NPF–6 for Arkansas Nuclear One, Units 1 and 2 (ANO 1 and 2) be amended to reflect the addition of system Energy Resources, Inc. (SERI) as a licensee on each of the aforementioned operating licenses.

Each license amendment application is associated with the consolidation of nuclear operations of LP&L, AP&L and SERI—all wholly-owned subsidiaries of Middle South Utilities, Inc. (MSU). For reasons discussed in the applications, MSU has decided that SERI will become its system-wide nuclear operating company. Under the MSU Plan, SERI will assume all responsibilities for the management and operation—but not ownership—of Waterford and ANO 1 and 2. SERI presently owns and operates Grand Gulf 1 and is in charge of the construction of Unit 2, the remaining nuclear units owned by the MSU system.

The proposed changes would transfer the responsibility for operating and managing Waterford and ANO 1 and 2 from LP&L and AP&L respectively to SERI. However, the amendments indicated that the ownership of Waterford and ANO 1 and 2 and the manner in which power and energy will be distributed and marketed from Waterford and ANO 1 and 2 will not change. Therefore, SERI and the licensees have contended that the antitrust license conditions which are attached to the Waterford operating license and pertain to LP&L will remain unchanged.

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Pursuant to 10 CFR 50.90 of the Commission's Rules and Regulations and Section 105c of the Atomic Energy Act, as amended, the staff is publishing receipt of the proposed amendments and requesting comments on their competitive impact. Copies of the applications for amendment have been forwarded to the Attorney General for his review and comment. Moreover, copies of the applications for amendment will be available for public inspection at the Commission's Public Document Room located at 2120 L Street, NW., Washington, DC 20555 and in each of the following local pulic document rooms: (1) for Waterford: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122; (2) for ANO 1 and 2: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801; and (3) for SERI: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Any person who wishes to express views pursuant to antitrust issues that may be raised by these amendment requests, should submit said views within 15 days from the initial publication of this notice in the **Federal Register** to the U.S. Nuclear Regulatory Commission, Washington, DC 20555; Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 14th day of November, 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Acting Associate Director for Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26734 Filed 11-17-88; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Proposed Amendments, Hearings, and Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council, Council).

ACTION: Notice of proposed amendments, hearings, and opportunity to comment.

SUMMARY: Pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*) the Council, in April 1983, adopted a Northwest Conservation and Electric Power Plan (Plan) including model conservation standards (MCS). The most recent complete amendment of the Plan was adopted in 1986. Although the Act requires the Council to review the Plan at least every five years, the Council has taken up various discrete parts of the Plan more frequently, to respond to ongoing changes in the regional energy picture and to incorporate the most recent technology and analysis. The Council now proposes to amend the Plan by updating the technical data base on which portions of the Plan depend. This notice describes the subject matter of the proposed amendments and explains how to participate in the amendment process.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments will close at 5 p.m. Pacific time on Friday, January 13, 1989. Public hearings on the proposed amendments will be held in each of the four Northwest states. Notice of the dates, times and places of these hearings will be published at the earliest opportunity.

The Council expects to take final action on the proposed Supplement amendments at its February 1989 meeting in Olympia, Washington.

Guidelines for Presenting Oral Comments at Hearings.

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordination, at the Council's central office no later than the day before the hearing. The Council's address is: 851 SW. 6th Avenue Suite, 1100, Portland, Oregon 97204. The Council's telephone numbers are: (503) 222-5161 and (toll free) (800) 222-3355 in Idaho, Montana, and Washington or (800) 452-2324 in Oregon.

2. Those who do not reserve time periods will be permitted to present oral comments as time permits.

3. Each speaker will be allowed 15 minutes during the hearing.

Guidelines for Submitting Written Comments

1. All written comments must be received in the Council's central office, at 851 SW. 6th Avenue, Suite 1100, Portland, Oregon 97204, by 5 p.m. Pacific time on January 13, 1989.

2. Please provide three (3) copies of all written submissions.

SUPPLEMENTARY INFORMATION: As directed by the Northwest Power Act (16 U.S.C. 839 *et seq.*, the Act) the Council developed and adopted a regional conservation and electric power plan shortly after its formation. The Plan includes an energy conservation program, including, but not limited to, model conservation standards; a recommendation for research and development; a methodology for determining quantifiable environmental costs and benefits; a twenty year demand forecast; a forecast of power resources that the Bonneville Power Administration will need to meet its obligations; an analysis of reserve and reserve reliability requirements; and a surcharge methodology. The Plan also includes the Fish and Wildlife Program, developed pursuant to other procedural requirements under the Act.

In order to keep the Plan as up to date as possible, the Council entered a public involvement process in January 1988 by publishing a staff issue paper entitled "Plans for a Technical Update to the 1986 Power Plan." The Council followed this paper with several issue papers on key planning areas, including economic, demographic and fuel price assumptions; demand forecasts; and analyses of the cost and availability of conservation and generating resources. After considerable public comment, the Council published a Staff Draft Update, which covered all the subjects treated in the issue papers. The Draft Update also generated extensive public comment. Most commentators said that while certain technical features of the Plan ought to be updated in the near term, the Draft Update as a whole proposed more fundamental changes in the Plan, some of which touched on basic policy issues, than could be addressed in the relatively short time proposed for the Update process. In particular, several commentators believed that several resources in the draft resource portfolio needed more deliberate consideration. These include cogeneration, and its cost and performance data, transmission and distribution system efficiency improvements, voltage regulation, as well as strategies to back up nonfirm power. Many commenters suggested that the Council identify the more basic policy issues now, but take them up on a more extended schedule.

Following these comments, the Council revised the Draft Update. In this revision, which is now called the Draft Supplement, the Council has reduced the amount of the more controversial resource portfolio estimates to the values found in the 1986 Power Plan.

Proposed Amendments

The amendments proposed in the Supplement would highlight the Council's power planning process, including, in particular, its philosophy of and strategies for implementing least cost planning. The Supplement also identifies certain major policy issues proposed for future, more detailed consideration.

The Supplement is chiefly aimed at bringing up to date the demand forecasts contained in the Plan, the estimates of resources available to meet future demand, both conservation and generating resources, and, within the limits noted above, an updated resource portfolio. The Supplement also contains several appendices, which document the revised forecasts of economic, demographic and fuel price assumptions; revised demand forecasts; revised estimates of the cost and availability of conservation resources; revised estimates of the cost and availability of new generation (hydroelectric, cogeneration, straegies to improve the use of the existing hydro system by using combustion turbines, and coal, along with a listing of the cost components considered) in the Northwest; and a description of the region's hydroelectric power system.

The Supplement, if adopted, would amend the Council's Power Plan, affecting portions of Chapters 1–8 of the 1986 Plan. It would not modify or otherwise affect Chapter 9 (the Action Plan). In case of conflict between the Supplement and the 1986 Power Plan, the Supplement would supersede the Plan. In all other instances, the Supplement would be an addition to the 1986 Power Plan.

FOR FURTHER INFORMATION CONTACT: If you would like a copy of the Draft Supplement to the 1986 Power Plan and/or a copy of the Draft Supplement Appendices, please contact Judy Allender, in the Council's office of Public Information and involvement, at the address or telephone numbers listed above.

Edward Sheets,

Executive Director.

[FR Doc. 88-26715 Filed 11-17-88; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26271; File No. SR-CBOE-88-17]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On September 20, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] proposed rule changes to implement procedures that will be applicable to participants in the CBOE's joint venture with the Chicago Board of Trade ("CBOT").

The proposed rule changes were noticed in Securities Exchange Act Release No. 26155 (October 5, 1988), 53 FR 39699 (October 11, 1988).[3] One comment was received on the proposed rule changes.[4]

I. The Joint Venture [5]

On February 12, 1988, the CBOE and the CBOT entered into a joint venture ("JV") agreement which provides for trading on the CBOE floor by the CBOE or CBOT of certain securities and futures contracts, and special procedures for trading those products. The CBOE 50 and 250 stock index futures contracts ("CBOE 50" and "CBOE 250", respectively) [6] are the initial JV contracts that will be traded on the CBOE floor. This will be the first time that a stock index futures pit will be located other than on a board of trade.[7]

The CBOE has constructed a new futures trading facility on its current trading floor, adjacent to the current Standard and Poor's 100 Stock Index option ("OEX") trading pit. The futures trading facility will include a futures pit for trading the CBOE 250, 76 booths and 20 arbitrage posts, and an elevated catwalk for communicating orders between the CBOE 250 pit and the OEX and the Standard and Poor's 500 Stock Index option ("SPX"/"NSX"/"SPL") pits.[8] A new post for trading the SPX will be located in the corner of the new trading facility.

A joint venture participant ("JVP") [9] may be either a member or a non-member of the Exchange. Under the terms of the JV agreement, all CBOE regular members will have access to all JV products. CBOE regular members will have access to JV securities products through their CBOE membership. In order to trade JV futures and futures option contracts in person, however, CBOE regular members must become futures qualified by completing a CBOT orientation seminar and examination program and filing a JV application. In addition, if the regular member intends to act as a floor broker in JV futures or futures option contracts, the member also must be registered with the National Futures Association.

Certain persons not members of the CBOE also will have access to JV contracts. CBOT full members, CBOT associate members ("AMs"), and CBOT Index, Debt and Energy Market members ("IDEMs") will have full access to all JV futures products. In order to trade JV futures contracts in person on the CBOE trading floor, such non-members must file a JV application and agree to be bound by CBOE rules restricting access to trading crowds as

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] The release contained the full text of the proposed rule changes and included the modifications to the proposal submitted by the CBOE in Amendment No. 1, which was submitted on September 29, 1988. Amendment No. 2 was filed on October 11, 1988 and clarified that CBOE floor brokers may accept orders entered by Joint Venture Participants who are not CBOE members only in certain circumstances (*i.e.* if the orders for releated option contracts are for hedge purposes only).

[4] Letter from William Brodsky, President, Chicago Mercantile Exchange ("CME"), to Jonathan Katz, Secretary, SEC, dated October 31, 1988.

[5] The sources for the description of the joint venture are: The CBOE's proposed rule changes, File No. SR-CBOE-88-17, submitted to the Commission on September 20, 1988; Amendments No. 1 and 2 to the proposed rule changes filed on September 29, and October 11, 1988, respectively; the joint venture agreement entered into by the CBOE and the CBOT on February 12, 1988; the regulatory agreement entered into by the CBOE and the CBOT on December 18, 1987, as amended on September 28, and October 5, 1988; CBOE's Joint Venture News, dated August 5, and August 16, 1988; CBOE Information Circular 88A #13 (June 1988); letter from Arne R. Rode, General Counsel, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation ("Division"), dated September 22, 1987; and letter from Mary L. Bender, Vice President, Division of Regulatory Services, CBOE, to Brandon Becker, Associate Director, Division, dated June 3, 1988.

[6] Pursuant to the authority granted by the jurisdictional accord between the Commission and the Commodity Futures Trading Commission ("CFTC"), the Commission reviewed the CBOT's application for designation as a contract market to trade futures contracts based on the CBOE 50 and 250 indexes. The Commission stated that it did not object to the designation. Letter from Jonathan G. Katz, Secretary, Commission, to Dr. Paula Tosini, Director, Division of Economic Analysis, CFTC, dated April 21, 1988. The CFTC approved the CBOT's application for designation as a contract market for the CBOE 50 and CBOE 250 futures on May 11, 1988.

[7] The Philadelphia Board of Trade currently trades foreign currency futures contracts on the Philadelphia Stock Exchange's ("Phlx") foreign currency option floor. Consequently, the CBOE-CBOT joint venture is not the first occasion in which a futures contract will be traded on the floor of a national securities exchange. *See* Securities Exchange Act Release No. 24235 (March 19, 1987) 52 FR 9750 (March 26, 1987).

[8] At the present time only the CBOE 250 stock index futures contract will trade in this pit. We understand that no decision has been made concerning when and where on the CBOE floor the CBOE 50 will trade.

[9] The term "joint venture participant" is defined in CBOE's rules as "a member or non-member of the Exchange who is qualified to execute in person transactions in joint venture contracts in a trading crowd on the floor of the Exchange." Rule 1.1(kk).

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well as rules regarding floor decorum and security.[10] CBOT full members will have full access to all JV securities products provided they acquire regular CBOE membership through exercise of their privileges under Article V of the CBOE Certificate of Incorporation.[11] CBOT full members who choose not to become CBOE regular members ("non-exercising CBOT full members") and CBOT partial members (*e.g.*, AMs and IDEMs) who are not eligible to become CBOT members will not be able to enter CBOE trading crowds or to effect in-person transactions in CBOE options products.

While CBOE non-members will be denied physical access to securities products traded on the CBOE floor, non-member JVPs trading JV futures products on the CBOE floor will have non-written order communication ("flashing") privileges to all JV securities products and non-JV securities products that are directly related [12] to those JV futures products. This flashing privilege will permit non-member JVPs to relay orders to floor brokers in the OEX and SPX trading crowds to effect transactions to hedge positions that already have been established in JV futures contracts. Before a CBOE member can conduct customer business with a non-member JVP, however, that member must receive written approval from the CBOE's Division of Regulatory Services. Because of the requirement that member organizations must receive written approval from the Exchange in order to conduct business with non-member JVPs, and because the CBOE will add an account origin code "j" for recording on trade tickets and reporting non-member JVP transactions in Exchange options contracts to the Exchange, the CBOE believes that the Exchange will be able to monitor closely the trading activity between non-member JVPs and member organizations.

As described above, the new futures trading facility on the CBOE floor contains a catwalk between the index options pits and the index futures pits for facilitating the relay by hand signals of intermarket hedging orders. CBOE floor brokers may accept orders flashed by non-member JVPs trading futures contracts on the Exchange floor for JV-related option contracts (*i.e.*, OEX and SPX) only where the orders are for hedging purposes.[13] These flashed orders may be executed by any floor broker, but must be followed by written orders.[14] CBOE regular members in the OEX and SPX crowds will have reciprocal order communication privileges into the JV futures contracts pits.

Non-member JVPs will be treated differently from other CBOE non-members. For example, unlike orders from public customers, option orders from or on behalf of CBOE 250 or CBOE 50 floor traders who are not CBOE members will not be entitled to acceptance by a Board Broker or an Order Book Official.[15] Further, because orders eligible for CBOE's Retail Automatic Execution System ("RAES") are limited to those qualified for entry into the limit order book pursuant to CBOE Rule 7.4(a), non-member JVPs will be prohibited from placing orders for their own account on RAES. Also, member organizations conducting business in JV securities contracts or JV-related options contracts with non-member JVPs will be exempted from several of the sales practice requirements relating to doing business with the public set forth in Chapter IX of CBOE's rules.[16] Chapter IX contains certain rules that member organizations must comply with that are intended to ensure that the purchase or sale of option contracts is suitable for the customers who wish to enter into such transactions. The exemptions from Chapter IX's rules recognize the distinction between non-member professional traders, such as JVPs, and other non-members. Because of the sophistication of the non-member JV professional traders, the CBOE believes that it is not necessary to require safeguards such as those provided in Chapter IX.

The CBOE proposes to allow floor brokers to cross inter-regulatory spread orders.[17] An inter-regulatory spread order has been defined in CBOE's rules as:

> An order involving the simultaneous purchase and/or sale of at least one unit in contracts, each of which is subject to different regulatory jurisdictions, at stated limits, or at a stated differential, or at market prices, on the floor of the Exchange.[18]

An inter-regulatory spread order could consist of a CBOE 250/OEX spread or a CBOE 250/SPX spread.[19] The OEX or SPX part of the spread would be subject to the regulatory jurisdiction of the Commission, while the CFTC would have jurisdiction of the CBOE 250 portion of the spread. Only CBOE members who also are futures qualified will be permitted to effect inter-regulatory spreads. Thus, it will be possible for a futures qualified CBOE floor broker to execute a CBOE 250/OEX(SPX) spread transaction as a single price order not subject to being broken up.[20] Such an inter-regulatory spread transaction may be executed only in either the OEX or SPX option pit as appropriate.[21] The CBOE believes that allowing these orders to be crossed narrows the bid-ask differential, thereby making the markets more efficient.[22] Both the futures and the options leg of the inter-regulatory spread may be effected simultaneously.[23]

On December 18, 1987, the CBOE and the CBOT entered into a regulatory agreement to facilitate the intermarket surveillance of stock index trading. The regulatory agreement provides that the CBOE and the CBOT will promptly exchange information regarding positions and trading activity of

[10] Rule 1.1(kk); Rule 6.20, Interpretations and Policies .07. Non-member JVPs who are adversely affected by a determination made under Rule 6.20 may obtain review thereof in accordance with the provisions of Chapter XIX of the CBOE Rules (Hearings and Review).

[11] The CBOT full members would, among other things, have to register as broker-dealers and fulfill the requisite qualifications for CBOE membership.

[12] The CBOE will determine the contracts that are related to the JV contracts. For example, for the CBOE 50 and 250, the CBOE has determined that the related option contracts are the Standard & Poor's 100 Index Option ("OEX") and the Standard & Poor's 500 Index Options ("SPX", "NSX", and "SPL"). Proposed Rule 6.70, Interpretations and Policies .01.

[13] Rule 6.70, Proposed Interpretations and Policies .01.

[14] Rule 6.24, Interpretations and Policies .02. Generally, an initiation, cancellation, or change of an order relayed to a floor broker by hand signal also must be relayed immediately to the floor broker in written form. In Securities Exchange Act Release No. 24460 (June 5, 1987) the Commission approved the CBOE's proposal to exempt OEX options from this requirement in order to avoid unnecessary confusion and congestion in the OEX pit (File No. SR–CBOE–87–10). This exemption does not alter the requirement that all orders be in written form. Similarly, all the rules concerning order preparation and reporting remain in effect. In order to achieve consistency and avoid impediments, the CBOE proposes to extend the exemption granted to OEX to SPX and NSX.

[15] Rule 7.4(a).

[16] Rule 9.1, Interpretations and Policies .01 and .02.

[17] Rule 6.74, Interpretations and Policies .03 and .04.

[18] Rule 1.1(ll).

[19] An inter-regulatory spread also could involve a CBOE 50/OEX or CBOE 50/SPX spread.

[20] In this regard, the public limit order book shall be precluded from participating in inter-regulatory spread orders. When such orders are bid or offered at a differential, they may not be separated into individual parts. The futures' side of such spreads must be priced within the daily price range. The price of the options' side of such spreads may touch but shall not go through the current best bid or offer prevailing in the trading crowd. *See* CBOT Rule 352.02.

[21] *See* CBOT Rule 352.02.

[22] These transactions can be crossed only after they have been exposed to the trading crowd and must be executed in the presence of a CBOE official that is futures qualified. *See also* CBOT Rule 350.10.

[23] Rule 6.74, Interpretations and Policies .04.

individuals or organizations in JV and related contracts traded at the CBOE or the CBOT as well as information regarding any disciplinary action taken by either exchange against individuals or organizations that relates to trading activity in any of the above contracts. An addendum to that agreement was executed on September 28, 1988, that provides for the daily exchange of audit trail data in connection with JV and related contracts. The CBOE will be responsible for the surveillance of JV securities products and related options contracts, while the CBOT will be responsible for the surveillance of JV futures products.

II. Comments

The Commission received one comment letter on the proposed rule changes. The CME submitted a comment letter on October 31, 1988, that raised two concerns. First, the CME argues that a potential exists for CBOE members to pre-arrange futures transactions in connection with inter-regulatory spreads. The CME specifically states that, unlike the CBOT, the CBOE does not have a rule that prohibits prearranged trading.[24] As a result, the CME claimed that broker-dealers could follow CBOE rules and prearrange trades in inter-regulatory spreads. This would allow joint participants to execute spreads that would effectively violate CBOT and CFTC prohibitions against prearranged trading. Second, the CME claims that non-member JVPs may have an unfair advanage over members of the public in the execution of their index option orders. The CME notes that the CBOE proposal expressly favors one select group of non-CBOE members to the detriment of all other non-CBOE members. Consequently, the CME states that the CBOE's proposed rule changes fail to promote just and equitable principles of trade and fail to protect investors and the public interest.

In response, the CBOE submitted a November 4, 1988, comment letter addressing the CME's concerns.[25] With regard to the CME's prearranged trading concern, the CBOE states that the concern is unwarranted for several reasons. First, only CBOE members who are qualified to trade futures under CBOT rules are capable of executing inter-regulatory spreads. Thus, the CBOE emphasizes that those CBOE members will be subject to CBOT regulation and must comply with CBOT's and CFTC's prohibitions against prearranged trading. In addition, CBOT Rule 350.10 specifically provides a procedure for crossing that complies with Commodities Exchange Act Regulation 1.39(a)(2), which ensures that crosses are subject to the competitive outcry process of the trading crowd.[26] Finally, the CBOE notes that it will be exchanging with the CBOT audit trail data identifying all trades in the CBOE 250 futures and the index options by time and participant on a daily basis. Both CBOE and CBOT will be surveilling for, among other things, prearranged trading in violation of CBOE and CBOT rules.

The CBOE also states that the CME's claim that the CBOE proposal grants CBOT members an advantage in the execution of their orders not otherwise available to members of the public is without merit. The CBOE notes that the trading of futures and securities options on the floor of a national securities exchange is not without precedent. More specifically, the CBOE states that the trading of currency futures and securities currency options on the floor of the Phlx enables Phlx members to move quickly between the two markets in order to hedge positions. With regard to the CBOE 250, the CBOE emphasizes that access of non-member JVPs to the OEX and SPX is extremely limited. In particular, a non-member JVP is permitted to hand signal or flash an options order to an index option floor broker only to hedge positions previously established in the CBOE 250 futures contract. The CBOE notes that these non-member JVPs have less trading privileges than public customers in that they are not permitted to place orders on the limit order book or utilize CBOE's automatic execution system. In addition, the CBOE argues that in this day of telephonic and computer communication, physical presence on an exchange floor no longer yields a significant advantage and that any potential advantage is outweighed by the benefits to the public of increased liquidity and efficient public investor order execution.

III. Discussion

The JV agreement between the CBOE and the CBOT is a novel arrangement that will add a futures trading privilege to a CBOE regular membership. CBOE members who become futures qualified will be able to trade JV futures contracts on the Exchange floor. CBOE members trading JV-related options contracts, such as OEX and SPX, or JV securities contracts to be introduced in the future, will be able to hedge positions in these contracts by executing transactions in JV futures contracts, such as the CBOE 250. Such hedging transactions will be facilitated by placing index futures contracts on the same exchange floor as the index option contracts. The Commission believes that permitting JV futures contracts to be traded on the Exchange floor will contribute to the mechanism of a free and open market by enhancing index options market makers' ability to hedge their positions with futures. Such enhancement should enable market makers to better accommodate customer orders and to provide deeper and tighter markets.[27]

The concept of futures and options trading in adjacent pits is not new. As mentioned earlier, foreign currency options and futures trade in contiguous crowds on the Phlx floor. At the CME, stock index futures and options on stock index futures trade in adjacent crowds. The JV, however, does represent the first time a stock index futures pit will be located on a securities exchange floor. Nevertheless, the JV arrangement is designed so that regulatory concerns arising from the adjacent floor trading of futures and securities options is minimized.

Under the JV, CBOT members who are not CBOE members will have access to JV contracts traded on the Exchange floor. This access, however, is limited. CBOT full members who do not become CBOE members and CBOT partial members will have direct access to all JV futures products, and not to CBOE traded options. While the trading of JV futures products generally will be regulated by the CBOT, such non-members must file a JV application and agree to be bound by CBOE rules restricting their access to futures trading crowds and subjecting them to floor decorum and security rules that normally are applied only to CBOE members. The Commission believes that requiring non-member JVPs to comply with such rules should ensure that the floor trading activity of non-member JVPs will be restricted to futures trading crowds and that non-member JVPs will

[24] *See* discussion *infra* at p. 17–18 and note 30.

[25] *See* Letter from Nancy R. Crossman, First Vice President Legal Affairs, CBOE to Jonathan Katz, Secretary, SEC, dated November 4, 1988.

[26] CBOT Rule 350.10 specifically permits the crossing of orders for specified inter-regulatory and intermarket spreads involving the CBOE 50 and CBOE 250 stock index futures contracts, provided the spread orders are offered competitively by open outcry in the open market. The inter-regulatory spread could be crossed only if the spread order is not accepted in the open market within a reasonable period of time.

[27] CBOE market makers who are active in OEX and SPX options customarily hedge their positions by establishing offsetting positions in the futures markets. *See* Division of Market Regulation, *The October 1987 Market Break*, 8–18 (February 1988).

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be bound by Exchange rules respecting conduct on the Exchange trading floor.

If a CBOT member seeks to trade directly for its own account any stock index option on the CBOE floor, the CBOT member must acquire a regular CBOE membership. CBOT members who become CBOE members must register as brokers or dealers pursuant to section 15 of the Act.[28] In addition, CBOT members who become CBOE members and wish to transact business with the public must meet the requirements set forth in Chapter IX of the CBOE rules and must be approved by and registered with the Exchange as Options Principals. The Commission believes that such requirements are consistent with section 15 and 6(b) of the Act in that the requirements should ensure that only qualified members trade JV securities products in person.

The CBOE's proposal to allow CBOE non-members, who will be denied physical access to securities products traded on the CBOE floor, flashing privileges to all JV securities products and non-JV securities that are directly related to JV futures products also has been designed to be consistent with sections 6 and 15 of the Act. The CBOE non-members cannot flash an order directly into an index option pit, but must flash it to a CBOE floor broker on the catwalk, who would in turn deliver the order to the index options pit. Thus, a CBOE non-member that desires to trade any securities for its own account must use a CBOE floor broker to execute the order. Moreover, although non-member JVPs necessarily obtain some limited time and place advantages by their presence on the CBOE floor, the Commission believes that the significance of such advantages is reduced due to the substantive restrictions placed on these non-members. The most important restriction, of course, is that non-member JVPs can effect index options transactions only to hedge existing CBOE 250 futures positions. In addition, option orders from non-member JVPs may not be accepted by an Order Book Official or placed on RAES. Because of these and other restrictions, the Commission believes that the CME concern that the JV provide non-member JVPs an inappropriate competitive advantage is incorrect. Moreover, to the extent such non-members do gain a limited time and place advantage in executing their orders, the Commission believes that such advantages, limited to hedging transactions, are an appropriate to increase depth and liquidity in index options contracts.

In addition to the ability of CBOE non-members to flash orders to CBOE floor brokers, CBOE members will have reciprocal flashing privileges into the JV futures pits. The Commission believes that the proposed flashing rules will facilitate orders in securities by allowing such orders to be flashed but at the same time limiting such flashing to orders used to hedge positions in JV futures contracts. The Commission believes, in addition, that extending to SPX and NSX the exemption granted to OEX from the requirement that orders relayed by hand signal must be immediately followed by a written order will facilitate transactions in securities while preserving record-keeping and reporting safeguards. The fact that member organizations doing business with non-member JVPs will be exempted from several of the sales practice requirements in Chapter IX of the CBOE's rules recognizes the fact that non-member professional traders are more financially sophisticated than other non-members. The Commission believes that proposed exemptions will facilitate transactions in securities by enabling Exchange members to transact business on the Exchange with non-member JVPs without having to comply with the requirements of Chapter IX.

The Commission believes that allowing inter-regulatory spread orders to be crossed will further contribute to a deep and liquid market and will facilitate transactions in securities. Before a member can cross an inter-regulatory spread, that member must offer the spread order competitively by open outcry in the OEX and SPX options pit. The member must better the existing market by bidding above or offering below the existing quotes for that spread transaction. Thus, any member seeking to cross an inter-regulatory spread order will narrow the bid-ask differential for that spread. If the spread order is not accepted in the open market after a reasonable time, the inter-regulatory spread may be crossed.[29] The Commission also believes that clarifying the regulatory responsibility for each leg of an inter-regulatory spread order will expedite the enforcement of each jurisdiction's regulations and foster coordination and cooperation between the jurisdictions involved.

The Commission also does not believe that the CME comment concerning prearranged trading is meritorious. Initially, the Commission observes that the CME's implication that prearranged trading in the securities markets is not prohibited is simply wrong. In this regard, prearranged trading is prohibited by section 9(a)(1) of the Securities Exchange Act of 1934.[30] Therefore, regardless of whether the CBOE has a rule prohibiting these transactions, prearranged trades would be prohibited under the Securities Exchange Act. Moreover, the Commission notes that the CBOE considers prearranged trading to be a practice inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1. In particular, the CBOE has specified surveillance procedures designed to identify and deter prearranged trading. The Commission also notes that the CBOE has taken disciplinary action when it identifies prearranged trading. The Commission recognizes, however, that prohibitions or prearranged trading in the futures markets have been interpreted to prohibit, under some circumstances, the upstairs arrangement of block or "facilitation" trades involving a futures commission merchant ("FCM") and its customer, including bona fide transactions negotiated at arms length and exposed to the trading crowd prior to execution. While this interpretation does diverge from the treatment of such trades on options exchanges, the Commission notes that CBOT and CFTC restrictions would continue to apply to the futures portion of the transaction. In addition, CBOE rules will require that the entire transaction be exposed to the trading crowd and subject to review be a CBOE official who is a qualified FCM. Consequently, the Commission does not believe that the CBOE's proposed rules regarding inter-regulatory spreads can lead to transactions that would be violative of CBOT or CFTC prearranged trading provisions.

Finally, the Commission believes that the CBOE has designed adequate procedures to conduct surveillance, along with the CBOT, of the JV trading. The CBOE and CBOT badge system should ensure that only eligible persons enter the options or futures pits on the CBOE floor. The regulatory agreement entered into by the CBOE and the CBOT will assist in preventing fraudulent and

[28] 15 U.S.C. 780 (1982).

[29] As previously noted, this must be done in the presence of a futures qualified CBOE floor official.

[30] *See* 15 U.S.C. 78i(a)(1)(C) (1982). Section 9(a)(1)(C) provides that it is illegal to enter any order or orders on a national securities exchange for the sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties. *See also*, Report of Special Study of the Options Markets, 96th Congress, 1st Sess. (Committee Print 96–IFC3) December 22, 1978 at 169.

intermarket manipulative acts and other abusive trading practices related to the trading of JV products by providing for the exchange of relevant surveillance data [31] for JV-related securities and futures products.

For the above reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [32] and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[33] that the proposed rule change is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[34]

Jonathan G. Katz,

Secretary.

Dated: November 10, 1988.

[FR Doc. 88–26688 Filed 11–17–88; 8:45 am]

BILLING CODE 8010–01–M

[31] The CFTC recently approved a rule by the CBOT to allow exchange for physicals ("EFPs") involving the CBOE 50 and 250 futures to be quoted and executed in the CBOE 50 and 250 pits during trading hours. In response to concerns of the Division of Market Regulation that such activity would mean that the CBOT was providing facilities for the quotation of stock transactions which would require the CBOT to register as a national securities exchange under section 6 of the Securities Exchange Act of 1934, the CBOT revised its Regulation 444.01 on November 8, 1988. In particular, the CBOT deleted the portion of Regulation 444.01 that permitted CBOE 50/ CBOE 250 EFP transactions during trading hours provided that they were offered competitively by open outcry in the open market.

[32] 15 U.S.C. 78f (1982).

[33] 15 U.S.C. 78s(b)(2) (1982).

[34] 17 CFR 200.30–3(a)(12) (1988).

[Release No. 34–26279; File No. SR–NYSE–88–34]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Certain Intermarket Trading Restrictions adopted by the New York Stock Exchange and the Chicago Mercantile Exchange, and the New York Stock Exchange and the New York Futures Exchange

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on November 1, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of two agreements in regard to certain intermarket trading restrictions between the New York Stock Exchange and the Chicago Mercantile Exchange and the New York Stock Exchange and the New York Futures Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

(1) Purpose

On April 13, 1988 the Exchange issued an Information Memorandum to its membership stating that it was considering the adoption of an interpretation whereby trading in index futures immediately prior to and with knowledge of the execution of one or more "baskets" of stock that favorably impact the value of the underlying index might constitute frontrunning, and thus might constitute a violation of just and equitable principles of trade under Exchange Rule 476. (See Exhibit A.) [1] In this Information Memorandum the Exchange invited comments from its members and member organizations concerning the proposed interpretation. The comments received by the Exchange are discussed in section 5 *infra*.

The New York Stock Exchange and the Chicago Mercantile Exchange ("CME"), and the New York Stock Exchange and the New York Futures Exchange ("NYFE") have recently determined to adopt a policy, uniform as between the respective markets, (see Exhibit B), which specifically defines and prohibits certain intermarket trading between their respective equities and futures markets, while not prohibiting legitimate trading activities.[2]

The policy prohibits a member or person associated with a member or member organization from executing or causing the execution of, for an account in which such member or person has a direct or indirect pecuniary interest, or for an account with respect to which such member or person exercises investment discretion, certain transactions, as described below, to take advantage of material, non-public information which can reasonably be expected to have an immediate, favorable impact in relation to such transactions. Any member or persons executing or causing the execution of such transactions may be in violation of just and equitable principles of trade under Rule 476.

Specifically the policy provides that a transaction in any stock index futures contract, or option on a stock index future, when such member or person has acquired knowledge of the imminent execution of another person's stock program transaction, may be in violation of just and equitable principles of trade, where, as noted above, a member or person associated with a member is trading to take advantage of material, non-public information which can reasonably be expected to have an immediate, favorable impact in relation to such transaction. Moreover, the NYSE, the CME and the NYFE have also recognized that transactions in stock index futures or options on stock index futures may have some effect on the market in the underlying equities themselves. Therefore, the memorandum states that conversely, certain transactions in the reverse order could also constitute a violation of just and equitable principles of trade. In this instance, stock program transactions, when such member or person has acquired knowledge of the imminent execution of another person's order(s) in stock index futures contracts or options on stock index futures, may also be in violation of just and equitable principles of trade.

The exchanges have agreed that it is not necessary to demonstrate that another person has been disadvantaged

[1] Exhibits A and B are available for inspection and copying in the Commission's Public Reference Room.

[2] The policy filed herein pertains to intermarket trading involving any stock index futures and the NYSE equities market, regardless of whether the future is traded on the CME, the NYFE, or another futures exchange. The NYSE's policies with regard to frontrunning in the context of trading in standardized options on individual stocks, and frontrunning in the context of trading in index options and options on over-the-counter stocks, were filed in SR–NYSE–87–36. (*See* Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296).

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when a determination is being made as to whether a member or person has taken advantage of material, non-public information. Furthermore, such member or person may be deemed to be in violation of just and equitable principles of trade regardless of whether such other person has given permission for such trading.

However, this policy is not intended to prevent such member or person from establishing, in a futures market, a bona fide hedge of risk such member or person may have assumed or agreed to assume in facilitating the execution of any other person's stock program orders. The risk to be hedged must be the result of having established a position or having given a firm commitment to assume a position, and the offsetting hedging transaction must be commensurate with such risk.

Additionally, this policy is not intended to prevent a member or person from implementing proprietary market strategy involving a stock program and a related stock index futures transaction by executing the stock index futures trade(s) prior to the execution of the stock program. However, the execution of a transaction in one market to take advantage of such member's or person's imminent transaction in a related market may be considered to be a manipulative activity.

The agreement between the NYSE and the NYFE is identical to that between the NYSE and the CME, with one additional restriction. This agreement further states that a transaction in any stock index option, when such member or person has acquired knowledge of the imminent execution of another person's order(s) in stock index futures contracts or options on a stock index future may also be in violation of just and equitable principles of trade.

Therefore, this agreement states that this policy is not intended to prevent such member or person from establishing, in a futures market, a bona fide hedge of risk such member of person may have assumed or agreed to assume in facilitating the execution of any other person's stock index option orders as well as another person's stock program orders.

Similarly, this agreement states that a member or person associated with a member organization who implements a proprietary market strategy involving stock index option transaction(s) as well as a stock program and a related stock index futures transaction by executing the stock index futures trade(s) prior to the execution of the stock index option transaction(s) as well as the stock program will not be deemed to be in violation of this policy.

(2) Statutory Basis for the Proposed Rule Change

The Exchange believes the proposed rule change will promote the purposes of section 6(b)(5) of the Act in that it can be said to "promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in securities, * * * and, in general, to protect investors and the public interest."

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In its April 13, 1988 Information Memorandum notifying its membership of the possible application of the frontrunning policy to index futures trading, the NYSE sought comments from its members. Comment letters were received from Merrill Lynch, Pierce, Fenner and Smtih Inc., Morgan Stanley & Co. and the Securities Industry Association. These comment letters are annexed as part of Exhibit A.

The NYSE believes that the concerns raised in these comment letters have been substantially addressed by the more specific definition of frontrunning as applied to trading in baskets of stocks and futures or options on futures agreed to by the NYSE and the CME, and the NYSE and the NYFE, and set forth in the Information Memoranda being filled herein. The most significant concerns were that legitimate trading activities, such as the facilitation of customer orders and the hedging of proprietary positions, which are, of course, beneficial to the market, should not be inhibited by this rule.

The Information Memoranda address these concerns by stating that the NYSE does not intend to prohibit a bona fide hedge assumed in facilitating the execution of any other person's stock program orders. Additionally, the NYSE does not seek to inhibit proprietary trading, including the execution of stock index futures prior to a stock program, unless the transaction is intended to take advantage of that member or person's imminent stock program transaction. The NYSE's more specific definition of intermarket frontrunning as a transaction based upon the knowledge of another person's activity, and not a member or member organization's own activity (unless manipulative), whether in stocks or stock index futures contracts or options, prohibits clearly abusive trading, while not prohibiting member firms from engaging in legitimate hedging of their own positions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20569.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 9, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 14, 1988.

[FR Doc. 88-26757 Filed 11-17-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16633; (811-3227)]

Sea Cash Management Fund, Inc. (Formerly, Principal Cash Management Fund, Inc.); Application

November 10, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Sea Cash Management Fund, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on November 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 5, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, B304-6991 East Camelback Road, Scottsdale, Arizona 85251.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On July 21, 1987, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On July 21, 1987, Applicant also filed Form N-1 under the Securities Act of 1933, but such registration statement did not become effective and Applicant never made a public offering of its securities. Applicant was incorporated in the State of Maryland but has never conducted any business. Applicant does not have any assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no shareholders and is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26689 Filed 11-17-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Office of Women's Business Ownership; Management and Technical Assistance Application Announcement

Summary: The Small Business Administration, Office of Women's Business Ownership (OWBO) announces that it is accepting application proposals under its' Women's Business Ownership program to provide management and technical assistance services to eligible Women's Owned and Operated small business concerns/individuals. Projects are to start in FY 89.

The announcement number is OWBO-89-001

Funding Instrument: The funding instruments, as defined by the Federal Grants and Cooperative Agreements Act of 1977 (31 U.S.C. 6304/6305) will be cooperative agreements.

Objectives of the Management and Technical Assistance Program

The goal of OWBO is to assist start-up and established small businesses owned by women, to include socially and/or economically disadvantaged women businesses, through long term training and counseling to achieve competitive viability. Towards that end, it is the intent of this program to provide financial, management and marketing assistance to women or women owned enterprises eligible for assistance under "Women's Business Ownership Act of 1988" through the use of professional entities with proven methods of providing competent assistance.

These entities shall be selected through a competitive process emphasizing their prior experience, methodology, and success. Financial, management and marketing assistance includes, but is not limited to, those services which are provided to women businesses in the areas of planning, research and development, identification of new business opportunities, loan packaging, financial counseling, and marketing assistance.

Closing Date: Applicants must submit their application/proposal on or before December 23, 1988, 3:00 p.m., local time, to the U.S. Small Business Administration, 1441 L Street, NW., Washington, DC, Room 219.

Eligible Applicants: This announcement is open to private for-profit, or non-profit organizations. This announcment is *not open* to states and local governments, nor to colleges, universities, or other institutions of higher education.

Application Materials: Applications will be forwarded to interested participants upon written request to the U.S. Small Business Administration, Office of Procurement and Grants Management, 1441 L Street, NW., Room 221, Washington DC 20416. All awards will be announced in the **Federal Register.**

Evaluation and Award Process: All proposals received as a result of this announcement will be evaluated by an SBA Review Panel. The awarding of OWBO Cooperative Agreements is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Disposition of Proposals: Notification of awards will be made by the Grants Management Officer. Organizations whose proposals are unsuccessful will be sent an awards list advising them of the successful awardees. Nothing in this announcement shall be construed as committing OWBO to divide available funds among all qualified applicants.

Date: November 14, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-26655 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0188]

Twin Ports Capital Co., Inc.; Surrender of License

Notice is hereby given that Twin Ports Capital Co., Inc., 1228 Poplar Avenue, Superior, Wisconsin 54880 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Twin Ports Capital Co., Inc. was licensed by the Small Business Administration on March 20, 1984

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender

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was accepted on November 7, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment

Dated: November 10, 1988

[FR Doc. 88-26659 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Birmingham, will hold a public meeting, at 9:30 a.m. to 1:00 p.m., on Friday, December 9, 1988, in the Conference Room of the Birmingham District Office, 2121 8th Avenue, North, Suite 200 Birmingham, Alabama 35203, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35203, 205/731-1341.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 9, 1988.

[FR Doc. 88-26656 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting, at 10:00 a.m. Tuesday, December 6, 1988, 211 Main Street—5th Floor, Conference Room 543, San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael R. Howland, District Director, U.S. Small Business Administration, San Francisco District Office, 211 Main Street, 4th Floor, San Francisco 94105, 415/974-0642.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 14, 1988.

[FR Doc. 88-26735 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0379]

First Interstate Equity Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing SBICs (12 CFR 107.102 (1988)) under the name of First Interstate Equity Corporation, 100 West Washington, Phoenix, Arizona 85003 for a license to operate in the State of Arizona as a Corporation under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 *et seq.*).

The applicant will begin operations with private capital of $1,000,000.

The officers, directors and shareholders of the applicant are as follows:

Edmund G. Zito, 8689 East Thoroughbred Trail, Scottsdale, Arizona 85258—President and Treasurer

David Harrison Bonsall III, 2057 West Cambridge, Phoenix, Arizona 85009—Vice President, Secretary and Director

Robert H. Dockworth, 58005 East Vici Del Crilo, Pasadina Valley, Arizona 85253—Director

James G. Vanasek, 9752 East Wood Drive, Scottsdale, Arizona 85260—Director

Leon G. Steve, 1539 Edgemont, Phoenix, Arizona 85003—Director

First Interstate Bank of Arizona, N.A., 100 West Washington, Phoenix, Arizona 85009—Sole Shareholder

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Phoenix, Arizona.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: November 8, 1988.

[FR Doc. 88-26736 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0210]

Norwest Venture Partners—II, a Minnesota Limited Partnership; Application for License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) under the name of Norwest Venture Partners—II, a Minnesota Limited Partnership, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 as amended (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The proposed general and limited partners and investment advisor are:

General Partners

Robert F. Zicarelli, 8777 East Via De Ventura, Suite 335, Scottsdale, Arizona 85258

Daniel J. Haggerty, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Stephen J. Schewe, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Dale J. Vogel, 777 108th Avenue, N.E., Suite 2460, Bellevue, Washington 98004

Stpehen R. Sefton, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

John E. Lindhal, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Douglas E. Johnson, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Timothy A. Stephanek, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Leonard J. Brandt, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

John L. Thomson, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Ernest C. Parizeau, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

John P. Whaley, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

All the foregoing are general partners of Itaska Partners, a Minnesota General Partnership, whose address is the same as Norwest Venture Capital Management, Inc.

Limited Partner

Norwest Limited, Inc., 90 South Seventh Street, Minneapolis, Minnesota 55402

Investment Advisor

Norwest Venture Capital Management, Inc., 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Norwest Corporation is a bank holding company and financial services organization and the parent company of the Investment Advisor, Norwest Growth Fund, Inc., Norwest Investors, Inc. and Norwest Limited, Inc. It also owns approximately 20% of the limited partnership interests of Northwest Venture Partners.

The Applicant proposes to begin operations with a capitalization of approximately $5,000,000 as a part of the first funding which will be increased at a later date to $75,000,000. The Applicant will be a source of equity capital and long term loan funds for qualified small business concerns. The Applicant may render management consulting services to small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, and submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Minneapolis, Minnesota area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated November 9, 1988.

[FR Doc. 88-26658 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 164; Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the RTCA Special Committee 164 on Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment to be held December 13-14, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 12 noon.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) review and approve terms of reference, RTCA Paper No. 373-88/SC164-1; (3) review of prior RTCA activities, RTCA/DO-170, and latest changes; (4) discussion on extent of the problem; (5) develop initial work program and schedule; (6) assignment of tasks; (7) other business; and (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 14, 1988.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 88-26705 Filed 11-17-88; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the first meeting of RTCA Special Committee 165 on Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services to be held December 5-7, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 12 noon.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) review and approve terms of reference, RTCA Paper No. 385-88/SC165-1; (3) briefings on aeronautical mobile satellite services; (4) discussion on extent of the problem; (5) develop initial work program and schedule; (6) assignment of tasks; (7) other business; and (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 14, 1988.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 88-26706 Filed 11-17-88; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

[Docket No. IRA-38]

Inconsistency Ruling No. IR-21; Connecticut Statute and Regulations Governing Transportation of Radioactive Materials

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of decision on appeal.

SUMMARY: In response to the appeal of the State of Connecticut from the findings made in Inconsistency Ruling No. IR-21 (52 FR 37072; October 2, 1987), that Inconsistency Ruling is affirmed.

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EFFECTIVE DATE: November 10, 1988.

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

A. General Authority and Preemption under the HMTA

Section 112(a) of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93rd Cong., 2d Sess., 37–38 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress apparently intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the Hazardous Materials Regulations (HMR), issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by the Office of Hazardous Materials Transportation (OHMT) under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 App. U.S.C. 1811(b); 49 CFR 107.215 through 107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, October 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and applied in a series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in its inconsistency ruling process.

OHMT has incorporated into its procedures (49 CFR 109.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon U.S. Supreme Court decisions on preemption. *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to accomplishing and executing the HMTA and the HMR; a requirement which is such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

B. Chronology

On July 16, 1986, Citizens Against Nuclear Trucking (CANT) filed an application for an administrative ruling seeking a determination that certain portions of Connecticut General Statutes (CGS) sections 16a–106 (a) and (b) and Connecticut Regulations sections 19–409d–51, 53, 54, and 55 regulating the transport from, into and through Connecticut of certain radioactive materials are inconsistent with the HMTA and the HMR. These statutory and regulatory provisions contain notice, routing, permit, information, documentation and time requirements.

On September 28, 1987, the Director, OHMT issued Inconsistency Ruling 21 (IR–21), which was published at 52 FR 37072 on October 2, 1987. The Director determined that the Connecticut permitting system for transportation of certain radioactive materials under Connecticut General Statutes Sections 16a–106(a) and (b) and Connecticut Regulations sections 19–409d–51, 53, 54 and 55 is inconsistent with the HMIA and the HMR and therefore preempted.

II. The Appeal

On October 29, 1987, the State of Connecticut (Connecticut) filed an appeal of IR–21 with the Administrator of the Research and Special Programs Administration. Connecticut filed a brief in support of its appeal by letter dated December 21, 1987. The arguments made by the appellant are discussed in the following sections. Comments supporting affirmance of IR–21 were filed by the Hazardous Waste Treatment Council, Nuclear Metals, Inc., Northeast Utilities, and CANT.

III. Decision on Appeal

A. Introduction

I am issuing this decision in my capacity as Administrator of the Research and Special Programs Administration (RSPA). I have thoroughly considered all of the issues raised in the appeal and the discussions of them in the comments. All of the issues being appealed were discussed exhaustively by the Director of OHMT in IR–21; thus I will respond only to the specific issues raised on appeal and generally will not reiterate the Ruling's discussions, with all of which I fully concur.

B. Connecticut's Argument

Connecticut appeals the finding in IR–21 that the Connecticut permitting system is inconsistent with the HMTA and the HMR. Connecticut asserts that "there is simply no evidence in the record to support the conclusion that the Connecticut regulatory scheme, as actually administered, makes it impossible for a person to comply with both the Federal and state requirements for the transportation of radioactive materials, nor is there any evidence that the 'state requirements are an obstacle to the execution of Federal law' " (Citation omitted). Appellant's Brief at p. 7. Connecticut states that, although the statutory scheme that CANT is challenging has been in operation for over ten years, CANT failed to present any evidence that the regulations, as administered by the Connecticut Department of Transportation (ConnDOT), have posed any problem with respect to the safe transportation of hazardous materials. Connecticut argues that IR–21 merely speculates as to potential conflict with Federal laws when there is nothing in the record to show that actual experience has resulted in a conflict.

Conneuticut argues that, for example, the permit processing provision, which IR–21 found inconsistent because of its inherent propensity to cause unnecessary delay, is in fact aimed at expediting the issuance of permits. Connecticut Regulation section 19–409d–54 states:

> No applications will be processed without a two-hour advance notice nor will an application be accepted more than one working day in advance of the scheduled move except that the Commissioner reserves the right to waive the advance requirement notice when it is in the best interest of public health and safety.

Connecticut states that "the Commissioner of ConnDOT has stated that 'permit applications can be received by telphone or by telecopier and as a rule approval of an application takes two (2) hours. The permit can be sent to the applicant via telecopier in order to expedite the process.' " Appellant's Brief at p 9, quoting the Affidavit of J. William Burns dated October 31, 1986. Therefore, Connecticut argues, "it is difficult, if not impossible, to see how an average two (2) hour permit application processing time can constitute an 'unreasonable delay.' " Appellant's Brief at p. 9.

Connecticut also stated in its appeal that:

> Significantly, no trucking firm or other organization involved in the actual transportation of radioactive material filed any response to CANT's application [July 16, 1986] challenging the Connecticut regulatory scheme—no negative comments were submitted to the RSPA. In short, the organizations directly affected by the challenged regulatory scheme did not intervene to support CANT's challenge.

Comments on an application for an inconsistency ruling are not necessary for a determination by OHMT; the presence or absense of comments does not dictate the result. However, in response to Connecticut's appeal, three organizations, in addition to CANT, submitted comments.

C. Other Comments

The Hazardous Waste Treatment Council is an association comprised of more than 65 commercial firms engaged in the treatment and transportation of hazardous substances and wastes. The Council stated that several of its member companies engage in the interstate transportation of radioactive materials and therefore stand to be directly affected by Connecticut's regulatory scheme. The Council, commenting in support of IR–21, noted that the basis for IR–21 is not speculative and that IR–21 properly reflects Congressional intent that the HMTA and the HMR provide a uniform national standard for hazardous materials transportation. The Council further commented that State requirements, such as Connecticut's delay hazardous materials shipments, disrupt the orderly movement of these materials, and are at odds with a transportation system that ensures the highest level of safety on a nationwide basis.

The Council took particular issue with Connecticut's argument that IR–21 was not supported by sufficient evidence in the record that the State's permitting system would unreasonably burden hazardous materials transportation:

> With regard to Connecticut's specific complaints about the sufficiency of the evidence, it is difficult to determine what type of evidence the State contemplates. To satisfy Connecticut, the evidence would have to conclusively demonstrate that the State's scheme is a burdensome obstacle to shipments of radioactive materials. But, the effect of such regulations on hazardous materials shippers and carriers may not be readily ascertainable. In the aggregate, factors such as numerous delays, redundant certification and information requirements and simply the task of monitoring the requirements of multiple jurisdictions in which a firm operates combine to impose a substantial and costly burden on such a firm. Connecticut takes no account of such effects of its statute.

The Council also argued that Connecticut presents inadequate evidence to support its position (e.g., the affidavit of the Commissioner of ConnDOT) "that its regulations do not unnecessarily delay shipments and that permit applications are processed 'as a rule' in a few hours." The Council stated, "this vague statement both fails to establish the range of delays a carrier may face under Connecticut's rules and wrongly assumes that *any* unnecessary delay or uncertainty in the progress of hazardous materials is acceptable."

Northeast Utilities (NU) is a registered public utility holding company whose subsidiaries supply electric and natural gas service to customers in Connecticut, are responsible for the operation of four nuclear power plants in Connecticut, and engage in the shipment of radioactive materials which are and will be subject to the Connecticut permitting system. NU commented that:

> the Connecticut regulations have been fairly applied and that most applications for a permit are procesed promptly. Further, the Connecticut Department of Transportation has granted appropriate relief when warranted by extraordinary circumstances. It is for this reason that NU chose not to comment in the inconsistency proceeding now being appealed by the State of Connecticut.

Nonetheless, NU believes that it is appropriate to comment on Connecticut's appeal for several reasons. First, NU agrees with DOT's analysis and decision in IR–21 that the Connecticut regulatory scheme creates an HMTA and the [HMR]. The Connecticut regulatory regime has the propensity to cause delay, could cause confusion and undermine compliance with the HMR, creates additional administrative burdens, and intrudes on areas within DOT's exclusive jurisdiction under the HMTA and HMR. Second, although the Connecticut statute and regulations have been applied fairly in the past so as to minimize excessive burdens on shippers and carriers, they have imposed additional burdens and the possibility nevertheless exists that this regulatory regime could be implemented in the future so as to cause more significant burden and delay.

NU points out that the basis of Connecticut's appeal is that there has been no evidence in the record of a dual compliance problem or actual obstacle, but that:

> what Connecticut overlooks is that DOT has already found that actual evidence of diversion and delay is not required under the HMTA as a basis for finding that a state or local governmental requirement is inconsistent under the "obstacle test". See, e.g., IR–21, 52 Fed. Reg. at 37074; IR–22, 52

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Fed. Reg. at 46583; IR-3, 46 Fed. Reg. at 18921; IR-2, 44 Fed. Reg. at 75571 . . . For DOT to blind itself to the potential for diversion and delay would not be consistent with its responsibilities under the HMTA.

NU also commented tht Connecticut does not seem to understand that sanctioning the Connecticut regulatory scheme would unfairly shift the burden of radioactive materials transportation from one jurisdiction to another, even though Connecticut itself pointed that out in its pleadings in the pending lawsuit regarding the validity of DOT's denial of New York City's request for a waiver of preemption. Further, NU commented that Connecticut's time of transport restrictions and additional permit information requiremer.ts unduly impede the transportation of radioactive matgerials. Finally, UN pointed out that:

> if every state were to adopt a similar regulatory regime, there would be no question that delays would result and that the uniform regulatory system intended by Congress, when it enacted the HMTA as a means of promoting transportation safety, would be thwarted to the detriment of the public interest.

Nuclear Metals, Inc. is a large volume generator of low-level radioactive waste shipments, the majority of which transit the State of Connecticut. Nuclear Metals commented that Connecticut's time of travel restrictions have resulted in delays and even routing changes to avoid travel through the state. Nuclear Metals added that these effects are contrary to the safe handling of radioactive wastes and urged that IR-21 be sustained against Connecticut's appeal.

CANT commented that IR-21 should be affirmed, and noted that Connecticut's argument that its regulatory scheme should not have been found inconsistent because it is administered in a consistent fashion really constitutes a tacit admission that its scheme is in fact inconsistent.

I have fully considered all of the comments submitted, as summarized above, and agree that IR-21 should be affirmed.

D. Decision

Connecticut argues that its two-hour permit processing time does not constitute an unreasonable delay. IR-21 found this provision to be inconsistent with the HMTA and the HMR for several reasons. First, a similar two-hour advance notice requirement with no stated purpose was found inconsistent in IR-20, 52 FR 24396 (June 30, 1987). As in IR-20, there is no evidence in the record that the Connecticut notice requirement serves any specific purpose. Furthermore, Connecticut's requirement applies statewide while the one at issue in IR-20 applied only to certain bridges and tunnels under the jurisdiction of the Triborough Bridge and Tunnel Authority.

Second, IR-21 found that the prohibition on applications more than one working day in advance of each scheduled shipment, combined with the statutory provision for three or more days to act on the application, tends to ensure delays in hazardous materials transportation. As stated in IR-21, "the Connecticut statute at issue here provides three working days for a decision and further allows additional time if the Commission determines it is required to evaluate the application. Unnecessary delay is inherent in such a provision; therefore, it is inconsistent with the HMTA and the HMR." 52 FR 37075.

The HMR at 49 CFR 177.853 provide that "all shipments of hazardous materials shall be transported *without unnecessary delay*, from and including the time of commencement of the loading of the cargo until its final discharge at destination" (emphasis added). Connecticut's permit processing provision fails the 'dual compliance' test and therefore is inconsistent with the HMTA and the HMR. As the Hazardous Waste Treatment Council commented, Connecticut's statement that permit applications are, as a rule, processed in a few hours, "both fails to establish the range of delays a carrier may face under Connecticut's rules and wrongly assumes that any unnecessary delay or uncertainty in the progress of hazardous materials is acceptable."

Moreover, Connecticut's assertion that actual, rather than potential, conflict must exist before a determination of inconsistency may be made is inaccurate. The Director of OHMT has consistently found that "the mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns." IR-3, 46 FR 18921 (quoted in IR-20, supra). Northeast Utilities supported this conclusion; it noted that, although the Connecticut system had been fairly applied in the past, it nevertheless has imposed additional burdens and the possibility exists that the system could be implemented in the future so as to cause more significant burden and delay.

The Director, OHMT, also determined that because Connecticut's permit processing provision is inextricably linked to its inconsistent statutory permitting requirements it also is inconsistent with the HMTA and the HMR. IR-21 found that although hazardous materials transportation permits are not inconsistent *per se*, the field of radioactive materials transportation safety is unique:

> Because the HMTA and the HMR have almost completely occupied the field of radioactive materials transportation safety, state and local transportation requirements relating thereto are limited to: (1) Traffic control or restrictions applying to all traffic, (2) designation of alternatives preferred routes under 49 CFR 177.825(b), (3) adoption of Federal or consistent requirements or those for which preemption has been waived, (4) enforcement of the requirements described in (3), and (5) imposition of transit fees to finance the enforcement described in (4) as well as emergency response.

52 FR 37074. In light of the virtually total occupation of the field of radioactive materials transportation, shipments of radioactive materials are presumptively safe based on their compliance with Federal regulations. Therefore, state or local provisions, like Connecticut's, requiring approval or authorizing conditions to be established (other than compliance with the Federal regulations) constitute an obstacle to the accomplishment of the HMTA and the HMR.

Therefore, I affirm the finding in IR-21 that the Connecticut permitting system is inconsistent with the HMTA and the HMR.

IV. Conclusion

For the reasons indicated above and for the reasons set forth in IR-21 itself, I affirm the determination by the Director of the Office of Hazardous Materials Transportation in IR-21 that Connecticut General Statutes sections 16a-106 (a) and (b) and Connecticut Regulations sections 19-409(d)-51, 53, 54 and 55 are inconsistent with the HMTA and the HMR and, therefore, are preempted under 49 App. U.S.C. 1811(a).

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on November 10, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88-26651 Filed 11-17-88; 8:45 am]

BILLING CODE 4910-60-M

Maritime Administration

[Docket S-837]

Waterman Steamship Corp.; Notice of Amended Application To Provide Trade Route 18/17 Service

Waterman Steamship Corporation (Waterman), by letter dated November 14, 1988, has requested an amendment to the **Federal Register** Notice dated November 7, 1988 (53 FR 44973) to delete the word "bareboat" with regard to the C9-S-81d LASH type and vessel named GREEN VALLEY.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies.)

By Order of the Maritime Subsidy Board.

Date: November 17, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-26913 Filed 11-17-88; 11:12 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 15, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: Focus Group Interviews With Taxpayers on IRS Notice Clarity
Description: The group interviews are necessary to obtain taxpayer input on the clarity of selected IRS notices. The results will be used to develop: (1) Alternative versions of the notices tested and (2) standards to assist IRS personnel responsible for the development of notices. Affected public is 300 participants (100 for Part I; 200 for optional Part II).
Respondents: Individuals or households
Estimated Number of Respondents: 300
Estimated Burden Hours Per Response: 2 hours
Frequency of Response: One-time group interviews
Estimated Total Reporting Burden: 600 hours
OMB Number: 1545-0416
Form Number: 5302
Type of Review: Revision
Title: Employee Census
Description: This form is used in conjunction with Forms 5300, 5301, and 5307 when applying to IRS for a determination letter stating the pension or profit-sharing plan of the employer meets the requirements of section 401(a) of the Internal Revenue Code. The data submitted allows the IRS to determine that the plan does not discriminate in favor of the prohibited group.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 52,000
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 10 hours 31 minutes
Learning about the law or the form, 42 minutes
Preparing and sending the form to IRS, 54 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 629,720 hours
OMB Number: 1545-0725
Form Number: 928
Type of Review: Revision
Title: Fuel Bond
Description: Certain sellers of gasoline and diesel fuel may be required under section 4101 to post bond before they incur liability for gasoline and diesel fuel excise taxes imposed by sections 4081 and 4091. This form is used by taxpayers to give bond and provide other information required by Regulations section 48.4101-1.
Respondents: Individuals or households, Business or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 500
Estimated Burden Hours Per Response:
Recordkeeping, 4 hours 32 minutes
Learning about the law or the form, 1 hour 4 minutes
Preparing the form, 2 hours 7 minutes
Copying, assembling, and sending the form to IRS, 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 3,995 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget Rooim 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26741 Filed 11-17-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 15, 1988.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1073
Form Number: 8801
Type of Review: Resubmission
Title: Credit for Prior Year Minimum Tax
Description: Form 8801 is used by individuals, estates, trusts, and corporations to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year to be carried forward for use in a future year.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 100,000
Estimated Burden Hours Per Response:
Recordkeeping, 1 hour 33 minutes
Learning about the law of the form, 1 hour 3 minutes
Preparing the form, 1 hour
Copying, assembling, and sending the form to IRS, 17 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 389,000 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and

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Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26742 Filed 11-17-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 15, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0019

Form Number: FMS-1133

Type of Review: Extension

Title: Claim Against the United States for the Proceeds of a Government Check

Description: If a payee claims non-receipt of a Treasury check, the FMS-1133 claim form and a copy of the negotiated check are sent to the payee. If the payee wishes to claim forgery, he or she answers questions on the form, signs and returns it to the Adjudication Division. Claims examiners review the claim to determine final action on the case.

Respondents: Individuals or households

Estimated Number of Respondents: 220,853

Estimated Burden Hours Per Response: 10 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 36,882 hours

Clearance Officer: Rita Franklin, (301) 436-5300, Programs Section, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782

OMB Reviewer: Milo Sunderhauf, (201) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26743 Filed 11-17-88; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on December 7 and 8, 1988. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue NW., Washington, DC. The meeting will begin at 8:00 a.m. on Wednesday, December 7 and 8:00 a.m. on Thursday, December 8, 1988. This will be the last meeting of the 1988 Commissioner's Advisory Group. The agenda will include the following topics:

Wednesday, December 7, 1988

Tax System Redesign (TSR) Initiatives/
State Coordination
Information Reporting
Penalties
Relationships with Practitioners

Thursday, December 8, 1988

Regulations Process
General Discussion.

Note.—Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

Because of limited time, three other topics are expected to be covered only through briefing papers. They are: Taxpayer Compliance Measurement Program (TCMP), Administrative Appeals Process, and Compliance Strategies. If time becomes available, some of these topics may be discussed at the meeting, although that is considered to be unlikely at this point.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner no later than November 30, 1988. Mr. Hilgen may be reach on (202) 566-4143 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, 1111 Constitution Avenue NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, (202) 566-4143 (Not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88-26747 Filed 11-17-88; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s);l (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 8, 1988.

By direction of the Administrator.

Frank E. Lalley, Director,

Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits
2. Application for Accrued Amounts of Veteran's Benefits Payable to Widow, Child or Dependent Parents
3. VA Form 21-614
4. The form is used by a dependent, who has not filed for death benefits, to file a claim fort accrued benefits available at the time of the veteran's death. This form is required to determined the appropriate claimant or class of claimant eligible for accrued benefits
5. On occasion
6. Individuals or households
7. 10,200 responses
8. 5,100 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Federal Fiduciary's Account
3. VA Form 27-4706b
4. The form is used by all Federal fiduciaries who are required to account to the VA for benefits paid to them on behalf of a beneficiary rated incompetent or under legal disability.
5. On occasion: Annually; Biennially; Triennially
6. Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
7. 6,700 responses.
8. 3,350 hours
9. Not applicable.

[FR Doc. 88-26690 Filed 11-17-88; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Veterans' Advisory Committee on Rehabilitation has been renewed for a two year period beginning November 3, 1988, through November 3, 1990.

Dated: November 3, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-26691 Filed 11-17-88; 8:45 am]

BILLING CODE 8320-01-M

Medical Care Reimbursement Rates for Fiscal Year 1989

AGENCY: Veterans Administration.

ACTION: Notice.

In accordance with provisions of OMB Circular A-11 section 13.5(a), revised reimbursement rates have been established by the Veterans Administration for inpatient and outpatient medical care furnished to beneficiaries of other Federal agencies during Fiscal Year 1989. These rates will be charged for such medical care provided at health care facilities under the direct jurisdiction of the Administrator on and after December 1, 1988.

Medical	$424
Surgery	$602
Spinal Cord Injury	$470
Blind Rehabilitation	$480
Neurology	$372
Rehabilitation Medicine	$327
General Psychiatry	$201
Intermediate Medicine	$183
Nursing Home Care	$139
Alcohol—Drug	$185
Prescription—Refill	$14
Outpatient [1]	$86
Dental Outpatient	$61

[1] Rate includes dialysis treatment.

Prescription refill charges in lieu of the outpatient visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. These charges apply if the patient receives the prescription refills in person or by mail.

When medical services for beneficiaries of other Federal agencies are obtained by the Veterans Administration from private sources, the charges to the other Federal agencies will be the actual amounts paid by the Veterans Administration for such medical services.

Inpatient charges to other Federal agencies will be at the current interagency per diem rate for the type of bed section or discrete treatment unit providing the care.

Dated: November 9, 1988.

Thomas K. Turnage,

Administrator.

[FR Doc. 88-26693 Filed 11-17-88; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Amendment of System Notice

Notice is hereby given that the Veterans Administration (VA) is amending a system of records entitled, "Veterans Appellate Records System—VA" (44VA01). The current version appears on pages 785 and 786 of the **Federal Register** publication, "Privacy Act Issuances", 1986 Compilation, Volume V. The system is being amended to update the existing notice by including the Board of Veterans Appeals (BVA) computer tracking system of claims folders and briefaces which is called "Veterans Appeals Control and Locator System" (VACOLS), the computer system used for indexing of BVA decisions, and a microfiche table which contains the veteran's file number. A briefface is a folder which contains certain information about the pending BVA decision on its cover, and the contents of the briefface contains a copy of any previous BVA decisions, a copy of the hearing transcript if one exists, and a copy of BVA correspondence.

The locator table is only available to BVA employees who must locate a claims folder for correction of the BVA decision or BVA index. The authorized employee uses this table to obtain the locator number (citation) of the redacted decision.

In the 1986 **Federal Register** notice, the appeal record card was identified. This has now been replaced by VACOLS. This computer tracking system of claims folders and briefaces is retrievable by veteran's name or file number. The veteran's record on VACOLS is kept for two years after the BVA decision has been dispatched, except for the VACOLS history file which is kept indefinitely. VACOLS informs the authorized BVA employee of the appellant's full name and the veteran's file number, the regional office having original jurisdiction, representation, period(s) of service, record indicator, special handling, specific medical opinions, the present and past locations of the claims folder and briefface, the data of the decision, the disposition, and the total number of issues. VACOLS also generates administrative reports used by the Board. Some of those reports are distributed to the service organizations but do not contain personal identifiers.

The "Index Card for Dangerous Persons" is being deleted from the system of records since the card is no longer in use and has not been for some years. In lieu of this card, a flash is placed in the briefface and the claims folder. The correspondence file is also deleted from the system since this is not retrievable by personal identifiers but is solely retrievable by date of dispatch and is kept for a period of six months.

Appellate Index and Retrieval Staff (AIRS) also uses a computer system to index all BVA decisions in order to comply with the Freedom of Information Act, 5 U.S.C. 552. The veteran's file number is a data element and an authorized BVA employee can retrieve information by that number. One would only use this file number, a personal identifier, if the decision control number is incorrect, and then that control number would be corrected. Having the ability to retrieve the information by file number is used for editorial purposes and for reports. This system generates reports concerning BVA attorneys' and paralegals' productivity, and, consequently, it is used administratively.

AIRS also has a microfiche table which consists of three series of

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numbers: The veteran's file number, decision control number, and the locator number. It is possible to use this table to locate a redacted decision by claim number. No one outside of the BVA uses this table.

The BVA is able to produce the BVA Decision Index and the AIRS Locator Table with the assistance of a contractor, Promisel & Korn, Inc., located in Bethesda, MD. The contractor maintains a backup copy of these two items and secures them under lock and key. Their building is also secured.

The affected sections include System Location, Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, Storage, Safeguards, Retention and Disposal, and Records Access Procedures.

These changes are administrative in nature; therefore, no public comment is required.

Approved: November 9, 1988.

Thomas K. Turnage,

Administrator.

The system identified as 44VA01, "Veterans Appellate Records System—VA "The current version appears on pages 785 and 786 of the **Federal Register** publication, "Privacy Act Issuances", 1986 Compilation, Volume V, the system is amended by revising the entries shown below:

44VA01

SYSTEM NAME:

Veterans Appellate Records System.

SYSTEM LOCATION:

Board of Veterans Appeals, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC, 20420, and its contractor, Promisel & Korn, Inc., 4720 Montgomery Lane, Suite 900, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans, claimants and their representatives, Members of Congress, witnesses, Board members, staff attorneys, and staff paralegals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Appeal Decision Jacket, copy of Board of Veterans Appeals decision, verbatim recording of hearings, computerized claims folder and briefface locator tracking system, microfiche decision locator table, computerized decision index, and employee productivity information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 4001(a), 4003; 5 U.S.C. 552.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in filing folders, rotary index file, filing cabinets, microfiche, computer disc, and computer tape.

* * * * *

SAFEGUARDS:

Files are under custody of designated employees with access only to employees of Board of Veterans Appeals and its contractor who needs to know. Files kept by the contractor are in a locked safe in locked rooms in a secured building. Personal identifiers are removed within a week of receipt.

RETENTION AND DISPOSAL:

Records are retained in accordance with records retention standards approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules. Records are destroyed by shredding, burning, or by erasing the magnetic media. Automated storage media is retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

* * * * *

RECORD ACCESS PROCEDURES:

Information and/or assistance as to access to Board of Veterans Appeals records or as to contesting the content of such records may be obtained by contacting the Freedom of Information Act Officer (01C1), Board of Veterans Appeals, Veterans Administration, 810 Vermont Avenue, Washington, DC 20420, or by telephoning (202)233–3365.

* * * * *

FR Doc. 88–26694 Filed 11–17–88; 8:45 am]

BILING CODE 8320–01–M

VETERANS' ADMINISTRATION

Performance Review Board Members

AGENCY: Veterans' Administration.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Veterans' Administration's Performance Review Boards which was published in the **Federal Register** (52 FR 46146, dated December 4, 1987).

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: K. Joyce Edwards, Office of Personnel and Labor Relations (05A3), Veterans' Administration, 810 Vermont Avenue NW., WAshington, DC 20420, (202) 233–3423.

The VA's Performance Review Boards (PRBs) will be chaired by the following individuals:

Chairperson, VA PRB

Thomas E. Harvey, Deputy Administrator

Chairperson, Department of Medicine and Surgery PRB

Arthur J. Lewis, M.D., Deputy Chief Medical Director

Chairperson, Department of Veterans Benefits PRB

Harold F. Gracey, Executive Assistant to the Chief Benefits Director

Chairperson, Office of Inspector General PRB

James H. Curry, Assistant Inspector General for Audit Policy and Oversight, Department of Defense

The membership of the VA's four Performance Review Boards will be selected from the aforementioned Chairpersons and the following individuals:

Raymond H. Avent, Deputy Chief Benefits Director for Field Operations
Raymond S. Blunt, Director, Office of Program Analysis and Evaulation
James B. Durnil, Deputy Inspector General, Agency for International Development
Kenneth E. Eaton, Chairman, Board of Veterans Appeals
Wilfred L. Ebel, Chief Memorial Affairs Director
Sidney M. Ford, Regional Director, Midwestern Region
John A. Gronvall, M.D., Chief Medical Director
Gerald K. Hinch, Director, Office of Equal Opportunity
Conrad R. Hoffman, Director, Office of Budget and Finance (Controller)
Grady W. Horton, Deputy Chief Benefits Director for Program Management
Donald L. Ivers, General Counsel
Frank E. Lalley, Director, Office of Information Management and Statistics
Joan E. Lamb, Associate Deputy Administrator for Public Affairs
John J. Lee, Regional Director, Mid-Atlantic Region
Robert E. Lindsey, Jr., Regional Director, Western Region
Susan Livingstone, Associate Deputy Administrator for Logistics
Rhoda R. Mancher, Deputy Chief Benefits Director for ADP Systems Management
Gerald S. Martin, Administrator's Representative
Richard P. Miller, Regional Director, Southwestern Region
Renald P. Morani, Deputy Inspector General
Gerald E. Neumann, Director, Office of Facilities

Alonzo M. Poteet III, Associate Deputy Administrator for Congressional and Intergovernmental Affairs
Robert R. Rhyne, D.D.S., Assistant Chief Medical Director for Dentistry
Michael Rudd, Director, Office of Personnel and Labor Relations
H. Robert Saldivar, Director, Office of Acquisition and Materiel Management
Richard G. Thomas, Executive Assistant to the Chief Medical Director
Robert W. Schultz, Deputy Associate Deputy Administrator for Logistics
Donal B. Thompson, Regional Director, Southeastern Region
John Vogel, Chief Benefits Director
Albert B. Washko, Regional Director, Northeastern Region
Daniel H. Winship, M.D., Associate Deputy Chief Medical Director
Charles V. Yarbrough, Director, Management Support Office
Albert Zamberlan, Regional Director, Great Lakes Region.

Dated: November 9, 1988.

Thomas K. Turnage,

Administrator.

[FR Doc. 88–26692 Filed 11–17–88; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 53, No. 223
Friday, November 18, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 23, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1989 Federal Reserve Board budget.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: November 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26842 Filed 11–16–88; 3:40 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, November 23, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: November 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26843 Filed 11–16–88; 3:40 pm]

BILLING CODE 6210–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 21, 1988.

A closed meeting will be held on Wednesday, November 23, 1988, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 23, 1988, at 10:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Amend administrative proceeding of an enforcement nature. Opinions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272–2300.

Jonathan G. Katz,

Secretary.

November 14, 1988.

[FR Doc. 88–26756 Filed 11–15–88; 4:27 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 53, No. 223
Friday, November 18, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

7 CFR PART 1c

DEPARTMENT OF ENERGY

10 CFR PART 745

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1230

DEPARTMENT OF COMMERCE

15 CFR PART 27

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR PART 1028

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR PART 225

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PART 60

DEPARTMENT OF JUSTICE

28 CFR PART 46

DEPARTMENT OF DEFENSE

32 CFR PART 219

DEPARTMENT OF EDUCATION

34 CFR PART 97

VETERANS ADMINISTRATION

38 CFR PART 16

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 26

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PART 46

NATIONAL SCIENCE FOUNDATION

45 CFR PART 690

DEPARTMENT OF TRANSPORTATION

49 CFR PART 11

Federal Policy for the Protection of Human Subjects

Correction

In proposed rule document 88-25552 beginning on page 45661 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45661, in the first column, in the heading to the document, the CFR citation for the Department of Agriculture and the title for the Veterans Administration should read as set forth above.

2. On the same page, in the second column, in the third line, "Veterans' " should read "Veterans".

3. On the same page, in the third column, in the first complete paragraph, in the 18th line, "Veterans' " should read "Veterans".

4. On page 45665, in the first column, in the second complete paragraph, in the seventh line, "accepted" was misspelled.

5. On the same page, in the second column, in the sixth line, "mischievous" was misspelled.

6. On page 45669, in the first column, below "**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**", and above the CFR cite, add "Agency for International Development".

7. On page 45676, in the third column, in the first complete paragraph, in the first line, "reasonably" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80990-8227]

Shrimp Fishery of the Gulf of Mexico

Correction

In rule document 88-25917 beginning on page 45270 in the issue of Wednesday, November 9, 1988, make the following correction:

§ 658.22 [Corrected]

On page 45272, in the first column, in the last line, in § 658.22(b), "24˚46 7'N. latitude," should read "24˚46.7'N. latitude,".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS-82032A; FRL-3466-5]

EDTMPA and Its Salts; Submission of Notice of Manufacture or Import

Correction

In rule document 88-24396 beginning on page 41335 in the issue of Friday, October 21, 1988, make the following corrections:

1. On page 41336, in the first column, in the table, under "Chemical name", in the 2nd, 3rd, 4th, 5th, 7th, 9th, 11th, 13th, 14th, 16th, 17th, 19th, and 21st entries, in the first line of each entry, "ethanediby" should read "ethanediyl".

2. On the same page, in the same column, in the table, under "Chemical name", in the eighth entry, in the fourth line, "O''''']" should read "O''''']-".

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84027; FRL-3292-4]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

Correction

In rule document 87-26555 beginning on page 44826 in the issue of Friday, November 20, 1987, make the following correction:

§ 716.35 [Corrected]

On page 44828, in the third column, in the heading of § 716.35, "copies" should read "lists".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 56

[Docket No. 87N-0032]

Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations

Correction

In proposed rule document 88-25553 beginning on page 45678 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45679, in the second column, in paragraph 3., in the ninth line, "Departmen tof Agriculture" should read "Department of Agriculture"

2. On page 45680, in the first column, in the fourth complete paragraph, in the seventh line, "member ship" should read "membership".

BILLING CODE 1505-01-D

federal register

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Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 15

Requirements for Approval of Explosives and Sheathed Explosive Units; Final Rule

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 15

Requirements for Approval of Explosives and Sheathed Explosive Units

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final Rule.

SUMMARY: This rule revises the Mine Safety and Health Administration's (MSHA) existing regulations for approval of explosives and adds new requirements for approval of sheathed explosive units. The revisions upgrade existing provisions consistent with current technology, eliminate duplicative and unnecessary provisions, reorganize the existing requirements, and provide alternative methods of compliance where possible.

EFFECTIVE DATES: This final rule is effective January 17, 1989. However, those manufacturers proceeding under the provisions of the previous rule may file requests for approval or extension of approval of explosives under that rule until November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Room 613, Arlington, Virginia 22203, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

MSHA is revising the existing requirements for approval of explosives and adding new requirements for approval of sheathed explosive units. These revisions are issued pursuant to section 508 of the Federal Mine Safety and Health Act of 1977.

On July 9, 1982, MSHA published an Advance Notice of proposed Rulemaking (ANPRM) in the **Federal Register** (47 FR 30025) which announced a comprehensive review of the underground coal mining standards in 30 CFR Part 75 and solicited public comments. As part of the review, MSHA specifically sought comment on blasting and explosives standards and related approval regulations.

On June 5, 1984, MSHA published a notice in the **Federal Register** (49 FR 23281) which announced the availability of its preproposal draft of revisions to the approval requirements for explosives, sheathed explosive units, and related blasting equipment, and scheduled a public conference. The public conference was held July 11, 1984, in Pittsburgh, Pennsylvania and was well attended by representatives of the mining community. MSHA received written comments regarding its preproposal draft from affected manufacturers and other segments of the mining community.

After reviewing the comments received in response to the preproposal draft, MSHA published a proposed rule on November 12, 1986, in the **Federal Register** (51 FR 41046). The proposal set out revisions to the existing regulations for approval of explosives in Part 15 and added new requirements for approval of sheathed explosive units.

On March 26, 1987 (52 FR 9670), MSHA published a notice of public hearing which outlined the major issues raised during the comment period. A public hearing was held April 22, 1987 in Bruceton, Pennsylvania during which further comment on the proposal was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearings, interested persons were allowed to submit supplementary statements and data until the record closed on May 15, 1987.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and at the public hearing. Comments were received from all segments of the mining community including explosive manufacturers, trade associations and representatives of miners. This final rule was developed after a full evaluation of the entire public record.

The Agency's final rule addresses the comments received and is consistent with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

II. Discussion and Summary of the Final Rule

The use of explosive in underground coal mines and certain underground metal and nonmetal gassy mines continues to present a potentially serious risk of injuries and death to miners. One major hazard associated with the use of explosives is the accidental ignition of mine gases and coal dust.

The use of explosives approved as permissible reduce the potential for igniting flammable mixtures of methane gas or coal dust that may be present in areas where blasting is performed. The flames produced by the detonation of approved explosives are significantly shorter in duration and length than black blasting powder or nonapproved dynamites which were primarily used in blasting operations before approved explosives were required for use undergound.

MSHA's existing regulations governing the approval of explosives have not been revised since 1961. Since that time, technological advances have led to the development of new types of explosives suitable for use in underground mines. Analytical techniques used by the Bureau of Mines in testing and evaluating explosives for MSHA have advanced comparably. This final rule updates the existing regulations to reflect this state-of-the-art technology and deletes obsolete provisions.

The final rule establishes three subparts in this Part 15. Subpart A contains general approval procedures and requirements that are applicable to all subparts. Subpart B revises the technical requirements for the testing and evaluation of explosives and Subpart C establishes new technical requirements for the approval of sheathed explosive units or other units to be fired outside the confines of a borehole.

Subpart B contains a new gallery test which provides for evaluation of explosives under conditions that are more representative of actual conditions in underground mines. Other provisions revise the existing requirements for toxic gases that are produced by detonation of explosives and establish a new method for calculating the equivalent volume of various gases relative to carbon monoxide. This is based on the threshold limit values, time weighted average (TLV–TWA) included for these gases in the chemical substances section of the publication of the American Conference of Governmental Industrial Hygienists (ACGIH) entitled "TLV's, Threshold Limit Values and Biological Exposure Indices for 1988–1989 ('TLV Booklet')."

The provisions in Subpart C are new and establish requirements for the approval of sheathed explosive units or other units to be fired outside the confines of a borehole. The sheathed unit, intended for use without being confined in a borehole, is designed so that it will not ignite a flammable mixture of methane and/or coal dust when fired. It has been developed for use in dislodging loose roof slabs and overhangs, rockfall leveling, slab or boulder breaking and in other situations where the unconfined application of explosives is appropriate to improve mine conditions.

In the preamble to the proposed rule for Part 15, MSHA referenced its rulemaking on 30 CFR Part 7. There, the Agency proposed that for approval of certain products the applicant or a third party selected by the applicant would conduct the required testing according to test procedures set forth by the Agency and require certification of test results by the applicant. MSHA specifically solicited comments as to whether the Agency should continue testing for approval of explosives and sheathed explosive units or if the testing under Part 15 might more appropriately be conducted by applicants or third parties and, therefore, included as a subpart under Part 7. The Agency was especially interested in information concerning the industry's capability with regard to facilities for conducting the required tests for approval of explosives and sheathed explosive units. In responding to this issue commenters stated that explosives and sheathed explosive units should not be included as products under Part 7. They believed that the concept of applicant or third-party testing would not be feasible in the explosives industry at this time since no manufacturer or third-party test facility had the capability to perform all the required tests. Therefore, as recommended by commenters, the final rule provides for continued Agency testing of products addressed by Part 15.

The final rule deletes existing § 15.24 concerning miscellaneous tests as those tests were used for research purposes and were not approval related. It also deletes the existing provisions in Part 15 which describe the blasting practices that must be followed in underground coal mines. These provisions are addressed in revisions to the safety standards in 30 CFR Part 75 which are being published simultaneously with this final rule.

The term "permissible" which is used in the existing standards was replaced in the proposal with the term "approved." Commenters objected to the change. They stated that the term "permissible" has been used for over 75 years and is well recognized throughout the mining industry. MSHA continues to believe that the terminology used to identify products which have been examined by the Agency to determine conformity with regulatory requirements must be standardized. The term which most appropriately reflects MSHA's action in this area is "approved." Therefore, the phrase "approved explosive" will be used in revised Part 15 in lieu of "permissible explosive." However, since explosives approved as permissible under the Part 15 regulations in effect prior to the effective date of this rule may continue to be manufactured and used in underground mines requiring approved explosives, the safety standard in Part 75 will define the term "permissible explosive" as one approved by MSHA. Further, a definition of "approval" consistent with the definition of this term in this part is added to Subpart N of Part 75.

Tests and evaluations made under this part will be performed for MSHA by the Bureau of Mines, U.S. Department of the Interior (Bureau). The Bureau testing facility is located near Pittsburgh, Pennsylvania.

III. Discussion of the Subparts

The following section-by-section analysis discusses each provision of the subparts of the final rule and addresses the comments received on the proposal.

Subpart A—General Provisions

Section 15.1 Purpose and effective dates.

This provision, derived from existing § 15.1, revises and simplifies the statement of purpose and more accurately reflects the scope of Part 15. It clarifies that the requirements set forth in the final rule are for approval of explosives and sheathed explosives units for use in underground coal mines and certain underground metal and nonmetal gassy mines. It also specifies the effective date applicable to the explosives and sheathed explosive units program. MSHA realizes that applicants need a phase-in or transition period when changing from previous to new revised approval regulations for products and two approaches for handling the transition were delineated in the proposal. The Agency proposed a delay of one year after publication of the final rule for the explosives approval requirements in Subpart B to take effect. However, Subpart A containing general provisions and Subpart C setting approval requirements for sheathed explosive units were to be effective 30 days after publication of the final rule so sheathed units could be made available for use in underground mines as quickly as possible. Alternatively, MSHA indicated it was considering making all subparts of the regulation, including the new revised explosives requirements in Subpart B, take effect 30 days after publication of the final rule. However, manufacturers with explosives applications in process could file requests for approval or extension of approval under the previous regulations until one year after the effective date of the new regulations. During this one-year phase-in period, applicants could submit an approval request for explosives under either the previous regulation or the new revised regulation.

The comments received on this question generally favored the second approach. Commenters stated that it provided manufacturers with greater flexibility since they could complete applications currently in process under the previous regulation while at the same time planning compliance with or even submitting applications under the new regulations immediately. In addition, they favored this approach since it followed the transition procedure set forth in MSHA's Part 7 regulations.

Consistent with the comments as well as with the approach taken on this issue in Part 7, the final rule provides that all subparts of the revised Part 15 regulation take effect 60 days after publication. It also provides that manufacturers proceeding under the provisions of the previous regulation may request approval or extension of approval of explosives under that regulation until one year from the effective date of the revisions. After the one-year period, all applications for approval or extension of approval of explosives or sheathed explosive units will be evaluated under the revised Part 15. The final rule also provides that explosives issued an approval under regulations in place prior to the effective date of these revisions, and in compliance with those regulations, could continue to be manufactured as long as no changes were made. Changes to previously approved explosives must be submitted as new approvals under the revisions to Part 15 set out in this final rule. This provision was added in response to commenters who sought clarification as to how the Agency intended to treat previously approved explosives manufactured in compliance with prior explosives approval regulations. With regard to the question of what standards would be used in auditing these explosives, MSHA will audit explosives based on the technical requirements upon which the approval was issued. Language reflecting this position is incorporated in § 15.10 Post-Approval Product Audit.

Section 15.2 Definitions

The following definitions apply to Part 15 approvals. They are designed to clarify the requirements of Part 15 and respond to the issues identified by commenters.

Applicant. This term, which is derived from the existing standards, identifies the party seeking approval of an explosive or sheathed explosive unit under this part.

Approval. This term replaces the existing phrase "certificate of approval."

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It is used to describe a written document issued by MSHA which states that an explosive or explosive unit meets the requirements of this part and which authorizes the use of an approval marking identifying the explosive or explosive unit as approved as permissible.

Explosive. This definition revises the existing definition to more clearly indicate the type of products for which this part is intended. The existing definition's reference to "blasting devices as defined in Part 17 of this subchapter," has not been included in the final rule since these devices are no longer manufactured or used in underground mines.

Extension of approval. This phrase, which is new, is used to describe a written document issued by MSHA that states that a change to a previously approved explosive or sheathed explosive unit meets the requirements of this part. It is based on existing terminology that is used when changes are made on products approved in accordance with 30 CFR, Parts 18 through 36.

Minimum product firing temperature. This term is new and means the lowest product temperature at which an explosive is approved for use. It was not included in the proposal, but was added to the final rule in response to commenters who sought clarification as to whether firing temperature in the air-gap sensitivity test referred to product temperature or ambient temperature.

Post-approval product audit. This term is new and is used to describe MSHA's examination and testing, or both, of approved explosives or explosive units to determine whether those products meet the technical requirements and have been manufactured as approved. Some commenters stated that it was unclear what was meant by the phrase "to determine whether those products meet the requirements of the approval," used in the proposed definition for post-approval product audit. The final rule revises the proposed definition to clarify that the Agency will conduct such audits to determine whether the products meet the technical requirements in Part 15 and have been manufactured as approved.

Some commenters recommended that the term "audit" be replaced with the term "check." They stated that the word "audit" could be interpreted differently in the future and subject manufacturers to extensive audits. The Agency believes that the term "audit" more accurately describes the process that will be used to determine compliance with these requirements.

Sheath. This term, which is new, is used to describe that portion of a sheathed explosive unit which will be dispersed to form a flame inhibiting cloud upon firing of the explosives contained in the sheathed unit.

Sheathed explosive unit. This term is new and is used to describe an explosive device that can be fired without being confined in a borehole. It is designed so that it will not ignite a flammable mixture of methane or coal dust when fired.

Test detonator. This term has a new definition which identifies the types of detonators that will be used to test explosives submitted for approval under this part The existing definition which specifies that these detonators contain a base charge of 0.25±0.02 gram of pentaerythritol tetranitrate (PETN) is replaced since this strength detonator is no longer being manufactured for commercial use.

Several commenters recommended that a "test detonator" be defined as an "instantaneous electric detonator with a copper-alloy shell and iron or copper leg wires that is commercially available for use in underground coal mines." They further recommended that a test detonator contain "a base charge of 0.40–0.45 gram of pentaerythritol tetranitrate (PETN) pressed to a specific gravity of 1.4 g/cc and primed with standard weight of primer." These commenters stated that since test detonators are to be used for determining air-gap sensitivity of an explosive, it is imperative that detonators with a standard base charge be specified.

Detonators with a base charge of 0.40–0.45 gram PETN, which is a No. 8 strength detonator, is the minimum strength detonator currently being manufactured in the United States for underground gassy mines. Detonators that have an initiating strength equivalent to that of a detonator with a base charge of 0.40–0.45 gram PETN will be used by the Agency to conduct the appropriate tests under this final rule. Specialized systems using technology other than that identified in this rule will be addressed through the new technology provisions in §§ 15.20(i) and 15.30(g). The safe performance of approved explosives or shethed units can be significantly affected if the proper strength detonator is not used. Therefore, a provision has been added in § 15.7 on approval marking to require the labeling for explosives and sheathed units to state the test detonator strength used in the approval testing. This will assist operators in selecting the proper strength detonator to use with explosives and sheathed explosive units and will also assist approval holders by ensuring that the same strength detonator is used by MSHA for approval and audit testing.

During the course of rulemaking on Part 15, a commenter urged that MSHA develop approval regulations for detonators used in the initiation of approved explosives in underground mines. MSHA, after considering the need to establish approval requirements for detonators, will seek to include an approval schedule for detonators in its regulatory program.

The definitions in the existing regulations for "basic specifications," "poisonous gases," "ingredients," "Bureau," "MESA," and "MSHA" are not included in the final rule because they are commonly known throughout the mining community.

Section 15.3 Observers at tests and evaluations.

This standard is derived from existing § 15.9 and is intended to protect proprietary information which could be available to observers at tests and evaluations conducted under this part.

The final rule provides that only MSHA and Bureau of Mines personnel, representatives of the applicant, and such other persons agreed upon by MSHA and the applicant are permitted to be present during the tests and evaluations conducted under Part 15. In response to comments, § 15.3 specifies that "MSHA and Bureau of Mines personnel" instead of "government personnel" may be present during testing and evaluation. This change reflects MSHA's view that only necessary persons be present when the tests and evaluations are performed. This will minimize the possibility of any inadvertent release of proprietary information.

As was indicated in the proposal, existing § 15.8 which addresses consultation between a prospective applicant and personnel at MSHA's Approval and Certification Center has been deleted in the final rule. A commenter raised concerns as to whether MSHA intends to continue providing appropriate consultation services at no cost to the applicant. Manufacturers may consult with MSHA regarding the test procedures and requirements for explosives and sheathed explosive units prior to submission of an application for approval under Part 15. However, once an application is received for action, costs will be charged pursuant to Part 5, including the time attributable to consultation.

Section 15.4 Application procedures and requirements.

This section, which is derived from existing §§ 15.3 and 15.15, sets forth the procedures and requirements for requesting approval of explosives or sheathed explosive units. It does not contain specific provisions concerning the fees to be charged for approval of explosives and sheathed explosive units. Instead, § 15.4(b) requires that fees calculated pursuant to Part 5, Fees for Testing, Evaluation, and Approval of Mining Products, (52 FR 17506) be submitted with each application for approval or extension of approval.

In a separate rulemaking, MSHA published a new Part 5 (Fees for Testing, Evaluation, and Approval of Mining Products) in the **Federal Register** on May 8, 1987 (52 FR 17506). That final rule revised the Agency's existing system of charging user fees for the testing, evaluation and approval of products manufactured for use in underground mines. Fees for MSHA processing of an application under Part 15 will be subject to an hourly rate charge for evaluation and flat rate charges for tests. On hourly rate actions, applicants will be billed for the fee when processing of the action is completed. The final fee will include, in addition to the hourly rate and flat test rate charges, actual travel and transportation expenses incurred when testing and evaluation requires the investigator to travel to the manufacturing or installation site. The Agency may consider converting to a flat fee schedule, payable with the application, after reviewing its hourly rate data.

MSHA will charge $33 per hour and an application fee of $100 for processing requests for approval or extension of approval for explosives under Subpart B and sheathed units under Subpart C. Flat rate fees for tests are shown in the table below. The test fees for explosives are revised from those listed in the final rule for Part 5 based on the revisions to the approval regulation. Test fees for sheathed units are new rates developed to recover costs of processing and testing. The fee schedule published in May 1987 will apply to applications for approval or extension of approval filed under the previous Part 15 regulations.

Part 15—Fees For Approval of Explosives and Sheathed Explosive Units

APPROVAL OF EXPLOSIVES

Test	Fee
Weigh-in	$420
Physical examination	295
Chemical analysis	1,797
Air Gap: Minimum product firing temperature	418
Air Gap: Room temperature	320
Pendulum friction	148
Detonation rate	320
Gallery Test 7	4,917
Gallery Test 8	3,537
Toxic gases (large chamber)	732

APPROVAL OF SHEATHED EXPLOSIVE UNITS

Test	Fee
Physical examination	$128
Chemical analysis	1,044
Gallery Test 9	1,944
Gallery Test 10	1,944
Gallery Test 11	1,944
Gallery Test 12	1,944
Drop Test	648
Temperature Effects/Detonation	672
Toxic Gases	580

The final rule organizes the application procedures into the three kinds of approval actions an applicant may request under Part 15: an original approval, a subsequent approval of a similar product, and extension of approval. In requesting an original (first time) approval for an explosive or sheathed explosive unit, MSHA will require the submission of all information necessary to evaluate all facets of the explosive or sheathed explosive unit as it relates to the approval requirements. If, after receipt of an original approval, the applicant requests subsequent approval of similar product or an extension of approval for the original product, the applicant will not be required to submit documentation duplicative of previously submitted information. Only information related to changes in the previously approved product will be required, avoiding unnecessary paperwork.

The final rule retains the existing requirement that changes in the specifications of a previously approved explosive or sheathed explosive unit must be approved by MSHA. This will avoid changes being made that could affect the safe performance of the explosive or sheathed explosive unit.

Section 15.4(c) (2) of the final rule requires applicants requesting approval of explosives to include "a laboratory number or other suitable designation identifying the explosive" at the time of application with the brand or trade name provided prior to issuance of approval. This constitutes a change from the proposal which required applicants to submit, at the time of application, the brand or trade name under which the explosive would be marketed if approved. Several commenters objected, however, pointing out that applicants frequently submit several explosive candidates for testing and do not determine the brand or trade name of the candidates until completion of the approval tests. Thus, applicants are no longer required to submit the brand or trade name at the time an application is submitted, but instead can provide it later. However, an approval will not be issued until the brand or trade name has been received by MSHA.

The final rule revises the existing requirement concerning assignment of different brand or trade names for approved explosives which specifies that, when a change in chemical composition is approved, the former composition shall not be used again unless reapproved by MSHA. Under § 15.4(f)(3) MSHA may require that a new or changed explosive or sheathed explosive unit be distinguishable from those associated with the former composition. This change recognizes that methods, other than different brand or trade names, could be used to identify products which perform differently and is based on MSHA's view that reapproval of an explosive or sheathed explosive unit, which otherwise performs safely, is not necessary because of a name change.

The existing requirement that the strength of the exposive be determined by the ballistic mortar test has been deleted in the final rule. MSHA has determined that it is not essential to know the strength of the explosive to determine whether the explosive will perform safely. In addition, of the numerous field samples of approved explosives that have been tested over the last ten years, all were found to be in compliance with the strength requirements. This was true even when the field samples were not in compliance with other specifications of the approval.

Section 15.5 Test samples.

The final rule reviews and updates the provisions of existing §§ 15.5 and 15.6 concerning the shipment, quantity, and quality of explosives and sheathed explosive units to be submitted for testing. The final rule retains, with clarifying changes, provisions from the existing regulations that prohibit

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shipment of samples until notification from MSHA, require storage of samples in a magazine for at least 30 days prior to testing and, establish when test samples not be tested because of their chemical composition or condition. New provisions have been added specifying that explosives will not be tested that use aluminum clips to seal explosive cartridges, contain any combination or perchlorate and aluminum, contain more than 5 percent perchlorate, or contain any perchlorate and less than 5 percent water.

Section 15.5(a) requires the applicant, upon request by MSHA, to submit samples of explosives and sheathed explosive units for testing and evaluation by MSHA. The section also sets forth the quantities of these products to be submitted.

Under § 15.5(a)(2), the applicant is required to submit 70 pounds of 1-¼-inch diameter explosives and additional cartridges according to a formula based on cartridge length. This formula constitutes a change from the proposal which increased the existing requirement of explosives to be submitted for testing from 100 to 150 pounds. Use of the formula method will provide a more accurate number of explosives needed for testing, while at the same time providing the increased quantity of explosives necessary to conduct the new minimum product firing temperature tests included in the final rule. Section 15.5(a)(3) also uses a formula to specify the number of cartridges in diameters less than 1-¼ inches that must be submitted for testing.

The existing requirement that applicants submit explosive cartridges in 8-inch lengths has been deleted in the final rule. This will allow applicants the flexibility to submit samples that are representative of the cartridge lengths to be manufactured.

Under § 15.5(b), MSHA will not test explosives or sheathed explosive units that: (1) Contain chlorites, chlorates, or substances that react over an extended period and cause degradation of the explosive or sheathed unit; (2) are chemically unstable; (3) show leakage; (4) use aluminum clips to seal the cartridge; (5) contain any combination of perchlorate and aluminum; (6) contain more than 5 percent perchlorate; or (7) contain any perchlorate and less than 5 percent water.

One commenter suggested that explosive cartridges with aluminum clips be permitted, stating that the hazard of incendivity associated with aluminum clips is not sufficient to warrant their exclusion. It is generally recognized by the mining community, however, that aluminum can present an incendivity hazard, particularly when contacting rusty metal, and should not be used in areas where there is a possibility of igniting methane or coal dust. Therefore, the final rule continues to prohibit testing of explosive cartridges with aluminum clips.

The final rule retains the provision specifying that MSHA will not test an explosive containing more than 5 percent perchlorate. Perchlorate is an ester or salt of perchloric acid which is used in explosives to enhance sensitivity, primarily to improve the low temperature performance of approved explosives. Several commenters objected to this provision stating that it was unduly designed restrictive. They further stated that MSHA should consider approval of explosives that contain more than 5 percent perchlorate providing that the manufacturer can show that such explosives are chemically stable, do not degrade or react over an extended time in storage and meet all the requirements for sensitivity and performance. In addition, one commenter indicated that it had products containing up to 10 percent perchlorate which had good safety stability histories. These products had been DOT classified which included impact and thermal stability testing.

As indicated in the proposal, research conducted by the Bureau of Mines shows that the use of perchlorate in approved explosives does not result in instability of the explosive when the amount of perchlorate does not exceed 5 percent and the explosive contains 5 percent or more of water. However, at that time, neither the Bureau of Mines nor MSHA was aware of any data or information on whether explosives with more than 5 percent perchlorate could be used safely and therefore, specifically requested that information or data be provided on the issue. Although commenters generally objected to the prohibition, sufficient data or information was not received to allow MSHA to establish appropriate tests or criteria for evaluating such explosives. As a result, the final rule retains the prohibition against testing of explosives with more than 5 percent perchlorate.

However, explosives with more than 5 percent perchlorate may be evaluated under the new technology provision in § 15.20(i) of the final rule. Under this provision, consideration would be given to evaluating those products under United Nations Test Series 3 which includes an impact test for sensitivity The Agency is also considering the need to store these explosives for an extended period prior to performing tests to determine whether the chemical stability has been affected by the increased proportion of perchlorate and whether the explosive will degrade or react over an extended time. MSHA will expect manufacturers requesting approval of explosives with more than 5 percent perchlocate under § 15.20(i) to address these issues through suggested test criteria and procedures.

Once MSHA approves and explosive with more than 5 percent perchlorate under the new technology provision, the Agency will make the modified tests and requirements used by MSHA to evaluate such explosive available to manufacturers and other interested persons. If over a period of time MSHA receives a number of applications for explosives with more than 5 percent perchlorate, MSHA will revise the explosive approval regulations in Part 15 through the rulemaking process to allow such explosives.

Commenters also raised questions concerning the prohibition of any combination of perchlorate and aluminum in explosives, finding this provision was also design restrictive. Further, one manufacturer stated that it had produced explosives containing aluminum and perchlorate with good safety stability histories. In combining perchlorate and aluminum in explosives, the perchlorate is an oxidizer and the aluminum is a highly efficient fuel source which also acts as the sensitizer. The perchlorate can be sensitive to friction that may result from impact in handling, and in the presence of aluminum for fuel, the resistance to explosion may not provide the assurance of safety necessary to gassy underground mines. Accordingly, the final rule retains the prohibition against testing of explosives composed of a combination of perchlorate and aluminum. However, as with explosives containing more than 5 percent perchlorate, MSHA will evaluate explosives incorporating a combination of perchlorate and aluminum under the new technology provision in § 15.20(i).

Section 15.5(c) requires explosives and sheathed explosives units to be stored prior to testing. It retains the existing requirement for storage in a magazine for at least 30 days before gallery tests are conducted. This storage period is designed to provide an indication of explosive or explosive unit stability so MSHA can determine whether the character of the product has changed.

Section 15.6 Issuance of approval.

This section is derived from existing § 15.13 and specifies the actions to be taken by MSHA upon review of applications for approval of explosives and sheathed explosive units. The final rule provides that MSHA will issue an approval or a notice denying approval after tests and evaluations have been completed. The approval or notice denying approval will be in writing.

The proposed rule deleted the existing requirement that applicants be provided a written report summarizing the results of the investigation of the application. Commenters objected to this deletion, stating that the report provided useful information to manufacturers concerning their products. This report, however, has proved most useful to applicants when approval of an explosive application was denied by MSHA as it set forth the rationale for denial. MSHAS believes that manufacturers should be given the reasons for denial of an approval. Therefore, paragraph (a) of the final rule provides, in lieu of an investigative report, that a notice denying approval must specify the reasons for MSHA's action.

Several commenters also suggested that MSHA be required to complete all approval actions within 90 days. Another commenter strongly disagreed, stating that an approval deadline would only serve to cause shortcuts in testing procedures and could result in products being approved for us in gassy underground mines that do not meet the technical requirements.

The final rule does not established a time limit for the completion of final actions on requests for approval of explosives and sheathed explosive units due to the complexity and variables involved in the approval process. Variables such as the number of applications received for approval are beyond the control of MSHA. An approval deadline is especially inappropriate given that the final rule allows approval of explosives or sheathed units that incorporate new technology or new applications of existing technology as established in §§ 15.20(i) and 15.30(g). Concerning the timing of the approval process, the Agency is aware that excessive delay could have an adverse affect on the quality and integrity of the product being tested. MSHA has eliminated the performance of nonapproval-related tests and has simplified reports on approval actions to reduce processing time. The total time for processing of approval actions for explosives was decreased by 18 percent in fiscal year 1988 from the previous year. Streamlining internal approval procedures will continue to be an MSHA priority.

Section 15.6(b) prohibits applicants for approval from advertising or otherwise representing an explosive or sheathed explosive unit as approved until MSHA has issued an approval. This provision, which is new, is consistent with similar prohibitions applicable to applicants for approval under other MSHA approval regulations such as 30 CFR Part 18.

Section 15.7 Approval marking.

This section is derived from existing § 15.14 and provides for labeling of approved explosives and sheathed explosive units. The final rule retains existing requirements that approved explosives be marketed only under the brand or trade name specified in the approval and that the wrapper of each cartridge as well as each case of explosives bear a label indicating that the explosive is approved. These requirements also apply to sheathed explosive units. Added to the approval marking provision in the final rule is the requirement that the explosive and sheathed unit contain the test detonator strength used in the approval testing, and the minimum product firing temperature.

The final rule requires that the wrapper of each cartridge and each case of approved explosives and the outer covering of each sheathed explosive unit and each case of approved sheathed explosive units be labeled with the minimum product firing temperature. The preproposal draft would have required each case of approved explosives and sheathed explosive units to be labeled with the minimum firing temperature. The proposal retained the performance requirement for a mimimum firing temperature but the manner of conveying this information was to be determined by explosive manufacturers. As discussed and specified in the new regulations for Part 75, Safety Standards for Explosives and Blasting, explosives or sheathed explosive units must not be fired when the product is below the minimum product firing temperature. One commenter said that explosives labeled with the minimum firing temperature could cause users to confuse outside air temperature with the temperature of the product. The Agency has clarified this issue by defining the minimum firing temperature as the lowest product temperature at which the explosive or sheathed explosive unit is approved for use. The commenter also stated that the labeling requirement would be more effectively accomplished through inserting detailed instructions in each case of explosives as to storage and use which is current practice and through user education and training. However, the Agency has eliminated the case insert in the final rule and does not believe that the case insert served to effectively provide guidance to the blaster. MSHA accident data shows failure by the blaster to follow safe blasting practices or regulations to be a contributing factor in over 80 percent of the fatal blasting accidents from 1978 through 1984. Upon further consideration of this information, MSHA has determined that blasters require more specific guidance in the safe handling and use of explosives.

The labeling of each explosive cartridge and sheathed unit with the minimum product firing temperature readily provides the blaster with the information on-site without having to read through a case insert which is very difficult to accomplish in the underground mining environment. The inclusion of this provision in the final rule transmits information necessary for user compliance with the explosives and blasting standards in Part 75. Accordingly, explosives and sheathed unit approval labels must provide the minimum firing temperature for the product.

The approval label must also provide the test detonator strength used in the approval testing of the explosive or sheathed unit. The safe performance of approved explosives or sheathed units can be significantly affected if the proper strength detonator is not used when blasting. Section 1310(e) of Part 75 requires that detonators have sufficient strength to initiate the explosives being used. The inclusion of the test detonator strength on the approval label will assist blasters in selecting the proper strength detonator to use with explosives and sheathed units and thus provide important information for user compliance with blasting safety standards. Moreover, it will ensure that the same strength detonator is used for post-approval audit testing as that used during the initial approval testing.

As noted above, the existing requirements for a case insert, warning the user that the explosive is approved only when used in conformance with the requirements of Part 15, is not included in the final rule. Requirements governing the use of explosives are appropriately included in related safety standards and should not be addressed in requirements for approval of explosives.

Section 15.8 Quality assurance.

This section is derived from existing § 15.14, except paragraph (b) which is new. The MSHA approval label is relied

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upon in the mining community as an indication that the product is safe for use in mines. Under the final rule, the approval-holder is required to manufacture the product in accordance with the specifications of the approval and report to MSHA any knowledge of explosives or sheathed explosive units distributed that do not comply with the approval.

One commenter objected to the proposal's deletion of a provision requiring applicants to submit detailed quality control plans and quality control inspection and testing instructions for acceptance by MSHA. Any changes to them would also have been subject to MSHA acceptance. MSHA continues to believe that there is a need for quality control in the production of approved explosive products. For this reason, the final rule retains the basic requirement that approved explosives and sheathed explosive units be manufactured in accordance with the approval. The design and implementation of a quality assurance program to accomplish this, however, is the manufacturer's responsibility and, therefore, has not been made subject to review or acceptance by MSHA.

Adherence to the final rule's requirements for quality assurance will provide substantial protection against the distribution of defective explosive products. However, MSHA recognizes that this can occur. In such an event, § 15.8(b) requires the approval-holder to report immediately to the Agency any knowledge that explosives or sheathed explosive units have been distributed which do not meet the requirements upon which the approval is based. This knowledge could come from the results of audits conducted by the approval-holder, reports from users, or other sources. Upon receiving such a report, MSHA will work with the approval-holder to implement appropriate corrective action.

Commenters requested that MSHA provide guidance on how approval-holders would comply with the requirement to report knowledge of distributed explosives or sheathed explosive units which did not meet the technical requirements. Since such explosive products can create a hazard, immediate notification should be by expeditious means, such as by telephone. The notification should include a description of the nature and extent of the problem, the locations where the explosives or sheathed explosive units have been distributed, and the approval-holder's plans for corrective action. Corrective action may include recalling the explosive products or restricting use of them pending conformance with the approval specifications. MSHA will review all of the information provided, including the approval-holder's program of corrective action. If the program is inadequate, MSHA will work with the manufacturer to develop a more appropriate program. If appropriate corrective action cannot be agreed upon by the approval-holder and MSHA, the Agency may seek revocation of the approval, or other action as necessary.

Section 15.9 Disclosure of information.

This section is derived from existing §§ 5.9 and 15.17 which address the disclosure of information on explosives tested and evaluated under Part 15. MSHA intends to continue the current practice of treating information on product specifications and performance as proprietary information and will protect its disclosure to the fullest extent consistent with The Freedom of Information Act, F.O.I.A. (5 U.S.C. 552). Under the final rule, MSHA will notify the applicant of requests for product information received by the Agency and will provide the manufacturer the opportunity to present its position on disclosure. Information identified by the manufacturer as proprietary will not be disclosed, unless, as provided by F.O.I.A., MSHA determines that disclosure will further the public interest and will not impede the discharge of any of the functions of the Agency. No objections were raised by commenters to this provision.

Provisions from the existing regulation concerning MSHA publication of lists and other information on approved explosives are not included in the final rule. The dissemination of information that is nonconfidential need not be addressed by these regulations. However, MSHA intends to continue to provide the mining community with this information.

Section 15.10 Post-approval product audit.

This section is derived from existing § 15.20 and from provisions on post-approval product audit contained in the Agency's approval rulemaking in 30 CFR Part 7. As was indicated in the preamble to proposed Part 15, it maintains a consistent approach on the issue of product audits with that outlined in Part 7.

The final rule provides that approved explosives and sheathed explosive units be subject to periodic audit by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. This aspect of the final rule, by providing a mechanism for independent evaluation by MSHA of approved products on a random basis, complements the quality assurance provision that requires approval-holders to manufacture their explosive products as approved. Moreover, it is consistent with recommendations from internal reviews of MSHA's approval program.

Approved explosives or sheathed units audited by MSHA will be selected by the Agency as representative of those distributed for use in mines. When an approved explosives product is requested by MSHA for audit from the approval-holder, the Agency will examine and evaluate it and conduct any testing necessary at the Bureau of Mines testing facility. This reflects a change from the proposal which allowed for the audit to occur at a "mutually agreeable site" since manufacturers indicated that they do not have adequate facilities for testing explosives and sheathed units. Approval-holders, however, will be notified by MSHA of the time for any audit-related testing of approved explosives or sheathed explosive units to allow them an opportunity to witness such tests.

In determining which approved explosives or sheathed explosive units will be subject to audit at any particular time, MSHA will consider a variety of factors such as whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations may include product complexity, the manufacturer's previous product audit results, product population in the mining community, and the time since the last audit or since the product was first approved.

Several commenters expressed concern over the proposal's requirement that explosives and sheathed explosive units selected from the field for auditing meet the same technical requirements as required for approval. This is a change from existing regulations which test field samples under less stringent criteria and allows for some field degradation such as in air gap sensitivity. It is important for explosive products available for use in underground gassy mine atmospheres to, at all times, be in compliance with the technical requirements on which approval is based without regard to the age of the product or the length of time the explosive or sheathed unit has been stored in the field. This is consistent with the approach taken in all of MSHA's other approval programs where audited products, including consumable items such as flame-resistant hydraulic fluid, must meet all the technical requirements upon which approval was granted. Commenters have presented no evidence during rulemaking to show that this is technically infeasible. If manufacturers believe that their products degrade sufficiently over time so they cannot continue to meet the technical requirements then they should provide a shelf or storage life for explosives or sheathed units. MSHA will consider explosives with expired shelf dates to be deteriorated and therefore required to be removed by mine operators in accordance with § 75.1328.

Under the final rule, approved products can be obtained for audit from the approval-holder or from sources other than the manufacturer such as mine suppliers or distributors. The approval-holder may, however, only be required to provide one case of explosives or 25 sheathed explosives once a year, at no cost to MSHA, except for cause. MSHA can obtain products for audit from the approval-holder or other sources such as mine suppliers or distributors at any time at MSHA expense.

Based on MSHA's experience, the Agency anticipates few instances in which more than this quantity of approved explosives or sheathed units will be required "for cause" from any one manufacturer in any one year. There are circumstances, however under which an additional audit is appropriate to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of an approved product, evidence of product changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval-holder. Under these circumstances, the approval-holder must provide, at no cost to MSHA, additional approved explosives or sheathed units so the Agency can ensure that the approval-holder is meeting the obligation to manufacture them as approved.

Several commenters indicated that shipping small quantities of explosives would impose unreasonable costs on manufacturers because most major carriers base their tariffs on a 7,500- or 10,000-pound minimum for shipment of Class A explosives. When shipment of explosives or sheathed explosive units is necessary for audit, MSHA believes that most approval-holders will ship them in the same vehicles as other shipments of explosives to customers, their regional supply magazines, or to the Bureau of Mines.

When discrepancies are found during MSHA audits of approved products, MSHA will require that the manufacturer take all necessary corrective actions. These actions could include, but are not limited to, the approval-holder recalling the lot or batch of explosives or sheathed units or issuing users notices. Revocation of the approval by MSHA may result when discrepancies in approved products are not successfully corrected.

A new paragraph (d) has been added to § 15.10 of the final rule to address commenters' questions regarding the auditing of previously approved explosives. It provides that explosives approved under regulations in effect prior to the effective date of this rule shall conform to the provisions on field samples set forth in those regulations (See 30 CFR Part 15, 1987 Edition).

Section 15.11 Revocation.

This section is derived from existing § 15.16 and from the provision on revocation in 30 CFR Part 7. It is indentical to the revocation section in Part 7 as MSHA believes that all approval-holders must be accorded the same rights and subject to the same process regardless of the approval regulations under which the approval was granted.

The final rule provides that MSHA may revoke an approval granted under Part 15 whenever an explosive or sheathed explosive unit fails to meet the applicable technical requirements specified in Subpart B or C or creates a hazard when used in a mine. Commenters recommended that the revocation procedures require MSHA to fully describe the cause or reason for a revocation action, and that the procedures include an appeal process for the approval-holder to challenge the basis for such action. The Agency recognizes that an MSHA approval is important to the marketability of a product used in the mining industry. For this reason it has been MSHA's practice to treat approval-holders as "licensees" under the Administrative Procedure Act (APA). Consistent with this practice, the final rule provides that approval-holders be accorded certain protections prior to revocation of an approval. These include being provided with (1) A written notice of the Agency's intent to revoke a product approval, with an explanation of the reasons for the proposed revocation, (2) an opportunity to demonstrate or achieve compliance with the technical requirements for approval, and (3) an opportunity for a hearing upon request.

Also in accord with the APA is the final rule provision which permits MSHA to suspend an approval, without prior notification to the approval-holder, if a product poses an imminent hazard to the safety or health of miners. Under such circumstances, an approval may be suspended immediately to protect the safety and health of any affected miners. Upon suspension of an approval, the product involved is no longer approved and MSHA will require mine operators to withdraw the product from use during the course of any suspension. MSHA will also immediately advise approval-holders of any suspension so effective corrective action can be started as soon as possible.

Subpart B—Explosives

Section 15.20 Technical requirements.

This section is derived from existing §§ 15.10, 15.11, 15.12 and 15.21, except for paragraphs (g)(1), and (g)(2), which are new. Section 15.20 of the final rule sets forth the technical requirements for approval of explosives.

Paragraph (a) requires the chemical composition of the explosive, as determined by MSHA analysis, to conform to the composition furnished by the applicant. If in conformance, the applicant's composition description is incorporated into the approval and is the standard to determine compliance with the approval during MSHA audits.

One commenter questioned why two sets of tolerances were necessary and suggested that the chemical composition of explosives be required to meet only the tolerances specified in § 15.21. The tolerances set in § 15.21 represent a baseline standard of variation which all explosives submitted for approval must meet, regardless of their chemical composition. However, the particular mixture of ingredients in an explosive may require tighter tolerances for the explosive to perform safely and for the purpose designed. Based on its data and knowledge of the technical functioning of the explosive involved, the manufacturer is in the best position to provide these mixture-specific tolerances. Therefore, the final rule requires that the chemical composition of an explosive meet the tolerances furnished by the applicant in addition to the tolerances specified in § 15.21.

Paragraph (b) requires the explosive to detonate completely in the rate-of-detonation test. This test is intended to determine whether the explosive has a tendency to misfire or partially detonate. The test is conducted on a 50-

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inch column of 1¼ inch diameter cartridges and on the same quantity of the smallest diameter cartridge less than 1¼ inch submitted by the applicant.

Under the proposal the rate-of-detonation test was to be conducted using a test detonator without a booster to initiate all explosives submitted for approval. The proposed rule eliminated the use of a booster in addition to a test detonator to initiate gelatinous explosives because boosters were not used in the mine environment. However, commenters stated that the use of boosters with gelatinous explosives yields more reproducible results in laboratory testing with regard to detonation velocity and recommended their continued use. Accordingly, the rate-of-detonation test has been modified in the final rule to specify the use of a 60-gram tetryl pellet booster for testing of gelatinous explosives.

Some commenters also suggested that the rate-of-detonation test be performed at the minimum firing temperature of the explosive since explosives tested at temperatures below this level could result in incomplete detonation or erratic rate of detonation. The effect of temperature on explosives is better evaluated under the air-gap sensitivity requirements in § 15.20(c) than in subparagraph (b) on rate of detonation. The air-gap test provides a more stringent measure of the explosive's ability to detonate as it is designed to ensure that a product, at its minimum firing temperature, will propagate the gap or space between explosive cartridges. This is in contrast to the rate-of-detonation test where cartridges are next to each other in a column. Therefore, the final rule continues to provide that the rate-of-detonation test be conducted at an ambient temperature between 68 and 86 °F.

Paragraph (c) requires that the air-gap sensitivity of the explosives be at least 2 inches at the minimum firing temperature and at least 3 inches at a temperature between 68 and 86 °F. This requirement enables MSHA to evaluate whether the explosive will transmit detonation across a small air gap to another explosive cartridge in the column. The air-gap sensitivity is determined in the explosion-by-influence test using the 7-inch cartridge method. The 7-inch cartridge method is conducted with two 8-inch cartridges. One inch is cut off the end of each cartridge. The cartridges are placed in a paper tube, the cut ends facing each other with the appropriate 2-inch or 3-inch air gap between them. Then, one cartridge is fired to test the effect of the detonation on the other. This test method represents a modification of the existing halved-cartridge method.

A comment from one manufacturer suggested retaining the existing halved-cartridge method of conducting the explosion-by-influence test rather than using the 7-inch cartridge method. MSHA proposed changing to the 7-inch method because use of a nearly whole cartridge better simulates actual conditions that may occur in the mining environment. This was not disputed by the comments and thus, the explosion-by-influence test in the final rule will be performed using the 7-inch cartridge method.

Recommendations were also received from commenters to specify the paper tube used in the test: The weight and type of paper; the length and width of the sheet of paper; and the number of wraps of paper. This additional specification, they stated, would help ensure that tests are conducted uniformly. MSHA disagrees that variations in the paper tube specifications could significantly affect the repeatability of tests and therefore has not included such detailed specifications in the final rule.

The final rule, like the proposal, recognizes different sensitivities in the air-gap test at different temperatures. Under § 15.20(c) an air-gap sensitivity of 2 inches is required at the minimum product firing temperature and 3 inches required at temperatures of 68 to 85 °F. This is consistent with existing §§ 15.12 and 15.21, which require an air-gap sensitivity of 3 inches in the initial approval test, but allows an air-gap sensitivity of 2 inches for field samples of approved explosives. Several commenters recommended specifying a 2-inch air gap at a temperature between 68 and 86 °F to be used in any post-approval product audit of explosives. As was explained in the earlier preamble discussion on this issue in § 15.10 Post Approval Product Audit, it is important for explosives available for use in gassy underground mines to, at all times, be in compliance with the technical requirements on which approval is based regardless of the age of the product or the length of time the explosives or sheathed unit has been stored in the field. As a result, the final rule requires products audited under § 15.10 to meet the same 3 and 2-inch air-gap sensitivity as is required for the original approval testing.

The minimum product firing temperature at which the air-gap sensitivity will be conducted is either that proposed by the applicant or 41 °F, whichever is lower. Thus, under the final rule, explosives will be required to perform adequately at a temperature as low as 41 °F. If specified by the applicant, the explosives will be tested at a lower temperature. The lowest temperature at which the explosive passes the test will be specified in the approval.

A further comment recommended exempting unit charges or cartridges from the air-gap sensitivity requirement in § 15.20(c). Unit charges or cartridges would be a package configuration designed to require that only one cartridge or continuous charge be loaded in a borehole. With only one cartridge or continuous charge in a borehole, the air-gap sensitivity, cartridge to cartridge would not be a factor in performance. Such unit charges or cartridges could still be used with single cartridges which may present the potential for an air gap to exist when loaded into a borehole. This could also occur with a continuous cartridge depending on its length.

Paragraph (d) specifies the performance required for an explosive in gallery test 7. The test demonstrates whether the explosive will ignite an explosive mixture of methane and air. Gallery test 7 is conducted by firing, one at a time from the borehole of a steel cannon, at least 20 explosive charges of varying weights. The explosives are primed with a test detonator and stemmed and tamped. This test is conducted in air containing 7.7 to 8.3 percent natural gas and at a temperature between 68 and 86 °F.

A commenter suggested that gallery test 7 and other gallery tests be performed on samples of explosives identical to those intended to be marketed for use in underground mines. MSHA agrees and has addressed this concern by specifying that gallery test 7 be conducted on explosives that include wrappers and seals.

The test procedure in both gallery tests 7 and 8 calls for tamping of the explosive prior to firing. Commenters generally objected to the tamping, noting that tamping is not permitted in the mines. In addition, they indicated that tamping can affect the rheology and sensitivity of explosives and suggested two alternatives for revising § 15.20 (d) and (e). One option was to provide larger diameter samples for testing and eliminate tamping altogether. The other alternative was to continue tamping, but permit the applicant to provide larger diameter cartridges for testing explosives where the rheology or sensitivity of the explosive could be adversely affected by tamping. While mine operators are prohibited from tamping the explosives, they need to

tamp the stemming to fill the cross-section of the borehole as required by the Part 75 explosives safety standards. Such tamping of the stemming material has the potential of putting pressure on the column of explosives. Also, Bureau of Mines research shows that crushing explosive cartridges to fill a borehole increases the risk for ignition of methane during blasting as compared to loading cartridges in a continuous train without crushing. The tamping of explosives in the gallery tests provides a factor of safety based on experimental studies. Accordingly, the gallery test has been designed to take this into account and provide the necessary measure of safety should this situation occur.

Paragraph (e) specifies the performance required for an explosive in gallery test 8. The test demonstrates whether the explosive will ignite an explosive mixture of methane and air in which bituminous coal dust has been predispersed. The test is conducted by firing, one at a time from the borehole of a steel cannon, at least 10 unstemmed explosive charges of varying weights. The explosives are primed with a test detonator and tamped. This test is conducted in 640 cubic feet of air containing 3.8 to 4.2 percent natural gas, into which 8 pounds of bituminous coal dust has been predispersed. The air is at a temperature between 68 and 86 °F.

Gallery test 8 in the final rule replaced existing gallery test 4, which provides for coal dust to be placed on shelves in the gallery, rather than being predispersed. The new test conditions facilitate improved quantitative comparisons of explosive incendivity. The test is also designed to better simulate conditions in the mining environment.

Paragraph (f) establishes the requirements for the performance of an explosive in the pendulum-friction test. The test demonstrates whether the explosive is unduly sensitive to impact and friction. The explosive is required to show "no perceptible reaction" under the conditions of the test. "No perceptible reaction", as used in the final rule, means the explosive does not burn, explode, or exhibit a local crackling. The test apparatus consists of an "A" frame, a weighted pendulum to which a steel or hard fiber-faced shoe is attached, and a steel anvil. The explosive sample is placed on the anvil and the pendulum is adjusted and released from a height of 59 inches.

Paragraph (g) is a revision and update of existing § 15.12(f) and specifies that the total volume equivalent to carbon monoxide (CO) of the toxic gases produced by detonation of the explosive not exceed 2.5 cubic feet per pound of explosive. In the preproposal, the Agency included this limitation to be determined by the large chamber test in which the explosive shall propagate completely. The large chamber test will be used under this final rule.

The existing requirement in §15.12(f) that limits the volume of poisonous gases to 2.5 cubic feet per pound of explosive was not retained in the proposal. This was because MSHA believed, at that stage of the rulemaking process, that the hazards associated with toxic gases were appropriately addressed in 30 CFR 75.301–2 which requires that concentrations of noxious or poisonous gases not exceed the current threshold limit values (TLV) as specified by the American Conference of Governmental Industrial Hygienists. However, in the proposal the Agency sought information and data on any benefits to be obtained by retention of this provision.

Commenters opposed the deletion of the poisonous gas limitation stating that they consider the limitation to be a valuable criterion in formulating approved explosives. In addition, they do not believe the limitation duplicates the requirements of 30 CFR 75.301–2, but instead ensures the effectiveness of the protections afforded by the Part 75 provision.

Upon further analysis, MSHA has determined that a toxic gas limitation should be retained. While current ventilation regulations address exposure to a number of toxic gases, including those associated with the detonation of explosives, MSHA's experience indicates that control of such gases produced by explosives is a particularly effective means for limiting the high concentrations of toxic fumes that can be produced by detonation during blasting. That the initial concentrations are particularly hazardous is exemplified by four blasting-related accidents which occurred between 1980 and 1985 and resulted in 9 fatalities from exposure to toxic gases or fumes. Further, retaining a limitation will better enable MSHA to ensure compliance with short-term exposure limits included in MSHA's air quality regulations. These considerations, coupled with strong support from commenters for retaining the existing toxic gas provision, persuaded the Agency that a fume requirement is necessary to minimize hazards. Accordingly, MSHA has included a limitation on toxic gases in the final rule, but has modified the existing provision so that the total volume is determined relative to carbon monoxide. The final rule requirement follows, with minor editorial changes, the language in the provision limiting toxic gases set out in the preproposal draft of this rulemaking.

Paragraph (g)(1) discusses the large chamber test which is conducted so the gaseous products from the detonation can be collected and analyzed. The large chamber test, which has a volume of approximately 1350 cubic feet, replaces the Bichel and Crawshaw-Jones tests conducted under the existing requirements. The explosive charge is stemmed and fired from a cannon into the large chamber. This chamber test simulates conditions that are more representative of actual conditions of use (stemmed, simulated borehole, large expansion ratio) than the existing tests. The large chamber test also eliminates the use of two test apparatuses that are currently used for toxic gas determinations.

Paragraph (g)(2) specifies the method for determining the effective toxicity of each toxic gas produced by relating the toxic gas to carbon monoxide. The method utilizes the threshold limit value, time weighted average (TLV–TWA) of the ingredient and the TLV–TWA of carbon monoxide. This method is derived from the American Conference of Governmental Industrial Hygienists (ACGIH) following a combined component effect for mixtures. It is based on TLV's included in the Chemical Substances section of the publication of the American Conference of Governmental Industrial Hygienists (ACGIH) entitled "TLV's, Threshold Limit Values for 1988–1989 ('TLV Booklet')."

Under the method, the equivalent volume of each toxic gas produced relative to CO is determined by multiplying the measured volume of gas by a conversion factor. The conversion factor is equal to the TLV–TWA in parts-per-million for CO divided by the TLV–TWA for the toxic gas. The TLV–TWA conversion factor for each gas for which MSHA will test is specified in Table I following §15.20(g)(2). The total volume equivalent to CO of the toxic gases produced by detonation of the explosive is the sum of the equivalent volumes of individual toxic gases.

Paragraph (h) prescribes the tests to be conducted when a change is proposed to an approved explosive. A change involving cartridge diameter or length requires MSHA examination to determine what tests, if any, are necessary to evaluate the proposed change. A change to a cartridge diameter smaller than the smallest diameter cartridge covered by the approval requires that the rate-of-detonation and explosion-by-influence tests be conducted. This testing enables

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MSHA to determine whether the approved explosive in the smaller diameter cartridges will continue to perform in accordance with the approval. A commenter suggested that the requirement for the explosion-by-influence test be deleted because testing done for the original approval on 1¼ inch diameter cartridges is sufficient to ensure reliable detonation of approved explosives. In MSHA's experience, however, detonation is not always reliable with certain explosive formulations when used in small diameter cartridges and, therefore, the other tests are necessary to ensure the safe performance of the modified explosive.

Paragraph (i) gives MSHA the flexibility to approve an explosive that incorporates new technology or new applications of existing technology for which the tests or performance requirements of the final rule are not appropriate. An approval will be issued under this provision only if it is determined by testing and evaluation that the explosive performs as safely as an explosive that meets the requirements of this rule. MSHA will develop appropriate tests and performance requirements when the explosive is submitted for approval. Variations in the test and evaluation methods will continue to emphasize the critical aspects of approved explosives, including stable chemical formulation and protection against ignition of an explosive atmosphere. This reflects MSHA's primary concern with the safe performance of explosives in the mining environment, rather than with their design.

Once MSHA approves an explosive under this section, the Agency will make the modified tests and requirements used by MSHA to evaluate a particular technology available to manufacturers and other interested persons. If over a period of time MSHA receives a number of applications for the same type of technology or newly adapted technology, MSHA will revise the explosive approval regulations through the rulemaking process to recognize such development.

One commenter objected to inclusion of this provision in the proposed rule because approval of an explosive under tests and criteria not contained in the rule would be improper. The commenter indicated that all approval requirements should be promulgated through rulemaking. The flexibility provided by this provision is necessary to ensure that MSHA's explosives approval program can best serve the needs of safety in a timely manner. MSHA foresees use of this provision only to accommodate innovation in the formulation of explosives. At the time MSHA issues an approval under this section, the Agency will make the criteria used to test and evaluate the product available to the mining community.

Section 15.21 Tolerances for ingredients.

This section is derived from existing § 15.21 and establishes tolerances for each ingredient in an explosive based on the composition set forth in the approval of an explosive. It revises the existing provisions and adds tolerance requirements for aluminum and physical sensitizing agents. Newer types of explosives often contain these substances which can affect the safe performance of an explosive and, therefore, these tolerances provide a safety limit for variations in the explosive composition.

The preproposal draft provision which would have established a tolerance of ±0.5 percent for aluminum and physical sensitizing agents was not included in the proposal. However, because aluminum and physical sensitizers can affect the safe performance of an approved explosive, tolerance requirements are necessary for these ingredients. Under the proposal, the applicant was allowed to establish a tolerance for these ingredients, based on its own technical data or experience.

One commenter objected to allowing the applicant to set the tolerances for aluminum and physical sensitizers, stating that it was MSHA's responsibility, as the safety agency involved, to specify the limits of variation for these ingredients. Several commenters stated that physical sensitizers may be in the form of density control agents which are not necessarily added during the manufacturing process as a certain percentage of the explosive formulation. Also, since physical sensitizers combined differently may be based on the chemical formulation of the explosive, the manufacturer is in the best position to set the tolerances appropriate to the explosive composition involved. Therefore, § 15.21(a) specifies the tolerances for physical sensitizers as those set by the applicant. However, small variations in the quantity of aluminum can affect the safe performance of approved explosives and, for this reason, it is important to closely control the allowable tolerance for aluminum. Commenters stated that the analytical methods used to determine the aluminum content in an explosive are subject to greater variations than ±0.5 percent and that inherent variations in the manufacturing process make adherence to this tolerance unrealistic. Upon further review, MSHA believes that it is technically attainable to achieve a ±0.7 percent tolerance for aluminum. Bureau of Mines measurements of aluminum in over 100 explosive samples show that less than 6 percent of the samples varied in tolerance by ±0.7 percent from the amount specified by the individual companies. Additionally, limited data from the Bureau of Mines indicates that a several percent tolerance variation in aluminum may affect the safe performance of an approved explosive. Therefore, MSHA specifies a ±0.7 percent tolerance for aluminum in the final rule.

The final rule, based on the comments received, retains the tolerances specified in the existing standards for carbonaceous materials, moisture, and other ingredients contained in the explosive formulation. Explosives manufactured within these tolerances have historically proven to be safe for use.

Section 15.22 Tolerance for performance, wrapper and specific gravity.

This section is derived from existing § 15.21 and prescribes the limits of variation for rate-of-detonation and specific gravity of the explosive for the weight of wrapper. The final rule is unchanged from the proposal and explosives are required to be manufactured in accordance with each specified tolerance.

Subpart C—Requirements for Approval of Sheathed Explosive Units or Other Explosive Units Designed To Be Fired Outside the Confines of a Borehole

Section 15.30 Technical requirements.

This section is new and sets forth the technical requirements for approval of sheathed explosive units. The comments received generally favored the concept of sheathed explosive units which are designed to be fired outside the confines of a borehold. One commenter stated that sheathed units will be especially beneficial in roof fall recovery and construction work and will provide a safe alternative to the hazards of firing "open shots." However, explosives manufacturers indicated in their comments that since no company is presently producing such units, they were unable to provide comments on Subpart C. Accordingly, the final requirements for sheathed explosive units in Subpart C are unchanged from the proposal, except for identical modifications in the drop test in § 15.30(d) and the detonation test in § 15.30(f) to address the use of previously approved explosives in sheathed units.

Paragraph (a) specifies that the sheathed explosive unit contain no more than 1½ pounds of approved explosive. This quantity of explosives is the maximum amount used in the prototype units designed and tested by the Bureau of Mines, which were found to be adequate for all situations where sheathed explosives are likely to be used.

Paragraph (b) requires that the chemical composition of the sheath, as determined by MSHA analysis, conform to the composition furnished by the applicant. If in conformance, the applicant's composition description will be incorporated in the approval and will then be the standard to determine compliance with the approval during MSHA audits.

Paragraph (c) sets forth requirements for the detonator well for the sheathed explosive unit. The detonator well allows the detonator to be securely inserted into the unit in order to provide for reliable detonation.

Paragraph (d) specifies performance requirements for the outer covering of the sheathed explosive unit to ensure that the unit is durable and appropriate for use in underground mines. Units are subjected to a drop test to determine whether the contents are susceptible to shifting or damage under conditions comparable to those likely to be encountered in underground mines. The test is performed with the unit at the minimum product firing temperature established for the explosive in the unit. For units with explosives approved under prior regulations, the drop test is performed at 41 °F.

Paragraph (e) specifies the performance requirements for sheathed explosive units in gallery tests 9, 10, 11, and 12. Under the final rule, sheathed explosive units are subjected to 10 trials of each gallery test and are required to detonate completely without causing any ignition of methane or coal dust.

Gallery test 9 is conducted with 3 sheathed explosive units placed 2 feet apart on a concrete slab in an explosive methane-air atmosphere. The test provides for evaluation under conditions simulating the blasting of fallen rock in an underground mine.

Gallery test 10 is conducted with 3 sheathed explosive units in the same arrangement as in gallery test 9 in an explosive methane-air atmosphere in which bituminous coal dust has been predispersed.

Gallery test 11 is conducted with 3 sheathed explosive units arranged in a triangular pattern in a simulated crevice formed by two concrete slabs. The test is performed in an explosive methane-air atmosphere under conditions simulating blasting of an overhanging roof slab.

Gallery test 12 is conducted with 3 sheathed explosive units arranged in a triangular pattern in a corner formed by three steel plates. The test is performed in an explosive methane-air atmosphere under conditions simulating blasting along a rib where compression and reflection of the explosive shock wave are produced. A commenter suggested that gallery tests 9, 11, and 12 also be conducted in an atmosphere containing predispersed bituminous coal dust. The commenter believed that, because of the possibility of sheathed explosive units used in inadequately rock-dusted areas, the likelihood of a dust ignition should be evaluated in approving the units. However, the methane-air and methane-coal dust air atmosphere specified in the gallery tests are easier to ignite than coal dust alone and provide a more stringent tests of the units incendivity than the test proposed by the commenter.

Paragraph (f) requires that each of 10 sheathed explosive units detonate completely when fired at the minimum product firing temperature established for the explosive used in the unit or at 41°F for units with previously approved explosives. The test evaluates the effect of temperature on the sensitivity of the explosive and the performance of the flame-inhibiting material in the unit.

Paragraph (g) gives MSHA the flexibility to approve an explosive unit that incorporates new technology or new applications of existing technology for which the tests or performance requirements of the final rule are not appropriate. An approval will be issued under this provision only if it is determined by testing and evaluation that the explosive unit performs as safely as one that meets the requirements of the proposed rule. Under the final rule, MSHA will develop the appropriate tests and performance requirements when the explosive unit is submitted for approval. Variations in the test and evaluation methods will continue to emphasize the critical aspects of sheathed explosive units, including stable chemical formulation, durable construction, and protection against ignition of an explosive atmosphere. This reflects MSHA's concern with the safe performance of explosive units designed to be fired outside the confines of a borehold in the mining environment, rather than with their design.

Once MSHA approves an explosive unit under this section, the Agency will make the modified tests and requirements used by MSHA to evaluate a particular technology available to manufacturers and other interested persons. If over a period of time MSHA receives a number of applications for the same type of technology or newly adopted technology, MSHA will revise Subpart C through the rulemaking process to recognize such developments

One commenter objected to inclusion of this provision in the rule because approval of an explosive unit under tests and criteria not contained in the rule would be improper. The commenter indicated that all approval requirements should be promulgated through rulemaking. The flexibility provided by this provision is necessary to ensure that MSHA's explosives approval program best serves the needs of safety in a timely manner. MSHA foresees use of this provision only to accommodate innovation in explosive units designed to be fired outside the confines of a borehole.

Section 15.31 Tolerance of ingredients

This section is new and prescribes the limits of variation from the composition of the sheath set forth in the approval of the sheathed explosive unit. Under the final rule, the tolerance for each ingredient in the sheath is required to be within the tolerance specified in Table II. The tolerances specified in Table II are derived from the existing requirements for ingredients in explosives. MSHA believes that these tolerances are also appropriate for sheathed explosive units.

Section 15.32 Tolerance for weight of explosive, sheath, wrapper and specific gravity.

This section is new and prescribes the limits of variation for certain characteristics of the sheathed explosive unit. Under the final rule, the sheathed explosive unit is required to be manufactured in accordance with the specified tolerances.

Derivation Table

The following derivation table lists: (1) Each section number of the final rule; and (2) the number of the existing regulation from which the final rule is derived.

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DERIVATION TABLE

New Section	Old Section
15.1	15.1.
15.2	15.2.
15.3	15.9.
15.4	15.3, 15.4 and 15.15.
15.5	15.5 and 15.6.
15.6	15.13.
15.7	15.14.
15.8(a)	15.14.
15.8(b)	New.
15.9	15.9 and 15.17.
15.10	15.20, 15.21.
15.11	15.16 and 15.22.
15.20(a)	15.11, 15.12(a).
15.20(b), (c), (d), (e), (f), (g), (h)(3).	15.5(d), 15.10, 15.12 and 15.21.
15.20(h)(1), (h)(2)	15.5(d).
15.20(i)	New.
15.21	15.21.
15.22	15.21.
15.30	New.
15.31	New.
15.32	New.

Distribution Table

The following distribution table lists: (1) Each section number of the existing regulation; and (2) the section number of the final rule which contains provisions derived from the corresponding existing section.

DISTRIBUTION TABLE

Old Section	New Section
15.1	15.1.
15.2	15.2.
15.3	15.4.
15.4	Part 5.
15.5	15.5.
15.6(a), (b), (c), (d)	15.5.
15.6(e)	Removed.
15.7	Removed.
15.8	Removed.
15.9	15.3 and 15.9.
15.10(a)(1), (a)(2), (b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7).	15.20.
15.10(b)(2)	Removed.
15.11	15.20(a).
15.12(a), (b), (c), (d), (e), (f), (g), (h)	15.20.
15.13	15.6.
15.14(a), (b), (c)	15.7.
15.14(d)	Removed.
15.14(e)	15.8(a).
15.15	15.4.
15.16	15.11.
15.17	15.9.
15.18	Removed.
15.19(a), (b), (c)	Part 75.
15.19(d), (e)	Removed.
15.20	15.10.
15.21(a)(1), (a)(3), (a)(4), (a)(5), (a)(6), (b)(5).	15.10.
15.21(a)(2), (b)(4)	Removed.
15.21(b)(1), (b)(2)	15.21.
15.21(b)(3), (b)(6), (b)(7)	15.22.
15.22	Removed.
15.23	Removed.
15.24	Removed.
The Federal Mine Safety Code (as incorporated by section 15.19(e).	Part 75.

III. Drafting Information

The persons principally responsible for preparing this final rule are: Harry C. Verakis, Technical Support, MSHA; Helen Caraway, Office of Standards, Regulations, and Variances, MSHA; Edward C. Connor, Coal Mine Safety and Health, MSHA; Richard Mainiero, Bureau of Mines, Department of Interior; and Linda B. Fort, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, a regulatory flexibility analysis has been developed by the Agency for the purpose of comparing the cost associated with the final rule with the cost of existing requirements for approval of explosives for underground coal mines. In this analysis, summarized below, MSHA has determined that the final rule will not result in major cost increases nor have an effect of $100,000,000 or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory proposals. MSHA revisions to the existing rule update and clarify existing compliance requirements. Clarified compliance requirements which reflect advances in technology should benefit both large and small manufacturers of explosives.

There are only seven companies who have been granted approvals for explosives to be used in underground gassy mines. Three employ over 100 people and one is a multinational corporation. MSHA has determined that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. The Agency has, however, prepared an initial regulatory flexibility analysis and estimates that the annual cost for industry compliance with the existing requirements is $204,125 compared to $277,170 for Subpart A (General Provisions) of the final rule. This represents a cost increase of 36 percent when compared to the existing rule. Approximately 60 percent of this increase is due to the approval requirements for sheathed explosive units which are new. However, these costs will be offset totally by the projected cost savings of $261,497 from the use of approved sheathed in underground coal mines. In addition, allowing the use of sheathed units underground should result in a reduction in blasting injuries. MSHA accident data from 1978 to 1987 reveals that there were 9 incidents which resulted in a total of four fatalities and 14 injuries caused by firing unconfined shots.

No fixed estimates were calculated for Subpart B as requests for such data revealed that costs could range from $0 to approximately $500,000 depending upon the ingredients used in explosives to meet the technical requirements of the rule. Further, because Subpart C (Sheathed Explosive Units) represents a new requirement, cost estimates for commercial production of sheathed units were not available.

V. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Seven companies are listed by MSHA as having a total of about 100 different approved explosives. MSHA receives about 25 applications for some type of explosives approval per year. Approximately 12 approvals are issued each year and about 13 applications are denied approval. MSHA estimates that applications for approval require an average of five hours labor to prepare. The burden per application remains essentially the same under the final rule as under the existing requirement. MSHA estimates that the total annual recordkeeping burden under the final rule may increase slightly, primarily due to the introduction of sheathed explosive units. However, the total burden could be reduced if the total number of applications received remains at present levels.

Paperwork requirements for Part 15 are approved under OMB control number 1219–0066 which covers all of MSHA's equipment testing requirements in 30 CFR Parts 11 through 36. Part 15, which relates to explosives approval, currently specifies that the applicant submit a statement in duplicate explaining the nature and composition of the explosive. The final rule streamlines the process by specifically stating the information required for approval and extensions of approval. Information in duplicate is not required in the final rule. Moreover, the applicant will not be required to resubmit documentation duplicative of previously submitted information when requesting subsequent approval of a similar product or an extension of approval. Only information related to changes in the previously approved explosive or sheathed explosive unit is required, avoiding unnecessary paperwork.

The final rule retains the existing requirement that the wrapper of each cartridge and each case of explosives be labeled with the brand or trade name and with a statement that the explosive is approved by MSHA. The final rule also extends these requirements to apply to sheathed explosive units. Added to the final rule is a requirement that each wrapper and case of explosives and sheathed units be marked with the test detonator strength and the minimum product firing temperature. Absent a Federal requirement, approval-holders would label explosive cartridges, sheathed explosive units and cases with the brand or trade name and would need to purchase new plates to change the name of new formulations prior to marketing. MSHA estimates that the cost of the wrapper is essentially the same with or without the words "MSHA Approved Explosive", the test detonator strength, and the minimum product firing temperature. MSHA, therefore, has associated no cost with the requirement that the label include these items.

Prior to commercial production, manufacturers conduct exhaustive tests to evaluate the performance of explosives under a variety of field conditions. Manufacturers typically include design aspects in explosive formulations so the products will properly function over the range of temperatures that may be encountered in blasting operations in underground coal mines. Characteristics related to minimum product firing temperature are part of the manufacturer's design parameters for explosives and such data is presently available in product technical information and literature.

The existing requirement for approval holder to provide a case-insert, warning the user that the explosive is approved only when used in conformance with the requirements of Part 15, is not included in the final rule. MSHA believes that requirements governing the use of explosives are appropriately included in related safety standards and should not be addressed in requirements for approval of explosives. Since the final rule deletes this case-insert requirement, the total annual cost savings would be about $2400.

The final rule adds a new requirement that approval holders report to MSHA any knowledge of the distribution of approved explosives or sheathed explosive units not meeting the specifications of the approval. Few manufactured lots of explosives, which do not meet the specifications of the approval, are distributed inadvertently. Based on a worst case analysis, MSHA estimates that each approval holder may need to report the distribution of explosives or sheathed units which do not meet specifications once per year. The total cost for these reports would be about $100.

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35), the collection of information requirements contained in the final rule have been approved by OMB under control number 1219–0066.

List of Subjects in 30 CFR Part 15

Administrative practice and procedure, Explosives, Mine Safety and health, Underground mining.

Date: November 9, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, Chapter I of Title 30, Code of Federal Regulation is amended by revising Part 15 to read as follows:

PART 15—REQUIREMENTS FOR APPROVAL OF EXPLOSIVES AND SHEATHED EXPLOSIVE UNITS

Subpart A—General Provisions

Sec.

15.1 Purpose and effective dates.
15.2 Definitions.
15.3 Observers at tests and evaluations.
15.4 Application procedures and requirements.
15.5 Test samples.
15.6 Issuance of approval.
15.7 Approval marking.
15.8 Quality assurance.
15.9 Disclosure of information.
15.10 Post-approval product audit.
15.11 Revocation.

Subpart B—Requirements for Approval of Explosives

15.20 Technical requirements.
15.21 Tolerances for ingredients.
15.22 Tolerances for performance, wrapper, and specific gravity.

Subpart C—Requirements for Approval of Sheathed Explosive Units or Other Explosive Units Designed to be Fired Outside the Confines of a Borehole

15.30 Technical requirements.
15.31 Tolerances for ingredients.
15.32 Tolerances for weight of explosive, sheath, wrapper, and specific gravity.

Authority: 30 U.S.C. 957.

Subpart A—General Provisions

§ 15.1 Purpose and effective dates.

This part sets forth the requriements for approval of explosives and sheathed explosive units to be used in underground coal mines and certain underground metal and nonmetal gassy mines and is effective January 17, 1989. Those manufacturers proceeding under the provisions of the previous regulation may file requests for approval or extension of approval of explosives under that regulation until November 20, 1989. After November 20, 1989, all requests for approval or extension of approval of explosives or sheathed explosive units shall be made in accordance with Subpart A and the applicable subpart of this part. Explosives issued an approval under regulations in place prior to January 17, 1989, and in compliance with those regulations, may continue to be manufactured and marked as approved as long as no change to the explosive is made.

§ 15.2 Definitions.

The following definitions apply in this part.

Applicant. An individual or organization that manufactures or controls the production of an explosive or an explosive unit and that applies to MSHA for approval of that explosive or explosive unit.

Approval. A document issued by MSHA which states that an explosive or explosive unit has met the requirements of this part and which authorizes an approval marking identifying the explosive or explosive unit as approved as permissible.

Explosive. A substance, compound, or mixture, the primary purpose of which is to function by explosion.

Extension of approval. A document issued by MSHA which states that the change to an explosive or explosive unit previously approved by MSHA under this part meets the requirements of this part and which authorizes the continued use of the approval marking after the appropriate extension number has been added.

Minimum product firing temperature. The lowest product temperature at which the explosive or explosive unit is approved for use under this part.

Post-approval product audit. Examination, testing, or both, by MSHA of approved explosives or explosive units selected by MSHA to determine whether they meet the technical requirements and have been manufactured as approved.

Sheath. A chemical compound or mixture incorporated in a sheathed explosive unit and which forms a flame inhibiting cloud on detonation of the explosive.

Sheathed explosive unit. A device consisting of an approved or permissible explosive covered by a sheath encased in a sealed covering and designated to

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be fired outside the confines of a borehole.

Test detonator. An instantaneous detonator that has a strength equivalent to that of a detonator with a base charge of 0.40–0.45 grams PETN.

§ 15.3 Observers at tests and evaluations.

Only personnel of MSHA and the Bureau of Mines, U.S. Department of the Interior, representatives of the applicant, and such other persons as agreed upon by MSHA and the applicant shall be present during tests and evaluations conducted under this part.

§ 15.4 Application procedures and requirements.

(a) *Application.* Requests for an approval or an extension of approval under this part shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, P.O. Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

(b) *Fees.* Fees calculated in accordance with Part 5 of this Title shall be submitted in accordance with § 5.40.

(c) *Original approval for explosives.* Each application for approval of an explosive shall include—

(1) A technical description of the explosive, including the chemical composition of the explosive with tolerances for each ingredient;

(2) A laboratory number or other suitable designation identifying the explosive. The applicant shall provide the brand or trade name under which the explosive will be marketed prior to issuance of the approval;

(3) The lengths and diameters of explosive cartridges for which approval is requested;

(4) The proposed minimum product firing temperature of the explosive; and

(5) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(d) *Original approval for sheathed explosive units.* Each application for approval of a sheathed explosive unit shall include—

(1) A technical description of the sheathed explosive unit which includes the chemical composition of the sheath, with tolerances for each ingredient, and the types of material used for the outer covering;

(2) The minimum thickness weight, and specific gravity of the sheath and outer covering;

(3) The brand or trade name, weight, specific gravity, and minimum product firing temperature of the approved explosive to be used in the unit;

(4) The ratio of the weight of the sheath to the weight of the explosive; and

(5) The name, address and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(e) *Subsequent approval of a similar explosive or sheathed explosive unit.* Each application for approval of an explosive or sheathed explosive unit similar to one for which the applicant already holds an approval shall include—

(1) The approval number of the explosive or sheathed explosive unit which most closely resembles the new one;

(2) The information specified in paragraphs (c) and (d) of this section for an original approval, as applicable, except that any document which is the same as the one listed by MSHA in the prior approval need not be submitted but shall be noted in the application; and

(3) An explanation of all change from the existing approval.

(f) *Extension of the approval.* Any change in an approved explosive or sheathed explosive unit from the documentation on file at MSHA that affects the technical requirements of this Part shall be submitted for approval prior to implementing the change.

(1) Each application for an extension of approval shall include—

(i) The MSHA-assigned approval number for the explosive or sheathed explosive unit for which the extension is sought;

(ii) A description of the proposed change to the approved explosive or sheathed explosive unit; and

(iii) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(2) MSHA will determine what tests, additional information, samples, or material, if any, are required to evaluate the proposed change.

(3) When a change involves the chemical composition of an approved explosive or sheathed explosive unit which affects the firing characteristics, MSHA may require the explosive or sheathed explosive unit to be distinguished from those associated with the former composition.

(Approved by the Office of Management and Budget under control number 1219–0066)

§ 15.5 Test samples.

(a) *Submission of test samples.* (1) The applicant shall not submit explosives or sheathed explosive units to be tested until requested to do so by MSHA.

(2) The applicant shall submit 70 pounds of 1¼-inch diameter explosives and additional cartridges in the amount of 3200 divided by the length in inches, except for cartridges 12, 20 and greater than 36 inches long. The applicant shall submit 70 pounds and additional cartridges in the amount of 3800 divided by the length in inches for cartridges 12, 20 and greater than 36 inches long.

(3) If approval is requested for cartridges in diameters less than 1-¼ inches, the applicant shall submit a number of cartridges equal to 1800 divided by the length in inches, except for cartridges 12, 20 and greater than 36 inches long. The applicant shall submit cartridges in the amount of 2200 divided by the length in inches for cartridges 12, 20 and greater than 36 inches long.

(4) If approval is requested for cartridges in diameters larger than 1-¼ inches, the applicant shall submit an additional 10 cartridges of each larger diameter.

(5) If approval is requested for cartridges in more than one length, the applicant shall submit an additional 10 cartridges for each additional length and diameter combination.

(6) Each applicant seeking approval of sheathed explosive units shall submit 140 units.

(b) *Condition and composition.* Explosives and sheathed explosive units will not be tested that—

(1) Contain chlorites, chlorates, or substances that will react over an extended time and cause degradation of the explosive or sheathed explosive unit;

(2) Are chemically unstable;

(3) Show leakage;

(4) Use aluminum clips to seal the cartridge;

(5) Contain any combination of perchlorate and aluminum;

(6) Contain more than 5 percent perchlorate; or

(7) Contain any perchlorate and less than 5 percent water.

(c) *Storage.* Explosives and sheathed explosive units shall be stored in a magazine for at least 30 days before gallery tests are conducted.

§ 15.6 Issuance of approval.

(a) MSHA will issue an approval or a notice of the reasons for denying approval after completing the evaluation and testing provided for by this part.

(b) An applicant shall not advertise or otherwise represent an explosive or sheathed explosive unit as approved until MSHA has issued an approval.

§ 15.7 Approval marking.

(a) An approved explosive or sheathed explosive unit shall be marketed only under the brand or test name specified in the approval.

(b) The wrapper of each cartridge and each case of approved explosives shall be legibly labeled with the following: the brand or trade name, "MSHA Approved Explosive", the test detonator strength, and the minimum product firing temperature.

(c) The other covering of each sheathed explosive unit and each case of approved sheathed explosive units shall be legibly labeled with the following: the brand or trade name, "MSHA Approved Sheathed Explosive Unit", the test detonator strength, and the minimum product firing temperature.

(Approved by the Office of Management and Budget under control number 1219–0066)

§ 15.8 Quality assurance.

(a) Applicants granted an approval or an extension of approval under this part shall manufacture the explosive or sheathed explosive unit as approved.

(b) Applicants shall immediately report to the MSHA Approval and Certification Center, any knowledge of explosives or sheathed explosive units that have been distributed that do not meet the specifications of the approval.

(Approved by the Office of Management and Budget under control number 1219–0066)

§ 15.9 Disclosure of information.

(a) All information concerning product specifications and performance submitted to MSHA by the applicant shall be considered proprietary information.

(b) MSHA will notify the applicants of requests for disclosure of information concerning its explosives or sheathed explosive units and shall give the applicant an opportunity to provide MSHA with a statement of its position prior to any disclosure.

§ 15.10 Post-approval product audit.

(a) Approved explosives and sheathed explosive units shall be subject to periodic audits by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. Any approved explosive or sheathed explosive unit which is to be audited shall be selected by MSHA and be representative of those distributed for use in mines. The approval-holder may obtain any final report resulting from such audit.

(b) No more than once a year, except for cause, the approval-holder, at MSHA's request, shall make one case of explosives or 25 sheathed explosive units available at no cost to MSHA for an audit. The approval-holder may observe any tests conducted during this audit.

(c) An approved explosive or sheathed explosive unit shall be subject to audit for cause at any time MSHA believes that it is not in compliance with the technical requirements upon which the approval was based.

(d) Explosives approved under regulations in effect prior to January 17, 1989, shall conform to the provisions on field samples set out in those regulations (See 30 CFR Part 15, 1987 Edition).

§ 15.11 Revocation.

(a) MSHA may revoke for cause an approval issued under this part if the explosive or sheathed explosive unit—

(1) Fails to meet the applicable technical requirements; or

(2) Creates a hazard when used in a mine.

(b) Prior to revoking an approval, the approval-holder shall be informed in writing of MSHA's intention to revoke. The notice shall—

(1) Explain the specific reasons for the proposed revocation; and

(2) Provide the approval-holder an opportunity to demonstrate or achieve compliance with the product approval requirements.

(c) Upon request, the approval-holder shall be afforded an opportunity for a hearing.

(d) If an explosive or sheathed explosive unit poses an imminent hazard to the safety or health of miners, the approval may be immediately suspended without a written notice of the agency's intention to revoke. The suspension may continue until the revocation proceedings are completed.

Subpart B—Requirements for Approval of Explosives

§ 15.20 Technical requirements.

(a) *Chemical composition.* The chemical composition of the explosive shall be within the tolerances furnished by the applicant.

(b) *Rate-of-detonation test.* The explosive shall propagate completely in the rate-of-detonation test. The test is conducted at an ambient temperature between 68 and 86 °F. Nongelatinous explosives are initiated with a test detonator only, while gelatinous explosives are initiated with a test detonator and a 60-gram tetryl pellet booster. The test is conducted on—

(1) A 50-inch column of 1¼ inch diameter cartridges; and

(2) A 50-inch column of the smallest diameter cartridges less than 1¼ inches submitted for testing.

(c) *Air-gap sensitivity.* The air-gap sensitivity of the explosive shall be at least 2 inches at the minimum product firing temperature and 3 inches at a temperature between 68 and 86 °F, and the explosive shall propagate completely.

(1) Air-gap sensitivity of the explosive is determined in the explosion-by-influence test using the 7-inch cartridge method. The air-gap sensitivity is determined for 1¼ inch diameter cartridges and each cartridge diameter smaller than 1¼ inches. Explosives are initiated with a test detonator.

(2) The 7-inch cartridge method is conducted with two 8-inch cartridges. One inch is cut off the end of each cartridge. The cartridges are placed in a paper tube, the cut ends facing each other, with the appropriate 2-inch or 3-inch air gap between them. The test is conducted at a temperature between 68 and 86 °F and at the minimum product firing temperature proposed by the applicant, or 41 °F, whichever is lower. The test temperature at which the explosive propagates completely will be specified in the approval as the minimum product firing temperature at which the explosive is approved for use.

(d) *Gallery Test 7.* The explosive shall yield a value of at least 450 grams for the lower 95 percent confidence limit (L_{95}) on the weight for 50 percent probability of ignition (W_{50}) in gallery test 7 and shall propagate completely. The L_{95} and W_{50} values for the explosive are determined by using the Bruceton up-and-down method. A minimum of 20 trials are made with explosive charges of varying weights, including wrapper and seals. Each charge is primed with a test detonator, then tamped and stemmed with one pound of dry-milled fire clay into the borehole of a steel cannon. The cannon is fired into air containing 7.7 to 8.3 percent of natural gas. The air temperature is between 68 and 86 °F.

(e) *Gallery Test 8.* The explosive shall yield a value of at least 350 grams for the weight for 50 percent probability of ignition (W_{CDG}) in gallery test 8 and shall propagate completely. The (W_{CDG}) value for the explosive is determined using the Bruceton up-and-down method. A minimum of 10 tests are made with explosive charges of varying weights, including wrapper and seals. Each charge is primed with a test detonator, then tamped into the borehole of a steel cannon. The cannon is fired into a mixture of 8 pounds of bituminous coal dust predispersed into 640 cubic feet of air containing 3.8 to 4.2 percent of natural gas. The air temperature is between 68 and 86 °F.

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(f) *Pendulum-friction test.* The explosive shall show no perceptible reaction in the pendulum-friction test with the hard fiber-faced shoe. Ten trials of the test are conducted by releasing the steel shoe from a height of 59 inches. If there is evidence of sensitivity, the test is repeated with the hard fiber-faced shoe.

(g) *Toxic gases.* The total volume equivalent to carbon monoxide (CO) of toxic gases produced by detonation of the explosive shall not exceed 2.5 cubic feet per pound of explosive as determined in the large chamber test. The explosive shall propagate completely.

(1) The large chamber test is conducted with a one-pound explosive charge, including wrapper and seal, primed with a test detonator. The explosive charge is loaded into the borehole of a steel cannon, then tamped and stemmed with one pound of dry-milled fire clay. The cannon is fired into the large chamber and the gaseous products resulting from detonation of the explosive are collected and analyzed for toxic gases. At least two trials are conducted.

(2) The equivalent volume of each toxic gas produced, relative to CO, is determined by multiplying the measured volume of the gas by a conversion factor. The conversion factor is equal to the threshold limit value, time weighted average (TLV–TWA) in parts-per-million for CO divided by the TLV–TWA for the toxic gas. The TLV–TWA conversion factor for each gas for which MSHA shall test is specified in Table I of this subpart. The total volume equivalent to CO of the toxic gases produced by detonation of the explosive is the sum of the equivalent volumes of the individual toxic gases.

TABLE I.—CONVERSION FACTORS FOR TOXIC GASES

[For Equivalent Volume Relative to Carbon Monoxide]

	Toxic Gas	
	Conversion Factor	TLV–TWA (PPM)
Ammonia	2	25
Carbon Dioxide	0.01	5000
Carbon Monoxide	1	50
Hydrogen Sulfide	5	10
Nitric Oxide	2	25
Nitrogen Dioxide	17	3
Sulfur Dioxide	25	2

(h) *Cartridge diameter and length changes.* (1) For proposed changes to an approved explosive involving only cartridge diameter or length, MSHA will determine what tests, if any, will be required.

(2) When a proposed change to an approved explosive involves a smaller diameter than that specified in the approval, the rate-of-detonation and air-gap sensitivity tests will be conducted.

(3) No test will be conducted on cartridges with diameters the same as or smaller than those that previously failed to detonate in the rate-of-detonation test.

(i) *New technology.* MSHA may approve an explosive that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the explosive is as safe as those which meet the requirements of this subpart.

§ 15.21 Tolerances for ingredients.

Tolerances for each ingredient in an explosive, which are expressed as a percentage of the total explosive, shall not exceed the following:

(a) Physical sensitizers: The tolerances established by the applicant;

(b) Aluminum: ±0.7 percent;

(c) Carbonaceous materials: ±3 percent; and

(d) Moisture and ingredients other than specified in paragraphs (a), (b), and (c) of this section: The tolerances specified in Table II.

TABLE II.—TOLERANCES FOR MOISTURE AND OTHER INGREDIENTS

Quantity of ingredients (as percent of total explosive or sheath)	Tolerance percent
0 to 5.0	1.2
5.1 to 10.0	1.5
10.1 to 20.0	1.7
20.1 to 30.0	2.0
30.1 to 40.0	2.3
40.1 to 50.0	2.5
50.1 to 55.0	2.8
55.1 to 100.0	3.0

§ 15.22 Tolerances for performance, wrapper and specific gravity.

(a) The rate of detonation of the explosive shall be within ±15 percent of that specified in the approval.

(b) The weight of wrapper per 100 grams of explosive shall be within ±2 grams of that specified in the approval.

(c) The apparent specific gravity of the explosive shall be within ±7.5 percent of that specified in the approval.

Subpart C—Requirements for Approval of Sheathed Explosive Units or Other Explosive Units Designed to be Fired Outside the Confines of a Borehole

§ 15.30 Technical requirements.

(a) *Quantity of explosive.* The sheathed explosive unit shall contain not more than 1½ pounds of an approved or permissible explosive.

(b) *Chemical composition.* The chemical composition of the sheath shall be within the tolerances furnished by the applicant.

(c) *Detonator well.* The sheathed explosive unit shall have a detonator well that—

(1) Is protected by a sealed covering;

(2) Permits an instantaneous detonator to be inserted in the unit with the detonator completely embedded in the well;

(3) Is provided with a means of securing the detonator in the well; and

(4) Is clearly marked.

(d) *Drop test.* The outer covering of the sheathed explosive unit shall not tear or rupture and the internal components shall not shift position or be damaged in the drop test.

(1) The drop test is conducted on at least 10 sheathed explosive units. Each unit is dropped on its top, bottom, and edge from a height of 6 feet onto a concrete surface. For units with explosives approved with a minimum product firing temperature, the drop test is performed with the unit at the minimum product firing temperature established for the explosive in the unit. For units with explosives approved under regulations in effect prior to [the effective date of this rule], the drop test is performed with the unit at 41 °F.

(2) At least four units which have been drop-tested shall be cut-open and examined.

(3) At least six units which have been drop-tested shall be subjected to gallery tests 9 and 10 as provided in paragraphs (e)(1) and (e)(2) of this section.

(e) *Gallery tests.* No sheathed explosive unit shall cause an ignition in gallery tests 9, 10, 11, or 12. Ten trials in each gallery test shall be conducted and each sheathed explosive unit shall propagate completely in all tests.

(1) Gallery test 9 is conducted in each trial with three sheathed explosive units placed in a row 2 feet apart. One of the trials is conducted with sheathed explosive units which have been subjected to the drop test as provided in paragraph (d)(3) of this section. The units are placed on a concrete slab, primed with test detonators and fired in air containing 7.7 to 8.3 percent natural gas or 8.7 to 9.3 percent methane. The air temperature is between 41 and 86 °F.

(2) Gallery test 10 is conducted in each trial with three sheathed explosive units placed in a row 2 feet apart. One of the trials is conducted with sheathed explosive units which have been subjected to the drop test as provided in paragraph (d)(3) of this section. The units are placed on a concrete slab, primed with test detonators and fired in air containing 3.8 to 4.2 percent natural gas, or 4.3 to 4.7 percent methane, mixed with 0.2 ounces per cubic foot of predispersed bituminous coal dust. The air temperature is between 41 and 86 °F.

(3) Gallery test 11 is conducted in each trial with three sheathed explosive units arranged in a triangular pattern with the units in contact with each other. The units are placed in a simulated crevice formed between two square concrete slabs, each measuring 24 inches on a side and 2 inches in thickness. The crevice is formed by placing one slab on top of the other and raising the edge of the upper slab at least 4 inches. The sheathed explosive units are primed with test detonators and fired in air containing 7.7 to 8.3 percent natural gas or 8.7 to 9.3 percent methane. The air temperature is between 41 and 86 °F.

(4) Gallery test 12 is conducted in each trial with three sheathed explosive units arranged in a triangular pattern with the units in contact with each other. The units are placed in a corner formed by three square steel plates, each measuring 24 inches on a side and one inch in thickness. The sheathed explosive units are primed with test detonators and fired in air containing 7.7 to 8.3 percent natural gas or 8.7 to 9.3 percent methane. The air temperature is between 41 and 86 °F.

(f) *Detonation test.* Each of ten sheathed explosive units shall propagate completely when fired at the minimum product firing temperature for the explosive used in the unit or 41 °F for units with explosives approved under regulations in effect prior to [insert the effective date of this rule]. The units are initiated with test detonators.

(g) *New technology.* MSHA may approve an explosive unit designed to be fired outside the confines of a borehole that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that such explosive unit is as safe as those which meet the requirements of this subpart.

§ 15.31 Tolerances for ingredients.

Tolerances established by the applicant for each ingredient in the sheath shall not exceed the tolerances specified in Table II § 15.21 of this part.

§ 15.32 Tolerances for weight of explosive, sheath, wrapper, and specific gravity.

(a) The weight of the explosive, the sheath, and the outer covering shall each be within ±7.5 percent of that specified in the approval.

(b) The ratio of the weight of the sheath to that of the explosive shall be within ±7.5 percent of that specified in the approval.

(c) The specific gravity of the explosive and sheath shall be within ±7.5 percent of that specified in the approval.

[FR Doc. 88–26410 Filed 11–17–88; 8:45 am]
BILLING CODE 4510–43–M

VOL
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ISS
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NO
18

1988

UMI

federal register

Friday
November 18, 1988

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75
Safety Standards for Explosives and Blasting; Final Rule

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards For Explosives And Blasting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Mine Safety and Health Administration's (MSHA) existing safety standards for explosives and blasting in underground coal mines. The revisions update existing provisions consistent with current technology, eliminate duplicative and unnecessary standards, reorganize the existing standards and provide alternative methods of compliance where possible.

EFFECTIVE DATE: The final rule is effective January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

The final rule revises the Mine Safety and Health Administration's existing safety standards for explosives and blasting in underground coal mines. These revisions are promulgated under section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act).

On May 8, 1984, MSHA published a notice in the **Federal Register** which announced the availability of its preproposal draft of explosive standards and scheduled public conferences to discuss it (49 FR 19601). Public conferences were held June 12, 1984, in Lexington, Kentucky, and June 14, 1984, in Pittsburgh, Pennsylvania. These conferences were well attended and MSHA received written comments from all segments of the coal mining community.

On May 9, 1986, MSHA published a proposed rule in the **Federal Register** (51 FR 17284). The proposal addressed the comments received regarding the preproposal draft. MSHA published a notice of public hearings in the **Federal Register** on October 21, 1986 (51 FR 37376). Hearings were held on November 18, 1986, in Pittsburgh, Pennsylvania, and November 20, 1986, in Lexington, Kentucky.

MSHA published a **Federal Register** notice (58 FR 9670) scheduling another hearing to receive additional testimony from interested parties concerning safety considerations when instantaneous and short-delay electric detonators are used in the same circuit. This hearing was held in Bruceton, Pennsylvania on April 22, 1987. The record remained open until May 15, 1987, to allow for the submission of post-hearing written comments and data on this issue. The record closed on December 19, 1986 for all other issues.

The Agency's final rule addresses the major comments received and is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act and the Mine Act.

II. Discussion of the Final Rule

A. General Discussion

The use of explosives in underground coal mines presents a potentially serious risk of injury and death to miners. From 1978 through 1987 there were 41 fatalities resulting from the improper use of explosives. Additionally, during this period there were 312 nonfatal injuries in coal mines resulting from the improper use of explosives. Prevention of accidents involving explosives depends to a large extent on the knowledge and experience of persons in the mine responsible for using explosives, and adherence to the standards which guide mine operators and miners in the safe conduct of blasting operations.

The final rule addresses the need for knowledgeable and experienced personnel to perform blasting functions by requiring only "qualified persons" or persons working in the presence of and under the direction of a qualified person to use explosives underground. The final rule also updates MSHA's existing standards for explosives consistent with modern blasting practices and products. The final rule supplements existing standards where they currently do not address important aspects of blasting and deletes obsolete provisions.

Prevention of accidents with explosives is also dependent on the use of components especially designed to operate safely in an underground environment containing coal dust and methane gas. The final rule continues to require that explosives and blasting units used in underground coal mines be approved by MSHA. The regulations governing MSHA approval of explosives and sheathed explosive units are being published, in a separate rulemaking, simultaneously with this final rule. The Agency is also developing revisions to the approval requirements for blasting units. These revisions, which have been proposed as a subpart to 30 CFR Part 7, Product Testing by Applicant or Third Party, were made available for public comment in the **Federal Register** on June 22, 1988 (53 FR 23506). In addition, MSHA will seek to include in its regulatory program an approval schedule for detonators used in underground coal mines. As part of that rulemaking, changes would be made in this final rule to require the use of such approved detonators.

B. Section-by-Section Discussion

Section 75.1300 Definitions.

The practice of sequentially lettering general definitions in existing subparts, which was carried forward in the proposed rule, has been eliminated in this final rule. The former method was confusing to many commenters who questioned why the Subpart N revision of definitions began at letter "r". The final rule now contains definitions of terms specifically related to Subpart N arranged in alphabetical order.

Many commenters stated that the term "permissible", which was excluded in the proposed rule, has and continues to have widespread use and should be retained in the final rule. As a result, the final rule includes two definitions from the preproposal, "permissible blasting unit" and "permissible explosive."

The following definitions apply to Subpart N:

Approval. This term describes a written document issued by MSHA which states that an explosive or explosive unit has met the requirements of Part 15 and which authorizes an approval marking identifying the explosive or explosive unit as approved as permissible. This definition has been added to make Part 75, Subpart N consistent with Part 15.

Battery starting. This definition identifies a specific exclusion to the prohibition of firing shots outside a borehole and applies only to anthracite mines. A commenter objected to the use of unconfined shots in battery starting preferring to initiate the flow of coal down a breast or chute by other means, thereby reducing exposure of miners to unnecessary hazards. However, this procedure has been performed in anthracite mines for many years as long as methane was reduced to less than 1 percent. Because anthracite dust is not explosive, it does not present the same hazard as bituminous coal dust and the Agency has therefore retained the definition.

Blasting off the solid. This definition provides an explanation of a blasting technique which occurs without the provision of a kerf or second free face. The final rule is extended to include rock as well as coal blasting in response to commenters who stated that it is not uncommon to encounter a rock fault across the full working face. While some commenters recommended prohibiting blasting off the solid stating that the practice is outdated and an unsafe method of mining, the Agency defines and regulates this practice under this final rule.

Instantaneous detonator. This definition describes a type of electric detonator that is commercially available for use in underground coal mines and which also has the performance characteristics for use with a sheathed explosive unit.

Laminated partition. This definition specifies the construction of the partition required to separate detonators from explosives when transported or stored. The definition remains unchanged from the proposed rule.

Opener hole. This definition describes the first borehole or holes fired in a ground when blasting off the solid to create an additional free face. This definition is essentially unchanged from the proposed rule.

Permissible blasting unit. This definition specifies a device which has been approved by MSHA for firing electric detonators. MSHA is in the process of revising the approval requirements for blasting units. The term "approved" that was used in the proposed Part 75, Subpart N definition is changed to "permissible" in response to comments. The proposed rule used the term "approved" instead of "permissible" to describe the explosive and blasting equipment required to be used by these provisions. The purpose of this was to standardize MSHA terminology used to describe mining products evaluated for safety by the Agency. Commenters objected, however, stating that this would result in confusion. In support of this, they noted that the term "permissible" has a long history of use in the explosives industry and that it also appears in State mining regulations. MSHA agrees that the term "permissible" is pervasively used in the industry worldwide to describe MSHA-approved explosives and blasting units. Upon reconsideration, MSHA retains the term "permissible blasting unit" in the final rule.

Permissible explosive. This definition specifies an explosive substance approved by MSHA for use in underground coal mines. As indicated above, the term "permissible" was used in the preproposal, but not retained in the proposal. Commenters urged that the term "permissible" be used instead of the term "approved." The final rule retains the term "permissible explosive."

Round. This definition describes a group of boreholes which are fired or intended to be fired in a continuous sequence by a single application of the firing current. One commenter suggested that the term "shots" in the proposed definition be changed to "holes" because this term is accepted and familiar in the industry. However, in the final rule, the term "shots" is changed to "boreholes." This term is more specific and is in keeping with the Agency's intent that regulations be as unambiguous as possible.

Sheathed explosive unit. This definition, as does the proposed definition, describes the unit as "a permissible explosive covered by a sheath of flame-inhibiting material encased in a sealed covering." Commenters stated that this terminology was too specific and would not provide for new technology. However, provisions are added to § 75.1315 to allow for the introduction of new technology. Accordingly, the definition is retained in the final rule to distinguish the units from other types of explosives.

Short-delay electric detonator. This definition specifies the range of delay periods for short-delay detonators that are commercially available for use in underground coal mines.

One commenter recommended that delay period numbers be included in the definition. However, delay period numbers corresponding to a given delay time may vary from manufacturer to manufacturer and thus not be uniform throughout the industry. Therefore, the Agency has not included delay period numbers in the definition.

Another commenter stated that the extension of the delay period beyond 500 milliseconds is not supported by established or promulgated regulations. However, research conducted by the Bureau of Mines, in conjunction with MSHA, has provided evidence that this time period can be extended to 1,000 milliseconds without increasing the risk of a methane or coal dust explosion. Accordingly, the definition is unchanged from the proposal. Comments concerning approved detonators are further discussed under § 75.1310(e).

Section 75.1301 Qualified person.

This standard revises the existing provision of 30 CFR Part 15 requiring explosives to be fired by "certified shot firers" and sets forth requirements for becoming qualified to perform this work.

MSHA statistics indicate that the persons most frequently injured in accidents with explosives are those firing the explosives. A frequent contributing factor has been the failure of these persons to follow safe blasting practices.

To address this risk to miner safety, the proposal included alternative qualification requirements for persons using explosives. Under the proposal, persons could have been qualified to use explosives if they were certified or qualified to do so by the State in which the mine was located, or if they had at least 1 year of underground coal mining experience and have demonstrated to an authorized representative of the Secretary the ability to properly use permissible explosives.

The final rule provides two alternatives for achieving qualification under this subpart. First, a person is a "qualified person" when the individual is certified or qualified to use explosives by the State in which the mine is located, provided that the State requires a demonstration of ability to safely use permissible explosives in accordance with Subpart N. This approach continues to recognize State qualification and certification programs for shot firers. However, under the final rule these programs will only be recognized if a demonstration of ability is included in the State program. This change from the proposal and existing standards recognizes evaluation of the individual's skill to safely use explosives to be the objective of the qualification requirement in the final rule.

Second, in States that do not certify or qualify persons to use explosives, a person is a "qualified person" if the individual has at least 1 year experience working underground on a coal-producing section of a mine where explosives are used and demonstrates to an authorized representative of the Secretary the ability to safely use explosives. Upon successful demonstration of this ability, MSHA's authorized representative will make application through the Qualification and Certification Unit in Denver, Colorado and a document indicating Federal qualification will be issued to the applicant. This aspect of the final rule provides for Federal qualification of persons to use explosives in underground coal mines. It addresses the need for a qualification program where none is available from the State in which the mine is located. The requirement is supported by MSHA accident data which shows that failure of the blaster to follow safe blasting practices or regulations was a contributing factor in over 80% of the fatal blasting accidents in underground coal mines from 1980 through 1986. In

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addition, a Bureau of Mines evaluation of coal mine blasting accidents between 1978 and 1981 shows that the blaster was the person injured in 65% of the accidents.

The 1-year experience requirement was included in the proposal. However, the final rule specifies that such experience must be acquired while working on a coal-producing section where explosives are used. This change reflects the need for relevant experience that can be expected to provide the prospective qualified person with basic knowledge about the underground coal mining environment where explosives are used and the safety considerations uniquely involved in this work. To protect the safety of himself and others, the blaster must be capable of recognizing hazards associated with methane and roof and rib conditions in the working place. Additionally, the blaster must know the potential dangers from equipment and other mining activities in the immediate face area. He must also be experienced in face area development and mining techniques to ensure the safety of all section personnel during blasting.

One commenter expressed the opinion that State shot firer certification programs are inadequate and noted that training courses and written tests are required in other major mining countries. Other commenters stated that certain State programs such as those in Colorado and Virginia were effective and therefore should not be duplicated by the Federal Government. No comments from any State mining agencies were received on this issue. MSHA recognizes that State requirements for qualification or certification of persons to use explosives are not uniform. These programs, however, can provide appropriate systems for qualifying persons if certain necessary elements are met. The final rule, therefore, continues to recognize them, provided that a demonstration of ability to safely use permissible explosives in accordance with this subpart is included in the State program. The demonstration of ability requirement will provide a means of ensuring that each person is competent to use such explosives.

MSHA is aware that there are States which do not currently require this demonstration of ability in their qualification programs and, therefore, need time to address this issue. For this reason, paragraph (b) provides that persons qualified or certified by a State to use permissible explosives underground prior to May 17, 1989, that is, six months after publication, are considered qualified under § 75.1301 even though the State program did not contain a demonstration of ability requirement. During this six-month period, those States with programs which do not meet the requirements of this rule can take the necessary steps for a demonstration of ability provision in their programs. After the six months have elapsed, however, State programs without this provision will not be recognized by MSHA and persons qualified or certified under such programs will not be considered "qualified persons" for purpose of this rule.

For purposes of Federal qualification, other commenters suggested deletion of the coal mining experience requirement and retaining only a demonstration of ability requirement. These commenters indicated that if persons can demonstrate their ability, then experience is unnecessary. The commenters went on to note that, in the western United States, miners with extensive underground noncoal mining experience could be precluded from being qualified persons and that, as a result, some western coal mine operators might encounter difficulty finding miners with the required experience.

The conditions and hazards inherent in underground coal mining where explosives are used are different than most noncoal mines. The presence of methane gas and coal dust in the mining atmosphere presents hazards from ignitions and mine explosions not encountered in most other types of mines where explosives are used. For these reasons, the proposed coal mining experience requirement is retained in the final rule.

A commenter also recommended that MSHA continue to recognize State programs for qualifying persons to use explosives in underground coal mines, but not establish a new Federal requirement. This approach, however, was not adopted since it would not address the qualification of persons to work in mines in States with no qualification or certification program.

Section 75.1310 Explosives and blasting equipment.

This section of the final rule is derived from existing §§ 15.19(d), 75.1300 and 75.1303 except paragraph (d) which is new, and prescribes the types of explosives and blasting equipment that are permitted in underground coal mines. In addition, the section prohibits certain types of blasting materials from being taken or used in underground coal mines.

Paragraph (a) allows only permissible explosives, approved sheathed explosives units and permissible blasting units to be taken into or used in the underground areas of coal mines because of the potential explosive atmosphere. The final rule differs from the proposed rule in several respects. The proposal specified that explosives taken underground be approved under 30 CFR Part 15, Requirements for Approval of Explosives and Sheathed Explosive Units. It did not expressly recognize sheathed explosive units nor specify that only approved blasting units be taken underground. For clarity, the final rule identifies approved sheathed explosive units, which will be evaluated for use in mines by MSHA under revised Part 15, as being permitted in underground coal mines. In addition, it specifies that only permissible blasting units are to be taken or used underground.

Paragraph (b) lists those blasting items which are not permitted to be taken into or used in underground areas. These are black blasting powder, aluminum or aluminum-alloy-cased detonators with aluminum leg wires and safety fuses. Black blasting powder and safety fuses involve recognized fire and explosion hazards. Black blasting powder is highly deflagrating and does not have the flame-inhibiting characteristics required for approved explosives. The final rule identifies black blasting powder as a prohibited explosive in underground coal mines. This was not included in the proposal because only approved explosives, which do not include black blasting powder, were to be permitted underground. For clarity, however, the final rule retains the existing prohibition against the use of black blasting powder. A safety fuse, when ignited, produces a jet of flame that will ignite methane or float coal dust. Aluminum also presents a safety hazard because of its high incendivity. A coating of aluminum oxide can also form on the blasting wires and cause an increase in the electric contact resistance which can be the source of a misfire in a blasting circuit. Because of the mechanical properties of aluminum wire, splices can also loosen and reduce the contact between conductors.

Explosives, sheathed explosive units and blasting units must meet certain design and performance requirements to be approved for use in the potentially explosive atmosphere of underground coal mines. The materials prohibited by paragraph (b) do not meet these safety requirements and are known to present a hazard if used in underground coal mines.

Some commenters requested that the proposed prohibition of nonelectric initiating systems be removed. While the final rule does not retain the proposed prohibition against nonelectric initiating devices, the definitions of instantaneous and short-delay detonators address only electric initiation systems. Commenters presented information which shows that new developments in explosive initiating systems indicate that alternate systems safe for use in underground coal mines may be developed in the foreseeable future. Presently MSHA has no criteria with which to evaluate nonelectric initiating systems. Until such time as standards are developed, the present petition for modification procedures are available to the mining industry. This process would require a case-by-case evaluation of nonelectric initiating systems to determine whether they perform as safely as the present performance of electric initiating devices.

Paragraph (c) requires that explosives be fired only with a permissible blasting unit used in a manner consistent with the blasting unit approval. This provision of the final rule replaces the proposed provision that explosives be fired only with an approved blasting unit that has sufficient capacity and is appropriate for the blasting operation.

MSHA recognizes that firing rounds containing a large number of boreholes is necessary under certain circumstances, such as when large amounts of rock need to be blasted. To address these conditions, blasting units designed to fire more than 20 boreholes, sometimes called large-capacity blasting units, have been tested and evaluated by the Agency under interim criteria and specifications and have been permitted to be used. The Agency's existing approval regulations for blasting units, 30 CFR Part 25, do not include specifications for the approval of such units. However, through the separate rulemaking of 30 CFR Part 7, Subpart D Blasting Units, MSHA has proposed new approval specifications that would recognize blasting units with the capacity to fire more than 20 boreholes in a round. Until these new approval regulations for blasting units are completed, blasting units evaluated under interim criteria by MSHA for safe use in underground coal mine atmospheres are considered to be approved for purposes of this regulation. Paragraph (c), therefore, requires that explosives be fired only with a permissible blasting unit used in a manner consistent with its approval.

Those blasting units that are approved by MSHA to fire only short-delay electric detonators will still continue to be permissible under this final rule. The Agency intends to allow these units to be used when firing instantaneous and short-delay detonators up to 1,000 milliseconds in bituminous mines, and also long period delay detonators in anthracite mines since there is no safety hazard apparent in using blasting units with either of these detonators. Research conducted by the Bureau of Mines in developing criteria for sheathed units and evaluating delay periods for detonators has demonstrated that permissible blasting units approved under Part 25 can be used safely with instantaneous, short- and long-delay detonators.

The primary purpose of using approved blasting units is to minimize the risk of igniting methane gas released by blasting or igniting coal dust placed into suspension by the forces created by the detonation of explosives. While this hazard is greater in the face area and in return air courses, it is also present in other areas of the mine when explosives are fired. As noted in the proposal, in 1970 a coal dust explosion occurred in an area outby the face and 38 miners were killed. While this accident may not have been caused by the failure to use an approved blasting unit, it does demonstrate that the potential exists for an ignition of coal dust or methane in areas of the mine other than inby the last open crosscut or in return air courses. For this reason, the final rule retains the principle of the existing standards that only blasting units approved as permissible are permitted in underground coal mines.

A commenter questioned the proposed requirement that the blasting unit used be "appropriate for the blasting operation". The purpose of this provision was to require that the capacity and function of the blasting unit be matched with the blasting to be performed. This purpose is addressed by the final rule which requires that a permissible blasting unit be "used in a manner consistent with its approval". Thus, if a blasting unit is approved to initiate up to 20 boreholes per round, it must not be used to initiate more than 20 boreholes in a round.

Paragraph (d) prohibits the use of permissible explosives and sheathed explosive units underground when they are below the minimum product firing temperature specified by the approval. The minimum product firing temperature for permissible explosives and sheathed explosive units are part of the approval issued for such explosives and sheathed units under Part 15. As explained in the proposal, the product temperature at which an explosive or sheathed unit is used directly affects its safe performance. Additional discussion of this issue can be found in the new explosives approval regulations.

Several commenters noted that the minimum product firing temperatures for approved explosives are not presently available. Previous MSHA regulations for the approval of explosives did not address a minimum product firing temperature. In Part 15, the final rule for the approval of explosives and sheathed explosive units requires the manufacturer to designate and display the minimum product firing temperature on the approval label. Under this final rule, explosives and sheathed units must not be fired when the product is below the temperature appearing on the approval label. MSHA will continue to allow the use of previously approved explosives recommending that they be fired in accordance with the manufacturer's recommended product temperature.

Paragraph (e) requires that electric detonators be compatible with the blasting unit and have sufficient strength to initiate the explosive being used. When operated, permissible blasting units provide a short burst of electric current within certain specifications. Factors that influence the performance of these units in conjunction with permissible explosives include the resistance created by the detonators to be fired and the energy necessary to initiate them. For example, detonators requiring more than 2 amperes to reliably initiate them may result in misfires when used with permissible blasting units. Likewise, some imported detonators of less than No. 8 strength may not reliably fire certain types of permissible explosives. MSHA is aware of detonators, introduced into the U.S. market and advertised as suitable for use in gassy mines, which require an initiating current exceeding the tested capacity of blasting units approved under 30 CFR Part 25. Further, Bureau of Mines tests of other imported detonators entering the U.S. market show reduced minimum no-fire currents. Uncontrolled minimum no-fire currents could lead to detonation of explosives during circuit testing, or greater sensitivity to stray electrical currents. These are examples of detonators which would be incompatible with the blasting unit and therefore not allowed under this provision.

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Under the preproposal draft, the issue of detonator compatibility was to be primarily addressed by new MSHA approval regulations for detonators. The proposal did not retain this approach, except that it would have required blasting units to "have sufficient capacity and be appropriate for the blasting operation". Since the proposed rule was published, MSHA has become aware of new detonators on the market which may not have the same characteristics as those previously available. Therefore, MSHA will seek to include an approval schedule for detonators used in underground coal mines in its regulatory program.

Section 75.1311 Transporting explosives and detonators.

This standard is derived from existing §§ 75.1301, 75.1304, 75.1305 and 75.1403–7 except § 75.1311(b)(2). This section specifies the requirements for transporting explosives and detonators underground. The hazards addressed by these standards are damage to explosives and detonators and accidental detonations. The final rule maintains the approach used in the proposal by specifying requirements for particular methods of transportation.

The final rule also adopts the suggestions of a commenter who recommended that the new standards should distinguish between track-mounted and other types of vehicles. The final rule distinguishes requirements for cars or vehicles and trolley locomotives based on the unique hazards which are presented by each mode of transportation. The final rule separately addresses the transportation of explosives and detonators by hand.

Paragraph (a) sets forth general requirements for transporting explosives and detonators underground, regardless of the transportation method. As in the proposal, the final rule requires that explosives and detonators be enclosed in separate, substantially constructed containers made of nonconductive material, with no metal or other conductive material exposed inside. It further clarifies that both Class A and Class C detonators in quantities greater than 1,000 be maintained in the original containers as shipped from the manufacturer to gain additional protection against accidental initiation. This is consistent with Department of Transportation (DOT) requirements for transporting explosives and detonators unless they are transported in separate vehicles. This provision reduces the risk of damage or spillage. Transporting explosives and detonators in separate containers segregates the initiating devices from the explosives, thus providing protection against accidental detonation of the explosives by the detonators. Substantially constructed, nonconductive containers protect explosives and detonators from electric current and damage or spillage during transportation. Typically, original containers for explosives are heavy grade cardboard with a water-repellant finish. When closed and in good condition, these containers adequately protect the contents. Likewise, the original packaging for detonators is nonconductive and holds the product in a stable, protected fashion suitable for transportation underground.

Paragraph (a) also requires that each container of explosives and detonators be indelibly marked with a readily visible warning identifying the contents. This final rule differs from the proposal which required only that the container be marked with a warning identifying the contents as explosive.

One commenter noted that the proposal might have allowed a person to print a warning with chalk and suggested that reflective lettering at least 6-inches high be required. The final rule provides that the warning must be "readily visible". This means that the warning must be easily seen by those people who work in the vicinity of the containers so as to alert them to the presence and contents of the containers. With this approach, the final rule permits the use of any effective method that informs approaching miners of the presence of explosives and detonators. In the final rule "indelibly" marked is added in response to this comment. "Indelibly marked" does not allow the use of chalk or any writing material which could be smeared, erased, or susceptible to change from the mine environment.

Paragraph (b) of the final rule applies when explosives and detonators are transported by any type of cars or vehicles. The cars or vehicles must be marked with warnings identifying the contents as explosive. The warning must be visible for miners approaching from any direction and be written in indelible letters. This warning can be in the form of removable signs. The final rule remains substantially the same as the proposal. The term "vehicle" is added to the final rule to clarify that these standards apply to any type of explosives and transportation equipment used underground. Because a car or vehicle can change direction or be approached from various sides and directions, the final rule essentially includes the preproposal provision in specifying that the warning be readily visible to miners approaching from any direction.

Several commenters suggested that the final rule include a new requirement that containers carrying explosives and detonators be situated in vehicles and cars so that they do not extend beyond the profile of the vehicle. While such a provision would limit the possibilities of damage and spillage if a container were to strike the roof or a rib, MSHA has concluded that such a requirement is unnecessary. The Agency's evaluation of explosive-related transportation accidents in underground coal mines did not indicate that any of these accidents were caused by the containers of explosives or detonators extending beyond the profile of the vehicle.

Paragraph (b) also addresses requirements for transporting detonators with explosives. It requires that explosives and detonators be transported in separate cars or vehicles. As an alternative, explosives and detonators may be transported in the same car or vehicle, provided that both Class A and Class C detonators in quantities greater than 1,000 are kept in the original containers as shipped from the manufacturer and separated from explosives by a hardwood partition of at least 4 inches thick, a laminated partition or equivalent. Additional protection must be provided when transporting these types and quantities of detonators with explosives. The experience of the Institute of Makers of Explosives (IME) has also shown that all Class A and Class C electric detonators may be shipped with prescribed packaging requirements and quantities in an IME 22 container. This container provides protection which is consistent with the hardwood or laminated partition prescribed in this rule. The IME publication entitled "Guide for the Use of IME 22 Container", April, 1988, provides information related to packaging and container shipment of detonators. Both Class A and Class C detonators may be transported in quantities of no more than 1,000 in the same vehicle with explosives if separated by 4 inches of hardwood, a laminated partition or equivalent. The principal purpose behind separating explosives and detonators during transportation is to minimize the danger of detonating the explosives in the event the detonators are accidentally initiated. The final rule further clarifies explosives transportation requirements in the proposal by requiring additional protection when certain detonators are transported with explosives. This final rule provision is consistent with IME guidelines and DOT regulations.

In response to several comments to the preproposal, the definition of "laminated partition" was revised in the proposed rule to specify minimum nominal dimensions for a laminated barrier rather than exact dimensions. The definition was derived from the Institute of Makers of Explosives, Pamphlet Number 22, January 1, 1985. The final definition is the same as the proposal.

Paragraph (b)(3) prohibits persons, other than those necessary to operate the equipment or to accompany the explosives and detonators, from being transported with the explosives and detonators. This provision is the same as the proposal and provides for a minimum number of miners to be exposed to a potentially hazardous situation.

Several commenters recommended that the final rule distinguish between track-mounted vehicles used for transportation of explosives and detonators and other types of vehicles used for this purpose. In response to these comments, and recognizing that certain track-mounted vehicles carrying explosives and detonators can involve hazards such as sparks from an arcing trolley wire which are not present with other types of vehicles, the use of trolley locomotives is separately addressed in paragraph (b)(4).

The final rule revises and makes mandatory the existing safeguard criterion in § 75.1403–7(i). It requires that trips carrying explosives and detonators be separated by at least a 5-minute interval from mantrips. Although not included in the proposed rule, a similar provision requiring a 5-minute interval was included in the preproposal draft. One commenter objected that the provision was not in the proposed rule. Based on the Agency's experience with the existing criterion, the 5-minute interval is an effective safety measure. This precaution reduces the chance of any collision with other track haulage equipment when explosives or detonators are being transported. Should a collision occur causing the detonation of transported explosives, the entire mine is in jeopardy of a propagating coal dust explosion. A review of MSHA accident data shows a high frequency of track haulage accidents underground. This information coupled with the hazards of transporting explosives and detonators, has caused MSHA, upon reconsideration, to adopt the 5-minute interval but limits the application to mantrips rather than all trips as specified in the preproposal. No commenters on the preproposal opposed its inclusion. The final rule deletes the existing criteria provision contained in § 75.1403–7(i) and makes the 5-minute interval mandatory for all mantrips.

The final rule also requires that when trolley locomotives are used, the cars containing explosives and detonators must be separated from the locomotive by at least one car that is either empty or that only contains noncombustible materials. This standard was included in the preproposal, but not in the proposal draft. It addresses the danger of an accident or a sudden stop during which the explosives or detonators could, unless adequately separated from the locomotive, come into contact with the heat or electricity generated by the locomotive, possibly resulting in an explosion.

Paragraph (c) sets forth requirements for transporting explosives and detonators on conveyor belts. These standards require explosives and detonators to be kept separated to avoid an accident with one from involving the other. The final rule also addresses the hazard of damaging and spilling explosives and detonators when using belt conveyors for transportation. One commenter suggested that in mines where there is a means of transporting explosives and detonators other than conveyor belts, the final rule should require the other method to be used. In MSHA's experience, tranportation of explosives and detonators by conveyor belt is safe, provided that the precautions prescribed by the rule are followed. When dangerous circumstances have been created during transportation of explosives and detonators by conveyor belt, they have been the result of collisions with obstructions or unsafe handling practices at transfer points or when unloading.

Like the proposal, paragraph (c)(1) provides that at least 6 inches of clearance must be maintained between the top of any container of detonators or explosives and the mine roof, or other obstruction along the conveyor belt. A commenter suggested that a minimum of 18 inches of clearance be required to be maintained between the top of containers of explosives and detonators and the mine roof or other obstruction. The final rule requires 6 inches of clearance instead of 18 inches because the required clearance is both adequate and reasonable to protect against damage to or spilage of explosives and detonators. It also accounts for vertical movement of the containers at uneven locations along a beltline, while recognizing the confined nature of the underground environment.

Except when persons are riding the belt to accompany explosives or detonators, a person must be at each transfer point between belts and the unloading location. This exception has been retained from the proposal recognizing that these persons would be in a position to stop the belts at these transfer and unloading points. Conveyor belts are also required to be stopped before explosives or detonators are loaded or unloaded. This new provision has been added to the final rule in response to a comment and is based on MSHA's assessment of several hazards associated with working around moving conveyor belts. An MSHA study, presented at the Fourteenth Annual Institute on Coal Mining Health and Safety at Blacksburg Virginia in 1983, on transportation and materials handling during the period from 1975 to 1982 showed 50 persons of all accidents associated with handling materials in underground coal mines to be conveyor related. Stopping the belt before loading or unloading allows stable positioning of cartons thereby reducing the potential of explosives and/or detonators from being carried over a belt tailpiece causing damage or detonation. It also protects against the hazard of miners being pulled into the moving belt during the course of handling containers.

Paragraph (d) addresses transportation of explosives and detonators by hand. It requires that they be carried in separate, noncond·uctive containers to keep explosives from coming in contact with initiating devices and to protect explosives and detonators from external electric sources. The original containers, rubberized bags or other nonconductive containers may be used to comply with this provision. The use of rubberized bags when transporting explosives and detonators by hand has proven to be safe.

The provision addressing hand-carried explosives and detonators was inadvertently left out of the proposal. MSHA recognizes that hand-carrying is likely to be used at some point when transporting explosives and detonators to the place of use. Therefore, this provision has been added to the final rule.

Section 75.1312 Explosives and detonators in underground magazines.

The final rule is derived from existing § 15.19(b) and §§ 75.1301, 75.1306 and 75.1307, except for paragraphs (c), (f) and (g) which are new. The rule establishes basic requirements for explosives and detonators kept in underground magazines and places

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limits on the quantity of explosives permitted underground.

Paragraph (a), like the existing rule, limits the quantity of explosives kept in underground magazines to no more than is needed for 48 hours of use. This quantity limit, which remains unchanged from the proposed rule, will vary at each mine according to the amount of explosives used in the operation. Limiting the amount of explosives underground protects against a large quantity of explosives being involved in a mine fire or explosion.

One commenter recommended a limit on both the quantity and time during which explosives may be stored, suggesting that only amounts needed and used within a 24-hour time period be permitted. Other commenters expressed concern that the proposed 48-hour period could lead to enforcement problems since usage may vary at a particular mine for any 48-hour time period, particularly for an operator who does not use explosives for the extraction of coal. One commenter recommended eliminating this requirement and suggested using instead a standard which addresses removal of deteriorated explosives from the mine. This commenter expressed the view that manufacturers have achieved a safe level of product stability and that the 48-hour standard would not address the hazards associated with excessive quantities of explosives stored underground. Another commenter stated that a 48-hour supply rule would be too restrictive, leading to increased handling and miner exposure to hazards transporting explosives. This commenter recommended a 7-day storage supply limitation.

The final rule limits the quantity of explosives kept underground to that amount expected to be used within 48 hours. Some commenters were confused at the public hearing as to the meaning of the quantity limit. MSHA emphasizes that the 48-hour rule is not a time limit for storage underground which requires that explosives be removed after 48 hours. Instead, it is a quantity limit on the volume of explosives stored underground, the quantity being that amount which would normally be used in the operation over 48 hours. To avoid unnecessary handling of explosives, MSHA has interpreted the existing standard in this manner and it has been industry practice for more than 30 years.

Paragraph (b) requires that explosives and detonators taken underground be kept in separate closed magazines at least 5 feet apart, or in the same closed magazine with the explosives and detonators separated by a hardwood partition at least 4 inches thick, separated by a laminated partition or equivalent. This standard remains basically unchanged from the proposed rule and addresses the need for careful storage of explosives and detonators as a basic precaution against damage and accidental detonation. Keeping explosives and detonators in either separate closed magazines or in the same closed magazine with the explosives and detonators separated by at least a 4-inch hardwood partition, a laminated partition or the equivalent minimizes the potential detonation of explosives in the event that the detonators are accidentally initiated.

Paragraph (c) requires that only explosives and detonators be kept in underground magazines and is substantially unchanged from the proposal. The proposed phrase "stored underground" is revised to read "kept underground" to clarify that explosive and detonator supplies be limited as prescribed by paragraph (a) of this section. Under the final rule, no materials other than explosives and detonators are to be kept in underground magazines. This standard prohibits the accumulation of empty packing material, combustible material and other items which could contribute to a fire or accidental detonation.

Paragraph (d) also remains unchanged from the proposed rule. It requires that magazines be substantially constructed and all interior surfaces be made of nonconductive material with no metal or other conductive material exposed inside. MSHA recognizes that metal exteriors have been effectively used to protect stored explosives and detonators from accidental detonation and damage. This rule permits the use of mobile magazines as well, provided that they meet the requirements of the final rule. A commenter also suggested that a provision be added to the final rule which would require all magazines to be immobilized while containing explosives. The commenter stated that all magazines must be stationary and in a known location outby the face to avoid the potential of equipment accidentally damaging a mobile magazine because of its unknown location. As discussed below, magazine locations are required to be posted with readily visible warnings to provide adequate notice of the location of explosives. These warnings on the magazine alert miners when magazines are moved to a new location. MSHA is not aware of any accidents regarding explosives and detonators in mobile magazines resulting from the magazine being either hit and damaged by mining equipment or by the magazine itself becoming a runaway piece of equipment. Most magazines are of skid-mounted type and are portable rather than mobile. Therefore, this recommendation is not adopted in the final rule.

Paragraph (e), which is consistent with both the proposal and the existing standard, requires that magazines be at least 25 feet from roadways and any source of electric current. Magazines must also be out of the direct line of the forces from blasting and be kept as dry as practicable.

One commenter suggested that all magazines be located at least 150 feet outby the last open crosscut. This suggestion has not been adopted. In MSHA's experience, the precautions of paragraph (e) provide a necessary and reasonable measure of protection against the hazards of an accidental explosion or other hazards involving explosives and detonators in magazines Locating the magazine 25 feet from any roadway will keep it out of areas of concentrated mine traffic where the magazine might be struck by equipment Keeping the magazine out of the direct line of the force of blasting protects the explosives supply from being damaged or accidentally initiated. When the magazine is kept as dry as practicable, damage to or deterioration of the explosives and detonators while they are stored in the magazine is minimized

Paragraph (f) requires that magazine locations be posted with indelibly marked, readily visible warnings indicating the presence of explosives. One commenter recommended that the warning be made of reflective material with lettering at least 6 inches tall and that these signs be located at all points where persons entering the area would pass. The warnings required by the fina rule must be indelible and sufficiently marked in a fashion that is readily visible, indicating the location of a magazine. This will require warnings that alert persons entering the area of the contents in the magazine, which is the purpose of this standard. The particular method by which this is accomplished, however is not specified in the final rule. Instead, the mine operator can determine how to appropriately label the warning signs.

Paragraph (g) specifies that only materials and equipment used in blasting such as blasting units, blasting cable, and tamping sticks can be stored at magazine locations. This is unchanged from the proposed rule. This provision differs from paragraph (c) in that it limits the items that can be stored in areas surrounding magazine locations while paragraph (c) limits the materials that can be stored inside an underground magazine. Paragraph (g) does not permit the storage of combustible material or empty packaging at these locations. This will minimize the risk of fire and premature initiation of the explosives and detonators.

One commenter suggested that underground storage of explosives and detonators be prohibited in any mine that does not use explosives to produce coal on a regular basis. The commenter stated that this would eliminate deterioration of explosives and detonators when stored for a long period of time. When explosives and detonators are stored in accordance with the final rule, the incidence of deterioration will be minimized. However, when deterioration of the explosives and detonators does occur, the final rule specifies that they be removed from the mine. In addition, the Agency is not aware of any data which indicates that problems are being encountered in underground coal mines as a result of this practice. For these reasons, this suggestion is not adopted in the final rule.

Section 75.1313 Explosives and detonators outside of magazine.

The standards in this section are derived from existing §§ 75.1301, 75.1304, 75.1306 and 75.1307 except for paragraphs (a) and (c) which are new. They address the handling of explosives and detonators that are removed from magazines for use. These standards are not changed substantially from the proposed rule except for paragraph (a) which, although not in the proposal, was a new provision in the preproposal draft.

Paragraph (a) is a new requirement which limits the quantity of explosives that can be outside a magazine for use in a working section or other area where blasting is to be performed to 100 pounds except when more than 100 pounds of explosives are required to blast one round. In the latter situation, the amount necessary to blast one round may be outside of the magazine. These limitations were in the preproposal draft but were not included in the proposal. At least 10 fatalities have occurred where explosives being stored on mining equipment accidentally detonated when the coal face was blasted. Upon reconsideration of this accident data and in response to a comment urging that a limitation on the amount of explosives outside a magazine be specified, this provision has been added to the final rule.

In addition, when excessive quantities of explosives are outside of a magazine they are subject to being misplaced and run over by mining equipment. This limitation will protect against accumulation of explosives on a working section or other area of a mine. This will also lessen the severity of an accident involving premature detonation of explosives.

The 100-pound limitation is based on the fact that explosives are normally stored in 50-pound cases. An allowance of 100 pounds of explosives outside of a magazine is more than enough to blast a round of coal. In certain instances, such as when blasting rock overcasts, MSHA recognizes that more than 100 pounds of explosives may be necessary. Paragraph (a)(2) of this section allows an operator the needed flexibility to do blasting under those special circumstances.

Paragraph (b) requires that explosives and detonators outside a magazine that are not being transported or prepared for loading in boreholes be kept in closed separate containers made of nonconductive material with no metal or other conductive material exposed inside. The containers must be at least 15 feet from any source of electrical current, out of the direct line of the forces from blasting, in a location to prevent damage by mobile equipment, and kept as dry as practicable. This paragraph is unchanged from the proposed rule.

One commenter suggested deleting the requirement that explosives and detonators be kept as dry as practicable because virtually all explosives and detonators are water resistant. Water gel and emulsion type explosives are wrapped in plastic and may not be affected by water. However, some granular-type explosives are wrapped in paper cartridges which are subject to water deterioration.

The 15-foot distance which must be maintained between the explosives and detonators and any source of electric current has proven to be an effective distance in preventing accidental initiation. Keeping the detonators and explosives out of the direct line of the forces from blasting normally means keeping these materials out of the section or area where blasting is conducted. When the explosives or detonators are kept in a location to prevent damage by mobile equipment, the possibility of accidental contact which could initiate detonation is lessened.

Paragraph (c) is a new provision which requires that explosives and detonators not used during the shift be returned to a magazine by the end of the shift. This paragraph is unchanged from the proposed rule. One commenter suggested that MSHA clarify that the provision allows storage in a section magazine at the end of a shift and does not require that explosives and detonators be carried outside of the mine to the main magazine at the end of a shift. MSHA does not believe that any additionally clarification is needed. The regulation permits the operator to use either the section or the main magazine so long as it meets the requirements of these standards.

A commenter recommended that MSHA require only qualified persons to return unused explosives to a magazine at the end of the shift. MSHA has not adopted this recommendation because the primary concern addressed by the qualified person requirement is the safe use of permissible explosives. These type explosives are required to be kept in substantially constructed, enclosed containers until used and pose limited hazards to persons handling these containers. Consequently, a qualified person is not required for transporting explosives into or out of the mine or for removing explosives from a magazine. The Agency believes, that since similar circumstances exist when returning explosives to a magazine, the need for a qualified person to perform this task does not exist.

Section 75.1314 Sheathed explosive units.

This new section sets forth the conditions under which sheathed explosive units may be used in underground coal mines. Other general requirements in the final rule for transportation, storage and handling of explosives also apply to the sheathed explosive units. The sheathed explosive unit, which was developed by the Bureau of Mines, U.S. Department of the Interior, can be fired outside the confines of a borehole without presenting the hazard of igniting any flammable atmosphere which might be present underground. Existing standards currently prohibit the firing of any explosives in bituminous coal mines that are not confined in a borehole. Sections 75.1310 and 75.1315 of the final rule allow the use of sheathed explosive units and § 75.1314 sets forth requirements for their use. Situations where it may be advantageous from a safety standpoint to fire the sheathed explosive unit include dislodging loose roof slabs or coal or rock overhangs, roof fall leveling, and slab or boulder breaking.

One commenter recommended that the use of sheathed explosive units be prohibited. This commenter stated that permitting the use of sheathed units would allow unconfined shots to be fired in underground bituminous coal

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mines resulting in a diminution of safety for the miners. Historically, the firing of unconfined shots has been prohibited. The sheathed explosive unit is designed to form a flame-inhibiting cloud upon firing of the unit. This cloud will prevent the flame created by firing of the explosive from igniting any explosive mixtures that may be present. The Bureau of Mines conducted numerous tests on its prototype sheathed explosive units to determine whether they would ignite explosive mixtures of methane or coal dust. During these tests the units were placed in a gallery containing explosive mixtures and fired. The firing of these units did not ignite any of the explosive mixtures. The tests conducted by the Bureau of Mines clearly show that sheathed explosive units can be used safely in underground coal mines, provided that the applicable provisions of this final rule are followed.

In addition, MSHA is issuing, concurrently with this final rule, approval requirements for sheathed explosive units. As previously discussed, sheathed explosive units must be approved by MSHA before they can be used in underground coal mines. These approval requirements are included in the revisions to 30 CFR Part 15.

Paragraph (a) of the final rule specifies that an instantaneous detonator must be used to fire each sheathed explosive unit. This paragraph remains essentially unchanged from the proposal, except the term "each" has been added to clarify that each sheathed explosive unit must be initiated by a separate instantaneous detonator for firing. The exclusive use of instantaneous detonators with sheathed explosive units protects against the hazards associated with sheathed explosive units being damaged by the earlier firing of an adjacent unit.

One commenter stated that short-delay detonators with the same delay periods could be used because the identical delays would ensure that the blast is essentially instantaneous. Tests conducted by the Bureau of Mines on short-delay detonators indicate that firing times for the same delay period can vary significantly. For example, a short-delay detonator with a designated delay period of 100 milliseconds could detonate in a time period ranging from 75 to 125 milliseconds. Therefore, if short-delay detonators are used in sheathed explosive units, one unit could fire before the others, thereby causing damage to the flame-inhibiting sheaths of adjacent units, and resulting in an ignition of coal dust or methane. Because of this potentially hazardous situation, the final rule specifies that instantaneous detonators be used when firing sheathed explosive units.

Paragraph (b) requires that a qualified person or a person working in the presence of and under the direction of a qualified person must prime and place the sheathed explosive units into position for firing. This paragraph also specifies that when priming a sheathed explosive unit the entire detonator must be inserted into the detonator well of the unit and be secured in place. Correct priming and placement of sheathed explosive units, like all other explosives, are crucial to safe performance. The final rule clarifies the proposal which specified that a person be under the immediate supervision of a qualified person. Under the final rule, when the sheathed explosive units are primed and placed by other than a qualified person, it must be done in the immediate presence of and under the direction of a qualified person.

The requirement in paragraph (b) regarding the method for priming the sheathed explosive unit appeared in the preproposal draft but not the proposed rule. Upon reconsideration, MSHA believes that because the sheathed explosive unit is relatively new, a requirement for how it is to be primed is necessary to reduce the hazards associated with improper detonator placement. Placing the detonator in the detonator well of the sheathed explosive unit initiates the explosive in the unit without damaging the sheath. Detonators improperly placed, could only partially detonate the explosive and damage the flame-inhibiting sheath. Damage to the flame-inhibiting sheath might then allow the explosive to ignite gas or dust in the mine atmosphere. The final rule also requires detonators to be secured in place to prevent movement of the detonator prior to initiation.

Paragraph (c) requires that sheathed explosive units not be primed until immediately before the units are placed where they will be fired. This paragraph is unchanged from the proposal. It addresses the hazard of prime sheathed explosive units being exposed in the underground mine environment for extended periods of time without being used, increasing the likelihood of accidental detonation. The priming of the sheathed explosive units is the last step in preparation of the explosives before the units are placed where they will be fired. The final rule minimizes the amount of time an explosive remains primed prior to firing.

Paragraph (c) requires that a sheathed explosive unit not be primed if it is damaged or deteriorated. The final rule revises the proposal which specified that a sheathed explosive unit not be fired if it is damaged or deteriorated. The final rule does not permit damaged or deteriorated sheathed explosive units to be primed. A qualified person will be able to visually inspect the sheathed explosive units before preparing them for detonation to determine if a sheathed explosive unit is damaged or deteriorated. Damaged or deteriorated sheathed units increase the potential for a misfire.

Paragraph (d) requires that rock dust be applied to the roof, ribs and floor within a 40-foot radius of the location where the sheathed explosive units are to be fired except in anthracite mines. This paragraph appeared in the preproposal draft but not the proposed rule. This application of rock dust helps protect against the hazards of float coal dust and coal dust being placed into suspension when the sheathed explosive unit is fired. In addition, it ensures that rock dust is applied in areas which are not covered by the MSHA requirement that generally addresses rock dust applications (30 CFR 75.402).

Paragraph (e) of the final rule provides that no more than three sheathed explosive units be fired at one time. This paragraph remains unchanged from the proposal. The use of three sheathed explosive units at one time should be adequate for application in underground coal mines. The simultaneous firing of three units is the maximum number of units that have been tested by the Bureau of Mines in an explosive atmosphere. These tests have shown that the proper firing of three units does not create an ignition hazard. One commenter, who had observed testing of sheathed explosive units by the Bureau of Mines, stated that in his opinion, three units provided ample rock breaking capacity to break the strongest strata associated with roof falls and excavation.

Paragraph (f) requires, as did the proposal, that sheathed explosive units not be fired if they are in contact with another sheathed explosive unit. This is in accordance with the test procedures used by the Bureau of Mines to determine the safety of firing sheathed explosive units. In addition, this will minimize the possibility that the concussion created by the firing of a unit will damage the flame inhibiting sheath of an adjacent unit and adversely affect the safety aspects of its performance.

Several commenters suggested that the term "sheathed explosive unit" be replaced with the phrase "explosives approved for unconfined blasting". They stated that the term "sheathed explosive unit" may limit technological advances and prevent the use of devices that are as safe as sheathed explosive units. The term "sheathed explosive units" is used in the final rule primarily to distinguish them from other types of explosives and should not be interpreted as limiting the introduction of other devices designed to be fired outside of boreholes. The approval provisions in Part 15 and the requirements of § 75.1315 allow for the future introduction of other such explosive units approved by MSHA.

Section 75.1315 Boreholes for explosives.

This standard is derived from existing §§ 75.1300, 75.1302, and Part 15 except for paragraphs (d), (e), and (f) which are new. It addresses unconfined shots and the use, spacing and maintenance of boreholes. These requirements will minimize the occurrence of gas and coal dust explosions and misfires.

Paragraph (a) requires that all explosives fired in underground coal mines be confined in boreholes except sheathed explosive units and other explosive units approved by MSHA for firing outside the confines of a borehole and shots fired in anthracite mines for battery starting or blasting coal overhangs. The final rule revises the existing requirement by allowing the use of sheathed units and deleting the terms "mud caps and adobes". Unconfined shots continue to be prohibited by the requirement that explosives fired underground be confined in boreholes, except when firing sheathed explosive units or other explosive units approved by MSHA under Part 15.

When explosives are fired, they create sufficient flames to ignite coal dust and methane. However, if the explosives are stemmed in a borehole, the flame is confined in the borehole and cannot ignite any coal dust or methane that may be present. This same principle is true for sheathed explosive units which upon firing create a cloud of flame-inhibiting material and prevent the flames from causing an ignition.

One commenter recommended that battery starting in anthracite mines be accomplished with means other than the use of unconfined blasting to prevent exposing miners to unnecessary hazards. The final rule allows unconfined shots to be fired in underground anthracite mines for battery starting and when taking down coal overhangs. These practices have been performed in anthracite mines for many years. Unlike bituminous coal dust, anthracite coal dust is not explosive and therefore does not present the same hazard as bituminous coal dust. However, as with all blasting, § 75.1324 prohibits any round from being fired unless the methane concentration in the area is less than 1 percent volume.

The final rule also prohibits persons from going inside a battery to start the flow of material. This requirement, which is an existing provision, was inadvertently omitted from the proposed rule. The Agency believes that due to the severe hazard of being struck and or crushed by falling material which is associated with this practice, it must be specifically prohibited.

Paragraph (b) requires boreholes for explosives in coal to have a distance of at least 24 inches between the boreholes and between each borehole and any free face, unless the height of the coal seam does not permit such spacing. This revises the existing standard which requires a burden of 18 inches in all directions. MSHA's experience, as well as that of several commenters, has shown that this language is subject to a variety of interpretations and leads to confusion. Therefore, the phrase "burden * * * in all directions", as used in existing Part 15, is deleted in the final rule.

Research conducted by the Bureau of Mines has indicated that, in order to minimize the potential for desensitization of explosives being fired in coal, a minimum spacing of 24 inches is necessary. The shockwaves created by the firing of explosives in a borehole can compress the explosives in an adjacent borehole if the spacing is less than 24 inches. When explosives are compressed, their density is changed and the likelihood of a misfire is significantly increased. Results of research conducted by the Bureau of Mines indicates that misfires occur approximately 50 percent of the time when the separation between boreholes is only 18 inches. The occurrence of misfires was significantly reduced when the spacing between the boreholes was increased to 24 inches.

Several commenters stated that a 24-inch spacing of boreholes would be too great a distance when blasting rock in combination with coal (middle man). They stated that such spacings would result in oversized rocks and reduce the overall effectiveness of the shot. Some of these commenters recommended that the existing 18-inch spacing be retained, while others recommended that a provision be added which would allow District Managers to permit distances less than 24 inches.

Paragraph (c) has been added to the final rule to address the concerns of these commenters. It requires boreholes in rock to be at least 18 inches from any other borehole in rock, at least 24 inches from any borehole in coal, and at least 18 inchres from any free face. This recognizes that rock is a harder material than coal and the distance between boreholes necessary to prevent desensitization of explosives is less. However, when a combination of rock and coal are blasted simultaneously, any borehole in rock must be at least 24 inches from any borehole in coal.

Paragraph (d) prohibits a borehole that has at any time contained explosives from being used to start any other hole. This provision addresses the hazard of accidentially drilling into undetonated explosives or detonators remaining in a previously loaded borehole. Miners have been fatally injured while drilling into holes that contained misfired explosives.

Paragraph (e) requires that when blasting slab rounds off the solid, the opener holes not be drilled beyond the rib line. Boreholes drilled beyond the rib line can result in overburdened shots which contribute to the ocurrence of blown-out shots and an increased risk of methane and dust ignitions.

Paragraph (f) provides that when coal is cut for blasting, the coal must be supported if necessary to maintain the stability of each borehole to be loaded with explosives. This provision appeared in the preproposal draft, but was not in the proposal. A commenter objected to this deletion because boreholes may collapse after being loaded. Boreholes which collapse or are otherwise affected by sagging or collapsing of cut coal can result in unconfined or blown-out shots. For example, if explosives are loaded into boreholes in a working place which has been undercut to a depth of 10 feet and the first 3-foot distance of the cut then sags or collapses, the explosives may be separated from the stemming material allowing the shots to be fired unconfined. A common practice for supporting the coal in such situations is placing a few blocks of wood in the undercut area of the face. Therefore, MSHA has revised the final rule to include this requirement.

Section 75.1316 Preparation before blasting.

This final rule is derived from existing § 75.1307 and Part 15, except paragraph (d) which is new. This section sets forth the requirements for deenergizing or removing electric equipment and determining the depth and direction of boreholes. It also identifies situations when explosives are not permitted to be loaded in boreholes. It address the hazards of premature detonation of the explosives being placed in boreholes.

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Paragraph (a) requires that before priming explosives, all mobile electric equipment be removed to a distance of 50 feet from the working place or any other area where blasting is to be performed. This paragraph also requires that stationary electric equipment within 50 feet of these areas be deenergized. Failure to deenergize these sources increases the risk of accidental initiation of detonators and explosives by stray electric current.

The 50-foot distance for mobile and stationary electric equipment was added to the final rule in response to a commenter who stated that some clarification was necessary to provide guidance to the mining industry as to what equipment should be removed or deenergized. This commenter was concerned that the proposal would be open to a variety of interpretations including the complete deenergization of all electric equipment on a producing section and that such a procedure is not necessary to maintain safe blasting practices. The 50-foot distance, which is an accepted minimum distance used in the coal and metal and nonmetal mining industries, minimizes the potential of premature detonation.

Paragraph (b) specifies that before loading boreholes with explosives, each borehole must be cleared and its depth and direction determined. This provision addresses two primary concerns. First, coal dust created during drilling of the boreholes must be removed from the hole. Otherwise the coal dust can get between the explosive cartridges and prevent the entire explosive train from detonating. The second concern is that the qualified person know the amount of explosives in each borehole based on its depth and that adequate space is provided between each borehole. Determining the depth and direction of each borehole provides sufficient information for making these determinations. Boreholes with excessive amounts of explosive or inadequate spacing of boreholes has resulted in numerous blown-out shots and misfires.

One commenter suggested that a wooden tamping pole or other nonconductive tool be used to clear boreholes and to determine their depth and direction. This commenter stated that only nonsparking tools should be used in preparing boreholes or at any other stage of the blasting process. While a wooden tamping pole is normally used in determining these factors, the use of metallic tools does not present a hazard when clearing boreholes prior to loading explosives and should not be prohibited. At this initial state of the blasting process, there is no danger involved with the borehole because if has not yet been loaded with explosives. However, § 75.1318(g) of the final rule requires that only a nonconductive, nonsparking pole be used when loading explosives into the boreholes and when tamping the stemming material.

Paragraph (c) prohibits loading of explosives into boreholes that are drilled beyond the depth of cut coal unless the portion of the borehole deeper than the cut is filled with noncombustible material. Cut coal provides a second free face for the explosives to break the coal down. Firing explosives in boreholes drilled beyond the depth of cut coal increases the risk of blown-out shots and methane or dust ignitions.

One commenter suggested that only clay dummies or water stemming bags be used to fill the portion of a borehole that has been drilled beyond the limits of a cut. This commenter stated that clay or water would be compatible with the boreholes, while other noncombustible materials possibly would not. The purpose of filling the space beyond cut coal is to prevent explosives from being loaded into that portion of the borehole. Therefore, noncombustible materials other than clay or water could also serve this purpose.

Paragraph (d) requires that when two working faces are approaching each other, cutting, drilling or blasting be done at only one working face at a time if the two faces are within 25 feet of each other. Therefore, if a developing crosscut is being mined from both sides, mining operations must be conducted on only one side at a time when the distance between the two working faces is 25 feet or less. This requirement protects against accidental initiation of explosives by preventing cutting or drilling in an approaching working face from coming into contact with boreholes containing explosives on the opposite side. It also guards against blasting breaking through to another area where people are working.

One commenter recommended that this provision apply only during preparation for blasting to avoid possible misinterpretation of the provision. The intent of the provision is to limit any activity related to cutting, drilling, or blasting to only one side when two approaching faces are within 25 feet of each other. This requirement minimizes the potential of premature detonation and also minimizes the number of persons subject to such hazard.

A provision which appeared as paragraph (c) in this section of the proposed rule that addressed the type of work that could be performed when loading boreholes has been moved to § 75.1318 in the final rule.

Section 75.1317 Primer cartridges.

This new standard sets forth requirements for primer cartridges. A primer cartridge is an explosive cartridge with a detonator inserted in one end. Improper makeup of the primer cartridge can adversely affect the reliable detonation of explosives and contribute to the occurrence of misfires, creating safety hazards.

Paragraph (a) requires that primer cartridges be primed and loaded only by a qualified person or a person working in the presence of and under the direction of a qualified person. This requires the qualified person to be in the immediate presence of the person priming explosive cartridges at all times that this work is being performed. Since the hazards associated with explosives and detonators are greatly increased when the two are joined together, a person who is competent and knowledgeable must be present to ensure that proper procedures and precautions are followed.

Paragraph (b) prohibits the priming of cartridges until immediately before they are loaded in boreholes. An explosive cartridge primed with a detonator is very sensitive and subject to accidental detonation. Therefore, the time in which an explosive is allowed to remain primed prior to firing must be minimized.

The proposed rule did not contain certain requirements that were in the preproposal for priming explosive cartridges since they would be prepared by a qualified person proficient in the proper techniques for the performance of these tasks. However, MSHA accident data shows that failure of the blaster to follow safe blasting practices or regulations was a contributing factor in over 80 percent of the fatal blasting accidents from 1978 through 1984. Upon further consideration of this information, MSHA has determined that blasters require more specific guidance in the safe handling and use of explosives. Moreover, commenters did not object to the inclusion of specific instruction on priming in the preproposal. Therefore, paragraphs (c) and (d) have been added to the final rule.

Paragraph (c) specifies that only a nonsparking punch be used when priming explosive cartridges. This specification, appearing in the preproposal draft as nonferrous, was not

in the proposal. The use of a sparking-type punch could create a spark sufficient to cause premature detonation of an explosive. Therefore, only nonsparking punches are permitted.

Paragraph (d) requires detonators to be completely within and parallel to the length of the explosive cartridge and to be secured by half-hitching the leg wires around the cartridge or by an equally effective method. This provision, which was in the preproposal draft, was not in the proposal. Because placement and alignment of detonators in the explosive cartridge is necessary for safe and effective blasting, the Agency addresses these factors in the final rule. Detonators not properly inserted into the explosive cartridge can cause misfires. If a detonator protrudes through the explosive cartridge wrapping and is initiated, the full energy from the fired detonator will not be transmitted to the explosive cartridge and a misfire can occur. Securing the detonator by half-hitching the leg wires around the cartridge keeps the detonator in position while the cartridge is being loaded into the borehole. The use of the half-hitch knot or loop around the cartridge is standard industry practice for securing the detonator. However, the final rule permits other equally effective means of securing the detonators.

Section 75.1318 Loading boreholes.

This section is derived from existing provisions in Part 15, except for paragraphs (a), (c), (d), and (e) which are new. These standards address the procedures for loading boreholes which directly affect the performance of the explosive. Improper loading can contribute to misfires and blown-out shots.

Paragraph (a) provides that explosives must be loaded in boreholes only by qualified persons or persons working in the presence of and under the direction of a qualified person. This requirement addresses the risk of explosives being mishandled at this important phase of the blasting process by untrained persons.

Paragraph (b) requires that when boreholes are being loaded no other work except that necessary to protect persons be done in the working place or other area where blasting is to be performed. This practice reduces the risk of accidental detonations and the number of persons exposed to this hazard in the blasting area. This standard appeared in § 75.1316 in the proposal.

Paragraph (c) addresses procedures for loading boreholes drilled upward in solid rock or long holes drilled upward in anthracite mines. A commenter suggested that pushing all the cartridges to the back of the borehole in a continuous column be restricted to holes that are inclined at an angle of less than 45 degrees from the horizontal. This commenter stated that when loading vertical holes overhead in rock, it would be impossible to load all cartridges in a continuous column. MSHA recognizes that alternative means are necessary to maintain contact between cartridges of explosives in certain circumstances such as vertical boreholes in rock and when drilling long holes upward in anthracite mining. In these cases, some slitting and tamping may be necessary to ensure contact between cartridges and to prevent gaps or separations in the column which could result in misfires. Such slitting and taping will not be considered as damaging the explosives as prohibited by paragraph (e) below. Therefore, the final rule includes alternative means to provide a continuous column of explosives under these circumstances.

Paragraph (d) requires that when loading boreholes the primer cartridge be the first cartridge loaded in the borehole, that the end of the cartridge containing the detonator face the back of the borehole and that the primer cartridge and other explosives be pushed to the back of the borehole in a continuous column with no cartridge deliberately crushed or deformed. Inserting the primer cartridge into the borehole first with the detonator toward the back of the borehole places initiation of the explosives at the point of greatest burden which decreases the potential for blown-out shots. Pushing the explosives to the back of a borehole in a continuous column minimizes gaps and voids between cartridges and damage to them which can interrupt detonation of the column of explosives and result in misfires.

In response to the proposed rule, one commenter suggested that the continuous column be accomplished with no explosive cartridge being crushed. The Agency agrees that explosive cartridges should not be crushed when loading boreholes for blasting coal in bituminous coal mines. Bureau of Mines research conducted in 1949 (Technical Paper 716) shows that crushing explosive cartridges to fill a borehole increases the risk for ignition of methane during blasting as compared to loading cartridges in a continuous train without crushing. In a bituminous coal mine the coal dust is explosive and methane face ignitions have a potential for initiating an ensuing mine-wide coal dust explosion. On the other hand, the risk of a methane or coal dust ignition is greatly reduced when blasting rock. Moreover, anthracite coal dust is not explosive and will not propagate an explosion.

Paragraph (e) prohibits an explosive from being loaded into a borehole if it is damaged, deteriorated or incompletely filled. Using explosives that are not in their approved condition increases the risk of misfires and inadequate performance of explosives.

One commenter suggested that the words "incompletely filled" be deleted. This commenter stated that it is impossible to know if a cartridge is incompletely filled without cutting open the cartridge and examining the contents and thereby damaging, deforming or changing the specifications of the cartridge before firing it. The commenter further stated that it is the explosive manufacturer who has the responsibility for ensuring that a cartridge is completely filled, not the qualified person. MSHA agrees that the manufacturer is primarily responsible for ensuring that the explosives are manufactured as approved, which includes completely filling each explosive cartridge. However, should some incompletely filled products be inadvertently distributed by the manufacturer, those cartridges must not be used.

Incompletely filled cartridges are easily identifiable by visual inspection and by feeling the cartridge in the hands while loading. When an incompletely filled cartridge is squeezed, there is too much play in the material. Also, water gels and some emulsion explosives are in flexible plastic cartridges, and the qualified person can see the amount of material in these types of explosives, as well as feel it. Therefore, this suggestion has not been adopted in the final rule.

Paragraph (f), derived from Part 15, prohibits explosives of different brands, types or cartridge diameters from being loaded in the same borehole. Because of the sensitivity variations of different types of explosives, the use of different types or sizes of explosives in the same borehole can contribute to the occurrence of misfires.

Several commenters recommended that this paragraph be deleted. These commenters stated that all explosives must pass approval tests so that a mixing of products should not cause problems which would not otherwise occur. During the approval process for explosives, tests are conducted to ensure that cartridges of the same diameter and from the same manufacturer will propagate a detonation properly. Propagation is concerned with the rate at which detonation proceeds down a cartridge.

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Different cartridge brands and size have different individual characteristics. When cartridges of the same brand are used together, a predictable result can be obtained which ensures continuous and uninterrupted propagation. No test research has been done to determine whether a mix of cartridge types and diameters can also propagate a detonation properly. Therefore, to ensure a continuous rate of detonation, explosive products must not be mixed.

Paragraph (g) requires that only nonconductive, nonsparking tamping poles be used for loading and tamping boreholes. This requirement, which is derived from existing Part 15, was not in the proposed rule. Commentors recommended that the existing term "nonmetallic" be changed to "nonferrous". The final rule uses the terms "nonconductive" and "nonsparking". The use of these types of tamping poles eliminates the potential for creating sparks that could cause premature detonation. The use of nonsparking connecting devices for extendable tamping poles is permitted by this standard.

In the proposed rule, this section also addressed the use of explosives that are below the approved minimum product firing temperature. Under the final rule, the minimum product firing temperature of explosives is addressed in § 75.1310.

Section 75.1319 Weight of explosives permitted in boreholes in bituminous and lignite mines.

This standard is derived from existing Part 15 and addresses the amount of explosives permitted when blasting coal, coal with rock partings, or fallen rock in bituminous or lignite mines. The use of explosives in excess of the stated limitations can result in excessive flame, coal dust, and methane being released into the mine atmosphere, creating the hazard of a methane or coal dust ignition. Excessive amounts of explosives can also contribute to the occurrence of cut-off shots in adjacent holes.

Paragraph (a) retains the existing 3-pound limit on explosives used in boreholes to blast coal, including coal with rock partings and fallen rock. Several commenters recommended that these requirements not be applicable when blasting fallen materials composed of rock and its surrounding coal strata outby the last open crosscut. While the hazards associated with blasting fallen material outby the last open crosscut may not be as great as in the face area, they still exist. For example, if coal dust and float coal dust present in these blasting areas are placed into suspension by the concussion from the blast, these materials can be ignited by flames caused by the use of excessive explosives. The Agency anticipates that sheathed explosive units will be used in the future to blast the vast majority of fallen material.

As in the existing standard, the final rule does not apply when blasting solid rock in its natural deposit. Blasting solid rock in its natural deposit can require explosives in excess of 3 pounds per borehole to properly blast the rock. Blasting solid rock with an insufficient amount of explosives can result in rock overhangs and loose roof which increase the hazards associated with cleaning up and supporting the area that has been blasted. In addition, the potential for an ignition of coal dust or methane is significantly less than when blasting coal. The proper amount of explosives per borehole depends on the specific circumstances involved. A commenter recommended that the proposed phrase "solid rock in its natural deposit" be replaced with the phrase "rock without mineable coal". This commenter stated that the proposed phrase could be misinterpreted to include sulfur balls and middle man in the coal face. The final rule is consistent with the existing regulation. MSHA is unaware of this provision being misinterpreted in the past.

Paragraph (b) requires a reduction in the weight of explosives by ½ pound for each foot of borehole less than 6 feet.

Section 75.1320 Multiple-shot blasting.

This standard is new, except for paragraph (a) which is derived from § 75.1303, and addresses requirements for detonator use and placement in multiple-shot blasting. Improperly fired multiple-shot blasts can result in blown-out and cut-off shots, both of which have resulted in the ignition of coal dust or methane.

Paragraph (a) prohibits mine operators from firing rounds containing more than 20 boreholes unless permitted in writing by the District Manager under § 75.1321. This provision addresses the hazard of firing more than 20 boreholes in a round which can release additional methane, generate more float coal dust and fumes, and create an increased potential for an explosion. MSHA received no objections to a specific 20-shot limitation in the preproposal draft. On the proposed rule, which was less specific, one commenter stated that 60 shots should be the limit for a round while other commenters stated that a 20-shot limitation should be specified for blasting coal. Most coal production blasting is done with 8–12 shots, with the number of shots varying according to the height or width of the coal. The need for blasting more than 20 boreholes more frequently occurs in development or construction work in rock, which would be permitted under § 75.1321.

Paragraph (b) prohibits instantaneous detonators and delay detonators from being used in the same blasting circuit in any underground coal mine. This practice, which would not have been specifically prohibited by the proposal, was added to the final rule in response to the recommendation of numerous commenters. These commenters pointed out, and MSHA agrees, that because of the different firing characteristics and firing times of instantaneous and short-delay detonators, the likelihood of misfires and the potential for blown-out shots is significantly increased when they are used in the same circuit.

Paragraph (c) is applicable to bituminous and lignite mines and specifies that only detonators with delay periods of 1,000 milliseconds or less be used when blasting in these mines. This constitutes an editorial change to conform to the definition of short-delay detonators and permits the use of instantaneous detonators. These are the only types of detonators that have been used in recent years and have proven to be safe and effective. They control the total elapsed blasting time of a round while minimizing the possibility of a methane or coal dust explosion.

A commenter suggested that the use of instantaneous detonators be prohibited. This commenter stated that short-delay detonators should be required in all mines and if exceptions are needed, a variance could be granted by the District Manager. The vast majority of detonators that will be used underground will be short-delay. However, as previously discussed, instantaneous detonators are required to be used when firing sheathed explosive units. They may also have some application when blasting rock. Instantaneous detonators can be safely used in these situations and to require that the use of instantaneous detonators be approved by the District Manager will create an unnecessary paperwork burden on the mining industry.

Consistent with this approach, the proposed requirement that short-delay detonators be used for multiple-shot blasting in anthracite mines when required by the District Manager is not included in the final rule. Upon further review, the Agency has determined that short-delay detonators are not typically used in anthracite mines and the need for their use in the foreseeable future is limited. Because of the different

characteristics of the coal seams, mining methods, and blasting techniques used in anthracite mines, long-delay detonators and instantaneous detonators are more appropriate for multiple-shot blasting. MSHA has no data or information to indicate that this practice is unsafe. However, as discussed above, instantaneous and delay detonators cannot be used in the same blasting circuit.

Currently, the total elapsed blasting time for short-delay electric detonators used in underground coal mines is limited to 500 milliseconds. However, research conducted by the Bureau of Mines, in conjunction with MSHA, has provided evidence that this time period can be extended to 1,000 milliseconds without increasing the risk of a methane or coal dust explosion. Accordingly, the final rule defines "short-delay detonator" as a detonator with a designated delay period of 25 to 1,000 milliseconds.

Paragraph (d) requires that each borehole in a round be initiated in sequence from the opener hole or holes in anthracite mines. The provision was in the preproposal draft and not in the proposal. Upon reconsideration, the Agency has determined that this is an important factor for blasting in anthracite mines and thus, it is addressed in the final rule. Since an opener hole is the first hole fired, it creates a second free face to provide additional relief for the remaining boreholes. This requirement provides for an orderly, controlled blast and prevents blown-out shots, cut-off shots and structural damage to the rib, roof, or ventilation system on steeply pitching seams.

Paragraph (e) addresses arrangement of detonator delay periods when blasting in bituminous and lignite mines. For blasting cut coal, this provision requires the first shot fired in the round to be initiated in the row nearest the kerf or shear. A kerf is a horizontal cut that is created by removing the coal near the bottom of the coal face with a cutting machine. On the other hand, a shear is a vertical cut that is created by removing a portion of the coal near the middle of the coal face or along each side. Both kerfs and shears provide a second free face for relief of the coal when the explosives are fired.

Paragraph (e)(1)(ii) addresses the interval between the designated delay periods of successive shots when blasting cut coal. The provision requires the interval to be at least 50 milliseconds, but not more than 100 milliseconds. The proposed requirement did not establish a range for the interval although the preproposal did specify such a range for sequential firing.

The interval between the designated delay periods of successive shots is an outgrowth of previous experimental research work conducted by the Bureau of Mines on multiple shot short-delay blasting. The interval established in this section of the rule is also supported by research performed in Great Britain and Western Europe and is a published recommendation of the Institute of Makers of Explosives. The research work has been published in International Conferences of Directors of Safety in Mines Research and in formal Bureau of Mines publications which are in the public domain. Establishing an upper limit of 100 milliseconds during sequential firing reduces the potential for ignition of gas or dust liberated during the firing of each successive shot. It also minimizes the potential for ignition from cut-off shots. The absence of an upper limit increases the probability of an explosion caused by explosives not being properly confined in a borehole and thus firing in a flammable atmosphere. Based on this technical data, MSHA has added this requirement to the final rule.

Paragraph (e)(2) addresses the arrangement of detonators and the interval between the designated delay periods of successive shots when blasting coal off the solid. When blasting coal off the solid, the provision requires each shot in the round to be initiated in sequence from the opener hole or holes. The firing of shots in sequence establishes a free face for successive shots, thereby reducing the potential for a blown-out shot. The required interval between successive shots when blasting coal off the solid is also based on experimental work by the Bureau of Mines in short-delay blasting.

Several commenters recommended the prohibition of blasting coal off the solid. Two multiple fatal blasting accidents were cited as justification for the prohibition. These commenters stated that blasting off the solid is a known hazard which is not economically justified. However, the Agency does not prohibit blasting off the solid in the final rule. Requirements in the final rule are directed to conducting blasting off the solid in a safe manner. The requirements control the amount of explosive used, provide for proper stemming and tamping, address placement of boreholes, regulate the sequence of firing, specify intervals between shots, and place a limitation on total elapsed blasting time not to exceed 1,000 milliseconds. In addition, the final rule contains more stringent requirements for the qualified persons who handle and use explosives. The Agency's investigation of the Adkins Coal Company explosives accident on December 7, 1981, and the FHR Coal Company explosives accident on January 20, 1982, which together resulted in 15 fatalities, revealed that although the technique of blasting coal off the solid was employed at these two mines, multiple violations of MSHA standards relative to the safe use of permissible explosives were cited as the cause of these accidents.

Section 75.1321 Permits for firing more than 20 boreholes and the use of nonpermissible blasting units.

This provision clarifies existing § 75.1303–1 which allows District Manager approval for firing more than 20 boreholes in a round and the use of nonpermissible blasting units. MSHA's experience has shown that mine operators have utilized it to obtain permits to use nonpermissible blasting units to fire large numbers of boreholes during construction blasting in rock. The removal of this provision from the proposal was based primarily upon the belief that permissible blasting units would be available to meet the mining industry's needs. However, MSHA has determined that, at this time, permissible blasting units do not have sufficient capacity to perform all development and construction blasting required by the industry. Therefore, the provision in the existing rule that permits the District Manager to authorize the firing of more than 20 boreholes per round and to use nonpermissible blasting units has been retained with minor editorial revisions, in the final rule.

Section 75.1322 Stemming boreholes.

This proposal is derived from existing § 75.1303 and Part 15, except paragraphs (b), (c), (f), (g), and (h) which are new. It sets forth procedures and requirements for stemming boreholes. Stemming in boreholes acts to suppress the flames during blasting. Failure to properly stem boreholes can result in blown-out shots.

Paragraph (a) requires only noncombustible material to be used for stemming boreholes. A commenter recommended deletion of the word "noncombustible" stating that the terminology would have allowed rock dust and wet sand bags to be used as stemming. It was also recommended, that stemming materials be restricted to clay and water. The final rule, like the existing provision, requires noncombustible material for stemming. Restricting use to clay and water would

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limit the type of stemming material and not permit use of materials that could be as equally effective.

Paragraph (b) specifies that stemming material, except water bags, must be tamped to fill the entire cross-sectional area of the borehole. This requirement was not contained in the proposed rule but was included in the preproposal draft. Upon further review by the Agency, specific language is included in the final rule to require the tamping of stemming materials to fill the entire cross-sectional area of the borehole. Stemming material must be tamped to prevent flames from escaping when a borehole is fired.

Paragraph (c) requires that the stemming materials in each borehole contact the explosive cartridge nearest the collar of the borehole. Space or gaps between the stemming material and the explosives can significantly reduce the effectiveness of stemming in confining the flames generated by the initiation of explosives.

Paragraphs (d) and (e) specify the minimum amounts of stemming material to be used based on the depth of the borehole. Experience has shown these minimum amounts to be adequate for confining the flame generated by the initiation of explosives. When clay dummies, moist sand, loose clay, or other noncombustible materials are used for stemming, the specified depth of stemming in the borehole must be the depth after tamping.

Paragraph (f) specifies that only pliable clay dummies be used for stemming when blasting off the solid in bituminous and lignite mines. The preproposal provision would have prohibited the use of water stemming bags when blasting coal off the solid. This requirement was not in the proposal. In lieu of only allowing blasting off the solid where permitted by the District Manager, as required in the preproposal, the final rule instead provides stringent requirements for controlling this practice. One of these is the requirement that only pliable clay dummies be used as stemming when blasting off the solid which has been included as recommended by commenters. The use of pliable clay dummies provides additional resistance against blown-out holes which may result in a methane or coal dust ignition.

Paragraph (g) requires that the diameter of a water stemming bag and the diameter of the drill bit used to drill the borehole be within ¼ of an inch. The primary purpose of a water stemming bag is to provide a wall of water within the borehole to confine flames generated by the initiation of the explosives. The Bureau of Mines and MSHA have determined through tests that a spacing of not more than ¼ of an inch between the water stemming bag and the walls of a borehole allows the water to form a complete wall within the borehole and prohibits the flames from escaping into the mine atmosphere. However, tests have not been conducted on spacings greater than ¼ of an inch and therefore the rule limits the spacing to a known safe value.

Paragraph (h) sets forth those performance characteristics for tear- and flame-resistance of water stemming bags which are commercially available for use in underground coal mines. The preproposal specified that water stemming bags be approved by MSHA, but this provision was not included in the proposal. In the absence of approval requirements, the Agency added the performance characteristics of flame resistance and tear resistance in the final rule so that safe water stemming bags will be provided for use when blasting cut coal. The flame resistant property reduces the fire hazard of a water stemming bag that is shot out of a borehole into a flammable atmosphere during blasting. The tear resistant property minimizes the potential for a water bag to rip or lose its water holding capability while used to stem a borehole. The inclusion of these performance characteristics in the final rule is in response to comments which stated that the proposed rule would have permitted the use of untested systems.

Section 75.1323 Blasting circuits.

The final rule is derived from existing Part 15, except for paragraphs (b), (f), (g), (h), (i) and (j), which are new. The final rule establishes the requirements for the use and protection of blasting circuits, including the blasting cable. To ensure reliable detonation of explosives and to reduce the risk of misfires and premature or unplanned detonation, devices used in the blasting circuit must be appropriate for their intended purpose and properly maintained.

Paragraph (a) requires blasting circuits to be protected from stray electric current. Blasting circuits can become energized by extraneous sources of electricity and protection is necessary to prevent premature initiation of the explosives.

One commenter stated that static electricity is a form of extraneous electricity and should be added to the rule. MSHA agrees that static electricity is a form of stray electricity. However, the Agency has not specifically added "static electricity" to the rule because it is considered to be only one form of stray electricity and is covered by the provisions of the final rule.

Paragraph (b) prohibits the use of detonators made by different manufacturers in the same blasting circuit. Due to sensitivity variations and firing characteristics among detonators, the combining of detonators made by different manufacturers can result in misfires. No objections were raised by commenters to this provision.

Paragraph (c) requires detonator leg wires to be kept shunted until connected to the blasting circuit. As suggested by commenters, the wording of this paragraph has been modified for clarity. When leg wires are not shunted, the detonator is subject to initiation by extraneous electricity. Detonator leg wires are shunted when received from the manufacturer and must remain so until connected into the blasting circuit.

Paragraph (d) requires blasting cables to be well-insulated copper wire of a diameter size not smaller than 18-gauge and long enough to permit the round to be fired from a safe location. In response to a comment seeking clarification concerning the size limitation of the wire gauge, the final rule specifies that the wire diameter be not smaller than 18-gauge. The final rule sets a minimum standard for blasting cable compatibility with the size of capacity of permissible blasting units. Blasting cable lengths must permit the firing of the blast from a safe location that is around at least one corner from the blasting area.

One commenter recommended that the blasting cable be at least 125 feet in length. The commenter objected to the proposed rule because it did not designate a minimum length of blasting cable and, as a result, thought shot firers would be encouraged to shoot from an unsafe location. In response to the commenter, the final rule specifies that the cable be of a sufficient length to reach around one corner from the blasting area. This provides a physical barrier between the blasting area and the shot firer.

Paragraph (e) requires blasting cables to be shunted until immediately before the blast is fired, except when testing for circuit continuity. The connection of the blasting cable to the blasting unit before the round is ready to be fired significantly increases the risk of accidental initiation.

Paragraph (f) requires that wire used between the blasting cable and the detonator circuitry be well-insulated, have a resistance no greater than 20-gauge copper wire, and be not more than 30 feet long. These requirements prohibit the use of wire that is damaged or has a resistance that may be inconsistent with the capabilities of the blasting unit.

One commenter recommended that the proposed rule increase the resistance from that of 20-gauge copper wire to 18-gauge copper wire based on a calculation that the increased resistance would reduce the current flow adversely affecting the result of the blast. In the final rule, the Agency has specified the wire between the blasting cable and detonator circuitry be not more than 30 feet long and have a resistance no greater than 20-gauge copper wire. The difference in the resistance of 18- and 20-gauge copper wire is insignificant (less than ¼ ohm) for a wire length of 30 feet and therefore the current flow would not be reduced sufficiently to adversely affect the result of the blast.

Paragraph (g) requires that all connections in the blasting circuit be properly spliced and sufficiently separated from other connections to prevent accidental contact or arcing. Poor connections increase the resistance of the blasting circuit. Connections that are too close together or contact each other can result in arcing and or short circuiting and increase the potential for a misfire.

Paragraph (h) requires that uninsulated connections be kept out of water and away from the coal, roof, ribs and floor. The term "bare" has been changed to "uninsulated" for clarity. Failure to protect uninsulated connections can result in loss of electric current through grounding, increasing the potential for misfires. A commenter suggested that these connections also be required to be kept "clean and shiny". The Agency has not adopted the commenter's suggestion since the rule also requires that all blasting circuits be tested for continuity, which will indicate the presence of proper circuit connections and continuity.

Paragraph (i) requires blasting circuits to be wired in a single series when 20 or fewer boreholes are to be fired in a round. This ensures that the resistance of the blasting circuit is compatible with permissible blasting units. One commenter suggested the wording be changed to "all holes to be wired in a 20 or fewer shot series" as opposed to "when 20 or fewer shots are fired in a round". This comment is not adopted in the final rule in order to maintain consistency with the definition of "round".

Paragraph (j) requires that blasting circuits be checked for circuit continuity and resistance using a blasting galvanometer or other instrument specifically designed for testing blasting circuits. This provision differs from the proposal which did not require that blasting circuits be checked for continuity and resistance but only required that certain instruments be utilized if checks for continuity were made. Two of the known causes of misfires are the lack of continuity or excessive electrical resistance in the blasting circuit. MSHA's field experience and assessment of factors and causes of blasting accidents are indicative of the need to check continuity and resistance to prevent misfires during blasting. Review of published recommendations from the Bureau of Mines and British research, recommendations published by the Institute of Makers of Explosives and industry-wide comments regarding the absence of this requirement in the proposed rule support this provision. MSHA has, therefore, modified this rule to require that blasting circuits be tested with a proper instrument for continuity and resistance. This provision minimizes the potential for misfires and eliminates the possibility of accidental initiation of explosives through use of improper checking devices which can carry excessive current capacity. This provision is consistent with circuit testing requirements for metal and nonmetal mines in 30 CFR 56.6121 and 57.6121.

Section 75.1324 Methane concentration and tests.

This standard was in the proposed rule and is derived from existing §§ 75.320 and 75.1302. It addresses methane concentrations and tests in areas where explosives are to be fired. Blasting in areas which contain explosive concentrations of methane can cause mine explosions.

Paragraph (a) prohibits blasting in any area that contains 1.0 volume percent or more of methane. While a one percent concentration of methane in air is not explosive, it is recognized throughout the coal mining community as the level at which steps must be taken to remove the methane.

Paragraph (b) requires that tests for methane be made immediately before shots are fired and that these tests be made by a person qualified to conduct such tests. Methane tests made immediately before the shots are fired provide a warning of methane concentrations at or above 1.0 volume percent.

One commenter recommended the addition of a new provision that would require rock dust to be applied to all surfaces from the face for at least 40 feet in all directions. The commenter stated that the existing standards do not require rock dusting to the face but would permit rock dusting to stop 39 feet from the face. The commenter added that the area surrounding the blast is the critical area that needs the rock dust. The Agency's current regulations in § 75.402 specify that all underground areas of a coal mine be rock dusted to within 40 feet of all working faces. Also, § 75.401 specifies that in working places, particularly in distances less than 40 feet from the face, water, with or without a wetting agent, or other no less effective method must be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the explosion hazard. The Agency has not found these safety requirements to be inadequate and, therefore, has not adopted the commenter's recommendation to require application of rock dust to all surfaces from the face for at least 40 feet in all directions.

Section 75.1325 Firing procedure.

This standard sets forth the procedures to be followed when firing explosives. It is derived from existing Part 15 except for paragraph (b) which is new.

Paragraph (a) requires that shots be fired only by a qualified person or a person working in the presence of and under the direction of a qualified person.

Paragraph (b) limits blasting in a working place to one face at a time. One commenter recommended deleting the proposed exception which would have permitted blasting up to three faces in a single working place. The final rule does not allow blasting more than one face at a time. Simultaneous firing of more than one face at a time can release additional methane, generate more dust and fumes, and create a greater potential for an explosion hazard. Another commenter stated the proposal, should limit the numbers of boreholes fired in a round to no more than 20. The final rule in § 75.1320(a) provides that no more than 20 boreholes can be fired in a round unless a permit is granted by the District Manager.

Paragraph (c) requires certain steps to be taken before a blast is fired, including the evacuation of persons from areas where a hazard would be created by the blast, a determination by the qualified person that all persons are a safe distance from the blasting area, and an issuance of warnings that a blast is to be fired. These precautions minimize the exposure of miners to the hazards created by the force of the blast.

Several commenters suggested that the proposed requirement specifying the evacuation of persons when blasting be revised to require them to leave the working place and other areas where a hazard would be created. Commenters

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also suggested clarifying that only those persons required to leave need to be around one corner from the blast. In response to these comments, the final rule has been reworded to address these concerns.

One commenter suggested that the verbal warning given before blasting be specific and consistent throughout the industry. The Agency has not adopted specific warning language. It is the responsibility of the qualified person to determine that all persons are a safe distance from the blasting area regardless of the warning given.

Paragraph (d) requires all shots to be fired promply after they are ready to be fired. This practice minimizes the time interval between the warning and firing of the round.

At the request of several commenters, § 75.1324(e) of the proposed rule has been moved and now appears as § 75.1326(c) of the final rule.

Section 75.1326 Examination after blasting.

This standard is derived from existing § 75.1308 and Part 15 and specifies the steps to be taken after blasting. It prohibits entry into the blast area before it is clear of smoke and dust. The concentrations of smoke and dust immediately after the blast can impair the recognition of hazards such as unstable roof and rib conditions. The rule also requires that a qualified person or a person working in the presence of and under the direction of a qualified person examine the area for misfires, methane and other hazardous conditions as soon as the smoke and dust have cleared. An immediate examination after blasting enables prompt action to be taken to correct any hazards resulting from the blast. In addition, the rule requires that if a round has partially detonated the qualified person must leave the area at once and no persons are to reenter the affected area for at least 5 minutes.

Many commenters recommended changing the proposed waiting period of at least 15 minutes found in the proposal at § 75.1324(e), to a waiting period of at least 5 mintues before entering an affected area when a round partially detonates. Commenters stated that the additional waiting period of 10 minutes or more could potentially permit serious problems to develop, particularly in mines where high methane liberation is common. Commenters also stated that partial detonation might result in damage to ventilation equipment in or near the face area and if repairs were not made immediately, dangerous accumulations of methane could occur. Commenters also cited several State laws which impose a 5-minute waiting period before persons are permitted to enter an affected area where a misfire has occurred. Other commenters favored the 15 minute waiting period. The Agency has adopted the waiting period of 5 minutes in the final rule. Should a fire occur from a partially detonated explosive, a longer waiting period may result in the inability to fight and extinguish the fire. The Agency also considered the increased hazard inherent in the accumulation of methane to explosive levels should damage occur to the ventilation system resulting from a protracted period of time before re-entry to the area containing a partially detonated round.

Section 75.1327 Misfires.

This final rule is derived from Part 15 except paragraph (b) which is new. It specifies general procedures to be followed in the handling of misfires. Misfires that are not found and disposed of promptly and safely can be accidentally detonated during loading or other operations, creating the potential for serious injury. Because of varying product performance characteristics, the rule does not specify a particular procedure for handling misfires, but allows a qualified person and mine management to address these situations on a case-by-case basis.

Paragraph (a) limits the work in the area affected by a misfire to that done by a qualified person to dispose of the misfire and other work to protect persons, such as making necessary roof control adjustments. This measure limits the exposure of persons to the hazard of accidental detonation.

A commenter suggested that the area in which a qualified person is working to dispose of misfires should be "dangered off" until the misfire is disposed of. The rule addresses the substance of this commenter's concern by restricting work permitted in the affected area to only that of a qualified person and other work necessary to protect persons.

Paragraph (b) of the final rule, as did the proposal, addresses to steps to be followed when a misfire cannot be disposed of by a qualified person. The rule requires each accessible entrance to the affected area to be posted with a warning to prohibit entry. The rule also requires immediate reporting of undisposed misfires to mine management so that technical assistance can be arranged to safely dispose of the misfire.

One commenter suggested that the information concerning misfires reported to mine management be recorded and maintained as a record signed by the mine foreman. The purpose of the rule is to provide information for mine management that will assist in disposing of misfires and in identifying and eliminating the cause of misfires. Requiring the mine operator to keep a record of each misfire adds to the burden of paperwork and provides no reasonable assurance that keeping such records will provide the means to reduce the incidents of misfires that may occur. The Agency considers that the manner in which this information is kept is an appropriate matter for mine management that need not be regulated.

Section 75.1328 Damaged or deteriorated expolosives and detonators.

This standard sets forth new requirements for handling and disposing of damaged or deteriorated explosives or detonators. Such exposives and detonators are required by paragraph (a) to be placed in separate containers of nonconductive and nonsparking material and removed from the mine or placed in a magazine for later removal. Several commenters recommended that damaged or deteriorated explosives and detonators be placed in separate containers constructed of nonsparking materials rather than being placed in separate containers with absorbent material as specified in the proposal. Commenters stated that absorbent material could cause an increased hazard if the wrong type of absorbent material, such as coal dust, is used. The use of a container constructed of nonsparking material effectively minimizes the possibility of inadvertent detonation.

The same commenters recommended removal of damaged explosives and detonators at the end of the shift to prevent exposing miners to unnecesary hazards. This suggestion was not adopted because paragraph (c) of this standard requires deteriorated explosives and detonators to be handled and disposed in accordance with the instructions of the manufacturer.

Paragraph (b) requires damaged detonators to be shunted, if practicable, before either being removed from the mine or placed in a magazine. One commenter recommended that damaged or deteriorated detonators be protected from stray current. The final rule addresses this provision by means of shunting the detonators, when practicable.

Paragraph (c) requires damaged or deteriorated explosives or detonators to be handled and disposed of in accordance with the instructions of the manufacturer and is from the preproposal draft. Commenters requested inclusion of this provision in the final rule, although it was not in the proposed rule. Because of the variety of explosive formulations and detonator types and characteristics, the instructions provided by manufacturers are relied upon by the mining industry as the authoritative source of information when disposing of damaged or deteriorated explosives. Other commenters recommended that damaged expolsives and detonators be disposed of only on the surface. However, the place and method of disposal is addressed in the manufacturer's specific instructions.

Derivation Table

The following derivation table lists the section number of each standard in the final rule and the section number of the existing standard from which it is derived.

New Section	Old Section
75.1300	75.2 and Part 15.2.
75.1301	Part 15 (Article IV).
75.1310	75.1300, 75.1303 and Part 15.19(d).
75.1310(d)	New.
75.1311	75.1301, 75.1304, 75.1305 and 75.1403-7(i).
75.1311(b)(2)	New.
75.1312	75.1301, 75.1306, 75.1307 and Part 15.19(b).
75.1312 (e), (f) and (g)	New.
75.1313 (a) and (c)	New.
75.1313(b)	75.1301, 75.1304, 75.1306 and 75.1307.
75.1314	New.
75.1315	75.1300, 75.1302 and Part 15 (Article IV).
75.1315(d), (e) and (f)	New.
75.1316	75.1307 and Part 15 (Article IV).
75.1316(d)	New.
75.1317	New.
75.1318 (a), (c), (d) and (e).	New.
75.1318 (b), (f), (g)	Part 15 (Article IV).
75.1319	Part 15 (Article IV).
75.1320(a)	75.1303.
75.1320 (b), (c), (d) and (e).	New.
75.1321	75.1303-1.
75.1322(a)	75.1303 and Part 15 (Article IV).
75.1322 (c), (d) and (e)	Part 15 (Article IV).
75.1322 (b), (f), (g) and (h).	New.
75.1323 (a), (b), (c), (d) and (e).	Part 15 (Article IV).
75.1323 (f), (g), (h), (i) and (j).	New.
75.1324	75.320 and 75.1302.
75.1325	Part 15 (Article IV).
75.1325(b)	New.
75.1326	75.1308 and Part 15 (Article IV).
75.1327 (a) and (b)(2)	Part 15 (Article IV).
75.1327(b)(1)	New.
75.1328	New.

Distribution Table

The following distribution table lists the section number of each existing standards in Subpart N and Part 15 and the section number of the final rule that contain revised provisions derived from the corresponding existing section.

Old Section	New Section
75.1300	75.1310 and 75.1315.
75.1301	75.1311, 75.1312 and 75.1313.
75.1302 (a) and (b)	75.1315.
75.1302(c)	75.1324.
75.1303	75.1310, 75.1320(a) and 75.1322.
75.1303-1	75.1321.
75.1304	75.1311 and 75.1313.
75.1305	75.1311.
75.1306	75.1312 and 75.1313.
75.1307	75.1312, 75.1313 and 75.1316(a).
75.1308	75.1326.
Part 15	75.1301, 75.1310, 75.1312, 75.1315 75.1316, 75.1318, 75.1319, 75.1322, 75.1323, 75.1325, 75.1326 and 75.1327.

III. Drafting Information

The principal persons responsible for preparing this final rule are: Edward C. Connor and A. Keith Watson, Coal Mine Safety and Health, MSHA; Harry C. Verakis, Technical Support, MSHA; Richard J. Mainiero, Bureau of Mines; Helen B. Caraway, Office of Standards, Regulations and Variance, MSHA; and Linda Fort, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify potential costs and benefits associated with the final changes to its explosives and blasting standards for underground coal mines. The Agency has incorporated this analysis into the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, summarized below, MSHA has determined that the final rule would not result in major cost increases nor have an effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small business when developing regulatory proposals. The final rule clarifies compliance responsibilities and adopts performance-oriented standards which will benefit small mining operations.

In the following summary of the Initial Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the final requirements with the costs of the existing requirements. A copy of the full analysis is available upon request.

MSHA estimates the annual cost for compliance with the existing requirements to be $2.5 million compared to $2.9 million for the final rule. The final regulations effect approximately 1700 underground mining operations. MSHA estimates about 975 of these mines are small businesses. The impact on small mines under existing requirements is $1.5 million compared to $1.8 million for the final rule representing a 19 percent increase. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees.

In developing cost estimates, MSHA has taken into consideration industry-wide practices. Compliance costs are related to labor, supplies, and equipment purchase and maintenance. In calculating the costs of the existing standards and the final rule, the Agency projected capital expenditures and recurring costs.

In the final rule, MSHA has reorganized, updated, and clarified existing provisions and deleted duplicative provisions. MSHA believes that clarification will foster a better understanding of safe blasting practices and that the new final requirements, especially those that address the use of sheathed explosive units, will afford greater protection for the miners.

The primary benefit of the final rule is the enhanced protection that the standards will provide to miners who are exposed to the hazards related to the use of explosives.

V. Paperwork Reduction Act of 1980

The final rule contains two collection of information provisions subject to the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The information collection requirements in existing Part 15 and § 75.1303-1, concerning certification of shot firer qualification and permits for the use of nonpermissible blasting units and to fire more than 20 boreholes, are retained in final §§ 75.1301 and 75.1321.

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35), the collection of information requirements contained in §§ 75.1301 and 75.1321 of the final rule have been approved by

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OMB under control numbers 1219–0106 and 1219–0025.

List of Subjects in 30 CFR Part 75

Mine safety and health, Mandatory safety standards, Underground coal mines, Explosives and blasting.

Date: November 9, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, pursuant to 30 U.S.C. 811 Part 75 Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations is amended as set forth below:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

2. Paragraph (c)(2) of § 75.2 is removed and paragraph (c)(3) is redesignated as (c)(2).

3. Newly redesignated § 75.2(c)(2) is revised to read as follows:

§ 75.2 Definitions

* * * * *

(c)* * *

(2) The manner of use of equipment means the manner of use prescribed by the Secretary.

* * * * *

Subpart D—Ventilation

§ 75.320 [Removed]

4. Subpart D is amended by removing § 75.320.,

Subpart O—Hoisting and Mantrips

§ 75.1403–7 [Amended]

5. Section 75.1403–7 is amended by removing and reserving paragraph (i).

6. Subpart N is revised to read as follows:

Subpart N—Explosives and Blasting

Sec.

75.1300 Definitions.
75.1301 Qualified person.
75.1310 Explosives and blasting equipment.
75.1311 Transporting explosives and detonators.
75.1312 Explosives and detonators in underground magazines.
75.1313 Explosives and detonators outside of magazines.
75.1314 Sheathed explosive units.
75.1315 Boreholes for explosives.
75.1316 Preparation before blasting.
75.1317 Primer cartridges.
75.1318 Loading boreholes.
75.1319 Weight of explosives permitted in boreholes in bituminous and lignite mines.
75.1320 Multiple-shot blasting.
75.1321 Permit for firing more than 20 boreholes and to use nonpermissible blasting units.
75.1322 Stemming boreholes.
75.1323 Blasting circuits.
75.1324 Methane concentration and tests.
75.1325 Firing procedure.
75.1326 Examination after blasting.
75.1327 Misfires.
75.1328 Damaged or deteriorated explosives and detonators.

§ 75.1300 Definitions.

The following definitions apply in this subpart.

Approval. A document issued by MSHA which states that an explosive or explosive unit has met the requirements of this part and which authorizes an approval marking identifying the explosive or explosive unit as approved as permissible.

Battery starting. The use of unconfined explosives to start the flow of coal down a breast or chute in an anthracite mine.

Blasting off the solid. Blasting the working face without providing a second free face by cutting, shearing or other method before blasting.

Instantaneous detonator. An electric detonator that fires within 6 milliseconds after application of the firing current.

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½-inch thick plywood, ½-inch thick gypsum wall board, ⅛-inch thick low carbon steel and ¼-inch thick plywood, bonded together in that order.

Opener hole. The first hole or holes fired in a round blasted off the solid to create an additional free face.

Permissible blasting unit. A device that has been approved by MSHA and that is used for firing electric detonators.

Permissible explosive. Any substance, compound or mixture which is approved by MSHA and whose primary purpose is to function by explosion.

Round. A group of boreholes fired or intended to be fired in a continuous sequence with one application of the firing current.

Sheathed explosive unit. A device consisting of an approved or permissible explosive covered by a sheath encased in a sealed covering and designed to be fired outside the confines of a borehole.

Short-delay electric detonator. An electric detonator with a designated delay period of 25 to 1,000 milliseconds.

§ 75.1301 Qualified person.

(a) A qualified person under this subpart is a person who—

(1) Is certified or qualified to use explosives by the State in which the mine is located provided that the State requires a demonstration of ability to safely use permissible explosives as prescribed by this subpart effective January 17, 1989; or

(2) In States that do not certify or qualify persons to use explosives required by this section, has at least 1 year of experience working underground on a coal producing section of a mine where explosives are used and demonstrates to an authorized representative of the Secretary the ability to safely use permissible explosives.

(b) Persons qualified or certified by a State to use permissible explosives in underground coal mines as of May 17, 1989 are considered qualified under this section even though their State program did not contain a demonstration of ability requirement.

§ 75.1310 Explosives and blasting equipment.

(a) Only permissible explosives, approved sheathed explosive units, and permissible blasting units shall be taken or used underground.

(b) Black blasting powder, aluminum-cased detonators, aluminum-alloy-cased detonators, detonators with aluminum leg wires, and safety fuses shall not be taken or used underground.

(c) Explosives shall be fired only with a permissible blasting unit used in a manner consistent with its approval. Blasting units approved by MSHA that have approval labels specifying use with short-delay detonators with delay periods between 25–500 milliseconds are accepted to fire short-delay detonators up to 1,000 milliseconds, instantaneous detonators and long period delay detonators for anthracite mines.

(d) Permissible explosives and sheathed explosive units shall not be used underground when they are below the minimum product firing temperature specified by the approval. Explosives previously approved which do not specify a minimum firing temperature are permissible for use so long as the present approval is maintained.

(e) Electric detonators shall be compatible with the blasting unit and have sufficient strength to initiate the explosives being used.

§ 75.1311 Transporting explosives and detonators.

(a) When explosives and detonators are to be transported underground—

(1) They shall be enclosed in separate, substantially constructed containers made of nonconductive material, with no metal or other conductive materials exposed inside, except as specified in paragraph (d) of this section; and

(2) Each container of explosives and of detonators shall be indelibly marked with a readily visible warning identifying the contents.

(b) When explosives and detonators are transported by any cars or vehicles—

(1) The cars or vehicles shall be marked with warnings to identify the contents as explosive. The warnings shall be readily visible to miners approaching from any direction and in indelible letters;

(2) Explosives and detonators shall be transported either in separate cars or vehicles, or if in the same cars or vehicles as follows:

(i) Class A and Class C detonators in quantities greater than 1,000 shall be kept in the original containers as shipped from the manufacturer and separated from explosives by a hardwood partition at least 4 inches thick, a laminated partition or equivalent; and

(ii) Class A and Class C detonators in quantities of no more than 1,000 shall be separated from explosives by a hardwood partition at least 4 inches thick, a laminated partition or equivalent.

(3) No persons, other than those necessary to operate the equipment or to accompany the explosives and detonators, shall be transported with explosives and detonators, and

(4) When explosives and detonators are transported using trolley locomotives—

(i) Trips carrying explosives and detonators shall be separated from all other mantrips by at least a 5-minute interval; and

(ii) Cars containing explosives or detonators shall be separated from the locomotives by at least one car that is empty or that contains noncombustible materials.

(c) When explosives and detonators are transported on conveyor belts—

(1) Containers of explosives shall be separated from containers of detonators by at least 50 feet;

(2) At least 6 inches of clearance shall be maintained between the top of any container of explosives or container of detonators and the mine roof or other obstruction;

(3) Except when persons are riding the belt to accompany explosives or detonators, a person shall be at each transfer point between belts and at the unloading location; and

(4) Conveyor belts shall be stopped before explosives or detonators are loaded or unloaded.

(d) When explosives and detonators are transported by hand they shall be carried in separate, nonconductive, closed containers.

§ 75.1312 Explosives and detonators in underground magazines.

(a) The quantity of explosives kept underground shall not be more than is needed for 48 hours of use.

(b) Except as provided in § 75.1313, explosives and detonators taken underground shall be kept in—

(1) Separate, closed magazines at least 5 feet apart; or

(2) The same closed magazine when—

(i) Separated by a hardwood partition at least 4 inches thick; or

(ii) Separated by a laminated partition; or

(iii) Separated by a device that is equivalent.

(c) Only explosives and detonators shall be kept in underground magazines.

(d) Magazines shall be substantially constructed and all interior surfaces shall be made of nonconductive material, with no metal or other conductive material exposed inside.

(e) All magazines shall be—

(1) Located at least 25 feet from roadways and any source of electric current;

(2) Located out of the direct line of the forces from blasting; and

(3) Kept as dry as practicable.

(f) Magazine locations shall be posted with indelibly marked and readily visible warnings indicating the presence of explosives.

(g) Only materials and equipment to be used in blasting shall be stored at magazine locations.

§ 75.1313 Explosives and detonators outside of magazines.

(a) The quantity of explosives outside a magazine for use in a working section or other area where blasting is to be performed shall—

(1) Not exceed 100 pounds; or

(2) Not exceed the amount necessary to blast one round when more than 100 pounds of explosives is required.

(b) Explosives and detonators outside a magazine that are not being transported or prepared for loading boreholes shall be kept in closed separate containers made of nonconductive material with no metal or other conductive material exposed inside and the containers shall be—

(1) At least 15 feet from any source of electric current;

(2) Out of the direct line of the forces from blasting;

(3) In a location to prevent damage by mobile equipment; and

(4) Kept as dry as practicable.

(c) Explosives and detonators not used during the shift shall be returned to a magazine by the end of the shift.

§ 75.1314 Sheathed explosive units.

(a) A separate instantaneous detonator shall be used to fire each sheathed explosive unit.

(b) Sheathed explosive units shall be primed and placed in position for firing only by a qualified person or a person working in the presence of and under the direction of a qualified person. To prime a sheathed explosive unit, the entire detonator shall be inserted into the detonator well of the unit and be held securely in place.

(c) Sheathed explosive units shall not be primed until immediately before the units are placed where they are to be fired. A sheathed explosive unit shall not be primed if it is damaged or deteriorated.

(d) Except in anthracite mines, rock dust shall be applied to the roof, ribs and floor within a 40-foot radius of the location where the sheathed explosive units are to be fired.

(e) No more than three sheathed explosive units shall be fired at one time.

(f) No sheathed explosive unit shall be fired in contact with another sheathed explosive unit.

§ 75.1315 Boreholes for explosives.

(a) All explosives fired underground shall be confined in boreholes except—

(1) Sheathed explosives units and other explosive units approved by MSHA for firing outside the confines of a borehole; and

(2) Shots fired in anthracite mines for battery starting or for blasting coal overhangs. No person shall go inside a battery to start the flow of material.

(b) Each borehole in coal for explosives shall be at least 24 inches from any other borehole and from any free face, unless prohibited by the thickness of the coal seam.

(c) Each borehole in rock for explosives shall be at least 18 inches from any other borehole in rock, at least 24 inches from any other borehole in coal, and at least 18 inches from any free face.

(d) No borehole that has contained explosives shall be used for starting any other hole.

(e) When blasting slab rounds off the solid, opener holes shall not be drilled beyond the rib line.

(f) When coal is cut for blasting, the coal shall be supported if necessary to maintain the stability of the column of explosives in each borehole.

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§ 75.1316 Preparation before blasting.

(a) Before priming any explosives—

(1) All mobile electric equipment shall be removed to a distance of at least 50 feet from the working place or other area where blasting is to be performed; and

(2) All stationary electric equipment within 50 feet of the working place or other area where blasting is to be performed shall be deenergized.

(b) Before loading boreholes with explosives, each borehole shall be cleared and its depth and direction determined.

(c) No borehole drilled beyond the depth of cut coal shall be loaded with explosives unless that portion of the borehole deeper than the cut is tamped with noncombustible material.

(d) When two working faces are approaching each other, cutting, drilling and blasting shall be done at only one working face at a time if the two faces are within 25 feet of each other.

§ 75.1317 Primer cartridges.

(a) Primer cartridges shall be primed and loaded only by a qualified person or a person working in the presence of and under the direction of a qualified person.

(b) Primer cartridges shall not be primed until immediately before loading boreholes.

(c) Only a nonsparking punch shall be used when priming explosive cartridges.

(d) Detonators shall be completely within and parallel to the length of the cartridge and shall be secured by half-hitching the leg wires around the cartridge or secured by an equally effective method.

§ 75.1318 Loading boreholes.

(a) Explosives shall be loaded by a qualified person or a person working in the presence of and under the direction of a qualified person.

(b) When boreholes are being loaded, no other work except that necessary to protect persons shall be done in the working place or other area where blasting is to be performed.

(c) When loading boreholes drilled at an angle of 45 degrees or greater from the horizontal in solid rock or loading long holes drilled upward in anthracite mines—

(1) The first cartridge in each borehole shall be the primer cartridge with the end of the cartridge containing the detonator facing the back of the borehole; and

(2) The explosive cartridges shall be loaded in a manner that provides contact between each cartridge in the borehole.

(d) When loading other boreholes—

(1) The primer cartridge shall be the first cartridge loaded in the borehole;

(2) The end of the cartridge in which the detonator is inserted shall face the back of the borehole; and

(3) The primer cartridge and other explosives shall be pushed to the back of the borehole in a continuous column with no cartridge being deliberately crushed or deformed.

(e) An explosive shall not be loaded into a borehole if it is damaged, deteriorated of if the cartridge is incompletely filled.

(f) Explosives of different brands, types or cartridge diameters shall not be loaded in the same borehole.

(g) Only nonconductive, nonsparking tamping poles shall be used for loading and tamping boreholes. The use of nonsparking connecting devices for extendable tamping poles is permitted.

§ 75.1319 Weight of explosives permitted in boreholes in bituminous and lignite mines.

(a) The total weight of explosives loaded in any borehole in bituminous and lignite mines shall not exceed 3 pounds except when blasting solid rock in its natural deposit.

(b) The total weight of explosives loaded in a borehole less than 6 feet deep in bituminous and lignite mines shall be reduced by ½ pound for each foot of borehole less than 6 feet.

§ 75.1320 Multiple-shot blasting.

(a) No more than 20 boreholes shall be fired in a round unless permitted in writing by the District Manager under § 75.1321.

(b) Instantaneous detonators shall not be used in the same circuit with delay detonators in any underground coal mine.

(c) In bituminous and lignite mines, only detonators with delay periods of 1,000 milliseconds or less shall be used.

(d) When blasting in anthracite mines, each borehole in a round shall be initiated in sequence from the opener hole or holes.

(e) Arrangement of detonator delay periods for bituminous and lignite mines shall be as follows:

(1) When blasting cut coal—

(i) The first shot or shots fired in a round shall be initiated in the row nearest the kerf or the row or rows nearest the shear; and

(ii) After the first shot or shots, the interval between the designated delay periods of successive shots shall be at least 50 milliseconds but not more than 100 milliseconds.

(2) When blasting coal off the solid—

(i) Each shot in the round shall be initiated in sequence from the opener hole or holes; and

(ii) After the first shot or shots, the interval between the designated delay periods of successive shots shall be at least 50 milliseconds but not more than 100 milliseconds.

§ 75.1321 Permits for firing more than 20 boreholes and for use of nonpermissible blasting units.

(a) Applications for permits for firing more than 20 boreholes in a round and for the use of nonpermissible blasting units shall be submitted in writing to the District Manager for the district in which the mine is located and shall contain the following information:

(1) The name and address of the mine;

(2) The active workings in the mine affected by the permit and the approximate number of boreholes to be fired;

(3) The period of time during which the permit will apply;

(4) The nature of the development or construction for which they will be used, e.g., overcasts, undercasts, track grading, roof brushing or boom holes;

(5) A plan, proposed by the operator designed to protect miners in the mine from the hazards of methane and other explosive gases during each multiple shot, e.g., changes in the mine ventilation system, provisions for auxiliary ventilation and any other safeguards necessary to minimize such hazards;

(6) A statement of the specific hazards anticipated by the operator in blasting for overcasts, undercasts, track grading, brushing of roof, boom holes or other unusual blasting situations such as coalbeds of abnormal thickness; and

(7) The method to be employed to avoid the dangers anticipated during development or construction which will ensure the protection of life and the prevention of injuries to the miners exposed to such underground blasting.

(b) The District Manager may permit the firing of more than 20 boreholes of permissible explosives in a round where he has determined that it is necessary to reduce the overall hazard to which miners are exposed during underground blasting. He may also permit the use of nonpermissible blasting units if he finds that a permissible blasting unit does not have adequate blasting capacity and that the use of such permissible units will create any of the following development or construction hazards:

(1) Exposure to disturbed roof in an adjacent cavity while scaling and supporting the remaining roof prior to wiring a new series of boreholes;

(2) Exposure to underburden boreholes where prior rounds have removed the burden adjacent to a remaining borehole;

(3) Exposure to an unsupported roof while redrilling large fragmented roof rock following the loss of predrilled boreholes during earlier blasting operations; or

(4) Any other hazard created by the use of permissible blasting units during underground development or construction.

(c) Permits shall be issued on a mine-by-mine basis for periods of time to be specified by the District Manager.

(d) Permits issued under this section shall specify and include as a condition of their use, any safeguards, in addition to those proposed by the operator, which the District Manager issuing such permit has determined will be required to ensure the welfare of the miners employed in the mine at the time of the blasting permitted.

(Approved by the Office of Management and Budget under control number 1219-0025)

§ 75.1322 Stemming boreholes

(a) Only noncombustible material shall be used for stemming boreholes.

(b) Stemming materials other than water stemming bags shall be tamped to fill the entire cross sectional area of the borehole.

(c) Stemming material shall contact the explosive cartridge nearest the collar of the borehole.

(d) Each borehole 4 or more feet deep shall be stemmed for at least 24 inches.

(e) Each borehole less than 4 feet deep shall be stemmed for at least half the depth of the borehole.

(f) When blasting off the solid in bituminous and lignite mines, only pliable clay dummies shall be used for stemming.

(g) The diameter of a water stemming bag shall be within ¼ of an inch of the diameter of the drill bit used to drill the borehole.

(h) Water stemming bags shall be constructed of tear-resistant and flame-resistant material and be capable of withstanding a 3-foot drop when filled without rupturing or developing leaks.

§ 75.1323 Blasting circuits.

(a) Blasting circuits shall be protected from sources of stray electric current.

(b) Detonators made by different manufacturers shall not be combined in the same blasting circuit.

(c) Detonator leg wires shall be shunted until connected into the blasting circuit.

(d) Blasting cables shall be—

(1) Well insulated, copper wire of a diameter not smaller than 18-guage; and

(2) Long enough to permit the round to be fired from a safe location that is around at least one corner from the blasting area.

(e) Blasting cables shall be shunted until immediately before firing, except when testing for circuit continuity.

(f) Wire used between the blasting cable and detonator circuitry shall—

(1) Be undamaged;

(2) Be well insulated;

(3) Have a resistance no greater than 20-guage copper wire; and

(4) Be not more than 30 feet long.

(g) Each wire connection in a blasting circuit shall be—

(1) Properly spliced; and

(2) Separated from other connections in the circuit to prevent accidental contact and arcing.

(h) Uninsulated connections in each blasting circuit shall be kept out of water and shall not contact the coal, roof, ribs, or floor.

(i) When 20 or fewer boreholes are fired in a round the blasting circuit shall be wired in a single series.

(j) Immediately prior to firing, all blasting circuits shall be tested for continuity and resistance using a blasting galvanometer or other instrument specifically designed for testing blasting circuits.

§ 75.1324 Methane concentration and tests.

(a) No shot shall be fired in an area that contains 1.0 volume percent or more of methane.

(b) Immediately before shots are fired, the methane concentration in a working place or any other area where blasting is to be performed, shall be determined by a person qualified to test for methane.

§ 75.1325 Firing procedures.

(a) Shots shall be fired by a qualified person or a person working in the presence of and under the direction of a qualified person.

(b) Only one face in a working place shall be blasted at a time.

(c) Before blasting—

(1) All persons shall leave the blasting area and each immediately adjacent working place where a hazard would be created by the blast, to an area that is around at least one corner from the blasting area;

(2) The qualified person shall ascertain that all persons are a safe distance from the blasting area; and

(3) A warning shall be given and adequate time allowed for persons to respond.

(d) All shots shall be fired promptly, after all persons have been removed to a safe location.

§ 75.1326 Examination after blasting.

(a) After blasting, the blasting area shall not be entered until it is clear of smoke and dust.

(b) Immediately after the blasting area has cleared, a qualified person or a person working in the presence of and under the direction of a qualified person, shall examine the area for misfires, methane and other hazardous conditions.

(c) If a round has partially detonated, the qualified person shall immediately leave the area and no person shall reenter the affected area for at least 5 minutes.

§ 75.1327 Misfires.

(a) When misfires occur, only work by a qualified person to dispose of misfires and other work necessary to protect persons shall be done in the affected area.

(b) When a misfire cannot be disposed—

(1) A qualified person shall post each accessible entrance to the area affected by the hazard of the misfire with a warning at a conspicuous location to prohibit entry; and

(2) The misfire shall be immediately reported to mine management.

§ 75.1328 Damaged or deteriorated explosives and detonators.

(a) Damaged explosives or detonators shall be—

(1) Placed in separate containers constructed of nonconductive and nonsparking materials; and

(2) Removed from the mine or placed in a magazine and removed when the magazine is resupplied.

(b) Damaged detonators shall be shunted, if practicable, either before being removed from the mine or placed in a magazine.

(c) Deteriorated explosives and detonators shall be handled and disposed of in accordance with the instructions of the manufacturer.

[FR Doc. 88-26411 Filed 11-17-88; 8:45 am]
BILLING CODE 4510-43-M

VOL
53
ISS
223
NO
18
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UMI

federal register

Friday
November 18, 1988

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 14, 15, and 52
Federal Acquisition Regulation (FAR); Commercial Pricing Certificates; Proposed Rule

VOL 53 ISS 223 NO 18 1988 UMI

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, and 52

Federal Acquisition Regulation (FAR); Commercial Pricing Certificates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule implements the requirements of Pub. L. 98–577 and Pub. L. 99–591 pertaining to commercial pricing certificates.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 17, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), Washington, DC 20405. Please cite FAR Case 85–32 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

On July 3, 1985 (50 FR 27560), FAC 84–10, Item III, Certificate of Commercial Pricing, was published as an interim rule implementing Pub. Laws 98–577 (applicable to the civilian agencies) and 98–525 (applicable to DOD, NASA, and the Coast Guard) requiring that acquisitions of commercial items be subject to a certification regarding the lowest price charged the public for items. Subsequently, the FY '87 DoD Appropriations Act, Pub. L. 99–591, made changes to the statutory coverage applicable to DoD, NASA, and the Coast Guard.

The FAR revisions included in this proposed rule implement Pub. Laws 98–577 and 99–591 now codified at 41 U.S.C. 253e and 10 U.S.C. 2323, respectively, and are applicable to all agencies. Under the proposed coverage, offerors/contractors in certain noncompetitive acquisitions are required to certify that the prices offered to the Government for spare or repair parts that the contractor also offers for sale to the general public are no higher than the lowest commercial price at which such parts were sold during the most recent regular period of not less than 30 days duration, or submit a written justification of the difference. The final rule, which will be developed after consideration of the public comments received from this notice of proposed rule, will rescind the interim rule and the DFARS coverage published in the **Federal Register** on June 1, 1988 (53 FR 19960).

B. Regulatory Flexibility Act

The proposed rule adds FAR 14.214, amends 15.813, revises the clause at 52.215–32, and adds the clause at 52.215–35 to implement Pub. Laws 98–577 and 99–591. Under the new coverage, offerors/contractors in certain noncompetitive acquisitions are required to certify that the prices offered for spare or repair parts that the contractor offers for sale to the general public are no higher than the lowest commercial price at which such parts were sold during the most recent regular monthly, quarterly, or other period of not less than 30 days in duration for which sales data are reasonably available. Such coverage is not expected to have a significant impact on a substantial number of small entities because the information required should be readily available to small businesses since they are less likely to have decentralized sales records and the large volume of sales transactions normally associated with larger businesses. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Certification of Commercial Pricing is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, et seq. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 14, 15, and 52

Government procurement.

Dated: November 14, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 14, 15, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

2. Section 14.214 is added to read as follows:

14.214 Commercial pricing certificates.

Sealed bid acquisitions of parts or components as defined in 15.813–2 are subject to the requirements of 15.813, Commercial Pricing Certificates, including the solicitation provisions and contract clause prescription in 15.813–7, when conditions specified therein are applicable.

PART 15—CONTRACTING BY NEGOTIATION

3. Sections 15.813 through 15.813–7 are revised to read as follows:

Sec.

15.813 Commercial pricing certificates.
15.813–1 Scope and applicability.
15.813–2 Definitions.
15.813–3 Policy.
15.813–4 Requirements for submission of commercial pricing certificates.
15.813–5 Exemption from the requirement to submit commercial pricing certificates.
15.813–6 Procedures.
15.813–7 Solicitation provision and contract clause.

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

15.813 Commercial pricing certificates.

15.813–1 Scope and applicability.

This section prescribes policies and procedures for obtaining certificates from contractors relating to prices offered for parts or components as defined in 15.813–2. It implements the statutory provisions in 41 U.S.C. 253e for civilian agencies and 10 U.S.C. 2323 for the Department of Defense, the National Aeronautics and Space Administration, and Coast Guard.

15.813–2 Definitions.

"Lowest commercial price," as used in this section, means the lowest price at which a sale was made to the general public of a particular part or component.

The term does not include the price at which a sale was made to—

(a) Any agency of the United States;

(b) Customers located outside the United States;

(c) A subsidiary, affiliate, or parent business organization of the contractor or any other branch of the same business entity; and

(d) For contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, such term also does not include the sale to any customer—

(1) For resale after such customer performs a service or function in connection with such part or component that increases the cost of the part or component unless the agency procuring the part or component can demonstrate that the agency is procuring the part or component before such service or function has been performed by any such customer (see 15.813–6(c)); or

(2) At a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part or component.

"Part or component," as used in this section, means—

(a) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself; or

(b) For acquisitions of civilian agencies other than the National Aeronautics and Space Administration and the Coast Guard, any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of a part or component.

15.813–3 Policy.

Contracts entered into using other than full and open competition may not result in prices for parts or components (as defined in 15.813–2) offered for sale to the public that exceed the contractor's lowest commercial prices for such parts or components unless the price difference is clearly justified by the seller or the contracting officer has determined to exempt the contractor from the requirement under 15.813–5(d). To this end, 41 U.S.C. 253e and 10 U.S.C. 2323 require offerors to certify that prices offered for parts or components are not more than their lowest commercial prices, or to submit a written statement specifying the amount of the difference between their lowest commercial prices for the parts or components and the prices offered, and providing justification for those differences. Because the forces of the competitive marketplace should ensure that the Government does not pay too high a price for commercial parts or components, commercial pricing certificates are necessary only when these forces are not present in a particular contract action.

15.813–4 Requirements for submission of commercial pricing certificates.

Unless a contract is exempt from the requirement pursuant to 15.813–5, commercial pricing certificates are required to be submitted with any offer/proposal that:

(a) Includes any parts or components that are offered for sale to the public, and

(b) Is submitted in connection with any of the following:

(1) Offers/proposals in connection with contracts to be awarded without full and open competition.

(2) Contract modifications, including contract modifications for additional parts or components, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause (but see subparagraph (b)(5) of this subsection), or funding and other administrative modifications.

(3) Orders under the provisioning line item of a contract, a basic ordering agreement, or similar arrangement if the order is being placed without full and open competition.

(4) Definitization of price on a letter contract, unpriced order, or other contract, modification, or order awarded without a definitive price. (The commercial pricing certificate is not required before the initial award, but rather shall be submitted with the proposal to definitize.)

(5) Any modification issued pursuant to the Changes clause that results in the providing of new or different parts or components.

15.813–5 Exemption from the requirement to submit commercial pricing certificates.

A contract is exempt from the requirement that a commercial pricing certificate be submitted if—

(a) The simplified small purchase procedures of Part 13 are used;

(b) An acquisition is being made under the procedures established by the General Services Administration for its multiple award schedule program; or

(c) An order is placed under an indefinite delivery type contract (a certificate is required in connection with the award without full and open competition of an indefinite delivery type contract); or

(d) The contracting officer determines that obtaining the commercial pricing certificate is not appropriate because of—

(1) National security considerations; or

(2) Significant differences between the terms of the commercial sales of the parts or components to be acquired under the contract and the terms of the contract including differences in quantity, quality, delivery requirements, or other terms and conditions.

15.813–6 Procedures.

(a) If a commercial pricing certificate is required in accordance with 15.813–4, the contracting officer shall ensure that the certificate set forth in paragraph (b) of the clause at 52.215–32, Certificate of Commercial Pricing for Parts or Components, is submitted with each offer/proposal. Notice of the requirement and requests for submission of a certificate in the solicitation is accomplished through use of the solicitation provision at 52.215–35. Contracting officers are encouraged to enter into advance agreements with contractors to consolidate submission requirements when detailed repetitive certifications and justifications would otherwise be required.

(b) When requested pursuant to paragraph (a) of this subsection, offerors/contractors are required to submit the commercial pricing certificate with their proposals unless the contracting officer determines to grant an exemption pursuant to 15.813–5(d). Exemptions from the requirement to submit a commercial pricing certificate should not be granted pursuant to 15.813–5(d)(2) unless the contracting officer has sufficient information to verify that the contractor's lowest commercial price for parts or components offered for sale to the public are subject to such substantial differences (in quantity, quality, delivery, or other terms and conditions) from Government contract terms so as to warrant the exemption. If the contracting officer determines that use of the lowest commercial price for a part or component is not appropriate for a contract under 15.813–5(d), this determination should be communicated to the offeror/contractor in writing. Contracting officers may accept

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information supporting possible exemptions from offerors/contractors at any time prior to agreement on price. Exemptions relieve the offerors/contractors from the statutory and contractual submission requirement.

(c) For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, a contracting officer may make a determination that the definition of "Lowest Commercial Price" in the clause at 52.215-32 shall include the price at which a sale was made to any person or corporation for resale by the person or corporation. In making this determination, the contracting officer must be able to demonstrate that the parts or components are being procured by the contracting officer under the same terms and conditions at which a sale was made to the person or corporation for resale.

(d) The contracting officer shall request submission of a new certificate when the validity of the certificate originally submitted with an offer/proposal becomes doubtful before award because of submission of a new or revised proposal or as a result of discussions.

(e) If, after award, the contracting officer learns or suspects that a certificate was inaccurate, incomplete, or misleading, the contracting officer shall request an audit under the authority of paragraph (c) of the clause at 52.215-32. If the contracting officer determines that a certificate is inaccurate, incomplete, or misleading, the Government is entitled to a price adjustment for any overcharge (see paragraph (d) of the clause at 52.215-32).

(f) Individual or class determinations made under 15.813(d) (1) or (2), and advance agreements made under paragraph (a) of this subsection, shall be documented in the contract file.

(g) Possession of a commercial pricing certificate is not a substitute for examining a contractor's proposal and determining that the prices offered are fair and reasonable. The certificate represents a tool to assist the contracting officer in the determination. The contracting officer shall obtain sufficient information with regard to commercial parts or components to permit an understanding of the contractor's commercial pricing structure and where within that structure the acquisition fits. (See 15.804-3(h) and data obtained on the Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data.)

15.813-7 Solicitation provision and contract clause.

(a)(1) The contracting officer shall insert the clause at 52.215-32, Commercial Pricing Certificate for Parts or Components, in solicitations and contracts if a commercial pricing certificate is required by 15.813-4.

(2) For civilian agencies other than the National Aeronautics and Space Administration and the Coast Guard, the contracting officer shall insert the clause with its Alternate I in solicitations and contracts involving the furnishing of parts or components using full and open competition.

(b) The contracting officer shall insert the provisions at 52.215-35, Commercial Pricing Certificate—Notice, in solicitations if a commercial pricing certificate is required by 15.813-4.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.215-32 is revised to read as follows:

52.215-32 Certification of commercial pricing for parts or components.

As prescribed in 15.813-7(a), insert the following clause:

CERTIFICATION OF COMMERCIAL PRICING FOR PARTS OR COMPONENTS (NOV 1988)

(a) *Definitions.*

"Lowest commercial price," as used in this section, means the lowest price at which a sale was made to the general public of a particular part or component. The term does not include the price at which a sale was made to—

(1) Any agency of the United States;

(2) Customers located outside the United States;

(3) A subsidiary, affiliate, or parent business organization of the contractor, or any other branch of the same business entity; and

(4) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, such term also does not include the sale to any customer—

(i) For resale after such customer performs a service or function in connection with such part or component that increases the cost of the part of component unless the agency procuring the part or component can demonstrate that the agency is procuring the part or component before such service or function has been performed by any such customer (see 15.813-6(c)); or

(ii) At a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part or component.

"Part or component," as used in this section, means—

(1) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself; or

(2) For acquisitions of civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, any individual part, component, subassembly, assembly or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of a part or component.

(b) *Submission requirements.* The Offeror/Contractor shall execute and submit to the Contracting Officer the following certificate with any offer/proposal as required by FAR 15.813-4 when requested by the Contracting Officer:

CERTIFICATE OF COMMERCIAL PRICING FOR SUPPLIES

(1) Unless justified in subparagraph (b)(2) of this clause, by submission of this offer/proposal, the Offeror/Contractor certifies that, to the best of its knowledge and belief, the prices offered for those parts or components (whether or not separately identified) that the Contractor offers for sale are no higher than the lowest commercial price at which such items were sold to the public during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available, *provided* that in no event shall this period be less than 30 days in duration.

(2) All parts or components for which prices offered are higher than the lowest commercial price referred to in subparagraph (b)(1) of this certificate are identified below (including the amounts by which such offered prices are higher) and a written justification for the differences is attached:

Part or Component _____
Price Difference _____
(List as necessary)
Offer/Proposal No. _____
Time period for sale data _____
Firm _____
Typed name and signature _____
Title _____
Date _____

(End of certificate)

(c) *Audit.* The Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all directly pertinent records of sales and related documents, including contract terms and conditions, necessary to verify the validity of any certificate executed in accordance with paragraph (b) of this clause. The Contractor shall make those records, books, data, and documents available for examination, audit, or reproduction until 3 years after the date the certificate set forth in paragraph (b) of this clause is executed. Nothing contained in this clause shall require the submission of cost or pricing data not otherwise required by law or regulation.

(d) *Price reduction.* If any price, including profit or fee negotiated in connection with this contract, or any cost reimbursable under this contract, has increased because the certification in subparagraph (b)(1) of the certificate or the information provided as justification in subparagraph (b)(2) of the certificate was inaccurate, incomplete, or misleading, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(End of clause)

Alternate I (Nov 1988) As prescribed in 15.813-7(a)(2), insert the following paragraph in the clause without a paragraph identifier, before paragraph (a) of this clause:

The requirements of this clause shall become operative only for any modifications to this contract involving the furnishing of parts or components, as defined in paragraph (a) of this clause, if awarded as a result of other than full and open competition.

5. Section 52.215-35 is added to read as follows:

52.215-35 Commercial pricing certificate—notice.

COMMERCIAL PRICING CERTIFICATE—NOTICE (NOV 1988)

Line Items _____ of this solicitation are parts or components to be acquired under conditions that require the submission of a commercial pricing certificate. The Offeror shall comply with the provision of this solicitation, 52.215-32, Certification of Commercial Pricing for Parts or Components, and execute and submit a certificate with its offer.

(End of provision)

[FR Doc. 88-26673 Filed 11-17-88; 8:45 am]
BILLING CODE 6820-61-M

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18

1988

UMI

federal register

Friday
November 18, 1988

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3160
Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Drilling Operations; Final Rule

VOL
53
ISS
223
NO
18
1988
UMI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02; Circular No. 2613]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides for the issuance of Onshore Oil and Gas Order No. 2 under the provisions of 43 CFR Subpart 3164. This order implements and supplements the requirements found in 43 CFR Subpart 3160 as they apply to drilling operations, specifically, those requirements found at §§ 3162.3-1, 3162.3-4, 3162.4-1, 3162.4-2, 3162.5-1, 3162.5-2, and 3162.5-3. This Order addresses the Bureau of Land Management's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian (except Osage Tribe) lands. The Order also details enforcement actions and prescribes the manner in which variances may be obtained from specific standards. The Bureau's specific existing internal guidelines on the subject of drilling operations have never been published formally in a Notice to Lessees and Operators, so that this Order has no direct predecessor.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, Room 601, Premier Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Howard A. Lemm, (801) 524-3000 or Robert Kent, (202) 653-2174.

SUPPLEMENTARY INFORMATION: Section 3164.1 of 43 CFR Part 3160 provides for the issuance of Onshore Oil and Gas Orders when needed to implement and supplement the regulations in that part. All Orders are promulgated through the rulemaking process and, when issued in final form, apply on a nationwide basis. This final rulemaking contains such an Order, No. 2, Drilling Operations.

This Order establishes specific and detailed requirements along with minimum standards covering well control during drilling, casing and cementing, drilling mud and the circulating system, drill stem testing, special drilling operations, related surface use, and the abandonment of drilling operations. These operation standards will be used in conjunction with the broad requirements of Part 3160 and Onshore Oil and Gas Order No. 1. This Order also classifies all violations as minor or major. In addition, the Order establishes the process for initially classifying a violation as minor and reissuing the violation as major if not corrected and continued drilling has increased the adverse impact.

This Order sets standards designed to be minimums for drilling operations at specific pressures under differing conditions and in different parts of the country. It is recognized that, under some conditions, additional requirements will be routinely imposed, or general variances to specific requirements will be granted, either in approval documents or on a field basis. In some instances, the Order relies on existing standards prepared by the American Petroleum Institute, the Occupational Safety and Health Administration, the Texas Railroad Commission, and other agencies. These standards are generally accepted in the oil and gas industry.

The proposed rulemaking for this Onshore Oil and Gas Order No. 2 was published in the **Federal Register** on August 13, 1987 (52 FR 30310). The comment period ended on October 13, 1987. A total of 36 comments were received: 24 from business entities, 8 from offices of Federal agencies, 2 from trade associations, 1 from an Indian tribe, and 1 from an individual. The comments are discussed in the appropriate portions of this preamble where the provisions of the Order they relate to are discussed.

Discussion of II Definitions

The proposed Order defined the term "freeboard". This term has been removed from the final rulemaking because the only reference to it was in the provision on minimum standards for surface use, which has also been removed from the final rulemaking as explained elsewhere in this preamble.

The term "function test" has been changed to "functionally operated" for clarification. At the suggestion of a comment, the word "wellbore" has been added to describe the type of pressures under discussion.

The term "H_2S trim" was removed in the final rulemaking since the final rulemaking now contains no reference to this term.

Several comments suggested changes to the term and definition for "High Pressure Zone" to include low pressure or lost circulation zones. This term has been replaced throughout the Order by "Abnormal Pressure Zone", which refers to low pressure as well as high pressure, and the definition modified to reflect this distinction.

The term "fresh water" has been removed from the Definitions and replaced by the term "usable water" wherever it occurred in the text. This Order requires the protection of usable water, which includes fresh water. The standard for "usable water" of 10,000 ppm. of total dissolved solids is based on the regulatory definition by the Environmental Protection Agency of "drinking water" at 40 CFR 144.3.

A new definition for the term "lessee" is incorporated in this final rulemaking to reflect a change in definition of the term in 43 CFR Part 3160 since the Draft Order was published for comment.

Several comments on the definition of "mud for plugging purposes" suggested that it too restrictive. By using this term, the proposed Order did not intend to exclude the use of other materials. Therefore, the final rulemaking has adopted these comments and the definition has been expanded to include other materials. Consultation with the authorized officer is encouraged to determine the need for mud for plugging purposes to assure that usage is consistent with environmental concerns and established operating practices.

The term "neat cement" does not appear in the final rulemaking, and the term has been removed from the definitions.

The definition for "tagging the plug" has been modified at the suggestion of comments to remove the reference to an amount of weight not to be exceeded when placing the weight of the drill pipe on the plug. This modification was made because no real purpose was served by placing a maximum on the amount of weight placed on the plug.

At the suggestion of a comment, the definition for "targeted tee or turn" has been modified slightly for increased clarity.

The definition of "test plug" is also amended for clarity.

The term "exploratory well" has been redefined to improve the description of what constitutes an exploratory (wildcat) well.

Seven additional terms have been added to the Definitions section in this final rulemaking in response to comments received. The definition chosen for each of these terms was either as defined by a referenced regulation or, when this was not the case, generally by the most commonly used definition incorporating oil field vernacular.

Discussion of III Requirements

A comment was received requesting clarification of the introductory portion of each "Requirement" section and the specific minimum standards that are then listed below each of these requirement sections. The purpose of the Requirements section is to provide direction as to what is to be included in the Application for Permit to Drill (APD), as well as to provide general direction as to the applicability of the minimum standards that follow each of these sections. Neither the Requirements sections nor the Minimum Standards sections are intended to stand alone. However, each section has been reviewed, and clarification added as appropriate.

A. Well Control Requirements

This portion of the rulemaking contains perhaps the most detailed and technical section of the Onshore Order for Drilling Operations. The principal reason for this is the need to establish minimum standards by pressure rating the equipment being utilized. Therefore, even though there is duplication in some of the minimum standards as they uniformly apply to 2M, 3M, 5M, and 10M and 15M systems, substantial differences in usage of equipment require each pressure rating to be listed separately.

A comment requested a definition of the term "operational" used in section III A.1. A definition for this term has been included in the final rulemaking in the Definitions section.

Other comments were received on this same section (III.A.1.) concerning the criteria for establishing the pressure rating of the well control equipment to be used. In the draft order these criteria were established "assuming no fluid (except gas) in the hole". The oil industry comments received on this section were critical of the criteria as being too restrictive and suggestive of a worst-case scenario. While a worst-case scenario represents a legitimate method, used by a number of regulatory agencies and energy companies in developing their design criteria for well control, a compromise has been adopted in the final rulemaking because assuming a totally evacuated hole (except gas) is too extreme to use for establishing minimum standards.

The compromise wording adopted assumes a "partially evacuated hole with a pressure gradient of 0.22 psi/ft." as the criteria for system design. This adopted pressure gradient parameter assumes a partially evacuated hole whereby the hydrostatic pressure gradient is approximately double that assumed in the draft order. It also represents approximately one-half the hydrostatic pressure of a column of water. In addition to being an easily remembered specification, it also represents an appropriate compromise and a legitimate minimum design criterion.

A comment was received concerning section III.A.2. suggesting that the Order should establish well control training provisions. Although this concept has merit, well control training for operators is not within the identified scope of this rulemaking and accordingly is not addressed here. However, this comment has been referred to appropriate BLM personnel for separate consideration.

Minimum standard III.A.i. has been editorially modified for clarity by adding the words "well control" in describing the device required as suggested in the comments received.

The minimum standard III.A.ii. for 2M systems has been modified as suggested in comments to clarify that an "annular preventer, double ram or two rams with one being a blind and one being a pipe ram," is required. This was the intention of the minimum standard contained in the draft Order, but as written could have been understood to require 4 rams, with 1 being a double, and including a blind and a pipe ram as well.

The minimum standard for III.A.iii. received several comments. Some of these noted that 3M systems are the ones most commonly available in some regions. Their use, it was noted, was predicted on availability rather than necessity. Compliance with the provisions of this Order is considered a minimum requirement. As stated in I.D.1., higher rated equipment may be used to meet and maintain these standards without being held to the higher standards normally applied to such equipment. Therefore, if the pressure expected is in the 2M category, the operator should state this in the application. The use of equipment of a higher pressure rating than that approved does not subject the operator to the specifications for the higher pressure rated equipment. Operators are reminded to base requests or equipment approval on this understanding. Since I.D.1. clearly addresses the above mentioned concerns, no further explanation or modification was deemed necessary in the text of the final rulemaking. It should be noted that if drilling were to occur in an area where a 2M system was appropriate and approved, the use of a 3M system without, for example, an annular preventer (which is not required in a 2M system) is, of course, fully acceptable. Accordingly, along with the more liberal assumption of a .22 psi/ft fluid in the hole rather than fully evacuated, as explained earlier, the standard is now appropriate without further modification and as such is consistent with API RP53.

Another comment on this section addressed the draft minimum standard for a drilling spool with side outlet connections. The comment stated that this was too restrictive because the blowout preventer (BOP) itself could have side outlets and functions in the same manner as the drilling spool. The final rulemaking has been modified to allow for this type of equipment and usage not only for a 3M system but for higher rated pressure systems as well.

The minimum standard in the final rulemaking for 2 kill line valves was modified from the draft as suggested by a comment to permit one of the two valves to be a check valve to clarify the intent of the Order.

The minimum standard for safety valves and subs was modified as suggested by comments to clarify intent and now reads "safety valve and subs to fit all drill string connections in use". This has been modified similarly in the requirements for higher rated systems as well.

The term "BOPE" was added to the minimum standard for clarification. It now reads, "All BOPE connections subject to well pressure shall be flanged, welded, or clamped." Connections not subjected to well pressure in the cellar, for example, or those connections upstream from check valves, etc., could be hammer unions as some comments suggested. The minimum standard addresses only those connections directly subject to well pressure conditions. This same modification has been made to the minimum standards for higher rated systems.

The minimum standards for 5M systems in section III.A.iv. generated numerous comments, many of which addressed similar items and nearly all of which suggested minor changes for clarity. As noted below, these changes were for the most part incorporated in this final rulemaking.

The second item in the minimum standards for 5M systems has been completely reworded at the suggestion of comments and broken into 2 separate standards to improve clarity and expound the original intent concerning the appropriate usage of a second pipe ram.

The use of remote kill line on a 5M system received several conflicting comments. This minimum standard is retained as proposed, because it reflects an appropriate and necessary minimum standard.

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Comments were received suggesting that the minimum standard in the draft requiring an inside BOP or float sub was not appropriate and did not represent a true minimum standard. The requirement has not been removed, because having an inside BOP or float sub on site that will fit the drill string is standard procedure and necessary to prevent blowouts. However, this standard has been amended to apply specifically to drill string connections in use rather than the entire string.

The minimum standards for 10M and 15M systems in section III.A.2.a.v. received general comments expressing satisfaction with all the specified standards as being appropriate and necessary given the high relative pressures under consideration. However, other useful comments were received as discussed below which addressed issues that warranted further consideration.

The minimum standard for a rotating head if conditions warrant as required in the draft Order was removed since it was not stated as a true minimum standard. The authorized officer at the time the APD is approved always has the discretionary authority to require additional equipment if conditions warrant.

Two comments addressed the minimum standard that requires "3 chokes, 1 being remotely controlled." This standard remains as stated in the draft Order since this requirement is well-accepted operating practice and represents an appropriate minimum standard.

The requirement for a wear ring received several comments. These ranged from the belief that a wear ring is appropriate for all pressure systems to the belief that a wear ring is inappropriate for any system. The minimum standard for a wear ring on 10M and 15M systems has been retained in the final rulemaking in realization that detecting significant wear particularly in these higher rated systems is directly related to responsible well control equipment requirements.

The minimum standard in paragraph III.A.2.a.vii. attracted 1 comment suggesting different wording to recognize the existence of alternative measures that would satisfy the intent of the standard. This minimum standard has been modified to accommodate this request.

The minimum standard in paragraph III.A.2.b.i. generated several comments, some of which suggested that the choke lines should be anchored. This requirement has been included in the final rulemaking. This minimum standard also received comment concerning the requirement that the lines be straight unless turns use tee blocks or are targeted with running tees. This part of the minimum standard was not further modified since it represents an appropriate minimum standard consistent with established operating practice. Operators are reminded that if an instance occurs whereby a legitimate exception to this practice is necessary a variance can be requested as explained elsewhere in this Order.

Several comments were received concerning paragraph III.A.2.b.ii., which relates to the choke manifold equipment configurations. This standard was modified for clarity to improve the original intended meaning. Several valves as shown on the drawing have been removed or their size reduced as suggested in comments since they did not serve an operational purpose and, therefore, were not true minimum standards. Another comment on the choke manifold system urged that wording should be incorporated to state that the system should be kept from freezing. Since the Order requires that all equipment shall be "operational", which includes keeping components from freezing or from being affected by any other factors that would render them non-operational, no greater specificity in this regard is necessary.

As requested in comments, the requirements of this subpart have been clarified by the addition of minimum standards III.A.2.b.iii. and III.A.2.b.iv. These paragraphs more clearly specify the intent of the Order relating to unrestricted flow for valve lines, and the design for pressure gauges.

The pressure accumulator system minimum standards for 3M systems in section III.A.2.c.ii. attracted several general and somewhat divergent comments. No consensus or necessity for modification was expressed, and the final rulemaking in this section remains unchanged.

The minimum standards for 5M accumulator systems in section III.A.2.c.iii. received several comments stating that, as worded, the standards were excessive. The compromise wording adopted attempts to address the concerns of the comments. However, the 50 percent safety factor for 3 ram systems is retained after a review of manufacturers' recommendations as well as industry recommended practices since 5M and higher pressure rated systems typically require more stored volume due to higher BOP stacks, more piping length, etc.

Paragraph III.A.2.f. was amended to reflect suggestions in several comments offering improved language to clarify the minimum standard for accumulator pump capacity in accordance with conventional use. Under the revised minimum standard, the accumulator system is to be isolated rather than removed from service for testing the pump. Furthermore, the pumps are required to be capable of obtaining a minimum of 200 psi pressure above the specified accumulator precharge pressure. This change reflects a recognition that the 1200 psi standard in the proposed Order unduly restricted use of lower pressure accumulator systems.

Paragraph III.A.2.g. has been modified to specify how the valve position is to be maintained, as requested in several comments.

Paragraph III.A.2.h. generated several comments requesting modified language. A statement has been added to clarify the intent that remote controls are not required for 2M systems. The requirement for remote controls for 3M systems remains in place. Again, operators are reminded that if a 2M system is adequate under the requirements of this Order, and the use of a 3M system is being used only because of its availability, this should be noted at the time of approval and the request for approval should reflect equipment specified to handle 2M pressure situations. Only the specifications necessary for 2M systems would be enforced.

The minimum standard for well control equipment testing, III.A.2.i.i., received a comment on acceptable test fluids. Clear water or an appropriate clear liquid for subfreezing temperatures with a viscosity similar to water is required by this final rulemaking. Use of a drilling fluid rather than a clear liquid could mask and/or seal small leaks and, therefore, such use is not considered an appropriate practice or minimum standard, and the rulemaking has been amended to specify liquid rather than fluid.

The next provision providing minimum standards and enforcement provisions for well control equipment testing, in section III.A.2.i.ii., received comments that expressed concern as to the period of time to maintain the pressure test. This minimum standard has been amended to effect a compromise between the draft Order and the varying comments received. The final rulemaking specifies that the test shall be maintained for "10 minutes or until the provisions of the test are met, whichever is greater" instead of the 15-minute test period specified in the draft Order. Utilization of a test plug is addressed in the final rulemaking along with accompanying provisions for its pressure testing.

The length of test specified in III.A.2.i.iii. was similarly modified to "10 minutes or until provisions of the test are met".

Language in III.A.2.i.iv.B. is amended to make it clear that the test is to be performed when any seal subject to test pressure is broken.

Minimum standard III.A.2.i.vii is amended to require that the annular preventer shall be functionally operated at least weekly in order to determine whether the equipment is in working order without subjecting it to well bore pressures. This requirement would not significantly damage or cause premature wear of the rubber element.

The minimum standard III.A.2.i.ix. was amended for clarity to include the words "pit level" in describing the blowout prevention equipment (BOPE) drill to be conducted as suggested in a comment. This clarification refers to an exercise to be performed by the rig crew in response to a simulation of a gain in the mud pit level that would indicate an entry of fluid in the well bore.

B. Casing and Cementing Requirements

Many comments were received concerning the provisions for casing and cementing. Although the philosophy of what constitutes good minimum standards varied somewhat throughout these comments, those comments that provided alternative language to accomplish the perceived intent of the drafted standards were especially useful. The efforts of those commentators are especially appreciated in resolving and arriving at the appropriate minimum standards herein incorporated.

Numerous changes in the introductory language that precedes the minimum standards have been made as the result of comments. The draft order inconsistently referred to fresh water zones and to usable water zones needing protection. References to fresh water zones have been replaced with the term "usable water zones" throughout this final rulemaking for consistency and for regulatory compliance since usable water zones, which include fresh water zones, are also required to be protected.

Comments also suggested alternatives to the term "leasable mineral deposits." This term has been replaced as suggested by the term "valuable deposit of minerals" and is redefined as indicated in the definitions.

The criterion for casing setting depth has been revised. The draft criterion attracted more comments than any other single item in the proposed rulemaking. This requirement as it appears in the final rulemaking is consistent with accepted standard field operating practice and establishes the standard for design assuming normal drilling operations and conditions. In this context, the casing would not have to be designed to anticipate a completely unloaded situation down-hole.

The minimum design factors for tension, collapse, and burst have been removed in this final rulemaking, because of the great variations in calculation methods within industry among companies and from region to region. However, the operator will be required to submit the design factors that were utilized in his design for all exploratory wells and/or other wells as specified by the authorized officer.

The casing design factors for formation pressure gradients and fracture gradients attracted several comments. However, since both items occur with a statement "lacking better data", there was a consensus that these criteria are appropriate.

The minimum clearance provision for a hole/casing annulus received considerable comment. The necessity for an acceptable clearance was widely recognized, yet concern was expressed because of drill bit and casing size availability considerations. Several comments included excellent data on commonly accepted hole/casing annulus clearances that are in part derived from drill bit and casing size availability. The most common example cited was the use of 7 inch casing in an 8 1/2 inch hole. This calculates to a 0.422 inch clearance on all sides, which, according to both the comments and further research within BLM, is the "smallest" prudent clearance necessary to provide adequate isolation. Therefore, the final rulemaking establishes 0.422 inch clearance on all sides as the minimum design criterion, replacing 0.500 inch. Some comments strongly suggested that as much as 1 inch on all sides may be necessary, but the final rulemaking establishes a practicable minimum standard. It is recognized that there could be exceptions in unique circumstances when the operator or the authorized officer may wish to vary this requirement. These rare exceptions can be dealt with by requesting or requiring a variance as explained elsewhere in this Order. It should be realized that, as with any minimum standard or requirement, the authorized officer may require an increased clearance depending on field conditions. For example, depending on circumstances, the authorized representative may require additional clearance for surface casing strings.

The "waiting on cement" time requirement drew several comments that differed widely as to the suggested appropriate times. This requirement has been amended to indicate that the time must be adequate to achieve a minimum of 500 psi compressive strength at the casing shoe prior to drilling out. This change was at the suggestion of comments received and represents the generally accepted field operating practice.

The minimum standard for casing in item III.B.1.a. has been amended as suggested in comments to improve clarity and provide for consistency with similar regulatory standards. The standard is strengthened by requiring testing and by requiring reconditioned casing to meet or exceed API standards for new casing.

The minimum standard for liners in paragraph III.B.1.b. attracted comments suggesting the overlap should be as much as 300 feet or as little as 50 feet. Maintaining the minimum standard at 100 feet of overlap was deemed the most appropriate to combine most beneficially safety and economy. Operators are free to exceed this minimum standard.

An additional comment on this section suggested language making it clear when a pressure test for liners should be performed, and setting the standards for such a test. This suggestion has been adopted in the final rulemaking.

At the request of comments, minimum standard III.B.1.e. has been amended to specify that the required report is to be made before running the next string of casing or before requesting plugging orders, whichever occurs first.

The minimum standard in paragraph III.B.1.f. received comments both on the standard for placement of centralizers and on the standard for determining the corrective action. These comments have been adopted. The standards have been amended to improve the likelihood of there being an adequate cement bond.

Minimum standard III.B.1.g. for use of top and bottom plugs was amended to improve clarity and to set forth acceptable alternatives for isolating the cement from contamination.

Minimum standard III.B.1.h. on pressure testing casing strings has been rephrased as suggested by comments in order to clarify the intent as well as the technical reasoning. As published in the proposed rulemaking, the standard for pressure testing—1 psi per foot of casing length—was an error, and the final Order returns to the standard that has been employed historically.

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One comment was received suggesting alternative wording to make minimum standard III.B.1.i. on testing the pressure integrity of each casing shoe more flexible to meet varying pressure situations at different depths and in different formations. Recognizing that the well may not require a 5M system until it reaches greater depth, the suggested wording has been adopted. The final Order relaxes the requirement for portions of wells—generally the upper portions—that may not require a 5M system.

C. Mud Program Requirements

One comment was received asking that the term "mudding up" be defined. The final rulemaking includes a definition of this term.

In response to comments, the last sentence of the requirement statement for this section was modified by replacing "and" with "or" in recognition that being relatively near a premix bulk mud supply is a sufficient and acceptable alternative to maintaining sufficient quantities of mud materials on site.

For clarity and at the suggestion of a comment, the word "equipment" has been added to the term "visual mud-monitoring" in minimum standard III.C.2.

Minimum standard III.C.3. of the mud program requirements has been modified as suggested by several comments to require having mud monitoring equipment in place on all systems only when abnormal pressures are anticipated by the operator. A definition of "abnormal pressure" has been added in the definitions section to clarify when the operator is required to have monitoring equipment in place. In exploration areas, applications for permit to drill (APD) will be approved only if they call for monitoring equipment to be in place, because in such situations there can be little or no basis for anticipating normal pressures.

A change in the proposed Order at paragraph III.C.4. on testing for viscosity, density, and gel strength was made in response to comments stating that the Order should specify when it is necessary to begin requiring mud tests. This has been done in the final rulemaking by specifying that after mudding up, the tests should occur every 24 hours.

Several comments were received objecting to the minimum standard III.C.5. on the use of trip tanks. The requirement only applies to 10M, 15M, and upgraded 5M systems. Systems in such high pressure situations are unique by their nature and require special equipment to aid in the detection of kicks. This standard therefore remains unchanged, except that the authorized officer is given discretion, for 5M systems, to require a trip tank if conditions warrant.

Minimum standard III.C.6. on gas detection equipment has been completely rewritten, at the suggestion of one comment, to add a provision for monitoring other hydrocarbon gases, such as methane, as well as hydrogen sulfide. An editorial change was also made to correct the H_2S concentration listed from 100 ppm to 20 ppm.

The language of standard III.C.7. on flare systems has been changed to improve clarity by specifying that flare lines shall be positioned in the prevailing downwind direction from the gas source. In addition, the flare line discharge distance has been changed from 150 feet to 100 feet for consistency with proposed Order 6, which is in preparation, and with standards set by the Occupational Safety and Health Administration.

Standard III.C.8. has been amended to require the installation of a mud-gas separator (gasbuster) as specified at least 500 feet above the anticipated hydrocarbon zone instead of 1,000 feet as stated in the proposed rulemaking, and only for systems of 10M or greater, or those where abnormal pressures are anticipated even if the system is not 10M, rather than for all 5M or greater systems as provided in the proposed rulemaking. Several comments requested this change, which will also be consistent with the proposed Order 6 on H_2S Operations. This approach is more reasonable and flexible. The standard applies only in those discrete areas where separators are most likely to be needed. Additionally, the violation in the final rulemaking is classified as "minor" in recognition that the correction could readily be made before encountering the anticipated hydrocarbon zone.

D. Drill Stem Testing Requirements

A number of comments addressed the proposed prohibition of initiating drill stem testing (DST) outside of daylight hours. This provision has been modified to allow the authorized officer a degree of flexibility in approving DST in recognition that in the northern latitudes and during the winter months, initiation of a DST in daylight may not be practicable. Special safety requirements may be imposed by the authorized officer in those instances. Also, closed chamber DST may be accomplished day or night and provision for this has been added as suggested in comments and to clarify the original intention of the draft.

Standards III.D.1. and D.2. were editorially amended for clarity as suggested in comments.

Standard III.D.3. on the location of combustion engines has been amended to make it consistent with the OSHA requirement that they be located no closer than 100 feet from the well bore, unless equipped with arresters and/or water cooled exhaust manifolds.

E. Special Drilling Operations

Numerous comments were received concerning this section. Many of these addressed the minimum distances specified. In response to these comments, all distances have been standardized and reduced to 100 feet. For example, the length of the blooie line, required to be 150 feet from the well bore in the proposed rulemaking, is now 100 feet. In all cases, the distances specified in this final rulemaking pertaining to Special Drilling Operations are consistent with similar requirements of OSHA.

Another comment suggested modifying the minimum standard concerning the straight run on the blooie line. This has been modified by the addition of the words "unless otherwise approved" because there may be instances where a straight run may not be feasible.

One comment suggested removal of the minimum standard requiring deduster equipment during air/gas drilling. This comment was not adopted due to the potentially serious environmental consequences. If an operator has a special situation and can justify not using deduster equipment, he can request a variance of the authorized representative as detailed elsewhere in this Order.

As suggested in a comment, the minimum standard for containment of cuttings and the circulating medium has been amended to specify the required mode of containment.

Several comments dealt with the draft minimum standard requiring an automatic igniter and a continuous pilot light on the blooie line. This standard has been modified to provide that either of these methods is acceptable rather than both being required. Under certain circumstances the authorized officer may require both in approving a particular APD if redundancy is desirable; however, it is not necessary to require both as a minimum standard.

At the suggestion of several comments, the minimum standard concerning mud mixing equipment, mixing water, etc., was rewording for clarity.

F. Surface Use

Comments from within government and from industry were received concerning the minimum standards portion of the Surface Use Requirements. These comments did not particularly object to the stated minimum standard in the draft, but argued that this Order is not the appropriate place to outline specific surface standards. Several comments suggested that a revision of Onshore Order No. 1 would be more appropriate. BLM has scheduled such a revision to Onshore Order No. 1. In addition, under the Federal Onshore Oil and Gas Leasing Reform Act of 1987, management of surface use on National Forest lands is required to be coordinated with the Forest Service. In response to the comments, the minimum standards portion of the Surface Use Requirements has been modified in this final rulemaking to contain a general standard to comply with the approved APD rather than specific standards.

G. Drilling Abandonment Requirements

Comments received on the drilling abandonment section of this Order are discussed below as they address specific provisions.

Two comments suggested amendment of the provision on types of mineral deposits requiring protection. The term "prospectively valuable deposit of minerals" has been added in the introductory paragraph of this section and to the definitions section of the Order to clarify an unnecessarily vague reference to "other minerals".

Another comment requested that the deadline for following up in writing an oral request for abandonment be increased from 5 business days to 10. This comment has not been adopted because an operator can ask for an extension if additional time is needed.

The minimum standard in paragraph III.G.1.i.a. on migrating fluids was modified as suggested in comments to make it clear that gases as well as liquids are considered fluids with a potential to migrate, and that formations containing them shall be cemented across in the prescribed manner. Another comment on this section wanted the term "fluid" to be defined as fresh water or hydrocarbon. This suggestion was rejected as being too restrictive. For example, salt water or nitrogen gas zones require cementing across so that contamination of other zones by migration does not occur.

The requirement in the draft Onshore Order specifying protection of lost circulation zones during plugging has been removed at the suggestion of comments. However, as stated elsewhere in the Drilling Abandonment Requirements, the hole must be in a static condition at the time any plugs are placed, or the placement of additional plugs and/or cement may be required. Therefore, to assure a static well bore condition, lost circulation zones must be stabilized or isolated in some manner before further plugging can occur higher up in the hole.

The minimum standard in paragraph III.G.1.i.b. was modified as explained earlier in this section to clarify the types of minerals needing protection.

The minimum standard in paragraph III.G.1.ii. attracted comments questioning the reasoning behind the requirement of an additional 10 percent of slurry for each 1,000 feet of depth. This factor is included to compensate for mud contamination (and not as a washout factor as supposed in some comments) in pumping the plug to the required depth. For a 100 foot plug located at 10,000 feet, this would amount to an additional 100 feet of cement column. Similar comments were received concerning this requirement as it applies to cased holes. Since the logic for requiring this additional slurry is the same, those comments are not addressed further in this section.

The minimum standard in paragraph III.G.1.iv. was modified as suggested by comments to make it clear that it pertains to thick sections of a single formation. Another comment on this section preferred that extremely thick sections be defined as being 400 feet in thickness. This suggestion was not adopted because there are too many variables to select a particular number as "extremely thick". The authorized officer and the operator requesting plugging instructions need flexibility in determining whether a portion of a formation is extremely thick.

The minimum standard in paragraph III.G.1.v. on plugging open holes was modified in this final rulemaking as suggested by a comment to recognize that plugs shall be placed across in-gauge sections of the hole every 3,000 feet, unless otherwise approved by the authorized officer. This change will enable the authorized officer the flexibility to modify this requirement on a case-by-case basis.

Two comments addressed the minimum standard in paragraph III.G.2.iii., the amount of cement needed to cap a bridge plug when a bailer is used. The comments suggested 20 feet instead of the proposed 35 feet. The comments were rejected because a lesser amount is not considered adequate. This recognizes a policy based on Bureau of Land Management experience, requiring 35 feet, that has been in place for many years. The requirement of 35 feet is already less than the 50 feet of plug required to cap the bridge plug when not using a bailer.

Paragraph III.G.5. was amended because of a typographical error to require that at least the top 50 feet (instead of 100 feet) of the annulus shall be plugged.

The section on isolating medium, paragraph III.G.6. in this final rulemaking, was modified to clarify the types of minerals requiring protection as explained above. Another comment on this section suggested deleting the 15,000 pound maximum tagging weight provision. This comment was adopted because setting a maximum weight to be used to tag a plug is unncessary.

The minimum standard in paragraph III.G.8. of this final rulemaking has been modified from the draft as suggested by a comment to clarify the cement plug requirement at the surface. This standard now states that the top 50 feet of the hole shall be plugged and removes the reference restricting this plug to the smallest casing extending to the surface. All annuluses within 50 feet of the surface are to be plugged off. Another comment on this provision suggested 100 feet of plug rather than 50 feet. This comment was not adopted because 50 feet is adequate if propoerly placed.

Paragraph III.G.10. concerning the surface cap was modified as suggested by comments to improve the clarity and sequence. Another comment on this minimum standard questioned the purpose of the weep hole. This term is defined and explained in the definitions section.

Discussion of IV Variances From Minimum Standard

The only comments on this section requested the addition of provision for oral variances during emergency situations. The final rulemaking adopts this suggestion, although such requests by the operator are required to be followed up by a written request as specified in the new wording. This change was incorporated in recognition that an emergency or other event that could not have been reasonably foreseen may occur during drilling operations.

Discussion of Attachments

Several comments were received concerning the choke manifold equipment configurations. A statement has been added to each of the pressure systems diagrams in response to the comments to indicate that the configuration of the equipment may

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vary. This was the original intent and the addition of the statement improves clarity.

Another comment requested that one of the two valves on the bleed line to the pit be removed from the requirement for equipment for pressure ratings of 3M and above. This comment was adopted for 3M systems, but was rejected for higher rated systems due to the higher pressures involved.

The principal authors of this proposed rulemaking are Howard Lemm of the Utah State Office, Carl Budd of the Rock Springs District Office, Hal Stoops of the Bakersfield District Office, and Bob Kent of the Washington Office, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby designated that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in 43 CFR Part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0134 and 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

October 11, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 183 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g), the Act of Feburary 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398c), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457). See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty., Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

2. Section 3164.1(b) is amended by adding the following entry to the table which is part of § 3164.1(b):

§ 3164.1 Onshore oil and gas orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	Federal Register reference	Supersedes
1	Approval of operations	November 12, 1983	48 FR 48916 and 48 FR 56226	NTL-6
2	Drilling operations			None

Note.—Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Note.—This appendix is published for information only and will not appear in the Code of Federal Regulations.

Appendix—Text of Oil and Gas Order No. 2.

Onshore Oil and Gas Order No. 2

Drilling Operations on Federal and Indian Oil and Gas Leases

I. Introduction.
A. Authority.
B. Purpose.
C. Scope.
D. General.
II. Definitions.
III. Requirements.
A. Well Control Requirements.
B. Casing and Cementing Requirements.
C. Mud Program Requirements.
D. Drill Stem Testing Requirements.
E. Special Drilling Operations.
F. Surface Use.
G. Drilling Abandonment.
IV. Variances from Minimum Standards.
Attachments.
I. Diagrams of Choke Manifold Requirements.
II. Sections from 43 CFR Subparts 3163 and 3165.

Onshore Oil and Gas Order No. 2

Drilling Operations on Federal and Indian Oil and Gas Leases

I. Introduction

A. Authority

This order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian (except Osage tribe) oil and gas leases that have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at: § 3162.3–1 *Drilling Applications and Plans;* § 3162.3–4 *Well Abandonment;* § 3162.4–1 *Well Records and Reports;* § 3162.4–3 *Samples, Tests, and Surveys;* § 3162.5–1 *Environmental Obligations;* § 3162.5–2 *Control of Wells;* § 3162.5–2(a) *Drilling Wells;* § 3162.5–3 *Safety Precautions;* and Subpart 3163 Noncompliance and Assessment.

B. Purpose

This onshore Order details the Bureau's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian lands (except Osage Tribe) and for abandonment immediately following drilling. The purpose also is to identify the enforcement actions that will result when violations of the minimum standards are found, and when those violations are not abated in a timely manner.

C. Scope

This Order is applicable to all onshore Federal and Indian (except Osage Tribe) oil and gas leases.

D. General

1. If an operator chooses to use higher rated equipment than that authorized in the Application for Permit to Drill (APD), testing procedures shall apply to the approved working pressures, not the upgraded higher working pressures.

2. Some situations may exist either on a well-by-well or field-wide basis whereby it is commonly accepted practice to vary a particular minimum standard(s) established in this Order. This situation may be resolved by requesting a variance (See section IV of this Order), by the inclusion of a stipulation to the APD, or by the issuance of a Notice to Lessees and Operators (NTL) by the appropriate BLM office.

3. When a violation is discovered, and if it does not cause or threaten immediate substantial and adverse impact on public health and safety, the environment, production accountability or royalty income, it will be classified as minor. The violation may be reissued as a major violation if not corrected during the abatement period and continued drilling has changed the adverse impact of the violation so that it meets the specific definition of a major violation.

4. This Onshore Order is not intended to circumvent the reporting requirements or compliance aspects that may be stated elsewhere in Existing NTL's, Onshore Orders, etc. A lessee's compliance with the requirements of the regulations in this Part shall not relieve the lessee of the obligation to comply with other applicable laws and regulations in accordance with 43 CFR 3162.5–1(c). Lessee's should give special attention to the automatic assessment provisions in 43 CFR 3163.1(b).

5. This Order is based upon the assumption that operations have been approved in accordance with 43 CFR Part 3160 and Onshore Oil and Gas Order No. 1. Failure to obtain approval prior to commencement of drilling or related operations shall subject the operator to immediate assessment under 43 CFR 3163.1(b)(2).

II. Definitions.

A. Abnormal Pressure Zone means a zone that has either pressure above or below the normal gradient for an area and/or depth.

B. Bleed Line means the vent line that bypasses the chokes in the choke manifold system; also referred to as Panic Line.

C. Blooie Line means a discharge line used in conjunction with a rotating head.

D. Drilling Spool means a connection component with both ends either flanged or hubbed, with an internal diameter at least equal to the bore of the casing, and with smaller side outlets for connecting auxiliary lines.

E. Exploratory Well means any well drilled beyond the known producing limits of a pool.

F. Fill-up Line means the line used to fill the hole when the drill pipe is being removed from the well. It is usually connected to a 2-inch collar that is welded into a drilling nipple.

G. Flare Line means a line used to carry gas away from the rig to be burned at a safer location. The gas comes from the degasser, gas buster, separator, or when drill stem testing, directly from the drill pipe.

H. Functionally Operated means activating equipment without subjecting it to well-bore pressure.

I. Isolating means using cement to protect, separate, or segregate usable water and mineral resources.

J. Lease means any contract, profit-share agreement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas (See 43 CFR 3160.0–5).

K. Lessee means a person holding record title in a lease issued by the United States (See 43 CFR3160.0–5).

L. Make-up Water means water that is used in mixing slurry for cement jobs and plugging operations, and is compatible with the cement constituents being used.

M. Manual Locking Device means any manually activated device, such as hand wheels, etc., that is used for the purpose of locking the preventer in the closed position.

N. Mud for Plugging Purposes means a slurry of bentonite or similar flocculent/viscosifier, water, and additives needed to achieve the desired weight and consistency to stabilize the hole.

O. Mudding Up means adding materials and chemicals to water to control the viscosity, weight, and filtrate loss of the circulating system.

P. Operating Rights Owner (or Owner) means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

Q. Operational means capable of functioning as designed and installed without undue force or further modification.

R. Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer his/her responsibility for the operations conducted in the leased lands or a portion thereof.

S. Precharge Pressure means the nitrogen pressure remaining in the accumulator after all the hydraulic fluid has been expelled from beneath the movable barrier.

T. Prompt Correction means immediate correction of violations, with drilling suspended if required in the discretion of the authorized officer.

U. Prospectively Valuable Deposit of Minerals means any deposit of minerals that the authorized officer determines to have characteristics of quantity and quality that warrant its protection.

V. Tagging the Plug means running in the hole with a string of tubing or drill pipe and placing the weight of that string on the plug. Other methods of tagging the plug may be approved by the authorized officer.

W. Targeted Tee or Turn means a fitting used in pressure piping in which a bull plug or blind flange of the same pressure rating as the rest of the approved system is installed at the end of a tee or cross, opposite the fluid entry arm, to change the direction of flow and to reduce erosion.

X. 2M, 3M, 5M, 10M, and 15M mean the pressure ratings used for equipment with a working pressure rating of the equivalent thousand pounds per square inch (psi) (2M=2,000 psi, 3M=3,000 psi, etc.).

Y. Usable Water means generally those waters containing up to 10,000 ppm of total dissolved solids.

Z. Weep Hole means a small hole that allows pressure to bleed off through the metal plate used in covering well bores after abandonment operations.

III. Requirements

A. Well Control Requirements

1. Blowout preventer (BOP) and related equipment (BOPE) shall be installed, used, maintained, and tested in a manner necessary to assure well control and shall be in place and operational prior to drilling the surface casing shoe unless otherwise approved by the APD. Commencement of drilling without the approved BOPE installed, unless otherwise approved, shall subject

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the operator to immediate assessment under 43 CFR 3163.1(b)(1). The BOP and related control equipment shall be suitable for operations in those areas which are subject to sub-freezing conditions. The BOPE shall be based on known or anticipated sub-surface pressures, geologic conditions, accepted engineering practice, and surface environment. Item number 7 of the 8 point plan in the APD specifically addresses expected pressures. The working pressure of all BOPE shall exceed the anticipated surface pressure to which it may be subjected, assuming a partially evacuated hole with a pressure gradient of 0.22 psi/ft.

2. The gravity of the violation for many of the well control minimum standards listed below are shown as minor. However, very short abatement periods in this Order are often specified in recognition that by continuing to drill, the violation which was originally determined to be of a minor nature may cause or threaten immediate, substantial and adverse impact on public health and safety, the environment, production accountability, or royalty income, which would require its reclassification as a major violation.

a. *Minimum standards and enforcement provisions for well control equipment.* i. A well control device shall be installed at the surface that is capable of complete closure of the well bore. This device shall be closed whenever the well is unattended.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

ii. 2M system:

—Annular preventer, double ram, or two rams with one being blind and one being a pipe ram *

—Kill line (2 inch minimum)

—1 kill line valve (2 inch minimum)

—1 choke line valve

—2 chokes (refer to diagram in Attachment 1)

—Upper kelly cock valve with handle available

—Safety valve and subs to fit all drill strings in use

—Pressure gauge on choke manifold

—2 inch minimum choke line

—Fill-up line above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

*Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

iii. 3M system:

—Annular preventers *

—Double ram with blind rams and pipe rams *

—Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) *

—Kill line (2 inch minimum)

—A minimum of 2 choke line valves (3 inch minimum) *

—3 inch diameter choke line

—2 kill line valves, one of which shall be a check valve (2 inch minimum) *

—2 chokes (refer to diagram in Attachment 1)

—Pressure gauge on choke manifold

—Upper kelly cock valve with handle available

—Safety valve and subs to fit all drill string connections in use

—All BOPE connections subjected to well pressure shall be flanged, welded, or clamped *

—Fill-up line above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

iv. 5M system:

—Annular preventer *

—Pipe ram, blind ram, and, if conditions warrant, as specified by the authorized officer, another pipe ram shall also be required *

—A second pipe ram preventer or variable bore pipe ram preventer shall be used with a tapered drill string

—Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) *

—3 inch diameter choke line

—2 choke line valves (3 inch minimum) *

—Kill line (2 inch minimum)

—2 chokes with 1 remotely controlled from rig floor (refer to diagram in Attachment 1)

—2 kill line valves and a check valve (2 inch minimum) *

—Upper kelly cock valve with hand available

—When the expected pressures approach working pressure of the system, 1 remote kill line tested to stack pressure (which shall run to the outer edge of the substructure and be unobstructed)

—Lower kelly cock valve with handle available

—Safety valve(s) and subs to fit all drill string connections in use

—Inside BOP or float sub available

—Pressure gauge on choke manifold

—All BOPE connections subjected to well pressure shall be flanged, welded, or clamped *

—Fill-up line above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

v. 10M & 15M system:

—Annular preventer *

—2 pipe rams *

—Blind rams *

—Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) *

—3 inch choke line *

—2 kill line valves (2 inch minimum) and check valve *

—Remote kill line (2 inch minimum) shall run to the outer edge of the substructure and be unobstructed

—Manual and hydraulic choke line valves (3 inch minimum) *

—3 chokes, 1 being remotely controlled (refer to diagram in Attachment 1)

—Pressure gauge on choke manifold

—Upper kelly cock valve with handle available

—Lower kelly cock valve with handle available

—Safety valves and subs to fit all drill string connections in use

—Inside BOP or float sub available

—Wear ring in casing head

—All BOPE connections subjected to well pressure shall be flanged, welded, or clamped *

—Fill-up line installed above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

vi. If repair or replacement of the BOPE is required after testing, this work shall be performed prior to drilling out the casing shoe.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

vii. When the BOPE cannot function to secure the hole, the hole shall be secured using cement, retrievable packer or a bridge plug packer, bridge plug, or other acceptable approved method to assure safe well conditions.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal. Abatement Period: Prompt correction required.

b. *Minimum standards and enforcement provisions for choke manifold equipment.* i. All choke lines shall be straight lines unless turns use tee blocks or are targeted with running tees, and shall be anchored to prevent whip and reduce vibration.

Violation: Minor

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

ii. Choke manifold equipment configuration shall be functionally equivalent to the appropriate example diagram shown in Attachment 1 of this Order.

Violation: Minor

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

iii. All valves (except chokes) in the kill line, choke manifold, and choke line shall be a type that does not restrict the flow (full opening) and that allows a straight through flow (same enforcement as item ii).

iv. Pressure gauges in the well control system shall be a type designed for drilling fluid service (same enforcement as above).

c. *Minimum standards and enforcement provisions for pressure accumulator system.* i. 2M system—accumulator shall have sufficient capacity to close all BOP's and retain 200 psi above precharge. Nitrogen bottles that meet manufacturer's specifications may be used as the backup to the required independent power source.

Violation: Minor

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

ii. 3M system—accumulator shall have sufficient capacity to open the hydraulically-controlled choke line valve (if so equipped), close all rams plus the annual preventer, and retain a minimum of 200 psi above precharge on the closing manifold without the use of the closing unit pumps. This is a minimum requirement. The fluid reservoir capacity shall be double the accumulator capacity and fluid level maintained at manufacturer's recommendations. The 3M system shall have 2 independent power sources to close the preventers. Nitrogen bottles (3 minimum) may be 1 of the independent power sources and, if so, shall maintain a charge equal to the manufacturer's specifications.

Violation: Minor.

Corrective Action: install the equipment as specified.

Normal Abatement Period: 24 hours.

iii. 5M and higher system—accumulator shall have sufficient capacity to open the hydraulically-controlled gate valve (if so equipped) and close all rams plus the annular preventer (for 3 ram systems add a 50 percent safety factor to compensate for any fluid loss in the control system or preventers) and retain a minimum pressure of 200 psi above precharge on the closing manifold without use of the closing unit pumps. The reservoir capacity shall be double the accumulator capacity, and the fluid level shall be maintained at manufacturer's recommendations. Two independent sources of power shall be available for powering the closing unit pumps. Sufficient nitrogen bottles are suitable as a backup power source only, and shall be recharged when the pressure falls below manufacturer's specifications.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

d. *Minimum standards and enforcement provisions for accumulator precharge pressure test.* This test shall be conducted prior to connecting the closing unit to the BOP stack and at least once every 6 months. The accumulator pressure shall be corrected if the measured precharge pressure is found to be above or below the maximum or minimum limit specified below (only nitrogen gas may be used to precharge):

Accumulator working pressure rating	Minimum acceptable operating pressure	Desired precharge pressure	Maximum acceptable precharge pressure	Minimum acceptable precharge pressure
1,500 psi	1,500 psi	750 psi	800 psi	700 psi
2,000 psi	2,000 psi	1,000 psi	1,100 psi	900 psi
3,000 psi	3,000 psi	1,000 psi	1,100 psi	900 psi

Violation: Minor.

Corrective Action: Perform test.

Normal Abatement Period: 24 hours.

e. *Minimum standards and enforcement provisions for power availability.* Power for the closing unit pumps shall be available to the unit at all times so that the pumps shall automatically start when the closing unit manifold pressure has decreased to a pre-set level.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

f. *Minimum standards and enforcement provisions for accumulator pump capacity.* Each BOP closing unit shall be equipped with sufficient number and sizes of pumps so that, with the accumulator system isolated from service, the pumps shall be capable of opening the hydraulically-operated gate valve (if so equipped), plus closing the annular preventer on the smallest size drill pipe to be used within 2 minutes, and obtain a minimum of 200 psi above specified accumulator precharge pressure.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

g. *Minimum standards and enforcement provisions for locking devices.* A manual locking device (i.e., hand wheels) or automatic locking devices shall be installed on all systems of 2M or greater. A valve shall be installed in the closing line as close as possible to the annular preventer to act as a locking device. This valve shall be maintained in the open position and shall be closed only when the power source for the accumulator system is inoperative.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

h. *Minimum standards and enforcement provisions for remote*

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controls. Remote controls shall be readily accessible to the driller. Remote controls for all 3M or greater systems shall be capable of closing all preventers. Remote controls for 5M or greater systems shall be capable of both opening and closing all preventers. Master controls shall be at the accumulator and shall be capable of opening and closing all preventers and the choke line valve (if so equipped). No remote control for a 2M system is required.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

i. *Minimum standards and enforcement provisions for well control equipment testing.* i. Perform all tests described below using clear water or an appropriate clear liquid for subfreezing temperatures with a viscosity similar to water.

ii. Ram type preventers and associated equipment shall be tested to approved (see item I.D.1. of this order) stack working pressure if isolated by test plug or to 70 percent of internal yield pressure of casing if BOP stack is not isolated from casing. Pressure shall be maintained for at least 10 minutes or until requirements of test are met, whichever is longer. If a test plug is utilized, no bleed-off of pressure is acceptable. For a test not utilizing a test plug, if a decline in pressure of more than 10 percent in 30 minutes occurs, the test shall be considered to have failed. Valve on casing head below test plug shall be open during test of BOP stack.

iii. Annular type preventers shall be tested to 50 percent of rated working pressure. Pressure shall be maintained at least 10 minutes or until provisions of test are met, whichever is longer.

iv. As a minimum, the above test shall be performed:

A. when initially installed;

B. whenever any seal subject to test pressure is broken;

C. following related repairs; and

D. at 30-day intervals.

v. Valves shall be tested from working pressure side during BOPE tests with all down stream valves open.

vi. When testing the kill line valve(s), the check valve shall be held open or the ball removed.

vii. Annular preventers shall be functionally operated at least weekly.

viii. Pipe and blind rams shall be activated each trip, however, this function need not be performed more than once a day.

xi. A BOPE pit level drill shall be conducted weekly for each drilling crew.

x. Pressure tests shall apply to all related well control equipment.

xi. All of the above described tests and/or drills shall be recorded in the drilling log.

Violation: Minor.

Corrective action: Perform the necessary test or provide documentation.

Normal Abatement Period: 24 hours or next trip, as most appropriate.

B Casing and Cementing Requirements

The proposed casing and cementing programs shall be conducted as approved to protect and/or isolate all usable water zones, potentially productive zones, lost circulation zones, abnormally pressured zones, and any prospectively valuable deposits of minerals. Any isolating medium other than cement shall receive approval prior to use. The casing setting depth shall be calculated to position the casing seat opposite a competent formation which will contain the maximum pressure to which it will be exposed during normal drilling operations. Determination of casing setting depth shall be based on all relevant factors, including: presence/absence of hydrocarbons; fracture gradients; usable water zones; formation pressures; lost circulation zones; other minerals; or other unusual characteristics. All indications of usable water shall be reported.

—Minimum design factors for tensions, collapse, and burst that are incorporated into the casing design by an operator/leasee shall be submitted to the authorized operator for his review and approval along with the APD for all exploratory wells or as otherwise specified by the authorized officer.

—Casing design shall assume formation pressure gradients of 0.44 to 0.50 psi per foot for exploratory wells (lacking better data).

—Casing design shall assume fracture gradients from 0.70 to 1.00 psi per foot for exploratory wells (lacking better data).

—Casing collars shall have a minimum clearance of 0.422 inches on all sides in the hole/casing annulus, with recognition that variances can be granted for justified exceptions.

—All waiting on cement times shall be adequate to achieve a minimum of 500 psi compressive strength at the casing shoe prior to drilling out.

1. Minimum Standards and Enforcement Provisions for Casing and Cementing.

a. All casing, except the conductor casing, shall be new or reconditioned and tested used casing that meets or exceeds API standards for new casing.

Violation: Major

Corrective Action: Perform remedial action as specified by the authorized officer.

Normal Abatement Period: Prompt correction required.

b. For liners, a minimum of 100 feet of overlap between a string of casing and the next larger casing is required. The interval of overlap shall be sealed and tested. The liner shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next larger string has been achieved. The test pressure shall be the maximum anticipated pressure to which the seal will be exposed. No test shall be required for liners that do not incorporate or need a seal mechanism.

Violation: Minor.

Corrective Action: Perform remedial action as specified by the authorized officer.

Normal Abatement Period: Upon determination of corrective action.

c. The surface casing shall be cemented back to surface either during the primary cement job or by remedial cementing.

Violation: Major.

Corrective Action: Perform remedial cementing.

Normal Abatement Period: Prompt correction required.

d. All of the above described tests shall be recorded in the drilling log.

Violation: Minor.

Corrective Action: Perform the necessary test or provide documentation.

Normal Abatement Period: 24 hours.

e. All indications of usable water shall be reported to the authorized officer prior to running the next string of casing or before plugging orders are requested, whichever occurs first.

Violation: Major.

Corrective Action: Report information as required.

Normal Abatement Period: Prompt correction required.

f. Surface casing shall have centralizers on every fourth joint of casing starting with the shoe joint and up to the bottom of the cellar.

Violations: Major.

Corrective Action: Logging/testing may be required to determine the quality of the job. Recementing may then be specified.

Normal Abatement Period: Prompt correction upon determination of corrective action.

g. Top plugs shall be used to reduce contamination of cement by displacement fluid. A bottom plug or other acceptable technique, such as a suitable preflush fluid, inner string cement method, etc., shall be utilized to help isolate the cement from contamination by the mud fluid being displaced ahead of the cement slurry.

Violation: Major

Correction Action: Logging may be required to determine the quality of the cement job. Recementing or further recementing may then be specified.

Normal Abatement Period: Based upon determination of corrective action.

h. All casing strings below the conductor shall be pressure tested to 0.22 psi per foot of casing string length or 1500 psi, whichever is greater, but not to exceed 70 percent of the minimum internal yield. If pressure declines more than 10 percent in 30 minutes, corrective action shall be taken.

Violation: Minor.

Corrective Action: Perform the test and/or remedial action as specified by the authorized officer.

Normal Abatement Period: 24 hours.

i. On all exploratory wells, and on that portion of any well approved for a 5M BOPE system or greater, a pressure integrity test of each casing shoe shall be performed. Formation at the shoe shall be tested to a minimum of the mud weight equivalent anticipated to control the formation pressure to the next casing depth or at total depth of the well. This test shall be performed before drilling more than 20 feet of new hole.

Violation: Minor.

Corrective Action: Perform the specified test.

Normal Abatement Period: 24 hours.

C. Mud Program Requirements

The characteristics, use, and testing of drilling mud and the implementation of related drilling procedures shall be designed to prevent the loss of well control. Sufficient quantities of mud materials shall be maintained or readily accessible for the purpose of assuring well control.

Minimum Standards and Enforcement Provisions for Mud Program and Equipment

1. Record slow pump speed on daily drilling report after mudding up.

Violation: Minor.

Corrective Action: Record required information.

Normal Abatement Period: 24 hours.

2. Visual mud monitoring equipment shall be in place to detect volume changes indicating loss or gain of circulating fluid volume.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

3. When abnormal pressures are anticipated. Electronic/mechanical mud monitoring equipment shall be required, which shall include as a minimum: pit volume totalizer (PVT); stroke counter; and flow sensor.

Violation: Minor.

Corrective Action: Install necessary instrumentation.

Normal Abatement Period: 24 hours.

4. A mud test shall be performed every 24 hours after mudding up to determine, as applicable: density, viscosity, gel strength, filtration, and pH.

Violation: Minor.

Corrective Action: Perform necessary tests.

Normal Abatement Period: 24 hours.

5. A trip tank shall be used on 10M and 15M systems and on upgraded 5M systems as determined by the authorized officer.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

6. a. Gas detecting equipment shall be installed in the mud return system for exploratory wells or wells where abnormal pressure is anticipated, and hydrocarbon gas shall be monitored for pore pressure changes.

b. Hydrogen sulfide safety and monitoring equipment shall be available and in use where atmospheric concentrations of hydrogen sulfide of 20 ppm or greater are anticipated.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

7. All flare systems shall be designed to gather and burn all gas. The flare line(s) discharge shall be located not less than 100 feet from the well head, having straight lines unless turns are targeted with running tees, and shall be positioned downwind of the prevailing wind direction and shall be anchored. The flare system shall have an effective method for ignition. Where noncombustible gas is likely or expected to be vented, the system shall be provided supplemental fuel for ignition and to maintain a continuous flare.

Violation: Major.

Corrective Action: Install equipment as specified.

Normal Abatement Period: 24 hours.

8. A mud-gas separator (gas buster) shall be installed and operable for all systems of 10M or greater and for any system where abnormal pressure is anticipated beginning at a point at least 500 feet above any anticipated hydrocarbon zone of interest.

Violation: Minor.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

D. Drill Stem Testing Requirements

Initial opening of drill stem test tools shall be restricted to daylight hours unless specific approval to start during other hours is obtained from the authorized officer. However, DSTs may be allowed to continue at night if the test was initiated during daylight hours and the rate of flow is stabilized and if adequate lighting is available (i.e., lighting which is adequate for visibility and vapor-proof for safe operations). Packers can be released, but tripping shall not begin before daylight, unless prior approval is obtained from the authorized officer. Closed chamber DSTs may be accomplished day or night.

Minimum Standards for Drill Stem Testing

1. A DST that flows to the surface with evidence of hydrocarbons shall be either reversed out of the testing string under controlled surface conditions, or displaced into the formation prior to pulling the test tool. This would involve providing some means for reverse circulation.

Violation: Major.

Corrective Action: Contingent on circumstances and as specified by the authorized officer.

Normal Abatement Period: Prompt correction required.

2. Separation equipment required for the anticipated recovery shall be properly installed before a test starts.

Violation: Major.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

3. All engines within 100 feet of the wellbore that are required to "run" during the test shall have spark arresters or water cooled exhausts.

Violation: Major.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

E. Special Drilling Operations

1. In addition to the equipment already specified elsewhere in this onshore order, the following equipment shall be in place and operational during air/gas drilling:

—Properly lubricated and maintained rotating head *

—Spark arresters on engines or water cooled exhaust *

—Blooie line discharge 100 feet from well bore and securely anchored

—Straight run on blooie line unless otherwise approved

—Deduster equipment *

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—All cuttings and circulating medium shall be directed into a reserve or blooie pit *

—Float valve above bit *

—Automatic igniter or continuous pilot light on the blooie line *

—Compressors located in the opposite direction from the blooie line a minimum of 100 feet from the well bore

—Mud circulating equipment, water, and mud materials (does not have to be premixed) sufficient to maintain the capacity of the hole and circulating tanks or pits

Violation: Minor (unless marked by an asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

2. Hydrogen sulphide operation is specifically addressed under Onshore Oil and Gas Order No. 6.

F. Surface Use

Onshore Oil and Gas Order No. 1 specifically addresses surface use. That Order provides for safe operations, adequate protection of surface resources and uses, and other environmental components. The operator/lessee is responsible for, and liable for, all building, construction, and operating activities and subcontracting activities conducted in association with the APD. Requirements and special stipulations for surface use are contained in or attached to the approved APD. Minimum Standards and Enforcement Provisions for Surface Use.

The requirements and stipulations of approval shall be strictly adhered to by the operator/lessee and any contractors.

Violation: If a violation is identified by the authorized officer he shall determine whether it is major or minor, considering the definitions in 43 CFR 3160.0–5, and shall specify the appropriate corrective action and abatement period.

G. Drilling Abandonment Requirements

The following standards apply to the abandonment of newly drilled dry or non-productive wells in accordance with 43 CFR 3162.3–4 and section V of Onshore Oil and Gas Order No. 1. Approval shall be obtained prior to the commencement of abandonment. All formations bearing usable-quality water, oil, gas, or geothermal resources, and/or a prospectively valuable deposit of minerals shall be protected. Approval may be given orally by the authorized officer before abandonment operations are initiated. This oral request and approval shall be followed by a written notice of intent to abandon filed not later than the fifth business day following oral approval. Failure to obtain approval prior to commencement of abandonment operations shall result in immediate assessment of under 43 CFR 3163.1(b)(3). The hole shall be in static condition at the time any plugs are placed (this does not pertain to plugging lost circulation zones). Within 30 days of completion of abandonment, a subsequent report of abandonment shall be filed. Plugging design for an abandonment hole shall include the following:

1. Open Hole.

i. A cement plug shall be placed to extend at least 50 feet below the bottom (except as limited by total depth (TD) or plugged back total depth (PBTD)), to 50 feet above the top of:

a. Any zone encountered during drilling which contains fluid or gas with a potential to migrate;

b. Any prospectively valuable deposit of minerals.

ii. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth.

iii. No plug, except the surface plug, shall be less than 25 sacks without receiving specific approval from the authorized officer.

iv. Extremely thick sections of a single formation may be secured by placing 100-foot plugs across the top and bottom of the formation, and in accordance with item ii hereof.

v. In the absence of productive zones or prospectively valuable deposits of minerals which otherwise require placement of cement plugs, long sections of open hole shall be plugged at least every 3,000 feet. Such plugs shall be placed across in-gauge sections of the hole, unless otherwise approved by the authorized officer.

2. Cased Hole. A cement plug shall be placed opposite all open perforations and extend to a minimum of 50 feet below (except as limited by TD or PBTD) to 50 feet above the perforated interval. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth. In lieu of the cement plug, a bridge plug is acceptable, provided:

i. The bridge plug is set within 50 feet to 100 feet above the open perforations;

ii. The perforations are isolated from any open hole below; and

iii. The bridge plug is capped with 50 feet of cement. If a bailer is used to cap this plug, 35 feet of cement shall be sufficient.

3. Casing Removed from Hole. If any casing is cut and recovered, a cement plug shall be placed to extend at least 50 feet above and below the stub. The exposed hole resulting from the casing removal shall be secured as required in items 1i and 1ii hereof.

4. An additional cement plug placed to extend a minimum of 50 feet above and below the shoe of the surface casing (or intermediate string, as appropriate).

5. Annular Space. No annular space that extends to the surface shall be left open to the drilled hole below. If this condition exists, a minimum of the top 50 feet of annulus shall be plugged with cement.

6. Isolating Medium. Any cement plug which is the only isolating medium for a fresh water interval or a zone containing a prospectively valuable deposit of minerals shall be tested by tagging with the drill string. Any plugs placed where the fluid level will not remain static also shall be tested by either tagging the plug with the working pipe string, or pressuring to a minimum pump (surface) pressure of 1,000 psi, with no more than a 10 percent drop during a 15-minute period (cased hole only). If the integrity of any other plug is questionable, or if the authorized officer has specific concerns for which he/she orders a plug to be tested, it shall be tested in the same manner.

7. Silica Sand or Silica Flour. Silica sand or silica flour shall be added to cement exposed to bottom hole static temperatures above 230 °F to prevent heat degradation of the cement.

8. Surface Plug. A cement plug of at least 50 feet shall be placed across all annuluses. The top of this plug shall be placed as near the eventual casing cut-off point as possible.

9. Mud. Each of the intervals between plugs shall be filled with mud of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling such interval. In the absense of other information at the time plugging is approved, a minimum mud weight of 9 pounds per gallon shall be specified.

10. Surface Cap. All casing shall be cut-off at the base of the cellar or 3 feet below final restored ground level (whichever is deeper). The well bore shall then be covered with a metal plate at least ¼ inch thick and welded in place, or a 4-inch pipe, 10-feet in length, 4 feet above ground and embedded in cement as specified by the authorized officer. The well location and identity shall be permanently inscribed. A weep hole shall be left if a metal plate is welded in place.

11. The cellar shall be filled with suitable material as specified by the authorized officer and the surface restored in accordance with the instructions of the authorized officer.

Minimum Standard

All plugging orders shall be strictly adhered to.

Violation: Major.

Corrective Action: Contingent upon circumstances.

Normal Abatement Period: Prompt correction required.

IV. Variances From Minimum Standard

An operator may request the authorized officer to approve a variance from any of the minimum standards prescribed in section III hereof. All such requests shall be submitted in writting to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, if appropriate, may approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s).

Emergency or other situations of an immediate nature that could not be reasonably foreseen at the time of APD approval may receive oral approval. However, such requests shall be followed up by a written notice filed not later than the fifth business day following oral approval.

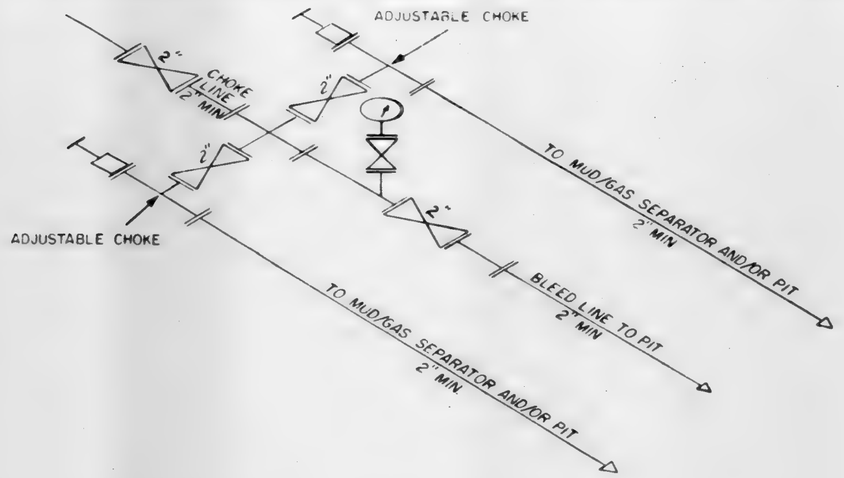
ATTACHMENTS

I. Diagrams of Choke Manifold Equipment

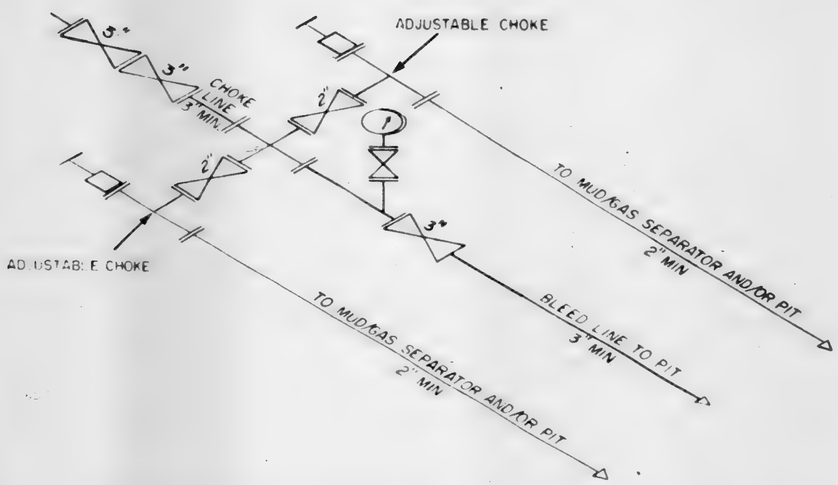
II. Sections From 43 CFR Subparts 3163 and 3165 (Not included With Federal Register Publication)

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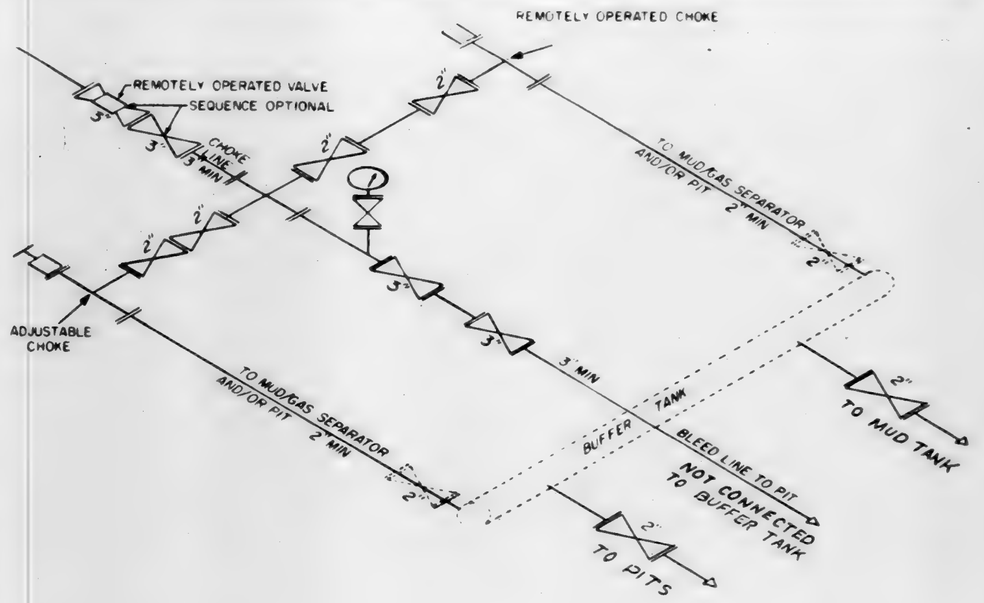
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2M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY



3M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY



5M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY

Although not required for any of the choke manifold systems, buffer tanks are sometimes installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together. When buffer tanks are employed, valves shall be installed upstream to isolate a failure or malfunction without interrupting flow control. Though not shown on 2M, 3M, 10M, or 15M drawings, it would also be applicable to those situations

[FR Doc. 88-26738 Filed 11-17-88; 8:45 am]
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federal register

Friday
November 18, 1988

Part VI

Environmental Protection Agency

Intent To Cancel Certain Pesticide Registrations; Notice

VOL 53 ISS 223 NO 18 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

[OPP-64010; FRL-3479-1]

Intent To Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel.

SUMMARY: EPA is issuing a notice of intent to cancel certain pesticide registrations under section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and 40 CFR 152.122. The registrations which the Agency intends to cancel are held by registrants whom the Agency, after a good faith effort, has been unable to contact. Persons adversely affected by this notice may request a hearing in accordance with the provisions of 40 CFR Part 164. An adversely affected person may avoid a hearing and maintain his registration in effect by supplying a correct and current address within the applicable 30 day period.

DATES: All registrations will be cancelled at the end of 30 days from the date of publication or receipt of this notice by registrants, unless the Agency is provided with a correct and current address of an affected registrant.

A request for a hearing by an affected registrant or the registrant's correct and current address must be received by the Agency on or before December 19, 1988, or 30 days after receipt by mail by the affected registrant of this notice, whichever is the later date.

A request for a hearing submitted by any other adversely affected persons must be received on or before December 19, 1988.

ADDRESS: Hearing requests must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Sherada Hobgood, Registration Support Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 724A, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7700).

SUPPLEMENTARY INFORMATION: Over the years, EPA has been unable to contact certain pesticide registrants at the addresses on file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs the Agency's ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation because some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with the Act.

Section 6(b) of FIFRA allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that "* * * pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act * * *."

Section 3(c)(1)(A) of FIFRA make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product. 40 CFR 152.122 requires that a registrant must keep the Agency informed of his current name and address of record. If the Agency's good faith attempts to contact the registrant are not successful, the Agency will issue in the **Federal Register** a notice of intent to cancel all products of the registrant under FIFRA Sec. 6(b). The registrant must respond within 30 days requesting that the registration be maintained in effect, and providing his name and address of record. If no response is received, the cancellations will become effective at the end of the 30 days without further notice to the registrant.

Persons adversely affected by this notice may request a hearing in accordance with the provisions of 40 CFR Part 164. An adversely affected person may avoid a hearing and maintain his registration in effect by supplying a correct and current address within the applicable 30 day period.

The impact of these cancellations on the agricultural economy is difficult to determine. It is believed that some or all of the pesticide products subject to this cancellation action are no longer on the market. Some of the pesticide products have no agricultural uses. At worst, the impact on the agricultural economy is expected to be slight.

Pursuant to section 6(b), the Secretary of Agriculture has reviewed this notice and has no comments. The Science Advisory Panel has waived its right (under section 25(d)) to review this notice.

Registrations Subject to Cancellation

The following registrations are subject to cancellation under this notice.

Registrant: Bradford MFG Company
Address: 149 Rosedale, Jackson, TN 38301
Registration Nos.: 58-10

Registrant: Red Devil Corporation
Address: 1609 17 N 14th St., St. Louis, MO 63106
Registration Nos.: 111-1

Registrant: Trager MFG Company Inc.
Address: 1200 Wheeler Avenue, Scranton, PA 18510
Registration Nos.: 274-30-31-34

Registrant: Nash & Kinsella Laboratories
Address: 9216 Clayton Rd., St. Louis, MO 63124
Registration Nos.: 427-22-48

Registrant: State Chemical Company
Address: Box 310, Amarillo, TX 79105
Registration Nos.: 438-7-15-28-29-31-32-52-55-57-60-64 thru 67-69

Registrant: Amsco Division Union Oil Company of California
Address: 825 SE. Thornton, Minneapolis, MN 55414
Registration Nos.: 528-51

Registrant: Carbola Chemical Co. Inc.
Address: 1877 State St., Watertown, NY 13601
Registration Nos.: 607-38-39-43-44

Registrant: Syracuse Pharmacal Company Inc.
Address: C/O Leager Labs Inc., 4161 Beck Ave., St. Louis, MO 63116
Registration Nos.: 832-1

Registrant: Theodore Meyer Inc.
Address: 922 Callowhill St., Philadelphia, PA 19123
Registration Nos.: 854-6-10-12-16

Registrant: Chemical Service
Address: 11250 W. Addison St., Franklin Park, IL 60131
Registration Nos.: 900-6-24-27-51-52-63-67-74 thru 79, 86-92-93-95-97 thru 99, 101-102-104-105-107

Registrant: UDDO Products
Address: P.O. Box 29048, New Orleans, LA 70189
Registration Nos.: 1123-3-4-6

Registrant: Central Chemical Company Inc.
Address: 358 Walnut St., Memphis, TN 38102
Registration Nos.: 1140-2

Registrant: Industrial Sanitation Company
Address: P.O. Box 471, East Chicago, IN 46312
Registration Nos.: 1174-1

Registrant: Janitors Supply House Inc.
Address: 617-619 W. Pratt St., Baltimore, MD 21208
Registration Nos.: 1487-6-13

Registrant: Duraclean Company
Address: 839 Waukegan Road, Deerfield, IL 60015
Registration Nos.: 1550-4

Registrant: Rogers Insect Powder Company
Address: P.O. Box 6447, Mobile, AL 33606
Registration Nos.: 1591-1

Registrant: Trio Chemical Works Inc.
Address: 8321 Commonwealth Blvd., Bellerose, NY 11426
Registration Nos.: 1783-1 thru 3, 7 thru 9, 17-19-23-26-31-38-39-43-56-61-63-64-65-66-69-70-72-73-75

Registrant: Sanitary Products Company
Address: 5106 E. 27th St., Kansas City, MO 64127
Registration Nos.: 1795-3

Registrant: Pittsburgh Chemical Lab
Address: Century Bldg., Pittsburgh, PA 15222
Registration Nos.: 2037-5

Registrant: Nykon Chem. Corp.
Address: 15 Macquesten Pky S., Mt. Vernon, NY 10550
Registration Nos.: 2361-5

Registrant: Atlanta Chemical Company Inc.
Address: P.O. Box 237, Jamestown, NC 27282
Registration Nos.: 2443-1

Registrant: Michel & Pelton Co.
Address: 111 Broadway, Suite 206, New York, NY 10006
Registration Nos.: 2617-1-9-13-14-20-24-27-29-35-37-38

Registrant: MACO Laboratories
Address: 558 James Ave. SE., Grand Rapids, MI 49500
Registration Nos.: 2741-2

Registrant: Carter Insec & Chemical Company Inc.
Address: P.O. Box 127, Teachey, NC 28464
Registration Nos.: 2917-2-8-11-25-28-29-31-37-55-68-69

Registrant: The Bushnell Company
Address: 1760 Eleanor Ave., St. Paul, MN 55116
Registration Nos.: 2984-1 thru 3

Registrant: R.R. Brand, Inc.
Address: 638 Papworth Avenue, Metarie, LA 70005
Registration Nos.: 3336-1

Registrant: Consumers Oil Company
Address: P.O. Box 548, 2713 River Ave., Rosemead, CA 91771
Registration Nos.: 3528-2-4

Registrant: Arlenge Laboratories
Address: 175 Pearl St., Brooklyn, NY 11201
Registration Nos.: 3735-4-5-8-19-22-23-33

Registrant: Southern Agricultural Chemicals Inc.
Address: Rt. 1, Cades, SC 29518
Registration Nos.: 3743-153-182 thru 184, 188-189-192-220-254-255-262-263-275-280-281-287-292-299-321-322-323-328-330-331-335 thru 337

Registrant: Economy Products
Address: P.O. Box 427, Shenandoah, IA 51601
Registration Nos.: 3770-219

Registrant: Chevron Oil Company
Address: P.O. Box 1446, Louisville, KY 40201
Registration Nos.: 3775-1-2

Registrant: American Firestoline Corporation
Address: 825 Third Avenue, New York, NY 10022
Registration Nos.: 3840-5

Registrant: Clarke John & Company Inc.
Address: 420 Lexington Avenue, New York, NY 10017
Registration Nos.: 4065-2-3

Registrant: Noxal Products Company
Address: 633 C W Valencia Dr., Fullerton, CA 92632
Registration Nos.: 4162-1

Registrant: Eddington Laboratories Inc.
Address: P.O. Box 86, Cornwell Heights, PA 19020
Registration Nos.: 4302-2

Registrant: Zenith Chemical Corp.
Address: 175 Mt. Pleasant Ave., Newark, NJ 07104 Attn: Rose
Registration Nos.: 4328-11 thru 14, 20-23-26-27-30-33-36

Registrant: Falleck Chemical Corporation
Address: 460 Park Ave., New York, NY 10022
Registration Nos.: 4343-3

Registrant: Nock RJ
Address: New Orleans, LA 70140
Registration Nos.: 4489-2

Registrant: Clean Home Products
Address: 2805 Locust St., St. Louis, MO 63100
Registration Nos.: 4600-4-6-8-9

Registrant: Melvin E. Wyant
Address: Johnny Cake Ridge, Mentor, OH 44060
Registration Nos.: 4636-4

Registrant: Lustray Labs, Inc.
Address: 964 Franklin Ave., Brooklyn, NY 11225
Registration Nos.: 4646-1

Registrant: California Vet Supply Company
Address: 10621 Burbank Blvd., N. Hollywood, CA 91601
Registration Nos.: 4902-1

Registrant: Southeastern Chemical Corporation
Address: P.O. Box 1026, Orangeburg, SC 29115
Registration Nos.: 4977-107

Registrant: Conway Soap Products Company
Address: 255 W. 79th Street, Chicago, IL 60620
Registration Nos.: 5366-2-3-7

Registrant: Farmingdale Garden Labs
Address: 136 Verdi St., Farmingdale, NY 11735
Registration Nos.: 5605-176-190-191-1594

Registrant: Plant Marvel Labs
Address: 624 W. 119th St., Chicago, IL 60628
Registration Nos.: 5617-1-2

Registrant: Custom Laboratories Inc.
Address: Box 2132, Spokane, WA 99210
Registration Nos.: 5913-2

Registrant: De Corporation
Address: 940 Meadow Oaks Dr., Arlington, TX 76010
Registration Nos.: 6189-1

Registrant: Sanico
Address: 13143 Saticoy St., N. Hollywood, CA 91605
Registration Nos.: 6190-2 thru 4, -6-7-9-10-14-16-17-18-26-27

Registrant: RO DI Chemical Company Incorporation
Address: 1460 W. Montrose, Chicago, IL 60640
Registration Nos.: 6339-10-12

Registrant: Life O Fabric Chem. Company
Address: 2010 Balboa, Dallas, TX 75224
Registration Nos.: 6551-3-4

Registrant: Batesville Chemical Company
Address: 205 Pamela St., Batesville, MS 38606
Registration Nos.: 6607-4

Registrant: Central Exterminating & Chem Co.
Address: 365 Central Park Ave., Yonkers, NY 10704
Registration Nos.: 6614-3 thru 5

Registrant: Clover Products
Address: 146 University Ave., Rochester, NY 14605
Registration Nos.: 6646-4

Registrant: Griffin Chem. Company
Address: 1326 South Seventh Street, Louisville, KY 40208
Registration Nos.: 6799-6

Registrant: Dawson Chemical Company Inc.
Address: 1525 N. Post Oak Road, Houston, TX 77055
Registration Nos.: 6874-2-5-6

Registrant: Dill J J Company
Address: Box 788, Kalamazoo, MI 49005
Registration Nos.: 6900-1-2-4 thru 6,-8-9-12-16-18-25-26-29-36 thru 39, 42-43-46-53 thru 55, 58-59-65-75-82-84-85-88-94-103-107-109-110-113-120 thru 122, -130-132 thru 134, -136-148

Registrant: Naftone Inc.
Address: 425 Park Ave., New York, NY 10022
Registration Nos.: 6948-10

Registrant: National Allied Products Co.
Address: P.O. Box 7346, Omaha, NE 68107
Registration Nos.: 6971-1-9

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Registrant: Laurence & CO E F
Address: 42 Whitney St., Northboro, MA 01532
Registration Nos.: 7184–1
Registrant: Bangels Herold Company Inc.
Address: Key Hwy & Boyle St., Baltimore, MD 21230
Registration Nos.: 7263–1
Registrant: Intree Corporation
Address: 1212 Washington, Muscatine, IA 52761
Registration Nos.: 7452–1
Registrant: Kem Labs Incorporated
Address: 1 Graham Lane, Lodi, NJ 07644
Registration Nos.: 7506–112
Registrant: Modern Pool Products Inc.
Address: 177 Greenwich Ave., Stamford, CT 06902
Registration Nos.: 7531–2–3–5–7–9
Registrant: New System Ext. Inc.
Address: Box 8422, Santurce, PR 00910
Registration Nos.: 7612–1
Registrant: Marval Chem. Company
Address: 929 Broadway, Lorain, OH 44052
Registration Nos.: 7614–2
Registrant: Chem-O-Craft Specialties
Address: Box 208, Argo, IL 60501
Registration Nos.: 7818–1
Registrant: Calahan Inc. H A
Address: 138 Water St., Box 448, S Norwalk, CT 06856
Registration Nos.: 7854–1–2
Registrant: Eagle Exterm. Serv.
Address: 1007 N 46th St., Philadelphia, PA 19100
Registration Nos.: 7978–2
Registrant: SCP Company
Address: 12 Quincy St., Nashua, NH 03104
Registration Nos.: 8055–1
Registrant: Laboratory Essentials Inc.
Address: P.O. Box 91, W. Islip, NY 11795
Registration Nos.: 8109–1–6
Registrant: Aero-Dyne Manufacturing Corporation
Address: 3505 W. Main, Emmetsburg, IA 50536
Registration Nos.: 8111–3–5
Registrant: Aggie Chemical Industry
Address: P.O. 8335, San Antonio, TX 78208
Registration Nos.: 8127–22
Registrant: Scott Laboratory
Address: 1595 Tarrytown St., San Mateo, CA 04402
Registration Nos.: 8128–1
Registrant: Reliance Chem. Corp.
Address: 120 11th St., Charlottesville, VA 22903
Registration Nos.: 8245–2
Registrant: T C Products Company
Address: P.O. Box 2132, Madison, WI 53705
Registration Nos.: 8487–7 thru 11
Registrant: Pro-Specialties, Inc.
Address: 7754 W. Harwood Avenue, Wauwatosa, WI 53213
Registration Nos.: 8550–1–4–6 thru 23,–28–32
Registrant: Zevel Corp.
Address: P.O. Box 112, La Mirada, CA 90637
Registration Nos.: 8684–2
Registrant: Wallace Chem. Company
Address: 24600 S. Main St., Carson, CA 90749
Registration Nos.: 8703–1–3 thru 5
Registrant: Montrose Chem. Corp. of CA
Address: P.O. Box E. 2401 Morris Ave., Union, NJ 07083
Registration Nos.: 8775–2 thru 4
Registrant: Clover Farm Stores Corp.
Address: 2135 Columbus Road, Cleveland, OH 44113
Registration Nos.: 8813–4
Registrant: Syrodeltro Chem. Inc.
Address: 501 W. Fayette St., Syracuse, NY 13204
Registration Nos.: 8931–3
Registrant: The Broadway Supply Company
Address: 7525 Bessemer Ave., Cleveland, OH 44127
Registration Nos.: 8955–8
Registrant: Brown Incorporated E L
Address: 267 E. Valley Blvd., Rialto, CA 92376
Registration Nos.: 9093–2
Registrant: Moraine Ind. Inc.
Address: 1212 W. Second St., Oconomowoc, WI 53066
Registration Nos.: 9239–5
Registrant: Duke Laboratories
Address: 10801 Linn Station Road, Louisville, KY 40223
Registration Nos.: 9294–1
Registrant: Industrial Chemical & Supply Company
Address: Box 4706, Tampa, FL 33607
Registration Nos.: 9356–1 thru 3
Registrant: World Wide Labs Inc.
Address: P.O. Box 22144, Tampa, Fl 33622
Registration Nos.: 9372–5–6–10
Registrant: Atlas Paint & Varnish Company
Address: 32–50 Buffington Ave., Irvington, NJ 07111
Registration Nos.: 9430–2
Registrant: Dri-Cide Inc.
Address: 6608 San Fernando Road, Glendale, CA 91201
Registration Nos.: 9435–1
Registrant: Elgene Chemicals Inc.
Address: 327 Northrup Ave., Mamaroneck, NY 10543
Registration Nos.: 9494–1 thru 4
Registrant: Belleren Research Corp.
Address: 354 Main St., Saugerties, NY 12477
Registration Nos.: 9575–2
Registrant: Douglas Chemical Division
Address: Deico Inc., 1 Lexington Ave., Beth Page, NY 10714
Registration Nos.: 9587–4
Registrant: MacNair L E
Address: 15 Franklin St., Houlton, ME 04730
Registration Nos.: 9592–3
Registrant: Bio. Scientific Company
Address: Box 1155, Rancho Santa Fe, CA 92067
Registration Nos.: 9611–1 thru 3
Registrant: Smith William Armstrong Company
Address: Box 868, East Point, GA 30044
Registration Nos.: 9624–2–4–5
Registrant: Glenn LW Termite & Pest Control
Address: 3305 24th St., W. Bradenton, FL 33505
Registration Nos.: 9625–1
Registrant: Ramrod Chemicals
Address: P.O. Box 2640, Dallas, TX 75221
Registration Nos.: 9681–5 thru 7
Registrant: Arsan Research Inc.
Address: 8715 Hidden Lake Dr., Howell, MI 48843
Registration Nos.: 9682–1
Registrant: All American Swimming Pool Manufacturing Company
Address: 8606 Blue Ash Rd., Cincinnati, OH 45242
Registration Nos.: 9705–1
Registrant: Veterinary Division
Address: Pharmaceutical Research Corp., North Miami, FL 33161
Registration Nos.: 9734–4
Registrant: Sanitation Services
Address: 194 Sterling Ave., Yonkers, NY 10704
Registration Nos.: 9761–1
Registrant: Keystone Veterinary Supply Company
Address: 8508 Widener Road, Philadelphia, PA 19118
Registration Nos.: 9766–1–2
Registrant: W–B Chemical Company Inc.
Address: 15 Macquesten Pkwy S., Mount Vernon, NY 10550
Registration Nos.: 9771–1
Registrant: Kendall Company Textile Division
Address: Box 1828, Charlotte, NC 28201
Registration Nos.: 9778–1
Registrant: Carman Conley Inc.
Address: 4321 W. 32nd St., Chicago, IL 60623
Registration Nos.: 9834–1
Registrant: International Raticide Company

Address: 617 Willow Glen Road, Santa Barbara, CA 93105
Registration Nos.: 9940–1
Registrant: Joseph E R Company Inc.
Address: P.O. Box 189, Norristown, PA 19404
Registration Nos.: 10044–1
Registrant: Ortho Industries Inc.
Address: 49 Lawton St., New Rochelle, NY 10801
Registration Nos.: 10046–1
Registrant: Valley Mills
Address: Box 1099, Vicksburg, MS 39180
Registration Nos.: 10161–1
Registrant: Community Pest Control
Address: 3219 N. 30th St., Omaha, NE 68111
Registration Nos.: 10281–1
Registrant: Rodoon Company
Address: 1668 E. Sunshine, Springfield, MO 65804
Registration Nos.: 10288–1
Registrant: Professional Chemical Company Inc.
Address: P.O. Box 94071, 4517 Yale St., Houston, TX 77018
Registration Nos.: 10290–12–17
Registrant: The Desachem Company, Inc.
Address: 29 Riverside Ave., Bldg. No. 17, Newark, NJ 07104
Registration Nos.: 10321–1–2
Registrant: Multa Chem. Inc.
Address: 11026 Endicott, Houston, TX 77035
Registration Nos.: 10439–1
Registrant: Mor-Par Company
Address: 7019 Coleshire Dr., Dallas, TX 75232
Registration Nos.: 10489–1
Registrant: Vamco Products Inc.
Address: 438 Springfield Pike, Cincinnati, OH 45317
Registration Nos.: 10545–1
Registrant: Extermin-All
Address: 4226 Ebbtide, Houston, TX 77045
Registration Nos.: 10546–2
Registrant: Rheyan-National
Address: 2828 Stonebrook St., Irving, Tx 75060
Registration Nos.: 10627–1
Registrant: Ecology Products Corp.
Address: P.O. Box 3349, Brownsville, TX 78520
Registration Nos.: 10636–2
Registrant: L & M Mineral Company
Address: P.O. Box 756, Brownwood, TX 76801
Registration Nos.: 10640–1
Registrant: W & B Div. of W W B Co.
Address: 21732 Kaneohe Lane, Huntington Beach, CA 92646
Registration Nos.: 10658–1
Registrant: Morehead Ind Inc.
Address: 273 Hayden Rowe, Hopkinton, MA 01748
Registration Nos.: 10662–4–5
Registrant: Lawn-A-Mat Chem & Equip Corp.
Address: 54 Kinkel St., Westbury, NY 11590
Registration Nos.: 10711–4–6
Registrant: Prinova Co., Inc.
Address: 982 Terminal Way, San Carlos, CA 94070
Registration Nos.: 10742–3 thru 9, 10–16–17
Registrant: Engineering
Address: Box 2497, Inverness, FL 32651
Registration Nos.:
Registrant: Rush-Hampton Ind.
Address: 3000 Industrial Park, Longwood, FL 32750
Registration Nos.: 10824–5
Registrant: Antical Chemical Inc.
Address: 770 Exchange St., Rochester, NY 14608
Registration Nos.: 10833–2–4
Registrant: Unichem Corp.
Address: 7 Regal Dr., Huntington, NY 11743
Registration Nos.: 10859–1
Registrant: March Chem Company Inc.
Address: 1464 Sierra Vista Dr., Baton Rouge, LA 70815
Registration Nos.: 10880–1–3–4
Registrant: Houston Tack Room Products Inc.
Address: 2817 West, T.C. Jester, Houston, TX 77018
Registration Nos.: 11294–1
Registrant: Three O One Exterminating Service Company
Address: 211 Lillian Rd., Wilson, NC 27893
Registration Nos.: 11322–3 thru 5
Registrant: Patel Inc.
Address: 205Westport Road, Kansas City, Mo 64111
Registration Nos.: 11331–1
Registrant: Advance Pakaging Inc.
Address: 6410 Mayfair, Houston, TX 77017
Registration Nos.: 11454–2
Registrant: Care-Free Swimming Pool Supply Company
Address: 4170 Grand Ave., Gurnee, IL 60031
Registration Nos.: 11481–2
Registrant: Shalco Chemical Corporation
Address: 1125 Brown Ave., P.O. Box 3443, Toledo, OH 43607
Registration Nos.: 11511–5–6–19–23
Registrant: Armstrong Chemical Company
Address: P.O. Box 669, Hugo, OK 74743
Registration Nos.: 11528–1–2
Registrant: Filters International Inc.
Address: Box 33, Lake Zurich, IL 60047
Registration Nos.: 11601–2–3
Registrant: Index Chemical Inc.
Address: Rd #3, Carranza Rd., Vincentown, NJ 08088
Registration Nos.: 11672–2
Registrant: Perma Kill Mfg. Co.
Address: P.O. Box 665, Sallisaw, OK 74955
Registration Nos.: 11704–2
Registrant: Cain Chemical Company
Address: 1204 Heights, Pasadena, TX 77503
Registration Nos.: 11716–4
Registrant: Plas Chem Corp.
Address: 6300 Bartmer Industrial Drive, St. Louis, MO 63130
Registration Nos.: 11717–1
Registrant: Cobis Products Company Inc.
Address: P.O. Box 4358, Atlanta, GA 30302
Registration Nos.: 11737–1
Registrant: Salem Laboratories
Address: 8325 Chubb Rd., North Vale, MI 48167
Registration Nos.: 12010–1 thru 5
Registrant: Robinette, Inc.
Address: 975 Lake Rd., Media, OH 44256
Registration Nos.: 12015–1–2–14–15–16
Registrant: Colony Corporation of America
Address: 1399 East 98th Street, Chicago, IL 60628
Registration Nos.: 12146–1
Registrant: Corbin Chemical Corp.
Address: 1400–04 Coney Island Ave., Brooklyn, NY 11230
Registration Nos.: 12325–2–3
Registrant: Kleenco Products
Address: 13233 NE., 16th Street, Bellevue, WA 98005
Registration Nos.: 12388–1 thru 5
Registrant: Springbok Chemical Company Inc.
Address: P.O. Box 398, Pendleton, OR 97801
Registration Nos.: 12434–3
Registrant: Aqua Power Inc.
Address: 2973 Riverland Rd., Fort Lauderdale, FL 33312
Registration Nos.: 12467–1–2
Registrant: Dixie Compound Works
Address: 434 Aberdeen Avenue, Dayton OH 45419
Registration Nos.: 12475–1
Registrant: Parks Enterprises Inc ME
Address: P.O. Box 966, Temecula, CA 92390
Registration Nos.: 13765–1 thru 3
Registrant: Dianol Inc.
Address: P.O. Box 10636, St. Petersburg, FL 33733
Registration Nos.: 13794–2
Registrant: Wayne County Pest Control Inc
Address: 18269 Wyoming Ave., Detroit, MI 48221

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Registration Nos.: 13811–2
Registrant: Form-A-Chem, Inc.
Address: 2505 Metro Blvd., Maryland Heights, MO 63043
Registration Nos.: 13881–3 thru 5
Registrant: Acrocem Inc.
Address: Box 388, Livingston, TX 77351
Registration Nos.: 13892–1
Registrant: Clear Pool Maintenance Inc.
Address: Box 9586, Riviera Beach, FL 33404
Registration Nos.: 14639–1
Registrant: Chem Con
Address: 1126 McGavock, Nashville, TN 37217
Registration Nos.: 14648–3–5
Registrant: Dyna Chem Corporation
Address: 56 Lincoln Hwy., Penndel, PA 19047
Registration Nos.: 14799–3
Registrant: The McKerson Corp
Address: 1500 South 5th Street, Minneapolis, MN 55408
Registration Nos.: 14895–1
Registrant: Corporated Brands Sales Inc.
Address: P.O. Box 42653, Evergreen Park, IL 60642
Registration Nos.: 14943–5
Registrant: Mother's Root Destroyer
Address: P.O. Box 47622, Dallax, TX 75247
Registration Nos.: 15015–1
Registrant: Key Chem Products Inc.
Address: 433 Government St., Baton Rouge, LA 70802
Registration Nos.: 15442–1–2
Registrant: Southland Agricultural Chemical Company
Address: P.O. Box 6207, Montgomery, AL 36106
Registration Nos.: 15575–11–17
Registrant: Davis Supply Company
Address: 2134 S. Saginaw, Flint, MI 48503
Registration Nos.: 16151–1
Registrant: Midich Prod Sales Company
Address: 3940 Dereimer Ave., Bronx, NY 10466
Registration Nos.: 18187–1
Registrant: Nationwide Chemical Corp.
Address: 146 Midland Avenue, Kearny, NJ 07032
Registration Nos.: 18684–2
Registrant: Emac Corporation
Address: 1187 Milldale Rd., Cheshire, CT 06410
Registration Nos.: 19223–1–2
Registrant: National Cosmetic Labs Inc.
Address: 7712 Densmore Ave., Van Nuys, CA 91406
Registration Nos.: 19762–1–2
Registrant: Old Hickory Medicine Co. Inc.
Address: P.O. Box 33, 5813 Lee Highway, Chattanooga, TN 37421

Registration Nos.: 21337–2
Registrant: C & H Chemical Company
Address: 475 N. Cleveland Ave., St. Paul, MN 55107
Registration Nos.: 21737–1–2
Registrant: Lucas Products Company
Address: State and Jackson Sts, Bedford, IA 50833
Registration Nos.: 23562–1
Registrant: Interstate Paint Corporation
Address: P.O. Box 1038, Brunswick, GA 31520
Registration Nos.: 24739–1
Registrant: Amform Company
Address: 4952 Sequoi Rd., Memphis, TN 38117
Registration Nos.: 25877–1
Registrant: McKenzie & Rogers
Address: Seattle, WA 98111
Registration Nos.: 26153–1
Registrant: Copper State Chemical Company
Address: Box 1110, Tucson, AZ 85702
Registration Nos.: 26494–1
Registrant: Preferred Products Company
Address: 620 Ave. O, Winter Haven, FL 33880
Registration Nos.: 26876–1
Registrant: Colt Chemical Corporation
Address: 2212 Hawkins Street, Charlotte, NC 28203
Registration Nos.: 27036–1–4–5
Registrant: Ani-Sheid Inc.
Address: 5401 Pamela Drive, Louisville, KY 40219
Registration Nos.: 30320–1
Registrant: Woods Paul Company Inc.
Address: 21 Highland Ave, Needham, MA 02192
Registration Nos.: 30600–2
Registrant: Bionomical Chemicals & Services Inc.
Address: 1003 Pineville Rd., Chattanooga, TN 37405
Registration Nos.: 30948–4–6–8 thru 12, 29–32–33–34
Registrant: Oil Chem International
Address: PO Box 627, Gonzales, LA 70737
Registration Nos.: 30955–4
Registrant: Graham Service Corp.
Address: 401 N.E. 62nd St., Miami, FL 33138
Registration Nos.: 31183–1
Registrant: VO-Toys Inc.
Address: Bronx, NY 10451
Registration Nos.: 31445–2–5–6–9
Registrant: Sunshine Products Company
Address: 2310 SO. 27th St., Milwaukee, WI 53218
Registration Nos.: 31867–1
Registrant: Swimming Pool Doctor
Address: 1322 N. Mill Street, Orlando, FL 32803

Registration Nos.: 32043–1
Registrant: ABR Enterprises
Address: 7812 Chestnut Way, Pleasanton, CA 94566
Registration Nos.: 32172–1
Registrant: Water Science Inc.
Address: 6267 North Blackstone Ave., Fresno, CA 93710
Registration Nos.: 32799–1
Registrant: Commander Chemical & Supply Co. Inc.
Address: 443 South Central Ave., Phoenix, AZ 85004
Registration Nos.: 33016–2
Registrant: Chemik Labs Inc.
Address: P.O. Box 24884, 1608 Day Star Drive, Dallas TX 75224
Registration Nos.: 33428–1
Registrant: Hawthrone Chemical Co.
Address: P.O. Box 11555, St. Louis, MO 63105
Registration Nos.: 33442–813
Registrant: Power Clean Products Inc.
Address: 200 Sherwood Drive, Wood Dale, IL 60191
Registration Nos.: 33494–1
Registrant: Agri Future Company
Address: 15708 Loop Road, Burnsville, MN 55337
Registration Nos.: 33861–1
Registrant: S & S Pools & Hockey
Address: 1176 Union Road, West Seneca, NY 14224
Registration Nos.: 34088–1
Registrant: Ecological & Specialty Prod. Co.
Address: 1188 Tice Place, Westfield, NJ 07090
Registration Nos.: 34538–1
Registrant: Supreme Chemicals Inc.
Address: 989 Montague Expressway, Milpitas, CA 95035
Registration Nos.: 34632–1
Registrant: Foresight of Omaha, Inc.
Address: 2900 F. St., Omaha, NE 68111
Registration Nos.: 34722–1
Registrant: Puff Industries
Address: Brooklyn, NY 11223
Registration Nos.: 34737–1
Registrant: Bio-Dyne Industries
Address: 24201 Frampton Avenue, Harbor City, CA 90710
Registration Nos.: 34850–3
Registrant: 50th State Cockroach Killer
Address: P.O. Box 8006, Honolulu, HI 96815
Registration Nos.: 34853–1
Registrant: Roberts Proprietories Inc.
Address: 575 Madison Avenue, New York, NY 10022
Registration Nos.: 34882–2–3

Registrant: MG Scientific Gas
Address: Div of Burdett Oxygen, One Schuklkill Ave, Norristown, PA 19404
Registration Nos.: 35084–1
Registrant: Winco Chemical Company
Address: P.O. Box 10692, Jackson, MS 39209
Registration Nos.: 35138–2–3–5–9, 11 thru 24, 26–29–30–31–33–34, 36 thru 42, 45–46–48–51–52–53–56–59
Registrant: Leisure Aid
Address: P.O. Box 7348, Omaha, NE 68107
Registration Nos.: 35284–1–2
Registrant: Gable-Tite Products Co., Inc.
Address: 3790 NW., 7 Box 470096, Miami, FL 33147
Registration Nos.: 35302–2
Registrant: International Trade Service Inc.
Address: 337 High St., Burlington, NJ 08016
Registration Nos.: 35314–1
Registrant: Arizona Sulphur Company
Address: 5340 West Bethany Home Road, Box 863, Glendale, AZ 85311
Registration Nos.: 35377–1–2
Registrant: E Z Bleach Corporation
Address: 2 Washburn Street, New Bedford, MA 02742
Registration Nos.: 35483–20002
Registrant: The America Company
Address: P.O. Box 846, Milton, FL 32570
Registration Nos.: 35904–1
Registrant: Water Equipment Manufacturers, Inc.
Address: 701 W. Tropical Way, Broward City.-Plantation, FL 33312
Registration Nos.: 35920–1
Registrant: Irwin Associates, Inc.
Address: P.O. Box 20636, St. Petersburg, FL 33742
Registration Nos.: 35959–4–5
Registrant: Aerosol West
Address: 2595 Katherine Ave., Ventura, CA 93001
Registration Nos.: 35988–1
Registrant: Crown Chemical Company
Address: 5280 Merrick Road, Massapequa, L.I., NY 11758
Registration Nos.: 36534–1 thru 3
Registrant: Bay Chemical Company
Address: 571 Airport Rd., 3 No., Naples, FL 33940
Registration Nos.: 36829–1
Registrant: Union Pool Marts, Inc.
Address: 2154 Eureka Rd., Wyandotte, MI 48192
Registration Nos.: 36919–2
Registrant: Hudson's Pest Control Products
Address: 1754 Meldrum Street, Detroit, MI 48207
Registration Nos.: 37103–1

Registrant: Transbas
Address: 1525 Lockwood Road, Billings, MT 59101
Registration Nos.: 37507–1
Registrant: OMTAR Chemicals Ltd
Address: 555 13th Street, NW., Washington, DC 20004
Registration Nos.: 37585–1
Registrant: Harrell Swimming Pool Service
Address: 597 W. Hickpochee Ave., La Belle, FL 33935
Registration Nos.: 37656–1–3
Registrant: Waters Chemicals
Address: 729 Beach Place, Mundelein, IL 60060
Registration Nos.: 37753–1
Registrant: Aqua Clear Pools Inc.
Address: 13377 W. Dixie Hwy, N. Miami, FL 33161
Registration Nos.: 37791–1
Registrant: Preferred Pool Services
Address: 201 SE 2nd Avenue. Delray Beach, FL 33444
Registration Nos.: 37898–1
Registrant: Ed. Carter Swimming Pool Serv.
Address: 1544 NE., 109th St., Miami, FL 33161
Registration Nos.: 37924–1
Registrant: International Water Systems
Address: P.O. Box 3371, St. Augustine, FL 32084
Registration Nos.: 38055–1–2
Registrant: Pace Limited
Address: P.O. Box 48, Taylor, TX 76574
Registration Nos.: 38174–1–2–4–7–8
Registrant: Perfect Pools of Fla. Inc., D/B/A Perfect Pools
Address: 1617 Middle River Dr., Ft. Lauderdale, FL 33305
Registration Nos.: 38221–3
Registrant: Ultra White Manufacturing Co.
Address: 329 Northrup Ave., Mamaroneck, NY 10543
Registration Nos.: 38346–1
Registrant: Sigma Chemical Corporation
Address: 1957 Temple, Signal Hill, CA 90804
Registration Nos.: 38682–2
Registrant: Michael G. Segina
Address: 1637 North Roosevelt Ave., Pasadena, CA 91104
Registration Nos.: 38758–1
Registrant: Uni-Lab Corporation
Address: 177 N. Church St., Suite 310, Box 5706, Tucson, AZ 85701
Registration Nos.: 38887–1–2
Registrant: Coventry Products
Address: 975 Lake Road, Medina, OH 44256
Registration Nos.: 38918–1 thru 3
Registrant: Holiday Industries
Address: 523 E. Rock Island, Grand Prairie, TX 75050

Registration Nos.: 39034–2
Registrant: Aquabiotics Corporation
Address: 701 Checker Drive, Buffalo Grove, IL 60090
Registration Nos.: 39096–1 thru 3
Registrant: Mundobello Chemical Services Co.
Address: 3907 Capitol, Houston, TX 77023
Registration Nos.: 39222–1
Registrant: Aqua Treat Chemicals, Inc.
Address: 1166 87th Street, Daly City, CA 94015
Registration Nos.: 39327–17–18
Registrant: Filtercold Corporation
Address: 2810 S. 24th Street, Phoenix, AZ 85034
Registration Nos.: 39446–3–4
Registrant: Pool Doctors
Address: 1400 Ellis St., Waukesha, WI 53186
Registration Nos.: 39662–2
Registrant: Supreme Distributors, Inc.
Address: 1509 E. Washington, Phoenix, AZ 85034
Registration Nos.: 39839–2
Registrant: Kratz Laboratories
Address: 1488 Page Industrial Court South, St. Louis, MO 63132
Registration Nos.: 39841–1–3 thru 11
Registrant: Chem-Ware Industrial Products, Inc.
Address: 7597 NW., 73rd Terrace, Tamarac, FL 33319
Registration Nos.: 39910–1 thru 12
Registrant: Alpha Pool & Marcite Co.
Address: Box 490252, Ft. Lauderdale, FL 33313
Registration Nos.: 39915–1
Registrant: Leading Trade Co.
Address: Box 476, Forest Hills, NY 11375
Registration Nos.: 40023–1
Registrant: Atlantic Pool Service, Inc.
Address: 3007 N. State Rd., #7, Hollywood, FL 33021
Registration Nos.: 40075–2
Registrant: Outdoor World Distributors, Inc.
Address: 329 SW. 14th Ave., Pompano Beach, FL 33060
Registration Nos.: 40080–2
Registrant: Leslies Swimming Pool Supplies
Address: 750 East McNab Rd., Pompano Beach, FL 33060
Registration Nos.: 40209–1
Registrant: Chemtex International, Ltd.
Address: P.O. Box 336, Prairieville, LA 70769
Registration Nos.: 40275–6 thru 27
Registrant: Equine Chemical Co., Inc.
Address: 529 North 43rd West Ave., Tulsa, OK 74127
Registration Nos.: 40322–1
Registrant: Admiral Pool Service

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Address: 405 South Ridge Rd., Delray Beach, CA 33444
Registration Nos.: 40352–2
Registrant: Century Manufacturing Co.
Address: 40 N. Jefferson St., P.O. Box 544, New Castle, PA 16103
Registration Nos.: 40382–1
Registrant: Allfield Chemicals, Inc.
Address: PO Drawer AA, Lafayette, LA 70502
Registration Nos.: 40956–1 thru 10
Registrant: Chemical Solvent Co.
Address: P.O. Box 487, Birmingham, AL 35201
Registration Nos.: 40959–1 thru 10
Registrant: Aqua-Tek Corp.
Address: 3256 "F" St., San Diego, CA 92102
Registration Nos.: 41041–1–2
Registrant: Pro Kem
Address: 1015 Wall Rd., El Paso, TX 79915
Registration Nos.: 41067–1
Registrant: International Chemicals Group
Address: 5800 Fairfield Ave., Box 6354, Ft. Wayne, IN 46815
Registration Nos.: 41167–1
Registrant: Mitchell Gunite Co.
Address: Box 8927, Jacksonville, FL 32211
Registration Nos.: 41227–1
Registrant: Dolphin Pool Service Division of Porpoise Pools
Address: 18789 SW. 105th Pl., Miami, FL 33157
Registration Nos.: 41379–1
Registrant: Mister Chemicals
Address: 160 NW. 24th Street, Boca Raton, FL 33432
Registration Nos.: 41380–1
Registrant: RPS Products Inc.
Address: Box 243–4, N. Elmhurst Rd., Prospect Heights, IL 60070
Registration Nos.: 41550–1
Registrant: Atlantis Pool Service & Supply
Address: Box 928, New Smyrna Beach, FL 32069
Registration Nos.: 41617–2
Registrant: Colony Pool Service Inc.
Address: 3520 Philadelphia Pike, Claymont, DE 19703
Registration Nos.: 41846–1
Registrant: S. E. Abbott Maintenance & Repair
Address: 6068 Chevy Chase St., West Palm Beach, FL 33406
Registration Nos.: 41959–1
Registrant: Crystal Clear Pools
Address: P.O. Box 14417, North Palm Beach, FL 33408
Registration Nos.: 41966–1
Registrant: Pool Plaza Inc.
Address: 20 Stone Road, Rochester, NY 14616
Registration Nos.: 51972–1
Registrant: Ark Swimming Pool Service Inc.
Address: 1220 NW. 23rd Ave., Fort Lauderdale, FL 33311
Registration Nos.: 42006–1
Registrant: Industrial Systems
Address: Long Plain Road, Matapoisett, MA 02739
Registration Nos.: 42087–110
Registrant: Deta Pools Inc.,
Address: 19 Jefferson Ave., Fairport, NY 14450
Registration Nos.: 42108–1
Registrant: Sure Chemical Corp.
Address: Route 140, Box 140, Upton, MA 01568
Registration Nos.: 42263–2–3
Registrant: Sentinel Chemical Inc.
Address: 545 Periwinkle Dr., Roswell, GA 30075
Registration Nos.: 42266–2–3
Registrant: Fast Supply
Address: 455 10th St., San Francisco, CA 94103
Registration Nos.: 42296–1
Registrant: Allegheny Water Services Corp.
Address: 2770 DS Harbor Blvd., Santa Ana, CA 92704
Registration Nos.: 42322–1–2–4–5
Registrant: Chemical Specifics, Inc.
Address: 420 Centre St., Nutley, NJ 07110
Registration Nos.: 42437–1 thru 5
Registrant: Big A Pool Service
Address: 533 N.E., 11th Ave., Ft. Lauderdale, FL 33301
Registration Nos.: 42468–1
Registrant: Washine Div.
Address: 935 Allwood Road, Clinton, NJ 07012
Registration Nos.: 42537–1
Registrant: Environmental Safe Products Corp.
Address: 20460 Gramercy Pl., Torrance, CA 90501
Registration Nos.: 42565–1
Registrant: Tasha Enterprises
Address: Box 1232, Chickasha, OK 73018
Registration Nos.: 42694–1
Registrant: S & R Plumbing Corp.
Address: 1075 NE. 79th St., Miami, FL 33138
Registration Nos.: 42763–1
Registrant: Custom Chemical Engineering
Address: 59 Meander Pike, Chatham, IL 62629
Registration Nos.: 42842–3–4
Registrant: Masti-Kure Products Co. Inc.
Address: One Wisconsin Ave., Norwich, CT 06360
Registration Nos.: 42844–1
Registrant: Mason Chemical Co.
Address: 6135 Shirley St., Naples, FL 33942
Registration Nos.: 42959–1
Registrant: Progressive Hydrology
Address: Box 584, Lawson, MO 64062
Registration Nos.: 43018–1–2
Registrant: Pool World Inc.
Address: 15328 North Nebraska, Tampa, FL 33612
Registration Nos.: 43141–1
Registrant: Pride Chemical
Address: Box 5001 Sus, Fargo, ND 58105
Registration Nos.: 43321–1
Registrant: Dr. Gerald G. McCarthy
Address: Rural Route, Bridgewater, IA 50837
Registration Nos.: 43357–1
Registrant: Texchem, Inc.
Address: 112 Catalina Drive, Greenville, SC 29609
Registration Nos.: 43508–1 thru 4
Registrant: CPI Chemicals, Inc.
Address: 2800 North Loop West, Suite 314, Houston, TX 77092
Registration Nos.: 43592–1
Registrant: Airwick Pool Products, Inc.
Address: 4 Cermak Boulevard, St. Peters, MO 63376
Registration Nos.: 43603–1
Registrant: Nu-Coat Chemicals
Address: Route, One, Four Oaks, NC 27524
Registration Nos.: 43694–1
Registrant: Eagle Laboratories
Address: 1802 West Grant Rd, Tucson, AZ 85705
Registration Nos.: 43717–27
Registrant: Greenshield of Washington
Address: Box 25784, Seattle, WA 98125
Registration Nos.: 43740–1
Registrant: Marco Pool Care, Inc.
Address: P.O. Box 784, Marco Island, FL 33937
Registration Nos.: 43753–1–2
Registrant: Bayside Industries, Inc.
Address: 109 Millers Lane Box 1927, Harrisburg, PA 17105
Registration Nos.: 43783–3
Registrant: Total Cost Systems
Address: 5186 126th Ave. N., Clearwater, FL 33520
Registration Nos.: 43872–1
Registrant: Stewart Sanitary Supply Co., Ltd.
Address: P.O. Box 15061 St. Louis, MO 63110
Registration Nos.: 43954–1–2–4–5–7–9–11–13–14–17–18–19–20–21–25–26–31–32–33–35–36–38–41–42–43–44–45–46–47–50–52–55–58–60
Registrant: G. Tex Chemical Internat'l
Address: 7900 Westheimer, No. 340, Houston, TX 77062
Registration Nos.: 43982–1
Registrant: Espar Chemical Corp.
Address: 1233 South Circle, Forest Park, IL 60130

Registration Nos.: 43985–1
Registrant: Manufactured Products, Inc.
Address: 317 11th St., Beach Haven, NJ 08008
Registration Nos.: 43988–1
Registrant: Riverblue Pools Contractor, Inc.
Address: 10527 S.W. 40th St., Miami, FL 33165
Registration Nos.: 44174–1
Registrant: Marzone, Inc.
Address: P.O. Box 1949, Tifton, GA 31794
Registration Nos.: 44317–1 thru 5–8–11 thru 16–18–19–21 thru 26–30–32 thru 36–38 thru 44–46
Registrant: Atlantic Pool Of Palm Beach, Inc.
Address: 2708 N. Federal Hwy., Delray Beach, FL 33444
Registration Nos.: 44371–1
Registrant: Pleasure Makers
Address: 381 S. Tamiami Drive, N.W., Charlotte, FL 33952
Registration Nos.: 44388–1
Registrant: California Cleaning Products, Inc.
Address: 8763 Lankershim Blvd., Sun Valley, CA 91352
Registration Nos.: 44389–1–4
Registrant: Votex Pool Service
Address: 1467 N.E. 57th Place, FT. Lauderdale, FL 33334
Registration Nos.: 44410–1
Registrant: Doyle Services, Inc.
Address: P.O. Box 8211, Indian River Shores, FL 32960
Registration Nos.: 44418–1
Registrant: Pet Rx
Address: 8801 N. Crescent Drive, Miramar, FL 33025
Registration Nos.: 44455–2
Registrant: Chou Chen Chemicals, Inc.
Address: 901 South 15th St., Louisville, KY 40210
Registration Nos.: 44639–1
Registrant: CMC, Inc.
Address: 327 Locust St., New Castle, PA 16103
Registration Nos.: 44648–1
Registrant: P.S. Products Co.
Address: 1968 Cummings Dr., Los Angeles, CA 90027
Registration Nos.: 44661–1
Registrant: Simadon
Address: Box 511, San Pedro, CA 90733
Registration Nos.: 44848–1
Registrant: Color Your Yard Inc.
Address: 515 Lee Road, Rochester, NY 14606
Registration Nos.: 44873–1
Registrant: Custom Pools & Spas
Address: 2092 17th St., Sarasota, FL 33580
Registration Nos.: 44898–1
Registrant: P & S Laboratories
Address: Box 55271, Riverside, CA 92517
Registration Nos.: 44971–1
Registrant: Omni Products
Address: 3049 Rigel Ave., Las Vegas, NV 89102
Registration Nos.: 45037–1
Registrant: Pool Boy Inc.
Address: 1207 W. Broward Blvd., Ft. Lauderdale, FL 33311
Registration Nos.: 45051–1
Registrant: Stanley Hartman Manufacturing, Inc.
Address: 4351 South Country Club Rd., Tucson, AZ 85714
Registration Nos.: 45117–1
Registrant: Patterson Products Co.
Address: 2950 S. Eighth St., Ste F–1, Beaumont, TX 77701
Registration Nos.: 45162–1
Registrant: Pacific Swimming Pool Corp.
Address: 9533 SW. 40th St., Miami, FL 33165
Registration Nos.: 45258–1
Registrant: Refinement Technology Labs Inc.
Address: 1407 North Providence Rd., Columbia, MO 65201
Registration Nos.: 45262–1
Registrant: Sunrise Soap Company, Inc.
Address: 620 W. Center Street, #6, N. Salt lake, UT 84054
Registration Nos.: 45302–1 thru 10
Registrant: Pool Care Inc.
Address: #36 West Lake St., Tarpon Springs, FL 33589
Registration Nos.: 45322–1
Registrant: D M Labs Corp.
Address: 23007 Mobile Ave., Canoga Park, CA 91307
Registration Nos.: 45345–1
Registrant: Rivera Pool Co.
Address: 2265 Dundee Rd., Winter Haven, FL 33880
Registration Nos.: 45404–1
Registrant: M.S. Pool Service
Address: 3001 Pioneer Trail #57, New Smyrna Beach, FL 32069
Registration Nos.: 45448–1
Registrant: BIO AG Enterprises
Address: P.O. Box 42815–38, Houston, TX 77042
Registration Nos.: 45459–3
Registrant: Energy Support Corp.
Address: Box 87, Westwego, LA 70094
Registration Nos.: 45693–1–2
Registrant: Capitol Sanitizing Systems
Address: 2300 Pimmit Dr., Falls Church, VA 22043
Registration Nos.: 45725–2–5
Registrant: Northeast Packaging Inc.
Address: 25 Connair Rd., Orange, CT 06477
Registration Nos.: 45746–2–4–5–6–7–8–11–12
Registrant: San Juan Pools of Hillsborough County, Inc.
Address: 4109 W. Buffalo Ave., Tampa, FL. 33614
Registration Nos.: 45752–1
Registrant: All Chemical Supply & Equipment Co.
Address: 4801 Pembroke Rd., Hollywood, FL 33021
Registration Nos.: 45898–1 thru 21
Registrant: The James-Scott Company
Address: 336 Hillcrest Street, El Segundo, CA 90245
Registration Nos.: 45984–2
Registrant: Andy's Independent Pest Control
Address: P.O. Box 3251, 4401 S.I. 35-Town & Country Mall, Temple, TX 76501
Registration Nos.: 45997–1
Registrant: Ecco Chemical Co., Inc.
Address: 2651 Sterling Acre Dr., Tucker, GA 30084
Registration Nos.: 46013–1–2–3
Registrant: Anchemco Inc.
Address: 2566–A McMuller-Booth Rd., Clearwater, FL 33519
Registration Nos.: 46053–1
Registrant: Halifax Aquatech Pools
Address: 140 East Mason Ave., Daytona Beach, FL 32014
Registration Nos.: 46131–1
Registrant: Atlantic Pool Store
Address: 3007 North State Rd. H7, Hollywood, FL 33021
Registration Nos.: 46159–1
Registrant: Engineering Services & Products Co.
Address: 214 Old Main St., Rocky Hill, CT 06067
Registration Nos.: 46200–1
Registrant: Valley & Universal Supply, Inc.
Address: P.O. Box 4084, Bethlehem, PA 18018
Registration Nos.: 4625–1
Registrant: A-Best Chemicals & Supply
Address: 1621 N. Magnolia, Ocala, FL 32670
Registration Nos.: 46575–1
Registrant: Cassco Inc.
Address: 38 N. West Jersey Ave., Woodbury Heights, NJ 08097
Registration Nos.: 46692–1
Registrant: Crystalene, Inc.
Address: Box 7787, Columbus, GA 31908
Registration Nos.: 46694–2–3–4
Registrant: Carolina Chem Services Inc.
Address: P.O. Box 40, North, SC 29112
Registration Nos.: 46728–1–2–3–4–5–6–8–9
Registrant: F.G. Products
Address: 3310 Reynolds Rd., Lakeland, FL 33801
Registration Nos.: 46784–1
Registrant: Pitcher Hill Pool Supply

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Address: SO. Bay & Taft Roads, N. Syracuse, NY 13212
Registration Nos.: 46860–1
Registrant: Admiral Pools
Address: 4015 Kathryn St., Sarasota, FL 33583
Registration Nos.: 46863–1
Registrant: Hackett and Gaskin
Address: 651 63rd St., Oakland, CA 94609
Registration Nos.: 46931–1
Registrant: The Agriculture & Nutrition Co.
Address: 5220 Speaker Rd., Kansas City, KS 66106
Registration Nos.: 46946–19–60–170–171–194–238–243–245
Registrant: McGrayel Co.
Address: 3386 S. Maple Ave., Box 12362, Fresno, CA 93777
Registration Nos.: 46978–1–2–3
Registrant: Southern Water Services
Address: 4421 Oakdale Rd., Smyrna, GA 30080
Registration Nos.: 47076–1
Registrant: Eastern Equine Enterprises
Address: 592 County Rd #1302, P.O. Box 392, Ashland, OH 44805
Registration Nos.: 47088–1
Registrant: Evrkleen Corp.
Address: 7827 NW. 15th St., Miami, FL 33126
Registration Nos.: 47113–1
Registrant: Care-Free Pool Supply
Address: Box 3456, Apollo Beach, FL 33570
Registration Nos.: 47120–1
Registrant: National Research Co.
Address: 4730 Noyes St. H218, San Diego, CA 92109
Registration Nos.: 47155–1
Registrant: Crown Services
Address: 2725 Via Casa Loma, San Clemente, CA 92672
Registration Nos.: 47278–1 thru 5
Registrant: Buccaneer Pool Supply & Service
Address: 3648 A. Henderson Blvd., Tampa, FL 33609
Registration Nos.: 47318–1
Registrant: Richard D. Stanton
Address: 5253 N. Dixie Highway, Pompano Beach, FL 33064
Registration Nos.: 47476–1
Registrant: Perochem Inc.
Address: 3451 Torrance Blvd., Torrance, CA 90503
Registration Nos.: 47525–1 thru 9
Registrant: Caf-Fey Chemical & Pesticide
Address: 2640 Woodland Ave., Louisville, KY 40211
Registration Nos.: 47663–1–2
Registrant: Luli Pools Inc.
Address: 5285 W. 20th Ave., Haileah, FL 33012
Registration Nos.: 47673–1
Registrant: Woody Riggs Co.
Address: 5027 SE. 107th St., Bellview, FL 32670
Registration Nos.: 47867–1–2
Registrant: Wiz Chemical Corp.
Address: Box 687, Bala Cynwyd, PA 19004
Registration Nos.: 47923–2–3–4
Registrant: Tristate Chemical Corp.
Address: 101 Elseden Bldg., 7710 Tanner Land, Florence, KY 41042
Registration Nos.: 48004–1–2
Registrant: Atlantic Pool and Patio
Address: 201 E. Granada Blvd., Ormond Beach, FL, 32074
Registration Nos.: 48057–1
Registrant: Metro Products
Address: 2912 Kings Rd., A214, Dallas, TX 75219
Registration Nos.: 48114–1
Registrant: Serat Inc.
Address: 8403 Rednock Lane, Miami Lakes, FL 48139
Registration Nos.: 48139–1–3–4–5
Registrant: Sun City Pool Supply
Address: 1897 Highland Ave. S., Largo, FL 33516
Registration Nos.: 48170–1–2
Registrant: Bayside Chemical
Address: P.O. Box 4932, Corpus Christi, TX 78405
Registration Nos.: 48216–1
Registrant: Argo-K Corporation
Address: 5750 Main St. NE., Minneapolis, MN 55432
Registration Nos.: 48222–1 thru 4
Registrant: United Scientifc Inc.
Address: 723 The Parkway, Richland, WA 99352
Registration Nos.: 48366–1
Registrant: Roach Vanish
Address: Box 6739, New York, NY 10128
Registration Nos.: 48369–1
Registrant: Trichem
Address: 306 S. Harrington St., Raleigh, NC 27603
Registration Nos.: 48455–1 thru 5
Registrant: Charles F. Hudson, Jr. D/B/A/ Chuck Hudson
Address: 8 Clear Way, Ocala, FL 32672
Registration Nos.: 48665–1–2
Registrant: Pools of Distinction
Address: 1400 St., Rd 44, E. Unit 4, Pineview Plaza, Crystal River, FL 32629
Registration Nos.: 48703–1
Registrant: Bernelco Inc.
Address: 8009 Standley St., Fort Worth, TX 76118
Registration Nos.: 49109–1
Registrant: AB Tri-State Termite & Pest Control
Address: 1955 W. Fayetteville, AR 72701
Registration Nos.: 49209–1
Registrant: Intergrated Pest Management Systems
Address: 3601 Magic Drive #904, San Antonio, TX 78229
Registration Nos.: 49315–2 thru 4
Registrant: Klatt Chemical Co.
Address: 1317 Oak Ave., Evanston, IL 60201
Registration Nos.: 49549–1
Registrant: Pep-Kote Products, Inc.
Address: Box 23747, Pleasant Hill, CA 94523
Registration Nos.: 49596–1
Registrant: Conceptus Investment Corp.
Address: 74–990 Joni Dr., Bldg 3–A, Palm Desert, CA 92260
Registration Nos.: 49774–1
Registrant: Brower's Watercare Service, Inc.
Address: 328 N. Broomville, Springfield, MO 65806
Registration Nos.: 50083–1–2–3
Registrant: ACS Inc.
Address: 515 S. 21st Ave., Hollywood, FL 33020
Registration Nos.: 50172–1
Registrant: Complete Chemical Services, Inc.
Address: Box 1860, Hollywood, FL 33020
Registration Nos.: 50173–1
Registrant: Aqua Guard, Inc.
Address: RT. 15, Box 588, Tyler, TX 75707
Registration Nos.: 50402–1 thru 6
Registrant: Water Watcher
Address: Box 1513, Liberty, TX 77575
Registration Nos.: 50417–1–2
Registrant: Compuchem Corp.
Address: 2371 Belmont Ave., Bronx, NY 10458
Registration Nos.: 50418–1
Registrant: Pac-Tec, Inc.
Address: 555 Boston Post Rd., Milford CT, 06460
Registration Nos.: 50429–1 thru 11
Registrant: The Pool Specialist of Ft. Pierce
Address: 1717 SO. U.S. #1–Royal Palm Shoppes, Ft. Pierce, FL 33450
Registration Nos.: 50499–1
Registrant: Radd Chemical Co.
Address: Merion Mills Business Center, Conshohocken, PA 19428
Registration Nos.: 50560–1–2–3
Registrant: Berg Chemical Co.
Address: 920 East 132 St., Bronx, NY 10454
Registration Nos.: 50728–1–2
Registrant: Zenco
Address: 3667 Blake St. Denver, CO 80205
Registration Nos.: 50742–1 thru 3
Registrant: Town Square Patio Shop
Address: 1821 West Brandon Blvd., Brandon, FL 33511

Registration Nos.: 50768–1
Registrant: Pro Chem Labs
Address: Box 2463, Conroe, TX 77305
Registration Nos.: 50787–2
Registrant: Stop-A-Bug, Inc.
Address: 61–15 98th St., Rego Park-Queens, NY 11374
Registration Nos.: 50908–1
Registrant: John H. Forsythe
Address: Box 896, Riverview, FL 33569
Registration Nos.: 51024–1
Registrant: Smittys Pool Equipment, Inc.
Address: 1018 NE. 44th St., Fort Lauderdale, FL 33334
Registration Nos.: 51104–1
Registrant: Pool N' Patio World of Brandon
Address: 919 Lithia Rd., Brandon, FL 33511
Registration Nos.: 51146–1
Registrant: Howard's Hardware
Address: 7041 Taft St., Hollywood, FL 33023
Registration Nos.: 51191–1
Registrant: BRJ Industries, Inc.
Address: 152 Messner Dr., Box 970F, Wheeling, IL 60090
Registration Nos.: 51414–1–2
Registrant: LaCrosse Pool Center
Address: 319 Lang Dr., LaCrosse, WI 54603
Registration Nos.: 51455–1
Registrant: Astro Water Engineers
Address: Box 182, Western Springs, IL 60558
Registration Nos.: 51515–1 thru 3
Registrant: J&C Products
Address: 911 Pine St., Fern Park, FL 32730
Registration Nos.: 51559–1
Registrant: E & G Industries, Inc.
Address: 3535 Waldorf Drive, Toledo, OH 43611
Registration Nos.: 51679–1
Registrant: Pacific Research Associates
Address: 2816 E. Coast Hwy. Suite 2, Corona Del Mar, CA 92625
Registration Nos.: 52253–1 thru 3
Registrant: Precision Coating Systems Inc.
Address: P.O. Box 36, Farmingdale, NJ 07727
Registration Nos.: 52367–1–2
Registrant: Cardoy Corporation
Address: 2246 Camino Ramon, Box 5025, San Ramon, CA 94583
Registration Nos.: 52427–1
Registrant: Interiors By Marie
Address: 6601 Norwood Ave., Jacksonville, FL 32208
Registration Nos.: 52500–1
Registrant: New Blends, Inc.
Address: 458 Whitney St., San Leandro, CA 94577
Registration Nos.: 52501–1
Registrant: Church Soap & Chemical Co.
Address: 7205 S. Chicago, Chicago, IL 60619
Registration Nos.: 52557–1
Registrant: Drug-A-Bug Company
Address: Box 355 C, Rt. #3, Leeds, AL 35094
Registration Nos.: 52606–1
Registrant: Lion Chemical Co.
Address: Box 1900, Claremore, OK 74018
Registration Nos.: 52747–2
Registrant: American Industrial Chemical Corp., Inc.
Address: 1111 N. Westshore Blvd. Suite 602, Tampa, FL 33607
Registration Nos.: 52787–1–2
Registrant: CMY Industries, Inc.
Address: 660 W. Lake St., Chicago, IL 60606
Registration Nos.: 52980–1 thru 6
Registrant: Germ-X Corp.
Address: 8625 Biscayne Blvd., Miami, FL 33138
Registration Nos.: 53389–1
Registrant: Darth Products
Address: Box 727, Eagle, ID 83616
Registration Nos.: 53571–1
Registrant: International Pesticide Label Exchange
Address: 7210 SW. Fifth Ave., Miami, FL 33143
Registration Nos.: 53975–1
Registrant: The Chemist Co.
Address: 3621 Edgefield Dr., Memphis, TN 38128
Registration Nos.: 54034–1–2
Registrant: Bak-Mar Products
Address: 824 Wilkerson, Mesquite, TX 75149
Registration Nos.: 54070–20205
Registrant: Environmental Resources Corp.
Address: 215 Liberty Square, Norwalk, CT 06852
Registration Nos.: 54280–1 thru 4
Registrant: Ashley A. Ansari DVM PHD
Address: 104 Fyfe Ct., Cary, NC 27551
Registration Nos.: 54456–3 thru 9
Registrant: Trenton Sales, Inc.
Address: 801 W. 13th Street, Houston, TX 77008
Registration Nos.: 54774–1
Registrant: Triad Laboratories, Inc.
Address: Box 8027, Greensboro, NC 27419
Registration Nos.: 56151–1–2–3
Registrant: Chem Designs
Address: Box 1420, Candler, NC 28715
Registration Nos.: 56210–1–2–3–4–5–9–10–11
Registrant: Midwest Equipment Co.
Address: Box 640159, Kenner, LA 70064
Registration Nos.: 56338–16
Registrant: Summit Laboratories, Inc.
Address: 9042 Marshall Court, Westminster, CO 80030
Registration Nos.: 56843–1
Registrant: Yucan, Inc.
Address: Box 573, Yuma, AZ 85364
Registration Nos.: 57036–1

Dated: November 4, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–26725 Filed 11–17–88; 8:45 am]

BILLING CODE 6560–50–M

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ISS
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NO
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federal register

Friday
November 18, 1988

Part VII

Consumer Product Safety Commission

16 CFR Parts 1306 and 1500
Ban of Lawn Darts; Final Rule

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1306 and 1500

Ban of Lawn Darts

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Lawn darts are devices with elongated tips that are used in an outdoor game by being thrown upward and striking the ground tip first. In this notice, the Commission bans lawn darts because they present a risk of puncture wounds, including skull punctures.[1]

A regulation, issued in 1970 by the Food and Drug Administration under the Federal Hazardous Substances Act ("FHSA") and now administered by the Commission, currently bans lawn darts, except for those intended for adult use that (1) are labeled to warn against use by children, (2) include instructions for safe use, and (3) are not sold by toy stores or by store departments dealing predominantly in toys or other children's articles. Despite these restrictions, which are intended to ensure that lawn darts are sold only for use as a game of skill by adults, children have continued to suffer serious injuries and deaths while playing with lawn darts. Accordingly, the Commission proposed to prohibit the sale of lawn darts that are intended to stick in the ground, on the basis that these darts present a risk of skull punctures.

After considering the comments received on the proposal and other information, the Commission concluded that whether a lawn dart is intended to stick in the ground is an inadequate criterion for whether a dart presents a significant risk of skull puncture injury. In addition, the Commission is unable to determine that any devices with elongated tips that can perform as lawn darts would not present this risk. Accordingly, the Commission is banning all lawn darts.

This action also satisfies a recent congressional directive, signed into law by the President on November 5, 1988, that the Commission revoke the FHSA exemption that allows the sale of lawn darts, under certain restrictions, unless the Commission finds that such products do not have the potential for causing puncture wound injury. Since the Commission is unable to find that any lawn dart would not have the potential to cause puncture wound injuries, no lawn darts are exempted from this ban.

DATE: The ban is effective December 19, 1988, as to products in the chain of distribution on or after that date.

FOR FURTHER INFORMATION CONTACT: Christine Nelson, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6400.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Commission was created in May of 1973. Prior to that time, the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1276, was administered by the Food and Drug Administration ("FDA"). Section 2(Q)(1)(A) of the FHSA, 15 U.S.C. 1261(Q)(1)(A), provides that the term "banned hazardous substance" includes "any toy, or other article intended for use by children, which is a hazardous substance." The Child Protection and Toy Safety Act of 1969 (83 Stat. 187–190) amended the FHSA to provide that any toy or other article intended for use by children may be classified as a hazardous substance if it is determined that the article presents an electrical, mechanical, or thermal hazard 15 U.S.C. 1261(F)(1)(D). Pursuant to this authority, the FDA, on November 17, 1970, proposed, among other things, to declare that lawn darts are banned toys because they present a mechanical hazard and an unreasonable risk of injury. 35 FR 17664.

The FDA received only one comment concerning the proposal to determine that lawn darts present a mechanical hazard. That comment stated that the large, outdoor-type darts are intended for use by adults as an outdoor sport or game. The comment contended that suitable labeling could be devised to inform parents or other adults of the necessity of carefully supervising children if they are to be permitted to play the game and to give other information relating to the safety of all nonplayers in the immediate area.

After considering this comment, the FDA determined in its final rule, published December 19, 1970, that "lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury, or other injury" presented a mechanical hazard within the meaning of the FHSA. 35 FR 19266. However, the final rule (as summarized below) also provided that the following types of lawn darts will not be included within the term "banned hazardous substance": Lawn darts and similar sharp-pointed articles not intended for toy use and marketed solely as a game of skill for adults, provided such articles:

(i) Bear the following statement on the front of the panel of the carton and on any accompanying literature:

Warning: Not a toy for use by children. May cause serious or fatal injury. Read instructions carefully. Keep out of the reach of children.

Such statement shall be printed in a sharply contrasting color within a borderline and in letters at [least] one-quarter inch high on the main panel of the container and at least one-eighth inch high on all accompanying literature.

(ii) Include in the instructions and rules clear and adequate directions and warnings for safe use including a warning against use when any person or animal is in the vicinity of the intended play or target area.

(iii) Are not sold by toy stores or store departments dealing predominantly in toys and other children's articles. 35 FR 19266, 19267.

A petition for judicial review of this regulation was filed by a lawn dart manufacturer, and the regulation was upheld. *R.B. Jarts, Inc. v. Richardson*, 438 F.2d 846 (2d Cir. 1971).

Since May of 1973, when the responsibility for administering the FHSA was transferred to the Commission, the Commission has periodically inspected samples of lawn dart labeling and instructions and surveyed marketing practices for lawn darts to determine whether the manufacturers, importers, and sellers of lawn darts are complying with the Commission's regulations under the FHSA.

The ban of lawn darts is codified in section 1500.18(a)(4) of Title 16 of the Code of Federal Regulations ("CFR"). The exemption quoted above for those lawn darts that have the specified labeling and instructions and that are not marketed in toy stores or in store departments dealing predominantly in children's articles is codified at 16 CFR 1500.86(a)(3).

In 1984, the Commission received reports that lawn darts were being sold in certain toy stores. As a result, the Commission's staff inspected at least 77 retail stores and found seven stores that were selling lawn darts in violation of the ban and exemption. Of the seven violative retail stores, six were toy stores, and three of these were part of the same nationwide chain. Products of four lawn dart importers had labeling violations. The retail sales and labeling violations discovered by these

[1] All three Commissioners (Chairman Terrence Scanlon, Commissioner Anne Graham, and Commissioner Carol Dawson) voted to approve this **Federal Register** notice. Chairman Scanlon and Commissioner Graham filed statements concerning their votes that are available from the Commission's Office of the Secretary.

inspections were corrected, and the Commission issued a consumer safety alert in July 1985 warning of the hazards of letting children play with lawn darts.

In June 1987, the Commission's staff examined the labeling on lawn darts marketed by 14 firms, and products from all 14 firms were found to have labeling violations. Products of eight of the firms were considered to have serious labeling violations, *i.e.*, no required warning statement on the front panel of the package. Other labeling violations included one or more of the following: the type size of the required warning statement was smaller than that specified in the exemption, the warning statement was absent from the instructions or was not printed within a borderline as required, and the instructions lacked clear and adequate directions and warnings for safe use.

In addition, Commission field investigators visited 122 retail stores around the country. Included in the 122 stores were 36 toy stores, 60 variety or department stores, and 26 sporting goods stores. Fifty-three of the stores were selling lawn darts, and 18 of these were displaying the product with or in close proximity to toys or sporting goods intended primarily for children.

As a result, the Commission's compliance staff met on July 17, 1987, with importers and manufacturers of lawn darts; a representative from the Sporting Goods Manufacturers Association also attended that meeting. At the meeting, the staff discussed five voluntary actions that could be taken by the firms to help assure compliance with the exemption from the ban and to increase consumer awareness of the hazards associated with lawn darts in the hands of children. These actions were:

1. The front panel warning label should be modified to make it more conspicuous and readable.

2. Place a warning label on one fin of each lawn dart in a color that contrasts with the fin. (The industry attendees at the July 17, 1987, meeting indicated that they would achieve contrast by means other than color, such as by contrasting texture.)

3. Change the design of lawn darts to prevent modification, or include a warning against modification with the instructions.

4. Include information on how to display lawn darts with each shipment of lawn darts to retailers.

5. Stop packaging lawn darts in combination sets with other games. Additional information on these recommended actions is given in the proposal. 53 FR 28657.

After the meeting on July 17, 1987, the staff wrote to all known lawn dart importers and to the known domestic manufacturer and the company that distributes its products. These letters went both to those that attended the meeting and to those that did not attend. The letters described the five voluntary actions and asked the firms to state in writing whether they were willing to take the actions requested. A total of 20 firms received letters, including additional importers of lawn darts that were identified between July and September.

Nineteen of the firms responded in writing or by telephone. Seven firms stated that they would carry out the five requests (except for the contrasting color on lawn dart fins); several of these firms requested additional slight and modifications of the terms.

Two major firms stated in writing that they would carry out only the first four requests. One of these firms also stated that it was in favor of the Commission making mandatory all of the voluntary actions which were requested.

Two firms stated general support for the voluntary actions the compliance staff had requested, but did not address the specific requests. Eight firms stated that they intended to stop importing lawn darts.

On July 30, 1987, the Commission issued a news release about lawn dart injuries and deaths. In the release, the Commission provides details on the existing ban, the exemption, and the hazard and resulting injuries. The release urges consumers to keep lawn darts away from children and asks consumers to report violations of the ban or exemption to the Commission.

On October 1, 1987, the Commission met to consider what actions would be appropriate to address the continuing injuries and deaths to children that occur when children play with lawn darts. By a unanimous vote, the Commission decided at its October 1, 1987, meeting to issue an ANPR indicating that the Commission might, among other actions, either require the five actions requested of industry at the July 17, 1987, meeting with the staff or ban all lawn darts and similar pointed objects usually intended for outdoor use and having the capacity for causing puncture wound injuries.

The Commission indicated that whatever action ultimately would be taken would take into account the results of a surveillance program to be conducted by the Commission's staff three months after publication of the ANPR; the object of the surveillance was to determine if the industry is in substantial compliance with the existing regulations and with the actions requested at the July 17, 1987, meeting described above. The Commission stated further that its final action would also depend upon an evaluation of whether such voluntary or mandatory standards, if enforced, could be expected to protect consumers from unreasonable risk of injuries. The staff was further directed to vigorously enforce the current FHSA provisions on lawn darts and to issue a consumer alert annually.

The ANPR was published on October 20, 1987. 52 FR 38935.

The Commission brought two cases in U.S. District Courts against major retail chains for lawn dart violations. In these cases, the defendants signed consent decrees to settle the Commission's concerns about the distribution of noncomplying lawn darts. In one of these cases, the Commission recently sought a contempt of court citation against the defendant for a subsequent violation of the consent decree, but the court declined to order this relief, stating that the defendant was nevertheless in substantial compliance with the consent decree.

In addition, the Commission requested the U.S. Customs Service to consider including lawn darts in the Operation Toyland program. This will enable CPSC and the Customs Service to examine incoming shipments of lawn darts.

Pursuant to the Commission's direction at the October 1, 1987, meeting, the Commission staff visited 112 retail stores to determine compliance with the current restrictions on the sale of lawn darts. Of these 112 stores, only 31 were selling lawn darts. Twenty-nine of the 31 were variety or department stores, one was a toy store, and one was a sporting goods store. Of the 31 stores selling lawn darts, 14 were in violation of lawn dart requirements. Violations consisted of displaying lawn darts for sale in a toy store or toy department (8 stores) or offering lawn darts for sale that violated labeling requirements (8 stores). Two stores were committing both types of violations.

The staff also identified 18 importers or manufacturers of lawn darts. Of these, 17 firms were distributing, or had recently distributed, lawn darts with labeling violations. Ten of these firms indicated that they do not intend to import, manufacture, or sell lawn darts in the future. Seven firms are known to intend to continue to import lawn darts.

With regard to whether the firms were willing to implement voluntarily the five actions requested at the July 17, 1987, meeting, one firm indicated that it would not comply voluntarily with the

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requests. Except for one firm that was undecided about whether it would sell lawn darts in combination sets with other games, the companies indicated that they would comply with the five requests on various, and sometimes indefinite, schedules.

The Commission received 11 comments on the ANPR that was published on October 20, 1987. After considering these comments and other available information, the Commission concluded that there was no feasible standard that could adequately reduce the risk of skull puncture injuries from lawn darts and that actions of the type that had been discussed with the industry previously will not be effective. Accordingly, the Commission proposed to ban any lawn dart that has a rigid elongated tip and that is intended to be used outdoors and thrown into the air so that it will stick in the ground, as well as similar products for outdoor use that are thrown in the same manner and are capable of sticking in the ground. The proposal was phrased in this manner because it was believed that any lawn dart that was capable of sticking in the ground would also present a risk of skull puncture injury. The express inclusion of both darts intended to stick in the ground and darts capable of sticking in the ground was intended to preclude arguments about subjective or unexpressed intentions. 53 FR 28657 (July 29, 1988).

Shortly before the Commission's scheduled meeting to consider whether to issue a final rule banning hazardous lawn darts, the Congress passed H.R. 5552, which provides:

> That notwithstanding any other provision of law, not later than 60 days after the date of enactment of this Act, the Consumer Product Safety Commission shall amend its regulations to revoke [the] exemption regarding lawn darts and other similar sharp-pointed toys contained in section 1500.86(a)(3) of title 16, Code of Federal Regulations, unless the Commission finds that such products do not have the potential for causing puncture wound injury.

On November 5, 1988, shortly after the Commission voted to ban lawn darts, this legislation was signed by the President. The action that the Commission is independently taking in this notice will fulfill the congressional directive. Furthermore, as discussed more fully below, the Commission is not aware of any lawn darts for which it can make the finding that the darts do not have the potential for causing puncture wound injury. The relationship between the Commission's action and H.R. 5552 is discussed in more detail in Section I of this notice.

B. The Product and the Scope of the Rule

Lawn darts are devices with elongated tips that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground tip first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. The type of lawn darts that have generally been available in the past and that have demonstrated their ability to cause skull puncture injuries typically have a metal or weighted plastic body, on the front of which is an elongated metal shaft about ¼ inch in diameter. These darts have a shaft on the rear of the body to which plastic fins are attached. These darts are about a foot in length and weigh about one quarter to one half pound. These darts are intended to stick in the ground when thrown.

Prior to the proposal, the Commission was aware of two additional types of games using devices that did not appear to present the risk of skull puncture injuries presented by the darts described above. One of these types uses a soft, usually plastic, body with an approximately hemispherical mushroom- or tulip-shaped head of relatively large diameter that is weighted so that the large end impacts the ground. This device is not considered to be lawn dart, and the Commission concluded that this type does not present a significant risk of skull puncture injuries.

Another type of lawn dart thought before the proposal, on the basis of the manufacturers description and allegation that the dart would not penetrate kraft paper, not to present the same risk of skull puncture injuries as do other elongated-tipped darts. This dart resembles the shape of the older type of lawn darts, but is lighter and the tip is made of a relatively soft and flexible material of about the consistency of a pencil eraser. Furthermore, the tip was described by the manufacturer as being mounted in a flexible base, so that the tip as a whole could also flex. These darts are designed to be used with a target that will entrap a dart that falls on the target.

Because the two types of devices described above were thought to not present the risk of skull puncture injuries presented by metal and rigid-plastic tipped darts, the preamble of the proposal stated that these tulip-shaped and extremely-flexible-tipped darts were not included within the scope of the proposed ban. However, subsequent tests by the Commission's staff of a sample of what was supposed to be the flexible-tipped dart described above showed that it could puncture a laminate that had been developed by the staff in an attempt to create a test target that could indicate when a dart presented a risk of puncturing a child's skull. (This laminate is discussed more fully in Section E(1)(j) of this notice.) Furthermore, this dart could easily puncture kraft paper, contrary to the manufacturer's previous representation. In addition, the dart is capable of sticking in the ground under conditions that could often exist when the darts are being used, and the dart would thus actually have been covered by the proposed ban.

Because the manufacturer's statements that the dart would not stick in the ground nor puncture kraft paper were not borne out by the staff's examination of the sample dart that was submitted, and because the dart penetrates the target laminate described above, the Commission is not able to find that this dart does not present a risk of skull puncture injury and should be excluded from the final ban. Accordingly, this dart is banned also.

As a result of comments on the proposed ban, the Commission became aware of other, prototype darts that visually resemble the older, rigid-tipped darts but that are lighter and have tips of plastic that are much more flexible than the metal-tipped darts that have caused skull puncture injuries and the rigid-plastic tipped darts that the Commission staff believes also present a risk of skull puncture injuries. Under some conditions, these darts are capable of sticking in the ground and were included within the scope of the proposed ban. After examining these prototype darts, the Commission's staff found that these darts also penetrated the laminate described above, thus raising the possibility that these darts present a risk of skull penetration injuries. The manufacturer of these darts has submitted no data that would show that these darts are incapable of such injuries, and the Commission finds that there are no differences in the functional or risk characteristics of these darts and darts that are known to have caused skull puncture injuries that would warrant not banning these darts. Therefore, these darts are also included in the ban.

The ban is not intended to include such items as arrows, horseshoes, javelins, penknives, and the like, nor is it intended to apply to indoor dart games that use a vertically-placed target, such as "English darts" or "American darts." The Commission intends for the ban to be severable as to different types of lawn darts. Thus, if the ban is held to be invalid as to any subcategory of lawn darts, the Commission intends that the ban will remain in effect as to the remaining types.

C. Risk of Injury

The risk that the Commission is addressing in this proceeding is that of puncture of the skulls of children caused by lawn darts being used by children. Since all lawn darts are being banned, the rule will also address all puncture wounds and other types of injuries caused by lawn darts.

As mentioned above, the potential for these devices to cause skull puncture injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves. This is because the tips do not appear sharp enough to present an obvious danger of puncture. The combined factors of weight, the narrow elongated shaft, the speed that the dart is traveling at the time of impact, and the thickness of the child's skull at the point of impact create the risk.

The Commission has predicted the potential for skull puncture injury by applying a mathematical model originally developed for bullets to estimate the probability of penetration of the skull by lawn darts with metal tips. The model estimates these penetration probabilities for various lawn darts parameters, such as tip diameter, dart weight, drop height, and skull thickness. From this model, a typical lawn dart weighing approximately ¼ lb., with a metal tip with a diameter of 0.5 cm (0.2"), and dropping from a height of 12 feet was estimated to have a probability of penetration of 37 percent for the average skull thickness of male and female children 3 years of age. It is reasonable to expect that a lawn dart will reach a height of twelve feet above a child's head during normal use. The probability of penetration increased to 92 percent for the minimum skull thickness of a three-year-old.

As noted above, the elimination of lawn darts that present an unreasonable risk of a skull puncture injuries will also eliminate the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries, that have been associated with lawn darts in the past. This also carries out the will of Congress expressed in H.R. 5552, which is discussed in Section I of this notice.

The Commission estimates that about 6,700 injuries from lawn darts were treated in U.S. hospital emergency rooms between January 1978 and December 1987. This represents an average of 670 injuries per year treated in emergency rooms. Approximately 57 percent of the injuries involved the head, face, eye, or ear. Just under 40 percent of the injuries were diagnosed as puncture wounds. Approximately 4 percent of the injured victims were hospitalized (on the average, approximately 25 per year), including all of the victims sustaining injuries reported as fractures. Over 75 percent of the victims were under age 15; about 50 percent of the victims were under age 10. In addition, Commission records dating back to 1970 show that at least three children have been killed by injuries associated with lawn darts. These children were 4, 7, and 13 years old.

In the 25 lawn dart injury reports for which information about the user of the lawn darts was available, the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

D. Statutory Authorities

If lawn darts as a class are deemed to be articles intended for use by children, the darts would be regulated under the provisions of the FHSA for mechanical hazards of children's products. Section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D); section 30(d) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2079(d). If at least some lawn darts were deemed to be children's products, while other lawn darts might not be children's products, a regulatory proceeding to address all lawn darts could be conducted either under both the CPSA and the FHSA or under the CPSA alone, after a finding that it is in the public interest to do so as provided in Section 30(D) of the CPSA.

An article intended for use by children which has been declared by rule to be a hazardous substance is banned under section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), unless exempted. To effect a ban of lawn darts under the FHSA, the Commission is revoking the exemption at 16 CFR 1500.86(a)(3) and making the necessary changes in the terms of the general ban at 16 CFR 1500.18(a)(4).

The Commission is authorized, under section 7 of the CPSA, to promulgate a mandatory consumer product safety standard which sets forth certain performance requirements for a consumer product or which sets forth certain requirements that a product be marked or accompanied by clear and adequate warnings or instructions. 15 U.S.C. 2056. A performance, warning, or instruction standard must be reasonably necessary to prevent or reduce an unreasonable risk of injury. In addition, if the Commission finds that no feasible consumer product standard under section 7 would adequately protect consumers from an unreasonable risk of injury associated with lawn darts, the Commission may promulgate a rule under section 8 of the CPSA declaring some or all lawn darts to be banned products. 15 U.S.C. 2057.

The procedures and requisite findings to accomplish any of the mandatory regulatory alternatives under consideration under either or both acts are essentially the same; both acts use a three-stage rulemaking procedure. At each stage of the rulemaking, the Commission is required to consider certain topics and make specified findings, particularly about the status of voluntary standards and about the costs and benefits of the contemplated rule.

The requirements for promulgating a mandatory rule are set out in section 9 of the CPSA, 15 U.S.C. 2058, and section 3(f) of the FHSA, 15 U.S.C. 1262(f). An advance notice of proposed rulemaking ("ANPR") is the first step of a regulatory proceeding that could lead to a safety rule. The second step of the rulemaking procedure is the issuance of a proposed rule, which is followed by public comment on the proposal. As described above, the first two steps have already taken place. The third step, which is accomplished by this notice, is the issuance of a final rule.

As explained above, the ban being issued in this notice with respect to any lawn darts not "a toy, or other article intended for use by children" is being issued under Sections 8 and 9 of the CPSA. As to the products covered by that ban, the Commission concludes there is at this time no feasible consumer product safety standard that would adequately reduce or eliminate the risk of skull puncture injury.

Section 9(d)(1) of the Consumer Product Safety Act provides that the Commission shall either promulgate a consumer product safety rule or withdraw the proposed rule within 60 days after publication of the proposal, unless the Commission extends the 60-day period for good cause and publishes its reasons therefor in the **Federal Register**. In the case of the final ban of lawn darts, a 30-day period was provided for the submission of public comments on the proposal. Due to the need to consider the public comments, particularly the issue of whether any flexible-tipped darts should be exempted from the ban, and due to the

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time required to prepare the staff's briefing materials and to prepare and revise the **Federal Register** notice to issue the ban, the rulemaking could not be concluded within the remaining 30 days of the 60-day period provided in section 9(d)(1) of the CPSA. Accordingly, for the reasons discussed above, the Commission extends the time for either promulgating the final ban or withdrawing the proposal until November 18, 1988.

In addition, on November 5, 1988, the President signed legislation directing certain action by the Commission with respect to lawn darts. This legislation is discussed in Section I of this notice.

E. Responses to the Proposal

The Commission received 13 written comments on the proposal. Comments opposed to the proposed ban were received from three firms which manufacture or distribute lawn darts, one former dart distributor, and the Sporting Goods Manufacturers Association. Comments in favor of the proposed ban were received from the Consumer Federation of America, the New York State Consumer Protection Board, the Puerto Rico Department of Consumer Affairs, the Michelle Snow Foundation (named after a child killed by a lawn dart injury), the Minnesota Attorney General, the town of Babylon, New York, an attorney who has represented a child injured by a lawn dart, and the mother of a child injured by a lawn dart.

In addition to written comments on the proposal, the Commission provided an opportunity for the oral presentation of comments, as required by section 9(d)(2) of the CPSA for consumer product safety rules, which was held on August 9, 1988. Two persons made presentations to the Commissioners at that time. One was the Vice President of Sales and Marketing for the domestic manufacturer of lawn darts, and the other was President of a company that markets those darts.

The significant issues raised by the comments, and the Commission's views on those issues, are explained below.

1. Comments opposed to the ban.

a. *Lawn darts are not unsafe compared to other products.* Several comments contended that it was unreasonable to ban lawn darts when other products that are not being considered for a ban injure more people. Examples given by the commenters of unregulated, but nonetheless dangerous, products included alcohol, tobacco, firearms, arrows, knives, javelins, English or American darts, sharp-pointed projectiles in general, horseshoes, bicycles, baseballs, bats, scooters, roller skates, skateboards, surfboards, "Saturday night specials," and drunk drivers.

In considering the substance of these comments, it is important to keep in mind that the Commission has no statutory authority to regulate risks assocated with alcoholic beverages, tobacco, firearms or their use, or motor vehicles or their use. Thus, any consideration of the reasonableness of regulating those risks is outside the Commission's statutory mandate.

As to the other products mentioned by the commenters as more dangerous than lawn darts, but not banned, the Commission notes that these products each present a unique combination of factors relevant to the decision of whether regulatory action is warranted. Among the factors the Commission is required to consider in determining whether to issue a performance standard or ban applicable to a product are: the number of deaths that will be prevented by the action; the number and severity of the injuries that will be prevented; the cost of the regulation for industry and consumers; and the need of the public for the consumer product subject to the rule, and the probable effect of the rule upon the utility, cost, or availability of such product to meet such need.

From the partial list given above of factors the Commission must consider in deciding to ban, or take other action with respect to, a product, it is clear that lawn darts differ markedly from the other products mentioned by these commenters with respect to the need and desire of the public for the product. There appears to be no strong attachment of the public to the game of lawn darts. Not one commenter wrote in to protest the proposed ban in his or her capacity as a recreational user of lawn darts. Thus, unlike most of the other games mentioned by these commenters, there is relatively little public desire for lawn darts that cannot be satisfied in other ways. Furthermore, there are numerous other lawn games that do not represent a risk of puncture injuries, including skull punctures, that could supply equivalent recreational value.

The stronger desire of the public for the other products listed by the commenters and the lack of equivalent substitutes for them are factors the Commission is required by statute to consider in determining whether such products should also be banned. In effect, the desire of the public for a product is a factor that could completely or partially offset, from a public policy standpoint, the deaths and injuries caused by the product. Therefore, the mere fact that other, more desired, products that produce more deaths and injuries are not banned does not lead to the conclusion that it is unreasonable or illogical to ban lawn darts.

b. *Low injury rate.* Commenters also argued that lawn darts should not be banned because the rate of three deaths in 17 years and 670 injuries treated annually in emergency rooms is quite low, especially considering that perhaps 1.5 million sets of darts are sold each year. The Commission agrees that this is a relatively low figure for deaths and injuries as recreational activities go. Nevertheless, the benefits of banning this product, even considering the desire of the public for it, bear a reasonable relationship to the costs of doing so. While the Commission does not take the idea of banning any product lightly, the availability of similar but non-lethal forms of recreation makes the continuation of these tragic injuries an unacceptable alternative.

c. *Darts not subject to current regulations.* A commenter noted that the earliest of the known deaths occurred before the currently required warnings and instructions were widely adopted. However, the later death and injuries show that these warnings and instructions are not completely effective in keeping these darts out of the hands of unsupervised children, and the early deaths still show the potential of the darts to cause death when used by children. Furthermore, even if the early deaths had not occurred, the costs and benefits of the ban would still bear a reasonable relationship to each other.

Commenters also noted that the latest known death from a lawn dart was caused by a dart that had been modified by removing the plastic fins from their original shaft at the rear of the weighted body of the dart and attaching the fins to the larger diameter shaft originally intended to serve as the tip. This modification results in the dart impacting on the original fin shaft, which is smaller in diameter than the original tip. The information available to the Commission's staff conflicts with the assertions of some commenters that the dart involved in this incident had been sharpened in some way.

The Commission's Engineering staff estimated that this modification would increase the chance of skull penetration or other serious injury by a factor of 1.6, based on the difference in diameters between the modified dart's tip and the intended tip. The Commission is unable to conclude whether this difference would have been sufficient to prevent the death in question had the dart not been modified. However, even if the dart had not been modified, there would

have been considerable potential for death or serious injury in this incident, and the fact that the dart was modified does not make the Commission conclude that a ban is unnecessary.

d. *User's responsibility.* Commenters pointed out that if the manufacturer's directions are followed, there will not be any injuries of children caused by other children using lawn darts. A commenter characterized the circumstances surrounding lawn dart injuries as a "total violation of common sense as well as explicit directions."

The deaths and injuries that continue to occur have made it clear that the present warnings and marketing restrictions have been insufficient to keep these products out of the hands of children, who will find them attractive and wish to play with them at least occasionally. The Commission staff's analysis of consumer attitudes and behavior (discussed in paragraph (e) and Section F, below) has indicated that further measures to market lawn darts only for adults would not prevent use by children. Particularly since the hazard of skull puncture is not necessarily apparent from a casual examination of the darts, the Commission does not believe that parental responsibility alone will prevent the injuries and deaths that would result from the continued sale of this product.

It is also unrealistic to hold children to standards of behavior and responsibility that would be appropriate for adults. Children cannot always be expected to exercise "common sense" when playing with a potentially dangerous object, especially when the danger is not necessarily obvious.

Thus, the Commission does not find these objections to the ban persuasive.

e. *Additional labeling and marketing restrictions.* Commenters argued that the additional five steps described in Section A of this notice will adequately reduce the risk. One commenter stated his belief that industry would voluntarily cease marketing lawn darts in combination sets with other games.

In order to determine whether these types of actions would be an adequate way to deal with the risk to children, the Commission's staff analyzed available information on consumer attitudes and behavior. This analysis is discussed in Section G of this notice under "Alternatives to the rule." After considering the staff analysis, the Commission concluded that efforts to market lawn darts for adult use only cannot be expected to preclude significant use by children. Accordingly, the Commission concludes that the actions under consideration previously will not adequately deal with this risk.

f. *Freedom of choice.* Commenters argued that a ban would violate the concept of "freedom of choice" that is an important part of living in a free society. While it is true that any ban, and many other regulatory actions, involve a restriction on choices available to various groups, the Commission has a responsibility to see that the marketing of products does not disregard the public interest in product safety. After considering the desire of the public for lawn darts in conjunction with the other costs and benefits of the proposed ban, the Commission concludes that the ban is warranted, for the reasons discussed above in the responses to other comments on the proposal.

g. *Inventory.* In the proposal, the Commission predicted that a ban that became effective in November would involve relatively few sets of lawn darts that were in the chain of distribution at that time. A manufacturer, however, commented that it had raw materials for about 50,000 sets, and a distributor commented that it had about 53,000 sets in inventory, which would involve a loss of over $100,000.

These adverse effects are within the range of effects that had been predicted by the Commission staff at the time of the proposal. In view of the need to curtail the deaths and injuries from lawn darts as soon as possible, and considering the vulnerable population involved, the Commission concludes that the adverse economic effects described by these commenters are insufficient to warrant abandoning or delaying the prohibition of hazardous lawn darts. See the discussion below concerning effective date.

h. *Effective date.* A commenter urged that the effective date be set so that wholesalers and retailers could exhaust their inventories before the prohibition becomes effective. This, according to the commenter, would involve an effective date of January 31, 1989, for wholesalers and an effective date of August 31, 1989, for retailers. The commenter contended that short-term demand for the product has been killed by adverse publicity and that therefore the only persons who would buy the darts during the extended period of the effective date would be persons who are specifically interested in having lawn darts.

As discussed in previous section (g), and in section G of this notice under "Costs," the Commission has concluded that the costs to manufacturers, wholesalers, and retailers of an effective date that is 30 days after publication of this notice are warranted in view of the need to restrict the number of sets of lawn darts going into the hands of consumers, some of which could be expected to cause further injuries or deaths to children who ultimately would be exposed to the darts in these sets. The commenter's argument that only persons interested in lawn darts will buy them if the effective date is extended is speculative, and, in any event, there is no reason to conclude that such darts will not end up being accessible to children. Accordingly, the Commission has decided not to extend the effective date for the purpose of allowing the exhaustion of inventory.

i. *One-time use.* A commenter expressed his belief that lawn darts are bought for special one-time occasions and are discarded after that use. This view conflicts with what the Commission staff has found in in-depth investigations of lawn dart incidents. Furthermore, even if this were true, the deaths and injuries that have occurred would have occurred in spite of that fact. Therefore, the Commission concludes that this argument contains no reason why a prohibition of lawn darts should not be implemented.

j. *Flexible tips.* In the proposal, the Commission noted that a type of lawn dart with a tip that was about as flexible as a pencil eraser, which the manufacturer stated was not intended to stick in the ground and would not pierce kraft paper, was not capable of sticking in the ground. This statement was based on the manufacturer's representation. In addition, during the comment period, two other types of darts were mentioned as possibly presenting less of a skull puncture hazard than the metal- or rigid-plastic-tipped darts that have been generally marketed in the past.

One of these darts was a nylon-tipped dart that the manufacturer contends is lighter and more resilient than the metal-tipped darts. According to the commenter, no customer complaint or insurance claim has been made with respect to this type of dart during the 8 years the commenter has marketed the product. The lack of complaints or insurance claims notwithstanding, the Commission's staff examined an example of that dart and concluded that its tip was sufficiently rigid and that it was sufficiently heavy that it presented a risk of injury similar to that of metal-tipped darts. Accordingly, the Commission concludes that it would not be appropriate to exclude this nylon-tipped dart from the category of prohibited lawn darts.

The other type of dart that was presented to the Commission as being less hazardous was one that had been developed by a commenter. The commenter, however, provided no data

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by which the Commission could evaluate the potential for skull puncture presented by this dart. The dart in question had a tip that the Commission staff believes is made of polyethylene and that is much more flexible than the nylon tip discussed in the preceding paragraph.

The first sample of this flexible-tipped dart obtained by the Commission's staff was dropped onto a laminate intended to simulate the puncture resistance of a child's skull. The dart was dropped from 25 feet and did not penetrate the upper layer of the laminate. However, that particular dart had been manipulated by numerous persons at the Commission, who had manually bent its tip to see how stiff it felt, before the dart was tested by the drop test. This handling may have bent the dart's tip or made it more flexible. Other, supposedly identical, samples of this dart failed the drop test. In addition, some darts will pass the test on some attempts and fail it on others, thus raising a question about the reproducibility of the test. These differing results may be due to slight differences in the angle at which the dart hits the target when dropped or to other, unknown factors. Although the Commission ultimately decided not to promulgate the drop test as part of the regulation, the results obtained were sufficient to indicate that these flexible-tipped darts may have the potential for skull puncture injury and for other puncture wound injury.

For the reasons stated above, the Commission is unable at this time to find that there are differences in the functional or risk characteristics between these flexible-tip darts and rigid-tip darts that would warrant excluding flexible-tip darts from the ban issued below.

k. *Homemade darts.* One commenter stated that if lawn darts were not sold, consumers would make their own versions that could be more dangerous than the ones now on the market. This comment appears to be entirely speculative.

l. *Repurchase and returns.* The proposal stated the rule "does not require the repurchase of prohibited lawn darts by manufacturers, marketers, or retailers who have sold the darts to the next entity in the chain of distribution or to consumers." The Sporting Goods Manufacturers Association asked for clarification of this statement. Further discussion of this statement is given below.

The quoted statement was included in the proposal to make it clear that the rule does not require any manufacturer, marketer, or retailer to repurchase lawn darts sold before the effective date of the ban. Therefore, the only real obligation these parties would have to repurchase such lawn darts would depend on the contractual or other obligations between the seller and the purchaser arising under state or local law.

Of course, this interpretation is not intended to limit in any way the Commission's authority to seek relief against noncomplying products, or products with particular defects, under section 15 of the CPSA, 15 U.S.C. 2064, or Section 15 of the FHSA, 15 U.S.C. 1274. Relief under these sections could include repair, replacement, or refunds, if a substantial product hazard is proven. Nor is it intended to restrict in any way a manufacturer, distributor, or retailer that might wish to voluntarily issue a refund to its customers.

2. *Comments supporting the ban.* As noted above, 8 of the 13 comments received on the proposal supported prohibiting the sale of hazardous lawn darts. Among the reasons stated were: that because of lack of supervision or education, the product finds itself in the hands of very young consumers; that warnings have not been effective; and that selling only in stores other than toy stores does not convey the message that lawn darts are for adult use only. The mother of an 8-year-old boy who was permanently injured while throwing a lawn dart explained the seriousness of the injury to the boy's eye, noted that the medical expenses already exceeded $20,000, and stated that the dart involved did not belong to the boy or his family.

Some comments pointed out particular violations of the Commission's current regulations, and that, in some cases pointed out by the Minnesota Attorney General, the companies involved had agreed to stop selling lawn darts.

Some comments urged the Commission to recall darts now in the hands of consumers, in addition to banning futures sales. The Commission has the authority to order refund, replacement, or repair of certain hazardous products under specified circumstances under section 15 of the CPSA and section 15 of the CPSA, 15 U.S.C. 1274, 2064. However, the Commission does not believe that recall would be appropriate or effective in the case of lawn darts, for the following reasons.

The lawn darts now in the hands of consumers were legally sold pursuant to a specific exemption provided in the FDA regulation subsequently administered by the Commission and republished as 16 CFR 1500.86(a)(3). After administering a regulation that specifically allowed the sale of these products, the Commission does not consider it appropriate to seek a recall unless such action is clearly warranted. However, as explained in the following paragraph, it is not at all clear that a recall would result in a substantial number of refunds for the consumer or that the benefits of such action would warrant such a potentially expensive remedy.

The experience of the Commission's staff in examining used lawn darts is that it is usually impossible to determine the identity of the manufacturer or importer of the dart. This is because of the similar design of the darts and the lack of permanent labeling identifying the manufacturer or importer. Without the ability to determine which manufacturer or importer is associated with a particular dart, the remedy of a recall is not likely to be effective or in the public interest.

Furthermore, lawn darts are relatively inexpensive and can be discarded by consumers who no longer desire them. The Commission is unable to find at this time that the substantial costs that would be incurred by manufacturers or importers to give refunds and administer a refund program would be warranted.

A commenter urged that the Commission institute an information campaign using "wanted posters" showing lawn darts. The Commission intends to continue its information efforts about lawn darts that are already in the hands of consumers, and the Commission staff will consider whether the commenter's idea can be used for lawn darts or other products, as appropriate. Since this issue is separate from the question of whether to issue a ban of lawn darts, it need not be fully resolved at this time.

A commenter urged that the prohibition of lawn darts be put into effect as soon as possible, in order that products in inventory not be dumped on the market before the effective date. The Commission believes that the 30-day effective date provided in the rule issued below will accomplish the result desired by this commenter.

F. Regulatory Analysis

Introduction

The Commission has determined that even lawn darts that arguably are intended for the use of adults are likely to be used by children at various times. Accordingly, the Commission is taking action under both the FHSA and the CPSA, so as to reach all lawn darts, which have been determined to present a risk of skull puncture injuries and other puncture wounds to children, and to eliminate potential arguments about whether any lawn darts can be considered to be intended for use by adults.

Under Section 3(i)(1) of the Federal Hazardous Substances Act ("FHSA") and Section 9(f)(2) of the Consumer Product Safety Act ("CPSA"), the Commission is required to publish with the regulation a final regulatory analysis containing

(A) A description of the potential benefits and potential costs of the regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs.

(B) A description of any reasonable alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential costs and benefits and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

15 U.S.C. 1262(i)(1), 2058(f)(2).

In addition, for proposed rules, section 9(c) of the CPSA and section 3(h) of the FHSA provide that the Commission shall publish a regulatory analysis containing:

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits or bear the costs

(2) a discussion of the reasons any standard or portion submitted to the Commission * * * was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed [to develop voluntary standards] * * * would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury * * *

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

15 U.S.C. 1262(h), 2058(c).

While the requirements under the FHSA and the CPSA are similar, Section 9 of the CPSA requires further that, for rules issued under the CPSA, the Commission shall make economic findings with respect to:

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule on the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

15 U.S.C. 2058(f)(1).

The following discussion serves as the final regulatory analysis for the ban that is issued below. The discussion addresses requirements under both the FHSA and CPSA, except where noted.

Benefits

The benefits of the rule will accrue through a decrease in the deaths and injuries associated with lawn darts. While the rule was originally intended to address the risk of skull puncture injuries to children, all lawn darts are found to present this risk, and their elimination will also eliminate the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries, that have been associated with lawn darts in the past. This also fulfills the will of Congress expressed in H.R. 5552, which is discussed in Section I of this notice.

An analysis by the Commission's Directorate for Epidemiology indicates that about 670 lawn-dart-related injuries have occurred annually over the last ten years. Economic studies indicate that the average cost of these injuries was about $7,500 per occurrence. The estimated total yearly cost of injuries associated with lawn darts is about $5 million.

The Commission is aware of 3 deaths associated with lawn darts over the period 1970–1987. If it is assumed that other variables, such as exposure and use characteristics, have remained constant and that the Commission is aware of all such deaths, the darts may present a 17 percent risk of one death in a given year. If a statistical valuation of $2 million for loss of life were assigned, lawn darts would have additional expected losses of about $300,000 per year.

Therefore, the estimated total yearly costs of death and injury associated with lawn darts are about $5.4 million. A reduction of these injuries and of the risk of death will make up the benefits accruing from the rule. Since the average useful life of a lawn dart is estimated to be ten years, and since it should take about 20 years to phase out the lawn darts that are currently in consumers' hands, a portion of the benefits of the rule will phase in each year, until, after about 20 years, the full benefit of the rule will accrue each year and will continue as long as the rule is in effect.

The benefits derived will be further affected by the choice of substitute activities. For example, if consumers chose a risk-free lawn game as a substitute, the reduction in injury would be completely realized after the existing stocks of elongated-tipped lawn darts in consumers' hands have become worn out, been misplaced, or otherwise passed from use. However, if consumers choose a substitute with a similar or higher risk of death or injury, the expected benefits of this action will be offset.

The benefits will be to purchasing consumers and their families and friends, but will accrue disproportionately to those 15 years old or younger, since over 75 percent of injuries and 100 percent of the deaths have occurred to this age group. Both the costs and benefits associated with a prohibition on the sale of elongated-tipped lawn darts are expected to be relatively small.

Costs

The costs of the rule to marketers of elongated-tipped lawn darts are the loss of future sales of a product with a demonstrated steady demand. Annual sales of these lawn darts are estimated at 1–1.5 million units, holding relatively stable in recent years. The typical retail price of a set of four lawn darts is about $5; thus, the total loss of sales will be about $5–7.5 million annually at the retail level. The intermediate and final markups of these products have been estimated at more than 50 percent of the retail price; thus, industry revenues from the sale of elongated-tipped lawn darts likely exceed $2.5 million annually. These revenues will be eliminated. However, the loss of these revenues could be largely recouped by sales of substitute products that will occupy the display and storage space previously allotted to lawn darts.

The vast majority of lawn darts sold in the U.S. are imported. However, the value of these imports is so small as to be negligible compared to total U.S. imports. There are no known U.S. exports of lawn darts. Thus, the rule is expected to have no effect on U.S. trade.

The one known domestic manufacturer will bear costs associated with the disposal of molds and production processes associated with the manufacture of these lawn darts as well as foregone profit on future sales. The manufacturer could produce lawn

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darts for export, but this is considered unlikely since the firm does not now export lawn darts and is unlikely to develop overseas markets rapidly. If production machinery is adaptable to the manufacture of another product for which there is a demand, the cost effect may be minimized. If molds and machinery are scrapped, and no available substitute is produced to offset lost sales, the domestic manufacturer may incur significant economic costs. Also, this manufacturer has indicated that it will have raw materials for about 50,000 sets of lawn darts. If other uses for these materials cannot be found, the cost of acquiring these materials will not be recouped.

The impact of lost sales of lawn darts will be the loss of net profit associated with production and marketing of these products, less any profit derived from other products marketed in their stead.

The distributional effect on marketers will depend on their share of the market and on what share they may take of the sale of substitute products. Importers and retailers will similarly be affected by the extent of the relative volumes they sell of these goods.

Costs borne by consumers will take two forms. Consumers will be unable to purchase a game which has a proven popularity and will be induced to purchase alternate games to fill that demand. There are ready substitutes available, at approximately the same price; however, it is not clear whether these substitutes provide a similar level of utility (enjoyment) as the products they would replace. If consumers are compelled to purchase more costly games in order to receive the same utility as that provided by prohibited lawn darts, the rule may result in increased costs to consumers. Further, there may be a loss in consumer surplus associated with the unavailability of lawn darts if consumers were willing to pay more than they now pay at retail for the game in order to acquire it, thus indicating that they value the product in excess of the retail price. The extent of any lost consumer surplus is unknown, but is expected to be small.

The Commission has anecdotal information indicating that elderly persons may play lawn darts more than other typical adults do. The Commission has no information to indicate the extent to which handicapped persons may play lawn darts. Either of these groups, however, should be able to find suitable recreational substitutes for lawn darts.

The domestic manufacturer and certain marketers and retailers may be considered small businesses. The overall effect of the rule on the domestic manufacturer may be substantial, but other small businesses are not expected to experience significant adverse effects associated with the rule. This issue is discussed further in Section G of this notice.

It is likely that the marketing firms (wholesalers and private labelers) will initially bear the costs associated with the rule. The costs, including those of retrieval and disposal of unsaleable inventories and foregone profits, will begin on the effective date, which, as discussed below, is December 19, 1988, and applies to all products in the chain of distribution at that time.

Since the commission is making the rule banning elongated-tipped lawn darts effective 30 days after the publication of the final rule, and since the rule applies to all such lawn darts in the chain of distribution on the effective date, the potential for injuries from darts distributed before the effective date will be minimized. Also, the Commission believes that at this time of year there will be fewer sets of lawn darts at the retail level or elsewhere in the chain of distribution. Furthermore, the industry will have had the opportunity not to enter into contracts for new goods pending a Commission decision, thus further reducing any inventory in the chain of distribution and other economic consequences of the rule. Therefore, the Commission believes that costs caused by inventory being held on the effective date of the rule will not be substantial.

The Commission also does not expect that the cost to retailers due to foregone profits from the sale of lawn darts will be substantial, since other products could be promoted in the retail space vacated by the prohibited products.

Comparison of Costs and Benefits

As explained above, the quantifiable benefits of the rule are based on an estimated saving of the $5.4 million annual cost of deaths and injuries once lawn darts are no longer in use. This figure could be offset to the extent that consumers choose to engage in activities that involve risk during the time they would otherwise be playing lawn darts.

The quantifiable costs will consist basically of lost industry revenues, which are estimated at somewhat more than $2.5 million per year. However, the loss of these revenues can be largely recouped by the manufacture and sale of substitute items. Unquantifiable costs, discussed above, include consumers' loss of enjoyment of lawn darts.

After considering the costs and benefits of the rule, the Commission concludes that the benefits of the rule will bear a reasonable relationship to its costs.

Alternatives to the Rule

The Commission has determined that the rule is needed because industry actions of the types discussed in Section A to address the potential hazard presented by lawn darts would not be adequate. The five actions previously under consideration are: modifications to package labels, labeling one fin of each lawn dart, inclusion of a consumer warning against modification of the lawn darts, notice to retailers on the proper display of the games, and elimination of lawn dart sales in combination sets. The cost of implementing the five steps has been estimated at $150,000 the first year, decreasing to about $100,000 thereafter. If the five voluntary steps were to be about 2 percent effective in reducing injuries, the benefits derived through injury reduction would exceed the costs associated with compliance. However, the Commission believes that these voluntary steps may not be adhered to by all marketers and that, in any event, as discussed below, this approach would not be effective in adequately reducing the risk of injury presented by these products.

In order to determine whether attempts to ensure that lawn darts will be marketed for adults could be an effective way to deal with this risk, the Commission's staff analyzed information on consumer attitudes and behavior. The staff concluded that efforts to market lawn darts only for adult use may not prevent use by children, for the following reasons:

1. Selling lawn darts in stores other than toy stores, such as sporting goods departments, does not convey the message that lawn darts are for adult use only.

2. Consumers may recognize that lawn darts require motor and strategic skills similar to those required for other sports equipment designed for and/or used by children and, therefore, conclude that they are appropriate for children who have these skills.

3. Labeling lawn darts for adult use only may not convince parents that lawn darts are inappropriate for children. Parents may not consider the game particularly hazardous, especially in comparison to other products used by children.

4. It may be difficult for parents to prevent children from using lawn darts, as they are often used at large, casual gatherings with little or no supervision provided.

5. Parents sometimes have no knowledge that children are using lawn darts.

After considering this analysis of consumer attitudes and behaviors, the Commission concluded that efforts to market lawn darts for adult use only cannot be expected to preclude substantial use by children. Specifically, the marketing and labeling provisions in the current regulations, either by themselves or supplemented by the five actions requested of industry by CPSC, cannot be expected to accomplish the intended purpose. Furthermore, lawn darts do not require complex skills that preclude use by children. Therefore, the Commission believes children will continue to be attracted to and play with lawn darts, even if the product is marketed only as a game of skill for adults. Accordingly, the Commission concludes that no effort to develop a voluntary standard based on these types of requirements will adequately reduce the risk associated with lawn darts.

The Commission could also promulgate the voluntary actions as a mandatory rule. The expected costs and benefits of a mandatory rule would be similar to the cost of voluntary action, assuming 100 percent compliance. This action would have the additional effect of ensuring compliance by existing marketers as well as any future entrants. However, the Commission's concerns over effectiveness, described in the preceding paragraph, would remain.

As discussed previously in this notice, the Commission investigated a performance test to see if it could be determined that certain flexible-tipped lawn darts do not present an unreasonable risk of skull puncture injury. For the reasons given in Section E(1)(j) of this notice, the Commission concluded that there was insufficient information to determine that flexible-tipped darts do not also present a risk of skull puncture injuries.

Effective Date

The time allowed after promulgation for the final rule to go into effect, and the point in the chain of distribution to which the rule will be applied, affect the extent to which the industry will experience adverse economic effects from the rule. These adverse effects could be minimized by setting an effective date that facilitates an orderly elimination of affected products from the marketplace. Such an effective date would allow for exhausting wholesale and retail inventories to reduce the number of products that would require shipment to an alternate market or that would have to be discarded. Absent sufficient lead times, manufacturers estimate the cost of compliance with the rule may be substantial. However, as discussed below, the effect of lead time may depend on the time of the year the regulation goes into effect.

Even though a long lead time may reduce the cost of the rule for manufacturers, the longer it is before the rule becomes effective, the more lawn darts could be sold and the greater the number of injuries or deaths which otherwise would have been prevented by an earlier effective date. In view of the need to reduce the injuries and deaths associated with this product as soon as possible, the Commission concludes that the early effective date, 30 days after promulgation of the rule, is reasonably necessary to eliminate or reduce the unreasonable risk of skull puncture injury associated with lawn darts.

As noted above, this rule is effective December 19, 1988. Having the rule effective at this time of year could cause firms to bear significantly increased costs because of contractual obligations to manufacturers, unless marketers took some anticipatory action. Winter and early spring historically are the periods of seasonal reorder and inventory buildup for seasonal sales of lawn darts.

The Commission has considered the potential effects of other effective dates on the industry and on possible future injuries. If the rule were to affect only products manufactured (or imported) after the effective date, the most acute impact to marketers would occur if the effective date were during the winter and early spring period of reorder. However, in view of the advance notice to the industry of the probability that the Commission could take final action on the proposal in the fall of this year, it seems likely that marketers will have delayed placing such orders pending a Commission decision on the final rule.

If the rule were based on first entry into commerce (first sale), marketers would be most adversely affected during the period of inventory buildup, which is early spring to midsummer. Again, marketers may have curtailed or delayed inventory buildup in anticipation of the possibility that a final rule would apply to products in their inventory on the effective date.

Comments on the Proposal

A summary of the significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues, are included in section E of this notice.

G. Regulatory Flexibility Analysis

Introduction

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that whenever an agency conducts a rulemaking proceeding under 5 U.S.C. 553 and is required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a preliminary regulatory flexibility analysis at the time of the proposal and a final regulatory flexibility analysis when the rule is issued. These analyses are required if the rule may have a significant impact on a substantial number of small businesses, small organizations, and small government jurisdictions. The agency is required to publish the preliminary regulatory flexibility analysis or a summary in the **Federal Register** and to make copies of the final regulatory flexibility analysis available to members of the public. The Commission's final regulatory analysis on the ban of lawn darts is given below. Copies may be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

The rule will affect all firms manufacturing, importing, or retailing lawn darts and may have a minor impact on some firms in the outdoor game industry that market lawn darts. Lawn darts represent about 5 percent of the total value of production of affected firms on the average, but individual firms indicate that these products represent as little as 1 percent and as much as 50 percent of gross revenue.

Statement of the Need for the Rule

Lawn darts intended for use by children are banned under the Federal Hazardous Substances Act, FHSA, at 16 CFR 1500.18(a)(4) and 1500.86(a)(3), but sale has been allowed under an exemption provision if certain warning labeling and retail display requirements are met. The Commission is concerned that, despite the regulation designed to discourage their use by children, lawn darts continue to be used by children. As a result, the products continue to present a risk of injury or death to children. Commission studies indicate that about 670 lawn-dart-related injuries were treated in hospital emergency rooms yearly from 1978 forward; three deaths have been reported over a 17-year period.

Objective of the Rule

The objective of the rule is to eliminate the risk of injury or death to children posed by skull punctures

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caused by lawn darts. All lawn darts have been found to present a risk of skull puncture, so the rule will also serve to eliminate the other types of wounds, including other puncture wounds, caused by lawn darts. The rule prohibits the sale of lawn darts in combination sets with other outdoor lawn games, as well as in sets of darts only. This action also carries out the will of Congress as expressed in H.R. 5552, which is discussed in section I of this notice.

Comments on the Initial Regulatory Flexibility Analysis

The Commission received no comments that were identified specifically as being in response to the initial regulatory flexibility analysis. However, the Commission's responses to comments that address issues that were mentioned in the initial regulatory flexibility analysis are included in section E of this notice dealing with comments on the proposal.

Alternatives to the Rule

The Commission also could take other regulatory actions, including mandatory requirements for increased package labeling, a warning label on one fin of each lawn dart, notice to consumers warning against modification, informing retailers of their responsibilities under current law, and prohibiting the sale of lawn darts in combination sets. Such actions would notify adults of the danger presented by lawn darts if used by children, and would remove these games from combination sets since consumers otherwise may infer that all games in the sets are appropriate for general family use. This alternative would result in a minimal adverse effect in the year of introduction, with little cost effect thereafter. The Commission believes that this alternative will not be effective in reducing skull puncture injuries to children, given the easy access that children normally have to the game after it is purchased and the skill and judgment required to play the game safely. Similar effects would be expected if these actions were voluntarily adopted by the industry.

The Commission could also use a different effective date. The effects of different effective dates, and the reasons they were not adopted by the Commission, are discussed in section G of this notice.

The Commission also investigated whether a performance test could be developed to determine which lawn darts present a risk of skull puncture injuries, but, as explained in section E(1)(i), such a test is not believed to be feasible at this time.

The Commission has investigated ways of reducing the potential impact on small firms and concludes that no less burdensome alternative would adequately address the risk of injury to children.

H. Environmental Impact

Pursuant to The National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has prepared an assessment of the environmental impact associated with the rule issued below and of the proposed penetration criteria. The assessment addresses the potential environmental effects of the prohibition of the sale of lawn darts.

The rule will make preexisting packaging materials unusable for their intended purpose and, absent a residual use, would necessitate destruction of these materials. The Commission anticipates that less than 10 percent of preprinted packaging will remain after the imposition of the effective date; thus, less than about 150,000 boxes and printed instructions will be destroyed. The rule will also affect existing molds for fabricating lawn darts, because the existing molds likely will be destroyed. There is one existing domestic manufacturer of lawn darts subject to the rule. The number of individual molds involved is not believed to be substantial.

Since it appears that existing inventories of noncomplying lawn darts are low, the ban is not expected to cause a significant increase in discarded packaging material, other printed materials, or noncomplying sets.

In the industry, molds are periodically changed because of age or design modifications. Given the relatively small number of individual printing plates and molds affected, the Commission expects that the rule will cause no significant change in the disposal of used printing plate material or used molds.

The requirements of the rule are not expected to have a significant effect on the materials used in production or packaging of lawn darts or on the amount or types of materials discarded after the rule. Therefore, the Commission finds that the prohibition of hazardous lawn darts will cause no significant environmental effects.

I. H.R. 5552

Shortly before the Commission's scheduled meeting to consider whether to issue a final rule banning hazardous lawn darts, the Congress passed H.R. 5552, which provides:

> That notwithstanding any other provision of law, not later than 60 days after the date of enactment of this Act, the Consumer Product Safety Commission shall amend its regulations to revoke [the] exemption regarding lawn darts and other similar sharp-pointed toys contained in section 1500.86(a)(3) of title 16, Code of Federal Regulations, unless the Commission finds that such products do not have the potential for causing puncture wound injury.

On November 5, 1988, this legislation was signed by the President. The following discussion explains how this legislation relates to the rule the Commission is issuing in this notice.

It is important to note that the rule that the Commission is issuing fully complies with the congressional directive. Based on the risk of skull puncture, the Commission is banning all lawn darts; part of the mechanism for implementing that ban is to revoke the exemption at § 1500.86(a)(3), as provided in the legislation.

The legislation allows the Commission to exclude from the scope of the revocation of the current exemption those products that the Commission finds "do not have the potential for causing puncture wound injury." However, as noted above, the Commission has considered this issue and is not aware of any lawn dart that does not present a risk of skull puncture injuries, much less of puncture wounds in general.

The legislation appears to change the requirements for evidence to support the Commission's rulemaking for this particular product from (1) having to amass substantial evidence to show that the product is unreasonably dangerous in order to ban it to (2) having to have substantial evidence to show the product does not present a risk of puncture wound injury in order to exclude it from being banned. This has no effect on the rule being issued, because the Commission has concluded that all lawn darts present an unreasonable risk of skull puncture injuries. The Commission has examined the question of whether there are any lawn darts that appear not to have the potential for causing puncture wound injury and cannot find that there are any lawn darts that do not have this potential. This reversal of the normal burden of proof would have significance for persons who wish to request that the Commission exempt particular products from the scope of the ban. Such persons will have to provide evidence that the product to be exempted does not have the potential for causing puncture wound injury. This is a higher burden than that which would normally be required to obtain an exemption; namely, that the ban is not reasonably necessary to address an unreasonable risk of injury.

Thus, the Commission's action fully complies with the provisions of H.R. 5552, and that bill provides additional legal support for the Commission's ban. Furthermore, the Commission's ban will supplement the bill's provisions, because the Commission is issuing a ban of lawn darts under the CPSA in addition to revoking the exemption to the current ban under the FHSA. The significance of this action arises from the fact that mechanical hazards of products can be regulated under the FHSA only if the product is a "toy or other article intended for use by children." FHSA 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D). Issuing a companion ban under the CPSA will remove any argument that might be made in response to an action for violating a ban of lawn darts under the FHSA alone that the darts are not toys or articles intended for use by children. While the Commission believes that the intent of H.R. 5552 is to remove all lawn darts from the market, the Commission's issuance of a ban under the CPSA, in addition to the existing ban under the FHSA, will provide additional assurance that the congressional intent will be achieved. By the same token, the expression of congressional intent in H.R. 5552 will provide additional support for the Commission's ban under the CPSA.

J. Conclusion

For the reasons given above, the Commission concludes that lawn darts present an unreasonable risk of skull puncture injuries to children from the mechanical characteristics of the darts. Further, it appears that there is no feasible consumer product safety standard that would adequately reduce this risk, and the rule issued below is the least burdensome alternative that will adequately reduce the risk. Also, this action fulfills the congressional directive embodied in H.R. 5552.

List of Subjects in 16 CFR Parts 1306 and 1500

Consumer protection, Recreation, Voluntary standards.

Therefore, under the authority of the Federal Hazardous Substances Act and the Consumer Product Safety Act, the Commission amends Title 16 of the Code of Federal Regulations, chapter II as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority citation for Part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

§ 1500.86 [Removed and Reserved]

2. Section 1500.86(a)(3) is removed and reserved.

§ 1500.18 [Amended]

3. The parenthical phrase at the end of § 1500.18(a)(4) is removed.

A new Part 1306 is added to read as follows:

PART 1306—BAN OF HAZARDOUS LAWN DARTS

Sec.
1306.1 Scope and application.
1306.2 Purpose.
1306.3 Banned hazardous products.
1306.4 Findings.
1306.5 Effective date.

Authority: 15 U.S.C. 2058–2060.

§ 1306.1 Scope and application.

(a) In this Part 1306, the Commission declares lawn darts, described in § 1306.3, to be banned hazardous products.

(b) Lawn darts and similar products that are articles intended for use by children are not covered by this ban, but are banned under the Federal Hazardous Substances Act at 16 CFR 1500.18(a)(4).

§ 1306.2 Purpose.

The purpose of this rule is to prohibit the sale of lawn darts, which have been found to present an unreasonable risk of skull puncture injuries to children.

§ 1306.3 Banned hazardous products.

Any lawn dart is a banned hazardous product.

§ 1306.4 Findings.

(a) The Commission has found that lawn darts are being distributed in commerce and present an unreasonable risk of injury.

(b) *The degree and nature of the risk of injury.* (1) The risk that the Commission intends to address in this proceeding is that of puncture of the skulls of children caused by lawn darts being used by children. The potential for these devices to cause these types of injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves. This is because the tips do not appear sharp enough to present an obvious danger of puncture. The combined factors of weight, the narrow elongated shaft, the speed that the dart is traveling at the time of impact, and the thickness of the child's skull at the point of impact present the risk. The Commission has concluded that all lawn darts have the potential for skull puncture during reasonably foreseeable use or misuse.

(2) Because all lawn darts are being banned, the elimination of lawn darts that can cause skull puncture injuries will also eliminate the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries that have been associated with lawn darts in the past. The Commission's staff estimates that about 670 injuries from lawn darts are treated in U.S. hospital emergency rooms per year. About 40 percent of these are puncture wounds. Approximately 57 percent of the injuries involved the head, face, eye, or ear. Approximately 4 percent of the injured victims were hospitalized (on the average, approximately 25 per year), including all of the injuries reported as fractures. Over 75 percent of the victims were under age 15; about 50 percent of the victims were under age 10. In addition, Commission records dating back to 1970 show that at least three children have been killed by injuries associated with lawn darts. These children were 4, 7, and 13 years old. In the 25 lawn dart injury reports for which information about the user of the lawn darts was available, the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

(c) *Products subject to this ban.* (1) Lawn darts are devices with elongated tips that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground tip first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. The types of lawn darts that have generally been available in the past and that have demonstrated their ability to cause skull puncture injuries typically have a metal or weighted plastic body, on the front of which is an elongated metal shaft about ¼ inch in diameter. These darts have a shaft on the rear of the body containing plastic fins. These darts are about a foot in length and weigh about one quarter to one half pound. These darts are intended to stick in the ground when thrown. Prior to this rule, annual sales of these lawn darts were estimated at 1–1.5 million units.

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(2) The definition for lawn darts in this rule is not intended to include arrows or horseshoes, nor is it intended to apply to indoor dart games that use a vertically-placed target, such as "English darts" or "American darts."

(d) *The need of the public for lawn darts, and the effects of the rule on their utility, cost, and availability.* The need of the public for lawn darts is for recreational enjoyment. Substitute recreational enjoyment can be obtained from other products. Lawn darts will not be available through commercial channels after the effective date of the ban.

(e) *Alternatives.* (1) The Commission considered various labeling requirements and limitations on the marketing of lawn darts that would be intended to discourage the marketing of the product to children and the use of the product by children. The Commission concluded, however, that these types of requirements would not preclude substantial use of the product by children and would not reduce adequately the risk of injury addressed by this rule.

(2) The Commission also considered the possibility of performance requirements for lawn darts to determine which lawn darts present an unreasonable risk of injury of skull penetration to children, but such requirements were determined not to be feasible.

(f) *Conclusion.* The Commission finds:

(1) That this rule, including its effective date, is reasonably necessary to eliminate or adequately reduce the unreasonable risk of skull puncture wounds to children associated with lawn darts and will also eliminate or reduce the other injuries, including puncture wounds, that have been associated with this product.

(2) That issuance of the rule is in the public interest.

(3) That no feasible consumer product safety standard would adequately protect the public from the unreasonable risk associated with lawn darts.

(4) That the benefits expected from this rule bear a reasonable relationship to its costs.

(5) That the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

§ 1306.5 Effective date.

This rule is effective December 19, 1988 and applies to all lawn darts in the chain of distribution on or after that date.

Dated: November 14, 1988.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

List of Relevant Documents

[This list will not be published in the Code of Federal Regulations.]

Letter from David Snow to Sen. Albert Gore, May 21, 1987.

Letter from David Snow, June 4, 1987.

Letter from David Schmeltzer, AED/CAL, to various persons associated with the lawn dart industry to invite them to a meeting on July 17, 1987; July 2, 1987.

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Attachment A—Proposed Ban of Lawn Darts, **Federal Register** Vol. 35, No. 223, November 17, 1970.

—Final rule on Lawn Dart Ban and Exemption, **Federal Register**, Vol. 35, No. 246, December 19, 1970.

Attachment B—Memorandum from Karels, T.R., ECSS, to Nelson, C., CARM, "Lawn Darts—PSA #2804", dated June 22, 1987.

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Memorandum to CPSC Regional Centers from Robert G. Poth, CARM, "Request to Notify Retail Stores of Noncomplying and Questionable Lawn Dart Sales Practices," July 22, 1987.

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Memorandum from John Preston, ESMT, to Chris Nelson, CARM, "Response to PSA Request No. 2837", August 11, 1987.

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Memorandum from Ulsamer, A.G., to Tyrrell, E.A., EX–PB, "HS Recommendations on Lawn Darts", August 20, 1987.

Memorandum from Tinsworth, D., and Crigler, W., EPHA, to Tyrrell, E., EX–PB, "Lawn Dart Injury Data", August 21, 1987.

Memorandum from John D. Preston, ESMT, to Elaine A. Tyrrell, EX–PB, "ES Comments on Options Package for Lawn Darts," August 21, 1987.

Memorandum from Poth, B., CARM, to Tyrrell, E., OPMB, "Lawn Darts Options Package", August 27, 1987.

Memorandum from Dale R. Ray, ECPA, to Elaine Tyrrell, OPMB, "Lawn Darts," August 27, 1987.

Memorandum from Walton, W.W., ES, to Tyrrell, E., EXPM, "Lawn Darts—Option Package", August 28, 1987.

Memorandum from Bob Poth, CARM, to Elaine Tyrrell, OPM, "Lawn Darts Option Package," September 1, 1987.

Briefing package from Elaine Tyrrell, Project Manager, to the Commission, September 10, 1987, with attachments:

TAB A—Memorandum from D. Schmeltzer, AED/CA, to Noble, D., OPMB, "Lawn Darts," with attachments, July 15, 1987.

TAB B—Memorandum from Tinsworth, D., EPHA, to Tyrrell, E., EX–PB, "Lawn Dart Injury Data," August 21, 1987.

TAB C—Memorandum from Ray, D., and Bennett, L., ECPA, to Tyrrell, E., OPMB, "Lawn Dart Accident Costs," August 4, 1987.

TAB D—CPSC News Release, July 30, 1987.

TAB E—Memorandum from Poth, B., CARM, to Tyrrell, E., OPMB, "Lawn Darts Options Package," August 28, 1987.

TAB F—Memorandum from Ulsamer, A., to Tyrrell, E., EX–PB, "HS Recommendations on Lawn Darts," August 20, 1987.

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—Memorandum from Ray, D., ECPA, to Tyrrell, E., OPMB, "Lawn Darts," August 27, 1987.

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Log of a conversation between Nick Marchica and Elaine Tyrrell, CPSC, and Milton Bush, SGMA, October 13, 1987.

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TAB B—Memorandum from Tinsworth, D., EPHA, to Tyrrell, EXPM, "Lawn Dart Injuries," January 20, 1988.

TAB C—Memorandum from Deppa, S.W., and White, S., EPHF, to Tyrrell, E.A., EX–PB, "Evaluation of Lawn Dart Provision Effectiveness," January 29, 1988.

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TAB E—Memorandum from Nelson, C., CARM, to Tyrrell, E., OPMB, "Lawn Dart Compliance Survey," January 20, 1988.

TAB F—Log of meeting held by the Sporting Goods Manufacturers Association (SGMA) with industry representatives on lawn darts, December 10, 1987.

TAB G—Public comments in response to the ANPR:

A. Letter from Bush, M., Esq., Sporting Goods Manufacturers Association, December 17, 1987.

B. Comments of Consumer Federation of America, submitted by M. Fise, December 21, 1987.

C. Letter to the Editor from C. Mesneck, September 29, 1987.

D. Letter from Heslin, M., Connecticut Department of Consumer Protection, December 8, 1987.

E. Letter from Vultaggio, S., Regent Sports Corp., to D. Schmeltzer, CPSC, November 10, 1987.

F. Letter from G. Hostetler, November 16, 1987.

G. Letter from S. Coberly, November 3, 1987.

H. Letter from R. Lamontagne, November 16, 1987.

I. Letter from P. Spaeth, New York State Department of Law, to Doug Noble, CPSC, October 8, 1987.

J. Letter from C. Bouris, December 1, 1987.

K. Letter from R. Archer, Kent Sporting Goods Co., Inc., to D. Schmeltzer, CPSC, November 9, 1987.

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Commenter	Date
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N. Mease	Oct. 29, 1987.
H. Hatch	Oct. 5, 1987.
Rochester City Council	Jan. 20, 1988.
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Letter from David Schmeltzer, CPSC/AEDCA, to Stephen R. Vultaggio, Regent Sports Corporation, June 17, 1988.

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Memorandum from Christine Nelson, CARM to Carl Blechschmidt, OPMB, "Proposed Ban of Lawn Darts," June 28, 1988.

Memorandum from Christine Nelson, CPSC/CARM, to Don Dovel, CPSC/FOCR, "Superior Marketing Lawn Darts," June 29, 1988.

Vote sheet from Harleigh Ewell, OGC, to the Commission "Draft **Federal Register**

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Notice to Propose a Prohibition of The Sale of Lawn Darts," June 30, 1988.

Memorandum to the Commission from Carl Blechschmidt, Program Manager, "Notice of Proposed Rulemaking for Lawn Darts," June 30, 1988, with attachments:

Tab A—Memorandum from Karels, T.R., ECSS, to Blechschmidt, C.W., EXPM, "Initial Regulatory Flexibility Analysis: Lawn Darts," June 28, 1988.—Memorandum from Karels, T.R., ECSS, to Blechschmidt, C.W., EXPM, "Preliminary Regulatory Analyses and Assessments—Lawn Darts," June 28, 1988.

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Tab A—Draft **Federal Register** notice, "Ban of Hazardous Lawn Darts."

Tab B—(1) Memorandum from John Preston, CPSC/ES, to David W. Thome, CPSC/OPMB, "ES Response to Comments on Lawn Darts NPR," September 14, 1988.

(2) Memorandum from Murray S. Cohn, Ph.D., CPSC/HS, to David W. Thome, CPSC/OPMB, "Comparison of Metal and Plastic Tipped Lawn Darts Using the Ballistic-Based Model," October 17, 1988.

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Log of telephone conversation between Harleigh Ewell, CPSC/OGC, and the Office of Advocacy of SBA, October 27, 1988.

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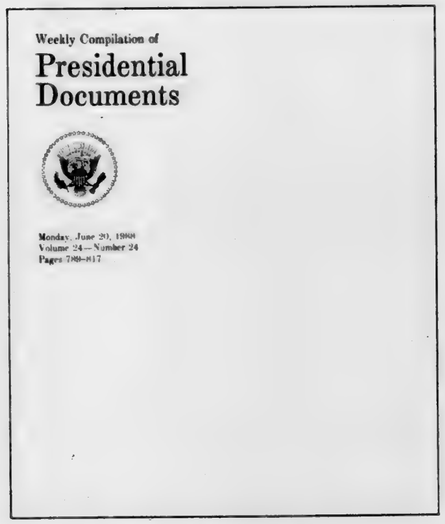
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11-21-88
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federal register

Monday
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VOL
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224
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11-21-88
Vol. 53 No. 224
Pages 46843-47178

federal register

Monday
November 21, 1988

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ISS
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Rules and Regulations

Federal Register
Vol. 53, No. 224
Monday, November 21, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1200

Board Organization

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is republishing its organization and functions statements to reflect the current titles of the principal organizational units of the Board and the primary functions assigned to those units. The Board last updated and published its organization and functions statements on June 16, 1988 (53 FR 22465). Since that time there have been certain title changes and other organizational realignments.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Bentley Roberts, (202) 653–7700.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1200

Organization and functions (government agencies).

Therefore, Part 1200 is revised to read as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 1200—BOARD ORGANIZATION

Subpart A—General

Sec.
1200.1 What is the Merit Systems Protection Board?
1200.2 Who is on the Board?

Subpart B—Offices of the Board

1200.10 Who assists the Board?

Subpart A—General

Authority: 5 U.S.C. 1201 et seq.

§ 1200.1 What is the Merit Systems Protection Board?

The U.S. Merit Systems Protection Board (the Board) is an independent government agency that operates like a court. The Board was created to ensure that all Federal Government agencies follow Federal merit systems practices, and to allow appellants to appeal certain personnel actions by Federal agencies.

§ 1200.2 Who is on the Board?

(a) The Board has three members whom the President appoints and the Senate confirms. Members of the Board seve seven-year terms.

(b) The President appoints, with the Senate's consent, one member of the Board to serve as Chairman and chief executive officer of the Board. The President also appoints one member of the Board to serve as Vice Chairman. If the Office of the Chairman is vacant or the Chairman cannot perform his or her duties, then the Vice Chairman performs the Chairman's duties. If both the Chairman and the Vice Chairman cannot perform their duties, then the remaining Board Member performs the Chairman's duties.

Subpart B—Offices of the Board

Authority: 5 U.S.C. 1205 (g) and (i).

§ 1200.10 Who assists the Board?

(a) A staff helps the Board carry out its work. The following offices make up the staff:

(1) Offices of the Executive Director, Deputy Executive Director for Management, and Deputy Executive Director for Regional Operations.
(2) Office of Management Analysis.
(3) Office of the Inspector General.
(4) Office of Administration.
(5) Office of the Administrative Law Judge.
(6) Office of the Appeals Counsel.
(7) Office of the Clerk of the Board.
(8) Office of the General Counsel.
(9) Office of Policy and Evaluation.
(10) Regional Offices.

(b) *Office of the Executive Director.* The Executive Director manages the operations and programs of the Board's headquarters and regional offices and reports directly to the Chairman. The Deputy Executive Director for Management manages internal management programs and systems. The Deputy Executive Director for Regional Operations manages the appellate functions of the 11 MSPB regional offices.

(c) *Office of Management Analysis.* The Director, Office of Management Analysis, develops and coordinates internal management programs and projects for the Deputy Executive Director for Management, and prepares information publications including annual reports on the Board's significant actions and its appeals workload.

(d) *Office of the Inspector General.* The Inspector General is the Board's internal auditor and reports directly to the Executive Director. The Inspector General plans and directs audits, investigations, and internal control evaluations.

(e) *Office of Administration.* The Director, Office of Administration, manages the Board's administrative programs. This office has four divisions: Financial and Administrative Management; Equal Employment; Information Resources Management; and Personnel.

(f) *Office of the Administrative Law Judge.* The Administrative Law Judge hears Administrative Procedures Act cases and other cases that the Board assigns. The Administrative Law Judge also rules on discovery motions and subpoena requests.

(g) *Office of Appeals Counsel.* The Director, Office of Appeals Counsel, prepares proposed decisions that recommend appropriate action by the Board in petition for review cases and other cases assigned by the Board.

(h) *Office of the Clerk of the Board.* The Clerk of the Board enters petitions for review and original jurisdiction cases onto the Board's docket and monitors their processing. The Clerk of the Board also does the following:

(1) Gives information on the status of cases;

(2) Manages the Board's records, reports, and correspondence style and control programs; and

(3) Answers requests under the Freedom of Information and Privacy Acts at the Board's headquarters.

(i) *Office of the General Counsel.* The General Counsel provides legal advice to the Board and its headquarters and regional offices, represents the Board in court proceedings, manages legislative policy, and performs congressional and media liaison.

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(j) *Office of Policy and Evaluation.* The Director, Policy and Evaluation, conducts special reviews and studies of Federal merit systems, including actions of the Office of Personnel Management under 5 U.S.C. 1209(b).

(k) *Regional Offices.* The Board has 11 regional offices located throughout the country. (Appendix II to 5 CFR Part 1201 contains a list of the regional offices.) The regional offices enter initial appeals onto their docket and make decisions on initial appeals according to Board regulations under 5 CFR Part 1201 and 5 CFR 1201.111.

Date: November 16, 1988.

Shannon McCarthy,

Deputy Clerk of the Board.

[FR Doc. 88-26861 Filed 11-18-88; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-169]

Mediterranean Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing a portion of Los Angeles County in California, near Van Nuys, as a quarantined area. The Mediterranean fruit fly regulations imposed restrictions on the interstate movement of regulated articles from this area, and were established to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from a portion of Los Angeles County in California, near Van Nuys, and that the regulations are no longer necessary. This rule relieves restrictions on the interstate movement of regulated articles from this area.

DATES: Interim rule effective November 14, 1988. Consideration will be given only to comments postmarked or received on or before January 23, 1989.

ADDRESSES: Send an original and two copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-169. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** on August 8, 1988 (53 FR 29633-29639, Docket Number 88-127), and effective August 2, 1988, we established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County in California, near Van Nuys. In another interim rule, published in the **Federal Register** on October 19, 1988 (53 FR 40865-40866, Docket Number 88-159), and effective October 14, 1988, we amended the Mediterranean fruit fly regulations by adding another portion of Los Angeles County in California, near Culver City, to the list of quarantined areas.

The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas of the United States. The regulations also designate soil, and a large number of fruits, nuts, vegetables, and berries, as regulated articles.

Based on trapping surveys conducted by inspectors of California state and county agencies and by inspectors of Plant Protection and Quarantine, a unit within the Animal and Plant Health Inspection Service, we have determined that the Mediterranean fruit fly has been eradicated from the quarantined area in Los Angeles County in California, near Van Nuys. The last finding of Mediterranean fruit fly in the Van Nuys area was made on July 31, 1988. Since then, no evidence of infestations has been found in that area. We have determined that infestations no longer exist in the quarantined area of Los Angeles County in California, near Van Nuys.

The quarantined area in Los Angeles County in California, near Culver City, remains infested with Mediterranean fruit fly.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. The area in Los Angeles County in California, near Van Nuys, was quarantined due to the possibility that the Mediterranean fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, and because the quarantined status of this portion of Los Angeles County imposes unnecessary regulatory restrictions on the public, we have taken immediate action to remove these restrictions.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these conditions, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments postmarked or received within 60 days of publication of this rule in the **Federal Register**. Any amendments we make to this rule as a result of these comments will be published in the **Federal Register** following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Los Angeles County in California, near Van Nuys. It appears that there is very little commercial activity that may be affected by this rule in the quarantined area. The small entities that may be affected by this regulation appear to consist of approximately 80 nurseries, 5 open fruit stands, 2 community gardens, 2 regularly scheduled swap meets (flea markets), 3 caterers who send lunch "chuckwagons" to job sites in the quarantined area, 1 airport with no scheduled passenger flights, 1 tomato and pepper grower with approximately 4000 plants on a ½-acre field, and 1 tomato grower with a 3-acre field. Both growers sell their products locally at roadside stands.

The effect of this rule on these entities should be insignificant, since it appears that most of their sales are for local intrastate markets, not interstate markets, and are therefore not affected by the regulatory provisions we are removing.

Those sales that were affected were generally of articles that could be moved, without significant added costs, after compliance with treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (see 7 CFR 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.78-3 [Amended]

2. In § 301.78-3(c), the first paragraph under "Los Angeles County" is removed.

Done at Washington, DC, this 14th day of November 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-26823 Filed 11-18-88; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 405

[Amdt. No. 2; Doc. No. 5950S]

Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Apple Crop Insurance Regulations, effective for the 1989 and succeeding crop years, by revising and reissuing the Apple Fresh Fruit Option and the Pilot Apple Sunburn Option. The intended effect of this final rule is to: (1) Reduce the add back percentage of cull production to be counted as production for the purposes of loss adjustment, and to incorporate minor grammatical changes in the Fresh Fruit Option; and (2) replace the Pilot Apple Sunburn Option, previously only available in Washington State, with a revised Apple Sunburn Option.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations is April 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the Apple Crop Insurance Regulations (7 CFR Part 405), to: (1) Revise and reissue the Apple Fresh Fruit Option (7 CFR 405.8(c)) to reduce the percentage of cull production added back to production to count for purposes of loss adjustment from 30 percent to 15 percent, and to incorporate minor grammatical changes; and (2) replace the Pilot Apple Sunburn Option (7 CFR 405.9), previously only available in Washington State, with a revised Apple Sunburn Option available over a wider area.

Under the present provisions of § 405.8(c), the Apple Fresh Fruit Option, apples which are knocked to the ground by wind, or frozen to the extent that they can be harvested but not packed or marketed as fresh apples, are considered 100 percent cull production. Thirty (30) percent of all such cull production is added back as production to count for loss adjustment purposes.

FCIC herein reduces the percentage of cull production add back from 30 percent to 15 percent to provide a more equitable determination in loss adjustment by more nearly reflecting the normal percentage of cull production.

FCIC issues a new § 405.9 Apple Sunburn Option, replacing the Pilot Apple Sunburn Option, published in the **Federal Register** at 52 FR 1467, January 20, 1988. These programs are designed to blend together to provide a broader base of protection for insured apple producers.

On Monday, August 22, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 31875, to revise and reissue the Apple Fresh Fruit Option and the Pilot

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Apple Sunburn Option for the 1989 and succeeding crop years. The public was given 30 days in which to submit written comment, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 53 FR 31875 in herewith adopted as final.

In order to make the insured aware of this beneficial amendment as quickly as possible, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 405

Apple crop insurance regulations.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Apple Crop Insurance Regulations (7 CFR Part 405), effective for the 1989 and succeeding crop years, as follows:

PART 405—[AMENDED]

1. The authority citation for 7 CFR Part 405 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 405.8 is amended by revising the section heading and paragraph (c) to read as follows:

§ 405.8 Apple fresh fruit option.

* * * * *

(c) The Option reads as follows:

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Apple Fresh Fruit Option

This is a continuous amendment (see section 15 of the basic policy).
Insured's Name _____
Contract No. _____
Address _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

It is hereby agreed to amend the basic Federal Crop Insurance Apple Policy under the following terms and conditons:

1. This Option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your applies under this Option.

2. You must have an apple policy in force.

3. You must insure all the acreage of applies in the county in which you have a share regardless of the intended use (fresh-market or processing).

4. In addition to section 8 of the apple policy, inspection and grading of the fruit must be done by us prior to harvest or no quality adjustment will be made.

5. Separate line entries according to intended use (fresh-market or processing) must be included on the acreage report required under section 3 of the apple policy.

6. Your apples intended for processing will be insured under the quality provisons of A only (See below).

7. Your apples intended for fresh-market will be insured under the quality provisions of either A or B, whichever you select.

8. If you select A only, A will apply to all of your apples intended for processing and fresh-market.

9. If you select B, those provisions will apply to all of your apples intended for fresh-market and the provisions of A will apply to all of your apples intended for processing.

10.a. You must select either A or B by marking the appropriate space below.

A——

In addition to section 9.e. and in lieu of 17.q. of the Apple Policy, your production to count for any acreage designated for processing or fresh-market will be adjusted when your apples are damaged by hail to the extent that such apples will not grade U.S. No. 1 (processing) (7 CFR 51.430 *et seq.*)). The adjustment factor (not to exceed 1) will be the ratio of the average market price (received by you or determined by us, whichever is larger) for your damaged production to the average market price for U.S. No. 1 (processing) apples. There will be no adjustment for quality if the apples do not grade U.S. No. 1 because of size, color, or russeting.

B——

In lieu of sections 9.e.(1), 9.e.(2), 17.1, and 17.q of the Apple Policy, the total production to be counted for a unit must include all harvested and appraised production. Harvested apple production which, due to hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards (7 CFR 51.300 *et seq.*), will be adjusted as follows:

(1) Production with 21 through 40 percent not grading U.S. Fancy or better due to hail damage will be reduced 2 percent for each percent in excess of 20 percent. The difference between the reduced production and the total production will be considered cull production.

(2) Production with 41 through 50 percent not grading U.S. Fancy or better due to hail damage will be reduced 40 percent plus an additonal 3 percent for each percent in excess of 40 percent. The difference between the reduced production and the total production will be considered cull production.

(3) Production with 51 through 64 percent not grading U.S. Fancy or better due to hail damage will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent. The difference between the reduced production and the total production will be considered cull production.

(4) Production with 65 percent or more not grading U.S. Fancy or better due to hail damage will be considered 100 percent cull production.

b. Apples which are knocked to the ground by wind or frozen to the extent that they can be harvested but not packed or marketed as fresh apples will be considered 100 percent cull production.

c. Fifteen (15) percent of all cull production will be counted as production.

d. No reduction in grade will be applied to any apple grading less than U.S. Fancy due solely to shape, russeting, or color.

e. Appraised production to be counted must include:

(1) Potential production lost due to uninsured causes and failure to follow recognized good apple management practices; and

(2) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed without our consent.

f. Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(1) Harvested;

(2) Further damaged by an insured cause and reappraised by us; or

(3) In whole or part knocked to the ground by wind or hail or frozen on the tree to the extent that harvest is not practical.

11. Your premium rate for Apples under either A or B, as elected by you, will be established by the actuarial table.

12. All provisions of the apple policy not in conflict with this option are applicable.

13. All determinations under this option will be made by us.

14. This Option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the policy, preceding such crop year.

Insured's Signature _____
Date _____
Corporation representative's signature and Code Number _____
Date _____

3. Section 405.9 is revised to read as follows:

§ 405.9 Apple sunburn option.

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Apple Sunburn Option.

This is not a continuous option. Applications for this option must be made prior to the sale closing date if you want this optional coverage. Upon our approval this option is applicable *only* for the 19____ crop year.
Insured's name _____
Contract No. _____
Address _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

It is hereby agreed to amend the Federal Crop Insurance Apple Policy in accordance with the following terms and conditions:

1. This option must be submitted to us on or before the final date for accepting applications for each crop year in which you wish to insure apples under this option.

2. You must have an apple policy and the Apple Fresh Fruit Option B in force.

3. You must insure all the acreage of apples in the county to which the Apple Fresh Fruit Option B applies and in which you have a share.

4. In addition to the causes of loss specified in paragraph 1.a. of the Apple Crop Insurance policy, excess sun is an insurable cause of loss.

5. In lieu of sections 9.e.(1), 9.e.(2), 17.l, and 17.q. of the Apple Policy, the total production to be counted for a unit must include all harvested and appraised production. Harvested apple production which, due to excessive sun damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards, will be adjusted as follows:

a. Production with 21 thru 40 percent not grading U.S. Fancy or better due to excessive sun damage will reduced 2 percent for each percent in excess of 20 percent. The difference between the reduced production and the total production will be considered cull production.

b. Production with 41 thru 50 percent not grading U.S. Fancy or better due to excessive sun damage will be reduced 40 percent plus an additional 3 percent for each percent in excess of 40 percent. The difference between the reduced production and the total production will be considered cull production.

c. Production with 51 thru 64 percent not grading U.S. Fancy or better due to excessive sun damage will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent. The difference between the reduced production and the total production will be considered cull production.

d. Production with 65 percent or more not grading U.S. Fancy or better due to excessive sun damage will be considered 100 percent cull production.

Fifteen (15) percent of all cull production, will be counted as production.

6. The premium for this sunburn option will be established by the actuarial table.

7. All provisions of the apple policy and the Fresh Fruit Option–B not in conflict with this option are applicable.

8. All determinations under this option will be made by us.

9. a. *"Excessive sun"* is defined as the exposure of the unharvested apples to direct or indirect sun sufficient to cause the apples to grade less than U.S. Fancy due to sunburn.

b. *"Sunburn"* is defined in accordance with applicable U.S.D.A. Standards.

Insured's Signature _____
Date _____
Corporation representative's Signature and Code Number _____
Date _____

Done in Washington, DC, on November 7, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–26854 Filed 11–18–88; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 440

[Amendment No. 2; Doc. No. 6046S]

Texas Citrus Tree Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Monday, March 21, 1988, at 53 FR 9104. The interim rule amended the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), by extending the date for filing contract changes specified in the policy for insuring citrus trees.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations is November 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Monday, March 21, 1988, FCIC published an interim rule, in the **Federal Register** at 53 FR 9104, amending the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), by extending the date for filing contract changes specified in the policy for insuring citrus trees to allow additional time for FCIC to file actuarial data on this program in the service offices prior to issuing the provisions of crop insurance protection on citrus trees as an endorsement to the general crop insurance policy.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review.

No comments were received, therefore, the interim rule published at 53 FR 9104 is hereby adopted as final.

List of Subjects in 7 CFR Part 440

Crop insurance, Texas citrus tree crop insurance regulations.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on Monday, March 21, 1988, at 53 FR 9104, is hereby adopted as final.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on November 7, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–26855 Filed 11–18–88; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 441

[Amdt. No. 1; Doc. No. 6034S]

Table Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Table Grape Crop Insurance Regulations (7 CFR Part 441), effective for the 1989 and succeeding crop years, by adding a calendar date for the end of the insurance period for Arizona grape producing counties. The intended effect of this rule is to add the calendar date for the end of the insurance period for those counties in Arizona recently approved for table grape crop insurance.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop

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Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA Procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1991.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Supart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the Table Grape Crop Insurance Regulations (7 CFR Part 441), by adding a calendar date for the end of the insurance period for table grape crop insurance in Arizona (7 CFR 441.7.g.).

The Board of Directors, at a meeting held on June 8, 1988, approved the expansion of table grape crop insurance to include Arizona. This action makes it possible to carry out that directive.

On Monday, August 22, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 31877 to amend the Table Grape Crop Insurance Regulations (7 CFR Part 441), effective for the 1989 and succeeding crop years, to add the calendar date for the end of the insurance period for those counties in Arizona recently approved for table grape crop insurance. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts the rule published at 53 FR 31877 was a final rule without change.

It is necessary that the end of the insurance period for Table Grapes produced in Arizona be known to policyholders as quickly as possible. Therefore, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 441

Crop insurance, Table grapes.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Table Grape Crop Insurance Regulations (7 CFR Part 441), effective for the 1989 and succeeding crop years, as follows:

PART 441—[AMENDED]

1. The authority citation for 7 CFR Part 441 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 441.7(d)7.g. is revised to read as follows:

§441.7 The application and policy.

* * * * *

(d) * * *

7. Insurance Period.

* * * * *

g. The following applicable date of the calendar year in which the grapes are normally harvested:

State and county(ies)	Variety	Date
Arizona:		
All counties.	Perlette	June 15.
	Flame Seedless	July 15.
	All others	July 31.
California:		
Fresno, Kern, Kings, Madera, and Tulare.	Perlette	August 15.
	Cardinal	August 15.
	Exotic	August 31.
	Flame Seedless	August 31.
	Superior Seedless.	August 31.
	Red Malaga	September 15.
	Queen	September 15.
	Thompson Seedless.	September 15.
	Black Rose	September 30.
	Italia	September 30.
	White Malaga	October 15.
	Ribier	October 15.
	Ruby Seedless	October 15.
	All others	October 31.
Merced, Stanislaus, and San Joaquin.	Flame Seedless	September 15.
	Thompson Seedless.	September 30.
	Ribier	October 15.
	Flame Tokay	October 31.
	All others	
Riverside, and San Bernadino.	Beauty Seedless	July 15
	Perlette	July 15
	All others	July 31.

Done in Washington, DC on November 7, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–26857 Filed 11–18–88 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 451

[Amendment No. 1; Doc. No. 6042S]

Canning and Processing Peach Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Canning and Processing Peach Crop Insurance Regulations, effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Canning and Processing Peach Crop Insurance Regulations only through the 1987 crop year. The provisions currently contained in this Part have been issued as the Stonefruit Endorsement under the General Crop Insurance Regulations, effective for the 1988 and succeeding crop years. The General Crop Insurance Regulations are a standard set of regulations and a master policy for insuring most crops which substantially reduce: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 15, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effects on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect. The new Stonefruit Endorsement was published on Wednesday, February 2, 1988, at 53 FR 6561 (7 CFR 401.122, Stonefruit Endorsement), and became effective for the 1988 and succeeding crop years. The provisions of the Canning and Processing Peach Crop Insurance Regulations contained in 7 CFR Part 451 have been superseded.

In order to clearly establish that 7 CFR Part 451 will be effective only through the end of the 1987 crop year, FCIC herein amends the subpart heading to specify that such will be the case.

Therefore, FCIC amends the subpart heading to provide that 7 CFR Part 451 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 451

Crop insurance; Canning and processing peach.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Canning and Processing Peach Crop Insurance Regulations (7 CFR Part 451), as follows:

PART 451—[AMENDED]

1. The Authority citation for 7 CFR Part 451 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. The Subpart heading in 7 CFR Part 451 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years.

Done in Washington, DC on November 7, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–26856 Filed 11–18–88; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 451

[Docket No. 6039S]

Canning and Processing; Peach Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which amended the Canning and Processing Peach Crop Insurance Regulations, by extending the date for filing contract changes specified in the policy for insuring canning and processing peaches in order to provide additional time in which to complete the actuarial transition form existing canning and processing peaches (Clingstone Peaches) in California to type IV under the Stonefruit Endorsement, published in a separate document.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 15, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR

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Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an environmental Impact Statement is needed.

On Friday, October 30, 1987, FCIC published an interim rule in the **Federal Register** at 52 FR 41691, amending the Canning and Processing Peach Crop Insurance regulations (7 CFR Part 451) by extending the date for filing contract changes specified in the policy for insuring canning and processing peaches in order to provide additional time in which to complete the actuarial transition for existing canning and processing peaches (Clingstone Peaches) in California to type IV under the Stonefruit Endorsement (7 CFR 401.122).

Written comments on the interim rule were solicited by FCIC for 60 days after publication in the **Federal Register**, and the rule was scheduled for review.

No comments were received, therefore, the interim rule published at 52 FR 41691 is hereby adopted as final.

List of Subjects in 7 CFR Part 451

Crop Insurance, Canning and processing peaches.

Final Rule

PART 451—[AMENDED]

§ 451.7 [Amended]

Accordingly, the interim rule revising § 451.7(d) 16 published in the **Federal Register** on Friday, October 30, 1987, at 52 FR 41691, is hereby adopted as final.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on November 7, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–26859 Filed 11–18–88; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 454

[Amdt. No. 1; Doc. No. 6072S]

Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Fresh Market Tomato (Guaranteed Production Plan) Insurance Regulation (7 CFR Part 454) to include tomato producers in Maryland and Virginia under the guaranteed production plan of tomato insurance. The intended effect of this rule is to provide the regulations for crop insurance protection on tomatoes grown under the guaranteed production plan to Maryland and Virginia in order to implement a decision by the Board of Directors to expand into those states.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and public comment are impracticable and contrary to the public interest, and good cause is found for making this rule effective in less than thirty days.

Further, since this rule relates to internal agency management it is exempt from the provisions of Executive Order 12291. Lastly, this action is not a major rule as defined in Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of the Act.

The Board of Directors of FCIC recently approved the expansion of the fresh market tomato (guaranteed production) crop insurance program into the States of Maryland and Virginia. This action is designed to carry out that directive.

John Marshall, Manager, FCIC, has determined that this action is appropriate to implement the Board of Directors approval of tomato insurance in Maryland and Virginia. All actuarial data is currently in place in the service offices and, since this is a first time offer of such crop insurance in those states, there are no producers adversely affected by this rule. This action provides a benefit to Maryland and Virginia tomato growers by offering crop insurance protection against damage or loss of their crops due to conditions beyond their control.

For this reason, it has been determined to make this program available in Maryland and Virginia without notice and comment normally allowed for implementing regulations.

List of Subjects in 7 CFR Part 454

Crop insurance, Fresh market tomato (Guaranteed production plan).

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 454), as follows:

PART 454—[AMENDED]

1. The authority citation for 7 CFR Part 454 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 454.7(d)15.d. is revised to read as follows:

§ 454.7 The application and policy.

* * * * *

(d) * * *

15. * * *

d. The cancellation and terminations dates are:

State	Cancellation and termination dates
Florida, Georgia, and South Carolina.	February 15.
Maryland, Pennsylvania, and Virginia.	April 15.

* * * * *

Done in Washington, DC, on November 7, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–26858 Filed 11–18–88; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 274a

[INS Number: 1125–88]

Nonimmigrant Classes; Special Requirements for Admission, Extension and Maintenance of Status, Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule revises the regulations of the Immigration and Naturalization Service ("Service") relating to employment authorization for dependents of certain foreign government and international organization officials classified as A–1, A–2 and G–4 nonimmigrants. It also allows employment authorization for dependents of certain foreign officials classified as G–1 nonimmigrants. These actions are being taken in order to improve employment opportunities for dependents of United States officials stationed abroad by making bilateral agreements more attractive for dependents of foreign officials stationed in the United States and to provide a regulatory basis for G–1 dependent employment authorization. This rule balances international obligations, administrative requirements and proper enforcement concerns.

DATES: This interim rule is effective November 21, 1988. Written comments must be received on or before December 21, 1988.

ADDRESS: Please submit comments in triplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I St., NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Jack Tabaka, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I St., NW., Room 7122, Washington, DC 20536, Telephone (202) 633–3240.

SUPPLEMENTARY INFORMATION:

Employment authorization for dependents of foreign government officials is based on reciprocity which takes two forms: Formal bilateral agreements or informal de facto arrangements. A bilateral agreement is a signed, written agreement which has been negotiated by both parties, that is, the United States and a foreign country. A bilateral agreement virtually guarantees employment authorization for dependents of certain United States government officials assigned to duty in the foreign country which signed the agreement. In turn it virtually guarantees employment authorization for dependents of certain officials of that foreign country who are assigned to duty in the United States. A de facto arrangement takes effect when the Department of State determines that a foreign country allows appropriate employment on the local economy for dependents of certain United States officials assigned to duty in that foreign country. Based on that determination, dependents of certain government officials of that foreign country assigned to duty in the United States may apply for employment authorization.

Dependent employment authorization based on a de facto arrangement is more tenuous than authorization based on a bilateral agreement. This is because a de facto arrangement is based on current practices and policies rather than mutually negotiated, well-defined obligations. The virtual assurance of dependent employment authorization in a foreign country contributes to making duty there more attractive to a United States government official whose dependents wish to work while abroad or whose spouse wishes to pursue his/her career. Recognizing the benefits, Congress has commissioned the Department of State to increase the number of bilateral agreements. (Foreign Relations Authorization Act, Fiscal Year 1979.)

As a result these regulations were drafted in cooperation with the Department of State to make bilateral agreements clearly more advantageous to foreign countries than de facto arrangements. This is accomplished principally through the following steps:

(1) Modifying the definition of dependent, which was only applicable to bilateral agreements, to better reflect international obligations and practices. The new definition has been extended to apply to de facto arrangements. This extension eliminates the anomaly that has allowed unmarried children of any age to be considered as dependents under de facto arrangements while limiting unmarried children to a definite age under bilateral agreements. The new definition applies to dependent employment authorization only and not to matters of visa issuance.

(2) Clarifying that the applicability of bilateral agreements and de facto arrangements is based on the foreign state which employs the principal alien and not the nationality of the dependent. Based on a recommendation by the Department of State, the regulations require that under de facto arrangement, the principal alien also must have the same nationality as the country he or she represents. This precludes employment authorization under de facto arrangements for dependents of principal aliens who are third country nationals.

These regulations allow dependents of certain G–1 principal aliens, a class not covered by prior regulations, to apply for employment authorization. On the basis of reciprocity, the Congressional intent to increase the number of bilateral agreements, equity and administrative considerations, it was decided to have the regulations governing G–1 dependents parallel the regulations governing other dependents of foreign government officials in A–1 and A–2 status.

There has been no regulatory basis for granting employment authorization to dependents of G–1 principal aliens. However, on the basis of bilateral agreements, de facto arrangements and other international considerations, G–1 dependents were granted employment authorization. The enactment of the Immigration Reform and Control Act ("IRCA") with its strict documentary requirements has necessitated a review of this procedure and has resulted in the G–1 regulations. With the provisions of IRCA in force, the issuance of G–1 dependent employment authorization has been suspended. The Department of State has advised the Service that the situation is straining the United States' relationship with a number of countries and could affect the United States' relations with more than 80 countries. The situation requires that these regulations, which allow for the employment of dependents of certain G–1 principal aliens, take effect immediately, a course of action with which the Department of State has expressed agreement. More than twenty countries have entered into bilateral agreements with the United States which permit G–1 dependents to work in the United States. The suspension of work authorizations for G–1 dependents from these countries violates formal international obligations of the United States and has developed into a significant issue for some of these countries which are traditional allies. In addition, approximately 60 other countries have previously enjoyed the possibility of their G–1 dependents obtaining employment in the United States under de facto arrangements. The cessation of issuance of work authorization to G–1 dependents jeopardizes the employment of dependents of United States officials stationed abroad, the very individuals that the program of dependent employment authorization is designed to assist. In order to avoid damage to United States foreign relations and to take United States dependents out of jeopardy, it is imperative that these regulations be implemented immediately.

It is recognized that these regulations affect individuals who qualify as dependents of G–1 officials but are not covered by terms of a bilateral agreement or de facto arrangement. In order not to penalize these individuals who meet the new definition of dependent, the interim regulations include a limited savings clause which will expire on or before December 31, 1989.

Because new G–1 regulations are closely tied to and were developed in conjunction with the regulations permitting work authorization for dependents of certain A–1, A–2 and G–4 principal aliens, the Department of State and the Service believe that all the new regulations on employment authorization for the dependents of certain A–1, A–2, G–1 and G–4 principal aliens should take effect at the same time.

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These regulations follow the long-standing policy of having regulations governing employment authorization for dependents of G–4 principal aliens (employees of international organizations) parallel the provisions of de facto arrangements. Additionally, these regulations allow a very limited test of reciprocity in considering employment authorization for dependents of certain G–4 principal aliens.

These regulations give the Director of the Eastern Regional Service Center authority to adjudicate applications for employment authorization under de facto arrangements along with the District Directors at New York and Washington, DC. This will allow the Service more flexibility in adjudicating such employment applications. The proposed regulations also clarify a dependent's tax liability.

As stated earlier, foreign policy considerations mandate that this rule be effective upon publication. It is recognized that immediate implementation will cause some individuals to be unknowingly in violation of these regulations. To preclude this, to provide adequate notice to individuals who are no longer eligible for employment authorization as a dependent, and to deal fairly with their employers, the following Service policy is set forth: An individual (1) who was considered a dependent of an A–1, A–2, G–1 or G–4 principal alien under the prior regulations or practices, and (2) who had employment authorization under the prior regulations or practices, and (3) who is not eligible for employment authorization as a dependent under the new regulation, will be allowed to work until February 20, 1989, or until the end of his/her employment authorization period, whichever comes first. Such employment by such an individual for the stated period of time shall not in any way be considered or construed to be a violation of nonimmigrant status.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The Information Collection Requirements contained in this regulation have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, under control number 1115–0090.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment.

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187.

2. Section 214.2 is amended by revising paragraphs (a)(2) and (a)(3), and adding paragraphs (a)(4) through (a)(10), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(a) * * *

(2) *Definition of A–1 or A–2 dependent.* For purposes of employment in the United States, the term "dependent" of an A–1 or A–2 principal alien, as used in § 214.2(a), means any of the following immediate members of the family habitually residing in the same household as the principal alien who is an officer or employee assigned to a diplomatic or consular office in the United States:

(i) Spouse;

(ii) Unmarried children under the age of 21;

(iii) Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;

(iv) Unmarried sons or daughters under the age of 25 who are in full-time attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and such bilateral employment agreement does not specify 23 as the maximum age for employment of such sons and daughters. The Office of Protocol of the Department of State shall maintain a listing of foreign states with which the United States has such bilateral employment agreements;

(v) Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain or re-establish their own households. The Department of State or the Service may require certification(s) as it deems sufficient to document such mental or physical disability.

(3) *Applicability of a formal bilateral agreement or an informal de facto arrangement for A–1 or A–2 dependents.* The applicability of a formal bilateral agreement shall be based on the foreign state which employs the principal alien and not on the nationality of the principal alien or dependent. The applicability of an informal de facto arrangement shall be based on the foreign state which employs the principal alien, but under a de facto arrangement the principal alien also must be a national of the foreign state which employs him/her in the United States.

(4) *Income tax, Social Security liability; non-applicability of certain immunities.* Dependents who are granted employment authorization under this section are responsible for payment of all federal, state and local income, employment and related taxes and Social Security contributions on any remuneration received. In addition, immunity from civil or administrative jurisdiction in accordance with Article 37 of the Vienna Convention on Diplomatic Relations or other international agreements does not apply to these dependents with respect to matters arising out of their employment.

(5) *Dependent employment pursuant to formal bilateral employment agreements.* The Office of Protocol shall maintain a listing of foreign states which have entered into formal bilateral employment agreements. Dependents of an A–1 or A–2 principal alien assigned to official duty in the United States may accept unrestricted employment based on such formal bilateral agreements between the Department of State and foreign states if the following conditions are met:

(i) The embassy of the foreign state employing the official makes an official request to the Office of Protocol;

(ii) The Office of Protocol recognizes the person as a dependent, as defined in this section, of an official A–1 or A–2 employee; and

(iii) The Office of Protocol informs the embassy of the foreign state that the dependent has permission to accept employment upon receipt of employment authorization documentation issued by the Service in accordance with 8 CFR 274a.

(6) *Dependent employment pursuant to informal de facto reciprocal arrangements.* For purposes of this section, an informal de facto reciprocal arrangement exists when the Department of State determines that a foreign state allows appropriate employment on the local economy for dependents of certain United States officials assigned to duty in that foreign state. The Office of Protocol shall maintain a listing of countries with which such reciprocity exists. Dependents of an A–1 or A–2 principal alien assigned to official duty in the United States may be granted permission to accept or continue in employment based upon informal de facto arrangements if the following conditions are met:

(i) The dependent submits Form I–566 to the Office of Protocol for transmission to the Visa Office. This application shall include a certification by the diplomatic mission of the foreign state employing the principal alien that the applicant is the dependent, as defined in this section, of an official of that foreign state whose assignment in the United States is expected to last more than six months;

(ii) The dependent submits with the application a statement from the prospective employer describing the position and the salary offered, the duties of the position and verification that the dependent possesses the necessary qualifications for the position; and

(iii) Both the authorized representative of the Department of State and the District Director of the Service at Washington, DC, or the Director of the Service's Eastern Regional Service Center are satisfied that:

(A) Both the principal alien and the dependent desiring employment are maintaining A–1 or A–2 status as appropriate;

(B) Employment of a similar nature for dependents of United States Government officials assigned to official duty in the foreign state employing the principal alien is not prohibited by that foreign state's government;

(C) The proposed employment is not in an occupation listed in the Department of Labor Schedule B (20 CFR Part 656), or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment. This Schedule B restriction does not apply to a dependent child, son or daughter who is a full-time student if the employment is part-time, consisting of not more than 20 hours per week and/or if it is temporary employment of not more than 12 weeks during school holiday periods; and

(D) The proposed employment is not contrary to the interests of the United States including, but not limited to, the public welfare and national security interests. Other situations which may be considered contrary to the interests of the United States include, but are not limited to: employment of A–1 or A–2 dependents who have criminal records, or who have violated the Immigration and Nationality Act, visa laws or regulations, or who have worked illegally in the United States, or who cannot establish that they have paid taxes and Social Security on income from previous United States employment.

(7) *Period of time for which employment may be authorized.* If approved, an application to accept or continue employment under this section shall be granted in increments of not more than two years each. The Service shall notify the Internal Revenue Service and the Department of Labor upon such approval.

(8) *No appeal.* There shall be no appeal from a denial of permission to accept or continue employment under this section.

(9) *Dependents or family members of principal aliens classified A–3.* A dependent or family member of a principal alien classified A–3 may not be employed in the United States under this section.

(10) *Unauthorized employment.* An alien classified under section 101(a)(15)(A) of the Act who is not a principal alien and who engages in employment outside the scope of, or in a manner contrary to this section, may be considered in violation of section 241(a)(9)(A) of the Act. An alien who is classified under section 101(a)(15)(A) of the Act who is a principal alien and who engages in employment outside the scope of his/her official position may be considered in violation of section 241(a)(9)(A) of the Act.

* * * * *

3. Section 214.2 is amended by revising paragraph (g)(2) and adding paragraphs (g)(3) through (g)(11) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(g) * * *

(2) *Definition of G–1 or G–4 dependent.* For purposes of employment in the United States, the term "dependent" of a G–1 or G–4 principal alien, as used in § 214.2(g), means any of the following immediate members of the family habitually residing in the same household as the principal alien who is an officer or employee assigned to a mission to an international organization or is employed by an international organization in the United States:

(i) Spouse;

(ii) Unmarried children under the age of 21;

(iii) Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;

(iv) Unmarried sons or daughters under the age of 25 who are in full-time attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and such bilateral employment agreement does not specify 23 as the maximum age for employment of such sons and daughters. The Office of Protocol of the Department of State shall maintain a listing of foreign states with which the United States has such bilateral employment agreements. The provisions of this paragraph apply only to G–1 dependents under certain bilateral agreements and are not applicable to G–4 dependents;

(v) Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain or re-establish their own households. The Department of State or the Service may require certification(s) as it deems sufficient to document such mental or physical disability.

(3) *Applicability of a formal bilateral agreement or an informal de facto arrangement for G–1 dependents.* The applicability of a formal bilateral agreement shall be based on the foreign state which employs the principal alien and not on the nationality of the principal alien or dependent. The applicability of an informal de facto arrangement shall be based on the foreign state which employs the principal alien, but under a de facto arrangement the principal alien also must be a national of the foreign state which employs him/her in the United States.

(4) *Income tax, Social Security liability; non-applicability of certain immunities.* Dependents who are granted employment authorization under this section are responsible for payment of all federal, state and local income, employment and related taxes and Social Security contributions on any remuneration received. In addition, immunity from civil or administrative jurisdiction in accordance with Article 37 of the Vienna Convention on Diplomatic Relations or other international agreements does not apply to these dependents with respect to matters arising out of their employment.

(5) *G–1 dependent employment pursuant to formal bilateral employment*

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agreements. The Office of Protocol shall maintain a listing of foreign states which have entered into formal bilateral employment agreements. Dependents of a G–1 principal alien assigned to official duty in the United States may accept unrestricted employment based on such formal bilateral agreements between the Department of State and foreign states if the applicable agreement includes persons in G–1 visa status and if the following conditions are met:

(i) The mission of the foreign state employing the official makes an official request to the Office of Protocol, or to the Office of Host Country Affairs of the United States Mission to the United Nations if the principal G–1 alien is a representative to the United Nations;

(ii) The Office of Protocol or the Office of Host Country Affairs recognizes the person as a dependent, as defined in this section, of an official G–1 employee; and

(iii) The Office of Protocol or the Office of Host Country Affairs informs the mission of the foreign state that the dependent has permission to accept employment upon receipt of employment authorization documentation issued by the Service in accordance with 8 CFR 274a.

(6) *G–1 dependent employment pursuant to informal de facto reciprocal arrangements and G–4 dependent employment.* For purposes of this section an informal de facto reciprocal arrangement exists when the Department of State determines that a foreign state allows appropriate employment on the local economy for dependents of certain United States officials assigned to duty in that foreign state. The Office of Protocol shall maintain a listing of countries with which such reciprocity exists. Dependents of a G–1 principal alien assigned to official duty in the United States may be granted permission to accept or continue in employment based upon informal de facto arrangements. Additionally, the following conditions must be met in the case of such G–1 dependents and in the case of all G–4 dependents:

(i) The dependent submits Form I–566 to the Office of Protocol for transmission to the Visa Office or to the United States Mission to the United Nations if the principal alien is employed by the United Nations. This application shall include a certification by the mission of the foreign state or by the international organization employing the principal alien that the applicant is the dependent, as defined in this section, of an official of that foreign state or organization whose assignment in the United States is expected to last more than six months;

(ii) The dependent submits with the application a statement from the prospective employer describing the position and the salary offered, the duties of the position, and verification that the dependent possesses the necessary qualifications for the position; and

(iii) Both the authorized representative of the Department of State and the District Director of the Service at New York (if the principal alien is a representation to the United Nations) or the District Director of the Service at Washington, DC, or the Director of the Service's Eastern Regional Service Center are satisfied that:

(A) Both the principal alien and the dependent desiring employment are maintaining G–1 or G–4 status as appropriate;

(B) Employment of a similar nature for dependents of United States Government officials assigned to official duty in the foreign state employing the principal alien is not prohibited by that foreign government. The provisions of this paragraph apply only to G–1 dependents;

(C) The proposed employment is not in an occupation listed in the Department of Labor Schedule B (20 CFR Part 656), or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment. This Schedule B restriction does not apply to a dependent child, son or daughter who is a full-time student if the employment is part-time; consisting of not more than 20 hours per week, and/or if it is temporary employment of not more than 12 weeks during school holiday periods; and

(D) The proposed employment is not contrary to the interests of the United States including, but not limited to, the public welfare and national security interests. Other situations which may be considered contrary to the interests of the United States include, but are not limited to: employment of G–1 or G–4 dependents who have criminal records, or who have violated the Immigration and Nationality Act, visa laws or regulations, or who have worked illegally in the United States, or who cannot establish that they have paid taxes and Social Security on income from previous United States employment. Additionally, the Department of State may determine a G–4 dependent's employment is contrary to the interest of the United States when the principal alien's country of nationality has one or more components of an international organization or international organizations within its borders and does not allow the employment of dependents of United States citizens employed by such component(s) or organization(s).

(7) *Period of time for which employment may be authorized.* If approved, an application to accept or continue employment under this section shall be granted in increments of not more than two years each. The Service shall notify the Internal Revenue Service and the Department of Labor upon such approval.

(8) *No appeal.* There shall be no appeal from a denial of permission to accept or continue employment under this section.

(9) *Dependents or family members of principal aliens classified G–2, G–3 and G–5.* A dependent or family member of a principal alien classified G–2, G–3 and G–5 may not be employed in the United States under this section.

(10) *Unauthorized employment.* An alien classified under section 101(a)(15)(G) of the Act who is not a principal alien and who engages in employment outside the scope of, or in a manner contrary to this section, may be considered in violation of section 241(a)(9)(A) of the Act. An alien who is classified under section 101(a)(15)(G) of the Act who is a principal alien and who engages in employment outside the scope of his/her official position may be considered in violation of section 241(a)(9)(A) of the Act.

(11) *Special provision.* As of November 21, 1988, no new employment authorization will be granted and no pre-existing employment authorization will be extended for a G–1 dependent absent an appropriate bilateral agreement or de facto arrangement. However, a G–1 dependent who has been granted employment authorization by the Department of State prior to the effective date of this section and who meets the definition of dependent under § 214.2(g)(2) (i), (ii), (iii) or (v) of this part but is not covered by the terms of a formal bilateral agreement or by an informal de facto reciprocal employment arrangement may be allowed to continue in employment until whichever of the following occurs first:

(i) The employment authorization by the Department of State expires; or

(ii) He or she no longer qualifies as a dependent as that term is defined in this section; or

(iii) December 31, 1989.

This transition period is granted so that the Department of State may negotiate additional bilateral agreements or establish de facto reciprocity with foreign states without unduly affecting individuals while the negotiations are underway.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

4. The authority citation for Part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a.

§ 274a.12 [Amended]

5. Section 274a.12(c)(1) is amended by inserting "child," after "dependent" and before "son".

6. Section 274a.12(c)(4) is amended by inserting "child," after "dependent" and before "son", and by changing the term "(G–4)" to "(G–1 or G–4)".

Dated: September 30, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88–26851 Filed 11–18–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 85–035F]

Streamlined Inspection System for Broilers and Cornish Game Hens

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; confirmation of interim rule with minor revisions and correction.

SUMMARY: On January 29, 1986, the Food Safety and Inspection Service published an interim rule with request for comments to establish a new method of post-mortem inspection known as the "Streamlined Inspection System" (SIS) for broilers and cornish game hens. The new system has been implemented in establishments previously operating under Modified Traditional Inspection. SIS incorporates new post-mortem inspection procedures requiring one or two inspectors and a Finished Product Standards (FPS) program for evaluating the wholesomeness and acceptability of finished product. Establishments are responsible for performing the necessary trim of designated defects on passed carcasses and for operating the FPS program. The new system allows increased efficiency in the use of FSIS resources and those of the poultry industry, while still providing consumers with wholesome and unadulterated products. FSIS is adopting the interim rule as a final rule with minor revisions based on the comments received.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made a determination that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The principal effect of this final rule is to establish a new inspection system for broilers and cornish game hens in response to increased demands on Agency resources. It provides FSIS and the poultry industry with an inspection procedure that meets the requirements for inspection within available resources.

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). Certain changes in plant facilities are required of establishments that operate under SIS; however, these changes, which were published in the October 21, 1987, issue of the **Federal Register**, will result only in minor expenditures. The industry will realize some gains through reduced charges for overtime inspection because there will be fewer inspectors per line, reduced workspace requirements for inspection teams, and increased productivity by maintaining optimal line speeds.

Background

The Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) requires, among other things, that the Secretary of Agriculture, through appointed inspectors, conduct a post-mortem inspection of the carcass of each bird processed in every official establishment that processes poultry for commerce or that is otherwise subject to the Act and condemn all product found to be adulterated. The post-mortem inspection is performed by veterinarians or trained food inspectors under veterinary supervision. Working at a moving production line, inspectors view the exterior, interior, and viscera (internal organs) of each bird slaughtered for the purpose of detecting disease or other conditions that might render the carcass or any part thereof unfit for human food or otherwise adulterated. In carrying out the examination, the inspectors follow standardized inspection procedures and initiate actions consistent with their findings. The procedures are designed to assure that only wholesome and unadulterated carcasses and carcass parts are passed for human food.

Post-mortem inspection of livestock and poultry accounts for the largest portion of the Department's expenditures for meat and poultry inspection. Therefore, use of the most efficient and effective post-mortem inspection procedures and staffing standards is essential to minimizing costs while protecting the public health.

The responsibility of the Department to make the most efficient use of its resources is now more important than ever because FSIS's resources are decreasing at the same time that demands for inspection services have been increasing. On September 19, 1985, a hiring freeze on permanent full-time (PFT) employment by FSIS was ordered to reflect a fiscal year (FY) 1986 operating budget that was less than necessary to support current employment.

In addition to freezing PFT employment, the hiring freeze restricted the conversion of temporary, intermittent, or part-time employees to PFT status. Also, use of part-time and other employment was held at 1985 levels. Personnel actions that involved moving employees between major program areas, from the field to headquarters, and from line to staff positions were also frozen.

On November 15, 1985, FSIS found it necessary to order additional cost-saving measures beyond those then in place to be able to operate within available funding levels. These measures included a continuation of the freeze on PFT employment, a one-third reduction in non-inspection-related travel, suspension of all non-technical training, and reductions in various contracts. All other costs were limited to the 1986 base level or below (1985 level less any non-recurring activities). FSIS's funding level necessitated a

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continuation of the hiring freeze and consequent reduction in employment. This reduction was influenced by such economic factors as inflation and rising employee benefit costs. However, even if FSIS were able to maintain the previous year's employment level, it would still have been unable to meet the rising industry demands for inspection service.

Besides the budget short fall, the Agency faces long-term constraints on its operations. The passage of the Gramm-Rudman-Hollings Balanced Budget Amendment of 1985 makes it likely that FSIS will be compelled to economize much further in the coming years. Appropriations for FY 1986 were subject to reductions of 4.3 percent to meet the requirements of Gramm-Rudman-Hollings, and increasingly larger cuts are mandated for the following fiscal years.

FSIS spends about 85 percent of its operating budget on employee salaries and benefits. This makes it impossible to absorb funding reductions or accommodate increased costs except through personnel reductions. The great majority of FSIS staff are field inspectors and veterinarians. Thus, any budgetary reductions are almost immediately felt in day-to-day inspection operations.

Even though FSIS continues to operate under certain budgetary constraints, it must fulfill its responsibilities under the law. A House-Senate Conference deliberating on one of the Continuing Resolutions recently took the position that "in administering the Federal Meat Inspection Act and the Poultry Products Inspection Act, the Administrator of FSIS is expected to take whatever action is necessary to ensure that requests for inspection service required by law are promptly accommodated. On-site inspection should receive priority over some other Agency functions".

At the same time that the Agency has been confronted with new budgetary limits, the poultry industry has been demanding increased inspection service. The operators of federally inspected poultry processing establishments have requested inspectional coverage for new production lines and expanded operations. Many establishments that have previously operated single-working shifts have expanded to two shifts or are planning to do so in the near future. The growth of the poultry products industry is accelerating. Production in FY 1985 was increased 5.5 percent over production in FY 1984 and increased by a similar percentage in FY 1986. In terms of per capita consumption, poultry is now second only to beef among all meat and poultry food products.

To accommodate the demands of increasing consumption and production and to absorb workforce reductions without denying inspection service, FSIS took immediate action to revise its poultry inspection procedures. On January 29, 1986, FSIS published an interim rule in the **Federal Register** (51 FR 3569) establishing the "Streamlined Inspection System" (SIS), a new post-mortem inspection system to be implemented in establishments that slaughter broilers and cornish game hens. These establishments constitute the largest section of the poultry industry in terms of output. The revision of inspection procedures in these establishments enabled FSIS to shift qualified inspection personnel to areas where their services were more efficiently and productively employed. This change became possible not merely because of the exigencies of present and future budgets, but because of the experience FSIS has gained over recent years in operating several types of poultry inspection systems.

Prior to the interim rule, there were three systems used for the inspection of broilers and cornish game hens, namely traditional inspection, modified traditional inspection, and the "New Line Speed" (NELS) inspection system. Also, a New Turkey Inspection (NTI) system was implemented in turkey slaughter establishments. SIS is a new method that has been developed on the basis of experience gained in operating the previous inspection systems.

A. Traditional Inspection

Under traditional inspection, one inspector examines a whole bird and is responsible for the proper disposition of the bird, including the identification and verification of any required trimming, before it leaves the inspection station. Traditional inspection was satisfactory to FSIS and the poultry industry for many years and is still performed in some slaughter establishments.

B. Modified Traditional Inspection (MTI)

In the middle 1970's, the development of automated evisceration equipment, as well as improvements in genetics, nutrition, health, and flock management, allowed the poultry industry to present uniform lots of birds to inspectors faster than inspectors could properly inspect the birds under the traditional methods. Therefore, a new inspection procedure known as "Modified Traditional Inspection" was developed in 1978 which allowed better use of inspection resources and permitted the poultry industry to take advantage of these new technologies and production improvements. MTI allowed industry to run an eviscerating line at speeds of up to 70 birds per minute.

MTI reduced the number of motions required for each of three inspectors on the line by splitting post-mortem inspection into two functional tasks. One task (performed by one inspector) was the outside inspection of each uneviscerated prepositioned carcass, using a mirror to observe surfaces not directly visible. The second task (performed by two inspectors), inside/viscera inspection, was performed after the bird was eviscerated and establishment personnel repositioned the carcass and its attached viscera. The trimming of carcass defects was performed by establishment employees, known as helpers or trimmers, who were positioned next to and acted under the direction of the inspectors.

C. New Line Speed (NELS) Inspection System

After the implementation of MTI, the poultry industry continued to make significant technological advances. Consequently, many establishments were able to present uniform lots of birds to inspectors faster than the 70 birds per minute allowed with MTI. This advance was made possible by improved automated equipment and better control of the production process. In these establishments, the inspection process again became a limiting factor in establishment productivity and restricted the return-on-investment for the development and installation of modern, innovative equipment and facilities. It became apparent to the Agency that these restraints could not be overcome through expanded use of MTI. Also, various studies had shown that Federal inspection was more efficient and effective in establishments where quality control was emphasized.

Establishments without the facilities, personnel, or procedures necessary to ensure the highest practicable degree of quality control sometimes tended to rely on Federal inspection as a substitute for the proper control of their own operations. In those establishments, Federal inspectors were sometimes placed in a burdensome, quasi-supervisory role not appropriate under the PPIA.

The NELS system eliminated much of the need for post-mortem inspectors to act in such a role. It required that participating establishments have and maintain good control of their facilities, personnel, and processing procedures, as spelled out in a written partial quality control agreement with FSIS. This agreement assures the inspector-in-charge that all functions critical to the processing of an acceptable product are being effectively performed by the establishment.

The NELS inspection system uses three post-mortem inspectors on each eviscreating line. Each inspects the outside (with the aid of a mirror), the inside, and the viscera of every third bird presented. The inspectors determine whether the birds should be condemned, salvaged, retained for disposition by a veterinarian, reprocessed, or permitted to move down the line as a passed bird subject to trim and reinspection. After post-mortem inspection is completed at the inspection station, establishment employees perform any necessary trim on all passed carcasses after the giblets are harvested.

The complete NELS inspection system consists of three inspectors performing the NELS inspection procedure and one inspector monitoring the application of an approved partial quality control (PQC) program designed to assure that the production process is under control and producing acceptable product. This program—the Poultry Carcass On-Line Quality Control (PCOLQC) Program—is a statistically based sampling system designed to assure the control of an establishment's processing operations. It is the basis for the approval of the use of the NELS inspection system in any establishment.

The maximum line speed achievable under NELS is 91 birds per minute. This speed may be reached when all plant conditions are optimal. The inspector-in-charge is responsible for reducing the line speed when, in his or her judgment, the existing NELS system does not permit adequate inspection because the birds are not presented properly or the health conditions of a particular flock dictate a need for a more extended inspection procedure.

D. New Turkey Inspection (NTI) System

For many years, the traditional inspection procedure was the only inspection procedure available to turkey processors, and was satisfactory to both FSIS and the turkey industry. As in the traditional procedure applied to broilers and cornish game hens, traditional turkey inspection involved the examination of the whole bird by one inspector who was responsible for proper disposition of the bird, including the identification and verification of any required trim, before the bird left the inspection station. In the last several years, the turkey industry has grown and matured to the point that merely expanding the use of the traditional inspection procedure would be impractical, inefficient, and place demands on resources that would be difficult for the Agency to meet. Therefore, in September of 1985, FSIS established the NTI system.

As in NELS, the NTI system places upon establishments the responsibility of developing and maintaining good control of their facilities, personnel, and processing procedures. A written partial quality control program, approved by FSIS assures the inspector-in-charge that critical processing functions are being effectively performed by the establishment. Depending on required plant line speeds, the NTI system requires one or two inspectors on each eviscerating line. The inspector inspects the outside, inside, and viscera of every bird presented. The inspector determines whether the bird should be condemned, salvaged, retained for disposition by a veterinarian, reprocessed or permitted to move down the line as a passed bird subject to trim and reinspection.

After post-mortem inspection has been completed at the inspection station(s), establishment employees perform any necessary outside trim on all passed carcasses after the giblets are harvested. Under traditional inspection, the inspector is responsible for identifying those carcases that must be trimmed, directing the establishment employee to trim the defects, and verifying that the bird has been properly trimmed. However, NTI shifts the responsibility of performing specific outside trim to the establishment employees.

The complete NTI system is like NELS in that it consists of one or two inspectors performing whole bird inspection, and one inspector monitoring the application of an approved PQC program to assure that the program is being followed. As in NELS, an acceptable PCOLQC program is the basis for approving use of the NTI system in any establishment. Under NTI, FSIS inspectors are responsible for inspecting the carcasses, monitoring the establishment's application of the PQC program, and conducting regular verification and evaluation sampling and observations to assure that the establishment's data are accurate and truthful, thus assuring that the ready-to-cook poultry conforms to all applicable regulatory requirements.

The NELS and NTI systems were subject to effectiveness studies comparing them with previously existing inspection procedures. NELS was operationally tested in three establishments and compared with both MTI and traditional inspection. Similarly, effectiveness studies to test the NTI system and compare it with the traditional inspection procedure were conducted in three establishments. The effectiveness test results indicated that there were no significant differences between NELS, MTI, and traditional inspection for broilers and cornish game hens, or between NTI and traditional inspection for turkeys.

The NELS and NTI systems represent notable advances in the development of efficient, scientifically-based inspection systems. The tests conducted on these systems were the most exhaustive ever performed on new inspection procedures. The valuable lessons gained from the development and application of the systems have enabled FSIS to prepare for future inspection systems that will rely extensively on automated equipment and the analysis of computerized data for objective monitoring of inspection performance and the incidence of carcass defects and disease conditions. Moreover, the experience gained by FSIS in operating NELS and NTI has provided the basis for developing SIS.

Development of SIS

Since the inception of NELS and NTI, top FSIS veterinarians and technical specialists have devoted many hours to the analysis of work measurement studies, disposition data, and other information from tests of the systems and from inplant operations. The specialists found that a new sequence of hand-eye movements would provide the most efficient and effective inspection procedures.

The analysis of technical information from the NELS and NTI tests, including the new work measurement findings, enabled FSIS to begin preliminary work on a two-inspector NELS system in May 1984. Since that time, FSIS has explored other one- and two-inspector procedures. Work measurement studies on the two-inspector NELS procedure were begun last year and were carried out over several months. On the basis of these studies, FSIS informed the broiler industry of the potential availability of one- or two-inspector NELS systems. The implementation of these systeme would have permitted additional establishments operating under the older MTI procedure to convert to the NELS system. In addition to permitting increased productivity in the poultry industry, FSIS would be able to fulfill its inspection responsibilities in a more uniform manner within NELS establishments and from establishment to establishment.

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The two-inspector NELS system was not formally proposed or implemented because of a few unresolved problems in establishing uniform approaches to inspection in various settings. Also, during the short time in which the system had been under development, there had been no opportunity to demonstrate the two-inspector system under operational conditions.

Nevertheless, the experience gained in developing this system enabled FSIS to conceive an innovative approach to poultry inspection. Rather than being implemented in the NELS setting, however, SIS was applied in MTI establishments. In those MTI establishments, FSIS had accumulated vast inspection experience and has been able to sustain a uniform approach to inspection.

SIS includes an inspection procedure that involves whole bird disposition in which each inspector examines the viscera, the inside, and outside surfaces of the carcass. The innovation represented by SIS, besides enhancing inspection productivity in old MTI establishments, also provides some incentive to establishments now operating under traditional inspection to convert to a system that can permit them to increase their output.

After post-mortem inspection under SIS has been completed at the inspection station(s), establishment employees perform any necessary outside trim on all passed carcasses after all the giblets are harvested. The inspector's helper may perform some trim if time permits.

SIS was implemented in official establishments once processing broilers and cornish game hens under the MTI procedure. While SIS is an alternate inspection method, its use is not voluntary in those establishments; the new system was implemented in existing MTI establishments on the basis of the Administrator's determination that SIS increases inspector efficiency. Establishments not operating under MTI may request the implementation of SIS; the request is approved if the Administrator determines that the system will result in no loss of inspector efficiency.

The chief difference between SIS and MTI is that under the new system there is no mirror inspection system. Rather, there are one or two inspection stations located on the processing line after the birds have been eviscerated. Each inspector examines the outside, inside, and viscera of the birds presented for inspection. The one-inspector form of SIS is known as SIS–1; the two-inspector configuration is known as SIS–2. Inspection under both SIS–1 and SIS–2 is conducted in two phases—a post-mortem inspection phase and a reinspection phase. Under SIS–1, every bird on each production line is presented to a single inspector for examination. Under SIS–2, there are two inspection stations at which each inspector examines the outside, inside, and viscera. Every other bird on the moving production line is presented to each inspector with the back side of the carcass toward the inspector and the viscera uniformly trailing or leading. In both SIS–1 and SIS–2, an establishment employee (termed a helper) is positioned next to each inspector. The maximum inspection rate for SIS–1 is 35 birds per minute; the maximum inspection rate for SIS–2 is 70 birds per minute per inspector team—the same maximum rate as that once permitted under MTI.

The inspection rates, or line speeds, are determined by the inspector-in-charge of an official establishment on the basis of his or her professional judgment. Line speeds are dependent on the appropriate presentation of carcasses for inspection. The adequacy of carcass presentation, in turn, depends on such factors as disease conditions in poultry flocks, plant operating conditions, lighting, and facilities. FSIS has developed guidelines for the presentation of carcasses in official poultry slaughter establishments.[1] These guidelines provide objective criteria for determining acceptance presentation and for reducing the line speeds when presentation is less than acceptable for inspecting birds at 70 birds per minute. These guidelines are applied by FSIS as a part of SIS.

In the inspection phase of SIS, inspectors determine which birds must be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to be moved down the line as a passed bird subject to reinspection. If an inspector finds that some poultry carcasses have certain defects not requiring condemnation of the whole carcass, the inspector may pass the carcass, which is then subject to reinspection to assure that the defects are physically removed. The helper, at the inspector's direction, marks these carcasses for trim unless the defects are obvious. Trimming of birds passed subject to reinspection is performed by establishment employees after all giblets have been harvested. The inspector's helper may perform some trim if time permits.

The reinspection station or stations are located at the end of the processing lines and after each chiller. At the prechill station, inspectors examine carcasses that have been passed subject to reinspection by visually monitoring, checking data, and/or gathering samples at the station. SIS incorporates a Finished Product Standards (FPS) program which is analogous to the Acceptable Quality Limits (AQL) program in the traditional and modified traditional systems and to the FPS in the NELS system. The FPS for SIS is applied in two phases—before and after the carcass chilling process. In the prechill phase, the carcasses are checked for processing and trimming defects; in the postchill phase, the birds are checked for defects caused by the chilling operation.

The AQL program used in the traditional inspection system was designed to be applied either before or after the chilling process. In practice, the AQL has been applied almost exclusively after the chill. (Some turkey processing establishments conduct prechill AQL checks.) The poultry industry has chosen to have AQL checks made after chilling because of production line configurations and space availability. Under the traditional systems, the trimming of carcasses was not the responsibility of the establishment, and the performance of AQL checks after the chilling process was therefore acceptable to FSIS. Under this arrangement, however, problems that necessitated a large amount of reworking of product occasionally developed because the finished products were found not to be in compliance with AQL standards.

With the advent of NELS and NTI, the responsibility for trimming carcasses was shifted from FSIS inspectors to the establishment. FSIS's experience in developing the FPS for NELS and NTI and in applying the PCOLQC program for those systems led to the conclusion that a more responsive system is now available. Data collected during the development of the FPS showed that the poultry chilling system itself contributes to carcass defects. The postchill AQL program applied under the traditional systems checks for defects that occur during processing and chilling. It was found that applying the PCOLQC and the FPS for NELS and NTI involved the use of two product-checking systems—a prechill system and a postchill system. The prechill system measures the degree of product nonconformance with processing and trimming standards, while the postchill system measures product nonconformance in terms of extraneous material present on birds exiting the chiller. The prechill and postchill testing systems developed for NELS and NTI were designed to allow the industry to enhance its responsiveness to process changes to minimize the amount of rework. As in NELS and NTI, the FPS program for SIS includes a prechill test that measures the effectiveness of processing controls and postchill test that reflects changes taking place during the chilling process.

Products not complying with the FPS are determined by FSIS to be adulterated. FSIS has determined that defects on carcasses or parts of carcasses below the action levels specified in the regulations do not render the carcasses or parts adulterated.

The standards for nonconformance used in the FPS program for SIS are adapted from those applied in the NELS system. These standards were based on data collected on passed birds in a group of 15 randomly selected broiler establishments. In developing the standards, all defects and trimming errors found on the passed birds were recorded. These same birds were then passed through the chilling process, recovered, and reexamined for all defects and trimming errors. Data from observations of the processed birds were compared with data used to set the AQL standards for the traditional inspection systems. The FPS under NELS were then provisionally established, after consultation with industry, using criteria similar to those used for the existing AQL. The standards were compared under plant operating conditions with the existing AQL standards and found to be valid. Product evaluated under the new FPS was equivalent in quality to product evaluated according to the old AQL standards. Thus, the specific values in the FPS and the list of nonconformances for SIS are the same as those already in use in the NELS system, and are based on studies and experience with that system over the last 2 years.

When SIS was implemented, certain establishments in the Southwest United States, principally in Arkansas and East Texas, experienced an unexpected problem with meeting the postchill FPS. These establishments advised the Agency that they were unique and either used water containing high levels of minerals and/or killed birds fed milo instead of corn.

The milo, like any feed, occasionally contaminated some carcasses. The problem was that the specks of milo contamination were small, numerous, and seemed to adhere to the carcass, making washing or reprocessing of the carcass difficult, if not impossible. Considerable time and Agency resources were spent attempting to solve this problem. Working with several leading industry representatives, the Agency concluded that establishments controlling their manufacturing processes has little or no problems meeting the postchill FPS.

The operation of the FPS program is the responsibility of the official establishment. Under SIS, data on the finished product standard evaluations are recorded using the cumulative sum (CUSUM) concept. In the CUSUM statistical method, the data collected on a given day are compared with previously collected data to determine the establishment's ability to control its processing operation and conform with product standards. Guidelines on the FPS program are available upon request from the Slaughter Inspection Standards and Procedures Division at the address given in footnote 1. These guidelines include information on form preparation and CUSUM calculations, and provide examples to clarify the application of the FPS program.

SIS–1 requires that the establishment provide one inspection station for each line and reinspection facilities adequate for the removal and examination of carcasses from each line for evaluation. SIS–2 requires the establishment to provide two inspection stations for each line and similarly adequate reinspection facilities. The implementation of SIS thus entails certain facility changes in the affected establishments. The SIS requirements for facilities at the inspection and reinspection stations were published as a final rule in the **Federal Register** on October 21, 1987 (52 FR 39207).

Comments and FSIS's responses on the proposed rule for Facility and Equipment Requirements for the Streamlined Inspection System for Broilers and Cornish Game Hens were published with the final rule in the **Federal Register** on October 21, 1987 (52 FR 39207).

Discussion of Comments

Comments on the interim rule were solicited from interested parties in the January 29, 1986, **Federal Register** (51 FR 3569). FSIS received 28 comments—20 from poultry processors, 4 from meat and poultry industry associations, 2 from FSIS poultry inspectors, and 2 from USDA employee associations. The following are summaries of those comments and FSIS's responses to each issue.

A. Poultry Processors

Many of the comments from poultry processors regarding SIS were favorable. The processors pronounced themselves ready to accept responsibilities for trimming of defects on the carcasses and for presentation of the birds for inspection. The processors expressed confidence in their ability to meet the prechill FPS; however, the postchill FPS is troublesome in some establishments.

1. *Comment:* The postchill FPS is unreasonably tight, of no benefit to the public, and is subject to wide application variations.

Response: The postchill FPS focuses on extraneous material and is designed to control defects that might be placed on the carcass as it moves through the chiller. These kinds of defects are essentially extraneous material caused by minute pieces of debris redistributed by the chiller during the course of the day or bits of mineral that might be a part of the entire potable water supplies.

As discussed earlier, some establishments experienced unexpected problems in meeting the postchill FPS. However, extensive research by the Agency found the postchill FPS to be reasonable and achievable if the establishments control their processing operation and react to the ongoing data collected on the prechill FPS. The postchill FPS test is necessary for it is the only check for nonconformances on the carcasses caused by the chilling process and the last official check on the carcasses before the product leaves the establishment.

2. *Comment:* A time limit should be imposed for conducting a postchill FPS test to reduce variation in the application of the standard.

Response: FSIS agrees with this commenter and has distributed to all establishments performing FPS tests instructions establishing a time limit of 5 to 7 minutes for a postchill FPS test and 8 to 10 minutes for a prechill FPS test. Monitoring personnel operating outside these time limits are to be correlated to provide uniform administration of the FPS program. To further reduce the variation in the application of the standard, the Agency developed a procedure for observing the carcass while performing the FPS tests. These timeframes and procedures were published in FSIS Directive 6120.1 dated August 27, 1987.[2]

[1] These guidelines are available for public inspection in the office of the FSIS Hearing Clerk. Copies may be obtained free upon request from the Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] Copies of this directive may be obtained free upon request from the Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Services, U.S.

Continued

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3. *Comment:* Place a size limit on the extraneous material counted on the postchill FPS.

Response: Since all extraneous material added to the carcass are from the production process, counting all of the extraneous material is a direct indication of the degree of process control in the establishment. Production managers not allowing extraneous material on the product, through a process control program or by reacting to the extraneous material data obtained on the prechill FPS checks, should have little or no problem meeting the postchill FPS regardless of the size of the extraneous material. The Agency also realizes the differences that people have in seeing various sizes of particles. Therefore, it is difficult to set a size limitation when agreement cannot be reached on a size which is visible to all people.

4. *Comment:* The postchill FPS is not analogous to the AQL.

Response: The FPS program consists of two testing systems—prechill and postchill. The prechill FPS program was designed to be analogous to the AQL. FPS is applied at the prechill location so that any problems developing on the evisceration line can be detected early and corrected before product reaches the chiller. This makes the system more responsive than AQL. However, some defects can occur to product as it moves through the chiller, which makes the postchill FPS necessary. Establishments controlling their processing operation and reacting to the ongoing data collected on the prechill FPS should find the postchill FPS reasonable and achievable.

5. *Comment:* On MP–Form 231 (FSIS Form 6500–2), an establishment is penalized five points under category 7 for not removing airsacculitis exudate from a bird that is not marked. An establishment should not be penalized for a USDA inspection error.

Response: FSIS agrees. During the development of the NELS FPS program, with an on-line control program, FSIS thought that categories 7 and 8 on MP–Form 231 (FSIS Form 6500–2) would adequately control the removal of lesions/conditions. Upon developing the SIS FPS program, the control of removal of these lesions/conditions was designed identically to the NELS FPS. Since then, it has become evident that the lack of a QC program requires a permanent marking system for identifying lesions/conditions and is necessary to adequately control trimming. Therefore, the rule has been modified to reflect this change.

An establishment shall have a permanent marking system for birds identified by a USDA inspector as needing removal of airsacculitis exudate from the inside surfaces of the carcass. When removable lesions/conditions are identified inside the carcass by the USDA inspector, the helper will be directed by the inspector to apply the permanent mark to the carcass. Subsequent to that inspection, if establishment or inspection personnel find removable inside lesions/conditions in carcasses without the permanent mark, the establishment continues to be responsible for the removal of the lesion/conditions, but the inspection error is not recorded and charged against the establishment in the FPS test. The affected carcasses will be hungback for IIC disposition and inspection correlation.

B. USDA Employee Association

1. *Comment:* A poultry establishment cannot handle the responsibility for trimming designated defects on passed birds.

Response: This responsibility has already been accepted by establishments operating under the NELS inspection system, and studies conducted by FSIS comparing NELS and MTI and traditional inspection have proven that establishments are capable of handling this responsibility. Preliminary studies of the trim performed under SIS indicate that establishments are having no problems in meeting the trim FPS.

2. *Comment:* Not enough FPS tests are performed under the SIS to detect unacceptable product.

Response: FPS tests are performed under the SIS as often as AQL tests were performed under MTI. The FPS tests conducted by FSIS personnel are the minimum number of tests required, and that number may be increased at the discretion of the inspector-in-charge.

3. *Comment:* The postchill FPS is effective in the protection of the public's health. The postchill FPS should not be relaxed. Poultry processors that maintain programs of adequate feed withdrawal, properly maintain and operate automatic equipment, wash carcasses properly, and filter chill water can meet the present postchill FPS.

Response: FSIS agrees with this comment.

C. FSIS Poultry Inspectors

1. *Comment:* SIS places a greater burden on the FSIS inspector, leading to greater stress and fatigue.

Response: An easily and rapidly adjustable platform and improved lighting are required under SIS to aid the inspector. SIS has removed the burden of identifying and verifying outside trim. Presentation guidelines have also been issued to ensure uniformly good presentation so the inspector is not overly burdened. Industrial engineers have measured the ergonomics of the inspection tasks, and a maximum line speed has been established at which the inspector can perform effective inspection without greater stress and/or fatigue.

2. *Comment:* In § 381.76(b)(3)(i)(*d*), the definition of "start number" is unclear.

Response: The definition for "start number" has been changed to read, "A value halfway between zero and the action number. The start number is used to determine the starting CUSUM for the first subgroup of a shift and to reset the CUSUM value if the CUSUM is equal to or greater than the action number."

3. *Comment:* In § 381.76 (b)(3)(iv)(*d*)(*4*)(*i*)(*E*) there is no mention of the resumption of random time postchill FPS testing after it has been suspended due to retesting of carcasses that were produced by a process that was not in control as determined by processing a prechill FPS testing.

Response: The following sentence has been added to that provision: "Once all product identified as needing retesting has arrived at the postchill sampling location, random time postchill FPS testing resumes."

Miscellaneous Amendments

Paragraphs (b)(4) and (b)(5) of § 381.76 were inadvertently omitted from the Code of Federal Regulations in the publication of the January 29, 1986, interim rule (51 FR 3569). These provisions provide requirements applicable to the NTI and NELS inspection systems that were not affected by the interim rule. Therefore, this final rule corrects that error by reissuing those provisions.

In addition, FSIS overlooked two references to "Modified Traditional Inspection" (MTI) contained in § 381.76 (c)(3) and (c)(6). Since SIS replaced MTI, those references to MTI are deleted, and "SIS" is added instead in this final rule.

List of Subjects in 9 CFR Part 381

Poultry products inspection, Post-mortem.

Final Rule

The interim rule amending 9 CFR Part 381 was published at 51 FR 3569, on January 29, 1986, is adopted as a final rule with the following changes:

Department of Agriculture, Washington, DC 20250. A copy is also available for public inspection in the Office of the FSIS Hearing Clerk.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 381.76 is amended by revising paragraph (b)(3)(i)(*d*), by adding a new paragraph at the end of paragraph (b)(3)(iv)(*d*)(*4*)(*i*)(*E*) after the second undesignated paragraph, by revising Parts B7, 8, and 9 of Table 1, and by adding paragraphs (b)(4) and (b)(5) to read as follows:

§ 381.76 Post-mortem inspection, when required; extent; traditional, Streamlined Inspection System (SIS), New Line Speed (NELS) Inspection System and the New Turkey Inspection (NTI) System; rate of inspection.

* * * * * *

(b) * * *

(3) * * *

(i) * * *

(*d*) "Start number". A value halfway between zero and the action number. The start number is used to determine the starting CUSUM for the first subgroup of a shift and to reset the CUSUM value if the CUSUM is equal to or greater than the action number. See Table 2.

* * * * * *

(iv) * * *

(*d*) * * *

(*4*) * * *

(*i*) * * *

(*E*) * * *

Once all product identified as needing retesting has arrived at the postchill sampling location, random time postchill FPS testing resumes.

* * * * * *

Table 1—Definitions of Nonconformances

* * * * * *

B * * *

7. Trimmable lesions/Condition
—A trimmable tumor or identifiable portion of a tumor on any part of the carcass.
—Trimmable Synovitis/airsacculitis (saddle/frog) lesions that have not been removed.
—Lesion/condition subject to removal following an approved cleanout process. Examples: airsacculitis, salpingitis, nephritis, spleen, or liver conditions requiring removal of the kidneys.

Table 1—Definitions of Nonconformances—Continued

Note: All establishments shall develop and maintain a permanent marking system that identifies carcasses with removable lesions/conditions on the inside surfaces. When removable lesions/conditions are identified inside the carcass by the inspector, the helper will be notified to apply the permanent mark. When removable inside lesions/conditions are found on a subgroup sample without the permanent mark, the error is not recorded in line 7. The affected carcass(s) will be hungback for IIC disposition and corrective action.
—Factor is five.
—A maximum of one incident per carcass.

8. Failure to complete task as indicated by marking system. Example: Synovitis, airsacculitis, inflammatory process, contamination, etc.
—The helper, under the inspector's direction, will apply a mark to the carcass, indicating to the trimmer(s) that specific action must be taken on that carcass. When airsac and kidney cleanout, or synovitis part removal, or carcass removal from the line is not completed, or only partially completed, this occurrence is recorded as one defect.
—Factor is five. It will also be recorded as a line 7 defect for a total factor of 10.
—A maximum of one incident per carcass.

9. Compound fracture
—Any bone fracture (i.e., leg or wing) that has caused an opening through the skin. May be accompanied with a bruise, but not always. Do not count the bruise in line 3 or 4 if it is associated with the compound fracture.
—Factor is two.
—A maximum of three incidents per carcass.

* * * * * *

(4) The following requirements are also applicable to NELS inspection:

(i) Inspection under NELS is conducted in two phases, as post-mortem inspection phase and a reinspection phase.

(*a*) Post-mortem inspection. The establishment shall provide three inspection stations on each eviscerating line in compliance with the facility requirements § 381.36(d)(1). The three inspectors shall inspect the inside, viscera, and outside of all birds presented. Each inspector shall be flanked by two establishment employees—the presenter and the helper. The presenter shall ensure that the bird is properly eviscerated and presented for inspection and the viscera uniformly trailing or leading. The inspector shall determine which birds shall be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to proceed down the line as a passed bird subject to reinspection. Poultry carcasses with certain defects not requiring condemnation of the entire carcass and specified in the partial quality control agreement as defects the establishment shall remove, shall be passed by the inspector, but shall be subject to reinspection to ensure the physical removal of the specified defects. The helper, under the supervision of the inspector, shall mark such carcasses for trim when the defects are not readily observable. Trimming of birds passed subject to reinspection shall be performed by:

(*1*) The helper, time permitting, and

(*2*) One or more plant trimmers positioned after giblet harvest and prior to reinspection.

(*b*) A reinspection station shall be located at the end of each line. This station shall comply with the facility requirements in § 381.36(d)(2). The inspector shall ensure that the establishment has performed the indicated trimming of carcasses passed subject to reinspection by visually monitoring, checking data, and/or gather samples at the station and at other critical points on the line. Specific reinspection activities shall be based on the establishment's partial quality control system and its performance under that system as determined by the inspector.

(ii) The approved quality control program for the establishment shall include critical control points on the line, which shall be monitored by the inspector. Establishment quality control employees shall operate the poultry carcass on-line quality control program and shall make immediately available to inspection personnel any and all data collected and maintained under the approved partial quality control program.

(iii) An inspector shall monitor the establishment's application of the poultry carcass on-line quality control program and shall take corrective action when he/she determines that the

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establishment has failed to maintain or correct its process as described in the approved quality control program.

(iv) The maximum inspection rate for NELS shall be 91 birds per minute per eviscerating line.

(5) The following requirements are also applicable to the NTI System:

(i) Inspection under the NTI System is conducted in two phases, a post-mortem inspection phase and a reinspection phase. The NTI–1 Inspection System requires that the establishment provide one inspection station for each line and adequate reinspection facilitiates so carcasses can be removed from each line for evaluation. The NTI–2 Inspection System requires that the establishment provide two inspection stations for each line and adequate reinspection facilities so carcasses can be removed from each line for evaluation.

(*a*) *Post-mortem inspection.* Each inspection station must comply with the facility requirements in § 381.36(e)(1). Each inspector shall be flanked by an establishment employee assigned to be the inspector's helper. The one inspector on an NTI–1 Inspection System shall be presented every bird. Each inspector on an NTI–2 Inspection System line shall be presented every other bird on the line. An establishment employee shall present each bird to the inspector properly eviscerated with the back side toward the inspector and the viscera uniformly trailing or leading. Each inspector shall inspect the inside, viscera, and outside of all birds presented. The inspector shall determine which bird shall be salvaged, reprocessed, condemned, retained for disposition by a veterinarian, or allowed to proceed down the line as a passed bird subject to trim and reinspection. Turkey carcasses with certain defects not requiring condemnation of the entire carcass and specified in the partial quality control program described in paragraph (d) of this section as defects the establishment shall remove, shall be passed by the inspector, but shall be subject to reinspection to ensure the physical removal of the specified defects. The helper, under the supervision of the inspector, shall mark such carcasses for trim when the defects of birds passed subject to reinspection shall be performed by:

(*1*) The helper, time permitting, and

(*2*) One or more plant trimmers positioned after the giblet harvest and prior to reinspection.

(*b*) *Reinspection.* A reinspection station shall be located at the end of the lines. This station shall comply with the facility requirements in § 381.36(e)(2). The inspector shall ensure that establishments have performed the indicated trimming of each carcass passed subject to reinspection by visually monitoring, checking data, and/or sampling product at the reinspection station and, if necessary, at other points, critical to the wholesomeness of product, on the eviscerating line. Specific reinspection activities shall be based on the establishment's partial quality control program described in paragraph (d) of this section and its performance under that program as determined by the inspector.

(ii) The approved partial quality control program described in paragraph (c) of this section for the establishment shall include critical control points on the eviscerating line, which shall be monitored by the inspector. Establishment quality control employees shall operate the quality control program, and shall make immediately available to inspection personnel any and all data collected and maintained under the partial quality control program.

(iii) An inspector shall monitor the establishment's application of the quality control program described in paragraph (c) of this section and shall take corrective action when he/she determines that the establishment has failed to maintain or correct its process as described in the approved partial quality control program.

* * * * *

§ 381.76 [Amended]

3. Under § 381.76, paragraph (c) (3) and (6) are amended by substituting the words "Streamlined Inspection System" for "Modified Traditional Inspection".

Done at Washington, DC, on November 16, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88–26809 Filed 11–18–88; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–81–AD; Amdt. 39–6076]

Airworthiness Directives; De Havilland Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises, publishes in the **Federal Register**, and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of de Havilland Model DHC–8–100 series airplanes by individual telegrams. This AD requires the addition of interim instructions to the Emergency Procedures Section of the Airplane Flight Manual (AFM). This action is prompted by incidents of inadvertent unfeathering of a propeller after the autofeather system had activated. This condition, if not corrected, could result in inadvertent unfeathering and loss of altitude during critical flight regimes. This action revises the previously issued telegraphic AD to limit the number of airplanes affected, and to provide for the installation of a modification which will eliminate the need for the additional instructions in the AFM.

DATES: Effective December 12, 1988.

Portions of this AD were effective earlier to all recipients of telegraphic AD T88–12–51, dated June 10, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Murry Schoenberger, Aerospace Engineer, New York Aircraft Certification Office, ANE–174, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION: On June 10, 1988, the FAA issued telegraphic AD T88–12–51, applicable to de Havilland Model DHC–8–100 series airplanes, which requires the addition of certain instructions to the Emergency Procedures Section of the FAA-approved Airplane Flight Manual (AFM). That action was prompted by two incidents where, during flight, the propeller on Model DHC–8 series airplanes inadvertently unfeathered after autofeather had occurred. Subsequent investigation revealed that when an engine fails with the autofeather system selected "ON," under certain conditions, the propeller could unfeather if either power lever is retarded. This unfeathering is inhibited once the condition lever is moved to the "START/FEATHER" of "FUEL OFF" position; furthermore, this can only occur if there is an abnormal delay between movement of the power lever and the condition lever. This condition, if nor corrected, could lead to inadvertent unfeathering and loss of altitude during critical flight regimes.

Subsequent to the issuance of that AD, the manufacturer developed a modification to the autofeathering latching logic wiring which, when installed, prevents the inadvertent unfeathering condition. Procedures for installation (retrofit) of this modification are described in de Havilland Service Bulletin 61–12–2, Revision A, dated October 28, 1988.

The FAA has determined that installation of this modification would eliminate the need for the (interim) AFM procedures required by the telegraphic AD. Therefore, the final rule has been revised to reflect that installation of the modification would constitute terminating action for the AFM addition. Although, with this action, the modification is provided as an *optional* terminating action, the FAA is considering further rulemaking to require the installation of the modification on all affected airplanes.

Additionally, de Havilland has advised FAA that this modification, defined as Mod 8/0909, was installed in production on airplanes, Serial Numbers 114 and subsequent. In light of this, the FAA has determined that those airplanes should not be subject to the requirements of this AD. Therefore, the applicability of the final rule has been revised to reflect that only airplanes, Serial Numbers 1 through 113, are affected.

The FAA has determined that these changes to the final rule, as described above, will not increase the economic burden on any operator, nor do they increase the scope of this AD.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g)

(Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising Telegraphic AD T88–12–51, issued June 10, 1988, by revising the applicability statement, adding a new paragraph B., and redesignating existing paragraph B. and C., as follows:

Boeing of Canada, Ltd, De Havilland Division: Applies to Model DHC–8–100 series airplanes, Serial Numbers 1 through 113, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent unfeathering of the propeller, accomplish the following:

A. Within 24 hours after the effective date of this AD, insert the following note into the Emergency Operating Procedures Section of the Airplane Flight Manual (AFM) [PSM–1–81–1A(FAA)], and alert all flight crews. This may be accomplished by inserting a copy of this airworthiness directive into the front of the Emergency Operating Procedures Section (Section 4) of the AFM:

Note.—Should an engine failure on fire after V_1 occur: Ensure that the emergency procedures of paragraphs 4.1.2., 4.2.1., and 4.2.2. of PSM 1–81–1A(FAA) are followed. The ENGINE SHUTDOWN check, paragraph 4.2.1., is not to be commenced until entering the third segment of the takeoff path. On commencement of the ENGINE SHUTDOWN or ENGINE FIRE (IN FLIGHT) check, paragraph 4.2.1. or 4.2.2., respectively, the check shoud be completed sequentially and uninterrupted to its conclusion.

B. Installation of the modification to the propellers-autofeather latching logic wiring, in accordance with de Havilland Service Bulletin 8–61–12, Revision A, dated October 28, 1988, constitutes terminating action for the requirements of paragraph A., above, and the required "Note" may be removed from the AFM.

C. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, New England Region, New York Aircraft Certification Office, 181, South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment revises Telegraphic AD T88–12–51, issued June 10, 1988.

This amendment becomes effective December 12, 1988.

Issued in Seattle, Washington, on November 10, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–26807 Filed 11–18–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–79–AD; Amdt. 39–6072]

Airworthiness Directives; Boeing Model 707–300, –300B, –300C, and –400 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 707–300 and –400 series airplanes, which currently requires modification of horizontal stabilizers that have accumulated 8,000 or more landings. This amendment requires rework of these stabilizers if necessary, to prevent stress corrosion in the horizontal stabilizer rear spar upper chord clevis. The condition, if not corrected, could lead to separation of the horizontal stabilizer.

EFFECTIVE DATE: December 30, 1988.

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ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Scott F. Romer, Airframe Branch, ANM-120S; telephone (206) 431-1966. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 79-01-06, Amendment 39-3388 (44 FR 2363; January 11, 1979), applicable to certain Boeing Model 707-300 and -400 series airplanes, to require modification of the horizontal stabilizer to prevent stress corrosion in the horizontal stabilizer rear spar upper chord clevis, was published in the **Federal Register** on July 21, 1988 (53 FR 27527).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, a foreign operator, requested that the proposed compliance time of 1 year be extended to 18 months, due to this operator's low airplane utilization rate. The FAA does not concur. Stress corrosion, which has resulted in the reported incidents of cracking, is basically time dependent, not flight cycle dependent. Therefore, the FAA has determined that the proposed compliance time is the maximum amount of time allowable for accomplishment of the modification without compromising safety.

Paragraphs A. and B. of the final rule have been revised to include Boeing Service Bulletin 3253, Revision 3, dated February 25, 1988, since Boeing Alert Service Bulletin A3313, Revision 9 (the service bulletin reflected in the proposal) references that service bulletin for certain associated modification procedures. The FAA has determined that this change to the final rule is for clarifying purposes only. It does not increase the economic burden on any operator, nor does it expand the scope of the AD.

Additionally, paragraph A. has been revised to reflect the latest revision of Boeing Service Bulletin 3331 as Revision 3, dated June 15, 1979.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

There are approximately 414 Model 707 series airplanes in the worldwide fleet. It is estimated that 55 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 707 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 79-01-06, Amendment 39-3388 (44 FR 2363; January 11, 1979), with the following new airworthiness directive:

Boeing: Applies to all Model 707-300, -300B, -300C, and -400 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

Note: The inspections required by AD 85-12-01 are not changed by this action.

To prevent the separation of the horizontal stabilizer, accomplish the following:

A. For airplanes on which the modification required by AD 79-01-06 has not been accomplished: Prior to the accumulation of 8,000 total landings, install structural improvement kits on the horizontal stabilizer outer panels and center section in accordance with Boeing Alert Service Bulletin A3313, Revision 9, dated February 25, 1988, Boeing Service Bulletin 3253, Revision 3, dated February 25, 1988, and Boeing Service Bulletin 3331, Revision 3, dated June 15, 1979.

B. For airplanes which have been modified in accordance with Boeing Service Bulletin A3313, Revision 8, or earlier versions, or Boeing Service Bulletin 3253, Revision 2, or earlier revisions, in compliance with AD 79-01-06: Within one year after the effective date of this AD, rework the clevis fittings in accordance with Boeing Alert Service Bulletin A3313, Revision 9, dated February 25, 1988, and Boeing Service Bulletin 3253, Revision 3, dated February 25, 1988.

C. Accomplishment of the modification requirements of this AD, constitutes terminating action for this AD and AD's 77-16-11 and 78-01-04.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 79-01-06, Amendment 39-3388.

This amendment becomes effective December 30, 1988.

Issued in Seattle, Washington, on November 4, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26806 Filed 11-18-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-34-AD; Amdt. 39-6061]

Airworthiness Directives; British Aerospace (BAe) PLC, Models HP 137 Jetstream Mk1, Jetstreams 200, and 3101 (Includes Model 3100) Airplanes (All Serial Numbers)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts, and revises, a new Airworthiness Directive (AD), AD 88-21-08R1, applicable to British Aerospace (BAe) PLC, Models HP 137 Jetstream Mk1, Jetstreams 200, and 3101 (includes Model 3100) airplanes (all serial numbers), and codifies the corresponding emergency AD letter dated October 14, 1988, as revised, into the **Federal Register**. This AD requires initial and recurring visual inspections of the securing rivet of the flap torque shaft universal joint and replacement of the universal joint assembly if the rivet has failed or has excessive end play. This condition, which was found during an air carrier inspection, could result in loss of control of the airplane due to asymmetric flap deployment. The actions of this AD will preclude asymmetric flap deployment due to failure of the universal joint rivet.

DATES: *Effective Date:* November 26, 1988, to all persons except those to whom it has already been made effective by priority letter from the FAA dated October 14, 1988, and is identified as AD 88-21-08.

Compliance: As prescribed in the body of the AD.

ADDRESSES: BAe Jetstream Alert Service Bulletin (ASB) 27-A-JA-881041, signed October 6, 1988, and amended by the Addendum ASB-A-JA-881041, dated October 5, 1988, applicable to this AD, may be obtained from British Aerospace PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; telephone (44-292) 79888; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; telephone (703) 435-9100. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Division, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; telephone (322) 513.38.30; or Mr. John P. Dow, Sr., FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: During an inspection of a BAe Jetstream wing flap actuation system, an air carrier discovered a failed securing rivet in the flap torque shaft universal joint. If this failed rivet was left uncorrected, asymmetric flap deployment could occur with resultant loss of control of the airplane. As a result, the manufacturer issued service information to detect and remedy this problem by describing procedures to inspect the securing rivet in the flap torque shaft universal joint, and replace the universal joint assembly if the securing rivet has failed. The Civil Aviation Authority (CAA) of the United Kingdom (UK) made compliance with this service information mandatory in the UK. The FAA reviewed the information and circumstances involving the failed rivet and determined that the CAA action should be made mandatory immediately for airplanes certificated for operation in the U.S. This is an interim action pending implementation of a permanent modification not requiring recurrent inspections.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the priority letter AD. It was also determined that an emergency condition existed, that immediate corresponding action was required, and that notice and public procedure thereon was impracticable and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by priority mail letter dated October 14, 1988. The AD became effective immediately to these individuals upon receipt of the letter, and is identified as AD 88-21-08.

Since the unsafe condition described therein may still exist on other British Aerospace (BAe) PLC, Models HP 137 Jetstream Mk1, Jetstreams 200, and 3101 (includes Model 3100) airplanes (all serial numbers), the AD is being published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the priority letter notification. Minor editorial changes, and a clarification of paragraph a(1) of the AD has been made by the addition of paragraph a(3) based upon comments received from the public. As a result, the AD is being revised and reissued as AD 88-21-08R1. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impractical for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. By revising and reissuing priority letter AD 88-21-08 as follows:

British Aerospace (BAe) PLC: Applies to Models HP 137 Jetstream Mk1, Jetstreams 200, and 3101 (includes Model 3109) airplanes (all serial numbers) certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent loss of airplane control due to asymmetric flap deployment, accomplish the following:

(a) Upon the accumulation of 2,000 cycles (1 cycle equals 1 takeoff and 1 landing) or within the next 25 cycles, whichever occurs later, visually and tactilely inspect the securing rivet on the left hand and right hand universal joints of the flap torque shaft as specified in BAe Jetstream Alert Service Bulletin (ASB) 27-A-JA-881041, signed October 6, 1988, and amended by the addendum to ASB 27-A-JA-881041, dated October 8, 1988. For each such universal joint:

(1) If the rivet has failed, or the vertical displacement of the rivet exceeds 0.040 inches, prior to further flight replace the torque shaft universal joint assembly with a serviceable part.

(2) If the vertical displacement of the rivet is end float only and does not exceed 0.040 inches as described in the above ASB as amended, repeat the inspection specified in paragraph (a) above thereafter at intervals not to exceed 50 cycles.

(3) If the rivet has not failed, and has no end float, repeat the inspection specified in paragraph (a) above thereafter at intervals not to exceed 200 cycles.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Division, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; telephone (44-292) 79888; or British Aerospace, Inc. Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; telephone (703) 435-9100. These documents may also be examined at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 28, 1988, to all persons except those to whom it has already been made effective by priority letter from the FAA dated October 14, 1988, and is identified as AD 88-21-08. This amendment revises AD 88-21-08, and will be identified as AD 88-21-08R1.

Issued in Kansas City, Missouri, on October 28, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26805 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-35-AD; Amdt. 39-6019]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-30 series airplanes, which currently requires structural inspections and repair or replacement, as necessary, to assure continued airworthiness. This AD would expand the applicability of that AD to include certain Model DC-9-10, -20, -30, -40, and -50 series airplanes. This action is prompted by a structural reevaluation which has identified certain principal structural elements likely to develop fatigue cracks, as these airplanes approach and exceed the manufacturer's original design life estimates. Fatigue cracks in these areas, if not detected and corrected, could compromise the structural integrity of these airplanes.

DATES: *Effective:* December 23, 1988. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of December 23, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5321.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 87-14-07, Amendment 39-5630 (52 FR 25589; July 8, 1987), to require inspections, and repair or replacement, as necessary, of the Principal Structural Elements (PSE) listed in McDonnell Douglas report number L26-008, R1, DC-9 Supplemental Inspection Document (SID), was published in the **Federal Register** on April 28, 1988 (53 FR 16724). The comment period for the proposal closed July 1, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The first commenter supported the proposal.

The second commenter stated that the SID program, as implemented, does not generate the required confidence by inspection of the defined sample in that the sample size is inspected at a much lower design life than that defined by the Supplemental Inspection Document (SID) criteria. The commenter suggested that a much larger sample size is required to provide the necessary confidence. The FAA does not concur. In reviewing the SID criteria, the FAA finds, at this time, no major discrepancies or omissions in the statistical-probability base which may discredit the results being sought. However, the FAA is acutely aware of additional work being developed in this area and will be kept apprised by the manufacturer of further iterations of the Supplemental Inspection Program. Should the existing Supplemental Inspection Program require revisions, the FAA may consider further rulemaking to revise this AD to incorporate that program.

The commenter further advised that when design life estimate is advanced, in using the sampling technique, there are possibilities for the existence of cracks outside the sample population. The FAA concludes that no one program can assure optimal safe guards for the likelihood of finding all cracks. The SID program is intended to supplement the operators' normal maintenance program by mandating a physical examination of those critical structural elements identified by a damage tolerance assessment of the airplane. The SID, integrated with operator vigilance and a well-developed and diligently practiced normal maintenance program, may prolong the service life of the airplane. The FAA has been apprised by the manufacturer that it is undertaking a review of the Supplemental Inspection Program. Should this program required revisions, the FAA may consider further rulemaking to reivse this AD to incorporate those revisions.

The final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph D.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0056.

It is estimated that 136 airplanes of U.S. registry and 14 U.S. operators will be affected by this AD, that it will take approximately 1,000 manhours to incorporate the Supplemental Inspection Program for a typical operator. The average labor charge is estimated to be $40 per manhour. Based on these figures, the total cost to U.S. operators to incorporate the SID program is estimated to be $560,000.

The recurring inspection impact on the affected operators is estimated to be 341 manhours per airplane per year, at an average labor cost of $40 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to be $1,855,040.

Based on the above figures, the total cost impact of this AD is estimated to be $2,415,040 for the first year, and $1,855,040 for each year thereafter.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC-9 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the applicability statement and paragraph A. of AD 87-14-07, Amendment 39-5630 (52 FR 25589; July 8, 1987), to read as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in section 2 of Volume I (All Series) of McDonnell Douglas Report No. L26-008, R1, DC-9 Supplemental Inspection Document (SID), dated November 1987, in accordance with Section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III-87 of the SID.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired or replaced before further flight, in accordance with an FAA-approved method.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. An alternate means of compliance or an adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

McDonnell Douglas Report No. L26-008, DC-9 Supplemental Inspection Document (SID), Volume I—All Series, Revision 1, Volume II-10/20, Volume II-20/30, Revision 1, Volume II-40, Volume II-50, and Volume III-87, all dated November, 1987, identified and described in this directive, are incorporated by reference and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 1790 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This Amendment becomes effective on December 23, 1988.

Issued in Seattle, Washington, on September 6, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26701 Filed 11-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ANE-06; Amdt. 39-6074]

Airworthiness Directives; Teledyne Continental Motors GTSIO-520-N Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Teledyne Continental Motors (TCM) GTSIO-520-N series engines by individual priority letters. The AD requires that the proper torque be assured on the regulator valve cover attaching screws for the rotary fuel pump. The AD is needed to prevent possible fuel pump leaks, fluctuating fuel flow, engine failure, and/or engine

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compartment fire which could result in loss of engine power and possible loss of the aircraft.

DATES: Effective December 1, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD, issued February 12, 1987, which contained this amendment.

Compliance required within the next ten fight hours, after the effective date of this AD, unless already accomplished.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: On February 12, 1987, a priority letter AD was issued and made effective immediately as to all known U.S. owners and operators of certain TCM GTSIO-520-N series engines. The AD requires that the proper torque be assured on the regulator valve cover attaching screws for the rotary fuel pump on the GTSIO-520-N series engines. It has been determined that fuel leaks can occur because the four attaching screws are not properly torqued. Four such cases were reported in the United Kingdom, and TCM returned their entire stock of this type fuel pump to Lear Siegler for correction. AD action was necessary to prevent possible fuel leaks, fluctuating fuel flow, engine failure, and/or engine compartment fire in TCM GTSIO-520-N series engines which could result in loss of engine power and possible loss of the aircraft.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letter AD, issued February 12, 1987, as to all known U.S. owners and operators of TCM GTSIO-520-N series engine. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Teledyne Continental Motors: Applies to GTSIO-520-N Series Engines equipped with rotary fuel pump, P/N 643367 or 643367A2, manufactured by Lear Siegler Romec.

Compliance is required within the next 10 flight hours, after the effective date of this AD, unless already accomplished. To prevent possible fuel pump leaks, fluctuating fuel flow, engine failure, and/or engine compartment fire; notwithstanding prior accomplishment of the referenced service bulletins, accomplish the following:

For all GTSIO-520-N series engines:

(a) Visually inspect the attaching screws on the regulator valve cover of fuel pump, P/N 643367 or 643367A2, for blue or green paint markings on the head of at least one screw.

(b) If paint markings are present, proper torque has been assured by the manufacturer. Therefore, make appropriate Engine Logbook entry, no further action is required.

(c) If paint markings are not present; accomplish the following:

(1) Cut and remove the safety wire from the four attaching screws on the regulator valve cover of fuel pump, P/N 643367 or 643367A2.

(2) Loosen screws one full turn.

(3) Tighten the four screws to 24-27 inch pounds.

(4) Safety wire the four screws with MS20995C32 wire.

(5) Make appropriate Engine Logbook entry.

Note.—Lear Siegler, Inc., Service Bulletin No. 101SB015, dated December 17, 1986, and Teledyne Continental Motors Service Bulletin No. M87-6, dated February 6, 1987, address this subject.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349.

This amendment becomes effective December 1, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD, issued February 12, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on November 9, 1988.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88-26800 Filed 11-18-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-15]

Designation of Control Zone in Springdale, AR, and Amendment of Control Zone in Fayetteville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a control zone at Springdale, AR, and will alter the control zone at Fayetteville, AR. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing standard instrument approach procedures (SIAP) to the Springdale Municipal Airport and to return to public use airspace no longer required for the protection of aircraft arriving/departing the Drake Field Airport, Fayetteville, AR. This action is necessary since a part-time nonfederal airport traffic control tower (ATCT) and scheduled air service are provide at the Springdale Municipal Airport. Designation of a control zone will allow the Springdale Municipal Airport to be used as an alternate airport under

instrument flight rules (IFR). The alteration of the Fayetteville, AR, Control Zone is necessary, since a review indicated that there is more controlled airspace than is required for the protection of aircraft arriving/departing the Drake Field Airport.

EFFECTIVE DATE: 0901 U.t.c., November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch (ASW-534), Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX. 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a control zone at Springdale, AR, and to amend the control zone at Fayetteville, AR, (52 FR 16853).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a control zone at Springdale, AR, and amends the control zone at Fayetteville, AR. The Springdale Municipal Airport has a part-time nonfederal ATCT. Designating a control zone at Springdale, AR, will enhance airport usage and will allow the airport to be used as an alternate under IFR conditions. The intended effect of this action is to ensure segregation of aircraft using the Springdale Municipal Airport under IFR and other aircraft operating VFR. A review of the control zone at Fayetteville, AR, indicated that there was more controlled airspace than really necessary. The alteration of the Fayetteville Control Zone will return to public use airspace no longer required for the protection of aircraft arriving/departing the Drake Field Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Springdale, AR [New]

Within a 5-mile radius of the Springdale Municipal Airport (Latitude 36°10'35"N., Longitude 94°07'09"W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Fayetteville, AR [Amended]

Within a 5-mile radius of the Drake Field Airport (Latitude 36°00'18"N., Longitude 94°10'12"W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX, on August 21, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

Editorial Note: This document was received by the Office of the Federal Register November 16, 1988.

[FR Doc. 88-26802 Filed 11-18-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 156

[Docket 25723; Adoption of Part 156]

State Block Grant Pilot Program; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments; correction.

SUMMARY: FAA is correcting errors in Amendment Number 156-1, "State Block Grant Pilot Program." In FR Doc. 88-24242, published Thursday, October 20, 1988, on page 41302, please remove "Amdt. No. 156-1" from the heading and replace with the words "Adoption of Part 156".

FOR FURTHER INFORMATION CONTACT: Mr. Mark Beisse, Office of Airport Planning and Programming, (APP-510), Federal Aviation Administration, telephone (202) 267-8724.

Michael D. Triplett,

Docket Section, Program Management Staff, AGC-10.

[FR Doc. 88-26700 Filed 11-18-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Final Rule.

SUMMARY: The U.S. Parole Commission is adopting an interpretative regulation that clarifies the parole eligibility status of Firearms Act violators under 26 U.S.C. 5871, who committed their crimes on or after October 12, 1984, the effective date of the Sentencing Reform Act of 1984. That law deleted the early parole eligibility provision of section 5871, effective October 12, 1984. This rule makes clear the Commission's interpretation that 18 U.S.C. 4205(a) makes these offenders eligible for parole after service of one-third of their sentences, but only if the crime was committed prior to November 1, 1987, when eligibility for parole was abolished for all federal offenders.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Janice G. McLeod, Attorney, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, Telephone (301) 492-5959.

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SUPPLEMENTARY INFORMATION: In 1984, Congress amended 26 U.S.C. 5871 to delete the language in that statute that made violators thereof eligible for parole as the Commission "shall determine." See section 227 of the Sentencing Reform Act of 1984, Pub. L. 98–473. This deletion raised the question of whether such persons are eligible for parole at all.

The Commission has decided that, for violators of section 5871 who committed their offenses between October 12, 1984 and November 1, 1987, 18 U.S.C. 4205(a), the general parole eligibility statute, makes them eligible for parole after service of one-third of their term or terms, if over one year.

Effective November 1, 1987, 18 U.S.C. 4205(a) was abolished for all offenses committed from that date forward, and kept in place by a savings provision, section 235(b)(1) of the Sentencing Reform Act of 1984, only for offenses committed prior to that date. See Pub. L. 100–182, the Sentencing Act of 1987. Hence, section 5871 offenders who commit their crimes on or after November 1, 1987, are no longer eligible for parole at any time.

The Commission's current regulations continue to reflect only the law applicable to section 5871 offenses committed prior to October 12, 1984, the effective date of the Sentencing Reform Act of 1984. Therefore, the Commission has decided to amend this regulation to define the parole eligibility of section 5871 offenders who committed their crimes between October 12, 1984 and November 1, 1987.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and Parole, Prisoners.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.2(d) is revised to read as follows:

§ 2.2 [Amended]

* * * * *

(d) If the Court has imposed a maximum term or terms of more than one year pursuant to 18 U.S.C. 924(a) or 26 U.S.C. 5871 [violation of Federal gun control laws], a Federal prisoner serving such term or terms may be released in the discretion of the Commission as if sentenced pursuant to 18 U.S.C. 4205(b)(2). However, if the prisoner's offense was committed on or after October 12, 1984, and the Court imposes a term or terms under 26 U.S.C. 5871, the prisoner is eligible for parole only after service of one-third of such term or terms, pursuant to 18 U.S.C. 4205(a).

* * * * *

Issued at Chevy Chase, Maryland, November 1, 1988.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 88–26849 Filed 11–18–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–88–15]

Drawbridge Operation Regulations; Tchefuncta River, Louisiana

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development and the town of Madisonville, the Coast Guard is changing the regulation governing the operation of the swing span bridge on State Route 22 across the Tchefuncta River, mile 2.5 at Madisonville, St. Tammany Parish, Louisiana, by permitting the draw to open only on the hour and half-hour between 5 a.m. and 8 p.m., and to open on signal at all other times. This change is being made to relieve vehicular traffic congestion. The opening of the draw on a regulated basis will allow motorists to plan crossings in conjunction with the regulated openings and will impose little inconvenience to vessel traffic.

EFFECTIVE DATE: This regulation becomes effective on December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 9 September 1988, the Coast Guard published a proposed rule (53 FR 35094) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 22 September 1988. In each notice interested parties were given until 24 October 1988 to submit comments.

Drafting Information

The drafters of this notice are Mr. John Wachter, project officer, and Commander J.A. Unzicker, project attorney.

Discussion of Comments

Five letters of comment were received in response to public notification of the proposed rule change. The National Marine Fisheries Service, the Federal Emergency Management Agency and the State of Louisiana offered no objection to the change. Two respondents objected to the proposed rule change, stating that accumulated vessels awaiting an opening of the bridge would create a hazard to vessels. The Coast Guard has carefully considered the comments and believes that the number of vessels accumulating at the bridge will be limited because mariners will plan their arrival to coincide with scheduled openings. Also, there are ample holding areas for vessels both upstream and downstream of the drawspan. While the objectors may be slightly inconvenienced by the regulated openings, they will still have the opportunity to pass through the bridge almost at will with knowledge of the schedule for openings and with minimal planning. Therefore, in the absence of significant objection to the proposal as published in (53 FR 35094) on 9 September 1988, the final rule is unchanged from the proposed rule.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that, with some planning by vessel operators that use the waterway, openings on a regulated basis will cause only minimal delay, or no delay, for boaters. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.500 is added to read as follows:

§ 117.500 Tchefuncta River.

The draw of the SR 22 bridge, mile 2.5 at Madisonville, shall open on signal; except that, from 5 a.m. to 8 p.m., the draw need open only on the hour and half-hour. The draw shall open on signal at any time for a vessel in distress or for an emergency aboard a vessel.

Dated: November 4, 1988.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 88–26892 Filed 11–18–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6688

[AK–932–09–4214–10; F–031073]

Revocation of Executive Order No. 1557 and Partial Revocation of Executive Order No. 7127, for Selection of Land by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two Executive orders insofar as they affect 3.39 acres of public land withdrawn for the McCarty Military Reserve. The land is no longer needed for the purpose for which it was withdrawn. This action will also classify the land as suitable for selection by the State of Alaska, if such land is otherwise available. If not selected by the State, the land will be subject to the terms and conditions of Public Land Order (PLO) No. 5180, as amended, and will remain closed to location for metalliferous minerals until a further opening order is published.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–3342.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. This order revokes Executive Order (EO) No. 1557, dated July 3, 1912, and partially revokes EO No. 7127, dated August 6, 1935, insofar as they affect the following described land:

McCarty Military Reserve

U.S. Survey No. 1463, situated in Sec. 8, T. 9 S., R. 10 E., Fairbanks Meridian.

The area described contains 3.39 acres.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2371, 2437–2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will be subject to the terms and conditions of PLO No. 5180, as amended, and any other withdrawal of record and shall remain closed to location for metalliferous mining until a further opening order is published.

J. Steven Griles,

Assistant Secretary of the Interior

November 4, 1988.

[FR Doc. 88–26846 Filed 11–18–88; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch. I

[CGD 86–033]

Update of Cross References and Correction of U.S.C. Citations

AGENCY: Coast Guard, DOT.

ACTION: Final rule correction.

SUMMARY: The Coast Guard is correcting errors in the final rule which appeared in the **Federal Register** on September 16, 1988 (53 FR 36022). The subchapter was inadvertently not mentioned in document paragraph number 73. In various places in that document the Coast Guard removed footnotes 12 and 13 from tables which are identical or nearly identical in several subchapters. However, the Coast Guard failed to remove references to footnotes 12 and 13 in the text of the tables. Since the statutory references in the footnotes have been repealed, the references to them in the table have no legal effect and should also be removed.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce P. Novak, (202) 267–1477.

§ 2.01–7 [Corrected]

1. On page 36023, second column, line 56 is corrected to read:

d. Footnote 12 and all references to footnote 12 in the text of the table are removed.

§ 24.05–1 [Corrected]

2. On page 36023, third column, line 28 is corrected to read:

d. Footnote 13 and all references to footnote 13 in the text of the table are removed.

§ 30.01–5 [Corrected]

3. On page 36024, first column, line 12 is corrected to read:

iv. Footnote 12 and all references to footnote 12 in the text of the table are removed.

§ 70.05–1 [Corrected]

4. On page 36024, third column, line 33 is corrected to read:

c. Footnote 12 and all references to footnote 12 in the text of the table are removed.

§ 90.05–1 [Corrected]

5. On page 36025, second column, line 20 is corrected to read:

c. Footnote 12 and all references to footnote 12 in the text of the table are removed.

§ 175.05–1 [Corrected]

6. On page 36026, second column, line 22 is corrected to read:

c. Footnote 12 and all references to footnote 12 in the text of the table are removed.

§ 188.05–1 [Corrected]

7. On page 36026, second column, line 61 is corrected to read:

c. Footnote 12 and all references to footnote 12 in the text of the table are removed.

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§ 194.05-9 [Corrected]

8. On page 36027, second column, line 7 is corrected to read: "49 CFR Parts 172, 173, and 176".

§ 194.05-17 [Corrected]

9. On page 36027, second column, lines 9, 10, and 11 are corrected to read:

73. Section 194.05-11(b) is amended by removing the words "Subpart 146.22 of Part 146 of Subchapter N of this chapter" and inserting the words "49 CFR Parts 172, 173, and 176" in their place.

Dated: November 10, 1988

[FR Doc. 88-26893 Filed 11-18-88; 8:45 am]

BILLING CODE 491-014-M

VETERANS ADMINISTRATION

48 CFR Part 852

Acquisition Regulations Relating to Cost Comparisons

AGENCY: Veterans Administration.

ACTION: Final rule; correction.

SUMMARY: The Veterans Administration (VA) is correcting its final regulations implementing the Office of Management and Budget Circular A-76.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Acquisition Policy Staff (93), Office of Acquisition and Materiel Management, Veterans Administration, 810 Vermont Avenue NW., Washington, DC, (202) 233-3054.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 26, 1988 (53 FR 43209) the VA published its regulations relating to cost comparisons. Several dates and one line of text were inadvertently omitted from the final regulation. The VA hereby corrects the errors.

Dated: November 14, 1988.

C.G. Verenes,

Acting Chief, Directives Management Division.

48 CFR Chapter 8, is amended to read as follows:

1. The authority citation for Part 852 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. On page 43211, in the middle column, the amendatory language in item 3 is corrected to read as follows:

3. In Subpart 852.2, sections 852.207-70, 852.207-71, and 852-72 are added to read as follows:

3. In 852.207-70, the heading to the clause is revised to read as follows:

852.207-70 Report of employment under commercial activities.

* * * * *

Report of Employment Under Commercial Activities (October 1988)

* * * * *

4. In 852.207-71, the heading to the provision in paragraph (a) is revised, and the heading and paragraph (b) of the provision in paragraph (b) is revised, to read as follows:

852.207-71 Notice of cost comparison.

* * * * *

(a) * * *

Notice of Cost Comparison (October 1988)

* * * * *

(b) * * *

Notice of Cost Comparison—Supplement (October 1988)

* * * * *

(b) Bidders (offerors) are placed on notice that this solicitation allows contractors to bid (offer) on the basis of Contractor-owned, Contractor-operated (COCO) and/or Government-owned, Government-operated (GOCO) basis. However, a COCO method of performance will only be considered if two or more responsive and responsible financially autonomous firms bid (offer) on a COCO basis, and a GOCO bid will only be considered if two or more responsive and responsible financially autonomous firms bid (offer) on a GOCO basis.

(End of Provision)

5. In 852.207-72, the heading to the provision is revised to read as follows:

852.207-72 Cost comparison criteria—VA medical facilities.

* * * * *

Cost Comparison Criteria—VA Medical Facilities (October 1988)

* * * * *

[FR Doc. 88-26695 Filed 11-18-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 380

[Docket No. 81012-8212]

Antarctic Marine Living Resources Convention Act of 1984

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Secretary of Commerce, on behalf of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), publishes notice of conservation and management measures promulgated by the Commission and accepted in whole by the United States Government to regulate catches in Convention for the Conservation of Antarctic Marine Living Resources (Convention) statistical reporting subarea 48.3, depicted at Figure 1, 50 CFR Part 380. These measures restrict overall catches of certain species of fish, prohibit the taking of other species, designate fishing seasons, and define reporting requirements.

EFFECTIVE DATE: November 21, 1988.

ADDRESS: A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle (NMFS International Science, Development and Polar Affairs Division), 202-673-5276.

SUPPLEMENTARY INFORMATION: At its annual meeting in Hobart, Tasmania, in 1986, CCAMLR, of which the United States is a member, adopted a conservation measure requiring the Commission at its 1987 meeting to adopt limitations on catch, or equivalent measures, binding for species upon which fisheries are permitted around Convention statistical reporting subarea 48.3 (South Georgia) for the 1987/88 season. For each fishing season after 1987/88, the Commission agreed to establish such limitations or other measures, as necessary, around South Georgia on a similar basis at the meeting of the Commission immediately preceding that season. Section 380.26 establishes the procedure through which this will be implemented each season.

The limitations on catch or equivalent measures will be consistent with the 1986 conservation measure (7/V), based upon the advice of the Scientific Committee, and take into account data resulting from recent fishery surveys around South Georgia. They will be announced in the **Federal Register** after the meeting at which they were adopted.

Vessels authorized to fish in subarea 48.3 must appoint a designated representative so that the National Marine Fisheries Service can gather and disseminate the required information in the timely manner necessary for it to implement its treaty obligations.

These regulations establish the reporting requirements for vessels fishing in subarea 48.3. Vessel operators are required to report in writing by cable, telex or rapifax personally or through a designated representative within 5 days of the end of the ten day reporting periods catches of *Champsocephalus gunnari* taken in subarea 48.3 to the National Marine Fisheries Service.

If the seasonal catch limitation for *C. gunnari* set by the Commission is reached before the end of the season, the closure of the fishery will be announced in the **Federal Register.** NMFS will also notify the designated representative of the holder of a permit to fish in subarea 48.3 of the date of the closure of the fishery.

Classification

The Secretary of Commerce has determined that this rule is necessary to implement the Antarctic Marine Living Resources Convention Act of 1984 and to give effect to the conservation and management measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources and agreed to by the United States.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) prepared a framework environmental assessment (EA) for the implementation of the Antarctic Marine Living Resources Convention Act of 1984 in 1987. NMFS has reviewed this rule and determined that the actions it requires were generally summarized in the framework EA and are thus excluded from further National Environmental Policy Act analysis.

This action is exempt from Executive Order 12291 and section 553 of the Administrative Procedure Act because it involves a foreign affairs function of the United States. Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared. At present there are no U.S. vessels or vessels subject to the jurisdiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply, except for research purposes. Presently, the only Antarctic resources affected are scientific specimens taken under National Science Foundation permits and by the U.S. Antarctic Marine Living Resources directed research program. Accordingly, these regulations should not have an incremental impact on U.S. vessels harvesting or performing associated activities in the Convention area.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget under Control Number 0648-0194.

The annual reporting burden for this collection of information is estimated to average one-half hour per harvester, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Robin Tuttle, National Marine Fisheries Service, 1335 East-West Highway, Room 7240, Silver Spring, Maryland 20910 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 380

Antarctic, Fish and Wildlife, Reporting and recordkeeping requirements.

Dated: November 9, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble of this rule, 50 CFR Part 380 is amended as follows:

PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

1. The authority citation for Part 380 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

2. Section 380.2 of Subpart A is amended by adding the following three terms in alphabetical order:

§ 380.2 Definitions.

* * * * *

Executive Secretary means the Executive Secretary of the Commission for the Conservation of Antarctic Marine Living Resources.

* * * * *

Fishery means.

(a) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(b) Any fishing for such stocks.

Fishing season means the period from July 1 to June 30.

* * * * *

§§ 380.20, 380.21 and 380.22 [Redesignated as §§ 380.21, 380.22, and 380.23] §§ 380.23 [Redesignated as § 380.20 and Revised]

3. Subpart B is amended by redesignating §§ 380.20, 380.21 and 380.22 as §§ 380.21, 380.22, and 380.23 respectively, and by redesignating existing § 380.23 and § 380.20, and revising it to read as follows:

§ 380.20 Scientific research.

The management measures in this subpart do not apply to scientific research, unless otherwise indicated.

4. New §§ 380.24, 380.25, and 380.26 are added to Subpart B to read as follows:

§ 380.24 Reporting requirements for Convention statistical reporting subarea 48.3.

(a) The calendar month is divided into three reporting periods; day 1 to day 10 is period A, day 11 to day 20 is period B, and day 21 to the last day of the month is period C.

(b) The operator of any vessel fishing in subarea 48.3 must, within 5 days of the end of a reporting period, report his catch of *Champsocephalus gunnari* to NMFS. The report must be made in writing by cable, telex, rapifax or other appropriate method to the number specified in the vessel's permit, and include the vessel name, permit number, month, reporting period, and its catch in metric tons (to the nearest tenth of a ton) of *C. gunnari* taken in subarea 48.3. An operator must also submit a negative report in writing if no *C. gunnari* is taken during the reporting period.

§ 380.25 Appointment of a designated representative.

(a) All holders of permits authorizing fishing in subarea 48.3 must appoint a designated representative in the United States.

(b) The designated representative will be notified of closures under § 380.26 and must transmit this information to the vessel on the grounds.

(c) The designated representative may receive catch reports from the vessel and transmit the reports to NMFS in writing.

§ 380.26 Seasonal restrictions in Convention statistical reporting subarea 48.3.

(a) Preseason actions.

(1) The Commission, at each annual meeting, will specify limitations on catch or equivalent measures for species on which fisheries are permitted around South Georgia (subarea 48.3) binding for that season.

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(2) Such measures will be based upon the advice of the Scientific Committee, taking into account any data resulting from fishery surveys around South Georgia.

(3) Such measures will be announced after the meeting at which they were adopted through publication in the **Federal Register**.

(b) Inseason actions.

(1) When 90 percent of the seasonal catch limitation has been taken, the Executive Secretary will make a final estimate of the date upon which the seasonal catch limitation will be reached. The fishery involved will close at the end of the last day of the reporting period within which that date falls.

(2) The closure of the fishery will be announced in the **Federal Register**.

(3) NMFS will notify the designated representative of a holder of a permit that authorizes activities in the fishery involved of the date of the closure of the fishery.

[FR Doc. 88-26877 Filed 11-16-88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 224

Monday, November 21, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1076

[DA-89-003]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Southwestern Idaho-Eastern Oregon Federal milk order. The proposed relate to the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing a majority of the producers supplying the market to prevent uneconomic movements of milk. The proposed suspension would be for the months of December 1988 through May 1989.

DATE: Comments are due on or before November 28, 1988.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is being considered for December 1988 through May 1989:

In § 1135.13, paragraphs (f)(3), (4), (5) and (6).

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20250-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days to permit completion of the required procedures to make the action effective for the month of December.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid milk needs and handles much of the market's reserve milk supplies, requested the suspension. The suspension would remove for December 1988 through May 1989 the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants.

The order now provides that a cooperative association may divert up to 80 percent of its total member milk received at all pool plants or diverted therefrom during any month. Similarly, the operator of a pool plant may divert up to 80 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during any month.

DCA indicates that operation of the 80-percent diversion limit means that over 2,000,000 pounds of milk must be unloaded and re-loaded each month at the cooperative's Meridian, Idaho, pool supply plant to be transferred to nonpool manufacturing plants. Such unnecessary handling is, according to the cooperative, undertaken for the sole purpose of meeting the delivery requirements of the order. The cooperative states that such unnecessary unloading and re-loading takes employees' time and requires additional cleaning of lines and tanks.

DCA states that the requested suspension will allow the pooling of producers who stand ready to supply the fluid milk requirements of the marketing area to be handled without undue expense. The cooperative does not believe that the suspension would encourage association with the order of the milk of producers who are not bona fide suppliers of the bottling needs of the market. During the requested suspension, DCA expects to evaluate the advisability of proposing permanent amendments to the order to eliminate such unnecessary handling in the future.

List of Subjects in 7 CFR Part 1135

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1135 continues to read as follows:

Authority: Secs. 1-19, 48 stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on November 15, 1988.

J. Patrick Boyle,

Administrotor.

[FR Doc. 88-26822 Filed 11-18-88; 8:45 am]

BILLING CODE 3410-02-M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-121-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series, Model DC-9-80 Series, Model MD-88, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9, DC-9-80, MD-88, and C-9 (military) series airplanes, which would require a revision to the FAA-approved Airplane Flight Manual (AFM) to add a preflight check of all fuel pumps. This proposal is prompted by reports of dual fuel pump failures. If a single pump failure were to go undetected, failure of the second pump could occur, at which time the remaining fuel, if in the center tank, would be trapped and could result in fuel starvation of one or both engines.

DATES: Comments must be received no late than January 9, 1989.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-121-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Richmond, Flight Test Pilot, Flight Test Branch, ANM-106L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5366.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-121-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: An FAA review of the McDonnell Douglas Model DC-9/DC-9-80 series airplane fuel system, following two recent incidents of dual center fuel pump failures, identified the potential for insidious engine fuel starvation where adequate fuel is available but trapped in the aircraft. It was determined that, on the Model DC-9, DC-9-80, MD-88, and C-9 (military) series airplanes, the fuel system will operate satisfactorily following the failure of one pump in any tank, without direct indication of pump failure. The pump failure could go undetected until failure of the second pump occurs.

If this situation were to occur in either wing tank, that engine would revert to suction feed. If both center tank pumps become inoperative, center tank fuel would be trapped in the center tank and would be unuseable. This condition, if not corrected: could result in fuel starvation. This problem would be compounded on extended range flights.

The FAA has determined that, in most cases, this situation can be avoided by a preflight check of each fuel pump to verify its proper operation. Failures noted at that time can be corrected on the ground and will significantly decrease the potential for a dual failure being discovered during flight.

Since this condition exist on other airplanes of this same type design, an AD is proposed which would require a revision to the approved Airplane Flight Manual (AFM) to require a preflight check to ensure the proper operation of all fuel pumps in tanks containing useable fuel.

There are approximately 1,500 Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (military) series airplanes in the worldwide fleet. It is estimated that 824 airplanes of U.S. registry would be affected by this AD. The required action would not require the expenditure of any significant amount of funds to accomplish.

The regulation proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 13034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to all Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9, (military) series airplance, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect fuel pump failures, accomplish the following:

A. Within 10 calendar days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to add the following, and provide to flight crews. This may be accomplished by inserting a copy of this Ad is the AFM:

Section 1—Limitations

Fuel Management

Add the following wording at the beginning of this section: "Prior to engine start, all tank-mounted fuel pumps in tanks containing useable fuel must be individually checked to verify pump operation by observing the respective inlet fuel pressure low lights extinguish when each individual pump is turned on. DC start pumps that are inoperative per the MEL, and center pumps on aircraft with a pump failure alerting system are not required to be checked."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Prinicipal Operations Inspector (POI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service information from the manufacurer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-LOO (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle Washington, on November 1, 1988.

Leroy A. Keith, Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26803 Filed 11-18-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-136-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to DC-10 and KC-10A (Military) series airplanes, which currently requires inspection and repair, if necessary, of the horizontal stabilizer rear spar cap and/or upper rear skin panel for fatigue cracking. This action would add a requirement to repeat the inspections at intervals not to exceed 2,000 landings.

DATES: Comments must be received no later than January 10, 1989.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-136-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5227.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-136-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: On July 21, 1987, FAA issued AD 87-06-53-R1, Amendment 39-5694 (52 FR 28133; July 28, 1987), applicable to McDonnell Douglas DC-10 and KC-10A (Military) series airplanes, to require inspections and repair of the horizontal stabilizer upper outer section rear spar cap or rear skin panel.

That action was prompted by reports from two operators of cracks found in the outer section of the rear spar cap of the horizontal stabilizer on three airplanes. If not detected, a crack at this location on the spar cap or skin panel may progress until the spar cap or skin panel is severed, which could result in structural failure.

At the time AD 87-06-53-R1 was issued, the FAA was aware that repetitive inspections would be necessary in order to adequately detect fatigue cracking in the horizontal stabilizer. The requirements of the existing AD were considered by the FAA as interim action.

Subsequent to the issuance of AD 87-06-53-R1, McDonnell Douglas Corporation conducted flight tests (and has proposed to conduct ground fatigue tests) to verify the stress levels and determine an appropriate repetitive inspection. Currently, McDonnell Douglas recommends a repetitive inspection interval of 2,000 landings.

The FAA concurs with McDonnell Douglas' recommendation and has determined that the existing AD must be revised to include the repetitive inspections. McDonnell Douglas has advised the FAA that its ground fatigue testing program is continuing. If the results of these tests indicate that the repetitive inspection interval be modified, the FAA may consider further rulemaking to address this subject.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A55-18, dated March 23, 1987, Revisions 1 dated May 21, 1988, and Revision 2, dated February 8, 1988, which describe inspection procedures to detect cracking in the horizontal stabilizer.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD amendment is proposed which would amend AD 87-06-53-R1 to require repetitive inspections of the horizontal stabilizer upper outer section rear spar cap and rear skin panel at intervals not to exceed 2,000 landings, in accordance with the service bulletin previously mentioned. Any necessary repair must continue to be accomplished in a manner approved by the FAA.

Additionally, this proposal would delete all references to the use of "later FAA-approved revisions" of the applicable service bulletin, in order to be consistnt with FAA policy in that

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regard. The FAA has determined that this change would not increased the economic burden on any operator, nor would it expand the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph D.

There are 423 Model DC-10 series airplanes in the worldwide fleet. It is estimated that 153 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the total inspection cost impact of the AD on U.S. bperators is estimated to be $6,120 per year.

The regulations proposed herein would not have sustantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC-10 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is containd in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federasl Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Airworthiness Directive (AD) 87-06-53-R1, Amendment 39-5694 (52 FR 28133; July 28, 1987), as follows:

McDonnell Douglas: Applies to Model DC-10-10, -10F, -15, -30, -30F, -40 and KC-10A (Military) airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the horizontal stabilizer rear spar cap and/or upper rear skin panel due to fatigue cracking, accomplish the following:

A. Prior to the accumulation of 30,000 flight hours or 7,500 landings, whichever occurs earlier, or within 15 days after August 14, 1987 (the effective date of Amendment 39-5694), whichever occurs later, unless already accomplished within the last 120 days since August 14, 1987 (the effective date of Amendment 39-5694), conduct a dye penetrant or eddy current inspection of horizontal stabilizer upper outer section rear spar cap and a visual inspection of the horizontal stabilizer upper outer rear skin panel, in accordance with McDonnell Douglas Alert Service Bulletin A55-18, dated March 23, 1987, or Revision 1, dated May 21, 1987, or Revision 2, dated February 8, 1988.

B. Prior to the accumulation of 2,000 landings after the inspection required by paragraph A., above, or within 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,000 landings, repeat the inspection required by paragraph A., above.

C. If a crack is found as a result of the inspections required by paragraph A. or B., above, repair before further flight, in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on November 2, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26804 Filed 11-18-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 80996-8196]

Reexports into COCOM Participating Countries

AGENCY: Bureau of Export Administration Commerce.

ACTION: Proposed rule.

SUMMARY: The Omnibus Trade and Competitiveness Act (OTCA), signed by the President on August 23, 1988, amends section 5(a)(4) of the Export Administration Act of 1979 (EAA) to require the removal of controls on most reexports to COCOM and 54(k) countries.

This rule proposes implementing the OTCA by expanding the permissive reexport provisions of § 774.2 of the Export Administration Regulations to allow reexports of U.S. commodities to and among COCM countries, and countries qualifying for full benefits under section 5(k) of the EAA, without prior U.S. authorization. Certain limited exceptions are specified.

The Office of Export Licensing must be notified in writing when the U.S. commodities being reexported are above the PRC green zone level. The rule specifies what information would have to be included in the notice. While no specific form has been developed for this purpose at this time, BXA intends to do so in the future to facilitate OCR computerization of the information.

The permissive reexport provision would also allow shipments into Switzerland, with the additional requirement that a Swiss Blue Import Certificate be obtained by the reexporting party.

This procedure would not in any way alter the licensing requirements for such items to the Soviet Union and other COCOM-proscribed countries. Furthermore, this procedure would not authorize reexport to entities that the reexporter knows or has reason to know are controlled in fact by countries in Country Groups Q, W, Y, or Z. BXA is

seeking a means of assisting reexporters in identifying such entities. Among the options that will be considered is a full or partial list of entities known to BXA. Comments on this aspect of the proposal are encouraged.

Section 5(a)(6) of the EAA, as amended by the OTCA, requires issuance of a regulation to define "supercomputer" for purposes of implementing sections 5(a) (4) and (5) of the Act. This definition will be provided in a separate issuance.

DATE: Comments must be received by January 5, 1989.

ADDRESS: Written comments (six copies) should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule, includes a collection of information requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection, which would be included in § 774.2, is pending OMB approval. Public reporting burden for the reexport reporting requirement is estimated to average approximately 25 minutes per response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Administration, Bureau of Export Administration, Room 3889, Department of Commerce, Washington, DC 20230 and to the Office of Management and Budget, Washington, DC 20503.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Because this rule is being issued in proposed form, this rule complies with section 13(b) of the Export Administration Act. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close January 5, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4086, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 768-799) are proposed to be amended as follows:

PART 774—[AMENDED]

1. The authority citation for Part 774 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Section 774.2 is amended by adding paragraph (k) to read as follows:

§ 774.2 Permissive reexports.

* * * * *

(k) *Reexports to and among COCOM participating countries and Switzerland.*—(1) *Except:*

(i) Supercomputers;

(ii) Electronic, mechanical or other devices, as described in § 776.13(a), primarily useful for surreptitious interception of wire or oral communications; and

(iii) Commodities intended for persons or entities that are controlled in fact (as defined in § 771.20(a) (1) and (2)) by the

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governments of Country Groups Q, W, Y or Z. Parties to a reexport transaction who know or have reason to know that the shipment is intended for such an entity may not utilize this permissive reexport provision.

(2) *Provided that:*

(i) Eligible commodities are for use or consumption within a COCOM participating country or Switzerland, or reexport is in accordance with the other provisions of the Export Administration Regulations; and

(ii) For reexports into Switzerland, the reexporting party has obtained a Swiss Blue Import Certificate.

(3) *Reporting Requirement:*

Upon reexport under this § 774.2(k), a party that reexports commodities that are not identified in any of the Advisory Notes identified in Supplement No. 1 to Part 799 (the Commodity Control List) must submit a reexport notification in writing, signed by an authorized representative of the reexporter, to the Office of Export Licensing, P.O. Box 273, Department of Commerce, Washington, DC 20230, Attention: Reexport Notification. The notification shall be transmitted no later than the next business day following shipment, by a means intended to affect delivery within five business days of transmission. The reexport notification shall identify:

(i) The reexporter and the ultimate consignee;

(ii) The type (including the ECCN, if known), quantity and value of the commodity;

(iii) The date of the reexport; and

(iv) The original U.S. export license number under which the commodity was exported from the U.S. (if known) and the identity of the U.S. party from whom the reexporter received the goods.

Dated: November 16, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-26864 Filed 11-18-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF STATE

Office of the Comptroller

22 CFR Part 34

[SD 220]

Collection of Debts by the Government Under the Debt Collection Acts

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to add Part 34 of 22 CFR establishing rules for the collection of debts owed to the State Department and the United States. These rules are published pursuant to 31 U.S.C. 3711(e)(1) and implement the collection procedures authorized by the Federal Claims Collection Act (31 U.S.C. 3701 through 3719) as amended by the Debt Collection Act of 1982 (Pub. L. 97-365 State. 1749). These laws have been implemented by the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101 through 105), regulations issued by the Office of Personnel Management (5 CFR Part 550) and the procedures prescribed by the Office of Management and Budget in Circular A-129 of May 9, 1985.

DATES: Comments must be received by January 5, 1989.

ADDRESS: Comments should be sent to: U.S. Department of State, M/COMP/FM, P.O. Box 9487, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Ramon A. Evon, United States Department of State, Room 4709, Annex 15, Washington, DC 20520, phone (703) 875-6880.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (the Act) authorizes procedures for the collection of debts owed to the United States, including (1) contracting for collection services to recover debts pursuant to to section 13 of the Debt Collection Act (codified at 31 U.S.C. 3718); (2) administrative offset pursuant section 10 of the Debt Collection Act (codified at 31 U.S.C. 3716); and (3) salary offset pursuant to section 5 of the Debt Collection Act (codified at 5 U.S.C. 5514). Although these are separate procedures, any procedure may be used by itself or in conjunction with other procedures.

Executive Order 12291

This proposed rule is not a "major rule" as defined under Executive Order 12291 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

State finds that the proposed rule will have no significant economic impact upon a substantial number of small entities: Within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 State. 1164 (5 U.S.C. 605(b)). This conclusion has been reached because the proposed rule does not in itself impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), any reporting recordkeeping provisions that are included in this rule will be submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in 22 CFR Part 34

Administrative practices. Procedures. Debt. Claims.

Accordingly it is proposed to amend Title 22 CFR, Subchapter D, (by adding a new Part 34 to read as follows:

PART 34—COLLECTION OF DEBTS

Subpart A—General Provision

Sec.

34.1 Purpose.
34.2 Scope.
34.3 Definitions.
34.4 Interest, penalty, and administrative charges.
34.5 Exceptions.
34.6 Use of procedures.
34.7 Other procedures or actions.

Subpart B—Administrative Offset and Referral to Collection Agencies

34.8 Demand for payment.
34.9 Collection by administrative offset.
34.10 Administrative offset amounts payable from retirement and disability Fund (Civil Service, Foreign Service, etc.).
34.11 Collection in installments.
34.12 Exploration of compromise.
34.13 Suspending or terminating collection action.
34.14 Referrals to the Department of Justice or the General Accounting Office.
34.15 Collection services.

Subpart C—Salary Offset

34.16 Scope.
34.17 Coordinating offset with another Federal agency.
34.18 Notice requirement before offset.
34.19 Request for a hearing.
34.20 Hearings.
34.21 Review of State records related to the debt.
34.22 Written agreement to repay as alternative to salary offset.
34.23 Procedures for salary offset.
34.24 Non-waiver of rights.
34.25 Refunds.

Authority: 31 U.S.C. 3701-3719; 5 U.S.C. 5514; 22 U.S.C. 2658; 22 U.S.C. 3926; 4 CFR 101 through 105; 5 CFR Part 550

Subpart A—General Provision

§ 34.1 Purpose.

These regulations prescribe the procedures to be used by the United States Department of State (*State*) in the collection of claims owed to *State* and to the United States.

§ 34.2 Scope.

(a) Applicability of Federal Claims Collection Standards (FCCS). Except as set forth in this part or otherwise provided by law, *State* will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the FCCS of the General Accounting Office and Department of Justice, 4 CFR 101 through 105.

(b) This part is not applicable to:

(1) Claims against any foreign country or any political subdivision thereof, or any public international organization.

(2) Claims where the *State* Comptroller or his designee determines that the achievement of the purposes of any provision of law administered by *State* require a different course of action.

§ 34.3 Definitions.

(a) A "debt" or "claim" refers to an amount of money which has been determined to be owed to the United States from any person, organization or entity, except another Federal Agency. A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

(b) "Delinquent" means a debt that has not been paid by the date specified in *State's* written notification or applicable contractual agreement, unless other satisfactory arrangements have been made by that date, or at any time thereafter the debtor fails to satisfy obligations under a payment agreement with *State*.

(c) "Disposable pay" means the amount that remains from an employee's federal pay after required deductions from Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits and such other deductions that are required by law to be withheld.

§ 34.4 Interest, penalty, and administrative charges.

Except as otherwise provided by statute, contract or excluded in accordance with FCCS, *State* will assess:

(a) Interest on unpaid claims will follow existing Treasury rules and regulations.

(b) Penalty charges at 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(c) Administrative charges to cover the costs of processing and calculating delinquent claims.

(d) Late payment charges shall be computed from the date of mailing or hand delivery of the notice of the claim and interest requirements.

(e) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and then to outstanding principal.

(f) *Waiver. State* shall consider waiver of interest, penalty charges and/or administrative charges in accordance with the FCCS, 4 CFR 102.13(g).

§ 34.5 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated, or settled in accordance with the regulations published under 31 U.S.C. 3726 (see 41 CFR Part 01-41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisitions Regulations (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations (see 48 CFR Part 32).

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice for compromise, suspension, or termination of collection action.

(d) Tax claims are excluded from the coverage of this regulation.

§ 34.6 Use of procedures.

Procedures authorized by this regulation (including but not limited to referral to a debt collection agency, administrative offset, or salary offset) may be used singly or in combination.

§ 34.7 Other procedures or actions.

(a) Nothing contained in this regulation is intended to require *State* to duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing in this regulation is intended to preclude utilization of informal administrative actions or remedies which may be available.

(c) Nothing contained in this regulation is intended to deter *State* from demanding the return of specific property or from demanding the return of the property or the payment of its value.

(d) The failure of *State* to comply with any provision in this regulation shall not serve as defense of the debt.

Subpart B—Administrative Offset and Referral to Collection Agencies

§ 34.8 Demand for payment.

(a) A total of three progressively stronger written demands at approximately 30-day intervals will normally be made, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the FCCS, including immediate referral for litigation and/or offset.

(b) The initial written demand for payment shall inform the debtor of:

(1) The basis of the claim;

(2) The amount of the claim;

(3) The date when payment is due 30 days from the date of mailing or hand delivery of the initial demand for payment;

(4) The provision for late payment (interest), penalty and administrative charges, if payment is not received by the due date.

§ 34.9 Collection by administrative offset.

(a) Offset will be used whenever feasible and not otherwise prohibited. Offset is not required to be used in every instance and consideration should be given to the debtor's finanical condition and the impact of offset on *State* programs or projects.

(b) The procedures for offset in this section do not apply to the offset of Federal salaries under 5 U.S.C. 5514.

(c) Before offset is made, *State* will provide the debtor with written notice informing the debtor of:

(1) The nature and amount of the claim;

(2) The intent of *State* to collect by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(3) The right of the debtor to inspect and copy *State's.* records of the claim;

(4) The right of the debtor to a review of the claim within *State*. If the claim is disputed in full or part, the debtor shall

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respond to the demand in writing by making a request by the payment due date state within the notice to the billing office for a review of the claim with *State*. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion must be paid by the date stated in the notice to avoid late payment, penalty and administrative charges. If *State* either sustains or amends its determination, it shall notify the debtor of its intent to collect the claim, with any adjustments based on the debtor's response by administrative offset unless payment is received within 30 days of the mailing of the notification of its decision following a review of the claim.

(5) The right of the debtor to offer to make a written agreement to repay the amount of the claim.

(6) The notice of offset need not include the requirements of paragraph (c) (3), (4), or (5) of this section if the debtor has been informed of the requirements at an earlier stage in the administrative proceedings, e.g., if they were included in a final contracting officer's decision.

(d) *State* will promptly make requests for offset to other agencies known to be holding funds payable to a debtor and, when appropriate, place the name of the debtor on the "List of Contractors Indebted to the United States". *State* will provide instructions for the transfer of funds.

(e) *State* will promptly process requests for offset from other agencies and transfer funds to the requesting agency upon receipt of the written certification that the person owes the debt and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K.

§ 34.10 Administrative offset amounts payable from retirement and disability funds (Civil Service, Foreign Service, etc.).

(a) Unless otherwise prohibited by law, *State* may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund, Federal Employee Retirement Fund, or the Foreign Service Retirement Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments, debts owed the United States by the debtor. Such requests shall be made to the appropriate officials of the respective fund servicing agency in accordance with such regulations as may be prescribed by the Director of that agency.

(b) When making a request for administrative offset under paragraph (a) of this section, *State* shall include written statements that:

(1) The debtor owes the United States a debt, including the amount of the debt.

(2) *State* has complied with the applicable statutes, regulations, and procedures of the respective fund servicing agencies.

(3) *State* has complied with the requirements of § 34.9 of this part, including any required hearing or review.

(c) Once *State* decides to request offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the fund servicing agency may identify the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund. This will satisfy any requirements that offset will be initiated prior to expiration of the applicable statute of limitations.

(d) If *State* collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, *State* shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the fund servicing agency to review the merits of the *State* determination relative to the amount and validity of the debt, its determination on waiver under an applicable statute, or its determination whether to provide an oral hearing.

§ 34.11 Collection in installments.

Whenever feasible, and except as required otherwise by law, debts owed to the United States, together with interest, penalties, and administrative costs are required by this regulation, should be collected in one lump sum. This is true whether the debt is being collected under administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installements. If *State* agrees to accept payment in installments, it will obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of the payments should bear a reasonable relation to the size of the debt and ability to the debtor to pay. If possible the installment payments should be sufficient in size and frequency to liquidate the Government's claim within three years.

§ 34.12 Exploration of compromise.

State may attempt to effect compromise in accordance with the standards set forth in Part 103 of the FCCS (4 CFR Part 103).

§ 34.13 Suspending or terminating collection action.

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the FCCS (4 CFR Part 104).

§ 34.14 Referrals to the Department of Justice or the General Accounting Office.

Referrals to the Department of Justice or the General Accounting Office shall be made in accordance with the standards set forth in Part 105 of the FCCS (4 CFR Part 105).

§ 34.15 Collection services.

(a) *State* has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(c) and Part 102 of the FCCS (4 CFR Part 102).

(b) *State* may disclose delinquent debts, other than delinquent debts of current Federal employees, to consumer reporting agencies in accordance with 31 U.S.C. 3711(f) and the FCCS.

(c) *State* will not use a collection agency to collect a debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

Subpart C—Salary Offset

§ 34.16 Scope.

(a) This subpart sets forth *State's* procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the United States Government.

(b) This subpart applies to:

(1) Current employees of *State* and other agencies who owe debts to *State*.

(2) Current employees of *State* who owe debts to other agencies.

(c) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 310 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g. travel advances in 5 U.S.C. 5705 and employee training expenses 5 U.S.C. 4108).

(d) This subpart does not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay or ministerial adjustments in pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) These regulations do not preclude an employee from:

(1) Requesting waiver of erroneous payment of salary, travel, transportation or relocation expense and allowances;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount of validity of a debt by submitting a subsequent claim to the General Accounting Office.

(f) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under Subpart A or other regulations.

§ 34.17 Coordinating offset with another Federal agency.

(a) When *State* is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until *State* provides the agency with a written certification that the debtor owes *State* a debt (including the amount and basis of the debt and the due date of payment) and that *State* has complied with these regulations.

(b) When another agency is owed the debt, *State* may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such request must be accompanied by a certification that the person owes the debt (including the amount and basis of the debt and the due date of payment) and that the agency has complied with its regulations as required by 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K.

§ 34.18 Notice requirements before offset.

Except as provided in § 34.16, salary offset deductions will not be made unless *State* first provides the employee with a written notice that he/she owes a debt to the Federal Government within a minimum of 30 calendar days before salary offset is initiated. When *State* is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available to the Department and will state:

(a) That *State* has reviewed the records relating to the debt and has determined that the debt is owed, its origin and nature, and the amount due;

(b) The intention of *State* to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) The requirement to assess and collect interest, penalties, and administrative costs in accordance with § 34.4, unless excused in accordance with § 34.4d;

(e) The employee's right to inspect and copy any *State* records relating to the debt, or, if the employee or their representative cannot personally inspect the records, to request and receive a copy of such records;

(f) The opportunity (under terms agreeable to *State*) to enter into a written agreement establishing a repayment schedule of the debt in lieu of offset;

(g) The right to a hearing conducted by an official (administrative law judge, or a hearing official not under the control of *State*) with respect to the existence of the debt, the amount of the debt, or the repayment schedule (i.e. the percentage of disposable pay to be deducted each pay period), so long as a request for a hearing is filed by the employee as prescribed in § 34.19;

(h) That the timely filing of a request for hearing within 30 calendar days after receipt of the notice of intent to offset will stay the commencement of collection proceedings;

(i) That the Department will initiate procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than thirty (30) days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

(j) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the request for a hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(k) That any knowingly false or frivolous statements, representation, or evidence may subject the employee to disciplinary procedures (5 U.S.C. Chapter 75, 5 CFR Part 752 or other applicable statutes or regulations); penalties (31 U.S.C. 3729 through 3731 or other applicable statutes or regulations); or criminal penalties (18 U.S.C. 286, 287, 1001, and 1002 or other applicable statutes or regulations);

(l) Any other rights and remedies available to the employee under statues or regulations governing the program for which the collection is being made;

(m) That the amounts paid on or deducted from the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(n) The method and time period for requesting a hearing; and

(o) The name and address of the *State* official to whom communciations should be directed.

§ 34.19 Request for a hearing.

(a) Except as provided in paragraph c of this section, an employee must file a request for a hearing, that is received by *State* not later than 30 calendar days from the date of *State's* notice described in § 34.18 if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) *State's* proposed offset schedule.

(b) The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it.

(c) The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(d) If the employee files a request for hearing later than the required 30 calendar days as described in paragraph a of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

(e) An employee waives the right to a hearing and will have his or her disposable pay offset if the employee fails to file a petition for a hearing as prescribed in paragraph a of this section or fails to appear at the scheduled hearing.

§ 34.20 Hearings.

(a) If an employee timely files a request for a hearing under § 34.19 *State* shall select the time, date and location of the hearing.

(b) Hearings shall be conducted by a hearing official not under the control or authority of *State* and

(c) *Procedure.* (1) After the employee request a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to

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be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence alone (e.g. when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but not limited to:

(i) Informal conferences with the hearing official or administrative law judge, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(3) *Paper hearing.* If the hearing official or administrative law judge determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record (5 U.S.C. 5514).

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart. See 4 CFR 102.3. Witnesses who testify in oral hearings will do so under oath or affirmation.

(5) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(6) *Failure to appear.* If the absence of good cause shown (e.g. excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall schedule a new hearing date upon the request of the agency representative. Both parties shall be given reasonable notice of the time and place of the new hearing.

§ 34.21 Review of State records related to the debt.

(a) *Notification by employee.* An employee who intends to insect or copy agency records related to the debt must send a letter to the official designated in § 34.18(o) stating his or her intention. The letter must be received by *State* within 30 calendar days after receipt of the notice of intent offset.

(b) *State's response.* In response to a timely notice submitted by the debtor as described in paragraph (a) of this section, *State* will notify the employee of the location and time when the employee may inspect and copy *State* records related to the debt.

§ 34.22 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to the notice of intent to offset, a written agreement to repay the debt as an alternative to salary offset. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by *State* within 30 calendar days of the notice.

(b) *State's response. State* will notify the employee whether the proposed written agreement for repayment is acceptable. It is within *State's* discretion to accept a repayment agreement instead of proceeding by offset.

(c) *Procedures.* If the employee and *State* enter into a written agreement to repay instead of salary offset, the debt will be repaid in accordance with the agreement provisions and the procedures of § 34.23 will not apply.

§ 34.23 Procedures for salary offset.

Unless *State* agrees and regulations do not provide otherwise, the following procedures apply:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay which is that part of current basic pay, special pay, retainer pay, or in the case of an employee not entitled to pay, other authorized pay remaining after the deduction of any amount required by law to be withheld.

(c) *Types of collection*—(1) *Lump sum payment.* Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(2) *Installment deducations.* (i) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible the size of the deduction will be that necessary to liquidate the debt in more than one year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other regulations or unless the employee has agree in writting to a greater amount.

(ii) Installment payments of less than $25 per pay period will be accepted only in the most unusal circumstances.

(iii) Installment deductions will be made over a period of not greater than the anticipated period of employment.

(d) *When deductions may begin.* (1) Salary offset will begin on the date stated in the notice as provided in § 34.18, unless a hearing is requested.

(2) If there has been a timely request for a hearing, salary offset will begin as of the date stated in the written decision.

(e) *Additional offset provisions*—(1) *Liquidation from final check.* If employment ends before salary offset is completed, the remaining debt will be liquidated by offset from payment of any nature due the employee from *State* (e.g. final salary payment, lump-sum leave, etc.).

(2) *Offset from other payments.* If the debt cannot be liquidated by offset from any final check, the remaining debt will be liquidated by offset from later payments of any kind due the former employee from the United States, inclusive of retirement or disability funds pursuant to § 34.10 of this regulation.

§ 34.24 Non-waiver of rights.

So long as there are statutory or contractual provision to the contrary, no employee payment (or all or a portion of a debt) collected under this subpart will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 34.25 Refunds.

(a) *State* will refund promptly to the appropriate individual amounts offset under this regulations when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) *State* is directed by an administrative or judicial order to make a refund.

(b) Refunds do not bear interests unless required or permitted by law or contract.

Elizabeth A. Gibbons,

Associate Comptroller, Financial Management.

October 5, 1988.

[FR Doc. 88-26775 Filed 11-18-88; 8:45 am]

BILING CODE 4710-37-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-88-27]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Venice, FL

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Florida Department of Transportation, Sarasota County, and the Venice Area Chamber of Commerce have requested the Coast Guard consider adding regulations governing the Hatchett Creek (SR 45/US-41), Venice Avenue, and South Venice (SR 45/US-41) drawbridges, mile 56.9, 56.6, and 54.9 respectively, at Venice, Florida by permitting the number of openings to be limited during certain periods. This proposal is being made because an increase in highway traffic has occurred on weekdays and bridge openings intensify traffic congestion. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation. This Supplemental Notice is being issued to clarify the Saturday, Sunday, and Federal Holiday regulations which were inadvertently omitted from the initial notice of proposed rulemaking.

DATE: Comments must be received on or before December 6, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, Brickell Plaza Federal Building, 909 SE. 1st Ave. Miami, Florida. Office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerald Fleming at (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge(s), and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Lieutenant Commander Gerald Fleming, project officer, and Lieutenant Commander S. T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

On September 2, 1988, Commander, Seventh Coast Guard District published a notice of proposed rulemaking in the **Federal Register** soliciting comments on modifications to the Hatchett Creek (SR-45/US/41) and Venice Avenue drawbridge rgulations. No comments were received. It was subsequently noted that the notice of proposed rulemaking had inadvertently omitted the existing weekend regulations for the Hatchett Creek bridge. This Supplemental Notice is issued to correct this omission and offer interested parties an opportunity to submit any additional comments. Due to the administrative nature of the correction, and the urgent need for the City of Venice to implement this change, the comment period is being reduced to 15 days.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.287 (a-1) and (b) are revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.

* * * * *

(a-1) The draw of the Venice Avenue bridge, mile 56.6 at Venice, shall open on signal, except that from 7 a.m. to 4:35 p.m., Monday through Friday except Federal holidays, the draw need open only at 10 minutes after the hour, 30 minutes after the hour and 50 minutes after the hour and except between 4:35 p.m. and 5:35 p.m. when the draw need not open.

(b) The draw of the Hatchett Creek (US-41) bridge, mile 56.9 at Venice, shall open on signal, except that, from 7 a.m. to 4:25 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour and except between 4:25 p.m. and 5:25 p.m. when the draw need not open. On Saturdays, Sundays, and Federal holidays from 7:30 a.m. to 6 p.m. the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

* * * * *

Dated: November 7, 1988.

Martin H. Daniell

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard Distict.

[FR Doc. 88-26891 Filed 11-18-88; 8:45 am]

BILLING CODD 4910-14-M

33 CFR Part 117

[CGD8-88-19]

Drawbridge Operation Regulations; Carlin Bayou, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the

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regulation governing the operation of the vertical lift span bridge on State Route 14 across Carlin Bayou, mile 6.4 at Delcambre, Louisiana, by requiring that the draw open on signal from 5 a.m. to 9 p.m. and open on at least four hours advance notice from 9 p.m. to 5 a.m. Presently, the draw is required to open on signal at all times. This proposal is being made because of infrequent requests for opening the draw during the prescribed advance notice period. This action should releive the bridge owner of the burden of having a person constantly available at the bridge to open the draw between 9 p.m. and 5 a.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before January 5, 1989.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130–3396. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are John Wachter, project officer, and Commander J.A. Unzicker, project attorney.

Discussion of Proposed Regulation

The vertical clearance of the bridge in the closed position is 2 feet above mean high tide and 5 feet above mean low tide. Traffic through the bridge consists of commercial boats, shrimp/fishing boats and recreational craft. Data submitted by the LDOTD show that marine traffic through the bridge between the hours of 9 p.m. and 5 a.m. is less than one vessel passage every three days.

Considering the few openings involved during the 9 p.m. to 5 a.m. period, the Coast Guard feels that the current on-site attendance at the bridge between those hours can be discontinued and that the bridge can be placed on four hours advance notice for an opening during that time frame. This would allow relief to the bridge owner while still providing for the reasonable needs of navigation. The bridge would continue to open on signal between 5 a.m. and 9 p.m. as it does now.

The advance notice for opening of the draw would be given by placing a collect call at any time to the LDOTD in Lafayette, Louisiana, telephone (318) 233–7404. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency, or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that very few vessels now pass the bridge during the proposed advance notice period of 9 p.m. to 5 a.m. For that period, the bridge averages opening less than one time every three days. The vessels involved can reasonably give four hours notice for a bridge opening by placing a collect call to the bridge owner at anytime. Mariners requiring the bridge opening are repeat users and scheduling their arrival at the bridge at the appointed time should involved little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46; and 33 CFR 1.05–1(g).

2. Section 117.436 is added to read as follows:

§ 117.436 Carlin Bayou.

The draw of the S14 bridge, mile 6.4 at Delcambre, shall open on signal; except that, from 9 p.m. to 5 a.m. the draw shall open on signal if at least four hours notice is given. The draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: November 4, 1988.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 88–26890 Filed 11–18–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

45 CFR Part 3

Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) in the United States Public Health Service, Department of Health and Human Services, proposes to revise the regulations in Title 45 Code of Federal Regulations, Part 3, governing the conduct of persons and traffic on the National Institutes of Health Federal enclave in Bethesda, Maryland, to: (1) Describe explicitly the applicability and effect of the Assimilative Crimes Act (18 U.S.C. 13) and to identify certain Maryland criminal statutes that apply to NIH under that Act; (2) identify for the information of the public certain Federal criminal statutes, which apply without regard to the place of the offense and which are particularly relevant to activities on Federal enclaves; and (3) add a new section limiting solicitation.

DATES: Written comments must be received on or before January 23, 1989, in order to assure that NIH will be able to consider these comments in preparing the final regulations.

ADDRESS: Send written comments on the proposed regulations, preferably in duplicate, to Mr. Lowell D. Peart, Regulations Officer, National Institutes of Health, Building 31, Room 3B–11, Bethesda, Maryland 20892, (301) 496–4606.

FOR FURTHER INFORMATION CONTACT: William G. Ketterer, Senior Attorney, NIH, Office of the General Counsel, Building 31, Room 2B–50, Bethesda, Maryland 20892, (301) 496–6043.

SUPPLEMENTARY INFORMATION: Notice is hereby given that NIH proposes to revise 45 CFR Part 3 to make editorial and other changes, including (1) the addition of paragraphs (d) and (e) to § 3.2, "Applicability," concerning the application of Federal statutes and assimilated Maryland statutes to the enclave, and § 3.44 governing solicitation, to strengthen the authority of the Director to regulate this activity within the enclave, and (2) revision of § 3.22, relating to requests for identification, to conform the regulations with pertinent rulings of the United States Supreme Court. The explicit citation of the Assimilative Crimes Act and specific Federal statutes in Titles 18 and 21, United States Code, and certain Maryland Statutes of particular relevance to NIH, is to better inform the public as to the applicability of these statutes and their penalties. The following statements are provided for the information of the public:

1. These proposed regulations would revise existing regulations to improve readability, update certain provisions, explicitly identify certain Federal and State criminal laws which presently apply independently of Part 3, and add a provision governing solicitation. The existing penalties for violation of provisions of the regulations set forth in Subpart D are not affected, and any economic impact of the provision governing solicitation is expected to be insubstantial and will not affect a substantial number of small entities. For these reasons, the Director has determined that this rule is not a "major rule" under Executive Order 12291, and that a regulatory impact analysis is not required. Further, as noted, these regulations will not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

2. Catalog of Federal Domestic Assistance: No assistance programs are affected.

3. This proposed rule does not contain information collection requirements subject to OMB approval under the Paperwork Reduction Act of 1980.

4. The Director, NIH, has considered the requirements of Executive Order 12606, in proposing these regulations and finds the proposals do not contain a significant potential negative impact on family well-being.

List of Subjects in 45 CFR Part 3

Conduct, Federal buildings and facilities, Government property, Traffic regulations.

It is therefore proposed to revise Part 3 of Title 45 Code of Federal Regulations to read as set forth below.

Dated: November 7, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

PART 3—CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH FEDERAL ENCLAVE

Subpart A—General

Sec.
3.1 Definitions.
3.2 Applicability.
3.3 Compliance.
3.4 False reports and reports of injury or damage.
3.5 Lost and found, and abandoned, property.
3.6 Nondiscrimination.

Subpart B—Traffic Regulations

3.21 Emergency vehicles.
3.22 Request for identification.
3.23 Parking.
3.24 Parking permits.
3.25 Servicing of vehicles.
3.26 Speed limit.
3.27 Bicycles.

Subpart C—Facilities and Grounds

3.41 Admission to facilities or grounds.
3.42 Restricted activities.
3.43 Removal of property.
3.44 Solicitation.

Subpart D—Penalties

3.61 Penalties.

Authority: 40 U.S.C. 318–318d, 486; Delegation of Authority, 33 FR 604.

Subpart A—General

§ 3.1 Definitions.

"Director" means the Director or Acting Director of the National Institutes of Health (NIH), or other officer or employee of NIH to whom the authority involved has been delegated.

"Enclave" means, unless the context requires a different meaning, the area, containing about 318 acres, acquired by the United States in several parcels in the years 1935 through 1993, and any future acquisitions, comprising the National Institutes of Health located in Montgomery County, Maryland, over which the United States acquired exclusive jurisdiction under the Act of March 31, 1953, Chapter 158 (1953 Maryland Laws 311).

"Police officer" means a uniformed or nonuniformed police officer appointed under a delegation of authority to the Director under Title 40 United States Code sections 318 or 318d; any other Federal law enforcement officer; and any other person whose law enforcement services are secured by contract or upon request or deputation from a State or local law enforcement agency.

§ 3.2 Applicability.

(a) The regulations in this part apply to all areas in the enclave and to all persons on or within the enclave, except as otherwise provided.

(b) The regulations in this part do not apply to occupants, their visitors, and other authorized persons in areas used as living quarters:

(1) When specifically made inapplicable, and

(2) In the case of the following provisions: § 3.24 Parking permits; § 3.25 Servicing of vehicles; § 3.42(a) Hobbies and sports; and § 3.42(f) Smoking.

(c) All regulations in this part are in addition to the provisions in the United States Code, including Title 18 relating to crimes and criminal procedure, and Title 21 relating to food and drugs, which apply:

(1) Without regard to the place of the offense, or

(2) To areas (such as the enclave) subject to the "special maritime and territorial jurisdiction of the United States," as defined in Title 18 United States Code section 7.

(d) In accordance with the Assimilative Crimes Act (18 U.S.C. 13) (Act), whoever is found guilty of an offense which, although not made punishable by any act of Congress, nor any provision of these regulations, would be punishable if committed within the State of Maryland, shall be

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guilty of a like offense and subject to a like punishment. In the event of an irreconcilable conflict between a provision of this part and a Maryland statute governing the identical subject matter, this part shall control.

(e) *Federal criminal statutes which apply.* The following Federal criminal statutes in the United States Code apply to Federal enclaves and elsewhere without regard to the place of the offense. This listing is provided solely for the information of the public and is not all-inclusive. The omission of other Federal statutes does not mean that such other statutes do not apply. In any given situation the cited statutory provisions and any amendments in effect when the alleged offense occurred shall determine the specifics of the offense, applicability, and penalty.

Subject	U.S. Code	Provides generally	Maximum penalty
1. By force or threat of force, willful injury, intimidation or interference with, or attempts to injure, intimidate or interfere with, a person from participating in or enjoying any benefit, service, privilege, program, facility, or activity, provided by or administered by the U.S., and engaging in certain other Federal protected activities.	18 U.S.C. 245.	Prohibits	Not involving death or bodily injury: Imprisonment one year and/or $1,000 fine.
2. Malicious destruction or damage, by an explosive, to a building or other property owned, possessed, used, or leased by the U.S., U.S. agency, or any organization receiving Federal financial assistance.	18 U.S.C. 844(f).	Prohibits	First offense not involving death or personal injury: Imprisonment 10 years and/or $10,000 fine and seizure and forfeiture of explosive materials.
3. Possession of explosive in buildings owned, possessed, used, or leased by U.S. or U.S. agency.	18 U.S.C. 844(g).	Prohibits, except with written consent of the agency.	Imprisonment one year and/or $1,000 fine and seizure and forfeiture of explosive materials.
4. Use of or carrying an explosive to commit, or during commission of, a felony prosecutable in a U.S. court.	18 U.S.C. 844(h).	Prohibits	First offense: Imprisonment 10 years and seizure and forfeiture of explosive materials.
5. Use of or carrying a firearm during and in relation to any crime of violence prosecutable in a U.S. court.	18 U.S.C. 924(c).	Prohibits	First offense: Imprisonment 5 years and $5,000 fine and seizure and forfeiture of firearm and ammunition.
6. Manufacture, distribution, dispensing, or possession with intent to do these acts, of narcotics and other controlled substances and counterfeit substances.	21 U.S.C. 841, 842, 843, 845.	Prohibits, except as authorized by the Controlled Substances Act (generally 21 U.S.C. 801–904).	First offense: Imprisonment 20 years and/or $250,000 fine depending on the amount and kind of substance (twice the above penalties for distribution by a person at least 18 years of age to one under age 21).
7. Simple possession of narcotics or other controlled substances.	21 U.S.C. 844.	Prohibits, unless substance obtained directly, or pursuant to prescription or order, from a practitioner, acting in the course of professional practice, or as otherwise authorized under the Controlled Substances Act.	First offense: Imprisonment 1 year and/or $5,000 fine.

(f) *Maryland criminal statutes which apply.* The matters described in this paragraph are governed, in whole or in part, by the current version of the cited Maryland criminal statutory provisions, which are made Federal criminal offenses under the Assimilative Crimes Act (18 U.S.C. 13). This listing sets forth areas of conduct particularly relevant to the enclave and is provided solely for the information of the public. The list is not all-inclusive and omission of other Maryland criminal statutes does not mean that such other statutes are not assimilated as Federal offenses under the Act. Generally, other Maryland criminal statutes will apply on the enclave, by force of the Act, unless superseded by Federal law or a provision of this part. In any given situation, the cited statutory provisions and any amendments in effect when the alleged offense occurred shall determine the specifics of the offense, applicability, and penalty.

Subject	Md. Code annotated	Provides generally	Maximum penalty
1. Pedestrian right-of-way	Transportation, Sec. 21–502.	Pedestrians have the right-of-way in crosswalks and certain other areas. Subject to certain limitations..	Imprisonment 2 months and/or $500 fine.
	Sec. 21–511	Blind, partially blind, or hearing impaired pedestrians have the right-of-way at any crossing or intersection. Subject to certain limitations..	$500 fine.
2. Drivers to exercise due care	Transportation, Sec. 21–504.	Drivers shall exercise due care to avoid colliding with pedestrians, children and incapacitated individuals.	$500 fine.
3. Driving while intoxicated, under the influence of alcohol and/or a drug or controlled dangerous substance.	Transportation, Sec. 21–902.	Prohibits	Sec. 21–902(a) (driving while intoxicated, first offense): Imprisonment 1 year and/or $1,000 fine. Sec. 21–902 (b), (c), (d) (driving under the influence): Imprisonment 2 months and/or $500 fine.
4. Unattended motor vehicles	Transportation, Sec. 21–1101.	Prohibits leaving motor vehicles unattended unless certain precautions are taken.	$500 fine.
5. Carrying or wearing certain concealed weapons (other than handguns) or openly with intent to injure.	Article 27, Sec. 36..	Prohibits, except for law enforcement personnel or as a reasonable precaution against apprehended danger.	Imprisonment 3 years or $1,000 fine.

Subject	Md. Code annotated	Provides generally	Maximum penalty
6. Unlawful wearing, carrying, or transporting a handgun, whether concealed or openly.	Article 27, Sec. 36B.	Prohibits except by law enforcement personnel or with permit.	First offense and no prior related offense: Imprisonment 3 years and/or or $2,500 fine.
7. Use of handgun or concealable antique firearm in commission of felony or crime of violence.	Article 27, Sec. 36B.	Prohibits	Imprisonment 20 years.
8. Disturbance of the peace	Article 27, Sec. 122.	Prohibits acting in a disorderly manner in public places.	Imprisonment 30 days and/or $500 fine.
9. Gambling	Article 27, Secs. 240, 245.	Prohibits betting, wagering and gambling, and certain games of chance (does not apply to vending or purchasing lottery tickets authorized under State law in accordance with approved procedures).	Sec. 240: Imprisonment one year and/or $1,000 fine. Sec. 245: Imprisonment 2 years and/or $100 fine.

§ 3.3 Compliance.

A person must comply with the regulations in this part; with all official signs; and with the lawful directions or orders of a police officer or other authorized person including traffic and parking directions.

§ 3.4 False reports and reports of injury or damage.

A person may not knowingly give any false or fictitious report concerning an accident or violation of the regulations in this part or any applicable Federal or Maryland statute to any person properly investigating the accident or alleged violation. All incidents resulting in injury to persons or willful damage to property in excess of $100.00 in value must be reported by the persons involved to the Police Office as soon as possible. The Police Office's main location and telephone number is: Building 31, Room B3BN10; (301) 496–5685.

§ 3.5 Lost and found, and abandoned, property.

Lost articles which are found on the enclave, including money and other personal property, together with any identifying information, must be deposited at the Police Office or with an office (such as the place where found) which may likely have some knowledge of ownership. If the article is deposited with an office other than the Police Office and the owner does not claim it within 30 days, it shall be deposited at the Police Office for further disposition in accordance with General Services Administration regulations (41 CFR Part 101–48). Voluntarily abandoned, abandoned, or other unclaimed property and, in the absence of specific direction by a court, forfeited property, may be so identified by the Police Office and sold in accordance with 41 CFR 101–45.304–1 and 101–45.304–2.

§ 3.6 Nondiscrimination.

A person may not discriminate by segregation or otherwise against another person because of age, color, creed, handicap, national origin, race or sex, in furnishing or by refusing to furnish to that person the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided within the enclave. (Title 18 United States Code section 245 prohibits, by use of force or threat of force willful injury, intimidation, or interference with, a person from participating in or enjoying any benefit, service, privilege, program, facility, or activity provided by or administered by the United States, attempts to do these acts, and engaging in certain other activities.)

Subpart B—Traffic Regulations

§ 3.21 Emergency vehicles.

A person must yield the right of way to an emergency vehicle operating its siren or flashing lights.

§ 3.22 Request for identification.

Upon request by a police officer, a person involved in any of the following situations must provide identification, for example, by exhibiting satisfactory credentials (such as an employment identification card or driver's license):

(a) A traffic accident within the enclave;

(b) The police officer reasonably believes that the individual is engaged in or has engaged in criminal conduct or a violation of the regulations of this part, or

(c) The enclave or a portion of the enclave is not open to the public (see § 3.41).

A driver of a motor vehicle involved in an accident within the enclave shall also exhibit upon request of a police officer the owner's registration card or other satisfactory proof of ownership.

§ 3.23 Parking.

(a) A person may not stand (vehicle stopped with or without an occupant) or park a motor or other vehicle:

(1) In a lane, space, or area not designated by sign for parking, and/or standing;

(2) On a sidewalk;

(3) Within an intersection or crosswalk;

(4) Within 10 feet of a fire hydrant, 5 feet of a driveway or 20 feet of a stop sign, crosswalk, or traffic control signal;

(5) In a double-parked position;

(6) At a curb painted yellow;

(7) On the side of a street facing oncoming traffic;

(8) In a position that would obstruct traffic;

(9) For a period in excess of 24 hours, except at living quarters or with the approval of the Police Office.

(b) A person must park bicycles, motorbikes, and similar vehicles only in designated areas, and may not bring these vehicles inside buildings.

(c) A visitor must park in an area identified for that purpose by posted signs or similar instructions, such as "visitor parking" and "reserved for visitors."

(d) A person may not drive or park an unauthorized motor vehicle on a grassy or any nonpaved area without the approval of the Police Office.

§ 3.24 Parking permits.

Except for visitor parking, a person may not park a motor vehicle without displaying a parking permit, currently valid for that location. The Director may revoke or refuse to issue or renew any parking permit for violation of this section, or any provision of this part.

§ 3.25 Servicing of vehicles.

A person may not wash, polish, change oil, lubricate, or make nonemergency repairs on a privately owned vehicle.

§ 3.26 Speed limit.

The speed limit is 25 miles per hour, unless otherwise posted. A driver of a vehicle may not exceed the speed limit.

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§ 3.27 Bicycles.

A person may not operate a bicycle, motorbike, or similar vehicle without a horn or other warning device, and, if the vehicle is operated between dusk and dawn, it must be equipped with an operating headlight, and taillight or reflector.

Subpart C—Facilities and Grounds

§ 3.41 Admission to facilities or grounds.

The enclave is officially open to the public during normal working and visiting hours and for approved public events. The enclave is closed to the public at all other times, and the Director may also officially close all or part of the enclave, or any building, in emergency situations and at other times the Director deems necessary to insure the orderly conduct of Government business. When all or part of the enclave is closed to the public, admission is restricted to employees and other authorized persons who may be required to display Government credentials or other identification when requested by a police officer and may be required to sign a register. The living quarters and adjacent areas are not open to the public but are open at all times to occupants and their visitors and business invitees, unless otherwise closed by the Director.

§ 3.42 Restricted activities.

(a) *Hobbies and sports.* A person may undertake hobbies and sports only in designated areas or as approved by the Director.

(b) *Pets and other animals.* A person may not bring on the enclave any cat, dog, or other animal except for authorized purposes. This prohibition does not apply to domestic pets at living quarters or to the exercise of these pets under leash or other appropriate restraints. The use of a dog by a handicapped person to assist that person is authorized.

(c) *Photography.* A person may take photographs, films or audiovisuals, for personal or news purposes on the grounds of the enclave or in entrances, lobbies, foyers, corridors, and auditoriums in use for public meetings, except when contrary to security regulations or Department of Health and Human Services policies, or where prohibited by appropriate signs. Photographs and similar activities for advertising or commercial purposes may be taken only with the advance written approval of the Director. A person may take photographs of a patient only with the informed consent of the patient (or the natural or legal guardian) and of the Director of the Warren Grant Magnuson Clinical Center or delegate.

(d) *Intoxicating beverages, narcotics, and other controlled substances.* A person may not possess, sell, consume, or use alcohol or other intoxicating beverages, except in connection with official duties, as part of authorized research, or as otherwise authorized by the Director; or, in the case of possession, consumption or use only, in living quarters. (The sale, consumption, use or possession of narcotics and other controlled substances is prohibited and shall be governed by the Controlled Substances Act (21 U.S.C. 841–845); driving under the influence of an alcoholic beverage, drug or controlled substance is prohibited and shall be governed by the Maryland *Transportation Code Annotated* section 21–902).

(e) *Nuisances and disturbances.* The following acts by a person are prohibited: Unwarranted loitering, disorderly conduct (acting in a disorderly manner to the disturbance of the public peace is prohibited and shall be governed by *Maryland Code Annotated,* Article 27, section 122); littering or disposal of rubbish in an unauthorized manner; the creation of any hazard to persons or property; the throwing of articles of any kind from or at a building; the climbing upon any part of a building for other than an authorized purpose; the loud playing of radios or other similar devices; and rollerskating, skateboarding, sledding or similar activities, except in officially designated areas.

(f) *Smoking.* Except as part of an approved medical research protocol, a person may not smoke in any building on the enclave.

§ 3.43 Removal of property.

A person may not remove Federal property from the enclave or any building on the enclave without a property pass, signed by an authorized property custodian, which specifically describes the items to be removed. In an emergency or when the property custodian is not available, a police officer may approve removal of Federal property if, after consulting with the administrative officer or other appropriate official, the police officer is authorized by that official to do so. Privately-owned property, other than that ordinarily carried on one's person, may be removed only under this property pass procedure, or upon properly establishing ownership of the property to a police officer. Packages, briefcases, or other containers brought within the enclave are subject to inspection while on, or being removed from, the enclave.

§ 3.44 Solicitation.

It shall be unlawful for a person (other than an employee using authorized bulletin boards), without prior written approval of the Director, to offer or display any article or service for sale within the enclave buildings or grounds; or to display any sign, placard, or other form of advertisement; or to collect private debts; or to solicit business, alms, subscriptions or contributions, except in connection with approved national or local campaigns for funds for welfare, health and other public interest purposes, or solicitation of labor organization membership or dues as authorized under the Civil Service Reform Act of 1978 (Pub. L. 95–454). This provision shall not apply to authorized lessees and their agents and employees with regard to space leased for commercial, cultural, educational, or recreational purposes, under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(a)(16)).

Subpart D—Penalties

§ 3.61 Penalties.

(a) A person found guilty of violating any provision of the regulations in this part is subject to a fine of not more than $50 or imprisonment of not more than thirty days or both, for each violation (40 U.S.C. 318c).

(b) Penalties for violation of offenses proscribed by Federal statutes (generally codified in Title 18 of the United States Code) and Maryland criminal statutes which are made Federal offenses under the Assimilative Crimes Act are prescribed in the applicable provisions of those statutes.

[FR Doc. 88–26761 Filed 11–18–88; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 81130–8230]

Pacific Coast Groundfish Fishery; Foreign Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary groundfish fishery specifications and request for comments.

SUMMARY: NOAA announces and requests comments on the preliminary 1989 specifications for groundfish taken in the U.S. exclusive economic zone and State waters off the coasts of Washington, Oregon, and California. These preliminary specifications propose the level of the acceptable biological catch, the optimum yield, and the distribution of the optimum yield between domestic and foreign fishing operations for groundfish species and species groups as required by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The intended effect of this action is to obtain public comments which will be considered before determining the final specifications for 1989.

DATE: Comments on the preliminary specifications for 1989 must be received by December 1, 1988.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg 1, Seattle WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140; or Rodney R. McInnis at (213) 514–6202.

SUPPLEMENTARY INFORMATION: Under the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR Part 663.24, the management specifications for groundfish must be evaluated each calendar year, the preliminary specifications for the upcoming year must be published in the **Federal Register** inviting public comment, and the final specifications must be published in the **Federal Register** following public comment. The management specifications include the acceptable biological catch (ABC), the optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and the total allowable level of foreign fishing (TALFF).

The ABC is the annual catch, for the more than 80 groundfish species managed by the FMP, that can be taken without jeopardizing a resource's productivity. It may differ from the maximum sustainable yield (MSY) for biological reasons.

The MSY is the average, over a reasonable length of time, of the largest catch which can be taken continuously from a stock. The MSY is modified by relevant social, economic, and ecological factors to make the OY, which is the amount of fish that will provide the greatest overall benefit to the Nation. The FMP uses two types of OYs, numerical OYs which are quotas, and a nonnumerical OY which is all the fish which can be legally caught under the gear, area, and catch restrictions imposed by the FMP.

Each numerical OY is a quota, the maximum amount of fish (in round weight) that may be retained, or landed each year from the exclusive economic zone (EEZ) (3–200 nautical miles) and the state territorial waters (0–3 nautical miles) off the coasts off Washington, Oregon, and California. A numerical OY is specified only for each of six species: Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel. The OY for each of these six species includes determinations of the amounts available for domestic and foreign fishing. The DAH consists of estimates of DAP and JVP which are determined by surveys in September and June to assess the industry's planned utilizaton. The TALFF is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated, a reserve of 20 percent of OY is established for each species in case the domestic industry needs more fish than was initially estimated.

The more than 70 remaining species managed under the FMP are included in the nonnumerical OY. For the most part, they cannot be harvested selectively and, unless biological stress is documented, have not been regulated by quotas. Full utilization by domestic processors of some species in this multispecies complex precludes joint venture or foreign targeting on underexploited species in this complex because large incidental catches of the fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because joint venture and foreign fishing are not available for any species in this multispecies complex. However, ABCs are specified for the major species or species groups.

The ABCs and OYs may be changed during the year, within limits, under the procedures outlined in the regulations at 50 CFR 663.22.

The preliminary 1989 management specifications for each species with an ABC different than in 1988, or with a numerical OY are discussed below, followed by Tables 1 and 2 which list the ABCs and OYs for all species or species groups. The aggregate data upon which these preliminary specifications are based are available for public inspection at the offices of the Regional Directors (see **ADDRESSES** above) during business hours until the end of the comment period.

Proposed Change to ABC for Nonnumerical OY Species

The ABCs for all species included in the nonnumerical OY are the same as in 1988, with the exception of yellowtail rockfish (Table 1). A new stock assessment, using cohort analysis and a dynamic pool model, suggests that the biomass of yellowtail rockfish has declined from the high levels in the late 1970's, and currently is close to levels that will sustain the maximum sustainable yield (MSY). The ABC was determined by averaging two estimates of biomass which were based on two slightly different models. One estimate uses a deterministic spawner-recruitment model (recruitment is dependent on stock size) and the other uses a constant recruitment model (recruitment is independent of stock size). The two estimates produced similar results. In the absence of data which would indicate that one was based on better scientific information than the other, the Groundfish Management Team (GMT) of the Pacific Fishery Management Council (Council) concluded that an average value was appropriate. This analysis included fish in the Canadian part of the Vancouver statistical area. The Council reconsidered how much of the biomass is available in the EEZ. In previous years, the Council estimated that 80 percent of the commercial catch of yellowtail rockfish occured in U.S. waters. The GMT believes this proportion is no longer appropriate, and although an accurate proportion is not yet known, that a 50 percent split is much more likely to represent the available biomass in U.S. waters. The GT expects better information in 1989 when preliminary results of a joint U.S.-Canada stock assessment become available.

Thus, although the estimate of biomass for yellowtail rockfish (including the Canadian portion of the Vancover statistical area) is higher than in 1988, this increase is partially offset by the reduced proportion estimated to be available off the U.S. coast. The result is no change to the 1,100 metric ton (mt) ABC in the U.S. Vancover area and a 300 mt increase, from 2,600 mt to 2,900, to the ABC in the Columbia area. Because there is no new stock assessment, the 300 mt ABC in the Eureka area is the same as in 1988. Accordingly, the total coastwide ABC for yellowtail rockfish is estimated at 4,300 mt, 300 mt above the 4,000 mt ABC in 1988.

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For purposes of determining the harvest guideline for the *Sebastes* complex of rockfish (of which yellowtail rockfish is a dominant component), the ABC for yellowtail rockfish in the Columbia area is prorated to determine the portion of the 2,900 mt ABC that applies north of Coos Bay, Oregon. This amount is 2,800 mt. (See footnote 5 of Table 1.) Calculating the harvest guideline for the *Sebastes* complex in the same way in 1989 as in 1988 (equal to the sum of the ABCs of the species in the complex), the increase to the yellowtail rockfish ABC will raise the harvest guideline for the Sebastes complex north of Coos Bay, Oregon to 10,500 mt, 300 mt higher than in 1988.

Proposed Specifications for Numerical OY Species

Pacific whiting. The 1989 ABC for Pacific whiting (whiting) is preliminarily specified at 225,000 mt, slightly lower than the 1988 estimate of 232,000 mt. A new assessment of the Pacific whiting resource incorporates two age-structured analyses, recent fishery data, and revised growth estimates. This assessment documents a decrease in the estimated magnitude of the 1980 year class and a trend of declining mean length and weight at age over the 1976–1986 period. This results in a downward revision of short-term yield in comparison with the prior year's assessment.

Because whiting is a transboundary species, initial biomass estimates included stocks in the Canadian portion of the Vancouver area. The 1989 proposed ABC of 225,000 mt for UY.S. waters is only 75 percent of the estimated total avialable yield of 300,000 mt. This proportion was calculated from the percentage of each exploitable age group found in the EEZ in the most recent survey (1986). This estimate takes into account that older whiting migrate farther north and faster than younger fish.

In 1989 as in previous years, ABC and OY are proposed to be equal. The 1989 estimate of DAP is 18,000 mt, the same as in 1988. Because joint venture requests for 1989 currently exceed the amount preliminarily specified for OY, the estimate of JVP in 1989 in 207,000 mt, the difference between OY and DAP. Accordingly the preliminary determination of DAH in 1989 is equal to OY and there is no initial TALFF and no reserve. (The reserve, 20 percent of OY, is established in case the domestic industry needs more fish than originally projected, and thus is determined only when there is a TALFF.) These amounts may change, depending on the final specifications of ABC and OY, revised DAP requests, and applications for joint venture processing which are determined and published later in the year.

If a midseason survey of domestic processors indicates that the estimate of DAP is too high, JVO may be increased by the amount of DAP that the Secretary determines will not be needed by U.S. processors during the remainder of the fishing year. Similarly, TALFF may be increased by any part of the reserve and initial estimated DAH for the species under consideration that the Secretary determines will not be harvested by U.S. fishermen during the remainder of the calendar year.

Sablefish. The 1989 preliminary ABC for sablefish is 9,000 mt, 1,000 mt below the 1988 ABC of 10,000 mt. A new assessment was conducted based on a "stock synthesis" model, which uses landings and port sample data, tag returns, and information from trawl and pot surveys to estimate the current status of the stock. The GMT feels this assessment is a major improvement over previous analyses. The new analysis supported the trend of declining exploitable stock. The level of landings in recent years (averaging 13,600 mt between 1980 and 1986) is not sustainable. However, the analysis also indicated that the stock currently is above the 83,000 mt biomass level which will produce MSY at the estimated MSY exploitation rate. Once biomass is reduced to the level which will produce MSY, the expected average annual yield would be 8,200 mt.

The Council recommended that the preliminary OY be set at 10,400 mt, approximately the level of landings expected in 1988, and consistent with a fishing schedule designed to achieve MSY in about seven years. The Council examined the expected results of harvesting sablefish at higher and lower exploitation rates and decided on an OY of 10,400 mt as a step in a process of gradual reduction in harvest levels over a reasonable period of time. This process will help the industry adjust to the reduction of harvest to the MSY of 8,200 mt that must occur by the time the biomass level is reduced to 83,000 mt. Also, a gradual reduction in harvest rates would minimize risk due to uncertainty in the analysis. For the reasons stated above, and because the sablefish biomass is larger than that needed to produce MSY, it is not inconsistent to set OY higher than ABC. Because domestic processors intend to process all available sablefish, none is available for joint venture or foreign fishing in 1989 except for minimal allowances for unavoidable incidental catches.

Pacific ocean perch. Pacific ocean perch have been overfished in the past and now are managed under a rebuilding schedule specified in the FMP. No new stock assessment was conducted in 1988. The most recent available data indicated little or no rebuilding of the Pacific ocean perch stock since 1979, and currently there are no indications of strong recruitment to the population. Accordingly, the 1989 ABCs for both the Vancouver and Columbia areas are proposed to be set at zero, as in 1987 and 1988.

Also as in the past two years, the OY is proposed to be set at a level that will allow some if not all incidental catches to be landed, but will not encourage directed fishing; 500 mt in the Vancouver area and 800 mt in the Columbia area. Clearly, domestic processors will fully utilize OY so no Pacific ocean perch are available for joint venture or foreign fishing in 1989 except for minimal allowances for unavoidable incidental catches.

Widow rockfish. The 1989 preliminary specification of the coastwide ABC for widow rockfish is 9,500 mt, 21 percent lower than the final 1988 ABC of 12,100 mt. New analyses revealed a great deal of uncertainty in the estimates of stock abundance and its relationship to MSY. Given these uncertainties, the Council recommended setting ABC at MSY until more consistent stock assessments are available. The ABC was less than 9,500 mt in 1984–1986.

The preliminary OY of 9,500 mt equals ABC in 1989, and, like ABC, is 21 percent lower than in 1988. Although less than in 1986–1988, this preliminary OY is slightly higher than the 9,300 mt OY in 1984–1985. Because this species is fully utilized by domestic processors, no widow rockfish are available for JVP or TALFF in 1989 except for minimal allowances for unavoidable incidental catches.

Shortbelly rockfish. The preliminary 1989 ABC and OY specifications for shortbelly rockfish are both 10,000 mt, the same as during 1983–1988. As in 1986–1988, DAP is estimated at 1,000 mt and JVP is estimated at 5,000 mt, resulting in DAH of 6,000 mt. The reserve is set at 2,000 mt in case domestic needs become higher than initially estimated, and the remaining 2,000 mt is designated for TALFF. Most shortbelly rockfish are available south of 39 degrees N. latitude, an area closed to foreign trawiling, and no interest has been expressed in a directed foreign fishery for this species north of 39 degrees N. latitude in 1989.

Jack mackerel (north of 39° latitude). The preliminary 1989 ABC and OY specifications for jack mackerel are both 12,000 mt, the same as during 1985–1988. No new stock assessment has been conducted for this species. No domestic interest has been identifed for the stock north of 39 degrees N. latitude, the only component of this species managed by the FMP. Accordingly, a reserve of 2,400 mt is proposed in case domestic needs develop, and 9,600 mt is designated for foreign fishing in 1989.

Classification

These preliminary specifications are made under the authority of and in accordance with 50 CFR 663.24 (a) and (b). This action is in compliance with Executive Order 12291 and is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

List of Subjects in 50 CFR Parts 663 and 611

Fisheries, Fishing, Foreign relations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

TABLE 1.—PRELIMINARY SPECIFICATIONS OF ABC FOR 1989 FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

[In thousands of metric tons]

Species	Area					
	Vancouver [1]	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Lingcod	1.0	4.0	0.5	1.1	0.4	7.0
Pacific Cod	2.2	.9	[2]	[2]	[2]	3.1
Pacific Whiting						[3] 225.0
Sablefish						[3] 9.0
Rockfish:						
Pacific Ocean Perch	0	0	[2]	[2]	[2]	[3] 0
Shortbelly						[3] 10.0
Widow						[3] 9.5
Other Rockfish: [4]						
Bocaccio	[2]	[2]	[2]	4.1	2.0	6.1
Canary	.8	[5] 2.1	.6	[2]	[2]	3.5
Chilipepper						[3] 3.6
Yellowtail	1.1	[5] 2.9	.3	[2]	[2]	4.3
Remaining Rockfish	.8	[5] 3.7	1.9	4.3	3.3	14.0
Flatfish:						
Dover Sole	2.4	11.5	8.0	5.0	1.0	27.9
English Sole						[3] 1.9
Petrale Sole	.6	1.1	.5	.8	.2	3.2
Other Flatfish	.7	3.0	1.7	1.8	.5	7.7
Other Fish [6]						
Jack Mackerel [7]						12.0
Others	2.5	7.0	1.2	2.0	2.0	14.7

[1] U.S. portion.

[2] These species are not common or important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted and rockfish species are included in the "remaining rockfish" category for the areas footnoted only.

[3] Total all areas.

[4] "Other rockfish" means rockfish species at 50 CFR 663.2, as amended, which do not have a numerical OY.

[5] For management of the Sebastes complex of rockfish, the Columbia area is split into northern and southern parts at Coos Bay, Oregon 43°21'34" N. latitude), and ABCs for the Columbia area are prorated as follows: Canary (Species), 2.1 (Columbia area total), 1.7 (North of Coos Bay), 0.4 (South of Coos Bay); Yellowtail (Species), 2.9 (Columbia area total), 2.8 (North of Coos Bay), 0.1 (South of Coos Bay); Remaining rockfish (Species), 3.7 (Columbia area total), 3.3 (North of Coos Bay), 0.4 (South of Coos Bay).

[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, and, in the Eureka, Monterey, and Conception areas, Pacific cod. "Other fish" is part of the "other species" category listed at 50 CFR 663.2.

[7] North of 39° N. latitude.

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TABLE 2.—PRELIMINARY SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1989

[In thousands of metric tons]

Species	Total OY	DAP	JVP [1]	DAH	Reserve	TALF F [1]
Pacific Whiting	225.0	18.0	207.0	225.0	0	0
Sablefish	10.4	10.4	0	10.4	0	0
Pacific Ocean Perch	[2] 1.3	[2] 1.3	0	[2] 1.3	0	0
Shortbelly Rockfish	10.0	1.0	5.0	6.0	2.0	2.0
Widow Rockfish	9.5	9.5	0	9.5	0	0
Jack Mackerel	12.0	0	0	0	2.4	9.6
Other Species	[3]					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See 50 CFR 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

[2] Of this 1,300 metric tons, 500 metric tons is for the Vancouver area and 800 metric tons is for the Columbia area. Pacific ocean perch from other areas are included in the OY for "other species". See 50 CFR 663.21(a)(3).

[3] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under 50 CFR 611.70 and Part 663. See 50 CFR 663.2 for species listing.

[FR Doc. 88-26827 Filed 11-16-88; 1:12 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 224
Monday, November 21, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Hiawatha National Forest, Pictured Rocks National Lakeshore

AGENCY: Forest Service, USDA.

ACTION: Notice; transfer of administrative jurisdiction.

SUMMARY: The Secretary of Agriculture has approved the transfer of 866.08 acres of the Hiawatha National Forest from the administrative jurisdiction of the Forest Service to the jurisdiction of the National Park Service, Department of the Interior, for addition to the Pictured Rocks National Lakeshore. A copy of the order as signed by the Secretary is set out at the end of this notice.

EFFECTIVE DATE: By order of the Secretary of Agriculture, the transfer was effective October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Johnson, Lands Staff, USDA, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, (703) 235-2406.

Dated: November 14, 1988.

Larry Henson,
Associate Deputy Chief.

In compliance with section 8 of the Act of October 15, 1966, Pub. L. 89-668, notice is hereby given that pursuant to the authority vested in the Secretary of Agriculture, the following lands are hereby transferred from the administrative jurisdiction of the Forest Service, Hiawatha National Forest, U.S. Department of Agriculture, to the administrative jurisdiction of the National Park Service, Pictured Rocks National Lakeshore, U.S. Department of the Interior.

Those certain lands now administered as a part of the Hiawatha National Forest, situated, lying, being in T. 47 N., R. 18 W., of the Michigan Meridian, Alger County, Michigan, and being more particularly described as follows:

T. 47 N., R. 18 W.,

Section 1, N½NW¼; SW¼SW¼

(State of Michigan reserves all mineral, coal, oil and gas, right of ingress and egress across any lands lying along any watercourse, and all aboriginal antiquities and right to explore and excavate for same.)

S½NW¼; NW¼SW¼

(Third party reserves all metals, oils, salt, gas, marl, ores, minerals, limestone, and all granite, stone or rock valuable for building purposes.)

Sec. 2, E½SE¼SW¼; E½NE¼; SW¼NE¼; SE¼

(Third party reserves all metals, oils, salt, gas, marl, ores, minerals, limestone, and all granite, stone or rock valuable for building purposes.)

Sec. 16, NE¼Sw¼; NW¼SE¼; NE¼SE¼

(State of Michigan reserves all mineral, coal, oil, and gas, right of ingress and egress across any lands lying along any watercourse, and all aboriginal antiquities and right to explore and excavate for same.)

Sec. 28. SW¼SE¼; S½NW¼SE¼
Sec. 29, NW¼SW¼
S½SW¼NW¼
NE¼SW¼NW¼
Sec. 35, W½NE¼

The area described aggregates 866.08 acres.

Effective date. This order is effective on the 31st of October, 1988.

Richard E. Lyng,
Secretary, Department of Agriculture.

[FR Doc. 88-28898 Filed 11-18-88; 8:45 am]

BILLING CODE 3410-11-M

ARMS CONTROL AND DISARMAMENT AGENCY

Hubert H. Humphrey Fellowship Competition

The U.S. Arms Control and Disarmament Agency will conduct a competition in 1989 for one-year Hubert H. Humphrey Fellowships in support of unclassified doctoral dissertation research in arms control and disarmament. Law candidates for the Juris Doctor or any higher degree are also eligible if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for Ph.D. candidates will be $5,000 plus applicable tuition and fees up to a maximum of $3,400. Stipends and tuition for law candidates will be prorated according to the credits given for the research paper. Fellows must be citizens or nationals of the United States and degree candidates at a U.S. University. The application deadline for the awards is March 15, 1989. Awards will be for a 12-month period beginning either September 1989 or January 1990. For information and application materials please write: Hubert H. Humphrey Fellowship Program, Office of Public Affairs, U.S. Arms Control and Disarmament Agency, Washington, DC 20451.

Date: November 4, 1988.

Sigmund Cohen, Jr.,
Director of Public Affairs.

[FR Doc. 88-26777 Filed 11-18-88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held December 8, 1988, 9:30 a.m., Room 1617-F, U.S. Department of Commerce, 14th & Constitution Avenue, NW. Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of TAC Chairmen's Meeting.
5. Discussion of Annual Report & 1989 Plan.
6. Discussion of Rechartering.
7. Election of Chairman.
8. Discussion of other Export Issues.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

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The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 17, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: November 15, 1988.

Betty Anne Ferrell,

Director, Technical Support Unit, Office of Technology and Policy Analysis.

[FR Doc. 88–26865 Filed 11–18–88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–588–019]

Cyanuric Acid and Its Chlorinated Derivatives From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and tentative determination to revoke in part.

SUMMARY: In response to requests by the petitioner and four respondents, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. The reviews cover two manufacturers/exporters of this merchandise to the U.S., Nissan Chemical Industries, Ltd., Shikoku Chemicals Corporation, two trading companies, Mitsubishi Corporation and Toyo Menka Kaisha, Ltd., and two consecutive periods from April 1, 1985 through March 31, 1986 and April 1, 1986 through March 31, 1987. The reviews indicate the existence of dumping margins for Shikoku Chemicals Corporation for cyanuric acid for both periods. The margins for Shikoku Chemicals Corporation for dichloro isocyanurates and trichloro isocyanuric acid for both periods were less than 0.5 percent and, therefore, *de minimis*. There were no margins for Nissan Chemical Industries, Ltd. for either dichloro isocyanurates or trichloro isocyanuric acid for both periods. The order on cyanuric acid excludes sales produced by Nissan.

As a result of the reviews, we preliminarily determine to assess dumping duties on cyanuric acid equal to the calculated differences between United States price and foreign market value.

We also tentatively determine to revoke the antidumping duty orders on dichloro isocyanurates and trichloro cyanuric acid.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1987, the Department published in the **Federal Register** (52 FR 15970) the final results of its last administrative reviews of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan (49 FR 18148, April 27, 1984). The petitioner and respondents requested in accordance with § 353.53a of the Commerce Regulations that we conduct administrative reviews. We published notices of initiation on May 20, 1986 (51 FR 18475) and May 20, 1987 (52 FR 18937). The Department has now conducted the administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Reviews

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized Tariff System ("HTS"). Until that time, the Department will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HTS item numbers with our product descriptions on a test basis. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the reviews are shipments of cyanuric acid (also known as isocyanuric acid) and its chlorinated derivatives (dichloro isocyanurates, and trichloro isocyanuric acid) used in the swimming pool trade.

We have categorized the merchandise as cyanuric acid, dichloro trichloro isocyanurates and trichloro isocyanuric acid, which we consider to be separate classes or kinds of merchandise. These products are sold in three basic consistencies: powder, granular and tablet. Such merchandise is currently classifiable under item number 425.1050 of the TSUSA and item number 2933.69.50.50 of the HTS. The review covers Shikoku Chemicals Corporation ("Shikoku"), Nissan Chemical Industries ("Nissan"), Mitsubishi Corporation and Toyo Menka Kaisha, Ltd., and two consecutive periods from April 1, 1985 through March 31, 1986 and April 1, 1986 through March 31, 1987.

Petitioner alleged that Nissan esablished a fictitious market for home market sales of trichloro isocyanuric acid by lowering the prices of the granular form of this product while increasing prices of the tablet and powder forms in order to avoid the imposition of dumping duties. Nissan only exports the granular form of this product to the United States. Petitioner states that, pursuant to section 1319 of the Omibus Trade and Competitiveness Act of 1988, section 773(a)(5) of the Traffic Act, we are required to examine

all forms of the product to establish foreign market value. During verification, we examined the volume and prices of sales for all forms of the products under review in the home market and found that while prices for tablet and powder were higher than the granular form, the predominant shares of home market sales was in the granular form. In addition, we noted a downward movement of prices for granular, tablet and powder forms between the third and fourth review periods. We found that tablet and powder forms of the product were not sold in sufficient quantities to offset the lower-priced sales of granular in the home market. Even if we were to weight-average home market sales of tablet, powder and granular to establish foreign market value, the weighted-average foreign market value would still be far below the lowest U.S. price of the granular form. Therefore, we do not consider such a predominant share of home market sales of the granular form of the products under review at lower prices and a downward movement of prices for all forms of the product to indicate a fictitious market of the granular form within the meaning of section 773(a)(5) of the Tariff Act. Accordingly, we preliminarily determine that Nissan has not established a fictitious market of the granular form in order to avoid the imposition of dumping duties, and we consider only the sales of the granular form of these products to establish foreign market value.

The petitioner also alleged that Nissan's sales for dichloro isocyanurates and trichloro isocyanuric acid were below cost of production for both periods. Petitioner submitted the cost of production data for both products for both periods. We initiated a cost of production investigation for both periods for trichloro isocyanuric acid sales and for dichloro isocyanurates for the April 1, 1986 through March 31, 1987 period. We verified actual cost data and preliminarily determine that Nissan made no sales below its cost of production for trichloro isocyarnurc acid sales for both periods and for dichloro isocyanurates for the period April 1, 1986 through March 31, 1987.

Regarding the below cost allegation for dichloro isocyanurates for the April 1, 1985 through March 31, 1986 review period, we applied the cost of production data that petitioner had submitted for dichloro isocyanurates to all home market sales of dichloro isocyanurates submitted by respondents for the same period. We assumed that using cost data from the petitioner was equivalent to performing a cost test based upon the best information available because the results obtained from using petitioner's cost data would be more adverse to the respondent than would be the results from using the respondent's actual cost data. Further, we applied this best information cost data for the product to all sales of that product. We found that a small percentage of all sales of dichloro isocyanurates was below the best information cost of production for the review period. We therefore concluded that the results from using actual cost data would also show a similarly small percentage of sales below cost. Accordingly, we preliminarily determine that there was an insufficient basis to initiate a cost of production investigation for dichloro isocyanurates for the April 1, 1985 through March 31, 1986 period.

In addition, petitioner submitted cost data in support of its allegation of sales below cost for Shikoku for both products for the April 1, 1986 through March 31, 1987 review period. We initiated a cost of production investigation for both products for that period. We verified actual data and preliminarily determine that Shikoku made no sales below its cost of production for either product for both periods.

Petitioner also alleged that Shikoku's trading company, Mitsubishi Corporation, was engaging in middleman dumping, *i.e.*, that Mitsubishi was selling to U.S. purchasers below its acquisition or purchase cost from Shikoku. At verification, we examined the sales made by Mitsubishi Corporation which formed the basis of petitioner's middlemen dumping allegation. By using verified acquisition prices, we found no evidence that Mitsubishi Corporation was selling below its acquisition cost from Shikoku. Therefore, we preliminarily determine that petitioner's allegation with respect to Mitsubishi Corporation provided an insufficient basis to pursue further the issue of middleman dumping.

United States Price

In caluclating United States price, the Department used purchase price as defined in seciton 772 of the Tariff Act. Purchasse price was based on the packed f.o.b. price from the manufacturers to the unrelated Japanese trading firms in Japan because the manufacturers knew that the merchandise was destined for the United States at the time of sale. We made adjustments, where applicable, for foreign inland freight, brokerage and handling and insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price as defined in section 773 of the Tariff Act, since there were sufficient sales of such or similar merchandise in the home market.

Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, insurance, competitive discounts, rebates, advertsing and promotion, and difference in credit and packing expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Product	Time period	Margin (percent)
Nissan Chemical Industries, Ltd.[1]	Dichloro Isocyanurates	April 19, 1985 to March 19, 1987	0
	Trichloro Isocyanuric acid	...do...	0
Shikoku Chemicals Corp	Cyanuric acid	April 19, 1985 to March 19, 1986	2.58
		April 19, 1986 to March 19, 1987	11.77
	Dichloro Isocyanurates	April 19, 1985 to March 19, 1986	0.01
		April 19, 1986 to March 19, 1987	0.01
	Trichloro Isocyanuric acid	April 19, 1985 to March 19, 1986	0.09
		April 19, 1986 to March 19, 1987	0.08

[1] The order on cyanuric acid excludes sales produced by Nissan.

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Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing, briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 32 days after the date of publication.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Nissan and Shikoku requested revocation of the orders with respect to the merchandise they exported. Since neither of these companies has had sales at less than fair market value for three years for dichloro isocyanurates and trichloro isocyanuric acid, and, as provided for in section § 353.54(e) of the Commerce Regulations, Nissan and Shikoku have agreed in writing to immediate suspension of liquidation and reinstatement of the order under circumstances specified in the written agreement, we tentatively determine to revoke the antidumping duty orders on dichloro isocyanurates and trichloro isocyanuric acid. If this revocation is made final, it will apply to all unliquidated entries of dichloro isocyanurates and trichloro isocyanuric acid from Japan, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Further, as provided for by § 353.48(b) of the Commerce Regulations, for shipments of cyanuric acid from Shikoku, the Department shall require a cash deposit of 11.77 percent of estimated dumping duties based on the more recent of the above margins. For shipments of cyanuric acid from Nissan, the Department will not require a cash deposit of estimated dumping duties, since the order on cyanuric acid excludes sales produced from Nissan. For any future entries of cyanuric acid from a new exporter, not covered in this or any prior administrative reviews, whose first shipment occurred after March 31, 1987 and who is unrelated to the reviewed firms, a cash deposit of 11.77 percent of estimated dumping duties will be required. For any future shipments of dichloro isocyanurates and trichloro isocyanuric acid, no cash deposit will be required.

These administrative reviews, tentative determination to revoke in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and 19 CFR 353.53a and 353.54.

Jan W. Mares,

Assistant Secretary for Import Administration.

Dated: November 14, 1988.

[FR Doc. 88-26867 Filed 11-18-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-802]

Preliminary Determination of Sales at Less Than Fair Value; Light-Walled Welded Rectangular Carbon Steel Tubing From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that light-walled welded rectangular carbon steel tubing from Argentina is being, or is likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of the subject merchandise from Argentina. We have notified the International Trade Commission of our determination and have directed the Customs Service to suspend liquidation of all entries of the subject merchandise from Argentina as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by January 30, 1989.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Contact Alain Letort or Richard Capwell, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-8668 (Capwell).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that light-walled welded rectangular carbon steel tubing ("LWRT") from Argentina is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margin of sales at less than fair value is 92.30 percent *ad valorem*, as shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of the merchandise from Argentina, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since our Notice of Initiation (53 FR 24988—July 1, 1988), the following events have occurred. On July 21, 1988, the International Trade Commission ("ITC") preliminarily determined there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of LWRT (USITC Publication 2098—July 1988).

On August 3, 1988, we presented a questionnaire to Laminfer S.A. ("Laminfer"), which accounted for virtually all the exports to the United States from Argentina during the period of investigation. We requested the Laminfer answer section A by August 24, 1988 and sections B and C by September 4, 1988. On August 18, 1988, at respondent's request, we extended the deadline for response to section A of the questionnaire until August 31, 1988, and to sections B and C until September 16, 1988. On August 31, 1988, we received Laminfer's response to section A of the questionnaire. On September 15, 1988, again at respondent's request, we extended the deadline for response to sections B and C until September 26, 1988. On September 26, 1988, we received Laminfer's response to sections B and C of the questionnaire. As a result of our analysis of Laminfer's responses, we issued a deficiency letter on September 30, 1988, and requested a response by October 11, 1988. On October 11, 1988, we received Laminfer's response to our deficiency letter, to which we requested that Laminfer reply by Novermber 18, 1988.

Scope of Investigation

The product covered by this investigation is light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch, currently provided for under item numbers 610.4928 of the *Tariff Schedules of the United States, Annotated* and classifiable under item number 7306.60.5000 of the *Harmonized Tariff Schedule.*

Period of Investigation

The period of investigation for LWRT from Argentina extends from January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether sales in the United States of LWRT from Argentina were made at less than fair value, we compared the United States price with the foreign market value for Laminfer, using the data provided in the responses.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on the c. & f. or f.o.b. packed prices to U.S. customers. We made deductions from purchase price, where appropriate, for foreign inland freight, foreign inland insurance, ocean freight, and stevedorage charges. We made an addition to purchase price for indirect taxes which were later rebated by reason of the exportation of the subject merchandise to the United States, in accordance with section 772(d)(1)(C) of the Act. Consistent with our practice in past investigations [see, *e.g., Barbed Wire and Barbless Fencing Wire from Argentina; Final Determination of Sales at Less Than Fair Value* (50 FR 38563—September 23, 1985)], we limited the addition to purchase price to 6.34 percent of the value of the exported product, which is the amount of allowable indirect taxes found to have been paid by Laminfer in the concurrent countervailing duty investigation of the subject merchandise [see *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products from Argentina* (53 FR 37619—September 27, 1988)].

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on delivered or f.o.b. packed prices to unrelated purchasers in Argentina. Since Argentine home-market prices were constantly adjusted upward to reflect the high rate of inflation in Argentina during the period of investigation, we calculated foreign market values for each month during the period of investigation rather than calculating a weighted-average foreign market value for the entire six-month period. We made deductions to foreign market value, as appropriate, for inland freight, inland insurance, cash discounts, and quantity discounts. In accordance with § 353.15 of our regulations, we made an adjustment to foreign market value for differences in circumstances of sale for credit expenses. In order to adjust for differences in packing between the two markets, we deducted Argentine packing costs from foreign market value and added U.S. packing costs. We also made an adjustment for the differences between sales commissions in the U.S. and home markets. In accordance with § 353.16 of our regulations, we made an adjustment to foreign market value to account for differences in the physical characteristics of the merchandise where there was no identical product in the home market with which to compare a product in the United States.

We disallowed the following adjustments claimed by Laminfer. We disallowed Laminfer's claimed adjustment for advertising expenses in the home market because, although Laminfer stated in its response that it used booklets and brochures as advertising media, the company did not provide samples of these as requested in our questionnaire. Laminfer also claimed adjustments to foreign market value for bad debt expenses, inventory carrying costs, administrative expenses, and selling expenses, all of which we disallowed because none of these expenses bear a direct relationship to the sales under investigation, as required by § 353.15 of our regulations.

Laminfer also claimed a deduction from foreign market value in certain sales where the merchandise was returned. Consistent with past practice in antidumping duty investigations, we disregarded sales involving returned merchandise in making our fair value comparisons.

Currency Conversions

Because Laminfer reported all U.S. sales data in Argentine australs, we made no currency conversions in our fair-value comparisons for purposes of this preliminary determination. We have requested that Laminfer provide us with a revised U.S. sales response listing all prices and expenses in the currency in which they actually were quoted or incurred. We will verify this information and use it in making our final determination in this case.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Critical Circumstances

The petitioners allege that "critical circumstances" exist with respect to imports of LWRT from Argentina. Under section 733(e)(1) of the Act, critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Based on our analysis of Bureau of the Census import data, we find that there is a reasonable basis to believe or suspect that imports of LWRT from Argentina have been massive over a relatively short period of time. Therefore, we preliminarily determine that the requirements of section 733(e)(1)(B) are met.

We also reviewed recent antidumping duty cases, as well as antidumping actions of other countries made available to us through the Antidumping Code Committee of the General Agreements on Tariffs and Trade, and found no evidence of dumping of LWRT by Argentine manufacturers, producers, or exporters in the United States or other countries. Therefore, we preliminarily determine that the requirements of section 733(e)(1)(A)(i) are not met.

We then considered whether the person by whom, or for whose account, the subject merchandise was imported knew or should have known that the exporter was selling the merchandise at less than its fair value. It has been our standard practice to impute knowledge of dumping when the estimated dumping margins in our determinations are of such magnitude that the importer knew, or should have known, that the subject merchandise was being sold at less than its fair value. Normally, we consider estimated margins of 25 percent or greater to be sufficient to impute

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knowledge of dumping [*see, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198—June 29, 1987)]. In this case, the estimated dumping margin calculated on the basis of the responses to our questionnaire is sufficiently large, even though there is no corporate relationship between the exporter and the importers, that the importers knew or should have known that the subject merchandise was being sold in the United States at less than its fair value. Accordingly, we find that the requirements of section 733(e)(1)(A)(ii) are met.

Therefore, we preliminarily determine that critical circumstances, within the meaning of section 733(e)(1) of the Act, exist with respect to imports of LWRT from Argentine.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of LWRT from Argentina, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 92.30 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

Article VI:5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products from Argentina* (53 FR 37619—September 27, 1988), which is 9.25 percent *ad valorem*, will be substracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, an industry in the United States.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 4, 1989, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by December 28, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

November 14, 1988.

Jan W. Mares,
Assistant Secretary for Import Administration.

[FR Doc. 88-26870 Filed 11-18-88; 8:45 am]
BILLING CODE 3510-DS-M

[A-583-803]

Preliminary Determination of Sales at Less Than Fair Value; Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that light-walled welded rectangular carbon steel tubing (LWRT) from Taiwan is being, or is likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to imports of the subject merchandise from Taiwan. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Taiwan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by January 30, 1989.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION: Contact Barbara Williams, Kathy McNamara, or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-0405 (Williams), 202/377-2312 (McNamara), or 202/377-0519 (Weible).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that light-walled welded rectangular carbon steel tubing (LWRT) from Taiwan is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to imports of the subject merchandise from Taiwan, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since our Notice of Initiation (53 FR 24988—July 1, 1988) the following events have occurred. On July 21, 1988, the ITC preliminarily determined there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of LWRT (USITC Publication 2096—July 1988).

On August 17, 1988, we presented questionnaires to Ornatube Enterprise Co., Ltd. (Ornatube), Yieh Hsing Industries, Ltd. (Yieh Hsing), and Vulcan Industrial Corp. (Vulcan), which accounted for substantially all of the exports to the United States from Taiwan. We requested that Ornatube, Yieh Hsing, and Vulcan respond to section A by August 31, 1988 and sections B and C by September 16, 1988.

On September 1, 1988, we received Ornatube's response to section A of the questionnaire. On September 6, 8, and 15, 1988, we received additional information from Ornatube in response to section A. On September 9, 1988, we issued a deficiency letter regarding Ornatube's section A response, and requested a response by September 16, 1988. On September 12, 1988, at respondent's request, we extended the deadline for response to sections B and C until September 23, 1988. On September 16, again at respondent's request, we extended the due date for the response to the deficiency letter to September 19, 1988. On October 3 and 11, 1988, we received Ornatube's responses to sections B and C of the questionnaire. As a result of our analysis of Ornatube's response, we issued a deficiency letter on October 14, 1988, and met with counsel for Ornatube on October 17, 1988. We requested a response to the deficiency letter by October 24, 1988. On October 24, 1988, we received Ornatube's response to our deficiency letter. Ornatube provided additional information on November 8 and 10, 1988.

On September 1, and 6, we contacted counsel for respondents Yieh Hsing and Vulcan regarding their response to our questionnaire. We have received no response from Yieh Hsing or Vulcan.

Scope of Investigation

The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item numbers with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local customs office to consult the schedule.

The product covered by this investigation is light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch, currently provided for under item number 610.4928 of the TSUSA and classifiable under item number 7306.60.5000 of the HTS.

Period of Investigation

The period of investigation for LWRT from Taiwan extends from January 1, 1988 to June 30, 1988.

Fair Value Comparisons

To determine whether Ornatube's sales in the United States of LWRT from Taiwan were made at less than fair value, we compared United States price with foreign market value, using the data provided in Ornatube's responses.

To determine whether Yieh Hsing's or Vulcan's sales in the United States of LWRT from Taiwan were made at less than fair value, we compared United States price, based on the best information available, with foreign market value, also based on the best information available. We used the best information available for Yieh Hsing and Vulcan, as required by section 776(c) of the Act, because appropriate responses were not submitted.

United States Price

For Ornatube, we based United States price on purchase price (PP), in accordance with section 772(b) of the Act, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated Ornatube's purchase price based on the C&F, C&F&C, CIF, CIFC packed prices to U.S. customers. We adjusted for value-added taxes incurred on merchandise sold in the home market which have been related, or which have not been collected, by reason of the exportation of the merchandise to the United States. We made deductions from the tax-inclusive price, where appropriate, for inland freight, marine insurance, ocean freight, brokerage charges, and port charges.

Since neither Ysieh Hsing nor Vulcan responsed to our questionnaire, we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States by the two companies. Therefore, we used the price information provided in the petition as the best information available, pursuant to section 776(c) of the Act. We used the packed United States price estimated by petitioner, minus deductions for freight, insurance, handling charges, and U.S. customs duty.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated Ornatube's foreign market value based on delivered C&F packed prices to unrelated purchasers in Taiwan. We made deductions to Ornatube's foreign market value, as appropriate, for inland freight and discounts. In accordance with § 353.15 of our regulations, we made a circumstance of sale adjustment to foreign market value for differences in credit expenses.

In this preliminary determination, we have allowed a circumstance of sale adjustment for export rebates resulting from China Steel's two-tier pricing system [*see, e.g., Certain Welded Carbon Steel Standard Pipe and Tube from India; Final Determination of Sales at Less than Fair Value*, 51 Fed. Reg. 9089 (March 17, 1987)]. The courts have sustained the authority of the Department to make adjustments for rebates such as the rebates granted by China Steel. *Sawhill Tubular Div., Cyclops Corp. v. United States*, 668 F. Supp. 1550 (Ct. Int'l Trade 1987); *cf. United States v. European Trading Co.*, 27 C.C.P.A. 289 (1940). Nevertheless, as we have encountered more and more two-tiered pricing schemes, we have

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become concerned over the wisdom of exercising our discretionary authority to make circumstance of sale adjustments in a manner which indirectly may facilitate the maintenance of barriers to trade that give rise to such two-tiered pricing schemes. Therefore, prior to our final determination in this proceeding, we intend to reexamine our policy with respect to these types of adjustments. In this regard, we welcome comments from interested members of the public, as well as the parties to this proceeding.

In order to adjust for any differences in packing between the two markets, we deducted Taiwanese packing costs from foreign market value and added U.S. packing costs. We also made an adjustment for the differences between sales commissions in the U.S. and the indirect selling expenses in the home market.

We disallowed the following adjustments claimed by Ornatube. Due to insufficient information provided by responsdent, we disallowed Ornatube's claimed adjustment for differences in the physical characteristics of the merchandise with which there was no identical product in the home market with which to compare a product in the United States. We disallowed the portion of indirect selling expenses attributable to sales management salaries, since management costs are considered part of general and administrative expenses.

We received an inadequate explanation of the calculation methodology in Ornatube's response for packing costs and credit expenses in both the U.S. and Taiwanese markets. Therefore, we recalculated packing costs and credit expenses attributable to sales in both markets using information provided by respondent.

Since we did not have specific data with respect to the quantities and prices of the subject merchandise from Yieh Hsing and Vulcan, we used the constructed value of the subject merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act. The constructed value calculated in the petition was based on domestic producer's costs adjusted for differences in Taiwan manufacturing costs, with the statutorily mandated addition of 10 percent of the cost of manufacture for general expenses and 8 percent of the cost of manufacture and genereal expenses for profit.

Currency Conversions

In our calculations for Ornatube, we used the conversion rate in effect on the date of sale to convert New Taiwan dollars to United States dollars.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of LWRT from Taiwan. Under section 733(e)(1) of the Act, the Department must determine if there is a reasonable basis to believe or suspect that:

(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) the volume and value of imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Based on our analysis of the Department's import data, we find that there is a reasonable basis to believe or suspect that imports of LWRT from Taiwan have been massive over a relatively short period of time. Therefore, we determine that the requirements of section 733(e)(1)(B) are met.

We also reviewed recent antidumping duty cases, as well as antidumpting actions of other countries made available to us through the Antidumping Code Committee of the General Agreements on Tariffs and Trade, and found no evidence of dumping of LWRT by Taiwanese manufacturers, producers, or exporters in the United States or other countries. Therefore, we preliminarily determine that the requirements of section 733(e)(1)(A)(i) are not met.

We then considered whether the person by whom, or for whose account, the subject merchandise was imported knew or should have known that the exporter was selling the merchandise at less than its fair value. It has been our standard practice to impute knowledge of dumping when the estimated dumping margins in our determinations are of such magnitude that the importer knew, or should have known, that the subject merchandise was being sold at less than its fair value. Normally, we consider estimated margins of 25 percent or greater to be sufficient to impute knowledge of dumping [*see, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198—June 29, 1987)]. In this case, the estimated dumping margin calculated on the basis of the responses to our questionnaire is sufficiently large, even though there is no corporate relationship between the exporter and the importers, that the importers knew or should have known that the subject merchandise was being sold in the United States at less than its fair value. Accordingly, we find that the requirements of section 733(e)(1)(A)(ii) are met.

Therefore, we preliminarily determine that critical circumstances, within the meaning of section 733(e)(1) of the Act, exist with respect to imports of LWRT from Taiwan.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of LWRT from Taiwan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below:

Manufacturere/Producer/Exporter	Weighted-average margin (percent)
Ornatube Enterprise Co., Ltd	25.86
Vulcan Industrial Corp	40.97
Yieh Hsing Industries, Ltd	40.97
All other manufacturers/producers/exporters	25.86

This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, an industry in the United States.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on January 4, 1989, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by December 28, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f))

November 14, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–26871 Filed 11–18–88; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-501]

Reinstitution of Antidumping Duty Investigation; 12-Volt Motorcycle Batteries From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: Based on a determination of the United States International Trade Commission (ITC), we are reinstituting our investigation on 12-volt motorcycle batteries from Taiwan. This investigation was terminated on the basis of a negative preliminary determination by the ITC on February 20, 1985. If this investigation proceeds normally, we will make our preliminary determination by February 16, 1989.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–3965.

SUPPLEMENTARY INFORMATION:

On February 7, 1985, we published a notice of Initiation of Antidumping Duty Investigation on 12-Volt Motorcycle Batteries from Taiwan (50 FR 5286). We initiated the investigation on the basis of a petition filed in proper form on January 11, 1985, by the General Battery Corporation, on behalf of the U.S. industry producing 12-volt motorcycle batteries. On January 15, 1985, the petition was amended to include Yuasa-General Battery Corporation as a co-petitioner. The petitioner is now Yuasa-Exide Battery Corporation, a successor entity to the original petitioners. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a U.S. industry.

The petitioner based the United States price on 1984 list prices for sales from Taiwan to the United States. Where appropriate, f.o.b. prices were adjusted to ex-factory prices by deducting estimated transportation charges.

The petitioner based foreign market value on 1980 list prices updated according to official Taiwan commodity price and labor wage indices and quoting adjustments based on experience from the 1981 investigation on motorcycle batteries.

Based on the comparison of prices calculated using the foregoing sources and methodology, the petitioner alleged an average dumping margin of 12 percent for 12-volt motorcycle batteries.

On March 6, 1985, the ITC published a Negative Determination of Reasonable Indication of Injury on this product (50 FR 9141). At that time, the ITC determined, pursuant to section 733(a) of the Act, that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury, nor that the establishment of an industry in the United States was materially retarded, by reason of imports from Taiwan of 12-volt motorcycle batteries, provided for in item 683.05 of the *Tariff Schedules of the United States*, which were alleged to be sold in the United States at less than fair value.

On September 29, 1988, the ITC informed the Department that it had now found a reasonable indication of threat of material injury to the United States industry producing 12-volt motorcycle batteries. This determination was made pursuant to the decision and order of the Court of International Trade in *Yuasa-General Battery Corp. v. United States* (Slip Op. 88–89, July 12, 1988). This decision is final and is not being appealed.

Based on the foregoing, we are reinstituting our antidumping duty investigation on 12-volt motorcycle batteries from Taiwan.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriae HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

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We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs officers have reference copies, and petitioners may contact the Import Specialist at their local customs office to consult the schedule.

The products covered by this investigation are 12-volt motorcycle batteries. Motorcycle batteries are lead-acid storage batteries which are rated from 2 to 32 ampere hours (10 hour rate) with voltage levels of either 6 or 12 volts. This investigation is limited to 12-volt motorcycle batteries. The batteries are mainly used as replacement batteries for motorcycles, but may, to a very limited extent, be used in snowmobiles, lawnmowers, and other such equipment. They are currently provided for under TSUSA item numbers 683.0110 and 683.0120 and currently classifiable under HTS item number 8507.10.00. These products were formerly provided for under TSUS item numbers 683.01 and 683.05.

Other Information

If this investigation proceeds normally, we will make our preliminary determination by February 16, 1989.

This notice is published pursuant to section 732(c)(2) of the Act.

November 14, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-26866 Filed 11-18-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-803]

Final Negative Countervailing Duty Determinations; Standard Pipe, Line Pipe, Light-walled Rectangular Tubing and Heavy-walled Rectangular Tubing From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that *de minimis* countervailable benefits are being provided to manufacturers, producers, or exporters in Malaysia of standard pipe and light-walled rectangular tubing (LWRT), and that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of heavy-walled rectangular tubing (HWRT). We also determine that no benefits within the meaning of the countervailing duty law are applicable to line pipe because we found no evidence to indicate that there are any producers or exporters in Malaysia which export line pipe to the United States. These products, which constitute four separate "classes or kinds" of merchandise, are fully described in the "Scope of Investigations" section of this notice.

Since the estimated net bounties or grants on standard pipe, line pipe, LWRT and HWRT are either *de minimis* or zero, our determinations are negative. Since our preliminary determination with respect to standard pipe was affirmative, we will direct the U.S. Customs Service to discontinue suspension of liquidation of all entries of standard pipe from Malaysia that were entered, or withdrawn from warehouse, for consumption on or after September 8, 1988, and to refund all estimated countervailing duties deposited on these entries.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0192 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determinations

Based on our investigations, we determine that *de minimis* countervailable benefits are being provided to manufacturers, producers, or exporters in Malaysia of standard pipe and LWRT, and that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of HWRT. We also determine that no countervailable benefits are applicable to line pipe because we found no evidence to indicate that there are any producers or exporters in Malaysia which export line pipe to the United States.

For purposes of the investigation of standard pipe, the following program is found to be countervailable:

- **Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales**

For purposes of the investigation of LWRT, the following program is found to be countervailable:

- Export Credit Refinancing

We determine the estimated net bounty or grant for standard pipe to be *de minimis* (0.30 percent *ad valorem*) for all manufacturers, producers and exporters in Malaysia. We determine the estimated net bounty or grant for LWRT for all manufacturers, producers and exporters in Malaysia to be *de minimis* (0.002 percent *ad valorem*). We determine the estimated net bounty or grant for line pipe and HWRT for all manufacturers, producers and exporters in Malaysia to be zero.

Case History

Since the last **Federal Register** publication pertaining to these investigations [the Notice of Preliminary Determinations (53 FR 34801, September 8, 1988)], we conducted verification at the government and company offices in Malaysia from September 12 through 23, 1988. Case briefs and rebuttal briefs were received on October 25, 1988 and October 27, 1988, respectively.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all the merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local Customs office to consult the schedule.

The products covered by these investigations constitute four separate "classes or kinds" of merchandise. The four separate "classes or kinds" are as follows:

(1) Certain circular welded carbon steel pipes and tubes, 0.375 inch or more but not over 16 inches in outside diameter, generally known in the industry as standard pipe. This is a general-purpose commodity used in such applications as plumbing pipe, sprinkler systems, and fence posts. Standard pipe may be supplied with an oil coating (black pipe) or may be galvanized, and is sold in plain, threaded, threaded and coupled, or beveled ends. These products are generally produced to American Society of Testing Materials (ASTM) specifications A-53, A-120, or A-135. Imports of these products are classified under TSUSA categories 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925, and are classified under HTS categories 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060, 7306.30.5065, 7306.30.5070, and 7306.30.5075.

(2) Certain welded carbon steel American Petroleum Institute (API) line pipe, 0.375 inch or more but not over 16 inches in outside diameter known in the industry as line pipe. Line pipe generally is produced to API specification 5L. Line pipe is used for the transportation of gas, oil, or water, generally in pipeline or utility distribution systems. API line pipe not over 16 inches in outside diameter is classified under TSUSA categories 610.3208 and 610.3209, and is classified under HTS categories 7306.10.1010 and 7306.10.1050.

(3) Certain heavy-walled carbon steel rectangular tubing having a wall thickness of 0.156 inch or greater, which is generally used for support members for construction or load-bearing purposes in construction, transportation, farm, and meterial-handling equipment. The product is generally produced to ASTM specification A-500, Grade B. Imports of heavy-walled rectangular tubing are classified under TSUSA category 610.3955, and are classified under HTS category 7306.60.1000.

(4) Certain light-walled carbon steel rectangular tubing having a wall thickness of less than 0.156 inch, which is generally employed in a variety of end uses other than the conveyance of liquid or gas, such as agricultural equipment frames and parts, and furniture parts. The product is generally produced to ASTM specification A-513 or A-500, Grade A. Imports of light-walled rectangular tubing are classified under TSUSA category 610.4928, and are classified under HTS category 7306.60.5000.

Analysis of Programs

We verified that all three respondent companies, Maruichi Malaysia Steel Tube Bhd. (Maruichi), Amalgamated Industrial Steel Bhd. (AIS) and Steel Pipe Industry of Malaysia (SPIM), produce and export standard pipe to the United States. We also verified that only AIS produces and exports LWRT and HWRT to the United States. Finally, we found no evidence at verification to indicate that there are any producers or exporters in Malaysia which exported line pipe to the United States during or after the review period.

For purposes of these determinations, the period for which we are measuring bounties or grants ("the review period") is calendar year 1987, which corresponds to the most recently completed fiscal year of one of the respondent companies. The other two respondent companies each have different fiscal years which overlap this period. In accordance with our practice in such situations, we have chosen the most recently completed calendar year as our review period.

Based upon our analysis of the petition, the responses to our questionnaries, verification, and written comments from petitioners and respondents, we determine the following:

I. Programs Determined To Confer Bounties or Grants

A. We determine that bounties or grants are being provided to manufacturers, producers or exporters in Malaysia of standard pipe under the following program:

Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales

Effective in 1984, section 29 of the Investment Incentives Act of 1968 was amended to allow for a flat deduction or allowance of five percent of export revenues (based on F.O.B. value) from taxable income. Due to the enactment of the Promotion of Investments Act of 1986, this program, provided for under section 39 of the 1986 Act, currently applies only to trading companies and agricultural companies.

However, Maruichi was able to claim the section 29 allowance on its tax return filed during the review period. This return was based on Maruichi's fiscal year completed in 1986 (February 1, 1985—January 31, 1986). The Malaysian tax authorities allowed only those exports shipped through December 31, 1985, to be used for the allowance claim. Because only exporters are eligible for the program, we determine that it is countervailable.

To calculate the benefit from this program, we divered Maruichi's tax savings from the program by the respondent companies' total exports during the review period in accordance with section 706(a)(2) of the Act, which requires us to calculate a country-wide rate for purposes of determining whether an investigation results in an affirmative or a negative determination. The country-wide rate includes all respondent companies because we verified that each company exports standard pipe to the United States. We divided the tax savings by the respondents' total exports because the program is not segregable by product or market. The resulting estimated net bounty or grant rate is 0.30 percent *ad valorem*.

In the preliminary determination on standard pipe we had calculated a bounty or grant rate for the review period of 1.17 percent *ad valorem*. We obtaining this rate by dividing Maruichi's section 29 allowance tax savings by its total exports during the review period. We excluded from this calculation all respondent companies with *de minimis* rates. We now have determined that the more appropriate way of calculating the bounty or grant rate is to include companies with *de minimis* rates in our determination of the country-wide rate (see *DOC Position* on *Comment 2*).

This rate is only applicable to standard pipe because Maruichi exported only standard pipe to the United States during the review period. The rate for this program appolicable to LWRT and HWRT is zero because AIS, the only respondent which exported these products to the United States during the review period, did not claim benefits under this program on its tax return filed during the review period.

On January 1, 1988, the Government of Malaysia terminated the Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales, except with regard to trading and agricultural companies. This termination was implemented through the passage of the Promotion of Investments Act of 1986. The Government replaced the Allowance with a new program applicable to exports made on or after January 1, 1986. The new program, provided for under Section 36 of the 1986

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Act, is the "Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales and Abatement of Five Percent of the Value of Indigenous Materials Used in Exports." It provides for an abatement of adjusted income for exports. The amount of adjusted income to be abated is: (1) A rate equivalent to 50 percent of the ratio of export sales to total sales; and (2) five percent of the value of indigenous Malaysian materials incorporated in the manufacture of exported products. This program is only applicable if there is adjusted income and cannot be carried forward if there is an adjusted loss. It is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

We verified that Maruichi and AIS claimed the first section of the Abatement on their tax returns filed in 1988. However, since these benefits were not claimed until after the review period, they do not affect our net bounty or grant determination. We must look at a finite period of time in making our determination as to whether countervailable benefits are above a *de minimis* rate. During the review period the countervailable tax benefits realized by the respondent companies were *de minimis*. Since the export tax allowance program was the only countervailable program used during the review period, we have no basis to issue an affirmative determination on standard pipe. Furthermore, we note that we can not at this time determine whether the benefits from the Abatement program would be above *de minimis* after the review period.

In our preliminary determination on standard pipe we estimated a duty deposit rate for Maruichi for the Abatement program by dividing its 1988 tax savings by its 1987 sales. We used the 1987 sales as a surrogate for 1988 sales in order to estimate the eventual duty liability. However, as described above, for purposes of our final determination on standard pipe we have now determined that the countervailable benefits during the review period are *de minimis*, and that there is, therefore, no basis to issue a countervailing duty order on standard pipe. Accordingly, the issue as to the appropriate duty deposit rate is moot.

B. We determine that bounties or grants are being provided to manufacturers, producers or exporters in Malaysia of LWRT under the following program:

Export Credit Refinancing

The Bank Negara Malaysia, the central bank of Malaysia, provides short-term export credit refinancing through commercial banks. The Export Credit Refinancing (ECR) programs, as revised in January 1986, provide pre- and post-shipment financing of exports for periods of up to 90 days. In December 1987, the maximum periods for financing under these programs were extended to 120 and 180 days, respectively. Currently, ECR offers order-based pre- and post-shipment financing and "certificate of performance" (CP) based pre-shipment financing. Order-based financing is provided on specific sales to specific markets. CP-based financing, which is a line of credit based on the previous 12 months' export performance, cannot be tied to specific sales in specific markets.

We verified that AIS is the only respondent company which paid interest on an Export Credit Refinancing loan for exports to the United States during the review period. The company received an order-based ECR loan on one shipment of LWRT to the United States. Because only exporters are eligible for ECR loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

In order to determine whether the loan received by AIS was provided at a preferential rate, we compared the interest rate charged to our short-term loan benchmark interest rate. As a benchmark for short-term loans, it is our practice to use the most comparable, predominant commercial rate for short-term financing. For purposes of these determinations, we are using the 90-day Bankers' Acceptance (BA) rate as the most comparable and commonly used alternative source of short-term financing. This is the benchmark that we applied in *Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from Malaysia* (53 FR 13303, April 22, 1988) (*Wire Rod*), the last investigation in which this program was used. Based on this comparison, we find that the ECR loan was provided at a preferential rate and, therefore, is countervailable.

To calculate the benefit from the ECR loan on which AIS paid interest in 1987, we followed the short-term methodology which has been applied consistently in our past determinations and is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. Because order-based ECR loans are shipment-specific, we included only that loan which financed exports of the products under investigation to the United States (in this case, LWRT). For this loan, we calculated the amount of interest that would have been paid using the BA benchmark and subtracted the amount of interest that was actually paid. We divided the result by AID's exports of LWRT to the United States during the review period. The result was a rate of 0.002 percent *Ad valorem*. This rate is only applicable to LWRT because the loan received by AIS was for a shipment of this product.

II. Program Determined Not To Confer a Bounty or Grant

We determine that bounties or grants are not being provided to manufacturers, producers or exporters in Malaysia of standard pipe, line pipe, LWRT or HWRT under the following program:

Accelerated Depreciation Allowance

The Accelerated Depreciation Allowance (ADA) was introduced in the mid-1970s. Since then, it has gone through several revisions, the most recent being a change from allowing an 80 percent annual depreciation on approved assets (thus providing a 100 percent tax write-off for these assets in the first year, since the initial allowance is 20 percent), to reducing the annual allowance to 40 percent (thereby spreading the tax write-off over two years). This revision was implemented with respect to assets purchased after January 1, 1986, according to Rules 1986 of the Income Tax Act of 1967. The allowance applies to plant and machinery.

We verified that there are no restrictions as to which companies can claim the ADA. In addition, we found that there are no qualifying or application procedures associated with the claim and that the Government has no discretion to vary the level of the allowance (40 percent for all companies). Moreover, we found no distinctions within the manufacturing sector as to which companies have claimed the ADA. We thus determine that this program is not limited to a specific enterprise or industry or group of enterprises or industries and, therefore, is not counteravailable.

III. Programs Determined Not To Be Used

Based on verified information, we determine that manufacturers, producers, or exporters in Malaysia of the pipe and tube products under investigation did not apply for, claim or receive benefits during the review period for exports of these products to the United States under the programs listed below. The program descriptions given below are based on verified information. Programs not described below are fully described in the notice of preliminary determinations in these investigations (53 FR 34801, September 8, 1988).

A. Export Tax Incentives

1. *Abatement of Five Percent of the Value of Indigenous Materials Used in Exports.* Section 36 of the Promotion of Investments Act of 1986 provides for an abatement of adjusted income for exports. The amount of adjusted income to be abated is: (1) A rate equivalent to 50 percent of the ratio of export sales to total sales; and (2) five percent of the value of indigenous Malaysian materials incorporated in the manufacture of exported products. Maruichi made a claim under the first section of this program on its tax return filed in 1988 (see section I. of the notice), but did not make a claim under the second. This program is not available to companies still participating in programs under the repeal Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status of an investment tax allowance under the Promotion of Investments Act of 1986.

2. *Allowance of Taxable Income of Five Percent for Trading Companies Exporting Malaysian-made Products.* Under section 39 of the Promotion of Investments Act of 1986, an allowance of five percent of the F.O.B. value of export revenues is available to trading companies and agricultural companies exporting Malaysian-made products. This program, like the abatement based on indigenous materials used in exports, is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

3. *Double Deduction for Export Credit Insurance Payments.*

4. *Double Deduction for Export Promotion Expenses.*

5. *Industrial Building Allowance.*

B. Other Export Incentive

Export Insurance Program.

C. Other Tax Incentives

1. *Pioneer Status Under the Investment Incentives Act of 1968.* Pioneer status under this Act, as amended, is available to companies producing a product (1) with favorable prospects for further development, including development for export, or (2) currently being produced in insufficient quantities to meet the development needs of Malaysia, including export. Benefits granted under pioneer status include exemptions on the portion of income derived from sales of the pioneer product from the following: (1) The 40 percent corporate income tax; (2) the five percent development tax; and (3) the three percent excess profits tax. Pioneer status benefits are available for a period of up to five years and may be extended for up to an additional three years. This program is not available to companies granted pioneer status for the same product under the Promotion of Investments Act of 1986. It is also not available to companies which received an investment tax credit under the Investment Incentives Act of 1968 or which received an investment tax allowance under the 1986 Act.

We verified that all three respondent companies received pioneer status in the 1970s and that they completely utilized any residual benefits remaining from this program before the review period.

2. *Pioneer Status Under the Promotion of Investments Act of 1986.* As stated above, the Promotion of Investments Act of 1986 replaced the Investment Incentives Act of 1968. Companies which received pioneer status under the 1968 Act may not receive it again under the 1986 Act for the same product. They may, however, receive it again under the 1986 Act for a different product. In addition, pioneer status under the 1986 Act is not available to companies which received an investment tax credit under the 1968 Act or which received an investment tax allowance under the 1986 Act.

The primary changes in the pioneer status program under the new law are as follows: (1) The initial grant of pioneer status is five years for all companies, regardless of their level of investment; (2) the product must be on the "promoted product" or "promoted activities" list; (3) specific one-year extensions for location, priority products, and Malaysian content have been eliminated; (4) extensions are now granted for five years if the product is on the "promoted product" list for extensions and the company meets certain investment, employment, or development criteria; and (5) pioneer status may also be provided to non-corporate entities such as cooperative societies, associations, etc. We verified that none of the respondent companies have been approved for pioneer status under the 1986 Act.

3. *Investment Tax Allowance.*

4. *Reinvestment Allowance.*

D. Medium- and Long-term Government Financing

E. Reduction in the Cost of State Land for New Industry

F. Preferential Financing for Bumiputeras

Interested Party Comments

Comment 1

Petitioners argue that we should use a weighted-average rate for overdrafts and Bankers Acceptances (BAs) combined as the benchmark for calculating benefits from ECR financing. They allow that BA financing is "comparable" to ECR financing but contend that the BA rate alone should not be used because BAs are not the "predominant" form of short-term financing in Malaysia. In support of their contention, they cite *Final Affiramtive Countervailing Duty Determination: Carbon Steel Wire Rod From Malaysia* (53 FR 13303, April 18, 1988) (*Wire Rod*), where the Department used "the most comparable, predominant commercial rate for short-term financing" as the benchmark for the ECR loan program.

Respondents claim that BA financing is the commercial equivalent of ECR financing and, therefore, the BA rate is the most appropriate benchmark for calculating benefits from ECR financing.

DOC Position

In calculating benefits from short-term loans, the Department uses the most appropriate national average commercial method of short-term financing (see, for example, the *Subsidies Appendix*). In *Wire Rod*, the BA rate was used as the benchmark for calculating benefits from ECR loans because BA financing was found to be the predominant alternative to ECR financing. In the current investigation we verified at the Bank Negara, Malaysia's central bank, and at a commercial bank that BA financing is the predominant alternative to ECR financing. Therefore, we consider the BA rate the most appropriate rate to use as our benchmark.

Comment 2

Petitioners argue that the Department should obtain a final bounty or grant rate for standard pipe by calculating an individual rate for Maruichi, as it did in

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the preliminary determination. They cite section 607 of the Act (19 U.S.C. 1671e(a)(2)), which allows the Department to calculate separate rates for different companies if there is a "significant differential between companies receiving subsidy benefits." They further contend that it has been the Department's practice to find a significant differential between companies when one received *de minimis* benefits and another received benefits that are above *de minimis*. In support of their argument, they cite *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden* (52 Fr 5794, February 1987), among other cases, in which significant differentials were found and only the sales of non-*de minimis* companies were used in calculating the subsidy rate.

Respondents claim that the Department should calculate a final rate for standard pipe by allocating Maruichi's tax benefits received during the review period over all respondent companies' sales. They cite *Ceramica Regiomontana, S.A. v. United States* (7 ITRD 2512, CIT 1986), in which the Court of International Trade ruled that "Congress has endorsed a legislative presumption in favor of a country-wide rate." They also refer to the Department's proposed regulations, which interpret the term "significant differential" to allow for company-specific rates only if there is "a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis."

DOC Position

Section 706(a)(2) of the Act creates a presumption in favor of country-wide rates. This presumption is overcome if the Department determines there is a significant differential between companies receiving subsidy benefits. In this regard, Congress directed the Department to develop a "reasonable" standard for determining what is a significant differential. *See* H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 180 (1984).

Section 355.20(d)(3) of our proposed countervailing duty regulations (50 FR 24217, 24225 (1985)) defines a significant differential as "a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis." It is also our practice, as the cases cited by petitioners suggest, to define a significant differential as the difference between a net subsidy of zero (or *de minimis*) and any rate greater than *de minimis*. However, before we will consider the question of a significant differential, we must first test the presumption in favor of country-wide rates. Thus, the initial step in the Department's calculation of the net subsidy is to determine the country-wide average rate. In the past, we have excluded companies with *de minimis* rates in determining the country-wide rate. We now determine that the more appropriate basis to calculate the country-wide rate is to include all companies regardless of the level of benefits for each company.

If the country-wide average is *de minimis*, our determination in an investigation will be negative. If the country-wide average is above *de minimis*, we then compare individual company rates with the country-wide average rate to determine whether significant differentials exist. Because we also consider individual rates of zero and *de minimis* to constitute a "significant differential," we remove all zero and *de minimis* companies (as well as other companies with significantly different rates) from the calculation of the country-wide average rate. As soon as at least one company is removed from the country-wide rate average, we no longer use the country-wide rate for duty deposit purposes. Rather, we assign individual company-specific rates to those companies that are "significantly different" (including zero rate and *de minimis* companies); the remaining companies form the basis of the "all other" rate. An "all other" rate is different from a country-wide rate because an "all other" rate is not based on all companies. There are three exceptions to this general practice: (1) An investigation does not cover virtually all exports of the merchandise to the United States; (2) we have no company-specific export data, only aggregate export data from a government; and (3) we use generally recognized sampling techniques.

Since none of these three exceptions apply to these investigations and since the country-wide rates for our investigations of standard pipe and LWRT are *de minimis*, we did not reach the question of whether there is a significant differential between the companies receiving countervailable benefits. Therefore, our determinations in these investigations are negative.

Comment 3

Respondents argue that the tax benefits received by Maruichi and AIS on their returns filed in 1988 should not be considered in making our final determination for standard pipe because these returns were filed after the review period. They contend that the Department's policy has been to treat benefits from income tax programs as accruing in the year in which the tax return claiming the benefits is filed.

DOC Position

The Department's practice for tax programs is to calculate benefits based on when the respondent companies realize or know the extent of their tax savings. Generally, as here, the amount of tax savings is not known until the tax return is filed. As noted in section I.A. of the notice, the countervailable tax benefits realized by the respondent companies during the review period were *de minimis*. Since the export tax allowance program was the only countervailable program used during the review period, we have no basis to issue an affirmative determination on standard pipe. While post-review period information can be used to determine whether there has been a program-wide change for purposes of calculating a duty deposit rate in an affirmative determination, such information cannot be used as the basis for obtaining an affirmative determination. Therefore, since the estimated net bounty or grant rate for the review period is negative for standard pipe, there is no reason to calculate a separate duty deposit rate based on post-review period information.

Comment 4

Respondents claim that the tax allowance benefit received by Maruichi was not generated by U.S. sales since the fiscal year covered by Maruichi's 1987 return was February 1, 1985—January 31, 1986, and Maruichi began exporting to the United States in the last quarter of 1987.

DOC Position

Since our determination for standard pipe is negative, the issue is moot. In calculating the benefit bestowed by a tax program, it is our practice to apply the tax savings from the return filed during the review period to review period sales, regardless of the fiscal year covered by the tax return.

Verification

We verified the information used in making our final determinations in accordance with section 776(b) of the Act. We used standard verification procedures including meetings with government and company officials and examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation Discontinued

The estimated net bounty or grant rate for standard pipe is 0.30 percent *ad valorem*. The estimated net bounty or grant rate for LWRT is 0.002 percent *ad valorem*. Under section 355.8 of our regulations, an aggregate net subsidy of less than 0.5 percent *ad valorem* is considered *de minimis*.

The estimated net bounty or grant rate for HWRT is zero because no bounties or grants were conferred on the export of this product to the United States during the review period. The estimated net bounty or grant rate for line pipe is zero because we verified that there were no exports of this product from Malaysia to the United States during the review period.

For the above reasons, we are directing the U.S. Customs Service to discontinue suspension of liquidation of all entries of standard pipe from Malaysia that we entered, or withdrawn from warehouse, for consumption on or after September 8, 1988, and to refund all estimated countervailing duties deposited on these entries. Since the determinations on line pipe, HWRT and LWRT are also negative, no suspension of liquidation will be required for these products.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d).

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-26869 Filed 11-18-88; 8:45 am]

BILLING CODE 3510-DS-M

Articles of Quota Cheese; Changes in and Additions to Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Publication of changes in and additions to list of certain foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has determined that there have been changes in cerain foreign government subsidies on articles of quota cheese. We are publishing a listing of those changes.

EFFECTIVE DATE: October 14, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countrvailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a)(3) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, after receipt of information or advice from any person, including the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese (as defined in section 701(c)(1) of the TAA), or whether there have been changes in subsidies previously included in the Department's annual listing or quarterly update to that annual listing, and to publish notification of any such additions or modifications.

On October 13, 1988, the Department of Agriculture notified the Department of changes in the amounts of subsidies (as defined in section 702(h)(2) of the TAA) being provided by the European Community ("E.C.") on articles of quota cheese.

The Department has now determined, in consultation with the Secretary of Agriculture, that the subsidy amounts have increased for E.C. member countries since our October 1, 1988 quarterly update to our annual subsidy list. The appendix to this notice lists the countries, the subsidy program, and the current gross and net amount of the subsidies.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy program listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 *note*).

Date: November 9, 1988.

Timothy N. Bergan,

Acting Assistant Secretary Import Administration.

Appendix—Quota Cheese Subsidy Programs

Country	Programs(s)	Gross [1] subsidy	Net [2] subsidy
Belgium	European Community (EC) Restitution Payments	22.5¢/lb.	22.5¢/lb.
Denmark	EC Restitution Payments	28.4¢/lb.	28.4¢/lb.
France	EC Restitution Payments	23.1¢/lb.	23.1¢/lb.
Greece	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.
Ireland	EC Restitution Payments	65.8¢/lb.	65.8¢/lb.
Italy	EC Restitution Payments	59.4¢/lb.	59.4¢/lb.
Luxembourg	EC Restitution Payments	22.5¢/lb.	22.5¢/lb.
Netherlands	EC Restitution Payments	28.9¢/lb.	28.9¢/lb.
Portugal	EC Restitution Payments	24.0¢/lb.	24.0¢/lb.
Spain	EC Restitution Payments	26.1¢/lb.	26.1¢/lb.
U.K.	EC Restitution Payments	24.8¢/lb.	24.8¢/lb.
W. Germany	EC Restitution Payments	35.3¢/lb.	35.3

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 88-26868 Filed 11-18-88; 8:45am]

BILLING CODE 3510-DS-M

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National Oceanic and Atmospheric Administration

Deep Seabed Mining; Environmental Reference Area; Ocean Mining Associates

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Designation of expanded deep seabed mining environmental reference area.

SUMMARY: On March 3, 1988, at 53 FR 6858, the National Oceanic and Atmospheric Administration (NOAA) announced Ocean Mining Associates' (OMA) proposal of an interim preservational reference area within OMA's Deep Seabed Hard Mineral Resources Exploration License USA–3. Concern that mining in adjacent areas could affect the reference area led to a NOAA designation of this area as an environmental reference area on May 16, 1988, at 53 FR 17237. At that time NOAA noted its intention to use the area for study, while further proceeding to evaluate its potential as a provisional interim preservational reference area (PIPRA). (Subsequent to this announcement, NOAA noticed OMA's proposal of a provisional impact reference area on September 7, 1988, at 53 FR 34572. This latter area is separate from the subject of this notice.)

OMA originally identified 6,520 km² within its license site as an area to be set aside as a "preserve" for environmental monitoring. Because of the concern noted above, OMA and two neighboring NOAA licensees have now added enough additional area to more than double the size of the original environmental reference area. OMA's supplemental area is 2,063 km² in size; that of the Kennecott Consortium, 2,998 km², and Ocean Minerals Company, 3,576 km². NOAA believes it is likely that this expanded environmental reference area of 15,157 km² could become a valuable preservational area for environmental studies of deep-sea biota; one that could serve as an excellent control area against which the extent of commercial mining's impact on deepsea marine life can be compared. The next step will be inspection of data to validate this belief.

All three consortia have agreed to release all resource and environmental data associated with their contributed areas for NOAA's evaluation and for public examination. NOAA is currently acquiring these data and will analyze them in the coming months for suitability toward final designation of the expanded environmental reference area as a PIPRA, and possibly a joint PIPRA applicable to all three license sites.

Coordinates for each consortium's contribution to this expanded environmental reference area are as follows:

OCEAN MINING ASSOCIATES.—ENVIRONMENTAL REFERENCE AREA WITHIN USA–3

Turning points	Latitude (North)	Longitude (West)
1	14°10′	128°5′
2	14°10′	128°0′
3	12°32.5′	128°0′
4	12°32.5′	128°35′
5	13°34.56′	128°35′
6	13°34.56′	128°15′
7	13°55′	128°15′
8	13°55′	128°10′
9	14°0′	128°10′
10	14°0′	128°5′
1	14°10′	128°5′

KENNECOTT CONSORTIUM.—ENVIRONMENTAL REFERENCE AREA WITHIN USA–4

Turning points	Latitude (North)	Longitude (West)
1	13°30′	128°00′
2	13°30′	127°45′
3	12°30′	127°45′
4	12°30′	128°00′
1	13°30′	128°00′

OCEAN MINERALS COMPANY.—ENVIRONMENTAL REFERENCE AREA WITHIN USA–1

Turning points	Latitude (North)	Longitude (West)
1	13°20.2′	128°57.5′
2	13°20.2′	128°35′
3	12°32.5′	128.35′
4	12°32.5′	128°57.5′
1	13°20.2′	128°57.5′

NOAA invites public inquiry and participation in this effort. The data should be on hand in early 1989 for inspection in the office noted below. Alternatively, summaries of the environmental data and other information should be available by mid-year and may be obtained from the following persons.

FOR FURTHER INFORMATION CONTACT: James P. Lawless or John W. Padan, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC 20235, (202) 673–5117.

John J. Carey,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88–26771 Filed 11–18–88; 8:45 am]

BILLING CODE 3510–12–M

COMMISSION OF FINE ARTS

Cancellation of Meeting

The Commission of Fine Arts' meeting scheduled for November 17, 1988, is cancelled. Our next scheduled meeting is Thursday, December 15, 1988, at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (566–1066) for details concerning access to meetings.

Inquires regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, November 8, 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88–26845 Filed 11–18–88; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing 1989 Agreement Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 16, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: The Bilateral Textile Agreement of August 4, 1986, as amended, between the Governments of the United States and Hong Kong establishes limits for the agreement year which begins on January 1, 1989 and extends through December 31, 1989. These limits are listed below.

A copy of the current bilateral agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 52 FR 23491, published on June 22, 1987.

Category	Twelve-month limit
Group I:	
200–229, 300–326, 360–369, 400–414, 464–469, 600–629 and 665–670, as a group.	198,754,909 square meters equivalent.
Sublevels in group I:	
200	261,571 kilograms.
219	30,338,882 square meters.
225/317/326	50,410,954 square meters.
226/313	54,421,439 square meters.
314	14,676,809 square meters.
315	7,256,264 square meters.
369(1)[1] (shoptowels)	596,317 kilograms.
604	179,550 kilograms.
611	4,783,334 square meters.
Group II:	
237,239, 330–359, 431–459, 630–659 and 843/844(1), as a group.	723,483,464 square meters equivalent.
Sublevels in Group II:	
237	877,318.
239	3,008,347 kilograms.
331	3,619,229 dozen pairs.
333/334	241,836 dozen.
335	303,633 dozen.
336	167,807 dozen.
338/339[2] (shirts and blouses other then tank, knit).	2,606,468 dozen.
338/339(1)[3] (tank tops).	1,933,253 dozen.
340	2,495,969 dozen.
341	2,533,942 dozen.
342	431,688 dozen.
345	367,871 dozen.
347/348	5,966,097 dozen of which not more than 2,936,286 dozen shall be in Category 347 and not more than 4,521,335 dozen shall be in Category 348.
350	112,182 dozen.
351	1,067,078 dozen.
352	5,110,411 dozen.
359(1)[4] (coveralls, overalls and jumpsuits).	475,763 kilograms.
359(2)[5] (outer vests)	991,590 kilograms.
434	9,376 dozen.
435	68,617 dozen.
436	89,369 dozen.
438	777,093 dozen.
442	76,723 dozen.
443	56,388 numbers.
443/444/643/644/843/844(1). (made-to-measure suits).	49,452 numbers.
444	34,740 numbers.
445/446	1,213,175 dozen.
447/448	61,010 dozen.
631	486,925 dozen pairs.
633/634/635	1,105,096 dozen of which not more than 412,101 dozen shall be in Categories 633/634 and not more than 849,120 dozen shall be in Category 635.
636	229,881 dozen.
638/639	4,332,611 dozen.
640	740,903 dozen.
641	748,658 dozen.
642	181,938 dozen.
644	33,360 numbers.
645/646	1,256,751 dozen.
647	405,056 dozen.
648	938,258 dozen.
649	623,624 dozen.
650	128,963 dozen.
651	246,966 dozen.
652	3,878,750 dozen.
659(1)[6] (coveralls, overalls and jumpsuits).	525,843 kilograms.
659(2)[7] (swimsuits)	205,938 kilograms.
Groups III: 831–844 and 847–859, as a group.	40,429,044 square meters equivalent.
Sublevels in Group III:	
835	97,183 dozen.
836	127,807 dozen.
840	577,274 dozen.
842	211,445 dozen.
847	310,017 dozen.
Limits not in a group:	
845(1)[8] (sweaters made in Hong Kong).	1,096,385 dozen.
845(2)[9] assembled in Hong Kong from knit-to-shape component parts knitted elsewhere).	2,624,329 dozen.
846(1)[10] (sweaters made in Hong Kong).	177,296 dozen.
846(2)[11] (sweaters assembled in Hong Kong from knit-to-shape component parts knitted elsewhere).	427,216 dozen.

[1] In Category 369(1), only tariff number 6307.10.20.10.

[2] In Categories 338/339, all tariff numbers except 6109.10.00.25, 6109.10.00.30, 6109.10.00.60 and 6109.10.00.65.

[3] In Categories 338/339(1), only tariff numbers 6109.10.00.25, 6109.10.00.30, 6109.10.00.60 and 6109.10.00.65.

[4] In Category 359(1), only tariff numbers 6103.42.20.20, 6103.49 30.34, 6104.62.10.20, 6104.69.30.10, 6114.20.00.48, 6114.20.00.52, 6203.42.20.10, 6204.62.20.10, 6211.32.00.10 and 6211.42.00.10.

[5] In Category 359(2), only tariff numbers 6103.19.20.30, 6103.19.40.30, 6104.12.00.40, 6104.19.20.40, 6110.20.10.22, 6110.20.10.24, 6110.20.20.30, 6110.20.20.35, 6110.90.00.44, 6110.90.00.46, 6201.92.20.10, 6202.92.20.20, 6203.19.10.30, 6203.19.40.30, 6204.12.00.40, 6204.19.30.40, 6211.32.00.70 and 6211.42.00.70.

[6] In Category 659(1), only tariff numbers 6103.23.00.55, 6103.43.20.20, 6103.49.20.00, 6103.49.30.38, 6104.63.10.20, 6104.69.10.00, 6104.69.30.14, 6114.30.30.40, 6114.[redacted]30.50, 6203.43.20.10, 6203.49.10.10, 6204.63.15.10, 6204.69.10.10, 6211.33.00.10 and 6211.43.00.10.

[7] In Category 659(2), only tariff numbers 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6211.11.10.10, 6211.11.10.20, 6211.12.10.10 and 6211.12.10.10.

[8] In Category 845(1), only tariff numbers 6103.29.20.74, 6104.29.20.72, 6110.90.00.24, 6110.90.00.42 and 6117.90.00.20.

[9] In Category 845(2), only tariff numbers 6103.29.20.70, 6104.29.20.70, 6110.90.00.22 and 6110.90.00.40.

[10] In Category 846(1), only tariff numbers 6103.29.20.68, 6104.29.20.68, 6110.90.00.20, 6110.90.00.38 and 6117.90.00.18.

[11] In Category 846(2), only tariff numbers 6103.29.20.66, 6104.29.20.64, 6110.90.00.18 and 6110.90.00.36.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–26872 Filed 11–18–88; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Deposit of Customer Funds in Foreign Depositories

AGENCY: Commodity Futures Trading Commission.

ACTION: Statement of Agency Interpretation.

SUMMARY: The Commodity Exchange Act ("Act") requires that all money, securities and property received by futures commission merchants ("FCMs") to margin, guarantee, or secure trades or contracts of any customer on domestic designated contract markets or accruing to such customer as the result of such trades or contracts be segregated pursuant to section 4d(2) of the Act, 7 U.S.C. 6d(2), and the regulations promulgated thereunder. The Commodity Futures Trading Commission ("Commission") is providing further guidance with respect to where customer funds relating to contracts traded on domestic exchanges may be deposited consistent with section 4d(2). The Commission generally has required that such funds be held in the United States with the exception of certain funds held on behalf of foreign-domiciled customers. In view of the interest in pricing and settling certain domestic futures and option contracts in foreign currencies, the Commission has determined that it is appropriate to permit funds of customers domiciled in the United States to be deposited in foreign depositories under certain

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conditions designed to insure consistency with the segregation requirements of the Act. The Commission also finds that the special provisions of the Bankruptcy Code applicable to the bankruptcy of commodity brokers generally require that in the event of the bankruptcy or insolvency of an FCM all segregated funds be distributed on a pro-rata basis to customers of the same class.

Accordingly, in order to assure the consistent treatment of all customer funds held outside the United States with respect to designated United States futures and options, the Commission has determined to apply certain limitations prospectively to foreign-domiciled customers whose funds relating to contracts traded on or subject to the rules of a contract market in the United States are held overseas. This interpretation modifies Commodity Exchange Authority Administrative Determination No. 238 (September 4, 1974) ("A.D. 238").

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Section 4d(2) of the Act requires that each FCM:

> treat and deal with all money, securities, and property received by such [FCM] to margin, guarantee, or secure the trades or contracts of any customer of such [FCM], or accruing to such customer as the result of such trades or contracts, as belonging to such customers. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such [FCM] or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held.

The Commission and its predecessor agency, the Commodity Exchange Authority ("CEA"), have construed this provision to require that customer funds deposited with an FCM relating to futures or option trading on a designated contract market be kept in the United States unless the funds are being held for a foreign-domiciled customer. In Administrative Determination No. 238, the Administrator of the CEA stated that an FCM "cannot directly or indirectly shift regulated commodity customers' funds to foreign banks in order to permit the firm to better its business relations with such foreign banks or *for any other reason*." (emphasis added) In monitoring segregation, the Commission consistently has applied this interpretation.[1]

The Commission has interpreted section 4d(2) and the regulations thereunder generally to preclude the use of foreign segregated depository accounts because permitting customer funds to be held offshore would expose them to risks which potentially could weaken the safeguards intended to be afforded by segregation.[2] For example, the Commission and self-regulatory organizations ("SROs") ordinarily would have less ready access to such depositories and, therefore, could encounter difficulties confirming balances and monitoring funds held in such depositories on an ongoing basis. An inability to detect potential problems quickly could hamper the ability of the Commission or an SRO to take steps to resolve incipient problems before they become more serious. The risk of shortfalls in these accounts also may be greater to the extent that these contracts attract foreign-based traders, since past experience indicates that FCMs find it more difficult to recover debit balances from defaulting foreign-based customers than from domestic customers. In addition, a foreign depository may not be responsive to Commission concerns when compliance by a regulatee with segregation requirements comes into question, or a court might refuse to enforce applicable provisions of the Commission's regulations that prohibit a foreign depository from offsetting obligations of the FCM against customer funds or from otherwise mishandling or permitting the mishandling of customer funds. Similarly, in the event of an FCM insolvency, deposits maintained at a foreign depository might not be handled or distributed in accordance with United States bankruptcy law. Finally, a foreign government could limit the use of, freeze, or confiscate assets held within its jurisdiction. As a result of any of these events, segregated funds might not be recoverable fully by customers upon demand, or in a bankruptcy or receivership.

The foregoing risks may be describe as sovereign or location risk. Currency exchange rate fluctuations, that is, currency risk, also can be a concern where deposits securing United States contracts are maintained in multiple currencies. Specifically, if an FCM becomes bankrupt or is placed in receivership while holding foreign currency-denominated deposits, both the size of the pool of funds available for distribution to customers and the size of individual claims against that pool may vary from day to day during the pendency of the proceeding. This could have the effect of exposing customers with dollar-denominated claims to currency risk.

The Commission currently has pending before it several applications from domestic exchanges to trade futures or option contracts on foreign financial instruments or indices.[3] The exchanges plan to price and settle the proposed contracts in the currency of the underlying instrument or index in order to enhance the effectiveness of t contracts for hedging purposes. The Board of Governors of the Federal Reserve System ("Federal Reserve"), however, has a policy which discourages banks from offering in the United States accounts denominated in foreign currencies.[4] Therefore, the CMI and CBT have requested that the Commission modify its interpretation regarding the deposit of customer funds in foreign banks.

The Commission believes that in ligh of the growing internationalization of the futures and option markets, modification of the Commission interpretation, as set forth in A.D. 238, concerning appropriate segregated depository accounts is warranted to the extent set forth herein. Accordingly, the Commission hereby is modifying that interpretation so as to permit FCMs to carry segregated funds of domestic customers in certain foreign depositorie if certain conditions are met.[5] These

[1] *See* Foreign Options and Foreign Futures Transactions, 51 FR 12104, 12110, n.36 (April 8, 1986); *see also* Leverage Transactions, Comm. Fut. L. Rep. ¶ 21, 742 at p. 26,952, n.52 (May 25, 1983).

[2] The Commission's segregation requirements are set forth in Regulations 1.20–1.30, 1.32 and 1.36, 17 CFR 1.20–1.30, 1.32 and 1.36, which provide, among other things, that customer funds must be accounted for separately by the FCM, must not be commingled with the FCM's own funds, must be held for the benefit of customers, must be available to the customer and the FCM immediately upon demand, and must be handled in a manner that will prevent the use of one customer's funds to margin or secure another person's position or to margin or secure customer obligations other than with respect to contracts traded on or subject to the rules of a designated contract market.

[3] For example, the Chicago Mercantile Exchange ("CME") has applied to trade futures on the Nikkei Stock Average and the Chicago Board of Trade ("CBT") has applied to trade futures on Long-Term Japanese Government Bonds.

[4] *See* letter dated October 23, 1973, from Arthur F Burns, Chairman, Federal Reserve, to A.W. Clauser President, Bank of America.

[5] All funds held overseas pursuant to this interpretation must continue to be segregated from the proprietary funds of the FCM, from the foreign futures and options secured amount, and from any non-regulated accounts. Such funds must be held in accounts which clearly identify them as customer segregated funds and for which the depository has provided the appropriate acknowledgment. The form in which FCMs may accept such deposits, *i.e.*, whether certain securities such as yen bonds will b

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conditions are designed to minimize the risks to customers incident to carrying their funds overseas and generally to prevent the dilution of customer funds held in segregation in the United States. The Commission intends to monitor experience under this interpretation and may determine to alter or supplement the conditions for keeping segregated funds offshore as such experience renders advisable.[6]

First, to be segregated properly, funds of U.S.-domiciled customers may be held offshore if such funds are used to margin, guarantee, or secure positions in a contract traded on a domestic contract market that is priced and settled in a foreign currency or accrue to such a customer as a result of positions in such contracts. The Commission believes that some flexibility is appropriate with regard to the amounts which may be deposited and the timeframe within which they may be deposited. For example, customers may have a business reason for depositing funds in advance of taking a position or in excess of margin requirements.

Nevertheless, the Commission also believes that some constraints are necessary to prevent the transfer of funds overseas for reasons unrelated to trading in the relevant contracts. An FCM must obtain specific written authorization from a customer to maintain funds offshore in that customer's segregated account to acquire and hold futures and option positions that are priced and settled in foreign currencies.[7] FCMs that carry these accounts also should establish written internal procedures for ensuring that segregated funds are held offshore solely for the above-stated purpose.[8]

These procedures will be subject to SRO and Commission oversight.[9]

Second, the funds must be held in depositories that meet the criteria used by the Commission under Regulation 30.7(c) for foreign futures and opion depositories [10] and are located in the country of origin of the applicable currency or in a county with those applicable regulatory body the Commission has appropriate information sharing arrangements.[11] In addition, pursuant to Commission Regulations 1.20(a) and 1.20(b), each FCM and clearing organization must obtain from each such foreign depository an appropriate acknowledgment of the applicability of Commission regulations regarding customer segregated funds as is provided by domestic depositories.

Third, all FCMs, at all times, must segregate sufficient funds denominated in dollars in the United States to meet all dollar-denominated obligations to U.S.-domiciled customers. Any shortfall in the dollar account(s) would constitute a segregation violation regardless of whether there were excess funds in segregation in a foreign currency-denominated account.[12]

Fourth, before placing a customer's funds overseas, an FCM must obtain from the customer a subordination agreement in the form set forth below. The agreement would authorize the deposit of segregated funds into a foreign depository if such funds are used to margin, guarantee, or secure such contracts or accrue as a result of positions in such contracts. The agreement also would authorize the subordination of the customer's claim attributable to funds held offshore in a particular foreign currency to the claims of customers whose funds are held in dollars or other foreign currencies in the event the FCM is placed in bankruptcy or receivership [13] and there are insufficient funds available for distribution from the funds held in the particular currency to satisfy all customer claims against those funds. The subordination will apply whether the insufficiency is due to underfunding of the account or the inability to recover all funds in the account.[14]

Such an agreement generally will prevent an insufficiency of available funds in one foreign currency from diluting customer funds held in dollars or in other foreign currencies. It also will shield customers with dollar claims or claims in other foreign currencies from exposure to that currency's conversion risks during the pendency of the bankruptcy or receivership. The Commission believes that generally the risks attendant to holding funds in a particular currency should not be shared by customers whose funds are held in dollars or in different foreign currencies.

The subordination agreement will apply only to claims against *segregated*

acceptable as margin, will continue to be governed by exchange and clearing house rules. Commission Regulation 1.25, which implements similar language in section 4d(2) of the Act, also will continue to require that customer funds in whatever currency deposited, may be invested by an FCM or clearing organization only in obligations of the United States, in general obligations of any State or of any political subdivision thereof, or in obligations fully guaranteed as to principal and interest by the United States.

[6] Development of information sharing arrangements with foreign regulators may assist the Commission in this regard.

[7] This authorization is included with the subordination agreement described below and must be retained by the FCM pursuant to Commission Regulation 1.31.

[8] When, by industry standards, funds cease to be held to margin, guarantee, or secure positions in the relevant contracts, an FCM should move such funds out of the foreign currency-denominated segregation account. Customer instructions pertinent to such transfers may be provided in advance as part of the customer agreement.

[9] In this connection, the Commission believes that the Joint Audit Committee, working with the futures industry, should develop uniform internal procedures and audit standards, consistent with this interpretation, to address the appropriate oversight of funds held offshore.

[10] *See* CFTC Advisory 87–5, Comm. Fut. L. Rep., ¶ 23,997 (December 3, 1987).

[11] *See, e.g.*, the information sharing arrangements established between the Commission and the Australian National Companies and Securities Commission in connection with granting the Sydney Futures Exchange relief under Part 30 of the Commission's rules and the Financial Information Sharing Memorandum of Understanding signed by, among others, the Commission and the United Kingdom Securities and Investments Board on September 1, 1988.

[12] In addition, to be in compliance with segregation requirements an FCM must maintain total funds in segregation sufficient to meet its total customer obligations in all currencies. An FCM, however, would be permitted to maintain such funds in dollars rather than in the currency of the obligation. The amount of dollars necessary to cover such obligations would change on a daily basis as the conversion rate changes. In any such case, the books and records of the FCM would have to identify clearly the extent to which funds were being held in dollars to satisfy obligations denominated in a foreign currency.

In the event of FCM insolvency, the trustee or receiver ordinarily should convert foreign currency denominated claims against such funds to dollars as soon as possible in order to avoid conversion risk during the remainder of the proceeding. *See* Commission Regulation 190.01(ff). To the extent that an FCM is holding dollars to satisfy its obligations to customers denominated in foreign currencies, the subordination agreement contained herein would not apply.

[13] In many cases where a firm's financial condition is impaired or a receivership is contemplated, it should be possible to transfer accounts from one clearing member to another clearing member pursuant to existing regulations notwithstanding the location of such segregated funds, provided there is no shortfall and all funds are in depositories which have supplied appropriate acknowledgments. Pre-bankruptcy transfers remain the preferred regulatory treatment for failing firms. The subordination contained herein is intended to facilitate the calculation of funds available with respect to dollar and foreign currency customers so that position transfers can take place where there are sufficient funds in a particular currency.

[14] Procedures for the liquidation of an FCM in bankruptcy and for the distribution of such FCM's assets to customers are set forth in Subchapter IV of Chapter 7 of the Bankruptcy Code, 11 U.S.C. 761, *et seq.*, and Part 190 of the Commission's regulations, 17 CFR 190.01, *et seq.* Generally, these procedures provide for the pro-rata distribution of assets among customers according to account class. Subordination agreements, however, are enforceable under the Bankruptcy Code. 11 U.S.C. 510(a). The Commission believes that the same distribution principles that are articulated in the code should apply in receiverships despite the lack of any express statutory scheme for receivership.

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funds. All customers will retain an equal claim status as to claims against other assets of the FCM.[15]

The Commission notes that for many years it has permitted the funds of foreign-domiciled customers trading on domstic markets to be held overseas.[16] The Commission believes that in a bankruptcy or receivership these customers should be treated equivalently to other customers for whom funds are held offshore in segregated accounts. To the extent funds located offshore are segregated funds, the same potential exists for dilution of domestic segregated funds in the event of bankruptcy or receivership. Accordingly, the Commission will require that foreign-domiciled customers who desire to have funds relating to trading on a domestic market held in a foreign account also consent to subordinate their claims based on such funds. In order to give customers and FCMs the opportunity to make any adjustments necessitated by this change in policy, FCMs will be allowed six months from the date of this interpretation to bring themselves into compliance. Thereafter, an FCM will not be permitted to hold in a customer segregated account foreign currency deposited by a foreign-domiciled customer in connection with trading on or subject to the rules of a United States contract market, unless the customer has signed a subordination agreement as set forth below.[17]

The subordination agreement may be incorporated into the bankruptcy disclosure document required by Commission Regulation 190.10(c) or may be separately executed and retained by an FCM. The agreement must contain the following language:

Subordination Agreement

Funds of customers trading on United States contract markets may be held in accounts denominated in a foreign currency with depositories located outside the United States or its territories if the customer is domiciled in a foreign country or if the funds are held in connnection with contracts priced and settled in a foreign currency. Such accounts are subject to the risk that events could occur which would hinder or prevent the availability of these funds for distribution to customers. Such accounts also may be subject to the risk that events could occur which would hinder or prevent the availability of these funds for distribution to customers. Such accounts also may be subject to foreign currency exchange rate risks.

By signing the accompanying acknowledgment the customer authorizes the deposit of funds into such foreign depositories. For customers domiciled in the United States, this authorization permits the holding of funds in regulated accounts offshore only if such funds are used to margin, guarantee, or secure positions in such contracts or accrue as a result of such positions.

In order to avoid the possible dilution of other customer funds, a customer who has funds held outside the United States must further agree that his claims based on such funds will be subordinated as described below in the unlikely event *both* of the following conditions are met: (1) The customer's futures commission merchant is placed in receivership or bankruptcy, *and* (2) there are insufficient funds available for distribution denominated in the foreign currency as to which the customer has a claim to satisfy all claims against those funds.

By signing the accompanying acknowledgment the customer agrees that if both of the conditions listed above occur, the customer's claim against the futures commission merchant's assets attributable to funds held overseas in a particular foreign currency may be satisfied out of segregated customer funds held in accounts denominated in dollars or other foreign currencies only after each customer whose funds are held in dollars or in such other foreign currencies receives its pro-rata portion of such funds. It is further agreed that in no event may a customer whose funds are held overseas receive more than its pro-rata share of the aggregate pool consisting of funds held in dollars, funds held in the particular foreign currency, and non-segregated assets of the futures commission merchant.

This subordination arrangement is designed to effectuate the following principles. Subject to subordination, all customer segregated funds deposited in connection with trading on United States contract markets, whether held in the United States or overseas, are part of a single pool available to be distributed ratably to customers in the event of bankruptcy or receivership. However, no customer whose funds are held in the United States may receive less than his pro-rata share funds held in the United States as a result of the shortfall or unavailability of funds held outside the United States. No customer whose funds are held in a particular foreign currency may receive less than his pro-rata share of the funds held in that foreign currency as a result of the shortfall or unavailability of funds held in an account denominated in another foreign currency. No customer whose funds are held in a foreign currency may receive more than his pro-rata share of the pool consisting of funds held in dollars, funds held in the particular foreign currency, and non-segregated assets of the FCM. To illustrate the mechanics of such subordination the Commission offers the following examples:[18]

Example 1–Two Currencies; Sufficient Segregated Funds; Foreign Funds Available

Dollar Segregated Funds (held in U.S.) =150
Customer A claim = 50
Customer B claim = 50
Customer C claim = 50
Yen Segregated Funds (held in Japan) = 100 [19]
Customer D claim = 50
Customer E claim = 50
A,B,C,D,E distribution = 50 each

In this case, there are sufficient funds available to meet all claims. Thus, the subordination agreement would not come into play, and the bankruptcy or receivership distribution would proceed in the same fashion as a bankruptcy or receivership which does not involve funds held overseas.[20]

[15] In cases where the subordination is triggered, it would be necessary for the bankruptcy trustee to modify the calculations under Part 190 of the Commission's regulations accordingly. For example, in calculating "funded balances" pursuant to Commission Regulation 190.07, the trustee would do separate calculations for segregated funds and for other assets of the FCM. With regard to segregated funds, the trustee generally would treat customers with claims denominated in different currencies as if they were members of different account classes. With regard to other assets of the FCM, the trustee would treat such customers as part of the same account class.

[16] *See* A.D. 236.

[17] To the extent foreign-domiciled customers deposit dollars in connection with United States futures or options, such funds should be held in the United States. The Commission perceives no administrative necessity for FCMs and customers to incur the location risks attendent to holding such dollar deposits overseas. If an FCM believes it has reasons for holding such deposits outside the United States, it may submit a request to the Division of Trading and Markets for relief from this requirement. Any such relief would include a requirement that such dollar deposits held overseas be subordinated to dollar deposits in the United States.

[18] Because the examples were designed to illustrate specific points about the mechanics of the subordination, the scenarios set forth are less complex than those which could be expected to occur in an actual bankruptcy. For instance, as noted above, a trustee or receiver would have to undertake separate calculations to allocate shares of non-segregated assets of the FCM. Moreover, some customers are likely to have claims for more than one currency. Thus, the differences in actual distributions among customers might be less marked than indicated by these examples.

[19] Although these funds would be held in yen, for purposes of calculating the total FCM segregation and net capital requirements the amount would be converted to dollars. Therefore, in each of these examples the amount of money held in the foreign currency account is expressed in dollars.

[20] Note, however, that customer A may have deposited yen and be entitled to receive yen in return while customer B may have deposited the dollar equivalent of that amount of yen and be entitled to receive dollars in return. The risk of this conversion would be borne by the customer in the

Continued

Example 2—Two Currencies; Sufficient Segregated Funds; Foreign Funds Unavailable

Dollar Funds = 150
A claim = 50
B claim = 50
C claim = 50
Yen Funds = 100
D claim = 50
E claim = 50
A,B,C, distribution = 50
D,E distribution = 0

In this case, assume a foreign court has frozen the yen account. The claims of Customers A, B, and C would be satisfied in full by the trustee from the dollar account. Customers D and E would receive nothing from customer segregated funds until the funds in the yen account became available.[21] However, as noted previously, unsatisfied customer claims could be paid from other assets of the FCM.

Example 3–Two Currencies; Insufficient Segregated Funds; Foreign Funds Available

Dollar Funds = 100
A claim = 50
B claim = 50
C claim = 50
Yen Funds = 50
D claim = 50
E claim = 50
A,B,C distribution = 33.33
D,E distribution = 25

In this case, D and E's claims on dollars funds are subordinated to the claims of A,B, and C because there was a shortfall in yen funds. A,B, and C each receive 1/3 of the $100 available in the dollar account. D and E each receive their pro-rata share of the funds in the yen account. They receive nothing from the dollar account because it was insufficient to satisfy A,B, and C, who took priority.

Subordination protects dollar customers from sovereign or location risk and from currency risk. Location risk is present to the extent the shortfall in the yen account occurred or was undetected as result of the account's foreign location. Currency risk is present because the exchange rate can change during the pendency of a bankruptcy thereby causing claims on an underfunded account to grow more quickly than the assets available to meet such claims.

To illustrate the effect of currency risk in the absence of a subordination agreement, suppose that in Example 3 on the day of bankruptcy, one yen equals one dollar. A,B,C,D, and E each would have a claim at that time of $50. In the absence of subordination, each customer's pro-rata share would be equal to the ratio of his claim to total claims, or $50/$250, or 1/5. Therefore, each customer's pro-rata share would be 1/5 of the total available assets of $150, or $30.

Suppose further, however, that by the time the trustee had reviewed the records and marshalled the assets, one yen equalled two dollars. At that point, assets would total $200 ($100 + $100 worth of yen). Each yen customer's claim would grow to $100 (50 yen = $100). Each dollar customer's claim would remain $50. Each yen customer's pro-rata share would be equal to the ratio of his claim to total claims, or $100/$350, or 2/7. Each dollar customer's pro-rata share would be equal to the ratio of his claim to total claims, or $50/$350, or 1/7. Each dollar customer then would receive 1/7 of the total assets, or 1/7 × $200 or $28.57. Thus, each dollar customer's share would diminish as a result of currency risk.[22]

The subordination agreement insulates the dollar customers from such risks by effectively making the dollar and yen accounts separate account classes in the event of a yen shortfall.[23] All risks incident to holding funds overseas thus are imposed on those customers who have authorized such deposits.[24]

Example 4—Two Currencies; Insufficient Segregated Funds; Foreign Funds Available

Dollar Funds = 100
A claim = 50
B claim = 50
C claim = 50
Yen Funds = 50
D claim = 50
E claim = 50
A, B, C distribution = 33.33
D, E distribution = 0

In this case, there are insufficient funds in segregation *and* the yen account has been frozen by court order. D and E's claims on the dollar funds are

absence of agreement otherwise between the FCM and the customer. Because the exchange margin requirement would be expressed in yen, an FCM who accepted dollars would be performing the additional service of currency conversion for his customer which should be treated as a separate transaction. Under Commission Regulation 1.55, any currency conversion risk inherent in trading a particular contract would be a material fact which an FCM would be required to disclose to its customers.

[21] For ease of comparison, all these examples involve different customers in the yen and dollar accounts. With one exception, the concepts illustrated, however, would be applicable equally if a single customer had claims against both accounts. Generally, in such a case, his claims would be treated separately, as if they belonged to two individuals. To see how a customer with claims against both accounts would fare, simply substitute A for E in each scenario. A's claim against the dollar funds would remain the same as currently set forth; A's claim against the yen funds would be the same as E's claim.

The exception would be the case where a customer has a claim against one account and a debit balance in the other, *i.e.*, the trustee has a claim against the customer in that account. Pursuant to Commission Regulations 190.07(b)(2) and (b)(3) these amounts would be netted. The Commission recognizes that this procedure could defeat the subordination if the debit balance is in the dollar account because in the netting process a customer could receive the full value of his foreign currency claim. The Commission notes, however, that an analogous situation can occur in a dollars-only bankruptcy where a customer effectively may receive as a result of netting an amount greater than what his pro-rata share otherwise would be. Such anomalies have been permitted in the interest of efficient administration of bankrupt estates. Absent such netting, estates could be forced to incur the expense and delay of litigation in order to recover claims against customers with respect to whom the firm is holding deposits.

[22] This currency risk is similar to the price risk which can occur in cases where an FCM becomes insolvent while holding customer deposits in forms which fluctuate in value, *e.g.*, Treasury securities. In such cases, customers who have deposited cash may be exposed to some extent to the market risks of these Treasury securities. However, there are several significant distinctions between this type of price risk and the currency risk discussed in the text which make it not inappropriate to treat the two situations differently. First, all customers of an FCM which accepts Treasury securities have the opportunity to post Treasury securities as margin while only customers trading certain contracts would have the opportunity to post foreign currency. Therefore, it is more equitable to spread the former risk among all customers in the event of bankruptcy than it is the latter. Second, shortfalls in foreign currency accounts, and thus potential exposure of third parties to currency risk, are more likely than shortfalls in the amount of Treasury securities held by an FCM. This is because currency accounts are subject to the location risks described above while Treasury securities held in the United States are not. In addition, since margin calls are denominated in cash, a customer failure to meet a foreign currency margin call could lead to a shortfall in the amount of foreign currency in the account, while a customer failure to meet a margin call in an account holding Treasury securities would lead to a shortfall in dollars not Treasury securities. Third, it may be easier and quicker for a trustee or receiver to convert Treasury securities held in the United States to cash than to convert foreign currency held overseas into dollars. Therefore, the pool of customer assets may be exposed to currency risk for a longer time than it is exposed to Treasury security market risks.

[23] The subordinate agreement, however, would not create separate account classes in all situations. Because the subordination is not reciprocal, dollar customers would have a claim on yen funds in the event of a dollar shortfall. Such a situation is illustrated in Example 7 below. The Commission may consider whether it would be appropriate to establish by regulation separate account classes in bankruptcy for each currency.

[24] Moreover, if proper segregation is maintained by an FCM with respect to overseas accounts, that is, all deficits are covered, no subordination should be required except in cases of theft or adverse sovereign action. In fact, there has been only one case in the last decade where a customer default led to a segregation deficit which was not covered by other assets of the carrying firm. *See Volume Investors Corporation*, Report of the Division of Trading and Markets (July 1985).

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subordinated to the claims of A, B, and C because the yen funds are unavailable. The trustee would calculate A, B, and C's pro-rata share of the dollar funds as if the yen did not exist.

Example 5—Three Currencies; Insufficient Segregated Funds; Shortfall in One Foreign Currency

Dollar Funds = 150
A claim = 50
B claim = 50
C claim = 50
Yen Funds = 150
D claim = 50
E claim = 50
F claim = 50
Pound Funds = 100
G claim = 50
H claim = 50
I claim = 50
A, B, C, D, E, F distribution = 50
G, H, I distribution = 33.33

The claims of pound customers are subordinated to the claims of dollar and yen customers because there is a shortfall in the pound account. Dollar and yen customers are both shielded from currency risk in the underfunded pound account.

Example 6—Three Currencies; Insufficient Segregated Funds; Shortfall in Both Foreign Currencies

Dollar Funds = 150
A claim = 50
B claim = 50
C claim = 50
Yen Funds = 100
D claim = 50
E claim = 50
F claim = 50
Pound Funds = 50
G claim = 50
H claim = 50
I claim = 50
A, B, C, distribution = 50
D, E, F distribuiton = 33.33
G, H, distribution = 16.66

The claims of pound and yen customers are subordinated to the claims of dollar customers because there is a shortfall in both foreign currency accounts. Furthermore, because of these shortfalls, the foreign currency customers are subject to a reciprocal subordination to one another. That is, D, E, and F have priority as to yen while G, H, and I have priority as to pounds. Effectively, in this case the trustee would treat the funds as three separate pools.

Example 7—Three Currencies; Insufficient Segregated Funds; Shortfall in Dollars

Dollar Funds = 100
A claim = 50
B claim = 50
C claim = 50
Yen Funds = 150
D claim = 50
E claim = 50
F claim = 50
Pound Funds = 150
G claim = 50
H claim = 50
I claim = 50
A, B, C, D, E, F, G, H, I, distribution = 44.44

The case illustrates the asymmetry created by the subordination agreement. Customers with claims on the dollar account are *not* subordinated in the event of a shortfall in that account. This outcome is consistent with the usual principles of pro-rata distribution. The exception to those general principles created in the previous examples is appropriate there because of the unique risks discussed above that are created by the carrying of funds overseas.

The approach described in this interpretation is intended to facilitate growth and innovation in domestic futures markets without compromising existing standards of customer protection. This interpretation does not imply any position on the merits of pending contract designation applications. The Commission is reviewing independently each proposed contract to which this interpretation might apply. The Commission also is analyzing whether additional regulatory action beyond the scope of this interpretation is appropriate in connection with the holding of customer segregated funds offshore.

Issued in Washington, DC, on November 16, 1988 by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 88-26860 Filed 11-18-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Chief of Staff's Special Commission to Review Honor Code and System; U.S. Military Academy; Meeting

Subject: Chief of Staff's Special Commission to Review the Honor Code and Honor System at the U.S. Military Academy.

Time: 8–9 December 1988.

Place: Superintendent's Conference Room, Building 600, 2nd Floor, U.S. Military Academy, West Point, New York.

Purpose: See agenda discussion items.

Summary of Agenda:

Date/Time	Open/ Closed to Public	Discussion Items
8 Dec/0900–1200	Open	Testimony from faculty, staff, and Cadets.
8 Dec/1300–1630	Closed	Private interviews and study of illustrative case histories.
9 Dec/0900–1200	Open	Committee Meetings.
9 Dec/1300–1430	Open	Report from Committees.
9 Dec/1430–1500	Open	Discussion of next possible steps.

The public may attend any of the meetings marked "Open".

The meeting being closed to the public is due to privacy act restrictions. Specific Honor cases will be presented to the Commission. In addition testimony will be taken which will provide personal information to the Commission.

The basis for the closed portion of the meeting is paragraph (6) of section 552b(c), Title 5, U.S. Code.

Point of contact is LTC James O. Younts III, 695–1983.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-26900 Filed 11-18-88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 10, 1988.

The USAF Scientific Advisory Board Division Advisory Group (DAG) for Space Division (AFSC) will meet on 6–8 Dec 88 from 8:00 a.m. to 5:00 p.m. at Patrick AFB, FL 32925.

The purpose of this meeting is to review plans for the Space Test Range. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-27009 Filed 11-18-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meetings

November 15, 1988.

Subcommittees of the USAF Scientific Advisory Board Ad Hoc Committee on Science and Technology (S&T) Roadmaps Review will meet as specified by the following schedule:

Wright-Patterson AFB, OH 45433—6–8 Dec 88
Tyndall AFB, FL 34204—9 Dec 88

The purpose of these meetings is to review the roadmaps for the programs in the Air Force S&T base. These meetings will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-27010 Filed 11-18-88; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intention To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Proposed Harbor at Kodiak, Kodiak Island, AK

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed plan is to build a 1,900-foot long rubblemound breakwater across the mouth of St. Herman Bay (formerly Dog Bay), Kodiak, Alaska; to provide vessel access to a 90-acre protected mooring area, necessary to aid navigation.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DSEIS can be answered by: Mr. William D. Lloyd at (907) 753–2640 or by writing to the: U.S. Army Corps of Engineers, Alaska District, ATTN: CENPA–EN–PL–ER (LLOYD), P.O. Box 898, Anchorage, Alaska 99506–0898.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The proposed plan would consist of a 1,900-foot long, rubblemound breakwater across the mouth of St. Herman Bay (formerly called Dog Bay); a channel 930 feet long, 150 feet wide, and 20 feet deep, providing vessel access to a 90-acre protected mooring area; and the necessary aids to navigation.

2. Reasonable Alternatives

Alternatives to the proposed plan include development of Near Island Basin (Trident Basin) and modification of the breakwater to include an entrance channel between Grass and Gull Islands.

3. Scoping Process

a. Public Involvement

There are three public meetings scheduled in Kodiak during the planning process. A fourth meeting may be held during the comment period of the DSEIS, if warranted. Draft and Final Environmental Impact Statements were prepared and distributed for public review in 1976 and 1978 respectively. The project was authorized by Congress for construction in 1986.

b. Significant Issues

At present, significant issues to be addressed in depth in the DSEIS include impacts to water circulation and quality, migratory routes of fish and shellfish, bald eagle concentrations, social and economic effects on local residents, and effects on cultural resources.

c. Assignments

Other than normal coordination, no cooperating agency assignments have been made.

d. Environmental Review and Consultation Requirements

The DSEIS will be circulated for review and all comments will be incorporated into the final supplemental environmental impact statement.

4. Scoping Meeting

a. A public scoping meeting to be held in the city of Kodiak is tentatively scheduled for the second week in January, 1989. A public notice announcing the scoping meeting will be mailed to the project mailing list prior to the meeting.

b. An agency scoping meeting was held on October 13, 1988.

5. Availability

The DSEIS is expected to be available to the public by January, 1990.

William W. Kakel,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-26773 Filed 11-18-88; 8:45 am]

BILLING CODE 3710-NL-M

DEPARTMENT OF EDUCATION

Pell Grant Program

AGENCY: Department of Education.

ACTION: Publication of the 1988–89 Award Year Zero Student Aid Index (SAI) Charts.

SUMMARY: The Secretary publishes the Zero Student Aid Index (SAI) Charts for institutions to use when verifying application information under the Pell Grant Program. The use of the Zero SAI Charts is authorized by § 668.59(a)(2) of the Student Assistance General Provisions regulations, 34 CFR 668.59(a)(2).

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides grant assistance to financially needy students to help them meet the cost of postsecondary education. In order to receive a Pell Grant, a student must submit an application to the Secretary that contains both financial and non-financial information which permits the Secretary to determine the student's expected family contribution (EFC). The EFC is an amount which the student and his or her family may be reasonably expected to contribute toward the student's cost of a postsecondary education. The EFC is called the Student Aid Index, or SAI, in the Pell Grant Program.

The Secretary notifies the student of his or her SAI on a document called a Student Aid Report (SAR). On the SAR, the Secretary also includes the information reported by the applicant on the application. The Secretary uses some of this information to calculate the student's SAI.

In order to assure that applicants for Pell Grants provide accurate information on their applications, the Secretary may require some applicants to verify and update that information, and he has published regulations governing this verification process in the Student Assistance General Provisions regulations, 34 CFR Part 668, Subpart E. Generally, under these regulations, if an applicant is required to change any of his or her application information, the applicant must make the changes on the SAR that he or she received and must resubmit that changed SAR to the Secretary. However, there are some circumstances where the changed application information will not change the student's SAI, and, under those circumstances, the Secretary does not require the applicant to resubmit the SAR.

Under § 668.59(a)(2) of the Student Assistance General Provisions

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regulations, 34 CFR 668.59(a)(2), the Secretary does not require an applicant to resubmit the changed SAR to the Secretary if the applicant has an SAI of zero and the institution that the applicant is attending can determine that the applicant's SAI will remain at zero using verified information and the Zero SAI Charts.

The Zero SAI Charts are a simplified version of the formula the Secretary uses in calculating an applicant's SAI. The charts may be used only if:

- The applicant's dependency status does not change, and
- The applicant's (spouse's) income and assets and the parental income and assets of a dependent student do not exceed specified amounts.

An institution may use the Zero SAI Charts to calculate a Pell Grant applicant's SAI if the following criteria are satisfied. (These criteria are based upon sections 411A through 411F of the Higher Education Act of 1965, as amended (HEA).)

For Students Qualified To Use the Simplified Needs Test

1. The income of a single dependent student is less than $3,501 in calendar year 1987.
2. The income of a married dependent student and spouse is less than $5,101 in calendar year 1987.
3. The income of an unmarried independent student without dependent children is less than $5,301 in calendar year 1987.
4. The income of a married independent student without dependents is less than $6,701 in calendar year 1987, if the student is not qualified to use the full employment expense offset (EEO), or income is less than $8,201 if the student is qualified to use the full EEO.
5. The income of an unmarried independent student with one dependent is less than $8,201 in calendar year 1987.

For Dependent Students [1] Using the Regular Needs Test

1. The income of a single dependent student is less than $3,501.
2. The income of a married dependent student is less than $5,101.
3. Dependent student and spouse net assets equal zero.[2]
4. Net home assets of parents are less than $30,001.[2]
5. Net business assets (exclusive of farm assets) of parents are less than $80,001.
6. Net farm assets (or a combination of net farm assets and net business assets) of parents are less than $100,001.
7. Net parental assets, other than home, farm, or business assets are less than $25,001.
8. Combined parental net, business, home, and other assets are less than $110,001.[2]
9. Combined parental net, farm, home, and other assets are less than $130,001.[2]

For Independent Students [1] Using the Regular Needs Test

1. The income of an unmarried independent student without dependent children is less than $5,301.
2. The income of a married independent student without dependents is less than $6,701 in calendar year 1987, if the student is not qualified to use the full EEO or income is less than $8,201 if the student is qualified to use the full EEO.
3. The income of an unmarried independent student with one dependent is less than $8,201 in calendar year 1987.
4. The assets of an unmarried independent student without dependent children are equal to zero.[2]
5. Net home assets of an unmarried independent student with a dependent, or a married independent student without dependents, are less than $30,001.[2]
6. Net business assets (exclusive of farm assets) are less than $80,001.
7. Net farm assets (or a combination of net farm assets and net business assets) are less than $100,001.
8. The net value of assets, other than home, farm, or business assets are less than $25,001.
9. Combined net business, home, and other assets are less than $110,001.[2]
10. Combined net farm, home, and other assets are less than $130,001.[2]

Zero SAI—Chart A

Use if Applicant *Is* Eligible for Full Employment Expense Offset (EEO) [1]

The correct household size is:	An applicant's SAI is zero if and the verified effective family income (EFI) is *less* than:
2	$8,201
3	9,601
4	11,901
5	13,801
6	15,301
7	17,101
8	18,901
9	20,701
10	22,501
11	24,301
12	26,101
13	27,901

[1] Use this chart if—
For a dependent student:
(1) The parents of the student are married and both parents earned income of $3,000 or more; or
(2) The parent of the student qualified as a head of household for Federal income tax purposes and the parent earned income of $3,000 or more.
For an independent student:
(1) Both the student and the spouse earned income of $3,000 or more; or
(2) The student qualified as a head of household for Federal income tax purposes and the student earned income of $3,000 or more.

Zero SAI—Chart B

Use if Applicant *Is Not* Eligible for Full Employment Expense Offset (EEO) [1]

The correct household size is:	An applicant's SAI is zero if and the verified effective family income (EFI) is *less* than:
1	$5,301
2	6,701
3	8,101
4	10,401
5	12,301
6	13,801
7	15,601
8	17,401
9	19,201
10	21,001
11	22,801
12	24,601
13	26,401

[1] Use this chart if you cannot use Chart A.

Effective Family Income (EFI)

Effective family income equals total income minus the sum of (1) Federal income taxes paid, (2) the tax allowance calculated under the Tax Allowance Percentage Table included in this Notice, and (3) excludable income, as defined below.

Total income equals the adjusted gross income (determined for tax filers from the U.S. income tax return or income earned from work not reported on a U.S. income tax return in the case of non-tax filers), the total untaxed income and benefits of the student's parents for a dependent student, or of the student and spouse for an independent student, and one-half of the student's VA educational benefits (under chapters 34 and 35 of title 38 of the United States Code).

Excludable Income

Excludable income includes:

- For a Native American student, individual payments of $2000 or less received by the student (and spouse) and the student's parents under the Per Capita or Distribution of Judgment Funds Act, and any income received under the Alaska Native Claims Settlement Act or the Maine Indian Claims Settlement Act.
- Income of a divorced or separated spouse of a student, or of a student's spouse who has died.
- Student financial assistance.
- Unemployment compensation received by a dislocated worker in accordance with Title III of the Job Training Partnership Act.

Tax Allowance Percentage Table

If state, or territory of residence is:	and total income is: less than $15,000	or	$15,000 or more
Alabama	.07		.06
Alaska	.03		.02
America Samoa	.04		.03
Arizona	.07		.06
Arkansas	.07		.06
California	.09		.08
Canada	.09		.08
Colorado	.08		.08
Connecticut	.08		.07
Delaware	.09		.07
District of Columbia	.11		.08
Federal States of Micronesia.	.04		.10
Florida	.05		.03
Georgia	.06		.04
Guam	.04		.07
Hawaii	.11		.03
Idaho	.09		.10
Illinois	.08		.08
Indiana	.07		.07
Iowa	.09		.06
Kansas	.08		.08
Kentucky	.08		.07
Louisiana	.04		.07
Marine	.10		.03
Marshall Islands	.04		.09
Maryland	.11		.03
Massachusetts	.11		.10
Mexico	.09		.10
Michigan	.12		.08
Minnesota	.12		.11
Mississippi	.07		.11
Missouri	.07		.06
Montana	.07		.06
Nebraska	.09		.06
Nevada	.04		.08
New Hampshire	.07		.03
New Jersey	.10		.06
New Mexico	.05		.09
New York	.14		.04

Tax Allowance Percentage Table—Continued

If state, or territory of residence is:	and total income is: less than $15,000	or	$15,000 or more
North Carolina	.09		.08
North Dakota	.06		.05
Northern Mariana Islands.	.04		.03
Ohio	.09		.08
Oklahoma	.07		.06
Oregon	.11		.10
Palau	.04		.03
Pennsylvania	.09		.08
Puerto Rico	.03		.02
Rhode Island	.11		.10
South Carolina	.09		.08
South Dakota	.05		.04
Tennessee	.05		.04
Texas	.04		.03
Utah	.09		.08
Vermont	.09		.08
Virgin Islands	.04		.03
Virginia	.09		.08
Washington	.06		.05
West Virginia	.07		.06
Wisconsin	.13		.12
Wyoming	.03		.02
Blank or Invalid State.	.09		.08

Sections 411C and 411D of the HEA.

FOR FURTHER INFORMATION CONTACT: Paula Husselmann, Chief, or Donald Conner, Program Analyst, Verification Development Section, Student Verification Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 4613, Washington, DC 20202, Telephone: (202) 732–5579.

(20 U.S.C. 1094)

(Catalog of Federal Domestic Assistance No. 84.063 Pell Grant Program)

[FR Doc. 88–26897 Filed 11–18–88; 8:45 am]

BILLING CODE 4000–01–M

[1] If a student, the student's spouse or parent(s) is a dislocated worker as defined in Title III of the Job Training Partnership Act, use calendar year 1988 expected year income. For all others use income received during calendar year 1987.

[2] If a student, student's spouse or parent is a dislocated worker as defined in Title III of the Job Training Partnership Act, or displaced homemaker as defined in section 480(e) of the HEA, the net asset value of a principal residence shall be considered zero.

[1] If a student or the student's spouse is a dislocated worker as defined in Title III of the Job Partnership Training Act, use calendar year 1988 expected income. For all other students, use income received in calendar year 1987.

[2] If a student or the student's spouse is a dislocated worker as defined in Title III of the Job Training Partnership Act, or a displaced homemaker as defined in section 480(e) of the HEA, the net asset value of a principal residence shall be considered zero.

Meeting; Student Financial Assistance Advisory Committee

AGENCY: Advisory Committee on Student Financial Assistance.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the opportunity to attend.

DATES: December 8, 1988, beginning at 9:00 a.m. and ending at 5:30 p.m.; and December 9, 1988, beginning at 8:00 a.m. and ending at 1:30 p.m., but closed from 8:00 a.m. to 9:00 a.m.

ADDRESS: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Room 4600, ROB–3, 7th & D Streets SW., Washington, DC 20202–7582 (202) 732–3439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Pub. L. 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms and making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students.

The Advisory Committee will meet in Washington, DC, from 9:00 a.m. to 5:30 p.m. on December 8 and from 8:00 a.m. to 1:30 p.m. on December 9. On December 9, a portion of the meeting will be closed to the public from 8:00 a.m. to 9:00 a.m. to elect a new Chariman, a Vice-Chairman and to discuss the Committee's present and future staffing. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemption (6) of section 552b(c) of the Government Sunshine Act (Pub. L. 94–409). The elections and ensuing discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

The proposed agenda of the open portion of the meeting includes: (a) Institutional Lender Draft Study Plan; (b) Delivery System Issues; (c) Committee Research Agenda; and (d) a report on

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Committee Organization and Administration.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Room 4600, 7th and D Streets SW., Washington, DC, from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: November 15, 1988.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 88-26791 Filed 11-18-88; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Availability of the 1988-89 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools

AGENCY: Department of Education.

ACTION: Notice of availability of the 1988-89 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools.

SUMMARY: The Secretary announces that the *1988-89 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools* (Directory) is now available at institutions of higher education participating in the Perkins Loan Program, State and Territory Department of Education and the United States Department of Education. Under the National Defense, National Direct and Perkins Loan Programs, a borrower may have a portion of his or her loan cancelled if the borrower teaches full-time for a complete academic year in a selected elementary or secondary school having a high concentration of students from low-income families. In the 1988-89 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1988-89 school year to qualify for cancellation benefits.

DATE: The Directory is available.

ADDRESSES: Information concerning specific schools listed in the Directory may be obtained from Roland W. Allen, Campus-Based Program Branch, Division of Program Operations and Systems, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4651, ROB-3), Washington, DC 20202-5453, Telephone (202) 732-3730.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Perkin Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; and (3) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools which qualify the borrower for cancellation under the procedures set forth in 34 CFR 674.52 and 674.54 of the National Defense, National Direct and Perkins Loan Program regulations.

The Secretary has determined that for the 1988-89 academic year, full-time teaching in the schools set forth in the 1988-89 Directory qualifies a borrower for cancellation.

The Secretary is providing the Directory to each institution participating in the Perkins Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1988-89 academic year.

The Office of Postsecondary Education will retain, on a permanent basis, copies of past, current, and future Directories.

(Catalog of Federal Domestic Assistance Number 84.037: National Defense, National Direct and Perkins Loan Cancellations.)

Dated: November 8, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-26898 Filed 11-18-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Amendment to the Model Conservation Standards Surcharge Policy Extension

AGENCY: Bonneville Power Administration (Bonneville or BPA), DOE.

ACTION: Notice of proposed amendments to Bonneville's Model Conservation Standards Surcharge Policy Extension and request for comments.

SUMMARY: This notice proposes two amendments to the recently adopted Model Conservation Standards (MCS) Surcharge Policy Extension (Policy). The first amendment, recommended by the Northwest Power Planning Council (Council), would change the method for calculating a surcharge. The calculation in the Policy would have resulted in a lower surcharge for noncompliance than was the Council's intent. The second amendment changes the level of energy savings which a residential sector code must achieve to be considered comparable to the Council's MCS.

DATE: Comments must be submitted on or before December 16, 1988.

ADDRESS: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon, 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Procter at 503-230-3961, or call BPA's Public Involvement office. Telephone numbers, voice/TTY, for the Public Involvement office are: 503-230-3478 in Portland: toll-free 800-452-8429 for Oregon outside of Portland; 800-547-6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue North, Suite 400, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, Federal Building, 550 W. Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION: After the draft policy was released for public comment, on August 15, 1988, two substantive issues arose. First, the Council advised Bonneville that the present Policy does not reflect the Council's surcharge methodology contained in their Model Conservation Standards for New Residential and Commercial Construction (Plan Amendment) of March 26, 1987. Second, in the process of reviewing the Policy and the Council's Plan Amendment, Bonneville became aware of another discrepancy between the Council's Surcharge recommendation and Bonneville's Policy.

When the draft Policy extension was released for public comment, Bonneville indicated that no policy changes were being proposed. At that time, Bonneville believed that the Policy was consistent with the Council's surcharge methodology and the Northwest Power Act. In order to provide for public comment on these issues, Bonneville decided to release the Policy extension with minor modifications and then proposed changes to the Policy. The separate release of the Policy extension in final form will assure policy continuity by providing utilities with information concerning plan submission and implementation dates.

In accordance with the Paperwork Reduction Act, Bonneville has determined that the submission requirements contained in the proposed amendment would require approximately 30 hours of staff time annually. Given the need to collect information useful in monitoring regional progress towards MCS adoption, Bonneville believes that the requirements do not place an undue burden on utilities. Bonneville is also seeking comment on this determination.

A. Surcharge Calculation

The Council noted, in their letter of October 6, 1988, that as a result of extensive public discussion on how the surcharge should be calculated, " * * * the Council concluded that the surcharge ought to be calculated on the total load of the non-conforming jurisdiction." As such, the Council stated that it was " * * * their intent that the surcharge be based on a customer's total firm load purchased from Bonneville to serve any non-complying jurisdiction, the surcharge should not be calculated on the basis of a non-complying end-use, such as the new residential sector."

To reflect the Council's intent, several changes would be required in sections 2 and 4 of the Policy. Proposed changes to data reporting requirements in section 2 will ensure that Bonneville has the appropriate information used to perform a surcharge calculation. Proposed changes in section 4 will affect the surcharge calculation.

The data reporting requirements contained in section 2 and the proposed new language are presented below.

The current language reads:

With their proposed plan, customers are to submit the following load information to the extent available: (a) total residential and commercial loads, (b) the portion of the customer's residential and commercial load covered by each of the conservation strategies contained in the appendices, and (c) total retail load.

The proposed language reads:

With their proposed plan, customers are to submit the following load information to the extent available: (a) total retail load, and (b) that portion of their total retail load in jurisdictions not covered by one or more of the conservation strategies contained in the appendices to this Policy. If a customer has retail loads in violation of the Policy for both sectors, the portion of their total load not in compliance with the Policy should be reported by sector for each noncomplying jurisdiction.

The current language in section 4 and the proposed new language are presented below.

The current language reads:

A. Not less than 30 days prior to a final decision on the imposition of a residential surcharge, the Administrator shall provide written notice to the customer including determination of the amount of a customer's load not covered by a Bonneville-approved MCS residential plan. The amount of the load not covered by a Bonneville-approved MCS residential plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

B. The level of the residential surcharge will be determined by dividing the customer's residential load not covered by a Bonneville-approved MCS residential plan by the customer's total retail load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

C. Not less than 30 days prior to a final decision on the imposition of a commercial surcharge, the Administrator shall provide written notice to the customer including a determination of the amount of the load not covered by a Bonneville-approved MCS commercial plan. The amount of the load not covered by a Bonneville-approved MCS commercial plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

D. The level of the commercial surcharge will be determined by dividing the customer's commercial load not covered by a Bonneville-approved MCS commercial plan by the customer's total retail load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

E. The resulting level of the residential or commercial surcharges will be applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules, using the Council's surcharge methodology, and will be applied subsequent to any other rate adjustments.

F. At no time will a customer simultaneously be assessed a surcharge for failure to comply with the requirements in the residential sector and a surcharge for failure to comply with the requirements in the commercial sector.

G. The customer and other interested parties shall be afforded an opportunity to provide comments regarding the determinations made in sections 4(A) to 4(D). Such comments may be made in writing or orally at a public meeting convened by Bonneville at the request of the customer for this purpose. This public meeting will be held between the time of the written Notice of Intent to surcharge and the final surcharge decision. Included in the Intent to Surcharge will be an initial determination of the fraction of a customer's load subject to the surcharge, based on sections 4(A) to 4(D). Following the receipt and evaluation of comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

H. Beginning with the effective date of a surcharge, the Administrator shall review the findings made in sections 4(A) to 4(D) after the customer, or a jurisdiction served by the customer, has taken an action that affects those findings. Customers may request such review by providing evidence in accordance with this section that the customer or a jurisdiction served by that customer has taken actions subsequent to the effective date of the surcharge.

The proposed language reads:

A. Not less than 30 days prior to a final decision on the imposition of a residential surcharge, the Administrator shall provide written notice to the customer including determination of the amount of a customer's total retail load in jurisdictions not covered by a Bonneville-approved MCS residential plan. The amount of the total retail load in jurisdictions not covered by a Bonneville-approved MCS residential plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in Section 2 of this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

B. Not less than 30 days prior to a final decision on the imposition of a commercial surcharge, the Administrator shall provide written notice to the customer including a determination of the amount of a customer's total retail load in jurisdictions not covered by a Bonneville-approved MCS commercial plan. The amount of the total retail load in jurisdictions not covered by a Bonneville-approved MCS commercial plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in Section 2 of this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

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C. The fraction of a customer's total retail load in jurisdictions *not* covered by a Bonneville-approved MCS plan will be determined by dividing the customer's total retail load in jurisdictions not covered by a Bonneville-approved MCS plan, as determined in section 4(A) or 4(B), by the customer's total retail load.

D. The level of the surcharge for failure to implement the necessary Bonneville-approved MCS plans is 10 percent multiplied by the fraction of a customer's total retail load not covered by a Bonneville-approved MCS plan.

E. At no time will a customer simultaneously be assessed a surcharge for failure of a jurisdiction to comply with the requirements in the residential sector and a surcharge for failure of that same jurisdiction to comply with the requirements in the commercial sector.

F. The customer and other interested parties shall be afforded an opportunity to provide comments regarding the determinations made in sections 4(A) to 4(D). Such comments may be made in writing or orally at a public meeting convened by Bonneville at the request of the customer for this purpose. This public meeting will be held between the time of the written Notice of Intent to Surcharge and the final surcharge decision. Included in the Notice of Intent to Surcharge will be an initial determination of the fraction of a customer's load subject to the surcharge, based on sections 4(A) to 4(D). Following the receipt and evaluation of comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

G. Beginning with the effective date of a surcharge, the Administrator shall review the findings made in section 4(A) to 4(D) after the customer, or a jurisdiction served by the customer, has taken an action that affects those findings. Customers may request such review by providing evidence in accordance with this section that the customer or a jurisdiction served by that customer has taken actions subsequent to the effective date of the surcharge.

B. Energy Savings Target for Code Evaluation

Referring to page 1–B–3 of the Council's Plan Amendment, the Council states that "The MCS for utility residential conservation programs requires utilities to implement, in accordance with the requirements detailed below, the Bonneville/utility residential MCS program, an equivalent alternative program, or rely on building codes improved to MCS levels." Similar language appears on page 1–B–8 for the Commercial Sector.

The Policy extension states in Appendix 5 that "An equivalent code must achieve at least the same level of total savings, in each sector separately, as would have been achieved by implementing Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's commercial MCS." Similar language appears in Appendix 7.

Since the Council's Plan Amendment indicated that utilities could rely solely on codes to comply with the Policy, as long as those codes were at the level of full MCS, several additional changes to the Policy are proposed.

The current language reads:

Equivalent Code. In the residential sector, a code for a specific sector which can be expected to achieve at least the same level of total electrical savings within the jurisdiction as would have been achieved had the utility serving that jurisdiction participated in Bonneville's Super GOOD CENTS Program. For the commercial sector, the Council's MCS will be used. (Section 1, part F)

The proposed language reads:

Equivalent Code. In either the residential or commercial sectors, a code which is designed to achieve (within 5 percent) the level of total electrical savings that would have been achieved if that jurisdiction had adopted the Council's MCS for that sector.

The current language reads:

Utilities which rely on jurisdictional adoption of residential building codes, or which impose a residential service standard, to achieve additional energy savings in the residential sector will have to provide evidence supporting the claim that the code (or service standard) can be expected to achieve at least the same level of electrical savings within the jurisdiction (or utility, service area, depending on whether a code or service standard approach is used) as would have been achieved if the utility had participated in Bonneville's Super GOOD CENTS Program. (Section 3A, paragraph 2)

The proposed language reads:

Utilities which rely on jurisdictional adoption of residential building codes, or which impose a residential service standard, to achieve additional energy savings in the residential sector will have to provide evidence supporting the claim that the code (or service standard) can be judged to be an equivalent code, as equivalence is defined in this Policy.

The current language reads:

An equivalent code must achieve at least the same level of total savings, in each sector separately, as would have been achieved by implementing Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's commercial MCS. (Appendix 5, paragraph 2)

The proposed language reads:

For a code to be judged equivalent to the MCS, it must meet the definition of equivalence as used in this Policy.

The current language reads:

If an equivalent utility service standard approach is pursued, a customer may choose to adopt a utility service standard which is not one of the codified versions, but which is expected to achieve, at least the same level of total electrical savings in each sector separately as would have been achieved by adopting Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's MCS for the commercial sector. (Appendix 7, paragraph 1)

The proposed language reads:

If an equivalent utility service standard approach is pursued, a customer may choose to adopt a utility service standard which is not one of the codified versions, but which is determined to be equivalent to the Council's MCS, as equivalence is defined in this Policy.

Issued in Portland, Oregon, on November 9, 1988.

Jack Robertson,

Deputy Administrator.

[FR Doc. 88–26879 Filed 11–18–88; 8:45 am]

BILLING CODE 6450–01–M

Model Conservation Standards Surcharge Policy Extension

AGENCY: Bonneville Power Administration (Bonneville or BPA), DOE.

ACTION: Notice of Bonneville's Model Conservation Standards (MCS) Surcharge Policy Extension.

SUMMARY: Bonneville is releasing its MCS Surcharge Policy Extension (Policy). The Policy is a slightly modified version of Bonneville's Policy for 1988. The extenstion is necessary because the Policy for 1988 was scheduled to expire on December 31, 1988. Utilities have the same compliance options they had with the Policy for 1988. In addition, the standards used to evaluate utility alternative plans remain unchanged. Under this Policy, customers of Bonneville who are subject to the Policy are to submit plans by December 16, 1988, and implement those plans by January 16, 1989. It is Bonneville's intent to allow customers to rely on their current compliance approach to the extent that the customer chooses to and that approach has been achieving acceptable results. As such, the extended Policy will help encourage region wide adoption of building codes at MCS levels.

DATES: The Policy is effective November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Procter at 503–230–3961. Or call BPA's Public Involvement Office. Telephone numbers, voice/TTY, for the Public Involvement office are: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2516.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue North, Suite 400, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, Federal Building, 550 W. Fort Street, Boise, Idaho 83724. 208–334–9137.

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I. Background of Policy

A. Introduction

The Surcharge Policy is a response to recommendations made by the Northwest Power Planning Council (Council) in its 1986 Northwest Conservation and Electric Power Plan (Plan) and its Model Conservation Standards (MCS) for New Residential and Commercial Construction of March 26, 1987 (Plan Amendment). The purpose of this policy is to encourage utilities to achieve additional electrical savings through improved residential and commercial building construction which can ultimately result in region-wide adoption of the Council's MCS in building codes. There are two additional policy objectives: (1) To identify the criteria that will be used to evaluate a utility's proposed approach to achieving MCS level electrical savings; and (2) to identify the method for calculating and collecting a surcharge.

As the Council states in its Plan Amendment, "By the end of 1989, the Council expects the region to achieve residential sector savings equivalent to at least 85 percent of those that would be achieved with full implementation of the MCS." One long-run goal is to achieve MCS level savings through code adoption.

B. Statutory Direction

Section 4(e)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Act) provides for the development of MCS as part of the Council's Plan. The standards, as described in section 4(f)(1) of the Act, are to include standards applicable to new and existing structures and to utility and government conservation programs. Such standards should reflect geographic and climatic differences and produce all power savings that are cost effective for the region and economically feasible for consumers.

Section 4(f)(2) of the Act provides that the Council may recommend to the Bonneville Administrator the imposition of a surcharge on customers of the Administrator for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented the standards or other conservation measures that the Administrator determines achieve energy savings comparable to the standards. Finally, section 4(e)(3)(G) of the Act mandates that the Council develop a methodology for calculating the surcharge.

II. Past and Present Surcharge Policy Development Efforts

Part A of this section summarizes past MCS and surcharge actions undertaken by the Council. Part B summarizes Bonneville's past surcharge-related activities. Part C describes the Council's 1987 surcharge recommendation as contained in its Plan Amendment of January 30, 1987.

A. Council Activities to Date

On April 27, 1983, the Council adopted its first Plan. As required by the Act, the Council's 1983 Plan contained MCS for newly constructed residential and commercial buildings and for conversion of existing residential and commercial buildings to electric space heating and conditioning.

In the 1983 Two-Year Action Plan (chapter 10 of the 1983 Plan), the Council identified tasks to be undertaken by Bonneville, the Council, and other regional entities. That Plan mandated that Bonneville include in its surcharge policy a consistent procedure for certifying compliance with MCS and a procedure for review and evaluating alternative plans.

In accordance with the 1983 Plan, State governments, local governments, or utilities were to adopt and enforce the MCS as building codes or utility service standards by January 1, 1986. Where such standards were not adopted, an alternative plan to achieve comparable savings should have been in place by January 1, 1986. Where neither action had occurred, the Council recommended that the Administrator impose a surcharge.

The Council voted on October 31, 1984, to adopt an amendment which simplified the surcharge calculation. The Council recommended that a 10-percent surcharge be levied on the customer's power bill for that portion of its loads which were not complying with the standard.

On July 26, 1985, the Council proposed to enter rule making to amend the MCS. On December 4, 1985, the Council voted to amend that portion of the 1983 Plan dealing with MCS. The amended MCS thermal performance levels for both new residential and new commercial buildings were equivalent to the MCS set forth and amended by the Council in its 1983 Plan. The Council also recommended that Bonneville develop a surcharge policy based on MCS implementation and performance.

In the 1986 Action Plan, the Council identified specific actions that Bonneville should take towards region-wide implementation of the MCS.

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Bonneville was to (1) have utilities submit to Bonneville a plan declaring how they intended to comply with the MCS, (2) design a process to collect utility-specific data on the savings that would be achieved if all buildings were constructed to MCS levels, (3) continue development and implementation of a procedure to measure compliance with the MCS, (4) review alternative plans for achieving compliance with the MCS, and (5) develop a new surcharge policy.

On November 20, 1986, the Council proposed to enter further rule making to amend part of its 1986 Plan dealing with MCS and the surcharge. After public comment, the Plan Amendment was published on January 30, 1987. Notice of the Plan Amendment, which included the Council's 1987 MCS, was published in the **Federal Register** on March 26, 1987 (52 FR 9738, March 26, 1987).

B. Bonneville Activities to Date

Bonneville began the development of a surcharge policy in early 1984 through a series of informal meetings with State government, local government, utility, and Council representatives. Bonneville staff informally discussed the various issues that might surround the development of a policy to implement the Council recommendation to impose a surcharge. These informal discussions formed the basis of a **Federal Register** Notice of Intent to Develop a Policy to Implement the Council Recommended Conservation Surcharge. The notice (49 FR 34891, September 4, 1984) was mailed to the public on August 28, 1984.

Bonneville elected to delay publication of a proposed policy until after final Council action on amendment of the surcharge methodology. Public review and comment on the proposed policy took place between March 13, 1985, and May 17, 1985.

Bonneville suspended action on the surcharge policy when the Council entered rule making to amend the MCS in the summer of 1985. After the Council amended its MCS recommendation in December 1985, Bonneville developed a revised proposed policy and received public comment on that proposal during July and August 1986.

As part of the Administrator's decision on whether to finalize the revised proposed surcharge policy, Bonneville undertook an analysis of the cost-effectiveness and consumer economic feasibility of the MCS contained in the Council's 1986 Plan. Bonneville concluded that some of the recommended measures were not cost effective, and on December 18, 1986, Bonneville's MCS findings were published.

Based in part on that analysis, the Council entered rule making to amend its MCS and surcharge recommendations. In Turn, Bonneville suspended the development of a final surcharge policy. Following publication of the Council's Plan Amendment on January 30, 1987, Bonneville undertook a second revision of the proposed surcharge policy.

On May 26, 1987, Bonneville released its proposed surcharge policy for public comment. The comment period closed on July 15, 1987. During the comment period there was one public meeting which was held on June 22, 1987. A number of changes were made in the proposed version of that policy, based on the public comment received. That policy, entitled "Model Conservation Standards Surcharge Policy," was Bonneville's response to Council recommendations to develop a surcharge policy.

In response to the 1988 Policy, utilities submitted plans for the residential and commercial sectors within their service areas. Those plans covered calendar year 1988. Since the Policy expires on December 31, 1988, Bonneville is now extending the Policy. This version of the Policy is substantially the same as the Policy for 1988.

C. Council's 1987 Surcharge Recommendation

The Council's Plan Amendment of January 30, 1987, made several major changes to its 1986 Plan. The most significant change in the surcharge recommendation was a move away from a performance-based surcharge, where utilities could face a surcharge if their performance was poor relative to the performance of other utilities. A summary of the Council's 1987 surcharge recommendation appears below.

1. *Residential Surcharge Recommendation.* The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a deadline set by Bonneville: (1) An initial plan for implementation of the Bonneville/Utility Residential MCS Program; (2) a plan for implementation of an alternative program which is approved by Bonneville as being equivalent; or (3) a declaration approved by Bonneville, that the MCS for residential buildings will be met by building codes. This surcharge would continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

2. *Commercial Surcharge Recommendation.* The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a date set by Bonneville: (1) An initial plan for implementation of the Bonneville/Utility Commercial MCS Program; (2) a plan for implementation of an alternative program which is approved by Bonneville as equivalent to the Bonneville/utility MCS Program, or (3) a declaration, approved by Bonneville, that the MCS for commercial buildings will be met by building codes at the MCS levels. The council recommended that the surcharge continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

3. *Conversion Surcharge Recommendation.* The Council's MCS for residential and commercial buildings converting to electric space heating/conditioning stated that State or local governments or utilities should take actions through codes and/or alternative programs to achieve electric power savings from buildings which convert to electric space heating/conditioning. The savings should be comparable to those savings that would be achieved if each building converting to electric space heating/conditioning were upgraded to include all cost-effective electricity conservation measures. The council recommended this conversion standard, but did not recommend that a surcharge be imposed for failure to adopt the standard.

4. *Combined Commercial/Residential Code.* One provision of the Plan Amendment allowed for a combined residential/commercial MCS strategy by a utility. This approach for less than MCS program savings to be achieved in one sector as long as the shortfall is recouped in the other sector. This alternative was to be applicable only to the submission of alternative codes or utility service standards.

5. *Exemptions.* The Council has determined that no exemptions are needed at this time.

6. *Federal Loads and Generic MCS.* The Council did not make any surcharge recommendation in these areas.

III. Surcharge Policy

Section 1: Definitions

A. *Administrator* Administrator of the Bonneville Power Administration or the Administrator's designated representative.

B. *Alternative Code.* Codes implemented in the residential and commercial sectors which, in aggregate, achieve total electrical savings at least as large as would have been expected had the council's illustrative MCS been implemented in the residential and commercial sectors. The Council's illustrative MCS are contained in the Council's Plan Amendment of January 30, 1987, as published in the **Federal Register** on March 26, 1987.

C. *Alternative Utility Plan* Any plan which either partially or wholly relies on an approach to conservation savings discussed in appendices 2, 4, 5, 6, or 7 of this policy.

D. *Alternative Utility Program* For the residential sector, a utility operated MCS support program designed to achieve at least the same level of total expected electrical savings, while complying with the Indoor Air Quality (IAQ) and ventilation goals, of Bonneville's Super GOOD CENTS program. For the commercial sector, a utility MCS support program designed to promote at least the same MCS measures as contained in the Council's commercial MCS of March 26, 1987, and providing comparable design assistance services as contained in the Bonneville/Utility MCS support program as of the effective date of this policy.

E. *Customer* For purposes of this policy, a utility existing in the Pacific Northwest region which purchases firm power from Bonneville under a utility Metered or computed Requirements Contract, or a utility which purchases firm capacity under a pre-Act contract, or a utility which participates in the Residential Purchase and Sales Agreement/Exchange Transmission Credit Agreement, as an active exchanger or deemer.

F. *Equivalent Code* In the residential sector, a code for a specific sector which can be expected to achieve at least the same level of total electrical savings within the jurisdiction as would have been acheved if the utility serving that jurisdiction implemented the Council's residential MCS. For the commercial sector, the Council's MCS of March 26, 1987, will be used.

G. *Jurisdiction* For purposes of this policy, any unit of government including Indian Tribes, State and local governments, and municipal corporations.

H. *Region* The Pacific Northwest Region, region, or regional means the area consisting of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin and any contiguous areas, not in excess of 75 air miles from the area referred to above, which are part of the service area of a rural electric cooperative customer, served by the Administrator on the effective date of the Act, which has a distribution system from which it serves both within and without such region.

I. *Service Area* The service area of a utility is that portion of its service territory which is both subject to the Surcharge Policy and to which the utility provides electric power service to the residential or commercial sectors.

J. *Total Retail Load* The number of firm kilowatt hours (kWh's) sold at retail by a customer during the 12-month period prior to the implementation date contained in Appendix 8 or during consecutive billing cycles covering a comparable period of time.

K. *Total Residential Load* The number of firm Kwh's sold at retail by the customer during either the most recent 12-month period prior to implementation date contained in Appendix 8, or during consecutive billing cycles covering a comparable period of time.

L. *Total Commercial Load* The total number of firm kWh's sold at retail by the customer during the 12-month period prior to the implementation date contained in Appendix 8, or during consecutive billing cycles covering a comparable period of time.

Section 2: Application of the Surcharge Policy

For this residential sector, by the plan submission date contained in Appendix 8, customers must submit either (a) a letter indicating that the approach being used to comply with the Policy in 1988 will be used to comply with the Policy for the plan coverage period indicated in Appendix 8, (b) a plan to implement the Super GOOD CENTS Program, or (c) an alternative utility program, or utility service standard for Bonneville approval, or (d) a plan indicating that jurisdictions within its service area will implement and enforce the MCS via participation in the Northwest Energy Code Program (NWECP) or adoption of a Bonneville-approved building code. A utility's residential sector plan may contain any combination of these approaches. Except as provided for in section 3(A) of this Policy, the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.

A utility's residential sector plan will be evaluated on the basis of the utility's proposed efforts for the residential sector during the plan coverage period indicated in Appendix 8 and its success with the approach(es) currently being used to comply with the Policy.

Customers who do not implement a Bonneville approved residential MCS plan by plan implementation date indicated in Appendix 8, will be subject to a surcharge as calculated in section 4 of this Policy. Customers who have been granted a grace period, as provided for either in section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

For the commercial sector, by the plan submission date indicated in Appendix 8, customers must submit either (a) a letter indicating that the approach currently being used to comply with the Policy will be used to comply with the Policy for the plan coverage period indicated in Appendix 8, (b) a plan to implement Bonneville's Commercial MCS Program, (c) an alternative utility commercial program or utility service standard in the commercial sector, or (d) a plan indicating that jurisdictions within its service area have met the Council's commercial MCS through codes. A utility's commercial sector plan may contain any combination of these approaches. Except as provided for in section 3(A), the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.

Customers who have not implemented a Bonneville-approved commercial MCS plan by the plan implementation date indicated in Appendix 8, are subject to a surcharge, as calculated in section 4 of this Policy. Customers who have been granted a grace period, as provided for in either section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of such period.

Customers of Bonneville without service areas as defined in this Policy, need only submit evidence of their lack of such a service area by the plan submission date indicated in Appendix 8. This provision exists for those customers who have voluntarily adopted a policy not to serve the residential or commercial sectors, or who are prohibited from serving the residential or commercial sector. If the customer serves one of these two sectors, then this provision will only apply to the one sector not served.

Customers who have neither submitted this information, nor a plan for achieving conservation in these sectors, will be subject to a subcharge after the plan implementation date indicated in Appendix 8 has passed.

Each of the appendices to this policy represents a different approach to achieve electrical savings from improved construction practices. These appendices contain more specific submission and evaluation criteria for each of the MCS plan options and are part of this policy. It is very important

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that customers carefully review this document including the appendices, to understand fully what actions utilities must take to achieve conservation savings in ways which also comply with this Policy.

Once any plan is approved and implemented, Bonneville will assume that the utility and/or jurisdiction(s) within its service areas will carry out that plan in good faith. During the period for which this Policy is in effect, Bonneville reserves the right to revisit any utility's approved plan if Bonneville has reason to believe that the utility has not implemented its plan in good faith. This same provision applies to utilities who rely on jurisdictional adoption and enforcement of codes to comply with this Policy.

With their proposed plans, customers are to submit the following load information to the extent available: (a) Total residential and commercial loads, (b) the portion of the customer's residential and commercial load covered by each of the conservation strategies contained in the appendices, and (c) retail load.

This Policy is in effect from the date it is signed by the Administrator until it is either amended or rescinded. In future years, Bonneville will announce the submission dates and timeframe which a submittal is to cover.

Section 3: Evaluation of Alternative Utility Plans

An alternative utility plan is any plan which relies wholly or in part on an approach to conservation savings presented in Appendix 2, 4, 5, 6, or 7 of this Policy. These plans will be evaluated using three criteria: (1) expected electrical savings, (2) enforcement, and (3) indoor air quality (IAQ) and ventilation. This section applies to all residential sector alternative plans and those commercial sector alternative plans relying on the adoption of commercial codes or commercial service standards.

If Bonneville concludes that the utility's proposed alternative plan cannot be accepted because of its failure to comply with any of the evaluation criteria described below, Bonneville will allow grace a period lasting at least as long as Bonneville took to evaluate the utility's initial proposal. Any subsequent grace period(s) may be allowed on a case-by-case basis.

A. Equivalent Electrical Savings

For the residential sector, if a utility is proposing to achieve electrical savings by implementing an alternative residential utility program, Bonneville will use the prospective total electrical savings of its Super GOOD CENTS Program to determine whether the utility's proposed approach will at least meet the appropriate residential electrical savings level for the period of time covered by a utility's plan. Part of the equivalence determination procedure for an alternative residential utility program will involve a comparison between the utility's proposed marketing program and the marketing program they would have pursued had they enrolled in the Super GOOD CENTS program for the period of time covered by the utility's plan.

Utilities which rely on jurisdictional adoption of residential building codes, or which impose a residential service standard, to achieve additional energy savings in the residential sector will have to provide evidence supporting the claim that the code (or service standard) can be expected to achieve at least the same level of electrical savings within the jurisdiction (or utility service area, depending on whether a code or service standard approach is used) as would have been achieved if the utility had participated in Bonneville's Super GOOD CENTS Program.

Utilities which rely on jurisdictional adoption of residential *and* commercial codes (or which impose residential and commercial service standards) to achieve additional savings beyond current practice, may "trade off" savings achieved in one sector towards a deficit in the other sector. The utility would have to present evidence supporting its claim that the residential and commercial codes, in aggregate, can be expected to achieve at least the same total level of electrical savings as would have been achieved had the jurisdiction adopted the Council's full illustrative commercial and residential MCS for that climate zone. Such sectoral trade-offs are only allowed using enhanced building codes or service standards.

In addition, a utility may obtain equivalent savings by allocating savings achieved by advanced building codes in a jurisdiction (or jurisdictions) within its service area to its entire service area. Such "jurisdictional trade-offs" are only allowed where the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within the utility's service area.

Finally, those utilities relying on commercial code adoption by a jurisdiction within or covering their service area, or who will impose a commercial service standard, will have to provide evidence supporting their claim that the expected total electrical savings are at least equivalent to what would have been expected had the jurisdiction implemented the Council's illustrative commercial MCS. The only exception to these requirements is for utilities or jurisdictions who adopt a codified version of the Council's MCS, as discussed in Appendices 4 and 6, respectively.

Submittals in future years may be evaluated using different standards in the event that code advancement occurs and/or the MCS are changed. For the plan coverage period indicated in Appendix 8, Bonneville will analyze residential electrical savings from an alternative plan by assuming that, in the absence of MCS, a residence would have been built to one of the following: (1) In Oregon, 1983 energy code; (b) in Washington, 1983 energy code; or (c) in either Idaho or Montana, HUD Minimum Property Standards. Electrical savings in the commercial sector will be evaluated assuming: (a) 1986 code in Oregon and Washington, (b) 1983 National Energy Code in Montana, and (c) individual jurisdiction codes in Idaho.

All thermal performance evaluations will rely on accepted engineering practices. Bonneville will be guided by the assumptions, process, and housing prototypes contained in Bonneville's Code Equivalency Determination Procedures.

B. Enforcement

A utility will have more discretion in proposing an approach which will meet the second evaluation criterion on enforcement. Bonneville is recommending that any customer contemplating submission of an alternative utility plan refer to Bonneville's Super GOOD CENTS, NWECP and Commercial MCS Program descriptions for guidance. Alternative utility plans, excluding an alternative utility commercial program, must contain a requirement of site inspection consistent with the effective date of the surcharge.

Referring to alternative utility programs, a utility will have to provide evidence adequate to assure Bonneville that the energy savings which are being claimed are attributable to the utility's program. Part of the evidence is some enforcement method to assure that the conservation savings the utility is claiming are attributable to the measure they are promoting and inspecting.

C. Indoor Air Quality and Ventilation

For residential construction all alternative plans will be examined to determine if the construction practices being promoted or required, when combined with the comparable

monitoring, information, and mitigation strategies, are likely to assure that IAQ and ventilation rates are comparable to what is achieved in homes constructed to Super GOOD CENTS standards, which are designed to at least maintain 1983 levels of IAQ and ventilation.

For the commercial sector, IAQ measures designed to at least maintain 1983 levels of IAQ and ventilation are required. The IAQ requirements contained in the Council's Plan Amendment of March 1987 were designed to maintain those levels of IAQ and ventilation. These same standards are contained in Bonneville's Energy Smart Design Program and the codified version of the Council's commercial MCS.

Section 4: Calculating a Surcharge

A. Not less than 30 days prior to a final decision on the imposition of a residential surcharge, the Administrator shall provide written notice to the customer including determination of the amount of a customer's load not covered by a Bonneville-approved MCS residential plan. The amount of the load not covered by a Bonneville-approved MCS residential plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

B. The level of the residential surcharge will be determined by dividing the customer's residential load not covered by a Bonneville-approved MCS residential plan by the customer's total retail load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

C. Not less than 30 days prior to a final decision on the imposition of a commercial surcharge, the Administrator shall provide written notice to the customer including a determination of the amount of the load not covered by a Bonneville-approved MCS commercial plan. The amount of the load not covered by a Bonneville-approved MCS commercial plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

D. The level of the commercial surcharge will be determined by dividing the customer's commercial load not covered by a Bonneville-approved MCS commercial plan by the customer's total retail load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

E. The resulting level of the residential or commercial surcharges will be applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules, using the Council's surcharge methodology, and will be applied subsequent to any other rate adjustments.

F. At no time will a customer simultaneously be assessed a surcharge for failure to comply with the requirements in the residential sector and a surcharge for failure to comply with the requirements in the commercial sector.

G. The customer and other interested parties shall be afforded an opportunity to provide comments regarding the determinations made in sections 4(A) to 4(D). Such comments may be made in writing or orally at a public meeting convened by Bonneville at the request of the customer for this purpose. This public meeting will be held between the time of the written Notice of Intent to surcharge and the final surcharge decision. Included in the Intent to Surcharge will be an initial determination of the fraction of a customer's load subject to the surcharge, based on sections 4(A) to 4(D). Following the receipt and evaluation of comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

H. Beginning with the effective date of a surcharge, the Administrator shall review the findings made in sections 4(A) to 4(D) after the customer, or a jurisdiction served by the customer, has taken an action that affects those findings. Customers may request such review by providing evidence in accordance with this section that the customer or a jurisdiction served by that customer has taken actions subsequent to the effective date of the surcharge.

Section 5: Collecting a Surcharge

A. Those customers receiving a final written notice of a load subject to a surcharge shall be billed for the surcharge beginning with the first full billing period following issuance of such notice.

B. Any power purchases or exchanges made on or after the effective date of the surcharge, but before receipt of final notice finding the load subject to a surcharge, may be retroactively billed to the effective date of the surcharge. Such retroactive billing shall collect the retroactive surcharge over a like number of billing periods as elapsed from the effective date of the surcharge to the receipt of final written notice of a surcharge.

C. The level of surcharge is applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules and/or exchanges pursuant to the residential Purchase and Sales Agreement/ Exchange Transmission Credit Agreement, using the Council's surcharge methodology, and is applied subsequent to any other rate adjustment.

1. For firm requirements customers purchasing firm power under the rate schedules subject to the surcharge, the surcharge shall be applied monthly to the billing charges for all power purchased under these rate schedules during the billing period.

2. For customers participating in the residential exchange program, the surcharge shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sale Agreement.

3. For those firm requirements customers that both purchase power from Bonneville and participate in the Residential Purchase and Sales Agreement or Exchange Transmission Credit Agreement, the surcharge shall be applied in the following manner to avoid surcharging the same load twice:

a. All power purchases under a utility's Power Sales Contract at rates subject to the surcharge shall include a surcharge, as calculated in the previous section, added to the billing charges for the billing period; and,

b. The surcharge applied to the utility's total exchange load shall be adjusted by multiplying the surcharge level by the percentage of a utility's exchange load served by a utility's own resources. The percentage of exchange load served by a utility's own resources shall be based on the difference between the utility's total retail load and firm power purchases from Bonneville divided by the total retail load and rounded to the nearest one-tenth of a percent. The adjustment surcharge level shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sales Agreement or in conformance with Exhibit E of the Exchange Transmission Credit Agreement.

D. If a customer participating in the Residential Exchange is currently in a deemer status, the surcharge shall be accumulated in the account established for this purpose as specified in the

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respective agreement and shall be included in the obligation a utility must repay prior to receiving a direct payment from Bonneville. If a customer is not in a deemer status, the surcharge shall be included in the determination of the net payment made by Bonneville.

E. The collection of the surcharge shall continue until the Administrator determines that the surcharge is no longer required under the terms of this Policy.

F. Surcharges collected on purchases for periods in which loads are subsequently found to be in compliance with this Policy shall be credited to the customer in the first full billing period following final written notice of such finding. Surcharges on loads which are subsequently found not to have been in compliance with the terms of this Policy for specified periods shall be billed to the customer in the first full billing period following final written notice of such findings.

Appendix 1: Achieving Electrical Savings by Adopting the Bonneville/ Utility MCS Support Program

A. Residential Sector

Bonneville customers opting for this path are assured that enrollment in and subsequent good faith implementation of the Super GOOD CENTS Program throughout their service areas will result in avoidance of a residential surcharge under the current surcharge policy. A customer which is considered a Super GOOD CENTS Program participant, but is only operating that program in a portion of its service area subject to the Policy, will have to take actions to assure that those portions of its service territory not covered by Super GOOD CENTS are covered by some combination of the other conservation strategies presented in these appendices. Those customers which implement the MCS measures contained in the Super GOOD CENTS Program, implement incentives equal to Bonneville's Super GOOD CENTS incentive level, and implement an advertising strategy considered by Bonneville to be consistent with the Super GOOD CENTS licensing and grant requirements will be considered a full participant in the Super GOOD CENTS Program for purposes of Surcharge Policy compliance. A Bonneville-approved advertising strategy must include, but is not limited to, use of the Super GOOD CENTS logo and participation in the region wide Super GOOD CENTS advertising campaign, in a Bonneville-approved manner. Customers which choose to adopt an advertising strategy and/or incentives which Bonneville concludes are not consistent with Super GOOD CENTS requirements for surcharge Policy compliance will be treated as filing an alternative plan. Those customers should refer to Appendix 2 for a discussion of that option.

For customers which on average over the last 3 years have had no more than (a) five site-built housing starts, and (b) 2,000 residential accounts will be considered small utilities for purposes of this policy. These utilities will have the option of enrolling in Bonneville's Super GOOD CENTS Program for small utilities, referred to as the Small Utility Program. If a utility believes it qualifies for this option, the utility is encouraged to contact the nearest Bonneville Area or District Office to obtain more information on this program option.

If a customer is currently relying on Super GOOD CENTS participation to comply with the Policy, the utility's submittal for the plan coverage period indicated in Appendix 8 can consist of a letter indicating that the utility plans to continue participation in Super GOOD CENTS for that period of time.

Otherwise, those customers wishing to enroll in Super GOOD CENTS as a way of avoiding a surcharge must indicate this to Bonneville by the plan submission date indicated in Appendix 8. In addition, the utility shall have signed a Super GOOD CENTS grant agreement by the plan implementation date indicated in Appendix 8. Bonneville will consider Super GOOD CENTS Program implementation to have occurred when the utility is engaging in activities, particularly marketing and promotion activities, which can be considered consistent with the utility's agreement.

Bonneville will consider offering a grace period if Bonneville has not completed the customer's Super GOOD CENTS grant award by the plan implementation date indicated in Appendix 8. Any such grace period will be provided in the event that Bonneville has received a plan by the plan submission date indicated in Appendix 8, and the approval delay is due solely to Bonneville internal delay.

Finally, as is indicated in the Super GOOD CENTS Program, participants are to submit the following data:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

b. Total number of new electrically heated homes constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

c. Total number of new electrically heated homes constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

To comply with the Policy, customers are to collect and provide that data to Bonneville by January 30 of the following year.

B. Commercial Sector

Bonneville customers opting for this path are assured that enrollment in, and subsequent good faith implementation of Bonneville's Smart Design Program throughout the utility's service area will result in avoidance of a commercial surcharge under the current Surcharge Policy. All customers wishing to avoid a surcharge under this path must agree to comply with the IAQ and data reporting requirements and other technical specifications of that program, applicable to the customer.

If a customer is currently relying on Smart Design participation to comply with the Policy, the utility's submittal can consist of a letter indicating that the utility plans to continue participation in Smart Design for the plan coverage period indicated in Appendix 8.

Those new customers electing to participate in Smart Design to comply with the Policy must agree by the plan submission date indicated in Appendix 8 to enroll in the commercial program and must have enrolled in the program no later than the plan implementation date indicated in Appendix 8. Bonneville will consider offering a grace period if Bonneville has not completed the customer's grant award, if applicable, by the plan implementation date indicated in Appendix 8. Any such grace period will be provided in the event that Bonneville had received a plan by the plan submisison date indicated in Appendix 8 and the approval delay is due solely to Bonneville internal delay.

Appendix 2: Achieving Electrical Savings by Adopting an Alternative Utility Program

If a utility is currently relying on an approved alternative plan to comply with the Policy, for either or both the residential and commercial sectors, the utility can submit a letter indicating its intentions to continue to rely on that approach for the plan coverage period indicated in Appendix 8.

A. Residential

An Alternative Utility Residential Program is the customer's proposed approach to meeting the standards of Bonneville's Super GOOD CENTS Program. In order for Bonneville to verify that the proposed program will provide equivalent savings, the information listed below must be submitted.

1. The conservation measures that will be promoted.

2. Analysis of the thermal performance of the conservation measures using Bonneville's input assumptions and Bonneville prototypes. These results will be compared to the Super GOOD CENTS illustrative path for that climate zone, using a WATTSUN analysis. If alternative assumptions or prototypes are used, acceptance of those alternative assumptions or prototypes will depend on the general acceptability of the assumptions and whether the prototypes represent typical dwellings certified in the utility's service area.

3. A list of activities to be undertaken to achieve the targeted penetration, such as: promotion and sales, advertising, incentives (type and level), technical assistance, certification, and any other applicable information. In addition, customers will be required to submit quarterly reports listing the activities undertaken and resources utilized in the marketing effort.

4. A plan showing how the utility will collect and provide the following data to Bonneville by January 30 of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

b. Total number of new electrically heated homes constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

c. Total number of new electrically heated homes constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

5. Information on how the utility and/ or jurisdiction plans to achieve IAQ and ventilation rates at least comparable to those achieved in Super GOOD CENTS homes, which are designed to at least maintain 1983 levels of IAQ and ventilation.

The Alternative Utility Program path is not generally recommended for utilities without prior experience in operating such programs. An established track record with a well-defined package of measures will be extremely helpful, if not essential, in obtaining Bonneville approval for Alternative Utility Programs. Nonetheless, Bonneville staff will work with customers interested in pursuing this path to help explain the data submission requirements and other complexities involved in this approach.

Because of these complexities, utilities intending to use this path for policy compliance should submit their proposals to Bonneville at the earliest possible date after the final adoption of the Surcharge Policy. An approved program shall be implemented by the plan implementation date indicated in Appendix 8, unless a grace period, as provided for in section 3 of the Policy, has been granted.

B. Commercial

An alternative Utility Commercial Program is the customer's proposed approach to meeting the standards of the Bonneville/Utility Commercial MCS Program. A proposed alternative program will be evaluated relative to the (1) level and type of activities and services to be offered, (2) method of marketing and performing the services, (3) penetration levels expected for the proposed program activities, and (4) proposed inspection method. The types of design assistance offered in Bonneville's program will be used to evaluate the type of design assistance a utility is proposing to offer in its own commercial MCS design assistance program. The types of design assistance which Bonneville's Commercial MCS Program contains are:

—Promotion of services to commercial customers;
—Screening to determine design assistance needs;
—Depending on the size of the utility and the type of commercial construction, provision of building design handbooks, computer energy modeling, clearinghouse referral, or other building design analysis; and
—Designer recognition for specified levels of energy efficiency.

To perform the necessary review, Bonneville will require the following information:

1. A list of activities and services the customer intends to offer (e.g., modeling, design assistance, design handbook, information services, and training opportunities) to achieve the targeted penetration;

2. Management and oversight consistent with Bonneville practices;

3. A proposed method to submit to Bonneville quarterly reports listing the activities undertaken and resources used in the marketing effort;

4. A plan showing how the utility will collect and provide the following data to Bonneville by January 30 of the following year;

a. Total number of new commercial buildings, major remodels, and retrofits (all fuels) constructed in the utility's service area during the past calendar year, listed by Bonneville prototype;

b. Total number of electrically heated newly constructed, major remodels, and retrofit commercial buildings in the utility's service area during the past calendar year, listed by Bonneville prototype; and

c. Total number of electrically heated newly constructed commercial buildings, major remodels, and retrofits, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, listed by Bonneville prototype.

Those customers intending to use this path for Surcharge Policy compliance shall submit their proposed plan by the plan implementation date indicated in Appendix 8, and shall have implemented the approved program no later than the plan implementation date indicated in Appendix 8, unless a grace period, provided for in section 3 of the policy has been granted.

Appendix 3: Achieving Electrical Savings by Participating in the Northwest Energy Code Program (NWECP)

This is a pre-approved path for avoidance of the surcharge if all the jurisdictions within the customer's service area, subject to the surcharge policy, are NWECP (formerly Early Adopter Program) participants. Except for the one exception noted below, if there are jurisdiction's within a customer's service area which are not NWECP participants, then the customer will be subject to a surcharge unless those jurisdictions have implemented a Bonneville-approved building code or the utility has implemented a Bonneville-approved utility program or a Bonneville-approved service standard.

Customers serving areas containing jurisdictions that have adopted advanced building codes may seek to allocate savings achieved by those jurisdictional codes to portions of their service areas are not covered by another approved option. This will be permitted only if the utility shows that the full Council MCS level of savings for both

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sectors are being attained, in aggregate, within that utility's service area. In other words, the utility must achieve at least the same level of total electrical savings as would be achieved had the Council's full commercial and residential MCS been implemented throughout the utility's service areas.

The essential feature of the NWECP is the adoption by a jurisdiction of the MCS contained in the NWECP description. Additional program features include specific activities to ensure that no degradation in IAQ results, some form of enforcement method to assure MCS construction, and some data reporting requirements.

A customer currently relying on jurisdictional participation in the NWECP as at least part of its Policy compliance approach, must submit a letter by the plan implementation date shown in Appendix 8 indicating that it wishes to continue to rely on that program participation to comply with the Policy for the plan coverage period indicated in Appendix 8.

A. Residential

1. Customers with jurisdictions within their service area that are currently participating in the NWECP, must submit a letter indicating (a) the jurisdictions that are NWECP participants, and (b) the award for each jurisdiction. In addition, customers must indicate what fraction of its residential load lies within NWECP jurisdictions. This information shall be submitted to Bonneville by the plan submission date indicated in Appendix 8.

2. Any jurisdiction considering adoption shall adopt and enforce the code by the plan implementation date indicated in Appendix 8, for the utility to avoid a surcharge, if the utility will not be operating an approved utility MCS program or residential service standard at that time.

3. Bonneville will consider offering a grace period if Bonneville has not completed the NWECP grant award process by the plan implementation date indicated in Appendix 8. Any such grace period will be considered in the event that Bonneville has received a plan by the plan submission date indicated in Appendix 8, and the approval delay is due to Bonneville internal alone.

4. Finally, the utility shall collect and provide to Bonneville the following data by Janaury 30 of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units.)

b. Total number of new electrically heated homes constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

c. Total number of new electrically heated homes constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

B. Commercial

1. To avoid surcharge, customers with jurisdictions within their services area considering enrolling in this program shall notify Bonneville by the plan implementation date indictated in Appendix 8, of the jurisdiction's intent to enroll in the program. The jurisdiction shall have officially adopted and be able to enforce the MCS by the plan implementation date indicated in Appendix 8, if the utility is not operating an approved Commercial MCS Program or commercial service standard.

2. Customers with jurisdictions within their service area that are currently participating in the NWECP, shall provide a copy of Bonneville's letter of approval or grant award number.

3. Finally, the utility shall collect and provide to Bonneville by January 30 of the following year:

a. Total number of new commercial buildings, major remodels, and retrofits (all fuels) constructed in the utility's service area during the past calendar year.

b. Total number of electically heated newly constructed, major remodels, and retrofits commercial buildings constructed in the utility's service area during the past calendar year.

c. Total number of newly constructed, major remodels, and retrofit commercial buildings in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

Those customers wishing to avoid a surcharge under this path shall agree by the plan submission date indicated in Appendix 8, to enroll in the commercial program and shall have enrolled in the program no later than the plan implementation date indicated in Appendix 8. Bonneville will consider offering a grace period if Bonneville has not completed its NWECP grant award process by the plan implementation date indicated in Appendix 8. Any such grace period will be considered in the even that Bonneville has received a plan by the plan submission date indicated in Appendix 8, and the approval delay is due to Bonneville internal delay alone.

NWECP application materials can be obtained by contacting your nearest Bonneville Area or District Office.

Appendix 4: Achieving Electrical Savings by Adopting a Codified Version of the MCS

Several codified vesions of the MCS have been developed. These are pre-approved codified versions of the Council's illustrative MCS paths. The options discussed in this appendix pertain to jurisdictions considering adopting, or who have adopted a codified version of the MCS, but are not participating in the NWECP.

Under this alternative, the customer must submit the codified vesion of the MCS which any jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods should be specified.

The statute or ordinance shall have been adopted and enforced by the plan implementation date indicated in Appendix 8, unless a grace period, as provided for in section 3 of the Policy, has been granted.

Finally, the utility shall collect and provide to Bonneville the following data by January 30 of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year (broken out by site built, modular, and HUD-code homes, and total multifamily units).

b. Total number of new electrically heated homes constructed in the utility's service area during the past calendar year (broken out by site built, modular, and HUD-code homes, and total multifamily units).

c. Total number of new electrically heated buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by site built, modular, and HUD-code homes, and total multifamily units).

Customers who are operating a utility program and/or utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

B. Commercial

Under this alternative, the customer must submit the codified version of the MCS which a jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods must be specified. In addition, the customer must indicate what steps the jurisdiction will take to address IAQ and ventilation requirements of Bonneville's NWECP.

By the plan submission date indicated in Appendix 8, the customer must submit the above information to Bonneville. The statute or ordinance must be operative no later than the plan implementation date indicated in Appendix 8, unless a grace period, as provided for in Section 3 of the policy, has been granted.

Finally, the utility shall collect and provide the following data to Bonneville by January 30 of the following year:

1. Total number of newly constructed, major remodels, and retrofitted (all fuels) commercial buildings in the utility's service area during the past calendar year.

2. Total number of electically heated newly constructed, remodeled, and retrofitted commecial building in the utility's service area during the past calendar year.

3. Total number of electrically heated new, remodeled, and retrofitted commercial buildings in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

Appendix 5: Achieving Electrical Savings by Adopting Alternative or Equivalent Building Codes

An alternative code is designed to achieve total electical savings which, when both sector's savings are combined, are at least as large as the electical savings expected had the Council's residential and commercial MCS been implemented. A jurisdiction proposing to adopt an alternative code, in which one sectors' total electrical savings is expected to exceed the target electrical savings level for that sector, can use those excess electrical savings to offset electical savings below the target in the other sector. The alternative code path may be pursued by a jurisdiction only when the sum of each sectors' savings at least equals the aggregate electrical savings target, which itself is based on the sum of the level of savings for the two sectors calculated using the Council's MCS. Section 3 of this policy discusses how the utility should approach the electrical savings equivalency analysis.

As compared to alternative codes, equivalent codes examine each sector individually. They differ from the pre-approved codified versions mentioned earlier, but provide equivalent savings. An equivalent code must achieve at least the same level of total savings, in each sector separately, as would have been achieved by implementing Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's commercial MCS.

A customer must submit a copy of the alternative or equivalent code which a jurisdiction has proposed. In addition, the customer must indicate how the jurisdiction plans on maintaining IAQ and ventilation at 1983 levels. Bonneville staff will attempt to assist customers and jurisdictions wishing to formulate improved building codes.

If an alternative code path is pursued, customers are encouraged to submit their alternative codes at the earlies possible date, but no later than the plan submission date indicated in Appendix 8. Both codes would have to be implemented and enforced by the plan implementation date indicated in Appendix 8.

A customer currently relying on jurisdictional participation in the NWECP as at least part of its Policy compliance approach must submit a letter indicating that it intends to continue to rely on that program participation to comply with the Policy for the plan coverage period indicated in Appendix 8.

For either the equivalent or alternative code approaches, the customer must submit its residential and commercial plans by the plan submission date indicated in Appendix 8. The codes must be implemented and enforced by the plan implementation date indicated in Appendix 8, unless a grace period, as provided for in Section 3 of the Policy, has been granted. Finally, the utility shall collect and provide to Bonneville by January 30 of the following year:

A. Total new homes (broken out by site built, modular, HUD-code homes, and total multifamily units) and commercial buildings, (new, major remodels, and retrofits) (all fuels) constructed in the utility's service area during the past calendar year.

B. Total new electrically heated homes (broekn out by single-family modular, HUD-code homes, site built, and multifamily) and commercial buildings (new construction, retrofits, and remodels) in the utility's service area during the past calendar year.

C. Total new electrically heated homes (broken out by single-family modular, HUD-code homes, site built, and total multifamily) and commercial buildings (broken out by new construction, major remodels, and retrofits by Bonneville prototype by square footage) in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan.

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

For a more complete discussion of the date required to evaluate an alternative or equivalent code, refer to the latest version of Bonneville's MCS Code Equivalency Determination Procedures A copy of these procedures can be obtained by contacting your nearest Bonneville Area or District Office.

Appendix 6: Achieving Electrical Savings by Adopting a Codified Version of the MCS as a Utility Service Standard [1]

If a utility is currently relying on a utility service standard as at least part of its Policy compliance approach, all the utility need do is submit a letter indicating that it wishes to continue to rely on that approach to comply with the Policy for the plan coverage period indicated in Appendix 8.

A. Residential

This path essentially involves adoption of a legally enforceable electric utility hook-up standard for new electrically heated residential buildings. The customer would simply decline to serve new electrically heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted. The adoption of a utility service standard may qualify the utility for participation in Bonneville's NWECP.

Customers wishing to avoid a surcharge with this approach shall submit a residential plan by the plan submission date indicated in Appendix 8, and the residential service standard

[1] Many customers have questioned whether they have legal authority, under State laws to impose such a service requirement. Bonneville has examined this question under the State laws of Oregon, Washington, Idaho, and Montana and has reached the tentative conclusion that no clear legal impediments exist in these States to conservation-oriented utility service requirements. While Bonneville does not offer legal advice to customers, particularly on questions of State law, Bonneville legal staff are available to discuss these preliminary conclusions with customers and their legal counsel. Any utility considering such a path should obtain independent legal advice on this question

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shall be adopted and enforced by the plan implementation date indicated in Appendix 8. A plan must contain: (1) A copy of the standard to be imposed, (2) how the customer plans on monitoring compliance with the standard, and (3) what IAQ measures and activities will be pursued to at least achieve IAQ and ventilation levels of Super GOOD CENTS construction, which is designed to at least maintain 1983 levels of IAQ and ventilation.

No surcharge will be imposed on any customer relying on such a service requirement which is subsequently enjoined or invalidated by a court. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

1. Total new homes (all fuels) constructed in the utility's service area during the past calendar year (broken out by single-family modular, HUD-code homes, site built, and multifamily).

2. Total new electrically heated homes constructed in the utility's service area during the past calendar year (broken out by single-family modular HUD-code homes, site built, and multifamily).

3. Total new electrically heated homes constructed in the utility's service area during the past calendar year to the standard(s) described in the customer's plan (broken out by single-family modular, HUD-code homes, site built, and multifamily).

B. Commercial

This path essentially involves adoption of a legally enforceable electric utility hook-up standard for new electrically heated commercial buildings at least equal to the Council's commercial MCS. The customer would simply decline to service new electrically heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted.

Customers wishing to avoid a surcharge with this approach shall submit a Commercial plan by the plan submission date indicated in Appendix 8, and the commercial service standard shall be adopted and enforced by the plan implementation date indicated in Appendix 8, unless a grace period, as provided for in section 3 of the policy, has been granted. A plan must: (1) Contain a copy of the standard to be imposed, and (2) indicate how the customer plans on monitoring compliance with the standard.

No surcharge will be imposed on any customer relying on such a service requirement which is subsequently enjoined or invalidated by a court. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

1. Total new commercial buildings, major remodels, and retrofits (all fuels) constructed in the utility's service area during the past calendar year.

2. Total electrically heated new, remodeled, and retrofitted commercial buildings constructed in the utility's service area during the past calendar year (broken out by Bonneville prototype).

3. Total electrically heated new, remodeled, and retrofitted commercial buildings constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by Bonneville prototype).

Appendix 7: Achieving Electrical Savings by Adopting an Alternative or Equivalent Utility Service Standard

This path is actually two alternative paths. If an equivalent utility service standard approach is pursued, a customer may choose to adopt a utility service standard which is not one of the codified versions, but which is expected to achieve at least the same level of total electrical savings in each sector separately as would have been achieved by adopting Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's MCS for the commercial sector. Alternatively, the customer may choose to adopt utility service standards for the residential and commercial sectors which when taken together, achieves at least the same level of total electrical savings as would have been achieved had the customer adopted the Council's commercial and residential MCS. This latter option is referred to as an alternative utility service standard.

If a utility is currently relying on a utility service standard as at least part of its Policy compliance approach, all the utility need do is submit a letter indicating that it wishes to continue to rely on that approach to comply with the Policy for the plan coverage period indicated in Appendix 8.

If an alternative or equivalent utility service standard approach is pursued, a customer shall submit to Bonneville (1) a copy of the proposed service standard(s); (2) a description of the enforcement method(s); (3) a description of the methods used to at least achieve IAQ and ventilation levels of Super GOOD CENTS construction, which is designed to at least maintain 1983 levels of IAQ and ventilation; and (4) a copy of the analysis used to verify that the proposed service standard(s) will achieve the required total electrical savings. This material shall be submitted by the plan submission date indicated in Appendix 8, and both service standards shall be adopted and enforced by the plan implementation date indicated in Appendix 8.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

A. Total new homes (broken out by site built, modular, HUD-code homes, and total multifamily units) and commercial buildings (all fuels broken out by new construction, major remodels, and retrofits) in the utility's service area during the past calendar year.

B. Total new electrically heated homes (for single-family, broken out by site built, modular, HUD-code homes, and total multifamily units) and commercial buildings (broken out by new construction, remodel, and retrofits) in the utility's service areas during the past calendar year.

C. Total new electrically heated homes (for single-family, broken out by site built, modular, HUD-code homes, and total multifamily units) and commercial buildings (new construction, remodels, and retrofits) constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan by Bonneville's prototype).

For a detailed description of the data required to evaluate an alternative or equivalent code, and the evaluation criteria, the customer and/or jurisdiction is advised to consult the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your local Bonneville Area or District Office.

Appendix 8: Submittal and Implementation Schedule for MCS Surcharge Policy

Plan Submission Date: December 16, 1988

Plan Implementation Date: January 16, 1989

Plan Coverage Period: Calendar Year 1989

Issued in Portland, Oregon, on November 9, 1988.

Jack Robertson,

Deputy Administrator.

[FR Doc. 88-26880 Filed 11-18-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-47-NG]

Dome Petroleum Corp.; Order Granting Authorization To Import Natural Gas

AGENCY: Economic RegulatoryAdministration, DOE.

ACTION: Notice of order granting authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Dome Petroleum Corporation (Dome Petroleum) authorization to import Canadian natural gas. The order issued in ERA Docket No. 88-47-NG authorizes Dome Petroleum to import up to 166.1 Bcf of natural gas for sale, under a long-term gas purchase contract, to Northern States over a term beginning November 1, 1988, through October 31, 2001.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 14, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-26882 Filed 11-18-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10199-000]

City of Klamath Falls, OR; Intention to Prepare an Environmental Impact Statement, and Notice of Public Scoping Meetings

November 14, 1988.

The Federal Energy Regulatory Commission (FERC) has received an application for license for the construction and operation of the proposed Salt Caves Project, FERC No. 10199-000, on the Klamath River in Klamath County, Oregon. The FERC staff has determined that licensing the proposed project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the proposed hydroelectric project in accordance with the National Environmental Policy Act. The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the proposed project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued in July 1989 and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

On Tuesday, December 20, 1988, the staff will conduct a public scoping meeting in Klamath Falls, from 7 p.m. to 10 p.m., at the Klamath County Fairgrounds, Main Exhibit Building, 3531 South 6th Street. The next day, Wednesday, December 21, 1988, the staff will conduct a scoping session oriented toward agencies and regional interests in Portland, from 10 a.m. to 2 p.m., at the Red Lion Inn Lloyd Center, 1000 NE. Multnomah Street.

All interested individuals, organizations, tribes, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the upcoming EIS.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS, (2) encourage statements from the public and experts on the issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views; and (3) solicit from the meeting participants all available information, especially quantified data, on the resources at issue.

Procedures

The meetings will be recorded by a stenographer and thereby become a part of the formal record of the Commission proceeding on the proposed Salt Caves Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Organizations, agencies and individuals with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until January 20, 1989. All correspondence should clearly show the following caption on the first page: Salt Caves Project, Oregon, Docket No. P-10199-000.

A preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties.

All those that are formally recognized by the Commission as intervenors in the Salt Caves Project proceeding are asked to refrain from engaging the staff in discussion of the merits of the project outside of the announced meetings.

For further information please contact Frank Karwoski at (202) 376-9284.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26815 Filed 11-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-19-000]

Colorado Interstate Gas Co.; Petition for Tariff Waiver

November 16, 1988.

Take Notice that on November 7, 1988, Colorado Interstate Gas Company ("CIG"), 2 North Nevada Avenue, Colorado Springs, Colorado 80903 ("Applicant"), filed in Docket No. RP89-19-000 a Petition for Waiver of Tariff Provisions pursuant to Rule 207 of the Federal Energy Regulatory Commission's ("Commission") Regulations.

CIG seeks waiver of § 24.3 of the General Terms and Conditions of CIG's F.E.R.C. Gas Tariff, Original Volume No. 1. As set forth more fully in the Petition, grant of the petition will allow CIG to waive the requirement that filings to change the Gas Research Institute ("GRI") Adjustment Charge be made at least 45 days prior to the proposed effective date. CIG states this waiver is necessary due to the timing of the Commission's action in Docket No. RP88-182-000 where the Commission has stated that it intends to establish the level of GRI funding on or before November 30, 1988.

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Copies of this filing have been served on all of CIG's jurisdictional sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before Nov. 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26810 Filed 11-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-4-000, TM89-2-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

November 16, 1988.

Take notice that on November 8, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Thirteenth Substitute Twenty-First Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1 containing changes in rates for its wholesale jurisdictional services for effectiveness on January 1, 1989. In the same filing, Granite State tendered Sixteenth Revised Sheet No. 8 and Seventeenth Revised Sheet No. 8 containing changes in the rates for storage service under its Rate Schedule GSS in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on October 1, 1988 and January 1, 1989, respectively.

According to Granite State, the rate changes on Thirteenth Substitute Twenty-First Revised Sheet No. 7 reflect revised purchase gas costs and its first annual purchased gas adjustment filing under the regulations prescribed in Order Nos. 483 and 483-A. Granite State further states that data in the filing contain an assessment of past performance, required by the regulations. It is stated that Granite State's actual purchase costs exceeded projected gas costs for one month, June, 1988, by 103 percent because of unanticipated changes in customer requirements for storage deliveries. Also, Granite State states that the instant filing reflects the purchase of Canadian gas for the first time on a firm basis from Shell Canada Limited through the facilities authorized in Docket No. CP87-39-000 and a purchase contract approved by the Economic Regulatory Administration in Opinion and Order No. 187.

According to Granite State, the revised rates on Thirteenth Substitute Twenty-First Revised Sheet No. 7 are applicable to wholesale sales to its two jurisdictional customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities).

Granite State further states that the revised rates for its Rate Schedule GSS storage service track changes in CNG Transmission Corporation's Rate Schedule GSS that Granite State is authorized to track on a current basis. It is said that the Rate Schedule GSS storage service is rendered for Bay State.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests in Docket No. TA89-1-4-000 should be filed on or before December 6, 1988, and all such motions or protests in Docket No. TM89-2-4-000 should be filed on or before November 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26811 Filed 11-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-225-001]

Inter-City Minnesota Pipelines Ltd., Inc.; Compliance Filing

November 15, 1988.

Take notice that on November 4, 1988, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M[2 1R1, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to comply with the order issued in this docket on August 26, 1988 and October 5, 1988:

Substitute Thirty-First Revised Sheet No. 4
First Substitute Thirty-First Revised Sheet No. 4
Second Revised Sheet No. 55
Fourth Revised Sheet No. 56
Substitute Second Revised Sheet No. 56-A
Substitute Original Sheet No. 56-B
Substitute Third Revised Sheet Nos. 57 and 58
Substitute Original Revised Sheet No. 58-A
Substitute Fourth Revised Sheet No. 59
Substitute Fifth Revised Sheet No. 60
Substitute Sixth Revised Sheet No. 61
Substitute Second Revised Sheet Nos. 61-A and 61-B
Substitute Third Revised Sheet No. 61-C
Substitute Second Revised Sheet No. 61-D
Substitute Third Revised Sheet No. 62
Substitute Fourth Revised Sheet No. 63
Substitute Second Revised Sheet No. 64
Original Sheet Nos. 64-A, 64-B, 64-C, 64-D
Substitute First Revised Sheet No. 65

Those orders required Inter-City to file revised tariff sheets to comply with Order Nos. 483 and 483-A.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26812 Filed 11-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-20-000]

Jupiter Energy Corp.; Petition for Waiver

November 14, 1988.

Take notice that on November 7, 1988, Jupiter Energy Corporation (Jupiter) filed a petition for waiver under Order Nos. 493 and 493-A requiring electronic media when submitting FERC filing and forms.

Jupiter states that it does not have the computer capability to file the information required on electronic media and that acquiring this capability would cause Jupiter severe economic hardship.

Jupiter states that it operates an offshore gas gathering system which consists of four pipelines comprising a total of 20.9 miles. Jupiter states that a total of four operating employees monitor and maintain the system. Due to the limited operations, Jupiter's accounting records are maintained manually and all FERC filings are prepared manually.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before November 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26813 Filed 11-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-52-011]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

November 16, 1988.

Take notice that Kentucky West Virginia Gas Company ("Kentucky West") on November 7, 1988, tendered for filing with the Federal Energy Regulatory Commission ("Commission") First Revised Sheets Nos. 5 and 6 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective March 2, 1988.

Kentucky West states that its proposed tariff changes are in compliance with the Commission's order in these proceedings dated June 22, 1988, requiring that Kentucky West eliminate the minimum commodity bill from its Rate Schedule PLS-1, effective March 2, 1988.

Kentucky West further states that by its filing, it does not waive any rights to collect amounts, nor the right to collect interest or carrying charges applicable thereto, to which it may become entitled after a final Commission decision on all issues in these proceedings or as a result of a final decision in Kentucky West Virginia Gas Company v. FERC, Nos. 87-1837 and/or 88-1769 (D.C. Cir.), or as a result of any other judicial and/or Commission decisions.

Kentucky West goes on to state in its filing that it is placing its Rate Schedule PLS-1 customers on notice that it intends to pursue its right to the effectiveness of the minimum commodity bill in its Rate Schedule PLS-1 from March 2, 1988, forward, and that if, as a result of final Commission or judicial action in any proceeding, it is determined that Kentucky West should have been allowed to retain the minimum commodity bill, or any modification thereof, in its Rate Schedule PLS-1, for any period from March 2, 1988, forward, Kentucky West will demand recovery of any amounts to which it is entitled.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.322 and 385.214). All such motions or protests should be filed on or before November 23, 1988. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26814 Filed 11-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-21-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

November 16, 1988.

Take notice that on November 9, 1988, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute Fourth Revised Sheet No. 69
Fourth Revised Sheet No. 71, page 1 of 2
Fourth Revised Sheet No. 71, page 2 of 2
First Revised Sheet No. 71-A, page 1 of 2
First Revised Sheet No. 71-A, page 2 of 2
First Revised Sheet No. 71-B, page 1 of 2
First Revised Sheet No. 71-B, page 2 of 2
First Revised Sheet No. 71-C
Fourth Revised Sheet No. 72, page 1 of 2
Fourth Revised Sheet No. 72, page 2 of 2
First Revised Sheet No. 72-A, page 1 of 3
First Revised Sheet No. 72-A, page 2 of 3
First Revised Sheet No. 72-A, page 3 of 3
First Revised Sheet No. 72-B, page 1 of 2
First Revised Sheet No. 72-B, page 2 of 2
First Revised Sheet No. 72-C
First Revised Sheet No. 72-D

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of Section 20 of the General Terms and Conditions to National's FERC Gas Tariff, First Revised Volume No. 1. National further states that its pipeline-suppliers which have received approval to flow-through take-or-pay charges to National are: Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, CNG Transmission Corporation, Columbia Gas Transmission Corporation and Transcontinental Gas Pipe Line Corporation.

Copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

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Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26816 Filed 11-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-41-000]

Paiute Pipeline Co.; Technical Conference

November 15, 1988.

Pursuant to the Commission letter order which issued on October 31, 1988, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Thursday, December 8, 1988 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26819 Filed 11-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-257-001]

Sea Robin Pipeline Co.; Compliance Tariff Filing

November 16, 1988.

Take notice that on November 10, 1988 Sea Robin Pipeline Company (Sea Robin) in accordance with the Commission's Order of October 31, 1988 in Docket No. RP88-257 submitted the following revised tariff sheets:

Substitute First Revised Sheet No. 29
Substitute First Revised Sheet No. 30
Substitute First Revised Sheet No. 31
Substitute First Revised Sheet No. 40
Substitute First Revised Sheet No. 42
Substitute Second Revised Sheet No. 51
Substitute Second Revised Sheet No. 52
Substitute First Revised Sheet No. 53
Substitute First Revised Sheet No. 54
Substitute First Revised Sheet No. 55
Substitute First Revised Sheet No. 57
Substitute First Revised Sheet No. 58
Substitute First Revised Sheet No. 59
Substitute First Revised Sheet No. 62
Substitute Second Revised Sheet No. 63
Substitute Second Revised Sheet No. 65
Substitute First Revised Sheet No. 67
Substitute First Revised Sheet No. 70
Substitute First Revised Sheet No. 71
Substitute Second Revised Sheet No. 72
Substitute Second Revised Sheet No. 73
Substitute First Revised Sheet No. 74
Substitute Second Revised Sheet No. 75
Substitute First Revised Sheet No. 78
Substitute First Revised Sheet No. 81
Substitute Second Revised Sheet No. 84
Substitute First Revised Sheet No. 87
Substitute First Revised Sheet No. 94
Substitute First Revised Sheet No. 95
Substitute First Revised Sheet No. 96
Substitute First Revised Sheet No. 104
Substitute First Revised Sheet No. 106

Sea Robin states that this filing is made pursuant to Ordering Paragraph B of the Commission's Oct. 31, 1988 Order in Docket No. RP88-257.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Regulations. All such motions to intervene or protest should be filed on or before November 23, 1988.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26817 Filed 11-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-267-002]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 16, 1988.

Take notice that on November 7, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheet to its FERC Gas Tariff to be effective October 1, 1988:

Substitute Original Sheet No. 4C

South Georgia states that the proposed tariff sheet is being submitted in compliance with the Commission's order of October 28, 1988 in Docket Nos. RP88-267-000 and RP88-267-001, South Georgia's proceeding to flow through take-or-pay buy-out and buy-down charges allocated to it by Southern Natural Gas Company. The aforesaid tariff sheet reflects revised charges based upon the inclusion of interruptible customers in the cost allocation calculations.

South Georgia states that copies of the filing were mailed to all of its jurisdictional purchasers and interested state commissions, as well as the parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 285.211 or 385.214). All such motions to protest should be filed on or before November 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26818 Filed 11-18-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings And Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $3,764.93 plus accrued interest obtained by the DOE under the terms of a Remedial Order issued to Tom O'Neal, owner of O'Neal's Service Center (O'Neal). The funds will be available to customers who purchased motor gasoline from O'Neal during the period August 1, 1979 through July 24, 1980.

DATE AND ADDRESS: Comments must be filed in duplicate on or before December 21, 1988, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number KEF-0117.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute funds obtained from O'Neal. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow account funded by O'Neal pursuant to the Remedial Order. The DOE has tentatively established procedures under which purchasers of O'Neal's motor gasoline during the audit period (August 1, 1979 through July 24, 1980) may file claims for refunds.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 14, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 14, 1988.

Implementation of Special Refund Procedures

Name of Firm: O'Neal's Service Center.

Date of Filing: September 19, 1988.

Case Number: KEF-0117.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On September 19, 1988, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Remedial Order issued by the DOE to Tom O'Neal, the owner of O'Neal's Service Center (O'Neal).

I. Background

O'Neal was a "retailer" of motor gasoline as that term was defined in 10 CFR 212.31 and operated a retail outlet in Corona, California during the period of price controls. An ERA audit of O'Neal's records revealed that between August 1, 1979 and July 24, 1980 (the audit period), O'Neal committed possible price violations with respect to its retail sales of motor gasoline in violation of 10 CFR 212.93. On February 24, 1981, the ERA issued a Proposed Remedial Order (PRO) to Tom O'Neal d/b/a O'Neal's Service Center alleging that the firm had overcharged its customers and that Mr. O'Neal was personally liable for the violations and should remit the amount of $7,310.55 plus interest.

Mr. O'Neal filed a Statement of Objections to the PRO on August 23, 1981. On September 29, 1982, the DOE denied the Statement of Objections and issued the PRO as a final Remedial Order (RO). *Tom O'Neal,* 10 DOE ¶ 83,011 (1982). The RO was subsequently affirmed by the Federal Energy Regulatory Commission on November 4, 1983. *Tom O'Neal,* 25 FERC ¶ 51,215 (1983), *aff'g* 23 FERC ¶ 62,308 (1983) (Proposed Decision). In July 1987, the ERA agreed to accept $3,764.93 in full settlement of O'Neal's refund obligation under the RO.[1] *See* July 30, 1987 letter from Richard L. Farman of the ERA to Randolf W. Katz, Counsel for O'Neal. On Agugust 15, 1988, the final payment was received by the DOE and placed in an escrow account maintained by the U.S. Treasury. This Decision concerns the distribution of the funds in the O'Neal escrow account, plus accrued interest.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement,* 9 DOE ¶ 82,553 (1982), and *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981),

We have considered the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the O'Neal Remedial Order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Proposed Refund Procedures

A. Showing of Injury

We propose that, in order to be eligible for a refund, an applicant must establish that it was injured as a result of O'Neal's overcharges. *See* 10 CFR 205.280. As previously stated, O'Neal sold motor gasoline to retail customers. Therefore, only end-users, or ultimate consumers, of O'Neal motor gasoline who were injured by the overcharges will be eligible for refunds in this proceeding. *See, e.g., Clean Machine, Inc.,* 17 DOE ¶ 85,251 (1988). In order to demonstrate injury, end-user applicants will be required to document the volume of motor gasoline that they purchased from O'Neal during the August 1, 1979 through July 24, 1980 audit period. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the regulatory period. They were therefore not required to keep records which would show whether they passed through cost increases in sales of other products or services. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 at 88,209 (1984), and cases cited therein. Consequently, end-users of O'Neal's motor gasoline will not be required to make a detailed demonstration of injury in order to establish eligibility for a refund. They will only be required to document their purchase volumes from O'Neal.

B. Calculation of Refund Amounts

In order to determine the potential refund amounts for applicants in this proceeding, we propose to adopt a volumetric refund presumption. The volumetric refund presumption treats

[1] This amount, representing one-half of the principal overcharge amount of $7,319.55 plus a three percent penalty, was orginally offered to Mr. O'Neal in 1982. In the July 30, 1987 letter, the ERA acknowleged that Mr. O'Neal had been willing to accept the earlier settlement offer in 1982 if certain matters had been clarified.

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O'Neal's overcharges as if they were spread equally over all gallons of motor gasoline that O'Neal sold during the audit period. In the present case, we propose to use this methodology for reasons of administrative efficiency since, during the 12-month audit period, there were a large number of separate pricing periods with differenct per gallon overcharge amounts for each grade of motor gasoline.

Under the volumetric method, a claimant that adequately demonstrates its purchase volumes will be eligible to receive a refund equal to the number of gallons of motor gasoline that it purchased from O'Neal during the audit period times the volumetric factor.[2] The volumetric factor in this case equals $0.00678 per gallon.[3] In addition, a successful claimant will receive a proportionate share of the interest that has accrued in the O'Neal escrow account.

As in previous cases, we propose to establish a minimum amount of $15 for refund claims.[4] We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶82,541 at 85.225 (1982). *See also*, 10 CFR 205.286(b).

Applications for Refund should not be filed at this time. Before implementing the procedures outlined in this Proposed Decision, we intend to publicize it in order to solicit comments from any interested parties. All comments must be filed with the Office of Hearings and Appeals within 30 days of the publication of this Proposed Decision in the **Federal Register**.

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). 15 U.S.C.A. §§ 4501–4507. The PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the O'Neal escrow account that the OHA determines will not be needed to effect direct restitution to injured O'Neal customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Tom O'Neal (O'Neal Service Center) pursuant to the Remedial Order issued on September 29, 1982 will be distributed in accordance with the foregoing decision.

[FR Doc. 88–26884 Filed 11–18–88; 8:45 am]

BILLING CODE 6450–01–M

[2] The volumetric refund presumption is rebuttable. Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, a claimant may submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶85,015 (1984).

[3] We computed this figure by dividing the $3,764.93 settlement amount by the 555,012 gallons of motor gasoline sold by O'Neal during the audit period.

[4] Under the volumetric method we have proposed in this proceeding, we calculate that an applicant must have purchased at least 2,211 gallons of motor gasoline from O'Neal during the twelve-month audit period in order to qualify for the minimum $15 refund. In contrast, according to Energy Information Administration data, the average motorist consumed approximately 590 gallons of motor gasoline per car during the audit period. *Consumption Patterns of Household Vehicles, June 1979 to December 1980*, DOE/EIA–0319 at 12 and 13. Accordingly, we anticipate that although many individual motorists who purchased motor gasoline from O'Neal may have legitimate claims, most of those claims will fall below the $15 threshold. However, it is possible that there are governmental entities or businesses with multiple vehicles that purchased motor gasoline from O'Neal on a regular basis and in sufficient quantities to qualify for a refund

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3479–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Motor Vehicle Exclusion Requests (EP ICR #0012). This is a request for renewal of an existing collection.

Abstract: Motor vehicle manufacturers that request the Environmental Protection Agency to determine whether a particular type of vehicle is excluded from coverage under the Clean Air Act must submit specifications of the vehicle, including its size, use, and top speed.

Burden Statement: The estimated public reporting burden for this collection of information is 2 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Vehicle Manufacturers.

Estimated No. of Respondents: 10.

Estimated Total Annaul Burden on Respondents: 40 hours.

Frquency of Collection: On Occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (FM–223), 401 M Street SW., Washington, DC 20450;
and
Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084).

Dated: November 7, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88–26792 Filed 11–18–88; 8:45 am]

BILLING CODE 6570–50–M

[FRL–3479–5]

Chesapeake Bay Program; 1987 Chesapeake Bay Agreement; Proposal for Review

The 1987 Chesapeake Bay Agreement signed by the Governors of Maryland, Virginia and Pennsylvania, the Mayor of the District of Columbia, the Chairman of the Chesapeake Bay Commission and the Administrator of the U.S. Environmental Protection Agency for the Federal Government, requires signatories to adopt Development Policies and Guidelines by January 1989. A draft document to fulfill this commitment will be available for public review in certain libraries throughout the Bay Basin for a 30-day period starting November 21, 1988, and ending December 20, 1988. For more information about the locations where the document may be reviewed, call the Chesapeake Regional Information Service toll-free by dialing 800/662–CRIS. In the Washington metropolitan area, you may call 881–8878.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 88–26793 Filed 11–18–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00270; FRL–3479–4]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting of Working Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a two-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Monday, December 12 and Tuesday, December 13, 1988, beginning at 8:30 a.m. each day and ending by 3:30 p.m. on Tuesday December 13.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 486–1234.

FOR FURTHER INFORMATION CONTACT: By mail: John Tice, Office of Pesticide Programs (TS–787C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 712C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–7410.

SUPPLEMENTARY INFORMATION: This will be the thirty-second meeting of the full Group. The tentative agenda thus far includes the following topics:

1. Action items from the July 1988 meeting of SFIREG.
2. Regional reports.
3. Other topics which may arise.

Dated: November 14, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88–26794 Filed 11–18–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3479–7]

Environmental Effects, Transport and Fate Committee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that a two-day meeting of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board (SAB) will be held on December 1 and 2, 1988. The meeting will begin at 9:00 a.m. and will be held in the Administrator's Conference Room, Room 1103, at the Environmental Protection Agency, Waterside Mall, West Tower, 401 M Street SW., Washington, DC. The meeting will adjourn no later than 5:00 p.m. on December 2.

Several objectives will be accomplished at this meeting. First, the Environmental Effects, Transport and Fate Committee (EET&FC) will be brought up to date on the activities of the various Subcommittees it oversees, including the Water Quality Advisories Subcommittee, the Long-Range Ecological Research Needs Subcommittee, and the Sediment Criteria Subcommittee. The Committee will also be informed of activities ongoing under the Research Strategies Committee, and the Global Climate Change Subcommittees.

In addition, three briefings will be provided from Agency staff. First, Tudor Davies, Director of the Office of Marine and Estuarine Protection, will discuss the current status of Ocean Dumping Regulations. Second, Don Nantes, Office of General Counsel, will brief the Committee on ethics regulations. Third, Marion Mlay, Director of the Office of Ground Water Protection, will discuss the current priorities of her Office, as well as future plans, and opportunities for SAB interaction.

The final objective for the meeting is to review Guidelines for Exposure-Related Measurements promulgated by the Agency's Office of Research and Development. These guidelines provide the general principles of exposure assessment along with a logical process to follow in assessing exposure. They include guidance on the measurement of pollutant concentrations in various environmental media, and the use of exposure-related measurements. Notice of availability for the document to be reviewed, Guidelines for Exposure-Related Measurements, will appear shortly in the **Federal Register**. Mr. John Segna, EPA, ORD/Office of Health and Environmental Assessment, can also be contacted at (202) 475–8909 concerning document availability.

The meeting will be open to the public. Any member of the public who wishes to attend, present information, or receive further details should contact Ms. Janis C. Kurtz, Executive Secretary or Mrs. Lutithia Barbee, Staff Secretary (A–101 F) Science Advisory Board, U.S. EPA, 401 M Street SW., Washington, DC, Telephone (202) 382–2552 or FTS–8–382–2552. Written comments will be accepted and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than November 28, 1988, to be assured of space on the agenda.

Date: November 9, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88–26795 Filed 11–18–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–751]

Mutual Savings and Loan Association of Charlotte, NC; Final Action Approval of Conversion Application

Date: November 8, 1988.

Notice is hereby given that on November 3, 1988, the Office of General Counsel and the Office of Regulatory Activities, or their respective designees, acting pursuant to delegated authority, approved the application of Mutual Savings and Loan Association of Charlotte, North Carolina, Charlotte, North Carolina ("Mutual"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and the acquisition of Mutual by Catawba SavShares, Inc., New Bern, North Carolina.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–26770 Filed 11–18–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200172.

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Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Authority), Sea-Land Service, Inc. (Sea-Land).

Synopsis: The agreement provides that the Authority will pay Sea-Land $25.00 per import container with cargo and $50.00 per export container with cargo loaded or unloaded from Sea-Land's vessels at a marine terminal in the Port of New York/New Jersey. The payment applies only to containers for which Sea-Land is required to pay a railroad for transportation by rail to or from points more than 260 miles from a terminal within the Port and have a prior or subsequent move by water through a marine terminal in the Port.

Agreement No.: 224–200173.

Title: Port Authority of New York/New Jersey Container Incentive Agreement.

Parties: Port Authority of New York/New Jersey (Port), Bermuda Container Line, Ltd. (Carrier).

Synopsis: The agreement establishes a container incentive program whereby the Port, pursuant to the terms and conditions of the agreement, will pay to the Carrier twenty-five dollars per import container with cargo and fifty dollars per export container with cargo loaded or unloaded from Carrier's vessels at a marine terminal in the Port. The payment applies only to containers for which Carrier is required to pay a railroad for transportation by rail to or from points more than 260 miles from a terminal within the Port and have a prior or subsequent move by water through a marine terminal in the Port.

Agreement No.: 224–200174.

Title: Port Authority of New York/New Jersey Container Incentive Agreement.

Parties: Port Authority of New York/New Jersey (Port), Maersk Incorporated (Carrier).

Synopsis: The agreement establishes a container incentive program whereby the Port, pursuant to the terms and conditions of the agreement, will pay to the Carrier twenty-five dollars per import container with cargo and fifty dollars per export container with cargo loaded or unloaded from Carrier's vessels at a marine terminal in the Port. The payment applies only to containers for which Carrier is required to pay a railroad for transportation by rail to or from points more than 260 miles from a terminal within the Port and have a prior or subsequent move by water through a marine terminal in the Port.

Agreement No.: 224–200175.

Title: City of Richmond, California Terminal Agreement.

Parties: The City of Richmond and Richmond Redevelopment Agency, California Stevedore Ballast Co.

Synopsis: The agreement provides for the ten year lease of Terminal No. 3 in the City of Richmond, California for a marine terminal operation.

Agreement No.: 224–200171.

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Authority), Gdynia America Line, Inc. (Gdynia).

Synopsis: The agreement provides that the Authority will pay Gdynia $25.00 per import container with cargo and $50.00 per import container with cargo loaded or unloaded from Gdynia's vessels at a marine terminal in the Port of New York/New Jersey. The payment applies only to containers for which Gdynia is required to pay a railroad for transportation by rail to or from points more than 260 miles from a marine terminal within the Port and have a prior or subsequent move by water through a marine terminal in the Port.

By Order of the Federal Maritime Commission.

Dated: November 15, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–26769 Filed 11–18–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207–011157–002

Title: Safbank Joint Venture Agreement

Parties:

The Bank Line Limited
The South African Marine Corporation Limited
Safbank Line Limited
Bank Line East Africa Limited

Synopsis: The proposed modification would permit Safbank Line Limited to assume any liability of Bank Line or Safmarine to multi-employer pension plans for the trade. The parties have requested a shortened period of review.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

Dated: November 16, 1988.

[FR Doc. 88–26895 Filed 11–18–88; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance) to Epirotiki Lines, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Epirotiki Lines, Inc./Hellenic Co. Overseas Cruise Vessels, S.A., 551 Fifth Avenue, New York, New York 10176. Vessel: World Renaissance.

Date: November 16, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–26873 Filed 11–18–88; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Performance Review Board; Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gregory Knott, Deputy Director of Personnel, General Services Administration, 18th and F Streets, NW., Washington, DC 20405 (202) 566–0398.

SUPPLEMENTARY INFORMATION: Section 4313(c) (1) through (5) of Title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management one or more performance review boards. The boards shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. David F. Godfrey, Acting Deputy Administrator.
2. Robert C. MacKichan, Jr., General Counsel.
3. Richard H. Hopf III, Associate Administrator For Acquisition Policy.
4. George P. Cordes, Regional Administrator, Region 3.
5. Roger D. Daniero, Deputy Commissioner, Federal Supply Service.
6. Richard M. Hadsell, Regional Administrator, National Capital Region.
7. Duncan L. Howard, Commissioner, Public Buildings Service.
8. Earl E. Jones, Commissioner, Federal Property Resources Service.
9. Patricia A. Szervo, Commissioner, Information Resources Management Service.

Dated: November 4, 1988.

Gregory L. Knott,

Deputy Director of Personnel.

[FR Doc. 88–26778 Filed 11–18–88; 8:45 am]

BILLING CODE 6820–24–M

[GSA Bulletin FPMR A–40, Supp. 30]

Changes to Federal Travel Regulations

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of Changes to Federal Travel Regulations (FTR).

SUMMARY: GSA has issued GSA Bulletin FPMR A–40, Supplement 30, transmitting a changed page to amend FPMR 101–7, Federal Travel Regulations (FTR), Chapter 2, Part 6, by increasing the maximum dollar amount for reimbursement of allowable real estate sale and purchase expenses incident to change of official station.

EFFECTIVE DATE: The revised provisions in Part 6 of Chapter 2 of the FTR are effective for employees whose effective date of transfer is on or after October 1, 1988. For purposes of these regulations, the effective date of transfer is the date on which the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Raymond F. Price, Jr., Travel and Transportation Regulations Staff (FBR), FTS 557–1253 or Commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Section 118 of Pub. L. 98–151 (97 Stat. 977), November 14, 1983, which amended the statutory authority for the employee relocation allowances contained in subchapter II of chapter 57, title 5, United States Code, enacted into law dollar limitations for reimbursement of expenses for the sale and/or purchase of a residence incident to an employee's transfer to a new official station.

5 U.S.C. 5724(a)(4)(B) provides for an annual update in the maximum dollar amounts applicable to reimbursement of expenses incurred by an employee for the sale and purchase of a residence. The law requires that the dollar amount be increased effective October 1 of each year based on the percent change, if any, in the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component for December of the preceding year over that published for December of the second preceding year.

Explanation of Changes

Paragraph 2–6.2g(1) and (2) are amended to reflect a 3.7 percent increase in the dollar maximums for reimbursement of allowable expenses incurred for the sale of the residence at the old official station from $17,177 to $17,813 and for the purchase of a new residence at the new official station from $8,589 to $8,907. Agencies should make a pen and ink change to annotate the real estate expenses section of page 6 of Table 2 in Appendix 2–A to reflect the new dollar amounts and the effective date.

Accordingly, the Federal Travel Regulations are amended as follows:

Chapter 2. Relocation Allowances

PART 6—ALLOWANCES FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. **Authority:** (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 5707; Executive Orders No. 11609, July 22, 1971, No. 12466, February 27, 1984, and No. 12522, June 24, 1985).

2. Paragraph 2–6.2g is revised to read as follows:

2–6.2. *Reimbursable and nonreimbursable expenses.*

* * * * *

g. *Overall limitations.* The total amount of expenses that may be reimbursed is as follows:

(1) In connection with the sale of the residence at the old official state, reimbursement shall not exceed 10 percent of the actual sale price or $17,813, whichever is the lesser amount.

(2) In connection with the purchase of a residence at the new official station, reimbursement shall not exceed 5 percent of the purchase price or $8,907, whichever is the lesser amount.

* * * * *

Dated: November 3, 1988.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 88–25776 Filed 11–18–88; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N–0390]

Drug Export; Syncor® (Tiamenidene HCl) Bulk New Drug Substance

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst-Roussel Pharmaceuticals, Inc., has filed an application requesting approval for the export of the human drug Syncor® (tiamenidine HCl) Bulk New Drug Substance of the Federal Republic of Germany.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the

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Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public particiaption in its review of the application. To meet this requirement, the agency is providing notice that Hoechst-Roussel Pharmaceuticals, Inc., Route 202–206 North, Sommerville, NJ 08876, has filed an application requesting approval for the export of the drug Symcor® (tiamenidine HCl) Bulk New Drug Substance of the Federal Republic of Germany. This drug is to be used in the treatment of hypertension. The application was received and filed in the Center for Drug Evaluation and Research on November 7, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 1, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 98–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: November 10, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88–26828 Filed 11–18–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Establishment of the National Committee to Review Current Procedures for Approval of New Drugs for Cancer and AIDS

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), and the Health Research Extension Act of 1985 (Pub. L. 99–158), the National Institutes of Health, announces the establishment by Acting Director, National Cancer Institute of the National Committee to Review Current Procedures for Approval of New Drugs for Cancer and AIDS.

The National Committee to Review Current Procedures for Approval of New Drugs for Cancer and AIDS shall assist and advise the Director of the National Cancer Institute, the Chair and members of the President's Cancer Panel, and the Vice-President of the United States in the review of current procedures for approval of new drugs for cancer and AIDS.

This Committee shall terminate on December 15, 1990, unless renewed by appropriate action as authorized by law.

Dated: November 15, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 88–26853 Filed 11–18–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program Board of Scientific Counselors Meetings-Announcement of Draft Technical Reports Projected for Public Peer Review from March 1989 through June 1990

To earlier inform the public and allow interested parties to comment or obtain information on toxicology and carcinogenesis studies prior to public peer review, the National Toxicology Program (NTP) again publishes in the **Federal Register** a current listing of draft Technical Reports projected for evaluation by the Peer Review Panel during their next five meetings from March 1989 through June 1990. The listing will be updated with announcements in the **Federal Register** approximately twice a year. The meeting dates for 1989 are: March 13–14, June 27–28, and November 20–21. Specific dates for the 1990 meetings will be established at a later time.

The attachment gives draft Technical Reports of studies on chemicals listed alphabetically within known or estimated dates of reviews and includes Chemical Abstracts Service registry numbers, responsible staff scientists with telephone numbers, NTP report numbers (if assigned), uses, species, routes of administration, and exposure levels used in the chronic studies.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919–541–3971), FTS (629–3971), will furnish final agendas, and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Dated: November 14, 1988.

David P. Rall,

Director, National Toxicology Program.

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES CHEMICALS PROJECTED FOR PEER REVIEW

Chemical name/Cas No.	Use [1]	Study Scientist	Route [2]	Species [3]	Exposure levels	NTP TR No.
Chemicals Tentatively Scheduled for Peer Review March 13–14, 1989						
Benzofuran; 271–89–6	INTR	R. Irwin; 919–541–3340	GAV	RM	FR&MM: 0, 60, 120, MR: 0, 30, 60, FM: 0, 120,240 MG/KG.	370
N, N=Dimethylaniline; 121–69–7	SOLV	K. Abdo; 919–541–7819	GAV	RM	R: 0, 3, 30, M: 0, 15, 30 MG/KG	360
Alpha=Methylbenzyl Alcohol; 98–85–1	COSM	M. Dieter; 919–541–3368	GAV	RM	R&M: 0, 375, 750 MG/KG	369
Nalidixic Acid; 389–08–2	PHAR	R. Morrissey; 919–541–5–35	FEED	RM	R&M: 0, 2000, 4000 PPM	368
Phenylbutazone; 50–33–9	PHAR	F. Kari; 919–541–2926	GAV	RM	R: 0, 50, 100, M: 0, 150,300 MG/KG	367
Toluene; 108–88–3	INTR	J. Huff; 919–541–3780	INHAL	RM	R: 0, 600, 1200, M: 0, 120, 600, 1200 PPM	362
Vinyl Cyclohexene Dispoxide; 106–87–6	INTR	R. ChhABRA; 919–541–3386	SP	RM	R: 0, 50, 100, M: 0, 25, 50, 100 MG/ML	362
Chemicals Tentatively Scheduled for Peer Review June 27–28, 1989						
Allyl Glycidyl Ether; 106–92–3	SOLV	G. Boorman; 919–541–3440	INHAL	RM	R&M: 0, 5, 10, PPM	
Chloroacetophenone (CN); 532–27–4	MLTR	R. Melnick; 919–541–4142	INHAL	RM	R: 0, 1, 2, M: 0, 2, 4, MG/M3	
O-Chlorobenzalmalononitrile (CS); 2698–41–1	MLTR	K. Abdo; 919–541–7819	INHAL	RM	R: 0, .075, .25, .75, M: 0, .75, 1.5 MG/M3	
C.I. Direct Blue 15; 2429–74–5	DYE	D. Morgan; 919–541–2264	WATER	R	0, 0.063, 0.125, 0.25 %	
3,3-Dimethoxybenzidine; 119–90–4	DYE	D. Morgan; 919–541–2264	WATER	R	R: 0, 80, 170, 330 PPM	
Epinephrine Hydrochloride; 55–31–2	PHAR	D. Dietz; 919–541–2272	INHAL	RM	R: 0, 1.5, 5.0, M: 0, 1.5, 3.0 MG/M3	
Succinic Anhydride; 108–30–5	FOOD	R. Melnick; 919–541–4142	GAV	RM	MM: 0, 38, 75, FM: 0, 75, 150 R: 0, 50, 100 MG/KG.	
Chemicals Tentatively Scheduled for Peer Review November 20–21, 1989						
Benzaldehyde; 100–52–7	INTR	J. Bishop; 919–541–1876	GAV	RM	R&MM: 0, 200, 400, FM: 0, 300, 600 MG/KG	
D-Carvone; 2244–16–8	COSM	J. Roycroft; 919–541–3627	GAV	M	R: 0, 175, 375, M: 0, 375, 750 MG/KG	
Glycidol; 556–52–5	PHAR	R. Irwin; 919–541–3340	GAV	RM	R: 0, 38, 75, M: 0, 25, 50 MG/KG	
Sodium Azide; 26628–22–8	PHAR	K. Adbo; 919–541–7819	GAV	R	0, 5, 10 MG/KG	
Tetranitromethane; 509–14–8	FUEL	J. Bucher; 919–541–4532	INHAL	RM	R: 0, 2, 5, M: 0, 0.5, 2 PPM	
Vinyl Toluene; 25013–15–4	SOLV	G. Boorman; 919–541–3440	INHAL	RM	R: 0, 100, 300, M: 0, 10, 25 PPM	
Chemicals Tentatively Scheduled for Peer Review February, 1990						
Amphetamine Sulfate; 60–13–9	PHAR	J. Dunnick; 919–541–4811	FEED	RM	0, 20, 100 PPM	
Ethylene Thiourea (ETU); 96–45–7	PEST	R. Chhabra; 919–541–3386	FEED	RM	R: 0, 25, 83, 250, M: 0, 100, 333, 1000 PPM	
Furfural; 98–01–1	INTR	R. Irwin; 919–541–3340	GAV	RM	R: 0, 30, 60, M: 0, 50, 100, 175, MG/KG	
Probenecid; 56–66–9	PHAR	S. Stefanski; 919–541–5739	GAV	RM	0, 100, 400 MG/KG	
Tris (2-Chloroethyl) Phosphate; 115–96–8	FLAM	H. Matthews; 919–541–3252	GAV	RM	R: 0, 44, 88, M: 0, 175, 350 MG/KG	

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NTP TOXICOLOGY AND CARCINOGENESIS STUDIES CHEMICALS PROJECTED FOR PEER REVIEW—Continued

Chemical name/Cas No.	Use [1]	Study Scientist	Route [2]	Species [3]	Exposure levels	NTP TR No.
Chemicals Tentatively Scheduled for Peer Review June, 1990						
C.I. Acid Red 114; 6459-94-5	DYE	D. Morgan; 919-541-2264	WATER	R	MR: 0, 70, 150, 300, FR: 0, 150, 300, 600 PPM.	
2, 3-Dibromo-1-Propanol; 96-13-9	FLAM	R. Melnick; 919-541-4142	FEED	RM	R: 0, 188, 375, M: 0, 88, 177 MG/KG	
3, 3-Dimethylbenzidine; 119-93-7	DYE	D. Morgan; 919-541-2264	WATER	R	0, 30, 70, 150 PPM	
Diphenylhydantoin (Phenytoin); 57-41-0	PHAR	R. Chhabra; 919-541-3386	FEED	RM	R: 0, 240, 800, 2400, MM: 0, 30, 100, 300, FM: 0, 60, 200, 600 PPM.	
Methyl Bromide; 74-83-9	FUME	R. Yang; 919-541-2947	INHAL	M	0, 10, 33, 100 PPM	
Resorcinol; 108-46-3	PHAR	R. Irwin; 919-541-3340	GAV	RM	MR&M: 0, 112, 225 FR: 0, 50, 100, 150, MG/KG.	
Titanocene Dichloride; 1271-19-8	LABC	M. Dieter; 919-541-3368	GAV	R	0, 25, 50 MG/KG	

[1] Abbreviations used: USE Primary Use Category: COSM Cosmetics; DYE As or in Dyes; FLAM Flame Retardants; FOOD Food and Food Additives; FUEL As or in Fuel; FUME Fumigants; INTR Chemical Intermediate or Catalyst; LABC Unspecified Chemical Uses not Fitting into SOLV, INTR, or REAG categories; MLTR Used for Military or Policing Purposes; PEST Pesticides, General or Unclassified; PHAR Pharmaceuticals or Intermediates; REAG Laboratory Reagent; SOLV Vehicles and Solvents.
[2] ROUTE Route of Administration: FEED Oral in Feed; GAV Oral, Gavage; INHAL Inhalation; SP Skin Paint; WATER Oral with Water.
[3] SPEC Species: R=Rats; M=Mice.

[FR Doc. 88-26862 Filed 11-18-88; 8:45 am]
BILLING CODE 4140-01-M

Centers for Disease Control; Statement of Organization, Functions, and Delegation of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 53 FR 43041, October 25, 1988) is amended to reflect the following changes within the Office of the Director, Center for Environmental Health and Injury Control: (1) Transfer the information management and services activities from the Office of Planning, Legislation, and Information Management to the Office of the Dirtector; and (2) change the name of the Office of Planning, Legislation, and Information Management to Office of Planning, Evaluation, and Legislation.

Section HC-B, Organization and Functions, is hereby amended as follows:

After the heading and statements for the *Center for Environmental Health and Injury Control (HCN),* make the following changes:

1. Change the title of the *Office of Planning, Legislation, and Information Management (HCN13)* to *Office of Planning, Evaluation, and Legislation (HCN13).*

2. Amend the statements for the *Office of Planning, Evaluation, and Legislation (HCN13)* as follows: (a) In item (1) insert the word "program" before "objectives," (b) delete items (5) and (6), and (c) renumber item (7) as (5).

Dated: November 8, 1988.
Wilford J. Forbush,
Director, Office of Management/PHS.
[FR Doc. 88-26821 Filed 11-18-88; 8:45 am]
BILLING CODE 4160-18-M

Health Resources and Services Administration; Statement of Organization, Functions and Delegation of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently as 53 FR 34588, September 7, 1988), is amended to reflect a new function in the Office of Program and Policy Development (HBC12), Bureau of Health Care Delivery and Assistance.

Under *Section HB-10, Organization and Functions,* amend the *Bureau of Health Care Delivery and Assistance (HBC),* as follows:

(1) Under functional statement for the *Office of Program and Policy Development (HBC12)* make the following changes: (1) Delete the word "and" after item number 12; and (2) change the period to a semicolon after item number 13 and add the following "and (14) provides the focus for the Bureau's program for prepaid indigent health care and provides coordination and liaison with the Office of the Administrator and the Health Care Financing Administration."

Date: November 8, 1988.
Wilford J. Forbush,
Director, Office of Management, PHS.
[FR Doc. 88-26820 Filed 11-18-88; 8:45 am]
BILLING CODE 4160-18-M

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Administrator, Health Resources and Services Administration, on November 8, 1988, by the Assistant Secretary for Health, the Administrator has delegated all of the authorities under section 315 of the Public Health Service Act, as amended, pertaining to the Grants for Treatment Drugs for Acquired Immune Deficiency Syndrome, to the Director, Bureau of Maternal and Child Health and Resources Development, with authority to redelegate.

Redelegation: These authorities may be redelegated.

Effective Date: This delegation became effective on November 8, 1988.

Date: November 8, 1988.
John H. Kelso,
Acting Administrator.
[FR Doc. 88-26829 Filed 11-18-88; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-020-0-4111-08]

Montana; Management Framework Plans, etc.

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of intent to prepare a resource management plan-management framework plan amendment/environmental impact statement for oil and gas and hold scoping meetings, Montana and South Dakota.

SUMMARY: A Districtwide planning amendments/Environmental Impact Statement will be prepared on the oil and gas leasing program, including all surface disturbing activities from geophysical activity through exploration, development, reclamation and abandonment.

The amendment is being done to fully describe and analyze two or more alternative proposals for the oil and gas leasing program that comply with the Bureau of Land Management Supplemental Program Guidance and the National Environmental Policy Act. The action will encompass 3.8 million federal surface and 12.6 million federal subsurface acres in the States of Montana, South Dakota and Wyoming. Most of the acreage lies in Montana. The action will entail requests to industry for pertinent data, mailing of a scoping brochure to interested or affected parties and public meetings to gather oil and gas data and public opinions or concerns. Subsequent notice will be published in the **Federal Register** concerning release dates and review periods of the draft EIS.

DATES: The 45-day public scoping period will begin on November 20 and end on January 4. There will be informational open houses at the district's four resource area offices as follows:

South Dakota Resource Area, 310 Roundup Street, Belle Fourche, South Dakota 57717
8 am–5 pm and 7–9 pm Tuesday, December 6

Big Dry/Powder River Resource Area, Miles City Plaza, Miles City, Montana 59301
8 am–5 pm and 7–9 pm Thursday, December 8

Billings Resource Area, 810 East Main, Billings, Montana 59301
8 am–5 pm and 7–9 pm Tuesday, December 13

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attention: Oil Gas Project Manager, 810 East Main, Billings, Montana 59105, Phone: (406) 657-6282.

SUPPLEMENTARY INFORMATION: Currently the oil and gas leasing program involves issuance of leases under standard stipulations that protect the environment from undue or excessive degradation. There are also some areas that are leased with additional special stipulations which further contain surface disturbing activities to protect sensitive resources. These special stipulations may designate areas of no surface occupancy or disturbance. The amendment/EIS will examine whether or not the BLM should issue oil and gas leases and the use of standard terms, standard stipulations and special stipulations (including timing and no surface occupancy stipulations) to protect surface resources. It will also examine the impacts of these stipulations on fluids hydrocarbon removal. Decisions on the use of these stipulations will be displayed on maps.

Descriptions of on-the-ground impacts to be anticipated and mitigation stipulations will be accomplished. Mitigations will be based on both potential and cumulative impacts. Future oil and gas development scenarios will be displayed by alternative. The amendment/EIS will incorporate recent planning and environmental assessment guidance.

Mat Millenbach,
District Manager.
[FR Doc. 88-26863 Filed 11-18-88; 8:45 am]
BILLING CODE 4310-DN-M

[ID-943-09-4212-13; I-22682]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to John V. and Eva C. Chatburn of Albion, Idaho 83311, for the following-described lands under Section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian
T. 12 S., R. 25 E.,
Sec. 3, N½SW¼, NW¼SE¼
Comprising 120.00 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian
T. 11 S., R. 25 E.,
Sec. 27, SE¼NE¼, E½SE¼.
Comprising 160.00 acres of private land.

The purpose of the exchange was to acquire the non-federal land to make a more economical managable unit. The public interest was well served through completion of this exchange.

The values of the federal public land and the non-federal land in the exchange were both appraised at the equal value of $9,000.00.

John Davis,
Deputy State Director for Operations.
Dated: November 8, 1988.
[FR Doc. 88-26782 Filed 11-18-88; 8:45 am]
BILLING CODE 4310-GG-M

[ES-030-09-4212-11; ES-00157-002]

Realty Action; Sale of Public Land in St. Louis County, MN; Correction

SUMMARY: This notice corrects the meridian number in the legal description of the land offered for direct sale to Glen V. Shafer as published in the **Federal Register** on December 24, 1987, Volume 52, No. 247, page 48770. It is the 4th Principal Meridan, Minnesota.

Chris Hanson,
Acting, District Manager.
[FR Doc. 88-26787 Filed 11-18-88; 8:45 am]
BILLING CODE 4310-GJ-M

[ID-943-09-4214-11; I-016413]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture proposes that 67.80 acres of land withdrawn for the Youth Conservation Corps O'Hara Camp, continue for an additional 50 years. The land is now being used as an administrative site by the Selway Ranger District. These lands will remain closed to surface entry, and mining, but have been and will remain open to mineral leasing.

DATE: Comments should be received by February 20, 1989

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FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 3813 for the Youth Conservation Corps O'Hara Camp, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following-described land:

Boise Meridian

T. 32 N., R. 7 E.,
Sec. 23, lot 4, W½NW¼NW¼SE¼, S½NW¼SE¼, W½W½SE¼SE¼.

The area described contains 67.80 acres in Idaho County.

The withdrawal is essential for protection of substantial capital improvements on the Administrative Site. The withdrawal closed the described land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: November 10, 1988.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 88–26785 Filed 11–18–88; 8:45 am]

BILLING CODE 4310–66–M

[MT–930–09–4214–10; MTM 166; MTM 18888]

Termination of Proposed Withdrawals and Reservation of Land, Opening Order; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates in their entirety two proposed withdrawals of National Forest System lands for use by the U.S. Forest Service in connection with three administrative sites and recreation areas in Beaverhead National Forest. The applicant agency has canceled its applications. This action will open the lands to mineral location and entry.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6090.

SUPPLEMENTARY INFORMATION:

1. Notice of the Department of Agriculture's application for withdrawal MTM 166 was published in the **Federal Register** on August 19, 1966, Volume 31, No. 161, pages 11039 through 11040, and republished in the **Federal Register**, on June 16, 1977, Volume 42, No. 115, pages 30692 through 30693. Notice of application for withdrawal MTM 18888 was published in the **Federal Register** on July 22, 1971, Volume 36, No. 141, page 13623, and republished in the **Federal Register** on July 20, 1977, Volume 42, No. 139, page 37257.

2. The applications have been canceled in their entirety as a result of the relinquishment filed on October 21, 1988. The lands affected are described as follows:

Principal Meridian, Montana

Beaverhead National Forest

(MTM 166)

Dinner Station Campground

Unsurveyed, but which probably will be when surveyed:
T. 5 S., R. 11 W.,
Sec. 1, W½SE¼NE¼ and E½SW¼NE¼.
Total area—40 acres.

Canyon Creek Campground

Unsurveyed, but which probably will be when surveyed:
T. 2 S., R. 11 W.,
Sec. 34, NW¼NE¼NE¼.
Total area—10 acres.

Reservoir Lake Campground

T. 8 S., R. 15 W.,
Sec. 21, E½W½NW¼SW¼, E½NW¼SW¼, and W½NE¼SW¼.
Total area—50 acres.

Aspen Campground

T. 5 S., R. 10 W.,
Sec. 4, S½SW¼SW¼SW¼.
Total area—5 acres.

Mono Creek Camp

Unsurveyed, but which probably will be when surveyed:
T. 3 S., R. 12 W.,
Sec. 34, NW¼NW¼NW¼.
Total area—10 acres.

Little Joe Camp

Unsurveyed, but which probably will be when surveyed:
T. 3 S., R. 12 W.,
Sec. 21, S½SE¼NE¼SW¼ and N½NE¼SE¼SW¼.
Total area—10 acres.

May Creek Camp

T. 2 S., R. 18 W.,
Sec. 13, SW¼SW¼SW¼;
Sec. 14, SE¼SE¼SE¼;
Sec. 23, E½NE¼NE¼; and
Sec. 24, W½NW¼NW¼.
Total area—60 acres.

Pintlar Falls Camp

Unsurveyed, but which probably will be when surveyed:
T. 1 N., R. 15 W.,
Sec. 2, S½S½SW¼SW¼;
Sec. 10, NE¼NE¼NE¼; and
Sec. 11, NW¼NW¼, N½SW¼NW¼, and N½S½SW¼NW¼.
Total area—80 acres.

Branham Lakes Campground

T. 4 S., R. 3 W.,
Sec. 5, SE¼SE¼NE¼, E½SW¼SE¼NE¼, and N½NE¼NE¼SE¼.
Total area—20 acres.

West Fork Administrative Site

Unsurveyed, but which probably will be when surveyed:
T. 12 S., R. 2 W.,
Sec. 7, W½SW¼SE¼NE¼, E½SE¼SW¼NE¼, W½NW¼NE¼SE¼, and E½NE¼NW¼SE¼.
Total area—20 acres.

Willow Creek Campground

T. 3 S., R. 3 W.,
Sec. 22, NE¼NE¼SW¼ and N½NW¼SE¼.
Total area—30 acres.

Upper Sureshot Lake Picnic Area

T. 3 S., R. 3 W.,
Sec. 25, NW¼SW¼NE¼, E½SW¼NE¼, and W½SE¼NE¼.
Total area—50 acres.

(MTM 18888)

Minneopa Lake Recreation Area

Unsurveyed, but which probably will be when surveyed:
T. 5 S., R. 11 W.,
Sec. 16, S½SW¼NE¼SE¼, S½SE¼NW¼SE¼, W½SE¼SE¼, E½SW¼SE¼, and E½SW¼SW¼SE¼; and
Sec. 21, NW¼NE¼NE¼, N½SW¼NE¼NE¼, NE¼NW¼NE¼, E½NW¼NW¼NE¼, and N½SE¼NW¼NE¼.

The areas described aggregate 485 acres in Deer Lodge, Beaverhead, and Madison Counties, Montana.

3. At 9 a.m. on December 21, 1988, the lands shall be opened to location and entry under the United States mining laws. Appropriations of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

November 9, 1988.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 88–26786 Filed 11–18–88; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Alaska Maritime National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Alaska Maritime National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative C, with several changes, for implementation. As described in the Plan, Alternative C is the alternative preferred by the Service. The Service is recommending 109,646 acres for addition to the National Wilderness Preservation System.

Alternative C provides a high degree of resource protection and a good opportunity for achieving the purposes set forth in the Alaska Lands Act, including conservation of fish and wildlife populations and habitats.

Date: November 4, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88–26783 Filed 11–18–88; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document; Koch Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Koch Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 9460, Block 233, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on September 16, 1988. Comments must be received on or before December 8, 1988 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: November 8, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–26780 Filed 11–18–88; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Official Leasing Maps

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: Publication of New and/or Revised Outer Continental Shelf Official Leasing Maps.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective with this publication, the following OCS Leasing Maps, last revised or newly issued on June 1, 1988, are on file and available, for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these Leasing Maps are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.[1]

[1] Changes in CFR notations are not considered as revisions. Sabine Pass Area, LA Map 12, is currently being revised. Completion date is unknown.

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Revised Maps [1]

Description

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West Cameron Area, LA 1
West Cameron Area West Addition, LA 1A
West Cameron Area South Addition, LA 1B
East Cameron Area, LA 2
East Cameron Area South Addition, LA 2A
Vermilion Area, LA 3
South Marsh Island Area, LA 3A
Vermilion Area South Addition, LA 3B
South Marsh Island Area South Addition, LA 3C
South Marsh Island Area North Addition, LA 3D
Eugene Island Area, LA 4
Eugene Island Area South Addition, LA 4A
Ship Shoal Area, LA 5
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Grand Isle Area, LA 7
Grand Isle Area South Addition, LA 7A
West Delta Area, LA 8
West Delta Area South Addition, LA 8A
South Pass Area, LA 9
South Pass Area South and East Addition, LA 9A
Main Pass Area, LA 10
Main Pass Area South and East Addition, LA 10A
Chandeleur Area, LA 11
Chandeleur Area East Addition, LA 11A

New Maps

The following Louisiana Leasing Maps are new. These were parts of South Timbalier, South Pelto, and Bay Marchand Areas, LA 6, and Main Pass and Breton Sound Areas, LA 10.

Description

South Pelto Area, LA 6B
Breton Sound Area, LA 10B.

Copies of these Leasing Maps may be purchased for $32.00 per set from Minerals Management Service, Gulf of Mexico OCS Regional office, Public Information, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 (504) 736–2519.

Technical comments or questions pertaining to these maps should be directed to Office of Leasing and Environment, Supervisor, Sales and Support Unit (504) 736–2761.

Date: November 8, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–26781 Filed 11–18–88; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Consent Decree Pursuant to Clean Air Act; Jefferson Smurfit Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 9, 1988, a proposed Consent Decree in *United States* v. *Jefferson Smurfit Corp.*, Civil Action No. 87–83–CIV–J–16 was lodged with the United States District Court for the Middle District of Florida. The Complaint, as amended, sought the imposition of injunctive relief and civil penalties under the Clean Air Act against the defendant for violations of numerous testing, reporting and monitoring requirements under the New Source Performance Standards regulations promulgated under the Clean Air Act. The violations in issue occurred at a certain coal-fired power boiler at defendant's Containerboard Mill Division paper mill in Jacksonville, Florida.

The Consent Decree requires defendant to pay a civil penalty totalling $67,000. The Decree also requires defendant to undertake certain remedial measures to ensure its future compliance with applicable testing, reporting and monitoring requirements contained in the New Source Performance Standards.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Jefferson Smurfit Corporation*, D.J. Ref. 90–5–2–1–1033.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Middle District of Florida, 409 Post Office Building, 311 West Monroe Street, Jacksonville, Florida; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue NW. Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044–7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue NW., Washington, DC. All requests for copies of the proposed Consent Decree must be accompanied by a check for copying costs totalling $1.50 ($0.10 per page) made payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 88–26774 Filed 11–18–88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Alcan Aluminum Corp., et al.

In accordance with Departmental policy, 28 CFR 50.7, section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d), notice is hereby given that on October 26, 1988 a proposed consent decree in *United States v. Alcan Aluminum Corporation, et al.*, Civil Action No. 88–4646, was lodged with the United States District Court for the District of New Jersey. The proposed consent decree involves claims by the United States for recovery of clean-up costs incurred and to be incurred at the Renora Superfund Site in Edison, New Jersey as well as claims for injunctive relief. These claims were brought against a group of 38 defendants pursuant to CERCLA.

The proposed consent decree requires the defendants to perform the remedial action selected in the Record of Decision issued by the United States Environmental Protection Agency ("EPA") on September 28, 1987, which specifies excavation and off-site disposal of soils contaminated with polychlorinated biphenyls ("PCBs") and on-site bioremediation of soils contaminated with polynuclear aromatic hydrocarbons ("PAHs"). The estimated cost for the government to perform this remedial action is approximately $1.5 million. The defendants are also required to pay $50,000 to the EPA and $26,973 to the state of New Jersey for past costs expended at the Site. In addition, the defendants have agreed to reimburse the governments for response costs, other than removal costs, which are not recovered from nonsettlors. In return, the defendants are given a release from claims for past removal costs at the Site (approximately $89,000) and a special convenant not to sue for the PAH remediation pursuant to section 122(f)(2)(B) of CERCLA. The defendants are also given a release for certain natural resource damage claims.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Alcan Aluminum Corp., et al.*, D.J. Ref. No. 90–11–3–113.

The proposed consent decree may be examined at the Office of the United States' Attorney for the District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102 and at the Region II Office of the United States Environmental Protection Agency, l26 Federal Plaza, New York, New York 10278. Copies may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Washington, DC 20503. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $22.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–26847 Filed 11–18–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Accurate Parts Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 7th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Accurate Parts Co. (Workers)	Kokomo, IN	11/7/88	10/25/88	21,546	Tarter motors.
Alpha Seismic (Company)	Houston, TX	11/7/88	10/18/88	21,547	Oil and gas.
Ariel Chemical Corp. (Workers)	Nitro, WV	11/7/88	9/27/88	21,548	Chemicals.
B.C. Tong Service dba B.C. Service Co. (Company).	Wickett, TX	11/7/88	10/7/88	21,549	Oil and gas.
B.J. Titan Services Inc. (Workers)	Houston, TX	11/7/88	10/19/88	21,550	Do.
BTA Oil Producers (Company)	Midland, TX	11/7/88	10/4/88	21,552	Do.
Benton Casing Service (Workers)	Victoria, TX	11/7/88	10/4/88	21,553	Do.
Do	Lake Charles, LA	11/7/88	10/4/88	21,553	Do.
Do	Winnie, TX	11/7/88	10/4/88	21,554	Do.
Do	Houma, LA	11/7/88	10/4/88	21,555	Do.
Cantex Drilling Co. (Workers)	Andrews, TX	11/7/88	10/6/88	21,556	Do.
Chapman Services, Inc. (Company)	Odessa, TX	11/7/88	10/6/88	21,557	Do.
Dia-log Company (Workers)	Natches, MS	11/7/88	9/12/88	21,558	Oil.
Do	Kilgore, TX	11/7/88	9/12/88	21,559	Do.
Do	Hammond, LA	11/7/88	9/12/88	21,560	Do.
Dover Resources, Inc. Norris Sucker Rod Div. (Workers).	Tulsa, OK	11/7/88	10/24/88	21,561	Oil and Gas.
ERC Industries, Inc. (Company)	Houston, TX	11/7/88	10/20/88	21,562	Oil Equipment.
Enserch Exploration Rocky Mnt District (Workers)	Denver, CO	11/7/88	10/18/88	21,563	Oil and Gas.
FWA Drilling Co., Inc. (Workers)	Victoria, TX	11/7/88	10/12/88	21,564	Oil.
Gas Equipment Co., Inc. (Company)	Houston, TX	11/7/88	10/6/88	21,565	Sell Pumps, Compressors.
Hamman Oil & Refining Co. (Workers)	Houston, TX	11/7/88	10/19/88	21,566	Oil and Gas.
Hrubetz Operating Co. (Company)	Forsan, TX	11/7/88	10/10/88	21,567	Oil.
Joy Technologies, Inc., Wheeling Fittings Div (Workers).	Cambridge, OH	11/7/88	10/21/88	21,568	Pipe Fittings.
Do	Woodlake, CA	11/7/88	10/21/88	21,569	Do.
KRW Energy Systems, Inc. (Workers)	Madison, PA	11/7/88	10/18/88	21,570	Synthetic Fuels.
Kestran, Inc. (Workers)	Stafford, TX	11/7/88	10/17/88	21,571	Oil Equipment.
Lafarge Corporation (Workers)	Dallas, TX	11/7/88	10/8/88	21,572	Cement.
Lee Apparel Co. (The) (Workers)	Pulaski, VA	11/7/88	10/20/88	21,573	Childrens mens, ladies Jeans.
Liberty Oil & Gas Corp (Company)	New Roads, LA	11/7/88	10/18/88	21,574	Oil and Gas.
Lily Kids, Inc. (ILGWU)	Harrison, NY	11/7/88	10/21/88	21,575	Childrens wear.
Louson Knitting Mill (ILGWU)	Philadelphia, PA	11/7/88	10/18/88	21,576	Sweaters.
Manville Forest Products (UBC)	Huttig, AR	11/7/88	10/1/88	21,577	Plywood, Lumber.
Maxus Energy Corp (Workers)	Amarillo, TX	11/7/88	10/19/88	21,578	Oil and Gas.
McInay & Associates (Company)	Casper, WY	11/7/88	10/19/88	21,579	Do.

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APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Moranco Drilling Co. (Workers)	Hobbs, NM	11/7/88	10/21/88	21,580	Do.
Norcal Crosetti Frozen Foods, Inc (Workers)	Watsonville, CA	11/7/88	10/12/88	21,581	Frozen Foods.
Petrograph Mudlogging (Workers)	Giddings, TX	11/7/88	9/19/88	21,582	Oil Services.
Pittsburgh & Lake Erie Railroad (IAMAW)	Pittsburgh, PA	11/7/88	9/26/88	21,583	Railroad Services.
Revlin Drilling, Inc. (Company)	Russell, KS	11/7/88	10/21/88	21,584	Oil and Gas.
Rig Supplies, Inc. dba Sun Supply (Workers)	Billings, MT	11/7/88	9/27/88	21,585	Do.
Stone Safety Corp. (UE)	Wallingford, CT	11/7/88	10/25/88	21,586	Heating & air condition Units for Mass Transit.
TK Valve Manufacturing Inc. (Workers)	Hammond, LA	11/7/88	10/21/88	21,587	Ball Valves.
Texas Primate Center (Company)	Alice, TX	11/7/88	10/25/88	21,588	Monkeys.
Three Star Drilling (Workers)	Lawrenceville, IL	11/7/88	10/21/88	21,589	Oil.
Unit Flow Thru Terminal (Workers)	Flint, MI	11/7/88	10/17/88	21,590	Warehouse/auto parts.
Vanguard Oil Co., Inc. (Company)	Mt. Carmel, IL	11/7/88	10/21/88	21,591	Oil.
W.E. Myers Drilling Co. (Workers)	Midland, TX	11/7/88	10/19/88	21,592	Do.
Weatherford Oilfield Services	Laurel, MS	11/7/88	10/17/88	21,593	Casing Services.

[FR Doc. 88-26876 Filed 11-18-88; 8:45 am]
BILLING CODE 4510-30-M

Job Training Partnership Act; Program Guidance and Annual Planning Schedule for Implementation of the New Economic Dislocation and Worker Adjustment Assistance Act for Program Year 1989

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Department of Labor is requesting comments on its proposed program guidance and annual planning schedule for implementation of the new Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act for Program Year 1989 (July 1, 1989–June 30, 1990). The information requested is needed to ensure that the State's programs will be operated in compliance with the Act and regulations.

DATES: Written comments are invited from the public. Comments must be submitted on or before December 21, 1988.

ADDRESS: Comments shall be addressed to Assistant Secretary for Employment and Training, U.S. Department of Labor, Room N–4703, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Robert N. Colombo.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Telephone: (202) 535–0577 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Labor is proposing planning guidance for the implementation of the new Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act program for Program Year 1989.

1. Background

On August 23, President Reagan signed into law the Omnibus Trade and Competitiveness Act of 1988 (OTCA). EDWAA, enacted as Subtitle D of Title VI of OCTA, revised Title III of the Job Training Partnership Act (JTPA) replacing the existing dislocated workers program with a new worker adjustment program, to be operational by July 1, 1989. Part 3 of Subtitle D of Title I of OTCA also makes major revisions in the Trade Adjustment Assistance (TAA) program concerning services for workers dislocated by foreign trade.

EDWAA authorizes a new comprehensive program to assist dislocated workers and also introduces a number of new and innovative approaches, including State dislocated worker units to assist communities and workers undergoing permanent plant closings and substantial layoffs.

Part 631 of Title 20, CFR, the regulations for JTPA Title III, as revised by OTCA, were published in the **Federal Register** on October 24, 1988, at 53 FR 41572, effective November 1, 1988.

Pursuant to section 311(a) of Title III of the JTPA, as amended by OTCA, and 20 CFR Part 631 of JTPA regulations, this document provides: (1) Instructions to the States for the submission of the State Plan; and (2) instructions to affected States for submission of the plan where there is a Single Substate Grantee.

The planning guidance calls for the development of a biennial "State Plan" and a "Plan" where there is a Single Substate Grantee. The initial biennial "State Plan" will cover a one-year transition period (July 1, 1989 to June 30, 1990). In conjunction with the State's biennial planning for JTPA this would put the planning cycle in conformity with the overall planning process for JTPA Title II–A and II–B.

2. Planning Documents

A. State Plan

Section 311(a) of the JTPA and § 631.36 of the JTPA regulations require that in order to receive funds under JTPA section 302(b) the State shall submit to the Secretary of labor (Sectreary), in accordance with instructions issued by the Secretary on a biennial basis, a biennial State Plan describing in detail the programs and activities that will be assisted with funds provided under JTPA Title III. The State Plan shall be submitted on or before the first day of May immediately preceding the program year for which funds are first to be made available under Title III. The initial biennial Plan will cover a one-year transition period (July 1, 1989 to June 30, 1990).

State plans are to be submitted using the OMB-approved format contained in Attachment I. The State Plan must describe the planned use of all resources for the transition period (July 1, 1989 to June 30, 1990).

The document also must contain a discription of the State's performance standards and incentive policy for Title III. Instructions for performance standards and incentive policy will be issued in accordance with the schedule included in Section 8 of this Notice.

The Department of Labor (Department) will review the State Plan and any comments submitted by the State Job Training Coordinating Council and will notify the State of any deficiencies in the Plan within 30 days after submission. Unless a State has been so notified, the Plan will be approved iwthin 45 days after submission.

Any Plan submitted under Title III may be modified to describe changes in or additions to the program and activities set forth in the Plan. Modifications to the Plan shall be submitted using the same format. No modification shall be effective unless reviewed and approved in accordance with section 311(d) of the JTPA and § 631.36 (d) and (e) of the JTPA regulations.

B. Single Substate Grantee "Plan"

Section 311(f) of the JTPA and § 631.50(h) of the JTPA regulations require that when the substate area is the State, the substate Plan and any Plan modification(s) shall be submitted by the Governor to the Secretary, in accordance with instructions issued by the Secretary.

Single substate grantee Plans are to be submitted using the OMB approved format contained in Attachment II. Modification to the Plan shall be submitted using the same format.

The department will review the Plan in accordance with the provisions of §§ 628.6 and 631.50(h) of the JTPA regulations for overall compliance with the provisions of the Act and JTPA regulations. States will be notified of the results of the review within the same timeframes specified for the review of the State Plan.

3. EDWAA Coordination

The State Plan must describe coordination activities among State and local organizations focusing on dislocated workers.

Pursuant to the new legislation, programs under EDWAA and TAA must be coordinated or integrated so as to avoid fragmented delivery of services to eligible dislocated workers.

The new EDWAA worker adjustment program and the TAA program will continue as separate and identifiable programs. However, as provided under the OTCA, States are encouraged to provide linkages and, where possible, to arrange joint responsibility for specific functions common to both programs. Such actions will assist dislocated workers to receive any and all benefits to which they are entitled, and any training or other services they need to become reemployed as quickly and as easily as possible. For example, linkages can take place in providing early intervention services, in exchange of information and coordination in the development and operation of training programs, in developing a common intake point and application process for the two programs, in providing technical assistance and training, and in establishing labor-management committees for dealing with dislocations. Above all, the delivery system must assure that the clientele of these programs, the dislocated workers to be served, are provided a clearly defined and easy-to-follow system of services.

4. Designation of State Disclocated Worker Unit

Section 311(b)(2) of the JTPA provides that States will designate or create an identifiable State dislocated worker unit (DWU) or office with the capability to respond rapidly onsite to permanent plant closures and substantial layoffs thorughout the State. Through this rapid response effort the DWU will be able to assess the need for appropriate basic readjustment services.

The DWU is a key feature of the States' implementation of the new programs under EDWAA and it is therefore key to the success of this initiative. The State, in designating an existing organization or creating a new organization to fulfill the responsibilities outlined in Title III of JTPA, shall assure that this organization has the capability to:

- Make appropriate retraining and basic adjustment services available to eligible dislocated workers through substate grantees, and in statewide, regional or industry-wide projects;
- Work with employers and labor organizations in promoting labor-management cooperation to achieve the goals of the program;
- Operate a monitoring, reporting, and management system to provide adequate information for effective program management, review, and evaluation;
- Provide technical assistance and advice to substate grantees;
- Exchange information and coordinate programs with the appropriate economic development agency, and State education, training, and social services programs;
- Coordinate with the unemployment insurance system and Federal-State Employment Service system, as well as TAA and JTPA Titles II–A and II–B programs in the State;
- Receive advance notice of plant closings and mass layoffs as provided at section 3(a)(2) of the Worker Adjustment and Retraining Notification (WARN) Act, Pub. L. 100–139, 102 Stat. 890;
- Notify the appropriate substate grantees as soon as possible (preferably within 48 hours) following receipt of employer notice of layoff or plant closing; and,
- Consult with labor organizations where substantial numbers of their members are to be served.

5. Rapid Response Capability

Pursuant to JTPA section 311(b)(2), the DWU has as one of its primary responsibilities the establishment of a rapid response capability, including securing appropriate staff, which will enable it to provide assistance, onsite, for dislocation events, such as permanent closures and substantial layoffs, throughout the State. This staff should include individuals who are knowledgeable about resources, including programs under EDWAA, TAA, JTPA, and other programs which are available through public and private sources to assist dislocated workers. These rapid response specialists are to have the ability to: (1) Organize a broad-based response to a disclocation event, including the ability to coordinate services provided under EDWAA with other State-administered programs; (2) provide limited amounts of immediate financial assistance for rapid response activities; (3) work effectively with employers and employees; and (4) work out provisions of retraining and readjustment services by substate grantees.

The rapid response specialists who are designated within the DWU may use EDWAA funds to establish on-site contact with employer and employee representatives (preferably within 48 hours after notification) of a current or impending permanent closure or substantial layoff in order to provide information on available resources and to provide emergency assistance. The specialists also will promote the formation of labor-management committees and provide on-going assistance to these committees.

6. Key Planning Dates

The Planning instructions in this notice are but one part of the information necessary for the implementation of the new EDWWA Program. Issuance targets for key products and other planning benchmarks are as follows: This schedule supplements and updates the prior schedule at 53 FR 34844, 34847 (September 8, 1988).

11–23–88 Comment period on interim final rules for Title III ends.

12–30–88 Employment and Training Administration issues final allotments for State formula allotments for Titles II–A, II–B and III of JTPA.

01–05–89 ETA issues final regulations and planning instructions.

By this time, Governors should have reconstituted their SJTCC, designated substate areas and grantees, and determined their formula for substate fund distribution.

2–01–89 Governors should give direction for substate planning. (statute requires 3/1)

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02–17–89 ETA issues Title III reporting instructions.

02–17–89 ETA issues Title III performance standards instructions.

05–01–89 Governor's Plan submitted to the Secretary, who advises of problems within 30 days or approves within 45 days. Single substate grantee Plans due to the Secretary.

07–01–89 Program operations begin.

Attachment I
OMB Control No.
Expiration Date:

Planning Instructions

Format and Procedures for Submitting the State Plan for Employment and Training Assistance for Dislocated Workers

I. Identifying Information

A. Name and Address of the grantee.
B. Date of submission.
C. Time period covered.

II. State Responsibilities (overall)

A. *Coordination.* 1. Describe coordination activities among State and local organizations focusing on dislocated workers.

2. Describe how EDWAA programs will be coordinated with the unemployment compensation system within the State. (Section 314(f)).

3. Describe how EDWAA programs will be coordinated with the Federal-State Employment system.

4. Describe how EDWAA programs will be coordinated with dislocated worker programs under Title III of the Carl D. Perkins Vocational Education Act. (Section 311(b)(5) of JTPA and § 631.37(c) of the JTPA regulations).

5. Describe how EDWAA programs will be coordinated with JTPA Title II-A programs.

6. Describe how Title III services,including intake, referral, assessment, training and placement will be integrated or coordinated with services and payment made available under Chapter 2 of Title II of the Trade Act of 1974 and provided by any State or local agencies designated under section 239 of the Trade Act of 1974 so as to avoid fragmented delivery of services to eligible dislocated workers. (Section 311(b)(10) of JTPA and § 631.37(a) of the JTPA regulations). Attach a copy of the interagency agreement developed if Title III and the Trade Adjustment Assistance program are not opprated by the same agencies.

B. *Program Administration.* 1. Describe the composition, including required representation (e.g., private sector, general public, labor, etc.) and functions of the State Job Training Council (SJTCC) as they pertain to EDWAA. Include the written comments provided on the State's plan as well as a description of the staffing provided to the SJTCC. (Section 311(b)(9)).

2. Provide a list of the selected substate areas. (Section 312(a) of JTPA and § 631.35 of the JTPA regulations)

3. Provide a list of selected substate grantees. (Section 312(b) of JTPA and § 631.35 of the JTPA regulations).

4. Describe the State's substate allocation methodology, including the data elements and allocation formulas to be used, as well as the methodology, if any, for the reallocation of funds among and from the State to substate areas. (Section 302 and 303 of JTPA and § 632.32(b) of the JTPA regulations).

5. Describe the State's procedures to identify funds required to be reallotted pursuant to section 303(b) of the Act and how such procedures will ensure equitable recapture of such funds. (Section 303(b) of JTPA and § 631.33 of the JTPA regulations).

6. Describe the method to be used to assess the level of need and use of the ten percent of the State's allocation to substate grantees on the basis of need. (Section 302(c)(2) of JTPA and § 631.32(d) of the JTPA regulations).

7. If the Governor has determined that services will be provided to displaced homemakers, indicate the basis for this decision. (Section 311(b)(4)).

8. Describe the manner in which the State will conduct monitoring and oversight of all State and substate activities to ensure that expenditures and activities are in accordance with the State or substate plan or modification. (Section 631.31 of the JTPA regulations).

C. *Performance Standards.* 1. Describe the State's methodolgy for setting performance standards for each substate grantee and any other method for assessing performance including State developed standards, which are not inconsistent with the Secretary's standards. (Section 106(g)).

2. Describe the method for providing incentives for training of greater duration consistent with JTPA section 106(g) and identifying that portion of the Governor's reserve funds (Section 302(c)(1)) which will be utilized to make such incentive awards.

3. Describe the sanctions policy for substate areas failing to meet performance standards pursuant to section 106(h).

III. State Program Operational Plan

A. *Disclocated Worker Unit/Rapid Response.* 1. Describe the State dislocated worker unit (DWU) or office, including a description of the organization, functions and staffing of this unit; also describe the DWU's capacity to provide "rapid response" assistance to permanent closure and substantial layoffs throughout the State. (Section 311(b)(2) of JTPA and § 631.30 of the JTPA regulations).

2. Describe how the DMU will arrange for the provision of retraining and basic readjustment services to eligible disclocated workers through substate grantees and other appropriate organizations. (Section 311(b)(3)(A) of JTPA and § 631.30(a)(1) of JTPA regulations).

3. Describe how the DMU will work with employees and labor organizations to establish labor-management committees to achieve the goals of the program. (Section 311(b)(3)(B) of JTPA and § 631.30(a)(2) of the JTPA regulations).

4. Describe the DMU's monitoring, reporting, and management systems. (Section 311(b)(3)(C) of JTPA and § 631.30(a)(3) of the JTPA regulations).

5. Describe how the DMU will provide technical assistance and advice to substate grantees. (Section 311(3)(D) of JTPA and § 631.30(a)(4) of the JTPA regulations).

6. Describe how the DMU will exchange information and coordinate programs with the appropriate economic development agency and state education, training and social services programs. Include in this description a discussion of how this coordination will be assured. Indicate which staff in the DMU have special responsibilities for coordination. (Section 311(b)(5) of JTPA and § 631.30(a)(5) of the JTPA regulations).

7. Describe how the DWU will coordinate the delivery of services, and provide for exchange of information and coordinate with all other programs available to assist dislocated workers including the state unemployment insurance system, TAA and Federal-State employment service system. (Section 631.30(a)(6) of the JTPA regulations).

8. Describe the procedures for the receipt of advance notice of plant closings and mass layoffs as provided at section 3(a)(2) of the Worker Adjustment and Retraining Notification (WARN) Act, Pub. L. 100–379, 102 Stat. 898; and the procedures for notification of appropriate substate grantees. (Section 631.31(a)(7) and (8) of the JTPA regulations).

9. Described how the State DWU will disseminate information throughout the State on the availability of services and activities for dislocated workers. (Section 311(b)(6) of the Act § 631.30(a)(10)).

B. Describe other activities undertaken by the State with 40 percent funds authorized under section 314(d) of JTPA and § 631.41(a) of the JTPA regulations.

1. Retraining services, including (but not limited to) those in section 314(d) of the Act when undertaken in Statewide, industrywide and regional programs;

2. Coordination with the unemployment compensation system, in accordance with § 631.36(b) of the JTPA regulations;

3. Discretionary allocation for basic readjustment and retraining services to provide additional assistance to areas that experience substantial increases in the number of dislocated workers, to be expended in accordance with the substate plan or modification thereof;

4. Incentives to provide training of greater duration for those who require it; and

5. Needs-related payments in accordance with section 315(b) of the Act.

IV. Assurances

The following assurances must be included in the State plan:

A. The State will comply with the statutory and regulatory requirements of EDWAA;

B. That services will be provided to eligible dislocated workers. (Section 311(b)(1) (B) and (C) of the Act).

C. Services will not be denied on the basis of State of residence to eligible dislocated workers displaced by a permanent closure or substantial layoff within the State; and may be provided to other eligible dislocated workers regardless of the state of residence of such workers; (Section 311(b)(1)(C)).

D. That services to displaced workers will not adversely affect the delivery of services to eligible dislocated workers and that services are provided in conjunction with ongoing programs for all dislocated workers.

E. That any program, under this Title, serving a substantial number of members of a labor organization will be established only after full consultation with such labor organization. (Section 311(b)(7) of JTPA.

F. That the State will not prescribe any Title III performance standards which are inconsistent with the parameters set annually by the Secretary pursuant to section 106(e) and apply the standards in accordance with section 311(a) with regards to incentives.

V. General Administrative Information

A. *Signature.* The State plan must contain the Governor's signature or the signature, name and title or his/her designee.

The plan must also include a statement indicating that the SJTCC has reviewed the plan and concurs with it, whether or not the SJTCC has made written comments. If written comments have been provided, copy of these comments shall be attached to the Plan. (Section 311(b)(9).)

B. *Mailing Address.* States are to submit three copies of the State Plan, each with original signature of the Governor or his/her designee to:

Administrator, Office of Job Training Programs, U.S. Department of Labor, Employment and Training Administration (ETA), Room N–4459, 200 Constitution Avenue, NW, Washington, DC 20210.

Also, a copy of the State Plan must be sent to the ETA regional office.

C. *Modification to State Plan.* Any Plan submitted under section 311(a) of JTPA, as amended, may be modified to describe changes in or additions to the programs and activities set forth in the Plan, except that no such modification shall be effective unless reviewed and approved pursuant to § 631.56(c),(d),(e), and (f) of the JTPA regulations.

Attachment II

OMB Control No.

Expiration Date:

Planning Instructions

Format and Procedures for Submitting the Single Substate Grantee Plan Employment and Training Assistance for Dislocated Workers

The Single Substate Grantee Plan shall contain:

I. Identifying Information

A. Identification and address of the grant recipient.

B. Identification and address of the entity or entities that will administer the program, if different from the grant recipient.

C. Date of submission.

D. Area covered by substate grantee (i.e. entire State of).

E. Time period covered by plan.

II. Program Information

A. The State's plan shall contain a description of:

(1) The means for delivering services in section 314 to eligible dislocated workers;

(2) The means to be used to identify, select, and verify the eligibility of program participants;

(3) The means for implementing the requirements of section 314(f);

(4) The means for involving labor organizations in the development and implementation of services;

(5) The performance goals to be achieved consistent with the performance goals contained in the State plan pursuant to section 311(b)(8);

(6) Procedures, consistent with section 107, for selecting service providers which take into account past performance in job training or related activities, fiscal accountability, and ability to meet performance standards;

(7) A description of the methods by which the substate grantee will respond expeditiously to worker dislocation where the rapid response assistance required by section 314(b) is inappropriate, including worker dislocation in sparsely populated areas, which methods may include (but are not limited to)—

(a) Development and delivery of wide-spread outreach mechanisms;

(b) Provision of financial evaluation and counseling (where appropriate) to assist in determining eligibility for services and the type of services needed;

(c) Initial assessment and referral for further basic adjustment and training services; and

(d) Establishment or regional centers for the purpose of providing such outreach, assessment, and early readjustment assistance;

(8) A description of the methods by which the other parties to the agreement described in section 312(b) may be involved in activities of the substate grantee;

(9) A description of training services to be provided, including—

(a) Procedures to assess participants' current education skill levels and occupational abilities;

(b) Procedures to assess participants' needs including educational, training, employment, and social services;

(c) Methods for allocating resources to provide the services recommended by rapid response teams for eligible dislocated workers within the substate area; and

(d) A description of services and activities to be provided in the substate area;

(10) The means whereby coordination with other appropriate programs, services, and systems will be effected, particularly where such coordination is intended to provide access to the services of such other systems for program participants at no cost to the worker readjustment program; and

(11) A detailed budget showing the planned expenditure of funds for the one year transition period by cost category and activity.

B. Describe the manner in which the single substate grantee will coordinate with the State dislocated worker unit in the implementation of the single substate grantee program in particular the rapid response activity. (Section 311(b)(2)).

C. Include a statement that the State will comply with the cost limitations contained in section 315 of the Act, including those limitations which apply to needs-related payments (25 percent) and retraining services (50 percent). Indicate whether the State will request a waiver of the 50 percent limitation for retraining. (Section 315 of the Act and § 631.14(a)(5) of the JTPA regulations).

D. Include the current and/or written comments of the SJTCC. If written comments have been provided, a copy of these comments shall be attached to the plan. (Section 313(a)).

III. Signature

The plan shall contain the Governor's signature or the signature and title of his/her designee. The name of the signer should be typed below the signature.

IV. Mailing Address

States shall submit three copies of the Single substate grantee plan, each with original signature of the Governor or his/her designee to:

Administrator, Office of Job Training Programs, Department of Labor, Employment and Training Administration (ETA), Room N–4459, 200 Constitution Avenue NW., Washington, DC 20210.

Also, a copy of the plan must be sent to the ETA regional office.

V. Modification

Any plan submitted under section 313(a) of JTPA as amended may be modified to describe changes in or additions to the programs and activities set forth in the plan, except that no such modification shall be effective unless reviewed and approved pursuant to §§ 631.50(h) and 628.6 of the JTPA regulations.

Signed at Washington, DC, this 15th day of November 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 88–26852 Filed 11–18–88; 8:45 am]

BILLING CODE 4510–30–M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

Summary: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Date and Time: Monday, December 5, 1988; Beginning 10:00 a.m.

Place: Room 1120, The Federal Building, 500 Camp Street, New Orleans, Louisiana 70130.

Type of Meeting: Open.

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Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268, Telephone (202) 756–0411.

Purpose of Meeting: The Honorable Jeremiah Denton, the Chairman of the Commission, will receive and consider statements of individuals and groups in Louisiana and neighboring states about the problems and prospects of the nation's maritime industries, particularly the merchant marine and shipbuilding industries. In particular, Senator Denton desires reactions to the Commission's first two reports and its recommendations, views about the contributions of the maritime industries to the national security, and suggestions for actions that would help to address current and projected shortages of merchant marine and shipyard capability to meet defense requirements. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing or by telephone by December 1, 1988, and are requested to provide two copies of their written statements to the Commission and to have copies available for the press. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions. Questions about the nature and content of testimony, scheduling, and related matters should be directed to Captain Wayne I. Humphreys, USN, the Commission's Chief of Staff.

Supplementary Information: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be delivered to the Commissioners at the public hearing or received at the Commission's office by the close of business on December 5, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. Submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88–26866 Filed 11–18–88; 8:45 am]

BILLING CODE 3820–01–M

Notice of Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbulding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Date and Time: Firday, December 9, 1988; Beginning 10:00 a.m.

Place: Board Room, Port of Long Beach, 925 Harbor Plaza, Long Beach, California 90802.

Type of Meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268, Telephone (202) 756–0411.

Purpose of Meeting: Commissioner Shannon J. Wall will receive and consider statements of individuals and groups in California about the problems and prospects of the nation's maritime industries, particularly the merchant marine and shipbuilding industries. In particular, Mr. Wall desires reactions to the Commission's first two reports and its recommendations, views about the contributions of the maritime industries to the national security, and suggestions for actions that would help to address current and projected shortages of merchant marine and shipyard capability to meet defense requirements. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing or by telephone by December 5, 1988, and are requested to provide two copies of their written statements to the Commission and to have copies available for the press. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions. Questions about the nature and content of testimony, scheduling, and related matters should be directed to Captain Wayne I. Humphreys, USN, the Commission's Chief of Staff.

Supplementary Information: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be delivered to the Commissioners at the public hearing or received at the Commission's office by the close of business on December 9, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. Submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88–26869 Filed 11–18–88; 8:45 am]

BILLING CODE 3820–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88–95)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATE: Comments are requested by December 21, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Philip D. Waller, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0042), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Information Collection from the Public in Support of the NASA Acquisition Process.
OMB Number: 2700–0042.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Individuals or households, state or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Numbers of Respondents: 175,000.
Responses per Respondent: 2.
Annual Responses: 350,000.
Hours per Response: 32.
Annual Burden Hours: 11,214,000.
Abstract-Need/Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission. It also includes reporting requirements under NASA contracts.

November 14, 1988.

Philip D. Waller,

Director, General Management Division.

[FR Doc. 88–26768 Filed 11–18–88; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Narrative Film Development Section) to the National Council on the Arts will be held on December 13, 1988, from 9:00 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

November 15, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–26824 Filed 11–18–88; 8:45 am]

BILLING CODE 7537–01–M

Meeting; National Council on the Arts

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Local Programs Section) to the National Council on the Arts will be held on December 8, 1988, from 8:30 a.m.–5:30 p.m. and December 9, 1988, from 8:30 a.m.–4:00 p.m. in Room MO9 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 9, 1988, from 2:00–4:00 p.m. The topic for discussion will be policy.

The remaining session of this meeting on December 9 from 8:30 a.m.–2:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

November 15, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–26825 Filed 11–18–88; 8:45 am]

BILLING CODE 7537–01–M

Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Fellowships for Playwrights Section) to the National Council on the Arts will be held on December 7, 1988, from 9:30 a.m.–5:30 p.m. in Room MO7 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 7, 1988, from 9:30–10:15 a.m. The topic for discussion will be policy.

The remaining session of this meeting on December 7 from 10:15 a.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant appplicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

November 15, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 88–26826 Filed 11–18–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Milestone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is

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considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 and an associated license amendment to Northeast Nuclear Energy Company, et al. (the licensee) for the Millstone Nuclear Station, Unit No. 3, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The licensee is requesting an exemption from Paragraph III.A.3 of 10 CFR Part 50 Appendix J, "Primary Reactor Containment Testing for Water-Cooled Power Reactors" to permit the use of the mass-point method of primary containment leakage testing. In 1973, Appendix J was issued to established requirements for primary containment leakage testing and incorporated by reference ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." The standard requires that containment leakage calculations be performed by using either the point-to-point method or the total time method.

At this time, a licensee who wishes to use mass-point must submit an application for exemption from the Appendix J requirement that containment integrated leak rate tests will conform to ANSI N45.4. The exemption proposed by the licensee would be granted until a proposed revision to Appendix J, which will permit use of the mass-point method, becomes effective. In the mass-point method, the mass of air in containment is calculated and plotted as a function of time and leakage is calculated from the slope of the linear least squares.

With the present developments in technology, the mass-point method has gained increasing recognition.

The superiority of the mass-point method becomes apparent when it is compared with the two other methods. In the total time method, a series of leakage rates is calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilbrium, ingassing or outgassing) the initial data point is not accurate, the results of the test will be affected. In the point-to-point method, the leak rates are based on the mass difference between each pair of consecutive points which are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the point-to-point method ignores any mass readings during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

The licensee's request and bases for exemption are contained in a letter dated August 11, 1988.

The licensee has also requested changes to the Technical Specifications that are related to the containment leakage rate test. By application for license amendment dated August 11, 1988, the licensee requested changes to Millstone Unit 3 Technical Specification (TS) 4.6.1.3, "Containment Leakage," to allow for use of ANSI/ANS Standard 56.8–1981 for "mass-point" determination of containment leakage rate.

A "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing" regarding the proposed changes to TS 4.6.1.2 was published in the **Federal Register** on September 21, 1988 (53 FR 36672).

The Need for The Proposed Action

The exemption and associated license amendment are needed to allow use of the mass-point analysis method at Millstone Unit No. 3.

Environmental Impacts of the Proposed Action

The erraticism of the total time method creates a higher probability of unnecessarily failing a containment integrated leakage rate test (note that the calculated procedure is independent of containment tightness) possibly resulting in increased test frequency, critical path outage time, and exposure to test personnel.

Radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or have any other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption and associated license amendment.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption and associated license amendment; any alternatives to the exemption and associated license amendment would have either essentially the same or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources different from or beyond the scope of resources used during normal plant operation, which were assessed in the Final Environmental Statement relating to plant operation, NUREG–1064, dated December 1984.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the propsed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption and associated license amendment.

For further details with respect to this action, see the request for exemption and application for license amendment dated August 11, 1988. A copy of the above is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC., 20555, and at the local public document room located at the Waterford Public Library, 49 Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 14th day of November, 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–26840–Filed 11–18–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on December 7, 1988, Room P–114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 7, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review: (1) The final report of the NRC–RES Technical Program Group on the Code Scaling, Applicability and Uncertainty (CSAU) Evaluation Methodology and (2) the report of the joint NRC/B&W Technical Advisory Group on the need for follow-on research pertaining to thermal hydraulic phenomena of the B&W once through steam generator (OTSG).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any change in schedule, etc., which may have occurred.

Date: November 15, 1988.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 88–26841 Filed 11–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 117 to Provisional Operating License No. DPR–20, issued to Consumers Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Palisades Plant, located in Van Buren County, Michigan. The amendment is effective as of the date of issuance.

The amendment revises the provisions in the Technical Specifications relating to low temperature, overpressure protection and the heatup and cooldown limits for meeting the requirements of 10 CFR Part 50, Appendix G, and operability requirements for the high pressure safety injection pumps.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 19, 1988 (53 FR 17994). No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on November 10, 1988, at 53 FR 45632.

For further details with respect to this action, see (1) the application for amendment dated December 22, 1987 as revised April 12, 1988, (2) Amendment No. 117 to License No. DPR–20 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 14th day of November 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–26838 Filed 11–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–315 and 50–316]

Indiana Michigan Power Co.; Issuance of Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 118 and 104 to Facility Operating Licenses Nos. DPR–58 and DPR–74, issued to the Indiana Michigan Power Company (the licensee), which revised the licenses and Technical Specifications (TSs) for operation of the Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, located in Berrien County, Michigan. The amendments are effective as of the date of issuance.

These amendments change the TSs and License Conditions 2.C.(5) for Unit 1 and 2.C.(3)(s) for Unit 2 by increasing the maximum enrichment of the fuel assemblies from the present values to 4.23 weight percent U–235. The changes are necessary because the Unit 2 Cycle 7 reload includes fuel assemblies which have enrichment in excess of the 3.84 weight percent presently allowed by the TSs. In addition, the amendment for Unit 2 makes an editorial change to TS 5.6.1.2.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 11, 1988 (53 FR 39679). No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on November 14, 1988, at 53 FR 45830.

For further details with respect to this action, see (1) the application for

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amendments dated August 19, 1988, (2) amendments Nos. 118 and 104 to Licenses Nos. DPR–58 and DPR–74, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Maude Preston Palenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 14th day of November, 1988.

For the Nuclear Regulatory Commission.

Wayne Scott,

Project Manager, Project Directorate III–I, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–26839 Filed 11–18–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, November 23, 1988
Wednesday, November 30, 1988
Wednesday, December 7, 1988
Wednesday, December 14, 1988

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a concensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632–9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

November 10, 1988.

[FR Doc. 88–26837 Filed 11–18–88; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26276; File No. SR–CSE–88–4]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to the Limitation of Liability for Use of Exchange Facilities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1988, the Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Cincinnati Stock Exchange proposed to add new Rule 11.9(t) in order to limit the Exchange's liability for losses resulting from the use of its facilities.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed Rule change is to limit the liability of the Exchange and its facilities manager for claims by CSE members and member employees arising out of their use of the Exchange's National Securities Trading System and Automated Extension Processing System. CSE Rule 14.5 limits the Exchange's liability to its members for losses resulting from their use of the Intermarket Trading System.[1] Although Exchange policy also limits the Exchange's liability to members for losses arising out of their use of CSE's data processing systems, currently there is no specific Rule to this effect.

Proposed Rule 11.9(t) is consistent with sections 6(b)(5) and 11A of the Act, which encourage the use of new data processing and communication techniques to facilitate economically efficient executions of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The Exchange believes that the proposed Rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

[1] On November 3, 1988, the Commission received a letter from the CSE, which deleted proposed CSE Rule 11.9(t)'s extension of the liability limitation to CSE customers. See letter from David Colker, General Counsel, CSE to George Scargle, Staff Attorney, SEC, Division of Market Regulation, dated October 31, 1988.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

The Exchange neither solicited nor received comments on the proposed rule change from members, participants, or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 12, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

November 14, 1988.

[FR Doc. 88–26830 Filed 11–18–88; 8:45 am]

BILLING CODE 3010–01–M

(Release No. 34–26277; File No. SR–NYSE–88–32)

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Stock Allocations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b) (1), notice is hereby given that on October 20, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of (1) new Rule 103B which authorizes the Exchange to adopt policies governing stock allocations, (2) Allocation Policies and Procedures, and (3) the form of application to be used by specialists in applying for stock allocations. The operation of the Allocation Policies and Procedures is described in Item. A. below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

(a) *Purpose*—The proposed rule change will update the Exchange's procedures and policies regarding the allocation of Exchange-listed equity securities to specialist units.[1] The proposal covers allocations resulting from: (i) Initial listings of common stock on the Exchange; (ii) the withdrawal of allocations from a specialist unit resulting from proceedings under Exchange Rules 103A, 475 and 476; and (iii) a specialist unit's voluntarily surrendering a security as a result of possible disciplinary or performance improvement action. The Policy will replace the current allocation system which is described in filing SR-NYSE-83–10.[2]

The proposed rule change is a result of a comprehensive review of the stock allocation system that the Quality of Markets Committee ("QOMC") initiated in 1987. The QOMC appointed an Allocation System Review Committee ("ARC"), which included four Exchange Directors and five former Allocation Committee ("Committee") Chairmen, to develop recommendations to enhance the allocation system. The ARC was guided by the following objectives:

—Preserve the integrity of the existing allocation process, and build upon its strengths to improve its objectivity, consistency and continuity;
—Consistent with the foregoing, strengthen the system's responsiveness to the needs of listing companies with respect to the allocation process; and
—Preserve the independence and autonomy of the Allocation Committee in applying allocation policy.

In following these objectives, the ARC recommended, and the Exchange adopted, revised allocation procedures and policies that are intended: (i) To ensure that securities are allocated in a fair and equitable manner; (ii) to ensure that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (iii) to provide incentives for ongoing enhancement of performance by specialist units; (iv) to provide the best possible match between specialist units and securities; and (v) to contribute to the strength of the specialist system. The procedures and allocation criteria adopted by the Exchange, and how those procedures and criteria differ from current procedures and criteria, are described below.

Composition of the Committee

The Allocation Committee will continue to have nine members. However, the make-up of the Committee has been altered slightly. There will be one, rather than two, specialists on the committee, and six, rather than five floor brokers. There will continue to be two allied members. Either one of the

[1] The Exchange will be reviewing the allocation of options to specialist units and will file revised options allocation procedures with the Commission when that review is complete.

[2] Securities Exchange Act Release No. 19626 (March 23, 1988), 46 FR 14103.

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floor brokers or the specialist now will also be a Floor Governor. While specialists offer technical expertise, the Exchange believes that the proposed mix of representation best addresses the needs of the allocation system; floor brokers and allied members are in the best position to judge the relative strengths and weaknesses of specialist units and to provide a perspective on the trading characteristics of new issues.

Committee members will be chosen from a 54 member allocation panel reflecting the make-up of the Committee. The panel will include brokers and specialists with five years experience on the Flor, allied members involved in listed equity trading and all 16 Floor Governors. Appointment of the allocation panel will be the responsibility of the QOMC pursuant to the following procedures: the Floor Directors will appoint a selection committee to develop a representative panel that maximizes the professional expertise and broad experience of the floor. The selection committee then will recommend panel appointments to the Floor Directors, who will finalize recommendations to the QOMC.

Panel members will serve a one-year term. During this term, panel members (except for Floor Governors) will be eligible for random appointment to a six-month term on the Committee.[3] Floor Governors will serve two-month terms on the Committee. Every two months, three Committee members will rotate off the Committee, thereby fostering continuity and objectivity in the decision-making process. After a panel member rotates off the Committee, he will be ineligible for reappointment for two months; after that two months, if he is still on the panel, he will be eligible for random selection for a second term. At the conclusion of a second Committee term, a panel member other than a Floor Governor will be ineligible for selection to the panel for one year. This differs from current policy which allows for up to six consecutive one-year terms on the panel. Under the Policy, the Exchange will post the names of the nine-member Committee at the time of each bi-monthly rotation.

Committee members will elect as Chairman one floor broker member of the Committee whose firm does a public business. The Committee members will elect the chairman two months before his term begins in order to foster consistency and to provide an opportunity for further education of the chairman-elect. Floor Governors and brokers whose firms are affiliated with a specialist unit will be ineligible to serve as chairman. A member elected chairman will serve as chairman for the remainder of his six-month Committee term. The chairman will preside at meetings of the committee and will be expected to take the leadership and initiative to conduct the meeting in accordance with Exchange policy.

Committee Procedures

Allocation decisions will be made by a majority vote of the Committee members present at a meeting and eligible to vote on the matter. The Exchange will make every effort to have nine members present for each allocation decision and will use substitutes from the panel where necessary; if no specialist panel member is available, a former specialist panel member may substitute or, if none is available, a former Allocation Committee chairman may substitute. In the event it is impossible to arrange a meeting of a full nine-member committee, the Exchange has established a quorum requirement of seven members (as opposed to five members under current policy), including five floor brokers, one allied member and one specialist (or a former Allocation Chairman as a substitute).

Under the Policy, Committee members may not participate in the allocation deliberations with respect to any stocks for which either they or a specialist with whom their firm is affiliated have applied. Members also must disqualify themselves if there is any other conflict.

The decision of the Committee, along with a summary of the reasons for the decision, will be made known to the members of the Exchange. The Exchange also will provide that information to the issuer of the security allocated.

Allocation Criteria

Committee members will base their decisions on their professional judgment rather than a specific mathematical calculation. Each Committee member will apply the specific criteria based on his expertise and experience in the Exchange community.

Specialist performance will continue to be the key allocation criterion and performance will be judged in large part by the standards included in the recently-approved amendments to Exchange rule 1031.[4] First, an important measurement of specialist performance will continue to be the subjective measurements provided by the Specialist Performance Evaluation Questionnaire ("SPEQ"). In evaluating SPEQ results, while the Committee will evaluate current ratings and the ranking of a specialist unit relative to other applicants, the Committee also will evaluate: improvements in ratings; ratings over the last year to account for possible aberrations in ratings; the strengths of the particular individual designated to trade the stock;[5] written comments as to the performance of the entire unit; and any particular ratings or comments that may be relevant to particular characteristics of the new stock.

The Committee now will also evaluate specific objective performance standards pursuant to Rule 103A, such as timeliness of openings; promptness in seeking floor official approval of non-regulatory delayed openings; timeliness of reports under the Opening Automatic Reporting System ("OARS"); timeliness of turnaround in the Designated Order Turnaround ("DOT") System; and responses to administrative messages.[6] The Committee also will evaluate other objective criteria provided by the Exchange, such as data on specialist participation and stabilization.

In addition to performance criteria, the Committees also will consider a number of additional criteria. First, recognizing that listing on the Exchange is a significant development for a company, the Committee will consider a letter from the listing company that either requests specific units or specifies particular expertise in one or more aspects of the specialist's roles.

The Committee also will consider other allocations received by a unit in each of the preceding two years and the current year. While a recent allocation does not preclude a new allocation, the committee considers such factors in comparing qualified applicants. In this regard, the Committee also will consider information regarding stocks lost through mergers, delistings and other events over which the specialist has no control.

The Committee also will review the capital adequacy of the specialist unit, based both on a current check of estimated capital and on its capital history, and the disciplinary history of the unit. Specific disciplinary matters the Committee will consider include: cautionary letters regarding market-maintenance for the prior 12 months; other cautionary letters and summary fines for the past six months, disciplinary actions for the past six months; and significant pending enforcement matters. The Committee will consider significant pending enforcement matters once charges are issued or a stipulation is signed. Regardless of the length of time before an enforcement matter is resolved, the enforcement matter will be in a specialist's allocation file until the action is dismissed, or, if formal disciplinary action is taken, until six months after the stipulation is signed or a Hearing Panel decision on the matter is final.[7]

The final criterion the Committee will consider involves foreign listings. Due to the unique characteristics of the trading of foreign issues, such as international arbitrage and the trading of the stock in the home market, the Committee also will consider an applicant's commitment to the particular efforts necessitated by these listings.

Special Policies and Education

The Policy also includes a number of special policy notes. First, the Policy states that spin-offs of listed companies, the listing of related companies, and relistings of companies are treated as new listings and are subject to the Policy. In these cases, however, relevant information concerning the relationship to a listed company or prior listing, and the specialist involved, will be included on the stock data sheet and will be provided to the Committee. Committee members will use their judgment to determine what consideration, if any, should be given to that information.

Second, the Exchange has adopted special criteria for applicants that are not current specialists. Each individual that the applicant proposes as a specialist must pass the Exchange's specialist examination. The proposed unit must demonstrate that it understands the specialist business, as well as demonstrate an ability and willingness to meet the specialist's trading obligations. The Committee also will evaluate the entity's: capital commitment; specialist and clerical support; disciplinary history; and any available record of the entity or its participants as a specialist or market maker on another exchange.

The Exchange also will continue its policy of blanket applications pursuant to which an applicant agrees to accept the allocation of any security. Because a specialist may be allocated a security pursuant to a blanket application when the Committee determines that the regular applicants are not suitable for a particular stock, the allocation of a security pursuant to a blanket application will not prejudice a unit's eligibility for future allocations.

Finally, the proposal emphasizes the importance of the education of all participants to ensure continued quality and consistency in the allocation process. Educational efforts include: orientation of new panel members; a two-month "phase-in" of new Committee chairmen; providing all members the names of committee and the reasons for allocations; and general educational efforts for both specialists and the general membership.

(b) *Statutory Basis.*—The proposal will provide a fair procedure by which securities are allocated to specialist units, and for selecting among applicants on a basis that encourages superior performance and enhances the specialist system on the Exchange Floor. Accordingly, the proposal furthers the objectives of Section 6(b)(5) of the Act which requires that the rules of the Exchange be "designed * * * to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and * * * not be designed to permit unfair discrimination between customers, issuers, brokers or dealers * * *."

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Although the Exchange has neither solicited nor received written comments on the proposed rule change, as discused in Item II.A. above, the proposal is a result of a special Allocation Review Committee of Exchange directors and members.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-32 and should be submitted by December 12, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 14, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26831 Filed 11-18-88; 8:45 am]

BILLING CODE 8010-01-M

[3] Although appointment is random as to individuals, the Exchange will make a effort (i) to provide a geographical balance to the Allocation Committee so that the Committee adequately represents all areas of the Floor, and (ii) to include on the Committee no more than one broker or allied member whose firm is affiliated with a specialist unit.

[4] Securities Exchange Act Release No. 25661 (May 9, 1988) 53 FR 17287 (the "Rule 103A Approval Release"). The Exchange believes that reaffirmation specialist performance standards, including the rule 103A standards, as the key allocation criteria is responsive to the Commission's stated policy in this area. *See* Rule 103A Approval Release at note 32.

[5] While stocks are allocated to specialist units, allocation applications must note the individual who will serve as the primary specialist handling the stock. The individual who will act as specialist is a factor that may be considered by the Committee.

[6] These 103A objective measures will be reported to the Committee on a "pass" or "fail" basis for each criterion. The Committee also will be informed if an applicant has been subject to a performance improvement action under Rule 103A in the most recent four quarters.

[7] Concurrent with the filing of this proposal, the Exchange also is proposing a separate policy that will limit the ability of a specialist unit to receive an allocation (i) if it has lost a registration in a security pursuant to a reallocation proceeding under Rule 103A or a disciplinary proceeding, or (ii) if it voluntarily surrendered a security in anticipation of such a proceeding. See File No. SR-NYSE-88-33.

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[Release No. 34-26278; File No. SR-NYSE-88-33]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Stock Allocations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an "Allocation Restrictions Policy and Specialist Unit's Demonstration of Corrective Efforts." The operation of the Proposed rule change is described in Item II.A. below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose.*—The purpose of this proposed rule change is to impose certain restrictions on a specialist unit that either (i) loses its registration in a specialty stock due to Exchange disciplinary or performance improvement action; or (ii) voluntarily withdraws its registration in a specialty stock as a result of possible disciplinary or performance improvement action.

In either case, the specialist unit would be ineligible to apply for future allocations for the six month period immediately following the reassignment of the security. After this six month allocation restriction period, the unit will be able to apply for allocations during the following six months only if the unit demonstrates that it has undertaken relevant efforts to resolve the circumstances that gave rise to the loss of the security; however, even if the Exchange allows a specialist unit to apply for a new allocation during this second six month period, the circumstances that gave rise to the loss of the security will be included in the information provided to the Allocation Committee. The Exchange staff, in consultation with the Floor Directors, will determine whether a unit may apply for new listings.

This proposed rule change will work in tandem with two newly-adopted Exchange rules. First, the proposal will work in tandem with the Allocation Policy contained in File No. SR-NYSE-88-32. That policy contains specific criteria that the Allocation Committee will use in making allocation decisions. While the proposed criteria include a review of a specialist unit's disciplinary history, nothing in the rule specifically prevents a new allocation to an applicant that recently lost or withdrew its registration in a security due to actual or anticipated regulatory or performance improvement action. This proposed rule would specifically prevent such a new allocation for six months and impose additional restrictions on the allocation of new securities to the unit for the following six months.

Second, this proposed rule will work in tandem with recently-revised Rule 103A. That rule codifies the procedures and standards by which the Exchange reviews specialist unit performance. In the event that a unit's performance falls below specified standards, Rule 103A provides for the possible initiation of a reallocation proceeding. The Exchange does not believe it would be appropriate for a unit to receive a new allocation during a period of time proximate to its losing its registration in a stock pursuant to a reallocation proceeding. Thus, the restrictions of this proposed rule change will apply following a reallocation under Rule 103A, as well as after the loss of a registration in a stock following other Exchange disciplinary actions.

The Exchange further believes that there should not be a distinction between: (i) A specialist unit's losing its registration in a security as a result of a reallocation or disciplinary proceeding; and (ii) a unit's voluntarily withdrawing its registration in a specialty stock as a result of the possibility of such action. Thus, this proposed rule change provides for the consistent application of the penalty in these two instances and will prevent a unit from avoiding the allocation restriction by negotiating a settlement of pending action.

Following the market break in October 1987 and an intense regulatory review of a specialist performance during that period, seven specialist units voluntarily withdrew their registrations in a number of speciality stocks. The Exchange believes that it would be inappropriate for specialists to receive new stock allocations for some period following the voluntary withdrawal of registrations in these circumstances.

The Exchange further believes that this proposed rule change is consistent with the Commission Staff's report on the market break.[1] In the Rerport, the staff reviewed Exchange specialist performance during the market break and encouraged Exchange action to improve specialist review procedures and the reallocation process in general. Specifically, the Report states that the staff "will review carefully the willingness of the Exchange to use its reallocation and other enforcement authority to address poor specialist performance during the market break and thereafter."[2] The Exchange believes that this proposed rule change is responsive to the staff's concerns.

(b) *Statutory Basis.*—The proposal will enhance the ability of the Exchange to ensure the fair allocation of securities to specialist units and to prevent the allocation of securities to specialist units whose performance is below acceptable standards. Accordingly, the proposal furthers the objectives of section 6(b)(5) of the Act which requires that the rules of the Exchange be "designed * * * to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and * * * not be] designed to permit unfair discrimination between customers, issuers, brokers or dealers * * *."

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change.

[1] The October 1987 Market Break. A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, February, 1988 ("Report").

[2] Report at 4-28.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Comission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-33 and should be submitted by December 12, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 14, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26834 Filed 11-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 33-6807; 34-26284; IC-16636; IA-1143; S7-25-88]

Regulation of International Securities Markets

AGENCY: Securities and Exchange Commission.

ACTION: Policy Statement; request for comments.

SUMMARY: The Securities and Exchange Commission is releasing a Policy Statement on Regulation of International Securities Markets. The Policy Statement identifies areas of regulatory concern presented by the continued internationalization of the securities markets. The Policy Statement sets forth principles and goals which the Commission considers to be central to achieving a truly global market system. The Commission emphasizes the need for cooperation between securities regulators throughout the world in seeking coordinated international solutions to world market problems. The Commission notes that in seeking solutions to common problems securities regulators should be sensitive to cultural differences and national sovereignty concerns. Regulators should be mindful and respectful of existing national regulatory frameworks. The Commission emphasizes concepts of accommodation and comparability in dealing with differences existing between these regulatory frameworks. Welcoming comments on its views, the Commission suggests that an effective regulatory structure for an international securities market system would include the following features:

1. *Efficient structures* for quotation, price, and volume information dissemination, order routing, order execution, clearance, settlement, and payment, as well as strong capital adequacy standards;

2. *Sound disclosure systems,* including accounting principles, auditing standards, auditor independence standards, registration and prospectus provisions, and listing standards that provide investor protection yet balance costs and benefits for market participants; and

3. *Fair and honest markets,* achieved through regulation of abusive sales practices, prohibitions against fraudulent conduct, and high levels of enforcement cooperation.

DATES: This policy statement is dated November 14, 1988. Comments are due on or before January 23, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-25-88. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: (1) On market structure issues, Richard G. Ketchum, Director of the Division of Market Regulation, (202) 272-3000;

(2) On disclosure issues, Linda C. Quinn, Director of the Division of Corporation Finance, (202) 272-2800;

(3) On accounting and auditing issues, Edmund Coulson, Chief Accountant, (202) 272-2050;

(4) On investment company and investment adviser issues, Kathryn B. McGrath, Director of the Division of Investment Management, (202) 272-2750; and

(5) On enforcement issues, Gary C. Lynch, Director of the Division of Enforcement, (202) 272-2900.

SUPPLEMENTARY INFORMATION:

I. Introduction

International markets for securities have grown tremendously in recent years. The world's markets for equity and debt securities have become increasingly automated and linked. Driven by new technology, investors' desires to enter foreign markets, and issuers' efforts to obtain low cost capital, the trend toward internationalization of the securities markets undoubtedly will continue.

The challenge facing regulators of these global securities markets is to ensure efficiency and honesty. An effective regulatory structure for an international securities market system would include the following features:

(1) *Efficient structures* for quotation, price, and volume information dissemination, order routing, order execution, clearance, settlement, and payment, as well as strong capital adequacy standards;

(2) *Sound disclosure systems,* including accounting principles, auditing standards, auditor independence standards, registration and prospectus provisions, and listing standards that provide investor protection yet balance costs and benefits for market participants; and

(3) *Fair and honest markets,* achieved through regulation of abusive sales practices, prohibitions against fraudulent conduct, and high levels of enforcement cooperation.

To achieve these objectives, securities regulators in each nation should work closely with their foreign counterparts and seek coordinated international solutions to world market problems. Securities regulators should continue to utilize both bilateral and multilateral relationships in various areas. Cooperative efforts through multilateral organizations, such as the International Organization of Securities Commissions ("IOSCO"), should be continued and strengthened.

In seeking solutions to common problems, securities regulators should

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be sensitive to cultural differences and national sovereignty concerns. As regulators seek to minimize differences between systems, the goal of investor protection should be balanced with the need to be responsive to the realities of each marketplace.

Solutions to the problems posed by internationalization should also be developed with due consideration to the differing approaches to regulation of the varying products in the securities markets, such as stock index futures and options. In that regard, both derivative and underlying markets should be fair and honest so that wrongdoers cannot do indirectly in one market what they are unable to do directly in a related market.

Major world markets and their regulators should also assist developing securities markets. By helping those markets to become efficient and honest, the developed markets will benefit as participants in the resulting enhanced global securities market system.

The United States Securities and Exchange Commission believes it has a responsibility to assume a leadership role in international securities regulation. It considers the principles and goals contained in this Policy Statement to be central to achieving a truly global market system.

II. A Structurally Efficient Securities Market System

A. Information and Trading Systems

The international securities market system should feature efficient structures for quotation, price, and volume information dissemination concerning securities and derivative products traded worldwide. The dissemination of market data on a real-time basis promotes the efficient operation of capital markets. Presently, quotation, price, and volume information in various national securities markets often may not be timely, because such information may be available only at the end of a trading day or at fixed times during the day. Such data would be inadequate to support the 24-hour trading activity that would occur in a global securities market system. World markets and their regulators should work with the private sector to improve market information systems so that these systems keep pace with growth in the volume of international trading. The systems should be fully automated to achieve the goal of worldwide, real-time information dissemination concerning globally traded securities and derivative products. Traders then would be able to determine the last sale price, current quotes, and current volume in a security or derivative product on a worldwide basis. Such automated, real-time information systems can be particularly crucial in times of market volatility when current information may be necessary to avert panic.

Accordingly, the first step in achieving a worldwide securities market information system should be to establish automated market information systems in each national market in order to increase efficiency and stability. A second step would be the creation and maintenance of international linkages between the automated information systems of the various national securities markets. A number of such linkages already exist between major national securities markets. Ultimately, the development of international consolidated information systems in globally traded securities and derivative products should be explored.

The international securities market system should also feature efficient structures for order routing and execution of trades. The key to achieving this goal will be to create and maintain automated national securities market routing systems and to improve the various execution systems, whether they be open outcry, auction, negotiated, automated, or a combination of those systems. The next step would be to establish international linkages between routing and execution systems, such as those already existing between several major national securities markets.

B. Clearance, Settlement, and Payment Systems

If a truly global securities market is to be achieved, one of the most important international goals should be to establish efficient and comparable automated national and international clearance, settlement, and payment systems. There are wide-ranging differences in dealer and institutional comparison periods, settlement periods, and degrees of automation among various equity and debt markets. Ultimately, all countries should establish fully automated clearance and settlement systems that permit paperless book entry movement of all broker-dealer and institutional equity and debt positions. The current lack of coordination among clearance, settlement, and payment sytems in major world securities markets increases the costs and risks of global securities trading.

Although comparable systems are not currently in place, it is nevertheless important to develop clearing linkages among the major national securities markets. Linkages provide a current viable means of establishing international clearance and settlement because they do not depend upon the existence of identical, or even comparable, systems in each country. Sound linkages facilitate cross-border settlements without compromising the essential soundness and integrity of each national clearance and settlement system. For the linkages to be sound, adequate safeguards should exist to reduce the risk of default and to contain potential losses. In the near term, securities regulators should encourage the development of a network of sound linkages between individual market clearance and settlement systems to facilitate cross-border settlements. Regulators also should strive to agree upon appropriate minimum standards for these linkages.

Notwithstanding the use of clearance and settlement linkages, reduction of differences between the various national clearance and settlement systems is necessary for creation of a truly global securities market. Accordingly, world markets and their regulators should continue to work towards achieving efficient and compatible systems. A top priority of all markets should be to establish and maintain centralized depository and clearing systems. Concurrently, securities regulators should work together to develop compatible worldwide standards for clearing entities.

C. Financial Responsibilities of Securities Firms

The multinational character of many large brokerage firms and financial institutions has raised regulatory concerns regarding the financial integrity of these entities. Securities regulators worldwide share the goal of preventing defaults of overseas affiliates from jeopardizing the financial integrity of firms in their own countries.

1. Financial Information Sharing

In the near term, national securities markets and their regulators should continue to develop bilateral and, if possible, multilateral agreements for the sharing of financial information with respect to securities affiliates. This approach recognizes the need for home country regulators to be better informed about worldwide securities activities of their regulated securities firms. Regulators thus would be in a better position to respond to international events—either on a firm or market-wide basis—that could have an adverse effect on the financial and operational condition of the regulated firm in the home country.

2. Capital Adequacy Standards

Varying degrees of regulation exist in different nations regarding broker-dealer capital. Securities regulators should continue to explore the desirability of more consistent international capital adequacy standards designed to ensure stability and liquidity in national and international markets. Acheiving full harmonization of capital requirements between banks and non-bank securities firms with regard to their worldwide securities activities is a difficult task. Efforts nevertheless should continue to harmonize securities firm financial responsibility rules in coordination with bank regulatory officials in order to ensure that mutually agreeable standards for risk-based capital are established. At a minimum, securities regulators should seek a common conceptual framework against which non-bank capital adequacy standards can be measured.

III. A Sound Disclosure System

Investors participating in the international securities markets should be protected through a sound disclosure system based on mutually agreeable accounting principles, auditing standards, auditor independence standards, registration and prospectus provisions, and listing standards. The goal in addressing international disclosure and registration problems should be to minimize regulatory impediments without compromising investor protection.

Differences in disclosure requirements, accounting principles, auditing standards, and auditor independence standards between countries are impediments to multijurisdictional offerings. Securities regulators should continue to seek ways to accommodate and, to the extent possible, minimize these differences in order to facilitate transnational capital formation, while ensuring adequate disclosure for the protection of investors.

As a means of facilitating transnational capital formation and increasing available investment opportunities, securities regulators should consider multijurisdictional registration mechanisms whereby issuers can use their own jurisdiction's disclosure documents for offerings in other countries. The ultimate goal should be the development of an integrated international disclosure system.

Efforts should be made to ease restrictions on cross-border sales of investment company shares. Easing restrictions on access by foreign investment companies to domestic markets can result in increased investment opportunities for domestic investors. If cross-border sales of investment company shares are to be facilitated, however, cooperative efforts by securities regulators are a necessity. The most promising approach currently seems to be one based on mutually acceptable standards which are adequate for protection of investors. accordingly, securities regulators should strive to develop and implement bilateral and, if feasible, multilateral agreements for the sale of investment company shares based upon such standards.

With regard to the applicability of securities registration requirements to overseas offerings, a "territorial approach" has merit. Under this approach, offers or sales of securities occurring outside a country's borders generally would not be subject to that country's registration requirements.

Accounting principles, auditing standards, and auditor independence standards are key factors in determining the feasibility of achieving mutually acceptable disclosure. A primary impediment to multinational offerings of securities is that different countries have different accounting standards. Mutually acceptable international accounting standards are a critical goal because they will reduce the unnecessary regulatory burdens resulting from current disparities between the various national accounting standards. Accordingly, securities regulators and members of the accounting profession throughout the world should continue efforts to revise and adjust international accounting standards with the aim of increasing comparability and reducing costs.

Differences in auditing standards and auditor independence standards also present obstacles to achieving a mutually acceptable worldwide disclosure regime. Auditors around the world are subject to different independence standards, perform different procedures, gather varying amounts of evidence to support their conclusions, and report the results of their work differently. Accordingly, an important long-term goal should be to establish mutually agreeable auditing and auditor independence standards.

IV. Fair and Honest Markets

Regulators should strive to make the world securities market system fair and honest, through regulation of abusive sales practices, prohibitions against fraudulent and manipulative conduct, and high levels of enforcement cooperation. Laws and regulations should promote efficiency and fairness in the securities markets by prohibiting such acts as insider trading, market manipulation, and misrepresentations to the marketplace. Additionally, securities firms and their personnel should be held to high standards of commercial honor and integrity. Securities regulators, including self-regulatory organizations, should require securities firms to establish and implement effective supervisory arrangements to guard against dishonet or abusive sales practices.

Investors will seek out markets they perceive as fair and honest. Countries that do not have prohibitions against insider trading, market manipulation, and misrepresentations to the marketplace risk becoming havens for illegal activities. Market abuses result in less efficient markets, higher insurance and other costs and, most important, the absence from those markets of individuals and institutional investors who consider integrity to be an essential market characteristic.

As access to international securities markets by brokers, issuers, investment companies, investment advisers, and securiites traders from all countries has increased, the need for access by enforcement authorities to information about foreign trading activity and the capital raising operations of foreign companies has expanded. Pertinent information and evidence regarding such activities frequently is located outside of a particular regulator's jurisdiction. Accordingly, securities regulators should continue to forge a network of bilateral and multilateral surveillance and information sharing arrangements that are effective from an enforcement standpoint and sensitive to national sovereignty concerns. The major international securities markets should be encouraged to share surveillance information with a view toward ultimate implementation of a worldwide network of surveillance sharing agreements.

Additionally, securities regulators should strive to eliminate the ability of wrongdoers to shield themselves and their ill-gotten gains from the laws of the countries in which their wrongdoing occurred or where their conduct had an impact. Countries should work together to establish formal mechanisms for the enforcement of judgments abroad, as well as for imposition of preliminary judgments freezing a wrongdoer's assets.

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V. Need for International Coordination

The ability of securities regulators to address the issues raised by internationalization of the securities markets will depend greatly upon cooperation among regulators. There can be no doubt that all securities regulators should work together diligently to create sound international regulatory frameworks that will enhance the vitality of capital markets.

Securities regulators around the world have already made strides in developing coordinated responses to important issues. International forums such as IOSCO provide securities regulators with the opportunity to meet with their international counterparts in order to work toward achieving greater cooperation, comparability, and uniformity in areas of particular concern.

Although some progress toward the goal of reaching common understandings has been made, the tasks ahead are complex. Major differences remain among world securities market regulatory structures, even among the most mature markets. While seeking common solutions to international issues, regulators should also be mindful and respectful of existing national regulatory frameworks.

If these national frameworks are to be respected, resolution of international securites regulation issues requires special effort by all concerned. The United States Securities and Exchange Commission is committed to working with securities regulators around the world to achieve the goal of an international securities market system that is efficient and honest.

The views expressed by the United States Securities and Exchange Commission in this Policy Statement are intended to stimulate thought in a rapidly developing regulatory area and should be regarded as subject to revision. The Commission welcomes comments on these views from all interested persons.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26878 Filed 11-18-88; 8:45 am]

BILLING CODE 8010-01-M

Applications and Opportunity for Hearing; Brock Exploration 1977-1, Ltd., et al.

November 15, 1988.

Notice is hereby given that the following issuers have filed applications pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for orders exempting the Applicants from certain registration and reporting requirements under sections 12, 13 and 15(d) of the 1934 Act.

Issuer	File No.
Brock Exploration 1977-1, Ltd.	81-754
Brock Exploration 1978-1, Ltd.	81-755
Brock Exploration 1979-1, Ltd.	81-756
Brock Exploration 1980-1, Ltd.	82-757
Brock Exploration 1981-1, Ltd.	81-758
Brock Exploration 1982-1, Ltd.	81-759
Brock Exploration 1983-1, Ltd.	81-760
Sierra-Pacific Pension Investors '84	81-774
Sierra-Pacific Pacific Development Fund	81-773
Sierra-Pacific International Properties V	81-765
Sierra-Pacific Development Fund II	81-776
Sierra-Pacific Development Fund III	81-777
Rancon Realty Fund III	81-766
Rancon Realty Fund IV	81-767
Rancon Realty Fund I	81-769
Green Gold Consolidated	81-770
Rancon Realty Fund II	81-778
Rancon Realty Fund V	81-781
Rancon Development Fund VI	81-782
Rancon Pacific Realty L.P.	81-783
Rancon Income Fund I	81-784
Income Growth Partners Ltd. IX	81-775
Angeles Income Properties, Ltd.	81-785

For a detailed statement of the information presented, all persons are referred to the applications which are on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person not later than December 12, 1988, may submit to the Commission in writing his views or any substantial facts bearing on any of these applications or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the applications which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered in any of these matters will recieve any notices and orders issued, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the applications may be issued upon request or upon the Commission's own motion.

For the Commission by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26833 Filed 11-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16635; (811-2449)]

Application; Bullock Monthly Income Shares, Inc.

November 15, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for De-Registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bullock Monthly Income Shares, Inc.

Relevant 1940 Act Section: Application filed pursuant to section 8(f) and Rule 8f-1.

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application was filed on October 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 9, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3047, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a Maryland corporation and on January 10, 1974, filed a registration statement pursuant to Section 8(b) of the 1940 Act to register as an open-end, diversified management investment company. Applicant also filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") on January 10, 1974, with respect to a public offering of Applicant's common stock. Applicant's 1933 Act registration statement became effective on April 12 1974, and its initial public offering commenced shortly thereafter.

2. On November 17, 1986, Applicant's Board of Directors approved (i) the sale of substantially all the assets of Applicant to the Monthly Income portfolio of Alliance Bond Fund (File No. 811-2383) in exchange for shares of beneficial interest of the Monthly Income portfolio of Alliance Bond Fund to be distributed to Applicant's shareholders on the basis of their relative net asset values per share, and (ii) the subsequent dissolution of Applicant. The Agreement and Plan of Reorganization and Liquidation and the terms of the reorganization are set forth in the preliminary proxy statement filed with the SEC on November 28, 1986. On December 26, 1986, a Prospectus/Proxy Statement was mailed to Applicant's shareholders or record. On February 27, 1987, at a meeting duly called and held, the shareholders of Applicant approved the reorganization and subsequent dissolution of Applicant. Pursuant to the Agreement and Plan of Reorganization and Liquidation, on March 2, 1987, Applicant transferred all its assets to the Monthly Income portfolio of Alliance Bond Fund in exchange for shares of beneficial interest of the Monthly Income portfolio of Alliance Bond Fund. The shares of the Monthly Income portfolio of Alliance Bond Fund received by Applicant were thereafter distributed to Applicant's shareholders in liquidation.

3. Applicant states that it does not currently have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. On August 28, 1987, Applicant filed Articles of Dissolution with the State of Maryland terminating its existence as a Maryland corporation. The Articles of Dissolution became effective upon filing.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26832 Filed 11-18-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of The Secretary

[Public Notice 1084]

[Delegation of Authority No. 170]

Delegation of Authority Providing for Implementation of the Victims of Terrorism Compensation Act

I hereby delegate to the Director General of the Foreign Service authority to carry out the functions vested in me by Executive Order 12598 of June 17, 1987 to implement the Victims of Terrorism Compensation Act (5 U.S.C. 5569 and 5570), including, but not limited to, declarations of instances in which individuals are in missing status or have suffered death or disability because of hostile action as a result of the individual's relationship with the United States Government, determinations of eligibility of individuals for compensation as a result of such instances, and issuance of regulations to administer these provisions.

The Director General may redelegate the functions delegated herein to a person acting as Director General in his or her absence.

Date: November 3, 1988.

George P. Shultz,

Secretary of State.

[FR Doc. 88-26779 Filed 11-18-88; 8:45 am]

BILLING CODE 4710-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 10, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 45921

Dated Filed: November 7, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 5, 1988.

Description: Application of Trump Shuttle, Inc. pursuant to section 401(d) of the Act and Subpart Q of the Regulations, requests authority to engage in interstate and overseas scheduled air transportation of persons, property and mail: Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket No.: 45922.

Date Filed: November 8, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 6, 1988.

Description: Application of Aviacion Del Noroeste, S.A. de C.V., pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation, carrying persons, property and mail and also authorizing it to engage in charter trips in foreign air transportation subject to the terms, conditions, and limitations of the Department's regulations governing charters, between points in Mexico and points in the United States.

Docket No.: 45926.

Date Filed: November 10, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 8, 1988.

Description: Application of America West Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of persons, property and mail over the following route: Between the coterminal points Phoenix, Arizona, Las Vegas, Nevada, Los Angeles, California, San Francisco/Oakland, California, San Diego, California, and Honolulu, Hawaii, and the terminal point Sydney, Australia.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-26844 Filed 11-18-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE 88-43

Petition For Exemption; Summary of Petitions Received, Disposition of Petitions Issued; Correction

AGENCY: Federal Aviation Administration DOT.

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ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; Correction, Dates.

SUMMARY: FAA is correcting errors in Dates Section. In FR Doc. 88–25739 published Tuesday November 8, 1988 on page 45181 please change the comment closing date from November 11, 1988, to read November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Rules Docket (AGC 10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington DC 20591; telephone (202) 267–3132.

Michael D. Triplett,

Docket Section, Program Management Staff, AGC 10.

[FR Doc. 88–26801 Filed 11–18–88; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–88–45]

Petition For Exemption; Summary of Petitions Received; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 12, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 15, 1988.

Deborah E. Swank,

Manager, Program Management Staff.

Petitions For Exemption

Docket No.: 22441.
Petitioner: United Airlines.
Regulations Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and Appendix F of Part 121.
Description of Relief Sought: To extend and amend Exemption No. 3451C that allows petitioner to continue an FAA-monitored program under which the petitioner's pilots in command, seconds in command, and flight engineers meet annual ground and flight recurrent training and proficiency check requirements. The proposed amendment would add, delete, and extend certain provisions of the exemption, based on petitioner's experience to date. Exemption No. 3451C will terminate on January 31, 1989.

Docket No.: 25656.
Petitioner: Michael S. Musticchio.
Sections of the FAR Affected: 14 CFR 65.71(a)(3).
Description of Relief Sought: To extend by 90 days the period during which all prescribed tests must be passed for a mechanic certificate.

Docket No.: 25682.
Petitioner: Thomas Glaeser and Richard Starks.
Sections of the FAR Affected: 14 CFR 91.24 (b) and (c).
Description of Relief Sought: To allow petitioners to operate their Nieuport (N124DS and N124TG) airplanes without the Mode C requirement because the current electrical system in the airplanes is there only to maintain engine operations and to trickle charge the battery.

Docket No.: 25686.
Petitioner: Airline Management Services, Inc.
Sections of the FAR Affected: 14 CFR 121.547.
Description of Relief Sought: To allow certain personnel of the petitioner and Airline Software Inc. to be admitted to the flight deck without a seat available in the cabin.

Docket No.: 25692.
Petitioner: JayHawk Air, Inc.
Sections of the FAR Affected: 14 CFR 43.3 (g).
Description of Relief Sought: To allow pilots employed by petitioner to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft used in Part 135 operations.

Docket No.: 25710.
Petitioner: H&S Aviation, Ltd.
Sections of the FAR Affected: 14 CFR 145.73(a).
Description of Relief Sought: To allow petitioner to repair and overhaul PT6 engines for Pratt & Whitney Canada installed in aircraft operating wholly within the United States, and would enable petitioner to repair and overhaul PW100 engines for Pratt & Whitney Canada installed in aircraft operating wholly within the United States, contingent upon FAA certification of petitioner as a foreign repair station for PW100 engines.

Docket No.: 25716.
Petitioner: Flamenco Airways, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow petitioner's pilots to remove one to four seats on their Britten Norman BN2A aircraft and install a supplemental type certificate stretcher in the seat tracks vacated by the seats.

Docket No.: 25719
Petitioner: World Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) 121.378.
Description of Relief Sought: To allow petitioner to use Caledonian Airmotive, Ltd., to perform services including inspection, repair, maintenance, overhaul, and return to service of CF6–6 and CF6–50 engines, appliances, parts, and components.

Docket No.: 25725.
Petitioner: Short Brothers PLC.
Sections of the FAR Affected: 14 CFR 145.73(a) and 43.3(a).
Description of Relief Sought: To allow petitioner to become certificated as a foreign repair station and to work on and approve for return to service aircraft, parts, and equipment on U.S.-registered aircraft regardless of their base or area of operation.

Docket No.: 25725.
Petitioner: Valley Airlines.
Sections of the FAR Affected: 14 CFR 21.197(c)(2).
Description of Relief Sought: To allow operation of petitioner's four Cessna 402 series aircraft under special flight permit with continuing authorization.

Docket No.: 25731.
Petitioner: Experimental Aircraft Association and Confererate Air Force.
Sections of the FAR Affected: 14 CFR Part 45.
Description of Relief Sought: To allow aircraft owned and operated by petitioners to operate with 2-inch markings located on the sides of the fuselage under the horizontal stabilizer or on the sides of the vertical tail surfaces, instead of as is presently provided under §§ 45.25 and 45.29.

Docket No.: 25670.
Petitioner: Airways Training Institute, Inc.
Sections of the FAR Affected: 14 CFR 141.35 (c)(5)(i) and (d)(4)(i).
Description of Relief Sought/Disposition: To allow Mr. Joe Sposito to be designated as petitioner's chief flight instructor without meeting certain experience requirements for such designation. *Denied, November 7, 1988, exemption No. 4993.*

[FR Doc. 88–26808 Filed 11–18–88; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Watauga County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Watauga County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Bellamy, Division Administration, Federal Highway Administration, 4505 Falls of the Neuse Road, Suite 470, Raleigh, North Carolina 27609, Telephone (919) 701–2950.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) for the proposed improvement of US 421 from east of the South Fork of the New River to SR 1361 in Watauga County. The proposed action consists of the construction of a multilane, divided, partially controlled access facility on new location for a distance of approximately 11 miles. The proposed project is needed to serve traffic demand in the area and to relieve the congestion, delay, and inconvenience currently being experienced along this highway.

Alternatives under consideration include (1) the "no-build", (2) improving existing US 421, and (3) construction on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies. Public meetings and meetings with local officials will be held in the project area. A public hearing will also be held. Information on the time and location of the public meeting and public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To insure that the full range of issues relating to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on November 14, 1988.

J. Max Tate,

District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 88–26784 Filed 11–18–88; 8:45 am]

BILLING CODE 4910–27–M

Federal Railroad Administration

Petition for Exemptions or Waivers of Compliance; Soo Line Railroad Co.

In accordance with 49 CFR 211.9 and 211.41 and 45 U.S.C. sections 1–16 and 1013, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waivers of compliance with certain requirements of the Federal railroad safety laws and regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Soo Line Railroad Company Waiver Petition Docket Numbers PB–88–2 and SA–88–4

The Soo Line Railroad Company (Soo Line) requests waivers of compliance with certain provisions of the railroad power brakes regulation (49 CFR Part 232), under Docket No. PB–88–2, and the safety appliance regulation (49 CFR Part 231), under Docket No. SA–88–4.

Soo Line seeks these waivers of compliance to permit the operation of railroad/highway vehicles which are designated as "RoadRailer" units. The Soo Line and the Norfolk Southern Corporation are entering into an agreement for the Soo Line to use RoadRailer equipment between Chicago, Illinois, and Minneapolis/St. Paul, Minnesota, a distance of about 450 miles.

Operating subsidiaries of the Norfolk Southern Corporation (Norfolk Southern) are presently operating 500 RoadRailer vehicles under a conditional waiver issued by FRA on July 28, 1987. (See notice of waiver petitions, 52 FRA 16326, May 4, 1987, for more detailed discussion.) These vehicles are almost identical to the standard semi-trailer presently used to haul cargo over the highway, the only difference being that they are equipped with a special drawbar, railroad running wheels and a special railroad brake system. The railroad wheels are mounted on a single axle, either to the rear of the normal tandem highway wheels or between the tandem highway wheels of the semi-trailer.

The RoadRailer vehicles, by design, cannot be subjected to traditional switching procedures conducted in railroad classification yards. The coupler assmebly will only couple to another RoadRailer vehicle or to a specially designed adapter car between the locomotive and a RoadRailer train, and the drawbar height is nonstandard. The waiver granted to the Norfolk Southern permits noncompliance with all the provisions of the Safety Appliance Standards (49 CFR Part 231). These standards include provisions that state the number, location and dimensional specifications for the handholds, ladders and sill steps that are required for each railroad car. In addition, the train air brake system on a RoadRailer train is not compatible with the more traditional system found on freight trains and would not be in compliance with the power brake regulation (49 CFR Part 232). It was for these reasons that the Norfolk Southern was granted relief from Parts 231 and 232.

It is for the same reasons that the Soo Line is seeking permanent waivers similar to those which were granted to the Norfolk Southern. The Soo Line would also agree to the same terms and conditions that presently exist for the operation of service of the RoadRailer equipment by the Norfolk Southern. The Soo Line states that a grant of conditional waivers for RoadRailer operations between Chicago and Minneapolis would result in an extension of the use of RoadRailer

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equipment to the Twin Cities area over the track of the Soo Line with no additional costs to the private sector, to consumers, or to the Federal state or local governments. It says that the service will provide benefits to consumers and the private sector through anticipated lower costs for transportation and the addition of new traffic to the Soo Line.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the period and specify the basis for their request.

All communications concerning these proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–88–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before January 5, 1989 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on November 14, 1988.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–26894 Filed 11–18–88; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Action on Motor Vehicle Defect Petition; Center for Auto Safety

This notice sets forth the reasons for the decision not to grant a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*)

On May 10, 1988, the Center for Auto Safety (CFAS), petitioned NHTSA to investigate and recall 1983 through 1987 ambulances, built by various manufacturers using the Ford E–350 chassis, regarding an alleged defect involving coolant hose failures.

The agency investigated the reported fires and found that the problem was related to the installation of the rear compartment heater by the second-stage ambulance manufacturers. During this installation, the second-stage manufacturers cut both the Ford installed heater hoses, running to and from the underdash original equipment heater, and install "T" connectors, usually made of plastic. These "T" connectors allow the second-stage manufacturer to connect additional heater hoses to supply coolant to the heaters they install in the rear compartments, which they fit to the Ford Chassis. Failures appeared to be caused by the poor quality of the original equipment hoses and the internal hose damage caused by the presence of sharp flashings on the plastic "T" most of the second-stage manufacturers were using.

Additional information showed that the problem not only involved Ford and the second-stage manufacturers, but also the operators of the ambulances. In a survey of 75 ambulances in Missouri, it was found that most Ford original equipment radiator caps had been replaced with aftermarket caps, which did not maintain pressure as high as required by Ford to inhibit the coolant boiling. It was also determined that most operators were operating with coolant which contained higher concentrations of antifreeze than the 50/50 mixture of water and antifreeze recommended by Ford and which was therefore more liketly to ignite.

NHTSA urged Ford to take recall action, and Ford agreed to conduct a safety recall. A recall was announced by Ford on August 4, 1988. Ford has agreed to conduct this recall even though some responsibility for the problem may lie with the second stage ambulance manufacturers and the ambulance operators. The recall will include replacing several heater hoses with hoses made of silicone and nomex, which will safely operate at higher temperatures. The "T"s installed by second stage manufacturers will be replaced with a metal "Y" which will have no sharp edges. Ford will also replace the radiator caps and the coolant with a properly balanced mixture of 50 percent coolant, 50 percent water.

Based on Ford's recall action, NHTSA has decided not to grant the CFAS petition.

Authority: Sec. 124, Pub. L. 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 15, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88–26875 Filed 11–18–88; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. T84–01; Notice 18]

Final Passenger Motor Vehicle Theft Data for 1987

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Publication of final theft data for 1987.

SUMMARY: The Motor Vehicle Information and Cost Savings Act provides that NHTSA shall publish passenger motor vehicle theft data for review and comment "immediately upon enactment of this title, *and periodically thereafter.*" (Emphasis added). The periodic publication of these theft data does not have any effect on the obligations of regulated parties under the Cost Savings Act. These theft data for years after 1984 serve only to inform the public of the extent of the motor vehicle theft problem. NHTSA has previously published 1987 theft data for public review and comment. After evaluating those public comments, the agency has made some minor changes to the previously published 1987 data. This notice informs the public of those minor changes and of this agency's final calculations of 1987 theft data.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202 366–4808).

SUPPLEMENTARY INFORMATION: NHTSA has promulgated a Federal motor vehicle theft prevention standard at 49 CFR Part 541. This standard applies to cars that are in lines designated as "high theft lines." Whether or not a car line is a high theft line depends on the relationship of the line's actual or likely theft rate to the median theft rate for car lines in 1983 and 1984. Section 603(b)(3) of the Cost Savings Act (15 U.S.C. 2023(b)(3) sets forth the steps NHTSA had to follow in making its determination of the median theft rate for 1983 and 1984. The agency followed those steps, published final theft data for the 1983 and 1984 car lines, and made a determination of the median theft rate for those years. *See* 50 FR 4666; November 12, 1985.

Section 603(b)(3) of the Cost Savings Act also provides that NHTSA shall "periodically" publish later calendar years' theft data for public review and comment. These publications of theft data for subsequent model years have no effect on the determination of whether a car line is or should be subject to the requirements of the theft prevention standard. The agency believes that the reason Congress directed it to periodically publish data for later years to inform the public, particularly law enforcement groups, automobile manufacturers, and the Congress, of the extent of the vehicle theft problem and the impact, if any, on the vehicle thefts of the Federal motor vehicle theft prevention standard.

To accomplish this purpose, NHTSA published for public review and comment the theft rates for 1987 on July 22, 1988 (53 FR 27782). NHTSA received two comments on the 1987 theft data, both of which were submitted by vehicle manufacturers, Volkswagen of America, Inc. (Volkswagen) and Saab-Scania of America, Inc. (Saab)

Volkswagen provided the agency with updated production figures for the Volkswagen Golf/GTI and the Volkswagen Jetta. The agency has incorporated these figures into the theft data and recalculated the theft rankings as appropriate. The Volkswagen Golf/GTI and Jetta theft rate ranking remain the same at numbers 90 and 71, respectively.

Saab brought to NHTSA's attention an error in the production figure for the Saab 9000 carline. This figure has been corrected and the theft rate recalculated. Formerly ranked at 154, the final Saab 9000 theft ranking is number 151.

The following list represents NHTSA's final calculation of theft rates for all 1987 car lines. As noted above, this list is only intended to inform the public of 1987 vehicle theft experience, and does not have any effect on the obligations of regulated parties under the Cost Savings Act.

Authority: 15 U.S.C. 2023; delegation of authority at 49 CFR 1.50. Issued on November 16, 1988.

Diane K. Steed,

Administrator.

MODEL YEAR 1987 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1987

	Manufacturer	Make/Model (Line)	Thefts 1987	Production (Mfgr's) 1987	Theft Rate (Thefts/Product) (1987) (1,000's)
1	General Motors	Pontiac Firebird	2,424	80,414	30.1440
2	General Motors	Chevrolet Camaro	3,333	128,056	26.0277
3	General Motors	Chevrolet Monte Carlo	1,516	74,739	20.2839
4	Toyota	MR2	381	19,782	19.2599
5	General Motors	Buick Regal	910	61,859	14.7586
6	Mitsubishi	Starion	100	6,845	14.6092
7	Ferrari	Mondial	2	147	13.6054
8	Mitsubishi	Mirage	357	27,879	12.8053
9	General Motors	Pontiac Fiero	563	44,376	12.6870
10	General Motors	Oldsmobile Cutlass Supreme	1,338	114,013	11.7355
11	General Motors	Chevrolet Beretta/Corsica	186	16,109	11.5463
12	Porsche	911	104	9,047	11.4955
13	Chrysler Corp	Chrysler New Yorker	747	68,106	10.9682
14	Chrysler Corp	Chrysler Conquest	160	15,014	10.6567
15	General Motors	Pontiac Grand Prix	176	16,543	10.6369
16	Toyota	Corolla/Corolla Sport	1,851	175,011	10.5765
17	General Motors	Chevrolet Corvette	278	29,021	9.5793
18	Volkswagen	Cabriolet	165	17,288	9.5552
19	General Motors	Cadillac Seville	168	18,175	9.2435
20	Toyota	Cressida	275	31,829	8.6402
21	Lotus	Esprit	3	350	8.5714
22	General Motors	Cadillac Fleetwood Brougham (RWD)	522	61,733	8.4558
23	Mitsubishi	Cordia	39	4,801	8.1233
24	Chrysler Corp	Chrysler Leberon/Town & Country	489	60,243	8.1171
25	General Motors	Chevrolet Nova	1,187	147,105	8.0691
26	General Motors	Chevrolet Spectrum	734	91,730	8.0017
27	Volkswagen	Scirocco	69	8,815	7.8276
28	Mitsubishi	Tredia	57	7,290	7.8189
29	Mazda	626	648	85,385	7.5892
30	Chrysler Corp	Dodge Lancer	193	26,521	7.2773
31	Ford Motor Co	Lincoln Town Car	537	74,171	7.2400
32	Honda	Prelude	397	55,856	7.1076
33	Mitsubishi	Galant	93	13,126	7.0852
34	Hyundai	Excel	1,592	231,551	6.8754
35	Isuzu	I-Mark	187	28,804	6.4922
36	General Motors	Buick Riviera	93	14,586	6.3760
37	General Motors	Oldsmobile Toronado	90	14,272	6.3061
38	Ford Motor Co	Ford Mustang	884	140,661	6.2846
39	Isuzu	Impulse	12	1,937	6.1951
40	Mazda	323	490	79,134	6.1920
41	General Motors	Pontiac Sunbird	540	87,251	6.1890
42	General Motors	Cadillac Deville (FWD)	970	157,374	6.1637
43	Chrysler Corp	Plymouth Caravelle	259	42,447	6.1017
44	Nissan	300ZX	203	33,981	5.9739
45	Chrysler Corp	Leberon GTS	227	38,790	5.8520
46	Mazda	RX–7	297	50,924	5.8322
47	Chrysler Corp	Dodge Colt/Colt Vista	328	57,799	5.6748
48	Toyota	Supra	217	38,936	5.5732
49	Nissan	200 SX	201	36,116	5.5654
50	Ford Motor Co	Ford Thunderbird	680	122,338	5.5583
51	Yugo	GV/GVX	193	35,000	5.5143
52	Chrysler Corp	Plymouth Colt/Colt Vista	289	52,636	5.4698

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MODEL YEAR 1987 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1987—Continued

	Manufacturer	Make/Model (Line)	Thefts 1987	Production (Mfgr's) 1987	Theft Rate (Thefts/Product) (1987) (1,000's)
53	Ford Motor Co	Mercury Topaz	395	72,911	5.4176
54	Porsche	928	12	2,223	5.3981
55	General Motors	Pontiac 6000	747	138,516	5.3929
56	Chrysler Corp	Dodge 600	212	40,368	5.2517
57	General Motors	Oldsmobile 98 Regency	410	78,335	5.2339
58	AMC/Renault	Alliance/Encore	160	30,697	5.2122
59	Chrysler Corp	Dodge Aries	497	99,043	5.0180
60	General Motors	Chevrolet Impala/Caprice	916	184,570	4.9629
61	General Motors	Buick Electra	413	83,613	4.9394
62	Chrysler Corp	Laser/Daytona	161	32,640	4.9326
63	Toyota	Celica	451	93,127	4.8428
64	Ford Motor Co	Mercury Lynx	192	40,036	4.7957
65	Nissan	Maxima	872	183,910	4.7414
66	Chrysler Corp	Dodge Shadow	381	81,012	4.7030
67	Ford Motor Co	Mercury Cougar	471	100,584	4.6827
68	General Motors	Cadillac Cimarron	68	14,560	4.6703
69	Ford Motor Co	Ford Tempo	1,103	240,096	4.5940
70	Suzuki	Forsa	21	4,587	4.5782
71	Volkswagen	Jetta	351	77,102	4.5524
72	General Motors	Oldsmobile Custom Cruiser Wagon	77	16,954	4.5417
73	General Motors	Chevrolet Cavalier	1,437	316,476	4.5406
74	Alfa Romeo	Spider Veloce 2000	14	3,090	4.5307
75	Chrysler Corp	Plymouth Reliant	467	103,795	4.4993
76	General Motors	Buick LeSabre/Electra Estate Wagon	53	11,808	4.4885
77	TVR	280I	1	225	4.4444
78	Ford Motor Co	Lincoln Mark VII	65	14,768	4.4014
79	General Motors	Oldsmobile Cutlass Ciera/Cruiser (FWD)	1,198	274,332	4.3670
80	General Motors	Buick Skylark/Somerset	331	76,125	4.3481
81	Porsche	944	60	13,872	4.3253
82	Chrysler Corp	Chrysler Fifth Avenue/Newport	414	96,685	4.2819
83	Ford Motor Co	Ford Escort	1,630	383,244	4.2532
84	General Motors	Chevrolet Chevette	150	35,448	4.2316
85	Nissan	Sentra	1,568	378,046	4.1476
86	Chrysler Corp	Plymouth Horizon	469	113,526	4.1312
87	BMW	6	14	3,412	4.1032
88	General Motors	Chevrolet Celebrity	1,375	342,738	4.0118
89	Mercedes-Benz	560SL	54	13,575	3.9779
90	Volkswagen	Golf/GTI	218	55,681	3.9152
91	General Motors	Cadillac Eldorado	68	17,452	3.8964
92	General Motors	Pontiac Bonneville	423	111,396	3.7973
93	General Motors	Oldsmobile Calais	399	107,029	3.7280
94	General Motors	Pontiac Parisienne/Safari S/W	45	12,111	3.7156
95	General Motors	Oldsmobile Delta 88 Royale	576	155,098	3.7138
96	Peugeot	505	30	8,128	3.6909
97	Mercedes-Benz	560SEL	28	7,801	3.5893
98	Mercedes-Benz	190D/E	79	22,018	3.5880
99	General Motors	Buick Century	618	172,911	3.5741
100	General Motors	Pontiac T1000	20	5,628	3.5537
101	BMW	7	9	2,541	3.5419
102	Nissan	Pulsar	229	65,374	3.5029
103	Bertone	X-1/9	7	2,000	3.5000
104	Nissan	Stanza	393	113,596	3.4596
105	General Motors	Buick LeSabre	486	141,529	3.4339
106	General Motors	Pontiac Grand AM	775	226,453	3.4223
107	BMW	5	51	15,035	3.3921
108	General Motors	Buick Skyhawk	140	41,511	3.3726
109	Ferrari	328	2	595	3.3613
110	Ford Motor Co	Mercury Grand Marquis	412	122,945	3.3511
111	General Motors	Chevrolet Sprint	207	61,925	3.3428
112	Chrysler Corp	Plymouth Turismo	126	38,215	3.2971
113	Alfa Romeo	Milano	19	5,840	3.2534
114	BMW	3	218	72,180	3.0202
115	Honda/Acura	Integra	181	60,454	2.9940
116	Ford Motor Co	Ford Taurus	1,015	348,502	2.9125
117	Toyota	Camry	498	175,373	2.8397
118	Mercedes-Benz	420SEL	50	17,948	2.7858
119	Honda/Acura	Legend	128	45,982	2.7837
120	Subaru	Subaru	157	60,000	2.6167
121	Audi	4000/Coupe/Quattro	41	15,789	2.5967
122	Chrysler Corp	Plymouth Sundance	202	81,725	2.4717
123	Ford Motor Co	Lincoln Continental	40	16,832	2.3764
124	Volvo	740/760	143	60,890	2.3485
125	Honda	Civic	631	268,692	2.3484
126	Chrysler Corp	Dodge Diplomat	72	30,804	2.3374
127	Ford Motor Co	Ford Crown Victoria	225	97,349	2.3113
128	Honda	Accord	770	333,436	2.3093

MODEL YEAR 1987 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1987—Continued

	Manufacturer	Make/Model (Line)	Thefts 1987	Production (Mfgr's) 1987	Theft Rate (Thefts/Product) (1987) (1,000's)
129	Ford Motor Co	Merkur XR4TI	16	7,352	2.1763
130	Mercedes-Benz	300E	43	19,957	2.1546
131	General Motors	Oldsmobile Firenza	45	21,042	2.1386
132	Chrysler Corp	Plymouth Gran Fury	34	16,235	2.0942
133	Jaguar	XJ	27	12,919	2.0899
134	Mercedes-Benz	260E	14	6,723	2.0824
135	Jaguar	XJ-S	6	2,925	2.0513
136	Volkswagen	Quantum	16	7,980	2.0025
137	Audi	5000S/Quattro	58	28,245	1.9827
138	Ford Motor Co	Mercury Sable	213	110,114	1.9344
139	Saab	900	65	37,171	1.7487
140	Subaru	Justy	17	10,000	1.7000
141	Porsche	924	24	15,097	1.5897
142	Chrysler Corp	Dodge Omni	146	94,681	1.5420
143	General Motors	Cadillac Allante	5	3,247	1.5399
144	Volvo	DL/GL	74	51,006	1.4508
145	Volkswagen	Fox	35	24,343	1.4378
146	Mercedes-Benz	560SEC	3	2,089	1.4361
147	Subaru	XT	64	45,000	1.4222
148	Volvo	780	1	704	1.4205
149	Austin Rover	Sterling	22	16,453	1.3371
150	Mercedes-Benz	300SDL	11	8,291	1.3267
151	Saab	9000	18	14,765	1.2191
152	Chrysler Corp	Dodge Charger	41	42,369	0.9677
153	Toyota	Tercel	34	108,189	0.3143
154	Mercedes-Benz	300DT	3	12,552	0.2390
155	Ferrari	Testarossa	0	301	0.0000
156	Rolls-Royce/Bentley	Silver Spirit/Silver Spur/Mulsanne	0	410	0.0000
157	Aston Martin	Saloon/Vantage/Volante	0	31	0.0000
158	Maserati	Quattroporte	0	73	0.0000
159	Excalibur	Phaeton/Roadster	0	70	0.0000
160	Aston Martin	Lagonda	0	15	0.0000
161	Rolls-Royce/Bentley	Corniche/Continental	0	140	0.0000
162	Zimmer	Classic/Elegante/Cabriolet	0	170	0.0000
163	Rolls-Royce/Bentley	Camargue	0	40	0.0000
164	Maserati	Biturbo	0	973	0.0000
165	Bitter GMBH	Bitter SC	0	82	0.0000

[FR Doc. 88-26674 Filed 11-18-88; 8:45 am]
BILLING CODE 4910-59-M

Research and Special Programs Administration

[Notice No. 88-8]

Request for Comments to the International Atomic Energy Agency Regulations

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: The International Atomic Energy Agency (IAEA) has initiated its second cycle of changes to its Safety Series No. 6, "Regulations for the Safe Transport of Radioactive Materials." The public is being asked to submit prospective changes to Safety Series No. 6, and its companion documents Safety Series Nos. 7, 37, and 80. Any future changes to IAEA Safety Series No. 6 may affect the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 179).

DATE: Comments should be received by December 23, 1988.

ADDRESS: Proposed changes to the IAEA regulations should be submitted to the Dockets Unit, Office of Hazardous Materials Transportation, U.S. Department of Transportation. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 8:30–5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Chief, Radioactive Materials Branch, Technical Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4545.

SUPPLEMENTARY INFORMATION: Many countries and international transport organizations throughout the world have adopted the standards of the IAEA "Regulations for the Safe Transport of Radioactive Materials" (IAEA Regulations). These regulations are currently found in IAEA publication Safety Series No. 6, 1985 Edition (SS6–85). Section 171.12(e) of the HMR permits the import and export of radioactive materials, under certain conditions, if packages are prepared for shipment in accordance with the IAEA Regulations. Currently, § 171.12(e) references Safety Series No. 6, 1973 Revised Edition (As Amended). In addition, the HMR are revised periodically so that they are in harmony with the most recent edition of SS6. Such revisions affect international as well as the domestic transportation of radioactive materials. Thus, it is anticipated that RSPA will propose to amend the HMR to bring it into harmony with SS6–85 and its revisions prior to

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January 1, 1990. Any future revisions to SS6–85 may affect the HMR.

In 1985 the IAEA instituted a new process for the continuing review and revision of its regulations. Through this process, supplements to the IAEA Regulations and its supportive documents would be issued every 2 years, thereby allowing the IAEA Regulations to remain current with technology and needs.

The IAEA initiated this review process in August 1986 by requesting that member states review SS6–85 and its supporting documents, Safety Series Nos. 7, 37, and 80, and submit suggestions for changes to those documents. As part of this process, the IAEA convened a Technical Committee meeting June 22–26, 1987, to consider proposals for amendments and identified problems submitted by IAEA Member States and international organizations in connection with the IAEA Regulations. Additionally, the Technical Committee considered advice and reports developed by consultant groups examining specific aspects of the regulatory standards for transport. The Technical Committee was charged with the tasks of examining the justification for the prospsed amendment and of recommending changes suitable for early adoption in the IAEA Regulations.

Subsequent to this meeting, the Director General of the IAEA transmitted the changes to the U.S. and other Member States and invoked the 90 day notice procedure, which gives Member States not less than 90-days to comment on the changes. On March 9, 1987, RSPA published in the **Federal Register** a Notice of Availability (52 FR 7254; Notice No. 87–2) requesting comments on these proposed changes to SS6–85 and its supporting documents. These changes were accepted by the Member States and are expected to be published by the IAEA in the near future. The second revision cycle is now being initiated.

Since amendments to SS6 may have an effect on the HMR, the public is invited to submit suggestions for proposed changes to SS6 and its supporting documents. In order to receive appropriate handling, RSPA is requesting that comments contain the following information: (1) An identification of the problem; (2) an explanation of the need for the proposed revision; (3) the paragraphs affected in SS6, SS7, SS37, and/or SS80; (4) a summary of the proposed revision; and (5) a justification for the proposed revision. To facilitate this process, a copy of SS6 and its supporting documents have been placed in RSPA's Dockets Unit. Individual copies may be purchased from Bernan-Unipub., 4611–F Assembly Drive, Lanham, MD 20706–4391. All proposals for changes received by DOT will be considered and included, as appropriate, in its response to the IAEA.

Issued in Washington, DC on November 15, 1988 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88–26885 Filed 11–18–88; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authoirty vested in me by the Act of October 19, 1985, (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (J50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "From Queen to Empress" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art (The Costume Institute) in New York, New York, beginning on or about December 15, 1988, to on or about April 16, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Date: November 16, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88–26985 Filed 11–18–88; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 53, No. 224
Monday, November 21, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:20 p.m. on Tuesday, November 15, 1988; the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) The Corporation's supervisory activities; (2) the possible closing of certain insured banks; and (3) an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in Room 6221 of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 16, 1988.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary.

[FR Doc. 88–26917 Filed 11–17–88; 11:51 am]

BILLING CODE 6714–01–M

NATIONAL COUNCIL ON THE HANDICAPPED

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on the Handicapped. This notice also describes the functions of the Council. Notice of this meeting is required under section 522 (b) (10) of the "Government in Sunshine Act" (Pub. L. 94–409).

DATES:

Nov. 28, 1988, 9:00 a.m. to 5:00 p.m.
Nov. 29, 1988, 9:00 a.m. to 5:30 p.m.
Nov. 30, 1988, 8:30 a.m. to 1:00 p.m.

LOCATION: Grand Hyatt Hotel, Washington, DC.

FOR FURTHER INFORMATION CONTACT: National Council on the Handicapped, 800 Independence Avenue, SW, Suite 814, Washington, DC 20591, (202) 267–3846, TDD: (202) 267–3232.

The National Council on the Handicapped is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95–602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law No. 98–221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Report from the Chairperson and Executive Committee
Forum: Implementing Public Policy In *Toward Independence*, cosponsored by the District of Columbia Mayor's Committee on Persons with Disabilities.
Committee Meetings
Press Conference in the "Disability Prevention Initiative"
Discussion of Unfinished and New Business

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on the Handicapped.

Signed at Washington, DC, on November 10, 1988.

Paul G. Hearne,

Executive Director.

[FR Doc. 88–26978 Filed 11–17–88; 3:39]

BILLING CODE 6820–BS–M

NATIONAL SCIENCE BOARD

DATE AND TIME:

December 1, 1988 8:00 a.m. Closed Session
December 2, 1988 8:30 a.m. Closed Session
December 2, 1988 9:00 a.m. Closed Session

PLACE: National Science Foundation, 1800 G Street, NW, Room 540, Washington, DC 20550.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED ON DECEMBER 1:

Committee on Programs and Plans

Closed Session (8:00 a.m. to 1:00 p.m.)

Grants and Contracts. During discussion of certain proposed awards the Committee may be joined by enough other Board members to constitute a quorum.

MATTERS TO BE CONSIDERED ON DECEMBER 2:

National Science Board

Closed Session (8:30 a.m. to 9:00 a.m.)

1. Minutes—October 1988 Meeting
2. NSB and NSF Staff Nominees
3. Grants and Contracts

Open Session (9:00 a.m.—12:00 noon)

4. Grants, Contracts, and Programs
5. Chairman's Report
6. Minutes—October 1988 Meeting
7. Director's Report
8. Draft Report of the NSB Committee on Openness of Scientific Communication
9. Inspector General Provisions
10. Presentation by Dr. Carl Lineberger: "The Laser Revolution in Chemical Physics"
11. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 88–26901 Filed 11–17–88 1:50 pm]

BILLING CODE 7555–01–M

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Corrections

Federal Register
Vol. 53, No. 224
Monday, November 21, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP87-428-001 et al.]

CNG Transmission Corp. et al.; Natural Gas Certificate Filings

Correction

In notice document 88-26311 beginning on page 45960 in the issue of Tuesday, November 15, 1988, make the following correction:

On page 45962, in the first column, after **8. Amoco Production Company**, the "Docket No." should read "CI88-94-002".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3449-9]

National Emission Standards for Hazardous Air Pollutants Subparts and Test Methods; Technical Corrections

Correction

In rule document 88-21393 beginning on page 36972 in the issue of Friday, September 23, 1988, make the following corrections:

§ 61.70 [Corrected]

1. On page 36972, in the second column, in amendatory instruction 6, in the fifth line, "M" should read "P_{Cl}".

Appendix B— [Corrected]

2. On page 36973, in the first column, in the equation following amendatory instruction 21, between "/" and "10^3", insert "(".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180791; FRL-3467-5]

Maryland Department of Agriculture, Receipt of Applications for Emergency Exemptions To Use (±)-2-[4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid; Solicitation of Public Comment

Correction

In notice document 88-24590 beginning on page 43269 in the issue of Wednesday, October 26, 1988, make the following corrections:

1. On page 43269, in the second column, under **SUBJECT**, in the fifth line, the formula should read "(±) -2-[4,5-dihydro-".

2. On the same page, in the third column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the fourth line, the formula should read "(±)-2-[4,5-".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0648]

Availability of Funds and Collection of Checks

Correction

In proposed rule document 88-25039 beginning on page 44335 in the issue of Wednesday, November 2, 1988, make the following correction:

§ 229.36 [Corrected]

On page 44341, in the third column, in § 229.36(f), the sixth line should read "(b)(5)(i) through (iii) of this section".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. 84N-0036]

Proposed Removal of Regulation Regarding Sulfonamide-Containing Drugs for Use in Food-Producing Animals

Correction

In proposed rule document 88-21057 beginning on page 35833 in the issue of Thursday, September 15, 1988, make the following correction:

On page 35833, in the first column, the CFR Part heading should read as it appears above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-09-4212-12; A 20346-0]

Realty Action, Exchange of Public Lands, Navajo and Apache Counties, AZ

Correction

In notice document 88-24302 appearing on page 41247 in the issue of Thursday, October 20, 1988, make the following correction:

In the third column, the 33rd line should read "Sec. 4, lot 1, SE¼NE¼, E½SE¼.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 815, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Reclamation and Operation Plan; Performance Standards; Roads

Correction

In rule document 88-25688 beginning

on page 45190 in the issue of Tuesday, November 8, 1988, make the following corrections:

1. On page 45195, in the second column, in the second complete paragraph, in the second line, "technology" should read "terminology".

2. On page 45197, in the second column, in the second complete paragraph, in the ninth line, after "performance" insert "standards".

3. On page 45201, in the second column, in the second complete paragraph, in the 17th line, "has" should read "had".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 158

[CGD 88-002]
RIN 2115-AC89

Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78

Correction

In proposed rule document 88-24616 beginning on page 43622 in the issue of Thursday, October 27, 1988, make the following corrections:

§ 158.120 [Corrected]

On page 43645, in the second column, in paragraph (4), in § 158.120, the definition for "Recreational boating facility" should read:

"Recreational boating facility" means a port that can provide wharfage or other services to 10 or more recreational vessels. It includes but is not limited to marinas, boatyards, and yacht clubs. It does not include a place or facility containing only an unattended launching ramp.

BILLING CODE 1505-01

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 390

[Docket No. R-120]

Capital Construction Fund

Correction

In proposed rule document 88-25110 beginning on page 43907 in the issue of Monday, October 31, 1988, make the following correction:

On page 43908, in the first column, in the third complete paragraph, the third line should read "not be deductible as an expense from the".

BILLING CODE 1505-01-D

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federal register

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Part II

Department of Transportation

Office of the Secretary

49 CFR Part 40

Procedures for Transportation Workplace Drug Testing Programs; Interim Final Rule

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket No. 45928 Notice No. 88-17]

RIN 2105-AB42

Procedures for Transportation Workplace Drug Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule.

SUMMARY: The Department of Transportation is adopting a modification of the Department of Health and Human Services' "Mandatory Guidelines for Federal Workplace Programs." The purpose of the modification is to adapt the procedures and safeguards developed by the Department of Health and Human Services more closely to the circumstances of drug testing programs in industries regulated by the Department of Transportation. Antidrug program rules published by the Department's operating administrations will require employers to conduct drug testing according to these Procedures.

DATES: This rule is effective December 21, 1988. Comments should be received by January 23, 1989. Late-filed comments will be considered to the extent practicable.

ADDRESS: Comments should be sent to Docket Clerk, Docket 45928, Department of Transportation (C-55), 400 7th Street SW., Room 4107, Washington, DC., 20590. In order to expedite handling of comments, commenters are requested to refer to the docket number for this rule and to provide an original and four copies of their comments. Commenters wishing to have their comments acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will time and date stamp the card and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington DC, 20590. Mr. Ashby's phone number is 202-366-9306.

SUPPLEMENTARY INFORMATION: The Department of Transportation (DOT) believes that a drug-free transportation workplace is essential to transportation safety. For this reason, the Department's operating administrations (the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, United States Coast Guard, Urban Mass Transportation Administration, and Research and Special Programs Administration) are issuing regulations requiring antidrug programs in the aviation, motor carrier, railroad, maritime, mass transit, and pipeline industries, respectively.

The proposed regulations for these operating administration rules proposed that employers conduct drug testing according to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" of the Department of Health and Human Services (DHHS). The "HHS Guidelines," as this document is known, were published in the **Federal Register** on April 11, 1988 (53 FR 11970). They were based on a notice of proposed rulemaking (NPRM) published August 14, 1987 by DHHS, and on comments to that NPRM.

The HHS Guidelines include procedures for collecting urine samples for drug testing, procedures for transmitting the samples to testing laboratories, testing procedures, procedures for evaluating test results, quality control measures applicable to the laboratories, recordkeeping and reporting requirements, and standards and procedures for HHS certification of drug testing laboratories. The intent of the Guidelines is to safeguard the accurancy of test results and the privacy of individuals who are tested.

The Department believes that the basic requirements of the Guidelines must remain a vital component of DOT drug drug testing regulations. However, the Department is aware that the Guidelines, as written by HHS to apply to testing by Federal agencies, do not fit perfectly the circumstances of employers regulated by DOT. There are many references to legal authorities and other matters which are peculiar to Federal agencies (e.g., references to the Privacy Act and to Executive Order 12564). Terminology referring to Federal "agencies" rather than to "employers" may be confusing in the DOT regulated industry context. One purpose of this rule is to make necessary editorial changes to adapt the content of the HHS Guidelines to the context of industries regulated by DOT.

In addition, DHSS drafted the Guidelines to apply to the physical and organizational circumstances of Federal agencies. Obviously, the circumstances of industries regulated by DOT are very different from those of Federal agencies. For this reason, the Department is modifying some provisions of the HHS Guidelines to work better in the implementation of drug testing programs by DOT regulated industries. These revisions are intended to leave intact the safeguards for accuracy and privacy in drug testing established by the HHS Guidelines while ensuring that parties regulated by DOT can practically implement the requirements.

We would call particularly to the attention of commenters the following revisions. This is not an exhaustive list of all modifications to the HHS Guidelines published in this document. The Department seeks comments on all aspects of this interim final rule.

In § 40.2, definitions of "employer" and "employee" have been added. The former definition includes consortia, but points out that individual members of a consortium are not relieved of their responsibilities under the rule by virtue of participation in the consortium. As provided in the operating administration drug rules, the testing rate of 50 percent can relate to the entire employee population covered by a consortium; the definition does not mean that 50 percent of the work force of each consortium member must be tested in a year.

Under the HHS Guidelines, a Federal agency may test a urine sample *only* for certain specified drugs. The Department's Procedures echo this requirement. Under § 40.21(c), an employer may test the sample obtained under a DOT drug rule only for the drugs required or specifically authorized to be tested under the DOT drug rule. That is, an employer must test the sample for the five major drugs listed in each DOT drug regulation. If the DOT agency involved authorizes testing for Drug X under § 40.21(b), the employer may also test the sample for that drug. If the employer wants to test, in addition, for Drug Y, the employer must obtain a second sample from the employee. The obtaining of this second sample is not under the authority of the DOT regulation. The employer must base its request for the second sample on whatever other legal authority is available, since the employer cannot rely on the DOT regulation as the basis for the request.

As alluded to above, an employer may submit to the DOT agency involved a protocol for testing another controlled substance (see § 40.21(b)). DOT agencies have discretion whether or not to entertain such requests; if a DOT agency approves such a request, then the employer can test for the drug as part of its DOT-mandated program.

The HHS Guidelines require Federal agencies to keep a permanent log book at the collection site. This is a requirement that is likely to be difficult for many employers to meet, particularly where there are scattered or remote locations at which testing must take place. Consequently, the DOT

Procedures will not require a permanent log book. Instead, employers would use a custody and control form (described at § 40.21-1(b)(4)), a copy of which would be retained for permanent record purposes. For the sake of flexibility, an employer could use a different but equivalent form, or a permanent log book, with the approval of the DOT agency involved.

The DOT procedures also seek to add flexibility to the choice and use of collection sites, in view of the variety of circumstances in which employers have to conduct tests (especially post-accident and reasonable cause tests). Collection sites are defined to include any suitable facility (e.g., a medical facility or mobile unit could qualify); a facility without all the security safeguards contemplated for collection sites could be used if samples are under the direct control of collection site personnel; and other water sources are permissible in the facility if the other sources are secured or monitored to ensure that they could not be used to dilute a specimen (see §§ 40.22(a); 40.22(b)(3); 40.22(f)(1)).

Based on the experience DOT has gained with its drug testing program for its own employees, the DOT procedures spell out the grounds on which an employee would be directed to give a sample while being observed (§ 40.22(e)(2)). These circumstances, which are the exclusive circumstances under which observation could be ordered, include a discrepancy in the temperature of the sample; a record of the employee having previously given a sample which had a too-low specific gravity or concentration of creatinine; or observation by the collection site person of conduct clearly and unequivocally indicating an attempt to tamper with a sample. In the latter case, the collection site person would have to get authorization from a higher-level supervisor before ordering the providing of a sample under observation (§ 40.22(f)(23)). The Department seeks comment on whether there are circumstances in which obtaining this authorization would be too difficult or would occasion too great a delay, such that this requirement should be modified or eliminated in such circumstances.

An additional circumstance in which a test can be observed is when that test is part of a rehabilitation program or post-positive testing program. The rationale for this provision is that, given recidivism rates among users of some drugs, and the concern that employees would have to avoid a second positive test, employees may have a greater incentive to "cheat" than in other circumstances. The Department seeks comment on this provision and its rationale. Should there be limitations on the authority of employers to conduct observed tests in these situations? For example, should the MRO or other appropriate official have to make a determination that a particular employee is likely to warrant observation during a particular test or series of tests? Should there be a temporal limitation on the period during which tests could be observed (e.g., the first two or three tests, the first or second year of post-positive testing)?

One of the purposes of the Procedures is to ensure that a proper chain of custody is maintained. A number of provisions of the Procedures, particularly in § 40.22, deal with this subject. One such provision (§ 40.22(j)(2)) concerns transfer of the specimen from the collection site person to the laboratory.

It is likely, in some circumstances, that the collection site person will transport or mail the sample directly to the laboratory. For example, the collection site person may put the sample in a mailer and turn it over to a mail room employee, who then sends it to the laboratory. However, the chain of custody form will be sealed in the mailer by the collection site person. This could leave a gap in the chain of custody. The Department seeks comment on whether this would be a significant problem and, if so, how to correct it.

Section 40.24(g)(5) requires a laboratory manager or other employee to sign urine custody and control forms. The Department seeks comment on whether this requirement is needed and whether there are other approaches that would be less burdensome.

The HHS Guidelines do not permit laboratories to subcontract any of their drug testing work. In the interest of flexibility of contracting arrangements for employers, the DOT procedures would permit subcontracting under carefully controlled conditions. These conditions include complete processing of and responsibility for a sample by the subcontract laboratory, which must also be HHS-certified (§ 40.24(j)).

The HHS Guidelines require Federal agencies to inspect laboratories before a testing contract is awarded. Believing that such a requirement would be too burdensome for employers, particularly small employers, the DOT procedures eliminate this requirement. However, DOT, DHSS, or any employer may inspect a laboratory at any time (§ 40.24(1)).

Similarly, the HHS Guidelines require Federal agencies contracting with a particular laboratory to periodically send "blind samples" to the laboratory to test the laboratory's accuracy. Doing so is reasonable for Federal agencies, but it could be very burdensome and costly for small employers. Consequently, the DOT Procedures provide that only large employers (i.e., those with 2,000 or more employees subject to drug testing under the applicable operating administration drug rule) need to follow this practice (§ 40.2(d)(2)(ii)). This relief for small entities is based, in part, on the assumption that most, if not all, HHS-certified laboratories will have contracts with one or more Federal agencies or other large entities, and will therefore be subject to some blind sample testing.

The Department seeks comment on whether this assumption is likely to be correct. If not, what should the Department's response be? The language of the rule would require employers to submit blind samples if the laboratory they work with does not have contracts with entities who would do blind sample testing. Is this reasonable, or would another approach be better? Also, is the 2,000 covered employee cutoff a reasonable one? Should a lower cutoff (e.g., 1,000 covered employees) be used, in order to make it less likely that laboratories would be subject to blind testing from at least some DOT regulated employers? This would also afford employees of more employers the assurance of properly-run drug testing programs which blind sampling provides. Alternatively, should a higher cutoff be used? Another approach that could be taken would be to base the cutoff on the number of specimens submitted by the employer in a year (e.g., 1,000 specimens rather than 2,000 employees, which might include some employers with high numbers of reasonable cause and post-accident tests who might otherwise not have to conduct blind testing.) The Department seeks comment on this approach as well.

Regulatory Process Matters

This is not a major rule under Executive Order 12291. It is a significant rule under the Department's Regulatory Policies and Procedures, since it affects several operating administrations and their regulated industries. A regulatory evaluation has not been prepared, since the costs of conducting drug testing conforming with these Procedures have been analyzed in the regulatory evaluations or regulatory impact analyses for the operating administration drug-free transportation workplace program rules.

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This rule will affect small entities in all the industries covered by DOT operating administration drug rules. The basic small entity impacts of each rule have been considered as part of the operating administrations' rulemakings. The Department has taken steps, as described in "Supplementary Information," to reduce small entity impacts in such areas as inspections, submission of blind samples, and permanent log books. Consequently, the Department certifies that 49 CFR Part 40 will not have a significant economic impact on a substantial number of small entities.

The Department has considered the Federalism implications of this rule under Executive Order 12612. The Department has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Federalism implications of individual operating administrations' drug rules are discussed in those rulemaking documents.

The reporting and recordkeeping requirements referenced in this regulation have been submitted for Paperwork Reduction Act approval to the Office of Management and Budget by the respective DOT operating administrations in connection with their own drug rules. This is because it is the operating administration rules, rather than this rule, that actually imposes the requirements on regulated parties. However, the Office of the Secretary is seeking OMB approval under the Paperwork Reduction Act for the form described in § 40.21–1(a). A **Federal Register** notice will be published when Paperwork Act approval is obtained.

This rule has been published without prior opportunity for notice and public comment. The Department finds that it would be impracticable, unnecessary, and contrary to the public interest to seek prior public comment for this rule. This finding is made on the basis of the overriding public interest in ensuring a drug-free transportation workplace, in order to ensure transportation safety and as a step toward controlling the nationwide problem of drug abuse. (There have been previous opportunities for public notice and comment on this subject, obtained by DHSS on the HHS Guidelines, which served as the basis for this rule, and on the operating administration drug rules, which proposed use of the HHS Guidelines.) It is necessary to publish final rules on this subject at this time, so that all parties affected by the operating administration drug rules will know what is expected of them with respect to testing procedures as they develop their drug-free workplace programs.

The Department will review comments received on this rule and publish a notice responding to the comments. The Department will also make any appropriate changes to the rule at that time. The operating administrations have received some comments on the HHS Guidelines in the course of their drug rulemakings. These comments will be made a part of the docket for this rulemaking and the Department will respond to them along with the other comments we receive. (Many of the changes in the HHS Guidelines made in this rule appear to be responsive to these comments.)

List of Subjects in 49 CFR Part 40

Controlled substances, Transportation.

Issued this 14th day of November 1988, at Washington, DC.

Jim Burnley,

Secretary of Transportation.

49 CFR Subtitle A is amended by adding Part 40 to read as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG TESTING PROGRAMS

Subpart A—General

Sec.
40.1 Applicability.
40.2 Definitions.

Subpart B—Scientific and Technical Requirements

40.21 The drugs.
40.23 Preparation for testing.
40.25 Specimen collection procedures.
40.27 Laboratory personnel.
40.29 Laboratory analysis procedures.
40.31 Quality assurance and quality control.
40.33 Reporting and review of results.
40.35 Protection of employee records.
40.37 Individual access to test and laboratory certification results.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing

40.41 Use of DHHS-certified laboratories.

Appendix A to Part 40—DHHS Certification Standards

Appendix B to Part 40—Urine Custody and Control Form

Authority: 49 U.S.C. 102, 301.

Subpart A—General

§ 40.1 Applicability.

This part applies to transportation employers (including self-employed individuals) conducting drug urine testing programs pursuant to regulations issued by agencies of the Department of Transportation and to such transportation employers' officers, employees, agents and contractors, to the extent and in the manner provided in DOT agency regulations.

§ 40.2 Definitions.

For purposes of this part the following definitions apply:

Aliquot. A portion of a specimen used for testing.

Chain of custody. Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an approved chain of custody form be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody. Two forms of chain of custody documents are utilized under this part. An external chain of custody form or "urine custody and control form" (described in § 40.23) is used to document chain of custody to the laboratory. An internal chain of custody form is utilized to document handling and transfer of the original sample container and aliquots within the laboratory.

Collection site. A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection site person. A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals. A collection site person shall have successfully completed training to carry out this function or shall be a licensed medical professional or technician who is provided instructions for collection under this part and certifies completion as required herein. In any case where: (a) A collection is observed or (b) collection is monitored by non-medical personnel, the collection site person must be a person of the same gender as the donor.

Confirmatory test. A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

DHHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

DOT agency. An agency of the United States Department of Transportation administering regulations requiring compliance with this part, including the United States Coast Guard, the Federal Aviation Administration, the Federal Railroad Administration, the Federal Highway Administration, the Urban Mass Transportation Administration, and the Research and Special Programs Administration.

Employee. An individual designated in a DOT agency regulation as subject to drug urine testing and the donor of a specimen under this part. As used in this part "employee" includes a final applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part.

Employer. An entity employing one or more employees that is subject to DOT agency regulations requiring compliance with this part. As used in this part, "employer" is inclusive of a industry consortium or joint enterprise comprised of two or more employing entities, but no single employing entity is relieved of its responsibility for compliance with this part by virtue of participation in such a consortium or joint enterprise.

Initial test (also known as screening test). An immunoassay screen to eliminate "negative" urine specimens from further consideration.

Medical Review Officer. A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

Permanent Record Book. A permanently bound book in which identifying data on each specimen collected at a collection site are permanently recorded in the sequence of collection. May be used in conjunction with a modified urine custody and control form to document collection.

Reason to believe. Reason to believe that a particular individual may alter or substitute the urine specimen.

Secretary. The Secretary of Transportation or the Secretary's designee may be a contractor or other recognized organization which acts on behalf of the Secretary in implementing this part.

Subpart B—Scientific and Technical Requirements

§ 40.21 The drugs.

(a) DOT agency drug testing programs require that employers test for marijuana, cocaine, opiates, amphetamines and phencyclidine.

(b) An employer may include in its testing protocols other controlled substances or alcohol only pursuant to a DOT agency approval, if testing for those substances is authorized under agency regulations and if the Department of Health and Human Services has established an approved testing protocol and positive threshold for each such substance.

(c) Urine specimens collected under DOT agency regulations requiring compliance with this part may only be used to test for controlled substances designated or approved for testing as described in this section and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by DOT agency regulations.

(d) This section does not prohibit procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration, or presence of adulterants).

§ 40.23 Preparation for testing

The employer and certified laboratory shall develop and maintain a clear and well-documented procedure for collection, shipment, and accessioning of urine specimens under this part. Such a procedure shall include, at a minimum, the following:

(a) Utilization of a standard urine custody and control form (carbonless manifold). The form shall be a multiple-part, carbonless record form with an original (part 1) that shall accompany the specimen to the laboratory. Copies shall be provided for the Medical Review Officer (part 2, to go directly to the MRO), the employee (part 3), the collection site (part 4) (if distinct from the employer), and the employer representative (part 5). The form should be a permanent record on which identifying data on the employee and on the specimen collection and transfer process is retained. The form shall be constructed to display, at a minimum, the following elements, which shall appear on its respective parts as indicated:

(1) The following information shall appear on all parts of the form:

(i) A preprinted specimen identification number, which shall be unique to the particular collection.

(ii) The employee's Social Security or employee identification number, which shall be entered by the employee.

(iii) Specification of the type of test conducted (pre-employment, random, etc.), which shall be entered by the employer representative or collector (acting for the employer).

(iv) A block providing that "Collector must note temperature of specimen has been read and record here if not within the range of 32.5—37.7C/90.5—99.8F:" with an area for the required notation.

(v) A chain-of-custody block providing areas to enter the following information for each transfer of possession: purpose of change; released by (signature/print name); received by (signature/print name); date. The words "Provide specimen for testing" and "DONOR" shall be preprinted in the initial spaces.

(vi) Information to be completed by the collection site person, identifying that person and providing the date of collection, the collection site and the telephone number (if any) of the collection site; a space for remarks at which unusual circumstances may be described; and a certification statement as set forth below and a signature block with date which shall be completed by the collection site person:

I certify that the specimen identified on this form is the specimen presented to me by the employee providing the certification below, that I have verified that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as required by the instructions provided.

(vii) A block to be completed by the laboratory after analysis of the specimen, providing a space for entry of the laboratory accession number and a certification to read as follows, together with spaces to enter the printed name and signature of the certifying laboratory official and date:

I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results attached are for that specimen.

(2) Information to be provided by the employee, which shall appear on parts 2 through 5 of the form only: Employee name (printed); duty location; job title; date of birth; and a certification statement as set forth below, together with a signature block with date which shall be completed by the employee:

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I certify that the urine specimen identified on this form is my own; that it is fresh and has not been adulterated in any manner; and that the identification information provided on this form and on the collection bottle is correct. I consent to the submission of this specimen to the certified laboratory designated by my employer, to the analysis of the specimen for controlled substances as provided by Federal requirements, and to the release of test results from that analysis to the Medical Review Officer designated by my employer.

(3) A block to be completed by the employee, which shall appear only on parts 2 and 3 of the form, containing a statement as follows: "If you wish to have prescription or over-the-counter medications you may have taken or been administered within the past 30 days considered as your test results are reviewed, you may list them here:" followed by an adequate writing area to list such substances.

A form meeting the requirements of this paragraph is displayed at Appendix B to this part. The urine custody and control form may include such additional information as may be required for billing or other legitimate purposes necessary to the collection, provided that personal identifying information (other than the employee identification number) may not be provided to the laboratory and employee medical information may appear only on the copies provided to the employee and to the Medical Review Officer. In lieu of a form meeting the above-described criteria, an employer may choose to use a multiple-sample chain of custody form together with a permanent record book maintained at the site of collection to document collection and transfer of specimens under this part, so long as the data elements set forth above are documented, personal identifying information is not disclosed to the laboratory, and the record system is designed in such a manner as to maintain the confidentiality of medical information.

(b) Use of a tamperproof sealing system designed in a manner such that the specimen bottle top can be sealed against undetected opening, the bottle can be identified with a unique identifying number identical to that appearing on the urine custody and control form, and space has been provided to initial the bottle affirming its identity. For purposes of clarity, this part assumes use of a system made up of one or more pre-printed labels and seals (or a unitary label/seal), but use of other, equally effective technologies is authorized.

(c) Use of a shipping container in which one or more specimens and associated paperwork may be transferred and which can be sealed and initialled to prevent undetected tampering.

(d) Written procedures, instructions and training shall be provided as follows:

(1) Employer collection procedures and training shall clearly emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the employee, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(2) A non-medical collection site person shall receive training in compliance with this part and shall demonstrate proficiency in the application of this part prior to serving as a collection site person. A medical professional, technologist or technician licensed or otherwise approved to practice in the jurisdiction in which collection occurs may serve as a collection site person if that person is provided instructions described in this part and performs collections in accordance with those instructions.

(3) Collection site persons shall be provided with detailed, clearly illustrated written instructions on the collection of specimens in compliance with this part. Employer representatives and employees subject to testing shall also be provided standard written instructions setting forth their responsibilities.

§ 40.25 Specimen collection procedures.

(a) *Designation of collection site.* (1) Each employer drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory. An independent medical facility may also be utilized as a collection site provided the other applicable requirements of this part are met.

(2) A designated collection site may be any suitable location where a specimen can be collected under conditions set forth in this part, including a properly equipped mobile facility. A designated collection site shall be a location having an enclosure within which private urination can occur, a toilet for completion of urination (unless a single-use collector is used with sufficient capacity to contain the void), and a suitable clean surface for writing. The site must also have a source of water for washing hands, which, if practicable, should be external to the enclosure where urination occurs.

(b) *Security.* The purpose of this paragraph is to prevent unauthorized access which could compromise the integrity of the collection process or the specimen.

(1) Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(2) A facility normally used for other purposes, such as a public rest room or hospital examining room, may be secured by visual inspection to ensure other persons are not present and undetected access (e.g., through a rear door not in the view of the collection site person) is not possible. Security during collection may be maintained by effective restriction of access to collection materials and specimens. In the case of a public rest room, the facility must be posted against access during the entire collection procedure to avoid embarrassment to the employee or distraction of the collection site person.

(3) If it is impractical to maintain continuous physical security of a collection site from the time the specimen is presented until the sealed mailer is transferred for shipment, the following minimum procedures shall apply: The specimen shall remain under the direct control of the collection site person from delivery to its being sealed in the mailer. The mailer shall be immediately mailed, maintained in secure storage, or remain until mailed under the personal control of the collection site person.

(c) *Chain of custody.* The chain of custody block of the urine custody and control form shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) *Access to authorized personnel only.* No unauthorized personnel shall be permitted in any part of the designated collection site when urine specimens are collected or stored. Only the collection site person may handle specimens prior to their securement in the mailing container or monitor or observe specimen collection (under the conditions specified in this part). In order to promote security of specimens, avoid distraction of the collection site person and ensure against any confusion in the identification of specimens, a collection site person shall conduct only one collection procedure at any given time. For this purpose, a collection procedure is complete when the urine bottle has been sealed and initialled, the urine custody and control form has been executed, and the employee has departed the site.

(e) *Privacy.* (1) Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided, as further described in this paragraph.

(2) For purposes of this part, the following circumstances are the exclusive grounds constituting a reason to believe that the individual may alter or substitute the specimen:

(i) The employee has presented a urine specimen that falls outside the normal temperature range, and the employee declines to provide a measurement of oral body temperature by sterile thermometer, as provided in paragraph (f)(23) of this part, or the oral temperature does not equal or exceed that of the specimen.

(ii) The last urine specimen provided by the employee (i.e., on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2 g/L.

(iii) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.).

(iv) The employee has previously been determined to have used a controlled substance without medical authorization and the particular test is being conducted as a part of a rehabilitation program, on return to service after any required rehabilitation, or under a DOT agency regulation providing for follow-up testing after return to service.

(f) *Integrity and identity of specimen.* Employers shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. Where practicable, there shall be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs. If there is another source of water in the enclosure, it shall be effectively secured or monitored to ensure it is not used (undetected) as a source for diluting the specimen.

(2) When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the employer's representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.

(5) The individual shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned areas that allows for individual privacy.

(8) The collection site person shall note any unusual behavior or appearance on the urine custody and control form.

(9) In the exceptional event that an employer-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., an accident investigation), a public rest room may be used according to the following procedures: A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10) Upon receiving the specimen from the individual, the collection site person shall determine that it contains at least 60 milliliters of urine. If there is less than 60 milliliters of urine in the container, additional urine shall be collected in a separate container to reach a total of 60 milliliters. (The temperature of the partial specimen in each separate container shall be measured in accordance with paragraph (f)(12) of this section, and the partial specimens shall be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the individual fails for any reason to provide 60 milliliters of urine, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.

(13) If the temperature of a specimen is outside the range of 32.5°–37.7° C/90.5°–99.8° F, that is a reason to believe that the individual may have altered or substituted the specimen, and another specimen shall be collected under direct observation of a same gender collection site person and both specimens shall be forwarded to the laboratory for testing. An individual may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

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(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.

(15) All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual has altered or substituted the specimen as described in paragraph (e)(2)(i) and (iii) of this section, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. As provided below, the specimen shall be sealed (by placement of a tamperproof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual shall be present at the same time during procedures outlined in paragraphs (f)(19)–(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the employer. If separate form the label, the tamperproof seal shall also be applied.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter on the urine custody and control form all information identifying the specimen. The collection site person shall sign the urine custody and control form certifying that the collection was accomplished according to the instructions provided.

(22) (i) The individual shall be asked to read and sign a statement on the urine custody and control form certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided.

(ii) The individual shall be provided an opportunity to set forth on the urine custody and control form information concerning medications taken or administered in the past 30 days.

(iii) When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the employer. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.

(23) A higher level supervisor of the collection site person, or a designated employer representative, shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described paragraph (e)(2) of this section.

(24) The collection site person shall complete the chain of custody portion of the urine custody and control form to indicate receipt from the employee and shall certify proper completion of the collection.

(25) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.

(26)(i) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the specimen and urine custody and control form shall be taken with him or her or shall be secured. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, the specimen shall be packaged for mailing before he or she leaves the site.

(ii) The collection site person shall not leave the collection site in the interval between presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number (shown on the urine custody and control form) and seal initialled by the employee. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and (at the election of the employer) a new collection begun.

(g) *Collection control.* To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled. The urine custody and control form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on an approval chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(h) *Transportation to laboratory.* Collection site personnel shall arrange to ship the collected specimens to the drug testing laboratory. The specimens shall be placed in containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers); and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site person shall sign and enter the date specimens were sealed in the containers for shipment. The collection site person shall ensure that the chain of custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

(i) *Failure to cooperate.* If the employee refuses to cooperate with the collection process (e.g., refusal to provide a complete specimen, complete paperwork, initial specimen) the collection site person shall inform the employer representative and shall document the non-cooperation on the urine custody and control form.

§ 40.27 Laboratory personnel.

(a) *Day-to-day management.* (1) The laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by the State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology, or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in paragraph (a)(2) (i), (ii), and (iii) of this section, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multispecialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in § 40.29(n)(1).)

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the tests results provided are accurate and reliable.

(b) *Test validation.* The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) *Day-to-day operations and supervision of analysts.* The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) *Other personnel.* Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) *Training.* The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) *Files.* Laboratory personnel files shall include: resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

§ 40.29 Laboratory analysis procedures.

(a) *Security and chain of custody.* (1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of DHHS, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, and time of entry and purpose of entry must be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) *Receiving.* (1) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the employer's chain of custody forms attached to the shipment shall be immediately reported to the employer and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles will normally be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.

(c) *Short-term refrigerated storage.* Specimens that do not receive an initial

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test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6°C. Emergency power equipment shall be available in case of prolonged power failure.

(d) *Specimen processing.* Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

(e) *Initial test.* (1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial test Level (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	* 300
Phencyclidine	25
Amphetamines	1,000

* 25ng/ml if immunoassay specific for free morphine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. Initial test methods and testing levels for other drugs shall be submitted in writing by the employer for the written approval of the DOT Agency under that agency's regulations.

(f) *Confirmatory test.* (1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirmatory test level (ng/ml)
Marijuana metabolite [1]	15
Cocaine metabolite [2]	150
Opiates:	
Morphine	300
Codeine	300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.
[2] Benzoylecgonine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. Confirmatory test methods and testing levels for other drugs shall be submitted in writing by the employer for the written approval of the DOT agency as provided in that agency's regulations.

(g) *Reporting results.* (1) The laboratory shall report test results to the employer's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the cutoff for each, the specimen number assigned by the employer, and the drug testing laboratory specimen identification number (accession number). The results (positive and negative) for all specimens submitted at the same time to the laboratory shall be reported back to the Medical Review Officer at the same time.

(2) The laboratory *shall report as negative* all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The Medical Review Officer may not disclose quantitation of test results to the employer but shall report only whether the test was positive or negative.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and employer must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer the original or a certified true copy of the urine custody and control form (part 1), which shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.

(6) The laboratory shall provide to the employer official responsible for coordination of the drug-free workplace program a monthly statistical summary of urinalysis testing of the employer's employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

(i) *Initial testing:*

(A) Number of specimens received;

(B) Number of specimens reported out; and

(C) Number of specimens screened positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamines

(ii) *Confirmatory testing:*

(A) Number of specimens received for confirmation;

(B) Number of specimens confirmed positive for:

Marijuana metabolite
Cocaine metabolite
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine

(7) The laboratory shall make available copies of all analytical results for employer drug testing programs when requested by DOT or any DOT agency with regulatory authority over the employer.

(8) Unless otherwise instructed by the employer in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) *Long-term storage.* Long-term frozen storage (−20° C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive. Within this 1-year period an employer (or other person designated in a DOT agency regulation) may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens under legal challenge for an indefinite period.

(i) *Retesting specimens.* Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) *Subcontracting.* Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine, and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in this part procedures. This paragraph does not prohibit subcontracting of laboratory analysis if specimens are sent directly from the collection site to the subcontractor, the subcontractor is a laboratory certified by DHHS as required in this part, the subcontractor performs all analysis and provides storage required under this part, the subcontractor is responsible to the employer for compliance with this part and applicable DOT agency regulations as if it were the prime contractor, and other relevant provisions of this part are observed.

(k) *Laboratory facilities.* (1) Laboratory facilities shall comply with applicable provisions of any State licensure requirements.

(2) Laboratories certified in accordance with DHHS Mandatory Guidelines for Federal Workplace Drug Testing Programs must have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) *Inspections.* The Secretary, a DOT agency, any employer utilizing the laboratory, DHHS or any organization performing laboratory certification on behalf of DHHS reserve the right to inspect the laboratory at any time. Employer contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the employer and the DOT agency of jurisdiction (directly or through an agency) to conduct unannounced inspections.

(m) *Documentation.* The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2-year period may be extended upon written notification by a DOT agency or by any employer for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall be required to maintain documents for any specimen under legal challenge for an indefinite period.

(n) *Additional requirements for certified laboratories.*—(1) *Procedure manual.* Each laboratory shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cutoff values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) *Standards and controls.* Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in service; and expiration date.

(3) *Instruments and equipment.* (i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventive maintenance.

(4) *Remedial actions.* There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) *Personnel available to testify at proceedings.* A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against an employee when that proceeding is based on positive urinalysis results reported by the laboratory.

§ 40.31 Quality assurance and quality control.

(a) *General.* Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) Laboratory quality control requirements for initial tests. Each analytical run of specimens to be screened shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cutoff).

In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory

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quality control samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(c) Laboratory quality control requirements for confirmation tests. Each analytical run of specimens to be confirmed shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cutoff).

The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(d) Employer blind performance test procedures. (1) Employers shall purchase drug testing services only from laboratories certified by DHHS or a DHHS-recognized certification program in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs. Laboratory participation is encouraged in other performance testing surveys by which the laboratory's performance is compared with peers and reference laboratories.

(2) (i) During the initial 90-day period of any new drug testing program, each employer shall submit blind performance test specimens to each laboratory it contracts with in the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) and thereafter a minimum of 10 percent of all samples (to a maximum of 250) submitted per quarter.

(ii) These blind performance testing requirements shall not apply to an employer that submits fewer than 1,000 employee specimens per year for analysis under one or more DOT agency regulations requiring compliance with this part, if such employer utilizes a laboratory that is currently subject to blind performance testing under this part or the DHHS Mandatory Guidelines for Federal Workplace Drug Testing Programs by a Federal agency or by another transportation employer required by this section to perform such blind performance testing for the substances for which the specimen is to be tested

(3) Approximately 80 percent of the blind performance test samples shall be blank (i.e., certified to contain no drug) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the employer is testing. This paragraph shall not be construed to prohibited spiking of other (potentially interfering) compounds, as technically appropriate, in order to verify the specificity of a particular assay.

(4) The DOT agency concerned shall investigate, or shall refer to DHHS for investigation, any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be made of the investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individuals responsible for the day-to-day management and operation of the drug testing laboratory. Then the DOT agency shall send the document to the employer as a report of the unsatisfactory performance testing incident. The DOT agency shall ensure notification of the finding to DHHS.

(5) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the employer shall promptly notify the DOT agency concerned. The DOT agency and the employer shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future; and, if there is reason to believe the error could have been systematic, the DOT agency may also require review and reanalysis of previously run specimens.

(6) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the employer shall instruct the laboratory to submit all quality control data from the batch of specimens which included the false positive specimen to the DOT agency concerned. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's urine drug testing. The DOT agency concerned may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. Based on information provided by the DOT agency, DHHS has the option of revoking or suspending the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

§ 40.33 Reporting and review of results.

(a) *Medical Review Officer shall review results.* An essential part of the drug testing program is the final review of results. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a DOT agency regulation. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer prior to the transmission of results to employer administrative officials.

(b) *Medical Review Officer—qualifications and responsibilities.* The Medical Review Officer shall be a licensed physician with knowledge of substance abuse disorders and may be an employee of the transportation employer or a private physician retained for this purpose. The role of the Medical Review Officer is to review and interpret positive test results obtained through the employer's testing program. In carrying out this responsibility, the Medical Review Officer shall examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The Medical Review Officer shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The Medical Review Officer shall not, however, consider the results of urine samples that are not obtained or processed in accordance with this part.

(c) *Positive test result.* Prior to making a final decision to verify a positive test result, the Medical Review Officer shall give the individual an opportunity to discuss the test result with him or her. Following verification of a positive test result, the Medical Review Officer shall, as provided in the employer's policy, refer the case to the employer employee assistance or rehabilitation program, if applicable, to the management official empowered to recommend or take administrative action (or the official's designated agent), or both.

(d) *Verification for opiates; review for prescription medication.* Before the Medical Review Officer verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (This requirement does not apply if the employer's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.)

(e) *Reanalysis authorized.* Should any question arise as to the accuracy or validity of a positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified by DHHS. The Medical Review Officer shall authorize a reanalysis of the original sample on timely request of the employee, as provided in applicable DOT agency regulations.

(f) *Result consistent with legal drug use.* If the Medical Review Officer determines there is a legitimate medical explanation for the positive test result, the Medical Review Officer shall report the test result to the employer as negative.

(g) *Result scientifically insufficient.* Additionally, the Medical Review Officer, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the Medical Review Officer may request reanalysis of the original sample before making this decision. (The Medical Review Officer may request that reanalysis be performed by the same laboratory or, as provided in § 40.33(e), that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with the DHHS Guidelines.) The laboratory shall assist in this review process as requested by the Medical Review Officer by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the employer. The employer shall include in its annual report to the DOT agency a summary of any negative findings based on scientific insufficiency but shall not include any personal identifying information in such reports.

§ 40.35 Protection of employee records.

Employer contracts with laboratories shall require that the laboratory maintain employee test records in confidence, as provided in DOT agency regulations.

§ 40.37 Individual access to test and laboratory certification results.

Any employee who is the subject of a drug test conducted under this part shall, upon written request, have access to any records relating to his or her drug test and any records relatings to the results of any relevant certification, review, or revocation-of-certification proceedings.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing

§ 40.41 Use of DHHS-certified laboratories.

Employers subject to this part shall use only laboratories certified under the DHHS Mandatory Guidelines for Federal Workplace Drug Testing Programs, 53 FR 11970, April 11, 1988, and subsequent amendments thereto. DHHS certification standards are set forth in Appendix A to this part for information and reference. Information concerning the current certification status of laboratories is available from: the Office of Workplace Initiatives, National Institute on Drug Abuse, 5600 Fishers Lane, Rockville, Maryland 20857.

Appendix A to Part 40—DHHS Laboratory Certification Standards

Note: Reproduced below is subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs issued by DHHS. Cross-references are to sections of those DHHS Guidelines. Equivalent provisions in this part may be determined by reference to the following table:

	Part 40
DHHS Guidelines:	
Section 1.1	§ 40.1
Section 1.2	§ 40.2
Section 2.1	§ 40.21
Section 2.2	§ 40.25
Section 2.3	§ 40.27
Section 2.4	§ 40.29
Section 2.5	§ 40.31
Section 2.6	
Section 2.7	§ 40.33
Section 2.8	§ 40.35
Section 2.9	§ 40.37

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

Section 3.1 Introduction.

Urine drug testing is a critical component of efforts to combat drug abuse in our society. Many laboratories are familiar with good laboratory practices but may be unfamiliar with the special procedures required when drug test results are used in the employment context. Accordingly, the following are minimum standards to certify laboratories engaged in urine drug testing for Federal agencies. Certification, even at the highest level, does not guarantee accuracy of each result reported by a laboratory conducting urine drug testing for Federal agencies. Therefore, results from laboratories certified under these Guidelines must be interpreted with a complete understanding of the total collection, analysis, and reporting process before a final conclusion is made.

Section 3.2 Goals and Objectives of Certification.

(a) *Uses of Urine Drug Testing.* Urine drug testing is an important tool to identify drug users in a variety of settings. In the proper context, urine drug testing can be used to deter drug abuse in general. To be a useful tool, the testing procedure must be capable of detecting drugs or their metabolites at concentrations indicated is section 2.4 (e) and (f).

(b) *Need to Set Standards; Inspections.* Reliable discrimination between the presence, or absence, of specific drugs or their metabolites is critical, not only to achieve the goals of the testing program but to protect the rights of the Federal employees being tested. Thus, standards have been set which laboratories engaged in Federal employee urine drug testing must meet in order to achieve maximum accuracy of test results. These laboratories will be evaluated by the Secretary or the Secretary's designee as defined in section 1.2 in accordance with these Guidelines. The qualifying evaluation will involve three rounds of performance testing plus on-site inspection. Maintenace of certification requires participation in an every-other-month performance testing program plus periodic, on-site inspections. One inspection following successful completion of a performance testing regimen is required for initial certification. This must be followed by a second inspection within 3 months, after which biannual inspections will be required to maintain certification.

(c) *Urine Drug Testing Applies Analytical Forensic Toxicology.* The possible impact of a positive test result on an individual's livelihood or rights, together with the possibility of a legal challenge of the result, sets this type of test apart from must clinical laboratory testing. In fact, urine drug testing should be considered a special application of analytical forensic toxicology. That is, in addition to the application of appropriate analytical methodology, the specimen most be treated as evidence, and all aspects of the testing procedure must be documented and available for possible court testimony. Laboratories engaged in urine drug testing for Federal agencies will require the services and

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advice of a qualified forensic toxicologist, or individual with equivalent qualifications (both training and experience) to address the specific needs of the Federal drug testing program, including the demands of chain of custody of specimens, security, proper documentation of all records, storage of positive specimens for later or independent testing, presentation of evidence in court, and expert witness testimony.

Section 3.3 General Certification Requirements.

A laboratory must meet all the pertinent provisions of these Guidelines in order to qualify for certification under these standards.

Section 3.4 Capability to Test for Five Classes of Drugs.

To be certified, a laboratory must be capable of testing for at least the following five classes of drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine, using the initial immunoassay and quantitative confirmatory GC/MS methods specified in these Guidelines. The certification program will be limited to the five classes of drugs (section 2.1(a) (1) and (2)) and the methods (section 2.4 (e) and (f)) specified in these Guidelines. The laboratory will be surveyed and performance tested only for these methods and drugs. Certification of a laboratory indicates that any test result reported by the laboratory for the Federal Government meets the standards in these Guidelines for the five classes of using the methods specified. Certified laboratories must clearly inform non-Federal clients when procedures followed for those clients conform to the standards specified in these Guidelines.

Section 3.5 Initial and Confirmatory Capability at Same Site.

Certified laboratories shall have the capability, at the same laboratory site, of performing both initial immunoassays and confirmatory GC/MS tests (section 2.4(e) and (f)) for marijuana, cocaine, opiates, amphetamines, and phencyclidine and for any other drug or metabolite for which agency drug testing is authorized (section 2.1(a)(1) and (2)). All positive initial test results shall be confirmed prior to reporting them.

Section 3.6 Personnel.

Laboratory personnel shall meet the requirements specified in section 2.3 of these Guidelines. These Guidelines establish the exclusive standards for qualifying or certifying those laboratory personnel involved in urinalysis testing whose functions are prescribed by these Guidelines. A certification of a laboratory under these Guidelines shall be a determination that these qualification requirements have been met.

Section 3.7 Quality Assurance and Quality Control.

Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process, including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality control procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs as specified in section 2.5 of these Guidelines.

Section 3.8 Security and Chain of Custody.

Laboratories shall meet the security and chain of custody requirements provided in section 2.4(a).

Section 3.9 One-Year Storage for Confirmed Positives.

All confirmed positive specimens shall be retained in accordance with the provisions of section 2.4(b) of these Guideline.

Section 3.10 Documentation.

The Laboratory shall maintain and make available for at least 2 years documentation in accordance with the specifications in section 2.4(m).

Section 3.11 Reports.

The laboratory shall report test results in accordance with the specifications in section 2.4(g).

Section 3.12 Certification.

(a) *General.* The Secretary may certify any laboratory that meets the standards in these Guidelines to conduct urine drug testing. In addition, the Secretary may consider to be certified any laboratory that is certified by a DHHS-recognized certification program in accordance with these Guidelines.

(b) *Criteria.* In determining whether to certify a laboratory or to accept the certification of a DHHS-recognized certification program in accordance with these Guidelines, the Secretary shall consider the following criteria:

(1) The adequacy of the laboratory facilities;

(2) The expertise and experience of the laboratory personnel;

(3) The excellence of the laboratory's quality assurance/quality control program;

(4) The performance of the laboratory on any performance tests;

(5) The laboratory's compliance with standards as reflected in any laboratory inspections; and

(6) Any other factors affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

Section 3.13 Revocation.

(a) *General.* The Secretary shall revoke certification of any laboratory certified under these provisions or accept revocation by a DHHS-recognized certification program in accordance with these Guidelines if the Secretary determines that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results.

(b) *Factors to Consider.* The Secretary shall consider the following factors in determining whether revocation is necessary:

(1) Unsatisfactory performance in analyzing and reporting the results of drug tests; for example, a false positive error in reporting the results of an employee's drug test;

(2) Unsatisfactory participation in performance evaluations or laboratory inspections;

(3) A material violation of a certification standard or a contract term or other condition imposed on the laboratory by a Federal agency using the laboratory's services;

(4) Conviction for any criminal offense committed as an incident to operation of the laboratory; or

(5) Any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

(c) *Period and Terms.* The period and terms of revocation shall be determined by the Secretary and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing of Federal employees.

Section 3.14 Suspension.

(a) *Criteria.* Whenever the Secretary has reason to believe that revocation may be required and that immediate action is necessary in order to protect the interests of the United States and its employees, the Secretary may immediately suspend a laboratory's certification to conduct urine drug testing for Federal agencies. The Secretary may also accept suspension of certification by a DHHS-recognized certification program in accordance with these Guidelines.

(b) *Period and Terms.* The period and terms of suspension shall be determined by the Secretary and shall depend upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing of Federal employees.

Section 3.15 Notice; Opportunity for Review.

(a) *Written Notice.* When a laboratory is suspended or the Secretary seeks to revoke certification, the Secretary shall immediately serve the laboratory with written notice of the suspension or proposed revocation by personal service or registered or certified mail, return receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and

(3) The period of suspension or proposed revocation.

(b) *Opportunity for Informal Review.* The written notice shall state that the laboratory will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30 days of the date of mailing or service of the notice. The review shall be by a person or persons designated by the Secretary and shall be based on written submissions by the laboratory and the Department of Health and Human Services and, at the Secretary's discretion, may include an opportunity for an oral presentation. Formal rules of evidence and procedures applicable to proceedings in a court of law shall not apply. The decision of the reviewing official shall be final.

(c) *Effective Date.* A suspension shall be effective immediately. A proposed revocation shall be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension shall terminate immediately and any proposed revocation shall not take effect.

(d) *DHHS-Recognized Certification Program.* The Secretary's responsibility under this section may be carried out by a DHHS-recognized certification program in accordance with these Guidelines.

Section 3.16 Recertification.

Following the termination or expiration of any suspension or revocation, a laboratory may apply for recertification. Upon the submission of evidence satisfactory to the Secretary that the laboratory is in compliance with these Guidelines or any DHHS-recognized certification program in accordance with these Guidelines, and any other conditions imposed as part of the suspension or revocation, the Secretary may recertify the laboratory or accept the recertification of the laboratory by a DHHS-recognized certification program.

Section 3.17 Performance Test Requirement for Certification

(a) *An Initial and Continuing Requirement.* The performance testing program is a part of the initial evaluation of a laboratory seeking certification (both performance testing and laboratory inspection are required) and of the continuing assessment of laboratory performance necessary to maintain this certification.

(b) *Three Initial Cycles Required.* Successful participation in three cycles of testing shall be required before a laboratory is eligible to be considered for inspection and certification. These initial three cycles (and any required for recertification) can be compressed into a 3-month period (one per month).

(c) *Six Challenges Per Year.* After certification, laboratories shall be challenged every other month with one set of at least 10 specimens—a total of six cycles per year.

(d) *Laboratory Procedures Identical for Performance Test and Routine Employee Specimens.* All procedures associated with the handling and testing of the performance test specimens by the laboratory shall to the greatest extent possible be carried out in a manner identical to that applied to routine laboratory specimens, unless otherwise specified.

(e) *Blind Performance Test.* Any certified laboratory shall be subject to blind performance testing (see section 2.5(d)). Performance on blind test specimens shall be at the same level as for the open or non-blind performance testing.

(f) *Reporting—Open Performance Test.* The laboratory shall report results of open performance tests to the certifying organization in the same manner as specified in section 2.4(g)(2) for routine laboratory specimens.

Section 3.18 Performance Test Specimen Composition.

(a) *Description of the Drugs.* Performance test specimens shall contain those drugs and metabolites which each certified laboratory must be prepared to assay in concentration ranges that allow detection of the analyte by commonly used immunoassay screening techniques. These levels are generally in the range of concentrations which might be expected in the urine of recent drug users. For some drug analytes, the specimen composition will consist of the parent drug as well as major metabolites. In some cases, more than one drug class may be included in one specimen container, but generally no more than two drugs will be present in any one specimen in order to imitate the type of specimen which a laboratory normally encounters. For any particular performance testing cycle, the actual composition of kits going to different laboratories will vary but, within any annual period, all laboratories participating will have analyzed the same total set of specimens.

(b) *Concentrations.* Performance test specimens shall be spiked with the drug classes and their metabolites which are required for certification: marijuana, cocaine, opiates, amphetamines, and phencyclidine, with concentration levels set at least 20 percent above the cutoff limit for either the initial assay or the confirmatory test, depending on which is to be evaluated. Some performance test specimens may be identified for GC/MS assay only. Blanks shall contain less than 2 ng/ml of any of the target drugs. These concentration and drug types may be changed periodically in response to factors such as changes in detection technology and patterns of drug use.

Section 3.19 Evaluation of Performance Testing.

(a) *Initial Certification.* (1) An applicant laboratory shall not report any false positive result during performance testing for initial certification. Any false positive will automatically disqualify a laboratory from further consideration.

(2) An applicant laboratory shall maintain an overall grade level of 90 percent for the three cycles of performance testing required for initial certification, i.e., it must correctly identify and confirm 90 percent of the total drug challenges for each shipment. Any laboratory which achieves a score on any one cycle of the initial certification such that it can no longer achieve a total grade of 90 percent over the three cycles will be immediately disqualified from further consideration.

(3) An applicant laboratory shall obtain quantitative values for at least 80 percent of the total challenges which are ±20 percent or ±2 standard deviations of the calculated reference group mean (whichever is larger). Failure to achieve 80 percent will result in disqualification.

(4) An applicant laboratory shall not obtain any quantitative values that differ by more than 50 percent from the calculated reference group mean. Any quantitative values that differ by more than 50 percent will result in disqualification.

(5) For any individual drug, an applicant laboratory shall successfully detect and quantitate in accordance with paragraphs (a)(2), (a)(3), and (a)(4) of this section at least 50 percent of the total drug challenges. Failure to successfully quantitate at least 50 percent of the challenges for any individual drug will result in disqualification.

b. *Ongoing Testing of Certified Laboratories. (1) False Positives and Procedures for Dealing with Them.* No false drug identifications are acceptable for any drugs for which a laboratory offers service. Under some circumstances a false positive test may result in suspension or revocation of certification. The most serious false positives are by drug class, such as reporting THC in a blank specimen or reporting cocaine in a specimen known to contain only opiates. Misidentifications within a class (e.g., codeine for morphine) are also false positives which are unacceptable in an appropriately controlled laboratory, but they are clearly less serious errors than misidentification of a class. The following procedures shall be followed when dealing with a false positve:

(i) The agency detecting a false positive error shall immediately notify the laboratory and the Secretary of any such error.

(ii) The laboratory shall provide the Secretary with a written explanation of the reasons for the error within 5 working days. If required by paragraph (b)(1)(v) below, this explanation shall include the submission of all quality control data from the batch of specimens that included the false positive specimen.

(iii) The Secretary shall review the laboratory's explanation within 5 working days and decide what further action, if any, to take.

(iv) If the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary may direct the laboratory to take corrective action to minimize the occurrence of the particular error, in the future and, if there is reason to believe the error could have been systematic, may require the laboratory to review and reanalyze previously run specimens.

(v) If the error is determined to be a technical or methodological error, the laboratory shall submit to the Secretary all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive by the laboratory from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for the day-to-day management of the laboratory's urine drug testing. Depending on the type of error which caused the false positive, this retesting may be limited to one analyte or may include any drugs a laboratory certified under these Guidelines must be prepared to assay. The laboratory shall immediately notify the agency if any result on a retest sample must be corrected because the criteria for a positive are not satisfied. The Secretary may suspend or revoke the laboratory's certification for all drugs or for only the drug or drug class in which the error occurred.

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However, if the class is one of a less serious error for which effective corrections have already been made, thus reasonably assuring that the error will not occur again, the Secretary may decide to take no further action.

(vi) During the time required to resolve the error, the laboratory shall remain certified but shall have a designation indicating that a false positive result is pending resolution. If the Secretary determines that the laboratory's certification must be suspended or revoked, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or any recertification process is complete.

(2) *Requirement to Identify and Confirm 90 Percent of Total Drug Challenges.* In order to remain certified, laboratories must successfully complete six cycles of performance testing per year. Failure of a certified laboratory to maintain a grade of 90 percent on any required peformance test cycle, i.e., to identify 90 percent of the total drug challenges and to correctly confirm 90 percent of the total drug challenges, may result in suspension or revocation of certification.

(3) *Requirement to Quantitate 80 Percent of Total Drug Challenges at ±20 Percent or ±2 standard deviations.* Quantitative values obtained by a certified laboratory for at least 80 percent of the total drug challenges must be ±20 percent or ±2 standard deviations of the calculated reference group mean (whichever is larger).

(4) *Requirement to Quantitate within 50 Percent of Calculated Reference Group Mean.* No quantitative values obtained by a certified laboratory may differ by more than 50 percent from the calculated reference group mean.

(5) *Requirement to Successfully Detect and Quantitate 50 Percent of the Total Drug Challenges for Any Individual Drug.* For any individual drug, a certified laboratory must successfully detect and quantitate in accordance with paragraphs (b)(2), (b)(3), and (b)(4) of this section at least 50 percent of the total drug challenges.

(6) *Procedures When Requirements in Paragraphs (b)(2)—(b)(5) of this Section Are Not Met.* If a certified laboratory fails to maintain a grade of 90 percent per test cycle after initial certification as required by paragraph (b)(2) of this section or if it fails to successfully quantitate results as required by paragraphs (b)(3), and (b)(4), or (b)(5) of this section, the laboratory shall be immediately informed that its performance fell under the 90 percent level or that it failed to successfully quantitate test results and how it failed to successfully quantitate. The laboratory shall be allowed 5 working days in which to provide any explanation for its unsuccessful performance, including administrative error or methodological error, and evidence that the source of the poor performance has been corrected. The Secretary may revoke or suspend the laboratory's certification or take no further action, depending on the seriousness of the errors and whether there is evidence that the source of the poor performance has been corrected and that current performance meets the requirements for a certified laboratory under these Guidelines. The Secretary may require that additional performance tests be carried out to determine whether the source of the poor performance has been removed. If the Secretary determines to suspend or revoke the laboratory's certification, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or until any recertification process is complete.

(c) *80 Percent of Participating Laboratories Must Detect Drug.* A laboratory's performance shall be evaluated for all samples for which drugs were spiked at concentrations above the specified performance test level unless the overall response from participating laboratories indicates that less than 80 percent of them were able to detect a drug.

(d) *Participation Required.* Failure to participate in a performance test or to participate satisfactorily may result in suspension or revocation of certification.

Section 3.20 Inspections.

Prior to laboratory certification under these Guidelines and at least twice a year after certification, a team of three qualified inspectors, at least two of whom have been trained as laboratory inspectors, shall conduct an on-site inspection of laboratory premises. Inspections shall document the overall quality of the laboratory setting for the purposes of certification to conduct urine drug testing. Inspection reports may also contain recommendations to the laboratory to correct deficiencies noted during the inspection.

Section 3.21 Results of Inadequate Performance.

Failure of a laboratory to comply with any aspect of these Guidelines may lead to revocation or suspension of certification as provided in sections 3.13 and 3.14 of these guidelines.

Appendix B to Part 40—Urine Custody and Control Form

The urine custody and control form shall meet the requirements of § 40.23. The following is a sample form that meets those requirements:

BILLING CODE 4810-62-M

URINE CUSTODY AND CONTROL FORM

STEP 1 -- TO BE COMPLETED BY EMPLOYEE/APPLICANT

Employee I.D. #_____ [PRE-PRINTED SPECIMEN I.D. #] Employer Name: _____

Social Security No. or Employee No.

STEP 2 -- TO BE COMPLETED BY EMPLOYER REPRESENTATIVE/OR COLLECTOR Reason for Test (Check One)

☐ Pre-employment ☐ Post Accident ☐ Random ☐ Periodic Medical

☐ Other(Specify)_____.

STEP 3 -- COLLECTOR MUST NOTE THAT TEMPERATURE OF SPECIMEN HAS BEEN READ. RECORD IF NOT WITHIN THE RANGE OF 32.5 - 37.7C/ 90.5 - 99.8 F:_____ ☐ WITHIN RANGE

STEP 4 -- TO BE INITIATED BY THE PERSON COLLECTING SPECIMEN AND COMPLETED AS NECESSARY THEREAFTER:

Purpose of Change	Released By Signature/Print Name	Received By Signature/Print Name	Date
Provide Specimen for Testing	DONOR		

STEP 5 -- (SEE BELOW -- TO BE COMPLETED BY EMPLOYEE)

STEP 6 -- BEFORE COMPLETING THIS STEP HAVE EMPLOYEE COMPLETE STEP 5 BELOW. To be completed by person collecting specimen:

Collector's Name_____ Date of Collection_____

Print (First, M.I., Last)

Collection Site_____ ( )_____

Facility Name and Location Telephone

Remarks concerning collection: _____

I certify that the specimen identified on this form is the specimen presented to me by the employee providing the certification below, that I have certified that it bears the same identification number as that set forth above, and that it has been collected, labeled and sealed as required by the instructions provided.

_____

Signature of collector

STEP 7 -- TO BE COMPLETED BY THE LABORATORY: Accession No. _____

I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results attached are for that specimen.

_____ _____ _____

Printed Name Signature Date

Copy No. 1: Original

BEST COPY AVAILABLE

URINE CUSTODY AND CONTROL FORM

STEP 1 -- TO BE COMPLETED BY EMPLOYEE/APPLICANT

Employee I.D. #_____ [PRE-PRINTED SPECIMEN I.D. #] Employer Name: _____
Social Security No.
or Employee No.

STEP 2 -- TO BE COMPLETED BY EMPLOYER REPRESENTATIVE/OR COLLECTOR Reason for Test (Check One)

☐ Pre-employment ☐ Post Accident ☐ Random ☐ Periodic Medical

☐ Other(Specify)_____.

STEP 3 -- COLLECTOR MUST NOTE THAT TEMPERATURE OF SPECIMEN HAS BEEN READ. RECORD IF NOT WITHIN THE RANGE OF 32.5 - 37.7C/ 90.5 - 99.8 F:_____ ☐ WITHIN RANGE

STEP 4 -- TO BE INITIATED BY THE PERSON COLLECTING SPECIMEN AND COMPLETED AS NECESSARY THEREAFTER:

Purpose of Change	Released By Signature/Print Name	Received By Signature/Print Name	Date
Provide Specimen for Testing	DONOR		

STEP 5 -- (SEE BELOW -- TO BE COMPLETED BY EMPLOYEE)

STEP 6 -- BEFORE COMPLETING THIS STEP HAVE EMPLOYEE COMPLETE STEP 5 BELOW. To be completed by person collecting specimen:

Collector's Name_____ Date of Collection_____
Print (First, M.I., Last)

Collection Site_____ ( )_____
Facility Name and Location Telephone

Remarks concerning collection: _____

I certify that the specimen identified on this form is the specimen presented to me by the employee providing the certification below, that I have certified that it bears the same identification number as that set forth above, and that it has been collected, labeled and sealed as required by the instructions provided.

_____
Signature of collector

STEP 7 -- TO BE COMPLETED BY THE LABORATORY: Accession No. _____

I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results attached are for that specimen.

_____ _____ _____
Printed Name Signature Date

STEP 5 -- TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN:

Name _____ Duty Location _____
Last/First/M.I.

Job Title: _____ Date of Birth _____

If you wish to have prescription or over-the-counter medications that you may have taken or been administered within the past 30 days considered as your test results are reviewed, you may list them here or provide that information separately to your employers' Medical Review Officer:

_____

_____

I certify that the urine specimen identified on this form is my own; that it is fresh and has not been adulterated in any manner; and that the identification information provided on this form and on the collection bottle is correct. I consent to the submission of this specimen to the certified laboratory designated by my employer, to the analysis of the specimen for controlled substances as provided by Federal requirements, and to the release of test results from that analysis to the Medical Review Officer designated by my employer.

_____ _____
Signature Date

Copy No. 2: Medical Review Officer

URINE CUSTODY AND CONTROL FORM

STEP 1 -- TO BE COMPLETED BY EMPLOYEE/APPLICANT

Employee I.D. #_____ [PRE-PRINTED SPECIMEN I.D. #] Employer Name: _____
Social Security No.
or Employee No.

STEP 2 -- TO BE COMPLETED BY EMPLOYER REPRESENTATIVE/OR COLLECTOR Reason for Test (Check One)

☐ Pre-employment ☐ Post Accident ☐ Random ☐ Periodic Medical

☐ Other(Specify)_____.

STEP 3 -- COLLECTOR MUST NOTE THAT TEMPERATURE OF SPECIMEN HAS BEEN READ. RECORD IF NOT WITHIN THE RANGE OF 32.5 - 37.7C/ 90.5 - 99.8 F:_____ ☐ WITHIN RANGE

STEP 4 -- TO BE INITIATED BY THE PERSON COLLECTING SPECIMEN AND COMPLETED AS NECESSARY THEREAFTER:

Purpose of Change	Released By Signature/Print Name	Received By Signature/Print Name	Date
Provide Specimen for Testing	DONOR		

STEP 5 -- (SEE BELOW -- TO BE COMPLETED BY EMPLOYEE)

STEP 6 -- BEFORE COMPLETING THIS STEP HAVE EMPLOYEE COMPLETE STEP 5 BELOW. To be completed by person collecting specimen:

Collector's Name_____ Date of Collection_____
Print (First, M.I., Last)

Collection Site_____ ( )_____
Facility Name and Location Telephone

Remarks concerning collection: _____

I certify that the specimen identified on this form is the specimen presented to me by the employee providing the certification below, that I have certified that it bears the same identification number as that set forth above, and that it has been collected, labeled and sealed as required by the instructions provided.

_____
Signature of collector

STEP 7 -- TO BE COMPLETED BY THE LABORATORY: Accession No. _____

I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results attached are for that specimen.

_____ _____ _____
Printed Name Signature Date

STEP 5 -- TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN:

Name _____ Duty Location _____
Last/First/M.I.

Job Title: _____ Date of Birth _____

If you wish to have prescription or over-the-counter medications that you may have taken or been administered within the past 30 days considered as your test results are reviewed, you may list them here or provide that information separately to your employers' Medical Review Officer:

_____

_____

I certify that the urine specimen identified on this form is my own; that it is fresh and has not been adulterated in any manner; and that the identification information provided on this form and on the collection bottle is correct. I consent to the submission of this specimen to the certified laboratory designated by my employer, to the analysis of the specimen for controlled substances as provided by Federal requirements, and to the release of test results from that analysis to the Medical Review Officer designated by my employer.

_____ _____
Signature Date

Copy No. 3: Employee

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URINE CUSTODY AND CONTROL FORM

STEP 1 -- TO BE COMPLETED BY EMPLOYEE/APPLICANT

Employee I.D. #_____ [PRE-PRINTED SPECIMEN I.D. #] Employer Name: _____
Social Security No.
or Employee No.

STEP 2 -- TO BE COMPLETED BY EMPLOYER REPRESENTATIVE/OR COLLECTOR Reason for Test (Check One)

☐ Pre-employment ☐ Post Accident ☐ Random ☐ Periodic Medical

☐ Other(Specify)_____.

STEP 3 -- COLLECTOR MUST NOTE THAT TEMPERATURE OF SPECIMEN HAS BEEN READ. RECORD IF NOT WITHIN THE RANGE OF 32.5 - 37.7C/ 90.5 - 99.8 F:_____ ☐ WITHIN RANGE

STEP 4 -- TO BE INITIATED BY THE PERSON COLLECTING SPECIMEN AND COMPLETED AS NECESSARY THEREAFTER:

Purpose of Change	Released By Signature/Print Name	Received By Signature/Print Name	Date
Provide Specimen for Testing	DONOR		

STEP 5 -- (SEE BELOW -- TO BE COMPLETED BY EMPLOYEE)

STEP 6 -- BEFORE COMPLETING THIS STEP HAVE EMPLOYEE COMPLETE STEP 5 BELOW. To be completed by person collecting specimen:

Collector's Name_____ Date of Collection_____
Print (First, M.I., Last)

Collection Site_____ ( )_____
Facility Name and Location Telephone

Remarks concerning collection: _____

I certify that the specimen identified on this form is the specimen presented to me by the employee providing the certification below, that I have certified that it bears the same identification number as that set forth above, and that it has been collected, labeled and sealed as required by the instructions provided.

_____
Signature of collector

STEP 7 -- TO BE COMPLETED BY THE LABORATORY: Accession No. _____

I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results attached are for that specimen.

_____ _____ _____
Printed Name Signature Date

STEP 5 -- TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN:

Name _____ Duty Location _____
Last/First/M.I.

[redacted]

I certify that the urine specimen identified on this form is my own; that it is fresh and has not been adulterated in any manner; and that the identification information provided on this form and on the collection bottle is correct. I consent to the submission of this specimen to the certified laboratory designated by my employer, to the analysis of the specimen for controlled substances as provided by Federal requirements, and to the release of test results from that analysis to the Medical Review Officer designated by my employer.

_____ _____
Signature Date

Copy No. 4: Collector

URINE CUSTODY AND CONTROL FORM

STEP 1 -- TO BE COMPLETED BY EMPLOYEE/APPLICANT

Employee I.D. #_____ [PRE-PRINTED SPECIMEN I.D. #] Employer Name: _____
Social Security No.
or Employee No.

STEP 2 -- TO BE COMPLETED BY EMPLOYER REPRESENTATIVE/OR COLLECTOR Reason for Test (Check One)

☐ Pre-employment ☐ Post Accident ☐ Random ☐ Periodic Medical

☐ Other(Specify)_____.

STEP 3 -- COLLECTOR MUST NOTE THAT TEMPERATURE OF SPECIMEN HAS BEEN READ. RECORD IF NOT WITHIN THE RANGE OF 32.5 - 37.7C/ 90.5 - 99.8 F:_____ ☐ WITHIN RANGE

STEP 4 -- TO BE INITIATED BY THE PERSON COLLECTING SPECIMEN AND COMPLETED AS NECESSARY THEREAFTER:

Purpose of Change	Released By Signature/Print Name	Received By Signature/Print Name	Date
Provide Specimen for Testing	DONOR		

STEP 5 -- (SEE BELOW -- TO BE COMPLETED BY EMPLOYEE)

STEP 6 -- BEFORE COMPLETING THIS STEP HAVE EMPLOYEE COMPLETE STEP 5 BELOW. To be completed by person collecting specimen:

Collector's Name_____ Date of Collection_____
Print (First, M.I., Last)

Collection Site_____ ( )_____
Facility Name and Location Telephone

Remarks concerning collection: _____

I certify that the specimen identified on this form is the specimen presented to me by the employee providing the certification below, that I have certified that it bears the same identification number as that set forth above, and that it has been collected, labeled and sealed as required by the instructions provided.

_____
Signature of collector

STEP 7 -- TO BE COMPLETED BY THE LABORATORY: Accession No. _____

I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results attached are for that specimen.

_____ _____ _____
Printed Name Signature Date

STEP 5 -- TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN:

Name _____ Duty Location _____
Last/First/M.I.

Job Title: _____ Date of Birth _____

[redacted]

I certify that the urine specimen identified on this form is my own; that it is fresh and has not been adulterated in any manner; and that the identification information provided on this form and on the collection bottle is correct. I consent to the submission of this specimen to the certified laboratory designated by my employer, to the analysis of the specimen for controlled substances as provided by Federal requirements, and to the release of test results from that analysis to the Medical Review Officer designated by my employer.

_____ _____
Signature Date

Copy No. 5: Employer

[FR Doc. 88-26611 Filed 11-15-88; 3:48 pm]
BILLING CODE 4910-62-C

VOL
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ISS
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NO
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1988
UMI

federal register

Monday
November 21, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 61 et al.

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121, and 135

[Docket No. 25148; Amdt. Nos. 61-81, 63-25, 65-32, 121-201 and 135-28]

RIN 2120-AC33

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations to require domestic and supplemental air carriers, commercial operators of large aircraft, air taxi and commuter operators, certain commercial operators, certain contractors to these operators, and air traffic control facilities not operated by the FAA or the U.S. military to have an anti-drug program for employees who perform sensitive safety- or security-related functions. A special provision has been added to the rule that provides that the final rule does not apply to any person where compliance with the final rule would violate the domestic law or policy of another country. Testing under the rule will be conducted by an employer prior to employment, periodically, randomly, after an accident, based on reasonable cause, and after an employee returns to duty to perform a sensitive safety- or security-related function for an employer. The final rule also will require that an employer provide EAP education and training services to employees and supervisors. The rule is necessary to prohibit an employee from performing a sensitive safety- or security-related function for an employer while that employee has a prohibited drug in his or her system or if that employee has used drugs as evidenced by a drug test showing the presence of drugs or drug metabolites. The rule is intended to ensure a drug-free aviation workforce and to eliminate drug use and abuse in commercial aviation.

EFFECTIVE DATE: This final rule is effective on December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Bartanowicz, Acting Deputy Director, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9679.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On December 4, 1986, the Federal Aviation Administration (FAA) issued an advance notice of proposed rulemaking (ANPRM) (51 FR 44432; December 9, 1986) entitled "Control of Drug and Alcohol Use for Personnel Engaged in Commercial and General Aviation Activities." The ANPRM invited comment from the public on drug and alcohol abuse by personnel in the aviation industry and the options available to the FAA for regulatory or other action in the interest of aviation safety. The FAA received over 650 written comments in response to the issues raised in the ANPRM.

On March 3, 1988, the FAA issued a notice of proposed rulemaking (NPRM) (53 FR 8368; March 14, 1988) entitled "Anti-Drug Program for Personnel Engaged in Specified Aviation Activities." The NPRM set forth an analysis of the comments received on the ANPRM and proposed regulations for public comment. The FAA received over 260 written comments on the proposals contained in the NPRM.

The FAA also held a series of public hearings on the regulations proposed in the NPRM. These hearings were held on June 2, 1988, in Washington, DC; June 7, 1988, in Denver, Colorado; and June 9, 1988, in San Francisco, California. Each of the hearings was recorded by a court reporter. The transcript of each hearing and any statements or other material, submitted to the hearing panel during the hearings, have been placed in the public docket. This material also has been reviewed in the development of the final rule.

Current Rules. The FAA's comprehensive anti-drug program is one action in a long history of actions to combat the use of drugs and alcohol in the aviation industry. The focus of the majority of these actions has been on commercial aviation personnel, particularly the cockpit and cabin crew. For example, pilots, flight attendants, flight engineers, and flight navigators may not act as a crewmember of a civil aircraft within eight hours after drinking an alcoholic beverage; while under the influence of alcohol; with 0.04 percent, or more, alcohol in their blood; or while using any drug that affects their faculties in any way contrary to safety. Also, crewmembers may be tested in the context of receiving medical care immediately after an accident. When there is a reasonable basis to suspect that one of these individuals has violated any of the above restrictions, these crewmembers must furnish, to the FAA, the results of any test taken within four hours of acting, or attempting to act, as a crewmember that indicates the presence of alcohol or any such drug in the person's system. Moreover, pilots, flight attendants, flight engineers, and flight navigators are required to submit to a test to indicate the percentage of alcohol in the blood when requested by a law enforcement officer who suspects that a crewmember may have violated a State or local law governing the operation of an aircraft while under the influence, or impaired by, drugs or alcohol.

The FAA may deny an application for a certificate or rating for up to one year, or may suspend or revoke an existing certificate or rating, in the case of any pilot, flight engineer, or flight navigator who has been convicted of violating a Federal or State law relating to drug trafficking or possession; who has violated the proscriptions described above; who has refused to furnish the results of any test that would indicate the presence of alcohol or drugs taken within four hours of acting, or attempting to act, as a crewmember; or who has refused to submit to an alcohol test requested by a law enforcement officer investigating violations of State or local laws. The FAA also may deny an application for a certificate or rating for up to one year, or may suspend or revoke an existing certificate or rating, in the case of any air traffic control tower operator, aircraft dispatcher, mechanic, repairman, or parachute rigger who has been convicted of a violation of a Federal or State law relating to drug trafficking or possession.

The Aviation Drug-Trafficking Control Act of 1984, which added language to sections 602 and 609 of the Federal Aviation Act of 1958, mandates that the FAA take certain actions regarding airmen involved in drug trafficking activities. The Administrator is required to revoke the airman certificate of any airman who has been convicted of violating any Federal or State law

relating to a controlled substance, other than simple possession, if an aircraft was used in, or was used to facilitate, the commission of the offense and the person served as an airman, or was onboard the aircraft, in connection with the commission of the offense. The Administrator has no discretion to review the conviction for the substantive offense. Under the 1984 legislation, the Administrator was prohibited from reissuing a certificate to that airman for up to five years but could reissue a certificate after an absolute minimum of one year, in certain extremely limited circumstances, if revocation was excessive and contrary to the public interest. As part of the Federal Aviation Administration Drug Enforcement Assistance Act of 1988, Congress amended sections 602 and 609 of the FAA Act, among other amendments to the Act, in October 1988. The statutory language now provides that the Administrator shall not issue an airman certificate to any person whose certificate has been revoked for aviation drug trafficking activities unless the airman is acquitted of the offense, a conviction upon which revocation is based is reversed on appeal, or the Administrator determines that issuance of an airman certificate will facilitate law enforcement efforts after a request from a Federal or State law enforcement official. The final rule requiring a comprehensive anti-drug program for employees in commercial aviation is consistent with these previous actions taken by the FAA.

The FAA's commitment to a drug-free workforce also applies to its own employees. The Department of Transportation began random drug testing of DOT employees in safety- and security-sensitive functions in September 1987. The Secretary's goal is to establish and maintain a drug-free workplace as intended by Executive Order 12564 and as directed by Presidential memorandum dated October 4, 1986. It is the opinion of the Department of Transportation that random drug testing is the most effective means of determining the presence of drugs or drug metabolites that may adversely affect an employee's performance of safety- or security-sensitive job functions. Pursuant to the Department's program, an employee of the Department will be removed from Federal service under several circumstances: refusal to enter or to successfully complete a drug rehabilitation or abatement program; repeat usage of drugs; refusal to provide a urine specimen for drug testing; adulteration or substitution of a urine specimen; on-duty use of illegal drugs; or a determination that a DOT employee has engaged in illegal drug trafficking.

In order to ensure that aviation safety is not compromised by a failure to detect drug users in the aviation industry, the FAA believes that it is appropriate and necessary to establish a comprehensive anti-drug program at this time.

Existing Industry Programs. As part of their comments to the ANPRM and the NPRM, many employers note that they have implemented drug testing programs or employee rehabilitation programs. For example, although their drug testing programs were not specifically described, Martin Aviation implemented a drug testing program in February 1987 and Suburban Airlines has required preemployment drug testing of flight crew applicants for over a year. Federal Express Corporation currently conducts preemployment testing of all applicants and "reasonable suspicion testing" of all employees.

Tramco, Inc. is a certificated repair station employing over 600 individuals and repairing over 100 aircraft per year. Tramco instituted a drug testing and counseling program "several years ago" and believes that the program yields substantial benefits to both employees and employers. Tramco tests all applicants for jobs and conducts tests based on probable cause. Tramco's tests based on probable cause are triggered by reports of employee drug use, employee attendance patterns that may suggest a drug problem, accidents, and observation by supervisors. A Tramco employee who tests positive for drugs is suspended for a minimum of one week and may not return to work until a drug test shows no evidence of drug use. Tramco estimates that, consistent with general statistics, 20 percent of its workforce has had some involvement with controlled substances. As of the time of its comment to the NPRM, Tramco identified 10 percent of its employees as individuals who had used drugs.

Rocky Mountain Helicopters, Inc. implemented a drug testing program for its employees in July 1986. Rocky Mountain Helicopters tests all pilots, mechanics managers, and others who can affect aviation safety using preemployment, random, probable cause, and postaccident testing. Rocky Mountain Helicopters does not pay an employee's rehabilitation costs but will consider rehiring any employee who completes an approved rehabilitation program. Petroleum Helicopters, Inc. began a preemployment and periodic testing program in 1982 and supports mandatory drug testing. Petroleum Helicopters denies employment to any applicant, and discharges any employee, who tests positive in a drug test. Petroleum Helicopters does not concur with the proposal to provide a rehabilitation opportunity to employees on the basis that an employer should not accept the risk of repeated illegal drug use among maintenance or flight personnel.

The FAA believes that the comprehensive anti-drug program, promulgated by this final rule, is not a novel concept. In light of the FAA's long history of regulatory action in the area of drug use in aviation and the significant number of industry drug testing programs currently implemented by aviation employers, the FAA believes that the agency is justified in requiring the commercial aviation industry to implement similar comprehensive anti-drug programs.

Discussion of Comments

General Overview of the Major Issues

The FAA received 261 comments in response to the NPRM. The FAA considered all timely-filed comments submitted in response to the NPRM and the testimony of 20 individuals who presented statements at the three public hearings held by the FAA. During the public hearings, the Secretary of Transportation, James H. Burnley, requested information from several individuals who presented statements at the hearings. The comment period for the NPRM closed on June 13, 1988. In order to accommodate the individuals who submitted supplemental information pursuant to the Secretary's request, the FAA also considered comments that were submitted as late as July 1, 1988.

There were several major themes presented by the commenters. Many commenters focus on the lack of evidence of significant drug use or drug abuse in the aviation industry. The commenters particularly stress this point with respect to the cockpit crew based on age, income, managerial supervision, close working relationships with peers, periodic medical exams to determine fitness for duty, and professionalism of the crew. Based on the lack of evidence, these commenters conclude that establishment of a drug testing program is unwarranted and unconstitutional. Regardless of the amount of evidence, the majority of commenters agree with the FAA's assessment that drug use and substance abuse have no place in the aviation environment. Some commenters note

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that the FAA's anti-drug stance is commendable, but the true issue is the type of program that evolves from that stance. Many commenters support the FAA's efforts to develop a comprehensive anti-drug program that would achieve a drug-free commercial aviation workforce and agree that a program to achieve a drug-free aviation environment is beneficial.

There is substantial, although not universal, support for a drug testing program using state-of-the-art urine testing. The gas chromotography/mass spectrometry (GC/MS) method, approved by the Department of Health and Human Services (DHHS), is recognized by the commenters as the most accurate method of analysis for the presence of drugs or drug metabolites in urine if rigorous collection and analysis procedures, such as those contained in the DHHA mandatory guidelines, are followed. (As discussed in detail elsewhere in this preamble, the Department of Transportation is publishing "Procedures for Transportation Workplace Drug Testing Programs" which are adopted in this final rule in lieu of the DHHS guidelines. These DOT-wide procedures closely resemble the DHHS guidelines and are used because the DHHS guidelines are not drafted for application by entities other than Federal agencies.) While some concerns were raised about the testing procedures, these concerns generally involve drug testing programs and procedures in the early 1980s that did not embody the critical safeguards of a properly-administered testing program.

Certain types of testing proposed in the NPRM receive significant support by the commenters. These types of testing include preemployment testing and postaccident testing. Periodic testing and testing based on reasonable cause received substantial support from the commenters. Some support for testing based on reasonable cause is predicated on traditional constitutional standards that apply to a search of the person.

There is significant and strongly-held opposition to random testing. However, the FAA's drug testing program, including random testing as a critical element, is supported by some commenters. The objections to random testing are based on legal or constitutional issues, privacy issues, and the invasive nature of random testing based on personal grounds, cost issues, and the absence of a demonstrated need for a comprehensive testing program assuming a low level of drug use in the industry.

Of those commenters who address the issue, there is agreement that the complexity, cost, and operational impact burdens of the rule would be significantly greater on small entities in the aviation industry. Finally, the commenters express significantly different opinions in the area of employee assistance programs (EAP). The primary differences surround the issues of the circumstances under which an employee is offered an opportunity for rehabilitation and the entity or individual who is responsible for payment of rehabilitation costs. Several major air carriers have already addressed this issue through insurance coverage or by labor-management agreement. However, even some of these organizations, although supportive of EAPs, oppose a broad, Federally-mandated EAP requirement. Labor organizations clearly support expansive EAP opportunities and services. Small entities oppose EAP requirements on many grounds, including cost and possible negative coworker attitudes exhibited toward rehabilitated employees.

The commenters differ regarding the method of achieving a drug-free aviation workforce and the manner in which the FAA would be involved in any program. The primary differences arise regarding the type and scope of testing used to identify sensitive safety- or security-related personnel who use drugs and the choices offered to those individuals who are identified as drug users.

Labor Unions and Organizations Representing Employees. In general, unions or organizations representing employees in aviation oppose the comprehensive mandatory drug testing proposed in the NPRM. Labor unions and employee organizations favor EAP and broad rehabilitation rights for all employees. These organizations oppose random drug testing but, with some qualifications, these organizations see a role for preemployment testing, postaccident testing, testing based on reasonable cause, and testing during and after rehabilitation to monitor an individual's progress.

The International Association of Machinists and Aerospace Workers (IAM) opposes any industry-wide drug and alcohol testing until hard evidence of an industry drug problem that jeopardizes aviation safety is substantiated and documented. The Independent Union of Flight Attendants (IUFA) opposes all forms of mandatory drug testing of employees. The Independent Federation of Flight Attendants (IFFA) objects generally to drug testing as unwarranted governmental intervention into labor-management relations but would support preemployment screening and postaccident testing if reasonable cause for such testing can be objectively illustrated. IFFA objects specifically to random testing in any form as unconstitutional and contrary to labor law. IFFA believes that the focus of any drug testing program should be limited to impairment on the job and states that no currently available testing procedure can determine drug impairment on the job. The Association of Flight Attendants (AFA) believes that drug testing of flight attendants is not warranted. However, AFA and the Association of Professional Flight Attendants (APFA) support preemployment testing of applicants seeking jobs in the industry if that testing is not used to discriminate against applicants on the basis of disabilities unrelated to drug use. AFA also would not oppose postaccident testing of pilots or probable cause drug testing of employees who are under the influence of drugs if these samples were collected by an FAA inspector. APFA opposes random testing, postaccident testing absent individualized suspicion, and testing based on reasonable cause as proposed. The Flight Engineers' International Association (FEIA) opposes all testing except in the case where probable cause exists to believe that an employee is impaired by drugs; in order to protect employees from harassment, FEIA states that any determination to test an employee based on probable cause for impairment should be reviewed by a neutral party. The Teamsters Union could support preemployment screening; testing based on reasonable suspicion to believe that an employee's actual or current impairment has, or is, affecting job performance or workplace safety; periodic testing to maintain medical certification; and testing after an accident or a "near miss" if there is a reasonable basis to suspect that human error may have been a casual factor.

The Air Line Pilots Association (ALPA), representing 41,000 pilots employed by 44 large and small airlines, is firmly opposed to all forms of drug and alcohol abuse by airline personnel. ALPA primarily is opposed to random and periodic testing based on their belief that these tests are offensive, ineffectual, unjustified, and unconstitutional. ALPA believes that if there is drug use among commercial pilots, the incidence of drug use would be less than 0.5 percent. On this basis, ALPA asserts that widescale random testing of the relatively small aviation population will result in a significant number of false-positive test results. ALPA does not oppose testing prior to

employment, testing after an accident, testing in circumstances where there are reasonable grounds to suspect drug use, and testing to monitor rehabilitation.

ALPA believes that the approach to the drug abuse problem articulated in the NPRM is inappropriate. ALPA instead urges the FAA to consider an approach similar to the Human Intervention Motivation Study (HIMS) program developed to identify and treat alcoholism among pilots. The key elements of the HIMS program are education, peer involvement, intervention, confrontation, and rahabilitation. Although the HIMS program has focused on treatment of pilots who demonstrate a problem with alcohol, ALPA sponsored a HIMS drug abuse training program in November 1987 which the FAA attended.

Labor and employee organizations also strongly support limitations on an employer's ability to exclude any employee from an opportunity for rehabilitation and limitations on an employer's ability to discharge an employee. Most organizations, including IUFA, IFFA, AFA, and APFA, strongly support regulations that would require an employer to establish and participate in comprehensive, nonpunitive EAP services established by collective bargaining or negotiation and available to all employees. ALPA agrees that any regulations should clearly recognize that unions have collective bargaining rights under Federal labor laws; ALPA suggests that any anti-drug regulations promulgated by the FAA should ensure that the regulatory requirements do not interfere or override the union's collective bargaining rights. FEIA supports EAP services, mandatory for each carrier and paid for by the carrier, for rehabilitation of all employees regardless of the circumstances that precipitated a drug test. IAM suggests that FAA regulations should be guidelines, applicable only to carriers who have a documented substance abuse problem affecting aviation safety, that stress education, prevention, rehabilitation, and protection of an employee's privacy.

Employers and Organizations Representing Employers. Most employers support mandatory drug testing of employees and limitations on an employee's opportunity for rehabilitation. Part 121 and Part 135 certificate holders do not express the same opinions regarding the proposals in the NPRM. The general views held by Part 121 certificate holders are characterized by the comments submitted by the Air Transport Association of America (ATA). ATA supports the FAA's comprehensive drug testing program and favors an opportunity for rehabilitation only for those employees who volunteer for rehabilitation. In the area of EAP services, Part 121 certificate holders generally favor flexibility and latitude for an employer to design a company EAP. American Airlines, however, favors industry-wide standard EAP requirements.

Most Part 135 certificate holders and small aviation businesses object to the drug testing requirements proposed in the NPRM. The Regional Airline Association (RAA), which represents many Part 135 certificate holders, opposes random testing; RAA also suggests that the random selection rate be set at a rate less than the maximum 125 percent rate proposed in the NPRM if the FAA mandates a random testing requirement. The Primary objection of Part 135 certificate holders and small businesses is to the proposed requirement to offer an opportunity for rehabilitation to an employee. These organizations oppose mandated rehabiliation because of the economic burden that would be imposed on a small operator. The National Air Transport Association (NATA) suggests, in its June 2, 1988 testimony, that Part 135 certificate holders employing 100 or fewer covered employees should be exempted from all requirements of the proposed anti-drug program.

Grace Flying Service, Inc., a Part 135 certificate holder conducting single-engine air taxi services, flight instruction, and aerial application services, opposes drug testing of employees. Grace Flying Service strenuously objects to any drug tests, whether scheduled or random, and would be reluctant to test its employees even if testing is mandated by the FAA.

The National Business Aircraft Association (NBAA) concurs with the FAA's anti-drug program with certain reservations. NBAA primarily is concerned about the constitutionality of random drug testing and the FAA's reliance on laboratory testing results that may be unreliable in detecting drugs or drug metabolites proposed to be analyzed in the NPRM.

Individual Commenters. The FAA received 170 comments from individuals. The majority of these individuals are pilots employed by major airlines and self-employed pilots who would be subject to the requirements of the proposed rule. The FAA also received comments from general aviation pilots and individuals who are not employed in the commercial aviation industry. The vast majority of the individual commenters oppose the drug testing requirements of the proposed rule based on constitutional objections, failure of the FAA to demonstrate a drug problem in the aviation community, and perceived inaccuracies of drug testing collection and analysis. A minority of individual commenters generally support the FAA's anti-drug proposals and primarily support the testing requirements. These individuals are private citizens or consumers who base their support on the need to ensure that aviation personnel are drug free, particularly on the job. The strongest individual support is expressed by letters from the family and friends of a passenger who was killed in the crash of Continental Air Express Flight 2286 near Durango, Colorado. The comments from the family and friends of the deceased passenger urge the FAA to do everything within its statutory authority to prevent a similar tragedy in the future.

Specific Issues

Discussion of the constitutional issues regarding random and periodic drug testing. A number of commenters have questioned the constitutionality of drug testing programs for aviation personnel. Although the state of the case law is still evolving in rapid fashion and no definitive Supreme Court resolution of many relevant and complex issues has been achieved, the FAA feels confident that testing required under this rule will pass constitutional scrutiny. The FAA recognizes that there are legitimate and significant constitutional concerns surrounding drug testing in general and random drug testing as a specific component of drug testing. The FAA acknowledges the current widescale litigation and apparent disparate judicial opinions on drug testing programs.

FAA Response. The principles of the Fourth Amendment to the U.S. Constitution are paramount in scrutinizing the fundamental legality of many drug testing programs. As a threshold legal matter, the Fourth Amendment applies to "searches" conducted or mandated by the government and protects individuals against "unreasonable searches and seizures." Action of a private party does not constitute State (or Federal) action unless there exists a close nexus between the state and the action in question. *Jackson v. Metropolitan Edison,* 419 U.S. 345 (1974); *Moose Lodge No. 107 v. Irvis,* 407 U.S. 163 (1972).

Assuming that the drug testing programs called for under the final rule do implicate the government, a second

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issue then arises concerning whether urine tests under these programs are "searches" within the meaning of the Fourth Amendment. Although most courts to address the issue to date have ruled that toxicological testing of employees for the purpose of determining fitness for duty is a search within the meaning of the Fourth Amendment, the issue is not entirely settled. *See Wyman v. James*, 400 U.S. 309, 317–338 (1971) (government welfare caseworker's "home visit" as a precondition for assistance payments is not a Fourth Amendment search). *See also, Lovvorn v. City of Chattanooga*, 846 F.2d 1539, 1553–1554 (6th Cir. 1988) (Guy, J., dissenting), *panel decision vacated and rehearing en banc ordered*, (August 3, 1988); *National Treasury Employees Union v. von Raab*, 808 F.2d 1057, 1060, 1062 (5th Cir. 1987) (Higginbotham, J., concurring). *Cf. Mack v. United States, F.B.I.*, 814 F.2d 120, 125 n.2 (2nd Cir. 1987).

Also assuming, *arguendo*, that urine tests of aviation personnel for illegal drugs are "searches" within the meaning of the Fourth Amendment, it is clear that while searches ordinarily must be conducted pursuant to a warrant issued on probable cause grounds, such a requirement is not always necessary. *Almeida-Sanchez v. United States*, 413 U.S. 266, 277 (1973) (Powell, J., concurring). Where, for example, "* * * the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search * * *." [*Camera v. Municipal Court*, 387 U.S. 523, 533 (1967)], the Supreme Court has routinely held that a warrant is not required by the Fourth Amendment. *See e.g., Griffin v. Wisconsin*, 107 S.Ct. 3164, 3167 (1987); *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985). The Supreme Court has likewise found that the probable cause standard is inappropriate where it would defeat the purpose that the search is designed to achieve. *See e.g., New Jersey v. T.L.O.*, 469 U.S. at 340–342; *O'Connor v. Ortega*, 107 S.Ct. 1492, 1501–1502 (1987) (plurality opinion) (upholding the search of a public employee's office for work-related noninvestigatory reasons on less than probable cause grounds); *United States v. Martinez-Fuerte*, 428 U.S. 543, 560–561 (1976) (footnotes omitted) (while "* * * some quantum of individualized suspicion is usually a prerequisite to constitutional search or seizure.] * * * the Fourth Amendment imposes no irreducible requirement of such suspicion").

Rather, "[t]he fundamental command of the Fourth Amendment is that searches and seizures be reasonable * * *." *New Jersey v. T.L.O.*, 469 U.S. at 340. In determining the reasonableness of a search, the Supreme Court has repeatedly stressed the importance of the facts particular to the search while acknowledging that the test of reasonableness "* * * is not capable of precise definition or mechanical application." *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). In analyzing a drug testing program, "* * * what is reasonable depends on the context within which a search takes place." *New Jersey v. T.L.O.*, 469 U.S. at 337.

In scrutinizing whether particular searches comport with the Fourth Amendment, courts have adopted a balancing test. In general, to support a claim that a search of an individual or the individual's property is reasonable, the government must demonstrate that, on balance, the public's legitimate interest in conducting the search outweighs the individual's legitimate expectation of privacy. *See e.g., United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985); *United States v. Villamonte-Marquez*, 462 U.S. 579, 588 (1983); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979). Thus, the courts must "* * * consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Bell v. Wolfish*, 441 U.S. at 559.

Viewed in this light, it is beyond dispute that the public has an overriding interest in assuring that sensitive safety- and security-related aviation personnel perform their duties free of illegal drugs. The drug problem in society in general and evidence of drug use in the aviation industry in particular are documented elsewhere in the preamble of this final rule. The impairing effects of illegal drugs and the substantial risks to public safety posed by aviation employees who use illegal drugs underlies the compelling governmental interests in promulgating this final rule.

In contrast, the drug testing requirements of the final rule involve a minimal invasion of privacy. As the Supreme Court has indicated, where searches are undertaken in situations where individualized suspicion is lacking, other safeguards must be relied upon to ensure that the discretion of the party conducting the search is properly defined and the scope of the search is limited. *See Delaware v. Prouse*, 440 U.S. at 654–655 (footnote omitted); *New York v. Burger*, 107 S.Ct. 2636, 2648 (1987). The drug testing requirements of the final rule place significant constraints on an employer's discretion in conducting drug testing. For example, the requirement for random drug testing calls for selection of an employee to be tested in a scientifically-acceptable manner, such as use of a computer-based random number generator. Requirements for testing based on reasonable cause or postaccident testing also are severely circumscribed in order to limit an employer's discretion in administering such tests to employees. Also, the FAA will review the actual employer anti-drug programs, required to be submitted to the agency in accordance with provisions of the final rule, to ensure that discretion is in fact limited in the administration of drug tests under these programs. *Cf. National Treasury Employees Union v. Reagan*, No. 86–4058, slip op. at 14 (E.D.La. April 29, 1988) (holding that the constitutionality of Executive Order requiring Federal agencies to establish drug testing programs for Federal employees was not ripe for review since each agency had not implemented a finalized, particular plan).

The actual testing procedures that each employer is required to implement under this final rule also are tailored narrowly to respect an employee's reasonable expectation of privacy. The DOT procedures governing collection of urine samples, which are based on the DHHS guidelines, are carefully designed to preserve privacy while protecting the integrity of the sample. The final rule contains a number of important employee safeguards, including privacy during collection under the majority of circumstances, stringent laboratory safeguards, and provisions for challenging results. Other employee drug testing programs incorporating the collection and testing procedures of the DHHS guidelines have been upheld against constitutional attack. The DOT procedures so closely resemble the DHHS guidelines in all pertinent respects that the Department of Transportation is confident that these procedures also will be upheld. *See American Federation of Government Employees v. Dole*, 670 F.Supp. 45 (D.D.C. 1987), *appeal docketed*, No. 87–5417 (D.C.Cir. Dec. 11, 1987) (upholding the constitutionality of the Department of Transportation program for random drug testing of safety- and security-sensitive agency employees); *National Association of Air Traffic Specialists v. Dole*, 2 Ind.Emp.Rts. Cases (BNA) 68 (D.Alaska 1987) (denying a motion for a preliminary injunction against the FAA's use of urinalysis drug testing as part of an annual physical examination of the agency's air traffic specialists).

Equally significant is the fact that urine drug testing of sensitive safety- and security-related employees is to be conducted in the "context" of the employment relationship. As the Supreme Court has pointed out, "[t]he operational realities of the workplace * * * may make *some* employees' expectation of privacy unreasonable." *O'Connor v. Ortega*, 107 S.Ct. at 1498. This is particularly important in circumstances where the employee works in an industry in which his or her activities are subject to extensive regulation. Thus, persons who work in such "closely regulated" industries have a "reduced expectation of privacy" [*New York v. Burger*, 107 S.Ct. at 2646] and, "in effect consent[] to the restrictions placed upon them" [*Almeida-Sanchez v. United States*, 413 U.S. at 271]. For these very reasons, two Federal courts of appeals have upheld urinalysis testing, in the absence of particularized suspicion, in industries where pervasive regulation has reduced an employee's expectation of privacy. *See Rushton v. Nebraska Public Power Dist.*, 844 F.2d 562, 566 (8th Cir. 1988) (nuclear plant operators); *Shoemaker v. Handel*, 795 F.2d 1136, 1142 (3rd Cir.), *cert. denied*, 479 U.S. 986 (1986) (jockeys); *Policemen's Benevolent Ass'n., Local 318 v. Township of Washington*, 850 F.2d 133 (3rd Cir. 1988) (police officers).

It is beyond dispute that aviation has always been subject to pervasive regulation by the government and by employers themselves. As one Federal district court has noted:

> [t]he rationale of the Third Circuit upholding drug urinalysis for jockeys in order to protect the integrity of horse racing is even more compelling when the public need for air safety is considered. If horse racing is recognized as a closely or pervasively regulated activity, then aviation activities and the aviation industry are as much or possibly more closely regulated.
>
> Indeed, the creation of a federal agency charged with the responsibility for ensuring safe air travel reflects the public interest in air safety. * * * [T]he public perception of air safety not only is critical to the airline industry but to all who fly. * * * [C]lose and pervasive regulation of aviation related activities is well established and * * * air safety relates to serious risk or hazards which require close and constant attention. *National Association of Air Traffic Control Specialists v. Dole*, 2 Ind. Emp. Rts. Cases (BNA) at 78.

The FAA recognizes that a number of Federal and State courts have rejected government-mandated drug testing program of Fourth Amendment grounds. However, even courts striking drug testing programs have recognized that drug testing is appropriate in other contexts. *See e.g., Lovvorn v. City of Chattanooga*, 846 F.2d at 1553–1554 (Martin, J.) ("When determining, then, whether a mandatory drug search is 'reasonable,' we believe that, as the costs to society of an inpaired employee increase, the requisite level of suspicion that a drug problem exists decreases."); *Policemen's Benevolent Ass'n, Local 318 v. Township of Washington*, 672 F.Supp. 779, 792 (D.N.J. 1987), *rev'd*, 850 F.2d 133 (3rd Cir. 1988) ("[T]he need to prevent a major airline disaster presents a far more compelling rationale than those presented by the municipality in support of testing its police officers."); *American Federation of Government Employees v. Meese*, No. C–88–1419–SAW (N.D.Cal. June 16, 1988) (issuing a preliminary injunction against a Bureau of Prison plan to test randomly all agency employees but nonetheless noting that "[t]here are cases in which compulsory drug testing may be justified in the interest of public safety or security." Memorandum opinion at 2).

The FAA also is aware of the recent Ninth Circuit decision holding unconstitutional regulations promulgated by the Federal Railroad Administration—mandating blood and urine tests of railroad employees who are involved in certain train accidents and fatal incidents and authorizing breath and urine tests after certain accidents, incidents, and rule violations—because the rules do not require a showing of "particularized suspicion" drug or alcohol impairment prior to testing. *Railway Labor Executive' Association v. Burnley*, 839 F.2d 575 (9th Cir.), *cert. granted*, 108 S.Ct. 2033 (1988). The Ninth Circuit based its views, in part, on the proposition that "* * * the vast bulk of [railroad] safety regulation is directed at owners and managers of railroads, not employees." *Id.* at 585. The U.S. government disagrees with the Ninth Circuit panel's decision, which is contrary to rulings in other Federal appellate courts. Moreover, contrary to the Ninth Circuit's views of the Federal Railroad Administration's jurisdiction over railroad employees, FAA's jurisdiction over employees in the aviation industry is clear and should not be subject to challenge on this basis.

The Supreme Court has granted the government's petition for a *writ of certiorari* in *Railway Labor Executives' Association v. Burnley* and has ordered that this case be argued this term "in tandem" with *National Treasury Employees Union v. von Raab*, 816 F.2d 170 (5th Cir. 1987), *cert. granted*, 108 S.Ct. 1072 (1988) (upholding drug testing of applicants for critical safety or security sensitive positions in the U.S. Customs Service). Decisions in these cases may not be forthcoming until the spring of 1989. However, in the absense of Supreme Court guidance, the FAA remains convinced that the need for drug testing by urinalysis in the aviation industry to determine fitness for duty of sensitive safety-or security-related employees and, thereby, to ensure public safety clearly outweighs the privacy interest of individuals in this class.

While not totally free from doubt, it is the opinion of the Department of Transportation that the FAA's anti-drug program, and similar regimens proposed by other administrations within the Department, will be determined to be constitutional. The critical need for properly-administered drug testing to ensure that employees in the transportation industry do not have drugs or drug metabolites in their system while performing sensitive safety- and security-related functions outweighs the reduced privacy interest of these employees.

Lack of Evidence of a Drug Problem in the Aviation Industry. Nearly every commenter who opposes drug testing in general, and random testing in particular, and even commenters who support the comprehensive drug testing proposals, raise the issue of lack of evidence of a drug problem in commercial aviation. On this basis, the commenters assert that the FAA can not justify the comprehensive proposals contained in the NPRM. ALPA, the Aircraft Owners and Pilots Association, (AOPA), and the organizations representing flight attendants maintain that the industry should police itself in the area of drug use and abuse.

FAA Response. The FAA made no attempt to obscure the lack of widespread evidence of drug use or abuse among commercial aviation personnel. However, after publication of the NPRM in the **Federal Register** on March 14, 1988, federal investigators released preliminary data showing that the captain of Continental Air Express Flight 2286, which crashed in Durango, Colorado on January 19, 1986, may have been impaired by drugs while operating the aircraft. A preliminary report of the National Transportation Safety Board (NTSB) indicates that toxicological test results show that the captain of Flight 2286 had cocaine and a cocaine metabolite in his system at the time of the crash. Seven passengers and the pilot and copilot died in the accident.

In 1983, the NTSB issued an Aircraft Accident Report (NTSB/AAR–84/11) on the crash of Central Airlines Flight 27 in Newark, New Jersey, on March 30, 1983. The NTSB determined that the probable cause of the crash of the Gates Learjet

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nonscheduled, cargo-carrying aircraft included "impairment of the flight crew's judgment, decisionmaking, and flying abilities by a combination of physiological and psychological factors." The NTSB did not conclude that drug-impaired performance was the sole cause of the crash. However, the report does state that test results indicate that the captain had used marijuana and the copilot had used, or been exposed to, marijuana within the 24 hours preceding the crash. Also, toxicological tests indicate that the copilot's urine showed evidence of contra-indicated use of an antihistamine drug.

Additional evidence of illegal drug use by individuals employed in the airline industry appeared in the fall of 1986, when a series of articles in the Pittsburgh Press, based on interviews with emergency room staffs at area hospitals, highlighted 23 cases of airline flight crew drug abuse. Twenty of those cases involved cocaine overdoses, two were heroin reactions, and one dealt with valium and alcohol. Twelve cockpit crewmembers and eleven cabin crewmembers were among those treated by Pittsburg area hospitals for drug use. Personnel at those hospitals also indicated that they had treated numerous cases of drug abuse among non-flight employees, such as mechanics. The Pittsburgh Press also surveyed 17 drug treatment clinics across the country and found that more than 69 pilots had been treated for cocaine addiction. A subsequent FBI investigation of drug use in the Pittsburgh area produced evidence that a number of airline employees, including cockpit, cabin, and ground crewmembers, had used cocaine, marijuana, and other illegal drugs, sometimes on duty or shortly before reporting for duty.

The NPRM also included comments by a Part 121 and Part 135 certificate holder that implemented an unannounced drug testing program applicable to its employees. This company reported that 2.5 percent of its 160 pilots and 4 percent of its 240 mechanics tested positive for a trace, or more, of illegal drug in their system. Data from the airline industry regarding preemployment screening of applicants for various positions indicate that the number of positive drug tests ranges from 4.2 percent to 20 percent with results as high as 25 percent to 30 percent in some geographical locations.

Although this data does not show an overwhelming drug problem in commercial aviation, it does show concrete evidence of drug use in the commercial aviation sector. The FAA recognizes that commercial aviation personnel operate in a professional and highly-regulated environment. However, pursuant to the FAA's statutory mandate to ensure aviation safety, the FAA also must acknowledge that commercial aviation personnel are not immune to, nor insulated from, drug use or abuse that may affect safety-critical job performance. The FAA believes that any drug use in commercial aviation warrants preventive and proactive intervention by the FAA to ensure aviation safety. The FAA believes that this view is not inconsistent with the increasing awareness of several aviation employers who currently have, as disclosed in their comments, basic drug testing and employee rehabilitation programs for their employees.

Although not a universally-expressed opinion among the commenters, ATA "fully embrace[s] the philosophy, expressed in the NPRM, that individuals who wish to work in aviation activities that involve the safety of passengers, co-workers, and others must not use illicit drugs, even while off-duty." Several commenters, including RAA, note that to the extent any drug use is occurring in the aviation industry, it is a "safety issue and it is well within the purview of the FAA to develop a comprehensive, nationally applicable set of regulations." The Equal Employment Advisory Council (EEAC) believes that the workplace is an appropriate environment to intervene in the process of individual substance abuse. EEAC also believes that the FAA has correctly concluded that the purpose of drug testing is not to determine that an employee is impaired by drugs at the time of testing. Instead, testing is used to enable an employer rationally to determine if an employee has used drugs and to conclude reasonably that there is a possibility of future impairment based on subsequent use.

Comments that the Proposed Rules are Politically-Motivated. The FAA received many comments that state that the comprehensive anti-drug program proposed by the FAA is based solely on political perceptions and goals. The commenters stress that DOT and the FAA have surrendered to the public hysteria over drug use and unfavorable press reports of drug use in the aviation industry.

FAA Response. Because this issue is raised so frequently by the commenters, the FAA chooses to address these comments although they are beyond the scope of the rulemaking. The war against drugs is one of this Administration's top priorities. Also, Congress has enacted a substantial amount of legislation to address the use, distribution, importation, and interdiction of drugs in the United States and is considering enactment of additional legislation. Moreover, a significant number of public opinion polls indicate that the American public is deeply concerned about the effect of drug use by individuals in critical safety occupations, including aviation. The fact that the Administration, Congress, and the public are concerned about drug use is noteworthy. However, the FAA is issuing the comprehensive anti-drug program in this final rule because it is consistent with the FAA's statutory duty to promulgate minimum standards to ensure and promote aviation safety.

DHHS Guidelines. The FAA received numerous comments, including comments from drug testing laboratories and companies supplying drug testing equipment, on the guidelines for drug testing promulgated by the Department of Health and Human Services (DHHS). Many of the commenters state that the certification requirements for drug testing laboratories are too rigid because the DHHS guidelines require laboratories to have the capability to do both initial and confirmation testing at the same laboratory site. The Director of the Santa Maria Public Airport District and Psychemedics Corporation, a commenter at the San Francisco public hearing, suggest that the FAA use analysis of hair, in lieu of urinalysis testing, to test for drugs on the basis that hair analysis may be more accurate and more reliable. Psychemedics Corporation proposes that analysis of hair samples would produce more complete results because hair contains a "longitudinal" history of drug use that could reveal drug use in excess of 90 days before analysis. This commenter also notes that the two-step process of immunoassay and GC/MS analysis would still be used; the only change would be the material that was analyzed. Federal Express strongly opposes implementation of the DHHS guidelines because they are overly-burdensome on carriers with operations in multiple locations.

Some commenters also state that a split sample should be obtained from each individual in order to ensure the accuracy of the analysis. Several commenters raise the issue that specimens may be used by an employer to test for physiological states, including epilepsy and pregnancy, to discriminate against applicants and employees. A few commenters consider the requirement of "monitored" specimen collection, whether by listening to or directly observing an individual, to be embarrassing and intrusive.

The AMA opposes the proposal to require employers to comply with the DHHS guidelines. The AMA states that these requirements would result in an undue hardship on aviation medical examiners who must comply with chain-of-custody procedures designed to ensure the integrity of the specimen.

The NTSB strongly concurs in the requirement that drug testing laboratories that analyze specimens pursuant to the drug testing program must meet the scientific and technical DHHS guidelines and must be certified by the Department of Health and Human Services. Insofar as the DHHS guidelines are inconsistent with other NTSB comments, the NTSB recommends that the FAA revise the guidelines for the industry drug testing program. ATA agrees that only DHHS-approved labs should be used for analyzing specimens but that the DHHS guidelines should be tailored to accommodate the particular needs of the aviation industry.

The SYVA Company and Drug Screening Systems, Inc. submitted comments to the FAA on the DHHS guidelines. Both companies are involved in the manufacture and supply of drug screening systems and equipment. These companies urge caution in the FAA's proposal to adopt the DHHS guidelines based on the restrictive and possibly burdensome nature of the requirements on employers required to conduct drug tests pursuant to the rule. These companies address several issues, including batch requirements, on-site collection, threshold drug levels, and development of new testing procedures not permitted under the current DHHS guidelines.

IFFA feels strongly that the Enzyme Multiplied Immunoassay Technique (EMIT) test should not be used as part of laboratory analysis of specimens because the test detects only the presence of a drug metabolite of the active drug and it often results in false-positive results, false-negative results, or misidentified results.

ALPA generally supports the proposal to make the DHHS guidelines applicable to collection and analysis of specimens. However, ALPA believes that the FAA's regulation should contain additional employee safeguards. First, the regulation should require split samples during collection. Second, the regulation should require that threshold drug levels determined by a confirmation test be consistent with the initial test to account for quantitative discrepancies in test results that are not attributable to deterioration of the sample. Third, ALPA suggests that an employee should be able to present the results of an independent test result to an MRO during review of test results to determine the validity of a positive test result. Fourth, the regulation should allow labor and management, through collective bargaining, to inspect laboratories and to perform quality control and administrative functions related to any anti-drug program.

Labor unions, including TWU and the Teamsters Union, advocate development and implementation of separate or additional guidelines to safeguard the selection and performance of laboratories analyzing specimens for drugs or drug metabolites.

EEAC believes that the DHHS guidelines are a valuable contribution to the goal of establishing procedural norms in collection and testing of specimens. However, EEAC believes that employers should establish individual procedures to ensure the integrity of a sample and its analysis. EEAC emphasizes that it is inappropriate for the FAA to impose such detailed requirements on private employers.

FAA Response. In the NPRM, the FAA proposed that all collection of specimens and drug testing take place in accordance with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970; April 11, 1988). The DHHS guidelines describe the collection and testing procedures applicable to all drug testing in the Federal government, and they include safeguards for the accuracy and privacy of collection and testing.

The Department of Transportation has determined that certain modifications of the DHHS guidelines are appropriate in the context of this and other DOT-operating administration drug-free workplace regulations. The result will be the DOT "Procedures for Transportation Workplace Drug Testing Programs," which will be codified at 49 CFR Part 40. These DOT procedures are intended to preserve, to the greatest extent practicable, the important safeguards provided by the DHHS guidelines.

Some of the modifications to the DHHS guidelines will be editorial in nature (e.g., references to responsibilities of "agencies" are changed to references to "employers"). Other modifications are intended to take into account differences in the situations of Federal agencies and DOT-regulated industries. For example, in testing at remote sites, DOT-regulated industries may find it necessary to conduct some kinds of testing in medical facilities or through the use of mobile units, rather than the more permanent collection sites contemplated by the DHHS guidelines. It may not be practicable for regulated employers to maintain on-site permanent logbooks. Consequently, the DOT procedures would permit alternative collection and recordkeeping procedures in these circumstances.

The Office of the Secretary in the Department of Transportation will publish elsewhere in today's **Federal Register** an interim final rule with request for comments entitled, "Procedures for Transportation Workplace Drug Testing Programs," that will codify the Department of Health and Human Services guidelines for drug testing at 49 CFR Part 40. This new part will set forth requirements for such things as specimen collection procedures, laboratory procedures, and quality assurance and certification procedures. The rule will provide guidance on how this rule shall be implemented.

During the comment period on the FAA's NPRM, and those rules proposed by other DOT operating administrations, comments were received concerning the DHHS guidelines. These comments are noted in this preamble and also will be transferred to the Department of Transportation to be incorporated in the docket for the Office of the Secretary (OST) interim final rule creating 49 CFR Part 40. OST will respond to those comments, as well as comments received during the comment period for Part 40, in its notice following the end of that comment period.

The FAA proposed only urine testing in the proposals contained in the NPRM. The suggestion of drug testing using analysis of hair specimens raises an issue within the expertise of the Department of Health and Human Services. Thus, at this time, DOT and the FAA do not intend to deviate from urinalysis as the technique for determining the presence of drugs or drug metabolities in an employee's system.

The FAA acknowledges the AMA comments regarding the inability of all aviation medical examiners to comply with the collection and chain-of-custody procedures contained in the DHHS guidelines due to the lack of appropriate facilities for collection. The FAA does not agree with the AMA that the requirements are overwhelming or overly-burdensome. Although the AMA was not specific regarding its objection to the collection and chain-of-custody procedures, DOT has included provisions in the DOT procedures to address some of the difficulties

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associated with collection and chain-of-custody procedures that may not have been appropriate for private entities. However, the FAA and DOT believe that strict collection and chain-of-custody procedures are critical to ensure the integrity and identity of a specimen provided by an employee. Thus, DOT has retained these protections in its modification of the DHHS guidelines. Moreover, only those aviation medical examiners who choose to provide this service to commercial aviation personnel during a physical examination are required to conform to the minimum procedures contained in the DOT procedures.

Consistent with the suggestion of the NTSB and other commenters, the Department of Transportation will modify the DHHS guidelines to tailor the provisions for application by private entities. The DOT procedures will not modify the basic, technological aspects of the rule (e.g., DHHS certification of laboratories, testing methodologies, collection procedures, and chain-of-custody procedures). Any arguably substantive changes from the DHHS guidelines will be included only to reduce practical and administrative burdens on private entities. These changes will be discussed in an ancillary document published by the Department of Transportation in the **Federal Register**. DOT and the FAA believe that the DOT procedures will provide adequate and appropriate procedures for collection and testing of samples. Although the FAA anticipates that the DOT procedures will prove to be an effective and efficient method of collection and testing, experience under the testing program or a change in the circumstances or needs of the industry may warrant further regulatory revisions in the future.

Accuracy of Drug Test Results. Many commenters base their opposition to drug testing on the perceived inaccuracy of analysis and test results. The commenters include the issues of false-positive test results, passive inhalation of illicit drugs, misidentification of licit drugs, and ingestion of food substances, including poppy seeds, resulting in a positive drug test result.

FAA Response. The FAA is aware of these expressed concerns because each of these issues surfaced in the early 1980s with the first series of drug testing programs introduced in the military and the private sector. In the early years of drug testing and analysis, laboratory security and analytical procedures had not reached today's level of sophistication. False-positive test results occur primarily in analysis of a specimen during an initial screening test, although contemporary screening tests, such as immunoassay tests, have become extremely accurate and approach 99 percent accuracy levels. Despite its increased accuracy, the initial screening test remains a less expensive test used only to yield a preliminary indication of the possible presence of drugs or drug metabolites. In order to ensure the integrity and accuracy of any test result, each positive initial screening test result must be confirmed using GC/MS analysis or another confirmatory procedure that may be subsequently approved by DHHS and incorporated into the DOT procedures. The GC/MS confirmation test is an extremely accurate and sophisticated test and is virtually error-free when used in compliance with the DHHS guidelines. The DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR Part 40), will be essentially identical to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services on April 11, 1988.

Employers must comply with the DOT procedures when conducting a testing program pursuant to the final rule. Like the DHHS guidelines, the DOT procedures will provide a system of checks and balances during collection and analysis of specimens. This system ensures the integrity and accuracy of the tests using appropriate scientific methods and rigid chain-of-custody procedures. An employer may only use a laboratory that complies with the DOT procedures. Also, an employer may only use a laboratory that has been certified by DHHS to process and analyze specimens required by the FAA rule. The DOT procedures regarding testing methodologies and technical matters will be identical to the DHHS guidelines. Thus, employers will be able to use any DHHS-certified laboratory since the laboratories will not necessarily be required to use different analytical techniques and testing methodologies for different entities conducting testing. The Department of Transportation expects that sufficient laboratories will have been certified for drug analysis by the Department of Health and Human Services by early 1989. However, the FAA will extend the compliance dates contained in this final rule if DHHS has not certified a sufficient number of laboratories to efficiently and accurately process and analyze specimens pursuant to the requirements of this final rule.

Since the mid-1980s, laboratories have become increasingly sophisticated in their analytical methods and chain-of-custody procedures. Many laboratories have compiled extensive records demonstrating scientific accuracy and protection of individual specimens. For example, CompuChem Laboratories, a major drug testing laboratory, has analyzed over 500,000 urine samples, conducting discrete testing for nine different drugs which resulted in nearly five million distinct analyses of these specimens, since 1980. CompuChem also has analyzed approximately 750,000 urine samples for the presence of two different drugs, resulting in nearly 1.5 million analyses of these specimens, pursuant to its contract with the military. None of the over six million analyses performed for DOT, the military, and other private and public entities has resulted in a false-positive test result.

In late 1987, a CompuChem clerical worker incorrectly labeled two samples that belonged to DOT employees. Within hours after the test results were questioned by the medical review officer, CompuChem and the medical review officer had identified and corrected the error. CompuChem was not satisfied with its prompt resolution of the error. As stated in its comment to the NPRM, CompuChem has instituted an additional system of review, by CompuChem personnel and computer checks, to ensure that "* * * this one in a million error will not reoccur."

Another drug testing firm, PharmChem Laboratories, has conducted over eight million nonmilitary drug tests nationwide. In its statement to the FAA during the public hearing held in San Francisco on June 9, 1988, PharmChem notes that several courts have determined that the GC/MS confirmation test is "virtually 100 percent accurate, assuming that proper chain-of-custody procedures are followed."

The FAA does not believe that the issue of "passive inhalation" of marijuana smoke will prove to be a significant issue leading to false-positive test results. First, PharmChem's statement indicates that the DHHS threshold levels that would result in a positive drug test result for the presence of marijuana or marijuana metabolites (to be incorporated completely and without change in the DOT procedures) are set at a level sufficiently high to preclude the possibility of a positive test result based on passive inhalation of marijuana smoke. Second, studies conducted to simulate the conditions that result in passive inhalation have been conducted in artificially-devised and extremely confining areas that were poorly ventilated. Also, in order to obtain a positive test result, testing was conducted immediately after this prolonged and intensive exposure to the marijuana smoke. Based on the FAA's knowledge of these studies, the FAA has concluded that it is highly unlikely that the identical circumstances would be encountered or accurately reproduced outside a laboratory.

Finally, the FAA believes that the safeguards that will be provided in the DOT procedures and by the medical review officer (MRO) review process, which are essentially identical to the DHHS guidelines, will preclude misidentification of food substances or licit drugs that might produce a false-positive test result. The DOT procedures will provide an individual with an opportunity to report any legal or prescription drugs that he or she may be taking at the time of collection of the specimen. The MRO's broad authority to interpret each confirmed positive test result, to evaluate an employee based on the MRO's knowledge of drug abuse disorders, and to verify that a confirmed positive test result is accurate should preclude misidentification of food substances or licit drugs taken in accordance with a valid prescription. In summary, the FAA believes that the two-step testing process, coupled with the DOT procedures, provides a process by which an individual is protected from erroneous false-positive drug test results.

Preemployment Testing. Most organizations and individuals do not object to the concept of preemployment testing. AOPA supports preemployment testing at the discretion of the employer. Operators who hire pilots or crewmembers pursuant to short-term contracts believe that a preemployment test is burdensome if required each time a pilot is rehired pursuant to a new contract. These entities suggest that preemployment tests be given only at the time of training or placement on a bid list for contracts.

Suburban Airlines has required preemployment testing of all flight crew applicants for over a year. Suburban supports 100 percent preemployment testing of the aviation employees proposed in the NPRM. The Director of the Santa Maria Public Airport District also supports preemployment testing and suggests that preemployment testing be implemented immediately.

The Soaring Society of America (SSA) believes that small business employers should have the option of requiring preemployment drug testing as a condition of employment. SSA feels that preemployment testing should be optional because applicants can circumvent detection in a preemployment drug test merely by abstaining from drug use for a short period of time before the preemployment test.

FAA Response. The FAA believes that preemployment testing is a necessary component of an effective anti-drug program. Pursuant to the rule, a preemployment drug test is required only when an applicant has been selected for employment in a sensitive safety- or security-related position with the employer. The preemployment testing provision does not require an employer to test each applicant for a sensitive safety- or security-related position. The rule simply states that an employer may not hire an applicant to perform sensitive safety- or security-related functions unless the applicant has passed a drug test. Therefore, the employer need only test an applicant before actually hiring the applicant for a sensitive safety- or security-related position.

The FAA has revised the proposed rules in ways which should ease the burden on operators who frequently rehire employees pursuant to short-term contracts. The FAA believes that the central issue regarding the frequency of preemployment testing is the continuity of an employee's involvement in an employer's drug testing program. An employer is required to conduct a preemployment test only the first time that an employee is hired pursuant to a contract with that employer so long as the individual remains in the employer's program, even during periods between contracts. The individual, thus, would be subject continuously to drug testing. In addition, so long as an employee is subject to an FAA-approved anti-drug program, another employer may use that employee to perform sensitive safety- or security-related functions. Thus, an individual who participates through a consortium would be able to provide services on a contract basis to multiple employers without having to submit to subsequent preemployment tests or to participate in another employer's drug testing program. If an employee has not been continuously subject to an FAA-approved anti-drug program, an employer would be required to conduct a preemployment drug test.

In the FAA's opinion, it would be permissible for an employer to allow a contract employee to continue in the employer's anti-drug program after termination of a contract. Particularly in the case of an employer who hires employees pursuant to a series of short-term contracts, both the employer and the employee benefit if the employee is continuously subject to a drug testing program. The employer could "rehire" the employee at any time but would not be required to give the employee another preemployment drug test. In addition, the employee could perform sensitive safety- or security-related functions for another employer on a temporary basis but would not be required to participate in another employer's anti-drug program or to submit to another preemployment drug test. To the extent that the employee is not covered by an FAA-approved anti-drug program, an employer would be required to conduct a preemployment drug test before the employee could be hired by a subsequent employer or rehired by a previous employer.

Periodic Testing. AOPA believes that periodic drug testing should not be part of an employer's drug testing program but should only be conducted based on the reasoned judgment of an aviation medical examiner. RAA supports periodic testing during medical certification at least once each calendar year. RAA believes that the employee should bear the cost of the periodic test. Federal Express does not oppose periodic testing but believes that it should be unrelated to the FAA medical examination.

The AMA opposes periodic drug tests as part of a routine medical examination because compliance with collection and chain-of-custody procedures, such as those contained in the DOT procedures and the DHHS guidelines, would be an undue burden on aviation medical examiners.

ATA stated that its association is not convinced that periodic testing effectively deters illicit drug use because of the relative ease with which this test can be circumvented by abstinence. SSA generally does not endorse periodic testing because an employee can avoid detection by relatively short-lived abstinence before any announced periodic test.

FAA Response. The FAA agrees with the commenters that announced periodic testing can be circumvented by an employee's abstinence from drug use. However, periodic testing does enable an employer to identify those employees who are so heavily-dependent on drugs that they are unable to abstain from drug use for even a short period of time prior to a periodic test.

The FAA has modified the periodic testing requirement of the regulation. Under the proposed regulation, an employee who holds a medical certificate would have been required to submit a specimen for drug testing as part of each medical examination required pursuant to Part 67. The revised

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section makes it clear that an individual is required to submit a specimen for drug testing during the first medical examination of the employee during the calendar year after implementation of the anti-drug program. Therefore, pilots who hold Class I medical certificates, who are required to have periodic medical examinations at 6-month intervals, must be tested only once during one of the medical examinations of the year pursuant to the anti-drug program.

The revised section also states that an employer may discontinue periodic testing after the first year of program implementation when the employer has implemented its random testing program according to the implementation schedule and, therefore, is conducting a significant number of random tests. The periodic testing requirement will ensure that all current employees who hold medical certificates will be tested once during the first year of implementation of an employer's anti-drug program; most of the employees who hold medical certificates also will be subject to random selection for testing during part of the first year of implementation. The majority of random testing programs will be operational after the first year of implementation and periodic testing, which is less effective than random testing, will no longer be a necessary component of an employer's anti-drug program. The FAA anticipates that these revisions will provide maximum drug detection capability and ease the transition to a full random testing program. The FAA considers the revision to be appropriate to relieve some of the significant economic and administrative burdens noted by the commenters who believe that periodic testing is an ineffective and ineffective drug deterrent.

Random Testing. Most individual commenters oppose random testing for a variety of reasons. Among these reasons is the lack of evidence of drug use or abuse in aviation to warrant random testing, invasion of individual privacy, and violation of constitutionally-protected rights.

AOPA opposes random testing primarily on the basis of the unsettled constitutional issues surrounding random testing and the burden imposed by this testing method on law abiding citizens. AOPA suggests that the FAA delay promulgation of a final rule until the issues raised by random testing are substantially resolved by the Supreme Court in *Railway Labor Executives' Association* v. *Burnley* and *National Treasury Employees Union* v. *von Raab* (cited previously). AOPA states that, by awaiting any Supreme Court decision, the FAA could ensure that the final rule is in conformity with guidance enunciated in the Supreme Court's opinion in *Burnley* and *von Raab*. One commenter submitted comments individually, as national litigation counsel for AOPA, and on behalf of the California Aviation Council and the Orange County Aviation Association. This commenter states that the NPRM is an unconstitutional invasion of privacy and a violation of an individual's procedural due process rights. The commenter believes that the NPRM should be withdrawn to await the Supreme Court's impending decisions.

The AMA supported random testing only as part of a comprehensive rehabilitation program. The AMA believes that random testing is not cost effective, is unnecessarily intrusive, and, without confirmation testing, random screening tests are inaccurate.

In addition to soliciting comments on the general concept of random testing, the FAA solicited comments on an appropriate random testing rate of up to 125 percent. Several small business entities, including TEMSCO Helicopters, Inc., Henson Airlines, and Tramco, Inc., oppose the random testing requirement based on the financial and administrative burdens associated with a 125 percent testing rate, transportation of employees to the collection site, and replacement of personnel during testing. TEMSCO Helicopters suggests that a random testing rate of 10 percent will enable the industry to determine if there is a drug problem in aviation without overburdening the industry. RAA also believes that a 125 percent random testing rate is overreaching and unwarranted; however, if the FAA proceeds with a random testing provision, RAA suggests that a 50 percent random testing rate is appropriate. Although Suburban Airlines strongly supports random testing, Suburban believes that a 50 percent random testing rate of the employees proposed in the NPRM would relieve the unjustifiable economic burden on a cost-benefit basis. ERA Aviation, Inc., a Part 121 and Part 135 certificate holder operating more than 12 helicopters and 12 airplanes, believes that unannounced random testing is the most effective deterrent to drug abuse. However, ERA questions a requirement to randomly test 125 percent of the employees on an annual basis. ERA believes that random testing of 25 percent to 50 percent of the affected employee groups, coupled with periodic testing, would provide a sufficient deterrent to drug use if the penalties for positive test results were severe.

NTSB opposes the random testing requirement of the proposed rules. However, if random testing were included in the final rule, the NTSB believes that a relatively high random testing rate would be a more effective deterrent to drug use. The acting Chairman of the NTSB did not concur with the NTSB's position regarding random testing; the acting Chairman supports random testing provided that the random testing rate is sufficiently high to serve as a deterrent to drug use.

ATA, American Airlines, and Delta Airlines support the FAA's mandatory random testing provision because it would provide the maximum deterrent effect to illicit drug use. ATA supports a random testing rate of 50 percent based on a review of Department of Defense and private industry drug testing programs. American Airlines also supports the mandatory random testing provision and a 125 percent random testing rate. A consultant to American Airlines on the issue of drug abuse prevention in the workplace, who submitted an affidavit attached to comments by American Airlines, is convinced that random drug testing is "the only powerful and proven means of detecting drug use and drastically reducing drug use and thereafter preventing further drug problems from occurring." On the other hand, Federal Express states that random testing should be permitted, but not mandated, by regulation. Federal Express states that if the FAA ultimately mandates random testing, carriers should be allowed to choose a random testing rate between 15 percent to 50 percent. Federal Express also believes that carriers should be free to set different random testing rates for different groups of employees.

There was almost universal opposition to random testing by unions and organizations representing employees. ALPA, the Transport Workers Union of American (TWU), and the International Brotherhood of Teamsters (Teamsters Union) are adamantly opposed to random testing. ALPA (Council #12) concurs in ALPA's general opposition to random drug testing of professionals in the aviation industry. The Teamsters Union states that a drug testing program is a change in working conditions which, in accordance with Federal labor law, is a mandatory subject of collective bargaining.

SSA does not oppose random testing of employees. However, in order to provide a workable and effective anti-drug program for small business, SSA suggests that entities employing 12 or fewer full-time employees be exempted from the random testing requirement. SSA defines "full-time employees" as those individuals who work for an employer at least 30 hours per week or 5 days per week and have maintained that schedule for at least 90 days.

One commenter, who spoke at the San Francisco public hearing on June 9, 1988, has been a practicing physician for 24 years and has devoted the past seven years to the exclusive practice of aviation medicine. This commenter has worked regularly with EAP representatives and has been involved with "* * * hundreds of airline employees before, during and after treatment for drug and alcohol dependencies." Based on the commenter's extensive experience in drug and alcohol use by aviation employees, he observes that the present system of relying on "* * * peer and supervisory identification, and a highly visible employee assistance program," and on a scheme of "preemployment, for-cause and fitness-for-duty drug testing, enables significantly impaired employees to remain in the workforce." Therefore, this commenter concludes that in order to eliminate those remaining risks, "* * * there is nothing more we can do short of random testing."

FAA Response. While noting the constitutional issues surrounding the issue of random testing discussed previously, the FAA continues to believe that unannounced testing based on random selection is a fundamental component of an effective drug testing program. Unannounced, random testing has proven to be an effective deterrent to drug use and will provide safety benefits to the aviation community by reducing or eliminating drug use by sensitive safety- or security-related aviation personnel. Unannounced, random testing programs initiated by the military, including the Coast Guard, and private industry show declining drug use, evidenced by a decrease in the number of individuals who test positive for drugs, over the course of the drug testing program.

The FAA received many comments regarding the proposed random testing rates. Several commenters suggest a random testing rate of 125 percent because that rate would result in the most significant deterrent to drug use in the aviation industry. However, other commenters who address this issue believe that a 125 percent random testing rate would be excessive and would impose a significant economic burden, particularly on small aviation businesses. The commenters propose a range of random testing rates starting at 10 percent annually. The majority of the commenters suggest that an annual 50 percent random testing rate for the aviation industry is appropriate. These commenters believe that the 50 percent testing rate accomplishes several goals consistent with the intent of the proposal.

In response to the commenters, the FAA has substantially revised the random testing proposal in the NPRM in order to reduce the practical and administrative burdens associated with initiating an unannounced testing program based on random selection of employees. The FAA's approach also is designed to provide a random testing rate that balances cost effectiveness and burdens on employees and employers but still results in an effective and credible deterrent to drug use.

For some employers, particularly those with a large number of employees subject to drug testing, it may be a substantial burden to move from no random drug testing of employees directly to random testing of 50 percent of the covered employees. For example, if required to have tested 50 percent of all covered employees by the end of the first year, employers might have to test at rates far above a 50 percent rate toward the end of the year, to make up for lower rates at the beginning of the year. Employers should be permitted to start the program at a lower testing rate and work up to a 50 percent rate as experience is gained and the testing procedure becomes administratively routine. The FAA does not want to create a situation which might lead to inadvertent mistakes by requiring initial unannounced testing based on random selection at too high a rate.

The final rule, therefore, provides an implementation procedure that would allow employers to phase in unannounced drug testing based on random selection of employees during the first 12 months in which tests are required to be conducted. Employers would not be required to reach an annualized rate of 50 percent until the last test collection of the first year of the program. The total number of unannounced tests based on random selection of employees during the first 12 months of the employer's testing program would have to equal at least 25 percent of the covered employee population. Also, the employer is required to space the tests reasonably throughout the year. This approach will provide a sufficient level of deterrence to drug use and will permit the employer to phase in the 50 percent rate.

Suppose, for example, that an employer has 1000 sensitive safety- or security-related employees. At a 50 percent annual rate, the employer would be required to conduct 500 unannounced tests based on random selection during a year. Under the phased approach, however, the employer could conduct only a few drug tests at the beginning of the program and then gradually increase the number of tests until, by the end of the first year, the annualized rate of 50 percent was achieved. Thus, if the employer's drug testing plan contemplated administration of unannounced tests based on random selection on 12 occasions during the year, the employer would need to collect 42 urine specimens for analysis (500 divided by 12) on the last occasion, but could collect fewer specimens until then. Overall, the employer would have to collect at least 250 specimens for analysis during the first year. In subsequent years, the employer is required to maintain the 50 percent annualized rate for unannounced testing based on random selection of employees.

The FAA believes that the final rule provides a moderate, but substantial, level of testing based on random selection that enables an employer to increase random testing gradually during the first year of program implementation. During subsequent years of the program, the employer must maintain an annualized rate of 50 percent of the covered employees. In order to determine the appropriate number of employees that must be tested to reach the appropriate "annualized rate" for the random testing program, the employer shall refer to the number of employees subject to the rule at the beginning of a calendar year.

At this time, the FAA believes that this phased program, ultimately reaching a testing level equivalent to 50 percent of the covered employees, will provide a sufficient deterrent to drug use without imposing an undue economic or administrative burden on employers and employees subject to the requirements of the regulation. In addition, the program will produce a sufficient data base at different annualized rates and testing levels for the FAA to analyze the scope of any drug problem in the commercial aviation industry generally or within any particular sector of the commercial aviation community. Analysis of the random drug testing data submitted by an employer will allow the FAA to determine if the

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random testing program should be revised in any manner.

The phased program and the final 50 percent random testing rate is consistent with the random testing program currently applicable to safety- and security-sensitive employees of the Department of Transportation. DOT's random testing program began in September 1987; the random testing rate has gradually increased and will reach an annualized rate of 50 percent by October of this year. Data from September 1987 to the present show that the current detection rate found as a result of DOT's random drug testing program is 0.83 percent; data from February 1987 to the present show that the current detection rate for FAA and DOT's periodic (e.g., scheduled) testing program is 0.012 percent.

According to the provisions of the final rule, all employers are required to randomly select a sufficient number of employees to enable the employer to conduct unannounced testing of employees who perform sensitive safety- or security-related duties for the employer at the appropriate rate during the calendar year. In order to conduct enough tests to reach the required percentage, an employer may be required to select a number of employees who perform a sensitive safety- or security-related functions for unannounced testing that is in excess of the actual number to meet the required percentage. Selection of a greater number of employees enables the employer to reach the appropriate annualized rate despite absences due to vacations and medical leave or absences due to an inability to reach a collection site resulting from travel or duty requirements.

If a consortium has been established among employers or operators, the consortium would be required to select and to test the appropriate rate of the aggregate total of employees subject to the final rule who are covered by the consortium. The testing rate of the consortium will be attributed to each employer participating in the consortium. In the FAA's opinion, the consortium's testing rate can be attributed to each participating employer, although less than the appropriate percentage of the employees of a particular employer has been tested during a calendar year, without significantly decreasing the deterrent effect of a random testing program. An employer or consortium that develops a random selection scheme involving preliminary selection criteria, such as geographical zones, must specify these schemes or variations in the employer's anti-drug plan. The FAA realizes that these variations may provide administrative ease for an employer. However, the FAA must review these variations to ensure that the scheme does not dilute the required annualized rate required by the final rule.

The FAA received comments from small aviation businesses regarding the difficulty of testing a large number of employees on a random basis during the first year of implementation of the rule. In response to these comments, the FAA substantially revised the provisions of the proposed rule. Certain Part 135 certificate holders whose total workforce includes 11 to 50 sensitive safety- or security-related employees are given additional time to submit a random testing plan and to ensure that the appropriate percentage of the sensitive safety- and security-related employees are subject to unannounced drug testing on a random selection basis during a calendar year. The FAA encourages these employers to develop a comprehensive random testing plan as soon as possible. As discussed later, Part 135 certificate holders that employ 10 or fewer covered employees and those individuals or entities listed in § 135.1(b), who are otherwise exempt from the requirements of Part 135 but are included in the final rule because they are engaged in operations for compensation or hire, are given additional time to develop and implement an anti-drug program that includes random testing. The FAA notes that the final rule does not restrict the ability of these employers to submit a random testing program, and to implement that program, earlier than the timeframes contained in the final rule.

Some commenters address the issue of the difficulty in developing an efficient and successful random testing program. The FAA notes that the rule provides flexibility to an employer to begin the random testing program at a lower random testing rate so long as the required percentage of covered employees have been selected on a random basis and have been tested by the end of the first year after approval of the employer's anti-drug program or random testing plan. For example, an employer may test small increments of employees at the beginning of a period and may test a large percentage of employees at the end of the same period to achieve the annualized rate that is required by the final rule.

Postaccident Testing. AOPA supports postaccident testing if it is conducted by the NTSB. AOPA believes that postaccident testing should not be a part of an employer's drug testing program and should not be conducted by the FAA.

The NTSB comments that the 24-hour period provided for postaccident testing is excessive. The NTSB recommends that the FAA specify a maximum period of four hours for collection of a postaccident drug test and provide an appropriate penalty for failure to collect the specimen within the 4-hour period. The NTSB believes that delays of more than four hours in sample collection impair detection of a drug and its "psychoactive component(s)" in blood samples, particularly substances such as cocaine, marijuana metabolites, some amphetamines, and phencyclidine (PCP). The NTSB also suggests that blood testing is the preferable method for postaccident testing and suggests that the FAA permit this method of testing for the presence of drugs after an accident. ATA also suggests that postaccident testing should be conducted within 4 hours after an accident and, in no case, later than 12 hours after an accident.

ATA recommended that the NTSB's definition of "incident" should be added to the postaccident testing provision to cover situations when an aircraft is empty or when personal injury or physical damage is less severe than specified in the postaccident testing provision. ATA also believes that postaccident testing should be conducted unless a supervisor determines that an employee's drug use was not a contributing factor in the accident. FEIA believes that postaccident testing is "wasteful and intrusive" unless the accident clearly is caused by the person to be tested and there is individualized probable cause to believe that the employee was impaired at the time of the accident.

SSA does not completely endorse postaccident testing based on a variety of practical considerations that SSA believes are unresolved in the regulation as proposed. However, SSA states that postaccident testing, after an NSTB-defined accident, of any employee working for a small business should be conducted as deemed feasible by the employer. SSA believes that postaccident testing should be conducted within 24 hours if the employer determines that testing is feasible and appropriate. Also, if the employer determines that testing is not feasible, the FAA may request an explanation from the employer during the routine investigation of the accident.

FAA Response. In the NPRM, the FAA proposed that postaccident tests be conducted within 24 hours after an accident based on the possibility that difficulties may arise after an accident in transporting an individual to a collection site or bringing a drug testing kit to the scene of the accident. The FAA is aware that extended delays in sample collection and testing after an accident may result in deterioration or elimination of a drug or a drug metabolite from a person's system. Recognizing these difficulties and concerns, the FAA has modified the postaccident testing provision. Under the final rule, an employer must conduct postaccident testing of an employee as soon as possible after the accident but in no case later than 32 hours after the accident. Selection of this time period comports with the DOT's postaccident drug testing program for DOT employees, which provides a maximum of 8 hours to determine if an employee is required to be tested and an additional 24 hours to actually obtain a sample for testing.

The FAA strongly encourages employers to promptly determine if an employee is subject to postaccident testing, particularly in cases where there is little or no uncertainty that an employee's performance was a contributing factor in the accident. The FAA intends to vigorously enforce the regulation where there is unreasonable delay in determining whether an employee should be tested under this provision or where there is unreasonable delay in testing after the determination to test is made. Although several commenters who address the issue suggest time periods of less than 24 hours, it is the FAA's opinion that a maximum period of 32 hours is a workable and reasonable accommodation that is appropriate for the aviation industry.

The NTSB's suggestion that the FAA require an employer to conduct postaccident testing within four hours after an accident is based on the time-sensitive nature of toxicological testing of blood samples. On the other hand, urinalysis testing does not involve the extreme time-critical considerations associated with collection and testing of blood samples. In the FAA's opinion, postaccident urinalysis testing is sufficient at this time to provide an indication of an individual's drug use that may have been a causal factor in an aviation accident.

Also, the FAA proposed only urine testing in the NPRM, specifically excluding blood testing as an option, for all drug tests that would be conducted under the anti-drug program. Therefore, the FAA considers the NTSB's suggestion to be beyond the scope of the notice and the FAA has not adopted NTSB's suggestion to permit postaccident testing by collecting a blood sample. In the aviation context, the significant proportion of serious accidents involving fatalities to crewmembers provides data with respect to drug involvement in those accidents. In the FAA's judgment, extending full toxicological testing to surviving crewmembers is not warranted at this time.

Presently, the FAA is not convinced that including the NTSB's definition of "incident" as a trigger for drug testing is warranted. As discussed below, the FAA believes that the revisions to the section providing for testing based on reasonable cause will adequately address circumstances that might qualify as "incidents." The current provisions allow sufficient, but limited, latitude to an employer to determine whether an employee should be tested following an incident or an accident not covered by the NTSB's definition of accident.

Although several commenters suggest that the FAA expand the scope of the postaccident testing provision, the FAA believes that the postaccident testing provision, limiting testing to only those employees whose performance may have been a cause of the accident, is appropriate. The FAA believes that it is inappropriate to require postaccident testing of an employee whose performance could not have been a cause of the accident merely because that employee happens to have been onboard or involved with an aircraft involved in an accident.

Testing Based on Reasonable Cause. The NTSB suggested that the FAA include "incidents," as defined by the NTSB's rules, as events that would trigger reasonable cause testing. RAA agrees with the requirement that two supervisors, one with training in the symptoms of drug abuse, must concur in the decision to test an employee based on reasonable suspicion of drug use. RAA believes that each carrier should determine the conditions which constitute reasonable suspicion. FEIA also believes that two supervisors, trained to detect symptoms of drug abuse, must concur in all decisions to test based on probable cause. ATA suggests that only one supervisor be required to trigger testing of an employee based on reasonable cause. In addition, ATA states that supervisors should not be required to have specialized training for the purpose of determining when reasonable cause exists to test an employee.

Tramco, Inc. believes that the proposed circumstances that would support a decision to test based on reasonable cause are too restrictive. Tramco believes that an employee's attendance patterns, tips from coworkers, "error rates," and other indirectly observable indications should also trigger testing based on reasonable cause. Tramco currently uses these triggers in its drug testing program; Tramco believes that the FAA's criteria will not result in detection of possible drug users because it is limited to physical and observable indices of gross impairment. SSA supports "for-cause" testing, as the employer deems necessary and feasible, if testing is conducted pursuant to the DHHS guidelines.

IAM and TWU believe that the criteria that would trigger testing based on reasonable cause are ill-defined. These organizations believe that testing based on reasonable cause will be a tool for employee harassment; these organizations suggest that supervisory personnel should be trained to recognize the symptoms of drug impairment or that at least one of the supervisors making the determination to test should be someone other than the employee's immediate supervisor. The Teamsters Union and IAM believe that decisions and determinations related to testing based on reasonable cause should be documented and supported in a written report.

The Newton Psychological Centre submitted a "basic identification profile," developed to aid supervisors of the Philadelphia Electric Company in identification of employees who may not be fit for duty. The profile is used to detect early warning signs of problems based on medical or psychological problems. The profile sets forth behavioral, emotional, physical, biological, and cognitive cues related to the use of marijuana, cocaine, alcohol, barbiturates, amphetamines, and heroin, or cues related to anxiety or depression. The company's policies regarding alcohol and substance abuse, job performance warning signs, and counseling and confrontation guidelines are printed on the profile.

FAA Response. As stated in the FAA's response to comments submitted on the postaccident testing provision, the FAA is not including a "postincident" testing provision at this time. However, the circumstances under which a supervisor could require an employee to submit to a test based on reasonable cause have been modified in the final rule. Based on the comments submitted, particularly by employers who have existing "reasonable cause" testing programs, the FAA has expanded

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the list of circumstances that might trigger testing under this provision. Evidence of repeated errors on the job, regulatory or company rule violations, or unsatisfactory time and attendance patterns, if coupled with a specific, contemporaneous event that indicates probable drug use, could provide additional, cumulative evidence to support a decision to test an employee based on reasonable cause.

As proposed in the NPRM, an employer is permitted to test a specimen provided by an employee, collected pursuant to a reasonable cause determination, for the presence of any drug or drug metabolite listed in Schedule I or Schedule II of the Controlled Substances Act. The employer may test for these drugs, as part of the employer's approved anti-drug program, if the employer has specific approval from the FAA to include these controlled substances in the employer's anti-drug program. In addition, the testing for these additional drugs must be conducted in accordance with the DOT procedures to be codified in 49 CFR Part 40.

The FAA believes that the provision requiring two supervisors, one of whom has specialized training in detecting the symptoms of drug use, to concur in the decision to test an employee based on reasonable cause is appropriate for large companies. However, the FAA has revised this section of the rule in order to address the legitimate concerns of small employers, many of whom do not have more than one supervisor employed at the company. For companies that employ 50 or fewer employees who perform a sensitive safety- or security-related function, the rule specifies that only one supervisor is required to make the determination that would trigger testing of an employee based on reasonable cause. The FAA also has clarified the annual EAP training requirements for supervisors to make it clear that supervisors who make reasonable cause determinations must have specific training that will enable them to assess and demonstrate the basis for testing based on reasonable cause.

Testing after Return to Duty. ATA believes that the FAA should not set regulatory standards governing postrehabilitation testing. ATA, other employer and employee organizations, and many individual commenters believe that a schedule for postrehabilitation testing should be made by management in consultation with persons involved in an employee's rehabilitation program. In order to ensure continued disassociation from drugs, RAA supports a requirement for monthly screening, for 12 months, after an employee has completed rehabilitation.

APFA believes that a schedule for postrehabilitation testing should be determined by an employee's EAP counselor and should be limited to a reasonable period of no more than one year. AFA states that decisions regarding testing after rehabilitation should be the responsibility of the individual treatment facility used by the employee.

FAA Response. The FAA agrees with the commenters that suggest that unannounced testing during any rehabilitation and before an employee returns to duty should be determined by the persons involved in the employee's rehabilitation program. Decisions regarding the frequency of testing during any rehabilitation program appropriately lie with those individuals who are familiar with and involved in any employee rehabilitation program.

However, unannounced testing after an employee returns to duty is critical to ensure an employee's continued disassociation from drugs. The FAA believes that it is essential to require unannounced testing of employees who have returned to duty in a sensitive safety- or security-related position for an employer after failing a drug test given by an employer or after refusing to submit to a drug test required by the final rule. This type of testing is the most effective means of ensuring that an employee remains drug free while performing commercial aviation duties. Moreover, once an employee has returned to duty, the FAA and the employer have a substantial interest in requiring that employee to be drug free while performing sensitive safety- or security-related duties in commercial aviation. Therefore, the FAA has included a provision in the rule requiring an employer to monitor an employee who has returned to duty by providing unannounced drug testing, pursuant to a schedule determined by the MRO, for not more than 60 months after the employee has returned to duty.

The rule also provides that an employer must conduct unannounced testing of an individual who is hired to perform a sensitive safety- or security-related function after failing a drug test or after refusing to submit to a drug test for another employer and who has not previously been subject to return-to-duty testing. This section of the final rule addresses situations where an individual fails a drug test or refuses to submit to a drug test but does not return to duty for an employer. In this case, any subsequent employer would be required to test an individual for not more than 60 months after the individual is hired to ensure that the individual is drug free. In the FAA's opinion, if an employee failed a drug test given by a previous employer but returned to duty with that employer in accordance with the requirements of this final rule, a subsequent employer would not be required to reevaluate a prior employer's return-to-duty decision. An employer would be required to test this individual prior to employment but would not be required to monitor the employee after the employee was hired. Pursuant to the final rule, the medical review officer (MRO) has the discretion to determine the appropriate level of unannounced testing for an individual or an employee. The FAA believes that it is appropriate to allow the MRO to tailor the frequency of this type of testing to adequately address differences between individuals, the level and type of drug use, and any treatment or counseling program.

The FAA notes that the MRO also is require to ensure that an employee has been tested for drugs, in accordance with the procedures in the final rule and the DOT procedures, before being hired or returning to duty. In most cases, the MRO will not be required to arrange testing for an employee because the employee will have taken a drug test as part of any employee rehabilitation program. However, the MRO must ensure that an individual or employee has been tested, in accordance with the procedures of Appendix I to Part 121 and the DOT procedures, before the MRO can make a recommendation that an individual be hired or than an employee be returned to duty after failing a drug test or after refusing to submit to a drug test. In the FAA's opinion, a preemployment drug test would suffice to satisfy this requirement of the final rule.

Employee Assistance Programs and Rehabilitation. The FAA sought comment in the NPRM regarding three different EAP options. These options specified the circumstances under which an employee would be given the opportunity to seek rehabilitation. Option 1 would allow all employees to seek an opportunity for rehabilitation regardless of how the employee's drug use was detected. Option 2 would allow most employees, except those employees whose drug use was detected as a result of postaccident testing or testing based on reasonable cause, to seek an opportunity for rehabilitation. Option 3 would only allow employees who volunteer to seek rehabilitation and would exclude all employees whose drug use was detected by any other means. Under all three options, an employer would not be required to offer an opportunity for rehabilitation or to provide job security to any employee who was identified as a drug user on the job.

Employer organizations tend to support the third option proposed in the NPRM regarding rehabilitation and reemployment or job security opportunities that should be offered to employees. Part 121 certificate holders, as generally noted by ATA, support the third option. For example, Delta Airlines believes that the most effective deterrent to drug use is the threat of losing a job. On that basis, Delta states that mandatory rehabilitation and an opportunity for continued employment would diminish the effectiveness of the rule. American Airlines disagrees with ATA's position and supports the first option. Federal Express supports the third option if the FAA mandates rehabilitation. The Helicopter Association International (HAI) states that requiring an employer-sponsored rehabilitation program whenever required testing of an employee produces a positive drug test result places an unwarranted burden on the employer. HAI believes that an employer should have the right to dismiss an employee if any drug test conducted during employment produces a positive test result. HAI states that the employer should have the ability to decide which employees, based on the "value" of the employee to the organization, would be offered an opportunity for rehabilitation.

Small Part 135 certificate holders generally state that an employer should have the right to fire any employee who uses drugs and feel that an opportunity for rehabilitation should not be offered to any employee who uses drugs. These small employers base their position on the potential liability to the company of rehiring a known drug user, the expense to the company of holding the employee's job open, or replacing an employee on a temporary basis, during rehabilitation.

The AMA reaffirmed its long-standing support of employment-based treatment and assistance programs for employees with alcohol or drug problems. The AMA believes that the FAA should require an employer to provide one opportunity for rehabilitation to any employee who voluntarily enrolls in an EAP and to any employee who is identified as a drug user through testing.

NTSB generally concurred in the concept of requiring an employer to provide EAP services to employees. The NTSB recommended that employers be required to offer one opportunity for rehabilitation to employees who volunteer for an EAP and for employees who are identified as drug users through any type of drug testing.

Most small business entities, TEMSCO Helicopters, Inc. and Overseas Air Transport Corporation for example, object to a regulatory provision that would require an employer to provide job security to an individual enrolled in rehabilitation. This objection is based on the financial burden of keeping a job open for an employee who is unable to perform his or her duties and the elimination of an employer's discretion to fire an employee who uses drugs. RAA believes that an employee who has successfully completed rehabilitation, as determined by the head of the rehabilitation program and airline management, should be offered an opportunity to return to duty. Executive Air Fleet (EAF), a Part 135 certificate holder with 200 employees subject to testing, would support job security for an employee who voluntarily sought rehabilitation and who had three to five years of service with the company. SSA also believes that an employee's length of employment may be a reasonable factor to consider when specifying an employer's obligation to retain or rehire an employee participating in rehabilitation. SSA also states that holding an employee's job open during inpatient rehabilitation will greatly complicate small business operations for an unknown time period. Henson Airlines states that, under its existing program, employees will be fired as a result of a positive alcohol or drug test. ERA Aviation, Inc. strongly objects to any Federally-mandated rehabilitation and rehire requirement. ERA Aviation objects to the cost of providing EAP services, but more important, objects to assuming the potential liability problems that could result from rehiring a known user of illegal substances even if that employee has successfully completed a rehabilitation program.

Several small operators, including TEMSCO Helicopters, Inc., object to the requirement to provide an opportunity for rehabilitation to employees identified as drug users. Henson Airlines provides an opportunity for rehabilitation only to employees who voluntarily enroll in rehabilitation. RAA supports these views. Organizations such as the American Association of Airport Executives (AAAE) and ATA believe that an opportunity should be offered only to employees who volunteer for rehabilitation. SSA states that there should be no requirement that a small business retain or rehire any employee who tests positive for drugs as a result of any unplanned drug test, including postaccident or for-cause testing. ATA believes that limiting rehabilitation and reemployment to volunteers has the dual effect of making safety the industry's highest priority and containing the costs associated with rehabilitation. AAAE believes that any employee who tests positive for drugs should be dismissed immediately. AAAE comments that employers and employees should be free to negotiate broader rehabilitation and reemployment rights as part of a collective bargaining agreement.

Labor organizations are strong supporters of broad EAP opportunities and services. TWU and FEIA believe that all employees who test positive, regardless of the reason for testing, should be given at least one opportunity for rehabilitation. FEIA supports the requirement for at least one rehabilitation opportunity because a positive drug test is not proof of impairment on the job. The Teamsters Union believes that negotiated, client-specific rehabilitation programs should be available to employees who volunteer and for employees who test positive on one occasion. Labor organizations comment that all rehabilitation costs should be paid by the employer either directly or as part of an employee benefit or insurance package. TWU concurs with this position, insofar as it relates to the first positive test result, unless the employee has engaged in conduct that would otherwise justify suspension or discharge under an applicable collective bargaining agreement.

ALPA states that there is no valid reason to limit access to an EAP only to employees who volunteer for rehabilitation. Based on experience in the HIMS program, only 15 percent of the pilots treated for alcoholism were self-referred; 85 percent of the pilots were discovered by the union or management, or both. ALPA believes that rehabilitation should be made broadly available to any employee who could benefit from an EAP and that, in some cases, a second opportunity for rehabilitation may be appropriate. ALPA urges the FAA to revise the proposed regulation to require employers to pay the cost of rehabilitation programs that are mandated by the regulation.

ALPA believes that traditional EAP techniques that are tailored to a specific population, such as the HIMS program, will be more effective in deterring drug use than the anti-drug program proposed in the NPRM. During the 15-year period

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that the HIMS program has been in effect, 800 pilots have participated in rehabilitation for alcoholism yielding a long-term success rate of 93 percent. ALPA states that the average "off line time" for pilots involved in the HIMS program is approximately 120 days: 30 days for treatment; 30 days for aftercare treatment, observation, and processing; and 45 to 60 days for processing of an FAA application. The recovery rate for pilots who participate in one rehabilitation opportunity is 85 percent. Of the 15 percent of the pilots who suffer a relapse after the first treatment, approximately 50 percent are successfully treated in their second rehabilitation opportunity.

FAA Response. Most comments regarding rehabilitation deal with the issue of whether, and under what circumstances, to offer rehabilitation and to provide job security to an employee and the length of any employee rehabilitation period. The FAA carefully considered the various arguments submitted by the commenters on the issue of EAP services and rehabilitation opportunities for employees. The FAA understands, and considered, the arguments raised in defense of broad rehabilitation opportunities and job security for aviation personnel who use drugs.

However, the FAA reviewed the two options that included provisions providing broad rehabilitation opportunities and job security to employees whose drug use was detected through testing under the final rule. Many of the commenters oppose rehabilitation opportunities and job security for employees who fail to discontinue drug use and wait to be detected by testing. The FAA agrees with these commenters and believes that a strong message must be conveyed to drug users that the use of drugs is unacceptable in the aviation industry. The FAA's primary duty, pursuant to statutory mandate, is to consider the adverse safety consequences surrounding the issue of drug use by senstivie safety- and security-related aviation personnel. On this basis, the FAA has determined that employers should not be obligated to offer an opportunity for rehabilitation or to provide job security to employees who fail a drug test or who use drugs on the job. The FAA understands that broad rehabilitation opportunities and job security for employees, without regard to the manner of detection of drug use, may help those employees who are unable to help themselves. But, the FAA believes that it is inconsistent with the agency's safety responsibilities to promote the message that drug use in the aviation industry will be tolerated until an individual's drug use is detected through testing. The FAA believes that it is inappropriate to place the agency and an employer in the anomalous position of allowing any employee who uses illegal drugs to work in a sensitive safety- or security-related position and whose drug use may adversely affect aviation safety. Rather, the FAA believes that it is appropriate and consistent with its statutory safety mandate to prohibit an employee who fails a drug test, who refuses to submit to a drug test, or who uses drugs on the job from acting in a sensitive safety- or security-related position. The FAA is convinced that the comprehensive testing program of sensitive safety- and security-related employees, combined with an employee assistance program to educate and train all personnel, is consistent with the statutory duty to promote aviation safety and will reduce any drug use in the aviation community.

The FAA also carefully reviewed the third option presented in the NPRM that would provide an opportunity for rehabilitation and job security to an employee who admitted his or her drug use and who volunteered for rehabilitation before being detected through drug testing. However, in the FAA's opinion and as noted by the commenters, there are several issues related to employee rehabilitation and retention or reemployment benefits that must be considered in development of the final rule.

For example, the term "rehabilitation" generally means the period of time during which an employee is receiving treatment or counseling for a drug problem. The length of any rehabilitation period is dependent on several factors such as the availability and enrollment period of rehabilitation services, the length and extent of treatment for the level of use and the type of drug used, collection and analysis of tests given during rehabilitation, and the review process that may lead to a recommendation to return to duty in a sensitive safety- or security-related position. The term "rehabilitated" generally means that an employee is determined to be drug free and, based on the employee's progress and prognosis during rehabilitation, the employee may return to work. The fact that an employee has returned to work does not mean that the employee is exempt from follow-up or aftercare treatment and counseling.

The FAA is aware of the wide variety of rehabilitation programs that vary both in the length of treatment and type of treatment depending on the substance used and the availability of rehabilitation and treatment services. One standard rehabilitation and treatment program, generally necessary for those individuals who require intensive inpatient care followed by outpatient care and counseling sessions, specifies 28 days of inpatient care. Other programs may involve shorter periods of time for inpatient care, may involve outpatient treatment only, or may involve a combination of inpatient and outpatient care of varied duration. For example, some treatment programs may require three to four sessions, given on two or three nights a week, over a six to eight week period and followed by less frequent meetings or counseling sessions. Other treatment programs might involve individual or group counseling sessions on a weekly basis, over a period of one year or more. An additional factor that affects the length or treatment or rehabilitation is the availability of private or community services in a particular area.

The FAA reviewed these variables to determine if a timeframe for voluntary rehabilitation and job security could be developed and included in the final rule. The FAA carefully considered the comments from many aviation businesses that oppose any regulatory requirement to offer rehabilitation and to retain or rehire any employee who admits to illegal drug use. The commenters base their objections on several factors including elimination of an employer's discretion to terminate an employee; undue complication of operations due to potential extended absences of employees enrolled in rehabilitation; and negation of an employer's ability to tailor rehabilitation opportunities and job security to a particular employee population. The most strenuous objections are based on the substantial and unwarranted burdens, both administrative and financial, associated with rehabilitation and job security for employees. Based on financial information submitted by the commenters, it appears that expenses of rehabilitation and job security opportunities as proposed would seriously affect large aviation entities and would probably overwhelm small companies.

After review of the considerable variables in treatment and the extensive arguments presented by the commenters, the FAA concluded that a reasonable accommodation of burdens on employers who may not be able to absorb employee absences and realistic opportunities for employee rehabilitation can not be imposed in the

abstract. Thus, the FAA does not agree with the commenters who state that the FAA should specify an opportunity for rehabilitation and the amount of time during which an employer is required to provide job security for an employee enrolled in rehabilitation.

Many employers in the aviation industry currently offer rehabilitation opportunities and job security benefits to employees. The FAA anticipates that those employers will continue to offer these opportunities and benefits to employees and that other employers may elect to include these components in any negotiated employee benefit package. Because many aviation entities have resolved the relative administrative, personnel, operational, and financial issues that surround employee rehabilitation and job security requirements, the FAA believes that the aviation industry is able to design appropriate programs and services for its employees. The FAA believes that, in light of the variables and burdens addressed above, issues regarding an adequate amount of time for rehabilitation, an appropriate amount of time to receive a recommendation to return to duty in a sensitive safety- or security-related position, and job security matters, are best addressed in the specific employment context.

Thus, an employer is not required to offer an opportunity for rehabilitation, to provide job security, or to provide the resources for rehabilitation to any employee. At the same time, employers may offer these opportunities and benefits to employees; the FAA urges employers to consider the experience of employers who have developed rehabilitation programs.

The final rule does not prohibit an employer from reassigning an employee to a position that does not involve the performance of sensitive safety- or security-related duties. The final rule also does not dictate whether an employee is required or permitted to use vacation time, sick leave, or leave without pay in order to accommodate the employee's time away from his or her sensitive safety- or security-related position. The FAA believes that issues such as termination, reassignment, hiring of temporary employees to fill a position, or policies regarding an employee's absence from a position, are issues that are appropriately the subject of employer and employee negotiation or collective bargaining.

The NPRM did not propose to require an employer to pay for an employee's rehabilitation and final rule also does not address this issue. Indeed, since an employer is permitted to terminate an employee who fails a drug test or who refuses to submit to a drug test, and such employee does not have a right to return to duty for that employer, this issue is not relevant to the final rule. However, the employer may cover an employee's rehabilitation expenses through an employee benefit package, insurance coverage, or as a matter of collective bargaining negotiated between the employer and the employee. The FAA considers these areas to be a matter between employers and employees and, as such, are left to the discretion of the employer or to be negotiated during collective bargaining.

EAP Education and Training Programs. ATA states that the FAA should not specify the details and contents of an employer's EAP. The Teamsters Union believes EAP services should be negotiated between labor and management and that rehabilitation programs should be client-specific.

ALPA believes that EAP services should be tailored to be specific employee population as the HIMS program is tailored to pilots in commercial aviation.

Various labor organizations conclude that EAPs, instead of mandatory testing, are the preferable method to conduct an anti-drug program. AFA also urges the FAA to separate the administration of any drug testing programs, if mandated at all, from administration of an EAP.

The FAA received considerable data in response to the ANPRM and the NPRM regarding the availability of EAP services. Some of these commenters included specific, existing EAPs that are recommended by the industry. The Association of Labor-Management Administrators and Consultants on Alcoholism, Inc., (ALMACA) submitted an extensive, recommended industry EAP in response to the ANPRM.

Although most commenters think that EAPs are valuable, employer and employee organizations differ on the mechanics and content of an EAP education and training component. Labor unions generally favor broad EAP services. The majority of employer organizations favor EAPs that are designed to meet the specific needs of the company and oppose regulatory action by the FAA in this area.

FAA Response. The FAA believes that an employer should have the ability to design an EAP that would best serve its employees. The ability to tailor an EAP is particularly important for small aviation employers who may not have the financial and administrative resources to support a company-sponsored EAP. Therefore, the FAA has made no changes to the proposed minimal EAP education requirements. However, the FAA has revised the EAP training requirements. The FAA deleted the minimum requirement of 60 minutes of annual training for all employees. The FAA retained the 60-minute training requirement for supervisors who will make determinations to test an employee based on reasonable cause. The FAA believes that it is appropriate to require a full 60 minutes of initial training for presently-employed and newly-hired supervisors making reasonable cause determinations because of the need for increased awarness and recognition of signs that may indicate drug use. The employer has the discretion to determine the reasonable recurrent training for supervisory personnel who have the authority to make reasonable cause determinations. The FAA believes that this flexibility will enable employers to address specific issues or needs that may arise as a result of the employer's anti-drug program.

The rule permits an employer to develop and provide these minimum services as part of an internal program or the employer may contract with community agencies or other aviation companies to provide these services to employees. The employer is permitted to provide additional education and training, beyond the minimum requirements of the rule, to its employees. The FAA believes that employers will not have substantial difficulty developing education and training programs for employees because of the significant number of model EAPs submitted to the FAA in response to the ANPRM.

Small Aviation Entities and Businesses. The National Air Transport Association (NATA) represents numerous Part 135 certificate holders in the aviation industry. NATA states that the anti-drug program would have significant cost impact on Part 135 certificate holders and, particularly, small aviation operators. NATA recommends that Part 135 certificate holders, with 100 or fewer covered employees should be excluded from the requirement to submit and implement an anti-drug program. A number of other small Part 135 certificate holders responding to the NPRM also argue for exclusion from the anti-drug program.

AOPA urges the FAA to exempt from the rule operators and their employees who currently are exempt from the requirements of Part 135. AOPA contends that these operators are invariably small businesses who would be unable to withstand the financial and administrative burdens of the proposed regulations. Several commenters involved in single pilot—single aircraft

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operations noted the difficulty of complying with most of the provisions of the proposed rules.

Atlantic Aero, Inc., a fixed based operation employing more than 100 people, and Sunwest Aviation support efforts to address the drug problem but state that modifications to the proposal are necessary to avoid an unjustified administrative and financial burden on small operators.

SSA feels that the proposed anti-drug program is inappropriate for small businesses that rely on student instruction as the economic base of activities or for certified flight instructors acting as independent contractors. SSA believes that the FAA has failed to account for the practical differences between large corporate entities and small businesses. SSA suggests that the FAA develop four separate anti-drug programs that would address the particular needs and concerns of Part 121 certificate holders, Part 135 certificate holders, flight schools, and small businesses or independent contractors.

A commenter speaking as national litigation counsel for AOPA and on behalf of the California Aviation Council and the Orange County Aviation Association, conveys the concerns of flight instructors, small fixed base operators, banner towers, crop dusters, and other small aviation entities that do not provide scheduled air carrier service who are affected by the proposal. This commenter notes that the NPRM is an unwarranted, overreaching invasion of the domestic aviation community's right to be free from governmental intrustion because of the lack of evidence of any drug problem among commercial aviation professionals. The commenter states that this lack of evidence supports the history or responsible self-regulation by the commercial aviation community.

The National Association of Flight Instructors (NAFI) states that the anti-drug program proposed in the NPRM is tailored for a large aviation organization and, therefore, is not appropriate for a small organization or a freelane flight instructor that is not employed by any company. NAFI believes that testing of a flight instructor each time that instructor performs flight instruction duties will be impossible. In addition, NAFI is concerned about the quality and reliability of laboratory analysis; the constitutionality of drug testing; and the administrative and economic burden on small entities related to EAP services, MRO requirements, and job security for employees enrolled in rehabilitation. Two individual commenters believe that sole-proprietorships and businesses that employ 10 or fewer employees should be excluded from any requirement to implement an anti-drug program.

FAA Response. The FAA understands the economic and practical concerns expressed by Part 135 certificate holders as well as those entities or individuals, listed in § 135.1(b), who are otherwise exempt from the requirements of Part 135 but are affected by the regulation because they are engaged in operations for compensation or hire. For the purposes of the requirements of the anti-drug program, the FAA has tailored the final rule in an attempt to accommodate small aviation entities, particularly those Part 135 certificate holders who employ 50 or fewer employees who are covered by this final rule and those entities or individuals, listed by this final rule and those entities or individuals, listed in § 135.1(b), who are otherwise exempt from the requirements of Part 135 but are included in the comprehensive anti-drug program because they conduct operations for compensation or hire.

The FAA believes that it would be counterproductive to the goals of the anti-drug program to impose requirements on small aviation entities who would be unable to comply with them because of substantial financial, administrative, and logistical difficulties. The vast majority of the difficulties are associated with the requirements of implementing a random testing program and providing rehabilitation programs and services to employees. Therefore, the FAA has revised the proposed rule to provide a tiered implementation plan that would allow small aviation entities to develop and implement a comprehensive anti-drug program, over specific time periods, in accordance with a schedule determined by the FAA. The language of the rule does not prohibit an employer from implementing its anti-drug program sooner than required by the FAA's schedule if the employer is able to comply with the rule requirements and the provisions of its anti-drug program at an earlier date.

Part 121 certificate holders and Part 135 certificate holders that have more than 50 covered employees, and contractors to these certificate holders, will be required to follow the schedule that was proposed in the NPRM with one exception. As proposed, these employers must submit an anti-drug plan to the FAA not later than 120 days after the effective date of the rule and must implement the anti-drug program not later than 180 days after approval of the anti-drug program by the FAA. However, these employers are required to implement preemployment testing of applicants for sensitive safety- or security-related positions not later than 10 days after approval of the employer's anti-drug plan by the FAA. The FAA believes that it is appropriate to require accelerated implementation of preemployment testing for these employers because many of these employers have existing preemployment testing programs and, generally, these employers have the available financial and administrative resources that enable them to begin testing.

Part 135 certificate holders that have 11 to 50 covered employees, and contractors to those certificate holders, will be required to submit an interim anti-drug program, that sets forth all required drug testing except mandatory random drug testing, not later than 180 days after the effective date of the final rule. The employer must implement preeployment testing, periodic testing, postaccident testing, testing based on reasonable cause, and testing after an employee's return to duty not later than 180 days after approval of the anti-drug program by the FAA. These employers must submit an amendment of their interim anti-drug program to the FAA, that contains the procedures for implementing an unannounced testing program of employees who are randomly selected at the applicable annualized testing rate, not later than 120 days after approval of the interim anti-drug program by the FAA. The employer must continue implementation of the remainder of the program and must implement the random testing provision not later than 180 days after approval of the amended anti-drug program by the FAA.

Part 135 certificate holders with 10 or fewer covered employees and those entities or individuals, listed in § 135.1(b), who are otherwise exempt from the requirements of Part 135 but are included in the comprehensive anti-drug program because they conduct operations for compensation or hire, and any contractors to these employers, must submit an anti-drug plan to the FAA for approval, that includes procedures for all types of testing mandated by the rule, not later than 360 days after the effective date of the final rule. These employers must implement the approved anti-drug program not later than 180 days after approval of the plan by the FAA. The FAA believes that this extension of time will enable small aviation entities to evaluate random drug testing programs of other companies, to develop an appropriate method by which to comply with the drug testing provisions of the rule, and to participate in any association or consortium that may be available to provide specimen collection, testing assistance, and EAP services. Also, the FAA believes that it is appropriate to require these employers to submit a plan that includes random testing, as opposed to implementation of random testing after other testing is implemented, because these employers will have a significant amount of time to develop and implement a comprehensive anti-drug program for their employees.

New aviation businesses that come into existence after the effective date of the rule, and that are subject to the requirements of the final rule, will be required to comply with the schedule that is appropriate for the size of the company and their particular operations. The FAA believes that it is appropriate to adhere to the same time schedules that are set forth for existing aviation entities in order to treat similarly-situated entities in a similar manner. However, it is possible that the timeframes may be accelerated for new businesses in the furture as existing employer programs and consortia develop and continue to provide services to the aviation community.

The FAA has identified an issue that could unduly burden small commercial operators who do not hold a Part 121 certificate or a Part 135 certificate, who conduct operations listed in § 135.1(b), and who are included in this final rule because they conduct operations for compensation or hire. Under the terms of the proposed rule, these commercial operators would have been unable to contract for aircraft maintenance or preventive maintenance services. The proposed rule would have prohibited commercial operators from using the services of employees who work for fixed base operators and repair stations that service only general aviation aircraft if the employees of these entities were not subject to an FAA-approved comprehensive anti-drug program. In an effort to relieve this unintended burden, the FAA has included a new provision in the final rule directed solely at those individuals or entities. This provision states, in essence, that an individual who is otherwise authorized may perform maintenance and repair work on a commercial operator's aircraft, even if that individual is not covered by a comprehensive anti-drug program, in two specific instances. First, an individual who is not covered by the final rule can perform emergency repairs on an aircraft if the aircraft could not be operated safely to a location where a covered employee could perform the repairs. Second, an individual who is not covered by the final rule can perform aircraft maintenance and preventive maintenance repairs on an aircraft if the operator would be required to transport the aircraft more than 50 nautical miles further than the closest available repair point from the operator's principal base of operations in order to have the work performed by a covered employee. The FAA believes that this narrow exemption from the requirements of the final rule will benefit the small commercial operators subject to the final rule but will not adversely affect the enhanced aviation safety intended by the final rule.

Medical Review Officer (MRO). Several small entities, including EAF, believe that an MRO should have the responsibility to determine if an employee has been successfully rehabilitated and to determine when an employee may return to duty. ATA also recommends that an MRO be involved in the determination of an employee's successful rehabilitation. However, ATA notes that it would not always be feasible for an MRO to personally interview each employee who has a positive test result and recommends that the final rule accommodate that situation. RAA and Federal Express oppose any regulatory provision that would require an airline to appoint or to designate an MRO as part of an anti-drug program.

APFA believes that an MRO should be an independent physician who could assist labor and management EAP officials during analysis of drug test results and determination of the validity of test results in each employee's case. AFA believes that it is imperative that an MRO have specific training in toxicology and addictive diseases. Even with this training, AFA believes an MRO should be responsible for monitoring any testing program and interpreting test results to determine if referral to an EAP is warranted for a particular employee. AFA states that evaluation and referral for treatment and determinations regarding an employee's readiness to return to work should be made only by an EAP treatment professional. IUFA states that only the health care professional with whom an employee has been working is qualified to make a determination of when an employee is fit to return to duty. If an MRO and the responsible health care official disagree, a neutral third party should evaluate an employee and determine if an employee is fit to return to work. ALPA states that the determination of whether an individual has been rehabilitated, at least in the case of pilots, must be made by the Federal Air Surgeon under the medical certification procedures contained in Part 67 of the Federal Aviation Regulations.

FAA Response. In response to commenters who oppose the requriement to designate or appoint an MRO, the FAA notes that the rule does not require that each employer have its own individual MRO. The FAA anticipates that small companies will become part of, or will associate with, large companies or may participate in a consortium of small companies or associations, in order to comply with the MRO requirement of the final rule that will result in reasonable costs to small employers.

After consideration of the comments on the issue of MROs, the FAA has determined that the requirements proposed in the NPRM are appropriate. The FAA believes that the review and evaluation functions of an MRO provide critical and necessary safeguards for an employee who is subject to drug testing under the comprehensive anti-drug program. The FAA believes that the MRO will prove to be a beneficial asset to both employees and employers who are subject to the provisions of the final rule.

However, the FAA has expanded the role of the MRO after review of the comments and the proposed rule, although many of these responsibilities are contingent on an employer's decision to be involved in rehabilitation. For example, if an employer chooses to use an individual to perform a sensitive safety- or security-related function who has failed a drug test under this program and who has successfully completed rehabilitation, the MRO will develop an unannounced testing schedule for that individual. The MRO is the final arbiter in cases where an individual disputes a testing schedule after return to duty. Except in cases where the Federal Air Surgeon is involved, as discussed below, the MRO also is the final arbiter regarding return-to-duty recommendations. The MRO also shall review any rehabilitation program in which an employee or an applicant participated, after failing a drug test conducted in accordance with Appendix I to Part 121, to determine if an employee can return to duty or an applicant may be hired to perform a sensitive safety- or security-related function for an employer.

The FAA also has defined the factors that an MRO shall consider when making a return-to-duty determination. The MRO is required by the final rule to ensure that an individual is drug free as evidenced by a drug test; that an

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individual has been evaluated by a rehabilitation counselor for drug use or abuse; and that an individual has complied with testing and counseling requirements of a rehabilitation program. Thus, the MRO will have significant and sufficient information to recommend, based on the MRO's professional opinion, that an individual or a current employee could perform a sensitive safety- or security-related function for an employer.

The FAA clarified the proposed requirement that the MRO "conduct a medical interview" with an employee as part of the review of a positive test result. The FAA did not intend that the proposal require a face-to-face interview with each employee. The final rule requires that the MRO provide an employee with an opportunity to discuss a positive test result with the MRO. Thus, for example, the MRO is permitted to discuss the positive test result with the employee by phone. The FAA believes that the clarification will relieve some administrative burdens on the MRO and employees in scheduling discussions of a positive test result. The FAA also added several requirements to the MRO's list of duties. First, the MRO is required to notify an employee of a confirmed positive test result within a reasonable time after verification of the result. Second, the MRO must process an employee's request to retest a specimen. The final rule provides that the employee's request to retest must be made in writing to the MRO within 60 days of notification of the confirmed positive test result.

In the NPRM, the FAA requested comment on who should make the decision that an employee had been successfully rehabilitated and could return to duty if the employee was drug free. ALPA specifically comments that return-to-duty determinations of pilots should be made by the Federal Air Surgeon consistent with the medical certification procedures contained in Part 67 of the Federal Aviation Regulations. Part 67 of the Federal Aviation Regulations define "drug dependence" as a "* * * condition in which a person is addicted to or dependent on drugs other than alcohol, tobacco, or ordinary caffeine-containing beverages, as evidenced by habitual use or a clear sense of need for the drug." After review of the comments and consideration of the medical standards contained in Part 67, the FAA has determined that the Federal Air Surgeon must be involved in the decision to return an individual who holds a Part 67 medical certificate to a sensitive safety-related position. The FAA believes that it would be contrary to the statutory mandate to determine the physical ability of an individual to perform duties pertaining to his or her airman certificate if the FAA failed to participate in a return-to-duty decision for an individual who holds a medical certificate.

Thus, the FAA has clarified the responsibilities of the MRO for situations where an employer voluntarily becomes involved in rehabilitation of employees or persons hired to perform sensitive safety- or security-related functions that require an individual to hold a medical certificate issue by the FAA. Under the rule, the MRO will perform all the duties and make all the determinations required in Appendix I for those individuals who do not hold a medical certificate issued pursuant to Part 67 of the Federal Aviation Regulations. For those individuals whose position with the employer requires them to hold a Part 67 medical certificate, the MRO is required to make a preliminary determination, consistent with the standard contained in Part 67, of probable drug dependence or a determination of nondependence. If the MRO makes a determination of nondependence based on his professional opinion, the MRO may recommend that an employee return to duty in a sensitive safety- or security-related position. The MRO is required to forward the finding of nondependence, the decision to return the employee to duty, and any supporting documentation, to the Federal Air Surgeon for review.

The FAA is aware that allowing an MRO to determine that an individual is not drug dependent and, therefore, may return to work in a sensitive safety- or security-related position without prior clearance by the Federal Air Surgeon may be controversial and may be viewed as inconsistent with aviation safety. However, in the FAA's opinion, it is consistent with aviation safety to provide subsequent FAA review of the treatment and any medical determination of nondependence that has been made by a competent licensed physician with knowledge of substance abuse disorders. The FAA also believes it is beneficial to provide subsequent review of an MRO's return-to-duty determinations, rather than initial review by the Federal Air Surgeon, so that an individual who is not dependent on drugs can return to work as soon as possible. Moreover, any individual who returns to work after rehabilitation is subject to unannouned testing as determined by the MRO and may be subject to ongoing counseling. Therefore, the FAA believes that initial determinations by an MRO and subsequent review by the Federal Air Surgeon will result in effective and fair treatment of individuals who are required to hold a medical certificate.

At any point that an MRO, in this professional opinion, makes a determination of probable drug dependence of an individual required to hold a medical certificate for a position, the MRO is required to report the name and other identifying information, and to forward all documentation that supports the determination, to the Federal Air Surgeon. If the MRO has made a probable drug dependence determination of an individual required to hold a medical certificate, the MRO may not make a recommendation to return that individual to duty. From that point forward, the Federal Air Surgeon is responsible for determining whether the individual may keep a medical certificate or may be issued a medical certificate consistent with the medical standards contained in Part 67 of the Federal Aviation Regulations. Since drug dependency is a disqualifying medical condition under Part 67 of the Federal Aviation Regulations, it is critical that the Federal Air Surgeon be aware of any determination of probable drug dependence. An individual subject to the medical requirements of Part 67 who has a history of drug dependency must receive a "special issuance" medical certificate, issued at the discretion of the Federal Air Surgeon pursuant to § 67.19, before returning to work in a sensitive safety-related position. The Federal Air Surgeon is required to determine if that individual is qualified to hold a medical certificate and is physically able to exercise the privileges of an airman certificate. This determination, and the discretion to grant a special issuance of a medical certificate, clearly are within the exclusive expertise of the Federal Air Surgeon.

The FAA has added a provision to the final rule that requires the MRO to report the name of any current employee required to hold a medical certificate to perform a sensitive safety-related function who fails a drug test. The MRO also is required to report the name of any individual who holds a medical certificate and applies for a position with the employer in which a medical certificate is required and who fails a preemployment drug test. The MRO is required to report the names of these individuals to the Federal Air Surgeon because a positive drug test result clearly is probative evidence of possible drug dependence which is a disqualifying condition under the medical standards of Part 67 of the Federal Aviation Regulations. Therefore, the FAA added this requirement to ensure that the FAA is aware of conditions that may affect an individual's ability to physically perform the duties of an airman.

Administrative Matters and Reporting and Recordkeeping Requirements of Appendix I to Part 121. The FAA received very few comments regarding the reporting requirements of the proposed rules. ATA found the requirements of Appendix I to be acceptable. ATA recommended that the FAA establish a date to analyze the data collected regarding drug testing and rehabilitation and to review the regulations. Suburban Airlines, as part of its analysis of the costs of the proposals, estimates that the administrative costs and record retention costs of testing its 211 employees would be $8,500 per year. Federal Express supports auditing of annual, summary data by the FAA that is supplied by an employer regarding the employer's anti-drug program. Federal Express does not object to submitting an anti-drug program for the FAA's approval but believes that the 180-day implementation period will be insufficient if the final rule contains all of the requirements proposed in the NPRM.

FAA Response. The regulatory provision that require an employer to submit a comprehensive anti-drug program and summary reports of the employer's program are critical measures to provide oversight of the industry's implementation of the comprehensive anti-drug program. The FAA believes that these minimal requirements are necessary to properly monitor the industry and to ensure compliance with the final rule. In addition, evaluation of the industry's implementation of the anti-drug program and the results of testing and rehabilitation programs will enable the FAA to review any demonstrated trends of drug use in the aviation industry and to modify the rules if warranted by the data. These reporting requirements are consistent with the FAA's existing industry recordkeeping and reporting requirements.

The FAA has modified the proposed recordkeeping and reporting provisions in the final rule. First, the FAA has clarified the requirements and organization of material that must be submitted in the employer's semi-annual report and annual report. In order that the FAA may accurately assess information submitted by an employer, the revised final rule provides that the employer must submit the total number of tests performed; the total number of tests performed for each category of test; and the total number of positive test results for each category of test given by an employer. These requirements are in addition to the proposed requirement to provide information on the number of positive test results according to the function performed by an employee for each type of test and according to the type of drug indicated by a positive drug test result. The FAA anticipates that requiring an employer to report the additional information will not overburden an employer because drug testing laboratories commonly report the bulk of this information when reporting drug test results. For example, as part of the DOT procedures (49 CFR Part 40), a DHHS-certified laboratory is required to provide a monthly statistical summary of initial and confirmation urinalysis testing data of employees tested during the month to the person responsible for coordination of the drug program. The summary contains information on the number of specimens received for initial and confirmation testing; the number of specimens reported for initial testing; and the number of specimens reported positive for each of the five drugs or drug metabolites tested during initial and confirmation testing [DOT "Procedures for Transportation Workplace Drug Testing Programs;" 49 CFR Part 40).

The FAA had proposed that an employer only keep records relating to the specimen collection process in the NPRM. However, in light of other revisions to the proposed rule made in response to the comments, the employer also must retain records of test results and records relating to any employee rehabilitation. For example, the MRO is required to report the names of individuals holding a Part 67 medical certificate who fail a drug test and to forward test result and rehabilitation information regarding all individuals holding a medical certificate to the Federal Air Surgeon. Thus, the FAA has revised the recordkeeping provision of the proposed rule to require that an employer keep adequate information with which an employer and the FAA can evaluate the anti-drug program and determine any trends that may develop in the commercial aviation industry. Pursuant to the final rule, an employer is required to retain all confirmed positive test results and any rehabilitation records for five years. The employer may retain these records longer than five years although extended record retention is not required by the final rule. The FAA also added a provision to the final rule that requires an employer to keep any negative test results for a period of 12 months. However, all records retained by the employer are subject to limited release, as discussed below, for any period of time that the employer keeps these records.

Confidentiality of Test Results. Most small businesses, individuals, and labor unions support restrictions on the release of drug testing information. These commenters believe that the FAA should include a regulatory provision prohibiting the release of any drug testing information about an employee.

RAA believes that only the employer and the employee should have access to the results of the anti-drug program. Conversely, ERA Aviation suggests that employers should be required to report the name, social security numbers, and certificate numbers of employees testing positive to the FAA. TWU states that test results should be confidential as to all persons, except an applicant or employee, absent written consent or valid compulsory process. The laboratory may release confirmed positive test results or negative test results only to the employer's medical officer. TWU suggests that the medical officer may notify managerial or supervisory personnel who have a compelling need for the information to implement employer's policies or may notify the medical personnel responsible for an employee's rehabilitation.

RAA and Federal Express believe that job applicants should be required to disclose prior test results to subsequent employers as a condition of employment. ATA believes that records of applicants for employment who have tested positive in a preemployment drug test should be disclosed to third persons in limited situations, including authorization from the applicant, litigation by the applicant, pursuant to a valid subpoena, and by order of a court or administrative agency. However, ATA believes that test results, related personnel records, and rehabilitation data of incumbent employees should not be released to any person absent express consent of the employee. The Director of the Santa Maria Public Airport District believes that positive test results of all employees and applicants should be retained in a central database and should be available to potential aviation employers. Federal Express also believes that carriers should be free to exchange an employer's drug testing

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results and that the FAA should insulate carriers from liability for this disclosure.

ALPA states that information regarding an employee's drug testing history should be treated as confidential information, and clearly stated in any final rule, since it is "extracted" from the employee by requiring the employee to submit to drug testing. A rule of confidentiality should apply to all information obtained pursuant to the regulation whether obtained as a result of testing, interview, or examination, or treatment of an employee. ALPA believes that the only effective and appropriate rule is a complete ban on disclosure of confidential drug testing information without the employee's written consent. ALPA believes that a complete ban on disclosure is required for ethical reasons and to encourage candor by employees when dealing with medical professionals.

As a general matter, EEAC advocates protecting the privacy of individuals who undergo drug tests. EEAC believes that sharing of drug testing information among employers in a safety-sensitive industry has superficial appeal. However, EEAC advocates caution in allowing a subsequent employer to rely solely on information obtained as a result of a different company's drug testing procedures.

FAA Response. The FAA has included a provision in the final rule that will govern release of records of an employee's drug testing results and any rehabilitation information. The FAA has decided that the legitimate individual privacy rights of an employee warrant strict limitations on the availability of an employee's drug testing results and rehabilitation information. The final rule provides that the release of an individual's drug test results and any information about an employee's rehabilitation program is permitted only with the specific, written consent of the individual. Due to the specific provisions discussed previously, this restriction does not override the requirement to report test results and any rehabilitation information to the Federal Air Surgeon of an applicant or an employee who holds a medical certificate who fails a drug test. The final rule also provides that the FAA is entitled to examine these records and that this information must be released to the NTSB as part of an accident investigation or to the FAA upon request.

Temporary Employees. The FAA solicited comments in the NPRM on the proposed definition of temporary employees and their eligibility for rehabilitation. RAA agrees with the FAA's proposed definition that temporary employees are those individuals who are hired for a period of less than 90 days. ATA and Federal Express propose a period of 120 days and TEMSCO Helicopters proposes a period of 150 days or less to determine an employee's eligibility for rehabilitation opportunities.

RAA and ATA agree with the FAA's proposal to exclude temporary employees from rehabilitation opportunities. RAA and ATA oppose the FAA's proposal to consider employees, who are eligible for reemployment by the same employer within 90 days following the original employment, as regular employees of the industry and, therefore, eligible for rehabilitation opportunities if they are rehired by the airline.

Several organizations, including TEMSCO Helicopters and ATA, comment that the time period of 90-day employment would adversely affect businesses who employ individuals on a seasonal or contract basis for longer periods of time. SSA states that small businesses should not be required to retain or to rehire a part-time or temporary employee who volunteers for, or otherwise participates in, rehabilitation.

FAA Response. In the NPRM, the FAA requested comment on the definition of a temporary employee and whether employers should be required to offer rehabilitation opportunities and job security to temporary employees. After consideration of the comments and due to deletion of the requirement to offer rehabilitation and job security to employees, a definition of temporary employees in the final rule is unnecessary. Therefore, an employer is not required by the rule to offer an opportunity for rehabilitation or to hold a position open for any temporary employee.

However, the final rule makes no distinction regarding testing of temporary employees. Thus, an employer is required by the final rule to include temporary employees in its drug testing program. The burden of testing temporary employees is slight when compared to the significant risk that a temporary employee who uses drugs poses to aviation safety. Thus, the FAA believes that it is important to test temporary employees for the presence of drugs or drug metabolites that may adversely affect performance of a sensitive safety- or security-related function. Many "temporary" employees, who actually are recurring seasonal employees or are regularly and containually rehired at the end of specified term, are "permanent" members of the aviation industry. The FAA firmly believes that these individuals clearly should be included in an employer's drug testing program in the interest of aviation safety. In addition, these employees, although they may consistently perform sensitive safety- or security-related functions pursuant to short-term contracts for different employers, should be included in EAP education programs because of their continuous involvement in commercial aviation activities.

Uniformity versus Flexibility. ATA, American Airlines, Delta Airlines, IUFA, and IFFA believe that all employers and employees should be subject to uniform minimum rules and requirements in the area of drug testing. These entities strongly believe that company-specific plans may dilute the effectiveness of the anti-drug program or lead to harassment of employees.

EEAC supports the concept of employer flexibility to design specific anti-drug programs. EEAC believes that each employer should determine the circumstances of employee drug testing and the content of employee assistance programs. EEAC supports preemployment testing, postaccident testing, periodic testing incident to scheduled physical examinations, and testing based on reasonable cause. EEAC believes employers should have the option or requiring random testing of employees.

EEAC readily endorses EAP services and rehabilitation of employees but believes that these benefits should not be mandated by the government. Decisions whether an employee has been rehabilitated and whether an employee should be permitted to return to work should be determined by the individual employer acting with the guidance of professionals involved in an employee's rehabilitation.

Federal Express believes that use of controlled substances at any time, whether on or off the job, should be prohibited due to the critical safety concerns in the aviation industry. Federal Express states that such a prohibition "* * * helps ensure safe operation of aircraft and protects employees and the general public from unnecessary safety hazards." However, Federal Express believes that the FAA should impose only minimum regulatory requirements of a drug testing and rehabilitation program and allow carriers to structure individual programs for their particular employees.

FAA Response. The FAA agrees with the Commenters who conclude that mandating minimum, uniform requirements for comprehensive anti-drug programs in the commercial aviation industry is necessary in order

to maximize the effectiveness of the program and to achieve a safe and drug-free commercial aviation workforce. The FAA believes that the comprehensive anti-drug program promulgated in this final rule meets the agency's statutory mandate to promote the safety of civil aircraft operating in air commerce and that it responds to the public's need for a safe aviation environment.

In response to the comments, particularly in the area of anti-drug programs implemented by small aviation entities, the FAA has addressed the need for employer flexibility by revising the program requirements or the implementation dates. The FAA has not included specific, detailed provisions regarding the content and requirements of an individual's treatment due to the significant variables that affect these components based on each individual, the type of drug used, and the level of any drug use, drug dependence, or drug addiction. Thus, in the area of an employee's rehabilitation treatment plan, the FAA agrees that this decision is best left to the discretion of those individuals who are significantly and directly involved in the employee's rehabilitation.

The FAA has imposed uniform, minimum requirements on employers and employees in other areas of the comprehensive program. Although employers are required to comply with the minimum requirements, employers may expand the minimum testing requirements to include other employees or may offer EAP services and rehabilitation opportunities to employees. If the employer expands its anti-drug program, any additional components of the employer's anti-drug program may not contradict or dilute the effectiveness of the FAA's final rule. As stated in the NPRM, while the FAA would not prohibit employers from taking independent actions beyond those required by the rule, such actions may not adversely affect the final rule and would not be authorized by the FAA. Therefore, additional benefits or more stringent procedures would not be considered part of the employer's approved program.

The FAA received many comments for revision of the final rule to include testing for additional drugs and permission for an employer to use analytical procedures that are not addressed in the DHHS guidelines. The Department of Transportation will address the issue of testing for additional drugs in the DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR Part 40). DOT intends to follow the proposed DHHS guidelines which allow testing for other drugs, in addition to the five drugs specified in the appendix, only in the context of testing based on reasonable cause. Neither this final rule nor the DOT procedures address the issue of an employer's ability to test for drugs, other than the drugs specified by the FAA, to the extent that an employer has independent legal authority to test for other drugs.

Regulatory Consent. AOPA believes that the FAA should eliminate the regulatory section that would require a pilot to submit to a drug test requested by an employer, a local law enforcement officer, or an FAA inspector. AOPA asserts that the FAA does not have the authority or the expertise to administer a drug test and that refusal to sumbit to a test is best left to local law.

ATA agrees with the sanctions proposed for an employee's refusal to submit to a required test. Henson Airlines has an existing policy that an employee's refusal to submit to a drug or alcohol test will result in disciplinary action that could include dismissal from the company.

FAA Response. The FAA has not revised the provisions proposed in the NPRM that would provide sanctions for an employee's refusal to submit to a drug test required as part of the comprehensive anti-drug program. The FAA believes that the sanctions proposed in the NPRM are appropriate and are necessary to ensure compliance with the requirements of the anti-drug program. In response to AOPA's comment, the FAA would not "administer" a drug test under this provision. The FAA would simply request that the employee submit to a drug test, collected and analyzed consistent with the DOT procedures of 49 CFR Part 40, where testing would be otherwise authorized under an anti-drug program. This provision is necessary primarily in the area of postaccident drug testing where the FAA may be the only official at the scene of an accident with the authority to request that an individual submit to a postaccident drug test.

The FAA also believes that compliance with the testing requirements of the final rule is not an issue that is best left to local law. As a preliminary matter, the FAA has clear statutory authority to promote and maintain aviation safety. Second, the FAA is the entity that issues airman certificates and that is charged with ensuring that an airman is qualified to exercise the privileges of that Federal certificate. Finally, sanctions imposed pursuant to State or local law may vary widely among each jurisdiction and would subject similarly-situated employees to dissimilar treatment according to the content of the local law. Therefore, the FAA believes that it is appropriate to provide that an individual is disabled from performing a sensitive safety- or security-related function and to include sanctions for a failure to submit to a drug test to promote aviation safety and to ensure consistent treatment of individuals engaged in commercial aviation.

Existing Regulations. AOPA, several small aviation entities, and many individual commenters believe that the FAA's existing regulations, and increased FAA enforcement of these regulations, are sufficient to deal with any drug problem in the aviation industry.

A commenter speaking as national litigation counsel for AOPA and on behalf of the California Aviation Council and the Orange County Aviation Association believes that the types of testing proposed by the FAA are duplicative of the existing opportunities for testing in the periodic medical examination of commercial and air transport pilots. In addition, this commenter states that the FAA has the authority, pursuant to § 609 of the Federal Aviation Act, to reexamine or reinspect any airman at any time. Therefore, the commenter believes that the FAA could implement a lawful drug testing program within the existing infrastructure of the FAA's certification procedures. The commenter also states that the regulations proposed in the NPRM create an irreconcilable conflict with the FAA's safety-enhancement enforcement system. The commenter believes that the proposed anti-drug program will prove detrimental to aviation safety because the number of enforcement cases brought by the FAA for violations of the proposed regulations will overburden the FAA and the administrative law judges assigned to hear enforcement cases.

FAA Response. The FAA disagrees with the commenters who state that the comprehensive anti-drug program requirements are redundant and that increased enforcement of the existing regulations or reexamination of individual airmen will result in a drug-free commercial aviation environment. The existing regulations do not address the issue of drug testing of aviation personnel performing sensitive safety- or security-related functions in commercial aviation. Thus, in the FAA's opinion, enforcement of existing regulations or individual reexamination will not sufficiently deter any drug use

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in commercial aviation. In addition, the existing regulations do not address the critical issues of procedural safeguards in collection and testing of samples for the presence of drugs or drug metabolites that are provided in the DOT procedures of 49 CFR Part 40.

Establishing a drug testing program within the existing "infrastructure" of the existing certification procedures is equivalent to implementing only a periodic testing requirement. Because of an individual's ability to circumvent periodic testing, based on a relatively short abstinence from drug use, periodic testing alone is not a sufficient deterrent to drug use in commercial aviation. The FAA believes that it is appropriate and necessary to provide minimum requirements, applicable to employers and employees, that will achieve a drug-free commercial aviation environment.

Preemption of State and Local Laws. ATA, Federal Express, and RAA recommend that the FAA insert a regulatory provision that explicitly proscribes State or local legislation that would interfere with the consistent and uniform testing and rehabilitation opportunities for aviation employees mandated by this final rule.

FAA Response. The FAA agrees with the commenters who are critically concerned about conflicting State and local laws that would interfere with an effective comprehensive anti-drug program. The FAA believes that inconsistent laws or regulations applicable to the subject matter of this final rule will frustrate the intent of the rule and severely hamper implementation and administration of an anti-drug program. Therefore, the FAA has included a preemption provision in the final rule that is intended to enhance the efficiency and effectiveness of the requirements of the final rule.

The FAA's issuance of the final rule preempts any State or local law, rule regulation, order, or standard that covers testing of commercial aviation employees for the presence of drugs or drug metabolites. The new rule does not preempt any State law that imposes sanctions for the violation of a provision of a State criminal code related to reckless conduct leading to actual loss of life, injury or damage to property, whether such provisions apply specifically to aviation employees or generally to the public. The scope of the authority preempted by this final rule and the authority reserved to the States is essentially identical to the provision in the regulations issued by the Federal Railroad Administration of the Department of Transportation (49 CFR 219.13).

Waivers or Exemptions. ATA believes that waivers and modifications of an employer's drug testing program should be granted if exceptional circumstances warrant the waiver or modification and if an equivalent level of safety can be maintained under the terms of the waiver. American Airlines advocates that all carriers should be subject to identical requirements and waivers should not be granted.

FAA Response. The final rule sets forth minimum requirements that must be included in an employer's anti-drug program. However, the rule generally does not set forth detailed program administration requirements in most areas of the program. Also, an employer is not prohibited from establishing an anti-drug program that goes beyond the minimum requirements promulgated by this rule. As a result of the FAA approval process of an employer's anti-drug program, a certain amount of discretion and flexibility is retained for an employer's administration of its anti-drug program.

On this basis, the FAA has determined that any requests for exemption from a requirement of this rule should be handled in the same manner as requests for exemptions of other FAA regulations under Part 11 of the Federal Aviation Regulations. The FAA believes that a case-by-case determination will be necessary to ensure that any exemptions from the requirements of this final rule are in the public interest.

Contractors

The FAA has revised the proposed rule as it applies to contractors whose employees perform sensitive safety- or security-related service for aviation entities subject to the rule. Under the proposed rule, contractors whose employees perform covered service to aviation entities were authorized to submit their own plans to the FAA to implement directly an anti-drug program. These contractor employees also could have been included in the anti-drug program of the aviation entity for whom they were providing services. However, for the final rule, the FAA concluded that all persons performing sensitive safety- or security-related functions should be under the plan of the aviation entity for whom they provide the services.

The FAA believes that administration of the anti-drug program would be vastly more efficient—for aviation entities directly subject to the rule, contractors, and the FAA—by reducing the proliferation of different plans submitted by a significant number of contractors who provide covered service to the same aviation entity. In addition, the FAA believes that limiting the submission of plans to those aviation entities directly subject to the rule will provide a more consistent approach to administration of industry anti-drug programs and will minimize the difficulties of ensuring compliance with the final rule. As noted earlier in this preamble, the final rule provides that an employee who is subject to the requirements of any employer's FAA-approved anti-drug program may provide sensitive safety- or security-related services to any other employer. Therefore, so long as a contractor employee is covered by one aviation entity's anti-drug program, the employee would be able to provide services for any employer subject to the rule. Thus, a contactor whose employees provide services to multiple aviation entities would not be subject to any greater burden than those entities directly subject to the rule.

Additional Issues

Alcohol. The NTSB, AMA, Henson Airlines, and other individual commenters suggest that the FAA include alcohol as a tested substance in any required testing program.

The FAA expressly excluded the issue of alcohol testing from this rulemaking for a variety of reasons stated in the NPRM; therefore, these comments are beyond the scope of this rulemaking. Excluding alcohol testing from this rulemaking should not be construed to mean that the FAA is ignoring the fact that alcohol may be a substance of widespread abuse in the aviation industry. As stated in the NPRW, the FAA will continue to review the effectiveness of regulations dealing with the issue of alcohol use and abuse in aviation and may consider additional rulemaking action in the future. In addition, employers are not prohibited from initiating alcohol testing programs for their employees if not otherwise prohibited from testing for alcohol.

The Department of Transportation will include a provision in the DOT precedures (49 CFR Part 40) that will enable an employer to test for the presence of alcohol in an employee's system. Pursuant to those procedures, the employer could include testing for alcohol in testing protocols only pursuant to FAA approval if the testing is authorized under the FAA regulations.

Testing for additional drugs. The NTSB recommends that the FAA expand the list of prohibited drugs to include those substances listed in Schedule III and Schedule IV of the Controlled Substances Act. The NTSB also

recommends that the FAA develop a medical exemption process to provide for a pilot's legitimate medical use of these substances. ATA recommends that mind-altering prescription drugs, such as barbiturates, benzodiazepines, methadone, and methaqualone, also be listed as prohibited drugs in any drug testing program. ERA Aviation supports this recommendation and suggests that propoxyphene, quaaludes, and codeine be added to the list of drugs that would be screened.

The five drugs specifically listed in Appendix I to Part 121 are the five drugs for which DHHS has set cutoff levels and testing protocols in its mandatory guidelines (53 FR 11970, 11973–11974; April 11, 1988). The Department of Transportation intends to adopt these cutoff levels and testing protocols verbatim in its procedures applicable to the aviation industry (49 CFR Part 40). An employer is required to test for marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, and metabolites of those drugs because of the incidence and prevalence of use of these drugs in the general population and based on the experience of the Department of Defense and the Department of Transportation in their drug testing programs. Because analysis of additional, less-frequently used drugs could result in substantial additional expense, the FAA believes that requiring an employer to test for these five drugs is appropriate at this time. Any testing for other drugs, beyond the specified drugs listed in the appendix, is authorized only in the context of testing based on reasonable cause. Only if, in that context, the FAA authorizes testing for additional Drug X under 49 CFR Part 40 (an approval which would be granted only after consultation with the Department of Health and Human Services, and only on the basis of an HHS-established testing protocol and positive threshhold) may the employer also test the sample for that drug.

Absent such an approval, if the employer wants to test, in addition, for Drug Y, the employer must obtain a second sample from the employee. The obtaining of this second sample is not under the authority of the DOT regulation. The employer must base its request for the second sample on whatever other legal authority is available, since the employer cannot rely on the DOT regulation as the basis for the request.

The FAA is aware that listing the drugs that will be analyzed as part of a drug testing program may result in individuals using alternative drugs that are not analyzed pursuant to the final rule. As part of the agency's review and anlaysis of the industry's anti-drug programs, the FAA encourages the aviation industry to notify the FAA if different drugs are being used in the aviation community. As part of the FAA's oversight of the comprehensive anti-drug program, the FAA will seek statistical information, to the extent any information is available, from the National Institute on Drug Abuse (NIDA), other Federal agencies, and any other source to determine if additional, different drugs should be included in the comprehensive anti-drug program to ensure aviation safety.

Testing of other individuals. Several commenters, including the AMA, NTSB, ATA, and ALPA, suggest that the FAA expand the list of individuals to be tested, or defined as sensitive safety- and security-related employees, under the regulations. Several entities recommended that the FAA require testing of all individuals certificated by the FAA, including general aviation pilots. ALPA, ATA, and Martin Aviation recommend that any employee who performs a function in or around an aircraft (deicing, weight and balance computation, fueling, taxiing or towing aircraft, weather forecasting, baggage handlers, and cargo personnel) and supervisors of covered employees be subject to testing because these individuals affect aviation safety. Federal Express states that it would include ramp agents responsible for weight and balance of an aircraft, deicers, and fuelers in a drug testing program although it does not employ these individuals. ALPA and American Airlines also urge the FAA to include corporate officers in any testing program. The Director of the Santa Maria Public Airport District suggests that the FAA amend Part 107, Part 108, and Part 139 to ensure that employees of certificated airport operators are included in the anti-drug program. Tramco, Inc. suggests that Part 145 be amended so that repair station employers are required to comply with the anti-drug requirements in the same manner as Part 121 certificate holders. Tramco also suggests that aircraft manufacturers be required to implement an anti-drug program.

After review of these various comments, the FAA has retained the basic regulatory list of functions proposed in the NPRM. However, the FAA has eliminated parachute rigging duties from the list of functions contained in Appendix I to Part 121. The activities performed by parachute riggers do not have a direct and significant impact on the safe operation of civil aircraft as do the other sensitive safety- and security-related functions listed in the appendix.

The FAA has not revised the rule to require drug testing of supervisory or managerial employees. However, the FAA notes that under the proposed rule and the final rule, supervisory or managerial employees who perform sensitive safety- or security-related functions for an employer are not permitted to perform these functions, either on a permanent or temporary basis, unless those employees are subject to the requirements of the employer's anti-drug program. Also, repair station employers and employees are subject to the requirements of an anti-drug program if these individuals provide contract service to an employer who is subject to the requirements of this final rule. Under the terms of the rule, a Part 121 certificate holder, a Part 135 certificate holder, or an entity or individual covered by the rule because they operate for compensation or hire may only use the services of persons who are subject to the requirements of an FAA-approved program. Therefore, although Part 145 was not amended, repair station employers and employees are included to the extent that they provide contract service or repair aircraft operated by an employer subject to the final rule.

The comprehensive anti-drug programs, proposed by the operating administrations within the Department of Transportation, focus on drug testing for various commercial transportation activities. The scope and direction of the FAA's comprehensive anti-drug program is consistent with the present Department-wide policy.

The FAA encourages the public and members of the aviation industry to submit information to the FAA (directed to the person listed in the heading "**FOR FURTHER INFORMATION CONTACT**") that may warrant inclusion of different drugs in a drug testing program or additional categories of employees to be tested. If it is necessary to preserve confidentiality of any information submitted to the FAA, the FAA encourages aviation industry representatives or trade associations to transmit the information to the FAA. The FAA will monitor the date gathered pursuant to this program, and will continue to review other information regarding drug use in private and commercial aviation, to determine if further rulemaking action in this area is required or necessary. The FAA may revise other sections of the Federal

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Aviation Regulations, to broaden the applicability and scope of the comprehensive anti-drug program, if further study warrants this action. The final rule does not prohibit an employer from testing any other employee or group of employees, if the employer is not otherwise prohibited, that the employer determines should be tested for drugs to provide safety or efficiency in the workplace.

Conflict with foreign laws or policies. We have determined not to make the rule applicable in any situation where compliance would violate the domestic laws or policies of another country. In addition, because of the potential confusion that may exist involving application of this rule in situations where compliance could violate foreign laws or policies, we have determined not to make the rule applicable, until January 1, 1990, in any situation where a foreign government contends that compliance with our rule raises questions of compatibility with its domestic laws or policies. During the next year, the Department of Transportation and other U.S. government officials will be working closely with representatives of foreign governments with the goal of reaching a permanent resolution to any conflict between our rule and foreign laws and policies. The U.S. and Canadian Governments have already established a bilateral working group in an attempt to achieve this objective. We believe that considerable progress has already been made, and further meetings will be held in the near future. While we believe that this can be a model for addressing the concerns of other countries, it is not intended to be the exclusive means. The Administrator may delay the effective date further under this section, if such delay is necessary to permit consultation with any foreign governments to be successfully completed.

It is the agency's intention to issue a notice no later than December 1, 1989, that would make any necessary amendments to the rule as a result of discussions with foreign governments. Shortly after their issuance, any such notices will be published in the **Federal Register**. While we recognize that any decision not to apply our rule to foreign citizens has the potential to create some anomalous conditions in competitive situations, it is the intention of the U.S. Government to make every effort to resolve potential conflicts with foreign governments in a manner that accommodates their concerns while ensuring the necessary level of safety by those we regulate.

Statutory authority. One commenter questions the authority of the FAA to promulgate regulations that proscribe recreational drug use by any airman during his or her free time that does not impair the airman's performance on the job. As stated by the commenter, the FAA's mandate is to ensure the safety of civil aviation and not to enforce criminal drug enforcement laws.

The FAA clearly has the statutory authority to mandate continuing eligibility requirements and minimum physical and medical standards to promote and develop safety in air commerce and civil aeronautics. For example, the FAA has clear authority to prohibit off-duty consumption of alcohol prior to aircraft operation to ensure that a crewmember is not impaired by alcohol while acting or attempting to act as a crewmember of a civil aircraft. Similarly, in the FAA's opinion, this broad authority includes the authority and ability to prohibit the presence of any drug or drug metabolite in an individual's system that may adversely affect aviation safety.

As noted in the NPRM, it often is difficult to detect the subtle and varying degrees of drug impairment to motor skills and judgment that are critical to aircraft operation or performance of sensitive safety- and security-related duties. Certain drugs or drug metabolites remain in an individual's system long after use and may impair an individual's subsequent performance. Indeed, the Vice President of a national firm providing consultation services on drug abuse prevention to American Airlines, with significant experience in identification and treatment of drug users, states that marijuana use disrupts recall and short-term memory and that there is serious impairment of skills appropriate to industrial operations for 10 to 12 hours after smoking a single marijuana cigarette. The FAA believes that it is clearly in the public interest and within the FAA's statutory authority to ensure that any "hangover effect" associated with recreational use of illegal drugs does not interfere with an individual's performance and, thus, jeopardize air safety.

Summary of Significant Changes From the Proposed Rule

The FAA amended several sections of the proposed rule in response to comments received from the public on the issues and in response to questions raised in the NPRM. Any changes that significantly altered the requirements of the anti-drug program are discussed previously and are summarized in this section.

The definition of an "employee" in Appendix I to Part 121 was amended to make it clear that employees of an entity that holds both a Part 121 certificate and a Part 135 certificate are to be considered employees of the Part 121 certificate holder. This will ensure that all employees of a single entity, regardless of the type of operating certificate held by the employer, are subject to the same requirements and time schedules for the purposes of an anti-drug program.

The definition of "employer" also was amended. This section was amended to make it clear that an employee of one company that has implemented an anti-drug program may perform sensitive safety- or security-related functions for another employer. For example, a mechanic employed by American Airlines, who is covered by American's anti-drug program, is permitted to perform maintenance duties or repair work on an aircraft owned by United Airlines.

The Department of Transportation has determined that certain modifications of the DHHS guidelines, proposed in the NPRM, are appropriate for this rulemaking. The FAA has referenced a DOT interim final rule (49 CFR Part 40), entitled "Procedures for Transportation Workplace Drug Testing Programs," in this final rule.

The FAA did not revise significantly the section of the appendix regarding the substances for which testing must be conducted. However, the appendix provides that testing for drugs listed in Schedule I and Schedule II of the Controlled Substances Act is permitted only during testing based on reasonable cause. In addition, the testing must be conducted in accordance with the DOT "Procedures for Transportation Workplace Drug Testing Programs" and pursuant to the employer's approved anti-drug program.

The FAA clarified the preemployment testing provision to make it clear that an employer may use a person to perform a sensitive safety- or security-related function who passed a previous preemployment drug test for an employer and has continuously been subject to testing under an approved anti-drug program even if the individual is not currently employed by that employer. The rule prohibits an employer from "hiring" any person after failing a preemployment drug test. The rule does not require an employer to test every applicant but only to test an applicant before he or she is actually hired by the employer.

The periodic testing provision was revised to make it clear that an employee is only required to provide one specimen for testing during the employee's first periodic medical examination in the first calendar year of implementation of the final rule. Also, this section was revised to enable an employer to discontinue periodic drug testing of employees as part of a medical examination after the first full calendar year of implementation of the employer's anti-drug program. After the first year of implementation, the employer's random testing program should be fully implemented and periodic testing as part of a medical examination may be eliminated.

The FAA revised the random testing provision of the final rule in response to the comments and with reference to the plans of the random testing program started by the Department of Transportation. The final rule provides for phased implementation of unannounced testing based on random selection beginning with an annualized rate equal to 25 percent of covered employees during the first 12 months of program implementation. Thereafter, the employer must achieve and maintain an annualized testing rate equal to 50 percent of the covered employees. The FAA also added a provision that would enable an employer to randomly select employees for unannounced testing based on a method, other than the methods originally proposed in the NPRM, that has been approved by the FAA.

The FAA has amended the postaccident testing provision. The revised section requires an employer to ensure that postaccident testing is conducted as soon as possible but not later than 32 hours after an accident.

As discussed previously, the FAA has expanded the bases upon which an employer may substantiate the determination to test an employee based on reasonable cause. In order to address concerns expressed in the comments, the FAA has included a provision in this section that allows a small aviation employer to test an employee based on a determination of reasonable cause made by only one supervisor trained in detection of drug use symptoms. As proposed in the NPRM, an employer may test an employee performing a sensitive safety- or security-related function for any Schedule I or Schedule II drug, if the employer conducts the testing based on reasonable cause in a manner consistent with the employer's approved anti-drug program and the DOT procedures (49 CFR Part 40).

In response to comments specifically solicited in the NPRM, the FAA has included a provision for unannounced testing after an employee's return to duty. Employees who failed a drug test or who refused to submit to a drug test and who have not received a recommendation to return to duty from an MRO must be tested in accordance with the return-to-duty provision of the final rule. This section requires an employer to implement a reasonable program of unannounced testing, for not longer than 60 months, after an individual has been hired or an employee has returned to duty to perform a sensitive safety- or security-related function.

The FAA has expanded the role of the medical review officer (MRO). For example, the MRO will review rehabilitation programs to determine if an employee may return to duty or an individual may be hired to perform a sensitive safety- or security-related function for an employer. The MRO also is the final arbiter in the case of disputes regarding a schedule for unannounced testing after an employee's return to duty. The FAA has added several provisions to this section to describe the duties of an MRO and the involvement of the Federal Air Surgeon where an individual who holds a medical certificate tests positive for the presence of a drug or drug metabolite.

The FAA has added a provision that protects the confidentiality of employee drug testing results and any rehabilitation information. This information may be released by an employer only with the written consent of the employee. However, the FAA may examine test result and rehabilitation records and the information may be released to the NTSB as part of an accident investigation or to the FAA upon request.

For various reasons discussed previously and in response to many comments, the FAA determined that opportunities for rehabilitation and job security for employees will not be mandated by this final rule. Rehabilitation opportunities and job security issues may be considered by an employer and should be determined by employers and employees in the specific employment context.

The FAA has tailored the schedule proposed in the NPRM for submitting an anti-drug program to the FAA and implementation of an anti-drug program in response to comments received in response to the NPRM. These changes have been fully discussed previously. In essence, the large aviation companies are required to comply with the schedules proposed in the NPRM. Smaller aviation companies have additional time to develop and implement an interim anti-drug program and slightly broader timeframes to develop and submit a random testing program. The smallest aviation entities covered by the rule initially have additional time to develop and implement testing programs for their employees.

The FAA also has included a section in Appendix I to Part 121 to provide for the preemptive effect of these regulations regarding any State or local law covering the subject matter of drug testing of commercial aviation employees. However, issuance of the final rule does not preempt State criminal laws that impose sanctions for reckless conduct leading to death, injury, or property damage.

Comments on the Cost of the Anti-Drug Program

Most small entities object to the anti-drug program based on the financial and administrative burden that these entities believe would result from implementation of the rule as proposed. Executive Air Fleet (EAF) is a Part 135 certificate holder with 200 employees who would be covered by the proposed rules. Because drug testing is widespread in other industries, EAF states that the aviation industry should "move ahead" with the proposed rules. However, EAF states that the potential costs of an anti-drug program could be burdensome even to an operation the size of EAF. EAF estimates that drug testing as proposed in the NPRM would cost $25,000 annually to test its 200 covered employees. EAP services would cost up to $26 per employee. EAF believes that EAP services would have to be available to the total employee population, not only sensitive safety- or security-related employees, because it is a benefit offered to employees. Thus, EAF estimates that EAP services for a business employing 400 individuals would cost $10,400 annually.

Metro Air is a Part 135 certificate holder using two single-engine aircraft, two light twin-engine aircraft, and three helicopters. Metro Air also is a flight school operator using 15 aircraft. Metro Air employs six full-time pilots and four to five part-time pilots. Metro Air states that the proposed rule is not financially feasible for small commercial operators because the company is not in a position to retain or offer rehabilitation to an employee who tests positive for drugs and the cost of hiring an MRO to interpret test results would be prohibitive. Metro Air believes that the FAA should conduct all drug testing of employees and administer any rehabilitation offered to an employee.

Ryder Systems, Inc. employs over 40,000 individuals who perform a variety

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of jobs in the transportation industry. Ryder Systems implemented an EAP in 1984. Ryder Systems estimates that 40 percent of the employees enrolled in the EAP due to controlled substance abuse problems require 28- to 30-day inpatient treatment that costs between $10,000 to $20,000. The average cost for controlled substance rehabilitation per employee is $3,000. On this basis, Ryder Systems believes that the FAA should only require that an employer establish an EAP and offer EAP services to an employee but should not specify the details of an EAP or rehabilitation program. However, Ryder Systems believes that the FAA should preserve the employer's discretion to determine EAP eligibility standards for employees, treatment of repeat offenders, and the conditions for allowing an employee to return to work.

American Airlines estimates that rehabilitation and treatment of an employee costs $8,000. For this reason and to ensure that the quality of treatment will lead to a reasonable prognosis for recovery, American Airlines believes that employers and contractors should be financially responsible for rehabilitation. Conversely, RAA and several small aviation entities, including Martin Aviation, Inc., believe that the FAA should not force airlines to incur the cost of employee rehabilitation due to the economic impact of the requirement on the regional airline industry.

RAA states that the average cost of a single random test would be $55 and that retesting for verification of positive results could cost up to $80 per test. On this basis, RAA estimates that the cost of random testing at a rate of 125 percent annually for regional airline pilots only will approach $500,000 annually. Due to the high cost of testing at a rate of 125 percent and the fact that the proposed rules would require testing of other aviation safety-related personnel in addition to pilots, RAA suggests that a random sampling rate of 50 percent would be appropriate.

Suburban Airlines employs 211 employees who would be covered by the proposed program. Suburban estimates that the FAA's program would cost over $28,000 annually at present employment levels. Based on Suburban's experience, 5 percent of intial tests indicate positive results for the presence of drugs and must be confirmed to verify the initial test results. Tramco, Inc., a certificated repair station, estimates that compliance with the anti-drug program will cost $24,000 annually plus counseling and lost time costs.

ALPA believes that the FAA incorrectly estimated the cost of the proposed anti-drug program and, therefore, the drug testing program is not justified by any reasonable cost-benefit analysis. ALPA states that the laboratory cost per test, assuming a random testing rate of 125 percent and a negotiated cost similar to the cost contained in the economic analysis, is merely a fraction of the total costs associated with a drug testing program. ALPA maintains that a drug testing program could cost at least $280 million per year. ALPA's estimate of cost is based on substantial administrative and personnel expenses, transportation of employees to a collection site, employee compensation during collection of a specimen, and compensation of employees who replace employees being tested during revenue flights.

A commenter speaking as national litigation counsel for AOPA and on behalf of the California Aviation Council and the Orange County Aviation Association believes that the FAA understated the costs and overgeneralized the benefits of the proposed rule contained in the economic summary of the NPRM. This commenter also believes that the FAA failed to consider more effective, practical, and less intrusive programs to deal with any drug problem that might exist in the aviation industry. The commenter states that the economic analysis fails to consider the potentially destructive economic effect of the proposed rules on small, commercial operators. Therefore, the commenter states that the FAA may not issue a final rule because the FAA has failed to meet the criteria of Executive Order 12291.

California Aeromedical Rescue and Evacuation, Inc. (CARE) does not believe that the proposed rules are reasonable due to the lack of evidence of a drug problem in aviation. CARE comments that the cost of maintaining a drug testing program, whether or not that program includes random testing, is significant. CARE employs 10 pilots, 4 mechanics, and approximately 45 flight nurses and flight medics. CARE estimates that the cost per test is $45 and, therefore, the fiscal impact on its operations will be between $8,000 to $12,000 per year. CARE believes that its scarce financial resources should be used for training, equipment, and maintenance. CARE states that preemployment and probable cause testing are wise and prudent measures. CARE predicts that including other types of testing will cause some of its employees to leave the company due to issues related to the constitutionality of unannounced testing without particularized suspicion of drug use. CARE states that the costs of litigation and training for new employees should be directed to other more useful avenues.

The commenters stress that while the costs developed by the FAA may be appropriate for larger companies, who are able to take advantage of "economies of scale," small aviation companies would incur significantly higher costs.

Two commenters who submitted a joint comment on the economic analysis contained in the NPRM dispute the benefits of the proposals in the NPRM, particularly with the FAA's estimate of the possible detection rate. These commenters present statistical analyses, using the data in the NPRM on general aviation pilots, to demonstrate, in their opinion, a considerably reduced detection rate and, therefore, considerably reduced benefits.

FAA Response. The FAA agrees that costs of screening and confirmation tests may reflect the bulk purchasing power of laboratory service for a large number of specimens and, therefore, may be applicable only to large aviation companies. However, the FAA lacks clear and definitive data regarding the extent to which "economies of scale" will affect or reduce costs. Although some commenters believe that the FAA failed to consider costs associated with administration of the anti-drug program, the initial Regulatory Evaluation and the FAA's total costs stated in the NPRM included these administrative costs.

The figures in the NPRM were based on average industry costs available to the FAA at the time of the NPRM. The FAA believes that the costs contained in the NPRM may closely equate to actual costs because the vast majority of personnel subject to the testing requirements of the proposed rule, by a ratio of 10 employees of large companies to one employee of small companies, are employees of large companies. Moreover, the FAA notes that small Part 135 certificate holders and other small aviation companies often are associated with larger companies. The FAA believes that small aviation operators could participate with large companies, much as these small companies contract for maintenance, reservations services, gate agents of larger companies, to conduct the required tests pursuant to the rules and, thus, take advantage of the economies of scale.

Nevertheless, the FAA increased the estimate of drug testing costs in an effort to respond to the concerns expressed by the commenters and to reflect the potential testing costs incurred by small aviation operators. For the purposes of the Regulatory Impact Analysis of the final rule, the cost estimate of screening tests was increased to $25.00 per test; the cost estimate of confirmation tests was increased to $35.00 per test; and the administrative costs were increased to $35.00 per test.

The FAA recognizes that broad rehabilitation programs would be very costly and could be cost-prohibitive for small aviation companies. For a variety of reasons discussed previously, the final rule does not require an employer to offer an opportunity for rehabilitation to employees and the FAA has not mandated a minimum amount of time that an employer must hold a position open while an employee is prohibited from performing sensitive safety- or security-related functions.

In estimating the benefits that are expected to accrue as a result of a comprehensive anti-drug program, the FAA noted its lack of specific, available data in the NPRM. The FAA disagrees with the commenters who dispute the analysis of benefits provided by the FAA in the NPRM and notes that a comparison of the benefits determined by these commenters with the estimated costs of the rule would still result in a cost beneficial rule. No evidence is available to demonstrate that sole reliance on the data regarding deceased general aviation pilots is representative of the population of employees who are subject to testing under the provisions of the final rule.

Infrequent and sporadic data is available in the commercial aviation sector. The FAA can not rely solely on information deduced from the two commercial aviation accidents discussed previously. The information does not reveal any significant patterns that would assist the FAA's estimates of costs and benefits of the proposals and, in any event, this information is not generally representative of personnel who are not pilots but who are subject to the requirements of the rule. For these reasons, the FAA believes that it is appropriate to use the national NIDA study information to estimate the potential costs of the rule because it more accurately reflects the broad population of employees who would be tested pursuant to a comprehensive drug testing program.

Economic Summary

In accordance with the requirements of Executive Order 12291, the FAA reviewed the cost impact and benefits of this final rule. Cost factors were obtained from information in the public docket including comments received during the FAA's public hearings. Additional data were furnished by air carrier trade associations, public institutions, and major chemical and drug testing laboratories. This rulemaking does not meet the criteria of a "major" rule under Executive Order 12291 because it is not likely to have an annual effect on the economy of $100 million or more. A summary of the FAA's estimates of the costs and benefits is provided below. However, because the rulemaking is a costly undertaking, the FAA considers the final rule to be a "major" rule under Executive Order 12291. For this reason, the FAA prepared, and placed in the docket, a Regulatory Impact Analysis of the final rule. In addition, because the rule involves issues of substantial interest to the public, the FAA determined that the rulemaking is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

Costs. The FAA estimated that the requirements of the final rule, over the 10-year period from 1990 to 1999, will cost approximately $240.3 million in 1987 dollars (an average of $24.0 million per year) or approximately $135.2 million discounted over that 10-year period. The discounted cost includes (rounded to the nearest million) $97.1 million for random testing; $6.2 million for periodic testing, postaccident testing, testing based on reasonable cause, and return-to-duty testing; $6.6 million for preemployment testing; $10.6 million for blind samples submitted to laboratories; $10.3 million for EAP education and training cost; and $2.4 million for costs associated with preparation and submission of an employer's anti-drug program.

Costs of postaccident testing, testing based on reasonable cause, and return-to-duty testing are included as part of periodic testing costs. The FAA used one-half of one percent of the estimated population tested annually as the number that will be tested under one of these three circumstances. The analysis of these costs is set forth in the full Regulatory Impact Analysis (Exhibit A) included in the public docket.

The final rule will affect 149 entities that hold Part 121 certificates, 3,614 entities that hold Part 135 certificates providing scheduled and on-demand service, and contractors who provide services to those certificate holders. The rule also will affect an undetermined number of entities engaged in operations listed in § 135.1(b) for compensation or hire. The FAA has been unable to determine the exact number of these organizations due to the highly diversified and multipurpose nature of their operations. For purposes of analyzing the cost impact of the final rule on these entities, the FAA estimated that approximately 1,500 entities, the same number as repair stations, are engaged in operations listed in § 135.1(b) for compensation or hire. Based on these estimates, the FAA estimated that 538,000 persons will be subject to drug testing in 1991 pursuant to the requirements of the final rule.

The FAA estimated that the cost of an initial screening test for the presence of drugs or drug metabolites will be $25 per test. The FAA expects that 12.5 percent of initial screening tests will require confirmation testing in accordance with the guidelines and standards contained in Appendix I to Part 121. Of the total initial screening tests, 7.5 percent are expected to be confirmed as true positives; 5.0 percent are expected to result in false positive test results after confirmation. The remainder are not expected to be confirmed as positive either because the specimen failed to meet the minimum threshold to be scientifically considered as positive, or because the specimen did not show the presence of drugs or drug metabolites. Confirmation tests are estimated to cost $35 per test. The FAA notes that an employer can realize substantial savings by contracting with a drug testing laboratory for a fixed price that includes the cost of initial screening tests and confirmation tests rather than paying for these tests separately. For example, the Coast Guard currently pays a single, fixed price of $21 for screening tests and any resulting confirmation tests under a single contract with a drug testing laboratory.

The FAA estimated that a screening test will require 15 minutes of a person's time to provide information for chain-of-custody forms and to provide a urine sample for drug testing. Thus, the FAA included a factor equal to 25 percent of an average, fully allocated, hourly wage for each occupational group covered by the final rule. The FAA also assumed that affected persons will provide urine samples for testing while on duty. The FAA included $35 per test as an administrative cost to cover, among other things, collection of specimens, reporting and recordkeeping, and chain-of-custody procedure costs. The FAA recognizes that these costs can vary significantly depending on a number of variables. For example, specimens may be collected in a medical setting (i.e., in a hospital or a clinic, in the presence of medical doctors, nurses, medical technicians). Collection of specimens in a medical setting is not required by this rule. Less expensive settings and nonmedical personnel trained for specimen collection may be used by the

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aviation industry. Collection sites may be either centrally located or dispersed throughout remote geographical locations. DOT's drug testing program and the FAA's periodic drug testing program illustrate the cost variations associated with specimen collection. DOT uses a contractor to collect specimens at various, dispersed locations throughout the country. DOT pays an average of $123 for each specimen collected. Specimens collected as part of the FAA periodic testing program are collected by aviation medical examiners. Collection costs for periodic tests range from $10 to $45 per specimen. The FAA considered these costs when estimating the administrative costs of the final rule. After consideration of the cost variations, the estimated administrative costs are representative of the costs expected in the aviation industry. The FAA increased the administrative costs contained in the NPRM on the basis of information submitted by commenters. The FAA believes that the aviation industry will find the most economical method of sample collection and will do so at costs that most closely mirror the costs charged to the FAA by aviation medical examiners for collection of specimens for periodic testing.

In the case of most postaccident testing, testing based on reasonable cause, and testing after return to duty triggered by refusal to submit to a test or failure of a previous drug test, the FAA assumed that collection costs for these tests are the same as the collection costs for random tests. However, the FAA assumed that the cost associated with collection of a small percentage of postaccident specimens would be $100 per test. The FAA used this higher figure to address the probability that postaccident specimens may be collected at a remote accident site or a location other than a site that the employer routinely collects specimens. Conversely, specimens collected for testing based on reasonable cause or testing after return to duty could be collected in a central location or at the same location where other specimens are collected pursuant to the requirements of the final rule.

Benefits. The FAA believes that three major benefits will result from the promulgation of the final rule. First, benefits will accrue from the prevention of potential injuries or fatalities and property losses due to accidents attributed to neglect or error on the part of employees performing sensitive safety- or security-related functions whose motor skills or judgment may be impaired by drugs. Second, benefits will accrue based on the potential reduction in employee absences from work, lost productivity, reduced medical and insurance costs due to on-the-job accidents, and improved general safety in the workplace. Third, broad benefits in the development of air commerce will accrue from projected diminished drug use by commercial aviation employees, thereby increasing public confidence in the commercial aviation transporation industry.

A review of the commerical aviation safety record shows that drug use may have been a cause or factor in only two recent aviation accidents. One accident was in 1983 and involved an all-cargo operation. The second accident was in 1988 and involved a passenger operation. Both accidents have been described previously in this rulemaking document. Drug use has not been established as a definitive causal factor of either accident. In the absence of readily-available statistical data depicting the extent of drug use by employees in commercial aviation and in light of the pernicious effects of drug use, the FAA does not consider the existing safety record to be an exclusive and valid indicator of the threat to aviation safety posed by aviation employee drug use. However, allegations of drug use by the pilot and copilot of Continental Air Express Flight 2286 that crashed on January 19, 1988, killing 9 people, reveal the significant and real potential for fatal aircraft accidents that may be related to the use of drugs in commercial aviation. In light of data regarding drug use by mechanics and repairmen submitted in reponse to the ANPRM, the FAA also is concerned about the potential for aviation accidents attributable to drug use by commercial aviation maintenance personnel.

The FAA estimates that $84.3 million in discounted benefits would result from promulgation of the final rule if one accident attributed to drug-impaired performance by an individual who performs a sensitive safety- or security-related function in commercial aviation, involving a narrow-body, three-engine, commercial aircraft carrying 133 passengers and 5 crewmembers, is prevented during the 10-year period from 1990 to 1999 (Exhibit E). Although not claimed as a benefit in this Regulatory Impact Analysis, the benefits associated with the prevention of a single accident, during the 10-year period from 1990 to 1999, would be considerably more if the accident involved a 4-engine, wide-body aircraft carrying 289 passengers and 19 crewmembers. In this event, discounted benefits would total $219.9 million.

The FAA also attempted to estimate benefits of the final rule, other than those benefits that may result from the prevention of aircraft accidents, associated with diminished drug use by commercial aviation personnel or any drug-deterrent effect that would result from promulgation of the final rule.

These estimated benefits consist of improved employee productivity as a result of drug use deterrence. A report released in 1987 by the National Institute on Drug Abuse (NIDA), entitled "Strategic Planning for Workplace Drug Abuse Programs," reveals that drug and alcohol abusers are involved in an additional 3.6 more accidents than nonabusers; file 1.5 additional workers' compensation claims than nonabusers; file 2.5 times more often for sick leave of 8 or more consecutive days than nonabusers; and incur 3 times the amount of normal medical costs than nonabusers.

In the absence of pertinent data, the FAA assumed that the rate of drug use by the 538,000 covered aviation personnel is approximately the same as the rate of drug use in the general population (e.g., 10 percent). The FAA also assumed that the productivity of employees who use drugs is 95 percent of the productivity of employees who do not use drugs.

In order to be conservative in estimating the costs of the final rule, the FAA assumed that 7.5 percent of the covered aviation personnel would produce test results that are confirmed positive for prohibited drug use. However, this estimate is premised on testing that produces optimum detection rates and the fact that drug users may continue to use drugs despite implementation of a comprehensive drug testing program that includes unannounced testing based on random selection. Realistically, the FAA expects that testing pursuant to the final rule will not achieve optimum detection rates and that some drug users will cease to use drugs rather than face the consequences of being detected by testing under the final rule.

The FAA hypothesized that 1.0 percent of the affected aviation population will stop using drugs voluntarily in the face of a comprehensive drug testing program. These individuals are expected to continue to perform sensitive safety- or security-related functions without the presence of drugs or drug metabolites in their systems. As noted above, the FAA assumed that drug users are 95 percent effective at their jobs compared to employees who do not use drugs. Thus, the aviation industry would realize a 5 percent on-the-job productivity increase for each individual who ceases to use drugs. Therefore, the FAA estimated that employee productivity gains of $97.3 million, or $54.3 million discounted over the 10-year period from 1990 to 1999, will accrue to the aviation industry based on the reduction of illegal drug use and increased employee productivity (see Exhibit G).

Benefit/Cost Comparison. The total cost of compliance with the requirements of the final rule is estimated to be $240.3 million in 1987 dollars and $135.2 million, at a present worth discount rate of 10 percent, over the projected 10-year period form 1990 to 1999. The FAA has been unable to quantitatively estimate the accident prevention effectiveness of the final rule. Nevertheless, the FAA believes that drug use, unless stemmed, will continue to pose a threat to aviation safety. The FAA estimates that preventing one accident involving an average size, commercial, passenger aircraft during the 10-year period from 1990 to 1999 would result in discounted benefits of $84.3 million. Likewise, discounted benefits ensuing from increased employee productivity are estimated to be $54.3 million. Thus, total discounted benefits expected to result from promulgation of the final rule amount to $138.6 million. The benefit to cost ratio of the final rule is 1.03.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small businesses. In consideration of the cost information discussed previously and included in the full Regulatory Impact Analysis, the FAA certifies that the final rule may have a significant negative economic impact on a substantial number of small entities. In an effort to relieve the burden on small entities, the FAA modified the requirements of the final rule and provided alternative schedules and implementation periods directed solely at small aviation entities to provide some measure of relief from the costs associated with the rule. The FAA anticipates that these modifications will reduce burdens associated with the requirements of the final rule on small entities without adversely affecting aviation safety.

International Trade Impact Statement

The final rule will affect only domestic operators and, therefore, will have no impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States. It should be noted that, unless compliance with this final rule would violate the domestic laws of policies of a foreign country or a foreign government contends that application of the rule raises questions of compatibility with foreign laws or policies, individuals employed at foreign repair stations under contract to U.S. certificate holders would not be able to perform maintenance or preventive maintenance work on U.S.-registered aircraft unless they participate in an anti-drug program. Thus, foreign repair stations may be affected economically. Likewise, this program also will result in an expense to U.S. certificate holders operating overseas because these entities will be required to establish anti-drug programs, which will not be required of their foreign competitors. The FAA is unable to estimate the possible competitive effect of these costs.

Paperwork Reduction Act Approval

In order to ensure compliance and effectiveness of the final rule, the FAA included necessary reporting and recordkeeping requirements in the provisions of the final rule. The final rule requires employers to maintain records related to employee drug testing and any rehabilitation and to submit periodic, written reports to the FAA that summarize an employer's anti-drug program. In accordance with the Paperwork Reduction Act of 1980, the recordkeeping and reporting requirements of the final rule have been submitted to the Office of Management and Budget (OMB) for approval.

Federalism Implications

The final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule preeempts any State or local law that would prohibit or limit drug testing required under the rule. This preemption, under the FAA's statutory authority, is essential to ensure that the safety benefits are obtained throughout the nation's air transportation system. The rule also could have an indirect, economic impact on State and local governments, if persons who lose jobs as a result of a positive drug test require welfare benefits or other public social services. The FAA does not expect this impact to be significant, however. Therefore, in accordance with Executive Order 12612, the FAA determines that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

The final rule requires domestic and supplemental air carriers, commercial operators of large aircraft, air taxi and commuter operators, certain commercial operators, certain contractors to these operators, located in the United States or in a foreign country, and air traffic control facilities not operated by the FAA or the U.S. military to have an anti-drug program for employees who perform, either in the United States or in a foreign country, sensitive safety- or security-related functions. Testing under this final rule will be conducted by an employer prior to employment, periodically, randomly, after an accident, based on reasonable cause, and after an employee returns to duty to perform a sensitive safety- or security-related function for an employer. The final rule also will require that an employer provide EAP education and training services to employees and supervisors. The rule is necessary to prohibit an employee from performing a sensitive safety- or security-related function for an employer while that employee has a prohibited drug in his or her system or if that employee has used drugs as evidenced by a drug test showing the presence of drugs or drug metabolites. The rule is intended to ensure a drug-free aviation workforce and to eliminate drug use and abuse in commercial aviation. The FAA believes that the final rule will reduce the potential for drug-related aviation accidents and will foster identification of commercial aviation employees who use drugs.

Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the final rule may have a significant negative economic impact on a substantial number of small entities. The final rule will not result in an annual effect on the economy of $100 million or more, but because the requirements of the final rule are important and costly undertakings, the FAA considers the final rule to be a major rule pursuant to the criteria of Executive Order 12291. In addition, the rule involves issues of substantial interest to the public; thus, the FAA determines that the final rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

List of Subjects

14 CFR Part 61

Air safety, Air transportation, Aircraft, Aircraft pilots, Airmen,

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Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

14 CFR Part 63

Air safety, Air transportation, Aircraft, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Safety, Transportation.

14 CFR Part 65

Air safety, Air transporation, Aircraft, Airmen, Aviation safety, Drug abuse, Drugs, Narcotics, Safety, Transportation.

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

14 CFR Part 135

Air carriers, Air taxi, Air transporation, Aircraft, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

The Amendment

Accordingly, the FAA amends Parts 61, 63, 65, 121, and 135 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, 121, and 135) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for Part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By adding a new § 61.14 to read as follows:

§ 61.14 Refusal to submit to a drug test.

(a) This section applies to—

(1) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a Part 121 certificate holder or a Part 135 certificate holder; and

(2) An employee who performs a function listed in Appendix I to Part 121 of this chapter for an operator as defined in § 135.1(c) of this chapter. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to Section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section.

(b) Refusal by the holder of a certificate issued under this part to take a test for a drug specified in Appendix I to Part 121 of this chapter when requested by a certificate holder, by an operator as defined in § 135.1(c) of this chapter, by an employer as defined in § 65.46 of this part, by a local law enforcement officer under his or her own authority, or by an FAA inspector, under the circumstances specified in that appendix, is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for Part 63, Subpart A, is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, 1427, 1429, and 1430; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

4. By adding a new § 63.12b to read as follows:

§ 63.12b Refusal to submit to a drug test.

(a) This section applies to—

(1) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a Part 121 certificate holder or a Part 135 certificate holder; and

(2) An employee who performs a function listed in Appendix I to Part 121 of this chapter for an operator as defined in § 135.1(c) of this chapter. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section.

(b) Refusal by the holder of a certificate issued under this part to take a test for a drug specified in Appendix I to Part 121 of this chapter when requested by a certificate holder, by an operator as defined in § 135.1(c) of this chapter, by a local law enforcement officer under his or her own authority, or by an FAA inspector, under the circumstances specified in that appendix, is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for Part 65 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

6. By adding a new § 65.23 to read as follows:

§ 65.23 Refusal to submit to a drug test.

(a) This section applies to—

(1) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a Part 121 certificate holder or a Part 135 certificate holder;

(2) An employee who performs a function listed in Appendix I to Part 121 of this chapter for an operator as defined in § 135.1(c) of this chapter. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section; and

(3) An employee of an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military.

(b) Refusal by the holder of a certificate issued under this part to take a test for a drug specified in Appendix I to Part 121 of this chapter when requested by a certificate holder, by an operator as defined in § 135.1(c) of this chapter, by an employer as defined in § 65.46 of this part, by a local law enforcement officer under his or her own authority, or by an FAA inspector, under the circumstances specified in that appendix, is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date that that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

7. By adding a new § 65.46 to read as follows:

§ 65.46 Use of prohibited drugs.

(a) The following definitions apply for the purposes of this section:

(1) An "employee" is a person who performs an air traffic control function for an employer. For the purpose of this section, a person who performs such a function pursuant to a contract with an employer is considered to be performing that function for the employer.

(2) An "employer" means an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military that employs a person to perform an air traffic control function.

(b) Each employer shall provide each employee performing a function listed in Appendix I to Part 121 of this chapter and his or her supervisor with the training specified in that appendix. No employer may use any contractor to perform an air traffic control function unless that contractor provides each of its employees performing that function for the employer and his or her supervisor with the training specified in that appendix.

(c) No employer may knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function while that person has a prohibited drug, as defined in Appendix I to Part 121 of this chapter, in his or her system.

(d) Except as provided in paragraph (e) of this section, no employer may knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function if that person failed a test or refused to submit to a test required by Appendix I to Part 121 of this chapter given by a certificate holder, by an employer, or by an operator as defined in § 135.1(c) of this chapter.

(e) Paragraph (d) of this section does not apply to a person who has received a recommendation to be hired or to return to duty from a medical review officer in accordance with Appendix I to Part 121 of this chapter or who has received a special issuance medical certificate after evaluation by the Federal Air Surgeon for drug dependency in accordance with Part 67 of this chapter.

(f) Each employer shall test each of its employees who performs any air traffic control function in accordance with Appendix I to Part 121 of this chapter. No employer may use any contractor to perform any air traffic control function unless that contractor tests each employee performing such a function for the employer in accordance with that appendix.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

8. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

9. By adding a new § 121.429 to read as follows:

§ 121.429 Prohibited drugs.

(a) Each certificate holder shall provide each employee performing a function listed in Appendix I to this part and his or her supervisor with the training specified in that appendix.

(b) No certificate holder may use any contractor to perform a function listed in Appendix I to this part unless that contractor provides each of its employees performing that function for the certificate holder and his or her supervisor with the training specified in that appendix.

10. By adding a new § 121.455 to read as follows:

§ 121.455 Use of prohibited drugs.

(a) This section applies to persons who perform a function listed in Appendix I to this part for the certificate holder. For the purpose of this section, a person who performs such a function pursuant to a contract with the certificate holder is considered to be performing that function for the certificate holder.

(b) No certificate holder may knowingly use any person to perform, nor may any person perform for a certificate holder, either directly or by contract, any function listed in Appendix I to this part while that person has a prohibited drug, as defined in that appendix, in his or her system.

(c) Except as provided in paragraph (d) of this section, no certificate holder may knowingly use any person to perform, nor may any person perform for a certificate holder, either directly or by contract, any function listed in Appendix I to this part if that person failed a test or refused to submit to a test required by that appendix given by a certificate holder or an operator as defined in § 135.1(c) of this chapter.

(d) Paragraph (c) of this section does not apply to a person who has received a recommendation to be hired or to return to duty from a medical review officer in accordance with Appendix I to Part 121 of this chapter or who has received a special issuance medical certificate after evaluation by the Federal Air Surgeon for drug dependency in accordance with Part 67 of this chapter.

11. By adding a new § 121.457 to read as follows:

§ 121.457 Testing for prohibited drugs.

(a) Each certificate holder shall test each of its employees who performs a function listed in Appendix I to this part in accordance with that appendix.

(b) No certificate holder may use any contractor to perform a function listed in Appendix I to this part unless that contractor tests each employee performing such a function for the certificate holder in accordance with that appendix.

12. By adding a new Appendix I to Part 121 to read as follows:

Appendix I—Drug Testing Program

This appendix contains the standards and components that must be included in an anti-drug program required by this chapter.

I. *DOT Procedures.* Each employer shall ensure that drug testing programs conducted pursuant to this regulation comply with the requirements of this appendix and the "Procedures for Transportation Workplace Drug Testing Programs" published by the Department of Transportation (DOT) (49 CFR Part 40). An employer may not use or contract with any drug testing laboratory that is not certified by the Department of Health and Human Services (DHHS) pursuant to the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11970; April 11, 1988).

II. *Definitions.* For the purpose of this appendix, the following definitions apply:

"Accident" means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage (49 CFR 830.2).

"Annualized rate" for the purposes of unannounced testing of employees based on random selection means the percentage of specimen collection and testing of employees performing a function listed in section III of this appendix during a calendar year. The employer shall determine the annualized percentage rate by referring to the total number of employees performing a sensitive safety- or security-related function for the employer at the beginning of a calendar year or by an alternative method specified in the employer's drug testing plan approved by the FAA.

"Employee" is a person who performs, either directly or by contract, a function listed in section III of this appendix for a Part 121 certificate holder, a Part 135 certificate holder, an operator as defined in § 135.1(c) of this chapter (except operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958), or an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military. Provided however that an employee who works for an employer who holds a Part 135 certificate and who also holds a Part 121 certificate is considered to be an employee of the Part 121 certificate holder for the purposes of this appendix.

"Employer" is a Part 121 certificate holder, a Part 135 certificate holder, an operator as defined in § 135.1(c) of this chapter (except operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to Section 405(h) of the Federal Aviation Act of 1958), or an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military. Provided, however, that an employer may use a person

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to perform a function listed in section III of this appendix, who is not included under that employer's drug program, if that person is subject to the requirements of another employer's FAA-approved anti-drug program.

"Failing a drug test" means that the test result shows positive evidence of the presence of a prohibited drug or drug metabolite in an employee's system.

"Passing a drug test" means that the test result does not show positive evidence of the presence of a prohibited drug or drug metabolite in an employee's system.

"Positive evidence" means the presence of a drug or drug metabolite in a urine sample at or above the test levels listed in the DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR Part 40).

"Prohibited drug" means marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, or a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 811, 812 (1981 & 1987 Cum.P.P.), unless the drug is being used as authorized by a legal prescription or other exemption under Federal, state, or local law.

"Refusal to submit" means refusal by an individual to provide a urine sample after he or she has received notice of the requirement to be tested in accordance with this appendix.

III. *Employees Who Must Be Tested.* Each person who performs a function listed in this section must be tested pursuant to an FAA-approved anti-drug program conducted in accordance with this appendix:

a. Flight crewmember duties.

b. Flight attendant duties.

c. Flight instruction or ground instruction duties.

d. Flight testing duties.

e. Aircraft dispatcher or ground dispatcher duties.

f. Aircraft maintenance or preventive maintenance duties.

g. Aviation security or screening duties.

h. Air traffic control duties.

IV. *Substances For Which Testing Must Be Conducted.* Each employer shall test each employee who performs a function listed in section III of this appendix for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines during each test required by section V of this appendix. As part of reasonable cause drug testing program established pursuant to this part, employers may test for drugs in addition to those specified in this part only with approval granted by the FAA under 49 CFR Part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshhold.

V. *Types of Drug Testing Required.* Each employer shall conduct the following types of testing in accordance with the procedures set forth in this appendix and the DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR Part 40):

A. *Preemployment testing.* No employer may hire any person to perform a function listed in section III of this appendix unless the applicant passes a drug test for that employer. The employer shall advise an applicant at the time of application that preemployment testing will be conducted to determine the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines or a metabolite of those drugs in the applicant's system.

B. *Periodic testing.* Each employee who performs a function listed in section III of this appendix for an employer and who is required to undergo a medical examination under Part 67 of this chapter, shall submit to a periodic drug test. The employee shall be tested for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines or a metabolite of those drugs as part of the first medical evaluation of the employee during the first calendar year of implementation of the employer's anti-drug program. An employer may discontinue periodic testing of its employees after the first calendar year of implementation of the employer's anti-drug program when the employer has implemented an unannounced testing program based on random selection of employees.

C. *Random testing.* Each employer shall randomly select employees who perform a function listed in section III of this appendix for the employer for unannounced drug testing. The employer shall randomly select employees for unannounced testing for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines or a metabolite of those drugs in an employee's system using a random number table or a computer-based, number generator that is matched with an employee's social security number, payroll identification number, or any other alternative method approved by the FAA.

(1) During the first 12 months following implementation of unannounced testing based on random selection pursuant to this appendix, an employer shall meet the following conditions:

(a) The unannounced testing based on random selection of employees shall be spread reasonably throughout the 12-month period.

(b) The last collection of specimens for random testing during the year shall be conducted at an annualized rate equal to not less than 50 percent of employees performing a function listed in section III of this appendix.

(c) The total number of unannounced tests based on random selection during the 12-months shall be equal to not less than 25 percent of the employees performing a function listed in section III of this appendix.

(2) Following the first 12 months, an employer shall achieve and maintain an annualized rate equal to not less than 50 percent of employees performing a function listed in section III of this appendix.

D. *Postaccident testing.* Each employer shall test each employee who performs a function listed in section III of this appendix for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines or a metabolite of those drugs in the employee's system if that employee's performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The employee shall be tested as soon as possible but not later than 32 hours after the accident. The decision not to administer a test under this section must be based on a determination, using the best information available at the time of the accident, that the employee's performance could not have contributed to the accident. The employee shall submit to postaccident testing under this section.

E. *Testing based on reasonable cause.* Each employer shall test each employee who performs a function listed in section III of this appendix and who is reasonably suspected of using a prohibited drug. Each employer shall test an employee's specimen for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines or a metabolite of those drugs. An employer may test an employee's specimen for the presence of other prohibited drugs or drug metabolites only in accordance with this appendix and the DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR Part 40). At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee who is reasonably suspected of drug use. In the case of an employer holding a Part 135 certificate who employs 50 or fewer employees who perform a function listed in section III of this appendix or an operator as defined in § 135.1(c) of this chapter, one supervisor, who is trained in detection of possible symptoms of drug use, shall substantiate the decision to test an employee who is reasonably suspected of drug use. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use.

F. *Testing after return to duty.* Each employer shall implement a reasonable program of unannounced testing of each individual who has been hired and each employee who has returned to duty to perform a function listed in section III of this appendix after failing a drug test conducted in accordance with this appendix or after refusing to submit to a drug test required by this appendix. The individual or employee shall be subject to unannounced testing for not more than 60 months after the individual has been hired or the employee has returned to duty to perform a function listed in section III of this appendix.

VI. *Administrative Matters.*—A. *Collection, testing, and rehabilitation records.* Each employer shall maintain all records related to the collection process, including all logbooks and certification statements, for two years. Each employer shall maintain records of employee confirmed positive drug test results and employee rehabilitation for five years. The employer shall maintain records of negative test results for 12 months. The employer shall permit the Administrator or the Administrator's representative to examine these records.

B. *Laboratory inspections.* The employer shall contract only with a laboratory that permits pre-award inspections by the employer before the laboratory is awarded a testing contract and unannounced inspections, including examination of any

and all records at any time by the employer, the Administrator, or the Administrator's representative.

C. *Employee request to retest a specimen.* Not later than 60 days after receipt of a confirmed positive test result, an employee may submit a written request to the MRO for retesting of the specimen producing the positive test result. Each employee may make one written request that a sample of the specimen be provided to the original or another DHHS-certified laboratory for testing. The laboratories shall follow chain-of-custody procedures. The employee shall pay the costs of the additional test and all handling and shipping costs associated with the transfer of the specimen to the laboratory.

D. *Release of Drug Testing Information.* An employer may release information regarding an employee's drug testing results or rehabilitation to a third party only with the specific, written consent of the employee authorizing release of the information to an identified person. Information regarding an employee's drug testing results or rehabilitation may be released to the National Transportation Safety Board as part of an accident investigation, to the FAA upon request, or as required by section VII.C.5 of this appendix.

VII. *Review of Drug Testing Results.* The employer shall designate or appoint a medical review officer (MRO). If the employer does not have a qualified individual on staff to serve as MRO, the employer may contract for the provision of MRO services as part of its drug testing program.

A. *MRO qualifications.* The MRO must be a licensed physician with knowledge of drug abuse disorders.

B. *MRO duties.* The MRO shall perform the following functions for the employer:

1. Review the results of the employer's drug testing program before the results are reported to the employer and summarized for the FAA.

2. Within a reasonable time, notify an employee of a confirmed positive test result.

3. Review and interpret each confirmed positive test result in order to determine if there is an alternative medical explanation for the confirmed positive test result. The MRO shall perform the following functions as part of the review of a confirmed positive test result:

a. Provide an opportunity for the employee to discuss a positive test result with the MRO.

b. Review the employee's medical history and any relevant biomedical factors.

c. Review all medical records made available by the employee to determine if a confirmed positive test resulted from legally prescribed medication.

d. Verify that the laboratory report and assessment are correct. The MRO shall be authorized to request that the original specimen be reanalyzed to determine the accuracy of the reported test result.

4. Process employee requests to retest a specimen in accordance with section VI.C of this appendix.

5. Determine whether and when, consistent with an employer's anti-drug program, a return-to-duty recommendation for a current employee or a decision to hire an individual to perform a function listed in section III of this appendix after failing a test conducted in accordance with this appendix or after refusing to submit to a test required by this appendix, including review of any rehabilitation program in which the individual or employee participated, may be made.

6. Ensure that an individual or employee has been tested in accordance with the procedures of this appendix and the DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR Part 40) before the individual is hired or the employee returns to duty.

7. Determine a schedule of unannounced testing for an individual who has been hired or an employee who has returned to duty to perform a function listed in section III of this appendix after the individual or employee has failed a drug test conducted in accordance with this appendix or has refused to submit to a drug test required by this appendix.

C. *MRO determinations.* 1. If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result that is consistent with legal drug use, the MRO shall conclude that the test result is negative and shall report the test as a negative test result.

2. If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result that is consistent with legal drug use, the MRO shall refer the employee to an employer's rehabilitation program is available or to a personnel or administrative officer for further proceedings in accordance with the employer's anti-drug program.

3. Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for futher action. Under these circumstances, the MRO shall conclude that the test is negative for the presence of drugs or drug metabolites in an employee's system.

4. In order to make a recommendation to hire an individual to perform a function listed in section III of this appendix or to return an employee to duty to perform a function listed in section III of this appendix after the individual or employee has failed a drug test conducted in accordance with this appendix or refused to submit to a drug test required by this appendix, the MRO shall—

a. Ensure that the individual or employee is drug free based on a drug test that shows no positive evidence of the presence of a drug or a drug metabolite in the person's system;

b. Ensure that the individual or employee has been evaluated by a rehabilitation program counselor for drug use or abuse; and

c. Ensure that the individual or employee demonstrates compliance with any conditions or requirements of a rehabilitation program in which the person participated.

5. Notwithstanding any other section in this appendix, the MRO shall make the following determinations in the case of an employee or applicant who holds, or is required to hold, a medical certificate issued pursuant to Part 67 of this chapter in order to perform a function listed in section III of this appendix for an employer:

a. The MRO shall make a determination of probable drug dependence or nondependence as specified in Part 67 of this chapter. If the MRO makes a determination of nondependence, the MRO has authority to recommend that the employee return to duty in a position that requires the employee to hold a certificate issued under Part 67 of this chapter. The MRO shall forward the determination of nondependence, the return-to-duty decision, and any supporting documentation to the Federal Air Surgeon for review.

b. If the MRO makes a determination of probable drug dependence at any time, the MRO shall report the name of the individual and identifying information, the determination of probable drug dependence, and any supporting documentation to the Federal Air Surgeon. The MRO does not have the authority to recommend that the employee return to duty in a position that requires the employee to hold a certificate issued under Part 67 of this chapter. The Federal Air Surgeon shall determine if the individual may retain or may be issued a medical certificate consistent with the requirements of Part 67 of this chapter.

c. The MRO shall report to the Federal Air Surgeon the name of any employee who is required to hold a medical certificate issued pursuant to Part 67 of this chapter and who fails a drug test. The MRO shall report to the Federal Air Surgeon the name of any person who applies for a position that requires the person to hold a medical certificate issued pursuant to Part 67 of this chapter and who fails a preemployment drug test.

d. The MRO shall forward the information specified in paragraphs (a), (b), and (c) of this section to the Federal Air Surgeon, Federal Aviation Administration, Drug Abatement Branch (AAM-220), 800 Independence Avenue, SW., Washington, DC 20591.

VIII. *Employee Assistance Program (EAP).* The employer shall provide an EAP for employees. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to an employee. Each EAP must include education and training on drug use for employees and training for supervisors making determinations for testing of employees based on reasonable cause.

A. *EAP education program.* Each EAP education program must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding drug use in the workplace.

B. *EAP training program.* Each employer shall implement a reasonable program of initial training for employees. The employee training program must include at least the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug use and abuse; and documentation of training given to employees and employer's supervisory personnel. The

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employer's supervisory personnel who will determine when an employee is subject to testing based on reasonable cause shall receive specific training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use in addition to the training specified above. The employer shall ensure that supervisors who will make reasonable cause determinations receive at least 60 minutes of initial training. The employer shall implement a reasonable recurrent training program for supervisory personnel making reasonable cause determinations during subsequent years. The employer shall identify the employee and supervisor EAP training in the employer's drug testing plan submitted to the FAA for approval.

IX. *Employer's Drug Testing Plan.*— A. *Schedule for submission of plans and implementation.* (1) Each employer shall submit a drug testing plan to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Branch (AAM–220), 800 Independence Avenue, SW., Washington, DC 20591.

(2) Each employer who holds a Part 121 certificate and each employer who holds a Part 135 certificate and employs more than 50 employees who perform a function listed in section III of this appendix shall submit an anti-drug program to the FAA (specifying the procedures for all testing required by this appendix) not later than 120 days after December 21, 1988. Each employer shall implement preemployment testing of applicants for a position to perform a function listed in section III of this appendix not later than 10 days after approval of the plan by the FAA. Each employer shall implement the remainder of the employer's anti-drug program no later than 180 days after approval of the plan by the FAA.

(3) Each employer who holds a Part 135 certificate and employs from 11 to 50 employees who perform a function listed in section III of this appendix shall submit an interim anti-drug program to the FAA (specifying the procedures for preemployment testing, periodic testing, postaccident testing, testing based on reasonable cause, and testing after return to duty) not later than 180 days after December 21, 1988. Each employer shall implement the interim anti-drug program not later than 180 days after approval of the plan by the FAA. Each employer shall submit an amendment to its approved anti-drug program to the FAA (specifying the procedures for unannounced testing based on random selection) not later than 120 days after approval of the interim anti-drug program by the FAA. Each employer shall implement the random testing provision of its amended anti-drug program not later than 180 days after approval of the amendment.

(4) Each employer who holds a Part 135 certificate and employs 10 or fewer employees who perform a function listed in section III of this appendix, each operator as defined in § 135.1(c) of this chapter, and each air traffic control facility not operated by, or under contract with the FAA or the U.S. military, shall submit an anti-drug program to the FAA (specifying the procedures for all testing required by this appendix) not later than 360 days after December 21, 1988. Each employer shall implement the employer's anti-drug program not later than 180 days after approval of the plan by the FAA.

(5) Each employer or operator, who becomes subject to the rule as a result of the FAA's issuance of a Part 121 or Part 135 certificate or as a result of beginning operations listed in § 135.1(b) for compensation or hire (except operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958) shall submit an anti-drug plan to the FAA for approval, within the timeframes of paragraphs (2), (3), or (4) of this section, according to the type and size of the category of operations. For purposes of applicability of the timeframes, the date that an employer becomes subject to the requirements of this appendix is substituted for [the effective date of the rule].

B. An employer's anti-drug plan must specify the methods by which the employer will comply with the testing requirements of this appendix. The plan must provide the name and address of the laboratory which has been selected by the employer for analysis of the specimens collected during the employer's anti-drug testing program.

C. An employer's anti-drug plan must specify the procedures and personnel the employer will use to ensure that a determination is made as to the veracity of test results and possible legitimate explanations for an employee failing a test.

D. The employer shall consider its anti-drug program to be approved by the Administrator, unless notified to the contrary by the FAA, within 60 days after submission of the plan to the FAA.

X. *Reporting Results of Drug Testing Program.* A. Each employer shall submit a semiannual report to the FAA summarizing the results of its drug testing program and covering the period from January 1–June 30. Each employer shall submit a annual report to the FAA summarizing the results of its drug testing program and covering the period from January 1–December 31. Each employer shall submit these reports no later than 45 days after the last day of the report period.

B. Each report shall contain:

1. The total number of tests performed and the total number of tests performed for each category of test.

2. The total number of positive test results by category of test; the total number of positive test results by each function listed in section III of this appendix; and the total number of positive test results by the type of drug shown in a positive test result.

3. The disposition of an individual who failed a drug test conducted in accordance with this appendix or who refused to submit to a drug test required by this appendix by each category of test.

XI. *Preemption.* A. The issuance of these regulations by the FAA preempts any State or local law, rule, regulation, order, or standard covering the subject matter of this rule, including but not limited to, drug testing of aviation personnel performing sensitive safety- or security-related functions.

B. The issuance of these regulations does not preempt provisions of State criminal law that impose sanctions for reckless conduct of an individual that leads to actual loss of life, injury, or damage to property whether such provisions apply specifically to aviation employees or generally to the public.

XII. *Conflict with foreign laws or international law.* A. This appendix shall not apply to any person for whom compliance with this appendix would violate the domestic laws or policies of another country.

B. This appendix is not effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of this appendix raises questions of compatability with that country's domestic laws or policies. On or before December 1, 1989, the Administrator shall issue any necessary amendment resolving the applicability of this appendix to such person on or after January 1, 1990.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

13. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421–1431, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

14. By revising the introductory text of § 135.1(b) and adding new paragraph (c) and (d) to read as follows:

§ 135.1 Applicability.

* * * * *

(b) Except as provided in paragraph (c) of this section, this part does not apply to—

* * * * *

(c) For the purpose of §§ 135.249, 135.251, and 135.353, "operator" means any person or entity conducting an operation listed in paragraph (b) of this section for compensation or hire except operation of foreign civil aircraft navigated within the United States pursuant to Part 375 described in paragraph (b)(8) and emergency mail service operation pursuant to section 405(h) of the Federal Aviation Act of 1958 described in paragraph (b)(9). Each operator and each employee of an operator shall comply with the requirements of §§ 135.249, 135.251, and 135.353 of this part.

(d) Notwithstanding the provisions of paragraph (c) of this section, an operator who does not hold a Part 121 certificate or a Part 135 certificate is permitted to use a person, who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to the requirements of an FAA-approved anti-drug program, to perform—

(1) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would be required to transport the aircraft more than 50 nautical miles further than the closest available repair point from the operator's principal place of operations to obtain these services; or

(2) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to the requirements of this appendix can perform the emergency repairs.

15. By adding a new § 135.249 to read as follows:

§ 135.249 Use of prohibited drugs.

(a) This section applies to persons who perform a function listed in Appendix I to Part 121 of this chapter for a certificate holder or an operator. For the purpose of this section, a person who performs such a function pursuant to a contract with the certificate holder or the operator is considered to be performing that function for the certificate holder or the operator.

(b) No certificate holder or operator may knowingly use any person to perform, nor may any person perform for a certificate holder or an operator, either directly or by contract, any function listed in Appendix I to Part 121 of this chapter while that person has a prohibited drug, as defined in that appendix, in his or her system.

(c) Except as provided in paragraph (d) of this section, no certificate holder or operator may knowingly use any person to perform, nor may any person perform for a certificate holder or an operator, either directly or by contract, any function listed in Appendix I to Part 121 of this chapter if that person has failed a test or refused to submit to a test required by that appendix given by any certificate holder or any operator.

(d) Paragraph (c) of this section does not apply to a person who has received a recommendation to be hired or to return to duty from a medical review officer in accordance with Appendix I to Part 121 of this chapter or who has received a special issuance medical certificate after evaluation by the Federal Air Surgeon for drug dependency in accordance with Part 67 of this chapter.

16. By adding a new § 135.251 to read as follows:

§ 135.251 Testing for prohibited drugs.

(a) Each certificate holder or operator shall test each of its employees who performs a function listed in Appendix I to Part 121 of this chapter in accordance with that appendix.

(b) No certificate holder or operator may use any contractor to perform a function listed in Appendix I to Part 121 of this chapter unless that contractor tests each employee performing such a function for the certificate holder or operator in accordance with that appendix.

17. By adding a new § 135.353 to read as follows:

§ 135.353 Prohibited drugs.

(a) Each certificate holder or operator shall provide each employee performing a function listed in Appendix I to Part 121 of this chapter and his or her supervisor with the training specified in that appendix.

(b) No certificate holder or operator may use any contractor to perform a function specified in Appendix I to Part 121 of this chapter unless that contractor provides each of its employees performing that function for the certificate holder or the operator and his or her supervisor with the training specified in that appendix.

Issued in Washington, DC, on November 14, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–26609 Filed 11–15–88; 3:49 pm]

BILLING CODE 4910-13-M

VOL
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ISS
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NO
21

1988

UMI

federal register

Monday
November 21, 1988

Part IV

Department of Transportation

Coast Guard

46 CFR Parts 4, 5 and 16

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Final Rule

VOL
53
ISS
224
NO
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1988
UMI

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4, 5 and 16

[CGD 86-067]

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: These regulations require the establishment of anti-drug programs to reduce the incidence of drug abuse by commercial vessel personnel. These programs include pre-employment, periodic, random, post-accident and reasonable cause testing. The post-accident portion of the program also involves testing for alcohol use.

The Coast Guard believes these rules will discourage drug and alcohol use by commercial vessel personnel, reduce the potential for marine casualties related to drug and alcohol use, and enhance the safety of the maritime transportation industry.

EFFECTIVE DATE: This rule is effective on December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Commander John Koski, Project Manager, Marine Investigation Division (G-MMI), Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-2215.

SUPPLEMENTARY INFORMATION: On July 8, 1988, the Coast Guard published a notice of proposed rulemaking, entitled "Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel," in the **Federal Register** (53 FR 25926).

On July 26, 1988, the Coast Guard announced in the **Federal Register** (53 FR 28024) a series of public hearings on the notice of proposed rulemaking. These hearings were held on August 10, 1988 in Houston, Texas; August 12, 1988 in Chicago, Illinois; August 19, 1988 in Washington, DC; and August 22, 1988 in San Francisco, California. A total of 80 individuals made statements on the proposed rules at these hearings. Each hearing was recorded, and copies of the tapes, along with any written statements and other materials provided, have been placed in the public docket. The Coast Guard also received a total of 246 letters commenting on the proposed rules. All of this information has been reviewed and considered in the development of the final rule.

The Office of the Secretary of the Department of Transportation is publishing elsewhere in today's **Federal Register** an Interim Final Rule and request for comments entitled *Procedures for Transportation Workplace Drug Testing Programs.* These Procedures, which will be codified in 49 CFR Part 40, are based on Department of Health and Human Services Guidelines for Drug Testing, with appropriate modifications to allow them to apply to private industry and state and local governments. The new 49 CFR Part 40 provides detailed information for implementation of the drug testing requirements of this rule, setting forth requirements for such things as specimen collection procedures, laboratory procedures, and quality assurance.

Drafting Information

The principal persons involved in drafting this document are CDR John Koski, Project Manager, and Christena Green, Project Counsel, Office of Chief Counsel.

Background

The Coast Guard has explicit statutory authority to deny issuance of a license, certificate of registry, or merchant mariner's document to any individual who (1) has been convicted of violating a dangerous drug law of the United States or a state within 10 years of application, or (2) has ever been a user of, or addicted to, a dangerous drug (46 U.S.C. 7503). Similarly, the Coast Guard has statutory authority to revoke a license, certificate of registry, or merchant mariner's document of any individual who is, or has been, a user of, or addicted to, a dangerous drug (46 U.S.C. 7704(c)). The Coast Guard is further mandated to revoke the license, certificate of registry, or merchant mariner's document of any individual who has been convicted of violating a dangerous drug law of the United States or a state within a 10 year period before the beginning of the proceedings against that individual (46 U.S.C. 7704(b)). It is clear that these statutes intend to exclude drug users and violators of drug statutes from serving on U.S. merchant vessels.

As the Coast Guard stated in its notice of proposed rulemaking, these statutes are currently enforced by examining criminal conviction records of license and document applicants and holders, by the prosecution of those individuals operating a vessel negligently or while intoxicated, and through administrative remedies such as civil penalty actions and suspension and revocation proceedings. These methods are used, however, only after an incident occurs and the Coast Guard obtains evidence on which to base remedial or punitive action.

This final rule is a logical extension of existing regulations to ensure a drug-free working environment in the maritime community. The regulations provide for positive and aggressive action to identify users of dangerous drugs before they are involved in incidents which bring them to the attention of the Coast Guard. The regulations are intended to ensure that users of dangerous drugs are not issued licenses, certificates of registry, or merchant mariner's documents, and are not accepted for employment on vessels engaged in commercial operations. Drug users and abusers will either be deterred from continued drug use or will be faced with sufficient probability of being identified in the workplace and precluded from employment in the industry when such use is detected through chemical testing.

Discussion of Comments

General Overview of Major Issues

The Coast Guard received 246 written comments in response to the notice of proposed rulemaking. Despite the fact that some of these were received after the close of the comment period, all were considered in the formulation of these rules. In addition to the written responses, 80 individuals presented testimony at the four public hearings held by the Coast Guard.

All facets of the maritime industry presented their views, either as individuals, small operators, large corporations, unions, or associations. While there was universal support for a drug-free maritime working environment, there was serious concern about how the Coast Guard proposed to accomplish this goal.

Several sectors felt that the scope of the proposed regulations was too broad and would result in unbearable implementation costs, most notably among small operators. Many felt that only those people operating under the authority of a Coast Guard issued license or merchant mariner's document should be subjected to mandatory drug testing. Echoing this opinion, many others stated that employees serving aboard vessels in capacities which had nothing to do with the safe operation of the vessel should not be subject to the mandatory testing requirements.

Small operators and seasonal operators were seriously concerned that mandatory testing would result in shortages in their workforces, maintaining that potential employees would opt to go into other, equally well-paying jobs which do not require them to be subjected to testing. In addition, a company administered testing program would erode the trust which has typically been established between management and the working members of small operations.

Commenters generally supported testing in conjunction with obtaining licenses and post-casualty testing, but felt that such programs should be administered by the Coast Guard and not private industry. There was a split of opinion regarding other types of testing (i.e., pre-employment, random, and reasonable cause): those companies and organizations which currently have effective anti-drug programs generally supported these types of testing, while those without such programs did not feel that all types of testing should be required. Even among those which had existing programs, there was concern that the strict parameters specified in the proposed rules would force them to abandon their programs in order to implement the procedures which are much more costly and more difficult to administer but, in their view, not necessarily more effective. Among individual commenters and labor unions, the opinion was almost universal that mandatory testing would be a violation of constitutional rights, with guilt being assumed until the individual could establish innocence.

Constitutional Issues

Numerous commenters questions the constitutionality of mandatory drug testing of maritime employees. Many commenters requested that the Coast Guard not proceed with this regulatory package until these issues have been resolved by the Supreme Court.

Response: Although the state of the case law is still evolving in rapid fashion and the Supreme Court has not resolved many of the relevant and complex issues, the Coast Guard is confident that testing of employees under this rule will withstand judicial scrutiny on constitutional grounds.

Of particular concern to the commenters is the relevance of the Fourth Amendment to drug testing. The principles of the Fourth Amendment to the U.S. Constitution are paramount in scrutinizing the fundamental legality of many drug testing programs. As a threshold matter, the Fourth Amendment applies to "searches" conducted or mandated by the government and protects individuals against "unreasonable searches and seizures." Action of a private party does not constitute State or Federal action unless there exists a close nexus between the State and the action in question. *See Jackson v. Metropolitan Edison,* 419 U.S. 345 (1974); *Moose Lodge No. 107 v. Irvis,* 407 U.S. 163 (1972).

Assuming that drug testing programs called for under the final rule do implicate the government, a second issue then arises concerning whether urine tests under these programs are "searches" within the meaning of the Fourth Amendment. Although most courts to address the issue to date have ruled that toxicological testing of employees for the purpose of determining fitness for duty is a search within the meaning of the Fourth Amendment, the issue is not entirely settled. *See Wyman v. James,* 400 U.S. 309, 317-338 (1971) (government welfare caseworker's "home visit" as a precondition for assistance payments is not a Fourth Amendment search). *See also, Lovvorn v. City of Chattanooga,* 1988 U.S. App. Lexis 6952 (6th Cir. May 23, 1988) (Guy, J., dissenting); *National Treasury Employees Union v. von Raab,* 808 F.2d 1057, 1060, 1062 (5th Cir. 1987) (Higginbotham, J., concurring). *Cf Mack v. United States, F.B.I.,* 814 F.2d 120, 125 n.2 (2nd Cir. 1987).

Also assuming, *arguendo,* that urine tests of merchant vessel personnel for prohibited substances are "searches" within the meaning of the Fourth Amendment, it is clear that while searches ordinarily must be conducted pursuant to a warrant issued on probable cause grounds, such a requirement is not always necessary. *Almeida-Sanchez v. United States,* 413 U.S. 266, 277 (1973) (Powell, J., concurring). Where, for example, "* * * the burden of obtaining a warrant is likely to frustrate the government purpose behind the search * * *" the Supreme Court has routinely held that a warrant is not required by the Fourth Amendment [citing *Camera v. Municipal Court,* 387 U.S. 523, 533 (1967)]. *See e.g., Griffin v. Wisconsin,* 107 S.Ct. 3164, 3167 (1987) (plurality opinion); *New Jersey v. T.L.O.,* 469 U.S. 325, 340 (1985). The Supreme Court has likewise found that the probable cause standard is inappropriate where it would defeat the purpose that the search is designed to achieve. *See e.g., New Jersey v. T.L.O.,* 469 U.S. 325 at 340-342 (1976) (While "* * * some quantum of individualized suspicion is usually a prerequisite to constitutional search or seizure [,] * * * the Fourth Amendment imposes no irreducible requirement of such suspicion" *United States v. Martinez-Fuerte,* 428 U.S. 543, 560-561).

Rather, "[t]he fundamental command of the Fourth Amendment is that searches and seizures be reasonable * * *" *New Jersey v. T.L.O.,* 469 U.S. 328 at 340. In determining the reasonableness of a search, the Supreme Court has repeatedly stressed the importance of the facts particular to the search while acknowledging that the test of reasonableness "* * * is not capable of precise definition or mechanical application." *Bell v. Wolfish,* 441 U.S. 520, at 559 (1979). In analyzing a drug testing program, "* * * what is reasonable depends on the context within which a search takes place." *New Jersey v. T.L.O.,* 469 U.S. 325, at 337.

In scrutinizing whether a particular search comports with the Fourth Amendment, courts have adopted a balancing test. In general, to support a claim that a search of an individual or the individual's property is reasonable, the government must demonstrate that, on balance, the public's legitimate interest in conducting the search outweighs the individual's legitimate expectation of privacy. *See e.g., United States v. Montoya de Hernandez,* 473 U.S. 531, 537 (1985); *United States v. Villamonte-Marquez,* 462 U.S. 579, 588 (1983); *Delaware vs. Prouse,* 440 U.S. 648, 653 (1979). Thus, the courts must "* * * consider the scope of the particular intrustion, the manner in which it is conducted, the justification for initating it, and the place in which it is conducted." *Bell v. Wolfish,* 441 U.S. 520, at 559.

Viewed in this light, it is beyond dispute that the public has an overriding interest in assuring that merchant vessel personnel performing duties which directly affect the safety of a vessel's navigation or operations do so free of prohibited substances. The drug problem in society in general and evidence of drug use in the maritime industry in particular are discussed elsewhere in the preamble of this final rule. The impairing effects of drugs and the substantial risks to public safety posed by merchant vessel personnel who use drugs underlies the compelling governmental interest in promulating this rule.

In contrast, the drug testing requirements of the final rule involve a minimal invasion of privacy. As the Supreme Court has indicated, where searches are undertaken in situations where individualized suspicion is lacking, other safeguards must be relied upon to ensure that the discretion of the party conducting the search is properly defined and the scope of the search is limited. *See Delaware v. Prouse,* 440 U.S. 648, at 654-655; *New York v. Burger,* 107 S.Ct. 2636 (1987). The drug testing requirements of the final rule place constraints on an employer's discretion

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in conducting drug testing. For example, the requirement for random drug tsting calls for selection of an employee to be tested in a scientifically acceptable manner, such as use of a computer-based random number generator. Requirements for testing based on reasonable cause or post-accident testing also are severely circumscribed in order to limit an employer's discretion in administering these tests to employees.

The actual testing procedures that each employer is required to implement under this final rule also are narrowly tailored to respect an employee's reasonable expectations of privacy. The procedures governing collection of urine samples, as referenced in the final rule, are carefully designed to preserve privacy while protecting the integrity of the sample. The final rule contains a number of important employee safeguards, including privacy during collection under most types of tests, stringent laboratory safeguards, and provisions for challenging results.

Equally significant is the fact that urine drug testing of employees performing sensitive safety-related duties is to be conducted in the "context" of the employment relationship. As the Supreme Court has noted, "[t]he operational realities of the workplace * * * may make *some* employees' expectation of privacy unreasonable" *O'Connor v. Orgega*, 107 S.Ct. 1492 (1987). This is particularly important in circumstances where the employee works in an industry in which an employee's activities are subject to extensive regulation. Thus, persons who work in such "closely regulated" industries have a "reduced expectation of privacy" [*New York v. Burger*, 107 S.Ct. 2636 (1987)] and, "in effect consent [ ] to the restrictions placed upon them" [*Almeida-Sanchez v. United States*, 413 U.S. at 271)]. For these reasons, two Federal Courts of Appeals have upheld urinalysis testing, in the absence of particularized suspicion, in industries where pervasive regulation has reduced an employee's expectation of privacy. *See Rushton v. Nebraska Public Power Dist.*, 844 F.2d 562, 566 (8th Cir. 1988) (nuclear plant operators); *Shoemaker v. Handel*, 795 F.2d 1136, 1142 (3rd Cir.), *cert. denied*, 479 U.S. 986 (1986) (jockeys); *Policemen's Benevolent Ass'n. Local 318 v. Township of Washington*, 1988 U.S. App. Lexis 8443 (3rd Cir. June 21, 1988) (police officers).

The Coast Guard recognizes that a number of Federal and State courts have rejected government-mandated drug testing program on Fourth Amendment grounds. However, even courts striking drug testing programs have recognized that drug testing is appropriate in other contexts. *See e.g., Lovvorn v. City of Chattanooga*, 1988 U.S.App. Lexis 6952 at 23 (6th Cir. May 23, 1988) (Martin, J.) ("When determining, then whether a mandatory drug search is "reasonable," we believe that, as the costs to society of an impaired employee increase, the requisite level of suspicion that a drug problem exists decreases."); *Policemen's Benevolent Ass'n. Local 318 v. Township of Washington*, 672 F.supp. 779, 792 (D.N.J. 1987), *rev'd*, 1988 U.S.App. Lexis 8443 (3rd Cir. June 21, 1988) ("[T]he need to prevent a major airline disaster presents a far more compelling rationale than those presented [by the municipality in support of testing its police officer.]"); *American Federation of Government Employees v. Meese*, No. C–88–1419–SAW (N.D. Cal. June 16, 1988) (issuing a preliminary injunction against a Bureau of Prison plan to test randomly all agency employees but nonetheless noting that "[t]here are cases in which compulsory drug testing may be justified in the interest of public safety or security." Memorandum opinion at 2).

The Coast Guard also is aware of the recent Ninth Circuit decision that held that the Federal Railroad Administration's mandatory blood and urine testing after certain accidents, incidents, or rule violations is unconstitutional because the rules do not require a showing of "particularized suspicion" of drug or alcohol impairment prior to testing. *Railway Labor Executives' Association v. Burnley*, 839 F.2d 575 (9th Cir.), *cert. granted*, 108 S.Ct. 2033 (1988). The Ninth Circuit based its views, in part, on the proposition that " * * * the vast bulk of [railroad] safety regulation is directed at owners and managers of railroads, not employees." *Id.* at 585. However, contrary to the circumstances in the railroad industry, the Coast Guard has a long history of regulating licensed and documented maritime personnel.

The Supreme Court has granted a government petition for a *writ of certiorari* in *Railway Labor Executives' Association v. Burnley*, and has ordered that this case be argued next term "in tandem" with *National Treasury Employees Union v. Von Raab*, 816 F.2d 170 (5th Cir. 1987), *cert. granted*, 108 S.Ct. 1072 (1988) (upholding drug testing of applicants for critical safety or security sensitive positions in the U.S. Customs Service). Decisions in these cases may not be forthcoming until the spring of 1989. However, in the absence of Supreme Court guidance, the Coast Guard is convinced that the need for drug testing by urinalysis in the maritime industry to determine fitness of maritime personnel for duty in sensitive safety-related positions, and, thereby, to ensure public safety, clearly outweighs the privacy interest of individuals in this class.

While not totally free from doubt, it is the opinion of the Department of Transportation that the Coast Guard's anti-drug progam, and similar drug testing regimens proposed by other administrations within the Department, will be determined to be constitutional. The critical need for properly administered drug testing to ensure that employees in the transportation industry do not have drugs or drug metabolites in their systems while performing sensitive safety- or security-related functions outweighs the reduced privacy interest of these employees.

Lack of Evidence of a Drug Problem in the Maritime Industry

Various segments of the maritime industry have asserted that there has been no demonstrated need to mandate industry-wide drug testing of maritime employees.

Response: The Coast Guard clearly stated in the preamble of the notice of proposed rulemaking that it did not have data which specifically identified the use of drugs or alcohol as a major causal effect in commercial vessel losses or casualty damage. However, many commenters submitted data to indicate that company-sponsored drug testing programs have resulted in significant documented reductions in drug usage among their employees. For example, a major maritime association testified that the lost-time incidence among its member companies has decreased by some 50 percent, and that much of this decline can be attributed to their drug interdiction programs. Other companies have reported similar successes. This information supports the Coast Guard contention that the marine industry is not immune to the drug probem that exists in society in general. It further illustrates that drug testing programs do decrease the incidence of drug usage by maritime personnel.

Accuracy of Drug Test Results

Many commenters base their opposition to drug testing on the perceived inaccuracy of analysis and test results. The commenters raised the issues of false-positive test results, passive inhalation of illicit drugs, misidentification of licit drugs, and ingestion of food substances such as poppy seeds which may result in a positive drug test result.

Response: Each of these issues surfaced with the first series of drug testing programs introduced in the military and the private sector. Since that time, laboratories have been increasingly sophisticated in their analytical methods. Many laboratories have compiled extensive records demonstrating scientific accuracy and protection of individual specimens. Today false-positive test results occur primarily during analysis of a specimen provided during an initial screening test. However, the initial screening test is used only to yield a preliminary indication of the possible presence of drugs. In order to ensure the integrity and accuracy of any test result, the Coast Guard has determined that each positive initial screening test result must be confirmed using Gas Chromotography/Mass Spectrometry (GC/MS). The GC/MS confirmation test is an extremely accurate test and is virtually error-free when properly conducted. This final rule specifies explicit procedures which must be followed to ensure accurate drug test results.

The final rule requires that employers establish and utilize drug testing programs which comply with the requirements of 49 CFR Part 40. These regulations are patterned after the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," published by the Department of Health and Human Services (DHHS) on April 11, 1988. These regulations provide a system of checks and balances during collection and analysis of specimens to ensure the integrity and accuracy of the tests using appropriate scientific methods and rigid chain-of-custody procedures. An employer may only use a laboratory that complies with the regulations and has been certified by the DHHS to process and analyze specimens required by the Coast Guard rule.

Finally, the Coast Guard believes that the Medical Review Officer (MRO) review process that has been provided in 49 CFR Part 40 will preclude misidentification of food substances or licit drugs that might produce a false-positive test result. The procedures provide an individual with an opportunity to report any legal or prescription drugs that he or she may be taking at the time of collection of the specimen. The MRO's broad authority to interpret each confirmed positive test result, to interview and evaluate an employee, and to verify that a confirmed positive test result is accurate should preclude misidentification of licit drugs taken in accordance with a valid prescription or food substances. In summary, the Coast Guard believes that the two-step analysis process, coupled with the requirements for independent review by an MRO, provides a process by which an individual is protected from erroneous false-positive drug test results.

Periodic Testing in Conjunction With License Application or Renewal

While many commenters voiced support for the concept that applicants for original and renewed licenses, certificates of registry, and merchant mariner's documents should be subjected to drug testing, there was almost universal agreement that the costs and responsibility for administering such testing should be borne by the Coast Guard. Further, commenters generally feel that periodic testing has no deterrent value because an employee may temporarily abstain from drug use prior to such a test.

Response: The Coast Guard agrees with the commenters that predetermined periodic testing can be circumvented by a person's abstinence from drug use. However, periodic testing does enable the Coast Guard to identify those persons who are so heavily-dependent on drugs that they are unable to abstain from drug use for even a short period of time prior to a periodic test.

The suggestion that the cost for such testing be borne by the Coast Guard has not been adopted in the final rule. Costs for such testing should appropriately be borne by the person desiring a license, certificate of registry or merchant mariner's document, as are the costs for required physical examinations. There is no reason to impose these costs on the taxpayer, which would be the effect if the Coast Guard were to pay for the testing. Periodic testing will be required in conjunction with required physical examinations after implementation of the rule. However, the periodic testing requirement may be met by satisfactory evidence that an individual has passed a recent drug test or has been participating in a random drug testing program for the previous year.

Pre-employment Testing

Many commenters felt that pre-employment testing was a needless cost to incur since the job applicants would have been tested to obtain their license, certificate of registry or merchant mariner's document and would be immediately subject to the company's random testing program once he or she was hired. They also noted the transient nature of employment in the maritime industry, with mariners frequently signing on a vessel for a single trip, or being employed on a succession of vessels.

Response: The Coast Guard believes that pre-employment testing is a necessary component of an effective anti-drug program. The Coast Guard acknowledges that needless, redundant testing could result if all job applicants were required to undergo pre-employment drug testing. Accordingly, the final rule has been modified to permit employers to hire, without a pre-employment drug test, an individual who can provide satisfactory evidence that he or she has passed a previous pre-employment or periodic drug test within six months of applying for their position or if that individual can establish that, over the previous twelve months he or she has been subject to a random testing program meeting the requirements of these regulations.

Random Testing

Numerous comments were provided concerning the issue of random testing. Some addressed the constitutionality of the tests. Many companies were particularly concerned with the proposed method of selecting employees to be tested. For the widely-scattered and often remotely located maritime workforce, employers felt that random selection of a unit or vessel and unannounced testing of the entire employee complement would provide a satisfactory deterrent effect and would be the most cost-effective method of implementing a random testing program.

Most commenters believe that the proposed 125 percent random sampling rate was excessive and would impose a significant economic burden, particularly on small businesses. The commenters proposed a range of random sampling rates starting at 10 percent annually. The majority of the commenters suggest that a 50 percent random sampling rate for the maritime industry is appropriate. These commenters believe that the 50 percent sampling rate accomplishes a deterrence level consistent with the intent of the proposal.

Response: While noting the constitutional issues surrounding the issue of random testing, the Coast Guard believes that random testing is a fundamental component of an effective drug testing program. Random testing has proven to be an effective deterrent to drug use and will provide safety benefits to the maritime community by reducing or eliminating drug use by maritime personnel. Random testing programs initiated by the military, including the Coast Guard, and private

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industry show declining drug use, evidenced by a decrease in the number of individuals who test positive for drugs over the course of the drug testing program.

The Coast Guard agrees with the commenters who propose a 50 percent random sampling rate and, therefore, has revised the random sampling provision of the rule consistent with the majority of the comments received in response to the NPRM. The 50 percent sampling rate will provide a sufficient deterrent to drug use without imposing an undue economic or administrative burden on employers and employees subject to the requirements of the regulation. The frequency of testing and the development of a random selection method for testing has been left to the employer. The requirement remains, however, that the method chosen ensures that all employees have a substantially equal chance of being selected for testing and that no employee shall know in advance when such testing will occur. A properly designed unit testing program could meet these requirements.

For some employers, particularly those with a large number of employees subject to drug testing, it may be a substantial burden to move from no drug testing to a 50 percent random testing rate. If required to have tested 50 percent of all covered employees by the end of the first year, employers might have to test at rates far above 50 percent toward the end of the year to make up for lower rates at the beginning. Employers should be permitted to start out at a lower testing rate and work up to 50 percent as experience is gained and the testing procedure becomes administratively routine. We do not want to create a situation which might lead to mistakes by requiring initial testing at too high a rate.

The final rule, therefore, provides an implementation procedure that would allow employers to phase in random drug testing during the first 12 months in which tests are conducted. Employers would not be required to reach an annualized rate of 50 percent until the last test collection. The tests would have to be spaced reasonably through the year to permit the employer to phase into the 50 percent rate, and the total number of tests conducted would have to equal at least 25 percent of the covered population.

Suppose, for example, that an employer has 1000 sensitive safety- and security-related employees. At a 50 percent annual rate, 500 tests would have to be conducted during a year. Under the phase-in, however, the employer could conduct only a few drug tests at the beginning of the program and then gradually increase the number of tests until, by the end of the first year, the annualized rate of 50 percent was achieved. Thus, if the employer's drug testing plan contemplated administering random tests on 12 occasions during the year, the employer would need to administer at least 42 tests (500 divided by 12) on the last occasion, but could administer fewer tests until then. Overall, the employer would have to conduct at least 250 random tests the first year. In subsequent years, the 50 percent rate would be maintained.

Post-Casualty Testing

Numerous commenters felt that post-casualty testing was a law-enforcement function and was appropriately the responsibility of the Coast Guard. Employers generally objected to the proposal that post-casualty testing be conducted by crewmembers when medical personnel were not available.

Response: The Coast Guard appreciates this opinion. However, in many instances the Coast Guard would be unaware that a serious marine incident had occurred until receipt from a vessel master or owner of Form CG-2692, Report of Vessel Casualty. Since time is of the essence in post-casualty testing, the responsibility for ensuring that it is accomplished whenever practicable has been left with the employer.

DHHS Guidelines

Many companies expressed concern over the required use of DHHS Guidelines, especially with respect to random testing programs which they presently have in effect. They stated that such requirements would force them to drastically alter testing programs which have proven effective.

Response: In the notice of proposed rulemaking for this rule, the Coast Guard proposed that all drug testing take place in accordance with the Mandatory Guidelines for Federal Drug Testing Programs of the Department of Health and Human Services (53 FR 11970; April 11, 1988). These guidelines describe the collection and testing procedures applicable to all drug testing in the Federal government, and they include safeguards for accuracy and privacy of testing.

The Department of Transportation has determined that certain modifications of the DHHS Guidelines are appropriate in the context of this and other DOT operating administration drug-free regulations. The result is the DOT "Procedures for Transportation Workplace Drug Testing Programs," which will be codified at 49 CFR Part 40. These DOT Procedures are intended to preserve, to the greatest extent practicable, the important safeguards provided by the HHS Guidelines.

Some of the modifications to the DHHS Guidelines are editorial in nature (for example, references to responsibilities of "agencies" are changed to reference "employers"). Other modifications are intended to take into account differences in the situations of Federal agencies and DOT regulated industries. For example, in testing at remote sites, DOT regulated industries may find it necessary to conduct some kinds of testing in medical facilities, through use of mobile units, or in ordinary toilet facilities, rather than the more permanent collection sites contemplated by the DHHS Guidelines. It may not be practicable for the regulated parties to maintain on-site permanent log books. Consequently, the DOT Procedures permit alternative collection and recordkeeping procedures in these circumstances.

During the comment period on this drug-free workplace rule and those proposed by other operating administrations, comments were received concerning the DHHS Guidelines. These comments will be incorporated in the docket for the Office of the Secretary (OST) interim final rule creating 49 CFR Part 40. The OST will respond to those comments, as well as comments received during the comment period for Part 40, in its notice following the end of that comment period.

Applicability

Many comments were received that stated the scope of applicability of the proposed rule was too broad. They feel many positions in the marine transportation industry are not directly related to vessel navigation or safety, this being especially true in smaller vessel operations such as excursion boats, and on fish processing vessels. Requiring testing of caterers, bartenders, and musicians on small passenger vessels, or people involved in factory-type functions aboard fish processing vessels would prove excessively costly to the operators and such testing would not enhance the safety of navigation or vessel operation.

Response: The Coast Guard agrees with this view. The regulations in the final rule have been changed to eliminate pre-employment, for cause, and random testing requirements for employees whose duties do not directly affect a vessel's safe navigation or operation. In addition to the persons discussed above, the Coast Guard has determined that scientific personnel on oceanographic research vessels can be exempted.

Employee Assistance Programs

Employee assistance programs received wide support with the exception of requiring rehabilitation as part of the program. There was strong opposition from employers to any mandated rehabilitation program. Employers feel it is essential for them to retain the right to terminate a person's employment, if they desire, should that person test positive for drugs. Union comments generally favor some requirement for rehabilitation of testing is mandated.

Response: The Coast Guard agrees that rehabilitation of an employee is not directly related to the safety of the vessel. The Coast Guard's concern is solely that persons who are impaired, or are likely to be impaired, are not carrying out safety-related duties. Employee rehabilitation should be a decision of the employer or agreed upon between labor and management during the collective bargaining process. The requirement for mandatory reinstatement of an employee who successfully completes rehabilitation has been deleted from the final rule. However, a person may not return to a safety-related position after testing positive for drugs without the MRO's recommendation. The person must agree to unannounced testing for a period of 60 months. In addition, the provisions of 46 CFR Part 5 concerning suspension or revocation of a license, certificate of registry, or merchant mariners document, and their restoration, apply.

Comments that the Proposed Rules are Politically-Motivated

Over 80 commenters addressed the "short" comment period allowed for evaluating the proposed regulations. Extentions of the comment period for 30 to 180 days were requested. Many commenters suggested that the proposed rules be reissued as an ANPRM, while others requested that an SNPRM be issued before publication of a final rule. The general perception of many in the industry was that the Coast Guard was rushing to final rule in this instance because of the up-coming elections in November.

Response: Because this issue was raised so frequently by the commenters, the Coast Guard chose to address these comments although they do not address the substance of the rule. The war against drugs is one of this Administration's top priorities. Also, Congress has enacted, and is considering, a substantial amount of legislation addressing the use, distribution, importation, and interdiction of drugs in the United States. Moreover, a significant number of public opinion polls indicate that the American public is deeply concerned about the effect of drug use by individuals in critical safety occupations, including the maritime industry. Development of this rule is motivated by the current political climate only to the extent that these attitudes coincide with the Coast Guard's statutory duties and authority. The Coast Guard is implementing these comprehensive anti-drug regulations because they are consistent with our statutory authority and responsibility to promulgate minimum standards to ensure and promote maritime safety.

Medical Review Officers

Numerous comments were received which indicated opposition to the requirement that employers hire a Medical Review Officer (MRO) to evaluate the results determined to be positive by a testing laboratory. Employers felt that the laboratories would best be able to ascertain the validity of positive test results and the requirement for an MRO represented an unnecessary expense.

Response: After consideration of the comments on the issue of the MROs, the Coast Guard has determined that the requirements to utilize an MRO are appropriate. The Coast Guard believes that the review and evaluation functions of an MRO, as set forth in 49 CFR Part 40, provide critical and necessary safeguards for an employee who is subject to drug testing under the comprehensive anti-drug program. The Coast Guard beleives that the MRO will prove to be a beneficial asset to both employees and employers who are subject to the provisions of the final rule.

Neither this rule nor 49 CFR Part 40 requires that each employer have its own individual MRO. The Coast Guard anticipates that small entities will become associated with large companies, or will participate in a consortium of small companies, in order to comply with the MRO requirements, and that the services of an MRO will not result in unreasonable costs to small entities.

Costs of Implementation

Many commenters stated that the Coast Guard has seriously underestimated the cost of implementing these regulations.

Response: The Coast Guard agrees that the certain cost estimates in the NPRM were lower than can be expected (e.g., initial screen and confirmatory testing costs). These have been increased in the development of the final regulatory impact analysis. However, because of changes included in the final rule (e.g., elimination of rehabilitation requirements and reducing the random testing rate to 50 percent), the estimated overall cost of implementing these regulations has dropped from $62.30 million to a maximum of $9.22 million during the third year of implementation to a constantly recurring annual cost of $7.20 million after the fifth year.

Exemption of Seasonal or Temporary Employees

Numerous requests were received from small passenger vessel operators and others to exclude seasonal or temporary employees. They expressed sincere concerns that requiring prospective employees to undergo pre-employment drug testing and to then be subjected to a random testing program would result in many individuals, notably high school or college students, seeking employment elsewhere. This, in turn, would greatly increase the difficulty of obtaining sufficient help to run a seasonal operation.

Response: As stated previously in this preamble, the Coast Guard has modified the scope of these regulations to exclude persons who are not involved as "crewmembers" aboard a vessel. Small passenger vessel operators will not be required to test employees serving as waiters, waitresses, cooks, bartenders, entertainers, etc., provided their duties do not directly affect the safety of the vessel's navigation or operations. Similarly, many seasonal employees on fish processing vessels are exempted. These changes should alleviate the problems associated with temporary employees. The Coast Guard appreciates the concerns expressed by parties employing high school or college age workers on a seasonal basis. However, many of these persons are solely or primarily responsible for the safe operation of the vessel as for example, a yacht club tender, camp boating instructor, or licensed operator of a sport fishing boat carrying six or fewer passengers. Safety concerns are not lessened because these persons are employed on a seasonal or temporary basis. In fact, there is considerable opinion, and some evidence, that the incidence of drug use is higher among the high school and college age group. The final rule does not exempt seasonal or temporary "crewmembers" from the testing requirements.

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Alternate Testing Technologies

Testing of Hair: A number of comments addressed the issue of using testing technologies different from those proposed by the Coast Guard. Three comments suggested that Radio Immunoassy of Hair be permitted as an alternative to urinalysis.

Response: Because the suggestion of drug testing using analysis of hair specimens raises an issue within the expertise of DHHS, the Coast Guard does not intend to include testing of hair at this time. If DHHS finds this drug testing method satisfactory in the future, and if the DOT procedures in 49 CFR Part 40 are revised to include this testing method, or any other proven testing technology, the Coast Guard will adopt them in their rules also.

Breath Testing Devices: Many commenters objected to the requirement in the proposed rules that all inspected vessels certificated for unrestricted ocean routes, and all inspected vessels certificated for restricted overseas routes, have on board at all times an evidential breath testing device (EBT) approved by the National Highway Transportation Safety Administration. They objected primarily to the high initial costs of obtaining this equipment and having to train crewmembers to properly calibrate and operate these devices and to perform post-casualty breath testing on fellow crewmembers.

Response: After reviewing the comments on this issue, the Coast Guard has revised the proposed rule to allow carriage of any breath testing device capable of accurately detecting the presence of alcohol in a crewmember's system. Some of these devices have been shown to be very accurate, easy to use, and inexpensive.

Because of the wide variety of breath testing devices available under the revised rule, the Coast Guard will require only that such devices be used in accordance with procedures specified by the manufacturer. This change will provide employers with sufficient flexibility to choose any accurate breath testing device compatible with their operational circumstances. The use of alcohol is not automatically disqualifying. The weight to be given test results in determining whether the standards of 33 CFR Part 95 have been violated is up to the Administrative Law Judge who can consider the type of device and the conditions under which the test was administered.

The Coast Guard appreciates the concerns raised about testing fellow crewmembers, and allows blood or breath samples to be collected by medical personnel or other qualified nonvessel personnel whenever practicable. However, if a vessel is in a location where such personnel are not available to conduct such tests, breath testing would be required to be done by vessel personnel. Blood testing can only be conducted by qualified medical personnel. The alternative, to forego readily available evidence concerning whether alcohol was involved in a casualty, would not be in compliance with the intent of 46 U.S.C. 6101.

Conflict with Foreign, State or Local Laws, or with Existing Agreements

Numerous comments indicated that drug testing of individuals was contrary to existing foreign or state laws prohibiting such testing. Other comments stated that the current programs are the result of collective bargaining agreements with affected unions and that the requirements of the proposed rules will send them back to the bargaining table.

Response: The Coast Guard recognizes that some state or local laws and some foreign laws may prohibit or limit the testing required under the final rule. Because of the predominant role assigned the Coast Guard concerning the safe operation of U.S. vessels in commercial service, it is the Coast Guard view that these rules preempt state laws. The complexity and variable circumstances encountered in the interaction of U.S. and foreign law concerning U.S. flag vessels operating within the jurisdiction of a foreign country requires each such situation to be separately analyzed.

We are aware of concerns expressed by foreign entities and foreign governments concerning the potential of our rule to have effect outside United States territory. There are several kinds of situations in which this concern appears to arise.

The first such situation involves a foreign citizen employed by a U.S. company. To begin with, we believe it is fundamental that a foreign citizen employed in the United States by an American company is fully subject to U.S. law, including the requirements for drug testing. With respect to employees of an American company located in a foreign country, it is not our intention to require an employer to violate local law. The requirement to ensure that employees located in a foreign country are subject to drug testing will not become effective until January 1, 1990. This additional compliance period is intended to minimize disruption for employers and employees while the U.S. government meets with foreign governments to discuss implementation of the requirements of the rule.

The second situation that has generated interest in this context concerns foreign entities that are contractors to U.S. companies. The Coast Guard position is that a marine employer who uses contract personnel to perform the duties of a crewmember has "engaged" those personnel. Therefore, the final rule subjects employees of the contractor to the same drug-testing requirements as direct employees of the marine employer. This requirement is necessary to ensure that U.S. companies do not circumvent the rule by contracting out for services. Some foreign entities and their governments, however, have suggested that this gives the rule extraterritorial effect, since a foreign contractor, like a U.S. contractor, would have to comply with our rule.

However, our rule does not *require* any foreign contractor to conduct drug testing of its employees. The rule imposes requirements only on the operator, i.e., marine employer. It is the responsibility of the marine employer to ensure that crewmembers are drug-free, as enforced by the drug-testing program we are today establishing. In that respect, the drug-testing requirements are not fundamentally different from other testing and training requirements. While it is true that foreign contractors will have to ensure that their employees who service U.S. companies meet our requirements, the same is also true for U.S. contractors.

Nevertheless, we appreciate the seriousness of the concerns expressed on this point. Therefore, the final rule provides that U.S. companies can continue to use foreign contractor employees, whether or not they have instituted drug-testing programs, through December 31, 1989. This short delay in the application of our rule to foreign contractors will provide an opportunity for additional discussion between governments.

The third situation involves a foreign citizen, employed by a foreign company, on a U.S. vessel operating in waters subject to the jurisdiction of the United States. Under agreement between the United States and Canada, Canadian pilots are required on American vessels under certain circumstances in both American and Canadian waters. These pilots, moreover, may, at least in some instances, be employees of the Canadian government. Representatives of the Canadian government have expressed the view that requiring testing of these pilots, even if they are in the United States at the time of the test, might violate the Canadian Human Rights Act. While there is as yet no definitive understanding about the extent and effect of Canadian law on random drug testing by Canadians operating in the United States, further consultation with the Canadian government seems advisable. Under the circumstances, we have determined to postpone implementation of the final rule, except for post-casualty testing, insofar as it would affect foreign pilots and foreign vessels, until January 1, 1990. This will allow for consultation between governments about implementation of the requirements of the rule.

There are also issues about random tests for employees of U.S. companies where the vessels may not return to the U.S. during the year. The company is required to conduct the tests in international waters, where feasible, or on board the ship within the territorial waters of a foreign country where such testing does not violate the laws of the foreign country. Where foreign law prohibits the testing of an employee regardless of his location, implementation of the final rule, insofar as it would affect such individuals, is postponed until January 1, 1990, to allow consultations between governments.

We have determined not to make the rule applicable in any situation where compliance would violate the domestic laws or policies of another country. In addition, because of the potential confusion that may exist involving application of this rule in situations where compliance could violate foreign laws or policies, we have determined not to make the rule applicable, until January 1, 1990, in any situation where a foreign government contends that compliance with our rule raises questions of compatibility with its domestic laws or policies. During the next year, the Department of Transportation and other U.S. government officials will be working closely with representatives of foreign governments with the goal of reaching permanent resolution to any conflict between our rule and foreign laws and policies. The U.S. and Canadian Governments have already established a bilateral working group in an attempt to achieve this objective. We believe that considerable progress has already been made, and further meetings will be held in the near future. While we believe that this can be a model for addressing the concerns of other countries, it is not intended to be the exclusive means. The Commandant may delay the effective date further under this section, if such delay is necessary to permit consultation with any foreign governments to be successfully completed.

It is the agency's intention to issue a notice no later than December 1, 1989, that would make any necessary amendments to the rule as a result of discussions with foreign governments. Shortly after their issuance, any such notices will be published in the **Federal Register.** While we recognize that this may create some anomalous conditions in competitive situations, it is the intention of the U.S. government to make every effort to resolve potential conflicts with foreign governments in a manner that accommodates their concerns while ensuring the necessary level of safety by those we regulate.

Section-by-Section Analysis

This final rule reflects substantial changes to those regulations set forth in the notice of proposed rulemaking. These changes have been made as a result of the comments received, issues raised during the public hearings and further review within the Coast Guard.

Amendments to Part 4

The final rule amends the existing marine casualty and investigation regulations by adding chemical testing requirements to be followed when commercial vessels are involved in serious marine incidents. To accomplish this, it has also been necessary to define additional terms utilized in these new regulations.

Section 4.03–2 defines a serious marine incident. Serious marine incidents differ from marine casualties and accidents. Some occurrences considered reportable marine casualties would not be considered serious marine incidents (e.g., suffering vessel damages of $50,000); other occurrences considered serious marine incidents would not be considered reportable marine casualties (e.g., discharging a reportable quantity of a hazardous substance into the navigable waters of the United States).

Section 4.03–4 defines an individual directly involved in a serious marine incident. This rule requires that these individuals be chemically tested for drug or alcohol use. For an individual to be directly involved in a serious marine incident, that individual's order, action or failure to act must have been a significant causative factor in the events leading to or causing a serious marine incident. This would be indicative of human error. Chemical testing would be required to determine whether or not such an error could be a result of drug or alcohol impairment. It is not intended by these regulations that the master of a vessel, who, by virtue of position, is responsible for the entire vessel, be tested after each serious marine incident in which the vessel may be involved. It is also not the intent of these regulations to necessarily test personnel after each material failure which may lead to a serious marine incident (e.g., the helmsman who happens to be on duty at the time of a steering gear failure).

Section 4.03–5 defines a medical facility.

Section 4.03–6 defines qualified medical personnel.

Section 4.03–7 defines a chemical test. Although these final rules recognize only certain chemical tests of urine, blood and breath to determine evidence of dangerous drug or alcohol use, the definition is written in broad enough terms to allow for the acceptance of other types of tests which may be added in subsequent rulemakings.

Paragraph (e) of § 4.05–1 has been revised to require the reporting of a marine casualty to the Coast Guard when an injury results which requires professional medical treatment beyond first aid and, in cases involving crewmembers, renders an individual unfit to perform routine vessel duties. This varies from the previous requirement which required reporting of injuries which incapacitated a person for a period in excess of 72 hours. This eliminates the need to report such cases as sprained ankles whereby an individual could be incapacitated for over three days and still not require professional medical attention.

A new Subpart 4.06 is added to address mandatory chemical testing following serious marine incidents involving vessels in commercial service. These regulations extend those contained in 33 CFR Part 95, which require determinations as to whether alcohol or drugs are involved in marine casualties and allow for the chemical testing of individuals involved in marine casualties or suspected of being intoxicated. The regulations in this part require chemical testing of individuals directly involved in serious marine incidents.

Section 4.06–1 outlines the responsibilities of the marine employer following the occurrence of a serious marine incident. A marine employer is first required to make a timely, good faith determination as to whether a marine casualty, discharge of oil, or discharge of a hazardous substance is, or is likely to become, a serious marine incident. If the employer determines that the criteria for a serious marine incident has been, or likely will be, met, the marine employer shall then determine who, if anyone, abroad the vessel was

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directly involved in the incident. The marine employer shall then take all practicable steps to assure that all persons directly involved in the serious marine incident are chemically tested for evidence of dangerous drug or alcohol use. A law enforcement officer may determine that individuals other than those designated by the marine employer should also be designated as being directly involved in the serious marine incident. In such cases, the marine employer must take all practicable steps to test those individuals also.

This section is intended to allow the marine employer to balance the chemical testing requirements of this part against the immediate circumstances surrounding a serious marine incident. The need to control a shipboard fire may far outweigh the necessity to promptly take a breath sample to test for alcohol use. It may be physically impossible to transport a crewmember directly ivnolved in a serious marine incident abroad a fishing vessel in the Gulf of Alaska to a medical facility where a blood sample can be taken and shipped for testing. The Coast Guard expects that timely chemical tests will be conducted on every person directly involved in a serious marine incident. It trusts the marine employer to make good faith determinations as to when such testing is required, who is required to be tested, and when it is practicable to do so.

The regulations also require the marine employer to indoctrinate all individuals engaged or employed aboard a vessel of these requirements. Personnel assigned functions to implement these regulations shall be trained to carry out those duties as necessary.

Section 4.06–5 outlines the responsibilities of persons directly involved in serious marine incidents. An individual can be determined to be directly involved in a serious marine incident by a marine employer or a law enforcement officer. When an individual is directed to undergo chemical testing for evidence of drug or alcohol use by the marine employer or the law enforcement officer, the individual is required to comply. However, no individual can be forcibly compelled to comply with these testing requirements. In cases where an individual refuses to submit to chemical testing required by this part, an entry will be made in the official log book, if one is required to be maintained, and on Form CG–2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident). Such a refusal is considered to be a violation of regulation and will subject individuals holding a license, certificate of registry, or merchant marine's document to suspension and revocation proceedings under 46 CFR Part 5. Individuals, whether or not they hold a license, certificate of registry, or merchant mariner's document, who refuse to submit to testing when directed to do so by their employer or a law enforcement officer will be subject to removal from any duties which directly affect the safety of vessel's navigation or operations. There may be instances where personnel would be unable to submit to such testing in order to perform duties in the aftermath of a serious marine incident which would be necessary for the preservation of life or property or the protection of the environment. In such cases, the testing would have to be delayed or not conducted, as determined necessary by the marine employer.

Section 4.06–10 specifies what types of specimens must be taken to meet the chemical testing requirements of this subpart. Paragraph (a) requires urine specimens to be provided for testing for evidence of dangerous drug use. Urine specimens must be collected and tested in accordance with the requirements of § 4.06–20 and 46 CFR Part 16, "Chemical Testing." Paragraph (b) allows either blood or breath specimens, or both, to be utilized to test for evidence of alcohol use. Because alcohol dissipates quickly from a person's system, it is necessary that the specimens be taken as soon as is practicable following the occurrence of a serious marine incident.

Section 4.06–20 establishes requirements for specimen collection. It is extremely important that specimens be obtained as soon as practicable following the occurrence of a serious marine incident, that they are not altered or tampered with, and that they can be positively tracked from the time the specimens are provided until the time they are tested. To ensure this, designated personnel must supervise the collection process and make certain that the proper procedures are followed. Ideally, specimen collection would be overseen by qualified collection personnel or by a firm offering a specimen collection service, either in a designated shoreside facility or aboard the vessel. Because of the nature of the maritime industry, however, it may be necessary for specimen collections to be carried out in remote locations which would necessitate that trained shipboard personnel collect specimens. This latter option would only be permitted for urine and breath specimen collections: blood specimens are only permitted to be taken by qualified medical personnel.

Paragraph (a) of this section specifies that a vessel certificated for unrestricted ocean routes and a vessel certificated for restricted overseas routes carry on board a breath testing device capable of determining the presence of alcohol in a person's system. The selection of this device is left to the discretion of the marine employer. However, the device must be used in accordance with the procedures specified by its manufacturer. These devices are not required to be carried on other vessels since their routes will, in all likelihood, place them near a medical facility where blood specimens can be taken, near a law enforcement facility where breath testing can be conducted, or in a location where the marine employer or the designated representative can bring testing equipment to the vessel.

Paragraph (b) requires that marine employers have urine specimen collection and shipping kits readily available for use in the collection and shipping of urine specimens following serious marine incidents. These kits need not be maintained aboard vessels if they can be obtained within 24 hours of the occurrence of a serious marine incident. The kits must contain all the items necessary, including written step-by-step procedures to be followed, to ensure that specimens are properly collected and shipped, regardless of the location at which the collection is accomplished. Specimen collection and mailing kit requirements are contained in § 16.330.

Section 4.06–30 requires that body fluid specimens be collected from the remains of crewmembers who die as a result of marine casualties. The marine employer is responsible for notifying the appropriate local authority of this requirement. The marine employer shall make a specimen collection and shipping kit available to the local authority and assist in assuring that the specimen is properly handled and shipped. Recognizing that there may be instances where the local authority or the custodian of the remains may refuse to allow such specimens to be taken, the regulations permit the marine employer to explain why the required specimens were not obtained in such cases.

Section 4.06–40 places the burden of ensuring that blood and urine specimens are properly collected, documented, and shipped upon the marine employer. Paragraph (a) specifies shipping requirements specific to blood specimens, and paragraph (b) specifies requirements for shipment of urine specimens.

Section 4.06–50 requires testing laboratories to provide prompt analyses of specimens sent to them for testing. The testing laboratories are required to send test reports to the Medical Review Officer designated by the marine employer. The main function of the Medical Review Officer is to ensure that any positive test result is not attributable to a prescribed medication or some other acceptable reason.

Paragraph (c) cautions that a positive test result, by itself, shall not constitute a finding that the use of drugs or alcohol was the probable cause of a serious marine incident. Such a fact may, however, be considered as evidence in the investigation of a serious marine incident and may lead to the conclusion that the use of drugs or alcohol was its probable cause.

Section 4.06–60 details the requirements for submittal of chemical testing information to the Coast Guard. This is accomplished through the use of Form CG–2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident). Following the occurrence of a serious marine incident, the marine employer is required to submit this form to the Coast Guard. In cases in which a Form CG–2692 (Report of Marine Accident, Injury or Death) is required to be submitted, the Form CG–2692B shall be appended to it. In cases involving discharges of oil or hazardous substances, where a Form CG–2692 may not be required, the Form CG–2692B shall be submitted to the Coast Guard Officer in Charge, Marine Inspection having jurisdiction over the location where the discharge occurred or nearest the port of the vessel's first arrival following the discharge. The Form CG–2692B requires the marine employer to indicate all individuals directly involved in a serious marine incident. These individuals are to provide specimens for chemical testing as required by this subpart. In instances where individuals refuse to provide required specimens, or where for some reason specimens cannot be obtained, this information shall also be included on the form. The marine employer shall submit a copy of the positive or negative test results for each person designated as a person directly involved in the serious marine incident to the same Officer in Charge, Marine Inspection to whom the Form CG–2692B was submitted.

Amendments to Part 5

Table 5.569 is revised in the final rule to include a listing for "Violation of Regulation: Refusal to provide specimens for required chemical test." The suggested range of appropriate order to be used for this violation will be a 12 to 24 month outright suspension of an individual's license, certificate of registry, or merchant mariner's document.

Amendments to Subchapter B

The final rule amends Subchapter B, Merchant Marine Officers and Seamen, by adding a new Part 16, Chemical Testing. Part 16 is divided into four subparts: Subpart A, General; Subpart B, Required Chemical Testing; Subpart C, Standards for Chemical Testing for Dangerous Drugs; and Subpart D, Employee Assistance Programs.

Subpart A of this part contains requirements of a general nature which apply to the chemical testing of commercial vessel personnel.

Section 16.101 informs the reader of the purpose of the regulations contained in this part, i.e., to provide minimum standards, procedures and means to be used to test for the use of dangerous drugs in order to minimize the use of intoxicants by merchant marine personnel and to promote a drug free and safe work environment.

Section 16.101 provides that an employer may test the sample obtained under this rule only for the drugs required or specifically authorized to be tested under the rule. That is, an employer must test the sample for the five major drugs listed in the regulation. Only if, in the context of reasonable cause testing, the Coast Guard authorizes testing for additional Drug X under 49 CFR Part 40 (an approval which would be granted only after consultation with the Department of Health and Human Services, and only on the basis of a DHHS-established testing protocol and positive threshold) may the employer also test the sample for that drug.

Absent such an approval, if the employer wants to test, in addition, for Drug Y, the employer must obtain a second sample from the employee. The obtaining of this second sample is not under the authority of these regulations. The employer must base its request for the second sample on whatever other legal authority is available, since the employer cannot rely on the Coast Guard regulation as the basis for the request.

Section 16.105 defines several terms utilized in Part 16.

"Chemical test" is defined in broad enough terms to describe virtually any type of chemical test. Although these final rules authorize only certain chemical tests of urine, blood and breath to determine evidence of dangerous drug or alcohol use, the definition is written to allow for the acceptance of other types of tests as they are proven to be satisfactory.

"Commitment of employment" is defined to mean the proof of employment required by 46 CFR 12.25–5.

"Crewmember", as used in this part, is an important term as it defines vessel personnel to whom the regulations of this part apply. The intent of these regulations is to chemically test all individuals engaged or employed aboard a vessel who perform duties which directly affect the safety of the vessel or its operations. This definition states that anyone aboard a vessel who is acting under the authority of a license, certificate of registry, or merchant mariner's document issued under this subchapter, whether or not a member of the vessel's crew, is subject to the requirements of this part. The wording is used to include individuals such as federal pilots who operate aboard a vessel, but are technically not a member of the vessel's crew. While not members of the vessel's crew, they are aboard serving a function, albeit temporary, which can directly affect the safety of the vessel. It is therefore necessary for them to be subject to these chemical testing requirements. The second part of this definition states that anyone engaged or employed to perform duties aboard a United States vessel which is required by law or regulation to be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued under this subchapter which directly affects the safety of the vessel or its operations is similarly subject to the requirements of this part. Thus, state pilots, certain industrial personnel, and undocumented crewmembers would all be subject to the requirements of this part. Certain of these regulations do not apply to individuals employed aboard a small passenger vessel such as waiters, waitresses, bartenders, and musicians who have no duties directly affecting the safety of the vessel. Scientific personnel aboard oceanographic research vessels and individuals primarily employed in the preparation of fish or fish products on fish processing vessels are also excluded from certain testing requirements.

"Dangerous drug" is defined.

"Dangerous drug level" is defined.

"Employer" is defined to include both marine employers and sponsoring organizations, as described below. Many of the regulations in this part refer to employers, vice marine employers. In such cases, marine employers may

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utilize sponsoring organizations to fulfill specified regulatory responsibilities.

"Fails a chemical test for dangerous drugs" is defined.

"Intoxicant" is defined to include any form of alcohol, dangerous drug, or combination thereof.

"Marine employer" is broadly defined to mean a vessel's owner, managing operator, charter, agent, master, or person in charge. Many of the regulations in this part pertain specifically to the marine employer. Who specifically executes the regulatory requirement will often depend on the circumstances of a given situation. Where doubt exists as to who will carry out a particular regulatory requirement, written company guidance should be provided.

"Medical Review Officer" is an individual designated by the employer to carry out the duties specified in 46 CFR 16.370. This individual may be employed directly by the employer, or may be provided for as part of a contracted drug testing program.

"Serious marine incident" is defined as in 46 CFR 4.03–2.

"Sponsoring organization" is broadly defined to include companies, consortiums, corporations, associations, unions, or other organizations with which marine employers or their employees are associated. Many of the regulations in this part refer to employers, vice marine employers. In such cases, sponsoring organizations can be used to fulfill the specified regulatory responsibilities.

"Vessel owned in the United States" is defined.

Subpart B of this part delineates the type of required chemical testing.

Section 16.201 emphasizes that chemical testing of personnel must be conducted. Any user who fails a chemical test for dangerous drugs is considered to be a user of dangerous drugs. The employer or prospective employer of an individual who fails to pass a required chemical test must deny that individual employment in, or remove him or her as soon as practicable from duties which directly affect the safety of the vessel's navigation or operations. If an individual holds a license, certificate of registry, or merchant mariner's document and fails to pass a required chemical test, the employer or prospective employer must report the test results to the nearest Officer in Charge, Marine Inspection. The individual will then be subject to suspension and revocation proceedings against his or her license, certificate of registry, or merchant mariner's document under 46 CFR Part 5.

Paragraph (e) of this section permits individuals who have failed a required chemical test to be rehired, provided requirements outlined elsewhere in the regulations have been fulfilled.

Section 16.205 establishes a graduated implementation scale for employers to come into compliance with the requirements of this part. A graduated scale is provided to allow smaller employers time to form associations or other similar sponsoring organizations, if they so choose, to oversee certain testing aspects required by these regulations and enable them to obtain reduced group testing rates at certified testing laboratories.

Marine employers who employ more than 50 employees subject to the requirements of this part are given six months after the effective date of this rule to implement a pre-employment testing program and one year to implement the remainder of the drug testing program.

Marine employers who employ from 11 to 50 employees subject to the requirements of this part are given one year after the effective date of this rule to implement the pre-employment, periodic, post-accident, reasonable cause, and after return to duty testing programs. They must establish random testing programs within two years after the effective date of this rule.

Marine employers who employ 10 or fewer employees subject to the requirements of this part are given two years after the effective date of this rule to implement a complete anti-drug program which fully complies with these regulations.

Paragraph (d) allows random testing programs to be gradually brought into effect over an extended time period of one year. As discussed earlier in this preamble, it may be a substantial burden for employers to move immediately from no drug testing to a 50-percent random testing rate. This paragraph specifies the graduated steps which will be permitted in the implementation of random testing programs.

Paragraph (f) is written to clarify that foreign pilots aboard U.S. vessels operating in waters not subject to the jurisdiction of the United States do not have to meet the testing requirements of this part.

Section 16.207 addresses conflicts with foreign laws. As discussed previously in this preamble, some foreign laws may prohibit testing of their citizens. This section delays implementation of the testing requirements of this part with respect to foreign citizens aboard U.S. vessels in order that agreements can be pursued with foreign governments to clarify this point.

Section 16.210 requires that no one be engaged, employed or otherwise given a commitment of employment as a crewmember aboard a vessel unless that individual passes a chemical test for dangerous drugs. The burden rests upon the marine employer to ensure that this requirement is met. The pre-employment test may be waived if the individual can prove that he or she has passed a pre-employment or periodic chemical test within the previous six months or if the individual can prove that he or she has been subject to an accepted random testing program for not less than twelve months, has not failed a chemical test for dangerous drugs, and has not refused to participate in required chemical tests. The wording of this section relieves the employer of the burden of pre-employment testing by allowing the hiring of individuals through sponsoring organizations, e.g., unions, which conduct pre-employment and random tests in accordance with these regulations of their members prior to their being assigned a shipboard billet.

Section 16.220 specifies that a chemical test for dangerous drugs must be conducted whenever a physical examination is required by regulations contained elsewhere in this subchapter. If a physical examination is required for a license or merchant mariner's document, the applicant must provide the results of the chemical test to the Coast Guard Regional Examination Center (REC). When the regulations require a license holder to undergo physical examinations on a periodic basis, the results of each required chemical test must be provided to the REC by the individual at the time of license renewal.

If an individual can prove that he or she has passed a pre-employment chemical test within the previous six months or if the individual can prove that he or she has been subject to an accepted random testing program for not less than twelve months, has not failed a chemical test for dangerous drugs, and has not refused to participate in required chemical tests, a periodic chemical test need not be conducted.

Section 16.230 requires marine employers to provide for the chemical testing of crewmembers on a random basis. As has been discussed previously, marine employers may form or otherwise use sponsoring organizations to conduct their random chemical testing programs.

Employers must test crewmembers on a random basis at an annual rate of not less than 50 percent. Every member of a given population must have a substantially equal chance of selection to be tested on a scientifically valid basis. The basis of selection is left to the employer. Employers may choose to test individuals; employers may choose to test entire units. The important consideration is that the testing frequency and process used in such that an individual employee's chances of selection remain constant throughout his or her employment. Employees may not receive a prewarning of when they are to be randomly tested.

It is important to note that the requirements of this section apply to individuals such as independent tankermen, federal pilots, state pilots, and certain industrial personnel. While not members of the vessel's crew, they are aboard serving a function, albeit temporary, which can directly affect the safety of the vessel or its operations. It is therefore necessary for them to be subject to these chemical testing requirements. Because such individuals commonly work for or through "third parties", e.g., pilot's associations or drilling companies, and are not properly employees of the marine employer, it is incumbent upon the marine employer to ensure that these individuals are either tested under programs established by their employer or association, or are tested under the marine employer's established program.

Paragraph (d) forbids anyone from serving as master, operator, or person in charge on a vessel in a position for which a license or merchant mariner's document is required unless all crewmembers are subject to the random testing requirements of this section. Doing so could result in suspension and revocation proceedings being initiated against the individual. This change was made because it is unreasonable to expect that all holders of licenses or merchant mariner's documents aboard a vessel be cognizant of who is and who is not in compliance with the testing procedures of this section. The master, operator, or person in charge, however, should be.

Section 16.240 requires that all individuals directly involved in a serious marine incident be chemically tested for the presence of dangerous drugs and alcohol in accordance with the requirements of 46 CFR 4.06.

Section 16.250 requires an employer to chemically test crewmembers for dangerous drug use when there is reasonable cause to suspect such usage. The decision to test in such circumstances should be based on the observation and concurrence of two persons in supervisory positions, wherever practicable. Whenever such testing is conducted, it shall be logged in the vessel's official log book, if one is required. If an individual refuses to submit or cooperate in the administration of a timely chemical test when directed to do so, this fact shall also be entered in the vessel's official log book. In the case of licensed or documented personnel, this will subject the individual to suspension and revocation proceeding under 46 CFR Part 5.

Section 16.260 requires employers to maintain records of chemical tests performed. These records must be sufficient to provide evidence of the results of chemical tests of crewmembers to satisfy §§ 16.210(b) and 16.220(b). Additionally, the records must be sufficiently detailed so as to permit collection and analysis of the effectiveness of the testing programs. Negative report records must be retained for one year. Positive report rcords must be maintained for five years. These records must be made available to Coast Guard officials upon request.

Subpart C establishes the standards to be met when chemically testing for dangerous drugs.

Section 16.301 requires that drug testing programs subject to this part be conducted in a manner consistent with 49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs. These regulations are based upon "Mandatory Guidelines for Federal Workplace Drug Testing Programs," developed by the Department of Health and Human Services (DHHS Guidelines). These were published in the **Federal Register** on April 11, 1988. This section cautions readers that the regulations in this subpart are summaries of the requirements contained in 49 CFR Part 40. In establishing specific procedures to carry out the requirements of this part, those regulations should be consulted.

Section 16.310 provides the employer with general guidance in the establishment of specimen collection procedures. It stresses principal issues which must be considered during program development (general collection site requirements, security of the collection site, access to the collection site by authorized personnel only, privacy of individuals providing specimens, and maintaining the integrity of specimens after they are given). Specific requirements for these aspects of a testing program are found in 49 CFR Part 40, and these regulations should be consulted to ensure program adequacy.

Section 16.320 requires that a chain of custody be established for each specimen provided for chemical testing. It is extremely important that each specimen can always be accounted for, from the time it is provided through its authorized disposition. A properly established chain of custody ensures that the chances of a specimen being altered, contaminated, switched, or lost are minimized and that test results provided are, in actuality, those of the indicated specimen.

Section 16.330 establishes specimen handling and shipping procedures. The regulations require the employer to obtain a specimen collection and shipping kit to be used to collect specimens and return them to the certified drug testing laboratory. Items required to be provided in the specimen collection and shipping kit are specified. The list is not all-inclusive, and additional items may be included as the employer considers necessary. It is imagined that the employer will work closely with the chosen drug testing laboratory in developing this kit. One important feature of the kit is the set of step-by-step instructions which describe the proper procedures to be followed during specimen collection, handling, and shipping. Because situations are envisioned where specimen collection may be supervised by personnel not overly familiar with these procedures, the specimen collection instructions must be written in a manner which is easily understandable and will result in the specimens being properly provided, stored, handled, and shipped to the testing laboratory.

Section 16.340 requires that laboratories used to conduct the chemical tests required by this part be DHHS certified. The burden is placed upon the employer to ensure that this requirement is met.

Section 16.350 requires that each specimen be analyzed in a manner consistent with 49 CFR 40.24. DHHS certified laboratories will meet this requirement. It also specifies the dangerous drugs for which each specimen must be tested and defines when a specimen is considered to have tested positive. Specimens which indicate the presence of a dangerous drug in excess of the levels established in 49 CFR 40.24 shall be reported to the Medical Review Officer as positive.

Section 16.360 describes the information which must be included on each specimen analysis report. Only specimens tested as positive on the confirmatory test are to be listed as positive on the specimen analysis report. Samples which are negative on the screening test and specimens which are negative on the confirmatory test

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shall be reported as negative on the specimen analysis report. All specimen analysis reports shall be sent to the Medical Review Officer designated by the employer, rather than to the employer.

Section 16.370 requires employers to designate or appoint a Medical Review Officer (MRO). The primary function of the MRO is to review and interpret each confirmed positive test in order to detemine if there is an alternative medical explanation for a positive test result. The MRO may be employed directly by the employer, or the provision of MRO services may be contracted as part of the drug testing program. The MRO verifies positive test results through interviews with the crewmember who tested positive, reviews of the crewmember's medical history and biomedical factors, and verification of the laboratory report and assessment. The MRO may, if he or she considers it necessary, request the original specimen be reanalyzed to determine the accuracy of the reported test result.

The MRO provides the final report to the employer or the employer's designated agent. The MRO may determine there is a legitimate medical explanation for a confirmed positive test result that is consistent with legal drug use. In such cases the MRO shall report a test result as negative. The MRO may conclude, based on reviews of laboratory inspection reports, quality assurance and quality control data, and other drug test results, that a particular drug test result is insufficient for further action. In such cases the MRO shall also report a test result as negative. If the MRO determines that there is no legitimate medical explanation for a confirmed positive test result that is consistent with legal drug use, the MRO shall report the positive test result to the employer for further proceedings in accordance with the employer's anti-drug program.

The MRO also determines when an individual who has failed a chemical drug test for dangerous drugs may return to work. The decision is made after the MRO determines that the individual is drug-free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work.

Section 16.380 mandates that employers shall not release individual test results or other personal information from anti-drug program records except: to the Coast Guard where required by these regulations, to specifically identified persons designated by the individual tested, or personally to the individual tested.

Subpart D specifies the requirements of employee assistance programs.

Section 16.401 requires employers to provide an Employee Assistance Program (EAP) for all crewmembers. The employer may establish the EAP as part of its internal personnel service program or the employer may contract with an entity that will provide EAP to a crewmember. The EAP must contain an education program and a training program for all personnel. At least 60 minutes of EAP training must be provided for each supervisor.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291. However, they are considered to be significant under the DOT regulatory policies and procedures (44 FR 11304; February 26, 1979) because they initiate a substantial regulatory program.

The Coast Guard has prepared and placed in the rulemaking docket a final regulatory evaluation addressing the economic impact of these rules. It may be inspected or copied at the Marine Safety Council, Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, from 8:00 a.m. to 3:00 p.m.

Regulatory Evaluation

The Coast Guard has developed a final regulatory impact analysis and placed it in the docket. As previously stated, the estimated overall cost of implementing these regulations will be a maximum of $9.22 million during the third year of implementation to a constantly recurring annual cost of $7.20 million after the fifth year. Although revisions to the vessel casualty reporting program have recently been effected, existing data does not readily identify drug-related casualties. Therefore, the Coast Guard has not estimated the total cost benefits of this rulemaking. However, the following must be kept in mind.

In 1984 there were approximately 2300 commercial vessel casualties (excluding fishing vessels), resulting in $237 million in damages and 68 deaths. Of these, 1133 of the accidents were directly attributable to personnel-related causes, i.e. carelessness, misjudgment, etc., resulting in $77 million in damages and 29 deaths. (It should be noted that these statistics do not include personnel deaths or injuries which were not associated with vessel accidents.) According to a 1987 NIDA report on Strategic Planning for Workplace Drug Abuse Programs, abusers of drugs and alcohol have 3.6 times as many accidents in comparison to other workers. There is no reason to believe a similar correlation does not exist in the maritime industry. On that basis, it would be reasonable to assume that detecting 7.5 percent drug users in the employee population would have the potential for preventing up to 27 percent ($3.6 \times 7.5\%$) of the accidents attributable to personnel-related causes. If 27 percent of the $77 million in damages and 29 deaths attributable to personnel-related causes is prevented some $20.8 million in damages and eight deaths could be prevented. (Additional savings would also be achieved as a result of reduced compensation claims, lower medical costs, and less time lost due to sick leave.)

The Coast Guard believes that if drug screening can prevent even a low percentage of accidents through drug testing and rehabilitation, the program will more than pay for itself. Using the minimum accepted value of a human life of one million dollars, the saving of but a few lives annually, along with reduced property damage, will more than match the cost of the program. This goal is believed achievable, given the success of other drug testing programs.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires review of proposed rules to assess their impact on small business. In consideration of the cost information discussion under the regulatory analysis, the Coast Guard concludes that this final rule could have a significant economic impact on a substantial number of small entites. The Coast Guard has provided viable alternatives for small employers to adopt which would reduce the cost of compliance while achieving the levels of protection sought by these rules. Although unit costs for small entities for certain services required under these regulations may be somewhat higher, small operators have the latitude to utilize cooperative services, or form associations, which will result in a reduction of unit costs. A regulatory flexibility analysis discussing this issue in more detail has been placed in the docket.

Paperwork Reduction Act

This rulemaking contains information collection requirements in the following sections: Part 16, subparts B and C, plus section 46 CFR 4.06. These collection requirements are being submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). Under § 4.06–60, the employer is required to submit a Form CG–2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident) to the Coast Guard whenever personnel are directed to provide specimens for mandatory chemical testing after the occurrence of a serious marine incident. Employers are also required to maintain records of the results of chemical testing for dangerous drugs under § 16.260.

Federalism Implications

This regulation has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The rules affect the safety of vessels in interstate and foreign commerce and are directly related to the qualifications of personnel licensed by the U.S. Coast Guard and their working conditions on vessels. These are express statutory responsibilities of the U.S. Coast Guard and there are no similar State responsibilities or programs in these areas.

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations and concluded that, under section 2.B.2.1. of Commandant Instruction M16475.1B, they will have no significant environmental impact and are categorically excluded from further environmental documentation.

List of Subjects

46 CFR Part 4

Administrative practice and procedures, Investigations, Accidents, Marine safety, Reporting and recordkeeping requirements, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 5

Administrative practice and procedures, Investigations, Administrative law judge, Investigating officer, Seamen, License, Certificate, Document, Administrative hearings, Navigation (Water), Suspension and revocation, Marine safety, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 16

Seamen, Marine safety, Navigation (Water), Alcohol and alcoholic beverages, Drugs.

Final Rule

For the reasons set out in the preamble, Title 46, Chapter I, of the Code of Federal Regulations, is amended as follows:

PART 4—[AMENDED]

1. The table of contents of Part 4 is amended by adding the following:

* * * * *

Subpart 4.06—Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels in Commercial Service

4.06–1 Responsibilities of the marine employer.
4.06–5 Responsibilities of individuals directly involved in serious marine incidents.
4.06–10 Required specimens.
4.06–20 Specimen collection requirements.
4.06–30 Specimen collection in incidents involving fatalities.
4.06–40 Specimen handling and shipping.
4.06–50 Specimen analysis and follow-up procedures.
4.06–60 Submission of reports and test results.

* * * * *

2. The authority citation for Part 4 is revised to read as follows:

Authority: 33 U.S.C. 1231, 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305, 50 U.S.C. 198; 49 CFR 1.46, except Subpart 4.40 for which the authority is: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

3. Subpart 4.03 is amended by adding new §§ 4.03–2, 4.03–4, 4.03–5, 4.03–6, and 4.03–7 to read as follows:

Subpart 4.03—Definitions

* * * * *

§ 4.03–2 Serious marine incident.

The term "serious marine incident" includes the following events involving a vessel in commercial service:

(a) Any marine casualty or accident as defined in § 4.03–1 which is required by § 4.05–1 to be reported to the Coast Guard and which results in any of the following:

(1) One or more deaths;

(2) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;

(3) Damage to property, as defined in § 4.05–1(f) of this part, in excess of $100,000;

(4) Actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301; or

(5) Actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 100 gross tons or more.

(b) A discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty.

(c) A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.

§ 4.03–4 Individual directly involved in a serious marine incident.

The term"individual directly involved in a serious marine incident" is an individual whose order, action or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing a serious marine incident.

§ 4.03–5 Medical facility.

The term "medical facility" means an American hospital, clinic, physician's office, or laboratory, where blood and urine specimens can be collected according to recognized professional standards.

§ 4.03–6 Qualified medical personnel.

The term "qualified medical personnel" means a physician, physician's assistant, nurse, emergency medical technician, or other person authorized under State or Federal law or regulation to collect blood and urine specimens.

§ 4.03–7 Chemical test.

The term "chemical test" means a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids, or tissues for evidence of dangerous drug or alcohol use.

4. Section 4.05–1(e) is revised to read as follows:

§ 4.05–1 Notice of marine casualty.

* * * * *

(e) Injury which requires professional medical treatment beyond first aid and, in the case of a person engaged or employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties.

* * * * *

5. A new Subpart 4.06 is added to read as follows:

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Subpart 4.06—Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels in Commercial Service

§ 4.06–1 Responsibilities of the marine employer.

(a) At the time of occurrence of a marine casualty, a discharge of oil into the navigable waters of the United States, a discharge of a hazardous substance into the navigable waters of the United States, or a release of a hazardous substance into the environment of the United States, the marine employer shall make a timely, good faith determination as to whether the occurrence currently is, or is likely to become, a serious marine incident.

(b) When a marine employer determines that a casualty or incident is, or is likely to become, a serious marine incident, the marine employer shall take all practicable steps to have each individual engaged or employed on board the vessel who is directly involved in the incident chemically tested for evidence of drug and alcohol use.

(c) The determination of which individuals are directly involved in a serious marine incident is to be made by the marine employer. A law enforcement officer may determine that additional individuals are directly involved in the serious marine incident. In such cases, the marine employer shall take all practicable steps to have these individuals tested in accordance with paragraph (b) of this section.

(d) The requirements of this subpart shall not prevent vessel personnel who are required to be tested from performing duties in the aftermath of a serious marine incident when their performance is necessary for the preservation of life or property or the protection of the environment.

(e) The marine employer shall ensure that all individuals engaged or employed on board a vessel are fully indoctrinated in the requirements of this subpart, and that appropriate vessel personnel are trained as necessary in the practical applications of these requirements.

(f) Each marine employer shall implement the testing requirements of this subpart in accordance with the implementation schedule provided in 46 CFR 16.205 and 16.207.

§ 4.06–5 Responsibilities of individuals directly involved in serious marine incidents.

(a) Any individual engaged or employed on board a vessel who is determined to be directly involved in a serious marine incident shall provide blood, breath or urine specimens for chemical tests required by § 4.06–10 when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide blood, breath or urine specimens, this refusal shall be noted on Form CG–2692B and in the vessel's official log book, if one is required.

(c) No individual may be forcibly compelled to provide specimens for chemical tests required by this part; however, refusal is considered a violation of regulation and could subject the individual to suspension and revocation proceedings under Part 5 of this chapter and removal from any duties which directly affect the safety of the vessel's navigation or operations.

§ 4.06–10 Required specimens.

Each individual required to submit to chemical testing shall, as soon as practicable, provide the following specimens for chemical testing:

(a) Urine specimens, collected in accordance with § 4.06–20 and Part 16 of this Chapter.

(b) Blood or breath specimens, or both, collected in accordance with § 4.06–20.

§ 4.06–20 Specimen collection requirements.

(a) All inspected vessels certificated for unrestricted ocean routes, and all inspected vessels certificated for restricted overseas routes, are required to have on board at all times a breath testing device capable of determining the presence of alcohol in a person's system. The breath testing device shall be used in accordance with procedures specified by the manufacturer.

(b) The marine employer shall ensure that urine specimen collection and shipping kits meeting the requirements of § 16.330 of this part are readily available for use following serious marine incidents. The specimen collection and shipping kits need not be maintained aboard each vessel if they can otherwise be readily obtained within 24 hours from the time of the occurrence of the serious marine incident.

(c) The marine employer shall ensure that specimens required by § 4.06–10 are collected as soon as practicable following the occurrence of a serious marine incident.

(d) When obtaining blood, breath, and urine specimens, the marine employer shall ensure that the collection process is supervised by either qualified collection personnel, the marine employer, a law enforcement officer, or the marine employer's representative.

(e) Chemical tests of an individual's breath for the presence of alcohol using a breath testing device may be conducted by any individual trained to conduct such tests. Blood specimens shall be taken only by qualified medical personnel.

§ 4.06–30 Specimen collection in incidents involving fatalities.

(a) When an individual engaged or employed on board a vessel dies as a result of a serious marine incident, blood and urine specimens must be obtained from the remains of the individual for chemical testing, if practicable to do so. The marine employer shall notify the appropriate local authority, such as the coroner or medical examiner, as soon as possible, of the fatality and of the requirements of this subpart. The marine employer shall provide the specimen collection and shipping kit and request that the local authority assist in obtaining the necessary specimens. When the custodian of the remains is a person other than the local authority, the marine employer shall request the custodian to cooperate in obtaining the specimens required under this part.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary specimens, the marine employer shall provide an explanation of the circumstances on Form CG–2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident).

§ 4.06–40 Specimen handling and shipping.

(a) The marine employer shall ensure that blood specimens collected in accordance with §§ 4.06–20 and 4.06–30 are promptly shipped to a testing laboratory qualified to conduct tests on such specimens. A proper chain of custody must be maintained for each specimen from the time of collection through the authorized disposition of the specimen. Blood specimens must be shipped to the laboratory in a cooled condition by any means adequate to ensure delivery within twenty-four (24) hours of receipt by the carrier.

(b) The marine employer shall ensure that the urine specimen collection procedures of § 16.310 of this part and the chain of custody requirements of § 16.320 are complied with. The marine employer shall ensure that urine specimens required by §§ 4.06–20 and 4.06–03 are promptly shipped to a laboratory complying with the requirements of 49 CFR Part 40. Urine specimens must be shipped by an expeditious means, but need not be shipped in a cooled condition for overnight delivery.

§ 4.06–50 Specimen analysis and follow-up procedures.

(a) Each laboratory will provide prompt analysis of specimens collected under this subpart, consistent with the need to develop all relevant information and to produce a complete analysis report.

(b) Reports shall be sent to the Medical Review Officer meeting the requirements of 40 CFR 40.27, as designated by the marine employer submitting the specimen for testing. Whenever a urinalysis report indicates the presence of a dangerous drug or drug metabolite, the Medical Review Officer shall review the report as required by 49 CFR 40.27 and submit his or her findings to the marine employer. Blood test reports indicating the presence of alcohol shall be similarly reviewed to determine if there is a legitimate medical explanation.

(c) Analysis results which indicate the presence of alcohol, dangerous drugs, or drug metabolites shall not be construed by themselves as constituting a finding that use of drugs or alcohol was the probable cause of a serious marine incident.

§ 4.06–60 Submission of reports and test results.

(a) Whenever an individual engaged or employed on a vessel is identified as being directly involved in a serious marine incident, the marine employer shall complete Form CG–2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serous Marine Incident).

(b) When the serious marine incident requires the submission of Form CG–2692 (Report of Marine Casualty, Injury or Death) to the Coast Guard in accordance with § 4.05–10, the report required by paragraph (a) of this section shall be appended to Form CG–2692.

(c) In incidents involving discharges of oil or hazardous substances as described in § 4.03–2 (b) and (c) of this part, when Form CG–2692 is not required to be submitted, the report required by paragraph (a) of this section shall be submitted to the Coast Guard Officer in Charge, Marine Inspection, having jurisdiction over the location where the discharge occurred or nearest the port of first arrival following the discharge.

(d) Upon receipt of the report of chemical test results, the marine employer shall submit a copy of the test results for each person listed on the CG–2692B to the Coast Guard Officer in Charge, Marine Inspection to whom the CG–2692B was submitted.

PART 5—[AMENDED]

6. The authority citation for Part 5 continues to read as follows:

Authority: 46 U.S.C. 7101, 7301, and 7701; 50 U.S.C. 198; 49 CFR 1.46(b).

§ 5.569 [Amended]

7. In § 5.569 add to Table 5.569 the following new offense after Incompetence:

Type of offense	Range of order (in months)
• • • • •	
Violation of Regulation: Refusal to provide specimens for required chemical test.	12–24.
• • • • •	

8. A new Part 16 is added to Subchapter B to read as follows:

PART 16—CHEMICAL TESTING

Subpart A—General

Sec.
16.101 Purpose of regulations.
16.105 Definitions of terms used in this part.

Subpart B—Required Chemical Testing

16.201 Application.
16.205 Implementation of chemical testing programs.
16.207 Conflict with foreign laws.
16.210 Pre-employment testing requirements.
16.220 Periodic testing requirements.
16.230 Random testing requirements.
16.240 Serious marine incident testing requirements.
16.250 Reasonable cause testing requirements.
16.260 Records.

Subpart C—Standards for Chemical Testing for Dangerous Drugs.

16.301 Procedures for Transportation Workplace Drug Testing Programs.
16.310 General.
16.320 Chain of custody.
16.330 Specimen handling and shipping.
16.340 Test laboratory requirements.
16.350 Specimen analyses.
16.360 Specimen analysis reports.
16.370 Medical Review Officer.
16.380 Release of information.

Subpart D—Employee Assistance Programs.

16.401 Employee Assistance Program (EAP).

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

Subpart A—General

§ 16.101 Purpose of regulations.

(a) The regulations in this part provide a means to minimize the use of intoxicants by merchant marine personnel and to promote a drug free and safe work environment.

(b) These regulations prescribe the minimum standards, procedures, and means to be used to test for the use of dangerous drugs.

(c) As part of a reasonable cause drug testing program established pursuant to this part, employers may test for drugs in addition to those specified in this part only with approval granted by the Coast Guard under 49 CFR Part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§ 16.105 Definitions of terms used in this part.

"Chemical test" means a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids, or tissues for evidence of dangerous drug or alcohol use.

"Commitment of employment" means the proof of employment required by 46 CFR 12.25–5.

"Crewmember" means an individual who is:

(a) On board a vessel acting under the authority of a license, certificate of registry, or merchant mariner's document issued under this subchapter, whether or not the individual is a member of the vessel's crew; or

(b) Engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued under this subchapter, except the following:

(1) Individuals primarily employed in the preparation of fish or fish products or in a support position not related to navigation on a fish processing vessel;

(2) Scientific personnel on an oceanographic research vessel; and

(3) Individuals not required under Part 15 of this subchapter who have no duties which directly affect the safety of the vessel's navigation or operations.

"Dangerous drug" means a narcotic drug, controlled substance, and marijuana (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)).

"Dangerous drug level" means the amount of traces of dangerous drugs or drug metabolites in an individual's breath, blood, urine, saliva, or body fluids or tissues.

"Drug test" means a chemical test of an individual's urine for evidence of dangerous drug use.

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"Employer" means a marine employer or sponsoring organization.

"Fails a chemical test for dangerous drugs" means the test result is reported as positive for the presence of dangerous drugs or drug metabolites in an individual's system after a Medical Review Officer's review in accordance with 49 CFR 40.27.

"Intoxicant" means any form of alcohol, dangerous drug, or combination thereof.

"Marine employer" means the owner, managing operator, charterer, agent, master, or person in charge of a vessel, other than recreational vessel.

"Medical Review Officer" means an individual designated by the employer to carry out the duties specified in § 16.370 of this part.

"Serious marine incident" means an event defined in 46 CFR 4.03–2.

"Sponsoring organization" is any company, consortium, corporation, association, union, or other organization with which individuals serving in the marine industry, or their employers, are associated.

"Vessel owned in the United States" means any vessel documented or numbered under the laws of the United States; and any vessel owned by a citizen of the United States that is not documented or numbered by any nation.

Subpart B—Required Chemical Testing

§ 16.201 Application.

(a) Chemical testing of personnel must be conducted as required by this subpart.

(b) If an individual fails a chemical test for dangerous drugs under this part, the individual will be presumed to be a user of dangerous drugs.

(c) If an individual holding a license, certificate of registry, or merchant mariner's document fails a chemical test for dangerous drugs, the individual's employer or prospective employer shall report the test results in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). The individual shall be denied employment as a crewmember or removed from duties which directly affect the safety of the vessel's navigation or operations as soon as practicable and shall be subject to suspension and revocation proceedings against his or her license, certificate of registry, or merchant mariner's document under 46 CFR Part 5.

(d) If an individual who does not hold a license, certificate of registry, or merchant mariner's document fails a chemical test for dangerous drugs, the individual shall be denied employment as a crewmember or removed from duties which directly affect the safety of the vessel's navigation or operations as soon as practicable.

(e) An individual who has failed a required chemical test for dangerous drugs may not be reemployed aboard a vessel until the requirements of § 16.370(d) of this part and 46 CFR Part 5, if applicable, have been satisfied.

§ 16.205 Implementation of chemical testing programs.

(a) Each employer who employs more than 50 employees required to be tested under this part shall implement the pre-employment testing program required in § 16.210 not later than June 21, 1989. All other employer testing programs required by this part shall be implemented not later than December 21, 1989.

(b) Each employer who employs from 11 to 50 employees required to be tested under this part shall implement the pre-employment, serious marine incident, and reasonable cause testing programs required by this part not later than December 21, 1989. The random testing programs required by § 16.230 of this part shall be implemented not later than December 21, 1990.

(c) Each employer who employs 10 or fewer employees required to be tested under this part shall implement the employer testing programs required by this part not later than December 21, 1990.

(d) During the first 12 months following the institution of random drug testing pursuant to this section, an employer shall meet the following conditions:

(1) The random drug testing is spread reasonably through the 12-month period;

(2) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(3) The total number of tests conducted during the 12 months is equal to at least 25 percent of the covered population.

(e) The periodic testing requirements of § 16.220 apply to physical examinations performed after December 21, 1990.

(f) When a vessel owned in the United States is operating in waters that are not subject to the jurisdiction of the United States, the testing requirements of §§ 16.210 and 16.230 do not apply to a citizen of a foreign country engaged or employed as pilot in accordance with the laws or customs of that foreign country.

(g) Upon written request of an employer, Commandant (G–MMI) will review the employer's chemical testing program to determine compliance with the provisions of this part.

§ 16.207 Conflict with foreign laws.

(a) This part shall not apply to any person for whom compliance with this part would violate the domestic laws or policies of another country.

(b) This part is not effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of this part raises questions of compatibility with that country's domestic laws or policies. On or before December 1, 1989, the Commandant shall issue any necessary amendment resolving the applicability of this part to such person on and after January 1, 1990.

§ 16.210 Pre-employment testing requirements.

(a) No marine employer shall engage, employ, or otherwise give a commitment of employment to, any individual to serve as a crewmember unless the individual passes a chemical test for dangerous drugs for that employer.

(b) The individual is not required to undergo the pre-employment test required by paragraph (a) of this section if the individual provides satisfactory evidence that he or she has:

(1) Passed a pre-employment test for the marine employer or another employer, or a periodic chemical test for dangerous drugs, within the previous six months; or

(2) Been subject to a random testing program meeting the criteria of § 16.230 of this part during the previous twelve months, has not failed a chemical test for dangerous drugs, and has not refused to participate in required chemical tests.

§ 16.220 Periodic testing requirements.

(a) Whenever a physical examination is required for an individual by this subchapter, a chemical test for dangerous drugs must be included as a part of the physical examination. If a physical examination is required for a license or merchant mariner's document application, the applicant shall provide the results of the chemical test administered as part of the physical examination to the Coast Guard Regional Examination Center (REC). For those individuals required by this subchapter to receive physical examinations on a periodic basis, the individual shall provide the result of each required chemical test to the REC at the time the individual applies for a renewal of his or her license. Only the results of those chemical tests taken since the individual's most recent license renewal need be submitted.

(b) The individual is not required to undergo the periodic chemical test required by paragraph (a) of this section if the individual provides satisfactory evidence that he or she has:

(1) Passed a pre-employment or a periodic chemical test for dangerous drugs within the previous six months; or

(2) Been subject to a random testing program meeting the criteria of § 16.230 of this part during the previous twelve months, has not failed a chemical test for dangerous drugs, and has not refused to participate in required chemical tests.

§ 16.230 Random testing requirements.

(a) Marine employers shall provide for the selection of crewmembers for chemical testing for dangerous drugs on a random basis. Random selection of individual crewmembers means that every member of a given population has a substantially equal chance of selection on a scientifically valid basis. The testing frequency and selection process shall be such that an employee's chance of selection continues to exist throughout his or her employment. Random selection may be accomplished by periodically selecting one or more vessels and testing all crewmembers aboard, provided each vessel subject to the marine employer's test program remains equally subject to selection.

(b) Marine employers may form or otherwise use sponsoring organizations, or may use contractors, to conduct the random chemical testing programs required by this part.

(c) Each marine employer shall ensure that crewmembers are tested on a random basis at an annual rate of not less than 50 percent.

(d) An individual may not be engaged or employed, including self employment, on a vessel in a position as master, operator, or person in charge for which a license or merchant mariner's document is required by law or regulation unless all crewmembers are subject to the random testing requirements of this section.

§ 16.240 Serious marine incident testing requirements.

The marine employer shall ensure that all persons directly involved in a serious marine incident are chemically tested for evidence of dangerous drugs and alcohol in accordance with the requirements of 46 CFR 4.06.

§ 16.250 Reasonable cause testing requirements.

(a) The marine employer shall require any crewmember engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ or be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued under this subchapter, who is reasonably suspected of using a dangerous drug to be chemically tested for dangerous drugs.

(b) The marine employer's decision to test must be based on a reasonable and articulable belief that the individual has used a dangerous drug based on direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use. Where practicable, this belief should be based on the observation of the individual by two persons in supervisory positions.

(c) When the marine employer requires testing of an individual under the provisions of this section, the individual must be informed of that fact and directed to provide a urine specimen as soon as practicable. This fact shall be entered in the vessel's official log book, if one is required.

(d) If an individual refuses to provide a urine specimen when directed to do so by the employer under the provisions of this section, this fact shall be entered in the vessel's official log book, if one is required.

§ 16.260 Records.

(a) Employers shall maintain records of chemical tests which the Medical Review Officer reports as "positive" for a period of a least 5 years and shall make these records available to Coast Guard officials upon request. Records of tests reported as "negative" shall be retained for one year.

(b) The records shall be sufficient to:

(1) Satisfy the requirements of §§ 16.210(b) and 16.220(b) of this part.

(2) Identify the total number of individuals chemically tested annually for dangerous drugs in each of the categories of testing required by this part including the annual number of individuals failing chemical tests and the number and types of drugs for which individuals tested positive.

Subpart C—Standards for Chemical Testing for Dangerous Drugs

§ 16.301 Procedures for Transportation Workplace Drug Testing Programs.

Drug testing programs subject to this part shall be conducted in accordance with 49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs. This subpart summarizes requirements for drug testing programs contained in those regulations. Those regulations should be consulted to determine the specific procedures which must be established and utilized. Drug testing programs required by this part shall use only drug testing laboratories certified by the Department of Health and Human Services (DHHS).

§ 16.310 General.

(a) *Collection site.* The employer shall ensure that the collection site is adequate to provide for the collection, security, temporary storage, and shipping of specimens to a certified drug testing laboratory.

(b) *Security.* Procedures shall provide for the collection site to be secure. Collection sites dedicated solely for specimen collection must be secure at all times. Collection sites which are not dedicated solely for specimen collection must be secured during specimen collection.

(c) *Access to authorized personnel only.* No unauthorized personnel shall be permitted in any part of a collection site when specimens are collected nor shall unauthorized personnel be allowed access to stored specimens.

(d) *Privacy.* Procedures for collecting urine specimens shall allow for individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.

(e) *Integrity of specimens.* Collection site personnel shall take precuations to ensure that each specimen is not adulterated or diluted during the collection process.

§ 16.320 Chain of custody.

(a) A chain of custody for each specimen to be chemically tested shall be established and maintained from the time of specimen collection through the testing of the specimen.

(b) If a specimen is not immediately prepared for shipment, it shall be safeguarded during temporary storage.

(c) Every effort shall be made to minimize the number of persons handling specimens.

§ 16.330 Specimen handling and shipping.

(a) The employer shall obtain a specimen collection and shipping kit to be used to collect specimens and ship them to the certified drug testing laboratory.

(b) The specimen collection and shipping kit, as required by 49 CFR Part 40, shall contain:

(1) Plastic urine specimen bottles in a sufficient quantity to accommodate the people to be tested;

(2) Means for sealing and identifying specimen bottles;

(3) Chain of custody forms;

(4) A set of step-by-step instructions which describe the proper procedures to be followed during specimen collection, handling, and shipping; and

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(5) Shipping materials.

(c) The marine employer shall ensure that specimens are promptly shipped to a certified testing laboratory meeting the requirements of § 16.340. Chain of custody documents must accompany each specimen from the time of specimen collection through shipment to and testing by the laboratory.

(d) Specimens shall be shipped by an expeditious means.

§ 16.340 Test laboratory requirements.

(a) The employer shall ensure that all chemical testing for dangerous drugs required by this part is conducted by a DHHS certified laboratory.

(b) The laboratory shall meet the requirements of 49 CFR Part 40.

§ 16.350 Specimen analysis.

(a) Each specimen shall be analyzed in accordance with 49 CFR 40.24, which requires testing for:

(1) Marijuana;
(2) Cocaine;
(3) Opiates;
(4) Phencyclidine (PCP); and
(5) Amphetimines.

(b) A specimen which indicates the presence of a dangerous drug at a level equal to or exceeding the levels established in 49 CFR 40.24 is reported to the Medical Review Officer as positive.

§ 16.360 Specimen analysis reports.

(a) The laboratory shall report all test results as required by 49 CFR 40.24(g). Reports are made within an average of five days after receipt of a specimen by the laboratory.

(b) The laboratory reports as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive are reported positive to the Medical Review Officer for a specific drug or drug metabolite.

§ 16.370 Medical review officer.

(a) The employer shall designate or appoint a Medical Review Officer (MRO) meeting the qualifications of 49 CFR 40.27. If the employer does not have a qualified individual or staff to serve as MRO, the employer may contract for the provision of MRO services as part of its drug testing program.

(b) The MRO shall review and interpret each confirmed positive test result in accordance with 49 CFR 40.27.

(c) If the MRO verifies a laboratory confirmed positive report, the MRO shall report the positive test result to the employer or the employers's designated agent.

(d) Before an individual who has failed a required chemical test for dangerous drugs may return to work aboard a vessel, the MRO shall determine that the individual is drug-free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work. In addition, the individual shall agree to be subject to increased, unannounced testing for a period as determined by the MRO of up to 60 months.

§ 16.380 Release of information.

(a) Except as provided for in this part and in § 4.06–60 of this chapter, an employer shall not release individual test results or other personal information for anti-drug program records.

(b) Individual results from drug tests required by this part may be released if the individual tested signs a specific authorization for the release of the results to an identified person.

(c) Nothing in this section shall prevent an individual tested under this part from obtaining the results of that test.

Subpart D—Employee Assistance Programs

§ 16.401 Employee Assistance Program (EAP).

The employer shall provide an Employee Assistance Program (EAP) for all crewmembers. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to a crewmember. Each EAP must include education and training on drug use for crewmembers and the employer's supervisory personnel as provided below:

(a) *EAP education program:* Each EAP education program must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for crewmember assistance, and display and distribution of the employer's policy regarding drug and alcohol use in the workplace.

(b) *EAP training program:* An EAP training program must be conducted for the employer's crewmembers and supervisory personnel. The training program must include at least the following elements: the effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug and alcohol use and abuse; and documentation of training given to crewmembers and the employer's supervisory personnel. Supervisory personnel must receive at least 60 minutes of training.

November 14, 1988.

Clyde T. Lusk, Jr.,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 88–26614 Filed 11–15–88; 3:50 pm]

BILLING CODE 4910–14–M

federal register

Monday
November 21, 1988

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 199

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[RSPA Docket No. PS-102]
RIN 2137-AB54

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations to require operators of pipeline facilities, other than master meter systems, used for the transportation of natural gas or hazardous liquids and operators of liquefied natural gas (LNG) facilities to have an anti-drug program for employees who perform certain sensitive safety-related functions covered by the pipeline safety regulations. Testing under these rules will be conducted prior to employment, after an accident, randomly, and on the basis of reasonable cause. In addition, these regulations require that an operator provide an Employee Assistance Program (EAP) for conducting education and training regarding the effects and consequences of drug use. The rules are intended to ensure a drug-free, and hence safer, pipeline operations environment.

DATES: *Effective Date:* This rule will be effective December 21, 1988.

Operators with more than 50 employees subject to drug testing do not have to begin the drug testing required by this final rule until December 21, 1989, and operators with 50 or fewer such employees do not have to begin to conduct the program until April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-1640.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1988, RSPA published a Notice of Proposed Rulemaking (NPRM) (53 FR 25892) entitled "Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquid Pipeline Operations." This NPRM proposed to require operators of pipeline facilities (including LNG facilities but excluding master meter systems) used for the transportation of natural gas or hazardous liquids to have an anti-drug program for employees who perform sensitive safety- and security-related functions. The NPRM invited comments from the public on these proposed rules and 73 written comments were received by the end of the comment period on September 6, 1988. These comments are in the public docket and have been reviewed in the development of the final rule.

The RSPA held public hearings on these proposed regulations on August 17, 1988, in Irving, Texas, and on September 6, 1988, in Washington, DC. Twenty-six persons testified at these hearings and the testimony was recorded by a court reporter. The transcripts of the hearings and any statements or other material submitted at the hearings are in the public docket and have been reviewed in the development of the final rule.

The NPRM proposed that this regulation would be included in Part 192, 193, or 195, as appropriate. In response to a few commenters who suggested that drug testing regulations should not be included with those commodity-specific regulations, the RSPA has adopted a new Part 199 specifically for these regulations.

Drug Testing Program Guidelines. In the NPRM for this rule, RSPA proposed that all drug testing take place in accordance with the "Mandatory Guidelines for Federal Drug Testing Programs" of the Department of Health and Human Services (DHHS) (53 FR 11970; April 11, 1988). These guidelines describe the collection and testing procedures applicable to all drug testing in the federal government, and they include safeguards for the accuracy and privacy of testing.

The DOT has determined that certain modifications of the DHHS Guidelines are appropriate in the context of this and other DOT operating administration drug-free workplace regulations. The result is the DOT *Procedures for Transportation Workplace Drug Testing Programs.* These "DOT Procedures" are intended to preserve, to the greatest extent practicable, the important safeguards provided by the DHHS Guidelines.

The Office of the Secretary of the Department of Transportation is publishing elsewhere in today's **Federal Register** an Interim Final Rule and request for comments entitled, *Procedures for Transportation Workplace Drug Testing Programs.* These Procedures, which will be codified in 49 CFR Part 40, are based on Department of Health and Human Services Guidelines for Drug Testing, with appropriate modifications to allow them to apply to private industry and state and local governments. The new 49 CFR Part 40 provides detailed information for implementation of the drug testing requirements of this rule, setting forth requirements for such things as specimen collection procedures, laboratory procedures, and quality assurance.

Some of the modifications to the DHHS Guidelines are editorial in nature (for example, references to responsibilities of "agencies" are changed to references to "employers"). Other modifications are intended to take into account differences in the situations of federal agencies and DOT regulated industries. For example, in testing at remote sites, DOT regulated industries may find it necessary to conduct some kinds of testing in medical facilities or through use of mobile units, rather than the more permanent collection sites contemplated by the DHHS Guidelines. It may not be practicable for regulated parties to maintain on-site permanent log books. Consequently, the DOT Procedures permit alternative collection and recordkeeping procedures in these circumstances.

During the comment period on the NPRM and anti-drug rules proposed by other operating administrations, comments were received concerning the DHHS Guidelines. These comments will be incorporated in the docket for the OST interim final rule creating 49 CFR Part 40. The OST will respond to those comments, as well as comments received during the comment period for Part 40, in its notice following the end of the comment period on the interim rule.

Discussion of Comments

The RSPA received 73 timely comments in response to the NPRM, including five comments from labor unions, five from state and federal government agencies, eight from pipeline industry associations, a few comments from individuals and others, and the remainder from pipeline operators. The majority of the commenters were opposed to one or more aspects of the proposed rule, while some commenters generally supported the proposed rule. The RSPA considered all timely-filed comments submitted in response to the NPRM as well as the testimony of the 26 individuals who presented statements at the two public hearings. Discussion of the comments received on major issues and RSPA's response follows.

Specific Issues

Constitutionality of Mandatory Drug Testing. Many commenters, raising issues related to the Fourth Amendment and right of privacy, question the constitutionality of drug testing programs for pipeline personnel. The majority of commenters who raised the constitutional issues questioned the wisdom of proceeding with a drug rule while cases involving constitutionality of drug testing are pending in the Supreme Court. The commenters specifically noted that, in *Railway Labor Executives' Association v. Burnley*, the Ninth Circuit has ruled that a mandatory drug testing program of railroad employees violated the Fourth Amendment because the program required testing of entire operation crews involved in accidents without requiring the existence of a reasonable and particularized suspicion of drug use or drug-related impairment on the part of those to be tested. The Fifth Circuit took a contrary view in *National Treasury Employees Union v. Von Raab* by holding that drug testing of Customs Service employees seeking transfer to certain sensitive positions is permissible. Both cases are now pending before the United States Supreme Court. Commenters also point to the recent case of *Mark B. Harmon v. Edwin Meese III.* (No. 88-1766 GHR, U.S. District Court for the District of Columbia, decided July 29, 1988). In that case, the United States District Court for the District of Columbia granted the plaintiffs, Department of Justice employees, a preliminary injunction to enjoin the Department from implementing mandatory random drug testing on grounds that the program constituted an unreasonable search and seizure. The Court subsequently made the injunction permanent.

RSPA Response. The RSPA recognizes that there are legitimate and significant constitutional concerns surrounding drug testing in general and random drug testing as a specific component of drug testing. The RSPA acknowledges the current wide-scale litigation and apparent disparate judicial opinions on drug testing programs. Although the state of the case law is still evolving in rapid fashion and the Supreme Court has not resolved many of the relevant and complex issues, the RSPA is confident that testing of employees under this rule will withstand judicial scrutiny on constitutional grounds.

Of particular concern to the commenters was the relevance of the Fourth Amendment to drug testing. The principles of the Fourth Amendment to the U.S. Constitution are paramount in scrutinizing the fundamental legality of many drug testing programs. The Fourth Amendment applies to "searches" conducted or mandated by the government (i.e., "state action") and protects individuals against "unreasonable searches and seizures." Action by a private party does not constitute state or federal action unless there exists a close nexus between the state and the action in question. *See Jackson v. Metropolitan Edison*, 419 U.S. 345 (1974); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972).

Because drug testing programs required under the final rule are imposed by the government, two collateral issues arise concerning whether the proposed urine tests under these programs constitute a search or a seizure and, if so, is the search or seizure unreasonable within the meaning of the Fourth Amendment. Although most courts to address the issue to date have ruled that toxicological testing of employees for the purpose of determining fitness for duty is a search within the meaning of the Fourth Amendment, the issue is not entirely settled. *See Wyman v. James*, 400 U.S. 309, 317-338 (1971) (government welfare caseworker's "home visit" as a precondition for assistance payments is not a Fourth Amendment search). *See also, Lovvorn v. City of Chattanooga*, 846 F.2d 1539, 1553-54 (6th Cir. 1988) (Guy, J., dissenting) *vacated and rehearing en banc granted* (6th Cir. Aug. 3, 1988); *National Treasury Employees Union v. von Raab*, 808 F.2d 1057, 1060, 1062 (5th Cir. 1987) (Higginbotham, J., concurring). *Cf. Mack v. United States, F.B.I.*, 814 F.2d 120, 125 n.2 (2nd Cir. 1987).

Also assuming, *arguendo*, that urine tests of personnel for prohibited substances are "searches" within the meaning of the Fourth Amendment, it is clear that while searches ordinarily must be conducted pursuant to a warrant issued on probable cause grounds, such a requirement is not always necessary. *Almeida-Sanchez v. United States*, 413 U.S. 266, 277 (1973) (Powell, J., concurring). Where, for example, "* * * the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search * * *," the Supreme Court has routinely held that a warrant is not required by the Fourth Amendment (citing *Camera v. Municipal Court*, 387 U.S. 523, 533 (1967). *See e.g., Griffin v. Wisconsin*, 107 S.Ct. 3164, 3167 (1987) (plurality opinion); *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985). The Supreme Court has likewise found that the probable cause standard is inappropriate where it would defeat the purpose that the search is designed to achieve. *See e.g., New Jersey v. T.L.O.*, 469 U.S. at 340-342; *United States v. Martinez-Fuerte*, 428 U.S. 543, 560-561 (1976) (footnotes omitted) (while "* * * some quantum of individualized suspicion is usually a prerequisite to constitutional search or seizure[,] * * * the Fourth Amendment imposes no irreducible requirement of such suspicion").

Rather, "[t]he fundamental command of the Fourth Amendment is that searches and seizures be reasonable * * *." *New Jersey v. T.L.O.*, 469 U.S. at 340. In determining the reasonableness of a search, the Supreme Court has repeatedly stressed the importance of the facts particular to the search while acknowledging that the test of reasonableness "* * * is not capable of precise definition or mechanical application." *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). In analyzing a drug testing program, "* * * what is reasonable depends on the context within which a search takes place." *New Jersey v. T.L.O.*, 469 U.S. at 337.

In scrutinizing whether a particular search comports with the Fourth Amendment, courts have adopted a balancing test. In general, to support a claim that a search of an individual or the individual's property is reasonable, the government must demonstrate that, on balance, the public's legitimate interest in conducting the search outweighs the individual's legitimate expectation or privacy. *See e.g., United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985); *United States v. Villamonte-Marquez*, 462 U.S. 579, 588 (1983); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979). Thus, the courts must "* * * consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Bell v. Wolfish*, 441 U.S. at 559.

Viewed in this light, the clear public interest in assuring that certain sensitive safety-related pipeline personnel perform their duties free of prohibited substances provides justification for testing and its limited intrusion on privacy expectations of covered employees. The drug problem in society in general and probability of drug use in the pipeline industry were discussed in the preamble of the NPRM The impairing effects of drugs and the substantial risks to public safety posed by sensitive safety-related pipeline personnel who use drugs underlies the compelling governmental interest in the promulgation of this rule.

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It is important to note that the drug testing requirements of the final rule are limited in scope and involve a minimal intrusion on privacy. As the Supreme Court has indicated, where searches are undertaken in situations where individualized suspicion is lacking, other safeguards must be relied upon to ensure that the discretion of the party conducting the search is properly defined and the scope of the search is limited. *See Delaware v. Prouse*, 440 U.S. at 654–655 (footnote omitted); *New York v. Burger*, 107 S.Ct. 2636 (1987). The drug testing requirements of the final rule place significant constraints on an operator's discretion in conducting drug testing. For example, the requirement for random drug testing calls for selection of an employee to be tested in a scientifically-acceptable manner, such as by use of a computer-based random number generator. Requirements for testing based on reasonable cause or post-accident testing also are severely circumscribed in order to limit an employer's discretion in administering these tests to employees.

The actual testing procedures that each employer is required to implement under this final rule are narrowly tailored to respect an employee's reasonable expectations of privacy. The DOT Procedures governing collection of urine samples are carefully designed to preserve privacy while protecting the integrity of the sample. The final rule contains a number of important employee safeguards, including privacy during collection under most types of tests, stringent laboratory safeguards, and provisions for challenging the test results. Other employee drug testing programs incorporating the collection and testing procedures of the DHHS Guidelines have been upheld against constitutional challenge. *See American Federation of Government Employees v. Dole*, 670 F.Supp. 445 (D.D.C. 1987), *appeal filed*, No. 87–5417 (D.C.Cir. Dec. 11, 1987) (upholding the constitutionality of the Department of Transportation program for random drug testing of safety-sensitive agency employees); *National Association of Air Traffic Specialists v. Dole*, 2 Ind.Emp.Rts. Cases (BNA) 68 (D.Alaska 1987) (denying a motion for a preliminary injunction against the FAA's use of urinalysis drug testing as part of an annual physical examination of the agency's air traffic specialists).

Equally significant is the fact that urine drug testing of sensitive safety-related employees is to be conducted in the "context" of the employment relationship. As the Supreme Court has noted, "[t]he operational realities of the workplace * * * may make *some* employees' expectation of privacy unreasonable." *O'Connor v. Ortega*, 107 S.Ct. 1492 (1987) (emphasis in original). This is particularly important in circumstances where the employee works in an industry in which an employee's activities are subject to extensive regulation. Thus, persons who work in such "closely regulated" industries have a "reduced expectation of privacy" [*New York v. Burger*, 107 S.Ct. 2636 (1987)] and, "in effect consent[] to the restrictions placed upon them" [*Almeida-Sanchez v. United States*, 413 U.S. at 271]. For these reasons, two federal courts of appeals have upheld urinalysis testing, in the absence of particularized suspicion, in industries where pervasive regulation has reduced an employee's expectation of privacy. *See Rushton v. Nebraska Public Power Dist.*, 844 F.2d 562, 566 (8th Cir. 1988) (nuclear plant operators); *Shoemaker v. Handel*, 795 F.2d 1136, 1142 (3rd Cir.), *cert. denied*, 479 U.S. 986 (1986) (jockeys); *Policemen's Benevolent Ass'n, Local 318 v. Township of Washington*, 850 F.2d 133 (3rd Cir. 1988) (police officers).

The RSPA recognizes that a number of federal and state courts have rejected government-mandated drug testing programs on Fourth Amendment grounds. However, even courts striking drug testing programs have recognized that drug testing is appropriate in other contexts. *See e.g., Lovvorn v. City of Chattanooga*, 846 F.2d 1539, 1553–54 (6th Cir. 1988) (Martin, J.), *vacated and rehearing en banc granted* (6th Cir., August 3, 1988) ("When determining, then whether a mandatory drug search is 'reasonable,' we believe that, as the costs to society of an impaired employee increase, the requisite level of suspicion that a drug problem exists decreases."); *Policemen's Benevolent Ass'n, Local 318 v. Township of Washington*, 672 F.Supp. 779, 792 (D.N.J. 1987), rev'd 850 F.2d 133 (3rd Cir., 1988) ([T]he need to prevent a major airline disaster presents a far more compelling rationale than those presented [by the municipality in support of testing its police officers.]"); *American Federation of Government Employees v. Meese*, No. C–88–1419–SAW (N.D.Cal. June 17, 1988) (issuing a preliminary injunction against a Bureau of Prison plan to test randomly all agency employees but nonetheless noting that "[t]here are cases in which compulsory drug testing may be justified in the interest of public safety or security." Memorandum opinion at 2).

The RSPA also is aware of the recent Ninth Circuit decision that held that the Federal Railroad Administration's mandatory blood and urine tests after certain accidents, incidents, or rule violations are unconstitutional because the rules do not require a showing of "particularized suspicion" of drug or alcohol impairment prior to testing. *Railway Labor Executives' Association v. Burnley*, 839 F.2d 575 (9th Cir. 1988), *cert. granted*, 108 S.Ct. 2033 (1988). The Supreme Court has granted a government petition for *writ of certiorari* in this case and has ordered that the case be argued this term "in tandem" with *National Treasury Employees Union v. von Raab*, 816 F.2d 170 (5th Cir. 1987), *cert. granted*, 108 S.Ct. 1072 (1988) (upholding drug testing of applicants for critical safety or security sensitive positions in the U.S. Customs Service). Decisions in these cases may not be forthcoming until the Spring of 1989. Numerous commenters urge that RSPA should delay a decision on a final drug rule until these cases are resolved. The RSPA disagrees.

Although currently not resolved, the RSPA believes that RSPA's anti-drug program and similar drug testing regimens proposed by other administrations within the Department will be ruled constitutional. The critical public safety need for properly administered drug testing to ensure that employees in the transportation industry are free from drugs while performing certain sensitive safety-related functions outweighs the practical considerations which would delay rulemaking so that it could be tailored to any guidance that may be offered by the Supreme Court when the pending cases are ultimately decided. Such a decision would unnecessarily delay the adoption of this important safety rule well beyond that needed to allow reasonable time for implementation. Furthermore, partly in response to the comments that urge delay pending the Supreme Court decisions, RSPA has adjusted the implementation dates provided in this rule. This delayed implementation of the rule will ensure that it can be implemented as soon as practical and will allow time to amend the rule in the unlikely event the Supreme Court provides guidance that makes that necessary or appropriate.

Need for Pipeline Anti-Drug Program. Many commenters who oppose drug testing in general, and random testing in particular, and even commenters who support the comprehensive drug testing proposals, expressed the belief that there is not sufficient evidence of a drug problem in the pipeline industry to warrant mandated drug testing requirements. Many commenters indicated that the proposed rule did not discuss or recognize the exemplary safety record in the pipeline industry. They also said that neither the pipeline industry nor the RSPA could show any pipeline accident that could be attributable to an employee that had been impaired due to the use of drugs. Many commenters further note that most pipeline accidents are caused by third party excavators over which the pipeline operators have little control.

The American Gas Association (AGA) also pointed out that pipelines are unique forms of transportation which do not carry people, unlike other forms of transportation regulated by DOT. Therefore, there are no passengers that depend upon the physical condition of the pipeline for their safety. Pipeline employees usually work in groups or teams, which make it less likely for an impaired worker to endanger the public. The AGA further argued that pipelines also have built-in safety features that would preclude a drug-impaired employee from causing an accident.

Comments from the Ohio Gas Association state that the presence of drugs in a person is an inadequate gauge of a person's present impairment and a person's performance on complex tasks does not necessarily suffer when under the influence of drugs. That Association cites one study that examined how well 12 daily users of an opiate could perform complex tasks. The results showed that the regular drug users performed as well as a nonuser control group.

The American Petroleum Institute (API) said it believed that any regulatory requirement, regardless of its worthwhile intentions, must demonstrate both a need and a solution that bears a positive relationship between costs and benefits. The API further asserts that a thorough assessment resulting in a demonstrated and compelling need must precede any broad and costly regulatory remedy for such a problem and they recommend that DOT undertake such a study.

The Service Employees International Union (SEIU) representing 10,000 members employed in the gas industry, primarily in gas distribution, is opposed to random and universal drug testing stating that the presence of drugs in a person's system does not indicate impairment on the job. The SEIU says that often tests detect the use of drugs in the past or during off-duty hours, and they object to the control of a worker's actions beyond the time the employee is at work.

On these bases, the commenters assert that the RSPA cannot justify the comprehensive proposals contained in the NPRM. Many of these commenters maintain that the industry should police itself in the area of drug use and abuse.

RSPA Response. RSPA does recognize the excellent safety record of the hazardous liquid and natural gas pipeline industry. However, as stated in the NPRM, RSPA also has in the record evidence of a serious drug problem in our society generally. In fact, one in five Americans used drugs in the last year and one in ten in the last month. RSPA also believes that this societal problem may extend into the pipeline workplace. While many commenters do not believe there is a problem in their industry, no commenter presented any statistically reliable data to prove there is not a drug problem similar to the societal problems. In fact, the reason that neither RSPA nor the commenters have such data is because very little testing has been done.

On the other hand, the large majority of commenters, even those opposing the rule, agree that a drug-impaired employee should not be performing a safety-related function on a pipeline. In fact, the majority of pipeline companies commenting on the rule stated that they had implemented anti-drug programs which generally included pre-employment, post-accident, and reasonable cause testing. The RSPA believes that the safety positions on a pipeline should not be performed by those impaired by drugs and that this rulemaking action to deter drug use is warranted and will promote safety.

The RSPA does not adopt safety regulations only after an "accident" occurs. A safety regulatory agency must anticipate potential problems and act in a rational, reasonable, and practicable way to prevent "accidents" from occurring.

Although pipelines do not transport passengers, this is not a critical determinant in deciding whether an anti-drug abuse rule is needed. Many, if not most, of the transportation employees who are or are proposed to be covered in other of the Department's anti-drug abuse programs are involved in freight rather than passenger transportation. Drug-using transportation employees can endanger not just passengers but other members of the public as well. Pipelines criss-cross the nation with transmission pipeline systems and there are extensive natural gas distribution systems located in the heart of most populated areas. Release of the hazardous commodities transported by these pipelines can endanger both pipeline employees and any member of the public who may happen to live, work, attend school near, or simply pass by the pipeline. Risk is even greater for people living near LNG storage facilities where the sudden release of a large volume of LNG can engulf surrounding areas with a flammable vapor cloud and create the potential for conflagration.

The RSPA also rejects claims that the degree of supervision afforded pipeline employees, the fact that they work in groups, and the existence of numerous built-in safety features on pipelines, renders an anti-drug abuse program unnecessary. In this regard, pipelines are not unlike many other transportation industries. For example, train operators are heavily supervised and work in teams, operating trains which are frequently equipped with safety devices that check the performance of the train operator. Yet in the January 4, 1987, Chase, Maryland, train accident, a Conrail movement passed an absolute restrictive signal and went through a switch into the path of a high-speed Amtrak train. Sixteen persons were killed and 174 were injured. The engineer and conductor of the Conrail train later admitted smoking marijuana in the cab just prior to the collision. The built-in safety devices had been tampered with.

As further example, the nuclear industry is much more extensively supervised with substantial built-in safety devices. Anti-drug programs have been recognized as appropriate under these conditions because of the grave risk to public safety. *Rushton v. Nebraska Public Power Dist.*, cited above. No amount of supervision or peer observation in the pipeline industry will assure that a drug abusing employee does not report for duty with drug use undetected and no built-in safety device is truly fail-safe.

Many reports, some referenced in the NPRM, clearly illustrate that the use of drugs impair employees' performance in the workplace. The effects of drugs have been documented in numerous studies and the RSPA is not persuaded by the few studies, mentioned by some commenters, that drugs do not affect the performance of employees and the safety of the workplace.

Accuracy of Drug Test Results. A few commenters base their opposition to drug testing on the perceived inaccuracy of analysis and test results. The commenters include the issues of false-positive test results, passive inhalation of illicit drugs, and misidentification of licit drugs resulting in a positive drug test result.

The Steelworkers' comments included the testimony of Mr. Lawrence Miike of the Office of Technology Assessment that he gave on April 9, 1987, before the Senate Committee on the Judiciary. That

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testimony details the pitfalls and costs of extensive drug testing procedures and methodology where the population tested is small.

RSPA Response: The RSPA is aware of these expressed concerns because each of these issues surfaced in the early 1980's with the first series of drug testing programs introduced in the military and the private sector. In the early years of drug testing and analysis, laboratory security and analytical procedures had not reached today's level of sophistication. False-positive test results occur primarily during analysis of a specimen during an initial screening test, although contemporary screening tests, such as immunoassay tests, have become extremely accurate and approach 99 percent accuracy levels. Despite its accuracy, the initial screening test remains a less expensive test used only to yield a preliminary indication of the possible presence of drugs or drug metabolites. In order to ensure the integrity and accuracy of any final test result, each positive initial screening test result must be confirmed using the gas chromatography/mass spectrometry (GC/MS) test as approved by DHHS. The GC/MS confirmation test is an extremely accurate and sophisticated test and is virtually error-free when used in compliance with the DOT Procedures.

Operators must comply with the DOT Procedures when conducting a testing program pursuant to these rules. The DOT Procedures provide a system of checks and balances during collection and analysis of specimens to ensure the integrity and accuracy of the tests using appropriate scientific methods and rigid chain-of-custody procedures. An operator may only use a laboratory that has been certified by DHHS to process and analyze specimens. Since the mid-1980's, laboratories have become increasingly sophisticated in their analytical methods and chain-of-custody procedures. Many laboratories have compiled extensive records demonstrating scientific accuracy and protection of individual specimens.

For example, since 1980, one major drug testing laboratory has analyzed over 500,000 urine samples, conducting discrete testing for nine different drugs which resulted in nearly five million distinct analyses of these specimens. The company also has analyzed approximately 750,000 urine samples for the presence of two different drugs, resulting in nearly 1.5 million analyses of these specimens, pursuant to its contract with the military. None of the over six million analyses performed for DOT, the military, and other private and public entities has resulted in a false-positive test result.

The RSPA does not believe that the issue of "passive inhalation" of marijuana smoke will prove to be a significant issue leading to false-positive test results. First, the threshold levels at which a drug test would yield a positive result for the presence of marijuana or marijuana metabolites are set at a level sufficiently high to preclude the possibility that such result was based on passive inhalation of marijuana smoke. Second, studies conducted to simulate the conditions that result in passive inhalation have been conducted in artificially-devised and extremely confining areas that were poorly ventilated. Also, in order to obtain a positive test result, testing was conducted immediately after this prolonged and intensive exposure to the marijuana smoke. It is unlikely that the identical circumstances would be encountered or accurately reproduced outside a laboratory.

Finally, the RSPA believes that the safeguards that will be provided in the DOT Procedures and by the medical review officer (MRO) review process will preclude misidentification of food substances or licit drugs that might produce a false-positive test result. The DOT Procedures provide an individual with an opportunity to report any legal or prescription drugs that he or she may be taking at the time of collection of the specimen. The MRO's broad authority to interpret each confirmed positive test result, to evaluate and interview an employee, based on the MRO's knowledge of drug abuse disorders, and to verify that a confirmed positive test result is accurate should preclude misidentification of licit drugs taken in accordance with a valid prescription or food substances. In summary, the RSPA believes that the two-step testing process, coupled with the DOT Procedures and the MRO procedures, provides a process by which an individual is protected from erroneous false-positive drug test results.

Employees Who Must be Tested. Many commenters requested that RSPA broadly identify employees to be tested. They argued that RSPA should not attempt to define each sensitive safety- and security-related function by job category. Some commenters stated that operators should include in their Operations and Maintenance (O&M) Plans a list of job classifications they consider to be sensitive safety- and security-related positions.

A smaller number of commenters were concerned that the term "sensitive safety- and security-related functions" would be subject to varying interpretation by different operators. Those commenters thought that operator decisions on the types and degree of sensitive safety- and security-related functions represented by an individual's job responsibility would be arbitrary and would subject an operator to significant potential liability from employee suits. A few commenters pointed out that more specificity was needed to preclude a court challenge based on state statutes that limit random testing to very specifically identified positions or functions. A few commenters thought all employees of pipeline operators should be tested.

Practically all commenters objected strongly to including employees of contractors in the drug testing program. Some of the commenters based their objections to testing contractor employees on the transient nature of many unskilled contractor employees. Most commenters pointed out that it would be extremely difficult to assure that contractor employees had been drug tested. Transok, Inc., states that because several months pass between jobs conducted by contractors, operators would need to test these contractor employees every time that they were called in for a job.

RSPA Response. Those "sensitive safety- and security-related functions" that were proposed for testing in the NPRM have been more narrowly identified in the definition of "employee" in the final rule. An "employee" has been defined to mean a person who performs duties for an operator in the following three functional areas regulated by Part 192, 193, or 195—operation, maintenance, or emergency-response. This narrower definition of "employee" applies only to persons performing functions directly related to the pipeline safety regulations. This does not include clerical, truck driving, accounting, or any other functions not subject to Part 192, 193, or 195. These regulations do not apply to employees who perform design or construction functions regulated by Part 192, 193, or 195. The RSPA believes that the design function is subject to many varying levels of review and the employees performing those functions need not be tested. The RSPA also believes that it is not necessary to apply these regulations to employees that perform construction functions. Because the pipeline is pressure tested for strength or leakage upon completion of construction, the RSPA believes that the pressure test will ensure detection of any construction defects that may have been caused by drug impaired employees.

Security-related functions are not covered by the final rule because functions performed by security personnel do not directly impact on the safe operation of the pipeline systems. Instead, security personnel provide secondary security protection from outside parties (primary protection being provided by fences, alarms, lighting, etc.). Given the indirect nature of this potential impact on safety, we have decided not to include such personnel within the anti-drug abuse program at this time. We do, however, encourage operators to voluntarily include such personnel in their programs.

The "employee" definition includes contractors and contractor workers. Although these persons may not be under the direct control of operators, their job performance is no less critical than the performance of employees who are employed directly for operators. Pipeline operators who choose to use contractors to perform their safety-related work have always been held responsible for compliance with safety regulations just as if the operator's own employees were performing the work. A decision to use a contractor rather than one's own employees should not result in a level of safety lower than intended.

However, two aspects of the final rule should assist operators in compliance when they use contractors: First, operators may require contractors to implement their own drug programs instead of including contractor employees in the operator's own program. So long as the operator is diligent about monitoring the contractor's compliance with such a requirement, the "knowingly" requirement should protect an operator from unfair liability. Second, limiting the employees covered by the drug rule to those who perform regulated operation, maintenance, or emergency-response functions, including welding, radiography and corrosion control on existing pipelines, should minimize the effects of the rule on operators who employ or contract for unskilled transient labor.

Pre-employment Testing. Most of the commenters who addressed pre-employment testing agreed with its use and many stated that they were already conducting pre-employment testing. However, some interpreted the proposal to be broader than intended and thus to apply to all job applicants. It was recommended that pre-employment testing be limited to otherwise successful applicants. A few commenters said that pre-employment drug testing was easily administered because such testing could be conducted as part of the medical examination that is required by most operators for new employees.

RSPA Response. The RSPA believes that pre-employment testing is a necessary component of an effective anti-drug program. Pursuant to the rule, a pre-employment drug test is required only when an applicant has been selected for employment to perform certain regulated functions. In order to clarify the applicability of this requirement, the RSPA has revised the proposed rule. Therefore, the pre-employment testing provision does not require an operator to test each applicant for a position. The rule simply states that an employer may not hire or use anyone to perform certain functions until he or she has passed a drug test. Therefore, the employer need only test a prospective employee who the operator intends to hire and use for a position subject to drug testing. The proposal that operators would be required to notify applicants that pre-employment drug testing would be conducted has been dropped from the final rule because such a notice is not necessary to accomplish the intent of the operator's drug program. The RSPA believes that such notice should be left to the operator's discretion.

The RSPA believes that the frequency of pre-employment testing is mitigated by the continuity of an employee's involvement in a drug testing program under these new regulations in Part 199. So long as an employee is currently subject to an operator's RSPA-required anti-drug program, another operator may use that employee to perform certain functions. If an individual is not currently subject to an operator's or contractor's RSPA-required anti-drug program, whether by termination of a previous contract or previous employment, an operator would be required to conduct a pre-employment drug test before using that individual in a position subject to drug testing.

Under the amendment, it would be permissible for an operator to allow a contractor or contractor's employee to continue in the operator's anti-drug program after termination of a contract. Similarly, a contractor may choose to run its own anti-drug program in conformity with Part 199 requirements to maintain continuity. Particularly in the case of an operator who engages employees pursuant to a series of short-term contracts, both the operator and the employee benefit if the employee is continuously subject to a Part 199 anti-drug program. The operator could "rehire" the employee at any time but would not be required to give the employee another pre-employment drug test. In addition, the employee could provide functions for another operator on a temporary basis but would not be required to participate in the other operator's anti-drug program or to submit to another pre-employment drug test.

Random Testing. A majority of commenters strongly oppose random testing for a variety of reasons. Among these reasons are the lack of evidence of drug use or abuse in the pipeline industry, invasion of individual privacy, violation of constitutionally-protected rights, and the high costs of conducting such testing. Many commenters said that such a testing program would be disruptive of the normal business activities of pipeline operators and would have a detrimental effect upon worker morale. This would result in unnecessary administrative and financial burdens.

The RSPA received many comments regarding the proposed random testing rates. However, of those commenters endorsing random testing, most suggested that a random testing rate of 10 percent to 20 percent is sufficient to deter drug use in the pipeline industry.

Some commenters argued that if the RSPA proceeds in the promulgation of a final rule, the random testing of employees should be delayed until the Supreme Court issues a decision on this issue. Some commenters also indicated that requirements to randomly test employees for the presence of drugs violated state statutes (Ohio and Vermont were among the states mentioned).

The United Steelworkers of America (Steelworkers) oppose government imposition of mandatory drug testing. The Steelworkers stated that while the public supports mandatory drug tests, as cited by the NPRM, that does not mean the public supports random tests.

RSPA Response. The comments opposing random testing on the basis of the constitutionality of and need for the rule have been discussed previously. The costs are discussed below in the Economic Analysis section. The RSPA believes that unannounced testing based on random selection is a fundamental component of an effective drug testing program. Unannounced random testing has proven to be an effective deterrent to drug use and will provide safety benefits to the pipeline industry by reducing or eliminating drug use by pipeline personnel. Unannounced random testing programs initiated by the military, including the Coast Guard, and private industry show declining drug

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use, evidenced by a decrease in the number of individuals who test positive for drugs, over the course of the drug testing program.

The NPRM proposed a testing rate of up to 125 percent. No commenters provided any data to support a particular level of testing. The RSPA believes that a 50 percent testing rate is sufficient and necessary to establish a valid confidence level as well as to provide an adequate deterrent to drug use by employees. At the same time, this rate should avoid the imposition of an undue economic or administrative burden on employers and employees subject to the requiremens of the regulation. In addition, the 50 percent random testing rate will produce a sufficient data base for the RSPA to analyze the scope of any drug problem in the pipeline industry generally or within any particular sector of the pipeline industry. Analysis of the random drug testing data will allow the RSPA to determine if the random testing program should be revised, including a revision of the random testing rate.

The 50 percent random testing rate is consistent with the random testing program currently applicable to sensitive safety-related employees of DOT. The DOT random testing program began in September 1987 and the random testing rate has gradually increased and will reach a level of 50 percent by the end of this year.

According to the provisions of the final rule, all operators are required to randomly select a sufficient number of employees to enable the operator to conduct unannounced testing of 50 percent of employees, who perform the applicable sensitive safety-related duties for the operator, during a calendar year. In order to test 50 percent of the employees who perform such functions, an operator may be required to select in excess of 50 percent of the employees who perform these functions for unannounced tesing. Selection of a greater number of employees enables the operator to reach a 50 percent testing level despite absences due to vacations and medical leave or an inability to reach a collection site due to travel or duty requirements.

For some operators, particularly those with a large number of employees subject to drug testing, it may be a substantial burden to move from no drug testing directly to a 50 percent random testing rate. If required to have tested 50 percent of all covered employees by the end of the first year, operators might have to test at rates far above a 50 percent rate toward the end of the year, to make up for lower rates at the beginning. Operators should be permitted to start out at a lower testing rate and work up to 50 percent as experience is gained and the testing procedure becomes administratively more routine. The RSPA does not want to create a situation which might lead to mistakes by requiring initial testing at too high a rate.

The final rule, therefore, provides an implementation procedure that allows operators to phase in random drug testing during the first 12 months in which tests are conducted. Operators would not be required to reach an annualized rate of 50 percent until the last test collection. The tests would have to be spaced reasonably through the 12-month period to permit the operator to phase in to the 50 percent rate, and the total number of tests conducted would have to be equal to at least 25 percent of the covered population.

Suppose, for example, that an employer has 1,000 sensitive safety-related employees. At a 50 percent annual rate, 500 tests would have to be conducted during each 12-month period. During the phase-in period, however, the operator could conduct only a few drug tests at the beginning of the program and then gradually increase the number of tests until, by the end of the first 12 months, the annualized rate of 50 percent was achieved. Thus, during the phase-in if the operator's anti-drug plan calls for administering random tests on 12 occasions, the operator would need to administer at least 42 tests (500 divided by 12) on the last testing occasion, but could administer fewer tests on earlier occasions. Overall, the operator would have to conduct at least 250 random tests during the phase-in period. In subsequent 12-month periods, the 50 percent rate would be maintained.

Post-accident Testing. Many industry commenters stated that their drug programs provided for conducting post-accident testing and were generally supportive of this part of the proposed regulation. However, industry commenters suggested that such testing should be limited to accidents that reasonably could have resulted from performance by an employee who was drug impaired. The commenters argued that the proposed rule to test employees whose performance is directly related to an accident was overly broad.

The National Transportation Safety Board (NTSB) recommended that a time limit of 4 hours be set for the collection of test specimens because a longer delay seriously limits the ability of tests to detect the parent drug or its psychoactive components in the blood. The NTSB further commented that toxicological samples collected even after 4 hours may provide useful information and therefore samples should be collected even if the 4-hour period has expired. The NTSB also recommended that collection of blood specimens be required in all post-accident testing.

Some commenters objected to post-accident testing as a separate category and suggested that an accident should be one factor in deciding to conduct a "for cause" test.

RSPA Response. The RSPA agrees with the commenters who recommended limiting post-accident testing and has limited such testing to employees whose performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. An exception is also provided when an employee's performance (e.g., maintenance) may have contributed to an accident, but whose performance occurred so far in advance of the accident that drug testing would not be useful in detecting drug use at the time of performance. This limitation in the final rule will ensure that testing is conducted only when the employee's performance may be causally linked to the accident and should allay the concerns of some commenters that a great number of employees would be subject to post-accident testing.

The final rule requires that post-accident testing be conducted as soon as possible but no later than 32 hours after an accident. This will ensure that such testing is not delayed and that the testing be conducted with dispatch. The RSPA strongly encourages employers to promptly determine if an employee is subject to post-accident testing, particularly in cases where there is little or no uncertainty that an employee's performance was a contributing factor in the accident. The RSPA intends to vigorously enforce the regulation where there is unreasonable delay in determining whether an employee should be tested under this provision or where there is unreasonable delay in testing after the determination to test is made.

The NTSB's suggestion that the RSPA require an employer to conduct post-accident testing within 4 hours after an accident is based on the time-sensitive nature of toxicological testing of blood samples. On the other hand, urinalysis testing does not involve the extreme time-critical considerations associated with collection and testing of blood samples. The RSPA believes that post-accident urinalysis testing is sufficient at this time to demonstrate an individual's drug use, evidenced by the presence of a drug or a drug metabolite in the individual's system. Also, the RSPA proposed only urine testing in the NPRM, specifically excluding blood testing as an option, for all drug tests that would be conducted under the anti-drug program. Further, as noted in the NPRM, the blood test method of checking for the presence of drugs is considered to be a more invasive procedure. Therefore, the RSPA considers NTSB's suggestion to be beyond the scope of the notice and the RSPA has not adopted NTSB's suggestion to require post-accident testing by collecting a blood sample.

Reasonable Cause Testing. The commenters generally supported the concept of testing of an employee based on reasonable cause. However, they recommended that testing be based on reasonable suspicion of drug use, rather than on reasonable cause because the reasonable cause standard is a more restrictive standard. The commenters stated that adopting a "reasonable suspicion standard" rather than a "reasonable cause standard" would reduce the weight of evidence needed to support and invoke that standard and thus increase the frequency of such tests.

Many commenters also thought that the proposal that at least two of the employee's supervisors substantiate and concur in the determination that reasonable cause exists to test an employee is too restrictive. While having two supervisors concur that an employee's behavior warrants drug testing might be desirable in light of the subjectivity of reasonable cause testing, the commenters thought it would not be practical in all circumstances. The particular location of the job site or the time of day might make it impractical for two supervisors to concur, since many job sites may only have one supervisor and the next level of management may be many miles away. The commenters wanted operators to be given flexibility in determining whether reasonable cause exists. The NTSB questions the requirement for two supervisors to concur in the determination that "reasonable cause" exists and recommended that RSPA modify this requirement to require that one supervisor can call for reasonable cause testing, but with appropriate supervisory oversight to discourage abuse.

RSPA Response. The RSPA has not revised the regulation to be based on reasonable suspicion, because there does not appear to be a clear distinction between reasonable cause and reasonable suspicion. Also, reasonable cause is the basis for testing adopted by other DOT agencies in their anti-drug rules. The RSPA is not persuaded that only one supervisor should determine reasonable cause because the seriousness of such a subjective determination should require the concurrence of two persons. The rule requires that at least two of the employee's supervisors, one of whom is trained in detection of possible symptoms of drug use, shall substantiate and concur in the decision to test an employee who is believed to be using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. The rule does not require that two supervisors observe the behavior of a suspected employee. The rule merely requires the concurence of two supervisors. The RSPA believes that such concurrence between two supervisors can be accomplished by phone, by discussions a few hours later, or by having another supervisor travel to the job site, if only one supervisor is available at that particular job site.

An exception has been made for small operators having 50 or fewer employees subject to the drug testing program because sometimes these operators do not have two supervisors for every employee. For these operators, the substantiation of one supervisor is sufficient to require that an employee be tested for drugs, provided that supervisor has received training as required.

The RSPA has written the description of circumstances that might trigger testing under this provision in performance-type language. In addition to the broad criteria listed in the rule, evidence of repeated errors on the job, regulatory or company rule violations, or unsatisfactory time and attendance patterns, if coupled with a specific, contemporaneous event that indicates probable drug use, could provide additional, cumulative evidence to support a decision to test an employee based on reasonable cause.

Retesting. The final rule requires that confirmed-positive samples be retained for at least 365 days. The rule also creates a right to have the original sample retested if the employee makes a written request within 60 days of receipt of a final test result from the MRO. The employee may designate retesting by the original laboratory or another DHHS certified laboratory. The operator may require the employee to pay the cost of re-analysis in advance, subject to reimbursement if the retest is negative.

Employee Assistance Programs

Rehabilitation. The RSPA sought comment in the NPRM regarding four different EAP rehabilitation options. These options specified the circumstances under which an employee would be given the opportunity to seek rehabilitation. Option 1 would allow all employees to seek an opportunity for rehabilitation regardless of how the employee's drug use was detected. Option 2 would allow employees, except those employees whose drug use was detected as a result of post-accident testing or testing based on reasonable cause, to seek an opportunity for rehabilitation. Option 3 would only allow employees who volunteer to seek rehabilitation and would exclude all employees whose drug use was detected by any other means. Option 4 would permit each operator to determine its policy concerning whether rehabilitation would be offered.

Most commenters indicated that rehabilitation of employees should be left to the operator's determination because federal regulations should not interfere in the management-labor relationship. Most commenters also said that drug rehabilitation was part of union collective bargaining agreements and those issues should not be subject to federal regulations. Some commenters pointed out the significant problems faced by small operators if a position would have to be held open while the employee was rehabilitated. Most labor unions supported Option 1. Most pipeline operators supported Option 4. The NTSB supported Option 3 because the Board believed that employers should be required to remove from service all those employees in safety-sensitive positions when testing confirms drug use.

RSPA Response. RSPA agrees that rehabilitation is a labor-management decision and is not directly relevant to the safe operation and maintenance of the pipeline. Further, there are significant problems in applying rehabilitation regulations to all segments of the pipeline industry. Therefore, an EAP rehabilitation program is not mandated by these regulations. Nonetheless, the RSPA hopes that pipeline operators will provide rehabilitative assistance to the employee, especially those employees with long and significant service, by providing those employees an opportunity to be rehabilitated. With respect to NTSB's comment, the final rule prohibits an operator from using an employee in certain sensitive safety-related functions when drug use has

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been confirmed, unless that individual has successfully completed a rehabilitation program.

Education and Training. Most commenters supported the EAP education and training program. Some commenters, however, thought that the type and length of EAP training should be left to the discretion of the operator.

RSPA Response. The education and training proposal in the NPRM has been adopted in the final rule. In response to a few commenters, some minor editorial changes were made to these requirements to distinguish the difference in these two facets of the drug program. The final rule permits an operator to develop and provide education and training as part of an internal program or to contract for these services. Operators may determine the extent of employee training. The 60 minutes of training proposed in the NPRM as a minimum for both employees and supervisors has been limited in the final rule to 60 minutes for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The RSPA believes that operators will not have difficulty in developing education and training programs for employees and supervisory personnel because of the many EAP's that are already being conducted by pipeline operators throughout the country.

Post-rehabilitation Testing. Some commenters stated that the RSPA should not specify the number of post-rehabilitation tests that should be conducted. The commenters recommended that post-rehabilitation testing should be left to the discretion of rehabilitation and medical personnel after taking into consideration the particular circumstances of each case.

RSPA Response. The RSPA has included a provision regarding unannounced testing after an employee's return to duty. This section requires an operator to subject an employee who has returned to duty following rehabilitation to a reasonable program of follow-up drug testing for not more than 60 months after the employee's return to duty. The RSPA believes that this program is required as a minimum to ensure that rehabilitation has been successful.

Confidentiality. Most commenters stated that drug test results should remain a confidential matter between the employer and the employee, as should any rehabilitation information. Several commenters stated that even employers should not have access to test results that would identify employees, but that such information should be available only to medical and EAP personnel. Commenters were concerned that disclosure to anyone other than the employer, without the consent of the individual, could expose the employer to liability, including defamation and slander suits. Several commenters noted that disclosure would violate state privacy laws and compromise legitimate privacy interests of individuals. Most commenters objected to providing test results to prospective or future employers, and several suggested that test results should be destroyed if an applicant was not hired. Commenters differed on whether RSPA or state pipeline safety agencies should have access to records kept on testing and rehabilitation. Most commenters opposed access to records but stated that they would not object to release of general information in the form of statistics. These commenters stated that statistical information, such as the number of persons tested and the number testing positive for certain drugs, could be released to RSPA or state pipeline safety agencies.

RSPA Response. The RSPA Has decided that the legitimate individual privacy rights of an individual warrant strict limitations on the availability of drug testing results and rehabilitation information. With one exception, the final rule provides that, other than in statistical form, an individual's drug test results and information about an individual's rehabilitation program may be released only with the written consent of the individual. The exception is that individual information must be released upon request by RSPA or an appropriate state pipeline safety agency as part of an accident investigation.

Preemption of State and Local Laws. Many commenters stated that state and local laws, especially those prohibiting or limiting an employer's ability to conduct random drug testing of its employees, could conflict with this rule. Several of these commenters recommended that RSPA include a regulatory provision that explicitly preempts state or local law on drug testing in the work place.

RSPA Response. The RSPA agrees with the commenters that conflicting state and local laws would interfere with an effective anti-drug program. Inconsistent state or local laws applicable to the subject matter of this final rule would frustrate the safety purposes of the rule and severely hamper implementation and administration of an anti-drug program. RSPA intends that issuance of the final rule, which mandates the conduct of an anti-drug abuse program that includes random testing, preempt, under the Supremacy Clause of the U.S. Constitution, any state or local law, rule, regulation, order, or standard that covers testing of pipeline employees for the presence of drugs or drug metabolites. This preemption exists to the extent that the state or local law interferes with implementation of the federal law. The rule does not preempt any state law that imposes sanctions for the violation of a provision of a state criminal code related to reckless conduct leading to actual loss of life, injury, or damage to property, whether such provisions apply specifically to pipeline employees or generally to the public. Consistent with RSPA policy that recognizes that a declaration of preemption is a judicial prerogative, no express provision has been included in the rule.

Collective Bargaining. A major issue raised by many commenters concerns the effect of collective bargaining on the ability of operators to implement Federally-imposed regulations fully and in a timely manner.

Those commenters point out that operators who are parties to collective bargaining agreements are required under the National Labor Relations Act to bargain in good faith with labor unions on issues involving wages, hours, and other conditions of employment. Drug testing for industry employees and job applicants is a mandatory subject of bargaining under section 8(b) of the National Labor Relations Act. In *NLRB General Counsel Memorandum GC 87–5,* the General Counsel of the National Labor Relations Board stated that the implementation of a drug testing program would constitute a substantial change in working conditions. Thus, the commenters state that compulsory urinalysis testing is a condition of employment with regard to which employers who are parties to collective bargaining agreements must bargain in good faith.

Operators who are parties to collective bargaining agreements may have a more difficult time in adopting anti-drug programs that satisfy Part 199 criteria than in adopting broad guidelines that allow more flexibility. The commenters urged DOT to address the collective bargaining issue in its final rule in terms of granting operators sufficient time to adopt a drug plan and in allowing operators flexibility in the design and implementation of their drug programs. Commenters stated that employers will be required to bargain on the effects of drug testing, such as which positions would be covered, which drugs would be tested for, chain-of-custody procedures, who will pay, the random selection method to be used, and whether union representatives should be involved in "for cause" decisions.

Several commenters suggested that RSPA provide additional time to develop and implement drug programs. Suggestions included 120 days after expiration of existing agreements, 12 to 15 months after issuance of the rule, and 12 months to develop and 18 months to implement a drug testing program. Commenters also mentioned grievance and arbitration issues which could delay implementation.

RSPA Response. Based on the comments, the final rule establishes an extended period to prepare for implementation of the anti-drug program. Operators with more than 50 employees subject to drug testing will have 1 year after the general effective date of this final rule to set up testing programs and EAP services. Drug testing does not have to begin until 1 year after the effective date of the rule. Operators with 50 or fewer employees subject to testing will have 18 months beyond the effective date to implement the anti-drug program. These periods should provide sufficient time to revise or adopt collective bargaining agreements.

Economic Analysis. Many commenters disagreed with the economic analysis of costs and benefits conducted in the Draft Regulatory Evaluation.

First, they state that the costs to conduct the anti-drug testing of employees were underestimated. The AGA thought that the cost of the initial urinalysis test and confirmatory test would average $200 per employee. The AGA further indicated that the per employee costs of random testing should include the urinalysis sampling, confirmation tests, transporting workers to test sites, lost productivity of workers being tested, testing contractor employees, operating a test lab facility, maintaining a rehabilitation program, and complying with DOT recordkeeping requirements. They estimated that 240,000 employees were in sensitive safety- and security-related positions and would be subject to testing, instead of the 116,500 employees thought to be subject to testing by the RSPA. The AGA stated that they thought it would cost $60 million dollars per year for random testing alone at the proposed 125 percent sampling rate. The AGA and several other commenters further pointed out that the $33 million in estimated benefits erroneously assumed that all accidents in which human error was involved would have been prevented by drug testing.

RSPA Response. A Final Regulatory Evaluation has been prepared to reflect the changes in the final rule. The cost estimates of conducting testing have been revised to be $25 per initial test, $35 per confirmation test, and $35 for administrative costs. These costs have been verified by DOT based on its own testing program. The DOT program indicates that the $35 administrative costs include specimen collection, recordkeeping, and chain-of-custody procedures. The cost of the program has been significantly reduced by limiting the random testing rate to 50 percent, by deleting the significant costs associated with rehabilitation of employees, by limiting the types of sensitive safety-related employees that must be drug tested, and by eliminating security-related positions. The discounted costs over a 10-year period of these regulations are estimated to be $29.1 million.

The benefits of the program have been revised in the Final Regualtory Evaluation to limit the impact to employees that may have been under the influence of drugs in accidents that were due to human error or other causes. In addition, the evaluation notes the important benefits that would accrue by preventing even one major accident. The estimated discounted benefits of the program over a 10-year period are $41.6 million.

Additional Issues

More Stringent Anti-Drug Programs. Some commenters said that their companies' drug testing programs went beyond the proposed federal rules and suggested changes to the proposed rules to allow more stringent requirements.

The final rule sets forth minimum requirements that must be included in an operator's anti-drug plan. However, the rule generally does not set forth detailed program administration requirements in most areas of the program. As a result, a significant degree of flexibility is retained for an employer's administration of its anti-drug program.

Section 199.11 of this regulation provides that an employer may test the sample obtained under this rule only for the drugs required or specifically authorized to be tested under this rule. That is, an employer must test the sample for the five major drugs listed in each DOT drug regulation. Only if, in the context of reasonable cause testing, the RSPA authorizes testing for additional Drug X under 49 CFR Part 40 (an approval which would be granted only after consultation with the Department of Health and Human Services, and only on the basis of an HHS-established testing protocol and positive threshold) may the employer also test the sample for that drug.

Absent such an approval, if the employer wants to test, in addition, for Drug Y, the employer must obtain a second sample from the employee. The obtaining of this second sample is not under the authority of the DOT regulation. The employer must base its request for the second sample on whatever other legal authority is available, since the employer cannot rely on the DOT regulation as the basis for the request.

Alcohol. Many commenters suggested that the RSPA include alcohol as a tested substance in any required testing program. These commenters pointed out that alcohol is probably the substance most abused by the public. The comments indicated that some operators already include alcohol in their anti-drug program.

The RSPA expressly excluded the issue of alcohol testing from this rulemaking for a variety of reasons stated in the NPRM; therefore, these comments are beyond the scope of the rulemaking. Alcohol testing was not proposed because the two preferred methods of testing an individual for the presence of alcohol are by breath analysis and by drawing blood. If tests were run for alcohol and for drugs, two different types of tests (blood alcohol concentration and urinalysis) would have to be conducted. This would greatly complicate the process as well as increase costs. Also, the blood test method generally is considered to be a more invasive procedure. Finally, it is easier to identify someone who abuses alcohol and reports for work impaired than someone who uses drugs.

Excluding alcohol testing from this rulemaking should not be construed to mean that the RSPA is ignoring the possibility that alcohol may be a substance of widespread abuse in the pipeline industry. The RSPA may consider rulemaking action against alcohol abuse in the future. Additionally, an operator is not prohibited from testing its employees for alcohol if the operator has the independent legal authority to do so.

Prohibited Drugs. The NTSB believes that the list of prohibited drugs is too narrow. The NTSB indicates that it has investigated a number of accidents in other modes of transportation caused by individuals impaired by drugs in Schedules III to V of the Controlled Substances Act.

In the final rule the definition of "prohibited drug" has been limited to the five substances for which drug testing is required: marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP), except that if an

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operator wishes to test for other substances during reasonable cause or post-accident testing, it may do so provided it has obtained approval from RSPA, as specified in 49 CFR Part 40. In addition, the rule does not prohibit an operator from testing for other drugs if the operator has the independent legal authority to do so.

Medical Review Officer (MRO). The RSPA has clarified and expanded the role of the MRO which is established in the DHHS guidelines. For example, the MRO also is the final arbiter regarding disputes on anti-drug testing programs and schedules for unannounced testing. The MRO is also responsible to determine a schedule of unannounced testing, and when applicable, in consultation with the rehabilitation committee, for an employee who has returned to duty after rehabilitation.

State Agency Inspectors. Most commenters that commented on the subject thought that state pipeline safety agency inspectors should also be subject to a drug testing program. The RSPA plans to establish standard qualifications for state pipeline safety inspectors. The comments on the need for a drug testing program for state inspectors will be considered in any future rulemaking regarding those standards.

Small Operators. Most commenters thought that small operators should also be subject to these drug testing programs. The American Public Gas Association (APGA) recommended that master meter systems should not be excluded from participation in this program. A few commenters, such as the Iowa Association of Municipal Utilities, thought that operators having 25 or fewer employees should not be included in this rule.

The RSPA believes that the problem of drug abuse is so universal that small operators should be subject to these rules to ensure that all the nation's pipeline transportation system is protected from the hazards of drug impaired pipeline employees. Furthermore, because small operators are typically distribution companies supplying gas to the public in populated areas, the public exposure is greater. Therefore, small operators are subject to these rules, except that a change has been made to the reasonable cause testing for operators with fewer than 50 employees subject to this part. In that case, only one supervisor is necessary to determine that there is reasonable cause for an employee to be drug tested. In addition, small operators are given additional time to begin their testing programs.

The RSPA has not changed the final rule with regard to master meter systems. Those systems are still excluded from the requirements of these regulations because they do not usually perform the functions traditionally considered as operating or maintaining a pipeline. The gas distribution company is responsible for the operational characteristics of the pipeline system. Under the pipeline safety rules, the master meter operator is responsible for maintenance of the pipelines on his property. He normally contracts this out to a local maintenance or plumbing company. If there is a leak, he does not shut off the system or lower the pressure. Instead, the resident of a unit usually calls the gas distribution company, which in turn checks to see if there is a problem and then takes appropriate action. Therefore, the types of incidents that would arise, such as leaks or explosions, would not be prevented by the drug testing of master meter operators.

Action that May be Taken by an Operator. Some commenters objected to the proposal that an operator may not discipline or terminate an employee for drug-related causes if the employee successfully completes rehabilitation. They argued that the proposed rule interjected the federal government into decisions and regulations between management and labor—an untenable situation to both the supervisors and supervised employees.

The RSPA agrees and has deleted this proposal from the final rule.

Suggested Alternative Plan. Transok, Inc., suggests that instead of mandating drug testing, the RSPA should impose a fine on employers of $500 for the first drug or alcohol related accident and $5,000 for subsequent accidents occurring within 5 years of the initial accident. This, according to Transok, Inc., would ensure a drug-free transportation system by penalizing employers who do not adequately supervise employees.

The RSPA believes that this approach would not ensure the prevention of drug use by pipeline industry employees. First, without a drug testing program, the RSPA would not be able to identify the accidents caused by drug-impaired employees. Secondly, such an approach would not be preventative since the accidents would already have occurred.

Conflict with Foreign Laws. We have determined not to make the final rule applicable in any situation where compliance would violate the domestic laws or policies of another country. In addition, because of the potential confusion that may exist involving application of this rule in situations where compliance could violate foreign laws or policies, we have determined not to make the rule applicable, until January 1, 1990, in any situation where a foreign government contends that compliance with our rule raises questions of compatibility with its domestic laws or policies. During the next year, the Department and other U.S. government officials will be working closely with representatives of foreign governments with the goal of reaching a permanent resolution to any conflict between our rule and foreign laws and policies. The U.S. and Canadian Governments have already established a bilateral working group in an attempt to achieve this objective. We believe that considerable progress has already been made, and further meetings will be held in the near future. While we believe that this can be a model for addressing the concerns of other countries, it is not intended to be the exclusive means. The Administrator may delay the effective date further under this section, if such delay is necessary to permit consultation with any foreign governments to be successfully completed.

It is the agency's intention to issue a notice no later than December 1, 1989, that would make any necessary amendments to the rule as a result of discussions with foreign governments. Shortly after their issuance, any such notices will be published in the **Federal Register**. While we recognize that any decision not to apply our rule to foreign citizens has the potential to create some anomalous conditions in competitive situations, it is the intention of the U.S. government to make every effort to resolve potential conflicts with foreign governments in a manner that accommodates their concerns while ensuring the necessary level of safety by those we regulate.

Advisory Committee Review

Section 4(b) of the NGPSA, as amended (49 App. U.S.C. 1673(b)), requires that each proposed gas pipeline safety standard be submitted to the Technical Pipeline Safety Standards Committee (TPSSC) for its consideration. Similarly, under section 204(b) of the HLPSA (49 App. U.S.C. 2003(b)), proposed hazardous liquid pipeline safety standards must be submitted to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). These Committees discussed the proposed rule at a joint meeting held on September 14, 1988, in Washington, DC. The official report of each Committee and the transcript of the meeting is in the docket.

The following sets forth the recommendations of each of the advisory committees regarding the feasibility, reasonableness, and practicability on the proposed rule and disposition of these recommendations by RSPA.

TPSSC. The TPSSC voted nine to four that the proposed rule is feasible, reasonable, and practicable with the following recommended changes:

- Section VI. Adopt Option 4, which leaves rehabilitation to an operator's discretion.

RSPA Response. RSPA agrees and the requirement for a mandatory rehabilitation program has been deleted in this final rule.

- Section VI.C. Eliminate random testing.

RSPA Response. As noted previously, the RSPA believes that random testing is a critical component of an anti-drug program and that a 50 percent drug testing rate is necessary to establish a valid confidence level as well as to provide a sufficient deterrent to drug use by employees. The RSPA believes that the 50 percent rate will not impose an undue economic or administrative burden on operators and employees.

- Section VII. Eliminate this section regarding restrictions on employee discipline.

RSPA Response. RSPA concurs, and this section has been eliminated since rehabilitation is discretionary in the final rule.

- Section VIII.A. Change time for preparing anti-drug plan from 120 days to 1 year.

RSPA Response. The RSPA agrees more time is needed and has adjusted the compliance date of the final rule.

- Section I. Eliminate applicability to contractor employees in definition of "employee."

RSPA Response. As noted previously, the RSPA believes that contractor employees should be included in the group of employees that must undergo drug testing. Although these persons may not be under the direct control of operators, their job performance is no less critical than the performance of employees who work directly for operators. The RSPA has limited the employees covered by the drug rule to those who perform regulated operation, maintenance, or emergency-response functions, which should minimize the effects of the rule on operators who contract for unskilled transient laborers.

- Section IV.C. Use more performance language in training.

RSPA Response. The RSPA believes that the requirements proposed for training generally were already in performance language. However, the proposal to require at least 60 minutes of training annually has been deleted as too specific. The final rule requires that operators provide 1 hour of training for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The training should include the effects and consequences of drug use and the manifestations and behavioral cues that may indicate drug use and abuse. The RSPA believes the rule provides sufficient flexibility and performance language to permit the tailoring of a training program to fit the operations of each particular operator. If an operator wishes to provide training in excess of the minimum requirements of this rule, the operator has the option to do so.

- Section IX. Limit access to records to circumstances following accidents.

RSPA Response. The RSPA has limited access to the drug testing records of a particular employee to when RSPA or a state pipeline safety agency are conducting an accident investigation.

THLPSSC. The THLPSSC voted 11 to 0 not to support the NPRM on drug testing because the need for such a rule has not been demonstrated. However, that advisory committee recommended that if the RSPA issues a final rule, the RSPA should consider the following recommendations:

- Section IV.C. Eliminate random testing.

RSPA Response. As noted previously, the RSPA believes that random testing is a critical component of an anti-drug program, and that a 50 percent drug testing rate is necessary to establish a valid confidence level as well as to provide a sufficient deterrent to drug use by employees. The RSPA believes that the 50 percent testing rate will not impose an undue economic or administrative burden on operators and employees.

- Section IV.D. Eliminate reasonable cause of testing.

RSPA Response. The RSPA has not eliminated this section. The RSPA believes that testing for "reasonable cause" is a necessary element and one of the cornerstones of the testing program. If an employee is believed to be taking prohibited drugs or under the influence of a prohibited drug while on duty, it is incumbent on the operator to determine if that employee is using prohibited drugs. More over, the comments indicate that most large operators are already conducting drug testing when their employees are believed to be using prohibited drugs.

- Section VI. Adopt Option 4, which leaves rehabilitation to an operator's discretion.

RSPA Response. The requirement for a rehabilitation program has been deleted in the final rule.

- Eliminate the applicability of the proposed rule to contractor employees.

RSPA Response. This has not been done for the reasons stated previously

- Section I. "DHHS Guidelines" should be a minimum requirement.

RSPA Response. The DOT has modified the DHHS Guidelines and adopted them as the DOT Procedures. As in all pipeline safety regulations, the operator may exceed the requirements as set forth in the federal regulations.

- Section IX. The RSPA should be given access to statistical information only.

RSPA Response. As mentioned before, the RSPA has limited access to the drug testing records of a particular employee to when RSPA or a state pipeline safety agency are conducting an accident investigation.

- Section 195.401(d)(3). Eliminate the absolute prohibition against an employee having any amount of a prohibited drug in his system.

RSPA Response. The RSPA has eliminated this requirement to be consistent with the "DOT Procedures" covering the amount of drug in an employee's physiological system that constitutes failure of an initial or confirmatory drug test.

- Section VII. Eliminate the restrictions on employee discipline. However, don't eliminate the employee discipline restrictions if random testing and testing based on reasonable cause are included in final rule.

RSPA Response. The proposed employee discipline restrictions are not in the final rule. The RSPA does not believe that any restriction on employee discipline is needed because the final rule does not mandate rehabilitation. Absent mandatory rehabilitation, any restriction on disciplinary action would unnecessarily interject RSPA into the management-employee relationship.

- Section VIII. Change time for preparing anti-drug plan from 120 days to 1 year.

RSPA Response. The RSPA agrees more time is needed and has adjusted the compliance date of the final rule.

Regulatory Flexibility Determination

These final rules apply to all entities subject to RSPA's jurisdiction under Part 192, 193, or 195, other than operators of master meter systems. Operators of master meter systems constitute the bulk of small businesses or other small

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entities that operate gas pipeline systems. There are few, if any, small entities that operate hazardous liquid pipelines subject to Part 195 or LNG facilities that are subject to Part 193. The final rule provides additional time for small operators to prepare their anti-drug plans and begin drug testing. In addition, the rule provides small operators flexibility in testing for reasonable cause by allowing one supervisor trained in detection to substantiate the decision to test. Therefore, I certify that pursuant to section 605 of the Regulatory Flexibility Act, this final rule will not have a "significant economic impact on a substantial number of small entities."

Paperwork Reduction Act

The final rule requires that the operator develop a written program and maintain records on drug testing and training. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), these information collection requirements have been submitted to the Office of Management and Budget for approval. Information need not be collected under this rule until OMB clearance is received and the OMB clearance number is published in the **Federal Register.**

Federalism Implications

The RSPA has reviewed the final rule in light of the Federalism considerations set forth in Executive Order 12612. Although the final rule will have to be adopted by states participating in the federal-state relationships prescribed in the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, the impact of such adoption based upon currently available information would not be substantial. In addition, RSPA does not expect that such adoption would have a substantial direct effect on the relationship between the federal government and the states or on the distribution of power and responsibilities among the various levels of government. This expectation takes into account the preemption of inconsistent state or local laws governing drug testing as discussed supra. Accordingly, preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

Significance

This final rule has been reviewed under Executive Order 12291 and determined not to be a major rule because it would not have an impact on the economy in excess of $100 million annually, would not result in a major change in costs or prices for consumers, individual industries, government, or any geographic region, and would not significantly affect competition. However, it is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because it concerns a matter on which there is substantial public interest and because it involves important Departmental policy. The Draft Regulatory Evaluation has been revised to reflect the changes in the final rule. The total discounted cost of these regulations over a 10-year period is now estimated to be $29.1 million. The discounted benefits of the program have been revised and are now estimated to be $41.6 million over a 10-year period. A copy of the Final Regulatory Evaluation has been placed in the docket.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing.

In view of the foregoing, RSPA amends Title 49 of the Code of Federal Regulations by adding a new Part 199 as follows:

PART 199—DRUG TESTING

Sec.

199.1 Scope and compliance.
199.3 Definitions.
199.5 DOT procedures.
199.7 Anti-drug plan.
199.9 Use of persons who fail or refuse a drug test.
199.11 Drug tests required.
199.13 Drug testing laboratory.
199.15 Review of drug testing results.
199.17 Retention of sample and retesting.
199.19 Employee assistance program.
199.21 Contractor employees.
199.23 Recordkeeping.

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53

§ 199.1 Scope and compliance.

(a) This part requires operators of pipeline facilities subject to Part 192, 193, or 195 of this chapter to test employees for the presence of prohibited drugs and provide an employee assistance program. However, this part does not apply to operators of "master meter systems" defined in § 191.3 of this chapter.

(b) Operators with more than 50 employees subject to drug testing under this part need not comply with this part until December 21, 1989. Operators with 50 or fewer employees subject to drug testing under this part need not comply with this part until April 23, 1990.

(c) This part shall not apply to any person for whom compliance with this part would violate the domestic laws or policies of another country.

(d) This part is not effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of this part raises questions of compatibility with that country's domestic laws or policies. On or before December 1, 1989, the Administrator shall issue any necessary amendment resolving the applicability of this part to such person on and after January 1, 1990.

§ 199.3 Definitions.

As used in this part—

"Accident" means an incident reportable under Part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under Part 195 of this chapter involving hazardous liquid pipeline facilities.

"Administrator" means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

"DOT Procedures" means the "Procedures for Transportation Workplace Drug Testing Programs" published by the Office of the Secretary of Transportation in Part 40 of this title.

"Employee" means a person who performs on a pipeline or LNG facility an operating, maintenance, or emergency-response function regulated by Part 192, 193, or 195 of this chapter. This does not include clerical, truck driving, accounting, or other functions not subject to Part 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

"Fail a drug test" means that the confirmation test result shows positive evidence of the presence under DOT Procedures of a prohibited drug in an employee's system.

"Operator" means a person who owns or operates pipeline facilities subject to Part 192, 193, or 195 of this chapter.

"Pass a drug test" means that initial testing or confirmation testing under DOT Procedures does not show evidence of the presence of a prohibited drug in a person's system.

"Prohibited drug" means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 & 1987 Cum.P.P.): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). In addition, for the purposes of reasonable cause testing, "prohibited drug" includes any substance in Schedule I or II if an operator has obtained prior approval from RSPA, pursuant to the "DOT Procedures" in 49 CFR Part 40, to test for such substance, and if the Department of Health and Human Services has established an approved testing protocol and positive threshold for such substance.

"Rehabilitation committee" means the individuals who develop and determine an employee's rehabilitation plan and a schedule for the employee's return to work. The committee consists of the operator or the operator's designated representative, the medical review officer, and the individual in charge of the employee's rehabilitation.

"State agency" means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

§ 199.5 DOT procedures.

The anti-drug program required by this part must be conducted according to the requirements of this part and the DOT Procedures. In the event of conflict, the provisions of this part prevail. Terms and concepts used in this part have the same meaning as in the DOT Procedures.

§ 199.7 Anti-drug plan.

(a) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain—

(1) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program;

(2) The name and address of each laboratory that analyzes the specimens collected for drug testing; and

(3) The name and address of the operator's medical review officer.

§ 199.9 Use of persons who fail or refuse a drug test.

(a) An operator may not knowingly use as an employee any person who—

(1) Fails a drug test required by this part and the medical review officer makes a determination under § 199.15(d)(2); or

(2) Refuses to take a drug test required by this part.

(b) Paragraph (a)(1) of this section does not apply to a person who has—

(1) Successfully completed a rehabilitation program and passed a drug test under DOT Procedures;

(2) Been recommended by the medical review officer for return to duty as a result of the rehabilitation program; and

(3) Not failed a drug test required by this part after the successful completion of a rehabilitation program.

§ 199.11 Drug tests required.

Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(a) *Pre-employment testing.* No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this part.

(b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, a drug test is useless to determine whether the performance was affected by drug use.

(c) *Random testing.* Each operator shall drug test at least 50 percent of its employees every 12 months. Each operator shall select employees for testing by using a random number table or a computer-based random number generator that is matched with an employee's social security number, payroll identification number, or other appropriate identification number. However, during the first 12 months following the institution of random drug testing under this part, each operator shall meet the following conditions:

(1) The random drug testing is spread reasonably through the 12-month period;

(2) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(3) The total number of tests conducted during the 12 months is equal to at least 25 percent of the covered population.

(d) *Testing based on reasonable cause.* Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. However, in the case of operators with 50 or fewer employees subject to testing under this part, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(e) *Testing after rehabilitation.* A person who returns to duty as an employee after rehabilitation shall be subject to a reasonable program of follow-up drug testing without prior notice for not more than 60 months after his return to duty.

§ 199.13 Drug testing laboratory.

(a) Each operator shall use for the drug testing required by this part only drug testing laboratories certified by the Department of Health and Human Services under the DOT Procedures.

(b) The drug testing laboratory must permit—

(1) Inspections by the operator before the laboratory is awarded a testing contract; and

(2) Unannounced inspections, including examination of records, at any time, by the operator, the Administrator, and if the operator is subject to state agency jurisdiction, a representative of that state agency.

§ 199.15 Review of drug testing results.

(a) *MRO appointment.* Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program.

(b) *MRO qualifications.* The MRO must be a licensed physician with knowledge of drug abuse disorders.

(c) *MRO duties.* The MRO shall perform the following functions for the operator:

(1) Review the results of drug testing before they are reported to the operator.

(2) Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

(i) Conduct a medical interview with the individual tested.

(ii) Review the individual's medical history and any relevant biomedical factors.

(iii) Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.

(iv) If necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

(v) Verify that the laboratory report and assessment are correct.

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(3) Determine whether and when an employee involved in a rehabilitation program may be returned to duty.

(4) Determine a schedule of unannounced testing, in consultation with the rehabilitation committee, for an employee who has returned to duty after rehabilitation.

(5) Ensure that an employee has been drug tested in accordance with the DOT Procedures before the employee returns to duty after rehabilitation.

(d) *MRO determinations.* The following rules govern MRO determinations:

(1) If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.

(2) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to an employee assistance program, or to a personnel or administrative officer for further proceedings in accordance with the operator's anti-drug program.

(3) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system.

§ 199.17 Retention of samples and retesting.

(a) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT Procedures. Within this 365-day period, the employee or his representative, the operator, the Administrator, or, if the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-period.

(b) If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the original sample must be retested if the employee makes a written request for retesting within 60 days of receipt of the final test result from the MRO. The employee may specify retesting by the Department of Health and Human Services. The operator may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee must be reimbursed for such expense if the retest is negative.

(c) If the employee specifies retesting by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample.

(d) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT Procedures, but equal to or greater than the established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results.

§ 199.19 Employee assistance program.

(a) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP must include education and training on drug use. At the discretion of the operator, the EPA may include an opportunity for employee rehabilitation.

(b) Education under each EAP must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.

(c) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.

§ 199.21 Contractor employees.

With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this part be carried out by the contractor provided:

(a) The operator remains responsible for ensuring that the requirements of this part are complied with; and

(b) The contractor allows access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this part.

§ 199.23 Recordkeeping.

(a) Each operator shall keep the following records for the periods specified and permit access to the records as provided by paragraph (b) of this section:

(1) Records that demonstrate the collection process conforms to this part must be kept for at least 3 years.

(2) Records of employee drug test results that show employees failed a drug test, and the type of test failed (e.g., post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least 5 years, and include the following information:

(i) The functions performed by employees who failed a drug test.

(ii) The prohibited drugs which were used by employees who failed a drug test.

(iii) The disposition of employees who failed a drug test (e.g., termination, rehabilitation, leave without pay).

(iv) The age of each employee who failed a drug test.

(3) Records of employee drug test results that show employees passed a drug test must be kept for at least 1 year.

(4) A record of the number of employees tested, by type of test (e.g., post-accident), must be kept for at least 5 years.

(5) Records confirming that supervisors and employees have been trained as required by this part must be kept for at least 3 years.

(b) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, except that such information must be released regardless of consent to the Administrator or the representative of a state agency upon request as part of an accident investigation. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the Administrator or the representative of a state agency upon request.

Issued in Washington, DC, on November 14, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88-26610 Filed 11-15-88; 3:51 pm]

BILLING CODE 4910-60-M

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federal register

Monday
November 21, 1988

Part VI

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217 and 219
Random Drug Testing; Amendments to Alcohol/Drug Regulations; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217 and 219

[FRA Docket No. RSOR-6, Notice No. 20]

Random Drug Testing; Amendments to Alcohol/Drug Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule prohibiting use of controlled substances without medical authorization by certain safety-sensitive railroad employees, requiring random drug testing of those employees, and amending existing regulations regarding control of alcohol and drug use in railroad operations to provide further safeguards with respect to body fluid tests for controlled substances. These measures are intended to facilitate the control of drug use in railroad operations and thereby prevent accidents, injuries, and property damage.

DATES: This final rule will be effective December 21, 1988. Pursuant to 49 CFR Part 211, FRA Rules of Practice, any petition for reconsideration must be submitted not later than 10 days prior to the effective date of the rule, or December 12, 1988. Railroad random testing programs must be submitted not later than June 19, 1989. The new Procedures for Transportation Workplace Drug Testing Programs must be implemented by the railroads by July 19, 1989, and on that date a prohibition on non-medical drug use will also become effective. Random testing programs must be implemented not later than November 20, 1989.

ADDRESSES: Any petition for reconsideration shall be submitted to the Docket Clerk (RCC–30), Office of Chief Counsel, Federal Railroad Administration, Room 8201, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Walter Rockey, Executive Assistant to the Associate Administrator for Safety (RRS–3), FRA, Washington, DC 20590 (Telephone: (202) 366–0897) or Grady Cothen, Special Counsel (Telephone: (202) 366–9416).

SUPPLEMENTARY INFORMATION:

Introduction

The Rulemaking

On May 10, 1988, FRA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to (1) prohibit the use of controlled substances by safety-sensitive railroad employees at any time, except with medical authorization, and (2) require that railroads implement random drug urine testing programs approved by the FRA (53 FR 16640). That notice also proposed to make certain incidental and conforming amendments to existing regulations regarding post-accident, reasonable cause, and pre-employment drug testing (49 CFR Part 219, Subparts C, D, and F).

On May 24, 1988, FRA published in the **Federal Register** an announcement of public hearings on the NPRM (54 FR 18589). Hearings were held in Chicago, Illinois, on June 14, 1988, in Atlanta, Georgia, on June 15, 1988, in Los Angeles, California, on June 23, 1988, and in Washington, DC, on June 28 and 29, 1988. The docket remained open for public comments through August 8, 1988. In keeping with FRA's announced policy to consider late-filed comments to the extent practicable, FRA has considered all comments submitted through August 22, 1988.

On July 28, 1988, FRA published in the **Federal Register** an Interim Rule and Interim Statements of Policy (53 FR 28594) implementing Pub. L. 100–342, the Rail Safety Improvement Act of 1988. This document amended the responsibility for compliance section of the present regulations (49 CFR 219.9) by making applicable to individuals the civil penalty sanctions of section 209 of the Federal Railroad Safety Act of 1970, as amended.

Industry and Regulatory Background

FRA has previously described at great length the historic efforts of the railroad industry to deal with safety hazards caused by alcohol and drugs and the very severe consequences to public and employee safety when those efforts have not been successful. (See documents pertinent to promulgation of the existing regulations at 48 FR 30723, July 5, 1983 (ANPRM); 49 FR 24252, June 12, 1984 (NPRM); 50 FR 31508, August 2, 1985 (Final Rule)).

The existing regulations regarding control of alcohol and drug use in railroad operations became effective beginning on February 10, 1986. Those regulations (49 CFR Part 219), which apply to employees performing functions subject to the Hours of Service Act (45 U.S.C. 61 et seq.)—

- Prohibit any employee from going or remaining on duty while using, possessing or being under the influence of alcohol or a controlled substance;
- Mandate post-accident toxicological testing following certain significant train accidents and employee fatalities;
- Require improved reporting of alcohol/drug involvement in accident/incidents (49 CFR 225.17(d));
- Provide for pre-employment drug screens;
- Authorize testing for reasonable cause (i.e., on reasonable suspicion, after an accident or injury involving human failure, or following an enumerated safety rule violation); and
- Require railroads to implement policies designed to identify employees troubled by substance abuse problems through voluntary referrals and co-worker reporting.

Over three years after issuance, elements of the rule remain under challenge in litigation now pending before the United States Supreme Court (*Burnley v. Railway Labor Executives' Association*, No. 87–1555).

This regulatory program builds on an extensive history on the part of the rail unions, the railroads and FRA in development of employee assistance programs and encouragement of education and awareness activities. Rail unions have included sobriety and mutual assistance in their organizational objectives since their formation in the last century. The railroads have, since their inception, enforced Rule G, the standard operating rule forbidding employees to go or remain on duty while using, possessing or being under the influence of alcohol. In recent years, mind-altering drugs have been added to this prohibition. Beginning in the 1950's, and on a broad front during the 1970's, the railroads developed and put in place some of the best employee assistance programs in all of American industry, serving extremely large client loads, and often including family members of employees. Employee assistance services have been made available to employees discharged for alcohol and drug-related violations, and voluntary referrals on a confidential basis have been actively encouraged.

Concurrent with the development and implementation of the existing regulatory program, FRA has actively promoted the design and implementation of peer prevention programs led by employees and supported by rail management. These efforts, known within the industry as Operation Red Block or Operation Stop (hereafter collectively "Operation Red Block"), provide a means for rank-and-file workers to protect their own safety while assisting fellow employees with substance abuse problems through education, awareness campaigns, intervention and, if necessary, confrontation of workers who come to work impaired. In exchange for this active employee involvement, railroad managements on a number of properties have agreed to withhold discipline in first-offense cases under the companies' substance abuse policy or Rule G (the standard operating rule prohibiting alcohol and drug use, possession and impairment), even when the offense is detected through incident-driven alcohol/drug testing and/or observations of railroad supervisors. In the next month, FRA will release a case study detailing the functioning of Operation Red Block on two railroads.

In addition to regulatory and voluntary activities, the railroad companies themselves have taken a variety of initiatives to address substance abuse among their employees. For instance, of the seven large rail systems that provide roughly 85 percent of rail transportation services in the United States (Burlington Northern, Conrail, CSX Rail Transportation, Norfolk Southern, Santa Fe, Southern Pacific and Union Pacific) (hereinafter "major rail systems") five have implemented drug screens in connection with physical examinations as a part of their medical qualifications programs. These examinations are typically conducted on a periodic basis and when employees return to service or transfer from one type of job position to another. Most of these programs have been challenged in litigation under the Railway Labor Act, even though it is the uniform practice of the railroads to use the results of drug screens for medical qualifications purposes and to return the employee to service upon presentation of a negative specimen (and completion of any substance abuse treatment that the employee, or the medical officer, deem necessary). See *Railway Labor Executives Association Consolidated Rail Corporation*, 845 F.2d 1187 (3rd Cir. 1988) (barring medical testing), cert. granted — U.S. —; *Railway Labor Executives Association v. Norfolk and Western Ry.*, 833 F.2d 700 (7th Cir. 1987) (medical testing creates only minor dispute subject to arbitration); *Brotherhood of Maintenance of Way Employees, Lodge 16 v. Burlington Northern Railroad Company*, 802 F.2d 1016 (8th Cir. 1986) (post-furlough testing held minor dispute).

All of the major rail systems have in place some form of training program for supervisors in drug abuse detection, and some of the programs provide for inclusion of employees and their representatives. Union organizations have also included substance abuse prevention information in their meetings and widely disseminated publications, and thousands of prevention committee members have received training through their railroads.

During the past three years, several thousand managers, supervisors and employee representatives have participated in conferences sponsored (or jointly sponsored) by FRA to provide information concerning FRA's regulatory program or to promote Operation Red Block. The most recent of these meetings, a working conference to share the field experience of the Operation Red Block prevention teams and expose nonparticipants to program concepts, was held in Fort Worth, Texas, in May of this year. At this conference the Federal Railroad Administrator once again strongly urged nonparticipating railroads and unions to join together in supporting Operation Red Block, and some additional Operation Red Block agreements have been signed since that time.

In short, the railroad industry approaches the 1990's having attempted every major strategy conceivable to control alcohol and drug use, with the exception of random testing. Despite these efforts and the progress they have brought, however, the public and railroad employees remain at risk.

Drug Abuse Prevalence

Tools of Measurement

Drug abuse prevalence is a changing reality that responds to many variables, including temporary or permanent effects of countermeasures implemented by employers or the government. The prevalence of drug abuse in any population is also difficult to measure directly due to a variety of reasons, including the following:

- Survey techniques using self and peer reporting are not necessarily well suited to determination of conduct that involves illegal acts. (FRA attempted to obtain reliable survey data on drug abuse in one railroad region, following the general model used for the 1978 alcohol survey conducted under the Railroad Employee Assistance Project. This effort was not successful, since drug users would not report their own use and co-workers often said there was a problem in the workplace while denying having seen incidents of drug use (which they would have been responsible for reporting had they been witnesses.))
- Supervisor/management estimates of drug abuse undertaken prior to institution of testing programs consistently understate prevalence rates as measured by other, more objective means.
- Testing programs relying on body fluids reflect only immediate past use (within the period necessary to reduce the concentration of drug or metabolite below the cut-off for the test) and thus understate the percent of population who may use drugs within a longer time period, such as a week, month or a year.
- For-cause testing programs generally produce positive rates higher than random or periodic testing, since drug abusers are overrepresented in events giving rise to the tests by virtue of their more frequent contribution to their occurrence.
- Reasonable suspicion testing, which is often aggregated with for-cause testing for reporting purposes, obviously produces high rates of detection because the individuals are selected based on signs and symptoms consistent with drug use.
- Scheduled testing with advance notice (e.g., periodic physical) produces positive rates much lower than actual incidence in the population, since all nondependent users and even some dependent users can abstain for the period necessary to avoid detection. Such testing of employed populations also results in apparent precipitous declines in prevalence as measured through the testing process. These declines may be partially illusory, since they may reflect increased effort by drug abusers to avoid detection by abstaining prior to the tests.
- Testing programs may not be directly comparable for a variety of reasons, including scope of substances tested, cut-offs on screening and confirmation, rigor with which collection is supervised, laboratory diligence in identifying diluted and adulterated samples, and varying rates of refusal.

Prevalence may also vary as the population changes through turnover (entry and exit) and passage of time (as some persons put aside habits learned in their youths and others develop habits, e.g., as a result of life crises or exposure to addicting substances in the course of medical treatment).

Individual Railroad Data and Industry Estimates

In the course of this rulemaking and program administration FRA has gathered a variety of statistical indicators from the railroads that verify the presence of a substance abuse problem in the industry and permit inferences to be drawn with respect to its size and significance.

A major western rail system employing 27,000 employees reports having performed over 23,000 urinalysis tests for alcohol and drugs of abuse

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since 1985, some 5,000 of which were for cause, with the remainder conducted in the medical program. In 1985, medical testing yielded a positive rate of 13.7 percent, but this indicator had dropped to 2.3 percent during the first four months of 1988. For-cause testing (including of FRA post-accident) yielded 24.1 percent positives in 1985, but had declined to 8.3 percent in 1988. This railroad's statistics for non-Hours of Service employees showed similar or slightly higher rates of detection for those groups despite broad corporate policies reaching all crafts.

Another major western railroad has pursued what it characterizes as a very aggressive for-cause testing program since August of 1984. From an initial positive rate in excess of 20 percent, the railroad reported an incidence rate of about 2 percent in early 1988. Transportation department employees on this railroad tested positive at a 5.6 percent rate in 1987. Maintenance-of-way and maintenance-of-equipment personnel tested positive at a similar or slightly lower rate. However, applicants for maintenance-of-way employment tested positive at a 38.6 percent rate as late as 1986 (the last year for which data was provided).

A major eastern rail system experiences positive rates during periodic physical examinations of under 1 percent. The railroad's reasonable cause positive rate was 4 percent in 1987, but dropped to 2 percent in the first 5 months of 1988. Return-from-furlough testing, which tends to focus on younger employees, yielded an 8.4 percent positive rate in 1987 but only 3.2 percent in 1988 (6 months).

Another major western rail system that performs most of its testing in the medical context, but also requires reasonable cause testing, experienced an overall 2.8 percent positive rate in 1987, falling to 1.6 percent in the first 5 months of 1988. This railroad's reasonable cause statistics reported under 49 CFR Part 217 showed a considerably higher positive rate for drugs in for-cause testing (15 percent), but with very few tests conducted (27), some of which may have been reasonable suspicion tests.

The major rail system on which Operation Red Block had its genesis reports the following alcohol/drug positive rates for mandatory post-accident and FRA reasonable cause testing: 8.3 percent in 1986, 10.6 percent in 1987, and 9.7 percent in 1988.

A northeastern commuter authority reports an overall positive rate of 11.4 percent for alcohol and drugs in for-cause, mandatory post-accident, and return-to-work testing since 1985.

A large midwest regional railroad has been administering mandatory post-accident and reasonable cause tests to its employees since 1986. In the first six months of that year, the railroad experienced a 13 percent positive rate (combined for both types of testing), declining to 5.3 percent in the most recent six-month period.

Railroads view alcohol and drug use as a unitary problem and so generally did not break down the two categories in presenting information in this rulemaking, so certain of the data presented above included both alcohol and drugs (where urine testing programs included alcohol). FRA has noted in the past, and through review of for-cause data submitted under 49 CFR Part 217, that the ratio of drug to alcohol positives in urine testing programs is typically about four or five to one.

As reflected by testimony in this proceeding, national and system union leaders generally estimate that use of drugs or alcohol affecting performance is a problem for approximately ten percent, or just under ten percent, of railroad employees.

National Railroad Prevalence Data

FRA administers two systems that collect prevalence data for the railroad industry. The first is a system of annual reporting regarding reasonable cause tests and Rule G dispositions (49 CFR 217.13(d)). In 1986, 5.8 percent of 2,953 reasonable cause urine tests were positive for alcohol or other drugs, with the rate for drugs other than alcohol running at 4.4% percent. In 1987, 6.8% of 5,439 reasonable cause urine tests were positive for alcohol or drugs, and the rate for drugs other than alcohol was 5.5% percent. In both years, marijuana and illegal stimulants (cocaine, amphetamines) dominated the "other drug" category, but central nervous system depressants (barbiturates, benzodiazepines) and narcotics (morphine and codeine) were well represented.

FRA also centrally administers a program for analysis of blood and urine specimens collected at independent medical facilities following significant railroad accidents. The categories of events are defined in such a way that roughly two-thirds of the testing events will be caused by human factors. (The remainder are selected solely based on severity and the public need to investigate causation and may, after investigation, be determined to have been caused exclusively by track, equipment or other factors.) Although the purposes of this program focus on investigation of individual accidents and targeting of resources for remediation, data are also aggregated to reflect incidence rates among the population tested. Pertinent information from this program is displayed below:

	2/10/86–12/31/86	1987 (12 mos.)	1/1/88–6/30/88
Qualifying events	170	179	85
Employees sampled	738	770	336
Positive for alcohol (percent)	.9	.4	1.2
Positive for controlled substance (unauthorized use) (percent)	3.7	5.1	6.5

Of particular concern is the fact that 14.9 percent of commuter railroad employees tested after qualifying accidents in the past two and one-half years were positive for unauthorized use of controlled substances.

Significance

FRA remains concerned that aggregate reasonable cause and post-accident statistics remain at relatively high levels, notwithstanding material changes in certain indicators on individual railroads. The aggregate reasonable cause statistics likely reflect the commencement in 1987 of reasonable cause programs on many railroads that previously had not adopted aggressive testing strategies. As noted above, railroads that maintain testing programs at reasonable levels of effort do show significant declines in positive rates, even for short-notice testing. FRA would therefore expect the long-term trend to show declines in positive rates on a national basis.

However, the rate of positive test results in postaccident testing, an appreciable portion of which involve recent or very heavy use (based on review of blood and urine levels), continues to be alarming. Although the detection of drug use among employees involved in an accident does not invariably mean that accident was caused by drugs, it does indicate the presence of a risk factor. And the nation's railroads continue to experience accidents for which strong indications point to alcohol or drug use as a casual or contributing factor.

Accident History

When FRA published the current regulations, we stated as follows:

> If we have not yet experienced a serious passenger train accident for which alcohol or drug involvement has been documented, it must nevertheless be remembered that the potential exists.

(50 FR 31508, 31525; August 2, 1985). Despite all efforts to prevent this type of event from occurring, 16 persons were killed and 174 were injured when a Conrail movement passed an absolute restrictive signal and went through a switch into the path of a high-speed Amtrak train at Chase, Maryland, on January 4, 1987. The engineer and conductor of the Conrail engines later admitted smoking marijuana in the cab just prior to the collision. Aggregation of all costs from this accident, including property damage and settlement of wrongful death and personal injury claims, may approach $100 million. With every hope that history will not repeat itself, we note again today that for so long as a significant number of railroad employees continue their misuse of alcohol and drugs the railroads, railroad employees and the public remain exposed to an unacceptable risk. This risk includes danger to passenger operations, the possibility of release of toxic or volatile hazardous materials, and the ever-present exposure of crewmembers from collisions and high-speed derailments.

The experience of 1987, which began so tragically with the Chase, Maryland, accident, is illustrative of the human and material consequences that drug and alcohol abuse can cause. According to a Safety Study by the National Transportation Safety Board entitled "Alcohol/Drug Use and its Impact on Railroad Safety" (NTSB/SS–88/04; June 1, 1988) (hereafter NTSB Alcohol/Drug Study), the Board found alcohol or drug involvement was a probable cause of eight rail transportation accidents in 1987, including one rail transit accident. The Board said that alcohol/drug involvement was listed as a contributing factor in the case of two additional accidents, one of them a transit accident. The 1987 railroad accidents listed in the NTSB study included, in addition to the Chase, Maryland, accident—

- New York, New York, April 10: Employee fatality during switching movement; deceased tested positive for marijuana metabolite and conductor directing movement trested positive for cocaine metabolite.
- Pittsburgh, Pennsylvania, April 11: Sideswipe/derailment of freight train overspeed on curve; 22,000 residents evacuated due to hazardous material release; engineer at fault tested positive for non-authorized use of butalbital, a barbiturate widely available in prescription medications.

- New York, New York, April 27: Rear end collision of commuter trains due to motorman failing to observe signal; 17 injured; motorman tested positive for marijuana.
- North Platte, Nebraska, September 19: Hostler left locomotives unattended without brakes, causing them to run into standing train; damage $271,000; hostler positive for marijuana.
- Kemmerer, Wyoming, November 8: Head-on collision of freight trains resulting in fatality, 8 injuries and $900,000 in damage; front brakeman of train not operated in accordance with signal indications positive for cocaine.

Including the above-listed, FRA has identified 13 accidents during 1987 involving alcohol or drug positives where employees may have been impaired and contributed to the cause or severity of those accidents.

FRA continues to detect at least one positive for alcohol or drugs in an average of one out of five accidents for which testing is conducted. For 1988, several accidents still under investigation or review illustrate the potential impacts of impaired employees:

- Chester, Pennsylvania, January 29: High-speed passenger train routed onto track occupied by maintenance-of-way equipment, 19 injured; $3,380,000 in property damage; block operator fled post after accident, but his urine specimen collected three and one-half days later tested positive for marijuana metabolite, and traces of the cocaine metabolite and amphetamines.
- Dixon, Illinois, March 21: Freight trains collided head-on; 3 injuries; $195,000 in damage; dispatcher positive for alcohol (.15 percent) and one brakeman on each train tested positive for marijuana.
- Mount Vernon, New York, April 6: Rear-end collision of empty commuter trains; 1 fatality; damage $1 million; engineer of striking train positive for marijuana metabolite (trace); dispatcher positive for opiates; block operator and assistant block operator positive for butalbital; leverman positive for marijuana.
- Fairlawn, New Jersey, May 21: Head-on collision of freight trains; 1 fatality; damage $39,000; dispatcher positive for marijuana.
- Long Beach, California, June 9: Switching collision of freight trains; 4 injuries; $51,000 damage; conductor of crew under investigation was positive for marijuana.

Overall, in the period January 1, 1987, through August 15, 1988, there have been 54 qualifying accidents in which one or more employees tested positive for unauthorized use of controlled substances. Thirty-two people died in those accidents, 357 were injured, and more than $33 million in railroad property was destroyed.

In summary, FRA remains concerned that all of the necessary and quite useful measures implemented to date have not been sufficient to bring an end to the threat to rail safety posed by misuse of alcohol and drugs.

The Proposed Rule

The NPRM proposed to prohibit use by safety-sensitive railroad employees of a controlled substance at any time, except with medical authorization, and to require implementation of random drug testing programs for those employees. The preamble and proposed rule text set out a number of issues to be resolved with respect to the design and implementation of these provisions and options for disposition of employees testing positive. The NPRM also proposed to amend the penalty schedule to Part 219 and make amendments to Part 217 to collect adequate data on the random testing program.

Discussion of Comments and Conclusions

General Overview of the Major Issues

In response to the NPRM, the FRA received comments from seventy-six persons, including written submissions and oral testimony at five public hearings. June hearings were held in Chicago, Atlanta, Los Angeles and Washington and all written comments received by August 22, 1988 were considered. Comments were received from thirty-six railroads, two organizations representing railroads, ten employee organizations, thirteen individuals, nine persons or organizations with some expertise in analysis of urine for drugs of abuse, and six public interest organizations.

All commenters supported the goal of a drug-free railroad operating enviornment. In general terms, the use of random testing as a means of achieving this goal received broad support from rail operators and members of the drug and alcohol testing industry. Labor organizations, however, opposed the imposition of mandatory random drug testing.

Evidence of a problem. Railroads noted that present testing programs reveal current drug use by employees (see discussion of data culled from railroad drug testing experience to date, above). All Class I carriers expressed concern at the level of drug usage being detected, stating that such usage has a

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detrimental effect on the safety of operations. A number of commenters, including Safe Travel America, pointed to the Chase, Maryland accident as evidence of the grave consequences of drug use.

Support for random testing. Rail carriers were joined in their support of random testing by a number of public interest groups, individuals, and members of the drug testing industry. These commenters are alarmed by the evidence of drug use among railroad employees and they believe that a random drug testing program is necessary to confront the problem. They believe that random testing is the most effective deterrent to drug use available. During oral testimony it was frequently stated that the interests of public safety justify the slight intrusion upon employee privacy.

Random testing as a deterrent. FRA heard from several railroads and experts who believe that random testing is justified because it provides a deterrent to on-duty and off-duty drug use. Commenters were nearly unanimous in their appraisal of the deterrent effect of random testing. Peter Bensinger of Bensinger, DuPont and Associates stated that, based upon his own considerable experience in the field, he believes that random testing is the most effective deterrent yet devised. Only the RLEA doubted the power of random testing's deterrent effect, stating that employee fear of discipline for a rule violation presents a deterrent of at least equal weight.

Opposition to random testing. Random testing was opposed by labor groups, CSX Transportation, eight inidividuals, and the Epilepsy Foundation of America. These commenters believe that random testing is an unacceptably intrusive and unnecessary method of curbing drug use by railroad employees. Random testing was opposed on constitutional grounds, and a number of alternatives were suggested. Many feared that railroads would use this new form of testing to harass union locals and employees. Others object to what they perceive to be an underlying bias—that an employee is guilty of misconduct until he can prove his innocence. The Railway Labor Executives Association (RLEA) contended that random testing would encourage drug users to switch to more dangerous drugs for which testing is not conducted.

The National Transportation Safety Board (NTSB) believed that other measures should be implemented before it is decided that random testing should be implemented. (See discussion below.)

Alternative Strategies. Labor, CSX Transportation, and the NTSB also believe that the implementation of testing is unnecessary and may undermine other efforts at controlling drug use. Several alternatives were suggested:

1. FRA should encourage carriers to establish Operation Red Block programs. These programs are supported because they instill trust between management and employees while being more effective in removing impaired employees from service. CSX Transportation submitted information which was said to indicate that their own Red Block program has helped to improve their safety record and to drastically reduce instances of Rule G violations.

2. FRA should only mandate that carriers develop their own testing programs through collective bargaining with unions. This was opposed by testing proponents because it would delay the imposition of testing and possibly require employers to administer numerous different programs for the various crafts. Safe Travel America disfavored this approach because it would prevent public input into the process. Some commenters also believed that a uniform nationwide program is superior to a piecemeal approach.

3. FRA should encourage training of supervisors in the detection of troubled employees.

4. FRA should do more to promote safety equipment such as automatic train control devices.

5. FRA should regulate carrier practices which create an environment conducive to drug and alcohol abuse. Among the factors thought to encourage abuse are long hours, long layovers and overnight stays at away from home terminals.

Labor unions and the NTSB stated that these efforts coupled with existing programs (post-accident testing, reasonable cause testing, pre-employment testing, medical testing, Rule G and employee assistance programs (EAP's)) should provide the necessary remedy for employee drug use. (NTSB's comments are more fully discussed below.)

CSX proposed that FRA support these programs and help establish acceptable levels of positive test results for the various non-selective testing methods. CSX suggested that random testing be mandated only for those carriers or regions that fail to meet the established target rate.

Constitutional Issues Regarding Random Drug Testing

Comments: The FRA received few detailed comments on the constitutionality of the proposed rule. A number of railroads, individuals and public interest groups indicated that they believe the FRA proposal to be constitutional because the public right to safety overrides an employee's less significant claim to privacy. Labor groups, CSX Transportation, and the Epilepsy Foundation of America, however, either questioned or affirmatively challenged the constitutionality of the rule.

A commenter also submitted the views of Senator Daniel Inouye (prepared for a legislative committee report), who viewed random testing of transportation employees as constitutionally defective by virtue of its impact on all employees, including the majority who do not misuse drugs. *See* Senate Rept. 100-43 at 39-42 (additional views on S. 1041).

Conclusions: Commenters in this rulemaking have not contended that a drug-free policy such as contained in section 219.102 of the proposed rule infringes protected constitutional interests, and we believe it is clear that it would not. *See New York Transit Authority v. Beazer*, 440 U.S. 568 (1979).

FRA is keenly aware of the constitutional issues posed by random drug testing. Those issues, and logically antecedent issues, are being litigated in a variety of forums already, and will likely be substantially resolved by the Supreme Court in pending litigation and cases already in the courts of appeals before the instant rule could wind its way through the judicial process. The Federal Aviation Administration addresses the constitutional issues in its preamble elsewhere in today's **Federal Register**. A very similar analysis applies to the issues in the instant rule applicable to railroad employees.

FRA has endeavored to craft the final rule in a manner ensuring that random testing programs meet objective criteria that protect against any exercise of discretion by the railroad in selecting a particular employee for testing. Urine collections will occur in private, except where carefully delineated conditions provide reason to believe that the employee may alter or substitute the specimen. The final rule carefully protects medical information necessarily developed incident to the testing process (i.e., provided by the employee at the time of sample collection or revealed through testing for controlled substances that have therapeutic uses).

Confidentiality protections for test results involving even illicit drug use will limit the perceived intrusiveness of the program from the point of view of the abuser, and non-abusers will obviously have nothing to fear. The final rule also affirms due process rights through careful control of the testing process itself, including review of test results by an expert fact-finder (the medical review officer), opportunity for the employee to make further explanations prior to any action on a laboratory report, access to underlying records and right to have the sample analyzed by another certified laboratory. Existing procedural rights with respect to employment remain unabridged (e.g., investigation, grievance and adjustment under the collective bargaining agreement and section 3 of the Railway Labor Act, 45 U.S.C. 153).

FRA has, in short, adopted the full range of protections useful to ensure fairness and confidentiality and to check abuse of discretion. The sanctions against individuals now available under amendments made by the Rail Safety Improvement Act of 1988 will further strengthen FRA's ability to enforce these important protections. Further, FRA is making the enhanced testing safeguards applicable to our existing rule.

Extent of the Drug Problem in Rail Transportation

Comments: Comments regarding the prevalence of the drug problem in rail transportation are discussed above. Virtually all commenters agreed that drug use remains at unacceptable levels and that it poses a safety risk that must be addressed. Commenters differed in the means deemed appropriate to address the problem.

Conclusions: Like the commenters, FRA remains concerned that misuse of controlled substances by railroad employees engaged in safety-sensitive duties is a significant problem that threatens the safety of railroad employees and the public for so long as it continues.

Accuracy of Drug Test Results

Comments: The FRA received comments from labor groups and individuals questioning the accuracy of drug testing. Experts testified, however, that use of GS/MS by the Coast Guard and U.S. Navy has turned up no false positives after thousands of proficiency tests. PharmChem, Inc. related that their own experience has shown that with proper confirmation techniques, drug testing is essentially errorless if chain of custody is properly maintained.

Conclusions: The accuracy of properly administered urine testing for drugs of abuse is not a matter of speculation. The scientific tools are available to make positive identification of specific compounds in human body fluids. *See*, e.g., *Urine Testing for Drugs of Abuse*, Research Monograph Series No. 73 (National Institute on Drug Abuse 1986); *GC/MS Assays for Abused Drugs in Body Fluids*, Research Monograph Series No. 32 (National Institute on Drug Abuse 1980). Commercial testing laboratories have extensive experience in the use of relevant technologies. The College of American Pathologists has for many years administered an open proficiency testing program for clinical laboratories performing drug testing. The United States armed services have conclusively demonstrated the value of blind proficiency testing as a means of ensuring reliable identification of positive specimens and documentation that no false positive tests are being reported, and two major railroads are already utilizing this technique. Finally, the Department of Health and Human Services is now administering a laboratory certification program that will identify a number of major laboratories capable of providing first-rate forensic control and documentation of testing, as well as first-rate analytical toxicology. Certification of additional laboratories is expected in the next few weeks, as the carefully-planned process of initial proficiency testing and laboratory inspection is completed.

As adapted for private sector application, the HHS Guidelines provide a workable and forensically sound approach to determination of the presence of drugs and their metabolites in urine. Care must be taken, of course, to prevent, detect and correct any error in application of the safeguards provided by the Guidelines and sound laboratory practice. FRA believes such errors, if any, will be extremely rare and readily susceptible to correction.

Coverage of Employees

Comments: Four railroads and one substance abuse expert testified in support of the current provision mandating testing only for employees covered by the Hours of Service Act. But a majority of commenters favored extending the degree of coverage to some extent. Labor, several railroads, and the NTSB all favored testing of first line supervisors. Testing of these individuals was supported because they make frequent safety critical decisions and because the testing of managers promotes employee faith in the fairness of the program.

There was also broad support, especially among carriers, for extending testing to maintenance of way employees. It was stated that these employees operate machinery over tracks while normal operations are in progress. They therefore pose as much of a threat to safety as employees who are covered by the Hours of Service Act.

To a lesser extent, extension of coverage to the following groups was supported: car inspectors, shop mechanics, railroad officers who carry firearms, and clerks who prepare paperwork for the transportation of hazardous materials.

Conclusions: FRA is persuaded that regulations for the control of alcohol and drug use should, from the point of view of ideal or optimum safety objectives, extend to all employees engaged in functions bearing directly on the safety of rail operations. Railroad policies generally reflect this point of view, as well. Given this objective, a Federal rule would extend to those actually involved in moving freight and passengers, those responsible for inspection or maintenance of rail track and structures, employees who work on rolling stock or inspect it for compliance with Federal standards, those who prepare shipping papers for hazardous materials, on-board service personnel on passenger trains, and a variety of other employees who are few in number but whose responsibilities can affect safety.

Nevertheless, to date FRA has limited the coverage of its regulations to employees directly involved in moving passengers and freight and maintaining signal systems that govern train operations, i.e., employees covered by the Hours of Service Act. FRA has maintained this distinction for a variety of reasons, including the frequency with which these employees perform safety-sensitive tasks, the devastation that they can produce by act or omission, and the demonstrable impacts that occur when any single employee is impaired by alcohol or drugs. Congressional attention to these functions through the Hours of Service Act has also established a strong precedent for focusing the alcohol/drug control program on persons performing these functions. Further, FRA has sought to focus its enforcement efforts on areas of most immediate need.

There is a growing body of opinion within the railroad industry, as expressed in the comments submitted in response to the NPRM, the additional employees, salaried and wage-earning, should be included within the coverage of measures such as the drug-free rule and random drug testing. FRA agrees

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that broader coverage may be warranted, based on known safety exposure and prevalence of drug use among other railroad employees. However, FRA is not willing to effectively delegate the task of defining the classes of employees covered by use of a vague definitional formula; nor can FRA overlook the issues of degree that are particularly critical when one is considering a random testing proposal. Further, FRA is cognizant of the burdens imposed on employees and railroads by any random testing program and seeks to limit those burdens to the extent possible consistent with safety.

FRA believes that the appropriate approach to this issue is to put in place the remaining elements necessary to comprise a comprehensive alcohol/drug regulatory program for employees performing functions subject to the Hours of Service Act. Both this rulemaking and successful completion of pending litigation will be necessary to achieve this objective. The issue of broader coverage can then be considered at an appropriate later date with respect to all or a portion of the elements of the comprehensive basic program.

Drug-Free Rule

Comments: The great majority of commenters support FRA efforts to prohibit off-duty as well as on-duty use. These commenters offered several compelling reasons for proscribing off-duty use. Most significantly, a number of experts and railroads pointed to the recent scientific studies which indicate that off-duty use has a lingering effect and can cause impairment even while the user is not subject to noticeable acute effects. It is argued that this compromise of fitness is not permissible in an employee who performs safety critical functions.

Commenters offered several other reasons for a drug-free rule. Any employee found to have drugs in his system is more likely to use drugs on-duty. Two commenters also noted that drug use is infectious—a casual off-duty user may be reluctant to turn in a fellow employee who is impaired on the job. An employee who uses drugs off-duty may be distracted while on the job by concerns over how he will obtain and pay for his next supply. One carrier expressed its view that a person willing to break laws (as evidence by illicit drug use) should not be entrusted with the responsibilities of a safety sensitive position. A few commenters contended that testing for off-duty use is necessary because present testing techniques can only determine the presence of drugs, and not whether the subject is impaired.

Only a few commenters objected to use of testing technologies that necessarily discover off-duty use. The RLEA based its objection on the contention that present studies are inconclusive as to the lingering effects of drug use. The RLEA argued that an intrusion upon employee privacy should not be based upon an unproven premise. Dr. John P. Morgan and Dr. Arthur J. McBay also question the reliability of studies tending to indicate that drug use can have lingering effects. Dr. McBay takes the position, in effect, that the safety risk associated with marijuana use is not documented, particularly after the acute effects of the drug are no longer apparent to the user, and that FRA overestimated drug abuse prevalence in rail transportation. (Dr. McBay further took a skeptical approach to virtually every additional major tenet of the rulemaking, even going so far as to question whether marijuana use is a public health program. (Cf., e.g., Institute of Medicine, *Marijuana and Health* (National Academy Press 1982).)

Conclusions: The fundamental premise of this rulemaking is that public and employee safety can be adequately protected only if employees engaged in safety-sensitive functions are free from the effects of drugs used without proper medical supervision. As described in the NPRM, the effects of drugs may include after-effects, chronic effects and withdrawal effects, as well as acute drug intoxication. The great weight of the comments in response to the NPRM supported FRA's judgment that it is not reasonable to allow the public to remain at risk from the consequences of drug abuse by attempting to address the problem only when overt manifestations present themselves in an unambiguous manner in the workplace.

Certain of the labor organizations continue to refer to the employee's right to do what he pleases "on his own time." However, employee representatives expressed differing viewpoints on this issue during the rulemaking. Employees, like transportation companies and government regulators, are gradually coming to the realization that society pays a substantial price for unauthorized use of controlled substances and that it is not possible to conveniently separate drug abuse off duty from fitness on duty. This realization is dramatically evidenced by the CSX Rail agreements for reasonable cause (post-accident or casualty) and return-to-service drug urine testing. The agreements implicitly recognize that any employee bringing residues of drug use to a fitness-for-duty examination is a matter of legitimate safety concern, whether or not on-duty use or impairment can be demonstrated. The consequences of detection in this context is removal from service until successful completion of rehabilitation, and it is a consequence fully endorsed by the labor organizations in a collectively bargained agreement. A similar recognition is embodied in the recent agreement between the Brotherhood of Railroad Signalmen and the Southeastern Pennsylvania Transportation Authority.

In the final analysis FRA's judgment that safety-sensitive employees should be free of drugs and their lingering effects is not one based on a handful of scientific studies or opinions of individual experts. Scientific studies can be cited for virtually any proposition, and there are as many opinions on issues of this breadth as there are experts. FRA's judgment is informed by the collective experience of the railroad industry, drug abuse clinicians, and those who have participated in this and prior rulemakings on control of alcohol and drug use. It is not possible to detail the full extent of that experience in any reasonable number of pages, but the following considerations are illustrative:

1. FRA has noted the prominence of cocaine abusers in serious accidents where evidence of heavy use was present, but recency of use was in question. FRA has also noted the clinical data associated with cocaine use that indicates a variety of adverse after-effects which could negatively impact employee fitness.

2. Misuse of controlled substances may be of concern even where prompted by the most innocent of motivations, such as self-medication for an illness. The Pittsburgh, Pennsylvania, accident of April 11, 1987, was caused by the inattention of a locomotive engineer who failed to control the speed of his train. The NTSB determined that the engineer's use of a medication containing butalbital contributed to probable cause. The engineer had obtained the medication from a family member and used it for flu symptoms with the last dose having been taken a full 24 hours prior to the accident. The engineer likely did not realize that the plasma half-life of the drug is in excess of 24 hours, permitting successive doses to build up in the body, so that a therapeutic level of the drug remained in his blood at the time of the accident with potentially sedating effects. The accident resulted in release of hazardous materials and evacuation of 22,000 residents of nearby neighborhoods and 122 minor injuries;

and any accident of this kind has the potential for much more serious harm to the public.

3. PCP and other hallucinogens may cause personality disorders and delayed effects long after they cease to be detectable in body fluids.

4. Like those addicted to alcohol, persons addicted to certain central nervous system depressants and narcotics may suffer severe withdrawal effects including seizures if they fail to use the drug at a maintenance level.

5. Railroad medical officers and employee assistance directors participating in this rulemaking are uniform in their judgments that unauthorized use of controlled substances is a fitness concern for the employer for a variety of reasons, including the fact that the employee using drugs may be unable to judge the full extent or duration of drug effects. FRA judges these representations to be consistent with the notable commitment of these professionals to rehabilitation of those willing to accept help.

Common sense, clinical experience and the experience of the FRA and its regulated industry offer persuasive reasons for implementing a drug-free policy, as does endorsement of this rulemaking by the National Institute on Drug Abuse.

FRA has noted that this conclusion is also supported in sworn declarations of a number of experts that have been introduced in evidence in pending litigation regarding other drug testing programs. For instance, George W. Woody, M.D., Chief of the Substance Abuse Treatment Unit at the Philadelphia Veterans Administration Medical Center and Professor of Clinical Psychiatry at the University of Pennsylvania described the mental disorders produced by prolonged use of stimulants and hallucinogens, and depression caused by sedative users, both of which were observed "long after the acute effects of the drug had ended." Dr. Woody noted that a drug use pattern that appears casual and controlled may change in complexion with great rapidity:

> [A]lthough a person might initially use a substance of abuse in off-duty hours and demonstrate little or no impairment on the job, the mere fact that the person uses the drug carries a significant danger that this controlled, sporadic pattern will change to an uncontrolled, abusive pattern in which he or she is unable to check their impulses to use the drug. The result is more frequent use and a greater likelihood of becoming impaired while at work.

Declaration of George D. Woody, M.D., April 9, 1987, at 4. Dr. Marian Fischman of Johns Hopkins University School of Medicine indicated that residual "next day" effects from marijuana use appear to be supported by recent studies and may be of particular concern if the subject does not expect such effects. Dr. Fischman also noted the deleterious residual effects of chronic use of stimulants. Both Drs. Woody and Fischman defend the study of pilot performance cited in the NPRM (Yesavage et al., 1985) as soundly designed and suggestive of residual effects from marijuana. These declarations and others of a similar nature were entered in the docket of this rulemaking.

It should not require repeating that there can be no surveillance of employees during their off-duty time. The final rule neither authorizes nor requires any such surveillance. A railroad employee's off-duty time is certainly his or her own. But this rule does accomplish two objectives: First, the employee may not engage in non-authorized use of controlled substances. This merely requires that prescription medication be used as prescribed, that physicians be informed of the safety-sensitive nature of the employee's duties before prescribing the manner in which the drug may be used (sec. 219.103), and that employees not use substances that it would be unlawful to possess in any event. With respect to conduct during off-duty periods, voluntary compliance is the means of enforcement. Second, the rule provides notice that an employee who appears on the job with unauthorized controlled substances or their metabolites in the employee's system is subject to detection. This prospect, enforced through urine testing, will provide incentives for changed behavior.

Random Testing: Detection and Deterrence

Comments. Commenters generally agreed that detection of drug abuse problems by employed persons seeking to hide their habits is ordinarily not possible until very advanced stages of dependency, and even then indicators do not point unambiguously to drug abuse, as opposed to other medical or pyschological problems. As Dr. J. Michael Walsh of NIDA stated:

> Very often the signs and symptoms of impairment for abused drugs are subtle to both the user and to those around him, especially in the early stages of abuse, making it almost impossible for friends or co-workers to detect the problem * * *. By the time it is readily detectable it is far too late normally.

Dr. Walsh noted supervisors may wish to ignore the indications that they do receive, because of the great difficulty of dealing with the problem in most employment contexts.

A physician/consultant who has served as the Federal Air Surgeon put it this way:

> For illegal drugs there are significant impairments beyond the period of the "high." These may last for hours and even days. The impairments are insideous, subtle and unpredictable, making it almost impossible for friends or co-workers to detect the problem.

A large regional railroad stated that in its experience only about one of four drug positives detected has been through reasonable suspicion testing, since it is very difficult for supervisors to pick up indicators.

Conclusions. FRA found portions of its existing rule provisions on the premise that drug use—even current drug use accompanied by acute effects—is not reliably detectable in a clear majority of cases, even by supervisors who have received a reasonable amount of pertinent training. Experience under FRA's post-accident testing rule and elements of the reasonable cause testing program that do not rely upon individualized reasonable suspicion was verified and underscored the correctness of this judgment. Several thousand railroad supervisors have been trained in recognizing the signs and symptoms of drug abuse, and thousands of railroad employees continue to use drugs. Even the drug abuser who may show symptoms will be inclined to deny to himself that that is the case, thus undercutting the deterrent effect of a reasonable suspicion testing policy. Quite apart from the difficulty of detecting drug abuse through observations, it is clear that supervisory observation could not be an exclusive tool of detection in the railroad industry because of the long periods during which supervisors are not present. Even where pre-departure supervisory observation is possible, employees can simply bring drugs into the workplace and use those drugs when they have departed their initial terminal (as happened in the Chase, Maryland, accident).

Clearly, some drug use is detectable. Gross intoxication might be noticeable by virtually any supervisor (though the supervisor would need to know what action to take); supervisors trained in signs and symptoms will be capable of making reasonable suspicion determinations in additional cases; and advanced dependency is often discernible through supervisory alertness or careful personnel practices. However, it is a sad fact that the

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concerted efforts of railroad companies and others to employ these important tools have shown their limitations. This conclusion is amply supported by testimony in this proceeding and in the proceeding for review of the current alcohol/drug rule (52 FR 211; January 20, 1987).

FRA has also noted the consistency of this judgment with expert testimony by witnesses in district court litigation regarding similar testing programs. For instance Robert L. DuPont, M.D., explained, in a detailed review of diagnostic criteria for marijuana and cocaine use, why those criteria are either not subject to observation by a supervisor or are non-specific (i.e., occur as symptoms of allergies or illnesses) and thus easily explained away by the drug user:

> [W]hat is primarily affected are the higher brain functions of judgment, decision making, reaction time, and other abilities needed to perform work safely. Motivation—the process of making a commitment to achieving a goal—is often profoundly affected by [the type of intoxication caused by] marijuana or stimulants such as cocaine. The problem is often particularly severe with a heavy or frequent user.

Declaration of Robert L. DuPont, Jr., June 10, 1987, at 2. Dr. Sidney Cohen of the University of California at Los Angeles also affirmed that traditional diagnostic criteria are not readily susceptible to reliable application by supervisors. (These declarations were entered in the docket of this rulemaking.)

The difficulty involved in detecting drug use is vividly illustrated by the experience of the U.S. Navy. Prior to incidents that resulted in disclosure of a major drug problem, Naval officers judged drug abuse to be a problem capable of being controlled through careful monitoring of performance. But drug testing instituted in 1981 showed a positive rate of 48 percent for enlisted personnel under the age of 25. Random testing brought the positive rate for Navy personnel down to the low single-digit range. *See*, e.g., Robert E. Willette, Ph.D., in *Urine Testing for Drugs of Abuse*, Research Monograph No. 73, at 6 (National Institute on Drug Abuse, 1986).

Employee representatives contend that other workers know who uses drugs, and after four years of concerted effort prevention teams are doing important work to address those who are known to use on the job. However, as the Union Pacific Railroad, whose employees pioneered Operation Red Block, has noted, voluntary action alone is not enough. It is not enough for at least two reasons, and it is not possible to say with mathematical certainty which of these factors preponderates:

First, Operation Red Block has not yet been extended to all railroads, nor have all union leaders of all crafts accepted the program on any railroad. Indeed, on a national basis coverage remains spotty, with only about half of railroad employees touched in any way by the program. "Holdouts" include both railroads and rail unions. This is a program founded on mutual trust and a keen perception of self-interest, as well as a healthy concern for the fellow employee. Clearly, these are conditions that cannot be mandated by any statute or regulation.

Second, even where Operation Red Block is in place it cannot succeed by itself. Where tolerance of substance abuse does not exist, some users will stop, but others will take special care to conceal their use, thereby denying co-workers the leverage necessary to bring about a change in behavior or get the abuser into treatment. In some cases, co-workers may even be unaware of the problem until they witness an unsafe act in the workplace. Further, some drug users simply will not respond in a positive way to expressions of concern from co-workers.

FRA continues to detect unauthorized use of drugs in mandatory post-accident tests on railroads that have active Operation Red Block programs, as well as those that do not. The major western rail system on which Operation Red Block got its start stressed in its testimony in this proceeding its dissatisfaction with a continuing reasonable cause positive rate of over 9 percent. The major eastern rail system that signed the first system-wide testing agreements with its organizations in August of 1987 has 2 post-accident alcohol/drug positives in the 12 months prior to the agreements and 4 positives (all for illicit drugs) in the subsequent 12 months.

It should be no surprise that Operation Red Block cannot be a complete answer to the problem, since different people respond to different stimuli. Some will respond to the carrot, some to the stick, some to peer concern and others only to a strong deterrent. This point is best illustrated by one Operation Red Block railroad's call for random testing and institution by another of a testing agreement.

Random Testing and Voluntary Programs

Comments. CSX and employee representatives also expressed the belief that the imposition of mandatory random testing would undermine trust and cooperation between railway labor and management. This trust is held to be critical to the success of EAP's and Operation Red Block. Thus, it was feared that random testing would undermine the success of these programs. Labor also feared that unless these preventive programs are mandated, carriers will tend to rely on random testing to weed out drug use instead of investing in prevention-oriented programs. Employee representatives postulated a wide range of negative impacts on voluntary programs from institution of random testing.

Other commenters, however, contend that random testing would more likely increase the importance of EAP's and Red Block. First, the fear of detection would drive many users to seek assistance. Second, with the stakes raised, there is no reason to believe that the commitment to these programs from counselors, unions or employees would decrease. Finally, the resulting increase in rehabiliation would give these programs an even more important role in combatting drug use. Two carriers indicated that voluntary admissions to EAP's on their lines increased after testing programs were implemented. Further, all operators who addressed the question stated that the implementation of random testing would not diminish their commitment to or financial support of preventive programs.

Conclusions. There is no doubt that implementation of regulatory options subtly influences a variety of initiatives in the private sector. FRA withheld regulatory action on the issue of alcohol and drugs for over a decade in order to promote and provide the opportunity for the development of non-regulatory solutions. During this period, employee assistance programs became firmly established and contributed to the well-being of thousands of railroad employees, the the REAP Report showed that, with respect to alcohol abuse, at least, much remained to be done (Mannello & Seaman, University Research Corp., 1979). FRA began its search for a sound regulatory design in 1983, and in the same year the first bypass agreement was signed (protecting Rule G violators who are reported by co-workers). Operation Red Block was implemented on portions of two railroads in 1984, the same year FRA proposed the most comprehensive testing program for employees of a regulated industry that had ever been suggested as of that time. FRA implemented its final rule in early 1986 despite a major law suit by the rail unions, and by 1987 employees of CSX had signed an agreement approving testing very similar to that contained in the FRA rule. This history illustrates that the "threat" of regulation can stimulate interest in voluntary action, but it does not establish that regulatory action stifles voluntary action. Indeed, the railroad industry today is involved in more aggressive private sector programs to address alcohol and drug use than at any previous time in its history.

One can speculate that even more might have been done had regulation been withheld, but FRA doubts that would have been the case. Alcohol and drug testing programs in aid of Federal prohibitions have brought to light the extent of this problem. They have reminded employees that they are the principal victims of job-related substance abuse. They have focused public attention and encouraged responsive measures by management and labor alike.

Similarly, one can speculate that requiring random testing may slow the future spread of Operation Red Block and similar initiatives by dampening the interest of the institutional players (e.g., railroads and employee organizations). It can be argued that resources will be diverted, even though the railroads uniformly testified that this would not occur. It can be argued that employee organizations will lose interest, even though they steadfastly denied that such would be the case. FRA finds none of this broad speculation useful for decisional purposes, because it is founded neither in history nor clear logic. Discussion among the parties at the hearings in this proceeding discounted such effects.

Employee spokesmen also raised the question as to whether co-workers involved in peer prevention activities (and others who might have been induced to participate in the future) may no longer view their role as necessary or appropriate. Some prevention committee members, for instance, may take the point of view that "someone else" is now responsible. Others may view random testing as so personally objectionable as to drive a wedge between them and any effort to address the substance abuse problem. FRA understands that these arguments are offered in good faith and cannot discount the possibility that some of the predicted effects may come to pass with respect to certain employees. Statutory jurisdiction over railroad safety confers no crystal balls through which the future may be foreseen, particularly when the motivations of complex human beings are in question. However, FRA views the risk of harm to voluntary programs as a minimal risk that must be taken.

This judgment is reached with the following points in mind:

- Prior predictions of harm from regulatory action have proven unfounded.
- Random testing may actually strengthen voluntary efforts by heightening the risk of detection and thus the susceptibility of the drug user to persuasion by concerned co-worker (while also heightening the concern of the co-worker who wants to reach his fellow employee before that employee is detected through random testing).
- Where Operation Red Block is not in place because of employee disinterest and management decides to sanction positive results with severe discipline, random testing will provide renewed incentives for employees to bargain for Red Block agreements and, in the interim, to utilize the co-worker report provision of the existing rule.
- Operation Red Block and other voluntary efforts will always be important to safeguard continued abstinence among those who have been detected through various means and have been provided an opportunity for treatment and return-to-service. Concerned co-workers who have once affirmed their role in prevention will not shrink from the responsibility to assist the recovering employee.

In short, FRA is persuaded that the existing strong regulatory program has strengthened voluntary action and that there is nothing qualitative different about random drug testing that should necessarily result in a different outcome. Much depends, of course, on the approach taken by opinion leaders among railroad employees. To a certain extent, they have the power to make their worst predictions come true; at the same time, they recognize it is not in the interest of those they serve for this to occur. FRA believes that employee representatives will continue to recognize the value of voluntary action and will communicate that need down through the ranks.

Random Testing: Structure of Testing Programs

Comments: Comments uniformly supported the exclusion of subjective factors from the random selection process. However, the railroads requested two types of flexibility. First, they wished to utilize a multi-stage selection process in which geographic units would first be selected on a random basis for any testing period (e.g., day, week or month). Then employees would be selected randomly within the geographic units. Second, certain of the railroads urged FRA to permit carriers to test different portions of the workforce at different selection rates, so long as the actual selection within each category is purely random. Geographic variations in drug use prevalence were cited in favor of this distinction, and there was some interest expressed in targeting a higher level of effort by craft, as well. These alternatives are further described below.

The Association of American Railroads (AAR) proposed that the FRA allow railroads flexibility in setting up random testing programs. As proposed in the NPRM, carriers would submit their proposals to the FRA for approval. FRA would then review the plan to be certain that the carrier program does not provide the railroad with an opportunity to discriminate or to harass employees or union locals. The AAR further believed that all testing programs should guarantee that each covered employee have a known and non-zero chance of selection on any given day, but that each employee need not have the exact same chance of selection.

As noted above, support for the multi-stage selection process was particularly strong. A carrier would divide its pool of employees into geographic clusters. On a given day of testing a number of these geographic clusters would be randomly selected. Then, employees within each selected cluster would be selected for testing at random. The carrier would then only have to conduct testing at few locations, rather than having to track down employees all across an extensive operating system. NIDA agreed that this method is cost efficient, pointing to the unit sweeps conducted by the military services as an example. (The Department of Transportation uses a similar method to administer its own random drug testing program.)

Some carriers also requested permission to use experience-rating techniques to target segments of the workforce where drug use is more prevalent. These segments would then be tested at a higher level than others. Targeting on the basis of location, age and craft was suggested. Two commuter lines and organized labor oppose group targeting, however. Labor expressed concern that geographic targeting could be used to harass an active union local. Employee representatives stated that the mere threat of increased testing could also have a chilling effect on local union activities. Proponents of targeting, however, stated that there would be no chance of harassment because all testing plans would have to be approved by the FRA, and all targeting should be based upon objective statistics which indicate that a particular segment is more prone to drug use.

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One commenter stated that regardless of whether a multi-stage or experience rating system is employed, the FRA should do the selection for the carrier in order to assure fairness.

Additional flexibility was requested by the Norfolk Southern, which offered testimony regarding the permissible period of time during which an employer may test the employee following selection. Norfolk Southern recommends that a carrier be permitted to administer the test at its convenience up to six months after the employee has been selected for random testing.

Most carriers also indicated an unwillingness to call employees to report for solely for testing (even if rested and available), in part out of fear that drug users among those selected would evade testing by marking off sick or by other means. Many railroads suggested that they be permitted to test an empoyee upon reporting for duty, while on duty, and at the end of a run before marking off duty. While one labor organization is not opposed to testing employees who are merely subject to call, three carrier representatives opposed the use of the extra board for the purpose of calling an employee in to submit to a drug test. They objected to the burdens of having to tract the employee down and then pay the employee for the time spent administering the test.

Few comments were received regarding whether to limit the chance that an employee will be tested more than once in a testing cycle. The AAR and a major freight railroad stated that an employee should remain in the pool, subject to testing at the same rate as every other employee. One other railroad believed that the probability of reselection should remain greater than zero, but less than that of unselected employees. Such a scheme would help to ensure that a greater number of employees is tested during each cycle, while the threat of testing remains palpable as regarding each individual.

The RLEA urged the FRA to recognize that time taken to provide a sample is not off-duty time. FRA also received comments from four carriers recommending that time lost in order to give a drug test should be considered neither time on-duty nor time-off duty for purposes of the Hours of Service Act. A number of commenters urged FRA to permit on-property collection of samples (*i.e.*, collection at railroad terminals and other railroad facilities). On-property collection would limit the amount of time an employee would be out of service for testing, and could help carriers avoid violations of the Hours of Service Act. Railroads stated that large amounts of time can be consumed not only in transporting an employee to the remote facility but in waiting for services after arriving at the facility. Limiting the loss of an employee's services would also lower the cost of the program to the carrier. Additionally, it was argued that the chain of custody may be more secure if testing is done at a carrier facility—i.e., there is a greater chance of mislabeling at a busy emergency room or medical facility where a number of technicians and clerks may handle the sample. In response to expressed concerns that on-site collection could afford managers an opportunity to harass employees, it was pointed out that all on-site procedures and facilities would have to meet the requirements of the HHS guidelines.

Conclusions: It is critical that the railroads have ample flexibility to implement random testing programs on a basis that will be cost effective to the railroad and will not cause undue inconvenience to employees. Programs should be structred to a maximum extent so that testing can be accomplished within normal duty hours, within legislated Hours of Service Act restrictions, and without delaying the transportation of passengers and freight that is the railroad's business purpose.

Flexibility in time. The railroads must first have flexibility to test at any time during the normal work day, including any period of allowed overtime. In this regard, it will be noted that the normal work day for through freight service may be any 12-hour portion of any 24-hour period. Time spent in deadheading to and from work assignments may further constrain availability. Similarly, yard service and dispatching "tricks" may be broken into three 8- or 9-hour periods that run around the clock. It will be important for railroads to randomly test employees working at all hours of the day and night. Computer railroads will have different requirements, as they endeavor to ensure crew availability for rush hour periods in the morning and afternoon.

The rule allows railroads to develop and submit plans providing for testing at any time an employee is lawfully on duty. Two restrictions apply. First, an employee may not be assigned for testing without first reporting for duty. Only on-duty employees may receive notice that testing is required. This restriction is consistent with concerns raised by employees that their off-duty periods could be disturbed and by concerns of the railroads that attempting to "call" employees for testing would risk loss of control as employees using drugs marked off sick or evaded testing through other strategies. Obviously, the final rule does not affect the determination of when employees are subject to the requirement that they report for duty. That matter is controlled by the collective bargaining agreements and the Railway Labor Act.

The second restriction on time availability is the Hours of Service Act. FRA does not enjoy the authority to repeal or modify requirements of that Act. FRA noted the request of several railroads that time spent in testing and incident to transportation be considered "limbo time" (neither on-duty nor off-duty). Legislation passed by the House of Representatives would have made possible such treatment, but FRA is not presently at liberty to take this action administratively. As a consequence, the railroads should plan their random testing programs on the assumption that time devoted to random testing (like other forms of testing) is time on duty commingled with covered service for purposes of the statutory maximums. This would not preclude the railroad's asserting a section 5(d) Hours of Service Act defense where testing was not completed within prescribed duty limits. However, to succeed with such a defense the railroad would have to prove that the delay was due to an unforeseeable combination of events, and that it used due diligence to minimize the excess service. Given the preplanned nature of random testing, such a showing is far less likely to be made in that context than in the post-accident or reasonable cause context.

Flexibility in space. Reasonable flexibility in determining the site of collection wil be crucial to the success of the program. If employees' personal schedules and train operations are not to be routinely disrupted, railroads will have to have the ability to collect samples at sites nearby to major terminals, crew change points, and other work sites. For this reason, FRA is authorizing collection at any suitable site, including a location on railroad property. Railroads are also free to utilize independent medical facilities and mobile units. For the time being, the requirement that reasonable cause collections be conducted at independent medical facilities will continue. FRA will review this issue along with a number of others in a future rulemaking.

For random testing, collection personnel may include any individual who is qualified by virtue of training or professional/technical experience. Non-medical collectors would be required to have received training in compliance with the Procedures for Transportation Workplace Drug Testing Programs (further described below), and the training program shall be included in the random testing program submitted for approval. FRA will make available a model training program setting forth the elements required to be included. Medical professionals and technicians will be deemed qualified to perform collections if, at a minimum, they are provided appropriate instructions for collection and certify in each case that they have conducted the collection as required in the instructions.

FRA is keenly aware that collection on the property by employees or contractors of the railroad may raise issues of neutrality and perceived integrity in the minds of some railroad employees. However, properly conducted collection will, by itself, provide reassurance. The testing procedures provide that specimen bottles will be filled, identified and secured with a tamper-proof seal in the presence of the employee. The employee then affirms the identity of the specimen by initialling the label/seal. In reporting any test result, the laboratory must certify that the seal was intact upon receipt. Recognizing the sensitivity involved in collection of the sample, FRA has also provided that the collector may not be a person in the chain of command above the employee or a co-worker. Railroads are encouraged to take additional actions to provide reassurance to employees that the testing process is being conducted in a fair and impartial manner, and, of course, to include these steps in their proposed programs submitted to FRA for approval. Moreover, the DOT Procedures for testing (more fully described below prohibit observed collection except under very limited circumstances, and railroad supervision would not be permitted to participate in such observation.

Random Testing Programs: Level of Effort

Comments: FRA received varying recommendations concerning the optimum level of testing. Commenters generally appeared to agree that no consistent incidence of unauthorized drug use was acceptable at any statistical level, but there was wide variance of opinion with respect to the rate of testing that would be appropriate given current drug prevalence information. Several commenters acknowledged that there is no evidence from civilian experience indicating what percentage of a population should annually be tested under a random testing program.

However, it was also noted that the testing rates of certain of the military services (125 percent to 240 percent) would not be appropriate for the railroad employee population, which is older and more stable (lower turnover) and has a lower drug use incidence rate than that experienced by the military services when their programs began. Some suggested that the FRA only establish minimum and maximum permissible levels, allowing the carrier to choose a level meeting its own needs and philosophy.

The AAR and a number of railroads stated that an adequate deterrent would be posed if fifteen percent of the workforce is subjected to short notice testing during the course of a year. Within that fifteen percent at least five percent would have to based on random selection. Other railroads generally recommended testing levels between ten and thirty-one percent. The only union to address the subject suggested a target rate of twelve and one-half percent.

A significant portion of commenters suggested somewhat higher levels, however. A major commuter authority considered fifty percent to be optimum, while the NTSB, Safe Travel America, a commuter authority and a major freight railroad believed that a level as high as 125 percent may be needed to effect a credible deterrent (though not all would mandate this level as minimum).

Another commenter suggested that a rate under 100 percent would create a perception of "the finite possibility of detection" and thus should be sufficient to deter, but indicated that it would be wise to vary the rate on an annual basis to determine the yield of various rates. While strongly supporting random testing, the AAR stated:

> Setting an unrealistically high level of effort as a mandatory minimum, with no scientific investigation of the relationship between the sampling fraction and the deterrent effect, would impose a burden the railroads would be forced to live with for a considerable length of time. Once requirements such as this are written into federal regulations it is extremely difficult and time consuming to change them.

Finally, a major freight railroad states:

> [W]e wish to emphasize * * * that the deterrence value of any random testing program, even one requiring a high level of effort, e.g., testing 100 percent of employees annually, would decline dramatically if employees who test positive for illegal drugs or alcohol were assured freedom from discipline as little as one time only.

Conclusions: Random drug testing will have two complementary objectives; detection and deterrence. Reliable detection is critical not only to removing the addicted substance abuser from the workplace but also to establishing an atmosphere of deterrence. However, random testing will work in concert with other means of detection and deterrence and thus should be viewed as one element in an overall program of countermeasures.

Commenters agreed that current drug testing programs that involve short-notice testing, such as post-accident testing and reasonable cause testing, do produce an important deterrent effect and have obviously led to the identification of many employees with drug abuse problems. Medically-based testing programs also provide a means of detection, although the advance notice customarily associated with this form of testing makes its direct deterrent value minimal (since drug users, knowing they will be tested at a scheduled appointment, may be able to abstain for the short period necessary to avoid detection).

The overall target level of deterrent effect that would be most cost effective and reasonable from the point of view of burdens on employees and transportation is not possible to determine at the outset of a random testing program. However, the record of this rulemaking has provided FRA with a sense of confidence that a moderate but substantial level of testing at the outset should address the drug deterrence need on most railroads while avoiding unnecessary burdens. As a consequence, the final rule will require that the railroads actually collect and analyze specimens from a number of randomly selected employees sufficient to equal in number 50 percent of the relevant employee population. The rule provides flexibility to allow for gradual start-up of the program.

In a supplemental notice, FRA will propose procedures to allow eventual adjustment of the testing level, by railroad, as a uniform experience base is established and differing needs are documented. That notice will also propose to allow the railroads to credit other short-notice testing (reasonable cause and post-accident) to the required level of effort for random testing. FRA believes that the railroad industry will remain unique with respect to the significant number of for-cause tests conducted. FRA is further concerned that failure to allow for this credit would discourage railroads from continuing aggressive reasonable cause testing programs, which inquire into fitness following unsafe practices. However, these are issues developed during the current rulemaking that deserve prompt but separate consideration to complete the program design.

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Drugs Tested

Comments: The HHS Guidelines require Federal agencies to test for marijuana and cocaine and authorize random testing for opiates, amphetamines, and PCP. Agencies may test for other Schedule I and II drugs in post-accident, unsafe practice and reasonable suspicion situations, if HHS has approved the analytical methods. On the face of the Guidelines, it appears that HHS will also accept agency applications to add additional Schedule I/II drugs to the five specified for random testing. The NPRM proposed to require random testing for the five HHS drugs and to authorize testing for additional substances under certain circumstances.

Comments were received requesting that the FRA allow carriers to test for drugs other than the five specified by the HHS guidelines. It was argued that there are many drugs not covered by the guidelines whose use will have a detrimental effect on the safety of rail operations. Only one drug testing expert testified that extending the list of tested drugs is not necessary at this time, the present five being by far the most prevalent. There was strong support among other experts and a number of carriers for the addition of barbiturates and benzodiazepines, in particular. It was stated that the use of these drugs is sufficiently prevalent to cause concern, and that a shift toward use of these drugs can be anticipated if they are not tested for.

An employee assistance manager of a regional railroad stated:

> [Barbiturates and benzodiazepines] have addictive properties and are widely available from a variety of sources. They affect reaction times and attention spans detrimentally, and pose as real a threat as other substances when used in an operating environment.

Several railroad medical officers participating in the proceeding were also strongly supportive of testing for central nervous system depressants. The NTSB supported testing for these drugs and lower-scheduled narcotics, as well.

An official of the National Institute on Drug Abuse testified that post-accident testing should continue for the broadest range of drugs feasible, regardless of any limitations that might be placed on more routine testing.

The Epilepsy Foundation opposed testing for barbiturates, since it could disclose to employers therapeutic drug use among epileptics whose seizure disorders are fully controlled, potentially leading to job discrimination.

Conclusions: The current alcohol/drug rule authorizes reasonable cause testing for any controlled substance, regardless of schedule or treatment for criminal law purposes. In the prior rulemaking, the American Medical Association and other commenters had agreed that the controlled substance list adequately defines those compounds of greatest concern with respect to the fitness of employees responsible for safe movement of transportation vehicles. Railroads are presently required to conduct pre-employment testing for drugs other than those mandated for random testing by this final rule.

FRA believes that the random testing rule, and testing procedures applicable to pre-employment and reasonable cause testing, must be sufficiently flexible to address known substance abuse problems and to address changing substance abuse patterns. FRA is already aware that abuse of barbiturates is a small but significant problem on the railroads. There is every reason to believe that misuse of benzodiazepines (sedative-hypnotics) may also be a problem (*see, e.g., Data from the Drug Abuse Warning Network,* Series G, Number 21 at 70 (National Institute on Drug Abuse, Statistical Series, July–December 1987)), though drug testing technology is struggling to keep up with detection requirements for low-dosage tranquilizers that have recently come to dominate the market. Drugs that impair vigilance are a particular problem on a railroad, since employees are required to maintain alertness at all hours of the day and night under circumstances sometimes involving minimal external stimuli.

Random testing itself has the potential to alter the mix of substance abuse to some extent, as some abusers elect to use compounds other than those included in random testing. New drugs will be introduced into licit and illicit markets that may become new drugs of choice for some railroad employees. It is crucial that the testing system be sufficiently flexible to permit detection of additional drugs without the additional delays involved in rulemaking.

Although experience under the current rule has not revealed any analytical deficiencies among the laboratories currently providing services to the railroads, FRA nevertheless agrees that more highly structured and intensive quality control measures can provide an important measure of reassurance to employees while also verifying that true positives are reliably identified and confirmed. The HHS laboratory certification program provides a logical framework for this effort. However, HHS approval of testing for other drugs will not be available to private sector employers (who are simply not within the scope of the Guidelines).

With respect to testing for barbiturates, FRA is not persuaded that railroad employers would discriminate against persons with epileptic conditions based on barbiturate use detected in testing authorized under this final rule. The Epilepsy Foundation cited no instances of job discrimination by rail employers, who already test for barbiturates in their medical programs and reasonable cause testing programs, as well as under FRA's mandate for pre-employment drug screens. Railroad medical review officers would, of course, maintain in confidentiality any information concerning documented prescription use of these drugs.

Therefore, FRA will propose in a supplemental notice a revised procedure under which railroads may request approval for testing of other controlled substances, with appropriate safeguards to ensure the quality of laboratory analysis.

HHS Guidelines and Testing Safeguards

Comments: Commenters expressed widespread approval of the HHS Guidelines as an adequate means of assuring integrity in the administration of random testing programs. Labor organizations tended to accept the Guidelines in their entirety, while a few railroads proposed some minor changes.

The Equal Employment Advisory Council (EEAC) recommends that the FRA allow carriers the option of testing under the HHS Guidelines or under a plan of their own which is at least as effective in protecting employees from inaccurate results.

Four commenters believe that the HHS Guideline threshold level of 100 nanograms per milliliter (ng/ml) for marijuana should be lowered. They stated that 100 ng/ml is far higher than the level one might reasonably expect to find in a passive smoker. It was argued that maintaining a high level would only serve to lower the detection rate for casual users of marijuana. Levels in the 10 to 50 ng/ml range were recommended. PharmChem, Inc., however, stated that the 100 ng/ml threshold is adequate to protect passive smokers while assuring that very few actual users escape detection.

Dr. Arthur J. McBay suggested that the FRA go a step beyond the Guidelines and require specimen splitting. Dr. McBay suggested that one portion be sent forward to the laboratory for testing and the other be retained in frozen storage. In the case of a contested positive, the retained portion could be divided, with one part being made

available to the employer and the other to the employee for retesting. This procedure was said to address "chain of custody, mislabelling, specimen switching, contamination, carryover, instrumental, technician and reporting errors." Amtrak indicated that it uses a similar system for its corporate testing program.

All commenters agreed that GC/MS methods are highly accurate. One commenter, however, stated that GC/MS should not be mandated because it is expensive, and that the GC/MS requirement should be changed if a more accurate form of testing becomes available. Dr. Arthur J. McBay stated that the rule should specify that full mass spectra analysis is required.

The Syva Co., fearing that the HHS may be slow in certifying laboratories, suggested that FRA recognize state certification of labs.

Two carriers and three members of the drug testing industry urged FRA to allow screening of urine samples at the testing location. All samples which initially tested positive would then be sent to a competent lab for confirmation. This procedure would allow operators to immediately remove from service those employees who have tested positive in the initial screen. Those whose positive results are not confirmed would be reinstated with back pay. Lab costs would be lowered since only samples with an initial positive would be sent to testing laboratories. Additionally, it was argued, most employees would be spared the fear and uncertainty which was said to accompany the wait for lab results. Proponents of on-site screening acknowledged that the initial screen is not as accurate as a GC/MS confirmation. However, they contended that false positives would actually inflict harm only in a minute number of cases, since not more than 5 percent of those testing positive (a minority in itself) would have the outcome reversed on confirmation.

All commenters addressing the subject believed that there are sufficient qualified testing facilities nationwide to handle the increase in testing which would result from implementation of the FRA rule. NIDA indicated that its certification program is reviewing 100 laboratories, one of which could handle all Federal employee specimens, with more than ample capacity in remaining laboratories to competently analyze additional samples from transportation operators.

Conclusions: The HHS Guidelines offer state-of-the-art procedures for collection of specimens, chain-of-custody, laboratory analysis and review and handling of test results. The Guidelines draw on extensive experience in the perfection and validation of military drug testing programs and were adopted for the Federal workplace program after notice and opportunity for comment. FRA agrees that the Guidelines should set the standard for urine drug testing in transportation. However, based on comments received and experience under the current rule, it is clear that the Guidelines require modest modification to fit the demands of a geographically dispersed transportation industry and non-Federal workplaces.

Proposals to loosen the Guidelines' requirements. Various parties found the Guidelines excessively burdensome or inflexible in some respect affecting their interests. FRA has carefully considered each of these suggestions and responds to the more substantive ones in the discussion which follows.

FRA respectfully disagrees with those commenters who would modify the Guidelines to permit on-site screening of urine samples. FRA recognizes the obvious advantages provided by this method, which have been intelligently advanced by several commenters, including two major railroads that use this technique in their present company plans. However, FRA agrees with the rationale expressed in the preamble to the Guidelines for requiring "same-site" screening and confirmation (53 FR 11970, 11972; April 11, 1988); and FRA disfavors on-site screening for the following additional reasons:

1. There is no effective way to quality-control, on-site screening to ensure positives are being detected at the prescribed cut-off. "Blind" proficiency testing samples would be readily identified in such a setting.

2. "New" technologies advocated by vendors for on-site screening have inherent limitations. One such system, for instance, is cross-reactive for four different drugs to a 300 ng/ml cut-off. Apart from yielding some unconfirmed positives, the system would apparently be largely ineffective for PCP, for which the Guidelines set a 25 ng/ml detection limit, while detecting amphetamines below the uniform HHS level. Data submitted by this vendor was limited to two reviews of a single set of tests that covered only two drugs based on tests under laboratory conditions. Although this system may have many very valuable applications, FRA is not prepared to structure a national program around a proprietary product still undergoing refinement.

3. Based on experience with its post-accident testing program, which has utilized the two principal immunoassay systems as well as other screening techniques, FRA believes that a small but not insignificant rate of false or unconfirmed positives will continue to occur in screening tests regardless of whether analysis is performed on site or at a laboratory. Although there is merit in providing immediate feedback to employees who screen negative, there is also a hazard that in a locally administered system the person with a presumptive positive will be singled out. Certainly any system that held the individual out of service would do so, and advocates of on-site screening contend that the ability to remove the presumed drug user from the workplace is a major advantage of this approach. With no disrespect intended to those railroads and others advocating on-site screening, FRA is not willing to incur the threat to the reputations and peace of mind of the great majority of employees who do not use drugs that such an approach would entail. Despite education efforts by FRA, the railroads and the labor organizations, the technical aspects of drug testing are still poorly understood by many railroad officers and employees. The risk that a presumptive positive could be viewed as a badge of dishonor is simply too great to entertain in a program mandated by Federal regulation. Random testing will produce the desired safety impacts if it deters use among non-dependent users, increases incentives for early referral among dependent users, and gradually, over a period of months or years, supplements other means of identifying those who persist in their abuse. Early removal of a single employee identified as presumptively positive is not, therefore, as critical to the accident prevention program as suggested by some of the commenters.

FRA also disagrees with a railroad that blind proficiency testing requirements of Guidelines should not be extended to the rail random testing program. Blind proficiency testing is one of the critical means of ensuring that laboratories are delivering high quality services. Blind proficiency testing is also critical to employee acceptance, as evidenced by the strong employee support for the CSX testing agreements, which embody this safeguard. FRA includes both open and blind proficiency testing in its quality control program for mandatory post-accident testing (which involves both blood and urine specimens) and believes that there is no impediment from the point of view of feasibility to including this element in the random testing program.

FRA disagrees with the suggestion that it would be sufficient for the railroads to utilize certified laboratories,

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since those laboratories will be routinely proficiency tested by Federal agencies. Some HHS-certified labs may never seek or win contracts to test Federal employee specimens and thus may never be subject to blind testing. While others will have such contracts, this is no better indication of capability than actual performance. Given the large volumes of railroad employee samples this program will generate, it is important to know that true positives are being detected and to document that negatives are being so reported.

Blind proficiency testing will involve some cost and logistical preparation, but any large employer should be capable of obtaining and utilizing this service from an expert contractor. FRA is persuaded that smaller railroads may find it costly on a per unit and overhead basis to participate in blind proficiency testing. Thus, under the Procedures for Transportation Workplace Drug Testing Programs (further described elsewhere in today's **Federal Register**), the blind testing requirement is limited to employers submitting 1,000 or more samples per year for analysis. Smaller employers are not required to submit blind samples if they are utilizing a laboratory that is subject to blind testing by a Federal agency or another transportation employer.

Cut-offs. The HHS Guidelines provide uniform administrative detection limits or cut-offs for each of the 5 drug groups for which testing is authorized. FRA appreciates the concerns of those commenters who believe a 100 ng/ml screening cut-off for marijuana metabolites is excessively high. However, FRA believes that this cut-off will permit identification of the great majority of regular or recent marijuana users, since the available assays detect "total cannabinoids", rather than being specific to the target metabolite (normally the 9-carboxy acid of THC). Data from FRA post-accident testing suggests that most confirmed positives at a 20 ng/ml level for confirmation screen over 100 ng/ml (for total metabolites). (FRA's post-accident protocol currently detects at 20 ng/ml on both screening and confirmation in order to identify the casual user who may have used just prior to an accident and whose specimen is collected early in the process of metabolism and elimination.) Further, the high cut-off virtually eliminates any possibility of a positive result from (claimed) passive inhalation.

Confirmation method. FRA disagrees with one commenter who would allow methods of confirmation other than gas chromatography/mass spectrometry. The commenter is correct in indicating that scientific advances may allow for better analytical methods of equal or greater specificity, but FRA believes that currently requiring the best available method on the face of the rule (rather than by implication, as with the current regulation) will provide reassurance to employees and avoid dispute and confusion. If better methods are validated and are available at reasonable cost, FRA can revise the rule to recognize the scientific or technological advance.

FRA likewise does not agree that full spectrum GC/MS analysis should be specified by the rule, since sophisticated single and multiple-ion protocols are available, most utilizing a deuterated internal standard, that are specific for the target compounds while offering good sensitivity and excellent quantitation at the cut-off. Expert inspection teams are reviewing each laboratory's GC/MS method to ensure specificity, accuracy and reliability for the 5 drug groups, and similar reviews would be required before additional drugs are added.

Laboratory certification. FRA does not agree with the comment that state licensure of laboratories should be recognized in the rule, nor is FRA prepared to accept accreditation by voluntary bodies absent HHS recognition. Laboratories conducting testing under FRA's existing rule typically hold one or more Federal or state licenses for various purposes. However, the HHS certification program is the first highly rigorous certification program specifically targeted at urine drug testing at the Federal level. The HHS Guidelines provide national standards for recognition and periodic review. By contrast, only a handful of states have aggressive licensure programs for drug testing laboratories. FRA believes that the uniform baseline provided by the HHS Guidelines is important to consistent and effective implementation of safeguards. Uniformity is particularly important given the interstate nature of the railroads' business and the variety of jurisdictions on which railroad employees work.

Split specimen. HHS considered a split sample requirement but rejected it for reasons FRA adopts. HHS stated, in part, as follows:

> [S]uch a system could increase the risk of administrative error by doubling the labeling, initialing, storage, and accountability requirements.

53 FR 11971; April 11, 1988. The railroad context presents a stark example of the problems with this approach. Employees' principal concern with respect to the testing process is often actions of the railroad company itself. In this regard, it would hardly add credibility to the system to have the railroad retain spliy samples in its possession.

Some of the other reasons often given for use of split samples often turn out not to bear scrutiny. Chain-of-custody and labeling problems, for instance, typically relate to handling prior to delivery to the laboratory. It is likely that any problem relating to a single sample would infect both (e.g., improper identification, broken chain-of-custody at site of collection). If there is an error at the laboratory, retention of the original (single) sample will allow for retesting.

Lab capacity. FRA believes that more than adequate certified laboratory capacity will exist to provide for quality analysis. Implementation of this program is, of course, contingent upon timely certifications being issued by HHS.

Adoption of Testing Procedures. In the NPRM for this rule, FRA proposed that all drug testing take place in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs of the Department of Health and Human Services (53 FR 11970; April 11, 1988). Those guidelines describe the collection and testing procedures applicable to all drug testing of Federal employees, and they include safeguards for the accuracy and privacy of testing. FRA also specifically solicited comment on adaptation of the Guidelines to meet the special circumstances of the regulated industry.

Based upon comments submitted in this docket and other information, the Department of Transportation has determined that certain modifications to the procedures of the Guidelines are appropriate in the context of this and other DOT operating administration drug testing regulations. Accordingly, the Department's Office of the Secretary is publishing elsewhere in today's **Federal Register** an Interim Final Rule with Request for Comments entitled "Procedures for Transportation Workplace Drug Testing Programs," that codifies the Department of Health and Human Services Guidelines for drug testing at 49 CFR Part 40. These DOT Procedures are intended to implement the important safeguards provided by the HHS Guidelines and set forth requirements for specimen collection, laboratory certification, and quality assurance.

As previously noted, during the comment period on the NPRM in this

proceeding, comments were received concerning the HHS Guidelines, as summarized above. These comments will be incorporated in the docket for the Office of the Secretary (OST) interim final rule creating 49 CFR Part 40. The OST will further respond to those comments, as well as comments received during the comment period for Part 40, in its notice following the end of that comment period.

Hair Analysis

Comments: Two companies supported an alternative to urinalysis. The commenters advocated analysis of hair by radio immunoassay (RIA). The hair is subjected to a proprietary extraction process and then analyzed in a manner similar to any other specimen, with presumptive positives confirmed by GC/MS. The commenters urge that this approach will produce an accurate test result without the inconvenience and intrusion of urine collection. A major advantage of this approach is the enlarged "window of detection". According to the commenters, since hair analysis can track drug use which occurred months in the past, there would be no need to test randomly.

Conclusions: Analysis of hair for drugs of abuse may offer promising possibilities for the future, and the commenters pointed out that many useful applications are already being made. However, as with any new proprietary technology being developed for commercial use, a number of issues of practicality remain to be settled. There seems to be little dispute that drugs, when eliminated through hair growth, can be detected for an extended period. However, issues such as detection limits, sampling methods, quality control of the extraction process, interpretation of opiate results, etc., should be thoroughly reviewed by the Department of Health and Human Services before large scale applications can be mandated or authorized. Further, it must be clear that an adequate laboratory capability exists to apply the technology.

Rehabilitation and Discipline

Comments: The FRA received numerous comments on what the consequences of a positive drug test should be. Two carriers, the labor organizations and certain other commenters believe that the regulation should require carriers to give an employee an opportunity for rehabilitation. It was suggested that drug use be treated like any other medical condition. It was pointed out that the employee could still be disciplined if drug use resulted in a violation of a carrier operating rule. These commenters also indicated that if rehabilitation is required, it should be a one time opportunity—i.e., recidivists should not be extended a second opportunity at rehabilitation.

Opponents of mandatory rehabilitation included railroads, members of the drug testing industry, and public interest groups. Numerous commenters stated that the deterrent effect of random testing would be completely undermined if drug users are not disciplined after a positive result. Without the threat of discipline, there would be little incentive for an employee to discontinue use until detected. Safe Travel America stated its belief that a policy of mandatory rehabilitation would undermine Operation Red Block programs by discouraging early referrals. Short lines stated that they could not afford to rehabilitate an employee and could not find a temporary replacement to perform the employee's duties during a period of rehabilitation.

A number of railroads uged the FRA to leave decisions regarding discipline and rehabilitation entirely up to the carrier. Some contended that each case is different, and therefore management should have the flexibility to act in a manner appropriate to each case.

Conclusions: In general, the policy of FRA under current regulations is to allow flexibility for handling under corporate policies and collective bargaining agreements when an employee's drug use is disclosed by body fluid testing or other means of detection available to management. FRA has extensively dealt with this issue in prior rulemaking proceedings.

With respect to the consequences of random testing, FRA believes that the public safety can best be advanced by continuing to provide the private sector parties with flexibility to fashion reasonable responses. Where labor and management are able to establish a relationship of trust, they will put in place Operation Red Block agreements allowing those whose drug use has been detected to return to service after treatment in probationary status (or withholding discipline entirely on a first offense) in exchange for active employee involvement in prevention, referral and (where no alternative exists) identification under the co-worker report rule. Where labor-management cooperation cannot be effected, the threat of disciplinary sanctions flowing from detection will provide a powerful deterrent to volitional use of drugs while creating a strong incentive for the dependent user to step forward and ask for help before detection in a random test.

Mandating discipline or disqualification in every case would bar railroads from participating in Operation Red Block agreements, which aid safety to the extent that they encourage employee participation in substance abuse prevention and enforcement. Mandating the opportunity for rehabilitation in every case would greatly reduce the incentives for early self-referrals and co-worker referrals. On either extreme, Federal intervention would eliminate the mutuality of consideration inherent in the Operation Red Block concept.

The final rule does require that an employee determined to have used drugs without appropriate medical authorization be removed from covered service. The employee may not be returned to covered service. The employee may not be returned to covered service unless the employee has submitted a negative urine sample and has completed any appropriate program of rehabilitation. Nothing in the rule requires that an employee determined to have violated the drug use prohibition be retained in the employ of the railroad.

Post-Rehabilitation Testing and After-care Monitoring

Comments: The FRA received various recommendations concerning follow-up testing of employees who have completed rehabilitation after testing positive in a random test. Commenters generally agree that FRA should give carriers wide latitude in post-rehabilitation testing, permitting the carrier to vary the frequency and duration of such testing on a case by case basis. Recommendations on an adequate period of follow-up testing varied from one to three years. Comments were received indicating that three to four tests per year may be sufficient.

Conclusions: Continuing treatment and follow-up testing of employees returned to service are important measures from the point of view of the recovering substance abuser and the public safety. Although this rule does not require that persons testing positive be afforded the opportunity for rehabilitation, it is inevitable that many will be offered that opportunity, particularly many testing positive for the first time. The knowledge that a follow-up test may be required can assist the recovering employee and offer important assurance from the point of view of the public safety.

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As a consequence, the final rule provides that, after returning to work, a recovering employee must continue in any program of aftercare required by the EAP counselor (as defined in the current rule to include medical or employee assistance professional personnel) and be subject to follow-up testing for not longer than 60 months after return to service. Professionals designated by the railroad are free to work out a reasonable program of follow-up testing based on the nature and severity of the use or dependency problem identified through clinical evaluation.

Confidentiality of Test Results

Comments: Commenters are in general agreement that the HHS Guidelines offer adequate protection to employees. The Epilepsy Foundation of America is satisfied that the HHS Guidelines prohibit MRO's from divulging to management the existence of an epileptic condition in an employee.

Carriers believe they must be free to divulge test results in at least two circumstances: pursuant to a bona fide government inquiry or discovery request, and when necessary to protect the railroad during legal proceedings. In addition to these instances, FRA received comment on the propriety of permitting operators to divulge an employee's testing history to a subsequent employer engaged in transportation. A handful of commenters stated that in the interests of safety a carrier should be permitted to inform a subsequent employer of an employee's past drug habits. Others believed that an employee should not be permanently encumbered by a single positive test result. Strong opposition to dissemination was expressed by the Epilepsy Foundation of America and the EEAC, while one carrier commented that at the very least the period during which the information can be divulged should be limited to no more than one year following completion of rehabilitation. Another commenter suggested that dissemination be permitted only if the employee failed to be rehabilitated.

Railroads and their representatives took the position that disclosure of test results in the context of a disciplinary proceeding would be the responsibility of the employee demanding the investigation or asserting the grievance (i.e., the employee would have waived confidentiality).

Conclusions: The purpose of random testing and other forms of testing authorized by the current rule is to detect and deter drug use in violation of stated prohibitions in order to ensure safety of the public and railroad employees. Test results that reveal medical use of controlled substances are subject to the individual's personal privacy interest in medical information, as is drug use information provided by the employee in order to permit informed interpretation of the test result. However, revealing such use to the railroad's medical review officer, who is under a duty not to republish the information, is not a material intrusion on the employee's privacy interest, since railroad employees have historically been subject to medical qualifications standards of the railroads. FRA agrees that this information need go no further than the medical review officer, and the final rule so provides. (The final rule prescribes a similar restriction on medical use disclosed through post-accident testing, subject to the need of Federal agencies investigating serious railroad accidents to have all information relevant to accident/incident causation.)

Test results indicating non-medical use of controlled substances are not subject to any recognized privacy interest. In most cases, such results will indicate ingestion of drugs that it is illegal to possess. However, requiring that this information be handled confidentially will tend to reduce the perceived intrusiveness of the testing process, and no legitimate safety purpose would be served by excessively broad publication of this information.

As a consequence, the final rule and the DOT Procedures require confidential handling of test results and medical information provided by the employee to aid interpretation of the results. In the case of test results, dissemination is limited to those persons necessarily involved in administrative action related to the drug use indicated by the test. Disclosure of test results by the railroad is permitted only with the written consent of the employee. The rule does not bar FRA or NTSB use of post-accident test results for accident investigation purposes (and disclosure incident to that process), carrier disclosure of aggregate statistics where such disclosure would not identify an individual, or FRA access to test records for regulatory compliance purposes.

Subsequent employers may obtain information concerning past drug testing under the rule only if the employee or applicant consents to disclosure. Obviously, nothing in the rule prohibits railroads entertaining applications from persons with railroad experience from requiring such consents as a condition of the hiring action.

Alternative Strategies—The NTSB Alcohol/Drug Study

The National Transportation Safety Board (NTSB) weighed in with brief comments and the 150-page Safety Study noted above. The NTSB Alcohol/Drug Study surveyed the 1987 accident experience for railroads and rail transit, reviewed railroad activities to address alcohol/drug problems, and proposed a lengthy list of further initiatives.

This document is a useful compendium of recent accident/incident data reflecting the consequences of alcohol and drug use by railroad and rail transit employees. However, FRA disagrees in material respects with many of the Study's conclusions and recommendations.

While offering a variety of recommendations on program implementation, NTSB stated as follows:

> Conceptually, the Safety Board views the FRA rule (with modifications that are addressed in this study) as the model approach for Federal regulation to reduce alcohol and/or drug use in the transportation industry.

The Board went on to make a long list of recommendations which FRA will carefully consider on their individual merits. They are reviewed here in the context of the current regulatory proposal, which was issued prior to the NTSB report, since they were characterized by the Board as alternatives to random testing.

Post-accident testing recommendations. The first group of NTSB recommendations relate to mandatory post-accident toxicological testing (49 CFR Part 219, Subpart C). This program involves collection of blood and urine samples from employees involved in serious railroad accidents. The multifaceted rationale for this program was described in the preamble to the current rule (50 FR 31508, 31541–31542; Aug. 2, 1985), but a major objective of the program is to provide data pertinent to accident/incident causation. FRA has strictly limited its scope, because the taking of blood samples is physically invasive and should be required only where there is a reasonably compelling public interest. Testing is currently required after any train accident involving a fatality, hazardous material evacuation or railroad property damage in excess of $500,000. Testing is also required after employee fatalities and "impact" train accidents that involve personal injuries or at least $50,000 in damage. With the experience gained through mandatory post-accident testing to date and the deployment of additional countermeasures through regulatory and voluntary action, FRA looks forward to modest further reductions in the scope of this program. NTSB, by contrast, would dramatically expand mandatory post-accident testing by—

- Lowering the damage threshold for nonimpact accidents to $150,000, using replacement cost as the basis for computation, and including loss of lading;
- Expanding the scope of those tested beyond employees covered by the Hours of Service Act;
- Requiring testing after impact accidents even if the dollar threshold for reportability (currently $5,200) is not exceeded; and
- Requiring collection of post-accident specimens within 4 hours.

The NTSB estimated that adoption of these recommendations would lead to testing after 600 accidents annually (currently less than 200) and lead to blood/urine sampling of over 6,000 employees (currently about 800). In support of these changes the NTSB cited several derailments in 1987 for which testing was not done because of differences between railroad damage estimates at the accident scene and later computations either by the railroad or by the NTSB.

FRA believes that major expansion of the current postaccident testing program is not warranted. The program is already the most extensive program providing full toxicology for fatalities and survivors that is in place for any mode of transportation. In order to be effective and check the exercise of discretion by administering personnel, testing must be done under a relatively rigid mandate. The NTSB recommendation would result in testing after a large number of derailments, the vast majority of which are caused by track or equipment or an interaction between the two (in contrast to collision-type events for which human factors predominate). The current program design excludes testing in this setting except with respect to the most serious accidents. Indeed, of the 4 accidents cited by the Board as examples of the need for more inclusive standards for testing, none appears to have involved human factors.

Further, the Board's suggestion that a 4-hour outside limit be put on post-accident testing—a limit which the Board would allow to be exceeded where necessity required—amounts to tinkering with a requirement that already requires that collection be given first priority after immediate safety response and medical care for those injured. FRA does not disagree that prompt collection is the objective, but sees little gain in a complicated formula that says, in effect, test as soon as possible, but not later than 4 hours, but after 4 hours if necessary.

FRA does not mean to imply that changes in the program may not be appropriate. FRA understands the view of the Board, for instance, that additional safety-sensitive employees could be included in post-accident testing. However, inclusion should be tightly justified, and suggestions that "all" "safety sensitive" personnel be tested continue to beg the question of whom and under what circumstances. This is an issue FRA intends to revisit in a subsequent rulemaking. Marginal changes in post-accident testing coverage, however, can hardly be expected to have direct and immediate impacts on overall deterrence of drug use.

Medical certification program. The Board devotes less than a page of discussion to its recommendation that FRA institute a medical certification program for railroad employees. The apparent purpose and justification for having the railroads issue medical certificates to thousands of employees would be to have a certificate to revoke should alcohol or drug use be detected. FRA cannot imagine a more indirect and costly means of accomplishing an objective that may be accomplished directly, particularly in light of FRA's recent acquisition of statutory authority to apply sanctions to individuals.

The Board recognizes that major railroads already have medical certification programs. It cites no systemic deficiencies in those program, documents no pattern of rail accidents caused by medical conditions other than misuse of alcohol or drugs, and gives no consideration to the effect of enforcing such a program on effective use of FRA's limited budget and personnel. Without prejudice to further consideration of the concept, FRA finds nothing in this proposal that should delay implementation of random testing.

Medical testing. The Board also recommends that FRA require periodic medical examinations ("return-to-work, return-from-furlough, and others as appropriate") for all employees in safety-sensitive functions and that FRA require inclusion of alcohol and drug screening in those exams.

Here the Board echos the sense of FRA's 1984 recommendation to the railroads (49 FR 24252, 24297; June 12, 1984) that drug tests be included with physical examinations. All major railroads have medical examination programs and there is considerable merit to inclusion of drug screens, particularly in a return-to-work context. FRA reserves the issue of whether these screens should be required for a later date. Of the seven rail systems that dominate rail transportation in this country (Conrail, CSX, Norfolk Southern, Union Pacific, Burlington Northern, Southern Pacific, Santa Fe), five already conduct drug or drug/alcohol screens with their physical examinations, although one or more of these railroads may be barred from continuing its program as a result of union-brought litigation. The National Railroad Passenger Corporation (Amtrak) also conducts such testing. The uniform experience of the railroads that have implemented medical testing is that it is important and useful, but not by any means dispositive of the problem, since abusers are often able to abstain for the time necessary to avoid detection. In short, it is not an alternative to random testing or other forms of short-notice testing.

Monitor performance. The NTSB also recommends that FRA "require railroads to monitor relevant behavior and performance, such as work attendance, work habits, and motor vehicle driving records, of all employees in safety-sensitive positions and to recommend to counseling those employees whose [records] are consistent with possible substance abuse." FRA, of course, already requires programs of training and testing in operating rules compliance (49 CFR Part 217) which monitor the most critical facets of performance on the job. FRA recommended that the railroads implement measures to review personnel records in 1984 (49 FR 24297; June 12, 1984). The Board itself quoted in the Alcohol/Drug Study from the FRA Alcohol/Drug Field Manual unit addressed at indentification of drug abuse patterns. Further, the Department of Transportation proposed legislation, which was signed into law during the comment period, to permit efficient access to the National Driver Register. There is no difference in objectives, therefore, between the Board and FRA.

However, FRA is concerned that the recommendation, in effect, asks that FRA mandate and enforce good personnel management. Although certain concrete steps can be required and compliance monitored (e.g., periodic checking of driving records), efficient and effective personnel management is much too broad and diverse a topic to cover in any set of regulatory requirements; and neither the Board nor FRA can point to a single approach that is validated as a definitive response to substance abuse in the workplace.

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Railroads already have significant incentives to manage their personnel wisely, and it is not clear that a new layer of Federal regulations would advance the process. This is an issue appropriate for inclusion in system assessments of railroad performance. However, one should not proceed with the illusion that better management by itself can bring an end to substance abuse in the workplace, since, absent direct and effective countermeasures, it is likely to persist at unacceptable levels in the face of the best personnel practices currently available.

Training. The Board would require annual drug and alcohol detection training for all employees who are required to monitor fitness for duty of other railroad employees, including working supervisors such as conductors and yardmasters. The existing FRA rule already requires that supervisors empowered to order reasonable cause drug tests receive detection training, and the Board documents in its report the delivery of such training to broad categories of line supervision under the current FRA rule and railroad programs, as well as inclusion of education/awareness components in Operation Red Block and similar voluntary programs that FRA has sponsored and supported. It is very clear, however, that detection training is not a substitute for random testing. Testimony offered at the field hearings supported the conclusion that many drugs in vogue in the railroad workplace can impair the fitness of a crewmember without inducing symptoms recognizable to even an educated layman. The fact that testing is keyed to an imperfect ability to recognize symptoms is one of the fundamental limitations of reasonable suspicion testing. While the considerable detection training conducted in this industry since 1985 has moderated that limitation to some extent, it cannot diminish it to an acceptable degree.

Reasonable cause testing. The Board's proposals for reasonable cause testing are as follows:

- Require that railroads adopt mandatory reasonable cause testing programs for all employees in safety-sensitive positions;
- Expand the circumstances which will trigger reasonable cause testing to include any violation of any safety or operating rule which can compromise the safety of operations or the welfare of other employees;
- Add testing requirements related to "work attendance, work habits, and poor motor vehicle driving records."
- Require alcohol breath testing in addition to urine testing when any reasonable cause condition is met.

FRA appreciates that these recommendations involve matters of serious relevance to the current rulemaking. However, FRA does not find them a suitable alternative to random drug testing for the following reasons:

Certain of the recommendations are more clearly sound in concept than in practical application. For instance, broadening the type of operating rule violations that would warrant testing would have to be done incrementally. It is not possible to allow discretion to the railroad officer in the field to determine when a particular event is sufficiently serious as a safety matter to require testing; nor, clearly, would violation of many operating rules warrant such action. For example, operating rules typically include such general provisions as prohibiting "reading of other than Company instructions while performing service." No doubt inattention caused by reading the morning paper could be a safety problem, but perusing it while stopped on a siding for a half hour waiting for another train to approach and pass might be less than a critical matter. The point is that allowing discretion in application of literally hundreds of pages of rules and instructions incorporated therein by reference would simply provide a license for exercise of unchecked discretion. FRA notes that since implementation of the current rule in February of 1986 no party including the Board has proposed any specific operating rules that should be added to the current enumerated list. Similarly, consideration of a long term declines in job performance is obviously relevant to safety, but it is critical to establish linkage between those indicators and drug use before ordering drug testing or other measures. This is a task well suited to medical or employee assistance personnel under existing referral policies of the railroads.

FRA notes that the formal NTSB recommendation for mandatory reasonable cause testing comes at a time when all but one of the major rail systems in the United States have in place reasonably aggressive or very aggressive for-cause urine testing programs, either under the FRA rule or their own corporate policies. It is doubtful that railroad managements need further encouragement to do what it is clearly in their interest to undertake.

Further, a mandate for reasonable cause testing would be largely unenforceable, particularly where no documented accident or injury occurred. In the railroad environment, there are normally two parties to any observed situation of reasonable cause. One is the employee, the other is the railroad officer. If the railroad officer fails to test, the employee who gave reasonable cause certainly has no incentive to report himself. Experience suggests that fellow workers who might witness the incident are equally unlikely to report it. Random testing, by contrast, is fully enforceable.

The NTSB and random testing. The Board's comments for the docket of this rulemaking reflect its conclusions and recommendations in the Alcohol/Drug Study. The Board recommends—

- "Aggressive reasonable cause testing, triggered by a wide range of potentially safety-related errors or work behavior patterns;
- "Post-accident/incident testing (with the definitions of "accident" and "incident" broadened as described in the enclosed Safety Study);
- "Periodic (medical) testing;
- "Effective supervision of employees, provided by supervisors and management better trained to detect and deal effectively with drug and alcohol use; [and]
- "Competent drug/alcohol education and treatment for employees."

The Board advocates implementation of these measures prior to consideration of random testing. Whether the Board supports or opposes random testing remains unclear.

FRA believes that some of the Board's recommendations duplicate existing measures already implemented on a voluntary basis, while others are impractical or unwise when cast as Federal regulatory mandates. FRA notes that the Alcohol/Drug Study deals with random testing in a very summary fashion, concluding without significant analysis that other recommended measures, taken together, would be more effective. FRA simply disagrees with this conclusion, and the testimony of those who chose to appear at the hearings failed to support it. This not the time to exhaust the resources of the rail industry or the oversight capacity of the FRA chipping away at the periphery of the problem. This is not the occasion, after over a decade of experimentation, to attempt methods that are unnecessarily intrusive, untried, or uncertain of administration. What is required is a clear and effective deterrent, utilizing means that will detect those incapable of changing their behaviors. Random testing will provide that deterrent and detection capability.

Small Railroad Issues

Comments: FRA received numerous comments on the issue of whether small railroads should be excluded from the requirements of the rule. The American Short Line Railroad Association (ASLRA) and a good number of its members stated that the unique nature of the small carrier warrants exclusion, while many of the Class I carriers stated that because some small carriers operate on the same tracks as larger roads they should be equally drug free.

The ASLRA proposed that carriers with fifteen or fewer covered employees be exempted. One carrier suggested that the cut-off point be carriers with 31,200 or fewer manhours by covered employees annually. Another suggested that the FRA exempt carriers based upon operating speed.

Many comments were received on the special nature of the small short line railroad:

1. Small railroads generally operate on special, dedicated trackage which is not part of the national trunk line system. They do not share this trackage with other carriers.
2. In nearly three years of FRA post-accident testing, there has not been a single drug or alcohol positive on a carrier in this classification.
3. Typically only one train operates on the line at any time, eliminating the possibility of a collision-type accident, the type of occurrence which correlates to many of the human performance decrements produced by drug impairment.
4. Managers often perform covered service, and therefore the regulation would create an anomaly whereby the manager would be administering testing on himself or herself.
5. Employees of small railroads are closely supervised and do not stay overnight at remote locations. Thus, two important root causes of drug use among rail employees are not present.
6. Small roads operate at low speed (typically no more than 25 mph) in rural locations and do not transport passengers. Hazardous materials traffic volumes are low.
7. The cost of a program to the small operator is disproportionately high. The economic burden of a sophisticated program could bankrupt unstable fledgling companies or force tradeoffs against safety investments that would be more effective in their unique circumstances.

However, commenters distinguished the cases in which a small road operates concurrently with a large carrier on shared track. All commenters agreed that the potential for a serious accident exists in that situation and that carriers operating on shared trackage should be subject to the same testing requirements as all other carriers operating on the national trunk line system.

Comments were also received discussing how the FRA should tailor the requirement of random testing to meet the concerns of the small carrier. It was suggested by large and small carriers alike that the FRA establish a hardship exclusion, whereby the FRA could excuse a carrier from compliance pursuant to the determination that a testing program is not necessary, or would be overly burdensome. Three small carriers proposed that the FRA itself conduct testing of short lines. This would save the railroads from having to bear the cost of drafting and implementing a program of their own. One commenter suggested that if testing is required, the FRA should excuse the small road from reporting requirements in order to preserve anonymity.

Due to the economic burden which random testing may place on small roads, much comment was received on ways to help small operators defray the cost of testing. One approach is for small railroads to "piggyback" onto the program of a Class I carrier. The large operator would in effect administer the program on a compensated basis for the small carrier. Some small carriers gave qualified assent to such arrangements, while several Class I carriers expressed strong opposition. Larger railroads fear possible liability consequences. They are also reluctant to be strapped with responsibility for tracking down short line employees or administering their programs. Some small railroads also feared the loss of control over personnel that would result if larger railroads administered the selection process.

The FRA received comments on the feasibility of lowering costs through the use of multi-carrier agreements. Under this approach, short lines could join together and establish a single program which would do the testing for several railroads. The ASLRA stated, however, that past attempts at collective arrangements indicate that short lines are reluctant to relinquish control of their operations and that therefore programs of this sort would most likely enjoy very limited support.

Conclusions: As FRA has explained in previous rulemakings, very small railroads present a unique regulatory problem. They are fundamentally different from small entities in other modes for several reasons. Most of these entities operate over track that is devoted exclusively to their service. It is not part of the national trunk line system. Because they are involved in the "retail" service of picking up or setting out cars at points of origin or destination, they move smaller trains, often with lower-horsepower locomotives. Operating speeds are generally in the 10 mile per hour range. Because most small railroads operate only a single train, collision-type accidents are impossible. Hazardous materials traffic is light, and operating speeds ordinarily do not produce the kinetic energy necessary to cause a major hazardous materials release. Small railroads do not provide scheduled passenger service, and their total employment constitutes less than 1 percent of the industry.

The special problems of small railroads with 15 or fewer Hours of Service employees, and the reduced safety exposure they represent, have compelled the Congress to allow exemptions to the traditional restrictions on Hours of Service applicable to all other railroads. Their problems are recognized in other ways in Federal safety standards, including exclusion from certain reporting requirements and exclusion of certain low-speed track (in common with other railroads) from the Track Safety Standards. When FRA issued the current alcohol/drug regulations in 1985, the very small railroads were also excluded from requirements for pre-employment drug testing, from the reasonable cause testing authorization, and from "bypass" requirements.

FRA did make very small railroads subject to requirements for post-accident toxicological testing, as well as the prohibitions of § 219.101 ("Federal Rule C"). However, since the institution of these requirements not a single small railroad has had an accident sufficiently severe to qualify under the mandatory post-accident testing requirements. Nor do we have any other information indicating public safety consequences from drug use on very small railroads.

FRA agrees that imposition of mandatory random testing on very small railroads is unnecessary and inappropriate. Although small railroads can certainly have accidents, they have few accidents that involve hazard to persons off their rights-of-way. As a consequence, the final rule exempts railroads with 15 or fewer employees from the random testing requirement. However, this exemption does not apply where the small railroad has trackage rights over another railroad or otherwise engages in joint operations with another railroad.

FRA believes that the criterion of 15 or fewer Hours of Service employees should, as a time-honored distinction

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embodied in the Hours of Service Act, serve as the line of delineation between those railroads subject to the random testing requirement and those not subject. This threshold is clearly in the range of reasonableness as a distinction between very local and limited rail operations and somewhat more extensive operations involving greater potential hazards.

FRA recognizes that small railroads above the exemption limit will require assistance to develop and implement random testing programs. FRA believes that the combination of concerted action through the ASLRA, FRA assistance, contracts with larger railroads, consortia among smaller railroads, and other approaches yet to be devised will permit orderly implementation of random testing on these properties. Similarly, very small railroads that operate over other railroads should be able to make reasonable arrangements for testing services from the host railroad or from other sources. FRA has considered but decided against mandating the participation of larger railroads in these arrangements, believing that workable solutions can only be fashioned on a business basis without FRA involvement.

Alcohol

Comments: Safe Travel America and six railroads would extend the random testing mandate to include alcohol. Commenters favoring inclusion of alcohol noted that alcohol is the single most abused drug in our society and feared that testing for other drugs alone could cause abusers to use alcohol instead. United Transportation Union witnesses viewed alcohol as a problem six or seven times greater than abuse of other drugs.

The AAR and certain other commenters believed that alcohol is more easily detected than use of other drugs. It was noted that testing for job-related use of alcohol would require blood or breath sampling, with attendant logistical complications.

Conclusions: Random testing for alcohol is a proposal that is technically beyond the scope of the NPRM. FRA did not include random testing for alcohol in the NPRM because it appeared that existing countermeasures, including the reasonable cause testing program, have been effective in reducing the use of alcohol by employees. Since post-accident toxicological testing began in early 1986, the positive rate for alcohol has remained at or below one percent. In one 7-year period prior to the issuance of the current rule, significant alcohol presence was determined in about one of every six or seven employees killed on the job in train incidents. In the two and one-half years since the effective date of the current rule, the only employee fatalities in train incidents for which alcohol has been detected are three non-Hours of Service employees (i.e., employees not subject to the current rule).

Further, FRA had noted that testing for alcohol presents separate issues that require independent analysis. It is not possible to test a single urine specimen and determine current blood alcohol concentration. Breath testing is the preferred method of detection and evaluation, but clearly would involve a separate logistical structure to administer in a random manner.

Accordingly, FRA has determined that the alcohol issue should continue to be addressed through existing programs, without prejudice to the possibility of further regulatory action at a later time.

Preemption

Comments: Comments were received indicating that some states have enacted laws which limit or regulate drug testing by private employers. In order to comply with these state requirements a railroad may have to vary the nature of its testing program from state to state. Two operators and the EEAC request that the FRA indicate in the final rule that state laws concerning drug testing are preempted by the federal mandate.

The RLEA commented that the final rule should also supersede any current or future random testing programs which are not implemented under the authority of the FRA rule.

Conclusions: Section 205 of the Federal Railroad Safety Act of 1970 provides, in effect, that state and local laws and regulations are preempted by any Safety Act regulation addressing the same subject matter. This statutory preemption is restated in the current regulation, which this final rule amends. Therefore, issuance of this random testing rule will preempt any state legislation regarding random drug testing for railroad employees, whether or not inconsistent with the final rule. FRA understands the scope of preemption to be as broad as necessary to ensure uniformity, both with respect to the occasions on which testing may be required and the technical safeguards for that testing.

Penalties

Comments: The FRA received a number of comments alleging abuses of present drug testing programs. Several union organizations, concerned that random testing may be misused by some members of railroad management, urged the FRA to provide harassed or mistreated employees with specific remedies. The Brotherhood of Locomotive Engineers asked for a $5,000 penalty for harassment, defined as a willful violation of the regulations. One railroad believed that railroads should be excused if, during the first year, the testing target was not met. Other comments were beyond the scope of the notice.

Conclusions: FRA has updated the penalty schedule to reflect the higher levels of penalties allowed under the Rail Safety Improvement Act of 1988. Additional revisions may be made in the context of the pending review of all penalty schedules (53 FR 28594; July 28, 1988).

International Commerce

It has been determined not to make the random testing requirement applicable in any situation where compliance would violate the domestic laws or policies of another country. In addition, because of the potential confusion that may exist involving application of this rule in situations where compliance could violate foreign laws or policies, we have determined not to make the rule applicable, until January 1, 1990, in any situation where a foreign government contends that compliance with our rule raises questions of compatibility with its domestic laws or policies. During the next year, the Department of Transportation and other U.S. Government officials will be working closely with representatives of foreign governments with the goal of reaching a permanent resolution to any conflict between our rule and foreign laws and policies. The U.S. and Canadian Governments have already established a bilateral working group in an attempt to achieve this objective. We believe that considerable progress has already been made, and further meetings will be held in the near future. While we believe that this can be a model for addressing the concerns of other countries, it is not intended to be the exclusive means. The Administrator may delay the effective date further under this section, if such delay is necessary to permit consultation with any foreign governments to be successfully completed.

It is the agency's intention to issue a notice no later than December 1, 1989 that would make any necessary amendments to the rule as a result of discussions with foreign governments. Shortly after their issuance, any such notices will be published in the **Federal Register**. While we recognize that any decision not to apply our rule to foreign citizens has the potential to create some anomalous conditions in competitive situations, it is the intention of the U.S. Government to make every effort to resolve potential conflicts with foreign governments in a manner that accommodates their concerns while ensuring the necessary level of safety by those we regulate.

Section-by-Section Analysis of Final Rule

The final rule reflects substantial revisions as a result of comments received, issues raised during the exchanges at the public hearings, and further review within FRA. Each comment received has been considered by the FRA in preparing this final rule.

Amendments to Part 219

The final rule amends the existing alcohol/drug control rule (49 CFR Part 219) by adding a prohibition on non-medical use of controlled substances at any time, creating a new subpart requiring submission and implementation of random drug testing programs, adding a new subpart that sets forth rigorous conditions and safeguards for urine drug testing authorized or required under the part, and making conforming changes in the general subpart. As noted below, further amendments will be issued in this same proceeding to conform Subparts D and F to the new Subpart H and revise Subpart C to incorporate enhanced procedures similar to those contained in Subpart H.

Subpart A amendments

Section 219.3 is amended to exclude from the operation of Subpart G (random testing) any person for whom compliance would violate the domestic laws or policies of another country.

Section 219.9 is amended to place the responsibility for compliance with random testing and testing safeguards on the railroad. Paragraph (d) of § 219.9, added by a recent amendment (53 FR 28594, 28600; July 28, 1988), imposes responsibility for compliance on individuals with respect to any applicable provisions and makes individuals subject to penalty for willful violations.

Subpart B amendment. The final rule amends Subpart B by adding a new § 219.102, entitled "Prohibition on use of controlled substances." The rule expressly states the proposition that an employee who performs covered service ay not use a controlled substance at any time, except as permitted by § 219.103. Section 219.103 allows use of a controlled substance under medical authorization where the medical practitioner has made a good faith judgment, with notice of the employee's assigned duties and on the basis of available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties.

The purpose of this prohibition is to promote the fitness of employees engaged in safety-sensitive functions and thereby to promote public and employee safety on the railroad. The prohibition is stated broadly to encourage responsible use of controlled substances and to put the employee on notice that detection of residues of controlled substances may have adverse consequences. Without proper medical guidance, employees may use controlled substances that have terminal half-lives of many hours or even days without being aware of the potential for adverse consequences on the job. Further, without such guidance, employees may cease to use drugs precipitously, resulting in withdrawal or hangover effects that can also degrade performance.

The rule neither authorizes nor requires surveillance by the railroad or any other person of off-duty conduct. Rather, the rule establishes a standard of conduct to guide the covered employee.

Subpart G. The final rule adds a new Subpart G to Part 219. The subpart requires establishment of random testing programs.

Section 219.601 deals with content and approval of random testing programs. *Paragraph (a)* requires each railroad to submit a random testing program for approval by the Administrator not later than June 19, 1989. Subsequent amendments would also be reviewed prior to implementation.

Paragraph (b) requires random testing programs to meet certain criteria. First, they must provide for statistically random selection of employees. In order to allow for rounding errors associated with multi-stage selection processes, the rule provides that each employee must have a "substantially equal" statistical chance of selection within a specified time frame. Any exercise of discretion in selection is specifically prohibited.

Second, programs must select for testing a sufficient number of employees so that the annualized rate of testing is equal to 50 percent of the relevant workforce. (Selection of a greater number of employees than are actually tested is a common feature of random testing programs, since at any given time some employees will be unavailable for testing due to use of annual or sick leave, training away from the normal work site, etc. The railroad program should address precisely how these problems will be addressed.)

The final rule also makes allowance for gradual start-up of the program. For some employers, particularly those with a large number of employees subject to drug testing, it may be a substantial burden to move immediately to a 50 percent random testing rate. If required to have tested at a rate equal to 50 percent of all covered employees by the end of the first year, employers might have to test at rates far above 50 percent toward the end of the year, to make up for lower rates at the beginning. Employers should be permitted to start out at a lower testing rate and work up to 50 percent as experience is gained and the testing procedure becomes administratively more routine. Clearly, it would not be wise to create a situation which might lead to mistakes by requiring initial testing at too high a rate.

The final rule therefore provides an implementation procedure that would allow employers to phase in random drug testing during the first 12 months in which tests are conducted. Employers would not be required to reach an annualized rate of 50 percent until the last test collection. The tests would have to be spaced reasonably through the year to permit the employer to phase in to the 50 percent rate, and the total number of tests conducted would have to be equal to at least 25 percent of the covered population.

Suppose, for example, that a railroad has 1,000 covered employees. At a 50 percent annual rate, 500 tests would have to be conducted during a year. Under the phase-in, however, the employer could conduct only a few drug tests at the beginning of the program and then gradually increase the number of tests until, by the end of the first year, the annualized rate of 50 was achieved. Thus, if the railroad's random testing program contemplated administering random tests on 12 occasions during the year, the employer would need to administer at least 42 tests (500 divided by 12) on the last occasion, but could administer fewer tests until then. Overall, the employer would have to conduct at least 250 random tests the first year. In subsequent years, the 50 percent rate would be maintained.

Third, the programs must meet certain criteria to ensure effectiveness. The program must be structured so that each employee perceives the possibility that he or she will be subject to testing. For example, the program must sample employees who regularly work late night and early morning shifts, not just

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employees on day shifts. Pool crews and extra board employees should also be subject to selection and testing on a basis that creates an expectation that selection may occur under circumstances where the employee is available for testing. Notice of selection shall not be provided until the duty tour during which testing occurs and then only so far in advance of collection as is necessary. Testing procedures and safeguards must be consistent with the requirements of Part 219.

Fourth, random testing programs must provide that an employee shall be subject to testing only while on duty. Employees who are off duty may not be notified that testing is required. Although the rule does not bar calling employees to duty exclusively for the purpose of testing if they are available for service under the collective bargaining agreement, they may not be notified of the testing requirement until they have reported. Since it is in the mutual interest of employees and railroads to provide for testing in connection with regular duty tours, FRA believes that random testing programs will be so designed as to create the minimum impact on employees' lives and therefore minimum cost to the railroad.

Finally, programs must provide that employees selected on a random basis be so informed. FRA anticipates that this would be done through initial verbal notification and through a check-off on the urine custody and control form.

Paragraph (c) provides for approval or disapproval (and resubmission) of random testing programs.

Paragraph (d) requires implementation of approved programs not later than November 20, 1989. Prior to implementation, each covered employee must receive a notice announcing the forthcoming commencement of the program, the consequences of a determination that the employee has violated § 219.102 or any applicable railroad rule, and reminding the employee of the right to self-refer for counseling and treatment without adverse consequences. The notice is intended to encourage affected employees to cease using drugs prior to the implementation of random testing.

Section 219.603 requires participation in random testing and prescribes a 9-month disqualification from covered service for refusing to provide a sample. This period is similar to the period set forth for refusal of a post-accident test, and hearing procedures are likewise similar. The section clarifies that tampering by the donor is a refusal. The requirement that the employee be disqualified from covered service is one that operates against the railroad (including a subsequent employer with notice of the refusal) and is issued under the Secretary's general regulatory authority conferred by section 202 of the Federal Railroad Safety Act. Following the end of the 9-month period, the disqualified employee could be returned to work only after presenting a negative sample and would be subject to follow-up testing. The employee would also have to complete any program of rehabilitation deemed necessary after professional evaluation.

Section 219.605 deals with consequences of a test result. *Paragraph (a)* recites that a test result is not considered positive until confirmed and reviewed by a medical review officer. *Paragraph (b)* provides for notification to the employee. *Paragraph (c)* requires the railroad to suspend from covered service an employee who is believed to be in violation of § 219.102 as a result of a positive test result. *Paragraph (d)* preserves any procedural rights available to the employee under a collective bargaining agreement or at common law. Most railroad employees are subject to specific procedural rights under the collective bargaining agreements with respect to lodging of a rule charge, investigation, grievance and arbitration. It is FRA's intent that this mechanism continue to be used to resolve issues of compliance by the employee with Federal and railroad alcohol/drug rules. For instance, should a railroad investigating officer or arbitrator determine, after hearing, that the employee had not been shown to be in noncompliance with § 219.102 or a railroad rule, the deciding officer could reinstate the employee with full back pay and benefits. This is the same system currently being used to determine employee responsibility under existing regulations.

Paragraph (e) provides that an employee who has been determined to have violated § 219.102 may not be returned to service unless the employee has presented a negative urine sample, been evaluated for chemical dependency or other treatable disorder, and completed any course of counseling or treatment determined to be necessary by an EAP counselor (a term defined in § 219.5). The determination referred to is the determination of the railroad (which is ordinarily subject to review and modification by an arbitrator or court of competent jurisdiction). This paragraph does not require that the employee be provided an opportunity for treatment, nor does it bar disciplinary sanctions. It merely establishes a safety "floor" for return of the recovering substance abuser to covered service. Upon return to service, the employee is subject to the requirement of participation in aftercare, if required by the EAP counselor, and to a reasonable program of follow-up testing not more than 60 months in duration. These provisions will allow the exercise of sound professional judgment by substance abuse and medical professionals and do not provide license for pursuit of collateral agendas.

Section 219.607 provides for record retention. Detailed records for positive tests must be retained for at least 2 years in order to ensure their availability to FRA and arbitrators (as necessary). Records of negative tests must be retained for 1 year. Summary records of test results and employee rehabilitation must be retained for at least 5 years. These records must be maintained for a reasonable period, by employee, if adequate data is to be gathered with respect to the success of drug abuse treatment.

Section 219.609 excludes from the subpart a railroad that employs not more than 15 Hours of Service employees and that does not operate on the tracks of another operating railroad. The exclusion does apply to a small railroad that leases track from another railroad, so long as the small railroad is the exclusive operator. FRA recognizes that this section does not precisely parallel the application language of § 219.3(b). FRA will resolve this tension in a forthcoming rulemaking.

Subpart H. The final rule adds a new Subpart H, which provides enhanced testing standards for existing Subparts D and F, as well as the new random testing subparts. This subpart becomes fully effective on July 19, 1989. This will allow time for HHS to complete its certification of laboratories, for railroads to make additional arrangements for collection and enter into new contracts for laboratory services, and for other necessary steps to be implemented. Earlier compliance is, of course, consistent with current regulations.

Subpart H will function in tandem with the Procedures for Transportation Workplace Drug Testing Programs, 49 CFR Part 40, which is published elsewhere in today's **Federal Register.** This part will, in effect, codify the HHS Guidelines with adaptations for DOT-regulated parties. Through incorporation by reference, Subpart H makes the DOT Procedures mandatory on railroad employers with respect to reasonable cause testing, pre-employment drug testing, and random testing. In the case of any perceived conflict of interpretation between Part 219 and Part 40, Part 219 controls because of its more particular application.

Section 219.701(a) gives effect to the DOT Procedures and applies them and Subpart H to Subparts D, F and G. For emphasis, the provision notes that only HHS-certified laboratories may be employed for this testing.

Paragraph (b) requires that the railroads' contracts with certified laboratories provide for appropriate inspection rights. The purpose of inspection as specified here is continuing laboratory quality control.

Paragraph (c) requires that labaratory contracts also provide for the laboratory's compliance with this part, including the laboratory standards provisions of the HHS Guidelines.

It should be noted that the DOT Procedures contain special provisions relieving smaller employers of blind proficiency testing requirements where the employer uses a laboratory already subject to blind proficiency testing by a transportation employer or Federal agency. Railroads covered by the blind testing requirement employ the great majority of employees subject to Part 219 and will submit to certified laboratories large volumes of employee samples and blind proficiency testing samples. Requiring this of smaller railroads would have little marginal effect with respect to quality control of the laboratories but would involve considerable expense and administrative burden. Further, involving a proliferation of smaller businesses in a blind proficiency testing program at this juncture in the development of the art would create unacceptable risks that samples could be mishandled and lead to confusion over the meaning of proficiency testing results. Although laboratory capacity for drug urinalysis is more than adequate, the number of firms providing expert external quality control services is presently limited. It is more important that large volume programs challenge the laboratories properly than it is for a large number of small clients to submit a relative handful of blind samples.

Section 219.703 deals with collection of urine samples.

Paragraph (a) provides that collection shall be handled in accordance with 49 CFR Part 40, the adapted HHS Guidelines.

Paragraph (b) refers to the policy of the DOT Procedures, which recognizes two groups of qualified collectors. The first is licensed medical professionals and technicians. Medical personnel may conduct collections if they have received instructions for collection under Part 40 and if they conduct the collection and certify its completion as required in that Part. Medical personnel are an essential resource for collection of urine samples following injury-producing events, where the employee has the option to provide a blood sample (as is the case under Subpart D), and in remote rural locations. Further, many railroads will wish to use independent medical facilities for collections (even when not required) in order to provide reassurance to employees that the process is fair and unbiased. Medical personnel are familiar with basic procedures for collection, identification and handling of body fluids used for diagnostic purposes. The adapted Guidelines set forth supplementary procedures that guard against intentional tampering by the donor while ensuring that the specimen is properly secured and handled in accordance with chain-of-custody procedures. Medical personnel must be provided written instructions ensuring that those procedures are followed.

Other personnel may also be trained to collect a urine specimen in accordance with the adapted Guidelines.

Paragraph (c) bars use of supervisors and co-workers as collectors. Collection should be accomplished in a detached and professional manner. Employees should not be subject to collection by persons with whom they work in the railroad operating environment. The term "co-worker" is defined for purposes of the paragraph to mean a person with whom the employee is assigned or could be assigned in a crew or other working unit to perform normal transportation duties on the railroad. FRA is aware that this limitation may make it difficult for smaller railroads to provide for collection on railroad property using their own personnel as collectors. However, FRA believes that smaller railroads will be able to use commercial collection services and local medical personnel to accomplish the collections.

Section 219.705 deals with the range of controlled substances for which testing is conducted. *Paragraph (a)* provides that samples shall be analyzed for controlled substances identified in paragraph (b). Under the DOT Procedures, testing is also authorized for specific gravity, creatinine (a natural waste present in all urine) concentration, and for suspected adulterants such as soap, vinegar or other agents that might be introduced in an attempt to defeat a screening test. These preparatory steps do not involve determination of any information that would be reported by a laboratory to any other person, unless the sample was deemed not suitable for analysis.

Paragraph (b) requires that each sample be analyzed for marijuana, cocaine, phencyclidine (PCP), opiates (morphine and codeine), and amphetamines (amphetamine and methamphetamine). Obviously, in the case of certain of these drugs it is the metabolite of the drug that is the target compound.

The five drug groups identified in this section generally represent the most widely abused controlled substances. Even in the case of PCP, for which the prevalence rate among employed populations is very low, there is an important public safety interest in identifying the few employees who may use the drug, since it is capable of producing lasting and extreme mental disorders, as well as irrational and uncontrolled conduct during its period of acute activity. Inexpensive screening tests are available for each of the drug groups.

Paragraph (c) provides that a railroad may test the sample obtained under this rule only for the drugs required or specifically authorized to be tested under this rule. (Part 40 further emphasizes that testing of the specimen other than that specifically authorized or required is prohibited.) That is, a railroad must test the sample for the five major drugs listed in each DOT regulation. Only if, in the context of reasonable cause testing, the FRA authorizes testing for additional Drug X under 49 CFR Part 40 (an approval which would be granted only after consultation with the Department of Health and Human Services, and only on the basis of an HHS-established testing protocol and positive threshold) may the railroad also test the sample for that drug.

Absent such an approval, if the employer wants to test, in addition, for Drug Y, the employer must obtain a second sample from the employee. The obtaining of this second sample is not under the authority of any DOT regulation. The employer must base its request for the second sample on whatever other legal authority is available, since the employer cannot rely on the DOT regulation as the basis for the request.

Section 219.707 provides for review of test results by the railroad's medical review officer (MRO) under provisions of 49 CFR Part 40. Under Part 40, test results are reported exclusively to the MRO, and only after performance of the confirmatory test.

Under *paragraph (a)* and Part 40, the MRO has the responsibility to review the laboratory report and consider alternate explanations for the presence

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of the compound detected, such as medical use of the controlled substance.

Paragraph (b) requires the MRO to complete review of the test results in not more than 10 working days, unless additional time is required because the MRO is awaiting supplementary documentation from the employee.

Paragraph (c) requires prompt delivery of any positive report to the employee. In no case may a railroad take adverse action against the employee without providing the employee a copy of the test result.

Paragraph (d) provides that the MRO shall report all negative results, including analytical positives indicating medical use of controlled substances and tests for which laboratory data is deemed insufficient, over the MRO's signature. The intent of this provision is for there to be a single form of negative report that does not disclose the basis on which the result is considered negative. The paragraph bars dissemination of medical drug use information to non-medical personnel, whether the information is derived from a test result or information provided by the employee or the employee's physician. The medical review officer is not barred from using therapeutic drug use information in the context of an established medical qualifications program, since enforcement of such a bar would inappropriately inject FRA into a confidential relationship and create major problems of enforcement. Where such programs exist, as they have with respect to railroads of significant size for many decades, the employee waives normal privacy interests with respect to matters bearing on medical fitness for duty.

Section 219.709 addresses sample retention and retesting.

Paragraph (a) provides for retention of samples deemed positive on confirmation for a one-year period. Within this period the employee may request that the sample be retained for a further reasonable period.

Paragraph (b) creates a right to have the original sample retested if the employee makes the request within 60 days of receipt of a positive test result from the MRO. The employee may designate retesting by the original laboratory or another HHS certified laboratory. The railroad may require the employee to advance the cost of reanalysis, subject to reimbursement if the retest is negative.

Paragraph (c) provides that inter-laboratory transfers be handled in accordance with chain-of-custody procedures.

Paragraph (d) provides that retest results shall be reported down to the level of sensitivity of the assay. Some drugs and metabolites deteriorate during handling and storage, therefore use of the same cut-offs employed for original testing is not appropriate.

Section 219.711 requires that test results be held in confidence. *Paragraph (a)* restricts handling of test results by laboratories. This paragraph must be effectuated through the railroad's contract with the laboratory (*see* § 219.701(c)).

Paragraph (b) provides that test results may be used within the railroad only for the purpose of compliance with Part 219. No further dissemination may be made within or external to the railroad, except with the written voluntary consent of the employee. The paragraph also requires that the railroad institute internal procedures sufficient to guard the information against unauthorized disclosure. Compliance with this part would include suspension of the employee, completion of any disciplinary proceeding required to determine compliance with § 219.102 or a similar company rule (including review of the determination by a professional arbitrator), and referral of the individual to an employee assistance program, if applicable.

FRA recognizes that it may be appropriate for future railroad employers of persons testing positive to be aware that the employee has been determined to have violated § 219.102, particularly where the employee requires rehabilitation prior to being returned to service or is subject to aftercare or follow-up testing. Railroads can achieve this objective by requesting the applicant to provide the necessary consent as a condition of employment. Such a consent is voluntary within the meaning of this part.

Paragraph (c) deals with handling of post-accident test results under Subpart C. Railroads are required to maintain those test results in the same manner as provided for other test results, except to the extent the results are made public in connection with an accident investigation. The section also recites FRA's present policy of treating test results indicating medical use of controlled substances as not subject to disclosure except where it is necessary to consider the information in relation to determination of probable cause.

The final rule also amends the *Schedule of Civil Penalties, Appendix A*, to provide penalties for violations of the random testing provisions (which incorporate by reference Subpart H). Other portions of the penalty schedule will be similarly amended prior to the effective date of Subpart H. Amounts set forth in the schedule amendments reflect the increased penalty range recently enacted into law in the Rail Safety Improvement Act of 1988.

Amendment to Part 217

The final rule also amends § 217.13 (Annual Report) to require reporting of alcohol/drug tests and observations in a standard format and to require reporting of new data elements related to the random testing program. Experience under the existing provision has indicated that the railroads and the FRA share a common need to obtain comparative aggregate data regarding this subject matter.

Further Rulemaking

The final rule makes certain changes in the safeguards for urine drug testing conducted under Subparts D and F of the current rule (49 CFR Part 219), effective July 19, 1989. In summary, the provisions of the new Subpart H will displace a number of provisions designed to provide for accurate and well-administered urine drug testing with the state-of-the-art requirements now available under the HHS Guidelines, as adapted through the DOT Procedures. Where appropriate, existing text will be removed and cross-references to the new regulatory language will be inserted. Provisions for mandatory post-accident toxicological testing will also be updated to incorporate procedures and further safeguards equivalent to those set forth in the DOT Procedures, which are themselves based on HHS Guidelines issued in April of 1988 and not yet fully implemented through laboratory certifications. Certain other decisions made in this proceeding will also require conforming changes in previous regulatory language in order to ensure consistency and orderly implementation.

FRA is publishing this final rule as soon as possible in order to allow the railroads ample time to plan and implement random testing programs. However, FRA recognizes that a supplemental final rule will have to be issued to make the conforming changes, and certain additional issues will have to be handled through separate notice and comment.

The supplemental final rule will be issued in the very near future, well ahead of the implementation dates announced in this final rule.

A supplemental NPRM will also be issued addressing the issues of approval of testing for other controlled substances, adjustment of random testing level of effort in light of experience gained under the rule, and crediting of other short-notice tests to the random testing 50% target level.

Additional notices of proposed rulemaking regarding minor substantive changes may also be issued in the near future. FRA remains committed to making a significant number of perfecting changes in the existing rule text and will do so with appropriate opportunity for further public participation.

Regulatory Analysis

E.O.12291 and DOT Regulatory Policies and Procedures

These final regulations have been evaluated in accordance with existing regulatory policies and are considered to be non-major under Executive Order 12291. However, they are considered to be significant under the DOT policies and procedures (44 FR 11034; February 26, 1979) because they initiate a substantial regulatory program.

Consequently, FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of these rules. It may be inspected and copied in Room 8201, 400 Seventh Street, SW., Washington, DC 20590.

FRA's "base case" estimate yields program costs over the first ten years of approximately $81 million and direct benefits from reduced train accidents of more than $87 million (current values at 10 percent discount), resulting in a positive benefit to cost ratio of 1.08 to 1. The favorable ratio would be significantly higher if the rule avoided a major catastrophic accident, such as a hazardous materials accident involving loss of a number of lives and destruction of valuable property.

FRA believes that additional direct and indirect benefits will accrue as a result of the deterrence of drug abuse and treatment of those detected for the first time. (Railroad policies typically allow reinstatement of recovering drug abusers on a leniency basis if they have completed appropriate treatment.) These benefits will include reduced personal injuries on and off the job, improved productivity and reduced absenteeism, reduced medical and worker's compensation claims, theft reduction, and diversion of cash resources of employees from non-productive expenditures for purchase of drugs to productive, legitimate uses. Accordingly, the total benefits flowing from the rule should preponderate over costs by a significantly higher ratio than presented in the quantitative analysis.

Regulatory Flexibility Act

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Although a significant number of small railroads are subject to these regulations, the economic impact of the rules will not be significant for several reasons. Although unit costs for small railroads for certain services required under the regulations may be somewhat higher, small railroads have the latitude to utilize cooperative buying services and, from testimony received during the rulemaking, will find at least some connecting Class I railroads willing to assist in areas such as laboratory contracts. Preparation of random testing programs will be facilitated by the small railroads' industry association. Gross testing costs will be generally proportional to the scale of the railroad, since costs vary by number of employees required to be tested.

FRA has taken two specific actions that will limit impacts on small entities. First, very small railroads employing 15 or fewer Hours of Service employees will be excluded from the requirement for random testing programs if they are not engaged in joint operations with other railroads. Second, smaller railroads are excluded from the requirement for blind proficiency testing if they utilize laboratories subject to blind challenge by other Government or transportation clients.

Comments received on this issue are summarized above.

Paperwork Reduction Act

The rules being adopted in this proceeding contain revised information collection requirements in the following sections: §§ 219.601, 219.603, 219.605, 219.607, 219.701 (incorporating 49 CFR Part 40), 219. 705, 219.707, 219.709, 219.711. Revised information collection requirements are also contained in the amendments to § 217.13. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). FRA anticipates that OMB will undertake prompt action on these requests for approval. When OMB has approved these revised requirements, FRA will publish a notice in the **Federal Register** announcing that action and revising § 219.21 accordingly. Compliance with the revised information collection requirements is not required until the approvals have been provided. Any comments on the revised information collection requirements should be provided to Mr. Gary Waxman, Regulatory Policy Branch, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503. Copies of any such comments should be provided to the docket of this rulemaking.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and DOT Order 5610.1c. These regulations meet the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This final rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted. Under section 205 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 434, this rule preempts any state or local law addressing the subject matter of the rule. The Safety Act provides for uniform regulation of railroads involved in interstate commerce.

List of Subjects

49 CFR Part 217

Railroad safety, Railroad operating rules, Reporting and recordkeeping activities.

49 CFR Part 219

Railroad safety, Control of alcohol and drug use, Reporting and recordkeeping requirements, Urine drug testing standards.

In consideration of the foregoing, Chapter II, Subtitle B, of Title 49, Code of Federal Regulations is amended as follows:

PART 219—[AMENDED]

1. The authority citation for Part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Part 219 is amended as follows:

a. The table of contents is amended to add new entries as follows:

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Subpart B—Prohibitions

* * * * *

219.102 Prohibition on abuse of controlled substances

* * * * *

Subpart G—Random Drug Testing Program

Sec.

219.601 Railroad random testing programs
219.603 Participation in testing; refusals
219.605 Positive test results; procedures
219.607 Reports; FRA access to records; confidentiality
219.609 Exclusion from subpart

Subpart H—Procedures and Safeguards for Urine Drug Testing

219.701 Standards for urine drug testing
219.703 Collection
219.705 Drugs tested
219.707 Review by MRO
219.709 Retest
219.711 Confidentiality of test results

* * * * *

b. Section 219.3 is amended by adding a new paragraph (c) at the end thereof to read as follows:

§ 219.3 Application.

* * * * *

(c)(1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

(2) Subpart G is not effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of that subpart raises a question of compatibility with that country's domestic laws or policies. On or before December 1, 1989, the Administrator shall issue any necessary amendment resolving the applicability of Subpart G to such person on and after January 1, 1990.

(c) Section 219.9 is amended by revising paragraph (a)(1), redesignating paragraph (a)(5) as (a)(7) and republishing it, by adding new paragraphs (a)(5) and (a)(6), and by republishing the introductory text of paragraph (a) to read as follows:

§ 219.9 Responsibility for compliance.

(a) A railroad that—

(1) Having actual knowledge, requires or permits an employee to go or remain on duty in covered service while in violation of § 219.101 or § 219.102;

* * * * *

(5) Fails to adopt or publish, or willfully and with actual knowledge fails to implement, a program required by Subpart G of this part;

(6) Willfully and with actual knowledge, requires an employee (or applicant) to submit to testing under a program required by Subpart C, D, F or G without observance of the procedures and safeguards contained in the subpart under which testing is conducted or, in the case of a test under Subpart D, F or G, without observance of the procedures and safeguards contained in Subpart H; or

(7) Fails to comply with any other requirement of this part;

shall be deemed to have violated this part and shall be subject to a civil penalty as provided for in Appendix A and paragraph (d) of this section.

* * * * *

d. Section 219.102 is added to read as follows:

§ 219.102 Prohibition on abuse of controlled substances.

On and after July 19, 1989, no employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by section 219.103 of this subpart.

e. Subpart G is added to read as follows:

Subpart G—Random Drug Testing Program

§ 219.601 Railroad random testing programs.

(a) *Submission.* No later than June 19, 1989, or in the case of a railroad commencing operations thereafter not later than 30 days prior to such commencement, each railroad shall submit for FRA approval a random testing program meeting the requirements of this subpart. The program shall be submitted to the Associate Administrator for Safety, FRA, for review and approval by the Administrator. If, after approval, a railroad desires to amend the random testing program implemented under this subpart, the railroad shall file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program shall not be implemented prior to approval.

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart shall meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents shall conform to such criteria in implementing the program:

(1) Selection of covered employees for testing shall be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame (except where approval has been granted under paragraph (e) of this section). The method may not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected as the result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection shall be retained for not less than 24 months from the date upon which the particular samples were collected.

(2) The program shall select for testing a sufficient number of employees so that, during the first 12 months—

(i) The random testing program is spread reasonably through the 12-month period;

(ii) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(iii) The total number of tests conducted during the 12 months is equal to at least 25 percent of the number of covered employees.

During each subsequent 12-month period the program shall select for testing a sufficient number of employees so that the number of tests conducted will equal at least 50 percent of the number of covered employees. Annualized percentage rates shall be determined by reference to the total number of covered employees employed by the railroad at the beginning of the particular twelve-month period or by an alternate method specified in the plan approved by the Administrator.

(3) Railroad random testing programs shall ensure to the maximum extent practicable that each employee shall perceive the possibility that a random test may be required on any day the employee reports for work.

(4) Notice of an employee's selection shall not be provided until the duty tour in which testing is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the time and place set for testing.

(5) The program shall include testing procedures and safeguards, and procedures for action based on positive test results, consistent with this part.

(6) An employee shall be subject to testing only while on duty.

(7) Each time an employee is selected for random testing the employee will be informed that selection was made on a random basis. The program shall provide that the employee will be permitted to retain a copy of a writing to that effect (e.g., a urine custody and control form with this information set forth).

(c) *Approval.* The Administrator will notify the railroad in writing whether the program is approved as consistent with the criteria set forth in this part. If the Administrator determines that the program does not conform to those criteria, the Administrator will inform the railroad of any matters preventing approval of the program, with specific explanation as to necessary revisions. The railroad shall resubmit its program with the required revisions within 30 days of such notice. Failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this subpart.

(d) *Implementation.* (1) No later than 45 days prior to commencement of random testing, the railroad shall publish to each of its covered employees, individually, a written notice that they will be subject to random drug testing under this part. Such notice shall state the date for commencement of the program, shall state that the selection of employees for testing will be on a strictly random basis, shall describe the consequences of a determination that the employee has violated § 219.102 or any applicable railroad rule, and shall inform the employee of the employee's rights under Subpart E of this part. A copy of the notice shall be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph creates a defense to a violation of § 219.102 of this part.

(2) Each railroad shall implement its approved random testing program not later than November 20, 1989 (or, in the case of a railroad commencing operations thereafter, on the expiration of 60 days from approval by the Administrator or November 20, 1989, whichever is later).

§ 219.603 Participation in testing; refusals.

(a) *Participation.* A railroad shall, under the conditions specified in this subpart and Subpart H, require a covered employee selected through the random testing program to cooperate in urine testing to determine compliance with section 219.102, and the employee shall provide the required sample and complete the required paperwork and certifications. Compliance by the employee shall be excused only in the case of a documented medical or family emergency.

(b) *Refusals.* (1) An employee who, upon being notified of the requirement to provide a sample under this subpart, refuses to provide a sample shall be withdrawn from covered service and shall be deemed disqualified for a period of nine (9) months. The disqualification required by this paragraph shall apply with respect to employment in covered service by any railroad with notice of such refusal. The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(2) Upon being withdrawn from service under this section, the employee shall be entitled to the same procedural protections as those set out in § 219.213(b) of this part with respect to refusal of post-accident testing. The purpose of the hearing shall be to determine whether the employee refused to provide a sample, having been notified of the requirement to do so, and whether the employee can establish a basis for being excused under the criteria stated by paragraph (a) of this section.

(3) Tampering with a sample in order to prevent a valid test (e.g., through substitution, dilution or adulteration) constitutes a refusal to provide a sample.

(c) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.605(e) of this part.

§ 219.605 Positive test results; procedures.

(a) *Medical review.* The result of a test required under this subpart shall be deemed positive only after it has been properly confirmed as required in Subpart H of this part and reviewed by a Medical Review Officer (MRO) as provided in subpart H to determine if it is evidence of prohibited drug use under § 219.102. This section establishes procedures for administrative handling by the railroad in the event a sample provided under this subpart is reported as positive by the MRO.

(b) *Notification.* Except as provided in Subpart H of this part, within the period specified in § 219.707 of this part the railroad shall notify an employee of the results of any test that is

(1) positive, by providing a copy of a laboratory report meeting the requirements of subpart H or

(2) negative, by providing a written notice issued by the MRO.

(c) *Suspension.* If the railroad determines that there is reason to believe that an employee is in violation of § 219.102, as evidenced by a positive test result, the railroad shall immediately remove the employee from covered service. In each case, the employee shall be provided with the report of the test results and notice of the basis for the removal not later than the time of removal.

(d) *Hearing procedures.* Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to the removal or other adverse action taken as a consequence of the positive test result.

(e) *Return to service.* An employee who has been determined to have used a controlled substance in violation of § 219.102 of this part as a consequence of a positive test result under this subpart shall not be returned to covered service unless the employee has—

(1) Presented a urine sample for testing under Subpart H of this part that tested negative for controlled substances assayed;

(2) Been evaluated by an EAP counselor to determine if the employee is affected by a psychological or physical dependence on one or more controlled substances or by another indentifiable and treatable mental or physical disorder involving abuse of alcohol or drugs as a primary manifestation; and

(3) Successfuly completed any course of counseling or treatment determined to be necessary by the EAP counselor prior to return to covered service.

An employee returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the EAP counselor and shall be subject to a reasonable progam of follow-up drug testing without prior notice for a period of not more than 60 months following return to service.

§ 219.607 Reports; FRA access to records; confidentiality.

Each railroad shall retain for at least 2 years all records of each test conducted under this subpart that is reported as positive by the Medical Review Officer, including urine custody and control forms, laboratory reports, and certification statements. Records of negative tests shall be retained for at least 1 year. Each railroad shall maintain for at least 5 years summary records of employee drug test results and rehabilitation for each covered employee. Records required to be kept shall be made available to FRA as provided by section 208 of the Federal Railroad Safety Act of 1970.

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§ 219.609 Exclusion from subpart.

This subpart does not apply to a railroad that employs not more than 15 employees covered by the Hours of Service Act (45 U.S.C. 61–64b) and that does not operate on tracks of another railroad (or otherwise engage in joint operations with another railroad) except as necessary for purposes of interchange.

f. A new Subpart H is added to read as follows:

Subpart H—Procedures and Safeguards for Urine Drug Testing

§ 219.701 Standards for urine drug testing.

(a) Effective upon the expiration of July 19, 1989, the conduct of urine drug testing under Subparts D, F, and G of this part shall be governed by this subpart and Part 40 of Subtitle A of this title. Laboratories employed for these purposes must be certified by the Department of Health and Human Services under that Department's Mandatory Guidelines for Federal Workplace Drug Testing Programs.

(b) Each railroad's contract with a laboratory conducting testing subject to this subpart shall provide that the FRA and the railroad shall have the right to unannounced inspection during normal business hours through qualified personnel or designated contractors. Such inspection rights shall, at minimim, include reasonable accompanied access to all records pertinent to testing under this part, quality control data incident thereto, samples submitted under this part, and equipment and personnel related to analysis of those samples.

(c) Each such contract shall also require that the laboratory comply with all applicable provisions of this part and 49 CFR Part 40, including requirements for employee access to specified laboratory records and any applicable conditions imposed upon approvals issued under this subpart or 49 CFR Part 40.

§ 219.703 Collection.

(a) Urine samples shall be collected and handled as required in 49 CFR Part 40 and this section.

(b) The following persons are qualified to perform urine collections under this subpart:

(1) A licensed medical professional or medical technologist or technician who is provided instructions for collection under 49 CFR Part 40 and who performs the collection and certifies completion as required therein; or

(2) A person who has successfully completed training as a collector as required in 49 CFR Part 40.

(c) A person with management or supervisory responsibility over the employee to be tested, or a co-worker of the employee to be tested, may not serve as a collector. For purposes of this paragraph, "co-worker" means a person with whom the person to be tested is assigned or could be assigned in a crew or other working unit to perform normal transportation duties on the railroad.

§ 219.705 Drugs tested.

(a) Urine samples collected under Subparts D, F, and G of this part shall be analyzed for the presence of controlled substances designated in paragraph (b) of this section and may be analyzed by procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration, or presence of adulterants).

(b) Each sample submitted shall be analyzed for marijuana, cocaine, phencyclidine (PCP), opiates (morphine and codeine), and amphetamines (amphetamine and methamphetamine).

(c) As part of the reasonable cause testing program established by Subpart D of this part, a railroad may test for additional controlled substances in addition to those specified in this section only with approval granted by FRA and for sustances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§ 219.707 Review by MRO.

(a) Test results reported positive by the laboratory as provided in 49 CFR Part 40 shall not be deemed positive or disseminated to any person (other than to the employee tested in a medical interview, if conducted) until they are reviewed by a Medical Review Officer (MRO) of the railroad as required by 49 CFR Part 40 and this section.

(b) The MRO shall complete review of test results within not more than 10 regular working days of receipt of the laboratory report or they shall be declared negative, unless any portion of the delay shall result from the unwillingness or inability of the employee to appear for an interview or provide documentation of prescription or other authorized use of medications. If the employee is responsible for such delay, the 10-day period may be extended by a period equal to the period attributed to the employee's delay. This paragraph shall not be read to bar reporting of a positive result if the employee, without a reasonable basis, fails to respond to an opportunity to provide supplementary information.

(c) After the MRO has reviewed the pertinent information and the laboratory assessment is verified as indicating presence of controlled substances without medical authorization consistent with § 219.103 of this part (and the review required by paragraph (b) of this section is completed), the MRO will report the results to a designated railroad officer for action in keeping with the requirements of this part. The employee shall be provided a copy of the approved test results within 48 hours of delivery to the railroad officer, or immediately upon the railroad's taking any action adverse to the employee, whichever first occurs.

(d) Test results reported as negative by the laboratory shall also be communicated to the employee through the MRO. The MRO shall promptly transmit the negative finding to the employee. All negative test results, including results involving medical use or administration of controlled substances or insufficiency of laboratory data, shall be transmitted to the designated railroad officer over the MRO's signature. The MRO may not disclose medically approved drug use or administration information obtained under this part (whether ascertained through testing or reported by the employee or the employee's medical practitioner at the employee's request) to non-medical railroad personnel; however, nothing in this part bars use of such information by the railroad's medical officer in the context of an established medical qualifications program.

§ 219.709 Retest.

(a) Samples that yield positive results on confirmation shall be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days, as required by Part 40 of this title. Within this 365-day period, the employee or his representative, the railroad, or the FRA may request that the laboratory retain the sample for an additional period. If, with the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(b) In the case of a test declared positive by the MRO, the original sample shall be retested if the employee makes a written request to the Medical Review Officer for retesting within 60 days of receipt of the final test result from the MRO. The employee may specify retesting by the original laboratory or by a second laboratory

that is certified by the Department of Health and Human Services as described in 49 CFR Part 40. The railroad may require the employee to advance the cost of shipment (if any) and reanalysis of the sample, but the employee shall be reimbursed for such expense if the retest is negative.

(c) If the employee specifies retesting by a second laboratory, the original laboratory shall follow approved chain-of-custody procedures in transferring a portion of the sample.

(d) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in 49 CFR Part 40, but equal to or greater than the established sensitivity of the assay, shall, as technically appropriate, be reported and considered corroborative of the original positive results.

§ 219.711 Confidentiality of test results.

(a) A laboratory reporting results of tests conducted under this subpart shall report those results only to the designated Medical Review Officer of the railroad. The results shall not be disclosed by the laboratory to any person other than the employee to whom the sample was identified. This paragraph shall not be read to bar normal access to analytical data for laboratory accreditation or certification processes, but records shall be maintained by specimen identification number (or accession number) rather than employee name.

(b) No record of tests conducted subject to this subpart or information drawn therefrom shall be used or disseminated by the railroad or within the railroad for any purpose other than providing for compliance with this part (and railroad rules consistent herewith), unless with the voluntary written consent of the employee. Such written consent shall specify the person to whom the information may be provided. Each railroad shall adopt and implement procedures to guard this information against unauthorized disclosure both within and external to the railroad company.

(c)(1) Effective July 19, 1989, results of post-accident toxicological testing under Subpart C of this part are reported to the railroad's Medical Review Officer, and the railroad shall treat the test results as subject to paragraph (b) of this section, except where publicly disclosed by FRA or the National Transportation Safety Board.

(2) To the extent permitted by law, FRA treats Subpart C test results indicating use of prescription or physician-administered controlled substances (and employee declarations of medical use incident to such testing) as confidential and withholds public disclosure except where it is necessary to consider this information in an accident investigation in relation to determination of probable cause. However, FRA may provide any result of testing under Subpart C to the National Transportation Safety Board.

3. Appendix A to Part 219 is amended by adding the following entries at the end of the table:

APPENDIX A—SCHEDULE OF CIVIL PENALTIES [1]

Section		Violation	Willful violation
	• • • • • •		
	Subpart G—Random Drug Testing		
219.601	Failure to implement and/or submit to FRA for approval a random drug testing program that satisfies the requirements of this Subpart and subpart H		10,000
	Failure to facilitate conduct of required random drug testing by failing to take all practical steps to require employee participation or by otherwise failing to comply with Subpart G such that test cannot be conducted	2,000	5,000
	Required employee to provide samples in reliance on Subpart G based on other than random selection	5,000	10,000
219.603	Required employee to submit to testing without observance of procedures and safeguards contained in Subparts G and H	5,000	7,500
219.605	Failure to provide notice of positive test result	2,000	2,500
	Failure to comply with other Subpart G requirement	1,000	2,500
	• • • • • •		

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 217—[AMENDED]

1. The authority citation for Part 217 is revised to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Part 217 is amended by revising the introductory text of paragraph § 217.13(d) and by amending § 217.13 to add a new paragraph (d)(5) as follows:

§ 217.13 Annual Report.

* * * * *

(d) The number, type and result of each test and inspection related to enforcement of Part 219 of this subchapter and the railroad's rule on alcohol and drug use ("Rule G"). This information shall be reported on Form FRA 6180.77 and shall include the following:

* * * * *

(5) Number and results of random drug tests conducted under the authority of § 219.601 of this chapter. For positive tests indicate the number for each controlled substance by drug group, and the following information: number and type of disciplinary actions taken, number of employees referred for evaluation, number of employees evaluated as not requiring formal treatment, number of employees

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evaluated as requiring outpatient treatment, number of employees evaluated as requiring inpatient treatment, number of employees failing to complete abatement or rehabilitation (as determined by clinical judgment or positive test on return-to-work urinalysis), number of employees who completed abatement or rehabilitation determined after investigation to have been involved in subsequent alcohol/drug disciplinary offenses, and number of follow-up tests and results by drug group (including refusals). Also indicate the number of refusals to cooperate in random testing and provide a summary of any negative test findings based upon scientific insufficiency (without personal identifying information).

Issued in Washington, DC on November 14, 1988.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 88-26612 Filed 11-15-88; 3:52 pm]

BILLING CODE 4910-06-M

federal register

Monday
November 21, 1988

Part VII

Department of Transportation

Federal Highway Administration

49 CFR Parts 391 and 394
Controlled Substances Testing; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 391 and 394

[FHWA Docket No. MC-116]

RIN 2125-AA79

Controlled Substances Testing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule sets forth regulations to require motor carriers who operate commercial motor vehicles in interstate commerce to have an anti-drug program including testing of commercial motor vehicle drivers for the use of controlled substances. Testing under these rules must be conducted prior to employment/use, periodically, based on reasonable cause, and random selection and is the responsibility of motor carriers. Post-accident testing must also be performed and is the responsibility of the driver. Generally, drivers of commercial motor vehicles with a gross vehicle weight rating (GVWR) over 26,000 pounds, vehicles transporting hazardous materials which require to be placarded, and certain buses are covered by this rule.

The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in motor carrier operations. This rule is necessary to prohibit a driver from driving while that driver has a prohibited drug in his or her system or if that driver has used drugs as evidenced by a drug test showing the presence of drugs or drug metabolites. The rule is intended to ensure a drug-free motor carrier workforce and to eliminate drug use and abuse in the motor carrier industry.

DATES: Effective Date: This final rule is effective on December 21, 1988.

The drug testing requirements must be in place no later than December 21, 1989, for motor carriers with 50 or more "drivers subject to testing." By December 21, 1990, all other motor carriers and drivers must be included in a drug test program which meets this rule. "Drivers subject to testing" is defined as: (1) employee drivers, and (2) contract drivers under contract for a total of 90 days or more in any 365-day period. Only the "drivers subject to testing" are required to be tested under a program implemented by large motor carriers by December 21, 1989. Random testing is to be phased in over a 1-year period starting with the applicable date noted above.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1986, the FHWA published an advance notice of proposed rulemaking (ANPRM) (51 FR 17572) asking several questions on drug testing. These questions were:

1. Should the FHWA mandate urine drug screening (preemployment and biennial) for all interstate commerce drivers?

2. Should the FHWA only state it permits urine drug screening in the regulation, leaving the decision to the motor carrier and the examining physician whether to perform the test?

3. Whether urine drug screening is mandated or optional, should the urine drug screening, where positive, be automatically subjected to more specific and sensitive tests for further confirmation?

4. Should the list of prohibited drugs, as now named, be changed to prohibit use of all drugs in the Schedules of Controlled Substances (SCS), Schedules I through V, 21 CFR Part 1308? If the SCS is adopted in its entirety, should a provision be added that specifically addresses instances of drivers using SCS drugs under doctor's orders?

The FHWA also published a notice of proposed rulemaking (NPRM) (BMCS Docket No. MC-120, Notice No. 86-3; 51 FR 17572) in the **Federal Register** on the same date as the ANPRM (May 13, 1986). The NPRM sought comments on the qualification and disqualification of drivers, background investigation and inquiries into the drivers' driving records, written examinations, and road tests. With regard to the qualification of drivers, the NPRM sought comments on a proposal to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to include a drug testing, standard for drivers of certain hazardous materials-laden vehicles. Comments were also sought on whether the proposed drug testing plan should mandated or be a recommended industry practice.

On June 14, 1988, the FHWA published, in the **Federal Register**, an NPRM proposing drug testing for commercial motor vehicle drivers who operate in interstate commerce (53 FR 22268). This NPRM addresed the issues contained in both earlier rulemaking actions.

The FHWA also held a series of public hearings on the proposed regulations. These hearings were held on July 12, 1988, in Cleveland, Ohio; July 25, 1988, in Dallas, Texas; August 4, 1988, in Los Angeles, California; and August 9, 1988, in Washington, D.C. The proceedings of all the hearings were recorded by a court reporter. The transcript of each hearing and any statements or other material submitted to the hearing panel during the hearings have been placed in the public docket. This material also has been carefully reviewed during the development of this final rule.

Current Rules

The FHWA has a very strong anti-drug program in place to combat drug use, primarily drug-related impairment while driving, in the motor carrier industry. The following is a description of current rules pertaining to the use of drugs by drivers of commercial motor vehicles being operated in interstate commerce.

Under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. App. 2707, the FHWA has established a regulation to disqualify drivers who operate motor vehicles while under the influence of alcohol or drugs. (**Federal Register** Volume 53, No. 140, July 21, 1988) These Federal disqualifications apply to intrastate drivers, as well as those operating vehicles in interstate commerce. The regulation disqualifies a driver for 1 year from driving a commercial motor vehicle in intrastate or interstate commerce if found to have committed a first violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance. If such a driver was transporting hazardous materials cargo, the disqualification period is 3 years. A second offense will result in a lifetime ban from driving a commercial motor vehicle unless the Secretary, by regulation, reduces the penalty to no less than 10 years.

Also, under subtitle T of title I of the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, section 1971, 100 Stat. 3207-59), it is a Federal crime for the operator of a common carrier (i.e., rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, an air common carrier) to operate under the influence of alcohol or a controlled substance. The maximum penalties, upon conviction, are 5 years imprisonment and a $10,000 fine. This Federal law is codified at 18 U.S.C.A. section 342 (West Supp. 1987).

The FHWA has adopted regulations which prohibit the use, by a driver, of a Schedule I drug or other substance, an amphetamine, a narcotic, or any other habit-forming drug (49 CFR 391.41(b)(12) (1987)). A driver who uses such a drug is not qualified to operate a commercial motor vehicle in interstate commerce (49 CFR 391.11(b)(6)(1987)). Unqualified persons who operate in commercial motor vehicles in interstate commerce are subject to civil and criminal penalties (49 U.S.C. 521(b) (1982 & Supp. III 1985)).

The FHWA has issued specific regulations prohibiting the operation of a commercial motor vehicle when drugs are involved. This rule provides that no driver shall be on duty and possess, be under the influence of, or use a Schedule I drug or other substance, an amphetamine, a narcotic, or any other substance, to a degree which renders the driver incapable of safely operating a commercial motor vehicle (49 CFR 392.4(a) (1987)). This provision does not apply to the possession or use of a drug administered by or under the instructions of a physician who has advised the driver that the drug will not affect the driver's ability to safely operate the vehicle (49 CFR 392.4(c)). Also, this section does not prohibit the "possession" of a drug which is manifested and transported as part of the shipment (49 CFR 392.4(d)).

Under 49 CFR 391.15, upon a conviction for driving under the influence of a prohibited drug, the driver is disqualified for at least 1 year and up to 3 years depending on previous convictions.

On October 4, 1988, the FHWA published a final rule required by the Commercial Motor Vehicle Safety Act of 1986 pertaining to alcohol use by commercial drivers. That rule which became effective October 27, 1988, reduces the blood alcohol concentration (BAC) level at or above which a driver can be disqualified for operating a commercial motor vheicle under the influence of alcohol. The rule establishes 0.04 percent as the BAC level to be used. States will be required to adopt and enforce this BAC level in order to comply with the provision of the 1986 Act in order to avoid the loss of Federal-Aid Highway funds. The disqualification provisions are enforceable from a Federal perspective effective October 27, 1988.

This final drug testing rule complements these rules by requiring drug testing by certain motor carriers. The existing rules generally address impairment due to drug use and resulting possible disqualification. This final rule generally addresses drug use and the determination that a driver is medically unqualified to drive.

Jurisdiction

Authority pertaining to motor carrier safety has been delegated to the FHWA at 49 U.S.C. 104 (1982 and Supp. III 1985) and 49 CFR 1.48 (1986). Under 49 U.S.C. 3102 (1982 & Supp. III 1985), the FHWA may prescribe requirements for the qualifications and maximum hours of service of employees and the safety of operation and equipment of motor carriers. For purposes of this section, motor carriers include for-hire motor carriers of passengers or property and private motor carriers of property operating in interstate commerce. Motor vehicles subject to this regulatory authority are not limited by size or weight. Under this authority, the FHWA has established the FMCSRs, 49 CFR Parts 350-399.

Section 206 of the Motor Carrier Safety Act of 1984 (Act), 49 App. U.S.C. 2505 (Supp. III 1985), directs that Federal safety standards be established for motor vehicles that, at a minimum, ensure that—

(a) Commercial motor vehicles are safely maintained, equipped, loaded, and operated;

(b) The responsibilities imposed upon operators of commercial motor vehicles do not impair their ability to operate such vehicles safely;

(c) The physical condition of operators of commercial motor vehicles is adequate to enable them to operate such vehicles safely; and

(d) The operation of commercial motor vehicles does not have deleterious effects on the physical condition of such operators.

This regulatory authority is applicable to for-hire and private motor carriers operating commercial motor vehicles in interstate commerce. A commercial motor vehicle is defined in the 1984 Act as a vehicle used in interstate commerce if the vehicle—

(a) Has a gross vehicle weight rating of 10,001 or more pounds;

(b) Is designed to transport more than 15 passengers, including the driver; or

(c) Is used to transport hazardous materials in a quantity requiring the vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Parts 171-179 (1986).

Policy Statement

It is the policy of the FHWA that drivers on the highways of our Nation should be free of drugs. To detect and deter the use of drugs by bus and truck drivers, this rule requires motor carriers to establish a program of four types of driver testing for the use of controlled substances: Pre-employment, periodic (biennial), reasonable cause, and random testing. In addition, this rule requires drivers to ensure that they are tested for drug use after a reportable accident. The testing procedures will protect individual privacy, ensure accountability and integrity of specimens, require confirmation of all positive screening tests, mandate the use of laboratories operating within the guidelines established by 49 CFR Part 40, provide confidentiality for test results and medical histories, and ensure nondiscriminatory testing methods. The FHWA proposes to require all motor carriers subject to these rules to establish effective drug use prevention programs for drivers.

Goals of Testing

The overall goal of the required testing is to ensure a drug-free transportation environment which, in turn, will reduce accidents and casualties in motor carrier operations.

Under this rule, a driver may not use controlled substances on or off duty. In this rule, the terms "controlled substances" and "drugs" are synonymous. If controlled substance use is detected, an individual is unqualified to drive a commercial motor vehicle involved in interstate commerce. A driver could not be hired or used if he/she has a confirmed positive drug test as a result of a pre-employment, periodic, reasonable cause, post-accident or random test. In all cases of a positive test, the driver is medically unqualified until such time as the driver no longer uses controlled substances, tests negative for controlled substances, and is medically recertified.

Drug testing and sanctions for use will help discourage substance use and reduce absenteeism, accidents, health care costs, and other drug-related problems. It will act as a deterrent to those individuals who might be tempted to try drugs for the first time or who currently use drugs. Finally, drug testing will protect the health and safety of the employees of motor carriers and other users of the highway system through the early identification and referral for treatment of workers with drug use problems.

Discussion of Comments

This section discusses the major comments and FHWA's response, including revisions to the NPRM. Generally these comments, while attributed to certain commenters, reflect the views of many others and address the major issues identified by the commenters to the NPRM.

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The FHWA has reformatted the final rule by amending Part 391, Qualifications of Drivers, instead of adding a new part to the FMCSRs. This is being done to streamline the FMCSRs and to clarify that this final rule generally applies to driver qualifications. This change is not substantive. The subparts included in the NPRM have been deleted as unnecessary and a new Subpart H, Controlled Substance Testing, has been added to Part 391. To aid the reader in understanding this change, the following chart of NPRM sections and corresponding final rule sections is included:

NPRM section	Final rule section
382.101	391.81.
382.103	391.83.
382.105	391.85.
382.107	Deleted.
382.109	391.87.
Not included	391.89.
382.111	Deleted.
Not included	391.93.
382.201	391.95.
382.203	391.97.
382.301	391.113.
382.303	391.115.
382.305	Deleted.
382.307	394.7, 394.9, and 394.20.
382.309	Deleted.
382.311	391.117.
382.401	391.99.
382.403	391.101.
382.501	391.103.
382.503	391.105.
382.505	391.107.
382.601	391.109.
382.603	391.111.
382.701	391.119.
382.703	Deleted.
382.705	Deleted.
382.707	391.121.
Not included	391.123.

General Overview of Comments

The FHWA received approximately 145 comments to the docket in response to the NPRM. In addition, 43 persons/organizations presented testimony at the four public hearings. During the public hearings, the Administrator of the FHWA, the hearing official for each of the hearings, requested further information from several individuals who presented statements at the hearings.

The FHWA carefully considered all comments that were submitted to the docket including those received after September 12, 1988, the closing date of the comment period, as well as all testimony presented at the hearings or submitted as requested by the Administrator at the hearings.

The breakdown, by type of commenter, is as follows:

Motor carriers: 42
Farmer organizations: 7
Associations: 39
Individuals: 28
Governmental agencies: 8
Unions: 6
Miscellaneous: 8
Medical: 5

Many of the associations were represented at several of the hearings and also submitted comments to the docket and several commenters submitted more than one comment. The majority of the individuals who testified or submitted comments, and who were not affiliated with an organization, were commercial motor vehicle drivers.

In general, the commenters support the FHWA's efforts to achieve a drug-free motor carrier workforce. There were, however, many differences of opinion regarding the method of achieving that goal. The primary differences centered around the random testing proposal and the proposal to mandate driver rehabilitation and subsequent employment reinstatement (included in 3 of the 4 rehabilitation options proposed in the NPRM). To a lesser extent, the post-accident and reasonable cause testing proposals also received a substantial number of comments.

Many of the commenters were concerned about the practical issues in implementing the rule, such as costs, equity, participation and enforcement. Commenters were also concerned about the legality of the proposal, especially the constitutionality of random drug testing. The following section discusses each of those concerns.

Specific Issues

Constitutional Objections to Drug Testing

The FHWA recognizes that there are legitimate and significant constitutional concerns surrounding drug testing in general and random drug testing as a specific component of drug testing. The FHWA acknowledges the current wide-scale litigation and apparent disparate judicial opinions on drug testing programs. Although the state of the case law is still evolving in rapid fashion and the Supreme Court has not resolved many of the relevant and complex issues, the FHWA is confident that testing of employees under this rule will withstand judicial scrutiny on constitutional grounds.

Of particular concern to the commenters was the relevance of the Fourth Amendment to drug testing. The principles of the Fourth Amendment to the U.S. Constitution are paramount in scrutinizing the fundamental legality of many drug testing programs. The Fourth Amendment applies to "searches" conducted or mandated by the government (i.e., "State action") and protects individuals against "unreasonable searches and seizures." Action by a private party does not constitute State or Federal action unless there exists a close nexus between the State and the action in question. *See Jackson* v. *Metropolitan Edison*, 419 U.S. 345 (1974); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972).

Because drug testing programs required under the final rule are imposed by the government, two collateral issues arise concerning whether the proposed urine tests under these programs constitute a search or a seizure and, if so, is the search or seizure unreasonable within the meaning of the Fourth Amendment. Although most courts to address the issue to date have ruled that toxicological testing of employees for the purpose of determining fitness for duty is a search within the meaning of the Fourth Amendment, the issue is not entirely settled. *See Wyman* v. *James*, 400 U.S. 309, 317–338 (1971) (government welfare caseworker's "home visit" as a precondition for assistance payments is not a Fourth Amendment search). *See also Lovvorn* v. *City of Chattanooga*, 846 F.2d 1539, 1553–54 (6th Cir. 1988) (Guy, R., dissenting) vacated and rehearing en banc Glantco (6th Cir. 1988); *National Treasury Employees Union* v. *von Raab*, 808 F.2d 1057, 1060, 1062 (5th Cir. 1987) (Higginbotham, J., concurring). Cf. *Mack* v. *United States, F.B.I.*, 814 F.2d 120, 125 n.2 (2d Cir. 1987).

Also assuming, *arguendo*, that urine tests of personnel for prohibited substances are "searches" within the meaning of the Fourth Amendment, it is clear that while searches ordinarily must be conducted pursuant to a warrant issued on probable cause grounds, such a requirement is not always necessary. *Almeida-Sanchéz* v. *United States*, 413 U.S. 266, 277 (1973) (Powell, J., concurring). Where, for example, "* * * the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search * * *," the Supreme Court has routinely held that a warrant is not required by the Fourth Amendment (citing *Camera* v. *Municipal Court*, 387 U.S. 523, 533 (1967). *See e.g., Griffin* v. *Wisconsin*, 107 S.Ct. 3163 (1987) (plurality opinion); *New Jersey* v. *T.L.O.*, 469 U.S. 325, 340 (1985). The Supreme Court has likewise found that the probable cause standard is inappropriate where it would defeat the purpose that the search is designed to achieve. *See e.g., New Jersey* v. *T.L.O.*,

469 U.S. 325, 340–342; *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 560–561 (1976) (whie some quantum of individualized suspicion is usually a prerequisite to constitutional search or seizure[,] * * * the Fourth Amendment imposes no irreducible requirement of such suspicion").

Rather, "[t]he fundamental command of the Fourth Amendment is that searches and seizures be reasonable * * *." *New Jersey* v. *T.L.O.*, 469 U.S. 325, 340. In determining the reasonableness of a search, the Supreme Court has repeatedly stressed the importance of the facts particular to the search while acknowledging that the test of reasonableness "* * * is not capable of precise definition or mechanical application." *Bell* v. *Wolfish*, 441 U.S. 520, 559 (1979). In analyzing a drug testing program, "* * * what is reasonable depends on the context within which a search takes place." *New Jersey* v. *T.L.O.*, 469 U.S. 325, 337.

In scrutinizing whether a particular search comports with the Fourth Amendment, courts have adopted a balancing test. In general, to support a claim that a search of an individual or the individual's property is reasonable, the government must demonstrate that, on balance, the public's legitimate interest in conducting the search outweighs the individual's legitimate expectation of privacy. *See e.g., United States* v. *Montoya de Hernandez*, 473 U.S. 531, 537 (1985); *United States* v. *Villamonte-Marquez*, 462 U.S. 579, 588 (1983); *Delaware* v. *Prouse*, 440 U.S. 648, 654 (1979). Thus, the courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Bell* v. *Wolfish*, 441 U.S. 520, 559 (1979).

Thus far, a number of courts have held or suggested in *dicta* that testing upon reasonable suspicion alone may be inadequate. Reasonable suspicion testing allows inquiry only after a problem manifests itself at work. *See, Amalgamated Transit Union, Division 1279* v. *Cambria County Transit Authority*, No. 88–796 (W.D. Pa. July 19, 1988). Furthermore, these courts have allowed drug and alcohol testing in the context of a pre-employment physical or routine health examination. *See, e.g., Combria County Transit Authority* (drug and alcohol testing during annual physical examinations does not violate employee rights under the fourth amendment; individualized reasonable suspicion not required); *Wrightsell* v. *City of Chicago*, 678 F. Supp. 727 (N.D. Ill. 1988) (drug testing of police officers as part of routine, reasonably required, employment-related medical examination is permissible where there is clear nexus between test and employer's legitimate safety concern); *McDonnell* v. *Hunter*, 612 F. Supp. 1122, 1130 n. 6 (S.D. Iowa 1985) (Fourth Amendment does not preclude taking body fluid specimen as part of pre-employment physical or as part of routine periodic physical examination), *aff'd as modified*, 809 F.2d 1302 (8th Cir. 1987); *Lovvorn* v. *City of Chattanooga*, 647 F. Supp. 875 n. 7 (E.D. Tenn 1986) (no constitutional difficulty with regularly conducted physicals, even if they involve urinalysis for drugs provided they are not used as subterfuge to conduct unreasonable search and seizure). Moreover, as the court in *Cambria County Transit Authority* held, such testing serves the laudable goal of fostering a drug free and sober workforce as well as flushing out those employees with serious drug problems.

Viewed in this light, the clear public interest in assuring that commercial motor vehicle drivers perform their duties free of prohibited substances provides justification for testing and its limited intrusion on privacy expectations of these individuals. The drug problem in society in general and the probability of drug use in the interstate trucking and bus industries were discussed in the preamble of the NPRM. The impairing effects of drugs and the substantial risks to public safety posed by drivers who use drugs underlie the compelling governmental interest in the promulgate of this rule.

It is important to note that the drug testing requirements of the final rule are limited in scope and involve a minimal intrusion or privacy. As the Supreme Court has indicated, where searches are undertaken in situations where individualized suspicion is lacking, other safeguards must be relied upon to ensure that the discretion of the party conducting the search is properly defined and the scope of the search is limited. *See Delaware* v. *Prouse*, 440 U.S. 648, 654–655; *New York* v. *Burger*, 107 S.Ct. 2636 (1987). The drug testing requirements of the final rule place significant constraints on a motor carrier's discretion in conducting drug testing. For example, the requirement for random drug testing calls for selection of an employee to be tested in a scientifically acceptable manner, such as by use of a computer-based random number generator. Requirements for testing based on reasonable cause or post-accident testing are also severely circumscribed in order to limit an employer's discretion in administering these tests to employees.

The actual testing procedures that each motor carrier is required to implement under this final rule are narrowly tailored to respect a driver's reasonable expectations of privacy. 49 CFR Part 40 governing collection of urine samples, as referenced in the final rule, are carefully designed to preserve privacy while protecting the integrity of the sample. The final rule contains a number of important safeguards, including privacy during collection under most types of tests, stringent laboratory safeguards, and provisions for challenging the test results. Other employee drug testing programs incorporating the collection and testing procedures of the HHS Guidelines have been upheld against constitutional challenge. *See American Federation of Government Employees* v *Dole*, 670 F. Supp. 445 (D.D.C. 1987), *appeal filed*, No. 87–5417 (D.C. Cir. Dec. 11, 1987) (upholding the constitutionality of the Department of Transportation program for random drug testing of safety- and security-sensitive agency employees); *National Association of Air Traffic Specialists* v. *Dole*, 2 IND. Emp. Rts. Cases (BNA) 68 (D. Alaska 1987) (denying a motion for a preliminary injunction against the FAA's use of urinalysis drug testing as part of an annual physical examination of the agency's air traffic specialists).

Equally significant is the fact that urine drug testing of sensitive safety- and security-related employees is to be conducted in the "context" of the employment relationship. As the Supreme Court has noted, "[t]he operational realities of the workplace * * * may make *some* employees' expectation of privacy unreasonable." *O'Connor* v. *Ortega*, 107 S.Ct. 1492 (1987). This is particularly important in circumstances where the employee works in an industry in which an employee's activities are subject to extensive regulation. Thus, persons who work in such "closely regulated" industries have a "reduced expectation of privacy" [*New York* v. *Burger*, 107 S.Ct 2636 (1987)] and, "in effect consent[ ] to the restrictions placed upon them." [*Almeida-Sanchez* v. *United States*, 413 U.S. at 271]. For these reasons, two Federal courts of appeals have upheld urinalysis testing, in the absence of particularized suspicion, in industries where pervasive regulation has reduced an employee's expectation of privacy. *See Rushton* v. *Nebraska Public Power Dist.*, 844 F.2d 562, 566 (8th Cir. 1988) (nuclear plant operators); *Shoemaker* v. *Handel*, 795 F.2d 1136,

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1142 (3rd Cir.), *cert. denied*, 479 U.S. 986 (1986) (jockeys); *Policemen's Benevolent Ass'n of New Jersey, Local 318* v. *Township of Washington*, 850 F.2d 133 (3d Cir. 1988) (police officers).

The FHWA recognizes that a number of Federal and State courts have rejected government-mandated drug testing programs on Fourth Amendment grounds. However, even courts striking down drug testing programs have recognized that drug testing is appropriate in other contexts. *See e.g., Lovvorn* v. *City of Chattanooga*, 846 F.2d 1539, 1533–54 (6th Cir. 1988) (Martin, J.) vacated and regarding en banc granted (6th Cir. August 3, 1988) ("When determining then whether a mandatory drug search is 'reasonable,' we believe that, as the costs to society of an impaired employee increase, the requisite level of suspicion that a drug problem exists decreases"); *Policemen's Benevolent Ass'n Local 318* v. *Township of Washington*, 672 F.Supp. 779, 792 (D.N.J. 1987), *rev'd*, 850 F.2d 133 (3d Cir. 1988) ([T]he need to prevent a major airline disaster presents a far more compelling rationale than those presented [by the municipality in support of testing its police officers.]"); *American Federation of Government Employees* v. *Meese*, No. C–88–1419–SAW (N.D.Cal. June 17, 1988) (issuing a preliminary injunction against a Bureau of Prison plan to test randomly all agency employees but nonetheless noting that "[t]here are cases in which compulsory drug testing may be justified in the interest of public safety or security." Memorandum opinion at 2).

The FHWA also is aware of the recent Ninth Circuit decision that held that the Federal Railroad Administration's mandatory blood and urine tests after certain accidents, incidents, or rule violations are unconstitutional because the rules do not require a showing of "particularized suspicion" of drug or alcohol impairment prior to testing. *Railway Labor Executives' Association* v. *Burnley*, 839 F.2d 575 (9th Cir. 1988), *cert. granted*, 108 S.Ct 2033 (1988). The Supreme Court has granted a government petition for *writ of certiorari* in this case and has ordered that the case be argued this term "in tandem" with *National Treasury Employees Union* v. *von Raab*, 816 F.2d 170 (5th Cir. 1987), *cert. granted*, 108 S.Ct. 1072 (1988) upholding drug testing of applicants for critical safety or security sensitive positions in the U.S. Customs Service). Decisions in these case may not be forthcoming until the Spring of 1989. Numerous commenters urge that FHWA should delay a decision on a final drug rule until these cases are resolved. The FHWA disagrees.

The DOT believes that FHWA's anti-drug program and similar drug testing regimens proposed by other administrations within the Department will be ruled constitutional. The critical public safety need for properly administered drug testing to ensure that employees in the transportation industry are free from drugs while performing certain sensitive safety- and security-related functions outweighs the practical considerations which would delay rulemaking so that it could be tailored to any guidance that may be offered by the Supreme Court when the pending cases are ultimately decided. Such a delay would unnecessarily defer the adoption of this important safety rule well beyond that needed to allow reasonable time for implementation.

Pre-Employment Testing

The majority of the commenters supported the proposal, without reservation, to require motor carriers to ensure that driver-applicants are chemically tested for evidence of the use of controlled substances.

Comment: Scope of Requirement. The National Private Trucking Association (NPTA) supports the proposed requirements for pre-employment testing by carriers, while expressing two concerns. The first concern deals with the scope of the requirement. The NPTA contends that pre-employment testing should be required only for those applicants the motor carrier intends to hire. It indicates that the time and costs associated with testing every applicant could be immense. Under 49 CFR Part 40 all positive initial screenings would have to be confirmed by a gas chromatography/mass spectrometry (GC/MS) test. Because the proposed rule is silent on the matter of which driver applicants carriers must specifically test, the NPTA commented that the rule should be amended for clarification purposes. The NPTA recommends that the final rule expressly limit its scope to those applicants the carrier intends to hire.

FHWA Response: The FHWA agrees with the NPTA proposal. Accordingly, § 391.103 (proposed § 382.501) has been changed to be more explicit that only those persons the motor carrier intends to hire must be tested for drugs prior to driving for the motor carrier. The order in which drug testing is performed along with the other application procedures is at the discretion of the motor carrier.

Comment: Requiring Confirmation Tests. The second concern the NPTA has relates to the costs associated with the GC/MS testing. The NPTA is opposed to requiring a second, confirmatory test for job applicants who test initially positive if the final rule would impose the responsibility of paying for the confirmatory test upon the carrier. The NPTA contends that in the pre-employment setting, carriers should be provided with as much discretion as possible concerning who they want to employ. The NPTA, therefore, recommends that the proposed rule be amended to give carriers the option of whether to obtain a confirmatory test of any driver applicant who initially tests positive, or, in the alternative, the rule should make clear that the determination of who bears the cost of a confirmatory test has been left to the carrier to decide.zx

FHWA Response: The FHWA recognizes that there is the possibility that a false positive could result from the initial, screening test. Without a confirmatory test, the driver-applicant could be wrongfully identified as a drug user. The FHWA is committed to following 49 CFR Part 40, including the requirement that a confirmation test be performed on every positive screen test. This requirement will ensure that persons are not wrongfully identified as drug users based solely on the results of the less vigorous screen test.

The FHWA is sympathetic to the concern raised by the NPTA regarding the additional costs of the GC/MS tests if they are performed on individuals who are in fact using drugs. However, the FHWA believes the intention of the motor carrier to employ a person, including the performance of a drug test, must ensure that those identified as drug users are tested through the most rigorous methods acceptable.

The FHWA, through this rule, does not intend to dictate who a motor carrier must hire. The requirement for pre-employment drug testing is to determine whether a person is qualified to drive a commercial motor vehicle. If a motor carrier intends to hire a person to drive, the results of the screen test or subsequent confirmatory test must be negative.

Comment: Pre-employment vs. Prequalification. The American Trucking Associations (ATA) also supports the FHWA proposal for pre-employment testing of driver-applicants through analysis of a urine specimen. The ATA suggests that this test should be referred to in the rule as "Prequalification" or perhaps as "Preuse" testing. The ATA agrees with the proposal that a driver who is regularly used by a motor carrier and has been tested negative for drug use, could be used temporarily by another motor carrier without an additional drug test, provided that the driver meets the other requirements of the FMCSRs. The ATA believes that the FHWA should recognize that motor carriers who lease drivers take exception to the term "pre-employment testing" because drivers used by them are not actually "employed." If there is any indication that they treat their drivers as employees rather than independent contractors, they will have problems of non-compliance with various government requirements that are applicable to use of employees but not to use of independent contractors.

FHWA Response: This requirement is intended to ensure that before a driver is used by a motor carrier, the motor carrier assures itself that the driver is free from drugs. Within this context, the FHWA envisions that there may be many instances (e.g., a person driving for a motor carrier for the first time) where "pre-employment" and "periodic" drug tests would be combined to determine if a person is qualified to drive. In such situations, the "pre-employment" test should be considered as the initial "periodic test." Therefore, the FHWA agrees with the concept as suggested by the ATA, but to reduce confusion, has decided to retain the term "pre-employment." Section 391.103 (proposed § 382.501) has been rewritten to clarify that the term "pre-employment" testing encompasses testing of persons a motor carrier intends to hire or use.

Comment: Reporting of Test Results. Greyhound Lines (Greyhound) strongly supports pre-employment testing of all applicants considered for employment. With notice to potential applicants that they will be required to submit to a drug test, Greyhound is finding that 20 to 30 percent of the drug test requests are positive. Based upon this continuing evidence, it believes that pre-employment drug screening is essential to the driver selection process. However, Greyhound does not support the proposed requirement that drug test results should be reported to all applicants. Greyhound indicated that between 1987 and 1988 more than 5000 applicants nationwide were processed. To require notification would create a significant burden on its field organization without an identified benefit.

FHWA Response: The FHWA continues to believe that in order for these requirements to be fair to all affected parties, the results of the test must be made available to those driver-applicants requesting the information. The FHWA has revised § 391.87 (proposed § 382.109) to reflect that the motor carrier must notify drivers of the test results (either positive or negative by drug) and must make this information available to those driver applicants who request it within 60 days from the date the driver applicant was notified of not being hired. The period of 60 days was chosen as a reasonable time for the driver applicant to contact the motor carrier.

Comment: Testing by Others. Consolidated Freightways (CF) indicates it has always supported a mandatory pre-employment testing of drivers and agrees that the testing should be part of the DOT physical examination that determines qualification to drive on this country's highways. Since the inception of CF's drug screening program in November 1985, it has tested over 8000 applicants. The percentage of positive results returned in the pre-employment testing has decreased from 9.1% in 1986 to 8.0% in 1987 and to 7.6% in 1988 (through June).

The Owner-Operators Independent Drivers Association (OOIDA) believes that the best system for testing owner-operators would be a certified testing program in which the owner-operator could choose to have a drug test conducted on himself/herself. The owner-operator would be issued a certification that he/she had completed a drug test within whatever period is required. This owner-operator could present this certification to a motor carrier which could then use the owner-operator without further drug testing.

FHWA Response: The FHWA anticipates that such procedures as described by the OOIDA, or modifications thereof, could be used to meet these as well as the other testing requirements. However, the FHWA continues to believe that it is incumbent on the motor carrier to ensure that all drivers it uses, whether they be employees or not, be free from drugs. Section 391.103 (proposed § 382.501) has been modified to allow drug testing programs by entities other than those under the direct control of motor carriers, provided the motor carrier assures itself that the program conforms to this rule. The information required to be obtained by the motor carrier is specified in § 391.103 (proposed § 382.501). The FHWA emphasizes that this provision does not relieve the motor carrier of any responsibilities under this rule.

Periodic Testing

There was nearly unanimous support for the FHWA's proposal that drug testing, through the collection of a urine sample, be made a requirement of the biennial medical examination required under 49 CFR 391.11(b)(6). Many of the commenters believe that periodic drug testing serves as a continuing deterrent for those who do not use drugs and as a continuing means of detecting drug use by casual users as well as by those who are dependent upon drugs. As motor carriers became aware of the drug abuse problem, many motor carriers have implemented drug screening programs as part of the periodic medical examination required by the FMCSRs. The findings of those programs confirm the benefits of drug testing prior to using a driver and of periodic drug screening. The ATA commented that a laboratory which performs drug screens for several major carriers indicated that it has found that up to 5 percent of drug screens completed for reexaminations show positive for drug use. This has occurred even where carriers have given advance notice that a drug screen will be performed. This percentage of "hits" seems, to the ATA, to justify continuation of periodic drug testing. The International Brotherhood of Teamsters (IBT) has 4 years of experience with periodic testing under the National Master Freight Agreement. The IBT supports periodic testing and is convinced from its local unions' experiences under the NMFA that periodic testing does pose a significant deterrent to drug use.

In the preamble to the NPRM, the FHWA requested comments on whether the periodic test should be a one-time requirement. Since the test was "scheduled," the effectiveness in identifying drug users was questioned. The NPTA expressed a view shared by many others that it is too early to tell whether periodic testing should "be a part of all future drug programs, or * * * phased out after several years when the other forms of testing are established and working smoothly." The NPTA recommends that the final rule incorporate a sunset provision of 3 to 5 years which would ensure that FHWA reconsider the effectiveness of, and therefore the continued need for, the periodic testing requirement.

The California Highway Patrol (CHP) believes that while scheduled periodic testing may not be a significant deterrent to occasional drug use, it will identify chronic substance abusers. The CHP also contends that periodic testing also reinforces driver awareness of the motor carriers' and the public's commitment to drug-free driving . CHP notes that periodic testing would be very cost effective, since it would be administered in conjunction with a routine medical examination.

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FHWA Response: The FHWA agrees with the majority of comments that periodic drug testing should be included in the driver's biennial physical. The final rule includes an amendment to § 391.41(b)(12) to require a drug test and to establish that a driver is unqualified if testing positive. Section 391.105 (proposed as § 382.503) has been revised to make it clear that a driver is required to submit a specimen for drug testing during the first medical examination of that driver during the calendar year after implementation of the drug testing program. This revision also states that a motor carrier may discontinue periodic testing after the first 2 years the motor carrier has implemented its random testing program according to the implementation schedule, and therefore, is testing 50 percent of covered employees under its random drug testing program.

The FHWA is revising 49 CFR 391.41(b)(12) to indicate that the drug use prohibition included in the driver qualification criteria is to be based in part on the testing requirements of this final rule. There is nothing to prohibit other procedures to be used to ensure that this requirement is met in addition to the requirements of this rule.

Reasonable Cause Testing

The FHWA currently prohibits motor carriers from allowing a driver to operate a motor vehicle if the driver's ability or alertness is impaired as a result of fatigue, illness, or any other cause (49 CFR 392.3). In addition, 49 CFR 391.11(b)(6) prohibits a motor carrier from permitting a person to drive unless that person is qualified which includes the drug use prohibition requirement contained in § 391.41(b)(12).

Comment: Definition of "reasonable cause". Many of the commenters supported the reasonable cause proposal in concept but questioned what types of actions constitute reasonable cause. As proposed in the NPRM, "reasonable cause" was defined as "the operator has violated a Federal Motor Carrier Safety Regulation or a State or local traffic law that could reasonably lead to, or has resulted in, serious injury or death; and that the motor carrier believes that the actions or appearance or conduct of the driver on duty, as defined in § 395.2 of this subchapter, are indicative of the use of a controlled substance. The conduct must be witnessed and documented by at least two employees, one of whom is in a supervisory capacity."

The commenters contended that the definition is too restrictive and very difficult to implement. They took exception with the portion of the definition that referred only to a serious violation without any observation of the driver's behavior by the motor carrier.

FHWA Response: The FHWA agrees and therefore has revised the definition of "reasonable cause" to limit it to observable actions that indicate the use of a controlled substance. The criterion regarding the commission of a violation of the FMCSRs is deleted. The FHWA believes that drug use should be identified before an action is committed that may injure someone or damage property. Also, in many circumstances, a driver may violate the FMCSRs without representatives of the motor carrier being present, making the proposed definition of "reasonable cause" ineffective.

Comment: Possible Driver Harassment. Commenters, mostly those representing drivers, including owner-operators, were concerned that the requirement for reasonable cause testing does not become a means for driver harassment or discrimination.

FHWA Response: Because of this concern, the regulatory language of the definition of "reasonable cause" has been changed to require that the supervisor must receive training regarding the circumstances and evidence necessary to make the determination. The training for supervisors is to be an element of the motor carrier's anti-drug program. The definition has been further changed to specify that the written documentation shall be signed and produced within 24 hours or before the results of the tests are released, whichever is the earlier.

In response to the comments raised about the problems regarding the availability of two persons to make a determination that a person should be tested for reasonable cause, the FHWA has revised the final rule. A motor carrier may initiate reasonable cause testing based on the observation and documentation of two supervisors or company officials trained in the detection of drug use symptoms if available. If only one supervisor is available only one may be used.

The FWHA believes that these provisions are adequate to ensure that the requirement for reasonable cause testing is not used for driver harassment.

Post-accident Testing

Post-accident testing is considered to be a necessary part of a drug prevention program. In addition, the test results will provide a valuable source of information about the relationship of controlled substance use and motor carrier accidents. Such data will be useful in identifying problems and establishing effective countermeasures.

The FHWA originally proposed mandatory testing for operators of commercial motor vehicles involved in fatal accidents. Commenters raised several areas of concern. One concern was that only motor carrier drivers would be tested, although it is probably more likely that drivers of other vehicles, especially private automobiles and light trucks, might be impaired by drugs. Testing only the motor carrier driver would be inequitable.

Another concern raised was that motor carrier drivers might be tested in accidents in which there is no evidence of their negligence. Without such evidence, many commenters stated such a requirement would be an infringement on the Fourth Amendment to the Constitution regarding unreasonable search and seizure.

The National Transportation Safety Board strongly supported the post-accident testing proposal and recommended that alcohol be included. It further recommended that the time limit for the collection of a sample be set at a maximum of four hours, not the 12 hours as proposed in the NPRM. Other commenters also supported the post accident testing requirement but with some of the concerns noted earlier.

FHWA Response: The FHWA agrees that other drivers involved in an accident might fail drug tests, but the FHWA does not have jurisdiction to require them to be tested. The FHWA, however, will work with the States, particularly the State enforcement agencies involved in the Motor Carrier Safety Assistance Program (MCSAP), to encourage the testing of all drivers involved in an accident with a commercial motor vehicle where drugs are suspected.

While the FHWA believes that these concerns have merit, they should not be used as a reason for eliminating the requirement for drug testing of commercial motor vehicle drivers after a reportable accident. The FHWA does recognize the logistical problems raised by several commenters regarding the notification of motor carriers of an accident which, under the NPRM, would require a drug test.

Therefore, the FHWA is requiring that the driver be responsible for ensuring that a urine sample is taken, a drug test performed in accordance with 49 CFR Part 40, and that the results be reported to the motor carrier after all reportable accidents involving the driver. The FHWA believes that the driver is in the best possible position to ensure that a drug test is performed. The requirement to accomplish this should not depend upon whether the local/State policy agency or others request that such a specimen shall be provided. If the driver is too seriously injured to provide a urine specimen, the rules shall require that the individual provide the necessary authorization for the obtaining of hospital reports or other documents that would indicate whether there were any drugs in the driver's system.

A reportable accident is defined in Part 394.3 as an accident which results in death of a human being or bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or total damage to all property aggregating $4,400 or more based upon actual costs or reliable estimates.

The FHWA is also interested in obtaining additional drug-use information related to accidents. Under the final rule, an employee is subject to post-accident testing as soon as possible after the accident but in no case later than 32 hours after the accident. Selection of this time period comports with the Department of Transportation's post-accident testing program for DOT employees, which provides a maximum of 8 hours to determine if an employee is required to be tested and an additional 24 hours to obtain the sample for testing. The FHWA is also requiring that motor carriers notify the FHWA, as part of the accident reporting requirements of 49 CFR Part 394, Notification and Reporting of Accidents, if a drug test (of any body fluid) was performed and the results of such test. Section 391.87 (proposed § 382.109) and Part 394 have been revised to add this provision to this rule.

The FHWA believes this provision will provide the much needed information regarding the relationship between drug use and accidents. As noted by many commenters, mostly motor carriers and the NTSB, the practical issue of requiring a motor carrier to perform a drug test on a driver involved in an accident away from the motor carrier's place of business would be very difficult. The motor carrier may not be made aware of the accident until several hours after the accident. The final rule expands the proposed requirements by requiring a drug test for all reportable accidents. This revision should increase information about drug-related accidents from that proposed in the NPRM.

The National Governor's Association is conducting a research study on possible improvements in truck and bus accident reporting. As part of this study, it will be conducting pilot projects in several States to test a new accident reporting form, reporting criteria and procedures. Based on the results of this study, the FHWA may further modify the accident reporting requirements and procedures now contained in Part 394.

Random Testing

The NPRM proposed that motor carriers establish anti-drug programs that include random testing at a testing rate up to 125 percent. The FHWA asked how such a testing program would work for smaller motor carriers and owner-operators who are not motor carriers.

The majority of the commenters addressed the random testing element. They identified several concerns with the concept of random testing. Of concern to many, were the legal issues. The FHWA is addressing to these concerns in another section of this preamble.

The NPRM provided several suggestions on how drivers and motor carriers could comply with the testing requirements (especially the random testing element) in the rule. These suggestions were:

1. Form consortiums made up of owner-operators and small carriers that would develop a centrally administered random testing program.
2. Form consortiums, and hire a contractor to develop and implement a random testing program.
3. Contract separately with an outside company that would setup these services.
4. Have existing industry-related groups (e.g., trade associations) setup drug programs in which small entities could participate.
5. Arrange to be included as a part of a larger company's drug testing program.

The ATA stated in its comments that the FHWA cannot have an effective random drug testing program if it mandates that motor carriers must do such testing. The ATA outlines two basic problems (1) 71% of the motor carriers have only one vehicle, and most of the others have less than six vehicles. It is impossible for an owner-operator to test himself/herself randomly. (2) Drivers usually operate 100,000 miles a year. They are away from home most of the time driving, loading and unloading, and waiting for loads and are not readily available for random drug testing.

The ATA believes that in the trucking industry, random testing is possible only through roadside random drug testing. The ATA contends that roadside testing, conducted by State enforcement officers participating in the MCSAP program, overcomes the trucking industry problems of carrier size and driver availability. It overcomes the potential of management failure to have a random drug testing program and the potential for driver failure to obey an order to be tested in a timely fashion after being notified that he/she has been selected for random testing.

The ATA further contends that a roadside program would create the credible threat that any driver, at any time, might be tested. A roadside test finding of positive drug use would result in disqualification of a driver for 1 year for the first offense and lifetime for a second offense. This tougher penalty would be a much stronger deterrent than the finding of "unqualified" and a short layoff that would result from a similar test result if the FHWA mandates that motor carriers must conduct the random drug test program.

The ATA believes that the FHWA has the legal authority under the MCSAP program, to require States to conduct random drug testing programs as a condition of receiving MCSAP funds. To do this, the ATA believes, the FHWA would merely have to amend the FMCSRs to establish guidelines to be used in conducting random drug testing and amend the MCSAP requirements in 49 CFR Part 350 to specify a level of random testing required to receive MCSAP funds. Upon receipt of a positive test result, the State agency would notify the driver, the motor carrier, and the FHWA. The FHWA would obtain a copy of the test results and issue a letter of disqualification to the driver, with a copy to the Commercial Driver License Information System, the State of licensure, and the motor carrier. The FHWA would maintain a permanent record of drivers disqualified for 1 year and for those disqualified permanently.

The ATA believes that consortiums, contractors, associations, and other third party organizations will be available to help motor carriers with their drug testing programs and that this will be a benefit to the carriers and to the FHWA drug abatement objectives, with the exception of random drug testing. The ATA does not believe that permitting third parties to set up and maintain drug testing programs would solve the trucking industry problem of effective mandatory random drug testing by motor carriers. The fact that third party programs are available does not mean that motor carriers would make use of them.

Many small carriers are located far from third party testing services and the problem of driver availability for random testing will still exist with third party programs. Third party programs would not result in effective sanctions

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for drivers with positive test results, comparable to the tough sanctions that would be imposed for positive test results through roadside drug testing.

The ATA also indicated that the testing rate should be initiated at a target rate of 10% and apply only to those drivers of commercial motor vehicles of more than 26,000 pounds gross vehicle weight rating (GVRW). The ATA believes that using the 26,000 pound threshold is consistent with the commercial driver license program and will focus on those drivers who travel longer distances and may be more tempted to use drugs because of being away from home for long periods. There is no deterrent from drug use for drivers if the only penalty is a short time off until they can get a "clean" test, as would be the case if the random testing program is made the responsibility of motor carriers.

The ATA agrees, however, that management must be allowed its own prerogatives for disciplining a driver who has a positive test result, over and above the penalties mandated by Congress and the FHWA. To as great an extent as possible, the ATA asserts, the FHWA requirements should avoid preemption of management programs established individually by motor carriers or through collective bargaining agreements.

The ATA also supports a suggestion the FHWA included in the NPRM to provide for a revision of the sampling rates based upon success of the mandatory random drug testing program. The ATA stated that success can be measured best through a roadside program of mandatory random drug testing, rather than requiring motor carriers to perform random testing.

The National Private Trucking Association (NPTA) supports random testing, even if it is required to be performed by the motor carrier. In supporting random testing by carriers, however, NPTA noted that a legitimate distinction does exist between the typical private carriage operation and the typical for-hire operation of a considerably large segment of the trucking industry, i.e., the truckload (TL) segment. That distinction concerns the use of owner-operators. While the NPTA has expressed its fundamental support for carrier-performed random testing, NPTA also believes the program would be more effective, both from a practical standpoint and from a constitutional standpoint, if random tests were to be conducted by law enforcement personnel in conjunction with their roadside inspections. The NPTA urged the FHWA to give serious consideration to that approach as an alternative to carrier conducted random testing. The NPTA believes the final rule should require that the annual sampling rate for random testing be no less than 50%.

The IBT stated that it is adamantly opposed to random drug testing. The IBT views it as "an affront to the human rights and personal dignity of its members who may be subjected to it." The IBT contends that the goal for a drug free transportation industry can be reached through the use of less intrusive forms of drug testing, such as reasonable cause and periodic physical examinations, which do not suffer from the same constitutional infirmities inherent in random testing. The IBT disagrees with the FHWA's stated belief that "an employer-sponsored program is the most effective form of random testing." In fact, the IBT does not believe that employer-sponsored random testing is feasible at all in the trucking industry. About 90% of the "employers" in trucking are either owner-operators or companies so small that a truly random program as the FHWA envisions is simply not workable. In the remaining small percentage of motor carriers, which will benefit least from any government imposed drug testing program, practical and logistical problems will make it very difficult, and much more expensive than the FHWA foresees, to implement coherent random testing programs.

The IBT indicated that none of the five options posed by the FHWA are really viable for random testing of owner-operators. Even supposing that voluntarily consortia could be established for random testing, there would be no way to prevent a driver from simply withdrawing when his/her number came up. There could be no enforcement by the consortium if a driver did test positive. The communications system and network of collection sites that would be needed to service such a consortium would have to be very expensive.

The American Bus Association supports a random drug testing including the 125% annual sampling rate since it led to such effective deterrence in the results published by the Department of Defense and the Coast Guard.

Greyhound Lines implemented its drug testing program in 1978 and supports the Department's initiative in the proposed rulemaking to require mandatory drug testing of all heavy duty commercial motor vehicle drivers. Greyhound is considering a random drug testing program that would annually test 75 percent of its drivers and plans to adjust that percentage based upon findings nationally and regionally as necessary. Greyhound indicated that it has a significant problem concerning structuring a random testing program that would not adversely affect locations with 10 or fewer drivers. Greyhound believes the final regulation should give motor carriers the flexibility to adjust the percentage of drivers to be tested. Under this proposal, if a high percentage of "positives" were found from random tests conducted, then the percentage of tests would be increased until a deterrent effect is noted.

The OOIDA is opposed to any form of random testing, whether by motor carriers or by Federal or State officials. The OOIDA believes that random testing is an embarrassment to those individuals who are innocent, and states that it plans to challenge, in the courts, any final rule that includes provisions requiring random testing for commercial motor vehicle drivers.

Other commenters support the concept of a random testing pilot program to evaluate the drug problem in the trucking industry and recommend appropriate steps after evaluation of the program. Many commenters believe there is insufficient evidence that random drug testing will serve as a deterrent to drug usage.

FHWA Response: The FHWA continues to believe that random testing can be an extremely effective method for decreasing drug use among commercial motor vehicle drivers because abstinence from use is the only way to prepare for an unannounced test. The success of random drug screening has been demonstrated in various programs. The United States Coast Guard implemented a random testing program for its uniformed personnel which led to a 75 percent decrease in drug use over a 5-year period. The Department of Defense has a random testing program which has resulted in a drop from 27 percent use-rate in 1980 to 8.9 percent in 1985.

The FHWA believes that random roadside drug testing at appropriate testing levels would be a very effective deterrent to the use of drugs by commercial motor vehicle drivers. The FHWA does not believe, however, that it can mandate such a program for State initiated enforcement. Unfortunately, the FHWA does not believe that this approach, as suggested by ATA and many other commenters, is a viable option at this time.

The FHWA believes, however, that an employer-sponsored program can include an effective form of random testing. As noted in the NPRM, the FHWA continues to be concerned that the programs that will be established in response to this final rule are fair and equitable to all motor carriers and drivers. The type of operation should not be used as an excuse to evade subjecting drivers to random testing. The FHWA calls upon the industry to work together to ensure that drivers who use drugs and drive in interstate commerce are identified and banned from driving until they are drug free. Only through a cooperative effort using the general framework established by this final rule will this be achieved.

Since the majority of the comments were opposed to random testing, information on the specifics of such a program were not forthcoming. As noted in the NPRM, the FHWA is concerned about the rate of testing that would provide an adequate level of deterrence. The ATA suggests that the initial rate be set at 10% while the ABA believes the 125% rate should be used. The NTSB suggested that a level closer to the upper limit should be chosen.

The FHWA has decided that a minimum testing rate of 50% is to be used. Such a level will provide a base line to make adjustments as necessary based on evidence of use at this rate. At this time, the FHWA believes that a 50 percent minimum testing rate will provide a sufficient deterrent to drug use. This rate is also consistent with the random testing program currently applicable to civilian employees of the U.S. Department of Transportation occupying sensitive safety and security-related positions. Those drivers who attempt to falsify their medical qualifications (by not admitting to testing positive and thereby being unqualified to drive) will be identified.

Implied Consent and Waivers

The FHWA has deleted proposed §§ 382.107 and 382.111 which address waivers and implied consent. These sections are being deleted as unnecessary and/or redundant. Section 206(f) of the Motor Carrier Safety Act of 1984 provides the Secretary with authority to waive, in whole or part, any rules issued under the authority of this Act. This rule is being issued under that authority. The FHWA believes an implied consent provision is not needed in this rule since the requirements are to determine if a driver is qualified to drive in interstate commerce.

Implementation Schedule

This rule is effective December 21, 1988.

A new § 391.93, Implementation schedule, establishes a timetable for implementing testing programs (pre-employment, periodic, reasonable cause, and post-accident) based on the number of drivers under the motor carrier's control. Motor carriers with 50 or more "drivers subject to testing" are required to initiate a drug testing program by December 21, 1989, for those drivers only. Other motor carriers will be required to initiate a drug test for other drivers by December 21, 1990. "Drivers subject to testing" is defined as employee drivers and leased drivers who are leased for 90 days or more in a 365-day period. Motor carriers using less than 50 drivers subject to testing are required to initiate a drug testing program by December 21, 1990.

The threshold of 50 drivers subject to testing was chosen by the FHWA as the level that would provide for an adequate selection pool for random testing. It would also provide, along with the other drug testing requirements, a sufficient number of tests to enable a basis for determining drug use within the motor carrier's driver work force. The number of tests required may also enable the motor carrier to realize lower costs per test thus minimizing the economic impact of the rule.

The FHWA is allowing for the additional year to initiate a drug testing element to the drug testing programs for smaller motor carriers and motor carriers using drivers for short time periods to allow them adequate time to establish workable, equitable, and effective mechanisms to perform drug testing, especially random testing.

A minimum phase in schedule is also established for random testing in § 391.93. Commencing with the implementation date, motor carriers are required to perform random testing at a minimum as follows: (1) The random drug testing is spread reasonably through the 12-month period; (2) The last test collection during the year is conducted at an annualized rate of 50 percent; and (3) the total number of tests conducted during the 12 months is equal to at least 25 percent of the covered population.

For some motor carriers, particularly those with a large number of drivers subject to drug testing, it may be a substantial burden to move from no drug testing directly to a 50 percent random testing rate. If required to have tested 50 percent of all covered drivers by the end of the first year, motor carriers might have to test at rates far above a 50 percent rate toward the end of the year, to make up for lower rates at the beginning. Employers should be permitted to start out at a lower testing rate and work up to 50 percent as experience is gained and the testing procedure becomes administratively more routine. We do not want to create a situation which might lead to mistakes by requiring initial testing at too high a rate.

The final rule therefore provides an implementation procedure that would allow motor carriers to phase in random drug testing during the first 12 months in which tests are conducted. Motor carriers would not be required to reach an annualized rate of 50 percent until the last test collection. The tests would have to be spaced reasonably through the year to permit the motor carrier to phase in to the 50 percent rate, and the total number of tests conducted would have to be equal to at least 25 percent of the drivers subject to testing.

Suppose, for example, that a motor carrier has 1,000 drivers subject to testing. At a 50 percent annual rate, 500 tests would have to be conducted during a year. Under the phase in, however, the motor carrier could conduct only a few drug tests at the beginning of the program and then gradually increase the number of tests until, by the end of the year, the annualized rate of 50 percent was achieved. Thus, if the motor carrier's drug testing plan contemplated administering random tests on 12 occasions during the year, the motor carrier would need to administer at least 42 tests (500 divided by 12) on the last occasion, but could administer fewer tests until then. Overall, the motor carrier would have to conduct at least 250 random tests the first year. In subsequent years, the 50 percent rate would be maintained.

As noted in the NPRM, the FHWA envisions that many of the small motor carriers and owner-operators will form consortiums and other cooperatives to meet the requirements of this rule. The FHWA encourages this and intends to promote such consortiums. The arrangements agreed to by these drivers and carriers will be tailored to their specific operations and characteristics. The FHWA welcomes any type of arrangement as long as it complies with the requirements of this rule.

An example of such an arrangement would be a consortium of owner-operators hiring a contractor to administer their drug testing program (pre-use and random testing elements of the program). The contractor would be responsible for notifying the drivers selected for random testing, ensuring that the test collection site, chain of custody procedures, and testing laboratory all comply with 49 CFR Part 40. Furthermore, the contractor would also obtain the medical review officer who would be responsible for interpreting the results, including verification of positive tests and

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notifying the driver and/or motor carrier of the results of the tests.

The consortium would also serve as the repository of all summary information regarding the "makeup" of the random test. Information regarding the number of tests performed and the results of the tests as well as the random selection procedures would provide objective and credible data to substantiate an effective and equitable testing program.

As noted in the comments, many owner-operators operating under short term trip-lease arrangements are not aware of their destinations sufficiently in advance to ensure that their location at any given time would be known to others. Often these operations consist of delivering a load in one city under a trip-lease agreement for a motor carrier, then calling a broker or another motor carrier to obtain another load, in many cases, to a destination other than the originating city. The FHWA recognizes such operations and does not intend, by this rule, to alter such arrangements. It is incumbent on the motor carrier entering into a trip-lease arrangement with the owner-operator to have drug testing program to ensure that the driver is not using drugs. With regard to the example cited above, the FHWA envisions that the motor carrier would verify that the owner operator is participating in a bona fide drug testing program through a consortium and verify that the driver is not currently unqualified because of testing positive for drug use by contacting the consortium prior to entering into a lease agreement with the driver.

The motor carrier has the option of subjecting these drivers to a random test under the motor carrier sponsored program. The rule allows motor carriers to accept bona fide consortium drug testing program in lieu of their carrier-based program.

The above example illustrates the potential for cooperation betwen motor carriers and owner-operators participating in a consortium. The motor carrier would be relying on the consortium to perform the pre-employment and random testing for potential drivers, thereby complying with the testing requirements with little impact on their operations. At the same time, drivers who are selected for testing under the consortium's random selection process could be notified through the motor carrier when the carrier calls the consortium to verify the drivers participation. Those drivers not using drugs would be subject to minimal delays in obtaining loads due to these requirements. If a motor carrier uses the same driver on a number of different trip contracts, the motor carrier would only have to check once every 6-month period on that driver. Those drivers who attempt to falsify their medical qualifications (by not admitting to testing positive and thereby being unqualified to drive) should be identified by this process.

Conflict with Foreign Laws

The FHWA has determined not to make the rule applicable in any situation where compliance would violate the domestic laws or policies of another country. In addition, because of the potential confusion that may exist involving application of this rule in situations where compliance could violate foreign laws or policies. The FHWA has determined not to make the rule applicable, until January 1, 1990, in any situation where a foreign government contends that compliance with our rule raises questions of compatibility with its domestic laws or policies. During the next year, the Department of Transportation and other U.S. government officials will be working closely with representatives of foreign governments with the goal of reaching a permanent resolution to any conflict between our rule and foreign laws and policies. The U.S. and Canadian Governments have already established a bilateral working group in an attempt to achieve this objective. The FHWA believes that considerable progress has already been made and further meetings will be held in the near future. While the FHWA believes that this can be a model for addressing the concerns of other countries, it is not intended to be the exclusive means. The FHWA Administrator may delay the effective date further under this section, if such delay is necessary to permit consultation with any foreign governments to be successfully completed.

It is the FHWA's intention to issue a notice, no later than December 1, 1989, that would make any necessary amendments to the rule as a result of discussions with foreign governments. Shortly after their issuance, any such notices will be published in the **Federal Register**. While the FHWA recognizes that any decision not to apply this rule to foreign citizens has the potential to create some anomalous conditions in competitive situations, it is the intention of the U.S. government to make every effort to resolve potential conflicts with foreign governments in a manner that accommodates their concerns while ensuring the necessary level of safety by those that the FHWA regulates.

Prescription Medication

A driver would be allowed to use a controlled substance (except for methadone) when taken as prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties. Under § 391.97 (proposed § 382.203) Prescribed drugs, a driver would have an affirmative defense to an allegation that he/she unlawfully used a controlled substance. The driver would have to prove, through clear and convincing evidence, that his/her use of the controlled substance was as prescribed by the licensed medical practitioner.

The motor carrier, MRO, and the driver would have flexibility in applying this provision. For example, when a driver tests positive for the use of controlled substances, a driver has the burden of proof to document the use was lawful. The motor carrier and the MRO may accept the affirmative defense and allow the driver to continue to operate, or request the opinion of another physician. The MRO may provide an opportunity for a driver to discuss a positive test result and clarify if a prescribed medication was involved. If the motor carrier elects the latter option and a medical dispute follows, the motor carrier or the driver has the option of bringing the question of the driver's qualification to the Office of Motor Carriers for resolution through 49 CFR 391.47, Resolution of conflict of medical evaluation.

The FHWA views use of § 391.47 as a last resort, however, and believes that the motor carrier, the licensed physician, and the driver can best resolve disputes regarding a positive teat result due to the use of prescribed controlled substances. The final decision should be based on whether there is evidence of abuse of the medication or whether the controlled substance causes the driver to be a risk while operating a commercial motor vehicle.

The FHWA currently prohibits the use of methadone by interstate commerce drivers. Docket comments to the ANPRM of May 13, 1986, from the Legal Action Center of New York requested that we allow drivers in interstate commerce to use prescribed methadone. The Center stated that a driver on a methadone maintenance program is a safe driver even though he/she is taking an addictive controlled substance.

Section 391.97(b) (proposed § 382.203(b)) provides that nothing in this rule restricts a motor carrier from requiring a driver to notify the motor carrier of therapeutic drug use before driving.

The ATA believes that the FHWA should require a driver who is using prescription medication to notify the motor carrier before driving a commercial motor vehicle. The motor carrier should have the option of using a driver, depending upon the recommendation of a medical doctor, because there are many prescription drugs that are subject to abuse by drivers. There are also drugs that have side effect which may adversely affect a driver's ability to safely operate a commercial vehicle. The ATA believes that owner-operators and casual drivers should be required to give advance notification of prescription drug use to motor carriers prior to leasing or working for such carriers. The ATA believes that any driver who is not employed by a motor carrier, or who is a motor carrier and who is using prescription medication should be required to carry a letter from the doctor who prescribed the medication certifying that its use is not subject to abuse and that it does not have side effects which will adversely affect driving ability. If the foregoing procedures are adhered to, a driver should be able to use them as an affirmative defense against a positive drug test. The ATA continues to oppose the use of methadone by drivers and recommends that the FHWA should continue its prohibition against methadone usage.

The IBT commented that the discussion under prescription medication might lead many drivers and motor carriers to the erroneous conclusion that the "defense" that a positive drug test was caused by prescription medication will normally involve the motor carrier. In fact, the usual circumstance will be that the motor carrier's only involvement will be through the Medical Review Officer (MRO). Under 49 CFR Part 40, the section dealing with review for prescription medication states, "If the Medical Review Officer determines there is a legitimate medical explanation for the positive test result, he or she shall determine that the result is consistent with legal drug use and take no further action." Hence, the IBT believes that the question of prescription medication is one that should, in most cases, be resolved between the driver and his MRO, without company officials with personnel, labor relations, or operations responsibilities ever becoming aware of it. Only if and when the driver challenges the MRO's decision and resorts either to the § 391.47 appeals process or to a contractual grievance procedure will nonmedical personnel have occasion to find out about the medication "defense."

The NPTA supports the FHWA's proposal to give drivers the opportunity to assert their bona fide use of prescription drugs as an affirmative defense. The FHWA also agree with the concern raised in the preamble about the possible abuse of prescription drugs. The FHWA, therefore, supports requiring drivers to "demonstrate through clear and convincing evidence" that the driver's use of a controlled substance was prescribed by a licensed physician "who is familiar with the driver's medical history and assigned duties." The FHWA also supports amending the proposed rule to require that, as a precondition to asserting this defense, drivers give motor carriers advance notice of their use of any prescription drug before driving. At the same time, the NPTA also recognizes that there may be instances where providing advance notice may not always be possible. They recommend that the final rule should also make clear that if a driver fails to provide the carrier with the required notice, but later meets the requisite evidentiary burden, the decision on whether to discipline the driver is entirely the motor carrier's.

FHWA Response: The FHWA is sympathetic to the concerns raised by these commenters on this issue, but believes that § 391.97 (proposed § 382.203) as proposed in the NPRM is satisfactory. An MRO should make a determination if there was a legitimate explanation for a positive test result and that the result is consistent with legal drug use and that no further action is necessary. Most cases could then be resolved between the driver and the MRO. Motor carriers, at their option, may require drivers to provide notice that they are using prescription drugs prior to driving and/or testing.

Who Is To Be Tested

It continues to be the FHWA's belief that the driver is the most critical individual involved in ensuring the safe operation of a commercial motor vehicle. The driver is responsible for ensuring the vehicle is in safe operating condition prior to its operation, during its operation, and after he/she has finished operating the vehicle. It is believed that a person tested positive for the use of a controlled substance would be less likely to ensure that the vehicle is in safe operating condition at any given time during which the driver is on duty.

Other occupations within the motor carrier industry, most notably mechanics (i.e., mechanics, mechanic helpers, tire changers, etc.) are not covered by this rule due to the difficulty in identifying those persons, especially those who do not work for a motor carrier. The FHWA believes it would be very difficult to identify and test, in a credible manner, all the individuals who maintain and/or repair commercial motor vehicles. This final rule, however, does not prohibit motor carriers from including their mechanics or other employees in the program.

The FHWA proposed using one of two definitions to regulate motor carriers and drivers. The first was based on the definition of "commercial motor vehicle" contained in the Motor Carrier Safety Act of 1984 and the applicability provisions specified in 49 CFR 390.3, General Applicability. The FHWA published a final rule regarding the general provisions of the FMCSRs on May 19, 1988 (53 FR 18042). This definition uses a gross vehicle weight rating or a gross vehicle combination weight rating criterion of 10,001 pounds or more. Both definitions also include vehicles designed to transport 16 or more persons and all vehicles transporting placardable quantities of hazardous materials. The second definition is based on the Commercial Motor Vehicle Safety Act of 1986 which defines "commercial motor vehicle" as a motor vehicle having a gross vehicle weight rating of 26,001 pounds or more. Section 390.3, General applicability, specifies which entities are subject to FMCSRs and which entities and operations are exempt from the FMCSRs. Generally, the FMCSRs are applicable to all employees and employers who transport property or passengers in interstate commerce. The exceptions to this general applicability are:

(1) All school bus operations as defined in § 390.5;

(2) Transportation performed by the Federal Government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States.

(3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;

(4) The transportation of human corpses or sick and injured persons;

(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) Any "exempt intracity zone" operation, as defined in § 390.5, if a State has adopted and enforces State laws and regulations, compatible with

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the rules in this subchapter, applicable to such intracity zone operation; and

(7) The private transportation of passengers. In addition, the rules in Part 391 (Qualifications of Drivers) of the FMCSRs generally do not apply to a farm vehicle driver. The farm driver exemptions found in 391.2 and 391.67 have been in effect since December 22, 1971, and were issued to meet specific, unique transportation needs of the country's farm community.

Several commenters were confused as to the exact applicability of the rule. While the preamble indicated that the rule would only apply to those drivers and motor carriers that were subject to the FMCSRs, the proposed regulatory language did not make this distinction. Proposed § 382.103 stated the proposed rule would apply to *all* motor carriers and drivers operating in interstate commerce. Farmer-related organizations, while supporting the NPRM, recommended that farmers be excluded from the requirements. The commenters were generally supportive of the use of the term "commercial motor vehicle" as it is used in § 390.5 of the FMCSRs (i.e., 10,001 pounds or more). The ATA recommends that the 26,000 pound GVWR threshold be used.

FHWA Response: The intent of the NPRM, though not explicitly stated in the regulatory language, was to have these drug testing requirements apply to motor carriers and drivers who are currently subject to the physical qualifications requirements of 49 CFR 391.11(b)(6). Since this rule only addresses qualification standards (as opposed to disqualification standards), only those drivers who are required to be physically qualified to drive are to be subject to this rule. Section 391.83 (proposed § 382.103) has been changed to reflect this intent. The rules in this Subpart will apply to any person who operates a commercial motor vehicle, as defined in 49 CFR 390.5 (except the vehicle size criterion is 26,001 pounds GVWR, instead of 10,001 pounds), in interstate commerce that is subject to the driver qualifications of § 391.11(b)(6). All drivers and motor carriers exempted under 49 CFR 390.3 (which becomes effective November 15, 1988) and § 391.2 are not subject to this rule.

The implementation of this Subpart is a significant undertaking for the motor carrier industry. The industry will need to expend a high level of administrative and financial resources to complete the task. The FHWA believes that the initial implementation of this rule should concentrate, as in the Commercial Driver's License Program, to drivers of vehicles which could result in the greatest benefits. Since the fatality rate for vehicles above 26,000 pounds is significantly greater than vehicles between 10,000 and 26,000 pounds, the FHWA has applied these rules at this time to vehicles with a GVWR of 26,001 pounds and above. In addition to the improved administrative costs and improved benefit/cost ratio, limitation to the heavy vehicles will also reduce the demand to create consortiums to facilitate the needs of the anti-drug programs for small carriers.

The smaller vehicles are also typically dispatched and return to a motor carrier's place of business on a daily basis. Unlike most long distance, heavy truck drivers, the operators of smaller vehicles are under the supervision and observation of the employer to a larger degree. Accordingly, the FHWA believes that the drug detection training provided to motor carrier dispatchers and supervisors will carry over to drivers of smaller vehicles.

The FHWA notes that it is developing an NPRM pertaining to the private transportation of passengers in interstate commerce. When that rule becomes final, certain drivers of such vehicles would be subject to the drug testing rules. Similarly, the intracity exempt (commercial) zones will be eliminated shortly because of legislation expected to be signed by the President and drivers in those zones will be covered by this rule.

This rule is not applicable with respect to any person for whom compliance with this part would violate the domestic laws or policies of another country. See discussion under section titled, Conflict with Foreign Laws.

Effect on the Motor Carrier Safety Assistance Program

As noted earlier, this final rule is codified in Part 391, Qualifications of Drivers as opposed a separate section (Part 382) as proposed in the NPRM. The FHWA does not intend that this revision affect intrastate motor carrier operations in anyway or Motor Carrier Safety Assistance Program funding for any State. This is consistent with the proposed applicability section (§ 382.103) which stated, "This part applies to motor carriers and drivers operating in interstate commerce."

The FHWA intends, however, to investigate in a separate notice of proposed rulemaking, the inclusion of intrastate drivers of large trucks and other vehicles in this rule.

Action on Receipt of Positive Drug Test

The IBT believes that much of the FHWA's discussion in the preamble to the NPRM under this heading, including virtually everything described in the first paragraph—except for the last sentence about taking "appropriate personnel action"—falls within the purview of the MRO under 49 CFR Part 40. This is one of the many specifics that the FHWA incorporates by reference with its repeated requirement in Subparts C, D, E, and F of the NPRM that a motor carrier shall require its drug testing program to conform with 49 CFR Part 40. The IBT stated that the FHWA should take care not to leave a contrary impression with readers of the final rule.

FHWA Response: The FHWA agrees with the IBT comment and affirmatively excludes that discussion from this final rule.

Notification of Test Results and Recordkeeping

Notification: Many of the commenters opposed the proposed requirement that a motor carrier must notify a driver-applicant of the results of a controlled substance test. Their rationale was that since such a large number of driver-applicants would be given a "pre-employment" test, it would be unduly burdensome to impose such a requirement on the industry.

FHWA Response: The FHWA believes these concerns are valid ones. However, we believe that the driver-applicant has the right to know the results of such a test if the driver-applicant requests such information within a reasonable period of time. Therefore, the FHWA will not require a motor carrier to make known the results of a "pre-employment" drug test unless the driver-applicant requests such results within 60 days of being notified of the disposition of the employment application. Conversely, the results of all other drug tests must be made known to a motor carrier employee any time the test results are "positive." The employee must be informed that the test indicated "positive" results and what drug(s) was discovered.

Record Retention: The FHWA had proposed that controlled substance test results be retained in the driver's qualification file for a period of 3 years. Most motor carrier commenters agreed with the proposal and articulated the belief that a motor carrier will establish procedures to safeguard against unauthorized release much the same as has been done for the protection of other personnel records. The ATA generally agreed with the retention period but contended that the results of a controlled substance test should be retained for a longer period of time when the test resulted in a driver disqualification for a period of 1 year or

permanently. The IBT also agreed with the retention period and went farther when it stated: "This regulation should further stipulate that the only test results in those files must be whether the outcome was reported 'negative' or 'positive' by the [medical review officer] MRO. Negative test results should only be maintained on file for a period of 12 months. Underlying laboratory reports and other confidential medical information may only be retained in the MRO's files, in keeping with 2.8 of the HHS Guidelines."

FHWA Response: The FHWA believes that the test results of any controlled substance test should be kept confidential. To accomplish this, the motor carrier is required to retain, in the driver's qualification file, such information that will indicate only the following:

(1) The employee submitted to a controlled substance test.

(2) The date of such test.

(3) The identity of the person or entity performing the test and who is the custodian of the detailed test results.

(4) Whether the test finding was "positive" or "negative."

The medical review officer (MRO) who is an agent for the motor carrier is required to be the sole custodian of the individual test results. We believe these retention requirements along with the access requirements discussed below will ensure the confidentiality desired.

Comment: Access to Individual Test Records or Test Findings. The ATA expressed concern about subsequent or prospective motor carriers being allowed access to information about controlled substance test results. It stated: "Subsequent or prospective motor carriers must be allowed access to information about drug test results and about disqualification for drug use or this whole program has little meaning. If a driver knows that subsequent users of his/her services will not be told about positive drug tests and disqualifications then the deterrent value of the tests is lost. The drug user will be able to hop from one job to another with little concern about the drug use being detected by future users of his/her service."

The IBT, on the other hand, believes that "a testing employer [under] no circumstances should be permitted to release test results to a subsequent or prospective employer." The IBT continued by stating: "The results will be of very little value to a future employer. If the testing employer has continuously employed an individual for a period of time, it can be inferred that the individual tested negative during that time. If the individual has tested positive and successfully gone through rehabilitation, that is information the prospective employer should not use in making an employment decision. If the individual was discharged on the basis of a positive test, that will become immediately apparent to the prospective employer. Furthermore, the pre-employment-employment drug test renders past drug test history of little value."

FHWA Response: As stated above, the FHWA believes that the test results of any controlled substance test should be kept confidential. Therefore, § 391.89 prohibits a MRO from releasing the confidential information in the MRO's possession to anyone without first obtaining written authorization from the affected person who was previously tested.

Comment: Maintenance of Summary Data. Measuring the effectiveness of the controlled substance testing program is essential to the success of any drug test program. The IBT asserts that the best answer lies in the collection of aggregate data, primarily from testing laboratories. In the interest of reducing the reporting burden, the IBT suggested collecting the desired data from the testing laboratories in lieu of the motor carrier. It suggested that the FHWA require monthly statistical reports to be filed by the testing laboratories since monthly statistical summaries are already required by the Department of Health and Human Services for evaluating the Federal government's drug testing program.

FHWA Response: The FHWA agrees that the collection and evaluation of statistical data is of prime importance. However, such a requirement as that proposed by the IBT could place an unnecessary burden on the testing laboratories and could require additional government expense that cannot be cost justified at this time. In an effort to ensure that the statistical data is available when needed, § 391.87 requires that each motor carrier or consortium collect and retain specific information in its files. The FHWA plans to statistically sample the available information to evaluate the effectiveness of the program. Additionally, the information collected by individual motor carriers will be reviewed whenever a compliance review is performed by the agency's field staff.

HHS Guidelines

In the notice of proposed rulemaking for the rule, the FHWA proposed that all drug testing take place in accordance with the Mandatory Guidelines for Federal Drug Testing Programs of the Department of Health and Human Services (53 FR 11970; April 11, 1988). These guidelines describe the collection and testing procedures applicable to all drug testing in the Federal government, and they include safeguards for the accuracy and privacy of testing.

The Department of Transportation has determined that certain modifications of the HHS Guidelines are appropriate in the context of this and other DOT operating administration drug-free workplace regulations. The result is that the Office of the Secretary in the Department of Transportation is publishing elsewhere in today's **Federal Register** an Interim Final Rule With Request for Comments entitled, *Procedures for Transportation Workplace Drug Testing Programs*, that codifies the Department of Health and Human Service Guidelines for drug testing at 49 CFR Part 40. This new part sets forth requirements for such things as specimen collection procedures, laboratory procedures, quality assurance and certification procedures. The rule will provide further guidance on how this rule shall be implemented. These DOT Procedures are intended to preserve, to the greatest extent practicable, the important safeguards provided by the HHS Guidelines.

Some of the modifications to the HHS Guidelines are editorial in nature (for example, references to responsibilities of "agencies" are changed to references to "employers"). Other modifications are intended to take into account differences in the situations of Federal agencies and DOT regulated industries. For example, in testing at remote sites, DOT required industries may find it necessary to conduct some kinds of testing in medical facilities or through use of mobile units, rather than the more permanent collection sites contemplated by the HHS Guidelines. It may not be practicable for regulated parties to maintain on-site permanent log books. Consequently, the DOT Procedures permit alternative collection and recordkeeping procedures in these circumstances.

During the comment period on this drug-free workplace program rule and those proposed by other operating administrations, comments were received concerning the HHS Guidelines. These comments will be incorporated in the docket for the Office of the Secretary (OST) interim final rule creating 49 CFR Part 40. The OST will respond to those comments, as well as comments received during the comment period for Part 40, in its notice following the end of that comment period.

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The FHWA acknowledges the comments regarding testing for drugs which HHS has not established cutoff levels and which are not included in the bimonthly challenge test samples which are a very important part of the HHS laboratory certification program. However, the FHWA believes that testing for the 5 classes of drugs (marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines) should be incorporated in the testing requirements for preemployment, periodic, post-accident, and random. However, the FHWA believes that testing conducted under "reasonable cause" should involve only those controlled substances as addressed in 49 CFR Part 40.

Section 391.81(b) of this regulation provides that a motor carrier may test the sample obtained under this rule only for the drugs required or specifically authorized to be tested under this rule. That is, a motor carrier must test the sample for the five major drugs listed in § 391.81(b). Only if, in the context of reasonable cause testing, the Federal Highway Administrator authorizes testing for additional Drug X under 49 CFR Part 40 (an approval which would be granted only after consultation with the Department of Health and Human Services, and only on the basis of an HHS-established testing protocol and positive threshold) may the motor carrier also test the sample for that drug.

Absent such an approval, if the motor carrier wants to test, in addition, for Drug Y, the motor carrier must obtain a second sample from the driver. The obtaining of this second sample is not under the authority of this subpart. The motor carrier must base its request for the second sample on whatever other legal authority is available, since the motor carrier cannot rely on this rule as the basis for the request.

Employee Assistance Programs and Rehabilitation

In the NPRM the FHWA had proposed several alternatives for employee assistance programs and rehabilitation. Under the first three options, an employee would have been entitled to enter a rehabilitation program, under circumstances which varied by option, and the employer would have been required to hold the employee's position open while the employee underwent rehabilitation.

The FHWA was encouraged to note that many of the commenters indicated that as part of their current drug testing programs they provide the opportunity for rehabilitation for their drivers. While the FHWA realizes that the practice of providing rehabilitation or drug testing is not universal in the motor carrier industry, the experiences of those who do provide rehabilitation and drug testing indicate that it is feasible.

While the majority of the commenters supported rehabilitation programs for drug users, there was a divergence of views on the criteria for providing rehabilitation and who should assume the costs of such a program. Related to the issue of rehabilitation was the provision that a driver be provided with employment reinstatement rights at the completion of a rehabilitation program and a negative test for controlled substances. Technical concerns, such as assurances that the driver is in fact rehabilitated, the length of a rehabilitation program and the procedures to assure that the former drug using driver continues to abstain from drug use once he/she completes a rehabilitation program, were raised by the commenters.

Those commenters representing motor carriers were in favor of leaving the decision to provide rehabilitation and reemployment rights to management-labor negotiations. These commenters also noted that they do not believe that the FHWA has the legal authority to require motor carriers to pay for rehabilitation programs for persons who the motor carrier decides should not be commercial motor vehicle drivers.

Those commenters representing drivers were in favor of motor carrier sponsored rehabilitation programs. They noted that those drivers found to be using drugs and not rehabilitated would not leave the motor carrier industry but would seek employment with another motor carrier. They believe that this would just transfer the drug problem within society, not reduce it, as they contend is the overall goal of the FHWA's anti-drug rulemaking.

FHWA Response: While the FHWA recognizes the significance of the arguments raised in defense of broad rehabilitation opportunities and job security for employees who use drugs, it is important to emphasize that the FHWA's primary duty is to consider the adverse safety consequences surrounding the issue of drug use within the motor carrier industry. The FHWA has decided that motor carriers will not be required, by this rule, to offer an opportunity for rehabilitation or to provide job security to drivers who fail a drug test, who use drugs on the job, or who voluntarily come forward and request rehabilitation.

It is understood that broad rehabilitation opportunities and job security for employees, without regard to the manner of detection of drug use, may help those drivers who are unable to help themselves. However, the FHWA believes that the comprehensive testing program of commercial motor vehicle drivers combined with an employee assistance program to educate and train all personnel, is the most effective approach to promote safety and will reduce drug use in the motor carrier industry.

Moreover, the FHWA encourages motor carriers and consortiums to develop their own policies regarding rehabilitation. This rule neither prohibits a motor carrier from assigning a driver to a nondriving duty nor requires the driver to use vacation time, sick leave or leave without pay in order to accommodate that person's rehabilitation activities. Issues such as termination, reassignment, hiring of temporary drivers to fill a position, or policies regarding a driver's absence from a position are, the FHWA believes, issues that are appropriately the subject of labor-management negotiations and are not issues to be addressed in this rulemaking action.

The FHWA investigated rehabilitation programs and found that the least time that it would take to complete a rehabilitation program would be 28 days. It would probably take an additional 14 days to enroll an individual in such a program. This would have requried an employer to keep an employee's position available for a minimum of 42 days for a rehabilitation program. Thorough rehabilitation programs which ended an employee's dependence on drugs could take much longer. There did not seem to be a means to implement mandatory rehabilitation without the FHWA being involved in the day-to-day management of the motor carrier. Rehabilitation rights also diluted the deterrent effect of the proposed regulations.

A driver with a drug problem must never be permitted to function in a position where his/her actions could affect the safe operation of a commercial motor vehicle. Consequently, rehabilitation and employment rights for employees will not be mandated. In all cases, of course, employers would be free to offer rehabilitation. This provides the most flexibility to labor and management to determine the need for and shape of any rehabilitation program. It also provides a deterrent to drug use and thus, may yield large benefits with low costs.

We note that under the Commercial Motor Vehicle Safety Act of 1986, drivers are disqualified for 1 year if they are convicted of operating a motor vehicle under the influence of alcohol or drugs. However, the issue of being under the influence of a drug is different from simply having drugs in one's system. It is to the latter, stricter standard that this rule is addressed.

The FHWA is concerned about follow-up testing of drivers who have completed rehabilitation after testing positive in a random test. The FHWA believes that motor carriers should have wide latitude in postrehabilitation testing, permitting the motor carrier to vary the frequency and duration of such testing on a case-by-case basis. Recommendations on an adequate period of follow-up random testing vary from 1 to 3 years. Some information reveals that 3 to 4 tests per year may be sufficient. Continuing treating and follow-up testing of employees returned to driving are important measures from the point of view of the recovering substance abuser and the public safety. Although this rule does not require that persons testing positive be afforded the opportunity for rehabilitation, it is inevitable that many will be offered that opportunity, particularly many testing positive for the first time. The knowledge that a follow-up test may be required can assist the recovering driver and offer important assurance from the point of view of the public safety. The final rule provides that, after returning to work, a recovering driver must continue in any program of after-care required by the EAP counselor and be subject to follow-up testing for not longer than 60 months after return to duty.

An Employee Assistance Program (EAP) is designed to help employees solve problems and provide motor carriers with a method for dealing with driver problems, such as drugs. An EAP may include the following components:

(a) Employee policy and procedures on drug use based on a motor carrier's unique needs, organizational structure, and goals and resources;

(b) Employee communications that include ongoing printed educational materials directed at both drivers and family members;

(c) Training of supervisors; and

(d) Evaluation of the effectiveness of the EAP.

The FHWA has determined that properly managed EAPs benefit both the motor carrier and the driver. All motor carriers shall develop EAPs for their employees. Each EAP is required to have an educational component which would minimally have display and distribution of informational material; display and distribution of a community-service hot-line telephone number for driver assistance (if one is available); and display and distribution of the company policy regarding drug use by drivers. Additionally, each EAP of a motor carrier would be required to provide training for drivers and supervisory personnel. The training would minimally require the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral causes that may indicate drug use and abuse; and documentation of training given to drivers and motor carrier's supervisory personnel. An EAP training program for drivers and supervisory personnel would consist of at least 60 minutes training for every driver and supervisor.

Motor carriers will be required to appoint or designate a Medical Review Officer (MRO). The MRO will perform several functions, including review of the results of the motor carrier's drug testing program; interpretation of each confirmed positive test result; provide an opportunity for a driver to discuss a positive test result with the MRO; and evaluation of an individual in conjunction with a rehabilitation program, if the motor carrier voluntarily implements one. This rule requires that an MRO be a licensed doctor of medicine or osteopathy. The MRO could be a currently employed company physician or could be a private physician who performs MRO service for the motor carrier on a contractual basis.

The FHWA recognizes that not all motor carriers have the fiscal resources to implement a "company" EAP. However, a motor carrier has a responsibility, both to its drivers and the public, to provide an environment where safety is not jeopardized by drug use. It is suggested that a motor carrier provide EAP services through one of the following means:

(a) Motor carrier operated EAP;

(b) Contractor/consortium arrangement;

(c) Arrangements with local community service organizations; or

(d) Other workable alternatives which provide an equivalent level of service.

The FHWA believes that a long-term, will-run EAP will pay for itself over time in lower costs for health care, absenteeism, accidents, and worker compensation. A large motor carrier may find that an internal program utilizing the services of fellow drivers is most economical as well as effective. Some motor carriers may have access to programs run by community service agencies which are made available at little or no cost. Labor unions may also provide programs. Counseling services may also be available as part of a driver's medical insurance plan. Companies should investigate the facilities and services available to them and their drivers and the benefit of establishing internal programs consistent with the size and scope of their operation.

Summary of Economic Analysis

This is a summary of the industry cost impact and benefit evaluation for the regulatory changes implemented in this rulemaking on drug testing programs for commercial motor vehicle operators. Testing under these rules would be conducted prior to employment, periodically, randomly, after a reportable accident and upon reasonable cause.

The rules are needed to prohibit absolutely the presence of a prohibited drug in a driver's system at any time. The rules are intended to ensure a drug-free highway environment and to eliminate drug abuse in the commercial motor carrier industry.

The assumptions and cost factors used in preparing the economic impact estimates of the changes have been developed by the FHWA. Cost data were furnished by motor carriers, motor carrier industry associations, drug testing laboratories, and trade publications. These estimates of cost impact include revisions based on public comment and other information that became available.

This rule will affect up to approximately 200,000 interstate motor carriers and about 3 million commercial motor vehicle drivers. These entities will incur additional costs because they will be required to comply with the proposed antidrug programs specified in this rule.

The FHWA believes that three major benefits will accrue from this rulemaking. First, there will be benefits due to the prevention of fatalities, personal injuries, and property loss resulting from accidents attributed to neglect or error on the part of commercial motor vehicle operators whose judgment or motor skills were impaired by the use of illicit substances.

Second, benefits will accrue to motor carriers and drivers from the reduction in pilferage, absenteeism, medical and insurance costs, and improved general safety and productivity in the work place.

Third, the reduction of drug abuse in a vital and socially important industry such as the commercial motor carrier industry would represent a broad public benefit.

Those commenting on the economic analysis of the NPRM generally indicated that the unit costs assumed by the FHWA were too low and that not all the costs were analyzed. In addition, the

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IBT questioned the basis for some of the assumptions used in the analysis. The FHWA has revised the analysis to include additional administrative costs (from $10 to $35) in response to the comments that the costs associated with the MRO to review positive test results and the recordkeeping costs were not included. The FHWA also raised the unit costs of the screen and confirmation test from $15 to $25 and from $25 to $35, respectively.

The NPRM included analyses of random testing rates of 12.5% and 125%. As noted in this rule, the FHWA is requiring a testing rate of 50% phased in over a two year period. The deterrent rates have been adjusted to reflect this testing rate. This analysis uses deterrent rates of 50 and 70 percent. The implementation schedule included in this rule is not reflected in this analysis.

Based on the revisions noted above, as well as the 26,001 pound GVWR threshold, the FHWA estimated that the costs (net present value) associated with this rule using option 4 proposed in the NPRM is $1.77 billion and the benefit is $8.14 billion for a benefit/cost ratio of 4.60.

This cost-benefit analysis did not attempt to estimate the benefits of increased productivity, lower worker's compensation claims, and reduced insurance rates that a drug-free driver work force would provide to their employers and society-at-large. It is reasonable to assume that adding the value of these more pervasive benefits to the annual cost savings of avoided accidents would significantly offset some of the costs of a drug testing program for interstate or foreign commercial motor vehicle operators.

Because the impact of this proposal will result in an annual effect on the economy of over $100 million, the FHWA has determined that this document is a major rule under Executive Order 12291. Pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions. A regulatory evaluation and regulatory flexibility analysis have been prepared and are available for review in the public docket.

The impacts of this proposed regulation on small entities are discussed in the regulatory flexibility analysis. A significant part of the motor carrier industry and other employers covered by the Act are made up of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the regulatory evaluation/regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally applicable to the small entity component of the industry.

The FHWA estimates that this final rule will increase the information collection and paperwork requirements for motor carriers. In anticipation of this, the FHWA has submitted, to the Office of Management and Budget (OMB) in a revision to their revised fiscal year 1988 information collection budget, an estimate of the burden hours associated with this rule. FHWA will submit for OMB approval any information collection requirements. Comments on the paperwork burdens should be submitted to the Office of Management and Budget, Attention of Mr. Gary Waxman.

Federalism Assessment

In the NPRM, the FHWA asserted that, "Nothing in this document directly preempts any State law or regulation." 53 FR 22282. This statement was based on incomplete information. As stated further in the NPRM, "The FMCSRs establish minimum safety regulations which, at the present time, may be supplemented by the States, *except for the adoption of inconsistent regulations." Id.* (emphasis supplied).

As pointed out by some commenters, several States have recently adopted laws or regulations which limit the ability of employers to drug test employees. The FHWA is aware that at least nine States and the City of San Francisco have adopted laws or ordinances which prohibit certain forms of testing or otherwise limit the ability of employers to conduct employee drug testing. These laws, regulations, or ordinances, to the extent that they would preclude motor carriers from complying with the requirements of the FMCSRs, as amended by this final rule, are preempted by these Federal regulations.

Federal regulations have the same preemptive effect as Federal statutes. *Wood v. General Motors Corp.*, 673 F. Supp. 1108, 1113 (D. Mass. 1987), *citing Fidelity Federal Savings & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 153, 102 S. Ct. 3014, 3022 (1982). Federal preemption of State laws and regulations may take place in several ways. (For an excellent discussion of preemption see *Wood v. General Motors Corp., supra*, at 1112). In our view, the Federal laws under which the FMCSRs were originally issued (now codified at 49 U.S.C. 3102) and recently repromulgated (49 U.S.C. 2505), while not occupying the field of interstate motor carrier safety so as to totally displace State regulation (*but see*, 49 U.S.C. app. 2507, Review and Preemption of State Regulations), clearly establish, at a minimum, that State laws or regulations which actually conflict with Federal law are preempted. *See Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 249, 104 S. Ct. 615, 621 (1984).

The FHWA and its predecessor, the Interstate Commerce Commission, have long believed that the FMCSRs preempt inconsistent State laws and regulations, to the extent that such State laws or regulations conflict with the Federal regulations. *See, e.g., Buck v. California*, 343 U.S. 99, 101–102, 72 S. Ct. 502, 504 (1952). Accordingly, the FMCSRs have long provided that, "Except as otherwise specifically indicated, Parts 390 through 397 of this subchapter are not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, *the compliance with which would not prevent full compliance with these regulations by the person subject thereto."* 49 CFR 390.30 (1987) (supplied). As part of its repromulgation of the FMCSRs, the FHWA recently issued a final rule to, among other things, renumber this section and amend it by striking the reference therein to "Parts 390 through 397" and by substituting therefor "subchapter B." 53 FR 18042, 18055 (to be codified at 49 CFR 390.9 (effective November 15, 1988)). This change recognizes that other Parts of title 49 of the Code of Federal Regulations have been issued under the authority of the Federal motor carrier safety laws referred to above, and with the same preemptive effect. The drug testing provisions adopted today are incorporated in Subchapter B of title 49 of the Code of Federal Regulations, and have the same preemptive effect.

The ATA made two recommendations with respect to this preemption issue. First, it recommended that the agency amend proposed § 382.101(b) to expressly provide that "No State may adopt, maintain or enforce any law or regulation which actually conflicts with or stands as an obstacle to the accomplishment of the full purposes and objectives of the regulations of this part." ATA comments of September 12, 1988, at 60. The FHWA declines to accept this recommendation because it believes it to be unnecessary for two reasons. First, the agency believes it is unnecessary at this time to affirmatively declare that no State may adopt such a law or regulation. States which have adopted these provisions have done so with more than motor carriers in mind. Accordingly, to the extent their laws apply to others not covered by these rules, they remain unaffected by these rules. Second, the FHWA further believes that its preemption conclusion outlined above is expressly stated in Part 390 of the FMCSRs as discussed above, and that it is not necessary to restate this conclusion. We believe that the amendments made today coupled with the amendments which are effective on November 15, 1988, make this more clear than was the case at the time of the NPRM. This rule does not in any way preempt State or local law enforcement officials from requesting urine or blood samples from commercial motor vehicle drivers.

The second recommendation made by the ATA was to revise proposed § 382.101(c) to specifically allow motor carriers to adopt more stringent regulations. The FHWA believes that this change is unnecessary since § 391.1(b) of the FMCSRs already states that nothing in these regulations prevents a motor carrier from imposing more stringent or additional qualification requirements and examinations. 49 CFR 391.1(b) (1987). On May 19, 1988, the FHWA published a final rule that becomes effective on November 15, 1988, and which would strike § 391.1(b) and, in its place, adopt a new § 390.3(d) which provides that, "Nothing in Subchapter B of this chapter shall be construed to prohibit an employer from requiring and enforcing more stringent believes that this would permit motor carriers to impose reasonable additional qualification requirements and examinations for their drivers.

The FHWA has carefully assessed this rule under the principles and criteria of the President's Executive Order on Federalism (E.O. 12612, October 28, 1987). For the reasons stated above and in the preamble to the NPRM, the FHWA believes that the problem of drug abuse, as it affects motor carrier safety, is one of national scope justifying Federal action. The agency believes that the limited preemptive effect of its adoption of this rule, as discussed above, is in strict adherence to constitutional principles and expressly supported by statutory authority. Section 206 of the Motor Carrier Safety Act of 1984 expressly directs that "minimum Federal safety standards for commercial motor vehicles * * * (be established to) * * * ensure that—* * * commercial motor vehicles are safely maintained, equipped, loaded, and operated, * * * (and) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate such vehicles safely * * *." 49 U.S.C. app. 2505(a). Thus, the FHWA concludes that this statute expressly authorizes the issuance of preemptive regulations. The FHWA further believes that the preemption which will occur is the minimum necessary to ensure the achievement of a primary objective of the Motor Carrier Safety Act of 1984, *i.e.*, to promote the safe operation of commercial motor vehicles.

List of Subjects in 49 CFR Part 391 and 394

Controlled substances, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on November 14, 1988.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending Title 49, Code of Federal Regulations, Subtitle B, Chapter III, Part 391 by adding a new Subpart H by revising certain sections of the Part, and by amending Part 394 as set forth below.

PART 391—[AMENDED]

1. The authority citation for Part 391 continues to read as follows:

Authority: 49 App. U.S.C. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

2. Part 391 is amended by adding Subpart H to read as follows:

Subpart H—Controlled Substance Testing

Sec.

391.81 Purpose and scope.
391.83 Applicability.
391.85 Definitions.
391.87 Notification of test results and recordkeeping.
391.89 Access to individual test results or test findings.
391.93 Implementation schedule.
391.95 Drug use prohibitions.
391.97 Prescribed drugs.
391.99 Reasonable cause testing requirements.
391.101 Reasonable cause testing procedures.
391.103 Pre-employment testing requirements.
391.105 Biennial testing requirements.
391.107 Pre-employment and Biennial testing procedures.
391.109 Random testing requirements.
391.111 Random testing procedures.
391.113 Post-accident testing requirements.
391.115 Post-accident testing procedures.
391.117 Disqualification.
391.119 Employee Assistance Program (EAP).
391.121 EAP training program.
391.123 After-care monitoring.

§ 391.81 Purpose and scope.

(a) The purpose of this subpart is to reduce highway accidents that result from driver use of controlled substances, thereby reducing fatalities, injuries, and property damage.

(b) This subpart prescribes minimum Federal safety standards to detect and deter the use of controlled substances as defined in 49 CFR Part 40 (marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP)).

(c) As part of reasonable cause drug testing programs established pursuant to this subpart, motor carriers may test for drugs in addition to those specified in this part only with approval granted by the Federal Highway Administrator under 49 CFR Part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§ 391.83 Applicability.

(a) This subpart applies to motor carriers and persons who operate a commercial motor vehicle as defined in this subpart in interstate commerce and are subject to the driver qualification requirements of Part 391 of this subchapter.

(b) This subpart shall not apply to any person for whom compliance with this subpart would violate the domestic laws or policies of another country.

(c) This subpart is not effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of this subpart raises questions of compatibility with that country's domestic laws or policies. On or before December 1, 1989, the Administrator shall issue any necessary amendment resolving the applicability of this subpart to such person on and after January 1, 1990.

§ 391.85 Definitions.

As used in this subpart—

"Collection site" means a place where individuals present themselves for the purpose of providing body fluid or tissue samples to be analyzed for specified controlled substances. The site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation or shipment of the samples to a laboratory.

"Commercial motor vehicle" means any self-propelled or towed vehicle used on public highways in interstate commerce to transport passengers or property when:

(a) The vehicle has a gross vehicle weight rating or gross combination

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weight rating of 26,001 or more pounds; or

(b) The vehicle is designed to transport more than 15 passengers, including the driver; or

(c) The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

"Controlled substance" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR 1308).

"Drivers subject to testing" means employee drivers and contract drivers under contract for 90 days or more in any period of 365 days.

"Drug" means any substance (other than alcohol) that is a controlled substance as defined in this section and 49 CFR Part 40.

"FHWA" means the Federal Highway Administration, U.S. Department of Transportation.

"Interstate commerce" means trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States.

"Medical practitioner" means a licensed doctor of medicine (MD) or osteopathy (DO) or a doctor of dental surgery (DDS) authorized to practice by the State in which the person practices.

"Medical Review Officer" means a licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders that is employed or used by a motor carrier to conduct drug testing in accordance with this part.

"Motor carrier" means a for-hire motor carrier or a private motor carrier of property. The term "motor carrier" includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, the definition of *"motor carrier"* includes the terms *"employer"* and *"exempt motor carrier."*

"Random selection process" means that drug tests are unannounced; that every driver, of a motor carrier, subject to test-tests conducted annually shall equal or exceed fifty percent (50%) of the total number of drivers subject to testing of a motor carrier.

"Reasonable cause" means that the motor carrier believes the actions or appearance or conduct of a commercial motor vehicle driver, on duty as defined in § 395.2 of this subchapter, are indicative of the use of a controlled substance.

§ 391.87 Notification of test results and recordkeeping.

(a) A motor carrier shall notify its driver or driver-applicant of the results of a controlled substance test conducted under this subpart.

(b) A motor carrier shall notify—

(1) A driver-applicant of the results of a pre-employment controlled substance test conducted under this subpart provided the driver-applicant requests such results within 60 days of being notified of the disposition of the employment application; or

(2) A driver of the results of a periodic, random, or post-accident controlled substance test conducted under this subpart provided the results were positive. The driver must also be advised what drug was discovered.

(c) A motor carrier shall ensure that all records related to the administration and results of the drug testing program for its drivers subject to the testing requirements are maintained for a minimum period of 5 years except that individual negative test results shall be maintained for a minimum of 12 months.

(d) A medical review officer shall be the sole custodian of individuals test results. The medical review officer shall retain the reports of individual test results for a minimum of 5 years.

(e) A motor carrier shall retain in the employee's qualification file such information that will indicate only the following:

(1) The employee submitted to a controlled substance test.

(2) The date of such test.

(3) The location of such test.

(4) The identity of the person or entity performing the test.

(5) Whether the test finding was "positive" or "subnegative."

(f) A motor carrier shall produce upon demand and shall permit the Administrator to examine all records related to the administration and results of controlled substance testing performed under this part.

(g) A motor carrier shall maintain an annual (calendar year) summary of the records related to the administration and results of the controlled substance testing program performed under this subpart. This summary shall include, at a minimum:

(1) The total number of controlled substance tests administered;

(2) The number of controlled substance tests administered in each category (i.e., prequalification, periodic, reasonable cause, and random);

(3) The total number of individuals who did not pass a controlled substance test;

(4) The total number of individuals who did not pass a controlled substance test by testing category;

(5) The disposition of each individual who did not pass a controlled substance test;

(6) The number of controlled substances tests performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the screening test in a sufficient quantity to warrant a confirmatory test;

(7) The number of controlled substance tests performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the confirmatory test in a sufficient quantity to be reported as a "positive" finding to the medical review officer; and

(8) The number of controlled substance tests that were performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the confirmatory test in a sufficient quantity to be reported as a "positive" finding by substance category (e.g., marijuana, cocaine, opium, PCP, or amphetamine).

§ 391.89 Access to individual test results or test findings.

(a) No person may obtain the individual tests results retained by a medical review officer, and no medical review officer shall release the individual test results of any employee to any person, without first obtaining written authorization from the tested employee. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employing motor carrier, the information delineated in § 391.87(e) of this subpart.

(b) No person may obtain the information delineated in § 391.87(e) of this part and retained by a motor carrier, and no motor carrier shall release such information about any employee or previous employee, without first obtaining written authorization from the tested employee.

§ 391.93 Implementation schedule.

(a) This rule is effective December 21, 1988.

(b) Motor carriers with 50 or more "drivers subject to testing" are required to implement a controlled substance testing program which meets the provision of this Part by December 21, 1989, for those drivers.

(c) All motor carriers with less than 50 "drivers subject to testing" are required to implement a controlled substance testing program which meets the provisions of this subpart by December 21, 1990, for all drivers.

(d) During the first 12 months following the insititution of random drug testing pursuant to this rule, a motor carrier shall meet the following conditions:

(1) The random drug testing is spread reasonably through the 12-month period;

(2) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(3) The total number of tests conducted during the 12 months is equal to at least 25 percent of the drivers subject to testing.

§ 391.95 Drug use prohibitions.

(a) No driver shall be on duty, as defined in § 395.2 of this subchapter, if the driver uses any controlled substances, except as provided in § 391.97 of this part.

(b) No driver shall be on duty, as defined in § 395.2 of this subchapter, if the driver tests positive for use of controlled substances, except as provided in § 391.97 of this part.

(c) A person who tests positive for the use of a controlled substance, as defined in 49 CFR Part 40, is medically unqualified to operate a commercial motor vehicle.

(d) A person who refuses to be tested under provisions of this subpart shall not be permitted to operate a commercial motor vehicle. Such refusal shall be treated as a positive test and subject the driver to the restrictions contained in paragraph (c) of this section.

§ 391.97 Prescribed drugs.

(a) *Affirmative defense.* Any driver who is alleged to have violated § 391.95 of this subpart shall have available as an affirmative defense, to be proven by the driver through clear and convincing evidence, that his/her use of a controlled substance (except for methadone) was prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties. The MRO may provide an opportunity for a driver to discuss a positive test result and clarify if a prescribed medication was involved.

(b) The rules in this subpart do not prohibit a motor carrier from requiring a driver to notify the motor carrier of theresapeutic drug use.

§ 391.99 Reasonable cause testing requirements.

(a) A motor carrier shall require a driver to be tested, upon reasonable cause, for the use of controlled substances.

(b) A driver shall submit to testing, upon reasonable cause, for the use of controlled substances when requested to do so by the employing motor carrier.

(c) The conduct must be witnessed by at least two supervisors, if at all feasible. If only one supervisor is available, only one supervisor need witness the conduct. The witnesses must have received training in the detection of probable drug use by observing a person's behavior.

(d) The documentation of the driver's conduct shall be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier.

§ 391.101 Reasonable cause testing procedures.

(a) A motor carrier shall ensure that the driver is transported immediately to a collection site for the collection of a urine sample.

(b) A motor carrier shall ensure that the controlled substance testing performed under paragraph (a) of this section conforms with 49 CFR Part 40.

§ 391.103 Pre-employment testing requirements.

(a) A motor carrier shall require a driver-applicant who the motor carrier intends to hire or use to be tested for the use of controlled substances as a prequalification condition.

(b) A driver-applicant shall submit to controlled substance testing as a prequalification condition.

(c) Prior to collection of a urine sample under § 391.107 of this subpart, a driver-applicant shall be notified that the sample will be tested for the presence of controlled substances.

(d) *Exception.* (1) A motor carrier may use a driver who is a regularly employed driver of another motor carrier without complying with paragraph (a) of this section, if the driver meets the requirement of § 391.65 of this subchapter.

(2) A motor carrier may use a driver who is not employed and tested by the motor carrier provided the motor carrier assures itself that the driver participates in a controlled substance testing program which meets the requirements of this subpart. A motor carrier who uses a driver more than once a year may assure itself once every 6 months. The motor carrier's assurance shall, as a minimum, consist of contacting the controlled substance testing program entity prior to using the driver and obtaining the following information:

(i) Name and address of the program.

(ii) Verification that the driver participates in the program.

(iii) Verification that program conforms to the 49 CFR Part 40.

(iv) Verification that driver is qualified under the rules of this subpart.

(v) The date the driver was last tested for controlled substances.

(3) The motor carrier who exercises paragraph (d)(2) of this section shall include the information obtained from the controlled substance testing programs in § 391.103(d) separately from the motor carrier's own anti-drug program.

(4) The motor carrier shall retain the information required in § 391.103(d) in the driver's qualification file as required under § 391.51 of this subchapter.

§ 391.105 Biennial (periodic) testing requirements.

(a) A motor carrier shall require a driver to be tested once under the requirements of this section for the use of controlled substances during the first medical examination of the driver after implementation of the drug testing program.

(b) *Exception.* A motor carrier may use a driver who participates in a drug testing program of another motor carrier or controlled substance test consortium.

(c) A motor carrier may discontinue periodic testing after the first calendar year when the motor carrier has implemented its random drug testing program according to the implementation schedule and, therefore, is testing 50 percent of drivers subject to testing under its random drug testing program.

§ 391.107 Pre-employment and biennial testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure its controlled substance testing program conforms with 49 CFR Part 40.

§ 391.109 Random testing requirements.

(a) A motor carrier shall use a random selection process to select and request a driver to be tested for the use of controlled substances.

(b) A driver shall submit to controlled substance testing when selected by a random selection process used by a motor carrier.

§ 391.111 Random testing procedures.

(a) The sample shall consist of a urine specimen.

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(b) A motor carrier shall ensure its drug testing program conforms with the 49 CFR Part 40.

§ 391.113 Post-accident testing requirements.

(a) A driver shall provide a urine specimen to be tested for the use of controlled substances as soon as possible after a reportable accident but in no case later than 32 hours after the accident.

(b) A driver who is seriously injured and cannot provide a specimen at the time of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.

§ 391.115 Post-accident testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A driver shall ensure that the specimen is forwarded and processed by a laboratory which conforms with the 49 CFR Part 40 Guidelines.

§ 391.117 Disqualification.

(a) *Disqualification for refusal.* Except for a driver who meets the conditions of § 391.113(b), a driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year following a refusal to give a urine sample when the driver has been involved in a fatal accident.

(b) *Disqualification for use of controlled substances.*

A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year for a positive test of controlled substance use when the driver has been involved in a fatal accident.

§ 391.119 Employee Assistance Program (EAP).

(a) Every motor carrier shall establish an EAP program. The EAP program shall, as a minimum, include—

(1) An educational and training component for drivers which addresses controlled substances;

(2) An education and training component for supervisory personnel which addresses controlled substances; and

(3) A written statement, on file and available for inspection, at the motor carrier's principal place of business, outlining the motor carrier's EAP.

§ 391.121 EAP training program.

(a) Each EAP shall consist of an effective training program for the motor carrier's supervisory personnel and all drivers.

(b) The training program must include at least the following elements:

(1) The effects and consequences of controlled substance use on personal health, safety, and the work environment;

(2) The manifestations and behavioral causes that may indicate controlled substance use or abuse; and

(3) Documentation of training given to drivers and motor carrier supervisory personnel.

(d) EAP training programs for all drivers and supervisory personnel must consist of at least 60 minutes of training.

§ 391.123 After-care monitoring.

After returning to work, drivers who test positive must continue in any after-care program and be subject to follow-up testing for not longer than 60 months folowing return to work.

3. In § 391.41, paragraph (b)(12) is revised to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(12) Does not use a Schedule I drug or other substance identified in Appendix D to this subchapter,[1] an amphetamine, a narcotic, or any other habit-forming drug; meets the requirements of Subpart H; and

* * * * *

4. In § 391.43, paragraph (c), a new instructional paragraph is added after the paragraph headed *Diabetes* and in paragraph (e) the first paragraph of the Medical Examiner's Certificate is revised to include controlled substance testing to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(c) * * *

Instructions for Performing and Recording Physical Examinations

* * * * *

Controlled Substance Testing. Testing procedures and requirements as contained in Subpart H, Controlled Substance Testing.

* * * * *

Medical Examiner's Certificate

I certify that I have examined (driver's name (print)) in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41 through 391.49) and with knowledge of his/her duties, I find him/her qualified under the regulations including the requirement for controlled substance testing as required by Subpart H of 49 CFR Part 391.

* * * * *

[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Standards, Washington, DC 20590, or to any Regional Office of Motor Carrier and Highway Safety of the Federal Highway Administration at the address given in § 390.27 of this subchapter.

PART 394—[AMENDED]

5. The authority citation for Part 394 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

6. In § 394.7, a new paragraph (b)(11) is added and reads as follows:

§ 394.7 Immediate notification of fatal accidents.

* * * * *

(b) * * *

(11) The results of a drug test performed in accordance with § 391.113 of this chapter.

* * * * *

7. In § 394.9, paragraph (b) is revised to read as follows:

§ 394.9 Reporting of accidents.

* * * * *

(b) The motor carrier must fill in the report form in accordance with the instructions in § 394.20, completely and accurately with the most reliable information available to it at the time the report is filed. Controlled substance testing, if performed, shall be noted under item number 27 of § 394.20(a) and under item number 28 of § 394.20(b).

* * * * *

8. In § 394.20, item 27 of paragraph (a) and item 28 of paragraph (b) are revised to include information concerning controlled substance testing and reads as follows:

§ 394.20 Instruction for preparing accident reports.

(a) * * *

Item 27: An account of the accident containing the most reliable information to which the motor carrier has access at the time of reporting, sufficiently detailed and complete to convey an understanding of his/her version of the accident shall be entered under this item. This account should be continued on an extra sheet of paper if more space is needed. Either on the form or a separate sheet of paper, indicate whether a test for controlled substances was performed, the type of test performed, and the results of the test.

* * * * *

(b) * * *

Item 28: An account of the accident containing the most reliable information to which the motor carrier has access at the time of reporting, sufficiently detailed and complete to convey an understanding of his version of the accident shall be entered under this item. This account should be continued on an extra sheet of paper if more space is needed. Either on the form or a separate sheet of paper, indicate whether a test for controlled substances was performed, the type of test performed, and the results of the test.

* * * * *

[FR Doc. 88-28613 Filed 11-15-88; 3:53 pm]
BILLING CODE 4910-22-M

federal register

Monday
November 21, 1988

Part VIII

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 653

Control of Drug Use in Mass Transportation Operations; Final Rule

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 653

[Docket No. 88-F]

RIN 2132-AA33

Control of Drug Use in Mass Transportation Operations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final Rule.

SUMMARY: This final rule sets forth regulations to require recipients of Federal financial assistance from UMTA, and operators for such recipients, to have an anti-drug program for employees who perform sensitive safety functions. The required anti-drug program would include testing an employee for drugs prior to employment, after an accident, when there is reasonable cause, randomly, and before returning to duty to perform sensitive safety functions after a positive drug test. This rule is necessary to prohibit an employee from performing sensitive safety functions while the employee has a prohibited drug or the metabolites of a prohibited drug in his or her system. This rule is intended to ensure a drug-free transit workforce and to eliminate drug use and abuse in the public transit industry.

EFFECTIVE DATE: This rule will be effective December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel Duff, Assistant Chief Counsel for Legislation and Regulations, Office of the Chief Counsel, (202) 366-4011; or Franz Gimmler, Deputy Associate Administrator for Safety, Office of Technical Assistance and Safety, (202) 366-2896; Urban Mass Transportation Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Because of the length of this preamble, the following outline of the regulation's introductory material is provided.

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I. Discussion

A. Background

On July 8, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) (53 FR 25910) entitled "Control of Drug Use in Mass Transportation Operations." The NPRM invited comment from the public on the proposed regulation which would require recipients of Federal transit funding to have a comprehensive anti-drug program. UMTA provided a 60 day comment period and received over 170 comments on the regulation proposed in the NPRM.

In addition to receiving written comments on the regulation proposed in the NPRM, UMTA held four public hearings across the country. These hearings were held on July 22, 1988, in Washington, DC, on July 25, 1988, in New York City, on August 1, 1988, in Chicago, Illinois, and on August 31, 1988, in Los Angeles, California. Each hearing was recorded by a court reporter and the transcript of each hearing and any statements or other material submitted to the hearing officer during the hearing is in the public docket to this rule. Statements made and any material submitted at the hearings were considered in developing this final rule.

B. Existing Programs

In the NPRM for this rulemaking, UMTA noted, at some length, a number of statistics regarding drug use in America, the effect of drug use on individuals and on safety, scientific data and epidemiological studies regarding drug use, and the perceived dangers of drugs in transportation generally and transit in particular. UMTA will not repeat that information in this text, but rather notes that nothing was submitted in the docket to refute that information, and UMTA incorporates that background information into this document by reference.

In light of that background information, it is the goal of the Secretary of Transportation to achieve a drug-free transportation workforce. In order to ensure that transit safety is not compromised by a failure to detect drug user in the transit industry, UMTA believes that it is appropriate and necessary to establish a comprehensive anti-drug program at this time. UMTA's commitment to a drug-free workforce also applies to its own employees. In June of 1987, the Secretary of Transportation implemented the Department of Transportation's anti-drug program and in September of 1987, the Department began drug testing of employees performing sensitive safety or security-related functions.

UMTA is aware that a growing number of operators in the transit industry also are attempting to achieve a drug-free workforce and that the idea of a comprehensive anti-drug program is not a novel concept in the transit industry. As part of their comments to the NPRM, many transit operators noted that they have already implemented drug testing and employee assistance programs. For example, the Chicago Transit Authority (CTA) has had a comprehensive anti-drug program since 1976, and an employee assistance program in place since 1974. CTA employees are given annual physical exams to check their fitness for duty, including drug testing. The current drug testing and rehabilitation program at CTA is a cooperative effort between CTA management and unions. The guidelines and procedures for drug control are part of a union contract and apply to all CTA employees. CTA considers its standards for testing and rehabilitation to be among the highest in the transit industry.

The York Area Transportation Authority (YATA) is another transit agency with a well established drug testing program, involving pre-employment testing, annual screening, and reasonable cause testing. Although YATA is a small transit agency, it has effectively administered both a drug testing and an employee assistance program for several years. YATA's drug testing procedures are governed by labor agreements and the employee assistance program is operated through a local contractor. Currently, YATA does not randomly test, but is considering the feasibility of instituting such a procedure.

The Minneapolis-St. Paul Metropolitan Transit Commission (MTC) shares UMTA's concern about drug abuse in the mass transit industry. The MTC implemented an alcohol and substance abuse policy on March 5, 1987, and it includes one of the most comprehensive drug and alcohol testing policies in the transit industry. All MTC employees and job applicants are subject to drug testing under this policy. Specifically, MTC's policy prohibits the use, sale or possession of drugs or alcohol during work hours or on MTC property. Employees violating this policy are subject to disciplinary action up to and including discharge. The policy provides for pre-employment drug testing and testing for probable cause. State law requires post-incident testing when a fatality has occurred. Additionally, MTC's employee assistance program includes rehabilitation for first time offenders. Although MTC's alcohol and substance abuse policy does not provide for the random testing of MTC employees, it is permissible to do random testing of safety sensitive employees under State law.

The Washington Metropolitan Area Transit Authority (WMATA) efforts to provide a drug free work place include an extensive Substance Abuse Policy and Employee Assistance Program dating back to 1984. WMATA's drug prevention strategies consist of education, awareness, drug testing, and rehabilitation. The drug testing rules apply to all WMATA employees. Pre-employment drug tests are given to applicants for bus operators and transit police, while post-incident testing is heavily oriented towards incidents involving vehicles. WMATA is conducting reasonable cause drug testing. The established employee assistance program works to identify troubled employees and assist them in seeking rehabilitation.

The American Public Transportation Association (APTA) shares the opinion of UMTA that drug abuse has become a major social problem and supports the Department of Transportation's goal of providing a drug free transportation environment. According to a survey conducted by APTA in 1986, of member transit systems, more than 75 percent of those responding had written rules and policies addressing drug and alcohol abuse by employees. Specifically, 60 percent of the transit systems (large bus and rail systems) responding, had employee assistance programs in operation that they feel are working effectively. These programs have the strong support of labor and management, as well as the communities in which these transit systems operate.

UMTA's conclusion that it is justified in requiring all Federally assisted public transit operations to implement a comprehensive anti-drug program to ensure the safety of the transit riding public follows from the growing problem of drugs in society and the transit industry's own recognition of a problem and its attempts to address the problem.

C. Summary of Final Rule

This final rule requires UMTA recipients, as a condition to their recipt of Federal funds, to have an anti-drug program that meets certain requirements for sensitive safety employees. An anti-drug program must provide for the following kinds of drug testing: pre-employment, reasonable cause, post-accident, return to duty, and random. All drug testing must be done in accordance with the Department of Transportation's regulations at 49 CFR Part 40, by a laboratory site certified to do drug testing for Federal agencies by the Department of Health and Human Services. Additionally, an anti-drug program must have an employee education and training program which provides information about the effects of drug use and the detection of drug use. The final rule does not require any rehabilitation, though UMTA strongly encourages recipients to provide it.

UMTA is preparing detailed implementation guidelines to assist recipients and their operators in carrying out this final rule. The implementation guidelines will include references to resources available to recipients regarding employee assistance programs, including rehabilitation.

This final rule applies to recipients of Federal financial assistance from UMTA under section 3, 9, and 18 of the Urban Mass Transportation Act of 1964, as amended, and to recipients of interstate transfer transit funds under 23 U.S.C. 103(e)(4). Any such recipient also must apply the regulation to any public or private operator providing mass transportation services for the recipient with UMTA funds.

The Office of the Secretary of the Department of Transportation is publishing elsewhere in today's **Federal Register** an Interim Final Rule and request for comments entitled, "Procedures for Transportation Workplace Drug Testing Programs." These Procedures, which will be codified in 49 CFR Part 40, are based on Department of Health and Human Service Guidelines for Drug Testing, with appropriate modifications to allow them to apply to private industry and State and local governments. The new 49 CFR Part 40 provides detailed information for implementation of the drug testing requirements of this rule, setting forth requirements for such things as specimen collection procedures, laboratory procedures, and quality assurance.

D. General Overview of Comments

UMTA received over 170 comments in response to the NPRM. UMTA considered all comments filed in a timely manner and all statements and material presented at the public hearings. During the public hearings, the Administrator and the Deputy Administrator of the Urban Mass Transportation Administration requested information from several individuals who presented statements at the hearings. While the comment period for the NPRM closed September 6, 1988, in order to accommodate the individuals who submitted supplemental information as requested by the Administrator or his Deputy, UMTA considered comments that were submitted as late as September 12, 1988.

The breakdown among commenter category is as follows:

Transit Operators (public and private)	82
Cities and counties	26
State DOTs	18
Local planning bodies/commissions	11
Medical/technical experts	6
Unions	6
Trade Associations (APTA, RLEA, NASTA)	4
Federal agencies (NTSB)	1
Colleges	2
Individual citizens	7
Senior citizen organizations	8
Other non-profit organizations	3
Chamber of Commerce	1

In general, the commenters support UMTA's efforts to achieve a drug-free transit workforce. There were, however, many differences of opinion regarding the method of achieving that goal and the manner of UMTA's involvement in any program. The primary differences arise regarding the type and scope of testing used to identify employees who perform sensitive safety functions and use drugs and the choices offered to those employees who are so identified. The comments received differed by both

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category of commenter and the issues on which the commenter focused.

The issues raised in the comments fall into two broad categories. The first category of issues addressed an entire range of practical issues around implementation of the rule. The second category of issues addressed some of the legal questions surrounding the issuance of the rule. Part E of this preamble contains a discussion of each of the issues which fall into the first category of comments. Part F of this preamble contains a discussion of the legal questions raised by the second category of comments.

E. Issues Raised in Comments

1. Pre-employment Testing

Most commenters do not object to the concept of pre-employment drug testing. VIA Metropolitan Transit in San Antonio, Texas, suggests that the pre-employment drug test also should include analysis of the blood sample collected at the pre-employment physical. However, the small operators are concerned about the cost and administrative burden of pre-employment drug testing. One small non-profit operator says that it will affect her ability to recruit already low-paid drivers. Another small operators requests that the pre-employment drug test be a condition of employment that the applicant can be asked to bear.

Some commenters support giving an applicant a chance to explain a positive drug test result. Others suggest that it places an additional unnecessary burden on the operator. One commenter asks that the final rule clarify that an opportunity to explain a positive result was not the same as the right to invoke an operator's grievance procedures.

Most commenters are concerned that they be allowed to keep the results of a pre-employment drug test in the event of an EEO complaint. One commenter requests that the final rule make it clear that refusal to take the test or failing the test is in and of itself grounds for rejection of an applicant.

UMTA Response. UMTA believes that pre-employment drug testing is a necessary part of an anti-drug program. Under the rule, an applicant must pass a pre-employment drug test before he or she can be hired for a sensitive safety position. The rule does not require an employer to test each applicant for a sensitive safety position, only the individual selected for the position.

In keeping with UMTA's desire to provide transit employers the greatest amount of flexibility possible, the final rule is silent about notifying applicants of their test results or allowing applicants to explain a test result. The final rule does however, require a transit employer to put an applicant on notice that the urine sample being collected is for a pre-employment drug test. UMTA encourages transit employers to clearly set out their policies with regard to notifying applicants of their drug test results or allowing applicants to explain their drug test results.

The proposed prohibition from retaining the results of a pre-employment test has been removed from the final rule. Transit employers should treat the results of a pre-employment test as they do other applicant information in accordance with local, State, and Federal law. If a State or local law conflicts with this regulation, a recipient may qualify for a temporary waiver. The conditions for receipt of a temporary waiver are discussed in detail elsewhere in this preamble.

2. Post-Accident Testing

One of the few issues on which there was a consensus in the comments was the scope of post-accident drug testing. Virtually all of the commenters who addressed the issue believe post-accident drug testing should not be limited to fatal accidents. Many suggested the rule cover property damage and serious injury. Some suggested the final rule include all accidents and some felt the definition of accident should be a local decision. Some commenters noted that many transit operators already do drug testing after accidents which do not involve fatalities. The unions that commented seek some limitation on the post-accident drug testing requirement where it is apparent that the accident was not the fault of the operator.

The National Traffic Safety Board (NTSB) and many others believe the potential 36-hour delay after an accident before an individual is tested set out in the NPRM is too long. Suggested time frames varied from 4 to 32 hours. The NTSB also recommended that UMTA require the collection of blood specimens as well as urine for all post-accident tests.

UMTA Response. UMTA agrees with the commenters regarding the scope of post-accident drug testing. Under the final rule, post-accident drug testing is required if there is a death or injury requiring an individual to be taken to a medical facility, if there is more than $5,000 in property damage or the accident must be reported to the Federal Highway Administration, the Federal Railroad Administration or the Coast Guard. However, in response to employee concerns, the final rule also provides that post-accident drug testing is not necessary if it is determined that the performance of a sensitive safety employee was not a contributing factor in the accident. UMTA agrees with commenters that it is inappropriate to require post-accident drug testing of an employee whose performance could not have been a contributing factor in an accident.

In the NPRM, UTMA proposed that urine samples be collected within 12 hours after the determination that there was a death within 24 hours of an accident. This time frame was based on the possibility that difficulties may arise in locating an individual after a death which occurred some hours after an accident or of obtaining a urine sample from the individual, especially if the individual was injured or the accident occurred in a remote area. UMTA is aware that extended delays in sample collection after an accident may result in deterioration or elimination of a drug or drug metabolite from an individual's system. Because the final rule requires testing in the event a person needs to be taken to a medical facility, the determination as to whether a post-accident test must be given can be made at the site of the accident. UMTA encourages transit employers to make this determination as soon as possible, particularly in cases where there is little or no uncertainty that the employee's performance was a contributing factor in the accident.

UMTA has modified the post-accident provision in the final rule to require testing as soon as possible but not later than 32 hours after the accident. While this is longer than some of the time periods suggested by commenters, UMTA believes that a maximum period of 32 hours is a workable and reasonable accommodation that is appropriate for the transit industry.

The NTSB's suggestion that UMTA require an employer to conduct post-accident testing within 4 hours after an accident is based on the time-sensitive nature of toxicological testing of blood samples. Testing of urine samples does not involve the extreme time-critical considerations associated with the collection and testing of blood samples. UMTA believes post-accident urine testing is sufficient at this time to determine whether an employee had a prohibited drug or drug metabolite in his or her system.

Also, UMTA proposed only urine testing in the NPRM, specifically excluding blood testing as an option for all drug tests that would be conducted under an anti-drug program required by the final rule. Therefore, UMTA considers NTSB's recommendation beyond the scope of the notice. UMTA does not adopt the NTSB's suggestion to require post-accident testing by collection of a blood sample.

3. Testing Based on Reasonable Cause

Very few commenters were opposed to drug testing based on reasonable cause although some commenters note that they prefer the term "reasonable suspicion." Many commenters ask for further guidance on what constitutes reasonable cause. Some commenters suggest that the definition should be left to the transit employer.

Many commenters supported the proposed rule's attempt to protect transit employees from harassemnt as exhibited by the two witness requirement in the proposed rule. Yet, almost as many commenters note that to have two supervisors available to make the decision is "a luxury." OATS, Inc. of Columbia, MO, serves 87 counties, which are divided into 7 service areas, and ther is only one supervisor per service area. Metro-Waukesha Metro Transit in Wisconsin has only 14 buses and rarely has two supervisors on duty at the same time.

UMTA Response. The final rule includes testing based on reasonable cause. UMTA's choice not to use the term reasonable suspicion was an editorial one for the sake of consistency within the Department of Transportation.

As stated earlier, UMTA wants to afford transit employers the greatest amount of flexibility possible within the framework provided by the rule so that their individual anti-drug programs may be best tailored to meet the needs of their community. For this reason, the final rule does not delineate what constitutes reasonable cause beyond requiring that the circumstances triggering the decision to test must be articulated and substantiated by specific contemporaneous physical indicators of probable drug use. This would include observations of behavioral changes and performance indicators over a period of time in conjunction with contemporaneous physical evidence. Individual anti-drug programs are free to set out specific circumstances or events which will trigger reasonable cause testing as long as the circumstances or event meets this standard. UMTA is aware that many transit employers already have negotiated such testing with their labor organizations. The implementation assistance which UMTA will make available to grantees will have additional material on the kinds of instances or circumstances which meet this standard as well.

UMTA is concerned that drug testing does not become a means by which transit employees are harassed or discriminated against. Because of this concern, the final rule calls for two supervisors to make the determination to test based on reasonable cause. However, because of the nature of many small and rural transit operations, the rule sets up a class of "small operators," which consists of recipients in areas under 200,000 population or recipients of assistance under section 18 of the UMTG Act. Under the final rule, a small operator only needs one supervisor to make the determination to require a drug test based on reasonable cause. However, UMTA encourages small operators to incorporate other protections against harassment and discrimination into their anti-drug programs. Additionally, under the final rule, the supervisor or supervisors who will make the reasonable cause determintion must have received additional training regarding the circumstances and evidence necesesary to make the determination.

4. Random Testing

Most commenters oppose random testing as proposed in the NPRM for a variety of reasons. Perhaps the primary reason cited is the unsettled constitutionality of random testing and the high rate of random testing in the NPRM. These same commenters suggest delay of the rule, or at least the random testing requirement of the rule, until the constitutionality issue is settled. They fear the high cost of litigation and questions whether UMTA would provide any financial support. Many of these commenters were not opposed to the idea of random testing, but were concerned about their own potential legal and financial liability.

Many commenters addressed the proposed rate of random testing of up to 125 percent in the NPRM. One commenter felt the maximum 125 percent rate was essential as a cornerstone to the program and "must not be reduced." Most felt the rate was too high, suggesting in the alternative anywhere from 10 percent to 100 percent. Of those who commented on the question in the NPRM regarding more latitude for operators with a high level of safety, virtually all favored such flexibility.

Many commenters said they felt random testing was unnecessary if reasonable cause testing is authorized. This was particularly true of comments from small and rural operators, who argued that the communities in which they operate in are ones where they would know if someone had a problem. Small and rural operators also noted many logistical problems associated with randomly testing small numbers of empoyees. Small and rural operators also noted confidentiality problems associated with randomly testing small numbers of employees. A few commenters felt the decision to randomly test employees should be a local one. The NTSB recommends that UMTA require the implementation of aggressive reasonable cause testing, pre-employment, post-accident and periodic testing as well as education and treatment before requiring the random testing.

A few commenters were opposed to random testing as unconstitutional. Some commenters noted State and local laws which prohibit or limit random testing of employees. A few commenters asked for clarification of what was random testing, and one suggested it be referreed to as "unscheduled screening."

UMTA Response. The constitutionality of random testing is discussed in the next section on legal concerns. UMTA is convinced, however, that an anti-drug program required by this final rule will withstand constitutional challenge and UMTA continues to believe that unannounced testing based on random selection is a fundamental component of an effective anti-drug program. Unannounced, random testing has proved to be an effective deterrent to drug use and will provide safety benefits to the transit riding public by reducing drug use by transit employees who perform sensitive safety functions. Unannounced, random testing programs initiated by the military, including the Coast Guard, and private industry, show declining drug use, evidenced by a decrease in the number of individuals who test positive for drugs, over the course of the drug testing program. A number of witnesses at the public hearings who were asked about the deterrent effect of random testing agreed that random testing does deter the use of drugs.

In response to comments on the rate that should be required for random testing, UMTA has adopted a 50 percent random testing rate in the final rule. At this time, UMTA believes that a 50 percent testing rate will provide an appropriate balance between a higher or lower rate offering a sufficient deterrent to drug use. UMTA believes the reporting required under the rule for a 50 percent random testing rate will provide enough data for UMTA to determine if the random testing program should be revised in any manner.

The 50 percent random testing rate is consistent with the random testing

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program currently applicable to sensitive safety and security-related employees of the U.S. Department of Transportation. However, for some employers, particularly those with a large number of employees subject to drug testing, it may be a substantial burden to move from no drug testing directly to a 50 percent random testing rate. If required to have tested 50 percent of all covered employees by the end of the first year, employers might have to test at rates far above a 50 percent rate toward the end of the year, to make up for lower rates at the beginning. Employers should be permitted to start out at a lower testing rate and work up to 50 percent as experience is gained and the testing procedure becomes administratively more routine. We do not want to create a situation which might lead to mistakes by requiring initial testing at too high a rate.

The final rule therefore provides an implementation procedure that would allow employers to phase in random drug testing during the first 12 months in which tests are conducted. Employers would not be required to reach an annualized rate of 50 percent until the last test collection. The tests would have to be spaced reasonably through the year to permit the employer to phase in to the 50 percent rate, and the total number of tests conducted would have to be equal to at least 25 percent of the covered population.

Suppose, for example, that an employer has 1000 sensitive safety employees. At a 50 percent annual rate, 500 tests would have to be conducted during a year. Under the phase in, however, the employer could conduct only a few drug tests at the beginning of the program and then gradually increase the number of tests until, by the end of the first year, the annualized rate of 50 percent was achieved. Thus, if the employer's drug testing plan contemplated administering random tests on 12 occasions during the year, the employer would need to administer at least 42 tests (500 divided by 12) on the last occasion, but could administer fewer tests until then. Overall, the employer would have to conduct at least 250 random tests the first year. In subsequent years, the 50 percent rate would be maintained.

Additionally, UMTA recognizes the logistical problems facing small and rural operators. Reasonable cause testing may indeed be very effective in small communities, however, UMTA believes that the deterrent effect of random testing will provide even further protection from employee drug use. In order to avoid some of the logistical problems associated with random testing, UMTA encourages States and their subrecipients, small and rural operators, to form consortia for the purpose of meeting the requirements of this rule, but in particular to meet the random testing requirement.

UMTA also recognizes that some States and local governments have laws which prohibit or limit random testing of employees. The final rule provides that operators that are unable to comply with this requirement because of State or local law may request a temporary waiver of the random testing requirement from UMTA. UMTA may grant a temporary waiver where an operator is making a good faith effort to eliminate the legal impediment created by State or local law. The expiration date of a temporary waiver will be no later than December 31, 1989.

5. Return to duty testing

A few commenters addressed this issue and all of them favored return to duty testing. One commenter noted that testing an employee who has missed work because of time spent in a drug rehabilitation program is of significant value in motivating that rehabilitated employee to stay drug free. Another commenter noted that there should be a policy that is consistently applied to all employees in similar circumstances in order to avoid any discrimination. One commenter said the testing should continue for one year and another said it should be authorized for the duration of the employee's employment. One commenter said the number and frequency of the tests should be determined by the employee's rehabilitation program. There were also comments to the effect that the decision to test employees returning to duty and whether to continue the testing for a specified period should be a local one.

UMTA Response. In response to these comments, UMTA is addressing the issue of return to duty drug testing in the final rule. UMTA is concerned about the safety of the transit riding public and thus in the final rule is requiring that, at a minimum, a transit employer must give a return to duty drug test to any individual who failed a post-accident, reasonable cause, or random drug test before that individual can resume performing sensitive safety duties. By including return to duty drug testing in this rule, UMTA is not requiring a transit employer to allow an employee who did not pass a drug test to come back to work, rather UMTA is providing this protection in the event a transit employer is willing to allow an employee a second chance. If an employee is given a second chance, the transit employer also may give unannounced drug tests to the individual for up to 60 months after the individual returns to duty. This type of testing is the most effective means of ensuring that an employee remains drug free. In addition to passing a return to duty drug test, an employee who failed a drug test or refused to take one would have to obtain a determination from the medical review officer that he or she could return to duty.

UMTA believes that any testing associated with an employee's rehabilitation should be left to the employee's rehabilitation program.

6. Rehabilitation

Comment was sought in the NPRM regarding four different employee assistance program options with varying rehabilitation requirements.

Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Once rehabilitated, the employee would be reinstated into his or her prior position. The second option would provide rehabilitation rights to an employee who comes forward voluntarily or who is identified as a drug user during a random test but would not require that the same opportunity be afforded to an employee identified as a drug user in a post-accident or reasonable cause test. In the third option, only an employee who comes forward voluntarily could claim rehabilitation rights, and anyone testing positive for drugs could be fired immediately. Under these three proposed options, recipients would be free to offer more rehabilitation options than proposed; the proposed options only establish minimum rehabilitation requirements for EAP's.

The fourth option would require the recipient to determine, as part of its anti-drug program, what rehabilitation opportunities to provide. This is essentially a "local option" approach. The recipient could choose any of the three other options as its approach or some variation of them or could choose not to provide an opportunity for rehabilitation in any circumstance.

Although many commenters agree in principle on the merit of rehabilitation for drug abusing employees, most tended to support the fourth option regarding rehabilitation, reemployment and job security opportunities that should be offered to employees. The Memphis Area Transit Authority, for example, argues that Option 4 allows recipients substantial flexibility in designing and enforcing their anti-drug programs. The Commonwealth of Kentucky contends that rehabilitation costs should be the sole responsibility of the substance abuser and that it is unrealistic to expect the recipient to assume such a financial burden.

The States of Idaho and Alaska, with many small and geographically isolated communities without rehabilitation programs and medical facilities, suggest that the cost of sending an employee to an urban area for rehabilitation would be prohibitive; Alaska urged that UMTA consider situational exemptions from the rehabilitation requirement. The Southern California Rapid Transit District (SCRTD) advocates that recipients be permitted to decide what rehabilitation options to provide based on their financial resources, existing programs (if any) and negotiated agreements. Capital Metro (Austin, Texas) supports management's prerogative to determine the circumstances under which an employee might be provided the opportunity for rehabilitation versus automatic termination. The American Public Transit Association (APTA) summarized many comments by stating that no single option seems to be appropriate as a nationwide standard.

Labor organizations that submitted comments are strong supporters of broad EAP services and rehabilitation opportunities. The Amalgamated Transit Union (ATU) urges adoption of Option 1 in the expressed belief that the most critical aspect of dealing with drug abuse is providing an opportunity for rehabilitation; in addition, they believe that a second opportunity for rehabilitation may be appropriate. Both the Transport Workers Union (TWU) and the ATU support a requirement for recipients to pay the cost of all required rehabilitation; the United Transportation Union (UTU) National advocates that, because UMTA would be mandating rehabilitation, UMTA should share in the financial burden of the program.

Most comments regarding rehabilitation deal with the issue of whether, and under what circumstances, to offer rehabilitation and to provide job security to an employee and the length of any employee rehabilitation period.

UMTA Response. While UMTA recognizes the significance of the arguments raised in defense of rehabilitation opportunities and job security for employees who use drugs, it is important to emphasize that in this rulemaking UMTA is considering the adverse safety consequences surrounding the issue of drug use by sensitive safety transit personnel. On this basis, UMTA has decided that recipients will not be required by this Federal regulation to offer an opportunity for rehabilitation or to provide job security to employees who fail a drug test, who use drugs on the job, or who voluntarily come forward and request rehabilitation. UMTA believes that the comprehensive drug testing of sensitive safety employees, combined with an employee education and training program, is the most effective approach to promote transit safety and will reduce drug use in the transit community. More importantly, in this regard, UMTA is leaving it to each recipient to develop its own policies regarding rehabilitation and job security in its anti-drug program.

While it is understood that rehabilitation opportunities and job security for employees may help those employees who use drugs, there are a multitude of managerial and labor relations issues associated with implementing a rehabilitation program. In light of the many factors involved, UMTA believes that issues such as an adequate amount of time for rehabilitation, an appropriate amount of time to receive a recommendation to return to duty in a sensitive safety position, and job security matters are best addressed in the specific employment context.

Although, a recipient is not required to offer an opportunity for rehabilitation to any employee, to provide job security to any employee, or to provide the resources for rehabilitation, UMTA encourages recipients to consider rehabilitation opportunities and to provide job security to employees enrolled in a rehabilitation program. It should be noted that a recipient may cover an employee's rehabilitation expenses through employee benefit packages, insurance coverage, or as a matter of collective bargaining.

7. Education and Training Programs

As noted in the NPRM, UMTA proposed that recipients would provide anti-drug education and training in addition to rehabilitation. The NPRM specified the elements to be contained in the training and educational component, including a minimum time frame for the annual training of sensitive safety employees and their supervisors.

Capital Metro states that emphasis should be placed on education and awareness rather than on rehabilitation programs. The Washington, DC Metropolitan Area Transit Authority (WMATA) contends that their supervisors respond positively to training programs that provide guidelines and support when they are faced with an employee who may have a substance abuse problem. Miami Valley Regional Transit Authority (Dayton, Ohio) believes that the proposed minimum of 60 minutes of training per year is not adequate; they recommend a minimum of two hours per year. The Southern California Rapid Transit District (SCRTD) believes that all employees require continuous training in brief sessions to understand the effects and consequences of drug use, urine sample collection and chain of custody procedures and the mechanics of drug testing; in addition, SCRTD advocates that supervisors receive a full day of training on substance abuse information and recognition. The Amalgamated Transit Union (National) argues that other industries' experiences support its recommendation of a minimum of ten hours of annual training.

Recipient and employee organizations differ significantly on the mechanics and content of an education and training component of an anti-drug program. However, the majority of recipients favor local flexibility in designing that component to meet the specific needs of the company or transit system. They argue that the scope and contents of any required education and training activities should be dependent on the recipient's available resources, the extent of the drug abuse problem in the local community, the status of existing educational programs, and the availability of outside providers of assistance for drug abuse such as public health service agencies.

UMTA Response. UMTA believes that a recipient should have the ability to design an anti-drug education and training program that would best serve its employees. The ability to tailor the program to local needs is particularly important for small recipients that may not have the financial and administrative resources to support a company-sponsored program. Therefore, although the requirement for an education and training component has been retained, along with a list of the basic elements it should contain, the final rule does not specify a minimum time period (i.e., 60 minutes), except that supervisors must receive at least 60 minutes of training before they are eligible to make a determination that an employee is subject to reasonable cause drug testing. As in the case of rehabilitation, UMTA has concluded that the extent and type of anti-drug education and training provided by recipients to employees is best determined in the specific employment context. UMTA encourages recipients to provide employees with frequent and substantive information, educational

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materials and training as part of an internal EAP or by contracting with community agencies, private organizations or other recipients, possibly in consortia arrangements.

8. DHHS Guidelines

The NPRM proposed that all drug testing take place in accordance with the Mandatory Guidelines for Federal Drug Testing Programs (DHHS Guidelines) of the Department of Health and Human Services (53 FR 11970; April 11, 1988). These guidelines describe the collection and testing procedures applicable to all drug testing in the Federal Government, and they include safeguards for the accuracy and privacy of testing.

A number of commenters, including several unions, raise important questions and concerns regarding the testing standards and laboratory selection and review procedures covered by the DHHS Guidelines. Some commenters suggest that UMTA allow for the procedures specified in the DHHS Guidelines or others which are "at least as effective" or are "their equivalent". Others argued for the flexibility and timeliness that results if screening and confirmatory tests can be done at different laboratories, the screening being on-site or nearby.

One commenter urges that UMTA and DHHS develop and implement a quality control and monitoring program of laboratories used to perform the drug tests. Another commented that the specimen collection procedures in the DHHS Guidelines were burdensome and, particularly in rural settings, impractical. Yet other commenters supported the unqualified adoption of the DHHS Guidelines.

One commenter questioned whether the DHHS Guidelines could be incorporated by reference in the UMTA Guidelines because they were circulated within the Federal Government and not issued for public comment.

UMTA Response. The Department of Transportation has determined that certain modifications of the DHHS Guidelines are appropriate in the context of this and other DOT operating administration drug-free workplace regulations. The result is the DOT "Procedures for Transportation Workplace Drug Testing Programs," which will be codified at 49 CFR Part 40. These DOT Procedures are intended to preserve, to the greatest extent practicable, the important safeguards provided by the DHHS Guidelines.

Some of the modifications of DHHS Guidelines are editorial in nature (for example, references to responsibilities of "agencies" are changed to references to "employers"). Other modifications are intended to take into account differences in the situations of Federal agencies and DOT regulated industries. For example, in testing at remote sites, DOT regulated industries may find it necessary to conduct some kinds of testing in medical facilities or through use of mobile units, rather than the more permanent collection sites contemplated by the DHHS Guidelines. It may not be practicable for regulated parties to maintain on-site permanent log books. Consequently, the DOT Procedures permit alternative collection and recordkeeping procedures in these circumstances. The DOT procedures at 49 CFR Part 40 set the procedural standards for urine drug tests in the transportation industry.

49 CFR Part 40 limits both the screen test and the confirmation test to a single technology: immunoassay and gas chromatography/mass spectrometry (GC/MS), respectively. Although commenters saw this limitation in the DHHS Guidelines as unduly restrictive, UMTA believes that the established reliability of the tests and procedures in 49 CFR Part 40 are necessary to ensure the integrity of a drug testing program. If better analytical methods are validated and available at a reasonable cost, UMTA can revise this rule to recognize the technological advance.

The final rule requires recipients to use only laboratory sites which are certified by DHHS to do drug testing for Federal agencies. The DHHS certification program is the first rigorous certification specifically targeted at urine drug testing at the Federal level. The DHHS Guidelines provide national standards for recognition and periodic review. UMTA is not prepared to accept accreditation by voluntary bodies absent DHHS recognition. UMTA believes DHHS certification of laboratory sites that do drug testing is an essential element to ensuring quality analysis of drug tests. UMTA has been assured that there will be sufficient capacity at certified laboratory sites to provide quality analysis for the entire transit industry.

All comments received during this rulemaking will be incorporated in the docket for the Office of the Secretary (OST) interim final rule creating 49 CFR Part 40. The OST will respond to those comments, as well as comments received during the comment period for Part 40, in its notice following the end of that comment period.

9. Medical Review Officer

UMTA received several comments on the qualifications and duties of the proposed Medical Review Office (MRO). Although two commenters mentioned the cost implications, all of the commenters recognized the necessity of the function and the value of the services. Several commenters sought clarification of those matters which management must decide with medical advice and those decisions that could be reserved to the MRO. All but one commenter addressing the issue urges that the rule provide flexibility to each recipient to decide exactly how to define roles and responsibilities.

UMTA Response. It was apparent from the comments that there was some confusion regarding the role of the MRO. The final rule incorporates all aspects of 49 CFR Part 40 pertaining to the qualifications, duties and responsibilities of the Medical Review Officer. An MRO must be a licensed physician. However, the rule does not require a recipient to hire a physician, the recipient only needs to arrange for the services of a physician to act as MRO. The rule allows a recipient to have more than one MRO based on organizational unit or employee work location, if necessary.

Under 49 CFR Part 40, the MRO's responsibility is to receive, review, and interpret all positive drug test results. The MRO makes the determination that the results of a drug test are valid and the determination whether a positive drug test result has a legitimate medical explanation. The MRO makes the determination whether a positive drug test result has a legitimate medical explanation only after reviewing any medical information submitted in confidence by the employee. If the MRO determines that a confirmed positive drug test result has a legitimate medical explanation, the MRO reports to the recipient or operator that the individual passed the drug test. The MRO is also responsible for determining whether an employee who did not pass a drug test or refused to take one may return to duty.

10. Confidentiality

Commenters raise a number of concerns regarding the issue of confidentiality. A significant number of commenters in particular oppose UMTA's proposal in the NPRM regarding pre-employment testing that, if the applicant is not hired, no record of the test results shall be maintained by the recipient. A common theme of the comments in this regard is reflected in this statement from one submission: "if a recipient does not retain a record of test results, on a strictly confidential basis, it could be left defenseless in a later claim under the equal opportunity

laws or other legal provisions governing hiring by public agencies."

A number of commenters express concern about the release of confidential information generally. A union, for example, suggests that test results should be kept confidential unless an employee provides written consent to the release of the information.

A commenter from California noted the existence of a State statute regarding the withholding of public employee records and suggests that the UMTA final rule might be in conflict with this provision.

UMTA Response. UMTA has included a provision in the final rule that will govern release of records of an employee's drug testing results and any rehabilitation information. UMTA has decided that the legitimate individual privacy rights of an employee warrant strict limitations on the availability of an employee's drug testing results. The final rule provides that the test results of an individual may be released only with the written consent of the individual. In addition, the final rule eliminates the NPRM requirement that the results of a preemployment test of an applicant not be maintained. UMTA recognizes the importance of such information in the event of a lawsuit or complaint about a failure to be hired. Accordingly, the regulation does not preclude the information from being maintained by the recipient but, as discussed above, any such information may be released only with the applicant's written consent.

Regarding the comment about the California statute, UMTA is aware that there are other state and local laws which may pose similar problems. However, once this rule becomes final and is implemented by a recipient, to continue to receive Federal transit funds, the recipient must comply with all of its requirements, including that which allows the release of data only upon written consent of the affected individual. The final rule does have a provision for a temporary waiver of certain requirements of the rule, if they are in conflict with state or local law. This waiver provision is discussed more fully under the heading 'Period for implementation'.

11. Recordkeeping and Reporting

Several organizations provided comments to UMTA regarding the reporting requirements of the proposed rule. The Dayton, Ohio Miami Valley Regional Transit Authority (RTA) deemed semi-annual and annual reports appropriate and recommended that the reports include summaries such as: the occupational groups tested, drugs identified, and disposition of employees; RTA further suggested that statistics should be grouped by category of test. The Austin, Texas Capital Metropolitan Transportation Authority supported annual reporting that could provide UMTA with general statistical information such as job title, category of test, number of tests given and a summary of test results. Long Beach (California) Transit did not object to an annual reporting requirement and generally agreed with Capital Metro's expression of support for inclusion of data in summary format to ensure the confidentiality of the information. The Topeka Metropolitan Transit Authority recommends that UMTA provide the necessary reporting forms with proper instructions for completion and submission. A few commenters objected to semi-annual or annual reports as overly burdensome and at least one organization recommended that the Triennial Review process could serve as the proper mechanism to evaluate the effectiveness of each recipients' anti-drug program.

There was a general consensus against the separate reporting post-accident test results for fatal accidents immediately after an accident. The City of Waukesha (Wisconsin) Transit System Utility suggested that positive post-accident test results are an issue and a problem to be resolved by the employer and the employee, and that UMTA's efforts should be focused on utilizing general statistical trends to assess the effectiveness of its anti-drug regulation.,

In light of its overall support for the compilation and resporting of generalized data on a semi-annual and annual basis, Long Beach Transit questioned the benefit gained by reporting to UMTA after each positive post-accident drug test result.

There was substantial opposition to UMTA's proposed requirement that if an applicant is not hired, no record of the tests results will be maintained by the recipient. Both OATS, Inc. (a private, not for profit service provider based in Columbia, MO) and the Iowa State Department of Transportation (IDOT) point out that destruction of an otherwise qualified applicant's application records (including pre-employment drug test results) prevent a recipient from producing evidence that an employment offer was withheld for a valid and legal reason; further it might not be possible to prove that affirmative action and equal employment opportunity requirements had been met. Clark County, Washington agreed that test records are important documents in defending against claims brought by a applicant subsequent to the recipient's decision to not employ the applicant; premature destruction of the records could expose the recipient to unnecessary liability and hamper any legal defense it may care to develop. A concern was expressed by Waukesha that applicants who previously test positive might reapply at a later date, and that they view a three year record retention policy as a reasonable management practice that would be very helpful in that eventuality. The Idaho State Department of Transportation (IDOT) argued in favor of destruction of drug test records of an applicant who tests positive and who is subsequently not hired; they expressed concern that such information could lead to future discrimination of rehabilitated substance abusers.

UMTA Response. The regulatory provisions that require a recipient to submit summary reports of the recipient's program are critical measures to provide oversight of the industry's implementation of the comprehensive anti-drug program. UMTA believes that these minimal requirements are necessary to properly monitor the effectiveness of the program and to ensure compliance with the final rule. In addition, evaluation of the industry's implementation of the anti-drug program and of test results will enable UMTA to review any demonstrated trends of drug use in the transit industry and to modify the final rule if warranted by the data.

The proposed recordkeeping and reporting provisions have been modified in the final rule. UMTA is persuaded that the proposed requirement for immediate reporting of post-accident test results would be cumbersome and an unnecessary management chore, and has therefore not included it in the final rule. UMTA also has clarified the requirements and organization of material that must be submitted in the recipient's semi-annual report. In order that UMTA may accurately assess information submitted by a recipient, the final rule provides that the recipient must submit:

(1) The total number of drug tests administered;

(2) The number of drug tests administered in each occupational category (e.g., vehicle operator);

(3) The number of drug tests administered in each testing category (i.e., pre-employment, post-accident, reasonable cause, random, and return to duty);

(4) The number of post-accident drug tests administered in each accident

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category (i.e., fatal, personal injury, or property damage);

(5) For each post-accident test, the number of hours between the accident and the collection of a urine specimen;

(6) The total number of individuals who did not pass a drug test;

(7) The number of individuals who did not pass a drug test by occupational category (e.g., vehicle operator);

(8) The number of individuals who did not pass a drug test by testing category (e.g., reasonable cause);

(9) The number of individuals who did not pass a postaccident drug test by accident category (e.g., fatal);

(10) The disposition of each individual who did not pass a drug test;

(11) The number of drug tests submitted to the laboratory that showed evidence of one or more prohibited drugs or drug metabolites in the immunoassay screen in a sufficient quantity to warrant a confirmatory test;

(12) The total number of drug tests submitted to the laboratory that showed evidence of one or more prohibited drugs or drug metabolities in the confirmatory test in a sufficient quantity to be reported as positive to the medical review officer; and

(13) The number of drug tests submitted to the laboratory that showed evidence of one or more prohibited drugs or drug metabolite in the confirmatory test in a sufficient quantity to be reported as positive by category (i.e., marijuana, cocaine, opiate, PCP, or amphetamine).

Because most drug testing laboratories report much of this information when reporting summary drug test results to the recipient, UMTA does not anticipate that the reporting requirements will be overly burdensome. However, in the case of multimodal recipients, the data must be broken down by mode. UMTA believes that the semi-annual reporting requirement is necessary and vital to gain a timely understanding and to evaluate the effectiveness of the anti-drug program. However, UMTA anticipates that the semi-annual reporting requirement will be modified or possibly eliminated within the next three to four years, if it is incorporated into the annual Section 15 reporting process.

Additionally, UMTA has withdrawn the proposed requirement that if an applicant is not hired, no record of the test results will be maintained by the recipient. In response to numerous comments, the recipient must retain all records related to the collection process and the reports of individuals not passing a drug test, regardless of the category of the test, for at least five years. The recipient must retain the reports of individuals passing a drug test for at least one year. Additionally, the medical review officer must keep the reports of individual test results that do not pass a drug test for at least five years and of individual test results that pass a drug test for at least one year. These records are subject to limited release, as discussed in Section 653.31.

12. Small Operators

The single issue raised by the NPRM that elicited the most comments was the impact of the proposed rule on small agencies and operators. Comments on this issue came from individuals, small entities both public and private, several States and several national organizations. Large operators also spoke out on behalf of the smaller agencies. The comments requested special consideration for groups variously categorized as the recipients of federal funds under section 18, section 16(b)(2) recipients, and other groupings defined by size of vehicle fleet, levels of employment, and numbers of safety sensitive positions.

Many of the commenters stated, and a number cited evidence that, rural, small, and specialized operators had "no safety problem" or a "better" or "much better" safety record than transit as a whole. Several went on to describe only very small or nonexistent drug problems in that good safety record.

Comments also emphasized the small size of the administrative staffs in most small systems. Frequently the manger splits his time between managing and driving and there are no other support personnel.

Among the concerns expressed, generally in order of importance, include:

- The cost to administer, cost to test, cost to rehabilitate, cost as a percentage of operating budget, as a percentage of Federal grant;
- The high level of personal and institutional development necessary to create and administer effective programs;
- The time needed to develop the required management capacity and to negotiate labor contracts and other agreements;
- Logistic and operational complexities imposed on small geographically dispersed systems (e.g., back-up drivers, collection sites, Medical Review Officers);
- The difficulties presented by irregular employment arrangements including part-time and voluntary worker and high employee turnover;
- The potential exposure to legal challenge and the costs associated with litigation and damages; and
- The apparent inequities resulting from requiring recipients of funds under section 18 to have an anti-drug program, but not recipients under section 16(b)(2).

In almost all comments, particular emphasis was placed on the special burdens imposed by the proposed random testing requirement and the proposed maximum 125 percent sampling rate. Relief was proposed in a variety of ways: establish new Federal assistance programs to fund the costs of the required drug programs; exclude from the rule agencies by funding category, size, or the demographics of their service area; eliminate one or more of the test categories from those required of smaller operators; eliminate other program elements from the requirements such as EAPs and/or rehabilitation; extend the period allowed for implementation of one or more of the program requirements; stagger or phase implementation time-tables; establish State or National programs to administer the required drug control activities; impose requirements selectively on those with a demonstrated drug problem; establish a Federal program to bear the costs of defending against legal challenges to agency actions in compliance with the rule; make EAP programs voluntary for small systems, also training; allow exemptions and waivers from some DHHS Guideline requirements; allow for and promote development of private providers of all services necessitated by the rule; reduce the sampling rate for the random testing program to something like 50 percent instead of 125 percent; allow more time to accomplish the post accident test; and allow for entire drug program or specific aspects to be accomplished by State Government and State or local police.

UMTA Response. Upon review of the docket, UMTA found several arguments made on behalf of small entities to be persuasive. UMTA has therefore prepared the final rule to accommodate small entities. UMTA has excluded all recipients of section 16(b)(2) funds from coverage under the rule, although UMTA will be studying data on this issue to determine whether some future rulemaking to cover section 16(b)(2) recipients might be warranted. UMTA has increased the implementation period for large recipients from 6 to 12 months. UMTA has increased the implementation period for section 18 recipients and other small operators from 6 months to 24 months; and UMTA has selected a rehabilitation option

making all aspects of that program element voluntary.

UMTA has excluded volunteer workers from the mandatory coverage of the rule.

UMTA is requiring the State to certify compliance with the rule for all sensitive safety employees of section 18 recipients. This is consistent with UMTA's administration of section 18 program, and allows the States to establish Statewide requirements or to pass the requirements through to subrecipients.

13. Covered Employees

In the NPRM, UMTA sought comment on which employees should be subject to the drug testing rule. The NPRM proposed that all employees in sensitive safety positions would be covered, including vehicle operators, controllers, and mechanics. The NPRM specifically asked whether this definition was broad enough or whether other categories of employees also should be covered.

A number of comments were received on this point. Some commenters suggest that the rule should not be limited in its application to sensitive safety employees. Rather, these commenters argue that all of a recipient's employees should be covered in order to emphasize the importance of a drug-free workplace, and to assure that all employees are subject to the same requirements. The National Transportation Safety Board, for example, supports the inclusion of all employees who perform sensitive safety functions.

On the other hand, other commenters did not specifically recommend that certain categories of employees be covered or excluded from coverage of the definition. Rather, these commenters suggest that each recipient should be given the flexibility to itself determine which employees perform safety functions sufficient to bring them under the definition. The transit industry's association, the American Public Transit Association (APTA), for example, supports this approach by recommending adding the phase "as defined specifically in the local program" at the end of the last sentence of the definition. "This would permit each transit system to tailor the definition of safety sensitive position to their own needs and circumstances, while still providing adequate guidance." (APTA also recommended that UMTA use the term "safety sensitive position" rather than "sensitive safety" to parallel the usage in the transit industry.) Other commenters suggest that the definition be defined as broadly as possible so long as the recipients are able to specifically decide which employees come under the category.

Many small operators suggest that the rule should not apply to their operations given their size, their ability to closely supervise employees, and the administrative and economic burdens that would result from the application of the rule to their operations. Consequently such commenters did not generally discuss which employees should be considered sensitive safety, except for the issue of volunteers, discussed below.

A few commenters representing large transit authorities suggest that security personnel should be considered sensitive safety employees under the rule. A New York City transit authority states that "* * * all security-related positions should be subject to a drug testing program for the same reasons that sensitive safety positions are and, in addition, because there is a higher burden placed on these employees to secure property and protect other employees and the riding public. Failure of such employees to perform their duties effectively could interfere with the safe operation of the authority and place the public at risk."

Regarding temporary employees, in the NPRM UMTA specifically asked for comments on whether such employees should be subject to rehabilitation, and thus few comments were received on the question of whether temporary employees should be covered by the rule. One State Department of Transportation states that all safety employees, full-time and temporary, should be subject to drug testing, especially pre-employment testing.

A significant number of small operators ask whether the rule was meant to apply to volunteers in sensitive safety positions. These commenters note that small systems particularly rely on volunteer drivers, many of whom are elderly, and suggest that this very needed and useful voluntary service would be seriously affected if such volunteers were to be subject to the anti-drug regulation.

UMTA Response. UMTA in the final rule will continue to limit the rule's coverage to sensitive safety employees. We believe we have no basis to extend the coverage of the rule to all of the employees of a transit system. Moreover, this would significantly increase the cost of the final rule. Recipients are reminded, however, that the rule establishes minimum requirements and does not prevent a recipient from establishing on its own a program that exceeds the rule's requirements.

UMTA does not agree with those commenters who suggest that each recipient should have the flexibility to decide which employees are to be considered sensitive safety and therefore subject to the rule. The rule should be uniform with respect to applicability to all recipients. In so deciding, however, we recognize that a more specific definition of the term sensitive safety is necessary and have therefore added a detailed provision in the "Definitions" section of the rule. It provides that such employees are those with duties related to the safe operation of transportation service by a recipient, including operating a revenue service vehicle; controlling dispatch or movement of a revenue service vehicle; maintaining a revenue service vehicle or equipment used in revenue service; and those who supervise individuals performing such sensitive safety functions. UMTA recognizes that even within the context of this more specific definition there may be questions about whether particular employees are covered, and recognizes that a recipient will have to make these determinations on a case-by-case basis, taking into consideration the extent of the employee's potential impact on safety.

UMTA has not included security personnel in the definition of "sensitive safety". However, UMTA agrees with the commenters who contend that security workers are involved in helping to provide safe transportation, and UMTA strongly encourages recipients to consider including security personnel in an anti-drug program.

UMTA has considered carefully the issue of whether volunteers should be subject to the rule. UMTA is persuaded by the comments of small operators who contend that coverage of this category under the rule might discourage individuals from volunteering their services, and have decided to exclude volunteers from the applicability of the rule. UMTA encourage those recipients that use volunteers to consider asking them to voluntarily place themselves under the recipient's anti-drug program.

Finally, part-time and temporary employees are included in the definition of "sensitive safety" employees. UMTA simply finds no basis to exclude such workers from the drug testing program, and agree with those commenters recommending their coverage under the rule.

14. Private Operators

Comments to the docket on this issue were limited. Commentators were concerned with the cost implication of the requirements, particularly in a

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competitive environment. They saw the control of drug program costs to be a significant new management task and one that would have a significant impact on their competitiveness. At the same time, both private operators and the public agencies with which they were under contract saw no alternatives to including private sensitive safety employees under the drug rule if the current growth of competition and private participation in public transit was to continue.

UMTA Response. The rule covers employees of private companies providing mass transportation services for a recipient if the employees perform sensitive safety functions. It is important to emphasize that it is the responsibility of the recipient to ensure, and certify to UMTA that any private operator with employees in this category complies with this rule.

15. Alcohol

Some commenters suggest that while drugs are a problem generally in society, alcohol abuse is an even greater problem. They argue that the rule should be broadened to cover alcohol abuse among sensitive safety transit employees as well.

UMTA Response. UMTA is concerned about impairment resulting from the abuse of other substances, principally alcohol. We believe, however, that this rulemaking will best accomplish a useful purpose by addressing only controlled substances. Although both alcohol and controlled substances may result in impairment in a driver's ability to control his or her vehicle, and although current law and regulations prohibit a person from driving while under the influence of either, certain differences are evident. The possession and use of controlled substances is nearly always illegal, while alcohol consumption is in many circumstances legal. Because of the legality of alcohol and its widespread use, most people have enough contact with users to recognize the indicators of its use. The appearance and actions of a person are often clear evidence of alcohol impairment.

Because alcohol is a legal substance, it is necessary to establish violation of existing prohibitions and actual impairment due to use, rather than simply establishing use, as is done in instances where illegal drugs are used. In instances where chemical testing is used, it would be to determine the degree of alcohol impairment. Testing will often be of a different type than is used to determine the use of drugs. UMTA is not prepared at this time to mandate blood testing programs. However, this regulation or other UMTA policy in no way prevents a recipient from instituting a program of chemical testing for alcohol use. Such testing could be done either in conjunction with an anti-drug program under this rule or separately.

Moreover, on October 4, 1988 the Federal Highway Administration (FHWA) issued a final rule at 53 FR 39044 regarding the use of alcohol by drivers that will affect many UMTA recipients. Under section 12008(f) of the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570), among other things, the FHWA has established a BAC level of 0.04 percent as the standard for when a person is deemed to be driving under the influence of alcohol while driving a commercial motor vehicle.

16. Period for Implementation

Many commenters present views on this issue. In the NPRM, UMTA proposed that the rule would have to be implemented within 180 days of its effective date. Commenters uniformly contend that this is too short a period of time for implementation of the anti-drug rule. The American Public Transit Association, for example, states that, "* * * a deadline of 180 days is too short a time frame to require transit systems to establish and implement a drug program in compliance with the UMTA regulations." The Association also lists a number of administrative and legal barriers to implementing the rule in 180 days, and recommends that a 12-month period of time be provided for a recipient to establish and implement its anti-drug program.

UMTA Response. UMTA is persuaded by the many comments on this issue that 180 days is too brief a time period for implementation. Accordingly, the rule provides that for recipients (other than small operators) the time period for implementation is 12 months from the effective date of the rule (which is 30 days after the date the rule is published in the **Federal Register**). Moreover, recognizing that small operators will need more time to implement the rule, UMTA is providing such recipients with 24 months to implement the rule. "Small operators," discussed in more detail elsewhere, are section 18 recipients, and those recipients in urbanized areas of less than 200,000 in population. The rule also permits a recipient to seek a temporary waiver from this implementation period if the recipient is unable under State or local law to comply with the regulation.

A request for a temporary waiver must include a legal opinion regarding the conflict between the rule and the state or local law, an indication of how the recipient is addressing the conflict at the State or local level, and an estimate of how long it will take to resolve the conflict. A temporary waiver will specify which provisions are being waived and a date on which the waiver expires. The expiration date of a temporary waiver will be no later than December 31, 1989. A recipient must certify compliance with all provisions not included in the waiver within the 12 or 24 month requirement. A recipient then must certify compliance with the provisions included in the waiver within 12 months after the expiration date of the waiver.

F. Legal Concerns Raised In Comments

1. Constitutionality

A number of commenters question the constitutionality of drug testing programs for transit personnel. UMTA recognizes that there are legitimate and significant constitutional concerns surrounding drug testing in general and random testing in particular. UMTA acknowledges the current widescale litigation and apparent disparate judicial opinions on drug testing programs.

UMTA Response. Although the state of the case law is evolving in rapid fashion and the Supreme Court has not resolved many of the relevant and complex issues, UMTA is confident that testing of employees under this rule will withstand judicial scrutiny on constitutional grounds.

Of particular concern to the commenters is the relevance of the Fourth Amendment to drug testing. The principles of the Fourth Amendment to the U.S. Constitution are paramount in scrutinizing the fundamental legality of many drug testing programs. As a threshold matter, the Fourth Amendment applies to "searches" conducted or mandated by the government and protects individuals against "unreasonable searches and seizures."

A second issue concerns whether urine tests under these programs are "searches" within the meaning of the Fourth Amendment. Although most courts to address the issue to date have ruled that toxicological testing of employees for the purpose of determining fitness for duty is a search within the meaning of the Fourth Amendment, the issue is not entirely settled. *See Wyman v. James,* 400 U.S. 309, 317–338 (1971) (government welfare caseworker's "home visit" as a precondition for assistance payments is not a Fourth Amendment search). *See also, Lovvorn v. City of Chattanooga,*

1988 U.S. App. Lexis 6952 (6th Cir. May 23, 1988) (Guy, J., dissenting); *National Treasury Employees Union v. von Raab,* 808 F.2d 10057, 1060, 1062 (5th Cir. 1987) (Higginbotham, J., concurring). *Cf. Mack v. United States, F.B.I.,* 814 F.2D 120, 125 N.2 (2nd Cir. 1987).

Also assuming, *arguendo,* that urine tests of transit personnel for prohibited substances are "searches" within the meaning of the Fourth Amendment, it is clear that while searches ordinarily must be conducted pursuant to a warrant issued on probable cause grounds, such a requirement is not always necessary. *Almeida-Sanchez v. United States,* 413 U.S. 266,277 (1973) (Powell, J., concurring). Where, for example, "* * * the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search * * *," the Supreme Court has routinely held that a warrant is not required by the Fourth Amendment [citing *Camara v. Municipal Court,* 387 U.S. 523, 533 (1967)]. *See e.g., Griffin v. Wisconsin,* ——— S.Ct.——— (1987) (plurality opinion); *New Jersey v. T.L.O.,* 469 U.S. at 340–342; *United States v. Martinez-Fuerte,* 428 U.S. 543, 560–561 n.—— (1976) (while "* * * some quantum of individualized suspicion is usually a prerequisite to constitutional search or seizure[,] . . . the Fourth Amendment imposes no irreducible requirement of such suspicion").

Rather, "[t]he fundamental command of the Fourth Amendment is that searches and seizures be reasonable * * *." *New Jersey v. T.L.O.,* 469 U.S. at 340. In determining the reasonableness of a search, the Supreme Court has repeatedly stressed the importance of the facts particular to the search while acknowledging that the test of reasonableness "* * * is not capable of precise definition or mechanical application." *Bell v. Wolfish,* 441 U.S. 520, 559 (1979). In analyzing a drug testing program, "* * * what is reasonable depends on the context within which a search takes place." *New Jersey v. T.L.O.,* 469 U.S. at 337.

In scrutinizing whether a particular search comports with the Fourth Amendment, courts have adopted a balancing test. In general, to support a claim that a search of an individual or the individual's property is reasonable, the government must demonstrate that, on balance, "the government's need for supervision, control and the efficient operation of the workplace" outweighs the individual's legitimate expectation of privacy. *O'Connor v. Ortega,* 480 U.S.——, 107 S.Ct. 1492, —— (1987). *Also see e.g., United States v. Montoya de Hernandez,* 473 U.S. 531, 537 (1985); *United States v. Villamonte-Marquez,* 462 U.S. 579, 588 (1983); *Delaware v. Prouse,* 440 U.S. 648, 654 (1979). Thus, the courts must "* * * consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Bell v. Wolfish,* 441 U.S. at 559.

Thus far, a number of courts have held or suggested in *dicta* that testing upon reasonable suspicion alone may be inadequate. Reasonable suspicion testing allows inquiry only after a problem manifests itself at work. *See, Amalgamated Transit Union, Division 1279 v. Cambria County Transit Authority, 691 F.Supp. 898* (W.O. Pa. 1988). Furthermore, these courts have allowed drug and alcohol testing in the context of a pre-employment physical or routine health examination. *See, e.g., Cambria County Transit Authority* (drug and alcohol testing during annual physical examinations does not violate employee rights under the fourth amendment; individualized reasonable suspicion not required); *Wrightsell v. City of Chicago,* 678 F.Supp. 727 (N.D. Ill. 1988) (drug testing of police officers as part of routine, reasonably required, employment-related medical examination is permissible where there is clear nexus between test and employer's legitimate safety concern); *McDonnell v. Hunter,* 612 F.Supp. 1122, 1130 n. 6 (S.D. Iowa 1985) (Fourth Amendment does not preclude taking body fluid specimen as part of pre-employment physical or as part of routine periodic physical examination), *aff'd as modified,* 809 F.2d at 1302 (8th Cir. 1987); *Jones v. McKenzie,* 833 F.2d 335, 341 (D.C. Cir. 1987) Pet. for cert. filed, No. 87–1706, April 15, 1988), (not unreasonable to require drug testing where an employee's duties involve direct contact with young school children and other physical safety, where the testing is conducted as part of a rountine employment-related medical examination and where there is a clear nexus between the test and the employer's legitimate safety concern). Moreover, as the court in *Cambria County Transit Authority* held, such testing serves the laudable goal of fostering a drug free and sober workforce as well as identifying those employees with serious drug problems.

Viewed in this light, it is beyond dispute that the public has an overriding interest in assuring that sensitive safety transit personnel perform their duties free of prohibited substances. The drug problem in society in general was discussed in the NPRM. The impairing effects of drugs and the substantial risks to public safety posed by sensitive safety- or security-related transit personnel who use drugs underlie the compelling governmental interest in promulgating this rule.

In contrast, the drug testing requirements of the final rule involve a minimal invasion of privacy. As the Supreme Court has indicated, where searches are undertaken in situations where individualized suspicion is lacking, other safeguards must be relied upon to ensure that the discretion of the party conducting the search is properly defined and the scope of the search is limited. *See Delaware v. Prouse,* 440 U.S. at 654–655 (footnote omitted); *New York v. Burger,* 107 S.Ct. 2636 (1987). The drug testing requirements of the final rule place significant constraints on an employer's discretion in conducting drug testing. For example, the requirement for random drug testing calls for selection of an employee to be tested in a scientifically-acceptable manner, such as use of a computer-based random number generator. Requirements for testing based on reasonable cause or post-accident testing also are severely circumscribed in order to limit an employer's discretion in administering these tests to employees. Moreover, recipients will be required to have an anti-drug program in accordance with the provisions of the final rule, to ensure that discretion is in fact limited in the administration of drug tests under the anti-drug program. *Cf. National Treasury Employees Union v. Reagan,* 685 F.Supp. 1346, 1352–53 (E.D. La. 1988) (holding that the constitutionality of an Executive Order requiring Federal agencies to establish drug testing programs for Federal employees was not ripe for review since each agency had not implemented a finalized, particular plan).

The actual testing procedures that each employer is required to implement under this final rule also are narrowly tailored to respect an employee's reasonable expectations of privacy. The Departmental regulations at 49 CFR Part 40 governing collection of urine samples, as referenced in the final rule, are based on the DHHS Guidelines which were carefully designed to preserve privacy while protecting the integrity of the sample. The final rule contains a number of important employee safeguards, including privacy during collection under most types of tests, stringent laboratory safeguards, and provisions for challenging results. Other employee drug testing programs incorporating the collection and testing procedures of the DHHS guidelines have been upheld against constitutional

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attack. *See American Federation of Government Employees v. Dole,* 670 F. Supp. 445 (D.D.C. 1987), appeal filed, No. 87–5417 (D.C. Cir. Dec. 11, 1987) (upholding the constitutionality of the Department of Transportation program for random drug testing of safety- and security-sensitive agency employees); *National Association of Air Traffic Specialists v. Dole,* 2 Ind. Emp. Rts. Cases (BNA) 68 (D. Alaska 1987) (denying a motion for a preliminary injunction against the Federal Aviation Administration's use of urinalysis drug testing as part of an annual physical examination of the agency's air traffic specialists).

Equally significant is the fact that urine drug testing of sensitive safety employees is to be conducted in the "context" of the employment relationship. As the Supreme Court has noted, "[t]he operational realities of the workplace * * * may make *some* employees' expectation of privacy unreasonable." *O'Conner v. Ortega,* 107 S.Ct. at 1498 (emphasis in original). This is particularly important in circumstances where the employee works in an industry in which an employee's activities are subject to extensive regulation. Thus, persons who work in such "closely regulated" industries have a "reduced expectation of privacy" [*New York v. Burger,* 107 S.Ct. 2636 (1987)] and, "in effect consent[ ] to the restrictions placed upon them" [*Almeida-Sanchez v. United States,* 413 U.S. at 271]. For these reasons, two Federal courts of appeals have upheld urinalysis testing, in the absence of particularized suspicion, in industries where pervasive regulation has reduced an employee's expectation of privacy. *See Rushton v. Nebraska Public Power Dist.,* 844 F.2d 562, 566 (8th Cir. 1988) (nuclear plant operators); *Shoemaker v. Handel,* 795 F.2d 1136, 1142 (3rd Cir.), *cert. denied,* 479 U.S. 986 (1986) (horse racing jockeys); *Policemen's Benevolent Ass'n, Local 318 v. Township of Washington,* 850 F.2d 133 (3rd Cir. 1988) (police officers).

UMTA recognizes that a number of Federal and State courts have rejected government-mandated drug testing program on Fourth Amendment grounds. However, even courts striking drug testing programs have recognized that drug testing is appropriate in other contexts. *See e.g., Lovvorn v. City of Chattanooga,* 1988 U.S. App. 84 F.2d 1539, 1553–54 (6th Cir. 1988) (Martin, J.) panel decision vacated and rehearing en banc (August 3, 1988), ("When determining, then, whether a mandatory drug search is 'reasonable,' we believe that, as the costs to society of an impaired employee increase, the requisite level of suspicion that a drug problem exists decreases."); *American Federation of Government Employees v. Meese,* 688 F. Supp. 547, 548 (N.D. Cal. 1988) (issuing a preliminary injunction against a Bureau of Prison plan to test randomly all agency employees but nonetheless noting that "[t]here are cases in which compulsory drug testing may be justified in the interest of public safety or security"). Within the mass transportation industry itself, a number of courts have reviewed service providers' drug testing programs and, in most cases, have upheld such programs in the face of constitutional and statutory challenges, even where such programs require employee testing in the absence of individualized suspicion. Thus, an early drug testing case upheld a drug testing program of the Chicago Transit Authority requiring, *inter alia,* drug and alcohol testing of operating employees directly involved in a serious accident. *Division 241, Amalgamated Transit Union v. Suscy,* 538 F.2d 1264 (7th Cir.), *cert. denied,* 429 U.S. 1029 (1976). The Suscy court reasoned that "the public interest in the safety of mass transit riders outweighs any individual interest in refusing to disclose physical evidence of intoxication or drug abuse." 538 F.2d at 1267. *Accord Jones v. McKenzie,* 833 F.2d at 340 ("The case law on this point is clear that a governmental concern is particularly compelling when it involves the physical safety of the employees themselves or of others.")

More recent court decisions also provide further support for the testing programs required by this final rule. See, *e.g., Amalgamated Transit Union, Local 933 v. City of Oklahoma City,* No. CIV–86–2182–A (W.D. Okla. September 6, 1988) (upholding annual physical, post-accident, reasonable suspicion, pre-employment and return to duty from-unscheduled-absence testing of transit workers); *Burka v. New York City Transit Authority,* 680 F. Supp. 590 (S.D.N.Y. 1988) (drug testing as part of routine, periodic physical examinations; pre-employment or incident to a promotion; as a result of an on-duty incident; or based upon reasonable suspicion of impairment found not to violate Rehabilitation Act and equal protection; however, disposition of Fourth Amendment issues not made on summary judgement); *Dozier v. New York City,* 519 N.Y.S.2d 135, 142 (1987) ("testing applicants for public safety-related jobs is reasonable under the Fouth Amendment if the applicant is given reasonable notice of drug testing"); *Transport Workers', Local 234 v. SEPTA,* 678 F. Supp. 543 (E.D. Pa. 1988) (upholding constitutionality of random testing of operating employees); *Amalgamated Transit Union, Division 1279 v. Cambria County Transit Authority, supra,* 691 F. Supp. 896 (mandatory drug and alcohol testing during annual physical examination does not violate Fourth Amendment); *Shaw v. Unemployment compensation Board of Review,* 539 A.2d 1383 (pa. 1988) (taking of bus drivers' blood and urine based on supervisor's reasonable suspicion comports with Fourth Amendment). Cf. *Sanders* v. *WMATA,* 819 F.2d 1151 (D.C. Cir. 1987) (employees' constitutional and statutory challenge to compulsory drug test and discharge on basis of test results after on-the-job accidents or incidents were bared by doctrine of sovereign immunity). But see *Amalgamated Transit Union, Local 1277 v. Sunline Transit Agency,* 663 F. Supp. 1560 (C.D. Cal. 1987) (random drug and alcohol testing of bus drivers and maintenance workers constitutes an unreasonable search).

UMTA also is aware of the recent Ninth Circuit decision that held that the Federal Railroad Administration's mandatory blood and urine testing after certain accidents, incidents, or rule violations is unconstitutional because the rules do not require a showing of "particularized suspicion" of drug or alcohol impairment prior to testing. *Railway Labor Executives' Association v. Burnley,* 839 F.2d 575 (9th Cir.), *cert. granted,* 108 S. Ct. 2033 (1988). The Ninth Circuit based its views, in part, on the proposition that "* * * the vast bulk of [railroad] safety regulation is directed at owners and managers of railroads, not employees." *Id.* at 585.

The Supreme Court has granted a government petition for a *writ of certiorari* in *Railway Labor Executives' Association v. Burnley* and has ordered that this case be argued this term "in tandem" with *National Treasury Employees Union v. von Raab,* 816 F.2d 170 (5th Cir. 1987), *cert. granted,* 108 S. Ct. 1072 (1988) (upholding drug testing of applicants for critical safety or security sensitive positions in the U.S. Customs Service). Decisions in these cases may not be forthcoming until the spring of 1989. However, in the absence of Supreme Court guidance, UMTA is convinced that the need for drug testing by urinalysis in the transit industry to determine fitness for duty of sensitive safety employees and, thereby, to ensure public safety clearly outweighs the privacy interest of individuals in this class.

While not totally free from doubt, it is UMTA's opinion that UMTA's anti-drug program, and similar drug testing regimens proposed by other administrations within the Department of Transportation, will be determined to be constitutional. The critical need for properly-administered drug testing to ensure that employees in the transportation industry do not have drugs or drug metabolites in their system while performing sensitive safety functions outweighs the reduced privacy interest of these employees.

2. Statutory Basis for the Rule

Some commenters suggest that UMTA does not have sufficient statutory authority to issue a rulemaking that requires drug testing of employees of recipients of UMTA funds. One recipient notes that the "Findings and Purposes" of the UMT Act (section 2) provides no specific safety statutory authority, but rather states that the purposes of the UMT Act are to (1) assist in the development of improved mass transportation facilities, equipment, techniques and methods; (2) encourage the planning and establishment of area wide urban mass transportation systems needed for economical and desirable urban development; and (3) provide assistance to State and local governments and their instrumentalities in financing such systems. Another commenter points out that section 9 of the UMT Act sets forth specific provisions of the UMT Act that apply to the section 9 formula program, but that section 9(e)(1) provides that no other condition, limitation or UMT Act provision applies to the program. Finally, a commenter notes that section 12(d) of the UMT Act provides that "[n]one of the provisions of this Act shall be construed to authorize the Secretary to regulate in any manner the mode of operation of any mass transportation system with respect to which a grant is made under section 3 * * *," and concludes that this prevents UMTA from issuing this drug regulation.

UMTA Response. As noted in the NPRM, the grant programs under both section 3 and section 9 of the Urban Mass Transportation Act of 1964, as amended (The UMT Act) require a recipient of Federal financial assistance to have the inherent capacity to carry out the purposes of the transit grants. Under the section 3 discretionary grants program, section 3(a)(2)(A)(i) provides that "No grant or loan shall be provided under this section unless the Secretary determines that the applicant has or will have—(1) the legal, financial, and technical capacity to carry out the proposed project; * * *."

Essentially the same requirement is contained in the formula grant program under section 9, although in the form of a certification. Section 9(e)(3) provides that each recipient of section 9 funding "* * * should submit to the Secretary annually a certification that such recipient * * * has or will have the legal, financial, and technical capacity to carry out the proposed program of projects * * *". This provision also requires, as does section 3, a certification by the recipient that it has "satisfactory continuing control" over the use of UMTA-assisted facilities and equipment.

The technical capacity to carry out a mass transit project necessarily must include an ability to provide essentially safe mass transportation services, and it is within the scope of this requirement for UMTA to require recipients of sections 3 and 9 funding to undertake measures that would enhance their ability to provide safe operations. "Satisfactory continuing control" also necessarily implies the ability to ensure that the safe operation of UMTA-assisted facilities and equipment is not endangered by drug use by employees who perform sensitive safety functions.

Under the section 3 discretionary program, moreover, the Secretary is authorized to make grants "* * * on such terms and conditions as the Secretary may prescribe * * *" providing even broader authority under this program to require a recipient to institute a drug program before a grant will be awarded. Funds made available under 23 U.S.C. 103(e)(4), moreover, essentially are subject to the same provisions and requirements applicable to funds made available under section 3.

For the section 18 transportation program for non-urbanized areas, subsection 18(f) provides that "grants under this section shall be subject to such terms and conditions (which are appropriate to the special needs of public transportation in areas other than urbanized areas) as the Secretary may prescribe." The requirements proposed here would be among the terms and conditions imposed under the authority of this section.

In addition, Congress has indicated its policy that UMTA have a continuing role in transit safety in section 22 of the UMT Act. That section provides the Secretary (and, by delegation, UMTA) with authority to investigate certain conditions which the Secretary believes create a serious hazard of death or injury. If the Secretary determines that such conditions do create such a hazard, the Secretary shall require the recipient of UMTA funding to submit a plan for correcting or eliminating such condition. The Secretary is authorized to withhold funding under the UMT Act until the plan is implemented.

Regarding the comments raised above, we recognize the general nature of the "Findings and Purposes" section of the UMT Act as originally enacted, as well as the cited restrictions on UMTA's authority under sections 3 and 9. It is important to note, however, that each time the UMT Act has been amended by reauthorization legislation, UMTA generally has been given a broader mandate to administer and regulate the activities of its grantees. For example, under the most recent transit reauthorization law, the 1987 Surface Transportation and Uniform Relocation Assistance Act (Pub. L. 100–17), UMTA specifically was required to issue no less than seven rulemakings. That same Act, moreover, implicitly recognizes UMTA's authority to provide guidance and oversight with respect to its grantees' activities by requiring at section 12(i) that any UMTA "* * * statement of general or particular applicability designed to implement, interpret, or prescribe law or policy in carrying out provisions of this Act" be issued as a "rule" subject to notice-and-comment rulemaking in the **Federal Register**.

UMTA is charged with the responsibility of overseeing the expenditure of approximately $3 billion annually. This final rulemaking, consistent with the underlying statutory authority in sections 3, 9, and 18 of the UMT Act, is in furtherance of that responsibility.

3. Preemption of state and local law

In the NPRM, UMTA noted that the rule would not preempt State or local laws, and there could be instances in which a State or local agency could face a conflict between compliance with the proposed regulation and State and local requirements. The comments bear this out. For example, the final rule requires random testing. Some State or local laws apparently prohibit or limit random testing. In this situation, the UMTA rule would not preempt the application of the State or local law; if compliance with the State or local law prevented the grantee from complying with the UMTA rule, however, the grantee's UMTA funding could be jeopardized. Many grantees operate under "consent" statutes that permit them to take all necessary actions to comply with Federal grant conditions. Such laws, in most cases, could resolve the potential conflict outlined above. Not all States have such "consent" statutes, however.

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In the NPRM, UMTA sought comment on whether conflicts of this sort therefore are likely to arise and, if so, what steps should be taken to avoid or resolve them.

A number of comments and concerns were presented on this issue, and UMTA recognizes that because the anti-drug rule does not preempt State law, conflicts may indeed occur. Accordingly, UMTA has decided to permit a recipient to seek a temporary waiver from any particular part of the rule that the recipient believes it is unable to comply with because of State or local law. Temporary waivers are discussed in detail elsewhere in this preamble.

4. Effect of rule on other federal regulations

Commenters brought to UMTA's attention an issue we did not address in the NPRM, that certain recipients may be subject not only to UMTA's drug rule but the related rules of the Federal Railroad Administration (FRA), the Coast Guard, and the Federal Highway Administration (FHWA).

More specifically, a number of recipients of UMTA funds provide commuter rail operations and, as such, are subject to FRA regulation, including the FRA anti-drug regulation. In addition, certain UMTA recipients operate ferry boats in mass transporation service, and ferry boats are subject to Coast Guard jurisdiction and to its anti-drug regulation.

Since both the FRA's and the Coast Guard's anti-drug regulations are generally consistent with UMTA's, UMTA has decided to permit a recipient to certify to UMTA that its sensitive safety employees are covered under the FRA or Coast Guard regulation. Standard certification language to this effect is included in UMTA's final regulation. Such a certification will satisfy the recipient's requirements under the UMTA drug regulation for those operations the Coast Guard or FRA cover. A recipient may have to submit two separate certifications if it is subject, say, to the Coast Guard regulation with respect to ferry boat operations but otherwise is subject to UMTA's regulation for its bus operation. That recipient would submit a certification of compliance with the Coast Guard rule for the ferry boat operations, and the UMTA certification for its other operations.

The FHWA also is issuing an anti-drug rule. That rule, however, includes a governmental exemption, the effect of which is to exclude all UMTA public body recipients from its coverage. It is possible that the FHWA rule may cover certain private operators under contract to an UMTA recipient if such operators are engaged in interstate commerce. UMTA is willing to consider a request from a recipient on behalf of a private operator subject to the FHWA rule not to be subject as well to the UMTA rule, but we do not propose a blanket certification to this effect. We believe this will not be a signficant issue and would rather address it on a case-by-case basis, taking into consideration the compliance of the private operator with the FHWA rule and other factors.

G. Section by Section Analysis

This final rule includes three parts: Subpart A covering general matters; Subpart B covering drug testing; and Subpart C addressing administrative issues. Each of these Subparts is summarized below.

Subpart A includes general information about the anti-drug rule. Section 653.1, Purpose, describes the rule's requirement that a recipient of funds from UMTA must establish an anti-drug program meeting the minimum criteria set forth in the rule.

Section 653.1(b) of this regulation provides that an employer may test the sample obtained under this rule only for the drugs required or specifically authorized to be tested under this rule. That is, an employer must test the sample for the five major drugs listed in this regulation. Only if, in the context of reasonable cause testing, UMTA authorizes testing for additional Drug X under 49 CFR Part 40 (an approval which would be granted only after consultation with the Department of Health and Human Services, and only on the basis of an HHS-established testing protocol and positive threshold) may the employer also test the sample for that drug.

Absent such an approval, if the employer wants to test, in addition, for Drug Y, the employer must obtain a second sample from the employee. The obtaining of this second sample is not under the authority of this regulation. The employer must base its request for the second sample on whatever other legal authority is available, since the employer cannot rely on this regulation as the basis for the request.

Section 653.3, Scope, indicates that the program applies to a recipient of funds under sections 3, 9, or 18 of the UMT Act, or a recipient of interstate transfer-transit funds under section 103(e)(4) of 23 U.S.C. In addition, if a recipient uses a public or private operator to provide mass transportation services, this rule also affects the operator through the recipient's certification to UMTA.

Section 653.5, Definitions, defines key terms as they are used in the regulation. "Accident" is defined as an occurrence involving a vehicle in revenue service in which a death occurs or someone must be treated at a medical facility. An accident also covers a situation where property damage is estimated to be $5,000 or more or one which must be reported to the Federal Highway Administration, the Federal Railroad Administration, or the Coast Guard. As § 653.15 makes clear, the fact that an accident has occurred does not itself require post-accident drug testing. Rather, the recipient must first determine that the employee contributed to the accident or cannot completely be discounted as a contributing factor to the accident.

Moreover, this section defines "pass a drug test" and points out that the laboratory analysis of a specimen is not the sole criterion for determining the presence of drugs. Rather, the medical review officer must independently review those test results before a positive drug test results will be reported to a recipient or operator.

"Prohibited drug" means marijuana; cocaine, opiates; phencyclidine (PCP), and amphetamines.

"Recipient" is defined as a direct recipient of Federal financial assistance from UMTA. Under the section 18 rural program, the States are the recipients of funds from UMTA. The States generally then make the funds available to subrecipients throughout the State. For purposes of the anti-drug regulation, the States make the certification of compliance to UMTA and may then administer the program directly or require subrecipients separately to comply with the regulation as a condition of receiving Federal funds through the State. In either case, UMTA will deal directly with the States regarding the regulation, not the subrecipients. A parallel approach is used with respect to any private operator providing transit service under contract to a recipient. The recipient would certify its compliance with the drug regulation to UMTA, and the recipient in turn would have to make certain that the private operator was in compliance with the regulation.

The section defines those employees of a recipient who specifically are covered by the rule under "sensitive safety function." This definition does not include those who volunteer their services, a fairly common practice among small operators. It does cover those employees who perform duties related to the safe operation of mass transportation service in the operation, control, or maintenance functions of the system, or those who supervise such employees.

This section defines "small operator" as those under the section 18 program and section 3 or section 9 recipients in urbanized areas of less than 200,000 in population.

Section 653.7 provides that a recipient shows compliance with the regulation by certifying to that effect to UMTA. Section 653.35 provides that the certification must be made a year after the rule becomes final or, in the case of small operators, a year and a half after the rule becomes final.

Section 653.9 describes the required elements of a drug program. In addition to the five types of drug testing of sensitive safety employees, the program also must include a policy statement on drug use in the workplace, and an employee education and training program.

Subpart B sets out the specific requirements of a drug testing program. Section 653.11 requires a transit employer to give a drug test to an applicant it would like to hire for a sensitive safety position. This section prohibits the applicant from being hired for a sensitive safety position if the applicant does not pass the drug test. This section also applies to an employee who is being transferred to a sensitive safety position.

Section 653.13 requires a transit employer to give a drug test to any sensitive safety employee it reasonably suspects is using drugs. The section requires two supervisors to make the decision to test for most operators, but allows one supervisor to make the decision for small operators. The supervisor or supervisors making the decision must be able to explain and document the reason for their suspicion.

Section 653.15 requires a transit employer to give a drug test to any sensitive safety employee involved in an accident unless it is clear that the employee's performance was not a factor in the accident. Under this section, the person making the decision to test could be a road supervisor or any other person designated by the transit employer to make it. This test must be done, that is the urine specimen must be collected, as soon as possible, but not later than 32 hours after the accident.

Section 653.17 requires a transit employer to give a number of unannounced drug tests equal to 50 percent of its employees each year. The selection of who is tested under this section must be made by using a scientifically valid random number generation method.

Section 653.19 requires that if a transit employer is going to allow an employee who refuses to take a drug test or did not pass a drug test to return to work in a sensitive safety position the employee must pass a return to duty drug test. The medical review officer also must determine that the individual may return to duty. This section would apply for example, if an employee's job was held open while the employee took part in a drug rehabilitation program. Under this section the employee also may be given an unannounced drug test at any time during the first 60 months back on duty in a sensitive safety position.

Section 653.21 requires that all drug tests given under this part comply with Department of Transportation regulations at 49 CFR Part 40. These regulations include requirements regarding preparation of the collection site, verification of the specimen collected, and proper handling of the specimen.

Section 653.23 limits the laboratory sites which may be used to perform the analysis of the specimens collected to those which are certified to do drug testing for the United States government by the Department of Health and Human Services. Further information on certified laboratory sites may be obtained from the National Institute on Drug Abuse at (301) 443-6780.

Section 653.25 specifies that drug tests under this part must be evaluated for the presence of marijuana metabolites, cocaine metabolites, opiate metabolites, PCP, and amphetamines. 49 CFR Part 40 sets out the levels at which each of these drugs or their metabolites are scientifically substantial enough to indicate use of the drug. Under this section the laboratory must follow the testing precedures in 49 CFR Part 40, including performing an initial screen by immunoassay and a confirmation by using gas chromatography/mass spectrometry (GC/MS), and properly storing the remains of any specimen that tests positive both times. Under this section the laboratory notifies the medical review officer of the results of its analysis of each specimen.

Section 653.27 requires each transit employer to have a licensed physician available to act as medical review officer for its anti-drug program. The medical review officer does not need to be an employee of the transit employer; such service can be provided on a contractual basis. This section also sets out the responsibilities of the medical review officer. Most importantly, it is the medical review officer who receives the laboratory results and makes the determination whether an individual does not pass a drug test as defined in the rule. This determination involves not only analysis of the test results but includes reviewing the individual's medical information as well. The medical review officer also determines when an employee who did not pass a drug test or refused to take one may return to duty.

Section 653.29 allows an employee who does not pass a drug test to request additional analysis of the urine sample the employee provided. An employee requesting this additional analysis may be required to advance the cost of the retest, but must be reimbursed if the employee passes the drug test as a result of the retest. This section does not apply to individuals who were administered a pre-employment drug test. However, nothing in this section prohibits a transit employer from offering this same benefit to applicants.

Subpart C sets forth a number of administrative requirements under the rule, including recordkeeping and reporting requirements under § 653.31. A recipient is to submit a semi-annual report to UMTA on such matters as the total number of drug tests administered by the recipient; the total number of those who did not pass a drug test; and information in general about the program.

Section 653.33 provides that individual test results may be released to a third party only upon the written consent of the individual involved, and only so long as that consent identifies the particular person to receive the information.

Section 653.35 provides three examples of a certification a recipient provides to UMTA to be in compliance with the rule. One certification relates to those covered by the UMTA rule, while the other two cover those recipients that may also be subject to the Coast Guard or Federal Railroad Administration anti-drug regulation. Coverage under either of those programs satisfies the UMTA regulation as well so long as the recipient certifies to UMTA it is so covered.

Finally, § 653.37 allows a recipient to seek a temporary waiver from UMTA if it believes it is unable to comply with a portion of the rule, because of State or local law. Among other things, the recipient must include a legal opinion describing the legal impediment to its compliance with the regulation. Any temporary waiver granted by UMTA will specify which provision of the rule is being waived and when the expiration date of the temporary waiver. The expiration date of a temporary waiver will be no later than December 31, 1989.

H. Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Urban Mass Transportation Administration, Office of Public Affairs,

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400 Seventh Street, SW., Washington, DC 20590 or by calling (202) 366–4043.

II. Economic Analysis

A. Summary

The Urban Mass Transportation Administration (UMTA) has evaluated the industry cost impacts and benefits of this final rule. What follows is a summary of a detailed economic analysis, the full text of which is available for review in the docket to this rulemaking.

The UMTA has determined that this rulemaking is not a major rule under Executive Order 12291 because the required anti-drug program is not likely to have costs of over $100 million in any one year. The assumptions used in preparing the economic impact estimates for this regulatory evaluation are based on information received from (1) public comments on the Notice of Proposed Rulemaking received during hearings or submitted in writing to the docket, (2) data on the mass transit industry included in the National Urban Mass Transportation Statistics Section 15 Annual Reports and other reports, and (3) data provided by chemical testing laboratories, the National Institute on Drug Abuse (NIDA), and other agencies and individuals knowledgeable about drug abuse and chemical testing in the United States.

In response to comments on the proposed rulemaking, a number of changes which affect the economic impact of the anti-drug program have been made in the final rule. These comments, and the responses to them, are discussed in the comments section of the preamble to the final rule.

The rule is applicable to agencies which receive Federal funds from grant programs under sections 3, 9, and 18 of the Urban Mass Transportation Act of 1964, (The UMTA Act), as amended. It is estimated that the rule initially will affect approximately 1,606 transit agencies and 195,500 persons in sensitive safety functions.

B. Costs

UMTA estimates that this rule will cost $13.21 million in the first year, $13.79 million in the second year, and $14.14 million in the third and succeeding years (in constant dollars). Costs for year one consist of $6.81 million for drug testing, $3.21 million for initial program development, $2.66 million for employee/supervisor education and training, and $0.53 million for program reporting to UMTA. These costs are detailed in Appendices A and B of the Regulatory Evaluation. The first year of testing would affect a total population of approximately 195,500 persons. Random drug testing is conducted at an annual rate of 50 percent of the affected population after the first year. It is estimated that initial drug screening tests will cost $25.00 each and confirmation tests will cost $35.00 each. Specimen collection for testing is estimated to require 30 minutes of an employee's time while on pay status, and an administrative cost of $35.00 is estimated for each test administered. Although the rule does not require rehabilitation or continued employment of persons who test positive for drugs; therefore, no costs are estimated for return to duty testing.

In addition to the direct costs for testing, each transit agency will also bear the costs for development of a drug control policy, for employee and supervisor training, and for reporting the results of drug testing to UMTA. It is estimated that the costs for program development and policy formulation will be $2,000 per transit agency. The final rule does not specify a minimum number of hours for employee and supervisor training to be conducted, except that supervisors making the determination to test based on reasonable cause must receive at least 60 minutes of training. However, for purposes of this analysis, UMTA has calculated that each employee in a sensitive safety position will receive one hour of training and each supervisor will receive two hours of training per year. Average hourly wages for employees and supervisors are estimated at $12.58 and $15.00, respectively. It is estimated that preparation of the required semi-annual and annual reports to the UMTA will require a total of 16 hours of labor at $20.00 per hour each year.

UMTA notes that a number of commenters were concerned about the costs associated with labor negotiations, arbitration, litigation, or lost wages which may result from implementation of this rule. However, because of the uncertain nature of these actions and the varied costs that might be associated with them, UMTA did not include any cost associated with them in this analysis.

Large transit operations will have twelve months to implement their drug control programs. Small entities (Section 18 funding recipients and other entities serving urbanized areas with populations of 200,000 or less) will have 24 months for program implementation.

C. Benefits

UMTA believes that two major benefits will accrue from this rule. First, will be a reduction in potential fatalities, personal injuries and property losses resulting from accidents attributed to individuals whose judgment or motor skills may be adversely affected by the use of illicit drugs. Second, will be the benefits accruing to recipients and operators from the potential reduction in absenteeism, lost productivity, medical and insurance claim costs, and improved general safety in the workplace. According to a 1987 NIDA report on Strategic Planning for Workplace Drug Abuse Programs, abusers of drugs and alcohol, in comparison to other workers, have 3.6 times as many accidents, file 1.5 times as many workers' compensation claims, are absent 2.5 times more often for sick leave of 8 days or more, and incur 3.0 times the normal medical costs.

UMTA has been unable to quantitatively estimate the extent to which this rule will reduce drug use in the mass transportation industry, and thus would enhance public safety or promote transit operations as a whole. However, a number of serious transit accidents have been reported in recent years in which operating personnel were determined to have drugs in their systems at the time of the accident. Analysis of the UMTA Section 15 Annual Report for 1985 and "A Directory of Rural and Specialized Transit Operators," by Rural America for UMTA dated June 1986 (Rural America Report) indicates that there were more than 17,300 vehicle related accidents reported involving fatalities, injuries, or significant property damage as defined in the rule. The 1985 NIDA National Household Survey on Drug Abuse reports that 19.3 percent of all Americans use some illicit drug in the past twelve months, 12.0 percent in the past 30 days. Assuming that only 10 percent of mass transit employees (as compared to 19.3 percent of the general population) use illicit drugs and that drug users are 3.6 times more likely to be involved in accidents, it is possible to estimate that approximately 28 percent of mass transportation accidents may have been caused by persons who use illicit drugs. Thus, as many as 4,844 of the 17,300 accidents occurring in 1985 could be attributed to drug abuse.

Another significant benefit of the rule, as it relates to a reduction in accidents, is the prevention of passenger deaths and injuries. It is difficult to ascribe a dollar value to human life; however, it is obvious that transit agencies face a potential financial liability in the event of death or injury of a passenger. For purposes of this analysis, it is estimated that the financial liability of a transit agency for a death to be $1 million.

Because adequate data are not available upon which to base a benefit analysis directed specifically at mass transportation, a macro approach is taken to estimate benefits. A 1984 Department of Health and Human Services (DHHS) study estimated the economic cost to American society from drug abuse to be $66 billion annually. More recent reports by the National Business Crime Information Center and the Research Triangle Institute have estimated this cost to society to be in excess of $100 billion annually. The estimated 195,500 employees in the mass transit industry covered by this rule represent approximately eight-hundredths of one percent of the United States population of 236 million. Thus, if drug use in the industry is assumed to be the same as in the general population, and if this rule were 100 percent effective in eliminating illicit drug use, the annual savings to society, based upon the DHHS estimated national cost of $66 billion annually (the lower of two estimates), would be $52.8 million. This yields a benefit to cost ratio of 4.00 for year one, 3.83 for year two and 3.73 for year three. If it is assumed that a random testing rate of 50 percent of the affected population after year one produces a proportionate reduction in program effectiveness (i.e., to one-half) the savings to society would be $26.4 million annually. This estimate yields a benefit to cost ratio of 2.00 for year one, 1.91 for year two, and 1.87 for year three and subsequent years.

III. Regulatory Impacts

A. Departmental Significance

This rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures, because it involves important departmental policy and has generated substantial public interest.

This rule is one of a series of rules being issued by the Department to ensure a drug free transportation system in this country.

B. Executive Order 12291

This action has been reviewed under executive order 12291 and UMTA has determined this is not a major rule. This rule will not result in an annual effect on the economy of $100 million or more.

C. Executive Order 12612—Federalism Assessment

This action has been reviewed under Executive Order 12612, concerning Federalism. UMTA has determined that this rule has sufficient Federalism implications to warrant the preparation of this Federalism assessment.

The Federalism impacts of this rulemaking result from its proposal for new, uniform UMTA requirements that federally-assisted mass transportation providers create and implement the drug programs described in this notice. Historically, transportation safety in the mass transit industry has not been the subject of specific UMTA regulatory requirements. Unlike other DOT organizations (e.g., FAA, FHWA, Coast Guard, FRA), UMTA has never directly licensed or regulated industry employees for safety. These matters have been handled locally by transit authorities.

Congress has shown increasing concern about UMTA's role in transit safety, for example, in the enactment of section 22 of the UMT Act and in requiring UMTA to establish a bus testing facility by 1989. More importantly, however, the necessity of promoting safe transportation through the use of vigorous anti-drug programs designed to ensure a drug-free mass transit workplace is national in scope and overriding in importance. This safety imperative is the primary basis for UMTA's decision to propose a new Federal requirement which goes beyond the traditional relationship between UMTA, transit grantees, and their employees. The basis for imposing these requirements is the Federal financial assistance provided to the recipients by UMTA. It is also important that UMTA ensure the maximum effectiveness of its financial assistance; i.e., it must ensure that the funds are used in a safe, drug-free environment. From a national perspective, safety is important in its own right but also to ensure Federal funds are not wasted because of drug-related accidents or other misuse.

In considering the Federalism impacts of this proposal, UMTA has focused on several key provisions of Executive Order 12612.

- Necessity for action. As noted above, there is an overriding safety necessity to insure a drug-free transportation workplace. Passengers on bus, rail, and other mass transportation systems must be ensured that vehicle operators and others whose actions are important to passenger safety do not use illegal drugs and that recipients have the legal, technical and financial capability to provide safe transportation service. In the absence of an UMTA requirement for an anti-drug program, which will identify drug users, deter drug use, and may provide opportunities for rehabilitation, this assurance cannot be made.
- Consultation with State and local governments. UMTA's regulated parties are primarily State and local government agencies (e.g., State departments of transportation, local transit authorities). Consequently, the views of affected State and local agencies were or particular importance to UMTA in this rulemaking. To ensure that these State and local governments were made aware of this rulemaking, UMTA held four public hearings on it.
- National scope of the problem. As noted elsewhere, the country has a nationwide, pervasive drug problem. There is no community in the country that is not affected, actually or potentially, by this problem. Mass transit users in every community need the same assurance that their safety will not be compromised by drug use by sensitive safety transit employees. They also need assurance that their tax dollar used in Federal assistance are not wasted because of drug-related accidents.
- Need for uniform, national standards. Only with uniform minimum national standards in this area can the safety concerns of passengers and the privacy and reliability concerns of employees be resolved in a way that addresses the national drug problems we face. State and local agencies are free to tailor the basic program requirements to meet their needs. Federal intrusion into local implementation decisions will be minimized through the use of self-certification by grantees of their compliance with UMTA requirements.
- Authority. The statutory authority for this rule is discussed elsewhere in this preamble. As a statutory and constitutional matter, the authority of Federal agencies to impose reasonable and necessary conditions on the receipt of Federal financial assistance is well established.
- Preemption. This final rule does not, as such, preempt State of local law. However, there will be a few instances in which a State or local agency faces a conflict between compliance with the regulation and State and local requirements. This rule has a provision for a temporary waiver in such cases which is discussed elsewhere in this preamble.

D. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

In this rule, UMTA has defined a small entity to be any transit agency which receives funding under Section 18 of the UMT Act, as amended, or which

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serves an urbanized area of 200,000 persons or less. This rule does not cover transit operations receiving assistance under section 16(b)(2) of the UMT Act.

The wide range of agency sizes, modes of operation, and geographical locations within this classification makes it difficult to determine the actual economic impact of this rulemaking. However, a number of the smaller transit agencies that already have drug testing programs in place commented that implementing the requirements of the rule, to include random testing, would have minimal financial impact. Additionally, a large number of the smaller transit agencies are those which receive Section 18 funding and some of these use unpaid volunteers who are not covered by the rule. Considering these factors and the benefits which accrue to transit entities from increased productivity and potential reductions in medical and insurance costs as a result of the implementation of the proposed drug control program. It is believed that this rulemaking will not have a significant economic impact on small agencies.

E. Paperwork Reduction Act

The collection of information requirements in this rule are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. These requirements have been submitted to the Office of Management and Budget for review. Information will not be collected under this rule until OMB clearance is received and the OMB clearance number is published in the **Federal Register**.

List of Subjects in 49 CFR Part 653

Drug testing, Grant programs—transportation, Mass transportation.

IV. New 49 CFR Part 653

Accordingly, for the reasons described in the preamble, 49 CFR Chapter VI is amended by adding new Part 653 to read as follows:

PART 653—CONTROL OF DRUG USE IN MASS TRANSPORTATION OPERATIONS

Subpart A—General

Sec.
653.1 Purpose.
653.3 Scope.
653.5 Definitions.
653.7 Requirement to establish an anti-drug program.
653.9 Required elements of an anti-drug program.

Subpart B—Drug Testing

653.11 Pre-employment testing.
653.13 Reasonable cause testing.
653.15 Post-accident testing.
653.17 Random testing.
653.19 Return to duty testing.
653.21 Testing procedures.
653.23 Qualified laboratories.
653.25 Laboratory analysis.
653.27 Medical review officer.
653.29 Retests.

Subpart C—Administrative

653.31 Recordkeeping and reporting.
653.33 Release of information.
653.35 Certifications of compliance.
653.37 Temporary waivers.

Authority: Urban Mass Transporation Act of 1964, as amended (49 U.S.C. 1601 et seq.); 23 U.S.C. 103(e)(4); and 49 CFR 1.51.

Subpart A—General

§ 653.1 Purpose.

(a) This part requires a recipient of Federal financial assistance to have an anti-drug program that is designed to detect the use of prohibited drugs by sensitive safety employees and to deter sensitive safety employees from using prohibited drugs.

(b) As part of reasonable cause drug testing program established pursuant to this part, employers may test for drugs in addition to those specified in this part only with approval granted by UMTA under 49 CFR Part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§ 653.3 Scope.

This part applies to—

(a) a recipient of Federal financial assistance under sections 3, 9, or 18 of the Urban Mass Transportation Act of 1964, as amended; and

(b) a recipient of Federal financial assistance under section 103(e)(4) of title 23 of the United States Code.

§ 653.5 Definitions.

As used in this part—

(a) "Accident" means an occurrence associated with the operation of a revenue service vehicle, whether or not such vehicle is in revenue service, if—

(1) An individual dies or must be taken to a medical treatment facility;

(2) The occurrence results in property damage that is estimated to be more than $5,000; or

(3) The occurrence must be reported to the Federal Highway Administration, the Federal Railroad Administration, or the Coast Guard.

(b) "Administrator" means the Administrator of the Urban Mass Transportation Administration or his or her designee.

(c) "Anti-drug program" means an anti-drug program required by this part.

(d) "Chain-of-custody procedures" means those procedures set out in 49 CFR Part 40 concerning the handling of a urine sample.

(e) "Pass a drug test" means that a medical review officer has determined, in accordance with 49 CFR Part 40, that the results of a drug test administered under this part—

(1) Showed no evidence or insufficient evidence of a prohibited drug or drug metabolite;

(2) Showed evidence of a prohibited drug or drug metabolite but there was a legitimate medical explanation for the result;

(3) Were scientifically insufficient to warrant further action; or

(4) Were suspect because of irregularities in the administration of the test or observation of chain of custody procedures.

(f) "Prohibited drug" means the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801 et. seq. and published at 21 CFR 1308.11 and 21 CFR 1308.12: marijuana; cocaine; opiates; phencyclidine (PCP); and amphetamines.

(g) "Recipient" means a direct recipient of Federal financial assistance from UMTA.

(h) "Revenue service vehicle" means a bus, van, car, rail car, locomotive, trolley car, trolley bus, ferry boat, or vehicle used on a fixed guideway or incline plane used to transport passengers.

(i) "Sensitive safety function" means any duty related to the safe operation of mass transportation service by a recipient, including:

(1) Operation of a revenue service vehicle, whether or not such vehicle is in revenue service;

(2) Controlling dispatch or movement of a revenue service vehicle;

(3) Maintaining revenue service vehicles or equipment used in revenue service; or

(4) Supervising an employee who performs a function listed in paragraph (i)(1)–(3) of this section.

(j) "Small operator" means a recipient of section 18 funds or a recipient of UMTA funds in an urbanized area of less than 200,000 in population.

(k) "UMTA" means the Urban Mass Transportation Administration.

§ 653.7 Requirement to establish an anti-drug program.

A recipient shall certify to UMTA, in accordance with section 653.35 of this part, that it or any operator providing mass transportation services for it with Federal financial assistance has established and implemented an anti-drug program as prescribed by this part.

§ 653.9 Required elements of an anti-drug program.

(a) An anti-drug program shall contain the following:

(1) A policy statement on drug use in the workplace, adopted by the governing body of the recipient or operator, which states that—

(i) An employee may not perform a sensitive safety function while that employee has a prohibited drug in his or her system;

(ii) If an employee performing a sensitive safety function refuses to take a drug test authorized under this part or is tested for drugs under this part and does not pass the drug test, that employee shall be relieved of his or her sensitive safety duties immediately; and

(iii) An employee who refuses to take a drug test authorized under this part or does not pass a drug test administered under this part may not return to a sensitive safety function until the employee has passed a return to duty drug test required under this part.

(2) An employee education and training program for all employees who perform sensitive safety functions. The education component shall include display and distribution of: informational material; a community service hot-line telephone number for employee assistance if available; and the recipient's policy regarding drug use in the workplace. The training component for sensitive safety employees shall include information on the effects and consequences of drug use on personal health, safety and the work environment, and the manifestations and behavioral cues that may indicate drug use and abuse. Supervisory employees shall receive at least 60 minutes of additional training on the physical, behavioral, and performance indicators of probable drug use if they will be determining when an employee is subject to drug testing based on reasonable cause under this part.

(3) A drug testing program as prescribed in Subpart B of this part which includes testing before employment, when there is reasonable cause, after an accident, on a random basis, and before returning to duty after refusing to take a drug test or not passing a drug test.

Subpart B—Drug Testing

§ 653.11 Pre-employment testing.

(a) An individual may not be hired to perform a sensitive safety function unless the individual passes a drug test administered under this section.

(b) An employee who does not perform a sensitive safety function may not be assigned to perform a sensitive safety function until the employee passes a drug test administered under this section.

(c) A pre-employment drug test required by this section may be administered only after the person to be tested is informed that the urine sample being collected will be tested for evidence of—

(1) Marijuana;
(2) Cocaine;
(3) Opiates;
(4) Phencyclidine (PCP); and
(5) Amphetamines.

§ 653.13 Reasonable cause testing.

(a) An employee who performs a sensitive safety function and who is reasonably suspected of using a prohibited drug must be administered a drug test under this section.

(b) (1) Except as provided in paragraph (b)(2), an employee is reasonably suspected of using a prohibited drug when two supervisors who are trained in the detection of drug use under § 653.9(2) articulate and can substantiate specific behavioral, performance or contemporaneous physical indicators of probable drug use.

(2) An employee of a small operator is reasonably suspected of using a prohibited drug when a supervisor who is trained in the detection of drug use under § 653.9(a)(2) articulates and can substantiate specific behavioral, performance or contemporaneous physical indicators of probable drug use.

§ 653.15 Post-accident testing.

(a) An employee who performed a sensitive safety function that either contributed to an accident, or cannot be completely discounted as a contributing factor to an accident, must be administered a drug test under this section.

(b) A decision not to administer a drug test under this section shall be made by an individual, designated by the recipient or operator, who was not involved in the accident. The determination shall be based on the best information available at the time.

(c) The urine sample for a post-accident drug test required by this section shall be collected as soon as possible but not later than 32 hours after the accident.

§ 653.17 Random testing.

(a) An employee who performs a sensitive safety function shall be subject to drug testing on an unannounced and random basis.

(b) Except as provided in paragraph (e), a recipient must administer a number of drug tests under this section equal to 50 percent of all employees who perform sensitive safety functions each calendar year.

(c) Each employee who performs a sensitive safety function shall be in a pool from which random selection is made. Each employee in the pool shall have an equal chance of selection and shall remain in the pool, even after the employee has been tested.

(d) An employee shall be selected for drug testing on a random basis by using a scientifically valid random number generation method.

(e) During the first 12 months following the institution of random drug testing under this section, a recipient or operator shall meet the following conditions.

(1) The random drug testing is spread reasonably through the 12-month period;

(2) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(3) The total number of tests administered during the 12 months is equal to at least 25 percent of all employees who perform sensitive safety functions.

§ 653.19 Return to duty testing.

(a) An employee who refuses to take or does not pass a drug test administered under this part may not return to a sensitive safety function until the employee passes a drug test administered under this section and the medical review officer has determined that the employee may return to duty.

(b) An employee who must be tested under this section may be administered an unannounced drug test for up to 60 months after the employee returns to a sensitive safety function.

§ 653.21 Testing procedures.

An anti-drug program shall ensure that the administration of a drug test under this part is consistent with 49 CFR Part 40.

§ 653.23 Qualified laboratories.

An anti-drug program may use a drug testing laboratory site only if the laboratory site—

(a) is certified by the Department of Health and Human Services to do drug testing for Federal agencies under the 'Scientific and Technical Guidelines for Drug Testing Programs' issued by the Alcohol, Drug Abuse and Mental Health Administration on April 11, 1988; and

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(b) will permit unannounced inspections, including the examination of all records, at any time, by the recipient or operator, or the Administrator.

§ 653.25 Laboratory analysis.

(a) A laboratory analyzing urine samples for an anti-drug program shall test for evidence of —

(1) Marijuana;
(2) Cocaine;
(3) Opiates;
(4) Phencyclidine (PCP); and
(5) Amphetamines.

(b) The laboratory shall follow the chain of custody and testing procedures set out in 49 CFR Part 40.

(c) If a urine sample yields a positive result on confirmation, the laboratory shall retain the remainder of the sample in properly secured, long-term, frozen storage for at least 365 days, as required by 49 CFR Part 40. Within this 365-day period, the employee or representative of the employee, the recipient or operator, medical review officer or the Administrator may request that the laboratory retain the sample for an additional period. If, with the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(d) The laboratory shall report each confirmed positive test and the level found in the sample to the medical review officer for the anti-drug program.

§ 653.27 Medical review officer.

(a) An anti-drug program shall have available the services of a designated medical review officer who is a licensed physician with knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's positive test result together with his or her individual medical history and any other relevant biomedical information.

(b) The medical review officer for an anti-drug program shall—

(1) Receive the results of all drug tests from the laboratory;

(2) Verify that the laboratory report and assessment of all drug test results are reasonable;

(3) Determine whether an individual passes a drug test;

(4) Report each test that does not pass to the individual whom the recipient or operator has designated to receive the results; and

(5) Determine whether an employee who refused to take or did not pass a drug test administered under this part may return to duty.

(c) When reviewing each confirmed positive test result under this section, the medical review officer may review the individual's medical history, including any medical records and biomedical information provided, in determining whether there is a legitimate medical explanation for the result, including the use of a legally prescribed medication.

(d) A medical review officer may request the laboratory to analyze the original urine sample again in order to verify the accuracy of the test result reported to the medical review officer.

§ 653.29 Retests.

(a) An employee who does not pass a drug test administered under this part may request that the original urine sample be analyzed again.

(b) An employee requesting a retest under this section must submit a written request within 60 days of the employee's receipt of the test result. The employee may specify retesting by the original laboratory site or by a second laboratory site that is certified to perform drug tests by the Department of Health and Human Services. The originating laboratory must follow chain-of-custody procedures when transferring the sample.

(c) An employee making a request for a retest under this section may be required to advance the cost of the additional analysis and all costs associated with the transfer of the specimen to another laboratory, including shipping and handling. If the retest results in the employee passing the drug test, the recipient or operator shall reimburse any costs collected in advance.

(d) In a retest under this section some analytes may deteriorate during storage. The detected levels of the drug below the detection limits established in 49 CFR Part 40, but equal to or greater than the established sensitivity of the assay, shall, as technically appropriate, be reported and considered corroborative of the original positive results.

Subpart C—Administrative

§ 653.31 Recordkeeping and reporting.

(a) An anti-drug program shall include the collection, reporting, and retention of information as required by this section.

(b) Each recipient or operator is responsible for maintaining all records related to the administration and results of the drug testing program for its applicants and employees. A recipient or operator shall retain all records related to the collection process and the reports of individuals not passing a drug test for at least five years. The recipient or operator shall retain the reports of individuals passing a drug test for at least one year.

(c) The medical review officer shall maintain individual test results. The medical review officer shall keep the reports of individual test results that do not pass a drug test for at least five years. The medical review officer shall keep the reports of individual test results that pass a drug test for at least one year.

(d) A recipient or operator shall permit the Administrator to examine records related to the administration and results of drug testing under this part.

(e) A recipient must submit a semi-annual report to the Administrator no later than February 15 and August 15 of each year. The semi-annual report due August 15 must summarize the information listed in paragraph (c) of this section for the anti-drug program of the recipient and its operators from January 1 to June 30 of that year. The semi-annual report due February 15 must summarize the information listed in paragraph (c) of this section for the anti-drug program of the recipient and its operators from July 1 to December 31 of the prior year.

(f) A semi-annual report under this section must include the following information for each mode of transportation provided by the recipient:

(1) The total number of drug tests administered;

(2) The number of drug tests administered in each occupational category (e.g., vehicle operator);

(3) The number of drug tests administered in each testing category (i.e., pre-employment, post-accident, reasonable cause, random, and return to duty);

(4) The number of post-accident drug tests administered in each accident category (i.e., fatal, personal injury, or property damage);

(5) For post-accident tests, the number of hours between the accident and the collection of a urine specimen;

(6) The total number of individuals who did not pass a drug test;

(7) The number of individuals who did not pass a drug test by occupational category (e.g., vehicle operator);

(8) The number of individuals who did not pass a drug test by testing category (e.g., reasonable cause);

(9) The number of individuals who did not pass a post-accident drug test by accident category (e.g., fatal);

(10) The disposition of each individual who did not pass a drug test;

(11) The number of drug tests submitted to the laboratory that showed evidence of one or more prohibited drugs or drug metabolites in the immunoassay screen in a sufficient quantity to warrant a confirmatory test;

(12) The total number of drug tests submitted to the laboratory that showed evidence of one or more prohibited drugs or drug metabolites in the confirmatory test in a sufficient quantity to be reported as positive to the medical review officer; and

(13) The number of drug tests submitted to the laboratory that showed evidence of one or more prohibited drugs or drug metabolites in the confirmatory test in a sufficient quantity to be reported as positive by category (i.e., marijuana, cocaine, opiate, PCP, or amphetamine).

(g) A recipient's first semi-annual report under this section shall cover the period from the first of the month in which the recipient or operator began drug testing under an anti-drug program to June 30 to December 31 of the same year, whichever is appropriate.

§ 653.33 Release of information.

(a) Except as provided in this subpart, no test result or other information from an anti-drug program may be released.

(b) The test result of an individual who was administered a drug test under this part may be released to a third party only if the individual tested signs a specific authorization for the release of the results to an identified person.

(c) Nothing in this section shall prohibit a recipient or operator from allowing an individual who is administered a drug test under this part to receive the results of his or her drug test.

§ 653.35 Certification of compliance.

(a) (1) Except as provided in paragraph (a)(2), a recipient shall submit the first certification required by § 653.7 of this part to UMTA no later than 24 months after the effective date of this part and annually thereafter.

(2) A small operator shall submit the first certification required by § 653.7 of this part to UMTA no later than 24 months after the effective date of this part, and annually thereafter.

(b) (1) Except as provided in paragraphs (b) (2) and (3), the text of the certification required by § 653.7 of this part shall be as follows:

I, (name), (title), certify that (name of recipient) and all operators providing mass transportation service for (name of recipient) with Federal financial assistance has established and implemented an anti-drug program in accordance with the terms of 49 CFR part 653.

(2) The text of the certification of a recipient that provides commuter rail transportation service regulated by the Federal Railroad Administration shall be as follows:

I, (name), (title), certify that (name of recipient) and all operators providing mass transportation service for (name of recipient) with Federal financial assistance has an anti-drug program that meets the requirements of the Federal Railroad Administration's regulations for employees regulated by the Federal Railroad Administration, and has established and implemented an anti-drug program in accordance with the terms of 49 CFR Part 653 for all other employees who perform sensitive safety functions.

(3) The text of the certification of a recipient that provides waterborne transportation service regulated by the United States Coast Guard shall be as follows:

I, (name), (title), certify that (name of recipient) and all operators providing mass transportation service for (name of recipient) with Federal financial assistance has an anti-drug program that meets the requirements of the United States Coast Guard regulations for employees regulated by the United States Coast Guard, and has established and implemented an anti-drug program in accordance with the terms of 49 CFR Part 653 for all other employees who perform sensitive safety functions.

§ 653.37 Temporary waivers.

(a) A recipient that is unable to comply with all or a portion of this part because of a conflicting state or local law in effect on the effective date of this part may request from the Administrator a temporary waiver from compliance with the affected provision.

(b) A request for a temporary waiver under paragraph (a) shall be submitted to UMTA, Office of the Chief Counsel, 400 Seventh Street SW., Washington, DC 20590, and shall include—

(1) An opinion of counsel regarding the conflict between this part and the law or agreement and the legal impediment to full compliance with this part;

(2) A statement by the recipient of any action being taken to remove the legal impediment; and

(3) A statement of when the recipient expects to be able to come into full compliance with this part.

(c) A temporary waiver granted under this section shall include:

(1) A statement of which provision of this part is being waived; and

(2) A date when the waiver expires, which shall be no later than December 31, 1989.

(d) (1) A recipient shall submit its first certification of compliance with the provisions of this part which are not included in a temporary waiver to UMTA within the time period required by § 653.35 of this part.

(2) A recipient shall submit its first certification of compliance with the provision of this part which is included in a temporary waiver to UMTA no later than 12 months after the expiration date of the waiver, or the date required by § 653.35 of this part, whichever is later.

Issued on: November 14, 1988.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 88-26615 Filed 11-15-88; 3:54 pm]
BILLING CODE 4910-57-M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1807/Pub. L. 100-656
Business Opportunity Development Reform Act of 1988. (Nov. 15, 1988; 102 Stat. 3853; 47 pages) Price: $1.50

H.R. 4399/Pub. L. 100-657
Commercial Space Launch Act Amendments of 1988. (Nov. 15, 1988; 102 Stat. 3900; 8 pages) Price: $1.00

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H.R. 5115/Pub. L. 100-658
Immigration Amendments of 1988. (Nov. 15, 1988; 102 Stat. 3908; 2 pages) Price: $1.00

S. 1630/Pub. L. 100-659
Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988. (Nov. 15, 1988; 102 Stat. 3910; 12 pages) Price: $1.00

S. 2042/Pub. L. 100-660
To authorize the Vietnam Women's Memorial Project, Inc., to establish a memorial on Federal land in the District of Columbia or its environs to honor women of the Armed Forces of the United States who served in the Republic of Vietnam during the Vietnam era. (Nov. 15, 1988; 102 Stat. 3922; 1 page) Price: $1.00

S.J. Res. 314/Pub. L. 100-661
Designating October 1988 as "Pregnancy and Infant Loss Awareness Month." (Nov. 15, 1988; 102 Stat. 3923; 1 page) Price: $1.00

S.J. Res. 315/Pub. L. 100-662
Designating 1989 as "Year of the Young Reader." (Nov. 15, 1988; 102 Stat. 3924; 1 page) Price: $1.00

S.J. Res. 340/Pub. L. 100-663
Designating November 27 through December 3, 1988, as "National Sir Winston Churchill Recognition Week." (Nov. 15, 1988; 102 Stat. 3925; 1 page) Price: $1.00

S.J. Res. 386/Pub. L. 100-664
To designate the week of June 18 through June 24, 1989, as "National Grasslands Week." (Nov. 15, 1988; 102 Stat. 3926; 1 page) Price: $1.00

S. 253/Pub. L. 100-665
To convey Forest Service land to Flagstaff, Arizona. (Nov. 16, 1988; 102 Stat. 3927; 2 pages) Price: $1.00

S. 1236/Pub. L. 100-666
Navajo and Hopi Indian Relocation Amendments of 1988. (Nov. 16, 1988; 102 Stat. 3929; 6 pages) Price: $1.00

S. 1883/Pub. L. 100-667
To amend the Act entitled "An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes." (Nov. 16, 1988; 102 Stat. 3935; 26 pages) Price: $1.00

S. 2165/Pub. L. 100-668
Washington Park Wilderness Act of 1988. (Nov. 16, 1988; 102 Stat. 3961; 8 pages) Price: $1.00

S. 2204/Pub. L. 100-669
To implement the Inter-American Convention on International Commercial Arbitration. (Nov. 16, 1988; 102 Stat. 3969; 2 pages) Price: $1.00

S. 2643/Pub. L. 100-670
Generic Animal Drug and Patent Term Restoration Act. (Nov. 16, 1988; 102 Stat. 3971; 19 pages) Price: $1.00

S.J. Res. 303/Pub. L. 100-671
To designate the month of October 1988 as "National Lupus Awareness Month." (Nov. 16, 1988; 102 Stat. 3990; 1 page) Price: $1.00

S.J. Res. 325/Pub. L. 100-672
Designating the third week in May 1989 as "National Tourism Week." (Nov. 16, 1988; 102 Stat. 3991; 1 page) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.115New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	10.00	July 1, 1988
101	23.00	July 1, 1987
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1987

Title	Price	Revision Date
42 Parts:		
1–60	15.00	Oct. 1, 1987
61–399	5.50	Oct. 1, 1987
400–429	21.00	Oct. 1, 1987
430–End	14.00	Oct. 1, 1987
43 Parts:		
1–999	15.00	Oct. 1, 1987
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4000–End	11.00	Oct. 1, 1987
44	18.00	Oct. 1, 1987
45 Parts:		
1–199	14.00	Oct. 1, 1987
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500–1199	18.00	Oct. 1, 1987
1200–End	14.00	Oct. 1, 1987
46 Parts:		
1–40	13.00	Oct. 1, 1987
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48 Chapters:		
1 (Parts 1–51)	26.00	Oct. 1, 1987
1 (Parts 52–99)	16.00	Oct. 1, 1987
2 (Parts 201–251)	17.00	Oct. 1, 1987
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50 Parts:		
1–199	16.00	Oct. 1, 1987
200–599	12.00	Oct. 1, 1987
600–End	14.00	Oct. 1, 1987
CFR Index and Findings Aids	28.00	Jan. 1, 1988
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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VOL
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ISS
225
NO
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11-22-88
Vol. 53 No. 225

federal register

• Tuesday
November 22, 1988

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SECOND CLASS NEWSPAPER
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U.S. Government Printing Office
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VOL
53
ISS
225
NO
22
1988
UMI

11-22-88
Vol. 53 No. 225
Pages 47179-47490

federal register

Tuesday
November 22, 1988

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VOL
53
ISS
225
NO
22
1988
UMI

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-35-AD; Amdt. 39-6073]

Airworthiness Directives; Bendix/King KDM 7000B Distance Measuring Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Bendix/King KDM 7000B distance measuring equipment (DME) units, installed in, but not limited to, Boeing 727 series, 737 series, 747 series, British Aerospace Model 146, Fokker Models F-27 and F-28, and McDonnell Douglas MD-80 series airplanes. This AD requires modification of the range gate and tracking board to insure adequate channeling line isolation. This AD is prompted by a report that if power to a KDM 7000B is removed or if a failure of the KDM 7000B occurs in installations where a KDM 7000B is paired with a Collins 51RV4 VHF navigation receiver or certain Bendix/King KNR 6030 VHF navigation receivers and where the DME and navigation receiver channeling lines are paralleled, the associated navigation receiver may be rechanneled to another frequency without the knowledge of the flight crew. Such an occurrence can cause unannunciated erroneous navigation data being presented to the flight crew during instrument flight conditions and could result in hazardous flight path deviations.

DATES: *Effective Date:* December 20, 1988.

Compliance: Compliance required as indicated in the body of the AD.

ADDRESSES: Alert Service Bulletin Number KDM 7000B-34-14, dated November 4, 1988, applicable to this AD may be obtained from Allied-Signal Aerospace Sector, Bendix/King Air Transport Avionics Division, P.O. Box 9327, Fort Lauderdale, FL 33310. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Ralph W. Rissmiller, Jr., Aerospace Engineer, Wichita Aircraft Certification Office, ACE-130W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: During recent tests conducted by Boeing Commercial Airplanes, rechanneling of a Collins 51RV4 VHF navigation receiver was observed when the circuit breaker on a Bendix/King KDM 7000B DME was opened. Investigation revealed that some installations of this equipment employ a single set of wafer switches and shared wiring to provide 2×5 frequency selection information to paired navigation (VOR/Localizer/Glideslope) receivers and distance measuring equipment. As a result of an engineering change introduced approximately 3½ years ago, a 10 kohm leakage path to ground on the 50 Khz tuning and DME hold lines was introduced during any condition in which DME external power is removed or internal power fails. Some navigation receivers, such as the Bendix/King KNR 6030 (s/n 2278 and below) and Collins 51RV4, are susceptible to this leakage path and may interpret it as a ground regardless of the 50 Khz selection on the control unit. If this condition occurs, the navigation receiver will tune to 50 Khz whether the frequency selector is in the 00 Khz or 50 Khz position. As a result, Bendix/King has issued Alert Service Bulletin Number KDM 7000B-34-14, dated November 4, 1988, which specifies a modification of the affected units.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other DME of the same type design, an AD is being issued requiring modification of the affected KDM 7000B DME units. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

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Bendix/King: Applies to Model KDM 7000B Distance Measuring Equipment (DME), Part Number 066-1019-21/-23/-26/-33/-43/-57 (Serial Numbers 21855 through and including 22528), certificated to the applicable requirements of Technical Standard Order C66a, installed in, but not limited to, Boeing 727 series, 737 series, 747 series, British Aerospace Model 146, Fokker Models F-27 and F-28, and McDonnell Douglas MD-80 series airplanes.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent uncommanded channeling of the associated VOR/Localizer/Glideslope navigation receiver and resultant erroneous navigation data with no warning information, accomplish the following:

(a) For affected KDM 7000B distance measuring equipment units, prior to installation in an aircraft, or if already installed in an aircraft, within the next 50 hours time-in-service following the effective date of this AD, modify the KDM 7000B DME in accordance with the instructions contained in Bendix/King Alert Service Bulletin KDM 7000B-34-14, dated November 4, 1988. This modification must be accomplished by a properly rated certified repair station.

(b) Airplanes may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Allied-Signal Aerospace Sector, Bendix/King Air Transport Avionics Division, P.O. Box 9327, Fort Lauderdale, Florida 33310; or may examine the document referred to herein at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 20, 1988.

Issued in Kansas City, Missouri, on November 9, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26954 Filed 11-21-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-161-AD; Amdt. 39-6078]

Airworthiness Directives; Cessna Model S550 and 650 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Cessna Model S550 and 650 series airplanes, which currently requires disconnection of electrical power to the interior cabinetry until a modification of the wiring and electrical components is installed. That action was prompted by a report of an electrical malfunction that resulted in fire damage in the galley area. This amendment requires an additional modification to be accomplished prior to reconnection of electrical power. This amendment is prompted by additional reports of electrical malfunctions of modifications installed in accordance with the existing AD. This condition, if not corrected, could result in cabin smoke, charred paneling, and/or fire.

EFFECTIVE DATE: December 12, 1988.

ADDRESSES: The applicable service information may be obtained from Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Witchita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph W. Rissmiller, Jr., Aerospace Engineer, Systems and Equipment Branch, ACE-130W, FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: On June 6, 1987, the FAA issued AD 87-03-15, Amendment 39-5647 (52 FR 23428; June 22, 1987), applicable to Cessna Model S550 and 650 series airplanes, which requires disconnection of the electrical power of the interior cabinetry until a modification of the wiring and electrical components is installed. That action was prompted by reports of chafing of the cabin accessory wiring used to power or to control items such as lighting, water heaters, and entertainment units on the airplanes. The chafing is such that the copper wire has made contact with the graphite layer in the composite paneling used in the various interior cabinetry, and has resulted in cabin smoke, charred paneling, and, in two incidents, fire. The reported incidents have occurred on Cessna Model 650 series airplanes; however, similar construction and the same type of materials are also used in Cessna Model S550 series airplanes.

Subsequent to the issuance of AD 87-03-15, the FAA has received additional reports of damage caused by electrical malfunctions in the galley area; one incident resulted in charred paneling and smoke. These incidents have occurred on airplanes that had been modified in accordance with Cessna Service Letter SLS550-25-02, Revision 3, or SL650-25-02, Revision 3, as specified in AD 87-03-15. Investigation revealed that these problems resulted from inadequate wire protection and electrical isolation of components from the graphite paneling used in the airplanes.

The FAA has reviewed and approved Cessna Service Letters SLS550-25-02, Revision 4, and SL650-25-02, Revision 4, both dated October 21, 1988, which describe procedures for installation of additional modifications which are necessary before electrical power can be safely restored to interior cabinetry wiring and electrical components.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 87-03-15 to require disconnection of electrical power to the interior cabinetry (in accordance with the Cessna service bulletins specified in AD 87-03-15), until additional modification of the interior cabinetry wiring and electrical component installation is accomplished, in accordance with the Cessna service letters previously mentioned.

Additionally, the applicability of this AD has been revised to exclude certain Model S550 series airplanes which are not equipped with the affected interior cabinetry.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It hab been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87-03-15, Amendment 39-5647 (52 FR 23428; June 22, 1987), with the following new airworthiness directive:

Cessna: Applies to Model S550 series airplanes, Serial Numbers (S/N) S550-0001 through S550-0039, and S550-0041 through S550-0120, except the lavatory vanities on S550-0100 through S550-0120; and Model 650 series airplanes, S/N 650-0001 through 650-0126, excedpt the lavatory vanities on S/N 650-0087 and 650-0105 through 650-0126; certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude wiring failure, which can result in cabin smoke and/or fire, accomplish the following:

A. For Cessna Model S550 series airplanes: Before next activation of the airplane's electrical power, disconnect the electrical power to the interior cabinetry in accordance with the accomplishment instructions of Cessna Alert Service Bulletin SBAS550-25-16, dated February 3, 1987.

1. Electrical wiring may be reconnected following modification of the interior cabinetry wiring and electrical components described in, and in accordance with, Cessna Service Letter SLS550-25-02, Revision 4, dated October 21, 1988.

B. For Cessna Model 650 series airplanes: Before next activation of the airplane's electrical power, disconnect the electrical power to the interior cabinetry in accordance with the accomplishment instructions of Cessna Alert Service Bulletin SBA650-25-12, dated February 3, 1987.

1. Electrical wiring may be reconnected following modification of the interior cabinetry wiring and electrical components described in, and in accordance with, Cessna Service Letter SL650-25-02, Revision 4, dated October 21, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

Note.—The request for alternate means of compliance should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Wichita Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not alrady received the appropriate service information from the manufacturer may obtain copies upon request to Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This amendment supersedes AD 87-03-15, Amendment 39-5647.

This amendment becomes effective December 12, 1988.

Issued in Seattle, Washington, on November 14, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26956 Filed 11-21-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-21]

Establishment of Springfield, OH, Control Zone and Alteration of Dayton Wright-Patterson AFB, OH, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish a separate Springfield, OH, control zone to serve Springfield-Beckley Municipal Airport and alter the existing Dayton Wright-Patterson Air Force Base (AFB), OH, control zone. Wright-Patterson AFB has a full-time control tower and weather reporting service whereas the Springfield-Beckley control tower and weather reporting service are offered on a part-time basis. Some pilots are confused as to which weather is the official weather in the control zone and believe that when the Springfield-Beckley control tower is not operating, the control zone there does not exist. The intended effect of this action is to split the existing control zone into two separate zones, thereby reflecting both civilian and military operational requirements and relieving pilot confusion.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, September 21, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Springfield, OH, control zone and modify the existing Dayton Wright-Patterson AFB, OH, control zone (53 FR 36581).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Springfield, OH, control zone and modifies the existing Dayton Wright-Patterson AFB, OH, control zone.

The establishment of a control zone for Springfield, OH, and modifying the Dayton Wright-Patterson AFB, OH, control zone will alleviate pilot confusion. Each zone will have their own weather reporting and hours of operation.

This control zone split will have no greater effect on the public than does the existing area. The airspace required for the two zones is actually a reduction of controlled airspace. The existing 6-mile radius of Springfield-Beckley Municipal Airport will be reduced to a 5-mile radius and the southwest extension from the radius zone will be 6 miles instead of 8.5 miles. The Springfield, OH, control zone will be effective during the specific dates and

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times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory. Dayton Wright-Patterson AFB, OH, dates and times remain status quo.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control Zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Springfield, OH [New]

Within a 5-mile radius of the Springfield-Beckley Municipal Airport, Springfield, OH, (39°50'25" N., long. 83°50'25" W.); and within 3.5 miles each side of the 055° bearing from the airport, extending from the 5-mile radius area to 9.5 miles northeast, and within 2.5 miles each side of the 241° bearing from the airport, extending from the 5-mile radius area to 6 miles southwest, excluding that portion overlying the Dayton Wright-Patterson AFB, OH, control zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

3. Section 71.171 is amended as follows:

Dayton Wright-Patterson AFB, OH [Revised]

Within a 5-mile radius of Wright-Patterson AFB (lat. 39°49'34" N., long. 84°02'54" W.).

Issued in Des Plaines, Illinois on November 7, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88-26955 Filed 11-21-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-41]

Establishment of Transition Area; Ruidoso, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will establish a new transition area at Ruidoso, NM. The development of a new standard instrument approach procedure (SIAP) to the Sierra Blanca Regional Airport, utilizing the new Capitan Nondirectional Radio Beacon (NDB), has made this amendment necessary. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the new SIAP to the airport. Coincident with this action is the changing of the status of the Sierra Blanca Regional Airport from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On August 15, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a new transition area located at Ruidoso, NM (53 FR 33503).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will establish a new transition area at Ruidoso, NM. The development of a new SIAP to the Sierra Blanca Regional Airport, utilizing the new Capitan NDB, has necessitated this amendment. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing this new SIAP. Coincident with this action, the status of the Sierra Blanca Regional Airport will change from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ruidoso, NM [New]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Sierra Blanca Regional Airport (latitude 38°27'42" N., longitude 105°31'31" W.).

Issued in Forth Worth, TX, on November 7, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-26959 Filed 11-21-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25735; Amdt. No. 1387]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference: Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200). FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on November 11, 1988.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

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PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: §97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective February 9, 1989

Jamestown, ND—Jamestown Muni, VOR RWY 13, Amdt. 7
Jamestown, ND—Jamestown Muni, VOR RWY 31, Amdt. 8
Jamestown, ND—Jamestown Muni, LOC/DME BC RWY 13, Amdt. 7
Jamestown, ND—Jamestown Muni, NDB RWY 31, Amdt. 6
Jamestown, ND—Jamestown Muni, ILS RWY 31, Amdt. 7
Lakeview, OR—Lake County, NDB-A, Amdt. 2

Effective January 12, 1989

Orlando, FL—Orlando Executive, VOR RWY 13, Amdt. 14
Orlando, FL—Orlando Executive, LOC BC RWY 25, Amdt. 18
Orlando, FL—Orlando Executive, NDB RWY 7, Amdt. 15
Orlando, FL—Orlando Executive, ILS RWY 7, Amdt. 21
Orlando, FL—Orlando Executive, RADAR-1, Amdt. 24
Alton/St. Louis, IL—St. Louis Regional, VOR-A, Amdt. 8
Alton/St. Louis, IL—St. Louis Regional, LOC BC RWY 11, Amdt. 6
Alton/St. Louis, IL—St. Louis Regional, NDB RWY 17, Amdt. 10
Alton/St. Louis, IL—St. Louis Regional, NDB RWY 29, Amdt. 9
Alton/St. Louis, IL—St. Louis Regional, ILS RWY 29, Amdt. 9
Peoria, IL—Greater Peoria, VOR or TACAN RWY 13, Amdt. 22
Peoria, IL—Greater Peoria, VOR/DME or TACAN RWY 31, Amdt. 8
Peoria, IL—Greater Peoria, NDB RWY 31, Amdt. 14
Peoria, IL—Greater Peoria, ILS RWY 13, Amdt. 5
Peoria, IL—Greater Peoria, ILS RWY 31, Amdt. 5
Peoria, IL—Greater Peoria, RNAV RWY 4, Amdt. 6
Peoria, IL—Greater Peoria, RNAV RWY 22, Amdt. 8
Peoria, IL—Greater Peoria, RADAR/1, Amdt. 11
Newton, IA—Newton Muni, VOR RWY 13, Amdt. 7
Newton, IA—Newton Muni, VOR RWY 31, Amdt. 7
Newton, IA—Newton Muni, RNAV RWY 31, Amdt. 1 *Cancelled*
Jennings, LA—Jennings, NDB RWY 13, Orig., *Cancelled*
Bar Harbor, ME—Hancock County-Bar Harbor, ILS RWY 22, Amdt. 3
Holland, MI—Tulip City, VOR-A, Amdt. 9
Holland, MI—Tulip City, RNAV RWY 8, Amdt. 1
Holland, MI—Tulip City, RNAV RWY 26, Amdt. 4
Albuquerque, NM—Albuquerque Intl, NDB RWY 17, Orig.
East Hampton, NY—East Hampton, VOR-A, Amdt. 9
Athens/Albany, OH—Ohio University, LOC RWY 25, Amdt. 2
Coshockton, OH—Richard Downing, VOR-A, Amdt. 8
Coshockton, OH—Richard Downing, RNAV RWY 22, Amdt. 2
Bedford, PA—Bedford, VOR/DME-A, Amdt. 2

Effective December 15, 1988

Pago Pago, AS—Pago Pago Intl, VOR/DME or TACAN-B, Amdt. 5
Santa Ana, CA—John Wayne Airport—Orange County, LDA/DME RWY 19R, Orig.
Denver, CO—Centennial, ILS RWY 35R, Amdt. 6
Denver, CO—Centennial, RNAV RWY 28, Amdt. 5
Denver, CO—Stapleton Intl, ILS RWY 35R, Amdt. 12
Gunnison, CO—Gunnison County, VOR-A, Amdt. 6
Paris, IL—Edgar County, VOR/DME-A, Amdt. 5
Paris, IL—Edgar County, NDB RWY 27, Amdt. 7
Bellaire, MI—Antrim County, VOR RWY 2, Amdt. 1
Bellaire, MI—Antrim County, NDB RWY 2, Amdt. 1
Grand Ledge, MI—Abrams Muni, VOR-A, Amdt. 4
Jefferson City, MO—Jefferson City Meml, LOC RWY 30, Amdt. 6, *Cancelled*
Jefferson City, MO—Jefferson City Meml, ILS RWY 30, Orig.
Tonopah, NV, Tonopah—VOR-A, Amdt. 3
Oklahoma City, OK—Will Rogers World, ILS RWY 35R, Amdt.7
Gallatin, TN—Sumner County Regional, NDB RWY 35, Orig.
Houston, TX—William P. Hobby, ILS RWY 30L, Orig.
Blanding, UT—Blanding Muni, NDB RWY 35, Amdt. 6
Salt Lake City, UT—Salt Lake City Intl, ILS/DME RWY 16R, Amdt. 4
Martinsville, VA—Blue Ridge, SDF RWY 30, Amdt.1
Beckley, WV—Raleigh County Memorial, VOR/DME RWY 1, Amdt. 2

[FR Doc. 88-26960 Filed 11-21-88; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F-0316]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to revise the temperature limitation set for uses of vinylidene chloride/methyl acrylate copolymers as articles or components of articles in contact with food. This action responds to a petition filed by The Dow Chemical Co.

DATES: Effective November 22, 1988; written objections and requests for a hearing by December 22, 1988. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 177.1990(c)(3) effective on November 22, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 19, 1986 (51 FR 29612), FDA announced that a petition (FAP 6B3938) had been filed by The Dow Chemical Co., 2040 Dow Center, Midland, MI 48640, proposing that § 177.1990 *Vinylidene chloride/methyl acrylate copolymers* (21 CFR 177.1990) be amended to provide for additional safe uses of vinylidene chloride/methyl acrylate copolymers as articles or components of articles intended for use in contact with food. The petition specifically requested that the temperature limitation set for use of the copolymers be raised from 121 °C (250 °F) to 135 °C (275 °F).

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that § 177.1990(c)(3) and (e) should be amended as set forth below. The agency is also incorporating by reference in § 177.1990(c)(3) an alternative method of analysis for residual vinylidene chloride and residual methyl acrylate.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before December 22, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1990 is amended by revising paragraphs (c)(3) and (e) to read as follows:

§ 177.1990 Vinylidene chloride/methyl acrylate copolymers.

* * * * *

(c) * * *

(3) Residual vinylidene chloride and residual methyl acrylate in the copolymer in the form in which it will contact food (unsupported film, barrier layer, or as a copolymer for blending) will not exceed 10 parts per million and 5 parts per million, respectively, as determined by either a gas chromatographic method titled "Determination of Residual Vinylidene Chloride and Methyl Acrylate in Vinylidene Chloride/Methyl Acrylate Copolymer Resins and Films," or, alternatively, "Residual Methyl Acrylate and Vinylidene Chloride Monomers in Saran MA/VDC Resins and Pellets by Headspace Gas Chromatography," dated March 3, 1986, which are incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(e) *Conditions of use.* The copolymers may be safely used as articles or components of articles intended for use in producing, manufacturing, processing, preparing, treating, packaging, transporting, or holding food, including processing of packaged food at temperatures not to exceed 135 °C (275 °F).

* * * * *

Dated: November 16, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-26990 Filed 11-21-88; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 86F-0375]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of vinylidene chloride/methyl acrylate copolymers as a food contact surface in packaging systems employing hydrogen peroxide as a sterilizing agent. This action is in response to a petition filed by The Dow Chemical Co.

DATES: Effective November 22, 1988; written objections and requests for a hearing by December 22, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-355), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 2, 1986 (51 FR 35287), FDA announced that a food additive petition (FAP 6B3953) had been filed by The Dow Chemical Co., Midland, MI 48674, proposing that § 178.1005 *Hydrogen peroxide solution* (21 CFR 178.1005) be amended to provide for the safe use of hydrogen peroxide as a sterilant for food packaging materials composed of vinylidene chloride/methyl acrylate copolymers complying with § 177.1990 *Vinylidene chloride/methyl acrylate copolymers* (21 CFR 177.1990).

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in § 178.1005(e)(1).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in

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reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environmental, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before December 22, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the hearing of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.1005 is amended by revising paragraph (e)(1) to read as follows:

§ 178.1005 Hydrogen peroxide solution.

* * * * *

(e) * * *

(1) Hydrogen peroxide solution identified in and complying with the specifications in this section may be used by itself or in combination with other processes to treat food-contact surfaces to attain commercial sterility at least equivalent to that attainable by thermal processing for metal containers as provided for in Part 113 of this chapter. Food-contact surfaces include the following:

Substances	Limitations
Ethylene-acrylic acid copolymers.	Complying with § 177.1310 of this chapter.
Ethylene-methyl acrylate copolymer resins.	Complying with § 177.1340 of this chapter.
Ethylene-vinyl acetate copolymers.	Complying with § 177.1350 of this chapter.
Ionomeric resins	Complying with § 177.1330 of this chapter.
Olefin polymers	Complying with § 177.1520 of this chapter.
Polyethlene-terephthalate polymers.	Complying with § 177.1630 of this chapter (excluding polymers described in § 177.1630(c)) of this chapter.
Polystyrene and rubber-modified polystyrene polymers.	Complying with § 177.1640 of this chapter.
Vinylidene chloride/methyl acrylate copolymers.	Complying with § 177.1990 of this chapter.

* * * * *

Dated: November 14, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–26988 Filed 11–21–88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is issuing a rule which interprets 18 U.S.C. 4210(b)(2) as requiring the automatic forfeiture of all time on parole when the Commission revokes parole and the parolee has sustained a conviction for any crime punishable by imprisonment. The purpose of this interpretation is to resolve a doubt recently raised by a federal appellate court as to whether forfeiture of "street time" is discretionary with the Commission, or whether it is a non-discretionary penalty imposed by law.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Janice G. McLeod, Attorney, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Prior to 1976, federal law prohibited any of the time a parolee spent on parole to be credited toward his sentence, if his parole were revoked for any reason. 18 U.S.C. 4205 (1948). In 1976, Congress revised this penalty at 18 U.S.C. 4210(b) to limit automatic forfeiture of "street time" to situations where the parolee has sustained a new conviction for a crime committed while on parole, if that crime is punishable by imprisonment, detention, or incarceration in any penal facility.

Forfeiture of street time was made discretionary in the case of absconders from supervision, in 18 U.S.C. 4210(c). But the Commission was not given the option to forgo forfeiture in the case of a new conviction under section 4210(b)(2). The only decision that statute leaves to be made by the Commission is whether "all or any part of the unexpired term being served at the time of parole" shall be concurrent with, or consecutive to, any new sentence. This language, by definition, presupposes no credit for the time served after the date of release on parole.

This view was accepted in *Harris* v. *Day*, 649 F.2d 755, 760 (10th Cir. 1981), holding that "the parolee who has been convicted of a new crime automatically forfeits the time spent on parole."

However, in *Boniface* v. *Carlson*, 856 F.2d (9th Cir. 1988), another appellate court assumed, but did not hold, that "forfeiture is not automatic or certain but is discretionary with the Commission." The Commission believes that this assumption is in error, and that *Harris* v. *Day*, *supra*, is the correct interpretation of the law.

Therefore, the U.S. Parole Commission has unanimously voted to promulgate a formal interpretation of its enabling statute.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and Parole, Prisoners.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.52(c)(2) is revised to read as follows:

§ 2.52 Revocation decisions.

* * * * *

(c) * * *

(2) It is the Commission's interpretation of 18 U.S.C. 4210(b)(2) that, if a parolee has been convicted of a new offense committed subsequent to his release on parole, which is punishable by any term of imprisonment, detention, or incarceration in any penal facility, forfeiture of time from the date of such release to the date of execution of the warrant is an automatic statutory penalty, and such time shall not be credited to the service of the sentence. An actual term of confinement or imprisonment need not have been imposed for such conviction; it suffices that the statute under which the parolee was convicted permits the trial court to impose any term of confinement or imprisonment in any penal facility. If such conviction occurs subsequent to a revocation hearing the Commission may reopen the case and schedule a further hearing relative to time forfeiture and such further disposition as may be appropriate. However, in no event shall the violator term imposed under this subsection, taken together with the time served before release, exceed the total length of the original sentence.

* * * * *

Issued at Chevy Chase, Maryland, November 1, 1988.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 88–26850 Filed 11–21–88; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Regional Office File Disclosure

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making a procedural revision to its rule at 28 CFR 2.56 entitled "Disclosure of Parole Commission Regional Office File", with regard to the handling of Bureau of Prisons' documents found in Parole Commission files. The Commission will now provide for the referral of any Bureau of Prisons (BOP) documents in a parole file to the Bureau for disclosure processing when the requester indicates that he wants copies of BOP documents found in his parole file. This change is intended to make the Commission's disclosure procedures conform with the departmental regulation governing referral of documents.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Janice G. McLeod, Attorney, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: At present, when there are Bureau of Prisons' documents in a parole file that fall within the scope of an inmate or parolee's disclosure request, the Commission refers the requester to the Bureau of Prisons for copies of these documents.

In order to be more responsive to inmate and parolee disclosure requests and to conform with a departmental regulation found at 28 CFR 16.4(c) concerning referral of documents, the Parole Commission is amending its disclosure regulation to provide for the referral of any Bureau of Prisons documents in a parole file to the Bureau of Prisons in those instances where the requestor indicates that he wants copies of any BOP document in his parole file.

This procedural change will be implemented by written notice to the requestor that his parole file contains Bureau of Prisons documents. The requestor will be asked to inform the Commission if he wants the Bureau of Prisons documents in his parole file processed. If so requested, the Commission would then copy and refer to the Bureau of Prisons any documents that originated with that agency for disclosure processing and a direct response to the requestor.

Bureau of Prisons documents found in a parole file are duplicates of documents found in an institutional (BOP) file. Many inmate and parolee requestors simultaneously submit disclosure requests to the Bureau of Prisons and the Parole Commission. Since the inmate has access to the reviewable disclosure section of his institutional file at his place of incarceration, requests for disclosure submitted to the BOP by inmates are generally processed before a request that is simultaneously submitted to the Parole Commission. Thus, any BOP documents in a Parole Commission file may have already been processed and released to the requestor by the Bureau of Prisons by the time the Commission processes a pending disclosure request. This may result in the inmate paying reproduction costs twice for the same documents.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.56(b) is revised to read as follows:

§ 2.56 Disclosure of Parole Commission regional office file.

* * * * *

(b) *Scope of disclosure.* Disclosure under this section shall extend to Commission documents concerning the prisoner or parolee making the request. Documents which are contained in the regional file and which are prepared by agencies other than the Commission which are also subject to the provisions of the Freedom of Information Act, shall be referred to the appropriate agency for a response pursuant to its regulations, unless the document has previously been prepared for disclosure pursuant to § 2.55, or is fully disclosable on its face, or has been prepared by the Bureau of Prisons. Any Bureau of Prisons

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documents in a parole file are duplicates of records in the inmate's institutional file. Before referring these documents to the Bureau of Prisons (BOP), the Commission will ask the requestor whether he also wants the BOP documents in his parole file processed.

Dated: November 1, 1988.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 88-26848 Filed 11-21-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-225-D]

Occupational Exposure to Formaldehyde; Start-Up Date

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; extension of start-up date.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published in the **Federal Register** a final rule regulating occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). On February 2, 1988, the Office of Management and Budget (OMB), in accordance with its authority under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and 5 CFR Part 1320, approved the information collection requirements contained in the final rule with the exception of those contained in paragraphs (m)(1)(i) through (m)(4)(ii), and on October 7, 1988, OMB approved paragraph (m)(1)(i) for one year and paragraphs (m)(1)(ii)–(m)(4)(ii) for three years.

On November 8, 1988, OSHA announced that it intended to provide a sixty-day start-up period from the date of OMB's approval until December 6, 1988, before it would begin enforcing the newly approved hazard communication provisions. 53 FR 45080. OSHA also announced that it would use the period November 8 through November 29 to collect additional comment concerning matters raised in an application for an administrative stay of the labeling requirement filed by the Formaldehyde Institute and others. Specifically, OSHA sought comment concerning the appropriateness of the labeling requirement and the feasibility of measuring formaldehyde emissions at the 0.1 ppm level, and whether the Agency should undertake additional rulemaking to reconsider the labeling requirement in paragraph (m)(1)(i) through (m)(4)(ii). The Agency set November 29, 1988, as the closing date for comments in order to complete its consideration of the Formaldehyde Institute's application for an administrative stay by the December 6 effective date.

This notice further extends the start-up date for compliance with the newly approved hazard communication provisions to December 20, 1988. The extension is necessary to permit judicial consideration of a motion filed by the Formaldehyde Institute on November 10, 1988, seeking a court-ordered stay of the cancer labeling requirements of the standard.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: OSHA is extending the start-up date for the hazard communication requirements at paragraphs (m)(1)(i) through (m)(4)(ii) of 29 CFR 1910.1048 in order to afford the United Staes Court of Appeals for the District of Columbia Circuit a meaningful opportunity to act on the Formaldehyde Institute's November 10 motion for a judicial stay, if such action is necessary. See, *UAW, et al.* v. *John A. Pendergrass*, DC Cir. No. 87-1743.

The Formaldehyde Institute's motion for a judicial stay of the cancer labeling provisions challenges both their efficacy and feasibility. This is also the substance of the Institute's application for an administrative stay. OSHA is now in the process of receiving additional comment on the feasibility and efficacy of that provision. The Agency will complete its consideration of those comments and announce its decision concerning the Institute's petition by December 6, 1988. It would be wasteful and confusing for the Agency, in the context of a response to the Institute's motion, to set before the court views concerning the previously-developed record while at the same time collecting further evidence that could affect the Agency's assessment of the need for a stay. Moreover, the Institute's motion for a judicial stay could be rendered moot, in whole or in part, by the Agency's December 6 ruling on the application for an administrative stay.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9-83 (48 FR 35736) and 29 CFR Part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational Safety and Health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, DC this 17th day of November 1988.

John A. Pendergrass,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 88-26992 Filed 11-21-88; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3475-1]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this Notice, EPA is approving amendments to the State of Oregon visibility protection program, submitted by the Oregon Department of Environmental Quality (ODEQ) on March 3, 1987, as a revision to the Oregon state implementation plan (SIP). These amendments were submitted to satisfy the requirements of section 169A (Visibility Protection) of the Clean Air Act (hereinafter referred to as the Act).

EFFECTIVE DATE: December 22, 1988.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-87-10), Environmental Protection Agency, 1200 Sixth Avenue, AT-092, Seattle, Washington 98101.

State of Oregon, Department of Environmental Quality, 811 Southwest Sixth Avenue, Portland, OR 97204.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, AT-092, Seattle, Washington 98101, Telephone: (206) 442-4253, FTS: 399-4253.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Act requires visibility protection for mandatory Class I federal areas where EPA has determined visibility is an important value. On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 *et seq.*

On April 10, 1986 (51 FR 12323), EPA approved certain provisions of the Oregon Administrative Rules (OAR) as a revision to the Oregon state implementation plan (SIP) in order to implement visibility monitoring and visibility new source review provisions as required by section 169A of the Act and 40 CFR 51.305 and 40 CFR 51.307 of EPA regulations, respectively. Specifically, EPA approved OAR, Chapter 340, Division 20, section 047, subsection 5.2 "Visibility Protection Plan for Class I Areas" (relating to visibility monitoring and new source review) and OAR, Chapter 340, Division 20, sections 225; 230(1) (e) and (f); 245 (3), (5), and (7); and 276 (relating to visibility new source review), as meeting the requirements of 40 CFR Part 51, Subpart P "Protection of Visibility" relating to visibility monitoring and new source review.

On March 3, 1987, the State of Oregon Department of Environmental Quality (ODEQ) submitted amendments to the Oregon visibility protection plan as a revision to the Oregon SIP in order to implement the remaining provisions of 40 CFR Part 51, Subpart P "Protection of Visibility." These amendments included completely revised OAR 340-20-047, § 5.2 "Visibility Protection Plan for Class I Areas," OAR 629-43-043 "Smoke Management Plan," and Oregon Department of Forestry/Oregon Department of Environmental Quality Interagency Directive 1-4-1-601 "Operational Guidance for the Oregon Smoke Management Program."

EPA reviewed these amendments to the Oregon visibility protection plan and found that the revised provisions met the criteria for visibility protection as promulgated by EPA in 40 CFR Part 51, Subpart P. EPA therefore proposed to approve these amendments as a revision to the Oregon SIP on June 22, 1988 (53 FR 23418).

On June 22, 1988 (53 FR 23418), EPA provided a 30 day public comment period on this proposed approval. No comments were received.

II. Summary of Action

EPA is today approving amendments to the Oregon visibility protection program as a revision to the Oregon SIP. Specifically, EPA is approving the revised OAR 340-20-047, § 5.2 "Visibility Protection Plan for Class I Areas," the revised OAR 629-43-043 "Smoke Management Plan," and the revised Directive 1-4-601 "Operational Guidance for the Oregon Smoke Management Program."

III. Administrative Review

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 1989. This action may not be challenged later in proceedings to to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Date: October 28, 1988.

Lee M. Thomas,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the state of Oregon was approved by the Director of the Federal Register on July 1, 1982.

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart MM—Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1970 is amended by adding paragraph (c)(83) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(83) On March 3, 1987 the Director of the Department of Environmental Quality submitted amendments to the Oregon visibility protection program as a revisions to the Oregon state implementation plan, specifically OAR 340-20-047, section 5.2 "Visibility Protection Plan for Class I Areas," OAR 629-43-043 "Smoke Management Plan," and Directive 1-4-1-601 "Operational Guidance for the Oregon Smoke Management Program."

(i) Incorporation by reference.

(A) Two letters dated March 3, 1987 from the Director of the Department of Environmental Quality to EPA Region 10 establishing the effective dates for Oregon Administrative Rules referenced in paragraphs (c)(83)(i) (B), (C), and (D) of this section.

(B) Oregon Administrative Rule, Chapter 340, Division 20, section 047, section 5.2 "Visibility Protection Plan for Class I Areas" as adopted by the Environmental Quality Commission on October 24, 1986.

(C) Oregon Administrative Rule, Chapter 629, Division 43, section 043 "Smoke Management Plan" as adopted by the Environmental Quality Commission on December 12, 1986.

(D) Directive 1-4-1-601 "Operational Guidance for the Oregon Smoke Management Program" as adopted by the Environmental Quality Commission on December 12, 1986.

[FR Doc. 88-26054 Filed 11-21-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3468-4]

Approval and Promulgation of Implementation Plan for the State of Texas; Good Engineering Practice-Stack Height Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This **Federal Register** notice approves Texas Air Control Board Regulation VI, § 116.3(a)(14), for Good Engineering Practice-Stack Height (GEP-SH) and Dispersion Techniques. Although the EPA generally approves the Texas stack height rules on the grounds that the State satisfies the requirements of 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). This GEP-SH Regulation, § 116.3(a)(14), enables the State to ensure that the degree of

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emission limitation required for the control of any air pollutant under its SIP is not affected by that portion of any stack height which exceeds GEP or by any other dispersion technique.

Today's notice is published to advise the public that EPA is approving the Texas State GEP–SH regulations. The rationale for this approval is contained in this notice and further documented in the *Technical Support Document.*

DATE: This action will be effective on January 23, 1989, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the State's submittal and EPA's *Technical Support Document* along with other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

SIP New Source Section, Air Programs Branch, Air, Pesticides and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655–7214.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, Telephone: (512) 451–5711.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION: Section 123 of the Clean Air Act, amended August 1977, regulates the manner in which techniques for dispersion of pollutants from a source may be considered in setting emission limitations. Specifically, section 123 requires that the degree of emission limitation shall not be affected by the portion of a stack which exceeds GEP or by "any other dispersion technique."

To fulfill the requirements of the Act, the EPA Administrator initially promulgated GEP–SH regulations on February 8, 1982, (47 FR 5864) by limiting stack height credits and other dispersion techniques. Portions of these regulations were successfully challenged in the U.S. Court of Appeals for the D.C. Circuit (see *Sierra Club* v. *EPA,* 719 F.2d 436 (D.C. Cir. 1983)). As the result of this court settlement, the EPA published the revisions to these regulations in the **Federal Register** notice of July 8, 1985, (50 FR 27892).

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, the EPA has required that all States (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the EPA's July 8, 1985, revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by impermissible stack height credits above GEP or by any other dispersion techniques. For any limitations that have been so affected, States have been required to prepare revised limitations consistent with their revised SIPs. This approval concerns only the first of these requirements. The EPA is reviewing the emission limitations of the existing sources by using the criteria provided in the **Federal Register** notice of July 8, 1985. The EPA will publish the results of this review and revision, if any, to emission limitations of the affected sources under a separate notice.

State Submission

On October 26, 1987, the Governor of Texas submitted a copy of the Texas GEP–SH, Air Control Board Regulation VI, § 116.3(a)(14), adopted by the Texas Air Control Board (TACB) on July 17, 1987, as a SIP revision along with the State's other supporting documents. TACB Regulation VI, § 116.3(a)(14), incorporates by reference the Federal regulations found in 40 CFR 51.100 (hh)–(kk) and as amended by the **Federal Register** notice of July 8, 1985 (50 FR 27892). In addition, Texas Incorporated the Federal regulatory definitions for "owner or operator" (40 CFR 51.100(f)), "emission limitation and emission standards" (40 CFR 51.100(z)), "Stack" (40 CFR 51.100(ff)), and "a stack in existence" (40 CFR 51.100(gg)). The State meets the requirements of Federal New Source program by incorporating 40 CFR 51.118 (a)–(b) and 40 CFR 51.164 for implementation and enforcement of the GEP–SH provisions in reviewing the New Source applications. All of the provisions adopted and incorporated under § 116.3(a)(14) are applicable to the owners or operators of proposed new facilities or modification of existing facilities in the State of Texas. The Governor's submission of October 26, 1987, included revisions to other sections of Regulation VI; however, today's notice only approves § 116.3(a)(14), provisions for stack height regulations. The EPA will publish its action on the remaining sections of this regulation at a later date.

Final Action

The EPA has reviewed the State's submittal and determined that the State regulations and procedures adequately meet the requirements of the Federal stack height and dispersion technique regulations, and thus the State regulations are in conformance with section 123 of the Clean Air Act. Therefore, the EPA is approving TACB Regulation VI, § 116.3(a)(14), as a revision to the Texas SIP.

In the interim, the EPA's stack height regulations were challenged in *NRDC* v. *Thomas,* 838 F .2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Appeals Court for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These provisions are: (1) Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2)); (2) Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(h)(2)(ii)(A)); and (3) Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

Although the EPA generally approves Texas stack height rules on the grounds that the State satisfies the requirements of 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* v. *Thomas,* 838 F .2d 1224 (D.C. Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985 regulations, the EPA will notify the State of Texas that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emissions limitations or may affect other actions taken by the State of Texas and source owners or operators.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of publication unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on January 23, 1989.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Incorporation by reference of the Texas State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Incorporation by reference, Particulate matter, Carbon monoxide, Hydrocarbons.

Date: October 12, 1988.

Lee M. Thomas,

Administrator.

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart SS—Texas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2270 is amended by adding paragraph (c)(62) to read as follows:

§ 52.2270 Identification plan.

* * * * *

(c) * * *

(62) Revision to the Texas State Implementation Plan for Good Engineering Practice—Stack Height regulations, Texas Air Control Board Regulation VI, § 116.3(a)(14), as adopted by the Texas Air Control Board on July 17, 1987, were submitted by the Governor of Texas on October 26, 1987. This revision included definitions for "owner or operator", "emission limitation and emission standards", "stack", "a stack in existence", "dispersion technique", "good engineering practice", "nearby", "excessive concentration", and regulations related to "stack height provisions" and "stack height procedures" for new source review.

(i) Incorporation by reference.

(A) Texas Air Control Board Regulation VI, § 116.3(a)(14), adopted by the Board on July 17, 1987.

(ii) Other material—None.

[FR Doc. 88-24829 Filed 11-21-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–40

[FPMR Temp. Reg. G–52]

Use of Carrier Contractor for Express Small Package Transportation

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation prescribes policies and procedures applicable to Federal civilian agencies and departments when next day express small package transportation service from and to specified cities is required. In addition, this regulation identifies the new contractor and new contract rates effective October 1, 1988.

DATES: *Effective date:* October 1, 1988. *Expiration date:* September 30, 1989, unless sooner canceled or revised.

FOR FURTHER INFORMATION CONTACT: Dan Carro, Travel and Transportation Management Division (FBT), Washington, DC 20406, telephone FTS 557–1261 or commercial 703–557–1261.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–40

Freight, Government property, Moving of household goods, Office relocations, Transportation.

PART 101–40 [AMENDED]

The authority citation for Part 101–40 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter G to read as follows:

FEDERAL PROPERTY MANAGEMENT REGULATIONS, TEMPORARY REGULATION G–52

October 24, 1988.

To: Heads of Federal agencies.

Subject: Use of carrier contractor for express small package transportation.

1. *Purpose.* This regulation prescribes policies and procedures applicable to Federal civilian agencies and departments when next day express small package transportation service from and to specified cities is required. In addition, this regulation identifies the new contractor and the new contract rates effective October 1, 1988.

2. *Effective date.* This regulation is effective October 1, 1988.

3. *Expiration date.* This regulation expires September 30, 1989, unless sooner canceled or revised.

4. *Background.* Under section 201(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)), the General Services Administration (GSA) is responsible for prescribing policies and procedures that are advantageous to the Government in terms of economy, efficiency, or service, regarding program activities in the area of transportation and traffic management. Accordingly, GSA has entered into a contract with the carrier listed in Attachment A for the transportation of express small packages from and to specified locations in the United States (including Alaska and Hawaii) and Puerto Rico, where the contractor or its agent presently provides or will provide next day service. In consideration of the contract rates listed in Attachment A and to the extent provided in this regulation, the Government has agreed to place all its transportation requirements for express small package service with the contractor.

5. *Scope.*

a. This regulation is mandatory for all civilian executive agencies pursuant to section 201(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)), and also may be used by (1) cost-reimbursable contractors working for the Government, (2) the legislative and judicial branches of the U.S. Government, and (3) the Department of Defense.

b. Next day express small package transportation is premium transportation. Therefore, agencies and other qualified users shall make prudent use of the services available under this regulation. When next day service is not

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required to accomplish an agency's mission, other less costly methods of transportation shall be used.

6. *Definitions.*

a. "Agency" means any ordering activity (including cost-reimbursable contactors) authorized to obtain contractor services at the contract rate.

b. "Commercial form" means a commercial uniform straight bill of lading, a commercial express receipt, or any other commercial instrument constituting a contract of carriage subject to the terms and conditions set forth in Standard Form 1103, U.S. Government Bill of Lading. (See 41 CFR 101–41.302–3.)

c. "Commercial forms and procedures" means a provision whereby shipments are made using commercial forms and commercial billing procedures instead of Government bills of lading (SF 1103) and their related billing procedures. (See 41 CFR 101–41.304–2.)

d. "Contractor" means the contract awardee listed in Attachment A.

e. "Contract rate" means a shipment charge listed in Attachment A.

f. "Express small package" means a package weighing 50 pounds or less, measuring a maximum of 108 inches in length and girth combined, and containing general commodities except:

(1) Hazardous materials as defined in 49 CFR 172.101;

(2) Property of extraordinary value;

(3) Live animals or plants;

(4) Precious metals or stones;

(5) Weapons or firearms;

(6) Liquor or tobacco products;

(7) Currency, including money orders;

(8) Narcotics or other controlled substances, unless otherwise accepted by the contractor;

(9) Any other article which the contactor prohibits its commerical customers from shipping; and

(10) Letters, unless adhering to the criteria established by the U.S. Postal Service as specified in subpar. 7a, below.

g. "Geographical areas" means locations lying wholly or partially within cities, towns, and communities identified by the U.S. Postal Service national five-digit ZIP code in the contractor's service guide or analogous listing.

h. "Holiday' means a Federal holiday.

i. "Special service" means any other agency-required services, such as weekend delivery, escorted courier service, insurance, proof of delivery, additional airbill copies, etc., which, if requested, will be subject to fees not higher than those charged to the contractor's regular commercial customers.

j. "Standard service" means pickup and next day delivery (including desk pickup and desk delivery) between the hours of 8 a.m. and 5 p.m., Mondays through Fridays, except holidays.

7. *Applicability.*

a. The scope of the express small package contract does not include "letters"; i.e., routine first class mail, as defined in U.S. Postal Service Regulations, 39 CFR 310.1 (Private Express Statutes) unless the letters are so "extremely urgent" that the value or usefullness of the letters would be lost or greatly diminished if not delivered within the time limits noted in par. (2), below. "Letter" is generally defined as "a message directed to a specific person or address and recorded in or on a tangible object." (See 39 CFR 310.1 for specific exclusions from the definition.)

(1) It is conclusively presumed that a letter is "extremely urgent" if the amount paid for carriage under the contract is at least $3 or twice the applicable U.S. postage for first class mail (including priority mail), whichever is greater. If a single shipment consists of a number of letters that are picked up together at a single origin for shipment to a single destination, postage may be computed as though the shipment constitutes a single letter. For other types of charges, a bona fide estimate of the average number of letters or shipments may be divided into the charge.

(2) If the value or usefulness of a letter would be lost or greatly diminished if the letter were not delivered under the following conditions, then the letter is considered "extremely urgent" and may be shipped by the contractor under the express small package contract:

(a) Where the letter is dispatched within 50 miles of the intended destination, delivery must be completed with 6 hours or by the close of the addressee's normal business hours on the date of dispatch, whichever is later, except that letters dispatched after noon and before midnight must be delivered by 10 a.m. of the addressee's next business day;

(b) For all other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day;

(c) Agencies shall ensure that all outside covers or containers of letters are prominently marked with the words "Extremely Urgent—Private Carriage Authorized." In addition, each outside cover shall show the names and addresses of the contractor, the sender, and the addressee;

(d) The determination that a letter or letters meet the extreme urgency provisions of 39 CFR 320.6 shall be made by the responsible sending office. If such letters are sent to an agency mailroom for pickup by a private carrier rather than pickup at the sending office, the sending office shall ensure that such letters are marked clearly with the legend "Extremely Urgent—Private Carriage Authorized"; or

(e) Any letters, the extreme urgency of which meets the requirements of 39 CFR 320.6, sent by a private express carrier, shall be placed in plain envelopes.

(3) In addition to the exception for extremely urgent letters, data processing materials may be shipped as an express small package if the data processing materials are conveyed (a) to a data processing center, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work is commenced on such materials within 36 hours of their receipt at the center; or (b) back from the data processing center to the address of the office originating the incoming materials, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work was commenced on the incoming materials within 36 hours of their receipt at the center.

(4) For further guidance with respect to shipments of letters, including data processing materials, see U.S. Postal Service Regulations at 39 CFR Parts 310 and 320, or call the Law Department of the U.S. Postal Service at FTS 245–4616.

b. The provisions of this regulation apply only when agencies subject to this regulation are using commercial forms and procedures. These agencies shall ship their express small packages by the contractor specified in Attachment A, except that the Government reserves the right to use the U.S. Postal Service when in the Government's best interest.

c. To the extent cost-reimbursable contractors are authorized by an agency to ship under this regulation and are reimbursed the transportation costs as direct allowable costs, the contract rates and services provided in this regulation apply to cost-reimbursable contractors. Agencies shall instruct their cost-reimbursable contractors that, before a shipment is made under this regulation, the commercial shipping document must be annotated with either of the following notations, as appropriate:

(1) *When the Government is shown as the consignee.* "Transportation is for the (name of specific agency) and the actual total transportation charges paid to the carrier by the consignor are assignable to, and shall be reimbursed by, the Government"; or

(2) *When the Government is not shown as either the consignor or consignee.* "Transportation is for the (name of specific agency) and the actual total transportation charges paid to the carrier by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract number . This may be confirmed by contracting (name and address of the contract administration office listed in the contract).

d. If the contractor offers and publishes for use by the general public a charge that is lower than the contract rate for the same service, agencies shall pay the lower charge.

e. The contract rate does not apply for local pickup and delivery between locations in the metropolitan area of any city, town, or community.

8. *Contractor responsibilities.*

a. In consideration of payment for services provided at the contract rates, the contractor will furnish:

(1) Standard service (see subpar. 6j);

(2) Delivery service for "extremely urgent" letters (see par. 7);

(3) Pickup service on the same day pickup is requested (see subpar. 12a); and

(4) Delivery service on the next day (excluding Saturdays, Sundays, and holidays) following receipt from the shipper. Next day delivery service will not apply when delivery is delayed due to acts of God, the public enemy, the authority of law, or the acts of the consignor (shipper) or consignee (receiver).

b. Packages not delivered on the next day as prescribed in subpar. 8a(4) shall be transported free of charge.

c. When an agency uses a purchase order (PO), blanket purchase agreement (BPA) , or other simplified procedure as permitted by Title 48, Code of Federal Regulations, Subpart 13.2, to order service with the contractor, such instruments should provide the following information: name of the contractor; account number(s) (per instructions of the specific ordering activity within the agency if the contractor assigns such identification numbers and the agency requests them per ordering activity); the GSA contract number; "bill to" address; term of the BPA/PO; and the total dollar value authorized under the BPA/PO (some agencies may require more than one account number per ordering activity if they wish to differentiate billing of different type shipments). If the BPA/PO's contain a dollar value limitation, the contractor will monitor the BPA/PO's and promptly notify the issuing agency/activity when the contractor's service charges approach the dollar value ceilings noted on the BPA/PO's. The contractor will also monitor the BPA/PO's to determine if such instruments restrict the ordering of contractor's service to only certain authorized personnel of an agency/activity. If there are restrictions, the contractor will communicate with the issuer of the BPA/PO to clarify the intent and purpose of the restriction or to remove the restriction, as agreed to by the Government agency involved. Agencies are encouraged to anticipate and incorporate, on the face of their BPA's and PO's, any extra-contractual services they might need. In any event, the contractor's financial system will have the flexibility to separately account for contractual and extra-contractual services provided to the agency which may have been authorized by separate documents (BPA/PO's), and also "break out" the charges for such services on subsequent invoices.

9. *Payment responsibilities.*

a. Payment by Government agencies for contractor services are subject to the Prompt Payment Act of 1982. Agencies will normally pay the contractor within 30 calendar days from receipt of a proper invoice. If interest is payable, it will commence with the 45th calendar day following receipt of a proper invoice by the ordering Government activity. Regarding the aging of accounts, the contractor will begin aging an account 5 calendar days after the postmark date of the invoice to allow for mailing and receipt by the Government. (Aging will not begin with the date service was provided or the date of the invoice itself.) For example, if a shipment took place on October 17, the billing cycle for that shipper closed October 20, and the invoice was generated and dated October 23, and mailed October 25, the contractor could begin account aging October 30. Also, the contractor will advise each agency payment office in writing of the address where payment should be sent to the contractor. The date of the check issued by the agency in payment of the account or the date the payment was issued by wire transfer through the Treasury Financial Communications System shall be considered the date payment is made.

b. At the option of the agency, and with concurrence of the contractor, use of automated electronic billing and payment systems, or other sophisticated methods to simplify the verification and control process, may be separately negotiated and established by agreement between the Government agency and the contractor.

c. The contractor will provide duplicate copies of the commercial form (air bill) used by the ordering activity as a contract of carriage to agency finance offices, or to the ordering activities themselves, if required, at the normal and customary fee charged to the general public. However, agencies should, at the time of account set-up, establish an invoice verification process so that copies of these commerical bills of lading (air bills) will be maintained in a central agency location where invoice verification can take place, thus precluding the need for agencies to obtain copies of the shipping document from the contractor.

d. Agencies shall instruct their cost-reimbursable contractors shipping under this regulation to ensure that the commercial document bears a proper "bill to" address and appropriate account reference(s) to facilitate the prompt processing and payment of the contractor's invoice by the due date.

10. *Delinquent payments and service suspension.*

a. The contractor is authorized to suspend service to any account if:

(1) The delinquent amounts are undisputed and overdue more than 90 calendar days;

(2) The contractor notified the account holder in writing 60 calendar days after billing that the account is overdue and will be suspended if not settled within 30 calendar days; and

(3) The contractor simultaneously furnishes the appropriate GSA zone office a copy of the written delinquency notice.

b. Within 5 calendar days of suspension of service, the contractor will send a list of agency accounts which have been suspended to the contracting officer and simultaneously to the appropriate GSA zone office. Only those ordering activities within an agency which are identified as separate accounts and are delinquent, as stated therein, will be suspended. All ordering activities within an agency will not be suspended. Contractors will restore service to a suspended activity within 5 calendar days of the agency's payment of the outstanding bills over 90 days.

c. When a question arises concerning the proper amount of charges for services rendered (e.g., improper billing, failure to post payments, erroneous charges, etc.), agencies shall give notice of the apparent error, defect, or impropriety in an invoice to the contractor's billing office in writing within 15 calendar days of receipt of the invoice, pursuant to 31 U.S.C. 3903(5) and OMB Circular A–125, sec. 6b, which implement the Prompt Payment Act.

d. No suspension of service will be initiated where disputes exist if an activity has paid the balance of undisputed billings. The GSA contracting officer will make the final

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decisions concerning any disputed charges.

11. *Shipment weight and charge.* Rates applicable under this regulation will be assessed on the total weight of each shipment moving at one time from one consignor to one consignee. For example, if three packages weigh one pound each, the applicable charge of the shipment will be computed at the rate applicable to one 3-pound package.

12. *Agency procedures for obtaining service.*

a. Pickup service as noted in subpar. 6j may be ordered on an as-needed basis. In these instances, agencies shall allow the contractor a minimum of 2 hours to make the pickup. For repetitive shipments, agencies may arrange with the contractor to install "lock boxes" and/or furnish regular pickup service at specified times on specified days to meet the shipper's requirements. Agencies should arrange such security clearances and passes as may be necessary to enable the contractor to perform pickup services in a timely fashion in accordance with agency procedures.

b. When and where practicable, agencies shall minimize transportation and administrative costs by consolidating into one shipment packages moving at one time from one consignor to one consignee.

c. Agencies shall determine the weight of each shipment and have the weight indicated on the appropriate commercial form. The total weight of a shipment shall be rounded to the nearest whole pound. Shipments weighing less than 1 pound shall be shown as weighing 1 pound.

d. Where the Government requires special services beyond the scope of the contract (such as weekend or holiday pickup and delivery, escorted courier services, insurance, airbill copies, and proof of delivery, international service, and service to communities not served next day by the contractor or its agent), an agency will have the option either to purchase these services from the contractor at the same fees charged to its regular commercial customers or use another carrier.

e. Agencies shall provide the contractor with a billing address at the time an agency account is established. To ensure that billings are directed to the proper paying office and subsequent payments are credited, agencies may establish a centralized payment system or clearly identify individual shipping activities/accounts to which billings are to be directed. Some agencies may require more than one account number per ordering activity if they wish to differentiate billing of different type shipments.

f. Agencies using a purchase order (PO), a blanket purchase agreement (BPA) pursuant to 48 CFR Subpart 13.2, or other simplified acquisition procedures, should provide the following information:

(1) Name of contractor;
(2) Account number(s);
(3) GSA contract number GS-00F-95031;
(4) Purchase order number;
(5) "Bill to" address;
(6) Term of the BPA/PO; and
(7) Total dollar value authorized under the BPA/PO.

g. The contractor's Government coordinator may be contacted to establish accounts or resolve service issues. (See attachment A.)

13. *Contractor performance.* The performance of contractor responsibilities as specified in par. 8 is essential to meet the objectives for which the express small package contract and these regulations were developed. Agencies should notify the appropriate GSA zone office, Federal Supply Service Bureau, Attn: Traffic and Travel Services Zone Manager, in writing, when the contractor fails to meet its contractual responsibilities. For purposes of this paragraph, the appropriate GSA zone office is that office listed in attachment C having jurisdiction over specified locations from which a shipment originates. These agency reports shall be compiled and forwarded for appropriate action to the GSA Travel and Transportation Management Division (FBT), Washington, DC 20406.

14. *Comments.* Comments and recommendations concerning use of this program or implementing regulations may be submitted to the General Services Administrator, Travel and Transportation Management Division (FBT), Washington, DC 20406.

15. *Effects on other directives.* FPMR Temporary Regulation G-51 is canceled.

Richard G. Austin,
Acting Administrator of General Services.
October 24, 1988.

Attachment A.—Contractor, Shipment Charges, and Geographical Areas

Contractor Code and Name: ABX—Airborne Express

Shipment weight (lbs)	Shipment charge
1	$5.00
2	5.89
3	6.78
4	7.67
5	8.56
6	9.45
7	10.34
8	11.23
9	12.12
10	13.01
11	13.90
12	14.79
13	15.68
14	16.57
15	17.46
16	18.35
17	19.24
18	20.13
19	21.02
20	21.91
21	22.80
22	23.69
23	24.58
24	25.47
25	26.36
26	27.25
27	28.14
28	29.03
29	29.92
30	30.81
31	31.70
32	32.59
33	33.48
34	34.37
35	35.26
36	36.15
37	37.04
38	37.93
39	38.82
40	39.71
41	40.60
42	41.49
43	42.38
44	43.27
45	44.16
46	45.05
47	45.94
48	46.83
49	47.72
50	48.61

Geographical Areas Served

The ABX contract rates listed in this attachment apply to any location within the geographical area of cities, towns, and communities in the United States (including Alaska and Hawaii) and Puerto Rico, where ABX or its agent presently, or in the future, provides or will provide next day service to the extent prescribed in par. 8 of this regulation. The geographical area of cities, towns, and communities is the U.S. Postal Service national five-digit ZIP code area listed in ABX's publication, "Airborne Express Service Guide," or as may be subsequently identified by ABX as being served next day. Agencies are encouraged to use the ABX service guide, which ABX will furnish on request. Agencies may determine up-to-date areas of service and obtain other information by contacting either the ABX Government coordinator at (703) 631-3440, the ABX offices listed in Attachment B, or the appropriate GSA office listed in Attachment C.

Attachment B—Airborne Express Offices

Alabama

Birmingham—205-591-6076
Decatur—205-355-5216
Dothan—205-792-1278
Florence—205-767-6408
Huntsville—205-772-9388
Mobile—205-633-0466
Montgomery—205-277-5039
Toll Free in Alabama to Montgomery—800-523-4872

Alaska

Anchorage—907-243-4313
Fairbanks—800-478-4313
Kenai—800-478-4313

Arizona

Phoenix—602-273-3060
Tucson—602-889-5768

Arkansas

Fayetteville—501-751-0990
Fort Smith—501-646-2946
Little Rock—501-376-0701
Toll free in Arkansas to Little Rock—800-426-6680
Springdale—501-521-3988

California

Bakersfield—805-392-1054
Fresno—209-251-7152
Hollywood—213-747-6980
Irvine—714-545-5070
Los Angeles—213-642-0195
Monterey—408-761-2831
Toll Free in California to Monterey—800-346-4561
Oakland—415-635-9850
Ontario—714-947-9819
Orange County—714-891-6063
Sacramento—916-925-1500
Toll free in Northern California to Sacramento—800-362-8211
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Attachment C—Areas of Jurisdiction, Federal Supply Service Bureaus, Traffic and Travel Services Zone Offices

Eastern Zone
Jurisdiction: AL, CT, DE, FL, GA, KY, MA, MD (note A), ME, MS, NC, NH, NJ, NY, PA, Puerto Rico, RI, SC, TN, VT, VA (note B), Virgin Islands, WV
Address: GSA, Attn: 4FBT, 75 Spring Street, SW., Atlanta, GA 30303
Telephone: FTS 242–5121; CML (404) 331–5121

Central Zone
Jurisdiction: IA, IL, IN, KS, MI, MN, MO, NE, OH, WI
Address: GSA, Attn: 6FBT, 1500 E. Bannister Street, Kansas City, MO 64131
Telephone: FTS (not available); CML (816) 523–6029

Southwestern Zone
Jurisdiction: AR, CO, LA, MT, ND, NM, OK, SD, TX, UT, WY
Address: GSA, Attn: 7FBT, 819 Taylor Street, Fort Worth, TX 76102
Telephone: FTS 334–2737; CML (817) 334–2737

Western Zone
Jurisdiction: AK, American Samoa, AZ, CA, GU, HI, ID, NV, Northern Mariana Islands, OR, Pacific Trust Territories, WA
Address: GSA, Attn: 9FBT, 525 Market Street, San Francisco, CA 94105
Telephone: FTS 454–9288; CML (415) 974–9288

National Capital Region (NCR)
Jurisdiction: DC, MD (note C), VA (note D)
Address: GSA, Attn: WFBT, 7th & D Streets, SW., Washington, DC 20407
Telephone: FTS 472–1626; CML (202) 472–1626

Note A.—Except for those counties under NCR jurisdiction as listed in note C.

Note B.—Except for those cities and counties under NCR jurisdiction as listed in note D.

Note C.—Counties of Prince Georges and Montgomery only.

Note D.—Cities of Alexandria, Fairfax, Manassas, and Manassas Park, and counties of Arlington, Fairfax, Loudoun, and Prince William only.

[FR Doc. 88–26981 Filed 11–21–88; 8:45 am]
BILLING CODE 6820–24–M

41 CFR Part 101–44

[FPMR Amdt. H–169]

Donation of Federal Surplus Personal Property To Nonprofit Providers of Assistance To Homeless Individuals

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation establishes policies and procedures for donating Federal surplus personal property to programs that provide assistance to the homeless. It is issued to comply with section 502 of the Stewart B. McKinney Homeless Assistance Act, which makes nonprofit tax-exempt providers of assistance to homeless individuals eligible for donations of Federal surplus personal property. This regulation will ensure that property usable for providing food, shelter, or other services to homeless individuals is made available to providers of assistance to the homeless.

EFFECTIVE DATE: November 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Duda, Director, Property Management Division, (703) 557–1240.

SUPPLEMENTARY INFORMATION: This regulation cancels and removes FPMR Temporary Regulation H–26 (52 FR 47393, December 14, 1987) from the appendix at the end of Subchapter H in 41 CFR Chapter 101.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–44

Government property management, Reporting requirements, Surplus Government property.

Accordingly, 41 CFR Part 101–44 is amended as follows:

PART 101–44—DONATION OF PERSONAL PROPERTY

1. The authority citation for Part 101–44 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–44.2—Donations To Public Agencies and Nonprofit Tax-exempt Activities

2. Section 101–44.202 is amended by revising paragraph (c)(5) to read as follows:

§ 101–44.202 State plan of operation.

* * * * *

(c) * * *

(5) *Financing and service charges.* The State plan shall set forth the means and methods by which the State agency will be financed. When the State agency is authorized to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges shall be set forth in the plan. The charges shall be fair and equitable and based on services performed by the State agency, including but not limited to screening, packing, crating, removal, and transportation. When the State agency provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the charge levied by the State agency shall be minimal. The State plan shall provide for minimal charges to be assessed in such cases and include the bases of computation. When property is made available to nonprofit providers of assistance to homeless individuals, the State plan shall provide for this property to be distributed at a nominal cost for care and handling of the property. The plan of operation shall set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds, are to be used for the operation of the State agency and the benefit of participating donees. Service charge funds may be used to cover direct and indirect costs of the State agency's operation, to purchase necessary equipment, and to maintain a reasonable working capital reserve. Such funds may be deposited or invested as permitted by State law, provided the plan of operation sets forth the types of depositories and/or investments contemplated. Service charge funds may be used for rehabilitating donable surplus property, including the purchase of replacement parts. Subject to State authority and the plan of operation, the State agency may expend service charge funds to acquire or improve office or distribution center facilities. When such acquisition or improvements are contemplated, the plan shall set forth what disposition is to be made of any financial assets realized upon the sale or other disposal of the facilities. When refunds of service charges in excess of the State agency's working capital reserve are to be made to participating donees, the plan shall so state and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner.

* * * * *

3. Section 101–44.207 is amended by adding paragraphs (a)(12.1) and (18.1) and revising paragraph (c) to read as follows:

§ 101–44.207 Eligibility.

* * * * *

(a) * * *

(12.1) "Homeless individual" means an individual who lacks a fixed, regular, and adequate nighttime residence, or who has a primary nighttime residence that is: (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (ii) an institution that provides a temporary residence for individuals intended to be institutionalized; or (iii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. For purposes of this regulation, the term does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

* * * * *

(18.1) "Provider of assistance to homeless individuals" means a public agency or a nonprofit, tax-exempt institution or organization that operates

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a program which provides assistance such as food, shelter, or other services to homeless individuals, as defined in paragraph (s)(12.1) of this section. Property acquired through the donation program by such institutions or organizations must be used exclusively in their program(s) for providing assistance to homeless individuals.

* * * * *

(c) *Eligibility of nonprofit tax-exempt activities.* Surplus personal property may be donated through the State agency to nonprofit tax-exempt activities, as defined in this section, within the State, such as:

(1) Medical institutions;
(2) Hospitals;
(3) Clinics;
(4) Health centers;
(5) Providers of assistance to homeless individuals;
(6) Schools;
(7) Colleges;
(8) Universities;
(9) Schools for the mentally retarded;
(10) Schools for the physically handicapped;
(11) Child care centers;
(12) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations;
(13) Museums attended by the public;
(14) Libraries, serving free all residents of a community, district, State or region; or
(15) Organizations or institutions that receive funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under title IV and title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act. Programs for older individuals include services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

* * * * *

4. Section 101–44.208 is amended to revise paragraph (b) to read as follows:

§ 101–44.208 Property distributed to donees.

* * * * *

(b) *Donation purpose.* At the time donable surplus property is acquired by a donee, the donee's authorized representative shall indicate on the State agency's distribution document the primary purpose for which the property is to be used. In the case of public agencies, such usage could be for public purposes, such as conservation, economic development, education, parks and recreation, public health, programs for providing assistance to homeless individuals, public safety, museums, State Indians, or programs for older individuals. When the property is to be used for a combination of these purposes or for some other public purpose, the distribution document shall so indicate. With respect to nonprofit institutions or organizations, the purpose shall be shown as education, public health, programs for providing assistance to homeless individuals, museums, or programs for older individuals.

* * * * *

Subpart 101–44.47—Reports

5. Section 101–44.4701 is amended to revise paragraph (b) to read as follows:

§ 101–44.4071 Reports.

* * * * *

(b) The Administrator of General Services will submit by October 21, 1987, and annually thereafter, a report to the Congress that describes each program that is administered by the agency to assist homeless individuals and the number of homeless individuals served by each program; impediments, including any statutory and regulatory restrictions, to the use of these programs by homeless individuals; and efforts made by GSA to increase the opportunities for homeless individuals to obtain shelter, food, and supportive services.

* * * * *

Subpart 101–44.49—Illustrations of Forms

6. Section 101–44.4902–3040–1 is amended by adding a paragraph at the end of the section to read as follows:

§ 101.44.4902–3040–1 Instructions for preparing GSA Form 3040.

* * * * *

Remarks—Use this area to report on donations to programs that provide assistance to homeless individuals. Include the total amount of property donated, the number of providers that received property, and the number of individuals (estimated if not known) served by each provider. If no donations were made to providers during the report quarter, an indication to that effect should be made.

Dated: October 12, 1988.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 88–26980 Filed 11–21–88; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Parts 201–1, 201–2, 201–23, and 201–24

[FIRMR Temp. Reg. 13, Supp 2]

Temporary Implementation of Paperwork Reduction Reauthorization Act of 1986; Automatic Data Processing Equipment

AGENCY: Information Resources Management Service, GSA.

ACTION: Temporary regulation, supplement.

SUMMARY: This supplement extends Federal Information Resources Management Temporary Regulation 13 for one additional year. Temporary Regulation 13 implemented applicable portions of the Paperwork Reduction Reauthorization Act of 1986. The statute provided a new definition of "automatic data processing equipment" under Pub. L. 89–306, as amended (Brooks Act). Supplement 1 extending Temporary Regulation 13 to December 23, 1987 was published in the **Federal Register** on December 8, 1987 (52 FR 46468). The intent of this extension is to continue temporary implementation of the statute until a proposed amendment is codified. See "Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, Regarding Automatic Data Processing Equipment", which appeared in the **Federal Register** on August 23, 1988 (53 FR 32085).

DATES: *Effective date:* December 23, 1988.

Expiration date: December 23, 1989.

Comments are due: December 22, 1988.

ADDRESS: Comments should be addressed to: General Services Administration (KMPR), Project 88.32T, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William R. Loy, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) Temporary Regulation 13 was published in the **Federal Register** on December 23, 1986 (51 FR 45887). Pursuant to 41 U.S.C. 418b(d), the publication of the original rule was waived because of urgent and compelling circumstances to implement Pub. L. 99–500 which was effective as of October 18, 1986. Supplement 1 extended Temporary Regulation 13 to December 23, 1987 (52 FR 46468). The publication of a proposed rule is again waived because the extension of the expiration date of the original rule is of a technical or editorial nature without a change of substance. The rule continues temporary implementation of the statute while additional rulemaking is in progress. See "Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, Regarding Automatic Data Processing Equipment", which appeared in the **Federal Register** on August 23, 1988 (53 FR 32085).

(2) The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide regulation that will have little or no cost effect on society. The temporary rule is not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

List of Subjects in 41 CFR Parts 201–1, 201–2, 201–23, and 201–24

Computer technology, Government procurement, Government property management, Information resources activities, Competition, Telecommunications.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).

In 41 CFR Chapter 201, FIRMR Temporary Regulation 13, Supplement 2 is added to Appendix A at the end of the chapter.

FIRMR Temporary Regulation 13 Supplement 2

To: Heads of Federal agencies.

Subject: FIRMR Implementation of the "Paperwork Reduction Reauthorization Act of 1986" (Title VIII, Pub. L. 99–500).

1. *Purpose.* This supplement extends the expiration date of FIRMR Temporary Regulation 13 for one additional year. The intent of this extension is to continue temporary implementation of the statute until a proposed amendment is codified.

2. *Effective date.* This regulation is effective December 23, 1988.

3. *Expiration date.* The expiration date of this temporary regulation is extended from December 23, 1988 to December 23, 1989.

Richard G. Austin,

Acting Administrator of General Services.

October 25, 1988.

[FR Doc. 88–26979 Filed 11–21–88; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 406 and 407

[BERC–299–F]

Medicare Program; Hospital Insurance Entitlement and Supplementary Medical Insurance Enrollment and Entitlement

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These regulations amend the Medicare rules that deal with hospital insurance entitlement and with supplementary medical insurance (SMI) enrollment and entitlement. They also revise rules and deal with State buy-in agreements, that is, agreements under which States may secure SMI benefits for certain Medicaid-eligible individuals by enrolling them in SMI and paying their SMI premiums.

The changes are necessary to conform our rules to changes made in the Medicare and Medicaid laws since the rules were last published.

The purpose is to ensure that those who must apply our rules are not misled or confused by content that fails to reflect statutory changes and modified policy.

DATE: These regulations are effective December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Denis Garrison, (301) 966–5643.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

These amendments conform HCFA regulations to statutory changes enacted since the particular sections were last published. Many of the statutory changes were self-executing, that is, so clear and specific that putting their provisions into effect did not require formal rules. Other have been implemented through changes in the basic regulations for each particular policy area. In both cases, it is necessary to conform all of our regulations so that they are internally consistent and reflect current requirements and procedures. When the regulations that needed to be conformed contained outdated material, confusing language, or incorrect cross-references, we have also made revisions to clarify and correct them.

Most of the statutory provisions are contained in seven laws:

1. The Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) enacted December 5, 1980.
2. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) enacted August 13, 1981.
3. The Tax Equity and Fiscal Responsibility Act (Pub. L. 97–248) enacted September 3, 1982.
4. The Social Security Amendments of 1983 (Pub. L. 98–21) enacted April 20, 1983.
5. The Deficit Reduction Act of 1984 (Pub. L. 98–369) enacted July 18, 1984.
6. The Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 98–272) enacted April 7, 1986).
7. The Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) enacted October 21, 1986).

The above laws are referred to by number. Other laws are identified as necessary.

The conforming changes are needed primarily for the Medicare supplementary medical insurance (SMI) program. Accordingly, it is the SMI regulations in Subpart B of 42 CFR Part 405 (most of which were last published between 1971 and 1978) that have undergone the most extensive revision. Subpart B, which deals with enrollment and entitlement, required extensive revision because of changes in the statute or in other regulations that implement statutory changes.

As part of our ongoing project to establish separate parts for each major area of the Medicare program, the Supbart B content is redesignated as Part 407. For the reader's convenience, a redesignation table for Subpart B is provided at the and of this preamble.

II. Background

The SMI program is the voluntary Medicare Part B program that pays all or part of the costs for physician's services, outpatient services, home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities. Part B also helps to pay for certain other medical and health services not covered by hospital insurance (Medicare Part A).

The SMI program is available to individuals who are entitled to hospital insurance and to U.S. residents who have attained age 65 and are citizens or are aliens lawfully admitted for permanent residence who have resided in the United States for five consecutive years. This program requires enrollment and payment of monthly premiums.

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III. Notice of Proposed Rulemaking

On February 19, 1988, at 53 FR 5008, we proposed amendments that were discussed in detail in the preamble to the NPRM and are summarized below. No comments were received, and only minor technical corrections or editorial changes are made in the proposed rules.

IV. Final Rules

A. Medicare Entitlement Based on Government Employment

1. Statutory Provisions

Section 278 of Pub. L. 97–248 provides, effective January 1, 1983, for taxing Federal wages and crediting Federal employment as a basis for entitlement to hospital insurance (HI).

Section 13205 of Pub. L. 99–272 provides for taxing the wages of State and local government employees hired on or after April 1, 1986, and crediting that employment for entitlement to Medicare Part A hospital insurance. State and local entities have the option of covering employees hired before April 1986, but only with respect to wages for periods after March 31, 1986.

2. Conforming Changes

Subpart B of Part 406 of the Medicare rules is amended to reflect the provisions of sections 278 and 13205.

B. Medicare Entitlement for Disabled Men Entitled to Father's Benefits

1. Statutory Provisions

Section 309(q) of the Social Security Amendments of 1983 (Pub. L. 98–21) extends Medicare entitlement, effective May 1983, to disabled men who are entitled to father's benefits. Under the new provision, which amends section 226(e)(3), a disabled man who is entitled to father's benefits (and cannot become entitled to disabled widower's benefits at the same time), is, if he applies for hospital insurance benefits, *deemed* entitled to disabled widower's benefits as follows:

- If he applied for hospital insurance benefits before may 1984, he was deemed entitled to disabled widower's benefits for any month after April 1981 for which he would have been entitled to those benefits if he had filed an application for them.
- If he applies for hospital insurance benefits in or after May 1984, he will be deemed entitled to disabled widower's benefits for any of up to 12 months before the month of application for which he would have been eligible for those benefits if he had filed an application for them.

2. Conforming Change

Section 406.12 is amended to incorporate this provision.

C. SMI Enrollment, Coverage, and Premium Increase

1. Statutory Provisions

Sections 1837, 1838, and 1839 of the Act deal, respectively, with enrollment periods, coverage periods, and amounts of premiums. Those sections were extensively amended by section 945 of Pub. L. 96–499, section 2151 of Pub. L. 97–35, and section 2338 of Pub. L. 98–369.

Section 945 removed the previous 2-enrollment limitation and established continuous open enrollment instead of the previous 3-month (January through March) annual enrollment period, effective April 1, 1981.

Section 2151 eliminated continuous open enrollment (that is, restored the annual 3-month enrollment period) effective October 1, 1981, but retained the provision allowing an unlimited number of reenrollments. Since the law requires that the monthly premium be increased for individuals who enroll after expiration of their initial enrollment periods and for those who reenroll, the enrollment provisions of sections 945 and 2151 also affected the way the premium increase would be determined.

Section 2338(a) amended section 1839(b), effective January 1, 1983, to provide that, in determining the premium for late enrollment in SMI, the months during which an employer group health plan was primary payer for individuals age 65 to 69 be excluded.

Sections 2338 (b) and (c) corrected an anomaly whereby employed individuals between 65 and 69 years of age, for whom the employer group health plan was primary payer of benefits, were nonetheless obliged to enroll in SMI because of the above noted restrictions on enrollment periods and the increased premiums charged to late enrollees under section 1839(b) of the Medicare law. The amendment added special enrollment periods (SEPs) to existing initial and general enrollment periods, so that Medicare coverage could begin promptly when Medicare would again become the primary payer because the beneficiary had ceased working or attained age 70.

Three sections of Pub. L. 99–272 affect enrollment and premium increases, as follows:

Section 9201(a) amended section 1862(b)(3)(A), effective May 1, 1986, to remove the upper age limit so that employer group health plan benefits continue to be primary to Medicare benefits even after the individual or the individual's spouse attains age 70. Section 9201(c) eliminated the SEP at age 70 since the employer plan continues to be primary as long as employment continues. (Sections 1837(i) and 1838(e) were amended.)

Section 9219(a) makes the provisions for SEPs, and for exclusion of months of employer plan coverage in determining premium increases consistent for all workers. (Sections 1837(i) and 1839(b) were amended.) This means that the provisions apply to two groups for whom employer plan benefits are *not* primary to Medicare because—

- They are neither entitled to, nor eligible for, hospital insurance; or
- They work for employers of fewer than 20 employees.

Since, as discussed above, the age 70 cap has been removed, these rules apply to individuals age 65 or over.

In the determination of premium increases for late enrollment, any months (beginning with January 1983) during which the individual was covered under an employer plan are excluded. The exclusion applies for premiums for months beginning with June 1986. The SEP provision applies to enrollments made in or after August 1986.

Section 9124 added section 1818(c)(7) to provide, effective for premiums for months after June 1986, that the premium increase for late enrollment in hospital insurance be limited to 10 percent and be payable for no longer than twice the number of full twelve-month periods during which the individual could have been, but was not, enrolled in the Medicare Part A program.

Section 9319 of Pub. L. 99–509—

- Added section 1862(b)(4) to make Medicare secondary payer for certain disabled Medicare beneficiaries who are covered under large group health plans; and
- Amended section 1837(i) to provide special enrollment periods for those beneficiaries, so that SMI will begin promptly when employer plan coverage ends.

These provisions are effective January 1, 1987 and will expire on December 31, 1991.

2. Conforming Changes

The regulations dealing with individual SMI enrollment are revised to reflect the statutory changes discussed above. (See Subpart B of Part 407.) Section 407.18 (c), (d), and (e) are revised to restore content that was erroneously dropped from § 405.210(b) when that paragraph was revised by rules published on March 25, 1983 (48 FR 12526). The statutory amendments that apply to Medicare Part A are reflected in §§ 406.21 and 406.22 of the hospital insurance rules.

D. Effective Date of Voluntary Disenrollment from SMI

1. Statutory Provision

Section 9344(b) of Pub. L. 99–509 amends section 1838(b) to change the effective date of voluntary disenrollment from SMI. Effective for disenrollment requests filed on or after July 1, 1987. SMI coverage ends on the last day of the month following the month in which the disenrollment request is filed. Before this amendment, voluntary termination was effective at the end of the quarter after the quarter in which the disenrollment request was filed.

2. Conforming Changes

The regulations dealing with SMI termination (Subparts B and C of Part 407) reflect this change.

E. State Buy-in Agreements

1. Statutory Provisions

Section 945 of Pub. L. 96–499 also amended section 1843 to provide that, during calendar year 1981:

- A State that did not have a buy-in agreement (that is, an agreement to enroll in SMI individuals eligible for SMI and for cash assistance or Medicaid and pay their SMI premiums), could request such an agreement; and
- A State that already had a buy-in agreement could request a broader coverage group for the agreement.

Section 947 of that same law provides for earlier termination of SMI entitlement when requested by an individual who was deemed enrolled after he or she was no longer eligible to have the SMI premiums paid by the State. (Sections 1838(b) and 1843(g)(2) were amended.)

Under a number of laws enacted since 1980, certain individuals who lose eligibility for cash assistance payments must nevertheless be treated as cash assistance recipients for purposes of Medicaid eligibility. If those individuals are covered under the State's Medicaid program, they are eligible for buy-in coverage. Section 301(e) of the Medicare Catastrophic Coverage Act of 1988 amends section 1843 of the Act to restore, effective "after 1988", the provisions that were in effect during 1981.

2. Conforming Changes

Subpart C of Part 407 (§§ 407.40–407.50) explains the statutory basis for buy-in, defines terms, lists coverage groups, and sets forth the conditions and procedures for termination of buy-in agreements.

IV. Regulatory Impact Statement

Executive Order 12291

Executive Order (E.O.) 12291 requires agencies to prepare and publish a regulatory impact analysis for any regulation that is likely to have an annual impact of $100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the order.

We have determined that a regulatory impact analysis is not required for these rules because they would not have an annual impact of $100 million or more.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals. A small entity is defined as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds and is located anywhere except in a metropolitan statistical area.

We have not prepared a regulatory flexibility analysis because we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

Paperwork Reduction Act

These regulations contain no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 407

Medicare Part B enrollment and entitlement, State buy-in agreements.

Redesignation Table

42 CFR Part 405, Subpart B

Old sec.	New sec.
405.201	407.1.
405.202	407.2.
405.205	407.10(a).
405.206	407.10(b).
405.207	407.11.
405.210(a)	407.12 and 407.22(b).
405.210(b)	407.17(a) and 407.18.
405.210(c)	407.17(b).
405.211	407.12(a).
405.212 (a) & (c)	407.14(a)(1).
405.212(b) [Reserved]	407. Deleted.
405.212(d)	407.14(a)(2).
405.212(e)	407.14(b).
405.213	407.12(a) and 407.15.
405.214(a) [Reserved]	407. Removed.
405.214 (b) & (c)	407. Removed as inconsistent with changes in the law.
405.214(d)	407.30.
405.215	407.12(b).
405.216	407.20.
405.217(a)	407.40(a).
405.217 (b)–(i)	407.40 (c) and (d), 407.42, and 407.43.
405.220	407.4(b).
405.221	407.25.
405.222	407.47.
405.223	407.27, 407, 148, and 407.50.
405.226	407.32.

42 CFR Chapter IV is amended as set forth below:

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart B—[Removed and Reserved]

A. Subpart B (§§ 405.201 through 405.226) is removed and reserved and the table of contents is amended to reflect this change.

B. The content of §§ 405.201 through 405.226 is redesignated under a new Part 407, revised, and presented later in this document.

C. Throughout this Chapter IV, all references to Subpart B and to §§ 405.201—405.226 are changed to refer to Part 407 and its sections, as appropriate.

II. Part 406 is amended as set forth below:

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PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

A. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

B. Subpart A is amended as set forth below:

1. The subpart title is revised to read as follows:

Subpart A—General Provisions

2. In § 406.6, the introductory text of paragraph (c) is republished, in (c)(3) "or" is removed, in (c)(4) the period is revised as "; or", and a new paragraph (c)(5) is added, to read as follows:

§ 406.6 Application or enrollment for hospital insurance.

* * * * *

(c) *Individuals who must file an application for hospital insurance.* An individual must file an application for hospital insurance if he or she seeks entitlement to hospital insurance on the basis of—

* * * * *

(5) The special provisions applicable to government employment as set forth in § 406.15.

C. Subpart B is amended as set forth below:

1. The table of contents is amended by revising the title of § 406.11 and adding a new § 406.15, to read as follows:

Subpart B—Hospital Insurance Without Premiums

406.10 Individual age 65 or over who is entitled to social security or railroad retirement benefits.
406.11 Individual age 65 or over who is not eligible as a social security or railroad retirement beneficiary, or on the basis of government employment.
406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.
406.13 Individual who has end-stage renal disease.
406.15 Special provisions applicable to Medicare qualified government employment.

§ 406.11 [Amended]

2. Section 406.11 is amended as follows:

a. The section heading is revised to read "§ 406.11 Individual age 65 or over who is not eligible as a social security or railroad retirement beneficiary, or on the basis of government employment."

b. In paragraph (b), "or § 406.15" is inserted immediately after "§ 406.10".

c. In paragraph (b)(1)(ii), "1966" is changed to "1968" and "1968" is changed to "1966".

d. In paragraph (e)(2), "or § 406.15" is added at the end of the sentence.

3. Section 406.12 is amended by revising the heading of paragraph (c), redesignating paragraph (c)(4) as (c)(5) and republishing (c)(5), and adding a new paragraph (c)(4) to read as follows:

§ 406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.

* * * * *

(c) *Deemed entitlement to disabled widow's or widower's monthly benefits.*

* * * * *

(4) *Deemed entitlement for certain individuals entitled to father's benefits.* An individual who is entitled to father's insurance benefits under section 202(g) of the Act cannot at the same time be entitled to disabled widower's benefits. However, if he applies for hospital insurance benefits, he will be deemed to be entitled to disabled widower's monthly benefits as follows:

(i) If he applied for hospital insurance benefits before May 1984, he was deemed entitled to disabled widower's benefits for any month after April 1961 for which he would have been entitled to those benefits if he had filed an application for them.

(ii) If he applies for hospital insurance benefits in or after May 1984, he is deemed entitled to disabled widower's benefits for any month, up to 12 months before the month of application, for which he would have been entitled to those benefits if he had filed an application for them.

(iii) Hospital insurance entitlement under this paragraph (c)(4) could not begin before May 1983.

(5) *Deemed retroactive entitlement for certain disabled widows and widowers.* In some cases, disabled widows or widowers cannot become entitled to monthly cash benefits before the month in which they file application. However, for purposes of meeting the 25-month requirement, disability benefit entitlement will be deemed to have begun with the earliest month (of the 12 months before the application for cash benefits) in which the individual met all the requirements except the filing of an application. (This provision is effective for applications filed on or after January 1, 1978.)

* * * * *

4. New § 406.15 is added, to read as follows:

§ 406.15 Special provisions applicable to Medicare qualified government employment.

(a) *Definition.* As used in this section, "Medicare-qualified government employment" means Federal, State, or local government employment that is subject only to the hospital insurance portion of the tax imposed by the Federal Insurance Contributions Act (F.I.C.A.). This includes—

(1) Wages paid for Federal employment after December 1982.

(2) Wages paid to State and local government employees hired after March 31, 1986.

(3) Wages paid to State and local government employees hired before April 1, 1986 but whose employment after March 31, 1986 is covered, for Medicare purposes only, under an agreement under section 218 of the Act.

(b) *Crediting of wages that are taxable only for Medicare purposes.* Medicare qualified government employment is credited in the same way and in the same amount as social security covered employment is credited for monthly social security cash benefit purposes. However, since only the Medicare portion (not the social security portion) of the F.I.C.A. tax is imposed, Medicare qualified government employment does not help qualify the individual for monthly Social Security cash benefits.

(c) *Required quarters of coverage.* (1) To qualify for hospital insurance on the basis of Medicare qualified government employment, an individual must have the number of quarters of coverage necessary to qualify for hospital insurance under § 406.10, § 406.12, or § 406.13.

(2) An individual who has worked in Medicare qualified government employment may qualify for hospital insurance on the basis of Medicare qualified government employment exclusively, or a combination of Medicare qualified government employment and social security covered employment.

(d) *Transitional provision for Federal employment.* Any individual who was a Federal employee at any time both during and before January 1983 will receive credit for quarters of Federal employment before January 1983 without paying tax. This transitional provision applies even if the Federal employee did not receive Federal wages for January 1983, for instance, because he or she was on approved leave without pay or on loan to a State or foreign agency.

(e) *Conditions of entitlement.* An individual who has worked in Medicare qualified government employment (or any related individual who would be entitled to social security cash benefits on the employee's record if Medicare qualified government employment qualified for those benefits) is entitled to

hospital insurance benefits if he or she—

(1) Would meet the requirements of § 406.10, § 406.12, or § 406.13 if Medicare qualified government employment were social security covered employment; and

(2) Has filed an application for hospital insurance.

For purposes of this section not more than 12 months before the month of application may be counted towards the 25-month qualifying period specified in § 406.12(a).

(f) *Beginning and end of entitlement—*(1) *Basic rule.* Subject to the limitations specified in paragraph (f)(2) and (f)(3) of this section, entitlement begins and ends as specified in § 406.10, § 406.12 or § 406.13, whichever is used to establish hospital insurance entitlement for the Federal, State, or local government employee or related individual.

(2) *Limitations: Federal government employment.* (i) Hospital insurance entitlement based on Federal employment could not begin before January 1983.

(ii) No months before January 1983 may be used to satisfy the qualifying period required for entitlement based on disability.

(3) *Limitations: State and local government employment.* (i) Hospital insurance entitlement based on State or local government employment cannot begin before April 1986.

(ii) No months before April 1986 may be used to satisfy the qualifying period required for entitlement based on disability.

D. Subpart C is amended as set forth below:

Subpart C—Premium Hospital Insurance

1. Section 406.21 is amended to revise paragraphs (a) and (c)(2) and add a new paragraph (e) to read as follows:

§ 406.21 Enrollment and entitlement.

(a) *Basic provision.* An individual who meets the requirements of § 406.20(b) may enroll for premium hospital insurance only during his or her "initial enrollment period", a "general enrollment period", or a "special enrollment period", as set forth in paragraphs (b) through (e) of this section.

* * * * *

(c) *General enrollment period.*

(1) * * *

(2) General enrollment periods are for individuals who do not enroll during the special enrollment period, who failed to enroll during the initial enrollment period, or whose previous period of entitlement had terminated.

* * * * *

(e) *Special enrollment period—*(1) *Terminology.*

As used in this paragraph—

(i) "Employer group health plan" or "Employer plan" has, to the extent not inconsistent with section 1837(i)(1)(B) of the Act, the meaning set forth in section 162(i)(3) of the Internal Revenue Code (IRC) which reads: "* * * 'group health plan' means any plan of, or contributed to by, an employer, to provide medical care * * * to his employees, former employees, or the families of such current or former employees, directly, or through insurance, reimbursement or otherwise". The phrase "plan of" encompasses a plan that is under the auspices of an employer who makes no financial contribution—a so-called "employee-pay-all" plan. Since section 1837(i)(1)(B) of the Act (which is made applicable to premium hospital insurance by section 1818 of the Act) requires that the individual be covered under the plan "by reason of the individual's or the individual's spouse's current employment", the "former employee" language of the IRC definition does not apply.

(ii) "Special enrollment period" (SEP) is a 7-month period that begins when the individual is no longer covered by an employer group health plan.

(2) *Basic rule.* Effective August 1, 1986, individuals may enroll in premium hospital insurance during SEPs that are available to them if they meet the following requirements:

(i) When first eligible to enroll for premium hospital insurance under § 406.20(b), they were covered under an employer group health plan by reason of current employment of the individual or the individual's spouse; and

(ii) The employer plan coverage has ended because of termination of the employment, or for any other reason.

(3) *Beginning date of SEP.* If the individual enrolls during the month in which employer plan coverage ends, that month is considered the first month of the SEP. Otherwise, the SEP begins with the following month.

(4) *Effective date of coverage.* Enrollment during the first month of the SEP will result in coverage effective with the first day of that month; enrollment in the second through seventh months of the SEP will result in coverage effective with the month following the month of enrollment.

(5) *Limitation on right to subsequent SEPs.* Subsequent SEPs become available if the individual reacquires employer plan coverage based on current employment and later loses it. Generally, if an individual fails to enroll during any available SEP, no further SEPs become available. However, if an individual failed to enroll during a previous SEP because employer plan coverage (under the same or a different plan) was restored before the end of that SEP, that failure to enroll would not preclude another SEP now or in the future.

2. Section 406.22 is amended by revising paragraph (a)(2), adding a new paragraph (a)(3) and revising paragraph (c) to read as follows:

§ 406.22 Monthly premiums.

(a) *General provisions.*

(1) * * *

(2) For months, from July 1974 through June 1983, premiums were determined for each 12-month period beginning July 1, and published in the Federal Register during the last quarter of the preceding calendar year.

(3) Beginning with 1984, premiums are promulgated each September, effective for the succeeding calendar year. (Because of the change in promulgation and effective dates, there was no change in the premiums for July through December of 1983.)

* * * * *

(c) *Monthly premiums: Increase for late enrollment and for reenrollment.* For an individual who enrolls after the close of the initial enrollment period or reenrolls, the amount of the monthly premium, as determined under paragraph (b) of this section, is increased by 10 percent for each full 12 months in the periods described in §§ 406.23 and 406.24. Effective beginning with premiums due for July 1986, the premium increase is limited to 10 percent and is payable for twice the number of full 12-month periods determined under those sections.

* * * * *

3. Section 406.23 is amended by revising paragraph (a), and adding new paragraphs (c)(3), (c)(4), and (c)(5), to read as follows:

§ 406.23 Determination of months to be counted for premium increase: Enrollment.

(a) *Enrollment before April 1, 1981 or after September 30, 1981.* The months to be counted for premium increase are the months from the end of the initial enrollment period through the end of the general enrollment period or special enrollment period in which the individual enrolls, excluding the following:

(1) Any months before September 1973.

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(2) For premiums due for months after May 1986, any months beginning with January 1983 during which the individual was enrolled in an employer group health plan based on the current employment of the individual or the individual's spouse.

(3) Any months during the 7-month special enrollment period under § 406.21(e) during which premium hospital insurance coverage is in effect.

* * * * *

(c) *Examples.*

* * * * *

(3) Effective with July 1986, Mary T, in Example 2, would no longer have to pay an increased premium because she had paid it for twice the number of full 12-month periods during which she could have been, but was not, enrolled in the program.

(4) Vincent C's initial enrollment period ended August 31, 1986. He was covered under his wife's employer group health plan until she retired on May 31, 1989. He enrolled during June 1989, the first month of the special enrollment period under § 406.21(e). No months are countable for premium increase purposes because the exclusions of paragraph (a) of this section apply to all months.

(5) Terry P enrolled in the 1987 general enrollment period, with coverage effective July 1987. There were 28 months after the end of his initial enrollment period through the end of the 1987 general enrollment period. His premium is increased by 10 percent. The increase will be eliminated after he has paid the additional 10 percent for 48 months.

§ 406.25 [Amended]

4. In § 406.25(b)(1), the cross reference, "§ 406.10 or § 406.11" is revised to read "§ 406.10, § 406.11, § 406.13, or § 406.15".

5. In § 406.25(b)(2), the cross reference, "§ 406.10 or § 406.11" is revised to read "§ 406.10, § 406.11, § 406.13, or § 406.15".

III. A new Part 407 is added, to read as set forth below:

PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

Subpart A—General Provisions

Sec.
407.1 Basis and scope.
407.2 General description of program.
407.4 Basic requirements for entitlement.

Subpart B—Individual Enrollment and Entitlement for SMI

407.10 Eligibility to enroll.
407.11 Forms used to apply for enrollment under Medicare Part B.
407.12 General enrollment provisions.
407.14 Initial enrollment period.
407.15 General enrollment period.
407.17 Automatic enrollment.
407.18 Determining month of automatic enrollment.
407.20 Special enrollment period related to coverage under an employer group health plan.
407.22 Request for individual enrollment.
407.25 Beginning of entitlement: Individual enrollment.
407.27 Termination of entitlement: Individual enrollment.
407.30 Limitations on enrollment.
407.32 Prejudice to enrollment rights because of Federal Government misrepresentation, inaction, or error.

Subpart C—State Buy-in Agreements

407.40 Enrollment under a State buy-in agreement.
407.42 Coverage groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.
407.43 Coverage groups available to Guam and the Virgin Islands.
407.45 Termination of State buy-in agreements.
407.47 Beginning of coverage under a State buy-in agreement.
407.48 Termination of coverage under a State buy-in agreement.
407.50 Continuation of coverage: Individual enrollment following end of coverage under a State buy-in agreement.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

Subpart A—General Provisions

§ 407.1 Basis and scope.

(a) *Statutory basis.* The supplementary medical insurance (SMI) program is authorized by Part B of title XVIII of the Social Security Act.

(1) Section 1831 of the Act establishes the program.

(2) Sections 1836 and 1837 set forth the eligibility and enrollment requirements.

(3) Section 1838 specifies the entitlement periods, which vary depending on the time and method of enrollment and on the basis for termination.

(4) Section 1843 sets forth the requirements for State buy-in agreements under which States may enroll, and pay the SMI premiums for, eligible individuals who are also eligible for cash assistance or Medicaid.

(5) Section 104(b) of the Social Security Amendments of 1965 (Pub. L. 89–87) specifies the limitations that apply to certain aliens and persons convicted of subversive activities.

(b) *Scope.* This part sets forth the eligibility, enrollment, and entitlement requirements and procedures for supplementary medical insurance. (The rules about premiums are in Part 408 of this chapter.)

§ 407.2 General description of program.

Part B of Title XVIII of the Act provides for a voluntary "supplementary medical insurance plan" available to most individuals age 65 or over and to disabled individuals who are under age 65 and entitled to hospital insurance. The SMI program financed by premiums paid by (or for) each individual enrolled in the program, plus contributions from Federal funds. It covers certain physicians' services, outpatient services, home health services, services furnished by rural health clinics (RHCs), ambulatory surgical centers (ASCs), and comprehensive outpatient rehabilitation facilities (CORFs), and other medical and other health services.

§ 407.4 Basic requirements for entitlement.

(a) An individual must meet the following requirements to be entitled to SMI:

(1) *Eligibility.* The individual must meet the eligibility requirements specified in § 407.10(a).

(2) *Enrollment.* The individual must enroll for SMI, or must be enrolled by a State under a buy-in agreement as specified in § 407.40.

(b) SMI pays only for covered expenses incurred during an individual's period of entitlement.

Subpart B—Individual Enrollment and Entitlement for SMI

§ 407.10 Eligibility to enroll.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, an individual is eligible to enroll for SMI if he or she—

(1) Is entitled to hospital insurance under any of the rules set forth in §§ 406.10 through 406.15 of this chapter; or

(2) Meets the following requirements:

(i) Has attained age 65. (An individual is considered to have attained age 65 on the day before the 65th anniversary of his or her birth.)

(ii) Is a resident of the United States.

(iii) Is a citizen of the United States, or an alien lawfully admitted for permanent residence who has resided continuously in the United States during the 5 years preceding the month in which he or she applies for enrollment.

(b) *Exception.* An individual is not eligible to enroll for SMI if he or she has been convicted of—

(1) Spying, sabotage, treason, or subversive activities under chapter 37, 105, or 115 of title 18 of the United States Code; or

(2) Conspiracy to establish dictatorship under section 4 of the Internal Security Act of 1950.

§ 407.11 Forms used to apply for enrollment under Medicare Part B.

The following forms, available free of charge by mail from HCFA, or at any Social Security branch or district office, are used to apply for enrollment under the supplementary medical insurance program.

HCFA–4040—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is used for enrollment by individuals who are not eligible for monthly benefits or for hospital insurance.)

HCFA–40–B—Application for Medical Insurance. (For general use by the SSA District Office in requesting medical insurance protection during the general enrollment period or during the initial enrollment period if the enrollee is not subject to automatic enrollment is SMI.)

HCFA–40–D—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is mailed to individuals who do not have current supplementary medical insurance because of prior refusals, voluntary withdrawal, or premium default from prior coverage. It is used during the annual general enrollment period.)

HCFA–40–F—Application for Medical Insurance. (For use by beneficiaries residing outside the United States.)

HCFA–18–F–5—Application for Hospital Insurance Entitlement. (For use by individuals who are not eligible for retirement benefits under Title II of the Social Security Act or under the Railroad Retirement Act. This form may also be used for enrollment in the supplementary medical insurance program.)

As an alternative, the individual may request enrollment by answering the Part B enrollment questions on an application for monthly Social Security benefits, or by signing a simple statement of request, if he or she is eligible to enroll at that time.

§ 407.12 General enrollment provisions.

(a) *Opportunity to enroll.* (1) An individual who is eligible to enroll for SMI may do so during an initial enrollment period or a general enrollment period as specified in §§ 407.14, and 407.15. An individual who meets the conditions specified in § 407.20 may enroll during a special enrollment period, as provided in that section.

(2) An individual who fails to enroll during his or her initial enrollment period or whose enrollment has been terminated may enroll or reenroll during a general enrollment period, or, if he or she meets the specified conditions, during a special enrollment period.

(b) *Enrollment periods ending on a nonworkday.* (1) If an enrollment period ends on a Federal nonworkday, that period is automatically extended to the next succeeding workday.

(2) A Federal nonworkday is any Saturday, Sunday, or Federal legal holiday or a day that is declared by statute or executive order to be a day on which Federal employees are not required to work.

§ 407.14 Initial enrollment period.

(a) *Duration.* (1) The initial enrollment period is the 7-month period that begins 3 months before the month an individual first meets the eligibility requirements of § 407.10 and ends 3 months after that first month of eligibility.

(2) In determining the initial enrollment period of an individual who is age 65 or over and eligible for enrollment solely because of entitlement to hospital insurance, the individual is considered as first meeting the eligibility requirements for SMI on the first day he or she becomes entitled to hospital insurance or would have been entitled if he or she filed an application for that program.

(b) *Deemed initial enrollment period.* (1) SSA or HCFA will establish a deemed initial enrollment period for an individual who fails to enroll during the initial enrollment period because of a belief, based on erroneous documentary evidence, that he or she had not yet attained age 65. The period will be established as though the individual had attained age 65 on the date indicated by the incorrect information.

(2) A deemed initial enrollment period established under paragraph (b)(1) of this section is used to determine the individual's premium and right to enroll in a general enrollment period if that is advantageous to the individual.

§ 407.15 General enrollment period.

(a) Except as specified in paragraph (b) of this section, the general enrollment period is January through March of each calendar year.

(b) An unlimited general enrollment period existed between April 1 and September 30, 1981. Any eligible individual whose initial enrollment period had ended, or whose previous period of entitlement had terminated, could have enrolled or reenrolled during any month of that 6-month period.

§ 407.17 Automatic enrollment.

(a) *Who is automatically enrolled.* An individual is automatically enrolled for SMI if he or she:

(1) Resides in the United States, except in Puerto Rico;

(2) Becomes entitled to hospital insurance under any of the provisions set forth in §§ 406.10 through 406.15 of this chapter; and

(3) Does not decline SMI enrollment.

(b) *Opportunity to decline automatic enrollment.* (1) SSA will notify an individual that he or she is automatically enrolled under paragraph (a) of this section and grant the individual a specified period (at least 2 months after the month the notice is mailed) to decline enrollment.

(2) The individual may decline enrollment by submitting to SSA or HCFA a signed statement that he or she does not wish SMI.

(3) The statement must be submitted before entitlement begins, or if later, within the time limits set in the notice of enrollment.

§ 407.18 Determining month of automatic enrollment.

(a) An individual who is automatically enrolled in SMI under § 407.17 will have the month of enrollment determined in accordance with paragraphs (b) through (f) of this section. The month of enrollment determines the month of entitlement.

(b) An individual is automatically enrolled in the third month of the initial enrollment period if he or she—

(1) Is entitled to social security benefits under section 202 of the Act on the first day of the initial enrollment period;

(2) Is entitled to hospital insurance based on end-stage renal disease; on entitlement to disability benefits as a social security or railroad retirement beneficiary; or on deemed entitlement to disability benefits on the basis of Medicare-qualified government employment; or

(3) Establishes entitlement to hospital insurance by filing an application and meeting all other requirements (as set forth in Subpart B of Part 406 of this chapter) during the first 3 months of the initial enrollment period.

(c) If an individual establishes entitlement to hospital insurance on the basis of an application filed in the last 4 months of the SMI initial enrollment period, he or she is automatically enrolled for SMI in the month in which the application is filed.

(d) If an individual establishes entitlement to hospital insurance on the basis of an application filed after the SMI initial enrollment period but not during a general enrollment period in effect before April 1, 1981, or after September 30, 1981, he or she is automatically enrolled for SMI on the

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first day of the next general enrollment period.

(e) If the individual establishes entitlement to hospital insurance on the basis of an application filed during a SMI general enrollment period in effect before April 1, 1981 or after September 30, 1981, he or she is automatically enrolled on the first day of that period.

(f) If an individual established entitlement to hospital insurance on the basis of an applicaton filed during the general enrollment period of April 1, 1981, through September 30, 1981, he or she was automatically enrolled for SMI on the first day of the month in which the application was filed.

§ 407.20 Special enrollment period related to coverage under an employer group health plan.

(a) *Terminology.* As used in this section—

(1) "Employer group health plan" or "Employer plan" has, to the extent not inconsistent with section 1837(i)(1)(B) of the Act, the meaning set forth in section 162(i)(3) of the Internal Revenue Code (IRC) which reads: "* * * 'group health plan' means any plan of, or contributed to by, an employer, to provide medical care * * * to his employees, former employees, or the families of such current or former employees, directly, or through insurance, reimbursement or otherwise". The phrase "plan of" encompasses a plan that is under the auspices of an employer who makes no financial contribution—a so-called "employee-pay-all" plan. Since section 1837(i)(1)(B) of the Act requires that the individual be covered under the plan "by reason of the individual's or the individual's spouse's current employment", the "former employee" language of the IRC definition does not apply.

(2) "Large group health plan" has the meaning set forth in section 5000(b) of the IRC, which reads: "* * * 'large group health plan' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of a least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year."

(3) "Special enrollment period (SEP)" is a 7-month period that begins when the individual is no longer covered by an employer plan or large group health plan.

(b) *General rule.* SEPs are available to individuals who meet the requirements of this paragraph (b) and those of paragraph (c) or (d) of this section, as appropriate:

(1) They are eligible for SMI on the basis of age or disability, but not on the basis of end-stage renal disease.

(2) When first eligible for SMI coverage (4th month of their initial enrollment period), they were covered under an employer plan or a large group health plan or, if not so covered, they enrolled in SMI during their initial enrollment period.

(3) Coverage under either SMI or an employer plan or large group health plan has been maintained for all months thereafter. Generally, if an individual fails to enroll in SMI during any available SEP, no further SEPs become available. However, if an individual failed to enroll during a SEP because coverage (under the same or a different employer plan or large group health plan) was restored before the end of that SEP, that failure to enroll in SMI does not preclude another SEP now or in the future.

(c) *Specific rules: Individual age 65 or over.* Individuals entitled on the basis of age must meet the following conditions:

(1) Have been covered, on the basis of current employment of the individual or the individual's spouse, under an employer plan; and

(2) Are no longer covered under such a plan on the basis of current employment.

(d) *Specific rules: Disabled Individual.* Individuals entitled on the basis of disability (but not on the basis of end-stage renal disease), must meet the following conditions:

(1) Have been covered under a large group health plan;

(2) Had this coverage as an employee, employer, individual associated with the employer in a business relationship, or as a member of the family of any of those persons; and

(3) No longer have coverage under such a plan.

(3) *Beginning of special enrollment period: Individual age 65 or over.* For an aged individual—

(1) Before May 1986, the SEP began with whichever of the following resulted in earlier SMI entitlement:

(i) The first day of the third month before the month in which the individual attained age 70, if employer group health plan coverage continued to age 70.

(ii) The first day of the month in which the individual was no longer enrolled in an employer plan on the basis of current employment.

(2) In and after May 1986, the SEP begins on the first day of the first month in which the individual is no longer enrolled in an employer plan on the basis of current employment.

(f) *Beginning of special enrollment period: Disabled individual.* The SEP begins with the first day of the first month after December 1986 in which the individual is no longer covered under an employer plan as described in paragraph (d) of this section. Because the provisions applicable to disabled individuals expire on December 31, 1991, the last SEP available under those provisions will begin with January 1992.

(g) *Beginning of special enrollment period:* Partial coverage month. When employer plan coverage ends before the end of a month, the following rules apply—

(1) If the individual enrolls in SMI before the end of the partial coverage month, the SEP begins with that month.

(2) If the individual does not enroll in SMI before the end of the partial coverage month, the SEP begins with the following month.

§ 407.22 Request for individual enrollment.

(a) A request for enrollment is required of an individual who meets the eligibility requirements of § 407.10 and desires SMI, if the individual—

(1) Is not entitled to hospital insurance;

(2) Has previously declined enrollment in SMI;

(3) Has had a previous period of SMI entitlement which terminated;

(4) Resides in Puerto Rico or outside the United States; or

(5) Is enrolling or reenrolling during a special enrollment period under § 407.20.

(b) A request for enrollment under paragraph (a) of this section must:

(1) Be signed by the individual or someone acting in his or her behalf; and

(2) Be filed with SSA or HCFA during the initial enrollment period, a general enrollment period, or a special enrollment period as provided in § 407.20.

§ 407.25 Beginning of entitlement: individual enrollment.

The following apply whether an individual is self-enrolled or automatically enrolled in SMI:

(a) *Enrollment during initial enrollment period.* (1) If an individual enrolls during the first three months of the initial enrollment period, entitlement begins with the first month of eligibility.

(2) If an individual enrolls during the fourth month of the initial enrollment period, entitlement begins with the following month.

(3) If an individual enrolls during the fifth month of the initial enrollment period, entitlement begins with the second month after the month of enrollment.

(4) If an individual enrolls in either of the last two months of the initial enrollment period, entitlement begins with the third month after the month of enrollment.

(5) Example. An individual first meets the eligibility requirements for enrollment in April. The initial enrollment period is January through July. The month in which the individual enrolls determines the month that begins the period of entitlement, as follows:

Enrolls in initial enrollment period	Entitlement begins on—
January	April 1 (month eligibility requirements first met).
February	April 1.
March	April 1.
April	May 1 (month following month of enrollment).
May	July 1 (second month after month of enrollment).
June	September 1 (third month after month of enrollment).
July	October 1 (third month after month of enrollment).

(b) *Enrollment on reenrollment during general enrollment period.* (1) if an individual enrolls or reenrolls during a general enrollment period before April 1, 1981 or after September 30, 1981, entitlement begins on July 1 of that calendar year.

(2) If an individual enrolled or reenrolled during the general enrollment period between April 1, 1981 and September 20, 1981, entitlement began with the third month after the month in which the enrollment request was filed.

(c) *Enrollment or reenrollment during a special enrollment period (SEP)—*

(1) *Before May 1986 for those whose employee group health plan coverage continued to age 70—*

(i) If an individual enrolled during the 3 months before attainment of age 70, entitlement began with the month of attainment of age 70; and

(ii) If an individual enrolled during the month of attainment of age 70, or during any of the 3 following months, entitlement began with the month after the month of enrollment.

(2) *For all other enrollees—*

(i) If an individual enrolls during the first month of nonenrollment in an employer group health plan (which, under § 407.20(g), is the first month of the SEP), entitlement begins with the first day of that month.

(ii) If an individual enrolls during the last 6 months of the SEP, entitlement begins with the month after the month of enrollment.

§ 407.27 Termination of entitlement: individual enrollment.

An individual's entitlement will terminate for any of the following reasons:

(a) *Death.* Entitlement to SMI ends on the last day of the month in which the individual dies.

(b) *Termination of hospital insurance benefits.* If an individual's entitlement to hospital insurance ends before the month in which he or she attains age 65, entitlement to SMI will end on the same day unless it has been previously terminated in accordance with paragraph (c) or (d) of this section.

(c) *Request by individual.* An individual may at any time give HCFA or SSA written notice that he or she no longer wishes to participate in SMI, and request disenrollment.

(1) Before July 1987, entitlement ended at the end of the calendar quarter after the quarter in which the individual filed the disenrollment request.

(2) For disenrollment requests filed in or after July 1987, entitlement ends at the end of the month after the month in which the individual files the disenrollment request.

(d) *Nonpayment of premiums.* If an individual fails to pay the premiums, entitlement will end as provided in the rules for SMI premiums, set forth in Part 408 of this chapter.

§ 407.30 Limitations on enrollment.

(a) *Initial enrollment periods.*—(1) *Individual under age 65.* An individual who has not attained age 65 may have one or more periods of entitlement to hospital insurance, based on disability. Since each period of disability entitlement entitles the individual to hospital insurance and since entitlement to hospital insurance makes the individual eligible for SMI enrollment, an individual may have an SMI initial enrollment period for each continous period of entitlement to hospital insurance.

(2) *Individuals who have attained age 65.* An individual who has attained age 65 may not have more than one initial enrollment period on the basis of age. However, if the individual develops ESRD after age 65, he or she may have another initial enrollment period based on meeting the requirements of § 406.13 of this chapter.

(b) *Number of enrollments.* There is no limitation on the number of enrollments.

(c) *Coverage under buy-in agreements.* For purposes of paragraph (a) of this section, the continued enrollment of an individual following the end of coverage under a State buy-in agreement in considered an initial enrollment.

§ 407.32 Prejudice to enrollment rights because of Federal Government misrepresentation, inaction, or error.

If an individual's enrollment or nonenrollment in SMI is unintentional, inadvertent, or erroneous because of the error, misrepresentation, on inaction of a Federal employee or any person authorized by the Federal Government to act in its behalf, the Social Security Administration or HCFA may take whatever action it determines is necessary to provide appropriate relief. The action may include:

(a) Designation of a special initial or general enrollment period;

(b) Designation of an entitlement period based on that enrollment period;

(c) Adjustment of premiums;

(d) Any combination of actions under paragraphs (a) through (c) of this section; or

(e) Any other remedial action that may be necessary to correct or eliminate the effects of the error, misrepresenttion, or inaction.

Subpart C—State Buy-In Agreements

§ 407.40 Enrollment under a State buy-in agreement.

(a) *Statutory basis.* (1) Section 1843 of the Act, as amended through 1969, permitted a State to enter into an agreement with the Secretary to enroll in the SMI program certain individuals who are eligible for SMI and who are members of the coverage group specified in the agreement. A coverage group could include certain individuals receiving Federally-aided State cash assistance (with the option of excluding individuals also entitled to social security benefits or railroad retirement benefits) or could include all individuals eligible for Medicaid. Before 1981, December 31, 1969 was the last day on which a State could request a buy-in agreement or a modification to include a coverage group broader than the one originally selected.

(2) Section 945(e) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) further amended section 1843 to provide that, during calendar year 1981, a State could request a buy-in agreement if it did not already have one, or request a broader coverage group for an existing agreement. Section 301(e)(1) of the Medicare Catastrophic Coverage Act of 1988 amends section 1843 of the Act to restore the 1981 provisions on a permanent basis, effective "after 1988".

(3) Several laws enacted during 1980-1987 require that the buy-in groups available under section 1843 of the Act

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be expanded to include certain individuals who lose eligibility for cash assistance payments but, for purposes of Medicaid eligibility, are treated as though they were receiving cash assistance.

(b) *Definitions.* As used in this section, unless the context indicates otherwise—

"Cash assistance" means any of the following kinds of monthly cash benefits, authorized by specified titles of the Act and, for convenience, represented by initials, as follows:

"AABD" stands for aid to the aged, blind or disabled under the first title XVI of the Act in effect until December 31, 1973.

"AB" stands for aid to the blind under title X of the Act.

"AFDC" stands for aid to families with dependent children under Part A of title IV of the Act.

"APTD" stands for aid to the permanently and totally disabled under title XIV of the Act.

"OAA" stands for old-age assistance under title I of the Act.

"SSI" stands for supplemental security income for the aged, blind, and disabled under the second title XVI of the Act, effective January 1, 1974.

"SSP" stands for State supplementary payments, whether mandatory or optional, to an aged, blind, or disabled individual under the second title XVI of the Act.

"*Railroad retirement beneficiary*" means an individual entitled to receive an annuity under the Railroad Retirement Act of 1974.

"*State*" means one of the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, or the Northern Mariana Islands, except when reference is made to "the 50 States".

"*State buy-in agreement*", or "*buy-in agreement*" means an agreement authorized by section 1843 of the Act, under which a State secures SMI coverage for individuals who are eligible for SMI, and who are receiving cash assistance or are eligible for Medicaid, by enrollling them in SMI and paying the SMI premiums on their behalf.

(c) *Basic rule.* A State that has a buy-in agreement in effect must enroll any individual who is eligible to enroll in SMI under § 407.10 and is a member of the coverage group as specified in the agreement.

(d) *Coverage under buy-in agreements.* (1) The buy-in group options that were available to States during 1981 and are again available after 1988 are specified in §§ 407.42 and 407.43. (These are the same groups that were available to States before 1970, as modified to reflect the intervening legislation.)

(2) A State buy-in agreement may include only one of the specified coverage groups.

(3) Before 1970 and during 1981, a State could request a buy-in agreement covering one of the specified coverage groups or an agreement modification to substitute a broader coverage group for its existing group.

(4) A State may at any time request an agreement modification to subsitute a narrower coverage group for its existing group.

(5) Any buy-in agreement that is currently in effect will continue in effect with the coverage group specified in § 407.42(c) or § 407.43(c) unless it is modified in accordance with paragraph (d)(4) of this section, or terminated in accordance with § 407.45.

§ 407.42 Coverage groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.

(a) *Categories included in the buy-in coverage groups.* The coverage groups that were available to the 50 States, the District of Columbia, and the Northern Mariana Islands are specified in paragraph (b) of this section in terms of the following categories:

(1) *Category A:* Individuals who—

(i) Receive SSI and SSP; and

(ii) Are covered under the State's Medicaid plan as categorically needy.

(2) *Category B:* Individuals who—

(i) Under the Act, or any other provision of Federal law are treated, for Medicaid eligibility purposes, as though they were receiving SSI or SSP; and

(ii) Are covered under the State's Medicaid plan as categorically needy.

(3) *Category C:* Individuals who are receiving AFDC.

(4) *Category D:* Individuals who, under the Act or any other provision of Federal law are treated, for Medicaid eligibility purposes, as though they were receiving AFDC.

(5) *Category E:* Individuals who, in accordance with § 435.114 or § 435.134 of this chapter, are covered under the State's Medicaid plan despite the increase in social security benefits provided by Pub. L. 92–336.

(6) *Category F:* All other individuals who are eligible for Medicaid.

(b) *Coverage groups available.* Any of the 50 States, the District of Columbia, and the Northern Mariana Islands could have chosen one of the following groups:

(1) *Group 1:* Categories A through F.

(2) *Group 2:* Categories A through E.

(3) *Group 3:* Categories A and B, and individuals in categories C and D who are not social security or railroad retirement beneficiaries, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received OAA, AB, APTD, or AABD in August 1972 or would have been eligible to receive OAA, AB, APTD, or AABD for that month if they had applied or had not been institutionalized.

(4) *Group 4:* Categories A and B, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received AABD in August 1972 or would have been eligible to receive AABD for that month if they had applied or had not been institutionalized. This option was available only to those States that had an AABD program as of December 31, 1973.

(c) *Coverage groups in effect as of January 1, 1988.*[1] As of January 1, 1988—

(1) The following 28 States and the District of Columbia had group 1 (categories A through F): [2]

Alaska	Michigan
Alabama	Mississippi
Arizona	Montana
Arkansas	Nevada
California	New Jersey
Colorado	New Mexico
District of Columbia	North Carolina
Florida	Ohio
Georgia	Oregon
Hawaii	South Carolina
Idaho	Texas
Indiana	Utah
Iowa	Virginia
Kansas	Washington
Maryland	

(2) The following 19 States had group 2 (categories A through E):

Connecticut	North Dakota
Delaware	Oklahoma
Illinois	Pennsylvania
Louisiana	Rhode Island
Maine	South Dakota
Minnesota	Tennessee
Missouri	Vermont
Nebraska	West Virgina
New Hampshire	Wisconsin
New York	

(3) Massachusetts had group 3 (categories A and B, and certain individuals in categories C, D, and E).

(4) Kentucky had group 4 (categories A and B, and certain individuals in category E).

§ 407.43 Coverage groups available to Guam and the Virgin Islands.

(a) *Categories included in buy-in coverage groups.* The coverage groups that were available to Guam and the Virgin Islands, which are not covered by

[1] The Northern Mariana Islands requested a buy-in agreement during 1981, but took no further action. Wyoming did not request an agreement.

[2] "Having" a coverage group means that if the State provides Medicaid to that particular group now or at any time in the future, the State has both the right and the obligation to buy-in for that group.

the SSI program, are described in paragraph (b) of this section in terms of the following categories:

(1) *Category A:* Individuals receiving OAA, AB, APTD, or AFDC.

(2) *Category B:* Individuals who, under the Act or any other provision of Federal law are treated, for Medicaid eligibility purposes, as though they were receiving AFDC.

(3) *Category C:* Individuals who, in accordance with § 436.112 of this chapter, are covered under the State's Medicaid plan despite the increase in social security benefits provided by Pub. L. 92–336.

(4) *Category D:* All other individuals who are eligible for Medicaid.

(b) *Coverage groups available.* Guam and the Virgin Islands could have chosen any one of the following groups:

(1) *Group 1:* Categories A through D.

(2) *Group 2:* Categories A through C.

(3) *Group 3:* Individuals in categories A and B who are not social security or railroad retirement beneficiaries.

(4) *Group 4:* Individuals in category A who are receiving OAA and individuals in category C who are included in that category (in accordance with § 436.112 of this chapter) because they received OAA for August 1972 or would have been eligible to receive OAA for that month if they had applied or have not been institutionalized.

(5) *Group 5:* Individuals in category A who are receiving OAA and are not social security or railroad retirement beneficiaries.

(c) *Coverage groups in effect as of January 1, 1988.* As of January 1, 1988, Guam and the Virgin Islands has group 1.[3]

§ 407.45 Termination of State buy-in agreements.

(a) *Termination by the State*—(1) *Termination after advance notice.* A State may terminate its buy-in agreement after giving HCFA 3 months advance notice.

(2) *Termination without advance notice.* A State may terminate its buy-in agreement without advance notice if—

(i) The State gives HCFA written certification to the effect that it is no longer legally able to comply with one or more of the provisions of the agreement; and

(ii) Submits a supporting opinion from the appropriate State legal officer, if HCFA requests such an opinion.

(b) *Termination by HCFA.* If HCFA, after giving the State notice and opportunity for hearing, finds that the State has failed to comply substantially with one or more of the provisions of the agreement, other than the requirement for timely payment of premiums, HCFA will give the State written notice to the effect that the agreement will terminate on the date indicated in the notice unless, before that date, HCFA finds that there is no longer that failure to comply. (Rules for collection of overdue premiums, including assessment of interest and offset against FFP due the State, are those set forth in the Notice published on September 30, 1985 at 50 FR 39784.)

[3] Puerto Rico did not request a buy-in agreement.

§ 407.47 Beginning of coverage under a State buy-in agreement.

(a) *General rule.* Subject to the provisions of paragraphs (b) and (c) of this section, coverage under a buy-in agreement begins as follows:

(1) *Individuals who are, or are treated as, cash assistance recipients.* For individuals who are, or are treated as, cash assistance recipients (that is, are members of categories A through E of § 407.42(a) or categories A through C of § 407.43(a)), coverage begins with the first month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is a member of one of those categories.

(2) *Other individuals eligible for Medicaid.* For individuals who are members of category F of § 407.42(a) or category D of § 407.43(a), coverage begins with the second month after the month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is determined to be eligible for Medicaid.

(b) *Effect of effective date of agreement or agreement modification*—(1) *Effective date of agreement.* An individual's coverage period may not begin before the effective date of the buy-in agreement, as specified in the agreement. That date may not be earlier than the third month after the month in which the agreement is executed.

(2) If an indvidual is a member of the State's buy-in coverage group only by virtue of a modification to change that group, the individual's coverage period cannot begin before the effective date of modification, as specified in the agreement modification. That date may not be earlier than the third month following the month in which the modification is executed.

(c) *Coverage based on erroneous report.* If the State erroneously reports to SSA that an individual is a member of its coverage group, the rules of paragraphs (a) and (b) of this section apply, and coverage begins as through the individual were in fact a member of the group. Coverage will end only as provided in § 407.48.

§ 407.48 Termination of coverage under a State buy-in agreement.

An individual's coverage under a buy-in agreement terminates with the earliest of the following events:

(a) *Death.* Coverage ends on the last day of the month in which the individual dies.

(b) *Loss of entitlement to hospital insurance benefits before age 65.* If an individual loses entitlement to hospital insurance benefits before attaining age 65, coverage ends on the last day of the last month for which he or she is entitled to hospital insurance.

(c) *Loss of eligibility for the buy-in coverage group.* If an individual loses eligibility for inclusion in the buy-in coverage group, buy-in coverage ends as follows:

(1) On the last day of the last month for which he or she is eligible for inclusion in the group, if HCFA determines ineligibility or receives a State ineligibility notice by the 25th day of the second month after the month in which the individual becomes ineligible for inclusion in the group.

(2) On the last day of the second month before the month in which HCFA receives a State ineligibility notice later than the time specified in paragraph (c)(1) of this section. A notice received by HCFA after the 25th day of the month is considered to have been received in the following month.

(d) *Termination of buy-in agreement.* If the State's buy-in agreement is terminated, coverage ends on the last day of the last month for which the agreement is in effect.

§ 407.50 Continuation of coverage: Individual enrollment following end of coverage under a State buy-in agreement.

(a) *Deemed enrollment.* When coverage under a buy-in agreement ends because the agreement terminates, or because the individual is no longer eligible for inclusion in the buy-in coverage group, the individual—

(1) Is considered to have enrolled during his or her initial enrollment period; and

(2) Will be entitled to SMI on this basis and liable for SMI premiums beginning with the first month for which he or she is no longer covered under the buy-in agreement.

(b) *Voluntary termination.* (1) An individual may voluntarily terminate entitlement acquired under paragraph (a) of this section by filing, with SSA or HCFA, a request for disenrollment.

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(2) Voluntary disenrollment is effective as follows:

(i) If the individual files a request within 30 days after the date of HCFA's notice that buy-in coverage has ended, the individual's entitlement ends on the last day of the last month for which the State paid the premium.

(ii) If the individual files the request more than 30 days but not more than 6 months after buy-in coverage ends, entitlement ends on the last day of the month in which the request is filed.

(iii) If the individual files the request later than the 6th month after buy-in coverage ends, entitlement ends at the end of the month after the month in which request is filed.[4]

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance, and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: August 23, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 21, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-26887 Filed 11-21-88; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 8

National Security Information

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule amendment.

SUMMARY: The original classification authorities have been changed to conform to the recent reorganization of elements within the activity. These changes follow the requirements of section 5.3(b) of Executive Order 12356, National Security Information.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mary K. Getter, Chief, Information Security Branch, Office of Security, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, Phone (202) 646-3125.

SUPPLEMENTARY INFORMATION:

List of Subjects in 44 CFR Part 8

Classified information.

[4] For requests filed before July 1987, entitlement ended on the last day of the calendar quarter after the quarter in which the disenrollment request was filed.

PART 8—NATIONAL SECURITY INFORMATION

1. The authority citation for Part 8 continues to read as follows:

Authority: Reorganization Plan Number 3 of 1978, Executive Order 12148 and Executive Order 12356.

2. Section 8.2, Original Classification Authority, is amended by revising paragraphs (b)(2), (c), and by adding paragraph (b)(4) to read as follows:

§ 8.2 Original classification authority.

* * * * *

(b) * * *

(2) Associate Director, National Preparedness Directorate

* * * * *

(4) Chief of Staff

(c) The positions delegated original Top Secret Classification Authority in paragraph (b) of this section, are also delegated Original Secret and Confidential Classification Authority by virtue of this delegation. The following positions have been delegated Original Secret and Original Confidential Classification Authority:

(1) Associate Director, State and Local Programs and Support.

(2) Regional Directors.

Any further delegation of original classification authority, for any classification level, will be accomplished only by the Director of the Federal Emergency Management Agency.

Date: November 14, 1988.

John R. Lilley II,

Director of Security.

[FR Doc. 88-26713 Filed 11-21-88; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 11

Collection of Debts by the Government Under the Debt Collection Acts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The changes made by this rule reflect organizational changes in the Federal Emergency Management Agency (FEMA); increase the dollar limit under which FEMA Debt Collection Officers (DCO's) may settle, terminate or compromise debts from less than $600 to $2,500 or less; and make certain minor technical changes to FEMA's Debt Collection Regulations.

Changes are being made to improve the debt collection process and correct references and organization titles.

DATE: This regulation takes effect December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Richard S. Buck, Accounting Division, Office of the Comptroller, Telephone: (202) 646-4091.

SUPPLEMENTARY INFORMATION: This rule makes minor changes to the existing FEMA Debt Collection Regulation (44 CFR Part 11, Subpart C) which was published as a final rule on September 28, 1984 (49 FR 38267). They reflect changes in internal FEMA organization and increase the authority of Debt Collection Officers (DCO's) to compromise, settle or terminate debt collection actions. DCO's are located in FEMA regional and in Headquarters Offices.

Section 11.30(b), which lists FEMA's "Offices", is changed to reflect organizational changes within FEMA made since the regulation was originally published in 1984.

Section 11.34(c) is added to allow the Agency Collections Officer (ACO) to delegate her or his debt collection authority to designees.

Section 11.35 is changed to grant DCO's authority to compromise debts or to suspend or terminate debt collection action of debts where the principal is $2,500 or less. Presently, the DCO's are authorized to so act in debts where the principal is less than $600. This change results from FEMA's debt collection experience during the past four years, which shows that the dollar limits of the DCO's authority should be raised so that more debts could be handled in the regions near where the debtors are located or in the program offices where there is familiarity with the debtors' relation to the program. These raised limits are consistent with practice in other Federal agencies.

Section 11.39 is eliminated since it relates to internal FEMA administrative procedures.

Section 11.42(a) is revised to allow for hand delivery of FEMA's initial demand for payment in addition to allowing for the use of certified mail, return receipt requested.

The heading of § 11.44 is changed to provide for "common law" offset rather than "Administrative offsets" in cases of Federal agencies, States or units of general local government. Further, DCO's will be permitted to use involuntary offset remedies after receiving ACO approval.

Section 11.48(a) is amended to allow FEMA to have interest accrue from the date that the debt demand letter (which mentions that interest shall be assessed) is mailed, or, in certain cases, when the debt demand letter mentions some later date on which interest shall start to accrue. Some minor, technical changes are made to have the regulation comport with the provisions of the Debt Collection Act of 1982 (31 U.S.C. 3701 *et seq.*)

Section 11.48(c) is amended to have penalties imposed in accordance with 31 U.S.C. 3717(e) if the debt is not paid in full within *120* days of the date of the initial demand, or if repayment arrangements, satisfactory to FEMA, are not made within that period. This is a change from the currently provided 90 day period. This change results from advice given by the General Accounting Office in Decision B-222845, dated December 9, 1987.

Section 11.48(d) is amended to substitute "administrative charges" for "extraordinary charges". States and units of general local government will be subject to charges for costs of collection in accordance with common law principles. This is consistent with the language of the Federal Claims Collection Standards (4 CFR 102.13(i)(2)) and with Comptroller General's Decision B-212222 (dated January 5, 1984).

Section 11.48(e)(5) is amended to raise the authority of the DCO to waive interest and penalties on debts of $2,500 or less, exclusive of interest and penalties. The ACO's settlement authority is raised from $600 to more than $2,500. This change follows the raising of the limits of authority to settle debts set forth in § 11.35.

Section 11.48(h) is amended to allow interest to be waived if States or local governments substantially prevail in their appeals and if they pay any balance found to be due after the appeal with reasonable promptness, such as 90 days after the rendering of the appeal decision.

Sections 11.50(c) and 11.51(c) are amended to correct references from 4 CFR 101.4(a) to 4 CFR 103.1(b) and 4 CFR 104.1(b), respectively.

Section 11.51(b)(4) is amended to correct references from § 11.50(a)(3) to § 11.50(a)(4).

Section 11.54 is amended to allow FEMA to utilize the General Services Administration's Government-wide debt collection agency contract.

These regulations do not have a significant impact on a substantial number of small entities and have not undergone a regulatory analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and, hence, no regulatory analysis has been prepared.

The information collection requirements contained in this Debt Collection Regulation, as amended by this proposed rule, have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 3067-0122.

List of Subjects in 44 CFR Part 11

Administrative practices and procedures, Claims.

Accordingly, Title 44 CFR Chapter I, Part 11, Subpart C is amended as follows:

PART 11—[AMENDED]

1. Section 11.30 is amended by revising paragraph (b) to read as follows:

§ 11.30 Scope of regulations.

* * * * *

(b) *Definitions.* For the purpose of this subpart, "office" means any of the following:

(1) United States Fire Administration.

(2) Federal Insurance Administration.

(3) National Preparedness Directorate.

(4) State & Local Programs & Support Directorate.

(5) Office of Training/National Emergency Training Center.

(6) Office of Comptroller, which for purposes of this subpart includes FEMA Headquarters elements which are not included in paragraph (b) (2) through (4) of this section

2. Section 11.34 is amended by adding paragraph (c) which shall read as follows:

§ 11.34 Referral of debts to the Comptroller, Federal Emergency Management Agency.

* * * * *

(c) *Delegation.* The ACO may delegate his or her authority in the FEMA debt collection program and this Subpart to a Deputy or to others in the FEMA Office of Comptroller.

§ 11.35 [Amended]

3. Any reference in § 11.35 that now reads: "less than $600" is revised to read: "$2,500 or less".

§ 11.39 [Removed]

4. Section 11.39 is removed.

§ 11.42 [Amended]

5. The first sentence of § 11.42(a) is revised to read as follows: "An initial demand shall be made in writing and sent by certified mail, return receipt requested, or delivered by hand to the debtor identifying the debt and advising that the full amount due should be paid by a specified date, not less than 30 days from the date of mailing or the hand delivery."

6. Section 11.44 is revised to read as follows:

§ 11.44 Collection of debts from Federal agencies or States or units of general local government by common law offset.

(a) Debts owed by Federal Agencies, States, or units of general local government may be collected by offset in accordance with principles of common law. See *U.S. v. Munsey Trust Co.*, 332 U.S. 234 (1947). Before taking such an involuntary offset against such debtors, the ACO or the DCO must notify such debtors as to:

(1) Nature and origin of the debt.

(2) Amount owed.

(3) FEMA's intent to collect interest at rates equivalent to those paid by the U.S. Government to borrow money on the open market, unless statute, regulation or agreement specifies another interest rate.

(4) Right of the debtor to inspect and copy records relating to the debt. However, FEMA may, in its discretion, utilize exemptions available under the Freedom of Information Act (5 U.S.C. 552(B)).

(5) Name, business address and telephone number of the official having cognizance over the debt.

(b) Prior to instituting involuntary offset against such debtors, DCO's must obtain approval of the ACO.

8. Section 11.48 is amended by revising paragraphs (a), (c), (d), (e)(5), and (h) introductory text, and (h)(1) to read as follows:

§ 11.48 Interest and penalties.

(a) *Interest.* Interest shall be charged on the outstanding principal balance due on debts owed the United States at the rate published by the Secretary of the Treasury under provisions of 31 U.S.C. 3717(a). The interest rate in effect at the time that FEMA first mailed or hand delivered to the debtor written notice, stating that the debt was due and that interest would be assessed on the debt, shall be the rate applied throughout the duration of the debt until the debt is paid in full. Interest shall accrue either from the date that the debtor was first informed that interest would be assessed or some subsequent date specified in the written notice given by FEMA to the debtor stating that interest would be assessed. Interest shall run from the following dates:

* * * * *

(c) *Penalty charges.* Except in the situation described in paragraph (b) of this section, a penalty of 6 per centum per annum shall be charged on the unpaid principal balance due if the debtor fails to pay the debt in full within

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120 days of the date of the first written notice by FEMA that penalty charges would be assessed. However, if the debtor enters into a repayment agreement, satisfactory to FEMA, within the 120 day period, then penalty will not be assessed. Penalty will accrue starting on and including the 31st day following the first written notice about penalty. Penalty will not be assessed against Federal agencies, States, or units of general local government.

(d) *Administrative costs for processing delinquent debts.* The debtor shall pay administrative costs of processing delinquent debts in accordance with 31 U.S.C. 3717(e)(1). Administrative costs are deemed to include, but not be limited to, costs of employing commercial firms to locate the debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt, etc. States and units of general local government shall be liable for administrative costs to the extent authorized under the common law or other statutory or contractual authority. A debt is deemed to be delinquent if it remains unpaid for 30 days after the initial demand for payment and if the debtor has not entered into a repayment agreement satisfactory to FEMA. A debt is also deemed delinquent if payment is not made by the date specified in FEMA's initial written notification or in the applicable contractual agreement.

(e) *Standards for waiver of interest, penalties and charges.*

* * * * *

(5) If it is determined that the debtor is unable to pay, as shown by complete and sworn statements as to his or her assets and projected income, then interest, penalties and charges may be waived in whole or in part. If the principal outstanding amount of the debt exceeds $2,500, the determination shall be made by the ACO. If the principal outstanding amount of the debt is $2,500 or less, the determination may be made by the DCO or the ACO.

* * * * *

(h) *Collection of interest and penalties while an appeal is pending.* If the debtor notes an appeal either as to the existence or the amount of the debt, interest and penalties may be waived or suspended by the ACO under the following circumstances:

(1) In the case of a State or a unit of general local government, interest shall be assessed on those amounts found due after the appeal process is completed and shall run from the time that the debtor government was first provided written notice by FEMA that interest would be assessed. However, the ACO may waive interest in whole or in part if the State or unit of general local government:

(i) Shows that its taxes or revenues will be insufficient to enable the government to meet essential government expenses.

(ii) Substantially prevails in its appeal, and pays the entire balance found to be due within 90 days of the decision on the appeal being transmitted to the appellant government.

If the State or unit of general local government is to be considered for waiver of interest due to governmental hardship, the ACO may demand that such government provide such economic, financial, or demographic data that the ACO believes to be necessary to assist her to him in determining the existence of such hardship.

* * * * *

9. Section 11.50(c) is revised to read as follows:

§ 11.50 Standards for compromise of debts.

* * * * *

(c) *Authority.* Only the ACO may compromise debts of more than $2,500. Debts of $2,500 or less may be compromised by the ACO or the DCO. Debts exceeding $20,000 may be compromised only after approval by the Department of Justice in accordance with 4 CFR 103.1(b).

§ 11.51 [Amended]

10. That part of § 11.51(b)(4) which now reads "§ 11.50(a)(3)" is revised to read "§ 11.50(a)(4)".

11. That part of § 11.51(c) which reads "4 CFR 101.4(a)" is revised to read "4 CFR 104.1(b)".

12. Section 11.54 is amended by revising paragraph (a) to read as follows:

§ 11.54 Contracts with debt collection agencies.

(a) *General.* FEMA shall utilize mandatory, government-wide debt collection agency contracts negotiated by the General Services Administration or the Department of the Treasury to effect collection of debts owed FEMA.

* * * * *

Date: November 12, 1988.

Julius W. Becton, Jr.,

Director.

[FR Doc. 88-26712 Filed 11-21-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85-388; FCC 88-320]

Public Land Mobile Services; Cellular Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The Commission has determined that the same five-year fill-in period that it established for the Metropolitan Statistical Areas should be applied to the Rural Service Areas; that such period should be measured from the date of the grant of the original authorization of each system in the RSA; that the transfer policy set forth in the Fourth Notice of Proposed Rulemaking in the same docket should be adopted; and that § 22.31(a)(1) of the Rules should be amended to provide that all applications for each RSA be mutually exclusive regardless of whether their proposed Cellular Geographic Service Areas overlap. Such action is needed in order to provide RSA carriers a reasonable opportunity to adjust their business plans to developing demand. The intended effect of the proposed action is to eliminate delays in the processing of applications for unserved portions of the RSAs and to ensure that cellular radiospectrum is used in as efficient a manner as possible. This action is taken in response to comments received as a result of our Fourth Notice of Proposed Rulemaking, published, 53 FR 25633, July 8, 1988.

EFFECTIVE DATE: December 16, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Anne Moebes, Mobile Services Division, Common Carrier Bureau; tele: 202-632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order adopted October 13, 1988, and released October, 1988. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Fifth Report and Order

1. This order applies the fill-in policy and procedures adopted for the Metropolitan Statistical Areas (MSAs) to the Rural Service Areas (RSAs) and amends the current cellular rules for RSAs accordingly. The amended rules adopting the proposed fill-in policy govern service to the area within each RSA that is not part of the Cellular Geographic Service Area (CGSA) of the licensee for that RSA. Adoption of this order permits RSA licensees to file applications to serve areas outside of their CGSA, but within the RSA, for a period of five years from the date of the initial authorization in each system in an RSA without being subject to competing applications. Thereafter, non-licensees could file applications for unserved portions of the RSA.

The order also provides, as set forth in the Fourth Notice of Proposed Rulemaking, that if the original licensee transfers its entire authorization for its CGSA within the RSA, the fill-in period and the right of expansion without competing applications transfers with the authorization. However, if the licensee transfers any other CGSA in the RSA or less than the total original CGSA authorization to another party, such party would have no right to expand the area covered by the transferred authorization without competing applications unless the transferee obtains a statement signed by the transferor agreeing to such an expansion.

This order is adopted based on the Commission's conclusion that in order to provide RSA carriers a reasonable opportunity to assess and adjust their business plans to developing demand, a fill-in policy for RSAs, similar to that used for MSAs, is preferable to other alternatives.

2. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) it is certified that the final rule will not have a significant impact on a substantial number of small entities. This action is expected to promote efficient and expedient cellular fill-in service to the RSAs and lower the administrative costs associated with the process of granting fill-in licenses in these RSAs.

Ordering Clauses

3. Authority for this rulemaking is contained in sections 1, 4 (i) and (j), 301, 303, and 309 of the Communications Act of 1934, as amended, and section 553 of the Administrative Procedure Act.

4. Accordingly, it is ordered, that Part 22 of the Rules is amended as specified in the Rules Section appended to this summary. The amendments adopted and the policies established in this Order for cellular licensees to expand their CGSAs with the RSA will become effective December 16, 1988.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendments to Part 22 of the Commission's Rules

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.31 is amended by revising paragraph (a)(1) introductory text and adding new paragraph (f) to read as follows:

§ 22.31 Mutually exclusive applications.

(a) * * *

(1) In the Domestic Public Cellular Radio Telecommunications Service, applications shall be considered mutually exclusive if their proposed Cellular Geographic Service Areas (CGSAs) overlap in such a way that a grant of one would preclude the grant of one or more of the other applications, except that applications for the same Rural Service Area (RSA) will be considered mutually exclusive regardless of whether their CGSAs overlap.

* * * * *

(f) *Rural Service Areas.* The provisions of this paragraph shall not apply to initial applications to serve a Rural Cellular Area in the Domestic Public Cellular Radio Telecommunications Service. Applications by entities other than licensees or grantees for a particular RSA to serve unserved areas outside the presently authorized CGSA but within the Rural Service Area (RSA) will not be accepted for five years from the grant of the original construction authorization of each system in an RSA. During this five-year period the original licensee will be authorized to expand its system into unserved areas of the RSA. If the original licensee/grantee transfers its *entire* RSA authorization, consisting of one or more CGSAs to another party, the remainder of the five-year period and the exclusive right of expansion without competing applications transfers with the authorization. However, if the licensee/grantee transfers *less* that its total original authorization to another party, the transferee will not obtain the exclusive right to expand the areas covered by the transferred authorization unless the transferee obtains a signed statement transferring such rights from the licensee/grantee. After the five-year period has expired, the provisions of § 22.31(a)(1) will apply.

[FR Doc. 88-26450 Filed 11-21-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-9; FCC 88-323]

Radio Reading Services; Noncommercial FM Licensees Allowable Costs

AGENCY: Federal Communications Commission.

ACTION: Policy Statement clarifying § 73.593 regarding Subsidiairy Communications Authorizations.

SUMMARY: In this *Policy Statement,* the Commission sets guidelines for the types of costs that noncommercial FM radio stations may recover from radio reading services in return for the service's use of the station's subcarrier.

DATE: *Effective date:* November 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Policy and Rules Division, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In re Allowable Costs for Noncommercial FM Licensees To Charge Radio Reading Services, MM Docket No. 87-9.

Policy Statement

Adopted: October 13, 1988.
Released: October 28, 1988.

I. Introduction

1. This *Policy Statement* is intended to clarify the kinds of costs that a noncommercial radio station may properly charge to the operators of a radio reading service to lease the station's subcarrier capacity pursuant to § 73.593 of our rules.[1] The *Policy*

[1] Section 73.593 reads as follows:

The licensee of a noncommercial educational FM station is not required to use its subcarrier capacity, but if it chooses to do so, it is governed by §§ 73.293 through 73.295 of the Commission's rules regarding

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Statement is the outgrowth of the *Notice of Inquiry* [2] issued last year in the above-captioned proceeding which solicited public comment on the issue of permissible charges to radio reading services. In that *Notice*, we specifically asked commenters to provide us with itemized statements of the charges being assessed by stations for reading service operations. We also asked commenters to identify those types of costs that would not be incurred by the stations but for the provisions of the reading services.

2. In response to the *Notice*, thirteen parties filed comments; eight parties filed reply comments; and two parties filed supplemental comments.[3] Commenters included the Association of Radio Reading Services (ARRS), which represents over 70 radio reading services, approximately three-quarters of the services in operation, the National Association of Broadcasters (NAB), the Corporation for Public Broadcasting (CPB) and National Public Radio (NPR). Additionally, a number of universities which hold public FM licenses filed joint comments.[4] The comments clearly indicate that there is substantial confusion as to what costs can legitimately be charged by a public radio station to the operators of a radio reading service. Having carefully reviewed and analyzed the comments, we are issuing this *Policy Statement* in an attempt to eliminate any existing confusion on the matter of the appropriateness of certain charges by noncommercial FM stations to radio reading services.

II. Background

A. Radio Reading Services

3. A radio reading service is an aural service provided primarily for the blind and visually impaired through the use of an FM licensee's subcarrier capacity. The FM station's subcarrier, which is used to broadcast the reading service, is an *inherent* part of the composite FM baseband frequency.[5] A specially equipped receiver is required by those using the reading service. There are approximately 112 of these services operating in 40 states. Reading services can provide an alternative form of access to printed materials like newspapers, magazines, and books for those with visual or other physical handicaps that will not permit the holding or reading or printed materials.

B. The Previous Rule

4. Historically, § 73.593 restricted public radio stations' use of their subcarrier capacity to those services that were consistent with the noncommercial educational purposes of such stations.[6] This rule specifically identified what types of programs could be offered on a public radio station's subcarrier. One of the permitted uses was for programs intended to serve the special needs and interests of the handicapped. If a station used its subcarrier for any noncommercial educational purpose, it was permitted to charge an amount which could not exceed the sum of the approximate cost of conducting the subcarrier operation (including purchase or lease of equipment, course material, personnel services, etc.), and the general overhead and operational costs attributable to such operations.[7] Thus, under the version of § 73.593 in force prior to 1983, the Commission was careful to ensure that public radio stations could be fully reimbursed for the cost incurred as a result of the use of their subcarriers. This meant that public radio stations could recover both their incremental costs [8] and those portions of their overhead costs [9] resulting from the noncommercial services they were allowed to offer.

C. The Public Broadcasting Amendments Act of 1981

5. In 1981, Congress passed the Public Broadcasting Amendments Act which amended the Communications Act to give public broadcasters, *inter alia*, the authority to use their facilities for remunerative purposes so long as such profit making activities did not interfere with the station's public telecommunications responsibilities.[10] Anticipating that federal government spending for public broadcasting would be reduced, Congress wanted to ensure that public stations would not be hampered in their independent efforts to generate funds for their operations from nongovernmental sources.[11]

D. Report and Order in BC Docket No. 82–1

6. In response to the Public Broadcasting Amendments Act, we reexamined the restrictions imposed by § 73.593 of our rules. In the *Report and Order* in BC Docket No. 82–1,[12] we concluded that the restrictions limiting public FM stations to noncommercial uses of their subcarriers were inconsistent with the spirit of the legislation. Consequently, we amended § 73.593 to authorize noncommercial FM licensees to use their subcarriers for the same range of remunerative activities as commercial radio stations.[13] We emphasized in the *Report and Order* that public stations are not required to use their subcarrier capacity. However, we made it clear that if a public station chooses to use its subcarrier for a commercial purpose, it is obligated to accommodate a radio reading service on its other subcarrier or ensure the availability of other subcarrier capacity.[14] We also explained that

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the types of permissible subcarrier uses and the manner in which subcarrier operations shall be conducted; Provided, however, that remunerative use of a station's subcarrier capacity shall not be detrimental to the provision of existing or potential radio reading services for the blind or otherwise inconsistent with its public broadcasting responsibilities.

[2] *Amendment of Part 73, Subpart C of the Commission's Rules to Require Licensees of Noncommercial FM Stations to Accommodate Requests by Radio Reading Services to Utilize Their Subcarrier Capacity on an Incremental Cost Justified Basis*, 2 FCC Rcd. 680 (1987)(*Memorandum Opinion and Order and Notice of Inquiry* in MM Docket 87–9) [hereinafter either *MO&O* or *Notice*], 52 FR 8084, March 16, 1987 and 52 FR 25892, July 9, 1987.

[3] A list of the parties filing comments may be found in Appendix 1.

[4] The Arizona Board of Regents, James Madison University, Kent State University, Ohio State University and WSKG Telecommunications Council filed joint comments [hereinafter Joint Commenters].

[5] Generally, FM licensees have two subcarrier channels available for use although it is technically possible to have more. Commission rules permit an FM licensee to authorize independent groups to use the station's subcarrier capacity. Section 73.295 of the rules outlines the conditions for subcarrier use and provides an illustrative list of permitted services which include specialized foreign language programming, paging and calling, telemetry, and traffic control signal switching. In order to use a station's subcarrier frequency, certain special equipment is necessary, i.e., a subcarrier generator, an audio compressor/limiter, a dedicated broadcast line, and some type of diagnostic equipment which monitors the baseband signal. During monophonic program transmissions, multiplex subcarriers and their significant sidebands must be within the 20 kHz to 99 kHz range; during stereophonic transmissions, their range is restricted to between 53 kHz and 99 kHz.

[6] 47 CFR 73.593(a)(1)(iii) (1982).

[7] *Id.*

[8] As we explain further below in paragraph 13, by incremental costs we mean those additional costs caused by the provision of the radio reading service's use of the subcarrier.

[9] By overhead costs we mean the basic costs of operating the station, such as salaries, rent and maintenance that would not be changed by the existence or nonexistence of the radio reading service.

[10] Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97–35, 1231, 95 Stat. 357, 731 (codified at 47 U.S.C. 399B (1982)).

[11] 127 Cong. Rec. S 9037–38 (1981) (colloquy between Sen. Schmitt and Sen. Packwood); *see also* S. REP. No. 98, 97th Cong., 1st Session (1981).

[12] *See Amendment of Sections 73.593 of the Commission's Rules*. 48 FR 28608 (June 9, 1983), 54 RR 2d 25, 35 (hereinafter *Report and Order*).

[13] *Id.* at 28614.

[14] *Id.* We provided some general guidelines for stations in accommodating radio reading services but left the implementation to each station's

Continued

public stations would not be required "to bear the fixed or operating costs" of the reading services, but would be expected to provide such services on a "not-for-profit basis." [15] In so doing, we attempted to balance the needs of the stations to receive reimbursement for their services with the public benefit of radio reading services for the handicapped.

7. A year after we issued our *Report and Order*, it became apparent that there was still some confusion over what charges public stations were allowed to recover from radio reading services under our amended rule. Mr. John C. DeWitt wrote a letter on behalf of The American Foundation for the Blind, Inc., asking the Commission to clarify, among other things, whether the not-for-profit charges that public stations passed on to reading services had to be based only on demonstrable incremental costs or whether they could also be based on percentages or proportional bases of the station's operating budget. In response, the Mass Media Bureau, in a letter dated December 3, 1984, stated that a "station should not exceed the incremental costs of conducting the radio reading service" but that "the applicable portion of the station's overhead that relates to providing the radio reading service is included in the incremental costs." [16] Even after the Bureau issued this letter, there was still confusion among noncommercial radio stations and reading service organizations as to allowable and nonallowable costs.

E. Petition for Rulemaking

8. On May 20, 1986, the Association of Radio Reading Services, Inc. (ARRS) filed a *Petition for Rulemaking*, requesting that the Commission impose a mandatory access requirement on noncommercial educational FM licensees to lease their subcarrier capacity to radio reading services and to require that such stations charge only nondiscriminatory, incremental cost-justified rates.[17] ARRS also urged the Commission to issue guidelines that would clarify the term "incremental costs" as initially used in the bureau letter. In its petition, ARRS stresseed that neither the *Report and Order*, nor the rule itself, specified what constituted profit or what costs may be assessed by public stations in determining rates for reading services.

9. Several commenters filed in response to ARRS' petition. Only one commenter strongly favored the imposition of a mandatory access requirement. Other commenters pointed out that ARRS' proposal did not take into account other noncommercial public uses of a station's subcarrier and that mandatory access by reading services would raise serious first amendment issues. Evidence was also presented by commenters which contested ARRS' assertions that our rule amendment had adversely affected the growth of reading services. The comments also revealed a great disparity in the amount that public stations charge radio reading services.

F. Memorandum Opinion and Order and Notice of Inquiry

10. On the basis of the record developed, we issued, on January 16, 1987, a combination *Memorandum Opinion and Order* and *Notice of Inquiry* in the proceeding.[18] In the *MO&O* portion of the item, we rejected a proposal to amend § 73.593 of our rules to *require* that noncommercial FM radio licensees accommodate radio reading services. The record, however, was not adequate to allow us to respond to ARRS' request for a clearer definition of incremental costs, and we determined that it would be inappropriate to attempt to resolve specific cost issues without a further record. In particular, we recognized the need to clarify what portion of general overhead costs can be appropriately allocated to a radio reading service. Accordingly, we issued the companion *Notice of Inquiry* now before us so that we could determine the actual cost of operating a radio reading service and proffer guidance concerning which costs could be passed on to the reading services. The *Notice* asked commenters to explain the apparent cost disparities in charges to radio reading services and to indicate whether our imposition of a particular method of calculating costs would be beneficial.

G. Comments

11. The commenters responding to the *Notice* divided fairly evenly into two groups—the radio reading services and the noncommercial FM stations. Generally, the radio reading services challenged the legitimacy of some or all of the costs charged by the stations; some services provided detailed information on costs or attached itemized bills to substantiate their allegations. On the other hand, the public stations defended their methods of calculating costs and asserted that the rates they charge reading services do not generate profits. Generally, public stations urged the Commission to rely on their discretion in determining costs, asserting that they are in the best position to determine the actual cost to their stations of operating a reading service.

12. *Reasons Given for Cost Disparities.* In our *Notice*, we requested an explanation for the wide disparity in the costs charged to reading services by public radio stations. The comments indicated that the disparities in costs charged are the result of a number of factors. First, noncommercial radio stations may use different methods to determine what to charge a radio reading service. Stations can charge flat, monthly, or hourly rates and the stations often differ in the manner in which these rates are set, e.g., some stations merely discount the rate charged by commercial stations for use of their subcarrier. Second, some stations charge reading services not only for the use of the subcarrier capacity, but also for a variety of other costs including transmission costs, personnel, maintenance and rental of space for housing subcarrier equipment. Third, some disparities can be traced to the fact that the equipment and labor costs associated with the implementation of the reading service vary from station to station.[19] For example, the need for and the cost of capital equipment to activate the subcarrier can vary widely depending on the state of the existing technical facilities at a given public radio station. Fourth, cost differentials can result from stations charging less than the maximum allowable costs under our rules. Finally, stations differ in whether, and to what extent, they charge radio reading services separately for the numerous types of optional or ancillary services [20] that a station may

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discretion. *Id.* n. 31. In addition, "ensuring the availability of other subcarrier capacity" could mean that the non-commercial radio station has assured the availability of another radio station's subcarrier for use by radio reading services.

[15] *Id.* n. 32.

[16] Letter from Chief, Mass Media Bureau to John C. DeWitt (December 3, 1984) (hereinafter Bureau letter).

[17] The petition was placed on public notice on July 14, 1986 (Report No. 1605).

[18] *See* n. 2, *supra*.

[19] ARRS and other reading services assert that the actual cost variations, resulting from differing equipment and operating costs in different markets, do not correlate with the variations in the fees being charged. Reply Comments of ARRS at 3.

[20] By "ancillary services" we mean services provided by the station that are in addition to the minimum services necessary to make a subcarrier available to the radio reading service. Examples of ancillary services include advertising assistance, the transmission link from the reading service's separate studio to the station's facilities, and use of studio space. Some stations provide ancillary services and some do not. Of those stations that do provide ancillary services, some explicitly charge for those services and some do not. In the main, the

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offer to a reading service, e.g., production personnel, studio time, or customer support.

13. *Incremental Costs.* A review of the comments reveals that most of the costs which can be potentially passed on to radio reading services fall into the category of either incremental costs or overhead costs. Incremental costs are typically thought to mean the costs that a noncommercial station would not incur *but for* the provision of subcarrier capacity to a reading service. For a definition and discussion of overhead costs, *see* ¶ 14. Most commenters have agreed that it is appropriate to pass on these incremental costs to reading services. However, there is some disagreement as to exactly which costs are "incremental." [21]

14. The reading services who commented offered varying descriptions of these costs which perhaps reflect the different types of services furnished by each station. Most reading services agree, however, that the following would be included in the category of incremental costs:

(1) The cost of electrical power consumed by the subcarrier equipment used by that reading service.[22]

(2) A prorated portion of maintenance and repair costs of subcarrier equipment.[23]

(3) A prorated portion of purchase and installation costs of subcarrier equipment, if the station does not already own this equipment.[24]

In addition, there was general agreement among most commenting reading services that the following should *not* be included in a definition of "incremental costs":

(1) The cost of transmitting the subcarrier's signal from the station's studio to its transmitter.[25]

(2) "Interference prevention" costs.[26]

(3) Lost opportunity costs resulting from accommodating a reading service instead of a fully remunerative lessee.

(4) Check processing or similar fees, unless these same fees have been imposed on the radio stations by their banks.[27]

15. *Overhead Costs.* The stations differ with the reading services on whether they are allowable,[28] with most stations preferring a definition which would allow a proportional charge for such costs. More specifically, they assert that these overhead costs should be chargeable to the reading service only to the extent that the reading service "draws on or shares existing personnel, services or facilities of the station." [29]

16. As indicated above, there was substantial disagreement among the commenters regarding the treatment of overhead costs. Overhead costs are generally understood by the commenters to be the basic costs of operating the public station, which would include salaries, rent, maintenance, etc. In responding to our request for information about actual charges, most of the commenters focused on this issue of the allocation of overhead costs between the stations and reading services. Several reading services contest the legitimacy of charging overhead costs. For example, Written Communications Radio Service (WCRS), an Ohio radio reading service, disputed the validity of numerous overhead costs charged to it by WKSU, Kent State University's noncommercial FM station.[30] Specifically, WCRS contested the allocation by WKSU of a percentage of the salary of each station employee to their reading service,[31] a $20.00 a month charge to process their monthly reimbursement checks for the telephone bill, 2% of the station's annual electric bill, an annual $100 fee for renting a rack that holds the subcarrier monitoring equipment and an annual $1,300.00 legal fee.[32]

17. WKSU claimed that complaints of WCRS stemmed from its basic disagreement with allowing *any* overhead costs to be charged to its operations. WKSU and the Joint Commenters insist that overhead costs are properly chargeable to the reading services, but only to the extent that the reading services draw on or share a station's existing personnel, services or facilities.[33]

18. The controversy concerning the recovery of overhead costs is specifically illustrated in the area of transmission costs. Several reading services object to being charged for transmission of the subcarrier signal between a public station's studio and its transmitter[s].[34] First, they argue that the subcarrier signal is an inherent part of the FM signal once the subcarrier has been activated. Consequently, the subcarrier signal is transmitted simultaneously with the station's main signal. The reading services stress that the signal delivery system is an integral part of the broadcasting system and is in operation regardless of whether or not a radio reading service uses it. The West Virginia Broadcasting Authority (WVEBA), on the other hand, argues that this proceeding should be strictly confined to the costs that can be recovered for the use of the subcarrier and therefore contends that the question of the charges that it passes on to the West Virginia Radio Reading Service (WVRRS) for the use of its microwave transmission system are outside the scope of the *Notice*.[35] Nevertheless, WVEBA defends its charges as proper.[36]

commenters agree that because these services are optional, their procurement should be the subject of a separate contract between the reading service and the noncommercial station. *See, e.g.,* Reply of ARRS at 7 n.5.

[21] Joint Comments at 3; Reply Comments of West Virginia Educational Broadcasting Authority at 1; Reply Comments of Kent State University at 3; Comments of National Public Radio at 2.

[22] Reply Comments of ARRS at 6; WCRS Complaint Letter at 1, see infra, note 30; Comments of Youngstown Radio Reading Service at 2 (asserting that "[i]t is estimated that 75 watts of power is all that is required to completely operate the SCA programming. On an average figure of 11¢ per kilowatt hour this totals to an annual electrical charge of approximately $75.00").

[23] Joint Commenters at 6; Reply Comments of ARRS at 6.

[24] Reply Comments of ARRS at 6.

[25] Reply Comments of ARRS at 7.

[26] NPR, in their Comments (at 5) claims that spectrum analyzers costing $6,000 to $15,000 and specially trained personnel are needed to control subcarrier channel interference with the main channel. However, ARRS, in its Reply Comments (at 7), disputed this claim. They assert that: [s]ubcarrier frequencies do not, in fact, *cause* interference with main channel signals. A station maintained in accordance with good engineering practices will not experience interference to either the main or subcarrier signals. Thus, costs related to monitoring or repairing interference would be incurred in any event, and are not the fault of the SCA user.

[27] Reply Comment of ARRS at 9.

[28] ARRS and other reading services would have the FCC prohibit stations from charging for any overhead costs not occasioned *exclusively* by the reading service's use of their subcarrier.

[29] Joint Commenters at 6.

[30] WCRS filed a complaint against WKSU–FM at Kent State University concerning these charges. This complaint, which was filed on April 10, 1985, remained pending, awaiting the resolution of the cost issues in this proceeding, until September 9, 1988, when the Commission received a letter from WCRS stating its intention to withdraw its complaint due to the resolution of differences between itself and WKSU–FM. In that letter, WCRS also withdrew its comments of June 10, 1987, and it's council's reply dated July 8, 1985.

[31] Included were percentages of the salaries of the Director of Engineering (5% or $1,276.00), the Operations Coordinator (3% or $862.00), the Business Manager (1% or $197.00), the Secretary (.5% or $98.00), and the Board Operator (33⅓% or $8,552.00).

[32] Comments of Written Communications Reading Service (WCRS) at 4–19.

[33] Reply Comments of WKSU–Kent State at 4.

[34] *See* Comments of the West Virginia Radio Reading Service at 7.

[35] Reply Comments of WVEBA at 3–4.

[36] WVEBA charges WVRRS the same price that it charges other non-profit groups for the use of its facilities. These charges are based on fixed charges that it established for use of its microwave system.

Continued

19. In addition to questioning the specific types of overhead charges being passed on to them, several of the reading services challenged the legitimacy of charging for these overhead costs on an hourly basis. They contend that hourly charges were developed on the basis of fixed yearly costs for electricity or dedicated telephone lines. These costs are generally computed on the assumption of continuous twenty-four hour a day service or availability. Those reading services that operated for a limited number of hours during the day stated that, when they wanted to increase their hours of operation, they were required to pay a predetermined hourly rate for each additional hour. Consequently, they assert that they are being charged twice for service costs which do not vary with the number of hours that the reading service is operating.

20. *Suggestions for Clarifying Recoverable Costs.* The commenters were unanimous in requesting that the Commission provide some form of guidance to the parties concerning legitimately allowable charges under § 73.593. The commenters made a variety of suggestions aimed at clarifying legitimately recoverable charges. The Corporation for Public Broadcasting (CPB) and the majority of reading services urged the Commission to delineate recoverable cost categories. They believe that such illustrative lists will provide a simple reference point for rejecting or accepting certain types of charges. Additionally, some of the reading services recommended that the Commission develop a list of costs that can not be charged to the radio reading services. A number of reading services suggested that the Commission require itemization of incremental costs in order to document the exact nature of the additional costs that are attributed to reading service operations. Other commenters suggested that stations bill reading services separately for transmission related charges, ancillary services and repairs. Many reading services suggested abolishing hourly charging as a method for calculating appropriate charges in order to preclude stations from passing on fixed yearly operating costs more than once. The reading services offered these suggestions to encourage precision in ascertaining the actual costs that are directly attributable to reading services' operations.

21. The stations argue that such precision, particularly with regard to overhead costs, is impossible. Furthermore, the stations stress that by insisting on such precision, especially in calculating a portion of overhead costs, the reading services are really trying to avoid paying their fair share of the basic operating costs. The stations urge the Commission to defer to their discretion and their good faith estimates of costs that are allowable within the Commission's not-for-profit standard. They assert that they are in the best position to make the determination of the proper charges to the lessees of their subcarriers. Furthermore, they contend that we should intervene only where there is clear evidence of abuse of our standards.

22. Several stations argue that the Commission should also defer to their discretion as to how they charge—i.e., whether their charges are based on hourly, monthly or flat rates. In contrast, other stations, as well as the NAB and CPB, advocate pricing or accounting guidelines to address the issue of the method used to compute charges.[37] They believe that such guidelines will provide adequate parameters within which they can make their pricing determinations, yet still provide sufficient flexibility to negotiate contracts which would be appropriate in different circumstances. These same parties oppose imposing a universally applicable formula for calculating costs because they believe that such a solution would be too rigid to encompass the myriad of unique arrangements between stations and the reading services.

III. Discussion

23. We are persuaded from the record that there is confusion regarding allowable and nonallowable charges for providing radio reading services under our not-for-profit standard. We are issuing this *Policy Statement* to provide clarification of allowable costs under the not-for-profit standard inherent in § 73.593. In the following discussion, first, we will define incremental costs. Second, we will address the difficult issue of allocating general overhead costs between reading services and public stations. Third, we will provide examples of nonallowable costs under § 73.593.[38]

24. *Incremental Costs.* If a station decides to charge a radio reading service for use of its subcarrier capacity, the station may recover the actual incremental costs of providing that service. By "incremental costs" (in the context of this proceeding), we mean those additional out-of-pocket costs that are caused by the operation of the reading service. Clear examples of such costs are the capital cost of the equipment needed for and used in the provision of the subcarrier signal to the radio reading service and any modification to a microwave system or a station's transmitter necessitated in order to so deliver the subcarrier signal. Other examples include the additional cost of the power necessary to operate the subcarrier and associated equipment, and any specific repairs related to subcarrier equipment or operations. Of course, if the station uses a single subcarrier during certain hours to provide radio reading services and during other hours to provide some other, profit-making service, then the radio reading service should be charged a fraction of the total subcarrier equipment and electricity cost and other related costs. The costs ancillary services or products that the station may choose to provide to the reading services may also be treated as incremental costs and are also recoverable.[39]

25. A similar incremental cost standard was embodied in the previous version of the rule. In using that standard in the original rule, we contemplated that a public station should be compensated for any out-of-pocket expenses incurred in allowing

WVEBA argues that WVRRS is not obliged to use its microwave system but can use telephone company lines to deliver the reading service's subcarrier signal.

[37] Precise guidelines were suggested in the following areas: the actual cost bases for pricing, the frequency with which such bases should be recalculated, allowable methods for allocating costs of jointly and concurrently operated facilities and allowable methods for calculating cost overhead rates. *See* Comments of CPB at 7–8.

[38] A CPB survey conducted in connection with this proceeding demonstrates that many stations offer their subcarriers to independent groups at no charge. Of the 295 public radio stations that responded to CPB's survey, 83 reported that they use one or more subcarrier channels for reading services. Of these 83 stations, 32 operate their own reading services, and 21 offer their facilities to independent groups at no charge. CPB Comments at 4–5. Although we are providing cost guidelines in this *Policy Statement*, we wish to emphasize that a public station is not required to charge a reading service for the use of its subcarrier or any ancillary services it provides.

[39] Ancillary services are not services that must be provided by the station as a consequence of providing the subcarrier. Rather, ancillary services are additional services that the station and the radio reading service agree will be provided, even though the radio reading service could use the subcarrier without using these added services. Given the non-essential nature of these ancillary services, FCC guidelines in this area are inappropriate and whatever steps the parties decide to take to provide such services is purely within their discretion.

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one of the permitted uses on its subcarrier.[40] In other words, the station should be no better or worse off than it was before leasing the subcarrier. When we carved out a priority for reading services in § 73.593, we intended that reading services continue to operate under this same not-for-profit standard.[41]

26. *Overhead Costs.* We recognize that the question of apportioning general overhead costs provides the most troublesome area for the parties to resolve. It should be clear from our definition of incremental costs that any costs which are directly attributable to the reading service are recoverable.[42] We do not wish to disallow reimbursement for such costs, since that might create the incentive for public radio stations to decline to provide reading services altogether, if to do so would cause them to incur losses. Refusal to offer reading services would force them to refrain from offering their subcarriers to paying subscribers as well. Overhead costs, such as salaries, rent and maintenance that are incurred by the station in the absence of the radio reading service and that are not increased when the station provides a subcarrier to the radio reading service, would not be allowed. As previously noted, some reading services concede that partial reimbursement for fixed overhead or salary costs should be allowed. Moreover, most stations prefer a definition which would allow a proportional charge for such costs only to the extent that the reading service "draws on or shares existing personnel, services or facilities of the station." Paragraph 13, *supra*. With these views in mind, we will permit stations to recover only those fixed overhead costs which are attributable to the provision of a reading service and can be so justified by the radio station.[43] To more closely determine such attributable costs, we suggest that both parties attempt to foresee the nature of those fixed overhead costs that might appropriately be charged to radio reading services and that they explore the possibility of including itemized charges or an explicit provision for these costs in their contracts. Another option would be to negotiate a completely separate billing.

27. *Nonallowable Costs.* Several of the reading services and ARRS urged us to designate certain costs as nonallowable. For example, WCRS suggests that fees for check processing, rental of space for the subcarrier equipment, general salaries, legal fees and transmission links like those between the station and transmitter charged by Kent State be included in this category. We consider all but the last item to be general overhead costs and therefore the parties should be guided by our previous discussion of this area. We note further that it would be improper for the station to charge any sort of fees such as check processing or similar fees to the radio reading service unless such fees are routinely charged to the station by the bank which processes those checks or unless those fees can be justified as related to the incremental cost of processing payments made by the radio reading service.

28. With regard to the costs for the transmission links between the station and the transmitter, we believe that such costs generally cannot be passed on to the reading service unless there is evidence that the reading service creates an incremental cost burden on such links. Technically, a subcarrier is an inherent part of the FM bandwidth used by the public radio station. Once the reading service has paid for the capital equipment necessary to activate the subcarrier—including additional channels for microwave systems if necessary—the actual transmission of the subcarrier signal, in most cases, would not cost the station any more than it pays to transmit its own signal. However, to the extent that the existence of the subcarrier decreases the quality of the station's signal or increases the possibility of interference to the transmission links, then any costs which the station incurs to correct those problems are properly chargeable to the radio reading service.

29. Another type of cost that is generally not recoverable is lost revenues from an actual or potential alternative lessee. Under normal circumstances, a broadcasting station, whether commercial or noncommercial, can view the opportunity cost of using a subcarrier for any particular purpose as the revenue it has given up by not using the subcarrier for its most profitable alternative use. This principle is not applicable here, however, where the public radio stations are restricted by our rules in the use of their subcarrier capacity. In the *Report and Order* adopting the current version of § 73.593, we determined that any station that wishes to lease its subcarrier capacity must first accommodate interested radio reading services itself or ensure the availability of other subcarrier capacity.[44] Thus, under our rule, there is no allowable alternative usage for the subcarrier capacity if it is needed to provide a reading service to its community. Given this policy, it is not appropriate for the station to charge the radio reading service the value of the subcarrier in a profitable alternative usage. If the public station is leasing another subcarrier for remunerative purposes, it will not be permitted to charge the reading service the difference between its remunerative alternative and the reading service's incremental costs. Both the Communications Act and our rules require these stations to fulfill their public telecommunications responsibilities before profiting from the use of their facilities.

30. We have provided the general guidelines discussed above as a framework within which the parties can negotiate private contracts to govern their particular arrangements for services. Such contracts give both parties the flexibility to account for variations in equipment, facilities, services and products involved in providing reading services. We urge the parties to enter into clear contracts outlining their respective cost obligations within the guidelines provided here. These contracts should provide the opportunity to the parties to specify the types of costs that will be recovered by stations from reading services and the method by which these costs are to be estimated.

31. We believe that providing general guidelines as to allowable and nonallowable costs is preferable to establishing cost computation formulas or more rigid cost categories as requested by numerous commenters. First, it is unlikely that the Commission could develop formulas or precise cost categories that would contemplate the wide variety of equipment, facilities, products and services involved in providing reading services. Thus, any fixed formulas or cost categories developed by the Commission would likely be incomplete or overbroad. Second, stations and reading services are in the best position to determine the incremental costs of the reading services in each particular situation. Imposition of rigid formulas or cost categories would remove this needed discretion and force the parties to comply with rules that may be arbitrary or inapplicable to their arrangements.

32. We also believe that general guidelines discussed above are more appropriate than the specific accounting or pricing guidelines recommended by some commenters for a number of reasons. To account for the variability in a station's equipment and facilities, as well as variability in their accounting methods, we would have to devise a range of accounting guidelines from which the stations could choose. For example, with regard to the capital cost of the subcarrier equipment, we would have to devise accounting guidelines that take into account the alternative methods of depreciating capital and amortizing loans. We believe that the resources that would be required to develop said guidelines would be unwarranted. First, it is not clear that the scope of the problem requires such an expenditure of resources. The CPB study[45] suggests that most stations and radio reading services are not disputing allowable costs. For those that are, we believe that the general guidance offered in the *Policy Statement* will provide the parties with a sufficient basis on which to resolve any disagreements. Finally, we are reluctant to promulgate detailed accounting regulations because we believe it is an unnecessary intrusion into the parties' discretion.

33. Authority for this action is contained in sections 4(i), 303, 307(b) of the Communications Act of 1934 as amended. In addition, the proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

34. Accordingly, it is ordered, that this proceeding is terminated.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

APPENDIX 1

Comments

Alaska Information Radio Reading and Education Services
Association of Radio Reading Services
Bible Broadcasting Network, Inc.
Brown Broadcasting Service, Inc.
Corporation for Public Broadcasting
Joint Comments (Arizona Board of Regents, Board of Visitors of James Madison University, Kent State University, Ohio State University, WSKG Telecommunications Council)
KJZZ/Sun Sounds Station
National Public Radio
Ohio Radio Reading Service
West Virginia Educational Broadcasting Authority
Written Communications Radio Service
West Virginia Radio Reading Service (West Virginia Library Commission)
Youngstown Radio Reading Service

Reply Comments

Association of Radio Reading Services
Corporation for Public Broadcasting
WKSU-Kent State University
National Association of Broadcasters
National Public Radio
Summit County Society for the Blind
West Virginia Educational Broadcasting Authority
West Virginia Radio Reading Service (West Virginia Library Commission) [filed two replies]

Supplemental Comments

Corporation for Public Broadcasting
Written Communications Radio Service

[FR Doc. 88-26984 Filed 11-21-88; 8:45 am]

BILLING CODE 6712-01-M

[40] In former § 73.593, several noncommercial educational uses were permitted, including programs for the aged, ethnic minorities, and professional groups. *See* 47 CFR 73.593 (1981).

[41] 47 CFR 73.593.

[42] This *Policy Statement* supercedes the Bureau letter of December 3, 1984.

[43] This might include, e.g., a station engineer who verifies the reliability of the technical installations, including the subcarrier's operation. Under these circumstances, a portion of the engineer's salary may be reasonably allocated to reading service subcarrier usage. Similarly, rent, administration, management and other appropriate costs attributable to reading service can be recovered if justified and segregable from other fixed overhead costs.

[44] *See* n. 14, *supra*.

[45] *See* n. 38 *supra*.

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1004, 1041, and 1042

[Ex Parte No. 55 (Sub-No. 67)]

Interpretations and Routing Regulations [1]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: The Commission adopts final rules consolidating its interpretations and routing regulations, now found at 49 CFR Parts 1004, 1041, and 1042, in a central location at 49 CFR Part 1004, as described below. The new rules also streamline and update these regulations, and remove obsolete matter. No substantive changes are intended. Grouping related provisions in one place should aid the general public in finding and using the material. The proposed rule was published in the **Federal Register** on August 5, 1988 at 53 FR 29498.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Richard L. Gagnon, (202) 275-7711 or Richard B. Felder, (202) 275-7691. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services, (202) 275-1721.)

Environmental and Energy Considerations

We conclude that the proposed action will not significantly affect either the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that the final rules will not have a significant economic impact on a substantial number of small entities. Our restructuring entails no substantive change is existing regulations, and the rules being removed are either obsolete or not used. Additionally, by consolidating the remaining regulations in one CFR part, we are facilitating their use by all persons.

Index

List of Subjects in 49 CFR Parts 1004, 1041, and 1042

Administrative practice and procedure, Motor carriers, Freight forwarders.

Decided November 14, 1988.

By the Commission, Chairman Gardison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations Parts 1004, 1041, and 1042 are amended as follows:

1. Part 1004 is revised to read as follows:

PART 1004—INTERPRETATIONS AND ROUTING REGULATIONS

Subpart A—Interpretation of Operating Rights

Sec.

1004.1 Return transportation.
1004.2 Authority to serve a particular area—construction.
1004.3 Incidental for-hire transportation by private carrier.

Subpart B—Miscellaneous Interpretations

1004.10 Gifts, donations, and hospitality by carriers.

Subpart C—Routing Regulations

1004.20 Regular-route motor passenger service.
1004.21 Traversal authority.
1004.22 Tacking.

[1] Previously titled "Non-Rail Interpretations and Routing Regulations."

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Sec.

1004.23 Elimination of routing restrictions—regular-rout carriers.
1004.24 Elimination of gateways—regular- and irregular-route carriers.
1004.25 Redesignated highways.
1004.26 Misrouting, adjustment of claims.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553. Subpart C also issued under 49 U.S.C. 10922(h)(1)(A).

Subpart A—Interpretation of Operating Rights

§ 1004.1 Return transportation.

A motor carrier may transport containers and other shipping devices inbound if they were used in its outbound transportation of the base commodity.

§ 1004.2 Authority to serve a particular area—construction.

(a) *Service at municipality.* A motor carrier of property, motor passenger carrier of express, and household goods freight forwarder authorized to serve a municipality may serve all points within that municipality's commercial zone not beyond the territorial limits, if any, fixed in such authority.

(b) *Service at unincorporated community.* A motor carrier of property, motor passenger carrier of express, and household goods freight forwarder, authorized to serve an unincorporated community having a post office of the same name, may serve all points in the United States not beyond the territorial limits, if any, fixed in such authority, as follows: (1) All points within 3 miles of the post office in such unincorporated community if it has a population of less than 2,500; within 4 miles if it has a population of 2,500 but less than 25,000; and within 6 miles if it has a population of 25,000 or more; (2) at all points in any municipality any part of which is within the limits described in paragraph (b)(1) of this section; and (3) at all points in any municipality wholly surrounded, or so surrounded except for a water boundary, by any municipality included under the terms of paragraph (b)(2) of this section.

§ 1004.3 Incidental for-hire transportation by private carrier.

A private carrier engaged in incidental for-hire transportation shall conduct such operations independently of its private operations and shall maintain separate records for each.

Subpart B—Miscellaneous Interpretations

§ 1004.10 Gifts, donations, and hospitality by carriers.

It is unlawful for any common carrier engaged in interstate or foreign commerce to offer, make, or cause any undue or unreasonable preference or advantage to any person. Gifts of services or anything of substantial value to particular shippers or their representatives are considered violations of the law. Expenditures for such gifts may not support requests to increase carrier rates. The Commission shall take appropriate enforcement action to redress such unlawful expenditures.

Subpart C—Routing Regulations

§ 1004.20 Regular-route motor passenger service.

A regular-route motor passenger common carrier may serve: (a) All points on, and all municipalities wholly within and all unincorporated areas within 1 airline mile of, its authorized route; and (b) all military posts, airports, schools, and similar establishments that may be entered within 1 airline mile of its authorized route, but operations within any part of such establishment more than 1 airline mile from such authorized route may not be over a public road.

§ 1004.21 Traversal authority.

(a) *Scope.* An irregular-route motor carrier may operate between authorized service points over any reasonably direct or logical route unless expressly prohibited.

(b) *Requirements.* Before commencing operations, the carrier must, regarding each State traversed: (1) Notify the State regulatory body in writing, attaching a copy of its operating rights; (2) designate a process agent; and (3) comply with 49 CFR 1043.8.

§ 1004.22 Tacking.

Unless expressly prohibited, a motor common carrier of property holding separate authorities which have common service points may join, or "tack," those authorities at the common point, or "gateway," for the purpose of performing through service as follows: (a) Regular-route authorities may be tacked with one another; (b) regular-route authority may be tacked with irregular-route authority; (c) irregular-route authorities may be tacked with one another if the authorities were granted pursuant to applications filed on or before November 23, 1973, and the distance between the points at which service is provided, when measured through the gateway point, is 300 miles or less; and (d) irregular-route authorities may be tacked with one another if the authorities involved contain a specific provision granting the right to tack.

§ 1004.23 Elimination of routing restrictions—regular-route carriers.

(a) *Regular-route authorities—construction.* All certificates that, either singly or in combination, authorize the transportation by a motor common carrier of property over (1) a single regular route or (2) over two or more regular routes that can lawfully be tacked at a common service point, shall be construed as authorizing transportation between authorized service points over any available route.

(b) *Service at authorized points.* A common carrier departing from its authorized service routes under paragraph (a) of this section shall continue to serve points authorized to be served on or in connection with its authorized service routes.

(c) *Intermediate point service.* A common carrier conducting operations under paragraph (a) of this section may serve points on, and within 1 airline mile of, an alternative route it elects to use if all the following conditions are met: (1) The carrier is authorized to serve all intermediate points (without regard to nominal restrictions) on the underlying service route; (2) the alternative route involves the use of a superhighway (*i.e.*, a limited access highway with split-level crossings); (3) the alternative superhighway route, including highways connecting the superhighway portion of the route with the carrier's authorized service route, (i) extends in the same general direction as the carrier's authorized service route and (ii) is wholly within 25 airline miles of the carrier's authorized service route; and (4) service is provided in the same manner as, and subject to any restrictions that apply to, service over the authorized service route.

§ 1004.24 Elimination of gateways—regular- and irregular-route carriers.

A motor common carrier of property holding separate grants of authority (including regular-route authority), one or more of which authorizes transportation over irregular routes, where the authorities have a common service point at which they can lawfully be tacked to perform through service, may perform such through service over any available route.

§ 1004.25 Redesignated highways.

Where a highway over which a regular-route motor common carrier of property is authorized to operate is assigned a new designation, such as a new number, letter, or name, the carrier shall advise the Commission by letter, and shall provide information concerning the new and the old

designation, the points between which the highway is redesignated, and each place where the highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.

§ 1004.26 Misrouting, adjustment of claims.

Carriers should adjust claims for damages resulting from misrouting. Where a carrier admits responsibility for billing, forwarding, or diverting a shipment over a higher rated route than that directed by the shipper or otherwise available, the misrouting carrier should refund the difference to the shipper (or reimburse the delivering carrier, as the case may be). Where the misrouting carrier alleges justification for using the higher rated route, the Commission may, at its discretion and upon appropriate petition, determine or express an advisory opinion on the lawfulness of such routing. This interpretation must not be used to evade or defeat tariff rates or to meet the rate of a competing carrier or route, nor to relieve a shipper from responsibility for routing instructions. Damages caused by misrouting are not overcharges. Therefore, adjustments of claims for misrouting against rail and water carriers are governed by 49 U.S.C. 11706 (c)(1) and (d).

PART 1041—[REMOVED]

2. Part 1041 is removed.

PART 1042—[REMOVED]

3. Part 1042 is removed.

[FR Doc. 88-26961 Filed 11-21-88; 8:45 am]
BILLING CODE 7035-01-M

VOL 53 ISS 225 NOV 22 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 225
Tuesday, November 22, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASW-39]

Proposed Establishment of Transition Area; George West, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area located at George West, TX. The development of a new VOR/DME-A standard instrument approach procedure (SIAP) to the Live oak County Airport, utilizing the Three Rivers Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME-A to the Live Oak County Airport. Coincident with this action is the changing of the status of the airport from visual flight rules (VFR) to instrument flight rules (IFR).

DATE: Comments must be received on or before December 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, docket No. 88-ASW-39, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-39." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a transition area at George West, TX. The development of a new VOR/DME-A SIAP to the Live Oak County Airport, utilizing the Three Rivers VORTAC, has necessitated this proposal. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME-A SIAP. Coincident with this action is the changing of the status of the Live Oak County Airport from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority deletated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

George West, TX [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Live Oak County Airport (latitude 28° 22' 0" N., longitude 98° 07' 10" W.), and within 2 miles each side of the 168° radial of the Three Rivers VORTAC (latitude 28° 30' 18" N., longitude 98° 09' 03" W.), extending from the 6.5-mile radius area to 9 miles northwest of the Live Oak County Airport.

Issued in Forth Worth, TX, on November 8, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-26957 Filed 11-21-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-40]

Proposed Revision of Transition Area; Laredo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise that transition area located at Laredo, TX. The development of a new VOR/DME RWY 17 standard instrument approach procedure (SIAP) to the Rancho Blanca Airport, utilizing the Laredo Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new VOR/DME RWY 17 SIAP to the Rancho Blanca Airport. Coincident with this action is the changing of the status of the Rancho Balanca Airport from visual flight rules (VFR) to instrument flight rules (IFR).

DATE: Comments must be received on or before December 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-40, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-40." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing data for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing data for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also requst a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Laredo, TX. The development of a new VOR/DME RWY 17 SIAP to the Rancho Blanca Airport, utilizing the Laredo VORTAC, has necessitated this proposed revision. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this revision is the changing of the status of the Rancho Blanca Airport from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAY, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Laredo, TX [Amended]

By inserting after the next to last sentence of the legal description: "and within an 8.0-mile radius of the Rancho Blanca Airport (latitude 27°16'29" N., longitude 99°28'51" W.). That airspace within Mexico is excluded."

Issued in Fort Worth, TX, on November 8, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-26958 Filed 11-21-88; 8:45 am]

BILLING CODE 4910-13-M

VOL 53 ISS 225 NO 22 1988 UMI

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[Notice No. 676; Ref: Notice Nos. 658, 668]

Label Disclosure for Brandy and Whiskey Treated With Wood

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 658, a notice of proposed rulemaking, published in the **Federal Register** on May 24, 1988 (53 FR 18574). ATF has received two requests to extend the comment period in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the notice.

DATE: Written comments must be received on or before January 6, 1989.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 ATTN: Notice No. 658.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1988, ATF published Notice No. 658 in the **Federal Register** (53 FR 18574) proposing to amend the regulations in 27 CFR Part 5 concerning the wording, and placement, of the disclosure statement for brandy and whiskey treated with wood.

The Bureau also solicited comments on a petition it received, filed jointly by the Federation des Exportateurs de Vins et Spirituex (FEVS) and the National Association of Beverage Importers, Inc. (NABI), concerning the usage and label disclosure for brandy treated with an infusion of oak chips, i.e., the Boise method. This petition was supported by several U.S. brandy producers.

The comment period for Notice No. 658, initially scheduled to close on August 22, 1988, was extended until November 22, 1988 (Notice No. 668, August 16, 1988; 53 FR 30848).

Subsequent to the publication of Notice No. 668, ATF received two requests to extend the comment period an additional 90 days, from November 22, 1988 to February 22, 1989. In the first request, submitted by the petitioners, it was noted that further coordination was necessary between the foreign (French) producers and the U.S. importers in order to fully complete the necessary analysis of all the complex issues raised in Notice No. 658. The petitioners also stated that additional time is needed to coordinate their joint position with the French Government and the Commission of the European Communities.

Similar concerns were expressed in a letter the Bureau received from the French Embassy, on behalf of the French Government.

ATF finds the reasons mentioned above to be valid. However, the Bureau is extending the comment period until January 6, 1989, rather than February 22, as requested by the petitioners. The Bureau believes that a comment period totaling approximately 225 days is a sufficient amount of time for all interested parties to respond.

Drafting Information

The author of this document is Coordinator James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

November 16, 1988.

W.T. Drake,

Acting Director.

[FR Doc. 88–26911 Filed 11–21–88; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to simplify the Indiana Surface Mining Rules which address diversions.

This notice sets forth the times and locations that the Indiana program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on December 22, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on December 19, 1988; requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on December 7, 1988.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. Copies of the Indiana program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Indianapolis Field Office.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, 575 N. Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 269–2609 (266–6166 after Nov. 18, 1988)

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492

Indiana Department of Natural Resources, Division of Reclamation, 309 West Washington Street, Indianapolis, Indiana 46204, Telephone: (317) 232–1555.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, (317) 269–2609. (266–6166 after Nov. 18, 1988).

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Information regarding general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions taken with regard to the Indiana program and program amendments can be found in 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Amendments

The proposed amendments are the result of a State initiated revision of its rules by the State of Indiana. The amendment is intended to simplify the diversion rules by departing from construction standards and incorporating performance standards. The amendments are summarized below: Amendments to 310 Indiana Administrative Code (IAC) 12–5–18 address: Hydrologic balance; diversion; general requirements. Previous language oriented toward design and construction criteria is deleted. New language addresses general performance requirements.

Amendments to 310 IAC 12–5–19 address: Hydrologic balance; diversions of perennial streams, intermittent streams, miscellaneous flows; supplemental requirements. Again, previous language oriented toward design and construction criteria is deleted. New language addresses supplemental performance requirements.

Amendments to 310 IAC 12–5–19 address: Underground mining; hydrologic balance; diversions; general requirements. Again, previous language oriented toward design and construction criteria is deleted. New language addresses supplemental performance requirements.

Amendments to 310 IAC 12–5–85 address: Underground mining; diversions of perennial streams, intermittent streams with a watershed greater than one square mile, miscellaneous flows; stream channel diversions; supplemental requirements. Again, previous language oriented toward design and construction criteria is deleted. New language addresses supplemental performance requirements.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Indiana satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m. on December 7, 1988. If two or more people do not request an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: November 4, 1988.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 88–26971 Filed 11–21–88; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Amendments; Revision of Ohio Program Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern five program administrative rules and are intended to revise the State program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on December 22, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on December 19, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on December 7, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492.

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Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated October 20, 1988 (Administrative Record No. OH–1110), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed amendments to the Ohio program at Ohio Administrative Code (OAC) sections 1501:13–3–07(B)(8); 13–4–01(B); 13–7–01(A)(6)(c)(ii); 13–7–05(A)(3), (A)(5)(b)(i), (A)(6), (A)(7)(i), and (ii), and (B)(2)(e); and 13–9–07(K)(1)(b). The proposed changes were initiated by Ohio and are briefly summarized below:

(1) OAC section 1501:13–3–07 paragraph (B)(8): This paragraph is being rewritten to incorporate language identical with 30 CFR 764.15(a)(7). This language allows the determination by Ohio not to process a petition for the designation of lands unsuitable for coal mining operations if the petition concerns lands for which a complete permit application has been filed and the first newspaper notice has been published.

(2) OAC section 1501:13–4–01 paragraph (B): Punctuation is being added to this paragraph pursuant to OSMRE's approval of Ohio Program Amendment No. 31 no May 27, 1988 (53 FR 19283). In that approval, the Director of OSMRE found that the existing punctuation could be misinterpreted as limiting the applicability of the Bald Eagle Protection Act to Federal and Indian lands rather than all lands.

(3) OAC section 1501:13–7–01 paragraph (A)(6)(c)(ii): This paragraph is being rewritten to reflect Ohio's current practice of billing operators for bond on incremental areas that have not been affected but which will be affected according to the annual map.

(4) OAC section 1501:13–7–05 paragraph (A)(3): The words "mining operation" are being added in the phrase "in the locality of the coal mining operation."

(5) OAC section 1501:13–7–05 paragraphs (A)(3), (A)(6), and (a)(7)(i) and (ii): These paragraphs are being rewritten to substitute the phrase "bond release conference" for "informal conference."

(6) OAC section 1501:13–7–05 paragraph (A)(5)(b)(i): The words "approved mining and reclamation" are being added to the phrase "of the approved mining and reclamation plan."

(7) OAC section 1501:13–7–05 paragraph (B)(2)(e): This paragraph concerning Phase II bond release is being added for consistency with OAC section 1501:13–9–04 (G)(2)(e) which requires the retention of temporary sedimentation ponds for at least two years after final seeding.

(8) OAC section 1501:13–9–07 paragraph (K)(1)(b): This paragraph is being rewritten to adopt a six-hour precipitation event as the design standard for diversions around valley and head-of-hollow fills. This proposed standard is identical to that of the comparable Federal regulation at 30 CFR 816.72(a)(2).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the ecommenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to coimment at the public hearing should contact the person listed under **"FOR MORE INFORMATION CONTACT"** by 4:00 p.m. on December 7, 1988. If no one requests an opportunity to comment at a pulbic hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meetings

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each public meeting will be made a part of Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 4, 1988.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 88–26972 Filed 11–4–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area; Key West Harbor at the U.S. Naval Air Station

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers is proposing to establish two new restricted areas and amend the existing boundaries of several existing restricted areas in the waters contiguous to the Key West Naval Air Station located on Key West, Fleming Key and Boca Chica Key in Monroe County, Florida. The request includes the reestablishment of certain areas contiguous to the westerly shoreline of Key West, the establishment of a new restricted area on Boca Chica Key north from U.S. Highway No. 1 and expanding the existing restricted area on Boca Chica Key. The restricted areas are required for the safety and security of Naval facilities and personnel.

DATE: Written comments must be submitted on or before December 22, 1988.

ADDRESS: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Lonnie Shepardson at (904) 791–1677 or Mr. Ralph T. Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Naval Air Station (NAS), Key West, Florida, has requested the Corps of Engineers amend the regulations in 33 CFR 334.610 to reestablish two restricted areas which were previously deleted; establish a new restricted area on Boca Chica Key, north from Highway No. 1 and expand the existing restricted area on Boca Chica Key. The proposed changes to each of the restricted area are briefly described as follows.

Area 1. An existing restricted area located on the south shoreline of Truman Annex. No changes proposed.

Area 2. West shoreline and harbor of Truman Annex. This proposed rule change would reestablish an area that was deleted in 1980. This area is needed to protect the Navy harbor at the Harry S. Truman Annex of the NAS. The area was previously deleted because the harbor portion of Truman Annex had been reported as surplus and was being processed for disposal by the Government. The area, minus a small portion at the north end, was subsequently withdrawn from surplus and has been reactivated for use by Navy combatant ships.

Area 3. Trumbo Point Annex and Coast Guard Areas. This proposal would also reestablish an area that was declared surplus and deleted. Pier D–3 was declared surplus but is now actively used by the Navy.

Area 4. Fleming Key—No changes proposed.

Area 5. Southwest shore of NAS, Boca Chica Key. The restricted area would be expanded to include the NAS fuel pier and adjacent turning basin and the Navy Marina.

Area 6. Southeastern shoreline of NAS, Boca Chica Key. This is a new restricted area extending 150 yards out from the shoreline which would prevent access to the area located behind the rifle and pistol firing ranges.

Economic Assessment and Certification

This proposed rule is submitted with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. I hereby certify that if adopted, this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Restricted areas.

In consideration of the above, the Corps of Engineers is proposing to amend 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.610 is revised to read as follows:

§ 334.610 Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted area.

(a) *The areas.* (1) All waters within 100 yards of the south shoreline of the Harry S. Truman Annex, beginning at a point on the shore at Latitude 24°32'45.3"N, Longitude 81°47'51"W; thence to a point 100 yards due south of the south end of Whitehead Street at Latitude 24°32'42.3"N, Longitude 81°47'51"W; thence extending westerly, paralleling the southerly shoreline of the Harry S. Truman Annex, to Latitude 24°32'37.6"N, Longitude 81°48'32"W, thence northerly to the shore at Latitude 24°32'41"N, Longitude 81°48'31"W (Area #1).

(2) All waters within 100 yards of the westerly shoreline of the Harry S. Truman Annex and all waters within a portion of the Truman Annex Harbor, as defined by a line beginning on the shore at Latitude 24°33'00"N, Longitude 81°48'41.7"W; thence to a point 100 yards due west at Latitude 24°33'00"N, Longitude 81°48'45"W; thence northerly, paralleling the westerly shoreline of the Harry S. Truman Annex, including a portion of the Harry S. Truman Annex Harbor entrance, to Latitude 24°33'23"N, Longitude 81°48'37"W; thence southeasterly to the shore (sea wall) at Latitude 24°33'19.3"N, Longitude 81°48'28.7"W (Area #2).

(3) All waters within 100 yards of the Coast Guard Station and the westerly end of Trumbo Point Annex beginning at the shore at Latitude 24°33'47.6"N, Longitude 81°47'55.6"W; thence westerly to Latitude 24°33'48"N, Longitude 81°48'00.9"W; thence due south to Latitude 24°33'45.8"N, Longitude 81°48'00.9"W, thence westerly to Latitude 24°33'47"N, Longitude 81°48'12"W; thence northerly to Latitude 24°34'06.2"N, Longitude 81°48'10"W; thence easterly to a point joining the existing restricted area around Fleming key at Latitude 24°34'03.3"N, Longitude 81°47'55"W (Area #3).

(4) Beginning at the last point designated in area 3 at Latitude 24°34'03.3"N, Longitude 81°47'55"W; proceed northwesterly, maintaining a distance of 100 yards from the shoreline of Fleming Key, except for a clearance of approximately 400 yards across the mouth of Fleming Cove near the southwesterly end of Fleming Key, continue around Fleming Key to a point easterly of the southeast corner of Fleming Key at Latitude 24°34'00.8"N, Longitude 81°47'37.5"W; thence easterly to Latitude 24°33'57.6"N, Longitude 81°47'20"W; thence southerly to a point on the shore at Latitude 24°33'54.7"N, Longitude 81°47'20.9"W (Area #4).

(5) All waters contiguous to the southwesterly shoreline of Boca Chica Key beginning at a point on the southwest shoreline at Latitude 24°33'24"N, Longitude 81°42'30"W; proceed due south 100 yards to Latitude 24°33'20.4"N, Longitude 81°42'30"W; thence, maintaining a distance of 100 yards from the shoreline, proceed westerly and northerly to Latitude 24°34'03"N, Longitude 81°42'47"W; thence due north to a point at the easterly end of U.S. Highway 1 (Boca Chica Channel) bridge at Latitude 24°34'39"N, Longitude 81°42'47"W (Area #5).

(6) All waters within 150 yards of the shoreline along a portion of the easterly shore of the Naval Air Station on Boca Chica Key between a point on the shoreline at Latitude 24°35'14"N, Longitude 81°41'44"W; proceed in a northerly direction, maintaining 150 yards off shore, to Latitude 24°35'45.1"N, Longitude 81°41'55.2"W; thence to a point on the shore at Latitude 24°35'42"N, Longitude 81°42'00"W (Area #6).

(b) *The regulations.* (1) Entering or crossing in any of the restricted areas

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described in paragraph (a) of this section is prohibited except as follows: privately owned vessels, properly registered and bearing identification in accordance with Federal and/or State laws and rgulations, and at night showing lights required by Federal laws and Coast Guard regulations or, if no constant lights are required, then a bright white light showing all around the horizon, may transit the following portions of the restricted areas:

(i) The channel, approximately 75 yards in width, extending from the northwest corner of Pier D–3 of Trumbo Point Annex, eastward beneath the Fleming Key bridge and along the north shore of Trumbo Point Annex.

(ii) A channel 150 feet in width which extends easterly from the main ship channel into Key West Bight, the northerly edge of which channel passes 25 feet south of the Trumbo Point Annex piers on the north side of the Bight. While the legitimate access of privately owned vessels to facilities of Key West Bight is unimpeded, it is prohibited to moor, anchor, or fish within 50 feet of any U.S. Government-owned pier of craft.

(iii) The dredged portion of Boca Chica channel from its seaward end to a point due south of the east end of the Boca Chica bridge.

(iv) All of the portion of restricted area number 2 that lies between the Truman Annex Mole and the Key West Harbor Range Channel. The transit zone extends to the northeasterly corner of the Truman Annex Mole, thence to the northeasterly corner of the restricted area at Latitude 24°33'19.3"N, Longitude 81°48'28.7"W.

(2) Stopping or landing by other than government-owned vessels and certain specifically authorized private craft in any of the restricted areas described in paragraph (a) of this section is prohibited.

(3) Vessels using the restricted channel areas described in paragraph (b(1)(i), (ii), (iii), and (iv) of this section shall proceed at speeds commensurate with minimum wake.

(c) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station, Key West, Florida, and such agencies as he/she may designate.

Dated: November 10, 1988.

Patrick J. Kelly,

Brigadier General, USA, Director of Civil Works.

[FR Doc. 88–26902 Filed 11–21–88; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 721 and 799

[OPTS–42075B and OPTS–50568; FRL–3480–2]

Pentabromoethylbenzene; Withdrawal of Proposed Test Rule; Proposed Significant New Use of Chemical Substance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule and proposed rule.

SUMMARY: This document withdraws a proposed rulemaking to require testing of pentabromoethylbenzene (PEB, CAS Number 85–22–3) for chemical fate and environmental effects under section 4 of the Toxic Substances Control Act (TSCA). Data received by EPA since proposal of the test rule indicate that there is currently no ongoing or intended manufacture or processing of the chemical substance. Additionally, EPA is herein proposing a significant new use rule (SNUR) under section 5(a)(2) of TSCA which would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of PEB for any use. EPA believes that PEB may be hazardous to human health and the environment, and that any use of PEB and activities associated with such use may result in significant human and environmental exposure. The required notice would provide EPA with the information needed to evaluate the intended use and associated activities, and an opportunity to protect against potentially adverse exposure to PEB before it can occur.

DATE: Written comments regarding the proposed SNUR should be submitted to EPA by December 22, 1988.

ADDRESS: Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M St. SW., Washington, DC 20460.

Comments regarding the proposed SNUR should include the docket control number OPTS–50568. Nonconfidential comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit XI of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St. SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: The proposed SNUR for PEB would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of PEB for any use. The required notice would provide EPA with the information needed to evaluate an intended use and associated activities, and an opportunity to protect against potentially adverse exposure to PEB before it can occur.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

I. Background of Proposed Test Rule Withdrawal

Section 4(a) of TSCA authorizes EPA to promulgate rules which require manufacturers and processors to test chemical substances and mixtures (chemicals) they manufacture or process. Data developed through these test programs are used by EPA in assessing the risks that the chemicals may present to human health and the environment.

Section 4(e) of TSCA established the Interagency Testing Committee (ITC) to recommend chemicals for priority testing consideration by EPA under section 4(a) of TSCA. The ITC designated PEB for priority consideration in its 15th Report, which was published in the **Federal Register** of November 29, 1984 (49 FR 46931). the ITC based its recommendation for health effects testing on the following factors: (1) Releases from production and use were expected to result in human exposure; and (2) there was insufficient information on the chronic effects of PEB, and toxic effects were observed in other substances having a polyhalogenated aromatic moiety. Teratogenicity testing was recommended because of lack of information.

The ITC also recommended PEB for ecological effects testing. The ITC's rationale was based on the following: (1) The purported and potential uses of PEB were evidence of its probable wide distribution; (2) PEB is structurally similar to halogenated substances that have appreciable toxicity; (3) PEB is expected to partition into soils, sediments, and biota after release; and (4) data on a structurally related substance, pentabromomethylbenzene, indicate that it is taken up by aquatic organisms and its residence time in the organisms may be relatively long. The ITC regarded this as presumptive evidence that PEB may have the potential to produce chronic effects.

EPA's response to this designation was published in the **Federal Register** of November 13, 1985 (50 FR 46785) as a proposed test rule on PEB under proposed § 799.3205. EPA proposed, pursuant to TSCA section 4(a)(1)(A) findings, that chemical fate and environmental effects testing be performed on PEB by manufacturers and processors of the substance. For a full discussion of test rule development under TSCA, and the rationale on which EPA based the proposed chemical fate and environmental effects testing, refer to the proposed test rule.

II. Decision Not To Require Testing

EPA has decided not to promulgate a rule to require testing of PEB because data available to EPA indicate that there is currently no ongoing or intended manufacture or processing of PEB. Therefore, there exist no entities that would be subject to the test rule should it be promulgated. However, to ensure that resumption of PEB production is monitored, under the authority of section 5(a)(2) of TSCA, EPA is proposing a SNUR for PEB, as described below.

III. Authority for Proposed SNUR

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5 (b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707.

IV. Applicability of General Provisions to SNURS

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed in detail in that **Federal Register** notice, and interested persons should refer to that document for further information. On July 27, 1988, EPA published final amendments to the general provisions (53 FR 28354) which would apply to this proposed SNUR, except as provided in proposed § 721.1515(b)(1). The entire text of Subpart A was published in that document; interested parties should refer to it for further information.

V. Summary of this Proposed Rule

The chemical substance which is the subject of this proposed SNUR is PEB. EPA is proposing to designate any use of PEB as a significant new use. Thus, this proposed rule would require persons who intend to manufacture, import, or process PEB for any use to notify EPA at least 90 days before such manufacture, import, or processing.

VI. Background Information on PEB

A. Production and Use Data

PEB (listed as benzene, pentabromoethyl on the TSCA Chemical Substance Inventory) has been used in the past as an additive-type flame retardant and was suggested for use in thermoset polyester resins for circuit boards, textiles, adhesives, wire and cable coatings, polyurethanes, and thermoplastic resins.

EPA reviewed the TSCA Chemical Substance Inventory Data Base and other information sources to identify current manufacturers, importers, and processors of PEB. The review indicates that all production and importation of PEB in the U.S. has been discontinued as of August 1986. It is therefore unlikely that any PEB has been processed or used since 1987.

B. Human Health Effects

A 28-day feeding study submitted to EPA pursuant to TSCA section 8(d) by a former manufacturer of PEB indicates that absorption of PEB occurs when exposure is through the oral route. In this study, PEB was administered to male and female Charles River CD rats at 100 and 1,000 parts per million in the diet. At the end of the study, the bromine content of the liver and fat was elevated in a dose-related manner (Ref. 1). Very few other data on the absorption, distribution, metabolism, and elimination of PEB were located in the available literature. However, because toxic effects (e.g., carcinogenicity) are observed in other substances having a polyhalogenated aromatic moiety, and there are no available data on the chronic toxicity of PEB, EPA is concerned that PEB may cause adverse effects in humans.

C. Environmental Effects

EPA is not aware of any information on the environmental persistence of PEB in the available literature. The structure of PEB suggests, however, by analogy to other halogenated aromatic substances, that PEB may be extremely persistent, with the aromatic part of the molecule highly resistant to biodegradation and chemical attack.

No data were found in the available literature on bioconcentration of PEB in aquatic organisms. However, estimates indicate that PEB may bioconcentrate to a significant degree (Ref. 2).

A structurally related substance, pentabromomethylbenzene, in a study with juvenile Atlantic Salmon, exhibited a fairly low uptake from water (96 hours) and from food (42 days) (Ref. 3). Depuration half-lives were 32 and 83 days for uptake from water and food, respectively. It should be noted that 96 hours is a fairly short time for evaluating chemical uptake from water, and that an extended period of testing might have resulted in much higher accumulation. The relatively long depuration half-lives also create some concern for potential chronic effects. No data were located from the available literature on the acute and chronic effects of PEB on fish, aquatic invertebrates, or plants.

Based on the foregoing data which indicate a potential for persistence and bioconcentration, the lack of data on potential chronic environmental effects, and PEB's structural similarity to substances of known toxicological

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effect, EPA is concerned that PEB may cause adverse effects to the environment.

D. Past and Current Exposure Data

EPA has little data on actual numbers of persons who have been exposed to PEB or at what levels. Current known exposures are limited to those resulting from any residues of previously manufactured or imported PEB in the environment.

VII. Objectives and Rationale for the Rule

To determine what would constitute a significant new use of PEB, EPA considered relevant information on the toxicity of the substance, likely exposures and releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this proposed rule:

1. EPA wants to ensure that it would receive notice of any company's intent to manufacture, import, or process PEB for any use before that activity begins.

2. EPA wants to ensure that it would have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacturing, importing, or processing PEB for any use.

3. EPA wants to ensure that it would be able to regulate prospective manufacturers, importers, or processors of PEB before any manufacturing, importing, or processing of PEB occurs, provided that the degree of potential health and environmental risk is sufficient to warrant such regulation.

PEB is structurally related to known and suspected carcinogenic substances. Data indicate that absorption occurs when PEB is administered orally. Additionally, evidence exists that PEB persists in the environment and may bioconcentrate. Currently, PEB is not subject to any Federal regulation that would notify the Federal Government of activities that might result in adverse exposures or releases, or provide a regulatory mechanism that could protect human health from potentially adverse exposures or protect the environment from potentially adverse releases before they occur.

EPA believes that the resumption of any use of PEB, and its related manufacture, import, or processing, has a high potential to increase the magnitude and duration of exposure to PEB as well as increasing the probability of environmental release. Given the potential toxicity of PEB, the reasonably anticipated situations that could result in exposure or release, and the lack of sufficient regulatory controls, individuals and/or the environment could be exposed to PEB at levels which may result in adverse effects.

Because EPA is concerned about potential exposure during the entire life cycle of PEB, EPA is proposing to modify § 721.5(a)(2) to require any prospective manufacturer, importer, or processor of PEB who intends to distribute the substance in commerce to submit a significant new use notice.

VIII. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions for PEB.

1. Promulgate a TSCA section 4(a)(1)(A) test rule to require any future manufacturers and processors of PEB to perform chemical fate and environmental effects testing. The data generated from such testing could supply EPA with the information relevant to a determination as to whether the manufacture, processing, or disposal presents an unreasonable risk of injury to human health or the environment. However, the promulgation of a test rule of this type may present a significant and potentially unwarranted economic barrier to the resumption of the chemical's production or importation. Alternatively, EPA believes that a SNUR notice would provide EPA with an opportunity to evaluate the intended use and associated activities before they occur, including the extent of potential environmental and human exposure for that use scenario. Thereafter, if environmental and health concerns persist, and data are still unavailable for a thorough risk assessment, EPA could regulate the proposed activities under TSCA section 5(e).

2. Promulgate a TSCA section 8(a) reporting rule for this substance. Under such a rule, EPA could require any person to report information to EPA when they intend to manufacture, import, or process PEB for any use. However, for this particular substance, the use of section 8(a) rather than SNUR authority would have several drawbacks. First, EPA would not receive sufficient advance notification of the intended activity, nor would it be able to take immediate follow-up regulatory action under section 5(e) or 5(f) to prohibit or limit the activity. In addition, EPA may not receive important information from small businesses, because such firms are exempt from section 8(a) reporting requirements. In view of the level of health and environmental concern for PEB, EPA believes that a section 8(a) rule for PEB would not meet EPA's regulatory objectives.

IX. Applicability of Proposed Rule to Uses Occurring Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the promulgation of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing as of the date of promulgation, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final; this interpretation of section 5 would make it extremely difficult for EPA to establish SNUR notice requirements.

Persons who begin commercial manufacture, importation, or processing of PEB for a significant new use designated in this proposed rule between proposal and promulgation of the SNUR may comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, importation, or processing of the substance between proposal and promulgation of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA recognizes that this interpretation of TSCA may disrupt the commercial activities of persons who begin manufacturing, importing, or processing PEB for a significant new use during the proposal period of this SNUR. However, this proposed rule constitutes notice of that potential disruption, and persons who commence the proposed significant new use prior to promulgation of the SNUR do so at their own risk.

X. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of PEB. EPA's complete economic analysis is available in the

public record for this proposed rule (OPTS–50568).

XI. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments prepare and submit a public version of the comments that EPA can place in the public file.

XII. Rulemaking Records

EPA has established a record for the TSCA section 4 proposed test rule (document control number OPTS–42075). Interested persons should refer to the proposed test rule for a listing of the record (50 FR 46785, November 13, 1985). Additionally, the record contains the following:

1. Letter from Ethyl Corporation, dated May 30, 1986, informing EPA of their concerns regarding the economic impact of the proposed tests on their production of PEB.

2. Letter from Ethyl Corporation, dated August 18, 1986, informing EPA of their decision to cease production of PEB.

EPA has established a record for the SNUR rulemaking (Document control number OPTS–50568). This record contains basic information considered by EPA in developing the proposed SNUR. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. This proposed rule.

2. The economic analysis of this proposed rule.

3. The three documents listed under **References** (Unit XIII of this preamble).

4. Letter from Ethyl Corporation, dated August 18, 1986, informing EPA of their decision to cease production of PEB.

5. ITC report on PEB.

EPA will accept additional materials for inclusion in the SNUR record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation.

Public versions of these records containing nonconfidential materials are available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holdiays in the TSCA Public Docket Office, located at Rm. NE–G004, 401 M St., SW., Washington, DC

XIII. References

1. TSCA section 8(d) submission 878214933.

2. Veith, G.D., DeFoe, D.L., and Bergstedt, B.J. "Measuring and Estimating the Bioconcentration Factor of Chemicals in Fish." *Journal of the Fishery Research Board of Canada.* 38:1040–1048. 1979.

3. Zitko, V. and Carson, W.G. "Uptake and Excretion of Chlorinated Diphenyl Ethers and Brominated Toluenes by Fish." *Chemosphere.* 6:293–301. 1977.

XIV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed SNUR would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the reporting cost for submitting a significant new use notice would be approximately $1,400 to $8,000. EPA believes that, because of the nature of the rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this proposed rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0038 to this proposed rule.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: November 1, 1988.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.1515 to read as follows:

§ 721.1515 Pentabromoethylbenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance pentabromoethylbenzene (CAS Number 85–22–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Any use.

(b) *Special requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph:

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for

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commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070-0038)

[FR Doc. 88-26941 Filed 11-21-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 221

Permanent Relocation Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This regulation establishes policy implementing FEMA's responsibility under Executive Order 12580 to provide perment relocation assistance to residents, businesses, and community facilities as part of a hazardous materials reponse action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, *as amended*, 42 U.S.C. 9601 *et seq*. This regulation will be used in conjunction with the Uniform Relocation Assistance and Real Property Acquisiton Act of 1970, as amended, and its implementing regulations, 49 CFR Part 24 (Uniform Regulations). When used with the Uniform Regulations, this regulation will provide for consistent implementation of permanent relocation programs, whether they are administered by FEMA, by another Federal Agency, or by a non-Federal entity.

DATE: Comments must be received on or before January 23, 1989.

ADDRESSES: Comments should be submitted to: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 "C" Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Charles D. Robinson, Superfund and Relocation Assistance Branch, Federal Emergency Management Agency, Room 710, 500 "C" Street SW., Washington, DC 20472, (202) 646-3805.

SUPPLEMENTARY INFORMATION: Paragraph 2(c)(1) of Executive order 12580, January 23, 1987, "Superfund Implementation", delegated to the Director of FEMA the responsibility for providing permanent relocation assistance to residents, businesses, and community facilities under CERCLA, *as amended* ("the Act"), in appropriate situations.

To date, permanent relocation assistance has been provided by FEMA at three hazardous materials sites pursutant to the Act: Globe, Arizona; Minker-Stout, Missouri; and Times Beach, Missouri. The State of Arzonia, through a cooperative agreement with FEMA, conducted the permanent relocation at Globe, Arizona. FEMA, through a contractor, conducted the permanent relocations at Minker-Stout and Times Beach, Missouri.

To provide permanent relocation assistance, FEMA works closely with the Environmental Protection Agency (EPA) at headquarters, as well as at regional levels. This working relationship is required because EPA determines when permanent relocations are required and, in consultation with FEMA, determines the funding level necesary to accomplish such relocations. To insure that the roles and responsibilities of both agencies are clearly defined for permanent and temporary relocation programs under CERCLA, an EPA/FEMA Memorandum of Understanding (MOU) was developed. The MOU was signed in April 1985. It outlines the temporary and permanent relocation assistance under CERCLA. Attachments to the MOU describe EPA/FEMA coordination for temporary and permanent relocations.

In permanent relocations, there are five major coordination points between EPA and FEMA. These points are: (1) Preliminary planning; (2) pre site-specific determination; (3) determination of need for relocation; (4) property acquisition; and (5) relocation assistance. Under preliminary planning, EPA regional offices notify FEMA Headquarters as soon as a site has been identified as having the potential for permanent relocation. When notified, FEMA has the responsibility of developing preliminary relocation plans and of providing technical assistance to EPA. Under pre site-specific determination, EPA provides FEMA with a list of properties that may have to be acquired or a legal description of the boundaries of the area where permanent relocations may be required; an indication of the need to purchase contaminated personal property or the need to have such property cleaned; a request for a cost estimate for the potential permanent relocation, or other technical assistance; and all necessary environmental clearances for relocation actions. FEMA develops cost estimates for potential permanent relocations, participates in the implementation of EPA's community relations plan, as required by section 117 of the Act, and informs States of the potential for a permanent relocation project and of the Act's requirements that States must meet before permanent relocation can be implemented using Federal resources.

FEMA must determine the State's willingness to administer the permanent relocation; to pay its portion of the total cost of the project, as required by section 104(c)(3)(C) of the Act; to accept title to acquired property pursuant to section 104(j)(2) of the Act; and to implement condemnation procedures pursuant to section 104(j) of the Act. The requirements imposed on States concerning the availability of hazardous waste disposal facilities are addressed only by States and EPA.

In the third step of this sequence, EPA provides FEMA with a determination of the need for relocation assistance, including an assessment which details the condition of the site. EPA and FEMA execute an Interagency Agreement (IAG) that authorizes funding for permanent relocation assistance and identifies the property to be acquired. Once the IAG is executed, FEMA and the State in which the hazardous material is located must negotiate and execute a cooperative agreement prior to the start of the permanent relocation project. After the FEMA/State Cooperative Agreement is signed, property owners and residents are contacted and property acquisition and relocation assistance is conducted pursuant to the cooperative agreement and the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

The fourth and fifth steps in the sequence of events are implemented either by the State or FEMA. If in the cooperative agreement between FEMA and the State, the State agrees to implement the program the State would perform these last two steps. FEMA would in either case coordinate the implementation of these last steps with EPA.

If a State implements the relocation program, it can either carry out the program with State personnel or enter into an agreement with a local government to implement the program. If FEMA conducts the program, a contractor is hired as FEMA's agent.

Temporary relocation assistance may be provided in a permanent relocation project to those residents living in property to be acquired, and to other residents whose presence at or near the site might cause a public health and safety concern. Temporary relocation assistance will be provided in accordance with FEMA regulations published at 44 CFR Part 220.

Environmental Considerations

FEMA has determined, based upon an Environmental Assessment, that this rule will not have a significant impact upon the quality of the human environment. The Environmental Assessment and a finding of no significant impact are included in the formal docket file and are available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

The Agency has determined that this rule is not a major rule under Executive Order 12291 and I certify that the rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Hence, no regulatory impact analysis has been prepared.

Information Collection Requirements

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. Submit comments on these planning requirements, including public reporting burden, to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503 marked "Attention Desk Officer for FEMA." Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing each collection requirement. The proposed rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 44 CFR Part 221

Real property acquisition, Relocation assistance, Reporting, Recordkeeping, Transportation.

It is proposed to amend Chapter I, Subchapter D, Title 44 of the Code of Federal Regulations by adding Part 221 to read as follows:

PART 221—PERMANENT RELOCATION ASSISTANCE

Subpart A—General

Sec.

221.1 Purpose
221.2 Definitions.
221.3 Program intent.
221.4 Eligibility criteria.
221.5 Duplication of benefits.
221.6 FEMA Administration.
221.7 State commitments.
221.8 State Administration.

Subpart B—Real and Personal Property Acquisition

221.9 Real property acquisition.
221.10 Personal property acquisition.

Subpart C—Relocation Assistance

221.11 Relocation assistance.

Subpart D—Payments for Moving and Related Expenses

221.12 Moving and related expenses.

Subpart E—Replacement Housing Payments.

221.13 Replacement housing payments.

Subpart F—Mobile Homes.

221.14 Mobile homes.

Authority: 42 U.S.C. 9601 *et seq.*; E.O. 12580, 3 CFR, 1987 Comp., p. 193; 49 CFR Part 24.

Subpart A—General

§ 221.1 Purpose.

This part prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA), other Federal Agencies, any State, or other entity when providing permanent relocation assistance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), *as amended*, 42 U.S.C. 9601 *et seq*. also known as Superfund. This regulation is to be used in concert with the regulations which implement the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended. Those Regulations are located at 49 CFR Part 24. (the Uniform Regulations).

§ 221.2 Definitions.

For the purpose of this part:

(a) *CERCLA or Superfund is the* Comprehensive Environmental Response, Compensation and Liability Act of 1980, *as amended*.

(b) *Cooperative Agreement* is an agreement between FEMA and a State that outlines the roles and responsibilities of the parties in implementing a CERCLA permanent relocation project.

(c) *Determination* is the decision EPA makes that permanent relocation of residents, businesses, and community facilities is required under CERCLA.

(d) *Disaster Assistance* means assistance provided as a result of major disaster declaration or emergency declaration under the Disaster Relief Act of 1974, Pub. L. 93-288.

(e) *Fair Market Value* is the price which a property will bring in a competitive and open market, the buyer and seller each acting prudently and knowledgeably. In permanent relocation programs under CERCLA, the fair market value is the value a willing buyer would have paid and a willing seller would have sold a property for in the absence of hazardous material contamination.

(f) *Interagency Agreement* is the agreement between the EPA and FEMA that identifies those property owners eligible for permanent relocation assistance, and provides funding to FEMA to cover the cost of the relocation.

(g) *Lead Federal Agency* is the Federal agency that has primary responsibility for coordinating a CERCLA response action.

(h) *Memorandum of Understanding (MOU)* is the FEMA/EPA document that outlines the Agencies responsibilities in implementing permanent and temporary relocation assistance under CERCLA.

(i) *On Scene Coordinator (OSC)* is the Federal official predesignated by the Lead Federal Agency to coordinate and direct Federal response.

(j) *Permanent Relocation Assistance* is the acquisition of real and/or personal property and the provision of assistance to residents, businesses and community facilities in finding, acquiring and/or renting replacement housing under CERCLA.

(k) *Temporary Relocation Assistance* is that assistance provided under FEMA Temporary Relocation Assistance Regulations, 44 CFR Part 220, to those persons temporarily displaced as a result of CERCLA actions.

(l) *Uniform Regulation* means the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs Regulation, 49 CFR Part 24.

§ 221.3 Program intent.

The intent of the FEMA Permanent Relocation Assistance Program is to acquire real and personal property, at a fair and equitable price, and to provide relocation assistance to eligible residents, businesses, and community facilities which are displaced for public health and safety reasons in connection with a Superfund hazardous substance response action and/or to allow the EPA or its agents to conduct clean-up activities. The program is not necessarily intended to totally compensate affected parties for all expenses and losses associated with contamination of the site.

§ 221.4 Eligibility criteria.

Permanent Relocation Assistance is provided to those residents, businesses, and community facilities determined by

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EPA to need permanent relocation in connection with a CERCLA action.

§ 221.5 Duplication of benefits.

Otherwise eligibility permanent relocation benefits shall not be provided to a relocatee if such benefits would duplicate assistance which has been or will be provided by any other governmental source. Duplication of benefits between permanent relocation and temporary relocation assistance under CERCLA, or between permanent relocation assistance and disaster assistance provided by government or private sources, is also prohibited.

§ 221.6 FEMA administration.

(a) *The Associate Director (AD)* for State and Local Programs and Support (SLPS) is responsible for the permanent relocation assistance program. The AD executes Cooperative Agreements with States for implementation of the permanent relocation programs.

(b) *The Assistant Associate Director (AAD)* for Disaster Assistance Programs (DAP) is responsible for managing the permanent relocation assistance program and site-specific operations including:

(1) Participating with EPA in preliminary site-specific planning, review of relocation options, and in determining relocation cost projections;

(2) Negotiating interagency agreements with EPA which define the scope and funding level of permanent reolcation projects;

(3) Negotiating cooperative agreements with States and other parties to address the roles and responsibilities of FEMA and other parties involved in permanent relocation programs; and

(4) Providing permanent relocation assistance.

(c) *FEMA Regional Directors* are responsible for the following:

(1) Referring all inquiries concerning permanent relocation actions to the Assistant Director, DAP; and

(2) Providing staff support to the Assistant Associate Director, DAP.

§ 221.7 State commitments.

Permanent relocation assistance can be implemented only after the State enters into a cooperative agreement with FEMA which documents its agreements to the following:

(a) To take title to all real property in accordance with section 104(j)(2) of CERCLA, as amended;

(b) To condemn property when necessary to obtain title, unless the State is able to demonstrate that State law does not authorize such condemnations;

(c) To pay the percentage of the cost of the permanent relocation program required by section 104(c)(3) of CERCLA, as amended;

(d) To restrict the use of purchased property to those purposes determined to be acceptable by State and federal health officials and to distribute proceeds of any subsequent sale on the same cost-share basis indicated in paragraph (c) of this section;

(e) To coordinate all permanent relocation activities with FEMA.

§ 221.8 State administration.

States may elect to administer permanent relocation activities in lieu of FEMA administration. When a State agrees to administer all or part of the relocation activity, the State must submit a permanent relocation plan to the Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support for FEMA approval and implement the plan in accordance with these regulations and the Uniform Regulation. The plan shall include the items listed below:

(a) Identification of the State and/or local agencies assigned relocation responsibilities;

(b) A narrative defining the scope of the relocation project to include an organization and staffing plan;

(c) Budget and estimated outlay schedule;

(d) Time frames within which tasks will be accomplished; and

(e) Procedures to be used in providing assistance.

Subpart B—Real and Personal Property Acquisition

§ 221.9 Real property acquisition.

(a) Real property will be acquired when EPA determines acquisition is necessary under CERCLA.

(b) Real property will be acquired pursuant to 49 CFR Part 24.

(c) Only real property specifically identified by EPA or the lead Federal agency by individual address or site boundaries will be acquiured.

(d) The property owner must grant the government permission to conduct CERCLA related activities on his or her property before relocation assistance may be provided to the owner.

(e) Only real property located within the site boundary at the time of the formal announcement (as defined in 49 CFR Part 24, Subpart A, § 24.2(k)(2) by EPA of the need for a permanent relocation, and which remains within the site boundaries at the time of closing, will be acquired.

§ 221.10 Personal property acquisition.

Personal property acquisition will be accomplished as prescribed in 44 CFR Part 220.13.

Subpart C—Relocation Assistance

§ 221.11 Relocation assistance.

Relocation assistance will be provided to all displaced persons pursuant to 49 Part 24 Subpart C. Additional requirements and considerations are:

(a) Those eligible for permanent relocation assistance may be required to vacate their property immediately to a temporary location because of the danger continued occupancy may pose to the health and safety of the occupants or the public.

(b) Pursuant to the requirements of Executive Order 11988 and 44 CFR Part 9, persons displaced by a CERCLA action will not be relocated to areas in a floodplain unless there are not practicable alternative housing sites.

(c) Persons displaced by a CERCLA action and who permanently relocate to an area of special hazard (as defined in the Flood Disaster Protection Act of 1973, Pub. L. 93-234) will not be eligible for federal financial assistance for acquisition or construction purposes (pursuant to section 102(a) of the Act) if they do not purchase flood insurance.

(d) Persons displaced are not eligible for assistance to relocate to special flood hazard areas of communities which do not participate in the Flood Insurance Program.

Subpart D—Payments for Moving and Related Expenses

§ 221.12 Moving and related expenses.

Payments for moving and related expenses will be provided as prescribed in 49 CFR Part 24, Subpart D.

Subpart E—Replacement Housing Payments

§ 221.13 Replacement housing payments.

Payments for replacement housing will be provided as prescribed in 49 CFR Part 24, Subpart E.

Subpart F—Mobile Homes

§ 221.14 Mobile homes.

Assistance for mobile home owners and occupants will be provided as prescribed in 49 CFR Part 24, Subpart F.

Date: November 8, 1988.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 88-27020 Filed 11-21-88; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1304, 1305, and 1308

Head Start Program

AGENCY: Office of Human Development Services (OHDS), HHS.

ACTION: Extension of comment period for NPRM pertaining to services to children with handicaps enrolled in the Head Start program.

SUMMARY: This notice amends the Notice of Proposed Rulemaking published in the **Federal Register** on October 19, 1988, by extending the period for submission of comments to January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Jane DeWeerd, (202) 755-7944.

SUPPLEMENTARY INFORMATION: On October 19, 1988, the Head Start Bureau published a Notice of Proposed Rulemaking in the **Federal Register** (53 FR 41088) proposing performance standards for services for children with handicaps enrolled in the Head Start program.

Because of an unavoidable delay in sending copies of the NPRM to grantees and interested persons we are extending the due date for submission of comments to January 19, 1989. This will allow more time for them to comment.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: November 15, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Approved: November 16, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88-27007 Filed 11-21-88; 8:45 am]

BILLING CODE 4130-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-511; FCC 88-327]

Broadcast services; Nighttime Protection for AM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to modify the required procedures for calculating root-sum-square (RSS) skywave interference levels at the groundwave service contours of Class II and Class III AM broadcast stations and the skywave service contours of Class I clear channel stations. Specifically, a reduction in the exclusion reference from 50% to 25%, and inclusion of adjacent channel signals in RSS calculations are proposed. These modifications will improve the accuracy of nighttime interference calculations, and will further limit incremental increases in the overall interference level in the AM broadcast band while still allowing the introduction of new service and changes in existing service where needed. The Commission is initiating this rulemaking proceeding as part of its review of AM technical assignment criteria looking toward improvement of the AM broadcast service.

DATES: Comments must be submitted on or before December 27, 1988 and reply comments on or before January 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steven Selwyn, Policy and Rules Division, Mass Media Bureau, (202) 254-3394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 88-511, adopted October 13, 1988, and released November 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In August 1987, the Commission released a *Notice of Inquiry* (*Inquiry*) (52 FR 31975, published August 24, 1987), which solicited comment on a number of technical issues related to general levels of interference in the AM broadcast service. Among these is the issue of whether the current method of calculating skywave interference to the nighttime groundwave service of Class II and Class III AM stations is adequate, given the number of stations now authorized to operate at night. Alternate methods for modifying the current procedure were discussed, along with the possible need for including the effects of adjacent channel skywave signals in such calculations. Subsequent consideration of this matter has led to a tentative conclusion that a similar calculation procedure may be useful in determining interference to the skywave service of Class I stations. A substantial number of comments supporting further consideration of improved methods for calculating nighttime interference were filed in response to the *Inquiry*.

2. The current method of calculating nighttime interference has two major limitations. First, calculating a station's root-sum-square (RSS) interference level using the current method results in a lower value than is appropriate because contributions of weaker stations are excluded. Thus, its use results in the gradual erosion of nighttime service as new nighttime operations are brought on the air, or as existing stations modify their facilities to increase signal strength in various directions. Second, the use of an exclusion reference (currently 50%) allows new small stations to go on the air, but can prevent modifications to larger existing stations even though the resulting interference increase may be less in the latter case.

3. The *Inquiry* set forth two alternative produres that could be used instead of the current method. One is to eliminate the exclusion altogether and instead to set a fixed limit as to how much the RSS interference level at protected station service contours could be increased by the new or modified station. This would have the advantage of consistent application to all stations, but could invite abuse of our application processes. The second alternative is to reduce the current exclusion reference, which is 50%, to a lower value such as 25%. This would improve the accuracy of the calculation, but would not correct the consistency problem. Nevertheless, the second alternative received more support from commenters. This alternative was seen by the commenters as capable of providing a modest reduction in overall interference levels without eliminating all flexibility in facility design or modification.

4. The Commission's primary objective in proposing a change in the procedures for RSS interference level calculations is to limit the incremental increase of interference that may be caused to existing stations by new stations or changes in the facilities of existing stations. However, the imposition of rigid interference constraints restricting substantially the introduction of new AM service in areas lacking it or changes to existing facilities would be undesirable. Additionally, concerns were raised by some commenters that replacing the current

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method with a one that would allow a station to increase interference by a fixed incremental amount could be subject to abuse. Such a method would need to include a procedure to preclude the filing of successive applications by a station licensee, where each application raised the level of interference to other stations by the maximum amount permitted. This might be difficult to enforce in actual practice, however, because of the administrative complexity of examining subsequently filed applications for consistency with the requirement.

5. Thus, the Commission tentatively concludes that a modification of the current RSS calculation procedure prescribed in 47 CFR 73.182(1) to change the 50 percent exclusion to a 25 percent exclusion would provide the best balance between limitations on new interference and flexibility in facility design. The 25 percent exclusion would be applied in a manner similar to the current 50 percent exclusion; that is, interfering signals would be listed in descending order of magnitude, and each signal that is less that 25 percent of the RSS of the preceding contributors would be disregarded. Although an exclusion level of 25 percent is proposed, the Commission solicits comment as to whether some other value would be better.

6. The Commission also solicits comment on whether the approximate method of determining the nighttime service of Class IV stations, as set forth in the Note following 47 CFR 73.182(a)(4) should be eliminated. The Commission questions whether it would be appropriate to retain such an approximate approach to interference computation in view of the refinements proposed herein. The Commission's Rules (47 CFR 73.182(m)) provide that objectionable interference from a co-channel station exists if the interfering field strength at the normally protected contour for the protected station from another station exceeds the value prescribed in 47 CFR 73.182(s), or the RSS divided by 20, whichever is greater. The Commission also solicits comment on whether it is desirable to retain this provision.

7. Another area of concern is adjacent channel skywave interference. 47 CFR 73.182(n) limits the amount of interference at the normally protected contour of a station from the *groundwave* signal of an adjacent channel interfering station. However, there is no corresponding limit on interference caused by adjacent channel *skywave* signals. Comments filed in response to the *Inquiry* indicated that adjacent channel skywave signals cause significant interference.

8. The majority of commenters expressed strong convictions that the current levels of interference in the AM broadcasting service border on being intolerable. Such interference, commenters argued, has perpetuated as a steady decline in the AM audience. Thus, the commenters strongly urge that the Commission revise 47 CFR 73.182, so that it more completely and accurately addresses actual interference levels.

9. Therefore, the Commission proposes to amend 47 CFR 73.182(n) to include skywave signals on first adjacent channels as well as co-channel skywave signals in the calculation of the RSS interference level. Adjacent channel skywave signals would be weighted with the appropriate first adjacent channel protection ratio in the calculation procedure. It is further proposed that the proposed 25 percent exclusion be applied to the weighted first adjacent channel skywave signals in the same manner as for co-channel interfering signals. The Commission does not believe, however, that it is necessary to consider the effect of skywave signals on second or third adjacent channels.

10. The Commission is also considering a change in the method of calculating interference to the skywave service of Class I stations. Currently, protection to the 0.5 mV/m 50 percent skywave signal of Class I stations is calculated by treating each interfering signal individually, without considering the effects of other interfering signals. The effect of multiple interfering signals was originally believed to be mitigated by the relatively limited number and geographic distribution of co-channel Class II stations on any particular clear channel frequency. However, inasmuch as an important objective of this proceeding is the consistent application of improved interference prediction criteria to current and future broadcast facilities, the Commission believes the proposed RSS computational method should be extended to cases where multiple interfering signals may affect the skywave service of Class I stations.

11. In order to limit the effect of such cumulative interference, the Commission is proposing that protection to a Class I station be determined by calculating the RSS at the 0.5 mV/m skywave or groundwave contour, whichever extends farther along each pertinent radial. Proposed new nighttime operations or modifications to existing facilities would be required to protect either the calculated RSS at any point on the protected contour or 0.5 mV/m, whichever is greater. There is presently no provision in the Commission's Rules to limit interference to the skywave service areas of Class I stations from adjacent channel skywave interference. Here also, the Commission is concerned that an increase in the number of nighttime operations on channels adjacent to clear channels could result in additional interference to Class I stations. Therefore, it is proposed to include skywave signals on first adjacent channel frequencies in the RSS calculations performed at the protected contour.

12. A final matter to be determined in regard to the calculation of the RSS interference level at the nighttime protected contour of Class I stations is the point at which interfering skywave signals are to be excluded in the RSS calculation. Because the Commission is proposing use of the 25 percent exclusion method for Class II and Class III protection, for purposes of consistency, Class I stations should be treated similarly. Nevertheless, there may be circumstances which warrant consideration of some other value. Therefore, while the Commission is proposing use of the 25 percent exclusion method when calculating the RSS for Class I stations, it recognizes that the tradeoff between the quality and quantity of service may suggest some other value as being more appropriate. Thus, interested parties are encouraged to give careful consideration to this issue.

13. There are also two related issues raised in this proceeding. First, there is the question of treatment of foreign stations. The Commission believes that the signals of Canadian and Mexican stations should be treated in the same manner as domestic stations in terms of their contribution to the calculation of co-channel and adjacent channel interference as proposed herein, to the extent such action would not conflict with applicable international agreements. Thus, until any change in the international agreements are effected, foreign facility proposals would continue to evaluated pursuant to the 50 percent exclusion method and would not be questioned on the basis of their adjacent channel skywave interference potential. Moreover, protection to foreign assignments would continue to be afforded in accordance with applicable international agreements.

14. A second area of concern is the relationship between the calculation procedures considered herein and other assignment criteria that may be considered in future rule making proceedings. Although the Commission is proceeding with this rule making at this time, there may be practical reasons for considering a delay in implementing new calculation procedures, if adopted, until consideration of other possible changes to interrelated technical assignment criteria is concluded. Rather than implementing various changes to the technical assignment criteria in a "piece meal" fashion, there may be merit in considering implementing simultaneously all the interrelated changes that may ultimately be adopted. This approach could minimize administrative burdens for the Commission, as well as uncertainties within the broadcast industry.

15. It is not the Commission's intention to require any modifications of existing facilities or applications pending at the time any changes proposed are implemented as a result of the rule changes proposed herein.

Ex Parte Information

16. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1200 *et seq.* of the Commission's Rules, 47 CFR 1.1200 *et seq.*, for rules governing permissible *ex parte* contacts.

Regulatory Flexibility Act Initial Analysis

17. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities because, the changes proposed relate only to interference calculations for AM broadcast station assignments.

Paperwork Reduction Act Statement

18. Public reporting burden for this collection of information is estimated to vary from 71 hours, 45 minutes per response to 302 hours, 30 minutes per response, with an average of 100 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Comment Information

19. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 11, 1988 and reply comments on or before January 11, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Donna R. Searcy,

Secretary.

[FR Doc. 88-26982 Filed 11-21-88; 8:45 am]

BILLING CODE 6712-01-M

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Notices

Federal Register
Vol. 53, No. 225
Tuesday, November 22, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Financial Services; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Special Committee on Financial Services of the Administrative Conference of the United States. The Committee has scheduled this meeting to develop proposed recommendations dealing with Bank Failures Risk Monitoring, and the Market for Corporate Control, based upon a report by Professors' Jonathan R. Macey of Cornell University Law School and Geoffrey Miller of the University of Chicago Law School. Copies of the Committee's report and draft recommendation may be obtained from the contact person named in this notice.

DATE: Thursday, December 8, 1988, at 9:00 a.m.

LOCATION: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

PUBLIC PARTICIPATION: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Brain C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. Telephone: (202) 254-7020.

Jeffrey S. Lubbers
Research Director.
November 16, 1988.
[FR Doc. 88-27019 Filed 11-21-88; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Cheyenne River Indian Reservation in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Cheyenne River Sioux Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Cheyenne River Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the CCC may commence upon November 1, 1988, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on November 17, 1988.

Milton Hertz,
Administrator, Agricultural Stabilization and Conservation Service.
[FR Doc. 88-27012 Filed 11-21-88; 8:45 am]
BILLING CODE 3410-05-M

Feed Grain Donations for the Crow Creek Indian Reservation in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Crow Creek Sioux Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Crow Creek Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon November 1, 1988, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on November 17, 1988.

Milton Hertz,
Administrator, Agricultural Stabilization and Conservation Service.
[FR Doc. 88-27013 Filed 11-21-88; 8:45 am]
BILLING CODE 3410-05-M

Soil Conservation Service

Sulphur Fork Creek Watershed, TN; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Sulphur Fork Creek Watershed, Cheatham, Montgomery, Robertson, and Sumner Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Jerry S. Lee, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, Nashville, TN 37203, telephone 615/736-5471.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jerry S. Lee, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for accelerated land treatment or erosion control and water quality maintenance. The planned works of improvement include conservation tillage systems, field stripcropping, grassed waterways and outlets, pasture and hayland planting, and critical area treatment. Federal financial assistance will be provided to accelerate financial and technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jerry S. Lee.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Jerry S. Lee,
State Conservationist.
Date: November 10, 1988.
[FR Doc. 88-26969 Filed 11-21-88; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Nos. 8102-01, 8102-02]

Actions Affecting Export Privileges; Athol Mayo Harrison Individually a/d/ b/a Microelectronics Research Institute

Summary

Pursuant to the October 17, 1988 recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Athol Mayo Harrison of Al Sunset Hill, Horak Avenue, Camps Bay 8001, South Africa and P.O. Box 7232, Cape Town 8012, South Africa, is denied for a period of twenty (20) years from November 23, 1983, all privileges of participating in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 768-799).

Order

On October 17, 1988 the ALJ entered his recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The basis of the ALJ's recommended Decision and Order is an agreement of the parties, which the ALJ approved. I hereby affirm that approval and the recommended Decision and Order of the ALJ. The ALJ is correct in his construction of the agreement as applying in its operative Language only to Respondent Harrison in his individual capacity. Although Harrison admits certain facts relating to Repondent Microelectronics Research Institute, his agreement with respect to denial of export privilege is limited to himself. Thus, the matter remains open with respect to Microelectronics Research Institute. If appropriate, a default order may be issued against the Institute in due time.

This constitutes final Agency action as to Athol Mayo Harrison (Docket Number 8102-01) in this matter.

Dated: November 16, 1988.

Paul Freedenberg,
Under Secretary for Export Administration.

Appearance for Dr. Harrison: Dr. Athol Mayo Harrison (pro se), Al Sunset Hill, Horak Avenue, Camps Bay 8001, South Africa, and P.O. Box 7232, Cape Town 8012, South Africa

Appearance for Agency: Anthony K. Hicks, Esq., Attorney-Advisor, Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Avenue NW., Washington, DC 20230.

Decision

This proceeding against Respondent Dr. Athol Mayo Harrison, individually and doing business as Microelectronics Research Institute ("MRI"), began with the issuance on February 2, 1988 of a Charging Letter by the Office of Export Enforcement ("Agency"), Bureau of Export Administration, U.S. Department of Commerce. This Letter was issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401-2420) (1982 and Supp. III 1985)) ("Act") and under the authority of the Export Administration Regulations (codified at 15 CFR Parts 368-399 (1988)) ("Regulations").[1]

The Charging Letter alleged that, during the period August 1982 through March 1983, Respondent Harrison, as co-owner and managing director of Respondent MRI, ordered a U.S.-origin computer and related peripherals from a U.S. company, and paid for this equipment after its delivery to MRI. Respondent Harrison made this purchase, the Charging Letter stated, at the direction of another co-owner of MRI, who was a party denied all U.S. export privileges. Such action by Respondent Harrison was taken, according to the Charging Letter, without the notification to and approval of the U.S. Department of Commerce that was required by § 387.12 of the Regulations for his participation in a transaction subject to the Regulations that benefited a person denied U.S. export privileges. The Charging Letter claimed that Respondent Harrison thus violated § 387.12 of the Regulations. The Charging Letter added that this computer equipment was controlled under the Act for national security reasons.

Prior to issuance of the Charging Letter, the U.S. export privileges of

[1] The Regulations, formerly codified at 15 CFR Parts 368-399, are redesignated as 15 CFR Parts 768-799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

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Respondent Harrison and Respondent MRI had been temporarily denied by an Order issued November 23, 1983 (48 FR 54259 (1983) ("Temporary Denial Order"). The Temporary Denial Order was modified three times: December 21, 1983 (48 FR 57347 (1983)); January 31, 1984 (49 FR 4810 (1984)); and October 30, 1984 (49 FR 44229 (1984)). None of these modifications affected the denial of U.S. export privileges to which Respondents have been subjected.

To settle the proceeding initiated by the Charging Letter, Respondent Harrison and the Agency have entered into a Consent Agreement under § 388.17 of the Regulations. In the Consent Agreement, Respondent Harrison "admits that the facts as stated in the Charging Letter are true" (Consent Agreement 2). Further in the Consent Agreement, the Agency and Respondent Harrison agree on the imposition against him of a denial of U.S. export privileges for 20 years starting from November 23, 1983, the date that the Temorary Denial Order began denying him such privileges (Consent Agreement 3–4).

The undersigned approves the terms of the Consent Agreement. These terms are implemented by the Order set forth below. Dating Respondent Harrison's 20-year denial period from the November 1983 point at which he became subject to the Temporary Denial Order gives him the benefit of the five years that his U.S. export privileges have already been denied. The results it that the Order set forth below assesses Respondent Harrison with a 15-year denial period prospectively, which is an appropriate sanction for the violation to which he has admitted.

Agency Counsel submitted a proposed order that, in addition to implementing the terms of the Consent Agreement, also would vacate the Temporary Denial Order, as modified (paragraph E of such proposed order). This proposal is declined. The Temporary Denial Order, as modified, was issued against Respondent MRI as well as against Respondent Harrison; and the record lacks sufficient grounds to vacate the Temporary Denial Order as to Respondent MRI.

Respondent Harrison claimed, in his May 16, 1988 Answer to the Charging Letter (paragraph 5), the Respondent MRI ceased to exist in 1984. The Consent Agreement recited (at 2) that Respondent Harrison so claims; and, in signing the Consent Agreement, Respondent Harrison crossed out the phrase typed in after his name that read "individually and doing business as Microelectronics Research Institute." No evidence was submitted, however, to support Respondent Harrison's claim that Respondent MRI no longer exists. Nor did the Agency make any statement about this claim, either confirming or contesting it.

According to the Consent Agreement (at 2), in 1982–83 Respondent MRI was co-owned by a party who had been denied all U.S. export privileges, and was used by such party and by Respondent Harrison as a vehicle to violate the Regulations. In the face of that record, before the temporary denial of U.S. export privileges to Respondent MRI is vacated, more is required than Respondent Harrison's claim, without support by evidence or the Agency.

Consequently, pursuant to the authority delegated to the undersigned by Part 388 of the Regulations, it is ordered as follows.

Order

I. For a period of 20 years from November 23, 1983, Respondent Athol Mayo Harrison, Al Sunset Hill, Horak Avenue, Camps Bay 8001, South Africa, and P.O. Box 7232, Cape Town 8012, South Africa, and all seccessors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which Respondent Harrison is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent Harrison appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent Harrison's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent Harrison or any related person, or whereby Respondent Harrison or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Respondent Harrison or any related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)). That disposition will constitute the sole basis for any entry regarding Respondent Harrison in the Table of Denial Orders, until modified (15 CFR Part 388, Supp. No. 1 (1988)).

Thomas W. Hoya,

Administrative Law Judge.

Date: October 17, 1988.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985).

[FR Doc. 88–26936 Filed 11–21–88; 8:45am]

BILLING CODE 3510-DT-M

International Trade Administration

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held December 9, 1988 at 10:00 a.m. in Room 3407 of the U.S. Department of Commerce, Main Commerce Building, 14th and Constitution Avenue NW., Washington, DC. The Committee provides advice about ways to promote increased exports of U.S. textiles and apparel.

Agenda

Review of export data; report on conditions in the export market; European Community Internal Market Program; export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377–4324).

Date: November 16, 1988.

Ronald I. Levin,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 88–28912 Filed 11–21–88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

November 17, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 25, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

FOR FURTHER INFORMATION CONTACT: Naomi, Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: Inasmuch as consultations held November 2–4, 1988 between the Governments of the United States and Costa Rica have not resulted in a mutually satisfactory limit for Categories 342/642, the United States Government has decided to control imports in these categories for the period May 27, 1988 through May 26, 1989.

The United States remains committed to finding a solution concerning Categories 342/642. Should such a solution be reached in further consultations with the Government of Costa Rica, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedule of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on November 7, 1988). Also see 53 FR 23304, published on June 21, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 17, 1988.

Commissioner of Customs

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 25, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 342/642, produced or manufactured in Costa Rica and exported during the twelve-month period which began on May 27, 1988 and extends through May 26, 1989, in excess of 100,934 dozen.

Textile products in Categories 342/642 which have been exported to the United States prior to May 26, 1988 shall not be subject to this directive.

Textile products in Categories 342/642 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

You are directed to charge 43,552 dozen for Category 342 and 14,497 dozen for Category 642 to the limit established in this directive for Categories 342/642. These charges are for goods imported during the period May 27, 1988 through August 31, 1988.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–26998 Filed 11–21–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

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The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Signature and Tally Record; DD Form 1907; OMB Control Number 0702–0027.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 2 minutes.

Frequency of Response: On Occasion.

Number of Respondents: 48,000.

Annual Burden Hours: 1,600.

Annual Responses: 48,000.

Needs and Uses: Signature and Tally Record is an integral part of the Defense Transportation System to provide continuous accountability and custody of classified and sensitive material when using commercial carriers. Form records the shipment transfer from one carrier to another from pickup point to delivery to the consignee.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe

Written commetns and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 17, 1988.

[FR Doc. 88–27005 Filed 11–21–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 17, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 7–8 December 1988 from 8:00 AM to 5:00 PM at the Aeronautical Systems Division, Wright-Patterson AFB, Ohio 45433.

The purpose of this meeting is to review the progress that has been made in Air Force integrated avionics programs since the summer study that was conducted in July 1986. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–27011 Filed 11–21–88; 8:45 am]

BILLING CODE 3810–01–M

USAF Scientific Advisory Board; Meeting

November 9, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet on December 15–16, 1988, from 8:00 a.m. to 5:00 p.m., at the Anser Corporation, Washington DC.

The purpose of this meeting is to prepare a briefing on the study's findings and recommendations to the Assistant Secretary of the Air Force for Acquisition. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–26975 Filed 11–21–88; 8:45 am]

BILLING CODE 3810–01–M

USAF Scientific Advisory Board; Meeting

November 10, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Science and Technology (S&T) Roadmaps Review will meet on 16 Dec 88 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to review the roadmaps for the programs in the Air Force S&T base. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–26976 Filed 11–21–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 14–15 December 1988.

Time: 0900–1700 hours, 14 December 1988; 0900–1200 hours, 15 December 1988.

Place: Crystal City, Alexandria, VA.

Agenda: The Army Science Board Ad Hoc Subgroup on Close Combat Training Strategy for the 1990's will meet to review the final outline and complete the draft report. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–27031 Filed 11–21–88; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Countermine Capabilities for Amphibious Operations will meet on December 6–7, 1988. The meeting will be held at the Mine Warfare Command, Charleston, SC. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on December 6; and commence at 8:30 a.m. and terminate at 2:00 p.m. on December 7, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to an assessment of the mine/countermine threat and current capabilities and limitations, and an evaluation of the technological approaches to detection, neutralization, marking and reporting problems. The agenda will include discussions on Navy special warfare and mine warfare programs. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: November 17, 1988.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

[FR Doc. 88–26974 Filed 11–21–88; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Grants; Advanced Coal Research; Pittsburgh Energy Technology Center

AGENCY: Department of Energy.

ACTION: Notice of restricted eligibility for the Program Solicitation No. DE–PS22–89PC89998 for Support of advanced coal research at U.S. colleges and Universities.

SUMMARY: The DOE announces that pursant to 10 CFR 600.7(b) (1) it intends to conduct a competitive Program Solicitation to award, on a restricted eligibility basis, grants to U.S. colleges, universities, and university-affiliated research institutions in suport of advanced coal research. The grants will be awarded to a limited number of proposals selected on the basis of scientific merit, subject to the availability of funds.

Text

Since the inception of the University Coal Researchy Program in FY-80 (by Congressional direction), it has been DOE's intent to maintain and upgrade educational, training, and research capabilities of our universities and colleges in the fields of science and technology related to coal. The involvement of professors and students to generate fresh research ideas and ensure a future supply of coal scientists and engineers is a key purpose of this program. To assure continued achievement of these goals, U.S. colleges, universities, and university-affiliated research institutions may submit applications in response to this annual solicitation, provided the following criteria are met: (1) The Principal Investigator listed on the application is a teaching professor at the submitting university, (2) at least one student registered at the university is to receive compensation for work performed in the conduct of research proposed in the application, and (3) proposals from the university-affiliated research institutions are submitted through the college of university with which they are affiliated. As long as these conditions are met, other participatns, Co-Principal. Investigators, or research staff who do not hold teaching or student positions may be included as part of the research team.

All applications must relate to coal research in one of the following seven technical categories:

(1) *Coal Science:* Fundamental research on the structure, characteristics, and reactivity of coal and coal-dervied materials; nature of the oxgen-, nitrogen-, and sulfur-bonding in coal; geochemical and geophysical properties of coal; techniques and instrumentation applicable to the analysis of coal, coal mineral matter, and coal-derived materials.

(2) Coal Surface Science: Research on surface properties of coal and mineral matter pertinent to weathering, preparation (i.e., cleaning, surface enhanced beneficiation dewatering, and pelletizing), conversion, utilization, and the reheology of coal-oil/coal-water slurries.

(3) *Reaction Chemistry:* Fundamental research directed toward an understanding of organic and inorganic chemistry of coal with respect to catalyzed and uncatalyzed conversion and utilization; chemical coal cleaning; biochemical coal gasification, lequefaction, and desulfurization; novel reactions for depolymerizing coal; chemcial reactions in supercritical fluids; and fuel cell chemistry.

(4) *Advanced Process Concepts:* Research on concepts of improved coal conversion and utilization processes through novel chemistry, engineering, reactors, or components.

(5) *Engineering Fundamentals and Thermodynamics:* Research on the effect of temperature and/or pressure on transport phenomena with thermodynamic and transport properties pertinent to coal conversion and utilization; and supercritical phase behavior.

(6) *Environmental Science:* Research on the formation, control, and elimination of pollutants arising from coal conversion and utilization reactions.

(7) **High Temperature Phenomena** Investigation of the physical and chemical phenomena at high temperatures associated with combustion and gasification of coal and with electromagnetic generation of power; vaporization of alkalis and ash fusion in goal conversion and utilization processes; and high temperature separation techniques.

Awards

DOE anticipates awarding grants for each project subject to the availability of funds. Approximately $5.4 million is available for the program solicitation, which should provide support for about 30 proposals. Solicitation shall be available on or about 11/28/88.

FOR FUTURE INFORMATION CONTACT: U.S. Department of Energy Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, *Attn:* Dona G. Sheehan.

Sun W. Chun,

Director.

[FR Doc. 88–26951 Filed 11–21–88; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Grant; Ministry of Energy and Infrastructure of Israel

AGENCY: Department of Energy.

ACTION: Announcement of noncompetitive financial assistance (grant) award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2), it intends to make a noncompetitive financial assistance (grant) award to the Ministry of Energy and Infrastructure of Israel for research to be conducted at the Israel Institute of Technology.

Scope: This grant to the Ministry of Energy and Infrastructure of Israel (MOEI) is to conduct a twenty-four (24) month research effort entitled: "Combustion of Pulverized Coal in Counter-Current Flow" at the Israel Institute of Technology (IIT).

The scope of this research project involves an experimental and theoretical investigation of heterogeneous combustion of pulverized

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coal in a new counter-current combustor operating in coordination with an experimental furnance developed by IIT. The objectives of the research are to develop experimental data for the study of heterogeneous combustion in practical systems; to develop a mathematical model to allow the user to optimize the design and the operating conditions of a counter-current combustor; and to develop two (2) prototypes of the combustor for different fuel consumption and different kinds of coal.

Authority for this noncompetitive award is 10 CFR 600.7(b)(2)(E) implementing an Annex XII to the Memorandum of Understanding (MOU) between the United States and Isreal, which was executed on September 29, 1988.

The term of this grant shall be from approximately November 30, 1988, through November 29, 1990, with an estimated value of $90,000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, *Attn:* Keith R. Miles.

Issued on November 4, 1988

Sun W. Chun,

Director, Pittsburgh Energy Technology Center.

[FR Doc. 88-26945 Filed 11-21-88; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date and time: Tuesday, December 13, 1988 9:30 a.m. to 12:00 noon.

Place: U.S. Department of Energy, Forrestal Building, Room 8E 089, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S-2, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda: December 13, 1988.

9:30-11:30: Review Committee Documents and Consider their Adoption

11:30-Noon: Public Comment.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 16, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-26946 Filed 11-21-88; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; EURATOM; Republic of Indonesia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the transfer of fuel elements containing 33,000 grams of uranium enriched to 19.95 percent in the isotope uranium-235 from the Federal Republic of Germany to the Government of Indonesia, for the fabrication of fuel elements for the JANUS-30 MPR Reactor. Retransfer document RTD/IE(EU)-5 has been assigned to this transfer.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 16, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-26947 Filed 11-21-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; EURATOM; Republic of Indonesia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the transfer of 3,500 grams of uranium enriched to 19.95 percent in the isotope uranium-235 from the Federal Republic of Germany to the Government of Indonesia, for the fabrication of fuel elements for the JANUS-30 MPR reactor. Retransfer document RTD/IE(EU)-6 has been assigned to this transfer.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy

Date: November 16, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-26948 Filed 11-21-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; EURATOM; University of Munich

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangment" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the sale of 100 milligrams of uranium oxide enriched to 99.9% in the isotope U-235. This material will be used by the University of Munich for isotope dilution analyses during a course on the geochronology of rock samples.

Contract Number S-EU-945 has been assigned to this transaction.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: November 16, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-26949 Filed 11-21-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the return of 30 kilograms of irradiated fuel of U.S. origin from the JMTR and JRR reactors in Japan for reprocessing and storage at Department of Energy facilities. The return of highly enriched uranium (HEU) is consistent will U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: November 16, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-26953 Filed 11-17-88; 3:20 pm]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-54-NG]

Brymore Gas Marketing, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order granting Brymore Gas Marketing, Inc. (BGMI), blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 88-54-NG authorizes BGMI to import up to 200 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery.

A copy of this order is available in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 14, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-26950 Filed 11-21-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES89-5-000, et al.]

Consumer Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 10, 1988.

Take notice that the following filings have been made with the Commission:

1. Consumer Power Company

[Docket No. ES89-5-000]

Take notice that on November 4, 1988, Consumer Power Company filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue and sell, and guarantee up to $800,000,000 in secured and/or unsecured short-term debt including but not limited to, notes, drafts, debentures and commercial paper. The issuance, sale or guarantee of the secured and/or unsecured short-term debt would be from time to time, during the period January 2, 1989 through December 31, 1989, with maturities of 364 days or less.

Comment date: December 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Morgantown Energy Associates

[Docket No. QF89-25-000]

On October 26, 1988, Morgantown Energy Associates (Applicant) of 256 Russell Avenue, Post Office Drawer 40, New Martinsville, West Virginia 26155 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located adjacent to the West Virginia University Campus in Morgantown, West Virginia. The facility will consist of two circulating fluidized bed boilers and a steam turbine generator. Thermal energy recovered from the facility will be used for heating, cooling, sterilization , and cooking at the West Virginia University Campus. The net electric power production capacity of the facility will be 58 MW. The primary source of energy will be bituminous waste coal. The installation of the facility is scheduled to commence on June 1, 1989.

Applicant is a West Virginia general partnership consisting of three general partners: MidAtlantic Energy Co. (MidAtlantic), Hickory Power Corporation (HPC), a wholly-owned subsidiary of Bechtal Development

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Company (BDC), and Dominion Cogen WV, Inc. (DCW), which is a wholly-owned subsidiary of Dominion Energy, Inc. (DEI). MidAtlantic, and HPC are not electric utility, electric utility holding companies or any combination thereof, however, DEI is a wholly-owned subsidiary of Dominion Resources, Inc. Which is an electric utility holding Company. Each partners equity investment, share in partnership profits, losses, cash distribution and tax benefits will be in the following proportion. DEI (50%), MidAtlantic (35%) and BDC (15%).

Comment date: Thirty days from publication in the **Federal Register**, in accordance with the Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26918 Filed 11-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-40-000]

Rosemount Cogeneration Joint Venture; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 17, 1988.

On November 7, 1988, Rosemount Cogeneration Joint Venture (Applicant), c/o Oxbow Power Corporation, 333 Elm Street, Dedham, Massachusets 02026, submitted for filing an application for certifiction of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Rosemount, Minnesota. The facility will consist of one cumbustion turbine generator, one supplementary fired heat recovery steam generator, one extraction/condensing steam turbine generator and associated equipment. Extraction steam will be used in the production of carbon dioxide. The maximum net electric power production capacity of the facility will be 58.9 NW. Construction of the facility is expected to begin on or about July 1, 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Engergy Regulatory Commission, 825 North Capitol Street, NW., Washington DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26919 Filed 11-21-88; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Project No. 10453-000 Colorado]

Hydroelectric Development, Inc.; Availability of Environmental Assessment

November 16, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the office of Hydropower Licensing has reviewed the application for minor license for the Granby Hydroelectric Project and has prepared an environmental assessment (EA) for the proposed project. In the EA, the Commission's staff analyzes the potential environmental impacts of the proposed project and concludes that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26920 Filed 11-21-88; 8:45 am]

BILLING CODE 6717-01-M

Hydroelectric Application Filed With the Commission

November 17, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment of License.

b. *Project No:* 2600-013.

c. *Date Filed:* September 27, 1988.

d. *Applicant:* Bangor-Pacific Hydro Associates.

e. *Name of Project:* West Enfield.

f. *Location:* Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Fred Ayer, Bangor-Pacific Hydro Associates, P.O. Box 932, Bangor, ME 04401.

i. *FERC Contact:* Mr. John P. Warner, (202) 376-9045.

j. *Comment Date:* December 15, 1988.

k. *Description of Project:* Bangor-Pacific Hydro Associates (licensee) proposes to amend the license for the West Enfield Project (FERC No. 2600), to modify the required mitigation for project impacts to fish resources.

The licensee proposes the following:

(A) Articles 43 and 44 be deleted.

(B) Four new Articles be added to the license generally as follows:

(1) Licensee shall, within one year from the date of this order, submit a plan to convert the existing smolt release ponds at the West Enfield Project to smolt rearing ponds. The ponds shall have a capacity for rearing no less than 50,000 salmon fry and shall be designed in consultation with U.S. Fish and Wildlife Service (FWS), Maine Atlantic Sea Run Salmon Commission (ASRSC), Penobscot Indian Nation (PIN), and Maine Department Marine Resources (DMR). At such time as the restoration goal for Atlantic salmon has been reached (8,000 adult salmon), Licensee shall commence maintaining and operating the ponds for the purpose of rearing and releasing such fry and juvenile salmon as shall be provided from time-to-time by the state and federal fishery agencies.

(2) The Licensee shall arrange for and stock each year no less than 50,000 salmon fry at such places in the Penobscot River system as are mutually agreed upon from time-to-time by the fishery agencies and the PIN.

(3) The License shall, within six months from the date of this order, cause the owners and/or Licensee of the Howland Dam (FERC No. 2721) on the Piscataquis River, and the Orono (FERC No. 2710), Stillwater (FERC No. 2712), and Milford (FERC No. 2534) dams in the Penobscot River system to file for Commission approval, plans to modify operations at those dams for the purpose of facilitating the downstream passage of salmon and alewives. Those plans shall be prepared in consultation with ASRSC, USFWS, Maine Department of Environmental Protection, PIN, and DMR.

(4) Licensee shall within six months of the date of this order acquire the Columbia Falls Dam on the Pleasant River and transfer title to the State of Maine.

l. *Purpose of Project:* The amendment would provide for alternative mitigation for the impacts of the West Enfield Project on anadromous fish required by the license.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: The Director, Office of Hydropower Licensing, Division of Project Review, Federal Energy Regulatory Commission, Room 204RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26921 Filed 11-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-147-000, et al.]

Northwest Pipeline Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the commission:

1. Northwest Pipeline Corporation

[Docket No. CP89-147-000]

November 10, 1988.

Take notice that on November 8, 1988, Northwest Pipeline corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in docket No. CP89-147-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, for authorization to provide a transportation service for Mallon Oil Company (Mallon), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Nortwest states that pursuant to an agreement dated August 1, 1988, as amended August 1, 1988, October 14, 1988, and October 21, 1988, it proposes to transport up to 20 billion Btu of natural gas per day for Mallon. Northwest proposes to transport the gas from the Bayless Purchase Meter #1 in Rio Arriba County, New Mexico to the Ignacio Plant delivery point located in La Plata County, Colorado and to the existing interconnects with el Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico and at Ignacio in La Plata County, Colorado.

Northwest also states that no construction of new facilities would be required to provide this service. Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 20 billion Btu, 2.5 billion, and 900 billion Btu, respectively. Northwest indicates that it would charge the rates and abide by the terms and conditions provided in its Rate Schedule IT-1.

Northwest advises that service under § 284.223(a) of the Commission's Regulations commenced on September 1, 1988, as reported in Docket No. ST89-531-000.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line

[Docket No. CP89-99-000]

November 14, 1988.

Take notice that on October 28, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-99-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Citizens Gas Supply Corporation (Citizens or Shipper), under the blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle indicates that it proposes to transport up to 100,000 dt. per day, on an interruptible basis, on behalf of Citizens pursuant to a Transportation Agreement dated August 26, 1988 between Panhandle and Citizens (Transportation Agreement). The Transporation Agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois. Panhandle also indicates it will then transport and redeliver subject gas, less fuel used and unaccounted for line loss to Michigan Consolidated Gas Company (MichCon) in Wayne County, Michigan.

Panhandle estimates that the daily and annual quantities would be 100,000 dt. and 36,500,00 dt, respectively. Panhandle further indicates it commenced this service September 1, 1988, as reported in Docket No. ST88-5671.

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Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89–132–000]

November 14, 1988.

Take notice that on November 4, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–132–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to revise points of delivery to Columbia Gas Transmission Company (Columbia) under Tennessee's Rate Schedule T–20 and to provide for the delivery of certain natural gas supplies to an existing point of interconnection with Columbia Gulf Transmission Company (Columbia Gulf) near Egan, Louisiana, under the blanket certificate issued in Docket No. CP82–413–000 on September 1, 1982, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee proposes to delete the existing points of delivery to Columbia in Tennessee's Northern Rate Zone and to provide for deliveries of Columbia's share of the Stratton-Agua Dulce production to an existing point of interconnection with Columbia Gulf near Egan, Louisiana. Tennessee states that under authorization granted in Docket No. G–962 and pursuant to its Rate Schedule T–20 included in its FERC Gas Tariff, Volume No. 2, Tennessee provides a firm transportation service for Columbia from the Stratton-Agua Dulce Field, Nueces County, Texas, to existing points of delivery to Columbia in Tennessee's Northern Rate Zone (Sales Zone 4). Tennessee further states that no additional facilities would be required to effect the proposed change. Tennessee advises that the proposed rearrangement of service was previously applied for in Docket No. CP84–441–003, except the effective date requested herein is February 1, 1989.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP89–131–000]

November 14, 1988.

Take notice that on November 4, 1988, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–131–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Continental Natural Gas, Inc. (Continental), under its blanket authorization issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commisson and open to public inspection.

Natural would perform the proposed interruptible transportation service for Continental, a marketer of natural gas, pursuant to an interruptible transportation service agreement dated June 15, 1988 (#IGP–1220). The term of the transportation agreement is from the date of the contract and shall continue for a primary term ending June 30, 1992, and shall continue month to month thereafter unless cancelled by five days' prior notice by either party. Natual proposes to transport on a peak day up to 50,000 MMBtu per day; on an average day up to 15,000 MMBtu; and on an annual basis 5,475,000 MMBtu of natural gas for Coontinental. Natural further states that consistent with its Rate Schedule ITS, Continental may request and Natural may agree to accept additional quantities as overrun gas. Natural proposes to receive the subject gas at the Transok/Bryan receipt point in Bryan County, Oklahoma for redelivery to the HPL/Lamar delivery point in Lamar County, Texas. The gas will be consumed by various interstate and intrastate pipelines and local distribution companies and industrial end users in Texas and Oklahoma. Natural avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on September 4, 1988, as reported in Docket No. ST89–548–000.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP89–130–000]

November 15, 1988.

Take notice that on November 4, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–130–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for CNG Trading Company, a marketer, under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes, pursuant to a transportation agreement dated September 29, 1988, as amended September 30, 1988, to transport natural gas for CNG Trading Company from points of receipt located in offshore Louisiana and the States of Louisiana, Texas, and Alabama. It is stated that points of delivery are located in Pennsylvania, New York, and West Virginia for the ultimate point of delivery in the State of Pennsylvania. The applicant further states that the maximum daily and average daily quantities are 150,000 dekatherms (dt) and the annual quantity would be 54,570,000 dt. Tennessee states that service under § 284.223(a) commenced October 6, 1988, as reported in Docket No. ST89–404 filed October 28, 1988.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP89–94–000]

November 15, 1988.

Take notice that on October 28, 1988, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–94–000 a request pursuant to §§ 157.205 and 284–223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Texaco Gas Marketing, Inc. (Texaco), a producer, under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes, pursuant to a transportation agreement dated September 26, 1988, to transport natural gas for Texaco from a point of receipt located in offshore Louisiana and redelivered to an interconnect with The Southern Connecticut Gas Company located in Milford, New Haven County, Connecticut. Applicant states that both the maximum daily and average daily quantities are 100,000 dekatherms (dt) and the annual quantity would be 36,500,000 dt. Applicant states further that service under § 284.223(a) commenced October 1, 1988, as reported in Docket No. ST89–255 filed October 20, 1988.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP89–127–000]

November 15, 1988.

Take notice that on November 3, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–127–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Texaco Producing Inc. (Texaco), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to transport, on an interruptible basis, up to 100,000 MMBtu/day plus overrun volumes for Texaco. Natural states that the receipt and delivery points are located in Louisiana. Natural states further that construction of facilities would not be required to provide the proposed service.

Natural states that the estimated daily and annual quantities would be 50,000 MMBtu and 18,250,000 MMBtu respectively, and that service under § 284.223(a) commenced September 4, 1988, as reported in Docket No. ST89–516.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–26923 Filed 11–21–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–153–000, et al.]

Williams Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89–153–000]

November 15, 1988.

Take notice that on November 9, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–153–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Central Soya Company Inc. (Central), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Central, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 11, 1988. Williams explains that service commenced September 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–5884–000. Williams further explains that the peak day quantity would be 7,000 MMBtu, the average daily quantity would be 3,000 MMBtu, and that the annual quantity would be 2,555,000 MMBtu. Williams explains that it would receive natural gas for Central's account at points located in Oklahoma and would redeliver the gas for Central's account at points in Kansas, Missouri, and Oklahoma.

Comment date: December 30, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP89–155–000]

November 15, 1988.

Take notice that on November 9, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–155–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Transtate Gas Service Company (Transtate); all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Transtate, a marketer, on an interruptible basis, pursuant to a transportation agreement dated August 25, 1988. William explains that service commenced September 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–5883–000. Williams further explains that the peak day quantity would be 57,000 MMBtu, the average daily quantity would be 50,000 MMBtu, and that the annual quantity would be 20,805,000 MMBtu. Williams explains that it would receive natural gas for Transtate's account at points located in Oklahoma, Kansas, and Texas and would redeliver the gas for Transtate's account at points in Kansas, Texas, and Oklahoma.

Comment date: December 30, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89–143–000]

November 15, 1988.

Take notice that on November 8, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–143–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, for authorization to provide transportation on behalf of Diamond Shamrock Offshore Partners Limited Partnership (Diamond Shamrock), under Tennessee's blanket certificate issued in Docket No. CP87–115–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport, on an interruptible basis, up to a maximum of 10,500 dekatherm (dt) of natural gas per day for Diamond Shamrock, a producer, from receipt points located in offshore Louisiana to an interconnection with Texas Gas Transmission Corporation located in Egan D, Acadia Parish, Louisiana. Tennessee anticipates transporting an annual volume of 3,832,500 dt.

Tennessee states that the transportation of natural gas for Diamond Shamrock commenced October 1, 1988, as reported in Docket

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No. ST89-455-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Tennessee in Docket No. CP87-115-000.

Comment date: December 30, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-119-000]

November 15, 1988.

Take notice that on November 1, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-119-000 a request pursuant to § 157.205 of the Commission's Regulations to provide transportation service on behalf of Kerr-McGee Corporation (Keer-McGee), under Transco's blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco requests authorization to transport, on an interruptible basis, up to a maximum of 53,985 dekatherms (dt) of natural gas per day for Kerr-McGee, a producer. It is stated that Transco will receive the gas in Ship Shoal Block 28, Offshore Louisiana, or under its flexible receipt authority, receive the gas at various receipt points in offshore Louisiana and offshore Texas, and then redeliver the gas in Clinton County, Pennsylvania. Transco anticipates transporting 365,000 dt annually.

Transco states that the transportation of natural gas for Kerr-McGee commenced September 2, 1988, as reported in Docket No. ST89-0080, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Transco in Docket No. CP88-328-000.

Comment date: December 30, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Eastern Transmission Corporation

[Docket No. CP87-4-006]

November 15, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 10, 1988 tendered for filing as part or its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Substitute Original Sheet No. 359A
Substitute Original Sheet No. 693A

Texas Eastern states it is filing these tariff sheets in compliance with the request of FERC Staff, to clarify that Texas Eastern will not receive for transportation a quantity of natural gas in excess of the Maximum Daily Transportation Quantity, plus Applicable Shrinkage, on a daily basis for customers under Rate Schedule FTS-4, as authorized in the Commission's July 27, 1988 order in Docket No. CP87-4-000. The above listed tariff sheets replace Original Sheet Nos. 359A and 693A which were filed on November 4, 1988 by Texas Eastern in Docket No. CP87-4 as a part of proposed Rate Schedule FTS-4 which represents a firm transportation service provided by Texas Eastern consisting of receipt, transportation, and delivery of gas for The Brooklyn Union Gas Company, Elizabethtown Gas Company, Long Island Lighting Company, New Jersey Natural Gas Company and Public Electric and Gas Company.

The proposed effective date of the tariff sheets listed above is November 1, 1988, the date originally requested by Texas Eastern in its November 4, 1988 filing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Comment date: November 23, 1988, in accordance with the first subparagraph of Standard Paragraph E at the end of this notice.

6. Southcoast Transmission Corporation

[Docket No. CP89-60-000]

November 16, 1988.

Take notice that on October 21, 1988, [1] Southcoast Transmission Corporation, (Applicant), 333 South Grand Avenue, Suite 3535, Los Angeles, California 90071, filed in Docket No. CP89-60-000 an application pursuant to section 7(c) of the Natural Gas Act and subpart E of The FERC's Regulations for an optional certificate of public convenience and necessity authorizing the construction and operation of a natural gas pipeline system to transport supplies of natural gas from western Canada, areas in the Rocky Mountain areas and a few Southwestern states, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to construct a pipeline system with a capacity of 1,500,000 Mcf/d, extending from the supply terminal at Carway, Alberta, in Western Canada approximately thirteen hundred miles to the delivery terminal near Bakersfield, Kern County California.

Applicant further proposes to provide Rocky Mountain area producers of natural gas, with access to California markets. Applicant stated that it will interconnect the proposed system with the existing pipeline system operated by Questar Pipeline Company (Questar) of Salt Lake City, Utah. It is alleged that Questar will provide capacity in its system for delivering 400,000 Mcf/d from the Rocky Mountain States of Wyoming, Colorado, and Utah, to two terminals located near Salt Lake City at Hyram and Payson Gates.

It is further stated that Applicant's terminal at Topock, Arizona will interconnect with existing pipeline systems operated by Enron Corporation and El Paso Natural Gas Company to transport natural gas from the southwestern states of new Mexico, Texas, and Oklahoma.

Applicant states that in order to transport supplies from Topock to Daggett in Southern California, and the Bakersfield terminals it will construct and operate a 143 mile supply lateral.

Applicant alleges that the total cost of proposed construction will be $1,274,000,000 and the construction be completed by July, 1991. Applicant states funding of the Southcoast Pipeline System will be from private sources which will be revealed to the Commission at the appropriate time.

Comment date: December 7, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Texas Eastern Transmission Corporation

[Docket No. CP87-4-005]

November 10, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 4, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Revised Sheet No. 1
Third Substitute Eight Revised Sheet No. 50
Original Sheet No. 359A
Substitute Original Sheet No. 359B
Substitute Original Sheet No. 359C
Original Sheet Nos. 359D through 359G
Substitute Original Sheet No. 359H
Original Sheet No. 359I
Second Revised Sheet No. 404
Second Revised Sheet No. 443
Second Revised Sheet No. 474
Original Sheet No. 489A
Second Revised Sheet No. 600
Original Sheet Nos. 693A through 693E

Texas Eastern states that by order issued July 27, 1988, in Docket Nos. CP87-4-000, CP87-4-001, and CP87-4-002, the Commission issued Texas Eastern a Certificate of Public Convenience and Necessity authorizing Texas Eastern to construct and operate certain pipeline loops and compressor facilities and *inter alia,* to provide a firm transportation service consisting of receipt, transportation, and delivery of gas for The Brooklyn Union Gas Company, Elizabethtown Gas Company, Long Island Lighting Company, New Jersey Natural Gas Company and Public Service Electric and Gas Company, collectively referred to as "Customers".

Texas Eastern states that on September 29, 1988, it filed with the Commission, in Docket No. CP87-4-004, *et al.,* tariff sheets in purported compliance with Part 154 of the Commission's Regulations that set forth the terms and conditions of said firm transportation service to be provided under Rate Schedule FTS-4 to the Customers. On October 28, 1988, a Staff Letter Order was issued in Docket No. CP87-4-004, *et al.,* rejecting Texas Eastern's September 29, 1988 filing on the grounds that the tariff sheets exceeded the scope of what was approved by the Commission's July 27, 1988 order in Docket No. CP87-4-000.

Specifically, the Staff Letter Order objected to the inclusion of a daily overrun charge as well as a tariff provision apparently construed by Staff as providing for the construction of new measuring equipment without certificate authorization.

Texas Eastern states that in compliance with Part 154 of the Commission's Regulations and the October 28, 1988 Staff Letter Order, the above listed tariff sheets are being refiled to set forth the terms and conditions of said firm transportation service to be provided under Rate Schedule FTS-4. Sheet Nos. 359A through 359I land 693A through 693E set forth Rate Schedule FTS-4 and the Form of Service Agreement. With the exception of changes made to satisfy concerns expressed in the October 28, 1988 Staff Letter Order, the tariff provision being filed today are identical to the original tariff provisions filed on September 29, 1988. In compliance with the October 28, 1988 Letter Order, Sheet Nos. 50, 359B and 359C reflect the deletion of the daily overrun charge. Sheet No. 359H (Section 10 of Rate Schedule FTS-4) has been revised to clarify that Texas Eastern must have certificate authorization before installing and operating new measuring equipment. Currently, gas quantities delivered under this Rate Schedule will be measured under existing certificated measuring equipment. Material required by § 154.62(b) of the Commission's Regulations is included in Attachment A.

The proposed effective date of the above listed tariff sheets in November 1, 1988 the date originally requested in Texas Eastern's September 29, 1988 filing in Docket No. CP87-4-004.

Copies of this filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Comment date: November 23, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Chevron U.S.A. Inc.

[Docket No. CP89-102-000]

November 16, 1988.

Take notice that on October 31, 1988, Chevron U.S.A. Inc. (Chevron), 1301 McKinney Street, Houston, Texas 77010, filed in Docket No. CP89-102-000 pursuant to § 385.207 of the Commission's Rules of Practice and Procedure a petition for a declaratory order finding that certain of its natural gas facilities located in the federal domain of offshore Louisiana, which are used to deliver natural gas for sale to Texas Eastern Transmission Corporation (Texas Eastern), are gathering facilities under section 1(b) of the Natural Gas Act and are, therefore, exempt from Commission Jurisdiction, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Chevron states that it sells gas to Texas Eastern under a 1964 warranty gas purchase contract between Texas Eastern and Gulf Oil Corporation (which merged with to Chevron). Chevron further states that the facilities which are the subject of the petition, referred to as Chevron's Western Offshore Gathering Lines, are pipelines constructed by Gulf Oil Corporation (Gulf) which are directly connected to facilities owned by Texas Eastern.

Chevron states that the pipelines which are the subject of this petition consist of segments of pipeline of various diameters ranging from 8-inch to 16-inch and various lengths ranging from 2 miles to 60 miles, and are operated in Eugene Island Block 330 and 333 fields, West Cameron Block 198 field, West Cameron Block 333 field, West Cameron Block 409 field, East Cameron Block 338 field, and Vermilion Block 261 field, as more fully described in the petition. Chevron asserts that each pipeline gathers gas produced from discrete producing areas for delivery to Texas Eastern at points of interconnection with Texas Eastern's facilities. Chevron further states the gas is separated from oil and water in separation facilities on platforms in the field. It is explained that the size and configuration of the Western Offshore Gathering Lines was made necessary by the distance of the fields from the facilities of Texas Eastern and the substantial total volume of 4.4 Tcf of gas which Gulf is obligated to gather from numerous offshore fields for delivery to Texas Eastern. Chevron states that the pipelines which gather a portion of the gas sold to Texas Eastern under the warranty contract are necessary and essential for Chevron to sustain its delivery obligation to Texas Eastern.

Chevron states that an uncertainty regarding the jurisdictional status of the Western's Offshore Gathering Lines exists under the Commission's issuance of Order No. 491, Interpretation of Section 5 of the Outer Continental Shelf Lands Act (OCSLA), Docket No. RM88-14-000, issued and effective April 1, 1988, 43 FERC ¶ 61,006 (April 1, 1988) and the accompanying Notice of Proposed Rulemaking (NOPR), Docket No. RM88-15-000, FERC Statutes and Regulations [CCH] ¶ 32,459 (April 1, 1988). Chevron further states an uncertainty regarding the jurisdictional status of petitioner's Western Offshore Gathering Lines exists under recent Commission declaratory orders issued on proposed offshore pipeline systems in *Shell Gas Pipeline Co.,* 41 FERC ¶ 61,032 (Oct. 19, 1987) *Conoco, Inc., et al.,* 44 FERC ¶ 61,040 (May 3, 1988) *Placid Oil Co.,* 43 FERC ¶ 61,310 (May 3, 1988) *rehearing denied,* 44 FERC ¶ 61,029 (July 8, 1988), and *Oklahoma Gas Pipeline Co.,* 43 FERC ¶ 61, 066 (April 20, 1988).

Chevron requests that the commission issue an order declaring the pipeline facilities described in the petition as the Western Offshore Gathering Lines are not interstate natural gas pipelines subject to the Natural Gas Act as defined in Order No. 491 and the accompanying NOPR. Chevron asserts that the primary and only function of the facilities is gathering, notwithstanding the size and geographical configuration of the facilities. Chevron states that declaring the pipeline facilities to be interstate natural gas pipelines subject to the Natural Gas Act (NGA) would disturb Chevron's operation of the pipelines as an independent producer to gather its production for sale to Texas Eastern require it convert the pipelines to pipelines offering to transport under Part 284 of the Commission's

[1] The application was tendered for filing on October 14, 1988; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until October 21, 1988. Section 381.103 of the Commission's Rules provide that the filing date is the date on which the fee is paid.

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regulations, require it to obtain a blanket certificate to transport gas for any shippers requesting service, and require it to allocate capacity to all shippers requesting service on a prorata basis even if the capacity is needed to meet its contractual and certificate obligation to Texas Eastern. In the event the Commission does not disclaim jurisdiction in entirety over the pipeline facilities, Chevron requests that the Commission delineate which facilities the Commission determines to constitute jurisdictional interstate pipelines subject to the NGA.

Comment date: December 7, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP89-158-000]

November 15, 1988.

Take notice that on November 9, 1988, Williams Natual Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-158-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for American Central Gas Companies, Inc. (American), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for American, a marketer, on an interruptible basis, pursuant to a transportation agreement dated August 31, 1988. Williams explains that service commenced September 4, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-37-000. Williams further explains that the peak day quantity would be 1,500 MMBtu, the average daily quantity would be 1,500 MMBtu, and that the annual quantity would be 547,500 MMBtu. Williams explains that it would receive natural gas for American's account at points located in Oklahoma, Kansas, Missouri, Wyoming, Colorado and Texas and would redeliver the gas for American's account at points in Kansas and Missouri.

Comment date: December 30, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26924 Filed 11-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3810-000 et al.]

Sun Exploration and Production Co. et al.; Applications for Certificates, Abandonment of Service, and Amendment of Certificates [1]

November 17, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 1, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-3810-000, G-5991-000, F C, Nov. 2, 1988.	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	El Paso Natural Gas Company, South Fullerton Plant, Andrews County, Texas.	(1)
G-5333-000, D, Oct. 12, 1988	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Texas Eastern Transmission Corporation, Baber Lease, SA and MG RR Survey 10, A-679, Laveca County, Texas.	(2)
G-6652-002, D, Oct. 24, 1988	Sun Exploration and Production Company	Tennessee Gas Pipeline Company, Heyser Field, Victoria County, Texas.	(3)
G-8447-000, D, Nov. 7, 1988	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252-2511.	Colorado Interstate Gas Company, Eva and Keyes Fields, Cimarron and Texas Counties, Oklahoma.	(4)
G-18117-001, D, Oct. 19, 1988	Tenneco Oil Company	ANR Pipeline Company, Mocane-Laverne Field, Harper and Beaver Counties, Oklahoma.	(5)
CI64-1055, D, Oct. 31, 1988	do	Arkla Energy Resources, a division of Arkla, Inc., North Scottsville Field, Harrison County, Texas.	(6)
CI64-1381-000, D, Oct. 31, 1988	do	Arkla Energy Resources, a division of Arkla, Inc., Sooner Trend Field, Kingfisher County, Oklahoma.	(7)
CI65-54-000, D, Oct. 27, 1988	do	Arkla Energy Resources, a division of Arkla, Inc., Milton, *et al.*, Fields Le Flore, *et al.*, Counties, Oklahoma.	(8)
CI66-292-001, D, Sept. 19, 1988	Anadarko Petroleum Corporation, P.O. Box 1330, Houston, TX 77251-1330.	Panhandle Eastern Pipe Line Company, Morton County, Kansas.	(9)
CI68-1022-004, C, Oct. 28, 1988	Tenneco Oil Company	Tennessee Gas Pipeline Company, Offshore Texas and Louisiana.	(10)
CI82-180-001, F C, Oct. 24, 1988	Sun Exploration and Production Company	Transcontinental Gas Pipe Line Corporation, M.A. Beckman Unit, White Kitchen Field, LaSalle County, Texas.	(11)
CI82-306-002, E, Nov. 2, 1988	Diamond Shamrock Offshore Partners, Limited Partnership, 717 N. Harwood Street, Room 3156, Dallas, TX 75201.	Trunkline Gas Company, Block A-542, High Island Area, South Addition, Offshore Texas.	(12)
CI85-643-001, C, Oct. 31, 1988	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	Texas Eastern Transmission Corporation, South Pass Blocks 93 and 94, Offshore Louisiana.	(13)
CI89-23-000, B, Oct. 21, 1988	C.H. Todd, Inc., 300 W. Douglas, Suite 600, Wichita, KS 67202-2988.	K N Energy, Inc., Cenrick G A Field, Beaver County, Oklahoma.	(14)
CI89-24-000, (G-6631), D, Oct. 24, 1988.	Sun Exploration and Production Company	Tennessee Gas Pipeline Company, Wendt Gas Unit, North Government Wells Field, Duval County, Texas.	(15)
CI89-28-000 (CI68-871), D, Oct. 25, 1988.	Tenneco Oil Company	El Paso Natural Gas Company, Worsham-Bayer Field, Reeves County, TX.	(16)
CI89-29-000, E, Oct. 27, 1988	Amoco Production Company, 1670 Broadway, Room 1754, Denver, CO 80202.	Williams Natural Gas Company, Hugoton Field, Finney County, Kansas.	(17)
CI89-30-000, E, Oct. 27, 1988	Sun Exploration and Production Company	Natural Gas Pipeline Company of America, Indian Basin Field, Eddy County, New Mexico.	(18)
CI89-31-000 (CI64-986), B, Oct. 27, 1988.	Tenneco Oil Company	Northern Natural Gas Company, Division of Enron Corp., Eumont Field, Lea County, New Mexico.	(19)
CI89-32-000 (CI70-1018), D, Oct. 27, 1988.	do	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	(20)
CI89-33-000 (G-10606), D, Oct. 27, 1988.	do	Natural Gas Pipeline Company of America, Mocane-Laverne Field, Beaver County, Oklahoma.	(21)
CI89-34-000 (CI64-396), E, Oct. 28, 1988.	do	Tennessee Gas Pipeline Company, Vermilion Block, 250, Offshore Louisiana.	(22)
CI89-35-000, F, Oct. 31, 1988	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189.	ANR Pipeline Company, Ship Shoal Block 115, Offshore Louisiana.	(23)
CI89-36-000, A, Oct. 31, 1988	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102	Panhandle Eastern Pipe Line Company, Hugoton Field, Morton County, Kansas.	(24)
CI89-37-000, A, Nov. 1, 1988	OXY USA Inc	Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas.	(25)
CI89-39-000 (CI64-1034), D, Oct. 31, 1988.	Tenneco Oil Company and Clara B. Alvord	United Gas Pipe Line Company, Waskom Field, Harrison County, Texas.	(26)
CI89-41-000 (CI64-1034), D, Nov. 1, 1988.	Tenneco Oil Company	do	(26)
CI89-42-000 (CI77-339), D, Nov. 1, 1988.	do	El Paso Natural Gas Company, Leonard Queen S. Field, Lea County, New Mexico.	(27)
CI89-43-000 (CI74-190), D, Nov. 1, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Transwestern Pipeline Company, Atoka Field, Eddy County, New Mexico.	(28)
CI89-44-000 (CI85-278), D, Nov. 2, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	ANR Pipeline Company, West Cameron Block 560/ OCS-G 3283, Offshore Louisiana.	(29)
CI89-46-000 (CI67-189), D, Nov. 2, 1988.	Tenneco Oil Company	El Paso Natural Gas Company, Justin Field, Lea County, New Mexico.	(30)
CI89-49-000 (CI60-55), B, Nov. 2, 1988.	do	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	(31)
CI89-51-000 (CI64-426), B, Oct. 26, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Lancaster Hills Field, Crockett County, Texas.	(32)
CI89-52-000 (CI79-388), D, Nov. 3, 1988.	Tenneco Oil Company	ANR Pipeline Company, Mocane-Laverne Field, Beaver County, Oklahoma.	(33)
CI89-54-000 (CI63-1435), B, Nov. 7, 1988.	do	Arkla Energy Resources, a division of Arkla, Inc., Carter North Field, Beckham County, Oklahoma.	(34)

[1] Effective August 1, 1988, Applicant acquired an additional 0.995009% interest in the South Fullerton Plant from Tenneco Oil Company. Applicant proposes to add this interest to its FERC Gas Rate Schedule Nos. 311 and 631 and related certificates.
[2] By assignment executed April 6, 1988, Applicant assigned its interest in certain acreage to Sohio Petroleum Company effective December 1, 1987.
[3] By assignment executed September 13, 1988, Applicant assigned its interest in certain acreage to Sue-Ann Oil & Gas Company, effective October 1, 1988.
[4] Effective December 1, 1987, Applicant assigned its interest in certain acreage to Maple Properties Corporation.

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[5] By assignments executed January 9, 1987, Applicant assigned its interest in certain acreage to Foran Oil Company, effective December 1, 1986. By assignments executed January 15 and 21, 1987, Applicant assigned its interest in certain acreage to Mesa Operating Limited Partnership, effective December 1, 1986. By assignment executed January 21, 1987, Applicant assigned its interest in certain acreage to Mesa Operating Limited Partnership and Sohio Petroleum Company, effective December 1, 1986. By assignment executed January 13, 1987, Applicant assigned its interest in certain acreage to Cabot Petroleum Corporation, effective December 1, 1986.

[6] By assignment executed November 1, 1986, Applicant assigned certain interests in Roger P. Baker and Carl Baker, Jr. d/b/a Gas Engine & Compressor Service, effective October 1, 1986. Effective March 1, 1986, Applicant assigned certain interests to C. R. Bachtell.

[7] Effective February 1, 1984, Applicant assigned certain interests to Jack P. Speed.

[8] By assignment effective December 1, 1987, Applicant assigned its interest in the Carmen "A" Unit to Maple Properties Corporation.

[9] Applicant states that certain leases reverted to the lessor and the acreage was subsequently leased to J. M. Huber Corporation, Matagorda Island Exploration Corp., Roemer Oil Co. and Helmerick & Payne, Inc.

[10] Applicant entered into a new gas purchase and sales agreement dated July 22, 1988, which, among other things, adds interests.

[11] Effective March 1, 1988, Applicant acquired certain interests from Chilton Energy. Applicant proposes to add this interest to its FERC Gas Rate Schedule No. 748 and related certificate.

[12] Effective July 1, 1988, Applicant acquired certain interests from Sun Operating Limited Partnership.

[13] By agreement dated August 22, 1968, Applicant's contract dated July 24, 1985, was amended to add acreage.

[14] Applicant states that the well was plugged on September 10, 1973.

[15] By assignment executed July 6, 1988, Applicant assigned its interest in certain acreage to Fair Operating Inc., effective July 8, 1988.

[16] By assignment executed January 29, 1987, Applicant assigned its interest in the State Dudley Rudman Unit to Prudential-Bache Energy Income Production Partnership, *et al.*, effective December 1, 1987.

[17] Effective June 1, 1988, Applicant acquired certain interests from Huan, Inc.

[18] Effective May 1, 1988, Applicant acquired certain interests from Robert N. Enfield and Mona L. Enfield, Eugene E. Nearburg, L.R. French and Marcia Fuller French, and Ben A. Copass and Dorothy K. Copass. In addition, Applicant requests that certain interests covered under its certificate in Docket No. CI65-583 and related FERC Gas Rate Schedule No. 185 be covered under this proposed certificate and rate schedule.

[19] Applicant states that the Ellen Weir Gas Com #1 as plugged and abandoned on October 26, 1981, and the lease was surrendered to the landowner on December 10, 1981.

[20] Effective December 1, 1986, Applicant assigned certain interests to Star Production, Inc.

[21] Effective December 1, 1987, Applicant assigned the R. McFarland #1-33 property to Maple Properties Corporation.

[22] Effective December 31, 1987, Applicant acquired certain interests from Houston Oil & Minerals Corporation.

[23] Effective December 1, 1986, Applicant acquired certain interests from Mono Power Company.

[24] Effective January 14, February 26 and February 27, 1987, Applicant acquired new leases covering certain interests previously dedicated to Panhandle Eastern Pipe Line Company by APX Corporation. APX Corporation's leases covering these interests had reverted to the U.S. Government.

[25] Applicant is filing for authorization to continue a sale previously covered by Anadarko Production Company, the operator, under its certificate in Docket No. CI63-1368 and related FERC Gas Rate Schedule No. 71.

[26] By assignment dated July 2, 1986, Tenneco assigned its interest in certain leases to Winchester Oil Company, effective July 1, 1986.

[27] By assignment dated January 29, 1987, Applicant assigned its interest in certain acreage to Prudential-Bache Energy Income Production Partnership IIIP-12, *et al.*, effective December 1, 1987.

[28] By assignment executed February 27, 1987, Applicant assigned its interest in certain leases to Hondo Oil & Gas Company, effective January 1, 1987.

[29] By assignments dated October 1, 1987, Applicant assigned its interest in OCS-G-3283 to Chevron U.S.A. Inc., effective October 1, 1987.

[30] By assignment dated May 15, 1986, Applicant assigned its interest in certain acreage to Doug Grimes, effective May 1, 1986.

[31] By assignments executed July 13, 1961, December 22, 1961, and February 14, 1963, Applicant assigned its interests in certain acreage to John Yuronka. The respective assignments cover depths from the surface to 3,892', 3,898' and 3,462'. The original lessors retained rights below 4,000'. The intervals between the depths assigned and 4,000' are non-producing. Applicant states there is no further exploration potential for these non-producing intervals and it has no further intention of drilling on this acreage.

[32] Applicant states that the lease(s) were released or have expired.

[33] By assignments dated October 29, 1986, Applicant assigned its interests in certain leases to Spess Oil Company, effective November 1, 1986.

[34] Certain wells have been plugged and abandoned. By assignment executed November 10, 1969, Applicant assigned its interest in certain other acreage to Occidental Petroleum Corporation, effective September 1, 1969.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-26922 Filed 11-21-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD8900904T]

Designation of Tight Formation, Nacogdoches County, TX, Texas-9 Addition 7; Tight Formation Determination

November 16, 1988.

Take notice that on October 24, 1988, the Railroad Commission of Texas (Texas) submitted to this Commission its determination that an additional area of the Travis Peak Formation, known as the Appleby, N. (Travis Peak) Field located in Nacogdoches County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued October 3, 1988, finding that the formation meets the requirements of this Commission's regulations set forth in 18 CFR Part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214 (1988)). All such comments should be filed within 20 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26925 Filed 11-21-88; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 9610-005; Washington]

Puget Sound Power & Light Co.; Surrender of Preliminary Permit

November 16, 1988.

Take notice that Puget Sound Power & Light Company, permittee for the Tye River Project No. 9610, has requested that its preliminary permit be terminated. The preliminary permit was issued February 5, 1988, and would have expired January 31, 1991. The project would have been located on the Tye River, in King County, Washington within the Mt. Baker-Snoqualmie National Forest.

The permittee filed the request on October 17, 1988, and the preliminary permit for Project No. 9610 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the business day following that day. New applications involving this project site to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26926 Filed 11-21-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EL89-5-000]

American Municipal Power-Ohio, Inc. v. Toledo Edison Co.; Filing

November 16, 1988.

Take notice that on October 26, 1988, American Municipal Power-Ohio, Inc., (AMP-Ohio) tendered for filing pursuant to Rule 206 of the Commission's Rules of Practice and Procedure a two-count, formal Complaint against Toledo Edison Company (TECO). In count I, AMP-Ohio requests that the Commission require that TECO comply with Commission policy and the terms of settlement agreements approved in Docket Nos. ER80-571 and ER81-518 by ordering TECO to pay interest on monies which it has been required to refund by the terms of these agreements. In count II, AMP-Ohio seek additional refunds from TECO for the period June, 1983 through February, 1984, and pursuant to the Municipal Resale Service Reate Agreement filed and approved by the Commission in Docket No. ER84-165.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. TECO has been served a copy of the complaint by AMP-Ohio. TECO's answer shall be due on or before December 16, 1988.

Lois D. Cashell,

Secretary

[FR Doc. 88-26927 Filed 11-21-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EL89-6-000]

Cities of Anaheim, Azusa, Banning, Colton, and Riverside, CA v. Southern California Edison Co.; Filing

November 16, 1988.

Take notice that on November 2, 1988, Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Cities) tendered for filing, pursuant to section 205, 206, 306 and 309 of the Federal Power Act, 16 U.S.C. 824d, 824e, 825e and 825h and Rule 206 of this Commission's Rules of Practice and Procedure, 18 CFR 385.206, a Complaint and request for Expedited Hearing against Southern California Edison Company (Edison). By this action, Cities seek modification of the terms of the presently effective partial requirements rate schedule which is on file with this Commission as Edison's Rate Schedule FERC No. 15 24.3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Edison has been served a copy of the complaint by Cities. Edison's answer shall be due on or before December 16, 1988.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26928 Filed 11-21-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-22-000]

ANR Pipeline Co.; Petition

November 17, 1988.

Take notice that on November 14, 1988, ANR Pipeline Company ("ANR"), 500 Renaissance Center, Detroit, Michigan 48243 ("Applicant"), filed in Docket No. RP89-22-00 a "Petition For Waiver of Tariff Provisions" pursuant to Rule 207 of the Federal Energy Regulatory Commission's ("Commission") Regulations.

ANR seeks waiver of section 1.(a) of Rate Schedule SGS-1, which Rate Schedule is part of ANR's F.E.R.C. Gas Tariff, Original Volume No. 1. As set forth more fully in the Petition, grant of the Petition will allow ANR to waive the full requirements provision of its SGS-1 Rate Schedule when ANR undertakes transportation service for its sales customers served under the GSG-1 Rate Schedule.

Copies of this filing have been served on all of ANR's sales customers and interested State Commissions.

Any person desirng to be heard or to protest aid filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules and Practice and Procedure. All such motions or protests should be filed on or before November 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26929 Filed 11-21-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-24-000]

Colorado Interstate Gas Co.; Petition for Tariff Waiver

November 17, 1988.

Take Notice that on November 14, 1988, Colorado Interstate Gas Company ("CIG"), 2 North Nevada Avenue, Colorado Springs, Colorado 80903, filed in Docket No. RP89-24-000 a Petition for Waiver of Tariff Provisions pursuant to Rule 207 of the Federal Energy Regulatory Commission's ("Commission") Regulations.

CIG seeks waiver of Section 15.3 of the General Terms and Conditions of CIG's FERC Gas Tariff, Volume No. 1-A, and certain X-Rate Schedules of CIG's FERC Gas Taiff, Original Volume No. 2. As set forth more fully in the Petition, grant of the petition will allow CIG to waive the requirement that filings to change the Gas Research Institute ("GRI") Adjustment Charge be made at least 45 days prior to the proposed effective date. CIG states this waiver is necessary due to the timing of the Commission's action in Docket No. RP88-182-000 where the Commission has stated that it intends to establish the level of GRI funding on or before November 30, 1988.

Copies of this filing have been served on all of the holders of CIG's FERC Gas Tariff, Volume No. 1-A, affected Original Volume No. 2 customers, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26930 Filed 11-21-88; 8:45 am]

BILLING CODE 6717-01-M

Exxon Corp. and Hunt Petroleum Corp.; Petition for Declaratory Order

November 15, 1988.

Take notice that on October 21, 1988, Exxon Corporation and Hunt Petroleum Corporation (Petitioners) filed a petition requesting the Commission to issue a declaratory order stating that it has no jurisdiction over a natural gas facility located in Alabama state waters in and adjacent to Mobile Bay. Petitioners contend that the facility is a gathering and production facility under section 1(b) of the Natural Gas Act (NGA) and is, therefore, exempt from jurisdiction and the certificate requirements of the NGA.

Petitioners state that the subject of this petition, the Exxon/Hunt Mobile Bay facility, will receive sour gas produced from Alabama state tracts and Outer Continental Shelf (OCS) leases owned by petitioners and will deliver the gas to an onshore processing and treating plant which is also owned by petitioners. The facility will also deliver sour produced water from the production platforms to the plant and will return fuel gas and fresh water from the plant to the platforms. The facility includes four separate lines which petitioners contend perform both production and gathering operations that are closely integrated with the operations of the production platforms and the onshore processing and treating plant. Petitioners, therefore, contend that under the primary function test set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983), the Exxon/Hunt Mobil Bay facility performs a gathering function which qualifies the facility for an exemption under section 1(b) of the NGA.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protest should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, within 15 days after publication of this notice in the the **Federal Register.** All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petiton are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26931 Filed 11-21-88; 8:45am]

BILLING CODE 6717-01-M

Docket No. RP89-14-001]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

November 16, 1988.

Take notice that on November 7, 1988, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M]2 1R1, filed substitute tariff sheets in the above-captioned proceeding.

Inter-City states that the substitute sheets reflect changes in its PGA tariff language pursuant to Order Nos. 483 and 483-A, and Inter-City's compliance filing submitted in Docket No. RP88-225-000. The sheets reflect changes only in Inter-City's annual and quarterly PGA filing requirements.

Copies of the filing were served on Inter-City's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26932 Filed 11-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-151-000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

November 17, 1988.

Take notice that on November 9, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-151-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Superior Natural Gas Corporation (Superior), a marketer, acting on behalf of itself and Walter Oil & Gas Corporation, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated September 20, 1988, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for Superior from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". Such transportation service may involve interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at existing points on its system located offshore Texas and offshore Louisiana and in the states of Texas, Louisiana, Mississippi and Alabama, and that it would transport and redeliver the gas in multiple states at various delivery points.

Tennessee advises that service under § 284.223(a) commenced Octoberr 1, 1988, as reported in Docket No. ST89-405 (filed October 28, 1988). Tennessee further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-26933 Filed 11-21-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $184,267.15 obtained as a result of a Consent Order that the DOE entered into with Lone Star Oil and Chemical Company (Case No. KEF-0106), a reseller of crude oil located in Dallas, Texas. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed on or before December 22, 1988, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Number KEF-0106.

FOR FURTHER INFORMATION CONTACT: Thomas L. Weiker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to an April 18, 1987 Consent Order between the DOE and Lone Star Oil and Chemical Company (Lone Star). The Consent Order resolves certain disputes between the firm and the DOE concerning Lone Star's possible violations of DOE regulations in its sales of crude oil. The settlement agreement covers the period June 1978 through January 1980.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account in the amount of $184,267.15, funded by Lone Star pursuant to the Consent Order. The determination proposes that the money be placed into a pool of crude oil moneys for distribution pursuant to the DOE's Modified Statement of Restitutionary Policy for crude oil claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: November 16, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Lone Star Oil and Chemical Company.

Date of Filing: March 10, 1988.

Case Number: KEF-0106.

On March 10, 1988, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures (Petition) with the Office of Hearings and Appeals (OHA). In the Petition, the ERA requests that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving the DOE and Lone Star Oil and Chemical Company. 10 CFR Part 205, Subpart V.[1] This Proposed Decision sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants.

During the period June 1978 through January 1980, Lone Star was a "reseller" of crude oil as that term is defined in 10 CFR 212.31. Lone Star was therefore subject to the provisions of the Mandatory Petroleum Price Regulations. 10 CFR Part 212. The ERA conducted an extensive audit of Lone Star's operations and found in a Proposed Remedial Order (PRO) that the firm had violated applicable DOE pricing regulations in its sales of crude oil. The PRO was issued as a final Remedial Order (RO) by the OHA on August 26, 1986. *Lone Star Oil and Chemical Company/Michael A. McAlister,* 14 DOE ¶ 83,044 (1986). Lone Star filed an appeal of the RO on October 10, 1986.

[1] Lone Star Oil and Chemical Company was a sole proprietorship owned by Michael A. McAlister. Accordingly, Michael A. McAlister was personally liable for the violations alleged against Lone Star Oil and Chemical Company. Lone Star Oil and Chemical Company and Michael A. McAlister will be collectively referred to as Lone Star throughout the rest of this Proposed Decision and Order.

appeal docketed No. 86-35-000 (FERC October 10, 1986).

In order to settle the claims and disputes between Lone Star and the DOE that were raised in the RO, the two parties entered into a Consent Order on April 18, 1987 (the Consent Order).[2] In accordance with the terms of the Consent Order, Lone Star paid $184,267.15 to the DOE on February 8, 1988. The Consent Order does not make any provision for the distribution of the funds remitted by Lone Star. In its Petition, the ERA states that it has been unable to identify persons injured by the overcharges or the amount that any individual may be entitled to receive. In accordance with the provisions of 10 CFR Subpart V, the ERA therefore requests that the OHA establish appropriate procedures for the distribution of the funds remitted by Lone Star.

I. Proposed Refund Procedures

On July 28, 1986, as a result of the court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. No. 378, the DOE issued a Modified Statement of Restitutionary Policy (MSRP) providing that crude oil overcharge or settlement revenues will be divided among the States, the United States Treasury, and eligible purchasers of crude oil and refined products. 51 FR 27899 (August 4, 1986). Up to 20 percent of the crude oil violation or settlement amounts may be reserved to satisfy claims from injured parties that purchased refined petroleum products between August 19, 1973 and January 27, 1981 (the crude oil price control period). The MSRP also calls for the remaining funds, after deducting the reserve, to be disbursed for indirect restitution. The MSRP states that this disbursement should be made both to the federal government and to the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Marianna Islands (the States). Accordingly, once all valid claims are paid, any remaining funds will be divided equally between the federal government and the States. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

The Lone Star funds are subject to the MSRP. Therefore, we propose to institute a claims process for the

[2] Under the provisions of the Consent Order, Lone Star agreed to withdraw its RO appeal and waived its right to further administrative appeal or any judicial review of the RO. *See Consent Order,* ¶ 13.

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$184,267.15 in funds involved in this proceeding. In the present case, we have decided to reserve the full 20 percent, or $36,853.43, of the alleged violation amount, plus a proportionate share of the accrued interest, for direct restitution to claimants that purchased refined petroleum products during the crude oil price control period. Refunds to eligible claimants that purchased refined petroluem products will be calculated on the basis of a volumetric refund amount derived by dividing the Lone Star refund pool of $184,267.15 by the total consumption of petroleum products in the United States during the crude oil price control period (2,020,997,335,000 gallons). *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 at 88,867 (1986) (*Mountain Fuel*). This approach reflects the fact that crude oil overcharges were spread to every region by the Entitlements Program.[3] The volumetric amount for the crude oil pool established in this proceeding is therefore $0.000000091176 per gallon of refined products purchased ($184,267.15/2,020,997,335,000=$0.000000091176).

We propose that the remaining 80 percent of the funds, or $147,413.72, be disbursed equally to the federal government and to the States for indirect restitution. We propose to direct the DOE's Office of the Controller to separate and divide this amount, and to distribute $73,706.86 plus appropriate interest to the States' crude oil tracking account [4] and $73,706.86 plus appropriate interest to the federal government's crude oil tracking account.

II. Proposed Presumptions Concerning Injury

We propose that the process the OHA will use to evaluate claims based on crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel*, 14 DOE at 88,869. As in non-crude oil cases, applicants generally are required to document their purchase volumes and to prove that they were injured by the alleged violations (*i.e.*, that they did not pass through the alleged overcharges to their customers). We propose to apply the standards for showing injury that the OHA has developed in analyzing non-crude oil claims. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). There standards include a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by a consent order firm's alleged overcharges. From our experience with Subpart V refund proceedings, we believe that potential claimants will fall into the following categories: (1) End-users, *i.e.*, consumers that used refined petroleum products; (2) regulated non-petroleum industry entities that used Lone Star products in their businesses, or cooperatives that purchased Lone Star products for their businesses; and (3) refiners, resellers or retailers that resold refined petroleum products.

We further propose to adopt certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider refund applications in the most efficient manner possible. *American Pacific International*, 14 DOE ¶ 85,158 (1986). First, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all sales of refined products made during the crude oil price control period and that refunds should therefore be made on a pro rata or volumetric per gallon basis. In the absence of better information, a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

We also propose to adopt a number of injury presumptions that will simplify and streamline the refund process. We will discuss these presumptions and the showing that each type of applicant must make in Section II (A) below.

(A) *Specific Application Requirements for Each Category of Refund Applicants*—(1) *Refund Applications of End-Users.* We proposed to adopt a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceedings. *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Therefore, we propose that end-users of petroleum products need only establish that they were ultimate consumers of a specific volume of petroleum products to qualify for a refund of their full allocable share.

(2) *Refund Applications of Cooperatives and Regulated Firms.* We also propose that firms whose price for goods and services are regulated by a government agency or by the terms of a cooperative agreement will not be required to demonstrate injury as a result of alleged crude oil overcharges. Although such firms, *e.g.*, public utilities that used petroleum products as feedstocks and agricultural cooperatives, generally would have passed any overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers and to provide us with a detailed explanation of how they plan to accomplish this restitution. We will also require them to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). However, utility claimants whose claims are based on 5,000,000 gallons or less will *not* be required to certify that they will pass the refunds through to their customers. We further note that a cooperative's sales of petroleum products to non-members will be treated in the same manner as sales by other resellers. Cooperatives should therefore provide the DOE with a breakdown of their sales volumes to members and non-members.

(3) *Refund Applications of Resellers, Retailers and Refiners.* We propose to adopt a presumption that resellers, retailers and refiners were generally able to pass any crude oil overcharges through to their customers. In order to qualify for a refund, resellers, retailers and refiners must therefore show that they were unable to pass through the effects of crude oil overcharges to their own customers. It will be extremely difficult for resellers and retailers to make such a showing. The Entitlements program spread crude oil overcharges evenly throughout the industry. Because crude oil overcharges equally affected *all* resellers and retailers (*i.e.*, the reseller and retailer applicants and their competitors), regardless of supplier, we believe that resellers' and retailers' selling prices generally increased to the same degree. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 to 88,898 (1987) (*Tarricone*). It would be unreasonable to presume, therefore, that any reseller or retailer applicants in Subpart V crude oil refund proceedings were adversely affected or competitively injured by crude oil overcharges. Instead, we require a detailed demonstration that a reseller or retailer was unable to pass through the effects of crude oil overcharges to its customers. For example, a gasoline station would need to show that the minute fraction of a cent per gallon crude oil overcharge was absorbed by it rather than passed through to its customers as a result to overall higher prices in the gasoline market in its area.

(B) *General Refund Application Requirements.* In addition to the specific requirements outlined above, all Applications for Refund must be in writing and must be signed by the applicant. The OHA has issued a number of Decisions and Orders explaining crude oil refund procedures. Two Decisions describing crude oil refund procedures in detail are *Ernest Allerkamp*, 17 DOE ¶ 85,079 (1988), and *Tarricone*, 15 DOE ¶ 85,495 (1987). Individuals who *have* already filed a crude oil refund application will *not* be required to submit another application in order to be considered for a share of the money paid to the DOE by Lone Star.

It is therefore ordered that the refund amount remitted to the Department of Energy by Lone Star Oil and Chemical Company pursuant to the Consent Order executed on April 18, 1987 will be distributed in accordance with the foregoing Decision.

[FR Doc. 88-26952 Filed 11-21-88; 8:45 am]
BILLING CODE 6450-01-M

[3] The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of entitlements to the lowest priced crude oil. This balancing mechanism had the effect of evenly dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See, e.g., Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985).

[4] The funds in the States' crude oil tracking account are distributed to the 50 States, territories and possessions of the United States whenever the total amount of the account equals 10 million dollars or as determined by the Director of the OHA.

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 10]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, Eximbank has submitted a proposed collection of information to the Office of Management and Budget for review.

Purpose: The purpose of the proposed report is to fulfill a statutory mandate, the Omnibus Trade and Competitiveness Act of 1988, which requires Eximbank to provide a written report regarding tied and mixed credits to Congress.

Summary:

(1) *Type of Request:* new
(2) *Number of Forms Submitted:* one
(3) *Form Number:* EIB 89-1
(4) *Title of Information Collection:* Tied Aid Interview Topics
(5) *Frequency of Use:* once
(6) *Respondents:* private sector U.S. exporters
(7) *Estimated Total Number of Responses:* 25
(8) *Estimated Total Number of Hours Needed to Fill Out the Form:* 2

Additional Information and Comments: Copies of the proposed application may be obtained from Helene Wall, Agency Clearance Officer (202) 566-8111. Comments and questions should be directed to Francine Picoult, Office of Management and Budget, Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, (202) 395-7340. All comments should be submitted within two weeks of this notice; if you intend to submit comments but are unable to meet this deadline, please advise Francine Picoult by telephone that comments will be submitted late.

Date: November 16, 1988.

Helene H. Wall,

Agency Clearance Officer.

[FR Doc. 88-27018 Filed 11-21-88; 8:45 am]
BILLING CODE 6690-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations; Servicios Internacionales, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2528
Name: Servicios Internacionales, Inc. dba Sico
Address: 2101 Austin, Ste. 210, Houston, TX 77002
Date Revoked: October 26, 1988
Reason: Failed to maintain a valid surety bond

License Number: 3111
Name: Seacon Express International, Inc.
Address: 1111 Watsoncenter Road, Ste. D & E, Carson, CA 90745
Date Revoked: October 28, 1988
Reason: Surrendered license voluntarily
License Number: 3053
Name: Rider Distributors, Inc.
Address: 1671 W. 38th Place, Unit 1408, Hialeah, FL 33012
Date Revoked: November 3, 1988
Reason: Failed to maintain a valid surety bond
License Number: 2415
Name: Gir World Forwarders, Inc.
Address: 45 John Street, New York, NY 10038
Date Revoked: November 3, 1988
Reason: Failed to maintain a valid surety bond
License Number: 2783
Name: Amex International Shipping, Inc.
Address: 1551 W. Redondo Beach Blvd., Ste. 200, Gardena, CA 90247
Date Revoked: November 5, 1988
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88-26904 Filed 11-21-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final FY 1989 program guidelines/application solicitation for National Labor-Management Conference.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 1989 Program Guidelines/Application Solicitation for the National Labor-Management Conference Program.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653-5320.

Labor-Management Cooperation Program—FY 1989 Application Solicitation for the National Labor-Management Conference

A. Introduction

The following is the final solicitation for the Fiscal Year 1989 cycle of the Labor-Management Cooperation Program as it pertains to the support of the Fifth National Labor-Management Conference schedu'ed for May 30–June

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1, 1990. A separate solicitation has been issued for grants to support labor-management committees. The Program Description and other sections that follow as well as a separately published FMCS Financial and Administrative Grants Manual make up the basic guidelines, criteria, and program elements a potential applicant must know in order to develop an application for funding consideration. Directions for obtaining an application kit may be found in Section G.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 was designed to promote the use of joint labor-management committees to deal with issues of mutual concern between labor and management. Since fiscal year 1981, the Federal Mediation and Conciliation Service has awarded about 100 grants for the direct support of these joint committees. In an effort to promote this concept to a larger audience, FMCS has also awarded four grants to support four national conferences which highlight developments and experiences of such committees around the nation. A total of about 4,700 persons have attended these four conferences.

The Fifth National Labor-Management Conference will be supported by FMCS through a competitive cooperative agreement. All application budget requests should focus directly on supporting the conference in cooperation with FMCS.

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss what problems or issues face today's business and labor leaders that can be addressed at the conference. This section basically discusses *why* such a conference is needed.

2. *Results or Benefits Expected*—The application must discuss *what* the conference is expected to accomplish.

3. *Approach*—This section specifies in detail *how* the applicant will assist FMCS in accomplishing the goals and objectives. At a minimum, the following elements must be included:

(a) What services will the applicant provide in the planning, design, and marketing of the conference.

(b) What services will the applicant provide in the administration of the conference.

(c) What services will the applicant provide in the evaluation of the conference.

(d) What kind of technical assistance will the applicant provide as a follow-up to the conference.

(e) What experience has the applicant had in supporting conferences and/or labor-management cooperation.

(f) What kind of computer-based registration system will be used and its capacities.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as *WHEN* each will be completed.

5. *Other Requirements*—Applicants are also responsible for the following:

(a) a detailed budget narrative based on applicable policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(b) A position description or resume of a proposed/actual person who will act as the Conference Administrator. The Conference Administrator must reside in the Washington, DC area;

(c) A copy of the proposed agreement or contract between the applicant and the Conference Administrator;

(d) An acknowledgement that the selection of the Conference Administrator is subject to prior approval by FMCS.

Selection Criteria

The following criteria will be used in scoring and selecting an applicant for award:

(1) The extent to which an applicant has identified an understanding of the issues and problems facing labor and management that can be addressed through the conference.

(2) The appropriateness of the expectations of what can be accomplished through the conference.

(3) The feasibility of the approach proposed in carrying out the conference. This includes an evaluation of how comprehensive the proposed support services are and the feasibility of the applicant in providing the services in a satisfactory manner.

(4) The feasibility and thoroughness of the implementation plan and major milestones.

(5) The cost effectiveness and fiscal soundness of the applicant's budget request.

C. Eligibility

Applicant eligibility is limited to national scope labor management committees/organizations or private non-profit organizations which can document that a major purpose or function of their organization has been the improvement of labor relations.

D. Allocations

FMCS has allocated $70,000 for this effort. This amount, plus any project income, must cover all conference expenses including speaker travel, postage, food and beverage, salary, audio-visual equipment rental, etc. Requests for blanket or fixed indirect (overhead) costs will be denied.

E. Length of Award and Match

The length of award will be 19 months beginning March 1, 1989 and ending September 30, 1990. No matching funds will be required for this cooperative agreement.

F. Application submission and Review

Applications must be postmarked no later than January 28, 1989. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application, plus one copy should be addressed to the Office of Labor-Management Grant Programs, FMCS, 2100 K Street, NW., Washington, DC 20427.

After the deadline has passed, all eligible conference applications will be reviewed, scored, and selected by the Director, Labor-Management Grant Programs who also serves as Conference Coordinator. Due to the special nature of this cooperative agreement, a Grant Review Board will not be used. All conference applicants will be notified of results prior to February 28, 1989. Applications submitted after the deadline date or that fail to adhere to eligibility or other major requirements may be administratively rejected by the Director, Labor-Management Grant Programs.

G. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacing Peter L. Regner, Labor-Management Grant programs, FMCS, 2100 K Street, NW., Washington, DC 20427 or by calling (202) 653-5320.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 88-26968 Filed 11-21-88; 8:45 am]

BILLING CODE 6732-01-M

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final FY 1989 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 1989 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653-5320.

Labor-Management Cooperation Program—Application Solicitation for Labor-Management Committees—FY 1989

A. Introduction

The following is the final solicitation for the Fiscal Year 1989 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. A separate solicitation will be issued for support of the Fifth National Labor-Management Conference. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in Fiscal Year 1981. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section I. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operatoin of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organizations and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, continguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement. Employees covered by a so-called "meet and confer" agreement are not eligible under this program. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY89, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communications between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

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3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board:

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1989 as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which will briefly discuss what basic questions or issues the assessment examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participant support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committes, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropirate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vs. its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and,

(8) The value to the goverment of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, private, non-profit labor-management committtees (or a labor or management entity on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exception applies to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

FMCS Has allocated $930,000 for this program. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be awarded according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY89 appropriation to contract for program support purposes other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio.

The total project period can thus normally be no more than 24 months.

Initial awards to establish new labor-management committtees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additonal 18 months at doublt the initial cash match ratio. The total project period can thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for exisitng area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-suported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs. In additon, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests form existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY89 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by *both* a labor management representative and be postmarked no later than May 6, 1989. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application, containing numbered pages, *plus three copies* should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW., Washington, DC 20427.

After the deadline has passed, all eligible applications except for those for the National Conference, will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process for those applications recommended by the Board(s).

All FY89 grant applicants will be notified of results and all grant awards will be made before September 30, 1989. Applications submitted after the deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Application Development Training

In FY89, FMCS will offer a half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC., on December 8, 1988. Individuals interested in attending the session should contact FMCS to reserve a space. See Section I for contact information.

I. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW., Washington, DC 20427; or by calling 202/653-5320.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 88-26970 Filed 11-21-88; 8:45 am]

BILLING CODE 6732-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority; Health Care Financing Administration

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register**, Vol. 48, No. 198, pp. 46434-46448, dated Wednesday, October 12, 1983) is amended to reflect the establishment of the Prescription Drug Implementation Task Force in the Bureau of Program Operations in the Office of the Associate Administrator for Operations. This task force will: (1) Develop guidelines for and implement electronic point of sale processing for Medicare prescription drug claims (at participating pharmacies); (2) conduct surveys and studies to effectively determine prescription drug costs and other costs associated with operating

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the program; (3) standardize formats for claims submission, receipts, and telephone prescriptions; and (4) develop audit and utilization review guidelines for drug processors.

The specific amendment to Part F. is described below:

• Section FP.20.A.5, Prescription Drug Implementation Task Force (FPA–2) is added to reflect the establishment of a focal coordinating point for the development of new operational requirements. The new section reads as follows:

5. Prescription Drug Implementation Task Force (FPA–2).

Oversees the operational implementation of the Medicare prescription drug benefit including home intravenous and immunosuppressive drug therapy. Develops Requests for Proposals in order to contract with entities to process prescription drug claims. Develops the standard format for claims submission. Develops the standard receipt for beneficiaries' use. Responsible for the implementation of electronic point of sale processing at participating pharmacies. Develops procedures for conducting enrollment of participating pharmacies. Develops guidelines for the provision of electronic point of sale technology to participating pharmacies. Develops utilization review guidelines for use by the drug claim processors. Develops audit guidelines for use of the drug claims procedures. Establishes an appeals procedure for drug claims. Conducts surveys of average wholesale costs of prescription drugs. Conducts studies of wholesale and retail prices of prescription drugs. Develops Physician Guide of 500 most prescribed drugs. Develops uniform notice on telephone prescriptions. Develops performance standards for drug processors. Coordinates activities between drug processors and State agencies concerning buy-in for Medicaid recipients of prescription drug costs. Coordinates with all other HCFA and HHS components involved in the presciption drug program. This is a temporary organization that is expected to be in operation until 1991 when its activities will be incorporated into other Bureau of Program Operations components.

Date: October 24, 1988.

Joseph R. Antos,

Acting Associate Administrator for Management and Support Services.

[FR Doc. 88–27086 Filed 11–21–88; 8:45 am]

BILLING CODE 4120–01–M

Office of the Secretary

Office of the Inspector General; Delegation of Authority To Issue Subpoenas of Witnesses in Investigations Under Section 1128A of the Social Security Act

Notice is hereby given that on November 3, 1983, the Inspector General redelegated to the Deputy Inspector General, the Assistant Inspector General for Investigations and his Deputies, and the Regional Inspectors General for Investigations, the authority delegated to him by the Secretary of the Department of Health and Human Services on April 26, 1988. That delegation authorizes the Inspector General to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation, for the purposes of any investigation under section 1128A of the social Security Act.

This authority cannot be redelegated.

Date: November 10, 1988.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 88–27088 Filed 11–21–88; 8:45am]

BILLING CODE 4110–60–M

Centers for Disease Control

National Committee on Vital and Health Statistics Subcommittee on Health Care Statistics; Meeting

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Health Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting (working session).

Name: National Committee on Vital and Health Statistics Subcommittee on Health Care Statistics

Time and Date: 8:00 a.m.–2:00 p.m.–December 15, 1988

Place: 5th Floor Conference Room, Health Policy Institute, Boston University, 53 Bay State Road, Boston, Massachusetts 02215.

Status: Open

Purpose: Working session of the Subcommittee to review National Center for Health Statistics (NCHS) plans for implementing changes in its surveys of health care providers, with particular focus on the relationship of minimum data sets to proposed survey plans.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: November 16, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–26914 Filed 11–21–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 84N–0334]

Vinyl Chloride and Other Chlorinated Polymers; Intent To Prepare an Environmental Impact Statement

AGENCY: Food and Drug Administration.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it intends to prepare an environmental impact statement (EIS) on the effects of the proposed amendments to its food additive regulations to provide for the safe use of vinyl chloride polymers in contact with food. The EIS will also consider the potential environmental impact of four food additive petitions involving chlorinated polymers. The EIS will be prepared in accordance with 40 CFR Part 1500, the council on Environmental Quality's (CEQ's) regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), and 21 CFR Part 25, FDA's NEPA policies and procedures.

DATE: Comments by January 23, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Buzz Hoffmann, Center for Food Safety and Applied Nutrition (HFF–304), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0277.

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 1988, FDA published a proposal to amend its food additive regulations to provide for the safe use of vinyl chloride polymers in contact with food (51 FR 4177). The term "vinyl chloride polymers" includes both vinyl chloride homopolymer (polyvinyl chloride or PVC) and copolymers of vinyl chloride with other chemicals. The agency proposed to take four actions: (1) To provide for the safe use of certain vinyl chloride polymers by establishing limits on the amount of residual vinyl chloride monomer that they may contain, (2) to codify all known prior sanctions for vinyl chloride polymers, (3) to provide for the use of certain unregulated vinyl chloride polymers in manufacturing vinyl chloride bottles, and (4) to remove vinyl chloride/vinylidene chloride copolymers from the list of materials that may be used as coatings on fresh citrus fruits.

In its notice of proposed rulemaking, FDA announced its conclusions that the proposed action would not have a significant impact on the human environment, and that an EIS was not required. The agency made its environmental assessment (EA) and finding of no significant impact (FONSI) available for public inspection in the Dockets Management Branch (address above).

At that time, FDA requested the submission of any data bearing on the issues and conclusions in the EA and FONSI. The agency specifically requested information on: (1) The environmental fate and effects of di(2-ethylhexyl) phthalate (DEHP), di(2-ethylhexyl) adipate (DEHA), and epoxidized soybean oil (ESO), three plasticizers used in conjunction with vinyl chloride polymers; and (2) whether vinyl chloride polymers contribute to the emission of polychlorinated dibenzo-*p*-dioxins (dioxins) and polychlorinataed dibenzofurans (furans) from municipal solid waste (MSW) incinerators. FDA said it would reexamine its conclusions if new information became available suggesting that the proposed action will have a significant environmental impact.

In response to this request for information, FDA received six submissions during the formal comment period that related to environmental issues, five from industry trade associations, and one from the U.S. Environmental Protection Agency (EPA). The industry supported the FONSI and provided environmental data on DEHP and DEHA. The industry submissions also concluded that (1) incineration of vinyl chloride polymers does not contribute to the formation of dioxins and furans, and (2) vinyl chloride polymers do not contribute significantly to acid gas emissions as compared to other sources.

EPA identified no strong reasons for FDA not to proceed with the proposed action but expressed concerns about the two potential environmental problems identified by FDA. EPA said that there was uncertainty about (1) the environmental fate and effects of DEHP, DEHA, and ESO, and (2) the extent to which vinyl chloride polymers contribute to the emission of dioxins and furans from MSW incinerators.

EPA also expressed concern that FDA's EA did not thoroughly support the FONSI and said that FDA should (1) present more clearly the potential effects of the proposed rule on the levels of use and disposal of plasticizers and plastics, (2) expand the discussion mitigation measures, and (3) clarify FDA's decision not to delay action on the proposed rule pending further studies to eliminate the uncertainties on the role of vinyl chloride polymers in emissions of dioxins and furans from MSW incinerators.

Because of EPA's comments, FDA decided to evaluate further its decision not to prepare an EIS and sought additional information. FDA contacted scientists to obtain information about the role of vinyl chloride polymers in the emission of dioxins and furans from MSW incinerators. The agency also contacted State and local government officials to learn what concerns they might have about FDA's action. Subsequently, FDA received about 1,400 comments and inquiries about the environmental impact of the proposed rule after the comment period had closed.

The comments from environmental organizations, State and local government officials, and citizens expressed concern about FDA's proposed action and requested that FDA prepare an EIS. These comments identified four major environmental issues involving the effects of postconsumer disposal of vinyl chloride polymer food-packaging material: Incineration of MSW, recycling of MSW, the solid waste management crisis, and adjuvants used with vinyl chloride polymers. The comments submitted by industry claimed that FDA's proposed action would not have significant environmental effects, and that an EIS was not necessary. These comments also provided information on the issues identified above.

Using the new information, FDA prepared an evaluation of the environmental issues in January 1988 as part of its internal deliberations on the proposed rule. The principal findings were:

(1) FDA's proposed action would result in an estimated increase of 180 million pounds in the annual use of vinyl chloride polymers for food-contact applications by 1991.

(2) FDA's proposed action would have little, if any, effect on emissions of dioxins and furans from incinerators operating under good combustion conditions and with state-of-the-art flue gas controls.

(3) FDA's proposed action would result in increased emissions of hydrogen chloride (HCl) from MSW incinerators, which would increase the cost of emission controls, would increase the amount of scrubber waste, and may affect the ability of incinerator operators to comply with existing or anticipated emissions standards.

(4) FDA's proposed action would not affect stratospheric ozone levels or significantly contribute to the overall acid precipitation problem.

(5) Increased use of vinyl chloride polymer food-packaging materials would have adverse effects on curbside recycling programs to the extent that these materials will compete with food-packaging materials that are being recycled. The impact of FDA's proposed action may become greater over time as the number of curbside recycling programs increases, unless markets are established for recycled vinyl chloride polymers.

(6) Vinyl chloride polymers may have adverse effects on attempts to recycle mixed plastics because HCl is released at temperatures reached in reprocessing plastics.

(7) FDA's proposed action would seem likely to exacerbate the attempts by some State and local authorities to deal with the growing solid waste management crisis. The impact would increase over time as the fractions of MSW that are incinerated and recycled continue to increase.

(8) The increased level of use of vinyl chloride polymers resulting from FDA's proposed rule represents only a 2 percent increase in the total vinyl chloride polymer resin market. However, the impact of FDA's proposed action on the solid waste management crisis is greater than suggested by its effect on the total market. This paradox results from the fact that most vinyl chloride polymer is used for products such as building and construction materials, which are often disposed of by methods other than by incineration and which are not targeted for postconsumer recycling.

(9) FDA's proposed action would result in no more than a small increase in the amounts of the plasticizers DEHP, DEHA, and ESO entering the environment because plasticizers are not used in rigid vinyl chloride polymer

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food-packaging materials, the products most affected by the proposed action.

FDA's January 1988 evaluation also identified several matters on which available information is inadequate to support findings about the nature and extent of potential environmental impacts. The major uncertainties include:

(1) The role and importance of vinyl chloride polymers in the formation and emission of dioxins and furans from MSW incinerators under the variety of incineration conditions that exist, particularly from improperly designed or operated incinerators or under transient conditions.

(2) The extent to which increased HCl emissions will increase operating and maintenance costs of MSW incinerators.

(3) The effects of increased HCl emissions on exposed organisms.

(4) The effects of HCl on the mobilization of heavy metals in MSW to fly ash or fumes in incinerators.

(5) The effects on incineration of increased amounts of vinyl chloride polymer bottles containing organotin stabilizers.

On February 2, 1988, FDA requested EPA's assistance in the environmental review of FDA's proposed rule on vinyl chloride polymers and specifically requested EPA's review of FDA's written evaluation of the issues. EPA responded, in a letter dated May 23, 1988, that FDA's analysis and preliminary conclusions fairly and accurately addressed the environmental issues associated with the proposed rule. EPA said that the issues that need to be addressed include: (1) The effect of vinyl chloride polymer incineration on municipal incineration plant compliance with State emission requirements for HCl, (2) complications created in recycling programs as a result of the presence of vinyl chloride polymers, (3) the possibility that increasing use of vinyl chloride polymers will exacerbate the existing solid waste crises associated with diminishing landfill capacity, (4) the effect of vinyl chloride polymer incineration on emission of dioxins and furans from MSW incinerators, and (5) the impact of plasticizers and other adjuvants used in rigid and semirigid vinyl chloride polymer containers. EPA said that several of the significant criteria in the CEQ's regulations (40 CFR 1508.27) are met by the proposed action and recommended that FDA perform a comprehensive EIS. FDA's evaluation and EPA's response are available from the Dockets Management Branch (address above).

II. FDA's Determination on Need for an EIS

In light of FDA's own analysis and EPA's findings and recommendation, FDA has determined that the proposed action may have significant environmental effects, and that an EIS must be prepared in accordance with 21 CFR 25.42.

The proposed rule of February 3, 1988, described FDA's evaluation of the human health risk presented by vinyl chloride monomer from the use of vinyl chloride polymers. The agency concluded that there is a reasonable certainty of no harm from the exposure to vinyl chloride monomer that may result from the use of vinyl chloride polymers in food packaging complying with the vinyl chloride monomer limitations set forth in the proposed rule. The proposed rule included limits on vinyl chloride monomer ranging from 5 to 50 parts per billion by weight of the vinyl chloride copolymer components, depending upon the particular application. These limits were proposed following a quantitative risk assessment by the agency that was based upon consideration of the potential exposure to vinyl chloride monomer and the potency of the monomer as determined by animal bioassays.

The comments on the proposed rule have not provided any basis for FDA to alter its tentative conclusion about the human health risk. Consequently, the agency has no concern about the safety of food that comes in contact with articles that comply with the monomer limits stated in the proposed rule. Therefore, pending development of an EIS and review of the environmental effects of the proposed rule, the agency advises that it will not take action against current uses of vinyl chloride polymers that are in compliance with these limits.

III. Food Additive Petitions Involving Halogenated Polymers

The CEQ regulations require consideration of the cumulative effects of an agency action and other past, present, and reasonably foreseeable future actions (40 CFR 1508.7). In its letter of May 23, 1988, EPA recommended that FDA consider the cumulative effect of vinyl chloride polymers and similar plastic products used in food-packaging materials. Consequently, FDA considered whether five food additive petitions that are before, or have recently been before, the agency and that involve halogenated polymers should be included as part of the environmental review of the proposed rule on vinyl chloride polymers.

FDA has decided not to delay action on two petitions submitted by The Dow Chemical Co. on the use of vinylidene chloride/methyl acrylate copolymers (FAP 6B3936, to increase the temperature for use of the copolymer from 121 °C to 135 °C, and FAP 6B3953, for use of the copolymer in food-packaging systems to be sterilized with hydrogen peroxide). (See 51 FR 29612; August 19, 1986, and 51 FR 35287; October 2, 1986). Elsewhere in this issue of the Federal Register, FDA is publishing final rules that grant these petitions. Because vinylidene chloride copolymer contains chlorine, FDA believes that the presence of this copolymer in the MSW stream may raise the same types of issues as vinyl chloride polymers. However, FDA has concluded that approval of these two petitions would result in a very small increase in the amount of chlorine entering the MSW stream and thus would not have a significant impact on the human environment. Nonetheless, the agency also decided to consider the environmental effects of the use of these copolymers in the EIS that will be prepared for the proposed rule on vinyl chloride polymers. The agency's findings of no significant impact and the petitioner's EA's may be seen at the Dockets Management Branch (address above).

Any new petitions that would result in a substantial increase in the use of vinylidene chloride polymers will be of concern. Such an increase could result from either a single petition or from a number of petitions that individually would produce only a small increase in the use of vinylidene chloride polymers. Under the CEQ regulations, individually minor actions taking place over a period of time can collectively be significant (40 CFR 1508.7).

FDA has under review three food additive petitions that involve halogenated polymers for use in contact with foods, two of which will be considered in the EIS. One petition, FAP 7B3994 (52 FR 21122; June 4, 1987), submitted by The Dow Chemical Co., requests approval of certain vinylidene chloride/vinyl chloride copolymers for use in food-packaging systems to be sterilized with hydrogen peroxide. The second petition, FAP 7B3985 (52 FR 12969; April 20, 1987), submitted by the Union Carbide Corp., is for use of vinyl chloride-acetate hydroxyl-modified copolymer, reacted with styrene-maleic anhydride copolymer, as a coating of articles intended for use in contact with food.

These two petitions would collectively increase the use and disposal of vinyl chloride polymer food-packaging material. Therefore, the issues that need to be addressed for these petitions are essentially the same as the issues that are to be addressed in the EIS for FDA's proposed rule. Considered together, these petitions would produce a substantial net increase in the amount of chlorine entering the MSW stream over and above the increase predicted as a result of FDA's proposed rule. Most of this increase would be contributed by the vinylidene chloride component of the copolymer in FAP 7B3994. FDA will delay action on FAP 7B3994 pending completion of the EIS process. However, FDA does not intend to delay action on FAP 7B3985 on environmental grounds. FAP 7B3985 concerns a copolymer that is expected to replace currently-used solvent-borne chlorinated polymers that have a higher chlorine content. Consequently, this action would result in a small net decrease in the chlorine entering the MSW stream.

FDA has decided not to consider in the EIS the environmental impact of FAP 7B4040 (52 FR 42728; November 6, 1987), submitted by Ausimont USA, Inc., for use of an ethylene/chlorotrifluoroethylene copolymer in repeat-use applications in contact with food. FAP 7B4040 concerns a copolymer that will be used in food-processing plants as piping to carry various foods, including hot water. In contrast to disposable food-packaging materials, this type of product is likely to be disposed of by methods other than incineration, such as special landfills. Consequently, any environmental impact associated with incineration of this halogenated polymer would be averted.

IV. Alternatives

Alternatives that will be considered in the EIS include: (1) Taking no action (i.e., withdrawing the proposed rule and denying the petitions), (2) deferring action until still more experimental work is done to determine the role of vinyl chloride polymers in MSW incinerator emissions of dioxins and furans under representative conditions and to address other uncertainties, (3) making final FDA's September 3, 1975, proposed rule to prohibit some uses of vinyl chloride polymers (40 FR 40529), and (4) making final FDA's 1986 proposed rule, except requiring that vinyl chloride polymer food containers be labeled to facilitate the separation of vinyl chloride food packaging from other wastes that are to be incinerated and recycled. Other reasonable alternatives that are submitted by interested parties will also be considered.

V. Scoping Process And Request For Comment

The purpose of the scoping process is to determine the scope of issues to be addressed in an EIS and to identify the significant issues related to a proposed action (40 CFR 1501.7). FDA has tentatively decided not to hold a scoping meeting for the EIS. The issues that will be addressed in the EIS have been adequately identified in (1) the previously prepared EA and FONSI, (2) the comments the agency has received, (3) FDA's recent written evaluation of the issues, and (4) this notice of intent. However, to ensure that the full range of environmental issues related to the proposed actions is addressed, and that all significant issues are identified, FDA is requesting additional comments, suggestions, and information from all interested parties.

FDA is particularly interested in information that (1) would support or refute FDA's current understanding of the impact of these proposals or that would eliminate the existing uncertainties, (2) suggests alternative actions that the agency might consider, particularly ones that would mitigate some or all of the potential environmental impacts, and (3) would provide a basis on which to establish the costs and benefits of requiring a label to facilitate source separation of vinyl chloride polymer food containers. To be of most use to the agency, information and comments should be fully supported and referenced.

Written comments and information concerning the proposed actions and the EIS should be submitted to the Dockets Management Branch (address above) by January 23, 1989.

Dated: November 14, 1988.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-26989 Filed 11-21-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institutes of Health, December 1-2, 1988, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on December 1 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 1 from approximately 9:30 a.m. to 6 p.m. and on December 2 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, National Institutes of Health, Building 31, Room 10A06, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, National Institutes of Health, Westwood Building, Room 834, Bethesda, Maryland 20892 (301/496-9767) will furnish substantive program information.

This notice is being published less than 15 days prior to meeting because of the difficulty of coordinating the attendance of members due to unforeseen conflicting schedules.

Dated: Nov 15, 1988.

Betty J. Beveridge,

Commitee Management Officer, NIH.

[FR Doc. 88-26943 Filed 11-21-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, December 12-13, 1988, 11th floor solarium, Building 10, National Institutes of Health, Bethesda, Maryland, which was published in the **Federal Register** on November 10, 1988 (53 FR 45592).

The meeting was cancelled due to complications of other commitments of several members of the Board and will be rescheduled at a later date.

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Dated: November 16, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-26944 Filed 11-21-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-050-09-4143-08]

Clark County Management Framework Plan, Las Vegas District, NV

November 14, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Proposed Plan Amendment and Final Environmental Assessment to the Clark County Management Framework Plan, Las Vegas District, Nevada.

SUMMARY: The Proposed Plan Amendment and Final Environmental Assessment to the Clark County Management Framework Plan for Sand and Gravel Leasing in the Las Vegas Valley Sub-Unit is available to the public. The amendment recommends that one existing sand and gravel lease be renewed, one existing sand and gravel lease be partially renewed, and that three lease applications be rejected. The leases are located in the southeastern portion of the Las Vegas Valley near Henderson, Nevada.

The Draft Plan Amendment and Environmental Assessment was made available to the public for review and comment on September 28, 1987. Comments received on the Draft Plan Amendment and Environmental Assessment were considered in preparing the Proposed Plan Amendment and Final Environmental Assessment. The Proposed Plan Amendment may be protested by all parties who participated in the process or who have an interest which is or may be adversely affected by adoption of the amendment.

DATE: Protests on the Proposed Plan Amendment and Final Environmental Assessment must be postmarked on or before December 23, 1988.

ADDRESSES: Protests or comments on the Proposed Plan Amendment and Final Environmental Assessment should be sent to: Director, Bureau of Land Management, 18th and C Streets, NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Individuals wishing to protest should provide the following information to the Director.

a. The name, mailing address, telephone number, and interest of the person filing the protest;

b. A statement of the issue or issues being protested;

c. A statement of the part or parts of the amendment being protested;

d. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

e. A concise statement explaining why the Nevada State Director's decision is believed to be wrong.

Copies of the Proposed Plan Amendment and Final Environmental Assessment have been mailed to individuals and organizations who participated in the planning amendment process. A limited number of additional copies are available upon request from the Las Vegas District Office. Individuals wishing to obtain copies of the document should contact Stan Wilkerson, Public Affairs Specialist, Las Vegas District, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646-8800.

Copies of the Draft Plan Amendment and Environmental Assessment and Proposed Plan Amendment and Final Environmental Assessment are available for review at the Las Vegas District Office and the Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 784-5448.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-27027 Filed 11-21-88; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-020-9-4212-13; A-23578]

Realty Action; Exchange of Public Lands; La Paz County, AZ

All or part of the following described sections containing federal lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 15W.,
Secs. 3, 8, 9, 10, 14, 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27, 28, 31, 34, 36.
T. 6 N., R. 15 W.,
Secs. 21, 27, 28, 33, 34.
T. 4 N., R. 16 W.,
Sec. 24.

Comprising 11,504.90 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to the Federal Land Policy and Management Act of 1976.

Segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Henri R. Bisson,

District Manager.

Date: November 14, 1988.

[FR Doc. 88-27030 Filed 11-21-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-09-4212-13; AZ A 23590]

Realty Action; Exchange of Public Land; Maricopa County, AZ

The following described public land has been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 5 N., R. 3 E.,
Sec. 1, SE¼ NE¼.

Containing 40 acres.

In exchange, BLM will acquire lands of equal value from within the following legally described private land offered by Julian Berry:

Gila and Salt River Meridian, Cochise County, Arizona

T. 12 S., R. 31 E.,
Sec. 2, NW¼SE¼, S½SE¼;
Sec. 11, N½NE¼;
Sec. 12, E½NE¼, SW¼NW¼, E½SW¼, N½SE¼;
Sec. 13, W½NE¼, E½NW¼, E½SW¼, W½SE¼.
T. 12 S., R. 32 E.,
Sec. 7, W½NW¼, N½SW¼, SE¼;
Sec. 18, NE¼NE¼, S½NE¼, S½NW¼, NW¼NW¼, W½SW¼.

Containing 1,400 acres, more or less.

In the exchange, BLM will acquire an important archaeological site, wildlife resource values and resolve access issues.

The public land will be transferred subject to a reservation to the United States for rights-of-way for ditches and canals under the Act of August 30, 1890; 26 Stat. 391; U.S.C. 945.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands, as described in this notice, from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

Notice of Realty Action A 23296 and the classification for state selection and mineral leasing only are hereby terminated as they affect the previously described public land.

Detailed information concerning this exchange can be obtained from the Phoenix District Office, telephone (602) 863-4464. For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Paul J. Buff,

Acting District Manager.

Date: November 10, 1988.

[FR Doc. 88-27028 Filed 11-21-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-09-4212-13; AZ A 23589]

Realty Action; Exchange of Public Land; Arizona

The following described public land has been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian

Mohave County

T. 17 N., R. 12 W.,
Sec. 26, SE¼NW¼.

Pinal County

T. 3 S., R. 7 E.,
Sec. 4, E½SW¼SE¼;
Sec. 5, SE¼SW¼;
Sec. 8, NE¼NW¼, S½NW¼, W½SW¼;
Sec. 14, SW¼SW¼;
Sec. 17, NW¼NW¼;
Sec. 18, SE¼SE¼;
Sec. 20, S½SW¼;
Sec. 22, E½;
Sec. 23, N½, SW¼, NW¼SE¼;
Sec. 24, W½NW¼, SE¼NW¼;
Sec. 27, W½NW¼;
Sec. 33, N½NE¼, NW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 34, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 35, all;
Sec. 36, lots 7 to 12, incl., SW¼.

Containing 3,240.37 acres, more or less.

In exchange, BLM will acquire lands of equal value from within the following legally described private land offered by Julian Berry:

Gila and Salt River Meridian, Arizona

Yavapai County

T. 16 N., R. 10 W.,
Sec. 3, lots 1 and 2, S½NE¼, SE¼ (surface only);
Sec. 10, NE¼ (surface only);
Sec. 11, NW¼ (surface only).

Mohave County

T. 16 N., R. 10 W.,
Sec. 31, lots 1 to 4, incl., E½, E½W½.
T. 16 N., R. 11 W.,
Sec. 4, lots 3 and 4, S½NW¼, SW¼;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 15, all;
Sec. 17, S½SW¼;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, S½NE¼;
Sec. 22, NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 23, all;
Sec. 26, all;
Sec. 27, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 16 N., R. 12 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, portion SE of Bohner Canyon;
Sec. 7, portion SE of Bohner Canyon;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 17, all;
Sec. 27, S½;
Sec. 29, NE¼NE¼;
Sec. 33, NW¼;
Sec. 35, all.
T. 16½ N., R. 10 W.,
Sec. 19, lots 1 and 2, SE¼SW¼, SE¼; lots 3 to 6, incl., NE¼SW¼ (surface only).
T. 16½ N., R. 11 W.,
Sec. 19, lots 1 to 4, incl., N½SE¼;
Sec. 20, lots 1 to 4, incl., S½;
Sec. 21, lots 1 to 4, incl., S½;
Sec. 28, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, N½NW¼.
T. 16½ N., R. 12 W.,
Sec. 21, lots 1 to 4, S½;
Sec. 23, lots 1 to 4, S½;
Sec. 25, S½;
Sec. 27, all;
Sec. 33, all;
Sec. 35, all.
T. 17 N., R. 10 W.,
Sec. 32, W½, SE¼.
T. 17 N., R. 11 W.,
Sec. 13, portion;
Sec. 14, portion (surface only);
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 1 to 3, incl., E½, E½NW¼, NE¼SW¼;
Sec. 21, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, E½, E½W½;
Sec. 33, all.
T. 17 N., R. 12 W.,
Sec. 13, all;
Sec. 23, all;
Sec. 25, all;
Sec. 35, all.

Containing 30,000 acres, more or less.

The values to be acquired by BLM include consolidation of rangelands, acquisition of wildlife habitat and riparian areas and improved access.

The public land will be transferred subject to the following terms and conditions:

A reservation to the United States for rights-of-way for ditches and canals under the Act of August 30, 1980; 26 Stat. 391; U.S.C. 945.

Trail right-of-way A 19382 and mineral material sale A 10206.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the *Federal Register* of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

Notices of Realty Action A 22592, A 20633 and A 22563 are hereby terminated as they affect the previously described public land.

Detailed information concerning this exchange can be obtained from the Phoenix District Office, telephone (602) 863-4464. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action. In the absence

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of any objections, this realty action will become the final determination of the Department of the Interior.

Paul J. Buff,

Acting District Manager.

Date: November 10, 1988.

[FR Doc. 88-27029 Filed 11-21-88; 8:45 am]

BILLING CODE 4310-32-M

[ES-940-09-4520-13; ES-039796, Group 180]

Filing of Plat of Dependent Resurvey and Subdivision of Section; Florida

1. The plat, in one sheet, of the dependent resurvey of a portion of the south and west boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of sections 31 and 33, and the metes-and-bounds survey of certain parcels in section 32, Township 11 South, Range 25 East, Tallahassee, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on December 27, 1988.

2. The survey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., December 27, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-26973 Filed 11-21-88; 8:45 am]

BILLING CODE 4310-GJ-M

Fish and Wildlife Service

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Arctic National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Arctic National Wildlife Refuge (Refuge), Alaska, pursuant to sections 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Enviromental Policy Act of 1969.

DATE: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the 9Arctic Refuge mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative A for implementation. As described in the Plan, Alternative A is the alternative preferred by the Service. The Service is not recommending any additional refuge lands for addition to the National Wilderness Preservation System.

Alternative A provides a high degree of resource protection and a good opportunity for achieving the purposes set forth in the Alaska Lands Act, including conservation of fish and wildlife populations and habitats.

Date: November 10, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-27026 Filed 11-21-88; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations; Alabama et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 11, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 7, 1988.

Carol D. Schull,

Chief of Registration, National Register.

ALABAMA

Baldwin County

Allen House (Creole and Gulf Coast Cottages in Baldwin County TR), Off CR 10 on N bank of Bon Secour River, Bon Secour, 88002-809

Captain Adams House (Creole and Gulf Coast Cottages in Baldwin County TR), 907 Captain O'Neal Dr., Daphne, 88002810

Hamner House (Creole and Gulf Coast Cottages in Baldwin County TR), Oak Rd. off CR 6, Bon Secour, 88002811

McMillan House (Creole and Gulf Coast Cottages in Baldwin County TR), 1404 Captain O'Neal Ave., Daphne, 88002812

Nelson House (Creole and Gulf Coast Cottages in Baldwin County TR), Hwy. 59, North, Latham, 88002814

Nicholson House (Creole and Gulf Coast Cottages in Baldwin County TR), CR 6, Oyster Bay, 88002813

Orrell House (Creole and Gulf Coast Cottages in Baldwin County TR), CR 6, Bon Secour, 88002815

Street House (Creole and Gulf Coast Cottages in Baldwin County TR), Wood Acres Rd. off CR 3, Point Clear, 88002816

Texas, The (Creole and Gulf Coast Cottages in Baldwin County TR), 306 Dryer Ave., Daphne, 88002817

Walker House (Creole and Gulf Coast Cottages in Baldwin County TR), 905 Captain O'Neal Dr., Daphne, 88002818

Colbert County

Rock Creek Archeological District (ACt44,ACt45), Address Restricted, Maud vicinity, 88002826

ARKANSAS

Independence County

Wheel Store, The, River and Broad Sts., Batesville, 88002822

Izard County

Calico Rock Historic District (Boundary Increase), W side of Rodman St. at Missouri-Pacific Railroad tracks, Calico Rock, 88002827

Little River County

Cowling, Judge Jefferson Thomas, House, 611 Willow St., Ashdown, 88002823

Pulaski County

Rose, U.M., School (Thompson, Charles L., Design Collection TR), Izard and W. 13th St., Little Rock, 88002820

Washington County

Frisco Depot, 550 W. Dickson St., Fayetteville, 88002819

Waters-Pierce Oil Company Building (Thompson, Charles L., Design Collection TR), West St., Fayetteville, 88002821

FLORIDA

Duval County

San Jose Estates Gatehouse (San Jose Estates TR), 1873 Christopher Point Rd., North, Jacksonville, 88002808

Marion County

Dunnellon Boomtown Historic, District, Roughly bounded by McKinney Ave., Illinois St., Pennsylvania Ave., and Cedar St., Dunnellon, 88002807

Orange Springs Methodist Episcopal Church and Cemetery (8MR1505), SR 315 and Church St., Orange Springs, 88002805

KANSAS

Sedgwick County

Riverside Cottage, 901 Spaulding Ave., Wichita, 88002824

Mississippi

Tishomingo County

Bear Creek Mound and Village Site (22Ts500), Address Restricted, Tishomingo vicinity, 88002825

TEXAS

Angelina County

Abercrombie—Cavanaugh House (Angelina County MRA), 304 Paul, Lufkin, 88002794

Angelina River Bridge (Angelina County MRA), US 59 over Angelina River, Lufkin, 88002801

Banks—Ogg House (Angelina County MRA), 602 Groesbeck St., East, Lufkin, 88002771

Behannon—Kenley House (Angelina County MRA), 317 Shephard, Lufkin, 88002798

Binion—Casper House (Angelina County MRA), 404 mantooth, Lufkin, 88002785

Bowers—Felts House (Angelina County MRA), 1213 Lotus Ln., Lufkin, 88002780

Boynton—Kent House (Angelina County MRA), 107 Kerr St., West, Lufkin, 88002779

Brookshire, Houston—Yeates House (Angelina County MRA), 304 Howe St., East, Lufkin, 88002776

Byus—Kirkland House (Angelina County MRA), 411 Mantooth, Lufkin, 88002786

Clark—Whitton House (Angelina County MRA), 1865 Old Mill Rd., Lufkin, 88002792

Corstone Sales Company (Angelina County MRA), 109—111 Shepherd St., East, Lufkin, 88002797

Dunham Hill (Angelina County MRA), US 69, Huntington, 88002803

Everitt—Cox House (Angelina County MRA), 418 Moore, Lufkin, 88002789

Fenley Commercial Building (Angelina County MRA), 112 Lufkin Ave., East, Lufkin, 88002781

Gibbs—Flournoy House (Angelina County MRA), TX 844, Manning vicinity, 88002804

Henderson, S.W.—Bridges House (Angelina County MRA), 202 henderson, Lufkin, 88002775

Humason—Pinkerton House (Angelina County MRA), 602 Grove, Lufkin, 88002773

Keltys Worker Housing (Angelina County MRA), 109 Maas, Lufkin, 88002784

Kennedy, A.C.—Runnells House (Angelina County MRA), 603 Groesbeck St., East, Lufkin, 88002772

Kennedy, R.A.—J.M. Lowrey House (Angelina County MRA), 519 Groesbeck St., East, Lufkin, 88002770

Kurth, J.H., House(Angelina County MRA), 1860 Old Mill Rd., Lufkin, 88002791

Kurth—Glover House (Angelina County MRA), 1847 Old Mill Rd., Lufkin, 88002790

Lawrence, G.E., House (Angelina County MRA), 2005 Chestnut St., South, Lufkin, 88002766

Lufkin Land—Long Bell—Buck House (Angelina County MRA), 1218 Lufkin St., Lufkin, 88002783

Marsh—Smith House (Angelina County MRA), 503 Raguet St., North, Lufkin, 88002796

McClendon—Abney Hardware Company (Angelina County MRA), 119 Lufkin Ave., East, Lufkin, 88002782

McGilbert House (Angelina County MRA), 1902 Old Mill Rd., Lufkin, 88002793

Newsom—Moss House (Angelina County MRA), 420 Mantooth, Lufkin, 88002787

Old Federal Building—Federal Courthouse (Angelina County MRA), 104 Third St., North, Lufkin, 88002799

Parker—Bradshaw House (Angelina County MRA), 213 Raguet St., North, Lufkin, 88002795

Percy, Dr. Edward—Abney House (Angelina County MRA), 406 Jefferson, Lufkin, 88002778

Perry, A.F. and Myrtle—Pitmann House (Angelina County MRA), 402 Bynum St., South, Lufkin, 88002765

Perry, C.W. Archie—Hallmark House (Angelina County MRA), 302 S. Bynum, Lufkin, 88002764

Pines Theatre (Angelina County MRA), 113 First St., South, Lufkin, 88002767

Rastus—Read House (Angelina County MRA), 1509 First St., South, Lufkin, 88002768

Russell—Arnold House (Angelina County MRA), 121 Menefee St., West, Lufkin, 88002788

Standley House (Angelina County MRA), 1607 tulane, Lufkin, 88002800

Temple, Henry G., House (Angelina County MRA), 501 Hines Rd., Diboll, 88002802

Trout, Walter C.—White House (Angelina County MRA), 444 Jefferson, Lufkin, 88002777

Walker, Howard, House (Angelina County MRA), 503 Harmony Hill Rd., Lufkin, 88002774

[FR Doc. 88-28991 Filed 11-21-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Amendment No. 5]

Section 5a Application No. 35 [1]; Oil Field Haulers Association, INc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Oil Field Haulers Association, Inc. (OFHA) has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of OHFA's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from OFHA's representative: Scott Pospisil, Oil Field Haulers Association, Inc., Austin, TX 78767.

DATES: Comments from interested parties are due December 22, 1988. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 35 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard R. Hartley, (202) 275-7766 or Richard B. Felder, (202) 275-7691. (TDD for hearing impaired (202) 275-1721.)

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concept, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.) Oil Field Haulers Association, Inc. (OFHA) has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(e) of the Motor Carrier Act of 1980, Pub. L. 96-296 (1980) (MCA). Since filing its application, OFHA has been obligated to observe the requirements of the MCA and the standards in *Motor Carrier Rate Bureau—Imp. Pub. L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*). We have provisionally approved OFHA's agreement as consistent with 49 U.S.C. 10706(b) and *Rate Bureau, supra*, subject to certain conditions and modifications in the following subject areas:

[1] Section 5 was recodified as section 10706.

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Identification and description of member carriers; right of independent action; open meetings; quorum standard; final disposition of cases; general standards for member carrier voting and discussion of collectively established rates; single-line rates; general rate increases and decreases; changes in tariff structure; and zone of rate freedom and released rates. We have also offered comments and imposed requirements concerning the agreement generally. OFHA has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and the *Rate Bureau* case, *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling authority and administrative criteria, and their application to OFHA's agreement.

A copy of any comments filed with the Commission must also be served OFHA, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that OFHA must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: November 14, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-26963 Filed 11-21-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-213 (Sub-No. 2X)]

Canadian Pacific, Ltd.; Abandonment Exemption Between Canadian Border and Houlton in Aroostook County, ME

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 3.03-mile line of railroad (the United States portion of its Houlton Subdivision), between milepost 4.97 in Aroostook County, ME and milepost 8.0 in Houlton, ME.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic on the line has been rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an order of financial assistance has been received, this exemption will be effective December 21, 1988 (unless stayed pending reconsideration). Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by December 1, 1988. Petitions to stay regarding matters that do not involve environmental issues [2] and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 12, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representatives: Charles H. White, Jr., John T. Sullivan, 1730 Pennsylvania Avenue NW., Suite 400, Washington, DC 20006.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 28, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-26987 Filed 11-21-88; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonments—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87-69]

Eric A. Baum, M.D.; Revocation of Registration

On September 17, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Eric A. Baum, M.D., Respondent, of Sarasota, Florida, proposing to revoke DEA Certificate of Registration BB0337508, and to deny any pending applications for renewal of his registration. The statutory bases for issuance of the Order to Show Cause were that Respondent was recently convicted of a felony offense relating to controlled substances and that his continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held on March 1 and 2, 1988, in Tampa, Florida.

On August 26, 1988, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision recommending that the Administrator revoke Respondent's DEA Certificate of Registration and deny any pending applications for renewal. Neither the Government nor Respondent's counsel filed exceptions to the Administrative Law Judge's opinion and recommended ruling.

After careful consideration of the entire record in this matter, the Administrator adopts the Administrative Law Judge's findings of

fact and concurs with her recommended ruling.

The Administrative Law Judge found that Respondent is a psychiatrist who maintains a medical license and a current DEA Certificate of Registration in the State of Florida. In the summer of 1985, Respondent and his current wife, Teresa Leigh Baum, and two of his children from a previous marriage, moved from Akron, Ohio to Sarasota, Florida.

Prior to Respondent's move to Florida in 1985, the Akron Police Department received a complaint from Respondent's former wife, Susan Artz, alleging that he was obtaining controlled substances for his personal abuse by issuing fraudulent prescriptions in the names of their children, Pamela Lynn Baum, Mark Baum and Eric Baum, Jr. Susan Artz claimed that her children had no medical problems or conditions which would have required treatment with controlled substances. Following her complaint, an Akron Police Department detective located 23 controlled substance prescriptions written by Respondent for Cylert, Ritalin and Fiorinal in the names of "Pam Evans," "E.A. Baum," "Terri Baum," "Mark Baum," "Pam Baum," "Susan Baum," and "Vicki Herbruck." Shortly thereafter, the Akron Police Department learned that Respondent had moved to Sarasota, Florida. They discontinued their investigation, but later forwarded the information to the Sarasota Police Department.

In 1986, the Sarasota Police Department was alerted to the possibility of a drug problem involving one of Respondent's children. While that concern turned out to be unfounded, it focused attention on Respondent. Detective Frank Mercurio of the Sarasota Police Department (who became a Special Agent with the Florida Department of Law Enforcement prior to the administrative hearing) contacted local pharmacies near Respondent's residence and the Akron Police Department. At St. Armand's Pharmacy, Detective Mercurio found some controlled substance prescriptions issued by Respondent to persons with the surname "Baum" and others with the surname "Leigh," the maiden name of Respondent's current wife. According to the pharmacist, all prescriptions were picked up either by Respondent or his wife.

On February 19, 1986, the pharmacist at St. Armand's Pharmacy telephoned Detective Mercurio and advised him that Teresa Baum was at the pharmacy and had presented two controlled substance prescriptions for filling which were issued by Respondent, one in the name of "Teresa Baum," the other in the name of "Pam Leigh." Accordingly, Detective Mercurio went to the pharmacy and arrested Mrs. Baum on charges of obtaining controlled substances by fraud. At that time, Mrs. Baum informed Detective Mercurio that Respondent had issued the prescriptions for her and her stepdaughter, Pam Baum, and that medical records for both of them could be found at their residence. She also advised him that she believed "Leigh" was her stepdaughter's middle name. When Detective Mercurio informed her that he knew her stepdaughter's middle name was "Lynn," Mrs. Baum invoked her right to counsel and remained silent. Respondent was arrested the following day on the same charges.

On the evening of February 19, 1986, Detective Mercurio and other officers from the Sarasota Police Department executed a search warrant at Respondent's residence. A thorough search of the residence revealed no medical records, but several controlled substance prescription bottles were found in Respondent's bedroom. All the prescription bottles bore Respondent's name as the prescribing physician. The labels listed the following persons as patients, "Susan Baum," "Terri Baum," "Teresa Baum," "Vicki Herbruck," "Rick Baum," and "Pamela Evans." Many of the bottles matched the prescriptions located earlier by the Akron Police Department. The residence did not contain a medical office.

Pamela Baum was present during the search of Respondent's residence and was interviewed by Detective Mercurio. She informed him that she had never gone by any name other than "Pamela Lynn Baum." Detective Mercurio later interviewed Mark Baum who informed him that his sister never went by any nicknames. In a telephone conversation with Detective Mercurio, Mrs. Artz informed him that Pamela Baum never used any names other than "Pamela" or "Pam Baum."

During the hearing, Respondent presented affidavits allegedly from Pamela Baum and Eric Baum, Jr., stating, in part, that she used the nickname "Pam Leigh." Respondent also testified that his daughter used the nickname "Pam Leigh" for various reasons, including "her fondness for Sara Lee pound cake," a former boyfriend was named K.C. Leigh, and "Leigh" was her stepmother's maiden name. Respondent claimed that he wrote the controlled substance prescriptions for her in the name of "Pam Leigh" because "it kept the two of the[m] [Pamela Baum and her stepmother] friendlier." The Administrative Law Judge found neither the affidavits nor Respondent's testimony credible evidence in support of his reason for issuing controlled substance prescriptions in the name "Pam Leigh."

In February 1986, Detective Mercurio also questioned Pamela and Mark Baum as to whether either of them were diagnosed as being hyperactive and hyperkinetic, or whether they were ever prescribed controlled substances including Ritalin, Cylert and Fiorinal for any legitimate medical reason. Pamela Baum informed Detective Mercurio that she did not have any medical, physical or psychological problems, and that she was not taking Ritalin or any other prescription drugs. She also stated that the last time her father prescribed anything for her was approximately six months earlier when she had bronchitis. Mark Baum informed Detective Mercurio that Respondent and his stepmother abused controlled substances, that neither he nor his sister suffered from any medical or psychological conditions requiring drug therapy, and that neither he nor his sister received controlled substances from Respondent. In addition, Detective Mercurio questioned Mrs. Artz about her children's medical conditions. She told him that none of her children had any medical problems requiring drug therapy, and that none of them were hyperactive. Detective Mercurio also questioned Vicki Herbruck, a registered nurse who dated Respondent from 1978 to 1982. She informed him that none of Respondent's children showed any signs of being hyperactive, and that she had never seen any indication that any of the children had any type of medical or psychological problem which would require regular medication.

In his defense, Respondent presented affidavits from Pamela Baum and Eric Baum, Jr., claiming that Pamela Baum suffered from hyperactivity and required regular treatment with Ritalin and/or Cylert. In light of the nature of the affidavits and Detective Mercurio's testimony to the contrary, the Administrative Law Judge did not give substantial weight to the affidavits. Respondent testified that both children were born with hyperkinesis and that the proper treatment was to alternatively prescribe Ritalin and Cylert. He also stated that he treated Pamela Baum with Fiorinal for "cluster headaches." Respondent testified that he prepared handwritten progress notes since August 1985 to document his medical treatment of his daughter. The Administrative Law Judge found that his progress notes did not match the actual prescriptions he issued in the name of

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"Pam Leigh." Respondent's prescribing far exceeded the doses mentioned in the progress notes. In addition, the information contained in Respondent's progress notes for prescribing Cylert and Ritalin to Pamela Baum did not comport with accepted medical practice. He prescribed quantities of both drugs which far exceeded those recommended by the *Physician's Desk Reference*. A psychiatric expert who reviewed Respondent's progress notes for Pamela Baum found that it was inappropriate to prescribe controlled substances to one's family and that it was also inappropriate to prescribe Cylert and Ritalin together for treatment of hyperkinetic problems. A medical record for Pamela Baum allegedly based upon an examination conducted by a Dr. Rosser in Akron, Ohio also indicated that Pamela Baum was a normal, healthy adolescent female. There is no indication that she suffered from hyperactivity or hyperkinesis. Respondent testified that his daughter hid her hyperactivity from Dr. Rosser. He also admitted that Dr. Rosser had not written the report, but rather, that he wrote the report based upon Dr. Rosser's notes. The Administrative Law Judge did not believe Respondent's testimony regarding Dr. Rosser's report. She concluded that the omission from the report of Pamela Baum's alleged hyperkinesis is further evidence that she did not suffer from the condition. Overall, the Administrative Law Judge concluded that there was substantial evidence to find that Pamela Baum did not suffer from hyperkinesis or hyperactivity, and that there was no medical reason for her to receive the Ritalin or Cylert prescribed in her name. Even had she suffered from hyperactivity, the quantities of drugs prescribed for her by Respondent were excessively large and unjustified.

With respect to Respondent's alleged treatment of his wife, Teresa Baum, the Administrative Law Judge found Respondent's explanations dubious. Respondent's progress notes for his wife's treatment do not match his actual prescribing practices. He prescribed considerably larger quantities of controlled substances than are indicated in his notes. He prescribed quantities which far exceeded the doses suggested by the *Physician's Desk Reference*. Judge Bittner also found that Respondent prescribed various controlled substances in his wife's name during the time she was pregnant with their child, even though the drugs he prescribed were contraindicated for pregnant women. As with the evidence concerning Pamela Baum, the Administrative Law Judge found that even had Teresa Baum suffered from the conditions alleged by Respondent, he prescribed excessively large and unjustified quantities of controlled substances to treat those conditions.

The Administrative Law Judge also found Respondent's explanation of why empty controlled substance prescription bottles bearing other persons' names were found in his residence to be incredible. Respondent claimed that he found the bottles in his son Mark's bedroom, and that Mark told him that he found the bottles at his mother's home and brought them back to Florida. Mark Baum did not testify in the DEA hearing. The Administrative Law Judge did not give any weight to Respondent's testimony on this issue.

Detective Mercurio testified that he spoke with Vicki Herbruck and Susan Artz concerning the Respondent's prescribing practices and the prescriptions and prescription bottles found issued in their names. Vicki Herbruck informed him that between 1978 and 1982 she observed Respondent write prescriptions in the names of his children and his ex-wife. She also stated that she would have the prescriptions filled at a pharmacy and give the drugs to Respondent for his personal consumption. She informed Detective Mercurio that she had no contact with Respondent after 1982 and was unaware of any prescriptions Respondent may have written in her name after that time. Among the prescriptions found in local pharmacies in Akron, Ohio were four prescriptions written by Respondent in Ms. Herbruck's name from November 1983 to November 1984, some of which matched the prescription bottles found in Respondent's residence. Mrs. Artz also informed Detective Mercurio that she had not received any controlled substances from Respondent since their divorce in 1978. Yet, prescription bottles bearing her name and issued after 1978 were found in Respondent's residence. The evidence supports a finding that the bottles found in Respondent's residence were from prescriptions he issued for his personal consumption.

On April 15, 1987, in the Circuit Court for the Twelfth Judicial Circuit, in and for Sarasota County, Respondent entered a "best interest" plea to one count of obtaining drugs by fraud, a felony offense in violation of F.S. 893.13(3)(a)(1). The court withheld adjudication under Section 948.01 of the Florida Code and Respondent was placed on probation for one year and was ordered to be evaluated by a drug counseling agency.

Respondent submitted reports by case manager from T.A.S.C., a drug counseling agency, which stated that he did not consider Respondent and Mrs. Baum to have drug abuse problems. The case manager's conclusions were only based upon one interview with Respondent and his wife. There is no indication that the case manager sought any independent information prior to making his evaluations. Thus, the Administrative Law Judge properly accorded only insignificant weitht to the reports.

Relying on cases similar to Respondent's, the Administrative Law Judge concluded that despite the court's action to withhold adjudication, Respondent was "convicted" of a felony offense within the meaning of the Controlled Substances Act. 21 U.S.C. 824(a)(2). See *United States* v. *Cook*, 10 M.J. 138 (U.S. Ct. Mil. App. 1981); and *Stephen Granet Rosen, D.D.S.*, Docket No. 84-44, 50 FR 46844 (1985). The Administrative Law Judge also found that Respondent's "best interest" plea is equivalent to a plea of *nolo contendere*, and that the Administrator may rely on such a plea as the basis for revoking a registration. See *Sokoloff* v. *Saxbe*, 501 F.2d 571 (2d Cir. 1974). Thus, the record sufficiently supports a finding that Respondent was convicted of a felony offense relating to controlled substances, and that the conviction constitutes a sufficient ground to support the revocation of his DEA Certificate of Registration.

The Administrative Law Judge also found that Respondent's continued registration was contrary to the public interest. As discussed in 21 U.S.C. 823(f), the following factors are to be considered by the Administrator in evaluating the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's [or registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's [or registrant's] conviction record under Federal or State laws relating to controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

The record establishes by a preponderance of the evidence that Respondent's continued registration is inconsistent with the public interest. The evidence in this record relates primarily to factors 2, 3, and 4 listed above. On numerous occasions, Respondent issued prescriptions for controlled substances in the names of fictitious individuals. He also issued prescriptions in the names of his children and others. There is no indication that these prescriptions were issued for any legitimate medical purpose. Even if these prescriptions had been issued for a legitimate medical reason, the quantities of controlled substances he prescribed were excessive. Respondent's unlawful activities resulted in his conviction for a felony offense relating to controlled substances. His actions clearly violated both state and Federal laws. Respondent provided no credible evidence to support his continued registration. The Administrative Law Judge was correct in concluding that "the most charitable comment to be made about these practices is that they show a total lack of regard for the obligations accompanying DEA registration."

The Administrator finds no need to comment further except to conclude, in full agreement with the Administrative Law Judge's recommendation, that Respondent's registration must be revoked, and that any pending applications for renewal of his registration must be denied.

Accordingly, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 1301.54, the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration BB0337506, previously issued to Eric A. Baum, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration, be, and they hereby are, denied.

This order is effective December 22, 1988.

John C. Lawn,
Administrator.

Dated: November 15, 1988.

[FR Doc. 88-26905 Filed 11-21-88; 8:45 am]
BILLING CODE 4410-09-M

William L. McPhail, M.D.; Denial of Application

On September 2, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to William L. McPhail, M.D., of 16603 Plymouth, Detroit, Michigan, proposing to deny his application, executed on May 12, 1988, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. McPhail's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

A registered mail receipt indicates that the Order to Show Cause was received by Dr. McPhail on September 9, 1988. More than thirty days have passed since the Order to Show Cause was received by Dr. McPhail and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. McPhail has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the investigative file.

The Administrator finds that Dr. McPhail is a physician licensed to practice medicine in the State of Michigan. Sometime in 1985 McPhail entered into an agreement with a Michael Kemp, who operated various medical clinics in the Detroit area. These clinics were visited by Medicaid and Blue Cross patients who sought prescriptions for controlled substances. In exchange for receiving these prescriptions, the patients were required to give blood, submit to x-rays, or submit to other medically unnecessary tests and procedures. Medicaid and Blue Cross then paid all claims for these tests to Mr. Kemp. Under Dr. McPhail's agreement with Mr. Kemp, Dr. McPhail received a weekly salary in return for his permitting Mr. Kemp to present claims under Dr. McPhail's Medicaid provider identification number. Additionally, because a licensed physician was required to sign prescriptions for controlled substances, Dr. McPhail also pre-signed numerous blank prescriptions. These prescriptions would later be filled out by unlicensed employees at Mr. Kemp's clinics who held themselves out to be doctors.

Dr. McPhail never saw or treated patients at any of Mr. Kemp's clinics, he merely passed the pre-signed prescriptions on to individuals who were neither qualified nor licensed to treat patients. Lines of patients could be observed outside Mr. Kemp's clinics, each patient waiting to get controlled substance prescriptions. The clinics provided no ligitimate medical service to patients. On the contrary, the clinics were established to supply controlled substances to patients at the highest possible profit to the clinic's owner, Mr. Kemp. Patients could easily receive controlled substance prescriptions every two weeks, regardless of their "medical" complaint. Many patients were personally dependent on the drugs they received. Dr. McPhail instructed one of the unlicensed individuals to prescribe Tylenol with codeine #3 on the first visit and Tylenol with codeine #4 on subsequent visits regardless of the patient's medical complaint. By pre-signing prescriptions, Dr. McPhail facilitated the clinic's practice of supplying controlled substance prescriptions to patients for no legitimate justification.

Title 21, Code of Federal Regulations, § 1306.05(a) requires prescriptions for controlled substances to be signed and dated on the date issued. Dr. McPhail pre-signed prescriptions on a regular basis for the unlicensed individuals to fill out. Dr. McPhail had no way of knowing what drugs were, in fact, prescribed to these individuals since he never saw the completed prescription forms. The Administrator finds Dr. McPhail's pre-signing of prescriptions inappropriate both because it is a violation of Federal regulations and also because Dr. McPhail was abdicating his responsibility as a prescriber of controlled substances.

As a result of this elaborate scheme, Dr. McPhail and several others employed at Mr. Kemp's clinics were charged in the Circuit Court for the 36th Judicial District, State of Michigan, with conspiracy to defraud Medicaid, Medicaid fraud, and unlawful delivery of controlled substances. Dr. McPhail was specifically charged with conspiracy to defraud Medicaid and Blue Cross, and conspiracy to unlawfully deliver controlled substances. The charges remain pending.

Finally, the Administrator finds that Dr. McPhail's previous DEA Certificate of Registration expired in February 1985. During the time that unlicensed clinic personnel were using Dr. McPhail's pre-signed prescriptions and DEA registration, Dr. McPhail was not currently registered with DEA. Even after Dr. McPhail left the clinic, he continued to prescribe, or cause controlled substances to be dispensed until as recently as March 21, 1988. Records supplied to the DEA by a Detroit pharmacy reveal that from January 5, 1988 through March 21, 1988, a majority of prescriptions filled by the pharmacy were called in by Dr. McPhail. These prescriptions were for various controlled substances, including Vicodin (Schedule III), diazepam (Schedule IV), acetaminophen with codeine (Schedule III) and various other codeine products. At the time Dr. McPhail issued these prescriptions, he was not registered with DEA and thereby not authorized to write any prescriptions for controlled substances.

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In view of all the foregoing facts regarding Dr. McPhail's experience with controlled substances, his pre-signing controlled substance prescriptions with knowledge that they would be used to dispense controlled substances, his involvement in a conspiracy to defraud Medicaid, and his writing of controlled substance prescriptions without a DEA registration, the Administrator concludes that the issuance of a registration to Dr. McPhail would be inconsistent with the public interest. Dr. McPhail's controlled substance handling activities fall far outside the bounds of legitimate practice. Registrants must dispense controlled substances, and the prescriptions which cause such drugs to be dispensed, in a careful and prudent manner to prevent their misuse. Dr. McPhail caused the diversion of substantial quantities of controlled substances through prescriptions which contained his name and expired DEA number. Activities such as those in which Dr. McPhail was involved cannot be tolerated. Dr. McPhail's past experience in handling and prescribing controlled substances leads the Administrator to conclude that Dr. McPhail's registration would be inconsistent with the public interest.

Having concluded that Dr. McPhail's registration would be inconsistent with the public interest, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that the application for registration executed by William L. McPhail, M.D., on May 12, 1988, be and it hereby is, denied. Any other outstanding applications for registration submitted by Dr. McPhail are also denied.

This order is effective December 22, 1988.

Dated: November 16, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-26906 Filed 11-21-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of individuals to serve as memers of the Performance Review Board of the Senior Executive Service shall be published in the Federal Register.

The following executives are hereby reappointed to new 3-year terms, effective November 18, 1988

Dennis E. Whitfield
Roland G. Droitsch

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, DC 20210.

Signed at Washington, DC, this 9th day of November 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-27023 Filed 11-21-88; 8:45 am]

BILLING CODE 4510-23-M

Bureau of Labor Statistics

Labor Research Advisory Council Committees; Meetings and Agenda

The regular Fall meetings of committees of the Labor Research Advisory Council will be held on December 6, 7, and 8 in the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of representatives of labor organizations. The schedule and agenda of the meetings are as follows:

Tuesday, December 6, Room S-2217

9:30 a.m.—Committee on Prices and Living Conditions

1. International Price Program
   a. Monthly pricing
   b. Revision
2. Consumer Price Index
3. Consumer Expenditure Survey
4. Other business

1:30 p.m.—Committee on Wages and Industrial Relations

1. Review of work in progress
2. Proposal for Change in the Area Wage Program
3. New Directions in Collective Bargaining Statistics
4. Developments in Cost Level Data from the Employment Cost Index
5. Other business

Wednesday, December 7, Room S-2217

9:30 a.m.—Committees on Productivity, Technology and Growth and Foreign Labor and Trade

1. Revisions in the BLS Projections
2. Occupational Tenure Data in the CPS
3. Work in the Public Sector Productivity Measurement
4. Update of the International Comparison of Productivity and Costs

1:30 p.m.—Committee on Employment and Unemployment Statistics

1. Status of FY 1989 Budget
2. Unemployment Insurance Supplement to Current Population Survey
3. Permanent Mass Layoff and Plant Closing: Status Report and Update
4. Business Establishment List (BEL) Project
5. Measurement of Labor Shortages
6. Current Population Survey redesign plans
7. New Local Area Unemployment Statistics (LAUS) Methodology: Implementation and next steps
8. SIC Revision: 1992-1997
9. Occupational mobility
10. Impact of Occupational Employment Statistics (OES) Sample Reduction
11. Other business

Thurday, December 8, Room S-2217

1:30 p.m.—Committee on Occupational Safety and Health Statistics

1. Annual Survey, results for 1987
2. SDS status, budget and state participation
3. Keystone Report
4. Statistical System Revision
   a. Data system
   b. Recordkeeping Concepts and timetable for new guidelines
5. Results of Revision Feasibility Tests (FY 1988)
6. FY 1989 Revision Pilot Tests
7. Fatality Reporting Project
8. Recordkeeping Assessment Projects
9. Industry Fact Sheet Project
10. Inhalation Project

The meetings are open. It is suggested that persons planning to attend as observers contact Henry Lowenstern, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523-1327.

Signed at Washington, DC, this 16th day of November 1988.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 88-27025 Filed 11-21-88; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-20,998]

Falcon Refinery, Ingleside, TX; Terminaiton of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 19, 1988 in response to a worker petition which was filed on behalf of workers at Falcon Refinery, Ingleside, Texas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

All workers were separated from Falcon Refinery, Ingleside, Texas more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-27021 Filed 11-21-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,109]

Inexco Oil Co., Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 26, 1988 in response to a worker petition received on September 26, 1988 which was filed on behalf of workers at Inexco Oil Company, Houston, Texas.

The retroactive provision of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

A negative determination applicable to the petitioning group of workers was issued on September 29, 1987 (TA-W-19,764). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 8th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-27022 Filed 11-21-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-211-C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., P.O. Box 143, Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 77.216-3 (water sediment or slurry impoundments and impounding structures; abandonment) to its Ellsworth No. 51 Mine (I.D. No. 36-00959), (Impoundment No. 1211 PA 20023-011 A) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that prior to abandonment of any water, sediment, or slurry impoundment and impounding structure, the person owning, operating, or controlling such an impoundment and impounding structure submit to and obtain approval of the District Manager a plan for abandonment based on current, prudent engineering practices which contain provisions to preclude the probability of future impoundment of water, sediment, or slurry, provide for major slope stability, and include a schedule for the plan's implementation.

2. As an alternate method, petitioner proposes to abandon a fine coal refuse impoundment and create a small pond of about 14 acres of surface area within a portion of the area formerly occupied by the impoundment as follows:

(a) The fine coal refuse impoundment would be abandoned by backfilling and recontouring, creating a small pond of approximately 14 acres of surface area;

(b) The heap type coarse coal refuse bank would be recontoured and the excavated materials would be used to backfill the adjacent impoundment, thus creating the small pound;

(c) An outlet channel from the area of the small pond that has sufficient capacity to safely pass the runoff from a probable maximum precipitation event would be constructed;

(d) Erosion protection in the outlet channel to accommodate discharge (flow) from a one hundred year storm event would be provided in accordance with MSHA guidelines for auxiliary coal mining facilities;

(e) The proposed outlet channel would have a trapezoidal cross section with a 15-foot wide base and IV:2H (27°) side slopes;

(f) Lower portions of the outlet channel would be provided with erosion protection where design flow velocities are in excess of 7 feet per second; and

(g) Mine drainage and treated water pipelines that formerly conveyed water to and from the impoundment would be removed.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 22, 1988. Copies of the petition are available for inspection at that address.

Date: November 15, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-27024 Filed 11-21-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also

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authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before January 6, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Army (N1–AU–89–1). Records of the U.S. Army Claims Service relating to routine Army property damage claims.

2. Department of the Army (N1–AU–89–2). Routine records of the U.S. Army Claims Service relating to medical expense claims.

3. Department of the Army (N1–AU–89–3). Routine records of the U.S. Army Claims Service relating to claim investigation reports.

4. Department of Health and Human Services, Public Health Service, Alcohol, Drug Abuse, and Mental Health Administation (N1–90–89–1). "Payback" files for awards made under the training provisions of the National Research Service Act and the Public Health Service Act.

5. Department of Housing and Urban Development (N1–207–89–1). Records relating to the IDEAS employee awards case files.

6. Department of Justice, Bureau of Prisons (N1–129–89–1). Negatives of inmate identification photographs, McNeil Island Penitentiary.

7. Panama Canal Commission, Administrative Services Division (N1–185–88–3). Incomplete and illegible survey notes, unidentified photos, unprocessed press clippings, transit statistics published in summary form in the annual report, files for routine administrative and facilitative activities, and duplicate copies of reports, memos, and studies schedules for permanent retention.

8. Railroad Retirment Board (N1–184–89–1). Comprehensive Schedule, Part 2 of 3. Records relating to facilitative matters are temporary. Records relating to overall policies and procedures are permanent.

9. Department of State (N1–59–88–27). Supply and Procurement Management Records.

10. United States Information Agency, Office of the Director (N1–306–8–18). Routine and facilitative records of the German-American Contacts Staff. Policy material is scheduled for transfer to the National Archives.

Dated: November 10, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–26967 Filed 11–21–88; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Education Advisory Panel; Amended Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (State Arts in Education Section) to the National Council on the Arts which was to have been held on December 7–8, 1988, from 8:00 a.m.–8:00 p.m. and December 9, 1988, from 8:00 a.m.–5:00 p.m. in Room MO9 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 has been changed.

The portion of the meeting which was to be open to the public on December 9, 1988, from 2:00–5:00 p.m. for a policy and guidelines discussion has been changed. The open portion of this meeting will be held on December 9, 1988, from 1:00–4:00 p.m.

The remaining sessions of this meeting on December 7–8, 1988 from 8:00 a.m.–8:00 p.m., and December 9, 1988, from 8:30 a.m.–1:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

November 17, 1988.

[FR Doc. 88–27016 Filed 11–21–88; 8:45 am]

BILLING CODE 7537–01–M

Media Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Advisory Panel (American Film Institute Section) to the National Council on the Arts will be held on December 1, 1988, from 9:00 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

November 17, 1988.

[FR Doc. 88–27015 Filed 11–21–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Expedited Clearance Request: NSF is requesting an expedited clearance from OMB for a two week turn-around after receipt at OMB (See following telephone questionnaire).

Agency Clearance Officer: Herman G. Fleming, (202) 357–9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Foreign Students in the Sciences.

Affected Public: Non-profit institutions.

Responses/Burden Hours: 120 respondents; 30 minutes each.

Abstract: This survey is to obtain information and perspectives on foreign students in graduate education in four U.S. scientific fields. The information will be used by the National Science Board in its deliberations regarding the impact of foreign students on graduate education in the United States.

Dated: November 16, 1988.

Herman G. Fleming,

NSF Clearance Officer.

Draft

Chairperson:
Department:
Institution:

Semi-Structured Telephone Interviews of Sample of U.S. University Department Chairpersons in Chemistry, Computer Science, Mathematics, Physics

This interview is to obtain information and perspectives on foreign students in graduate education in four U.S. scientific fields. Your participation in this interview is totally voluntary. The information you provide will be given maximum protection from disclosure, subject to applicable laws including the Freedom of Information Act, 5 USC 552. Individuals will not be identified with their answers.

The information will be used to assist the National Science Foundation, and in particular the National Science Board's Committee of Foreign Involvement in U.S. Universities in its deliberations regarding the impact of foreign students on the quality and content of graduate education in the United States.

This survey is expected to take approximately 30 minutes. If you have comments concerning response time, you may send comment to: Herman G. Fleming, Reports Clearance Officer, Division of Personnel and Management, National Science Foundation, Washington, DC 20550.

Or to: Office of Management and Budget, Paperwork Reduction Project (3145–xxxx), Washington, DC 20503.

Draft

Foreign Students in the Sciences

Semi-Structured Interview Guide

Departmental Demographics

- Number of students and percent foreign.
- Countries of origin of foreign students.

Assess to Graduate Education

- Adequacy of numbers and quality of U.S. versus foreign applicants.
- Expectations for the future regarding adequacy and quality of U.S. versus foreign applicants.
- Policies limiting numbers or percent of foreign students.
- Requirements regarding English competency.

Process and Content of Education/Research

- Changes made to accommodate foreign students.

Curriculum Content.

Instructional approach.

Faculty-student interactions.

- Effect of foreign students on research activities.

On ability to obtain funding.

On faculty research interests or overall nature of research pursued.

On restrictions on research.

Teaching Assistants (TAs)

- Number and percent foreign.
- Differences in nature of assignments to foreign versus U.S. TAs.
- Special programs to train foreign TAs.
- Restrictions on TA awards to foreign students.
- Sources of support for foreign TAs.

Research Assistants (RAs)

- Number and percent foreign.
- Differences nature of assignments to foreign versus U.S. RAs.
- Special programs to train foreign RAs.
- Restrictions on RA awards to foreign students.
- Sources of support for foreign RAs.

Academic Performance of Foreign versus U.S. Students.

- Length of time to complete degree.
- Likelihood of successful completion.
- Differences in post-graduation plans and employability.

[FR Doc. 88–26942 Filed 11–21–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding (MOU) Between the NRC and the Illinois Department of Nuclear Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Draft Subagreement No. 2 between NRC and the Illinois Department of Nuclear Safety for public comment.

SUMMARY: Section 274i. of the Atomic Energy Act of 1954, as amended, allows the Nuclear Regulatory Commission (Commission or NRC) to enter into an agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." This section 274i. agreement, typically in the form of a Memorandum of Understanding (MOU), differs from an agreement between NRC a and State under the "Agreement State" program; the latter is accomplished only by entering into an agreement under section 274b. of the Atomic Energy Act. A State can enter into a section 274i. MOU whether or not it has a section 274b. agreement.

In April of 1984, NRC and the State of Illinois signed an "umbrella" MOU, providing principles of cooperation

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between the State and NRC in areas of concern to both.

In June of 1984, NRC and the State of Illinois signed Subagreement No. 1 which provided the basis for mutually agreeable procedures whereby the State may perform inspection functions for and on behalf of the Commission at certain reactor and materials licensee's facilities which generate low-level radioactive waste.

Draft Subagreement No. 2 under this MOU provides the basis for mutually agreeable procedures whereby the Illinois Department of Nuclear Safety (IDNS) may perform inspection, audit, and similar functions for nuclear power plants together with and for and on behalf of the Commission under a program created pursuant to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) and accepted by NRC and IDNS. The Commission is in the process of finalizing the Policy Statement on NRC cooperation with States and the Subagreement may require revisions, in order to conform to the final Policy Statement.

DATE: Submit comments by December 22 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Deliver comments to 7920 Norfolk Avenue, Bethesda, Maryland between 7:45 a.m. and 4:15 p.m. weekdays except Federal holidays. Copies of comments received may be examined at the NRC Public Document Rom at 2120 L Street, NW., Washington, DC lower level.

FOR FURTHER INFORMATION CONTACT: Roland Lickus, Chief, State and Government Affairs, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Building #4, Glen Ellyn, Illinois, 60137, (312) 790–5666.

SUPPLEMENTARY INFORMATION: NRC regulation (10 CFR 50.55a) requires the application of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME) Code to certain pressure vessels, piping, pumps and valves of nuclear power reactors. As discussed more fully in the text of the Subagreement which follows, a State role is contemplated in the ASME system as it pertains to certain nuclear power plant components. This Subagreement is intended to formalize and define the manner in which the NRC and the Illinois Department of Nuclear Safety (IDNS) will cooperate in the planning and conducting of ASME Code related inspections at nuclear power plants in Illinois to ensure compliance with NRC regulations. The objective of the Subagreement is to provide a framework for IDNS to assist NRC in performing safety inspections under 10 CFR § 50.55a. The NRC will take appropriate enforcement actions for joint inspections conducted under this Subagreement. Key features of the Subagreement include provisions for (1) ensuring IDNS's activities supplement but do not duplicate the NRC's activities; (2) joint team inspections of ASME related matters led by NRC; (3) documentation by IDNS of its inspection efforts for inclusion into the final NRC inspection report; (4) availability of NRC training for IDNS inspectors; and (5) timely exchange of information between NRC and IDNS.

Dated at Rockville, Maryland, this 15th day of November 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

Subagreement 2 Between the Nuclear Regulatory Commission and the Illinois Department of Nuclear Safety

I. Authority

The Nuclear Regulatory Commission (NRC) and the Illinois Department of Safety (IDNS) entered into this Subagreement under the authority of the Memorandum of Understanding (MOU) of April 1984, between Illinois and NRC (49 FR 20586; 5/15/1984) and under section 274i of the Atomic Energy Act of 1954, as amended.

II. Background

A. NRC and ASME Code

1. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, require the Nuclear Regulatory Commission (NRC) (previously the Atomic Energy Commission (AEC)) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure the common defense and security and to protect the health and safety of the public. Under these statutes, the NRC has the ultimate responsibility to regulate nuclear power plant safety.

2. In June 1971, AEC promulgated regulations which established minimum quality standards for the design, fabrication, erection, construction, testing, and inspection of boiling and pressurized water-cooled nuclear power plants by requiring conformance with appropriate editions and addenda of specified published industry codes and standards. These regulations, 10 CFR 50.55a (and the now revoked § 115.43a), have provided specific guidance to manufacturers and users of structures, systems and components of nuclear power plants for meeting Criterion 1 of the NRC's "General Design Criteria for Nuclear Power Plants" in Appendix A of 10 CFR Part 50 (See 36 FR 11423; 6/12/71). That criterion requires that structures, systems and components of nuclear power plants important to safety be designed, fabricated, erected, and tested to quality standards that reflect the importance of the safety functions to be performed. In particular, these regulations have required pressure vessels, piping, pumps, and valves that were part of a reactor's coolant pressure boundary to be constructed (e.g., designed, fabricated, inspected, and tested) in accordance with ASME Code Editions and Addenda.

3. The AEC stated in the preamble of the regulations, among other things, that:

i. It accepted the ASME inspection process;

ii. Licensees, vendors and others could use the ASME inspection and survey systems in partial fulfillment of its requirements to the extent that they were shown by the description of the quality assurance program required by § 50.34(a)(7) to satisfy the applicable requirements of Appendix B of 10 CFR Part 50;

iii. Section 50.55a(b)(2) (now § 50.55a(a)(3)) provides a basis for the authorization of alternatives to the requirements of the specified ASME Code sections and other standards if it can be shown that an acceptable level of safety will be provided; and

iv. It is considered that a significant improvement in the level of quality in construction of structures, systems and components important to safety would be afforded by compliance with the requirements of more recent versions of an ASME Code than those specified in the amendments and it encouraged such compliance whenever practicable, regardless of the date of purchase of equipment or the provisions of the amendments.

4. Presently, to promote the safe operation of nuclear components, NRC requires use of Section III, Division 1, of the ASME Code for construction of Class 1, 2, and 3 components, and Section XI, Division 1, of the ASME Code for inservice inspections of these components.

5. In March of 1981, NRC, ASME, and the National Board of Boiler and Pressure Vessel Inspectors (NB) entered into an "Exchange of Correspondence" that set forth "Principles" for "The Accreditation and Inspection of Nuclear Supplier Quality Assurance Programs." These Principles define the NRC's, the ASME's, and the NB's responsibilities and actions with respect to the ASME/NB accreditation program and third party inspection of Certificate Holders providing products and services to nuclear facilities in accordance with ASME Code, Section III (Divisions 1 and 2). The key objective of the Exchange of Correspondence was to provide NRC licensees and license applicants with a non-duplicative, efficient and effective procedure for implementing the ASME/NB nuclear accreditation program and the monitoring of supplier quality assurance (QA) activities to ensure compliance with NRC, ASME, and NB programmatic QA requirements.

6. On March 31, 1986, the NRC's Office of Inspection and Enforcement distributed Information Notice No. 86–21 informing NRC licensees, construction permit holders and vendors of NRC's recognition of ASME's Accreditation Program for holders of N, NPT, NA, and NV stamps and Certificates of Authorization.

7. NRC's endorsement of the system established under ASME has followed a detailed assessment of the ASME's infrastructure from which, among other things, NRC has determined that it provides an effective inspection program that NRC can accept to carry out its mission.

B. Illinois, IDNS, and the ASME Code

1. The ASME Code provides rules for the construction of heating boilers, power boilers, pressure vessels and nuclear power plant components. Also, the ASME Code provides recommended rules for the care and operation of heating boilers, recommended guidelines for the care of power boilers, and rules for the inservice inspection of nuclear power plant components. The ASME has an Accreditation System that is used to ensure the quality of construction of ASME Code components. The ASME Accreditation System is based on a program of authorized inspection, which requires an Authorized Inspector (AI) (an Authorized Nuclear Inspector (ANI) in the case of the nuclear sections of the ASME Code), designated or approved by an Authorized Inspection Agency (AIA) to inspect independently the activities of a Certificate Holder during construction under the ASME Code. In addition, Section XI of the ASME Code has an inservice inspection system, also based on a program of authorized inspection, which requires that an Authorized Nuclear Inservice Inspector (ANII) from an AIA independently inspect the performance of the owner's In-Service Inspection (ISI) program.

2. In accordance with the provisions of Section 2 of the Illinois Boiler and Pressure Vessel Safety Act (Ill. Rev. Stat. 1985, ch. 111 1/2, par. 3202) the Illinois Board of Boiler and Pressure Vessel Rules adopted the ASME Boiler and Pressure Vessel Code.

3. In pertinent part, Section 2a of the Illinois Boiler and Pressure Vessel Safety Act (Ill. Rev. Stat. 1985, ch. 111 1/2, par. 3202a) provides that IDNS shall have sole State jurisdiction with respect to ASME Code compliance over all boilers and pressure vessels contained within or upon or in connection with any nuclear facility within the State of Illinois and that IDNS shall have the same authority and shall have and exercise the same powers in relation to such boilers and pressure vessels as the Board or the State Fire Marshal has and exercises in relation to other boilers and pressure vessels within the State of Illinois.

4. Illinois also enters into this Subagreement to faciliate implementing its responsibilities with respect to ASME code compliance under the Illinois Boiler and Pressure Vessel Safety Act.

III. Scope

A. This Subagreement defines the way in which the NRC and IDNS will cooperate in the planning and conducting of inspections of nuclear power plants to ensure compliance with NRC's regulations and the Exchange of Correspondence on ASME Section III and Section XI components. This Subagreement does not apply to investigations or inquiries conducted by the NRC. Except as provided in VII.B.13., this Subagreement does not apply to IDNS's inspections of, and enforcement actions regarding boilers, pressure vessels and appurtenances not covered in a Final Safety Analysis Report (FSAR)/Updated Safety Analysis Report (USAR).

B. For the purpose of this MOU, "Inspection" is defined as an audit, observation, examination, review, and related functions to verify whether an item, component, or activity conforms to specified requirements of the ASME Code Sections III and XI. The scope of these inspections shall be limited to those systems described in the FSAR/USAR.

C. Nothing in this Subagreement is intended to restrict or expand the statutory authority of NRC, Illinois, or IDNS, or to affect or vary the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Subagreement intended to restrict or expand the authority of Illinois and IDNS on ASME Code matters not within the scope of this Subagreement.

IV. Purpose and Intent

A. Although NRC has the ultimate responsibility to regulate nuclear power plant safety under the Atomic Energy Act and Energy Reorganization Act, noted above, NRC recognizes the interest of Illinois in the overall safety and health of its citizens. For this reason, NRC and IDNS agree to cooperate in implementation of NRC's safety programs related to nuclear power plants. Further, NRC recognizes that, to the extent that IDNS supports NRC's safety mission, additional resources are applied to overall nuclear safety. Thus, NRC recognizes IDNS's desire to participate in NRC's inspections of nuclear power plants.

B. The objective of this Subagreement is to provide a framework for IDNS to assist NRC in performing safety inspections under 10 CFR 50.55a. IDNS intends to verify owner's compliance with sections III and XI of the ASME Code for all safety-related systems, applicable nonsafety-related systems, components, and supports of these systems and components, as described in the FSAR/USAR of nuclear power plants. It is intended that these verifications will apply to section III construction activities and to section XI inservice inspection activities after section III requirements have been met. The NRC will take appropriate enforcement actions for joint inspections conducted under this Subagreement.

C. Within this framework, NRC and IDNS intend that IDNS's role in ASME Code activities not only help maintain safety, enhance joint understanding, reduce duplication of effort, and provide a unified position on matters of joint concern, but also that it be well-defined, appropriately controlled and agreed to in advance by NRC and IDNS to minimize potential jurisdictional and technical disputes.

D. IDNS inspection may accompany NRC personnel inspecting nuclear power plant components manufactured outside Illinois but intended to be used within it.

V. NRC's General Responsibilities

NRC is responsible for conducting safety inspections of nuclear power plants to assure that the plants are designed, constructed, tested, and

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operated in accordance with pertinent NRC regulatory requirements. These inspections are conducted in accordance with the NRC Inspection Manual using personnel appropriately qualified to perform the necessary task. The NRC will take appropriate enforcement actions for joint inspections conducted under this Subagreement.

VI. IDNS's General Responsibilities

A. Assist the NRC when requested in performing planned NRC safety inspections under 10 CFR 50.55a.

B. Cooperate with the NRC in such inspections to assure that these components meet the requirements of the ASME Code as adopted and endorsed by the NRC.

C. Conduct inspections at manufacturing facilities, materials suppliers, AIAs, architect/engineers and other ASME related activities not covered in this Subagreement to verify ASME Code compliance; IDNS will provide the results of these activities to NRC for information.

D. Inspect boilers and pressure vessels in nuclear facilities within the State of Illinois and issuing Inspection Certificates as required by Sections 10 and 11 of the Illinois Boiler Pressure Vessel Safety Act, provided that IDNS's activities under this paragraph shall not be inconsistent with Federal law and the rules, policies, and practices of the NRC.

VII. Implementation—NRC's and IDNS's Specific Responsibilities

IDNS and NRC agree to work in concert to assure that the following training, inspection and enforcement, and information exchange protocol are followed.

A. Training

1. IDNS's inspectors accompany NRC's inspectors will be qualified and certified by IDNS in accordance with the NRC Inspection Manual, or its equivalent. Based on IDNS inspector performance, NRC reserves the right to revoke IDNS inspector certification under this Subagreement and it shall provide the reasons for the action in writing to IDNS.

2. NRC will use its best efforts to make space available in its inspector training courses, seminars, and special orientation programs to accommodate the training needs of IDNS inspectors.

3. IDNS will pay the travel and per diem expenses of its inspectors attending training courses. Where NRC establishes special training classes, IDNS agrees to reimburse NRC for its costs of training IDNS inspectors.

4. IDNS personnel who inspect vessels and appurtenances not covered in an FSAR/USAR shall meet the qualification requirements under Illinois State law and are not required to be qualified and certified in accordance with the NRC Inspection Manual or its equivalent.

B. Inspections and Enforcement

1. IDNS's activities are not intended to duplicate NRC's regulatory activities.

2. IDNS's inspectors are responsible for meeting all requirements of an NRC licensee related to personal safety and access at the plant site.

3. Before IDNS's inspectors are qualified and certified under this Subagreement, they may participate with NRC inspectors as observers at safety inspections or work under the guidance and direction of NRC's inspectors.

4. To facilitate cooperation and efficient use of resources, NRC and IDNS inspectors will conduct joint team safety inspections under this Subagreement. An NRC inspector will lead the team and be in charge of the inspection.

5. For these joint team safety inspections, NRC and IDNS will work together to develop inspection plans. For reactive inspections in which a quick response is necessary, time may not permit the joint development of an inspection plan or IDNS's participation in such an inspection. NRC will involve IDNS to the maximum extent possible consistent with protection of the public health and safety.

6. IDNS will use NRC to channel any IDNS information request to a licensee which is made to support the planning and implementation of the joint team safety inspections.

7. NRC and IDNS will perform safety inspections in accordance with the inspection plans using applicable procedures in the NRC Inspection Manual.

8. Should IDNS develop inspection findings or otherwise identify problems about ASME Code compliance, it will identify these promptly to the NRC inspection team leader.

9. IDNS may attend and participate in the NRC's inspection entrance and exit meetings with licensees of nuclear power plants in Illinois or with vendors fabricating systems or components for use in Illinois on matters within the scope of this Subagreement.

10. Within 15 working days after completing its portion of a safety inspection, IDNS will document to NRC its inspection's scope, details and results in a report written in the format described in the NRC Inspection Manual. The NRC team leader will use the information in preparation of the NRC's final report.

11. If, based on its review of the IDNS report, NRC identifies potential violations of NRC regulatory requirements, NRC will take appropriate enforcement action as prescribed in Appendix C of 10 CFR Part 2. If NRC proposes escalated enforcement action, based on IDNS findings, it will give IDNS reasonable notice of the time and place of the enforcement conference, and IDNS may attend that conference. At NRC request, IDNS will assist NRC during any enforcement conferences or hearings at which NRC takes enforcement action as a result of a violation identified by an IDNS inspector.

12. IDNS will be given reasonable notification of and the opportunity to participate in NRC inspections of a licensee's corrective action(s) resulting from a joint team safety inspection.

13. IDNS will give reasonable notification to NRC of its inspections of boilers, pressure vessels, and appurtenances not covered in an FSAR/USAR.

14. IDNS will inform NRC if it is unable to participate in an NRC inspection activity.

C. Information Exchange

1. IDNS and NRC agree to the greatest extent possible and in good faith to make available to each other information within the intent and scope of this Subagreement. Specifically, NRC recognizes the value of IDNS's data acquisition system and IDNS agrees to make available to NRC data in this system related to activities under this Subagreement.

2. IDNS and NRC agree to meet periodically at mutually agreeable times and places to exchange information on matters of common concern pertinent to this Subagreement.

3. IDNS and NRC agree to consider each other's identified information needs and concerns, as well as those of the licensee, when developing inspection plans.

4. NRC agrees to make available to IDNS inspection-related documentation for inspections conducted under this Subagreement.

5. IDNS will not publicly disclose inspection findings prior to the release of the NRC inspection report.

6. To preclude the premature public release of sensitive information, IDNS and NRC shall protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Illinois Freedom of Information Act and other applicable authority. IDNS and NRC shall consult with each other before releasing sensitive or proprietary information related to findings under this Subagreement.

VIII. Contacts

A. The principal contacts for this Subagreement will be the Director, Division of Reactor Safety, NRC, Region III, and the Manager, Office of Nuclear Facility Safety, IDNS. These individuals may designate appropriate staff representatives for the purpose of administering this Subagreement.

B. Identification of these contacts is not intended to restrict communication between NRC and IDNS staff members on technical and other day-to-day activities.

IX. Resolution of Conflicts

If disagreements arise about ASME Code related issues, NRC or IDNS may consult ASME or the National Board, as necessary. ASME is the final authority on such issues concerning ASME Code compliance regarding ASME Code stamped components. Should conflicts or disagreements occur between NRC and IDNS, NRC and IDNS will jointly work together to resolve these differences. The NRC's General Counsel is the final authority to interpret the Commission's regulations.

X. Effective Date

This Subagreement will take effect after it has been executed by both parties.

XI. Duration, Termination, and Modification

This Subagreement may be amended or modified upon written agreement by both parties and may be terminated upon 30 days written notice by either party.

XII. Separability

If any provision of this Subagreement, or the application of any provision to any person or circumstance is held invalid, the remainder of this Subagreement and the application of such provisions to other persons or circumstances shall not be affected.

For the Nuclear Regulatory Commission.

Executive Director for Operations
Date:

FOR THE ILLINOIS DEPARTMENT OF NUCLEAR SAFETY,

Director
Date:

[FR Doc. 88-26994 Filed 11-21-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-424]

Georgia Power Co. et al., Vogtle Electric Generating Plant, Unit 1; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee) to withdraw its May 19, 1988, application of the Vogtle Electric Generating Plant, Unit 1, located in Burke County, Georgia. The proposed amendment would have revised Technical Specification (TS) 3.2.2, "Heat Flux Hot Channel Factor-FQ(Z)" from 2.30 to 2.25 at 100% power, and from 4.60 to 4.50 at 50% power or less. The bases to TS 3.2.1 would also have been revised to reflect the change. The Commission issued a Notice of Consideration of Issuance of the Amendment in the **Federal Register** on June 19, 1988 (53 FR 24511). By letter dated August 30, 1988, the licensee withdrew its application for the proposed amendment because a reanalysis showed that a change to FQ(Z) is not needed to compensate for increased containment spray flow.

For further details with respect to this action, see (1) the application for amendment dated May 19, 1988, (2) the licensee's letter dated August 30, 1988, withdrawing the application for amendment, and (3) our letters dated November 2, 1988, and Nov. 15, 1988. All of the above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 15th day of November 1988.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26993 Filed 11-21-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-498]

Houston Lighting and Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-76, issued to Houston Lighting and Power Company (the licensee), for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

The proposed amendment would revise the Unit 1 Technical Specifications (TS) to the Combined Technical Specifications for Units 1 and 2, add placing the positive displacement pump in a lock-out condition during cold overpressurization, add a reactor coolant pump seal isolation charging header pressure interlock and modify the administrative section of the Technical Specifications. Each of these are addressed separately below.

Before issuance of the proposed license amendment, the Commission will have more findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The South Texas Project Electric Generating Station (STPEGS) Unit 1 operating license includes the Technical Specifications for the operation of Unit 1. At the time Unit 2 receives an operating license, Houston Lighting and Power Company (HL&P) will receive Technical Specifications that are applicable for both units, i.e., Combined Technical Specifications. To implement the Combined Technical Specifications on Unit 1, the Unit 1 license requires administrative changes.

The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of

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amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples includes example (i), a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature.

The changes associated with the section of the proposed amendment for the Combined Technical Specifications are administrative in nature and, therefore, are within the scope of the example. Since this section of the amendment involves changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that this section of the amendment involves no significant hazards consideration.

The section of the proposed amendment regarding the positive displacement pump (PDP) adds to the Technical Specifications the placement of the positive displacement pump in a lock-out condition before reaching a cold overpressure mitigation system activation condition. The proposed change would implement the lock-out as a surveillance in the overpressure protection system.

The Houston Lighting & Power Company reviewed the proposed change and determined, and the staff agrees that:

(1) This section of the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. No hardware changes or methods of operation are altered as a result of the amendment. The actual PDP lock-out provisions are already addressed in plant operating procedures. This change elevates the PDP lock-out to the same status as the other affected pumps (i.e., charging and high head safety injection).

(2) This section of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change formalizes, in the Technical Specifications, operational requirements already implemented by the plant. In addition, no hardware changes are involved with this change.

(3) This section of the proposed amendment does not involve a significant reduction in the margin of safety. No changes to the plant from a hardware or operational standpoint are made as a result of this change. The proposed technical specification requirement (the locking-out of the PDP) is already included in plant operating procedures. Since the proposed specifications add additional surveillance requirements to verify that the PDP is locked-out, all margins of safety are maintained.

The section of the proposed amendment regarding the reactor coolant pump seal isolation proposes to incorporate the reactor coolant pump seal isolation charging header pressure interlock into the Technical Specifications by specifically addressing operability and surveillance requirements for the charging header pressure interlock circuit. The interlock circuit provides a trip signal if the charging header pressure is low. The proposed change incorporates the surveillance requirements in the appropriate tables.

The Houston Lighting and Power Company reviewed the proposed change and determined, and the staff agrees that:

(1) This section of the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. No hardware changes are required as a result of this change.

The proposed amendment will provide the containment isolation function associated with this interlock with the same technical specification status as other containment isolation functions.

(2) This section of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No hardware changes are made which would create any new failure or accident sequences. Conditions could exist wherein the plant was in the proposed action statement and a spurious or actual Phase "A" isolation could occur. The STPEGS Emergency Operating Procedures (EOP's) address this scenario adequately in that continued operation of the reactor coolant pumps is not allowed if seal injection flow is lost and Component Cooling water flow is not available to the RCP thermal barrier. The EOP's also provide guidance to the operators to attempt to restore seal injection as soon as possible.

(3) This section of the proposed amendment does not involve a significant reduction in the margin of safety. The proposed changes include the Seal Injection Isolation Valve Interlock function in the Technical Specifications to clarify plant response to a failure of this circuit. There is no change in the margin of safety. The proposed action statement maintains plant conditions which satisfy safety analysis assumptions and allows for an orderly response to an inoperable circuit.

The Houston Lighting and Power Company proposed four changes to the administrative section of the Technical Specifications. The first change involves the composition of the Plant Operations Review Committee. The change requires that if the Technical Services Manager does not meet the qualifications of a Radiation Protection Manager, the committee will be augmented by a member who meets the qualifications. The second change further defines the quorum requirements for the Nuclear Safety Review Board by indicating that a majority of the board members must be present for a quorum to exist. The third change specifies the minimum approval authority for plant procedures. For procedures other than station administrative procedures, the Plant Manager, Plant Superintendent or other responsible department head will approve procedures prior to implementation. The fourth change specifies that procedures will be reviewed periodically.

The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751), these examples include example (i), A purely administrative change to technical specifications: a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nonmenclature.

The changes associated with this section of the amendment are administrative in nature and, therefore are within the scope of the example. Since the application for this section of the amendment involves changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that this section of the amendment involves no significant hazards consideration.

The staff has reviewed the proposed amendment and the licensee's no significant hazards consideration determination. Based on the review of the proposed areas of change and the above discussions, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By December 22, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Wetern Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman and Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Wharton Junior College Library, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland, this 16th day of November 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate-IV Division of Reactor Projects-III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-26995 Filed 11-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity For Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-62 issued to the licensees, Illinois Power Company [1] (IP), Soyland Power

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has

Continued

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Cooperative, Inc. (Soyland) and Western Illinois Power Cooperative, Inc. (WIPCO), for operation of Clinton Power Station, Unit 1 (CPS) located in DeWitt County, Illinois.

This amendment includes proposed changes to the Operating License to the CPS Technical Specifications in order to support the first refueling of theCPS reactor with new fuel types and to support subsequent reactor operation (Cycle 2) in the Maximum Extended Operating domain (MEOD) and with reduced feedwater temperatures. This proposed amendment also requests a revision to Technical Specification Table 3.3.7.4–2, Remote Shutdown System Controls, to include additional control switches for valves 1E12–FO68B and 1E12–F014B and circuit breaker 252–AT1AA1. This change provides for controls to enhance the operation of the subject components to comply with the NRC staff's guidance for implementing 10 CFR Part 50, Appendix A, Criterion 19 (GDC 19) as referenced in paragraph 7.4.3.1 of the Clinton Power Station Safety Evaluation Report (SSER No. 6). Additionally, a change to Technical Specification 4.4.1.2 is requested. This change will clarify the jet pump surveillance requirements of this specification and incorporate the guidance provided in General Electric Service Information Letter No. 330.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 22, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to aprticipate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act ot be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petition wishes to intervene. Any person who has filed a petition for leave to itnervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission,Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** Notice. A copy of the petition should also be sent to the Office of the General Counsel,U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Sheldon Zabel, Equire, Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, suipplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

If a request for heareing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 6, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 15th day of November 1988.

For The Nuclear Regulatory Commission.

Byron Siegel,

Acting Director, Project Directorate III–2, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 88–26996 Filed 11–21–88; 8:45 am]

BILLING CODE 7590–01–M

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exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

[Docket No. 50–461]

Illinois Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62 issued to the licensees, Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. (Soyland) and Western Illinois Power Cooperative, Inc. (WIPCO), for operation of Clinton Power Station, Unit 1 (CPS) located in De Witt County, Illinois.

This amendment includes a proposed change to the Operating License to reflect an adjustment to the ownership interests in CPS which would occur if Soyland merges with WIPCO and WIPCO ceases to exist as a separate entity. Soyland and WIPCO are minority owners of CPS with a combined ownership share of less than 15%. Along with IP, WIPCO and Soyland are currently licensees for CPS; as a result, the merger of WIPCO and Soyland will not result in the transfer of the license to any entity not currently a licensee for CPS. Soyland will assume full responsibility for all CPS obligations currently being discharged by WIPCO. The proposed license amendment will not change the share of ownership that IP has in CPS, will not change IP's commitments related to capital and operating and maintenance costs, and will not affect IP's role as project manager.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 22, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's P ublic Document Room, 2120 L Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Sheldon Zabel, Esquire, Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 2, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 15th day of November 1988.

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[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

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For the Nuclear Regulatory Commission.

Byron Siegel,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–28997 Filed 11–21–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Information Technology Advisory Committee; Meeting

AGENCY: Office of Management and Budget.

ACTION: Notice; Information Technology Advisory Committee; Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Information Technology Advisory Committee will be held.

DATE AND TIME: December 1, 1988, from 1:00 p.m.–3:00 p.m.

ADDRESS: Room 2010 of the New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Judith Poorbaugh, Office of Information and Regulatory Affairs, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503. 202/395-7231.

SUPPLEMENTARY INFORMATION: OMB's Information Technology Advisory Committee (ITAC) was established to provide a forum for the exchange of ideas between senior executives in the information technology industry and senior OMB policy officials. The topic to be discussed at the second meeting is the role of systems integrators in Federal information system development. The meeting will be open to the public up to the seating capacity of the room (approximately 75 persons including committee members). Places will be allocated on a first call, first served basis. All persons who wish to attend the meeting must call 395–7231 by November 29 for clearance into the building.

AGENDA

1:00—Opening remarks and general discussion: What is the anticipated impact of the growing role of the systems integration industry on the Federal government?

Jay Plager,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 88–27057 Filed 11–21–88; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, Deputy Executive Director.

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 17f–2(a); File No. 270–34

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval of Rule 17f–2(a) which requires securities industry personnel to be fingerprinted. 9800 Respondents incur an estimated average burden of one-half hour to comply with the rule.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative summary or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235–00934), Room 3228 New Executive Office Building, Washington, DC 20543.

Jonathan G. Katz,

Secretary.

November 16, 1988.

[FR Doc. 88–28966 Filed 11–21–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16637; 812–7102]

Security Mortgage Acceptance Corp.–1; Application

November 16, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption from all provisions of the Investment Company Act of 1940 ("1940 Act").

Applicant: Security Mortgage Acceptance Corporation—1 (the "Applicant"), on behalf of itself and on behalf of other corporations formed or to be formed, originally sponsored and wholly-owned by Alfred Lerner and organized for the same limited purpose as Security Mortgage Acceptance Corporation—1 (the Applicant and such other corporations are referred to individually as an "Issuer" and collectively as the "Issuers").

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order amending a previous order (the "Existing Order") issued to Applicant (Investment Company Release No. 15220, July 23, 1986) so as to exempt the Issuers from all provisions of the 1940 Act in connection with the proposed sale by such Issuers or Residual Interests (as defined below) to (i) institutional investors or (ii) sophisticated non-institutional investors. The exemptive relief requested by the application would also permit the Issuers to elect to REMIC status.

Filing Date: The application was filed on August 22, 1988, and amended on October 24 and November 9, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavitr or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Security Mortgage Acceptance Corporation—1, 1385 Eaton Center, 1111 Superior Avenue, Cleveland, Ohio 44114.

FOR FURTHER INFORMATION CONTACT: H. R. Hallock, Jr., Special Counsel, at (202) 272–3030, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from eitehr the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each Issuer has been formed, or will be formed, for the purpose of issuing bonds ("Bonds"), collateralized by mortgages that are first liens on one to four family residences ("Mortgages") and/or mortgage-backed securities evidencing an undivided interest in pools of mortgages that are first liens on one to four family residences ("Private Mortgage Certificates"), mortgage pass-through certificates fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA Certificates"), mortgage participation certificates issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates") and guaranteed mortgage pass-through certificates issued and guaranteed by the Federal National Mortgage Association ("FNMA Certificates") (GNMA Certificates, FHLMC Certificates and FNMA Certificates severally referred to as the "Certificates" and collectively with Private Mortgage Certificates and Mortgages as the "Mortgage Collateral"). All capitalized terms used herein, and not otherwise defined, shall have the meanings ascribed to such terms in the prior application which resulted in the issuance of the Existing Order.

2. Applicant now proposes, subject to the conditions contained in the Existing Order, as amended herein, and subject to certain additional terms and conditions as described below, to sell some or all of the cash flow remaining after all required payments on the Bonds have been made and expenses have been paid (the "Residual Interests"). Such Residual Interests may either take the form of the sale of stock in the applicable Issuer or a sale of beneficial interests in such cash flow.

3. The sale of Residual Interests will not alter the payment of cash flows under any Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to an Indenture to support payments of principal and interest on a Series of Bonds. The identity of the holders of the Residual Interest in an Issuer or the legal form of the Residual Interests will not alter in any respect the payments required to be made to the holders of any of the Bonds of any Series.

4. The interests in the holders of the Bonds will not be compromised or impaired by the ability of the Applicant to sell Residual Interests in any Series, and there will not be a conflict of interest between the holders of the Bonds and Residual Interest holders for several reasons: (a) The collateral which secures each Series of Bonds issued, or to be issued, by the Applicant pursuant to an Indenture is not speculative in nature because such collateral consists, or will consist, solely of the Certificates, which Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds of each Series have been, or will be, rated in one of the two highest rating categories by a nationally recognized statistical rating agency, which by definition means that the capacity of each Series of Bonds to repay principal and interest on such Bonds is extremely strong; (c) the Indenture under which each Series of Bonds has been, or will be, issued subjects the collateral pledged to secure the bonds of such Series, all income distributions thereon, and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the holders of the Bonds; and (d) the Residual Interest holders will be entitled to receive current distributions representing the residual payments on the collateral from each Series of Bonds in accordance with the terms of the related Indenture.

5. The value of the entire Residual Interests will be much less than the value of the Bonds to the Bondholders. Applicant has not deposited, and does not intend to deposit, in respect of any Series of Bonds, Mortgage Collateral with a collateral value that exceeds 110% of the aggregate principal amount of the related Bonds.

6. Pursuant to the terms of any Indenture, only an Issuer has, or will have, the limited right to substitute Mortgage Collateral. It will not be possible for the Residual Interest holders to alter the Mortgage Collateral initially deposited, and in no event will the Issuers' right to substitute Mortgage Collateral result in a diminution in the value or quality of the Mortgage Collateral. Therefore, although substituted Mortgage Collateral may have a different prepayment experience than the replaced Mortgage Collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the Residual Interest holders, which market conditions are likely to affect all Mortgage Collateral of similar payment terms and maturities in a similar fashion; and (b) the interests of the Residual Interest holders will not be different from those of the Bondholders with respect to such prepayment experience.

7. See the application for additional representations concerning the Residual Interests.

Applicant's Legal Conclusions

The requested order is necessary and appropriate in the public interest because: (a) The Issuers should not be deemed to be entities to which the provisons of the 1940 Act were intended to be applied; (b) the Issuers may be unable to proceed with their proposed activities if the uncertainties concerning the applicablility of the 1940 Act are not removed; (c) the Issuers' activities are intended to serve a recognized and critical public need; (d) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of Bonds by the registration or exemption provisions of the Securities Act of 1933, as amended (the "Securities Act"), and thereafter by the Trustee representing their interest under the Indenture; and (e) the Residual Interests will be held entirely by the applicant or offered only to a limited number of sophisticated insitutional investors or "accredited" non-institutional investors through private placements.

Applicant's Conditions

A. Conditions Relating to REMIC Election

(1) The election by an Issuer to treat the arrangement by which any Series of Bonds is issued as a REMIC will have no effect on the level of expenses that would be incurred by any such Issuer. Whether or not such election is made, the Issuer that elects to have such Series of Bonds treated as a REMIC will provide for the timely payment of all anticipated fees and expenses to be incurred in connection with the administration of such Series in a manner satisfactory to the agency or agencies rating the Bonds. Such Issuer will provide for such payment by one or more of the methods described in the application.

(2) The Issuers will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the methods (which methods may be used in combination) are selected by the Issuers to provide for the payment of such fees and expenses.

B. Conditions Relating to the Sale of Residual Interests

(1) Residual Interests will be sold pursuant to the application, as amended.

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only where the related Bonds are collateralized by the Certificates.

(2) Residual Interests will be offered and sold only to (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the Securities Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at least $200,000 (measured by market value at the time of such purchase) of such Residual interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage-related securities. Residual Interest holders will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefits plans, insurance companies, or real estate investment trusts or other institutions or non-institutional investors as described above which customarily engage in the purchase of mortgages and other types of mortgage-related securities.

(3) Residual Interests will be sold only in transactions not involving any public offering within the meaning of section 4 (2) of the Securities Act.

(4) Transfers of Residual Interests will be prohibited in any case where, as a result of the proposed transfer, there would be more than 100 Residual Interest holders of any Series of Bonds at any time.

(5) Each purchaser of a Residual Interest will be required to represent that it is not purchasing for distribution and that it will hold such Residual Interest in its own name or for accounts as to which it exercises sole investment discretion.

(6) No Residual Interest holder may be affiliated with the Trustee, the custodian of the Mortgage Collateral, or the agency rating the Bonds of the relevant Series.

(7) No holder of a controlling interest in the Applicant (as the term "control" is defined in Rule 405 under the Securities Act) will be affiliated with either (a) any custodian which may hold the Mortgage Collateral on behalf of the Trustee or (b) any statistical rating agency rating the Bonds.

(8) If any shares of the common stock of an Issuer were to be sold and such sale were to result in the transfer of control of such Issuer (as the term "control" is defined in Rule 405 under the Securities Act), the relief afforded by any order granted on the application as amended would not apply to subsequent Bond offerings by such Issuer in which control had been transferred.

For the Commission, by the Division of investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26964 Filed 11-21-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0297]

Nelson Capital Corp.; Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SMA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1988)), Nelson Capital Corp., 585 Steward Avenue, Suite 416, Garden City, L.I., New York 11530 incorporated under the laws of the State of New York has surrendered its license, No. 02/02-0297 issued by the SBA on June 12, 1973.

Nelson Capital Corporation has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Nelson Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: November 16, 1988.

[FR Doc. 26907 Filed 11-21-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-88-44]

Petition for Exemption; Summary of Petitions Received; Disposition of Petitions Issued; Rosenbaum Aviation Inc.; Collection

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; correction, Dates.

SUMMARY: FAA is correcting errors in Dates Section. In FR Doc. 88-26297, published Tuesday November 15, 1988, on page 46010, please change the comment closing date from December 1, 1988, to read December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

Michael D. Triplett,

Docket Section, Program Management Staff.

[FR Doc. 88-26935 Filed 11-21-88; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PR-88-14]

Petition for Rulemaking; Summary of Petitions Received; Disposition of Petitions Issued; Rosenbaum Aviation Inc.; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions; Correction, dates.

SUMMARY: FAA is correcting errors in Dates Section. In FR Doc. 88-26168, published Monday November 14, 1988, on page 45771, please change the comment closing date from November 30, 1988, to read January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

Michael D. Triplett,

Docket Section, Program Management Staff.

[FR Doc. 88-26936 Filed 11-21-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 16, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0235.
Form Number: 730.
Type of Review: Extension.
Title: Tax on Wagering.
Description: Form 730 is used to identify taxable wagers and collect the tax monthly. The information is used to determine if persons accepting wagers are correctly reporting the amount of wagers and paying the required tax.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 4,150.
Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping—3 hours 26 minutes, learning about the law or the form—1 hour 4 minutes, preparing the form—2 hours 6 minutes, copying, assembling, and sending the form to IRS—16 minutes.
Frequency of Response: Monthly.
Estimated Total Recordkeeping/Reporting Burden: 339,000 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26908 Filed 11-21-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 16, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0058.
Form Number: ATF F 698(5120.25).
Type of Review: Extension.
Title: Application by the Proprietor of Bonded Winery or Bonded Wine Cellar.
Description: ATF F 698(5120.25) is used to establish the qualifications of an applicant for a bonded wine cellar or winery. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 832.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 832 hours.
OMB Number: 1512-0310.
Form Number: ATF REC 5120/3.
Type of Review: Extension.
Title: Records Relating to Decolorizing Wine, Including the Use of Activated Carbon.
Description: ATF requires that wine that is treated on wine premises with activated carbon or similar decolorizing material to be identified and specific records to be maintained. ATF uses this information to validate the Federal excise tax due to the U.S. Government and to ensure the integrity of the product as wine for consumer protection.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 325 hours.
OMB Number: 1512-0333.
Form Number: ATF REC 5130/1.
Type of Review: Extension.
Title: Usual and Customary Business Records Maintained by Brewers.
Description: ATF audits brewer's records to verify production of beer and cereal beverages and to verify quantity of beer removed subject to tax or without payment of tax.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 147.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Repots Management Officer.

[FR Doc. 88-26909 Filed 11-21-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 16, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Office, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0191.
Form Number: 4952.
Type of Review: Resubmission.
Title: Investment Interest Expense Deduction.

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Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 800,000.

Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping—1 hour 5 minutes, learning about the law or the form—22 minutes, preparing the form—1 hour 7 minutes, copying, assembling, and sending the form to IRS—20 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 2,336,000 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26910 Filed 11-21-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular; Public Debt Series No. 30-88]

Treasury Bonds of 2018

Washington, November 15, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Bonds of 2018 (CUSIP No. 912810 EB O), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may also be issued to Government accounts and Federal Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated November 15, 1988, and issued November 22, 1988. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1988, to November 22, 1988. Interest on the Bonds is payable on a seminannual basis on May 15, 1989, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 2018, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239-1500, prior to 12:00 noon, Eastern Standard time, Thursday, November 17, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, November 16, 1988, and received no later than Tuesday, November 22, 1988.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successive higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from November 15, 1988, to November 22, 1988. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, November 22, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, November 18, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, November 22, 1988. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Training of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the

appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

Attachment A

CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of November 15, 2018, CUSIP No. 912810 EB 0

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2018 due November 15, 2018, CUSIP No. 912803 AP 8

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury Interest (TINT) Due		Treasury Interest (TINT) due	
May 15, 1989	EN 6	May 15, 2004	FU 9
Nov. 15, 1989	EP 1	Nov. 15, 2004	FV 7
May 15, 1990	EQ 9	May 15, 2005	FW 5
Nov. 15, 1990	ER 7	Nov. 15, 2005	FX 3
May 15, 1991	ES 5	May 15, 2006	FY 1
Nov. 15, 1991	ET 3	Nov. 15, 2006	FZ 8
May 15, 1992	EU 0	May 15, 2007	GA 2
Nov. 15, 1992	EV 8	Nov. 15, 2007	GB 0
May 15, 1993	EW 6	May 15, 2008	GC 8
Nov. 15, 1993	EX 4	Nov. 15, 2008	GD 6
May 15, 1994	EY 2	May 15, 2009	GE 4
Nov. 15, 1994	EZ 9	Nov. 15, 2009	GF 1
May 15, 1995	FA 3	May 15, 2010	JU 5
Nov. 15, 1995	FB 1	Nov. 15, 2010	JV 3
May 15, 1996	FC 9	May 15, 2011	JW 1
Nov. 15, 1996	FD 7	Nov. 15, 2011	JX 9
May 15, 1997	FE 5	May 15, 2012	JY 7
Nov. 15, 1997	FF 2	Nov. 15, 2012	JZ 4
May 15, 1998	FG 0	May 15, 2013	KA 7
Nov. 15, 1998	FH 8	Nov. 15, 2013	KB 5
May 15, 1999	FJ 4	May 15, 2014	KC 3
Nov. 15, 1999	FK 1	Nov. 15, 2014	KD 1
May 15, 2000	FL 9	May 15, 2015	KE 9
Nov. 15, 2000	FM 7	Nov. 15, 2015	KF 6
May 15, 2001	FN 5	May 15, 2016	KH 2
Nov. 15, 2001	FP 0	Nov. 15, 2016	KK 5
May 15, 2002	FQ 8	May 15, 2017	KM 1
Nov. 15, 2002	FR 6	Nov. 15, 2017	KP 4
May 15, 2003	FS 4	May 15, 2018	KR 0
Nov. 15, 2003	FT 2	Nov. 15, 2018	KT 6

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MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

ATTACHMENT B

[FR Doc. 88-27039 Filed 11-18-88; 10:30 am]
BILLING CODE 4810-40-C

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UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Painting in Renaissance Siena: 1420–1500

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Painting in Renaissance Siena: 1420–1500" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art (Robert Lehman Wing) in New York, New York, beginning on or about December 20, 1988, to on or about March 19, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

R. Wallace Stuart,

Acting General Counsel.

Date: November 16, 1988.

[FR Doc. 88–26986 Filed 11–21–88; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 53, No. 225
Tuesday, November 22, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 44142.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:00 a.m., November 25, 1988.

CHANGE IN THE MEETING: The closed Commission meeting scheduled to discuss Survillance Matters has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27122 Filed 11–18–88; 3:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 44549.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., November 29, 1988.

CHANGE IN THE MEETING: The Commission meeting scheduled to discuss Program Objectives, second quarter, FY 89 has been cancelled and will be rescheduled for December.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27121 Filed 11–18–88; 3:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 44549.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., November 29, 1988.

CHANGE IN THE MEETING: The closed Commission meeting scheduled to discuss Enforcement Objectives has been cancelled and will be scheduled for December.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–27123 Filed 11–18–88; 3:31 pm]

BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Wednesday, November 16, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the elimination of separate savings bank call reports.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: November 17, 1988.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary.

[FR Doc. 88–27078 Filed 11–18–88; 1:15 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Wednesday, November 16, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the application of First Commercial Thrift and Loan Company, a proposed new industrial bank to be located at 655 Anton Boulevard, Costa Mesa, California, for Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: November 17, 1988.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary.

[FR Doc. 88–27079 Filed 11–18–88; 1:15 pm]

BILLING CODE 6714–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: November 16, 1988; 53 FR 46183.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., November 16, 1988.

CHANGE IN THE MEETING: The following Docket Numbers have been added to the agenda of November 16, 1988:

Item No., Docket No., and Company

CAG–4—RP88–228–000, Tennesee Gas Pipeline Company.
CAG–95—CP88–180–000, CP88–181–000 and CP88–185–000, PennEast CDS.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27056 Filed 11–18–88; 11:04 am]

BILLING CODE 6717–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 21, 28, December 5, and 12, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of November 21

Wednesday, November 23

10:00 a.m.
Briefing on Effectiveness of Diagnostic Evaluations (Public Meeting).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule—10 CFR Part 62, "Criteria and Procedures for Granting Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities."

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b. Order on Shoreham (Tentative) (*postponed* from November 17).

Week of November 28—Tentative

Thursday, December 1

10:00 a.m.
Meeting with State of Nevada on High Level Waste Program (Public Meeting).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of December 5—Tentative

Friday, December 9

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

2:00 p.m.
Meeting with Public Officials Having Responsibility for Emergency Planning for Pilgrim Nuclear Power Plant (Public Meeting).

Week of December 12—Tentative

Thursday, December 15

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492–1661.

November 17, 1988.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 88–27099 Filed 11–18–88; 3:04 pm]
BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 53, No. 225
Tuesday, November 22, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1750

Acquisitions, Mergers, and Consolidations; Telephone Program

Correction

In proposed rule document 88-24186 beginning on page 40896 in the issue of Wednesday, October 19, 1988, make the following corrections:

1. On page 40986, in the third column, in the first complete paragraph, in the seventh line, "The" should read "They".

2. On page 40897, in the first column, in the table of sections, "1750.10 Specific provision" should read "1750.10 Specific provisions".

§ 1750.3 [Corrected]

3. On page 40898, in the first column, § 1750.3(r), in the fifth line, "major" should read "merger".

§ 1750.20 [Corrected]

4. On the same page, in the third column, § 1750.20(d) should read, "(d) REA will not consider making a loan for the acquisition of an existing borrower unless, in addition to all other requirements, such acquisition will improve the likelihood of repayment of an outstanding REA loan."

§ 1750.24 [Corrected]

5. On page 40899, in the first column, in § 1750.24(a), in the first line, insert "any" after "approve".

§ 1750.25 [Corrected]

6. On the same page, in the third column, in § 1750.25(c)(2), in the first line "From" should read "Form".

§ 1750.44 [Corrected]

7. On page 40901, in the first column, in § 1750.44(a), in the fourth line, insert a comma after "permits".

§ 1750.45 [Corrected]

8. On the same page, in the second column, in the first line, in § 1750.45(a)(2), insert a comma after "section".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1751

Loan Processing Procedures; Telephone Program

Correction

In proposed rule document 88-23965 beginning on page 40734 in the issue of Tuesday, October 18, 1988, make the following corrections:

§ 1751.2 [Corrected]

1. On page 40736, in the first column, in § 1751.2(l), in the seventh line, after "apparatus", insert "and".

§ 1751.10 [Corrected]

2. On the same page, in the second column, in the second line, in § 1751.10(b), "in" should read "is".

§ 1751.30 [Corrected]

3. On page 40737, in the first column, in the heading for § 1751.30 "Feasibility"was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 81128-8228]

Northeast Multispecies Fishery

Correction

In proposed rule document 88-25918 beginning on page 45301 in the issue of Wednesday, November 9, 1988, make the following corrections:

§ 651.20 [Corrected]

1. On page 45305, in the second column, in § 651.20(a)(2), in the table, under "Loran C bearings", in the fourth entry, "60-×-25175" should read "9960-×-25175". Also, in the sixth entry,"41°00'N" should read "41°10'N".

BILLING CODE 1505-01-D

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federal register

Tuesday
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Part II

Department of Health and Human Services

Public Health Service; Office of the Assistant Secretary for Health; Alcohol, Drug Abuse, and Mental Health Administration; National Institutes of Health; Centers for Disease Control; Agency for Toxic Substances and Disease Registry; Indian Health Service; Health Resources and Services Administration; and Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service, HHS.

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Burdget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Office of the Assistant Secretary for Health (OASH) in the Public Health Service (PHS) is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: OASH has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in OASH, and (2) those minor changes which affect the public's right of need to know, such as changes in the system location of records or the address of system managers.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Date: October 17, 1988.

OFFICE OF THE ASSISTANT SECRETARY OF HEALTH

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09–37–0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM, 51 FR 42352, November 24, 1986
09–37–0002 PHS Commissioned Corps Personnel Records, HHS/OASH/OM, 51 FR 42352, November 24, 1986
09–37–0003 PHS Commissioned Corps Medical Records, HHS/OASH/OM, 51 FR 42352, November 24, 1986
09–37–0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OM, 51 FR 42352, November 24, 1986
09–37–0006 PHS Commissioned Corps Grievance Investigatory, and Disciplinary Files, HHS/OASH/OM, 51 FR 42352, November 24, 1986
09–37–0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OM, 51 FR 42352, November 24, 1986
09–37–0015 National Center for Health Services Research and Health Care Technology Assessment (NCHSR) Grants Records System, HHS/OASH/NCHSR, 51 FR 42352, November 24, 1986
09–37–0017 Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM, 51 FR 42352, November 24, 1986
09–37–0018 Disaster Health Services Information Systems, HHS/OASH/DEP, 50 FR 38212, September 20, 1985
09–37–0019 National Medical Expenditure Survey, HHS/OASH/NCHSR, 51 FR 2762, January 21, 1986
09–37–0020 Office of Minority Health Grants Records System, HHS/OASH/OM, 52 FR 37662, October 8, 1987

09–37–0001

System Name:

Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

System Location:

Public Health Service Executive Secretariat, Room 710H, Hubert H. Humphrey Building, 200 Independence Ave. SW., Wasingotn, DC 20201; Office of Population Affairs, OASH, 200 Independence Ave. SW., Washington, DC 20201; National Center for Health Services Research and Health Care Technology Assessment, Parklawn Building, Room 18–23, 5600 Fishers Lane, Rockville, MD 20857; and Federal Records Center, 4205 Suitland Road, Washington, DC 20409.

* * * * *

System Manger(s) and address:

Director, Public Health Service Executive Secretariat (address as above), Staff Assistant to the Deputy Assistant Secretary for Population Affairs (address as above); Director, National Center for Health Services Research and Health Care Technology Assessment (address as above). Policy coordination is provided by: Director, Office of Organization and Management Systems, Office of Management, Parklawn Building, Room 17–51, 5600 Fishers Lane, Rockville, Maryland 20857.

* * * * *

[FR Doc. 88–24492 Filed 11–21–88; 8:45 am]
BILLING CODE 4160–17–M

Alcohol, Drug Abuse, and Mental Health Administration

Privacy Act of 1974; Annual Publication of Revisions to PHS Privacy Act Systems Notices

AGENCY: Department of Health and Human Services (DHHS); Public Health Service (PHS); Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

ACTION: Privacy Act; annual publication of revisions to Privacy Act System Notices.

SUMMARY: ADAMHA is publishing this document to meet the requirement of Section 3.a.(8) of Appendix I to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records about Individuals," which requires that agencies review each system of records annually and publish any minor changes in the **Federal Register** (FR). ADAMHA has reviewed all of its active systems and is publishing all minor changes to its systems notices.

SUPPLEMENTARY INFORMATION: ADAMHA has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as routine uses, title and address changes, system location, and system manager(s).

1. Changes:

The following minor changes have been made to systems of records as follows:

a. 09–30–0020

System name:

Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1978) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/ADAMHA/NIDA.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

System name:

Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/ADAMHA/NIDA.

System location:

Addiction Research Center, National Institute on Drug Abuse, Francis Scott Key Medical Center, P.O. Box 5180, Baltimore, Maryland 21224.

Categories of individuals covered by the system:

Civilly committed narcotic addicts (1967–1976) and adult PHS beneficiaries (1935–1974) treated at either the PHS hospital in Fort Worth, Texas, or Lexington, Kentucky

Retention and disposal:

All administrative and medical records have been retired to a Federal Records Center. The records collected under the Narcotic Addict Rehabilitation Act of 1966 will be destroyed when they are 25 years old, which will be in 2001 because the last patient was released from treatment in 1976. The PHS beneficiaries' records will be destroyed at the same time. The records will be shredded in 2003 upon written request from the system manager.

System manager(s) and address:

Librarian, Addiction Research Center, National Institute on Drug Abuse, Francis Scott Key Medical Center, P.O. Box 5180, Baltimore, Maryland 21224.

b. 09–30–0022

System name:

National Institute on Drug Abuse, Addiction Research Center, Federal Prisoner and Non-Prisoner Research Files, HHS/ADAMHA/NIDA.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

System location:

NIDA Addiction Research Center, Francis Scott Key Medical Center, Building C, P.O. Box 5180, Baltimore, Maryland.

Categories of individuals covered by the system:

Volunteers, adult males (from 1968 to present), adult females (beginning in 1985), adolescents (ages 13–18, beginning in 1983) and children (neonate to 12 beginning in 1989).

Safeguards:

1. Authorized Areas: Only authorized ARC staff (Principal Investigator and his/her research team) are allowed access to these files. The contractor staff has access to the files during the recruitment/screening process.

2. Physical Safeguards: Files and file rooms are locked after business hours. Building has electronic controlled entry at all times with a 24-hour guard/television surveillance system. The computer terminals are in a further secured area.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from unauthorized personnel. Access codes to the research records are available only to the Principal Investigator and his/her research team. Access to the records is strictly limited to those staff members trained in accordance with the Privacy Act. The contractor staff members are required to secure the information in accordance with the Privacy Act. ARC Project Officer and contracting officials will monitor contractor compliance.

System manager(s) and address:

Chief, Research Support Branch, NIDA, Addiction Research Center, Francis Scott Key Medical Center, Building C, P.O. Box 5150, Baltimore, Maryland 21224.

Notification procedures:

To determine if a record exists, write to the system manager at the above address. Provide a notarized signature as proof of identity. This can be waived if the request is made through official federal, state, or local channels. The request should include the patient's register number and/or the number of years of incarceration (for prisoner subjects), full name at time of participation in the research project, date(s) of research participation, and title of research project or name of drug being studied. An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or legal guardian who requests notification of a child's or adolescent's record shall designate a family physician or other health professional (other than a family member) or a member of the Addiction Research Center staff to whom the record, if any, will be sent. The parent or legal guardian must verify in writing the relationship to the adolescent as well as his/her own identity.

C. 09–30–0036

System name:

Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometrics Research Data, HHS/ADAMHA/OA.

Minor alterations have been made to the categories of records in the system as follows:

Categories of records in the system:

The system contains data about the individual as relevant to a particular research study. Examples include, but are not limited to, items about the health/mental health and/or alcohol and/or drug consumption patterns of the individual; demographic data; social security numbers (voluntary); past and present life experiences; personality characteristics; social functioning; utilization of health/mental health alcohol and/or drug abuse services; family history; physiological measures; and characteristics and activities of health/mental health; alcohol abuse, and/or drug abuse care providers.

Retrievability:

During data collection stages and followup, if any, retrieval by personal identifier (e.g., name, social security number (in some studies), or medical record number) is necessary. During the data analysis stage, data are normally retrieved by the variables of interest (e.g., diagnosis, age, occupation).

d. 09–30–0039

System name:

Drug Abuse Treatment Outcome Prospective Study (TOPS), HHS/ADAMHA/NIDA.

Minor alterations have been made to the categories of records in the system as follows:

System name:

Drug Abuse Treatment Outcome Study (DATOS), HHS/ADAMHA/NIDA

System location:

For records collected between 1979 through 1986: National Institute on Drug Abuse, Division of Clinical Research, 5600 Fishers Lane, Rockville, Maryland 20857.

New Records will be located with an ADAMHA contractor, not yet determined. You may contact above address for name and location after October 1, 1988.

Categories of individuals covered by the system:

Voluntary adult clients of federally funded treatment programs, including Treatment Alternative Street Crime (TASC) Programs of the Department of Justice, who requested to be included in TOPS from 1979 through 1986. New data collected from voluntary adult clients of treatment programs beginning in 1989 and will continue through 1993.

Purpose:

The purpose of the system is to compile information on drug abusers who obtain treatment in Federally funded abuse treatment programs in order to derive information on the treatment environments and abusers behaviors and characteristics subsequent to treatment. Researchers and drug abuse services providers may use the aggregate data to address issues and generate hypotheses to understand better the interactions among the client and community.

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Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To determine if a record exists, write to the system manager at the address above. An individual may learn if a record exists about himself/herself upon written request, with notarized signature. The request should include, if known, name of the researcher, location of the research site, approximate date of data collection, any alias used, and subject identification number.

An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except: (A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (E) has secured a written statement attesting to the recipient's understanding of, and willingness to, abide by these provisions.

An ADAMHA contractor (to be determined) uses the records in this system to accomplish the research purpose for which the records are collected. In the event of followup studies or continuation studies, because the contract has been terminated for convenience by the Government, we may disclose records in this system to a subsequent ADAMHA contractor. We would require the new contractor to maintain Privacy Act safeguards with respect to such records.

System manager(s) and address:

Drug Abuse Treatment Outcome Study (DATOS), Deputy Chief, Treatment Research Branch, Division of Clinical Research, National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, Room 10A–30 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

e. 09–30–0041

System name:

Subject—Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA.

Minor alterations have been made to the system location as follows:

System location:

Dixon and Williams Pharmaceutical, 5775 Hyde Park Circle, Jacksonville, Florida 32210.

Addiction Research Center, National Institute on Drug Abuse, Francis Scott Key Medical Center, P.O. Box 5180, Baltimore, Maryland 21224.

f. 09–30–0043

System name:

Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/ADAMHA/NIDA.

A minor alteration has been made to the system location:

System location:

Research Technology Branch, Division of Preclinical Research, National Institute on Drug Abuse, Room 10A–13, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

2. Readers who notice any errors or omissions in ADAMHA system notices are invited to bring them to my attention at the following addresses: Alcohol Drug Abuse, and Mental Health, Administration, 5600 Fishers Lane, Room 12–105, Rockville, Maryland 20857.

Date: October 24, 1988.

Betty J. Cook,

Deputy Executive Office, ADAMHA.

3. Table of Contents

The following is a list of system notices which ADAMHA currently maintains:

09–30–0004 Intramural Research Program Records of Research Performed on In- and Out-Patients with Various Types of Mental Illness, HHS/ADAMHA/NIMH
09–30–0020 Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1978), HHS/ADAMHA/NIDA
09–30–0022 National Institute on Drug Abuse, Addiction Research Center, Federal Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA
09–30–0023 Records of Contracts Awarded to Individuals, HHS/ADAMHA/OA
09–30–0027 Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Prevention, Fellowships, Clinical Training, Community Programs, HHS/ADAMHA/OA
09–30–0029 Records of Guest Workers, HHS/ADAMHA/OA
09–30–0030 Records of Visiting Fellows, HHS/ADAMHA/OA
09–30–0033 Correspondence Files, HHS/ADAMHA/OA
09–30–0035 Three Mile Island Mental Health Survey Respondents Record, HHS/ADAMHA/NIMH
09–30–0036 Alcohol, Drug Abuse, and Mental Health Epidemiological and Biometric Research Data HHS/ADAMHA/OA
09–30–0037 Psychotherapy of Opiate-Dependent Individuals, HHS/ADAMHA/NIDA
09–30–0038 Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/ADAMHA/NIDA
09–30–0039 Drug Abuse Treatment Outcome Prospective Study (TOPS), HHS/ADAMHA/NIDA
09–30–0041 Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA
09–30–0043 Shipment Records of Drugs of Abuse of Authorized Researchers, HHS/ADAMHA/NIDA
09–30–0047 Patient Records on Chronic Mentally Ill Merchant Seamen Treatment at Nursing Homes in Lexington, Kentucky (1942 to the Present), HHS/ADAMHA/NIMH
09–30–0048 Intramural Research Program Records of In- and Out-Patients with Various Types of Alcohol Abuse and Dependence, Relatives of Patients with Alcoholism, and Healthy Volunteers, HHS/ADAMHA/NIAAA
09–30–0049 Consultant Records Maintained by ADAMHA Contractors, HHS/ADAMHA/OA
09–30–0050 Clinical Research: Patient Medical Records, HHS/ADAMHA/OA

[FR Doc. 88–24985 Filed 11–21–88; 8:45 am]

BILLING CODE 4160–20–M

National Institutes of Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service, DHHS.

ACTION: Privacy Act; annual republication of notices of revised systems of records.

SUMMARY: The National Institutes of Health (NIH) has conducted a comprehensive review of all Privacy Act systems of records and is publishing the resulting revisions. None of the revisions meet the OMB criteria either for a new or altered system of records requiring an advance period for public comment. These changes are in compliance with OMB Circular A–130, Appendix 1. The notices republished below are complete and accurate as of August 31, 1988.

Included is a list of three systems of records that have been deleted since the 1987 publication and a complete list of the systems of records that NIH currently maintain.

SUPPLEMENTARY INFORMATION: The following information summarizes the current status of all systems of records which NIH maintains:

A. System Name. The following systems have been updated to reflect a change in the name of the system:

09–25–0037, "Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA."
09–25–0038, "Clinical Research: Patient Data, HHS/NIH/NIDDK."
09–25–0112, "Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD."
09–25–0130, "Clinical Research Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI."

B. System Location. The following systems have been updated to reflect a change in the system locations. These changes do not affect the access by the individual to the individual's records.

09–25–0003, "Administration: Radionuclide Users File, HHS/NIH/ORS."
09–25–0010, "Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI."
09–25–0011, "Clinical Research: Blood Donor Records, HHS/NIH/CC."
09–25–0012, "Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC."
09–25–0014, "Clinical Research: Student Records, HHS/NIH/CC."
09–25–0037, "Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA."
09–25–0042, "Clinical Research: National Dental Research Patient Records, HHS/NIH/NIDR."
09–25–0044, "Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR."
09–25–0054, "Administration: Property Accounting, HHS/NIH/ORS."
09–25–0057, "Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI."
09–25–0060, "Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI."
09–25–0069, "NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI."
09–25–0074, "Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI."
09–25–0077, "Clinical Research: Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI."
09–25–0099, "Clinical Research: Patient Medical Records, HHS/NIH/CC."
09–25–0112, "Extramural Awards: Research, Research Training, Fellowship and Constructions Applications and Related Awards, HHS/NIH/OD."
09–25–0115, "Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID."
09–25–0130, "Clinical Research Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI."
09–25–0154, "Biomedical Research: Records of Subject in Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI."
09–25–0156, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD."

C. Categories of Individuals Covered by the System. The following system has been updated to reflect an increase in the number of individuals covered by the system. This change does not constitute a major modification and no advance publication is required.

09–25–0156, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD."

D. Categories of Records. The following systems have been updated to reflect a change in the categories of records in the system. This change does not alter the character of purpose of the system.

09–25–0078, "Administration: Consultant File, HHS/NIH/NHLBI."
09–25–0142, "Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies in Aging, HHS/NIH/NIA."
09–25–0156, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD."

E. Storage. The following systems have been updated to reflect a change in the method of storing the records:

09–25–0010, "Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI."
09–25–0044, "Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR."
09–09–0069, "NIH Clinical Center Admissions to the National Cancer Institute, HHS/NIH/NCI."
09–25–0115, "Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID."

F. Retrieval. The following systems have been updated to reflect a change in the method of retrieving the records.

09–25–0069, "NIH Clinical Center Admissions to the National Cancer Institute, HHS/NIH/NCI."
09–25–0078, "Administration: Consultant File, HHS/NIH/NHLBI"
09–25–0140, "International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC."

G. Safeguards. The following systems have been updated to reflect a change in the safeguards:

09–25–0037, "Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA."
09–25–0042, "Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR."
09–25–0044, "Clinical Research: Sensory Testing Research Program. HHS/NIH/NIDR."

H. System Manager(s) and Address(es). The following systems have been updated to reflect a change in the system manager or the address of the system manager. These changes do not affect the access by the individual to the individual's records.

09–25–0003, "Administration: Radionuclide Users File, HHS/NIH/ORS."
09–25–0008, "Administration: Radiation Workers Monitoring, HHS/NIH/ORS."
09–25–0010, "Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI."
09–25–0011, "Clinical Research: Blood Donor Records, HHS/NIH/CC."
09–25–0012, "Clinical Research: Candidate/Normal Volunteer Records, HHS/NIH/CC."
09–25–0014, "Clinical Research: Student Records, HHS/NIH/CC."
09–25–0035, "International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC."
09–25–0037, "Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA."
09–25–0042, "Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR."
09–25–0053, "Clinical Research: Vision Studies, HHS/NIH/NEI."
09–25–0054, "Administration: Property Accounting, HHS/NIH/ORS."
09–25–0057, "Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI."
09–25–0060, "Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI."
09–25–0069, "NIH Clinical Center Admissions to the National Cancer Institute, HHS/NIH/NCI."
09–25–0074, "Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI."
09–25–0077, "Clinical Research: Biological Carcinogenesis Branch Human Specimen, HHS/NIH/NCI."
09–25–0078, "Administration: Consultant File, HHS/NIH/NHLBI."
09–25–0087, "Administration: Employees and Consultants. HHS/NIH/NIAID."
09–25–0099, "Clinical Research: Patient Medical Records, HHS/NIH/CC."
09–25–0112, "Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD."
09–25–0115, "Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID."
09–25–0130, "Clinical Research Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI."
09–25–0140, "International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC."
09–25–0143, "Biomedical Research: Records of Subjects in Clinical Epidemiologic and Biometric Studies of the National Institutes of Allergy and Infectious Diseases, HHS/NIH/NIAID."

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09–25–0148, "Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institutes of Neurological and Communicative Disorders and Stroke, HHS/NIH/NINCDS."

09–25–0154, "Biomedical Research: Records of Subjects in Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI."

09–25–0156, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD."

I. Record Source Categories. The following system has been updated to reflect a change in the source of the information contained in the record.

09–25–0069, "NIH Clinical Center Admissions to the National Cancer Institute, HHS/NIH/NCI."

J. Notification Procedures. The following systems have been updated to reflect changes in the office and/or official to contact to determine whether or not the system contains a record about the individual.

09–25–0091, "Administration: General Files on Employees, Donors and Correspondence, HHS/NIH/NEI."

09–25–0156, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD."

K. The following systems have been changed for clarity and editing purposes.

09–25–0011, "Clinical Research: Blood Donor Records, HHS/NIH/CC."

09–25–0035, "International Activities: International Health Exchange Program Participants, HHS/NIH/FIC."

09–25–0112, "Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD."

09–25–0124, "Administrative: Pharmacology Research Associates, HHS/NIH/NIGMS."

09–25–0126, "Clinical Research: National Heart, Lung and Blood Institute Epidemiological Studies, HHS/NIH/NHLBI."

09–25–0133, "Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIAID."

L. The following systems have a name change due to the renaming of the organization from NIADDK to NIDDK as follows:

09–25–0038, "Clinical Research: Patient Data, HHS/NIH/NIDDK."

09–25–0039, "Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK."

09–25–0040, "Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIDDK."

09–25–0041, "Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK."

M. Deleted Systems of Records. The following systems of records which appeared in the 1986 annual publication are now being deleted:

09–25–0013, "Clinical Research: Preadmission Medical Records, HHS/NIH/CC."

09–25–0049, "Clinical Research: Serology-Epidemiology Parasite Research, HHS/NIH/NIAID."

09–25–0117, "International Activities: U.S.-Japan Program Panel Members, HHS/NIH/NIAID."

We are publishing only those systems which have been changed to reflect minor modifications. All system notices were last published in the **Federal Register, Privacy Act Issuances, 1986 Compilation, Volume 1**, pp. 484–546, November 24, 1986, Vol. 51, No. 226, pp. 42398–42449 and selectively updated on November 24, 1987, in Vol. 52, No. 226, pp. 45028–45028.

The following is a list of active systems of records maintained by NIH.

Table of Contents

09–25–0001, Clinical Research: Patient Records, HHS/NIH/NHLBI, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 485.

09–25–0002, Clinical Research: Patient Phonocardiogram Records, HHS/NIH/NHLBI, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 485.

09–25–0003, Administration: Authorized Radionuclide Users File, HHS/NIH/ORS, publ. **Federal Register**, Vol. 51, No. 226, p. 42422.

09–25–0005, Administration: Library Circulation and User I.D. File, HHS/NIH/OD, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 487.

09–25–0007, Administration: NIH Safety Classes Issuance Program, HHS/NIH/ORS, publ. **Federal Register**, Vol. 51, No. 226, p. 42401.

09–25–0008, Administration: Radiation Workers Monitoring, HHS/NIH/ORS, publ. **Federal Register**, Vol. 51, No. 226, p. 42423.

09–25–0010, Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42424.

09–25–0011, Clinical Research: Blood Donor Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 51, No. 226, p. 42402.

09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 51, No. 226, p. 42424.

09–25–0014, Clinical Research: Student Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 51, No. 226, p. 42426.

09–25–0015, Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 492.

09–25–0016, Clinical Research: Collaborative Perinatal Project, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 493.

09–25–0019, Clinical Research: Genetic Counseling, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 493.

09–25–0020, Clinical Research: Genetics of Neurological Disorders, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 494.

09–25–0021, Clinical Research: Guam Patient/Control Registry, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 495.

09–25–0026, Clinical Research: Nervous System Studies, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 496.

09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 496.

09–25–0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 497.

09–25–0033, International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42403.

09–25–0034, International Activities: Scholars in Residence Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42404.

09–25–0035, International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42404.

09–25–0036, Grants: IMPAC (Grant/Contract Information), HHS/NIH/DRG, publ. **Federal Register**, Vol. 51, No. 226, p. 42405.

09–25–0037, Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 501.

09–25–0039, Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 502.

09–25–0040, Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIDDK, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 503.

09–25–0041, Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 504.

09–25–0042, Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 51, No. 226, p. 42426.

09–25–0044, Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 51, No. 226, p. 42427.

09–25–0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42428.

09–25–0048, Clinical Research: Serology-Epidemiology Parasite Research, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42429.

09–25–0053, Clinical Research: Vision Studies, HHS/NIH/NEI, publ. **Federal Register**, Vol. 51, No. 226, p. 42414.

09–25–0054, Administration: Property Accounting, HHS/NIH/ORS, publ. **Federal Register**, Vol. 51, No. 226, p. 42431.

09–25–0057, Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42432.

09–25–0060, Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42433.

09–25–0067, Clinical Research: National Cancer Incidence Surveys, HHS/NIH/NCI, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 511.

09–25–0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42406.

09–25–0074, Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42434.

09–25–0075, Administration: Institutions Submitting Assurances for Protection from Research Risks and Animal Welfare, HHS/NIH/OD, publ. **Federal Register**, Vol. 51, No. 226, p. 42407.

09–25–0077, Clinical Research: Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42435.

09–25–0078, Administration: Consultant File, HHS/NIH/NHLBI, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 515.

09–25–0087, Administration: Employees and Consultants, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42436.

09–25–0091, Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI, publ. **Federal Register**, Vol. 51, No. 226, p. 42415.

09–25–0093, Administration: Administration Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 517.

09–25–0098, Contracts: National Cancer Institute Contract Management System Principal Investigators, Project Officers and Contract Specialists, HHS/NIH/NCI, publ. **Federal Register**, Vol. 1, p. 518.

09–25–0099, Clinical Research: Patient Medical Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 51, No. 226, p. 42408.

09–25–0100, Clinical Research: Neuropharmacology Studies, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 519.

09–25–0102, Administration: Grants Associates Program Working Files, HHS/NIH/DRG, publ. **Federal Register**, 1986 Comp.Vol. 1, p. 520.

09–25–0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/OD, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 521.

09–25–0108, Administration: Executive Secretariat Correspondence Records, HHS/NIH/OD, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 521.

09–25–0108, Personnel: Guest Researchers/Student Scientists/Scientists Emeriti, HHS/NIH/DPM, publ. **Federal Register**, Vol. 51, No. 226, p. 42409.

09–25–0112, Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD, publ. **Federal Register**, Vol. 51, No. 226, p. 42410.

09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42436.

09–25–0118, Contracts: Professional Services Contractors, HHS/NIH/NCI, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 526.

09–25–0121, International Activities: Senior International Fellowships Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42416.

09–25–0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS, publ. **Federal Register**, Vol. 51, No. 226, p. 42412.

09–25–0126, Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI, publ. **Federal Register**, Vol. 51, No. 226, p. 42417.

09–25–0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 529.

09–25–0129, Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NINCDS, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 530.

09–25–0130, Clinical Research Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 531.

09–25–0133, Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIDDK, publ. **Federal Register**, Vol. 51, No. 226, p. 42438.

09–25–0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS, publ. **Federal Register**, Vol. 51, No. 226, p. 42418.

09–25–0140, International Activities: International Scientific Research in Intramural Laboratories at National Institutes of Health, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42413.

09–25–0142, Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA, publ. **Federal Register**, 1986 Comp. Vol. 1, p. 535.

09–25–0143, Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42439.

09–25–0146, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological and Communicative Disorders and Stroke, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 51, No. 226, p. 42440.

09–25–0151, Administration: Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct In Science or Subject to Sanctions for Such Misconduct, HHS/PHS/NIH, publ. **Federal Register**, Vol. 52, No. 102, p. 19929.

09–25–0152, Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 51, No. 226, p. 42442.

09–25–0153, Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD, publ. **Federal Register**, Vol. 51, No. 226, p. 42444.

09–25–0154, Biomedical Research: Records of Subjects in Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42420.

09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of NIH, HHS/NIH/OD, publ. **Federal Register**, Vol. 51, No. 226, p. 42447.

Date: November 3, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

09–25–0003

SYSTEM NAME:

Administration: Authorized Radionuclide Users File, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 21, Room 106, 9000 Rockville Pike, Bethesda, MD 20892

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Research Investigators within NIH and outside holding NIH-NRC Board License for radioactive material.

CATEGORIES OF RECORDS IN THE SYSTEM:

Radioactive material users.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

To provide adequate administrative controls to assure compliance with NIH Radition Safety policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Training and experience information transferred to place of new employment.

2. Personnel exposure data transferred to place of new employment.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the the request of that individual.

4. Disclosure may be made from this system of records by the Department of Health and Human Services (HHS) to the Department of Justice, or to a court

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or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective represention of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file cabinet.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to staff Health Physicists, staff Physical Science Technicians, and adminstrative personnel of the branch.

2. Physical Safeguards: Records are generally stored in locked file cabinets or in cabinets that are in rooms that can be locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly limited to Radiation Safety Branch personnel staff. Records may be removed from files only at the request of authorized personnel. For computerized records, access is controlled by the use of security codes known only to authorized users.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, items 1300–B–13 through 16. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Chief, Data and Analytical Services Section, Radiation Safety Branch, ORS, Building 21, Room 106, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual, previous employers and educational institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0008

SYSTEM NAME:

Administration: Radiation Workers Monitoring, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 21, Room 134, 9000 Rockville Pike, Bethesda, MD 20892, and National Institutes of Health, Building 12, Computer Center, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH workers using radioactive materials or radiation producing equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Radiation exposure incident reports, film badge exposure reports, urine and whole body counting reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902.

PURPOSE OF THE SYSTEM:

(1) To assure legal compliance with requirement of Nuclear Regulatory Commission to maintain internal and external radiation exposure data and any radiation incident follow-up reports. (2) To monitor personnel exposures in order that they be maintained at the lowest levels reasonably achievable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Radiation exposure history may be transferred to new employer or to Nuclear Regulatory Commission on their requests.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in card file and computer tapes.

RETRIEVABILITY:

Records are retrieved by name and group number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel,

physical and procedural safeguards such as the following:

1. Authorized users: Access to information stored is limited to the system manager and Radiation Branch (RSB) staff.

2. Physical safeguards: Information is filed in cabinets in Building 21 or in computer disc files or magnetic drum mass storage. Building 21 is locked during non-working hours. In addition there is a security fence with locked gate surrounding Building 21. File cabinets are in rooms with RSB employees who monitor access to the information therein.

3. Procedural safeguards: Access to computer files is limited only to personnel who know the initial set assigned by the Division of Computer Research and Technology (DCRT), file names, storage locations, and keywords protecting these files. Access to file cabinets is controlled by office personnel who personally recognize RSB staff members.

RETENTION AND DISPOSAL:

Years at NIH: indefinite.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Chief, Data and Analytical Services Section, Radiation Safety Branch, DS, Building 21, Room 106, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting information to how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Previous employer and education institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0010

SYSTEM NAME:

Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Executive Plaza North, Room 540, 6130 Executive Blvd., Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals potentially exposed to biohazardous microbial agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Microbial agents registry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

(1) To serve as a base for health and safety for individuals and organizations involved in use of potentially hazardous agents. (2) To identify potential hazards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on magnetic tape, and 3380 disks.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees authorized to use the records include professional staff in the Biological Carcinogenesis Branch who have been informed of the need for maintaining confidentiality of the records.

2. Physical Safeguards: Office records are kept in closed cabinets in offices which are locked during off-duty hours.

3. Procedural Safeguards: Access to the file is strictly controlled by the system manager and his designee, and records may be removed from files only at the request of the system manager or other authorized employee. Access to computerized records is controlled by the use of security codes known only to the authorized users.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, "ADP Systems Security," of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER AND ADDRESS:

National Cancer Institute, Division of Cancer Etiology, Coordination, Research Resources, BCP, Executive Plaza North, Room 540, 6130 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that

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the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals and/or organizations providing specimens.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0011

SYSTEM NAME:

Clincial Research: Blood Donor Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health Building 10A, Room 5D36, 9000 Rockville Pike, Bethesda, MD 20892.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of blood and blood components to be used in the NIH Clinical Center for patient infusions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Past donations, blood types, phenotype. Laboratory results of hepatitis testing, serologic reactions on all blood samples, donations of blood or blood components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Preparation of Biological Products" of the Public Health Service Act (42 U.S.C. 263).

PURPOSE OF THE SYSTEM:

(1) To provide a means for contacting blood donors for patient care and research. (2) To provide a medical history of all donors for the transfusion records of each blood unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and their staff in order to accomplish the purposes for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Certain diseases infectious diseases may be reported to state government as required by law.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computer file, on donor cards, and on microfilm.

RETRIEVABILITY:

Records are retrieved by a unique control number assigned to each individual donor.

SAFEGUARDS:

Access is granted only to authorized employees in the Department of Transfusion Medicine including physicians, nurses, technologists, computer operators, and the departments's administrative officer.

1. Authorized Users: Access is granted only to authorized employees of the Department of Transfusion Medicine including physicians, nurses technologists, computer operators and the secretary to the Chief.

2. Physical Safeguards: Record facilities are locked when system personnel are not present.

3. Procedural Safeguards: Access to manual files is limited to authorized users. Access to computerized records is controlled by the use of security codes known only to the authorized users.

These practices are in compliance with the standards of chapter 45-13, of the HHS General Administration Manual, Supplementary chapter PHS hf: 45-13, and Part 6, "ADP System Security" of the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Donor cards are retained for 18 months and then microfilmed. Microfilm is retained indefinitely in accordance with the NIH Records Control Schedule, item 3000-E-50.

Disposal method include burning or shredding paper materials and erasing computer tapes.

SYSTEM MANAGER AND ADDRESS:

Chief, Department of Transfusion Medicine, National Institutes of Health, Building 10, Room 5D56, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact the system manager at the address specified above. Requesters should provide the same information as is required under the notification procedures above. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Data are collected from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0012

SYSTEM NAME:

Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 1N230, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normally healthy individuals who volunteer to participate in NIH studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Program application, health questionnaire and record of participation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 283.

PURPOSE OF THE SYSTEM:

(1) To determine suitability for participation in the normal volunteer program, (2) to document remuneration of normal volunteers, (3) to provide a record of participation to be used (a) in writing letters of recommendation/reference for the volunteer, and (b) preparing reports on the normal volunteer program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PROGRAM OF SUCH USES:

1. Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

2. Certain infectious diseases may be reported to state government as required by law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. Disclosure may be made to a congressional office from the record of an individual in response in an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Program applictions and health questionnaries are stored in file folders. Records of participation are stored on index cards.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, procedural safeguards such as the following:

1. Authorized Users: Access is granted only to the Normal Volunteer Program staff in the Office of Special Programs and to NIH physicians who have requested the recruitment of volunteers for their clinical research projects.

2. Physical Safeguards: Record facilities are locked when system personnel are not present.

3. Procedural Safeguards: Access to the files is strictly controlled by the files staff. Records may be removed from the file only at the request of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Program applications and health questionnaires are kept for 36 months (3 years) after an individual leaves NIH. Applications which are eligible but not accepted may be kept for 1 year.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Assistant Director for Special Program, CC, Building 10, Room 1C226, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact: Assistant Director for Special Programs, Building 10, Room 1N226, NIH, 9000 Rockville Pike, Bethesda, MD 20892. and provide the information described under notification Procedures above.

Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Volunteer, sponsoring contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0014

SYSTEM NAME:

Clinical Research: Student Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 1C292, 9000 Rockville Pike, Bethesda, MD 20892.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential and accepted Medical Staff and Research Fellows, medical students, and other students in NIH training programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application form, transcripts, references, evaluations.

BEST COPY AVAILABLE

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

(1) To identify candidates for Medical Staff and Research Fellow, clinical elective, and other training positions. (2) To maintain a permanent record of those individuals who have received clinical research training at the NIH for historical and reference uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information may be used to respond to congressional inquires for constituents concerning admission to the program.

2. Information may be used to respond to prospective future employers of these individuals who wish to confirm their presence at NIH.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and year.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to health care personnel of the NIH who are involved in the evaluation and selection of training candidates.

2. Physical Safeguards: Records are maintained in locked cabinets with access limited to authorized personnel (systems manager and staff).

3. Procedural Safeguards: Access to the file is strictly controlled by the files staff. Records may be removed from the file only at the request of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Years at NIH: Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the NIH Records Control Schedule. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Assistant Director for Special Programs, CC, Building 10, Room 1C292, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact the system manager at the above address and provide the information described under Notification Procedures above. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the system manager at the address specified above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Applicants, universities and teachers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0035

SYSTEM NAME:

International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 38A, Room 612, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens applying for participation in international health exchange programs through NIH.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports, including curricula vitae and letters of reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421.

PURPOSE OF THE SYSTEM

To administer individual health exchange programs and prepare for scientific review and approval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. To qualified experts not within the definition of Department employees as prescribed in Department Regulations for opinions as a part of the application review process.

3. Information is furnished to pertinent staff of the relevant foreign ministry for acceptance purposes.

4. Applications are made available to authorized employees and agents of the Federal Government for the purpose of inspections and audits, and, in appropriate cases, to the Department of Justice for investigation under civil and criminal laws.

5. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in locked file cabinets. Offices are locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Years at NIH: 1. At Federal Records Center: 5. Destroy 6 years after close out (NIH Manual 1743, Appendix I, Section 2300-320-7).

SYSTEM MANAGER(S) AND ADDRESS:

National Institutes of Health, Program Specialist, International Coordination and Liaison, Branch, FIC, Building 38A, Room 612, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Information is obtained from applicants and individuals who supply references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0037

SYSTEM NAME:

Clinical Research: Baltimore Longitudinal Study of Aging, HHS/NIH/NIA.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

National Institutes of Health, Building 12, 9000 Rockville Pike, Bethesda, MD 20892;

and

Chief, Longitudinal Studies Branch, IRP, NIA, Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Voluntary participants in the Gerontology Research Center (GRC) Longitudinal Study of Aging.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, psychological and physical test results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 289k-2, k-4. Health Research Extension Act of 1985 PL 99-158.

PURPOSE OF THE SYSTEM:

Epidemiological research on the human aging process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain infectious diseases are reported to state governments as required by law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on computer files, and on microfiche.

RETRIEVABILITY:

Records are retrieved by ID number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to the clinical, research and support staff of the GRC. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Hard copy files are kept in locked file cabinets.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee. Access to computer files is controlled through

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security codes known only to authorized users.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Chief, Longitudinal Studies Branch, IRP National Institutes of Health Gerontology Research Center, GRC 4940 Eastern Avenue, Baltimore, MD 21224

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requestor must also verify his or her identity by providing either a notarization of the request or a written certification that the requestor is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individuals, research staff, test results.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0038

SYSTEM NAME:

Clinical Research: Patient Data, HHS/NIH/NIDDK.

SECURITY CLASSFICIATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 9N222, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients of the National Institute of Diabetes, and Digestive and Kidney Diseases (NIDDK).

CATEGORIES OF RECORDS IN THE SYSTEM:

Patient history, demographic data, miscellaneous correspondence with patients.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281a, 289c.

PURPOSE OF THE SYSTEM:

(1) Care and treatment of patients with arthritic, metabolic or digestive disease; (2) Experimentation and investigation on the etiology, treatment and prevention of arthritic, metabolic or digestive disease; (3) Administration of these clinical and research programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain infectious diseases are reported to state governments as required by law.

3. Information may be used to respond to congressional inquiries for constitutents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on magnetic tape.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unathorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the NIADDK whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in a limited access area. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual indentification.

4. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Chief, Clinical Investigations, NIDDK, Building 10, Room 9N222, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists write to:

National Institutes of Health, Administrative Officer, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0040

SYSTEM NAME:

Clinical Research: Southwestern American Indian Patient Data, HHS/HIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Phoenix Area Indian Hospital, Room 541 Phoenix, Arizona 85016.

Write to system manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients of the National Institute of Diabetes, and Digestive and Kidney Diseases (NIDDK) being treated at the Phoenix Area Indian Hospital.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history, treatment schedules, diagnostic records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

(1) Used by clinicians and support staff of the Phoenix Clinical Research Section for treatment of NIADDK patients, and for research related to such treatment. (2) Records are forwarded to the Indian Health Service which maintains records after patient discharge in case follow-up or later treatment is necessary.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain infectious diseases are reported to state governments as required by law.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and patient number.

SAFEGUARDS:

Records are maintained in secured areas and containers, with personnel screening to prevent unauthorized access. Charge-out records are maintained on records charged out from the files.

RETENTION AND DISPOSAL:

Records are retained and destroyed according to the same standards that apply to other medical records of the Indian Health Service.

SYSTEM MANAGER AND ADDRESS:

Chief, Phoenix Clinical Research Section, Phoenix Area Indian Hospital, Room 541, 4212 North 16th Street, Phoenix, Arizona 85016.

NOTIFICATION PROCEDURE:

To determine if a record exists write to: National Institutes of Health, Administrative Officer, NIDDK, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access, to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

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CONTESTING RECORD PROCEDURES:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Clinicians of the Phoenix Clinical Research Section.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0042

SYSTEM NAME:

Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR.

SECURITY CLASSIFICATION.

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 6S237, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and other participants in current and past research projects of the National Institute of Dental Research (NIDR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and dental histories, dental pathologies and therapies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 285h.

PURPOSE OF THE SYSTEM:

(1) To record the diagnosis and treatment of patients with diseases of the mouth, tongue, teeth and surrounding tissues; (2) To record the normal condition of the mouth, tongue, teeth and surrounding tissues of individuals referred to the dental clinic; (3) To provide clinical data for research into the etiology, treatment and prevention of oral diseases; (4) For review and planning of the NIDR clinical program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the clinical and research purposes for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain infectious diseases are reported to state governments as required by law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and hospital ID number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to dentists, physicians, dental hygienists, dental assistants and other health care personnel involved in the care and treatment of patients in the NIDR dental clinic, and to referring professionals. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are stored in a cabinet which is locked at all times when not in use.

3. Procedural Safeguards: Access is controlled by clerical staff of the Dental Clinic during clinic hours, and by the Officer of the Day when the clinic is closed.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B-361), Manual Chapter 1743, item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Records will be destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Chief, Clinical Investigations and Patient Care Branch, NIDR, Building 10, Room 6S237A, 9000 Rockville Pike, Bethesda, MD 20829.

NOTIFICATION PROCEDURE:

To determine if a record exists contact: NIDR Privacy Act Coordinator, Westwood Building, Room 535, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual, parents or guardians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0044

SYSTEM NAME:

Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 6S-247, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Infants, children and adults participating in the Sensory Testing Research Program of the National Institute of Dental Research (NIDR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Test results, extracts from medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 288a.

PURPOSE OF THE SYSTEM:

(1) To record the medical/dental histories of individuals participating in the Sensory Testing Research Program; (2) To record the results of chemosensory tests of individuals participating in the Sensory Testing Research Program; (3) For research on sensitivity to oral nasal stimulation; (4) For review and planning of the Clinical Investigations and Patient Care Branch program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees, referring health professionals and collaborating researchers and their staff in order to accomplish the clinical and research purposes for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain infectious diseases are reported to state governments as required by law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, data books and in a mini-computer maintained by the NIDR Scientific Systems Section.

RETRIEVABILITY:

Records are retrieved by name, date of observation and age of subject.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to Clinical Investigations Section staff, to scientist colleagues by invitation of the principal investigator and to referring professionals. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

2. Physical Safeguards: Records are stored in rooms which are locked at all times when not in use. Computer terminals are in secured areas. Access to computer file is controlled by software protection codes associated with each site.

3. Procedural Safeguards: Access is controlled by Clinical Investigation Section staff.

These safeguards are in compliance with the standards of chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45-13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Disposal is by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Research Psychologist, Clinical Investigations, NIDR, Building 10, Room 1A05, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists contact: NIDR Privacy Act Coordinator, Westwood Building, Room 535, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

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RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Subject individual, cooperating clinician or health agency, family members.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0053

SYSTEM NAME:

Clinical Research: Vision Studies, HHS/NIH/NEI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 10N202, CC, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and subjects in the National Eye Institute research studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history as relevant to vision research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289i, 289k.

PURPOSE OF THE SYSTEM:

(1) To gather photographic evidence of various stages or progressions of certain visual disorders; (2) To record certain diagnostic test results (such as color vision testing) in the compilation of empirical data to support research evaluations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Information may be used to respond to Congressional inquiries for constituents concerning admission to the NIH Clinical Center.

3. Certain infectious diseases may be reported to State Government as required by law.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatable with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file cabinets.

RETRIEVABILITY:

Records are retrieved by name and cross referenced by anatomical entity.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research and physicians treating the patient whose records are involved. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the system manager. File cabinets are in locked rooms and access to files is strictly controlled. Specifically, records may be removed from files only at the request of the System Manager or authorized employees.

The particular safeguards implemented at each site are developed in accordance with chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45-13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000-G-3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Clinical Director, NEI, Building 10, Room 10N-202, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, contact: Executive Officer, NEI, Building 31, Room 6A05, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under a false pretense is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Medical examinations conducted by and under the direction of the research investigators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0054

SYSTEM NAME:

Administration: Property Accounting, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 2E47, 9000 Rockville Pike, Bethesda, MD 20892, and National Institutes of Health, Computer Center, Building 12, 9000 Rockville Pike, Bethesda, MD 20892, and National Institutes of Health, Building 31, Room B1C06, 9000 Rockville Pike, Bethesda, MD 20892, and National Institute of Environmental Health Sciences, Office of Facilities Engineering, 102-01, NIEHS, P.O. Box 12233, Research Triangle Park, N.C., 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the National Institutes of Health who are issued tools or card keys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Property management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5901; 5 U.S.C. 7903; 40 U.S.C. 318a; 42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

Used for tool and card keys issuance and control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Textual records are stored in offices which are locked when not in use. Computer files are password protected.

RETENTION AND DISPOSAL:

Records are kept until two years after an item is released by an individual.

SYSTEM MANAGER AND ADDRESS:

For tools: National Institutes of Health, Administrative Officer, DES, Building 31, Room 2E47, 9000 Rockville Pike, Bethesda, MD 20892.

For card keys: National Institutes of Health, Chief, Crime Prevention Section, Security Branch, DS, ORS, Building 31, Room B3B16, 9000 Rockville Pike, Bethesda, MD 20205.

National Institute of Environmental Health Sciences, Chief, Office of Facilities Engineering, 102-01, P.O. Box 12233, Research Triangle Park, NC 27709.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Data is obtained from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0057

SYSTEM NAME:

Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Environmental Epidemiological, DCE, NCI, Executive Plaza North, Room 434, 6130 Executive Blvd., Bethesda, MD 20205, and Frederick Cancer Research Facility, Room 434, Frederick, MD 21701.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with Burkitt's Lymphoma in the registry of the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical abstracts, pathology reports, and other laboratory correspondence with attending physicians.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE OF THE SYSTEM:

Epidemiologic research on Burkitt's Lymphoma.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry

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from the congressional office made at the request of the individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in a limited access area. Offices are locked during off-duty hours.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

American Burkitt's Lymphoma Registry, Division of Cancer Etiology, NCI, Executive Plaza North, Suite 434, 6130 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably indentify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Hospitals, physicians.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0060

SYSTEM NAME:

Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 13C103, 9000 Rockville Pike, Bethesda, MD 20892, and Frederick Cancer Research Center, Building 426, Frederick, MD 21701, and National Cancer Institute, Navy Hospital, Building 8, Room 3146, Bethesda, MD 21814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All patients who have been hospitalized in the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE OF THE SYSTEM:

(1) Patient care and treatment. (2) Clinical and epidemiological research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to

directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition, and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tapes, on index cards, and manual paper records.

RETRIEVABILITY:

Records are retrieved by patient name or number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and protedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute, or its contractors, whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in a limited access area. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Head, Biostatistics and Data Management Section, National Institutes of Health, Building 10, Room 13C103, 9000 Rockville Pike, Bethesda, MD 20892, and Chief, Clinical Research Branch, Biological Response Modifiers Program, Frederick Cancer Research Center, 335 Park Avenue, Building 567, Room 129, Frederick, MD 21701, and Navy Hospital, Deputy Branch Chief, NCI—Naval Medical Oncology Branch, Building 8, Room 5101, Bethesda, MD 20814.

NOTIFICATION PROCEDURE:

Write to system manager for the appropriate location to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Hospital medical records, referring physician, referring hospitals, clinical laboratories, patient contact, and Central Tumor Registries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0069

SYSTEM NAME:

NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Chief, Genetics Section, DCE, Executive Plaza North, Room 400, 6130 Executive Blvd., Bethesda, MD 20205, and National Institutes of Health, Division of Computer Research and Technology, Building 12A, 9000 Rockville Pike, Bethesda, MD 20205.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former cancer patients admitted to the NIH Clinical Center or the National Cancer Institute (NCI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, reports and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE OF THE SYSTEM:

National Cancer Institute physicians and supporting staff are involved in research on the cause and diagnosis of disease and the treatment of patients, requiring the maintenance of working files to chart progress, responses to treatment, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of

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an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) and Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee; for example, in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on computer files.

RETRIEVABILITY:

Records are retrieved by name and identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute and the Clinical Center whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in limited access areas. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employees. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Epidemiology & Biostatistics, Clinical Epidemiology Branch, Division of Cancer Etiology, NCI, Chief, Clinical Genetics Section, Executive Plaza North, Suite 400, 6130 Executive Blvd., Bethesda, MD 20205, and Chief, Family Studies Section, Environmental Epidemiology Branch, Executive Plaza North, Suite 439, 6130 Executive Blvd., Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

Write to system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A Parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Patients' personal physicians, NIH staff treating the patients or performing tests, and patients themselves.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0074

SYSTEM NAME:

Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, DCBD, NCI, Executive Plaza North, Room 330C, Bethesda, MD 20892, and at hospitals and clinics, educational and research institutions, Federal, State or local government agencies, and private facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cancer patients, individuals undergoing biopsies, and normal controls in clinical studies of the Division of Cancer Biology and Diagnosis (DCBD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical & treatment history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE OF THE SYSTEM:

This system is used to support research: (1) To compare cancer diagnostic tests, (2) to develop statistical methodology, (3) to trace the natural history of the cancer under study, and (4) to develop, evaluate and verify biological markers for early cancer detection and for monitoring treatment success.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in files and on computer tapes and discs.

RETRIEVABILITY:

Records are retrieved by coded identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute and its contractors whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in limited access areas. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, "ADP Systems Security," of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Computer Systems Analyst, National Institutes of Health, Executive Plaza North, Room 344, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0077

SYSTEM NAME:

Clinical Research: Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Executive Plaza North, Rm. 540, 6130 Executive Blvd., Bethesda, MD 20892, and at private organizations under contract. Write to the system manager for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cancer and other patients, and normal donors of biopsy and tumor specimens, who are seen at clinically-oriented organizations under contract to the National Cancer Institute. Both adults and children are covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history and diagnostic information about the donor, information on the type of specimen, location of repository (if specimen is stored before use), and distribution record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282: "Research and Investigation," "National Cancer Institute," and "Cancer Research and Other Activities."

PURPOSE OF THE SYSTEM:

(1) For cancer research, using by-products of cancer treatment, such as biopsy and tumor specimens that would normally be discarded, to allow interpretation of experimental results; (2) To project future research needs; (3)

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To monitor and evaluate the NCI distribution system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The Department contemplates that it may contract with a private firm for storage and preservation of specimens. Records necessary for identification, retrieval and research use will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tape, discs.

RETRIEVABILITY:

Retrieved by name of donor and cross-referenced by identifying number, procurement source, and various epidemiological characteristics.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute, or its contractors, whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records, computers and computer terminals are kept in limited access areas. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users.

4. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records in this system are instructed to make no disclosure of the records except as authorized by the system manager.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Coordinator, Research Resources, Biological Carcinogenesis Branch, Division of Cancer Etiology, NCI, National Institutes of Health, Executive Plaza North, Room 540, 6130 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Specimen Report Form filled out by the organization providing specimens.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0078

SYSTEM NAME:

Administration: Consultant File, HHS/NIH/NHLBI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

List of consultants available for use in evaluation of National Heart, Lung, and Blood Institute special grants and contracts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and resumes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d), 281.

PURPOSE OF THE SYSTEM:

(1) To identify and select experts and consultants for program reviews and evaluations. (2) For use in evaluation of NHLBI special grants and contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disc and file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Data on computer files is accessed by keyword known only to authorized users. Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel.

RETENTION AND DISPOSAL:

Records are kept until the individual is no longer available for consultation.

SYSTEM MANAGER AND ADDRESS:

National Heart, Lung, and Blood Institute, Computer Specialist, Division of Extramural Affairs, Westwood Building, Room 5A15, 5333 Westbard Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: National Institutes of Health, Privacy Act Coordinator, NHLBI, Building 31, Room 5A08, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under also pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0067

SYSTEM NAME:

Administration: Employee and Consultants, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 7A32, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former key professional employees of the Institute and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Press releases, curriculum vitae, nominations for awards and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d) 289a.

PURPOSE OF THE SYSTEM:

For background records to provide public announcements on National Institute of Allergy and Infectious Diseases (NIAID) Council members, advisors and guest lecturers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to staff whose duties require the use of such information. Authorized users are located in the Office of the Director, NIAID. Other one time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records in this system are stored in file folders which are kept in locked cabinets. The room is locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are kept until no longer needed for reference.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Communications, National Institutes of Health, Building 31, Room 7A32, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to:

National Institutes of Health, Privacy Act Coordinator, NIAID, Westwood Building, Room 704, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures. Requesters should also

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reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the System Manager at the address above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individuals and newspaper clippings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0091

SYSTEM NAME:

Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 6A03, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of gifts, employees, correspondents of the National Eye Institute (NEI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Budget, administrative services, correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 289i.

PURPOSE OF THE SYSTEM:

(1) To identify certain donors of unconditional gifts to the National Eye Institute; (2) To record certain delegations and permit holders; (3) To maintain a mailing list of persons in the vision research community; (4) To provide service or information to specific requesters; (5) To communicate with collaborating investigators in vision research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and subject area.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant regular access only to staff with designated responsibilities directly related to the purpose for which the records are kept. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager. Records are kept in locked offices.

RETENTION AND DISPOSAL:

Years at NIH: 1. Disposal methods include burning or shredding paper materials.

SYSTEM MANAGER AND ADDRESS:

National Eye Institute, Executive Officer, Building 31, Room 6A05, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to:

National Eye Institute, Records Management Officer, Building 31, Room 6A17, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0099

SYSTEM NAME:

Clinical Research: Patient Medical Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Patient Medical Records, Building 10, Room 1N208, 9000 Rockville Pike, Bethesda, MD 20892; and National Institutes of Health, Patient Nutrition Records, Building 10, Room B1S229, 9000 Rockville Pike, Bethesda, MD 20892.

and at private organizations under contract. Write to the system manager for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registered Clinical Center patients. Some individuals not registered as patients but seen in Clinical Center for diagnostic tests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical treatment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 248: "Research and Investigation," and "Hospitals, Medical Examinations, and Medical Care."

PURPOSE OF THE SYSTEM:

(1) To provide a continuous history of the treatment afforded individual patients in the Clinical Center; (2) To provide a data base for the clinical research conducted within the hospital.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information may be used to respond to Congressional inquiries for constituents concerning their admission to NIH Clinical Center.

2. Social Work Department may give pertinent information to community agencies to assist patients or their families.

3. Referring physicians receive medical information for continuing patient care after discharge.

4. Information regarding diagnostic problems, or having unusual scientific value may be disclosed to appropriate medical or medical research organizations or consultants in connection with treatment of patients or in order to accomplish the research purpose of this system. For example, tissue specimens may be sent to the Armed Forces Institute of Pathology; X-rays may be sent for the opinion of a radiologist with extensive experience in a particular kind of diagnostic radiology. The recipients are required to maintain Privacy Act safeguards with respect to these records.

5. Records may be disclosed to representatives of the Joint Commission on Accreditation of Hospitals conducting inspections to ensure that the quality of Clinical Center medical record-keeping meets established standards.

6. Certain infectious diseases are reported to State Government as required by law.

7. Medical information may be disclosed to tumor registries for maintenance of health statistics.

8. The Department contemplates that it may contract with a private firm for transcribing, updating, copying, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

9. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and/or on microfiche, and on computer tapes.

RETRIEVABILITY:

Records are retrieved by unit number and patient name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees maintaining records in this system are instructed to grant regular access only to physicians and dentists and other health care professionals officially participating in patient care, to contractors, or to NIH researchers specifically authorized by the system manager.

2. Physical Safeguards: All record facilities are locked when system personnel are not present.

3. Procedural Safeguards: Access to files is strictly controlled by the system manager. Records may be removed only by system personnel following receipt of a request signed by an authorized user. Access to computerized records is controlled by the use of security codes known only to the authorized user. Codes are user- and function-specific.

Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records in this system are instructed to make no disclosure of the records except as authorized by the system manager.

These safeguards were developed in accordance with chapter 45–13, Safeguarding Records Contained in Systems of Records, of the HHS General Administration Manual, corresponding chapter PHS hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–E–22. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Chief, Medical Record Department, National Institutes of Health, Building 10, Room 1N208, 9000 Rockville Pike, Bethesda, Md. 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the above address. The requester must provide tangible proof of identity, such as a driver's license. If no identification papers are available, the requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. The representative may be a physician, or other health professional, or other responsible individual. The subject individual will be granted direct access unless it is determined that such access is likely to have an adverse effect on him or her. In that case, the medical/dental record will be sent to the designated representative.

The individual will be informed in writing if the record is sent to the representative.

A parent or guardian who requests notification of or access to a child's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

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CONTESTING RECORD PROCEDURE:

Contact the system manager and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Referring physicians, other medical facilities (with patient's consent), patients, relatives of patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0112

SYSTEM NAME:

Grants: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant applicants and Principal Investigators; Program Directors; Institutional and Individual Fellows; Research Career Awardees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant applications and review history, awards, financial records, progress reports and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation," "National Library of Medicine," "National Cancer Institute," "National Heart, Lung and Blood Institute," "National Institute of Dental Research," "National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases," "National Institute of Neurological and Communicative Diseases and Stroke, and Other Institutes," National Institute of Child Health and Human Development," "National Institute of General Medical Sciences," "National Eye Institute," and "National Institute on Aging," of the Public Health Service Act (42 U.S.C. 241, 276, 281, 287, 288, 289 (a), (d), (e), (i), 289(k-2)).

PURPOSE OF THE SYSTEM:

1. Information provided is used by NIH staff for review, award, and administration of grant programs.

2. Information is also used to maintain communication with former fellows who have incurred an obligation through the National Research Service Award Program.

3. Staff may also use curriculum vitae to identify candidates who may serve as ad hoc consultants or committee and council members in the grant peer review process.

4. As a part of the cost analysis of a proposed grant, a budget review is conducted of the percentage of time and effort listed under personnel category, equipment and supply categories, and other items listed under "other" category.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. Of assignments of research investigators and project monitors to specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange, Inc.;

2. To the cognizant audit agency for auditing;

3. In the event of litigation where the defendent is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected;

4. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual;

5. To qualified experts not within the definition of Department employees as prescribed in Department Regulations, 45 CFR 56.2, for opinions as a part of the application review and award administration processes;

6. To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter;

7. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

8. To a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records;

9. To the grantee institution in connection with performance or administration under the terms and conditions of the award, or in connection with problems that might arise in performance or administration if an award is made on a grant proposal.

10. To the profit institution's president or official responsible for signing the grant application in connection with the review or award of a grant application and in connection with the administration and performance of a grant under the terms and conditions of the awards.

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

The Department may disclose to consumer reporting agencies information on individuals who have failed to meet payback obligations incurred under awards made under authority of the National Research Service Awards Program (41 U.S.C. 2891-1). Information disclosed includes data identifying the individual, the amount, status and history of the obligation, and that the obligation arose from an award made under the National Research Service Awards Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders, on computer tapes and discs, cards and in notebooks.

RETRIEVABILITY:

Retrieved by name and grant number.

SAFEGUARDS:

A variety of physical and procedural safeguards are implemented, as appropriate, at the various locations of this system:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to officials whose duties require use of the information. These officials include review groups, grants management staff, other extramural program staff, health scientist administrators, data processing and analysis staff and management officials with oversight responsibilities for extramural programs. Other one-time and special access is granted on an individual basis as specifically authorized by the system manager. Authorization for access to computerized files is controlled by the system manager or designated official and is granted on a need-to-know basis. Lists of authorized users are maintained.

2. Physical Safeguards: Secured facilities, locked rooms, locked cabinets, personnel screening; records stored in order of grant numbers which are randomly assigned.

3. Procedural Safeguards: Access to file rooms and files is strictly controlled by files staff or other designated officials; charge-out cards identifying users are required for each file used; inactive records are transferred to controlled storage in Federal Records Center in a timely fashion; retrieval of records from inactive storage is controlled by the system manager or designated official and by the NIH Records Management Officer; computer files are password protected and access is actively monitored by the Computer Center to prevent abuse. Employees are given specialized training in the requirement of the Privacy Act as applied to the grants program.

These safeguards are developed in accordance with chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45-13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Years at NIH: For the appropriate Retention period and disposal method; refer to NIH Manual Chapter 1743: National Research Service Awards—chapter 4000-B-4, Construction Awards—chapter 4600 D-1, Funded Grants—Chapter 4000 B-1, Unfunded Grants—Chapter 4000 C-1.

SYSTEM MANAGER AND ADDRESS:

See Appendix II.

NOTIFICATION PROCEDURE:

Write to official at the address specified in Appendix II to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the official at the address specified in Appendix IV to obtain access to a record, and provide the same information as is required under the Notification Procedures above. Requesters should also reasonably specify the record contents being sought.

Individuals may also request lists of accountable disclosures that have been made of their record(s).

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified in Appendix II, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information submitted by applicant; supplemented by outside reviewers and internal staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Location

National Cancer Institute, Westwood Building, Room 8A18, 5333 Westbard Avenue, Bethesda, MD 20892.
National Heart, Lung and Blood Institute, Westwood Building, Room 4A09, 5333 Westbard Avenue, Bethesda, MD 20892.
National Library of Medicine, Building 38A, Room 5N509, 8600 Rockville Pike, Bethesda, MD 20892.
National Institute of Allergy and Infectious Diseases, Chief, Grants Management Branch, EAP, Westwood Building, Rooms 722 and 733, Bethesda, MD 20892.
National Institute of Allergy and Infectious Diseases, Chief, Data Control Section OAM, Westwood Building, Room 733, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Diabetes, Digestive and Kidney Diseases, Westwood Building, Room 610, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Arthritis and Musculoskeletal and Skin Diseases, Westwood Building, Room 8A18, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Child Health and Human Development, Landow Building, Room 6A21, 7910 Woodmont Avenue, Bethesda, MD 20892.
National Institute of Aging, Building 31, Room 5C39, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Dental Research, Grants Management Officer, Westwood Building, Room 518, Bethesda, MD 20892.
National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, NC 27709.
National Institute of General Medical Sciences, Grants Management Officer, Westwood Building, Room 936, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Neurological and Communicative Disorders and Stroke, Federal Building, Room 10A12, 7550 Wisconsin Avenue, Bethesda, MD 20892.
National Eye Institute, Building 31, Room 6A47, 9000 Rockville Pike, Bethesda, MD 20892.
Division of Research Resources, Building 31, Room 5B32, 9000 Rockville Pike, Bethesda, MD 20892, National Center for Nursing Research, Building 38A, Room B2E17, 9000 Rockville Pike, Bethesda, MD 20892.
Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

Appendix II: System Manager and Address

National Cancer Institute, Grants Privacy Act Coordinator, Grants Administration Branch, Westwood Building, Room 8A18, Bethesda, MD 20892.
National Heart, Lung and Blood Institute, Chief, Grants Operations Branch, Division

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of Extramural Affairs, Westwood Building, Room 4A10, 5333 Westbard Avenue, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute, Administrative Officer, Division of Extramural Affairs, Westwood Building, Room 7A11, Bethesda, MD 20892.
National Library of Medicine, Associate Director for Extramural Programs, Building 38A, Room 5N505, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Allergy and Infectious Diseases, Chief, Grants Management Branch, EAP, Westwood Building, Room 710, Bethesda, MD 20892.
National Institute of Allergy and Infectious Diseases, Chief, Data Control Section, ITEB, OAM, Westwood Building, Room 733, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Diabetes, Digestive and Kidney Disease, Grants Management Officer, Room 639, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Child Health and Human Development, Chief, Office of Grants & Contracts, Executive Plaza North Room S01, 6130 Executive Building, Bethesda, MD 20892.
National Institute on Aging, Grants Management Officer, Room 5C07, Building 31, Bethesda, MD 20892.
National Institute of Dental Research, Grants Management Officer, NIDR, Westwood Building, Room 518, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, NC 27709.
National Institute of General Medical Sciences, Grants Management Officer, NIGMS, Westwood Building, Room 936, Bethesda, MD 20892.
National Institute of Neurological and Communicative Disorders and Stroke, Grants Management Officer, Federal Building, Room 1004A, Bethesda, MD 20892.
National Center for Nursing Research, Acting Director, Division of Extramural Programs, Building 38A, Room B2E17, 9000 Rockville Pike, Bethesda, MD 20892.
National Eye Institute, Grants Management Officer, Building 31, Room 6A52, 9000 Rockville Pike, Bethesda, MD 20892.
Division of Research Resources, Director, Office of Grants and Contracts Management, Building 31, Room 5B32, 9000 Rockville Pike, Bethesda, MD 20892.

Appendix III: Notification Procedures

National Cancer Institute, See Appendix II.
National Heart, Lung and Blood Institute, Privacy Act Coordinator, Building 31, Room 5A50, Bethesda, MD 20892.
National Library of Medicine, See Appendix II.
National Institute of Allergy and Infectious Diseases, See Appendix II.
National Institute of Diabetes, Digestive, and Kidney Diseases, Administrative Officer, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Child Health and Human Development, See Appendix II.
National Institute of Aging, See Appendix II.
National Institute of Dental Research, See Appendix II.
National Institute of Environmental Health Sciences, See Appendix II.
National Institute of General Medical Sciences, See Appendix II.
National Institute of Neurological and Communicative Disorders and Stroke, See Appendix II.
National Eye Institute, See Appendix II.
National Center for Nursing Research, See Appendix II.
Division of Research Resources, See Appendix II.

Appendix IV: Records Access Procedures

National Cancer Institute, Privacy Act Coordinator, Building 31, Room 10A30, 9000 Rockville Pike, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute, See Appendix III.
National Libary of Medicine, See Appendix II.
National Institute of Allergy and Infectious Diseases, Privacy Act Coordinator, Westwood Building, Room 703, Bethesda, MD 20892.
National Institute of Arthritis, Diabetes, Digestive and Kidney Diseases, See Appendix III.
National Institute of Child Health and Human Development, See Appendix II.
National Institute on Aging, See Appendix II.
National Institute of Dental Research, Grants Management Officer, Westwood Building, Room 518, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Environmental Health Sciences, See Appendix II.
National Institute of General Medical Sciences, Privacy Act Coordinator, Westwood Building, Room 9A05, Bethesda, MD 20892.
National Institute of Neurological and Communicative Disorders and Stroke, Head, Administration Management Section, Building 31, Room 8A47, 9000 Rockville Pike, Bethesda, MD 20892.
National Eye Institute, Administrative Officer, Building 31, Room 6A31, 9000 Rockville Pike, Bethesda, MD 20892.
Division of Research Resources, Privacy Act Coordinator, Building 31, Room 5B10, 9000 Rockville Pike, Bethesda, MD 20892.

09-25-0115

SYSTEM NAME:

Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 7A52, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants and Clinical Investigators under National Institute of Allergy and Infectious Diseases (NIAID) Investigational New Drug Applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a.

PURPOSE OF THE SYSTEM:

(1) To maintain a record of the investigators under Investigational New Drug (IND) applications. (2) To appoint consultants to the Clinical Research Subpanel (CRS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in books.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as

appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to NIAID staff whose duties require the use of such information. Authorized users are located in the Clinical and Epidemiological Studies Branch, Microbiology and Infectious Diseases Program, NIAID. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Building is locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Years at NIH: Indefinite.

SYSTEM MANAGER AND ADDRESS:

Chief, Clinical and Epidemiological Studies Branch, NIAID, Building 31, Rm. 7A52, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NIAID Privacy Act Coordinator, Westwood Building, Room 703, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures.

Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0124

SYSTEM NAME:

Administration: Pharmacology Research Associates, HHS/NIH/NIGMS

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Westwood Bldg., Room 919, 5333 Westbard Avenue, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for positions as Pharmacology research Associates with the Institutes of General Medical Sciences (NIGMS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual application forms, academic transcripts and references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 209.

PURPOSE OF THE SYSTEM:

(1) For review, award and administration of the Pharmacology Research Associate Program (PRAT). (2) For consideration of the applicant by other NIH Associate Programs at the applicant's request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By name of applicant.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain the system are instructed to grant access only to authorized personnel (System Manager and staff assigned to the program).

2. Physical Safeguards: The records are maintained in locked file cabinets when not in use and system location is locked during non-working hours.

3. Procedural Safeguards: Access to files is strictly controlled by responsible individuals who have been instructed in the Privacy Act requirements. Records are returned to the locked cabinets when not in use.

RETENTION AND DISPOSAL:

1. Records of applications who are admitted to the program are kept not more than five years following their termination. 2. Records of applicants who are not permitted to the program are kept for one year. All records are shredded after proper time has elapsed.

SYSTEM MANAGER AND ADDRESS:

Director, PRAT Program, Pharmacological Sciences, NIGMS, Westwood Bldg. Room 919, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to System Manager and provide the following information: applicant's name and date of application.

The requester must also verify his or her identity by providing either a notarization of the request or a written

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certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought.

RECORD SOURCE CATEGORIES:

Clinical treatment records from physicians, nurses and other sources of care.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0126

SYSTEM NAME:

Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are located in hospitals, universities, research centers, research foundations, and coordinating centers under contract with the National Heart, Lung, and Blood Institute, and in NHLBI facilities in Bethesda, Maryland. A list of locations is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in these studies include (1) individuals who have been or who are presently being treated by the National Heart, Lung, and Blood Institute, for diseases or conditions of the heart, lung, blood vessels and blood; (2) individuals whose physical, genetic, social, economic, environmental, behavioral or nutritional conditions or habits are being studied in relation to the incidence of heart, lung, blood vessel and blood diseases among human beings; and (3) normal volunteers who have agreed to provide control data germane to these studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, medical and statistical information resulting from or contained in research findings, medical histories, vital statistics, personal interviews, questionnaires, or direct observation. The system also includes records of current addresses of study participants, photographs, fingerprints, and correspondence from or about participants in these studies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 412, 413 of the Public Health Service Act (42 U.S.C. 287a, 287b)

PURPOSE OF THE SYSTEM:

(1) Summaries of data resulting from these studies are used by the National Heart, Lung, and Blood Institute to monitor and evaluate the incidence of the diseases or the conditions under investigation and the relationship of various factors to the occurrence of these diseases. (2) The summaries are also used for program planning and evaluation purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Referrals may be made of assignments of research investigators and project monitors to specific research projects to the Smithsonian Institution to contribute to the Smithsonian Science Information Exchange, Inc.

3. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

4. Where the appropriate official of the Department, pursuant to the Department's Freedom of Information Regulation determines that it is in the public interest to disclose a record which is otherwise exempt from mandatory disclosure, disclosure may be made from this system of records.

5. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in the system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

7. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

8. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

9. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, magnetic tapes or discs, punched cards, bound note books.

RETRIEVABILITY:

Name and/or participant identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized users: Employees who maintain records in this system are instructed to grant regular access only to authorized researchers, physicians and their assistants whose duties require the use of such information.

2. Physical safeguards: Records are kept in locked file cabinets and in some instances in locked offices or guarded buildings. Locations are locked during non-working hours, and are attended at all times during working hours.

3. Procedural safeguards: Access to the data is controlled by the System Manager and the Project Officer. Data stored in computers is accessed through the use of key words known only to principal investigators or authorized personnel.

The particular safeguards implemented at each site are developed in accordance with chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45-13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained and destroyed according to the authority of the NIH Records Control Schedule (HHS Records Management Manual, Appendix B-361), section 3000-G. For a copy of this authority, write to the System Manager.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Epidemiology and Biometry, National Heart, Lung, and Blood Institute, Federal Building, 2C-08, 7550 Wisconsin Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: NHLBI Privacy Coordinator, Building 31, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Requesters must provide the following information in writing:

1. Full name
2. Name and location of research study
3. Approximate dates of enrollment.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to System Manager as indicated above. The contestor must reasonably specify in writing the record contents at issue and state the corrective action sought and the reasons for the correction. The right to contest with supporting justification. The record is limited to information which is incomplete, irrelevant, incorrect, or untimely.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants and from medical and clinical research observations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0130

SYSTEM NAME:

Clinical Research: Environmental Epidemiologic Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Executive Plaza North, Room 443, 6130 Executive Blvd., Bethesda, MD 20892, and National Institutes of Health, Bldg. 12, 9000 Rockville Pike, Bethesda, MD 20892.

and at hospitals, medical schools, universities, research institutions commercial organizations, state agencies, and collaborating government agencies. A list of locations and contracts is available upon request from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with cancer and other environmentally caused diseases, (e.g., birth defects), patients with other diseases (e.g., heart disease), normal and other persons (e.g., family members) for the purpose of making comparisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records, progress reports, correspondence, epidemiological computerized data and records on biological specimens (e.g., blood, tumors, urine, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, and 282.

PURPOSE OF THE SYSTEM:

To determine: (1) Factors or substances in the environment which cause cancer; (2) ways in which these factors or substances may cause cancer; (3) characteristics of persons who may be particularly susceptible to the environmental factor(s) or substance(s) and/or to cancer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to

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accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

3. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfilm, charts, graphs, computer tapes, disks, and punch cards.

RETRIEVABILITY:

By name and/or code number.

SAFEGUARDS:

HHS contractors and collaborating researchers are required to comply with the provisions of the Privacy Act and with Department to Regulations. Subjects participating in a clinical study are advised that their identity will only be known to those who are involved in conducting the study and that any published findings will be in a format which precludes individual identification. Data are kept in secured areas with access limited authorized personnel (system manager, project officer, contracting officer, collaborating researchers, staff, and HHS contractors). Data transmitted to the NCI are in a form which precludes individual identification. For computerized records the contractor is required to comply, where appropriate, with Department standards and National Bureau of Standards Guidelines. For example, access is controlled by the use of security codes known only to authorized personnel.

RETENTION AND DISPOSAL:

One year to indefinitely depending on the project. Hard copy burned; computer tapes and disks erased.

SYSTEM MANAGER AND ADDRESS:

National Cancer Institute, Chief, Environmental Epidemiology Branch, Executive Plaza North, Room 443, 6130 Executive Blvd., Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

To determine if a file exists, write to System Manager and provide the following information:

a. System name: Environmental Epidemiologic Studies in the Division of Cancer Cause and Prevention.

b. Complete Name at time of study.

c. Facility and Home Address at the time the study was undertaken.

d. Date(s) at the time the information was provided (if known).

e. Birthdate.

f. Disease type (if known).

The requester must also verify his or her identity by providing either a notarization of the request of a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to five thousand dollar fine.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Write to System Manager and specify the record sought. The same information required above for notification is also needed for access.

CONTESTING RECORD PROCEDURE:

Write to System Manager and specify the record and the part(s) to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

HHS agencies, institutions under contract to the U.S. Government, universities, medical schools, hospitals, research institutions, commercial institutions, state agencies, other U.S. Government agencies, patients and normal volunteers, physicians, research investigators and other collaborating personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0133

SYSTEM NAME:

Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are located in hospitals, research foundations, and universities under contract, in Federal Records Centers and in the National Institute of Allergy and Infectious Diseases (NIAID) facilities in Bethesda, Md. Write to the system manager at the address below for the addresses of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients who have received kidney transplants and donors of kidneys transplanted at participating institutions during the period January 1, 1974, through December 31, 1976.

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical and medical records containing information on clinical examinations, laboratory findings, and related research records. For kidney recipients, a demographic profile is also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241a, and 289c.

PURPOSE OF THE SYSTEM:

(1) To study the relevance of tissue typing to the outcome of kidney transplants. (2) To study the influence of organ preservation techniques and various surgical and medical therapies on the outcome of kidney transplants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

4. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

5. Certain infectious diseases are reported to State Governments as required by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, punched cards, and magnetic tapes or discs.

RETRIEVABILITY:

Information is retrieved by name and location of study and by transplant number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to NIAID staff whose duties require the use of such information. Authorized users are located in the Genetics and Transplantation Biology Branch, Immunology and Allergic and Immunologic Diseases Program, NIAID.

2. Physical Safeguards: Records in this system are stored in locked cabinets. Access to the computer files is by key word.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee. For computerized records, access is controlled by the use of security codes known only to authorized users.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Disposal is by burning or shredding and computer tapes are erased.

SYSTEM MANAGER AND ADDRESS:

Chief, Genetics and Transplantation Biology Branch, IAIDP, National Institute of Diabetes and Digestive Kidney Diseases, NIH, Westwood Building, Room 754, 5333 Westbard Avenue, Bethesda, Maryland, 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Privacy Act Coordinator, NIAID, Westwood Building, Room 703, 5333 Westbard Avenue, Bethesda, Maryland 20892 and provide the following information:

1. Full name

2. Name and location of clinical trial facility

3. Approximate dates of enrollment in the research study

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate a responsible representative in writing who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants and from medical records and clinical research observations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0140

SYSTEM NAME:

International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Fogarty International Center, Building 16A, Room 101, 9000 Rockville Pike, Bethesda, MD 20892, and Division of

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Computer Research and Technology, Building 12A, Room 3061, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Ancillary records are located in the Office of the Associate Director for Intramural Affairs, laboratories, administrative and personnel offices where participants are assigned. Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health scientists at all levels of their postdoctoral or equivalent research careers who are invited to the National Institutes of Health for further training or to conduct research in their biomedical specialties under the auspices of FIC's administration of International Activities. Most of these scientists are foreign, however some may be resident aliens or U.S. citizens.

Individuals in these categories include Visiting Associates, Visiting Scientists, Foreign Special Experts who are employees and Visiting Fellows, Guest Researchers, Exchange Scientists, International Research Fellows, and Fogarty Scholars and Residents who are not employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

History of fellowship, employment and/or stay at NIH; education, immigration data and references. For payroll purposes, social security numbers are requested of all applicants accepted into the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421 and Section 307 of the Public Health Service Act.

PURPOSE OF THE SYSTEM:

To document the individual's presence at the NIH, to record immigration history of the individual in order to verify continued eligibility in existing programs, and to meet requirements in the code of Federal Regulations (Parts 8 & 22).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information is made available to authorized employees and agents of the U.S., including the General Accounting Office, for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on file cards, computer tapes and microfilm.

RETRIEVABILITY:

By name, country of citizenship, institution, fellowship number, social security number, visa and immigration status, and home address.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records included under this system according to the sensitivity of the data they contain.

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the requet of the system manager or other authorized employees. For computerized records, access is controlled by the use of security codes known only to authorized users; access codes are changed periodically. The computer system maintains an audit record of all requests for access.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, "ADP System Security" of the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records of successful are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Chief, Foreign Scientist Assistance Branch, Building 16A, Room 101, Fogarty International Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager as listed above. Verification of identity is required.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official listed under notification procedure above, and reasonably identify the record, and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD ACCESS CATEGORIES:

Subject individuals and other federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0142

SYSTEM NAME:

Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system will be located in hospitals and clinics, research centers and research foundations, and in facilities of the National Institute on Aging (NIA) in Bethesda, MD. They may be stored at Federal Records Centers. A list of locations is available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in these studies will include: (1) Individuals whose physical, genetic, social, psychological, cultural, economic, environmental, behavioral, pharmacological, or nutritional conditions or habits are studied in relationship to the normal aging process and/or diseases and other normal or abnormal physical or psychological conditions of the aged, and (2) normal volunteers who are participants in such studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system will consist of a variety of health, demographic, and statistical information resulting from or contained in research findings, medical histories, vital statistics, personal interviews, questionnaires, or direct observations. The system will also include records of current addresses of study participants, and correspondence from or about participants in the studies. When supplied on a voluntary basis, Social Security numbers will also be included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority is provided by Sections 301, Research Contracting, and 463–4, Health Research Extension Act of 1985, Pub. L. 99–158.

PURPOSE OF THE SYSTEM:

The National Institute on Aging will use the data collected; (1) in research projects on (a) the health status of individuals and changes in health status over time, (b) the incidence and prevalence of certain diseases and problems of the aged in certain populations, and (c) the changes that take place as individuals age; (2) and for program planning and evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records may be disclosed to HHS contractors, collaborating researchers and their staffs in order to accomplish the basic research purpose of this system. The recipients will be required to maintain Privacy Act safeguards with respect to such records.

2. Data may be disclosed to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use of disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. In the event the Department deems it desirable or necessary in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

5. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

6. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, magnetic tapes or discs, punched cards, or bound notebooks. Stored data may include textual, photographic, X-ray, or other material.

RETRIEVABILITY:

Information will be retrieved by personal identifiers such as name, code number and/or Social Security number, when this is supplied on a voluntary basis.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Access will be limited to principal investigators, collaborating researchers and necessary support staff.

2. Physical Safeguards: Hard copy data will be maintained in locked file cabinets. Information stored in computer systems will be accessible only through proper sequencing of signal commands and access codes specifically assigned to the Project Officer or contractor.

3. Procedural Safeguards: Access to the information will be controlled directly by the Project Officer or his or her representative at remote locations, and by the system manager at NIA locations. Contractors and collaborating researchers will be notified that they are subject to the provisions of the Privacy Act, and will be required to make formal agreements to comply with these provisions. The particular safeguards implemented in each project are developed in accordance with chapter 45–13 and supplementing chapter PHS of 45–13 of the HHS General Administration Manual and part 6, ADP Systems Security, of the HHS Information Resources Management Manual, and the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records at contractor facilities will be retained and disposed of under the specific terms established in each contract. Records at NIA facilities will

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be retained and disposed of under the authority of the NIH Records Control Schedule (HHS Records Management Manual, Appendix B–361, item 3000–G–3). Write to system manager for a copy of the authorized disposition.

SYSTEM MANAGER AND ADDRESS:

Privacy Act Coordinator, National Institute on Aging, Building 31, Room 2C08, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address below and provide the following information in writing:

1. Full name at time of participation in the study,
2. Date of birth,
3. Home address at the time of study,
4. The facility where the examination was given or where information was collected,
5. Approximate date or dates of participation,
6. Name of study, if known,
7. Current name, address and telephone number.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollars fine.

An individual who requests notification of or access to a medical or dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's description.

RECORD ACCESS PROCEDURE:

Contact the system manager at the above address and provide the same information as outlined under the notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the system manager at the address below. The contestor must reasonably identify the record, specify in writing the information being contested, and state the corrective action sought and the reasons for the correction and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information will be obtained directly from individual participants and from medical and clinical research observations, or indirectly from existing source documents such as disease registries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0143

SYSTEM NAME:

Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

At National Institutes of Health facilities in Bethesda, Maryland, and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating Federal agencies. Inactive records may be retired to Federal Records Centers. A list of locations is available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with infectious diseases, immunologic diseases involving adverse reactions of the body (e.g., allergic reactions) and related diseases (e.g. Acquired Immunodeficiency Disease Syndrome/AIDS), normal health volunteers who serve as controls for comparison with patients, relatives of patients and other individuals whose characteristics or conditions are being studied for possible connections with the occurrence of the diseases under investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, medical, and epidemiological information resulting from or contained in direct observations, medical records and other histories, vital statistics reports, records on biological specimens (e.g., blood, urine, etc.), personal interviews, questionnaires, progress reports, correspondence or research findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

This system will be used to support (1) Epidemiologic, clinical and biometric investigations into the causes, nature (morbidity and mortality), outcome, therapy and cost of infectious, immunologic and related diseases; (2) Review and evaluation of the progress of these research projects, and identification of and planning for improvements or for additional research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be to the Department of Justice for the purpose of obtaining its advice.

5. The Department contemplates that it may contract with one or more private firms for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, computer-accessible forms (e.g. tapes or discs), punched cards, bound notebooks, microfilm, charts, graphs, and X-rays.

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number.

SAFEGUARDS:

Access to or disclosure of information is limited to collaborating researchers, contractors and NIAID employees who are involved in the conduct, support or review and evaluation of the research activities supported by this system. Contractors and collaborating researchers are required to comply with the provisions of the Privacy Act and with Department regulations.

Data are kept in secured areas (e.g. rooms which are locked when not in regular use, buildings with controlled access). Data stored in computer-accessible form is accessed through the use of key words known only to principal investigators or authorized personnel; all other information is stored in locked files.

These and other appropriate safeguards are implemented in each project in accordance with chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13, and part 6, Systems Security, of the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Records at contractor facilities are retained and destroyed according to the terms of the contract. Records at NIAID facilities are retained and destroyed in accordance with the authority provided in the NIH Records Control Schedule (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows the records to be kept until the system manager determines that the data has no further value for scientific research. Disposal methods include burning or shredding hard copy and erasing computer tapes and discs.

SYSTEM MANAGER AND ADDRESS:

Chief, Epidemiology and Biometry Section, MIDP, National Institute of Allergy and Infectious Diseases, Westwood Building, Room 739, Bethesda, Maryland 20892, and Chief, Epidemiology Branch, AIDSP, Room 240P, Control Data Building, 6003 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NIAID Privacy Act Coordinator, Room 703, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892, and provide the following information:

1. System name,
2. Complete name and home address at the time of the study,
3. Birthdate,
4. Facility conducting study,
5. Disease type (if known),
6. Approximate dates of enrollment in the research study.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate, in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or acess to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants, from physicians, research investigators and other collaborating persons and from medical records and clinical research observations at hospitals, HHS agencies, universities, medical schools, research institutions, commercial institutions, state agencies, collaborating Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0148

SYSTEM NAME:

Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological and

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Communicative Disorders and Stroke, HHS/NIH/NINCDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

At National Institutes of Health facilities in Bethesda, Maryland, and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating Federal agencies. Inactive records may be retired to Federal Records Centers. A list of locations is available upon request from the respective System Managers of the subsystems included in this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with neurological diseases, communicative disorders, stroke, and related diseases; normal, healthy volunteers who serve as controls for comparison with patients; relatives of patients; and other individuals whose characteristics or conditions are suited for possible connections with the occurrence of the diseases under investigations. Subject individuals include both adults and children.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, biomedical, and epidemiological information resulting from or contained in direct observations, medical records and other histories, vital statistics reports, records on biological specimens (e.g., blood, urine, etc.), personal interviews, questionnaires, progress reports, correspondence, or research findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 241, Research and Investigation, and 289a, Establishment of Institutes, of the Public Health Service Act (42 U.S.C. 301, 431).

PURPOSE OF THE SYSTEM:

This system will be used to support (1) contracted and contract-related epidemiological, clinical and biometric investigations into the causes, nature, outcome, therapy, prevention and cost of neurological and communicative disorders and stroke; (2) review and evaluation of the progress of these research projects, and identification and planning for improvements or for additional research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

5. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, computer-accessible forms (e.g., tapes or discs), punched cards, bound notebooks, microfilm, charts, graphs and X-rays.

RETRIEVABILITY:

Information is retrieved by name and/or patient identification number.

SAFEGUARDS:

Access to or disclosure of information is limited to collaborating researchers, contractors and employees, and other authorized biomedical researchers who are involved in the conduct, support or review and evaluation of the research activities supported by this system. Contractors and collaborating or other researchers are required to comply with the provisions of the Privacy Act and with HHS Privacy Act regulations.

Data are kept in secured areas (e.g., rooms which are locked when not in regular use, buildings with controlled access). Data stored in computer-accessible form is accessed through the use of key words known only to principal investigators or authorized personnel; all other information is stored in locked files.

These and other appropriate safeguards are implemented in each project in accordance with chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13, and Part 6, Systems Security, of the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Records at contractor facilities are retained and destroyed as specified in individual contracts.

Records at NIH facilities are retained and destroyed in accordance with the NIH Records Control Schedule (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows the records to be kept until the system manager determines that the data has no further value for scientific research.

Disposal methods include burning or shredding hard copy and erasing computer tapes and discs.

SYSTEM MANAGERS AND ADDRESSES:

NINCDS research activities are divided, functionally and administratively, into five programs and one office. In effect, there are five subsystems within this single umbrella system. System Managers have been designated for each subsystem as follows:

Director, Division of Communicative Disorders, Federal Building, Room 1C11, 7550 Wisconsin Avenue, Bethesda, MD 20892, and, Director, Division of Fundamental Neurosciences, Federal Building, Room 916, 7550 Wisconsin Avenue, Bethesda, MD 20892, and Director, Division of Convulsive, Developmental and Neuromuscular Disorders, Federal Building, Room 716, 7550 Wisconsin Avenue, Bethesda, MD 20892, and Director, Division of Demyelinating Atropic, and Dementing Disorders, Federal Building, Room 6A06, 7550 Wisconsin Avenue, Bethesda, MD 20892, and Director, Division of Intramural Research, NIH Building 36, Room 5A05, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to:

NINCDS Privacy Act Coordinator, Federal Building, Room 816, 7550 Wisconsin Avenue, Bethesda, MD 20892, and provide the following information:

1. system name,
2. complete name and home address at the time of the study,
3. birthdate,
4. facility conducting the study,
5. disease type (if known),
6. approximate dates of enrollment in the research study.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a 5,000 dollar fine.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) of whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notifications procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the system manager and reasonably identify the record, specify the information being contested and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information in these records is obtained directly from individual participants, and from physicians, research investigators and other collaborating persons, and from medical records and clinical research observations at hospitals, HHS agencies, universities, medical schools, research institutions, commercial institutions, state agencies, and collaborating Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0154

SYSTEM NAME:

Biomedical Research: Records of Subjects in Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Executive Plaza North, Room 343K, 6130 Executive Blvd., Bethesda, MD 20892, and National Institutes of Health, Building 12, 9000 Rockville Pike, Bethesda, MD 20892, and at hospitals, medical schools, universities, research institutions, commercial organizations, collaborating State and Federal Government agencies, and Federal Records Centers. Write to system manager at the address below for the address of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children in the following categories: patients with cancer; persons for whom cancer risk can potentially be lowered; and persons without signs or symptoms who may be identified through screening and detection methods as having cancer or being at increased risk of developing cancer. For certain types of epidemiologic studies, e.g., case-control studies, NCI may also collect, for purposes of comparison, records on other persons. These comparison groups could include normal individuals (e.g., family members or neighborhood controls), or other patient groups (e.g., hospital controls) who do not have cancer or are not at a particularly high risk of developing cancer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying participants (such as name, address, Social Security Number), medical records, progress reports, correspondence, epidemiological data, and records on biological specimens (e.g., blood, tumors, urine, etc).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 301, Research and Investigation, and Title IV, Part A, National Cancer Institute, of the Public Health Service Act (42 U.S.C. 241, and 281–286).

PURPOSES:

Records in this system will be used, (1) to evaluate cancer control programs, including prevention, screening, detection, diagnosis, treatment, rehabilitation, and continuing care; (2) to identify characteristics of persons who may be particularly susceptible to environmental or occupational factors for substances which cause or prevent cancer, and/or to cancer; (3) to determine risk factors or substances

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which cause or prevent cancer, and the ways in which they do so; (4) to evaluate statistical and epidemiological methodologies for risk factor assessment, clinical trials, cancer control studies, and the study of the natural history of cancers; (5) to plan for, administer, and review research activities as described in the above purposes; (6) information from this system may be reported to the Food and Drug Administration (FDA) as a condition for approval of clinical investigations of new drugs, or to report adverse effects of drugs so that FDA can make informed decisions on authorizing use of such drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purposes for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

4. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use of disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

5. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee—for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfilm, charts, graphs, computer tapes, disks, and punch cards.

RETRIEVABILITY:

By name, Social Security Number when supplied voluntarily or contained in existing records used in projects under this system, or other identifying number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists, and support staff of the National Cancer Institute (NCI), or its contractors, grantees or collaborators who need such information in order to contribute to the research or administrative purposes of the system. The system manager specifically authorizes one-time and special access by others on a need-to-know basis consistent with the purpose and routine uses of the system.

2. Physical safeguards: Records are kept in limited access areas. Offices and records storage locations are locked during off-duty hours. Input data for computer files is coded to avoid individual identification. Where possible, information on individual identities is kept separate from data used for analysis.

3. Procedural safeguards: Access to manual files is granted only to authorized personnel, as described above. Access to computer files is controlled through security codes known only to authorized users. Names and other details necessary to identify individuals are not included in data files used for analysis. These files are indexed by code numbers.

Code numbers and complete identifiers are linked only if there is a specific need, such as for data verification.

Contractors, grantees or collaborators who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project director, contract officers and project officers oversee compliance with these requirements

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

NCI retains research records in accordance with the NIH Records

Control Schedule, item 3000–G–3, which allows the system manager to keep the records as long as they are useful in scientific research. Contractors, grantees and collaborators who receive disclosures of records from this system retain the records only as long as necessary to accomplish the purpose for which the disclosures are made. Inactive records may be transferred to a Federal Records Center. Disposal methods include burning hard copy and erasing computer tapes and disks.

SYSTEM MANAGER AND ADDRESS:

Chief, Surveillance and Operations Research Branch, DCPC, National Cancer Institute, Executive Plaza North, Room 343K, 6130 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a file exists, write to the system manager and provide the following information:

a. System name: "Biomedical Research: Records of Subjects in Cancer Studies of the Division of Cancer Prevention and Control Activities";

b. Complete name at time of participation;

c. Facility and home address at the time of participation;

d. In some cases, where records are retrieved by an identifying number, such as the Social Security Number or Hospital identification Number, it may be necessary to provide that number. In some cases, to ensure proper identification it may be necessary to provide date(s) of participation (if known), birthdate, or disease type (if known).

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a maximum fine of five thousand dollars.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Write to the system manager and provide the same information as requested under the notification procedure above. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures which have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the system manager, identify the record, and specify the information contested. State the corrective action sought and your reasons for requesting the correction, and provide supporting information to show that the record is inaccurate, incomplete, irrelevant, untimely, or unnecessary.

RECORD SOURCE CATEGORIES:

HHS agencies, institutions under contract to the U.S. Government, such as universities, medical schools, hospitals, research institutions, commercial institutions, state agencies, other U.S. Government agencies, patients and normal volunteers, physicians, research investigators and other collaborating personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate System Manager below for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the NIH, other persons who have participated in or benefited from NIH programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include (1) participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of advisory committees; (5) other researchers, health care professionals, or individuals who have or are at risk of developing diseases or conditions studied by NIH; (6) persons who provide feedback about the value or usefulness of information they receive about NIH programs, activities or research results; (7) persons who have received Doctorate level degrees from U.S. institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

This umbrella system of records covers a varying number of separate sets of records used in different evaluation studies. The categories of records in each set depend on the type of program being evaluated and the specific purpose of the evaluation. In general, the records contain two types of information: (1) Information identifying subject individuals, and (2) information which enables NIH to evaluate its programs and services.

(1) Identifying information usually consists of a name and address, but it might also include a patient identification number, grant number, Social Security Number, or other identifying number as appropriate to the particular group included in an evaluation study, or

(2) Information used for evaluation varies according to the program evaluated. Categories of evaluative information include personal data and medical data on participants in clinical and research programs; personal data, publications, professional achievements and career history of researchers; and opinions and other information received directly from individuals in evaluation surveys and studies of NIH programs.

The system does not include any master list, index or other central means of identifying all individuals whose records are included in the various sets of records covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the following general authorities regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and

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its general authority to maintain records in connection with these and its other functions (42 U.S.C. 203, 241, 2891–1 and 44 U.S.C. 3101).

PURPOSE OF THE SYSTEM:

This system supports evaluation of the policies, programs, organization, methods, materials, activities or services used by NIH in fulfilling its legislated mandate for (1) conduct and support of biomedical research into the causes, prevention and cure of diseases; (2) support for training of research investigators; (3) communication of biomedical information.

This system is not used to make any determination affecting the rights, benefits or privileges of any individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and collaborating researchers, organizations, and State and local officials for the purpose of conducting evaluation studies or collecting, aggregating, processing or analyzing records used in evaluation studies. The recipients are required to protect the confidentiality of such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, bound notebooks, or computer-accessible media (e.g., magnetic tapes or discs).

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number within each evaluation study. There is no central collection of records in this system, and no central means of identifying individuals whose records are included in the separate sets of records that are maintained for particular evaluation studies.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records in this system according to the sensitivity of the data each set contains. Information already in the public domain, such as titles and dates of publications, is not restricted. However, sensitive information, such as personal or medical history or individually identified opinions, is protected according to its level of sensitivity. Records derived from other systems of records will be safeguarded at a level at least as stringent as that required in the original systems. Minimal safeguards for the protection of information which is not available to the general public include the following:

1. Authorized Users: Regular access to information in a given set of records is limited to NIH or to contractor employees who are conducting, reviewing or contributing to a specific evaluation study. Other access is granted only on a case-by-case basis, consistent with the restrictions required by the Privacy Act (e.g., when disclosure is required by the Freedom of Information Act), as authorized by the system manager or designated responsible official.

2. Physical Safeguards: Records are stored in closed or locked containers, in areas which are not accessible to unauthorized users, and in facilities which are locked when not in use. Records collected in each evaluation project are maintained separately from those of other projects. Sensitive records are not left exposed to unauthorized persons at any time. Sensitive data in machine-readable form may be encrypted.

3. Procedural Safeguards: Access to records is controlled by responsible employees and is granted only to authorized individuals whose identities are properly verified. Data stored in computers is accessed only through the use of keywords known only to authorized personnel. Contracts for operation of this system of records require protection of the records in accordance with these safeguards; NIH project and contracting officers monitor contractor compliance.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Studies, analyses, reports, and statistical compilations created or collected in evaluation of NIH mission-related activities are scheduled for permanent retention by the National Archives as part of the historical record of the NIH, as provided by the NIH Records Control Schedule, section 1100–C–2. Working papers, extra copies, or records not used in evaluations of major programs of the NIH or any of its Bureaus, Institutes or Divisions are destroyed no later than 5 years after completion of the evaluation study (NIH Records Control Schedule, items 1100–C–12d, 1100–C–14b, 1100–C–15b).

Policy Coordination for this system is provided by: Associate Director for Science, Policy and Legislation, National Institutes of Health, Building 1, Room 137, 9000 Rockville Pike, Bethesda, MD 20892.

SYSTEM MANAGERS AND ADDRESSES:

See Appendix 1.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the official of the organization responsible for the evaluation, as listed in Appendix 2. If you are not certain which component of NIH was responsible for the evaluation study, or if you believe there are records about you in several components of NIH, write to NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20892.

Requesters must provide the following information:

1. Full name;

2. Name and location of the evaluation study or other NIH program in which the requester participated or the institution at which the requester was a student or employee, if applicable;

3. Approximate dates of participation, matriculation or employment, if applicable.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants; from systems of record 09–25–0036, "Grants: IMPAC (Grants/Contract Information), HHS/NIH/DRG;" 09–25–0112, "Grants: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD"; NSF–6, "Doctorate Record File", NSF–43, "Doctorate Work History File" (previously entitled "NSF–43, "Roster and Survey of Doctorate Holders in The United States" and other records maintained by the operating programs of NIH; the National Academy of Sciences and other contractors; grantees or collaborating researchers; or publicly available sources such as bibliographies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1: System Managers

National Institutes Health, Office of the Director, Associate Director for Science, Policy and Legislation, Building 1, Room 137, 9000 Rockville Pike, Bethesda, MD 20892.

National Heart, Lung and Blood Institute (NHLBI): Director, Office of Program Planning & Evaluation, Building 31, Room 5A03, Bethesda, MD 20892.

National Library of Medicine (NLM): Special Assistant for Operations Research, Office of the Director, Building 38, Room 2S18, Bethesda, MD 20892.

National Eye Institute (NEI): Associate Director for Program Planning, Analysis and Evaluation, Building 31, Room 6A25, Bethesda, MD 20892.

National Cancer Institute (NCI), Privacy Act Coordinator, National Institutes of Health, Building 31, Room 4B43, Bethesda, MD 20892.

National Institute on Aging (NIA): Chief, Office of Planning, Analysis, Technical Information and Evaluation, Federal Building, Room 6A09, 7550 Wisconsin Avenue, Bethesda, MD 20892.

National Institute of Allergy and Infectious Diseases (NIAID): Chief, Information Technology and Evaluation Branch, Office of Administrative Management, Building 31, Room 7A17, Bethesda, MD 20892.

National Institute of Child Health and Human Development (NICHD): Chief, Office of Planning and Evaluation, Building 31, Room 2A10, Bethesda, MD 20892.

National Institute of Dental Research (NIDR): Chief, Office of Planning, Evaluation Section, Building 31, Room 2C36, Bethesda, MD 20892.

National Institute of Environmental Health Sciences (NIEHS): Program Analyst, Office of Program Planning and Evaluation, P.O. Box 12233, Research Triangle Park, NC 27709.

National Institute of General Medical Sciences (NIGMS): Associate Director for Evaluation, Westwood Building, Room 9A16, 5333 Westbard Avenue, Bethesda, MD 20892.

Fogarty International Center (FIC): National Institutes of Health, Assistant Director for Planning and Evaluation, Building 38A, Room 607, Bethesda, MD 20892.

Division of Research Grants (DRG), Assistant Director for Special Projects, Westwood Building, Room 457, 5333 Westbard Avenue, Bethesda, MD 20892.

Division of Research Resources (DRR): Evaluation Officer, Office of Program Planning and Evaluation, NIH, Building 31, Room 5B54, Bethesda, MD 20892.

National Center for Nursing Research (NCNR), Chief, Office of Program Planning and Evaluation, Building 38, Room B2E17, Bethesda, MD 20892.

Appendix 2: Notification and Access Officials

NIH, Office of the Director: Associate Director for Science, Policy and Legislation, Building 1, Room 137, 9000 Rockville Pike, Bethesda, MD 20892.

National Heart, Lung and Blood Institute (NHLBI): Privacy Act Coordinator, Building 31, Room 5A29, Bethesda, MD 20892.

National Library of Medicine (NLM): Special Assistant for Operations Research, Office of the Director, Building 38, Room 2S18, Bethesda, MD 20892.

National Eye Institute (NEI): Executive Officer, Building 31, Room 6A25, Bethesda, MD 20892.

Fogarty International Center (FIC): Assistant Director for Planning and Evaluation, Building 38A, Room 607, Bethesda, MD 20892.

Division of Research Grants (DRG): Assistant Director for Special Projects, Westwood Building, Room 457, 5333 Westbard Avenue, Bethesda, MD 20892.

Division of Research Resources (DRR): Program Analyst, Office of Program Planning and Evaluation, Building 31, Room 5B54, Bethesda, MD 20892.

National Cancer Institute, Privacy Act Coordinator, National Institutes of Health, Building 31, Room 10A30, Bethesda, MD 20892.

[FR Doc. 88–26752 Filed 11–21–88; 8:45am]

BILLING CODE 4101–01–M

Centers for Disease Control

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Centers for Disease Control, HHS.

ACTION: Annual publication of system of record notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Centers for Disease Control (CDC) is publishing the table of contents and minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: CDC has completed the annual review of its systems of records and is publishing below the table of contents and those minor changes which affect the public's right or need to know, such as changes in the system location of records or the designation and address of system managers.

1. CENTERS FOR DISEASE CONTROL

TABLE OF CONTENTS

A. The following CDD active systems of records were last published in the **Federal Register**, 51 FR 42449, November 24, 1988:

09–20–0000 Cooperative Mycoses Study. HHS/CDC/CID.
09–20–0001 Certified Interpreting Physician File. HHS/CDC/NIOSH.
09–20–0027 Radiation Exposure Records for NIOSH Employees. HHS/CDC/NIOSH.
09–20–0055 Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications. HHS/CDC/NIOSH.
09–20–0059 Division of Training Mailing List. HHS/CDC/NIOSH.
09–20–0089 Studies of Treatment of Tuberculosis and Other Mycobacterioses. HHS/CDC/CPS.
09–20–0090 Studies of Testing for Tuberculosis and Other Mycobacterioses. HHS/CDC/CPS.
09–20–0096 Records of Tuskegee Study Health Benefit Recipients. HHS/CDC/CPS.
09–20–0102 Alien Mental Waiver Program. HHS/CDC/CPS.
09–20–0103 Alien Tuberculosis Followup Program. HHS/CDC/CPS.
09–20–0106 Specimen Handling for Testing and Related Data. HHS/CDC/CID.
09–20–0112 CDC Exchange Visitor and Guest Researcher Records. HHS/CDC/PMO
09–20–0113 Epidemic Investigation Case Records. HHS/CDC/CID.

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09-20-0117 Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies. HHS/CDC/NIOSH.
09-20-0118 Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist. HHS/CDC/NIOSH.
09-20-0136 Epidemiologic Studies and Surveillance of Disease Problems. HHS/CDC/CID.
09-20-01137 Passport File. HHS/CDC/IHPO.
09-20-0138 Epidemic Intelligence Service Officers Files. HHS/CDC/EPO.
09-20-0147 Occupational Health Epidemiological Studies. HHS/CDC/NIOSH.
09-20-0149 Morbidity Studjes in Coal Mining, Metal and Non-metal Mining and General Industry HHS/CDC/NIOSH.
09-20-0155 Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry. HHS/CDC/NIOSH.
09-20-0154 Medical and Laboratory Studies. HHS/CDC/NIOSH.
09-20-0157 Clinical Laboratory Personnel Proficiency Test Results (Medicare). HHS/CDC/TLPO.
09-20-0159 Records of Subjects in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations. HHS/CDC/NIOSH.
09-20-0160 Records of Subjects in Health Promotion and Education Studies. HHS/CDC/CHPE.
09-20-0161 Records of Health Professionals in Disease Prevention and Control Training Programs. HHS/CDC/CPS.
09-20-0162 Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies. HHS/CDC/CEHIC.

B. The following National Center for Health Statistics systems, renumbered to reflect the organizational realignment with CDC, were last published in the **Federal Register**, 51 FR 42368, November 24, 1986:

09-20-0163 Applicants for National Center for Health Statistics Technical Assistance. HHS/CDC/NCHS. (Formerly numbered 09-37-0009.)
09-20-0168 Curricula Vitae of Consultants to the National Center for Health Statistics. HHS/CDC/NCHS. (Formerly numbered 09-37-0014).
09-20-0169 Users of Health Statistics. HHS/CDC/NCHS. (Formerly numbered 09-37-0016.)

C. The following four NCHS system notices were last published in the **Federal Register**, 49 FR 37692, September 25, 1984:

09-20-0164 Health and Demographic Surveys Conducted in Probability Samples of the United States Population. HHS/CDC/NCHS. (Formerly numbered 09-37-0010).
09-20-0165 Health Manpower Inventories and Surveys. HHS/CDC/NCHS. (Formerly numbered 09-37-0011).
09-20-0166 Vital Statistics for Births, Deaths, Fetal Deaths, Marriages, and Divorces Occurring in the United States During Each Year. HHS/CDC/NCHS. (Formerly numbered 09-37-0012.)
09-20-0167 Health Resources Utilization Statistics. HHS/CDC/NCHS. (Formerly numbered 09-37-0013).

2. The following systems reflect changes in the system location of records or the designation or address of system managers. The revised categories are published in their entirety below:

09-20-0055

SYSTEM NAME:

Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications. HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Research Grants, National Institutes of Health, Westbard Bldg., Westbard Avenue, Bethesda, MD 20014.

Grants Management Office, Procurement and Grants Office, Buckhead Bldg., Rm. 300, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Grants Program Activity, Office of the Director, National Institute for Occupational Safety and Health (NIOSH), Bldg. 1, Rm. 3053, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Division of Training and Manpower Development, Division of Biomedical and Behavioral Science, Division of Physical Science and Engineering, and Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Division of Respiratory Disease Studies and Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, WV 26505.

Federal Records Center, 4205 Suitland Road, Suitland, MD 20409, and 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Data are also occasionally located at grantee sites as studies are developed, data collected, and reports written. A list of grantee sites where individually identifiable data are currently located is available upon request to the system manager.

* * * * *

SYSTEM MANGER(S) AND ADDRESS:

Grants Management Officer, Procurement and Grants Office, Buckhead Bldg., Rm. 300, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Associate Director for Grants, Grants Program Activity, Office of the Director, NIOSH, Bldg. 1, Rm. 3053, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

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09-20-0106

SYSTEM NAME:

Specimen Handling for Testing and Related Data. HHS/CDC/CID.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Center for Infectious Diseases, Bldg. 4, Rm. B-35, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

San Juan Laboratories, Center for Infectious Diseases, Centers for Disease Control, San Juan, Puerto Rico 00936.

Center for Prevention Services, Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Chief, Dengue Branch, Division of Vector-Borne Viral Diseases, Center for Infectious Diseases, Centers for Disease Control, GPO Box 4532, San Juan, Puerto Rico 00936.

Director, Center for Prevention Services, Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

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09-20-0136

SYSTEM NAME:

Epidemiologic Studies and Surveillance of Disease Problems. HHS/CDC/CID.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

San Juan Laboratories, Center for Infectious Diseases, Centers for Disease Control, San Juan, Puerto Rico 00936.

Center for Prevention Services, Freeway Office Park, Rm. 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Center for Environmental Health and Injury Control, Chamblee Bldg. 27, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Training and Laboratory Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Chief, Dengue Branch, Division of Vector-Borne Viral Diseases, Center for Infectious Diseases, Centers for Disease Control, GPO Box 4532, San Juan, Puerto Rico 00936.

Director, Center for Prevention Services, Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Center for Environmental Health and Injury Control, Chamblee Bldg. 27, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Training and Laboratory Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

09-20-0138

SYSTEM NAME:

Epidemic Intelligence Service Officers Files. HHS/CDC/EPO.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

SYSTEM LOCATION:

Epidemiology Program Office, Bldg. 1, Rm. 5116, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Dated: October 21, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-24815 Filed 11-21-88; 8:45 am]

BILLING CODE 4160-18-M

Agency for Toxic Substances and Disease Registry

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Agency for Toxic Substances and Disease Registry, HHS.

ACTION: Annual publication of system of record notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Agency for Toxic Substances and Disease Registry (ATSDR) is publishing the table of contents of its system of records.

SUPPLEMENTARY INFORMATION: ATSDR has completed the annual review of its system of records and is publishing the listing below. There are no changes to report which affect the public's right or need to know.

The following system notice currently maintained by ATSDR was published in the **Federal Register**, 53 FR 30720, August 15, 1988:

TABLE OF CONTENTS

09-19-0001 Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances. HHS/ATSDR/OHA.

Dated: October 21, 1988.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 88-24814 Filed 11-21-88; 8:45 am]

BILLING CODE 4160-70-M

Public Health Service

Indian Health Service

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Indian Health Service, PHS, HHS.

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Indian Health Service (IHS) in the Public Health Service (PHS) is publishing minor changes to its notices of systems of records. The three IHS notices of systems of records are being published in their entirety.

SUPPLEMENTARY INFORMATION: IHS has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in IHS, and (2) the three IHS notices of systems of records in their entirety. Minor changes have been made to the previously published notices of systems of records. These changes reflect the elevation of IHS to agency status within PHS. The designation of IHS as a component agency within PHS went into effect on January 4, 1988. Revisions to systems of records numbers have been made as a result of this change. A revision of the introductory paragraph of the Routine Uses section of the Health and Medical Records Systems Notice, which reflects revisions to the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR Part 2, which became effective on August 10, 1987, has also been made. Minor changes which affect the public's rights or need to know, such as changes in the storage locations of records within the system or the addresses of system managers have also been made to all three systems notices where appropriate.

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Date: October 27, 1988.

Robert McSwain,

Associate Director, Office of Administration and Management.

Indian Health Service

Table of Contents

09-17-0001 Health and Medical Records Systems, HHS/IHS/OHP
09-17-0002 Indian Health Service Scholarship Programs/HHS/IHS/OHP
09-17-0003 Indian Health Service Staff Credentials and Privileges Records, HHS/IHS/OHP

09-17-0001

System name:

Health and Medical Records Systems, HHS/IHS/OHP.

Security classification:

None.

System location:

Indian Health Service (IHS) hospitals, health centers, school health centers, health stations, field clinics, Service Units, IHS Area Offices (Appendix 1), and Regional Federal Records Centers (Appendix 2). Automated records, including Patient Care Information System (PICS) records, are stored at the Data Processing Service Center, IHS, located in Albuquerque, New Mexico (Appendix 1). Records may also be located at hospitals and offices of health care providers who are under contract to IHS. A current list of contractor sites is available by writing to the appropriate System Manager (Area or Service Unit Director) at the address shown in Appendix 1.

Categories of individuals covered by the system:

Individuals, including both IHS beneficiaries and nonbeneficiaries, who are examined/treated on an inpatient and/or outpatient basis by IHS staff and/or contract (including tribal contract) health care providers.

Categories of records in the system:

1. Health and medical records containing: Examination, diagnostic and treatment data; proof of eligibility; social data such as name, address, data of birth, tribe; case records for special programs such as: Dental, social service, mental health, nursing; and laboratory test results. 2. Follow-up registers of individuals with specific health conditions or a particular health status such as: Tumors, communicable diseases, hospital commitment, suspected and confirmed physical child abuse and neglect, immunizations, self-destructive behavior, or handicap. 3. Logs of individuals provided health care by staffs of specific hospital components such as: Surgery, emergency, obstetric delivery, x-ray and laboratory. 4. Operation and/or disease indices for particular hospitals which list each relevant patient by the operation or disease. 5. Monitoring strips and tapes such as fetal monitoring strips and EEG and EKG tapes. 6. In the Achorage, Alaska; Billings, Montana; and Tucson, Arizona Area Offices automated patient medical records are maintained in the Patient Care Information System (PCIS) which provides for structured patient medical summaries to IHS and contract health care providers, such as: Name; beneficiary code; Social Security Number (SSN) (voluntary); address; tribe; date of birth; and examination, diagnostic and treatment results. 7. Third-party reimbursement records containing name, address, date of birth, date of admission and Medicare or Medicaid claim numbers, SSN (voluntary), health plan name, insurance number, employment status, and other relevant claim information necessary to process and validate third-party reimbursement claims.

Authority for maintenance of the system:

Section 321 of the Public Health Service Act, as amended, (42 U.S.C. 248), "Hospitals, Medical Examinations and Medical Care." Section 327A of the Public Health Service Act, as amended, (42 U.S.C. 254a–1), "Hospital-Affiliated Primary Care Centers." Indian Self Determination and Education Assistance Act (25 U.S.C. 450). Snyder Act (25 U.S.C. 13). Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.). Construction of Community Hospitals Act (25 U.S.C. 2005–2005f). Indian Health Service Transfer Act (42 U.S.C. 2001–2004).

Purposes:

The purposes of this system are:
1. To provide a description of a patient's illness, the treatment administered and results achieved, and to plan for future care of the patient.
2. To provide IHS program officials with statistical data upon which the health care program is evaluated and modified to meet future needs.
3. To serve as a means of communication among members of the health care team who contribute to the patient's care by integrating information from field visits with that from IHS facilities which have provided treatment.
4. To serve as the official documentation of health care rendered.
5. To contribute to continuing education of IHS staff to improve their competency to deliver health care services.
6. For disease surveillance purposes. For example:
(a) The Centers for Disease Control may use these records for their monitoring of various communicable diseases among persons residing within the United States; and
(b) The National Institutes of Health may use these records for their review of the prevalence of particular diseases (i.e., malignant neoplasms, diabetes mellitus, arthritis, metabolism and digestive diseases) for various ethnic groups of the Nation.
7. To compile and provide aggregated program statistics. Upon request of other components of the Department, IHS will provide statistical information, from which individual identifiers have been removed, such as:
(a) To the National Center for Health Statistics, for its dissemination of aggregated health statistics for various ethnic groups;
(b) To the Assistant Secretary for Population Affairs to keep a record of the number of sterilizations provided through the use of Federal funds;
(c) To the Health Care Financing Administration for the documentation of IHS health care covered by the Medicare and Medicaid programs for third-party reimbursement; and
(d) To the Bureau of Support Services, Health Care Financing Administration, to determine the prevalence of end-stage renal disease among the American Indian and Alaska Native population and to coordinate the care of American Indian and Alaska Native patients with this condition.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

If an individual receives treatment, or referral for treatment, for alcohol or drug abuse, then the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR Part 2 may apply. In general under these regulations, the only disclosures of the alcohol or drug abuse record which may be made without patient consent are: (1) To meet medical emergencies (42 CFR Part D, § 2.51), (2) for research, audit, evaluation and examination (42 CFR Part D, §§ 2.52 and 2.53), (3) pursuant to a court order (42 CFR 2.61–2.67), and (4) pursuant to a qualified service organization agreement, as defined in 42 CFR 2.11. In all other situations, written consent of the patient is usually required prior to disclosure of alcohol or drug abuse information under the routine uses listed below.

Individuals acting *in loco parentis* to minors, as well as parents, legal guardians, and custodians may act on behalf of the subject individual for purposes of giving consent for disclosures to others when it is determined that the subject individual is a minor who is unable to or cannot exercise with appropriate understanding, the right of consent by himself or herself.

1. Records may be disclosed to State, local or other authorized organizations which provide health services to American Indians and Alaska Natives, or provide third-party reimbursement or fiscal intermediary functions, for the purpose of planning for or providing such services, billing or collecting third-party reimbursements and reporting results of medical examination and treatment.

2. Records may be disclosed to Federal and non-Federal school systems which serve American Indians and Alaska Natives for the purpose of student health maintenance.

3. Records may be disclosed to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits, or utilization review.

4. Records may be disclosed to authorized organizations, such as the United States Office of Technology Assessment, or individuals for conduct of analytical and evaluation studies sponsored by the IHS.

5. Records may be disclosed to a congressional office in response to an inquiry from that office made at the request of the subject individual.

6. A record may be disclosed for a research purpose, when the Department:
(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;
(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;
(c) Has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;
(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

7. Information regarding the commission of crimes or the reporting of occurrences of communicable diseases, suspected or confirmed physical child abuse or neglect, births, or deaths, etc., may be disclosed by health providers and facilities to State and local agencies as required by State and local law. The disclosure of patient information on alcohol or drug abuse for purposes of criminal investigations or prosecution of the patient must be authorized by court order issued under 42 CFR 2.65.

8. Information regarding suspected cases of physical child abuse or neglect may be disclosed to members of community child protective teams (comprised of representatives of tribes, Bureau of Indian Affairs, a child protective service agency, the judicial system(s) (local, State, tribal), law enforcement officers (State, county, Tribal or local)) and IHS for the purposes of establishing a diagnosis, formulating a treatment plan, monitoring the plan, investigating reports of suspected physical child abuse or neglect and making recommendations to the appropriate court of competent jurisdiction. The disclosure of patient information on alcohol or drug abuse for purpose of criminal investigation or prosecution of the patient for suspected child abuse or neglect must be authorized by a court order issued under 42 CFR 2.65.

9. The Department may disclose information from this system of records to the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:
(a) HHS, or any component thereof; or
(b) Any HHS employee in his or her official capacity; or
(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so has agreed to represent the employee; or
(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

10. Records may be disclosed to the Bureau of Indian Affairs and its contractors for the identification of American Indian and Alaska Native handicapped children to permit that Bureau to carry out the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401 et. seq.).

11. Records may be disclosed to an IHS contractor for the purpose of computerized data entry or maintenance of records contained in this system. The contractor shall be required to maintain Privacy Act safeguards with respect to the receipt and processing of such records.

12. Records may be disclosed to a health care provider under contract to IHS (including tribal contractors) to permit the contractor to obtain health and medical information about the subject individual in order to provide appropriate health services to that individual. The contractor shall be required to maintain Privacy Act safeguards with respect to the receipt and processing of such records.

13. Records may be disclosed to the State of Alaska, Department of Health and Social Services (DHSS) (which supplies part or all of this information to IHS), in response to its request for patient summaries, portions of immunization registers, disease indices and other computer-generated medical summaries. This information assists DHSS in its provision of health care to the subject individual. Disclosure to the State of Alaska's DHSS is limited to information concerning its patients.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders, ledgers, card files, microfiche, microfilm, punch cards, computer tapes, disk packs and automatic files.

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Retrievability:

Indexed by name, record number, and SSN and cross-indexed. SSN is supplied on a voluntary basis.

Safeguards:

1. Authorized Users:

Access is limited to authorized IHS personnel and IHS contractors and subcontractors in the performance of their duties. Authorized personnel include: Medical records personnel, health care providers, authorized researchers, medical audit personnel, and health care team members.

2. Physical Safeguards:

Records are kept in locked metal filing cabinets or in a secured room at all times when not actually in use during working hours and at all times during nonworking hours. Magnetic tapes, disks, other computer equipment and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced.

Telecommunication equipment (computer terminals, modems and disks) of the Patient Care Information System (PCIS) are maintained in locked rooms during nonworking hours. Combinations on door locks are changed periodically and whenever a PCIS employee resigns, retires or is reassigned.

3. Procedural Safeguards:

Within each facility a list of personnel or categories of personnel having a demonstable need for the records in the performance of their duties has been developed and is maintained. Procedures have been developed and implemented to review one-time requests for disclosure to personnel who may not be on the authorized user list. Proper charge-out procedures are followed for the removal of all records from the area in which they are maintained. Persons who have a need to know are entrusted with records from this system of records and instructed to safeguard the confidentiality of these records. They are to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act, and to destroy all copies or to return such records when the need to know has expired. Procedural instructions include the statutory penalties for noncompliance.

The following automated information systems (AIS) security procedural safeguards are in place for automated health and medical records maintained in the Patient Care Information System. A profile of automated systems security is maintained. Security clearance procedures for screening individuals, both Government and contractor personnel, prior to their participation in the design, operation, use or maintenance of IHS automated information systems are implemented. The use of current passwords and log-on codes are required to protect sensitive automated data from unauthorized access. Such passwords and codes are changed periodically. An automated audit trail is maintained. Only authorized IHS Data Processing Service Center staff may modify automated files in batch mode. Personnel at remote terminal sites may only retrieve automated data. Such retrievals are password protected.

Privacy Act requirements and specified Automated Information System security provisions are specifically included in contracts and agreements and the system manager or his/her designee oversee compliance with these contract requirements.

4. Implementing Guidelines:

DHHS Chapter 45–13 and supplementary Chapter PHS.hf:45–13 of the General Administraton Manual; and Part 6, ADP Systems Security," of the DHHS Information Resources Management Manual.

Retention and Disposal:

Patient listings which may identify individuals are maintained in IHS Area and Program Offices permanently. Inactive records are held at the facility which provided health services from three to seven years and then are transferred to the appropriate Federal Records Center. Monitoring strips and tapes (i.e., fetal monitoring strips and EEG and EKG tapes) which are not stored in the patient's official medical record, are stored at the health facility for one year and are then transferred to the appropriate Federal Records Center. (See Appendix 2 for Federal Record Center addresses.) Records are retained at the Regional Federal Records Centers for 25 years. Disposal methods include burning or shredding of hard copy and erasing of magnetic media.

System manager(s) and address:

Policy-Coordinating Official: Director, Division of Clinical and Preventive Health Services, Indian Health Service, 5600 Fishers Lane, Room 6A–55, Rockville, Maryland 20857.

See Appendix 1, The IHS Area/Program Office Directors and Service Unit Directors listed in Appendix 1 are System Managers.

Notification procedure:

General Procedure:

Requests must be made to the appropriate System Manager (IHS Area/Program Office Director or Service Unit Director). An individual who requests a copy of, or access to, a medical record shall at the time the request is made designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. Such a representative may be an IHS health professional. When an individual is seeking to obtain information about himself/herself which may be retrieved by a different name or identifier than his/her current name or identifier, he/she shall be required to produce evidence to verify that he/she is the person whose record he/she seeks.

No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests In Person:

Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to the designated agency employee, such employee shall make a written record verifying the subject individual's identity. If the subject individual has no identification papers, the responsible system manager or designated agency official shall require that the subject individual certify in writing that he/she is the individual whom he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. If an individual is unable to sign his/her name when required, he/she shall make his/her mark and have the mark verified in writing by two additional persons.

Requests By Mail:

Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes. If the written request does not contain sufficient information, the System Manager shall inform the requester in writing that additional, specified information is required to process the request.

Requests By Telephone:

Since positive identification of the caller cannot be established, telephone requests are not honored.

Parents And Legal Guardians:

Parents of minor children and legal guardians of legally incompetent individuals shall verify their own identification in the manner described above, as well as their relationship to the individual whose record is sought. A copy of the child's birth certificate or court order establishing legal guardianship may be required if there is any doubt regarding the relationship of the individual to the patient.

Record access procedures:

Same as Notification Procedures. Requesters should also provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their record, if any.

Contesting record procedures:

Write to the appropriate IHS Area/Program Office Director of Service Unit Director at his/her address specified in Appendix 1, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

Record source categories:

Patient and/or family members, IHS health care personnel, contract health care providers, State and local health care provider organizations, and Medicare and Medicaid funding agencies.

Systems exempted from certain provisions of the act:

None.

Appendix 1—System Managers and IHS Locations Under Their Jurisdiction Where Records Are Maintained

Director, Aberdeen Area Indian Health Service, Federal Building, 115 Fourth Avenue, SE., Aberdeen, South Dakota 57401
Director, Rapid City Service Unit, Rapid City Indian Hospital, Rapid City, South Dakota 57702
Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, Eagle Butte, South Dakota 57625
Director, Fort Berthold Service Unit, Minni-Tohe Indian Health Center, New Town, North Dakota 58763
Director, Fort Totten Service Unit, Fort Totten Indian Health Center, Fort Totten, North Dakota 58335
Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770
Officer in Charge, Wanblee Indian Health Center, Wanblee, South Dakota 57577
Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570
Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, Sisseton, South Dakota 57262
Director, Wahpeton Indian School Health Center, Wahpeton, North Dakota 58075
Director, Standing Rock Service Unit, Fort Yates Indian Hospital, Fort Yates, North Dakota 58538
Director, McLaughlin Indian Health Center, McLaughlin, South Dakota 57642
Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, Belcourt, North Dakota 58316
Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071
Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, Wagner South Dakota 57380
Director, Pierre Service Unit, Ft. Thompson Indian Health Station, Ft. Thompson, South Dakota 57339
Director, Pierre Indian School Health Center, c/o Ft. Thompson Indian Health Station, Ft. Thompson, South Dakota 57339
Director, Lower Brule Indian Health Center, Lower Brule, South Dakota 57584
Director, Bemidji Area Office, Indian Health Service, 203 Federal Building, Bemidji, Minnesota 56601
Director, Eastern Michigan Service Unit, Kincheloe Indian Health Center, Kincheloe, Minnesota 49788
Director, Leach Lake Service Unit, Cass Lake Indian Hospital, Cass Lake, Minnesota 56633
Director, Inger Indian Health Station, Inger Route, Deer River, Minnesota 56636
Director, Squaw Lake Indian Health Station, Squaw Lake, Minnesota 56681
Director, Ball Club Indian Health Station, Ball Club, Minnesota 56622
Director, Onigum Indian Health Station, Star Route, Walker, Minnesota 56484
Director, Red Lake Service Unit, Red Lake Indian Hospital, Red Lake, Minnesota 56671
Director, Ponemah Indian Health Station, Ponemah, Minnesota 56666
Director, White Earth Service Unit, White Earth Indian Health Center, White Earth, Minnesota 56591
Director, Naytahwaush Indian Health Station, Naytahwaush, Minnesota 56566
Director, Pine Point Indian Health Station, White Earth, Minnesota 56591
Director, Alaska Native Health Service, 250 Gambell Street, Third and Gambell Street, Anchorage, Alaska 99501
Director, Anchorage Service Unit, PHS, Alaska Native Medical Center, P.O. Box 107741, Anchorage, Alaska 99510
Director, Alaska Native Health Center, St. George Island, Alaska 99660
Director, Alaska Native Health Center, St. Paul Island, Alaska 99660
Director, Barrow Service Unit, Barrow Alaska Native Hospital, Barrow, Alaska 99723
Director, Southeast Area Regional Health Center, 3272 Hospital Drive, Juneau, Alaska 99801
Director, Kotzebue Service Unit, Kotzebue Alaska Native Hospital, Kotzebue, Alaska 99752
Director, Ketchikan Alaska Native Health Center, 3289 Tongass Avenue, Ketchikan, Alaska 99901
Director, Annette Islands Service Unit, Metlakatla Alaska Native Health Center, Box 428, Metlakatla, Alaska 99926
Director, Yukon-Kuskokwim-Delta Service Unit, Yukon-Kuskokwim-Delta Regional Hospital, Indian Health Service, Bethel, Alaska 99559
Director, Albuquerque Area Indian Health Service, 505 Marquette, NW., Suite 1502, Albuquerque, New Mexico 87102–0087
Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, NE., Albuquerque, New Mexico 87106
Director, Isleta Indian Health Center, P.O. Box 429, Isleta, New Mexico 87022
Director, Jemez Indian Health Center, P.O. Box 256, Jemez Pueblo, New Mexico 87024
Chief Dental Program, IHS Dental Training Center, Southwestern Indian Polytechnical Inst., 9168 Coors Road, NW., P.O. Box 25927, Albuquerque, New Mexico 87125
Director, Indian School Health Center, Southwestern Indian Polytechnical Inst., 9168 Coors Road, NW., P.O. Box 25927, Albuquerque, New Mexico 87125
Director, Sandia Indian Health Station, Sandia, New Mexico 87047
Director, Santa Ana Indian Health Station, P.O. Box 580, Bernalillo, New Mexico 87004
Director, Zia Indian Health Station, General Delivery, San Ysidro, New Mexico 87053
Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340
Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87501
Director, Dulce Indian Health Center, Dulce, New Mexico 87528
Director, Taos Indian Health Center, Taos, New Mexico 87571
Director, Santa Clara Indian Health Center, P.O. Box 1322, Espanola, New Mexico 87532
Director, Santo Domingo Indian Health Station, Santo Domingo, New Mexico 87052
Director, San Juan Indian Health Station, San Juan, New Mexico 87566
Director, Cochiti Indian Health Station, Cochiti, New Mexico 87041
Director, San Felipe Indian Health Station, General Delivery, San Felipe Pueblo, New Mexico 87001
Director, Southern Colorado-Ute Service Unit, P.O. Box 778, Ignacio, Colorado 81137
Director, Ignacio Indian Health Center, Ignacio, Colorado 81137
Director, Towaoc Indian Health Center, Towaoc, Colorado 81334
Director, White Mesa Indian Health Station, General Delivery, Towaoc, Colorado 81334
Director, Zuni-Ramah Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327
Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049
Director, Laguna Indian Health Center, P.O. Box 199, New Laguna, New Mexico 87038
Director, Canoncito Indian Health Station, c/o Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049
Director, Billings Area Indian Health Service, P.O. Box 2143, 711 Central Avenue, Billings, Montana 59103
Director, Blackfeet Service Unit, Browning, Indian Hospital, Browning, Montana 59417

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Director, Heart Butte Indian Health Station, Heart Butte, Montana 59448
Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022
Director, Lodge Grass Indian Health Center, Lodge Grass, Montana 59050
Director, Pryor Indian Health Station, Pryor, Montana 59066
Director, Flathead Service Unit, St. Ignatius Indian Health Center, St. Ignatius, Montana 59865
Director, Polson Indian Health Center, 320–B 4th Avenue East, Polson, Montana 59860
Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526
Director, Hays Indian Health Station, Hays, Montana 59527
Director, Fort Peck Service Unit, Poplar Indian Health Center, Poplar, Montana 59255
Director, Wolf Point Indian Health Center, Wolf Point, Montana 59201
Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514
Director, Arapahoe Indian Health Center, Arapahoe, Wyoming 82510
Director, Northern Cheyenne Service Unit, Lame Deer Indian Health Center, Lame Deer, Montana 59043
Director, Rocky Boy's Service Unit, Box Elder Indian Health Center, Box Elder, Montana 59521
Director, Navajo Area Indian Health Service, P.O. Box G, Window Rock, Arizona 86515–0190
Director, Chinle Service Unit, Chinle Indian Hospital, P.O. Drawer P.H., Chinle, Arizona 86503
Director, Tsailee Indian Health Center, P.O. Box 467, Tsailee, Arizona 86556
Director, Many Farms Indian School Health Center, c/o Chinle Comprehensive Health Facility, P.O. Box P.H., Chinle, Arizona 86503
Director, Pinon Indian Health Station, Pinon, Arizona 86510
Director, Rock Point Indian Health Station, c/o Chinle Comprehensive Health Facility, P.O. Box P.H., Chinle, Arizona 86503
Director, Crownpoint Service Unit, Crownpoint Indian Hospital, Crownpoint, New Mexico 87313
Director, Pueblo Pintado Clinic, c/o Community Health Services, Crownpoint Indian Hospital, Crownpoint, New Mexico 87313
Director, Fort Defiance Service Unit, Fort Defiance Indian Hospital, Fort Defiance, Arizona 86504
Medical Officer in Charge, Toyei Indian Health Clinic, Fort Defiance, Arizona 86504
Director, Shiprock Service Unit, Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420
Director, Teec Nos Pos Indian Health Center, P.O. Drawer D., Teec Nos Pos, Arizona 86514
Director, Dzilth-Na-O-Dith-Le Indian Health Center, Star Route 4, P.O. Box 5400, Bloomfield, New Mexico 87413
Director, Sanostee Indian Health Clinic, c/o Shiprock Indian Hospital, Field Health, Shiprock, New Mexico 87420
Director, Todalena Indian Health Clinic, c/o Shiprock Indian Hospital, Field Health, Shiprock, New Mexico 87420
Director, Gallup Service Unit, Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87301
Medical Officer in Charge, Tohatchi Indian Health Center, P.O. Box 142, Tohatchi, New Mexico 87325
Medical Officer in Charge, Fort Wingate Indian School Health Center, Fort Wingate, New Mexico 87316
Director, Kayenta Service Unit, Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033
Director, Inscription House Indian Health Center, P.O. Box 7397, Shonto, Arizona 86054
Director, Dennhotso Indian Health Center, c/o Kayenta Indian Health Center, Kayenta, Arizona 86033
Director, Tuba City Service Unit, Tuba City Indian Hospital, Tuba City, Arizona 86045
Director, Winslow Service Unit, Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047
Director, Dilkon Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047
Director, Leupp Indian School Health Center, c/o Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047
Director, Leupp Indian Health Center, c/o Winslow Indian Health Center, Community Health Services, P.O. Drawer 40, Winslow, Arizona 86047
Director, Oklahoma City Area Indian Health Service, 215 Dean A. McGee Street NW., Oklahoma City, Oklahoma 73102–3477
Director, Ada Service Unit, Carl Albert Indian Hospital, 1001 North Country Club Drive, Ada, Oklahoma 74820
Director, Wewoka Indian Health Center, Wewoka, Oklahoma 74884
Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, Claremore, Oklahoma 74017
Director, Miami Indian Health Center, P.O. Box 1498 Miami, Oklahoma 74354
Director, Locust Grove Indian Health Station, Locust Grove, Oklahoma 74352
Director, Clinton Service Unit, Clinton Indian Hospital, Route 4, Box 213, Clinton, Oklahoma 73601
Director, Watonga Indian Health Center, P.O. Box 878, Watonga, Oklahoma 73772
Director, Concho Indian Health Clinic, P.O. Box 150, Concho, Oklahoma 73022
Director, Kansas Service Unit, Holton Indian Health Center, 100 West 16th Street, Holton, Kansas 66436
Facility Director, Lawrence (Haskell) Indian Health Center, 2415 Massachusetts Avenue, Lawrence, Kansas 66044
Director, Lawton Service Unit, Lawton Indian Hospital, Lawton, Oklahoma 73501
Director, Anadarko Indian Health Center, P.O. Box 828, Anadarko, Oklahoma 73005
Director, Riverside Indian Health Station, Anadarko, Oklahoma 73005
Director, Carnegie Indian Health Center, Carnegie, Oklahoma 73015
Director, Pawnee Service Unit, Pawnee Indian Health Center, Rural Route 2, Box 1, Pawnee, Oklahoma 74058
Director, Pawhuska Indian Health Center, 715 Grandview, Pawhuska, Oklahoma 74056
Director, White Eagle Indian Health Center, P.O. Box 2071, Ponca City, Oklahoma 74601
Director, Shawnee Service Unit, Shawnee Indian Health Center, 2001 South Gordon Cooper Drive, Shawnee, Oklahoma 74801
Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464
Director, Jones Academy Indian Health Station, Heartshorne, Oklahoma 74547
Director, Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016–5981
Director, Colorado River Service Unit, Parker Indian Hospital, Route 1, P.O. Box 12 Parker, Arizona 85344
Director, Peach Springs Indian Health Center, Peach Springs, Arizona 86434
Director, Chemehuevi Indian Health Clinic, Chemehuevi Valley, California 92363
Director, Havasupai Indian Health Station, Supai, Arizona 86435
Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85364
Director, Sherman Indian School Health Center, 9034 Magnolia, Riverside, California 92503
Director, Keams Canyon Service Unit, Keams Canyon Indian Hosptial, P.O. Box 98, Keams Canyon, Arizona 86034
Director, Second Mesa Indian Health Center, P.O. Box General Delivery, Second Mesa, Arizona 86043
Director, Owyhee Service Unit, Owyhee Indian Hospital, P.O. Box 212, Owyhee, Nevada 89832
Director, Southern Bank Indian Health Clinic, 1545 Silver Eagle Road, Elko, Nevada 89801
Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th St., Phoenix, Arizona 85016
Director, Fort Mcdowell Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 86016
Director, Salt River Indian Health Center, Route 1, Box 215, Scottsdale, Arizona 85256
Director, Gila Crossing Indian Health Clinic, Route 1, Box 770, Laveen, Arizona 85339
Director, San Lucy Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016
Director, Phoenix Indian School Health Center, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016
Director, Sacaton Service Unit, Sacaton Indian Hospital, Sacaton, Arizona 85247
Director, San Carlos Service Unit, San Carlos Indian Hospital, San Carlos, Arizona 85550
Director, Bylass Indian Health Center, P.O. Box 208, San Carlos, Arizona 85550
Director, Schurz Service Unit, Schurz Indian Hosptial, Schurz, Nevada 89427
Director, Stewart Indian Health Station, Stewart, Nevada 89437
Director, Fort McDermitt Indian Health Station, P.O. Box 475, McDermitt, Nevada 89421
Director, Pyramid Lake Indian Health Clinic, Nixon, Nevada 89424
Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Roosevelt, Utah 84066

Director, Whiteriver Service Unit, Whiteriver Indian Hosptial, Whiteriver, Arizona 85941
Director, Cibicue Indian Health Center, Cibicue, Arizona 85941
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2892
Director, Chemawa Indian Health Center, 3750 Hazelgreen Road, NE. Salem, Oregon 97303
Director, Colville Service Unit, Colville Indian Health Center, Nespelem, Washington 99155
Director, Inchellium Indian Health Center, Inchellium, Washington 99138
Director, Fort Hall Service Unit, Fort Hall Indian Health Center, P.O. Box 317, Fort Hall, Idaho 83203
Director, Northern Idaho Service Unit, Northern Idaho Indian Health Center, P.O. Drawer 367, Lapawai, Idaho 83540
Director, Kamiah Indian Health Station, Kamiah, Idaho 83536
Director, Coeur d'Alene Indian Health Station, Coeur d'Alene, Idaho 83814
Director, Warm Springs Service Unit, Wellpinit Indian Health Center, P.O. Box 357, Wellpinit, Oregon 99040
Director, Puget Sound Service Unit, Puget Sound Indian Health Station, 1212 South Judkins, Seattle, Washington 98144
Director, Yakima Service Unit, Yakima Indian Health Center, Route 1, Box 1104, Toppenish, Washington 98948
Director, Yellowhawk Service Unit, Yellowhawk Indian Health Center, P.O. Box 160, Pendleton, Oregon 97801
Director, Taholah Service Unit, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587
Director, Queets Indian Health Station, c/o Service Unit, Director, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587
Director, Neah Bay Service Unit, Neah Bay Indian Health Center, P.O. Box 418, Neah Bay, Washington 98357
Director, Northwest Washington Service Unit, Lummi Indian Health Center, 2592 Kwina Road, Bellingham, Washington 98225
Director, Tucson Area Office, Indian Health Service, 7900 S. J. Stock Road, Tucson, Arizona 85746–6352
Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634
Director, Santa Rosa Indian Health Center, Star Route, Box 71, Sells, Arizona 85634
Director, San Xavier Indian Health Center, 7900 S. J. Stock Road, Tucson, Arizona 85734
Director, Nashville Area Office, Indian Health Service, Oak Towers Building, 1101 Kermit Drive, Suite 810, Nashville, Tennessee 37217–2191
Director, Cherokee Service Unit, Cherokee Indian Hospital, Cherokee, North Carolina 28719
Director, California Area Office, Indian Health Service, 2999 Fulton Avenue, Sacramento, California 95821

Appendix 2—Federal Archives and Records Centers

District of Columbia, Maryland except U.S. Court Records for Maryland, Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409
GSA Region 1—Connecticut, Maine, and Rhode Island, Federal Archives and Records Center, 380 Trapelo Road, Waltham, MA 02154
GSA Region 2—New York, Federal Archives and Records Center, Military Ocean Terminal, Bldg. 22, Bayonne, NJ 07002
GSA Region 3—Pennsylvania, Federal Archives and Records Center, 5000 Wissahickon Avenue, Philadelphia, PA 19144
GSA Region 4—Alabama, Florida, Mississippi and North Carolina, Federal Archives and Records Center, 1557 St. Joseph Avenue, East Point, GA 30344
GSA Region 5—Wisconsin, Minnesota and U.S. Court Records for Michigan, Federal Archives and Records Center, 7358 South Pulaski Road, Chicago, IL 60629
GSA Region 5—Michigan, except U.S. Court Records, Federal Records Center, 3150 Springboro Road, Dayton, OH 45439
GSA Region 6—Kansas, Iowa and Nebraska, Federal Archives and Records Center, 2306 East Bannister Rd., Kansas City, MO 64131
GSA Region 7—Louisiana, New Mexico, Oklahoma and Texas, Federal Archives and Records Center, P.O. Box 6216, Ft. Worth, TX 76115
GSA Region 8—Colorado, Wyoming, Utah, Montana, North Dakota and South Dakota, Federal Archives and Records Center, P.O. Box 25307, Denver, CO 80225
GSA Region 9—California, Except Southern California and Nevada, Except Clark County, Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, CA 94066
GSA Region 9—Arizona: Clark County, Nevada and Southern California (Counties of San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Riverside, Orange, Imperial Inyo, and San Diego), Federal Archives and Records Center, 24000 Avila Road, Laguna Niguel, CA 92677
GSA Region 10—Washington, Oregon, Idaho and Alaska, Federal Archives and Records Center, 6125 Sand Point Way, Seattle, WA 98115

09–17–0002

SYSTEM NAME:

INDIAN HEALTH SERVICE SCHOLARSHIP PROGRAMS, HHS/IHS/OHP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Scholarship Branch, Indian Health Service, Room 6–12, 5600 Fishers Lane, Rockville, Maryland 20857, and Washington National Records Center, 4205 Suitland Road. Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for, persons who have been approved to receive, persons who are receiving, and persons who have received scholarship funds administered by the Indian Health Service (IHS) since January 1976, such as, but not necessarily limited to the Health Professions Pregraduate Scholarship Program for Indians, the Health Professions Preparatory Scholarship Program for Indians, and the Health Professions Scholarship Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include all scholarship applications; associated forms from selected applicants only; selection and performance records; progress reports; vouchers of expenditures; and Social Security Numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 103 of the Indian Health Care Improvement Act, 25 U.S.C. 1613, Health Professions Preparatory Scholarship Program for Indians, and the Health Professions Pregraduate Scholarship Program for Indians.

Section 104 of the Indian Health Care Improvement Act, 42, U.S.C. 294y-1, Health Professions Scholarship Program.

Section 4 of the Debt Collection Act of 1982, Pub. L. 97–365, 5 U.S.C. 5514 note, Requirement That Applicant Furnish Taxpayer Identifying Number.

PURPOSE OF THE SYSTEM:

The purpose of this system of records is to select candidates for the Indian Health Service scholarship programs, to monitor the scholarship-related activities of candidates selected, and to evaluate the effectiveness of the programs. Scholarship-related activities are defined as enrollment and attendance in IHS-funded courses, the receipt by the student of a monthly stipend and the expenditure of funds by the student for the purchase of supplies (including books), equipment, tuition, fees and other reimbursable and justified expenditures authorized by IHS.

Records may be transferred to system No. 09–15–0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records may be disclosed to a congressional office in response to a verified inquiry from that office made at the written request of the subject individual.

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2. Records may be disclosed to authorized persons employed by the grantee institution (the institution which the recipient of a scholarship grant is attending) as needed for the administration of a scholarship grant award.

3. Records may be disclosed to other Federal agencies that also provide scholarship funding at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal scholarship programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

4. IHS will provide to any person requesting it a list of recipients of scholarship grants, including the school attended and tribal affiliation of each recipient.

5. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable IHS to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security Number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in folders, ledgers, magnetic tapes, and on electronic word processing diskettes.

RETRIEVABILITY:

Records which identify individual persons are indexed by name or identification number of scholarship applicant or recipient.

SAFEGUARDS:

1. Authorized Users: Access is limited only to authorized personnel in the performance of their duties. Authorized personnel include: the system manager, his/her staff, IHS Area Office Scholarship Coordinators, IHS Headquarters Branch Chiefs acting as advisors to scholarship recipients and staffs of the IHS Grants Management Offices in IHS Headquarters and IHS Area Offices.

2. Physical Safeguards: Paper records are stored in locked file cabinets. The records storage areas are secured during off-duty hours.

Word processing diskettes are stored in areas where fire and life safety codes are strictly enforced. Word processing diskettes are off-loaded and stored in locked cabinets when not in use.

3. Procedural Safeguards: All IHS personnel who make use of records contained in this system are made aware of their responsibilities under the provisions of the Privacy Act and are required to maintain Privacy Act safeguards with respect to such records.

The records storage areas are not left unattended during office hours, including lunch hours. Records are not removed from these areas in which they are maintained in the absence of proper charge-out procedures. Twenty-four hour, seven-day security guards perform random checks on the physical security of the records storage areas and word processing diskettes. A data set name controls the release of data to only authorized users.

When copying records for authorized purposes, care is taken to ensure that any imperfect pages are not left in the reproduction room where they can be read, but are destroyed or obliterated.

4. Implementing Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf:45–13 of the General Administration Manual, "Information on Individuals Obtained in Grant Applications."

RETENTION AND DISPOSAL:

Scholarship application materials are returned to unsuccessful applicants. Records in the system are retained by IHS for one year after the final award payment has been made by IHS and are then retired to a Federal Records Center. Records are shredded or burned by the Federal Recorfda Center four years after they are received.

SYSTEM MANAGER AND ADDRESS:

Chief, Scholarship Branch, Indian Health Service, 5600 Fishers Lane, Room 6–12, Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

Requests by mail or in person: To substantiate the identity of the subject individual seeking access to his/her scholarship grant application and/or performance record the requester must provide his/her name, signature, and Grant Identification Number, and to identify the record sought the requester must provide dates of attendance, school(s) of attendance, and field or speciality or courses taken.

In addition, the requester is informed that provision of the SSN may assist in the verification of the identity of the person as well as the identification of his/her record. The requester is informed that provision of his/her SSN is voluntary and that the individual will not be refused access to his/her record for failure to disclose his/her SSN.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought.

Requesters may also request an accounting of disclosures that have been made of their record, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system, third parties who provide references concerning the subject individuals, and schools that individuals in the system attend or have attended.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–17–0003

SYSTEM NAME:

Indian Health Service Medical Staff Credentials and Privileges Records, HHS/IHS/OHP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Each Indian Health Service (IHS) Area Office and each IHS Service Unit (Appendix 1). Records may also be located at hospitals and offices of health care providers who are under contract to IHS. A current list of contractor sites is available by writing to the appropriate System Manager (Area or Service Unit Director) at the address shown in Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, current and former Indian Health Service (IHS) medical staff members. The term IHS medical staff includes fully licensed individuals permitted by law to provide patient care services independently and without concurrent professional direction or supervision, within the scope of his /her license and in accordance with individually granted clinical privileges. The IHS medical staff includes physicians (M.D. and D.O.) and dentists and may include other health care practitioners such as psychologists, optometrists, podiatrists, audiologists, and, in some states, certified nurse midwives.

Types of assignment categories of current and former IHS medical staff members include the following:

Provisional—Those new members of the medical staff who are serving a required initial probationary period, as specified in the local medical staff bylaws. During this time, their qualifications for membership on the active or courtesty IHS medical staff are assessed.

Active—Those members who are either IHS employees or employees of Pub. L. 93–638 Tribal Contractors who spend at least 50 percent of their professional time within the IHS facility and/or IHS Service Unit. They have served their probationary period and have been found to be fully qualified for membership on the IHS medical staff.

Temporary—Those members who provide services on a short-term basis.

Courtesy or Associate—Those members who generally provide services on a periodic or episodic basis (e.g., consultants for specialty clinics) and are usually not IHS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, Social Security Number, IHS medical staff membership and privileges applications and associated forms, employment data, liability insurance coverage, credentialing history of licensed health professionals, personal, educational, and demographic background information, professional performance information consisting of continuing education, performance awards, and adverse or disciplinary actions, and evaluations and approvals completed by IHS medical staff reviewers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Indian Self Determination and Education and Assistance Act (25 U.S.C. 450), Snyder Act (25 U.S.C. 13), Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.), Indian Health Service Transfer Act (42 U.S.C. 2001–2004).

PURPOSE

The purposes of this system are:

1. To ensure that IHS medical staff members are qualified, competent and capable of delivering quality health services consistent with those of the medical community at large and that they are granted privileges commensurate with their training and competence and with the ability of the facility to provide adequate support equipment, services, and staff.

2. To inform health care practitioner(s) and staff of health care facilities, state or county health professional societies or licensing boards to whom the subject individual may apply for clinical privileges, membership or licensure, of the subject individual's professional competence, character and ethical qualifications. This may include information regarding drug or alcohol abuse or dependency. Within the Department such releases may be made to personnel staffs of DHHS Regional Offices.

3. To provide adverse health care practice information to the data bank established under Title IV of Pub. L. 99–660, the Health Care Quality Improvement Act of 1986. The purpose of such a release is to provide information concerning a current or former IHS medical staff member whose professional health care activity failed to conform to generally accepted standards of professional medical practice.

4. To provide health care practice information concerning current or former members of the IHS medical staff with Commissioned Corps status to the Division of Commissioned Personnel, U.S. Public Health Service, so that an informed decision may be made concerning the promotion, retention, or reassignment of the subject individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records may be disclosed to organizations authorized to conduct evaluation studies concerning the delivery of health care services by the Indian Health Service (e.g., Joint Commission on the Accreditation of Healthcare Organizations).

2. IHS may disclose records consisting of name, Social Security Number, employment history and any professional qualification information concerning medical staff membership and privileges, professional competence, clinical judgment and personal character to a State or local government health professional licensing board, to the Federation of State Medical Boards, to the data bank established under Title IV of Pub. L. 99–660 and/or to a similar entity which has the authority to maintain records concerning the issuance, retention or revocation of licenses or registrations necessary to practice a health professional occupation or specialty. The purpose of this disclosure is to inform medical profession licensing boards and appropriate entities about the health care practices of a current, terminated, resigned, or retired IHS medical staff member whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of members of the general public. This will be done within the guidelines for notice, hearing, and review as delineated in the medical staff bylaws for the IHS facility and/or within other HHS or IHS regulations or policies.

3. IHS may disclose biographic data and information supplied by potential applicants to (a) references listed on the IHS medical staff and/or privileges application and associated forms for the purpose of evaluating the applicant's professional qualifications, experience, and suitability, and (b) a State or local government health profession licensing board, to a health-related professional organization, to the Federation of State Medical Boards, and to the data bank established under Title IV of Pub. L. 99–660 or a similar entity for the purpose of verifying that all claimed background and employment data are valid and all

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claimed credentials are current and in good standing.

4. Records may be disclosed to other Federal agencies (including the Office of Personnel Management for subject individuals applying for or maintaining Civil Service appointments), to State and local governmental agencies, and to organizations in the private sector to which the subject individual applies for clinical privileges, membership or licensure for the purpose of documenting the qualifications and competency of the subject individual to provide health services in his/her health profession based on the individual's professional performance while employed by the IHS.

5. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof, or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

6. Records may be disclosed to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

7. In the event that a system of records maintained by the IHS to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed and retrieved by name, Social Security Number, and any other identifying numbers necessary to establish the identity of an individual whose record is maintained in the system of records.

SAFEGUARDS:

1. Authorized Users:

Access is limited to authorized personnel for use in the performance of their official duties. Authorized personnel include: Physician Recruitment and other Health Professions Branch Staff and Area Governing Board Members at IHS Area Offices, and Service Unit Directors, Clinical Directors and members of the Credentials and Privilege Committee of each IHS Service Unit. At each location where records in this system will be maintained, a list of personnel or categories of personnel having an official need-to-know has been developed and is maintained.

2. Physical Safeguards:

Records are kept in locked metal filing cabinets or in locked desk drawers in secured rooms at all times when not actually in use during working hours and at all times during non-working hours. Record storage areas, including file cabinets and desks, are not left unattended or unlocked during office hours, including lunch hours.

3. Procedural Safeguards:

Persons who have an official need-to-know are entrusted with records from this system of records and are instructed to safeguard the confidentiality of these records and to destroy all copies or to return such records when the need to know has expired. Instructions include the statutory penalties for noncompliance. Proper charge-out procedures are followed for the removal of records from the area in which they are maintained. Before an employee who will control disclosure of records can work with the records (i.e., employees who report to the system manager) the system manager or designee ensures that the employee has received training in the safeguards applicable to the records and is aware of the actions to take to restrict disclosure. When copying records for authorized purposes, care is taken to ensure that any imperfect pages are not left in the reproduction room where they can be read but are destroyed or obliterated.

4. Implementation Guidelines:

DHHS Chapter 45–13 and supplementary Chapter PHS.hf:45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Records are maintained by IHS for at least five years after the individual's termination of employment or association with IHS. Records of unsuccessful applicants for medical staff membership will be retained for three years after his/her rejection. After these periods of retention expire, records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix 1.

Policy Coordinating Official: Director, Patient Care Professional Affairs and Support IHS, 5600 Fishers Lane, Room 6A–55, Rockville, Maryland 20857.

The IHS Clinical Directors at all IHS Service Units listed in Appendix 1 are System Managers. IHS medical staff credentials and privileges files are stored at these locations. Other addresses listed in Appendix 1 are locations at which all or parts of these records may also be stored (Physician Recruiter at IHS Area Offices). Post Office Box designations appearing in Appendix 1 should be specified when making requests by mail.

NOTIFICATION PROCEDURE:

Requests must be made to the appropriate System Manager (Clinical Director for the appropriate Service Unit) listed in Appendix 1.

Requests by mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain, at a minimum, the name, signature, Social Security Number, and address of the requester, and for unsuccessful applicants the date when the application was submitted, and for current or former IHS health care providers the dates and locations of service.

We may request additional identification when we hold records for different persons with the same name or where an apparent discrepancy exists between information contained in the record and that provided by the individual requesting access to the record.

Other names used: Where an individual is seeking to obtain information about himself/herself which may be retrieved by a different name than his/her current name, he/she shall be required to produce evidence to verify that he/she is the person whose record he/she seeks.

Requests in person: A subject individual who appears in person at a specific location (where he or she currently works or formerly worked) seeking access or disclosure of records contained in this system of records relating to him/her shall provide the information described in "Requests by mail" (above) and at least one piece of tangible identification such as a driver's license or passport.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure. Requesters should also provide a reasonable description of the record being sought.

Requesters may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Write to the appropriate Service Unit Clinical Director at the address specified in Appendix 1 and reasonably identify the record, specify the information being contested, and state the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES

Subject individual, IHS health care personnel, references supplied by the subject individual, professional societies or associations, specialty boards, colleges and universities attended by the subject individual, former employers, health facilities or health providers with which the subject individual was associated, liability insurance carriers, organizations providing cardiopulmonary resuscitation (CPR) training to the subject individual, State and local health and health care licensing or certifying organizations, and organizations which serve as repositories of information on health care professionals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1—System Managers

Director, Aberdeen Area Indian Health Service, Federal Building, 115 Fourth Avenue, SE, Aberdeen, South Dakota 57401
Clinical Director, Rapid City Service Unit, Rapid City Indian Hospital, Rapid City, South Dakota 57702
Clinical Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, Eagle Butte, South Dakota 57625
Clinical Director, Fort Berthold Service Unit, Minni-Tohe Indian Health Center, New Town, North Dakota 58763
Clinical Director, Fort Totten Service Unit, Fort Totten Indian Health Center, Fort Totten, North Dakota 58335
Clinical Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770
Clinical Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570
Clinical Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, Sisseton, South Dakota 57262
Clinical Director, Standing Rock Service Unit, Fort Yates Indian Hospital, Fort Yates, North Dakota 58538
Clinical Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, Belcourt, North Dakota 58316
Clinical Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071
Clinical Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, Wagner, South Dakota 57380
Clinical Director, Pierre Service Unit, Ft. Thompson Indian Health Center, Ft. Thompson, South Dakota 57339
Director, Bemidji Area Office, Indian Health Service, 203 Federal Building, Bemidji, Minnesota 56601
Clinical Director, Eastern Michigan Service Unit, Kincheloe Indian Health Center, Kincheloe, Minnesota 49786
Clinical Director, Leach Lake Service Unit, Cass Lake Indian Hospital, Cass Lake, Minnesota 56633
Clinical Director, Red Lake Service Unit, Red Lake Indian Hospital, Red Lake, Minnesota 56671
Clincial Director, White Earth Service Unit, White Earth Indian Health Center, White Earth, Minnesota 56591
Director, Alaska Native Health Service, 250 Gambell Street, Third and Gambell Street, Anchorage, Alaska 99501
Clinical Director, Anchorage Service Unit, PHS, Alaska Native Medical Center, P.O. Box 107741, Anchorage, Alaska 99510
Clinical Director, Barrow Service Unit, Barrow Alaska Native Hospital, Barrow, Alaska 99723
Clinical Director, Kotzebue Service Unit, Kotzebue Alaska Native Hospital, Kotzebue, Alaska 99752
Clinical Director Annette Island Service Unit, Metlakatla Alaska Native Health Center, Box 428, Metlakatla, Alaska 99926
Clinical Director, Yukon-Kuskokwim-Delta Service Unit, Yukon-Kuskokwim-Delta Regional Hospital, Indian Health Servcie, Bethel, Alaska 99559
Director, Albuquerque Area Indian Health Service, 505 Marquette NW Suite 1502, Albuquerque, New Mexico 87102–0097
Clinical Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive NE, Albuquerque, New Mexico 87106
Clinical Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340
Clinical Director, Southern Colorado-Ute Service Unit, P.O. Box 778, Ignacio, Colorado 81137
Clinical Director, Zuni-Ramah Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327
Clinical Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049
Director, Billings Area Indian Health Service, P.O. Box 2143, 711 Central Avenue, Billings, Montana 59103
Clinical Director, Blackfeet Service Unit, Browning Indian Hospital, Browning, Montana 59417
Clinical Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022
Clinical Director, Flathead Service Unit, St. Ignatius Indian Health Center, St. Ignatius, Montana 59865
Clinical Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526
Clinical Director, Fort Peck Service Unit, Poplar Indian Health Center, Poplar, Montana 59255
Clinical Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514
Clinical Director, North Cheyenne Service Unit, Lame Deer Indian Health Center, Lame Deer, Montana 59043
Clinical Director, Rocky Boy's Service Unit, Box Elder Indian Health Center, Box Elder, Montana 59521
Clinical Director, Navajo Area Indian Health Service, P.O. Box G, Window Rock, Arizona 86515–0190
Clinical Director, Chinle Service Unit, Chinle Indian Hospital, P.O. Drawer P.H., Chinle, Arizona 86503
Clinical Director, Crownpoint Service Unit, Crownpoint Indian Hospital, Crownpoint, New Mexico 87313
Clinical Director, Fort Defiance Service Unit, Fort Defiance Indian Hospital, Fort Defiance, Arizona 86504
Clinical Director, Gallup Service Unit, Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87301
Clinical Director, Kayenta Service Unit, Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033
Clinical Director, Shiprock Service Unit, Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420
Clinical Director, Tuba City Service Unit, Tuba City Indian Hospital, Tuba City, Arizona 86045
Clinical Director, Winslow Service Unit, Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047
Director, Oklahoma City Area Indian Health Service, 215 Dean A. McGee Street NW., Oklahoma City, Oklahoma 73102–3477
Clinical Director, Ada Service Unit, Carl Albert Indian Hospital, 1001 North Country Club Drive, Ada, Oklahoma 74820
Clinical Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, Claremore, Oklahoma 74017

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Clinical Director, Clinton Service Unit, Clinton Indian Hospital, Route 4, Box 213, Clinton, Oklahoma 73601
Clinical Director, Kansas Service Unit, Holton Indian Health Center, 100 West 16th Street, Holton, Kansas 66436
Clinical Director, Lawton Service Unit, Lawton Indian Hospital, Lawton, Oklahoma 73501
Clinical Director, Pawnee Service Unit, Pawnee Indian Health Center, Rural Route 2, Box 1, Pawnee, Oklahoma 74058
Clinical Director, Shawnee Service Unit, Shawnee Indian Health Center, 2001 South Gordon Cooper Drive, Shawnee, Oklahoma 74801
Clinical Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464
Director, Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016–5981
Clinical Director, Colorado River Service Unit, Parker Indian Hospital, Route 1, P.O. Box 12, Parker, Arizona 85344
Clinical Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85364
Clinical Director, Keams Canyon Service Unit, Keams Canyon Indian Hospital, P.O. Box 98, Keams Canyon, Arizona 86034
Clinical Director, Owyhee Service Unit, Owyhee Indian Hospital, P.O. Box 212, Owyhee, Nevada 89832
Clinical Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th St., Phoenix, Arizona 85016
Clinical Director, Sacaton Service Unit, Sacaton Indian Hospital, Sacaton, Arizona 85247
Clinical Director, San Carlos Service Unit, San Carlos Indian Hospital, San Carlos, Arizona 85550
Clinical Director, Schurz Service Unit, Schurz Indian Hospital, Schurz, Nevada 89427
Clinical Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Roosevelt, Utah 84066
Clinical Director, Whiteriver Service Unit, Whiteriver Indian Hospital, Whiteriver, Arizona 85941
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2892
Clinical Director, Coleville Service Unit, Coleville Indian Health Center, Nespelem, Washington 99155
Clinical Director, For Hall Service Unit, Fort Hall Indian Health Center, P.O. Box 317, Fort Hall, Idaho 83203
Clinical Director, Northern Idaho Service Unit, Northern Idaho Indian Health Center, P.O. Drawer 367, Lapawai, Idaho 83540
Clinical Director, Puget Sound Service Unit, Puget Sound Indian Health Station, 1212 South Judkins, Seattle, Washington 98144
Clinical Director, Yakima Service Unit, Yakima Indian Health Center, Route 1, Box 1104, Toppenish, Washington 98948
Clinical Director, Yellowhawk Service Unit, Yellowhawk Indian Health Center, P.O. Box 160, Pendleton, Oregon 97801
Clinical Director, Taholah Service Unit, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587
Clinical Director, Neah Bay Service Unit, Neah Bay Indian Health Center, P.O. Box 416, Neah Bay, Washington 98357
Clinical Director, Northwest Washington Service Unit, Lummi Indian Health Center, 2592 Kwina Road, Bellingham, Washington 98225
Clinical Director, Warm Springs Service Unit, Wellpinit Indian Health Center, P.O. Box 357, Wellpinit, Oregon 99040
Director, Tucson Area Office, Indian Health Service, 7900 S.J. Stock Road, Tucson, Arizona 85746–9352
Clinical Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634
Director, Nashville Area Office, Indian Health Service, Oak Towers Building, 1101 Kermit Drive, Suite 810, Nashville, Tennessee 37217–2191
Clinical Director, Cherokee Service Unit, Cherokee Indian Hospital, Cherokee, North Carolina 28719
Director, California Area Office, Indian Health Service, 2999 Fulton Avenue, Sacramento, California 95821.

[FR Doc. 88–25299 Filed 11–21–88; 8:45 am]
BILLING CODE 4160–16–M

Health Resources and Services Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services; Public Health Service (PHS); Health Resources and Services Administration (HRSA).

ACTION: Publication of minor changes to systems of record notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," HRSA is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: HRSA has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as system deletions, title changes, and changes in the system location of records, or the address of system managers.

1. HRSA has deleted the following systems during the year:

09–15–0019 Health and Medical Records Systems, HHS/HRSA/IHS;
09–15–0036 Indian Health Service Scholarship, HHS/HRSA/IHS.

On January 4, 1988, in accordance with the Reorganization Order of the Secretary (52 FR 47053–47056), the Indian Health Service was elevated from a Bureau in HRSA to the status of a PHS Agency. The above Privacy Act systems of records have been transferred to the Indian Health Service, which is assuming all responsibility for the records. Therefore, HRSA has deleted these systems from its inventory of active systems of records.

2. Other minor system notice changes affecting individual categories are published below.

Date: October 5, 1988.

James A. Walsh,

Associate Administrator for Operations and Management.

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The following table of contents lists all currently active Privacy Act systems of records maintained by the Health Resources and Services Administration:

09–15–0001 Division of Federal Occupational and Beneficiary Health Services, Health and Counseling Records, HHS/HRSA/BHCDA.
09–15–0002 Record of Patients' Personal Valuables and Monies, HHS/HRSA/BHCDA.
09–15–0003 Contract Physicians and Consultants, HHS/HRSA/BHCDA.
09–15–0004 Federal Occupational Health Data System, HHS/HRSA/BHCDA.
09–15–0007 Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BHCDA.
09–15–0008 Emergency Non-PHS Treatment Authorization File, HHS/HRSA/BHCDA.
09–15–0022 Accounts Receivable, HHS/HRSA/OA.
09–15–0026 Medical Fellowships and Educational Loans, HHS/HRSA/OA.
09–15–0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BHCDA.
09–15–0029 PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BHCDA.
09–15–0037 Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BHCDA.
09–15–0038 Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BHPr.
09–15–0039 Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.
09–15–0040 Health Professions Student Loan Repayment Program, HHS/HRSA/BHPr.
09–15–0041 Health Professions Student Loan Cancellation, HHS/HRSA/BHPr.
09–15–0042 Physician Shortage Area Scholarship Program, HHS/HRSA/BHCDA.
09–15–0043 Cuban Loan Program, HHS/HRSA/OA.
09–15–0044 Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.
09–15–0045 Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.
09–15–0046 Health Professions Planning and Evaluation, HHS/HRSA/OA.
09–15–0052 Nurse Practitioner and Midwifery Traineeships Program, HHS/HRSA/BHPr.

09–15–0001

SYSTEM NAME:

Division of Federal Occupational and Beneficiary Health Services, Health and Counseling Records, HHS/HRSA/BHCDA. Minor alterations have been made to this system notice. The following portion of the "Retention and Disposal" category should be revised to reflect the location of retired records:

* * * * *

RETENTION AND DISPOSAL:

National Personnel Records Center in St. Louis, Missouri.

* * * * *

09–15–0004

SYSTEM NAME:

Federal Employee Occupational Health Data System, HHS/HRSA/BHCDA. Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees served by PHS/Division of Federal Occupational and Beneficiary Health Services (DFOBHS) Service Units.

CATEGORIES OF RECORDS IN THE SYSTEM:

Occupational health record and service-derived data organized and presented for program operation purposes.

* * * * *

09–15–0007

SYSTEM NAME:

Patient Medical Record System PHS Hospital/Clinics, HHS/HRSA/BHCDA. Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

RETENTION AND DISPOSAL:

Number of years held at Federal Records Center (see Appendix 2) before disposal—45 years for active duty uniformed service personnel, 20 years for all others. How destroyed: The disposal standard for these records may be obtained by writing the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Director, PHS Health Data Center, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

NOTIFICATION PROCEDURE:

To determine the existence of a record, write to the facility where treatment was rendered if listed in Appendix 1B. (Note that the facility may now be operated under a different name by the successor organization.) If the facility is not listed, write to: Director, Public Health Service Data Center, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

09–15–0052

SYSTEM NAME:

Nurse Practitioner and Midwife Program, HHS/HRSA/BHPr. Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

SYSTEM NAME:

Nurse Practitioner and Nurse Midwifery Traineeships Programs, HHS/HRSA/BHPr.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals selected to receive nurse practitioner and nurse midwifery traineeships by schools participating in the program.

* * * * *

[FR Doc. 88–24280 Filed 11–21–88; 8:45 am]
BILLING CODE 4160–16–M

Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: FDA is publishing this document to meet the requirements of the Office of Management and Budget (OMB) Circular No. A–130, "Management of Federal Information Resources," Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," which limits republication to revised system notices only.

SUMMARY: FDA has reviewed each of its system notices and has revised some this year to enhance specificity and clarify the effects of reorganization. These revisions are minor and have no affect on the public's need-to-know; therefore, FDA is not republishing any of its system notices at this time, but is republishing the table of contents of all current systems of records. FDA's system notices were published in their entirety November 24, 1986, 51 FR 42524–42536. A copy of FDA's system notices is available from the FDA Privacy Act Coordinator, HFI–30, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION:

A. General Information

1. The routine uses set forth in each notice describe permissible disclosures outside the Department of records in that system which may be made without the consent of individuals who are the subjects of those records. Additional disclosures without consent of subject individuals are permitted by the Privacy Act in Section 3(b) as follows:

"(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) Required under section 552 of this title [the Freedom of Information Act];

"(3) For a routine use as [described in the routine use section of each specific system notice];

"(4) To the Bureau of Census for purposes of planning or carrying out census or survey or related activity pursuant to the provisions of Title 13;

"(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation of the Administrator of General Services or his designee to determine whether the record has such value;

"(7) To another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure

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notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) To the Comptroller General, or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

"(11) Pursuant to the order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))." (This "Special Disclosure" statement does not apply to any FDA systems of records.)

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09-10-0002 Regulated Industry Employee Enforcement Records. HHS/FDA/OMO/DMS
09-10-0003 FDA Credential Holder File. HHS/FDA/ORA
09-10-0004 Communications (Oral and Written) With the Public. HHS/FDA/OMO
09-10-0005 State Food and Drug Official File. HHS/FDA/ORA
09-10-0007 Science Advisor Research Associate Program (SARAP). HHS/FDA/ORA
09-10-0008 Radiation Protection Program Personnel Monitoring System. HHS/FDA/CDRH
09-10-0009 Special Studies and Surveys on FDA-Regulated Products. HHS/FDA/OMO
09-10-0010 Bioresearch Monitoring Information System. HHS/FDA
09-10-0011 Certified Retort Operators. HHS/FDA/CFSAN
09-10-0013 Employee Conduct Investigative Records. HHS/FDA/OMO
09-10-0015 Blood Donors for Tissue Typing Sera and Cell Analysis and Related Research. HHS/FDA/CDB/OB
09-10-0017 Epidemiological Research Studies of the Center for Devices and Radiological Health. HHS/FDA/CDRH
09-10-0018 Employee Identification Card Information Record. HHS/FDA/OMO/DMS.

Dated: October 27, 1988.

Jack W. Martin,

Associate Commissioner for Public Affairs.

[FR Doc. 88-26835 Filed 11-21-88; 8:45 am]

BILLING CODE 4160-01-M

federal register

Tuesday
November, 22, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 135 and 145
Foreign Repair Station Rules; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 135 and 145

[Docket No. 25454; Amdt. Nos. 135-29 and 145-21]

RIN 2120-AC50

Foreign Repair Station Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to revise the regulations to accommodate the increasing demand for maintenance and alteration of U.S.-registered aircraft operated worldwide. These amendments modify the requirements for U.S. certification of a foreign repair station. In addition, a foreign or domestic manufacturer of a product for which it holds a U.S. type certificate and that is certificated by the FAA as a repair station will be allowed to return to service a component maintained or altered by a noncertificated source, subject to specified conditions. Lastly, to be consistent with the air carrier operating rules, the air taxi/commercial operator rules are amended to permit the airworthiness release to be signed by a person authorized by a U.S.-certificated foreign repair station. This action is part of a general project underway to review and update all Federal Aviation Regulations (FAR) governing repair stations.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Leo Weston, Aircraft Maintenance Division (AFS-340), Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8203.

SUPPLEMENTARY INFORMATION:

Background

Subpart C, Part 145 of the FAR, Foreign Repair Stations, has its origin in Civil Air Regulations (CAR) Part 52 by an amendment adopted in 1949 as § 52.38 (14 FR 823; February 11, 1949). The purpose of the amendment was to provide for the issuance of foreign repair station certificates for facilities located outside the United States where the Administrator found that "* * * such agencies are needed for the maintenance, alteration, and repair of United States aircraft operated outside the United States."

The lack of repair agencies authorized to perform work on U.S.-registered aircraft in certain areas outside the United States at that time resulted in considerable inconvenience to aircraft owners, pilots, and operators conducting international flight operations. It was recognized that certification of foreign agencies, even those not staffed with holders of U.S. airman certificates, would expedite the maintenance, repair, and return to service of U.S. aircraft in those areas where certificated repair stations were not available. Consistent with the concept that the maintenance was to be performed on U.S.-registered aircraft in areas outside the United States, the scope of a certificated foreign repair station's authority provided for in § 52.38 was limited to "performance of work on aircraft which are used in operations conducted in whole or in part outside the United States * * *."

CAR Part 52 was revised in 1952 (17 FR 2981; April 5, 1952) with § 52.38 becoming § 52.50. When the Civil Air Regulations were recodified in 1962, CAR Part 52 became FAR Part 145, and CAR section 52.50 became FAR sections 145.71 and 145.73 (27 FR 6662; July 13, 1962).

On July 1, 1986, the FAA prepared two draft internal action notices which were later revised on October 3, 1986. The first addressed foreign repair station privileges and responsibilities under Part 145 and the eligibility of replacement parts for return to service on U.S.-registered aircraft. The second draft action notice addressed air carrier privileges and responsibilities under Parts 121 and 135 when using noncertificated sources for parts. The draft action notices did not represent new FAA policy.

Although it is not regular or required practice for the FAA to solicit comments on internal guidance material, such as action notices, the original notices were broadly circulated to be consistent with the FAA's practice of seeking constructive input and promoting international cooperation. The FAA received comments from 34 different entities, including several foreign civil aviation authorities. Several of the commenters were of the opinion that existing rules and practices required substantive change, and that, to be in accordance with the Administrative Procedure Act, a rulemaking proceeding was appropriate.

In addition, the FAA received petitions from the Air Transport Association of America (ATA) (Docket No. 25169) and the Regional Airline Association (RAA) (Docket Nos. 25162 and 25163). These petitions request changes to the FAR to clarify the rules and expand the availability of foreign repair stations and foreign aircraft manufacturers for the maintenance and alteration of U.S.-registered aircraft and components, whether or not such aircraft are used wholly or partly outside the United States. Related parts of these petitions have been considered in the preparation of this rule and are considered a part hereof. Issues in the petitions not within the scope of the Notice will be acted upon separately.

The civil aviation environment has changed significantly since the foreign repair station regulations were first adopted in 1949. More foreign-manufactured aircraft are being flown by U.S. operators, and the need for increased maintenance capability for U.S.-registered aircraft from both foreign manufacturers and U.S.-certificated foreign repair stations has dramatically increased in the past 39 years. This need is reflected by exemptions that have been granted in recent years related to maintenance and alterations performed by foreign repair stations. Exemptions to §§ 145.71 and 145.73 have authorized certain U.S.-certificated foreign repair stations to perform work on foreign-manufactured products to be used on U.S.-registered aircraft that may not be operated outside the United States. Over 100 exemptions from the operating rules have also been issued to air carriers to permit them to use other than U.S.-certificated airmen (i.e., to use foreign manufacturers and foreign U.S.-certificated repair stations) to repair and return to service U.S.-registered aircraft and components under the provisions of the air carrier operating rules.

Many U.S. air carriers currently use foreign-manufactured aircraft and other aeronautical products. This use is partly a result of multinational consortiums and cooperative agreements to manufacture and market domestic and foreign products between U.S. and foreign manufacturers. In recent years, the type and number of aircraft and aircraft parts manufactured in foreign countries and used by U.S. operators in the United States have increased rapidly.

Many U.S. air carriers use foreign-manufactured aircraft and products as the prime elements of their fleets. United States commuter airlines are heavily dependent upon foreign-manufactured aircraft. Due to the unavailability of modern U.S.-manufactured passenger aircraft in the 20-50 seat range, almost all of the aircraft with passenger capacities exceeding 19 seats used by U.S. commuter airlines are foreign manufactured. Larger foreign-manufactured aircraft, such as the Airbus, as well as foreign-manufactured engines, are being used increasingly by U.S. air carriers.

In addition, many U.S. aircraft manufacturers rely on foreign subcontractors for many component parts of their aircraft. Under current regulatory limitations, however, foreign manufacturers (with or without a U.S. foreign repair station certificate) have been unable in many situations to repair their products, even to the extent that warranty work has been curtailed.

United States operators have expressed a need for expanded access to U.S.-certificated foreign repair stations for maintenance, alteration, and preventive maintenance of their aircraft, aircraft engines, propellers, appliances, and component parts because of the increased worldwide demand for maintenance and the increasing amount of foreign-manufactured equipment being used by U.S. operators. This expanded access can be accomplished by changes to Subpart C, Part 145, that would modify the restrictions on who may apply for U.S. certification as a foreign repair station and the limitations on work that such a repair station can perform.

Accordingly, on November 24, 1987, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 87-12 (52 FR 45124; November 24, 1987). The notice proposed to amend Part 145 for certificating foreign repair stations by modifying the requirements for determination of need before a foreign repair station may be considered for U.S. certification. The notice also proposed modifying the limitation on the scope of work that a foreign repair station may perform on U.S.-registered aircraft and on aircraft engines, propellers, appliances, and component parts for use on U.S.-registered aircraft. Subject to specified conditions, the notice provided that a repair station that is also a U.S. type certificate holder may use a noncertificated facility for maintenance. The notice also proposed amending Part 135 to permit the airworthiness release to be signed by a person authorized by a U.S.-certificated foreign repair station. Comments on the notice were requested from the public to be received on or before January 25, 1988.

Subsequent to the opening of the docket on this notice, on December 21, 1987, Congress, in Amendment No. 45 to the Conference Report on the Continuing Resolution H.J. Res. 395 making continuing appropriations for the fiscal year 1988, stated that the proposed rulemaking on foreign repair stations raised significant policy, economic, and safety issues that should be carefully reviewed by the appropriate authorizing committees, and that the FAA should defer final action on the notice of proposed rulemaking until October 1, 1988. (133 Cong. Rec. H12799 daily ed. Dec. 21, 1987).

The FAA received 3,894 comments on this notice. These comments have been reviewed and considered by the FAA in the promulgation of this rule. Of the 3,894 comments reviewed, 3,808 oppose NPRM No. 87-12 and 79 commenters are in support. No comments specifically oppose the proposed amendment to Part 135 to permit the airworthiness release to be signed by a person authorized by a U.S.-certificated foreign repair station, and this amendment is adopted herein as proposed. Seven commenters did not express a position on the notice.

Of the 3,894 comments received and reviewed by FAA, 1,116 comments regarding foreign repair stations were received by the FAA prior to the issuance of the notice in the **Federal Register** on November 24, 1987. The 1,116 pre-docket comments have been reviewed and generally oppose the substance of the notice and parallel the comments received in opposition to the notice after the docket opened.

A considerable number of comments on the notice were received after the docket was closed. As of May 16, 1988, all of these late comments were reviewed to ensure that all of the issues raised by those comments have been addressed in this rulemaking.

Of the comments opposing the notice, most of the commenters are either individual mechanics employed, or persons who have family members employed, by a domestic repair station or airline. The labor unions representing mechanics, the Air Line Pilots Association (ALPA) and the Association of Flight Attendants (AFA), unanimously oppose the proposal. Other union groups and organizations, such as the American National Association of Letter Carriers, the Moving Picture Machine Operators, the United Food and Commercial Workers, and the Aeronautical Repair Station Association (ARSA) also oppose the Notice. American Airlines opposes the proposal as it applies to all foreign repair stations, but supports expanding the scope of the present regulations to permit foreign manufacturers to support their own products.

The Office of the Secretary of State for the State of Oklahoma forwarded a Resolution, adopted by the House of Representatives of the Second Session of the 41st Oklahoma Legislature, requesting the FAA to withdraw the proposed rule. By House Resolution No. 139, on February 24, 1988, the House of Representatives of the Eighty-fourth General Assembly, Second Regular Session, of the State of Missouri resolved that the Missouri House of Representatives encourage each member of the Missouri Congressional Delegation to contact the United States Department of Transportation and any other appropriate Federal Agency regarding the potential impact on Missouri's economy with any expansion of maintenance authority granted under Part 145 and that the Chief Clerk of the Missouri House of Representatives be instructed to prepare properly transcribed copies of the resolution for the Governor of Missouri, the Missouri Department of Economic Development and for each member of the Missouri Congressional Delegation for their information and possible action. The Attorney General for the State of Minnesota urged the withdrawal of the proposed relaxation of the FAA's rules regarding the use of foreign repair stations.

Of the 79 comments received by FAA on NPRM No. 87-12 supporting the proposals contained therein, the majority of the comments are from corporate or foreign government entities. Seven foreign civil aviation authorities support the notice, as do several foreign airlines, foreign manufacturers, and foreign repair stations, as well as their representative associations. Several U.S. airlines support the notice, as do their associations. Several U.S. manufacturers and associations support the proposal, including Pratt & Whitney, General Electric, Fokker Aircraft of USA, Incorporated, MBB of America, Inc., Aerospace Industries Association (AIA), and General Aviation Manufacturers Association (GAMA).

Discussion of Comments

The comments on this notice received by the FAA address 15 separate issues. These are discussed below.

Use of a Noncertificated Facility Subject to Specified Conditions

A number of commenters express concern and some misunderstanding with the proposed amendment to § 145.47 by adding a new paragraph (§ 145.47(c)). The new paragraph would permit a domestic or foreign manufacturer holding a U.S. type certificate and a U.S. repair station certificate to have maintenance and alteration work performed on certain components by a noncertificated source under certain specified conditions.

In proposing the change to § 145.47, it was the FAA's intent to permit a type certificate holder holding the U.S. type certificate for a product it manufactures

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or manufactured to contract for maintenance and alterations of a component of that product with a noncertificated original component manufacturer (or licensee), provided such type certificate holder is also a U.S.-certificated repair station. This change would permit the original component manufacturer (or licensee) to perform maintenance on or alteration of a component of the original type certificated product it manufactures for the type certificate holder.

The type certificated product (i.e., aircraft, aircraft engine, propeller, or appliance) has been determined by the FAA to be of proper design, material, specification, construction, and performance for safe operations, and to have met minimum FAA standards, rules, and regulations. Permitting the type certificate holder, that is also a U.S.-certificated repair station, to maintain the component or to contract for its maintenance or alteration, will permit that foreign or domestic type certificate holder to support its product (including warranty work), regardless of where the component was manufactured. To use a noncertificated facility for maintenance, a type certificate holder must not only hold the type certificate for the product, including components thereof, but must also be a functioning U.S.-certificated repair station. Under all circumstances the type certificate holder's repair station must be under its control. Further, the noncertificated subcontractor must have produced the original component under the type certificate.

Before a noncertificated source (original component manufacturer or licensee) may be used by the type certificate holder to repair the component, the type certificate holder must show the FAA that the original component manufacturer or its licensee has all of the necessary data, facilities, materials, and qualified personnel to accomplish the work. In addition, the component would be returned to service by the type certificate holder in accordance with a quality control system for maintenance that (1) Recognizes the credit given to the quality control system that the manufacturer has in place for the type certificated product as well as the necessary differences between the manufacturing and maintenance processes; (2) is approved by the FAA; and (3) is included in the operations specifications and inspection procedures manual of the type certificate holder's repair station.

The type certificate holder, that is also a certificated repair station, is responsible for the airworthiness of the repaired component: (1) By ensuring that the maintenance quality control system established for the component was followed in accordance with the procedures in its repair station's inspection procedures manual; and (2) by ensuring that the maintenance or repair of the component was properly documented. This procedure for using noncertificated sources is different from that permitted under current rules (§ 145.47(b)), though under both § 145.47(b) and the new § 145.47(c) the repair station must have the system capability to determine the airworthiness of certain articles or processes. The difference between the two paragraphs is that the quality control system and procedures of the type certificate holder to control a newly manufactured component from the component manufacturer can be modified by the type certificate holder's repair station to a quality control system for maintenance. After a component is repaired by the component manufacturer, the component will go through the type certificate holder's repair station maintenance quality control system. The type certificate holder's repair station will inspect such a component in accordance with its inspection procedures manual to ensure that, before the component is placed in stock for use in an aircraft or part thereof, it is in a good state of preservation and is free from apparent defects or malfunctions.

Under the existing rules (§ 145.47(b)), a repair station, if authorized by the FAA, can only contract those functions asterisked in Appendix A to Part 145. The amendment to § 145.47(c) will permit the type certificate holder to contract for the repair of a component under its repair station certificate using the quality control system inspection as set forth in its inspection procedures manual. Under this amendment, any maintenance functions that are included in the inspection procedures manual of the type certificate holder's repair station may be accomplished under the quality control system approved for the repair station.

In proposing this concept, the FAA recognized the process established and approved for type certification and manufacture of new products, and established a parallel system to include maintenance requirements for a product and to provide an additional means for a repair station to contract out certain components to a noncertificated facility for maintenance. This process is intended to ensure that the repaired component, like the original manufactured component, is airworthy and meets all requirements for installation on the type certificated product. This process also recognizes that the original component manufacturer is a viable source for engineering data, technical expertise, and service information. In addition, the repair of the component would be accomplished under the auspices of a U.S.-certificated repair station (the type certificate holder), which has met the requirements under Part 145 for such a facility, and is inspected and approved by the FAA.

Twenty-seven commenters supporting the notice recommend that the FAA permit a non-type certificated original component manufacturer to carry out maintenance and repair on its products as a "noncertificated source" under very broad conditions. The commenters recommend that the noncertificated component manufacturer be permitted to approve a product's return to service without quality verification by a type certificate holder and have the authority for direct shipment of parts. Commenters also recommend that the United States accept direct shipment from the component manufacturer if the manufacturer is approved and authorized to maintain the product by a national (foreign) airworthiness authority.

These recommendations are beyond the intent and purpose of rulemaking as contained in the notice and will not be considered. However, with respect to the authority contained in the new § 145.47(c), when the FAA certificates a foreign manufacturer (that is a holder of a U.S. type certificate) as a foreign repair station, any relevant approvals given by foreign airworthiness authorities will continue to be considered. If the noncertificated component manufacturer desires to direct ship a repaired component to a user, bypassing the type certificate holder, this amendment provides for a component manufacturer to become a U.S.-certificated repair station with an appropriate rating and, thus, be accorded such privileges.

Other commenters contend that by adding a new paragraph to § 145.47 as proposed, a conflict would arise with the existing § 145.47(b) in that the proposal would limit the use of outside vendors to essentially the original equipment manufacturers and their subcontractors. The commenters also point out that the proposed new paragraph to be added to § 145.47 is in conflict with § 145.1(c), which specifies that regulations regarding maintenance performed by manufacturers are

covered under Part 145, Subpart D, and that §§ 145.11 through 145.79 do not apply to manufacturers. Accordingly, the commenters contend that any rules intended to apply to manufacturers should be addressed only in Subpart D, rather than in Subpart B, as proposed.

The FAA sees no conflict in § 145.47 between existing paragraph (b) and the paragraph proposed for inclusion in that section as new paragraph (c). Furthermore, a manufacturer with a limited rating under Part 145, Subpart D, cannot contract for repair of a component to a noncertificated facility and must perform its maintenance and preventive maintenance operations in accordance with Part 43. Presently, § 145.47(b) provides that a repair station, after obtaining approval from the FAA, may contract certain limited functions of repair to another facility without having, in house, the required equipment and materials for the function. Those job functions that can be so contracted to an outside agency are set forth in Appendix A to Part 145. In such an arrangement, the repair station must determine the airworthiness of the article involved before it is returned to service, unless the contractor is an appropriately rated repair station, in which case the part would be returned to service in accordance with the procedures as authorized in the repair station's inspection procedures manual. To determine the airworthiness of the article involved, the repair station must not only be appropriately rated to perform the contracted function, but must have the appropriate data, qualified personnel, and inspection capabilities to ensure the airworthiness of the article involved.

The new paragraph (§ 145.47(c)) would permit a type certificate holder that is a certificated repair station to subcontract any repair of a component of a type certificated product to the noncertificated component manufacturer. Such a type certificate holder would be responsible for the airworthiness of the article involved, as required in current § 145.47(b). However, as long as the component is returned to service in accordance with the FAA-approved quality control system of the type certificate holder's repair station, the airworthiness of the article involved is effectively ensured. This process and the scope of permitted maintenance are the basic differences between existing § 145.47(b) and new § 145.47(c).

The FAA also disagrees that the amendment to § 145.47 is in conflict with § 145.1(c). Section 145.1(c) provides that a manufacturer may obtain a repair station certificate with a limited rating issued under Subpart D of Part 145 to exercise the privileges of that rating as a "manufacturer's maintenance facility" (MMF) without having to meet the basic requirements for a repair station as set forth in Subpart B of Part 145. The amendment, however, requires the type certificate holder to obtain a rating as a repair station and to meet all of the requirements for a certificated repair station as set forth in Subpart B or C of Part 145.

A commenter also recommends that the proposal to add a new paragraph (c) to § 145.47 be withdrawn and that the FAA amend § 43.3(i) relating to persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations. The commenter recommends that the word "maintain" be added to that paragraph to allow a manufacturer holding a type certificate and its subcontractors to perform maintenance, in addition to rebuilding and alterations.

The FAA disagrees with this recommendation. Such an amendment would not establish a parallel maintenance quality control system—as would be accomplished by adding a new paragraph to § 145.47—but would permit a manufacturer's maintenance facility to perform maintenance on a component without showing maintenance capabilities required under Subpart B of Part 145. Further, as foreign manufacturers do not hold production approvals, this suggestion would exclude such foreign manufacturers.

Several commenters express the concern that, as proposed, § 145.47(c) would require a component manufacturer's noncertificated facility that repairs a component for a type certificate holder to send the repaired component part "through" the type certificate holder for quality verification. The commenters point out that such a physical transfer of the repaired component back to the type certificate holder's repair station would be pointless, cause delay, and increase expense. The commenters further maintain that only the manufacturers of the component have the specialized test equipment for a full specification check.

The FAA disagrees that it would be unnecessarily burdensome for components repaired by a noncertificated contractor, as defined in new § 145.47(c), to be routed physically through the type certificate holder's repair station facility. This inspection is essential if such a component manufacturer remains noncertificated. If the component manufacturer were certificated by the United States as a repair station, the requirement to route the component through the type certificate holder would not be necessary, or even appropriate assuming the component manufacturer is properly rated, and the component manufacturer could direct ship a repaired component. Important safety objectives can only be satisfied if the individual components are returned to service by a certificated repair station in accordance with the quality control system of the type certificate holder's repair station, as approved by the Administrator and set forth in the operations specifications and inspection procedures manual of the type certificate holder's repair station. The FAA, in adopting the concept as proposed in § 145.47 for a new paragraph (c), has clarified this intent in the wording of the final rule.

Other commenters referring to the proposed new paragraph, § 145.47(c)(1), express concern that there may be a potential ambiguity concerning whether or not the type certificate holder can use the privileges granted by this section if the product is no longer in production. They also suggest that § 145.47(c)(1) be changed to "the product" as opposed to "a product."

The FAA agrees with both of these suggestions and in § 145.47(c)(1), as adopted, has eliminated any question as to whether or not a certificate holder that still holds the type certificate for the product can use the privilege granted if the product is no longer in production.

Other commenters express concern that the new authority in § 145.47(c) for holders of repair station certificates, that are also holders of U.S. type certificates, might affect the current authority of all Subpart B and Subpart C repair stations to contract with noncertificated agencies as currently set forth in Appendix A to Part 145.

As stated above, it is the FAA's intent that the authority in new paragraph § 145.47(c) is in addition to the existing contracting authority in § 145.47(b), and § 145.47(b) authority is not affected by this amendment.

A commenter questions whether or not the proposed amendment to § 145.47 benefiting original equipment manufacturers is justified. In the commenter's opinion, the proposed change to § 145.47 would extend the ability to use noncertificated sources beyond warranty work revisions without an apparent safety justification. The commenter contends that the proposed amendment may be based on an FAA assumption that the manufacturing process and the repair process involve basically the same engineering concepts, whereas the manufacturing process and the repair process utilize different analyses.

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The FAA agrees that the processes of manufacturing a single product line and of repairing the product do not necessarily involve the same knowledge or perspective. A manufacturer's quality control system and a maintenance quality control system may not be the same, but similarities between these two processes do exist and can be recognized. The amendment takes advantage of the process already established and approved for type certification and manufacture of new products and establishes a parallel maintenance concept. This maintenance process for the repair station of the type certificate holder would explicitly be set forth in its repair station's operations specifications and inspection procedures manual as approved by the Administrator. A component of the type certificated product repaired by the component manufacturer would only be returned to service if the type certificate holder's repair station ensures that the component has been returned to service in accordance with the repair station's maintenance procedures and approved quality control system.

Concern is also expressed that the proposal to add a new paragraph (c) to § 145.47 would permit and encourage a "paper transaction" between the type certificate holder and an associated repair station to create a minimal corporate relationship with a type certificate holder. Under the proposal, the work done by the repair station of the manufacturer type certificate holder would be under the quality control system of the type certificate holder. This will be covered in each repair station's operations specifications and inspections procedures manual for each type certificate holder's repair station that undertakes to exercise the authority under new § 145.47(c).

Commenters contend that there is no assurance that the noncertificated licensee of a noncertificated component manufacturer would have any repair competence, as no requirements are set forth that the licensee establish any corporate relationship or have any repair insight into the component manufacturer's design concept.

The FAA's intent is to permit a licensee of a component manufacturer that actually manufactures the component to also do repair work, if that licensee is approved in the same manner as the original component manufacturer in accordance with the FAA-approved operations specifications and inspection procedures manual of the type certificate holder's repair station.

The proposal for amendment of § 145.47 as contained in the notice has been modified in accordance with the discussion above.

"Need" for Foreign Repair Stations

Those commenters opposing modification of the foreign repair station rules in Part 145, Subpart C, would retain the existing wording in § 145.71 that a foreign repair station certificate would be issued only if the Administrator finds that the station is necessary for maintaining or altering U.S.-registered aircraft outside of the United States. The notice proposed deletion of the restriction that such U.S. aircraft be "outside of the United States." Of those commenters supporting the Notice in general, the majority favored deleting this restriction. The commenters point out that the current regulation is a very restrictive approach to foreign maintenance and repairs and is based on factors increasingly out of touch with the international character of modern aviation. They emphasize that the current regulation, which was written for an aircraft fleet that was all U.S. manufactured and only occasionally operated overseas, is inappropriate in today's multinational aviation markets and industries.

Twenty-one commenters supporting the notice recommend that the required statement of need be eliminated from § 145.71 or, if retained, the word "necessary" be defined more precisely. These commenters suggest that the "need" clause would lend itself to an interpretation whereby the FAA, on grounds unrelated to safety, could determine which repair stations could be used by U.S.-registered aircraft owners. As pointed out in the notice, the FAA does not intend to implement the "need" clause in such an inappropriate manner.

In developing the proposals contained in the notice, the FAA desired to retain a requirement for need when certifying foreign repair stations. The FAA has stated that U.S. foreign repair station certification should not be used in a manner that has no relationship to the support of U.S.-registered aircraft or U.S. operators. Further, it is necessary to retain a provision which requires a showing of need to avoid situations that could develop where certification is requested where no reasonable need to support U.S.-registered aircraft could be expected to develop. This provision will ensure that foreign repair stations that would not support U.S.-registered aircraft would not burden U.S. resources for FAA certification or recertification. As to the recommendation to explain the word "necessary" in a more precise manner, the use of this word in existing § 145.71 has not led to the difficulties in administration of the regulation that some commenters suggest. The word "necessary" as retained in § 145.71 will not be used to deny the issuance of foreign repair station certificates to otherwise qualified applicants provided such stations will work on U.S.-registered aircraft.

Scope of Work of Foreign Repair Stations

Those commenters opposing modification of the foreign repair station rules in Part 145, Subpart C, would retain the existing wording in § 145.73 that a foreign repair station can work on U.S.-registered aircraft and on aircraft engines, propellers, appliances, and component parts for use on U.S.-registered aircraft only if such aircraft are used in operations conducted wholly or partly outside of the United States. The notice proposed deleting this geographical restriction. All commenters supporting the notice agree with this deletion. These commenters contend that the geographic limitation in the scope of work of authorized foreign repair stations in today's environment creates an unrealistic regulatory situation. For example, if a foreign repair station performed identical maintenance on the identical components of two identical aircraft of a U.S. air carrier, one aircraft of which operated outside of the United States and the other operated solely domestically, a literal interpretation of existing § 145.73 would result in a determination that the aircraft operating internationally was legally maintained while the aircraft operating domestically was not. The FAA recognized this anomaly in the notice by pointing out that if properly qualified and certificated by the FAA, a foreign repair station operating in accordance with FAA requirements and surveillance can provide proper and safe maintenance and alteration of U.S.-registered aircraft and their components. This capability does not depend on the aircraft's physical location at the time maintenance or alteration is required and accomplished. The amended rule deletes this geographical restriction.

Return of Warranted Parts to the Type Certificate Holder

RAA and several U.S. commuter air carriers commenting in support of the notice emphasize the necessity that such operators be given the flexibility to return warranted aircraft components or unusually troublesome components back to the manufacturer, that holds the type certificate, for maintenance. RAA indicates that the commuter industry in the United States currently operates approximately 780 foreign-built aircraft representing about 41 percent of the total estimated commuter aircraft in operation in 1987. Of the 18 most commonly flown types of passenger aircraft in regional airline service in 1987, 12 were foreign manufactured. Those foreign aircraft together constituted over 65 percent of the total seating capacity of the regional passenger industry in 1987.

Several commuter/regional airlines state that the proposed amendments in the notice would greatly facilitate maintenance support of their foreign-build aircraft by providing more flexibility through increased resources by permitting operators to reduce inventories of high-value replacement components. They also point out that certificated repair stations in the United States have long had the opportunity to acquire the tooling, equipment, and training to support foreign-manufactured aircraft system components and have largely failed to do so.

One operator states that it has been operating the German Dornier DO–228 aircraft for over 3 years, and during this time has been directly involved in an attempt to broaden the scope of domestic capabilities for the maintenance of foreign-built components on its aircraft. This commenter contends that due to the small Dornier fleet size in the United States, there has been resistence by domestic repair stations to purchase the necessary test equipment, special tools, repair parts, inventory, and documentation from the respective foreign manufacturer.

Commenters opposing the notice disagree with the views of the commuter/regional airline industry on this issue. These commenters question the role and place of commuter/regional airlines in the airline industry as a whole, and suggest that the views of these airlines be discounted. The commuter/regional airlines are those carriers that provide regularly scheduled passenger and/or cargo service with aircraft seating less than 60 passengers and cargo payload capacity of 18,000 pounds or less. These airlines operate pursuant to schedules published in widely used airline schedule guides. The commuter/regional airline industry has shown dramatic growth during the years since the Airline Deregulation Act of 1978 and has been recognized as representing a distinct class of air carriers. Today, these airlines are an integral part of the nation's air transporation system.

Because the Airline Deregulation Act of 1978 (and subsequent Civil Aeronautics Board action) permitted communter/regional airlines to operate aircraft with up to 60 seats and a payload capacity of up to 18,000 pounds, these carriers were able to operate more efficiently. This development, which allowed carriers to match the most economical airplanes to their market requirements, spurred a worldwide revolution in new aircraft development. Today, a series of new generation light transport aircraft, most of them foreign manufactured, are being put into service by the commuter/regional airlines. According to RAA, in 1986 the 179 commuter/regional airlines carried 28.4 million passengers and the average number of passengers per airline enplaned in 1986 was 158,400. RAA states that regional airline industry revenue passenger miles grew to 4.47 million in 1986.

The FAA recognizes this need as expressed by the regional airline industry and others for operators to be able to return warranted parts to a type certificate holder for maintenance, not only by the adoption of the rules relating to Part 145 regarding foreign repair stations, but by the amendment to § 135.443 as well.

Impact on Air Safety

Two thousand and seventeen commenters express concern with an anticipated negative impact of the proposal on air safety. Several state that they had firsthand experience with poor quality work performed overseas. Some specifics relating to safety include the lack of quality control in foreign shops, work permitted to be done by unqualified people, and the lack of tools and facilities necessary to maintain aircraft effectively. Many commenters express an opinion that the standards of foreign repair stations are considerably and routinely lower than the standards of U.S. domestic repair stations. The overriding concern expressed by such commenters is that work is being done in foreign repair stations by non-U.S.-licensed mechanics. Many commenters are concerned about work being done and approved by noncertificated supervisory and inspection personnel as well. Because of these points, the commenters conclude that a rash of "bogus parts" would appear, and unauthorized replacement parts for use on U.S.-registered aircraft would result from the change under the proposal.

These commenters also contend that air safety would be compromised, because translation difficulties are currently being encountered when maintenance records are obtained on aircraft and components repaired and operated outside of the United States. In particular, the commenters point to difficulty in obtaining adequate translations of repair records since "some languages do not have technical terms which can be translated into English." These commenters conclude that changing the foreign repair station regulations without a uniform language requirement for maintenance records would increase the likelihood of inadequate records and compromise the FAA's ability to regulate and enforce its own requirements. They also state that the Notice should be withdrawn, because the proposals in the Notice do not include assurances that the quality of aircraft maintenance performed by foreign repair stations is equal to that performed by domestic repair stations.

No substantive information or examples were submitted by these commenters in support of their allegations that if the proposed changes were adopted there would be a negative impact on air safety.

The FAA has stated that if the proposals in the Notice are adopted, an equivalent level of air safety will be retained. The FAA has concluded that these changes will not derogate safety. Foreign repair stations, which have been found properly qualified and certificated by the FAA and have been operating in accordance with FAA requirements and surveillance, have been providing safe and proper maintenance and alteration on U.S.-registered aircraft and their components for almost 40 years. No substantial evidence to the contrary has been presented by any commenter. The FAA intends that this safe maintenance will continue and that safety will not be adversely affected by the adoption of this rule. Each foreign repair station must prove to the FAA that it fully complies with all of the requirements to be an authorized U.S.-certificated repair station before the FAA will issue it a certificate to work on U.S.-registered aircraft. These requirements are similar to U.S. domestic repair stations except that foreign repair stations do not require U.S.-certificated airmen in inspection and supervisory positions. However, the FAA does review the qualifications of these airmen, even if they are certificated by the country in which the station is located, to ensure that they are able to perform, supervise, and inspect the work for which the repair station is rated. The foreign repair station or rating must be renewed every 12 or 24 months in accordance with § 145.17. If at any time the repair station

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fails to comply with the FAA requirements, its certificate can be suspended and/or revoked as has been the case in the past. The FAA has the power of emergency suspension if the situation warrants.

When the Administrator issues a foreign repair station certificate, a finding is made that the holder is competent to perform safely the repairs for which it is rated. Prior to the issuance of such a certificate, a representative of the Administrator reviews the detailed application which is required to be submitted, analyzes the station's proposed inspection procedures and quality control system, examines the physical facilities of the repair station, scrutinizes the organization and the personnel who are to perform these functions, and assesses the outside sources that the station intends to utilize. Only after this safety review does FAA consider issuance of a foreign repair station certificate.

Thus, the certification process for a foreign repair station is substantially the same as the process the FAA uses for domestic repair facilities and involves the same standards. If a foreign repair station has been found to be competent to repair a U.S.-registered aircraft operating wholly or partly outside of the United States, as permitted under the current rules, then it should be equally competent to make those same repairs for aircraft operating within the United States. When found properly qualified and certificated by the FAA, a foreign repair station, in accordance with FAA requirements and surveillance, can provide proper and safe maintenance and alteration on U.S.—registered aircraft and their components. This amendment does not change that fact.

Under current regulations for domestic repair stations, only an individual in a supervisory or inspection category need be certificated as an airman; consequently, a person performing routine maintenance need not be an FAA-certificated airman. However, as to supervisory and inspection personnel, both the Civil Aeronautics Act of 1938 and its successor, the Federal Aviation Act of 1958, as amended, specifically provide that individuals employed outside the United States in charge of the inspection, maintenance, overhaul, or repair of aircraft, aircraft engines, propellers, or appliances may, to the extent that the Administrator may provide, be excepted from the requirement to hold an appropriate U.S. airman certificate. This statutory mandate was recognized in the adoption of the foreign repair station regulations in 1949. This exception, authorized by Congress, is being carried out by the FAA.

As to the contention that inadequate maintenance records are obtained from foreign repair stations because some languages do not have technical terms which can be translated into English, the *Lexicon of Terms Used in Connection with International Civil Aviation* of the International Civil Aviation Organization (ICAO) provides for uniform use of such technical terms. Also, the ICAO Standards and Recommended Practices require adequate recordkeeping, regardless of the language.

In a letter to the FAA, the National Safety Council (NSC) recommends that the FAA not amend §§ 145.71 and 145.73. NSC is of the view that foreign repair stations should not provide modification, major repair, or overhaul work without inspection by U.S.-licensed personnel, unless the aircraft are operated wholly outside of the United States. NSC also refers to a contact with the U.S. Air Force Inspection and Safety Center (AFISC) who is familiar with foreign standards. According to the AFISC contact (as related by the NSC), no AFISC personnel would agree that foreign regulatory standards are equivalent to U.S. standards, and "* * * if foreign nationals are doing our maintenance work, we could be in trouble." AFISC personnel, as well as NSC, are apparently of the opinion that the proposals as contained in the Notice are solely for monetary purposes and that the FAA did not consider the actual safety impact. On the other hand, the FAA is advised that the U.S. Air Force has relied heavily on foreign sources to repair its deployed assets for many years. Such reliance involving airframes, engines, and exchangeables increases Air Force readiness and sustainability by retaining these assets close to the operating locations where they would be used during conflict. Moreover, the Air Force has advised that "* * * we have found the reliability for foreign work to be comparable to U.S. work."

FAA Surveillance

Six hundred and fifty-eight commenters contend that if the proposals in the notice are adopted, the FAA would be unable to monitor foreign repair stations effectively, due to limited inspector personnel, and compliance monitoring and enforcement would be impossible. Among such commenters are the Transport Workers Union (TWU) and the Aeronautical Repair Station Association (ARSA). According to TWU, the ratio of FAA inspectors to air carrier oprators has signficantly decreased since deregulation. ARSA contends that there is a serious inadequacy in the FAA's inspection and enforcement system which has a direct bearing on these proposals. ARSA further states that its members have reported that the average interval between FAA physical plant inspections and document reviews ranges from 6 to over 36 months with the typical interval being 18 months. Many commenters express belief that the FAA is already stretched beyond its limits without incurring additional responsibilities.

The cost to the FAA for additional inspectors is addressed by many commenters. Although Part 187 permits a charge for certification, these commenters contend that the costs of inspector hiring, training, etc., cannot be recovered.

Two aeronautical authorities, from the United Kingdom and the Federal Republic of Germany, state that they do not believe there would be any increase in applications for FAA foreign repair station certificates if the proposals in the notice are adopted because, during the past 18 months of debate on the foreign repair station issue, there has been little or no increase in the number of organizations (repair stations that are not U.S.-certificated) expressing an interest to either government for certification.

A large domestic repair station, generally supporting the notice, contends that it is reasonable to project a reduction in the approximately 200 existing foreign repair station certificates by the end of 1988. This commenter bases this contention on several factors: (1) The FAA appears to have implemented a general policy of reissuing Part 145 certificates for 12 months rather than 24 months so as to reduce the number of existing certificates; (2) it is fair to assume that the FAA will review foreign repair station certificate applications more rigorously in the future; (3) there will be no surge in the number of foreign repair station certificates granted to organizations located in less-developed countries with low labor costs since the FAA will exercise more scrutiny of a foreign repair station certificate application from a less-developed country; (4) if there are any cost advantages in terms of lower wages, those labor advantages are being offset by the change in the relative value of the foreign country's currency with the dollar; and (5) an air carrier will carefully assess a number of factors prior to committing to a foreign repair station, including the continued availability of that facility as a source of maintenance.

This commenter further contends that the certification and surveillance system conducted by the FAA is critical to the integrity of foreign and domestic repair stations, as well as all entities regulated by the FAA. If there is any shortfall between the cost incurred by the FAA in surveillance and certification of foreign repair stations and the charges assessed for those services, immediate amendment of Part 187 to recover those costs should be initiated.

Several U.S. air carriers state that they do not believe any increase in the number of foreign repair stations servicing airline aircraft would approach the magnitude suggested by the FAA. The 50 to 100 percent increase mentioned in the notice was intended only as an example. Those numbers were used to demonstrate that even for a very large percentage increase, the effects would be minimal. These commenters state that those foreign repair agencies with a capability and capacity to service U.S.-registered airline aircraft have already become certificated within the past 39 years, and that resources available to the FAA from the fees assessed foreign repair station applicants are sufficient to fund the necessary personnel to provide the required inspections.

In addition, these air carriers note that foreign repair stations are not only subject to the same FAA surveillance imposed on domestic repair stations, but, in addition, all work performed for a U.S. airline by any outside repair agency, either domestic or foreign, must be accomplished in accordance with the air carrier's FAA-approved maintenance operations specifications. Furthermore, the records of all work performed by such repair agencies must be made and maintained in accordance with the current Federal Aviation Regulations. Thus, these air carriers contend, not only will the FAA perform its surveillance responsibilities, but the U.S. airlines also will continue to exercise surveillance over any work performed for them by foreign repair stations.

The FAA is dedicated to meeting its responsibilities under the Federal Aviation Act of 1958, as amended, and will continue to do so. It is anticipated that by modifying these restrictions related to a determination of need and to the scope of work to be conducted by foreign repair stations, a number of noncertificated foreign facilities can apply for FAA certification. This could have some impact on FAA certification and surveillance resources. It is difficult to anticipate the increase in foreign repair stations that might result from this amendment; however, based upon the domestic experience, the resourpe impact should be minimal. The FAA will respond to any increased workload.

There are approximately 900 FAA inspectors now responsible for domestic repair stations. This translates into approximately 4½ repair stations per inspector. There are now approximately 200 foreign repair stations. If that number increased to 300 or 400, and the number of repair stations per inspector were the same as the domestic case, it would require an increase of 22 to 44 inspectors. Thus, even for an increase of 50 to 100 percent in the number of foreign repair stations, the increase in the number of required inspectors would be less than 5 percent of the current inspector work force. The FAA will continue the surveillance of the existing certificated repair stations, domestic or foreign, and the influx of any new ones. Having experienced the problems associated with deregulation and an expanding industry with a declining FAA inspection work force, the FAA has grown highly sensitive to the need for a safety surveillance work force equal to the work demands. In addition, the certification and surveillance responsibilities of the FAA for foreign repair stations will make full use of information provided by local airworthiness authorities when appropriate, thus enhancing the capabilities of the FAA work force. In any event, there will be no deregulation in safety because of the rule as adopted. Regarding the costs incurred by the FAA in the certification and surveilllance of foreign repair stations and the minimal fees currently assessed for those services, future rulemaking will be conducted to review the adequacy of the fees prescribed in Part 187.

FAA Enforcement

Several commenters point out that if the proposals in the notice are adopted, the FAA could not enforce its regulations, because foreign businesses or individuals could not be prosecuted by the U.S. Government. Although the commenters state that the United States cannot levy civil penalties against foreign violators, they do not provide any explanation to support this conclusion.

Under this proposal, the FAA would retain enforcement oversight over U.S.-certificated foreign repair stations through certificate action and civil penalty action. Moreover, Pub. L. 100–223 amended section 901 of the Federal Aviation Act of 1958, as amended, to provide for a two-year civil penalty demonstration program for violations of the Act or any rule or regulation issued thereunder which occur after December 30, 1987. Under the demonstration program, the Administrator may assess ("order") civil penalties not to exceed $50,000, after notice and the opportunity for hearing. This will allow FAA to adjudicate those civil penalty actions without referring them to a U.S. attorney for adjudication in a U.S. District Court. In the case of civil penalties in excess of $50,000, if the parties cannot reach a compromise settlement, the actions will continue to be adjudicated by referring them directly to a U.S. attorney for adjudication in a U.S. District Court.

In those instances where a respondent foreign repair station or foreign mechanic fails to pay a civil penalty (not in excess of $50,000) assessed under the demonstration program or fails to offer and pay a compromise civil penalty (in excess of $50,000) acceptable to the Administrator in full settlement of the alleged violations, the FAA may have difficulty in obtaining in personam jurisdiction which is necessary to pursue a collection action in the appropriate U.S. District Court. However, the fact that many foreign repair stations have designated agents for purposes of service in the United States obviates the problem. In any event, where civil penalty actions are unsuccessful, the FAA can take certificate action and this enforcement mechanism will be more than sufficient to ensure that safety is maintained. The FAA has not had substantial difficulty in enforcing violations of the FAR committed by foreign repair stations or a foreign mechanic in the past and does not foresee such difficulties in the future.

Loss of Jobs

Among those opposing the proposal, the majority express concern over loss of jobs in the United States and the general negative impact on the U.S. economy that would result if the proposals are adopted. Twenty-four hundred and twenty-six commenters consider the loss of jobs as the major factor in their opposition to the proposal. The magnitude of concern varies from fear for the individual's job to "several million" jobs lost nationwide, including jobs in related industries. Many commenters express concern with the potential impact on the national economy and on specific cities such as Tulsa, Oklahoma, and Kansas City, Missouri. The Professional Aviation Maintenance Association (PAMA) expresses concern that sufficient consideration was not given by the FAA to the loss of jobs. PAMA questions the statement in the Notice that the need for maintenance service

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will increase in the United States; PAMA contends that maintenance jobs will decrease because production of general aviation aircraft has decreased by over 90 percent in the last few years. Some commenters state that the aviation industry is going the way of the steel, electronics, and textile industries: overseas. No data or analyses were included in any comment to support these claims.

In contrast to the contentions of those expressing concern over loss of jobs and negative effects on the economy, the following information has been provided to the FAA. The *U.S. Industrial Outlook 1988—Aerospace*, U.S. Department of Commerce, January 1988 states:

" " " The increasing trend toward international collaboration is fostering an escalation in trade of aircraft engines and aircraft parts, as the world's expanding fleet of civil and military aircraft demands more equipment for maintenance and repair " " " International collaboration in the engine sector is providing a catalyst for trade and is creating an industry which transcends national boundaries " " " The inflation-adjusted value of U.S. aerospace shipments is projected to climb about 3.3 percent in 1988, marking the sixth consecutive year of industry growth. Meanwhile, U.S. aerospace exports and imports will reach record highs of $22.1-billion and $8.8-billion, respectively. The rising trend of industrial collaboration beween U.S. and foreign manufacturers in the aircraft sector will be the chief reason for this increase in the flow of trade. Total industry employment is forecast to increase almost 3 percent in 1988, to 836,000.

A study by Gellman Research Associates, Inc., Jenkintown, Pennsylvania, which was jointly sponsored by the Air Transport Association of America (ATA) and the International Air Transport Association (IATA), and included in the ATA and IATA comments, also addresses this issue and refutes the allegation that adoption of the proposal will result in the wholesale loss of jobs in the United States. The study contends that U.S. domestic repair stations currently receive more business from foreign customers than U.S.-certificated foreign repair stations receive from U.S. customers, and that the real threat to U.S. jobs would be the establishment of trade barriers that could result in retaliation affecting both domestic repair stations and other aerospace activities. Also, in this regard, one major U.S. manufacturer supporting the notice comments that its business as a U.S. manufacturer of a major product depends in substantial part on foeign-source business, not only for new engine buys but for follow-up repair and overhaul product support. This commenter points out that such reliance confirms the international and interdependent nature of today's aviation marketplace. If this foreign source business is lost, which may occur if the proposals in the notice are not adopted, this manufacturer is of the opinion that the inevitable result would be not only a probable loss of U.S. jobs at its overhaul and repair facilities, but also a probable job loss on the manufacturing side as well.

Impact on National Economy and Trade Balance

Several commenters express concern that foreign repair stations would have an unfair economic advantage over domestic repair stations. ARSA reports that of the ARSA members responding to its survey, 80 percent stated that they thought they would be adversely affected by having to compete with foreign-owned and subsidized firms. The FAA understands that this association represents approximately 90 of the 4,400 repair stations. The number of repair stations responding to the ARSA survey was not stated in the ARSA comments. ALPA states that the Notice requires foreign repair stations to meet less stringent standards and will therefore put domestic repair stations at an economic disadvantage. Some other commenters state that this would be unfair competition, because some foreign countries subsidize the work of their repair stations. They state that there is, therefore, a potential for a negative trade balance. Many commenters relate this change to other industries that have lost jobs to foreign sources, including the steel, automobile, and electronics industries. One commenter states that the domestic air transport industry employs over 100,000 skilled aircraft mechanics, and even the loss of only 10 percent of repair work in the United States means a loss of $300 million in direct wages, causing up to $600 million in net loss of U.S. income. The basis for these estimates is not provided.

Several commenters referred to the FAA view expressed in the notice that the proposed rule changes would be consistent with the terms of several trade agreements to which the United States is a signatory. These commenters, in supporting the proposal, concur and stress that the proposal is in accord with section 1102(a) of the Federal Aviation Act of 1958, as amended, which requires the FAA to exercise and perform its powers and duties consistently with any obligation assumed by the United States in any agreement that may be enforced between the United States and any foreign country or countries. Under section 103 and Title VI of the Federal Aviation Act of 1958, as amended, Congress mandated that the FAA would perform its functions on the basis of aviation safety considerations. Congress did not delegate to FAA its power to regulate commerce with foreign nations, but rather directed the FAA to perform its duties and functions consistent with international treaties and agreements.

British Airways, as well as several other European commenters, refers to records maintained by the Association of European Airlines (AEA) on its members. It was reported that during 1986, AEA members performed approximately $34.3 dollar's worth of repair work on U.S.-registered aircraft operated by U.S.-based operators. The $34.3-million figure and all other data contained in these records were based on information provided by 11 AEA foreign air carrier members who accounted for over 80 percent of the repair facility capacity of AEA members. However, in that same year, it is stated that those same AEA members spent $80.9 million, more than double the amount of money spent by the U.S. operators, for repair services performed for them by U.S. repair stations. In other words, U.S. repair stations enjoyed better than a two-to-one trade surplus in aircraft repair work. Furthermore, it is pointed out, that for the past 5 years, AEA figures indicate an increasing trend in favor of U.S. repair stations.

One large U.S.-certificated foreign repair station provided data showing that its gross revenue from its aircraft engine maintenance work worldwide was approximately $77 million in 1986 and $89 million in 1987. However, in 1986 this foreign repair station paid approximately $32 million, or 42 percent, of its total maintenance revenue to various U.S. businesses retained to perform maintenance services as subcontractors and to provide tools; equipment; spare parts such as turbine blades, vanes, and discs; components; and surplus supplies. The flow of such funds to the United States increased in 1987 to approximately $39 million. This foreign repair station expects this trend to continue in the future.

One foreign air carrier reports that it purchased $57 million in U.S. maintenance services in 1986 and performed $47 million in maintenance services for U.S. customers. Another large foreign air carrier reports that it spent $11.2 million on contract repair of its aircraft in the United States in 1986 and received just over $5 million from services performed for U.S. air carriers.

British Airways also points out that it is a matter of public record that since 1986 the value of the U.S. dollar has significantly declined relative to the value of virtually all of the national currencies of the AEA member airlines. As a result, British Airways believes that, compared to 1986, it would now be significantly more expensive for U.S. carriers to have repair work performed by repair stations operated by AEA members and significantly less expensive for AEA member carriers to utilize the services of U.S. domestic repair stations.

In addition to the comments of ARSA, there were 10 domestic repair stations that commented on the notice. Three of these repair stations support the proposals in the notice. One such commenter states that, because the FAA is authorized to promote the development of civil aeronautics under the Federal Aviation Act, the proposals in the Notice should be promulgated as a final rule.

One commenter, although a member of PAMA, disagrees with PAMA's stated opposition that the proposals would have a negative economic and trade balance impact. The commenter states that protectionism is a delicate art, and protectionism should be practiced by the consumer, not the government, to minimize retaliation. The commenter points out that the balance of payments is of concern to all U.S. citizens, but so is the ability to obtain aircraft maintenance in a timely manner by a qualified repair station in accordance with the Federal Aviation Regulations.

Other commenters supporting the proposals as contained in the Notice provide information specifically on the effect of the proposals on the national economy and the balance of trade, and submit supporting data. The ATA surveyed 14 of the largest ATA member airlines concerning work performed by foreign repair stations for those U.S. airlines, as well as the work performed by those airlines for foreign operators in 1987. Responses from these airlines indicate that approximately 104 million dollars' worth of work was performed by the U.S. air carriers for foreign operators in 1987. In contrast, approximately 89 million dollars' worth of work was performed for these airlines by foreign repair stations during the same period. Moreover, of this $89 million, approximately $11 million was not performed under the authority of the foreign repair station certificate, but was performed under the airlines' authority to contract maintenance under § 121.363(b) as well as under §§ 121.371(a) and 121.378(a) exemption authority. ATA also points out that U.S. domestic repair stations enjoy substantial advantages over foreign repair facilities in competing for repair work from U.S. air carriers in that they are located much closer to the center of the carrier's operations. This is particularly the case when the repair station is owned and operated by the U.S. carrier concerned.

ATA also surveyed 21 large U.S. organizations that work on transport airplanes and components. All of these organizations reported to ATA that they perform work for foreign operators who are operating in the United States. Ten of these organizations reported that 30 percent or more of their work is accomplished for foreign operators. Similarly, the results of a recent survey by IATA of its member airlines show an expenditure of approximately $184 million in 1987 by 20 foreign airlines for work performed by U.S. repair stations. Charts submitted by ATA and IATA set forth the use of maintenance by foreign operators in the United States and the resultant creation of jobs in this country.

To determine the economic impact of the proposed rulemaking on the domestic airlines, repair stations, aircraft manufacturers, and ultimately U.S. consumers, ATA and IATA jointly commissioned an economic analysis by Gellman Research Associates, Inc. As stated above, a copy of the Gellman analysis is enclosed with both the ATA and IATA comments. ATA is of the opinion that the Gellman analysis demonstrates that (1) The United States would not benefit by restricting international trade in aircraft maintenance; (2) the aircraft maintenance business does not contain the elements (such as economies of scale) required to provide economic benefits to a nation by restricting trade; and (3) even if an economic benefit from restricting trade in aircraft maintenance did accrue to repair stations, such restrictions would result in higher costs to aircraft operators, such as airlines, which could translate into higher rates and fares. The Gellman report concludes that the ultimate impact would be reduced demand for air transportation by consumers and shippers, accompanied by a reduced earnings and employment for airlines.

Foreign commenters also submitted information to indicate that, in their opinion, the proposal in the notice would not have a negative effect on the U.S. national economy or on the U.S. balance of trade. As referred to above, data taken from the records of the Association of European Airlines indicate that U.S. domestic repair stations enjoyed better than a two-to-one trade surplus in aircraft repair work. In the opinion of British Airways, the AEA figures indicate an increasing trend in favor of U.S. repair stations.

In promulgating the proposals contained in the notice, the FAA expressed the view that the demand for maintenance services would continue to grow in the United States, as well as at foreign locations, and that the effects of the proposals in the Notice on the increase in foreign maintenance and on the existing work performed in the United States must be considered in the context of expected overall growth in the industry. In addition, the FAA stated that, in light of these views, the proposals would not adversely affect either the national economy or the U.S. trade balance. The FAA encouraged commenters to respond and submit supporting economic and trade data for any beneficial or adverse impacts that would be anticipated to occur should the proposed rules be adopted. Though the views expressed by the FAA were generally challenged by those opposing the proposals as a whole, no supportive economic or trade data were submitted by these commenters to indicate that any adverse impact would occur should the proposed rules be adopted. In contrast, as described above, considerable information was submitted that supports the initial FAA views.

The U.S. Department of Commerce, as indicated in its publication, the *U.S. Industrial Outlook For 1988—Aerospace*, expresses the opinion that the rising trend of industrial collaboration between U.S. and foreign manufacturers in the aviation sector will be the chief reason that the increase in the flow of trade may reach record highs in 1988 of $22 billion for exports and $8.8 billion for imports. The FAA reiterates its position that the proposals as contained in the notice would not appear to have any adverse impact on the national economy or trade balance.

Impact of War and Terrorism/Sabotage

Over 60 commenters opposing the notice express the view that, with more U.S. jobs lost to foreign facilities by enactment of the proposals, there would be fewer qualified mechanics and maintenance facilities available to the United States in the event of war. They also express concern that U.S. aircraft would be more susceptible to international terrorism or sabotage activity. No supporting data were submitted by the commenters espousing this issue.

As stated above, the FAA has been advised that the U.S. Air Force (USAF) has relied heavily on foreign sources to repair its aircraft for many years so that USAF readiness and sustainability can

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be increased by retaining its aircraft close to operating locations where the aircraft would be used during conflict.

In the nearly 40 years since U.S.-registered aircraft have been utilizing foreign repair stations, the threat of war or terrorism/sabotage has not been a problem; there is no reason to believe the amendments adopted in this rule would change that.

Drugs

Several commenters express concern over the use of illegal substances by personnel overseas. The commenters state that drug use is checked in the United States by the growing practice of testing for illegal substances, which may not be the case at foreign repair stations. Testing for drug use in the aviation industry is a matter of growing importance. The FAA has initiated other regulatory actions in this area. Therefore, the commenters' concerns are outside the scope of this rulemaking.

Exemption Process

Over 15 commenters opposing NPRM No. 87–12 point out that the proposed rule is not necessary, because exemptions currently permit certain work to be performed overseas by foreign repair stations.

The FAA has handled over 100 exemption actions from petitions filed by U.S. air carriers for relief from the operating Parts of the regulations (Parts 121 and 135) to permit these carriers to use foreign repair facilities that otherwise would not be available under current regulations. Exemptions were granted to air carriers who operate foreign-manufactured aircraft and/or foreign-manufactured components installed on U.S.-registered aircraft, and have limited access to qualified repair and overhaul facilities in the United States. As an example, one U.S. air carrier commenting on the Notice points out that it uses a foreign-manufactured air compressor, and there is no U.S. domestic repair station authorized or equipped to overhaul and repair such a unit. The FAA has found that allowing such carriers to utilize experienced type certificate holders and U.S.-certificated foreign repair facilities with trained personnel, who are qualified to perform work on original foreign-manufactured component parts, provides a level of safety equal to that provided by the rules from which the exemptions have been sought. While the FAA has granted exemptions to U.S. air carriers in these cases, that mechanism does not provide a solution to all of the problems brought about by the increasingly international character of U.S. air carrier operations. As stated by one U.S. air carrier, the exemption process not only increases the workload of an already heavily burdened FAA staff, it poses serious problems for carriers requiring prompt maintenance. The unavoidable delay caused by the need to prepare, file, and obtain an exemption can be a serious problem for a carrier that faces unexpected maintenance problems. Furthermore, the exemption process is not only time consuming and burdensome for the petitioner, but is intended to cover only unique problems of a person, rather than classes of problems.

Bogus Parts

Over 75 commenters oppose the proposal contained in the Notice contending that there would be increased use of unauthorized or "bogus" parts and components on U.S.-registered aircraft if the proposals are adopted. The International Association of Machinists (IAM) refers to the large amount of foreign parts not maintained according to FAA specifications that were found during the National Air Transportation Inspections (NATI) and the investigation of the crash of an Arrow Air DC–8. Other than IAM's reference, no supporting documentation was submitted on this issue.

The problems encountered during the NATI program are complex, involving repair station authority and surveillance issues. Some of the problems associated with repair station authority are addressed by this rulemaking in that what are currently considered to be "unauthorized" parts are so, simply because of the existing restrictive scope of work that can be accomplished by foreign repair stations. The problems associated with surveillance have been addressed by the FAA and will continue to be closely monitored.

Dissolution of U.S. Air Carrier Maintenance Operations

Over 45 commenters that oppose NPRM No. 87–12 express concern that airline management, in supporting amendment of Part 145 in regard to foreign repair stations, is looking only at maintenance costs, not quality, and that airline management would be quick to move all of their airline overhaul facilities out of the country. These commenters contend that if the proposals are adopted U.S. air carriers would completely dissolve portions of their maintenance operations and send all component and aircraft work overseas. No substantive data were presented to support the above contention.

The FAA place full maintenance responsibility on the operator. Airline comments supporting the proposal point out that U.S. carriers have, and will continue to have, the overwhelming portion of all maintenance work performed in the United States. This is borne out by U.S. airline testimony before Congress on the use of foreign repair stations by U.S.airlines (*Hearing Before the Aviation Subcommittee of the House Committee on Public Works and Transportation*, 100th Congress, First Session, July 28, 1987, pages 59, 92, and 362). ATA's comments supporting this notice point out that there is more to consider in the cost of maintenance than the cost of the labor, such as overhead, depreciation of sophisticated equipment, inventory costs, shop capacity, delays in shipment to aircraft or components to foreign shops, and the availability of skilled labor to perform the maintenance. ATA takes the position that the United States is well in the lead in these areas.

RAA, in supporting the proposals in the notice, states that U.S. regional airlines do not, as a rule, operate revenue flights outside of the United States. Thus, regional airlines do not rely heavily on foreign repair stations to do work that could be done in this country. On the other hand, RAA points out that regional airlines are impacted by FAA rules that prevent such air carriers from sending aircraft and components to the original manufacturer for repair or overhaul to ensure that the manufacturer remains accountable for the quality of the product.

Evidence and arguments submitted by the commenters forwarding information support the conclusion that U.S. airlines prefer to maintain their aircraft at domestic locations.

The FAA does not concur with the contention that, if the proposals are adopted, there will be an exodus of U.S. air carrier maintenance operations overseas.

Foreign Retaliation

Several commenters supporting the notice point out that failure of the United States to adopt the proposed amendments may be viewed by foreign governments as an overly protectionist act by the U.S. Government and, under these circumstances, it would be reasonable to assume that if the proposed amendments are not adopted, there would be intense pressures on foreign governments to impose reciprocal restrictions on the use of U.S. repair stations by their national flag carriers. Furthermore, the commenters state that the demand for reciprocal restrictions could easily expand to include other aviation products and services, such as a product manufactured by both domestic and foreign entities.

Aeronautical authorities of the British and German governments (CAA and LBA) remind the FAA in their comments that their governments permit U.S. domestic repair stations unrestricted access to their aviation industry, subject only to the need for current release documentation and records. Any significant difference between the intent of the final rule and the intent of the notice would be assumed by these governments to be caused by concern for safety standards. They, in turn, would be required to review their own acceptance standards from any foreign source, including U.S. domestic repair stations. The aeronautical authority of the French government (DGAC) states that they are planning to review their regulations related to DGAC certification of foreign repair stations (e.g., U.S. domestic repair stations) under the same technical requirements as French repair stations except in cases where, due to maintenance arrangements or bilateral agreements between authorities, it will be reciprocally recognized that the approvals given by one authority are considered valid by the other.

Other supporters of the proposals also point out that no major foreign government currently imposes any regulatory restrictions on the use of FAA-certificated U.S. repair facilities by its own airlines. These commenters refer repeatedly to testimony at the Congressional hearing on the use of foreign repair stations by U.S. airlines in July 1987 (Hearing before the Aviation Subcommittee of the House Committee on Public Works and Transportation). Mr. Crawford F. Brubaker, the Deputy Assistant Secretary of Commerce for the United States, testified at this hearing that many foreign governments had informed him that retaining existing geographic restrictions on foreign repair stations is inconsistent with the Agreement on Trade in Civil Aircraft which was negotiated pursuant to the General Agreement on Tariffs and Trade (GATT). In his testimony, Mr. Brubaker stated (page 8):

> However, if, in the view of our foreign trading partners this issue is not resolved in a prompt and fair manner, there is a possibility that a dispute action [GATT] might be filed by one or more signatories. Should any trading partner take counteraction, it could be detrimental to both our airlines and to our aircraft industry.

At this same hearing, Pratt & Whitney testimony (page 103) and Boeing Co. testimony (page 101) were to the effect that if foreign governments were to adopt regulations that narrowed their current foreign repair restrictions, the U.S. aviation maintenance industry would suffer a substantial loss of business. The Aerospace Industries Association of America declared that (pages 98 and 99):

> Any regulation that would restrict the free flow of trade in the international airline market would ultimately have a negative impact on the U.S. aerospace industry and the Nation's overall trade balance. Last year, the industry employed 1.3 million people. Loss of competitiveness in the world market could lead to a catastrophic loss of American jobs in this vital manufacturing sector.
>
> • • • Further, the imposition of trade restrictions is clearly not within FAA's purview and should be left to international negotiation. The use of FAA's regulations for protectionism will give rise to reciprocal actions from foreign airworthiness agencies and will undermine the FAA's worldwide credibility in safety.

Commenters raising this issue conclude the foreign retaliation could well result in reduced business by domestic repair stations. These commenters also contend that domestic airframe, engine, electronics, and equipment manufacturers could be targeted for retaliatory measures resulting in higher costs to their businesses, reduced demand for their products, and ultimately reduced earnings and employment.

Paperwork Reduction Act

Information collection requirements in the proposed amendments to § 135.443 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0039.

Regulatory Evaluation

In promulgating the proposals contained in the notice, the FAA expressed the view that the demand for maintenance services will continue to grow in the United States as well as at foreign locations. The effects of the proposals in the notice on the increase in foreign maintenance and on the existing work performed in the United States must be considered in the context of expected overall growth in the industry. In addition, the FAA stated that the proposals would not adversely affect either the national economy or the U.S. trade balance. The FAA further concluded that there would not be a large shift of jobs from the United States to foreign countries.

In light of the above views, the FAA encouraged commenters to respond and submit supporting factual economic and trade data for any anticipated benefical or adverse impacts should the proposed rules be adopted. The FAA also solicited recommendations for better methods to achieve the objectives of the rules and rule changes proposed in the Notice. Though the views by the FAA were strongly challenged by those opposing the proposals as a whole, no supportive factual economic or trade information was submitted by these commenters to indicate how an adverse impact would occur to the national economy or trade balance should the proposed rules be adopted; nor were any recommendations submitted by these commenters for achieving the objectives of the rules. These commenters desire to retain the status quo and maintain the foreign repair station regulations adopted in 1949 as they are now set forth in Part 145.

Those opposed to the proposals contained in the notice express concern that foreign repair stations would have an unfair economic advantage over domestic repair stations. These commenters allege foreign repair stations would have to meet less stringent standards than domestic repair stations and that domestic repair stations would be placed at an economic disadvantage. One unsubstantiated statement alleges that if the proposals are adopted, there would be a net loss in U.S. income of up to $600 million. The basis for these estimates is not provided. An association of repair stations reported that, of its members responding to a survey sent out by the association, 80 percent stated that they thought they would be adversely affected by having to compete with foreign-owned and subsidized firms. No supporting data were submitted by this association, even as to the number of repair stations the association represented, or the number of repair stations responding to the survey. The FAA understands that this association represents approximately 90 of the 4,400 repair stations.

The primary concern expressed in most of the opposing comments is related to the loss of jobs in the United States and the general negative impact on the U.S. economy that would result if the proposals are adopted. A wide range of estimates for lost jobs is offered; however, there is no explanation of how these estimates were made. In general, no data or analyses were included in any comment to support these claims.

As detailed in the *Discussion of Comments* section, commenters supporting the proposals submitted extensive and factual information indicating that foreign entities currently spend up to twice as much in the United

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States for maintenance as U.S. operators spend abroad. These commenters contend that this trend will continue, because there will not be a dramatic increase in the number of new foreign repair stations. Furthermore, there are a limited number of facilities in the world that can meet the FAA's stringent requirements.

The expectation that trade will not be adversely affected is supported by the U.S. Department of Commerce that concludes the rising trend of industrial collaborating between U.S. and foreign manufacturers in the aviation sector will increase the expected flow of trade for 1988 to record highs. The U.S. Department of Commerce cited figures of $22 billion for exports and $8.8 billion for imports in the aviation sector. This trend towards international collaboration in aircraft manufacturing will also result in the growth of trade in equipment for maintenance and repair, and consequently reciprocal growth in the trade of repair services. This expected expansion supports the FAA view that overall growth in the aviation industry will offset losses, if any, in maintenance and services.

Supporters of the proposals refute the allegations that the rules would create an exodus of jobs from the United States to foreign countries, contending that the allegations are unsupported. As pointed out by such supporters in the *Discussion of Comments* section, there will not be a wholesale use of foreign repair stations by U.S. operators. Also, the U.S. Department of Commerce points out that the world's expanding fleet of aircraft will demand more equipment for maintenance and repair, and the total industry employment for 1988 in the overall aviation sector is forecast to increase by almost 3 percent.

Additionally, as pointed out in the *Discussion of Comments* section, if the foreign repair station rules are not updated and adopted as proposed, and if the United States retains the status quo and adopts a stance of protectionism, there are sufficient indicators regarding the likelihood of some retaliatory action from some foreign governments to adjust their regulations, making them as restrictive as those currently in effect in Part 145. These actions could very well result in a negative impact on the U.S. economy. This possibility is supported by the fact that the U.S. Department of Commerce has been advised by many foreign governments that, in their opinion, retention of existing geographic restrictions on foreign repair stations by the United States is inconsistent with certain international treaties to which the United States is a signatory. These foreign governments have further stated that if they were to take counteraction, it could be detrimental to both U.S. airlines and to the U.S. aircraft industry.

Although expanding access to world markets for aircraft maintenance could result in additional work being done at foreign locations, the FAA must conclude from the information submitted to this docket (Docket No. 25454) that the consequences would not inlcude a major, if any, shift in jobs. Nor, will adoption of these rules have an adverse impact on the national economy or on the U.S. balance of trade. The *Discussion of Comments* section points out that the rules will be beneficial, particularly to U.S. air carriers and to manufacturers (as well as to some domestic repair stations) in their ability to obtain maintenance and repair work on foreign-manufactured aircraft and components. Further, it should also be noted that there are no direct compliance costs to U.S. interests associated with the foreign repair station revisions, because certification as a repair station is strictly voluntary. A loss of some jobs could certainly be possible, if only as a normal effect of any competition; however, the supporting information in the docket does not show that such a major loss would occur.

Though the rule could be restricted solely to foreign manufacturers, this restriction would not fully address many U.S. air carrier problems, particularly in cases where there is no domestic facility capable of performing certain necessary maintenance. Likewise, limiting the scope of work only to warranted items will not cover a situation in which no U.S. domestic repair station is authorized or equipped to overhaul and repair a certain component not covered by warranty.

The airline industry has experienced rapid growth following deregulation resulting in a demand for equipment suitable to the individual operator's requirements. This demand has been increasingly met through international endeavors in the manufacture of aircraft and their components. The demand for qualified maintenance services and facilities has grown as the fleet of foreign-manufactured aircraft has increased, particularly in the regional and commuter airline industry.

Many U.S. operators have not invested the capital required to provide domestic maintenance facilities that are capable of servicing foreign-manufactured aircraft, nor have they been able to attract outside repair facilities to provide the necessary services. Under the existing regulations, some carriers that operate foreign-manufactured aircraft have obtained exemptions to take advantage of the manufacturer's warranty provisions for the products they operate. Presently, some manufacturers are precluded from repairing their own products, because of their repair station's location or their inability to obtain U.S. certification under §§ 145.71 and 145.73.

While the FAA has granted exemptions to U.S. air carriers to permit them o use foreign repair facilities that would not be othewise available under current regulations, that mechanism does not provide a solution to all of the problems brought about by the increasingly international character of U.S. air carrier operations. The exemption process is time consuming and by its very nature places a repeated and continued burden on a petitioner. It does not take care of unforeseen maintenance needs and is only intended to cover unique problems of an individual person, rather than classes of problems, such as the matter of foreign repair stations. Also, in light of the lengthy negotiation process associated with formulating and refining bilateral agreements, pursuing additional bilateral agreements for maintenance of U.S.-registered aircraft is not considered advantageous in terms of any short-term benefits for the U.S. aviation community.

The FAA has determined that allowing domestic and foreign manufacturers holding U.S. repair station certificates to contract the repair of components to non-U.S.-certificated repair stations, domestic and foreign, under the specific circumstances set forth in the amended § 145.47(c) will not diminish the quality of the repairs, as the components would be approved for return to service under the repair station's quality control process that has been found acceptable to the FAA. This new process will increase the amount of maintenance resources available to U.S. operators, thereby reducing costs and delays associated with their operations.

The amendment to § 135.443(b), which permits a foreign repair station to return an aircraft or part to service after performance of maintenance, similar to existing § 121.709(b), should not result in any adverse impact. Because the implementation of § 121.709(b) has not created any problems, none are anticipated from the change to Part 135. Further, being able to use a foreign repair station to return their aircraft to service would be a major benefit for Part 135 operators.

International Trade Impact Analysis

As set forth in the *Discussion of Comments* section, the amendments contained herein are consistent with the terms of several trade agreements to which the United States is a signatory, such as the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), incorporating the Agreement on Trade in Civil Aircraft (31 U.S.T. 619), and the Agreement on Technical Barriers to Trade (Standards) (19 U.S.C. 2531). Not only do these changes reflect the FAA's desire to eliminate unnecessary barriers to international trade, but such action is consistent with section 1102(a) of the Federal Aviation Act of 1958, as amended, which requires the FAA to exercise and perform its powers and duties consistently with any obligation assumed by the United States in any agreement that may be in force between the United States and any foreign country or countries. The economic trade impacts are discussed in the previous section (*Regulatory Evaluation*).

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entitities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant impact on a substantial number of small entities."

The FAA has determined that these amendments are not expected to have a significant impact on a substantial number of small entities. The provisions of this rule are primarily directed toward the activities of foreign repair stations and, therefore, domestic repair stations are not expected to incur any costs for compliance. Consequently, the domestic repair stations should not incur any significant economic impact under FAA Order 2100.14A, September 16, 1986, Regulatory Flexibility Criteria and Guidance. Furthermore, by deleting barriers in the aviation repair station industry and encouraging potential entrepreneurs to introduce beneficial products and processes to the aviation industry as a whole, the amendments are consistent with the Act (see RFA sec. 2(a)(5)). This is supported by comments received on the notice.

Of the 10 domestic repair stations that commented individually, 5 indicate that they are large repair stations and not small entities; no indication was given as to the size of the other 5 repair stations. The bulk of those commenters opposing the notice are individual employees of large entities, particularly large airlines. The majority of the 4,400 domestic repair stations are small entities (businesses with less than 200 employees). These small domestic repair stations are primarily concerned with the smaller general aviation U.S.-registered aircraft and components and are not impacted by an increase or decrease in the number of foreign repair stations. Therefore, the FAA has determined that the amendments are not expected to have a significant impact on a substantial number of small entities and has concluded that a regulatory flexibility analysis is not required.

Federalism Implications

The regulations set forth in these amendments are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291, and that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The regulatory evaluation of this final rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, is printed in its entirety in this final rule and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT**."

List of Subjects

14 CFR Part 135

Air carriers, Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 145

Aircraft, Airworthiness, Aviation safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends Parts 135 and 145 of the Federal Aviation Regulations (14 CFR Parts 135 and 145) as follows:

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 135.443(b) by adding a flush paragraph following § 135.443(b)(3) to read as follows:

§ 135.443 Airworthiness release or aircraft maintenance log entry.

* * * * *

(b) * * *

(3) * * *

Notwithstanding paragraph (b)(3) of this section, after maintenance, preventive maintenance, or alterations performed by a repair station certificated under the provisions of Subpart C of Part 145, the airworthiness release or log entry required by paragraph (a) of this section may be signed by a person authorized by that repair station.

* * * * *

PART 145—REPAIR STATIONS

3. The authority citation for Part 145 continues to read as follows:

Authority: Secs. 313, 314, 601, and 607, 72 Stat. 752; 49 U.S.C. 1354(a), 1355, 1421, and 1427, unless otherwise noted.

4. By amending § 145.47 by redesignating paragraph (c) as (d) and adding a new paragraph (c) to read as follows:

§ 145.47 Equipment and materials: Ratings other than limited ratings.

* * * * *

(c) A certificated domestic or foreign repair station may contract maintenance and alteration of components of a type certificated product to a noncertificated source identified in the repair station's inspection procedures manual provided:

(1) The repair station is the manufacturer who originally manufactured the product for which it holds a U.S. type certificate;

(2) The contracted component is included as part of the type certificated product;

(3) The component maintenance is done by the original component manufacturer or its manufacturing licensee; and

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(4) Before such a component is returned to service, the repair station ensures that it is being returned to service in accordance with the repair station's quality control system as approved by the Administrator and set forth in the repair station's operations specifications and inspection procedures manual.

* * * * *

5. By revising § 145.71 to read as follows:

§ 145.71 General requirements.

A repair station certificate with appropriate ratings may be issued for a foreign repair station if the Administrator determines that it will be necessary for maintaining or altering United States registered aircraft and aircraft engines, propellers, appliances, and component parts thereof for use on United States registered aircraft. A foreign repair station must meet the requirements for a domestic repair station certificate, except those in §§ 145.39 through 145.43.

6. By revising § 145.73 to read as follows:

§ 145.73 Scope of work authorized.

(a) A certificated foreign repair station may, with respect to United States registered aircraft, maintain or alter aircraft, airframes, powerplants, propellers, or component parts thereof. The Administrator may prescribe operations specifications containing limitations that the Administrator determines necessary to comply with the airworthiness requirements of this chapter.

(b) A certificated foreign repair station may perform only the specific services and functions within the ratings and classes that are stated in its operations specifications.

Issued in Washington, DC, on November 16, 1988

T. Allan McArtor,

Administrator.

[FR Doc. 88-26934 Filed 11-17-88; 12:26 pm]

BILLING CODE 4910-13-M

federal register

Tuesday
November 22, 1988

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701

Permanent Regulatory Program; Definitions; Support Facilities; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701

Permanent Regulatory Program; Definitions; Support Facilities

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is removing the definition of *support facilities* from its regulations because a definition is not needed in order to ensure that such facilities are regulated under the Surface Mining Control and Reclamation Act ("the Act" or SMCRA). OSMRE has determined that the identification of facilities that support surface coal mining operations has been conducted in a manner consistent with the intent of SMCRA during those periods when there has been no definition in Federal regulations (prior to the 1983 introduction of a definition and since the 1985 suspension of the definition).

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5950 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule
III. Response to Comments
IV. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* ("the Act" or SMCRA), sets forth general regulatory requirements governing surface coal mining and the surface impacts of underground coal mining. Sections 701(28) (A) and (B) of the Act define *surface coal mining operations* subject to regulation under the Act to include (A) specific activities conducted in connection with a coal mine and:

(B) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to such activities; * * *

OSMRE had initially proposed a definition of "resulting from or incident to" on September 18, 1978 (43 FR 41801). However, following review of comments on the proposed definition, OSMRE decided not to include it in the final regulations issued on March 13, 1979. In the preamble to those final regulations (44 FR 14915), OSMRE stated that "a meaningful definition which would cover all situations is not possible." Instead, the determination as to whether an off-site area or facility would be subject to regulation under section 701(28)(B) of SMCRA would be made on a case-by-case basis. Further guidance was provided in the discussion of permitting requirements for support facilities and coal processing plants at § 785.21 (44 FR 15095). In that discussion, OSMRE stated that regulatory authorities would be required to extend their permit requirements to include all facilities on the mine site and all facilities incident to the mine at or near the site.

On May 5, 1983, in an attempt to further clarify which facilities were subject to regulation under section 701(28)(B) of SMCRA, OSMRE defined the term *support facilities* (48 FR 20401). In the 1983 definition, OSMRE included in regulations an interpretation of the phrase in section 701(28)(B) of SMCRA, "resulting from or incident to," to connote an element of geographic proximity. Facilities regulated as support facilities were to be determined, in part, based upon their location relative to a regulated activity.

The 1983 definition was challenged in the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–114 (D.D.C. July 6, 1984) (*In Re: Permanent II*). Plaintiffs maintained that there was no lawful basis for a geographic limitation in the definition, and that the statutory language, "resulting from or incident to," connotes a functional relationship. The court determined that there was no evidence to support OSMRE's conclusion that areas that result from or are incident to activities must be located near those activities. The court found that a limitation based solely on proximity could not stand. *In Re: Permanent (II)*, Slip op. at 20–23.

On July 10, 1985, in response to the court's finding, OSMRE published an interim final regulation (50 FR 28188) suspending the definition of *support facilities*. At the same time, OSMRE proposed the removal of the definition (50 FR 28180). OSMRE further stated in those rulemakings that it had determined that a definition of *support facilities* was not needed, and that there was no need to amplify the language of section 701(28)(B) of the Act with respect to the meaning of the phrase "resulting from or incident to" a regulated activity.

Nine comments were received from representatives of the coal industry, environmental organizations, and State regulatory authorities on the 1985 proposal to delete the definition of *support facilities*. All commenters favored retention of a definition to clarify which types of facilities would be subject to regulation as support facilities. Because of the expressed interest in having a regulatory definition, OSMRE reconsidered possible definitions. On May 11, 1987, OSMRE stated in the preamble to a final regulation defining "coal preparation" (52 FR 17724) that it would propose a new definition of *support facilities*. However, for reasons discussed in the following section of this preamble, "Discussion of Final Rule," OSMRE did not propose a new definition.

In order to ensure full consideration of opinions on this issue, OSMRE undertook an extensive outreach effort involving the participation of interested parties from industry, environmental groups, State regulatory authorities and professional societies. This included holding facilitated outreach meetings to provide interested parties with an opportunity to comment on draft rule language and to fully discuss issues relative to this proposed rulemaking.

In addition to embarking on the outreach effort and reconsidering possible definitions, responsible officials in each of OSMRE's field offices were consulted to determine if support facilities have been adequately identified by States. The results of that consultation, as well as the outreach effort, are discussed in the following section of this preamble, "Discussion of Final Rule."

Finally, on January 29, 1988, the U.S. Court of Appeals issued a decision which overturned the decision in *In Re: Permanent (II)* concerning whether proximity could be considered in determining SMCRA's jurisdiction over off-site facilities. (*NWF v. Hodel*, 839 F.2d 694, 765–766 (D.C. Cir., 1988) ("*NWF*")). The court of appeals affirmed the Secretary's incorporation of a consideration of proximity in the 1983 definition of *support facilities*.

Specifically, the court stated that the "phrase 'resulting from or incident to' clearly suggests a causal connection, which, while not indicating an element of geographic proximity, certainly does require some type of limiting principle of proximate causation * * *." (*NWF*, 839 F.2d at 745). The court of appeals reinstated the provision which stated that "resulting from or incident to an activity connotes an element of proximity to that activity." Based on this ruling, OSMRE reinstated the definition of *support facilities* on June 9, 1988 (53 FR 21767).

On June 22, 1988, OSMRE proposed to amend its permanent program regulations at 30 CFR 701.5 by removing the definition of *support facilities* (53 FR 23522). Removal was reproposed rather than taking final action on the similar proposal of 1985 (50 FR 28180) because of the public expectation that a new definition would be forthcoming following OSMRE's statement to that effect in the final rulemaking defining "coal preparation" (52 FR 17724). This allowed all interested parties to consider again the proposed removal and comment on it prior to any final effect.

In addition to soliciting public comments and providing an opportunity for public hearings upon request, OSMRE provided a 45-day public comment period. OSMRE received comments from three organizations: A State regulatory authority, a representative of a coalition of environmental groups, and a representative of the coal industry. No public meeting was requested and none was held.

II. Discussion of Final Rule

OSMRE is removing the definition of *support facilities* from 30 CFR 701.5. Although comments on the 1985 proposed removal of the definition of *support facilities* (50 FR 28180) favored having a definition, generally because it would help in interpreting which facilities should be subject to regulations, outreach discussions with commenting parties indicated that the interest in having a definition was not strong. The 1987 outreach consultations focused, in particular, on an effort to identify those categories of facilities which would always be considered support facilities and those which would never be support facilities. OSMRE was unable to develop a definition of *support facilities* based upon categories of facilities. Any such definition would involve high potential for either under- or over-inclusive findings when applying the criteria of "resulting from or incident to."

In addition, the outreach participants expressed the concern that having a definition could be harmful in that it would limit the ability of regulatory authorities to make case-by-case determinations of what is "resulting from or incident to." Indeed, during the discussions there developed considerable support for making the proposed removal of the definition final.

Concurrent with the outreach effort, responsible officials in each of OSMRE's field offices were consulted to determine if support facilities have been adequately identified by States. While only two approved State programs contain a definition of *support facilities*, rarely have objections been raised to OSMRE concerning the administration of State programs on this issue. In fact, there have been only two instances where OSMRE has issued a ten-day notice to a State with an approved program questioning whether or not particular facilities should be regulated as support facilities.

In consideration of OSMRE's experience with this issue, it appears that regulatory authorities are capable of identifying off-site facilities that should be subject to the provisions of SMCRA without having a definition of *support facilities* in Federal regulations. In fact, there appears to be no significant difference in the administration of State programs with or without a Federal definition. OSMRE believes that the term "resulting from or incident to," in the context of the rest of the language of section 701(28) of SMCRA, provides adequate guidance to regulatory authorities in the identification of facilities that support surface coal mining operations. Having considered the court's decision, OSMRE will again recognize that the consideration of proximity, as well as function, is valid in determining whether facilities are "resulting from or incident to" regulated activities. The agency is dealing with industrial practices of great complexity (*NWF*, 839 F.2d at 745). It is imperative that OSMRE's regulations provide reasonable flexibility to implement the statute in a manner that considers the myriad site-specific situations that cannot be fully anticipated in a Federal regulation.

OSMRE will continue to monitor, through existing oversight and annual evaluation mechanisms, the interpretation by regulatory authorities of the term "resulting from or incident to." If, as a result of this monitoring, it is determined that there has developed a need for additional guidance or regulatory action, OSMRE will take appropriate action.

III. Response to Comments

Two commenters supported the proposed removal. One commenter suggested that, because the definition merely gives examples of facilities which may be regulated, and the definition of *surface coal mining operations* provides sufficient guidance to enable regulatory authorities to identify such facilities, a definition of *support facilities* is not needed. The second commenter expressed support for the court of appeals finding that the consideration of an element of proximity is a reasonable approach to determining when the facilities in section 701(28)(B) of the Act are "resulting from or incident to" the activities in (A). This commenter also endorsed the court's finding that interpreting the scope of such a statutory phrase is, as the court stated, "an obvious example of the sort of congressional delegation of policy choices to an agency the courts are bound to respect."

One of these supporting commenters went on to suggest that OSMRE should also remove the performance standards for support facilities in 30 CFR 816.181. Because such facilities must be operated in accordance with the permit issued for the mine which they support and must comply with all other performance standards, the commenter maintained, special performance standards are not needed.

OSMRE has noted this suggestion. However, the performance standards of 30 CFR 816.181 are beyond the scope of this rulemaking.

The commenter opposing the removal of the definition of *support facilities* suggested that the June 9, 1988, reinstatement of the definition had the effect of classifying certain coal preparation activities (e.g. crushing, sizing, screening) as activities of support facilities rather than as surface coal mining operations. This, the commenter maintained, conflicts with the express direction given the Secretary in *In Re: Permanent II* and warrants the promulgation of a final definition that conforms to the decision in *In Re: Permanent II*.

OSMRE recognizes that an argument can be made that the coal preparation facilities of concern to the commenter could be considered to be support facilities under the reinstated definition but does not agree that this is a problem or that it warrants redefining *support facilities*. The reinstatement was made in response to the direction of the court of appeals. Thus, regardless of whether or not it conflicts with the direction given in *In Re: Permanent II*, it was

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necessary to comply with the higher court's decision. The Office is taking actions, in this rulemaking and in another final rule, fully consistent with the decision of the court of appeals reversing the finding of the lower court relative to the scope of regulation of coal processing. (see separate final rule for Coal Preparation Plants Not Located Within the Permit Area of a Mine in this issue of the **Federal Register**, proposed June 22, 1988; 53 FR 23526).

This same commenter suggested the need to redefine *support facilities* to assure uniform regulation among all states. Lack of a definition, the commenter maintained, would result in having no minimum national standards for identifying such facilities and would leave the States, the public, and the industry with no guidance on the scope of regulated support facilities. Industry would be subject to more after-the-fact liabilities and the public would be deprived of intended statutory protection, the commenter asserted. In addition, the commenter suggested, States will inevitably diverge widely in their decisions on the scope of regulation of facilities, and OSMRE will have no basis upon which to exercise Federal jurisdiction where States fail to act. One result, the commenter maintained, will be "forum shopping," particularly in the Kentucky-Ohio-West Virginia border area, for the least restrictive State policy on support facilities, a result which Congress intended be avoided.

OSMRE believes that adequate guidance exists to regulatory authorities in the statutory definition of *surface coal mining operations*. This belief is reinforced by OSMRE's and the State's experience in identifying support facilities as discussed elsewhere in this preamble. OSMRE is concerned that any attempt to be too prescriptive in regulation covering the broad spectrum of possible facilities would unduly restrict the discretion that regulatory authorities must have in order to make valid decisions about the jurisdiction of SMCRA in individual cases. Categorical exclusions or inclusions would almost certainly result in inappropriate applications of the rule in some instances. Further, the court of appeals explicitly acknowledged the legal defensibility of OSMRE's "flexible implementation of the statute that allows regulatory authorities to 'consider the myriad site specific situations that cannot be fully anticipated in writing a Federal regulation.' 48 FR 20397 (1983)." *NWF*, 839 F.2d at 745.

As noted in this preamble, OSMRE had initially proposed a definition of "resulting from or incident to" on September 18, 1978 (43 FR 41801). However, based on comments received and following further consideration, OSMRE excluded the definition from the 1979 final regulations and chose, instead, to take a case-by-case approach to identifying support facilities. The history of the program shows that there has not been a compelling need to have such a definition.

Concerning the commenter's assertion about "forum shopping," this simply has not been OSMRE's experience. OSMRE has verified that only two States, Ohio and Virginia, define *support facilities* in their program rules. These definitions, which have been approved by OSMRE as "no less effective" than Federal requirements, will not have to be removed as a result of the removal of the definition of *support facilities* at 30 CFR 701.5. To the extent operators wish to take into account any aspect of a State's regulatory program and its implementation in determining the location of facilities, they are free to do so. However, OSMRE has seen no evidence that such considerations are likely to override other more significant economic factors, such as transportation availability and costs and ease of access and communications, when an operator is deciding on the location of support facilities.

In addition to maintaining that a definition of *support facilities* is necessary, this same commenter provided an interpretation of section 701(28)(B) of the Act upon which to base the definition. The commenter suggested that there are six discernable subcategories of section 701(28)(B): (1) The areas upon which section 701(28)(A) activities occur; (2) the areas where section 701(28)(A) activities disturb the land surface; (3) adjacent lands the use of which is incidental to section 701(28)(A) activities; (4) all lands affected by new roads or improvements of existing roads for haulage or access; (5) excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, and shipping areas; and (6) other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. Those specific areas enumerated by Congress, the commenter maintained, such as roads, excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas and shipping areas, etc., because of their enumeration by Congress, are "resulting from or incident to" activities in section 701(28)(A).

The commenter quoted Senate Report 95-128: " 'Surface coal mining operations' also includes all areas upon which occur surface mining activities and surface activities incident to underground mining. It also includes all roads, facilities[,] structures, property, and materials on the surface resulting from or incident to such activities, *such as* refuse banks, dumps, culm banks, impoundments and processing wastes.' " (Emphasis added by commenter). The areas identified in (B), the commenter maintained, were thus listed as specific examples of areas which Congress determined to be resulting from or incident to activities in (A). The phrase "and other areas * * *" the commenter continued, was included to cover any other areas which Congress did not delineate. It is only for this latter unidentified "other areas upon which are sited structures, facilities or other property or materials on the surface" that OSMRE must create a criterion for determining which facilities are "resulting from or incident to" activities in (A), the commenter concluded.

OSMRE disagrees with the commenter's interpretation of section 701(28)(B) and cites the court of appeals: "At issue in the interpretation of § 701(28)(B) is the scope of 'processing areas * * * and other areas upon which are sited structures, facilities or other property or materials on the surface resulting from or incident to such activities.' " Later in the same paragraph, the court refers to "processing areas * * * resulting from or incident to such activities." Clearly, the court of appeals decision provides a basis for OSMRE's interpretation that the phrase "resulting from or incident to" modifies "processing."

In addition, contrary to the commenter's assertion, the phrase "resulting from or incident to" clearly does modify all those other areas specified in section 701(28)(B) of the Act. OSMRE does not believe that the enumeration by Congress of examples in section 701(28)(B) was intended to reach any such facilities which are not resulting from or incident to a mine. If the enumeration were intended to reach such facilities, then all impoundments and dams nationwide would be subject to SMCRA regardless of whether or not they had anything to do with a coal mine. Certainly Congress did not intend OSMRE to regulate cattle-watering agricultural impoundments or major water project impounding structures without any coal mining association. Congress did not intend that "shipping areas" regardless of their association with mines be regulated under SMCRA. It is unreasonable to assume that Congress intended to regulate all coal processing at industrial facilities nationwide, absent any relationship to a mine. Rather than enumerating the examples in section 701(28)(B) as always-regulated types of facilities, irrespective of whether or not they are associated with coal mines, OSMRE believes that Congress identified them as examples of facilities that will be regulated if they are "resulting from or incident to" activities in connection with a mine.

This commenter suggested an approach to defining *support facilities* involving the identification of specific classes of facilities which would categorically fall within or outside of the regulatory ambit of SMCRA, coupled with the identification of those in the gray area where more site-specific analyses would be applied. In addition, the commenter provided some examples of how case-by-case decisions could be made for those facilities that would be covered explicitly in the definition. A coal transfer operation (e.g. from truck to rail) dedicated solely to coal transfer would clearly be dependent on and resulting from coal extraction activities, the commenter asserted. The commenter suggested that a transfer operation, which also transferred some other commodity, like grain or rock, where coal was not a significant factor in the economic viability of the enterprise, would not likely be found to be resulting from coal extraction activities.

In 1987, in consultation with regulatory authorities and representatives of the coal industry and environmental organizations, OSMRE developed for consideration a three-tiered approach to defining *support facilities*. As mentioned already in this preamble, OSMRE concluded that any definition that categorized property as always regulated, never regulated, or sometimes regulated would involve high potential for finding instances within each category in which the criteria of "resulting from or incident to" would be applied either under- or over-inclusively.

Thus, not only must OSMRE reject the commenter's particular categorization of facilities based on the interpretation of section 701(28)(B) of the Act, but the Office reaffirms its long-held belief that any attempt to categorize such facilities in the context of a definition of *support facilities* would lead to the inappropriate application of SMCRA.

On the question of what factors should be considered in determining whether or not a facility is "resulting from or incident to" an activity in section 701(28)(A) of the Act, the commenter suggested that the determination should hinge on whether or not the facility is resulting from or incident to the types of activities included in the definition, rather than be based on an integration of ownership or control with a specific regulated mining activity. The commenter further maintained that Congress was concerned with regulating these facilities wherever impacts occurred regardless of whether the facility was independently operated or was part of an integrated mining operation. The basis for the determination, the commenter asserted, should be the economic viability of the facility independent of the mining activity.

OSMRE agrees. Economic independence is a valid consideration in determining whether a facility is a support facility. Indeed, OSMRE would expect the economic dependence of a facility on a mine to be a critical element in determining the degree to which the facility results from or is incident to a regulated mining activity.

An additional consideration in identifying support facilities, the commenter suggested, would be whether the environmental and public health and safety impacts of the support area are regulated by other agencies for water discharges or other environmental impacts. This would not mean, the commenter continued, that areas should be excluded from regulation based on the magnitude of impact or on the basis that OSMRE's regulations would not fully mitigate the impacts. Instead, the commenter urged, it should be a consideration of whether there are, in close cases, unaddressed coal-related environmental impacts of the sort that Congress sought to remedy, such as toxic runoff, proximity to dwellings, surface or groundwater contamination. For example, the commenter suggested, as a practical matter, extended storage of coal would likely cause impacts on both the subsurface hydrology and surface water quality from runoff. Absent the application of SMCRA, the commenter continued, such impacts would be classified as "non-point" pollution under the Clean Water Act and subject to no regulatory controls. The commenter reminded OSMRE that the Office has previously acknowledged that if not regulated, support areas can cause acid and toxic drainage and will be left unreclaimed when they are no longer needed, creating a safety and environmental hazard.

OSMRE does not agree that the consideration of environmental effects in this context is relevant to the determination of whether a "resulting from or incident to" relationship exists. In fact, OSMRE considered this concept during its 1987 outreach activities on this rule but was convinced by the negative comments received, and by further review of the definition of *surface coal mining operations* at section 701(28) of the Act, that such a consideration is irrelevant to determining "resulting from or incident to," and therefore inappropriate. Congress passed this Act to require environmental protection and reclamation at coal mines and for activities and areas associated with coal mines. This Act was not intended to regulate other industrial facilities not associated with mines even if the facilities involve some coal-related activity and even if they would have undesirable environmental impacts. Therefore, whether there is jurisdiction to regulate a particular facility under some other environmental statute must be irrelevant to a determination of whether there is jurisdiction to regulate the facility under SMCRA. The facility either is or is not properly subject to jurisdiction under SMCRA. Also, the reach of any other statute concerning the facility cannot be affected by whether or not there is jurisdiction under SMCRA.

Effect in Federal Program States and on Indian Lands

The proposed rule would apply through cross-referencing in those States with Federal programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The proposed rule also would apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750.

IV. Procedural Matters

Paperwork Reduction Act

This rule does not contain collections of information which require approval

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by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291

The Department of the Interior has determined, in accordance with the criteria of Executive Order 12291 (February 17, 1981), that this rule is not major and does not require a regulatory impact analysis because it will not affect existing costs to the coal industry and coal consumers, and will not adversely affect competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic effect on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA), and has made a finding that this rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA is on file in the OSMRE Administrative Record in Room 5131, 1100 L St., NW., Washington, DC.

Author

The principal author of this rule is Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–5950 (Commercial or FTS).

List of Subjects in 30 CFR Part 701

Coal mining, Surface mining, Underground mining.

Accordingly, 30 CFR Part 701 is amended as set forth below.

Dated: October 7, 1988.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

§ 701.5 [Amended]

2. Section 701.5 is amended by removing the definition of *support facilities.*

[FR Doc. 88–26916 Filed 11–21–88; 8:45 am]
BILLING CODE 4310–05–M

federal register

Tuesday
November 22, 1988

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 785 and 827

Permanent Regulatory Program; Coal Preparation Plants Not Located Within the Permit Area of a Mine; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 785 and 827

Permanent Regulatory Program; Coal Preparation Plants Not Located Within the Permit Area of a Mine

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its regulations to clarify the circumstances under which coal preparation plants located outside of the permit area of a mine are subject to the performance standards and permitting requirements of the Surface Mining Control and Reclamation Act ("the Act" or SMCRA).

OSMRE is concerned that, because of the May 11, 1987, promulgation of a new definition of "coal preparation" (52 FR 17724), existing regulations at 30 CFR 785.21 and 30 CFR 827.1 might be interpreted to regulate certain coal preparation plants which are not properly subject to regulation under the Act. By more closely tracking the language of SMCRA in this final rule, OSMRE ensures that coal preparation activities that are carried out "in connection with" a coal mine are appropriately regulated under SMCRA.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington DC 20240; Telephone: 202-343-5950 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule
III. Response to Comments
IV. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* ("the Act" or SMCRA), sets forth general regulatory requirements governing surface coal mining and the surface impacts of underground coal mining. Section 701(28) of the Act is a lengthy definition of "surface coal mining operations." Because this final rule implements an element of that definition, and because commenters focused on the question of the proper interpretation of this definition, it is included here verbatim from the Act.

> For the purposes of this Act * * * "surface coal mining operations" means—
>
> (A) activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading or coal for interstate commerce at or near the mine site: *Provided, however,* That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use of sale or coal explorations subject to section 512 of this Act; and
>
> (B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities * * *. (SMCRA section 701(28), 30 U.S.C. 1291(28)).

The processing and preparation activities mentioned in the definition are usually conducted at the mine site and are then covered by OSMRE's permitting requirements at 30 CFR Parts 780 and 784 and also by the performance standards at 30 CFR Parts 816 and 817. However, such activities sometimes occur at a preparation plant which is not located at a mine site but is still operating "inconnection with" a coal mine and, thus, is subject to the requirements of the Act. To ensure that off-site coal preparation is appropriately regulated, OSMRE established a special category of permitting requirements for coal preparation plants not located within the permit area of a mine at 30 CFR 785.21 and also established special performance requirements for such facilities at 30 CFR Part 827.

The terms "processing" and "preparation" in the definition at section 701(28) of the Act are often used interchangeably. Indeed, OSMRE is not aware of any practical difference between coal preparation and coal processing. "Coal preparation" at 30 CFR 701.5 is defined as meaning "chemical or physical *processing* and the cleaning, concentrating, or other *processing* or preparation of coal" (emphases added). Although OSMRE uses the term "preparation" in this final rule at 30 CFR 785.21 and 30 CFR Part 827 and also in the definition at 30 CFR 701.5, because of numerous references to "processing" in the Act, earlier regulations, court decisions, and comments received, OSMRE continues to refer to the subject activity as "processing" as well as "preparation" in the preamble to this rulemaking.

Final regulations published on March 13, 1979 (44 FR 15317) defined a "coal processing plant" as a facility "where run-of-the-mine coal is subjected to chemical or physical processing *and* separated from its impurities" (emphasis added). In the preamble to those definitions, OSMRE discussed the rationale for the need to reach facilities not located at the mine site (44 FR 15292). "Coal processing plants are usually located at the mine mouth, but frequently one central preparation plant may serve several mines as a focal point for coal preparation and shipment to market. The coal may be transported to this central plant without removal of the rock and other impurities in the run-of-mine coal."

The revised permanent program regulations of May 5, 1983, defined "coal preparation plant" and added a complementary definition of "coal preparation or coal processing." Both of the 1983 definitions described the activity being conducted as "cleaning, concentrating, or other processing or preparation" (48 FR 20400). This definition retained the concept of separation of coal from its impurities as an integral element of coal preparation.

Also on May 5, 1983, OSMRE made final the addition of limiting language in §§ 785.21 and 827.1 to exclude facilities "at the site of ultimate coal use." (48 FR 20401). In addition, OSMRE stated that it would treat "all facilities which handle coal as either 'in connection with' a mine or 'in connection with' an end user." OSMRE continues to believe that regulation of facilities operated by or for the end user of coal at the point of such use is not required under SMCRA because, by virtue of their association with the end user of the coal, such facilities are not operated "in connection with" a coal mine.

The 1983 definitions of "coal preparation or coal processing" and "coal preparation plant," and the Secretary's jurisdiction to regulate off-site processing plants, were challenged in the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79-1144 slip op. (D.D.C. July 6, 1984) (*In Re: Permanent (II)*). The court concluded that these definitions were based on a misreading of the statute. The court rejected OSMRE's interpretation that coal preparation activities necessarily involve the separation of coal from its impurities. *In Re: Permanent II*, Slip op. at 15-20. However, the court affirmed the Secretary's jurisdiction to regulate off-site processing plants. *In Re: Permanent II*, Slip op. at 17, note 12.

In response to the court's decision, OSMRE redefined "coal preparation" and "coal preparation plant" in an interim final rule and, concurrently, in a proposed rule (July 10, 1985; (50 FR 28180)). The revised definitions included "chemical or physical processing" and "cleaning, concentrating, or other processing or preparation." Most significantly, the condition that coal preparation must include the separation of coal from its impurities was deleted from the definitions. These definitions were published as a final rule on May 11, 1987 (52 FR 17724).

On January 29, 1988, the U.S. Court of Appeals upheld the decision in *In Re: Permanent (II)* affirming the Secretary's jurisdiction to regulate off-site processing plants. (*NWF v. Hodel*, 829 F.2d 694, 742-745 (D.C. Cir., 1988) ("*NWF*")). This decision and its effect on OSMRE's interpretation of the phrase "in connection with" are discussed in the following "Discussion of Final Rule."

On June 22, 1988, OSMRE proposed to amend its permanent program regulations at 30 CFR Parts 785 and 827 to clarify that off-site coal preparation is subject to regulation under SMCRA only when it is conducted "in connection with" a coal mine (53 FR 23526). In addition to soliciting public comments and providing an opportunity for public hearings upon request, OSMRE provided a 45-day public comment period. OSMRE received comments from nine organizations, including State regulatory authorities, environmental groups and representatives of the coal industry. No public meeting was requested and none was held.

II. Discussion of Final Rule

OSMRE is amending the language in 30 CFR 785.21, the permitting requirements for off-site preparation plants, and 30 CFR 827.1, the performance standards for off-site preparation plants, to make clear that those sections apply only to off-site coal preparation that is "in connection with" a coal mine.

The first sentence of § 785.21(a), which specifies the requirements for permits for coal preparation plants not located within the permit area of a mine, previously read, "This section applies to any person who operates or intends to operate a coal preparation plant outside the permit area, other than such plants which are located at the site of ultimate coal use." Under this final rule, this sentence is replaced with, "This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine." Further, this language differs from the proposed rule in that it includes the clarifying phrase, "for a specific mine." The second sentence of paragraph (a) remains the same. Because the purpose of this rulemaking is to clarify that the rule applies only to coal preparation plants operated in connection with a coal mine, and OSMRE believes that this limitation necessarily excludes facilities at the site of ultimate use, the redundant phrase "other than such plants which are located at the site of ultimate coal use," is deleted in this final rule.

Section 827.1, which specifies the performance standards for coal preparation plants not located within the permit area of a mine, previously read, "This part sets forth requirements for coal preparation plants not within the permit area for a specific mine other than those plants which are located at the site of ultimate coal use." In the final rule, this language is replaced with, "This part sets forth requirements for coal preparation plants operated in connection with a coal mine but outside the permit area for a specific mine." As in the case of 30 CFR 785.21, this language differs from the proposed rule in that it includes the clarifying phrase, "for a specific mine." Again, for the reasons cited above, the redundant phrase "other than those plants which are located at the site of ultimate coal use," is deleted.

The new definitions of "coal preparation" and "coal preparation plant" promulgated on May 11, 1987 (52 FR 17724), include activities and facilities in addition to those that involve the separation of coal from its impurities. OSMRE's experience has been that these additional activities are not necessarily conducted at the point of ultimate use, nor are they necessarily conducted "in connection with" a coal mine. As a result, OSMRE can no longer treat all facilities which handle coal as either "in connection with" a mine or "in connection with" an end user as it could when the definition of coal preparation was based on the separation of coal from its impurities. For example, facilities such as the docks at Baltimore, MD; Hampton Roads, VA; Mobile, AL; and Long Beach, CA, that may occasionally crush or size coal, may conduct "coal preparation" under the new definition. However, OSMRE does not believe that the activities being conducted at such facilities are "in connection with" a coal mine or that the Act was intended to regulate the activities at such facilities.

In light of the broadened definitions of "coal preparation" and "coal preparation plant," it is necessary to ensure that the performance standards in 30 CFR Part 827 and the permitting requirements in 30 CFR 785.21 are applied only to facilities conducting coal preparation "in connection with" a coal mine. The limitation to coal preparation conducted "in connection with" a coal mine is necessarily implied in Parts 785 and 827 because of the statutory and regulatory use of that phrase in the definition of the term "surface coal mining operations." However, OSMRE believes it would clarify the provisions if the limitation were explicitly referenced and would help to ensure that the provisions are not misconstrued.

No definition of the term "in connection with" is included in this final rule. Any attempt to further define this phrase in a regulation would unduly restrict the discretion that regulatory authorities must have in order to make valid decisions about the applicability of the performance standards of SMCRA in individual cases. Categorical exclusions or inclusions would almost certainly result in inappropriate applications of the rule in some instances. Regulatory authorities will find ample guidance for making determinations as to whether a coal preparation plant is being operated in connection with a coal mine in the language in the definitions of "surface coal mining operations" in section 701(28) of SMCRA and 30 CFR 700.5, in case histories interpreting those definitions, and in preamble discussions in OSMRE's related 1979 and 1983 rules.

OSMRE continutes to believe that the ability of mine operators, or coal handlers directly servicing such operators, to have control of processing operations is essential in establishing that a processing plant is being operated in connection with a coal mine. This position was set forth in an explanation of the reach of the 1979 regulation (30 CFR 785.21) when OSMRE stated, "OSM is only requiring regulatory authorities to extend their permit requirements as far into the stream of commerce as those activities over which mine operators and the coal handlers who directly serve them, such as coal processors, have or

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could have control of operations." (44 FR 15095).

In identifying the relationship necessary for coal preparation to be "in connection with" a coal mine, the principle stated in the May 5, 1983, preamble to the definition of "coal preparation of coal procesing" should be referenced. In that preamble, OSMRE cited examples of facilities which could be considered to be "in connection with" a coal mine, including "facilities which receive a significant portion of their coal from a mine; facilities which receive a significant portion of the output from a mine; facilities which have an economic relationship with a mine; or any other type of integration that exists between a facility and a mine." Further, OSMRE stated that a "facility need not be owned by a mine owner to be in connection with a mine." (48 FR 20393; see also discussion at 52 FR 17726, May 11, 1987). This rulemaking does not alter that position.

Finally, in determining the applicability of SMCRA to off-site facilities, OSMRE has considered the January 29, 1988, ruling of the court of appeals (*NWF*, 839 F.2d at 742–745). That decision affirmed OSMRE's interpretation that the phrase "at or near the mine site" found in section 701(28)(A) of the Act did not limit the Act's regulatory jurisdiction over coal processing activities. While acknowledging that the reasonableness of the Secretary's reading of section 701(28)(A) of the Act concerning jurisdiction over coal processing activities was a close question, the court affirmed OSMRE's authority to regulate off-site coal processing under section 701(28)(B) of SMCRA, which extends the Secretary's authority to "processing areas" and other areas upon which are sited structures and facilities "resulting from or incident to" activities specified in section 701(28)(A).

In addition to affirming this authority, the court of appeals found that the phrase "resulting from or incident to" could be construed to connote an element of proximity. Specifically, the court of appeals stated that the "phrase 'resulting from or incident to' clearly suggests a causal connection, which, while not indicating an element of geographic proximity, certainly does require some type of limiting principle of proximate causation * * *." (*NWF*, 839 F.2d at 745).

Because the court affirmed the Secretary's authority to regulate offsite coal processing under section 701(28)(B) of SMCRA, it is appropriate for OSMRE to consider the court's approval of the use of a proximity factor in determining the reach of 701(28)(B). Hence, OSMRE believes that geographic proximity, as well as the functional relationship between mines and coal preparation plants, are proper factors to be considered by regulatory authorities when identifying off-site preparation plants which operate in connection with a coal mine and therefore are subject to regulation under SMCRA.

III. Response to Comments

Jurisdiction of SMCRA over "Coal Processing"

One commenter maintained that the rule is an attempt to assert authority beyond the limits of SMCRA. Congress did not intend, the commenter asserted, to regulate off-site activities incidental to the loading of coal, such as crushing or sizing.

OSMRE does not agree. The question of whether Congress intended the physical processing of coal, such as crushing and sizing, to be regulated under SMCRA is not at issue in this rulemaking. As discussed in the "Background" of this preamble, OSMRE revised the definitions of "coal preparation" and "coal preparation plant" (May 11, 1987; 52 FR 17724) to include physical processing of coal in response to the decision in *In Re: Permanent II* (Slip op. at 15–20). The issue in this rulemaking is how to determine those off-site coal preparation activities which are included in the definition of "surface coal mining operations" at section 701(28) of the Act.

Another commenter suggested that the rule was an illegal attempt to curtail jurisdiction over crushing, screening, sizing, and other physical processing. The commenter maintained that OSMRE was failing to meet the intent of SMCRA to regulate *all* coal processing.

OSMRE disagrees. Contrary to the commenter's assertion, there is nothing in the Act or its history that implies that SMCRA was meant to apply nation-wide to all industrial facilities that process coal irrespective of whether or not they are operating in connection with a coal mine. This rule relies on the statutory standard in section 701(28)(A) of the Act that the off-site coal preparation must be performed "in connection with" a coal mine. Because the phrase "in connection with" is not defined in the Act, and there is no statutory obligation to define it in regulations, OSMRE has the latitude to adopt it verbatim and apply it in a reasonable manner consistent with its normal meaning.

Specifically, this commenter maintained that the consideration of proximity in determining jurisdiction over off-site coal processing is illegal. The proximity consideration authorized by the court of appeals for support facilities, the commenter maintained, does not apply to coal processing. The phrase in section 701(28)(B), "resulting from or incident to," the commenter asserted, modifies "other areas upon which are sited structures, facilities, or other property or materials on the surface" and does not modify "processing" in (B).

OSMRE disagrees. OSMRE's position is based in part on the decision of the court of appeals, which stated, "At issue in the interpretation of section 701(28)(B) is the scope of 'processing areas * * * and other areas upon which are sited structures, facilities or other property or materials on the surface resulting from or incident to such activities.' " The court continued, "We agree * * * with the district court that the Secretary may reasonably construe the meaning of 'processing areas * * * resulting from or incident to such activities' to include processing facilities that are not at or near the mine site." The court added, "The language of subsection (B) is without geographic limitation; coal processing facilities can certainly be 'incident to' surface coal mining operations without being onsite" (*NWF*, 839 F.2d at 744–745). This language supports OSMRE's conclusion that the phrase "resulting from or incident to" modifies "processing areas," and that OSMRE may regulate off-site coal preparation facilities pursuant to the definition of "surface coal mining operations" at section 701(28) of the Act.

This same commenter suggested that even if it is accepted, for argument's sake, that "processing areas" is modified by "resulting from or incident to," it is arbitrary to apply this to dry coal preparation and not other coal preparation. If, the commenter maintained, the phrase does modify "coal processing," then it also modifies the other enumerated facilities in section 701(28)(B), including coal waste impoundments, dams, spoil banks, overburden piles, etc. The commenter suggested that OSMRE would be hard-pressed to argue before any court that this is the case because of the obvious environmental hazards that would result from such an interpretation.

Contrary to this assertion, OSMRE is not interpreting the modifying phrase "resulting from or incident to" as limited to dry coal preparation but rather interprets it to apply to all coal processing or preparation. Although OSMRE is not addressing in this rulemaking the interpretation of (B) as it applies to facilities other than coal preparation plants, OMSRE must note that the phrase "resulting from or incident to" clearly does modify all those other areas specified in section 701(28)(B) of the Act. OSMRE does not believe that the enumeration by Congress of examples in section 701(28)(B) was intended to reach such facilities not resulting from or incident to a mine. If Congress had intended to regulate these enumerated facilities without any consideration of whether they were resulting from or incident to coal mine activities, then all impoundments and dams nationwide would be subject to SMCRA regardless of whether or not they had anything to do with a coal mine. Certainly Congress did not intend OSMRE to regulate cattle-watering agricultural impoundments or major water project impounding structures without any coal mining association. Congress did not intend that "shipping areas" regardless of their association with coal mines be regulated under SMCRA. It is unreasonable to assume that Congress intended to regulate all coal processing at all industrial facilities nationwide, absent any relationship to a mine. Congress did not enumerate the examples in section 701(28)(B) as types of facilities which will always be regulated under SMCRA, irrespective of whether or not they are associated with coal mines. Congress identified them as examples of facilities that will be regulated if they are "resulting from or incident to" activities in connection with a coal mine.

In addition to the objection concerning OSMRE's interpretation of the language in section 701(28)(B) of the Act, this commenter suggested that OSMRE's rule amounts to an expansion of the 1988 court of appeals decision and that it conflicts with the 1980 and 1984 district court decisions that paragraphs (A) and (B) of section 701(28) of the Act are independent and that they cumulatively establish the scope of jurisdiction. OSMRE has attempted, the commenter continued, to interject a geographic proximity consideration crafted under paragraph (B) into an interpretation of "in connection with" which is found in paragraph (A). This, the commenter argued, is contrary to court decisions in that it makes paragraph (A) servient to the language in paragraph (B).

The commenter suggested that the court of appeals, although expressly declining to find jurisdiction under paragraph (A), endorsed the lower court's judgment to find authority under paragraph (B). Thus, according to the commenter, the lower court's interpretation of the relationship between paragraphs (A) and (B) must stand as the only proper interpretation consistent with rules of statutory construction and the broad intent of Congress.

Again, OSMRE disagrees. First, the court of appeals found authority to regulate off-site coal processing under section 701(28)(B) of the Act. Second, the court acknowledged that the term "processing areas" is modified by the phrase "resulting from or incident to." The question is which processing areas are resulting from or incident to the activities in section 701(28)(A) of the Act. Third, the court found the element of proximity to be a valid consideration in determining whether a facility is "resulting from or incident to." Thus, the consideration of proximity in determining the reach of the regulation to "processing areas" is appropriate. The court indicated that the Secretary may properly limit the reach of the regulation to "facilities that are 'in connection with' a surface coal mine * * *." Thus, the court acknowledged without objection an approach to determining what is "coal processing * * * resulting from or incident to" coal mining activities, which is based on a consideration of proximity appropriate in implementing section 701(28) (B) of the Act, and which incorporates pertinent limiting language found in section 701(28) (A) of the Act—"activities * * * in connection with."

This view is also consistent with the finding of the court of appeals that the "phrase 'resulting from or incident to' * * * certainly does require some type of limiting principle of *proximate* causation that is familiar to the courts in tort law. Otherwise, every support facility that could be considered a 'but for' result of a surface coal mining operation would be subject to SMCRA regulation" (emphasis added) (*NWF*, 839 F. 2d at 745).

OSMRE believes that a limiting principle similar to the one found by the court of appeals to have merit under section 701(28) (B) of the Act can also be reasonably applied in determining whether coal processing activities are "in connection with" a coal mine under section 701(28)(A). Thus, the element of geographic proximity, along with the element of functional relationship described in this preamble, are proper factors to consider in evaluating whether an off-site coal preparation plant is subject to regulation under SMCRA. Contrary to the assertion of the commenter, OSMRE is interpreting the complex definition in section 701(28) of the Act in a manner wholly consistent with and supported by this latest court decision.

One commenter maintained that the most straight-forward approach to regulating off-site coal processing would be to acknowledge what the court of appeals found to be a "clearly better" reading of the statute—that "at or near the mine site" in section 701(28)(A) of the Act modifies "cleaning, concentrating, or other processing or preparation."

OSMRE has considered this interpretation in the past but, in light of the fact that the court of appeals has upheld the Secretary's jurisdiction over coal processing under section 701(28)(B) of the Act, it is not necessary to revisit the interpretation of the "at or near the mine site" language in section 701(28)(A). The purpose of this rule is to recognize that there are processing facilities other than those at the point of ultimate use that are not in connection with a coal mine, and to ensure that jurisdiction is extended only to preparation plants operating in connection with a coal mine.

One commenter suggested that OSMRE clarify that off-site coal loading absent chemical or physical processing is not regulated under section 701(28)(B) of the Act as "processing areas" or as "other areas upon which are sited structures * * * resulting from or incident to" mining. The commenter pointed to the language in (A) stipulating that the definition of "surface coal mining operations" includes loading "for interstate commerce" that occurs "at or near the mine site," and suggested that this would preclude regulating coal loading that did not meet this two part criteria in (A).

OSMRE interprets "loading" and "processing" in section 701(28) to be distinct and different activities. Coal loading is not processing, and therefore off-site loading facilities that do not process coal are not subject to the performance standards of 30 CFR Part 827. OSMRE agrees with the commenter that loading facilities that do not process coal are not regulated unless located at or near the mine site. OSMRE construes the specific language of section 701(28)(A) of the Act limiting the regulation of loading facilities to those at or near the mine site to limit proximity considerations concerning off-site loading facilities.

Applying "In Connection With"

In addition to supporting the incorporation of the phrase "in connection with" into the rule, one commenter suggested that OSMRE define the term in order to limit the rule's application.

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As mentioned above, there is no statutory obligation to flesh out the language in this rule. OSMRE believes that further attempts to define the phrase "in connection with" would unduly hamper regulatory authorities in making valid case-by-case determinations and would result in inappropriate applications of the rule. For example, in 1983, OSMRE amended the rules governing the reach of SMCRA to off-site coal processing by including all processing but that which was conducted at the point of ultimate use. While the test was mechanical and very easy to apply, it posed the potential for inclusion of facilities that do not operate in connection with a coal mine. To that extent, the fleshing out of the rule was undesirable and needed to be changed.

The preamble to this rule provides adequate guidance, much of which has been in place for many years, on what to consider when evaluating whether a coal preparation plant is operating in connection with a coal mine. Further, the court of appeals (*NWF*, 839 F.2d at 745) found merit in OSMRE's "flexible implementation of the statute that allows regulatory authorities to 'consider the myriad site specific situations that cannot be fully anticipated in writing a Federal regulation.' (48 FR 20397; 1983)."

Another commenter criticized OSMRE's assertion that it can no longer treat facilities as being either in connection with a mine or an end user. The commenter maintained that OSMRE has failed to identify any aspect inherent in the preparation activities newly included in the definition of "coal preparation" that justifies any reconsideration of their being subject to regulation. The commenter then went on to exclude the possibility of basing such a distinction on location or environmental harm because processing involving the separation of coal from its impurities is just as likely to occur away from minesites as that which does not involve separation of impurities, and both types of processing involve environmental impacts.

Contrary to the commenter's assertion, OSMRE's experience indicates that facilities separating coal from its impurities are much more apt to be located near the mine or near the end user, while crushing, sizing, and screening may occur at any point in the stream of commerce. Further, as described earlier in this preamble, once the definition of "coal preparation" was changed to include activities less apt to be conducted "in connection with" a coal mine, it raised the specter of the misapplication of the rules to such activities. Because of the addition to the definition of "coal preparation" of new categories of activities which in some instances may not be "in connection with" a mine or end user (e.g., crushing and sizing), OSMRE must revise the language of this rule. OSMRE wishes to appropriately limit and concisely state the jurisdiction provided in section 701(28) of the Act over coal preparation which results from or is incident to an activity "in connection with" a coal mine. Therefore, OSMRE is revising the rules to incorporate the phrase "in connection with."

Another commenter objected to the removal from existing regulations of the phrase "other than such plants which are located at the site of ultimate coal use" and the insertion of "in connection with," on the basis that the latter phrase is subjective and will require the regulatory authority to make a judgment as to whether a facility is operating "in connection with" a coal mine. The commenter suggested that the determination of jurisdiction was clearer under previous language and recommended retaining the existing language in 30 CFR Parts 785 and 827.

It has always been necessary for regulatory authorities to determine whether coal preparation activities are being conducted "in connection with" a coal mine. The incorporation of the statutory language in this rule merely specifically repeats the statutory requirement. Because of the amended definition of "coal preparation," the terms of the previous criterion could have been interpreted to include activities and facilities which do not meet the statutory definition of surface coal mining operations. Therefore, this provision needed to be changed.

Another commenter was concerned about the effect of the rule on a specific preparation plant that operates in connection with an end user, a power plant burning coal from a mine located about a mile away. Such plants were not subject to regulation under OSMRE's previous rules at 30 CFR Parts 785 and 827 because those rules explicitly excluded from jurisdiction "such plants which are located at the site of ultimate coal use."

As stated above, OSMRE has not changed its interpretation that operations in connection with an end user are not operations in connection with a coal mine. Coal preparation facilities which are being operated only in connection with another industrial facility, such as the power plant of concern to this commenter, do not operate in connection with a coal mine and are not subject to the rule.

Another commenter maintained that this rule is a reversal of OSMRE's July 10, 1985 (50 FR 28186), interim final rule which required States to revise their programs to ensure that every "coal preparation plant" under the interim final definition would be permitted. Certain operations subject to regulation under the interim final rule will no longer be regulated under the new rule, the commenter asserted.

This new rule does not constitute a reversal of the referenced requirement. Although the revised definition of "coal preparation plant" included facilities not previously considered by OSMRE to be conducting coal preparation, it did not alter OSMRE's requirement that regulatory authorities extend jurisdiction only to coal preparation activities when they are "in connection with" a coal mine.

One commenter emphasized that the fact that the statute is phrased in the singular, "in connection with *a* surface coal mine" (emphasis added) means that Congress intended that the activity be regulated only when it is in connection with one mine, not several mines. The commenter maintained that the court of appeals supported this interpretation when it noted that "the Secretary only purports to regulate facilities that are 'in connection with' a surface coal mine."

Although OSMRE recognizes that the reference to "activities * * * in connection with a surface coal mine" in section 701(28)(A) of the Act is phrased in the singular, and the singular is used in this rule, the Office does not interpret the language of the Act to indicate Congressional intent to limit application of the Act to activities in connection with only one mine (see, for example, 44 FR 15095 and 15292; March 13, 1979). The use of the singular "a" in this rule and in the guidance in this preamble does not preclude regulatory authorities from considering the relationship of a facility to more than one mine in determining whether that facility is conducting activities "in connection with" a coal mine.

This commenter also suggested that OSMRE consider whether a plant has a useful life independent of a specific mine in addition to considering those factors already discussed in the preamble to this rule in applying the "in connection with" test.

OSMRE believes that it is valid to consider whether a facility has a useful life independent of the specific mine or mines which it serves, in determining if the facility is operating in connection with a coal mine (particularly in light of the intended effect of the Act as a reclamation statute). A facility lacking a useful life independent of the specific mine or mines which it currently serves would be operating in connection with a coal mine, while a facility having a useful independent life might not. In the latter case, regulatory authorities would have to consider the other aspects of the relationship between the facility and any particular coal mine or mines to determine if it operates in connection with a coal mine. OSMRE believes that this consideration is consistent with the economic and other considerations set forth in the May 5, 1983, preamble to the definition of "coal preparation or coal processing" (48 FR 20393) and is also consistent with the need for a limitation noted by the court of appeals (*NWF*, 839 F.2d at 745).

This same commenter added that the functional relationship described by example in the preamble is subject to change over time. For example, the commenter noted, a facility's economic relationship to a mine may change from year to year depending on the life of the permit and, particularly, the useful life of the facility. Consequently, the commenter maintained, a facility that meets the "in connection with" test one year may not meet it under the exact same analysis the next year. The commenter suggested the use of a litmus test which would incorporate proximity and the "useful life independent of a mine" test applied in relation to a specific mine.

The commenter asserted that this will lead to the regulation of preparation plants built and operated for the life of a particular mine thus allowing for a more appropriate application of SMCRA's post-mining land use standards. Independent facilities which operate separate from the life of a particular mine do not fit Congress' statutory scheme for post-mining land use, according to the commenter. Such a facility's useful life, the commenter continued, may extend beyond the life of the particular mine it serves, but the level and frequency of activity of the facility may be associated with several mines it serves, rather than a particular mine. The commenter further maintained that OSMRE has in the past insisted that a permit for an independent facility show that it will be dismantled and the area reclaimed once processing activities cease, despite the owner's plans to use the facility sometime in the future for new mining anticipated in the area. It appears from legislative history and statutory construction, the commenter maintained, that Congress intended to regulate only those facilities directly related to a mine with no anticipated life beyond a particular mine.

OSMRE agrees with the commenter that the application of the Act, with its primary emphasis on reclamation and post-mining land use, to industrial facilities designed for long-term use and not operated in connection with a coal mine would be inappropriate. Because SMCRA is primarily a reclamation statute, and any facility regulated as a surface coal mining operation must have a reclamation plan, it is reasonable to expect that a regulated facility will have an estimated or prescribed life span and that reclamation will occur following the close of operations.

However, OSMRE disagrees with the commenter's assertion that SMCRA was intended to regulate only those facilities directly related to a mine with no anticipated life beyond a particular mine. OSMRE sees no basis in SMCRA or the legislative history for the commenter's conclusion. As noted above, a facility may be subject to regulation because it is operating in connection with more than one coal mine.

OSMRE does not expect this approach to lead to a series of situations in which many facilities that meet the "in connection with" test one year will not meet it under the same analysis the next year, as envisioned by the commenter. Decisions of regulatory authorities concerning whether or not facilities operate in connection with a coal mine are to be made consistent with the practical considerations discussed in this rulemaking. OSMRE does not believe that the fundamental economic relationships that exist between facilities and mines fluctuate to the extent that regulatory authorities would properly reverse their determinations from one year to the next. Further, OSMRE believes that the flexibility inherent in this rule does more to enhance the year-to-year consistency of decisions than would be the case if the rule set forth a more mechanical approach.

Issue of "Control of Operations"

One commenter criticized OSMRE for stating in the proposed rule that "the ability of the mine operators, or coal handlers directly servicing such operators, to have control of operations is essential in establishing that a plant is being operated in connection with a mine," and then allegedly contradicting that position by stating that "a facility need not be owned by a mine owner to be in connection with a mine" (53 FR 23528). Because of the confusion surrounding what "control" really is, the commenter maintained, OSMRE needs to provide more guidance here.

Further the commenter maintained, OSMRE should make clear that the "control" discussed in the preamble is different from ownership and control as defined in OSMRE's regulations. The former, the commenter suggested, does not have the legal meaning of the latter, and really relates to function rather than a legal relationship.

The language quoted by the commenter is from guidance provided by OSMRE in 1979 and 1983. This rulemaking is not intended to alter the meaning or utility of that guidance, and the application of that guidance through regulatory programs has not raised any significant questions regarding its utility or appropriateness. Further, OSMRE sees nothing contradictory in that guidance. OSMRE was merely making the point that ownership of a facility is not necessary in order for the facility to be operating in connection with a coal mine. The level of economic reliance of a particular facility on a coal mine is a valid consideration in determining if the facility operates in connection with that mine. OSMRE still considers this guidance to be pertinent.

The commenter's point about the use of the term "control" is well taken. OSMRE defines "owns or controls" and "owned or controlled" at 30 CFR 773.5 (see 53 FR 38868) for purposes of implementing section 510(c) of the Act relative to ownership or control of a mine operation. A definition of "control" did not exist in 1979 when OSMRE first used the term as guidance for resolving questions of SMCRA's jurisdiction over offsite facilities. The purpose and effect of the guidance for this rule is not intended to be altered by OSMRE's recent definition of "owns or controls." The preamble cited in this rulemaking was intended to allude to the economic or functional relationship or linkage that may constitute a connection between coal processing activities and a mine under section 701(28)(A) of the Act, irrespective of ownership of the facilities.

This commenter also suggested that OSMRE's preamble examples of the types of relationships that constitute "in connection with" are vague, and that OSMRE needs to define the terms used in the examples, such as "significant", "economic relationship", or "any type of integration" (53 FR 23528).

OSMRE does not agree that the examples are vague. When used as illustrations in the guidance on evaluating "connections," these terms have generally understood meanings. OSMRE believes that defining or further

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fleshing out these terms beyond their normal usage is unnecessary in order for the terms to be useful in this context. And to the extent that more detailed definitions would alter the generally understood meanings of these terms, such definitions would lead to inappropriate applications of the rule.

Miscellaneous Comments

One commenter asserted that OSMRE, by referencing specific harbor facilities in the preamble, was attempting to carve out an illegal exemption for facilities based on distance from a mine.

OSMRE is not proposing any class exemption. The port facilities named in the preamble to the proposed rule were included as specific and illustrative examples of facilities which OSMRE believes are not conducting coal preparation in connection with a coal mine. As another commenter pointed out, these specific facilities are primarily freight handling facilities and, as such, are an intermediate transfer point for coal which has already entered interstate or international commerce. OSMRE does not propose that determinations about jurisdiction be made solely on the basis of location relative to a mine absent any consideration of function or relationship. The approach adopted by OSMRE, and one which the court of appeals found to have merit, is to consider proximity as one of the factors in determining jurisdiction.

One commenter noted that a misconception exists concerning blending of coal, where coal from different seams and of differing qualities is loaded into the same coal carrier to achieve a composite product of specified quality. The commenter was concerned that this will be considered "physical processing" under this rule because the characteristics of the blended coal are different from those of the constituent coals. This is particularly objectionable, the commenter maintained, because there is no environmental consequence to such blending.

OSMRE does not believe that the blending of coal during loading, if all that is involved is the loading of different types or qualities of coal, changes the status of a loading operation for purposes of regulation. Such blending is not processing.

One commenter urged that OSMRE clarify that retail sales dealers having their own coal preparation facilities, where the only contact with a mine is the purchase of run-of-the-mine coal at wholesale prices, are not to be regulated under the rule.

OSMRE cannot state with certainty that the facilities of concern to this commenter do not operate in connection with a coal mine. Whether a particular retail sales dealer is operating in connection with a coal mine is a question of fact, to be determined based on the facts of the particular situation. However, because coal preparation facilities operated by retail sales dealers tend to be closely linked to end users, OSMRE does not expect that regulatory authorities, in making case-by-case determinations, will likely find that such facilities are operating in connection with a coal mine.

A Federal agency reminded OSMRE of the authority of Federal land managing agencies to regulate surface mining on agency lands.

This rule deals with the issue of regulation under SMCRA and thus has no effect on regulation by other Federal agencies of lands under their jurisdiction under other statutes.

One commenter objected to the manner of promulgation of these and previous regulations dealing with off-site coal preparation, and maintained that OSMRE violated the Administrative Procedure Act (APA) in promulgating the 1985 interim final rule defining "coal preparation." The commenter maintained that it is difficult for operators of facilities to determine if they are subject to regulation because of the constant changes in the status of regulations. The commenter criticized OSMRE for proposing changes only to portions of the rules governing off-site coal preparation instead of revising all the rules for off-site preparation. OSMRE should, the commenter suggested, at least provide a reasonable effective date for this final rule so that operators have time to determine if they are to be regulated.

Questions of APA violations in other rulemakings are outside the scope of this rulemaking. The APA and section 526(a) of SMCRA provide appropriate procedures for any interested person who feels that a statutory requirement for another rulemaking has not been met. OSMRE has adhered to the APA in proposing this rule, considering public comments, and promulgating the final rule. The rule is issued with the standard effective date of 30-days from the date of publication, which OSMRE believes is a reasonable effective date, given the nature of the issues addressed in this rulemaking. In addition, OSMRE sees no reason to repropose all the rules dealing with off-site coal preparation when the only question at hand is one of clarifying which preparation plants are subject to regulation under the Act's definition of "surface coal mining operations."

Finally, concerning the commenter's assertion that facility operators cannot tell if they are subject to the rule, OSMRE does not purport to provide the entire regulatory scheme in this rule, but rather seeks to provide a reasonable framework for regulatory authorities to adopt and implement regulatory programs, including appropriate case-by-case decisions about jurisdiction. In this regard, OSMRE believes that it is providing sufficient regulatory guidance, and that operators of processing facilities necessarily know whether or not they are operating in connection with a coal mine or if they are operating a long-term industrial facility not in connection with any coal mine. When in doubt, they should contact the regulatory authority.

Effect in Federal Program States and on Indian Lands

The rule applies through cross-referencing in those States with Federal programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750.

Effect on State Programs

OSMRE will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

IV. Procedural Matters

Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291

The Department of the Interior has determined, in accordance with the criteria of Executive Order 12291 (February 17, 1981), that this rule is not major and does not require a regulatory impact analysis because it will not affect existing costs to the coal industry and coal consumers, and will not adversely affect competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic effect on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA), and has made a finding that this rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA is on file in the OSMRE Administrative Record in Room 5131, 1100 L St., NW., Washington, DC.

Author

The principal author of this rule is Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-5950 (Commercial or FTS).

List of Subjects

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 827

Coal, Environmental protection, Surface mining.

Accordingly, 30 CFR Parts 785 and 827 are amended as set forth below

Date: October 8, 1988.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

1. The authority citation for Part 785 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, and Pub. L. 100-34.

2. Section 785.21 is amended by revising paragraph (a) to read as follows:

§ 785.21 Coal preparation plants not located within the permit area of a mine.

(a) This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine. Any person who operates such a preparation plant shall obtain a permit from the regulatory authority in accordance with the requirements of this section

* * * * *

PART 827—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL PREPARATION PLANTS NOT LOCATED WITHIN THE PERMIT AREA OF A MINE

3. The authority citation for Part 827 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, and Pub. L. 100-34.

4. Section 827.1 is revised to read as follows:

§ 827.1 Scope.

This part sets forth requirements for coal preparation plants operated in connection with a coal mine but outside the permit area for a specific mine.

[FR Doc. 88-26915 Filed 11-21-88; 8:45 am]

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federal register

Tuesday
November 22, 1988

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21 and 36

Noise Certification Standards for Propeller-Driven Small Airplanes and Propeller-Driven Commuter Category Airplanes; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 25034; Amendment Nos. 21-63 and 36-16]

Noise Certification Standards for Propeller-Driven Small Airplanes and Propeller-Driven Commuter Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule, which is based on Notice 86-10 (51 FR 25500), revises noise certification standards for propeller-driven small airplanes and propeller-driven, commuter category airplanes by substituting the use of actual takeoff tests for the level flyover tests currently specified. Subsequent to the publication of Notice 86-10, Parts 21, 23, 36, 91, and 135 of the Federal Aviation Regulations (FAR) were amended to adopt certification procedures, airworthiness and noise standards, and operating rules for an additional category of propeller-driven, multiengine airplane, designated as the Commuter Category. As a result of these amendments, propeller-driven, commuter category airplanes have been included in this final rule. This rule revises noise certification test procedures as of December 22, 1988 and revises the noise level limit numbers to approximate the sound levels measured and corrected in accordance with Appendix F of Part 36. This rule resulted from industry requests that noise certification be more directly based upon typical in-service noise measurements and from studies conducted over a three year period under the auspices of the International Civil Aviation Organization. The rule exempts both antique airplanes and airplanes modified by the addition of floats or skis from the acoustical change measurement and documentation requirements of Part 21.

DATES: Effective date of this amendment is December 22, 1988. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Albersheim, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3560.

SUPPLEMENTARY INFORMATION:

Synopsis of the Final Rule

Part 36 of the Federal Aviation Regulations (14 CFR Part 36) contains noise standards for aircraft type and airworthiness certification. Appendix F of Part 36 contains the provisions currently applicable to propeller-driven small airplanes and propeller-driven, commuter category airplanes. Compliance with Appendix F is now determined by a level flyover test for which the measured noise is subjected to a calculated "correction" to account for differences in aircraft performance between level flight and takeoff. This rule amends Part 36 adding an Appendix G to include actual takeoff noise tests, instead of the present level flyover test, eliminating the need for the performance correction. The amendment provides the test conditions, procedures, and noise levels necessary to demonstrate compliance with certification requirements. The new noise standard affects the following items:

A. Certification Procedure Provisions

The new rule amends FAR Part 36 by adding an Appendix G which contains the specifications for conducting takeoff noise certification tests. This appendix also contains procedures for adjusting measured noise data for the differences in aircraft performance and acoustic propagation between the test day and the reference standard day. The effective date for Appendix G is December 22, 1988.

B. Noise Level Standard

Appendix G provides for the continued use of the A-weighted sound level (L_A) as the noise measure the propeller-driven small airplanes and propeller-driven, commuter category airplanes.

The Appendix G noise level limit is simply a translation of the current Appendix F noise limit which accounts for the difference in noise level resulting from the change in test airspeed and distance that the airplane is from the microphone. Even though the Appendix G noise level limit is now 5 decibels higher than the Appendix F limit, no change in absolute noise level requirements is expected to occur from this amendment.

C. Acoustical Change

FAR Part 21 has been amended to remove the present limitations on acoustical changes. These limitations were based on the use of the level flyover test and had no provision for increased airplane weight or decreased performance. With this revision, FAR Part 21 now uses one acoustical change provision for all airplanes that are noise certificated using a takeoff test.

The revision to FAR Part 21 also exempts from the acoustical change requirements antique airplanes, i.e., those that had flight time before January 1, 1955, and airplanes modified by the addition of floats or skis. The owners of antique aircraft often experience difficulty in finding airworthy parts, e.g., engines, needed to keep aircraft in safe operable condition. They, therefore, often opt to make changes based on current parts availability and safety. The typical operator of an antique aircraft owns only one airplane and the acoustical change situations arise infrequently; thus, the FAA does not believe that adding noise requirements is justified either economically or environmentally.

Regulatory History

On December 31, 1974, the FAA adopted noise standards (40 FR 1029) for propeller-driven small airplanes, which prescribed noise standards for the issue of normal, utility, acrobatic, transport, and restricted type certificates. The rule also prescribed noise standards for airworthiness certificates and restricted category airworthiness certificates for newly produced propeller-driven small airplanes of older type designs. Finally, the rule prohibited acoustical changes in the type design of those airplanes where those changes increased noise levels beyond specified limits. Section 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1431), as amended by the Noise Control Act of 1972 (Pub. L. 92-574) provided the statutory authority for the provisions published in Notice 73-26 in the Federal Register on October 10, 1973 (38 FR 28016). A corrective amendment was published in the Federal Register on February 11, 1975 (40 FR 6346). The adopted standards were again amended (41 FR 56506; December 23, 1976) as a result of two proposals submitted to the FAA by the Environmental Protection Agency (40 FR 820, January 3, 1975, and 40 FR 1061; January 6, 1975).

A further amendment (45 FR 67064, October 9, 1980) applied to new production of previously exempt agricultural and fire-fighting airplanes (without flight time before January 1, 1980), and to acoustically changed airplanes (without flight time in the changed configuration before January 1, 1980) that had not been shown to comply with Part 36 noise levels.

In May 1983, the International Civil Aviation Organization (ICAO) Committee on Aircraft Noise recommended replacing the ICAO flyover noise standard with a takeoff noise standard. In July 1986, a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (Notice 86-10, 51 FR 25500; July 14, 1986) to solicit comments on the proposal to revise noise certification for propeller-driven small airplanes by substituting the use of actual takeoff tests for the level flyover tests specified in Appendix F of Part 36. This final rule is substantially the same as the ICAO recommendation, except for microphone placement and associated noise limits.

Need for Regulation

The noise certification method for propeller-driven small airplanes contained in Appendix F approximated the takoff noise by requiring level flyovers and making "corrections" calculated from meaured or assumed aircraft performance. However, ground measurements recorded during actual takeoffs seldom agreed with the Appendix F certification levels. As a result, the Genereal Aviation Manufacturers Association suggested that the noise certification rules should be changed to employ actual takeoff noise measurements. Thus, the purpose of this amendment is only to change the noise testing procedure and not to lower the absolute noise limitations.

Additionally, under Section 611 of the Federal Aviation Act of 1958, as amended (the Act), the FAA Administrator, in prescribing or amending aircraft noise regulations, is required to consider, among other things, whether the action is consistent with the highest degree of safety in air commerce and whether it is economically reasonable, technologically practicable, and appropriate for the particular type of aircraft to which it would apply. The FAA believes that this final rule meets the requirements of Section 611 of the Act.

Rule Structure and Timing

As a part of this rule, an Appendix G has been added to Part 36. This appendix is structured along the general lines of Appendix F which contains the requirements for noise certification of propeller-driven small airplanes and propeller-driven, commuter category airplanes using the level flyover test. While both procedures share some common elements e.g., the use of the A-weighted decibel as the unit of noise measure), their differences are so pervasive that concern for the clarity of the resulting regulation requires the use of a separate appendix.

Similarly, to preclude questions of the applicability of each procedure, the FAA will require the use of Appendix G of all tests conducted on or after December 22, 1988, regardless of the date of application for type certification. This will eliminate the regulatory burden that would be imposed on applicants if different standards and tests were required for different airplanes, or models thereof, in same product line. On or after December 22, 1988, all noise certification tests will be conducted pursuant to Appendix G.

Analysis of the Amendments

The amendment to establish a takeoff test procedure for the noise certification of propeller-driven small airplanes and propeller-driven, commuter category airplanes revises existing Parts 21 and 36 to the Federal Aviation Regulations (14 CFR Parts 21 and 36) as follows: 1. Section 21.93 defines changes to an aircraft type design which require recertification for noise, i.e., acoustical changes. Recertification for those "acoustical changes" for propeller-driven small airplanes and propeller-driven, commuter category airplanes was limited to (a) changes to or removal of mufflers of similar noise-control components or (b) increases in installed power or propeller tip speed. This amendment expands the definition of acoustic change. As amended, § 21.93 states that any voluntary change in the type design of an airplane which may increase the noise levels of that airplane is an "acoustical change". This change allow one "acoustic change" definition to be used by all airplanes.

Section 21.93 has also been amended to eliminate recertification for acoustic change for antique airplanes and land-based airplanes which only add (or substitute) floats or skis to already certificated wheeled aircraft. Recertification for acoustic change is required for acoustic changes made after a wheeled aircraft has been reconfigured with floats or skis. The new definition of "antique" airplane is limited to U.S. registered airplanes with flight time prior to January 1, 1955. As amended in this respect, § 21.93 is now consistant with § 45.22(b) which grants an exemption to antique aircraft from nationality and registration marking. There is no change in airworthiness certification requirements as a result of this rule.

2. Two additional technical publications have been incorporated by reference in § 36.6. The publications contain technical specifications for noise measurement and analysis equipment and are available from the International Electrotechnical Commission. Section 36.6 provides information concerning the purchase of these additional publications and a listing of the U.S. Government offices where the publications are available for inspection. The listing of these offices has been updated to account for changes which occurred subsequent to publication of Notice 86-10. However, this change does not effect the scope of this final rule.

3. Section 36.9 has been amended to require that noise tests conducted for acoustical changes be performed in accordance with § 36.501. At present § 36.9 requires compliance with Appendix F. However, § 36.501 directs applicants to the appropriate appendix.

4. Section 36.501 has been expanded to direct applicants for new, amended, and supplemental type certificates to the appropriate noise limit in Appendix F for certification tests completed before December 22, 1988. or Appendix G for certification tests completed on or after December 22, 1988.

5. Paragraphs (b) and (c) of § 36.501 have been amended to direct applicants for new, amended, and supplemental type certificates to the appropriate noise certification regulation. The amendment establishes Decmeber 22, 1988, as the date on or after which all noise certification tests for propeller-driven small airplanes and propeller-driven, commuter category airplanes will be conducted using the methods and procedures of Appendix G. All tests completed before this date will use Appendix F. The noise levels appropriate to each procedure are contained in the applicable appendix.

6. The title of Appendix F has been changed to clearly indicate that it only pertains to the flyover test requirements for propeller-driven small airplanes and propeller-driven, commuter category airplanes.

7. Similarly, the description of the scope of Appendix F, contained in section F36.1, has been amended to reflect its new status.

8. An Appendix G has been added to FAR Part 36 and its contents are summarized as follows:

PART A—GENERAL

The scope of Appendix G is specified in section G36.1. The appendix prescribes procedures and certification noise levels applicable to tests of propeller-driven small airplanes and propeller-driven, commuter category airplanes which are conducted on or after December 22, 1988. Tests for propeller-driven small airplanes and propeller-driven, commuter category airplanes which are conducted prior to

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December 22, 1988, will be performed under Appendix F.

PART B—NOISE MEASUREMENT

Section G36.101 specifies takeoff test conditions including both the physical conditions for the noise measurement site and the meteorological "test window". The meteorological window in which testing is allowable is larger for Appendix G than for Appendix F. Specifically, temperature and relative humidity limits for Appendix G have been increased to match those currently used for testing of large propeller-driven and turbojet powered aircraft. These limits should decrease the need and costs of waiting for acceptable weather conditions before starting tests. The wind limits have been changed to include limits on both total wind and cross-wind velocity. Appendix F only has a total wind limit coupled with a requirement to align the airplane flight direction within +15 degrees of the wind under certain circumstances.

Section G36.103 describes the acoustical measurement system. Since the noise unit chosen for Appendix G is the same as that for Appendix F, no changes in this section have been made.

Section G36.105 is similar to the corresponding section of Appendix F, with some additional technical guidance provided. Specifically, two additional documents from the International Electrotechnical Commission (Publication No. 651, entitled "Sound Level Meters" and No. 561, entitled "Electro-acoustical Measuring Equipment for Aircraft Noise Certification") are incorporated by reference. A reference to the calibration procedures contained in Appendix A is also added to clarify the requirements in this area. The section adds two more categories of acceptable sound level recording instrumentation, graphic level recorders and sound level meters. These additions increase the flexibility of the rule and lower the costs to the applicant. Additionally, use of an inexpensive windscreen is required when the wind speed exceeds 5 knots. This requirement will improve the signal-to-noise ratio on windy days, improve the data, and increase the number of test days available to applicants.

Section G36.107 specifies the requirements for noise measurement procedures, including the orientation of the microphone during takeoff. The orientation of the microphone sensing elements during the test must be related to the direction from which the sound was coming during calibration. Similarly, the recorder must be calibrated within 10 decibels of the full-scale value. Both of these requirements are intended to ensure that differences between measurement systems will not affect measured sound levels.

Section G36.109 provides guidance on the types and extent of data necessary for noise certification including information on the equipment and its response, and meteorological and topography features that might affect noise measurements, aircraft performance, and noise levels. For takeoff noise tests, information must be gathered on aircraft performance and position when the airplane is directly over the microphone to make the corrections required in section G36.201.

Section G36.111 specifies airplane flight procedures with measurement distances taken from the microphone location at the noise measuring site. Specifically, the start of takeoff roll must be 8,200 feet from the noise measuring site and the aircraft must pass over it within ten degrees from the vertical and within twenty percent of the reference (standard day) altitude. The reference day is a no-wind, sea level day of 59 °F and 70 percent relative humidity. The 59 °F standard is that used for calculating aircraft performance for airworthiness certification and by using this value, rather than the 77 °F used in Appendix F, applicants need not re-compute aircraft performance solely for noise certification purposes. Such calculations are not currently necessary under Appendix F since aircraft noise during level flyover can generally be assumed to be independent of temperature.

PART C—DATA CORRECTIONS

Section G36.201 contains the technical specifications for the corrections to measured data necessary under Appendix G. Corrections are required to convert the data to standard reference conditions for (1) atmospheric absorption, (2) noise path length differences caused by conditions such as changes in altitude, (3) propeller tip speed, and (4) engine power. This section does not require correction for atmospheric absorption if the test is conducted within a "no-correction" window, shown in figure G1. A similar "no-correction" window is provided for certain tests conducted within five percent of the reference power.

Section G36.203 requires that the measurement point be overflown at least six times to get enough measurements for a statistically valid average sound level. Further, the variation of these flights must be such that the confidence limit does not exceed 1.5 dB(A).

PART D—NOISE LIMITS

The noise level limits for the takeoff tests of propeller-driven small airplanes and propeller-driven, commuter category airplanes are contained in section G36.301. The noise level must not exceed 73 dB(A) up to and including aricraft weights of 1,320 pounds. Between 1,320 pounds and 3,300 pounds, the noise limit increases linearly at a rate of 1dB(A) for each 165 pounds from 73 dB(A) to 85 dB(A). Between 3,300 pounds and 19,000 pounds, noise cannot exceed 85 dB(A). The maximum weight of the airplane at brake-release must be the maximum weight for which noise certification is requested.

These limits (and all of Appendix G) apply to tests conducted on or after December 22, 1988, for noise certification for a new, amended, or supplemental type certificate. The choice of a single date on which to apply Appendix G, is intended to provide for the smooth transition to the new test procedures and to ensure equitable treatment for all applicants.

Regulatory Impact Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket. This evaluation reviews all changes to Parts 21 and 36. The FAA determined that the final rule is considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and is not major as defined in Executive Order 12291.

Little or no increase in costs will result from the proposed changes in certification procedures. Such costs, when they occur, would result from limits on future versions of existing aircraft types where those affected aircraft types demonstrate poorer-than-average climb capabilities during takeoff.

Regulatory Flexibility Determination

As detailed in the evaluation, the amendments adopted to Part 36 will not impose any new requirements on small or large entities. In fact, several amendments will reduce regulatory burdens to owners of certain airplanes (e.g., antique airplanes). The majority of changes to Part 36 are either editorial or clarifying in nature. Stringency is neither increased nor decreased. Since no substantial costs are incurred with adoption of the new amendments, it is certified under the criteria of the Regulatory Flexibility Act, the final rule will not have a significant economic impact on a substantial number of small entities.

Evironmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), the FAA has determined that this rule will not constitute a major Federal action significantly affecting the quality of the human environment. The amendment will have no net effect on noise levels around airports, including those used exclusively for general aviation. Therefore, no environmental assessment or environmental impact statement is necessary.

Trade Impact Analysis

Little or no impact on U.S. or foreign trade will occur as a result of this amendment. The majority of changes to Part 36 are either editorial or clarifying in nature, and stringency is neither increased nor decreased. Absent the rule, U.S. propeller-driven small aircraft and propeller-driven, commuter category aircraft exports may be placed at a competitive cost disadvantage since each model would be required to be certificated to both the current Appendix F flyover test and the ICAO takeoff test. The cost of multiple certifications would result in either higher selling prices or lower profits to U.S. manufacturers.

Federalism Implications

The regulations adopted in this final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Discussion of Comments

Interested persons were afforded the opportunity to participate in development of this rulemaking by submitting written comments to the public regulatory docket on or before October 9, 1986. All comments received have been reviewed and duly considered in promulgating this amendment.

Nineteen public comments were received in response to the notice (Docket No. 25034). All of the comments supported the revision of noise standards for propeller-driven small airplanes by substituting the use of actual takeoff tests for the level flyover tests specified in Appendix F; however, each commenter also had specific suggestions about one or more of the FAA's proposed amendments.

The comments received in public Docket No. 25034 were grouped by broad categories of issues and are discussed below.

1. Microphone Placement

A number of commenters recommended that a ground plane microphone be used for the measurement program instead of a microphone situated four feet above ground level. The ground plane microphone was recommended for greater accuracy of measurements and for standardization with ICAO measurement procedures. One commenter suggested that some recognition, in this rule, of measurements taken concurrently with both the ground plane microphone and the four foot high microphone is necessary in order to ensure that the FAA's verification of ground plane microphone measurements will be accepted by foreign certification authorities.

After consideration of the ground plane microphone, the FAA has chosen to continue using the four foot high microphone location for several reasons. First, the four foot microphone height measures noise where people receive it. Second, since noise measurements to date have been taken using a four foot microphone height, establishing a noise limit based on ground plane microphone measurements would require the FAA to first obtain additional data using the ground plane microphone in order to establish a reference database. Third, the class of airplanes to which this rule applies often use airports where jets and other large aircraft also fly. The noise from those other aircraft is measured at four feet above ground level. Thus, there would be no way to compare the certified noise levels of different aircraft using the same airport.

To lessen the burden on U.S. manufacturers which export aircraft, the FAA will approve, upon request, supplemental measurements obtained using the ground plane microphone. Although approved by the FAA, this supplemental information will not be considered a certification unless it is approved by the civil aviation authority of the country of import.

2. Aircraft Weight

Several commenters recommended that the upper weight limit of aircraft tested under this rule be increased to comply with the ICAO standard and to be consistent with NPRM, Notice 83–17 (48 FR 52010; November 15, 1983) which contained requirements for an additional category of propeller-driven, multiengine airplane, designated as the Commuter Category. The Commuter Category applies to airplanes with a maximum seating capacity, excluding pilto seats, of 19 or less, and a maximum certificated weight of 19,000 pounds or less. The final rule for the Commuter Category airplane was adopted on January 15, 1987 (52 FR 1806). NPRM, Notice 86–10 (51 FR 25500; July 14, 1986) was published for comment before the Commuter Category final rule was adopted and only covered certification of propeller-driven small airplanes of weights up to and including 12,500 pounds. To include Commuter Category airplane noise certification in Appendix G of Part 36, the upper weight limit for testing under Appendix G has been increased to 19,000 pounds.

3. Meteorological Conditions

Several commenters were concerned with the meteorological conditions and measurement procedures necessary for compliance with Appendix G. One commenter questioned the need to apply a restriction on tests where the atmospheric absorption at 8 KHz is greater than 12 dB/100 meters since the propeller blade passing or engine firing frequencies and their harmonics rarely produce energy above 1 KHz. Another commenter recommended locating the thermometer to measure ambient temperature and the hygrometer to measure relative humidity at 4 feet above the ground to avoid the need for remote monitoring. The NPRM proposed that meteorological measurements be made between 10 feet and 33 feet of the surface. Several commenters recommended that the no-correction window for atmospheric absorption be changed to comply with the ICAO standard. The NPRM proposed a requirement for atmospheric absorption correction for noise data obtained when the temperature is outside the range of 50 to 95 degrees F (10 to 35 degress C) and/or when the relative humidity is outside the range of 45 to 95 percent. One commenter suggested that testing with a temperature inversion should be permitted if a layered atmosphere with appropriate temperature and relative humidity measurements is used.

After consideration of the technical issues involved, the FAA has determined that the rule should not include a restriction on test conditions based on the atmospheric absorption at 8 KHz. By eliminating this restriction, the temperature/relative humidity window required for testing is now the

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same as the ICAO window, i.e., the ambient air temperature must be between 36 and 95 degrees F (2.2 and 35 degrees C) and relative humidity must be between 20 percent and 95 percent.

Further, for test simplification, the rule allows temperature and relative humidity measurements to be made with the thermometer and hygrometer situated between 4 feet and 33 feet of the surface instead of the NPRM measurement height of between 10 feet and 33 feet.

The no-correction window for atmospheric absorption has been modified to comply with the ICAO standard. Figure G1 contains the no-correction window for atmospheric absorption.

The correction to account for differences between the test and reference height of the airplane over the noise measuring point has been changed to that used by ICAO. The NPRM specified the correction Delta (1)=22 log (H_T/H_R), where H_T is the height of the test aircraft when directly over the noise measurement point and H_R is the reference height. The final rule requires the correction Delta (1)=20 log (H_T/H_R) be used when test day conditions are outside of those specified in the atmospheric absorption no correction window (Figure G1). Delta (1)=22 log (H_T/H_R) will only be used when test day conditions are within those specified in figure G1.

Finally, it should be noted that section G36.101 is not intended to preclude using a layered atmosphere to correct for a temperature inversion, provided the correction procedure is approved by the FAA. The rule allows as much flexibility as possible with regard to meteorological conditions. Thus, no provision was made to require that a layered atmosphere be used when testing with a temperature inversion if the inversion would not significantly alter the measured noise level of the airplane.

4. Rule Effective Date

Several comments were received regarding the effective date of the rule. Appendix G prescribes procedures and noise levels applicable to noise certification of propeller-driven small airplanes and propeller-driven, commuter category airplanes conducted on or after December 22, 1988. The comments recommended that the date of applicability for the rule be based upon the date of application for the type certificate rather than on when the airplane is tested. In addition, two comments recommended that a time period be established during which a manufacturer who fails to meet the new standard may revert to the existing standard to protect his investment. One comment stated that it was possible for an airplane to satisfy Appendix F, the existing noise certification standard, but be rendered non-compliant under Appendix G.

While recognizing the commenters' concerns about meeting Appendix G certification requirements, the intent of the FAA is to standardize the takeoff noise tests for all propeller-driven small airplanes and propeller-driven, commuter category airplanes. The criteria of Appendix G are designed so that airplanes which meet Appendix F certification requirements should also meet Appendix G requirements. Thus, the final rule requires certification to Appendix G for airplanes tested on or after December 22, 1988.

5. Acoustical Change

One comment stated that the FAA proposal to remove limitations on the definition of acoustical change for propeller-driven small airplanes and align this definition with that used by all other airplanes may impose an unnecessary burden on the manufacturers of this class of airplane. The comment went on to say that the definition of acoustical change currently in § 21.93 has considerable utility because it effectively excludes the need to retest airplanes for minor configuration changes that experience has shown do not increase (or decrease) the measured noise levels.

Section 21.93 of the FAR currently limits the definition of acoustical change for propeller-driven, commuter category airplanes and propeller-driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories to the following type design changes:

(i) Any change to or removal of a muffler or other component designed for noise control.

(ii) Any change to, or installation of, a powerplant or propeller that increases maximum continuous power or thrust at sea level, or increases the propeller tip speed at that power or thrust, over that previously approved for the airplane.

The new rule defines an acoustical change as any voluntary change in the type design of an airplane that may increase the noise levels of that airplane. The FAA agrees with the intent of the comment to avoid retesting for minor configuration changes which are known not to increase the noise level and believes that the new wording more clearly meets that intent. This rule will not require testing for changes which, by past experience, have been shown not to increase noise.

6. Sound Recording

Two comments were received concerning the use of a sound level meter to record test data. Section G36.105 allows airplane noise to be recorded using a magnetic tape recorder, graphic level recorder, or sound level meter when approved by the regional certification authority. One commenter stated that the requirement in section G36.105(a) that the test data should be recorded allowing a graphic level recorder or sound level meter to be used instead of a magnetic tape recorder is inconsistent with the rest of the section. Another comment, addressing the same section, questioned why a sound level meter is acceptable if the sound must be recorded. The comment went on to say that the reading of a sound level meter may be recorded, but this does not constitute recording the noise.

Appendix G is written with the intent of allowing the greatest amount of flexibility possible in order to avoid imposing undue economic burden on any applicant. Allowing the option to use a graphic level recorder or sound level meter is done to permit certification to be accomplished as inexpensively as possible. Thus, when approved by the regional certification authority, a sound level meter, graphic level recorder, or magnetic tape recorder is acceptable for recording airplane noise.

A further clarification has been added to section G36.105 concerning the type of sound level meter to be used. The intent of the rule is to use Type 1 sound level meters, as specified in Appendix F (IEC publication 179). The NPRM specified that sound level meters must comply with International Electrotechnical Commission (IEC) Publication No. 651, entitled "Sound Level Meters." Publication No. 651 supersedes Publications 123 (1961), 179 (1965 and 1973), and 179A (1973). Although Publication 651 contains standards for Type 0,1,2, and 3 sound level meters, it does not specify the type of sound level meter to be used for noise measurement. To correct this ambiguity, section G36.105 has been revised to specify the use of Type 1 sound level meters for Appendix G noise certification.

7. Limiting Noise Value

One commenter recommended that the FAA adopt the aircraft noise limits established by ICAO for noise certification of propeller driven small airplanes.

The aircraft noise limits specified in the FAA rule are as follows. The noise level must not exceed 73 dB(A) up to and including aircraft weights of 1,320 pounds (600 kg). For weights greater than 1,320 pounds, the limit increases at the rate of 1 dB/165 pounds (1 dB/75 kg) up to 85 dB(A) at 3,300 pounds (1,500 kg), after which it remains at 85 dB(A) up to and including 19,000 pounds (8,640 kg).

ICAO specifies a 76 dB(A) limit up to an airplane mass of 600 kg, then increasing with the logarithm of airplane mass at the rate of 9.83 dB(A) per doubling of mass until 88 dB(A) is reached, after which the limit is constant up to 9000 kg. Thus, the difference in noise limits between the FAA rule and ICAO rule is approximately 3 dB(A) throughout the range of weight values for which the rule applies.

The higher ICAO noise limits can be attributed to their use of a ground plane microphone instead of the four foot height installation. Generally, a ground plane microphone will provide a noise level several dB(A) greater than a microphone situated four feet above ground level for the same airplane. Thus, the difference in limiting noise values between the FAA rule and the ICAO rule is due to a difference in measurement technique rather than a difference in noise standards.

8. Helical Tip Mach Number Correction

One commenter recommended that, in section G36.201(d)(3), the phrase "no correction is to be made when M_t is larger than M_r" should be deleted since it might be interpreted to apply to all cases, even those for which a specific value of the constant "k" has been determined. The constant "k" is equal to the slope of the line obtained for measured values of noise level in dB(A) versus helical tip Mach number.

The FAA agrees that if a specific value of k has been determined, a correction should be allowed when the test helical tip Mach number, M_t, is larger than the reference helical tip Mach number, M_r. The NPRM phrase "no correction is to be made when M_t is larger than M_r" was meant to apply only to cases where the nominal value of k is to be used for the correction. To avoid confusion over this point, section G36.201(d)(3) has been revised as follows. The phrase "no correction is to be made when M_t is larger than M_r has been deleted. The sentence "No correction may be made using the nominal value of k when M_t is larger than M_r" has been added.

9. Noise Level vs Airplane Weight Graph

One commenter suggested including a figure showing graphically the noise level limits as a function of airplane weight. The FAA agrees that the addition of a figure showing noise limits as a function of airplane weight would simplify interpretation of the rule. Thus, figure G2 has been added to section G36.301.

10. Microphone Diameter

One commenter recommended that since the ICAO test procedure specifies that a one half inch diameter microphone be used for data measurement, a one half inch microphone diameter should be specified for the FAA rule in order to achieve better international acceptance of data measured in accordance with the FAA procedure (and of data measured using the ground plane microphone). The NPRM did not specify a microphone size required for data measurement.

The FAA does not find it necessary to specify microphone diameter for noise certification testing in accordance with Appendix G. Both ICAO and the FAA require the same microphone frequency response tolerance. Therefore, the data should be accepted internationally. The one half inch diameter microphone is required for the ground plane microphone installation and thus is only an issue when the ground plane microphone is used.

11. Altitude Tolerance

One commenter recommended that the FAA consider eliminating the requirement that the aircraft pass over the measurement point within 20 percent of the reference altitude. The commenter stated that this requirement is unnecessary since section G36.201 requires a correction to the noise level if the test altitude differs from the reference altitude.

After consideration of this comment, the FAA chose to retain the requirement that the aircraft pass over the measurement point within 20 percent of the reference altitude. This requirement is necessary due to the inaccuracy of the correction for deviations from the reference altitude and for consistency with the ICAO standard.

12. Test Flight Tolerances

In keeping with the general recommendation of most of the commenters that the FAA maintain standardization with the ICAO noise certification rule and to simplify the certification test flight procedure, the FAA has included a tolerance on the flight test speed and weight. As written, the language in the NPRM would have required each test flight to be conducted at a single precise airspeed and weight. The FAA notes that all other Part 36 flight test procedures include reasonable tolerances for the specified reference test conditions. Further, the FAA believes that such tolerances are necessary to account for pilot and meteorological variability from test to test, and for the weight of fuel burned during testing. Accordingly, the ICAO Annex 16 tolerances have been added to section G36.111(a).

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 36

Agriculture, Aircraft, Noise control.

Incorporation by Reference.

Adoption of the Amendments

Accordingly, Parts 21 and 36 of the Federal Aviation Regulations (14 CFR Parts 21 and 36) are amended as follows:

PART 21—[AMENDED]

1. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 21.93(b)(3) is revised to read as follows:

§ 21.93 Classification of changes in type design.

* * * * *

(b) * * *

(3) Propeller driven commuter category and small airplanes in the normal, utility, acrobatic, transport, and restricted categories, except for airplanes that are:

(i) Designated for "agricultural aircraft operations" (as defined in § 137.3 of this chapter, effective January 1, 1966) to which § 36.1583 of this chapter does not apply, or

(ii) Designated for dispensing fire fighting materials to which § 36.1583 of this chapter does not apply, or

(iii) U.S. registered, and that had flight time prior to January 1, 1955 or

(iv) Land configured aircraft reconfigured with floats or skis. This reconfiguration does not permit further exception from the requirements of this section upon any acoustical change not enumerated in § 21.93(b).

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PART 36—[AMENDED]

3. The authority citation for Part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 *et seq.*; Sec. 124 of Pub. L. 98-473, E.O. 11514, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983.)

4. Section 36.6 is amended by adding paragraphs (c)(1)(iii) and (c)(1)(iv) and by revising paragraph (e)(3) to read as follows:

§ 36.6 Incorporation by reference.

* * * * *

(c) * * *

(1) * * *

(iii) IEC Publication No. 651, entitled "Sound Level Meters," first edition, dated 1979.

(iv) IEC Publication No. 561, entitled "Electro-acoustical Measuring Equipment for Aircraft Noise Certification," first edition, dated 1978.

* * * * *

(e) * * *

(3) The respective Region Headquarters of the Federal Aviation Administration as follows:

(i) New England Region Headquarters, 12 New England Executive Park, Burlington, Massachusetts 01803.

(ii) Eastern Region Headquarters, Federal Building, John F. Kennedy (JFK) International Airport, Jamaica, New York 11430.

(iii) Southern Region Headquarters, 3400 Norman Berry Drive, East Point, Georgia 30344.

(iv) Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

(v) Central Region Headquarters, Federal Building, 601 East 12th Street, Kanasa City Missouri 64106.

(vi) Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, Texas 76193-0000.

(vii) Northwest Mountain Region Headquarters, 17900 Pacific Highway South, Seattle, Washington 98168.

(viii) Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, California 92007.

(ix) Alaskan Region Headquarters, 701 C Street, Anchorage, Alaska 99513.

(x) European Office Headquarters, 15, Rue de la Loi (3rd Floor), B-1040 Brussels, Belgium.

* * * * *

5. Section 36.9 is revised to read as follows:

§ 36.9 Acoustical change: Propeller-driven small airplanes and propeller-driven small category airplanes.

For propeller-driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories and for propeller-driven, commuter category airplanes for which an acoustical change approval is applied for under § 21.93(b) of this chapter after January 1, 1975, the following apply:

(a) If the airplane was type certificated under this part prior to a change in type design, it may not subsequently exceed the noise limits specified in § 36.501 of this part.

(b) If the airplane was not type certificated under this part prior to a change in type design, it may not exceed the higher of the two following values:

(1) The noise limit specified in § 36.501 of this part, or

(2) The noise level created prior to the change in type design, measured and corrected as prescribed in § 36.501 of this part.

§ 36.501 [Amended]

6. Section 36.501(a)(1) is amended by changing the words "type certificate" to read "new, amended, or supplemental type certificate"; and by inserting the phrase "and propeller-driven, commuter category airplanes for which application for the issuance of a type certificate in the commuter category is made on or after January 15, 1967" after the words "October 10, 1973."

7. Sections 36.501 (b) and (c) are revised to read as follows:

§ 36.501 Noise Limits.

* * * * *

(b) For aircraft covered by this subpart for which certification tests are completed before December 22, 1988, compliance must be shown with noise levels as measured and prescribed in Parts B and C of Appendix F, or under approved equivalent procedures. It must be shown that the noise level of the airplane is no greater than the applicable limit set in Part D of Appendix F.

(c) For aircraft covered by this subpart for which certification tests are not completed before December 22, 1988, compliance must be shown with noise levels as measured and prescribed in Parts B and C of Appendix G, or under approved equivalent procedures. It must be shown that the noise level of the airplane is no greater than the applicable limits set in Part D of Appendix G.

8. The title of Appendix F of Part 36 is revised to read as follows:

Appendix F—Flyover Noise Requirements for Propeller-Driven Small Airplane and Propeller-Driven, Commuter Category Airplane Certification Tests Prior to December 22, 1988

9. Section F36.1 of Appendix F of Part 36 is revised to read as follows:

PART A—GENERAL

Section F36.1 *Scope.* **This appendix prescribes noise level limits and procedures for measuring and correcting noise data for the propeller driven small airplanes specified in §§ 36.1 and 36.501(b).**

10. A new Appendix G is added to Part 36 to read as follows:

Appendix G—Takeoff Noise Requirements for Propeller-Driven Small Airplane and Propeller-Driven, Commuter Category Airplane Certification Tests on or After December 22, 1988

PART A—GENERAL

Sec.
G36.1 *Scope.*

PART B—NOISE MEASUREMENT

G36.101 *General Test Conditions.*
G36.103 *Acoustical measurement system.*
G36.105 *Sensing, recording, and reproducing equipment.*
G36.107 *Noise measurement procedures.*
G36.109 *Data recording, reporting, and approval.*
G36.111 *Flight procedures.*

PART C—DATA CORRECTIONS

G36.201 *Corrections to Test Results.*
G36.203 *Validity of results.*

PART D—NOISE LIMITS

G36.301 *Aircraft Noise Limits.*

PART A—GENERAL

Section G36.1 *Scope.* This appendix prescribes limiting noise levels and procedures for measuring noise and adjusting these data to standard conditions, for propeller driven small airplanes and propeller-driven, commuter category airplanes specified in §§ 36.1 and 36.501(c).

PART B—NOISE MEASUREMENT

Sec. G36.101 *General Test Conditions.*

(a) The test area must be relatively flat terrain having no excessive sound absorption characteristics such as those caused by thick, matted, or tall grass, by shrubs, or by wooded areas. No obstructions which significantly influence the sound field from the airplane may exist within a conical space above the measurement position, the cone being defined by an axis normal to the ground and by a half-angle 75 degrees from the normal ground axis.

(b) The tests must be carried out under the following conditions:

(1) No precipitation;

(2) Ambient air temperature between 30 and 95 degrees F (2.2 and 35 degrees C);

(3) Relative humidity between 20 percent and 95 percent, inclusively;

(4) Wind speed may not exceed 10 knots (19 km/h) and cross wind may not exceed 5 knots (9 km/h), using a 30-second average;

(5) No temperature inversion or anomalous wind condition that would significantly alter the noise level of the airplane when the nose is recorded at the required measuring point, and

(6) The meteorological measurements must be made between 4 ft. (1.2 m) and 33 ft. (10 m) above ground level. If the measurement site is within 1 n.m. of an airport meteorological station, measurements from that station may be used.

(c) The flight test procedures, measuring equipment, and noise measurement procedures must be approved by the FAA.

(d) Sound pressure level data for noise evaluation purposes must be obtained with acoustical equipment that complies with section G36.103 of this appendix.

Sec. G36.103 *Acoustical Measurement System.*

The acoustical measurement system must consist of approved equipment with the following characteristics: (a) A microphone system with frequency response compatible with measurement and analysis system accuracy as prescribed in section G36.105 of this appendix.

(b) Tripods or similar microphone mountings that minimize interference with the sound being measured.

(c) Recording and reproducing equipment characteristics, frequency response, and dynamic range compatible with the response and accuracy requirements of section G36.105 of this appendix.

(d) Acoustic calibrators using sine wave or broadband noise of known sound pressure level. If broadband noise is used, the signal must be described in terms of its average and maximum root-mean-square (rms) value for non-overload signal level.

Sec. G36.105 *Sensing, Recording, and Reproducing Equipment.*

(a) The noise produced by the airplane must be recorded. A magnetic tape recorder, graphic level recorder, or sound level meter is acceptable when approved by the regional certificating authority.

(b) The characteristics of the complete system must comply with the requirements in International Electrotechnical Commission (IEC) Publications No. 651, entitled "Sound Level Meters" and No. 561, entitled "Electro-acoustical Measuring Equipment for Aircraft Noise Certification" as incorporated by reference under § 36.6 of this part. Sound level meters must comply with requirements for Type 1 sound level meters as specified in IEC Publication No. 651.

(c) The response of the complete system to a sensibly plane progressive sinusoidal wave of constant amplitude must be within the tolerance limits specified in IEC Publication No. 651, over the frequency range 45 to 11,200 Hz.

(d) If equipment dynamic range limitations make it necessary, high frequency pre-emphasis must be added to the recording channel with the converse de-emphasis on playback. The pre-emphasis must be applied such that the instantaneous recorded sound pressure level of the noise signal between 800 and 11,200 Hz does not vary more than 20 dB between the maximum and minimum one-third octave bands.

(e) The output noise signal must be read through an "A" filter with dynamic characteristics designated "slow" as defined in IEC Publication No. 651. A graphic level recorder, sound level meter, or digital equivalent may be used.

(f) The equipment must be acoustically calibrated using facilities for acoustic free-field calibration and if analysis of the tape recording is requested by the Administrator, the analysis equipment shall be electronically calibrated by a method approved by the FAA. Calibrations shall be performed, as appropriate, in accordance with paragraph A36.3(e) of Appendix A of this part.

(g) A windscreen must be employed with the microphone during all measurements of aircraft noise when the wind speed is in excess of 5 knots (9 km/hr).

Sec. G36.107 *Noise Measurement Procedures.*

(a) The microphones must be oriented in a known direction so that the maximum sound received arrives as nearly as possible in the direction for which the microphones are calibrated. The microphone sensing elements must be 4 ft. (1.2m) above ground level.

(b) Immediately prior to and after each test, a recorded acoustic calibration of the system must be made in the field with an acoustic calibrator for the purposes of checking system sensitivity and providing an acoustic reference level for the analysis of the sound level data. If a tape recorder or graphic level recorder is used, the frequency response of the electrical system must be determined at a level within 10 dB of the full-scale reading used during the test, utilizing pink or pseudorandom noise.

(c) The ambient noise, including both acoustic background and electrical systems noise, must be recorded and determined in the test area with the system gain set at levels which will be used for aircraft noise measurements. If aircraft sound pressure levels do not exceed the background sound pressure levels by at least 10 dB(A), a takeoff measurement point nearer to the start of the takeoff roll must be used and the results must be adjusted to the reference measurement point by an approved method.

Sec. G36.109 *Data Recording, Reporting, and Approval.*

(a) Data representing physical measurements and adjustments to measured data must be recorded in permanent form and appended to the record, except that corrections to measurements for normal equipment response deviations need not be reported. All other adjustments must be approved. Estimates must be made of the individual errors inherent in each of the operations employed in obtaining the final data.

(b) Measured and corrected sound pressure levels obtained with equipment conforming to the specifications in section G36.105 of this appendix must be reported.

(c) The type of equipment used for measurement and analysis of all acoustical, airplane performance, and meteorological data must be reported.

(d) The following atmospheric data, measured immediately before, after, or during each test at the observation points prescribed in section G36.101 of this appendix must be reported:

(1) Ambient temperature and relative humidity.

(2) Maximum and average wind speeds and directions for each run.

(e) Comments on local topography, ground cover, and events that might interfere with sound recordings must be reported.

(f) The aircraft position relative to the takeoff reference flight path must be determined by an approved method independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, or photographic scaling techniques.

(g) The following airplane information must be reported:

(1) Type, model, and serial numbers (if any) of airplanes, engines, and propellers;

(2) Any modifications or nonstandard equipment likely to affect the noise characteristics of the airplane;

(3) Maximum certificated takeoff weight;

(4) For each test flight, airspeed and ambient temperature at the flyover altitude over the measuring site determined by properly calibrated instruments;

(5) For each test flight, engine performance parameters, such as manifold pressure or power, propeller speed (rpm) and other relevant parameters. Each parameter must be determined by properly calibrated instruments. For instance, propeller RPM must be validated by an independent device accurate to within ±1 percent, when the airplane is equipped with a mechanical tachometer.

(6) Airspeed, position, and performance data necessary to make the corrections required in section G36.201 of this appendix must be recorded by an approved method when the airplane is directly over the measuring site.

Sec. G36.111 *Flight Procedures.*

(a) The noise measurement point is on the extended centerline of the runway at a distance of 6200 ft (2500 m) from the start of takeoff roll. The aircraft must pass over the measurement point within ±10 degrees from the vertical and within 20% of the reference altitude. The flight test program shall be initiated at the maximum approved takeoff weight and the weight shall be adjusted back to this maximum weight after each hour of flight time. Each flight test must be conducted at the speed for the best rate of climb (V_y) ±5 knots (±9 km/hour) indicated airspeed. All test, measurement, and data correction procedures must be approved by the FAA.

(b) The takeoff reference flight path must be calculated for the following atmospheric conditions:

(1) Sea level atmospheric pressure of 1013.25 mb (013.25 hPa);

(2) Ambient air temperature of 59°F (15°C);

(3) Relative humidity of 70 percent; and

(4) Zero wind.

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(c) The takeoff reference flight path must be calculated assuming the following two segments:

(1) First segment.

(i) Takeoff power must be used from the brake release point to the point at which the height of 50 ft (15m) above the runway is reached.

(ii) A constant takeoff configuration selected by the applicant must be maintained through this segment.

(iii) The maximum weight of the airplane at brake-release must be the maximum for which noise certification is requested.

(iv) The length of this first segment must correspond to the airworthiness approved value for a takeoff on a level paved runway (or the corresponding value for seaplanes).

(2) Second segment.

(i) The beginning of the second segment corresponds to the end of the first segment.

(ii) The airplane must be in the climb configuration with landing gear up, if retractable, and flap setting corresponding to normal climb position throughout this second segment.

(iii) The airplane speed must be the speed for the best rate of climb (V_y).

(iv) Maximum continuous installed power and rpm for variable pitch propeller(s) shall be used. For fixed pitch propeller(s), the maximum power and rpm that can be delivered by the engine(s) must be maintained throughout the second segment.

PART C—DATA CORRECTIONS

Sec. G36.201. *Corrections to Test Results.*

(a) These corrections account for the effects of:

(1) Differences in atmospheric absorption of sound between meteorological test conditions and reference conditions.

(2) Differences in the noise path length between the actual airplane flight path and the reference flight path.

(3) The change in the helical tip Mach number between test and reference conditions.

(4) The change in the engine power between test and reference conditions.

(b) Atmospheric absorption correction is required for noise data obtained when the test conditions are outside those specified in Figure G1. Noise data outside the applicable range must be corrected to 77 F and 70 percent relative humidity by a FAA approved method.

(c) Helical tip Mach number and power corrections must be made if:

(1) The propeller is a variable pitch type, or

(2) The propeller is a fixed pitch type and the test power is not within 5 percent of the reference power.

(d) When the test conditions are outside those specified, corrections must be applied by an approved procedure or by the following simplified procedure:

(1) Measured sound levels must be corrected from test day meteorological conditions to reference conditions by adding an increment equal to

$$\text{Delta (M)} = (\alpha - 0.7)\, H_T/1000$$

where H_T is the height in feet of the test aircraft when directly over the noise measurement point and α is the rate of absorption for the test day conditions at 500 Hz as specified in SAE ARP 866A, entitled "Standard Values of Atmospheric Absorption as a function of Temperature and Humidity for use in Evaluating Aircraft Flyover Noise" as incorporated by reference under § 36.6 of this part.

(2) Measured sound levels in decibels must be corrected for height by algebraically adding an increment equal to Delta (1). When test day conditions are within those specified in figure G1:

$$\text{Delta (1)} = 22 \log (H_T/H_R)$$

where H_T is the height of the test aircraft when directly over the noise measurement point and H_R is the reference height.

When test day conditions are outside those specified in figure G1:

$$\text{Delta (1)} = 20 \log (H_T/H_R)$$

(3) Measured sound levels in decibels must be corrected for helical tip Mach number by algebraically adding an increment equal to:

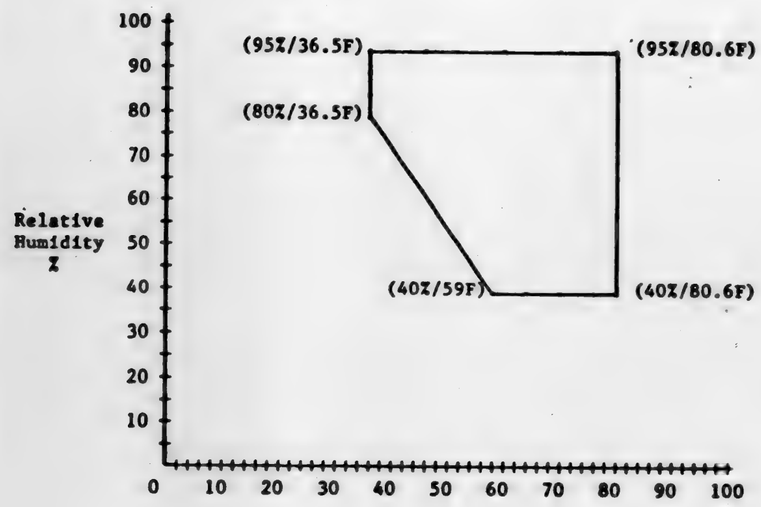
$$\text{Delta (2)} = k \log (M_R/M_T)$$

where M_T and M_R are the test and reference helical tip Mach numbers, respectively. The constant "k" is equal to the slope of the line obtained for measured values of the sound level in dB(A) versus helical tip Mach number. The value of k may be determined from approved data. A nominal value of k = 150 may be used when M_T is smaller than M_R. No correction may be made using the nominal value of k when M_T is larger than M_R. The reference helical tip Mach number M_R is the Mach number corresponding to the reference conditions (RPM, airspeed, temperature) above the measurement point.

(4) Measured sound levels in the decibels must be corrected for engine power by algebraically adding an increment equal to:

$$\text{Delta (3)} = 17 \log (P_R/P_T)$$

where P_T and P_R are the test and reference engine powers respectively.



MEASUREMENT WINDOW FOR NO ABSORPTION CORRECTION

Figure G1

Sec. G36.203 *Validity of Results.*

(a) The measuring point must be overflown at least six times. The test results must produce an average noise level (L_{Amax}) value within a 90 percent confidence limit. The average noise level is the arithmetic average of the corrected acoustical measurements for all valid test runs over the measuring point.

(b) The samples must be large enough to establish statistically a 90 percent confidence limit not exceeding ±1.5 dB(A). No test results may be omitted from the averaging process unless omission is approved by the FAA.

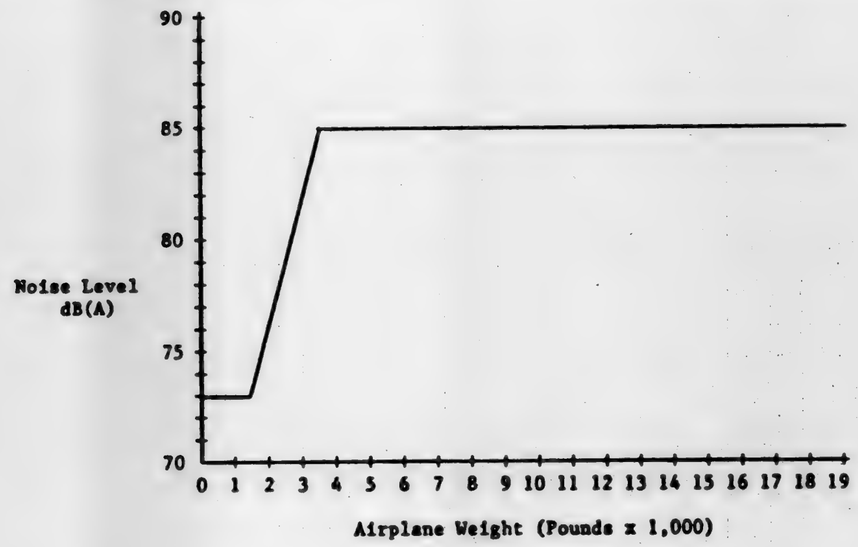
PART D—NOISE LIMITS

Sec. G36.301 *Aircraft noise limits.*

(a) Compliance with this section must be shown with noise data measured and corrected as prescribed in Parts B and C of this appendix.

(b) The noise level must not exceed 73 dB(A) up to and including aircraft weights of 1,320 pounds (600 kg). For weights greater than 1,320 pounds the limit increases at the rate of 1 dB/165

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NOISE LEVEL vs AIRPLANE WEIGHT

FIGURE G2

pounds (1 dB/75 kg) up to 85 dB(A) at 3,300 pounds (1,500 kg), after which it is constant at 85 dB(A) up to and including 19,000 pounds (8,640). Figure G2 shows noise level limits vs airplane weight.

(Sec. 313(a), 603, and 611(b), Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1423, and 1431(b)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655 (c)); Title I, National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); Exceutive Order 11514, March 5, 1970 and 14 CFR 11.45).

Issued in Washington, DC, on September 23, 1988.

T. Allan McArtor,

Administrator.

FR Doc. 88-26887 Filed 11-21-88; 8:45 am]

BILLING CODE 4910-17-A

federal register

Tuesday
November 22, 1988

Part VII

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 307

Services for Deaf-Blind Children and Youth Program; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 307

Services for Deaf-Blind Children and Youth Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Services for Deaf-Blind Children and Youth program. These regulations are needed to implement the amendments to section 622 of the Education of the Handicapped Act (EHA) included in the EHA Amendments of 1986, Pub. L. 99-457. In addition, the amendments to the regulations are needed to implement programmatic changes, including the way the Secretary makes awards to State and multi-State projects authorized by § 307.11.

DATE: Comments must be received on or before December 22, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: R. Paul Thompson, Severely Handicapped Branch, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 4620), Washington, DC 20202-2734.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Charles W. Freeman. Telephone: (202) 732-1165.

SUPPLEMENTARY INFORMATION: These regulations are proposed to implement section 622 of Part C of the EHA, as amended by the EHA Amendments of 1986, Pub. L. 99-457, and to make programmatic changes in the regulations. These changes do not alter principal objectives or activities authorized under this authority, but rather clarify and support the central thrust of the program.

The most significant changes addressed in these proposed regulations are:

(1) To implement the EHA Amendments of 1986, a new authorized activity has been added that permits the Secretary to make awards for the development and operation of extended school year demonstration programs for severely handicapped children and youth, including deaf-blind children and youth. The regulations clarify that, for the purpose of this program, extended school-year programs are those that provide services during the interim between two regular school terms, where the interim period is at least four weeks in length.

(2) New, weighted criteria have been developed for the evaluation of applications submitted under the State and multi-State priorities authorized under § 307.11.

(3) New weighted criteria are provided for the evaluation of applications addressing the technical assistance activities described in §§ 307.12 and 307.13. These new criteria are designed to promote the development of improved applications that effectively address specific education and related needs of deaf-blind children and youth.

(4) Technical assistance provided under § 307.11 to entities funded to conduct State and multi-State projects, in addition to being made available to State educational agencies, can now be provided to other public and private agencies and organizations providing educational or related services to deaf-blind children and youth within the State.

(5) Sections 307.14 and 307.15, which provided for the support of data analysis and dissemination activities through grant awards, have been removed. If necessary, the Secretary will obtain assistance needed to complete these requirements through individual requests for proposals.

(6) Criteria are established for determining the amount of awards for State and multi-State projects under § 307.11.

(7) The preparation of a coordinated plan for each deaf-blind child and youth served has been included among the services to be made available under a § 307.11 grant. This will promote the development of effective educational programming for each child and youth and avoid duplication of effort among the various agencies serving this population.

(8) Applicants under both the State and multi-State projects under § 307.11 and technical assistance providers under § 307.12, are now required to coordinate with other relevant service providers the provision of services on behalf of deaf-blind children and youth. This will result in increased benefits to these children and youth and reduce duplication of services.

(9) Section 307.12 grantees providing technical assistance to State and multi-State deaf-blind projects funded under § 307.11, in addition to serving State educational agencies, may now provide technical assistance to other agencies, institutions, and organizations which provide services to deaf-blind children and youth. This increases the availability of important technical assistance to direct service providers.

The legislative history of this program clarifies that Congress understood that not all deaf-blind children and youth are classified by the States as deaf-blind. Some of these children and youth may have other handicaps as well and so be classified under some other category of handicapping condition. It is, therefore, the intent of the Secretary that grantees under this part serve eligible deaf-blind children and youth, including those who are counted under other categories of handicapping conditions, but who meet the eligibility criteria under the definition of "deaf-blind" contained in 34 CFR 300.5(b)(2). According to this definition, deaf-blind children and youth are those who have concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special eduation programs solely for deaf or blind children.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The application procedures and other requirements in the proposed regulations are minimal and will not place undue burdens on small entities participating in this program or have a significant impact on these entities. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 307.20, 307.33, 307.35, and 307.36 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Jim Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4620, Switzer Building, 330 C Street, SW., Washington, DC, 20202-2734, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 307

Education, Education of handicapped, Education—research, Grants program—education, Reporting and recordkeeping requirements, Teachers.

(Catalog of Federal Domestic Assistance Number 84.025, Services for Deaf-Blind Children and Youth)

Dated: October 26, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Part 307 of Title 34 of the Code of Federal Regulations as follows:

PART 307—SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

1. The authority citation for Part 307 is revised to read as follows:

Authority: 20 U.S.C. 1422, unless otherwise noted.

2. In § 307.4, paragraph (b) is amended by adding "Severely handicapped children and youth (§ 315.4(d))" in alphabetical order to the list of terms defined, and by revising the heading and introductory text, and the authority citation, to read as follows:

§ 307.4 What definitions apply to the Services for Deaf-Blind Children and Youth Program?

* * * * *

(b) *Definitions in 34 CFR Part 300 and Part 315.* The following terms used in this part are defined in 34 CFR Part 300 or Part 315.

* * * * *

Authority: 20 U.S.C. 1401 (1), (16), (17), and (18), and 20 U.S.C. 1424)

3. Section 307.10 is amended by revising paragraph (a), removing paragraphs (d) and (e), adding "and" at the end of paragraph (c), and adding a new paragraph (d), to read as follows:

§ 307.10 What types of activities are considered for support under this part?

* * * * *

(a) Services to deaf-blind children and youth and technical assistance to agencies, institutions, and organizations, as described in § 307.11;

* * * * *

(d) Extended school year educational or related service demonstration projects for severely handicapped children and youth, including children and youth who are deaf-blind, if those activities are provided during an interim period of at least four weeks between two regular school terms.

(Authority: 20 U.S.C. 1422)

4. Section 307.11 is amended by revising the section heading and adding a new paragraph (a)(1)(iv), revising the introductory text of paragraph (a)(2), removing "and" from the end of paragraph (a)(2)(iv), removing the period at the end of paragraph (a)(2)(v) and adding in its place, "; and", adding a new paragraph (a)(2)(vi), revising paragraph (b)(1), removing "and" from the end of paragraph (c)(1), revising paragraph (c)(2), adding a new paragraph (c)(3), revising paragraph (d), and removing paragraph (e) to read as follows:

§ 307.11 What types of services to deaf-blind children and youth and technical assistance are considered for support under this part?

(a) * * *

(1) * * *

(iv) Preparation of a coordinated plan for each child and youth served, describing all the services provided under paragraph (a)(1) (i) through (iii) of this section. These services must be in accordance with other Federal and State programs.

(2) Technical assistance to public and private agencies, institutions, and organizations providing educational, transitional, vocational, early identification, and related services to deaf-blind children and youth, to assure that they may more effectively—

* * * * *

(vi) Promote the integration of deaf-blind children and youth with other handicapped and nonhandicapped children and youth.

(b)(1) Each grantee under this section shall give priority in the use of project funds to the provision of services described in paragraph (a)(1) of this section and to the provision of technical assistance as described in paragraph (a)(2) of this section.

* * * * *

(c) * * *

(2) Provide technical assistance to the public and private agencies, institutions, and organizations served under paragraph (a)(2) of this section in the development and implementation of procedures for evaluating the effectiveness of services they provide to deaf-blind children and youth; and

(3) Engage in on-going coordination with the State educational agency, the State's lead agency under Part H of the EHA, and other State agencies responsible for providing services to deaf-blind children and youth, in the provision of services under this section.

(d) For the purpose of making awards under § 307.11, the Secretary may make awards for single or multi-State projects. Each State may be served through only one project.

(Authority: 20 U.S.C. 1422)

5. Section 307.12 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

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§ 307.12 What types of technical assistance to grantees under § 307.11 are considered for support under this part?

(a) The Secretary may provide financial assistance under this part for projects that establish and support programs for the provision of technical assistance, to grantees under § 307.11.

(b) Technical assistance services made available under this section must be requested by a grantee under § 307.11 or a State educational agency, and may be extended to other agencies, institutions, and organizations providing services to deaf-blind children and youth, to—

* * * * *

(Authority: 20 U.S.C. 1422)

§§ 307.14, 307.15 and 307.20 [Removed]

6. Sections 307.14, 307.15, and 307.20 are removed.

7. Section 307.31 is revised to read as follows:

§ 307.31 How does the Secretary determine the amount of an award under § 307.11?

In determining the funding level for each award under § 307.11 for a single or multi-State deaf-blind services project, the Secretary considers the following factors:

(a) The number of children and youth in the States the applicant proposes to serve;

(b) The number of deaf-blind children and youth in the State benefiting from services under § 307.11(a) (1) and (2) in relation to the total number of such children across all States;

(c) The relative cost of providing services authorized under this part to deaf-blind children and youth in the States the applicant proposes to serve; and

(d) The quality of the application submitted under this part evaluated on the basis of the criteria in § 307.33.

(Authority: 20 U.S.C. 1422)

8. A new § 307.32 is added to read as follows:

§ 307.32 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under § 307.11 on the basis of the criteria in § 307.33. If more than one eligible application is received on behalf of any State for an award under § 307.11, the Secretary uses the procedures established in § 307.34. The Secretary uses the selection criteria in § 307.35 or 307.36 to evaluate applications submitted for other types of activities authorized under this part.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1422)

9. A new § 307.33 is added to read as follows:

§ 307.33 What criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate the quality of an application submitted under § 307.11. Each applicant may receive up to a total of 100 points. Each application will be evaluated based only on those factors of each criterion that relate to the service needs of the States the applicant proposes to serve.

(a) *Justification for the project, extent of need, and expected impact.* (15 points) The Secretary reviews each application to determine the justification for the proposed activities in each State, based on the extent of State need for and expected impact from the provision of services and technical assistance, including consideration of—

(1) The age, number, and location of deaf-blind children and youth in the State to whom the State is not obligated to provide a free appropriate public education under Part B of the EHA, to whom the State is not providing special educational and related services under some other authority, and to whom the applicant proposes to provide services;

(2) The specific actions needed for the provision of educational and related services to deaf-blind children and youth based on the State's plan for delivery of services to students with handicaps required under Parts B and H;

(3) The specific actions needed for the provision of technical assistance addressed by the project based on the State's plan for provision of technical assistance to providers of services to deaf-blind children and youth;

(4) The expected benefits to be gained by providing the educational and related services to deaf-blind children and youth to be served by the project, their parents and service providers; and

(5) The expected benefits to be gained by meeting the technical assistance needs of service providers to be assisted by the project.

(b) *Quality of services and technical assistance.* (40 points) The Secretary reviews each application to determine the quality of the plan to provide services and technical assistance in each State to be served, including—

(1) The quality of the design of the project for providing each of the educational and related services described under § 307.11(a)(1), and for providing technical assistance as described under § 307.11(a)(2);

(2) The extent to which the applicant's plan for providing services and technical assistance implements current research findings and exemplary practices including arranging for services that are age-appropriate for project participants, and providing for the maximum integration of deaf-blind children and youth in the least restrictive environment;

(3) How well the objectives of the project respond to the needs of deaf-blind children and youth in the State, their parents, and service providers;

(4) The extent to which the plan of management is effective and ensures proper and efficient provision of educational and related services and technical assistance, and reflects an analysis of the service needs of deaf-blind children and youth in the State;

(5) How well the objectives of the project relate to the purpose of the program;

(6) How the project will assist the State in developing and implementing the State's Comprehensive Systems of Personnel Development required under Parts B and H of EHA;

(7) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(8) The quality of the applicant's plan for providing consultative and training services for families of deaf-blind children and youth as described in § 307.11(a)(1)(iii);

(9) The quality of the applicant's plan to involve parents in the development and delivery of appropriate services to their deaf-blind children and youth; and

(10) The extent to which services provided for children birth through two years of age meet the requirements of Part H of the EHA.

(c) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project for the provision of services to deaf-blind children and youth and technical assistance to agencies, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The experience of each person referred to in paragraphs (c) (1) and (2) of this section, relevant to the provision of quality educational services to deaf-blind children and youth in less restrictive environments;

(4) The time that each person referred to in paragraphs (c) (1) and (2) of this section will commit to the project; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine for technical assistance, and direct services where appropriate, in each State to be served, the extent to which—

(1) The budgets are adequate to support the activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) Costs reflect—

(i) The time anticipated to be spent by each staff member for the provision of services described under § 307.11(a)(1) and costs for contracted and consultative services, travel costs, and other direct costs;

(ii) The time anticipated to be spent by each staff member for the provision of technical assistance under § 307.11(a)(2), and costs for contracted and consultative services, travel, and other related expenditures for technical assistance activities; and

(iii) The time anticipated to be spent for administrative services.

(Authority: 20 U.S.C. 1422)

(f) *Coordination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for initiating and maintaining coordination in each State to be served with—

(1) Related activities funded from grants, contracts, and cooperative agreements awarded under Parts C, D, E, F, and G of the EHA; and

(2) Relevant agencies, organizations, and institutions having responsibility to deliver service to deaf-blind children and youth in the State, including services providers under Parts B and H of the EHA and section 1221 *et seq.* of Title I of the Hawkins-Stafford Elementary and Secondary School Improvements Amendments of 1988.

(g) *Dissemination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for disseminating significant project information within the State(s) to providers of services to deaf-blind children and youth.

(Authority: 20 U.S.C. 1422)

10. A new § 307.34 is added to read as follows:

§ 307.34 What procedures does the Secretary use if more than one application for an award under § 307.11 proposes to serve the same State?

If more than one eligible application is received on behalf of any State for an award under § 307.11, the Secretary applies the selection criteria in § 307.33 and selects the highest ranked application for funding.

(Authority: 20 U.S.C. 1422)

11. A new § 307.35 is added to read as follows:

§ 307.35 What are the selection criteria used to evaluate an application under § 307.10(d)?

The Secretary uses the selection criteria in 34 CFR 315.33 to evaluate an application for an extended school year project—under § 307.10(d).

(Authority: 20 U.S.C. 1422)

12. A new § 307.36 is added to read as follows:

§ 307.36 What are the selection criteria used to evaluate an application under § 307.12 or § 307.13?

The Secretary uses the following criteria to evaluate an application for the provision of technical assistance under § 307.12 or § 307.13:

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist in meeting national needs in the provision of services to deaf-blind children and youth, including consideration of—

(1) The extent and importance of the needs addressed by the project;

(2) The expected benefits to deaf-blind children and youth served by the project, their parents, and service providers; and

(3) The national significance of the project in terms of potential benefits to deaf-blind children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

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(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

(Authority: 20 U.S.C. 1422)

§ 307.40 [Removed]

13. Section 307.40 is removed.

§ 307.42 [Removed]

14. Section 307.42 is removed.

[FR Doc. 88-27017 Filed 11-21-88; 8:45 am]
BILLING CODE 4000-01-M

federal register

Tuesday
November 22, 1988

Part VIII

The President

Proclamation 5911—To Implement Changes to the Harmonized Tariff Schedule of the United States

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VOL
53
ISS
225
NO
22
1988
UMI

Federal Register
Vol. 53, No. 225
Tuesday, November 22, 1988

Presidential Documents

Title 3—

The President

Proclamation 5911 of November 19, 1988

To Implement Changes to the Harmonized Tariff Schedule of the United States

By the President of the United States of America

A Proclamation

1. Section 1204(a) of the Omnibus Trade and Competitiveness Act of 1988 (the Act) (P.L. 100-418; 19 U.S.C. 3004(a)) enacts the Harmonized Tariff Schedule of the United States (the HTS). Section 1204(b) (19 U.S.C. 3004(b)) confers authority upon the President to proclaim such modifications to the HTS as are consistent with the standards applied in converting the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) into the format of the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System) and are necessary or appropriate to implement: (1) future outstanding staged rate reductions; (2) the applicable provisions of statutes enacted, Executive actions taken, and final judicial decisions rendered, after January 1, 1988, and before January 1, 1989; and (3) such technical rectifications as the President considers necessary.

2. Pursuant to the terms of Section 1204(b)(1) of the Act, I have determined that certain modifications to the HTS are necessary or appropriate in order to implement the future outstanding staged rate reductions for products of countries entitled to most-favored-nation treatment, as set forth in Annex I to this Proclamation; the future outstanding staged rate reductions for products of Israel, as set forth in Annex II to this Proclamation; and the applicable provisions of statutes enacted and Executive actions taken after January 1, 1988, and before January 1, 1989, along with certain necessary technical rectifications, all of which are set forth in Annex IV to this Proclamation.

3. In Proclamations 5779 of March 23, 1988 (53 FR 9850), and 5805 of April 29, 1988 (53 FR 15785), I terminated preferential tariff treatment under the Generalized System of Preferences (GSP) (19 U.S.C. 2461 *et seq.*) for articles that are eligible for such treatment and that are imported from Bahrain, Bermuda, Brunei Darussalam, Nauru, Hong Kong, the Republic of Korea, Panama, Singapore, or Taiwan, and I modified the general headnotes and other provisions of the TSUS to reflect such terminations. In Proclamation 5787 of March 31, 1988 (53 FR 11031), I also modified the TSUS to reflect the decisions made in the 1987 annual review of the GSP. Further, to carry forward these decisions into the nomenclature of the HTS, pursuant to Sections 1204(b)(1) and 1211(b) of the Act, and consistent with the standards to be applied in converting the TSUS into the format of the Harmonized System, I have determined, pursuant to Title V of the Trade Act of 1974 (the Trade Act), as amended, that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles and that certain beneficiary developing countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles. I have determined that the modifications for purposes of the GSP set forth in Annex III are necessary or appropriate to implement in the HTS the applicable provisions of Proclamations 5779, 5787, and 5805, and the additional actions associated with implementing these decisions under the HTS nomenclature.

4. Section 604 of the Trade Act, as amended by Section 1214(j)(4) of the Act (19 U.S.C. 2483, as amended), confers authority upon the President to embody in

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the HTS the substance of the relevant provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to Sections 1204, 1211, and 1214 of the Act and Title V and Section 604 of the Trade Act, do proclaim that:

(1) For each of the HTS subheadings enumerated in Annex I, the "General" subcolumn of rate of duty column 1 shall be modified as provided in such Annex on the dates specified therein.

(2) For each of the HTS headings/subheadings enumerated in Annex II, the "Special" subcolumn of rate of duty column 1 shall be modified as provided in such Annex on the dates specified therein.

(3) Each occurrence of the symbol corresponding to the United States-Israel Free Trade Area program in the HTS is modified by striking out "I" and inserting "IL" in lieu thereof.

(4) The HTS is further modified as set forth in Annexes III and IV to this Proclamation.

(5) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this Proclamation are hereby superseded to the extent of such inconsistency.

(6) The provisions of this Proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on and after January 1, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

Billing code 3190-01-M

ANNEX I

MODIFICATIONS TO IMPLEMENT STAGED RATE REDUCTIONS FOR PRODUCTS OF COUNTRIES ENTITLED TO MOST-FAVORED-NATION TREATMENT

Notes:

1. Each rate of duty in the column headed "January 1, 1989" in the following table, set forth opposite the number of a subheading in the Harmonized Tariff Schedule of the United States identified therein, shall replace the existing rate in the "General" subcolumn of rate of duty column 1 for such subheading, effective with respect to goods provided for therein which are entered, or withdrawn from warehouse for consumption, on and after January 1, 1989.

2. Each such rate of duty shall be superseded by the rate for the applicable subheading set forth in the columns headed "April 1, 1989" and "January 1, 1990", effective with respect to goods provided for therein which are entered, or withdrawn from warehouse for consumption, on and after the date at the head of the applicable column.

Subheading	January 1, 1989	April 1, 1989	January 1, 1990
2903.11.00	20%	20%	20%
2915.39.10	20%	20%	20%
4203.29.20	14%	14%	14%
4203.29.30	14%	14%	14%
4203.29.40	14%	14%	14%
4203.29.50	14%	14%	14%
5309.21.20	6.6¢/kg + 27.2%	6.6¢/kg + 27.2%	25%
5309.29.20	6.6¢/kg + 27.2%	6.6¢/kg + 27.2%	25%
5311.00.20	6.6¢/kg + 27.2%	6.6¢/kg + 27.2%	25%
5608.11.00	17%	17%	17%
5608.19.10	17%	17%	17%
6002.20.10	16%	16%	16%
6302.22.10	19.8%	19.8%	17%
6302.32.10	19.8%	19.8%	17%
6304.19.15	19.8%	19.8%	17%
6406.10.60	5.3%	5.3%	5.3%
6406.20.00	5.3%	5.3%	5.3%
6406.99.30	5.3%	5.3%	5.3%
8529.90.20	3.7%	3.7%	3.7%
8540.91.20	3.7%	3.7%	3.7%
9401.50.00	8.6%	7.5%	7.5%
9401.90.25	8.6%	7.5%	7.5%
9403.80.30	8.6%	7.5%	7.5%
9403.90.25	8.6%	7.5%	7.5%
9608.99.30	40¢/thousand + 7%	40¢/thousand + 7%	40¢/thousand + 7%

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ANNEX II

MODIFICATIONS TO IMPLEMENT STAGED RATE REDUCTIONS FOR PRODUCTS OF ISRAEL

Notes:

1. Each heading/subheading in the Harmonized Tariff Schedule of the United States (HTS) enumerated in Table 1 is modified by inserting a rate of duty of "Free" followed by the symbol "IL" in parentheses in the "Special" subcolumn of rate of duty column 1, in lieu of the existing rate and symbol for products of Israel, effective with respect to such goods which are entered, or withdrawn from warehouse for consumption, on and after January 1, 1989.

2. Each rate of duty enumerated in Table 2 opposite a heading/subheading in the HTS is inserted (together with the symbol "IL" in parentheses) in the "Special" subcolumn of rate of duty column 1 for such heading/subheading in lieu of the existing rate and symbol for products of Israel, effective with respect to such goods which are entered, or withdrawn from warehouse for consumption, on and after the date at the head of the applicable column.

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Table 1.--Products of Israel Elibible for Duty Free Treatment
Effective January 1, 1989

Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV
0101.20.20	0709.90.05	1605.10.20	2101.10.40
0201.20.40	0709.90.10	1605.20.05	2101.20.40
0201.30.40	0709.90.13	1605.30.05	2102.10.00
0202.20.40	0709.90.16	1605.40.05	2102.20.20
0207.22.20	0709.90.30	1605.90.05	2104.20.00
0207.22.40	0710.10.00	1605.90.10	2105.00.00
0302.70.20	0710.22.30	1702.10.00	2106.10.00
0303.80.20	0710.30.00	1702.30.40	2106.90.15
0305.20.20	0710.80.20	1702.50.00	2106.90.40
0402.29.00	0710.80.60	1704.90.40	2106.90.50
0402.99.60	0710.90.10	1806.10.30	2106.90.60
0403.10.00	0710.90.90	1806.20.70	2202.90.10
0403.90.80	0711.30.00	1901.10.00	2202.90.20
0404.10.40	0711.90.40	1901.20.00	2204.10.00
0404.90.05	0714.90.20	1901.90.20	2204.21.20
0404.90.20	0802.21.00	1901.90.30	2204.21.40
0404.90.40	0802.32.00	1901.90.40	2204.29.20
0404.90.60	0804.20.80	1901.90.80	2204.29.60
0405.00.80	0804.50.60	1901.90.90	2206.00.30
0406.10.00	0805.10.00	1902.11.40	2206.00.60
0406.20.10	0805.20.00	1902.19.40	2208.20.20
0406.20.20	0805.30.20	1902.20.00	2208.20.30
0406.20.30	0805.30.40	1902.30.00	2208.20.50
0406.20.35	0807.10.30	1902.40.00	2208.40.00
0406.20.40	0807.10.40	1905.90.90	2208.90.20
0406.20.50	0811.20.40	2001.90.10	2208.90.25
0406.20.55	0811.90.22	2001.90.20	2208.90.35
0406.20.60	0811.90.40	2001.90.35	2208.90.60
0406.30.10	0811.90.55	2001.90.60	2401.10.60
0406.30.20	0811.90.60	2003.10.00	2401.10.80
0406.30.30	0812.90.10	2004.10.00	2401.20.60
0406.30.40	0812.90.20	2005.20.00	2401.20.80
0406.30.50	0813.40.30	2005.60.00	2401.30.60
0406.30.55	0813.40.80	2005.90.10	2401.30.90
0406.30.60	1005.90.40	2005.90.50	2402.10.30
0406.40.40	1102.90.40	2006.00.20	2529.21.00
0406.40.60	1104.30.00	2006.00.90	2707.60.00
0406.40.80	1106.10.00	2007.99.20	2806.20.00
0406.90.10	1106.30.40	2007.99.25	2811.19.50
0406.90.15	1302.13.00	2007.99.35	2824.90.10
0406.90.25	1503.00.00	2007.99.55	2825.30.00
0406.90.30	1507.10.00	2007.99.65	2825.90.30
0406.90.35	1507.90.40	2008.19.90	2827.39.10
0406.90.40	1517.10.00	2008.30.40	2827.39.40
0406.90.45	1517.90.10	2008.30.55	2827.49.10
0406.90.60	1517.90.20	2008.30.65	2831.10.00
0406.90.65	1518.00.40	2008.30.95	2831.90.00
0406.90.80	1602.41.10	2008.40.00	2833.29.30
0407.00.00	1602.49.90	2008.50.20	2834.10.10
0408.11.00	1602.50.09	2008.50.40	2841.80.00
0408.19.00	1602.50.90	2008.60.00	2841.90.10
0408.91.00	1604.11.20	2008.70.00	2844.30.10
0408.99.00	1604.13.20	2008.92.10	2846.10.00
0604.99.60	1604.13.30	2008.92.90	2849.90.30
0704.10.40	1604.14.10	2008.99.28	2850.00.10
0706.10.05	1604.14.30	2008.99.29	2850.00.20
0706.90.40	1604.19.40	2008.99.35	2902.11.00
0707.00.20	1604.19.50	2008.99.42	2902.90.50
0707.00.40	1604.20.05	2008.99.45	2903.11.00
0707.00.50	1604.20.40	2008.99.60	2903.13.00
0707.00.60	1604.20.50	2008.99.65	2903.19.50
0709.40.20	1604.30.20	2009.30.20	2903.21.00
0709.51.00	1605.10.05	2009.40.20	2903.30.05

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Table 1--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV
2903.30.20	2921.44.50	2934.90.18	3214.90.50
2903.40.00	2921.45.50	2934.90.20	3402.20.10
2903.59.30	2921.49.30	2934.90.45	3402.90.30
2903.59.40	2921.51.20	2935.00.15	3404.20.00
2903.59.50	2921.51.50	2935.00.20	3502.10.10
2903.61.20	2921.59.20	2935.00.30	3502.10.50
2904.10.15	2921.59.50	2935.00.31	3504.00.10
2904.90.10	2922.11.00	2935.00.33	3604.90.00
2904.90.35	2922.12.00	2935.00.37	3707.90.30
2905.11.20	2922.13.00	2935.00.50	3804.00.50
2905.12.00	2922.19.40	2936.23.00	3809.92.10
2905.31.00	2922.21.50	2936.26.00	3809.99.10
2905.32.00	2922.22.10	2942.00.50	3810.10.00
2905.39.10	2922.22.50	3003.40.00	3810.90.10
2905.39.50	2922.29.23	3004.50.10	3810.90.50
2905.49.50	2922.29.25	3004.50.20	3811.11.10
2905.50.50	2922.29.29	3202.10.10	3811.19.00
2906.29.10	2922.29.50	3204.11.10	3811.21.00
2907.22.10	2922.30.30	3204.11.15	3811.90.00
2907.23.00	2922.42.10	3204.11.20	3812.10.10
2909.19.50	2922.50.19	3204.11.50	3812.30.10
2909.20.00	2922.50.40	3204.12.10	3814.00.10
2909.41.00	2924.29.07	3204.12.20	3814.00.20
2909.42.00	2924.29.11	3204.12.30	3815.90.10
2909.43.00	2924.29.13	3204.12.40	3817.10.00
2909.44.00	2924.29.14	3204.12.50	3817.20.00
2909.49.05	2924.29.25	3204.13.10	3819.00.00
2909.49.50	2924.29.35	3204.13.20	3820.00.00
2909.50.20	2925.19.50	3204.13.25	3823.30.00
2909.60.50	2926.10.00	3204.13.30	3823.40.10
2910.10.00	2927.00.20	3204.13.50	3823.40.30
2910.20.00	2927.00.30	3204.14.10	3823.90.19
2912.13.00	2927.00.40	3204.14.20	3823.90.29
2912.19.40	2927.00.50	3204.14.25	3823.90.32
2912.21.00	2928.00.20	3204.14.30	3823.90.35
2912.29.10	2929.10.10	3204.14.50	3823.90.36
2912.30.10	2929.10.15	3204.15.10	3823.90.46
2912.42.00	2929.10.50	3204.15.20	3823.90.50
2914.11.10	2929.90.20	3204.15.30	3901.10.00
2914.22.10	2931.00.10	3204.15.35	3901.20.00
2914.69.10	2931.00.50	3204.15.40	3902.10.00
2915.33.00	2932.11.00	3204.15.50	3903.90.10
2915.36.00	2932.19.50	3204.16.10	3904.10.00
2915.35.00	2932.21.00	3204.16.20	3904.21.00
2915.39.10	2932.29.20	3204.16.30	3904.22.00
2915.39.40	2932.29.40	3204.16.50	3921.12.15
2916.31.10	2932.90.35	3204.17.10	3921.13.15
2917.12.10	2932.90.37	3204.17.20	3921.14.00
2917.14.10	2932.90.50	3204.17.30	3921.90.15
2917.19.40	2933.11.00	3204.17.50	3926.90.33
2917.37.00	2933.19.30	3204.19.11	3926.90.85
2917.39.30	2933.19.42	3204.19.15	4013.20.00
2918.15.10	2933.29.40	3204.19.19	4202.11.00
2918.17.10	2933.39.50	3204.19.30	4202.12.40
2918.21.10	2933.59.40	3204.19.40	4202.12.80
2918.22.10	2933.71.00	3204.19.50	4202.19.00
2919.00.30	2933.90.25	3204.20.10	4202.21.60
2920.90.20	2933.90.39	3204.20.50	4202.22.15
2921.41.10	2934.10.20	3205.00.10	4202.22.40
2921.41.20	2934.20.15	3205.00.50	4202.22.45
2921.42.25	2934.20.20	3206.49.20	4202.22.70
2921.42.50	2934.20.50	3206.50.00	4202.22.80
2921.43.15	2934.30.50	3207.40.50	4202.29.00
2921.43.50	2934.90.06	3211.00.00	4202.31.60

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Table 1--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV
4202.32.20	6103.19.40	6113.00.00	6207.92.40
4202.32.40	6103.32.00	6114.20.00	6207.99.40
4202.39.00	6103.42.10	6114.30.10	6208.19.20
4202.92.15	6103.42.20	6114.30.30	6208.19.40
4202.92.30	6103.43.20	6115.11.00	6208.21.00
4202.92.45	6103.49.20	6115.12.00	6208.22.00
4202.92.60	6104.12.00	6115.19.00	6208.29.00
4202.92.90	6104.13.20	6115.91.00	6208.91.10
4202.99.00	6104.19.15	6115.92.10	6208.92.00
4206.10.90	6104.33.20	6117.80.00	6208.99.60
4301.60.30	6104.39.10	6201.12.20	6208.99.80
4302.19.15	6104.42.00	6201.92.15	6209.20.10
4409.10.65	6104.43.20	6201.92.20	6209.20.30
4409.20.65	6104.44.20	6201.93.20	6209.20.50
4411.19.40	6104.52.00	6201.93.30	6209.90.20
4411.29.90	6104.53.20	6202.12.20	6209.90.40
4412.11.50	6104.59.10	6202.19.00	6210.20.10
4412.12.15	6104.62.10	6202.91.20	6210.20.20
4412.12.50	6104.62.20	6202.92.15	6210.30.10
4412.19.40	6104.63.10	6202.92.20	6210.30.20
4412.19.50	6104.63.20	6202.93.20	6210.40.10
4412.29.40	6104.69.10	6202.93.45	6210.40.20
4412.99.40	6104.69.20	6202.99.00	6210.50.10
4412.99.50	6105.20.20	6203.32.20	6210.50.20
4415.10.90	6106.10.00	6203.42.20	6211.11.20
4415.20.80	6107.12.00	6203.43.15	6211.12.30
4420.90.40	6107.19.00	6203.43.20	6211.20.40
4421.90.20	6107.21.00	6203.43.35	6211.20.60
4421.90.30	6107.22.00	6203.48.10	6211.32.00
4503.90.60	6107.29.40	6204.12.00	6211.33.00
4504.10.50	6107.91.00	6204.13.20	6211.42.00
4504.90.20	6108.11.00	6204.19.20	6211.43.00
4504.90.40	6108.22.00	6204.19.30	6211.49.00
4602.10.11	6108.29.00	6204.22.10	6217.10.00
4602.10.13	6108.31.00	6204.31.10	6302.21.10
4602.10.21	6108.32.00	6204.32.20	6302.31.10
4602.10.23	6108.91.00	6204.33.10	6302.60.00
4602.10.25	6108.92.00	6204.39.40	6302.91.00
4823.90.50	6109.10.00	6204.41.10	6303.92.00
5103.30.00	6109.90.15	6204.42.20	6306.11.00
5402.31.60	6109.90.20	6204.42.30	6306.21.00
5402.32.60	6110.20.10	6204.43.20	6306.22.90
5501.10.00	6110.30.20	6204.43.40	6307.10.20
5509.11.00	6111.20.10	6204.44.40	6307.20.00
5509.21.00	6111.20.30	6204.49.00	6307.90.70
5509.31.00	6111.20.40	6204.52.20	6401.10.00
5509.41.00	6111.20.50	6204.53.30	6401.91.00
5509.51.30	6111.20.60	6204.59.30	6401.92.30
5509.69.20	6111.30.10	6204.59.40	6401.92.60
5510.11.00	6111.30.20	6204.62.20	6401.92.90
5510.90.20	6111.30.40	6204.62.40	6401.99.30
5601.10.20	6111.30.50	6204.63.30	6401.99.60
5601.22.00	6111.90.10	6204.63.35	6401.99.80
5602.10.90	6111.90.20	6204.69.20	6401.99.90
5602.90.60	6111.90.40	6204.69.25	6402.11.00
5603.00.90	6111.90.50	6204.69.30	6402.19.10
5609.00.30	6111.90.60	6204.69.90	6402.19.30
5807.90.20	6112.11.00	6205.30.20	6402.19.50
5808.90.00	6112.12.00	6206.10.00	6402.19.70
5911.90.00	6112.19.10	6206.20.20	6402.19.90
6101.90.00	6112.20.10	6206.30.30	6402.30.30
6102.20.00	6112.20.20	6206.40.20	6402.30.50
6102.30.05	6112.39.00	6206.90.00	6402.30.60
6102.30.20	6112.49.00	6207.22.00	6402.30.70

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Table 1--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV
6402.30.80	6405.20.90	7108.13.50	8215.10.00
6402.30.90	6405.90.20	7109.00.00	8215.20.00
6402.91.40	6405.90.90	7111.00.00	8215.99.30
6402.91.50	6406.10.05	7114.11.45	8215.99.40
6402.91.60	6406.10.10	7115.10.00	8401.20.00
6402.91.70	6406.10.20	7115.90.50	8421.12.00
6402.91.80	6406.10.25	7116.20.20	8421.19.00
6402.91.90	6406.10.30	7117.19.10	8421.91.00
6402.99.05	6406.10.35	7202.50.00	8442.50.90
6402.99.10	6406.10.40	7219.31.00	8448.33.00
6402.99.15	6406.10.45	7219.32.00	8448.51.10
6402.99.20	6406.10.50	7219.33.00	8448.51.30
6402.99.30	6406.99.90	7219.34.00	8456.10.10
6402.99.60	6603.20.30	7219.35.00	8456.20.10
6402.99.70	6603.20.90	7220.20.60	8456.30.10
6402.99.80	6603.90.00	7220.20.70	8456.90.10
6402.99.90	6702.10.20	7222.10.00	8457.10.00
6403.11.60	6810.19.10	7222.20.00	8457.20.00
6403.19.15	6812.50.10	7228.50.10	8457.30.00
6403.19.45	6905.10.00	7228.60.10	8458.11.00
6403.19.60	6907.10.00	7314.11.20	8458.19.00
6403.20.00	6907.90.00	7314.11.90	8458.91.10
6403.30.00	6908.10.20	7318.11.00	8458.91.50
6403.40.30	6908.10.50	7318.12.00	8458.99.10
6403.40.60	6908.90.00	7319.20.00	8458.99.50
6403.51.30	6909.19.50	7319.30.10	8459.10.00
6403.51.60	6910.10.00	7323.99.30	8459.21.00
6403.51.90	6910.90.00	7326.90.30	8459.29.00
6403.59.15	6911.10.20	7408.22.10	8459.31.00
6403.59.30	6911.90.00	7408.22.50	8459.39.00
6403.59.60	6913.10.50	7412.10.00	8459.40.00
6403.59.90	6914.90.00	7419.99.15	8459.51.00
6403.91.30	7002.20.50	7419.99.30	8459.59.00
6403.91.60	7002.32.00	7804.20.00	8459.61.00
6403.91.90	7002.39.00	7901.12.10	8459.69.00
6403.99.20	7006.00.20	7901.20.00	8459.70.00
6403.99.40	7009.10.00	8101.10.00	8460.11.00
6403.99.60	7009.91.10	8104.11.00	8460.19.00
6403.99.75	7009.91.50	8108.10.50	8460.21.00
6403.99.90	7009.92.10	8108.90.60	8460.29.00
6404.11.20	7009.92.50	8111.00.45	8460.31.00
6404.11.40	7010.90.30	8202.40.30	8460.39.00
6404.11.50	7012.00.00	8203.20.20	8460.40.00
6404.11.60	7013.21.30	8203.20.40	8460.90.00
6404.11.70	7013.29.05	8205.90.00	8461.10.00
6404.11.80	7013.31.30	8206.00.00	8461.20.00
6404.11.90	7013.32.10	8207.11.00	8461.30.00
6404.19.15	7013.39.10	8207.12.30	8461.40.10
6404.19.20	7013.91.30	8207.30.30	8461.40.50
6404.19.25	7013.99.20	8207.40.30	8461.50.00
6404.19.30	7013.99.30	8207.50.20	8461.90.00
6404.19.35	7014.00.10	8207.50.40	8462.10.00
6404.19.40	7014.00.20	8207.60.00	8462.21.00
6404.19.50	7015.90.20	8207.70.30	8462.29.00
6404.19.60	7016.90.10	8207.80.30	8462.31.00
6404.19.70	7016.90.50	8207.90.30	8462.39.00
6404.19.80	7017.20.00	8209.00.00	8462.41.00
6404.19.90	7017.90.00	8211.10.00	8462.49.00
6404.20.20	7018.10.10	8211.91.20	8462.91.00
6404.20.40	7018.20.00	8211.91.30	8462.99.00
6404.20.60	7018.90.10	8213.00.60	8463.10.00
6405.10.00	7103.99.50	8213.00.90	8463.20.00
6405.20.30	7104.90.50	8214.20.30	8463.30.00
6405.20.60	7108.12.50	8214.20.90	8463.90.00

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Table 1--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV	Heading/subheading in HTS as modified by Annex III and Annex IV
8483.40.70	9008.90.40	9106.10.00	9507.90.80
8501.10.20	9010.20.30	9106.20.00	9603.10.20
8503.00.40	9010.20.40	9106.90.40	9603.10.40
8512.10.20	9010.90.40	9108.11.40	9603.10.70
8512.90.40	9011.10.80	9108.19.40	9603.29.40
8513.10.20	9011.20.80	9108.19.80	9603.40.20
8513.90.20	9011.80.00	9108.20.80	9605.00.00
8516.40.40	9011.90.00	9108.91.10	9608.20.00
8532.10.00	9013.10.10	9108.91.20	9608.40.40
8532.21.00	9013.90.20	9108.91.30	9608.99.30
8532.22.00	9013.90.40	9108.91.50	9612.10.90
8532.23.00	9015.10.80	9108.99.20	9613.10.00
8532.24.00	9018.31.00	9108.99.40	9613.20.00
8532.25.00	9018.32.00	9108.99.60	9613.80.40
8532.29.00	9018.50.00	9109.11.40	9613.80.60
8532.30.00	9018.90.10	9109.11.60	9613.80.80
8539.29.20	9018.90.20	9109.19.40	9613.90.80
8540.11.00	9018.90.80	9109.19.60	9614.90.40
8544.70.00	9019.10.60	9109.90.40	9615.11.20
8605.00.00	9021.11.00	9109.90.60	9615.11.50
8606.10.00	9021.19.40	9110.12.00	9615.19.60
8606.20.00	9021.21.80	9110.19.00	9615.90.20
8606.30.00	9021.29.80	9114.10.40	9615.90.60
8606.91.00	9025.11.20	9114.30.40	9617.00.30
8606.92.00	9025.11.40	9114.40.60	9617.00.40
8606.99.00	9025.80.20	9114.90.40	9617.00.60
8712.00.10	9026.10.40	9114.90.50	9816.00.20
8712.00.30	9026.80.40	9202.90.60	
8712.00.40	9026.90.40	9207.10.00	
8714.91.90	9027.10.40	9207.90.00	
8714.92.50	9027.30.80	9209.92.80	
8714.93.30	9027.50.80	9303.30.40	
8714.93.80	9027.90.60	9303.90.40	
8714.94.50	9028.90.00	9304.00.20	
8714.95.00	9029.10.40	9305.10.20	
8714.96.10	9029.20.20	9305.10.40	
8714.96.90	9029.20.60	9305.90.50	
8714.99.90	9029.90.20	9401.30.00	
9001.10.00	9029.90.40	9401.90.25	
9001.20.00	9031.40.00	9403.80.30	
9001.90.50	9101.11.80	9403.90.25	
9001.90.60	9101.99.20	9403.90.60	
9001.90.90	9101.99.40	9404.29.10	
9002.11.40	9101.99.60	9404.30.80	
9002.20.80	9101.99.80	9405.10.60	
9002.90.20	9102.29.20	9405.20.60	
9002.90.40	9102.29.50	9405.40.60	
9002.90.90	9102.91.40	9405.50.40	
9003.11.00	9102.91.80	9405.60.40	
9003.19.00	9102.99.20	9405.91.20	
9003.90.00	9102.99.40	9405.91.40	
9004.10.00	9102.99.60	9405.99.40	
9004.90.00	9102.99.80	9501.00.60	
9005.80.60	9104.00.10	9502.99.20	
9005.90.00	9104.00.20	9503.41.20	
9006.40.60	9104.00.40	9503.50.00	
9006.52.60	9105.11.80	9503.90.70	
9006.59.60	9105.19.40	9504.20.20	
9007.21.80	9105.19.50	9505.10.40	
9007.29.80	9105.21.80	9506.69.40	
9007.92.00	9105.29.40	9507.10.00	
9008.10.00	9105.29.50	9507.30.20	
9008.20.80	9105.99.50	9507.90.40	
9008.30.00	9105.99.60	9507.90.70	

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Table 1--Continued

Additional U.S. note 1 to chapter 11 is modified by striking out "6.4%" and inserting "Free" in lieu thereof.

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Table 2.--Staged Reductions in Rates of Duty for Products of Israel Which Become Free of Duty Effective January 1, 1995

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
0804.40.00	5.3¢/kg	4¢/kg	1.3¢/kg	Free
0805.40.40	0.9¢/kg	0.7¢/kg	0.2¢/kg	Free
0805.40.60	0.7¢/kg	0.5¢/kg	0.2¢/kg	Free
0805.40.80	1.2¢/kg	0.9¢/kg	0.3¢/kg	Free
2001.90.25	4.8%	3.6%	1.2%	Free
2005.90.80	7%	5.3%	1.8%	Free
2008.99.10	5.3¢/kg	4¢/kg	1.3¢/kg	Free
2827.59.30	1.5%	1.1%	0.4%	Free
2830.20.00	1.1%	0.8%	0.3%	Free
2903.30.15	1.2%	0.9%	0.3%	Free
2903.59.15	5.4%	4.1%	1.4%	Free
2903.62.00	3.7%	2.8%	0.9%	Free
2903.69.50	3.7%	2.8%	0.9%	Free
2908.10.50	0.7¢/kg + 7.8%	0.5¢/kg + 5.8%	0.2¢/kg + 1.9%	Free
2908.20.50	0.7¢/kg + 7.8%	0.5¢/kg + 5.8%	0.2¢/kg + 1.9%	Free
2908.90.50	0.6¢/kg + 7.8%	0.5¢/kg + 5.8%	0.2¢/kg + 1.9%	Free
2909.30.40	5.4%	4.1%	1.4%	Free
2909.30.50	8%	6%	2%	Free
2909.49.10	5.4%	4.1%	1.4%	Free
2909.49.15	8%	6%	2%	Free
2909.50.45	5.4%	4.1%	1.4%	Free
2909.50.50	8%	6%	2%	Free
2909.60.10	5.4%	4.1%	1.4%	Free
2909.60.20	8%	6%	2%	Free
2917.12.50	5.4%	4.1%	1.4%	Free
2917.19.20	5.4%	4.1%	1.4%	Free
2917.39.50	8%	6%	2%	Free
2921.30.10	5.4%	4.1%	1.4%	Free
2925.20.30	6%	4.5%	1.5%	Free
3916.90.30	3.1%	2.3%	0.8%	Free
3918.10.31	1.7%	1.3%	0.4%	Free
3918.10.32	3.4%	2.6%	0.9%	Free
3918.10.40	2.2%	1.6%	0.5%	Free
3918.90.20	3.4%	2.6%	0.9%	Free
3918.90.30	2.2%	1.6%	0.5%	Free
3921.12.11	1.7%	1.3%	0.4%	Free
3921.12.19	2.2%	1.6%	0.5%	Free
3921.13.11	1.7%	1.3%	0.4%	Free
3921.13.19	2.2%	1.6%	0.5%	Free
3921.90.11	1.7%	1.3%	0.4%	Free
3921.90.19	2.2%	1.6%	0.5%	Free
3921.90.21	2.9%	2.2%	0.7%	Free
3921.90.25	6.4%	4.8%	1.6%	Free
3921.90.29	1.8%	1.3%	0.4%	Free
3924.90.10	1.4%	1%	0.3%	Free
3925.30.10	1.4%	1%	0.3%	Free
3926.20.40	5.6%	4.2%	1.4%	Free
3926.20.50	2%	1.5%	0.5%	Free
3926.90.56	2.1%	1.6%	0.5%	Free
3926.90.57	3.2%	2.4%	0.8%	Free
3926.90.59	1%	0.7%	0.2%	Free
4008.21.00	1.4%	1%	0.3%	Free
4010.91.11	2.1%	1.6%	0.5%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
4010.91.15	3.2%	2.4%	0.8%	Free
4010.91.19	1%	0.7%	0.2%	Free
4010.99.11	2.1%	1.6%	0.5%	Free
4010.99.15	3.2%	2.4%	0.8%	Free
4010.99.19	1%	0.7%	0.2%	Free
4015.19.10	1.5%	1.1%	0.4%	Free
4015.19.50	5.6%	4.2%	1.4%	Free
4015.90.00	2%	1.5%	0.5%	Free
4202.22.35	3.4%	2.5%	0.8%	Free
4202.32.80	2.6%	2%	0.7%	Free
4202.32.85	8%	6%	2%	Free
4202.32.95	8%	6%	2%	Free
4203.10.20	1.9%	1.4%	0.5%	Free
4203.29.05	5.6%	4.2%	1.4%	Free
4203.29.08	5.6%	4.2%	1.4%	Free
4203.29.15	5.6%	4.2%	1.4%	Free
4203.29.18	5.6%	4.2%	1.4%	Free
4203.29.20	5.6%	4.2%	1.4%	Free
4203.29.30	5.6%	4.2%	1.4%	Free
4203.29.40	5.6%	4.2%	1.4%	Free
4203.29.50	5.6%	4.2%	1.4%	Free
4203.40.30	2.2%	1.7%	0.6%	Free
4205.00.60	2.2%	1.7%	0.6%	Free
4601.99.00	1.4%	1%	0.3%	Free
5007.90.30	2%	1.5%	0.5%	Free
5007.90.60	2%	1.5%	0.5%	Free
5101.21.60	3.1¢/kg + 2.5%	2.3¢/kg + 1.9%	0.8¢/kg + 0.6%	Free
5101.29.60	3.1¢/kg + 2.5%	2.3¢/kg + 1.9%	0.8¢/kg + 0.6%	Free
5101.30.60	3.1¢/kg + 2.5%	2.3¢/kg + 1.9%	0.8¢/kg + 0.6%	Free
5102.10.90	3.1¢/kg + 2.5%	2.3¢/kg + 1.9%	0.8¢/kg + 0.6%	Free
5105.10.00	3.1¢/kg + 2.5%	2.3¢/kg + 1.9%	0.8¢/kg + 0.6%	Free
5105.21.00	3.1¢/kg + 2.5%	2.3¢/kg + 1.9%	0.8¢/kg + 0.6%	Free
5105.29.00	3.1¢/kg + 2.5%	2.3¢/kg + 1.9%	0.8¢/kg + 0.6%	Free
5105.30.00	3.1¢/kg + 2.5%	2.3¢/kg + 1.9%	0.8¢/kg + 0.6%	Free
5106.10.00	3%	2.3%	0.8%	Free
5107.10.00	3%	2.3%	0.8%	Free
5107.20.00	3%	2.3%	0.8%	Free
5108.10.30	2%	1.5%	0.5%	Free
5108.10.60	3%	2.3%	0.8%	Free
5108.20.30	2%	1.5%	0.5%	Free
5108.20.60	3%	2.3%	0.8%	Free
5109.10.40	2%	1.5%	0.5%	Free
5109.10.60	3%	2.3%	0.8%	Free
5109.90.40	2%	1.5%	0.5%	Free
5111.11.10	7¢/kg + 5%	5.3¢/kg + 3.8%	1.8¢/kg + 1.3%	Free
5111.11.60	13.2%	9.9%	3.3%	Free
5111.19.10	2.8%	2.1%	0.7%	Free
5111.19.20	7¢/kg + 5%	5.3¢/kg + 3.8%	1.8¢/kg + 1.3%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5111.19.60	13.2%	9.9%	3.3%	Free
5111.20.05	2.8%	2.1%	0.7%	Free
5111.20.60	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5111.30.05	2.8%	2.1%	0.7%	Free
5111.30.60	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5111.90.30	3.1%	2.3%	0.8%	Free
5111.90.60	13.2%	9.9%	3.3%	Free
5112.11.00	13.2%	9.9%	3.3%	Free
5112.19.10	2.8%	2.1%	0.7%	Free
5112.19.60	13.2%	9.9%	3.3%	Free
5112.20.00	19.2¢/kg + 15.2%	14.4¢/kg + 11.4%	4.8¢/kg + 3.8%	Free
5112.30.00	19.2¢/kg + 15.2%	14.4¢/kg + 11.4%	4.8¢/kg + 3.8%	Free
5112.90.30	3.1%	2.3%	0.8%	Free
5112.90.60	3.4%	2.6%	0.9%	Free
5113.00.00	2.2%	1.6%	0.5%	Free
5204.11.00	2%	1.5%	0.5%	Free
5204.19.00	2%	1.5%	0.5%	Free
5204.20.00	2%	1.5%	0.5%	Free
5205.11.10	1.4%	1.1%	0.4%	Free
5205.11.20	2.3%	1.7%	0.6%	Free
5205.12.10	1.7%	1.3%	0.4%	Free
5205.12.20	3%	2.2%	0.7%	Free
5205.13.10	2.2%	1.6%	0.5%	Free
5205.13.20	3.4%	2.6%	0.9%	Free
5205.14.10	3%	2.3%	0.8%	Free
5205.14.20	4%	3%	1%	Free
5205.15.10	3.5%	2.6%	0.9%	Free
5205.15.20	4.8%	3.6%	1.2%	Free
5205.21.00	2.3%	1.7%	0.6%	Free
5205.22.00	3%	2.2%	0.7%	Free
5205.23.00	3.4%	2.6%	0.9%	Free
5205.24.00	4%	3%	1%	Free
5205.25.00	4.8%	3.6%	1.2%	Free
5205.31.00	2.3%	1.7%	0.6%	Free
5205.32.00	3%	2.2%	0.7%	Free
5205.33.00	3.4%	2.6%	0.9%	Free
5205.34.00	4%	3%	1%	Free
5205.35.00	4.8%	3.6%	1.2%	Free
5205.41.00	2.3%	1.7%	0.6%	Free
5205.42.00	3%	2.2%	0.7%	Free
5205.43.00	3.4%	2.6%	0.9%	Free
5205.44.00	4%	3%	1%	Free
5205.45.00	4.8%	3.6%	1.2%	Free
5206.11.00	4.3%	3.2%	1.1%	Free
5206.12.00	4.3%	3.2%	1.1%	Free
5206.13.00	4.3%	3.2%	1.1%	Free
5206.14.00	4.3%	3.2%	1.1%	Free
5206.15.00	4.3%	3.2%	1.1%	Free
5206.21.00	4.3%	3.2%	1.1%	Free
5206.22.00	4.3%	3.2%	1.1%	Free
5206.23.00	4.3%	3.2%	1.1%	Free
5206.24.00	4.3%	3.2%	1.1%	Free
5206.25.00	4.3%	3.2%	1.1%	Free

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Table 2--Continued

Heading/sub-heading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5206.31.00	4.3%	3.2%	1.1%	Free
5206.32.00	4.3%	3.2%	1.1%	Free
5206.33.00	4.3%	3.2%	1.1%	Free
5206.34.00	4.3%	3.2%	1.1%	Free
5206.35.00	4.3%	3.2%	1.1%	Free
5206.41.00	4.3%	3.2%	1.1%	Free
5206.42.00	4.3%	3.2%	1.1%	Free
5206.43.00	4.3%	3.2%	1.1%	Free
5206.44.00	4.3%	3.2%	1.1%	Free
5206.45.00	4.3%	3.2%	1.1%	Free
5207.10.00	2%	1.5%	0.5%	Free
5207.90.00	2%	1.5%	0.5%	Free
5208.11.20	2.8%	2.1%	0.7%	Free
5208.11.40	3.5%	2.6%	0.9%	Free
5208.11.60	3.1¢/kg + 7.7%	2.3¢/kg + 5.8%	0.8¢/kg + 1.9%	Free
5208.11.80	5%	3.7%	1.2%	Free
5208.12.40	2.8%	2.1%	0.7%	Free
5208.12.60	3.5%	2.6%	0.9%	Free
5208.12.80	5%	3.7%	1.2%	Free
5208.13.00	3.2%	2.4%	0.8%	Free
5208.19.20	3.2%	2.4%	0.8%	Free
5208.19.40	2.8%	2.1%	0.7%	Free
5208.19.60	3.5%	2.6%	0.9%	Free
5208.19.80	5%	3.7%	1.2%	Free
5208.21.20	3.4%	2.5%	0.8%	Free
5208.21.40	4.1%	3.1%	1%	Free
5208.21.60	5.4%	4.1%	1.4%	Free
5208.22.40	3.4%	2.5%	0.8%	Free
5208.22.60	4.1%	3.1%	1%	Free
5208.22.80	5.4%	4.1%	1.4%	Free
5208.23.00	3.7%	2.8%	0.9%	Free
5208.29.20	3.7%	2.8%	0.9%	Free
5208.29.40	3.4%	2.5%	0.8%	Free
5208.29.60	4.1%	3.1%	1%	Free
5208.29.80	5.4%	4.1%	1.4%	Free
5208.31.40	3.8%	2.9%	1%	Free
5208.31.60	4.6%	3.4%	1.1%	Free
5208.31.80	5.9%	4.4%	1.5%	Free
5208.32.30	3.8%	2.9%	1%	Free
5208.32.40	4.6%	3.4%	1.1%	Free
5208.32.50	5.9%	4.4%	1.5%	Free
5208.33.00	4.2%	3.1%	1%	Free
5208.39.20	4.2%	3.1%	1%	Free
5208.39.40	3.8%	2.9%	1%	Free
5208.39.60	4.6%	3.4%	1.1%	Free
5208.39.80	5.9%	4.4%	1.5%	Free
5208.41.40	3.8%	2.9%	1%	Free
5208.41.60	4.6%	3.4%	1.1%	Free
5208.41.80	5.9%	4.4%	1.5%	Free
5208.42.30	3.8%	2.9%	1%	Free
5208.42.40	4.6%	3.4%	1.1%	Free
5208.42.50	5.9%	4.4%	1.5%	Free
5208.43.00	4.2%	3.1%	1%	Free
5208.49.20	4.2%	3.1%	1%	Free
5208.49.40	3.8%	2.9%	1%	Free

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Table 2- Continued

Heading/sub heading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5208.49.60	4.6%	3.4%	1.1%	Free
5208.49.80	5.9%	4.4%	1.5%	Free
5208.51 40	3.8%	2.9%	1%	Free
5208.51 60	4 6%	3 4%	1.1%	Free
5208.51 80	5 9%	4.4%	1 5%	Free
5208.52 30	3.8%	2 9%	1%	Free
5208.52 40	4.6%	3.4%	1.1%	Free
5208 52.50	5 9%	4.4%	1.5%	Free
5208.53.00	4.2%	3.1%	1%	Free
5208.59.20	4.2%	3.1%	1%	Free
5208.59.40	3.8%	2.9%	1%	Free
5208.59 60	4.6%	3.4%	1.1%	Free
5208.59.80	5.9%	4.4%	1.5%	Free
5209.11.00	2 6%	2%	0 7%	Free
5209.12.00	2.6%	2%	0.7%	Free
5209 19.00	2.6%	2%	0.7%	Free
5209.21 00	3 1%	2.3%	0.8%	Free
5209.22.00	3 1%	2.3%	0.8%	Free
5209.29.00	3 1%	2.3%	0 8%	Free
5209 31 60	3 6%	2.7%	0.9%	Free
5209.32.00	3.6%	2.7%	0 9%	Free
5209 39.00	3.6%	2.7%	0.9%	Free
5209.41.60	3.6%	2.7%	0 9%	Free
5209.42.00	3.6%	2.7%	0 9%	Free
5209.43.00	3.6%	2.7%	0.9%	Free
5209.49.00	3.6%	2.7%	0.9%	Free
5209.51.60	3.6%	2.7%	0.9%	Free
5209.52 00	3.6%	2.7%	0.9%	Free
5209 59.00	3.6%	2.7%	0.9%	Free
5210 11.40	3.4%	2.5%	0.8%	Free
5210.11 60	4.1%	3.1%	1%	Free
5210 11.80	5.4%	4.1%	1.4%	Free
5210 12.00	3.7%	2.8%	0.9%	Free
5210 19 20	3.7%	2.8%	0.9%	Free
5210 19 40	3.4%	2 5%	0.8%	Free
5210 19 60	4.1%	3.1%	1%	Free
5210 19 80	5 4%	4.1%	1.4%	Free
5210 21 40	3 8%	2.9%	1%	Free
5210 21 60	4 6%	3.4%	1.1%	Free
5210 21 80	5 9%	4.4%	1.5%	Free
5210 22 00	4.2%	3.1%	1%	Free
5210.29 20	4 2%	3.1%	1%	Free
5210 29 40	3 8%	2.9%	1%	Free
5210 29 60	4 6%	3 4%	1 1%	Free
5210 29 80	5 9%	4 4%	1.5%	Free
5210 31.40	4 2%	3.1%	1%	Free
5210 31 60	4 9%	3 7%	1.2%	Free
5210 31 80	6 2%	4 7%	1.6%	Free
5210 32 00	4 5%	3 4%	1.1%	Free
5210 39 20	4 5%	3.4%	1.1%	Free
5210 39.40	4 2%	3.1%	1%	Free
5210 39.60	4 9%	3 7%	1.2%	Free
5210 39 80	6 2%	4 7%	1.6%	Free
5210 41 40	4 2%	3 1%	1%	Free
5210 41.60	4 9%	3 7%	1.2%	Free

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Table 2--Continued

Heading/sub-heading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5210.41.80	6.2%	4 7%	1.6%	Free
5210 42.00	4.5%	3 4%	1.1%	Free
5210.49.20	4 5%	3 4%	1.1%	Free
5210.49.40	4.2%	3 1%	1%	Free
5210 49.60	4.9%	3 7%	1.2%	Free
5210.49.80	6.2%	4 7%	1.6%	Free
5210.51.40	4.2%	3.1%	1%	Free
5210.51.60	4.9%	3.7%	1.2%	Free
5210.51.80	6.2%	4 7%	1.6%	Free
5210.52.00	4.5%	3.4%	1.1%	Free
5210.59.20	4.5%	3.4%	1.1%	Free
5210.59.40	4.2%	3.1%	1%	Free
5210.59.60	4.9%	3.7%	1.2%	Free
5210.59.80	6.2%	4.7%	1.6%	Free
5211.11.00	3.1%	2.3%	0.8%	Free
5211.12.00	3.1%	2.3%	0.8%	Free
5211.19.00	3.1%	2.3%	0.8%	Free
5211.21.00	3.6%	2.7%	0.9%	Free
5211.22.00	3.6%	2.7%	0.9%	Free
5211.29.00	3.6%	2.7%	0.9%	Free
5211.31.00	3.9%	2.9%	1%	Free
5211.32.00	3.9%	2.9%	1%	Free
5211.39.00	3.9%	2.9%	1%	Free
5211.41.00	3.9%	2.9%	1%	Free
5211.42.00	3.9%	2.9%	1%	Free
5211.43.00	3.9%	2.9%	1%	Free
5211.49.00	3.9%	2.9%	1%	Free
5211.51.00	3.9%	2.9%	1%	Free
5211.52.00	3.9%	2.9%	1%	Free
5211.59.00	3.9%	2 9%	1%	Free
5212.11.10	13.2%	9.9%	3.3%	Free
5212.12.10	13.2%	9.9%	3.3%	Free
5212.12.60	3.1%	2.3%	0.8%	Free
5212.13.10	13.2%	9.9%	3.3%	Free
5212.13.60	3.1%	2.3%	0.8%	Free
5212.14.10	13.2%	9.9%	3.3%	Free
5212.14.60	3.1%	2.3%	0.8%	Free
5212.15.10	13.2%	9.9%	3.3%	Free
5212.15.60	3.1%	2.3%	0.8%	Free
5212.21.10	13.2%	9.9%	3.3%	Free
5212.21.60	3.1%	2.3%	0.8%	Free
5212.22.10	13.2%	9.9%	3.3%	Free
5212.22.60	2.9%	2.2%	0.7%	Free
5212.23.10	13.2%	9.9%	3.3%	Free
5212.23.60	2.9%	2.2%	0.7%	Free
5212.24.10	13.2%	9.9%	3.3%	Free
5212.24.60	2.9%	2.2%	0.7%	Free
5212.25.10	13.2%	9 9%	3.3%	Free
5212.25.60	2.9%	2.2%	0.7%	Free
5306.10.00	1.7%	1.3%	0.4%	Free
5306.20.00	2.4%	1.8%	0.6%	Free
5307.10.00	1.4%	1.1%	0.4%	Free
5307.20.00	1.6%	1.2%	0.4%	Free
5308.20.00	2.7%	2%	0.7%	Free
5308.90.00	1.6%	1.2%	0.4%	Free

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Table 2--Continued

Heading/sub heading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5309.11.00	1.2%	0.9%	0.3%	Free
5309.19 00	1.2%	0.9%	0.3%	Free
5309.21 20	10%	7 5%	2.5%	Free
5309.21.30	2.8%	2.1%	0.7%	Free
5309.21.40	1.2%	0.9%	0 3%	Free
5309.29 20	10%	7.5%	2.5%	Free
5309.29.30	2.8%	2 1%	0.7%	Free
5309 29.40	1.2%	0.9%	0.3%	Free
5311 00 20	10%	7 5%	2.5%	Free
5311 00.30	2.8%	2.1%	0 7%	Free
5311 00.40	1.2%	0 9%	0.3%	Free
5311.00.60	2.2%	1 6%	0.5%	Free
5401 10.00	5.2%	3.9%	1.3%	Free
5401.20 00	5.2%	3 9%	1.3%	Free
5402.10.60	3.6%	2.7%	0.9%	Free
5402.20 60	3.6%	2.7%	0.9%	Free
5402 33 60	3.6%	2.7%	0.9%	Free
5402.39 60	3.6%	2.7%	0.9%	Free
5402 42 00	4%	3%	1%	Free
5402.43 00	4%	3%	1%	Free
5402 49 00	4%	3%	1%	Free
5402 51 00	4%	3%	1%	Free
5402.59 00	4%	3%	1%	Free
5402 61 00	3.7%	2.8%	0.9%	Free
5402.62 00	3.7%	2.8%	0 9%	Free
5402 69 00	3.7%	2.8%	0.9%	Free
5403.10 60	3.6%	2.7%	0.9%	Free
5403 20.60	3.6%	2 7%	0.9%	Free
5403.32.00	4%	3%	1%	Free
5403.41.00	3 7%	2.8%	0.9%	Free
5403.42.00	3.7%	2.8%	0.9%	Free
5403 49.00	3.7%	2.8%	0.9%	Free
5404 10.20	3.1%	2.3%	0.8%	Free
5404.90.00	2.1%	1.6%	0.5%	Free
5405.00 30	3.1%	2.3%	0 8%	Free
5405 00.60	2.6%	2%	0.7%	Free
5407 10 00	2.6%	2%	0 7%	Free
5407 20 00	6.8%	5.1%	1 7%	Free
5407 30 10	1.4%	1%	0.3%	Free
5407 30 90	6.4%	4.8%	1 6%	Free
5407 41 00	6.8%	5 1%	1 7%	Free
5407 42 00	6 8%	5 1%	1.7%	Free
5407 43 10	9.7¢/kg + 9%	7 3¢/kg + 6.8%	2 4¢/kg + 2.3%	Free
5407 43 20	6.8%	5 1%	1.7%	Free
5407 44 00	6.8%	5 1%	1.7%	Free
5407 51 00	6.8%	5.1%	1.7%	Free
5407 52 05	9.7¢/kg + 9%	7 3¢/kg + 6 8%	2.4¢/kg + 2.3%	Free
5407 52 20	6.8%	5 1%	1.7%	Free
5407 53 10	9 7¢/kg + 9%	7 3¢/kg + 6.8%	2.4¢/kg + 2.3%	Free
5407 53 20	6.8%	5.1%	1.7%	Free
5407.54 00	6.8%	5 1%	1 7%	Free
5407 60 05	9 7¢/kg + 9%	7 3¢/kg + 6.8%	2 4¢/kg + 2 3%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5407.60.10	9.7¢/kg + 9%	7.3¢/kg + 6.8%	2.4¢/kg + 2.3%	Free
5407.60.20	6.8%	5.1%	1.7%	Free
5407.71.00	6.8%	5.1%	1.7%	Free
5407.72.00	6.8%	5.1%	1.7%	Free
5407.73 10	9.7¢/kg + 9%	7.3¢/kg + 6.8%	2.4¢/kg + 2.3%	Free
5407.73.20	6.8%	5.1%	1.7%	Free
5407.74.00	6.8%	5.1%	1.7%	Free
5407.81.00	6.8%	5.1%	1.7%	Free
5407.82.00	6.8%	5.1%	1.7%	Free
5407.83.00	6.8%	5.1%	1.7%	Free
5407 84.00	6.8%	5.1%	1.7%	Free
5407 91 05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5407 91 20	6.8%	5.1%	1.7%	Free
5407 92 05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5407.92 20	6.8%	5.1%	1.7%	Free
5407.93.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5407.93.15	9.7¢/kg + 9%	7.3¢/kg + 6.8%	2.4¢/kg + 2.3%	Free
5407.93.20	6.8%	5.1%	1.7%	Free
5407.94.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5407.94.20	6.8%	5.1%	1.7%	Free
5408.10.00	2.6%	2%	0.7%	Free
5408.21.00	6.8%	5.1%	1.7%	Free
5408.22.00	6.8%	5.1%	1.7%	Free
5408.23.10	9.7¢/kg + 9%	7.3¢/kg + 6.8%	2.4¢/kg + 2.3%	Free
5408.23.20	6.8%	5.1%	1.7%	Free
5408.24.00	6.8%	5.1%	1.7%	Free
5408.31.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5408.31.20	6.8%	5.1%	1.7%	Free
5408.32.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5408.32.30	3.1%	2.3%	0.8%	Free
5408.32.90	6.8%	5 1%	1.7%	Free
5408.33.05	19.4¢/kg + 15.2%	14 6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5408.33 15	9.7¢/kg + 9%	7.3¢/kg + 6.8%	2.4¢/kg + 2.3%	Free
5408.33.30	3.1%	2.3%	0.8%	Free
5408.33.90	6.8%	5.1%	1.7%	Free
5408.34.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5408.34.30	3.1%	2.3%	0.8%	Free
5408.34.90	6.8%	5.1%	1 7%	Free
5501.20.00	4%	3%	1%	Free
5501.30.00	4%	3%	1%	Free
5501.90.00	4%	3%	1%	Free
5502.00.00	4%	3%	1%	Free
5503.40.00	2%	1.5%	0.5%	Free
5503.90.00	2%	1.5%	0.5%	Free
5505.10.00	0.9%	0 7%	0.2%	Free

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Table 2- Continued

Heading/sub heading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5505.20 00	0.9%	0.7%	0.2%	Free
5506 10.00	2.6%	2%	0.7%	Free
5506.20.00	2.6%	2%	0.7%	Free
5506.30.00	2.6%	2%	0.7%	Free
5506.90.00	2.6%	2%	0.7%	Free
5507.00.00	2.6%	2%	0.7%	Free
5508.10.00	5.2%	3.9%	1.3%	Free
5508.20.00	5.2%	3.9%	1.3%	Free
5509.12.00	4.8%	3.6%	1.2%	Free
5509.22.00	4.8%	3.6%	1.2%	Free
5509.32.00	4.8%	3.6%	1.2%	Free
5509.42.00	4.8%	3.6%	1.2%	Free
5509.51.60	4.8%	3.6%	1.2%	Free
5509.52.00	6%	4.5%	1.5%	Free
5509.53.00	6%	4.5%	1.5%	Free
5509.59.00	6%	4.5%	1.5%	Free
5509.61.00	6%	4.5%	1.5%	Free
5509.62.00	6%	4.5%	1.5%	Free
5509.69.40	4.8%	3.6%	1.2%	Free
5509.69.60	6%	4.5%	1.5%	Free
5509.91.00	6%	4.5%	1.5%	Free
5509.92.00	6%	4.5%	1.5%	Free
5509.99.20	4.4%	3.3%	1.1%	Free
5509.99.40	4.8%	3.6%	1.2%	Free
5509.99.60	6%	4.5%	1.5%	Free
5510.12.00	4.8%	3.6%	1.2%	Free
5510.20.00	6%	4.5%	1.5%	Free
5510.30.00	6%	4.5%	1.5%	Free
5510.90.40	4.8%	3.6%	1.2%	Free
5510.90.60	6%	4.5%	1.5%	Free
5512.11.00	6.8%	5.1%	1.7%	Free
5512.19.00	6.8%	5.1%	1.7%	Free
5512.21.00	6.8%	5.1%	1.7%	Free
5512.29.00	6.8%	5.1%	1.7%	Free
5512.91.00	6.8%	5.1%	1.7%	Free
5512.99.00	6.8%	5.1%	1.7%	Free
5513.11.00	6.8%	5.1%	1.7%	Free
5513.12.00	6.8%	5.1%	1.7%	Free
5513.13.00	6.8%	5.1%	1.7%	Free
5513.19.00	6.8%	5.1%	1.7%	Free
5513.21.00	6.8%	5.1%	1.7%	Free
5513.22.00	6.8%	5.1%	1.7%	Free
5513.23.00	6.8%	5.1%	1.7%	Free
5513.29.00	6.8%	5.1%	1.7%	Free
5513.31.00	6.8%	5.1%	1.7%	Free
5513.32.00	6.8%	5.1%	1.7%	Free
5513.33.00	6.8%	5.1%	1.7%	Free
5513.39.00	6.8%	5.1%	1.7%	Free
5513.41.00	6.8%	5.1%	1.7%	Free
5513.42.00	6.8%	5.1%	1.7%	Free
5513.43.00	6.8%	5.1%	1.7%	Free
5513.49.00	6.8%	5.1%	1.7%	Free
5514.11.00	6.8%	5.1%	1.7%	Free
5514.12.00	6.8%	5.1%	1.7%	Free
5514.13.00	6.8%	5.1%	1.7%	Free

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Table 2--Continued

Heading/sub-heading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5514.19.00	6.8%	5.1%	1.7%	Free
5514.21.00	6.8%	5.1%	1.7%	Free
5514.22.00	6.8%	5.1%	1.7%	Free
5514.23.00	6.8%	5.1%	1.7%	Free
5514.29.00	6.8%	5.1%	1.7%	Free
5514.31.00	6.8%	5.1%	1.7%	Free
5514.32.00	6.8%	5.1%	1.7%	Free
5514.33.00	6.8%	5.1%	1.7%	Free
5514.39 00	6.8%	5.1%	1.7%	Free
5514.41.00	6.8%	5.1%	1.7%	Free
5514.42.00	6.8%	5.1%	1.7%	Free
5514.43.00	6.8%	5.1%	1.7%	Free
5514.49.00	6.8%	5.1%	1.7%	Free
5515.11.00	6.8%	5.1%	1.7%	Free
5515.12.00	6.8%	5.1%	1.7%	Free
5515.13.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5515.19.00	6.8%	5.1%	1.7%	Free
5515.21.00	6.8%	5.1%	1.7%	Free
5515.22.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5515.22.10	5.8%	4.3%	1.4%	Free
5515.29.00	6.8%	5.1%	1.7%	Free
5515.91.00	6.8%	5.1%	1.7%	Free
5515.92.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5515.92.10	5.8%	4.3%	1.4%	Free
5515.99.00	6.8%	5.1%	1.7%	Free
5516.11.00	6.8%	5.1%	1.7%	Free
5516.12.00	6.8%	5.1%	1.7%	Free
5516.13.00	6.8%	5.1%	1.7%	Free
5516.14.00	6.8%	5.1%	1.7%	Free
5516.21.00	6.8%	5.1%	1.7%	Free
5516.22.00	6.8%	5.1%	1.7%	Free
5516.23.00	6.8%	5.1%	1.7%	Free
5516.24.00	6.8%	5.1%	1.7%	Free
5516.31.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5516.31.10	5.8%	4.3%	1.4%	Free
5516.32.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5516.32.10	6%	4.5%	1.5%	Free
5516.33.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5516.33.10	5.8%	4.3%	1.4%	Free
5516 34.05	19.4¢/kg + 15.2%	14.6¢/kg + 11.4%	4.9¢/kg + 3.8%	Free
5516.34.10	5.8%	4.3%	1.4%	Free
5516.41.00	6.8%	5.1%	1.7%	Free
5516.42.00	6.8%	5.1%	1.7%	Free
5516.43.00	6.8%	5.1%	1.7%	Free
5516.44.00	6.8%	5.1%	1.7%	Free
5516.91.00	6.8%	5.1%	1.7%	Free
5516.92.00	6.8%	5.1%	1.7%	Free
5516.93.00	6.8%	5.1%	1.7%	Free
5516.94.00	6.8%	5.1%	1.7%	Free
5601.10.10	2.9%	2.2%	0.7%	Free

II-18
Table 2- Continued

Heading/sub heading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5601.21.00	2.9%	2.2%	0.7%	Free
5601.29.00	3.2%	2.4%	0.8%	Free
5601.30.00	2%	1.5%	0.5%	Free
5602.10.10	2.9%	2.2%	0.7%	Free
5602.21.00	12¢/kg + 4%	9¢/kg + 3%	3¢/kg + 1%	Free
5602.90.30	6.4%	4.8%	1.6%	Free
5603.00.10	1.4%	1%	0.3%	Free
5603.00.30	6.4%	4.8%	1.6%	Free
5604.10.00	2.9%	2.2%	0.7%	Free
5606.00.00	2.3%	1.7%	0.6%	Free
5607.10.00	1.6%	1.2%	0.4%	Free
5607.29.00	2.8%	2.1%	0.7%	Free
5607.30.20	2.7%	2%	0.7%	Free
5607.41.30	3.2%	2.4%	0.8%	Free
5607 49.15	3.2%	2.4%	0.8%	Free
5607.49.25	11¢/kg + 6%	8.3¢/kg + 4.5%	2.8¢/kg + 1.5%	Free
5607.49.30	2.9%	2.2%	0.7%	Free
5607.50.20	11¢/kg + 6%	8.3¢/kg + 4.5%	2.8¢/kg + 1.5%	Free
5607.50.40	2.9%	2.2%	0.7%	Free
5607.90.20	2.9%	2.2%	0.7%	Free
5608.11.00	6.8%	5.1%	1.7%	Free
5608.19.10	6.8%	5.1%	1.7%	Free
5608.90.10	2.5%	1.9%	0.6%	Free
5608 90.20	6.4%	4.8%	1.6%	Free
5609.00.10	2.3%	1.7%	0.6%	Free
5609 00.20	1.6%	1.2%	0.4%	Free
5609 00.40	3%	2.3%	0.8%	Free
5701 10.13	1.6%	1.2%	0.4%	Free
5701 10.16	1.6%	1.2%	0.4%	Free
5701 90 10	2.1%	1.6%	0.5%	Free
5701 90 20	2.6%	2%	0.7%	Free
5702 10 10	2%	1.5%	0.5%	Free
5702 10 90	2%	1.5%	0.5%	Free
5702 20 10	2.8¢/sq meter	2.1¢/sq meter	0.7¢/sq meter	Free
5702 39 10	1.4%	1.1%	0.4%	Free
5702 39 20	2.3%	1.7%	0.6%	Free
5702 49 10	1.7%	1.3%	0.4%	Free
5702 49 15	1.4%	1.1%	0.4%	Free
5702 51 20	2%	1.5%	0.5%	Free
5702 51 40	2.9%	2.2%	0.7%	Free
5702 59.10	3.1%	2.3%	0.8%	Free
5702.59.20	1.9%	1.4%	0.5%	Free
5702.91.20	2%	1.5%	0.5%	Free
5702.91.30	2%	1.5%	0.5%	Free
5702.91.40	2.9%	2.2%	0.7%	Free
5702.99.10	3.1%	2.3%	0.8%	Free
5702.99 20	2.2%	1.6%	0.5%	Free
5703.10.00	2.8%	2.1%	0.7%	Free
5703.20.10	2.6%	2%	0.7%	Free
5703.90.00	2%	1.5%	0.5%	Free
5704.10.00	2.2%	1.6%	0.5%	Free
5705.00.20	2.6%	2%	0.7%	Free
5801.10 00	2 2%	1.6%	0.5%	Free

II-19
Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5801.21.00	9.2%	6.9%	2.3%	Free
5801.22.00	9.2%	6.9%	2.3%	Free
5801.23.00	8%	6%	2%	Free
5801.24.00	4.5%	3.4%	1.1%	Free
5801.26.00	5%	3.8%	1.3%	Free
5801.31.00	7.8%	5.9%	2%	Free
5801.32.00	7.8%	5.9%	2%	Free
5801.33.00	7.9%	5.9%	2%	Free
5801.34.00	7.9%	5.9%	2%	Free
5801.36.00	7.8%	5.9%	2%	Free
5801.90.10	1.7%	1.3%	0.4%	Free
5801.90.20	2.2%	1.7%	0.6%	Free
5802.11.00	4.5%	3.4%	1.1%	Free
5802.19.00	4.5%	3.4%	1.1%	Free
5802.20.00	7.9%	5.9%	2%	Free
5802.30.00	2.8%	2.1%	0.7%	Free
5803.10.00	4.6%	3.4%	1.1%	Free
5803.90.10	13.2%	9.9%	3.3%	Free
5803.90.20	1.2%	0.9%	0.3%	Free
5803.90.30	6.8%	5.1%	1.7%	Free
5804.10.00	4.8%	3.6%	1.2%	Free
5804.21.00	6.4%	4.8%	1.6%	Free
5804.29.00	4%	3%	1%	Free
5804.30.00	6%	4.5%	1.5%	Free
5805.00.20	1.4%	1.1%	0.4%	Free
5805.00.30	2.9%	2.2%	0.7%	Free
5806.10.10	3.3%	2.5%	0.8%	Free
5806.10.20	3.8%	2.9%	1%	Free
5806.10.30	2.2%	1.6%	0.5%	Free
5806.31.00	3.3%	2.5%	0.8%	Free
5806.32.10	3.6%	2.7%	0.9%	Free
5806.39.10	3%	2.3%	0.8%	Free
5806.39.20	1.9%	1.4%	0.5%	Free
5806.39.30	1.2%	0.9%	0.3%	Free
5806.40.00	6.4%	4.8%	1.6%	Free
5807.10.10	2.8%	2.1%	0.7%	Free
5807.90.10	2.8%	2.1%	0.7%	Free
5808.10.20	1.4%	1.1%	0.4%	Free
5808.10.30	3.4%	2.5%	0.8%	Free
5809.00.00	6.8%	5.1%	1.7%	Free
5810.10.00	6.4%	4.8%	1.6%	Free
5810.91.00	3.4%	2.5%	0.8%	Free
5810.99.00	2.8%	2.1%	0.7%	Free
5811.00.10	6%	4.5%	1.5%	Free
5811.00.20	2.9%	2.2%	0.7%	Free
5811.00.30	6.4%	4.8%	1.6%	Free
5811.00.40	1.8%	1.3%	0.4%	Free
5902.10.00	2.6%	2%	0.7%	Free
5902.20.00	2.6%	2%	0.7%	Free
5902.90.00	2.6%	2%	0.7%	Free
5903.10.10	2.2%	1.6%	0.5%	Free
5903.10.15	1.4%	1%	0.3%	Free
5903.10.18	6.4%	4.8%	1.6%	Free
5903.10.20	1.7%	1.3%	0.4%	Free
5903.10.25	3.4%	2.6%	0.9%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
5903.10.30	2.2%	1.6%	0.5%	Free
5903.20.10	2.2%	1.6%	0.5%	Free
5903.20.15	1.4%	1%	0.3%	Free
5903.20.18	6.4%	4.8%	1.6%	Free
5903.20.20	1.7%	1.3%	0.4%	Free
5903.20.25	3.4%	2.6%	0.9%	Free
5903.20.30	2.2%	1.6%	0.5%	Free
5903.90.10	2.2%	1.6%	0.5%	Free
5903.90.15	1.4%	1%	0.3%	Free
5903.90.18	6.4%	4.8%	1.6%	Free
5903.90.20	1.7%	1.3%	0.4%	Free
5903.90.25	3.4%	2.6%	0.9%	Free
5903.90.30	2.2%	1.6%	0.5%	Free
5906.91.10	2.2%	1.6%	0.5%	Free
5906.91.20	1.7%	1.3%	0.4%	Free
5906.91.25	3.4%	2.6%	0.9%	Free
5906.91.30	2.2%	1.6%	0.5%	Free
5906.99.10	2.2%	1.6%	0.5%	Free
5906.99.20	1.7%	1.3%	0.4%	Free
5906.99.25	3.4%	2.6%	0.9%	Free
5906.99.30	2.2%	1.6%	0.5%	Free
5907.00.10	6.4%	4.8%	1.6%	Free
5908.00.00	2.7%	2%	0.7%	Free
5909.00.10	1.8%	1.4%	0.5%	Free
5909.00.20	2.6%	2%	0.7%	Free
5910.00.10	3.2%	2.4%	0.8%	Free
5910.00.90	2.1%	1.6%	0.5%	Free
5911.10.10	2.3%	1.7%	0.6%	Free
5911.10.20	1.7%	1.3%	0.4%	Free
5911.20.10	2.4%	1.8%	0.6%	Free
5911.20.30	2.6%	2%	0.7%	Free
5911.31.00	2.4%	1.8%	0.6%	Free
5911.32.00	2.4%	1.8%	0.6%	Free
6001.10.20	7.9%	5.9%	2%	Free
6001.10.60	3.2%	2.4%	0.8%	Free
6001.21.00	4.5%	3.4%	1.1%	Free
6001.22.00	7.8%	5.9%	2%	Free
6001.29.00	3.2%	2.4%	0.8%	Free
6001.92.00	7.8%	5.9%	2%	Free
6001.99.00	3.2%	2.4%	0.8%	Free
6002.10.40	4%	3%	1%	Free
6002.20.10	7.6%	5.7%	1.9%	Free
6002.20.30	4%	3%	1%	Free
6002.20.60	3.4%	2.6%	0.9%	Free
6002.20.90	3%	2.3%	0.8%	Free
6002.30.20	5.6%	4.2%	1.4%	Free
6002.30.90	3.2%	2.4%	0.8%	Free
6002.41.00	2.2%	1.6%	0.5%	Free
6002.91.00	2.2%	1.6%	0.5%	Free
6002.93.00	3.4%	2.5%	0.8%	Free
6002.99.00	2.2%	1.6%	0.5%	Free
6101.10.00	30.9¢/kg + 8%	23.2¢/kg + 6%	7.7¢/kg + 2%	Free
6101.20.00	3.4%	2.6%	0.9%	Free
6101.30.10	2.4%	1.8%	0.6%	Free
6101.30.15	30.9¢/kg + 8%	23.2¢/kg + 6%	7.7¢/kg + 2%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
6101.30.20	2%	1.5%	0.5%	Free
6102.10.00	27.4¢/kg + 8%	20.5¢/kg + 6%	6.8¢/kg + 2%	Free
6102.30.10	27.4¢/kg + 8%	20.5¢/kg + 6%	6.8¢/kg + 2%	Free
6102.90.00	2%	1.5%	0.5%	Free
6103.11.00	30.9¢/kg + 8%	23.2¢/kg + 6%	7.7¢/kg + 2%	Free
6103.12.10	30.9¢/kg + 8%	23.2¢/kg + 6%	7.7¢/kg + 2%	Free
6103.12.20	12%	9%	3%	Free
6103.19.10	30.9¢/kg + 8%	23.2¢/kg + 6%	7.7¢/kg + 2%	Free
6103.19.15	9.6%	7.2%	2.4%	Free
6103.19.20	2%	1.5%	0.5%	Free
6103.21.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6103.22.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6103.23.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6103.29.10	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6103.29.20	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6103.31.00	9.2%	6.9%	2.3%	Free
6103.33.10	30.9¢/kg + 8%	23.2¢/kg + 6%	7.7¢/kg + 2%	Free
6103.33.20	12%	9%	3%	Free

II-22
Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
6103.39.10	12%	9%	3%	Free
6103.39.20	2.4%	1.8%	0.6%	Free
6103.41.10	9.2%	6.9%	2.3%	Free
6103.41.20	6.8%	5.1%	1.7%	Free
6103.43.10	2%	1.5%	0.5%	Free
6103.43.15	2%	1.5%	0.5%	Free
6103.49.10	12%	9%	3%	Free
6103.49.30	2.4%	1.8%	0.6%	Free
6104.11.00	6.8%	5.1%	1.7%	Free
6104.13.10	6.8%	5.1%	1.7%	Free
6104.19.10	6.8%	5.1%	1.7%	Free
6104.19.20	2.4%	1.8%	0.6%	Free
6104.21.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6104.22.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6104.23.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6104.29.10	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6104.29.20	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6104.31.00	27.4¢/kg + 8%	20.5¢/kg + 6%	6.8¢/kg + 2%	Free
6104.32.00	6.6%	5%	1.7%	Free
6104.33.10	27.4¢/kg + 8%	20.5¢/kg + 6%	6.8¢/kg + 2%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
6104.39.20	2.4%	1.8%	0.6%	Free
6104.41.00	6.8%	5.1%	1.7%	Free
6104.43.10	6.8%	5.1%	1.7%	Free
6104.44.10	6.8%	5.1%	1.7%	Free
6104.49.00	2.4%	1.8%	0.6%	Free
6104.51.00	6.8%	5.1%	1.7%	Free
6104.53.10	6.8%	5.1%	1.7%	Free
6104.59.20	2.4%	1.8%	0.6%	Free
6104.61.00	1.6%	1.2%	0.4%	Free
6104.63.15	6.8%	5.1%	1.7%	Free
6104.69.30	2%	1.5%	0.5%	Free
6105.10.00	5.4%	4%	1.3%	Free
6105.20.10	6.8%	5.1%	1.7%	Free
6105.90.10	6.8%	5.1%	1.7%	Free
6105.90.30	2.4%	1.8%	0.6%	Free
6106.20.10	6.8%	5.1%	1.7%	Free
6106.20.20	9.6%	7.2%	2.4%	Free
6106.90.10	6.8%	5.1%	1.7%	Free
6106.90.20	2.4%	1.8%	0.6%	Free
6106.90.30	2%	1.5%	0.5%	Free
6107.29.20	6.8%	5.1%	1.7%	Free
6107.92.00	6.8%	5.1%	1.7%	Free
6107.99.20	6.8%	5.1%	1.7%	Free
6107.99.40	2.1%	1.6%	0.5%	Free
6108.39.10	6.8%	5.1%	1.7%	Free
6108.39.20	1.6%	1.2%	0.4%	Free
6108.99.20	6.8%	5.1%	1.7%	Free
6108.99.40	1.6%	1.2%	0.4%	Free
6109.90.10	5.4%	4.1%	1.4%	Free
6110.10.10	3.1%	2.3%	0.8%	Free
6110.10.20	6.8%	5.1%	1.7%	Free
6110.20.20	5.3%	4%	1.3%	Free
6110.30.10	2.4%	1.8%	0.6%	Free
6110.30.15	6.8%	5.1%	1.7%	Free
6110.30.30	5.4%	4.1%	1.4%	Free
6110.90.00	2.4%	1.8%	0.6%	Free
6111.10.00	6.8%	5.1%	1.7%	Free
6111.30.30	13.8%	10.4%	3.5%	Free
6111.90.30	13.8%	10.4%	3.5%	Free
6112.19.20	9.2%	6.9%	2.3%	Free
6112.31.00	10%	7.5%	2.5%	Free
6114.10.00	6.8%	5.1%	1.7%	Free
6114.30.20	13.8%	10.3%	3.4%	Free
6114.90.00	2.4%	1.8%	0.6%	Free
6116.10.15	10%	7.5%	2.5%	Free
6116.10.25	7.9%	5.9%	2%	Free
6116.10.35	5.6%	4.2%	1.4%	Free
6116.10.45	5.6%	4.2%	1.4%	Free
6116.91.00	13.3¢/kg + 3%	10¢/kg + 2.2%	3.3¢/kg + 0.7%	Free
6116.92.20	8%	6%	2%	Free
6116.92.30	4%	3%	1%	Free
6116.93.15	13.3¢/kg + 3%	10¢/kg + 2.2%	3.3¢/kg + 0.7%	Free
6116.93.20	7.9%	5.9%	2%	Free
6116.99.60	1.5%	1.1%	0.4%	Free
6116.99.90	1.6%	1.2%	0.4%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
6117.10.10	4.1%	3.1%	1%	Free
6117.10.20	4.8%	3.6%	1.2%	Free
6117.10.40	4.1%	3.1%	1%	Free
6117.10.60	4.1%	3.1%	1%	Free
6117.20.00	3.2%	2.4%	0.8%	Free
6117.90.00	3.2%	2.4%	0.8%	Free
6201.11.00	21.2¢/kg + 8.4%	15.9¢/kg + 6.3%	5.3¢/kg + 2.1%	Free
6201.12.10	1.9%	1.4%	0.5%	Free
6201.13.10	1.9%	1.4%	0.5%	Free
6201.13.30	21.2¢/kg + 8.4%	15.9¢/kg + 6.3%	5.3¢/kg + 2.1%	Free
6201.13.40	9.1%	6.8%	2.3%	Free
6201.19.00	1.2%	0.9%	0.3%	Free
6201.91.10	6.8%	5.1%	1.7%	Free
6201.91.20	9.1%	6.8%	2.3%	Free
6201.92.10	1.9%	1.4%	0.5%	Free
6201.93.10	1.9%	1.4%	0.5%	Free
6201.93.25	21.2¢/kg + 8.4%	15.9¢/kg + 6.3%	5.3¢/kg + 2.1%	Free
6201.93.35	11.8%	8.9%	3%	Free
6201.99.00	1.8%	1.4%	0.5%	Free
6202.11.00	18.6¢/kg + 8.4%	13.9¢/kg + 6.3%	4.6¢/kg + 2.1%	Free
6202.12.10	1.9%	1.4%	0.5%	Free
6202.13.10	1.9%	1.4%	0.5%	Free
6202.13.30	18.5¢/kg + 8.4%	13.9¢/kg + 6.3%	4.6¢/kg + 2.1%	Free
6202.13.40	5.4%	4.1%	1.4%	Free
6202.91.10	6.8%	5.1%	1.7%	Free
6202.92.10	1.9%	1.4%	0.5%	Free
6202.93.10	1.9%	1.4%	0.5%	Free
6202.93.40	21.2¢/kg + 8.4%	15.9¢/kg + 6.3%	5.3¢/kg + 2.1%	Free
6202.93.50	5.4%	4.1%	1.4%	Free
6203.11.10	3%	2.3%	0.8%	Free
6203.11.20	21.2¢/kg + 8.4%	15.9¢/kg + 6.3%	5.3¢/kg + 2.1%	Free
6203.12.10	21.2¢/kg + 8.4%	15.9¢/kg + 6.3%	5.3¢/kg + 2.1%	Free
6203.12.20	11.6%	8.7%	2.9%	Free
6203.19.10	6.6%	5%	1.7%	Free
6203.19.20	21.2¢/kg + 8.4%	15.9¢/kg + 6.3%	5.3¢/kg + 2.1%	Free
6203.19.30	11.6%	8.7%	2.9%	Free
6203.19.40	3%	2.3%	0.8%	Free
6203.21.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
6203.22.30	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6203.29.20	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6203.29.30	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6203.31.00	8.8%	6.6%	2.2%	Free
6203.32.10	1.2%	0.9%	0.3%	Free
6203.33.10	8.8%	6.6%	2.2%	Free
6203.33.20	3%	2.3%	0.8%	Free
6203.39.10	8.8%	6.6%	2.2%	Free
6203.39.20	8%	6%	2%	Free
6203.39.40	2.8%	2.1%	0.7%	Free
6203.41.10	3.5¢/kg + 8.4%	2.6¢/kg + 6.3%	0.9¢/kg + 2.1%	Free
6203.41.20	9.1%	6.8%	2.3%	Free
6203.42.10	1.9%	1.4%	0.5%	Free
6203.42.40	4.2%	3.2%	1.1%	Free
6203.43.10	1.9%	1.4%	0.5%	Free
6203.43.25	5.2%	3.9%	1.3%	Free
6203.43.30	21.2¢/kg + 8.4%	15.9¢/kg + 6.3%	5.3¢/kg + 2.1%	Free
6203.43.40	5.2%	3.9%	1.3%	Free
6203.49.15	5.2%	3.9%	1.3%	Free
6203.49.20	3%	2.3%	0.8%	Free
6203.49.30	1.2%	0.9%	0.3%	Free
6204.11.00	6.8%	5.1%	1.7%	Free
6204.13.10	6.8%	5.1%	1.7%	Free
6204.19.10	6.8%	5.1%	1.7%	Free
6204.21.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
6204.22.30	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6204.23.00	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6204.29.20	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6204.29.40	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	The rate applicable to each garment in the ensemble if separately entered	Free
6204.31.20	18.6¢/kg + 8.4%	13.9¢/kg + 6.3%	4.6¢/kg + 2.1%	Free
6204.32.10	1.2%	0.9%	0.3%	Free
6204.33.20	1.2%	0.9%	0.3%	Free
6204.33.40	18.5¢/kg + 8.4%	13.9¢/kg + 6.3%	4.6¢/kg + 2.1%	Free
6204.33.50	1.2%	0.9%	0.3%	Free
6204.39.20	18.5¢/kg + 8.4%	13.9¢/kg + 6.3%	4.6¢/kg + 2.1%	Free
6204.39.30	1.2%	0.9%	0.3%	Free
6204.41.20	6.8%	5.1%	1.7%	Free
6204.42.10	4.8%	3.6%	1.2%	Free
6204.43.10	4.8%	3.6%	1.2%	Free
6204.43.30	6.8%	5.1%	1.7%	Free
6204.44.20	4.8%	3.6%	1.2%	Free
6204.44.30	6.8%	5.1%	1.7%	Free
6204.51.00	6.8%	5.1%	1.7%	Free
6204.52.10	3.4%	2.6%	0.9%	Free
6204.53.10	4.8%	3.6%	1.2%	Free
6204.53.20	6.8%	5.1%	1.7%	Free
6204.59.10	4.8%	3.6%	1.2%	Free
6204.59.20	6.8%	5.1%	1.7%	Free
6204.61.00	6.8%	5.1%	1.7%	Free
6204.62.10	1.9%	1.4%	0.5%	Free
6204.62.30	3%	2.3%	0.8%	Free
6204.63.10	1.9%	1.4%	0.5%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
6204.63.12	2.4%	1.8%	0.6%	Free
6204.63.15	6.8%	5.1%	1.7%	Free
6204.63.20	4.8%	3.6%	1.2%	Free
6204.63.25	6.8%	5.1%	1.7%	Free
6204.69.10	6.8%	5.1%	1.7%	Free
6205.10.10	3.8%	2.9%	1%	Free
6205.10.20	3.8%	2.9%	1%	Free
6205.20.10	3.4%	2.5%	0.8%	Free
6205.20.20	3.4%	2.5%	0.8%	Free
6205.30.10	5.2%	3.9%	1.3%	Free
6205.30.15	21.2¢/kg + 8.4%	15.9¢/kg + 6.3%	5.3¢/kg + 2.1%	Free
6205.90.20	3%	2.3%	0.8%	Free
6205.90.40	1.2%	0.9%	0.3%	Free
6206.10.10	6.8%	5.1%	1.7%	Free
6206.20.30	6.8%	5.1%	1.7%	Free
6206.30.10	3%	2.3%	0.8%	Free
6206.30.20	1.2%	0.9%	0.3%	Free
6206.40.10	4.8%	3.6%	1.2%	Free
6206.40.25	4.2¢/kg + 6.7%	3.2¢/kg + 5%	1.1¢/kg + 1.7%	Free
6206.40.30	11.4%	8.6%	2.9%	Free
6207.19.00	2.6%	2%	0.7%	Free
6207.21.00	3.2%	2.4%	0.8%	Free
6207.29.00	3%	2.3%	0.8%	Free
6207.91.10	3.2%	2.4%	0.8%	Free
6207.92.20	1.2%	0.9%	0.3%	Free
6207.99.20	6.8%	5.1%	1.7%	Free
6207.99.60	3%	2.3%	0.8%	Free
6208.99.20	6.8%	5.1%	1.7%	Free
6209.10.00	18.6¢/kg + 8.4%	13.9¢/kg + 6.3%	4.6¢/kg + 2.1%	Free
6209.20.20	6.6%	5%	1.7%	Free
6209.30.10	11.4%	8.6%	2.9%	Free
6209.30.20	12%	9%	3%	Free
6209.30.30	5.4%	4.1%	1.4%	Free
6209.90.10	11.4%	8.6%	2.9%	Free
6209.90.30	6.8%	5.1%	1.7%	Free
6210.10.40	6.8%	5.1%	1.7%	Free
6211.11.10	11.8%	8.9%	3%	Free
6211.12.10	6.8%	5.1%	1.7%	Free
6211.20.10	1.9%	1.4%	0.5%	Free
6211.20.15	2.4%	1.8%	0.6%	Free
6211.20.20	11.8%	8.9%	3%	Free
6211.20.30	12%	9%	3%	Free
6211.20.50	11.9%	8.9%	3%	Free
6211.20.70	6.8%	5.1%	1.7%	Free
6211.31.00	6.8%	5.1%	1.7%	Free
6211.39.00	1.2%	0.9%	0.3%	Free
6211.41.00	6.8%	5.1%	1.7%	Free
6212.10.10	12.8%	9.6%	3.2%	Free
6212.10.20	7.2%	5.4%	1.8%	Free
6212.20.00	10%	7.5%	2.5%	Free
6212.30.00	10%	7.5%	2.5%	Free
6212.90.00	2.3%	1.7%	0.6%	Free
6213.10.10	3%	2.3%	0.8%	Free
6213.10.20	3%	2.3%	0.8%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
6213.20.10	5.6%	4.2%	1.4%	Free
6213.20.20	2.6%	2%	0.7%	Free
6213.90.10	4.6%	3.5%	1.2%	Free
6213.90.20	4.3%	3.2%	1.1%	Free
6214.10.10	3.1%	2.3%	0.8%	Free
6214.10.20	3.1%	2.3%	0.8%	Free
6214.20.00	5.4%	4%	1.3%	Free
6214.30.00	4%	3%	1%	Free
6214.40.00	4%	3%	1%	Free
6214.90.00	4.8%	3.6%	1.2%	Free
6215.10.00	3.2%	2.4%	0.8%	Free
6215.20.00	10.6¢/kg + 5.4%	8¢/kg + 4%	2.7¢/kg + 1.3%	Free
6215.90.00	3.2%	2.4%	0.8%	Free
6216.00.15	10%	7.5%	2.5%	Free
6216.00.20	8.8¢/kg + 4.4%	6.6¢/kg + 3.3%	2.2¢/kg + 1.1%	Free
6216.00.25	5.6%	4.2%	1.4%	Free
6216.00.30	5.6%	4.2%	1.4%	Free
6216.00.38	5.6%	4.2%	1.4%	Free
6216.00.48	8.8¢/kg + 4.4%	6.6¢/kg + 3.3%	2.2¢/kg + 1.1%	Free
6216.00.50	1.5%	1.1%	0.4%	Free
6216.00.60	1.6%	1.2%	0.4%	Free
6217.90.00	3.2%	2.4%	0.8%	Free
6301.20.00	1.8¢/kg + 6%	1.3¢/kg + 4.5%	0.4¢/kg + 1.5%	Free
6301.90.00	2.2%	1.6%	0.5%	Free
6302.22.10	9.1%	6.8%	2.3%	Free
6302.29.00	1.3%	1%	0.3%	Free
6302.32.10	9.1%	6.8%	2.3%	Free
6302.39.00	2.4%	1.8%	0.6%	Free
6302.40.10	5.1%	3.8%	1.3%	Free
6302.40.20	3.1%	2.3%	0.8%	Free
6302.51.10	2.8%	2.1%	0.7%	Free
6302.51.20	2.2%	1.7%	0.6%	Free
6302.51.30	2.6%	2%	0.7%	Free
6302.51.40	2.9%	2.2%	0.7%	Free
6302.52.10	4.1%	3.1%	1%	Free
6302.52.20	1%	0.8%	0.3%	Free
6302.53.00	5.1%	3.8%	1.3%	Free
6302.59.00	3.2%	2.4%	0.8%	Free
6302.92.00	1%	0.8%	0.3%	Free
6302.93.10	2.8%	2.1%	0.7%	Free
6302.93.20	3.2%	2.4%	0.8%	Free
6302.99.10	3.2%	2.4%	0.8%	Free
6302.99.20	3.2%	2.4%	0.8%	Free
6303.11.00	2.9%	2.2%	0.7%	Free
6303.12.00	2.3%	1.7%	0.6%	Free
6303.19.00	3.2%	2.4%	0.8%	Free
6303.91.00	4.7%	3.5%	1.2%	Free
6303.99.00	3.2%	2.4%	0.8%	Free
6304.11.30	4.7%	3.5%	1.2%	Free
6304.19.10	2%	1.5%	0.5%	Free
6304.19.15	6.8%	5.1%	1.7%	Free
6304.19.30	5%	3.8%	1.3%	Free
6304.91.00	2.2%	1.6%	0.5%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
6304.92.00	2.9%	2.2%	0.7%	Free
6304.99.10	3%	2.3%	0.8%	Free
6304.99.15	5.1%	3.8%	1.3%	Free
6304.99.20	2.9%	2.2%	0.7%	Free
6304.99.40	3%	2.3%	0.8%	Free
6304.99.60	2.6%	1.9%	0.6%	Free
6305.20.00	2.8%	2.1%	0.7%	Free
6305.31.00	3.8%	2.9%	1%	Free
6305.39.00	3.8%	2.9%	1%	Free
6306.19.00	2.3%	1.7%	0.6%	Free
6306.29.00	2.3%	1.7%	0.6%	Free
6306.31.00	1.7%	1.3%	0.4%	Free
6306.39.00	1.7%	1.3%	0.4%	Free
6307.10.10	1.9%	1.4%	0.5%	Free
6307.90.30	3.6%	2.7%	0.9%	Free
6307.90.40	2 9%	2.2%	0.7%	Free
6307.90.50	3.2%	2.4%	0.8%	Free
6406.10.75	4.5%	3.4%	1.1%	Free
6406.10.80	3.6%	2.7%	0.9%	Free
6406.99.15	6.8%	5.1%	1.7%	Free
6501.00.90	4.4¢/kg + 4.4%	3.3¢/kg + 3.3%	1.1¢/kg + 1.1%	Free
6502.00.90	2.9%	2.2%	0.7%	Free
6503.00.90	5.8¢/kg + 2.7% + 0.8¢/article	4.3¢/kg + 2% + 0.6¢/article	1.4¢/kg + 0.7% + 0.2¢/article	Free
6504.00.90	2.9%	2.2%	0.7%	Free
6505.90.15	3.4%	2.5%	0.8%	Free
6505.90.20	3.2%	2.4%	0.8%	Free
6505.90.25	3.2%	2.4%	0.8%	Free
6505.90.30	20.3¢/kg + 6.2%	15.2¢/kg + 4.6%	5.1¢/kg + 1.5%	Free
6505.90.40	13.3¢/kg + 3.4%	10¢/kg + 2.5%	3.3¢/kg + 0.8%	Free
6505.90.50	2.9%	2.2%	0.7%	Free
6505.90.60	15.9¢/kg + 5.6%	11.9¢/kg + 4.2%	4¢/kg + 1.4%	Free
6505.90.70	2.9%	2.2%	0.7%	Free
6505.90.80	8.8¢/kg + 3.2%	6.6¢/kg + 2.4%	2.2¢/kg + 0.8%	Free
6505.90.90	8.8¢/kg + 3.2%	6.6¢/kg + 2.4%	2.2¢/kg + 0.8%	Free
6506.10.60	1%	0.7%	0.2%	Free
6506.91.00	1%	0.7%	0.2%	Free
6506.99.00	3.4%	2.6%	0.9%	Free
6702.90.40	3.6%	2.7%	0.9%	Free
7019.10.10	3%	2.2%	0.7%	Free
7019.10.20	3.8%	2.9%	1%	Free
7019.10.40	2.4%	1.8%	0.6%	Free
7019.10.60	2.4%	1.8%	0.6%	Free
7019.20.10	2.4%	1.8%	0.6%	Free
7019.20.20	3.4%	2.5%	0.8%	Free
7019.20.50	4.5%	3.4%	1.1%	Free
7019.90.10	2.8%	2.1%	0.7%	Free
8482.10.50	4.4%	3.3%	1.1%	Free
8482.99.10	4.4%	3.3%	1.1%	Free
8906.00.10	1.7%	1.3%	0.4%	Free
9404.21.00	2.4%	1.8%	0.6%	Free

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Table 2--Continued

Heading/subheading in HTS as modified by Annex III and Annex IV	Rates of duty, effective with respect to goods which are products of Israel and entered, or withdrawn from warehouse for consumption, on and after--			
	January 1, 1989	January 1, 1990	January 1, 1992	January 1, 1995
9404.29.90	2.4%	1.8%	0.6%	Free
9404.90.10	2.4%	1.8%	0.6%	Free
9404.90.20	2.4%	1.8%	0.6%	Free
9404.90.80	2%	1.5%	0.5%	Free
9502.91.00	3.2%	2.4%	0.8%	Free
9506.21.80	1.7%	1.3%	0.4%	Free

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ANNEX III

MODIFICATIONS TO IMPLEMENT DECISIONS TAKEN UNDER THE GENERALIZED SYSTEM OF PREFERENCES PROGRAM

Section 1

1. General note 3(c)(ii)(A) of the Harmonized Tariff Schedule of the United States (HTS) is modified--

(a) by deleting "Bahrain", "Brunei Darussalam", "Korea, Republic of", "Nauru", "Panama", "Singapore", and "Taiwan" from the enumeration of independent countries.

(b) by deleting "Bermuda" and "Hong Kong" from the enumeration of non-indepentent countries and territories.

(c) by deleting "Brunei Darussalam" and "Singapore" from the enumeration of members of the Association of South East Asian Nations (ASEAN) and by modifying "Association of South East Asian Nations (ASEAN)" to read "Members of the Association of South East Asian Nations (ASEAN) Eligible for GSP".

2. General note 3(c)(ii)(D) of the HTS is modified by deleting such note and substituting therefor the following new general note 3(c)(ii)(D)--

"(D) Articles provided for in a subheading for which a rate of duty "Free" appears in the "Special" subcolumn of rate of duty column 1 followed by the symbol "A*" in parentheses, if imported from a beneficiary developing country set out opposite the subheading numbers listed below, are not eligible for the duty-free treatment provided in subdivision (c)(v)(C) of this note:

0603.10.70	Colombia	2005.10.00	Mexico	3004.90.60	Bahamas; Turkey
0702.00.60	Mexico	2005.90.55	Mexico		
0703.20.00	Mexico	2005.90.90	Mexico		
0704.10.40	Mexico	2007.99.50	Brazil	3201.90.50	Mexico
0704.10.60	Mexico	2203.00.00	Mexico	3203.00.50	Mexico
0704.20.00	Mexico	2208.90.45	Mexico	3207.40.10	Mexico
0705.11.40	Mexico	2401.20.40	Brazil	3301.12.00	Brazil
0705.19.40	Mexico	2529.22.00	Mexico	3703.10.30	Brazil
0707.00.20	Mexico	2620.19.60	Mexico	3703.20.30	Brazil
0707.00.40	Mexico	2620.20.00	Mexico	3703.90.30	Brazil
0708.10.40	Mexico	2620.30.00	Mexico	3823.90.40	Brazil
0709.30.20	Mexico	2804.69.10	Brazil	3904.10.00	Mexico
0709.30.40	Mexico	2824.10.00	Mexico	3904.21.00	Mexico
0709.60.00	Mexico	2824.20.00	Mexico	3904.22.00	Mexico
0709.90.13	Mexico	2825.90.15	Brazil	3909.10.00	Israel
0709.90.20	Mexico	2827.59.05	Israel	3921.13.50	Mexico
0710.21.40	Mexico	2843.21.00	Mexico	3921.90.50	Mexico
0710.80.50	Mexico	2843.29.00	Mexico	3922.10.00	Mexico
0710.80.70	Mexico	2903.59.40	Israel	3922.20.00	Mexico
0711.40.00	Mexico	2905.19.00	Brazil	3922.90.00	Mexico
0711.90.60	Mexico	2906.11.00	Brazil	4011.10.00	Brazil
0804.50.40	Mexico	2909.19.10	Brazil	4011.20.00	Brazil
0807.10.20	Mexico	2915.31.00	Brazil	4011.40.00	Brazil
0807.10.70	Mexico	2915.39.10	Mexico	4011.91.50	Brazil
0810.90.40	Mexico	2915.70.00	Brazil	4011.99.50	Brazil
0811.10.00	Mexico	2916.15.50	Brazil	4012.10.50	Brazil
0813.10.00	Turkey	2916.19.50	Brazil	4104.21.00	Argentina
0813.30.00	Argentina	2916.39.15	Bahamas	4104.22.00	Argentina
1005.90.40	Argentina	2917.13.00	Brazil	4104.29.60	Argentina
1006.30.10	Mexico	2917.14.10	Brazil	4104.31.60	Argentina
1007.00.00	Argentina	2917.19.50	Brazil	4104.31.80	Argentina
1515.30.00	Brazil	2918.11.10	Brazil	4104.39.60	Argentina
1701.11.00	Brazil	2918.22.10	Turkey	4104.39.80	Argentina
1701.12.00	Brazil	2918.22.50	Bahamas	4105.20.60	Argentina
1701.91.20	Brazil	2918.90.30	Bahamas	4106.12.00	India
1701.99.00	Brazil	2924.29.39	Bahamas	4106.19.00	India
1806.10.40	Brazil	2933.19.35	Bahamas	4106.20.30	India
1904.90.00	Mexico	2933.40.10	Israel	4107.29.60	Argentina
2001.10.00	Mexico	2933.90.31	Bahamas	4107.90.60	Argentina
2001.90.40	Mexico			4109.00.70	Argentina

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4409.10.40	Mexico	7403.12.00	Peru; Zambia	8415.90.00	Mexico
4411.11.00	Brazil			8419.11.00	Israel
4411.19.20	Brazil			8419.19.00	Israel
4411.19.40	Brazil	7403.13.00	Peru; Zambia	8419.90.10	Israel
4411.21.00	Brazil				
4411.29.60	Brazil			8421.23.00	Brazil; Mexico
4411.29.90	Brazil	7403.19.00	Peru; Zambia		
4412.19.40	Indonesia				
4412.99.40	Indonesia			8421.31.00	Brazil; Mexico
4818.10.00	Mexico	7403.21.00	Peru; Zambia		
4818.20.00	Mexico				
4818.30.00	Mexico			8424.20.10	Mexico
4818.50.00	Mexico	7403.22.00	Peru; Zambia	8424.90.10	Mexico
4823.20.10	Brazil			8425.20.00	Mexico
4823.90.65	Mexico			8425.31.00	Mexico
5208.31.20	India	7403.23.00	Peru; Zambia	8425.41.00	Mexico
5208.32.10	India			8425.42.00	Mexico
5208.41.20	India			8426.11.00	Mexico
5208.42.10	India	7403.29.00	Peru; Zambia	8426.12.00	Mexico
5208.51.20	India			8426.19.00	Mexico
5208.52.10	India			8426.20.00	Mexico
5607.30.20	Mexico	7604 10.30	Venezuela	8426.30.00	Mexico
6210.10.20	Mexico	7604.29.30	Venezuela	8426.41.00	Mexico
6307.90.60	Mexico	7605.11.00	Venezuela	8426.49.00	Mexico
6405.90.20	Mexico	7605.21.00	Venezuela	8426.91.00	Mexico
6406.10.65	Brazil	7608.10.00	Brazil	8426.99.00	Mexico
6406.99.60	Argentina	7608.20.00	Brazil	8428.10.00	Mexico
6810.11.00	Mexico	7609.00.00	Brazil	8428.20.00	Mexico
6905.10.00	Mexico	7903.10.00	Mexico	8428.31.00	Mexico
6909.19.10	Mexico	7903.90.30	Mexico	8428.32.00	Mexico
		8406.11.90	Israel	8428.33.00	Mexico
6910.10.00	Brazil; Mexico	8406.19.90	Israel	8428.39.00	Mexico
		8406.90.90	Israel	8428.40.00	Mexico
				8428.50.00	Mexico
6910.90.00	Brazil; Mexico	8407.32.20	Brazil; Mexico	8428.60.00	Mexico
				8428.90.00	Mexico
				8429.11.00	Brazil
6911.90.00	Brazil; Mexico	8407.33.20	Brazil; Mexico	8429.19.00	Brazil
				8429.20.00	Brazil
				8429.30.00	Brazil
6912.00.44	Brazil	8407.34.20	Brazil; Mexico	8429.40.00	Brazil
7004 10.20	Mexico			8429.51.50	Brazil
7113.11.50	Thailand			8429.52.50	Brazil
7113.19.21	Israel	8408.10.00	Brazil	8429.59.50	Brazil
7113.19.50	Thailand	8408.20.20	Brazil	8430.10.00	Brazil
7113.20.21	Israel	8408.20.90	Brazil	8430.20.00	Brazil
7113.20.50	Thailand	8408.90 90	Brazil	8430.31.00	Brazil
7114.11.70	Mexico			8430.39.00	Brazil
7114.20.00	Mexico	8409.91.91	Brazil; Mexico	8430.41.00	Brazil
7115.90.20	Mexico			8430.49.80	Brazil
7116.10.10	Thailand			8430.50.50	Brazil
7116.20.10	Thailand	8409.91.92	Brazil; Mexico	8430.61.00	Brazil
7202.11.10	Mexico			8430.62.00	Brazil
7202.19.50	Mexico			8430.69.00	Brazil
7202.21.10	Brazil	8409.91.99	Brazil; Mexico	8431.10.00	Mexico
7202.21.50	Brazil			8431.31.00	Mexico
7202.30.00	Brazil			8431.39.00	Mexico
7307.21.50	Brazil	8409.99.91	Brazil	8431.41.00	Brazil
7307.91.50	Brazil	8409.99.92	Brazil	8431.42.00	Brazil
7314.19.00	Mexico	8409.99.99	Brazil	8431.43.80	Brazil
7320.10.00	Mexico	8411.91.90	Brazil	8431.49.10	Mexico
7320.20.10	Mexico	8411.99.90	Brazil	8431.49.90	Brazil
7323.94.00	Mexico	8414.51.00	Mexico		
7401.10.00	Mexico	8414.59.80	Mexico	8465.94.00	Brazil; Mexico
7402.00.00	Mexico	8414.60.00	Mexico		
		8414.90.10	Mexico		
7403.11.00	Peru; Zambia	8415.10.00	Mexico	8470.40.00	Mexico
		8415.81.00	Mexico	8471.20.00	Mexico
		8415.82.00	Mexico	8471.91.00	Mexico
		8415.83.00	Mexico	8471.99.30	Mexico

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8473.21.00	Mexico	8512.90.70	Mexico	8708.10.00	Brazil; Mexico
8473.29.00	Mexico				
8473.30.80	Mexico	8512.90.90	Brazil; Mexico	8708.21.00	Brazil; Mexico
8473.40.00	Mexico				
8479.10.00	Brazil; Mexico	8516.90.60	Mexico	8708.29.00	Brazil; Mexico
		8519 91.00	Brazil; Mexico		
8479.30.00	Brazil; Mexico			8708.31.50	Brazil; Mexico
		8519.99.00	Brazil		
8479.81.00	Brazil; Mexico	8523.11.00	Mexico	8708.39.50	Brazil; Mexico
		8523.12.00	Mexico		
		8523.13.00	Mexico		
8479.82.00	Brazil; Mexico	8523.20.00	Mexico	8708.40.10	Brazil; Mexico
		8523.90.00	Mexico		
8479.89.90	Brazil; Mexico	8527.11.11	Brazil; Mexico	8708.40.20	Brazil; Mexico
8479.90.00	Brazil	8527.21.10	Brazil; Mexico	8708.40.50	Brazil; Mexico
8483.10.10	Brazil; Mexico	8527.31.40	Brazil; Mexico	8708.50.50	Brazil; Mexico
8483.10.30	Brazil				
8501.20.40	Mexico	8534.00.00	Mexico	8708.50.80	Brazil; Mexico
8501.20.50	Mexico	8535.10.00	Mexico		
8501.31.40	Mexico	8535.21.00	Mexico	8708.60.50	Brazil; Mexico
8501.31.50	Mexico	8535.29.00	Mexico		
8501.31.80	Mexico	8535.30.00	Mexico	8708.60.80	Brazil; Mexico
8501.32.60	Mexico	8535.40.00	Mexico		
8501.33.60	Mexico	8535.90.00	Mexico	8708.70.80	Brazil; Mexico
8501.34.60	Mexico	8536.10.00	Mexico		
8501.40.40	Mexico	8536.20.00	Mexico	8708.80.50	Brazil; Mexico
8501.40.50	Mexico	8536.30.00	Mexico		
8501.51.40	Mexico	8536.41.00	Mexico	8708.91.50	Brazil; Mexico
8501.51.50	Mexico	8536.49.00	Mexico		
8501.61.00	Mexico	8536.50.00	Mexico	8708.93.50	Brazil; Mexico
8501.62.00	Mexico	8536.61.00	Mexico		
8501.63.00	Mexico	8536.69.00	Mexico	8708.99.50	Brazil; Mexico
8501.64.00	Mexico	8536.90.00	Mexico		
8502.11.00	Mexico	8537.10.00	Mexico	8716.90.50	Brazil; Mexico
8502.12.00	Mexico	8537.20.00	Mexico		
8502.13.00	Mexico	8538.10.00	Mexico	8802.30.00	Brazil
8502.20.00	Mexico	8538.90.00	Mexico	9008.90.40	Mexico
8502.30.00	Mexico	8539.10.00	Mexico	9009.90.00	Mexico
8502.40.00	Mexico	8539.90.00	Mexico	9013.20.00	Mexico
8503.00.60	Mexico	8543.10.00	Mexico	9018.39.00	Mexico
8504.10.00	Mexico	8543.20.00	Mexico	9021.90.80	Mexico
8504.40.00	Mexico	8543.30.00	Mexico	9025.11.20	Brazil
8504.50.00	Mexico	8543.80.90	Mexico	9025.19.00	Mexico
8504.90.00	Mexico	8543.90.80	Mexico	9028.90.00	Mexico
8505.19.00	Mexico	8544.20.00	Mexico	9113.10.00	Thailand
8507.30.00	Mexico	8544.30.00	Mexico	9303.30.40	Brazil
8507.40.00	Mexico	8544.41.00	Mexico	9401.20.00	Mexico
8507.80.00	Mexico	8544.51.40	Mexico	9401.30.40	Yugoslavia
8507.90.80	Mexico	8544.51.80	Mexico	9401.61.40	Yugoslavia
8509.90.20	Mexico	8544.60.20	Mexico	9401.69.60	Yugoslavia
8511.10.00	Mexico	8547.90.00	Brazil	9401.90.10	Mexico
8511.20.00	Mexico	8548.00.00	Mexico		
8511.30.00	Mexico	8605.00.00	Mexico		
8511.40.00	Mexico	8606.10.00	Mexico		
8511.50.00	Mexico	8606.20.00	Mexico		
8511.80.60	Mexico	8606.30.00	Mexico		
8511.90.60	Mexico	8606.91.00	Mexico		
		8606.92.00	Mexico		
8512.40.40	Brazil; Mexico	8606.99.00	Mexico		

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9403.40.60	Mexico	9405.40.80	Mexico	9508.00.00	Brazil; Mexico
9403.50.60	Mexico	9405.91.20	Mexico		
9403.90.10	Mexico	9504.20.60	Brazil	9613.80.20	Mexico
9405.10.80	Mexico			9613.90.40	Mexico"
9405.20.80	Mexico				

Section 2

Notes:

1. Bracketed matter is included to assist in the understanding of the proclaimed modifications.

2. The following supersedes matter now in the HTS. The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

1. Subheading 2825.90.50 is superseded by:

	[Hydrazine...:]			
	[Other:]			
"2825.90.15	Niobium oxide.....	3.7%	Free (A*,E,IL)	25%
2825.90.60	Other.....	3.7%	Free (A,E,IL)	25%"

2. Subheadings 2903.40.10 and 2903.40.50 are superseded by:

	[Halogenated...:]			
"2903.40.00	Halogenated derivatives of acyclic hydrocarbons containing two or more different halogens.....	3.7%	Free (A,E,IL)	25%"

3. Subheading 6117.10.30 is superseded by:

	[Other made...:]			
	[Shawls,...:]			
"6117.10.40	Containing 70 percent or more by weight of silk or silk waste.....	10.1%	Free (A,E) 4.1% (IL)	90%
6117.10.60	Other.....	10.1%	Free (E*) 4.1% (IL)	90%"

4. Subheading 6213.10.00 is superseded by:

	[Handkerchiefs:]			
	"Of silk or silk waste:			
6213.10.10	Containing 70 percent or more by weight of silk or silk waste.....	7.5%	Free (A,E) 3% (IL)	60%
621..10.20	Other.....	7.5%	Free (E*) 3% (IL)	60%"

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5. Subheading 9502.10.30 is superseded by:

	[Dolls...:]			
	[Dolls,...:]			
	"Other:			
9502.10.40	Not over 33 cm in height.....	12%	Free (E,IL)	70%
	Other:			
9502.10.60	Capable of electro-mechanical movement of body parts activated by, and synchronized with, an integral or accompanying cassette tape player or micro-processor.....	12%	Free (A,E,IL)	70%
9502.10.80	Other.....	12%	Free (E,IL)	70%"

Section 3

1. For the following HTS subheadings the "Special" subcolumn of rate of duty column 1 is modified by inserting in the parentheses the symbol "A," immediately before "E" in each such subheading:

0305.63.20	1104.12.00	2001.90.30	2934.90.25	7013.10.10
1103.12.00	1604.16.40	2005.80.00	3604.10.00	

2. For the following HTS subheadings the "Special" subcolumn of rate of duty column 1 is modified by inserting the rate of "Free (A)" for each such subheading:

5404.90.00
5405.00.60

3. For HTS subheading 7307.19.90 the "Special" subcolumn of rate of duty column 1 is modified by deleting the symbol "A*" for such subheading.

4. For the following HTS subheadings the "Special" subcolumn of rate of duty column 1 is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof for each such subheading:

0804.50.80	3918.10.10	3921.90.11	3926.90.75	4203.30.00
2831.10.00	3918.10.31	3921.90.40	3926.90.83	4206.90.00
2906.13.50	3919.10.20	3923.10.00	3926.90.87	4303.10.00
2918.30.50	3919.90.50	3923.21.00	3926.90.90	4409.10.50
2925.11.00	3920.10.00	3923.29.00	4013.10.00	4409.20.50
2930.90.50	3920.20.00	3923.30.00	4013.90.50	4412.11.10
2933.29.45	3920.42.50	3923.90.00	4015.11.00	4412.12.10
2933.59.30	3920.51.10	3924.10.20	4016.95.00	4412.29.10
2933.90.48	3920.51.50	3924.90.10	4016.99.03	4418.20.00
2934.90.47	3920.63.10	3924.90.50	4016.99.10	4419.00.80
3406.00.00	3920.69.00	3925.30.10	4016.99.20	4420.90.40
3903.30.00	3920.99.10	3926.30.10	4201.00.30	4420.90.80
3905.20.00	3920.99.20	3926.40.00	4202.32.20	4601.20.90
3916.90.10	3921.12.11	3926.90.25	4203.21.20	4811.21.00
3916.90.20	3921.13.11	3926.90.35	4203.21.80	4816.10.00

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4820.50.00	7321.13.00	8302.41.90	8463.10.00	8518.40.10
4821.90.20	7321.81.10	8302.42.30	8463.20.00	8518.40.20
4823.11.00	7321.82.10	8302.42.60	8463.30.00	8518.50.00
5607.29.00	7321.90.00	8302.49.40	8463.90.00	8518.90.10
5903.10.20	7323.91.50	8302.49.60	8464.10.00	8518.90.30
5903.20.20	7323.93.00	8302.49.80	8464.20.00	8519.40.00
5903.90.20	7323.99.50	8302.60.30	8464.90.00	8520.10.00
5906.10.00	7323.99.90	8302.60.90	8465.10.00	8520.20.00
5906.91.20	7324.10.00	8305.10.00	8465.91.00	8520.31.00
5906.99.20	7324.21.50	8305.90.30	8465.92.00	8520.39.00
6306.22.10	7324.29.00	8306.10.00	8465.93.00	8520.90.00
6306.31.00	7325.91.00	8306.29.00	8465.95.00	8521.10.00
6306.49.00	7325.99.50	8308.90.60	8465.96.00	8522.90.60
6406.10.60	7326.19.00	8403.90.00	8465.99.00	8522.90.90
6406.20.00	7326.20.00	8414.30.40	8470.10.00	8525.20.05
6406.99.30	7326.90.90	8418.10.00	8470.21.00	8525.20.20
6506.10.60	7407.21.70	8418.21.00	8470.29.00	8525.20.50
6506.91.00	7408.19.00	8418.22.00	8470.30.00	8527.11.60
6601.10.00	7412.20.00	8418.29.00	8471.10.00	8527.19.00
6601.91.00	7413.00.50	8418.30.00	8471.92.10	8527.32.00
6601.99.00	7418.10.20	8418.99.00	8471.92.40	8527.39.00
6603.20.90	7418.10.50	8419.81.10	8471.92.65	8527.90.80
6701.00.00	7418.20.10	8419.89.50	8471.92.90	8528.10.40
6702.10.40	7418.20.50	8421.39.00	8471.93.20	8539.21.40
6702.90.10	7419.91.00	8425.11.00	8471.93.40	8539.22.40
6702.90.40	7419.99.50	8425.19.00	8471.93.60	8539.22.80
6704.11.00	7615.10.30	8425.39.00	8471.99.90	8539.29.10
6704.19.00	7615.10.50	8425.49.00	8472.30.00	8539.29.40
6704.20.00	7615.10.70	8435.10.00	8472.90.80	8543.80.60
6704.90.00	7615.10.90	8435.90.00	8479.89.60	8608.00.00
6908.10.20	7615.20.00	8438.80.00	8481.30.10	8708.94.50
6913.10.10	7616.90.00	8438.90.90	8481.30.90	8713.10.00
6913.10.20	7907.90.30	8452.10.00	8481.80.10	8715.00.00
6913.90.10	7907.90.60	8456.10.10	8481.80.50	8716.10.00
7009.10.00	8203.20.60	8456.20.10	8481.80.90	8716.20.00
7009.91.10	8203.30.00	8456.30.10	8481.90.10	8716.31.00
7009.92.10	8203.40.60	8456.30.50	8481.90.50	8716.39.00
7011.10.50	8204.11.00	8456.90.10	8483.10.50	8716.40.00
7011.20.00	8204.12.00	8456.90.50	8507.10.00	8716.80.50
7011.90.00	8204.20.00	8457.10.00	8507.20.00	8716.90.30
7014.00.50	8205.20.30	8458.11.00	8509.30.00	8903.10.00
7018.90.50	8205.30.60	8458.19.00	8509.40.00	8903.91.00
7113.19.25	8205.40.00	8458.91.50	8509.80.00	8903.92.00
7113.19.29	8205.51.30	8458.99.50	8509.90.40	8903.99.15
7113.20.25	8205.51.45	8459.29.00	8511.80.20	8903.99.20
7113.20.29	8205.51.75	8459.31.00	8511.90.20	8903.99.90
7114.19.00	8205.59.10	8459.39.00	8512.10.20	8905.90.10
7115.90.10	8205.59.45	8459.40.00	8512.40.20	9003.11.00
7117.19.50	8205.59.55	8459.51.00	8512.90.40	9003.19.00
7117.90.50	8205.59.60	8459.59.00	8513.10.20	9003.90.00
7305.31.20	8205.59.80	8459.61.00	8513.10.40	9004.10.00
7306.30.30	8205.70.00	8459.69.00	8513.90.20	9004.90.00
7306.50.30	8207.12.30	8459.70.00	8513.90.40	9006.30.00
7307.19.30	8211.91.60	8460.11.00	8516.31.00	9006.52.10
7307.22.10	8211.92.80	8460.19.00	8516.32.00	9006.52.30
7307.92.30	8213.00.30	8460.29.00	8516.40.20	9006.59.40
7307.93.30	8214.10.00	8460.39.00	8516.50.00	9007.91.80
7308.10.00	8214.90.60	8460.40.00	8516.80.40	9008.20.40
7308.20.00	8215.91.90	8460.90.00	8516.80.80	9009.12.00
7308.40.00	8215.99.50	8461.10.00	8517.10.00	9009.21.00
7308.90.90	8301.20.00	8461.20.00	8517.40.40	9009.22.00
7312.10.60	8301.30.00	8461.30.00	8517.81.00	9009.30.00
7312.10.90	8301.40.60	8461.40.50	8517.90.30	9010.90.80
7315.89.10	8301.60.00	8461.50.00	8517.90.40	9017.80.00
7316.00.00	8301.70.00	8461.90.00	8518.10.00	9019.10.20
7317.00.65	8302.10.60	8462.29.00	8518.21.00	9022.29.40
7317.00.75	8302.10.90	8462.39.00	8518.22.00	9032.89.20
7318.21.00	8302.20.00	8462.49.00	8518.29.00	9032.90.20
7321.11.10	8302.41.30	8462.91.00	8518.30.10	9113.20.60
7321.12.00	8302.41.60	8462.99.00	8518.30.20	9113.20.90

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9201.10.00	9401.90.35	9405.20.40	9503.90.60	9506.69.60
9201.20.00	9401.90.40	9405.20.60	9503.90.70	9506.70.40
9201.90.00	9401.90.50	9405.30.00	9504.10.00	9506.91.00
9206.00.20	9403.10.00	9405.40.40	9504.30.00	9506.99.15
9207.90.00	9403.20.00	9405.40.60	9504.40.00	9506.99.30
9208.10.00	9403.30.80	9405.50.30	9504.90.40	9506.99.60
9209.92.20	9403.40.90	9405.50.40	9504.90.60	9507.90.80
9209.94.40	9403.50.90	9405.60.20	9504.90.90	9601.10.00
9209.99.10	9403.60.80	9405.60.40	9505.10.10	9603.21.00
9306.30.40	9403.70.80	9405.99.20	9505.10.25	9603.29.40
9401.10.40	9403.80.30	9405.99.40	9505.10.30	9603.29.80
9401.10.80	9403.80.60	9406.00.80	9505.90.20	9603.40.20
9401.30.80	9403.90.25	9501.00.40	9505.90.60	9603.40.40
9401.40.00	9403.90.50	9502.10.20	9506.29.00	9603.90.80
9401.50.00	9403.90.70	9503.41.10	9506.31.00	9604.00.00
9401.61.60	9403.90.80	9503.50.00	9506.39.00	9613.90.80
9401.69.80	9404.10.00	9503.60.00	9506.51.20	9615.11.40
9401.71.00	9404.21.00	9503.80.20	9506.51.40	9615.90.40
9401.79.00	9404.29.90	9503.80.40	9506.51.60	9616.10.00
9401.80.40	9404.90.20	9503.80.60	9506.59.80	9617.00.10
9401.80.60	9405.10.40	9503.80.80	9506.62.80	
9401.90.25	9405.10.60	9503.90.50	9506.69.40	

5. For the following HTS subheadings the "Special" subcolumn of rate of duty column 1 is modified by deleting the symbol "A" and inserting an "A*" in lieu thereof for each such subheading:

0711.40.00	2915.70.00	7403.29.00	8430.31.00	8502.20.00
1006.30.10	2916.19.50	8406.11.90	8430.39.00	8507.40.00
1007.00.00	2916.39.15	8406.19.90	8501.20.50	8512.40.40
1701.12.00	2918.22.50	8406.90.90	8501.31.80	8512.90.90
1806.10.40	3909.10.00	8408.10.00	8501.32.60	8535.29.00
1904.90.00	4412.19.40	8409.91.91	8501.33.60	8543.10.00
2005.10.00	4412.99.40	8409.99.91	8501.34.60	8605.00.00
2005.90.55	7114.11.70	8411.91.90	8501.62.00	8802.30.00
2005.90.90	7114.20.00	8426.11.00	8501.63.00	9013.20.00
2401.20.40	7401.10.00	8428.32.00	8501.64.00	9021.90.80
2620.19.60	7403.21.00	8428.33.00	8502.11.00	9113.10.00
2620.20.00	7403.22.00	8428.39.00	8502.12.00	9403.40.60
2620.30.00	7403.23.00	8429.51.50	8502.13.00	9403.50.60

ANNEX IV

OTHER MODIFICATIONS

Note:

The following headings/subheadings, article descriptions, with or without preceding superior descriptions, and rates of duty supersede matter now in the Harmonized Tariff Schedule of the United States (HTS). The headings/subheadings, article descriptions, with or without preceding superior descriptions, corresponding rates of duty, and effective period (where applicable) are set forth in columnar format. The material set forth in such format is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", "Rates of Duty 2", and "Effective Period", respectively.

1. General note 3(a)(i) is modified by striking out "most-favored-nation (MFN)"; and general note 3(a)(ii) is modified by striking out "MFN" and inserting "most-favored-nation (MFN)" in lieu thereof.

2. General note 3(b) is modified by inserting in alphabetical sequence "Romania".

3. General note 3(c)(v)(A) is modified by striking out "Panama".

4. General note 3(c)(v)(B)(1) is modified by striking out "column" and inserting "subcolumn" in lieu thereof.

5. General note 7 is modified by inserting "Definitions." at the beginning thereof, and by striking out "4-digit or" in subdivision (f) thereof.

6. General note 9 is modified by inserting "Methods of Ascertainment." at the beginning thereof.

7. Paragraph (a) of rule 5 of the General Rules of Interpretation is modified by striking out "The rule" and inserting "This rule" in lieu thereof.

8. Heading 0403 is modified by inserting ", nuts" after "fruit".

9. Subheading 0602.20.00 is modified by striking out the article description and inserting "Trees, shrubs and bushes, grafted or not, of kinds which bear edible fruit or nuts" in lieu thereof.

10. Subheadings 0713.31.40, 0713.39.40, and 0713.90.80 are each modified by striking out "above-stated" in the respective article descriptions and inserting "above stated" in lieu thereof.

11. Heading 0812 is modified by inserting a comma after "nuts".

12. Subheading 0813.20.00 is deleted and the following new subheadings are inserted in lieu therof:

"0813.20	Prunes:			
0813.20.10		Soaked in brine and dried	4.4¢/kg	Free (E,IL) 4.4¢/kg
0813.20.20		Other	17.5%	Free (E,IL) 35%".

13. Note 3 of chapter 15 is modified by inserting a comma after "fractions"

14. Heading 1512 is modified by striking out "their fractions" and inserting "fractions thereof" in lieu thereof.

15. The superior heading immediately preceding subheading 1512.11.00 is modified by striking out "their fractions" and inserting "fractions thereof" in lieu thereof.

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16. Heading 1513 is modified by striking out "their fractions" and inserting "fractions thereof" in lieu thereof.

17. The superior heading immediately preceding subheading 1513.21.00 is modified by striking out "their fractions" and inserting "fractions thereof" in lieu thereof.

18. Heading 1514 is modified by striking out "their fractions" and inserting "fractions thereof" in lieu thereof.

19. Subheading note 1 of chapter 17 is modified by striking out "polarimetric" and inserting "polarimeter" in lieu thereof.

20. Chapter 17 is modified--

(a) by striking out additional U.S. note 3(a) and inserting the following new additional U.S. notes 3(a)(i) and (ii) in lieu thereof:

"3. (a)(i) The total amount of sugars, syrups and molasses described in subheadings 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.30, 1702.90.40, 1806.10.40 and 2106.90.10, the products of all foreign countries, entered, or withdrawn from warehouse for consumption, during the period January 1, 1988 through December 31, 1988, shall not exceed in the aggregate 919,772 metric tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this note (the total base quota amount) shall be 884,505 metric tons, raw value; 1,814 metric tons, raw value, may only be used for the importation of "specialty sugars" as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this note; and the remaining 33,453 metric tons, raw value, may only be imported for the purposes specified in paragraph (c)(v) of this note (the quota adjustment amount).

(ii) Sugar entering the United States during a quota period may be charged to the previous quota period with the approval of the Secretary of Agriculture. The Secretary may only grant such approval if (A) the sugar was shipped in time to enter the United States during the previous quota period and (B) the sugar would have successfully entered the United States during the previous quota period but for forces beyond the control of the importer, including but not limited to engine failure of the transporting ocean carrier, unexpectedly severe weather conditions, and acts of God.";

(b) by changing the "Percentage Distribution" for the Philippines in additional U.S. note 3(c)(i) from "13.5" to "15.8";

(c) by deleting the line "23. Rep. S. Africa 2.3" in additional U.S. note 3(c)(i) and renumbering lines 24 to 32 as 23 to 31, respectively; and

(d) by inserting the following new additional U.S. note 3(c)(iii) in numerical sequence:

"(iii) Notwithstanding any authority given to the United States Trade Representative under paragraphs (e) and (g) of this note, in allocating any limitation imposed under any paragraph of this note on the quantity of sugars, syrups, and molasses described in the subheadings cited under paragraph (a) of this note which may be entered --

(A) the percentage allocation made to the Philippines under this paragraph may not be reduced, and

(B) no allocation may be made to the Republic of South Africa.".

21. The article description for subheading 2009.20.20 is modified by inserting after "concentrated" the following:

"and not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree)".

22. The article description for subheading 2009.20.40 is modified to read "Other".

23. Subheading 2106.90.50 is modified by striking out "proclaimed" and inserting "established" in lieu thereof.

24. Heading 2620 is modified by striking out "metallic compounds" and inserting "metal compounds" in lieu thereof.

25. Chapter 27 is modified--

(a) by striking additional U.S. note 4, inserting new additional U.S. notes 4 and 5 as follows, and renumbering additional U.S. notes 5 and 6 as additional U.S. notes 6 and 7, respectively:

"4. For the purposes of subheading 2710.00.18, "motor fuel blending stock" means any product (except naphthas of subheading 2710.00.25) derived primarily from petroleum, shale oil or natural gas, whether or not containing additives, to be used for direct blending in the manufacture of motor fuel.

5. In determining the relative weights of components of the mixtures provided for in subheading 2710.00.45, naphtha and other petroleum derivatives which may be present in such mixtures as solvents shall be disregarded.";

(b) by inserting in numerical sequence the following new subheading with an article description having the same degree of indentation as the article description for subheading 2710.00.15:

"2710.00.18 Motor fuel blending stock.....52.5¢/bbl Free (IL) $1.05/bbl";

(c) by modifying subheading 2710.00.20 by striking out "fuel)" and inserting "fuel or motor fuel blending stock)"; and

(d) by modifying subheading 2710.00.25 by striking out "fuel)" and inserting in lieu thereof "fuel or motor fuel blending stock)".

26. Note 2(e) of chapter 28 is modified by striking out "metallic derivatives" and inserting "metal derivatives" in lieu thereof.

27. Note 4 of chapter 28 is modified by striking out "a metallic acid" and inserting "a metal acid" in lieu thereof.

28. Note 5 of chapter 28 is modified by striking out "metallic" and inserting "metal" in lieu thereof.

29. Note 6 of chapter 28 is modified by striking out "isotope" and inserting "isotopes" in lieu thereof.

30. Note 7 of chapter 29 is modified by striking out the second "and" and inserting ", or" in lieu thereof.

31. Subheading 3004.32.00 is modified by striking out "cortex" and inserting "cortical" in lieu thereof.

32. Note 3 of chapter 32 is modified by striking out "matters" and inserting "matter" in lieu thereof.

33. Heading 3203 is modified by striking out the text following the semicolon and inserting "preparations as specified in note 3 to this chapter based on coloring matter of vegetable or animal origin:" in lieu thereof.

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34. Heading 3204 is modified by striking out the text between the first and second semicolons and inserting "preparations as specified in note 3 to this chapter based on synthetic organic coloring matter" in lieu thereof.

35. Heading 3205 is modified by striking out the text following the semicolon and inserting "preparations as specified in note 3 to this chapter based on color lakes:" in lieu thereof.

36. Subheading 3301.22.00 is modified by striking out "of jasmin" in the article description and inserting "of jasmine" in lieu thereof.

37. Note 5(d) of chapter 34 is modified by inserting "in" following "dispersed".

38. Heading 3604 is modified by striking out "signalling" in the article description and inserting "signaling" in lieu thereof.

39. Note 9 of chapter 39 is modified by striking out "plastic layer" and inserting "layer of plastics" in lieu thereof.

40. Note 10 of chapter 39 is modified by striking out the comma following "(even if when so cut".

41. Chapter 39 is modified by striking out subheadings 3910.00.10 through 3910.00.50, including the superior heading thereto, and inserting the following in lieu thereof:

"3910.00.00 Silicones in primary forms....3% Free (A,E,IL) 25%".

42. Note 2(a) of chapter 42 is modified by striking out "plastic sheeting" and inserting "sheeting of plastics" in lieu thereof.

43. Chapter 43 is modified by striking out additional U.S. note 1 thereto.

44. (a) Subheading 4301.60.30 is modified by adding ",E" after "A" in the "Special" subcolumn of rate of duty column 1.

(b) Subheading 4302.30.00 is modified by striking out "cuttings," in the article description and inserting "cuttings" in lieu thereof.

45. Chapter 44 is modified by striking out subheadings:

(a) 4412.11.05, 4412.12.05, 4412.19.05, 4412.29.05 and 4412.99.05, and "Other:" immediately following these subheadings;

(b) 4412.21, 4412.21.05 and 4412.21.10 and replacing the foregoing with the following:

"4412.21.00 Containing at least one layer of particle board.....4% Free (A,E,IL) 40%"; and

(c) 4412.91, 4412.91.05 and 4412.91.10 and replacing the foregoing with the following:

"4412.91.00 Containing at least one layer of particle board.....4% Free (A,E,IL) 40%".

46. Note 1(f) of chapter 48 is modified by striking out "plastic sheeting" and inserting "sheeting of plastics" in lieu thereof.

47. Note 8(a)(iii) of chapter 48 is modified by striking out "plastic layer" and inserting "layer of plastics" in lieu thereof.

48. Heading 4905 is modified by inserting a comma before "including".

49. Heading 4907 is modified by striking out "check forms; banknotes," and inserting "banknotes; check forms;" in lieu thereof.

50. Note 7(c) of section XI is modified by striking out the comma after "fabrics".

51. Subheading 5102.10.80 is modified by striking out the rate set forth in the Rates of Duty 1-General subcolumn and inserting "Free" in lieu thereof, and by striking out the rates set forth in the Rates of Duty 1-Special subcolumn.

52. The superior heading immediately preceding subheading 5111.11 is modified by inserting "of" after the second "or".

53. The superior heading immediately preceding subheading 5112.11.00 is modified by inserting "of" after the second "or".

54. Subheading 5407.10.00 is modified by striking out the comma.

55. Note 3(c) of chapter 56 is modified by striking out "strips" and inserting "strip" in lieu thereof.

56. Note 3(c) of chapter 56 is modified by inserting "material" after "textile".

57. Heading 5607 is modified by striking out "rope" and inserting "ropes" in lieu thereof.

58. Note 3 of chapter 58 is modified by striking out "purpose" and inserting "purposes" in lieu thereof.

59. Note 6(a) of chapter 59 is modified by striking out the present text and inserting "(a) Transmission or conveyor belting, of textile material, of a thickness of less than 3 mm; or" in lieu thereof.

60. Note 3(a) of chapter 61 is modified by striking out "black fabric" and inserting "black fabric," in lieu thereof.

61. Note 8 of chapter 61 is modified by striking out "concerning" and inserting "covering" in lieu thereof.

62. Chapter 61 is modified by striking out subheading 6116.10.20 and inserting the following, at the same level of indentation, in lieu thereof:

	"Other:			
	Without fourchettes:			
	Cut and sewn from pre-existing machine-knit fabric that is impregnated, coated or covered with plastics or rubber:			
6116.10.15	Of vegetable fibers.....25%	Free (E*) 10% (IL)	61%	
6116.10.25	Other.....19.8%	7.9% (IL)	90%	
6116.10.35	Other.....14%	Free (E*) 5.6% (IL)	75%	
6116.10.45	With fourchettes.....14%	Free (E*) 5.6% (IL)	25%".	

63. Note 8 of chapter 62 is modified by striking out "concerning" and inserting "covering" in lieu thereof.

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64. Chapter 62 is modified--

(a) by adding "Free (E)" in the "Special" subcolumn of rate of duty column 1 for subheading 6204.53.10;

(b) by adding "+" after "E" in the "Special" subcolumn of rate of duty column 1 for subheading 6214.10.10; and

(c) by striking out subheading 6216.00.25 and inserting the following, at the same level of indentation, in lieu thereof:

	"Other:			
	Without fourchettes:			
	Cut and sewn from pre-existing machine-woven fabric that is impregnated, coated or covered with plastics or rubber:			
6216.00.15	Of vegetable fibers	25%	Free (E*) 10% (IL)	25%
6216.00.20	Other	22¢/kg + 11%	8.8¢/kg + 4.4% (IL)	99.2¢/kg + 65%
6216.00.25	Other	14%	Free (E*) 5.6% (IL)	75%
6216.00.30	With fourchettes	14%	Free (E*) 5.6% (IL)	25%".

65. (a) Heading 6306 is modified by striking out the article description and inserting "Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods:" in lieu thereof.

(b) Heading 6308.00.00 is modified by adding "E*," before "IL" in the "Special" subcolumn of rate of duty column 1.

66. The rate in the Rates of Duty 2 column for subheading 6501.00.90 is modified by inserting "+" after "88.2¢/kg".

67. Note 1(c) of chapter 70 is modified by striking out "(heading 8547)" and inserting "of heading 8547" in lieu thereof.

68. Subheading 7013.10.10 is modified by striking out "sollution" in the article description and inserting "solution" in lieu thereof.

69. Note 10 of chapter 71 is modified by striking out "and" and inserting "or" in lieu thereof.

70. Note 1(k) of chapter 72 is modified by inserting a comma after "size".

71. Subheading note 1(a) of chapter 72 is modified by striking out "Pig iron containing by weight separately or together:" and inserting "Pig iron containing, by weight, one or more of the following elements in the specified proportions:" in lieu thereof.

72. Additional U.S. note 2 of chapter 72 is modified by striking out "phosphatising" and inserting "phosphatizing" in lieu thereof.

73. The rates in the Rates of Duty 2 column for subheadings 7208.33.10, 7208.34.10, and 7208.35.10, respectively, are each modified by striking out "20%" and inserting "0.4¢/kg + 20%" in lieu thereof.

74. Subheading 7210.70 is modified by striking out "plastic coated" and inserting "coated with plastics" in lieu thereof.

75. (a) Subheadings 7212.40, 7217.19.10, 7217.29.10 and 7217.39.10 are each modified by striking out "plastic coated" and inserting "coated with plastics" in lieu thereof.

(b) Subheadings 7217.39.10 and 7217.39.50 are modified by adding ",IL" after "E" in the "Special" subcolumn of rate of duty column 1.

76. Subheading 7304.20 is modified by striking out "the".

77. Subheading 7305.20 is modified by striking out "the".

78. Subheading 7306.20 is modified by striking out "the".

79. Subheading 7314.42.00 is modified by striking out the article description and inserting "Coated with plastics" in lieu thereof.

80. Note 1(b)(i) of chapter 74 is modified by striking out "shall be" and inserting "is" in lieu thereof.

81. Note 1(g) of chapter 74 is modified by inserting a comma after "size".

82. Subheading 7414.90.00 is modified by striking out "Free (A,B,E,I))" in the Rates of Duty 1-Special subcolumn and inserting "Free (A,B,E,IL)" in lieu thereof.

83. Subheading note 1(b)(ii) of chapter 75 is modified by striking out "shall be" and inserting "is" in lieu thereof.

84. Note 1(d) of chapter 76 is modified by inserting a comma after "size".

85. Subheading note 1(b)(i) of chapter 76 is modified by striking out "shall be" and inserting "is" in lieu thereof.

86. Note 1(d) of chapter 78 is modified by inserting a comma after "size".

87. Note 1(d) of chapter 79 is modified by inserting a comma after "size".

88. Note 1(d) of chapter 80 is modified by inserting a comma after "size".

89. Subheading note 1(b)(ii) of chapter 80 is modified by striking out "shall be" and inserting "is" in lieu thereof.

90. Subheading note 1 of chapter 81 is modified by striking out "shall apply" and inserting "applies" in lieu thereof.

91. Heading 8201 is modified by inserting "and pruners" after "secateurs".

92. Subheading 8201.50.00 is modified by striking out the article description and inserting "Secateurs and similar one-handed pruners and shears (including poultry shears), and parts thereof" in lieu thereof.

93. Note 1(a) of section XVI is modified by striking out "unhardened vulcanized rubber" and inserting "vulcanized rubber other than hard rubber" in lieu thereof.

94. Subheading 8418.50.00 is modified by striking out the article description and inserting "Other refrigerating or freezing chests, cabinets, display counters, showcases and similar refrigerating or freezing furniture" in lieu thereof.

95. Subheading 8419.60.00 is modified by striking out "gas" and inserting "other gases" in lieu thereof.

96. Subheading 8428.10.00 is modified by striking out "action and" in the article description and inserting "action;" in lieu thereof.

97. Subheading 8429.52 is modified by striking out "360 degree" in the article description and inserting "360°" in lieu thereof.

98. Subheading 8485.10.00 is modified by inserting "or boats'" after "Ships'".

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99. Note 1 of chapter 85 is modified by striking out "This Chapter" and inserting "This chapter" in lieu thereof.

100. Note 5(b)(iii) of chapter 85 is modified by inserting a comma after "passive".

101. The following new notes are inserted as additional U.S. notes 5 and 6 of chapter 85--

"5. Picture tubes imported in combination with, or incorporated into, other articles are to be classified in subheadings 8540.11 through 8540.12, inclusive, unless they are--

(a) incorporated into complete television receivers, as defined in additional U.S. note 6 below;

(b) incorporated into fully assembled units such as word processors, ADP terminals, or similar articles;

(c) put up in kits containing all the parts necessary for assembly into complete television receivers, as defined in additional U.S. note 6 below; or

(d) put up in kits containing all the parts necessary for assembly into fully assembled units such as word processors, ADP terminals, or similar articles.

6. For the purposes of additional U.S. note 5 above the term "complete television receivers" means television receivers, fully assembled in their cabinets, whether or not packaged or tested for distribution to the ultimate purchaser(s).".

102. Subheadings 8501.40.20, 8501.40.40 and 8501.40.50 are modified by striking out "Exceeding" and inserting "Of an output exceeding" in lieu thereof.

103. Heading 8907 is modified by striking out "landing stages" and inserting "landing-stages" in lieu thereof.

104. Heading 9011 is modified by striking out "microphotography, microcinematography" and inserting "photomicrography, cinemicrography" in lieu thereof.

105. Subheading 9011.20 is modified by striking out "microphotography, microcinematography" and inserting "photomicrography, cinemicrography" in lieu thereof.

106. Subheading 9018.90.60 is modified by deleting "and parts and accessories thereof" and inserting ",other than extracorporeal shock wave lithotripters; all the foregoing and parts and accessories thereof" in lieu thereof.

107. Additional U.S. note 4 of chapter 91 is modified to read as follows:

"4. Special Marking Requirements: With the following exceptions, any movement or case provided for in this chapter, whether imported separately or attached to any article provided for in this chapter, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, stamping, or mold-marking (either indented or raised), as specified below. Movements with opto-electronic display only and cases designed for use therewith, whether entered as separate articles or as components of assembled watches or clocks, are excepted from the marking requirements set forth in this note. The special marking requirements are as follows:

(a) Watch movements shall be marked on one or more of the bridges or top plates to show--

(i) the name of the country of manufacture;
(ii) the name of the manufacturer or purchaser; and
(iii) in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings.

(b) Clock movements shall be marked on the most visible part of the front or back plate to show--

(i) the name of the country of manufacture;
(ii) the name of the manufacturer or purchaser; and
(iii) the number of jewels, if any.

(c) Watch cases shall be marked on the inside or outside of the back to show--

(i) the name of the country of manufacture; and
(ii) the name of the manufacturer or purchaser.

(d) Clock cases provided for in this chapter shall be marked on the most visible part of the outside of the back to show the name of the country of manufacture.".

108. Subheadings 9209.92.80, 9209.94.80, 9209.99.40, and 9209.99.80 are modified by deleting the asterisk following the "E" designation in the "Special" subcolumn of rate of duty column 1 for each of these items.

109. Subheading 9301.00 is modified by striking out the article description and inserting "Military weapons, other than revolvers, pistols and the arms of heading 9307:" in lieu thereof.

110. Note 1(e) of chapter 94 is modified by striking out "Furniture specially designed as parts of refrigerators of heading 8418;" and inserting "Furniture specially designed as parts of refrigerating or freezing equipment of heading 8418;" in lieu thereof.

111. Subheadings 9603.30.20 through 9603.30.60, 9606.10.40 and 9606.10.80 are each modified by striking out "cents" each place it occurs in the respective article descriptions and inserting "¢" in lieu thereof.

112. Heading 9608 is modified by striking out "stylos" in the article description and inserting "styli" in lieu thereof.

113. Subheading 9616.20.00 is modified by striking the asterisk following the "E" designation in the "Special" subcolumn of rate of duty column 1.

114. Subheading 9705.00.00 is modified by striking out "archaeological, palaeontological," in the article description and inserting "archeological, paleontological," in lieu thereof.

115. U.S. note 2(ij) to subchapter XVII of chapter 98 is modified by striking out "7308.50" and inserting "7308.90" in lieu thereof.

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116. U.S. note 2 to subchapter II of chapter 99 is modified by striking out "9903.84.30 or 9903.84.40" and inserting "9903.41.20 or 9903.41.25" in lieu thereof.

117. Subchapter II of chapter 99 is modified by adding after U.S. note 2 the following notes:

"3. (a) For so long as subheading 9902.51.01 is in effect, additional U.S. notes 2(d)(ii), 2(d)(iii), and 2(d)(iv) of chapter 51 shall be suspended.

(b) For the purposes of subheading 9902.51.01, a tolerance of not more than 10 percent of wools not finer than 48s may be allowed in each bale or package of wools imported as not finer than 46s.

4. For the purposes of the superior heading to subheadings 9902.57.01 and 9902.57.02, the term "mass-produced kits" includes only those which are designed to be sold in the customs territory of the United States exclusively in kit form.

5. For the purposes of subheading 9902.85.27, the term "entertainment broadcast band receivers" means receivers designed principally to receive signals in the AM (530-1710 kHz) and FM (88-108 MHz) entertainment broadcast bands, whether or not capable of receiving signals on other bands such as aviation, television, marine, public safety, industrial and citizens bands.

6. For the purposes of subheading 9902.95.03 --

(a) The term "toy figures of inanimate objects" refers only to imaginary creatures that either:

(i) do not possess features of human or other earthly creatures;
(ii) possess both earthly and non-earthly features but are predominantly non-earthly in nature; or
(iii) possess features which are a hybrid of features of more than one animate object.

This definition does not cover toy figures of objects which are readily recognizable as vegetables, minerals, robots or machines, whether or not such figures possess humanoid or earthly features.

(b) The term "filled" includes toy figures which are not completely filled or are filled with materials such as plastic beads or crushed nutshells but which otherwise possess the characteristics of toy figures classifiable as "stuffed".

7. For purposes of subheading 9902.61.00, the term "duty-free quantity" means--

(a) for the 12-month period ending October 31, 1986, 161,600 dozen; and

(b) for any 12-month period thereafter, an amount equal to 101 percent of the duty-free quantity for the preceding 12-month period.".

118. Subchapter II of chapter 99 is further modified by adding in numerical sequence the following new provisions:

	Feathers and down, whether or not on the skin, crude, sorted (including feathers simply strung for convenience in handling or transportation), treated, or both sorted and treated, but not otherwise processed (provided for in heading 0505):				
9902.05.10	Meeting both test methods 4 and 10.1 of Federal Standard 148a promulgated by the General Services Administration	Free	No change	No change	On or before 12/31/90
9902.05.11	Other	Free	No change	Free	On or before 12/31/90
9902.08.07	Cantaloupes, fresh, if entered during the period from January 1 to May 15, inclusive of any year (provided for in subheading 0807.10.20)	Free	No change	No change	On or before 12/31/90
9902.08.11	Cranberries, frozen (provided for in subheading 0811.90.35)	Free	No change	No change	On or before 12/31/90
9902.09.04	Mixtures of mashed or macerated hot red peppers and salt (provided for in subheading 0904.20.70)	Free	No change	No change	On or before 12/31/90
9902.25.04	Graphite, crude and refined, natural (provided for in subheading 2504.10.10)	Free	No change	No change	On or before 12/31/90
9902.26.11	Tungsten ores (provided for in subheading 2611.00.00)	Free	No change	No change	On or before 12/31/90
9902.26.14	Synthetic rutile (provided for in subheading 2614.00.30)	Free	No change	No change	On or before 12/31/90

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119. Subheading 9902.26.22 is modified by striking out ", 2805.30" in the article description.

120. Subchapter II of chapter 99 is further modified by adding in numerical sequence the following new provisions:

9902.29.01	Cyclic organic chemical products in any physical form having an aromatic or modified aromatic structure, however provided for in chapter 29 (but excluding 6,7-dihydroxy-2-naphthalenesulfonic acid, sodium salt), to be used in the manufacture of photographic color couplers	Free	No change	No change	On or before 12/31/90
9902.29.02	Mixtures of 3-ethylbiphenyl (m-ethylbiphenyl) and 4-ethylbiphenyl (p-ethylbiphenyl) (provided for in subheading 2902.90.50)	Free	No change	No change	On or before 12/31/90
9902.29.03	sec-Butyl chloride (provided for in subheading 2903.19.50)	Free	No change	No change	On or before 12/31/90
9902.29.04	p-Toluenesulfonyl chloride (provided for in subheading 2904.10.10)	Free	No change	No change	On or before 12/31/90
9902.29.05	Mixtures containing not less than 90 percent by weight of stereoisomers of 2-isopropyl-5-methylcyclohexanol, but containing not more than 20 percent by weight of any one such stereoisomer (provided for in subheading 2906.19.00)	Free	No change	No change	On or before 12/31/90
9902.29.06	1,1-Bis(4-chlorophenyl)-2,2,2-trichloroethanol (Dicofol) (provided for in subheading 2906.29.50)	Free	No change	No change	On or before 12/31/90
9902.29.07	2-[(3-Nitrophenyl)sulfonyl]ethanol (CAS No. 41687-30-3) (provided for in subheading 2906.29.50)	Free	No change	No change	On or before 12/31/90

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9902.29.08	β-Naphthol (provided for in subheading 2907.15.50)	Free	No change	No change	On or before 12/31/90
9902.29.09	o-Benzyl-p-chlorophenol (provided for in subheading 2908.10.50)	Free	No change	No change	On or before 12/31/90
9902.29.10	6-Hydroxy-2-naphthalenesulfonic acid, and its sodium, potassium, and ammonium salts (provided for in subheading 2908.20.50)	Free	No change	No change	On or before 12/31/90
9902.29.11	Triethylene glycol dichloride (provided for in subheading 2909.49.50)	Free	No change	No change	On or before 12/31/90
9902.29.13	2,6-Dichlorobenzaldehyde (provided for in subheading 2913.00.10)	Free	No change	No change	On or before 12/31/90
9902.29.14	Dinocap (provided for in subheading 2916.19.50)	Free	No change	No change	On or before 12/31/90
9902.29.15	p-Sulfobenzoic acid, potassium salt (provided for in subheading 2916.31.10)	Free	No change	No change	On or before 12/31/90
9902.29.20	m-Toluic acid (provided for in subheading 2916.39.50)	Free	No change	No change	On or before 12/31/90
9902.29.21	m-Hydroxybenzoic acid (provided for in subheading 2918.29.10)	Free	No change	No change	On or before 12/31/90
9902.29.22	d-6-Methoxy-α-methyl-2-naphthaleneacetic acid and its sodium salt (provided for in subheading 2918.90.30)	Free	No change	No change	On or before 12/31/90

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9902.29.23	Triphenyl phosphate (provided for in subheading 2919.00.10)	Free	No change	No change	On or before 12/31/90
9902.29.24	3-Amino-3-methyl-1-butyne (provided for in subheading 2921.19.50)	Free	No change	No change	On or before 12/31/90
9902.29.25	4-Chloro-2-nitroaniline (CAS No. 89-63-4)(provided for in subheading 2921.42.25)	Free	No change	No change	On or before 12/31/90
9902.29.26	p-Nitro-o-toluidine (previded for in subheading 2921.43.20)	Free	No change	No change	On or before 12/31/90

121. Subheading 9902.29.27 is modified by striking out "3,3-Diaminobenzidine" in the article description and inserting "3,3'-Diaminobenzidine" in lieu thereof, and by striking out "12/31/88" in the Effective Period column and inserting "12/31/90" in lieu thereof.

122. Subchapter II of chapter 99 is further modified by adding in numerical sequence the following new provisions:

9902.29.28	α,α,α-Trifluoro-o-toluidine (provided for in subheading 2921.43.50)	Free	No change	No change	On or before 12/31/90
9902.29.29	2-Amino-5-chloro-4-methylbenzenesulfonic acid; and 2-Amino-5-chloro-4-ethylbenzenesulfonic acid (provided for in subheadings 2921.43.50 and 2921.49.50, respectively)	Free	No change	No change	On or before 12/31/90
9902.29.30	8-Amino-1-naphthalenesulfonic acid and its salts (provided for in subheading 2921.45.10)	Free	No change	No change	On or before 12/31/90
9902.29.31	5-Amino-2-(p-aminoanilino) benzenesulfonic acid (provided for in subheading 2921.59.10)	Free	No change	No change	On or before 12/31/90

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9902.29.32	N1,N4,N4-Tris(2-hydroxyethyl)-2-nitro-1,4-phenylenediamine; N1,N4-Dimethyl-N1-(2-hydroxyethyl)-3-nitro-1,4-phenylenediamine; N1,N4-Dimethyl-N1-(2,3-dihydroxypropyl)-3-nitro-1,4-phenylenediamine; and N1-(2-Hydroxyethyl)-3-nitro-1,4-phenylenediamine (provided for in subheading 2922.19.30)	Free	No change	No change	On or before 12/31/90
9902.29.33	1-Amino-8-hydroxy-3,6-naphthalenedisulfonic acid; and 4-Amino-5-hydroxy-2,7-naphthalenedisulfonic acid, monosodium salt (H acid, monosodium salt) (provided for in subheading 2922.21.10)	Free	No change	No change	On or before 12/31/90
9902.29.34	6-Amino-1-naphthol-3-sulfonic acid (provided for in subheading 2922.21.10)	Free	No change	No change	On or before 12/31/90
9902.29.35	6-Amino-4-hydroxy-2-naphthalenesulfonic acid (Gamma acid) (provided for in subheading 2922.21.50)	Free	No change	No change	On or before 12/31/90
9902.29.36	m-Nitro-p-anisidine (provided for in subheading 2922.29.35)	Free	No change	No change	On or before 12/31/90
9902.29.37	m-Nitro-o-anisidine (provided for in subheading 2922.29.50)	Free	No change	No change	On or before 12/31/90
9902.29.38	3,3'-Dimethoxybenzidine (o-Dianisidine) and its dihydrochloride (provided for in subheading 2922.29.50)	Free	No change	No change	On or before 12/31/90
9902.29.39	p-Nitro-o-anisidine (provided for in subheading 2922.22.50)	Free	No change	No change	On or before 12/31/90

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9902.29.40	2-Amino-5-nitrophenol (provided for in subheading 2922.29.10)	Free	No change	No change	On or before 12/31/90
9902.29.41	3-Ethylamino-p-cresol (provided for in subheading 2922.29.15)	Free	No change	No change	On or before 12/31/90
9902.29.42	4-Chloro-2,5-dimethoxyaniline (CAS No. 6358-64-1) (provided for in subheading 2922.29.20)	Free	No change	No change	On or before 12/31/90
9902.29.43	1-Amino-2,4-dibromoanthraquinone (provided for in subheading 2922.30.30)	Free	No change	No change	On or before 12/31/90
9902.29.44	1-Amino-4-bromo-2-anthraquinonesulfonic acid (Bromamine acid) and its sodium salt (provided for in subheading 2922.30.30)	Free	No change	No change	On or before 12/31/90
9902.29.45	3,4-Diaminophenetole dihydrogen sulfate (CAS No. 85137-09-3) (provided for in subheading 2922.50.30)	Free	No change	No change	On or before 12/31/90
9902.29.46	2-Nitro-5-[(2,3-dihydroxy)-propoxy]-N-methylaniline; 2-Nitro-5-(2-hydroxyethoxy)-N-methylaniline; 4-[(2-Hydroxyethyl)amino]-3-nitrophenol; 4-(2-Hydroxyethoxy)-1,3-phenylenediamine dihydrochloride; and 3-Methoxy-4-[(2-hydroxyethyl)amino]nitrobenzene (provided for in subheading 2922.50.30)	Free	No change	No change	On or before 12/31/90
9902.29.47	4-Methoxyaniline-2-sulfonic acid (provided for in subheading 2922.50.40)	Free	No change	No change	On or before 12/31/90

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9902.29.48	1-Amino-2-chloro-4-hydroxyanthraquinone (provided for in subheading 2922.50.40)	Free	No change	No change	On or before 12/31/90
9902.29.49	Benzethonium chloride (provided for in subheading 2923.90.00)	Free	No change	No change	On or before 12/31/90
9902.29.51	N-(7-Hydroxy-1-naphthyl)-acetamide (provided for in subheading 2924.29.09)	Free	No change	No change	On or before 12/31/90
9902.29.52	2,5-Dimethoxyacetanilide (CAS No. 3467-59-2) (provided for in subheading 2924.29.09)	Free	No change	No change	On or before 12/31/90
9902.29.53	3,5-Dinitro-o-toluamide (provided for in subheading 2924.29.39)	Free	No change	No change	On or before 12/31/90
9902.29.54	2,2'-Oxamidobis[ethyl-3-(3,5-di-tert-butyl-4-hydroxyphenyl)propionate] (provided for in subheading 2924.29.40)	Free	No change	No change	On or before 12/31/90
9902.29.55	Bis(o-tolyl)carbodiimide; 2,2',6,6'-Tetraisopropyldiphenylcarbodiimide; Poly[nitrilomethanetetrarylnitrilo[2,4,6-tris(1-methylethyl)-1,3-phenylene]], [2,6-bis(1-methylethyl)phenyl]-omega-[[[[2,6-bis(1-methylethyl)phenyl]amino]methylene]amino]; and diisocyanato-1,3,5-tris(1-methylethyl) homopolymer (provided for in subheading 2925.19.20)	Free	No change	No change	On or before 12/31/90
9902.29.56	Diphenylguanidine and di-o-tolylguanidine (provided for in subheading 2925.20.30)	Free	No change	No change	On or before 12/31/90

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9902.29.57	N,N-Bis(2-cyanoethyl) aniline (provided for in subheading 2926.90.40).....	Free	No change	No change	On or before 12/31/90
9902.29.58	N1-(2-Hydroxyethyl)-2-nitro-1,4-phenylene-diamine (provided for in subheading 2922.19.40).....	Free	No change	No change	On or before 12/31/90
9902.29.59	2,2-Bis(4-cyanatophenyl) (provided for in sub-heading 2929.10.40).....	Free	No change	No change	On or before 12/31/90
9902.29.60	S-(2,3,3'-trichloroallyl)-diisopropylthiocarbamate (provided for in sub-heading 2930.20.50).....	Free	No change	No change	On or before 12/31/90
9902.29.61	3-(4'-Aminobenzamido)-phenyl-ß-hydroxy-ethylsulfone (CAS No. 20241-68-3) (provided for in subheading 2930.90.20).....	Free	No change	No change	On or before 12/31/90
9902.29.62	Paraldehyde, USP grade (provided for in sub-heading 2932.90.50).....	Free	No change	No change	On or before 12/31/90
9902.29.63	Aminomethylphenylpyrazole (Phenylmethylamino-pyrazole) (provided for in subheading 2933.19.10).....	Free	No change	No change	On or before 12/31/90
9902.29.64	6-(3-Methyl-5-oxo-1-pyrazolyl)-1,3-naphthalenedisulfonic acid (Amino-J-pyrazolone) (CAS No. 7277-87-4); and 3-Methyl-1-phenyl-5-pyrazolone (Methylphenyl-pyrazolone) (provided for in subheading 2933.19.10).....	Free	No change	No change	On or before 12/31/90

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9902.29.65	1,2-Dimethyl-3,5-diphenylpyrazolium methyl sulfate (Difenzoquat methyl sulfate) (provided for in subheading 2933.19.25).....	Free	No change	No change	On or before 12/31/90
9902.29.66	m-Sulfaminopyrazolone (m-Sulfamidophenylmethyl-pyrazolone) (provided for in subheading 2933.19.40).....	Free	No change	No change	On or before 12/31/90
9902.29.67	3-Methyl-1-(p-tolyl)-2-pyrazolin-5-one (p-Tolylmethylpyrazolone) (provided for in sub-heading 2933.19.40).....	Free	No change	No change	On or before 12/31/90
9902.29.68	Phenylcarbethoxypyrazolone (provided for in sub-heading 2933.19.42).....	Free	No change	No change	On or before 12/31/90
9902.29.69	3-Methyl-5-pyrazolone (provided for in sub-heading 2933.19.50).....	Free	No change	No change	On or before 12/31/90
9902.29.70	Flecainide acetate (provided for in sub-heading 2933.39.35).....	Free	No change	No change	On or before 12/31/90
9902.29.71	Barbituric acid (provided for in subheading 2933.51.10).....	Free	No change	No change	On or before 12/31/90
9902.29.72	Butyl 2-[4-(5-trifluoro-methyl-2-pyridinyloxy)-phenoxy]propanoate (provided for in sub-heading 2933.90.20).....	Free	No change	No change	On or before 12/31/90
9902.29.73	4,11-Diamino-1H-naphth-[2,3-f]isoindole-1,3,5,10(2H)-tetrone (CAS No. 128-81-4) (provided for in subheading 2925.19.20).....	Free	No change	No change	On or before 12/31/90

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9902.29.74	1-[4-(1,1-Dimethylethyl)-phenyl]-4-(hydroxydiphenyl-methyl)-1-piperidinyl-1 butanone (Terfenadone) (provided for in subheading 2933.90.37).....	Free	No change	No change	On or before 12/31/90
9902.29.75	1-(3-Sulfopropyl)-pyridinium hydroxide (provided for in sub-heading 2933.39.50).....	Free	No change	No change	On or before 12/31/90
9902.29.76	2-n-Octyl-4-isothiazolin-3-one, and mixtures of 2-n-octyl-4-isothiazolin-3-one and application adjuvants (provided for in subheadings 2934.10.50, 3808.90.20 and 3808.90.50 respectively).....	Free	No change	No change	On or before 12/31/90
9902.29.77	Dicyclohexylbenzothiazyl-sulfenamide (provided for in subheading 2934.20.50).	Free	No change	No change	On or before 12/31/90
9902.29.78	2-(4-Aminophenyl)-6-methyl-benzothiazole-7-sulfonic acid (provided for in subheading 2934.20.50).....	Free	No change	No change	On or before 12/31/90
9902.29.79	2-Amino-N-ethyl-benzenesulfonanilide (provided for in sub-heading 2935.00.10).....	Free	No change	No change	On or before 12/31/90
9902.29.80	Sulfamethazine (provided for in subheading 2935.00.30).....	Free	No change	No change	On or before 12/31/90
9902.29.81	Sulfaquinoxaline and sulfanilamide (provided for in subheading 2935.00.31).....	Free	No change	No change	On or before 12/31/90
9902.29.82	Sulfathiazole (provided for in subheading 2935.00.33 or 3004.90.60).....	Free	No change	Free	On or before 12/31/90

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9902.29.83	Sulfaguanidine (provided for in subheading 2935.00.35).....	Free	No change	No change	On or before 12/31/90
9902.29.84	Sulfapyridine (provided for in subheading 2935.00.35).....	Free	No change	Free	On or before 12/31/90
9902.29.85	Acetylsulfaguanidine (provided for in subheading 2935.00.39).....	Free	No change	No change	On or before 12/31/90
9902.29.86	2,4-Dichloro-5-sulfamoyl-benzoic acid (provided for in subheading 2935.00.45).....	Free	No change	No change	On or before 12/31/90
9902.29.87	N-Ethyl-o-toluene-sulfonamide and N-Ethyl-p-toluenesulfonamide (provided for in sub-heading 2935.00.47).....	Free	No change	No change	On or before 12/31/90
9902.29.88	Cyclosporine (provided for in subheading 2941.90.10 or 3004.20.00).....	Free	No change	No change	On or before 12/31/90
9902.30.04	Nicotine resin complex put in measured doses in chewing gum form (provided for in sub-heading 3004.40.00.....	Free	No change	No change	On or before 12/31/90
9902.30.05	Iron-dextran complex (pro-vided for in subheading 3004.90.60).....	Free	No change	No change	On or before 12/31/90
9902.32.04	3,7-Bis(dimethylamino)-phenazathionium chloride (Methylene blue) (pro-vided for in subheading 3204.13.50).....	Free	No change	No change	On or before 12/31/90
9902.36.06	Metaldehyde (provided for in subheading 3606.90.60 or 3808.90.50).....	Free	No change	No change	On or before 12/31/90

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9902.37.07	Photographic color couplers (provided for in subheading 3707.90.30 or 3707.90.60).....Free	No change	No change	On or before 12/31/90
9902.38.06	Mixtures of dinocap and application adjuvants (provided for in subheading 3808.20.10).....Free	No change	No change	On or before 12/31/90
9902.38.07	Mixtures of mancozeb and dinocap (provided for in subheading 3808.20.10).....Free	No change	No change	On or before 12/31/90
9902.38.08	Maneb, zineb, mancozeb, and metiram (provided for in subheading 3808.20.20).....Free	No change	No change	On or before 12/31/90
9902.38.09	Mixtures of 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (Sethoxydim) and application adjuvants (provided for in subheading 3808.30.10).....Free	No change	No change	On or before 12/31/90
9902.38.10	Mixtures of 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, magnesium chloride and stabilizers, whether or not containing application adjuvants (provided for in subheading 3808.90.20).....Free	No change	No change	On or before 12/31/90
9902.38.11	Mixtures of 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (Dicofol) and application adjuvants (provided for in subheading 3808.90.10).....Free	No change	No change	On or before 12/31/90
9902.38.23	Mixtures containing derivatives of N-[4-(2-hydroxy-3-phenoxypropoxy)phenyl]acetamide (provided for in subheading 3823.90.29).....Free	No change	No change	On or before 12/31/90

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9902.39.01	Vinyl acetate-vinyl chloride ethylene terpolymers, containing by weight less than 50 percent derivatives of vinyl acetate, except those polymerized from aromatic or modified aromatic monomers (provided for in subheading 3901.30.00 or 3904.30.00).....Free	No change	No change	On or before 12/31/90
9902.39.14	Cross-linked polyvinyl-benzyltrimethylammonium chloride (Cholestyramine resin USP) (provided for in subheading 3914.00.00).....Free	No change	No change	On or before 12/31/90
9902.39.26	Transparent sheeting of plastics containing 30 percent or more by weight of lead (provided for in subheading 3926.90.90).....Free	No change	No change	On or before 12/31/90
9902.40.08	Plates, sheets, and strip of natural rubber combined with woven fabrics of man-made fibers, for use in the manufacture of skirts for hovercraft (provided for in subheading 4008.21.00).....Free	No change	No change	On or before 12/31/90
9902.40.11	Bicycle tires and tubes and rim strips, the foregoing of rubber or plastics (provided for in subheading 4011.40.00, 4012.90.20, 4012.90.30, or 4013.20.00)....Free	No change	No change	On or before 12/31/90
9902.48.23	Jacquard cards and jacquard heads for power-driven weaving machines, and parts thereof (provided for in subheading 4823.90.85 or 8448.59.50).....Free	No change	No change	On or before 12/31/90
9902.50.05	Yarns, containing 85 percent or more by weight of silk waste, multiple (folded) or cabled (except unbleached or bleached yarns measuring more than 59,267 m/kg) (provided for in subheading 5005.00.00).....Free	No change	No change	On or before 12/31/90

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9902.51.01	Unimproved wool; other wool not finer than 46s (all the foregoing provided for in subheadings 5101.11.10 through 5101.11.50, 5101.19.10 through 5101.19.50, 5101.21.10 through 5101.21.35, 5101.29.10 through 5101.29.35 or 5101.30.10 through 5101.30.30).....	Free	No change	Free	On or before 12/31/90
9902.54.02	Colored, multifilament yarns, untwisted or with a twist of less than 5 turns per meter, of not less than 22 decitex per filament, of nylon or modacrylic, to be used in the manufacture of wigs for dolls (provided for in subheadings 5402.41.00 or 5402.49.00)	Free	No change	No change	On or before 12/31/90
	Needle-craft display models, primarily hand stitched, of completed mass-produced kits:				
9902.57.01	Provided for in subheading 5701.10.20, 5701.90.20, 5805.00.25, 5805.00.40, 6302.91.00, 6302.92.00, 6302.93.10, 6302.93.20, 6302.99.20, 6303.19.00, 6303.92.00, 6303.99.00, 6304.92.00, 6304.93.00, 6304.99.15, 6304.99.20, 6304.99.60, 6307.90.85 or 6307.90.90.....	Free	No change	No change	On or before 12/31/90
9902.57.02	Aprons and babies' bibs (provided for in subheading 6111.20.60, 6111.30.50, 6111.90.50, 6114.20.00, 6114.30.30, 6209.20.50, or 6211.42.00).....	Free	No change	No change	On or before 12/31/90

9902.61.00	Sweaters that-- (i) do not contain foreign materials in excess of the percentage of total value limitation contained in general note 3(a)(iv), and (ii) are assembled in Guam, exclusively by United States citizens, nationals, or resident aliens, by joining together (by completely sewing, looping, linking, or other means of attaching) at least 5 otherwise completed major knit-to-shape component parts of foreign origin; and if entered before the aggregate quantity of such sweaters that is entered during any 12-month period after October 31, 1985, exceeds the duty-free quantity for that period.....	Free	No change	No change	On or before 10/31/92

123. Subheading 9902.62.10 is modified by striking out "12/31/88" and inserting "12/31/90" in lieu thereof.

124. Subchapter II of chapter 99 is further modified by inserting in numbrical sequence the following new provisions:

9902.66.03	Frames for hand-held umbrellas chiefly used for protection against rain (provided for in subheading 6603.20.30).....	Free	No change	No change	On or before 12/31/90
9902.70.12	Glass inners for vacuum flasks or for other vacuum vessels (provided for in subheading 7012.00.00).....	9%	Free (A,E) 3.6% (IL)	55%	On or before 12/31/90

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9902.70.13	Kitchenware of glass-ceramics, nonglazed, greater than 75 percent by volume crystalline, of lithium aluminosilicate, having a linear coefficient of expansion not exceeding 10 x 10^{-7} per Kelvin within a temperature range of 0°C to 300°C, transparent, haze-free, exhibiting transmittances of infrared radiations in excess of 75 percent at a wavelength of 2.5 microns when measured on a sample 3 mm in thickness, and containing ß-quartz solid solution as the predominant crystal phase (provided for in subheading 7013.10.10)	Free	No change	No change	On or before 12/31/90
9902.71.13	Jewelry provided for in subheading 7117.19.10, 7117.19.50 or 7117.90.40 (except parts) valued not over 1.6¢ per piece; and articles provided for in heading 9502, 9503 or 9504 or subheading 9505.90.00 (except balloons, marbles, dice, and diecast vehicles), valued not over five cents per unit	Free	No change	No change	On or before 12/31/90
9902.73.12	Cable or inner wire for caliper brakes and casing therefor, whether or not cut to length (provided for in subheading 3917.32.00, 7312.10.05, 7312.10.10, 7312.10.20, 7312.10.30, 7312.10.50, 7312.10.60, 7312.10.70, 7312.10.90 or 7326.90.90)	Free	No change	No change	On or before 12/31/90
9902.73.15	Bicycle chains (provided for in subheading 7315.11.00)	Free	No change	No change	On or before 12/31/90
9902.84.42	Power-driven weaving machines for weaving fabrics of a width not exceeding 30 cm (provided for in subheading 8446.10.00)	Free	No change	No change	On or before 12/31/90

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9902.84.43	Offset printing presses of the sheet-fed type weighing 1600 kg or more (provided for in subheading 8443.19.90)	No change	No change	10¢	On or before 12/31/90
9902.84.44	Machines designed for heat-set, stretch texturing of continuous man-made fibers (provided for in subheading 8444.00.00)	Free	No change	No change	On or before 12/31/90
9902.84.45	Carding and spinning machines specially designed for wool, other than machines specially designed for the manufacture of combed wool (worsted) yarns (provided for in subheading 8445.11.00 or 8445.20.00)	Free	No change	No change	On or before 12/31/90
9902.84.46	Power-driven weaving machines for weaving fabrics more than 4.9 m in width, parts thereof, and auxiliary machinery for use therewith (provided for in subheading 8446.21.00, 8446.30.00, 8448.19.00, 8448.41.00, 8448.42.00, or 8448.49.00)	Free	No change	No change	On or before 12/31/90
9902.84.47	Hosiery knitting machines, single cylinder fine gauge and all double cylinder (provided for in subheading 8447.11.10, 8447.12.10 or 8447.20.60)	Free	No change	No change	On or before 12/31/90
9902.84.50	Decorative lace-braiding machines using the jacquard system, parts thereof, and auxiliary machinery for use therewith (provided for in subheading 8447.90.10, 8448.11.00, 8448.19.00 or 8448.59.50)	Free	No change	No change	On or before 12/31/90

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9902.84.51	Needles for knitting machines (provided for in subheading 8448.51.10 or 8448.51.30)	Free	No change	No change	On or before 12/31/90
9902.85.12	Generator lighting sets for bicycles, and parts thereof (provided for in subheading 8512.10.20 or 8512.90.40)	Free	No change	No change	On or before 12/31/90
9902.85.27	Entertainment broadcast band receivers valued not over $40 each (provided for in subheading 8527.19.00 or 8527.32.00) incorporating timekeeping or time display devices, not in combination with any other article, and not designed for motor vehicle installation	Free	No change	No change	On or before 12/31/90
9902.85.40	Television picture tubes, color, having a video display diagonal of less than 29 cm (provided for in subheading 8540.11.00)	Free	No change	No change	On or before 12/31/90
9902.87.14	Caliper brakes, drum brakes, front and rear derailleurs, shift levers, cables and casings for derailleurs, coaster brakes, two-speed hubs with internal gear-changing mechanisms, three-speed hubs, whether or not incorporating coaster brakes, click twist grips, trigger and twist grip controls for three-speed hubs, free wheel sprockets, cotterless type crank sets, frame lugs, and parts of all the foregoing (provided for in subheading 3917.32.00 or heading 7312 or 8714)	Free	No change	No change	On or before 12/31/90

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9902.90.90	Parts, not including photoreceptors or assemblies containing photoreceptors, of electrostatic copying machines, which machines operate by reproducing the original image via an intermediate (provided for in subheading 9009.90.00)	Free	No change	No change	On or before 12/31/90
9902.95.01	Stuffed dolls, whether or not dressed, and doll skins for stuffed dolls (provided for in subheading 9502.10.20 or 9502.99.10)	Free	No change	No change	On or before 12/31/90
9902.95.02	Stuffed or filled toy figures of animate objects (except dolls), not having a spring mechanism and not exceeding 63.5 cm in either length, width, or height (provided for in subheading 9503.41.10 or 9503.49.00)	Free	No change	No change	On or before 12/31/90
9902.95.03	Stuffed or filled toy figures of inanimate objects not having a spring mechanism (provided for in subheading 9503.41.10 or 9503.49.00)	Free	No change	No change	On or before 12/31/90
9902.95.04	Skins for stuffed toy figures of animate or inanimate objects (provided for in subheading 9503.41.30)	Free	No change	No change	On or before 12/31/90

125. U.S. note 3 to subchapter III of chapter 99 is modified by striking out "9903.41 and 9903.64" and inserting "9903.41.05 and 9903.41.10" in lieu thereof.

126. U.S. note 4(h)(i)(B) to subchapter III of chapter 99 is modified by striking out "and not less than 0.20 percent nor more than 0.030 percent sulphur;".

127. U.S. note 6 to subchapter III of chapter 99 is modified by striking out "9903.04.55, inclusive," and inserting "9903.04.55, inclusive, subheadings 9903.19.10 and 9903.19.90," in lieu thereof.

128. Subheadings 9903.28.10, 9903.28.15, and 9903.28.20 are each modified by striking out "429,761", "645,208", and "773,374" in the Specified Limit column and inserting "390,856", "621,886", and "757,812", respectively, in lieu thereof.

129. Subheading 9903.72.22 is modified by striking out "24" and "154" in the Quota Quantity column and inserting "48" and "129", respectively, in lieu thereof.

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130. U.S. note 4(d) to subchapter IV of chapter 99 is modified by striking out "subheading 9904.40.40" and inserting "subheadings 9904.20.10 and 9904.40.40" in lieu thereof.

131. Subheading 9904.10.54 is modified by striking out "Portugal 456 000" in the Quota Quantity column.

132. Subheading 9904.30.70 is delered

[FR Doc. 88-27178
Filed 11-21-88; 11:23 am]
Billing code 3190-01-C

federal register

Tuesday
November 22, 1988

Part IX

The President

Proclamation 5908—To Amend the Quantitative Limitations on Imports of Certain Cheeses

Proclamation 5909—To Designate Guyana as a Beneficiary Country for Purposes of the Caribbean Basin Economic Recovery Act

Proclamation 5910—National Adoption Week, 1988

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Presidential Documents

Title 3—

The President

Proclamation 5908 of November 18, 1988

To Amend the Quantitative Limitations on Imports of Certain Cheeses

By the President of the United States of America

A Proclamation

1. Import limitations have been imposed on certain cheeses pursuant to the provisions of Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Section 701 of the Trade Agreements Act of 1979, P.L. 96–39 (the "Act"), requires that the President by proclamation limit the quantity of cheese of the types specified therein that may enter the United States in any calendar year after 1979 to not more than 111,000 metric tons.

2. Proclamation No. 4708 of December 11, 1979, established quantitative limitations on imports of such cheeses as required by the Act. Proclamations No. 4811 of December 30, 1980, No. 5425 of January 6, 1986, and No. 5618 of March 16, 1987, modified those quantitative limitations. Such quantitative limitations and allocations for enumerated countries appear in part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) and subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

3. In order to permit an increase in imports of certain cheeses from Uruguay, the provisions set forth in item 950.10 in part 3 of the Appendix to the TSUS and subheading 9904.10.42 of the HTS must be modified. This modification does not affect any existing quota allocations other than the allocation for Uruguay. This modification increases the annual aggregate quantity of quota cheese allocated to 111,000 metric tons.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States of America, including Section 701 of the Trade Agreements Act of 1979, Section 604 of the Trade Act of 1974, and Section 1204(b) of the Omnibus Trade and Competitiveness Act of 1988, do hereby proclaim that:

A. Item 950.10 in part 3 of the Appendix to the Tariff Schedules of the United States is modified as follows:

The line beginning with "Uruguay" is changed to read as follows:

"Uruguay.....943,569 482,000";

B. Subheading 9904.10.42 of the Harmonized Tariff Schedule of the United States is modified as follows:

The line beginning with "Uruguay" is changed to read as follows:

"Uruguay.....428,000".

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IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-27189
Filed 11-21-88; 12:24 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5909 of November 18, 1988

To Designate Guyana as a Beneficiary Country for Purposes of the Caribbean Basin Economic Recovery Act

By the President of the United States of America

A Proclamation

1. Section 212 of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2702) authorizes the President to designate the countries, territories, or successor political entities thereto that will be beneficiary countries for purposes of the CBERA (19 U.S.C. 2701 *et seq.*). Such countries are entitled to duty-free entry of eligible articles imported directly therefrom into the customs territory of the United States. I am now adding Guyana to the list of beneficiary countries. I have notified the House of Representatives and the Senate of my intention to designate this country and communicated to them the considerations entering into my decision.

2. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) confers authority upon the President to embody in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) the substance of the relevant provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder. Section 1204(b)(1) of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100–418) directs the President to proclaim such modifications to the Harmonized Tariff Schedule of the United States (HTS), as enacted by section 1204 of that Act, as are necessary or appropriate to implement the applicable provisions of Executive actions taken after January 1, 1988, and before the effective date of the HTS.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to sections 211 through 213 of the Caribbean Basin Economic Recovery Act, section 604 of the Trade Act of 1974, and section 1204 of the Omnibus Trade and Competitiveness Act of 1988, do proclaim that:

(1) General headnote 3(e)(vii)(A) to the TSUS, listing those countries designated as beneficiary countries for purposes of the CBERA, is modified by inserting in alphabetical sequence "Guyana".

(2) General note 3(c)(v)(A) to the HTS, listing those countries designated as beneficiary countries for purposes of the CBERA, is modified by inserting in alphabetical sequence "Guyana".

(3)(a) The amendment made by paragraph (1) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after November 24, 1988.

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(b) The amendment made by paragraph (2) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-27190
Filed 11-21-88; 12:25 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5910 of November 18, 1988

National Adoption Week, 1988

By the President of the United States of America

A Proclamation

The family, society's most fundamental unit, is part of God's design for human happiness. Belonging to a family is a natural and vital component of life, and every child deserves to be a member of a loving and nurturing family. For many children, this becomes possible through life in an adoptive family. That is good reason for all Americans to celebrate adoption and to commend and cooperate with those in the private sector and public service who work to find loving, lasting homes for waiting youngsters.

For some children, the waiting is much too long. More than 30,000 children now in foster care are in need of permanent homes. Most of these fine youngsters have special needs; some are of school age, in sibling groups, members of minorities, or affected by physical, mental, or emotional disabilities. But all of them have two things in common—they need families of their own, and they have great love to offer new parents. We can all learn much from the wonderful experiences of adoptive families already blessed with special-needs adoptive children.

We know, however, that the waiting is long for many prospective parents as well. Thousands of marriages in our country are childless, and many families are anxious to adopt. Many single people also desire to know the happiness of adoption. Adoption brings immeasurable joy to adopted children and adoptive parents alike. It also gives us cause for hope—that more youngsters will find lasting homes and that ever more Americans will find within themselves the generosity, courage, and love to make adoption their personal alternative to the cruelty of abortion. Prolife pregnancy counseling centers exist in cities and towns across our land to help mothers choose life for their unborn infants. These mothers give their babies not only the gift of birth but also the gift of a bright future with a loving adoptive family. These brave women, and those who decide to raise their babies themselves, deserve our admiration, friendship, and help while they are expecting and after.

There is more each of us can do to encourage adoption, from making our neighbors and communities aware of this option to making room in our own homes for special-needs children and adoptive infants. As a Nation, we must continue to promote adoption and to eliminate barriers to it. We must also offer our appreciation and encouragement to the millions of our fellow citizens—such as adoption caseworkers, foster care supervisors, judges, lawyers, clergy and religious, physicians, teachers, pregnancy counselors, and countless volunteers—who help children and families with adoption. In this way we can aid more and more Americans in discovering the special joy of building a family through adoption.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 20 through November 26, 1988, as National Adoption Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-27191
Filed 11-21-88; 12:26 pm]
Billing code 3195-01-M

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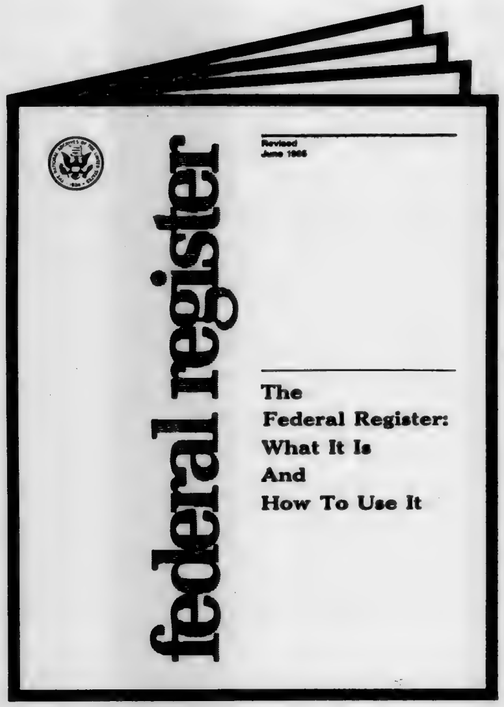
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The President

Executive Order 12656 of November 18, 1988

Assignment of Emergency Preparedness Responsibilities

WHEREAS our national security is dependent upon our ability to assure continuity of government, at every level, in any national security emergency situation that might confront the Nation; and

WHEREAS effective national preparedness planning to meet such an emergency, including a massive nuclear attack, is essential to our national survival; and

WHEREAS effective national preparedness planning requires the identification of functions that would have to be performed during such an emergency, the assignment of responsibility for developing plans for performing these functions, and the assignment of responsibility for developing the capability to implement those plans; and

WHEREAS the Congress has directed the development of such national security emergency preparedness plans and has provided funds for the accomplishment thereof;

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to Reorganization Plan No. 1 of 1958 (72 Stat. 1799), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended, and the Federal Civil Defense Act, as amended, it is hereby ordered that the responsibilities of the Federal departments and agencies in national security emergencies shall be as follows:

PART 1—Preamble

Section 101. *National Security Emergency Preparedness Policy.*

(a) The policy of the United States is to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. A national security emergency is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States. Policy for national security emergency preparedness shall be established by the President. Pursuant to the President's direction, the National Security Council shall be responsible for developing and administering such policy. All national security emergency preparedness activities shall be consistent with the Constitution and laws of the United States and with preservation of the constitutional government of the United States.

(b) Effective national security emergency preparedness planning requires: identification of functions that would have to be performed during such an emergency; development of plans for performing these functions; and development of the capability to execute those plans.

Sec. 102. *Purpose.*

(a) The purpose of this Order is to assign national security emergency preparedness responsibilities to Federal departments and agencies. These assignments are based, whenever possible, on extensions of the regular missions of the departments and agencies.

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(b) This Order does not constitute authority to implement the plans prepared pursuant to this Order. Plans so developed may be executed only in the event that authority for such execution is authorized by law.

Sec. 103. *Scope.*

(a) This Order addresses national security emergency preparedness functions and activities. As used in this Order, preparedness functions and activities include, as appropriate, policies, plans, procedures, and readiness measures that enhance the ability of the United States Government to mobilize for, respond to, and recover from a national security emergency.

(b) This Order does not apply to those natural disasters, technological emergencies, or other emergencies, the alleviation of which is normally the responsibility of individuals, the private sector, volunteer organizations, State and local governments, and Federal departments and agencies unless such situations also constitute a national security emergency.

(c) This Order does not require the provision of information concerning, or evaluation of, military policies, plans, programs, or states of military readiness.

(d) This Order does not apply to national security emergency preparedness telecommunications functions and responsibilities that are otherwise assigned by Executive Order 12472.

Sec. 104. *Management of National Security Emergency Preparedness.*

(a) The National Security Council is the principal forum for consideration of national security emergency preparedness policy.

(b) The National Security Council shall arrange for Executive branch liaison with, and assistance to, the Congress and the Federal judiciary on national security-emergency preparedness matters.

(c) The Director of the Federal Emergency Management Agency shall serve as an advisor to the National Security Council on issues of national security emergency preparedness, including mobilization preparedness, civil defense, continuity of government, technological disasters, and other issues, as appropriate. Pursuant to such procedures for the organization and management of the National Security Council process as the President may establish, the Director of the Federal Emergency Management Agency also shall assist in the implementation of and management of the National Security Council process as the President may establish, the Director of the Federal Emergency Management Agency also shall assist in the implementation of national security emergency preparedness policy by coordinating with the other Federal departments and agencies and with State and local governments, and by providing periodic reports to the National Security Council on implementation of national security emergency preparedness policy.

(d) National security emergency preparedness functions that are shared by more than one agency shall be coordinated by the head of the Federal department or agency having primary responsibility and shall be supported by the heads of other departments and agencies having related responsibilities.

(e) There shall be a national security emergency exercise program that shall be supported by the heads of all appropriate Federal departments and agencies.

(f) Plans and procedures will be designed and developed to provide maximum flexibility to the President for his implementation of emergency actions.

Sec. 105. *Interagency Coordination.*

(a) All appropriate Cabinet members and agency heads shall be consulted regarding national security emergency preparedness programs and policy issues. Each department and agency shall support interagency coordination to improve preparedness and response to a national security emergency and

shall develop and maintain decentralized capabilities wherever feasible and appropriate.

(b) Each Federal department and agency shall work within the framework established by, and cooperate with those organizations assigned responsibility in, Executive Order No. 12472, to ensure adequate national security emergency preparedness telecommunications in support of the functions and activities addressed by this Order.

PART 2—General Provisions

Sec. 201. *General.* The head of each Federal department and agency, as appropriate, shall:

(1) Be prepared to respond adequately to all national security emergencies, including those that are international in scope, and those that may occur within any region of the Nation;

(2) Consider national security emergency preparedness factors in the conduct of his or her regular functions, particularly those functions essential in time of emergency. Emergency plans and programs, and an appropriate state of readiness, including organizational infrastructure, shall be developed as an integral part of the continuing activities of each Federal department and agency;

(3) Appoint a senior policy official as Emergency Coordinator, responsible for developing and maintaining a multi-year, national security emergency preparedness plan for the department or agency to include objectives, programs, and budgetary requirements;

(4) Design preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(a) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies;

(b) Identification of actions that could be taken in the early stages of a national security emergency or pending national security emergency to mitigate the impact of or reduce significantly the lead times associated with full emergency action implementation;

(5) Base national security emergency preparedness measures on the use of existing authorities, organizations, resources, and systems to the maximum extent practicable;

(6) Identify areas where additional legal authorities may be needed to assist management and, consistent with applicable Executive orders, take appropriate measures toward acquiring those authorities;

(7) Make policy recommendations to the National Security Council regarding national security emergency preparedness activities and functions of the Federal Government;

(8) Coordinate with State and local government agencies and other organizations, including private sector organizations, when appropriate. Federal plans should include appropriate involvement of and reliance upon private sector organizations in the response to national security emergencies;

(9) Assist State, local, and private sector entities in developing plans for mitigating the effects of national security emergencies and for providing services that are essential to a national response;

(10) Cooperate, to the extent appropriate, in compiling, evaluating, and exchanging relevant data related to all aspects of national security emergency preparedness;

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(11) Develop programs regarding congressional relations and public information that could be used during national security emergencies;

(12) Ensure a capability to provide, during a national security emergency, information concerning Acts of Congress, presidential proclamations, Executive orders, regulations, and notices of other actions to the Archivist of the United States, for publication in the **Federal Register**, or to each agency designated to maintain the **Federal Register** in an emergency;

(13) Develop and conduct training and education programs that incorporate emergency preparedness and civil defense information necessary to ensure an effective national response;

(14) Ensure that plans consider the consequences for essential services provided by State and local governments, and by the private sector, if the flow of Federal funds is disrupted;

(15) Consult and coordinate with the Director of the Federal Emergency Management Agency to ensure that those activities and plans are consistent with current National Security Council guidelines and policies.

Sec. 202. *Continuity of Government.* The head of each Federal department and agency shall ensure the continuity of essential functions in any national security emergency by providing for: succession to office and emergency delegation of authority in accordance with applicable law; safekeeping of essential resources, facilities, and records; and establishment of emergency operating capabilities.

Sec. 203. *Resource Management.* The head of each Federal department and agency, as appropriate within assigned areas of responsibility, shall:

(1) Develop plans and programs to mobilize personnel (including reservist programs), equipment, facilities, and other resources;

(2) Assess essential emergency requirements and plan for the possible use of alternative resources to meet essential demands during and following national security emergencies;

(3) Prepare plans and procedures to share between and among the responsible agencies resources such as energy, equipment, food, land, materials, minerals, services, supplies, transportation, water, and workforce needed to carry out assigned responsibilities and other essential functions, and cooperate with other agencies in developing programs to ensure availability of such resources in a national security emergency;

(4) Develop plans to set priorities and allocate resources among civilian and military claimants;

(5) Identify occupations and skills for which there may be a critical need in the event of a national security emergency.

Sec. 204. *Protection of Essential Resources and Facilities.* The head of each Federal department and agency, within assigned areas of responsibility, shall:

(1) Identify facilities and resources, both government and private, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national security emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources to essential military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies.

Sec. 205. *Federal Benefit, Insurance, and Loan Programs.* The head of each Federal department and agency that administers a loan, insurance, or benefit program that relies upon the Federal Government payment system shall coordinate with the Secretary of the Treasury in developing plans for the continuation or restoration, to the extent feasible, of such programs in national security emergencies.

Sec. 206. *Research.* The Director of the Office of Science and Technology Policy and the heads of Federal departments and agencies having significant research and development programs shall advise the National Security Council of scientific and technological developments that should be considered in national security emergency preparedness planning.

Sec. 207. *Redelegation.* The head of each Federal department and agency is hereby authorized, to the extent otherwise permitted by law, to redelegate the functions assigned by this Order, and to authorize successive redelegations to organizations, officers, or employees within that department or agency.

Sec. 208. *Transfer of Functions.* Recommendations for interagency transfer of any emergency preparedness function assigned under this Order or for assignment of any new emergency preparedness function shall be coordinated with all affected Federal departments and agencies before submission to the National Security Council.

Sec. 209. *Retention of Existing Authority.* Nothing in this Order shall be deemed to derogate from assignments of functions to any Federal department or agency or officer thereof made by law.

PART 3—Department of Agriculture

Sec. 301. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Agriculture shall:

(1) Develop plans to provide for the continuation of agricultural production, food processing, storage, and distribution through the wholesale level in national security emergencies, and to provide for the domestic distribution of seed, feed, fertilizer, and farm equipment to agricultural producers;

(2) Develop plans to provide food and agricultural products to meet international responsibilities in national security emergencies;

(3) Develop plans and procedures for administration and use of Commodity Credit Corporation inventories of food and fiber resources in national security emergencies;

(4) Develop plans for the use of resources under the jurisdiction of the Secretary of Agriculture and, in cooperation with the Secretaries of Commerce, Defense, and the Interior, the Board of Directors of the Tennessee Valley Authority, and the heads of other government entities, plan for the national security emergency management, production, and processing of forest products;

(5) Develop, in coordination with the Secretary of Defense, plans and programs for water to be used in agricultural production and food processing in national security emergencies;

(6) In cooperation with Federal, State, and local agencies, develop plans for a national program relating to the prevention and control of fires in rural areas of the United States caused by the effects of enemy attack or other national security emergencies;

(7) Develop plans to help provide the Nation's farmers with production resources, including national security emergency financing capabilities;

(8) Develop plans, in consonance with those of the Department of Health and Human Services, the Department of the Interior, and the Environmental Protection Agency, for national security emergency agricultural health services and forestry, including:

(a) Diagnosis and control or eradication of diseases, pests, or hazardous agents (biological, chemical, or radiological) against animals, crops, timber, or products thereof;

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(b) Protection, treatment, and handling of livestock and poultry, or products thereof, that have been exposed to or affected by hazardous agents;

(c) Use and handling of crops, agricultural commodities, timber, and agricultural lands that have been exposed to or affected by hazardous agents; and

(d) Assuring the safety and wholesomeness, and minimizing losses from hazards, of animals and animal products and agricultural commodities and products subject to continuous inspection by the Department of Agriculture or owned by the Commodity Credit Corporation or by the Department of Agriculture;

(9) In consultation with the Secretary of State and the Director of the Federal Emergency Management Agency, represent the United States in agriculture-related international civil emergency preparedness planning and related activities.

Sec. 302. *Support Responsibility.* The Secretary of Agriculture shall assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical agricultural materials.

PART 4—Department of Commerce

Sec. 401. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Commerce shall:

(1) Develop control systems for priorities, allocation, production, and distribution of materials and other resources that will be available to support both national defense and essential civilian programs in a national security emergency;

(2) In cooperation with the Secretary of Defense and other departments and agencies, identify those industrial products and facilities that are essential to mobilization readiness, national defense, or post-attack survival and recovery;

(3) In cooperation with the Secretary of Defense and other Federal departments and agencies, analyze potential effects of national security emergencies on actual production capability, taking into account the entire production complex, including shortages of resources, and develop preparedness measures to strengthen capabilities for production increases in national security emergencies;

(4) In cooperation with the Secretary of Defense, perform industry analyses to assess capabilities of the commercial industrial base to support the national defense, and develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs;

(5) In cooperation with the Secretary of the Treasury, develop plans for providing emergency assistance to the private sector through direct or participation loans for the financing of production facilities and equipment;

(6) In cooperation with the Secretaries of State, Defense, Transportation, and the Treasury, prepare plans to regulate and control exports and imports in national security emergencies;

(7) Provide for the collection and reporting of census information on human and economic resources, and maintain a capability to conduct emergency surveys to provide information on the status of these resources as required for national security purposes;

(8) Develop overall plans and programs to ensure that the fishing industry continues to produce and process essential protein in national security emergencies;

(9) Develop plans to provide meteorological, hydrologic, marine weather, geodetic, hydrographic, climatic, seismic, and oceanographic data and services to Federal, State, and local agencies, as appropriate;

(10) In coordination with the Secretary of State and the Director of the Federal Emergency Management Agency, represent the United States in industry-related international (NATO and allied) civil emergency preparedness planning and related activities.

Sec. 402. *Support Responsibilities.* The Secretary of Commerce shall:

(1) Assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical materials;

(2) Support the Secretary of Agriculture in planning for the national security management, production, and processing of forest and fishery products;

(3) Assist, in consultation with the Secretaries of State and Defense, the Secretary of the Treasury in the formulation and execution of economic measures affecting other nations.

PART 5—Department of Defense

Sec. 501. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Defense shall:

(1) Ensure military preparedness and readiness to respond to national security emergencies;

(2) In coordination with the Secretary of Commerce, develop, with industry, government, and the private sector, reliable capabilities for the rapid increase of defense production to include industrial resources required for that production;

(3) Develop and maintain, in cooperation with the heads of other departments and agencies, national security emergency plans, programs, and mechanisms to ensure effective mutual support between and among the military, civil government, and the private sector;

(4) Develop and maintain damage assessment capabilities and assist the Director of the Federal Emergency Management Agency and the heads of other departments and agencies in developing and maintaining capabilities to assess attack damage and to estimate the effects of potential attack on the Nation;

(5) Arrange, through agreements with the heads of other Federal departments and agencies, for the transfer of certain Federal resources to the jurisdiction and/or operational control of the Department of Defense in national security emergencies;

(6) Acting through the Secretary of the Army, develop, with the concurrence of the heads of all affected departments and agencies, overall plans for the management, control, and allocation of all usable waters from all sources within the jurisdiction of the United States. This includes:

(a) Coordination of national security emergency water resource planning at the national, regional, State, and local levels;

(b) Development of plans to assure emergency provision of water from public works projects under the jurisdiction of the Secretary of the Army to public water supply utilities and critical defense production facilities during national security emergencies;

(c) Development of plans to assure emergency operation of waterways and harbors; and

(d) Development of plans to assure the provision of potable water;

(7) In consultation with the Secretaries of State and Energy, the Director of the Federal Emergency Management Agency, and others, as required, develop plans and capabilities for identifying, analyzing, mitigating, and responding to hazards related to nuclear weapons, materials, and devices; and maintain liaison, as appropriate, with the Secretary of Energy and the Members of the Nuclear Regulatory Commission to ensure the continuity of nuclear weapons production and the appropriate allocation of scarce resources, including the

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recapture of special nuclear materials from Nuclear Regulatory Commission licensees when appropriate;

(8) Coordinate with the Administrator of the National Aeronautics and Space Adminstration and the Secretary of Energy, as appropriate, to prepare for the use, maintenance, and development of technologically advanced aerospace and aeronautical-related systems, equipment, and methodologies applicable to national security emergencies;

(9) Develop, in coordination with the Secretary of Labor, the Directors of the Selective Service System, the Office of Personnel Management, and the Federal Emergency Management Agency, plans and systems to ensure that the Nation's human resources are available to meet essential military and civilian needs in national security emergencies;

(10) Develop national security emergency operational procedures, and coordinate with the Secretary of Housing and Urban Development with respect to residential property, for the control, acquisition, leasing, assignment and priority of occupancy of real property within the jurisdiction of the Department of Defense;

(11) Review the priorities and allocations systems developed by other departments and agencies to ensure that they meet Department of Defense needs in a national security emergency; and develop and maintain the Department of Defense programs necessary for effective utilization of all priorities and allocations systems;

(12) Develop, in coordination with the Attorney General of the United States, specific procedures by which military assistance to civilian law enforcement authorities may be requested, considered, and provided;

(13) In cooperation with the Secretary of Commerce and other departments and agencies, identify those industrial products and facilities that are essential to mobilization readiness, national defense, or post-attack survival and recovery;

(14) In cooperation with the Secretary of Commerce and other Federal departments and agencies, analyze potential effects of national security emergencies on actual production capability, taking into account the entire production complex, including shortages of resources, and develop preparedness measures to strengthen capabilities for production increases in national security emergencies;

(15) With the assistance of the heads of other Federal departments and agencies, provide management direction for the stockpiling of strategic and critical materials, conduct storage, maintenance, and quality assurance operations for the stockpile of strategic and critical materials, and formulate plans, programs, and reports relating to the stockpiling of strategic and critical materials.

Sec. 502. *Support Responsibilities.* The Secretary of Defense shall:

(1) Advise and assist the heads of other Federal departments and agencies in the development of plans and programs to support national mobilization. This includes providing, as appropriate:

(a) Military requirements, prioritized and time-phased to the extent possible, for selected end-items and supporting services, materials, and components;

(b) Recommendations for use of financial incentives and other methods to improve defense production as provided by law; and

(c) Recommendations for export and import policies;

(2) Advise and assist the Secretary of State and the heads of other Federal departments and agencies, as appropriate, in planning for the protection, evacuation, and repatriation of United States citizens in threatened areas overseas;

(3) Support the Secretary of Housing and Urban Development and the heads of other agencies, as appropriate, in the development of plans to restore community facilities;

(4) Support the Secretary of Energy in international liaison activities pertaining to nuclear materials facilities;

(5) In consultation with the Secretaries of State and Commerce, assist the Secretary of the Treasury in the formulation and execution of economic measures that affect other nations;

(6) Support the Secretary of State and the heads of other Federal departments and agencies as appropriate in the formulation and implementation of foreign policy, and the negotiation of contingency and post-emergency plans, intergovernmental agreements, and arrangements with allies and friendly nations, which affect national security;

(7) Coordinate with the Director of the Federal Emergency Management Agency the development of plans for mutual civil-military support during national security emergencies;

(8) Develop plans to support the Secretary of Labor in providing education and training to overcome shortages of critical skills.

PART 6—Department of Education

Sec. 601. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Education shall:

(1) Assist school systems in developing their plans to provide for the earliest possible resumption of activities following national security emergencies;

(2) Develop plans to provide assistance, including efforts to meet shortages of critical educational personnel, to local educational agencies;

(3) Develop plans, in coordination with the Director of the Federal Emergency Management Agency, for dissemination of emergency preparedness instructional material through educational institutions and the media during national security emergencies.

Sec. 602. *Support responsibilities.* The Secretary of Education shall:

(1) Develop plans to support the Secretary of Labor in providing education and training to overcome shortages of critical skills;

(2) Support the Secretary of Health and Human Services in the development of human services educational and training materials, including self-help program materials for use by human service organizations and professional schools.

PART 7—Department of Energy

Sec. 701. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Energy shall:

(1) Conduct national security emergency preparedness planning, including capabilities development, and administer operational programs for all energy resources, including:

(a) Providing information, in cooperation with Federal, State, and energy industry officials, on energy supply and demand conditions and on the requirements for and the availability of materials and services critical to energy supply systems;

(b) In coordination with appropriate departments and agencies and in consultation with the energy industry, develop implementation plans and operational systems for priorities and allocation of all energy resource requirements for national defense and essential civilian needs to assure national security emergency preparedness;

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(c) Developing, in consultation with the Board of Directors of the Tennessee Valley Authority, plans necessary for the integration of its power system into the national supply system;

(2) Identify energy facilities essential to the mobilization, deployment, and sustainment of resources to support the national security and national welfare, and develop energy supply and demand strategies to ensure continued provision of minimum essential services in national security emergencies;

(3) In coordination with the Secretary of Defense, ensure continuity of nuclear weapons production consistent with national security requirements;

(4) Assure the security of nuclear materials, nuclear weapons, or devices in the custody of the Department of Energy, as well as the security of all other Department of Energy programs and facilities;

(5) In consultation with the Secretaries of State and Defense and the Director of the Federal Emergency Management Agency, conduct appropriate international liaison activities pertaining to matters within the jurisdiction of the Department of Energy;

(6) In consultation with the Secretaries of State and Defense, the Director of the Federal Emergency Management Agency, the Members of the Nuclear Regulatory Commission, and others, as required, develop plans and capabilities for identification, analysis, damage assessment, and mitigation of hazards from nuclear weapons, materials, and devices;

(7) Coordinate with the Secretary of Transportation in the planning and management of transportation resources involved in the bulk movement of energy;

(8) At the request of or with the concurrence of the Nuclear Regulatory Commission and in consultation with the Secretary of Defense, recapture special nuclear materials from Nuclear Regulatory Commission licensees where necessary to assure the use, preservation, or safeguarding of such material for the common defense and security;

(9) Develop national security emergency operational procedures for the control, utilization, acquisition, leasing, assignment, and priority of occupancy of real property within the jurisdiction of the Department of Energy;

(10) Manage all emergency planning and response activities pertaining to Department of Energy nuclear facilities.

Sec. 702. *Support Responsibilities.* The Secretary of Energy shall:

(1) Provide advice and assistance, in coordination with appropriate agencies, to Federal, State, and local officials and private sector organizations to assess the radiological impact associated with national security emergencies;

(2) Coordinate with the Secretaries of Defense and the Interior regarding the operation of hydroelectric projects to assure maximum energy output;

(3) Support the Secretary of Housing and Urban Development and the heads of other agencies, as appropriate, in the development of plans to restore community facilities;

(4) Coordinate with the Secretary of Agriculture regarding the emergency preparedness of the rural electric supply systems throughout the Nation and the assignment of emergency preparedness responsibilities to the Rural Electrification Administration.

PART 8—Department of Health and Human Services

Sec. 801. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Health and Human Services shall:

(1) Develop national plans and programs to mobilize the health industry and health resources for the provision of health, mental health, and medical services in national security emergencies;

(2) Promote the development of State and local plans and programs for provision of health, mental health, and medical services in national security emergencies;

(3) Develop national plans to set priorities and allocate health, mental health, and medical services' resources among civilian and military claimants;

(4) Develop health and medical survival information programs and a nationwide program to train health and mental health professionals and paraprofessionals in special knowledge and skills that would be useful in national security emergencies;

(5) Develop programs to reduce or eliminate adverse health and mental health effects produced by hazardous agents (biological, chemical, or radiological), and, in coordination with appropriate Federal agencies, develop programs to minimize property and environmental damage associated with national security emergencies;

(6) Develop guidelines that will assure reasonable and prudent standards of purity and/or safety in the manufacture and distribution of food, drugs, biological products, medical devices, food additives, and radiological products in national security emergencies;

(7) Develop national plans for assisting State and local governments in rehabilitation of persons injured or disabled during national security emergencies;

(8) Develop plans and procedures to assist State and local governments in the provision of emergency human services, including lodging, feeding, clothing, registration and inquiry, social services, family reunification and mortuary services and interment;

(9) Develop, in coordination with the Secretary of Education, human services educational and training materials for use by human service organizations and professional schools; and develop and distribute, in coordination with the Director of the Federal Emergency Management Agency, civil defense information relative to emergency human services;

(10) Develop plans and procedures, in coordination with the heads of Federal departments and agencies, for assistance to United States citizens or others evacuated from overseas areas.

Sec. 802. *Support Responsibility.* The Secretary of Health and Human Services shall support the Secretary of Agriculture in the development of plans related to national security emergency agricultural health services.

PART 9—Department of Housing and Urban Development

Sec. 901. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Housing and Urban Development shall:

(1) Develop plans for provision and management of housing in national security emergencies, including:

(a) Providing temporary housing using Federal financing and other arrangements;

(b) Providing for radiation protection by encouraging voluntary construction of shelters and voluntary use of cost-efficient design and construction techniques to maximize population protection;

(2) Develop plans, in cooperation with the heads of other Federal departments and agencies and State and local governments, to restore community facilities, including electrical power, potable water, and sewage disposal facilities, damaged in national security emergencies.

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PART 10—Department of the Interior

Sec. 1001. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of the Interior shall:

(1) Develop programs and encourage the exploration, development, and mining of strategic and critical and other nonfuel minerals for national security emergency purposes;

(2) Provide guidance to mining industries in the development of plans and programs to ensure continuity of production during national security emergencies;

(3) Develop and implement plans for the management, control, allocation, and use of public land under the jurisdiction of the Department of the Interior in national security emergencies and coordinate land emergency planning at the Federal, State, and local levels.

Sec. 1002. *Support Responsibilities.* The Secretary of the Interior shall:

(1) Assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical minerals;

(2) Cooperate with the Secretary of Commerce in the identification and evaluation of facilities essential for national security emergencies;

(3) Support the Secretary of Agriculture in planning for the national security management, production, and processing of forest products.

PART 11—Department of Justice

Sec. 1101. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Attorney General of the United States shall:

(1) Provide legal advice to the President and the heads of Federal departments and agencies and their successors regarding national security emergency powers, plans, and authorities;

(2) Coordinate Federal Government domestic law enforcement activities related to national security emergency preparedness, including Federal law enforcement liaison with, and assistance to, State and local governments;

(3) Coordinate contingency planning for national security emergency law enforcement activities that are beyond the capabilities of State and local agencies;

(4) Develop national security emergency plans for regulation of immigration, regulation of nationals of enemy countries, and plans to implement laws for the control of persons entering or leaving the United States;

(5) Develop plans and procedures for the custody and protection of prisoners and the use of Federal penal and correctional institutions and resources during national security emergencies;

(6) Provide information and assistance to the Federal Judicial branch and the Federal Legislative branch concerning law enforcement, continuity of government, and the exercise of legal authority during national security emergencies;

(7) Develop intergovernmental and interagency law enforcement plans and counterterrorism programs to interdict and respond to terrorism incidents in the United States that may result in a national security emergency or that occur during such an emergency;

(8) Develop intergovernmental and interagency law enforcement plans to respond to civil disturbances that may result in a national security emergency or that occur during such an emergency.

Sec. 1102. *Support Responsibilities.* The Attorney General of the United States shall:

(1) Assist the heads of Federal departments and agencies, State and local governments, and the private sector in the development of plans to physically protect essential resources and facilities;

(2) Support the Secretaries of State and the Treasury in plans for the protection of international organizations and foreign diplomatic, consular, and other official personnel, property, and other assets within the jurisdiction of the United States;

(3) Support the Secretary of the Treasury in developing plans to control the movement of property entering and leaving the United States;

(4) Support the heads of other Federal departments and agencies and State and local governments in developing programs and plans for identifying fatalities and reuniting families in national security emergencies;

(5) Support the intelligence community in the planning of its counterintelligence and counterterrorism programs.

PART 12—Department of Labor

Sec. 1201. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Labor shall:

(1) Develop plans and issue guidance to ensure effective use of civilian workforce resources during national security emergencies. Such plans shall include, but not necessarily be limited to:

(a) Priorities and allocations, recruitment, referral, training, employment stabilization including appeals procedures, use assessment, and determination of critical skill categories; and

(b) Programs for increasing the availability of critical workforce skills and occupations;

(2) In consultation with the Secretary of the Treasury, develop plans and procedures for wage, salary, and benefit costs stabilization during national security emergencies;

(3) Develop plans and procedures for protecting and providing incentives for the civilian labor force during national security emergencies;

(4) In consultation with other appropriate government agencies and private entities, develop plans and procedures for effective labor-management relations during national security emergencies.

Sec. 1202. *Support Responsibilities.* The Secretary of Labor shall:

(1) Support planning by the Secretary of Defense and the private sector for the provision of human resources to critical defense industries during national security emergencies;

(2) Support planning by the Secretary of Defense and the Director of Selective Service for the institution of conscription in national security emergencies.

PART 13—Department of State

Sec. 1301. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of State shall:

(1) Provide overall foreign policy coordination in the formulation and execution of continuity of government and other national security emergency preparedness activities that affect foreign relations;

(2) Prepare to carry out Department of State responsibilities in the conduct of the foreign relations of the United States during national security emergencies, under the direction of the President and in consultation with the heads of other appropriate Federal departments and agencies, including, but not limited to:

(a) Formulation and implementation of foreign policy and negotiation regarding contingency and post-emergency plans, intergovernmental agreements, and arrangements with United States' allies;

(b) Formulation, negotiation, and execution of policy affecting the relationships of the United States with neutral states;

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(c) Formulation and execution of political strategy toward hostile or enemy states;

(d) Conduct of mutual assistance activities;

(e) Provision of foreign assistance, including continuous supervision and general direction of authorized economic and military assistance programs;

(f) Protection or evacuation of United States citizens and nationals abroad and safeguarding their property abroad, in consultation with the Secretaries of Defense and Health and Human Services;

(g) Protection of international organizations and foreign diplomatic, consular, and other official personnel and property, or other assets, in the United States, in coordination with the Attorney General and the Secretary of the Treasury;

(h) Formulation of policies and provisions for assistance to displaced persons and refugees abroad;

(i) Maintenance of diplomatic and consular representation abroad; and

(j) Reporting of and advising on conditions overseas that bear upon national security emergencies.

Sec. 1302. *Support Responsibilities.* The Secretary of State shall:

(1) Assist appropriate agencies in developing planning assumptions concerning accessibility of foreign sources of supply;

(2) Support the Secretary of the Treasury, in consultation, as appropriate, with the Secretaries of Commerce and Defense, in the formulation and execution of economic measures with respect to other nations;

(3) Support the Secretary of Energy in international liaison activities pertaining to nuclear materials facilities;

(4) Support the Director of the Federal Emergency Management Agency in the coordination and integration of United States policy regarding the formulation and implementation of civil emergency resources and preparedness planning;

(5) Assist the Attorney General of the United States in the formulation of national security emergency plans for the control of persons entering or leaving the United States.

PART 14—Department of Transportation

Sec. 1401. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Transportation shall:

(1) Develop plans to promulgate and manage overall national policies, programs, procedures, and systems to meet essential civil and military transportation needs in national security emergencies;

(2) Be prepared to provide direction to all modes of civil transportation in national security emergencies, including air, surface, water, pipelines, and public storage and warehousing, to the extent such responsibility is vested in the Secretary of Transportation. This direction may include:

(a) Implementation of priorities for all transportation resource requirements for service, equipment, facilities, and systems;

(b) Allocation of transportation resource capacity; and

(c) Emergency management and control of civil transportation resources and systems, including privately owned automobiles, urban mass transit, intermodal transportation systems, the National Railroad Passenger Corporation and the St. Lawrence Seaway Development Corporation;

(3) Develop plans to provide for the smooth transition of the Coast Guard as a service to the Department of the Navy during national security emergencies. These plans shall be compatible with the Department of Defense planning systems, especially in the areas of port security and military readiness;

(4) In coordination with the Secretary of State and the Director of the Federal Emergency Management Agency, represent the United States in transportation-related international (including NATO and allied) civil emergency preparedness planning and related activities;

(5) Coordinate with State and local highway agencies in the management of all Federal, State, city, local, and other highways, roads, streets, bridges, tunnels, and publicly owned highway maintenance equipment to assure efficient and safe use of road space during national security emergencies;

(6) Develop plans and procedures in consultation with appropriate agency officials for maritime and port safety, law enforcement, and security over, upon, and under the high seas and waters subject to the jurisdiction of the United States to assure operational readiness for national security emergency functions;

(7) Develop plans for the emergency operation of U.S. ports and facilities, use of shipping resources (U.S. and others), provision of government war risks insurance, and emergency construction of merchant ships for military and civil use;

(8) Develop plans for emergency management and control of the National Airspace System, including provision of war risk insurance and for transfer of the Federal Aviation Administration, in the event of war, to the Department of Defense;

(9) Coordinate the Interstate Commerce Commission's development of plans and preparedness programs for the reduction of vulnerability, maintenance, restoration, and operation of privately owned railroads, motor carriers, inland waterway transportation systems, and public storage facilities and services in national security emergencies.

Sec. 1402. *Support Responsibility.* The Secretary of Transportation shall coordinate with the Secretary of Energy in the planning and management of transportation resources involved in the bulk movement of energy materials.

PART 15—Department of the Treasury

Sec. 1501. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of the Treasury shall:

(1) Develop plans to maintain stable economic conditions and a market economy during national security emergencies; emphasize measures to minimize inflation and disruptions; and, minimize reliance on direct controls of the monetary, credit, and financial systems. These plans will include provisions for:

(a) Increasing capabilities to minimize economic dislocations by carrying out appropriate fiscal, monetary, and regulatory policies and reducing susceptibility to manipulated economic pressures;

(b) Providing the Federal Government with efficient and equitable financing sources and payment mechanisms;

(c) Providing fiscal authorities with adequate legal authority to meet resource requirements;

(d) Developing, in consultation with the Board of Governors of the Federal Reserve System, and in cooperation with the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration Board, the Farm Credit Administration Board and other financial institutions, plans for the continued or resumed operation and liquidity of banks, savings and loans, credit unions, and farm credit institutions, measures for the reestablishment of evidence of assets or liabilities, and provisions for currency withdrawals and deposit insurance;

(2) Provide for the protection of United States financial resources including currency and coin production and redemption facilities, Federal check disbursement facilities, and precious monetary metals;

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(3) Provide for the preservation of, and facilitate emergency operations of, public and private financial institution systems, and provide for their restoration during or after national security emergencies;

(4) Provide, in coordination with the Secretary of State, for participation in bilateral and multilateral financial arrangements with foreign governments;

(5) Maintain the Federal Government accounting and financial reporting system in national security emergencies;

(6) Develop plans to protect the President, the Vice President, other officers in the order of presidential succession, and other persons designated by the President;

(7) Develop plans for restoration of the economy following an attack; for the development of emergency monetary, credit, and Federal benefit payment programs of those Federal departments and agencies that have responsibilities dependent on the policies or capabilities of the Department of the Treasury; and for the implementation of national policy on sharing war losses;

(8) Develop plans for initiating tax changes, waiving regulations, and, in conjunction with the Secretary of Commerce or other guaranteeing agency, granting or guaranteeing loans for the expansion of industrial capacity, the development of technological processes, or the production or acquisition of essential materials;

(9) Develop plans, in coordination with the heads of other appropriate Federal departments and agencies, to acquire emergency imports, make foreign barter arrangements, or otherwise provide for essential material from foreign sources using, as appropriate, the resources of the Export-Import Bank or resources available to the Bank;

(10) Develop plans for encouraging capital inflow and discouraging the flight of capital from the United States and, in coordination with the Secretary of State, for the seizure and administration of assets of enemy aliens during national security emergencies;

(11) Develop plans, in consultation with the heads of appropriate Federal departments and agencies, to regulate financial and commercial transactions with other countries;

(12) Develop plans, in coordination with the Secretary of Commerce and the Attorney General of the United States, to control the movement of property entering or leaving the United States;

(13) Cooperate and consult with the Chairman of the Securities and Exchange Commission, the Chairman of the Federal Reserve Board, the Chairman of the Commodities Futures Trading Commission in the development of emergency financial control plans and regulations for trading of stocks and commodities, and in the development of plans for the maintenance and restoration of stable and orderly markets;

(14) Develop plans, in coordination with the Secretary of State, for the formulation and execution of economic measures with respect to other nations in national security emergencies.

Sec. 1502. *Support Responsibilities.* The Secretary of the Treasury shall:

(1) Cooperate with the Attorney General of the United States on law enforcement activities, including the control of people entering and leaving the United States;

(2) Support the Secretary of Labor in developing plans and procedures for wage, salary, and benefit costs stabilization;

(3) Support the Secretary of State in plans for the protection of international organizations and foreign diplomatic, consular, and other official personnel and property or other assets in the United States.

PART 16—Environmental Protection Agency

Sec. 1601. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Administrator of the Environmental Protection Agency shall:

(1) Develop Federal plans and foster development of State and local plans designed to prevent or minimize the ecological impact of hazardous agents (biological, chemical, or radiological) introduced into the environment in national security emergencies;

(2) Develop, for national security emergencies, guidance on acceptable emergency levels of nuclear radiation, assist in determining acceptable emergency levels of biological agents, and help to provide detection and identification of chemical agents;

(3) Develop, in coordination with the Secretary of Defense, plans to assure the provision of potable water supplies to meet community needs under national security emergency conditions, including claimancy for materials and equipment for public water systems.

Sec. 1602. *Support Responsibilities.* The Administrator of the Environmental Protection Agency shall:

(1) Assist the heads of other Federal agencies that are responsible for developing plans for the detection, reporting, assessment, protection against, and reduction of effects of hazardous agents introduced into the environment;

(2) Advise the heads of Federal departments and agencies regarding procedures for assuring compliance with environmental restrictions and for expeditious review of requests for essential waivers.

PART 17—Federal Emergency Management Agency

Sec. 1701. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the Federal Emergency Management Agency shall:

(1) Coordinate and support the initiation, development, and implementation of national security emergency preparedness programs and plans among Federal departments and agencies;

(2) Coordinate the development and implementation of plans for the operation and continuity of essential domestic emergency functions of the Federal Government during national security emergencies;

(3) Coordinate the development of plans, in cooperation with the Secretary of Defense, for mutual civil-military support during national security emergencies;

(4) Guide and assist State and local governments and private sector organizations in achieving preparedness for national security emergencies, including development of plans and procedures for assuring continuity of government, and support planning for prompt and coordinated Federal assistance to States and localities in responding to national security emergencies;

(5) Provide the President a periodic assessment of Federal, State, and local capabilities to respond to national security emergencies;

(6) Coordinate the implementation of policies and programs for efficient mobilization of Federal, State, local, and private sector resources in response to national security emergencies;

(7) Develop and coordinate with all appropriate agencies civil defense programs to enhance Federal, State, local, and private sector capabilities for national security emergency crisis management, population protection, and recovery in the event of an attack on the United States;

(8) Develop and support public information, education and training programs to assist Federal, State, and local government and private sector entities in planning for and implementing national security emergency preparedness programs;

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(9) Coordinate among the heads of Federal, State, and local agencies the planning, conduct, and evaluation of national security emergency exercises;

(10) With the assistance of the heads of other appropriate Federal departments and agencies, develop and maintain capabilities to assess actual attack damage and residual recovery capabilities as well as capabilities to estimate the effects of potential attacks on the Nation;

(11) Provide guidance to the heads of Federal departments and agencies on the appropriate use of defense production authorities, including resource claimancy, in order to improve the capability of industry and infrastructure systems to meet national security emergency needs;

(12) Assist the Secretary of State in coordinating the formulation and implementation of United States policy for NATO and other allied civil emergency planning, including the provision of:

(a) advice and assistance to the departments and agencies in alliance civil emergency planning matters;

(b) support to the United States Mission to NATO in the conduct of day-to-day civil emergency planning activities; and

(c) support facilities for NATO Civil Wartime Agencies in cooperation with the Departments of Agriculture, Commerce, Energy, State, and Transportation.

Sec. 1702. *Support Responsibilities.* The Director of the Federal Emergency Management Agency shall:

(1) Support the heads of other Federal departments and agencies in preparing plans and programs to discharge their national security emergency preparedness responsibilities, including, but not limited to, such programs as mobilization preparedness, continuity of government planning, and continuance of industry and infrastructure functions essential to national security;

(2) Support the Secretary of Energy, the Secretary of Defense, and the Members of the Nuclear Regulatory Commission in developing plans and capabilities for identifying, analyzing, mitigating, and responding to emergencies related to nuclear weapons, materials, and devices, including mobile and fixed nuclear facilities, by providing, inter alia, off-site coordination;

(3) Support the Administrator of General Services in efforts to promote a government-wide program with respect to Federal buildings and installations to minimize the effects of attack and establish shelter management organizations.

PART 18—General Services Administration

Sec. 1801. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Administrator of General Services shall:

(1) Develop national security emergency plans and procedures for the operation, maintenance, and protection of federally owned and occupied buildings managed by the General Services Administration, and for the construction, alteration, and repair of such buildings;

(2) Develop national security emergency operating procedures for the control, acquisition, leasing, assignment, and priority of occupancy of real property by the Federal Government, and by State and local governments acting as agents of the Federal Government, except for the military facilities and facilities with special nuclear materials within the jurisdiction of the Departments of Defense and Energy;

(3) Develop national security emergency operational plans and procedures for the use of public utility services (other than telecommunications services) by Federal departments and agencies, except for Department of Energy-operated facilities;

(4) Develop plans and operating procedures of government-wide supply programs to meet the requirements of Federal departments and agencies during national security emergencies;

(5) Develop plans and operating procedures for the use, in national security emergencies, of excess and surplus real and personal property by Federal, State, and local governmental entities;

(6) Develop plans, in coordination with the Director of the Federal Emergency Management Agency, with respect to Federal buildings and installations, to minimize the effects of attack and establish shelter management organizations.

Sec. 1802. *Support Responsibility.* The Administrator of General Services shall develop plans to assist Federal departments and agencies in operation and maintenance of essential automated information processing facilities during national security emergencies.

PART 19—National Aeronautics and Space Administration

Sec. 1901. *Lead Responsibility.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Administrator of the National Aeronautics and Space Administration shall coordinate with the Secretary of Defense to prepare for the use, maintenance, and development of technologically advanced aerospace and aeronautical-related systems, equipment, and methodologies applicable to national security emergencies.

PART 20—National Archives and Records Administration

Sec. 2001. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Archivist of the United States shall:

(1) Develop procedures for publication during national security emergencies of the **Federal Register** for as broad public dissemination as is practicable of presidential proclamations and Executive orders, Federal administrative regulations, Federal emergency notices and actions, and Acts of Congress;

(2) Develop emergency procedures for providing instructions and advice on the handling and preservation of records critical to the operation of the Federal Government in national security emergencies.

PART 21—Nuclear Regulatory Commission

Sec. 2101. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Members of the Nuclear Regulatory Commission shall:

(1) Promote the development and maintenance of national security emergency preparedness programs through security and safeguards programs by licensed facilities and activities;

(2) Develop plans to suspend any licenses granted by the Commission; to order the operations of any facility licensed under Section 103 or 104; Atomic Energy Act of 1954, as amended (42 U.S.C. 2133 or 2134); to order the entry into any plant or facility in order to recapture special nuclear material as determined under Subsection (3) below; and operate such facilities;

(3) Recapture or authorize recapture of special nuclear materials from licensees where necessary to assure the use, preservation, or safeguarding of such materials for the common defense and security, as determined by the Commission or as requested by the Secretary of Energy.

Sec. 2102. *Support Responsibilities.* The Members of the Nuclear Regulatory Commission shall:

(1) Assist the Secretary of Energy in assessing damage to Commission-licensed facilities, identifying useable facilities, and estimating the time and actions necessary to restart inoperative facilities;

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(2) Provide advice and technical assistance to Federal, State, and local officials and private sector organizations regarding radiation hazards and protective actions in national security emergencies.

PART 22—Office of Personnel Management

Sec. 2201. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the Office of Personnel Management shall:

(1) Prepare plans to administer the Federal civilian personnel system in national security emergencies, including plans and procedures for the rapid mobilization and reduction of an emergency Federal workforce;

(2) Develop national security emergency work force policies for Federal civilian personnel;

(3) Develop plans to accommodate the surge of Federal personnel security background and pre-employment investigations during national security emergencies.

Sec. 2202. *Support Responsibilities.* The Director of the Office of Personnel Management shall:

(1) Assist the heads of other Federal departments and agencies with personnel management and staffing in national security emergencies, including facilitating transfers between agencies of employees with critical skills;

(2) In consultation with the Secretary of Defense and the Director of Selective Service, develop plans and procedures for a system to control any conscription of Federal civilian employees during national security emergencies.

PART 23—Selective Service System

Sec. 2301. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of Selective Service shall:

(1) Develop plans to provide by induction, as authorized by law, personnel that would be required by the armed forces during national security emergencies;

(2) Develop plans for implementing an alternative service program.

PART 24—Tennessee Valley Authority

Sec. 2401. *Lead Responsibility.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Board of Directors of the Tennessee Valley Authority shall develop plans and maintain river control operations for the prevention or control of floods affecting the Tennessee River System during national security emergencies.

Sec. 2402. *Support Responsibilities.* The Board of Directors of the Tennessee Valley Authority shall:

(1) Assist the Secretary of Energy in the development of plans for the integration of the Tennessee Valley Authority power system into nationwide national security emergency programs;

(2) Assist the Secretaries of Defense, Interior, and Transportation and the Chairman of the Interstate Commerce Commission in the development of plans for operation and maintenance of inland waterway transportation in the Tennessee River System during national security emergencies.

PART 25—United States Information Agency

Sec. 2501. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the United States Information Agency shall:

(1) Plan for the implementation of information programs to promote an understanding abroad of the status of national security emergencies within the United States;

(2) In coordination with the Secretary of State's exercise of telecommunications functions affecting United States diplomatic missions and consular offices overseas, maintain the capability to provide television and simultaneous direct radio broadcasting in major languages to all areas of the world, and the capability to provide wireless file to all United States embassies during national security emergencies.

Sec. 2502. *Support Responsibility.* The Director of the United States Information Agency shall assist the heads of other Federal departments and agencies in planning for the use of media resources and foreign public information programs during national security emergencies.

PART 26—United States Postal Service

Sec. 2601. *Lead Responsibility.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Postmaster General shall prepare plans and programs to provide essential postal services during national security emergencies.

Sec. 2602. *Support Responsibilities.* The Postmaster General shall:

(1) Develop plans to assist the Attorney General of the United States in the registration of nationals of enemy countries residing in the Untied States;

(2) Develop plans to assist the Secretary of Health and Human Services in registering displaced persons and families;

(3) Develop plans to assist the heads of other Federal departments and agencies in locating and leasing privately owned property for Federal use during national security emergencies.

PART 27—Veterans' Administration

Sec. 2701. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Administrator of Veterans' Affairs shall:

(1) Develop plans for provision of emergency health care services to veteran beneficiaries in Veterans' Administration medical facilities, to active duty military personnel and, as resources permit, to civilians in communities affected by national security emergencies;

(2) Develop plans for mortuary services for eligible veterans, and advise on methods for interment of the dead during national security emergencies.

Sec. 2702. *Support Responsibilities.* The Administrator of Veterans' Affairs shall:

(1) Assist the Secretary of Health and Human Services in promoting the development of State and local plans for the provision of medical services in national security emergencies, and develop appropriate plans to support such State and local plans;

(2) Assist the Secretary of Health and Human Services in developing national plans to mobilize the health care industry and medical resources during national security emergencies;

(3) Assist the Secretary of Health and Human Services in developing national plans to set priorities and allocate medical resources among civilian and military claimants.

PART 28—Office of Management and Budget

Sec. 2801. In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the Office of Management and Budget shall prepare plans and programs to maintain its functions during national security emergencies. In connection with these functions, the Director of the Office of Management and Budget shall:

(1) Develop plans to ensure the preparation, clearance, and coordination of proposed Executive orders and proclamations;

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(2) Prepare plans to ensure the preparation, supervision, and control of the budget and the formulation of the fiscal program of the Government;

(3) Develop plans to coordinate and communicate Executive branch views to the Congress regarding legislation and testimony by Executive branch officials;

(4) Develop plans for keeping the President informed of the activities of government agencies, continuing the Office of Management and Budget's management functions, and maintaining presidential supervision and direction with respect to legislation and regulations in national security emergencies.

PART 29—General

Sec. 2901. Executive Order Nos. 10421 and 11490, as amended, are hereby revoked. This Order shall be effective immediately.

Ronald Reagan

THE WHITE HOUSE,
November 18, 1988.

[FR Doc. 88-27194
Filed 11-21-88; 1:08 pm]
Billing code 6718-21-M

Presidential Documents

Executive Order 12657 of November 18, 1988

Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*), the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*), the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), Reorganization Plan No. 1 of 1958, Reorganization Plan No. 1 of 1973, and Section 301 of Title 3 of the United States Code, and in order to ensure that plans and procedures are in place to respond to radiological emergencies at commercial nuclear power plants in operation or under construction, it is hereby ordered as follows:

Section 1. *Scope.* (a) This Order applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant radiological emergency preparedness plans that are sufficient to satisfy Nuclear Regulatory Commission ("NRC") licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans.

(b) In order to request the assistance of the Federal Emergency Management Agency ("FEMA") provided for in this Order, an affected nuclear power plant applicant or licensee ("licensee") shall certify in writing to FEMA that the situation described in Subsection (a) exists.

Sec. 2. *Generally Applicable Principles and Directives.* (a) Subject to the principles articulated in this Section, the Director of FEMA is hereby authorized and directed to take the actions specified in Sections 3 through 6 of this Order.

(b) In carrying out any of its responsibilities under this Order, FEMA:

(1) shall work actively with the licensee, and, before relying upon its resources or those of any other Department or agency within the Executive branch, shall make maximum feasible use of the licensee's resources;

(2) shall take care not to supplant State and local resources. FEMA shall substitute its own resources for those of the State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

(3) is authorized, to the extent permitted by law, to enter into interagency Memoranda of Understanding providing for utilization of the resources of other Executive branch Departments and agencies and for delegation to other Executive branch Departments and agencies of any of the functions and duties assigned to FEMA under this Order; however, any such Memorandum of Understanding shall be subject to approval by the Director of the Office of Management and Budget ("OMB") and published in final form in the **Federal Register**; and

(4) shall assume for purposes of Sections 3 and 4 of this Order that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in

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accordance with their duties to protect the public from harm and would act generally in conformity with the licensee's radiological emergency preparedness plan.

(c) The Director of OMB shall resolve any issue concerning the obligation of Federal funds arising from the implementation of this Order. In resolving issues under this Subsection, the Director of OMB shall ensure:

(1) that FEMA has utilized to the maximum extent possible the resources of the licensee and State and local governments before it relies upon its appropriated and lawfully available resources or those of any Department or agency in the Executive branch;

(2) that FEMA shall use its existing resources to coordinate and manage, rather than duplicate, other available resources;

(3) that implementation of this Order is accomplished with an economy of resources; and

(4) that full reimbursement to the Federal Government is provided, to the extent permitted by law.

Sec. 3. *FEMA Participation in Emergency Preparedness Planning.* (a) FEMA assistance in emergency preparedness planning shall include advice, technical assistance, and arrangements for facilities and resources as needed to satisfy the emergency planning requirements under the Atomic Energy Act of 1954, as amended, and any other Federal legislation or regulations pertaining to issuance or retention of a construction permit or an operating license for a nuclear power plant.

(b) FEMA shall make all necessary plans and arrangements to ensure that the Federal Government is prepared to assume any and all functions and undertakings necessary to provide adequate protection to the public in cases within the scope of this Order. In making such plans and arrangements,

(1) FEMA shall focus planning of Federal response activities to ensure that:

(A) adequate resources and arrangements will exist, as of the time when an initial response is needed, given the absence or inadequacy of advance State and local commitments; and

(B) attention has been given to coordinating (including turning over) response functions when State and local governments do exercise their authority, with specific attention to the areas where prior State and local participation has been insufficient or absent;

(2) FEMA's planning for Federal participation in responding to a radiological emergency within the scope of this Order shall include, but not be limited to, arrangements for using existing Federal resources to provide prompt notification of the emergency to the general public; to assist in any necessary evacuation; to provide reception centers or shelters and related facilities and services for evacuees; to provide emergency medical services at Federal hospitals, including those operated by the military services and by the Veterans' Administration; and to ensure the creation and maintenance of channels of communication from commercial nuclear power plant licensees or applicants to State and local governments and to surrounding members of the public.

Sec. 4. *Evaluation of Plans.* (a) FEMA shall consider and evaluate all plans developed under the authority of this Order as though drafted and submitted by a State or local government.

(b) FEMA shall take all actions necessary to carry out the evaluation referred to in the preceding Subsection and to permit the NRC to conduct its evaluation of radiological emergency preparedness plans including, but not limited to, planning, participating in, and evaluating exercises, drills, and tests, on a timely basis, as necessary to satisfy NRC requirements for demonstrations of off-site radiological emergency preparedness.

Sec. 5. *Response to a Radiological Emergency.* (a) In the event of an actual radiological emergency or disaster, FEMA shall take all steps necessary to ensure the implementation of the plans developed under this Order and shall coordinate the actions of other Federal agencies to achieve the maximum effectiveness of Federal efforts in responding to the emergency.

(b) FEMA shall coordinate Federal response activities to ensure that adequate resources are directed, when an initial response is needed, to activities hindered by the absence or inadequacy of advance State and local commitments. FEMA shall also coordinate with State and local governmental authorities and turn over response functions as appropriate when State and local governments do exercise their authority.

(c) FEMA shall assume any necessary command-and-control function, or delegate such function to another Federal agency, in the event that no competent State and local authority is available to perform such function.

(d) In any instance in which Federal personnel may be called upon to fill a command-and-control function during a radiological emergency, in addition to any other powers it may have, FEMA or its designee is authorized to accept volunteer assistance from utility employees and other nongovernmental personnel for any purpose necessary to implement the emergency response plan and facilitate off-site emergency response.

Sec. 6. *Implementation of Order.* (a) FEMA shall issue interim and final directives and procedures implementing this Order as expeditiously as is feasible and in any event shall issue interim directives and procedures not more than 90 days following the effective date of this Order and shall issue final directives and procedures not more than 180 days following the effective date of this Order.

(b) Immediately upon the effective date of this Order, FEMA shall review, and initiate necessary revisions of, all FEMA regulations, directives, and guidance to conform them to the terms and policies of this Order.

(c) Immediately upon the effective date of this Order, FEMA shall review, and initiate necessary renegotiations of, all interagency agreements to which FEMA is a party, so as to conform them to the terms and policies of this Order. This directive shall include, but not be limited to, the Federal Radiological Emergency Response Plan (50 *Fed. Reg.* 46542 (November 8, 1985)).

(d) To the extent permitted by law, FEMA is directed to obtain full reimbursement, either jointly or severally, for services performed by FEMA or other Federal agencies pursuant to this Order from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

Sec. 7. *Amendments.* This Executive Order amends Executive Order Nos. 11490 (34 *Fed. Reg.* 17567 (October 28, 1969)), 12148 (44 *Fed. Reg.* 43239 (July 20, 1979)), and 12241 (45 *Fed. Reg.* 64879 (September 29, 1980)), and the same are hereby superseded to the extent that they are inconsistent with this Order.

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Sec. 8. *Judicial Review.* This Order is intended only to improve the internal management of the Executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Sec. 9. *Effective Date.* This Order shall be effective November 18, 1988.

Ronald Reagan

THE WHITE HOUSE,
November 18, 1988.

[FR Doc. 88-27195
Filed 11-21-88; 1:09 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12658 of November 18, 1988

President's Commission on Catastrophic Nuclear Accidents

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Public Law 100-408, and in order to establish a President's Commission on Catastrophic Nuclear Accidents, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 1), it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Commission on Catastrophic Nuclear Accidents ("Commission"). The Commission shall be composed of nine members who shall be appointed by the President. The members shall represent a broad range of views and interests and shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party. Any vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(b) The President shall designate one of the members of the Commission as Chairperson to serve at the pleasure of the President.

Sec. 2. *Functions.* (a) The Commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210), as amended, subsection (e)(1), and shall submit to the Congress, after a review by the President, a final report of the study setting forth:

(1) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(2) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payments of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(3) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(b) The Commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice, or assistance upon request by the Chairperson of the Commission.

Sec. 3. *Administration.* (a) The Chairperson of the Commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act and title 5, United States Code.

(b) To the extent permitted by law and requested by the Chairperson of the Commission, the Administrator of General Services shall provide the Commission with necessary administrative services, facilities, and support on a reimbursable basis.

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(c) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall provide, to the extent permitted by law and subject to the availability of funds, the Commission with such facilities, support, funds, and services, including staff, as may be necessary for the effective performance of the functions of the Commission.

(d) Each member of the Commission may receive compensation at the maximum rate prescribed by the Federal Advisory Committee Act for each day such member is engaged in the work of the Commission. Each member may also receive travel expenses, including per diem in lieu of subsistence, under sections 5702 and 5703 of title 5, United States Code.

(e) The functions of the President under the Federal Advisory Committee Act that are applicable to the Commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

Sec. 4. *General.* (a) The final report required in section 2 shall be submitted to the Congress not later than August 20, 1990.

(b) The Commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in section 2 is submitted.

Ronald Reagan

THE WHITE HOUSE,
November 18, 1988.

[FR Doc. 88-27198
Filed 11-21-88; 1:10 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5912 of November 19, 1988

National Family Week, 1988

By the President of the United States of America

A Proclamation

The family, the birth- and dwelling-place of natural and self-sacrificing love, is the first of all social contracts. Rooted in the designs of the Creator and reinforced through the wise devices of the law, the family is the sum of a nation's heritage and the heart of a nation's strength. It is, moreover, the original mirror of mankind's hope for a world founded on bonds of tradition and affection, where the individual is cherished for his unalienable worth, the past revered for its accumulation of knowledge and insight, and the future honored for its power to restore and renew.

With all the diversity of its population, the United States has drawn unmatched strength from the confluence of peoples who value and celebrate the importance of family life. During this particular week, as families gather around the table of thanksgiving, it is especially appropriate that we pause as a Nation to acknowledge the blessings of love and fealty that families confer on their members and, through them, on the larger community.

It is also appropriate that we use this occasion to reflect on the truth that even though the family has proven to be the most durable of all institutions, its vitality is not guaranteed under all conditions. In the past few decades, as a host of new pressures have placed fresh strains on the health of family life in our society, a process of restoration has begun. Policymakers at all levels of government, and leaders in religion and the social sciences, are taking a closer look at the cultural and legal forces undermining the well-being of families. Recognition is at last being given to the fact that no strategy for reducing the tremendous costs of remedial efforts to combat crime and poverty will succeed if we fail to focus first on strengthening the family.

In the years to come, this process of rebuilding must continue. As it does so, we can all take heart in knowing that, to paraphrase a famous epigram, reports of the death of the family have been greatly exaggerated. For as long as the human heart wills to keep for itself a special place of understanding, welcome, and healing—in short, a hearth and a home—the family will endure and prosper.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 20 through November 26, 1988, as National Family Week, and I call upon the people of the United States to observe this week with appropriate programs, gatherings, ceremonies, and other activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-27199
Filed 11-21-88; 1:20 p.m.]
Billing code 3195-01-M

Presidential Documents

Proclamation 5913 of November 19, 1988

National Home Care Week, 1988

By the President of the United States of America

A Proclamation

Home care enhances life for people of all ages who are ill or disabled. The home should be the setting of first choice for care and treatment, because it is conducive to healing; in the home, family members can supply caring and love. The combination of professional services with such situations can add to the effectiveness of home health care. National Home Care Week, 1988, reminds us of the good that results when families and home care providers put into practice the respect we all owe to everyone in need of such care.

In recent years, home care programs have grown in number and in importance in health care delivery. We should all be grateful that these programs enable millions of Americans to receive fine care at home. The employees and volunteers of home care agencies, private and public alike, need our cooperation and attention as they work with family members across our land to offer the excellent care patients at home require and deserve.

The Congress, by Public Law 100-600, has designated the period of November 27 through December 3, 1988, as "National Home Care Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period of November 27 through December 3, 1988, as National Home Care Week, and I call upon government officials, interested organizations and associations, and all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-27200
Filed 11-21-88; 1:21 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 53, No. 226
Wednesday, November 23, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

Interest on Deposits

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") is amending Part 329 of its regulations, 12 CFR Part 329, entitled "Interest on Deposits." Congress has recently given nonprofit political organizations the right to hold NOW accounts. The FDIC is amending Part 329 to reflect this change. The FDIC is also removing an obsolete footnote from Part 329. Part 329 applies to noninsured institutions in States that meet certain criteria. The footnote identifies Massachusetts as a State that meets the criteria, but Massachusetts no longer does so. Except to the extent necessary to conform Part 329 to statutory law, neither amendment changes the meaning of Part 329 in any way.

EFFECTIVE DATE: The amendments are effective on November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Jules Bernard, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC, 20429, (202) 898–3731.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The amendments do not create any new recordkeeping or reporting requirements, nor do they modify any existing reporting or recordkeeping requirements. A cost/benefit analysis (including a small-bank impact statement) is not required.

Discussion

Only certain depositors may hold so-called "NOW accounts." NOW accounts are savings accounts that afford unlimited check-writing privileges. Federal law specifies that natural persons, certain nonprofit organizations, and public units may hold NOW accounts. *See* 12 U.S.C. 1832. Footnote 2 of § 329.1(b)(3) quotes this statute.

Congress has recently amended this law. The amendment gives NOW-account privileges to a new kind of depositor: nonprofit organizations operated for political purposes. *See* Pub. L. 100–86, 109, 101 Stat. 552, 579 (1987). The FDIC is modifying the text of the quotation found in Footnote 2 to reflect this change.

Part 329 also says that it applies to certain noninsured banks—namely, to those that are located in a State where deposits held in uninsured banks and thrifts exceed 20% of all deposits (insured plus noninsured) held in all banks and thrifts in the State. *See* 12 U.S.C. 1828(g)(1).

Footnote 1 in § 329.1(a)(3) identifies Massachusetts as the only State that fulfills this test. Massachusetts does not do so any more, however. Accordingly, the FDIC is deleting Footnote 1, and is redesignating Footnote 2 as Footnote 1.

Finally, the FDIC is simplifying the citations of authority for Party 329, as provided in the Federal Register's Document Drafting Handbook.

Other Matters

Issuance as a Final Rule

The amendments conform Part 329 to the changes in 12 U.S.C. 1832. In other respects they express the FDIC's existing interpretations of Part 329. Inasmuch as the amendments do not affect the substance of Part 329, public comment is not necessary and good cause exists for making the amendments effective as final upon publication. *See* 12 U.S.C. 553(b).

Regulatory Flexibility Act Statement

The amendments will not have a significant economic impact on a substantial number of small entities. The provisions of the Regulatory Flexibility Act relating to an intitial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable.

List of Subjects in 12 CFR Part 329

Advertising, Banks, Banking, Interest rates.

The Board of Directors of the Federal Deposit Insurance Corporation hereby amends Part 329 of title 12 of the Code of Federal Regulations as follows:

PART 329—INTEREST ON DEPOSITS

1. The authority citation for Part 329 is revised to read as follows:

Authority: 12 U.S.C. 1819, 1828(g) and 1832(a).

§ 329.1 [Amended]

2. Paragraph (a)(3) of § 329.1 is amended by removing the footnote designation "1" at the end thereof and by removing footnote 1.

§ 329.1 [Amended]

3. Paragraph (b)(3) of § 329.1 is amended by redesignating footnote "2" at the end thereof as footnote "1" and reusing it to read as follows:

[1] Paragraph (1) of 12 U.S.C. 1832(a) authorizes banks to let certain depositors make withdrawals from interest-bearing deposits by negotiable or transferable instruments for the purpose of making transfers to third parties—*i.e.*, to hold deposits commonly called "NOW accounts."

Paragraph (2) of 12 U.S.C. 1832(a) provides: "Paragraph (1) shall apply only with respect to deposits or accounts which consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religous, philanthropic, charitable, educational, political, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof."

By order of the Board of Directors this 16th day of November, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 88–27076 Filed 11–22–88; 8:45 am]
BILLING CODE 6714–01–M

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FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket Nos. R-0640 and R-0644]

Regulation CC—Availability of Funds and Collection of Checks; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation; correction.

SUMMARY: The Board is correcting the final official Board interpretation concerning its Regulation CC, Availability of Funds and Collection of Checks, for the laws of the state of New Mexico.

FOR FURTHER INFORMATION CONTACT: Joseph R. Alexander, Senior Attorney, Legal Division (202–452–2489), or, for the hearing impaired only, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (202–452–3254).

SUPPLEMENTARY INFORMATION: On October 25, 1988, the Board adopted final interpretations under its Regulation CC concerning whether the laws of several state governing funds availability superseded or were preempted by the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) and the Board's regulation implementing that Act (Regulation CC—12 CFR Part 229). The interpretation appeared in the **Federal Register** on November 2, 1988 (53 FR 44325). An error appeared in the preemption determination concerning New Mexico law, and the Board is correcting that error with this notice.

As this is merely a technical correction that does not change the substance of Regulation CC, publication for comment is not required by 5 U.S.C. 553.

The following corrections are made to Appendix F to Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229) published in the **Federal Register** on November 2, 1988 (53 FR 44325):

1. On page 44331, third column, sixth line, change "fourth" to "fifth".

2. On page 44331, third column, 11th line, change "sixth" to "seventh".

By order of the Secretary of the Board, acting pursuant to delegated authority (12 CFR 265(a)(11)), November 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–27033 Filed 11–22–88; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 802

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of formal interpretation.

SUMMARY: On November 14, 1988, the Federal Trade Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, issued Formal Interpretation Number 14 pursuant to § 803.30 of the Commission's Premerger Notification Rules, 16 CFR 803.30. The formal interpretation discusses the effect of the CAB Sunset Act, 49 U.S.C. 1551(a)(7), on § 802.6(b) of the Commission's premerger notification rules, 16 CFR 802.6(b). Its primary purpose is to state that any airline merger or acquisition that is to be consummated on or after January 1, 1989, must be reviewed under the Hart-Scott-Rodino premerger notification program, regardless of whether the parties to it have sought or even obtained approval from the Department of Transportation before that time.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Chief, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION: The text of Formal Interpretation Number 14 is set out below:

Interpretation Number 14

Formal Interpretation Pursuant to § 803.30, of the Premerger Notification Rules, 16 CFR 803.30, Concerning § 802.6(b) of the Rules, 16 CFR 802.6(b), As It May Relate To Transactions Between Air Carriers And Others Consummated On Or After January 1, 1989.

Mergers and similar transactions between airlines have for decades required federal regulatory approval prior to consummation. Until 1985, that authority was granted to the Civil Aeronautics Board, and since then, to the Department of Transportation (DOT). The Hart-Scott-Rodino premerger notification rules, 16 CFR 801.1 *et seq.*, have taken account of the prior approval requirement and have attempted to eliminate duplicative notification and review by providing in § 802.6(b)(1) that:

[A]ny transaction which requires approval by [DOT] prior to consummation, pursuant to section 408 of the Federal Aviation Act, 49 U.S.C. 1378, shall be exempt from the requirements of the act if copies of all information and documentary material filed with [DOT] are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General.

As of January 1, 1989, under the provisions of the CAB Sunset Act, 49 U.S.C. 1551(a)(7), DOT will no longer have authority over airline mergers. The Federal Trade Commission is issuing this formal interpretation in anticipation of the following question that may arise concerning the transition: Is a transaction for which DOT approval has been sought or obtained (and for which papers filed with DOT have been contemporaneously filed with the antitrust agencies) but which has not been consummated prior to January 1, 1989, exempt from premerger notification requirements pursuant to § 802.6(b)(1), or is a Hart-Scott-Rodino premerger notification required?

The Commission construes § 802.6(b)(1) as *not* exempting such a transaction; therefore, Hart-Scott-Rodino premerger notification would be required, assuming that the size thresholds are met and no other exemption applies. A transaction that takes place after January 1, 1989, is not "[a] transaction which requires approval by [DOT] prior to consummation" and thus does not come within the § 802.6(b)(1) exemption.

This interpretation is consistent with the most basic policy behind the Hart-Scott-Rodino Antitrust Improvements Act and DOT statutory authority over airline mergers. That policy is to assure that a merger or similar transaction will be subjected to a premerger competitive review. This interpretation eliminates the possibility that a transaction would avoid all premerger review if the parties sought, but did not receive, final approval by DOT of a merger or acquisition.

This interpretation limits the exemption provided by § 802.6 to transactions that are both approved by DOT and consummated by the parties prior to January 1, 1989. Without these limitations, approval of a transaction by DOT might enable the parties to complete a transaction without further premerger competitive review at a much later date when the likely competitive effects of the transaction could be significantly different. This interpretation thus meets the premerger notification rules' concern about the amount of change that can take place in the marketplace between the review and the completion of the transaction. (That concern is addressed by § 803.7 of the premerger notification rules, which requires that the parties complete the acquisition for which notification was filed within a limited time following the Hart-Scott-Rodino review or seek another such review before they complete it.)

The Hart-Scott-Rodino premerger notification obligation that may arise for transactions for which DOT approval has been sought need not significantly delay such transactions. Parties may file Hart-Scott-Rodino premerger notification and seek early termination of their waiting period. If the antitrust agencies have, in the course of a DOT section 408 proceeding, actually completed their antitrust analysis of the proposed transaction, early termination could be granted promptly.

In addition, parties need not wait until January, 1989, to submit Hart-Scott-Rodino premerger notifications for proposed transactions. In the unique circumstances of this sunset law, the Commission and the Antitrust Division of the Department of Justice will review a premerger notification notwithstanding that the transaction would be exempt if consummated with DOT approval prior to January 1989. In other words, the parties may both claim the exemption provided for in § 803.6 and separately file for antitrust premerger review of the same transaction. If both procedures are invoked, the parties would be free to consummate a transaction before January 1989 with DOT approval even if the Hart-Scott-Rodino premerger notification waiting period had not terminated.

Section 802.6(b)(2) provides that acquisition of:

(2) The following * * * assets will not be exempt under § 802.6(b)(1):

(i) If the transaction is an acquisition of assets, the assets which are engaged in a business or businesses other than aeronautics or air transportation * * *;

(ii) If the transaction is an acquisition of voting securities * * *, the business or businesses of the acquired issuer (and all entities which it controls) which are not engaged in aeronautics or air transportation * * *.

Because there will no longer be any transactions that satisfy the criteria of § 802.6(b)(1), § 802.6(b)(2) will no longer be invoked with respect to transactions that were previously covered by section 408 of the FAA. However, through informal interpretations pursuant to § 803.30, the Commission's Premerger Notification Office has used the method reflected in § 802.6(b)(2) to define the extent to which "assets held as a result of a transaction requiring approval" by other federal regulatory agencies are exempt from premerger notification requirements. The Premerger Notification Office will continue to apply this method to such other transactions consummated after December 31, 1988.

The Assistant Attorney General in charge of the Antitrust Division of the Department of Justice concurs in this formal interpretation.

By direction of the Commission.

Date: November 14, 1988.

Donald S. Clark,

Secretary.

[FR Doc. 88–27152 Filed 11–22–88; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket Nos. RM88–21–001 and RM88–5–002]

Amendment to Regulations Governing Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less

November 16, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Denial of Rehearing.

SUMMARY: On October 17, 1988, California Save Our Streams Council (CSOS) filed a request for rehearing of Commission Order No. 503.[1] In that order, the Commission granted in part, denied in part, and dismissed in part a petition for rulemaking filed by CSOS. CSOS filed the petition for rulemaking on December 16, 1985, and renewed its request on January 12, 1988, as a petition for rehearing of the alleged "de facto denial" of its petition for rulemaking.

Since the request for rehearing does not raise any new issues of law, fact or policy that were not previously considered by the Commission in Order No. 503, the request for rehearing is denied by operation of law as of November 16, 1988.

EFFECTIVE DATE: November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (202) 357–8530

[1] Amendment to Regulations Governing Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less, Order No. 503, 53 FR 36,562 (Sept. 21, 1988) III FERC Stats. & Regs. ¶ 30,830 (Sept. 15, 1988).

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE, Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Notice of Denial of Rehearing

November 16, 1988

On October 17, 1988, California Save Our Streams Council (CSOS) filed a request for rehearing of Commission Order No. 503.[1] At its meeting on November 16, 1988, the Commission agreed to take no action on the rehearing request. The rehearing request raises no questions of law, fact or policy not previously considered by the Commission. Accordingly, the Commission gives notice that, under section 313(a) of the Federal Power Act and Rule 713 of the Commission's Rules of Practice and Procedure, the request for rehearing is denied by operation of law as of November 16, 1988.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27143 Filed 11–22–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 85F–0202]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

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ACTION: Final rule.

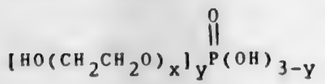
SUMMARY: The Food and Drug Administration (FDA) is correcting an error in the nomenclature and Chemical Abstracts Service Registry Number (CAS Reg. No.) for a food additive listed in 21 CFR 178.2010(b). The correction removes the entry "Tris(triethylene glycol)phosphate (CAS Reg. No. 9056–42–2)" and replaces it with "Phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502–13–2)", which more accurately describes the chemical identity of the additive.

DATES: Effective November 23, 1988; written objections and requests for a hearing by December 23, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1988 (53 FR 16558), FDA published a proposed rule to remove the entry "tris(triethylene glycol)phosphate (CAS Reg. No. 9056–42–2)" from the list of substances in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) and to alphabetically replace this listing with the entry "phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502–13–2)" as a stabilizer in ethylene terephthalate polymers intended for use in contact with food. The agency stated in the proposal that "tris(triethylene glycol)phosphate" is the name of only one of the numerous compounds represented by the correct structural formula for subject additive:



where y=3 and x=3, on an average.

The agency received no comments on its proposal. The agency is, therefore, adopting the proposal as a final rule without any changes.

The agency has previously considered the environmental effects of this rule, as announced in the proposed rule of May 10, 1988. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact upon the human environment and that an environmental impact statement is not required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

Any person who will be adversely affected by this regulation may at any time on or before December 23, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in paragraph (b) by removing the entry for "Tris(triethylene glycol)phosphate (CAS Reg. No. 9056–42–2)" and alphabetically adding a new entry in the table to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* *	* * *
Phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502–13–2)	At levels not to exceed 0.1 percent by weight of polyethylene phthalate polymers complying with § 177.1630 of this chapter, such that the polymers contact foods only of Type VI–B described in Table 1 of § 176.170(c) of this chapter.
* *	* * *

Dated: November 14, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–27052 Filed 11–22–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule revises the Cuban Assets Control Regulations, 31 CFR Part 515 ("the Regulations"). This rule is designed to reduce the flow of hard currency to Cuba through transactions with persons subject to the jurisdiction of the United States. This rule also revises the regulations pertaining to telecommunications and foreign subsidiary transactions with Cuba to reflect current policy in these areas, and clarifies the rule with respect to use of charge cards, including debit and credit cards, in connection with transactions related to travel within Cuba.

EFFECTIVE DATE: December 23, 1988.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Acting Chief Counsel (telephone: 202/376–0412) or Steven I. Pinter, Chief of Licensing (telephone: 202/376–0236), Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This rule is designed to reduce the flow of hard currency to Cuba through transactions with persons subject to the jurisdiction of the United States. It: (1) Requires that persons engaged in service transactions related to travel to Cuba obtain specific licenses for such transactions and provides that such licenses will be available only for persons who do not participate in discriminatory practices of the Cuban government against residents and citizens of the United States; and (2) requires that any person wishing to provide services related to the collection or forwarding of remittances to close relatives in Cuba obtain a license from the Office of Foreign Assets Control.

In addition, this rule deletes the requirement of paragraph (c) of § 515.559 of the Regulations that a foreign affiliate have no more than a minority of officers or directors who are also officers and directors of a person within the United States in order to receive a license to engage in trade with Cuba.

The rule clarifies Treasury's long-standing rule that charge cards, including but not limited to debit and credit cards, may not be used in transactions related to travel within Cuba. In addition, it contains a number of administrative, clarifying, and conforming revisions to the Regulations.

Because the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required under the Administrative Procedure Act or any other law, the provisions of Executive Order 12291 of February 17, 1981, are inapplicable. Because no notice of proposed rulemaking is required under the Administrative Procedure Act or any other law, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are also inapplicable.

This rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this rule have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1505–0096.

Comments concerning the collections of information and the accuracy of the estimated average annual reporting burden, and suggestions for reducing the burden, should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Office of Foreign Assets Control, U.S. Department of the Treasury, with copies to the Office of Information Resources Management, Department of the Treasury, 15th and Pennsylvania Avenue N.W., Washington, DC 20220.

The collections of information in this rule are in §§ 515.560(i) and 515.563(d) of Title 31 of the Code of Federal Regulations. This information is required by the Office of Foreign Assets Control to determine whether organizations engaging in secondary transactions related to Cuban travel or remittances to Cuban nationals are in compliance with the Regulations. The likely respondents are business or other for-profit institutions, including small businesses.

The estimated total annual reporting burden is 1250 hours. The estimated average annual burden hours per respondent is one hour. The estimated number of respondents is 250, while the estimated annual frequency of responses is five.

List of Subjects in 31 CFR 515

Administrative practice and procedure, Cuba, Currency, Foreign investment in the United States, Foreign trade, Reporting and recordkeeping requirements, Securities, Travel and transportation expenses.

PART 515—[AMENDED]

1. The **"Authority"** citation for Part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp. p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp. p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp. p. 748.

§ 515.559 [Amended]

2. Paragraph (c) of § 515.559 is revised to read as follows:

* * * * *

(c) Specific licenses issued pursuant to the policies set forth in this section do not authorize any person within the United States to engage in, participate in, or be involved in a licensed transactions with Cuba or Cuban nationals. Such involvement includes, but is not limited to, assistance or participation by a U.S. parent firm, or any officer or employee thereof, in the negotiation or performance of a transaction which is the subject of a license application. Such participation is a ground for denial of a license application, or for revocation of a license. To be eligible for a license under this section, the affiliate must be generally independent, in the conduct of transactions of the type for which the license is being sought, in such matters as decision-making, risk-taking, negotiation, financing or arranging of financing, and performance.

§ 515.560 [Amended]

3. Paragraph (c) introductory text of § 515.560 is revised to read as follows:

* * * * *

(c) The following transactions by persons licensed under paragraphs (a) and (b) of this section are authorized in connection with travel to, from, and within Cuba:

* * * * *

4. Subparagraphs (4) and (5) of paragraph (c) of § 515.560 are removed. Subparagraph (6) is redesignated as subparagraph (4).

5. Paragraph (d)(1) of § 515.560 is revised to read as follows:

* * * * *

(d)(1) Unless specifically provided, neither this section nor any general or specific license contained in or issued pursuant to this section authorizes persons subject to U.S. jurisdiction to utilize charge cards, including but not limited to debit or credit cards, for expenditures to Cuba. Such transactions are prohibited by § 515.201 of this part.

* * * * *

6. Paragraph (d)(2) of § 515.560 is revised to read as follows:

(d) * * *

(2) This section does not authorize the processing and payment by persons subject to U.S. jurisdiction, such as charge card issuers or intermediary banks, of charge card instruments (e.g., vouchers, drafts, or sales receipts) for expenditures in Cuba, and does not authorize a charge card issuer, or a foreign charge card firm owned or controlled by U.S. persons, to deal with a Cuban enterprise, a Cuban national, or a third-country party, such as a franchisee, in connection with the extension of charge card services to any person in Cuba.

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7. Paragraph (i) is added to § 515.560 to read as follows:

* * * * *

(i)(1) *Specific lisenses for persons engaged in service transactions related to travel to Cuba.*—(i) *Applicability of specific license requirement; definition of "travel service provider."* The following persons wishing to provide services in connection with travel to Cuba are "travel service providers" for purposes of this part: Travel agents, ticket agents, commercial and non-commercial organizations that arrange travel to Cuba; tour operators; persons arranging through transportation to Cuba; persons chartering an aircraft or vessel on behalf of others in Cuba; and persons arranging hotel accommodations, ground transportation, local tours, and similar travel activities on behalf of others in Cuba. Travel service providers must obtain a specific license from the Office of Foreign Assets Control before providing services with respect to travel to Cuba. The list stated above should not be considered exhaustive, as other persons may be "travel service providers" within the meaning of this part. Opinions may be obtained from the Office of Foreign Assets Control concerning the applicability of this licensing requirement in individual cases. Carrier service providers are dealt with separately in paragraph (i)(2) of this section.

(ii) *Terms and conditions of licenses.* Licenses will be issued in appropriate cases for a one-year period, subject to annual renewal. Licenses will be issued only upon the applicant's written affirmation and subsequent demonstration that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States. Examples of such practices include, but are not limited to, charging discriminatory rates for air travel or requiring payment for services, such as hotel accommodations and meals, not desired, planned to be utilized, or actually utilized, based on such characteristics as race, color, religion, sex, citizenship, place of birth, or national origin. Specific licenses issued pursuant to this paragraph do not permit travel service providers to provide services in connection with individuals' transactions incident to travel which are prohibited by this part.

(iii) *Initial applications for licenses.* The initial application for a license shall contain:

(A) The applicant organization's name, address, telephone number, and the name of an official of the applicant organization responsible for its licensed services;

(B) The applicant's state of incorporation, if any, the address of its principal place of business and all branch offices, the identity and ownership percentages of all shareholders or partners, and the identity and position of all principal officers and directors;

(C) Copies of any by-laws, articles of incorporation, management agreements, or other documents pertaining to the organization, ownership, control, or management of the applicant; and

(D) A report on the forms and other procedures used to ensure that each customer is in full compliance with U.S. law implementing the Cuban embargo and does in fact qualify for one of the general licenses of this section, or has received a specific license from the Office of Foreign Assets Control pursuant to this section. In the case of a customer traveling pursuant to general license, the applicant must demonstrate that it requires each customer to attest, in a signed statement, to his qualifications for the particular general license claimed. The statement must provide facts supporting the customer's belief that he qualifies for the general license. In the case of a customer traveling under a specific license, the applicant must demonstrate that it requires the customer to furnish it with a copy of the license. The copy of the signed statement or the specific license must be maintained on file with the applicant.

(iv) *Applications for renewal of licenses.* Subsequent applications for renewal shall indicate whether any changes with respect to the information provided in the initial application for a license have occurred and shall provide, with respect to the past twelve-month period:

(A) The number of customers who traveled to Cuba under the applicant's auspices;

(B) The number of customers by license category;

(C) The gross revenue generated from such business; and

(D) The amount of money provided to Cuba or nationals of Cuba in connection with the applicant's business and the purposes for which the money was provided.

(v) *Required reports.* (A) Each specific license shall require that the licensee furnish quarterly reports to the Department of the Treasury, Office of Foreign Assets Control, 1331 G Street NW., Washington, DC 20220 during the term of the license. Such reports shall contain the same information as requested in paragraph (i)(1)(iv) of this section for the annual renewal applications, but shall cover only the three-month period immediately preceding the date of the report.

(B) While the names and addresses of individual travelers need not be submitted with initial and subsequent applications for licenses or quarterly reports, this information must be retained on file with all other information required by § 515.601 of this part, beginning on the effective date of this section. These records must be furnished to the Office of Foreign Assets Control on demand pursuant to § 515.602 of this part.

(vi) *Presentation of passenger lists.* Tour operators, persons operating an aircraft or vessel, or persons chartering an aircraft or vessel on behalf of others, for travel to, from, and within Cuba must furnish the U.S. Customs Service on demand a list of passengers on each flight or voyage to, from, and within Cuba.

(2) *Specific licenses for persons engaged in certain carrier service transactions related to travel to Cuba; definition of "carrier service provider".*—(i) *Applicability of specific license requirements.* Persons subject to U.S. jurisdiction wishing to provide carrier services by aircraft or vessels incidental to their non-scheduled flights or voyages to, from, or within Cuba are "carrier service providers" for purposes of this part. Carrier service providers must obtain a specific license from the Office of Foreign Assets Control before providing services with respect to non-schedule flights or voyages to, from, or within Cuba.

(ii) *Terms and conditions of licenses.* Licenses will be issued in appropriate cases for a one-year period, subject to annual renewal.

(iii) *Initial applications for licenses.* The initial application for a license shall contain:

(A) The applicant's name, adress, telephone number, and the name of an official of the applicant organization responsible for its licensed services;

(B) The applicant's state of incorporation, if any, the address of its principal place of business and all branch offices, the identity and ownership percentages of all shareholders or partners, and the identity and position of all principal officers and directors;

(C) Copies of any by-laws, articles of incorporation, management agreements, or other documents pertaining to the organization, ownership, control, or management of the applicant; and

(D) A report on the forms and other procedures used to ensure that each customer is in full compliance with U.S. law implementing the Cuban embargo and does in fact qualify for one of the general licenses of this section, or has received a specific license from the Office of Foreign Assets Control pursuant to this section. In the case of a customer traveling pursuant to general license, the applicant must demonstrate that it requires each customer to attest, in a signed statement, to his qualifications for the particular general license claimed. The statement must provide facts supporting the customer's belief that he qualifies for the general license. In the case of a customer traveling under a specific license, the applicant must demonstrate that it requires the customer to furnish it with a copy of the license. The copy of the signed statement or the specific license must be maintained on file with the applicant.

(iv) *Applications for renewals of licenses.* Subsequent applications for renewal shall indicate whether any changes with respect to the above information have occurred and shall provide, with respect to the past twelve-month period:

(A) The number of persons it carried to or from Cuba;

(B) The gross revenue generated from such business; and

(C) The amount of money provided to Cuba or nationals of Cuba in connection with the applicant's business and the purposes for which the money was provided.

(v) *Required reports.* (A) Each specific license shall require that the licensee furnish quarterly reports to the Department of the Treasury, Office of Foreign Assets Control, 1331 G Street NW., Washington, DC 20220 during the term of the license. Such reports shall contain the same information as requested above for the annual renewal applications, but shall cover only the three-month period immediately preceding the date of the report.

(B) While the names and addresses of individual travelers need not be submitted with initial and subsequent applications for licenses or quarterly reports, this information must be retained on file with all other information required by § 515.601 of this part, beginning on the effective date of this section. These records must be furnished to the Office of Foreign Assets Control on demand pursuant to § 515.602 of this part.

8. Paragraph (g) of § 515.560 is revised to read as follows:

* * * * *

(g) This section does not authorize any person subject to the jurisdiction of the United States to make any investment in Cuba, establish any branch or agency in Cuba, or transfer any property to Cuba, except transfers by or on behalf of individual or group travelers authorized pursuant to paragraph (c) of this section.

9. Paragraph (k) is added to § 515.560 to read as follows:

* * * * *

(k) Carriage to or from Cuba of any merchandise, cargo or gifts, other than those permitted to individual travelers as accompanied baggage is not authorized for persons subject to the jurisdiction of the United States.

§ 515.563 [Amended]

10. Subparagraph (d) is added to § 515.563 to read as follows:

* * * * *

(d) *Specific licenses for persons engaged in secondary transactions relating to remittances to close relatives*—(1) *Applicability of specific license requirement.* Persons subject to U.S. jurisdiction, including persons who provide payment forwarding services and non-commercial organizations acting on behalf of donors, who wish to provide services in connection with the collection or forwarding of remittances authorized pursuant to this section must obtain a specific license from the Office of Foreign Assets Control. Depository institutions, as defined in paragraph (d)(6) of this section, are exempt from this requirement.

(2) *Terms and conditions of licenses.* Licenses will be issued in appropriate cases for a one-year period, subject to annual renewal.

(3) *Initial applications for licenses.* The initial application for a license shall contain—

(i) The applicant's name, address, telephone number, and the name of an official of the applicant organization responsible for its licensed services;

(ii) Its state of incorporation, if any, the address of its principal place of business and all branch offices, the identity and ownership percentages of all shareholders and partners, and the identity and position of all principal officers and directors;

(iii) Copies of any by-laws, articles of incorporation, management agreements, or other documents pertaining to the organization, ownership, control, and management of the applicant; and

(iv) A report on (A) the forms, account books, and other recordkeeping procedures used to determine whether each customer has exceeded the annual ceiling on remittances to any one household or payee established in this section, or sent remittances to persons other than close relatives as defined in paragraph (b) of this section; and (B) the method by which remittances are sent to Cuba and the procedures used by the applicant to ensure that the remittances are received by the persons intended.

(4) *Applications for renewal of licenses.* Subsequent applications for renewal shall indicate whether any changes with respect to the information provided in the initial application have occurred and shall provide, with respect to the last twelve-month period:

(i) The number of persons sending remittances;

(ii) The number of recipients in Cuba;

(iii) The total dollar volume of remittances handled by the applicant;

(iv) The gross revenue generated from such business; and

(v) The amount of money provided to Cuba or nationals of Cuba in connection with the applicant's business, and the purposes for which the money was provided.

(5) *Required reports.* (i) Each specific license shall require that the licensee furnish quarterly reports to the Department of the Treasury, Office of Foreign Assets Control, 1331 G Street NW., Washington, DC 20220 during the term of the license. Such reports shall contain the same information as requested in paragraph (d)(4) of this section for the annual renewal applications, but shall cover only the three-month period immediately preceding the date of the report.

(ii) While the names and addresses of remitters, the number and amount of each remittance, and the name and address of each recipient need not be submitted with each license application or report, this information must be retained on file as required by § 515.601 of this part, beginning on the effective date of this section. These records must be furnished to the Office of Foreign Assets Control on demand pursuant to § 515.602 of this part. Failure to comply with these requirements will result in revocation of the license granted pursuant to this section, as provided in § 515.805 of this part.

(6) *Depository Institution.* For purposes of this section, the term "depository institution" means any of the following:

(i) An insured bank as defined in section 3 of the Federal Deposit Insurance Act;

(ii) An insured institution as defined in section 408(a) of the National Housing Act;

(iii) An insured credit union as defined in section 101 of the Federal Credit Union Act; or

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(iv) Any other institution that is carrying on banking activities chartered by a Federal or state banking authority.

§ 515.701 [Amended]

11. Paragraph (c) of § 515.701 is added to read as follows:

* * * * *

(c) In addition, persons convicted of violation of the Trading with the Enemy Act and 18 U.S.C. 1001 may be subject to such greater penalties as set forth in 18 U.S.C. 3263.

12. The following sentence is added to the end of § 515.901:

§ 515.901 [Amended]

* * * The information collection requirements in § 515.560(i) and 515.563(d) have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505–0096.

Dated: November, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 8, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88–27089 Filed 11–18–88; 3:43 pm]

BILLING CODE 4810–25–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3439–5]

Approval and Promulgation of Implementation Plans, Tennessee; Approval of SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On January 6, 1988, the State of Tennessee submitted several regulations to EPA as State Implementation Plan (SIP) revisions. Today three of the regulations, 1200–3–6–.05(4), 1200–3–19–.11(3)(b), and 1200–3–19–.12(2)(g) are being approved. Rule 1200–3–6–.05(4) deals with opacity monitor specifications. Rules 1200–3–19–.11(3)(b) and 1200–3–19–.12(2)(g) delete specific requirements and emission limits for certain source types from the regulations because the sources affected have closed.

DATES: This action will be effective on January 23, 1989, unless notice is received by December 23, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On January 6, 1988, the State of Tennessee submitted to EPA as revisions to its State Implementation Plan (SIP) nine regulations. Four regulations, 1200–3–24 (Stack Heights), 1200–3–16–.02(m) (Volatile Organic Compounds) and 1200–3–16–.01(6)(c) and 1200–3–16–.21 (New Source Performance Standards), were addressed in other notices. Rules 1200–3–9.04(1)(c) (Construction and Operating Permits: Exemptions) and 1200–3–19.05(4) (Operating Permits and Emission Limiting Conditions) are revisions to regulations that were never federally approved. Therefore, no action will be taken on those revisions.

This notice addresses the remaining regulations, 1200–3–6–.05(4) (Non-Process Visible Emissions: Wood Fired Fuel Burning), 1200–3–19–.11(3)(b) (Particulate Matter Emission Regulations for the Bristol Nonattainment Area) and 1200–3–19.12(2)(g) (Particulate Matter Emission Regulations for Air Contaminant Sources in or Significantly Impacting the Particulate Nonattainment Areas in Campbell County).

The revision to Rule 1200–3–6–.05(4) deleted the reference to Rule 1200–3–5–.05 (Standard Certain Existing Sources), which specified the types of opacity monitors, and replaced it with the **Federal Register** cite (48 FR 13327) dealing with opacity monitor specifications. Rule 1200–3–19–.11(3)(b) has been deleted in its entirety. The rule required all magnetite processing plants to perform certain activities before they ceased operation by July 1, 1979. The source, Reese Viking (later Viking Oil), a woodworking operation, ceased operation by late 1978 and moved to Virginia. This compliance schedule requirement is no longer necessary. Rule 1200–3–19–.12(2)(g) has also been deleted in its entirety. Only one source, Carborundum, a silicon carbide manufacturing plant, was affected by the particulate emission standards in the rule and this source ceased operation by mid-1980. Tennessee determined that this rule was no longer needed in their regulations.

Final Action: Since Rules 1200–3–6–.05(4), 1200–3–19–.11(3)(b) and 1200–3–.12(2)(g) are consistent with EPA policy and requirements, they are hereby approved. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 26, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(95) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(95) Rules 1200–3–6–.05(4), Wood Fired Fuel Burning Equipment, 1200–3–19–.11(3)(b), Particulate Matter Emissions Regulations for the Bristol Nonattainment Area, and 1200–3–19–.12(2)(g), Particulate Matter Emission Regulations for Air Contaminant Sources in or Significantly Impacting the Particulate Nonattainment Control Areas in Campbell County, which were submitted January 6, 1988.

(i) Incorporation by reference.

(A) Rule 1200–3–6–.05(4), Wood Fired Fuel Burning Equipment, which is State-effective, May 30, 1987.

(B) Rule 1200–3–19–.11(3)(b), Particulate Matter Emission Regulations for the Bristol Nonattainment Area, which is State-effective May 30, 1987.

(C) Rule 1200–3–19–.12(2)(g), Particulate Matter Emission Regulations for Air Contaminant Sources in or Significantly Impacting the Particulate Nonattainment Control Areas in Campbell County, which is State-effective May 30, 1987.

(ii) Other material—none.

[FR Doc. 88–19886 Filed 11–22–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[FRL–3480–4]

Designation of Areas of Air Quality Planning Purposes; Ohio: Attainment Status Designations

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is taking final action to disapprove Ohio's request to redesignate Cuyahoga County from nonattainment to attainment for the carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS). This action is necessary because the data available indicate that this area is still a nonattainment area for CO. As a result of this action, the current nonattainment designation of Cuyahoga County, as codified in 40 CFR 81.336 remains the same.

EFFECTIVE DATE: This final rulemaking becomes effective on December 23, 1988.

ADDRESSES: Copies of the redesignation request and supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5 AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 9006), USEPA designated Cuyahoga County (Cleveland) as nonattainment for CO. On May 31, 1985, the State of Ohio submitted a redesignation request to USEPA requesting that Cuyahoga County be redesignated from nonattainment to attainment of the CO NAAQS. Additional technical support was submitted by the State on September 10, 1985.

The primary NAAQS for CO is violated if, more than once in a calendar year, maximum CO concentrations exceed either: (1) The maximum allowable 8-hour concentration of 9 parts per million of air (9 ppm), or (2) the maximum allowable 1-hour concentration of 35 ppm. Generally, the most recent 2 years (8 consecutive quarters) of quality assured, representative air quality data are examined to ensure that it is violation free before approving a redesignation request for CO.

According to the State's submittal, CO was monitored at three sites in Cuyahoga County during the period April 1983 through March 1985. These sites are: 8907 Carnegie Avenue; 3500 East 147th Street; and 1925 St. Clair Avenue. The monitoring at 8907 Carnegie Avenue was terminated in early 1984. The monitor was moved from this site to the 1925 St. Clair Avenue site.

USEPA reviewed the State's request, which included technical information from the City of Cleveland, and determined that it does not meet USEPA's redesignation policy.[1]

On July 14, 1987 (52 FR 26410), USEPA proposed to disapprove the redesignation based on the following analysis:

1. Two years of violation free CO data are not available for the 8907 Carnegie Avenue site. The quality assured data for this site shows multiple exceedances for the CO standard for 1983. The State of Ohio and the City of Cleveland attempted to prove that these exceedances were due to a temporary tire fire in North Bloomfield, Ohio. Based on a conservative dispersion modeling analysis, USEPA believes that the State had not substantiated this assertion and believes that the tire fire did not significantly contribute to violations at the 8907 Carnegie Avenue site.

2. USEPA considers the 1983 Carnegie Avenue CO data to be valid for purposes of denying the redesignation of Cuyahoga County.

In the September 12, 1985, submittal, the State of Ohio stated that USEPA approved the relocation of the 8907 Carnegie Avenue monitor to the 1925 St. Clair Avenue site. The State of Ohio had recommended that all previous data from the Carnegie Avenue site should not be considered.

Although monitors may be relocated from time-to-time for various reasons, USEPA does not agree that valid data from the older sites can be discounted. This data can be discounted only if a demonstration is made that the monitor malfunctioned, causing all the data to be non-quality assured. The State of Ohio has not made such a demonstration for the 1983 data at the Carnegie Avenue site. The State has not modeled the impacts of mobile source emissions in the vicinity of the Carnegie Avenue site to demonstrate that the 1983 exceedances could not have been caused by these emissions. As a result, USEPA considered the 1983 Carnegie Avenue CO data to be valid for purposes of denying a redesignation.

3. The analysis of average daily traffic (ADT) from throughout Cuyahoga County shows that the monitors (including the Carnegie Avenue site) may not be in the areas of the highest CO concentrations. Microscale modeling is necessary to evaluate possible worst-case CO concentrations at other potential hotspots.

The St. Clair site has a significantly lower associated traffic level than the Carnegie Avenue site. It is reasonable to infer from the available traffic data (based on CO concentrations at the Carnegie Avenue site and its associated traffic level) that some hotspot modeling would have to be done to refine the area that is nonattainment for CO.

4. The State has not fully implemented the control strategy approved by the USEPA. USEPA's April 21, 1983, redesignation policy memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards, to USEPA Air Management Directors states that one prerequisite to approving a redesignation request is a demonstration that an air pollution control plan fully approved by USEPA

[1] For a detailed discussion of USEPA's redesignation policies applicable to this action, see the notice of proposed rulemaking dated July 14, 1987 (52 FR 26410).

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has been implemented. The most recent approved CO control plan for Cleveland is the 1979 SIP (October 31, 1980; 45 FR 72122). The 1979 Cleveland CO SIP committed the State of Ohio to implement an I/M program in the Cleveland urban area and this program has not been implemented (nor has the I/M requirement been deleted from the plan).

Based on all of the above, USEPA proposed to disapprove the Cuyahoga County redesignation for CO.

Public Comments

Only one set of public comments were received in response to USEPA's July 14, 1987, proposed rulemaking. Each of the issues raised are discussed below along with USEPA's response.

Comment

In the period since 1980, the OEPA has continuously monitored CO at two sites in Cuyahoga County. The monitoring sites have been approved by the OEPA and have complied with Federal requirements.

Response

The CO monitoring sites used since 1980 were approved by the OEPA. These sites were also approved by the USEPA as meeting siting requirements with regards to placement relative to local CO sources and buildings. USEPA, however, in comments on Ohio's Fiscal Year 1984 and Fiscal Year 1985 grant requests, recommended that a CO monitor be located in the Central Business District (CBD) of Cleveland, where higher traffic densities and lower vehicle speeds would be expected to result in higher CO concentrations. Monitoring data at 1020 Euclid (a CBD site) in 1986 indicated two exceedances (13.2 and 10.1 ppm) of the eight-hour CO standard. This is a standard violation. In addition, line source dispersion modelling and evaluation of daily traffic levels indicate the potential for several non-monitored CO standard violation sites.

Comment

Since 1982, exceedances of the CO standard have been monitored only six times and only two of these exceedances contributed to a violation of the standard. The area has been in attainment 99.9 percent of the time since 1982. Further, there have been no monitored violations since 1983.

USEPA Response

Although it is agreed there have been few monitored exceedances since 1982, there have been monitored standard violations both in 1983 and in 1986. In light of this, approving a redesignation to attainment is not appropriate.

Contrary to the data supplied by the commenter, two exceedances of the eight-hour standard were monitored at 1020 Euclid in 1986. The commenter contends that the highest of the two exceedances was due to a temporary CO discharge from an LTV Steel blast furnace. However, modeling conducted by the OEPA, referenced in a January 9, 1987, letter from Patricia Walling, OEPA, to Gary Nied, Cleveland Air Pollution Control, failed to support the contention that the CO discharge from the blast furnace caused a monitored exceedance of the CO standard. The modeling showed very low CO concentration impacts at the monitor.

It should also be noted that monitors recording violations of the standard (8907 Carnegie Avenue and 1020 Euclid) have not been maintained for sufficient time after the monitored violations to show that violations have not reoccurred. Both monitors were removed shortly after the standard violations were recorded. Such action raises significant questions about claims that violations of the CO standard are no longer occurring in Cuyahoga County.

Comment

The commenter is aware of the CO modelling study recently conducted for major traffic intersections in Cuyahoga County. The commenter has been verbally informed that the modelling shows the potential for CO standard exceedances at some intersections. The commenter, however, believes that, because the study results have not been given a review by the local Cleveland agencies, the study results should not be used in making rulemaking decisions.

USEPA Response

At OEPA's request, a contractor finalized a Cleveland CO modelling study. The OEPA has reviewed and commented on the study results. The study does show a potential for CO standard exceedances at several intersections in Cuyahoga County based on 1986 traffic levels.

Comment

The commenter remains convinced that the March 3–4, 1983, CO eight-hour standard exceedances monitored at 8907 Carnegie Avenue, Cleveland were due to CO emissions from a tire fire in North Bloomfield, Ohio. Although gaussian dispersion modelling by USEPA has failed to substantiate the tire fire as the cause of the monitored standard violation, the commenter believes other facts support the argument that the tire fire was the cause of the standard violation. The commenters provided the following facts:

(1) A tire fire took place on the evening of March 2, 1983, and continued into the morning of March 3, 1983, in North Bloomfield, Ohio.

(2) A second tire fire took place on March 4, 1983, at the same location.

(3) The northeast Ohio area experienced predominately easterly winds during the three day period (March 2–4, 1983) making the Cleveland area downwind of the tire fire.

(4) The dimensions of the tire fire: length: 1,300 feet; width: 450 feet; height: Undetermined.

(5) The City of Cleveland Division of Air Pollution Control, began receiving citizen complaints of burning rubber odors and haze on the morning of March 3, 1983. Plotting of complaint locations implied that the tire fire was the probable source of haze and odors.

(6) Other than the CO standard exceedances coinciding with the time period of the tire fire, there were no other recorded CO standard violations over a four-plus year period.

USEPA Response

USEPA agrees that the Cleveland CO standard violations in 1983 occurred during the same period as a documented tire fire in North Bloomfield. USEPA, however, does not agree that the tire fire is the only logical source for the monitored CO. Simple coincidence of the tire fire and the monitored CO standard exceedances does not prove that the tire fire was the cause of the CO standard exceedances. The same conditions that would have been required to have produced high tire fire related pollutant concentrations in Cleveland (primarily a low dispersion rate of pollutants due to a low mixing height or to high atmospheric stability) would have also resulted in higher pollutant concentrations resulting from local sources. Nobody has made a demonstration that local emissions were not the cause of the CO standard exceedances. To the contrary, the USEPA, through dispersion modelling using conservative assumptions (assumptions that should have led to the maximum tire fire CO impact that could be reasonably expected), showed that the tire fire should not have caused CO standard exceedances at the 8907 Carnegie Avenue monitoring site. A discussion of the modelling results is contained in the December 11, 1985, Technical Support Document for this action which is available at the Region V office.

The commenter does not refer to which four-plus year period is CO

standard violation free. Review of the CO data on file in USEPA's National Aerometric Data Bank shows that the eight-hour standard for CO (9 parts per million or approximately 10 milligrams per cubic meter not to be exceeded more than once per year) was violated in 1978 and 1981 at the Carnegie Avenue site. Single exceedances were recorded at this site in 1980 and 1979. Clearly this site had a history of high CO concentrations with periodic standard violations. No demonstration was made that these standard violations would have ended as a result of the implementation of emissions control measures. The 8907 Carnegie Avenue site was terminated in early 1984.

More recently, a CO standard violation was recorded in 1986 at the 1020 Euclid Avenue site. Clearly, CO standard violations continue to occur in Cuyahoga County. In addition, CO modelling for major roadway intersections using 1986 traffic levels showed the potential for CO standard violations at nine of the fifteen intersections modelled. Many intersections with high traffic levels remain unmodelled. The USEPA remains convinced that Cuyahoga County continues to experience CO standard violations at several locations in the County.

Comment

The commenter believes that attainment of the CO standard in Cuyahoga County would have been maintained in the future for the following reasons:

(1) Vehicle emissions will continue to decrease through the impact of the Federal Motor Vehicle Control Program (FMVCP).

(2) The traffic density and total number of vehicles are expected to decrease in the future.

(3) CO emissions from stationary sources are expected to decrease in the future.

(4) The proposed anti-tampering vehicle Inspection/Maintenance (I/M) program will further reduce CO emissions from vehicles.

USEPA Response

USEPA agrees that the CO emission reductions expected for the future would have reduced CO concentrations. This, however, has little bearing on whether or not the area is currently experiencing CO standard violations. It is agreed that, after the area reaches attainment of the standard, the cited CO emission control measures will assist in the maintenance of the standard. It should be noted the commenter did not quantify the impacts of the future emission controls. Therefore, it is not demonstrated that the standard would be attained or maintained in the future.

Comment

The commenter stated that a change in the monitoring location for the 8907 Carnegie Avenue monitor was necessary due to a request from the USEPA to relocate the monitor to a new location. In addition, problems were experienced at the 8907 Carnegie Avenue site maintaining the room temperature within the allowable range from the monitor. The 1925 St. Clair Avenue site was conditionally accepted by a representative of the USEPA. The Commenter believes that USEPA's complaint that the 8907 Carnegie Avenue site was not shown to be violation-free seems unfair given that the monitor relocation was requested by USEPA.

USEPA Response

USEPA agrees that a new monitoring location in downtown Cleveland, where traffic densities are generally higher and vehicle speeds are generally lower than in surrounding neighborhoods, was requested. It is also agreed that a representative of the USEPA, approved the 1925 St. Clair Avenue site. The 1925 St. Clair site, however, was not in a peak CO impact area where USEPA expected the worst-case CO site to be located. The 1925 St. Clair Avenue site is outside of the Central Business District (CBD) of Cleveland. In addition, USEPA did not expect the Carnegie Avenue data to be argued away simply on the basis of a monitor relocation. The Carnegie Avenue data were valid and showed a violation of the CO standard that needs to be dealt with.

Comment

The past six years of CO data seem to indicate that all CO problems are not necessarily traffic related. The commenter's contention remains that the March 3–4, 1983 CO standard violation was due to a tire fire. It has been the experience of the commenter that a number of past CO standard violations may have been the result of excess emissions from the steel mill blast furnaces in the local industrial valley rather than from traffic. The suspected stationary sources have now been either controlled or dismantled. High CO readings attributed to vehicular traffic does not seem to be a chronic problem in Cuyahoga County. This is due to: (1) A lack of long steel corridors in street canyons; (2) a lower traffic volume in the CBD compared to other major cities; and (3) a constant ventilation of air due to the proximity of Lake Erie.

USEPA Response

As discussed above and in the Technical Support Document dated December 11, 1985, USEPA has not been convinced that the North Bloomfield tire fire was the cause of the March 3–4, 1983, CO standard violation. Similarly, USEPA is not convinced that other CO standard violations, especially the 1986 standard violation at 1020 Euclid Avenue, were due to temporary steel mill or other stationary source emissions. A previous attempt was made through modelling to show that temporary, excess steel mill emissions caused the 1986 CO standard exceedances at the 1020 Euclid Avenue site. The end result was that the excess steel mill emissions were modelled to have an insignificant impact at the monitoring site. Lacking such demonstration, USEPA continues to view the CO standard violations at the 1020 Euclid Avenue and 8907 Carnegie Avenue sites as part of the evidence that CO standard violations continue to occur in Cuyahoga County.

In addition to the CO standard violations, CO modelling shows that several of the intersections in the County may be associated with ambient CO standard violations. Out of fifteen intersections modelled for 1986 traffic conditions, nine intersections were modelled with potential CO standard violations. Many other intersections identified as having high traffic volumes and recommended for possible modelling were not modelled. It cannot be concluded on the limited modelling that CO standard violations are limited to the nine intersections with modelled CO standard violations.

Regardless of the extent or source of the CO standard violations, USEPA remains convinced that Cuyahoga County should retain its nonattainment designation for CO because of the monitored violations.

Final Action

USEPA is taking final action to disapprove the State's request to redesignate Cuyahoga County from nonattainment to attainment for the carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 1989. This action

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may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air Pollution Control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: November 8, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88–27066 Filed 11–22–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 3F2956/R986; FRL–3480–1]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide glyphosate and its metabolite aminomethylphosphoric acid (AMPA) in or on the raw agricultural commodity (RAC) shellfish at 3.0 parts per million (ppm). Monsanto Co. petitioned for this tolerance.

EFFECTIVE DATE: November 23, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 3F2956/R986], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of September 9, 1988 (53 FR 34974), in which it was announced that the Monsanto Co., 1101 17th St. NW., Washington, DC 20036, had submitted a pesticide petition (PP 3F2956) to EPA proposing to amend 40 CFR 180.364 by establishing a tolerance for the combined residues of the herbicide glyphosate [N-(phosphonomethyl)glycine] and its metabolite aminomenthylphosphoric acid (AMPA) in or on the RAC shellfish at 0.25 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 7, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.364(b) is amended by adding and alphabetically inserting the listing for shellfish, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Shellfish	3.5
* * * * *	

[FR Doc. 88–26940 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–45

[FPMR Amendment H–165]

Utilization and Disposal of Personal Property; Correction

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule; correction.

SUMMARY: The purpose of this document is to make a correction to a final rule published May 5, 1988 (53 FR 16089) that revised portions of FPMR Subchapter H. The error was an amendatory language oversight, and it is being corrected to reflect the original intended revision.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Stanley M. Duda, Director, Property Management Division (FBP), 703–557–1240.

SUPPLEMENTARY INFORMATION: On May 5, 1988 (53 FR 16089), General Services Administration revised portions of FPMR Subchapter H that provided policy and procedure for the utilization and disposal of personal property. On page 16122 of that document, Item 72 should have read as follows:

72. Sections 101–45.316, 101–45.316–1, 101–45.316–2, 101–45.316–3, and 101–45.316–4 are removed and reserved to read as follows:

§ 101–45.316 [Removed and Reserved]

§ 101–45.316–1 [Removed and Reserved]

§ 101–45.316–2 [Removed and Reserved]

§ 101–45.316–3 [Removed and Reserved]

§ 101–45.316–4 [Removed and Reserved]

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)

Dated: November 9, 1988.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 88–27245 Filed 11–22–88; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 64

[Gen. Docket 87–505; FCC 88–341]

National Security Emergency Preparedness Telecommunications Service Priority System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action finalizes the petition to the Federal Communications Commission (Commission or FCC) by the Secretary of Defense in his capacity as the Executive Agent of the National Communications System (NCS). NCS proposed to replace the existing Restoration Priority rules with a new National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) system which has broader scope and applicability. The suggested revisions, requiring major changes to Part 64 of FCC rules, were announced in the Commission's Public Notice released on April 3, 1987. Following receipt and analysis of comments from interested parties, the Commission released its Notice of Proposed Rulemaking (NPRM) in Gen. Docket No. 87–505 adopted November 2, 1987 and released December 2, 1987. The NPRM included a transcript of the revised rules proposed by NCS, and interested parties were asked for their views. Comments and reply comments as well as revisions by NCS to its proposal have dictated the need for the Commission to update its rules governing priority treatment of provisioning and restoration of common carrier-provided telecommunications services during emergencies.

EFFECTIVE DATE: December 23, 1988.

FOR FURTHER INFORMATION CONTACT: James M. Talens, Chief, Domestic Services Branch, Common Carrier Bureau, telephone (202) 634–1800.

SUPPLEMENTARY INFORMATION: This preamble summarizes the Report and Order (R&O) in Gen. Docket No. 87–505 adopted October 27, 1988, and released November 17, 1988. The complete document may be inspected and copied during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Dockets Branch, Room 239, 1919 M St. NW., Washington, DC. A transcript may be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M St. NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

In 1967, the Commission adopted rules establishing a system of priorities applicable to leased intercity private line services. Those rules, contained in Appendix A of Part 64 of the Commission's rules and known as the Restoration Priority (RP) System, were promulgated to ensure that services vital to the national interest would be maintained, to the maximum extent possible, during emergency conditions. The RP designation is obtained by submitting a request to NCS in the case of federal and foreign government requests, or to the FCC for state and local government and private industry requests. The FCC is responsible for issuing final notices of priority based on NCS recommendations or on the requests that come directly to it. The rules remain effective until superseded by the President's powers under section 706 of the Communications Act.

In its petition for rulemaking, NCS urged that the current RP System does not fully address today's needs for priority treatment of NSEP telecommunications services and that a new TSP System is needed. Under the direction of the Executive Office of the President, NCS proposed rules to replace the RP System with the new TSP System. NCS' proposal was issued by the Commission as a NPRM released December 2, 1987. A summary of the NPRM was published in the **Federal Register** on December 17, 1987 (52 FR 47951), and the complete document was published in the FCC Record at 2 FCC Rcd 24 (1987). Based on comments and reply comments filed by interested parties, including a revised proposal by NCS in response to some of the concerns discussed in the NPRM, the Commission has revised Parts 0 and 64 of its rule as set forth below. The revised rules initiate a program that modernizes the means by which the nation is assured that essential communications services provided by common carriers receive priority provisioning and restoration. The rules may serve also as guidance for the provisioning and restoration of private systems.

Regulatory Flexibility Analysis

The Commission is responding to deficiencies in the existing RP System, and adopting a TSP System by which carriers may provide priority provisioning and restoration of service when specific NSEP needs have been identified. The impact of the new TSP rules upon large and small telecommunications providers will vary depending on the number of NSEP services they provide. The burden hours, estimated at 105,000 annually, will be assumed by the National Communications System/Department of Defense.

Ordering Clauses

Accordingly, it is ordered, pursuant to authority contained in 47 USC 151, 154(i), 201–205 and 303(r), that Parts 0 and 64 of the Commission's Rules and Regulations are amended as shown at the end of this document effective December 23, 1988.

It is further ordered, that the initial operating capability date of these rules will be nine months after the appearance in the **Federal Register** of a summary of the Commission's order concerning the Executive Office of the President's procedures for implementation.

It is further ordered, that the Chief, Common Carrier Bureau is delegated authority to participate in and conduct discussions and meetings and issue orders to resolve issues in connection with implementation of the Telecommunications Service Priority System.

List of Subjects

47 CFR Part 0

Commission organization, Functions of Office of Managing Director, Functions of Common Carrier Bureau, Additional authority delegated to Field Operations Bureau.

47 CFR Part 64

Communications common carriers, Priority services in emergencies, Telecommunications Service Priority (TSP) system, National security emergency preparedness (NSEP).

Donna R. Searcy,

Secretary.

For the reasons summarized in the foregoing preamble and as detailed in the Report and Order in Gen. Docket No. 87–505 (FCC 88–341) adopted October 27, 1988, 47 CFR Parts 0 and 64 of the Commission's Rules and Regulations are amended as follows:

Appendix

A. Part 0 of the Commission's Rules and Regulations (Chapter 1 of Title 47 of the Code of Federal Regulations, Part 0) is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

2. § 0.11(a)(10) is revised to read as follows:

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§ 0.11 Functions of the Office.

(a) * * *

(10) Under the general direction of the Defense Commissioner, coordinate the defense activities of the Commission, including recommendation of national emergency plans and preparedness programs covering Commission licensees and planning for continuity of essential Commission functions during national emergency conditions. Support the Chief, Common Carrier Bureau on matters involving assigment of Telecommunications Service Priority System priorities and in the administration of that System. Act as FCC Defense Coordinator and principal to the National Communications System.

* * * * *

3. Section 0.91 is amended by adding new paragraph (l) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(l) Administers the Telecommunications System Priority System with the concurrence of the Office of the Managing Director, and resolves matters involving assignment of priorities and other issues pursuant to Part 64 of the rules.

4. § 0.314(g) is revised to read as follows:

§ 0.314 Additional authority delegated.

* * * * *

(g) To act on and make determinations on behalf of the Commission regarding requests for assignments and reassignments of priorities under the Telecommunications Service Priority System, Part 64 of the rules, when circumstances require immediate action and the common carrier seeking to provide service states that it cannot contact the National Communications System or the Commission office normally responsible for such assignments.

* * * * *

B. Part 64 of the Commission's Rules and Regulations (Chapter 1 of Title 47 of the Code of Federal Regulations, Part 64) is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

2. § 64.401 is revised to read as follows:

§ 64.401 Policies and procedures for provisioning and restoring certain telecommunications services in emergencies.

The communications common carrier shall maintain and provision and, if disrupted, restore facilities and services in accordance with policies and procedures set forth in the Appendix to this part.

§ 64.402 [Removed]

Section 64.402 is removed.

Appendix B—[Removed]

4. Appendix B to Part 64 is removed.

5. Appendix A to Part 64 is revised to read as follows:

Appendix A to Part 64—Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)

1. Purpose and Authority

a. This appendix establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. The NSEP TSP System authorizes priority treatment to certain domestic telecommunications services (including portions of U.S. international telecommunication services provided by U.S. service vendors) for which provisioning or restoration priority (RP) levels are requested, assigned, and approved in accordance with this appendix.

b. This appendix is issued pursuant to sections 1, 4(i), 201 through 205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201 through 205 and 303(r). These sections grant to the Federal Communications Commission (FCC) the authority over the assignment and approval of priorities for provisioning and restoration of common carrier-provided telecommunications services. Under section 706 of the Communications Act, this authority may be superseded, and expanded to include non-common carrier telecommunication services, by the war emergency powers of the President of the United States. This appendix provides the Commission's Order to telecommunication service vendors and users to comply with policies and procedures establishing the NSEP TSP System, until such policies and procedures are superseded by the President's war emergency powers. This appendix is intended to be read in conjunction with regulations and procedures that the Executive Office of the President issues (1) to implement responsibilities assigned in section 6(b) of this appendix, or (2) for use in the event this appendix is superseded by the President's war emergency powers.

c. Together, this appendix and the regulations and procedures issued by the Executive Office of the President establish one uniform system of priorities for provisioning and restoration of NSEP telecommunication services both before and after invocation of the President's war emergency powers. In order that government and industry resources may be used effectively under all condition, a single set of rules, regulations, and procedures is necessary, and they must be applied on a day-to-day basis to all NSEP services so that the priorities they establish can be implemented at once when the need arises.

* In sections 2(a)(2) and 2(b)(2) of Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions" April 3, 1984 (49 FR 13471 (1984)), the President assigned to the Director, Office of Science and Technology Policy, certain NSEP telecommunication resource management responsibilities. The term "Executive Office of the President" as used in this appendix refers to the official or organization designated by the President to act on his behalf.

2. Applicability and Revocation

a. This appendix applies to NSEP telecommunications services:

(1) For which initial or revised priority level assignments are requested pursuant to section 8 of this appendix.

(2) Which were assigned restoration priorities under the provision of FCC Order 80–581; 81 FCC 2d 441 (1980); 47 CFR Part 64, Appendix A, "Priority System for the Restoration of Common Carrier Provided Intercity Private Line Services"; and are being resubmitted for priority level assignments pursuant to section 10 of this appendix. (Such services will retain assigned restoration priorities until a resubmission for a TSP assignment is completed or until the existing RP rules are terminated.)

b. FCC Order 80–581 will continue to apply to all other intercity, private line circuits assigned restoration priorities thereunder until the fully operating capability date of this appendix, 30 months after the initial operating capability date referred to in subsection d of this section.

c. In addition, FCC Order, "Precedence System for Public Correspondence Services Provided by the Communications Common Carriers" (34 FR 17292 (1969)); (47 CFR Part 64, Appendix B), is revoked as of the effective date of this appendix.

d. The initial operating capability (IOC) date for NSEP TSP will be nine months after release in the Federal Register of the FCC's order following review of procedures submitted by the Executive Office of the President. On this IOC date requests for priority assignments generally will be accepted only by the Executive Office of the President.

3. Definitions

As used in this part:

a. *Assignment* means the designation of priority level(s) for a defined NSEP telecommunications service for a specified time period.

b. *Audit* means a quality assurance review in response to identified problems.

c. *Government* refers to the Federal government or any foreign, state, county, municipal or other local government agency or organization. Specific qualifications will be supplied whenever reference to a particular level of government is intended (e.g., "Federal government", "state government"). "Foreign government" means any sovereign empire, kingdom, state, or independent political community, including foreign diplomatic and consular

establishments and coalitions or associations of governments (e.g., North Atlantic Treaty Organization (NATO), Southeast Asian Treaty Organization (SEATO), Organization of American States (OAS), and government agencies or organization (e.g., Pan American Union, International Postal Union, and International Monetary Fund)).

d. *National Communicotions System (NCS)* refers to that organization established by the President in Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984).

e. *National Coordinating Center (NCC)* refers to the joint telecommunications industry-Federal government operation established by the National Communications System to assist in the initiation, coordination, restoration, and reconstitution of NSEP telecommunication services or facilities.

f. *National Security Emergency Preparedness (NSEP)* telecommunications services," or "NSEP services," means telecommunication services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States. These services fall into two specific categories, Emergency NSEP and Essential NSEP, and are assigned priority levels pursuant to section 9 of this appendix.

g. *NSEP treatment* refers to the provisioning of a telecommunication service before others based on the provisioning priority level assigned by the Executive Office of the President.

h. *Priority action* means assignment, revision, revocation, or revalidation by the Executive Office of the President of a priority level associated with an NSEP telecommunications service.

i. *Priority level* means the level that may be assigned to an NSEP telecommunications service specifying the order in which provisioning or restoration of the service is to occur relative to other NSEP and/or non-NSEP telecommunication services. Priority levels authorized by this appendix are designated (highest to lowest) "E," "1," "2," "3," "4," and "5," for provisioning and "1," "2," "3," "4," and "5," for restoration.

j. *Priority level assignment* means the priority level(s) designated for the provisioning and/or restoration of a particular NSEP telecommunications service under section 9 of this appendix.

k. *Private NSEP telecommunications services* include non-common carrier telecommunications services including private line, virtual private line, and private switched network services.

l. *Provisioning* means the act of supplying telecommunications service to a user, including all associated transmission, wiring and equipment. As used herein, "provisioning" and "initiation" are synonymous and include altering the state of an existing priority service or capability.

m. *Public switched NSEP telecommunications services* include those NSEP telecommunications services utilizing public switched networks. Such services may include both interexchange and intraexchange network facilities (e.g., switching systems, interoffice trunks and subscriber loops).

n. *Reconciliation* means the comparison of NSEP service information and the resolution of identified discrepancies.

o. *Restoration* means the repair or returning to service of one or more telecommunication services that have experienced a service outage or are unusable for any reason, including a damaged or impaired telecommunications facility. Such repair or returning to service may be done by patching, rerouting, substitution of component parts or pathways, and other means, as determined necessary by a service vendor.

p. *Revalidation* means the rejustification by a service user of a priority level assignment. This may result in extension by the Executive Office of the President of the expiration date associated with the priority level assignment.

q. *Revision* means the change of priority level assignment for an NSEP telecommunications service. This includes any extension of an existing priority level assignment to an expanded NSEP service.

r. *Revocation* means the elimination of a priority level assignment when it is no longer valid. All priority level assignments for an NSEP service are revoked upon service termination.

s. *Service identification* refers to the information uniquely identifying an NSEP telecommunications service to the service vendor and/or service user.

t. *Service user* refers to any individual or organization (including a service vendor) supported by a telecommunications service for which a priority level has been requested or assigned pursuant to section 8 or 9 of this appendix.

u. *Service vendor* refers to any person, associate, partnership, corporation, organization, or other entity (including common carriers and government organizations) that offers to supply any telecommunications equipment, facilities, or services (including customer premises equipment and wiring) or combination thereof. The term includes resale carriers, prime contractors, subcontractors, and interconnecting carriers.

v. *Spare circuits or services* refers to those not being used or contracted for by any customer.

w. *Telecommunication services* means the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, visual or other electronic, electric, electromagnetic, or acoustically coupled means, or any combination thereof. The term can include necessary telecommunication facilities.

x. *Telecommunications Service Priority (TSP) system user* refers to any individual, organization, or activity that interacts with the NSEP TSP System.

4. Scope

a. *Domestic NSEP services.* The NSEP TSP System and procedures established by this appendix authorize priority treatment to the following domestic telecommunication services (including portions of U.S. international telecommunication services provided by U.S. vendors) for which provisioning or restoration priority levels are requested, assigned, and approved in accordance with this appendix:

(1) Common carrier services which are:

(a) Interstate and foreign telecommunications services,

(b) Intrastate telecommunication services inseparable from interstate or foreign telecommunications services, and instrastate telecommunication services to which priority levels are assigned pursuant to section 9 of this appendix.

Note.—Initially, the NSEP TSP System's applicability to public switched services is limited to (a) provisioning of such services (e.g., business, centrex, cellular, foreign exchange, Wide Area Telephone Service (WATS) and other services that the selected vendor is able to provision) and (b) restoration of services and components of services that the selected vendor is able to restore.

(2) Services which are provided by government and/or non-common carriers and are interconnected to common carrier services assigned a priority level pursuant to section 9 of this appendix.

b. *Control services and orderwires.* The NSEP TSP System and procedures established by this appendix are not applicable to authorize priority treatment to control services or orderwires owned by a service vendor and needed for provisioning, restoration, or maintenance of other services owned by a service vendor. Such control services and orderwires shall have priority provisioning and restoration over all other telecommunication services (including NSEP services) and shall be exempt from preemption. However, the NSEP TSP System and procedures established by this appendix are applicable to control services or orderwires leased by a service vendor.

c. *Other services.* The NSEP TSP System may apply, at the discretion of and upon special arrangements by the NSEP TSP System users involved, to authorize priority treatment to the following telecommunication services:

(1) Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level pursuant to section 9 of this appendix.

(2) Portions of U.S. international services which are provided by foreign correspondents. (U.S. telecommunication service vendors are encouraged to ensure that relevant operating arrangements are consistent to the maximum extent practicable with the NSEP TSP System. If such arrangements do not exist, U.S. telecommunication service vendors should handle service provisioning and/or restoration in accordance with any system acceptable to their foreign correspondents which comes closest to meeting the procedures established in this appendix.)

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5. Policy

The NSEP TSP System is the regulatory, administrative, and operational system authorizing and providing for priority treatment, *i.e.*, provisioning and restoration, of NSEP telecommunication services. As such, it establishes the framework for telecommunication service vendors to provision, restore, or otherwise act on a priority basis to ensure effective NSEP telecommunication services. The NSEP TSP System allows the assignment of priority levels to any NSEP service across three time periods, or stress conditions: Peacetime/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. Although priority levels normally will be assigned by the Executive Office of the President and retained by service vendors only for the current time period, they may be preassigned for the other two time periods at the request of service users who are able to identify and justify in advance, their wartime or post-attack NSEP telecommunication requirements. Absent such preassigned priority levels for the Attack/War and Post-Attack/Recovery periods, priority level assignments for the Peacetime/Crisis/Mobilization period will remain in effect. At all times, priority level assignments will be subject to revision by the FCC or (on an interim basis) the Executive Office of the President, based upon changing NSEP needs. No other system of telecommunication service priorities which conflicts with the NSEP TSP System is authorized.

6. Responsibilities

a. The FCC will:

(1) Provide regulatory oversight of implementation of the NSEP TSP System.

(2) Enforce NSEP TSP System rules and regulations, which are contained in this appendix.

(3) Act as final authority for approval, revision, or disapproval of priority actions by the Executive Office of the President and adjudicate disputes regarding either priority actions or denials of requests for priority actions by the Executive Office of the President, until superseded by the President's war emergency powers under section 706 of the Communications Act.

(4) Function (on a discretionary basis) as a sponsoring Federal organization. (See section 6(c) below.)

b. The Executive Office of the President will:

(1) During exercise of the President's war emergency powers under section 706 of the Communications Act, act as the final approval authority for priority actions or denials of requests for priority actions, adjudicating any disputes.

(2) Until the exercise of the President's war emergency powers, administer the NSEP TSP System which includes:

(a) Receiving, processing, and evaluating requests for priority actions from service users, or sponsoring Federal government organizations on behalf of service users (e.g., Department of State or Defense on behalf of foreign governments, Federal Emergency Management Agency on behalf of state and local governments, and any Federal organization on behalf of private industry entities). Action on such requests will be completed within 30 days of receipt.

(b) Assigning, revising, revalidating, or revoking priority levels as necessary or upon request of service users concerned, and denying requests for priority actions as necessary, using the categories and criteria specified in section 12 of this appendix. Action on such requests will be completed within 30 days of receipt.

(c) Maintaining data on priority level assignments.

(d) Periodically forwarding to the FCC lists of priority actions by the Executive Office of the President for review and approval.

(e) Periodically initiating reconciliation.

(f) Testing and evaluating the NSEP TSP System for effectiveness.

(g) Conducting audits as necessary. Any Telecommunications Service Priority (TSP) System user may request the Executive Office of the President to conduct an audit.

(h) Issuing, subject to review by the FCC, regulations and procedures supplemental to and consistent with this appendix regarding operation and use of the NSEP TSP System.

(i) Serving as a centralized point-of-contact for collecting and disseminating to all interested parties (consistent with requirements for treatment of classified and proprietary material) information concerning use and abuse of the NSEP TSP System.

(j) Establishing and assisting a TSP System Oversight Committee to identify and review any problems developing in the system and recommend actions to correct them or prevent recurrence. In addition to representatives of the Executive Office of the President, representatives from private industry (including telecommunication service vendors), state and local governments, the FCC, and other organizations may be appointed to that Committee.

(k) Reporting at least quarterly to the FCC and TSP System Oversight Committee, together with any recommendations for action, the operational status of and trends in the NSEP TSP System, including:

(i) Numbers of requests processed for the various priority actions, and the priority levels assigned.

(ii) Relative percentages of services assigned to each priority level under each NSEP category and subcategory.

(iii) Any apparent serious misassignment or abuse of priority level assignments.

(iv) Any existing or developing problem.

(l) Submitting semi-annually to the FCC and TSP System Oversight Committee a summary report identifying the time and event associated with each invocation of NSEP treatment under section 9(c) of this appendix, whether the NSEP service requirement was adequately handled, and whether any additional charges were incurred. These reports will be due by April 30th for the preceding July through December and by October 31 for the preceding January through June time periods.

(m) All reports submitted to the FCC should be directed to Chief, Domestic Services Branch, Common Carrier Bureau, Washington, DC 20554.

(3) Function (on a discretionary basis) as a sponsoring Federal organization. (See section 6(c) below.)

c. Sponsoring Federal organizations will:

(1) Review and decide whether to sponsor foreign, state, and local government and private industry (including telecommunication service vendors) requests for priority actions. Federal organizations will forward sponsored requests with recommendations for disposition to the Executive Office of the President. Recommendations will be based on the categories and criteria in section 12 of this appendix.

(2) Forward notification of priority actions or denials of requests for priority actions from the Executive Office of the President to the requesting foreign, state, and local government and private industry entities.

(3) Cooperate with the Executive Office of the President during reconciliation, revalidation, and audits.

(4) Comply with any regulations and procedures supplemental to and consistent with this appendix which are issued by the Executive Office of the President.

d. Service users will:

(1) Identify services requiring priority level assignments and request and justify priority level assignments in accordance with this appendix and any supplemental regulations and procedures issued by the Executive Office of the President that are consistent with this appendix.

(2) Request and justify revalidation of all priority level assignments at least every three years.

(3) For services assigned priority levels, ensure (through contractual means or otherwise) availability of customer premises equipment and wiring necessary for end-to-end service operation by the service due date, and continued operation; and, for such services in the Emergency NSEP category, by the time that vendors are prepared to provide the services. Additionally, designate the organization responsible for the service on an end-to-end basis.

(4) Be prepared to accept services assigned priority levels by the service due dates or, for services in the Emergency NSEP category, when they are available.

(5) Pay vendors any authorized costs associated with services that are assigned priority levels.

(6) Report to vendors any failed or unusable services that are assigned priority levels.

(7) Designate a 24-hour point-of-contact for matters concerning each request for priority action and apprise the Executive Office of the President thereof.

(8) Upon termination of services that are assigned priority levels, or circumstances warranting revisions in priority level assignment (e.g., expansion of service), request and justify revocation or revision.

(9) When NSEP treatment is invoked under section 9(c) of this appendix, within 90 days following provisioning of the service involved, forward to the National Coordinating Center (see section 3(e) of this appendix) complete information identifying the time and event associated with the invocation and regarding whether the NSEP service requirement was adequately handled and whether any additional charges were incurred.

(10) Cooperate with the Executive Office of the President during reconciliation, revalidation, and audits.

(11) Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by the Executive Office of the President.

e. Non-federal service users, in addition to responsibilities prescribed above in section 6(d), will obtain a sponsoring Federal organization for all requests for priority actions. If unable to find a sponsoring Federal organization, a non-federal service user may submit its request, which must include documentation of attempts made to obtain a sponsor and reasons given by the sponsor for its refusal, directly to the Executive Office of the President.

f. Service vendors will:

(1) When NSEP treatment is invoked by service users, provision NSEP telecommunication services before non-NSEP services, based on priority level assignments made by the Executive Office of the President. Provisioning will require service vendors to:

(a) Allocate resources to ensure best efforts to provide NSEP services by the time required. When limited resources constrain response capability, vendors will address conflicts for resources by:

(i) Providing NSEP services in order of provisioning priority level assignment (i.e., "E", "1", "2", "3", "4", or "5");

(ii) Providing Emergency NSEP services (i.e., those assigned provisioning priority level "E") in order of receipt of the service requests;

(iii) Providing Essential NSEP services (i.e., those assigned priority levels "1", "2", "3", "4", or "5") that have the same provisioning priority level in order of service due dates; and

(iv) Referring any conflicts which cannot be resolved (to the mutual satisfaction of servicer vendors and users) to the Executive Office of the President for resolution.

(b) Comply with NSEP service by:

(i) Allocating resources necessary to provide Emergency NSEP services as soon as possible, dispatching outside normal business hours when necessary;

(ii) Ensuring best efforts to meet requested service dates for Essential NSEP services, negotiating a mutually (customer and vendor) acceptable service due date when the requested service due date cannot be met; and

(iii) Seeking National Coordinating Center (NCC) assistance as authorized under the NCC Charter (see section 1.3, NCC Charter, dated October 9, 1985).

(2) Restore switched (e.g., cellular) NSEP telecommunications services which suffer outage, or are reported as unusable or otherwise in need of restoration, before non-NSEP services, based on restoration priority level assignments. (Note.—For broadband or multiple service facilities, restoration is permitted even though it might result in restoration of services assigned no or lower priority levels along with, or sometimes ahead of, some higher priority level services.) Restoration will require service vendors to restore NSEP services in order of restoration priority level assignment (i.e., "E", "1", "2", "3", "4", or "5") by:

(a) Allocating available resources to restore NSEP services as quickly as practicable, dispatching outside normal business hours to restore services assigned priority levels "1", "2", and "3" when necessary, and services assigned priority level "4" and "5" when the next business day is more than 24 hours away;

(b) Restoring NSEP services assigned the same restoration priority level based upon which can be first restored. (However, restoration actions in progress should not normally be interrupted to restore another NSEP service assigned the same restoration priority level);

(c) Patching and/or rerouting NSEP services assigned restoration priority levels from "1" through "5," when use of patching and/or rerouting will hasten restoration;

(d) Seeking National Coordinating Center (NCC) assistance authorized under the NCC Charter; and

(e) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service vendors and users) to the Executive Office of the President for resolution.

(3) Respond to provisioning requests of customers and/or other service vendors, and to restoration priority level assignments when an NSEP service suffers an outage or is reported as unusable, by:

(a) Ensuring that vendor personnel understand their responsibilities to handle NSEP provisioning requests and to restore NSEP service; and

(b) Providing a 24-hour point-of-contact for receiving provisioning requests for Emergency NSEP services and reports of NSEP service outages or unusability.

(c) Seek verification from an authorized entity if legitimacy of a priority level assignment or provisioning request for an NSEP service is in doubt. However, processing of Emergency NSEP service requests will not be delayed for verification purposes.

(4) Cooperate with other service vendors involved in provisioning or restoring a portion of an NSEP service by honoring provisioning or restoration priority level assignments, or requests for assistance to provision or restore NSEP services, as detailed in sections 6(f)(1), (2), and (3) above.

(5) All service vendors, including resale carriers, are required to ensure that service vendors supplying underlying facilities are provided information necessary to implement priority treatment of facilities that support NSEP services.

(6) Preempt, when necessary, existing services to provide and NSEP service as authorized in section 7 of this appendix.

(7) Assist in ensuring that priority level assignments of NSEP services are accurately identified "end-to-end" by:

(a) Seeking verification from an authorized Federal government entity if the legitimacy of the restoration priority level assignment is in doubt;

(b) Providing to subcontractors and/or interconnecting carriers the restoration priority level assigned to a service;

(c) Supplying, to the Executive Office of the President, when acting as a prime contractor to a service user, confirmation information regarding NSEP service completion for that portion of the service they have contracted to supply;

(d) Supplying, to the Executive Office of the President, NSEP service information for the purpose of reconciliation.

(e) Cooperating with the Executive Office of the President during reconciliation.

(f) Periodically initiating reconciliation with their subcontractors and arranging for subsequent subcontractors to cooperate in the reconciliation process.

(8) Receive compensation for costs authorized through tariffs or contracts by:

(a) Provisions contained in properly filed state or Federal tariffs; or

(b) Provisions of properly negotiated contracts where the carrier is not required to file tariffs.

(9) Provision or restore only the portions of services for which they have agreed to be responsible (i.e., have contracted to supply), unless the President's war emergency powers under section 706 of the Communications Act are in effect.

(10) Cooperate withe the Executive Office of the President during audits.

(11) Comply with any regulations or procedures supplemental to and consistent with this appendix that are issued by the Executive Office of the President and reviewed by the FCC.

(12) Insure that at all times a reasonable number of public switched network services are made available for public use.

(13) Not disclose information concerning NSEP services they provide to those not having a need-to-know or might use the information for competitive advantage.

7. Preemption of Existing Services

When necessary to provision or restore NSEP services, service vendors may preempt services they provide as specified below. "User" as used in this Section means any user of a telecommunications service, including both NSEP and non-NSEP services. Prior consent by a preempted user is not required.

a. The sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority level "E" or restore NSEP services assigned a restoration priority level from "1" through "5":

(1) Non-NSEP services: If suitable spare services are not available, then, based on the considerations in this appendix and the service vendor's best judgment, non-NSEP services will be preempted. After ensuring a sufficient number of public switched services are available for public use, based on the service vendor's best judgment, such services may be used to satisfy a requirement for provisioning NSEP services.

(2) NSEP services: If no suitable spare or non-NSEP services are available, then existing NSEP services may be preempted to provision or restore NSEP services with higher priority level assignments. When this is necessary, NSEP services will be selected for preemption in the inverse order of priority level assignment.

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(3) Service vendors who are preempting services will ensure their best effort to notify the service user of the preempted service and state the reason for and estimated duration of the preemption.

b. Service vendors may, based on their best judgment, determine the sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority of "1" through "5". Preemption is not subject to the consent of the user whose service will be preempted.

8. Requests for Priority Assignments.

All service users are required to submit requests for priority actions through the Executive Office of the President in the format and following the procedures prescribed by that Office.

9. Assignment, Approval, Use, and Invocation of Priority Levels

a. *Assignment and approval of priority levels.* Priority level assignments will be based upon the categories and criteria specified in section 12 of this appendix. A priority level assignment made by the Executive Office of the President will serve as that Office's recommendation to the FCC. Until the President's war emergency powers are invoked, priority level assignments must be approved by the FCC. However, service vendors are ordered to implement any priority level assignments that are pending FCC approval.

After invocation of the President's war emergency powers, these requirements may be superseded by other procedures issued by the Executive Office of the President.

b. *Use of Priority Level Assignments.*

(1) All provisioning and restoration priority level assignments for services in the Emergency NSEP category will be included in initial service orders to vendors. Provisioning priority level assignments for Essential NSEP services, however, will not usually be included in initial service orders to vendors. NSEP treatment for Essential NSEP services will be invoked and provisioning priority level assignments will be conveyed to service vendors only if the vendors cannot meet needed service dates through the normal provisioning process.

(2) Any revision or revocation of either provisioning or restoration priority level assignments will also be transmitted to vendors.

(3) Service vendors shall accept priority levels and/or revisions only after assignment by the Executive Office of the President.

Note.—Service vendors acting as prime contractors will accept assigned NSEP priority levels only when they are accompanied by the Executive Office of the President designated service identification, *i.e.*, TSP Authorization Code. However, service vendors are authorized to accept priority levels and/or revisions from users and contracting activities before assignment by the Executive Office of the President when service vendor, user, and contracting activities are unable to communicate with either the Executive Office of the President or the FCC. Processing of Emergency NSEP service requests will not be delayed for verification purposes.

c. *Invocation of NSEP treatment.* To invoke NSEP treatment for the priority provisioning of an NSEP telecommunications service, an authorized Federal official either within, or acting on behalf of, the service user's organization must make a written or oral declaration to concerned service vendor(s) and the Executive Office of the President that NSEP treatment is being invoked. Authorized Federal officials include the head or director of a Federal agency, commander of a unified/specified military command, chief of military service, or commander of a major military command; the delegates of any of the foregoing; or any other officials as specified in supplemental regulations or procedures issued by the Executive Office of the President. The authority to invoke NSEP treatment may be delegated only to a general or flag officer of a military service, civilian employee of equivalent grade (e.g., Senior Executive Service member), Federal Coordinating Officer or Federal Emergency Communications Coordinator/Manager, or any other such officials specified in supplemental regulations or procedures issued by the Executive Office of the President. Delegates must be designated as such in writing, and written or oral invocations must be accomplished, in accordance with supplemental regulations or procedures issued by the Executive Office of the President.

10. Resubmission of Circuits Presently Assigned Restoration Priorities

All circuits assigned restoration priorities must be reviewed for eligibility for initial restoration priority level assignment under the provisions of this appendix. Circuits currently assigned restoration priorities, and for which restoration priority level assignments are requested under section 8 of this appendix, will be resubmitted to the Executive Office of the President. To resubmit such circuits, service users will comply with applicable provisions of section 6(d) of this appendix.

11. Appeal

Service users or sponsoring Federal organizations may appeal any priority level assignment, denial, revision, revocation, approval, or disapproval to the Executive Office of the President within 30 days of notification to the service user. The appellant must use the form or format required by the Executive Office of the President and must serve the FCC with a copy of its appeal. The Executive Office of the President will act on the appeal within 90 days of receipt. Service users and sponsoring Federal organizations may only then appeal directly to the FCC. Such FCC appeal must be filed within 30 days of notification of the Executive Office of the President's decision on appeal. Additionally, the Executive Office of the President may appeal any FCC revisions, approvals, or disapprovals to the FCC. All appeals to the FCC must be submitted using the form or format required. The party filing its appeal with the FCC must include factual details supporting its claim and must serve a copy on the Executive Office of the President and any other party directly involved. Such party may file a response within 20 days, and replies may be filed within 10 days thereafter. The Commission will not issue public notices of such submissions. The Commission will provide notice of its decision to the parties of record. Any appeals to the Executive Office of the President that include a claim of new information that has not been presented before for consideration may be submitted at any time.

12. NSEP TSP System Categories, Criteria, and Priority Levels

a. *General.* NSEP TSP System categories and criteria, and permissible priority level assignments, are defined and explained below.

(1) The Essential NSEP category has four subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; and Public Welfare and Maintenance of National Economic Posture. Each subcategory has its own criteria. Criteria are also shown for the Emergency NSEP category, which has no sub-categories.

(2) Priority levels of "1," "2," "3," "4," and "5" may be assigned for provisioning and/or restoration of Essential NSEP telecommunication services. However, for Emergency NSEP telecommunications services, a priority level "E" is assigned for provisioning. A restoration priority level from "1" through "5" may be assigned if an Emergency NSEP service also qualifies for such a restoration priority level under the Essential NSEP category.

(3) The NSEP TSP System allows the assignment of priority levels to any NSEP telecommunications service across three time periods, or stress conditions: Peacetime/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. Priority levels will normally be assigned only for the first time period. These assigned priority levels will apply through the onset of any attack, but it is expected that they would later be revised by surviving authorized telecommunication resource managers within the Executive Office of the President based upon specific facts and circumstances arising during the Attack/War and Post-Attack/Recovery time periods.

(4) Service users may, for their own internal use, assign subpriorities to their services assigned priority levels. Receipt of and response to any such subpriorities is optional for service vendors.

(5) The following paragraphs provide a detailed explanation of the categories, subcategories, criteria, and priority level assignments, beginning with the Emergency NSEP category.

b. *Emergency NSEP.* Telecommunications services in the Emergency NSEP category are those new services so critical as to be required to be provisioned at the earliest possible time, without regard to the costs of obtaining them.

(1) *Criteria.* To qualify under the Emergency NSEP category, the service must meet criteria directly supporting or resulting from at least one of the following NSEP functions:

(a) Federal government activity responding to a Presidentially declared disaster or emergency as defined in the Disaster Relief Act (42 U.S.C. 5122).

(b) State or local government activity responding to a Presidentially declared disaster or emergency.

(c) Response to a state of crisis declared by the National Command Authorities (e.g., exercise of Presidential war emergency powers under section 706 of the Communications Act.)

(d) Efforts to protect endangered U.S. personnel or property.

(e) Response to an enemy or terrorist action, civil disturbance, natural disaster, or any other unpredictable occurrence that has damaged facilities whose uninterrupted operation is critical to NSEP or the management of other ongoing crises.

(f) Certification by the head or director of a Federal agency, commander of a unified/specified command, chief of a military service, or commander of a major military command, that the telecommunications service is so critical to protection of life and property or to NSEP that it must be provided immediately.

(g) A request from an official authorized pursuant to the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.* and 18 U.S.C. 2511, 2518, 2519).

(2) *Priority Level Assignment.*

(a) Services qualifying under the Emergency NSEP category are assigned priority level "E" for provisioning.

(b) After 30 days, assignments of provisioning priority level "E" for Emergency NSEP services are automatically revoked unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

(c) For restoration, Emergency NSEP services may be assigned priority levels under the provisions applicable to Essential NSEP services (see section 12(c)). Emergency NSEP services not otherwise qualifying for restoration priority level assignment as Essential NSEP may be assigned a restoration priority level "5" for a 30-day period. Such 30-day restoration priority level assignments will be revoked automatically unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

c. *Essential NSEP.* Telecommunication services in the Essential NSEP category are those required to be provisioned by due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs. They may be assigned priority level of "1," "2," "3," "4," or "5" for both provisioning and restoration, depending upon the nature and urgency of the supported function, the impact of lack of service or of service interruption upon the supported function, and, for priority access to public switched services, the user's level of responsibility. Priority level assignments will be valid for no more than three years unless revalidated. To be categorized as Essential NSEP, a telecommunications service must qualify under one of the four following subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety and Maintenance of Law and Order; or Public Welfare and Maintenance of National Economic Posture. (Note.—Under emergency circumstances, Essential NSEP telecommunication services may be recategorized as Emergency NSEP and assigned a priority level "E" for provisioning.)

(1) *National security leadership.* This subcategory will be strictly limited to only those telecommunication services essential to national survival if nuclear attack threatens or occurs, and critical orderwire and control services necessary to ensure the rapid and efficient provisioning or restoration of other NSEP telecommunication services. Services in this subcategory are those for which a service interruption of even a few minutes would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must be at least one of the following:

(i) Critical orderwire, or control service, supporting other NSEP functions.

(ii) Presidential communications service critical to continuity of government and national leadership during crisis situations.

(iii) National Command Authority communications service for military command and control critical to national survival.

(iv) Intelligence communications service critical to warning of potentially catastrophic attack.

(v) Communications service supporting the conduct of diplomatic negotiations critical to arresting or limiting hostilities.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority level "1" for provisioning and restoration during the Peace/Crisis/Mobilization time period.

(2) *National security posture and U.S. population attack warning.* This subcategory covers those minimum additional optimum defense, diplomatic, or continuity-of-government postures before, during, and after crises situations. Such situations are those ranging from national emergencies to international crises, including nuclear attack. Services in this subcategory are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Threat assessment and attack warning.

(ii) Conduct of diplomacy.

(iii) Collection, processing, and dissemination of intelligence.

(iv) Command and control of military forces.

(v) Military mobilization.

(vi) Continuity of Federal government before, during, and after crises situations.

(vii) Continuity of state and local government functions supporting the Federal government during and after national emergencies.

(viii) Recovery of critical national functions after crises situations.

(ix) National space operations.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority level "2," "3," "4," or "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

(3) *Public health, safety, and maintenance of law and order.* This subcategory covers the minimum number of telecommunication services necessary for giving civil alert to the U.S. population and maintaining law and order and the health and safety of the U.S. population in times of any national, regional, or serious local emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP functions.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Population warning (other than attack warning).

(ii) Law enforcement.

(iii) Continuity of critical state and local government functions (other than support of the Federal government during and after national emergencies).

(vi) Hospitals and distributions of medical supplies.

(v) Critical logistic functions and public utility services.

(vi) Civil air traffic control.

(vii) Military assistance to civil authorities.

(viii) Defense and protection of critical industrial facilities.

(ix) Critical weather services.

(x) Transportation to accomplish the foregoing NSEP functions.

(b) *Priority level assignment.* Service under this subcategory will normally be assigned priority levels "3," "4," or "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

(4) *Public welfare and maintenance of national economic posture.* This subcategory covers the minimum number of telecommunications services necessary for maintaining the public welfare and national economic posture during any national or regional emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Distribution of food and other essential supplies.

(ii) Maintenance of national monetary, credit, and financial systems.

(iii) Maintenance of price, wage, rent, and salary stabilization, and consumer rationing programs.

(iv) Control of production and distribution of strategic materials and energy supplies.

(v) Prevention and control of environmental hazards or damage.

(vi) Transportation to accomplish the foregoing NSEP functions.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority levels "4" and "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

d. *Limitations.* Priority levels will be assigned only to the minimum number of telecommunication services required to

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support an NSEP function. Priority levels will not normally be assigned to backup services on a continuing basis, absent additional justification, *e.g.*, a service user specifies a requirement for physically diverse routing or contracts for additional continuity-of-service features. The Executive Office of the President may also establish limitations upon the relative numbers of services which may be assigned any restoration priority level. These limitations will not take precedence over laws or executive orders. Such limitations shall not be exceeded absent waiver by the Executive Office of the President.

e. Non-NSEP services. Telecommunication services in the non-NSEP category will be those which do not meet the criteria for either Emergency NSEP or Essential NSEP.

[FR Doc. 88-27108 Filed 11-22-88; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 387, 390, 391, and 395

[FHWA Docket No. MC-114]

RIN 2125-AA34

Federal Motor Carrier Safety Regulations; General; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Corrections to final rule.

SUMMARY: This document includes seven technical amendments: Five technical amendments correct the final rule that appeared in the **Federal Register** on Thursday, May 19, 1988 (53 FR 18042); one amendment corrects a typographical error in 49 CFR 387.41 that appeared in the final rule addressing minimum levels of financial responsibility for motor carriers which was published in the **Federal Register** on Monday, November 21, 1983 (48 FR 52683); and one amendment that corrects typographical errors in 49 CFR 395.2 and 395.13 that appeared in the final rule addressing hours of service of drivers and the use of automatic on-board recording devices which was published in the **Federal Register** on Friday, September 30, 1988 (53 FR 38666). The first correction is necessary to reinstate an exemption in 49 CFR 391.2 for certain farm vehicle drivers which was inadvertently omitted from the final rule. The second correction amends 49 CFR 390.5 by removing a definition that is not needed.

The third correction amends 49 CFR 390.5 by revising the definition "exempt intracity zone" to make it comport with the FHWA's original intent. The fourth correction amends 49 CFR 390.27 to correctly state the addresses of FHWA's regional motor carrier safety offices. The fifth correction amends 49 CFR 387.41 so that the provisions of the section will be clearly understood and the rule will correctly reflect a reorganization within the agency. The sixth correction amends 49 CFR 390.21 so that the provisions of the section are consistent. The seventh correction redesignates a paragraph in 49 CFR 395.2 and amends 49 CFR 395.13 so that the referral to another section is correct.

EFFECTIVE DATE: November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPRM) published in the **Federal Register** at 52 FR 26278 on July 13, 1987, the FHWA proposed to amend Part 390 of the Federal Motor Carrier Safety Regulations (FMCSRs), and to make certain conforming amendments to other Parts of the FMCSRs. Inadvertently, it was proposed to remove § 391.2(c), which exempted certain farm vehicle drivers from the driver qualification rules of Part 391, while leaving the partial exemption for drivers of articulated (combination) farm vehicles, which appears at § 391.67, intact. The farm driver exemptions found in § 391.2 and § 391.67 have been in effect since December 22, 1971, and were issued to meet specific, unique transportation needs of the country's farm community. We have received no evidence that those needs have changed and the FHWA received no comments regarding the removal of § 391.2(c). In view of the fact that the removal of § 391.2(c) in the final rule that was published in the **Federal Register** on Thursday, May 19, 1988 (53 FR 18042) was inadvertent, the FHWA is reinstating § 391.2(c).

The second technical amendment made today corrects § 390.27, Locations of regional motor carrier safety offices, to reflect several recent address changes which were not incorporated in the final rule that was published in the **Federal Register** on Thursday, May 19, 1988 (53 FR 18042).

Section 390.5, Definitions, as published in the **Federal Register** on May 19, 1988 (53 FR 18054), contained a definition of "taxicab." Since vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or less or vehicles designed to transport less than 15 passengers, including the driver, are not subject to the FMCSRs, the definition of "taxicab" is not needed and is, therefore, being removed.

The definition of "exempt intracity zone" also published in the **Federal Register** on May 19, 1988 (53 FR 18054) is amended to make it comport with the FHWA's original intent. In describing exempt intracity zones, the FHWA intended to refer to the ICC definition of a "commercial zone" simply for purposes of delineating the geographic area within which a driver or vehicle otherwise subject to the agency's safety regulations would be exempt from those requirements. It was not the FHWA's intent to limit the exemption to those drivers who were "not under a common control, management, or arrangement for a continuous carriage or shipment." *See* 49 CFR 1048.101 (republished as section 44 of Appendix F to Subchapter B, 53 FR 18042, 18069 (1988)). In fact, drivers under such common control, management, or arrangement were subject to a similar ICC exemption when operating in "terminal areas." 49 U.S.C. 10523. The amendment to the definition of "exempt intracity zone" is intended to make clear that it applies to drivers in these geographic locations regardless of whether the driver is under a common control, management, or arrangement for a continuous carriage or shipment.

The financial responsibility requirements for motor carriers was published in the **Federal Register** on Monday, November 21, 1983 (48 FR 52653). Section 387.41, Violation and penalty, was originally published with a typographical error that changed the intended meaning of the section. The word "capability" was used when the proper word for the appropriate sentence should have been "culpability." This error was discovered recently and is not being corrected by this technical amendent. This technical correction also reflects a reorganization within the agency.

Paragraph (b)(4) of § 390.21, Marking of motor vehicles, refers to paragraphs (b)(1) and (b)(2), but should also have referred to (b)(3) for completeness (pertaining to information which must be marked on a motor vehicle). The omission of (b)(3) from this paragraph was inadvertent, and paragraph (b)(4) is being revised to include the reference to paragraph (b)(3).

A final rule concerning automatic on-board recording devices was published in the **Federal Register** on Monday, September 30, 1988 (53 FR 39666). This rule included a definition of "automatic

on-board recording device," but it incorrectly designated this definition as paragraph (k). That paragraph should have been designated as paragraph (i) to conform to changes made on May 19, 1988. *See* 53 FR 18958. Also, § 395.13(b)(2) referred incorrectly to the provisions of "§ 395.13." That typographical error is being corrected by changing the referral to "§ 395.15."

Finally, the agency has received several calls questioning the discussion concerning rescission of the intracity zone exemption that begins on page 18048 of the May 19, 1988, **Federal Register**. The discussion heading incorrectly appears as "Exempt Intercity Operation Drivers." The heading should have read "Exempt Intracity Operation Drivers." Two additional references to "intercity zones" were incorrectly made in the body of the discussion. These were typographical errors made during printing preparation. The entire discussion addresses the "intracity zone exemption" and should be interpreted that way.

List of Subjects in 49 CFR Parts 387, 390, and 391

Highway safety, Highways and roads, Financial responsibility, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Motor vehicle safety.

In view of the above, the FHWA is amending 49 CFR Parts 387, 390, 391, and 395 as follows:

PART 387—[AMENDED]

1. The authority citation for Part 387 is revised to read as follows:

Authority: 49 U.S.C. 10927 *note*; 49 CFR 1.48.

2. Section 387.41 is revised to read as follows:

§ 387.41 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Associate Administrator for Motor Carriers or his designee, by written notice. In determining the amount of such penalty, the Associate Administrator or his designee shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

PART 390—[AMENDED]

3. The authority citation for Part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

4. Section 390.27 is revised to read as follows:

§ 390.27 Locations of regional motor carrier safety offices.

Region No.	Territory included	Location of regional office
1	Connecticut, Maine, Massachusetts, New Jersey, New Hampshire, New York, Rhode Island, Vermont, Puerto Rico, and the Virgin Islands. That part of Canada east of Highways 19 and 8 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border.	Leo W. O'Brien Federal Office Building, Room 719, Albany, NY 12207-2334.
3	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	31 Hopkins Plaza, Federal Building, Room 1615, Baltimore, MD 21201-2819.
4	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee	1720 Peachtree Road, NW., Suite 219, Atlanta, GA 30367-2349.
5	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. That part of Canada west of Highways 19 and 8 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border, and east of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line north to the Canadian border.	18209 Dixie Highway, Homewood, IL 60430-2294.
6	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. All of Mexico, except the States of Baja California and Sonora and the Territory of Baja California Sur., Mexico. All nations south of Mexico.	Room 8A00, Federal Building, 819 Taylor Street, Fort Worth, TX 76102-6115.
7	Iowa, Kansas, Missouri, and Nebraska	6301 Rockhill Road, P.O. Box 419715, Kansas City, MO 64141-6715.
8	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. That part of Canada west of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line due north to the Canadian border, and east of Highway 95 from Kingsgate to Blaeberry and thence a straight line due north to the Canadian border.	555 Zang Street, Room 400, Lakewood, CO 80228-1014.
9	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Mariana Islands. The States of Baja California and Sonora, Mexico, and the Territory of Baja California Sur., Mexico.	211 Main Street, Room 1108, San Francisco, CA 94105-1926.
10	Alaska, Idaho, Oregon, and Washington. That part of Canada west of Highway 95 Kingegate to Blaeberry and thence a straight line due north to the Canadian border, and all the Province of British Columbia.	Mohawk Building, Room 312, 708 SW. Third Avenue, Portland, OR 97204-2491.

5. In § 390.5, the definition of *"taxicab"* is removed and the definition of "Exempt intracity zone" is revised to read as follows:

§ 390.5 Definitions.

* * * * *

"Exempt intracity zone" means the geographic area of a municipality or the commercial zone of that municipality described by the ICC in 49 CFR Part 1048, revised as of October 1, 1975. The descriptions are printed in Appendix F to Subchapter B of this chapter. The term "exempt intracity zone" does not include any municipality or commercial zone in the State of Hawaii. For purposes of § 390.3(g), a driver may be considered to operate a vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone.

* * * * *

6. in § 390.21, paragraph (b)(4) is revised to read as follows:

§ 390.21 Marking of motor vehicles.

* * * * *

(b) * * *

(4) If the name of any person other than the operating carrier appears on

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the motor vehicle operated under its own power, either alone or in combination, the name of the operating carrier shall be followed by the information required by paragraphs (b)(1), (2), and (3) of this section, and be preceded by the words *"operated by."*

* * * * *

PART 391—[AMENDED]

7. The authority citation for Part 391 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

8. In § 391.2, paragraph (c) is reinstated and reads as follows:

§ 391.2 General exemptions.

* * * * *

(c) *Certain farm vehicle drivers.* The rules in this part do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) motor vehicle that has a gross weight, including its load, of more than 10,000 pounds. (For limited exemptions for farm vehicle drivers of heavier articulated vehicles see § 391.67.)

PART 395—[AMENDED]

9. The authority citation for Part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; and 49 CFR 1.48.

§ 395.2 [Amended]

10. In § 395.2, paragraph (k) is redesignated as paragraph (i).

11. In § 395.13, paragraph (b)(2) is revised to read as follows:

§ 395.13 Drivers declared out of service.

* * * * *

(b) * * *

(2) No driver required to maintain a record of duty status under § 395.8 or § 395.15 of this part shall fail to have a record of duty status current on the day of examination and for the prior seven consecutive days.

* * * * *

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this section with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program No. 20.217, Motor Carrier Safety.)

Issued on November 16, 1988.

Anthony J. McMahon,

Chief Counsel, Federal Highway Administration.

[FR Doc. 88-27032 Filed 11-22-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces closure of the Bering Sea subarea to fruther retention of other rockfish and sablefish by U.S. vessels. This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bearing Sea and Aleutian Islands Area (FMP), limits retention of other rockfish and sablefish to the amount specified for total allowable catch (TAC).

DATES: Effective November 19, 1988, 12 noon AST (2100 GMT). Comments will be accepted through December 5, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Mike Sigler, Fishery Research Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the exclusive economic zone (EEZ) under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR Parts 611 and 675.

Under § 675.20(a)(8), the Director, Alaska Region, NMFS has determined that the total allowable catches (TACs) of other rockfish and sablefish in the Bearing Sea subarea will be reached by 1200 AST (2100 GMT) November 19, 1988. After this time, U.S. fishermen must treat other rockfish and sablefish in the same manner as prohibited species, as described in § 675.20(c), for the remainder of the fishing year.

Other notices concerning other rockfish were effective January 1, 1988 (53 FR 894, January 14, 1988) and September 30, 1988 (53 FR 3907, October 5, 1988). Other notices concerning sablefish were effective January 1, 1988 (53 FR 894, January 14, 1988), June 11, 1988 (53 FR 22328, June 5, 1988), and September 28, 1988 (53 FR 38725, October 3, 1988).

Classification

This action is taken under the authority of 50 CFR 675.20(a)(8) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to prevent the TACs for other rockfish and sablefish in the Bering Sea subarea from being exceeded.

Interested persons are invited to submit comments in writing to the above address for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 18, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-27128 Filed 11-18-88; 4:09 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment and reopening.

SUMMARY: NOAA announces (1) the apportionment of amounts of pollock to domestic fishermen delivering fish to foreign processors (JVP) from amounts originally apportioned to domestic fishermen processing fish or delivering fish to domestic processors (DAP) and (2) the reopening of the Bering Sea subarea to directed JVP fishing for pollock. These actions, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), are necessary to assure optimum use of pollock by allowing JVP fishing in the Bering Sea subarea to resume. They are intended as a conservation measure to comply with the objectives of the FMP.

DATES: Effective November 20, 1988, noon A.s.t. (2100 G.m.t.). Comments will be accepted through December 5, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 201668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patricia Peacock, Resource Management Specialist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the U.S. exclusive economic zone under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.93 and Part 675.

In 1988, 15 percent of the Total Allowable Catch (TAC) for groundfish in the Bering Sea and Aleutian Islands Management Area was placed in the non-specific reserve, the initial specifications for DAP were determined, and the remaining amounts were provided to domestic fishermen delivering fish to foreign processors (53 FR 894, January 14, 1988). No initial specification was provided for TALFF because U.S. fishermen are able to harvest and/or process the TAC.

The following prior in-season actions during 1988 have apportioned amounts of groundfish from the reserve to DAP and/or JVP, or amounts from DAP to JVP: April 14 (53 FR 12772, April 19, 1988), May 5 (53 FR 16552, May 10, 1988), May 20 (53 FR 19303, May 25, 1988), June 17 (53 FR 23402, June 22, 1988), July 11 (53 FR 26599, July 14, 1988), July 22 (53 FR 28229, July 27, 1988), August 25 (53 FR 33140, August 30, 1988), September 6 (53 FR 35081, September 9, 1988), September 28 (53 FR 38725, October 3, 1988), September 30 (53 FR 39097, October 5, 1988), and October 14 (53 FR 40894, October 19, 1988).

Reapportionment to JVP

The Director, Alaska Region, NMFS (Regional Director) has determined from DAP catch-to-date and the NMFS DAP survey completed in November, 1988, that DAP will harvest and process 526,000 metric tons (mt) of pollock in the Bering Sea subarea by the end of 1988. The current (early-November) DAP catch of Bering Sea subarea pollock (380,715 mt) is 71 percent of the 536,162 mt quota. For this reason, the Regional Director has determined that the current DAP amount of Bering Sea subarea pollock is excess to DAP needs in 1988. Therefore, 10,000 mt of the DAP amount for Bering Sea subarea pollock is transferred to the JVP amount for Bering Sea subarea pollock (Table 1).

Reopening

U.S. fishermen delivering to foreign processors were required by NMFS to cease directed fishing for pollock in the Bering Sea subarea on October 6 (53 FR 39479, October 7, 1988) to leave sufficient quota to provide bycatch of this species in other JVP fisheries. This notice increases the JVP amount for pollock to an amount that may be taken in directed fisheries. Therefore, foreign processors may resume the receipt of pollock harvested from the Bering Sea subarea or may resume the receipt of pollock within the Bering Sea subarea as of noon, A.s.t. November 20, 1988. This notice reverses the closure to the directed JVP fishery for pollock in the Bering Sea subarea (see 53 FR 39479, October 7, 1988).

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice will allow JVP fishermen to begin directed fishing for Bering Sea pollock. Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice, in accordance with § 675.20(b)(2)(i).

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 18, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF INITIAL TAC

[All values are in metric tons]

		Current	This action	Revised
Pollock (Bering Sea subarea)	DAP	536,162	−10,000	526,162
TAC=1,312,000; ABC=1,500,000	JVP	775,838	+10,000	785,838
Total (TAC=2,000,000)	DAP	700,173	−10,000	690,173
	JVP	1,291,634	+10,000	1,301,634
	Reserve	8,193	(1)	8,193

(1) No change.

[FR Doc. 88-27129 Filed 11-18-88; 4:15 pm]

BILLING CODE 3510-22-M

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VOL 53 ISS 226 NO 23 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 226
Wednesday, November 23, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-80-118]

Energy Conservation Program for Consumer Products; Proposed Rulemaking and Public Hearing Regarding Test Procedures for Refrigerators, Refrigerator-Freezers and Freezers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Proposed rule: Correction.

SUMMARY: On September 26, 1988 (53 FR 37416), DOE published a proposed rule to amend test procedures for refrigerators, refrigerator-freezers, and freezers. This document corrects the errors in that notice.

FOR FURTHER INFORMATION CONTACT: Douglass S. Abramson, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586-9507.

Issued in Washington, DC., November 17, 1988.

John R. Berg,

Acting Assistant Secretary Conservation and Renewable Energy.

PART 430—[CORRECTED]

Appendix A1 to Subpart B—[Corrected]

1. In Appendix A1 to Subpart B of Part 430, 5.2.1.3 Variable Defrost Control the equation for calculating "CT" is corrected as follows:

5.2.1.3

* * * * *

$$CT=(CT_L\times CT_M)/(F\times (CT_M-CT_L)+CT_L)$$

* * * * *

Appendix B1 to Subpart B—[Corrected]

2. In Appendix B1 to Subpart B of 430, 5.2.1.3 Variable Defrost Control the equation for calculating "CT" is corrected as follows:

* * * * *

$$CT=(CT_L\times CT_M)/(F\times (CT_M-CT_L)+CT_L)$$

* * * * *

[FR Doc. 88-27142 Filed 11-22-88; 8:45 am]

BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

Procurement Automated Source System

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to amend its regulations relating to the collection of fees and distribution of user guides in connection with the Procurement Automated Source System (PASS). The purpose of these amendments is to facilitate an expansion of the number of users which had to date been limited by certain contract provisions. The primary effect of these changes would be to free the expansion of PASS from the constraints of the Agency's budget process, while retaining the Agency's own access to the system and its control over fundamental decisions related to the operation of the system.

DATES: Comments must be submitted on or before December 8, 1988.

ADDRESS: Comments should be submitted to Jonathan H. Mertz, Special Assistant to the Associate Administrator for Procurement Assistance, 1441 L Street, NW., Room 600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jonathan H. Mertz (202) 653-6635.

SUPPLEMENTARY INFORMATION: Under current procedures the Small Business Administration maintains a Procurement Automated Source System (PASS) through a private contractor and allows small and large businesses and government agencies direct access to the system. This proposed rule is in connection with a proposed restructuring of the contract fee arrangements for the PASS system.

Under existing provisions, the contractor receives a monthly base user interface fee, and fixed fee per user for any users above the number allowed under the base user interface fee, both paid by the Agency. The number of base users is set and the number of additional users is theoretically unlimited. Under the current provisions of the contract, Agency funding levels would restrict the ultimate number of system users.

The proposed rule would eliminate the requirement that all user receipts be credited to the agency and would make the contractor responsible for all accounts receivable and collection duties. The rule would also reduce the number of manuals required to be distributed to each new user from two to one.

Compliance With Executive Order 12291, Executive Order 12612, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

Executive Order 12291

For the purposes of E.O. 12291, SBA has determined that this proposed rule would not be a major rule if promulgated in final form because it would not have an annual effect on the economy of $100 million or more; or cause a major increase in costs for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets. The total anticipated PASS budget would be $1.2 million for fiscal year 1989 and the number of additional users are estimated at 150. Assuming normal use, the additional users would be expected to generate approximately $43,200 per year in user fees. This assumes the current user fee rate of $24 per hour of usage. This is well below the $100 million annual floor specified by E.O. 12291.

Executive Order 12612

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), SBA certifies that this rule, if promulgated in final form, would not have a significant economic impact on a substantial number of small entities. The direct effects of this rule would be on the PASS contractor and on those users who would receive one fewer training manual. Additionally, most PASS users are not small businesses.

Paperwork Reduction Act

If promulgated in final form, this rule would not impose any reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. ch. 35.

List of Subjects in 13 CFR Part 125

Government procurement, Small business, Technical assistance.

For reasons set forth above, Title 13, Part 125 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 125—[AMENDED]

1. The authority citation for Part 125 continues to read as follows:

Authority: Section 610(a) of Pub. L. 100-202, 101 Stat. 1330, secs. 5(b) (6), 8 and 15 of the Small Business Act, 72 Stat. 384, as amended (15 U.S.C. 631 *et seq.*), 31 U.S.C. 9701, 9702, 96 Stat. 1051).

§ 125.10 [Amended]

2. Section 125.10(b) is amended by removing from the sentence which begins "The contractor will bill SBA * * * " the phrase "minus any fees it collects from non-SBA users," and substituting in the sentence beginning "Each PASS ID entitles * * * " the phrase "one PASS User Guide" for "two PASS User Guides."

Dated: November 17, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-27043 Filed 11-22-88; 8:45 am]

BILLING CODE 8025-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3480-6]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Ozone

AGENCY: U.S. Environmental Protection Agency (USEPA)

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the Goodyear Tire and Rubber Company (Goodyear) in St. Marys, Ohio. The proposed revision was submitted in the form of variances for Goodyear lines K001 to K019, and exempts them from the requirements contained in Ohio Administrative Code (OAC) Rule 3745-21-09(U). The variances also limit the total volatile organic compound (VOC) emissions from the lines to 225 tons per year. USEPA is proposing approval of this revision because the source is located in Auglaize County. Auglaize County has always been designated as a rural attainment/unclassified area for ozone and, thus, the existing control requirements are not required by the Clean Air Act.

DATE: Comments must be received on or before December 23, 1988.

ADDRESSES: Copies of the SIP revision request are available for public inspection during normal business hours at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V office).

Air and Radiation Branch, Region V, 5AR-26, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio at (312) 886-6088).

SUPPLEMENTARY INFORMATION CONTACT: USEPA approved the Ohio VOC rules as part of the ozone SIP as meeting the reasonable available control technology (RACT) Part D requirements of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).[1] Although RACT VOC regulations are required by PART D of the Clean Air Act in all ozone nonattainment areas. Ohio's rules are applicable to both attainment and nonattainment areas.

On June 1, 1987, the Ohio Environmental Protection Agency (OEPA) submitted a revision to its ozone SIP for the Goodyear Tire and Rubber Company (Goodyear) in St. Marys, Ohio. The proposed revision request was submitted in the form of variances for the Goodyear sources. The variances exempt Goodyear lines K001 to K019 from the requirements contained in Ohio Administrative Code (OAC) Rule 3745-21-09(U). The variances also limit the total volatile organic compound (VOC) emissions from the lines (K001 to K019) to 255 tons of volatile organic compounds per year. (These lines are used to coat metal).

The State requested that this revision be approved as a site-specific RACT determination for Goodyear. As discussed below, this revision is not approvable as a site-specific RACT determination because it does not meet all of USEPA's requirements. However, the revision can be approved as a relaxation from RACT requirements.

This source is located in Auglaize County. Auglaize County has always been designated as a rural attainment/unclassified area for ozone. Therefore, RACT (the existing control requirements in the approved SIP) is not required by the Clean Air Act in this area.

Evaluation of Revision as a Site-Specific RACT Determination

The State attempted to demonstrate that the existing control requirement (3.5 pounds of VOC per gallon of coating, excluding water limit) does not represent RACT for Goodyear and requested a site-specific RACT determination. In order for a site-specific RACT determination to be approvable, a source must demonstrate that it is either technically or economically infeasible to meet an emission rate limit lower than that proposed as site-specific RACT for the source.

Reductions in VOC emissions may be obtained either by reducing the VOC content of the coatings or by installing control systems to capture and destroy the VOC before they escape into the ambient air. Therefore, it must be demonstrated that both of these control methods are either technically or economically infeasible at the facility.

1. VOC Content of Coatings

The State submitted correspondence between Goodyear and its two adhesive suppliers in order to document that complying adhesives are not available. However, this correspondence does not adequately demonstrate that complying adhesives are not available. Both of the suppliers indicated that they currently have some waterbased adhesives

[1] RACT is defined as the lowest emission rate that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

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available and are working to develop others. In addition, the State did not submit documentation which shows that Goodyear has performed an adequate investigation of additional suppliers that could reasonably be expected to provide such adhesives. A detailed discussion on the extent of such an investigation is contained in appendix A of the proposed rulemaking on the Easco action published on November 9, 1988 at (53 FR 45285). (Although the Easco action pertains to RACT requirements in a nonattainment area, the same kind of investigation applies to RACT determinations in attainment areas where there is an accommodative SIP in place.)

Additionally, even if Goodyear was able to demonstrate that it is infeasible to meet the 3.5 pounds of VOC per gallon of coating (excluding water) limit, the variance would still have to be changed to include an alternative RACT emission rate limit. Such an alternative limit would have to be documented as the lowest emission rate that Goodyear could meet using low solvent or waterbased coatings. The variance currently contains only an annual limit of 255 tons per year. A tons per year limit is not approvable as a RACT limit. A daily emission rate limit is required. (Alternatively a longer averaging time, e.g., 30 days, could be approved if the revision request met USEPA's policy on long-term averaging for VOC source emission limits which is contained in a memorandum from John O'Connor, former Acting Director of the Office of Air Quality Planning and Standards, dated January 20, 1984.)

2. Add-on Control Systems

USEPA has determined that add-on controls, specifically incinerators and carbon adsorption, are technically feasible means of limiting VOC emissions from sources in the metal surface-coating category. (Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products, EPA–450/2–78–015, pp. 2–6.) Facilities that are unable to comply with emission limits by using low-VOC coating should install add-on controls if the installation of such controls is economically reasonable.

The State has submitted a study from Goodyear to demonstrate that control of VOC emissions through add-on controls would be unreasonably costly. USEPA has reviewed this study and agrees that the cost-effectiveness as reported in the study is higher than that determined in USEPA's Control Technique Guideline for Miscellaneous Metal Parts and Products as representing RACT. Therefore, add-on control can be considered economically infeasible for this facility.

However, because the State did not demonstrate that complying adhesives are not available as noted in item #1 above, USEPA cannot approve this revision as a site-specific RACT determination. However, as discussed in detail below, this revision is approvable as a relaxation from RACT.

Evaluation of Revision as a Relaxation From RACT Requirements

Goodyear's St. Marys facility is located in Auglaize County which has been designated rural attainment/unclassified for ozone. RACT regulations were adopted in this area to accommodate growth rather than to attain the ozone standard. Therefore, this revision can be approved as a relaxation from RACT. The original basis of this accommodative ozone SIP for areas classified as attainment/unclassifiable was to require RACT level controls on existing sources, in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required of new major sources in attainment/unclassifiable areas under USEPA's prevention of significant deterioration regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas. Therefore, this action, when promulgated, will cancel the accommodative SIP for Auglaize County. This means that all new major VOC sources and major modifications in this county must comply with all the PSD monitoring requirements. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas. All sources wishing to locate in nonattainment areas must comply with the State's federally approved Part D new source review program.

USEPA assumes that Ohio would prefer to have this variance approved and cancel the accommodative SIP for the duration of the variance. If Ohio does not wish to have the variance approved on this basis, it should so indicate during the public comment period for this notice.

The State of Ohio has issued variances for lines K001 to K019. In addition to limiting the total volatile organic compound emissions from the lines to 255 tons per year, the variances also contain recordkeeping requirements and quarterly reporting requirements.

This SIP revision was submitted to USEPA in the form of a variance issued by the State to the Goodyear Tire and Rubber Company. This variance expires three years after final approval by USEPA. Therefore, this SIP revision is only effective for that period of time. After this period, the SIP for Goodyear reverts to the USEPA approved Ohio SIP contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U). Additionally the accommodation SIP would be in place again at that time.

Proposed Action

USEPA is proposing to approve this SIP revision for the following reasons: (1) The Goodyear facility is in Auglaize County, which is a rural attainment area for ozone. The Clean Air Act does not require RACT level VOC control in areas that have always been designated attainment; and (2) Approval of this proposed SIP revision will not increase the historical VOC emission level from this source. Under USEPA existing policy, however, no demonstration of attainment and maintenance was required in the SIP for rural ozone attainment areas.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.
Dated: November 16, 1987.

Frank M. Covington,

Acting Regional Administrator.

Editorial Note: This document was recevied by the office of the Federal Register November 18, 1988.

[FR Doc. 88–27068 Filed 11–22–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3480–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the ozone portion of the Ohio State Implementation Plan (SIP) for Mansfield Products Company in Mansfield, Richland County, Ohio. This revision was submitted by the State as an alternative emission control program (bubble) for a primer flowcoat line (K002) and an electrostatic spray line (K005). The terms and conditions for the variance and permit for these lines limit volatile organic compound (VOC) emissions from the primer flowcoat line to 2.62 pounds of VOC per gallon of coating, excluding water, and limit VOC emissions from the electrostatic spray line to 3.45 pounds of VOC per gallon of coating, excluding water.

The revision does not meet the requirements of USEPA's December 4, 1986 (51 FR 43814), final emission trading policy statement (ETPS) and, therefore, cannot be proposed to approve this revision as a relaxation from the Reasonably Available Control Technology (RACT) requirements in the SIP, because the Clean Air Act does not require RACT level control in areas, such as Richland County, designated as attaining the National Ambient Air Quality Standards (NAAQS) for ozone.

DATE: Comments must be received on or before December 23, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Maggie Greene, at (312) 886–6029, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149.

Comments on this proposed rule should be addressed to (please submit an original and five copies if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6029.

SUPPLEMENTARY INFORMATION: On September 30, 1986 and on March 30, 1987, the Ohio Environmental Protection Agency (OEPA) submitted a proposed revision to its ozone SIP for Mansfield Products Company. Mansfield Products Company, located in Mansfield, Ohio, is a manufacturer of large appliances. The company operates several surface coating lines, subject to the requirements of OAC Rule 3745–21–09(K). This rule limtis the VOC content of the coatings to 2.8 pounds of VOC per gallon of coating, excluding water.

The proposed revision of Ohio's ozone SIP for Mansfield Products Company involves a primer flowcoat line (K002) and an electrostatic spray line (K005). This revision was submitted by the State as a bubble between two large appliance surface coating lines. The special terms and conditions of the permit to operate for the primer flowcoat line and the variance for the electrostatic spray line are listed below:

1. In lieu of OAC rule 3745–21–09(K), the primer flowcoat line shall comply with the following limitations:

a. The VOC content of each coating employed in source K002 shall not exceed 2.62 pounds of VOC per gallon of coating employed, excluding water; and

b. The transfer efficiency of the coatings employed shall not be less than 85 percent.

2. In lieu of OAC rule 3745–21–09(K), the electrostatic spray line shall comply with the following limitations:

a. The VOC content of each coating employed in source K005 shall not exceed 3.45 pounds of VOC per gallon of coating employed, excluding water; and

b. The transfer efficiency of the coatings employed shall not be less than 60 percent.

3. The operation of the electrostatic spray line shall not exceed 8 hours per day and 260 days per year.

4. After December 31, 1985, the facility shall maintain daily records which list the number of washing machines and lids produced at each coating line.

5. After December 31, 1985, the facility shall maintain monthly records of coating content and usage for each coating.

Daily VOC emissions can be determined, using daily production records and monthly coating usage records.

USEPA Evaluation

In order to have a revision to the ozone SIP approved as a plan that is equivalent to RACT, the revision would have to meet both the criteria discussed below in sections 1 and 2. This revision does not meet these criteria. However, as discussed in section 3, this revision request can be approved as a relaxation from RACT for the electrostatic spray line.

1. Bubble Policy

Criteria for evaluating bubbles are contained in USEPA's December 4, 1986, final emission trading policy statement (ETPS) (51 FR 43814). This policy states that only emission reductions that are surplus, permanent, quantifiable and enforceable can be used for credit in a bubble.

Surplus reductions must be determined, using an appropriate baseline. For a source located in an attainment area (such as Richland County), the baseline is generally the lower of either the actual or allowable emissions at the time of application for credit. Actual values for capacity utilization and hours of operation are the source's average historical values for 2 years prior to application for credit. An alternate time period may be used if the State can demonstrate it to be more representative of typical operations.

The actual and allowable emissions and the change from before to after the bubble are summarized below:

Sources	Emissions (tons/year)					
	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
Primer Flowcoat line K002	12.9	12.9	0	16.9	12.9	−4.0
Electrostatic spray line K005	7.5	7.5	0	5.2	7.5	+2.3
Total	20.4	20.4	0	22.1	20.4	−1.7

The actual emissions and the after bubble allowable emissions are based on 1984 actual solids usage. The before bubble allowable emissions are based on 1984 solids usage, the SIP limit of 2.8 pounds of VOC per gallon of coating

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and the baseline transfer efficiency of 60 percent for the primer flowcoat line. Note, it is possible for both actual and allowable emissions in tons per year from the two lines to increase beyond the levels presented above, because the permit and variance contain only rate-based emission limits, which are not production level limited.

Mansfield Products submitted its bubble application to OEPA on April 11, 1985. Therefore, the baseline should be determined using the lower of either the actual or the allowable emission rate at the time of submittal to the State, and the average solids usage should be based on data from the years 1983 and 1984. At the time Mansfield Products submitted the bubble to OEPA, the actual emission rate from the primer flowcoat line was 2.62 pounds of VOC per gallon of coating, which is lower than its allowable emission rate of 2.8 pounds of VOC per gallon of coating; and thus the actual emission rate of 2.62 pounds would generally be used to determine the baseline. However, the higher allowable emission rate can be used to determine the baseline if the State demonstrates that the use of the allowable rate will not jeopardize attainment or maintenance of the applicable standard. In today's proposed rulemaking, use of the allowable value of 2.8 pounds of VOC per gallon of coating will not jeopardize maintenance of the ozone standards, because it does not result in actual total emissions above the historical levels before 1983, when actual total emissions were higher than the allowable. Ambient ozone data from 1983, and before, showed attainment of the ozone standard. See discussion of Air Quality in section 3.

With regard to the electrostatic spray line, the allowable emission rate of 2.8 pounds of VOC per gallon of coating is less than the actual emission rate of 3.45 pounds of VOC per gallon of coating. Therefore, the allowable emissions rate of 2.8 pounds of VOC per gallon of coating was appropriately used by the State to determine the baseline for the electrostatic spray line.

However, to ensure that surplus reductions are also permanent, quantifiable and enforceable, the variance and permit must contain appropriate emission limits. In order for this revision to be approved as a bubble, the variance for the electrostatic spray line must also contain a suitable mass emission cap, in addition to emission rate limits of 2.62 pounds of VOC per gallon of coating for the primer flowcoat line and 3.45 pounds of VOC per gallon of coating for the electrostatic spray line, to ensure that the actual emissions from the electrostatic spray line do not increase to the extent that there are no longer sufficient offset credits from the primer flowcoat line.

The Mansfield Products bubble does not meet USEPA's ETPS, because the bubble does not contain a suitable mass emission limit.

2. Transfer Efficiency Credit

OEPA calculated an allowable emission rate for the primer flowcoat line of 3.43 pounds of VOC per gallon of coating, using a baseline transfer efficiency of 60 percent, an actual transfer efficiency of 85 percent, and the SIP allowable emission rate of 2.8 pounds of VOC per gallon of coating, excluding water.

According to USEPA's original policy, outlined in a November 28, 1980, memorandum from G.T. Helms, Chief of the Control Programs Operations Branch in USEPA's Office of Air Quality Planning and Standards (OAQPS), entitled "Appropriate Transfer Efficiencies for Metal Furniture and Large Appliance Coating," large appliance coaters can receive credit when they achieve greater than 60 percent transfer efficiency. This memorandum also contains values to be used to determine actual transfer efficiency achieved by specific types of application equipment. However, more recent guidance indicates that these "table values" for actual transfer efficiency are no longer acceptable. An April 11, 1986, memorandum from Gerald Emison, Director, OAQPS, entitled "Response to Five VOC Issues Raised by the Regional Offices and Department of Justice" states that unless the SIP specifically incorporates values for transfer efficiency, actual measured values should be used. The Ohio SIP does not contain specific values for transfer efficiency. Therefore, in order for the Mansfield Products revision to be approved as RACT, the actual transfer efficiency of the flowcoater would have to be measured and used.

3. Air Quality

Richland County was originally designated as nonattainment for the ozone NAAQS. This was based on the assumption that nonattainment of the 0.88 ppm ozone standard (the level of the standard prior to 1979) was widespread around major urban areas. As requested by OEPA, USEPA designated Richland County as nonattainment although no in-county monitoring data were available. After the ozone standard was changed to 0.12 ppm, OEPA recognized that the assumption of widespread ozone nonattainment was no longer valid and initiated the redesignation of Richland County to attainment of the ozone standard. USEPA approved this redesignation on June 12, 1984 (49 FR 24124).

Analysis of Revision

Although this revision does not satisfy USEPA's policy requirements on emission trading or transfer efficiency and cannot be approved as a bubble, it can still be proposed for approval as a relaxation from RACT for the electrostatic spray line, because Mansfield Products Company is located in a rural attainment area for ozone and the Clean Air Act does not require RACT-level control in such areas. In addition, the revision will not cause an increase in the historical VOC emission level from the source. Under USEPA's existing policy, no demonstration of attainment and maintenance was required in the SIP for such areas. However, because the revision will allow less than RACT-level control on the electrostatic spray line, the accommodative ozone SIP for Richland County will be eliminated.

The original principle of this accommodative ozone SIP for areas classified as attainment/unclassifiable was to require RACT-level controls on existing sources, in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required of new major sources in attainment/unclassifiable areas under USEPA's Prevention of Significant Deterioration (PSD) regulations. The rationale behind this tradeoff is that the "extra" emission reduction obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas.

This action, if approved, will cancel the accommodative SIP for Richland County. This means that all new major VOC sources and major modifications in this county must now comply with all the PSD monitoring requirements.

Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIPs, the RACT relaxation in this notice will also have no effect on nonattainment areas. All sources wishing to locate in nonattainment areas must comply with the State's Part D new source review program, as federally approved.

Proposed Action

USEPA is proposing to approve this SIP revision as a relaxation from RACT

emission limits for the following reasons:

1. Mansfield Products Company is in Richland County, which is a rural attainment area for ozone. The Clean Air Act does not require RACT-level VOC control in attainment areas; and

2. Approval of this proposed SIP revision will not cause an increase in the historical VOC emission levels from this source.

If the State wishes to correct the inconsistencies cited above in order to retain the accommodative SIP for the area, it should also review the following guidance for other potential inconsistencies: (1) Appendix D of the proposed Post-1987 ozone policy titled "Discrepencies and Inconsistencies found in Current SIPs," (2) a May 25, 1988, clarification of Appendix D titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," and (3) the "SIP Approvability Checklist—Enforceability," which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plan Revisions for Enforceability and Legal Sufficiency." These documents contain USEPA requirements (largely dealing with SIP approvability and enforceability) which must be met for a site-specific SIP revision to be approved in an attainment area without eliminating the accommodative SIP for the area.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before December 23, 1988, will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709). Removal of the accommodative SIP for Richland County will not have a significant economic impact on a substantial number of small entities also, because it will only affect industries wishing to build major new facilities or to make a major expansion in an existing facility in Richland County.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: September 28, 1987.

Frank M. Covington,

Acting Regional Administrotor.

Editorial Note: This document was received by the Office of the Federal Register, November 18, 1988.

[FR Doc. 88–27089 Filed 11–22–88; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

48 CFR 512, 546 and 552

[GSAR Notice No. 5–173]

Acquisition Regulation, Inspection of Supplies

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise § 512.104 to amend the prescription for use of the Availability for Inspection, Testing and Shipment/Delivery clause; delete §§ 546.301; amend §§ 546.302, 546.302–70 and 546.302–71 to revise the sections to prescribe the new Source Inspection by Quality Approved Manufacturer and the Source Inspection clause; delete §§ 546.302–72, 546.316 and 546.316–70; amend § 552.212–72 to combine the two Availability for Inspection, Testing and Shipment/Delivery clauses currently used into a single clause with an alternate; amend § 552.242–70 to revise the Status Report of Orders and Shipments clause to change the reporting frequency from twice a month to once a month; retitle § 552.246–70 and revise the section to provide the text of the new Source Inspection by Quality Approved Manufacturer clause; delete § 552.246–72; renumber § 552.246–73 as 552.246–72 and revise the text of the Source Inspection clause; and delete §§ 552.246–74 and 552.246–77.

DATE: Comments are due in writing on or before December 23, 1988.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. This exemption applies to this proposed rule.

The proposed revisions regarding the use of various clauses and the requirements of the clauses may have an economic effect on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis has been prepared and submitted to the Chief Counsel of Advocacy of the Small Business Administration. Copies of the initial regulatory analysis are available for public comment from the office identified above.

The Status Report of Orders and Shipments clause at GSAR 552.242–70, the Source Inspection by Quality Approved Manufacturer clause at GSAR 552.246–70, and the Source Inspection clause at GSAR 552.246–72 contain information collection requirements which require the approval of OMB under section 3504(h) of the Paperwork Reduction Act. The information collections in this proposed rule have been submitted to OMB for review and approval. Comments on the information collection requirements in this proposed rule may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC.

The title of the first collection in this rule is "Status Report of Orders and Shipments." The clause requires contractors to submit a monthly report showing the status of processing of orders received under the contract. The contracting officer responsible for administering the contract uses the information to ensure that orders are shipped in accordance with the delivery terms established in the contract and to initiate appropriate action when orders are delinquent. The respondents are contractors awarded indefinite delivery or requirements contracts for stock replenishment items by GSA. The estimated annual burden for this collection is 4,570 hours. This is based on an estimated average burden hour per response of .083, a proposed frequency of 12 responses per respondent, and an estimated number of likely respondents of 4,570.

The title of the second collection in this rule is "Material Inspection and Receiving Report (DD Form 250 and GSA Form 308)." The clause at GSAR 552.246–70, Source Inspection by Quality Approved Manufacturer, requires the contractor prepare, sign and distribute a DD–250 for each shipment under the contract. The clause a GSAR 552.246–72, Source Inspection, requires the contractor to prepare for signature by a

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Government inspector the DD–250 for deliveries to military agencies or the CSA 308 for deliveries to civilian agencies. The contractor distributes the forms after signature by the Government inspector. The information contained on the DD–250 or GSA 308 is used by various contract administration and other support offices to document contract quality assurance, acceptance of supplies, shipments, and to support payments. The information is essential to effective contract administration. The respondents are contractors awarded supply contracts by GSA that provide for source inspection. The estimated total annual burden for this collection is 263,000 hours. This is based on an estimated average burden hour per response of .5, an average proposed frequency of 115 responses per respondent, and an estimated number of likely respondents of 4,572.

List of Subjects in 48 CFR Parts 512, 546 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 512, 546 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 512—[AMENDED]

Subpart 512.1—Delivery or Performance Schedules

2. Section 512.104 is amended by revising paragraph (d) to read as follows:

512.104 Contract clauses.

* * * * *

(d) The contracting officer shall insert the clause at 552.212–72, Availability for Inspection, Testing and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which timeframes cannot be determined in advance. If the contract is for stock items, the contracting officer shall use Alternate I.

PART 546—QUALITY ASSURANCE

546.301 [Removed]

3. Section 546.301 is removed.

4. Sections 546.302, 546.302–70 and 546.302–71 are revised to read as follows:

546.302 Fixed-price supply contracts.

546.302–70 Source inspection by quality approved manufacturer.

Contracting officers in the Federal Supply Service shall insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection, except multiple award schedule contracts, motor vehicle contracts, and contracts awarded by the Special Programs Division of the General Products Commodity Center, unless the contracting officer, in conjunction with quality assurance, decides inspection by Government personnel is necessary. Contracting officers may authorize the use of manufacturing plants or other facilities located outside the United States (including Puerto Rico and Virgin Islands) under paragraph (a)(1) of the clause when (a) inspection services are available from another Federal agency on the basis of its primary inspection responsibility in a geographic area, (b) an inspection interchange agreement exists with another agency concerning inspection at a contractor's plant, (c) procurement is being made for AID and specifies the area of source(s), or (d) other considerations will ensure more economical and effective inspection consistent with the Government's interests. Such authorization must be coordinated with the appropriate quality assurance specialist and documented in the file.

546.302–71 Source inspections.

The contracting officer shall insert the clause at 552.246–72, Source Inspection, in solicitations and contracts when it is determined that inspection is to be performed at the source by Government personnel.

546.302–72, 546.316 and 546.316–70 [Removed]

5. Sections 546.302–72, 546.316 and 546.316–70 are removed.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 552.212–72 is revised to read as follows:

552.212–72 Availability for inspection, testing and shipment/delivery.

As prescribed in 512.104(d), insert the following clause:

AVAILABILITY FOR INSPECTION, TESTING AND SHIPMENT/DELIVERY (1988)

(a) The Government requires that supplies be made available for inspection and testing within __ calender days after _____ [Insert "notice if award" or "order"] and be _____ [Insert "shipped" or "delivered"] within __ calender days after (1) notice of approval and release by the Government inspector or (2) authorization to ship without Government inspection.

(b) Failure to make supplies available for inspection and testing or to _____ [Insert "ship" or "deliver"] as required by this clause may result in termination of this contract for default.

(End of Clause)

Alternate I (1988)

If the contract is for stock items, the contracting officer shall insert "shipped" or "ship" in the basic clause, add the following paragraph (b) and redesignate paragraph (b) of the basic clause as paragraph (c).

(b) If notice of approval and release by the Government inspector or authorization to ship without Government inspection is received before __ calender days after receipt of the _____ [Insert "notice of award" or "order"], receipt of such notice shall be deemed to be received on the __ calender day after receipt of _____ [Insert "notice of award" or "order"]. Shipments shall not be made before the _____ calender day after receipt of the _____ [Insert "notice of award" or "order"] unless authorized in writing by the Contracting Officer.

7. Section 552.242–70 is revised to read as follows:

552.242–70 Status report of orders and shipments.

As prescribed in 542.1107(a), insert the following clause:

STATUS REPORT OF ORDERS AND SHIPMENTS (1988)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calender month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instructions on the form, or in an automated printout form as an attachment to the GSA 1678 when authorized by the ACO. Blocks 1 through 5 of the GSA Form 1678 shall be completed and attached as a cover page to the automated report. Reports shall be forwarded to the ACO not later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or reproduced by the Contractor.

(End of Clause)

8. Section 552.246–70 is retitled and revised to read as follows:

552.246–70 Source inspection by quality approved manufacturer.

As prescribed in 546.302–70, insert the following clause:

SOURCE INSPECTION BY QUALITY APPROVED MANUFACTURER (1988)

(a) *Inspection system and inspection facilities.* (1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed price clause of this contract shall be maintained throughout the contract period and shall comply with all requirements of Federal Standard 368, edition in effect on the date of the solicitation. A written description of the inspection system shall be made available to the Government before contract award. The Contractor shall immediately notify the Contracting Officer and the designated GSA Quality Assurance Office of any changes made in the inspection system during the contract period. As used herein, the term "inspection system" means the Contractor's own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and end articles before shipment. The manufacturing plant or other facilities must be located in the United States (including Puerto Rico and Virgin Islands), unless otherwise authorized by the Contracting Officer.

(2) In addition to the requirements in Federal Standard 368, records shall include the date inspection and testing were performed. All records shall be available for at least 12 months after contract performance is completed.

(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) Within 10 calender days after receipt of the written notice of award, the Contractor shall provide the Contracting Officer with the name of the individual and an alternate that will be responsible for inspecting each shipment under this contract.

(b) *Inspection and receiving reports.* (1) For each shipment the Contractor shall prepare and distribute DD Form 250, Material Inspection and Receiving Report, promptly but not later than the close of business the workday following shipment. The Contractor will be provided a supply of the DD 250 with complete instructions for preparation and distribution. When shipments are released, one of the officials named by the Contractor under paragraph (a) above, shall sign a Quality Approved Manufacturer Certificate certifying that the supplies have been inspected and found to be in conformity with contract requirements. The certification shall be placed in block 16 of the DD 250 and shall read as follows:

"I certify that the shipment of supplies shown on this form were inspected and found to comply with all requirements of the contract.

Signature of Certifying Official"

(c) *Inspection by Government personnel.* (1) Although the Government will normally rely upon the Contractor's certification as to the quality of supplies shipped, it reserves the right under the Inspection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract before acceptance at all times and places including the point of manufacture. When the Government notifies the contractor of its intent to inspect supplies before shipment, the contractor shall notify or arrange for subcontractors to notify the designated GSA Quality Assurance Office at least 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until after inspection by the Government is completed.

(2) Government inspection responsibility will be assigned to the GSA Quality Assurance Office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located.

(3) During the contract period, a Government representative will periodically select samples of supplies produced under this contract for Government verification inspection and testing.

(d) *Quality deficiencies.* (1) Notwithstanding any other clause of this contract concerning the conclusiveness of acceptance by the Government, any supplies or production lots shipped under this contract found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this contract within a period of * months after acceptance shall at the Government's option be replaced, repaired or otherwise corrected by the Contractor at no cost to the Government within 30 calendar days (or such longer period as the Government may authorize in writing) after receipt of notice to replace or correct. When the nature of the defect affects an entire batch or lot of supplies, and the Contracting Officer determines that correction can best be accomplished by retaining the nonconforming supplies and reducing the contract price by an amount equitable under the circumstances, then the equitable price adjustment shall apply to the entire batch or lot of supplies from which the noncomforming item was taken.

(2) If supplies in process, shipped, or awaiting shipment to fill Government orders are found not to comply with contract requirements, or if deficiencies in either plan quality of process controls are found, the Contractor may be issued a Quality Deficiency Notice (QDN). Upon receipt of a QDN, the Contractor shall take immediate corrective action and shall suspend shipment of the supplies covered by the QDN until such time as corrective action has been completed. The Contractor shall notify the GSA Quality Assurance Office, within 5 workdays, of corrective action taken or to be taken to permit onsite verification by a Government representative. Shipments of nonconforming supplies will be returned at the Contractor's expense and may cause this contract to be terminated. Delays due to the issuance of QDN do not constitute excusable delay under the Default clause. Failure to complete corrective action in a timely manner may result in termination of this contract.

(3) This contract may be terminated for default if subsequent Government inspection discloses that plant quality or process controls are not being maintained, subspecification supplies are being shipped, or for failure to comply with any other requirement of this clause.

(e) *Charges for inspection and testing.* The Contractor will be charged for any additional cost of inspection/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of clause 52.246–2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $* * per man-hour or fraction thereof if the inspection is at a GSA supply distribution facility; $* * per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $* * per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Subcontracting requirements.* The Contractor shall insert in any subcontracts for inspection or testing the provisions set forth in paragraph (a) through (e) of this clause and the Inspection of Supplies—Fixed Price clause of this contract. The Contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause and the Inspection of Supplies—Fixed Price clause.

(End of Clause)

* The contracting officer shall normally insert 365 days as the period for replacing defective supplies. However, when the supplies being bought have a shelf life of less than 1 year, the shelf life period should be used, or in the instance where a longer period may reasonably be expected to be available, the longer period should be used.

** The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.

552.246–72 [Removed]

9. Section 552.246–72 is removed.

10. Section 552.246–73 is renumbered 552.246–72 and revised to read as follows:

552.246–72 Source inspection.

As prescribed in 546.302–71, insert the following clause:

SOURCE INSPECTION (1988)

(a) *Inspection by Government personnel.* (1) Supplies to be furnished under this contract will be inspected at source by the Government prior to shipment from the manufacturing plant or other facility designated by the Contractor, unless the Contractor is otherwise notified in writing by the Contracting Officer or a designated representative. Notwithstanding the forgoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment.

(2) Government inspection responsibility will be assigned to the GSA Quality Assurance Office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located. The contractor shall notify or arrange for subcontractors to notify the designated GSA Quality Assurance Office at least 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until after inspection by the Government is completed.

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(b) *Inspection and receiving reports.* For each shipment, the Contractor shall be responsible for preparation and distribution of inspection documents as follows: (1) DD Form 250, Material Inspection and Receiving Report, for deliveries to military agencies; or (2) GSA Form 308, Notice of Inspection for deliveries to CSA or other civilian agencies. When required, the Contractor will be furnished a supply of CSA Form 308 and/or DD Form 250, and complete instructions for their preparation and distribution.

(c) *Inspection facilities.* (1) The inspection system required to be maintained by the Contractor in accordance with clause 52.246–2, Inspection of Supplies—Fixed Price, may be the contractor's own facilities or any other facilities acceptable to the Government. These facilities shall be utilized to perform all inspections and tests fo materials and components prior to incorporation into end articles, and for the inspection of such end articles prior to shipment. The right is reserved by the Government to evaluate the acceptability and effectiveness of the Contractor's inspection system prior to award and periodically during the contract period.

(2) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(3) The Contractor shall deliver the items specified in this contract from a plant or warehouse located within the United States (including Puerto Rico and the Virgin Islands) that is equipped to perform all inspections and tests required by this contract or specifications, to evidence conformance therein, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(d) *Availability of records.* In addition to any other requirement of this contract, the Contractor shall maintain at the point for source inspection, and make available to the Contracting Officer or an authorized representative, for the duration of the contract and 6 months (180 days) thereafter, records showing the following information for each order received under the contract: (1) order number; (2) date order received by the contractor; (3) quantity ordered; (4) date scheduled into production; (5) batch or lot number, if applicable; (6) date inspected and/or tested; (7) date available for shipment; and (8) date shipped or date service completed.

(e) *Additional cost of inspection and testing.* The Contractor will be charged for any additional cost of inspecting/testing or reinspection/retesting supplies for the reasons stated in paragraph (e) of clause 52.246–2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $* per man-hour or fraction thereof if the inspection is at a GSA supply distribution facility; $* per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $* per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a CSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(End of Clause)

*The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.

552.246–74 [Removed]

11. Section 552.246–74 is removed.

552.246–77 [Removed]

12. Section 552.246–77 is removed.

Dated: November 11, 1988.

Ida M. Ustad,

Director, Office of GSA Acquisition, Policy and Regulations.

[FR Doc. 88–26899 Filed 11–22–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. RSCG–3; Notice No. 1]

49 CFR Ch. II

RIN 2130–AA27

Grade Crossing Signal System Safety

AGENCY: Federal Railroad Administration (FRA), (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The purpose of this proceeding is twofold: (a) to determine whether Federal regulatory intervention is required to ensure adequate maintenance, inspection and testing of signal systems and devices at railroad highway grade crossings, and (b) to determine whether such regulations would be cost beneficial. Specificially, the proceeding seeks the following data: (1) information on current practices regarding maintenance, inspection and testing of these systems; (2) data on the frequency of grade crossing accidents in general and, more specifically, accidents attributable in whole or in part to the malfunctioning of devices; (3) evidence, if any, relating accidents attributable in whole or in part to the malfunctioning of devices to inadequacies in current maintenance, inspection and testing practices (or, conversely, evidence suggesting that Federal standards on maintenance, inspection and testing could have avoided such accidents); (4) data relating the costs and benefits of Federal regulatory intervention in these areas; and (5) information on the effectiveness of current and anticipated systems designed to the ensure detection of signal malfunctions.

DATES: (1) Written comments must be received by January 4, 1989. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

(2) Public Hearing: FRA will hold a public hearing in this proceeding on December 14, 1988. The hearing will commence at 10:00 a.m. Any person desiring to make an oral statement at the hearing should submit their prepared statements to the Docket Clerk at least five days before the hearing date.

ADDRESSES: Written comments should be addressed to the Docket Clerk, Office of Chief Counsel, RCC–30, Federal Railroad Administration, Department of Transportation, 400 Seventh Street SW., Room 8201, Washington, DC 20590. Written comments should identify this proceeding by its docket and notice number and five copies should be submitted. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Docket Clerk is located in Room 8201 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Public Dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

The hearing will be held in Room 4234 of the Nassif Building located at 400 Seventh Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 (Telephone: (202) 366–0897), or Mark Tessler, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590 (Telephone: (202) 366–0628).

SUPPLEMENTARY INFORMATION:

Background

From the earliest days of railroading, the substantial difference between the stopping capacity of a steel wheel on a steel rail and the stopping capacity of a motor vehicle on an asphalt highway dictated that railroads would have the right-of-way at rail-highway crossings. The railroad's inability to stop over short-to-medium range distances precluded any other alternative. Unfortunately, convincing motorists to respect that right-of-way has proven a difficult challenge, as evidenced by the fact that 50% of all grade crossing fatalities occur at crossings with operating, active warning devices.

Notwithstanding the common recognition that these are primarily "highway" accidents, FRA has worked closely with the railroad industry, state governments, labor organizations, Federal Highway Administration and equipment suppliers to reduce the frequency and severity of rail-highway grade crossing accidents. Those efforts have produced significant results particularly in the period between 1978 and 1987. The grade crossing accident rate declined consistently during that period, with cumulative declines for each accident category as follows: accident numbers declined by 52 percent; the accident rate per million train miles declined by 38 percent; injuries declined by 45 percent; and fatalities declined by 41 percent.

Nevertheless, even in 1987—the best year on record—6,391 accidents occurred at rail-highway intersections across the United States, and 624 people died in those accidents.

FRA Initiatives

FRA was instrumental in creating the inventory of rail-highway crossings that was conducted between 1973 and 1975. The Agency currently has custodial responsibility for this data base. It has utilized the inventory—and funded research efforts—to assist states in the allocation of resources among potential sites for installation of train activated devices. Access to the data allows states to reduce the several thousand possible candidates to a workable number that can be subjected to a rigorous analysis before final decisions are made. In addition, FRA and FHWA have fostered development of low cost improvements, such as better crossing surfaces, clearance of visual obstructions, elimination of little used crossings and the "corridor system approach" to crossing improvements. Demonstration projects to establish the effectiveness of these alternatives have been conducted. FRA has also supported "Operation Lifesaver" with both financial assistance and agency personnel. FRA staff annually make over 1,000 contacts and directly reach some 100,000 people with the Operation Lifesaver message.

FRA has also explored the possibility of equipping freight cars with reflectorized markings and installing alerting lights on locomotives as ways of improving the conspicuity of trains. In neither instance was FRA able to conclude that safety would be enhanced by requiring such devices.

Issue Definition

FRA estimates that there are approximately 347,000 rail-highway intersections in the United States. Such crossings include private and public roads which intersect at grade and those that are separated by having one mode of travel use a bridge or tunnel to pass over the other. Approximately 186,000 of these intersections involve public roads which intersect railroads at grade. Statistically, the date concerning those intersections shows the following:

Type of roadway (Federal-aid designation)	Number of crossings
Federal-Aid, Interstate and Primary	9,326
Federal-Aid, Urban	16,686
Federal-Aid, Secondary	19,306
Non-Federal-Aid	140,303
Total	185,621

Vehicular traffic level (daily average)	Type of warning device provided			Crossings in that category (percent)
	Signals (percent)	Signs (percent)	None (percent)	
Over 10,000	83	14	3	4
5,001 to 10,000	76	19	4	6
1,001 to 5,000	62	33	5	20
501 to 1,000	45	50	5	11
Under 500	15	79	6	59

Virtually all public crossings are equipped with a passive device that alerts motorists to the impending intersection; nearly 58,000 (roughly 31% of the public crossings) have devices that are activated by the approach of a train. These active warning devices include flashing light, bells and gates, and any particular intersection may have any one or a combination of such devices. In addition, there are a few locations when train activated circuitry will alter the traditional highway taffic lights to control vehicular or pedestrian traffic on an adjacent street.

FRA has assessed the need for standards governing the inspection, testing and maintenance of the devices at these 58,000 crossings on several occasions. In the late 1970's, the Federal Railroad Administration initiated a rulemaking proceeding to address the issue. Following an extensive open hearing and public comment process, FRA terminated the rulemaking proceeding in October, 1978. [See October 4, 1978, issue of the Federal Register, 43 FR 45903, Docket No. RSGC–1; Notice 2] A material factor in that decision was an FRA analysis of more than 21,000 accident files from the period 1975 to 1978. That analysis revealed that allegations of malfunction were present in only 9/10 of 1 percent of the cases, and the testimony submitted failed to make a persuasive case that Federal standards could have materially altered those numbers.

At the request of the Brotherhood of Railway Signalmen, FRA conducted a second proceeding and a similar data analysis in 1984 (49 FR 24968, Docket No. RSS1–84–3). It reached the same basic conclusion. In the second study, some 19,000 accident records were reviewed in detail and only 1 5/100 of one percent involved allegations of warning device failure.

In the wake of these proceedings, FRA focused its resources on what it determined at the time were more productive areas, including support for Operation Lifesaver, updating of the rail-highway crossing inventory and accident prediction formulas and promotion of a corridor improvement program for crossings without automated warning devices. FRA also held a Special Safety Inquiry to explore how public and private agencies could better target their programs, and published a report containing recommendations on all phases of the grade crossing safety issue and it is available in the public docket.

Recent Developments

Two developments worth noting have occurred since the completion of these proceedings. The first involves a demonstration project in the State of Texas. Under that program, a toll-free number was provided to permit any person to report problems with rail-highway grade crossings. FRA is

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currently studying the data developed in that program, both as to the rate of contacts and the actual roadside conditions that prompted the calls. The second development involves the growing diversity of responsibility for these devices. In the last several years, the large railroads have transferred portions of their systems to independent carriers, passing responsibility for the maintenance of the crossing devices to the new carrier-owners. FRA is cognizant of the fact that the new operators often lack sufficient traffic density to warrant the continuation of active warning devices. At the same time, however, we have little data on the maintenance practices adopted by the new owners, and believe that testimony on that issue would be helpful in evaluating the advisability of FRA regulatory intervention.

The Current Proceeding

In 1987, the Department of Transportation commenced a Congressionally mandated study assessing national rail-highway crossing improvement and maintenance needs, and how these crossing needs can be addressed in a cost-effective manner. The final report, to be issued by the Federal Highway Administration, is due in April 1989.

The focus of this proceeding is somewhat different. The issue here is twofold: whether the adoption of Federal standards for crossing maintenance, inspection and testing would materially reduce the occurrences of accidents related to signal device malfunction, and whether the benefits of such a rule would outweigh its cost.

Specifically, FRA seeks: (a) Information on current practices regarding maintenance, inspection and testing of these systems; (b) data on the frequency of grade crossing accidents in general and, more specifically, accidents attributable in whole or in part to the malfunctioning of devices; (c) evidence, if any, relating accidents attributable in whole or in part to the malfunctioning of devices to inadequacies in current maintenance, inspection and testing practices (or, conversely, evidence suggesting that Federal standards on maintenance, inspection and testing could have avoided such accidents); (d) relating the costs and benefits of Federal regulatory intervention in these areas; and (e) information on the effectiveness of current and anticipated systems designed to ensure detection of signal malfunctions.

FRA intends this proceeding to go beyond statistical evidence and anecdotal experience to solicit specific comments on these issues and the following questions:

1. Is there a safety problem posed by the current level of maintenance, inspection and testing of grade crossing warning devices? If responding in the affirmative, what data supports this assertion?

2. Quantify, to the extent possible, the number of accidents, injuries and fatalities attributable in whole or in part to the malfunctioning of warning devices over the last calendar year and over the previous five calendar years.

3. Is there evidence correlating these accidents to inadequacies in current maintenance, inspection and testing practices (or, conversely, evidence suggesting that Federal standards on maintenance, inspection and testing could have avoided such accidents)?

4. If it proves impossible to resolve these issues at this point in time, should FRA establish additional reporting requirements to develop a more extensive data base concerning the reliability of such devices? If responding in the affirmative, would the existing FRA rules for reporting signal system malfunctions be an appropriate model for such a system?

5. Is there any substance to assertions that changes in ownership of rail lines will alter the current inspection, testing and maintenance practices employed by prior owners? If so, are these changes justified by diminished traffic densities on the lines in question?

6. FRA has been advised that individual railroads have clearly established practices for the periodic inspection, testing and maintenance of these devices. What are those practices? How uniform is their application? Has any effort ever been made to compile and compare these individual programs?

7. Are devices currently available (or anticipated within the foreseeable future) which can automatically detect signal malfunctions? Please describe these devices, their costs and their capabilities.

8. If a safety problem does exist, can it effectively be addressed by Federal regulations? Why or why not? If Federal regulations are to be adopted, what specific areas should they address?

9. Should Federal regulations be promulgated, what type of recordkeeping would be required? Should such records be submitted to the Federal government in report form, or subject only to review during routine Federal inspections?

10. If Federal regulations were proposed, would additional maintenance forces be required? If the response is in the affirmative, is it possible to provide an estimate of the increase in man hours?

11. What additional inspection and maintenance costs would be required by such regulations? What data is being relied on to calculate this response; specifically, what assumptions and estimates are being used concerning work hours, travel miles (& times) and required materials?

12. What economic impact, if any, will the regulations have on the carriers beyond the direct costs identified above?

13. Will additional capital investments be necessary?

14. To what extent would such regulations reduce the number of accidents and casualties? Provide both the theoretical and the statistical justification for your response.

15. What alternative courses of action could be taken to address this issue? Is there a larger state and local role in this issue that has not been fully explored?

16. Please provide any data you may have comparing the costs and benefits of the proposed regulations.

This list of issues is not intended to be universal. The purpose of this proceeding has been previously described, and we solicit comments on all issues relevant to that stated purpose.

FRA will evaluate any proposed action and its potential impacts in accordance with existing regulatory policies to determine whether it would be a "major rule" under DOT policies, or have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

FRA will further evaluate any proposed rule pursuant to DOT regulations implementing the Environmental Policy Act.

Any proposed action will be further evaluated to determine information collection burdens pursuant to the Paperwork Reduction Act. Any proposed action will be evaluated pursuant to Executive Order 12612 to determine whether it would have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Commenters are invited to state their views on the above.

Issued in Washington, DC, on November 17, 1988.

John Riley,

Administrator, Federal Railroad Administration.

[FR Doc. 88-27064 Filed 11-22-88; 8:45 am]

BILLING CODE 4910-06-M

49 CFR Part 229

[Docket No. LI-7; Advance Notice]

Event Recorders

AGENCY: Federal Railroad Administration (FRA), (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: FRA is conducting this proceeding to determine whether Federal regulatory intervention is necessary to ensure the presence of event recorders on train movements within FRA's jurisdiction, and whether such regulations would be cost beneficial. The proceeding will also explore whether there is a necessity for standards governing event recording devices.

Specifically, the proceeding seeks information concerning the current extent of event recorder installation, the capabilities of event recorders in current use, anticipated technological developments, and potential uses of event recorder data.

DATES: (1) *Written Comments:* Written comments must be received by March 13, 1989.

(2) *Public Hearing:* FRA believes that a full development of the issues surrounding event recorders requires that a public hearing be held. The hearing will be held on January 10, 1989, at 10 a.m. Any person desiring to make an oral statement at the hearing should notify the Docket Clerk before January 3, 1989. Advance notice to the Docket Clerk is especially important for manufacturers or suppliers who may wish to demonstrate their event recorders at the hearing. FRA will attempt to accommodate all such requests, but oral presentations and demonstrations may have a time limit imposed on them in order to allow all persons who so desire to be heard. FRA regrets that it will not be able to make provisions for special electrical power needs or for visual presentation equipment.

ADDRESSES: (1) *Written Comments:* Address comments to the Docket Clerk, Office of Chief Counsel, RCC-30, Federal Railroad Administration, Department of Transportation, 400 Seventh Street SW., Room 8201, Washington, DC 20590. Comments should identify the docket and notice number and five copies should be submitted. Persons wishing to receive confirmation or receipt of their comments should include a self-addressed stamped postcard. The Dockets Section is located in Room 8201 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

(2) *Public Hearing:* A public hearing will be held at Room 2230, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Persons making statements at the hearing should provide five copies of their remarks at the hearing.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, RRS-2, Room 8320A, Federal Railroad Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 (telephone 202-366-0897), or Thomas A. Phemister, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590 (telephone 202-366-0635).

SUPPLEMENTARY INFORMATION: FRA is conducting this proceeding to determine whether Federal Regulatory intervention is necessary to ensure the presence of event recorders on train movements within FRA's jurisdiction, and whether such regulations would be cost beneficial. The proceeding will also explore whether there is a necessity for standards governing event recording devices.

Preliminary review by FRA shows that every major railroad now uses event recorders of some type; because technology has been advancing rapidly in this area, these devices vary considerably in both the number and type of "events" they will record. In the railroad environment, it may not be necessary to equip every locomotive to ensure that every train movement is recorder-monitored, since most movements employ multiple locomotives in addition to the "central" or "lead" locomotive. Overall, more than 7,500 of the approximately 17,000 road locomotives owned by the major United States railroads are so equipped. In at least one individual fleet, more than half of the locomotives have recorders.

The majority of the recorders now in use have the capacity to record the following eight events over a 48-hour period:

1. Time,
2. Speed,
3. Traction motor amperage,
4. Distance traveled,
5. Throttle position,
6. Dynamic brakes,
7. Locomotive (independent) brake, and
8. Train brake pipe pressure reduction.

More advanced recorders are now available and some of these will record 20 or more events; devices using magnetic tape as the recording medium are now meeting competition from devices which record into a computer readable memory, facilitating direct computer analysis of the events leading up to an accident.

Event recorders have long been a useful tool to FRA investigators in determining accident causation, but we intend in this proceeding to go beyond our anecdotal experiences to solicit comments on the following issues:

1. What percentage of the current locomotive fleet is equipped with some form of event recorder? How does that percentage vary among the following categories:

—Class I carriers
—Regional railroads
—Short line carriers
—Commuter carriers
—Locomotives moving Amtrak equipment (whether owned by Amtrak or not)

2. What percentage of the fleet would have to be equipped to ensure that all train movements subject to FRA jurisdiction are recorded? Does that percentage vary among the classes of carriers described in question 1?

3. If FRA proposes regulations, should they distinguish among the five classes of carriers described in question 1? Why or why not?

4. Describe the generic types of devices in use today and the estimated percentage of the fleet installed with each type.

5. Describe the "state-of-the-art," i.e., the capability of devices available on the market today.

6. Should FRA mandate standards for the construction and maintenance of event recording devices? What would the advantages and disadvantages of such standards be?

7. Are there uses for event recorder data beyond its traditional function in accident investigations? If so, what are those uses? Were "management benefits" (for example, the ability to measure locomotive and/or crew performance over varying terrain or with trailing tonnage of varying amounts) part of the decision to install event recorders on a carrier's fleet? How

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were the costs and benefits of those uses evaluated before the installation decision was made? Has experience changed those original projections? How?

8. Are all classes and types of locomotives compatible with event recorders? If not, why not?

9. Are there distinctions between the types of data that should be recorded in passenger and freight operations?

10. What events should be recorded:

—For accident investigation purposes?

—For purposes other than accident investigations?

11. What technological advances can be reasonably anticipated in event recorders over the next five years?

12. Are all "hot box" detector readings currently being recorded? How? Why/why not? Where are the recordings made? Where are the recordings maintained? How long are they maintained? How are train crews informed of the reading of a hot box detector? Are they informed of both negative and positive readings? Are recordings made and maintained of the notification to train crews of positive hot box indications?

13. Is there an advantage to requiring compatibility among event recorders? Should, for instance, all required devices accept a standard cable connector? Is there a standard pick up transducer signal that all devices could or should accept? Is the issue of capability or standardization a valid subject for Federal regulatory involvement?

14. What design or installation factors could make current devices more resistant to tampering? What actions, if any, are manufacturers taking to incorporate such changes in future designs?

15. Where and how should event recorders be mounted to both increase their chance of surviving an accident and yet ensure that they remain accessible for maintenance and inspection?

16. How are current devices inspected and maintained? How often are those inspections made? How often should inspections be performed? What calibration procedures are performed and at what frequency?

17. What indications do (can) these devices give to inform train crews that they are on and functioning? Is there a way that these devices can alert a crew if they cease recording events during a movement? Are such features incorporated in any currently available devices?

18. What standards for accuracy, if any, currently prevail among recorder manufacturers? What calibration procedures are necessary to maintain that accuracy? If FRA proposes regulations, should they include standards for accuracy? If so, how should those standards be developed?

19. What is the installed cost of currently available devices, broken down for materials and labor?

20. What maintenance costs do these devices require on an annual basis? Are these costs related to the number and type of events that a device may be required to record?

21. Will anticipated technological developments materially alter the response to the two preceding questions?

22. If FRA does propose regulations, should they be limited to newly purchased locomotives? Comment generally on the costs and benefits of a rule that would go beyond requiring event recorders in newly manufactured locomotives to include a mandatory retrofit of the current fleet.

This list of issues is not intended to be universal; the purpose of this proceeding has been previously described and we solicit comments on all issues relevant to that stated purpose.

Regulatory Impact

This rule has been evaluated in accordance with existing policies and procedures, and is considered to be non-major under Executive Order 12291 but significant under DOT policies and procedures (44 FR 11034, February 26, 1979).

This rule's economic impact cannot be accurately quantified with the information now known to FRA. An analysis of economic impact, including the impact on small entities pursuant to the Regulatory Fexibility Act (5 U.S.C. 601 *et seq.*), will be made after evaluating the data submitted in response to this advance notice of proposed rulemaking and the findings of that analysis will be published as part of any notice of proposed rulemaking in this matter.

A rule issued in this proceeding may impose information collection requirements, the extent and impact of which can only be evaluated with the data FRA expects to develop as a result of this advance notice of proposed rulemaking. If requirements meeting Federal thresholds are imposed, they will be submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. No record keeping requirements will be mandatory until such approval has been obtained.

This rule should not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Issued in Washington, DC, on November 17, 1988.

John H. Riley,

Administrator, Federal Railroad Administration.

[FR Doc. 88-27119 Filed 11-22-88; 8:45 am]

BILLING CODE 4910-06-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1135

[Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures-Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to adjust the quarterly rail cost adjustment factor (RACF) for changes in productivity. This proposal reflects a decision to change the RCAF from an *input* index (describing changes in costs that railroads must pay for their materials and labor) to an *output* index (one indicating changes in the cost of producing railroad services). The proposed adjustment is based on a traditional index number approach and would use data from the ICC Waybill Study and annual reports filed by Class I line-haul railroads. The proposed adjustment would develop a moving trend over a full business cycle which would be applied on a prospective basis. The proposed methodology was developed by a contractor for the Commission. Copies of the contractor's final report are available. Additionally the Commission is proposing that the RCAF not be discounted for a profit element. Finally the Commission will entertain comments on the sharing of productivity gains between railroads and shippers.

DATES: Comments must be filed December 16, 1988. Replies are due January 17, 1989.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 275-7354, Robert C. Hasek, (202) 275-0938, [TDD for hearing impaired (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision write to, call or pick up in person from: Office of The Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 275-7428. Copies of the contractor's final report are available from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, (202) 284-4357/4359 for a fee of $40. Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission headquarters.

This action will not affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1135

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

Title 49 of the Code of Federal Regulations, Part 1135 is proposed to be revised as follows:

PART 1135—RAILROAD COST RECOVERY PROCEDURES

1. The authority citation for Part 1135 would continue to read as follows:

Authority: 49 U.S.C. 10321 and 10707a; 5 U.S.C. 553.

§ 1135.1 [Amended]

2. Section 1135.1(b) is proposed to be amended by adding the following language at the conclusion of § 1135.1(b):

§ 1135.1 Quarterly adjustment of rates.

* * * * *

(b) * * * Additionally, each quarterly index will be adjusted for productivity changes. The adjustment will be made by applying a productivity trend implemented on a gradual basis so that 25 percent of the annual change is applied during the first quarter, 50 percent during the second quarter, 75 percent during the third quarter and 100 percent during the fourth quarter. Productivity adjustments shall compound in the same manner as rate changes.

* * * * *

Decided: November 14, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley and Phillips. Chairman Gradison, Vice Chairman Andre and Commissioner Lamboley commented with separate expressions. Commissioner Phillips concurred with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-27072 Filed 11-22-88; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 11B)]

Abandonment Regulations; Costing; Revised Treatment of Return on Investment; Equipment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In early 1987, the Commission amended its regulations governing railroad abandonments, service discontinuances, and financial assistance offers to, among other things, treat return on investment in railroad equipment (ROI-Equipment) as an economic cost rather than an avoidance cost. On appeal, the United States Circuit Court of Appeals for the District of Columbia Circuit remanded the proceeding and directed the Commission to reconsider its decision. In response, the Commission proposes to amend its rules as indicated below to place RIO-Equipment back in the avoidable cost category. Comments are invited.

DATES: Comments are due by December 23, 1988.

ADDRESS: Send comments (original and 10 copies), referring to Ex Parte No. 274 (Sub-No. 11B) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: The earlier amendments to the regulations [Ex Parte No. 274 (Sub-No. 11)] were made in *Abandonment Regulations—Costing*, 3 I.C.C.2d 340 (1987), and published in 52 FR 2705, January 26, 1987. The appeals court remanded the ROI-Equipment portion of those changes in *Association of American Railroads* v. *ICC*, 846 F.2d 1465 (D.C. Cir. 1988).

The court expressed concern with the Commission's reasoning that equipment from an abandoned rail line will not necessarily be used elsewhere. It found this to be at odds with a prior court decision that concluded Congress had determined, as a matter of law, that costs in subsidy determinations should be based on an assumption that abandonment would spare railroads the costs of new equipment. The court held that the Commission, in subsidy calculations, must either drop the change it made or reconcile it with the statutory assumption. It also noted that, for consistency, the Commission might want to consider revising treatment of ROI-Equipment in the abandonment context.

The Commission now proposes to revise both the subsidy and abandonment treatment of ROI-Equipment. The Commission is now considering certain other abandonment regulation changes that were proposed in Ex Parte No. 274 (Sub-No. 11A), *Abandonment Regulations—Costing (Implementation of the Railroad Accounting Principles Board Findings)*, 53 FR 17234, May 13, 1988. The final action in this proceeding will rephrase the amendments proposed here, as necessary to adjust for interim changes in the rules being amended.

Additional information is contained in a concurrent decision instituting this proposed rulemaking. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commissions, Washington, DC 20423. Telephone (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

The Commission certifies that the proposed revision will not have a significant economic impact on a substantial number of small entities. The purpose of the proposed changes is to permit a more accurate determination of the costs of rail operations in connection with rail abandonment and subsidy proceedings.

List of Subjects in 49 CFR Part 152

Abandonments and discontinuances, Administrative practice and procedures, and Railroads.

This proposed rulemaking is issued under the authority of 5 U.S.C. 553, and 49 U.S.C. 10321, 10362, 10903, and 10904.

Dated: November 10 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

Part 1152, of Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903.

11. In Part 1152 the authority citation would continue to read:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C.

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10321, 10362, 10505, 10903, 11161, 11162, and 11163, *et seq.*

Subpart D—Standards for Determining Costs, Revenues, and Return on Value.

* * * * *

2. Paragraph (g) introductory text of § 1152.32 is proposed to be amended by adding the phrase "plus the return on investment in freight cars." at the end of the sentence beginning with the phrase "The costs assigned to a line under this subsection".

3. Paragraph (g)(3)(ii) is proposed to be added to § 1152.32 to read as follows:

§ 1152.32 Calculation of Avoidable Costs.

(g) * * *

(3) * * *

(ii) Add 100 percent of the return on investment. The return on investment shall be determined by multiplying the current value of each type of car, developed in paragraph (g)(3)(i) of this section, by one minus the ratio of accumulated depreciation to the total original cost investment. The total return on investment is determined by multiplying the net current value by the rate of return calculated in § 1152.34(d).

* * * * *

4. Paragraphs (g)(3)(iii) of § 1152.32 is proposed to be amended by revising the phrase "To the amounts for repairs and depreciation, and add * * *" to read "To the amounts for repairs, depreciation, and return on investment add * * *".

* * * * *

5. Paragraph (h) proposed to be added to § 1152.32 to read as follows:

(h) *Return on investment—locomotive (line).* The return on investment shall be calculated for each type of classification of locomotive that is actually used to provide service to the line segment. The return for the locomotive(s) used shall be calculated in accordance with the following procedure:

(1) The current replacement cost for each type of locomotive used to serve the line segment shall be based on the most recent purchase of that particular type and size locomotive by the carrier indexed to the midpoint of the subsidy year or an amount quoted by the manufacturer. The amount must be substantiated. This unit cost shall be multiplied by 1 minus the ratio of total accumulated depreciation to original total cost of that type of equipment owned by applicant-carrier, as shown by company records.

(2) The current cost of capital used in the calculation of return on investment for locomotives shall be the current before-tax cost of capital, adjusted for inflation, weighted to the capital structure, and adjusted for the effects of the combined statutory Federal and State income tax rates. The current cost of capital expressed as a percent, shall be calculated as provided in §1152.34(d).

(3) The annual return on investment for each category or type of locomotive shall be calculated by multiplying the replacement cost determined in paragraph (h)(1) of this section by the rate of return determined in paragraph (h)(2) of this section.

(4) The return on investment for each type of locomotive shall be assigned to the line segment on a ratio of the locomotive unit hours on the segment to average locomotive unit hours per unit for each type of locomotive in the system. This ratio will be developed as follows:

(i) The carrier shall keep and maintain records of the number of hours that each type of locomotive incurred in serving the segment during the subsidy period.

(ii) The railroad shall develop the system average locomotive unit hours per unit for each of the following types of locomotives: yard diesel; yard-other; road diesel; and road-other.

(iii) The ratio applied to the return on investment is calculated by dividing the hours that each type or class of locomotive is used to serve the segment, as developed in paragraph (h)(4)(i) of this section, by the system average locomotive unit hours per unit for the applicable type developed in paragraph (h)(4)(ii) of this section.

(5) The cost assigned to the segment for each type of locomotive shall be calculated by multiplying the annual return on investment developed in paragraph (h)(3) of this section by the ratio(s) developed in paragraph (h)(4) of this section.

* * * * *

6. The introductory text of § 1152.34 is proposed to be revised to read as follows:

§1152.34 Return on investment.

Return on investment for road property shall be computed according to the procedures set forth in this section.

* * * * *

7. Paragraph (a) of § 1152.34 is proposed to be removed and reserved for future use.

8. Paragraph (b) of § 1152.34 is proposed to be removed and reserved for future use.

* * * * *

§ 1152.36. Submission of Revenue and Cost Data. [Amended]

9. The chart appearing in § 1152.36 is proposed to be amended as follows:

(a) Lines 5(h) and 5(i) are proposed to be revised to read as follows:

5. * * *

(h) Return on investment—locomotives.

(i) Revenue taxes.

(b) Line 5(j) is proposed to be added to read as follows:

5. * * *

(j) Property taxes.

(c) Lines 12 through 16 are proposed to be revised to read as follows:

12. Valuation of property (lines 12a through 12c).

a. Working capital.

b. Income tax benefits.

c. Net liquidation value.

13. Rate of return.

14. Total return on value (line 12 times line 13).

15. Avoidable loss from operations (line 4 minus line 7).

16. Estimated subsidy (line 4 minus lines 7, 11, and 14).

(d) Lines 17, 18, and 19 are proposed to be removed.

[FR Doc. 27073 Filed 11–22–88; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 53, No. 226
Wednesday, November 23, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Devils Lake Sioux Tribe in North Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Devils Lake Sioux Tribe in North Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Devils Lake Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the CCC may commence upon December 15, 1988, and shall be made available through May 15, 1989, or such other data as may be stated in a notice issued by the USDA.

Signed at Washington, DC on November 17, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–27139 Filed 11–22–88; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 88–163]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Disease Resistant Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to E. I. Du Pont de Nemours & Co., Inc., to allow the field testing in the State of Delaware of genetically engineered tobacco plants, modified to contain an extra gene for endochitinase. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants does not present a risk of introduction or dissemination of a plant pest and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Sally L. McCammon, Staff Biotechnologist, biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room G–186, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7612, or write her at this same address. The environmental assessment should be requested under accession number 88–091–01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

E.I. Du Pont de Nemours & Co., Inc., of Wilmington, Delaware, has submitted an application for a permit for release into the environment of genetically engineered tobacco plants modified to contain an extra gene for endochitinase. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tobacco plants under the conditions described in the E.I. Du Pont de Nemours & Co., Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

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The environmental assessment and finding of no significant impact which is based on data submitted by E. I. Du Pont de Nemours & Co., Inc., as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for endochitinase has been inserted into the tobacco chromosome. The increased production of endochitinase may make these plants less susceptible to the damaging effects of certain fungal pathogens. In nature, the genetic material contained in a plant chromosome can only be transferred to another sexually compatible plant by cross-pollination. In this field test, the introduced gene cannot spread to any other sexually compatible plant by cross-pollination since the plants will be harvested before flowering and any flower buds that do form will be removed before they open.

2. Neither the endochitinase gene nor its enzyme product confers on tobacco any plant pest characteristics. The increased production of chitinase in these tobacco plants does not increase characteristics such as weediness. Tobacco already contains a naturally occurring gene for endochitinase.

3. The bean variety from which the endochitinase gene was obtained is not a plant pest.

4. The endochitinase gene may provide the genetically engineered tobacco plants with a selective advantage over nongenetically engineered tobacco plants in its ability to become established in the environment due to a possible increase resistance to fungal pathogens. Because the genetically engineered tobacco will not be allowed to flower or survive, any selective advantages gained by the genetically engineered tobacco plants are not of concern in this field test.

5. The vector used to transfer the endochitinase gene into the tabacco chromosome has been evaluated for its use in this experiment. The vector, although derived from a plasmid with known plant pathogenic potential, has een disarmed; that is, genes which are necessary to confer plant pathogenic traits have been removed from the vector. The Vector has been tested and shown to be nonpathogenic to susceptible plants.

6. The vector agent, the bacterium which was used to deliver the vector that carries the endochitinase gene into the tobacco plant cell, was eliminated and is no longer associated with transformed plants.

7. Horizontal movement of genetic material after insertion into a plant genome has not been demonstrated. The vector acts by delivering the gene to the chromosomal DNA. The vector does not survive in a transformed plant. No mechanism is known to exist in nature to horizontally move an inserted gene from the chromosome of a plant to any other organism.

8. Endochitinase is an enzyme with ability to degrade structural components of fungi, nematodes, and certain insects. It has no reported mammalian toxicity.

9. The size of the field test plot is small (66 feet by 66 feet). The plot will be located on a private research farm and will have good security.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental; Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 16th day of November 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–27137 Filed 11–22–88; 8:45 am]

BILLING CODE 3410-34-M

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98–375). The meeting will be held in Miami, Florida and will be chaired by Commission Chairman John N. Goudie.

DATES: Friday, December 9, 1988, from 9:00 a.m. until 10: 00 a.m. (Closed). Friday, December 9, 1988 from 10:15 a.m. until 12:00 p.m. (Open). Saturday, December 10, 1988 from 9:00 a.m. until 1:00 p.m. (Open).

ADDRESSES: On December 9, 1988 from 9:00 a.m. to 12:00 p.m. at the Biltmore Hotel, Granada Room, Coral Gables, Florida. On December 10, 1988 from 9:00 a.m. to 1:00 p.m. at the Biltmore Hotel, Granada Room, Coral Gables, Florida.

FOR FURTHER INFORMATION CONTACT: Francisco J. Martinez-Alvarez (202) 632–1992.

SUPPLEMENTARY INFORMATION: On December 9 and 10, the Commission will meet to discuss proposals for endorsement of Quincentenary projects. Observers from the United States Information Agency, the National Park Service, and the Smithsonian Institution will make presentations to the Commission on December 9 and the Florida Columbus Hemispheric Trade Commission will make a presentation on December 10.

Francisco J. Martinez-Alvarez,

Acting Director.

[FR Doc. 88–27124 Filed 11–22–88; 8:45 am]

BILLING CODE 6820-RB-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held December 16, 1988, 1:30 p.m. at the Federal Building, Room 15018, 450 Golden Gate Avenue, San Francisco, CA.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Presentation by Apple Computers on Workstations.
4. Presentation by McDonnell Douglas on Data Encryption.
5. Discussion of the Bulletin Board Proposal.
6. Review of Draft 6031P Form.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in sections 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230.

For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377-2583.

Date: November 16, 1988.

Betty Anne Ferrell,

Director, Technical Support Unit Office of Technology and Policy Analysis

[FR Doc. 88–27084 Filed 11–22–88; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held December 16, 1988, 9:00 a.m. in the Federal Building, Room 15018, 450 Golden Gate Avenue, San Francisco, California.

The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Review Telecommunications Proposals and Develop a Work Plan.
4. Develop a Simplified CCL 1565 Proposal.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the subcommittee. For further information or copies of the minutes, call Betty Ferrell at (202) 377–2583.

Date: November 16, 1988.

Betty Anne Ferrell,

Director, Technical Support Unit, Office of Technology and Policy Analysis.

[FR Doc. 88–27085 Filed 11–22–88; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held December 15, 1988, 9:00 a.m. in the Federal Building, Room 15018, 450 Golden Gate Avenue, San Francisco, California. The Software Subcommittee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Develop Subcommittee Positions on Draft Technical Data Regulations.
4. Discussion of New Network Software Changes.
5. Prepare for January Meeting on Data Encryption Standard.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Betty Ferrell at (202) 377–2583.

Date: November 16, 1988.

Betty Anne Ferrell,

Director, Technical Support Unit, Office of Technology and Policy Analysis.

[FR Doc. 88–27086 Filed 11–22–88; 8:45 am]

BILLING CODE 3510-DT-M

Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee will be held December 15, 1988 at 1:30 p.m., at the Federal Building, Room 15018, 450 Golden Gate Avenue, San Francisco, California. The Supercomputer Subcommittee was formed with the goal of making recommendations to the Department of Commerce relating to licensing issues with respect to supercomputers.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Status of Supercomputer Proposal.
4. Develop a Performance Measurement for Non-Vector Machines.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Betty Ferrell at (202) 377–2583.

Date: November 16, 1988.

Betty Anne Ferrell,

Director, Technical Support Unit, Office of Technology and Policy Analysis.

[FR Doc. 88–27087 Filed 11–22–88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–122–806]

Initiation of Antidumping Duty Investigation; Generic Cephalexin Capsules from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of generic cephalexin capsules from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 12, 1988, and we will make our preliminary determination on or before April 5, 1989.

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EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Debra Conner or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC., 20230, telephone (202) 377–1778 or (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On October 27, 1988, we received a petition filed in proper form by Biocraft Laboratories, Inc., on behalf of the industry in the United States which manufactures generic cephalexin capsules. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleges that imports of generic cephalexin capsules from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

The petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act, and that it has filed the petition on behalf of the U.S. industry manufacturing the product that is subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on an average of known Canadian prices it must use to meet the competition. Petitioner listed these prices (competitively met prices) for several customers.

Petitioner based foreign market value on prices published in *Drug Benefit Formularies*, by the Ministries of Health of Ontario and Saskatchewan, Canada. Petitioner states that these prices represent the lowest amount for which a listed drug product can be purchased in those provinces in Canada.

Based on a comparison of United States price and foreign market value, petitioner alleges dumping margins ranging from 18.42 to 39.73 percent.

Petitioner also alleges that "critical circumstances" exist with respect to imports of generic cephalexin capsules from Canada.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on generic cephalexin capsules from Canada and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports or generic cephalexin capsules from Canada are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 5, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local customs office to consult the schedule.

The products covered in this investigation are generic cephalexin capsules from Canada, as provided for in item 411.7600 of the *Tariff Schedules of the United States Annotated* (TSUSA) and currently classifiable under Harmonized System (HTS) item number 3004.20.00. Generic cephalexin capsules are cephalexin monohydrate in capsule form. Cephalexin monohydrate is a semi-synthetic cephalosporin antibiotic intended for oral administration. Its chemical formula is C16H17N304S.H20. Generic cephalexin capsules contain the equivalent of not less than 90 percent and not more than 120 percent of the labelled amount of cephalexin monohydrate. The capsule is made of a water soluble gelatin, designed to facilitate swallowing and a phased release of the drug into the user's digestive system.

We are tentatively excluding from the scope of this investigation certain proprietary brand-name cephalexin capsules which petitioner alleges differ from the generic product. Such differences allegedly include different consumer expectations, different promotional activities, and significantly different prices. While the Department does not normally consider proprietary brand-names in defining the scope of an investigation, we have done so in this particular instance because the differences alleged by petitioner between branded and generic pharmaceutical products appear to be far greater than would normally be the case for other types of products. We will continue to examine this issue, however, during the investigation and will consider any comments on this issue. Any comments should be addressed as noted in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by the ITC

The ITC will determine by December 12, 1988, whether there is a reasonable indication that imports of generic cephalexin capsules from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise it will proceed according to statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

November 10, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–27048 Filed 11–22–88; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room H1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–00016." A summary of the application follows:

Applicant: Wood Machinery Manufacturers of America (WMMA), 1900 Arch Street, Philadelphia, Pennsylvania 19103.

Contact: John S. Satagaj, Counsel, *Telephone: (202) 639–8888.*

Application #: 88–00016.

Date Deemed Submitted: November 8, 1988.

Members (in addition to applicant): Abrasive Engineering and Manufacturing, Olathe, KS; Alexander Dodds Company, Grand Rapids, MI; Black Bros. Company, Mendota, IL; C R Onsrud, Inc., Troutman, NC; Crouch Machinery, Inc., Pinehurst, NC; CTD Machines, Inc., Los Angeles, CA; Delta International Machinery Corporation, Pittsburgh, PA; Diehl Machines, Wabash, IN; Fulghum Ind. Inc., Wadley, GA; Industrial Woodworking Machine Company, Garland, TX; James L. Taylor Manufacturing Company, Poughkeepsie, NY; Jenkins Division, Kohler General Corporation, Sheboygan Falls, WI; Ken Hazledine Machine Company, Inc., Terre Haute, IN; L.R.H. Enterprises, Inc., Van Nuys, CA., Lancaster Machinery Company, Lancaster, PA; Medalist Automated Machinery, Oshkosh, WI; Mereen-Johnson Machine Company, Minneapolis, MN; Mid-Oregon Industries, Bend, OR; Montaco, Inc., Orlando, FL; Newman Machine Company, Inc., Greensboro, NC; North American Products Corporation, Jasper, IN; Northfield Foundry and Machine Company, Northfield, MN; Oliver Machinery Company Grand Rapids, MI; Onsrud Machine Corporation, Wheeling, IL; Powermatic, McMinnville, TN; Robert A. Martin Company, Inc., Harvey, IL; Robert Bosch Power Tool Corporation, New Bern, NC; The Wallace Company, Pasadena, CA; Thermwood Corporation, Dale, IN; Timesavers, Inc., Minneapolis, MN; Tyler Machinery Company, Inc., Warsaw, IN; Whirlwind Inc., Dallas, TX; and Yates-American Machinery, Inc., Beloit, WI.

Summary of the Application

Export Trade

Products. Woodworking machines, woodworking systems, and accessories, principally, but not exclusively, classified in SIC # 3553, including: Cutting machines (including boring, dowelling, carving, dovetailing, mortising, planing, routing, sawing, shaping, profiling, tenoning, chucking, turning, and veneering machines); sanding machines (including edge, flat surface, irregular surface, and special-purpose sanding machines); gluing, laminating, and assembling machines (including assembly clamping, auxiliary gluing, edge gluing, surface gluing, pressing, and laminating machines); finishing machines (including applicator, auxiliary finishing, and drying machines and ovens); wood drying equipment (including dryers, kilns, and moisture measurement equipment); auxiliary machines and equipment (including environmental and safety equipment, materials handling equipment, auxiliary attachments, tool maintenance equipment, and tooling); special product and special purpose machines; logging and sawmilling machines (including log handling and preparation machines, log conversion equipment, and other auxiliary equipment and attachments); and wood residue utilization systems or equipment.

Services and Technology. Engineering, design, and related services related to Products and turnkey contracts that substantially incorporate Products; servicing of Products; training with respect to the use of Products; and technology licensing related to the manufacture and user of Products.

Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology). Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia,the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. WMMA and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products, Services, and/or Technology in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products, Services, and/or Technology by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

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c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products, Services and/or Technology;

e. Provide or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-member Suppliers to sell their Products, Services, and/or Technology or offer their Export Trade Facilitation Services through the certified activities of WMMA and/or its Members;

g. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

h. License associated Technology rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with WMMA or any other Member;

i. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product, Service, and/or Technology requirements of specific export customers or Export Markets; and

k. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by Members, to export Products to Export Markets, operate warranty, service and training centers in Export Markets, and provide Export Trade Facilitation Services to Members.

2. WMMA and/or its Members may enter into agreements wherein WMMA and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products, Services, and/or Technology in that country or market. In such agreements, (i) WMMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) members may agree that they will export for sale in the relevant country or market only through WMMA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary.

3. WMMA and/or its Members may exchange and discuss the following types of information:

a. Information that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products, Services, and/or Technology in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, available capacity to produce, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to product quantity, source, available capacity to produce Products, and delivery dates must be on a transaction-by-transaction basis only, and shall relate solely to Products intended for or available for export;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by WMMA and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about WMMA or its Member's export operations, including, without limitation, sales and distribution networks established by WMMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. WMMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accompanied by WMMA itself, or by agreement with Members or other parties.

5. WMMA and/or its Members may meet to engage in the activities described in paragraphs 1 through 4 above.

6. WMMA and/or its Members may refuse to provide to non-members Export Trade Facilitation Services or participation in the other activities described in paragraphs 1 through 5 above.

7. WMMA and/or its Members may forward to the appropriate individual Members requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activites (including prices and/or costs), and if such individual Member elects to respond, it shal respond directly to the requesting foreign government or its agents with respect to such information.

Date: November 18, 1988

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc.88-27088 Filed 11-22-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its advisory bodies will convene public meetings at the Hotel Pierre, Santurce, PR, and at the Council's Headquarters as follows:

Council—On December 6, 1988, at the Council's Headquarters (address below) at 9 a.m., will convene a closed session (not open to the public), to interview candidates for the Council's Executive Director position, and will adjourn at noon. On December 7, 1988, at the Hotel Pierre, 9 a.m., will convene its 65th regular public meeting to discuss the Shallow-water Reef Fish Fishery Management Plan (FMP)—Amendment #1, the draft Queen Conch FMP, Billfish FMP regulations, and consider other technical and administrative matters related to Council operations. The public meeting will recess at 5 p.m., reconvene December 8 at 9 a.m., and will adjourn at noon.

Administrative Committee—On December 6 at the Hotel Pierre the committee will convene its public meeting at 2 p.m., to discuss administrative matters related to the Council, and will adjourn at 5 p.m.

Scientific and Statistical Committee (SSC) and Advisory Plan (AP)—On December 5 the AP will convene at the Hotel Pierre at 9:30 a.m., and will adjourn at 5 p.m. On the same day the SSC will convene at 9:30 a.m., at the Council's Headquarters, and will adjourn at 5 p.m. Both groups will discuss the Shallow-water Reef Fish FMP—Amendment #1, the draft Queen Conch FMP, and the permitting and monitoring system for the Billfish FMP exemption to the artisanal handline fishery in Puerto Rico.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918; (809) 753-4926.

Date: November 17, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-27080 Filed 11-22-88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will convene a public meeting at the Sheraton Hotel, Anchorage, AK, on December 5, 1988, at 10:30 a.m.:

Council—The Council will convene an executive session (not open to the public) on December 7 at noon to review nominations to the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and plan teams. With the exception of the executive session and the AP Nominating Committee meeting, all meetings are open to the public. The Council will consider final approval of allocative measures in the halibut fishery for the International Pacific Halibut Commission Regulatory Areas 4B (Aleutian Islands) and 4C (Pribilof Islands). These measures include designating fishing periods and limiting the amount of fish landed per trip. The Council will review sablefish management alternatives, including continued open access management, multispecies longline fishery, individual fishing quotas, license limitation, combinations systems, and determine which will be developed and sent to the Secretary of Commerce for implementation. The Council will determine the acceptable biological catches for 1989 for each of the groundfish species and species groups in the management areas of the Gulf of Alaska and Bering Sea and Aleutians, and set preliminary total allowable catches based on biological and socioecomic considerations. The Council will take public testimony on domestic processor and joint venture needs for 1989 and set initial apportionments to start the new fishing year, January 1 for most species. They will also consider taking emergency action to reduce the retention limit used in the sablefish directed fishing definition in the Bering Sea and Aleutian Island, and to establish a Shelikof Strait district in the Gulf of Alaska for pollock management. The Council will also reconsider its proposed bycatch plan for 1989 in the Bering Sea and Aleutians, and will review 1989 foreign permit applications for joint venture and directed fishing in the Gulf of Alaska and Bering Sea/Aleutian Islands. The Council's meeting will adjourn on December 9.

Other meetings to be held during the week are:

Committee/panel	Beginning
AP	10:30 a.m., Sunday, Dec. 4.
Herring Bycatch Workgroup	10:30 a.m., Sunday, Dec. 4.
SSC	1 p.m., Sunday, Dec. 4.
AP Nominating Committee	2:30 p.m., Sunday, Dec. 4.
Permit Review Committee	7 p.m., Sunday, Dec. 4.
Magnuson Fishery Conservation and Management Act Reauthorization Committee.	7 p.m., Tuesday, Dec. 6.
Finance Committee	7 a.m., Wednesday, Dec. 7.

Other meetings in addition to the above may be held on short notice. All public meetings will be held at the Sheraton Hotel unless otherwise noted. For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone (907) 271-2809.

Date: November 22, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-27081 Filed 11-22-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Fishery Management Plan (FMP) Rewrite Oversight Group will convene a public meeting on November 30, 1988, at 1 p.m., at the Pacific Marine Fisheries Commission, Conference Room, 2075 SW. First Avenue, Suite 1C, Portland, OR, to review progress on FMP amendment #4, and to begin preparation of the public review document scheduled for release in April 1989. The public meeting will adjourn on December 1, 1988, at 3 p.m.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Date: November 17, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-27082 Filed 11-22-88; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council and the Council's Standing Committees will convene public meetings at the Ala Moana American Hotel, Honolulu, HI, as follows:

Council—at its 63rd meeting on November 28, 1988, at 1:30 p.m., will review the status and possibily make changes to the fishery management plans (FMPs) for crustaceans, pelagics, bottomfish and seamount groundfish, and precious corals on the basis of advice received from the Council's Advisory Panels (APs), its Plan Monitoring Teams, and its Scientific and Statistical Committee (SSC). Also on November 28 the Council will convene a closed session (not open to the public) at 4:30 p.m., to discuss personnel matters.

It is anticipated that the Council will elect officers for 1989, appoint Council Committee members and chairmen for 1989, appoint members to the AP for 1989-1991, approve a policy for selecting SSC members, review and comment on precious coral experimental SSC fishing applications, approve budgets for American Samoa, Guam and the Commonwealth of the Northern Mariana Islands native rights/limited entry projects, approve a programmatic budget for 1989-1990, and review the 1989 administrative budget. (Funds available for Regional Fishery Management Councils total $7.2 million

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and Council budget requests for 1989 total $8.7 million.) The meeting will reconvene on November 29 at 9 a.m., and will adjourn at 5 p.m. The public is encouraged to participate in the Council's deliberations.

The Council's Standing Committees will covene on Sunday, November 27 at 10:00 a.m., will recess at 5 p.m., reconvene on November 28 at 8 a.m., and will adjourn at noon.

The public meeting will also include reports from Islanders, fisheries agencies and organizations, reports on foreign fishing and foreign and domestic enforcement, FMPs, reports from the Council's standing committees, reports on data and research needs, administrative matters, meetings and conferences, as well as any other business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: November 17, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–27083 Filed 11–22–88; 8:45 am]

BILLING CODE 3510–22–M

National Marine Fisheries Service; Endangered Species; Application for Permit; Archie Carr Center for Turtle Research (P436)

Notice is hereby given that the Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531 through 1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Part 217 through 222).

1. Applicant: Archie Care Center for Sea Turtle Research, Department of Zoology, University of Florida, Bartham Hall, Gainesville, Florida 32611.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Species:*

Green turtle (*Chelonia mydas*), unspecified.
Loggerhead turtle (*Caretta caretta*), *unspecified.*
Hawksbill turtle (*Eretmochelys imbricata*), unspecified.
Leatherback turtle (*Dermochelys coriacea*), unspecified.
Oliver Ridley (*Lepicochelys olivacea*), unspecified.
Kemp's Ridley (*Lepicochelys kempii*), unspecified.

4. *Type of Take:* The applicant proposes to capture, tag, release, recapture, measure, sexed, collect blood samples, flush stomach, radio tag, and to perform non-injurious biopsies on sea turtles during the study of population dynamics. Up to 100 biopsies will be taken and no more than 20 will be radio tagged at any time in any study region. The objectives are to determine the movement and migration patterns; determine size distribution patterns and growth rates; determine population status; species composition and abundance; determine and monitor the physiological status of these sea turtle populations; and determine the negative impact of marine debris and pollutants on sea turtle populations.

5. *Location and Duration of Activity:* Offshore and inshore waters of the southeast United States (Atlantic and Gulf coasts of Florida, Atlantic coast of Georgia). Waters through the Bahamas which are known to be import feeding grounds for the U.S. populations of loggerheads and green turtles, and waters around the Azores.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd, St. Petersburg, Florida 33702.

Date: November 17, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–27071 Filed 11–22–88; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Commission on Executive, Legislative and Judicial Salaries will hold an Executive Session on December 6, 1988, from 9:30 a.m. to 12:30 p.m. The meeting on the 6th will be held at 736 Jackson Place NW., Washington, DC.

The purpose of the meeting is to discuss recommendations for the final report of the Commission.

For further information, please contact the Commission's office, 736 Jackson Place NW., Washington, DC 20415, telephone 275–8031.

Polly L. Gault,

Executive Director.

[FR Doc. 88–27173 Filed 11–21–88; 11:47 am]

DEPARTMENT OF ENERGY

Office of Fossil Energy

Coordinating Subcommittee on Petroleum Storage & Transportation, Committee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council

Date and Time: Monday, December 12, 1988, 3:00 PM; Tuesday, December 13, 1988, 11:30 AM

Place: National Petroleum Council Conference Room, 1625 K Street NW., Washington, DC

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585. Telephone: 202/586–4695

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Review Committee's request for further work on the draft volumes.

Tentative Agenda:

—Opening remarks by the Chairman and Government Cochairman.

—Review of the Committee's request for further work on the draft report volumes.

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation

The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 88–27141 Filed 11–22–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–69–NG]

Seagull Marketing Services, Inc.; Application To Import Natural Gas From and Export Natural Gas To Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 8, 1988, of an application filed by Seagull Marketing Services, Inc. (Seagull), for blanket authorization to import up to 150 Bcf of Canadian natural gas and export up to 150 Bcf of domestic natural gas to Canada over a two-year term beginning on the date of first import or export. Seagull intends to utilize existing pipeline facilities for transportation of the volumes to be imported or exported. Seagull also proposes to submit quarterly reports detailing each transaction.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than November 23, 1988.

FOR FURTHER INFORMATION CONTACT:

William L. Durbin, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F–091, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9516.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Seagull, a wholly-owned subsidiary of Seagull Energy Corporation, is a Texas corporation, with its principal place of business in Houston, Texas. Under the blanket authority sought, Seagull intends to import or export gas from or to Canada, either as a broker or agent, or for its own account, for short-term, spot sales to either United States or Canadian customers, including, but not limited to, gas distribution companies, electric utilities, agricultural users, pipelines, and industrial and commercial end-users. The specific terms of each import or export sale would be negotiated on an individual basis, including price and volume.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issue determined by the Administrator to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the import authority and on the domestic need for the gas in their responses on the requested export authority. The applicant asserts that this import/export arrangement will be in the public interest in that each import/export sale must be competitive in the U.S. and for Canadian gas markets served or no sales will be made. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F–056, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t, December 23, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete

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understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

In an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Seagull's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 16, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-27104 Filed 11-22-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER89-49-000]

Pacific Gas & Electric Co.; Notice of Filing

November 18, 1988.

Take notice that on November 1, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing a Transmission Rate Schedule Between PG&E and the Sacramento Municipal Utility District (SMUD).

PG&E states the rate schedule submitted will provide SMUD with firm and as-available transmission services and mitigation services for the transmission of electric power by PG&E between SMUD's points of interconnction with PG&E and PG&E's Midway Substation.

Copies of this filing were served upon SMUD and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27146 Filed 11-22-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Goodlettsville, Broadcasting Co., Inc., Goodlettsville, TN.	BPH-861215MI	88-487
B. SAR Broadcasting, Inc., Goodlettsville, TN.	BPH-861216MB	
C. Bledsoe Communications, Ltd., Goodlettsville, TN.	BPH-861216MD	
D. Heidelberg-Stone Broadcasting Co., Goodlettsville, TN.	BPH-861217MA	
E. Masterpeace Music, Goodlettsville, TN.	BPH-861217MD	
F. Mr. Toni E. Plummer, Goodlettsville, TN.	BPH-861217MG	
G. Phoenix of Goodlettsville, Inc., Goodlettsville, TN.	BPH-861217MI	
H. H. Randolph Holder, Jr. and Betty C. Holder, Goodlettsville, TN.	BPH-861217MJ	
I. DG Enterprises, Inc., Goodlettsville, TN.	BPH-861217ML	
J. Goodlettsville, Community Broadcasting, Inc., Goodlettsville, TN.	BPH-861217MM	
K. Innovative Broadcasting, Inc., Goodlettsville, TN.	BPH-861217MN	
L. Rudy A. Lindsey, Sr. and Faye B. Lindsey, husband and wife, a tenancy by the entireties, d.b.a. Lindsey Christian Broadcasting Co., Goodlettsville, TN.	BPH-861217MO	
M. Radio Goodlettsville, Inc., Goodlettsville, TN.	BPH-861217MP	
N. William E. Benns III, Goodlettsville, TN.	BPH-861217MQ	
O. Tennessee Women in Broadcasting, Inc., Goodlettsville, TN.	BPH-861217MT	
P. Geri Taczak, Goodlettsville, TN.	BPH-861217MV	
Q. Hartke Communications, Corp., Goodlettsville, TN.	BPH-861217MX	
R. Young Broadcasting, Inc., Goodlettsville, TN.	BPH-861217MZ	
S. Richard S. Francis, Goodlettsville, TN.	BPH-861217NA	
T. Goodlettsville Associates, Goodlettsville, TN.	BPH-861217NB	
U. John L. Sinclair, Goodlettsville, TN.	BPH-861217NC	
V. Tennessee Radio Ltd. Partnership, Goodlettsville, TN.	BPH-861217NF	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19,347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Environmental, C, E, O
2. Air Hazard, D, F, Q, S, V
3. Comparative, all
4. Ultimate, all

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Service Division, Mass Media Bureau.

[FR Doc. 88-27114 Filed 11-22-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city and State	File No.	MM DOCKET No.
A. Steven Heft d/b/a Hefty Communications, Ltd., Tuskegee, AL.	BPCT-870331QC..	88-488
B. Tuskegee Television, Tuskegee, AL.	BPCT-870602KF..	
C. Tuskegee Associates, Tuskegee, AL.	BPCT-870602KG..	
D. Tuskegee Communications, Inc., Tuskegee, AL.	BPCT-870602KM..	

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, A, B, C, D
Environmental Impact, D
Comparative, A, B, C, D
Ultimate, A, B, C, D
Non-Standardized, B, C (See Appendix)

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

Appendix

2. To determine, with respect to Tuskegee Television:

(a) Whether Wesley Godfrey was a principal or real party in interest or was otherwise involved in Godfrey and Associates, an applicant for Channel 33, Shreveport, Louisiana, in the proceeding in MM Docket No. 83-687 and, if so, the effect thereof on Wesley Godfrey's basic qualifications; and

(b) All the facts and circumstances surrounding Wesley Godfrey's August 16, 1983 letter to Senator J. Bennett Johnston, in MM Docket No. 88-687, (2) whether said letter constituted a solicitation of an *ex parte* presentation in violation of Section 1.1225 of the Commission's Rules, and (3) the effect, if any, of the evidence adduced on Godfrey's basic qualifications.

(c) In light of the evidence adduced in 2(a) and 2(b), above, the effect, if any, upon the applicant's basic qualifications.

3. To determine, with respect to Tuskegee Associates:

(a) Whether, at the time it filed its application (BPCT-870731LP) for a construction permit for a new commercial television station to operate on Channel 66, Bradenton, Florida, in MM Docket No. 87-532, Florida Manatee TV Broadcast Associates was financially qualified to construct and operate the facility proposed;

(b) In the event that issue 3(a) is resolved in the negative, whether Florida Manatee TV Broadcast Associates engaged in misrepresentations or was otherwise lacking in candor in certifying its financial qualifications in its application in MM Docket No. 87-532; and

(c) In light of the evidence adduced pursuant to issues 3(a) and 3(b), above, the effect, if any, upon the applicant's basic qualifications.

[FR Doc. 88-27115 Filed 11-22-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1759]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

November 15, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed December 9, 1988. See Section 1.4(b)(1) of the Commisison's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Chippewa Falls, Wisconsin and Red Wing, Minnesota) (MM Docket No. 87-310, RM's 5851 & 6121) Number of petitions received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-27113 Filed 11-22-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Renewal without any change.
Title: Country Exposure Report.
Form Number: FFIEC 009 and 009a.
OMB Number: 3064-0017.
Expiration Date of Current OMB Clearance: January 31, 1989.
Frequency of Response: Quarterly.
Respondents: Generally, insured state nonmember banks that hold international assets.
Number of Respondents: 36
Number of Responses Per Respondent: 4
Total Annual Responses: 144.

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Average Number of Hours Per Response: 29.
Total Annual Burden Hours: 4,176.
OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted on or before January 23, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to continue the Country Exposure Report, Forms FFIEC 009 and 009a. The report is submitted pursuant to section 907 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906) which requires each banking institution with foreign country exposure to submit, no fewer than four times each calendar year, information regarding such exposure. This information is used by the Federal banking agencies in assessing the international lending practices of the banks they supervise.

Dated: November 18, 1988.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 88-27077 Filed 11-22-88; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010716-003.
TITLE: San Francisco Terminal Agreement.
Parties: San Francisco Port Commission Evergreen Marine Corp. (Taiwan) Ltd.
Synopsis: The agreement cancels the application of Evergreen's arrangement with Japan Line, Inc. covered by Agreement Amendment 224-010716-001 and revises the prorata minimum guarantee. The agreement also provides for an amended scale of charges for wharfage and dockage.
Agreement No.: 224-200176.
Title: Bridgeton Municipal Port Authority Terminal Lease Agreement.
Parties: Bridgeton Municipal Port Authority (Port Authority) Genstar Stone Products Company (Genstar).
Filing Party: John Mattioni, Esquire, Mattioni, Mattioni & Mattioni, Ltd., 399 Market Street, 2nd Floor, Philadelphia, Pa. 19106.
Synopsis: The agreement provides for the Port Authority to grant Genstar an option to develop the property fronting on the Cohansey River for a large scale bulk aggregate materials handling facility for barge loading and unloading and a lease option.
Agreement No.: 224-200177.
Title: Port of Seattle Terminal Lease Agreement.
Parties: Port of Seattle, Matson Terminals Inc.
Synopsis: The agreement provides that the Port leases and grants to Matson facilities at Port of Seattle Terminal 25; rental of three container cranes (two preferentially assigned); and certain improvements with cost sharing by Matson.

By Order of the Federal Maritime Commission.
Dated: November 18, 1988.
Tony P. Kominoth,
Assistant Secretary.
[FR Doc. 88-27120 Filed 11-22-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The HongKong and Shanghai Banking Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 15, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The HongKong and Shanghai Banking Corporation,* Hong Kong; Kellett N.V., Curacao, Netherlands Antilles; HSBC Holdings B.V., Amsterdam, The Netherlands; and Marine Midland Banks, Inc., Buffalo, New York; to acquire warrants for 24.9 percent of the voting shares of Statewide Bancorp, Toms River, New Jersey, and thereby indirectly acquire The First National Bank of Toms River, Toms River, New Jersey; and The First National Bank of New Jersey/Salem County, Penns Grove, New Jersey.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Cherokee Bancshares, Inc.,* Woodstock, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Cherokee, Woodstock, Georgia, a *de novo* bank.

2. *SouthTrust of South Carolina, Inc.,* Latta, South Carolina, and SouthTrust Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of SouthTrust Bank of Charleston, N.A., Charleston, South Carolina, a *de novo* bank.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Lower Rio Grande Valley Bancshares, Inc., ESOP,* La Feria, Texas; to become a bank holding company by acquiring 30 percent of the voting shares of Lower Rio Grande Valley Bancshares, Inc., La Feria, Texas, and thereby indirectly acquire First National Bank of La Feria, La Feria, Texas.

Board of Governors of the Federal Reserve System, November 17, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-27034 Filed 11-22-88; 8:45 am]
BILLING CODE 6210-01-M

NCNB Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 9, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation,* Charlotte, North Carolina; to acquire 100 percent of the voting shares of MarketCenter Bank, N.A., Raleigh, North Carolina, a *de novo* bank.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SouthTrust Corporation,* Brimingham, Alabama; to relocate its existing subsidiary, SouthTrust National Bank, from its current location in Phenix City, Alabama, to Columbus, Georgia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation,* Chicago, Illinois; to acquire 100 percent of the voting shares of FCBAH Bank, Arlington Heights, Illinois, a *de novo* bank.

2. *First Oak Brook Bancshares, Inc.,* Oak Brook, Illinois; to acquire 100 percent of the voting shares of Liberty Bancorp, Inc., Broadview, Illinois, and thereby indirectly acquire Liberty Bank, Broadview, Illinois.

3. *NEB Corporation,* Fond du Lac, Wisconsin; to acquire 100 percent of the voting shares of Mount Calvary State Bank, Mount Calvary, Wisconsin.

4. *W-CV Bancorp, Inc.,* Westby, Wisconsin; to become a bank holding company by acquiring 93.97 percent of the voting shares of Westby-Coon Valley State Bank, Westby, Wisconsin.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation,* Memphis, Tennessee; to acquire 100 percent of the voting shares of United Southern Corporation, Clarksdale, Mississippi, and thereby indirectly acquire United Southern Bank, Clarksdale, Mississippi.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Missouri Bancshares, Inc.,* Kansas City, Missouri; to acquire 90 percent of the voting shares of Monroe City Bank, Monroe City, Missouri.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *PTB Corporation,* Salem, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer Trust Bank, N.A., Salem, Oregon.

Board of Governors of the Federal Reserve System, November 17, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-27035 Filed 11-22-88; 8:45 am]
BILLING CODE 6210-01-M

Norwest Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota, and its subsidiaries, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to acquire Charter Finance Company, Cape Girardeau, Missouri, and Mid South Finance Company of Illinois, McClure, Illinois, and thereby engage in consumer finance, sales finance, commercial finance, and the sale, on an agency basis of credit life and credit accident and health insurance underwritten by affiliated insurance companies, and of credit property and credit-related casualty insurance underwritten by unaffiliated insurance companies pursuant to section 4(c)(8) of the Bank Holding Company Act. These activities will be conducted in Cape Girardeau, Missouri.

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Board of Governors of the Federal Reserve System, November 17, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-27036 Filed 11-22-88; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 6, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Chevis C. Swetman,* Biloxi, Mississippi; to acquire up to 20 percent of the voting shares of Peoples Financial Corporation, Biloxi, Mississippi, and thereby indirectly acquire The Peoples Bank of Biloxi, Biloxi, Mississippi.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Steven Pfeiffer,* Rick Reed, Harry Walker, Donald Spencer, Marlin Cluts, and Theodore Tilton, all of Rochelle, Illinois; to acquire 72 percent of the voting shares of Leland National Bancorp, Inc., Leland, Illinois, and thereby indirectly acquire Leland National Bank, Leland, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First National Bank of Clarksdale Employee Stock Option Plan,* Clarksdale, Mississippi; to acquire an additional 3.3 percent of the voting shares of First Valley National Bank, Clarksdale, Mississippi, and thereby indirectly acquire First National Bank of Clarksdale, Clarksdale, Mississippi.

2. *L. Weems Trussell,* Fordyce, Arkansas; to acquire 12.72 percent of the voting shares of FBT Bancshares, Inc., Fordyce, Arkansas, and thereby indirectly acquire Fordyce Bank & Trust Company Fordyce, Arkansas, as the result of a stock redemption.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Nyle E. Barlow,* Broomfield, Colorado; to acquire an additional 0.87 percent of the voting shares of the voting shares of Front Ridge Capital Corporation, Lafayette, Colorado, and thereby indirectly acquire Bank VII, Lafayette, Colorado.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Richard J. Meyer,* Fullerton, California; to acquire 23.26 percent of the voting shares of Pacific Inland Bancorp, Anaheim, California, and thereby indirectly acquire Pacific Inland Bank, Anaheim, California.

Board of Governors of the Federal Reserve System, November 17, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-27037 Filed 11-22-88; 8:45 am]
BILLING CODE 6210-01-M

Westpac Banking Corp.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 9, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Westpac Banking Corporaion,* Sydney, Australia; to engage *de novo* through its subsidiary, Westpac Pollock Mortgage Finance, Inc., New York, New York, in making, acquiring, and servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 17, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-27038 Filed 11-22-88; 8:45 am]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10-31-88 AND 11-10-88

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN Number	Date terminated
VIAG Aktiengesellschaft, Banner Industries, Inc., ChemRex, Inc.	89-0045	Oct. 31, 1988.
The Equitable Life Assurance Society of the U.S., Alliance Imaging, Inc., Alliance Imaging, Inc.	89-0061	Do.
Agway Inc., Dairylea Cooperative Inc., Dairylea Cooperative Inc.	89-0065	Do.
Sadao Kondo, Dixie Yarns, Inc., Dixie Yarns, Inc.	89-0131	Do.
Ford Motor Co., Wells Fargo and Co., credit card accounts.	89-0146	Do.
Meredith Corp., Pan Associates L.P., Meredith/Burda Corp.	89-0162	Do.
Pan Associates, L.P., Meredith Corp., Meredith/Burda Corp.	89-0163	Do.
Connecticut Health System, Inc., NCH Corp., NCH Corp.	89-0164	Do.
Seagull Energy Corp., Tenneco, Inc., Houston Oil and Minerals Corp.	89-0177	Do.
Union Carbide Corp., Genesis, Ltd., Genesis, Ltd.	89-2737	Nov. 1, 1988.
Elsevier N.V., FPL Group, Inc., DAMAR Corp., and Real Estate Data Inc.	89-0079	Do.
Petrofina S.A., Tenneco Inc., TOC-Gulf Coast Inc.	89-0089	Do.
Kerr-McGee Corp., Flag-Redfern Oil Co., Flag-Redfern Oil Co.	89-0115	Do.
Consolidated Electrical Distributors, Inc., The Manitowoc, Co., Inc., The Manitowoc Co., Inc.	89-0046	Nov. 2, 1988.
Merrill Lynch and Co., Inc., GTE Corp., GTE Consumer Communications Products Corp.	89-0081	Do.
Cooper Industries, Inc., IMO Delaval Inc., Enterprise Engine and Compressor Division.	89-0136	Do.
Donald P. Kelly, BCI Associates, L.P., Beatrice Co.	89-0142	Do.
First Chicago Corp., Fleet Call, Inc., Fleet Call, Inc.	89-0171	Do.
JWP Inc., Stephen Kornfeld, H. and F. Kornfeld, Inc.	89-0193	Do.
Colonial Realty/USA Corp., The Travelers Corp., Constitution Plaza Inc.	89-0031	Nov. 3, 1988.
Mobil Corp., Tenneco, Inc., Collins Pipeline Co.	89-0103	Do.
New York Life Insurance Co., Maxicare Health Plans, Inc., Maxicare Texas, Inc.	89-0207	Do.
Zero Corp., Air Cargo Equipment Corp., Air Cargo Equipment Corp.	89-0148	Nov. 4, 1988
Burlington Northern, Inc., John D. and Catherine T. MacArthur Foundation, MacArthur Foundation.	89-0165	Do.
Farmland Industries, Inc., CEPEX, Inc., CEPEX, Inc.	89-0183	Do.
NFU Acquisition Co., The Continental Corp., Loyalty Life Insurance Corp.	89-0190	Do.
Voting Trust of the Providence Journal Co., Odyssey Partners, Channel 36 Partners.	89-0200	Do.
Robert M. Bass, Naragansett First Fund, Naragansett Television Co. of California, Inc.	89-0204	Do.
EZ Communications, Inc., Outlet Communications, Inc., Outlet Broadcasting Inc.	89-0211	Do.
RT Holding S.A., Tolibia Irrevocable Trust I, Tolibia Cheese, Inc.	89-0218	Do.
Metropolitan Financial Corp., Roger L. Rovick, Edina Realty, Inc.	89-0221	Do.
Metropolitan Financial Corp., David P. Revick, Edina Realty, Inc.	89-0222	Do.
Trustees of TIAA Stock, McCormick & Co., Inc., McCormick Properties, Inc.	89-0243	Do.
Trustees of TIAA, Acquisition Corp., Acquisition Corp.	89-0256	Do.
The Rouse Co., Acquisition Corp., Acquisition Corp.	89-0257	Do.
Motor-Columbus AG, Western Union Corp., Western Union Corp.	89-0076	Nov. 7, 1988.
Walton Monroe Mills, Inc., MacField, Inc., MacField, Inc.	89-0141	Do.
Robert F.X. Sillerman, Metropolitan Broadcasting Holding Co., Metropolitan Broadcasting Holding Co.	89-0168	Do.
Melville Corp., The Finish Line, Inc., The Finish Line, Inc.	89-0208	Do.
Carl C. Brazell, Jr., Carl E. Hirsch (Legacy Broadcasting Inc.), KPKE Acquisition Corp., KHOW Acquisition Corp.	89-0219	Do.
Carl C. Brazell, Jr., Robert F.X. Sillerman, Metropolitan Broadcasting of Dallas, Metropolitan Broad.	89-0220	Do.
First Spring Financial Associates, Galaxie Corp., Lamar Life Insurance Co.	89-0224	Do.
Manfred David Moross, Galaxie Corporation, Lamar Life Insurance Co.	89-0225	Do.
Peter Munk, Goldstein Oil Co., Clark Oil and Refining Corp. and 29 other entities.	89-0241	Do.
Peter Munk, Novelly Oil Co., Clark Oil and Refining Corp., and 29 other entities.	89-0242	Do.
The Fulcrum III Limited Partnership, Cigna Corp., Horace Mann Educators Corp.	89-0271	Do.
PacifiCorp, Hunt Petroleum Corp., Black Lake Pipe Line Co. and certain assets of HPC.	89-0053	Nov. 8, 1988.
Kaydon Corp., NN Ball and Roller Corp., NN Ball and Roller Corp.	89-0091	Do.
Rhode-Poulenc S.A., Nucor Corp., Research Chemicals Inc.	89-0110	Do.
Columbia Pictures Entertainment, Inc., A. Jerrold Perenchio, Loews Meadowland Cinemas 8 Associates.	89-0125	Do.
Columbia Pictures Entertainment, Inc., Columbia Pictures Entertainment, Inc., Loews Meadowland Cinemas 8 Associates, Loews-Hartz.	89-0135	Do.

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10-31-88 AND 11-10-88—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN Number	Date terminated
Macfield, Inc., Morgan Stanley Group Inc., Burlington Industries, Inc. (Madison Yarn Company Div.).	89-0160	Do.
Willamette Industries, Inc., Boise Cascade Corp., Boise Cascade Corp.	89-0176	Do.
Alvin C. Copeland, Church's Fried Chicken, Inc., Church's Fried Chicken, Inc.	89-0199	Do.
Huffy Corp., Washington Inventory Service, Washington Inventory Service.	89-0230	Do.
The Gorman-Rupp Co., Banner Industries, Inc., Patterson Pump Co.	89-0074	Nov. 10, 1988.
AMEC PLC, Matthew Hall PLC, Matthew Hall PLC.	89-0182	Do.
RFS Equity Partners II, L.P., Beijer Industries AB, Calmar Inc.	89-0192	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representatives, Premerger Notification Office Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-27117 Filed 11-22-88; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0058, Deposit Bond—Annual Sale of Government Personal Property, SF 151. This form is used by a bidder participating in sales of Government personal property whenever the sales invitation permits an annual type of Deposit Bond in lieu of cash or other form of bid deposit.

AGENCY: Federal Supply Service (FBP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Individuals responding, 400; responses, 1 per year; average hours per response, .25; burden hours, 100.

FOR FURTHER INFORMATION CONTACT: William Tesh, Jr. 703-557-0807.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: November 17, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-27090 Filed 11-22-88; 8:45 am]

BILLING CODE 6820-24-M

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0057, Deposit Bond Individual—Sale of Government Personal Property, SF 150. This form is used by a bidder participating in sales of Government personal property whenever the sales invitation permits an individual type of Deposit Bond in lieu of cash or other form of bid deposit.

AGENCY: Federal Supply Service (FSP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Individuals responding, 50; responses, 1 per year; average hours per response, .5; burden hours, 25.

FOR FURTHER INFORMATION CONTACT: John Hansley, 703-557-0807.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: November 17, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-27091 Filed 11-22-88; 8:45 am]

BILLING CODE 6820-24-M

Availability of Final Environmental Impact Statement for the Proposed Federal Building in Downtown Chicago

November 15, 1988.

The General Services Administration (GSA) has prepared a Final Environmental Impact Statement (FEIS) for the proposed construction of a 600,000 occupiable square foot Federal Building in downtown Chicago. The limits of the geographical area under consideration for the building are bounded to the north and west by the Chicago River, to the east by Lake Michigan, and to the south by Congress Parkway. Within this geographical area, three potential sites are evaluated.

The proposed Federal Building will house the regional headquarters of various Federal agencies. The principal utilization of the facility will be for administrative and management functions; minimal public service functions are anticipated. Sixty parking spaces reserved for Government use will also be incorporated into the structure.

The building will be acquired through a lease finance mechanism which will place the property in private ownership for as long as thirty years. GSA intends to award a lease contract to a developer by the end of 1988. Offerors will identify, propose, and acquire the site, as well as suggest their own design for the building. Occupancy of the completed facility is slated for mid-1991.

Copies of the Final Environmental Impact Statement are available from: Robert A. Nawrocki, Planner, Planning Staff—5PL, 230 South Dearborn Street, Room 3618, Chicago, Illinois 60604, (312) 353-5610.

The Council on Environmental Quality regulations provide for a 30 day review period; comments can be directed to the person above.

Alan A. Drazek,

Regional Administrator.

[FR Doc. 88-27148 Filed 11-22-88; 8:45 am]

BILLING CODE 6820-23-M

Federal Supply Service Consortium of Federal, Academic, and Industry Logistics Experts

Meeting Notice:

Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet December 7, 1988, from 10:00 am to 12:00 noon in Crystal Mall Building 4, Room 1129, Arlington, Virginia. The purpose of the meeting is to provide a forum for exchange on logistics issues, among member civilian agencies.

The agenda for this meeting will include an update on the fiscal year 1989 agenda topics and an examination of industry supply distribution.

The meeting will be open to the public.

For further information contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557-7970.

Dated: November 17, 1988.

Donald C.J. Gray,

Commissioner, Federal Supply Service, GSA.

[FR Doc. 88-27050 Filed 11-22-88; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Policies and Procedures for Establishing a National Registry of Persons Exposed to Hazardous Substances

AGENCY: Department of Health and Human Services (DHHS): Agency for Toxic Substances and Disease Registry (ATSDR).

ACTION: Notice of availability.

Notice is hereby given that the final document "Policies and Procedures for Establishing a National Registry of Persons Exposed to Hazardous Substances" (National Exposure Registry) is available. Notification of the availability of the draft of this document and a solicitation for comments was published in the **Federal Register** on Thursday, January 14, 1988 (53 FR 953).

All persons who previously requested this document will receive the final document by mail without further request.

A limited supply of copies will be made available to the public upon request. Requests should be made in writing to: Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., MS-F-36, Atlanta, GA 30333, ATTN: Dr. JeAnne Burg.

Dated: November 17, 1988.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 88-27047 Filed 11-22-88; 8:45 am]

BILLING CODE 4160-70-M

Food And Drug Administration

[Docket No. 85N-0483]

Policy on Eligibility of Drugs For Orphan Designation; Revision of Policy

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: In accordance with the Orphan Drug Amendments of 1988 (the 1988 amendments), the Food and Drug Administration (FDA) has revised its policy on the timing of requests for designation of drugs as drugs for diseases or conditions that are considered rare in the United States (orphan drugs). FDA is announcing that a drug is eligible for orphan-drug designation if the sponsor's request for designation is received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. This is a revision of FDA policy before the 1988 amendments which had provided that requests for orphan-drug designation should be filed prior to the marketing approval of a drug for that rare disease or condition.

DATE: The revised policy for the eligibility of a drug for orphan designation became effective April 18, 1988.

FOR FURTHER INFORMATION CONTACT: Emery J. Sturniolo, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: Section 526 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bb) as added by the Orphan Drug Act (Pub. L. 97-414), provides that the manufacturer or sponsor of a drug may request FDA to designate the drug as a drug for a rare disease or condition. Further, section 526 of the act requires that FDA so designate the drug provided that the agency finds that:

(1) The drug "is being or will be investigated for a rare disease or condition;" and

(2) Approval of a marketing application for the drug "would be for use for such disease or condition."

In the **Federal Register** of February 5, 1986 (51 FR 4505), FDA issued an advance notice of the agency's intent to initiate rulemaking to establish procedures to implement the Orphan Drug Act. As part of that notice, FDA advised that, pending completion of the rulemaking process, the agency would follow a policy that a drug is eligible for orphan-drug designation provided only that the sponsor's request for orphan-drug designation is received by FDA before the agency approves a marketing application for the drug for that rare disease or condition. The agency also announced that it intended to include in the proposed rule the policy regarding timing of requests for such designation.

On April 18, 1988, the 1988 amendments (Pub. L. 100-290) amended section 526 of the act to provide in pertinent part: "A request for designation of a drug shall be made before the submission of an application under section 505(b) [21 U.S.C. 355(b)] for the drug, the submission of an application for certification of the drug under section 507 [21 U.S.C. 357], or the submission of an application for licensing of the drug under section 351 of the Public Health Service Act [42 U.S.C. 262]."

Accordingly, FDA may no longer follow its previous policy regarding the timing of requests for orphan-drug designation. Although FDA expects to issue its proposed rule in the near future and will include in that rule the policy respecting submission of requests for orphan-drug designation established by the 1988 amendments, the agency has not yet completed development of the proposal. For this reason, to ensure that interested members of the public are made aware of the change in a timely manner, FDA has decided to issue this notice of its necessary change in policy rather than wait until the proposed rule is published.

Accordingly, FDA advises that for a drug to be eligible for orphan-drug designation under section 526 of the act, FDA must receive the sponsor's request for such designation prior to the submission of a marketing application for that drug for that rare disease or condition, filed under section 505(b) or 507 of the act or section 351 of the Public Health Service Act.

Under the pertinent amendments to section 526 of the act, FDA must receive a request for orphan-drug designation before a marketing application is riled for that drug for that specific use for which designation is requested. However, the enactment of Pub. L. 100-290 does not foreclose the agency from granting the orphan-drug designation to sponsors acting in good faith who had marketing applications filed by FDA

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prior to April 18, 1988, provided no final action on the marketing application was taken by that date.

FDA advises that the revised policy for the eligibility of a drug for orphan designation announced in this notice was effective April 18, 1988, the date of enactment of the 1988 amendments.

Dated: November 16, 1988.

John W. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-27055 Filed 11-21-88; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

Advisory Committee; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Gastroenterology-Urology Devices Panel

Date, time, and place. December 6 and 7, 1988, 9 a.m., Room T-416-418, Twinbrook Building 4, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, December 6, 1988, 9 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 12 m.; closed presentation of data, 1:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 4 p.m.; open committee discussion, December 7, 1988, 9 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 12 m.; open committee discussion, 1:30 p.m. to 3 p.m.; Frank S. Cascinani, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7750.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. On December 6, 1988, between 9 a.m. and 11 a.m., the results of research performed on the post treatment effects of lithotripsy including hypertension will be presented. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 24, 1988, and submit a brief statement of the general nature of the evidence or argument they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss safety and effectiveness data for devices for extracorporeal shock wave lithotripsy.

Closed presentation of data. The committee may discuss trade secret and/or confidential commercial information regarding the materials, design, computer software, and manufacturing information for the lithotriptors. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel

Date, time, and place. December 15 and 16, 1988, 8 a.m., Conference Rooms G and H, Parklawn Building, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, December 15, 1988, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 10:30.; closed presentation of data, 10:30 a.m. to 11 a.m.; open committee discussion, 12:30 p.m. to 2 p.m.; closed presentation of data, 2 p.m. to 2:30 p.m.; open committee discussion, 2:45 p.m. to 4:15 p.m.; closed presentation of data, 4:15 p.m. to 4:45 p.m.; open public hearing, December 16, 1988, 8 a.m. to 9 a.m.; open committee discussion 9 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 11:30 a.m.; Marie A. Schroeder, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7156.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 8, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a bone growth stimulator, 4-year followup data for two approved bone growth stimulators, and comments submitted to FDA regarding the guidance document for application submissions for intra-articular prosthetic knee ligament devices.

Closed presentation of data. Trade secret and/or confidential commercial information will be presented to the committee regarding the premarket approval application for a bone growth stimulator and the 4-year followup data for two approved bone growth stimulator devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding the guidance document for certain application submissions that relate to preparation of investigational device exemptions and premarket approval applications for intra-articular prosthetic knee ligament devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Peripheral And Central Nervous System Drugs Advisory Committee

Date, time, and place. December 20, 1988, 9 a.m., Conference Room. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, December 20, 1988, 9 a.m. to 10 a.m., unless public participation does not last that long; closed committee deliberations, 10 a.m. to conclusion; Frederick J. Abramek, Center for Drug Evaluation and Research (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4020.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drugs for use in the treatment of neurological disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 6, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed

participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. The committee will hear trade secret and/or confidential commercial information relevant to the investigational new drug (IND) application 30,045. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 16, 1988.

James S. Benson,

Acting Deputy Commissioner.

[FR Doc. 88-27051 Filed 11-22-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0372]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene oxide-propylene oxide block copolymer, polyethylene glycol (600) dioleate, propylene glycol monooleate and isopropyl alcohol as boiler water additives.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street

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SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (section 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, has filed a petition (FAP 8A4111) proposing that 21 CFR Part 173—*Secondary Direct Food Additives Permitted in Food and Human Consumption* be amended to provide for the safe use of ethylene oxide-propylene oxide block copolymer, polyethylene glycol (600) dioleate, propylene glycol monooleate and isopropyl alcohol as boiler water additives.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 14, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–27053 Filed 11–22–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88G–0371]

The NutraSweet Co.; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The NutraSweet Co., has filed a petition (GRASP 8G0345), proposing to affirm that microparticulated egg and milk protein product is generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by January 23, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 8G0345) has been filed by The NutraSweet Co., 1751 Lake Cook Road, Deerfield, IL 60015, proposing that microparticulated egg and milk protein product be affirmed as GRAS for use as a direct human food ingredient.

The GRAS affirmation petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before January 23, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether this substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 14, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–27054 Filed 11–22–88; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meetings: DETROIT DISTRICT OFFICE, chaired by Louis F. Schneider, Acting District Director. The topics to be discussed are tampon labeling and other items of current concern.

DATE: Tuesday, December 6, 1988, 10 a.m.

ADDRESS: George Potter Larrick Bldg., Conference Rm., 1560 East Jefferson Ave., Detroit, MI 48207.

FOR FURTHER INFORMATION CONTACT: Evelyn DeNike, Consumer Affairs Officer, Food and Drug Administration, 1560 East Jefferson Ave., Detroit, MI 48207, 313–226–6260.

DETROIT DISTRICT OFFICE, chaired by Kenneth Ewing, Grand Rapids Resident Post Supervisory Investigator. The topic to be discussed are tampon labeling and other items of current concern.

DATE: Wednesday, December 7, 1988, 10 a.m.

ADDRESS: Kent County Public Health Facility, 700 Fuller Ave. NE., Grand Rapids, MI 49503.

FOR FURTHER INFORMATION CONTACT: Evelyn DeNike, Consumer Affairs Officer, Food and Drug Administration, 1560 East Jefferson Ave., Detroit, MI 48207, 313–226–6260.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 18, 1988.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–27116 Filed 11–22–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Service Administration Federal Advisory Committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G–400, 330 Independence Avenue SW., Washington, DC, telephone (202) 245–6791. Copies may be obtained from:

Contran Lamberty, Dr.Ph.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Date: November 17, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–27049 Filed 11–22–88; 8:45 am]

BILLING CODE 4160–15–M

Health Care Financing Administration

[ICA–018–N]

Medicare Program; Meeting of the Advisory Committee on Home Health Claims

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces a meeting of the Advisory Committee on Home Health Claims for the purpose of studying the reasons for the increase in the denial of claims for home health services during 1986 and 1987, the ramifications of the increase, and the need to reform the process involved in these denials. The meeting will be open to the public.

DATE: The meeting will be held on December 8, 1988 from 9:30 a.m. to 4:30 p.m., Mountain Standard Time (MST), and on December 9, 1988 from 9:30 a.m. to 2:00 p.m., MST.

ADDRESS: The meeting will be held in the La Posada de Albuquerque, 125 Second Street, NW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION, CONTACT: Wilhelm Pickens: (301) 966–7476.

SUPPLEMENTARY INFORMATION: On July 1, 1988, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) was enacted. Section 427 of Pub. L. 100–360 established the Advisory Committee on Medicare Home Health Claims. Additionally, section 427 requires the Advisory Committee to report by July 1, 1989 to the Administrator of the Health Care Financing Administration (HCFA) and to the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate, its findings on the denial of claims for home health services in 1986 and 1987. The Advisory Committee must study—

(1) The reasons for the increase in the denial of claims for home health services during 1986 and 1987;

(2) The ramifications of that increase; and

(3) The need to reform the process involved in the denials.

The Advisory Committee will address fully these three specified duties before it takes up any other questions. The recommendations of the Advisory Committee are intended to be used only at the option of HCFA and Congress.

Agenda items for the meeting will include presentations from experts in the field of home health services, and discussions of directions and issues to be addressed at subsequent meetings.

Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13,774; Medicare—Supplementary Medical Insurance)

Dated: November 16, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–27125 Filed 11–22–88; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–88–1896]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 16, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request of Occupied Conveyance (Handbook 4310.5 REV. 1)

Office: Housing

Description of the Need for the Information and Its Proposed Use: This information collection is used by the occupant to request from HUD permission to remain as a tenant of a property that has been conveyed to HUD. HUD uses the information to determine if the occupant is financially able to pay the fair market rent.

Form Number: HUD–9539

Respondents: Individuals or Households and Businesses or Other For-Profit

Frequency of Submission: On Occasion

Reporting Burden:

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	Numer of respondents	x	Frequency of response	x	Hours per respondent	=	Burden hours
Request for occupied conveyance	7,950		1		.5		3,975

Total Estimated Burden Hours: 3,975
Status: Revision
Contact: Author M. Orton, HUD, (202) 755–5740; John Allison, OMB, (202) 395–6880.

Date: November 16, 1988.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Indian Preference Final Rule (FR–1808)
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: This collection implements Section 7 of the Indian Self-Determination and Education Assistance act which requires that preference be given to Indian enterprises and organizations in contracting, subcontracting, employment, and training. The reporting requirements are for materials that contractors must submit to ensure that the preferences are provided.
Form Number: None
Respondents: State or Local Governments and Small Businesses or Organizations
Frequency of Submission: On Occasion and Recordkeeping
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per Response	=	Burden hours
Proof of ownership	200		1		5.00		1,000
Statement of subcontracting	350		1		2.57		900
Statement of employment	350		1		2.57		900
Complaint reports	10		1		8.00		80
Alternate methods	5		1		8.00		40
Recordkeeping	100		1		.25		25

Total Estimated Burden Hours: 2,945
Status: Reinstatement
Contact: Dominic A. Nessi, HUD, (303) 755–1015; John Allison, OMB, (202) 395–6880
Date: November 16, 1988

Notice of Submission of Proposed Information Collection to OMB

Office: Housing
Description of the Need for the Information and Its Proposed Use: This collection is comprised of the initial and subsequent demand letters used by HUD to collect monies on delinquent property improvement and manufactured housing loans assigned to the Federal Government after the lender has exhausted its collection effort and has submitted a claim to HUD for loan reimbursement.
Form Number: HUD–9812–1
Respondents: Individuals or Households
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per Response	=	Burden hours
Title I Collection Letters	1,000		1		.083		83

Total Estimated Burden Hours: 83
Status: Extension
Contact: Carol A. White, HUD, (202) 755–6857; John Allison, OMB, (202) 395–6880
Date: November 14, 1988.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Definition of Income, Rents, and Recertification of Family Income for the Rent Supplement and Section 236 Programs
Office: Housing
Description of the Need for the Information and Its Proposed Use: HUD regulations require owners use good faith efforts to admit tenants first who are eligible for the appropriate tenant based subsidy; second who are eligible to pay a below market rent under a project based subsidy; and third who can pay the market rent. The regulations further require owners to seek written HUD approval in the latter two categories. HUD needs the information collected through waiver requests to evaluate, approve, and track the number of tenants who are housed and do not receive the benefit of a tenant-based subsidy.
Form Number: None
Respondents: Businesses or Other For-Profit, Non-profit Institutions, and Small Businesses or Organizations
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per Response	=	Burden hours
Waiver requests	350		1		1		350

Total Estimated Burden Hours: 350
Status: Extension
Contact: Judith L. Lemeshewsky, HUD, (202) 426–3944; John Allison, OMB, (202) 295–6880
Date: November 16, 1988.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Certification Request Documentation
Office: Fair Housing and Equal Opportunity
Description of the Need for the Information and Its Proposed Use: The information collection is necessary to assist HUD in making an assessment with respect to State and local agencies' legal and administrative capabilities to administer their fair housing laws. The agencies seeking recognition must submit copies of Attorney General's opinions; administration and operating information (budget, personnel, etc.); and additional information relative to the agencies' abilities to satisfactorily administer their laws or ordinances.
Form Number: None
Respondents: State or Local Governments
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Requests for certification	30		1		17		510

Total Estimated Burden Hours: 510
Status: Revision
Contact: Maxine B. Cunningham, HUD, (202) 755–0455; John Allison, OMB, (202) 395–6880
Date: October 27, 1988.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Housing Discrimination Complaint Forms (English/Spanish Version)
Office: Fair Housing and Equal Opportunity
Description of the Need for the Information and Its Proposed Use: Pursuant to Public Law 90–284, any person who believes he/she has been or is about to be injured by a discriminatory housing practice on the basis of race, color, religion, sex, or national origin may file a complaint with the Secretary of HUD using this form. HUD needs the information provided for the basis of an investigation of a housing discrimination complaint.
Form Number: HUD–903 and 903A
Respondents: Individuals or Households, State or Local Governments, and Businesses or Other For-Profit
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Discrimination complaint form	8,400		1		1		8,400

Total Estimated Burden Hours: 8,400
Status: Revision
Contact: Wagner D. Jackson, HUD, (202) 755–6836; John Allison, OMB, (202) 395–6880
Date: October 27, 1988.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Fifty-five or Over Housing Requirement
Office: Fair Housing and Equal Opportunity
Description of the Need for the Information and Its Proposed Use: The information collection is necessary to assist HUD in determining whether newly constructed housing facilities qualify for the "55 or over" housing exemption. In order to qualify for the "55 or over" exemption, one of the requirements a housing facility must satisfy is the requirement to publish and adhere to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
Form Number: None
Respondents: Businesses or Other For-Profit
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application for exemption	1,231		1		1		1,231

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Total Estimated Burden Hours: 1,231
Status: New
Contact: Dana D. Jackson, HUD, (202) 755-5288; John Allison, OMB, (202) 395-6880
Date: October 27, 1988.

[FR Doc. 88-27147 Filed 11-22-88; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-50-09-4211-11 FLJJ; U-36058]

Bulldog Ridge Communication Site Environmental Assesment; Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Comment period.

SUMMARY: The Bulldog Ridge Communication Site Environmental Assessment (EA) is available for comment for 30 days from publication in the Federal Register. The proposed site is on an existing communication site that has been "cherry-stemmed" within the Mt. Pennell Wilderness Study Area. For further information contact Roy Edmonds at (810) 896-8221. Copies of the EA are available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

Dated: November 15, 1988.

Jerry W. Goodman,
District Manager.

[FR Doc. 88-27092 Filed 11-22-88; 8:45 am]
BILLING CODE 4310-DQ-M

[AZ-920-07-4212-13; A-22844-A]

Arizona; Exchange of Federal and Private Mineral Estate

November 14, 1988.

ACTION: Notice of mineral exchange.

SUMMARY: This was an exchange of private and Federal mineral estates. The United States received title to the mineral estate in 67,233.23 acres of land in Apache County that is held in trust by the United States for the Navajo Tribe as part of the Navajo Reservation. This exchange united ownership of the surface and mineral estates within the boundaries of the Navajo Indian Reservation. Santa Fe Pacific Railroad Company received title to the mineral estate in 67,178.61 acres of land in Apache, Navajo and Coconino Counties.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

SUPPLEMENTARY INFORMATION: The United States conveyed the mineral estate in the following described land to Santa Fe Pacific Railroad Company, under Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Gila and Salt River Meridian

T. 9 N., R. 27 E.
Sec. 3, lots 1 to 4, incl., S½N½;
Sec. 14, all;
Sec. 23, NE¼, NE¼NW¼, S½NW¼, SW¼, N½SE¼;
Sec. 24, S½,
Sec. 25, N½NW¼, SE¼;
Sec. 26, NE¼, N½SE¼.
T. 9 N., R. 28 E.
Sec. 30, lots 3 and 4, E½SW¼, NE¼SE¼, W½SE¼;
Sec. 31, lots 1 and 2, NE¼NW¼.
T. 9 N., R. 30 E.,
Sec. 26, SE¼;
Sec. 34, N½, SE¼;
Sec. 35, all.
T. 10 N., R. 25 E.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 10, NW¼NE¼, N½NW¼;
Sec. 22, NE¼SW¼, N½SE¼;
Sec. 23, NE¼, S½;
Sec. 25, W½;
Sec. 26, N½NE¼, SW¼NE¾, S½NW¼, SW¼;
Sec. 27, S½NE¼, SE¼.
T. 10 N., R. 26 E.,
Sec. 22, S½,
Sec. 23, NE¼NE¼, S½NE¼, N½SW¼, SE¼;
Sec. 24, NW¼, NW¼SW¼;
Sec. 25, SW¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼, S½S½;
Sec. 26, W½NE¼, S½NW¼, W½W¼, SE¼SW¼, S½SE¼;
Sec. 27, W½NE¼, N½NW¼, S½;
Sec. 34, E½NE¼, NE¼SE¼;
Sec. 35, NE¼NW¼, S½NW¼, N½SW¼.
T. 10 N., R. 28 E.,
Sec. 14, E½E½, NE¼SW¼, W½SE¼.
T. 10 N., R. 30 E.,
Sec. 26, E½SE¼;
Sec. 27, S½SW¼, SW¼SE¼;
Sec. 28, SE¼SE¼;
Sec. 33, E½NE¼, NE¼SE¼;
Sec. 34, NW¼NE¼, SE¼NE¼, W½, NE¼SE¼;
Sec. 35, NE¼NE¼, S½N½, N½SW¼, NW¼SE¼.
T. 10 N., R. 31 E.,
Sec. 6, lots 1 to 4, incl.
T. 11 N., R. 22 E.,
Sec. 4, lots 1 to 3, incl., S½NE¼.
T. 11 N., R. 25 E.,
Sec. 10, all.
T. 11 N., R. 27 E.,
Sec. 22, SE¼SE¼;
Sec. 23, SE¼SE¼;
Sec. 25, N½SE¼;
Sec. 26, N½N½, SW¼NE¼.
T. 11 N., R. 28 E.,
Sec. 3, lots 3 and 4, S½NW¼, SW¼, W½SE¼;
Sec. 4, E½SE¼;
Sec. 8, all;
Sec. 23, E½SE¼;
Sec. 25, W½E½, E½W½, W½NW¼, SW¼SW¼, SE¼SE¼;
Sec. 26, E½NE¼;
Sec. 30, lot 4, SE¼SW¼, SW¼SE¼;
Sec. 31, lot 1, NW¼NE¼, NE¼NW¼.
T. 11 N., R. 29 E.,
Sec. 4, SW¼SW¼;
Sec. 5, lot 2, S½NE¼, SE¼.
T. 11 N., R. 30 E.,
Sec. 15 N½.
T. 11 N., R. 31 E.,
Sec. 27, lots 2 to 4, incl., SW¼NE¼, SE¼NW¼;
Sec. 31, lots 3 and 4, E½SW¼, SE¼;
Sec. 34, lots 1 to 4, incl., W½E½, E½W½.
T. 12 N., R. 21 E.,
Sec. 8, E½;
Sec. 14, all;
Sec. 22, all.
T. 12 N., R. 22 E.,
Sec. 20, W½W½, SE¼SW¼, S½SE¼;
Sec. 28, E½E½.
T. 12 N., R. 24 E.,
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 24, N½N½, SE¼NW¼;
T. 12 N., R. 25 E.,
Sec. 18, lots 1 to 4, incl., E½;
Sec. 28, SE¼.
T. 12 N., R. 26 E.,
Sec. 20, all;
Sec. 28, S½.
T. 12 N., R. 27 E.,
Sec. 18, SE¼.
T. 12 N., R. 28 E.,
Sec. 10, SE¼NW¼, W½W½, E½SW¼, SW¼SE¼.
T. 12 N., R. 29 E.,
Sec. 20, E½NE¼, SW¼NE¼, SE¼NW¼, SW¼SW¼, NE¼SE¼, W½SE¼.
T. 12 N., R. 30 E.,
Sec. 1, SE¼;
Sec. 12, NE¼, S½;
Sec. 26, S½NW¼, N½SW¼, SE¼;
Sec. 27, NE¼;
Sec. 35, NE¼.
T. 12, N., R. 31 E.,
Sec. 6, lots 10 and 11;
Sec. 7, NE¼, SE¼SW¼, N½SE¼, SW¼SE¼.
T. 13 N., R. 18 E.,
Sec. 6, lots 1, 2, 6 and 7, S½NE¼; E½SW¼, SE¼;
Sec. 12, W½E½, W½.
T. 13 N., R. 19 E.,
Sec. 18, lots 1 to 4, incl., E½, E½W½.
T. 13 N., R. 20 E.,
Sec. 6, all.
T. 13 N., R. 21 E.,
Sec. 18, lots 1 to 4, incl., E½, E½W½;
Sec. 22, SW¼NE¼, W½, NW¼SE¼, S½SE¼.
T. 13 N., R. 25 E.,
Sec. 4, SW¼;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, N½SE¼;
Sec. 8, all;
Sec. 10, all;
Sec. 24, all.
T. 13 N., R. 26 E.,
Sec. 28, E½NE¼, SE¼.
T. 13 N., R. 29 E.,
Sec. 6, lots 1, 2 and lots 4 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
T. 13 N., R. 30 E.,

Sec. 28, S½NE¼, S½SW¼, SE¼.
T. 13 N., R. 31 E.,
Sec. 19, lots 3 and 4 E½W¼, SE¼;
Sec. 21, S½SE¼;
Sec. 22, lot 4;
Sec. 27, lots 1 to 3, incl.;
Sec. 28, N½, N½S½
T. 14 N., R. 17 E.,
Sec. 20, NW¼, S½;
Sec. 24, NW¼, S½;
Sec. 28, N½, SE¼.
T. 14 N., R. 18 E.,
Sec. 10, S½
Sec. 20, all;
Sec. 28, W½
T. 14 N., R. 24 E.,
Sec. 6, lots 3 to 6, incl., SE¼NW¼, E½SW¼, SE¼;
Sec. 14, all;
Sec. 34, all.
T. 14 N., R. 26 E.,
Sec. 28, all.
T. 14 N., R. 27 E.,
Sec. 12, all.
T. 14 N., R. 28 E.,
Sec. 20, all.
T. 15 N., R. 14 E.,
Sec. 4, lots 1, 3 and 4, SE¼NE¼, S½NW¼, W½SW¼;
Sec. 8, E½;
Sec. 10, all;
Sec. 26, N½.
T. 15 N., R. 15 E.,
Sec. 12, W½;
Sec. 14, W½.
Sec. 18, lots 1 to 4, incl., SE¼NE¼, W½ E½, E½SE¼;
Sec. 20, all;
Sec. 30, lot 1.
T. 15 N., R. 16 E.,
Sec. 6, lots 5 to 7, incl., and lots 9 to 14, incl. E½SW¼, SE¼.
T. 15 N., R. 17 E.,
Sec. 34, all.
T. 16 N., R. 13 E.,
Sec. 34, all.
T. 16 N., R. 15 E.,
Sec. 18, lots 2 to 4, incl., E½, E½W½.
T. 16 N., R. 25 E.,
Sec. 20, all.
T. 16 N., R. 29 E.,
Sec. 26, N½, SW¼.
T. 16 N., R. 30 E.,
Sec. 14, all;
Sec. 30, lots 1 to 4, incl., E½W½.
T. 17 N., R. 12 E.,
Sec. 18, SE¼SE¼;
Sec. 20, all;
Sec. 28, all;
Sec. 30, lots 1 to 4, incl., E½, E½W½;
Sec. 34, lots 1 to 7, incl., and lots 11 and 12, N½.
T. 17 N., R. 19 E.,
Sec. 12, W½;
Sec. 14, all;
Sec. 18, lots 1 to 4, incl., W½E½, E½W½.
T. 17 N., R. 20 E.,
Sec. 6, lots 6 and 7, E½SW¼, SE¼;
Sec. 8, all.
T. 17 N., R. 21 E.,
Sec. 10, NE¼, S½;
Sec. 14, NW¼.
T. 17 N., R. 23 E.,
Sec. 10, all;
Sec. 30, E½.
T. 17 N., R. 29 E.,
Sec. 20, SW¼NE¼, SE¼SW¼, W½SE¼.
T. 17 N., R. 31 E.,
Sec. 20, N½, N½S½;
Sec. 30, lot 1.
T. 18 N., R. 12 E.,
Sec. 14, all.
T. 18 N., R. 16 E.,
Sec. 10, E½, E½W½;
Sec. 12, all.
T. 18 N., R. 20 E.,
Sec. 12, E½ NW¼, SW¼NW¼, NW¼ SW¼.
T. 18 N., R. 21 E.,
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 14, all;
Sec. 18, lots 1 to 4, incl., E½, E½W½;
Sec. 22, N½, NW¼SW¼;
Sec. 26, N½, SW¼;
Sec. 28, NW¼NE¼, W½.
T. 18 N., R. 23 E.,
Sec. 10, N½N½, SW¼NE¼, S½NW¼, NW¼SW¼.
T. 19 N., R. 11 E.,
Sec. 10, all;
Sec. 12, E½, E½W½;
Sec. 18, lots 2 to 4, incl., W½E½, E½W½
Sec. 20, N½, N½S½, SW¼SW¼;
Sec. 22, all;
Sec. 24, all;
Sec. 30, lots 3 and 4, E½, E½W½;
Sec. 34, lots 1 to 4, incl., N½, N½S½.
T. 19 N., R. 12 E.,
Sec. 18 lots 1 to 4, incl., E½, E½W½.
T. 19 N., R. 16 E.,
Sec. 4 lot 1, SE¼NE¼, SE¼;
Sec. 8, NW¼, W½SE¼.
T. 19 N., R. 20 E.,
Sec. 10, SW¼;
Sec. 30, NE¼.
T. 19 N., R. 21 E.,
Sec. 20, N½, SE¼;
Sec. 22, all;
Sec. 28, all;
Sec. 30, lots 1 and 2, E½NW¼.
T. 19 N., R. 25 E.,
Sec. 30, lots 1 to 4, incl., E½, E½NW¼, SE¼W¼.
T. 20 N., R. 11 E.,
Sec. 20, all.
T. 20 N., R. 16 E.,
Sec. 28, all.
T. 23 N., R. 10 E.,
Sec. 24, W½NE¼, E½NE¼.

Comprising 67,178.61 acres in Apache, Navajo and Coconino Counties.

In exchange the United States received title to the mineral estate from Sante Fe Pacific Railroad Company in the following described land:

Gila and Salt River Meridian

T. 19 N., R. 27 E.,
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Sec. 10, all;
Sec. 11, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl. E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, NE¼, W½;
Sec. 26 all;
Sec. 27, all.
T. 19 N., R. 31 E.,
Sec. 17, all;
Sec. 20, all;
Sec. 21, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, E½;
Sec. 31, E½;
Sec. 33, all.
T. 20 N., R. 27 E.,
Sec. 19, lots 1 to 4, incl., E½W½, E½.
T. 20 N., R. 28 E.,
Sec. 4, lots 1 to 4, incl., S½N½, S½.
T. 20 N., R. 29 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½W½, E½;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 20 N., R. 30 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., E½SW¼, S½NE¼, SE¼NW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;

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Sec. 15, all;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½W½, E½;
Sec. 31, lots 1 to 4, incl., E½W½, E½;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 20 N., R. 31 E.,
Sec. 3, lots 1 to 4, incl.;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., E½SW¼, SE¼ NW¼, S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, lots 1 to 4, incl.;
Sec. 15, lots 1 to 4, incl.;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, lots 1 to 4, incl.;
Sec. 27, lots 1 to 4, incl.;
Sec. 28, E½;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½,W½, E½;
Sec. 33, all;
Sec. 34, lots 1 to 4, incl.

The area described comprises 67,233.23 acres of land held in trust by the United States for the Navajo Tribe as a part of the Navajo Reservation.

The purpose of this notice is to inform the public and interested governmental officials of the exchange.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-27093 Filed 11-22-88; 8:45 am]
BILLING CODE 4310-32-M

National Park Service

Concession Contract Negotiations; Barker-Ewing Scenic Tours, Inc.

AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Barker-Ewing Scenic Tours, Inc. authorizing it to continue to provide guided scenic interpretive river trips for the public at Grand Teton National Park, Wyoming for a period of five (5) years from January 1, 1988, through December 31, 1992.

EFFECTIVE DATE: February 21, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225-0287, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1987 and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Homer L. Rouse,
Acting Regional Director, Rocky Mountain Region.

Date: October 20, 1988.

[FR Doc. 88-27040 Filed 11-22-88; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Senior Executive Service; Performance Review Board Membership

November 1, 1988.

On or about November 1, 1988 the following persons will be added as members of the Performance Review Board: Irvin D. Coker, John F. Owens, Thomas H. Reese III.

Date: November 8, 1988.

Jan Barrow,
Executive Secretary, Performance Review Board.

[FR Doc. 88-27151 Filed 11-22-88; 8:45 am]
BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-284]

Certain Electric Power Tools, Battery Cartridges and Battery Chargers; Commission Decision Not To Review an Initial Determination Amending the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 6) issued by the presiding administrative law judge (ADJ) amending the notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons, III, Esq. Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1098. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On October 18, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 Stat. 1107). The notice of investigation was amended (1) to delete all reference to the former requirement that an industry in the United States be efficiently and economically operated; (2) with respect to the registered trademark-based part on the investigation, to delete the reference to the former requirement that complainant be required to prove that the effect or tendency of the alleged unfair acts is to destroy or substantially injure an industry in the United States; and (3) with respect to the nonregistered trademark part of the investigation, to replace the phrase "effect or tendency" with the phrase "threat or effect." No petitions for review or agency comments regarding the ID were received.

Copies of the ID and all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1108.

By order of the Commission.
Kenneth R. Mason,
Secretary.

Issued: November 17, 1988.

[FR Doc. 88-27132 Filed 11-22-88; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-284]

Certain Electric Power Tools, Battery Cartridges and Battery Chargers; Amendment of Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the notice of investigation in the above-captioned investigation has been amended in the manner described below.

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons, III, Esq. Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, 202-252-1098. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On October 18, 1988, the presiding administrative law judge issued an initial determination (ID) amending the notice of investigation and directing the Commission Secretary, in the absence of Commission review of the ID, to publish the amendment to the notice of investigation in the **Federal Register**. The Commission has determined not to review the ID. Accordingly, paragraph (1) of page 2 of the notice of investigation has been amended to read as follows:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the unlawful importation into the United States, the sale for importation, or the sale within the United States after importation, of certain electric power tools, battery cartridges, and battery chargers by reason of alleged infringement of Registered Trademark 1,204,296, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1108.

By order of the Commission.
Kenneth R. Mason,
Secretary.

Issued: November 17, 1988.

[FR Doc. 88-27133 Filed 11-22-88; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-424 (Preliminary)]

Martial Arts Uniforms From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-424 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of martial arts uniforms,[1] provided for in items 381.05, 381.08, 381.31, 381.32, 381.33, 381.56, 381.62, 381.63, 381.65, 381.95, 381.97, 381.98, 384.05, 384.07, 384.09, 384.23, 384.24, 384.26, 384.48, 384.77, 384.50, 384.52, 384.90, 384.91, 384.92, and 384.94 of the Tariff Schedules of the United States (subheadings 6203.22.10, 6203.23.00, 6203.29.20, 6203.42.40, 6203.43.40, 6203.49.20, 6204.22.10, 6204.23.00, 6204.23.00, 6204.29.20, 6204.62.40, 6204.63.35, 6204.69.25, 6209.20.30, 6209.20.50, 6209.30.20, 6209.30.30, 6209.90.20, 6209.90.30, and 6217.10.00 of the Harmonized Tariff Schedule of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 30, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-252-1185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on November 15, 1988, by Century Martial Art Supply, Inc., Midwest City, OK.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3, as amended), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of

[1] For purposes of this investigation, "martial arts uniforms" refers to tops, pants, and belts, imported separately or as ensembles, for men, boys, women, girls, and infants, of cotton or of man-made fibers, whether ornamented, or not ornamented, suitable for wearing while practicing all forms of martial arts, including but not limited to Judo, Karate, Kung Fu, Tae Kwon Do, Ninja, Ninjutsu, Hakama, Tai Chi, Jujitsu, and Hapkido.

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this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on December 6, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–252–1158) not later than December 2, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before December 9, 1988, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rule (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than December 14, 1988. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 17, 1988.

[FR Doc. 88–27130 Filed 11–22–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–281]

Certain Recombinant Erythropoietin; Commission Decision Not To Review an Initial Determination Amending the Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 26) issued by the presiding administrative law judge (ALJ) amending the notice of investigation in the above-captioned investigation.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1106.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1108. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On October 12, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 1107). The notice of investigation was amended to delete references to the former requirements that the effect or tendency of the alleged unfair acts is to destroy or substantially injure an industry in the United States and that the industry be efficiently and economically operated.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and interim rule 210.53 (53 FR 33070, Aug. 19, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 16, 1988.

[FR Doc. 88–27134 Filed 11–22–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–297 (Preliminary) and 731–TA–422 (Preliminary)]

New Steel Rails From Canada Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Canada of new steel rails,[2] provided for in items 610.20, 610.21, and 688.42 [3] of the Tariff Schedules of the United States (subheading 7302.10.10, 7302.10.50, and 8548.00.00 of the Harmonized Tariff Schedule of the United States), that are alleged to be subsidized by the Government of Canada.

The Commission also determines, pursuant to section 7339(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Canada of new steel rails that are alleged to be sold in the United States at less that fair value (LTFV).

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For the purposes of these investigations, "new steel rails" include rails, whether of carbon, high carbon, alloy or other quality steel, including, but not limited to, standard rails, all main line sections (over 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rails (or "third rails"), and crane rails, provided for in items 610.2010, 610.2025, 610.2100, and 688.4280 of the *Tariff Schedules of the United States Annotated* (TSUSA) (subheadings 7302.10.1020, 7302.10.1040, 7302.10.5000, and 8548.00.0000 of the *Harmonized Tariff Schedule of the United States* (HTS)).

Specifically excluded from the scope of these investigations are imports of "light rails," which are 60 pounds or less per yard. "Relay rails," which are used rails that have been taken up from a primary railroad track and are suitable to be reused as rails (such as on a secondary rail line or in a rail yard), are also excluded.

[3] The petition states that contact rails are provided for under this item number; however, according to the U.S. Customs Service, contact rails are provided for under TSUS item number 685.90 (HTS item 8536.90.00). Irrespective of where classified in the TSUS or HTS, contact rails are clearly included within the scope of these investigations.

Background

On September 26, 1988, a petition was filed with the Commission and the Department of Commerce by Bethlehem Steel Corporation, Bethlehem, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of new steel rails from Canada and by reason of LTFV imports from Canada. Accordingly effective September 26, 1988, the Commission instituted preliminary countervailing duty investigation No. 701–TA–297 (Preliminary) and preliminary antidumping investigation No. 731–TA–422 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 3, 1988, (53 FR 38795). The conference was held in Washington, DC, on October 19, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on November 10, 1988. The views of the Commission are contained in USITC Publication 2135 (November 1988), entitled "New Steel Rails from Canada: Determinations of the Commission in Investigations Nos. 701–TA–297 (Preliminary) and 731–TA–422 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission:

Kenneth R. Mason,

Secretary

Issued: November 14, 1988.

[FR Doc. 88–27136 Filed 11–22–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–389 (Final)]

3.5 Inch Microdisks and Media Therefor From Japan

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: November 7, 1988.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–252–1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION: Effective September 29, 1988, the Commission instituted the subject investigation and established a schedule for its conduct (53 FR 40972, October 19, 1988). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from December 7, 1988 to February 6, 1989 (53 FR 44933, November 7, 1988). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than January 24, 1989; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on January 31, 1989; the prehearing staff report will be placed in the nonpublic record of January 23, 1989; the deadline for filing prehearing briefs is February 2, 1989; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on February 9, 1989; the deadline for filing posthearing briefs is February 16, 1989, and the deadline for Parties to file additional written comments on business proprietary information is February 21, 1989.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 17, 1988.

[FR Doc. 88–27131 Filed 11–22–88; 8:45 am]

BILLING CODE 7020–02–M

Intent To Hold MTN Field Hearings

AGENCY: International Trade Commission.

ACTION: Notice of intent to hold field hearings in connection with the request which the Commission expects to receive from the United States Trade Representative (USTR) to provide advice on the probable economic effects on U.S. industries and consumers of liberalization of specified U.S. and foreign tariffs and nontariff measures in the Uruguay Round of Multilateral Trade Negotiations (MTN).

FOR FURTHER INFORMATION CONTACT: Aaron Chesser (202–252–1380) or Sylvia McDonough (202–252–1393), Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION: The Commission expects to receive from the USTR within the next few months a list of articles which may be considered for modification of U.S. import duties or nontariff measures in trade negotiations. Section 131 of the Trade Act of 1974 (19 U.S.C. 2151), as amended by section 111 of the Omnibus Trade and Competitive Act of 1988 (Pub. L. 100–418, 102 Stat. 1107), requires that the Commission furnish certain advice to the President within 6 months after receipt of such a list in connection with a proposed trade agreement. Section 131 requires that the Commission hold public hearings in the course of preparing its advice.

Upon receipt of the request from the USTR, the Commission plans to institute investigations to provide the requested advice under authority of section 131 of the Trade Act of 1974, as amended, and section 332 of the Tariff Act of 1930, as amended.

In order to prepare and submit its advice in a timely manner, the Commission will need to hold hearings and require that submissions be filed relatively early in the 6-month period of its investigations. In anticipation of receiving such a request, and in order to provide interested persons with sufficient time to prepare submissions and make arrangements to attend one of the public hearings, the Commission has adopted the following tentative schedule for the holding of public hearings and the filing of notifications to appear at these hearings:

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Tentative Schedule for MTN Field Hearings by the U.S. International Trade Commission

City	Hearing date	Deadline for notification to appear at hearing
Houston, TX	Monday, Jan. 30, 1989	Noon, Jan. 19, 1989.
New Orleans, LA	Wednesday, Feb. 1, 1989	Do.
Miami, FL	Friday, Feb. 3, 1989	Do.
Atlanta, GA	Monday, Feb. 6, 1989	Do.
Los Angeles, CA	Monday, Feb. 13, 1989	Noon, Jan 24, 1989.
San Francisco, CA	Wednesday, Feb. 15, 1989	Do.
Portland, OR	Friday, Feb. 17, 1989	Do.
Denver, CO	Friday, Feb. 24, 1989	Do.
Chicago, IL	Monday, Feb. 27, 1989	Noon, Feb. 6, 1989.
Minneapolis, MN	Wednesday, Mar. 1, 1989	Do.
Kansas City, MO	Thursday, Mar. 2, 1989	Do.
New York, NY	Monday, Mar. 13, 1989	Noon, Feb. 20, 1989.
Boston, MA	Wednesday, Mar. 15, 1989	Do.
Pittsburgh, PA	Friday, Mar. 17, 1989	Do.
Washington, DC	Monday, Apr. 3, 1989; Tuesday, Apr. 4, 1989	Noon, Mar. 13, 1989.

Upon receipt of the list, the Commission will publish notice of the institution of investigations, the actual hearing sites and date of each hearing, and deadlines for filing written notification to appear at a hearing; due dates for filing written briefs in lieu of, or in addition to, an appearance at a hearing will also be supplied. In addition, all other pertinent information concerning the investigations and hearings will be provided.

Persons wishing to appear at a hearing should be aware that it is sufficient for them to appear at only one of the hearings. They need not appear at additional hearings to restate their views. In the interest of time conservation at the hearings, it is anticipated that witnesses will be requested to condense their presentations to summaries only. Further, if appropriate, the formation of witness panels will be encouraged to conserve time. A transcript will be made of all hearings.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued November 15, 1988.

[FR Doc. 88-27135 Filed 11-22-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31353]

Iowa Traction Railroad Co.—Operation Exemption

Iowa Traction Railroad Company (Traction) has filed a notice of exemption to lease and operate certain railroad property owned by Hermitage Homes, Inc. (Hermitage). Traction will lease and operate a 3-mile portion of the rail line from milepost 152.5 to milepost 155.5 in Mason City, IA. The line was previously abandoned by Chicago and North Western Transportation Company in Docket No. AB-1 (Sub-No. 205X), and was purchased by Hermitage (a non-rail carrier). Hermitage leased the line segment to Traction on August 6, 1988. Traction's operation of the line segment is expected to be consummated on the effective date of the exemption.

Any comments must be filed with the Commission and served on Thomas F. McFarland, Jr., Belnap, Spencer, McFarland, Emrich & Herman, 20 North Wacker Drive, Suite 3710, Chicago, IL 60606.

Traction must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901,* 4 I.C.C.2d 305 (1988).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 2, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-26962 Filed 11-22-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 14, 1988, a proposed Consent Decree in *United States* v. *ITT Rayonier, Inc.,* Civil Action No. 87-345-CIV-J-12 was lodged with the United States District Court for the Middle District of Florida. The complaint, as amended, sought the imposition of injunctive relief and civil penalties under the Clean Water Act against defendant for its unpermitted discharges of pollutants, and for its discharges of wastewater in violation of the effluent limits contained in its National Pollutants Discharge Elimination System permit issued under that Act. The discharges in issue entered the Amelia River or one of its tributaries from defendant's plant in Fernandina Beach, Florida.

The Consent Decree requires defendant to pay a civil penalty totalling $40,000. The Decree also requires defendant to implement certain remedial measures, including installation of a diking containment system around its plant, to prevent future unpermitted discharges and other violations of its NPDES permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *ITT Rayonier, Inc.,* D.J. Ref. 90-5-1-1-2786.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Middle District of Florida, 409 Post Office Building, 311 West Monroe Street, Jacksonville, Florida; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, Atlanta, Georgia; or (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044-7611, or in person at the U.S. Department of Justice Building, Room 1521, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530.

Roger J. Marzulla,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 88-27094 Filed 11-22-88; 8:45 am]

BILLING CODE 4410-01-M

Information Collection(s) Under Review

November 18, 1988

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies. Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible. The Department of Justice's Clearance Officer is Mr. Larry E. Miesse who can be reached on (202) 633-4312.

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Change of Address Notice.
(2) I-697, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form solicits information needed to update an applicant's address in the legalization automated database. The country and date of birth information is needed to identify specific applicants who have similar names and/or do not provide an "A" number or provide the wrong number.
(5) 50,000 respondents at .083 hours each.
(6) 4,150 estimated annual public burden hours.
(7) Not applicable under section 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Declaration of Intending Citizen.
(2) I-772, Immigration and Naturalization Service.
(3) On Occasion.
(4) Individuals or households. This form is a prerequisite for certain specified groups of aliens to assert a claim of discrimination based on citizenship status.
(5) 2,500,000 annual respondents at .033 hours each.
(6) 82,500 estimated annual burden hours.
(7) Not applicable under section 3504(h).

(1) Report of Theft or Loss of Controlled Substances.
(2) DEA-106, Drug Enforcement Administration.
(3) On occasion.
(4) Individuals or households, businesses or other for-profit, Federal agencies or employees. 21 CFR 1301.74(c) and 1301.76(b) required DEA registrants to complete and submit a DEA-106 upon discovery of a theft or loss of controlled substances to allow for accurate accountability, monitor substances diverted into illicit markets and develop leads for criminal investigations.
(5) 8,393 respondents at .5 hours each.
(6) 4,199 estimated annual burden hours.
(7) Not applicable under section 3504(h).

(1) Document Verification Request.
(2) G-845, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is an integral part of the Systematic Alien Verification for Entitlement (SAVE) Program, and provides direct access to the index.
(5) 200,000 respondents at .083 hours each.
(6) 16,600 estimated annual burden hours.
(7) Not applicable under section 3504(h).

(1) Law Enforcement Officers Killed.
(2) DO 76, 76a, 76b. Federal Bureau of Investigation.
(3) On occasion.
(4) State or local governments. Collects data regarding law enforcement officers, killed in the line of duty. Data are used to formulate training needs and are published annually.
(5) 180 respondents at .46 hours each.
(6) 83 estimated annual burden hours.
(7) Not applicable under section 3504(h).

(1) Law Enforcement Officers Killed or Assaulted.
(2) DO-71. Federal Bureau of Investigation.
(3) On occasion.
(4) State or local governments. Collects data regarding assaults on police officers; summary statistics are published annually.
(5) 3,324 annual respondents at .2 hours each.
(6) 664 estimated annual burden hours.
(7) Not applicable under section 3504(h).

(1) Arson Incident Report.
(2) DO-84. Federal Bureau of Investigation.
(3) On occasion.
(4) State or local governments. Collects arson data from fire service agencies to be published annually.
(5) 102,000 annual respondents at .25 hours each.
(6) 25,500 estimated annual burden hours.
(7) Not applicable under section 3504(h).

(1) Application of Temporary Replacement Card.
(2) I-695, Immigration and Naturalization Service.
(3) One time only.
(4) Individuals or households. Used for the application for replacement of the I-688, Temporary Resident Card.
(5) 250,000 annual respondents at .166 hours each.
(6) 41,500 estimated annual burden hours.
(7) Not applicable under section 3504(h).

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(1) Medical Examination of Aliens Seeking Adjustment of Status.
(2) I–693, Immigration and Naturalization Service.
(3) One time only.
(4) Individuals or households. Pub. L. 99–603 requires specific language regarding the medical examination required of applicants who apply for temporary and permanent residence status.
(5) 1,500,000 annual respondents at .5 hours each.
(6) 750,000 estimated annual burden hours.
(7) Not applicable under section 3504(h).

Revision of a Currently Approved Collection

(1) Notice of Appeal.
(2) I–694, Immigration and Naturalization Service.
(3) One time only.
(4) Individuals or households. Used in considering appeals of denials of temporary and permanent residence status by legalization applicants and special agricultural workers.
(5) 20,000 annual respondents at .5 hours each.
(6) 10,000 estimated annual burden hours.
(7) Not applicable under section 3504(h).

Larry E. Miesse,
Department Clearance Officer, Department of Justice.

[FR Doc. 88–27042 Filed 11–22–88; 8:45 am]
BILLING CODE 4410–10–M

Office of Juvenile Justice and Delinquency Prevention

Testing Juvenile Detainees for Illegal Drug Use

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.
ACTION: Notice of extension of deadline date.

Notice of amendment to text of program summary.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces the extension of the deadline date for the developmental initiative entitled "Testing Juvenile Detainees for Illegal Drug Use", **Federal Register**, Vol. 53, No. 213, Thursday, November 3, 1988 from November 30, 1988 to December 16, 1988.

This notice also announces a change in the text located on page 44570 of the **Federal Register**, Vol. 53, No. 213. The Summary on that page stated:

"The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 224(a)(5) and section 243(2) of the Juvenile Justice and Delinquency Prevention Act, as amended * * *"

This sentence has been amended and now reads as follows:

"The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 224(a)(5), section 224(b)(1) and section 243(2) of the Juvenile Justice and Delinquency Prevention Act, as amended * * *"

FOR FURTHER INFORMATION CONTACT: Douglas W. Thomas, Research and Development Division, (202) 724–5929, or Frank Smith, Special Emphasis Division, (202) 724–5914.

Date: November 18, 1988.

Diane Munson,
Acting Administrator, OJJDP.

[FR Doc. 88–27155 Filed 11–22–88; 8:45 am]
BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88–97)]

Fiscal Year 1988 Report of Closed Meeting Activities of Advisory Committees

AGENCY: National Aeronautics and Space Administration.
ACTION: Notice of availability of reports.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, the NASA advisory committees that held closed or partially closed meetings in 1988, consistent with the policy of 5 U.S.C. 552b(c), have prepared reports on activities of these meetings. Copies of the reports have been filed and are available for public inspection at the Library of Congress, Federal Advisory Committee Desk, Washington, DC 20540; and the National Aeronautics and Space Administration, Headquarters Information Center, Washington, DC 20546. The names of the committees are: NASA Advisory Council (NAC), NAC Aeronautics Advisory Committee, NAC History Advisory Committee, NAC Life Sciences Advisory Committee, NAC Space Applications Advisory Committee, NAC Space and Earth Science Advisory Committee, NAC Space Science and Applications Advisory Committee and the NASA Wage Committee.

FOR FURTHER INFORMATION CONTACT: Kathryn Newman, Code NPN, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–2880).

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–27041 Filed 11–22–88; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.
ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC, 20550.

SUPPLEMENTARY INFORMATION: On October 14, 1988, the National Science Foundation (NSF) published a notice in the **Federal Register** of permit applications received from: G.F. Mobley and B.D. Hodgson, N. Crawford, S. Klipper, P. Kirkpatrick, D. Smith, B. Goodman, K. Davidson, W. Baker and G.R. Harbison. In response to the Foundation's invitation to interested parties to submit written data, comments, or views about these permit applications, the Environmental Defense Fund recommended that the permit applications of Messrs. Mobley and Hodgson, Crawford, Klipper, Smith, Goodman, Davidson, and Baker to enter Sites of Special Scientific Interest (SSSI's) be strictly conditioned on compliance with management plans for these areas and that the permit applications of these individuals to enter Specially Protected Areas (SPA's) be denied. In addition, the Environmental Defense Fund suggested that NSF's authority to issue permits to these individuals to "take" Antarctic mammals and birds is questionable.

Messrs. Mobley and Hodgson are employed by the National Geographic Magazine; Messrs. Crawford and Klipper are self-employed photographers invited by the National Science Foundation to document the U.S. Antarctic Program for the public. Mr. Smith is employed by Sky and Telescope Magazine. Mr. Goodman is employed by Science World Magazine. Mr. Davidson is employed by the San Francisco Examiner. Mr. Baker is employed by WNET–TV in New York.

Each of these individuals will be in Antarctica in support of NSF's efforts to make available to the public objective information on the U.S. Antarctic Program. These individuals will observe NSF-sponsored research projects. While observing such research, they will be accompanied by NSF employees or by the scientists conducting the research.

NSF recognizes that most Americans cannot visit Antarctica. Therefore, it makes special efforts each Antarctic summer to assure access by a small number of scholars in the humanitaries—artists, photographers, writers—and by representatives of the communications media.

These visitors focus on U.S. Antarctic Program activities and are given access to as much of the continent as possible within the constraint of available logistics. The visitors are special communicators, unconstrained by the demands of a scientific research project or of recurring support tasks. They use their identified talents to observe, report, and interpret the realities of Antarctica in a more comprehensive and generalized manner than is possible in scientific research projects. They are, in effect, the disinterested (neutral) observers of a complex, continuing interaction between man and environment.

The Foundation is convinced that access to special areas and close proximity to antarctic wildlife are particularly important in these visits. Action by the Antarctic Treaty nations to limit access to these special areas brings with it a particular responsibility to assure access by a few trained communicators who have no vested personal or organizational interest. These individuals can be expected to address the values of society as they prepare their communications to it. Such objective observations should be welcome by the Environmental Defense Fund.

The issuance of permits to individual members of the news media to enter SSSI's or SPA's would be for the purpose of allowing these media personnel to observe scientists conducting research. Members of the news media will be accompanied at all times while in SPA's or SSSI's by scientists who already hold permits to enter SPA's or SSSI's. Under §§ 670.28(a) and 670.32 of the Antarctic Conservation Act regulations, NSF may issue a permit authorizing entry to protected areas if there is a compelling scientific purpose for such entry which cannot be served elsewhere. NSF has determined that reporting to the public on how science is conducted in a remote area of the world which most members of the public will never visit is a compelling scientific purpose.

Under § 670.15 of the Antarctic Conservation Act regulations, NSF may also issue a permit to "take" Antarctic mammals or birds for educational purposes. To "take" under the Antarctic Conservation Act means to remove, harass, molest, harm, pursue, hurt, shoot, wound, kill, trap, capture, restrain, or tag any native mammal or bird, or to attempt to engage in such conduct. NSF will not grant to individuals who are members of the news media the authority to handle or deliberately disturb Antarctic mammals or birds. Permits will be issued to increase the awareness of these individuals to their responsibilities under the Antarctic Conservation Act, and to keep inadvertent disturbances, if any, to a minimum.

After carefully considering the comments received from the Environmental Defense Fund, NSF has decided to issue the requested permits. The permits were issued on November 18, 1988, subject to the compliance of individual permits holders with management plans for protected areas which they may enter, and subject to the provision that any "taking" shall be incidental and directly related to observation of scientific research.

Charles E. Myers,
Permit Office.

[FR Doc. 88–27075 Filed 11–22–88; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Containment Systems; Meeting

The ACRS Subcommittee on Containment Systems will hold a meeting on December 6, 1988, Room P–114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 6, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will review the NRR staff's document on final recommendations for containment performance and improvements (BWR Mark I only).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 17, 1988.

Morton W. Libarkin,
Assistant, Executive Director for Project Review.

[FR Doc. 88–27103 Filed 11–22–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–498–OL]

Houston Lighting & Power Co. (South Texas Project Unit 1); Issuance of Supplement to Director's Decision DD–88–3 (DD–88–18)

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a request to reconsider Director's Decision DD–88–3 filed by Ms. Billie P. Garde and Mr. Richard E. Condit on behalf of the Government Accountability Project (GAP). Director's Decision DD–88–3 denied a Petition filed by GAP under 10 CFR 2.206. In large part, the basis for the

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denial of the GAP Petition was an evaluation performed by the Safety Significance Assessment Team, documented in a report in which the staff concludes that allegations of safety concerns could not be substantiated. In its present request, GAP alleges that DD–88–3 is not responsive to its Petition and is not based on substantial evidence, and is therefore arbitrary and capricious. Specifically, GAP alleges that the NRC staff investigation of safety allegations was inherently inadequate to serve as a basis for any assessment of the programmatic implications of the allegations.

GAP's request has been denied for the reasons fully described in the "Supplement To Director's Decision DD–88–3," issued on this date, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the Local Public Document Rooms for the South Texas Nuclear Project located at the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701 and at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

A copy of the Supplement will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, Director's Decision DD–88–3 and the Supplement will constitute the final action of the Commission twenty five (25) days after issuance, unless the Commission on its own motion institutes review of the Decision and Supplement within that time.

Dated at Rockville, Maryland this 15th day of November 1988.

For the Nuclear Regulatory Commission.

James H. Sniezak,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88–27104 Filed 11–22–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 114 to Facility Operating License DPR–39 and Amendment No. 103 to Facility Operating License DPR–48 issued to Commowealth Edison Company (the licensee) for operation of Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

The amendments consist of proposed changes to the Zion Technical Specification section 3.2, 3.4, 3.8, and 3.9 that would authorize Zion Station to remove the Boron Injection Tank (BIT) and the associated piping, valves and heat trace for recirculation between the BIT and the Boric Acid Tanks (BAT). These amendments will result in operational and safety benefits for the station. Presently, the negative effect of the high boric acid concentration in the BIT and BAT systems necessitates frequent BAT transfer pump seal repairs, heat trace repairs and entering into Technical Specification Limiting Conditions of Operation to accomplish these repairs. The detrimental consequences of high boric acid concentrations are also potential contributing factors to Emergency Core Cooling System inoperability. Improved analytical techniques used for Final Safety Analysis Report acident analyses show that the BIT concentrations could be reduced or the entire BIT could be removed from the Westinghouse plants.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal register on September 8, 1988 (53 FR 34849). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to this action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated June 9, 1988, (2) Amendment No. 114 to License No. DPR–39, (3) Amendment No. 103 to License No. DPR–48, (4) the Commission's relate Safety Evaluation, and (5) Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC and at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. Copy of items (2) through (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland this 9th day of November 1988.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V, and Special Projects.

[FR Doc. 88–27105 Filed 11–22–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–335–OLA; ASLBP No. 88–560–01–LA]

Florida Power & Light Co. (St. Lucie Plant, Unit No. 1); Rescheduled Hearing

November 17, 1988.

Before Administrative Judges: B. Paul Cotter, Jr., Chairman, Glenn O. Bright, and Dr. Richard F. Cole.

Please take notice that the evidentiary hearing on the issues remaining in this proceeding scheduled to begin at 9:00 a.m. on Tuesday, December 6 and continue through Thursday, December 8, 1988, at the Howard Johnson Lodge, Sailfish Room, 950 S. Federal Highway, Stuart, Florida has been postponed.

The hearing has been rescheduled to commence at 9:00 a.m. on January 24, 1989, and continue from day to day until completed. A notice giving the new location will be issued as soon as hearing space can be confirmed.

Dated at Bethesda, Maryland, this 17th day of November 1988.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

[FR Doc. 88–27106 Filed 11–22–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

GPU Nuclear Corp. (Three Mile Island Nuclear Station Unit 2); Exemption

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR–73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI–2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On August 5, 1987, the NRC published in the Federal Register a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75 percent of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in section III, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in section III. Therefore, the Commission hereby grants the following exemption:

GPU Nuclear Corporation is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 43297).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of November 1988.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–27107 Filed 11–22–88; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 39—Licenses and Radiation Safety Requirements for Well Logging.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every five years. Reports are submitted as events occur.

5. Who will be required or asked to report: Applicants for and holders of specific licenses authorizing the use of licensed radioactive material in well logging.

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6. An estimate of the number of responses: 578.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 1 hour per response for reports, plus approximately 83 hours annually per recordkeeper. The total industry burden is 15,554 hours.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC regulations in 10 CFR Part 39 establish radiation safety requirements for the use of radioactive material in well logging operations. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions should be directed to the OMB, reviewer, Nicolas B. Garcia, (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 16 day of November, 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–27100 Filed 11–22–88; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, revision, or extension: Extension.

2. The title of the information collection: Personal Qualifications Statement—Licensee.

3. The form number if applicable: NRC 398.

4. How often the collection is required: On occasion and every six years (at renewal).

5. Who will be required or asked to report: Individual requiring a license to operate the controls at a nuclear facility.

6. An estimate of the number of responses: 1900 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 3,850; approximately 2 hours per response.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC Form 398 requests detailed information that should be submitted by a licensing candidate when applying for a new or renewal license to operate the controls at a nuclear facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

ADDRESSES: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION: Comments and questions should be directed to the OMB reviewer: Nicolas B. Garcia (202) 395–3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 16th day of November 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–27101 Filed 11–22–88; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of Submission, new, revision, or extension: Extension.

2. Titles of the information collection: 10 CFR Part 25—Access Authorization for Licensee Personnel; and 10 CFR Part 95—Security Facility Approval and Safeguarding of National Security Information and Restricted Data.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Nuclear facility licensees and other organizations requiring access to NRC classified information.

6. An estimate of the number of responses: 10 CFR Part 25—96; 10 CFR Part 25—66.

7. An estimate of the total number of hours needed to complete the requirement or request: 10 CFR Part 25—.7 per response; 95 total; 10 CFR Part 95—6.8 per responses; 919 total.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Parts 25 and 95—Licensees and other organizations are required to provide information to ensure that an adequate level of protection is provided NRC classified information and material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia, (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 18th day of November 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–27102 Filed 11–22–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Performance Review Board, Membership

Notice is hereby given in accordance with 5 U.S.C. 4314 of a revision in the membership of the Performance Review Board of the Office of the United States Trade Representative (USTR). The revision consists of the following appointments:

Chair—W. Douglas Newkirk, Assistant United States Trade Representative for GATT Affairs.

Alternate—Peter Allgeier, Assistant United States Trade Representative for Asia and the Pacific.

Members—James Frierson, Chief of Staff, Judith Bello, General Counsel, Jon Rosenbaum, Assistant United States Trade, Representative for Latin America, Caribbean, and Africa, Marian Barell, Director of Telecommunications Trade Policy.

Ex-Officio Member—Michael Doyle, Assistant United States Trade Representative for Administration.

Executive Secretary—John P. Giacomini, Director, Human Resources.

This was effective August 10, 1988.

John P. Giacomini,

Director, Human Resources.

[FR Doc. 88–27144 Filed 11–22–88; 8:45 am]

BILLING CODE 3190–01–M

POSTAL RATE COMMISSION

[Order No. 807; Docket No. A89–3]

Notice and Order Accepting Appeal and Establishing Procedural Schedule; Kurtz, IN

Issued: November 14, 1988.

In the matter of Kurtz, Indiana 47249 The Kurtz Community, Petitioners.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc III.

Docket Number: A89–3.

Name of Affected Post Office: Kurtz, Indiana 47249.

Name(s) of Petitioner(s): The Kurtz Community.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: November 7, 1988.

Categories of Issues Apparently Raised

1. Effect on postal services (39 U.S.C. 404(b)(2)(C).

2. Effect on the community (39 U.S.C. 404(b)(2)(A).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before November 22, 1988.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

[Docket No. A89–3, Kurtz, Indiana 47249]

Nov. 7, 1988	Filing of Petition.
Nov. 14, 1988	Notice and order of Filing of Appeal.
Dec. 2, 1988	Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
Dec. 12, 1988	Petitioners' Participant Statement or Initial Brief (*see* 39 CFR 3001.115 (a) and (b)).
Jan. 3, 1989	Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).
Jan. 18, 1989	Petitioners' Reply Brief should Petitioners choose to file one (*see* 39 CFR 3001.115(d)).
Jan. 25, 1989	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
Mar. 7, 1989	Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 88–27095 Filed 11–22–88; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26286; File No. 600–26]

Self-Regulatory Organizations; Notice of Filing of Application for Registration as a Clearing Agency by Clearing Corporation for Options and Securities, and Request for Comments

On October 14, 1988, the Clearing Corporation for Options and Securities ("CCOS") filed with the Commission an application for temporary registration as a clearing agency under section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q–1 ("Act") and Rule 17Ab2–1 thereunder. CCOS proposes to issue standardized securities options and provide related clearance and settlement services.

I. Introduction

CCOS is a subsidiary of the Chicago Board of Trade Clearing Corporation ("BOTCC"), which provides clearing services for futures and commodities transactions executed on the Chicago Board of Trade. CCOS intends to provide clearance and settlement services for securities options, specifically index options.

CCOS's application, filed on Form CA–1 under the Act, includes rules, procedures, and arrangements for the clearance and settlement of standardized securities options. Although CCOS is a separate corporate entity from the BOTCC, BOTCC would perform services and data processing functions for CCOS under a service agreement, which is included in the application.

II. Clearing Agency Background Information

The Options Clearing Corporation ("OCC") currently acts as the common issuer and clearing agency for all standardized securities options. Prior to the 1975 amendments to the Act, the Commission approved plans by the American Stock Exchange and CBOE to establish OCC as a common clearing entity for all exchange-traded options.[1] After establishment of OCC, Congress enacted section 17A of the Act, which provides comprehensive Congressional findings and statutory provisions concerning the clearance and settlement of securities transactions.[2]

The Commission interpreted section 17A of the Act in proceedings to determine whether to grant National Securities Clearing Corporation ("NSCC") registration as a clearing agency. NSCC represented a consolidation of three clearing organizations that had served separately the New York Stock Exchange, American Stock Exchange, and National Association of Securities Dealers.[3]

[1] *See* Securities Exchange Act Release No. 11146 (December 19, 1974), 5 SEC Doc. 774. *See also* Securities Exchange Act Release No. 10031 (February 7, 1974), 3 SEC Doc. 506.

[2] The CCOS application represents the first application by a clearing organization other than by OCC (or its subsidiary the Intermarket Clearing Corporation) to provide clearing agency services for standardized options. For legislative history concerning Section 17A of the Act, *See, e.g.*, Report of Senate Comm. on Housing and Urban Affairs, Securities Acts Amendments of 1975: Report to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Sess. 4 (1975); Conference Comm. Report to Accompany S. 249, Joint Explanatory Statement of Comm. of Conference, H.R. Rep. No. 229, 9th Cong., 1st Sess. 102 (1975).

[3] Prior to NSCC's registration, clearing organizations were tied strictly to trading markets, which precluded competition among clearing agencies and forced broker-dealers trading in those three markets to use separately those three clearing organizations.

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Although the Commission recognizes its statutory obligation to have due regard for competition among clearing agencies,[4] the Commission granted NSCC conditional, temporary registration based on its belief that NSCC's registration and applicable conditions would, among other things, promote competition among broker-dealers and reduce costs for clearing securities transactions.[5] The conditions to NSCC's registration, however, were designed to promote competition among clearing agencies and underlined the Commission's conclusion that the continued existence of multiple stock clearing corporations should be encouraged.[6]

The Commission generally has attempted to strike an appropriate balance between clearing agency competition and efficient cost-effective clearing arrangements, which, when available to broker-dealers in applicable markets, promote competition among broker-dealers. Thus, although securities clearing corporations and depositories associated with various securities markets can compete for clearing business, interfaces between clearing corporations [7] and depositories [8] enable broker-dealers and bank members to settle all equity securities transactions through membership in one clearing corporation and one depository.[9]

[4] *See, e.g.*, Securities Exchange Act No. 13163 (January 13, 1977), 42 FR 3916 ("NSCC Temporary Registration Order").

[5] NSCC's registration was affirmed and remanded in *Bradford National Corporation* v. *SEC*, 590 F.2d 1085 (DC Circuit 1978). The case was remanded for the Commission to consider further its approval of geographic price mutualization by NSCC and NSCC's mode of allocating its facilities management contract. *See also* Securities Exchange Act Release No. 17562 (February 10, 1981), which affirmed the Commission's registration of NSCC.

[6] As reflected in the NSCC Temporary Registration Order, those conditions included requirements that NSCC establish interfaces with other clearing agencies, and make its over-the-counter comparison system and branch offices available to other clearing agencies. *See also* Release No. 17562. In another context, the Commission mandated an interface between proposed municipal securities clearing operations of NSCC and Bradford Securities Processing Services. *See* Securities Exchange Act Release No. 17343 (November 28, 1990), 45 FR 80224.

[7] Regional Interface ("RIO") arrangements among clearing corporations, for example, enable broker-dealers to settle all eligible exchange-lised and over-the-counter equity security transactions at a single clearing corporation. *See, e.g.*, NSCC Temporary Registration Order.

[8] Interfaces among registered securities depositories enable a sole member at one depository to deliver securities through a depository interface to a sole member of another depository. *See, e.g.*, Securities Exchange Act Release Nos. 13375 (March 15, 1977), 42 FR 15996; 20461 (December 7, 1983), 48 FR 55654; 23083 (March 31, 1986), 51 FR 12421.

[9] That capability has been referred to as "one-account settlement." *See, e.g.*, Securities Exchange Act Release Nos. 23083 (March 31, 1986), 51 FR 12421; 16900 (June 17, 1980), 45 FR 41920. *See also* Letter from Jonathan G. Katz, Secretary, Commission, to Jean A. Webb, Secretary, CFTC, dated May 5, 1987, at note 3.

III. Specific Requests for Comments

A. Common Clearing

The Commission requests comment on whether it should deny the CCOS application in favor of common clearing of standardized options at OCC. Commentators should discuss applicable law and the costs and benefits of common versus multiple clearing facilities for standardized securities options. In particular, commentors should address whether common clearing is consistent with the statutory objectives contained in section 17A of the Act concerning maintenance of fair competition among clearing agencies and the linking of clearance and settlement facilities. Finally, Commentators should address the effects that market stress (*e.g.*, high volume and volatility) likely would have on multiple options clearing systems. Commentators addressing the efficient integration of multiple clearing systems should consider the questions below.

B. Integration of Multiple Options Clearing Systems

The Commission preliminarily believes that Section 17A of the Act mandates that any approval of multiple clearing systems for standardized options include conditions requiring efficient integration of those systems. As discussed above, in the National Clearance and Settlement System for stocks the Commission has determined that this goal requires the provision of "one-account settlement" effected by the operation, without fees, of interfaces among stock clearing corporations. Accordingly, the Commission requests comments on the following:

(1) Whether the stock clearing model can be adapted effectively for options clearing systems;

(2) Whether multiple options clearing systems should include multiple issuers of standardized options and, if so, how to maintain fungibility among such options and how to treat multiple options issuers under the Federal Securities laws (*e.g.*, whether such issuers should be treated as common issuers or separate issuers with each acting as a financial intermediary on behalf of its members vis-a-vis the other issuer);

(3) The most efficient, yet prudential, manner for each clearing organization to assure payment of its obligations to other clearing organizations;

(4) Whether multiple clearing systems should be required to employ identical margin levels and, if not, the effects of different margin levels for otherwise fungible options, and the manner in which multiple clearing systems should integrate or coordinate intra-day variation margin calls;

(5) The manner in which multiple clearing systems would assign exercised options and the effects of significant disparities in open interest at the clearing organizations on the assignment process;

(6) The manner in which multiple clearing systems should respond to member defaults and the default of a clearing organization;

(7) The manner in which multiple clearing systems should allocate costs associated with integration and services performed for one another;

(8) The manner in which multiple clearing systems should operate net money settlement with their members and among themselves;

(9) The effects multiple clearing systems would have on current relationships among options markets and options clearing facilities, including the manner in which compared trades would be reported by exchanges to options clearing organizations.

C. Relationships Among Markets for Derivative Products

As described in various reports during the last year, markets for derivative products are interrelated.[10] Those interrelationships have been recognized and addressed in a number of market initiatives, including intermarket cross-margin systems that calculate a single margin requirement for a portfolio of securities options and futures products.[11]

The Commission invites commentators to discuss whether intermarket cross-margin systems raise prudential or competitive concerns that may require special conditions or regulations applicable to multiple clearing facilities for standardized options. The Commission also requests comment on whether the relationships between CCOS and its affiliated trading market and futures clearing corporation raise concerns or create a need for particular controls to assure safe, efficient, and competitive clearance and settlement systems for securities options and futures products.

[10] *See, e.g.*, Division of Market Regulation, The October 1987 Market Break (February 1988); The Interim Report of the Working Group on Financial Markets (May 1988); Report of the Presidential Task Force on Market Mechanisms (January 1988).

[11] *See, e.g.*, Securities Exchange Act Release Nos., 26153 (October 3, 1988), 53 FR 39567; 26154 (October 3, 1988), 53 FR 39556.

IV. Request for Comments

Commentators are invited to submit written data, views, and arguments concerning the foregoing application and specific requests for comment within thirty days of the date of publication of this notice in the **Federal Register**. Such written data, views, and arguments will be considered by the Commission in deciding whether to approve the CCOS registration application. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. 600–28. Copies of the application and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 16, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–27059 Filed 11–22–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26294; File No. SR–NASD–88–44]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Increased Annual Fees Paid by Issuers of Securities Included in the NASDAQ System

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on September 27, 1988, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend Section B of Part IV of Schedule D to the NASD By-Laws to delete certain existing tex and add new provisions regarding increased annual fees paid by issuers of securities included in the NASDAQ system.

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26164, October 6, 1988) and by publication in the **Federal Register** (53 FR 40149, October 13, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of section 15A and the rules and regulations thereunder.

The NASD has indicated that they will impose this fee beginning June 1, 1989. It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–88–44, be, and hereby, is, approved, effective June 1, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

November 17, 1988.

[FR Doc. 88–27062 Filed 11–22–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26293; File No. SR–NYSE–88–37]

Self-Regulatory Organizations; Filing and Order Granting Limited Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Auxiliary Closing Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice hereby is given that on November 15, 1988, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The proposed rule change adds auxiliary closing procedures for assisting in handling the order flow associated with the expiration of stock index futures, stock index options and options on stock index futures (collectively, "derivative instruments"). These procedures will apply on the one day a month that the derivative products expire ("expiration day"). The rule change is being proposed for a one-year period, beginning November 1988 and extending through October 1989.

The proposed rule change supersedes all othe Exchange rules and policies inconsistent with it. In regard to the stocks subject to the auxiliary closing procedures, the superseding procedures preclude (i) entry of market-at-the-close orders relating to the liquidation of any positions that relate to a trading strategy involving any derivative instrument after 3:30 p.m. and (ii) entry of other market-at-the-close orders after an imbalance publication unless they offset the imbalance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose—Since September 1986, the Exchange has adopted auxiliary closing procedures for use on days when the stock index futures, stock index options and options on stock index futures expire concurrently.[1] These procedures apply to market-at-the-close orders and provide an orderly mechanism for displaying potential order imbalances in the pilot stocks. The purpose of the proposed rule change is to adopt these procedures (with one proposed modification) for use on a monthly basis for the next year.

The Exchange is proposing using these procedures for all monthly derivative product expirations because of increased end-of-day market volatility at the monthly expirations. This volatility appears to result from market-at-the-close orders entered to liquidate stock positions related to derivative products.

The one proposed modification is to preclude after 3:30 p.m. the entry of market-on-close orders relating to the liquidation of *all* positions that relate to a trading strategy involving derivative

[1] The Exchange has adopted these procedures pursuant to a request of the Commission staff. *See* Letter dated September 16, 1986 to Robert J. Birnbaum, President, NYSE, from Richard G. Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission.

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instruments.[2] Previously, the procedures applied only to market-at-the-close orders relating to the liquidation of index arbitrage positions. The Exchange is proposing this change because there are a number of trading strategies in addition to index arbitrage involving derivative instruments (*e.g.*, portfolio insurance) where the use of market-at-the-close orders could contribute to market volatility.

The Exchange has previously refiled the closing procedures each quarter, rather than sought approval for multiple quarters, because it believes that the appropriate response to market volatility relating to the expiration of derivative products is for futures and options markets to base the settlement prices of derivative products on opening, rather than closing Exchange prices.[3] The need to apply the closing procedures to monthly expirations makes separate filings for each expiration impractical, leading the Exchange to seek approval for one year. During that year the Exchange hopes that all futures and options markets will adopt the use of opening prices for settlement purposes, thus obviating the need for these special closing procedures.

(b) *Statutory basis*—The basis under the Act for the proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[2] As noted above, "derivative instruments" include only stock index options, stock index futures, and options on stock index futures.

[3] The Exchange has adopted permanent opening auxiliary procedures to assist in the handling of order flow relating to the expiration of derivative products. *See* Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23474.

III. Date Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange seeks accelerated effectiveness of the proposed rule change solely with respect to the November 18 and December 16 derivative product expirations and asks the Commission to approve it on this limited basis as soon as practicable. Informing the industry that the Exchange intends to utilize the closing procedures specified by the proposed rule change should occur as soon as possible to permit investors and firms to plan accordingly. Moreover, the procedures contain only one minor change from the procedures used previously for quarterly expirations. Accordingly, the Exchange seeks this limited action by the Commission in time to permit notification of interested parties in advance of the November 18 and December 16 expirations. The Exchange is not requesting accelerated effectiveness for future expirations at this time.

The Exchange is not requesting accelerated effectiveness for expirations beyond the December 1988 expiration. Rather, the Exchange seeks publication for comment of a proposed one-year program that would involve monthly implementation of its auxiliary closing procedures through the October 1989 expiration.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of section 6 and the rules and regulations thereunder. The market-at-the-close procedures described herein have been utilized on previous quarterly expirations dating back to September 1986. These procedures were part of efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of derivative products traded in conjunction with stocks as part of index arbitrage. By requiring early submission of market-at-the-close orders and by disseminating imbalances, the NYSE has been able to attract contra-side interest to alleviate imbalances caused by the closing of index arbitrage positions. The procedures have proven to be an operational success, and have contributed significantly to the smooth handling of the increased order flow associated with expirations.

The Commission also finds that the Exchange's proposals to begin implementing its market-at-the-close procedures during all monthly expirations (as opposed to only quarterly expirations) and to apply the procedures to *all* stock trades related to a trading strategy involving derivative instruments (as opposed to only index arbitrage trading) are cosistent with the requirements of the Act and the rules and regulations thereunder. The Commission believes there are trading strategies in addition to index arbitrage that can lead to stock market volatility on expiration Fridays. In addition, these strategies often involve the trading of derivative index instruments that expire on a monthly basis, rather than only on the quarterly expirations covered currently by the NYSE's market-at-the-close procedures.

The Commission finds good cause for approving application of the NYSE's market-at-the-close procedures to the November and December 1988 monthly expirations prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the Exchange to implement and notify market participants about procedures that it believes will appropriately address stock market volatility resulting from market-at-the close orders related to trading strategies involving derivative index products. At the same time, the Commission is publishing for comment the NYSE's proposal to implement its auxiliary closing procedures on a monthly basis through the October 1989 expiration.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 14, 1988.

It therefore is ordered, pursuant to section 19(b)(2) of the act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 17, 1988.

[FR Doc. 88-27063 Filed 11-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16639; 812-7002]

The Cardinal Fund Inc. et al.; Application

November 17, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: The Cardinal Fund Inc. ("Cardinal"), Cardinal Government Guaranteed Fund ("Cardinal Government Guaranteed"), Cardinal Government Securities Trust ("Cardinal Tax Exempt") (collectively, the "Funds"), and The Ohio Company ("TOC") (collectively, "Applicants").

Relevant 1940 Act Sections: Approval of exchange offers requested under section 11(a).

Summary of Application: Applicants seek an order approving certain exchange offers to be made between the Funds, or which may be made between the Funds and future investment companies which have the same investment adviser or principal underwriter or whose investment advisers or principal underwriters are under common control with the offering company on a basis other than the relative net asset values of the shares to be exchanged.

Filing Date: The application was filed on March 8, 1988, and amended on November 17, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC, 20549. Applicants, 155 E. Broad Street, Columbus, Ohio 43215, Attention: C.A. Peterson.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney (202) 272-7714, or Karen L. Skidmore, Branch Chief (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Funds is a diversified, open-end, management investment company registered under the 1940 Act. TOC acts as principal underwriter of each of the Funds. TOC is the investment adviser of Cardinal. Cardinal Management Corp., a wholly-owned subsidiary of TOC, is the investment adviser of Cardinal Government Guaranteed and Cardinal Tax-Exempt.

Applicants have requested that any order issued by the Commission also extend to all other investment companies: (1) Organized after the initial filing of the application, (2) having a common investment adviser or principal underwriter or having investment advisers or principal underwriters which are under common control with the offering company, (3) holding themselves out to investors as related companies for purposes of investment or investor services, and (4) having the same exchange offers and load characteristics described herein ("Additional Funds").

2. TOC maintains a continuous public offering of shares of Cardinal Government and Cardinal Tax Exempt (together called the "No-Load Funds") at their respective current net asset value without a sales charge and also maintains a continuous public offering of shares of Cardinal and Cardinal Government Guaranteed (together called the "Load Funds") at their respective current net asset value plus a sales charge. The sales charge for Cardinal begins at 8.5% for purchase of less than $10,000 and decreases at different break-points through purchases of $500,000 or more, where the sales charge is 1%. The sales charge for Cardinal Government Guaranteed begins at 4.75% for purchases of less than $100,000 and decreases at different breakpoints through purchases of $1,000,000 or more, where the sales charge is 1%. Each of the Load Funds has a special charge for certain purchasers which are trusts qualifying under section 401 of the Internal Revenue Code of 1986 which begins at 4.75% for purchases of less than $100,000 and decreases at different breakpoints through purchases of $500,000 or more, where the sales charge or load is 1%. There is no sales charge imposed on reinvestment of dividends and capital gains paid on shares of the Funds.

3. Not more often than once each calendar quarter, upon written authorization of TOC and payment of a nominal administrative fee (currently $5.00 for each of the Funds) shareholders of the Funds may exchange some part of, or all of their currently-owned shares of one of the Funds (the "Exchanged Securities") for shares of another one of the Funds (the "Acquired Securities").

4. The exchange shall be effected on the basis of the relative net asset values of the Exchanged Securities and the Acquired Securities at the time of the exchange, except that a sales load shall be charged equal in amount to any difference between the sales load then chargeable upon purchase of the Acquired Securities in the absence of an exchange and the sales load previously paid upon the purchase of the Exchanged Securities.

5. In calculating the sales load previously paid upon the purchase of the Exchanged Securities and the sales load then chargeable upon purchase of the Acquired Securities in the absence of an exchange (i) where the Exchanged Securities represent less than all of the shares in one of the Funds being exchanged, the security upon which the highest sales load was previously paid is deemed to be exchanged first, (ii) where the Exchanged Securities were acquired through reinvestment of dividends or capital gains distributions, the Exchanged Securities are deemed to have been acquired with a sales load equal to the sales load previously paid on the securities on which the dividend

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was paid or distribution made, (iii) if the Exchanged Securities themselves had been acquired pursuant to an exchange or exchanges with one or more of the Funds, the sum of the sales previously paid on the Exchanged Securities and the previously exchanged securities shall be deemed to be the sales load previously paid upon purchase of the Exchanged Securities, and (iv) all applicable provisions for reduced sales charges will be considered in determining the sales charge applicable to the purchase of the Acquired Securities and any such reductions in sales charges will be made in accordance with the conditions of Rule 22d–1 under the 1940 Act.

6. More than 97% of the Funds' shares sold on an annual basis are sold by TOC. Less than 3% of the Funds' shares sold on an annual basis are sold by broker-dealers which sell such shares pursuant to agreements with TOC ("Selected Dealers").

7. TOC will not initiate a general telephone solicitation to current shareholders of the Funds to inform them of the exchange privilege or to actively solicit an exchange, nor will its representatives solicit Fund shareholders on an individual basis except on the infrequent occasion when the circumstances of a particular individual account suggest that an exchange would be in the best interests of the individual shareholder and the exchange is made at the request of the shareholder.

8. TOC has in place a program to review all purchases and sales of shares of the Funds, including exchanges where a commission is paid to one of TOC's registered representatives. Officers of TOC monitor the information generated by such program to insure compliance with the Securities Exchange Act of 1934 and the National Association of Securities Dealers, Inc. Rules of Fair Practice and TOC believes that such a program will identify excessive exchanges which may not be in the best interests of, or suitable for, the exchanging shareholders.

9. Shareholders of the Funds will be notified of the Funds' exchange program, including any administrative fee which may be imposed on exchange transactions, by means of the Funds' prospectuses and by means of other communications, including sales literature and other advertising that describe the exchange program. Any such communication describing the Funds' exchange program will include notification of any administrative fee related thereto.

Applicants' Legal Conclusions

1. The purpose of the administrative fee is to defray the Funds' administrative expenses incurred in exchange transactions.

2. The purpose of the proposed exchange program is to permit shareholders of the Funds who change their investment objectives to exchange, in a simple transaction, their shares in one of the Funds for the shares of another Fund on an equitable basis. If an exchange from one of the No-Load Funds to one of the Load Funds were made at relative net asset value without a sales charge, then the distribution system of the Load Funds would be disrupted because an investor could easily avoid the sales charge of the Load Funds by first purchasing one of the No-Load Funds and then exchanging the shares so acquired for shares of one of the Load Funds that are otherwise sold with a sales charge.

3. The exchange program complies with the terms and conditions of Rule 11a–3 under the 1940 Act, as proposed in Investment Company Act Release No. 16504, July 29, 1988.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. The administrative fee or any scheduled variation thereof will be uniformly applied to all shareholders participating in the exchange program.

2. Any variation in sales charges on sales of shares of the Funds, by means of exchanges or otherwise, will be effectuated in accordance with Rule 22d–1 under the 1940 Act.

3. Applicants will comply with the terms and conditions of proposed Rule 11a–3 under the 1940 Act, if and when the proposed rule is adopted.

4. Any future offers of exchange involving any Additional Funds will be subjected to the representations and conditions described in this application.

5. In the event that Applicants modify or terminate the exchange privilege, notice of the modification or termination will be provided to the shareholders of the Funds in writing not less than 60 days in advance of such modification or termination (unless the modification is to reduce the administrative fee). The Funds will disclose the right to modify or terminate the exchange privilege in their prospectuses. Prior to any future modification (but not termination) of the exchange privilege, Applicant will apply to the Commission for an amendment of the order requested by this application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G.Katz,

Secretary.

[FR Doc. 88–27058 Filed 11–22–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16640 (811–3945)]

Principal Preservation Tax-Exempt Fund, Inc.; Application

November 17, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Principal Preservation Tax-Exempt Fund, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investement company.

Filing Date: The application was filed on June 22, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 12, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington DC 20549; Applicant, 215 North Main Street, West Bend, WI 53095.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3420, or Brion R. Thompson, Branch Chief, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier, (800) 231–3282 (in Maryland, (301) 258–4300).

Applicant's Representations

1. On January 19, 1984, Applicant filed Form N–8A to register under the 1940 Act as an open-end, diversified management investment company. On January 19, 1984, Applicant also filed Form N–1 pursuant to the Securities Act of 1933, which registration statement became effective on May 11, 1984, the date upon which the initial public offering of Applicant's shares commenced. Applicant was organized as a Maryland corporation.

2. On January 23, 1987, Applicant's Board of Directors unanimously approved its Agreement and Plan of Merger (the "Plan") and recommended its submission to Applicant's stockholders. At the annual meeting held on May 22, 1987, a majority of Applicant's stockholders approved the Plan. Pursuant to the Plan, on July 23, 1987, the Applicant transferred all of its assets and liabilities to the Hedged Tax-Exempt Portfolio (since renamed the Tax-Exempt Plus Portfolio) (the "Series"), a series of Principal Preservation Portfolios, Inc. (the "Fund"). The Fund was registered under the 1940 Act on August 30, 1985 (File No. 811–4401). The Series was specially designated to receive the assets and assume the liabilities of the Applicant, and prior to the merger the Series had no assets or liabilities. Applicant's net asset value on the implementation date of the Plan was $133,255,818 or $8.65 per share, and each stockholder of Applicant received in exchange an equal number of shares of common stock of the Series. No portfolio securities were sold and no brokerage commissions were paid during the implementation of the Plan.

3. Fees and expenses associated with implementing the Plan aggregated approximately $38,000, including legal, accounting, registration fees and distribution of proxy materials. The expenses were allocated between the Applicant and the various series of the Fund on the basis of average net asset value, except that expenses associated with the preparation, printing and distribution of proxy materials were allocated on the basis of shareholders of record. This resulted in approximately $28,700 of fees and expenses being borne by the Applicant.

4. Pursuant to the Plan, the investment adviser, distribution, custodian and transfer and dividend disbursing agent agreements and the policies and plans of Applicant continued in full force and effect with respect to the assets of the Series after the merger.

5. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–27060 Filed 11–22–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16641; (811–4785)]

Principal Preservation Tax-Exempt Portfolios, Inc.; Application

November 17, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Principal Preservation Tax-Exempt Portfolios, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 22, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 12, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 215 North Main Street, West Bend, WI 53095.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3420, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. On July 31, 1986, Applicant filed Form N–8A to register under the 1940 Act as an open-end, diversified management investment company. On July 31, 1986, Applicant also filed Form N–1A pursuant to the Securities Act of 1933, which registration statement became effective on September 23, 1986, the date upon which the initial public offering of Applicant's shares commenced. Applicant was organized as a Maryland corporation.

2. On January 23, 1987, Applicant's Board of Directors unanimously approved its Agreement and Plan of Merger (the "Plan") and recommended its submission to Applicant's stockholders. At the annual meeting held on May 22, 1987, a majority of Applicant's stockholders approved the Plan. Pursuant to the Plan, on July 23, 1987, the Applicant transferred all of its assets and liabilities to the Insured Tax-Exempt Plus Portfolio (the "Series"), a series of Principal Preservation Portfolios, Inc. (the "Fund"). The Fund was registered under the 1940 Act on August 30, 1985 (File No. 811–4401). The Series was specially designated to receive the assets and assume the liabilities of the Applicant, and prior to the merger the Series had no assets or liabilities. Applicant's net asset value on the implementation date of the Plan was $17,069,569 or $9.21 per share, and each stockholder of Applicant received in exchange an equal number of shares of common stock of the Series. No portfolio securities were sold and no brokerage commissions were paid during the implementation of the Plan.

3. Fees and expenses associated with implementing the Plan aggregated approximately $16,000, including legal, accounting, registration fees and distribution of proxy materials. The expenses were allocated between the Applicant and the various series of the Fund on the basis of average net asset value, except that expenses associated with the preparation, printing and distribution of proxy materials were allocated on the basis of shareholders of record. This resulted in approximately $6,650 of fees and expenses being borne by the Applicant.

4. Pursuant to the Plan, the investment adviser, distribution, custodian and transfer and dividend disbursing agent agreements and the policies and plans of Applicant continued in full force and effect with respect to the assets of the Series after the merger.

5. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative

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proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27061 Filed 11-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24749]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 17, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 12, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company (70-7286)

Consolidated Natural Gas Company ("CNG"), CNG Tower, Pittsburgh, Pennsylvania 15222-3199, a registered holding company, has filed a post-effective amendment to its application-declaration filed under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By order dated October 30, 1986 (HCAR No. 24224) ("October 1986 Order"), Consolidated was authorized, through December 31, 1988, to purchase on the open market up to four million shares of its outstanding common stock, $2.75 par value per share ("Common Stock"), and to reissue from time-to-time the purchased shares which are to be held as treasury stock. In accordance with the October 1986 Order, CNG purchased through September 30, 1988 1,480,500 shares at an average price of $34.88, leaving an additional 2,519,500 authorized to be purchased, and reissued 210,600 shares of Common Stock held as treasury stock to CNG's employee benefit plans. CNG now requests an extension of its authorization to December 31, 1990 to purchase the remaining Common Stock and to reissue for general corporate purposes and in connection with employee benefit plans the treasury stock purchased pursuant to such authorization.

National Fuel Gas Company, et al. (70-7436)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, Suite 4545, New York, New York 10112, a registered holding company, and its wholly owned nonutility subsidiary, Seneca Resources Corporation ("Seneca"), 10 Lafayette Square, Buffalo, New York 14203, have filed a post-effective amendment to a declaration filed with this Commission pursuant to Sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

Seneca is engaged in, among other things, an oil and gas exploration program. By order dated December 23, 1987 (HCAR No. 24538), Seneca was authorized to issue and sell secured short-term notes to First Republic Bank of Houston and Citibank, N.A. ("Citibank") in an aggregate principal amount of up to $18 million from time-to-time through December 28, 1988, pursuant to a credit agreement ("Credit Agreement") with First Republic and a credit arrangement ("Credit Arrangement") with Citibank. The Credit Agreement and note held by First Republic is now owned by NCNB Texas National Bank ("NCNB-Texas").

Seneca is engaged in a joint venture ("Joint Venture") with Cashco Oil Company, a nonaffiliate company, to develop oil and gas leases. To enable the Joint Venture to develop certain oil and gas leases, Seneca issued and sold two secured master notes—one now held by NCNB-Texas under the terms of the Credit Agreement and one issued and sold under the terms of the Credit Arrangement with Citibank. Both master notes will mature on December 28, 1988 and repayment of outstanding amounts is guaranteed by National. At September 30, 1988, $14.2 million was owned to the banks by the Joint Venture. National and Seneca now state that the repayment period for such borrowings must be extended because of a decrease in hydrocarbon prices since the inception of the Joint Venture.

Accordingly, National and Seneca now seek authorization for the period from December 28, 1988 to December 27, 1989: (i) for Seneca, on behalf of the Joint Venture, to renew bank lines of credit and to issue thereunder notes, each in an aggregate principal amount of up to $16 million, and to guarantee the repayment of all amounts so borrowed; and (ii) for National to guarantee Seneca's obligations to banks and repayment of all amounts borrowed by the Joint Venture under these lines of credit. In no event will the aggregate principal amount of such short-term borrowings exceed $16 million.

Ocean State Power, et al. (70-7549)

Ocean State Power ("OSP"), 110 Tremont Street, Boston, Massachusetts 02108, a general partnership and subsidiary of EUA Ocean State Corporation ("EUA-OS") and Narragansett Energy Resources Company ("NERC"), and its indirect parent companies Eastern Utilities Associaties ("EUA"), One Liberty Square, Boston Massachusetts 02107, and New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, registered holding companies, and Blackstone Valley Electric Company ("Blackstone"), a subsidiary of EUA, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 40 thereunder.

OSP, in connection with its plans to construct, own and operate a combined cycle electric generating facility ("Project") to be located in Burrillville, Rhode Island, proposes to raise one hundred percent of its construction financing for the Project (approximately $246 million) through non-recourse loans from a syndicate of financial institutions, under a $240 million general construction-loan credit facility ("Credit Facility") and a $6 million interconnection facilities construction loan facility ("Loan Facility"). Irving Trust Company will be the lead agent ("Agent") to the Credit Facility. The Credit Facility will have a seven-year term, comprised of a construction-loan facility with a term of approximately two years that will convert to a term-loan facility upon the Project's achieving commercial operation. The term-loan facility is intended to provide OSP flexibility with regard to the timing of arranging long-term, fixed-rate permanent financing with new lenders, which will be subject to further Commission approval.

The Credit Facility will be secured by a lien on all of the physical assets of the Project and by an assignment to the lenders of (i) all of OSP's rights and interests in connection with the Project under the contracts necessary for the construction and operation of the Project and specified Project insurance, (ii) all of the partners' interests in the OSP partnership, (iii) proportional guarantees' obligations (herein, EUA's and NEES' guarantees of EUA-OS and NERC obligations, respectively), under an Equity Contribution Agreement, and (iv) the Equity Contribution Agreement itself. The lenders will have the sole benefit of all of the Project security, except for certain security interests to be granted to any subsequent lenders to a second generating unit in common facilities shared by the Project and such second unit, and a security interest to be granted Tennessee Gas Pipeline Company ("Tennessee") in certain amounts paid under the power sale agreements attributable to the demand charges payable under the Tennessee gas transportation contract and proceeds thereof. The Loan Facility will be secured only by an assignment to the lenders of OSP's right to receive from Blackstone its actual costs incurred in building the interconnection facilities, which will be sold to Blackstone following the construction period and at the time that the Project achieves commercial operation.

Under the construction-loan facility, OSP may obtain fixed-rate, 30-day advances, by exercising a competitive bid option, or if the option is not exercised, or for those amounts not covered by accepted bids, OSP will pay its choice of the LIBOR plus ½% per annum, the Agent's CD rate plus ⅝% per annum or the Agent's Prime Rate plus ⅛% per annum. These rates will increase by ⅛% per annum for any amounts drawn over an aggregate amount of $220 million, and by the same percentage amount successively each time drawings occur after one of two defined reference dates. The term-loan facility employs the same base rates with margins ranging from ⅜% to ¾% on the LIBOR and CD options, plus ⅛% on the excess if borrowings exceed $110 million, but includes a provision for applying some prepayments to such excess borrowings first. Fifty percent of the outstanding amounts under the construction-loan facility will be amortized when the plant goes into commercial operation, and the remainder will convert to loans under the term-loan facility. One hundred percent of outstanding amounts under that facility will be amortized upon permanent refinancing of the debt, and prior to that quarterly on a 20-year level principal repayment schedule beginning nine months after commercial operation, with a balloon payment of at least 20%. OSP has agreed to pay an arrangement fee, a one-time participation fee of ⅛% of the amount available under the Credit Facility and Loan Facility, a commitment fee of ¼% per annum on available amounts under both facilities and ⅛% per annum on unavailable amounts under the Credit Facility, a facility fee of ⅛% per annum on competitive drawings to the lenders on a *pro-rata* basis for the original commitment under both facilities, an agent's fee of $4,000 per competitive bid, plus $150,000 per annum during construction and $35,000 thereafter, which will produce an assumed effective cost of money of 10.221%.

In support of the Credit Facility, EUA and NEES propose to guarantee to the partnership the performance by EUA-OS and NERC of their obligations to make capital contributions to OSP under the Equity Contribution Agreement of up to $30 million and $25 million, respectively, as authorized by Commission order (HCAR No. 24727, October 13, 1988).

Central Coal Company (70-7551)

Centeral Coal Company ("Central"), 40 Franklin road, Roanoke, Virginia, 24022, a subsidiary of Appalachian Power Company ("Appalachian") and Ohio Power Company ("Ohio"), electric utility subsidiaries of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to section 12(c) of the Act and Rule 46 thereunder.

Central proposes to declare and pay to Appalachian and Ohio a dividend on its common stock in an aggregate amount of up to $2,325,000 from additional paid-in capital.

Consolidated Natural Gas Company (70-7567)

Consolidated Natural Gas Company ("CNG"), CNG Tower, Pittsburgh, Pennsylvania 15222-3199, a registered holding company, and its proposed wholly owned subsidiary, CNG Financial Services, Inc. ("Financial") have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 9(c)(3), 10, 12(b) and 13(b) of the Act and Rules 45, 50(a)(5), 86, 87 and 90 thereunder.

Consolidated proposes to organize, acquire the capital stock of, and provide initial financing for a new wholly owned subsidiary, Financial. The primary business of Financial will be to take advantage of the tax savings associated with passive leveraged leasing investments.

It is proposed that Financial will, from time to time, through December 31, 1989 obtain necessary funding from Consolidated for leveraged leasing through: (a) the sale of up to 10,000 shares of Financial common stock, $10,000 par value; (b) open account advances; (c) credit agreement loans; or (d) long-term loans, in any combination of the foregoing and in such amounts that the aggregate outstanding amount so obtained from Consolidated for leveraged leasing will not any time exceed $100 million. The notes issued by Financial to Consolidated in connection with such borrowings will have the same effective terms and interest rates as related borrowings of Consolidated. If there are no corresponding outstanding loans of Consolidated, such borrowings by Financial would carry the following interest rates: open account advances, the federal funds' effective rate as quoted daily by the Federal Reserve Bank of New York; credit agreement loans, the prime commercial rate in effect from time to time at the Chase Manhattan Bank, N.A.; and long-term loans, the indicative rate for comparable debt issuances published in Salomon Brothers Inc. Bond Market Roundup dated nearest to the time of takedown.

It is proposed that Financial invest as an equity participant in leveraged leases. Through such activities, Financial will seek to improve the competitive position of Consolidated by taking advantage of available tax credits and deductions arising from ownership of the leased property. Financial weill seek an investment firm(s) ("Investment Firm") for the purpose of together forming a joint venture(s) ("Joint Venture") to invest as equity participants in leveraged leases. The Investment Firm will propose leasing transactions involving non-affiliated companies. No leases of utility assets will be effected. Financial will have the absolute right to reject any proposed transaction. The Investment Firm will be responsible for the administrative function associated with the leases, such as credit investigation, monitoring insurance coverage, maintenance of the leased property, and remarketing the property at the end of the lease terms, subject to Financial's approval.

The Joint Venture would acquire, from time to time, assets for lease to lessees with high quality credit for a term of

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years on a net basis. The Joint Venture would borrow from institutional lenders, in security of the property and the lease, but without personal liability, between 50% and 80% of the cost, and receive the balance from Financial and Investment Firm in proportion to their respective equity ownership in the Joint Venture. Financial would provide up to $100 million and Investment Firm up to $25 million in equity to the Joint Venture, which would finance up to $500 million of leased property.

Central Power and Light Company (70–7572)

Central Power and Light Company ("CP&L"), P.O. Box 2121, Corpus Christi, Texas 78403, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed an application pursuant to Section 9(a) and 10 of the Act.

In April 1987, CP&L purchased a 16 story office building to serve as CP&L's corporate headquarters ("Headquarters Building"). The Headquarters Building contains approximately 237,500 square feet of office space, of which approximately 196,300 square feet are currently occupied by CP&L. Approximately 23,400 square feet of excess space on the first two floors of the Headquarters Building was designed and built for commercial and retail uses and cannot be effectively used by CP&L. In addition, approximately 18,500 square feet of space on the third floor, portions of the fourth floor, basement and roof of the Headquarters Building are not occupied by CP&L and, it is stated, will not be required until some time in the future. CP&L states that it intends to ultimately occupy all but the first two floors of its Headquarters Building. CP&L thus seeks authorization to lease to nonaffiliate third parties this excess space until such time as that space is needed by CP&L.

CP&L also seeks authority to lease one of its former office buildings ("Office Building") to third parties, at or near the market rates at the time such leases are entered into, until such time as CP&L can effect a sale of this building.

Middle South Utilities, Inc. et al. (70–7575)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its service company subsidiary, MSU System Services, Inc. ("Services"), 639 Loyola Avenue, New Orleans, Louisiana 70113, Arkansas Power & Light Company ("Arkansas"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("Louisiana"), 142 Delaronde Street, New Orleans, Louisiana 70114, Mississippi Power & Light Company ("Mississippi"), P.O. Box 1640, Jackson Mississippi 39215–1640 and New Orleans Public Service Inc. ("New Orleans"), 317 Baronne Street, New Orleans, Louisiana 70112, each an operating subsidiary of Middle South (collectively, "Operating Companies"), the Operating Companies" fuel supply subsidiary, System Fuels, Inc. ("SFI"), 639 Loyola Avenue, New Orleans, Louisiana 70113 and System Energy Resources, Inc. ("System Energy"), One Jackson Place, 188 Capitol Street, Jackson, Mississippi 39201, Middle South's generating company subsidiary, have filed an application-declaration pursuant to Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By orders dated December 30, 1985 (HCAR NO. 23967) and December 17, 1986 (HCAR No. 24266) the Operating Companies and System Energy were authorized to make short-term borrowings and invest in a system money pool ("Pool"), and to issue and sell short-term notes to banks and to commercial paper dealers through December 31, 1988. In addition, Middle South, Services, System Fuels, and System Energy, were authorized, through December 31, 1988, to participate in the Pool to the extent provided in those orders.

It is now proposed that, during the period ending December 31, 1990, the Operating Companies and System Energy continue to meet their interim capital needs through borrowings from the Pool and the issuance and sale of short-term notices to banks and commercial paper dealers. Total outstanding short-term borrowings so proposed to be made by each of the Operating Companies and System Energy during this period would not exceed 10% of the sum of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed by an Operating Company or System Energy and then outstanding and (b) the capital and surplus of the Operating Company or System Energy as then stated on its books of account, subject, in the case of System Energy, to compliance with any further restrictions on short-term borrowings from time to time in effect in its other credit arrangements. Total borrowings through the Pool by Services and SFI would not exceed, at any one time outstanding, amounts equal to the aggregate unused portion of back-up lines of credit then available to the companies. Middle South may lend to the Pool, but not borrow therefrom.

With respect to its participation in the Pool as a borrower, System Energy's existing credit arrangements currently require (absent waivers) that in the event of a default by System Energy under such credit arrangements or of insolvency, bankruptcy, liquidation, reorganization or other similar proceedings affecting System Energy, no payment by System Energy would be permitted on account of principal or interest upon Pool borrowings until all obligations under such credit arrangements were provided for or paid. Prior to the occurrence of any such default or proceeding, System Energy would be permittedf to make payments of principal and interest on account of its Pool borrowings. System Energy's existing bank loan agreements currently limit the amount it may invest through the Pool to up to $10,000,000 at any one time.

Funds in the Pool will first be made available for lending to the Operating Companies and System Energy on an equal allocation basis. Services and SFI will borrow only after the daily needs of the Operating Companies and System Energy have been satisified.

Services, as administrator of the Pool, will invest funds remaining in the Pool after satisfaction of the borrowing needs of the participants, and allocate the earnings among the participants providing the excess funds on a *pro rata* basis in accordance with their respective interests in the funds.

Arkansas, Louisiana, Mississippi, New Orleans and System Energy propose to issue unsecured short-term notes ("Notes") to various commercial banks either under individuals lines of credit or under consolidated "either/or" lines available for use by one or more of the Operating Companies and System Energy. The Notes will be payable either on demand of the lending bank or not more than one year from the date of issuance, and will bear interest at a rate per annum generally no greater than 1.5 percent over the prime commercial bank rate in effect on the date of the issuance or renewal or from time to time, depending upon the arrangements with the lending bank; provided that, under certain circumstances, the rate of interest on the Notes may be based upon other market rates or indices such that the rate may exceed, for certain brief periods and within certain parameters approved by the Commission, the above-described maximum rate of interest.

An exception from the competitive bidding requirements of Rule 50 has been requested for the proposed issuance of commercial paper.

Yankee Atomic Electric Company (70–7577)

Yankee Atomic Electric Company ("Yankee"), 580 Main Street, Boston, Massachusetts 01740, an electric utility subsidiary of New England Electric System and Northeast Utilities, registered holding companies, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Yankee proposes to issue and sell, through December 31, 1990, short-term promissory notes and commercial paper up to a maximum aggregate amount to be outstanding at any one time of $25 million. The notes are expected to be sold to (i) The Bank of Nova Scotia ("BNS") or The Bank of Nova Scotia International Limited ("BNS-Nassau"), or both; and (ii) National Westminster Bank USA ("Nat West"). In addition, Yankee proposes to issue and sell commercial paper to Merrill Lynch Money Markets, Incorporated, Shearson Lehman Commercial Paper Incorporated, and First Boston Corporation, dealers in commercial paper (collectively, "Dealers").

Under an Operating/Standby Credit Agreement ("Agreement") between Yankee and BNS/BNS-Nassau, proposed borrowings of up to $20 million will be evidenced by a note payable maturing in less than twelve months from the date of issuance. Borrowings shall bear interest at a rate per annum, which shall be equal to either BNS's base rate or ½ of 1% above BSN-Nassau's one, two, three, six, or nine-month LIBO Rate depending on the maturity of the borrowing as may be determined from time to time by Yankee. On a monthly basis, Yankee is to pay a standby fee equal to ¼ of 1% per annum on the average daily unused portion of the line of credit under said Agreement.

Under a Promissory Note Agreement between Yankee and Nat West, Yankee may borrow up to $5 million for a maximum term of nine months. Loans made by Nat West shall bear interest at a rate per annum which is equal to the lowest of (i) Nat West's prime rate, (ii) ⅝ of 1% in excess of Nat West's 90-day certificate of deposit rate, or (iii) ½ of 1% in excess of Nat West's one, two, three, six, or nine-month LIBO Rate. On a quarterly basis, Yankee is to pay a commitment fee of ⅜ of 1% per annum on the average daily unused portion of the note.

Southwestern Electric Power Company (70–7578)

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156, a subsidiary of Central and South West Corporation, a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

SWEPCO has requested authority to sell 2,882 utility poles located in Caddo and Bossier Parishes, Louisiana, to South Central Bell Telephone Company ("South Central Bell"). The proposed sale will be made pursuant to an allocation agreement between SWEPCO and South Central Bell which provides for the maintenance of equalization in the number of pole contracts between the companies in areas served by both. It is anticipated that proceeds from the proposed sale will be added to SWEPCO's general operating funds.

Eastern Edison Company, et al. (70–7579)

Eastern Edison Company ("Eastern"), 110 Mulberry Streety, Brockton, Massachusetts 02403, Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865, and EUA Service Corporation ("Service"), P.O. Box 2333, Boston, Massachusetts 02107, ("collectively, Subsidiaries"), subsidiaries of Eastern Utilities Associates, a registered holding company, have filed a declaration pursuant to sections 6 and 7 of the Act.

The Subsidiaries propose to issue and sell short-term notes to banks, from time to time during the period from December 28, 1988, to December 27, 1989, in aggregate amounts outstanding at any one time not to exceed $45 million for Eastern, $40 million for Montaup, $14 million for Blackstone and $5 million for Service.

Each note will be dated the date of issuance and will mature no later than September 30, 1990. Some notes will bear interest at a floating prime rate, have maximum maturities of nine months, and be prepayable at any time without premium. Other notes will bear interest at available money market rates, in all cases less than the prime rate at the time of issuance, will have maximum maturities of nine months, and will not be prepayable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–27145 Filed 11–22–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Indianapolis, will hold a public meeting at 9:30 a.m. on Tuesday, December 6, 1988, at North Meridian Inn, 1530 North Meridian, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Federal Building, Room 578, 575 North Pennsylvania Street, Indianapolis, Indiana 46204–1584, 317/226–7275.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 16, 1988.

[FR Doc. 88–27044 Filed 11–22–88; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Cleveland, will hold a public meeting, at 10:00 a.m. Friday, December 9, 1988, at Cuyahoga Community College, B&A Room 210, 2900 Community College Avenue, Cleveland, Ohio 44115, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call S. Charles Hemming, District Director, U.S. Small Business Administration, 1240 East Ninth Street, Room 317, Cleveland, Ohio 44199, 216/522–4182

Jean M. Nowak,

Director, Office of Advisory Councils

November 16, 1988.

[FR Doc. 88–27045 Filed 11–22–88; 8:45 am]

BILLING CODE 8025–01–M

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DEPARTMENT OF STATE

[Public Notice CM-8/1235]

U.S. Organizations for the International Consultative Committees on Radio (CCIR) and Telegraph and Telephone (CCITT); Meeting

The Department of State announces that there will be joint meeting of the National Committees of the International Radio Consultative Committee (CCIR) and the International Telegraph and Telephone Consultative Committee (CCITT) on December 15, 1988 at 10:00 a.m. and continue until approximately 4:00 p.m. in Room 1912, Department of State, 2201 C Street, NW., Washington, DC.

The National Committees provide service on matters of policy and positions in preparation for the respective Plenary Assemblies and international Study Groups meetings, as well as on a broad range of matters relating to the International Telecommunication Union (ITU) in general. The ITU will convene a Plenipotentiary Conference in May, 1989 which will consider issues of considerable interest to U.S. CCIR and CCITT participants.

The main purposes of the meeting will be to:

1. Report on national preparations for the Plenipotentiary;

2. Discussion of specific issues of interest to the CCIs;

3. Consideration of future activities.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, Department of State, Washington, DC; telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Date: November 4, 1988.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88-27096 Filed 11-22-88; 8:45 am]

BILLING CODE 4710-07-M

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee meeting on Wednesday, January 18, 1989, at 9:30 a.m. in Conference Room 1107, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

Agenda items scheduled for discussion are as follows:

I. Council Program of Educational Assistance:

(a) Final Reports of 1987 Program and Initial Report on 1988 Program.

(b) Council's efforts in Securing Contributions for 1988 Program.

(c) Recommendations of Council's Evaluation Committee Regarding Projects Submitted by Regional Overseas Schools Associated for 1989 Program.

(d) Report of the Subcommittee to Increase the Participation of U.S. Corporations and Foundations in Council 1989 Program.

II. New Education Agenda for the New Administration.

III. Initial Results of Surveys Concerning Schools Fund-Raising Drives and Activities of Overseas Schools Regional Associations.

IV. Recommendations of the Subcommittee to Increase U.S. Firms Participation in American-Sponsored Overseas Schools Activities.

V. Council's Communication with U.S. Corporations and Foundations.

VI. Selection of Date of Council's Annual Meeting.

Access to the State Department is controlled. Members of the public desiring to attend the meeting may write to the Overseas Schools Advisory Council, Department of State, Room 234, SA-6, Washington, DC 20520 or telephone Ms. Joyce Bruce on area code 703-875-6220, prior to January 18. The public may participate in discussions at the Chairman's instructions.

Date: November 3, 1988.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 88-27097 Filed 11-22-88; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; U.S. 97, Deschutes County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Deschutes County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE., Salem, Oregon 97301, Telephone: (503) 399-5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Route 97 (U.S. 97) in Deschutes County, Oregon. The proposed improvement would improve U.S. 97 through or near the City of Bend for a distance of about 4 to 8 miles, depending on the alternative. Improvements to U.S. 97 in the Bend vicinity are considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include (1) taking no action, (2) converting Division Street to a 4-lane expressway, (3) widening the existing U.S. 97, (4) improving existing city streets to serve with the existing U.S. 97 as a couplet, and (5) constructing a limited access highway on a new location, including both east and west bypasses. Design variations of grade, alignment, and access restrictions will be studied with various build alternatives.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings will be held during project development. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. the draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program.)

Issued on: November 14, 1988.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 88-27098 Filed 11-22-88; 8:45 am]

BILLING CODE 4910-22-M

[FHWA Docket No. MC-88-17]

Driver Fatigue Research; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA's Office of Motor Carriers announces a public meeting to solicit comments and recommendations from interested persons on areas that need to be considered when studying truck and bus driver fatigue. The meeting will include presentations from experts from the motor carrier industry, academic and private research organizations, and government agencies on such subject areas as behavioral and physiological considerations, sleep and shift work and vehicle design effects, and noise, shock, and vibration factors. In addition, all attendees are invited to share their views on these and other subjects related to driver fatigue and to make recommendations on the areas that need to be studied before the FHWA proposes any changes to the Federal regulations pertaining to hours of service.

Because space will be limited at the sessions, those wishing to speak should contact Ms. Lois Bossman or Ms. Lana Agnew at the DOT Transportation Systems Center in Cambridge, Massachusetts, (telephone 671-494-2307 or 2034).

The public symposium is scheduled for November 29 and 30, 1988 from 9 a.m. until 5 p.m. on both days, and will be held in room 2230, 400 Seventh St. SW., Washington, DC 20590.

A docket has been established to receive comments from persons unable to attend the meeting. Persons unable to attend may submit written comments to Docket No. MC-88-17, Room 4232, HCC-10, Office of Chief Counsel, 400 Seventh St. SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Hamilton, Office of Motor Carriers, 400 Seventh St. SW., Washington, DC 20590, (202) 366-0665. Office hours are from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, except legal holidays.

Issued: November 17, 1988.

R.D. Morgan,

Executive Director, Federal Highway Administration.

[FR Doc. 88-27127 Filed 11-22-88; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1988, included in the Omnibus Approriations Act, Pub. L. 100-202 signed into law by President Reagan on December 22, 1987, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the Federal Register each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant.

This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590. (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Grant obligated
City of Phoenix, Phoenix, AZ	AZ-03-0013	$2,441,505	9-30-88
Southern California Rapid Transit District Los Angeles, CA	CA-03-0130-09	96,271,485	9-30-88
California Department of Transportation, San Francisco, CA	CA-03-0315	11,284,950	9-01-88
Bay Area Rapid Transit District, San Francisco, CA	CA-03-0335	12,480,750	9-30-88
Bay Area Rapid Transit District, San Francisco, CA	CA-03-3500	3,420,017	9-27-88
San Francisco Municipal Railroad, San Francisco, CA	CA-03-0333	9,849,375	9-30-88
Chicago Transit Authority, Chicago, IL	IL-03-0135	100,756,500	9-23-88
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL	IL-03-0133-01	16,171,500	9-30-88
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL	IL-03-0141	8,888,250	9-30-88
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL	IL-03-0131	11,250,000	9-30-88
City of Indianapolis, Indianapolis, IN	IN-03-0058	800,000	9-30-88
Iowa Department of Transportation, Rural, IA	IA-03-0057	4,701,952	9-30-88
Kentucky Transportation Cabinet, Frankfort, KY	KY-03-0021	284,775	9-30-88
Brockton Area Transit Authority, Brockton, MA	MA-03-0151	1,058,400	9-30-88
Greater Portland Transit District, Portland, ME	ME-03-0025	924,000	9-30-88
Maine Department of Transportation, Rural, ME	ME-03-0024	2,048,700	9-30-88
Mass Transit Administration, Baltimore, MD	MD-03-0035	750,000	9-30-88
Michigan Department of Transportation Rural, MI	MI-03-0116	4,532,724	9-30-88
Nassau County, New York, NY	NY-03-0224-01	1,403,676	9-30-88
Suffolk County, New York, NY	NY-03-0233	3,630,000	9-30-88

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SECTION 3 GRANTS—Continued

Transit property	Grant No.	Grant amount	Grant obligated
Metropolitan Transportation Authority, New York, NY	NY-03-0238	1,852,500	9-30-88
Town of Huntington, New York, NY	NY-03-0235	375,000	9-30-88
Metropolitan Transportation Authority, New York, NY	NY-03-0220	12,059,025	9-30-88
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH-03-0099	7,560,000	9-30-88
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH-03-0097	16,212,000	9-30-88
Akron Metropolitan Regional Transit Authority, Akron, OH	OH-03-0098	120,000	9-30-88
Akron Metropolitan Regional Transit Authority, Akron, OH	OH-03-0096	1,375,500	9-30-88
Delaware River Port Authority of Pennsylvania and New Jersey, Philadelphia, PA	NJ-03-0075	21,900,000	9-30-88
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0195-01	7,125,000	9-30-88
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0202	5,700,000	9-30-88
City of Philadelphia, Philadelphia, Pa	PA-03-0148-01	2,850,000	9-30-88
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0168-01	11,250,000	9-30-88
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0194	7,875,000	9-30-88
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0190-01	11,250,000	9-30-88
South Carolina Department of Highways and Public Transportation, Columbia, SC	SC-03-0005	3,115,284	9-30-88
Dallas Area Rapid Transit Authority, Dallas, TX	TX-03-0122	11,126,250	9-30-88
Metropolitan Transit Authority, Houston, TX	TX-03-0119-01	31,160,000	9-30-88
Northern Virginia Transportation Commission, Washington, DC	VA-03-0035	750,000	9-30-88

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Date obligated
City of Huntsville, Huntsville, AL	AL-90-X035	$408,667	9-29-88
Mobile Transit Authority, Mobile, AL	AL-90-X034	2,075,227	9-29-88
Central Arkansas Transit Authority, Little Rock, AR	AR-90-X015	698,658	9-30-88
Arkansas State Highway and Transportation Department, Little Rock, AR	AR-90-X014	93,250	9-30-88
City of Tucson, Tucson, AZ	AZ-90-X020	388,000	9-30-88
Santa Clara County Transportation Agency, San Jose, CA	CA-90-X044-05	3,901,960	9-30-88
City of Laguna Beach, Los Angeles, CA	CA-90-X291	206,000	9-30-88
City of Fairfield, Fairfield, CA	CA-90-X292	577,191	9-30-88
City of Merced, Merced, CA	CA-90-X295	554,377	9-30-88
City of Simi Valley, Simi Valley, CA	CA-90-X305	684,200	9-30-88
South Coast Area Transit, Oxnard/Ventura, CA	CA-90-X306	2,749,541	9-30-88
City of Gardena, Los Angeles, CA	CA-90-X310	311,200	9-30-88
San Diego Association of Governments, San Diego, CA	CA-90-X309	400,000	9-30-88
Southern California Rapid Transit District, Los Angeles, CA	CA-90-X283-01	22,511,000	9-30-88
Santa Clara County Transit District, San Jose, CA	CA-90-X284-01	569,697	9-30-88
Hub Area Transit Authority, Yuba City, CA	CA-90-X307	370,000	9-30-88
City of Arcadia, Los Angeles, CA	CA-90-X308	84,000	9-30-88
City of Pueblo, Pueblo, CO	CO-90-X043	473,698	9-30-88
Capitol Region Council of Governments, Hartford, CT	CT-90-X125	47,200	9-30-88
Central Connecticut Regional Planning Agency, New Britain, CT	CT-90-X119	7,952	9-30-88
Greater Waterbury Transit District, Waterbury, CT	CT-90-X122	136,000	9-30-88
Norwalk Transit District, Norwalk, CT	CT-90-X123	154,429	9-30-88
Middletown Transit District, Hartford, CT	CT-90-X120	215,980	9-30-88
Connecticut Department of Transportation, Hartford, CT	CT-90-X114	2,196,332	9-30-88
Housatonic Area Regional Transit District, Danbury, CT	CT-90-X124	200,000	9-30-88
City of Stamford, Stamford, CT	CT-90-X121	130,077	9-30-88
Pinellas Suncoast Transit Authority, St. Petersburg, FL	FL-90-X116	3,942,919	9-26-88
Hillsborough Area Regional Transit Authority, Tampa, FL	FL-90-X106-01	2,400,000	9-26-88
Consolidated Government of Columbus, Columbus, GA	GA-90-X036-01	116,416	9-29-88
Douglas County Board of County Commissioners, Atlanta, GA	GA-90-X045	75,200	9-26-88
Georgia Department of Transportation, Atlanta, GA	GA-90-X046	4,476,650	9-26-88
Metropolitan Transit Authority of Black Hawk County, Waterloo, IA	IA-90-X097	174,000	9-30-88
City of Davenport, Davenport, IA	IA-90-X096	81,460	9-30-88
Pocatello Urban Transit, Pocatello, ID	ID-90-X016	377,673	9-30-88
Pace, Chicago, IL	IL-90-X125	489,600	9-30-88
Chicago Transit Authority, Chicago, IL	IL-90-X128	52,466,148	9-30-88
City of Danville, Danville, IL	IL-90-X124	410,000	9-30-88
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL	IL-90-X123	31,611,578	9-30-88
Greater Peoria Mass Transit District, Peoria, IL	IL-90-X116	1,304,640	9-30-88
Springfield Mass Transit District, Springfield, IL	IL-90-X121	1,820,000	9-30-88
Pace, Chicago, IL	IL-90-X126	11,997,165	9-30-88
Heart City Rider, Elkhart-Goshen, IN	IN-90-X112	353,851	9-30-88
Metropolitan Evansville Transit System, Evansville, IN	IN-90-X111	1,159,840	9-30-88
Topeka Metropolitan Transit Authority, Topeka, KS	KS-90-X031	656,080	9-30-88
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X032	676,400	9-30-88
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X033	460,750	9-30-88
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X034	20,000	9-30-88
City of Monroe, Monroe, LA	LA-90-X083	920,994	9-30-88
City of Alexandria, Alexandria, LA	LA-90-X084	701,660	9-30-88
Jefferson Parish, New Orleans, LA	LA-90-X087	1,806,729	9-30-88
City of Lake Charles, Lake Charles, LA	LA-90-X082	274,580	9-30-88
City of Lafayette, Lafayette, LA	LA-90-X085	500,000	9-30-88
City of Lafayette, Lafayette, LA	LA-90-X062-02	6,330	9-30-88

SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Date obligated
St. Bernard Parish, New Orleans, LA	LA-90-X066	222,600	9-30-88
Regional Transit Authority, New Orleans, LA	LA-90-X018-02	6,857,812	9-30-88
Louisiana Dept. of Transp. and Development, New Orleans, LA	LA-90-X066	662,218	9-30-88
Worcester Regional Transit Authority, Worcester, MA	MA-90-X077-01	178,400	9-30-88
Greater Attleboro-Taunton Regional Transit Authority, Providence, MA	MA-90-X083-01	530,000	9-30-88
Lowell Regional Transit Authority, Lowell, MA	MA-90-X075-01	65,688	9-30-88
Brockton Area Transit Authority, Brockton, MA	MA-90-X081-01	49,168	9-30-88
Mass Transit Administration, Baltimore, MD	MD-90-X036	536,635	9-26-88
Maine Department of Transportation, Statewide, ME	ME-90-X036-01	697,448	9-30-88
Maine Department of Transportation, Statewide, ME	ME-90-X038	43,440	9-30-88
Lewiston-Auburn Transit Committee, Lewiston-Auburn, ME	ME-90-X037	34,680	9-30-88
Muskegon Area Transit System, Muskegon, MI	MI-90-X104	596,656	9-30-88
City of Rochester, Rochester, MN	MN-90-X034	470,143	9-30-88
City of Columbia, Columbia, MO	MO-90-X037-01	52,705	9-30-88
City Utilities of Springfield, Springfield, MO	MO-90-X050	561,008	9-30-88
City of St. Joseph, St. Joseph, MO	MO-90-X049	601,577	9-30-88
Gulf Regional Planning Commission, Gulfport, MS	MS-90-X020-01	22,000	9-29-88
City of Jackson, Jackson, MS	MS-90-X023	1,635,200	9-26-88
Central Mississippi Planning and Development District, Jackson, MS	MS-90-X022	96,316	9-29-88
City of Billings, Billings, MT	MT-90-X022	553,062	9-30-88
Winston-Salem Transit Authority, Winston-Salem, NC	NC-90-X085	1,489,643	9-29-88
Wilmington Transit Authority, Wilmington, NC	NC-90-X083	1,815,507	9-26-88
Capitol Area Transit, Raleigh, NC	NC-90-X075-01	264,000	9-30-88
Wilmington Transit Authority, Wilmington, NC	NC-90-X066-01	26,100	9-26-88
Gastonia Transit, Gastonia, NC	NC-90-X081	253,979	9-26-88
Chapel Hill Transit, Durham, NC	NC-90-X072-01	120,000	8-8-88
Chapel Hill Transit, Durham, NC	NC-90-X082	1,929,085	9-30-88
Greensboro Agency Transp. Express, Inc., Greensboro, NC	NC-90-X080	346,440	9-26-88
Metro Area Transit, Omaha, NE	NE-90-X016	88,800	9-30-88
City of Nashua, Nashua, NH	NH-90-X018	472,964	9-30-88
Cooperative Alliance for Seacoast Transportation, Portsmouth-Dover-Rochester, NH	NH-90-X015-01	70,000	9-30-88
Cooperative Alliance for Seacoast Transportation, Portsmouth-Dover-Rochester, NH	NH-90-X017	506,705	9-30-88
City of Albuquerque, Albuquerque, NM	NM-90-X022	1,581,173	9-30-88
Putnam County, New York, NY	NY-90-X124-01	242,800	9-30-88
Putnam County, New York, NY	NY-90-X139	88,933	9-30-88
City of Rome, Rome, NY	NY-90-X141	192,010	9-23-88
Rockland County, New York, NY	NY-90-X142	1,092,036	9-30-88
Suffolk County, New York, NY	NY-90-X143	3,146,990	9-30-88
New York City Department of Transportation, New York, NY	NY-90-X144	24,877,973	9-30-88
Central New York Regional Transportation Authority, Syracuse, NY	NY-90-X145	3,219,950	9-30-88
Town of Huntington, New York, NY	NY-90-X147	337,857	9-30-88
Canton Regional Transit Authority, Canton, OH	OH-90-X108	320,000	9-30-88
Southwest Ohio Regional Transit Authority, Cincinnati, OH	OH-90-X092-01	366,851	9-30-88
Canton Regional Transit Authority, Canton, OH	OH-90-X105	48,800	9-30-88
Akron Metro Regional Transit Authority, Akron, OH	OH-90-X084-01	2,372,910	9-30-88
Ohio Department of Transportation, Columbus, OH	OH-90-X106	3,463,948	9-30-88
Central Ohio Transit Authority, Columbus, OH	OH-90-X107	2,560,000	9-30-88
Lorain County Transit Board, Lorain, OH	OH-90-X104	790,500	9-30-88
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK-90-X026	169,368	9-30-88
Metropolitan Tulsa Transit Authority, Tulsa, OK	OK-90-X024	597,401	9-30-88
Enid Public Transportation Authority, Enid, OK	OK-90-X025	317,000	9-30-88
Cumberland-Dauphin-Harrisburg Transit Authority, Harrisburg, PA	PA-90-X150	1,182,139	9-26-88
Red Rose Transit Authority, Lancaster, PA	PA-90-X152	929,800	9-26-88
Beaver County Transit Authority, Pittsburgh, PA	PA-90-X067-02	607,200	9-30-88
City of Sharon, Sharon, PA	PA-90-X153	115,000	9-26-88
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-90-X151	36,620,964	9-30-88
Luzerne County Transportation Authority, Scranton, PA	PA-90-X154	1,422,984	9-30-88
Municipality of Canovanas, San Juan, PR	PR-90-X032-01	318,776	9-29-88
Municipality of Loiza, San Juan, PR	PR-90-X014-01	96,000	9-29-88
Municipality of Mayaguez, Mayaguez, PR	PR-90-X041	120,000	9-29-88
Department of Transportation and Public Works, San Juan, PR	PR-90-X011-03	4,260,000	9-29-88
Municipality of Toa Alta, San Juan, PR	PR-90-X042	212,500	9-29-88
Municipality of Vega Baja, Vega Baja, PR	PR-90-X024-01	1,159,124	9-29-88
Rhode Island Department of Transportation, Providence, RI	RI-90-X011	5,680,000	9-30-88
Greenville Transit Authority, Greenville, SC	SC-90-X015-02	1,296,420	9-26-88
Johnson City Transit System, Johnson City, TN	TN-90-X053-01	28,100	9-26-88
Clarksville Transit System, Clarksville, TN	TN-90-X063-01	135,000	9-26-88
City of Kingsport, Kingsport, TN	TN-90-X067	264,050	9-26-88
City of Port Arthur, Port Arthur, TX	TX-90-X111	651,200	9-30-88
City of Waco, Waco, TX	TX-90-X132	361,898	9-30-88
Capital Metropolitan Transit Authority, Austin, TX	TX-90-X141	3,729,440	9-30-88
City of Abilene, Abilene, TX	TX-90-X133	404,800	9-30-88
City of Wichita Falls, Wichita Falls, TX	TX-90-X135	162,357	9-30-88
Texoma Council of Governments, Denison, TX	TX-90-X134	194,251	9-30-88
Dallas Area Rapid Transit Authority, Dallas, TX	TX-90-X130-02	1,440,000	9-30-88
City of Grand Prairie, Dallas, TX	TX-90-X123	67,060	9-30-88
City of Brownsville, Brownsville, TX	TX-90-X139	680,800	9-30-88
El Paso Mass Transit Department, El Paso, TX	TX-90-X131	4,215,936	9-30-88
Via Metropolitan Transportation Authority, San Antonio, TX	TX-90-X138	2,638,527	9-30-88

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SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Date obligated
Permian Basin Regional Planning Commission, Midland, TX	TX-90-X136	40,000	9-30-88
Brazos Valley Community Action Agency, Bryan, TX	TX-90-X129	296,820	9-30-88
City of Beaumont, Beaumont, TX	TX-90-X130	792,000	9-30-88
City of Amarillo, Amarillo, TX	TX-90-X137	804,604	9-30-88
Utah Transit Authority, Provo/Orem, UT	UT-90-X011	409,176	7-30-88
Charlottesville Transit Service, Charlottesville, VA	VA-90-X061	623,446	9-30-88
Bristol Virginia Transit, Bristol, VA	VA-90-X056	78,076	9-26-88
Peninsula Transportation District Commission, Hampton, VA	VA-90-X055	1,022,558	9-30-88
Petersburg Area Transit, Petersburg, VA	VA-90-X058	291,070	9-26-88
Greater Roanoke Transit Company, Roanoke, VA	VA-90-X059	917,521	9-26-88
Greater Richmond Transit Company, Richmond, VA	VA-90-X060	3,610,610	9-26-88
Greater Lynchburg Transit Company, Lynchburg, VA	VA-90-X062	1,187,370	9-26-88
Municipality of Metropolitan Seattle, Seattle-Everett, WA	WA-90-X066	15,678,833	9-30-88
Washington Department of Transportation, Seattle-Everett, WA	WA-90-X062	6,053,155	9-30-88
Kitsap Transit, Bremerton, WA	WA-90-X067	960,000	9-30-88
Whatcom Transportation Authority, Bellingham, WA	WA-90-X064	417,000	9-30-88
The City of Racine Belle Urban, Racine, WI	WI-90-X099	1,149,640	9-30-88
City of Kenosha, Kenosha, WI	WI-90-X097	983,200	9-30-88
Eau Claire Transit, Eau Claire, WI	WI-90-X096	371,558	9-30-88
Kanawha Valley Regional Transportation Authority, Charleston, WV	WV-90-X028	337,269	9-26-88
Ohio Valley Regional Transportation Authority, Wheeling, WV	WV-90-X030	1,012,000	9-29-88
City of Wierton, Wierton, WV	WV-90-X029	130,000	9-30-88
City of Casper, Casper, WY	WY-90-X004	282,180	9-30-88

SECTION 9 GRANTS READY FOR OBLIGATION WAITING FOR 13(c) CERTIFICATION

Transit property	Grant No.	Grant amount
Asheville Transit Authority, Asheville, NC	NC-90-X084	$641,417
Regional Transportation Commission, Reno, NV	NV-90-X008	1,125,267
Westchester County, New York, NY	NY-90-X148	5,348,097
Metropolitan Transit Authority, Nashville, TN	TN-90-X066	1,639,256
Spokane Transit Authority, Spokane, WA	WA-90-X088	3,161,738

Issued on: November 15, 1988.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 99-27150 Filed 11-22-88; 8:45 am]

BILLING CODE 4910-62-M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Special Medical Advisory Group will be held on December 8 and 9, 1988. The session on December 8 will be held at the Capital Hilton Hotel, 16th and "K" Streets, NW., Washington, DC 20036, and the session on December 9 will be held in the Omar Bradley Conference Room (10th floor) at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery. The session on December 8 (held at the Capital Hilton Hotel) will convene at 6 p.m. and the session on December 9 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/233-3985) prior to December 6, 1988.

Dated: November 16, 1988.

By direction of the Administrator.

Dennis R. Boxx,

Deputy Assistant Deputy Administrator for Public Affairs.

[FR Doc. 88-27126 Filed 11-22-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 226
Wednesday, November 23, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:35 a.m. on Friday, November 18, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act; and (2) a personnel matter.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 18, 1988.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary.

[FR Doc. 88-27246 Filed 11-21-88; 3:51 pm]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: At 9:00 a.m., Monday, November 28, 1988.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202) 377-6679.

MATTERS TO BE CONSIDERED:

Minimum Regulatory Capital
Definition of Regulatory Capital

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 27241 Filed 11-21-88; 3:44 pm]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, November 28, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Proposals regarding fees for directors of Federal Reserve Banks.
3. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on November 9, 1988.)
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27153 Filed 11-21-88; 8:50 am]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, December 7, 1988.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of November, 1988.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

DATE OF NOTICE: November 9, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-27149 Filed 11-21-88; 8:50 am]

BILLING CODE 7550-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold a meeting at 8:00 a.m. on Tuesday, December 6, 1988, in the Wilson's Plover Room of the Hyatt Regency Westshore, 6200 Courtney Campbell Causeway, Tampa, Florida. The meeting is open to the public. The Board expects to discuss the matter stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, December 5, 1988, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

December 6—8:00 a.m.

(Open)

1. Minutes of the Previous Meeting, November 7-8, 1988.
2. Remarks of the Postmaster General.
3. Annual Comprehensive Statement to Congress. (Louis A. Cox, General Counsel)
4. Chief Inspector's Report on Consumer Protection. (Charles R. Clauson, Chief Postal Inspector)
5. FY 1988 Financial Statements. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
6. Final FY 1990 Revenue Forgone Appropriation Request and Budget. (Comer S.

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Copie, Senior Assistant Postmaster General, Finance Group)

7. Capital Investments:

a. South Florida Mail Processing Center. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)

b. Multiline Optical Character Reader and Bar Code Sorter Automation. (Warren P. Denise, Acting Assistant Postmaster General, Engineering and Technical Support Department)

8. Tentative Agenda for January 9–10, 1989, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 88–27224 Filed 11–21–88; 3:41 pm]

BILLING CODE 7710–12–M

federal register

Wednesday
November 23, 1988

Part II

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for New Stationary Sources: VOC Emissions From Petroleum Refinery Wastewater Systems; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 3387-1]

Standards of Performance for New Stationary Sources; VOC Emissions From Petroleum Refinery Wastewater Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for volatile organic compound (VOC) emissions from petroleum refinery wastewater systems were proposed in the Federal Register on May 4, 1987 (52 FR 16334). This action promulgates standards of performance for VOC emissions from petroleum refinery wastewater systems. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that VOC emissions from petroleum refinery wastewater systems cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require new, modified, and reconstructed petroleum refinery wastewater systems to implement a combination of equipment, work practice, design, and operational standards that represents the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impact and energy requirements.

EFFECTIVE DATE: November 23, 1988.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background information document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "VOC Emissions from Petroleum Refinery Wastewater Systems—Background Information for Promulgated Standards" (EPA-450/3-85-001b). The promulgation BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments; (2) a summary of the changes made to the standards since proposal; and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. A docket, number A-83-07, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, Room 4, South Conference Center, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Durham, Chemicals and Petroleum Branch, for the technology aspects at (919) 541-5672 or, for the regulatory aspects, Mr. Doug Bell at (919) 541-5568 or Ms. Debbie W. Stackhouse at (919) 541-5258, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the final regulation:

I. The Standards
  A. Affected Facilities
  B. Requirements of the Standards
  C. Selection of Format for the Standards
II. Summary of Impacts
  A. Environmental Impacts
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I. The standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> • • • application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

A. Affected Facilities

The affected facilities to which these standards apply include: (1) Individual drain systems; (2) oil-water separators; and (3) individual drain systems with their ancillary downstream wastewater components, including sewer lines and oil-water separators (i.e., an aggregate facility as described below). The emission points to be regulated include: Drain openings; junction box covers; sewer lines; oil-water separators; slop oil facilities, including tanks and conditioning equipment; any connections or openings of these components from which VOC vapors might be emitted; and VOC control devices used to comply with the standards.

All refinery wastewater system components downstream of the oil-water separator (with the exception of slop oil facilities) have been excluded from coverage under the regulation. This includes two groups of components: (1) Air flotation systems, including dissolved air flotation systems (DAF's) and induced air flotation systems (IAF's); and (2) equalization basins and other auxiliary tanks, basins, and equipment located between the oil-water separator and the downstream air flotation system.

Individual drain systems include all process drains and sewer lines connected to the first downstream junction box. Except as noted in § 60.690(b) of the regulation, the definition for individual drain systems includes all such drains systems and the common junction box, together with the associated sewer lines and other junction boxes down to the receiving oil-water separator. Each individual drain system constitutes a separate affected facility.

Oil-water separators include the separation tank (which also includes the forebay and other separation basins), skimmers, weirs, grit chambers, and sludge hoppers. Slop oil facilities, including tanks, are also included in the oil-water separator definition as are other storage vessels and auxiliary equipment, which receive or store oily wastewater and are located between individual drain systems and the oil-water separator. Each oil-water separator that receives oily wastewater also constitutes a separate affected facility.

Because refinery wastewater systems are highly interrelated sources of VOC emissions, VOC controls on entire wastewater systems prior to and including the oil-water separation system are environmentally prudent and within the range of reasonable costs. Thus, the aggregate affected facility includes all the emission points that are functionally related down to and including the oil-water separators [that is, each individual drain system together with its ancillary downstream treatment components (including all drains and common junction box, together with their associated sewer lines and other junction boxes down to and including the primary and secondary oil-water separators)]. However, because the emission points covered by the standards are often constructed or modified on an individual basis, the affected facilities also include each individual drain system and each oil-water separator.

The standards exempt segregated stormwater sewer systems used for the sole purpose of collecting stormwater runoff from the plant premises. Each modified or reconstructed individual drain system that has a catch basin (as defined in § 60.691) in the existing configuration is exempt from the requirements for individual drain systems. The rule also exempts surge tanks that receive only stormwater runoff or non-contact cooling water, and any other tanks or basins that are used for storing non-VOC products such as caustic or coagulant.

B. Requirements of the Standards

For process drain systems, water seal controls must be installed on drains. Junction boxes must have tight-fitting covers. Junction box covers may include an open vent pipe of a specified size to relieve any buildup of vapor pressure. Each modified or reconstructed individual drain system that has a catch basin in the existing configuration is exempt from the requirements for individual drain systems. Sewer lines in all new, modified, and reconstructed individual drain systems are required to be covered to the interconnection with the receiving oil-water separator.

For oil-water separators with a design capacity to treat more than 16 liters per second (250 gallons per minute) of refinery wastewater, a fixed roof and closed vent system that directs vapors to a control device must be installed. The control device must be a vapor recovery or destruction device designed and operated to recover or destroy VOC with an efficiency of 95 percent or greater. Smaller oil-water separators must be equipped with a fixed roof, but need not install a closed vent system and control device.

The final rule has been clarified as to what is required when an oil-water separator that was already fully or partially covered at the time of proposal is modified or reconstructed. A modified or reconstructed oil-water separator shall be equipped with a roof over the entire separator tank. If, at the time of proposal (May 4, 1987), a separator was already equipped with a fixed roof over the entire separator tank and the facility is subsequently modified or reconstructed, the roof shall be tightly sealed. If the separator has a design capacity to treat 38 liters per second (600 gallons per minute) or more of refinery wastewater, the vapor space shall be vented to a VOC recovery or destruction control device. As an alternative to a fixed roof vented to a control device, a floating roof may be installed over the entire separator tank.

If a partial fixed roof was in place at the time of proposal over a portion of the separator tank and the oil-water separator has a maximum design capacity to treat 38 liters per second (600 gallons per minute) or more, upon modification or reconstruction the remainder of the oil-water separator shall be covered with a fixed roof and the vapor space shall be vented to a control device. As an alternative to a fixed roof and control device, the partial fixed roof may be removed and the entire oil-water separator covered with a floating roof.

If a partial fixed roof was in place over a portion of the separator tank at the time of proposal and the oil-water separator has a maximum design capacity to treat less than 38 liters per second (600 gallons per minute), upon modification or reconstruction the remainder of the separator tank shall be covered with either a floating roof or a tightly sealed fixed roof, but venting the vapor space to a VOC recovery or destruction device shall not be required.

The requirements for slop oil tanks have been revised slightly. Storage vessels including slop oil tanks are covered under this subpart only if they are not an affected facility under Subparts K, Ka, or Kb of 40 CFR Part 60. Storage vessels are required to be equipped with tightly sealed fixed roofs. The requirement in the proposed standards that slop oil be collected, stored, and transported in an enclosed system prior to reuse, disposal, or reentry to a process unit remains unchanged, except for the inclusion under this requirement of oily wastewater drawn from slop oil handling equipment.

Other auxiliary equipment associated with the operation of an oil-water separator is required to meet the same requirements as the oil-water separator.

Certain technologies are specified as equivalent alternatives to BDT as defined above. Completely closed drain systems with no openings to the atmosphere are allowed in lieu of water seal controls on process drains. In the case of oil-water separators, storage vessels, and other auxiliary equipment, floating roofs are allowed as an alternative technology. The roof is required to have a liquid-mounted primary seal and a secondary seal, with both seals meeting certain minimum gap requirements.

The definition of "volatile organic compound" has been deleted from the final regulation because it is already defined in § 60.2 of the General Provisions.

The aggregate affected facility definition included in the proposed standards has been retained, but includes two changes. First, air flotation systems and other equipment downstream of the oil-water separators (with the exception of slop oil facilities) are not covered under the final standards. Second, installation of a new individual drain system (consisting of process drains connected to the first common downstream junction box), rather than any physical or operational change, is necessary to constitute a "modification" to the aggregate facility. If a new individual drain system is constructed that results in increased emissions, the individual drain system together with its ancillary downstream components down to and including the oil-water separators is an affected facility subject to the requirements for aggregate facilities, even if no capital expenditure is involved. Other physical or operational changes to the wastewater system components would constitute a modification if emissions increase and a capital expenditure is made on the facility.

As explained above, under the aggregate affected facility definition, a new individual drain system or an emissions increase from an existing drain system could cause existing downstream components to be subject to the standards. Only if the total emissions increase is offset would the wastewater components be exempt from the aggregate facility definition. Offsetting of emission increases would have to occur within the associated existing wastewater treatment facilities. Owners or operators of the facility would be required to demonstrate that emission offsets claimed at one facility would not be suppressed and thereby released to the air at some downstream location. Even though an individual drain system and existing downstream components may be exempt under the aggregate definition as a result of offsets, the new, modified or

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reconstructed individual drain system may constitute a separate affected facility under the individual drain system definition. Also, a downstream oil-water separator may constitute a separate affected facility under the oil-water separator affected facility definition.

Initial performance tests are required only for flares used as VOC control devices to comply with the standards. The performance test required for flares is a test to confirm operation according to design specifications and is not an emission test.

Initial and periodic visual or physical inspections of water seals in drains are required. After the initial inspection, water seals on drains that are in active service are to be inspected each month. Water seals on drains not in active service are to be inspected weekly. Alternatively, if a tightly sealed cap or plug is installed on the inactive drain, only semiannual visual inspections are required. Initial and semiannual visual inspections are also required for covers on junction boxes, joints and covers on sewer lines, and fixed roof seals, doors, hatches and other openings on oil-water separators or auxiliary equipment to identify cracks, gaps, or other problems that could result in VOC emissions.

Owners or operators who install floating roofs on oil-water separators, storage vessels, or auxiliary equipment must determine the maximum gap widths between the primary seal and the wall of the separator and between the secondary seal and the wall of the separator within 60 days of the initial installation of the floating roof and introduction of refinery wastewater or 60 days after the equipment is placed back in service. These maximum gap widths are to be determined once every 5 years thereafter for the primary seal, and once every year thereafter for the secondary seal. If any oil-water separator ceases to receive or treat wastewater for a period of 1 year or more, subsequent introduction of refinery wastewater will be considered an initial introduction, requiring gap widths to be measured within 60 days.

Initial and semiannual monitoring of emissions from closed vent systems using a portable hydrocarbon analyzer is required to determine if there are detectable emissions (500 ppm above background levels). The EPA Method 21 would be the applicable test method. The requirement to ensure "no detectable emissions" from seams, joints, seals, and gaskets on junction boxes, oil-water separators, and other equipment having atmospheric or pressure control vents has been deleted in the final standards.

To ensure that a vapor recovery or destruction device is operating properly, the owner or operator is required to monitor the vapor flow to the control device, outlet VOC concentration or organics levels (or inlet and outlet for carbon adsorbers), or other parameters. All gauging and sampling devices on systems equipped with a control device must be kept gas-tight, except when gauging or sampling is taking place.

The reporting and recordkeeping requirements of the General Provisions apply. In addition, the design and operating specifications for all equipment used to comply with these standards are required to be maintained in a readily accessible location. Such specifications shall include the parameters to be monitored on all systems equipped with a closed vent system and control device. Initial and semiannual reports are required that certify that all inspections have been carried out. Records of each inspection where a water seal is dry or breached, a cap or plug is out of place, emissions are detected, or a problem is identified, including information about the repairs or corrective action taken, must be maintained in a readily accessible location and submitted semiannually in a summary report.

The recordkeeping and reporting requirements applicable to closed vent systems have been revised to require that certain information about the operation of the control device be maintained. For facilities using a thermal incinerator, continuous records must be maintained of the temperature of the gas stream in the combustion zone of the incinerator. Also, records of all 3-hour periods during which the average temperature of the gas stream in the combustion zone of the thermal incinerator is more than 28 °C (50 °F) below the design temperature must be maintained and reported semiannually. Similarly, for facilities using catalytic incinerators, continuous records of the temperature of the gas stream both upstream and downstream of the catalyst bed must be maintained. Also, records of all 3-hour periods during which the average temperature measured before the catalyst bed of a catalytic incinerator is more than 28 °C (50 °F) below the design gas stream temperature, and all 3-hour periods during which the average temperature difference across the catalyst bed is less than 80 percent of the design temperature difference across the catalyst bed must be maintained and reported semiannually. For facilities using a carbon adsorber, continuous records of the VOC concentration level or reading of organics of the control device outlet gas stream or inlet and outlet gas stream must be maintained. Records of all 3-hour periods during which the average VOC concentration level in the exhaust gases of a carbon adsorber is more than 20 percent greater than the design concentration level must be reported semiannually to the Administrator.

C. Selection of Format for the Standards

For petroleum refinery wastewater systems, a combination of equipment, work practice, design, and operational standards was selected. Under this approach, equipment representing BDT is required. However, procedures are included to allow alternative control equipment to be used if equivalent emission reductions can be demonstrated. Certain equivalent alternatives are allowed in the standards.

The standards require certain work practices to ensure that the control equipment installed is properly maintained. For example, regular inspections of water seals by owners or operators are required to ensure that proper water levels are maintained. Design standards are required for control devices to ensure that the type of system installed has the design capability to achieve emission reductions determined by EPA to reflect BDT.

Performance standards would allow for some flexibility in complying with the standards, since any control technique may be used if it achieves the level of emission reduction represented by the standard. However, for most refinery fugitive VOC emission sources, such as refinery wastewater systems, it is not feasible to prescribe performance standards because measurement of emissions from these sources is impractical or economically infeasible. Based on the considerations discussed below, it is not feasible to prescribe performance standards for refinery wastewater systems except where a flare is used as the control device.

Determining compliance with standards of performance for individual drain systems would be prohibitively expensive. Each drain would need to be bagged and vented in a manner that would allow the measurement of pollutant concentrations and flowrates. The cost of conducting performance tests on the numerous drains in an entire refinery or even a single refinery process unit would be unreasonably expensive.

In the case of oil-water separators, the principal limitation with standards of performance concerns the difficulty in measuring emission levels. Emission levels can vary considerably over relatively short periods of time depending on inlet oil concentrations, wastewater flowrates through the separator, and other factors. Even though in some cases the flowrate to an oil-water separator may remain relatively constant, the VOC emissions change periodically as the time of day or upstream process conditions change. In addition, vapor recovery or destruction devices are not expected to be dedicated to a specific wastewater stream. Emissions measurement of a nondedicated system would be complicated and perhaps meaningless. Thus, standards of performance would require continuously measuring emission levels. This would be an unreasonably expensive and impracticable approach to setting the proposed standards.

II. Summary of Impacts

A. Environmental Impacts

Approximately 100 newly constructed process unit drain systems are expected to be covered by the standards during the 5-year period 1985–1989. These systems will include approximately 5,000 drains and 1,000 junction boxes. Approximately 30 new oil-water separators are also expected to be covered by the standards during the 5-year period. In addition, it is expected that a total of at least 18 modified or reconstructed process drain systems will be affected by the standards. A small number of modified or reconstructed oil-water separators will also be affected by the standards.

The standards will reduce emissions of VOC from process drain systems by about 50 percent in comparison to the emissions that would result in the absence of the standards. An emission reduction of about 88 percent would result from oil-water separators in comparison to the emissions that would result under existing State and local regulations. For separators that would be built in States that do not currently regulate them, the emission reductions achieved by these standards would generally exceed 95 percent for individual facilities. The overall emission reduction from all facilities covered by the standards is estimated to be 2,020 Mg/yr (2,225 tons/yr) in the fifth year of implementation. This is about 60 Mg/yr (65 tons/yr) less than the proposed standards and reflects the exclusion of air flotation systems from the final standards.

The VOC emitted from wastewater treatment systems contribute to atmospheric photochemical reactions. These reactions form ozone, which is harmful to human health and welfare. Reduction of VOC emissions from newly constructed, modified, and reconstructed refinery wastewater systems would at the same time reduce emissions of any toxic constituents which may be in the wastewater streams.

The standards will not have an adverse impact on water quality. The control techniques will not interfere with the basic water treatment function of oil-water separators and air flotation systems. Further, suppression of VOC in the wastewater by covering separators will not result in a significant increase in organic loading to subsequent treatment process. Volatile organic compounds have a greater affinity for the oil phase of wastewater than for the water phase. To the extent that control techniques suppress emissions of VOC, these VOC will mostly be captured in the slop oil that is removed at the oil-water separator and reused or recycled.

Further, there will be no significant amount of solid waste produced as a result of the standards. There has been no change to the standards since proposal that would affect the water quality and solid waste impacts of the standards.

B. Energy Impacts

The standards will have essentially no energy impacts on the operation of process drain systems. The standards will result in consumption of small quantities of steam, water, electricity, and fuel gas for operation of control devices to destroy VOC captured from oil-water separators. There has been no change to the standards since proposal that would have a significant adverse impact on energy consumption by affected facilities.

C. Cost Impacts

The capital cost of the controls required by this regulation for individual drain systems is based on a uniform cost for each drain and junction box for installing p-traps, covers, and vent pipes. Therefore, the cost to a facility is proportional to the size of the refinery wastewater system serving the facility. All costs are presented in third quarter 1983 dollars. For a typical plant, the capital cost of the individual drain system would be $7,600 for a new process drain and junction box system, and $21,400 for retrofitting a process drain and junction box emissions reduction system. The annualized costs of these systems for the typical refinery wastewater system would be $1,650 for the new drain and junction box system, and $5,250 for a retrofitted system. The cost effectiveness of controls on a new drain and junction box system would be $300/Mg ($270/ton) of VOC controlled, and for a retrofit system would be $850/Mg ($770/ton).

For oil-water separators, the capital and annualized costs have increased slightly since proposal due to the addition of the cost of fuel gas to purge the oil-water separator to a vapor recovery or destruction device. The capital cost of covering the separator and installing vapor control would be $30,300 for a new facility using an existing control device for vapor control. The annualized cost of the new system with existing controls would be $22,800, with an average cost effectiveness of $140/Mg ($130/ton) of VOC removed.

For retrofitting an oil-water separator with controls to comply with the regulations, the capital cost would be $41,800 for a system using existing vapor controls. The annualized cost of the retrofit system using existing controls would be $25,800, with an average cost effectiveness of $160/Mg ($150/ton) of VOC.

The national fifth year annualized costs of the regulation to affected facilities are approximately $200,000 for retrofit facilities and approximately $1.1 million for new facilities.

D. Economic Impacts

The standards for petroleum refinery wastewater systems will have very little impact upon either the firms that refine petroleum products or on the consuming public. Market forces alone will greatly affect the price of refined petroleum products. These factors include the price of domestic and imported crude oil and the proportions of each used by domestic refineries; the prices of alternative sources of energy; the growth of the United States and international economies; and the costs of other inputs into the refinery industry. If the costs of the standards are also considered, the prices of refined products would show very little additional increase, estimated approximately $0.03 per cubic meter (less than $0.01/barrel), or less than 0.1 percent. No significant reduction in demand for refined products or in the profitability of growth of the refining industry is expected to result from the implementation of this regulation.

The environmental, energy, cost, and economic impacts are discussed in greater detail in the two BID volumes: (1) "VOC Emissions From Petroleum Refinery Wastewater Systems—Background Information for Proposed Standards" (EPA–450/3–85–001a), and (2) "VOC Emissions From Petroleum Refinery Wastewater Systems—

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Background Information for Promulgated Standards" (EPA–450/3–85–001b).

III. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (49 FR 66807, June 29, 1984) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the VOC emissions from petroleum refinery wastewater systems recommended for proposal. This meeting was held on August 29, 1984. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

The standards were proposed and published in the **Federal Register** on May 4, 1987 (52 FR 16334). The preamble to the proposed standards discussed the availability of the proposal BID, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the proposal BID were distributed to interested parties.

Opportunity for interested persons to present data, views, or arguments concerning the proposed standards at a public hearing was provided. However, there were no requests for such a hearing and, therefore, no hearing was held.

The comment period extended from May 4, 1987 to July 20, 1987. Twelve comment letters were received concerning issues relative to the proposed standards of performance for petroleum refinery wastewater systems. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

IV. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry representatives, one trade association, and one equipment vendor. A detailed discussion of these comments and responses can be found in the promulgation BID. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation.

The major comments and responses have been summarized in this preamble. Most of the comment letters contained multiple comments. The major comments have been divided into the following areas: Applicability of the Standards, Definition of Affected Facility and Modification/ Reconstruction, Selection of Control Technology, and Monitoring Requirements. Responses to comments not discussed below can be found in the promulgation BID to this rulemaking (see "Addresses" section).

A. Applicability of the Standards

One commenter recommended that a provision be included in the standards that would exempt facilities with oily wastewater streams containing only heavier hydrocarbon compounds. Streams containing only these compounds would be expected to have lower emissions than streams containing lighter, more volatile compounds. The commenter specifically recommended that this exemption be in the form of a minimum vapor pressure requirement of 1.5 psia. Another commenter suggested that the exemption be implemented through the use of a minimum relative volatility level. Without such an exemption, the commenters stated, the standards would impose an economic burden on some facilities without accomplishing a significant reduction in VOC emissions.

A cutoff based on vapor pressure or other measure of volatility for oily wastewater streams was considered during the development of the proposed regulation, but was not adopted because the total vapor pressure of the organics in the wastewater has the potential to vary widely and may change with wastewater loading, composition, and temperature. Among other factors that influence the rate of volatilization are ambient temperature, wind speed over the basin, and the thickness of the oil layer.

An industry survey showed that the organic loading can vary by orders of magnitude for the same wastewater system (see Docket Item No. II–B–45). Although there are no data to reflect the degree of change in organic composition of the wastewater, these changes can result from the loading variations, upset conditions, changes in operation, and the addition of new process units. For these reasons, a vapor pressure cutoff has not been included in the final standards.

Seven commenters objected to the requirement for installation of fixed roofs on DAF's. The concerns range from poor cost effectiveness (mainly due to low emissions potential); to safety (because of safety concerns, it may be necessary to purge the fixed roof to a VOC recovery or destruction device); to operation (roof would interfere with operation, reduce downstream water quality); and to maintenance (roof would hinder regular maintenance).

In response to these comments, EPA undertook a thorough reexamination of the technical, economic, and environmental bases of the application of the NSPS to air flotation systems, focusing specifically on the safety problems and the low emission potential of air flotation systems. As a result of this reexamination, the final standards have been revised to exempt air flotation systems, including both DAF's and IAF's.

The analysis undertaken by the Agency included a telephone survey of refiners with fixed roofs installed on their DAF's, as well as a review of the responses to a telephone survey of vendors conducted prior to the proposal. Further, DAF float disposal methods were reviewed to evaluate potential downstream impacts of controlling these systems. As a result of this analysis, the Agency has determined that a DAF controlled with a tightly sealed roof may pose safety concerns that were not adequately addressed by the proposed standards. An unvented fixed roof may present an explosion and fire hazard in some types of air flotation systems due to the buildup of explosive vapors inside the cover. By purging the space beneath the fixed roof with another gas, such as nitrogen, these safety concerns can be alleviated. For a system with the vapor space purged and vented to a control device, the incremental cost effectiveness was estimated to be over $13,000/Mg ($11,800/ton) of VOC. Consequently, EPA concluded there is no cost-effective method of VOC destruction or removal demonstrated for DAF's.

Fixed roof controls on air flotation systems serve to suppress VOC emissions temporarily, rather than to destroy VOC. The VOC emissions that are suppressed temporarily by the fixed roof system are merely transported downstream through air flotation effluent and froth. Consequently, about 60 Mg/year (65 tons/year) of the VOC emission reduction shown in the proposal BID actually represents the VOC suppressed temporarily by fixed roof controls on air flotation systems, but emitted downstream at uncontrolled emission points.

The Agency did consider DAF froth recycling as an alternative method for VOC control. However, recycling of froth has not been demonstrated to be a practical method of disposal for all refiners because the froth may contain additives such as coagulants. The majority of refiners landfarm or landfill froth rather than recycle it.

Taken together, these considerations led the Agency to decide that the focus of the standards should be on the control of emissions from individual drain systems and oil-water separators, including slop oil facilities, rather than on air flotation systems. Therefore, air flotation systems are not covered by the final standards.

One commenter stated that equalization basins located upstream from the air flotation system should not be included in the definition of DAF's. According to this commenter, these are very large basins and it would be difficult to place covers on them. A cover could also be dangerous due to the large surface area and amount of potential air leaks into the cover.

Equalization basins that are part of an air flotation system have been excluded from the final standards for essentially the same reasons that air flotation systems themselves have been excluded (see above). The recommended method of VOC control was a fixed roof which, like DAF's, would suppress VOC emissions temporarily, only to be emitted at some uncontrolled location downstream. Thus, there are no cost-effective methods of VOC recovery or destruction that have been demonstrated for these facilities.

Two commenters requested clarification of the applicability of the proposed standards to slop oil from oil-water separators and of the requirement in the proposed standards that slop oil be collected and reused or disposed of in an enclosed system. The commenters stated that these requirements could extend the applicability of the standards to segments of the refinery operation beyond the wastewater system itself, and could potentially encompass the entire refinery in cases where slop oil is combined with refinery feedstock. The commenters suggested that the provision for slop oil be dropped unless a technical basis for justifying such a requirement can be demonstrated.

The final standards have been revised to clarify the scope of the regulation of slop oil and slop oil tanks. In the final standards, storage vessels, including slop oil tanks auxiliary to oil-water separators, are regulated. These storage vessels are required to be covered with a tightly sealed fixed roof. The fixed roof can be vented with a pressure relief valve that has been set at the maximum pressure necessary for proper system operation, but such that the pressure relief valve is not venting continuously. Such a requirement is both technically feasible and cost effective in view of the VOC emissions potential of these uncovered facilities.

Emissions from slop oil are regulated under this subpart until the slop oil reenters a process unit or is disposed of. The slop oil and oily wastewater drawn from slop oil handling equipment must be collected, stored, transported, reused, recycled, or disposed of in an enclosed system (i.e., it must not be open to the atmosphere). Once slop oil is returned to the process, or is disposed of, it is no longer within the scope of this regulation. Another limitation on the applicability of this subpart to storage vessels, including slop oil tanks, is posed by the requirements of Subparts K, Ka, or Kb that regulate volatile organic liquid storage vessels, depending on the size of the facility and the vapor pressure of the liquid being stored. The NSPS for petroleum refinery wastewater systems does not apply to storage vessels subject to the requirements of Subparts K, Ka, or Kb, although the transport, recycling, reuse, or disposal of slop oil remains subject to the standards for petroleum refinery wastewater systems and must be kept in an enclosed system.

B. Definition of Affected Facility/ Modification

Seven commenters recommended that the definition of an aggregate facility as a separate affected facility be deleted from the proposed regulation. The commenters stated that a refinery wastewater system is normally designed with excess capacity and VOC emissions are more related to surface area than to oil volume. Further, the commenters stated that there are no data to show that an increase in the loading of VOC-bearing wastes necessarily results in an increase in refinery wastewater VOC emissions. Therefore, in the commenters' view, it is not appropriate to require additional controls as a result of increased throughput or the addition of one new pump, process drain or process unit. The commenters recommended that the standards should be triggered only when the capacity of the wastewater system is expanded.

The EPA disagrees with the commenters' assertion that an increase in the loading of VOC-bearing wastes does not result in an increase in refinery wastewater system VOC emissions. Although the amount of wastewater surface area exposed to the atmosphere does affect emissions, the concentration of VOC in the wastewater along with other factors, such as vapor pressure and temperature, are also factors in determining the emission potential. As a result, with increases in throughput, the volatile organic loading also increases when the surface area remains constant. In EPA's view, VOC emissions can increase with increased loading even if the capacity of the wastewater system (i.e., surface area) is not expanded.

However, in order to ensure that the application of the standards to downstream components of the wastewater system is triggered only by significant changes to the system that result in emission increases, EPA has amended the definition of affected facility in the final regulation. Under the proposed regulation, any physical or operational change made to an aggregate facility that resulted in an emissions increase would have constituted a modification, thereby making the standards applicable to the changed facility and all regulated downstream components of the wastewater system. Under the final regulation, the definition of affected facility still includes the "aggregate facility," but the definition has been amended to clarify what constitutes a modification that would bring downstream components under the regulation.

In the final regulation, a new paragraph (b) has been added to § 60.690 that states that a modification to an aggregate affected facility occurs when a new individual drain system (consisting of process drains connected to the first common downstream junction box) is constructed and tied into an existing refinery wastewater system. Under the final regulation, the new individual drain system and the components of the system downstream from the new individual drain system become an aggregate affected facility. This definition will lead to the control of VOC emissions from new individual drain systems constructed to serve new process units within the refinery, as well as from those constructed to serve existing process units.

The new paragraph (b) also specifies that the capital expenditure exemption contained in § 60.14(e)(2) of the General Provisions does not apply for the addition of a new individual drain system under this regulation. Section 60.14(e)(2) states that an increase in the production rate of an existing facility is not considered a modification if the increase does not involve a capital expenditure. A capital expenditure for petroleum refineries is considered to be any expenditure greater than 7 percent of the total capital cost of the facility. The intent of the capital expenditure clause is to exclude minor changes from coverage under the NSPS. The addition of a new individual drain system is considered a significant change to the aggregate facility, because emissions are significantly increased from downstream components of the

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wastewater facility. Therefore, under the final regulation, the addition of a new individual drain system to an existing wastewater facility that results in increased emissions would constitute a modification of an aggregate facility, even if no capital expenditure is involved. The capital expenditure exemption is retained for all other physical or operational changes to wastewater treatment system components. A small physical or operational change within an existing individual drain system (such as the addition of a pump) that does not constitute a capital expenditure on the aggregate facility would not be considered a modification of the aggregate facility. However, such changes may still constitute a modification to the individual facility (i.e., the individual drain system).

C. Selection of Control Technology

One commenter stated that the technical basis for installing sewer seals for emission reduction is flawed. As described by the commenter, vapors trapped by the sewer drain seals will be emitted via the junction box to prevent the buildup of potentially explosive vapors. The commenter recommended that since sewer seals will not materially reduce emissions, this requirement should be removed from the final standards.

The overall emission reductions from process drain seals are greater than from controls on junction boxes because of the greater number of process drains within a process unit. The greater number of drains exposes more surface area and thereby provides greater opportunity for volatilization.

Based on the assumption that molecular diffusion and convection are the primary factors affecting VOC emissions from drains and junction boxes, and in light of the potential safety problems of water seals on junction boxes, vent pipes are allowed to provide safe and effective emissions control from junction boxes. Because the rate of molecular diffusion and convection are influenced by the length of the vent pipe and design of the vent pipe opening, EPA evaluated the effects of different size vent pipes. Since VOC diffusion is inversely proportional to the diffusion path length, the greater the vent pipe length, the lower the rate at which molecular diffusion can transport VOC into the air. Also, the diameter of the vent pipe opening affects the emissions due to convection. Therefore, to restrict emissions due to the effects of molecular diffusion and convection from junction box vents, EPA has determined that a vent pipe having a maximum diameter of 10.2 centimeters (4 inches) and a minimum length of 90 centimeters (3 feet) will be required. Thus, a vent pipe is allowed to avoid safety problems, but a maximum diameter and minimum length are specified in order to restrict emissions due to the effects of molecular diffusion and convection.

D. Monitoring Requirements

Two commenters stated that the requirement for weekly inspection of water seals on drains is unnecessarily stringent and would present a significant burden to the industry given the large number and location of these drains in a refinery. According to the commenters, drains are often located in areas that are difficult or unsafe to inspect routinely. The commenters recommended that the inspection frequency for process drains be reduced to once a month. The commenters further stated that water seals also tend to be maintained by precipitation, maintenance washing, and use.

The EPA agrees that drains which are kept in active wastewater service will be maintained primarily by the refinery wastewater that is received from a process unit, as well as by precipitation and maintenance washing. Inspections are still required, however, to make sure that the water seals are present or that the seal pots are properly capped. Therefore, the inspection frequency has been reduced from weekly to monthly for drains in active service. For drains that are removed from active service, there is no assurance that precipitation or maintenance washing will maintain the water seal. Consequently, a weekly visual or physical inspection of the water seal is still required unless a tightly sealed cap or plug is installed. Only semiannual inspections are required for tightly sealed caps or plugs on drains not in active service to ensure that caps or plugs are properly in place.

Three commenters stated that the applicability of "no detectable emissions" to specific components of the refinery wastewater system and the associated requirement for monitoring using a portable hydrocarbon monitor to detect such emissions was inappropriate, and that visual inspection would be sufficient. Specifically, the commenters objected to the application of the standards to equipment with fixed roof controls that are not required to be vented to a vapor recovery or destruction control device, such as junction boxes and some oil-water separators.

The final standards have been revised to delete the "no detectable emissions" monitoring requirement for junction boxes, oil-water separators, and other components of the affected refinery wastewater system that are not vented to a vapor recovery or destruction control device. the Agency agrees with the comment that visual inspection coupled with follow-up repair and maintenance is sufficient to prevent leaks of VOC through faulty or poorly maintained joints, seals, or gaskets. Therefore, the final standards are the same as proposed for visual inspection of all joints, seams, access doors, and other emission sources on junction boxes, sewer lines, oil-water separators and any other components of the refinery wastewater system that are subject to the standards.

For oil-water separators with closed vent systems and other closed systems, such as closed drain systems, the "no detectable emissions" requirement specified in the proposed rule is maintained in the final rule. For closed vent systems, monitoring and inspection would be required of joints, seams, access doors, and other potential emission sources when the facility becomes subject to the standards, and semiannually thereafter to ensure that there are "no detectable emissions indicated by an instrument reading of less than 500 ppm above background levels." The EPA Method 21 would be the applicable test method for these facilities.

V. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

The effective date of this regulation is November 23, 1988. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal, May 4, 1987.

As prescribed by section 111, the promulgation of these standards was preceded by the Administrator's determination pursuant to 40 CFR 60.16 that fugitive sources of VOC emissions from petroleum refineries, including wastewater systems, contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare (44 FR 49222, August 21, 1979, and as amended by 47 FR 31876, July 23, 1982). In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clear Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

Information collection requirements associated with this regulation (those included in 40 CFR Part 60, Subpart A and Subpart QQQ) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2060–0172).

Public reporting burden for this collection of information is estimated to be 8,430 hours annually, with an average of 140 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Executive Order as grounds for finding a regulation to be a "major rule." The industry-wide annualized costs in the fifth year after the standards would go into effect would be about $1.1 million, less than the $100 million established as the first criterion for a major regulation in the Executive Order. The estimated price increase of less than 0.1 percent associated with the proposed standards would not be considered a "major increase in costs or prices" specified as the second criterion in the Executive Order. The economic analysis of the proposed standards' effect on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion in the Executive Order). The Agency has, therefore, concluded that this regulation is not a "major rule" under Exectuive Order 12291.

This regulation was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection in Docket No. A–82–39, EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Petroleum refining, Reporting and recordkeeping requirements.

Date: November 8, 1988.

Lee M. Thomas,

Administrator.

PART 60—AMENDED

For the reasons set forth in the preamble, 40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By adding a new subpart as follows:

Subpart QQQ—Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems

Sec.

60.690 Applicability and designation of affected facility.
60.691 Definitions.
60.692–1 Standards: General.
60.692–2 Standards: Individual drain systems.
60.692–3 Standards: Oil-Water separators.
60.692–4 Standards: Aggregate facility.
60.692–5 Standards: Closed vent systems and control devices.
60.692–6 Standards: Delay of repair.
60.692–7 Standards: Delay of compliance.
60.693–1 Alternative standards for individual drain systems.
60.693–2 Alternative standards for oil-water separators.
60.694 Permission to use alternative means of emission limitation.
60.695 Monitoring of operations.
60.696 Performance test methods and procedures and compliance provisions.
60.697 Recordkeeping requirements.
60.698 Reporting requirements.
60.699 Delegation of authority.

Subpart QQQ—Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems

§ 60.690 Applicability and designation of affected facility.

(a)(1) The provisions of this subpart apply to affected facilities located in petroleum refineries for which construction, modification, or reconstruction is commenced after May 4, 1987.

(2) An individual drain system is a separate affected facility.

(3) An oil-water separator is a separate affected facility.

(4) An aggregate facility is a separate affected facility.

(b) Notwithstanding the provisions of 40 CFR 60.14(e)(2), the construction or installation of a new individual drain system shall constitute a modification to an affected facility described in § 60.690(a)(4). For purposes of this paragraph, a new individual drain

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system shall be limited to all process drains and the first common junction box.

§ 60.691 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in Subpart A of 40 CFR Part 60, and the following terms shall have the specific meanings given them.

"Active service" means that a drain is receiving refinery wastewater from a process unit that will continuously maintain a water seal.

"Aggregate facility" means an individual drain system together with ancillary downstream sewer lines and oil-water separators, down to and including the secondary oil-water separator, as applicable.

"Catch basin" means an open basin which serves as a single collection point for stormwater runoff received directly from refinery surfaces and for refinery wastewater from process drains.

"Closed vent system" means a system that is not open to the atmosphere and is composed of piping, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission source to a control device.

"Completely closed drain system" means an individual drain system that is not open to the atmosphere and is equipped and operated with a closed vent system and control device complying with the requirements of § 60.692–5.

"Control device" means an enclosed combustion device, vapor recovery system or flare.

"Fixed roof" means a cover that is mounted to a tank or chamber in a stationary manner and which does not move with fluctuations in wastewater levels.

"Floating roof" means a pontoon-type or double-deck type cover that rests on the liquid surface.

"Gas-tight" means operated with no detectable emissions.

"Individual drain system" means all process drains connected to the first common downstream junction box. The term includes all such drains and common junction box, together with their associated sewer lines and other junction boxes, down to the receiving oil-water separator.

"Junction box" means a manhole or access point to a wastewater sewer system line.

"No detectable emissions" means less than 500 ppm above background levels, as measured by a detection instrument in accordance with Method 21 in Appendix A of 40 CFR Part 60.

"Non-contact cooling water system" means a once-through drain, collection and treatment system designed and operated for collecting cooling water which does not come into contact with hydrocarbons or oily wastewater and which is not recirculated through a cooling tower.

"Oil-water separator" means wastewater treatment equipment used to separate oil from water consisting of a separation tank, which also includes the forebay and other separator basins, skimmers, weirs, grit chambers, and sludge hoppers. Slop oil facilities, including tanks, are included in this term along with storage vessels and auxiliary equipment located between individual drain systems and the oil-water separator. This term does not include storage vessels or auxiliary equipment which do not come in contact with or store oily wastewater.

"Oily wastewater" means wastewater generated during the refinery process which contains oil, emulsified oil, or other hydrocarbons. Oily wastewater originates from a variety of refinery processes including cooling water, condensed stripping steam, tank draw-off, and contact process water.

"Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

"Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through the distillation of petroleum, or through the redistillation of petroleum, cracking, or reforming unfinished petroleum derivatives.

"Sewer line" means a lateral, trunk line, branch line, ditch, channel, or other conduit used to convey refinery wastewater to downstream components of a refinery wastewater treatment system. This term does not include buried, below-grade sewer lines.

"Slop oil" means the floating oil and solids that accumulate on the surface of an oil-water separator.

"Storage vessel" means any tank, reservoir, or container used for the storage of petroleum liquids, including oily wastewater.

"Stormwater sewer system" means a drain and collection system designed and operated for the sole purpose of collecting stormwater and which is segregated from the process wastewater collection system.

"Wastewater system" means any component, piece of equipment, or installation that receives, treats, or processes oily wastewater from petroleum refinery process units.

"Water seal controls" means a seal pot, p-leg trap, or other type of trap filled with water that has a design capability to create a water barrier between the sewer and the atmosphere.

§ 60.692–1 Standards: General.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of §§ 60.692–1 to 60.692–5 and with §§ 60.693–1 and 60.693–2, except during periods of startup, shutdown, or malfunction.

(b) Compliance with §§ 60.692–1 to 60.692–5 and with §§ 60.693–1 and 60.693–2 will be determined by review of records and reports, review of performance test results, and inspection using the methods and procedures specified in § 60.696.

(c) Permission to use alternative means of emission limitation to meet the requirements of §§ 60.692–2 through 60.692–4 may be granted as provided in § 60.694.

(d)(1) Stormwater sewer systems are not subject to the requirements of this subpart.

(2) Ancillary equipment, which is physically separate from the wastewater system and does not come in contact with or store oily wastewater, is not subject to the requirements of this subpart.

(3) Non-contact cooling water systems are not subject to the requirements of this subpart.

(4) An owner or operator shall demonstrate compliance with the exclusions in paragraphs (d)(1), (d)(2), and (d)(3) of this section as provided in § 60.697 (h), (i), and (j).

§ 60.692–2 Standards: Individual drain systems.

(a)(1) Each drain shall be equipped with water seal controls.

(2) Each drain in active service shall be checked by visual or physical inspection initially and monthly thereafter for indications of low water levels or other conditions that would reduce the effectiveness of the water seal controls.

(3) Except as provided in paragraph (a)(4) of this section, each drain out of active service shall be checked by visual or physical inspection initially and weekly thereafter for indications of low water levels or other problems that could result in VOC emissions.

(4) As an alternative to the requirements in paragraph (a)(3) of this section, if an owner or operator elects to install a tightly sealed cap or plug over a drain that is out of service, inspections shall be conducted initially and semiannually to ensure caps or plugs are in place and properly installed.

(5) Whenever low water levels or missing or improperly installed caps or plugs are identified, water shall be added or first efforts at repair shall be made as soon as practicable, but not later than 24 hours after detection, except as provided in § 60.692–6.

(b)(1) Junction boxes shall be equipped with a cover and may have an open vent pipe. The vent pipe shall be at least 90 cm (3 ft) in length and shall not exceed 10.2 cm (4 in) in diameter.

(2) Junction box covers shall have a tight seal around the edge and shall be kept in place at all times, except during inspection and maintenance.

(3) Junction boxes shall be visually inspected initially and semiannually thereafter to ensure that the cover is in place and to ensure that the cover has a tight seal around the edge.

(4) If a broken seal or gap is identified, first effort at repair shall be made as soon as practicable, but not later than 15 calendar days after the broken seal or gap is identified, except as provided in § 60.692–6.

(c)(1) Sewer lines shall not be open to the atmosphere and shall be covered or enclosed in a manner so as to have no visual gaps or cracks in joints, seals, or other emission interfaces.

(2) The portion of each unburied sewer line shall be visually inspected initially and semiannually thereafter for indication of cracks, gaps, or other problems that could result in VOC emissions.

(3) Whenever cracks, gaps, or other problems are detected, repairs shall be made as soon as practicable, but not later than 15 calendar days after identification, except as provided in § 60.692–6.

(d) Except as provided in paragraph (e) of this section, each modified or reconstructed individual drain system that has a catch basin in the existing configuration prior to May 4, 1987 shall be exempt from the provisions of this section.

(e) Refinery wastewater routed through new process drains and a new first common downstream junction box, either as part of a new individual drain system or an existing individual drain system, shall not be routed through a downstream catch basin.

§ 60.692–3 Standards: Oil-water separators.

(a) Each oil-water separator tank, slop oil tank, storage vessel, or other auxiliary equipment subject to the requirements of this subpart shall be equipped and operated with a fixed roof, which meets the following specifications, except as provided in paragraph (d) of this section or in § 60.693–2.

(1) The fixed roof shall be installed to completely cover the separator tank, slop oil tank, storage vessel, or other auxiliary equipment with no separation between the roof and the wall.

(2) The vapor space under a fixed roof shall not be purged unless the vapor is directed to a control device.

(3) If the roof has access doors or openings, such doors or openings shall be gasketed, latched, and kept closed at all times during operation of the separator system, except during inspection and maintenance.

(4) Roof seals, access doors, and other openings shall be checked by visual inspection initially and semiannually thereafter to ensure that no cracks or gaps occur between the roof and wall and that access doors and other openings are closed and gasketed properly.

(5) When a broken seal or gasket or other problem is identified, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after it is identified, except as provided in § 60.692–6.

(b) Each oil-water separator tank or auxiliary equipment with a design capacity to treat more than 16 liters per second (250 gpm) of refinery wastewater shall, in addition to the requirements in paragraph (a) of this section, be equipped and operated with a closed vent system and control device, which meet the requirements of § 60.692–5, except as provided in paragraph (c) of this section or in § 60.693–2.

(c)(1) Each modified or reconstructed oil-water separator tank with a maximum design capacity to treat less than 38 liters per second (600 gpm) of refinery wastewater which was equipped and operated with a fixed roof covering the entire separator tank or a portion of the separator tank prior to May 4, 1987 shall be exempt from the requirements of paragraph (b) of this section, but shall meet the requirements of paragraph (a) of this section, or may elect to comply with paragraph (c)(2) of this section.

(2) The owner or operator may elect to comply with the requirements of paragraph (a) of this section for the existing fixed roof covering a portion of the separator tank and comply with the requirements for floating roofs in § 60.693–2 for the remainder of the separator tank.

(d) Storage vessels, including slop oil tanks and other auxiliary tanks that are subject to the requirements of 40 CFR Subparts K, Ka, or Kb, are not subject to the requirements of this section.

(e) Slop oil from an oil-water separator tank and oily wastewater from slop oil handling equipment shall be collected, stored, transported, recycled, reused, or disposed of in an enclosed system. Once slop oil is returned to the process unit or is disposed of, it is no longer within the scope of this subpart. Equipment used in handling slop oil shall be equipped with a fixed roof meeting the requirements of paragraph (a) of this section.

(f) Each oil-water separator tank, slop oil tank, storage vessel, or other auxiliary equipment that is required to comply with paragraph (a) of this section, and not paragraph (b) of this section, may be equipped with a pressure control valve as necessary for proper system operation. The pressure control valve shall be set at the maximum pressure necessary for proper system operation, but such that the value will not vent continuously.

§ 60.692–4 Standards: Aggregate facility.

A new, modified, or reconstructed aggregate facility shall comply with the requirements of §§ 60.692–2 and 60.692–3.

§ 60.692–5 Standards: Closed vent systems and control devices.

(a) Enclosed combustion devices shall be designed and operated to reduce the VOC emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.75 seconds at a minimum temperature of 816°C (1,500°F).

(b) Vapor recovery systems (for example, condensers and adsorbers) shall be designed and operated to recover the VOC emissions vented to them with an efficiency of 95 percent or greater.

(c) Flares used to comply with this subpart shall comply with the requirements of 40 CFR 60.18.

(d) Closed vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(e)(1) Closed vent systems shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as determined during the initial and semiannual inspections by the methods specified in § 60.696.

(2) Closed vent systems shall be purged to direct vapor to the control device.

(3) A flow indicator shall be installed on a vent stream to a control device to ensure that the vapors are being routed to the device.

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(4) All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(5) When emissions from a closed system are detected, first efforts at repair to eliminate the emissions shall be made as soon as practicable, but not later than 30 calendar days from the date the emissions are detected, except as provided in § 60.692–6.

§ 60.692–6 Standards: Delay of repair.

(a) Delay of repair of facilities that are subject to the provisions of this subpart will be allowed if the repair is technically impossible without a complete or partial refinery or process unit shutdown.

(b) Repair of such equipment shall occur before the end of the next refinery or process unit shutdown.

§ 60.692–7 Standards: Delay of compliance.

(a) Delay of compliance of modified individual drain systems with ancillary downstream treatment components will be allowed if compliance with the provisions of this subpart cannot be achieved without a refinery or process unit shutdown.

(b) Installation of equipment necessary to comply with the provisions of this subpart shall occur no later than the next scheduled refinery or process unit shutdown.

§ 60.693–1 Alternative standards for individual drain systems.

(a) An owner or operator may elect to construct and operate a completely closed drain system.

(b) Each completely closed drain system shall be equipped and operated with a closed vent system and control device complying with the requirements of § 60.692–5.

(c) An owner or operator must notify the Administrator in the report required in 40 CFR 60.7 that the owner or operator has elected to construct and operate a completely closed drain system.

(d) If an owner or operator elects to comply with the provisions of this section, then the owner or operator does not need to comply with the provisions of §§ 60.692–2 or 60.694.

(e)(1) Sewer lines shall not be open to the atmosphere and shall be covered or enclosed in a manner so as to have no visual gaps or cracks in joints, seals, or other emission interfaces.

(2) The portion of each unburied sewer line shall be visually inspected initially and semiannually thereafter for indication of cracks, gaps, or other problems that could result in VOC emissions.

(3) Whenever cracks, gaps, or other problems are detected, repairs shall be made as soon as practicable, but not later than 15 calendar days after identification, except as provided in § 60.692–6.

§ 60.693–2 Alternative standards for oil-water separators.

(a) An owner or operator may elect to construct and operate a floating roof on an oil-water separator tank, slop oil tank, storage vessel, or other auxiliary equipment subject to the requirements of this subpart which meets the following specifications.

(1) Each floating roof shall be equipped with a closure device between the wall of the separator and the roof edge. The closure device is to consist of a primary seal and a secondary seal.

(i) The primary seal shall be a liquid-mounted seal.

(A) A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the separator and the floating roof.

(B) The gap width between the primary seal and the separator wall shall not exceed 3.8 cm (1.5 in.) at any point.

(C) The total gap area between the primary seal and the separator wall shall not exceed 67 cm^2/m (3.2 $in.^2/ft$) of separator wall perimeter.

(ii) The secondary seal shall be above the primary seal and cover the annular space between the floating roof and the wall of the separator.

(A) The gap width between the secondary seal and the separator wall shall not exceed 1.3 cm (0.5 in.) at any point.

(B) The total gap area between the secondary seal and the separator wall shall not exceed 6.7 cm^2/m (0.32 $in.^2/ft$) of separator wall perimeter.

(iii) The maximum gap width and total gap area shall be determined by the methods and procedures specified in § 60.696(d).

(A) Measurement of primary seal gaps shall be performed within 60 calendar days after initial installation of the floating roof and introduction of refinery wastewater and once every 5 years thereafter.

(B) Measurement of secondary seal gaps shall be performed within 60 calendar days of initial introduction of refinery wastewater and once every year thereafter.

(iv) The owner or operator shall make necessary repairs within 30 calendar days of identification of seals not meeting the requirements listed in paragraphs (a)(1) (i) and (ii) of this section.

(2) Except as provided in paragraph (a)(4) of this section, each opening in the roof shall be equipped with a gasketed cover, seal, or lid, which shall be maintained in a closed position at all times, except during inspection and maintenance.

(3) The roof shall be floating on the liquid (i.e., off the roof supports) at all times except during abnormal conditions (i.e., low flow rate).

(4) The floating roof may be equipped with one or more emergency roof drains for removal of stormwater. Each emergency roof drain shall be fitted with a slotted membrane fabric cover that covers at least 90 percent of the drain opening area or a flexible fabric sleeve seal.

(5)(i) Access doors and other openings shall be visually inspected initially and semiannually thereafter to ensure that there is a tight fit around the edges and to identify other problems that could result in VOC emissions.

(ii) When a broken seal or gasket on an access door or other opening is identified, it shall be repaired as soon as practicable, but not later than 30 calendar days after it is identified, except as provided in § 60.692–6.

(b) An owner or operator must notify the Administrator in the report required by 40 CFR 60.7 that the owner or operator has elected to construct and operate a floating roof under paragraph (a) of this section.

(c) For portions of the oil-water separator tank where it is infeasible to construct and operate a floating roof, such as the skimmer mechanism and weirs, a fixed roof meeting the requirements of § 60.692–3(a) shall be installed.

(d) Except as provided in paragraph (c) of this section, if an owner or operator elects to comply with the provisions of this section, then the owner or operator does not need to comply with the provisions of §§ 60.692–3 or 60.694 applicable to the same facilities.

§ 60.694 Permission to use alternative means of emission limitation.

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved by the applicable requirement in § 60.692, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after notice and an opportunity for a hearing.

(c) Any person seeking permission under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves equivalent emission reductions.

§ 60.695 Monitoring of operations.

(a) Each owner or operator subject to the provisions of this subpart shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment, unless alternative monitoring procedures or requirements are approved for that facility by the Administrator.

(1) Where a thermal incinerator is used for VOC emission reduction, a temperature monitoring device equipped with a continuous recorder shall be used to measure the temperature of the gas stream in the combustion zone of the incinerator. The temperature monitoring device shall have an accuracy of 1 percent of the temperature being measured in °C or ±0.5 °C (±1.0 °F), whichever is greater.

(2) Where a catalytic incinerator is used for VOC emission reduction, temperature monitoring devices, each equipped with a continuous recorder shall be used to measure the temperature in the gas stream immediately before and after the catalyst bed of the incinerator. The temperature monitoring devices shall have an accuracy of 1 percent of the temperature being measured in °C or ±0.5 °C (±1.0 °F), whichever is greater.

(3) Where a carbon adsorber is used for VOC emissions reduction, a monitoring device that continuously indicates and records the VOC concentration level or reading of organics in the exhaust gases of the control device outlet gas stream or inlet and outlet gas stream shall be used.

(4) Where a flare is used for VOC emission reduction, the owner or operator shall comply with the monitoring requirements of 40 CFR 60.18(f)(2).

(b) Where a VOC recovery device other than a carbon adsorber is used to meet the requirements specified in § 60.692–5(a), the owner or operator shall provide to the Administrator information describing the operation of the control device and the process parameter(s) that would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

(c) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

§ 60.696 Performance test methods and procedures and compliance provisions.

(a) Before using any equipment installed in compliance with the requirements of §§ 60.692–2, 60.692–3, 60.692–4, 60.692–5, or 60.693, the owner or operator shall inspect such equipment for indications of potential emissions, defects, or other problems that may cause the requirements of this subpart not to be met. Points of inspection shall include, but are not limited to, seals, flanges, joints, gaskets, hatches, caps, and plugs.

(b) The owner or operator of each source that is equipped with a closed vent system and control device as required in § 60.692–5 (other than a flare) is exempt from § 60.8 of the General Provisions and shall use Method 21 to measure the emission concentrations, using 500 ppm as the no detectable emission limit. The instrument shall be calibrated each day before using. The calibration gases shall be:

(1) Zero air (less than 10 ppm of hydrocarbon in air), and

(2) A mixture of either methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(c) The owner or operator shall conduct a performance test initially, and at other times as requested by the Administrator, using the test methods and procedures in § 60.18(f) to determine compliance of flares.

(d) After installing the control equipment required to meet § 60.693–2(a) or whenever sources that have ceased to treat refinery wastewater for a period of 1 year or more are placed back into service, the owner or operator shall determine compliance with the standards in § 60.693–2(a) as follows:

(1) The maximum gap widths and maximum gap areas between the primary seal and the separator wall and between the secondary seal and the separator wall shall be determined individually within 60 calendar days of the initial installation of the floating roof and introduction of refinery wastewater or 60 calendar days after the equipment is placed back into service using the following procedure when the separator is filled to the design operating level and when the roof is floating off the roof supports.

(i) Measure seal gaps around the entire perimeter of the separator in each place where a 0.32 cm (0.125 in.) diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the wall of the separator and measure the gap width and perimetrical distance of each such location.

(ii) The total surface area of each gap described in (d)(1)(i) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the wall to the seal and multiplying each such width by its respective perimetrical distance.

(iii) Add the gap surface area of each gap location for the primary seal and the secondary seal individually, divide the sum for each seal by the nominal perimeter of the separator basin and compare each to the maximum gap area as specified in § 60.693–2.

(2) The gap widths and total gap area shall be determined using the procedure in paragraph (d)(1) of this section according to the following frequency:

(i) For primary seals, once every 5 years.

(ii) For secondary seals, once every year.

§ 60.697 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section. All records shall be retained for a period of 2 years after being recorded unless otherwise noted.

(b)(1) For individual drain systems subject to § 60.692–2, the location, date, and corrective action shall be recorded for each drain when the water seal is dry or otherwise breached, when a drain cap or plug is missing or improperly installed, or other problem is identified that could result in VOC emissions, as determined during the initial and periodic visual or physical inspection.

(2) For junction boxes subject to § 60.692–2, the location, date, and corrective action shall be recorded for inspections required by § 60.692–2(b) when a broken seal, gap, or other problem is identified that could result in VOC emissions.

(3) For sewer lines subject to §§ 60.692–2 and 60.693–1(e), the location, date, and corrective action shall be recorded for inspections required by §§ 60.692–2(c) and 60.693–1(e) when a problem is identified that could result in VOC emissions.

(c) For oil-water separators subject to § 60.692–3, the location, date, and

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corrective action shall be recorded for inspections required by by § 60.692-3(a) when a problem is identified that could result in VOC emissions.

(d) For closed vent systems subject to § 60.692-5 and completely closed drain systems subject to § 60.693-1, the location, date, and corrective action shall be recorded for inspections required by § 60.693-5(e) during which detectable emissions are measured or a problem is identified that could result in VOC emissions.

(e)(1) If an emission point cannot be repaired or corrected without a process unit shutdown, the expected date of a successful repair shall be recorded.

(2) The reason for the delay as specified in § 60.692-6 shall be recorded if an emission point or equipment problem is not repaired or corrected in the specified amount of time.

(3) The signature of the owner or operator (or designee) whose decision it was that repair could not be effected without refinery or process shutdown shall be recorded.

(4) The date of successful repair or corrective action shall be recorded.

(f)(1) A copy of the design specifications for all equipment used to comply with the provisions of this subpart shall be kept for the life of the source in a readily accessible location.

(2) The following information pertaining to the design specifications shall be kept.

(i) Detailed schematics, and piping and instrumentation diagrams.

(ii) The dates and descriptions of any changes in the design specifications.

(3) The following information pertaining to the operation and maintenance of closed drain systems and closed vent systems shall be kept in a readily accessible location.

(i) Documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions shall be kept for the life of the facility. This documentation is to include a general description of the gas streams that enter the control device, including flow and VOC content under varying liquid level conditions (dynamic and static) and manufacturer's design specifications for the control device. If an enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816°C (1,500°F) is used to meet the 95-percent requirement, documentation that those conditions exist is sufficient to meet the requirements of this paragraph.

(ii) A description of the operating parameter (or parameters) to be monitored to ensure that the control device will be operated in conformance with these standards and the control device's design specifications and an explanation of the criteria used for selection of that parameter (or parameters) shall be kept for the life of the facility.

(iii) Periods when the closed vent systems and control devices required in § 60.692 are not operated as designed, including periods when a flare pilot does not have a flame shall be recorded and kept for 2 years after the information is recorded.

(iv) Dates of startup and shutdown of the closed vent system and control devices required in § 60.692 shall be recorded and kept for 2 years after the information is recorded.

(v) The dates of each measurement of detectable emissions required in §§ 60.692, 60.693, or 60.692-5 shall be recorded and kept for 2 years after the information is recorded.

(vi) The background level measured during each detectable emissions measurement shall be recorded and kept for 2 years after the information is recorded.

(vii) The maximum instrument reading measured during each detectable emission measurement shall be recorded and kept for 2 years after the information is recorded.

(viii) Each owner or operator of an affected facility that uses a thermal incinerator shall maintain continuous records of the temperature of the gas stream in the combustion zone of the incinerator and records of all 3-hour periods of operation during which the average temperature of the gas stream in the combustion zone is more than 28°C (50°F) below the design combustion zone temperature, and shall keep such records for 2 years after the information is recorded.

(ix) Each owner or operator of an affected facility that uses a catalytic incinerator shall maintain continuous records of the temperature of the gas stream both upstream and downstream of the catalyst bed of the incinerator, records of all 3-hour periods of operation during which the average temperature measured before the catalyst bed is more than 28°C (50°F) below the design gas stream temperature, and records of all 3-hour periods during which the average temperature difference across the catalyst bed is less than 80 percent of the design temperature difference, and shall keep such records for 2 years after the information is recorded.

(x) Each owner or operator of an affected facility that uses a carbon adsorber shall maintain continuous records of the VOC concentration level or reading of organics of the control device outlet gas stream or inlet and outlet gas stream and records of all 3-hour periods of operation during which the average VOC concentration level or reading of organics in the exhaust gases, or inlet and outlet gas stream, is more than 20 percent greater than the design exhaust gas concentration level, and shall keep such records for 2 years after the information is recorded.

(g) If an owner or operator elects to install a tightly sealed cap or plug over a drain that is out of active service, the owner or operator shall keep for the life of a facility in a readily accessible location, plans or specifications which indicate the location of such drains.

(h) For stormwater sewer systems subject to the exclusion in § 60.692-1(d)(1), an owner or operator shall keep for the life of the facility in a readily accessible location, plans or specifications which demonstrate that no wastewater from any process units or equipment is directly discharged to the stormwater sewer system.

(i) For ancillary equipment subject to the exclusion in § 60.692-1(d)(2), an owner or operator shall keep for the life of a facility in a readily accessible location, plans or specifications which demonsrate that the ancillary equipment does not come in contact with or store oily wastewater.

(j) For non-contact cooling water systems subject to the exclusion in § 60.692-1(d)(3), and owner or operator shall keep for the life of the facility in a readily accessible location, plans or specifications which demonstrate that the cooling water does not contact hydrocarbons or oily wastewater and is not recirculated through a cooling tower.

(Approved by the Office of Management and Budget under control number 2060-0172)

§ 60.698 Reporting requirements.

(a) An owner or operator electing to comply with the provisions of § 60.693 shall notify the Administrator of the alternative standard selected in the report required in § 60.7.

(b)(1) Each owner or operator of a facility subject to this subpart shall submit to the Administrator within 60 days after initial startup a certification that the equipment necessary to comply with these standards has been installed and that the required initial inspections or tests of process drains, sewer lines, junction boxes, oil-water separators, and closed vent systems and control devices have been carried out in accordance with these standards. Thereafter, the owner or operator shall submit to the Administrator semiannually a certification that all of the required inspections have been carried out in accordance with these standards.

(2) Each owner or operator of an affected facility that uses a flare shall submit to the Administrator within 60 days after initial startup, as required under § 60.8(a), a report of the results of the performance test required in § 60.696(c).

(c) A report that summarizes all inspections when a water seal was dry or otherwise breached, when a drain cap or plug was missing or improperly installed, or when cracks, gaps, or other problems were identified that could result in VOC emissions, including information about the repairs or corrective action taken, shall be submitted initially and semiannually thereafter to the Administrator.

(d) As applicable, a report shall be submitted semiannually to the Administrator that indicates:

(1) Each 3-hour period of operation during which the average temperature of the gas stream in the combustion zone of a thermal incinerator, as measured by the temperature monitoring device, is more than 28 °C (50 °F) below the design combustion zone temperature,

(2) Each 3-hour period of operation during which the average temperature of the gas stream immediately before the catalyst bed of a catalytic incinerator, as measured by the temperature monitoring device, is more than 28°C (50°F) below the design gas stream temperature, and any 3-hour period during which the average temperature difference across the catalyst bed (i.e., the difference between the temperatures of the gas stream immediately before and after the catalyst bed), as measured by the temperature monitoring device, is less than 80 percent of the design temperature difference, or,

(3) Each 3-hour period of operation during which the average VOC concentration level or reading of organics in the exhaust gases from a carbon adsorber is more than 20 percent greater than the design exhaust gas concentration level or reading.

(e) If compliance with the provisions of this subpart is delayed pursuant to § 60.692-7, the notification required under 40 CFR 60.7(a)(4) shall include the estimated date of the next scheduled refinery or process unit shutdown after the date of notification and the reason why compliance with the standards is technically impossible without a refinery or process unit shutdown.

(Approved by the Office of Management and Budget under control number 2060-0172)

§ 60.699 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States:

§ 60.694 Permission to use alternative means of emission limitations.

[FR Doc. 88-26939 Filed 11-22-88; 8:45 am]
BILLING CODE 6560-50-M

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UMI

federal register

Wednesday
November 23, 1988

Part III

Environmental Protection Agency

40 CFR Parts 122 and 403

EPA Administered Permit Programs; the National Pollutant Discharge Elimination System; General Pretreatment Regulations for Existing and New Sources; Proposals To Implement the Recommendations of the Domestic Sewage Study; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 403

[EN-FRL-3309-6]

EPA Administered Permit Programs, The National Pollutant Discharge Elimination System; General Pretreatment Regulations for Existing and New Sources, Proposals to Implement the Recommendations of the Domestic Sewage Study.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend the General Pretreatment and the National Pollutant Discharge Elimination System regulations (40 CFR Parts 122 and 403) to implement section 3018(b) of the Resource Conservation and Recovery Act (RCRA) and sections 207(b) and 402(b)(8) of the Clean Water Act (CWA). The proposed regulations are intended to carry out the recommendations of the Domestic Sewage Study (hereinafter referred to as "the Study").

EPA submitted the Study to Congress in response to section 3018(a) of RCRA. This provision directed the Agency to prepare a report for Congress on wastes discharged through sewer systems to publicly owned treatment works (POTWs) that are exempt from regulation under RCRA as a result of the Domestic Sewage Exclusion. The Study examined the nature and sources of hazardous wastes discharged to POTWs, measured the effectiveness of EPA's programs in dealing with such discharges, and recommended ways to improve the programs to better control hazardous wastes entering POTWs.

To implement the recommendations to the Study, section 3018(b) of RCRA directs the Administrator to revise existing regulations and promulgate such additional regulations as are necessary to assure the hazardous wastes discharged to POTWs are adequately controlled to protect human health and the environment. Today's proposed changes to the general pretreatment regulations are a step towards that goal. POTWs should note that parts of today's proposal apply to all POTWs, whether or not they have an approved pretreatment program.

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Comments should be addressed to Marilyn Goode, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Marilyn Goode, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202-475-9533). The record for this rulemaking is available at Room 208 Northeast Mall at the above address.

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I. Background

The regulatory amendments proposed today originated in the Domestic Sewage Exclusion. The exclusion, established by Congress in section 1004(27) of RCRA, provides that solid or dissolved material in domestic sewage is not solid waste as defined in RCRA. A corollary is that such material cannot be considered a hazardous waste for purposes of RCRA.

The regulatory exclusion applies to domestic sewage as well as mixtures of domestic sewage and other wastes that pass through the sewer system to a POTW (see 40 CFR 261.4(a)(1)). The exclusion thus covers industrial wastes discharged to POTW sewers which contain domestic sewage, even if these wastes would be considered hazardous if disposed of by other means.

One effect of the exclusion is that industrial facilities which generate hazardous wastes and discharge such wastes to sewers containing domestic sewage are not subject to RCRA manifest requirements for the transport of those excluded wastes. However, such industrial users must comply with certain other RCRA requirements that apply to generators of hazardous wastes. Some of these requirements are set forth at 40 CFR 262.11 (determining whether a waste is hazardous), § 262.12 (obtaining an EPA identification number), § 262.34 (accumulation of hazardous wastes), § 262.40 (c) and (d) (recordkeeping), and § 262.43 (reporting). Other requirements may apply if the wastes are treated or stored prior to discharge.

Another effect of the Domestic Sewage Exclusion is that POTWs receiving mixtures of hazardous waste and domestic sewage through the sewer system are not deemed to have received hazardous wastes. Therefore, such POTWs are not required to meet the RCRA requirements of 40 CFR Part 264 for treating, storing, and disposing of these wastes. However, hazardous wastes delivered directly to a POTW by truck, rail, or dedicated pipe are not covered by the Domestic Sewage Exclusion. POTWs receiving these wastes are subject to regulation under the RCRA permit-by-rule (see 40 CFR 270.60(c)).

In 1984, Congress enacted the Hazardous and Solid Waste Amendments to RCRA. The legislative history of these amendments demonstrates that Congress wanted EPA to examine the effects of the Domestic Sewage Exclusion. To this end, section 3018(a) of the Hazardous and Solid Waste Amendments to RCRA required EPA to prepare:

> * * * a report to Congress concerning those substances identified or listed under section 3001 which are not regulated under this subtitle by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size, and number of generators which dispose of substances in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment.

EPA submitted its report (the Study) to Congress on February 7, 1986. In performing the study, the Agency reviewed information on 160,000 waste dischargers from 47 industrial categories and the residential sector. Because of the nature of the available data sources, the Study provided estimates for the discharge of the specific constituents of hazardous wastes (e.g., benzene, acetone, etc.) rather than estimates for hazardous wastes as they are more generally defined under RCRA (i.e., "characteristic" wastes such as ignitable or reactive wastes, or listed wastes such as spent solvents, electroplating baths, etc.). The Study also provided more extensive estimates for those hazardous constituents which are also CWA priority pollutants. The CWA priority pollutant list was originally developed as part of a settlement agreement between the Natural Resouces Defense Council (NRDC) and EPA (*NRDC v. Train, 8 ERC 2120* (D.D.C. 1976)). This agreement required the agency to promulgate technology-based standards for 65 compounds or classes of compounds. Congress then incorporated this list of toxic pollutants as part of the 1977 amendments to the CWA. From the list of compounds or classes of compounds, EPA later developed a list of 126 individual priority pollutants.

EPA was able to give estimates in the Study on the types, sources, and quantities of many hazardous constituents discharged to POTWs. The Study provided information on industrial categories ranging from large hazardous waste generators (such as the organic chemicals industry) to the smaller generators (such as laundries and motor vehicle services). The Study also examined the fate of hazardous constituents once they are discharged to POTW collection and treatment systems and discussed the potential for environmental effects resulting from the discharge of these constituents after treatment by POTWs. The Study then measured the effectiveness of existing government controls in dealing with these discharges, particularly federal and local pretreatment programs and categorical pretreatment standards applicable to industrial users of POTWs.

After considering all the pertinent data, EPA concluded that the Domestic Sewage Exclusion should be retained at the present time. The Study found that CWA authorities are generally the best way to control hazardous waste discharges to POTWs. However, the Study also found that these authorities should be employed more broadly and effectively to regulate these discharges. The Study therefore recommended ways to improve various EPA programs under the CWA to obtain better control of hazardous wastes entering POTWs.

The legislative history of Section 3018 of RCRA displays Congress' understanding that the appropriateness of the Domestic Sewage Exclusion depends largely on an effective pretreatment program under the CWA. The pretreatment program (mandated by sections 307(b) and 402(b)(8) of the CWA and implemented in 40 CFR Part 403) provides that industrial users must pretreat pollutants discharged to POTWs to prevent the pollutants from interfering with or passing through POTWs.

As a follow-up to the Domestic Sewage Study, section 3018(b) of RCRA requires the Administrator to revise existing regulations and to promulgate such additional regulations as are necessary to ensure that hazardous wastes discharged to POTWs are adequately controlled to protect human health and the environment. These regulations are to be promulgated pursuant to Subtitle C of RCRA or any other authority of the Administrator, including section 307 of the CWA. As a first step towards promulgating the regulations called for by section 3018(b), the Agency published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** on August 22, 1986 (51 FR 30186). In the ANPR, EPA made preliminary suggestions for regulatory changes, which, if promulgated, would improve the control of hazardous wastes discharged to POTWs. Secondly, the Agency also held three public meetings in Washington, DC, Chicago, and San Francisco to solicit additional comments on the ANPR. Finally, EPA met with several interested groups and organizations to obtain the benefit of their advice and expertise.

The comments received on the ANPR were summarized and discussed in a **Federal Register** notice published on June 22, 1987 (52 FR 23477). That notice also described all the activities which EPA is carrying out to fulfill the recommendations of the Study. Most commenters suggested ways to make the pretreatment program more effective in controlling hazardous wastes discharged to municipal wastewater treatment plants.

Today's notice proposes changes to the general pretreatment regulations in response to the findings and recommendations of the Study (for a summary of these findings and recommendations, see Chapter 7 of the Study). Today's proposal reflects EPA's response to the Congressional mandate of section 3018(b), its consideration of comments received on the ANPR, and its accumulated experience in shaping and overseeing the national pretreatment program. The amendments proposed today are more specific than the ideas presented in earlier notices. Consequently, commenters may wish to supplement earlier comments. The Agency solicits comments on all aspects of the amendments proposed today.

II. Proposed Changes

A. Specific Discharge Prohibitions

As part of its review of the national pretreatment program, the Study recommended modifying the prohibited discharge standards of the general pretreatment regulations to improve control of characteristic hazardous wastes and solvents.

The specific prohibitions forbid discharging certain types of materials which harm POTW systems by creating fire hazards, causing corrosion, obstructing flow, or creating heat which inhibits biological activity (see 40 CFR 403.5(b)). The Study and the ANPR discussed expanding these prohibitions to forbid the discharge of characteristic hazardous wastes under RCRA (i.e., wastes that are defined as hazardous under 40 CFR Part 261, Subpart C if they possess certain characteristics). These characteristics are ignitability, corrosivity, reactivity, and toxicity measured by the Extraction Procedure (EP) or Toxicity Characteristic Leaching Procedure (TCLP).

The majority of commenters who discussed this suggestion said that a blanket prohibition of characteristic RCRA hazardous wastes to POTWs would be inappropriate. These commenters stated that materials exhibiting these characteristics often lose their hazardous qualities when they are mixed with domestic sewage or treated at a POTW. The fact that a particular substance exhibits a RCRA hazardous waste characteristic does not necessarily indicate the likelihood of pass through or interference, these commenters believed, especially in the case of toxicity (EP or TCLP).

Other commenters supported adding these characteristics to the specific discharge prohibitions. These commenters often advocated modifying the characteristics to make them more relevant to conditions in POTW collection and treatment systems.

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After considering this issue, the Agency has concluded that adding all the RCRA characteristics to the specific discharge prohibitions would not be appropriate, since substances exhibiting these characteristics do not necessarily pass through or interfere with POTW. However, EPA agrees with the commenters who stated that the current prohibitions could be improved by adopting into 40 CFR 403.5(b) certain RCRA characteristics in modified form. Following is a discussion of the Agency's proposed modifications.

1. Ignitability and Explosivity

The indirect discharge of ignitable materials has caused many documented cases of explosions and fires in POTW collection systems. The severity of these incidents ranges from narrowly averted fires to actual explosions which have killed POTW workers and destroyed the collection system and surrounding area.

These fires and explosions often happen near the point of indirect discharge. Temperatures in the collection system which are above the ambient temperature may promote evaporation of ignitable wastes and lead to fires and explosions. In addition, collection systems are generally closed to the atmosphere except at certain points such as manhole lids or storm drains. Thus, ignitable wastes within the collection system continually evaporate into a relatively fixed volume of air, readily forming vapors which cannot be dispersed to the open atmosphere.

Once these vapors are formed, the sources of ignition can include electric sparks from motors or generators, frictional heat, cigarettes, hot surfaces such as a manhole lid heated by the sun, or chemical heat generated by reactions occurring at the point of discharge. Explosions in POTW systems can damage the sewer, pumping stations, and (if the sewer caves in because of an explosion) roads and buildings above the sewer. POTW workers may suffer injuries from the force of an explosion, from burns, or from smoke inhalation, thus interfering with effective operation of the system. Finally, all fires or explosions will to some extent hinder the operation of the POTW by requiring the affected trunk line to be closed off during firefighting or later repairs.

The present specific prohibitions already forbid the discharge to sewers of materials creating a fire or explosion hazard. However, this narrative provision lacks specificity; it does not give industrial users or POTWs specific methods or limits to determine whether a wastewater discharge violates the prohibition. As a result, the prohibition has limited effectiveness as a preventive requirement. The standard is clearly violated only if there is an actual fire or explosion in the sewer, if an industrial user violates a local limit designed to implement 40 CFR 403.5 (a) and (b). The best way to prevent the discharge of ignitable pollutants (or mixtures) is to test or monitor the discharge for the characteristics of ignitability or exlosivity. However, the current prohibition does not require any such testing or monitoring.

To address this problem, the Agency is today proposing to amend 403.5(b) to forbid discharges with a closed cup flashpoint of less than 140° Fahrenheit (the RCRA standard for ignitable liquid waste under 40 CFR 261.21(a)(1)).

A flashpoint is the minimum temperature at which vapor combustion will spread away from its source of ignition. Below this temperature, combustion of the vapor immediately above the liquid will either not occur at all, or will occur only at the point of ignition. Temperatures above this flashpoint are needed for combustion to spread. Thus, a flashpoint limitation would ensure that no discharge to a POTW will independently cause the propagation of self-sustained combustion.

EPA chose the flashpoint of 140 degrees Fahrenheit as the RCRA standard for liquid ignitable wastes because typical industrial wastes are capable of being subjected to this temperature during routine management (studies indicated that this temperature can be reached in storage tanks during hot weather.) Typical industrial wastewater temperatures are considerably below 140 degrees Fahrenheit. In addition, ambient temperatures are not likely to meet or exceed this temperature, either at the point of discharge or in the sewer. For this reason, the Agency believes that the 140 degree flashpoint would also be an appropriate addition to the specific discharge prohibitions.

Although the 140 degree prohibition would be imposed upon wastewater discharges and not wastewater constituents, comparing the flashpoints of typical organic wastewater constituents provides a rough guide to the stringency of the flashpoint prohibition. In general, wastewater discharges would have to be at least as nonflammable as furfural or benzaldehyde to meet the flashpoint prohibition. The prohibition would not permit the undiluted discharge of volatiles such as benzene or ethyl alcohol.

The most appropriate way to test the flashpoint of wastewaters is a closed cup measure. The closed cup method most closely duplicates the collection of vapor in closed spaces such as sewers. For this reason, the Agency is proposing to prohibit discharges with a closed cup flashpoint of less than 140 degrees F. Closed cup testers are commonly used and are available from laboratory supply firms. The closed cup tests specified under RCRA and proposed to be required today are the Pensky-Martin closed cup tester and the Setaflash closed cup tester, using standard test methods specified in 40 CFR 261.21(a)(1). Not all industrial users will find it necessary to use such testers. Many will be able to determine the flashpoint of substances they discharge by using reference tables or other sources of information.

The Agency emphasizes that the proposed flashpoint prohibition applies to each industrial user's discharge independently. The prohibition will not necessarily address the flammability of discharges from multiple industrial users that are combined in sewers. Because of the effect of dilution in the sewer system, however, it seems reasonable to assume that the concentratrions of combustible constituents in sewer wastewaters will usually be well below the concentrations required for flammability if all industrial users comply with the flashpoint prohibition. In addition, EPS believes imposing a uniform criterion on industrial discharges would make POTW implementation and enforcement easier in some cases, since the flashpoint prohibition effectively prohibits the discharge of certain highly flammable substances in pure or concentrated form. For these substances, enforcement of the specific prohibition would be particularly easy because of the availability in technical literature of values for pure compounds.

EPA solicits comments on whether its proposed flashpoint prohibition is reasonable, unduly stringent, or insufficiently protective of POTWs under worst case conditions. Specifically, the Agency requests comments on whether such a prohibition would sufficiently take into account the effects (harmful or beneficial) of effluent mixing or dilution in a POTW system, and on whether there exists another technically feasible alternative that would take these effects into account while still being preventive.

It should be noted that an aqueous solution containing less than twenty-four percent alcohol by volume is not considered to be an ignitable waste under 40 CFR 261.21(a)(1). Because these substances may be discharged to POTW's in considerable quantities and they may wish to conduct appropriate monitoring, EPA is not proposing to exempt these liquids from its proposed prohibition of the discharge of pollutants with a flashpoint of less than 140° Fahrenheit. However, the Agency solicits comment on whether the possibility of damage to POTWs from such substances is so slight that such an exemption would be appropriate.

In order to deal with the problems of mixing and dilution in the sewer, EPA evaluated various other prohibitions which would take these factors into account. The most practical option appears to be one which is already used by some POTWs. This is a prohibition based on the lower explosion limit (LEL) of an organic vapor mixture. The LEL of an organic vapor is the minimum concentration required to form a flammable or explosive vapor to air mixture. Under this procedure, the POTW measures the flammability or explosivity of an organic vapor in the sewer as a percent of the mixture's LEL, using an explosimeter. The POTW then identifies and quantifies (through vapor phase monitoring) the specific compounds responsible for an LEL exceedance registered on the explosimeter. The POTW may subsequently require certain industrial users to install gas monitoring equipment as appropriate. Many POTW technicians already use explosimeters to detect combustible vapors in sewers. In addition, many standard design requirements for oxygen activated sludge plants use LEL warning systems to prevent explosions in the recycled oxygen gas in the reactors. The warning system triggers an automatic shutdown of oxygen addition to the plant at some organic content below the LEL, as well as a flushing of the organic oxygen mixture from the reactor.

EPA is today proposing to amend 40 CFR 403.5(b) to provide that no discharge to the POTW shall result in an exceedance of ten percent of the LEL at any point within the POTW (including, e.g., the collection system). The Agency believes that this prohibition, used in combination with the flashpoint approach, could be very effective in preventing fires and explosions. The flashpoint prohibition is less expensive and easier to execute, but it is applied to the effluent before mixing in the sewer. The LEL measurements, on the other hand, are more costly and difficult to perform but are more effective in determing the explosivity of effluent mixtures under actual conditions in the sewer.

The effectiveness of either of these prohibitions depends largely on monitoring. The flashpoint test is perhaps more appropriate as an inexpensive way to monitor smaller dischargers who might occasionally discharge ignitable wastes, and hazardous waste haulers. It is a simple test that quickly identifies highly flammable substances and mixtures. LEL monitoring may be more useful when applied to significant dischargers who frequently or routinely discharge these substances, since large or frequent discharges would better justify the installation of continuous explosivity monitoring equipment that warns when a specified percentage of the LEL is reached. POTWs may also require industrial users to take other measure to prevent violations of the LEL prohibition, such as modifying their discharge practices.

The Agency solicits comments on whether the LEL prohibition is practical, either alone or in combination with the flashpoint prohibition. Specifically, EPA requests comments on whether it might be too difficult to link an LEL exceedance within the sewer system to discharges from specific industrial users, or whether the vapor phase monitoring needed to determine the causes of the exceedance would be too difficult or expensive. The Agency also requests comment on whether the flashpoint appproach or the LEL approach would be sufficient alone to prevent fires and explosions at POTWs.

2. Reactivity and Fume Toxicity

Wastes exhibiting the reactivity characteristic are regulated under RCRA because their extreme instability and tendency to react violently or explode make them a hazard to human health and the environment at all stages of waste management. In general, RCRA defines as reactive any waste which is an explosion hazard, generates harmful quantities of toxic gas or vapor when mixed with water, or reacts violently without detonation with water to generate elevated pressures and/or heat. EPA chose to adopt a narrative standard for reactive wastes because the varied effects and physical properties assaociated with these wastes are not easily quantifiable or measurable by standardized testing protocols.

Many commenters on the ANPR were concerned about the health and safety of workers at POTWs. There is no question that the generation of toxic gases and vapors can sometimes be dangerous to the safety and health of these workers, thus interfering with operations at the POTW and even endangering human life. In addition, the local general population could also suffer if sufficient quantities of toxic gases and vapors are released from sewer vents or aeration or containment basins.

Gases and vapors may be caused by chemical reactions between constituents of the industrial discharge and the receiving sewage, or microbial metabolism. In addition, some toxic gases can be generated as the result of sudden drops in pH. Besides generating toxic gases and vapors when mixed with sewage, industrial discharges may have sufficiently high concentration of toxic gases and volatile liquids to cause toxic levels of gas or vapor to form above the wastewater even if the discharge is diluted by the sewage. Sewer workers (and, in one instance, nearby residents) have been killed by inhaling hydrogen sulfide gas formed by the reaction of spilled substances with organic material in sludge or other materials.

Many of the existing specific discharge prohibitions will help prevent harm to POTW workers. Such harm, besides clearly constituting interference with POTW operations, is a serious concern for workers and operators at POTWs, as was expressed in the comments received in response to the ANPR. However EPA has never explicitly required POTWs to develop local limits to prevent this kind of interference. To address this question, the Agency is today proposing to amend 40 CFR 403.5(b) to provide that no discharge to the POTW shall result in toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems. EPA is also proposing to amend 40 CFR 403.5(c) to require POTWs to implement this prohibiton by establishing numerical discharge limits or other controls where necessary based on existing human toxicity criteria or other information. Industrial users would then be liable for any violations of these limits or controls.

The American Conference of Government Industrial Hygienists (ACGIH) annually publishes a list of threshold limit values (TLVs) for numerous toxic inorganic and organic chemicals. The threshold limit values represent estimated chemical concentrations in air below which harmful health effects in exposed populations are believed to be unlikely to occur. For each chemical listed, one or more types of threshold limits are listed. The three types of threshold limits are: (1) A concentration on which nearly all workers may be exposed day after day without adverse effects; (2) a concentration to which workers may be exposed continuously for a short period of time without suffering irritation, chronic tissue damage, or drowsiness sufficient to impair self-rescue or work

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efficiency; and (3) a concentration that should not be exceeded during any part of the work day. If any one of these three threshold limits is exceeded, a potential hazard from that substance is presumed to exist.

Another approach used to control the health impacts of breathing volatile organic compounds has been developed by the Metropolitan Sewer District of Cincinnati. This approach features the use of a vapor headspace gas chromatographic analysis of equilibrated industrial wastewater discharge (one volume of wastewater to one volume of air head space) at room temperature (24 °C). The analysis procedure measures the total vapor space organic concentration by calculating the total peak area of the chromatogram expressed as parts per million (ppm) of equivalent hexane. It is not necessary to identify individual peaks. A 300 ppm equivalent hexane concentration was selected as a pragmatic local limit to minimize exposure hazards, since, although sewer workers should always use appropriate breathing devices, the 300 ppm limit minimizes the risk from accidental exposures. It reduces the likelihood that volatile organic levels in the sewer air space would exceed levels considered immediately dangerous to life and health.

A limitations of the 300 ppm equivalent hexane limit is that it does not ensure that the levels of individual volatiles will be below safe exposure levels. However, it should prevent concentrations of total volatiles from exceeding immediately dangerous levels, and would also eliminate many explosive or flammable hazards (except for spills or illegal discharges). Monitoring is done by a laboratory test that can be run by many wastewater treatment laboratories.

It should be noted that neither the Cincinnati approach nor the ACGIH criteria are designed to protect workers against long-term health effects from possible carcinogens, mutagens, and teratogens. However, EPA believes that this proposed amendment to the specific discharge prohibitions will help prevent the generation of quantities of toxic vapors at the POTW that are capable of causing acute health effects to POTW workers. In some cases the prohibitions could even prevent harm to the general public as well. POTWs may use such standards as those employed by the ACGIH and the Metropolitan Sewer District of Cincinnati to establish local limits or other criteria they find appropriate. These limits should give POTWs an effective way to implement and enforce the proposed prohibition.

EPA solicits comments on the addition of this prohibition to the general pretreatment regulations and on the feasibility of developing local limits to other controls from human toxicity criteria or other information such as those discussed above. The Agency requests comments on the practicality of such a prohibition, on alternative regulatory ways to protect worker health and safety, and on whether worker health and safety is adequately protected by the present general and specific discharge prohibitions.

3. Used Oil

EPA also solicits comment on amending 40 CFR 403.5(b) to prohibit the discharge of used oil to POTWs. The Agency has become concerned about the possibility that the volume of used oil disposed of by this method is increasing to the point of causing interference and pass through.

"Used oil" is generally any oil that has been refined from crude oil, used, and, as a result of such use, contaminated by physical or chemical impurities. Used oils include spent automotive lubricating oils, transmission and brake fluid, spent industrial oils such as compressor, turbine, and bearing oils, hydraulic oils, metalworking, gear, electrical, and refrigerator oils, railroad drainings, and spent industrial process oils.

The likely increase in volume of used oil discharged to sewers is due to several factors, chief among them the Domestic Sewage Exclusion, the RCRA land ban, and lower prices for crude oil which make it no longer economically profitable to store used oil. The Agency estimates that four to eight million gallons of used oil per year are dumped into sewers. There are currently no specific prohibitions against disposing of used oil in sewers, although the existing prohibitions forbid the discharge of pollutants which obstruct flow at the POTW. Used oil is often stored in 500 gallon tanks and transported in 3000 gallon tank trucks. Release of these volumes of oil has the potential to interfere with operations at POTWs, particularly in the case of smaller plants.

In addition, used oil can contain a variety of toxic or hazardous constituents such as PCBs, benzene, chromium, arsenic, cadmium, and lead. Examination of the composition of used oil generated in the United States showed that average levels of twelve pollutants found in waste oil are above the reportable quantities established in 40 CFR 302.4(a) as hazardous levels of these constituents under the Superfund Program. EPA has also conducted a study assessing the potential for pass through of these pollutants to surface waters and to sludge. Results showed that, when large volumes of used oil are discharged, there is a potential for pass through that can cause violations of water quality criteria (details of these analyses are contained in the record of this rulemaking). Many of the constituents in contaminated used oil, such as trichloroethylene and tetrachloroethylene, are highly water soluble and thus characterized by a high mobility potential. Metals such as arsenic, chromium, and lead are very persistent in the environment when released from the POTW in sludge or in wastewater effluent. Used oil is also an energy resource that might be better collected and recycled than discharged into POTWs.

For these reasons, the Agency requests comment on the possibility of amending 40 CFR 403.5(b) to forbid the discharge of used oil into POTWs. EPA solicits comments on the possible advantage and disadvantages of such a prohibition, and on which particular kinds of used oil should be prohibited.

4. Solvent Wastes

EPA also wishes to solicit comment on the possibility of amending the specific discharge prohibitions to prohibit the discharge of listed solvent hazardous wastes from non-specific sources as defined in 40 CFR 261.31 (EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005).

These solvent listings (about 30 organic compounds) encompass spent solvents, spent solvent mixtures and still bottoms from the recovery of spent solvents and spent solvent mixtures. The compounds were listed on the basis of ignitability and/or toxicity. Less than one-half are currently designated as CWA priority pollutants.

Discharges of solvent wastes to POTWs have involved actual fires or explosions, or potential fires which caused evacuation of treatment plant buildings and unusual measures to protect treatment or collection systems (e.g., ventilation or flushing of sewer lines). The most frequent problem caused by solvent discharges is fume toxicity occasioned by volatilization in POTW collection and treatment systems. Many incidents have been documented involving worker illness, including nausea, shortness of breath, skin irritation, and headaches. Solvent discharges have also caused inhibition or upset of biological treatment systems in several instances, or interfered with

treatment plant operation in some other way. For example, in one case, the diversion of oxygen from an activated sludge treatment system due to the threat of fire or explosion resulted in a marked decrease in treatment plant efficiency.

In addition, the Agency has evidence that solvent discharges to POTWs may interfere with beneficial sludge management. Several sludges in sampling programs have approached TCLP failure due to concentration of solvents in leachate. Analysis of pollutant fate within POTW systems has shown that significant quantities of solvents pass through to receiving waters where biological treatment systems are not well acclimated to the pollutant in question. Moreover, pass through of solvent wastes will be substantially greater at POTWs operating at less than secondary treatment levels or experiencing major combined sewer overflow problems.

EPA solicits comments on the merits of amending the specific discharge prohibitions to forbid the discharge to POTWs of listed solvent wastes under 40 CFR 261.31 (EPA Hazardous Wastes Nos. F001, F002, F003, F004, and F005). Specifically, the Agency requests comment on whether existing local limits, the proposed amendments to the specific discharge prohibitions concerning ignitability and fume toxicity, and the proposed solvent management component of industrial user spill and batch control plans (see Part II–B below) would address most of the concerns discussed above, possibly making a ban on solvents redundant. A possible advantage of these proposed amendments is that they would address the discharge of organic compounds not used as solvents. This approach might be particularly useful in industries with significant loadings of non-volatile organic pollutants (e.g., pharmaceutical manufacturing, pesticides manufacturing, or other industries utilizing organics production or formulation processes). On the other hand, the RCRA listed solvent wastes include alcohols and ketones, which are very soluble in water, are often difficult to treat by physical or chemical treatment, and may be best treated by biological degradation processes such as those used at POTWs. The Agency solicits comment on whether the possible impacts of solvents on POTWs and receiving waters would justify prohibiting these wastes from being discharges to POTWs, and whether such a prohibition would be appropriate for those highly water-soluble solvent wastes which are more appropriately treated by degradation.

B. Spills and Batch Discharges (Slugs)

Spills and batch discharges present special challenges to POTWs. As documented by data on incidents at POTWs, these discharges can cause many problems at the treatment plant, including worker illness, actual or threatened explosion, biological upset or inhibition, toxic fumes, corrosion, and contamination of sludge and receiving waters. A recent survey undertaken by the Association of Metropolitan Sewerage Agencies (AMSA) indicated that spills to sewer systems were the most common source of hazardous wastes at the respondents' treatment plants.

The current general pretreatment regulations do not address these problems comprehensively. The principal pretreatment regulation concerning slugs is the requirement that all industrial users notify POTWs of slug loads of pollutant discharges that, because of flow rate or concentration, will interefere with the POTW (40 CFR 403.12(f)). On October 17, 1988 (53 FR 40562) EPA expanded this requirement to include notification of slug loads that would violate any of the specific prohibitions of 40 CFR 403.5(b).

In the ANPR, the Agency discussed the possibility of requiring POTWs to impose on industrial users plans for prevention and follow-up control of spills and batch discharges. Many commenters responded positively to this suggestion, although POTWs often stated that they wished to have maximum flexibility to address the particular concerns of their localities. Some POTWs submitted copies of their own control plans (such as ordinances, policies, and procedures). EPA has reviewed these plans and other ideas to determine which features might be suitable to include in a uniform national requirement. Following is a summary of the most frequent provisions that the Agency has found in its review of POTW control methods. It should be noted that the review included mainly larger POTWs, who represent only a small percentage of the approximately 1500 POTWs required to have local pretreatment programs.

In controlling spills and batch discharges to sewer systems, many POTWs rely upon the legal authorities contained in their sewer use ordinance or on conditions enforced through discharge permits issued to their industrial users. In general, most POTWs have not developed ways to specifically regulate batch discharges to the sewer. Batch discharges of industrial process wastewaters are usually regulated by the same ordinances or permits as continuous discharges, and must meet the same local and federal discharge standards. They may also be regulated individually through permit requirements on notification, monitoring and reporting. However, since some batch discharges can harm a sewer system, some POTWs do specifically regulate them, frequently by requiring industrial users to obtain permission from the POTW before batch discharges are allowed to take place.

Many POTWs, however, have developed methods to help prevent and control spills. The extent of regulation, and probably the effectiveness in controlling accidental spills, varies considerably among POTWs. Controlling spills larger depends on good faith efforts by the dischargers to carry out prevention and containment measures and to notify the POTW. POTWs cannot entirely predict or prevent accidental or intentional spills from happening, although they can inspect industrial user facilities to ensure that controls are in place and properly maintained. Knowledge by the POTW of all its industrial users and their potential for spills and batch discharges is essential to the control of such problems. In addition, POTWs may also find it necessary to undertake measures to detect whether a slug discharge has occurred and to respond to any damage caused by the discharge.

The most common element of POTW control plans is a requirement that industrial users notify the POTW of accidental spills that occur. This requirement may be contained in the sewer use ordinance or exist as a permit requirement. Some requirements are generic and only require notification. Others require a description and analysis of the spilled material and later notification of remedial measures. Some POTWs have developed notification forms, and some specify minimum reportable quantities or require notification only from significant industrial users.

Almost all POTWs' plans require generally that industrial users prevent spills from occurring. Some POTWs require the use of physical measures, such as building spill containment facilities (i.e., dikes or berms). Other POTWs require development of a spill prevention or materials management program, such as toxic organic (including solvent) management plans, best management practices, and emergency response procedures. At least one POTW gives its dischargers a detailed spill prevention checklist which

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includes such items as history of and potential for spills, materials management procedures, tests for safety of storage tanks, transfer and pumping stations, and procedures for loading. Some POTW require the industrial user to submit spill follow-up reports describing the response to the spill and the steps taken to prevent a recurrence of the type of spill that occurred.

After considering the comments received on the ANPR and evaluating various control plans submitted by many POTWs, EPA is today proposing to amend 40 CFR 403.8(f)(2)(v) to provide that POTWs must evaluate each of its significant industrial users to determine whether such users need a plan to prevent and control slug discharges, i.e., discharges (including spills and batches) that could lead to a violation of any of the special prohibitions or otherwise cause problems at the POTW. This evaluation is proposed to be required at the same time that the POTW conducts inspection or sampling of a significant industrial user (for a discussion of the inspection and sampling requirements, as well as the definition of "significant industrial users", see Part II-G below). Under this procedure, POTWs would use the opportunity of an inspection or sampling to examine the operational practices and physical premises of a significant industrial user to decide whether these warranted the development of a plan to handle and prevent accidential spills or non-routine batch discharges.

In deciding whether a significant industrial user should have a slug control and prevention plan, the two most important criteria are generally the quantity and types of toxic or hazardous material stored at the facility and the potential for these materials to enter the sewer system. For example, if an industrial user stores quantities of chemicals warranting attention, but the facility has not floor drains, sump pumps, or other direct ways for these materials to enter the sewer, then the POTW may decide to accord low priority to that particular industrial user. If, on the other hand, toxic or hazardous materials are stored in a room with floor drains, the POTW may wish to consider that industrial user to be in a higher risk category. Similarly, the POTW may wish to use a certain volume or concentration of a stored chemical as a cut-off point for requiring a slug plan. Examples of such cut-off points include the reportable quantities used in the County of Los Angeles' wastewater ordinance, and the reportable quantities established under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) which are used as criteria by the Metropolitan Sewer District of Louisville and Jefferson County.

Another factor which POTWs may wish to consider in deciding which significant industrial users should have slug control plans is the extent to which the industrial user in question is already covered by a similar plan under RCRA. For example, generators of hazardous wastes who treat, store, or dispose of hazardous waste on-site are generally subject to the provisions governing accumulation of hazardous wastes (see 40 CFR 262.34). These provisions specify such measures as container use and management, personnel training, and procedures for emergency response. Which measures are required under § 264.34 generally depends on the amount of hazardous waste generated and the amount of time such waste remains on-site. After evaluating the physical premises of a significant industrial user and the practices and procedures developed by that user in response to other statutory requirements, a POTW may decide that these measures are a substitute for some or all of the measures that would be required under a slug control plan. Similarly, those industrial users who transport hazardous wastes or who dispose of such wastes by other means than the sewer system may be subject to the more stringent requirements of 40 CFR Part 264, such as general facility standards (including inspection requirements, personnel training, and location standards) prepardness and prevention (including facility design, required equipment, and arrangements with local authorities) and contingency and emergency procedures. If a significant industrial user is covered by such a plan, the POTW may decide that such measures are an adequate substitute for some or all of the elements required in a local slug prevention plan.

The Agency is also proposing to amend § 403.8(f)(2)(v) to provide that if the POTW decides that such a plan is warranted for a particular significant industrial user, the plan must contain, at a minimum, the following elements:

(1) Description of discharge practices, including non-routine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for promptly notifying the POTW of slug discharges as defined under § 403.5(b), with procedures for follow-up written notification within five days;

(4) Any necessary procedures to prevent accidental spills, including maintenance of storage areas, handling and transfer of materials, loading and unloading operations, and control of plant site run-off;

(5) Any necessary measures for building any containment structures or equipment;

(6) Any necessary measures for controlling toxic organics (including solvents);

(7) Any necessary procedures and equipment for emergency response; and

(8) Any necessary follow-up practices to limit the damage suffered by the treatment plant or the environment and to prevent recurrence of the type of spill that occurred.

The Agency believes that today's proposal would help many industrial users prevent and control harmful spills and batch discharges. EPA believes that the elements listed in today's proposal are the essential minimum requirements for uniform application in all approved local pretreatment programs. Since the proposal lists only the minimal elements of such plans, it should give POTWs adequate flexibility to decide the details of notification, prevention, and response procedures. The Agency notes also that the definition of significant industrial user proposed today allows POTWs to add or delete industrial users from this category according to the potential for adverse impacts at the POTW. This flexibility will allow POTWs to select the most appropriate candidates for such plans and to tailor the plans to meet conditions peculiar to their localities, a concern that was expressed by many commenters.

EPA solicits comments on all aspects of these proposed amendments. Specifically, the Agency requests comment on whether EPA should impose specific spill or batch control requirements directly on industrial users. As mentioned above, the changes to the general pretreatment regulations promulgated on October 17, 1988 (53 FR 40562) would require all industrial users, including those not covered by categorical standards, to notify the POTW of any slug load discharge which violates any of the specific discharge prohibitions. An advantage of imposing specific requirements directly on all industrial users is that discharges to all POTWs would be covered, not just the industrial users in approved local programs. In addition, POTWs would be saved the administrative burdens of evaluating and approving plans submitted by their industrial users. The Agency welcomes comments on whether these advantages would outweigh the loss of the flexibility allowed to POTWs in today's proposal.

The Agency also requests comment on whether the control plans proposed to

be required today should be limited to significant industrial users as defined in proposed 40 CFR 403.3(u) (discussed in Part II–G of today's notice), or expanded to cover all industrial users, or limited to other categories such as industrial users who submit notification of the discharge of hazardous wastes under proposed 40 CFR 403.12(p).

In addition, EPA requests comment on possible duplication between the requirements of 40 CFR 403.12(f) (notification of slug loads to the POTW), section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and section 304(b) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 103(a) of CERCLA requires that facilities (including indirect dischargers to sewers) which release a hazardous substance in a quantity greater than or equal to its reportable quantity (RQ) must notify the National Response Center. Section 304(b) of SARA requires such releases to be reported to local and state emergency planning commissions as well. Although section 101(10) of CERCLA provides an exemption from these notification requirements for "federally permitted" releases, including discharges to POTWs with approved pretreatment programs which are in compliance with pretreatment standards (see 53 FR 27288, July 19, 1988), the exemption will not apply to slug discharges. This, if an industrial user discharges a slug load of one of 721 CERCLA hazardous substances which is equal to or exceeds the CERCLA RQ for that substance, the industrial user discharging such a slug must notify the National Response Center, the local emergency planning committee established pursuant to section 301(c) of SARA, any State emergency planning committee for a State likely to be affected by the discharge, and the local POTW.

The Agency requests comment on whether these notification requirements are duplicative and unduly burdensom, and if so, on how they could be improved. In the Federal Register notice of July 19, 1988 proposing the regulatory definition of federally permitted releases (53 FR 27288), EPA stated that the Administrator would consider establishing an administrative exemption from CERCLA notification requirements if it appeared that certain releases pose no hazard or pose a hazard only rarely and under circumstances that would not likely result in any action being taken to respond to the hazard. At the present time, the Agency has no data indicating that slug discharges equal or exceeding CERCLA RQs do not pose a hazard, or that action (other than the POTW's response) is unlikely to be taken to respond to such a discharge. Nevertheless, EPA solicits comment on the appropriateness of proposing such an administrative exemption in the future. The Agency is particularly interested in any technical data which might demonstrate whether discharges to POTWs of an RQ or more of any or all CERCLA hazardous substances present little danger of pass through or interference, or whether such discharges are most appropriately handled by the POTW even if such danger exists.

Alternatively, EPA solicits comment on the usefulness of exempting industrial users from having to notify the POTW of those slug discharges for which they have submitted CERCLA notification. This might be especially appropriate if POTWs were included on the local emergency planning committees established under section 301(c) of SARA.

In order to help POTWs implement slug control requirements, the Agency plans to issue a guidance manual for use in controlling and preventing accidental spills and batch discharges. The manual will include suggested methods for spill prevention by industrial users and response by POTWs, as well as suggested ways to control batch discharges by pretreatment permits and sewer use ordinances.

C. Trucked and Hauled Wastes

Many commenters on the ANPR expressed concern about discharges from liquid waste haulers. The Study recommended strengthening controls on these dischargers, and in June 1987 the Agency issued guidance to help POTWs control the discharge of such wastes to their systems (*Guidance Manual for the Identification of Hazardous Wastes Delivered to Publicly Owned Treatment Works by Truck, Rail, or Dedicated Pipe*). As a further response to the Study's recommendation, EPA had suggested in the ANPR prohibiting the introduction of hazardous wastes to sewer system by truck except at discharge points designated by the POTW.

Many commenters responded positively to this suggestion. Many POTWs already prohibit the introduction of any trucked wastes to the sewer except at designated discharge points (some ban only the introduction of non-septic wastes). In response to these comments, the Agency is today proposing to amend 40 CFR 403.5(b) to prohibit the introduction to POTWs of any trucked or hauled pollutants except at discharge points designated by the POTW. EPA emphasizes that discharging hazardous wastes at transfer stations or discharge points (i.e., sewer manholes) without a RCRA permit would violate RCRA generator and transporter requirements under 40 CFR Parts 262 and 263 and thus is already illegal. Therefore, the principal new legal effect of today's proposed amendment would be to prohibit the discharge of trucked non-hazardous wastes to POTWs except at designated discharge points. Practically, however, this proposed requirement would give POTWs better control of *all* wastes into their systems (including hazardous wastes) by encouraging them to designate certain discharge points that they could monitor and, if such monitoring showed that wastes were hazardous, to prevent the introduction of undesirable wastes into the sewer system.

EPA solicits comments on the merits of this proposal. Specifically, the Agency requests comments on whether the proposed prohibited discharge standard is too extensive and should be limited to non-septic wastes only. EPA also requests comment on whether to require POTWs to develop and obtain approval of additional procedures to deal with trucked or hauled wastes (such as monitoring and sampling), or on whether to amend 40 CFR 403.8 to require POTWs to specify particular discharge sites. The Agency points out that truckers or haulers of wastes to POTWs are industrial users within the meaning of 40 CFR 403.3 (g) and (h). As such, they are already subject to the prohibited discharge standards (and the notification requirements of 40 CFR 403.12, if they transport wastes for categorical discharges or if they discharge slug loads). In addition, approved local pretreatment programs must include inspection, surveillance and monitoring programs to ensure that all industrial users (including truckers and haulers) comply with the pretreatment requirements. POTWs must, in other words, include some procedures (tests, manifests, reports, etc.) to obtain information from transporters about their wastes before these wastes can be accepted. POTWs need not await amendment of the current pretreatment regulations to begin enforcing these local provisions. However, EPA solicits comment on whether other procedures would be appropriate especially for trucked and hauled wastes, such as requiring POTWs to conduct analyses of trucked wastes so that hazardousness and

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compatibility of the wastes with POTW operations could be determined.

D. Notification Requirements

Notifying POTWs of hazardous waste discharges is essential to the control of such wastes. Without workable notification requirements, any further attempt to control hazardous pollutants is difficult if not impossible.

Section 3010(a) of RCRA requires that any person who generates or transports a RCRA hazardous waste, or who owns or operates a facility for the treatment, storage, or disposal of such waste, must file a notification with EPA or with a State with an authorized hazardous waste permit program. Section 3018(d) of RCRA (enacted as part of the Hazardous and Solid Waste amendments in 1984) clarifies that wastes mixed with domestic sewage are also subject to this notification requirement.

EPA has not yet promulgated regulations to implement the section 3018(d) notification requirements. The Study recommended that these requirements be implemented to ensure that regulatory authorities were aware of discharges of hazardous wastes to POTWs. In the ANPR, the Agency suggested amending the general pretreatment regulations to require that industrial users notify POTWs (rather than EPA or the State) of any hazardous wastes discharged.

Commenters expressed very strong support for the notification requirements discussed in the ANPR. Many POTWs stated that such notification was essential to give owners and operators of treatment plants notice of hazardous wastes entering their treatment and collection systems. Some commenters urged notification of State permitting authorities as well. One commenter stated that industrial users should be required to notify EPA of such discharges, because section 3018(d) required it and because such notification would give the Agency more information about the sources and quantities of hazardous wastes entering POTWs, which would generally improve EPA oversight of local pretreatment programs.

EPA is today proposing to amend 40 CFR 403.12 to add a new paragraph (p) to require that all industrial users notify EPA Regional Waste Management Division Directors, State hazardous waste permitting authorities, and their POTW of any discharge into the POTW of a substance which is a listed or characteristic waste under section 3001 of RCRA. Such notification must include a description of any such wastes discharged, specifying the volume and concentration of the wastes, the type of discharge (continuous, batch, or other) and identifying the hazardous constituents contained in the listed wastes. The notification must also include an estimate of the volume of hazardous wastes expected to be discharged during the following twelve months. The notification must take place within six months of the effective date of today's proposed amendments.

Small quantity generators would be exempt from these notification requirements during any calendar month in which they generate no more than one hundred kilograms of hazardous wastes, except for certain acute hazardous wastes under 40 CFR 261.5 (e), (f), (g), and (j). Generation of more than one hundred kilograms of hazardous waste in any given month would render this exemption moot and would require one-time submission of the notification. Subsequent months during which the industrial user generated more than one hundred kilograms per month would not require submission of additional notifications, except for the above-mentioned acute hazardous wastes.

In the case of new regulations under section 3001 identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW of the discharge of such substances within ninety days of the effective date of such regulations (except for the small quantity generator exemption discussed above).

Under the amendments proposed today, these are one-time notification requirements which do not apply to pollutants already reported under the self/monitoring provisions of 40 CFR 403.12 (b), (d), and (e), nor to pollutants already reported under the "changed discharge" requirements of 40 CFR 403.12(j). However, to clarify that § 403.12(j) also applies to the discharge of hazardous wastes, the Agency is today proposing to amend that provision to provide that all industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including changes in the volume or character of any listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under proposed § 403.12(p).

To ensure further control of hazardous wastes discharged to sewers, proposed § 403.12(p) would require all industrial users who submit notification of the discharge of hazardous wastes to certify that they have a program in place to reduce the volume and toxicity of non-categorical hazardous wastes generated to the degree they have determined to be economically practicable, and that they have selected the method of treatment, storage, or disposal currently available which minimizes the present and future threat to human health and the environment. It should be noted that a similar certification requirement already applies to all generators of hazardous wastes under section 3002(b) of RCRA.

Even though section 3010 mandates only a one-time notification, it has been suggested that requiring industrial users to submit notification of all hazardous waste discharges would burden POTWs, EPA, and States with paperwork even where the quantity of wastes discharged was very small. To address these concerns, EPA has proposed the exemption from the notification requirements of those facilities that generate no more than 100 kilograms of hazardous waste per calendar month. Under 40 CFR 261.5(c), these generators are exempt from most RCRA requirements, including the notification requirements of section 3010, during a calendar month in which they generate no more than 100 kilograms of hazardous waste (not including certain acutely hazardous wastes). This exemption, if promulgated, would be consistent with RCRA program requirements and might save POTWs and industrial users the time and expense associated with notifications of small amounts of hazardous wastes. On the other hand, the exemption might allow the generation and discharge into sewers of up to 100 kilograms per month of hazardous wastes without notification, an exemption which some POTWs (particularly smaller ones) might not regard as justified.

Similarly, EPA solicits comment on whether any of the existing RCRA forms might be suitable for submission of the proposed notification requirements. The Agency also notes that certain industrial users (those with over ten employees who discharge certain listed toxic chemicals) are required under section 313 of SARA to complete annually a Toxics Release Inventory Form (EPA Form R) and submit this form to EPA and the State where the industrial user is located. EPA requests comment on whether those industrial users required to submit Form R should send a copy of Form R to the POTW in lieu of today's proposed hazardous waste notification requirements, if the toxic chemicals reported by the industrial user on Form R include those RCRA hazardous wastes for which notification would be required under today's proposal. The Agency also requests comment on whether additional (or more specific) management requirements should be required to control wastes for which notification would be submitted under this proposal.

E. Individual Control Mechanisms for Industrial Users

As a way to carry out local pretreatment programs and implement local limits more effectively, the Agency discussed in the ANPR the possibility of requiring POTWs to use a permit system as the basis of their pretreatment programs. In responding to this suggestion, some commenters opposed such a requirement, stating that the quality of local controls for industrial users should be evaluated individually. Other commenters believed that such a program was essential for consistent and enforceable requirements. A few industry commenters believed that a permit system would result in better notice of the duties required of industrial users.

Audits conducted of local pretreatment programs have led EPA to question whether many exisitng control mechanisms are adequate to ensure compliance with applicable pretreatment requirements. To address this concern, and after evaluating ANPR comments on this subject, the Agency is today proposing to amend § 403.8(f) to require that POTWs with approved programs must have the legal authority to issue individual discharge permits or equivalent control mechanisms to industrial users identified as significant under proposed 40 CFR 403.3(u) (this definition is discussed below in Part II-G). Such control mechanisms shall contain, at a minimum, the following:

(1) Statement of duration (in no case more than five years);

(2) Statement of non-transferability without prior POTW approval;

(3) Applicable effluent limits based on categorical standards and local limits;

(4) Applicable monitoring, sampling, and reporting requirements;

(5) Notification requirements for slug discharges as defined in § 403.5(b); and

(6) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements.

EPA believes that individual control mechanisms are the best way to ensure compliance with applicable pretreatment standards and requirements by significant industrial users. A permit system will give the industrial user clear notice of all the pretreatment requirements to which it is subject under both federal regulations and local program provisions. Such a system should make it easier for such users to perform effective pretreatment measures before a violation can occur, rather than after. The Agency solicits comments on the merits of this proposed amendment. Specifically, EPA requests comments on: (1) The appropriateness of limiting the requirement to industrial users defined as significant under proposed 40 CFR 403.3(s), or of additional or alternative targets, such as categorical users or notifiers of hazardous waste discharges under proposed § 403.12(p); (2) whether the requirement should apply only to POTWs with more than a specified number of industrial users (and, if so, what number would be appropriate as a cut-off point); and (3) whether the list of permit conditions proposed today should be contracted, expanded, or modified.

F. Implementing the General Prohibitions Against Pass Through and Interference

The Study and the ANPP discussed three principal ways to enhance implementation of the general discharge prohibitions against pass through and interference. These three ways were: (1) Requiring that water quality-based permit limits for additional constituents of hazardous wastes be incorporated into NPDES permits issued to POTWs; (2) moving aggressively to set toxicity-based limits in NPDES Permits issued to POTWs; and (3) requiring POTWs to develop local limits for problem pollutants even if no POTW permit violation occurs or is threatened.

The Agency received many comments about the relative virtues and drawbacks of the various ways to control pass through and interference. These comments are discussed below. Also included is a discussion of forthcoming sludge control requirements that should result in improved local limits to prevent interference.

1. Water Quality-Based Permit Limits

The most favored method of preventing pass through was incorporating more water quality-based limits in permits issued to POTWs. POTWs could then use these permit limits to back-calculate local limits to prevent pass through or interference.

The Agency believes that the requirements of section 304(l) of the CWA, as amended, and EPA's ongoing toxics control program will result in an increase in the numbers of water quality-based limits in NPDES permits issued to POTWs. The provisions of section 304(1) require a progressive program of toxic pollutant control. Under this section, States must develop several lists of impaired waters, including waters where technology-based controls and existing water quality-based controls are not adequate to meet water quality standards for the priority pollutants or adequate to protect designated uses.

To further provide for the improvement of water quality, section 304(l) requires the development of individual control strategies for waterbodies which are impaired substantially or entirely due to point source discharges (including POTWs) of section 307(a) toxic pollutants. Under this provision, States must identify (within two years of enactment of the amendments) waters that are unlikely to comply with water quality standards after implementation of technology-based requirements. States must then identify particular point sources (including POTWs) that may be causing the violation of standards in those waters and develop individual control strategies to reduce toxics and meet standards in such waters not later than three years after the strategy is established.

Section 304(1) directs immediate attention to establishing controls where there are known impacts due entirely or substantially to point source discharges of section 307(a) toxic pollutants. The Agency has prepared draft final guidance for States and EPA Regions on how to address these problems within the available control mechanisms and data. The guidance also directs States and EPA Regions to address all known sources of toxicity in receiving waters (including hazardous constituents) as required by sections 301(b)(1)(C), 303(c), 303(d), 303(e), 401, and 402(a), of the CWA. EPA regards the new statutory requirements to control point sources as part of the ongoing national program for toxics control. Initially, all known problems due to any pollutant are to be controlled (using both new and existing statutory authorities) as soon as possible, even if the problem does not involve section 307(a) pollutants.

As stated above, most commenters on the ANPR believed that increasing the use of water quality-based limits in NPDES permits issued to POTWs is the best way to help POTWs develop local limits to control the pass through of toxic and hazardous pollutants. The Agency believes that the individual control strategies mandated by the CWA amendments and the ongoing national toxics control program will increase the number of such permit limits, which POTWs can use to derive the necessary local limits.

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2. Sludge Control

Another provision of the amended CWA has far-reaching implications for the development of local limits. These are the provisions dealing with the regulation of sewage sludge. The amendments set forth a comprehensive program for reducing environmental risks and maximizing the beneficial uses of sludge. The amendments mandate the promulgation of technical criteria for toxic pollutants in sweage sludge and the specification of acceptable sludge management practices, and require that these standards be implemented through permits. To carry out these requirements, EPA is currently developing acceptable contaminant levels and management practices for an initial group of toxic pollutants for the five major sludge use and disposal options: Land application, distribution and marketing, incineration, landfilling, and ocean disposal (although not all pollutants will be regulated for each option).

In addition to calling for the promulgation of technical criteria for the use and disposal of sewage sludge, the 1987 amendments to section 405 also contain a significant departure from previous statutory provisions regarding implementation. The amendment applies the requirements to all persons and further requires that the above technical criteria and management practices be included in an NPDES permit unless such criteria have been included in a permit issued by one of several other listed federal permit programs or an approved State program. This means that, for the first time, permits will be the required way to implement the federal technical criteria. When the sludge criteria are promulgated, NPEDES permits issued to POTWs or other treatment works treating domestic sewage must include these requirements unless they are included in another appropriate permit. These requirements can be used by POTWs to calculate the local limits necessary to allow for the widest range of sludge use and disposal options.

Section 405 as amended also requires that, before promulgation of the criteria, the Administrator shall impose conditions in permits issued to POTWs under section 402 or to take such other measures as the Administrator deems appropriate to protect public health and the environment from adverse effects which may occur from toxic pollutants in sewage sludge. To incorporate sludge limits into permits before promulgation of such criteria, such limits will have to be developed on a case-by-case basis. To implement this requirement, the Agency is preparing guidance for EPA Regions and States. The guidance will set forth all existing federal and State requirements, and will recommend sludge contamination limits and management practices based on current EPA and State requirements. These limits and practices can also be used by POTWs to begin developing the appropriate local limits.

3. Toxicity-Based Permit Limits

Commenters on the ANPR also expressed general support for the use of toxicity-based limits in NPDES permits issued to POTWs, although some commenters were concerned about the technical difficulties involved in setting permit limits in response to such testing. As a supplement to limits based on numerical standards for specific chemicals, the Agency has strongly encouraged NPDES permitting authorities to establish toxicity testing requirements in municipal permits and to develop whole effluent toxicity-based permit limitations as appropriate to control toxicity to aquatic life. It should also be noted that the expanded use of biomonitoring was one of the principal recommendations of the Study. EPA has encouraged this approach to controlling toxic effluents for several reasons. First, it allows POTWS and permit writers to assess certain toxic effects (such as lethality, growth, and reproductive success) of a complex mixture by integrating the interactions of the constituents into a single measure. Second, toxicity-based permit limits provide a numeric target for measuring violations of the narrative standard "No toxics discharged in toxic amounts". This approach allows the investigation of the cause of toxicity through toxicity reduction evaluations (TREs). A TRE is a study which uses toxicity tests to find ways to reduce or control effluent toxicity. Such tests can be used in a TRE to find the specific toxicant or toxicants causing effluent toxicity and to identify a treatment which reduces or eliminates unacceptable toxic effects. Toxicity-based permit limits can also be particularly useful where national categorical pretreatment standards do not adquately address local toxicity problems and/or where there are no numerical criteria currently available, as is the case for most toxic and hazardous constituents.

In encouraging the use of toxicity testing, the Agency has recommended that testing requirements be based on the technical recommendations in the *Technical Support Document for Water Quality-Based Toxics Control*, hereafter the "TSD" (EPA 440/4–85–032, September, 1985). This document describes the rationale for whole effluent toxicity controls and the action to be taken to access receiving water effects. It recommends a series of toxicity screening tests based on effluent dilution. Permit writers can use the results of the screening tests to determine if additional testing requirements, local limits, and/or toxicity limits in the permit should be established.

Because EPA believes that toxicity evaluation is an essential step towards developing sound NPDES permit limits and local limits to control toxic and hazardous pollutants, the Agency is today proposing to amend 40 CFR 122.21(j) to require that *all* existing POTWs conduct whole effluent toxicity screening and/or definitive toxocity testing and submit the results of such screening or testing as part of their NPDES permit applications. The Agency anticipates that permits writers will use the toxicity screening information generated for the permit application to justify permit limitations and toxicity reduction evaluations when the testing reveals water quality standards violations. The toxicity information will also form the basis for monitoring requirements and other permit conditions, when appropriate, to ensure ongoing compliance with water quality standards.

The screening which the Agency is proposing to require is adapted from the TSD because this document is in wide use and has proved to be a useful tool for conducting such protocols. First, an initial dilution screen should be performed. The POTW should compare the flow rate of its receiving stream (in terms of the design low flow specified by the State) to its effluent design flow rate. For marine, estuarine, and standing water discharge situations, dilution can be calculated using existing State standards and corresponding allowable dilution calculation procedures.

If dilution exceeds 10,000 to 1, and there is a reasonable rapid mix of the effluent outside of the initial dilution area in the receiving water, the effluent need not be tested further. If dilution is less than 10,000 to 1, *or* mixing is not rapid and toxicity within a plume is of concern, then toxicity screening tests are proposed to be required as follows:

(1) In cases where dilution is between 1,000 to 1 and 10,000 1, *or* where a poorly mixed effluent plume in a large receiving water is of concern (even with greater dilution), acute toxicity screening tests must be performed by collecting six effluent samples in one day (grab or short-term composite) each quarter over a one-year period. Twenty-four hour screening tests must then be conducted in 100% final effluent, using an invertebrate species and a fish species in each sample, and following the protocols specified in *Methods for Measuring the Acute Toxicity of Effluents to Aquatic Organisms*, Peltier, W. and C.I. Weber, 3rd edition, 1985, EPA 600/4–85–013. The Director (i.e., the Regional Administrator or the State NPDES Director) may require alternative tests procedures and may require the submission of definitive testing data, generated according to procedures specified by the Director, to replace or supplement the screening test data specified above.

(2) If dilution is less than 1,000 to 1 but greater than 100 to 1, chronic toxicity screening tests must be performed by collecting six samples (24-hour composite) on six successive days each quarter over a one-year period. Seven-day static screening tests must then be conducted in 100% final effluent, using an invertebrate species and a fish species, daily composite samples to renew test solutions, and following protocols specified by the Director. The Director may require alternative test procedures and may require the submission of definitive testing data, generated according to procedures specified by the Director, to replace or supplement the screening test data specified above.

(3) If dilution is less than 100 to 1, screening is in appropriate, since at these ambient concentrations even minimally toxic effects can cause unacceptable toxicity. Instead, definitive toxicity data generation shall be performed according to procedures required by the Director.

Today's proposal would require the results of any acute or chronic toxicity screening or testing performed above to be submitted to the Director as part of the POTW's NPDES permit renewal application. The current regulations (§ 122.21(d)(1)) require that existing POTWs must submit permit renewal applications at least 180 days before the currently effective permit expires. The Director may grant permission to submit the application at a later date (but not later than the expiration date of the existing permit). Therefore, any screening or testing required under the above procedures should be commenced in time to be completed before the 180-day deadline.

To address States with screening and testing procedures that are equivalent to those proposed above, the agency is also proposing to allow the POTW to use such equivalent procedures if they are accepted by the Director. However, the Agency solicits comment on other definitive data generation procedures that would be appropriate for inclusion in NPDES permit applications, and on whether follow-up corrective measures to reduce toxicity should be specified in 40 CFR Part 122. For example, POTWs might be required to follow the recommendations of the TSD on definitive data generation, using uncertainty factors and dilution data. Where the effluent is shown to have toxic impact (as defined in the TSD trigger mechanism), corrective action could be required.

An alternative method of collecting definitive toxicity data might be to require POTWs with high dilution ratios (1000 to 1 or greater) to conduct acute tests on three species quarterly for the year preceding submission of the permit application, while POTWs with low dilution ratios (less than 1000 to one) might be required to conduct chronic tests on three species quarterly. Still another option is requiring POTWs with approved programs to conduct both acute and chronic toxicity tests on three species once a month for a year before submission of the permit application, while all other POTWs might be required to conduct the same test but at a reduced frequency, such as quarterly. Where the effect concentrations exceed the allowable dilution (as defined by the State standards) corrective measures to reduce toxicity would be required.

Corrective measures to reduce toxicity include toxicity-based permit limits (which should in any event be required in case of a violation of State water quality standards), requiring further testing, or toxicity reduction evaluations (TREs). The Agency has recommended guidelines for making decisions in the TSD. If the Director requires further testing to generate more definitive data, the Agency has recommended several methods manuals for conducting such testing (see, e.g., the above-mentioned *Methods for Measuring the Acute Toxicity of Effluents to Aquatic Organisms*, Peltier, W., and C.I. Weber, 3rd edition, 1985, EPA Office of Research and Development, Cincinnati, Ohio, EPA–600/4–85–013; *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Horning, W., and C.I. Weber, EPA Office of Research and Development, Cincinnati, Ohio, EPA–600/4–85–014; *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, Horning, W., and C.I. Weber. These methods, where properly followed, should give a valid assessment of potential water quality impact.

As discussed above, TRE's may be necessary to bring a discharger into compliance with a toxicity-based permit limit. A TRE is a study which employs toxicity tests and various types of treatment to identify specific ways to reduce effluent toxicity. The effluent is subjected to typical laboratory techniques such as aeration, filtration, and fractionation. After each step, toxicity tests are conducted on altered and unaltered effluent. The toxicity is then attributed to compounds removed or neutralized in that step at which the toxicity is significantly reduced. If a pollutant is identified as the cause of the toxicity, it can be limited in the permit and then controlled through permit limits. If a treatment option (such as filatration) is shown as capable of reducing toxicity, the POTW can pursue that treatment to meet its whole effluent toxicity requirements. A TRE can thus be used to set limits for specific toxicity-causing pollutants or to identify a treatment which will reduce toxicity to the level required by a toxicity-based permit limit. TREs can be conducted before permit issuance, under a permit compliance schedule, or in response to an administrative order. Protocols for conducting TRE's are currently available in draft from EPA's Office of Water Enforcement and Permits.

The Agency believes that these proposed requirements for detecting and controlling toxicity will help to achieve better control of toxic and hazardous wastes discharged from POTWs. The need to assess and control these pollutants should not be underestimated. EPA's proposal to require toxicity testing by POTWs is based upon evidence that these sources continue to discharge toxic substances (including hazardous constituents) in significant amounts.

The Agency emphasizes that whole effluent toxicity-based controls are a complement to and not a substitute for chemical-specific controls. Neither of these methods is by itself sufficient to control adverse toxic impacts in all cases. Permitting authorities also need the results of chemical effluent monitoring in order to develop effective permits for POTWs. To this end, the Agency plans to propose this year new application requirements for POTWs, along with a form to be used in submitting the application. This proposal will solicit comment on requiring POTWs to test their effluent for (at a minimum) the CWA priority pollutants. The final application requirements, when promulgated, should incorporate requirements for both whole

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effluent and chemical-specific monitoring.

4. Control of Indirect Dischargers: Alternative Approaches

A. *General issue.* The amendments proposed in Parts A–E above will help POTWs address incidents that affect plant efficiency and should provide additional assurance that POTWs can function properly and comply with their permits at all times. It should be noted that although the agency's concern in the amendments proposed today is primarily with hazardous and toxic pollutants, EPA encourages POTWs to adopt these mechanisms as necessary to deal with any pollutant of local concern. In addition, EPA believes that in some cases further measures are necessary to give POTWs adequate control of wastes discharged to sewers. This belief was supported by commenters on the ANPR who expressed concern that existing local limits and categorical standards were not sufficient to deal expeditiously with harmful quantities of such wastes entering POTWs.

This concern is largely attributable to two causes: (1) The inherent limitations of categorical standards and local limits developed to prevent violations of NPDES permits issued to POTWs and (2) the likely increase in volume of hazardous and toxic wastes discharged to POTWs. To address such environmental concerns and to respond adequately to the Congressional directive of section 3018(b), the Agency has considered how best to exercise its broad authority to control these discharges in a way that is effective, expeditious, and administratively acceptable.

b. *Nature and scope of environmental concern.* The Study was expressly mandated by Congress to determine whether Clean Water Act programs could control the discharge of hazardous wastes to POTWs for adequate protection of human health and the environment. Although the Study recommended retention of the Domestic Sewage Exclusion, it also concluded that the level of many hazardous constituents in POTW wastewaters (particularly organic compounds) raised concerns about potential effects on human health, the environment, and POTW operations. Even after full implementation of pretreatment standards, large amounts of hazardous, toxic, and carcinogenic chemicals are discharged to POTWs. To illustrate the scope of the problem, the Study estimated that:

- 7,260,000 pounds of hazardous metal constituents are discharged to POTWs each year even after implementation of categorical pretreatment standards.
- Between 81,400,000 and 132,000,000 pounds of priority hazardous organic constituents are discharged to POTWs each year even after implementation of categorical pretreatment standards.
- Approximately 138,600,000 pounds of nonpriority hazardous constituents (mostly organics) are discharged to POTWs each year, few of which are regulated by categorical standards. The organics industries alone are estimated to discharge wastewater containing twice as many pounds of nonpriority organic constituents as priority organic constituents.
- For the indirect dischargers in the pharmaceutical manufacturing category, total cyanide is currently the only pollutant regulated under categorical pretreatment standards. Yet significant loadings of hazardous constituents are discharged by this industry, especially methanol, acetone, ethyl acetate, xylene, chloroform, methlyene chloride, and toluene.
- Pesticide manufacturing is another significant discharger of hazardous constituents to POTWs including benzene, chlorobenzene, and toluene.

The Study expressed concern about the incomplete coverage of organics by categorical standards (such as pharmaceuticals) and the fact that unregulated or emerging industries are also likely to be significant sources of hazardous waste discharges. These industries include hazardous waste treatment, solvent and oil recovery, and service-oriented industries such as transportation sources that tend to discharge variable quantities of toxic pollutants. Some of the organics discharged from both categorical and noncategorical industries are subject to less than 50 percent removal at unacclimated POTWs. As a particular example of an expanding industry whose wastewaters are not specifically addressed by categorical standards, the Study cited hazardous waste treatment and disposal facilities and noted that almost all RCRA characteristic and listed wastes have been reported as potentially present in discharges from these facilities.

In addition, it should be noted that estimated loadings of hazardous constituents found in the Study from all industries are likely to be conservative. Lack of precise data on nonpriority constituents could easily mean that the figures estimated by the Study are low, and as more research is done into the effects of various toxic and hazardous pollutants, the list of pollutants of concern may increase. More importantly, loadings of hazardous wastes to POTWs are almost certain to increase in the future due to the Domestic Sewage Exclusion, the virtual ban under RCRA of liquid wastes in landfills, and the development of many new toxic chemicals every year. This likely increase argues for the need to take action to reduce these loadings.

The Agency's concern about these massive loadings is heightened by the fact that some hazardous constituents are toxic in very low amounts. For example:

- Cyanide is chronically toxic to freshwater aquatic organisms at concentrations above 5.2 ug/1.
- Benzene is chronically toxic to marine aquatic organisms in concentrations above 0.7 mg/1.
- Silver is acutely toxic to freshwater aquatic organisms in concentrations above 4.1 ug/1.

The Study devoted considerable effort to examining the potential effects on environmental media from hazardous constituents discharged to POTWs. Modeling techniques were used to project likely instream concentrations of certain hazardous constituents, which were then compared to applicable aquatic and human health criteria and standards to determine potential impacts on surface water quality (full compliance with categorical pretreatment standards was assumed). The modeling techniques revealed that some projected loadings of hazardous constituents exceeded water quality criteria even after imposition of categorical standards (pollutants of concern included cadmium, silver, chromium, copper, mercury, lead, cyanide, and zinc). The Study also reviewed existing POTW bioassay results, which revealed that a significant number of POTWs had toxic discharges. The Study therefore concluded that the current categorical standards cannot by themselves resolve water quality concerns, and projected that other hazardous constituents may also be passing through treatment systems to create water quality problems. Besides water quality concerns, the Study found that hazardous constituents discharged to POTWs can also enter the environment through other pathways such as the disposal of sewage sludge contaminated with hazardous metals or the volatilization of organic compounds contained in industrial discharges (these pollutants may be emited both to the ambient air and to the POTW workplace).

EPA believes that these findings firmly demonstrate the importance of expanding the current exercise and the

Agency's broad authority to address hazardous wastes discharged to POTWs.

c. *Current control mechanisms.* To date, the Agency has exercised its pretreatment authority primarily through categorical standards and local limits. Although these controls address many concerns, both have limitations which prevent them from being a fully effective solution to the problems presented by discharges of hazardous constituents.

With respect to categorical standards, the Agency must collect and examine exhaustive data on the industries covered, including pollutants discharged and treatment systems used. EPA is currently evaluating many regulated and unregulated industries to determine which are appropriate candidates for new or revised categorical pretreatment standards. Developing these standards, is, however, a lengthy and expensive process, often taking many years.

The second principal means of controlling hazardous waste discharges to POTWs is the application of local limits. Local limits must be developed as needed to prevent interference with POTW operations and pass through of pollutants to receiving waters.

POTWs have generally developed adequate local limits to control interference from and pass through of pollutants that were of most concern when the pretreatment program was first developed (i.e., metals and some priority organics), but these limits have sometimes not been effective in dealing with the loadings of hazardous constituents for several reasons. First, calculating local limits for organics (such as many of the hazardous organic constituents in the Study) can be technically difficult if numeric criteria for these pollutants are not contained in POTWs' NPDES permits. Without such limits, it is impossible to establish pass through under the current definition of that term at 40 CFR 403.3(n). Second, even when pass through is demonstrated, the source of the toxicity can be difficult to locate if the pollutant concentration in a POTW's influent is highly variable and the matrix of pollutants contained in that influent is highly complex. Although EPA has issued guidance to POTWs on developing local limits, these limits may need to be supplemented under certain circumstances.

d. *Commercial hazardous waste treaters: An industry of particular concern.* The Agency's examination of the existing control mechanisms has led it to conclude that even if additional categorical standards and improved local limits were developed, there may still exist a gap in the ability of the current pretreatment program to deal comprehensively with the concerns raised by the Study. Of particular concern is the aqueous waste treatment and disposal industry. These facilities provide physical, chemical, and/or biological treatment of hazardous and nonhazardous wastewaters, including leachate from landfills and process wastewater from manufacturing operations. Aqueous treaters include both on-site generators that are not regulated by categorical standards but treat process wastewater, and commercial hazardous waste treaters (hereafter referred to as CWTs). Facilities that transport wastes to CWTs include landfills that choose not to provide treatment on-site or do not have an acceptable receiving stream or sewer line available, and manufacturers who find it more cost-effective or otherwise preferable to contract haul their wastes to a commercial facility. The Agency estimates that there are now over one hundred CWTs in the country, most of which discharge to POTWs and many of which accept categorical wastes. Flow rates at these facilities average about 45,000 gallons per day. The Study found that several incidents at POTWs have been associated with discharges from CWTs. These events include disruption of treatment processes, hazardous fumes, and contamination of sewage sludge. The incidents are of concern in light of studies by EPA and the Association of Metropolitan Sewerage Agencies (AMSA) showing that the number of waste treatment and disposal facilities are increasing substantially. The AMSA survey indicated that the number of requests for connection to POTWs by these facilities may cause increasing problems at POTWs unless they are adequately controlled.

Data collected recently by the Agency clearly indicate that the wastes accepted by these facilities contain significant amounts of hazardous constituents (particularly organics) that pass through the CWT system, receiving inadequate treatment before they are discharged to POTWs. Treatment provided at CWTs may include treatment of specific waste types (for example, cyanide destruction), physical/chemical treatment, biological treatment, and tertiary treatment. Although the physical/chemical treatment technologies at some CWTs are primarily designed to remove metals and other inorganic pollutants, the wastes accepted by these facilities contain significant amounts of organics that pass through the system, receiving limited treatment. This poor treatment received by organics is reflected in the effluent levels of biochemical oxygen demand (BOD), total organic carbon (TOC) and chemical oxygen demand (COD). Better reductions are achieved for heavy metals. Compared to physical/chemical treatment systems, the advanced treatment systems in place at some CWTs are more effective in removing organic compounds; however, high effluent concentrations or organics are common even with advanced treatment such as carbon adsorption. There are also high effluent concentrations of indicator compounds such as BOD, TOC, and COD, which demonstrates relatively poor removal of organics.

Organics found frequently and at high concentrations in the effluent from CWTs include industrial solvents such as acetone, benezene, methylene chloride, and methyl ethyl ketone. These findings show that the physical/chemical technologies, as currently operated by CWTs, are not removing organics adequately and that the more advanced technologies are not producing as much removal as would be expected, perhaps because of poor design or lack of proper operation and maintenance. The findings demonstrate the clear potential for discharge of poorly treated hazardous wastes to POTWs or surface waters. In addition, comparison of raw wastewater samples from CWTs with water quality criteria for acute and chronic toxicity, human health, and drinking water revealed numerous exceedances for several categories of pollutants. It should also be noted that the Study estimated that there is less than 50% removal of all four of the industrial solvents mentioned above at unacclimated POTWs.

CWTs are also difficult to regulate through traditional local limits. The waste discharged by many of these facilities is complex and varying in quality. Calculating local limits for CWTs can be technically difficult because of the variability of the influent to these facilities and the absence of limits for many toxic and hazardous pollutants in NPDES permits issued to POTWs.

e. *Options for addressing CWTs.* To address the concerns presented by CWTs, the Agency is considering three options for the regulation of these facilities. The first is the combined wastestream formula (by which they are currently covered), the second is categorical standards, and the third is technology-based local limits, which will be explained in more detail below.

Combined Wastestream Formula

In the absence of categorical standards specifically developed for

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CWTs, these facilities are now regulated by any other applicable categorical standards as applied using the combined wastestream formula. Industry has been very vocal in criticizing the administrative difficulties of this regulatory scheme. The formula is a mathematical method used to determine effluent limits for CWTs receiving contributions from multiple wastestreams (both categorical and noncategorical). On June 12, 1986 (51 FR 21454) EPA published a notice of proposed rulemaking which explained that this formula applies to "centralized" waste treaters (many of these facilities are located off-site and thus are equivalent to CWTs). EPA also proposed to require that industrial contributors provide their centralized waste treaters with information about the nature of their process, volume of wastes, pollutant constituents, and any categorical pretreatment standards applicable to the contributors' processes. This information is necessary for the centralized waste treater (or CWT) to apply the combined wastestream formula, and thus determine its effluent limits.

The Agency solicited comments on whether other information is necessary for such an analysis and on whether the States should develop a form to standardize the information provided to these facilities. EPA also solicited comments on several alternative regulatory schemes. These included promulgating specific categorical pretreatment standards for these facilities, relying solely on local limits, and controlling each pollutant discharged by the facility by applying the most stringent numerical limit for that pollutant taken from all the categorical standards applicable to the wastes received by the facility.

EPA received many comments on this issue. Many industry commenters questioned the feasibility of applying the combined wastestream formula to their facilities. They believed that the formula was too inflexible and that variability of incoming wastestreams to CWTs would require frequent recalculation of the formula, thus rendering limits out-of-date as soon as they were calculated and leading to excessive administrative complexity. There would be little room for local discretion in controlling CWTs on a facility-specific basis. They also stated that the required information from their contributors might be difficult to obtain, update, or verify.

Because of the comments and the practical issues they raised, EPA has decided not to finalize the part of the June 12, 1986 proposal which addressed CWTs at this time. However, the options discussed in that notice are still under active consideration (in particular the combined wastestream formula). The Agency believes that some commenters have underestimated the flexibility inherent in the formula (see 40 CFR 403.6(e)). If contributions to the CWT have a record of consistency and no change is projected, a single set of limitations would be developed and implemented. However, where the wastes introduced to the CWT fluctuate, several alternative limitations could be developed corresponding to different waste configurations discharged to the CWT and would be implemented according to which configuration currently prevailed. This approach would eliminate the burden of recalculating limits to reflect changes in the CWT influent and would reduce the uncertainty about applicable limits.

The principal step in implementing these alternative limits would be to obtain historical data from the CWT on its contributions at various times over the calendar year. If the contributions remained consistent over a period of time (for example, if over a particular season the CWT received a relatively fixed percentage of wastes from mental finishers, another relatively fixed percentage from coil coaters, and another from battery manufacturers or copper formers) then limits could be calculated to take effect whenever these percentages changed. The alternative or consecutive limits could be written into the permit or other agreement between the POTW and the CWT.

EPA requests comment on the feasibility of applying the combined wastestream formula to CWTs, and on whether this approach would be more practical to implement than the other options discussed today. Comments submitted concerning the options discussed in the June 12, 1986 proposal need not be resubmitted; they will be incorporated as part of the rulemaking record.

Categorical Standards

The second principal option being considered by the Agency is the development of categorical standards specifically for CWTs. If a decision is made to develop these standards, promulgation will probably take several years. It is for this reason that the Agency is proposing a third principal option for regulating CWTs, i.e., technology-based local limits. These limits could serve as an interim measure before categorical standards are developed, or as a permanent measure if no standards are promulgated. They could also be used to reduce loadings of certain pollutants that are locally significant but not nationally regulated.

Local Limits Based on a Best Professional Judgment (BPJ) Determination of Best Available Technology Economically Achievable (BAT)

Section 307(b) directs the Administrator to establish pretreatment standards "to prevent the discharge of any pollutant through treatment works * * * which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works". The legislative history of this provision demonstrates Congress' belief that

> * * * comprehensive water pollution abatement requires that controls should * * * be extended to any industrial discharge into municipal waste treatment works in order to prevent pollutants from entering such works if they would impair the effectiveness of the waste treatment works, or if they would pass untreated or inadequately treated wastes through the treatment works into navigable waters * * * [I]t is clear that the Administrator may be unable to establish such [pretreatment] standards for all pollutants which require such control. Therefore, the provisions of this section do not relieve municipalities and States from establishing pretreatment standards to control rate, flows, and concentration of industrial discharges into waste treatment works.
>
> (Report No. 92–414 of the Committee on Public Works of the U.S. Senate, 2 Leg. History 1415, 1973).

The legislative history also reveals that Congress intended wastes from indirect dischargers to ultimately receive the same level of treatment given to wastes from direct dischargers before these wastes enter navigable waters. In discussing the 1977 amendments to the Federal Water Pollution Control Act, it was stated that

> * * * the combination of pretreatment and treatment by the municipal treatment works shall achieve at least that treatment which would be required if the industrial user were making a direct discharge.
>
> (Joint Explanatory Statement of the Committee of Conference, 3 Leg. History 271, 1978).

In addition, there is no specific statutory language restricting the Agency in fashioning a program to deal with the concerns that Congress was addressing. Rather, Congress provided EPA with the discretion to establish program requirements that effectuate the goals of the pretreatment program.

The Agency's current policy of basing local limits on the prevention of POTW NPDES permit violations was appropriate at the time the policy was first established. However, this policy

was not a full exercise of EPA's statutory authority. Instead, it was a prudent exercise of as much of that authority as was appropriate at the time. The following proposal is an incremental and essential change in the pretreatment program to improve its effectiveness and address problems revealed by the Study.

EPA is today proposing to amend § 403.8 to require that POTWs with approved programs receiving discharges from CWTs (as defined in proposed § 403.3(e)) develop and implement local limits based on a BPJ determination of BAT. These case-by-case technology-based limits would be very similar to the BPJ limits which have been routinely developed by NPDES permit writers during the past decade for direct dischargers not covered by national effluent limitations guidelines.

As noted above, POTWs must currently develop local limits to prevent pass through under § 403.3(n) (i.e., a discharge from an industrial user that, alone or together with other sources, causes a violation of the POTW's NPDES permit). Since many of the pollutants discharged by CWTs are usually not restricted by NPDES permits issued to POTWs, EPA is also proposing a supplementary definition of pass through for POTWs receiving discharges from CWTs. The proposed new definition would provide that pass through means the failure of the CWT and the POTW to reduce pollutant discharges from the POTW to the degree which would be required by section 301(b)(2) of the CWA if the CWT discharged directly to surface waters. To further this requirement, the Agency is also proposing to amend § 403.5(c) to provide that POTWs receiving discharges from CWTs must develop and enforce specific local limits for these facilities to prevent pass through as defined in the proposed supplementary definition. It is probable that many POTWs already have the legal authority to impose technology-based limits under local statutes or ordinances.

(Note that today's proposal also would renumber § 403.3(n), to become § 403.3(o).)

The proposed amendments require the POTW to determine whether the discharge from a CWT is receiving the level of effluent treatment which would be required if the CWT were a direct discharger, after taking into account the treatment capability of the POTW. In order to determine what would constitute best available technology for the CWT, the POTW could focus on pollutants regulated in the categorical standards for industries contributing to the CWT and any other pollutants of concern (priority or nonpriority) discharged by the CWT. The POTW should take into account all the factors enumerated in section 304(b)(2)(A) of the CWA and 40 CFR 125.3(c)(2) that are considered in developing BPJ limits for direct discharges. These include the age of facilities and equipment processes employed, the engineering aspects of various control technologies, and the costs of effluent reduction.

For examples of what would constitute best available control technologies for various pollutants, the POTW may wish to consult effluent limitations guidelines, or categorical standards for other industries (e.g., in the metal finishing category at 40 CFR Part 433, precipitation/clarification for metals, alkaline chlorination for cyanide, and hexavalent chromium reduction; in the organics, plastics, and synthetic fibers category at 40 CFR Part 414, steam stripping for organics). Alternatively, the POTW may wish to conduct its own analysis. In addition, EPA plans to develop technical information for use by POTWs in determining appropriate technology-based treatement. Based on the data available so far, the Agency has tentatively concluded that many CWTs may be able to meet BAT-based limits by better operation and maintenance, such as constructing additional storage tanks, piping and pumps for further waste segregation or collection for treatment. Such improvements may often be possible at relatively low cost (approximately fifty thousand dollars). Other CWTs may need to install more advanced treatment technology which could be more expensive (up to five hundred thousand dollars, including operation and maintenance). POTWs may wish to conduct a careful case-by-case examination of the CWT in question to determine if adequate pollutant removal can be achieved by better operation and maintenance rather than by installation of additional technology.

As mentioned above, the Agency encourages POTWs to adopt this mechanism as necessary to deal with pollutants of local concern as well as toxic and hazardous pollutants. After determining what would constitute best available technology for the various pollutants discharged by the CWT, the POTW would determine whether the actual reduction achieved by the CWT plus the reduction achieved by the POTW were equal to the hypothetical BAT limits. The most practical way to measure the POTW's removal for a specific pollutant would be to employ EPA's removal credits protocals (see 52 FR 42434 (November 5, 1987) and 46 FR 9404 (January 8, 1981)). Generally speaking, these protocals require twelve representative samples (of influent and effluent) to be taken over the course of a year, after which removal for each sample is determined by measuring the difference as a percentage of the influent concentration. The POTW would be required to develop the previously calculated technology-based local limits for the CWT if the combined removal by the CWT and the POTW for the pollutant in question turned out to be less than that which would be required to meet such hypothetical BAT limits. In order to keep the limits up to date, they should be evaluated every five years (see proposed § 122.21(j)(2)).

These technology-based local limits would be implemented and enforced in the same manner as any other local limits. § 403.8(f)(4) requires POTWs to develop local limits as required under § 403.5(c)(1) (which, as proposed to be amended today, would require the development of technology-based local limits for CWTs) or demonstrate that such local limits are not necessary. In the case of technology-based local limits, such a demonstration would normally include a showing that the pollutants in the discharge from the CWT are reduced (after treatment by the CWT and the POTW) to the degree which would be required if the CWT were a direct discharger. Requirements to develop and update such local limits as are necessary will be reflected in the POTW's approved pretreatment program and incorporated into the POTW's permit upon modification or reissuance (see proposed § 403.8(f)(1)(iii) and existing § 403.8(c). Like all other applicable pretreatment requirements, the failure to develop necessary local limits will continue to be subject to enforcement, either by EPA or an approved NPDES State, as a violation of the POTW's NPDES permit. However, the Agency notes that under most circumstances pass through as defined in proposed § 403.3(o)(2) would not be enforced in the absence of local limits specifically developed to prevent such pass through.

f. *Other Industries.* POTWs may also need to use their authority to develop technology-based local limits for other industries. To this end, the Agency is considering requiring POTWs to develop such limits for pesticide and pharmaceutical manufacturers. The pharmaceutical industry ranks high in total hazardous constituent loadings for priority pollutants after the implementation of categorical pretreatment standards, and the

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pesticide industry has been among the nation's top ten dischargers of hazardous constituents. The Agency is currently reviewing pharmaceutical manufacturing to determine whether to propose new categorical pretreatment standards for this industry, and it has already initiated rulemaking procedures which will lead to the eventual promulgation of standards for the pesticides industry. However, the Agency nevertheless believes that alternate controls may be necessary.

g. Solicitation of Comments. EPA invites comment on which of the approaches discussed today is the most practical and effective way to further the recommendations of the Study by improving local limits. Specifically, EPA solicits comments on all aspects of the proposed requirement that POTWs develop local limits based on a BPJ determination of BAT, especially the merits of this approach compared to the combined wastestream formula. The approach might prove to be effective alternative to the formula and would address some of the concerns expressed by commenters responding to the June 12, 1986 notice. In particular, POTWs would be able to address CWTs on a case-by-case basis and develop limits that were tailored to the particular facility. The Agency requests comment on whether POTWs should also be allowed to use the combined wastestream formula to develop local limits for those CWTs for which the formula might be more appropriate, i.e., those with a relatively invariable or predictable influent.

The Agency also solicits comments on whether to require technology-based local limits for pharmaceutical and pesticide manufacturers. In addition, EPA wishes to receive comments on the practical implementation aspects of technology-based local limits for POTWs, whether for CWTs or industrial users in general. The Agency plans to make technical information available for use in developing such limits, but welcomes comment on this issue and on whether any additional reporting or compliance requirements are necessary for these limits.

EPA also solicits comments on whether to specify in the definition of pass through under § 403.3(o)(2) that such pass through is for purposes of local limits development only and is not subject to the general prohibition of pass through in 40 CFR 403.5(a)(1) in the absence of local limits specifically developed to prevent such pass through. The Agency requests comment on whether such language is necessary or would be redundant in light of 40 CFR 403.5(a)(2), which provides an affirmative defense for an industrial user who demonstrates that it did not know or have reason to know that its discharge caused pass through or interference.

5. Other Problems at POTWs

It should be noted that § 403.3 defines interference as a discharge, which, alone or in conjunction with other sources, prevents the use or disposal of sewage sludge in accordance with (among other authorities) the Clean Air Act (CAA). POTW sewage sludge incinerators are currently regulated under section 112 of the CAA (National Emissions Standards for Hazardous Air Pollutants, or NESHAPS). EPA has promulgated emission rates for mercury and beryllium based on acceptable ambient concentrations, and the Agency is considering other pollutants, including organics, for regulation. As further NESHAPS are promulgated, POTWs will be required to develop local limits as necessary to ensure that their sludge incineration facilities meet the emissions limits.

With respect to air emissions from chemicals discharged to POTWs, EPA is currently studying the emission of volatile compounds and other toxic air pollutants from wastewater treatment plants (both direct and indirect dischargers). The emphasis is on emissions from the organic chemicals, plastic, and synthetic fibers industrial category and the pharmaceutical and pesticide manufacturing categories. EPA is also developing test methods to identify other process wastestreams rich in volatile organic compounds. EPA is using data from this study to evaluate air emissions caused by volatilization formed from the treatment of wastewaters (by such means as air stripping) and is also considering possible regulation of such emissions under the Clean Air Act, which eventually reduce the amount of volatile compounds entering wastewater treatment plants.

EPA is also conducting a study to evaluate the extent of groundwater contamination caused by leaking sewers (see 52 FR 23485, June 22, 1987). If this study indicates that such contamination is widespread, EPA will evaluate the possibility of requiring POTWs to develop any local limits needed to prevent violation of any groundwater protection standards to which the POTW may be subject.

G. Enforcement of Categorical Standards

The Study recommended that EPA pursue more stringent enforcement of categorical pretreatment standards. More rigorous enforcement could lead to a significant reduction of pollutant loadings to POTWs, particularly of heavy metals. More stringent enforcement of the standards was also recommended by the Pretreatment Implementation Review Task Force (PIRT) which in 1985 gave the Agency recommendations for improving the national pretreatment program. The ANPR discussed several of EPA's initiatives to improve local enforcement, including guidance, audits and inspections of approved pretreatment programs, expanded self-monitoring requirements, and enforcement actions against POTWs with unimplemented programs.

The commenters on the ANPR generally supported these means of improving the enforcement of categorical pretreatment standards. In response to these comments, EPA will continue to emphasize all activities designed to better POTWs' ability to enforce compliance with these standards.

EPA is today proposing certain other changes to the general pretreatment regulations which it believes will help POTWs enforce their local pretreatment programs and improve control of toxic and hazardous wastes discharged to POTWs. These proposed changes are discussed below.

1. Revisions to Local Limits

On October 17, 1988 (53 FR 40562) EPA revised 40 CFR 403.8(f) by clarifying that the development of local limits (or a demonstration that they are not necessary) is a prerequisite to approval of a POTW pretreatment program and the continuing legal acceptability of an approved program. Although the regulatory language of that rule does not explicitly require POTWs to update local limits, the preamble of the June 12, 1986 proposal to that rule stated that "local limits * * * must be updated as necessary to reflect changing conditions at the POTW" (51 FR 21459) and that "failure to * * * update, as needed, necessary local limits, will, of course, continue to be subject to enforcement, * * * as a violation of the POTW's permit" (51 FR 21460).

In order to completely clarify this requirement, and because of the importance of up-to-date local limits in controlling the discharges of toxic and hazardous pollutants, EPA is today proposing to add 40 CFR 122.21(j)(2) to provide that POTW's must evaluate in writing the need to update their local limits as part of their NPDES permit applications (i.e., once every five years at a minimum). If the Director determines that a particular POTW should evaluate the need for revision more often, it may so specify in the POTWs permit or approved pretreatment program (as incorporated by reference in the permit).

Today's proposal would not require POTWs to update their local limits when such revision is not needed. Instead, EPA is proposing to establish a minimum frequency for formal evaluation of the need for revised limits. Examples of events that might indicate the need for such a revision include changes in the POTW's NPDES permit, changes in sludge disposal standards or POTW sludge disposal methods, modifications to the treatment plant, addition or deletion of significant industrial users, and changes in industrial users' processes or pretreatment operations. These events could all affect the likelihood of interference with POTW operations or possible lack of compliance with the POTW's NPDES permit. The proposed minimum frequency should give POTWs more precise notice of their legal responsibilities and should help EPA enforce pretreatment implementation. The proposed frequency should also help POTWs be more effective in preventing pass through and interference caused by the discharge of toxic and hazardous wastes.

EPA solicits comment on whether POTWs should be required to conduct this evaluation more frequently. For example, POTWs might be required to conduct the evaluation whenever multiple instances of pass through or interference had occurred (such as two or more violations in a quarter), in order to determine whether existing local limits were adequate to prevent these occurrences or whether local enforcement efforts were adequate. POTWs might also be required to submit such evaluations once a year as part of the annual reports to the Approval Authority required under 40 CFR 403.8(i). The Agency welcomes comment on how frequently local limits should be examined to ascertain whether they need to be revised.

2. Inspections and Samplings of Significant Industrial Users by POTWs

The existing regulations (40 CFR 403.8(f)(2)(v)) require that a POTW must be able to randomly sample and analyze the effluent from industrial users and conduct surveillance and inspections to identify noncompliance with pretreatment standards. However, these regulations do no specifiy how often POTWs must perform the sampling, analysis and surveillance.

In the 1986 *Pretreatment Compliance Monitoring and Enforcement Guidance* (hereinafter "1986 Guidance"), the Agency recommended that POTWs conduct at least one inspection and/or sampling visit annually to all "significant industrial users." According to the Guidance, the term "significant industrial user" includes all categorical users and any noncategorical industrial user that discharges 25,000 gallons per day or more of process wastewater, contributes a process wastestream which make up 5 percent or more of the average dry weather capacity of the treatment plant, or has a reasonable potential, in the opinion of the Control Authority, to adversely affect the POTW's operation. The Control Authority, with the consent of the Approval Authority, may remove any noncategorical industrial user from the list of significant industrial users if the industrial user has no reasonable potential to adversely affect the POTW or to violate any pretreatment standards or requirements. EPA is today proposing that the consent of the Approval Authority is not required when the industrial user would have been designated as significant only because of an average process wastewater flow of 25,000 gallons per day or more. Noncategorical industrial users may also petition to be removed from the significant industrial user list. For example, if the significant noncategorical industrial user has an exemplary compliance record, is not likely to contribute to instances of interference, and has little potential to contribute to any water quality problems, the POTW may wish to delete that user from the list. Alternatively, EPA emphasized in the Guidance that more frequent monitoring should probably be conducted in certain cases: e.g., if an industrial user has not been able to comply with pretreatment standards. POTWs may of course add an industrial user to the list even if that user was previously deleted, if compliance problems of any other circumstances arise which make such an addition appropriate.

In order to specify a standard for how often POTWs must inspect and sample the effluent of their significant industrial users, EPA is today proposing to modify 40 CFR 403.8(f)(2)(v) to require POTWs to inspect and sample all "significant industrial users" at least once every two years. EPA believes that inspection and sampling of these users at least this often should help POTWs avert pass through and interference by keeping better track of the larger industrial discharges into their treatment and collection systems (especially discharges of toxic and hazardous pollutants). The proposed amendments should also provide a uniform program requirement that EPA can readily enforce if necessary.

As discussed in Part II–B above, the Agency is also proposing to amend § 403.8(f)(2)(v) to require POTWs to evaluate at the time of inspection whether the significant industrial user in question should have a slug control plan for the prevention and control of spills or batch discharges that could cause interference at the POTW.

To ensure that POTW s update their lists of significant industrial users, the Agency is also proposing to amend 40 CFR 403.12(i)(1) to require POTWs to identify such users in the updated list of all industrial lusers required to be submitted to the Approval Authority under 40 CFR 403.12(i). In addition, EPA is proposing to amend 40 CFR 403.8(f)(2)(iii) to require that, within 30 days after a POTW's establishment or revision of its list of significant industrial users, the POTW must inform all such newly designated users of their status and the applicable requirements of this status.

Because several of the proposals today affect requirements applicable to significant industrial users, EPA believes that it would be appropriate to propose a regulatory definition of this term for the sake of national consistency and program enforceability. For this reason, EPA is proposing to amend 40 CFR 403.3 to add a new definition of "significant industrial user" which is similar to the definition in the 1986 Guidance, since that definition has so far proved to be a useful tool in distinguishing the more important indirect dischargers.

EPA solicits comment on all of the rule changes proposed above. Specifically, the Agency requests comment on whether to require that pretreatment POTWs sample and inspect all significant industrial users at least once a year, or whether the currently proposed frequency of at least once every two years will better enable the POTW to plan for inspections while still collecting useful and current discharge information. Alternatively, EPA solicits comment on whether today's proposed requirement of a minimum sampling and inspection frequency is redundant in light of other existing or proposed requirements for self-monitoring and reporting by indirect dischargers, such as twice-yearly sampling and reporting by all categorical and significant non-categorical industrial users.

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requirements to report a substantial change in the volume or character of pollutants discharged, and requirements to notify the POTWs of any discharge of hazardous wastes. The Agency also requests comment on whether to require that POTWs target certain compounds or classes of compounds in their sampling, such as the RCRA Appendix IX hazardous constituents. The Agency also solicits comment on the appropriateness of the proposed definition of significant industrial user, and on whether to allow POTWs to delete categorical users from the list of significant industrial users. It has been suggested that some categorical users do not present any potential for pass through or interference and that POTWs should therefore be free to delete them from the list of significant industrial users. Similarly, EPA requests comment on whether the flow criterion of 25,000 gallons per day for non-categorical significant industrial users is appropriate. The Agency has traditionally used the 25,000 gallons per day criterion in guidance documents. That number represents 5 percent of the hydraulic capacity of the smallest POTWs which EPA may require to have an approved pretreatment program (i.e., those POTWs with half a million gallons per day of design flow capacity). However, EPA solicits comment on whether a larger flow criterion (such as 50,000 gallons per day) would be more useful as a guideline for identifying those industrial users with the capacity for adversely affecting most POTWs.

In addition, EPA wishes to receive comment on the role of the Approval Authority in designating significant industrial users. Specifically, the Agency requests comment on whether the Control Authority should be required to obtain the agreement of the Approval Authority before choosing not to designate (or removing from the list) an industrial user who would otherwise be included because of the proposed criteria.

The Agency also solicits comment on expanding the definition of significant industrial user to include notifiers of hazardous waste discharges under proposed § 403.12(p). Since inclusion in the definition may carry certain administrative consequences for those notifiers in approved pretreatment programs (self-monitoring, inspections, individual control mechanisms, and slug control plans), the Agency welcomes comment on whether any or all of these requirements would be appropriate for some or all dischargers of hazardous wastes.

In addition, the Agency solicits comment on the usefulness of requiring POTWs to estimate, in the annual reports submitted to the Approval Authority under § 403.8(i), whether the amount of hazardous wastes received during the last calendar year has changed significantly and whether any change has affected operations at the POTW.

3. Enforcement Response Plans for POTWs

The existing general pretreatment regulations do not clearly specify the enforcement requirements applicable to POTWs with approved pretreatment programs. The only specific enforcement sanction identified is the requirement that POTWs publish the names of significant noncompliers in the largest local daily newspaper. The regulations require POTW program submissions to identify how the POTW intends to ensure compliance; they also require POTWs to enforce all pretreatment standards and requirements against industrial users and obtain remedies for noncompliance (40 CFR 403.8(f)(1)). However, POTWs are not informed specifically what their legal responsibilities are in carrying out enforcement actions. This also complicates EPA's task in enforcing this part of approved pretreatment programs, since evaluation of POTW enforcement is difficult when the procedures contained in the approved program are not sufficiently specific.

EPA Regions and NPDES States have Enforcement Management Systems in operation for direct dischargers. In the 1986 Guidance, the Agency encouraged each POTW to develop an Enforcement Response Guide, which is a set of procedures describing how the POTW will investigate industrial user violations and which corrective or enforcement actions the POTW will take to respond to such violations (the Guidance suggested certain procedures). To ensure that POTWs develop and implement specific enforcement procedures, EPA is proposing today to amend 40 CFR 403.8(f) to require all POTWs with pretreatment programs to develop and implement an enforcement response plan describing how the POTW will investigate and respond to instances of industrial user noncompliance, including time frames within which the responses will take place.

The Agency believes that the process of developing these plans will be very valuable in helping POTWs decide what resources are needed to enforce their pretreatment standards and how they will actually deal with industrial user violations. Such plans will also make it much easier for EPA to determine whether a POTW is complying with its pretreatment implementation requirements for enforcement. The proposed rule will not interfere with the ability of POTWs to carry out their programs in a manner suited to their needs, nor should such a plan be difficult to develop. The 1986 Guidance included detailed suggestions on various appropriate responses to many different kinds of noncompliance. The POTW should use both the Guidance and its own expertise to develop a reasonable plan to address and remedy noncompliance.

EPA solicits comments on this proposal. Specifically, the Agency requests comments on whether to include more specific elements in the enforcement response plan. Although the Agency believes that the maximum degree of flexibility is needed for POTWs to address their particular problems, it is possible that certain elements of such plans might be suitable for uniform application. EPA welcomes comment on this issue.

4. Definition of Significant Violation

The existing regulations (40 CFR 403.8(f)(2)(vii)) require Control Authorities to publish, in the daily newspaper with the largest circulation in the service community, a list of industrial users which had significant violations of applicable pretreatment standards and requirements during the previous twelve months. The list must be published at least once a year. "Significant violation" is defined as a violation which remains uncorrected 45 days after notification of noncompliance; which is part of a pattern of noncompliance over a twelve-month period; which involves a failure to accurately report noncompliance; or which resulted in the POTW exercising its emergency authority under 40 CFR 403.8(f)(1)(vi)(B).

This definition paralleled the criteria for submitting Quarterly Noncompliance Reports (QNCRs) on direct dischargers. QNCRs are submitted by States with approved NPDES programs or by EPA Regions for States without such programs. The Agency uses QNCRs to track the progress and measure the effectiveness of NPDES compliance and enforcement against direct dischargers. However, in 1986 EPA revised the criteria for the types of violations required to be reported in QNCRs. The revisions, besides containing more precise language, established technical review criteria (TRC) to be used for reporting certain effluent violations. The TRCs were based on the magnitude and/or duration of the violations.

The 1986 Guidance included a detailed description of significant violations by industrial users which substantially mirrored these new criteria for the violations required to be reported in QNCRs. In the Guidance, EPA recommended the national use of this definition to identify the most serious violations by industrial users and to set priorities for enforcement actions.

Experience with the current definition of significant violation has shown that POTWs vary considerably in their definition and application of this interpretation when selecting which violations to publish in local newspapers. This is particularly true of deciding what constitutes a "pattern of noncompliance" under 40 CFR 403.8(f)(2)(vii). To eliminate these inconsistencies and to establish more parity between the treatment of violations committed by direct and indirect dischargers, the Agency is proposing today to amend §403.8(f)(2)(vii) to replace the definition of significant violation with a new definition which is substantially the same as the criteria for reporting direct discharger violations in QNCRs.

Under the definition proposed today, a POTW must publish in the largest daily newspaper a list of industrial users who were in significant violation in the previous twelve months. A violation would be significant if it met one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, i.e., those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(2) Technical review criteria (TRC) violations, defined here as those in which thirty-three percent or more of all the measurements taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit times the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment effluent limit (daily maximum or longer term average) that the Control Authority believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(4) Any discharge of a pollutant that has caused imminent danger to human health, welfare, or to the environment and has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(iv)(B) to halt or prevent such a discharge,

(5) Violation, by ninety days or more after the schedule date, of a compliance schedule milestone, contained in a local control mechanism or enforcement order, for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules within thirty days of the due date;

(7) Failure to accurately report noncompliance, or

(8) Any other violation or group of violations which the Control Authority considers to be significant.

The Agency believes that this proposed amendment gives POTWs more precise notice of their obligation to establish which industrial user violations must be published. EPA solicits comments on the appropriateness of the above criteria. The Agency emphasizes that industrial users would continue to be liable for any violation of applicable pretreatment requirements. Whether an industrial user is identified as being a significant violator does not determine the type of enforcement action that should be taken, including enforcement actions for lesser violations.

5. Reporting Requirements for Significant Industrial Users

40 CFR 403.12 describes the reports that industrial users who are subject to categorical pretreatment standards must submit to their control authorities. The existing regulations do not specifically require non-categorical industrial users to submit reports to the control authority regarding their compliance with applicable pretreatment requirements. On October 17, 1988, (53 FR 40562) EPA amended 40 CFR 403.12 to clarify that Control Authorities must require appropriate reporting from those industrial users with discharges not subject to categorical standards.

In order to ensure that this reporting is carried out regularly, the Agency is today proposing to amend 40 CFR 403.12(h) to require that all significant industrial users (as defined under proposed 40 CFR 403.3(u), including noncategorical significant users) must submit to their POTWs at least twice a year a description of the nature, concentration, and flow of pollutants selected for such reporting by the POTW. In addition, EPA is proposing to require all significant industrial users to base their reports on data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. Control Authorities or Approval Authorities may require more frequent monitoring or more detailed information in the report as appropriate. As mentioned above, the Agency is also proposing to amend 40 CFR 403.8 to require POTWs to inform significant industrial users of their status and the applicable requirements of this status.

EPA believes that these proposed requirements will give POTWs much more accurate knowledge of non-categorical wastes entering their treatment and collection systems. This knowledge is particularly important because many toxic and hazardous pollutants are not covered by categorical standards. EAP also believes that establishing minimum monitoring frequencies is the only way to ensure that the samples submitted to the POTW are representative and up to date.

The Agency solicits comment on this proposed change to the general pretreatment regulations. Specifically, EAP requests comment on the twice-yearly reporting frequency and on limiting the reporting requirements to significant industrial users as defined in proposed 40 CFR 403.3(u). EPA selected the twice-yearly frequency to be consistent with similar requirements for categorical industrial users, and has proposed to limit the requirements to significant noncategorical industrial users because these users seem likely to discharge the largest amounts of toxic and hazardous pollutants. In addition, the proposed definition of significant industrial users gives POTWs flexibility to add or delete industrial users as appropriate. The Agency also requests comment on whether to require significant industrial users to sample for certain compounds or classes of compounds, such as the RCRA Appendix IX hazardous constituents. EPA welcomes comment on these and other aspects of this proposed requirement.

H. Miscellaneous Amendments

In addition to the substantive regulatory changes proposed today, the Agency is also proposing to amend some possibly confusing language in the general pretreatment regulations to clarify current requirements and avoid misunderstandings. These proposed clarifications are discussed below.

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1. Local Limits Development and Enforcement

40 CFR 403.5(c) provides that POTWs "developing" pretreatment programs must develop and enforce specific limits to implement the general and specific discharge prohibitions. In order to clarify that POTWs with already approved pretreatment programs must also develop and enforce local limits, EPA is today proposing to amend § 403.5(c) to provide that POTWs shall continue to develop and enforce appropriate local limits after developing an approved pretreatment program.

2. EPA and State Enforcement Action

40 CFR 403.5(e) summarizes the statutory procedures that EPA and NPDES States must follow under section 309(f) of the Clean Water Act to bring an enforcement action against an industrial user that has caused interference or pass through at a POTW, i.e., give the POTW 30 days notice to initiate its own enforcement action. However, § 403.5(e) may be misleading in not stating that this notice requirement only applies to federal enforcement under section 309(f) of the Act and not to other enforcement actions. In order to avoid misunderstanding, the Agency is today proposing to amend the title of § 403.5(e) to indicate that these notice procedures only apply to actions brought under section 309(f) of the Act.

3. National Pretreatment Standards: Categorical Standards

40 CFR 403.6 provides that categorical pretreatment standards, unless specifically noted otherwise, shall be in addition to the general prohibitions established in § 403.5. There appears to have been an omission from this provision of the specific discharge prohibitions. In order to rectify this omission, the Agency is proposing to amend § 403.6 to add that national pretreatment standards, unless specifically noted otherwise, shall be in addition to all prohibitions and limits established under § 403.5(c).

4. POTW Pretreatment Program Requirements: Implementation

40 CFR 403.8(f) establishes the requirements that a POTW pretreatment program must satisfy. Although these requirements must be met in order for a POTW's pretreatment program to be approved, the proposed regulatory language clarifies the implementation obligations for a POTW. The language of § 403.8(f)(1) now provides that a POTW must have the legal authority which enables it to deny, condition, and control pollutant contributions, require compliance by industrial users, conduct inspections of industrial users, and perform other essential attributes of a pretreatment program. This language does not specifically state that POTWs must implement these procedures. In order to clarify this language, the Agency is today proposing to amend the introductory sentence of § 403.8(f) to state that "a POTW Pretreatment Program shall be developed *and implemented* to meet the following requirements". EPA is also proposing to amend the title of § 403.8 to read "POTW Pretreatment Programs: Development *and Implementation* by POTW" [emphasis added].

5. Development and Submission of NPDES State Pretreatment Programs

40 CRFR 403.10(c) states that "the EPA shall * * * apply and enforce Pretreatment Standards and Requirements until the necessary implementing action is taken by the State". This sentence might give the wrong impression that the Agency will cease to enforce pretreatment requirements when a State has received program approval. Since this is not the case, EPA is today proposing to delete this sentence from § 403.10.

6. Admistrative Penalties Against Industrial Users

The second to last sentence in 40 CFR § 403.8(f)(1)(vii)(B) states that "the Approval Authority shall have authority to seek *judicial* relief for noncompliance by Industrial Users when the POTW has acted to seek such relief but has sought a penalty which the Approval Authority finds to be insufficient [emphasis added]". Given EPA's new authority under the 1987 amendments to the Clean Water Act to assess administrative penalties, this provision is misleading because it could arguably be read to preclude the Agency from seeking such penalties from an industrial user that has already been subject to an action by the POTW. In order to correct this omission, the Agency is today proposing to amend § 403.8(f)(1)(vii)(B) to provide that the Approval Authority shall have the authority to seek judicial relief and also may have administrative authority when the POTW has acted to seek such relief but has sought a monetary penalty which the Approval Authority finds to be insufficient.

7. Provisions Governing Fraud and False Statements

40 CFR 403.12(n) regarding fraud and false statements incorrectly states that certain reporting requirements shall be subject to the provisions of section 309(c)(2) of the Clean Water Act. The reference should be to sections 309(c)(4) and (6) of the Act, as amended. EPA is today amending § 403.12(n) accordingly.

III. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. The Agency has determined that this proposed rule does not meet the criteria of a major rule as set forth in section 1(b) of the Executive Order. The Agency has completed a general estimate of the annual cost to industrial users and POTWs of the amendments proposed today, which is included in the administrative record for this rulemaking. This rule has been submitted to the Office of Management and Budget (OMB) for review.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Most of the amendments proposed today, if promulgated, will affect larger POTWs (those with approved pretreatment programs) and significant industrial users. I hereby certify, pursuant to 5 U.S.C. 605(b), that this regulation will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit any rule that contains information collection requirements to the Director of OMB for review and approval. The information collection requirements in this proposed rule have been submitted to OMB for review.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control, Confidential business information.

40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Date: November 14, 1988.

Lee M. Thomas,

Administrator.

For the reasons explained in the preamble, Part, 122 and 403 of Chapter I of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

40 CFR Part 122 is amended as follows:

1. The authority citation for Part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.21 is proposed to be amended by adding paragraphs (j) (1) and (2) to read as follows:

§ 122.21 Application for a permit.

* * * * *

(j) * * *

(1) All existing POTWs shall provide the following information to the Director:

(i) Results of whole effluent biological toxicity screening, conducted as follows:

(A) For POTWs with a dilution ratio between the receiving stream low flow rate and the effluent design flow rate of less than 10,000 to 1 but greater than 1,000 to 1, or with a poorly mixed effluent plume in a receiving water of concern:

Collect six effluent samples in one day (grab or short-term composite) each quarter over a one-year period. Conduct twenty-four hour screening tests for acute toxicity in 100% final effluent, using an invertebrate species and a fish species in each sample, and following the protocols specified in *Methods for Measuring the Acute Toxicity of Effluents to Aquatic Organisms*, Peltier, W. and C.I. Weber, 3rd edition, 1985, EPA 600/4–85–013. The Director may require alternative test procedures and may require the submission of definitive testing data, generated according to procedures specified by the Director, to replace or supplement the screening test data specified above.

(B) For POTWs with a dilution ratio between the receiving stream low flow rate and the effluent design flow rate of less than 1,000 to 1 but greater than 100 to 1: Collect six effluent samples (24-hour composite) on six successive days each quarter over a one-year period. Conduct seven-day static screening test for chronic toxicity in 100% final effluent, using an invertebrate species and a fish species in each sample, daily composite samples to renew test solutions, and following protocols specified by the Director. The Director may require alternative test procedure and may require the submission of definitive testing data, generated according to procedures specified by the Director, to replace or supplement the screening test data specified above.

(c) For POTWs with a dilution ratio between the receiving stream low flow rate and the effluent design flow rate of less than 100 to 1, results of definitive toxicity data generation according to procedures required by the Director.

(ii) [Reserved]

(2) All POTWs with approved pretreatment programs shall provide the following information to the Director: A formal evaluation of the need to revise local limits under 40 CFR 403.5(c)(1).

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

1. The authority citation for Part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977 (Pub. L. 95–217), secs. 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304 (e) and (g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92–500), as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987.

2. Section 403.3 is proposed to be amended by redesignating existing paragraphs (e) through (s) and (t) as paragraphs (f) through (t) and (v), designating new paragraph (o) as paragraph (o)(1), and adding new paragraphs (e), (o)(2) and (u) as follows:

§ 403.3 Definitions.

* * * * *

(e) The term "CWT" means a commercial centralized waste treatment facility (other than a landfill or an incinerator) which treats or stores aqueous wastes generated by facilities not located on the site of the CWT and which disposes of these wastes by introducing them to a POTW.

* * * * *

(o)(2) In the case of POTWs receiving discharges from CWTs as defined in § 403.3(e), pass through also means the failure of the CWT and the POTW to reduce pollutant discharges from the POTW to the degree which would be required under section 301(b)(2) of the CWA if the CWT discharged directly to surface waters.

* * * * *

(u) the term "Significant Industrial User" means:

(1) All dischargers subject to Categorical Pretreatment standards under § 403.6 and 40 CFR Chapter I, Subchapter N; and

(2) All noncategorical dischargers that, in the opinion of the Control Authority, have a reasonable potential to adversely affect the POTW's operation, or that contribute a process wastestream which makes up 5 percent or more of the average dry weather capacity of the POTW treatement plant, or that discharge an average of 25,000 gallons per day or more of process wastewater to the POTW. However, the Control Authority need not designate as Significant any noncategorical Industrial User that, in the opinion of the Control Authority and with the agreement of the Approval Authority, has no potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement. The agreement of the Approval Authority is not necessary in cases where the noncategorical discharger would have been designated as significant only because of an average discharge of 25,000 gallons per day or more of process wastewater. However,

(3) Any noncategorical Industrial Use designated as Significant may petition the Control Authority to be deleted from the list of Significant Industrial Users on the grounds that it has no potential for adversely affecting the POTW's operation or violating any pretreatment standard or requirement.

3. Section 403.5 is proposed to be amended by revising paragraphs (b)(1), adding text to the end of (c)(1), revising the title of paragraph (e), and adding new paragraphs (b)(6) and (b)(7) to read as follows:

§ 403.5 National pretreatment standards: prohibited discharges.

* * * * *

(b) * * *

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, pollutants with a closed cup flashpoint of less than 140 degrees Farenheit (sixty degrees Centigrade), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ATSM standard D–93–79 or D–93–80k (incorporated by reference, see § 260.11) or a Setaflash Closed Cup Tester, using the test method specified in ATSM Standard D–3278–78 (incorporated by reference, see § 260.11) and pollutants which cause an exceedance of 10% of the lower

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explosive limit (LEL) at any point within the POTW.

* * * * *

(6) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute workers health and safety problems.

(7) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(c) * * *

(1) * * * Each POTW with an approved Pretreatment Program shall continue to develop these limits as necessary and effectively enforce such limits. Such POTWs shall implement the prohibition in paragraph (b)(6) of this section by establishing numerical discharge limits or other controls where necessary based on existing human toxicity criteria or other information. Such POTWs receiving discharges from CWTs as defined in § 403.3(e) shall develop and enforce specific limits for those facilities to prevent pass through as defined in § 403.3(o)(2).

* * * * *

(e) *EPA and Stated enforcement actions under section 309(f) of the CWA.* * * *

4. § 403.6 is proposed to be amended by revising the introductory text to read as follows:

§ 403.6 National Pretreatment Standards: Categorical Standards.

National Pretreatment Standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new Industrial Users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR Chapter I, Subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all prohibitions and limits established under §403.5(c).

* * * * *

5. § 403.8 is proposed to be amended by revising the Section heading, the introductory text paragraph (f), redesignating paragraphs (f)(1)(iii) through (f)(1)(vii) as (f)(1)(iv) through (f)(1) (viii), revising paragraphs (f)(1)(vii)(B), (f)(2)(v), and (f)(2)(vii), adding text to the end of (f)(1)(iv), and (f)(2)(iii), and adding new paragraphs (f)(1)(iii) and (f)(5) to read as follows:

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

* * * * *

(f) *POTW pretreatment requirements.* A POTW Pretreatment Program shall be developed and implemented to meet the following requirements:

(1) * * *

(iii) Develop local limits for commercial aqueous off-site waste treaters (CWTs, as defined in § 403.3(e)) based upon a best professional judgment (BPJ) determination of the best available technology economically achievable (BAT).

(iv) * * * In the case of Industrial Users identified as significant under § 403.3(u), this control shall be achieved through discharge permits or equivalent individual control mechanisms issued to each such user. Such permits or other control mechanisms must contain, at a minimum, the following conditions:

(A) Statement of duration (in no case more than five years);

(B) Statement of non-transferability of the permit without prior POTW approval;

(C) Applicable effluent limits based on categorical pretreatment standards and local limits;

(D) Applicable monitoring, sampling, and reporting requirements;

(E) Notification requirements for slug discharges as defined in § 403.5(b); and

(F) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements.

* * * * *

(vii) * * *

(B) Pretreatment Requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vii)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; or any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected Industrial Users and an opportunity to respond) to halt or prevent any Discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Approval Authority shall have authority to seek judicial relief and may also seek administrative relief when the POTW has sought to seek such relief but has sought a monetary penalty which the Approval Authority believes to be insufficient.

* * * * *

(2) * * *

(iii) * * * Notify each newly designated Significant Industrial User of its status and of all requirments applicable to such users within 30 days after designation as such.

* * * * *

(v) Randomly sample and analyze the effluent from Industrial Users and conduct surveillance and inspection activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing noncompliance with Pretreatment Standards. Inspect and sample the effluent from each Significant Industrial User that discharges into the POTW at least every two years, and evaluate, at the time of such sampling or inpsection, whether each such significant industrial user needs a plan to prevent and control slug discharges as defined under § 403.5(b). The results of such activities shall be made available to the Approval Authority upon request. If the POTW decides that such a plan is needed, each plan shall contain, at a minimum, the following elements:

(A) Description of discharge practices, including non-routine batch discharges;

(B) Description of stored chemicals;

(C) Procedures for promptly notifying the POTW of slug discharges as defined under § 403.5(b), with procedures for follow-up written notification within five days;

(D) Any necessary procedures to prevent accidental spills, including maintenance of storage areas, handling and transfer of materials, loading and unloading operations, and control of plant site run-off;

(E) Any necessary measures for building containment structures or equipment;

(F) Any necessary measures for controlling toxic organic pollutants (including solvents);

(G) Any necessary procedures and equipment for emergency response;

(H) Any necessary follow-up practices to limit the damage suffered by the treatment plant of the environment.

* * * * *

(vii) Comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards. These procedures shall include provision for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of Industrial Users which, at any time during the previous twelve months, were in significant violation of applicable Pretreatment Standards or Pretreatment Requirements. For the purposes of this provision, an Industrial User is in significant violation if its violations meet one or more of the following criteria:

(A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(B) Technical review criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit times the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

(C) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority believes has caused, alone or in combination with other discharges, intereference or pass through (including endangering the health of POTW personnel or the general public);

(D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment and has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vii)(B) of this section to halt or prevent such a discharge;

(E) Violation, by ninety days or more after the schedule date, of a compliance schedule milestone contained in a local control mechanism or enforcement order, for starting construction, completing construction, or attaining final compliance;

(F) Failure to provide required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules within thirty days of the due date;

(G) Failure to accurately report noncompliance; or

(H) Any other violation or group of violations which the Control Authority considers to be significant.

* * * * *

(5) The POTW shall develop and implement an Enforcement Response Plan. This Plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of Industrial User noncompliance. At a minimum, this Plan shall:

(i) Describe how the POTW will investigate instances of noncompliance;

(ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of Industrial User violations and the time periods within which responses will take place;

(iii) Adequately reflect the POTW's primary responsibility to enforce all applicable Pretreatment Requirements and Standards, as detailed in §§ 403.5 and 403.8(f) (1) and (2).

§ 403.10 [Amended]

6. § 403.10 is proposed to be amended by removing the first sentence in paragraph (c).

7. § 403.12 is proposed to be amended by adding text to the end of paragraph (h) by revising paragraphs (i)(1), (j), and (n), and adding new paragraph (p) to read as follows:

§403.12 Reporting requirements for POTWs and Industrial Users

* * * * *

(h) * * * Significant Industrial Users shall submit to the Control Authority at least twice a year a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator.

* * * * *

(i) * * *

(1) An updated listed of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. The list shall identify which Industrial Users are Significant Industrial Users and provide a brief explanation of why any noncategorical discharger with an average flow of 25,000 gallons per day or more of process wastewater was not designated as a Significant Industrial User. The list shall also identify those Industrial Users which are subject to categorical Pretreatment Standards and specify which Standards are applicable to each Industrial User.

* * * * *

(j) *Notification of changed discharge.* All Industrial Users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under § 403.12(p).

* * * * *

(n) *Provisions governing Fraud and False statements:* The reports required to be submitted under this section shall be subject to the provisions of 18 U.S.C. section 1001 relating to fraud and false statements and the provisions of sections 309(c) (4) and (6) of the Act, as amended, governing false statements, representation or certifications in reports required under the Act.

* * * * *

(p) *Notification of the discharge of hazardous wastes.* (1) The Industrial User shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of any discharge into the POTW of a substance which is a listed or characteristic waste under section 3001 of RCRA. Such notification must include a description of any such wastes discharged, specifying the volume and concentration of such wastes and the type of discharge (continuous, batch, or other), identifying the hazardous constituents contained in the listed wastes, and estimating the volume of hazardous wastes expected to be discharged during the following twelve months. The notification must take place within 180 days of the effective date of this rule. This requirement shall not apply to pollutants already reported under the self-monitoring requirements of § 403.12(b), (d), and (e).

(2) Dischargers are exempt from the requirements of paragraph (p)(1) of this section during a calendar month in which they generate no more than 100 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.5(e), (f), (g), and (j). Generation of more than one hundred kilograms of hazardous wastes in any given month requires a one-time notification. Subsequent months during which the industrial user generates more than one hundred kilograms of hazardous waste do not require additional notification, except for the acute hazardous wastes specified in 40 CFR 261.5(e), (f), (g), and (j).

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(3) In the case of new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW of the discharge of such substance within 90 days of the effective date of such regulations, except for the exemption in paragraph (p) (2) of this section.

(4) In the case of any notification made under this paragraph (p) of this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of wastes generated to the degree it has determined to be economically practicable and that it has selected the method of treatment, storage, or disposal currently available which minimizes the present and future threat to human health and the environment.

[FR Doc. 88-26796 Filed 11-22-88; 8:45 am]
BILLING CODE 6560-50-M

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S. 2215/Pub. L. 100-679

Office of Federal Procurement Policy Act Amendments of 1988. (Nov. 17, 1988; 102 Stat. 4055; 18 pages) Price: $1.00

S. 2470/Pub. L. 100-680

Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988. (Nov. 17, 1988; 102 Stat. 4073; 5 pages) Price: $1.00

S.J. Res. 327/Pub. L. 100-681

Commemorating January 28, 1989, as a "National Day of Excellence" in honor of the crew of the space shuttle Challenger. (Nov. 17, 1988; 102 Stat. 4078; 1 page) Price: $1.00

S.J. Res. 332/Pub. L. 100-682

To designate the period commencing December 11, 1988, and ending December 17, 1988, as "National Drunk and Drugged Driving Awareness Week." (Nov. 17, 1988; 102 Stat. 4079; 2 pages) Price: $1.00

S.J. Res. 352/Pub. L. 100-683

Designating September 24, 1989, as "United States Marshals Bicentennial Day." (Nov. 17, 1988; 102 Stat. 4081; page) Price: $1.00

S.J. Res. 365/Pub. L. 100-684

To designate January 28, 1989, as "National Challenger Center Day" to honor the crew of the space shuttle Challenger. (Nov. 17, 1988; 102 Stat. 4082; 1 page) Price: $1.00

S. 2209/Pub. L. 100-685

National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989. (Nov. 17, 1988; 102 Stat. 4083; 21 pages) Price: $1.00

H.J. Res. 650/Pub. L. 100-686

Designating April 1989 as "Actors Fund of America Appreciation Month." (Nov. 18, 1988; 102 Stat. 4104; 1 page) Price: $1.00

S. 11/Pub. L. 100-687

To amend title 38, United States Code, to establish certain procedures for the adjudication of claims for benefits under laws administered by the Veterans' Administration; to apply the provisions of section 553 of title 5, United States Code, to rulemaking procedures of the Veterans' Administration; to establish a Court of Veterans' Appeals and to provide for judicial review of certain final decisions of the Board of Veterans' Appeals; to provide for the payment of reasonable fees to attorneys for rendering legal representation to individuals claiming benefits under laws administered by the Veterans' Administration; to increase the rates of compensation payable to veterans with service-connected disabilities; and to make various improvements in veterans' health, rehabilitation, and memorial affairs programs; and for other purposes. (Nov. 18, 1988; 102 Stat. 4105; 34 pages) Price: $1.25

S. 2030/Pub. L. 100-688

To amend the Marine Protection, Research, and Sanctuaries Act of 1972 to provide for termination of ocean dumping of sewage sludge and industrial waste, and for other purposes. (Nov. 18, 1988; 102 Stat. 4139; 22 pages) Price: $1.00

S. 2049/Pub. L. 100-689

Veterans' Benefits and Programs Improvement Act of 1988. (Nov. 18, 1988; 102 Stat. 4161; 20 pages) Price: $1.00

H.R. 5210/Pub. L. 100-690

Anti-Drug Abuse Act of 1988. (Nov. 18, 1988; 102 Stat. 4181; 365 pages) Price: $11.00

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NO
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11-25-88
Vol. 53 No. 227

federal register

Friday
November 25, 1988

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VOL
53
ISS
227
NO
25
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11-25-88
Vol. 53 No. 227
Pages 47657-47798

federal register

Friday
November 25, 1988

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VOL
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NO
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1988
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Rules and Regulations

Federal Register
Vol. 53, No. 227
Friday, November 25, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt as a final rule the interim rule published at 53 FR 31639 which amended the regulations found at 7 CFR Part 26 which set forth the formula which is used by the Secretary of Agriculture to determine the adjusted world price for upland cotton. These actions were taken under the authority of section 103A(a)(5)(E) (i) through (iii) of the Agricultural Act of 1949, as amended, in order to enhance the effectiveness of the upland cotton price support program.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major." It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this final rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR Part 26 was originally added to the Code of Federal Regulations adequately covers these amendments. Therefore, a new Regulatory Flexibility Analysis has not been prepared.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An interim rule was published in the **Federal Register** on August 19, 1988 (53 FR 31639), amending regulations found at 7 CFR Part 26 which set forth the formula which is used by the Secretary of Agriculture to determine the adjusted world price for upland cotton. The interim rule provided for a 30-day public comment period which ended September 19, 1988. Six responses were received.

Discussion of Comments

Five respondents supported the changes made by the regulation. However, as members of the textile by-products industry, they voiced concerns about the impact on their industry of the changes which would have the effect of lowering the adjusted world price. The respondents indicated that, as a result of the 1986 Upland Cotton Program, they lost some markets to Low-priced cotton lint. The protection extended to gin motes and spinnable textile wastes through the 1986 Inventory Protection Program and to gin motes under the 1986 First Handler Certificate Program was considered vital to the competitive position of these products in the textile industry. Since the changes made no provision for payments with respect to cotton textile by-products, they felt it appropriate to raise the issue at this time.

Based upon a review of these concerns, it has been determined that this issue is not directly related to the changes made by the interim rule and that this issue should more appropriately be considered in the context of the 1989 Upland Cotton Program. Since analysis and consideration of those program provisions are currently taking place, these comments will be addressed in the formulation of the 1989 program.

The sixth respondent discussed the impact of the program changes on the price of 1987-crop cotton not pledged as collateral for price support loans. As a producer holding such cotton, the respondent felt that the changes unfairly lowered the price he was being offered for his cotton. He suggested several remedies to this problem including reopening the loan availability period for 1987-crop cotton or making a payment to either the producer or the buyer equal to the difference between the loan rate and the adjusted world price. Implementing these suggestions would be unfair to producers who sold their 1987-crop cotton prior to these changes. The respondent's recommendations, if implemented, would result in increased Commodity Credit Corporation outlays and would not contribute to the competitiveness of U.S. cotton. For these reasons, the respondent's recommendations were not adopted.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

PART 26—[AMENDED]

Final Rule

Accordingly, the interim rule published at 53 FR 31639 which amended 7 CFR Part 26 is hereby adopted as a final rule without change.

Signed at Washington, DC, on November 8, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88–27257 Filed 11–23–88; 8:45 am]
BILLING CODE 3410–05–M

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Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 1405, 1413, 1421, and 1470

Price Support Loans and Purchases, Production Adjustment Programs, and Other Operations

AGENCY: Agricultural Stabilization and Conservation Service; Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts the interim rule published in the **Federal Register** on June 3, 1988 at 53 FR 20280. The interim rule amended 7 CFR Part 1421 by combining as one subpart the subparts currently contained in Part 1421 which set forth the price support loan and purchase program regulations for the 1988 and subsequent crops of barley, corn, sorghum, oats, farm-stored peanuts, rice, rye, soybeans, and wheat. The interim rule also amended Part 1421 by revising: (1) The manner in which price support rates are determined when adjoining towns in different counties are considered to be one shipping point; (2) the information which must be entered on a warehouse receipt in order for such receipt to be used in obtaining a price support loan; and (3) the grade requirements which must be met by commodities pledged as collateral for a warehouse-stored price support loan. This final rule also deletes an obsolete reference to a form no longer used by CCC.

This final rule also adopts the proposed rule published in the **Federal Register** on October 5, 1987 at 52 FR 37160 which would amend 7 CFR Part 1405 to set forth the manner in which interest in calculated by the Commodity Credit Corporation (CCC).

These regulations provide greater uniformity in program administration and delete repetitive provisions.

EFFECTIVE DATE: November 25, 1988.

ADDRESS: Director, Cotton, Grain, and Rice Price Support Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Harold Connor, Program Specialist, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013. Telephone: (202) 447–8223.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to the interim rule since Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporations (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. It has been determined by an environmental envaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Proposed Rule

On October 5, 1987, a proposed rule was published in the **Federal Register** at 52 FR 37160 with respect to the manner in which the rate of interest that is generally applicable to CCC loans would be determined and announced. No comments were received in response to this proposed rule. Accordingly, the provisions of this proposed rule are adopted without change.

Interim Rule

On June 3, 1988, an interim rule was published in the **Federal Register** at 53 FR 20280 which amended the regulations governing Price Support and Production Adjustment Programs. This interim rule amended Chapter XIV of Title 7 of the Code of Federal Regulations pertaining to the functions of Commodity Credit Corporation, Department of Agriculture to include the regulations which set forth the terms and conditions of the CCC production adjustment programs at 7 CFR Part 713 and the terms and conditions under which CCC may make payments in a form other than cash set forth at 7 CFR Part 770. These regulations were formerly set forth in Chapter VII of Title 7 of the Code of Federal Regulations pertaining to the functions of ASCS. The new section numbers for each of the existing sections are provided in the table below:

Old section	New section
713.1–713.157	1413.1–1413.157
770.1–770.7	1470.1–1470.7

The interim rule also: (1) Amended the regulations set forth at 7 CFR Part 1421 to codify the terms and conditions under which CCC will make available price support loans and purchase agreements for barley, corn, farm-stored peanuts, oats, rye, sorghum, soybeans, rice, and wheat in one subpart of 7 CFR Part 1421; (2) amended 7 CFR 1421.59, 1421.99, 1421.219, 1421.254, 1421.344, 1421.374, and 1421.470 to remove regulations that provided for adjustment of the basic county support price for barley, corn, sorghum, oats, rye, soybeans and wheat, respectively, in the event two or more CCC-approved warehouses are located in the same or adjoining towns which have the same freight rate even though such warehouses are located in the same county; (3) amended 7 CFR 1421.18(c)(3) to delete references to the method used by CCC in adjusting basic county loan rates when the reconcentration of CCC loan collateral is approved; (4) amended 7 CFR 1421.9 to set forth with greater specificity those entries which must be included on warehouse receipts which are tendered to CCC in connection with a price support loan or purchase agreement; (5) combined at 7 CFR 1421.18 the individual commodity subparts for barley, corn, sorghum, oats, rice, rye, soybeans, and wheat that set forth the grade requirements which must be met by commodities pledged as collateral for warehouse-stored CCC price support loans and also incorporated new grading requirement terminology which is currently used by the Federal Grain Inspection Service; and (6) made changes throughout 7 CFR Part 1421 for purposes of grammar and clarity.

General Summary of Comments

Comments were received from only one respondent with respect to the interim rule. The response, submitted on behalf of the Georgia Agricultural Commodity Commission for Peanuts, indicated that the impact would not be very great on the peanut growers represented since those growers seldom use farm-stored loans. The respondent stated that the interim rule would be most important to the growers in Virginia and Carolina, where the types of peanuts grown are different from those grown in Georgia, and expressed support of the position of growers in those areas on the interim rule. The respondent ultimately saw the interim rule as causing no negative impact on the peanut industry as a whole. No other comments were received.

Accordingly, the regulations as set forth in the interim rule published at 53 FR 20280 are adopted as a final rule without any changes other than the changes made in this final rule for the purposes of grammar and clarity, and to delete the reference to an obsolete form.

List of Subjects

7 CFR Part 713

Feed grain, Rice, Upland and extra long staple cotton, Wheat and related programs.

7 CFR Part 770

Commodity certificates, In-Kind payments, Other forms of payment.

7 CFR Part 1405

Feed grain, Rice, Upland cotton, Wheat and related programs, Grains, Loan programs/Agriculture, Price support programs, Warehouse commodity certificates, In-Kind payments, Other forms of payment.

7 CFR Part 1421

Grains, Loan programs/Agriculture, Price support programs, Warehouses.

Final Rule

Accordingly, Title 7 of the Code of Federal Regulations is revised as follows:

PART 1405—[AMENDED]

1. The proposed rule published at 52 FR 37160 is adopted as a final rule as follows:

A. The authority citation for 7 CFR Part 1405 is revised to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c).

B. Sections 1405.1 and 1405.2 are revised to read as follows:

§ 1405.1 Interest.

(a) *General.* Except as may otherwise be determined by CCC as provided in individual program regulations, program contracts or such other means as deemed appropriate by CCC, interest shall be assessed as provided in this Part with respect to loans disbursed by CCC.

(b) *Rate in effect on disbursement.* The rate of interest that is applicable to CCC loans shall be equal to the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the date the loan is disbursed by CCC. This rate of interest shall be in effect until the earlier of the maturity of the loan or the next January 1.

(c) *Rate in effect as of January 1.* The rate of interest applicable to all CCC loans that are outstanding as of January 1 of any year shall be adjusted as of such date to equal the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on such date. This rate shall be in effect until the earlier of the maturity of the loan or the next January 1. The rate of interest applicable to CCC loans as of January 1 of any year shall be announced by CCC by press release or other means.

§ 1405.2 Basic rule of fractions.

Fractions shall be rounded in accordance with the provisions of 7 CFR Part 793.

PART 1421—[AMENDED]

2. The interim rule published at 53 FR 20280 is adopted as a final rule with the following changes:

A. The authority citation for 7 CFR Part 1421 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 101A, 105C, 107D, 108, 110, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 1439, as amended, 91 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441–1, 1444b, 1445b–2, 1445c–2, 1445e, 1446, 1447, 1421, 1423, and 1425).

§ 1421.1 [Amended]

B. Section 1421.1 is revised by removing "1425" and inserting in lieu thereof "1446".

C. 7 CFR 1421.4(a) is revised to read as follows:

§ 1421.4 Eligible producer.

(a) *Producer.* An eligible producer of a crop of a commodity shall be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this part; and

(3) Meets the requirements of Parts 12, 718, and 1413 of this title.

* * * * *

D. 7 CFR 1421.5(b)(1) is revised to read as follows:

§ 1421.5 General eligibility requirements.

* * * * *

(b) *Quality and quantity.* (1) Commodities must be tendered to CCC by an eligible producer andmust be in existence at the time of disbursement of loan or purchase agreement proceeds. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. Such commodities must not contain more than two rodent pellets or comparable amounts of other filth per 1,000 grams of wheat.

* * * * *

E. 7 CFR 1421.6 is revised to read as follows:

§ 1421.6 Maturity and expiration dates.

(a) *Loans.* (1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities except peanuts, no later than the last day of the ninth calendar month following the month in which the loan application is made; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated maturity date.

(b) *Purchase agreements.* (1) With respect to all commodities except peanuts, purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved. With respect to peanuts, purchase agreements expire on April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the expiration date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated expiration date.

(c) *Extension of loans.* (1) Notwithstanding any other provision of this Part, all 1987 and prior crop year loans which have been made available to eligible producers in accordance with provisions of this part shall not be extended upon maturity except that 1985 and 1986 crop corn and sorghum loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year.

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(2) With respect to all commodities, 1988 and subsequent year loans may not be extended upon maturity.

F. 7 CFR 1421.7(e) is revised to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(3) *Adjustment of basic county support rates.* (1) This paragraph is applicable to barley, rye, sorghum and wheat pledged as collateral for regular price support loans.

(2) The applicable basic support rate for commodities pledged as collateral for a warehouse-stored loan that were received by rail or combination barge-rail shall be the basic support rate established for the county from which the commodity was shipped. The support rate may be further adjusted when the commodity is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–2, Advance Notification of Grain Movement By Producer; Form CCC–699, Reconcentration Agreement and Trust Receipt; or as otherwise determined and announced by CCC.

(3) The applicable basic county support rate for commodities delivered by truck by the producer to a warehouse at a normal delivery point shall be the support rate for the county where the commodity is stored, adjusted for the premiums and discounts determined by CCC. The basic county support rate for commodities delivered by truck by the producer to (i) an in-line warehouse, or (ii) a warehouse and shipped by truck, barge, or truck-barge to an in-line warehouse shall be the support rate for the county from which the commodity was shipped, adjusted for premiums and discounts determined by CCC. The support rate may be further adjusted when the commodity is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–2, Advance Notification of Grain Movement By Producer; Form CCC–699, Reconcentration Agreement and Trust Receipt; or as otherwise determined and announced by CCC.

(4)(1) Supplemental certificates must be issued by the warehouse which receives commodities which have been moved in accordance with paragraphs (e) (2) and (3) of this section. Such certificates must show:

(A) The rate of freight paid into the storage point;

(B) The amount of any penalty for backhaul or out-of-line movement;

(C) The applicable normal trade channel market that would be used in commercial channels of trade; and

(D) Any other information which may be prescribed by CCC.

(ii) The warehouseman shall be responsible for the accuracy of such information and shall be liable for any cost incurred by CCC for the failure to comply with the provisions of this paragraph. After the acquisition of the warehouse receipt by CCC, such costs shall be determined in accordance with the provisions of the Uniform Grain Storage Agreement which has been executed by the warehouseman.

G. 7 CFR 1421.9(i) is revised to read as follows:

§ 1421.9 Warehouse receipts.

* * * * *

(i) *Freight certificate requirements.* Warehouse receipts representing commodities which have been shipped by rail and/or barge, must be accompanied by supplemental certificates completed according to § 1421.7(e).

§ 1421.11 [Amended]

H. 7 CFR 1421.11 is amended by removing the second sentence.

I. 7 CFR 1421.12(b) (2) and (3) are revised to read as follows:

§ 1421.12 Fees, charges, and interest.

* * * * *

(b) *Delivery charges.* * * *

(2) Delivery charges shall be paid at the time of settlement with respect to:

(i) Farm-stored loans; and

(ii) Purchase agreements.

(3) With respect to warehouse-stored loans, delivery charges shall be paid by the producer prior to the date the loan application is made and shall be deducted from the loan proceeds.

* * * * *

J. 7 CFR 1421.18(b)(4)(i)(A) is revised to read as follows:

§ 1421.18 Warehouse-stored loans.

* * * * *

(b) *Grade requirements.*

* * * * *

(4)(i) Oats must grade No. 3 or better, except that: (A) The oats may grade No. 4 or "Sample Grade" on the factors of test weight or because of being badly stained or materially weathered or both; and

* * * * *

Signed at Washington, DC, on November 18, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation, Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–27260 Filed 11–23–88; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV–89–004]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Dancy Tangerine Minimum Size Relaxation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule temporarily relaxes the minimum size requirements for domestic shipments of Florida Dancy tangerines from size 176 (2–6/16 inches in diameter) to size 210 (2–4/16 inches in diameter). The size composition, maturity level, and current and prospective market demand conditions for the 1988–89 season Dancy tangerine crop warrant this action.

DATES: The Florida Dancy tangerine size relaxation is effective for the period November 21, 1988, through August 20, 1989. Comments which are received by December 27, 1988, will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Marketing Agreement and Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order. In addition, there are approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of these shippers and a majority of the producers may be classified as small entities.

Grade and size requirements for Florida citrus fruit covered under this marketing order are specified in § 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (7 CFR 905.306; 53 FR 17171, May 16, 1988). This regulation was issued on a continuing basis subject to modification, suspension, or termination by the Secretary. Paragraph (a) of § 905.306 provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerine, and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I.

This rule amends paragraph (a) of § 905.306 to temporarily relax the minimum size requirements for domestic shipments of Dancy tangerines from size 176 (2–6/16 inches in diameter) to size 210 (2–4/16 inches in diameter). The relaxation for Dancy tangerines will remain in effect from November 21, 1988, through August 20, 1989, by which time shipment of the 1988–89 season Dancy tangerine crop will be finished.

The Citrus Administrative Committee (committee), which administers the program locally, recommended the relaxation at its October 18, 1988, meeting. The committee's recommendation to relax such requirements follows the practice of prior years of lowering the minimum size requirements when the crop has reached an acceptable level of flavor and maturity. Dancy tangerine shipments are expected to start in mid-November and peak in mid-December this season.

The relaxed minimum requirements for Dancy tangerines reflect the projected maturity and flavor levels and size composition of the crop which will remain for shipment on November 21, 1988, as well as the prospective tangerine supplies remaining for shipment at that time. The committee expects the maturity and flavor of the tangerines to be released to be adequate to foster strong sales for the remainder of the season. Growing conditions have been especially good this season. This action is designed to maximize shipments to fresh market channels.

The relaxation of the minimum size requirements for Dancy tangerines is only for 1988–89 season shipments. The tighter minimum size requirements, as specified in § 905.306, will resume for Dancy tangerines effective August 21, 1989. The resumption of the tighter minimum size requirements for 1989–90 season shipments is based upon the anticipated maturity, size, quality, and flavor characteristics of Dancy tangerines early in the shipping season.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida tangerine shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base is not subject to the handling requirements.

The relaxation of the minimum size requirements applicable to Dancy tangerines is intended to maximize domestic shipments and permit shipments to meet buyer needs. Therefore, the Department's view is that the impact of this action upon producers and shippers will be beneficial because it will enable shippers to provide Dancy tangerines consistent with buyer requirements. The application of minimum size requirements to Florida Dancy trangerines over the past several years has resulted in fruit of acceptable size, maturity, and flavor being shipped to fresh markets.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available infomation, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecesary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes size requirements currently in effect for Florida Dancy tangerines; (2) Florida Dancy tangerine shippers are aware of this action which was recommended by the committee at a public meeting and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1988–89 season Florida Dancy tangerine crop will be underway by November 21, 1988; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, grapefruit, oranges, tangelos, tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

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PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The provisions of § 905.306 are amended by revising the following entries in Table I of paragraph (a) applicable to domestic shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 47.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * * * *			
Tangerines:			
* * * * *			
Dancy	11/21/88–8/20/89.	U.S. No. 1	2–4/16
	On and after 8/21/89.	U.S. No. 1	2–6/16
* * * * *			

Dated: November 18, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–27259 Filed 11–23–88; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: The Nuclear Regulatory Commission is amending a final rule that was published on November 10, 1988, to correct the numerical designation of one footnote and to indicate the removal of a second footnote. These corrections are necessitated by a separate rulemaking, published on October 13, 1988 (53 FR 40019), that revised many footnotes in the policy statement. These changes were inadvertently overlooked when the November rule was published. This notice corrects that oversight.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758.

SUPPLEMENTARY INFORMATION:

In the November 10, 1988, edition of the **Federal Register**, on page 45451, make the following corrections:

PART 2—[AMENDED]

Appendix C—[Amended]

1. In column 2, amendatory instruction number 3, the number of the footnote reference and the actual footnote should be "13" rather than "11".

2. In column 2, amendatory instruction number 4 should be removed along with the footnote, as this footnote was earlier removed in the October 1988 final rulemaking document.

Dated at Bethesda, Maryland, this 21st day of November 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88–27212 Filed 11–23–88; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Reg. C; Docket No. R–0635]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice regarding data reporting.

SUMMARY: On August 19, 1988, the Board published a revised Regulation C. Among other things, the revised regulation implemented statutory amendments that brought mortgage banking subsidiaries of bank and savings and loan holding companies and certain savings and loan service corporations within the coverage of the Home Mortgage Disclosure Act (HMDA). Under the statutory amendments, these institutions were required to report mortgage loan data for all of calendar year 1988. More recently, however, Congress changed the effective date provision of the original amendments. As a consequence, in their reports for calendar year 1988, these institutions are required to report data only for loans originated or purchased on or after August 19, 1988. This notice is intended to alert institutions to the revised effective date.

DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Noto or Linda E. Vesperony, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3667 or 202–452–2412; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202–452–3544.

SUPPLEMENTARY INFORMATION: The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). It requires depository institutions that have over $10 million in assets, and have offices in metropolitan statistical areas (MSAs) or primary metropolitan statistical areas (PMSAs), to disclose annually their originations and purchases of mortgage and home improvement loans and to report this data to federal regulators.

In the Housing and Community Development Act of 1987 (Pub. L. 100–242, section 565, 101 Stat. 1815) (Housing Act), which was signed into law on February 5, 1988, the Congress expanded the coverage of HMDA to include mortgage banking subsidiaries of bank holding companies and savings and loan holding companies, as well as savings and loan service corporations. Revisions to Regulation C to implement the expanded coverage were adopted by the Board and published in the **Federal Register** on August 19, 1988 (53 FR 31683). In accordance with the amendments in the Housing Act, the newly covered institutions were required to include, in the report that is due March 31, 1989, data on loans that they originated or purchased at any time during calendar year 1988.

Recently, in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, 102 Stat. 3224), the Congress clarified the applicability of the Housing Act amendments to HMDA. As a consequence, mortgage banking subsidiaries of bank and savings and loan holding companies and savings and loan service corporations are required, in their March 1989 reports, only to include HMDA data for loans originated or purchased on or after August 19, 1988.

Board of Governors of the Federal Reserve System, November 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–27161 Filed 11–23–88; 8:45 am]

BILLING CODE 6210–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards for Natural Gas Distribution

AGENCY: Small Business Administration (SBA).

ACTION: Emergency interim final rule.

SUMMARY: The SBA is establishing, on an emergency interim basis, a size standard of 500 employees for Standard Industrial Classification (SIC) code 4924, Natural Gas Distribution. No size standard exists at present for this industry. Recent deregulation laws grant open access to gas lines owned by local public utilities to all firms including marketers, transmission firms and gas field producers. As a result of deregulation, firms can now compete for Federal natural gas contracts, necessitating the establishment of a size standard to be used for 8(a) program participation and contracts set aside for exclusive small business bidding.

Interested parties are invited to comment on the suitability of this emergency interim size standard or the suitability of adopting a different size standard.

DATES: November 25, 1988. Comments are to be submitted on or before January 24, 1989.

ADDRESS: Address All Comments To: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 1441 L Street NW., Room 601, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Norma Salenger, Size Standards Staff, (202) 653–6373.

SUPPLEMENTARY INFORMATION: During the months of August, September, and October 1988, the SBA received several requests to establish promptly a size standard applicable to the procurement of natural gas by military installations. The sudden interest, by both firms and Federal agencies, is due to the recent deregulation laws which grant open access to interstate and local transportation pipelines owned by regulated public utility firms for the transmission and distribution of natural gas. Prior to this deregulation each public utility held title to the natural gas as it passed through its lines. Thus the Federal Government and other consumers purchased the gas from the local regulated gas utility. Under current laws, with open access to transportation lines, many firms within the natural gas industry have the opportunity to supply natural gas to the consumer.

Deregulation has introduced competition in the supply of natural gas to the Federal Government. Under deregulation, Federal agencies can purchase natural gas directly from the producing field, from utilities, or from marketers. Natural gas marketers, a new type of entity, are firms that take title to the gas before transmission over the long range lines and hold title until delivery to the ultimate consumer, but do not take physical possession of the gas. They arrange the purchase of gas at the source, transportation over pipelines, and sale to the user. Marketers have shown particular interest in bidding on Federal contracts for natural gas.

Natural gas can be supplied by firms whose primary line of business can be in any of five standard industrial classifications (SICs). Field producers of natural gas are classified under SIC code 1311, Crude Petroleum and Natural Gas. SIC code 1311 already has a size standard of 500 employees. There are no size standards for the other four industries that can supply natural gas. These industries are: SIC code 4922, Natural Gas Transmission; SIC code 4923, Natural Gas Transmission and Distribution; SIC code 4924, Natural Gas Distribution; and SIC code 4932, Gas and Other Services Combined (with the major portion gas services). With respect to natural gas marketers, SBA has consulted with two Federal agencies who advised that their practice is to determine that natural gas marketers are classified within SIC code 4924.

The Department of Defense (DoD) is expected to issue a substantial number of contracts for natural gas at the end of 1988 and the first several months of 1989. In recent solicitations for the procurement of natural gas, the DoD has designated SIC code 4924, Natural Gas Distribution, as the industry classification which describes such purchases. The contracting officer has the responsibility of selecting the appropriate SIC for each procurement and the size standard for that SIC will be used to determine if a firm is small. Any firm capable of performing the contract may bid subject to the size standard for the designated SIC in the case of a set aside procurement.

The DoD and several private firms have expressed concern over the absence of a small business size standard for SIC code 4924. Without a size standard, the determination of what is a small business within SIC code 4924 for Federal procurements of natural gas cannot be made. This absence of a small business size standard has an impact on three programs targeted for small businesses. First, Federal contracts for natural gas cannot be set aside for exclusive small business competition. Recent congressional actions (i.e., Pub. L. 99–661 and H.R. 1807) demonstrate a concern by the Congress to increase small business participation in industries in which participation has been historically low. Without a small business size standard small business participation cannot be measured, much less increased. Second, SBA and Federal agencies cannot make available to firms within the 8(a) program newly available contract opportunities in the field of natural gas distribution. Finally, DoD cannot make a determination as to whether a firm is small without a size standard for that industry for purposes of increasing small disadvantaged business participation pursuant to section 1207 of Pub. L. 99–661. For these reasons, an emergency interim final size standard is being established for SIC code 4924. This action is taken under SBA's implementing regulation § 121.10(b) Title 13 CFR, which allows SBA to set an emergency interim size standard if no size standard exists for the industry in question.

Historical data are available on Federal procurements for natural gas. Based on data from the Federal Procurement Data Center, there were 405 Federal contracts for natural gas in FY 1987 for a total of $194,336,000, and an average contract value of $479,842. This was a 4.2 percent increase in procurement dollars from FY 1986, when $185,572,000 in natural gas was purchased through 447 Federal contracts. In FY 1987, 88.8 percent was purchased from distributors (SIC codes 4923, 4924, and 4932) for an average of $445,700 for the 387 contracts. Only 18 procurements were directly from a natural gas transmission firm (SIC code 4922) and these averaged $1,213,700 per contract.

Data for the natural gas distribution industry are not collected by the U.S. Bureau of the Census, but are collected by SBA's data base entitled "United States Establishment and Enterprise Microdata (USEEM)." These data are used for this rule to determine an appropriate temporary size standard for natural gas distribution. In the following table it is clear that the bulk of sales in this industry is by firms with at least 1,000 employees.

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DISTRIBUTION OF SALES BY EMPLOYMENT SIZE—1986 SIC CODES 4613 AND 4924

Employment size class	SIC code 4613		SIC code 4924	
	No. of firms	Pct. of sales	No. of Firms	Pct. of sales
1–19	22	0.2	193	4.4
20–49	4	0.3	36	1.6
50–99	7	1.8	15	1.6
100–249	2	1.8	18	3.6
250–499	0	0	6	4.0
500–999	1	8.2	11	9.1
1,000–4,999	1	87.7	15	43.1
5,000+	0	0	3	32.6
Totals	37	100.0	297	100.0

Source.—U.S. Small Business Administration, United States Establishments Enterprise Microdata (USEEM).

The decision to establish the emergency interim size standard at 500 employees took into consideration several factors. The existing size standard for field producters of natural gas, SIC code 1311, Crude Petroleum and Natural Gas, is at 500 employees. Field producers can participate as bidders on Federal contracts along with utilities and marketers, and as a result there is a basis for establishing the size standard at a common level with their industry. Suppliers of natural gas, other than field producers, are similar to nonmanufacturers who deliver a product manufactured by another firm. Natural gas is not a manufactured product, but like the manufacturer, a nonproducer may sell the product of a natural gas producer. Considering SBA's position of establishing a 500-employee size standard for nonmanufacturers which is a size standard for distributors, a nonproducer of natural gas, a size standard of 500 employees ensures equitable treatment of similar types of firms. The lions's share of natural gas sales by distributors is by firms with 500 or more employees. In the closely related industry, SIC code 4613, Refined Petroleum Pipelines, 95.9 percent of industry sales is by firms with over 500 employees. For SIC code 4613, the size standard is 1,500 employees. This comparison lends support to a size standard of at least 500 employees.

A size standard of 500 employees for natural gas distributors would allow small field producers and small public utilities to bid in competition with almost all marketers. However, marketers can be in business with a few personnel, since they usually do not have production, storage, or transportation facilities. A size standard substantially below 500 employee would result in limiting set-aside contracts almost exclusively to marketers. SBA has no desire to exclude small field producers or others with natural gas facilities and is thus establishing 500 employees as a interim size standard.

Compliance with Regulatory Flexibility Act, Executive Orders 12291 and 12612 and the Paperwork Reduction Act

SBA certifies that this interim final rule is being published pursuant to an emergency for the reasons indicated above and the SBA is, therefore, waiving the requirements of section 603 of the Regulatory Flexibility Act. The SBA will publish a final regulatory analysis when this rule is promulgated in final form.

SBA certifies that this rule poses no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

SBA also certifies that this rule would not have Federalism implications warranting the preparation of a Federalism assessment in accordance with Executive Order 12612.

SBA is waiving the requirements for a Regulatory Impact Analysis pursuant to section 8(a)(1) of Executive Order 12291. As discussed above, a size standard is needed immediately to determine if a firm is small on Federal contracts for natural gas distribution. The portion of natural gas that can be expected to be purchased from small firms under the size standard being established by this final rule cannot be estimated at this time, since there are no data on past procurements indicating the size of firm receiving past contracts. Data are expected to be available for such an estimate in the final regulatory impact analysis.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

Accordingly, SBA amends Part 121 of 13 CFR as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 of 13 CFR continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, as amended, 15 U.S.C., 632(a) and 634(b)(6), and Pub. L. 99–591 and 99–661.

§ 121.2 [Amended]

2. In § 121.2(d)(2), Table 2, is amended by adding to Major Group 49 the following:

SIC (*=New SIC Code in 1987, Not Used in 1972)	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
4924	Natural Gas Distribution.	500

* * * * *

Dated: November 7, 1988.

James Abdnor,

Administrator U.S. Small Business Administration.

[FR Doc. 88–27222 Filed 11–23–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–31, Special Condition No. 25–ANM–21]

Special Conditions; Cessna Aircraft Co. Model 560 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company Model 560 airplane. This airplane will have an unusually high operating altitude (45,000 feet) when compared to the state of technology envisioned in the airworthiness standards of Part 25 of the Federal Aviation Regulations (FAR). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 25.

EFFECTIVE DATE: November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; telephone (206) 431–2118.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1987, Cessna Aircraft Company applied for an amendment to their type Certificate No. A22CE to include their new Model 560 airplane. The Model 560, which is a derivative of the S550 currently approved under Type Certificate No. A22CE, is slightly larger, with a 20-inch fuselage stretch, different engines, increased horizontal tail size, increased operating weights and speeds, and an increase in operating altitude from 43,000 feet to 45,000 feet.

Under the provisions of § 21.101, Cessna Aircraft Company must show that the Model 560 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A22CE or the applicable regulations in effect on the date of application for the Model 560. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A22CE are as follows: Part 25 of the Federal Aviation Regulations, effective February 1, 1965, including Amendments 25–1 through 25–17; §§ 25.251(e), 25.934, and 25.1091(d)(2), as amended through Amendment 25–23; §§ 25.787, 25.789, 25.791, 25.853, 25.855, 25.857, and 25.1359, as amended through Amendment 25–32; §§ 25.1385(c) and 25.1401, as amended through Amendment 25–40; § 25.1303(a)(2) as amended through Amendment 25–43; Special Conditions 25–25–CE–4; Part 36 of the Federal Aviation Regulations effective December 1, 1969, as amended at the time of certification; and SFAR 27, effective February 1, 1974, as amended at the time of certification.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model 560 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2). In addition to the applicable airworthiness regulations and special conditions, the Model 560 must comply with the noise certification requirements of Part 36 and the engine emission requirements of Special Federal Aviation Regulation (SFAR) 27.

Novel or Unusual Design Features

The model 560 will incorporate an unusual design feature in that it will be certified to operate up to an altitude 45,000 feet.

The FAA policy is to apply special conditions to Part 25 transports when the certificated altitude exceeds the capability of the oxygen system (in this case, the passenger system.) This has been the case for the early Learjets, the Cessna 650, and the Israel Aircraft Industries Model 1125 Westwind Astra. The special conditions for the Westwind Astra are considered the most applicable to the Cessna Model 560 and its proposed operation. They were therefore used as the basis for the special conditions described below.

Damage tolerance methods were proposed to be used to assure pressure vessel integrity while operating at the higher altitude, in lieu of the ½-bay crack requirement used in some previous special conditions. Crack growth data is used to prescribe an inspection program which should detect cracks before an opening in the pressure vessel would allow rapid depressurization., Initial crack sizes for detection are determined under § 25.571, Amendment 25–54. The cabin altitude after failure may not exceed the cabin altitude/time curve limits shown in Figures 3 and 4. Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000 foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition therefore requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions for improbable failures not coverd by the spcial conditions, provided the cabin altitude is limited.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–88–5–NM for the Cessna Aircraft Company Model 560 airplane was published in the **Federal Register** on August 11, 1988 (53 FR 30292). Only one comment was received.

The commenter notes that the proposed special conditions state that "the cabin altitude after failure may not exceed the cabin altitude/time curve limits shown in figures 3 and 4," and further state that "to prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes." The commenter points out that if these requirements are valid, they would be valid at any pressurized altitude, i.e., the occupants would experience similar physiological effects in the event the altitude/time curve was exceeded. Based on this argument, the commenter asserts that the requirements should not be levied as a special condition based on an arbitrary altitude. The FAA does not agree that these special conditions should not be adopted. As stated previously, the FAA has determined that the applicable

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regulations do not contain adequate standards with respect to the Model 560 airplane's operation at high altitude. Therefore, these special conditions are necessary to establish an acceptable level of safety. The FAA does concur, however, that requirements such as those contained in these special conditions should be made generally applicable, and is considering rulemaking to adopt such requirements.

The commenter also states that the FAA is inconsistent with its acceptance or rejection of using "extremely improbable" as a means of showing compliance with rules contained in Part 25, as compared with selected portions of some special conditions. The commenter states, as an example, that at least one model airplane was certified to 41,000 feet by certifying that an engine rotor burst for a portion of the engine is "extremely improbable." If, as the commenter asserts, it is acceptable to certify an airplane to 41,000 feet, based on an "extremely improbable" rotor burst, it should be an acceptable method at 45,000 feet, assuming that the failure is still "extremely improbable." The FAA does not agree with the commenter's position relative to the application of probability methods to engine burst and pressure vessel integrity. The commenter proposes to use the probability of failure concept as the basis for showing compliance with the special conditions, the same basis used in finding compliance with § 25.1309 of the regulations. Section 25.1309 speaks in terms of improbable and extremely improbable relative to the occurrence of a failure event and the event's effect on the airplane and its occupants. The FAA policy has been, as noted by § 25.903 and in findings relative to §§ 25.901 and 25.1309, to assume that the engine burst will occur. It is not appropriate to assume a statistical approach for certification relative to engine burst as engines are subjected to unpredictable foreign object damage (FOD), and, in addition, the engines are not tested to any degree of statistical confidence that would allow the use of the statistical approach.

In general, the statistical approach to certification, when elected by an applicant, is appropriate when establishing the reliability of fail-safe systems when they are separated or isolated and the analysis is based on a reliable data base of the same or similar components. Further, this is applicable after conducting environmental, endurance, fatigue, and failure assessment type tests. It is not appropriate to use statistical analysis where single failures, common-cause type failures, or human error are involved. The FAA is also not aware of any attempt to establish a rotor burst hole size for executive jets by statistical methods. Typically, even the holes from smaller fragments decompress the cabin at an unacceptable rate for executive jets. Certification of executive jets has generally been considered for higher altitude operation when the pressure vessel, including any pressure vessel conditioned air check valves, are located 5 degrees or more forward from the forward-most fan rotating plane. It should be noted that there is an executive jet which is presently limited to an operating altitude of 41,000 feet because the forward fan stages will impinge on the pressure vessel if they fail.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the **Federal Register**. As the intended type certification date for the Cessna 560 is mid November 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Aircraft, Air transportation, Aviation safety, Safety.

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Cessna Aircraft Company Model 560 airplanes, pursuant to the authority delegated to me by the Administrator.

PARTS 21 AND 25—[AMENDED]

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E. O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

2. *Operation to 45,000 feet.*

a. *Pressure Vessel Integrity.*

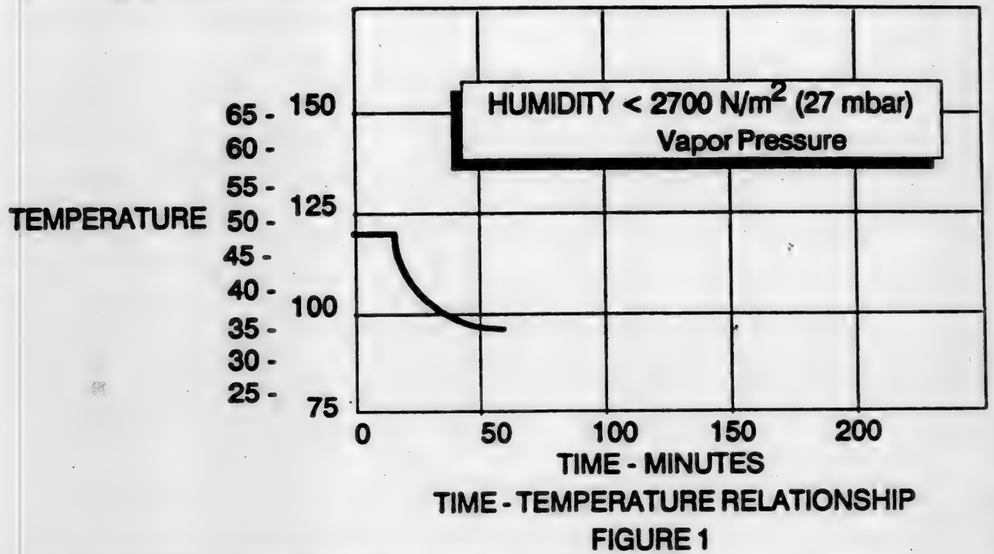
1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph d (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

b. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

c. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

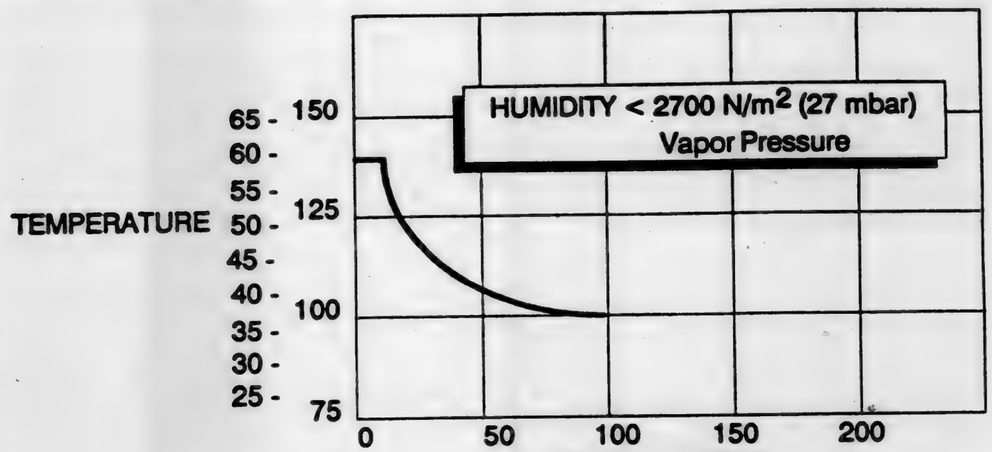


TIME - TEMPERATURE RELATIONSHIP

FIGURE 1

2. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

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TIME - TEMPERATURE RELATIONSHIP
FIGURE 2

d. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

a. Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

b. Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

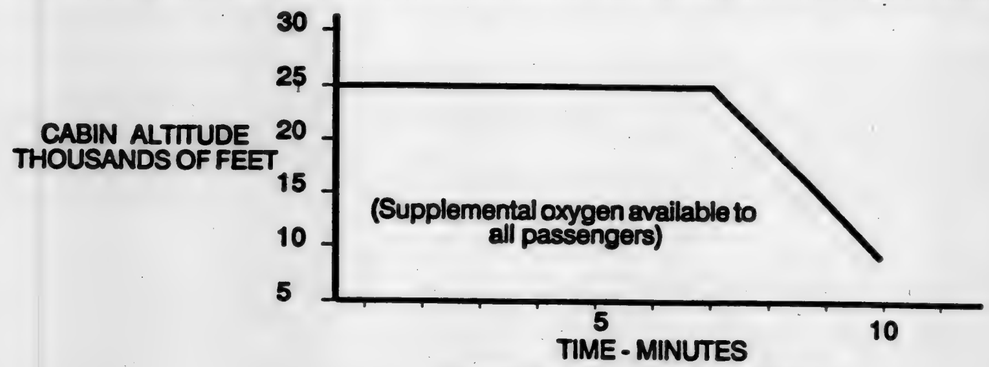
a. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

b. The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

c. Complete loss of thrust from all engines.

3. In showing compliance with paragraphs d1 and d2 of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note.—For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Cessna must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.



CABIN ALTITUDE - TIME HISTORY
FIGURE 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

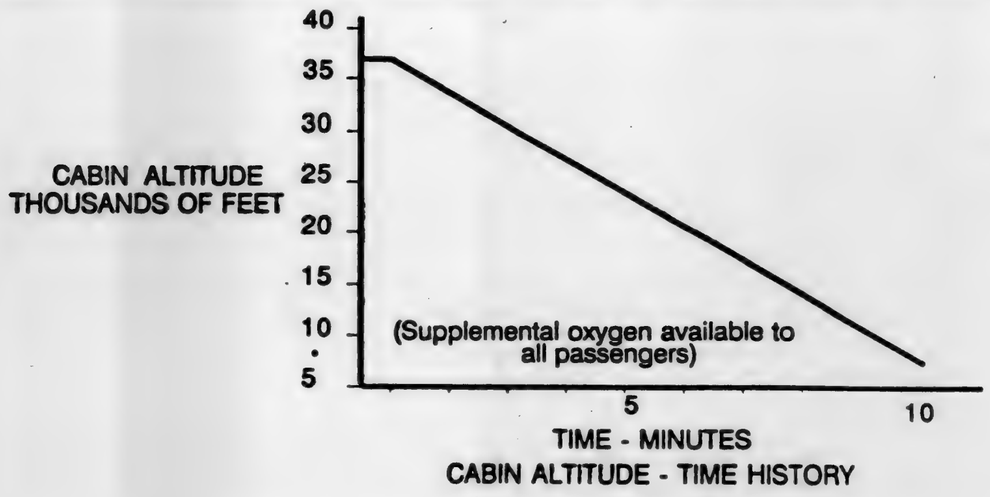
e. *Oxygen equipment and supply.*

1. A continuous flow oxygen system must be provided for the passengers.

2. A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

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CABIN ALTITUDE - TIME HISTORY

FIGURE 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Seattle, Washington, on November 17, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-27156 Filed 11-23-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-17-AD; Amdt. 39-6081]

Airworthiness Directives; Cessna Models T210L, T210M, T210N, P210N, and T303 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Cessna Models T210L, T210M, T210N, P210N, and T303 airplanes that are equipped with Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 or 6224 pressurized magnetos. It requires repetitive inspections and pre-flight checks to detect magneto moisture contamination. This AD is prompted by numerous reports of contaminated magnetos, which could result in dual magneto failure, engine stoppage, and forced landing of the airplane. The inspections and checks specified in this AD would preclude this situation from occurring.

DATES: *Effective:* December 26, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Slick Aircraft Products Division, Unison Industries, Inc., Service Bulletin (SB) 1-88, dated April 10, 1988, and 4200/6200 Series Magneto Maintenance and Overhaul Manual, Form L-1037 Revision D, dated April 10, 1988, applicable to this AD may be obtained from Slick Aircraft Products Division, Unison Industries, Inc., 530 Blackhawk Park Avenue, Rockford, Illinois 61108, telephone (815) 965-4700. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Taylor, Chicago Aircraft Certification Office, ACE-115C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7134.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring repetitive inspections and pre-flight checks of pressurized magnetos on certain Cessna Models T210L, T210M, T210N, P210N, and T303 airplanes was published in the **Federal Register** on July 18, 1988 (53 FR 27051). The proposal resulted from numerous reports of internal moisture contamination of Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 and 6224 pressurized magnetos used on Cessna Models T210L, T210M, T210N, P210N, and T303 airplanes. Evidence of moisture is shown by corrosion of some internal metal components, indications of electrical arcing or tracking near the center of the distributor block, decomposition of non-metallic components indicated by gummy or powdery substances, and/or traces of water pooling.

Two accidents were reported in which dual magneto failure occurred resulting in forced landings. Examination of those magnetos revealed long term deterioration with evidence of moisture contamination. It was also revealed that the magnetos had not been inspected per the airplane manufacturer's maintenance instructions, which required several internal magneto inspections before the 500-hour inspection and/or overhaul interval recommended by Slick Aircraft Products Division. Of the airplanes involved, one had flown through rain at the time of failure and the other had previous flights in rain conditions.

The Models 6220 and 6224 pressurized magnetos are identical in design to other approved models except for changes necessary for pressurization. Several thousand of these other non-pressurized magnetos have been in service with no reported moisture contamination problems. All of the reported incidents of internal magneto moisture contamination have occurred on turbocharged engines such as are used on Cessna Models T210L, T210M, T210N, P210N, and T303 airplanes. Approximately 50% of these reports occurred after the recommended 500-hour inspection and/or overhaul interval. Nearly 30% occurred between 400 and 500 hours. Long term deterioration was reported in most of these reports, indicating a lack of internal magneto inspections.

The FAA determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, and proposed an AD requiring initial and repetitive inspections for evidence of moisture contamination, and repair as necessary on Cessna Models T210L, T210M, T210N, P210N, and T303 airplanes equipped with Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 and 6224 pressurized magnetos.

Interested persons have been afforded an opportunity to comment on the proposal. Five comments were received. No comments were received on the cost determination. Three commenters opposed the proposed placard indicating that it is inappropriate and unnecessary, because the pre-flight magneto checks are part of information contained in operating handbooks, checklists, and other supplementary materials. The proposed placard requires pre-flight magneto checks to be conducted in accordance with the Airplane Flight Manual (AFM)/Pilot's Operating Handbook (POH) Supplement included as Appendix 1 of the AD. While the procedures for conducting the pre-flight magneto checks are the same as required by the AFM/POH, the AFM/POH Supplement adds requirements which must be accomplished if the magneto check exceeds certain limits.

Because the pilot must be alerted to this additional requirement, the FAA has determined that the placard is both necessary and appropriate.

One commenter concurred with the proposal, but recommended adding post-flight magneto checks. The FAA has determined that the pre-flight magneto checks and periodic magneto inspections proposed will adequately address magneto contamination problems. One commenter opposes the proposal indicating the small percentage of the total number of airplanes reporting this problem through the Service Difficulty Report (SDR) Program. While this program gives the FAA indications of possible problems, it does not give the total number of actual occurrences (the sum of those reported and those not). Those incidents reported in the SDR served as an indication of contamination problems with certain magneto installations. The FAA has determined that if the contamination problems are not properly addressed, dual magneto failure could possibly occur resulting in forced landing of the airplane. Another commenter also made reference to certain tests conducted on a Cessna P210 airplane which indicated large volumes of water being required to show moisture laden magnetos. The FAA has determined that the validity of those tests are, at the least, questionable due to alterations of the magneto air supply system and the use of visual means for determination of moisture. With such an altered magneto air supply system, visual observation of moisture does not account for water entrainment along surfaces not observed.

Based on the above comments, no changes to the proposal are deemed necessary. However, one commenter pointed out that the AFM/POH Supplement called out airplane models not shown in the applicability statement of the NPRM. Accordingly, the AFM/POH Supplement referred to in the final rule will reflect these changes. In addition, minor editorial corrections were made regarding the dates on the service information and who may accomplish the requirements of paragraph (a) in the AD.

The FAA has determined that this regulation only involves 3,500 airplanes at an approximate annual cost of $80 for each airplane, or a total annual fleet cost of $280,000. No small entities impacted by this AD own sufficient airplanes to cause their cost of compliance to equal or exceed the significant thresholds of the Regulatory Flexibility Act.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or

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negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to Models T210L, T210M, T210N, P210N, and T303 (all serial numbers) airplanes certificated in any category, that are equipped with Slick Aircraft Products Division, Unison Industries, Inc., Model 6220 or 6224 pressurized magnetos.

Compliance: Required as indicated, unless already accomplished.

To preclude magneto moisture contamination, which could result in dual magneto failure, engine stoppage, and forced landing, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) Revise the "*Normal Procedures*" section of the Airplane Flight Manual (AFM) or the airplane Pilot's Operating Handbook (POH), by inserting the AFM/POH Supplement, dated April 1, 1988, provided in Appendix 1 of this AD.

(2) Fabricate and install on the instrument panel in clear view of the pilot a placard with letters not less than 1/10 inches in height with the following wording:

"Prior To Each Flight, Conduct Magneto Checks in Accordance With AFM/POH Supplement Dated April 1, 1988."

and operate the airplane accordingly.

(3) The requirements of paragraphs (a) (1) and (2) of this AD may be accomplished by the owner/operator of any airplane owned or operated by him. The person accomplishing these actions must make the appropriate airplane maintenance record entry per FAR 43.9 and 91.173.

(b) Within the next 50 hours time-in-service after the effective date of this AD, inspect the airplanes in accordance with Paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 10, 1988, and:

(1) For airplanes operating for compensation or hire, at intervals not to exceed 100 hours TIS after the initial inspection, inspect the Model 6220 or 6224, as applicable, pressurized magnetos in accordance with Paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 10, 1988. Prior to further flight repair any defects found in accordance with the instructions contained in the above referenced service bulletin.

(2) For airplanes operating under FAR 91, after the initial inspection, at each annual inspection, inspect the Model 6220 or 6224, as applicable, pressurized magnetos in accordance with Paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 10, 1988. Prior to further flight repair any defects found in accordance with the instructions contained in the above-referenced service bulletin.

(c) Airplanes may be flown in accordance with provisions of FAR 21.197 to a base where the requirements of this AD may be accomplished.

(d) The 100-hour TIS repetitive inspection interval specified in paragraph (b) of this AD may be extended up to an additional 10 hours TIS to allow compliance with previously scheduled maintenance.

(e) An equivalent means of compliance with the requirements of this AD may be used, if approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Slick Aircraft Products Division, Unison Industries, Inc., 530 Blackhawk Park Avenue, Rockford, Illinois 61108 or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 26, 1988.

Issued in Kansas City, Missouri, on November 16, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

Appendix 1—FAA Approved Supplement to the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual for Cessna Models T210L, T210M, T210N, P210N, and T303 Series Aircraft

Reg. No.

Ser. No.

This supplement must be attached to the FAA Approved Airplane Flight Manual on which Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 or 6224 pressurized magnetos are installed. The information contained herein supplements or supersedes the basic manual only in those areas listed. For limitations, procedures, and performance information not contained in this supplement, consult the basic Airplane Flight Manual.

FAA Approved.

W. F. Horn,

Manager, Chicago Aircraft Certification Office, FAA Central Region.

Date: April 1, 1988.

Section II. Limitations

No change.

Section III. Emergency Procedures

No change.

Section IV. Normal Operating Procedures

Before Takeoff

Perform a magneto check of each engine at 1,700 RPM as follows: move ignition switch first to R position and note RPM. Next, move switch back to Both, to clear the other set of plugs. Then, move switch to the L position, note RPM and return the switch to the Both position. RPM drop should not exceed 150 RPM on either magneto or show greater than 50 RPM differential between magnetos. If there is doubt concerning operation of the ignition system, RPM checks at higher engine speeds will usually confirm whether a deficiency exists.

Caution

Many non-ignition system factors influence engine performance during a magneto check, and the replacement or repair of ignition components may not remedy problems in all cases. After verifying that all non-ignition system related causes for problems have been explored, proceed with the inspection procedures as stated below. If the magneto check exceeds either of the above limits, both magnetos must be disassembled and inspected in accordance with Section III, 100-hour inspection of Slick Aircraft Products Division, Unison Industries, Inc., SB 1-88, dated April 10, 1988, or FAA approved equivalent. An absence of RPM drop may be an indication of faulty grounding of one side of the ignition system or should be cause for suspicion that the magneto timing is set in advance of the setting specified. Check ignition ground and magneto timing.

FAA Aproved.

Date: April 1, 1988.

[FR Doc. 88-27157 Filed 11-23-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-22-AD; Amdt. 39-6080]

Airworthiness Directives; Piper Models PA-60-601, PA-60-601P, PA-60-602P and PA-60-700P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment adopts a new Airworthiness Directive (AD), applicable to certain Piper (Aerostar) Models PA-60-601, PA-60-601P, PA-60-602P and PA-60-700P airplanes. This AD requires replacement and modification of certain engine fluid-carrying hoses and associated hardware. This action is prompted by reports of burned, chafed, brittle and leaking oil supply hoses which are suspected in several incidents of causing in-flight fires. The actions specified in this AD will correct the reported conditions and reduce the possibility of in-flight fires.

DATES: *Effective:* December 26, 1988.

Compliance: As indicated in the body of the AD.

ADDRESSES: Piper Aircraft Corporation Service Bulletin (SB) No. 761, dated April 18, 1983, and SB No. 815, dated January 3, 1986, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4360. This information also may be examined in the Rules Docket, Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD which would require replacement and rerouting of certain fluid-carrying hoses and the proper securing of these hoses on certain Piper (Aerostar) Model PA-60-601, PA-60-601P, PA-60-602P and PA-60-700P airplanes was published in the **Federal Register** on August 9, 1988, (53 FR 29912).

The proposal was prompted by a National Transportation Safety Board Recommendation that reported several in-flight engine fires had occurred on Piper PA-60 series airplanes due to exhaust system leaks and misrouted oil supply hoses. On February 26, 1986, Piper SB No. 818 was issued, applicable to the PA-60 series airplanes, and required the disassembly, inspection and replacement of defective or worn parts, and proper reassembly of the exhaust system. The FAA issued AD 87-07-09, Amendment 39-5600 (52 FR 11631, April 10, 1987), with an effective date of May 15, 1987, which implemented Piper SB No. 818. On April 18, 1983, Piper released SB No. 761 requiring replacement and modification of engine fluid-carrying hoses and associated hardware. This action alleviates the above stated hose conditions by replacing some hoses with higher temperature rated hoses, and also provides for rerouting these and other serviceable hoses for increased clearances between the hoses, the exhaust stacks, and the turbochargers. On January 3, 1986, Piper released SB No. 815 requiring the replacement of ties securing turbocharger oil supply hoses with metal clamps and hardware so as to provide increased security and clearance between the hoses, the exhaust stacks and the turbochargers.

Since the conditions described herein are suspected of causing in-flight fires and are likely to exist or develop in other Piper Model PA-60 airplanes of the same type design, an AD was proposed which would require replacement and rerouting of certain fluid-carrying hoses and the proper securing of these hoses as specified in Piper SB Nos. 761 and 815 on the subject airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Subsequent to issuance of this proposal, the FAA determined that certain Piper Model PA-60-700P airplanes were modified during production to comply with the provision of SB No. 761. Accordingly, the proposal has been rewritten to except these modified airplanes from the requirements of the AD. Since this change is clarifying in nature and does not increase the burden of the proposal the amendment is being adopted without additional rulemaking procedures.

The FAA has determined there are approximately 325 airplanes affected by this AD. The one-time cost of implementing the AD is estimated to be $1,040 per airplane. The total cost is estimated to be $338,000 to the private sector. The cost of complying with this AD will not have significant impact on any small entities owning affected airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Piper (Aerostar): Applies to Models PA-60-601 equipped with an automatic waste gate controller per Retrofit Option 106 (S/N 61-0001-004 through 61-0334-111), PA-60-601 (S/N 61-0342-112 through 61-0880-8162157), PA-60-601P (S/N 61P-0157-001 through 61P-0880-8163455), PA-60-602P (S/N 62P-0750-8165001, and 62P-0861-8165002 through 60-8365010), PA-60-700P (S/N 60-8423001 through 60-8423025) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD unless already accomplished.

To reduce the possibility of damage to the oil supply hoses which, if not corrected, could result in an in-flight fire, oil starvation and/or engine failure, accomplish the following:

(a) For all the above applicable airplanes except Model PA-60-700P (S/N 60-8423001 through 60-8423025) airplanes, replace and modify the engine fluid-carrying hoses and associated hardware in accordance with the instructions contained in Piper Service Bulletin (SB) No. 761, dated April 18, 1983, and Piper SB No. 815, dated January 3, 1986.

(b) For Model PA-60-700P Aerostars (S/N 60-8423001 through 60-8423025) airplanes replace and modify the engine fluid-carrying hoses and associated hardward in accordance with the instructions contained in Piper SB No. 815, dated January 3, 1986.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

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All persons affected by this directive may obtain copies of the documents referred to herein upon request to Piper Aircraft Corporation 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 26, 1988.

Issued in Kansas City, Missouri, on November 16, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 88-27158 Filed 11-23-88; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 4]

Educational, Scientific and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Notice of temporary rules.

SUMMARY: In compliance with an order of the United States District Court for the Central District of California, the United States Information Agency (the "Agency" or "USIA") on November 16, 1987, published interim rules to amend regulations found at 22 CFR Part 502 which implement the *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character* ("Beirut Agreement of 1948") at 52 FR 43753. On May 13, 1988, the district court found the interim regulations unconstitutional and ordered the Agency to draft new regulations. By order dated September 9, 1988, the court required that the new regulations be promulgated within 60 days. Regulations were published at 53 FR 45079 on November 8, 1988. On November 10, 1988, the United States Court of Appeals for the Ninth Circuit stayed the district court's May 13, 1988, and September 9, 1988, decisions for 60 days. Accordingly, the Agency will resume operating under the interim regulations published on November 16, 1987, until further notice.

DATES: The temporary regulations shall become effective November 25, 1988.

ADDRESS: Merry Lymn, Assistant General Counsel, Room 700, USIA, 301 4th Street, SW., Washington, DC 20547, (202) 485-8829.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Room 700, USIA, 301 4th Street SW., Washington, DC 20547, (202) 485-8829.

SUPPLEMENTARY INFORMATION: By advance notice of proposed rulemaking published at 52 FR 25384, July 7, 1987 (republished in its entirety because of typesetting errors at 52 FR 26156, July 13, 1987), the USIA instituted a rulemaking proceeding in response to an order of the United States District Court for the Central District of California in *Bullfrog, Inc. v. Wick*, 646 F. Supp. 492 (C.D. Cal. 1986). The district court held that part of the regulations implementing the Beirut Agreement were unconstitutional, and enjoined USIA from enforcing the invalidated sections of the regulations. In addition, the court ordered that USIA reconsider six films which had been denied certification under 22 CFR Part 502. Consequently, in order to aid the Agency in complying with the district court's order, the Agency requested public comments as to whether and how the challenged regulations could be redrafted in a way which would both satisfy the district court's ruling and comply with the terms and requirements of the Beirut Agreement, as interpreted by the United States, UNESCO, and the international community. After review of the public comments received, the Agency adopted interim regulations. By order dated May 13, 1988, the court invalidated the interim regulations as unconstitutional. On September 9, 1988, the court ordered the Agency to promulgate new regulations which were to become effective within 60 days. Consequently, the Agency published new interim regulations on November 8, 1988. On November 10, 1988, the United States Court of Appeals for the Ninth Circuit stayed the district court's May 13, 1988, and September 9, 1988, decisions for 60 days. Accordingly, the Agency will suspend temporarily the regulations set forth at 53 FR 45079 on November 8, 1988, and resume operating under the regulations published at 52 FR 43753 November 16, 1987. The notice published at 52 FR 43753 is included here by reference.

Findings and Conclusions

The Agency concludes that it will adopt the regulations set forth herein on temporary basis effective November 25, 1988, and will begin to make certification decisions at that time.

This decision does not significantly effect the quality of the human environment and is not a major or regulatory action under the Energy and Conservation Act of 1975.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this regulation § 502.6 (a)(3), (4), (b)(3), and (5) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501 through 3520) and have been assigned OMB Control Numbers.

PART 502—[AMENDED]

The authority for Part 502 continues to read:

Authority: 5 U.S.C. 301, 19 U.S.C. 2051, 2052, 22 U.S.C. 1431 *et seq.* E.O. 11311.31 FR 13413, 3 CFR 1966–1970 comp. page 593.

§ 502.6 [Amended]

2. In § 502.6 paragraph (a)(3) is suspended. A new paragraph (a)(4) is added to read as follows:

(a) * * *

(4) Audio visual materials which are deemed "educational, scientific or cultural" for the purposes of Article 1 of the Beirut Agreement of 1948 are those "whose primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill," as defined below as comprising the following elements:

(i) The content of the audio visual material is presented in a primarily factual or demonstrative manner.

(ii) To the extent that the material reflects a viewpoint or viewpoints which purport to be supported by factual bases, the facts are not distorted. The facts will be deemed distorted if they do not represent the current state of factual knowledge of a subject or aspect of a subject, verifiable by generally accepted methods, or if the facts are presented in such a way as to constitute hate material (such as the racial supremacist material involved in *National Alliance v. United States*, 710 F.2d 868 (1983)).

(iii) To the extent that the material presents, promotes, or advocates a conclusion or viewpoint for which different viewpoint(s), theory(ies) or interpretation(s) may exist, the material acknowledges, presents or refers to the existence of a difference of opinion or other point of view.

(iv) The technical quality is such that it does not interfere with the use made of the material.

In the "Summary of Content" section of the certificate, the Agency, in its discretion, may identify material that in its opinion constitutes propaganda, in that it is substantially adapted to prevail upon, indoctrinate, convert, induce or in any other way influence a viewer or user with reference to any specific political, religious or economic views, practices, movements, causes or systems or belief. Where an applicant identifies an intended audience the Agency may also express an opinion in the "Summary of Content" section of the certificate as to whether that audience possesses the background or training to understand the subject matter.

Date: November 21, 1988.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 88-27287 Filed 11-23-88; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8234]

Electronic Filing of Notice of Federal Tax Lien

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document removes temporary regulations and adopts as final regulations proposed regulations published in the **Federal Register** on February 23, 1988, relating to a notice of Federal tax lien filed by the use of an electronic or magnetic medium. These regulations clarify existing regulations under section 6323(f) of the Internal Revenue Code (Code).

EFFECTIVE DATES: The regulations are effective for a notice of Federal tax lien filed on or after February 23, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Ada S. Rousso of the Office of the Assistant Chief Counsel,Income Tax and Accounting, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (202–566–4104, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On February 23, 1988, the **Federal Register** published temporary regulations (52 FR 5269) (1988–16 I.R.B. 24) and proposed regulations (53 FR 5279) (1988–16 I.R.B. 33) under section 6323(f) of the Code relating to a notice of Federal tax lien filed by the use of an electronic or magnetic medium, clarifying existing regulations under section 6323(f) of the Code. No written comments were received. A public hearing was neither requested nor held. Accordingly, the temporary regulations are removed and the proposed regulations are adopted as final regulations by this Treasury decision.

In General

This document amends the Administrative Regulations (26 CFR Part 301) under section 6323 of the Code. These regulations clarify that the term "Form 668" includes a notice of Federal tax lien filed by the use of an electronic or magnetic medium where the law of the state in which a notice of Federal tax lien is filed permits such method of filing.

Section 6321 of the Code imposes a lien in favor of the United States whenever a person liable for any tax neglects or refuses to pay the tax after demand. For such lien to be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor, a notice of the lien must be filed which meets the requirements of section 6323(f). Section 6323(f)(3) provides that the form and content of the notice referred to in section 6323(a) shall be prescribed by the Secretary, and that such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

Notice of Lien May Be Filed by the Use of an Electronic or Magnetic Medium

Section 301.6323(f)–1(c) of the regulations provides that notice of a Federal tax lien "shall be filed on Form 668, 'Notice of Federal Tax Lien under Internal Revenue Laws'." These final regulations clarify that the term "Form 668" includes both a Form 668 printed on paper and a Form 668 filed by the use of an electronic or magnetic medium if the law of the state in which the notice is filed permits a notice of Federal tax lien to be filed by the use of such medium. The use of a non-paper form will not affect the decision to place a notice of lien on file and will not significantly affect the timing of issuance of a notice of lien. Rather, the use of a non-paper form merely simplifies the manner of transmitting information to a state after a lien is determined to be valid and any remaining issues are resolved. Paper forms will continue to be used in states that do not permit electronic or magnetic filing.

The use of electronic or magnetic media to file a notice of tax lien will enable the Internal Revenue Service to better serve the public by (a) reducing the time it takes to notify the public that a lien exists; (b) reducing the amount of paperwork necessary to file a notice; and (c) in certain cases, eliminating or reducing the cost of filing a notice of lien, which cost is generally billed to the taxpayer involved.

Refiling a Notice of Lien

Section 6323(g) of the Code and § 301.6323(g)–1 of the regulations, which govern the refiling of a notice of Federal tax lien, do not require a particular form to be used in refiling a notice of Federal tax lien. Therefore, an amendment to the regulations is not necessary to allow a notice of Federal tax lien to be refiled by the use of any electronic or magnetic medium permitted by the state in which the notice is refiled.

Special Analyses

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these regulations is Lauren G. Shaw of the Office of the Assistant Chief Counsel, Financial Institutions and Products, Internal Revenue Service. However,

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personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, Part 301 of Title 26 of the Code of Federal Regulations is amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 is amended as follows:

(1) By removing the following citation:

Authority: 26 U.S.C. 7805 * * * Section 301.6323(f)–1T(c) is also issued under 26 U.S.C. 6323(f)(3); and

(2) By adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 301.6323(f)–(1)(c) is also issued under 26 U.S.C. 6323(f)(3).

Par. 2. 26 CFR Part 301 is amended as follows:

§ 301.6323(f)–11 [Removed]

(1) By removing § 301.6323(f)–1T; and

(2) By revising § 301.6323(f)–1(c) to read as follows:

§ 301.6323(f)–1 Place for filing notice; form.

* * * * *

(c) *Form*—(1) *In general.* The notice referred to in § 301.6323(a)–1 shall be filed on Form 668, "Notice of Federal Tax Lien Under Internal Revenue Laws". Such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien. For example, omission from the notice of lien of a description of the property subject to the lien does not affect the validity thereof even though State law may require that the notice contain a description of the property subject to the lien.

(2) *Form 668 defined.* The term "Form 668" generally means a paper form. However, if a state in which a notice referred to in § 301.6323(a)–1 is filed permits a notice of Federal tax lien to be filed by the use of an electronic or magnetic medium, the term "Form 668" includes a Form 668 filed by the use of any electronic or magnetic medium permitted by that state. A Form 668 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

November 2, 1988. Approved:

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–27232 Filed 11–23–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1978

Rules Implementing Section 405 of the Surface Transportation Assistance Act of 1982

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: Section 405 of the Surface Transportation Assistance Act of 1982 (hereinafter the "STAA"), Pub. L. 97–424, 96 Stat. 2097, 2157–58, enacted January 6, 1983 (49 U.S.C. app. 2301 *et seq.*), provides protection to employees in the trucking industry from discrimination because of activity related to commercial motor vehicle safety and health matters. On November 21, 1986, OSHA published an interim final rule which provided for rules of practice and procedure to implement section 405 of STAA. At that time the agency requested comments concerning the interim final rules. Since then, the agency has received several comments from interested parties and the U.S. Supreme Court has ruled on an important provision in STAA. OSHA has reviewed those comments and the Court's decision and it now adopts these rules which have been revised to a certain extent to comply with the Court's ruling on the statute and its method of implementation and to address problems perceived by the agency or the commentators.

DATES: These rules are effective December 27, 1988. They apply to all cases docketed on or after that date. They also apply to further proceedings in cases then pending, except to the extent that their application would be infeasible or would work an injustice, in which event present rules (i.e., those published at 51 FR 42091) apply.

FOR FURTHER INFORMATION CONTACT: James Foster, Office of Information, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8151.

SUPPLEMENTARY INFORMATION:

Rulemaking Proceedings

On November 21, 1986, the Occupational Safety and Health Administration (OSHA) published in the **Federal Register** an Interim Final Rule promulgating rules which implemented section 405 of STAA. 51 FR 42091–42095. In addition to promulgating the interim final rule, OSHA's notice included a request for public comment on the interim rules.

In response, five organizations and individuals filed comments with the agency. These commentators represented the full spectrum of those who will be affected by the rules. The International Brotherhood of Teamsters, a labor organization representing a significant portion of drivers covered by STAA, filed a comment which supported the rules as drafted. Two trucking industry associations, American Trucking Association Inc. (ATA) and Specialized Carriers and Rigging Association (SCRA), filed comments, which generally supported the rule but also pointed to specific problems which they perceived in the rules. In addition, two attorneys, Michael C. Towers of Fisher and Phillips, Atlanta, Georgia, and Jeffrey I. Pasek of Cohen, Shapiro, Polisher, Shiekman and Cohen, Philadelphia, Pennsylvania, who have participated in section 405 proceedings, filed comments which address both specific problems they faced under practice prior to rule promulgation and also problems that they perceive under the interim rule.

After promulgation of the interim rule, in *Brock* v. *Roadway Express, Inc.*, — U.S. —, 107 S. Ct. 1740 (1987), the Supreme Court ruled on a constitutional challenge to the temporary reinstatement provision in STAA. (49 U.S.C. app. 2305(c)(2)(A)). The Supreme Court's ruling, which upheld the constitutionality of that statutory provision and the rules promulgated thereunder, directly affected several of the rules and accordingly, OSHA has decided to redraft certain subsections of the rule to better comport with the Supreme Court's holding.

Following the receipt of the comments and the issuance of the decision in *Brock* v. *Roadway Express, Inc., id.* (hereinafter *"Roadway Express"*), OSHA has reviewed the comments and the decision and, in response, has developed a final rule which makes some changes in the interim final rule. Other changes urged by commentators were considered but rejected. OSHA addresses the comments and the changes in the discussion which follows. The comments and OSHA's response are discussed seriatim in the order of the provisions of the rule.

Definitions

OSHA received only one comment on the definition section. SCRA questioned whether the meaning of "employee" as defined in § 1978.101(d) included the employee of an independent contractor.

OSHA believes that a person is an employee, whether he or she works for a major multistate trucking firm or for an independent contractor, if that person meets the criteria found in 49 U.S.C. 2301, *i.e.*, if that person drives in interstate commerce a vehicle which meets the criteria of the definition of "commercial motor vehicle" found at 49 U.S.C. app. 2301(1) and is employed by a commercial motor carrier as that term is defined in a new definition in the regulation at § 1978.101(e). For example, if an independent contractor is a motor carrier and has an employee who drives a vehicle in interstate commerce which has a gross vehicle weight rating of ten thousand or more pounds, that employee is covered by section 405. Because the statute and rule did not previously provide a definition for "commercial motor carrier," OSHA has added a definition at § 1978.101(e).

OSHA also notes that the definition of "employee" specifically includes an independent contractor if that person personally operates the commercial motor vehicle in interstate commerce. In that instance, if the independent contractor insisted upon meeting DOT regulations and subsequently the company which had contracted with him refused to honor the contract because of the independent contractor's safety activity, the independent contractor has the right to complain to OSHA about such adverse action.

Filing of Complaint

SCRA has suggested that § 1978.102(c) be changed because the rule permits the filing of section 405 cases with "any OSHA officer or employee," with the result that the employer would have to travel to a remote location to contest the filing. This comment misapprehends OSHA practice and the intent of the rule. Section 1978.102(c) simply permits the employee to file at a convenient location. Thereafter, OSHA will assign the case to a regional office responsible for enforcement activities in the geographical area where the employee resides or was employed. Usually, this location is equally convenient to the employer, since most employees are domiciled near the terminal which may have discriminated against them. Thus, OSHA does not see this rule, which permits quick and convenient filing of a complaint, to impinge unduly upon employer or employee.

In § 1978.102(f), OSHA has made a change in accordance with *Roadway Express* and several comments. The interim rule called for OSHA to notify the *"named person" i.e.,* the person against whom the complaint had been filed, of the filing of a complaint without transmittal of the actual complaint filed by the employee. Several commentators suggested that this withholding of the actual complaint is unfair. Likewise, the Supreme Court has suggested that the named person be given notice of the complaint and the substance of the relevant evidence to satisfy due process requirements. *Roadway Express*, 107 S. Ct. at 1748. Accordingly, OSHA has changed 102(f) to provide that, upon receipt of a valid section 405 complaint, the agency will transmit to the named person a copy of the complaint as filed by the complainant, as long as the complaint does not identify any potential confidential witnesses.

Nevertheless, OSHA notes that oftentimes the complaint as received from the employee is frequently an inarticulate, non-legal statement of the facts as a non-lawyer perceives them. After receipt and transmittal of the complaint, when OSHA conducts its investigation, the agency may discover evidence which expands or narrows the basis and the scope of the complaint's allegation. See *NLRB* v. *Indiana & Michigan Electric Co.*, 318 U.S. 9, 18 (1942). Of course, as provided for in the new § 1978.103(b) (discussed below), if the nature or scope of the investigation changes, OSHA shall notify the named person of any new or additional bases for the claim of discrimination.

Investigation

In response to *Roadway Express* and several comments, OSHA has significantly revamped § 1978.103(b). In *Roadway Express*, the Court upheld the facial constitutionality of the statute and the regulations under the Due Process clause of the Fifth Amendment and thus ruled that the statute's provision permitting temporary reinstatement of a discharged employee after a preliminary investigation and issuance of findings and order was permissible. However, in the Court's analysis of the facts, because the record failed to show that OSHA investigators had informed Roadway of the substance of the evidence to support reinstatement of the discharged employee, the plurality concluded that the statute and OSHA's rules were unconstitutionally applied.

Under OSHA's reading of this decision, it has been determined that, while OSHA's current procedures are facially constitutional, the rule governing the investigation process should be changed to permit a more clear-cut and orderly exchange of information at the investigative phase. Thus, as noted above, OSHA will provide to the named person a copy of the employee complaint. Additionally, OSHA has changed § 1978.103(b) to provide for the named person's apprisal of any new or amended charges which may have been discovered during the course of the investigation, and OSHA has also added a new section, § 1978.103(c), which provides for giving the named person notice of the substance of the evidence which supports the complaint, if OSHA has reason to believe that it may be necessary to order temporary reinstatement of the complainant. In addition to providing the named person with the substance of the relevant evidence supporting a finding of discrimination and temporary reinstatement, § 1978.103(c) provides the named person the opportunity to meet with the investigator to submit rebuttal evidence.

When OSHA provides the named person with notice of the substance of the relevant supporting evidence, OSHA shall provide the named person with a synopsis of the evidence and may provide sanitized witness statements. However, OSHA will not provide the names of the witnesses and, if the statements cannot be sanitized to the extent that the identity of the witnesses is protected, OSHA will not provide the written statements themselves, but instead it will provide the company with the substance of the evidence.

This decision to withhold names and copies of statements has been made in conformity with the Department of Labor's longstanding practice of protecting the identity of confidential witnesses. See, *e.g. Stephenson Enterprises Inc.* v. *Marshall*, 578 F.2d 1021, 1025 (5th Cir. 1978); *Hodgson* v. *Charles Martin Inspectors of Petroleum Inc.*, 459 F.2d 303 (5th Cir. 1972). See also *Roviaro* v. *U.S.*, 353 U.S. 53 (1957). OSHA takes statements from witnesses with the promise that witness identity will not be disclosed unless and until a witness is called to testify at trial. This decision to withhold names is a commonsense approach to a particularly difficult problem. The government is

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investigating in these cases because an employee has accused an employer of discrimination after the employee contacted or threatened to contact the government. Fellow employees, who are often the best sources of information concerning the allegation of discrimination, are unlikely to come forward with the correct information if they perceive that the employer will learn of their identity, particularly in cases such as these where the employer is accused of discriminating against employees who contact the government. Any premature disclosure of witness identities at an early stage prior to hearing will likely hinder an effective investigation.

OSHA's analysis of *Roadway Express*, leads to the conclusion that the Court did not require disclosure of the names of confidential witnesses. Indeed, OSHA has concluded that the plurality's holding supports OSHA's decision. The plurality held that the minimum that due process requires is notice of the employee's allegations, "notice of the substance of the relevant supporting evidence" and the opportunity to rebut that evidence in writing and in meetings with OSHA. 107 S. Ct. 1748. At no point in the plurality decision does the court require OSHA to provide the names or identities of the witnesses. In fact, in three separate places in the plurality opinion, the court distinguishes between the term "substance of the evidence" and a witness' statement. Additionally, OSHA notes that Justice Brennan also discusses OSHA's obligation in terms of provision of the substance of evidence as opposed to furnishing actual witness statements. Accordingly, under the new rule at § 1978.103(c), OSHA will not disclose to the named person the identities of confidential witnesses.

However, recognizing that the employer has a constitutional right to know the substance of the relevant evidence supporting OSHA's preliminary finding, OSHA, as it has in the past, will disclose to the employer the substance of the evidence by meeting with the named person to discuss the evidence, and to provide sanitized copies of witness statements, if such provision will not jeopardize the identity of witnesses. If there is no way to sanitize the statements, OSHA will discuss with the employer the substance of the relevant evidence contained in those statements without providing the actual statements.

During or after the disclosure meeting, the named person may furnish rebuttal evidence. However, due to the Congressional mandate that section 405 proceedings be conducted expeditiously, OSHA cannot permit a named person any more than five days after notification to present rebuttal evidence, unless the interests of justice so require. After OSHA has considered the rebuttal evidence, it will issue findings and, if necessary, a preliminary order.

Issuance of Findings and the Preliminary Order

OSHA received several comments from the trade associations regarding the award of attorney's fees to the complainant if complainant prevails. SCRA requested that § 1978.104 be redrafted to permit award of attorney's fees to the named person if he or she prevailed. However, neither the statute nor the legislative history permit an interpretation of the statutory language to provide award of attorney's fees to the named person. The statutory language specifies that the Secretary may award attorney's fees only to a complainant if he or she prevails. There is no mention of award of attorney's fees to any other party. Relying on the fundamental canon of construction, *expressio unius est exclusio alterius*, OSHA has concluded that, since Congress mentioned only the complainant in the statutory provision regarding fees, Congress must have intended to exclude an award of attorney's fees to the named person. Thus, OSHA is unable to agree with SCRA's comment. Moreover, OSHA notes that the Secretary has already addressed this question in *Abrams* v. *Roadway Express, Inc.*, 84–STA–2, May 23, 1985, wherein the Secretary concluded that the statute did not authorize the award of fees to an employer.

In connection with § 1978.104, which provides for OSHA's issuance of findings and a preliminary order which may award attorney's fees, among other things, ATA commented that the rule as it relates to § 1978.109 is ambiguous with regard to an employer's liability for attorney's fees. ATA states that § 1978.109 does not provide specifically for vacation of a preliminary order by OSHA which awarded attorney's fees and accordingly, it believes that a named person may incur some liability for OSHA's preliminary order award of fees. However, OSHA notes in response that § 1978.109(c)(4) specifically states that when the Secretary determines that the named person did not violate the Act, "the final order shall deny the complaint." The Secretary's order is the final order of the Department and it takes precedence over all previous orders and rulings. Consequently, if the Secretary finds no validity to an employee's complaint, there can be no basis on which to award any damages to complainant, including attorney's fees.

Attorney Towers commented that § 1978.104(a) should provide for detailed findings of fact by OSHA at the conclusion of its investigation. OSHA agrees that its findings should be sufficiently detailed as to apprise the parties of the complained of activity and the facts upon which OSHA has based its determination regarding whether a violation of the statute occurred. However, OSHA believes that it is not necessary to specify in its rule the elements which must be found in each finding of fact issued by OSHA. The amount of detail and explanation in the findings depends on the facts of each case. Accordingly, OSHA will not revise § 1978.104 to specify the amount of detail in its investigative findings.

Scope of Rules, Notice of Hearing; Litigation Complaint

Attorney Pasek commented on § 1978.106(d); he believed that the rule should provide for the filing of a litigation complaint to frame the issues for trial. OSHA has determined for several reasons that this would be an unnecessary step and has chosen not to implement such a rule. First, the findings of fact issued by OSHA in most circumstances should be sufficiently detailed to apprise the parties of the legal and factual issues presented in the matter. Moreover, a requirement that the prosecuting party file a litigation complaint after issuance of findings and the filing of objections thereto would only tend to delay the proceedings which are to be conducted in a very time-shortened process. The Congressional mandate is that the Department is to conduct hearings expeditiously after the filing of objections. Given that the findings and objections have already served to narrow the issues and given the need for an expeditiously conducted hearing, OSHA has decided that the current rule at § 1978.106(d) which provides for the filing of a prehearing statement of positions, if ordered by the judge, is sufficient to give the parties notice of the issues and the remedy sought.

Parties

Section 1978.107 generated a number of comments regarding the role of the Assistant Secretary in administrative hearings. Section 1978.107(a) provides that if the Assistant Secretary finds reasonable cause to believe the employee's complaint, the Assistant Secretary will ordinarily be the prosecuting party at any administrative hearing conducted pursuant to § 1978.106. Section 1978.107(b) provides that if no merit to the employee's complaint is found at the investigative level, the Assistant Secretary will ordinarily not participate in the hearing.

SCRA and ATA commented that this rule is unfair in that it does not permit the Assistant Secretary to provide assistance to the employer when OSHA has found no merit to the employee's complaint. SCRA has proposed that, to remedy this unfairness, OSHA set up a "public defender" office which will defend the employer's actions in cases arising under § 1978.107(b). Similarly, ATA and Attorney Towers believed that OSHA should participate in the hearings even when the agency has found no merit to the complaint.

OSHA has carefully considered these comments and finds that the commentators have misunderstood the purpose of the statute and the manner in which the rules implement the statute. The purpose of the statute is to ensure that the government's channels of information are not dried up by employer intimidation of prospective complainants and witnesses. *Brock* v. *Roadway Express, Inc., supra*, 107 S. Ct. 1745. See also, *NLRB* v. *Scrivener*, 405 U.S. 117, 122 (1972); *Mitchell* v. *Robert De Mario Jewelery, Inc.*, 361 U.S. 288, 292; *Square D. Company* v. *Donovan*, 709 F.2d 335, (5th Cir. 1983) (long-term effect and primary purpose of antiretaliation suits is to promote effective enforcement of statutes by protecting employee communications with governmental authorities.) As Congress noted in the legislative history to STAA:

> the Section was considered necessary to encourage "whistle-blowing" by employees. Enforcement of commercial motor vehicle safety laws and regulations is possible only through an effort on the part of the employer, employees, State safety agencies, and the Department of Transportation. Therefore, the committee considered it necessary to specifically provide protection for those employees who are discharged or discriminated against for exercising their rights and responsibilities under this title.
>
> Senate Commerce Committee Section by Section Analysis of Title IV, S. 3044, Commercial Motor Vehicle Safety, 97th Cong., 2d Sess., 128 Cong. Rec. S 14028 (Dec. 7, 1982).

Based on this reasoning, OSHA has found that it is extremely important that, if the Assistant Secretary determines that section 405 has been violated, the case be properly prosecuted at a hearing to ensure that the government's channels of communication with employees are kept open. Accordingly, the Solicitor will normally prosecute this type of claim.

On the other hand, if after an investigation OSHA does not find reasonable cause to believe the employee's complaint, in essence OSHA does not believe that the government's channels of information have been interfered with and accordingly, the government's interest in protecting whistleblowing is not as likely to be implicated in a hearing. For that reason, OSHA will ordinarily not participate in such a hearing.

ATA and SCRA urge that this position is unfair in that it denies the named person the benefit of the government's investigative report and expertise. However, a requirement that OSHA appear to defend its investigative findings does not further any governmental purpose, for the government has preliminarily, at least, concluded that whistleblowing is not implicated in the hearing, and appearance at a hearing would use up scarce resources.

Furthermore, the hearing is conducted *de novo* and is not a review of OSHA's findings. OSHA's conclusions are no longer directly at issue. Instead the critical factors at the hearing are the evidence adduced by the complainant as prosecuting party and the employer's rebuttal of that evidence. Since the employer knows the true reasons for the employment action and can best adduce facts to support its reasons for taking that action, the party in the best position to refute the complainant's evidence is the named person. The Assistant Secretary will not have any special knowledge of the employer's reasons for the discharge or other action and thus, would not likely be able to contribute to the proceeding.

In a related comment, Attorney Towers raises a constitutional objection to § 1978.107(b) which, as noted, provides that if the Assistant Secretary does not find reasonable cause to believe that the employee's complaint has merit, he or she will ordinarily not participate in the administrative hearing which may be held after the employee files objections. Mr. Towers' objection is based on the proposition that, if the Assistant Secretary does not participate in the hearing, the complainant then seeks to remedy a private dispute in an administrative tribunal, which is an Article I of the U.S. Constitution tribunal. Under Mr. Towers' argument, private disputes can be constitutionally adjudicated only in Article III courts. See *Northern Pipeline Co.* v. *Marathon Pipeline Co.*, 458 U.S. 50 (1982) (Bankruptcy Act of 1978 is unconstitutional to the extent bankruptcy judges were not Article III judges.)

OSHA believes that his objection is based on an erroneous assumption. The objection assumes that when the Assistant Secretary finds no reasonable cause to believe the employee's claim, the matter becomes a purely private dispute if it goes to an administrative hearing without the Assistant Secretary's participation. On the contrary, with or without the Assistant Secretary's participation, the employee's claim is still very much a claim that a Congressionally created right to be protected from discrimination has been violated. An employee's claim of discrimination based on engagement in the protected activity of "whistleblowing" with regard to commercial motor vehicle safety and health matters is a claim which did not exist at common law. It only came into existence when Congress, on January 6, 1983, determined that the government had to protect its sources of information and accordingly, the STAA process was formulated. In this regard, then, OSHA's investigative finding is merely the first step in a Congressionally-created process to determine whether the claim is correct. The *de novo* hearing before an administrative law judge, followed by the Secretary of Labor's review are additional steps in this process and in no way are they resolution of "private disputes". Since these are all steps in a Department of Labor process to determine the existence of a statutory violation, the Assistant Secretary's non-participation in the proceeding does not render the Congressionally-created right a private dispute.

Indeed, as explained in various Supreme Court decisions, when Congress has created a special right, not known at common law, such as the right to be free from discrimination because of an employee's safety-related activities, Congress can remove adjudication of this Congressionally-created substantive Federal right from Article III courts and delegate it to administrative agencies for factual determination. See *Northern Pipeline Construction Co.* v. *Marathon Pipeline Co.*, 458 U.S. 50, 102 S. Ct. 2858, 2878. See also, *Crowell* v. *Benson*, 285 U.S. 22, 51–65 (1932); *Atlas Roofing Co.* v. *OSHRC*, 430 U.S. 442, 450 n. 7 (1977); *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, (1937). In fact, Congress has used the same or similar approaches in numerous other whistleblower statutes administered by the Secretary. See, e.g., Energy Reorganization Act, 42 U.S.C. 5851; Toxic Substances Control Act, 15 U.S.C. 2622; Safe Water Drinking Act, 42

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U.S.C. 300; 9(i); Water Pollution Control Act, 33 U.S.C. 1367; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9610; and Resource Conservation and Recovery Act, 42 U.S.C. 6971.

Finally, OSHA notes that the final administrative decision of the Secretary is reviewable in the Federal courts of appeals, 49 U.S.C. app. 2305(d)(1), and the Secretary must go to U.S. district court to enforce his final order. 49 U.S.C. app. 2305(e).

Two other comments were raised with regard to § 1978.107. Attorney Pasek noted that this section contains the only direct reference to the right of the parties to obtain discovery in STAA proceedings and he requested that the rules provide more explicitly for discovery. The rule does not provide for specific discovery measures because the rule in § 1978.106(a), has incorporated by reference 29 CFR Part 18, the Rules of Procedure governing Department of Labor Administrative Hearings, which specifically provides for discovery. See 29 CFR 18.14–23.

Attorney Towers also noted that the rule did not provide for joinder of necessary parties. OSHA believes that it is unnecessary to have a specific provision regarding joinder because 29 CFR Part 18 specifies that the Federal Rules of Civil Procedure will apply to the extent that the rules of administrative practice do not cover an area.

Decision and Orders

Section 1978.109, which covers the issuance of ALJ decisions and the final decision and order of the Secretary, generated several comments. As noted previously in OSHA's response to comments on § 1978.104, SCRA and ATA commented on the availability of attorney's fees for employers. As noted in the response to those comments, the statute provides only for awards of costs and attorney's fees to complainants.

Attorney Towers and ATA commented on the § 1978.109(a) provision for the close of the record before the administrative law judge. According to these commentators, the rule appeared to be incorrectly drafted because § 1978.106(b) provided for the holding of a hearing within 30 days of the filing of objections, and yet § 1978.109(a) provided for the closing of the record "no later than 30 days after the objection." According to the comments, the rules conflicted and presented the parties with an impossibility of performance in that the hearing would open on the same day as the record would close.

OSHA has reviewed this provision and believes that the rules as drafted are correct and operable. In § 1978.106(b), the hearing must commence within 30 days after the filing of an objection to the Assistant Secretary's findings and order. This rule means that a hearing can commence at any time within that 30 day period, unless the parties agree to an extension.

In § 1978.109(a), the record closes on the 30th day after the filing of objections. This rule requires that any hearing which may have been conducted and the submission of all evidence must be completed by the close of business on the 30th day after the filing of objections. In this scenario, there is no conflict between §§ 1978.106(b) and 1978.109(a) since the hearing could be conducted prior to and concluded by the 30th day after the filing of objections. Accordingly, the record can then be closed on the 30th day. If necessary, the parties may agree to a continuance. OSHA's purpose in implementing such a shortened timeframe for hearings is to satisfy the Congressional mandate that hearings be conducted "expeditiously" after objections are filed. See *Brock* v. *Roadway Express, Inc., supra,* 107 U.S. 1746.

Withdrawal and Settlements

Attorney Pasek raised several concerns regarding § 1978.111. His first concern is that § 1978.111(a) limits the withdrawal of complaints by an employee to the time prior to the filing of objections to the Assistant Secretary's findings. Attorney Pasek found this requirement to be "unduly restrictive" and an impairment to reaching an amicable accord. OSHA has considered this concern and believes that he has misunderstood the purpose of this section. Section 1978.111(a) is aimed at the unilateral withdrawal of a complaint by the complainant prior to the start of adjudicatory proceedings. If an individual is no longer interested in pursuing his claim at the *investigative* stage, OSHA will review with the complainant his or her reasons for withdrawal and, if OSHA determines that this withdrawal has been made voluntarily and under no coercion by the named person, the withdrawal request will ordinarily be approved by OSHA.

Attorney Pasek also was concerned that § 1978.111(c) unduly restricted settlement attempts since the subsection requires the ALJ or the Secretary to affirm any portion of the findings or order with respect to which objection is withdrawn. OSHA's purpose in promulgating this rule was to cover unilateral withdrawals of objections to findings and an order where a party has determined on his or her own that he or she no longer wishes to pursue an objection and it is not intended to cover a settlement agreement. The Secretary, in *Underwood* v. *Blue Springs Hatchery,* 87–STA–21, Order to Show Cause, issued September 23, 1987, has also ruled that § 1978.111(c) covers the withdrawal of complaint after the filing of objections. If the parties, including the Assistant Secretary, agree, a settlement which includes a withdrawal of objections without admitting liability may be reached without engaging the provisions in § 1978.111(c). Such a settlement falls not under § 1978.111(c) but rather § 1978.111(d), where settlements are to be tri-partite as required by the statute.

In § 1978.111(d), OSHA intended to require that all parties who have chosen to participate in the hearing agree to the settlement and that the Secretary of Labor approve such agreement. In § 1978.111(d) settlements, if the Assistant Secretary has chosen not to participate in the hearing, it was OSHA's intent that it should be unnecessary to seek his approval of the agreement. Instead, the settlement section requires that the agreement be submitted for approval by the Secretary or his ALJ. In that regard, the settlement would conform with the statutory mandate that proceedings under 405 may be terminated by a settlement agreement entered into by the Secretary of Labor, the complainant and the named person.

To the extent that § 1978.111(d) does not make this intention clear, OSHA has changed the rule to provide for a distinction between settlements at the investigative phase and those at the adjudicatory phase. New § 1978.111(d)(1) provides for investigative settlements where tri-partite agreement is reached with the Assistant Secretary's approval of a settlement between complainant and the named person. New § 1978.111(d)(2) provides for the procedure in adjudicatory settlements where the parties, including the Assistant Secretary if he or she has elected to participate, must submit the agreement for approval to the ALJ or the Secretary. New § 1978.111(d)(3) incorporates the language of old § 1978.111(d) which covered the Assistant Secretary's declination to prosecute a case if the complainant refused to accept a fair and equitable settlement. OSHA believes that the new language will clarify its intent in the previously drafted section on settlements.

Arbitration or Other Proceedings

Attorney Towers and ATA commented that, at the investigative phase prior to issuance of findings and preliminary order, the Assistant Secretary should defer to the outcome of other proceedings. OSHA intended that the provisions at § 1978.112(c) apply to the Assistant Secretary as well as the Secretary's. OSHA's reading of the current language is that § 1978.112(c)'s use of the word "Secretary" included the Assistant Secretary within its ambit. See § 1978.101(b). However, OSHA recognized that confusion may occur as the section is presently drafted and accordingly, to eliminate this confusion, § 1978.112(c) shall be changed to include a reference to the Assistant Secretary. Under this provision, the Assistant Secretary, at the investigative phase, may defer to the outcome of proceedings conducted in another forum, including arbitration and grievance proceedings, if those proceedings dealt adequately with all factual issues, were fair, regular and free of procedural defects and the outcome of the proceedings was not repugnant to the purpose and policy of the Act. See *Spielberg Mfg. Co.,* 112 NLRB 1080, 1082 (1955).

OSHA has made one other, insignificant change in § 1978.112. As was done in § 1978.102(d)(3), OSHA has deleted any case citations which support the rule. OSHA has deleted these references since the specific citations do not add anything significant to the rule and only serve to clutter the text of the subsections.

Errata

Several errors occurred in promulgation of the interim rule. These errors are related solely to incorrect cross references within the rule itself and one instance of incorrect editing.

1. In § 1978.102(f), the reference to 29 CFR 1978.102(b) is changed to 29 CFR 1978.103 (b) and (c).
2. In § 1978.108(a), the reference to § 1978.106(a) is changed to § 1978.107(a).
3. Section 1978.108(b), the reference to § 1978.106(b) is changed to 1978.107(b).
4. In § 1978.108(c), the reference to § 1978.106(c) is changed to 1978.107(c).
5. In § 1978.110(a), the reference to § 1978.108 is changed to 1978.109.
6. In § 1978.109(b) the word "discretionary" in last sentence of that paragraph has been deleted.

Unchanged Provisions

Many of the provisions in the interim rule received no comments. Those provisions are adopted as originally promulgated.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. These rules are issued pursuant to section 405 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 49 U.S.C. 2301 *et seq.*) and Secretary of Labor's Order No. 9–83, 48 FR 35736, and No. 18–75, December 10, 1975, and with respect to the procedures dealing with the relationship between section 405 and section 11(c) procedures, pursuant to section 11(c)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)(2)) and section 8(g)(2) of the OSH Act (29 U.S.C. 657(g)(2)).

Classification

This rule is procedural in character in that it implements the procedures for filing, investigating, litigating, and adjudicating complaints filed pursuant to the Surface Transportation Assistance Act of 1982. Therefore, the rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the rule is procedural in character in that it implements the procedures established by the Surface Transportation Assistance Act of 1982 and thus no significant economic impact is expected with respect to small entities, nor with respect to other entities as well. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not contain a collection of information requirement.

List of Subjects in 29 CFR Part 1978

Employer-employee relations, Administrative practice and procedure, Labor, Occupational Safety and Health.

Signed at Washington, DC this 17th day of November, 1988.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

For the reasons set out in the preamble, Title 29 is amended by revising Part 1978, Subpart B to read as follows:

PART 1978—RULES FOR IMPLEMENTING SECTION 405 OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA)

Subpart A—Interpretive Rules [Reserved]

Subpart B—Rules of Procedure

Complaints, Investigations, Findings and Preliminary Orders

Sec.

1978.100 Purpose and scope.
1978.101 Definitions.
1978.102 Filing of discrimination complaint.
1978.103 Investigation.
1978.104 Issuance of findings and preliminary orders.
1978.105 Objections to the findings and the preliminary order.

Litigation

1978.106 Scope of rules; applicability of other rules; notice of hearing.
1978.107 Parties.
1978.108 Captions, titles of cases.
1978.109 Decision and orders.
1978.110 Judicial review.
1978.111 Withdrawal of section 405 complaints, objections, and findings; settlement.

Miscellaneous Provisions

1978.112 Arbitration or other proceedings.
1978.113 Judicial enforcement.
1978.114 Statutory time periods.
1978.115 Special circumstances; waiver of rules.

Authority: Sec. 405 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 49 U.S.C. 2301 *et seq.*) and Secretary of Labor's Order No. 9–83, 48 FR 35736, and No. 18–75, December 10, 1975, and with respect to the procedures dealing with the relationship between sec. 405 and sec. 11(c) procedures, pursuant to sec. 11(c)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)(2)) and sec. 8(g)(2) of the OSH Act (29 U.S.C. 657(g)(2)).

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Subpart A—Interpretive Rules—[Reserved]

Subpart B—Rules of Procedure

Complaints, Investigations, Findings and Preliminary Orders

§ 1978.100 Purpose and scope.

(a) This subpart implements the procedural aspects of section 405 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 2305, which provides for employee protection from discrimination because the employee has engaged in protected activity pertaining to commercial motor vehicle safety and health matters.

(b) Procedures are established by this subpart pursuant to the statutory provision set forth above for the expeditious handling of complaints of discrimination made by employees, or persons acting on their behalf. These rules, together with those rules set forth at 29 CFR Part 18, set forth the procedures for submission of complaints under section 405, investigations, issuance of findings and preliminary orders, objections thereto, litigation before administrative law judges, post-hearing administrative review, withdrawals and settlements, judicial review and enforcement, and deferral to other forums.

§ 1978.101 Definitions.

(a) "Act" means the Surface Transportation Assistance Act of 1982 (STAA) (49 U.S.C. 2301 *et seq.*).

(b) "Secretary" means Secretary of Labor or persons to whom authority under the Act has been delegated.

(c) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

(d) "Employee" means (1) a driver of a commercial motor vehicle (including an independent contractor while in the course of personally operating a commercial motor vehicle); (2) a mechanic; (3) a freight handler; or (4) any individual other than an employer; who is employed by a commercial motor carrier and who in the course of his employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any State, or a political subdivision of a State who is acting within the course of such employment.

(e) "Commercial motor carrier" means a person who meets the definition of "motor carrier" found at 49 U.S.C. 10102(13) (Supp. 1987) and "motor private carrier" found at 49 U.S.C. 10102(16) (Supp. 1987).

(f) "OSHA" means the Occupational Safety and Health Administration.

(g) "Complainant" means the employee who filed a section 405 complaint or on whose behalf a complaint was filed.

(h) "Named person" means the person alleged to have violated section 405.

(i) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons.

§ 1978.102 Filing of discrimination complaint.

(a) *Who may file.* An employee may file, or have filed by any person on the employee's behalf, a complaint alleging a violation of section 405.

(b) *Nature of filing.* No particular form of complaint is required.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but filing with any OSHA officer or employee is sufficient. Addresses and telephone numbers for these officials are set forth in local directories.

(d) *Time for filing.* (1) Section 405(c)(1) provides that an employee who believes that he has been discriminated against in violation of section 405 (a) or (b) "* * * may, within one hundred and eighty days after such alleged violation occurs," file or have filed by any person on the employee's behalf a complaint with the Secretary.

(2) A major purpose of the 180-day period in this provision is to allow the Secretary to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 180 days of an alleged violation will ordinarily be considered to be untimely.

(3) However, there are circumstances which will justify tolling of the 180-day period on the basis of recognized equitable principles or because of extenuating circumstances, *e.g.*, where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; or where the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency are examples of circumstances which do not justify a tolling of the 180-day period. The Assistant Secretary will not ordinarily investigate complaints which are determined to be untimely.

(e) *Relationship to section 11(c) complaints.* A complaint filed by an employee within thirty days of the alleged violation or otherwise timely filed pursuant to section 11(c) of the OSHA Act, which alleges discrimination relating to safety or health, shall be deemed to be a complaint filed under both section 405 and section 11(c). Normal procedures for investigations under both sections will be followed, except as otherwise provided.

(f) Upon receipt of a valid complaint, OSHA shall notify the named person of the filing of the complaint by providing a copy of the complaint, sanitized to protect witness confidentiality if necessary, and shall also notify the named person of his or her rights under 29 CFR 1978.103 (b) and (c).

§ 1978.103 Investigation.

(a) OSHA shall investigate and gather data concerning the case as it deems appropriate.

(b) Within twenty days of his or her receipt of the complaint the named person may submit to OSHA a written statement and any affidavits or documents explaining or defending his or her position. Within the same twenty days the named person may request a meeting with OSHA to present his or her position. The meeting will be held before the issuance of any findings or preliminary order. At the meeting the named person may be accompanied by counsel and by any persons with information relating to the complaint, who may make statements concerning the case. At such meeting OSHA may present additional allegations of violations which may have been discovered in the course of its investigation.

(c) If, on the basis of information gathered under paragraphs (a) and (b) of this section, OSHA has reasonable cause to believe that the named person has violated the Act and that temporary reinstatement is warranted, prior to the issuance of findings and preliminary order as provided for in § 1978.104, OSHA shall again contact the named person to give him or her notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. The named person shall be given the opportunity to submit a written response, to meet with the investigators and to present statements from rebuttal witnesses. The named person shall present this rebuttal evidence within five days of OSHA's notification pursuant to this subsection, or as soon thereafter as OSHA and the named person can agree, if the interests of justice so require.

§ 1978.104 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within sixty days of the filing of the complaint, written findings as to whether there is reasonable cause to believe that the named person or others have discriminated against the complainant in violation of section 405 (a) or (b). If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he shall accompany his findings with a preliminary order providing the relief prescribed in section 405(c)(2)(B). Such order will include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. At the complainant's request the order may also assess against the named party the complainant's costs and expenses (including attorney's fees) reasonably incurred in filing the complaint.

(b) The findings and the preliminary order shall be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order shall inform the parties of the right to object to the findings and/or the order and shall give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary shall file with the Chief Administrative Law Judge, U.S. Department of Labor, the original complaint and a copy of the findings and/or order.

(c) Upon the issuance of findings that there is reasonable cause to believe that a violation has occurred, any pending section 11(c) complaint will be suspended until the section 405 proceeding is completed. When the section 405 proceeding is completed the Assistant Secretary will determine what action, if any, is appropriate on the section 11(c) complaint. If the Assistant Secretary's findings indicate that a violation has occurred, the Assistant Secretary shall make a separate determination as to whether section 11(c) has been violated.

§ 1978.105 Objections to the findings and the preliminary order.

(a) *Basic procedures.* Within thirty days of receipt of the findings or preliminary order the named person or the complainant, or both, may file objections to the findings or preliminary order providing relief or both and request a hearing on the record. The objection and request shall be in writing and shall state whether the objection is to the findings or the preliminary order or both. Such objection shall also be considered a request for a hearing. The date of the postmark shall be considered to be the date of filing. Objections shall be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC and copies of the objections shall be mailed at the same time to the other parties of record, including the Assistant Secretary's designee who issued the findings and order.

(b) *Effective date of findings and preliminary order and failure to object.* (1) The findings and the preliminary order shall be effective thirty days after the named person's receipt thereof, or on the compliance date set forth in the preliminary order, whichever is later, unless an objection to the findings or preliminary order has been timely filed. However, the portion of any preliminary order requiring reinstatement shall be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections thereto.

(2) If no timely objection is filed with respect to either the findings or the preliminary order, such findings or preliminary order, as the case may be, shall become final and not subject to judicial review.

§ 1978.106 Scope of rules; applicability of other rules; notice of hearing.

(a) Except as otherwise noted, hearings shall be conducted in accordance with the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges promulgated at 29 CFR Part 18, 48 FR 32538 (July 15, 1983), amended at 49 FR 2739 January 20, 1984. Hearings shall be conducted as hearings *de novo*.

(b) Upon receipt of an objection, the Chief Administrative Law Judge shall immediately assign the case to a judge who shall, within seven days following the receipt of the objection, notify the parties, by certified mail, of the day, time, and place of hearing. The hearing shall commence within 30 days of the filing of the objection, except upon a showing of good cause or unless otherwise agreed to by the parties.

(c) If both complainant and the named person object to the findings and/or order, the objections shall be consolidated and a single hearing shall be conducted. If the objections are not received simultaneously, the hearing shall commence within 30 days of the receipt of the later objection.

(d) At the time the hearing order issues, the judge may order the prosecuting party to file a prehearing statement of position, which shall briefly set forth the issues involved in the proceeding and the remedy requested. Such prehearing statement shall be filed within three days of the receipt of the hearing order and shall be served on all parties by certified mail. Thereafter, within three days of receipt of the prosecuting party's prehearing statement, the other parties to the proceeding shall file prehearing statements of position.

§ 1978.107 Parties.

(a) In any case in which only the named person objects to the findings or the preliminary order the Assistant Secretary ordinarily shall be the prosecuting party. In such a case the complainant shall also be a party and may engage in discovery, present evidence or otherwise act as a party. The named person shall be the party-respondent. If, at any time after the named person files objections, the Assistant Secretary and complainant agree, the complainant may present the case to the judge. Under such circumstances the case will be handled as if it had arisen under paragraph (b) of this section.

(b) In any case in which only the complainant objects to findings that the complaint lacks merit, to the preliminary order, or to both, the complainant shall be the prosecuting party. The Assistant Secretary may as of right intervene as a party at any time in proceedings under this paragraph. The named person shall be the party-respondent.

(c) In any case in which both the complainant and the named person object to the preliminary order the Assistant Secretary shall be the prosecuting party. The complainant and the named person shall be the party-respondents. In any such case, if the named person also objected to the findings the Assistant Secretary, complainant, and named party shall each have the party status, rights, and responsibilities set forth in paragraph (a) of this section with respect to the findings.

§ 1978.108 Captions, titles of cases.

(a) Cases described in § 1978.107(a) shall be titled:

Assistant Secretary of Labor for Occupational Safety and Health, Prosecuting Party and (Name of Complainant), Complainant v. (Name of named person), Respondent.

(b) Cases described in § 1978.107(b) shall be titled:

(Name of complainant), Complainant v. (Name of named person), Respondent.

(c) Cases described in § 1978.107(c) shall be titled:

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Assistant Secretary of Labor for Occupational Safety and Health, Prosecuting Party v. (Name of named person), Respondent.

(Name of complainant), Complainant v. (Name of named person), Respondent.

(d) The titles listed in paragraphs (a), (b), and (c) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

§ 1978.109 Decision and orders.

(a) *Administrative Law Judge decisions.* The administrative law judge shall issue a decision within 30 days after the close of the record. The close of the record shall occur no later than 30 days after the filing of the objection, except upon a showing of good cause or unless otherwise agreed to by the parties. For the purposes of the statute the issuance of the judge's decision shall be deemed the conclusion of the hearing. The decision shall contain appropriate findings, conclusions, and an order pertaining to the remedy which, among other things, may provide for reinstatement of a discharged employee and also may include an award of the complainant's costs and expenses (including attorney's fees) reasonably incurred in bringing and litigating the case, if the complainant's position has prevailed. The decision shall be forwarded immediately, together with the record, to the Secretary for review by the Secretary or his or her designee. The decision shall be served upon all parties to the proceeding.

(b) The administrative law judge's decision and order concerning whether the reinstatement of a discharged employee is appropriate shall be effective immediately upon receipt of the decision by the named person. All other portions of the judge's order are stayed pending review by the Secretary.

(c) *Final order.* (1) Within 120 days after issuance of the administrative law judge's decision and order, the Secretary shall issue a final decision and order based on the record and the decision and order of the administrative law judge.

(2) The parties may file with the Secretary briefs in support of or in opposition to the administrative law judge's decision and order within thirty days of the issuance of that decision unless the Secretary, upon notice to the parties, establishes a different briefing schedule.

(3) The findings of the administrative law judge with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be considered conclusive.

(4) Where the Secretary determines that the named party has not violated the law, the final order shall deny the complaint.

(5) The final decision and order of the Secretary shall be served upon all parties to the proceeding.

§ 1978.110 Judicial review.

(a) Within 60 days after the issuance of a final order under § 1978.109, any person adversely affected or aggrieved by such order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation (49 U.S.C. 2305(d)(1)).

(b) A final order of the Secretary shall not be subject to judicial review in any criminal or other civil proceedings (49 U.S.C. 2305(d)(2)).

(c) The record of a case, including the record of proceedings before the administrative law judge, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§ 1978.111 Withdrawal of section 405 complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, an employee may withdraw his or her section 405 complaint by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary shall thereafter determine whether the withdrawal shall be approved. The Assistant Secretary shall notify the named person of the approval of any withdrawal.

(b) The Assistant Secretary may withdraw his findings or a preliminary order at any time before the expiration of the 30-day objection period, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order shall begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Secretary. The judge or the Secretary, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

(d)(1) *Investigative Settlements.* At anytime after the filing of a section 405 complaint by an employee and before the finding and/or order are objected to, or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlement.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and such settlement is approved by the Secretary of Labor or the ALJ. A copy of the settlement shall be filed with the ALJ or the Secretary as the case may be.

(3) If, under paragraph (d) (1) or (2) of this section the named person makes an offer to settle the case which the Assistant Secretary, when acting as the prosecuting party, deems to be a fair and equitable settlement of all matters at issue and the complainant refuses to accept the offer, the Assistant Secretary may decline to assume the role of prosecuting party as set forth in § 1978.107(a). In such circumstances, the Assistant Secretary shall immediately notify the complainant that his review of the settlement offer may cause the Assistant Secretary to decline the role of prosecuting party. After the Assistant Secretary has reviewed the offer and when he or she has decided to decline the role of prosecuting party, the Assistant Secretary shall immediately notify all parties of his decision in writing and, if the case is before the administrative law judge, or the Secretary on review, a copy of the notice shall be sent to the appropriate official. Upon receipt of the Assistant Secretary's notice, the parties shall assume the roles set forth in § 1978.107(b).

Miscellaneous Provisions

§ 1978.112 Arbitration or other proceedings.

(a) *General.* (1) An employee who files a complaint under section 405 of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Secretary's jurisdiction to entertain section 405 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Secretary may proceed with the investigation and the issuance of findings and orders regardless of the pendency of other proceedings.

(2) However, the Secretary also recognizes the national policy favoring voluntary resolution of disputes under

procedures in collective bargaining agreements. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 405 complaints.

(3) Where complainant is in fact pursuing remedies other than those provided by section 405, the Secretary may, in his or her discretion, postpone a determination of the section 405 complaint and defer to the results of such proceedings.

(b) *Postponement of determination.* When a complaint is under investigation pursuant to § 1978.103, postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under section 405 and those proceedings are not likely to violate rights guaranteed by section 405. The factual issues in such proceedings must be substantially the same as those raised by a section 405 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

(c) *Deferral to outcome of other proceedings.* A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-by-case basis, after careful scrutiny of all available information. Before the Assistant Secretary or the Secretary defers to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the section 405 complaint.

§ 1978.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to occur.

§ 1978.114 Statutory time periods.

The time requirements imposed on the Secretary by these regulations are directory in nature. While every effort will be made to meet these requirements, there may be instances when it is not possible to meet these requirements. Failure to meet these requirements does not invalidate any action by the Assistant Secretary or Secretary under section 405.

§ 1978.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the judge or the Secretary on review may, upon application, after three days notice to all parties and intervenors, waive any rule or issue such orders as justice or the administration of section 405 requires.

[FR Doc. 88-27070 Filed 11-23-88; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 80515-8209]

Requests for Identifiable Records

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: This final rule sets forth changes that the Patent and Trademark Office (PTO) is making to the rules governing requests for records not disclosed to the public as part of the regular informational activity of the PTO. The prior rule sets out the PTO Freedom of Information Act (FOIA) procedures. The final rule updates these procedures and specifies that FOIA requests will be processed in accordance with Department of Commerce regulations contained in Part 4 of 15 CFR (Public Information).

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Albin F. Drost by telephone at (703) 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: As presently written, 37 CFR 1.15 describes procedures for obtaining documents under the Freedom of Information Act that have been superseded. The purpose of this rule change is to bring the PTO FOIA procedures into conformity with the Department of Commerce FOIA rules. The final rule directly advises requesters that the PTO will follow the Department of Commerce rules for disclosure of information under FOIA.

A notice of proposed rulemaking was published on July 19, 1988 (53 FR 27177). Interested parties were requested to submit written comments on or before September 20, 1988. No comments were received.

Other considerations

This rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

This rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12812, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354) because no increase in fees or paperwork should result from this rule change.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12991. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no federalism implications affecting the relationship between the National Government and the states as outlined in Executive Order 12612.

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirement within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Records.

For the reasons set out in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office amends Title 37 of the Code of Federal Regulations as set forth below:

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PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.15 is revised as follows:

§ 1.15 Requests for identifiable records.

(a) Requests for records, not disclosed to the public as part of the regular informational activity of the Patent and Trademark Office and which are not otherwise dealt with in the rules in this part, shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request." Each such request, so marked, should be submitted by mail addressed to the "Patent and Trademark Office, Freedom of Information Request Control Desk, Box 8, Washington, DC 20231," or hand delivered to the Office of the Solicitor, Patent and Trademark Office, Arlington, Virginia. The request will be processed in accordance with the procedures set forth in Part 4 of Title 15, Code of Federal Regulations.

(b) Any person whose request for records has been initially denied in whole or in part, or has not been timely determined, may submit a written appeal as provided in § 4.8 of Title 15, Code of Federal Regulations.

(c) Procedures applicable in the event of service of process or in connection with testimony of employees on official matters and production of official documents of the Patent and Trademark Office in civil legal proceedings not involving the United States shall be those established in parts 15 and 15a of Title 15, Code of Federal Regulations.

Date: November 21, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-27247 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3472-5; AL-022]

Approval and Promulgation of Implementation Plans; Alabama: Lead Plan for Jefferson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan for Jefferson County submitted by Alabama to provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for lead as required under section 110 of the Clean Air Act (CAA). EPA proposed to approve the Alabama lead State Implementation Plan (SIP) for Jefferson County on July 16, 1986 (51 FR 25716), and on February 11, 1987 (52 FR 4288), approved it on the condition that the Alabama Department of Environmental Management study and adopt, as appropriate, controls beyond the level of Reasonably Available Control Technology (RACT), since the plan did not include a demonstration that the NAAQS would be attained. Following a "RACT-plus" study in conformity with the conditional approval, the Jefferson County Department of Health (JCDH) submitted draft plan revisions on February 19, 1988. Approval was proposed on June 29, 1988 (53 FR 24451), contingent upon two conditions being met before final rulemaking. The first condition was that Jefferson County adopt the draft revised Regulation 6.11 and respond suitably to EPA's comments made on the draft revised regulations. Secondly, Jefferson County was to submit the air permits that reflect the lead emission limits of the draft revised Jefferson County regulations to Alabama as air permits. Alabama was in turn to submit the air permits to EPA for inclusion in the Alabama SIP. On May 11, 1988, Jefferson County adopted the revised Regulation 6.11, which was submitted to EPA on February 19, 1988. On August 5, 1988, Alabama submitted to EPA, for inclusion in the SIP, Jefferson County's air permits. This satisfies both conditions specified in the June 29, 1988, notice. EPA is today approving Alabama's revisions because the SIP contains a demonstration of attainment of standards and all necessary measures to attain the standards. Additionally, in the civil action of *NRDC* v. *EPA*, Civ. No. 82-2317 (D.C.D.C.), EPA agreed to take final action on Jefferson County's lead regulation by December 1, 1988.

DATES: This action will be effective on December 27, 1988.

ADDRESSES: Copies of the submittal are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION

I. Background

On October 5, 1978, the National Ambient Air Quality Standards (NAAQS) for lead were promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (μg lead/m^3) averaged over a calendar quarter. Under Section 110 of the CAA, all states were to submit a SIP which will provide for attainment and maintenance of the lead NAAQS.

The State of Alabama on March 24, 1982, submitted to EPA a SIP for attainment of the lead NAAQS. On May 2, 1984 (40 FR 18737), EPA disapproved the Alabama SIP for lead because it did not provide for the attainment of the NAAQS for lead throughout the State. In 1984 and 1985, the State was not able to attain the standards due to fugitive emissions. Therefore, on March 18, 1985, and May 6, 1985, the State of Alabama submitted portions of a revised lead SIP which demonstrates attainment of the NAAQS for lead for all areas of Alabama except Jefferson County. This SIP focused on the area around Sanders Lead, in Troy, Alabama where both monitored air quality data and air quality model predictions showed violations of the NAAQS for lead. Through modeling, Alabama demonstrated that the required control measures and emission limitations were adequate to assure attainment of the lead NAAQS in the vicinity of Sanders Lead. Accordingly, EPA proposed approval of this revised plan on January 2, 1986 (51 FR 41), and final approval was given on July 14, 1986 (51 FR 25366). On October 7, 1985, Alabama submitted to EPA a new lead SIP for Jefferson County (revised Regulation 6.11). EPA proposed to approve the revised Regulation 6.11 on July 16, 1986 (51 FR 25715). Since this regulation, which was initially adopted on September 9, 1985, was not accompanied by a demonstration of attainment of the NAAQS for lead, EPA conditionally approved it on February 11, 1987. The condition of approval was that the State fulfill by October 1, 1987, its commitment to submit to EPA any additional measures, along with an appropriate demonstration, necessary to assure timely attainment and maintenance of the NAAQS as expeditiously as practicable but no later than October 1, 1989.

Following a "RACT-plus" study in conformity with the conditional approval, the Jefferson County Department of Health (JCDH) submitted draft plan revisions on February 19, 1988. EPA proposed to approve Jefferson County's draft revision on June 29, 1988 (53 FR 24451), contingent upon two conditions being met before final approval. First, JCDH was to adopt the draft revised Regulation 6.11 which was submitted to EPA on February 19, 1988, and respond suitably to EPA's comments on the draft revised regulation. Secondly, JCDH was to submit the emission limits reflected in the regulation to Alabama as air permits. Alabama was in turn to submit the permits to EPA for inclusion in the Alabama SIP.

II. Alabama Revised Lead SIP

On August 5, 1988, the Alabama Department of Environmental Management submitted to EPA the Jefferson County air permits issued to Interstate Lead Company as a revision to the Alabama SIP in fulfillment of Alabama's requirement to modify its SIP to address the lead nonattainment in Leeds, Alabama.

On May 11, 1988, the Jefferson County Board of Health adopted a revised Regulation 6.11, designed to correct the lead nonattainment problem in Leeds, Alabama. These revised regulations have been incorporated into the permits issued to the secondary lead plant in the Leeds area, Interstate Lead Corporation. The revised regulations represent control of lead and particulate matter emissions from secondary lead smelters above the level of RACT. This level of control (above RACT) is normally referred to as "RACT-plus."

The RACT-plus lead regulations were derived by: (1) Research and study of existing approved lead SIPs in other states; (2) investigation of effective lead air pollution controls at sources in geographic areas in attainment of the lead NAAQS; (3) conducting numerous inspections of Interstate Lead Corporation's (ILCO) plant to observe actual emission problems; (4) making extensive emission calculations on all known ILCO lead sources and emission points to estimate emissions under current, RACT-level control, as practiced by ILCO, and as projected for the RACT-plus level of control; and (5) evaluating the results of mathematical computer modeling which utilized these emissions estimates. The resultant regulations generated represent RACT-plus controls which, when implemented and enforced, will provide for attainment of the lead NAAQS.

III. Results of EPA Review

Today's final rule provides the results of EPA's review of Alabama's revised lead SIP for Jefferson County. This information is presented under the following headings.

A. Changes in the Final SIP and Regulations.

B. Emission Data

C. Air Quality Data and Monitoring System.

D. Demonstration of Attainment/Modeling.

E. RACT-plus Control Plan for ILCO.

F. Compliance Schedule for Jefferson County.

G. Public Comments on EPA's Proposal.

More detailed information concerning EPA's review of this SIP is contained in a Technical Support Document which is available for public inspection at the locations identified in the "Addresses" section of this notice.

A. Changes in the Final SIP and Regulations

The most important changes in the existing secondary lead smelter regulations were made to implement RACT-plus level of control for affected sources or emission release points; these changes were incorporated into the air permits. Other changes were made for clarity or consistency with other regulations. A public hearing was held on the revisions on April 5, 1988. EPA reviewed the draft revised regulations and made comments which were forwarded to the Jefferson County Department of Health before the hearing. EPA proposed to approve the draft revised regulation on June 29, 1988 (53 FR 24451), based on the condition that the version adopted by Jefferson County respond suitably to EPA's comments on the draft revised regulations. JCDH has responded suitably to all comments made by EPA in the proposal notice.

B. Emission Data

The Jefferson County Department of Health has submitted lead emissions data for stack and process fugitive emission and fugitive dust sources. A summary of actual emissions at ILCO in 1984 and 1986 and the allowable RACT and proposed RACT-plus emissions is shown in Table 6 of the Technical Support Document. The lead RACT-plus control measures provide for a 72 percent reduction in point source emissions (from RACT allowable to RACT-plus allowable). The process area of the facility will be required to be enclosed in a building (100 percent capture). This building enclosure will have a ventilation capture system (hoods, ductworks, baghouses and fans) which will capture at any given time at least 90 percent of the process fugitive emissions and send it to a control device (baghouse) which will have 99-plus percent control efficiency. The remaining 5-10 percent of the emissions contained in the enclosed building will be removed in a timely manner by the same ventilation capture system.

The magnitude and duration of the 5-10 percent lead emissions which will be removed by the building ventilation capture system will vary depending on such problems as malfunctions, corrosion, or operator error which ILCO may experience and the reaction time needed to solve these problems. The emissions generated by such problems are intermittent in nature and will be required to be corrected on a priority basis.

The additional RACT-plus control is provided to improve captivity of all escaping process emissions. EPA has concluded that the lead emission reductions will provide for attainment and maintenance of the lead NAAQS.

C. Air Quality Data and Monitoring System

In 1987 a total of seven (7) quarterly lead violations were measured at two different ambient monitoring sites in the vicinity of ILCO. These tabulated results ranged from 1.91 to 3.33 ug/m^3. Therefore, Jefferson County was required to implement the next phase, or the RACT-plus portion, on the secondary lead smelter to ensure compliance with the lead NAAQS by October 1, 1989.

D. Demonstration of Attainment/Modeling

Since RACT-plus has been defined, the purpose of the modeling analysis was to assess the ambient lead levels with RACT-plus in place and determine if the lead concentrations will be below the NAAQS for lead.

Two models were selected to assess the RACT-plus Control Strategy. The Industrial Source Complex Long Term Model (ISCLT) was used to assess the concentrations on the low terrain near the facility, caused primarily by the fugitive emissions. The VALLEY model was used to assess the lead concentrations on the higher terrain, caused primarily by the emissions from the stacks.

The modeling techniques used in the demonstration supporting this revision are, for the most, based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA

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"Guideline on Air Quality Models" (1986). Since that time, revisions to modeling guidance have been promulgated by EPA (53 FR 392, January 6, 1988). Because the modeling analysis was under way prior to publication of the revised guidance, EPA accepts the analysis.

Based on the modeling results, intermediate terrain (locations between plume height and receptor height) was not a factor in the analysis. The design concentration was found to occur at the fenced property line using the ISCLT model. The major contribution to the design concentration was from the fugitive and stack emissions being downwashed due to building configuration. The results of the modeling concentrations are summarized in Tables 2, 3, and 4 of the Technical Support Document.

The meteorological data used in the analysis consisted of five years (1982–1986) of Birmingham, Alabama surface data and Centerville, Alabama mixing height data. These meteorological data in conjunction with maximum production rates as defined in the RACT-plus strategy predicted compliance with the quarterly lead standards of 1.5 $\mu g/m^3$.

Other stationary sources of lead and background sources of lead were evaluated in the existing lead State Implementation Plan (SIP) done in 1985. These sources were found at that time to be insignificant with respect to impact on ambient air quality in the vicinity of ILCO. This assessment has not changed. However, an additional source of lead has been located in the vicinity of ILCO since then. This source, A.J. Gerrard Company, Inc., is located within one kilometer of ILCO. A lead stack test was performed on Gerrard on November 30, 1987, by a private consultant to determine the facility's emissions. The emissions from Gerrard were modeled. The modeling revealed that Gerrard by itself causes no lead NAAQS exceedance and contributes an insignificant amount of lead to the monitoring sites around ILCO.

E. RACT-Plus Control Plan for ILCO

To ensure compliance with the lead NAAQS, a RACT-plus control plan was developed. The draft revised Jefferson County lead control plan contains new requirements at the RACT-plus level as follows:

1. A fully enclosed and ventilated building with control device shall be required to reduce and control emissions that escape as fugitive emissions from the furnaces' process and pollution control equipment currently in use.

2. Stack emissions from all baghouse stacks, except the building ventilation control device stack, will be limited to 0.001 grains of lead and 0.005 grains of particulate matter per dry standard cubic foot of exhaust. The building ventilation control device exhaust stack will have emissions limits of 0.0001 grains of lead and 0.0005 grains of particulate matter per dry standard cubic foot of exhaust. These limitations when used in the computer modeling to demonstrate attainment show no predicted lead NAAQS exceedances at receptors near ILCO, Inc.

3. Each and every baghouse or control device stack must be maintained at a height of 75 feet as a minimum above the ground level of the source. Any stacks which have to be modified because of installation of the enclosure building must also meet GEP requirements as currently required in Chapter 2 of the Jefferson County Board of Health Air Pollution Control Rules and Regulations.

4. "Drinking Quality" water will be used by ILCO on those fugitive dust points that are controlled by wet suppression. Recycled effluent will no longer be allowed as a dust suppressant for selected fugitive dust emissions points.

5. The installation of collection systems on the casting operations, and the reverb furnace metal tapping, will not be required because these emissions will be captured in the ventilated building. All other collection systems will be maintained by ILCO.

F. Compliance Schedule for Jefferson County

On February 19, 1988, the Jefferson County Department of Health submitted a revised schedule for implementing the RACT-plus study for ILCO. The schedule contains specific and detailed progressive steps leading to attainment; a timeframe for adopting regulatory requirements to implement additional measures; deadlines for installation of additional controls; and other specific deadlines for bid packages, engineering changes and construction. Specifically, the schedule calls for ILCO to complete plans and specifications and necessary permit applications by September 1, 1988; completion of all engineering changes and finalization of all bid packages by November 1, 1988; issuance of bid packages to vendors and contractors by December 1, 1988; construction of all equipment including new enclosed building with ventilation system by September 1, 1989, startup of all equipment by October 1, 1989, and collection of ambient lead data with RACT-plus installed for twenty-four months by October 1, 1991. The revised schedule is considered by EPA to be adequate. This schedule is a portion of the SIP revision EPA is approving and can be enforced directly by EPA as well as the State and Jefferson County.

G. Public Comments on EPA's Proposal

The following are the Jefferson County Department of Health's comments on EPA's Proposed Rule for the Jefferson County, Alabama Lead RACT-plus regulations as contained in Vol. 53, No. 125 **Federal Register** dated June 29, 1988:

1. Ref: Section IV. A

Changes proposed by EPA to the proposed regulations have been included in the regulations adopted by the Jefferson County Board of Health on May 11, 1988.

2. Ref: Section IV. D

The meteorological data used in the plan analysis consisted of the year 1982–1986 rather than 1981–1985.

3. Ref: Section IV. E., Paragraphs Nos. 6 and 7

The Technical Support Document (TSD) for the lead SIP for Jefferson County as adopted on May 11, 1988, did not include the requirement for additional lead monitors since the existing network of 5 monitors (not including Leeds Elementary School which is a special study site) was considered adequate.

The Jefferson County Department of Health also feels that it is not necessary to relocate the Hayes monitor, because even though it is on Interstate Lead property, it is across a public road from the facility and the site is accessible to the public.

The adopted TSD also did not include a requirement for a meteorological data system to be installed by Interstate Lead. Ambient monitoring is to be used to demonstrate attainment of the NAAQS.

EPA agrees with the above comments. The changes or corrections have been included in the present notice.

EPA's Action

EPA has evaluated the Jefferson County part of the Alabama lead SIP and has determined that it demonstrates attainment of the lead NAAQS through the implementation of control measures at the Interstate Lead Company. EPA is therefore approving the Jefferson County part of the Alabama lead SIP since Jefferson County adopted the draft revised Regulation 6.11 on May 11, 1988, and responded suitably to all of EPA's comments in the proposal notice. Also, Alabama formally submitted to EPA, for inclusion in the SIP, Jefferson County air permits that reflect the lead emission limits of the draft revised Jefferson County lead regulations.

Additionally, in the civil action of *NRDC* v. *EPA*, Civ. No. 82–2137 (C.D.C.D.), EPA agreed to take final action regarding Jefferson County's lead regulation, by December 1, 1988.

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1988. This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, and Lead.

Incorporation by reference of the state implementation plan for the State of Alabama was approved by the Director of the Federal Register on July 1, 1982.

Date: October 28, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter 1, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(48) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(48) Revised State Implementation Plan for attainment and maintenance of lead standards in Jefferson County, submitted on August 5, 1988, by the Alabama Department of Environmental Management.

(i) *Incorporation by reference.* (A) Air permits incorporating revised regulations for existing secondary lead smelters located in Jefferson County, Alabama (Regulation 6.11), adopted by the Jefferson County Board of Health on May 11, 1988.

(B) [Reserved]

(ii) *Other material.* (A) Narrative SIP, entitled "State Implementation Plan for the Attainment of the National Ambient Air Quality Standard for Lead in Jefferson County," dated February 19, 1988.

(B) [Reserved]

[FR. Doc. 88–25769 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3439–4; TN–072]

Approval and Promulgation of Implementation Plans; Tennessee; Plan Revision for Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by Tennessee that a change in the definition of "Existing Source" in Chapter 18, Volatile Organic Compound (VOCs), of the Tennessee Air Pollution Control regulations be incorporated into the Tennessee State Implementation Plan (SIP). The definition of "Existing Source" for VOC sources subject to Chapter 18 rules is found in Tennessee Department of Health and Environment Rule 1200–3–18–.02(m). The change in definition which was adopted by the Tennessee Department of Health and Environment on November 10, 1986, will have no effect on the environment.

DATES: This action will become effective on January 24, 1989, unless notice is received by December 27, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On January 6, 1988, the Tennessee Department of Health and Environment submitted to EPA a request to change the definition of "Existing Source" for VOC sources subject to Chapter 18 of the Tennessee Department of Health and Environment Air Pollution Control regulations. The current definition of "Existing Source" is found in Rule 1200–3–18.02(m). The revision would add the phrase "or the emergency rule date, whichever is earlier" so that the revised rule would read as follows:

"Existing source" is any process(es) in existence or having a state or local agency's construction permit prior to the "original rule certified date" or the emergency rule date, whichever is earlier, for the specified paragraph.

The Tennessee emergency rule date is December 31, 1980, and the Tennessee Emergency Rule for VOC's was approved by EPA on November 24, 1981 (46 FR 57488). The final rules for VOC sources have not been approved by EPA. No EPA action is planned regarding the final rules because they are identical to the emergency rules.

Therefore, the change in the definition of "Existing Source" for Chapter 18 is consistent with current Agency policy. Because of the simplicity of the action, no technical support document was prepared.

Final Action

EPA approves the SIP revision to change the definition of "Existing Source" in Chapter 18 of the Tennessee Department of Health and Environment rules. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

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Court of Appeals for the appropriate circuit by January 24, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note. The Director of the *Federal Register* approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: August 26, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(94) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(94) A revision of Rule 1200–3–18–.02(m) was submitted to EPA on January 6, 1988, by the Tennessee Department of Health and Environment.

(i) *Incorporation by reference.* (A) Amendment to Tennessee Department of Health and Environment rules (revision of Paragraph 1200–3–18–.02(m)), State-effective on November 10, 1986.

(ii) Other materials—none.

[FR Doc. 88–19887 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3473–9]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 110(a)(2)(F)(ii) of the Clean Air Act, as amended, requires that a state plan include a program to provide for installation of equipment to monitor emissions from stationary sources. In order to satisfy the requirements of the Act and EPA's plan requirements at 40 CFR 51.214, the Kansas Department of Health and Environment (KDHE) adopted K.A.R. 28–19–19 *et seq.*, Continuous emission monitoring (CEM). These rules were submitted to EPA on January 6, 1988, and became effective May 1, 1988.

Today's action approves Kansas' CEM rules. Approval of these rules repairs an outstanding state implementation plan (SIP) deficiency.

EPA is acting on these rules using the direct-to-final procedures.

DATES: The effective date of this rulemaking is January 24, 1989, unless EPA receives notice that someone wishes to make adverse or critical comments by December 27, 1988.

ADDRESSES: Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the state's submittal are available for public inspection during normal business hours at the above address and at the Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION:

Introduction

On October 6, 1975 (40 FR 46247), EPA promulgated regulations implementing section 110(a)(2)(F)(ii) of the Clean Air Act, as amended, which require that SIPs contain legally enforceable procedures to require stationary sources subject to emission standards as part of an applicable plan to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions; and to provide other information as specified in Appendix P of 40 CFR Part 51. EPA's regulations requiring CEM were originally codified at 40 CFR 51.19(e). EPA recodified its Part 51 regulations on November 7, 1986 (40 FR 40658). The CEM requirements are now found at 40 CFR 51.214.

After public notification and a public hearing held on November 13, 1987, the KDHE adopted rules requiring CEM systems. The Kansas CEM requirements are contained in K.A.R. 28–19–19 *et seq.* The state's notification and public hearing satisfy the requirements of 40 CFR 51.102. The state's submittal meets the 60–day timeframe for submitting SIP revisions in 40 CFR 51.104(d).

Review of Regulations

40 CFR Part 51, Appendix P, sets forth the minimum requirements for CEM and recordkeeping that a SIP must include in order to be approved under 40 CFR 51.165(b). K.A.R. 28–19–19(a) requires that all sources subject to the regulation install CEMs and comply with the data reduction and report requirements contained therein. This is approvable.

K.A.R. 28–19–19(b) (1) and (2) exempt units subject to the state's New Source Performance Standards (NSPS) in K.A.R. 28–19–83 *et seq.* This is acceptable since the state adopted EPA's NSPS by reference and the NSPS contain provisions for CEM for affected facilities subject to NSPS. The exemption is extended to fossil fuel-fired steam generators where an operating permit issued by the state under K.A.R. 28–19–14 limits the operating capacity to less than 30 percent. The exemption is terminated if the capacity restriction is removed. In such cases, the source owner or operator must have a CEM system installed and operational within six months of removal of the operational restriction. This is consistent with Part 51, Appendix P.

K.A.R. 28–19–19(c) identifies sources to which the regulations apply. This is consistent with sections 1.1.1 and 1.1.2 of Appendix P. Appendix P requires CEMs on sulfuric acid plants with a capability greater than 300 tons per day and nitric acid plants with a capacity greater than 300 tons per day if a control strategy for nitrogen dioxide is required in that Air Quality Control Region. The state's CEM regulations do not address sulfuric acid or nitric acid plants. This is acceptable. The state's section 111(d) plan identifies one sulfuric acid plant, but that plant's maximum *is* 300 tons per day. Thus, a CEM is not required. Existing sulfuric acid plants are regulated under K.A.R. 28–19–26. No nitrogen dioxide control strategy is required in Kansas; thus, CEM is not required for nitric acid plants.

The Kansas rules require that subject sources complete the installation and demonstrate compliance by November 1, 1987. This is approvable. K.A.R. 28–19–19(e) provides for an extension of time for installation, but in no case is an extension beyond November 1, 1988, to be granted. K.A.R. 28–19–19(f) requires that the owner or operator of an affected emission unit notify the state not less than 30 days prior to the anticipated installation and the date of the anticipated performance tests. The extension is consistent with Part 51, Appendix P, section 3.1. This extension does not prevent attainment of any primary ambient air quality standard because they are applicable only to stationary sources which do not impact on ozone or carbon monoxide nonattainment areas.

K.A.R. 28–19–19(g) adopts by reference the performance specifications and test procedures in 40 CFR Part 60, Appendix B, in effect on July 1, 1986. This is approvable. The performance specifications in the state regulation are identical to EPA's specifications for opacity, SO_2, CO_2, and O_2. The regulation requires that the source owner or operator subject to the requirements maintain records of all measurements, including performance test measurements, performance evaluations, calibration checks, adjustments, and maintenance, as well as emissions measurements. The regulation requires maintenance of records for at least two years. This is approvable.

The state rules require that the CEM system be operated except for down time during repairs, calibration checks, and zero and span checks. The rule requires monitoring of source emissions when the source is in operation. This is approvable.

The provisions of K.A.R. 28–19–19(k) require that the owners or operators of a source subject to the CEM regulations submit quarterly excess emissions reports. The data reductions requirements for the quarterly reports are clearly described in K.A.R. 28–19–19(e). This is consistent with Part 51, Appendix P, section 5.0, and is approvable.

The provisions of K.A.R. 28–19–19(m) require that an owner or operator of a source subject to the CEM rules develop and submit to the state an approvable quality assurance (QA) plan. When approved, the QA plan becomes enforceable as a part of the state CEM requirements. The quality control (QC) requirements are consistent with the QC requirements of Part 60, Appendix F, for CEMs and are approvable.

K.A.R. 28–19–19(o) allows a source owner or operator to use different but equivalent procedures and requirements for CEM systems, provided that a demonstration of equivalency is made, satisfactory to the department with EPA concurrence, that the alternative is equivalent. This rule is approvable with the understanding that all such equivalent procedures and requirements must be submitted to EPA as individual SIP revisions. In the absence of such approval, the enforceable requirements of the remaining rules shall be applicable.

Conclusion

EPA believes that the CEM regulations adopted by the state of Kansas are consistent with the technical requirements of 40 CFR Part 51, Appendix P. EPA believes the state's CEM regulations satisfy the requirements of 40 CFR 51.165(b) and 51.214.

Action

EPA approves the Kansas regulations K.A.R. 28–19–19(a) through K.A.R. 28–19–19(1) which govern the use and operation of CEM operating systems.

EPA believes there is good cause to approve the state's CEM rules without prior proposal. The rules adopted by the state of Kansas are consistent with the EPA requirements at 40 CFR 51.165 and 51.214 and satisfy the requirements of section 110(a)(2)(F)(ii) of the Clean Air Act, as amended. Further, the state's adoption of these rules and procedures cures an outstanding Kansas SIP deficiency. When EPA approves these state rules, they become federally enforceable and provide EPA with an additional means of tracking major sources of SO_2 and other pollutants. EPA believes that approval of these rules is noncontroversial.

The public should be advised that action will be effective January 24, 1989. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, and Sulfur dioxide.

Note.—Incorporation by reference of the SIP for the state of Kansas was approved by the Director of the *Federal Register* on July 1, 1982.

Date: October 28, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart R—Kansas

2. Section 52.820 is amended by adding paragraph (c)(23) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(23) Kansas Administrative Regulations (K.A.R.) 28–19–19(a) through 28–19–19(o) pertaining to continuous emission monitoring at certain stationary sources were submitted on January 6, 1988, by the Kansas Department of Health and Environment. K.A.R. 28–19–19(o) allows for departmental discretion on use of different but equivalent procedures than those specified in 28–19–19(a) through 28–19–19(n). EPA approves this rule with the understanding that all such equivalent procedures and requirements must be submitted to EPA as individual SIP revisions. In the absence of such approval, the enforceable provisions of K.A.R. 28–19–19(a) through 28–19–19(n) shall be applicable.

(i) *Incorporation by reference.* (A) K.A.R. 28–19–19(a) through 28–19–19(o), continuous emission monitoring, as submitted by the Secretary of the Kansas Department of Health and Environment. These regulations became effective on May 1, 1988.

(B) Letter of January 6, 1988, from the Secretary of the Kansas Department of Health and Environment. This letter establishes the effective date for the revised regulations referenced in paragraph (23)(i)(A) of this section.

[FR Doc. 88–25927 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

VOL 53 ISS 227 NO 25 1988 UMI

40 CFR Part 261

[SW-FRL-3481-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified wastes generated by the Goodyear Tire and Rubber Company, Randleman, North Carolina. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: November 25, 1988.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–88–GYEF–FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

The Goodyear Tire and Rubber Company (Goodyear), located in Randleman, North Carolina, petitioned the Agency to exclude from hazardous waste control a specific waste it generates. After evaluating the petition EPA proposed, on July 13, 1988, to exclude Goodyear's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 53 *FR* 26455).

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

Goodyear Tire and Rubber Company, Asheboro Wire Plant, Randleman, North Carolina.

1. Proposed Exclusion

Goodyear petitioned the Agency for an exclusion of its wastewater treatment sludge filter cake, presently listed as EPA Hazardous Waste No. F006. Goodyear based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form. Furthermore, to support its claim that both the non-listed and listed constituents of concern would not be present in the waste above health-based levels of concern, Goodyear submitted results from total constituent analyses for all the EP toxic metals, nickel, cyanide, and sulfide and results from EP toxicity analyses for all the EP toxic metals and nickel. See 53 *FR* 26455, July 13, 1988, for a more detailed explanation of why EPA proposed to grant Goodyear's petition for its sludge filter cake.

2. Agency Response to Public Comments

The Agency received one comment on the proposed rule. The commenter supported the Agency's proposed use of the organic leachate model (OLM) and the vertical and horizontal spread (VHS) model as applied to Goodyear's petitioned waste. The commenter also strongly supported EPA's assertion that "it is inappropriate for the Delisting Program to consider extensive site-specific factors in its evaluation of delisting petitions." See 53 *FR* 26456. The commenter believed that it is unlawful and inappropriate for EPA to consider any site-specific factors in its evaluation of delisting petitions. This comment does not pertain to this petition or affect the proposed decision since the Agency did not consider any site-specific factors in its evaluation of the petitioned waste. The Agency, therefore, will independently respond to this comment in terms of a separate rulemaking petition raising this issue with the Agency (filed by the commenter, the Hazardous Waste Treatment Council).

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Goodyear's wastewater treatment sludge filter cake should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to the Goodyear Tire and Rubber Company's Asheboro Wire Plant, located in Randleman, North Carolina, for its wastewater treatment sludge filter cake, described in its petition as EPA Hazardous Waste No. F006. The exclusion only applies to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

EPA would like to clarify its amendatory language presented in the proposed exclusion for Goodyear's waste. In the proposal, it was written that the exclusion would be for wastes generated "* * * after [the date of the final rule's publication]". See 53 *FR* 26460, July 13, 1988, Table 1. This language may be misinterpreted to mean that the Agency's exclusion is only prospective in nature. Generally, when EPA grants a final exclusion, it is intended to be retrospective as well as prospective in nature unless specifically stated otherwise in the conditions of the exclusion. Since Goodyear has demonstrated that its process, as described in its petition, generates a non-hazardous waste that does not vary

with respect to the types or levels of constituents in the waste, this exclusion is meant to be both retrospective and prospective in nature. The Agency, therefore, in promulgating this final rule, has deleted any reference which may be misinterpreted to indicate that the exclusion is only prospective in nature. Specifically, in this final rule we have deleted the phrase "* * * after [the date of the final rule's publication]" from Column 3 of Table 1 located under the heading "Part 261—*Identification and Listing of Hazardous Waste*".

III. Limited Effect of Final Exclusion

The final exclusion being granted today is being issued under the Federal RCRA delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's pursuant to section 3009 or RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective immediately upon publication in the **Federal Register**. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation in the **Federal Register**. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: November 17, 1988.

Kenneth A. Shuster,

Acting Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922.)

2. In Table 1 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * *
Goodyear Tire and Rubber Co.	Randleman, NC	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations.
* * *	* * *	* * *

[FR Doc. 88–27201 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This final rule changes the burden of proof as to whether a violation occurred by allocating the ultimate burden of persuasion to the petitioner for review in a civil penalty proceeding under the Surface Mining Control and Reclamation Act of 1977.

EFFECTIVE DATE: This rule is effective December 27, 1988.

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FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203. Telephone (703) 235–3750.

SUPPLEMENTARY INFORMATION: On October 15, 1987, the Office of Hearings and Appeals published a proposed amendment of 43 CFR 4.1155. 52 FR 38246–38247 (October 15, 1987). The amendment proposed to change the allocation of the ultimate burden of persuasion as to the fact of a violation from the Office of Surface Mining Reclamation and Enforcement to the petitioner for review in a proceeding for administrative review of a civil penalty proposed in accordance with section 518(a) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1268(a) (1982), in order to make the allocation of the burden of proof concerning this issue consistent with 43 CFR 4.1171 and with the legislative intent expressed in S. Rep. No. 128, 95th Cong., 1st Sess. 93 (1977).

Interested persons were given until November 16, 1987, to submit comments on the proposed amendment of this rule. No comments were received. The amendment is, therefore, adopted as proposed.

Determination of Effects

Because this rule only amends a procedure involving administrative review, the Department of the Interior has determined that it is not major, as defined by Executive Order 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

National Environmental Policy Act

The Department has determined that this rule will not significantly affect the quality of the human environment, on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

Paperwork Reduction Act

This rule contains no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

Drafting

This rule was drafted by Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands-mineral resources, Surface mining.

For the reasons set forth above, § 4.1155 of Subpart L, Part 4 of Title 43 of the Code of Federal Regulations, is revised as set forth below.

Dated: October 7, 1988.

Earl E. Gjelde,

Under Secretary.

PART 4—[AMENDED]

1. The authority for 43 CFR Part 4, Subpart L, continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. Section 4.1155 is revised to read as follows:

§ 4.1155 Burdens of proof in civil penalty proceedings.

In civil penalty proceedings, OSM shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the civil penalty and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

[FR Doc. 88–27236 Filed 11–23–88; 8:45 am]
BILLING CODE 4310-79-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6816]

Suspension of Community Eligibility; Maryland and West Virginia

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATE: As shown in fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001 through 4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90-and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, floodplains

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of the 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and community name	County	Community No.	Effective date
Maryland:			
Unincorporated Areas	Allegany	240001	Dec. 2, 1988.
Annapolis, City of	Anne Arundel	240009	Do.
Baltimore, City of	Independent City	240087	Do.
Eldorado, Town of	Dorchester	240105	Do.
Havre De Grace, City of	Harford	240043	Do.
Hurlock, Town of	Dorchester	240112	Do.
Mardela Springs, Town of	Wicomico	240079	Do.
Salisbury, City of	Wicomico	240080	Do.
West Virginia:			
Ansted, Town of	Fayette	540027	Dec. 16, 1988.
Mt. Hope, City of	Fayette	540280	Do.
Oak Hill, City of	Fayette	540031	Do.

Issued November 21, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88–27181 Filed 11–23–88; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6817]

Suspension of Community Eligibility; Pennsylvania et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et seq.*). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection

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Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III				
Pennsylvania: Potter, Township of, Beaver County.	422327	Mar. 17, 1977, Emerg.; Dec. 2, 1988, Reg.; Dec. 2, 1988, Susp	12-2-88	Dec. 2,1988.
Region V				
Illinois:				
Arthur, Village of, Moultrie County	170520	Sept. 2, 1975, Emerg.; Dec. 2, 1988, Reg.; Dec. 2, 1988, Susp	12-2-88	Do.
Wenona, City of, Marshall County	170462	Aug. 4, 1975, Emerg.; Dec. 2, 1988, Reg.; Dec. 2, 1988, Susp	12-2-88	Do.
Region VI				
Oklahoma: Wagoner County, Unincorporated Areas.	400215	July 15, 1981, Emerg.; Dec. 2, 1988, Reg.; Dec. 2, 1988, Susp	12-2-88	Do.
Region VII				
Kansas: Louisville, City of, Pottawatomie County.	200272	July 2, 1981, Emerg.; Dec. 2, 1988, Reg.; Dec. 2, 1988, Susp	12-2-88	Do.
Region III				
Pennsylvania:				
Middle Smithfield, Township of, Monroe County.	421890	Oct. 3, 1975, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp	12-16-88	Dec. 16, 1988.
Tobyhanna, Township of, Monroe County	421897	Mar. 16, 1976, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp.	12-16-88	Do.
Virginia:				
Essex County, Unincorporated Areas	510048	Mar. 15, 1974, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp.	12-16-88	Do.
York County, Unincorporated Areas	510182	Oct. 5, 1973, Emerg.; Dec. 16 1988, Reg.; Dec. 16 1988, Susp	12-16-88	Do.
Region IV				
Georgia:				
Americus, City of, Sumter County	130203	Mar. 26, 1975, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp.	12-16-88	Do.
Lakeland, City of, Lanier County	130120	Dec. 19, 1973, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp.	12-16-88	Do.
Tennessee: Lawrenceburg, City of, Scotland County.	475437	Jan. 7, 1972, Emerg.; May 25, 1973, Reg.; Dec. 16, 1988, Susp	12-16-88	Do.
Region V				
Michigan:				
Putnam, Township of, Livingston County	260442	Dec. 21, 1978, Emerg.; Feb. 6, 1984, Reg.; Dec. 16, 1988, Susp	12-16-88	Do.
Taymouth, Township of, Saginaw County	260503	June 2, 1977, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp	12-16-88	Do.
Ohio: Hamilton County, Unincorporated Areas	390204	July 2, 1973, Emerg.; June 1, 1982, Reg.; Dec. 16, 1988, Susp	12-16-88	Do.
Region VII				
Kansas: Dickinson County, Unincorporated Areas.	200575	July 19, 1978, Emerg.; Dec. 16, 1988, Reg.; Dec. 16 1988, Susp	12-16-88	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued November 21, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-27183 Filed 11-23-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6815]

Suspension of Community Eligibility; City of Martin, KY; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule, correction.

SUMMARY: This rule corrects the final rule published in the **Federal Register**, Friday, October 28, 1988 (53 FR 43693). The City of Martin, Kentucky, was listed in error and should be deleted from this list. The City is in compliance with the National Flood Insurance Program regulations. All records should be amended accordingly.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 417, Washington, DC 20472.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Issued: November 21, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-27182 Filed 11-23-88; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5

Freedom of Information Act Regulations

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: This regulation revises certain portions of the Department's regulation implementing the FOIA, 5 U.S.C. 552, specifically, the portions dealing with fees and with predisclosure notification. Those portions were published as an interim final rule, with request for comments, on November 13, 1987, when the entire regulation was revised. For the convenience of the public, we are printing the entire regulation at this time.

DATE: This regulation takes effect December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Russell M. Roberts, Freedom of Information Officer, (202) 472-7453.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking to revise its FOIA regulations on April 18, 1986 (51 FR 13250). Pursuant to that notice, HHS received comments and considered them. After that publication, Congress enacted the Freedom of Information Reform Act of 1986, Pub. L. 99-570, 1801 through 1804. This statute amended the FOIA provisions on law enforcement records and on search fees and fee waivers. Also after that publication, the President promulgated Executive Order 12600 requiring agencies to establish procedures for predisclosure notification of business records.

HHS published a rule based on the proposed rule, the comments, the FOI Reform Act, and the Executive Order on November 13, 1987 (52 FR 43575). The rule was an interim final rule with respect to certain portions of § 5.5 (specifically, the definitions of "commercial use," "duplication," "educational institution," "non-commercial scientific institution," "representative of the news media," "review," and "search" only) and with respect to §§ 5.41 through 5.45 and § 5.65 (c) through (e). As to all other portions, the rule was a final rule. HHS solicited comments on the interim final portions, and we received comments from one individual and from two public interest groups. We have carefully considered those comments, and our responses to them are presented below. We are also making some minor technical changes at this time, and those are explained at the end of the preamble.

Analysis of Comments and of Changes

Definitions (§ 5.5)

The Freedom of Information Reform Act substantially revised the law on fees. Its primary effect was to establish three categories of requests and to prescribe which types of fees could be charged for each. For commercial use requests, agencies may charge for search, duplication, and review; for non-commercial requests from educational and scientific institutions and from news media representatives, agencies may charge for duplication only; and for other requests, agencies may charge search and duplication only. The statute also grants two free hours of search time and 100 free pages of duplication for the latter two categories, and it bars charging fees where the costs of collecting the fee exceed the fee to be collected. The statute also revised the standard for fee waivers. The portions of the rule that defined some of the terms introduced by this statute had an interim final status.

"Commercial use." One comment suggested that all non-profit entities be categorically excluded from this definition, partly because the criterion should be the nature of the entity rather than the nature of the use. However, the statutory language focuses on the nature of the use, and a not-for-profit entity can have commercial uses. The existing language in the rule focuses the inquiry on the nature of the use while stating that we will take into account the nature (including the nonprofit nature) of the requester. It also states that when a request is from a representative of the news media, a use supporting the news dissemination function is not a commercial use. We are leaving this language unchanged.

"Educational institution." One comment suggested that the definition is too narrow, and recommended either leaving the term undefined or using the definition in the tax code, I.R.C. section 501(c)(3). We have decided instead to modify the definition to conform with the Guidelines promulgated by the Office of Management and Budget at 52 FR 10012, 10018 (1987).

"Representative of the news media." All three commenters addressed this definition. One comment suggested striking the entire paragraph. All objected explicitly or implicitly to the definition of "news" in the second sentence, expressing concerns that a government agency should not be making determinations of newsworthiness. Two comments suggested that the important factor should be who the representative is, and not what is being requested. Two commenters expressed concern that the definition excluded requests relating to historical events.

We believe that the major concerns of the commenters can be satisfied without striking the entire paragraph. We recognize that the information sought need not be itself "news" or directly about very current events in order to qualify for an exemption from paying search fees. Thus, a journalist's request for information about historical events would qualify if, for example, those historical events were background to

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current events or were otherwise of current interest.

We also recognize that it would be improper to let our determination of whether a particular request should be treated for fee purposes as having been made by a "representative of the news media" be influenced by any partisan political interest or by any parochial institutional interest in limiting what the public ought to know, and we do not intend to have those determinations influenced by any such interests.

We have decided to strike the sentence defining "news" and to revise the first sentence as follows:

" 'Representative of the news media' means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public."

Two of the comments were specifically concerned with the treatment of freelance journalists in the definition. One commenter said the definition requires a freelancer to be associated with a specific news organization, and that such a requirement is improper. We are not amending the language based on this comment, since the definition does not impose any such requirement. The other commenter argued that requiring a freelancer to show "a solid basis" for expecting publication was too restrictive a standard. We have substituted "likelihood of publication" for "solid basis for expecting publication."

"Review." One commenter suggested striking this definition since it would reward inefficiency and would encourage delays in disclosure while the agency ran up review costs. We are leaving the language unchanged. The act explicitly authorizes charging for review costs, although only in the case of commercial use requests. Neither the act nor the regulation suggests that this provision expands any deadlines, and the act allows us to charge only "reasonable" fees.

Fees (Subpart D)

One comment suggested that § 5.41 (b) and (c) refer to the availability of fee waivers. We are leaving these subsections unchanged, since this availability is already mentioned in the introductory language in § 5.41.

One comment objected to the statement in § 5.42(a) that we may charge search fees even if the records found are exempt or if we do not find any records. We are leaving this language unchanged. This is consistent with the position taken by the Office of Management and Budget in its uniform FOIA fee schedule and guidelines, at paragraph 9(b). See 52 FR 10012, 10019. A request of this sort has still caused us to incur costs of search and/or review. Also, in some cases, the non-existence of records within the scope of a request may itself be an informative result.

One comment, without referring specifically to HHS or to our interim final rule, objected generally to agencies' construing two hours of search time for computer searches differently from the way they construe it for manual searches. In § 5.42(b), we apply the two-hour waiver identically in connection with computer searches and in human searches—in both cases, what is waived is the first two hours of human work. The operation of the computer is a cost of operating a machine, which is distinct from the costs of an employee's time. We make this distinction consistently in §§ 5.42(b); 5.43 (b), (d).

In § 5.43(a), we are updating the information about rates currently charged.

We have revised § 5.44 to provide that we will normally require payment of all fees before furnishing records, with exceptions such as requesters with histories of prompt payment. We expect this will improve collection of fees owed. In that section, we are no longer specifying that fees be paid by check or money order; the instructions described in § 5.44(c) will specify modes of payment.

Two comments suggested eliminating § 5.45 (b) through (c), which explain the statutory standard for fee waivers. They said these provisions violate the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* One said the factors set forth here do not adequately take into account the public's interest in monitoring agency activities, and that they ought to, but fail to, make possible a waiver where the requester concludes after reading the records that the agency has acted properly and that no news story is warranted. We are retaining these provisions. They do not violate the Paperwork Reduction Act—they merely explicate the statutory standard and do not impose any reporting requirement on waiver applicants. The public's interest in monitoring agency activities is taken into account in paragraph (b). Finally, the provisions do not require that a story actually be written. For example, "whether the requester's intended use of the information would be likely to disseminate the information among the public" (paragraph (b)(3)) turns on whether public dissemination would be likely if anything newsworthy were found, and not on the likelihood of finding anything newsworthy.

One comment suggested that § 5.45 provide for waivers automatically when the requested information concerned violations of law, government inefficiency or misconduct, or agency administrative error. We are not adding such a provision. These circumstances may be relevant in applying the statutory standard, but they cannot expand on that standard.

One comment suggested establishing a presumption that public interest organizations, scholars, and journalists are entitled to fee waivers. We believe that any such formal presumption is neither necessary nor appropriate. The preamble to the November 13, 1987, publication (52 FR at 43577–43578) has already explained why we decided not to include an automatic waiver for news media representatives—such an automatic waiver would render superfluous the explicit statutory inclusion of those persons in the category of requesters that, while exempt from search and review costs, does normally have to pay duplicating costs. The explicit provisions regarding the news media in the final rule (§ 5.45 (b)(3), (c)(1)) should help make clear that news media representatives will be granted waivers when appropriate.

One comment objected to focusing on the informational value of only the disclosable portions of the records. The comment did not address any specific part of this regulation, but this limitation is inherent in § 5.45(b), especially in paragraph (b)(1). We are leaving that language unchanged. The statutory criterion requires such consideration, since information that is not disclosed cannot contribute to public understanding.

One comment suggested a substitute streamlined test that would require a waiver when all the following tests are met: The information is not sought for a primarily commercial purpose or for a primarily personal purpose; it is sought in connection with an issue of good government or general public concern; it is sought in order to further some civic, political, or public communication or other activity; and it is not generally and easily available to the public. We are retaining the analysis set forth in paragraphs (b) and (c), since that is a more accurate interpretation of the statutory language.

One comment objected to certain language in guidance issued by the Department of Justice on April 2, 1987. The language in question advised allowing fee waivers only if the information disclosed would contribute to the understanding of "the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons." The quoted language is similar to

§ 5.45(b)(3), so we have reviewed that subsection in light of the comment. The comment argues that dissemination of the information among the most concerned or affected subset of the public should suffice, and that dissemination to the public at large is not required. We agree that it is not necessary that the entire population learn of the information. On the other hand, the disclosure does not serve the "public interest" by "contribut[ing] significantly to public understanding" where only a few individuals learn of the information. We are concerned that the current language of paragraph (b)(3), distinguishing the general public from a "segment" of interested persons, might be read as requiring a more universal dissemination than should be required. Thus, we are changing "segment" to "narrow segment." Our intent is that waivers not be limited to situations where the entire public will learn of the information, but rather to exclude situations where only a relatively small group will learn of it.

The same commenter objects to language in the Justice Department guidance that interprets the statutory phrase "contribute significantly to public understanding" as requiring agencies to determine whether the level of public understanding after the disclosure is substantially greater than the predisclosure level. The comment suggests that information contributes "significantly" to public understanding whenever the information has meaning. We have reviewed § 5.45(b)(4) in light of this comment, and have decided to leave it unchanged. This subsection correctly treats "significantly" as meaning "to a significant degree," and thus as synonymous with "substantially."

One comment objected to the requirement, in § 5.45(e), that a waiver request be made at the same time as the request for records. We are retaining this requirement. We need to make the determination as to waiver at the outset so that, if we deny the waiver request, the requester can decide whether to assume liability for the fees before we underake the burden of searching and copying.

In § 5.45(d), we have eliminated language that would make narrowness of passing one of the tests a basis for merely reducing fees rather than waiving them.

In § 5.45(e), we have added a sentence incorporating by reference the appeal process set out in § 5.34(c).

Predisclosure Notification Procedures (§ 5.65 (c) through (e))

One comment objects to the predisclosure notification procedures on the grounds that they would hinder compliance with the time limits imposed by the FOIA, and it recommends that the regulations state that the procedures can be followed only to the extent permitted by law. We are leaving the language unchanged. Our authority, and our duty, to protect trade secrets and confidential and privileged commercial and financial information is based on statutes. *See* 5 U.S.C. 552(b)(4); 18 U.S.C. 1905. Executive Order 12600 and this regulation establish a reasonable way to comply to the greatest possible degree with both the FOIA time requirements and the requirement to protect this information. The regulation recites the FOIA time limits § 5.35, and no restatement in necessary in this section.

Another commenter concerned about the effect of these procedures on timely processing of requests recommends that the regulation (a) state that we will not delay processing the request while sending predisclosure notification and awaiting the submitter's response, (b) state time limits for the submitter to respond, (c) state that we will inform the requester of the dates when we sent notice to the submitter and received its response and of the method of notification, and (d) state that we will notify the requester when we reject a submitter's objections and will tell the requester the date when we will release the records absent a court order. We are leaving the language unchanged. Recommendation (a) is treated in the paragraph immediately above. Recommendation (b) in unnecessary, since the time limit for the submitter is already fixed at five days, in § 5.65(d)(2). We believe that the other two recommendations would create unnecessary paperwork.

We are revising § 5.65(c) to say that where a request for proposals or request for quotations mandates certain language in order to designate records as confidential, then that language is necessary. This change will make this regulation consistent with the HHS Acquisition Regulations, 48 CFR 252.215–12.

Minor Technical Corrections

We have made several minor technical corrections.

We have added 18 U.S.C. 1905 to the citation of authority for the regulation.

In § 5.5, we are clarifying the definitions of "agency" and "Department" to refer to "*Medicare* health insurance." We are also modifying the definition of "request" to conform with our regulation governing responses to subpoenas, 45 CFR Part 2.

In § 5.21(a), we are making it optional for FOI Officers to write down oral requests.

In § 5.22(a), we are adding a reference to requests for detailed earning statements under the Social Security program. In § 5.24(b), we are changing "on take" to "in an electronic medium."

In § 5.31(a)(1)(ii), the office mentioned is the Family Support (not "Services") Administration. In § 5.31(a)(2)(i), we have added a reference to the Agency for Toxic Substances and Disease Registry. We have added a provision for an FOI Officer for the Indian Health Service in § 5.31(a)(2)(vi), and § 5.31(c). In § 5.31(a)(3), the SSA FOI Officer is the Director, Office of Public Inquiries (not Office of Information). In various paragraphs of § 5.31(a), we have eliminated as superfluous the phrase "or his or her designee;" delegation is adequately provided for in paragraph (b). We have updated the addresses and/or phone numbers for the FOI Officers for HHS, SSA, HCFA, PHS, and NIH.

Finally, we have made typographic corrections in §§ 5.21(a), 5.45(b)(3), 5.45(c), 5.65 (introductory text), and 5.65(b)(3).

The Secretary finds that there is good cause to have the changes (other than those in §§ 5.5 (definition of "representative of the news media"), 5.41 through 5.45, and 5.65(c) through (e)) take effect without notice and comment procedures. Some of these changes are purely technical corrections (typographical corrections, updating of addresses and phone numbers, and updating or organizational references). Some are elimination of superfluous language. One (the definition of "request" in § 5.5), is an interpretative provision, and it merely conforms this regulation to another regulation already in effect. One (the change respecting oral requests in § 5.21(a)) affects only our internal procedures. These changes are insignificant in impact, and use of notice and comment procedures is unnecessary.

The Secretary has determined that this regulation is not a major rule within the meaning of E.O. 12291 because it will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria. Therefore, the preparation of a regulatory impact analysis is not required.

The Secretary certifies that this regulation will not have a significant economic impact on any substantial number of small entitities as defined by the Regulatory Flexibility Act, Pub. L. 96–354.

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This regulation does not require use of a form, nor does it otherwise involve a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 45 CFR Part 5

Freedom of information.

For the reasons set out in the preamble, 45 CFR Part 5 is revised as follows:

Part 5—Freedom of Information Regulations

Subpart A—Basic Policy

Sec.

5.1 Purpose.
5.2 Policy.
5.3 Scope.
5.4 Relationship between the FOIA and the Privacy Act of 1974.
5.5 Definitions.

Subpart B—Obtaining a Record

5.21 How to request records.
5.22 Requests not handled under the FOIA.
5.23 Referral of requests outside the Department.
5.24 Responding to your request.

Subpart C—Release and Denial of Records

5.31 Designation of authorized officials.
5.32 Release of records.
5.33 Denial of requests.
5.34 Appeal of denials.
5.35 Time limits.

Subpart D—Fees

5.41 Fees to be charged—categories of requests.
5.42 Fees to be charged—general provisions.
5.43 Fee schedule.
5.44 Procedures for assessing and collecting fees.
5.45 Waiver or reduction of fees.

Subpart E—Records Available for Public Inspection

5.51 Records available.
5.52 Indexes of records.

Subpart F—Reasons for Withholding Some Records

5.61 General.
5.62 Exemption one: National defense and foreign policy.
5.63 Exemption two: Internal personnel rules and practices.
5.64 Exemption three: Records exempted by other statutes.
5.65 Exemption four: Trade secrets and confidential commercial or financial information.
5.66 Exemption five: Internal memoranda.
5.67 Exemption six: Clearly unwarranted invasion of personal privacy.
5.68 Exemption seven: Law enforcement.
5.69 Exemptions 8 and 9: Records on financial institutions; records on wells.

Authority: 5 U.S.C. 552, 18 U.S.C. 1905, 31 U.S.C. 9701, 42 U.S.C. 1306(c), E.O. 12600.

Subpart A—Basic Policy

§ 5.1 Purpose.

This part contains the rules that the Department of Health and Human Services (HHS) follows in handling requests for records under the Freedom of Information Act (FOIA). It describes how to make a FOIA request; who can release records and who can decide not to release; how much time it should take to make a determination regarding release; what fees may be charged; what records are available for public inspection; why some records are not released; and your right to appeal and then go to court if we refuse to release records.

§ 5.2 Policy.

As a general policy, HHS follows a balanced approach in administering FOIA. We not only recognize the right of public access to information in the possession of the Department, but also protect the integrity of internal processes. In addition, we recognize the legitimate interests of organizations or persons who have submitted records to the Department or who would otherwise be affected by release of records. For example, we have no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. This policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized in the Freedom of Information Act.

§ 5.3 Scope.

These rules apply to all components of the Department. Some units may establish additional rules because of unique program requirements, but such rules must be consistent with these rules and must have the concurrence of the Assistant Secretary for Public Affairs. Existing implementing rules remain in effect to the extent that they are consistent with the new Departmental regulation. If additional rules are issued, they will be published in the **Federal Register**, and you may get copies from our Freedom of information Officers.

§ 5.4 Relationship between the FOIA and the Privacy Act of 1974.

(a) *Coverage.* The FOIA and this rule apply to all HHS records. The Privacy Act, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records. "Individuals" and "system of records" are defined in the Privacy Act and in our Privacy Act regulation, Part 5b of this title.

(b) *Requesting your own records.* If you are an individual and request records, then to the extent you are requesting your own records in a system of records, we will handle your request under the Privacy Act and Part 5b. If there is any record that we need not release to you under those provisions, we will also consider your request under the FOIA and this rule, and we will release the record to you if the FOIA requires it.

(c) *Requesting another individual's record.* Whether or not you are an individual, if you request records that are about an individual (other than yourself) and that are in a system of records, we will handle your request under the FOIA and this rule. (However, if our disclosure in response to your request would be permitted by the Privacy Act's disclosure provision, 5 U.S.C. 552a(b), for reasons other than the requirements of the FOIA, and if we decide to make the disclosure, then we will not handle your request under the FOIA and this rule. For example, when we make routine use disclosures pursuant to requests, we do not handle them under the FOIA and this rule. "Routine use" is defined in the Privacy Act and in Part 5b). If we handle your request under the FOIA and this rule and the FOIA does not require releasing the record to you, then the Privacy Act may prohibit the release and remove our discretion to release.

§ 5.5 Definitions.

As used in this part,

"Agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, HHS is an agency. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession or under the control of HHS or its agents, such as Medicare health insurance carriers and intermediaries.

"Commercial use" means, when referring to a request, that the request is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put; the identity of the requester (individual, non-profit corporation, for-profit corporation), on the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

"Department" or "HHS" means the Department of Health and Human Services. It includes Medicare health insurance carriers and intermediaries to the extent they are performing functions under agreements entered into under sections 1816 and 1842 of the Social Security Act, 42 U.S.C. 1395h, 1395u.

"Duplication" means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microform, audio-visual materials, and magnetic tapes, cards, and discs.

"Educational institution" means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program of scholarly research.

"Freedom of Information Act" or "FOIA" means section 552 of Title 5, United States Code, as amended.

"Freedom of Information Officer" means an HHS official who has been delegated the authority to release or withhold records and assess, waive, or reduce fees in response to FOIA requests.

"Non-commercial scientific institution" means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

"Records" means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards; magnetic tapes, cards, or discs; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures). It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials. Nor does it include books, magazines, pamphlets, or other reference material in formally organized and officially designated HHS libraries, where such materials are available under the rules of the particular library.

"Representative of the news media" means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). We will treat freelance journalists as representatives of a new media entity if they can show a likelihood of publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

"Request" means asking for records, whether or not you refer specifically to the Freedom of Information Act. Requests from Federal agencies and court orders for documents are not included within this definition. Subpoenas are requests only to the extent provided by Part 2 of this title.

"Review" means, when used in connection with processing records for a commercial use request, examining the records to determine what portions, if any, may be withheld, and any other processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include examination done in the appeal stage with respect to an exemption that was applied at the initial request stage. However, if we initially withhold a record under one exemption, and on appeal we determine that that exemption does not apply, then examining the record in the appeal stage for the purpose of determining whether a different exemption applies is included in "review." It does not include the process of researching or resolving general legal or policy issues regarding exemptions.

"Search" means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

Subpart B—Obtaining a Record

§ 5.21 How to request records.

(a) *General.* Our policy is to answer all requests, both oral and written, for records. However, in order to have the rights given you by the FOIA and by this regulation (for example, the right to appeal if we deny your request and the right to have our decisions reviewed in court), you must either make your request in writing or make it orally to a Freedom of Information Officer. Freedom of Information Officers and their staffs may put in writing any oral requests they receive directly.

(b) *Addressing requests.* It will help us to handle your request sooner if you address it to the Freedom of Imformation Officer in the HHS unit that is most likely to have the records you want. (See § 5.31 of this Part for a list of Freedom of Information Officers.) If you cannot determine this, send the request to: HHS Freedom of Information Officer, 645–F, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Write the words "Freedom of Information Act Request" on the envelope and letter.

(c) *Details in the letter.* You should provide details that will help us identify and find the records you are requesting. If there is insufficient information, we will ask you for more. Include your telephone number(s) to help us reach you if we have questions. If you are not sure how to write your request or what details to include, communicate with a Freedom of Information Officer.

§ 5.22 Requests not handled under the FOIA.

(a) We will not handle your request under the FOIA and this regulation to the extent it asks for records that are currently available, either from HHS or from another part of the Federal Government, under a statute that provides for charging fees for those records. For example, we will not handle your request under the FOIA and this regulation to the extent it asks for detailed earnings statements under the Social Security program, or records currently available from the Government Printing Office of the National Technical Information Service.

(b) We will not handle your request under the FOIA and this regulation to the extent it asks for records that are distributed by an HHS program office as part of its regular program activity, for example, health education brochures distributed by the Public Health Service or public information leaflets distributed by the Social Security Administration.

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§ 5.23 Referral of requests outside the Department.

If you request records that were created by, or provided to us by, another Federal agency, and if that agency asserts control over the records, we may refer the records and your request to that agency. We may likewise refer requests for classified records to the agency that classified them. In these cases, the other agency will process and respond to your request, to the extent it concerns those records, under that agency's regulation, and you need not make a separate request to that agency. We will notify you when we refer your request to another agency.

§ 5.24 Responding to your request.

(a) *Retrieving records.* The Department is required to furnish copies of records only when they are in our possession or we can retrieve them from storage. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records in the Records Disposal Act of 1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101–11.4; the General Records Schedules of the National Archives and Records Administration; and in the HHS Handbook: *Files Maintenance and Records Disposition.*

(b) *Furnishing records.* The requirement is that we furnish copies only of records that we have or can retrieve. We are not compelled to create new records. For example, we are not required to write a new program so that a computer will print information in the format you prefer. However, if the requested information is maintained in computerized form, but we can, with minimal computer instructions, produce the information on paper, we will do this if it is the only way to respond to a request. Nor are we required to perform research for you. On the other hand, we may decide to conserve government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. Moreover, we are required to furnish only one copy of a record and usually impose that limit. If information exists in different forms, we will provide the record in the form that best conserves government resources. For example, if it requires less time and expense to provide a computer record as a paper printout rather than in an electronic medium, we will provide the printout.

Subpart C—Release and Denial of Records

§ 5.31 Designation of authorized officials.

(a) *Freedom of Information Officers.* To provide coordination and consistency in responding to FOIA requests, only Freedom of Information Officers have the authority to release or deny records. These same officials determine fees.

(1) *HHS Freedom of Information Officer.* Only the HHS Freedom of Information Officer may determine whether to release or deny records in any of the following situations:

(i) The records you seek include records addressed to or sent from an official or office of the Office of the Secretary, including its staff offices, or of any Regional Director's Office;

(ii) The records you seek include any records of the Office of Human Development Services, the Family Support Administration, or any organizational unit of HHS not specifically indentified below; or

(iii) The records include records of more than one of the major units identified below (PHS, HCFA, and SSA) either at headquarters or in a Regional

(2) *PHS Freedom of Information Officer.* If the records you seek are exclusively records of the Public Health Service or if the records you seek involve more than one health agency of the Public Health Service, including its records in the regions, only the Deputy Assistant Secretary for Health (Communications), who also is the PHS Freedom of Information Officer, may determine whether to release or deny the records, except as follows:

(i) *CDC and ATSDR Freedom of Information Officer.* If the records you seek are exclusively records of the Centers for Disease Control and/or the Agency for Toxic Substances and Disease Registry, only the Director, Office of Public Affairs, CDC, who also is the CDC and ATSDR Freedom of Information Officer, may determine whether to release or deny the records.

(ii) *FDA Freedom of Information Officer.* If the records you seek are exclusively records of the Food and Drug Administration, only the Associate Commissioner for Public Affairs, FDA, who also is the FDA Freedom of Information Officer, may determine whether to release or deny the records.

(iii) *NIH Freedom of Information Officer.* If the records you seek are exclusively records of the National Institutes of Health, only the Associate Director of Communications, NIH, who also is the NIH Freedom of Information Officer, may determine whether to release or deny the records.

(iv) *HRSA Freedom of Information Officer.* If the records you seek are exclusively records of the Health Resources and Services Administration, only the Associate Administrator for Communications, HRSA, who also is the HRSA Freedom of Information Officer, may determine whether to release or deny the records.

(v) ADAMHA Freedom of Information Officer. If the records you seek are exclusively records of the Alcohol, Drug Abuse and Mental Health Administration, only the Associate Administrator for Communications and Public Affairs, ADAMHA, who is also the ADAMHA Freedom of Information Officer, may determine whether to release or deny the records.

(vi) *IHS Freedom of Information Officer.* If the records you seek are exclusively records of the Indian Health Service, only the Director of Communications, IHS, who also is the IHS Freedom of Information Officer, may determine whether to release or deny the records.

(3) *SSA Freedom of Information Officer.* If the records you seek are exclusively records of the Social Security Administration, including its records in the regions, only the Director, Office of Public Inquiries, SSA, who also is the SSA Freedom of Information Officer, may determine whether to release or deny the records.

(4) *HCFA Freedom of Information Officer.* If the records you seek are exclusively records of the Health Care Financing Administration, including its records in the regions, only the Director, Office of Public Affairs, HCFA, who also is the HCFA Freedom of Information Officer, may determine whether to release or deny the records.

(b) *Delegations.* Any of the above Freedom of Information Officers may delegate his or her authority to release or deny records and to determine fees. Any such delegation requires the concurrence of the Assistant Secretary for Public Affairs.

(c) *Addresses and telephone numbers.* The addresses and telephone numbers of the Freedom of Information Officers are listed below.

Freedom of Information Officers

HHS Freedom of Information Officer, Room 645–F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, *Tel:* (202) 472–7453

SSA Freedom of Information Officer, Room 4–H–8, Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235, *Tel:* (301) 965–3962

HCFA Freedom of Information Officer, Room 100, Professional Building, Office of Public Affairs, 6660 Security Boulevard, Baltimore, Maryland 21207, *Tel:* (301) 966–5352

PHS Freedom of Information Officer, Room 13–C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, *Tel:* (301) 443–5252

FDA Freedom of Information Officer, HFW–35, Room 12A16, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, *Tel:* (301) 443–1813

NIH Freedom of Information Officer, National Institutes of Health, Building 31, Room 2B39, 9000 Rockville Pike, Bethesda, Maryland 20892, *Tel:* (301) 496–5633

CDC Freedom of Information Officer, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, *Tel:* (404) 329–3286

HRSA Freedom of Information Officer, Room 14–43, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, *Tel:* (301) 443–2086

ADAMHA Freedom of Information Officer, Room 12–C–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, *Tel:* (301) 443–3783

IHS Freedom of Information Officer, Room 5–A–39, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, *Tel:* (301) 443–1397.

§ 5.32 Release of records.

(a) *Records previously released.* If we have released a record, or a part of a record, to others in the past, we will ordinarily release it to you also. However, we will not release it to you if a statute forbids this disclosure, and we will not necessarily release it to you if an exemption applies in your situation and did not apply, or applied differently, in the previous situations.

(b) *Unauthorized disclosure.* The principle stated in paragraph (a) of this section, does not apply if the previous release was unauthorized.

(c) *Poor copy.* If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note its poor quality in our reply.

§ 5.33 Denial of requests.

(a) *Information furnished.* All denials are in writing and describe in general terms the material withheld; state the reasons for the denial, including, as applicable, a reference to the specific exemption of the FOIA authorizing the withholding or deletion; explain your right to appeal the decision and identify the official to whom you should send the appeal; and are signed by the person who made the decision to deny all or part of the request.

(b) *Unproductive searches.* We make a diligent search for records to satisfy your request. Nevertheless, we may not be able always to find the records you want using the information you provided, or they may not exist. If we advise you that we have been unable to find the records despite a diligent search, this does not constitute a denial of your request.

§ 5.34 Appeal of denials.

(a) *Right of appeal.* You have the right to appeal a partial or full denial of your FOIA request. To do so, you must put your appeal in writing and send it to the review official identified in the denial letter. You must send your appeal within 30 days from the date you receive that letter or from the date you receive the records released as a partial grant of your request, whichever is later.

(b) *Letter of appeal.* The appeal letter should state reasons why you believe that the FOIA exemption(s) we cited do not apply to the records that you requested, or give reasons why they should be released regardless of whether the exemption(s) apply. Because we have some discretionary authority in deciding whether to release or withhold records, you may strengthen your request by explaining your reasons for wanting the records. However, you are not required to give any explanation.

(c) *Review process.* Before making a decision on an appeal of a denial, the designated review official will consult with the General Counsel to ensure that the rights and interests of all parties affected by the request are protected. Also, the concurrence of the Assistant Secretary for Public Affairs is required in all appeal decisions, including those on fees. When the review official responds to an appeal, that constitutes the Department's final action on the request. If the review official grants your appeal, we will send the records to you promptly or let you inspect them, or else we will explain the reason for any delay and the approximate date you will receive copies or be allowed to inspect the records. If the decision is to deny your appeal, the official will state the reasons for the decision in writing and inform you of the FOIA provision for judicial review.

§ 5.35 Time limits.

(a) *General.* FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet the deadlines, you may proceed as if we had denied your request or your appeal. We will try diligently to comply with the time limits, but if it appears that processing your request may take longer than we would wish, we will acknowledge your request and tell you its status. Since requests may be misaddressed or misrouted, you should call or write to confirm that we have the request and to learn its status if you have not heard from us in a reasonable time.

(b) *Time allowed.* (1) We will decide whether to release records within 10 working days after your request reaches the appropriate FOI office, as identified in § 5.31 of this part. When we decide to release records, we will actually provide the records, or let you inspect them, as soon as possible after that decision.

(2) We will decide an appeal within 20 working days after the appeal reaches the appropriate review official

(c) *Extension of time limits.* FOI Officers of review officials may extend the time limits in unusual circumstances. Extension at the request stage and at the appeal stage may total up to 10 working days. We will notify you in writing of any extension. "Unusual circumstances" include situations when we:

(1) Search for and collect records from field facilites, archives, or locations other than the office processing the request.

(2) Search for, collect, or examine a great many records in response to a single request.

(3) Consult with another office or agency that has substantial interest in the determination of the request.

(4) Conduct negotiations with submitters and requesters of information to determine the nature and extent of non-disclosable proprietary materials.

Subpart D—Fees

§ 5.41 Fees to be charged—categories of requests.

The paragraphs below state, for each category of request, the type of fees that we will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given in §§ 5.42 through 5.45 or for other reasons.

(a) *Commercial use request.* If your request is for a commercial use, HHS will charge you the costs of search, review, and duplication.

(b) *Educational and scientific institutions and news media.* If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, HHS will charge you only for the duplication of documents. Also, HHS will not charge you the copying costs for the first 100 pages of duplication.

(c) *Other requesters.* If your request is not the kind described by paragraph (a)

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or (b) of this section, then HHS will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time or for the copying costs of the first 100 pages of duplication.

§ 5.42 Fees to be charged—general provisions.

(a) We may charge search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(b) If we are not charging you for the first two hours of search time, under § 5.41(c), and those two hours are spent on a computer search, then the two free hours are the first two hours of the operator's own operation. If the operator spends less than two hours on the search, we well reduce the total search fees by the average hourly rate for the operator's time, multipled by two.

(c) If we are not charging you for the first 100 pages of duplication, under § 5.41 (b) or (c), then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout. If we cannot use this method to calculate the fee reduction, then we will reduce your total duplication fee by the normal charge for photocopying a standard size page, multiplied by 100.

(d) We will not charge you any fee at all if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. As of May 1987, such costs among the units HHS ranged between $6.00 and $12.50.

(e) If we determine that you (acting either alone or together with others) are breaking down a single request into a series of requests in order to avoid (or reduce) the fees charged, we may aggregate all these requests for purposes of calculating the fees charged.

(f) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. We will use the provisions of Part 30 of this Title in assessing interest, administrative costs, and penalties and in taking actions to encourage payment.

(g) This subpart does not apply to requests for Social Security program records on Social Security number holders, wage earners, employers, and claimants, where the requests are governed by section 1106 of the Social Security Act, 42 U.S.C. 1306(c), and by 20 CFR 442.441.

§ 5.43 Fee schedule

HHS charges the following fees:

(a) Manual searching for or reviewing of records—when the search or review is performed by employees at grade GS–1 through GS–8, an hourly rate based on the salary of a GS–5, step 7, employee; when done by a GS–9 through GS–14, an hourly rate based on the salary of a GS–12, step 4, employee; and when done by a GS–15 or above, an hourly rate based on the salary of a GS–15, step 7, employee. In each case, the hourly rate will be computed by taking the current hourly rate for the specified grade and step, adding 16% of that rate to cover benefits, and rounding to the nearest whole dollar. As of November 25, 1988, these rates were $10, $20, and $37 respectively. When a search involves employees at more than one of these levels, we will charge the rate appropriate for each.

(b) Computer searching and printing—the actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(c) Photocopying standard size pages—$0.10 per page. FOI Officers may charge lower fees for particular documents where—

(1) The document has already been printed in large numbers,

(2) The program office determines that using existing stock to answer this request, and any other anticipated FOI requests, will not interfere with program requirements, and

(3) The FOI Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.

(d) Photocopying odd-size documents (such as punchcards or blueprints), or reproducing other records (such as tapes)—the actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(e) Certifying that records are true copies. This service is not required by the FOIA. If we agree to provide it, we will charge $10 per certification.

(f) Sending records by express mail, certified mail, or other special methods. This service is not required by the FOIA. If we agree to provide it, we will charge our actual costs.

(g) Performing any other special service that you request and we agree to—actual costs of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (a) of this section.

§ 5.44 Procedures for assessing and collecting fees.

(a) *Agreement to pay.* We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevertheless want us to proceed with the search.

(b) *Advance payment.* If you have failed to pay previous bills in a timely fashion, or if our initial review of your request indicates that we will charge you fees exceeding $250, we will require you to pay your past due fees and/or the estimated fees, or a deposit, before we start searching for the records you want. If so, we will let you know promptly upon receiving your request. In such cases, the administrative time limits prescribed in § 5.35 of the part (i.e., ten working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after we come to an agreement with you over payment of fees, or decide that fee waiver or reduction is appropriate.

(c) *Billing and payment.* We will normally require you to pay all fees before we furnish the records to you. We may, at our discretion, send you a bill along with or following the furnishing of the records. For example, we may do this if you have a history of prompt payment. We may also, at our discretion, aggregate the charges for certain time periods in order to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters. For example, we might send a bill to such a requester once a month. Fees should be paid in accordance with the instructions furnished by the person who responds to your requests.

§ 5.45 Waiver or reduction of fees.

(a) *Standard.* We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both of the following tests:

(1) It is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(2) It is not primarily in the commercial interest of the requester.

These two tests are explained in paragraphs (b) and (c) of this section.

(b) *Public interest.* The disclosure passes the first test only if it furthers the specific public interest of being likely to contribute significantly to public understanding of government operations or activities, regardless of any other public interest it may further. In analyzing this question, we will consider the following factors.

(1) How, if at all, do the records to be disclosed pertain to the operations or activities of the Federal Government?

(2) Would disclosure of the records reveal any meaningful information about government operations or activities? Can one learn from these records anything about such operations that is not already public knowledge?

(3) Will the disclosure advance the understanding of the general public as distinguished from a narrow segment of interested persons? Under this factor we may consider whether the requester is in a position to contribute to public understanding. For example, we may consider whether the requester has such knowledge or expertise as may be necessary to understand the information, and whether the requester's intended use of the information would be likely to disseminate the information among the public. An unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence.

(4) Will the contribution to public understanding be a significant one? Will the public's understanding of the government's operations be substantially greater as a result of the disclosure?

(c) *Not primarily in the requester's commercial interest.* If the disclosure passes the test of furthering the specific public interest described in paragraph (b) of this section, we will determine whether it also furthers the requester's commercial interest and, if so, whether this effect outweighs the advancement of that public interest. In applying this second test, we will consider the following factors:

(1) Would the disclosure further a commercial interest of the requester, or of someone on whose behalf the requester is acting? "Commercial interests" include interests relating to business, trade, and profit. Not only profit-making corporations have commercial interests—so do nonprofit corporations, individuals, unions, and other associations. The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.

(2) If disclosure would further a commercial interest of the requester, would that effect outweigh the advancement of the public interest defined in paragraph (b) of this section? Which effect is primary?

(d) *Deciding between waiver and reduction.* If the disclosure passes both tests, we will normally waive fees. However, in some cases we may decide only to reduce the fees. For example, we may do this when disclosure of some but not all of the requested records passes the tests.

(e) *Procedure for requesting a waiver or reduction.* You must make your request for a waiver or reduction at the same time you make your request for records. You should explain why you believe a waiver or reduction is proper under the analysis in paragraphs (a) through (d) of this section. Only FOI Officers may make the decision whether to waive, or reduce, the fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate a review official. You may appeal the denial to that official. In your appeal letter, you should discuss whatever reasons are given in our denial letter. The process prescribed in § 5.34(c) of this part will also apply to these appeals.

Subpart E—Records Available for Public Inspection

§ 5.51 Records available.

(a) *Records of general interest.* We will make the following records of general interest available for your inspection and copying. Before releasing them, however, we may delete the names of people, or information that would identify them, if release would invade their personal privacy to a clearly unwarranted degree. (See § 5.67 of this part.)

(1) Orders and final opinions, including concurring and dissenting opinions in adjudications, such as Letters of Finding issued by the Office for Civil Rights in civil rights complaints, and Social Security Rulings. (See § 5.66 of this part for availability of internal memoranda, including attorney opinions and advice.)

(2) Statements of policy and interpretations that we have adopted but have not published in the Federal Register.

(3) Administrative staff manuals and instructions to staff that affect the public. (We will not make available, however, manuals or instructions that reveal investigative or audit procedures as described in §§ 5.63 and 5.68 of this part.)

(b) *Other records.* In addition to such records as those described in paragraph (a) of this section, we will make available to any person a copy of all other agency records, unless we determine that such records should be withheld from disclosure under subsection (b) of the Act and Subpart F of this regulation.

§ 5.52 Indexes of records.

(a) *Inspection and copying.* We will maintain and provide for your inspection and copying current indexes of the records described in § 5.51(a). We will also publish and distribute copies of the indexes unless we announce in the Federal Register that it is unnecessary or impracticable to do so. For assistance in locating indexes maintained in the Department, you may contact the HHS Freedom of Information Officer at the address and telephone number in § 5.31(c).

(b) *Record citation as precedent.* We will not use or cite any record described in § 5.51(a) as a precedent for an action against a person unless we have indexed the record and published it or made it available, or unless the person has timely notice of the record.

Subpart F—Reasons for Withholding Some Records

§ 5.61 General.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. We describe these exemptions below and explain how this Department applies them to disclosure determinations. (In some cases more than one exemption may apply to the same document.) Information obtained by the Department from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute or regulation, will not be disclosed, to the extent it can be withheld under one of these exemptions. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Department.

§ 5.62 Exemption one: National defense and foreign policy.

We are not required to release records that, as provided by FOIA, are "(a) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive Order." Executive Order No. 12356 (1982) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials of those countries or officials of the Department of State. Also, we may on occasion have in our possession records classified by some other agency. We may refer your request for such records to the agency that classified them and notify you that we have done so, as explained in § 5.23.

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§ 5.63 Exemption two: Internal personnel rules and practices.

We are not required to release records that are "related solely to the internal personnel rules and practices of an agency." Under this exemption, we may withhold routine internal agency practices and procedures. For example, we may withhold guard schedules and rules governing parking facilities or lunch periods. Also under this exemption, we may withhold internal records whose release would help some persons circumvent the law or agency regulations. For example, we ordinarily do not disclose manuals that instruct our investigators or auditors how to investigate possible violations of law, to the extent that this release would help some persons circumvent the law.

§ 5.64 Exemption three: Records exempted by other statutes.

We are not required to release records if another statute specifically allows us to withhold them. We may use another statute to justify withholding only if it absolutely prohibits disclosure or if it sets forth criteria to guide our decision on releasing or identifies particular types of material to be withheld.

§ 5.65 Exemption four: Trade secrets and confidential commercial or financial information.

We will withhold trade secrets and commercial or financial information that is obtained from a person and is privileged or confidential.

(a) *Trade secrets.* A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

(b) *Commercial or financial information.* We will not disclose records whose information is "commercial or financial," is obtained from a person, and is "privileged or confidential."

(1) Information is "commercial or financial" if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances). We interpret this category broadly.

(2) Information is "obtained from a person" if HHS or another agency has obtained it from someone outside the Federal Government or from someone within the Government who has a commercial or financial interest in the information. "Person" includes an individual, partnership, corporation, association, state or foreign government, or other organization. Information is not "obtained from a person" if it is generated by HHS or another federal agency. However, information is "obtained from a person" if it is provided by someone, including but not limited to an agency employee, who retains a commercial or financial interest in the information.

(3) Information is "privileged" if it would ordinarily be protected from disclosure in civil discovery by a recognized evidentiary privilege, such as the attorney-client privilege or the work product privilege. Information may be privileged for this purpose under a privilege belonging to a person outside the government, unless the providing of the information to the government rendered the information no longer protectable in civil discovery.

(4) Information is "confidential" if it meets one of the following tests:

(i) Disclosure may impair the government's ability to obtain necessary information in the future;

(ii) Disclosure would substantially harm the competitive position of the person who submitted the information;

(iii) Disclosure would impair other government interests, such as program effectiveness and compliance; or

(iv) Disclosure would impair other private interests, such as an interest in controlling availability of intrinsically valuable records, which are sold in the market by their owner.

The following questions may be relevant in analyzing whether a record meets one of more of the above tests: Is the information of a type customarily held in strict confidence and not disclosed to the public by the person to whom it belongs? What is the general custom or usage with respect to such information in the relevant occupation or business? How many, and what types of, individuals have access to the information? What kind and degree of financial injury can be expected if the information is disclosed?

(c) *Designation of certain confidential information.* A person who submits records to the government may designate part or all of the information in such records as exempt from disclosure under Exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. Where a legend is required by a request for proposals or request for quotations, pursuant to 48 CFR 352.215–12, then that legend is necessary for this purpose. Any such designation will expire ten years after the records were submitted to the government.

(d) *Predisclosure notification.* The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (c) of this section. They also apply to records that were submitted to the government where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption 4. Certain exceptions to these procedures are stated in paragraph (e) of this section.

(1) When we receive a request for such records, and we determine that we may be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(2) The submitter has five working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(3) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records, we will notify the submitter in writing. This notice will briefly explain why we did not sustain its objections. We will include with the notice a copy of the records about which the submitter objected, as we propose to disclose them. The notice will state that we intend to disclose the records five working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(4) When a requester files suit under the FOIA to obtain records covered by this paragraph, we will promptly notify the submitter.

(5) Whenever we send a notice to a submitter under paragraph (d)(1) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object. Whenever we send a notice to a submitter under paragraph (d)(3) of this section, we will notify the requester of this fact.

(e) *Exceptions to predisclosure notification.* The notice requirements in paragraph (d) of this section do not apply in the following situations:

(1) We decided not to disclose the records;

(2) The information has previously been published or made generally available;

(3) Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the FOIA, but in this case a submitter may still designate records as described in paragraph (c) of this section, and in exceptional cases, we may, at our discretion, follow the notice procedures in paragraph (d) of this section; or

(5) The designation appears to be obviously frivolous, but in this case we will still give the submitter the written notice required by paragraph (d)(3) of this section (although this notice need not explain our decision or include a copy of the records), and we will notify the requester as described in paragraph (d)(5) of this section.

§ 5.66 Exemption five: Internal memoranda.

This exemption covers internal government communications and notes that fall within a generally recognized evidentiary privilege. Internal government communications include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most-commonly applicable privileges are described in the following paragraphs.

(a) *Deliberative process privilege.* This privilege protects predecisional deliberative communications. A communication is protected under this privilege if it was made before a final decision was reached on some question of policy and if it expressed recommendations or opinions on that question. The purpose of the privilege is to prevent injury to the quality of the agency decisionmaking process by encouraging open and frank internal policy discussions, by avoiding premature disclosure of policies not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. Purely factual material in a deliberative document is within this privilege only if it is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, if it would reveal the nature of the deliberative portions, or if its disclosure would in some other way make possible an intrusion into the decisionmaking process. We will release purely factual material in a deliberative document unless that material is otherwise exempt. The privilege continues to protect predecisional documents even after a decision is made.

(b) *Attorney work product privilege.* This privilege protects documents prepared by or for an agency, or by or for its representative (typically, HHS attorneys) in anticipation of litigation or for trial. It includes documents prepared for purposes of administrative adjudications as well as court litigation. It includes documents prepared by program offices as well as by attorneys. It includes factual material in such documents as well as material revealing opinions and tactics. Finally, the privilege continues to protect the documents even after the litigation is closed.

(c) *Attorney-client communication privilege.* This privilege protects confidential communications between a lawyer and an employee or agent of the government where there is an attorney-client relationship between them (typically, where the lawyer is acting as attorney for the agency and the employee is communicating on behalf of the agency) and where the employee has communicated information to the attorney in confidence in order to obtain legal advice or assistance.

§ 5.67 Exemption six: Clearly unwarranted invasion of personal privacy.

(a) *Documents affected.* We may withhold records about individuals if disclosure would constitute a clearly unwarranted invasion of their personal privacy.

(b) *Balancing test.* In deciding whether to release records to you that contain personal or private information about someone else, we weigh the foreseeable harm of invading that person's privacy against the public benefit that would result from the release. If you were seeking information for a purely commercial venture, for example, we might not think that disclosure would primarily benefit the public and we would deny your request. On the other hand, we would be more inclined to release information if you were working on a research project that gave promise of providing valuable information to a wide audience. However, in our evaluation of requests for records we attempt to guard against the release of information that might involve a violation of personal privacy because of a requester being able to "read between the lines" or piece together items that would constitute information that normally would be exempt from mandatory disclosure under Exemption Six.

(c) *Examples.* Some of the information that we frequently withhold under Exemption Six is: Home addresses, ages, and minority group status of our employees or former employees; social security numbers; medical information about individuals participating in clinical research studies; names and addresses of individual beneficiaries of our programs, or benefits such individuals receive; earning records, claim files, and other personal information maintained by the Social Security Administration, the Public Health Service, and the Health Care Financing Administration.

§ 5.68 Exemption seven: Law enforcement.

We are not required to disclose information or records that the government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

(a) *Enforcement proceedings.* We may withhold information whose release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases—such as when a fraud investigation is likely—we may refuse to confirm or deny the existence of records that relate to the violations in order not to disclose that an investigation is in progress, or may be conducted.

(b) *Fair trial or impartial adjudication.* We may withhold records whose release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(c) *Personal privacy.* We are careful not to disclose information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, and retaliation.

(d) *Confidential sources and information.* We may withhold records whose release could reasonably be expected to disclose the identity of a confidential source of information. A confidential source may be an individual; a state, local, or foreign government agency; or any private organization. The exemption applies whether the source provides information

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under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. Also, where the record, or information in it, has been compiled by a criminal law enforcement authority conducting a criminal investigation, or by an agency conducting a lawful national security investigation, the exemption also protects all information supplied by a confidential source. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(e) *Techniques and procedures.* We may withhold records reflecting special techniques or procedures of investigation or prosecution, not otherwise generally known to the public. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. We may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.

(f) *Life and physical safety.* We may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment as well as to physical violence.

§ 5.69 Exemptions 8 and 9: Records on financial institutions; records on wells.

Exemption eight permits us to withhold records about regulation or supervision of financial institutions. Exemption nine permits the withholding of geological and geophysical information and data, including maps, concerning wells.

Date: September 9, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-27239 Filed 11-23-88; 8:45 am]

BILLING CODE 4150-04-M

Family Support Administration

45 CFR Part 303

Office of Child Support Enforcement; Federal Income Tax Refund Offset

AGENCY: Office of Child Support Enforcement (OCSE), FSA, HHS.

ACTION: Final rule.

SUMMARY: This regulation revises Federal tax refund offset regulations to provide that the Office of Child Support Enforcement (OCSE) will recover its costs from the States for certain services provided in the Federal tax refund offset process. These services are limited to printing and mailing pre-offset notices when OCSE provides this service.

In addition, this regulation makes necessary changes to conform OCSE regulations with the revised method the Internal Revenue Service (IRS) will use beginning in processing year 1988 to recover costs of the offset procedure. The IRS fee will no longer be billed to the State and collected by the Secretary of Health and Human Services. Beginning with the 1988 processing year, the IRS deducted its fee from the offset amount, although States are still required to credit the obligor with the full amount of the offset.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Betsy Matheson, OCSE Policy Branch, (202) 252-5362.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal tax refund offset program, States are required to send the absent parent advance notice that his or her case will be referred for offset, pursuant to section 464(a)(3)(A) of the Social Security Act (the Act). During the initial years of the Federal tax refund offset program, OCSE, under its regulatory authority, chose to provide States with the option of having OCSE send the advance notice on behalf of the State IV-D agency, if requested to do so, to encourage use of the offset mechanism. In processing year 1988, 39 States and jurisdictions requested OCSE to provide the advance notice to absent parents for them.

OCSE has always had the statutory authority to charge fees for this service, but until now has not done so to give States an incentive to implement the offset procedure. OCSE believes that State programs have sufficiently developed now so that it is no longer necessary to provide this technical assistance, without cost to States. Moreover, in light of the Federal deficit it is no longer appropriate to provide a service at no cost which is clearly the obligation of the State. Accordingly, OCSE will now charge for services it provides in the Federal tax refund offset process. These services include printing and mailing pre-offset notices on behalf of the States. Any fees charged the State will be reimbursable at the current Federal matching rate for child support administrative expenses so that the Federal Government will still bear the majority of the cost (68 percent in FY 1988 and 1989). Additional information, including the amount of the fee and its effective date, was issued in Program Instructions dated July 12, 1988 (OCSE-AT-88-12).

Another provision of the Federal tax refund offset program is that the IRS shall charge the State a fee for its costs of applying the offset procedure. Prior to the 1988 processing year, this fee was billed and collected from the State IV-D agency by the Secretary of Health and Human Services (HHS). However, the IRS has changed its cost recovery method, and beginning with the 1988 processing year deducted its fee directly from the offset amount. Therefore, these regulations delete the requirement that the IRS fee be billed and collected from the State IV-D agency by HHS.

In addition to publication of the proposed rule, States were notified well in advance, and through several different media (conferences, action transmittal, letters) of the pending IRS change in its method of recovering costs under the offset procedure. While a small number of States may have difficulties with these changes in conforming State legislative changes are necessary, States have had ample warning and opportunity to implement necessary legislation. In 1986, the IRS notified OCSE of its intention to deduct its fee directly from the offset amount and OCSE informed States in a "Dear Colleague" letter of IRS' intention and asked for comments on whether or not this change would pose any problems. Although the IRS did not implement its proposal in the 1987 processing year, States have been on notice since that time of a potential change in the IRS method for cost recovery.

The revised cost recovery method used by the IRS does not affect current IV-D collection and distribution policy. The State IV-D agency must consider the total amount offset as a support collection and distribute this amount pursuant to Federal regulations at 45 CFR 303.72(h). For example, if the State certifies $2,000 for Federal tax refund offset and the IRS offsets $2,000 and deducts the IRS offset fee from this amount, the State must credit the absent parent with a $2,000 payment and distribute $2,000, not $2,000 less the IRS fee. The State may recover the IRS fee in non-AFDC cases pursuant to regulations at 45 CFR 302.33(d).

Statutory Authority

Section 464(a)(3) of the Act requires the State to send notice to an individual that a Federal tax refund offset will be made. Section 464(b)(1) provides that the Secretary of the Treasury shall prescribe the fee that State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure.

Section 1102 authorizes the Secretary of HHS to publish regulations (not inconsistent with the Act) necessary to efficiently administer his functions under the Act. Under the title IV-D State plan requirement contained in section 454(13) of the Act, the Secretary may prescribe, and the State must comply with, requirements and standards necessary to establish an effective title IV-D program.

General authority for the Federal government to charge for certain specialized or technical services which it may perform is found in the Intergovernmental Cooperation Act at 31 U.S.C. 6505. This statute states that services may be provided if requested by the State in writing and payment is made.

OMB Circular No. A-97 promulgates rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under title III of the Intergovernmental Cooperation Act. Specifically, this Circular permits Federal agencies to provide (among other services) technical information, data processing, communications and personnel management systems services, and technical advice on improving logistical and management services which the Federal agency normally provides for itself or others under existing authorities. We believe that sending the pre-offset notice on behalf of States meets the above criterion because it provides data processing services which improve the Federal tax refund offset process by ensuring that the offset notice is accurate and timely. The authority for OCSE to provide this service exists because OCSE serves as the agent between the State and the IRS for the offset process. Therefore, OCSE is intrinsically involved in the actual Federal tax refund offset process and this is just one aspect of that process.

Prior Regulatory Provisions

45 CFR 303.72(e)(1) stated that OCSE or the State IV-D agency if it elects to do so, shall send a written advance notice to inform an absent parent that the amount of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset.

45 CFR 303.72(i)(1) stated that a refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of HHS have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be billed and collected from the IV-D agency by the Secretary of HHS or designee and credited to the IRS appropriations which bore all or part of the costs involved in making the collection.

Regulatory Changes

This regulation revises 45 CFR 303.72(e)(1) to require that the State IV-D agency, or OCSE, if the State requests and OCSE agrees, shall send the advance notice. This revision is consistent with section 464(a)(3) of the Act. The revised language merely clarifies that the State is ultimately responsible for sending the advance notice and that OCSE is providing technical assistance to the State when it sends the advance notice on behalf of the State.

Paragraph (i)(1) of this secton is revised by deleting the reference to the IRS cost recovery procedure, i.e., the IRS fee is billed and collected from the IV-D agency by the Secretary of HHS. This change is necessary to conform OCSE regulations to the change in the IRS method for collecting the IRS offset fee. Beginning in processing year 1988, the IRS deducted its fee from the offset collection instead of billing the State and having HHS collect the fee.

A new paragraph (i)(3) has been added to this section. This paragraph provides that a fee will be charged to any State which requests OCSE to send advance written notice in regard to the Federal tax refund offset process, including the printing and mailing of pre-offset notices on behalf of the State. The amount of the fee and the effective date for charging a fee will be established by OCSE in instructions.

Response to Comments

Seven State agencies submitted comments in response to the notice of proposed rulemaking published in the **Federal Register** (53 FR 12041) on April 12, 1988. A discussion of these comments and our responses follow:

Fee for Printing and Mailing Pre-Offset Notices

Comment 1: Three State agencies expressed concern over the cost to State and local governments resulting from the fee which OCSE will now charge for printing and mailing pre-offset notices.

Response: These regulations at § 303.72, which specify that States requesting OCSE to send pre-offset notices will be charged a fee, will result in some increased costs to State and local governments which opt to have OCSE send their pre-offset notices. Although section 464(a)(3)(A) of the Act clearly requires States to send pre-offset notices to absent parents, OCSE previously provided these services without charge to encourage use of the offset procedure and to assist States during the developmental stages of implementation. Such assistance is no longer necessary. We believe the cost to States will be minimal, since States will receive Federal funding for these expenditures at the applicable matching rate.

Comment 2: One State agency inquired how States will be reimbursed for any overpayment of OCSE's fee.

Response: Refunds will be issued after the printing and sending of pre-offset notices have been completed. Program instructions, issued in an action transmittal (OCSE-AT-88-12) on July 12, 1988, specifically discuss the payment process.

Comment 3: One State agency requested that we revise the proposed regulation at § 303.72(i)(3) to clarify that "the State" refers to States which request OCSE to mail its pre-offset notices.

Response: In response to the commentor's recommendation, final regulations at § 303.72(i)(3) specify that a State which requests OCSE to send written advance notice to absent parents will be charged a corresponding fee.

Comment 4: One State agency suggested that it would be more cost effective for the State agency to send a combined Federal and State pre-offset notice.

Response: States may send a combined State and Federal pre-offset notice if all notice requirements for both processes are met. As we have previously stated in the **Federal Register** (50 FR 19636) on May 9, 1985, Federal regulations do not have the same notice requirements for Federal and State offset since procedures, distribution policy and the agency responsible for Federal and State offset may be different depending on State practice. However, many States do use a combined notice, which is cost effective, and we encourage other States to adopt such procedures if feasible.

IRS Cost Recovery Method

Comment 1. Two State agencies expressed concern over the administrative and financial impact of the new IRS cost recovery method indicating that there will have to be changes made to automated systems and accounting procedures as well as increased budget authority. They requested that the collection method

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remain unchanged or be delayed for six months to allow time for automated systems and budgetary changes.

Response. Beginning with the 1988 processing year, the IRS deducted the offset fee from the offset amount. Regulations at § 303.72(i)(1) simply reflect changes already made by the IRS to their cost recovery method and these revisions do not increase the fee charged by the IRS for refund offsets. States have always been responsible for paying these fees. The States have had ample notice of this change since 1986 and we believe any additional costs incurred to accommodate this new method will be minimal. The States will be reimbursed for the IRS offset fee at the applicable matching rate.

Comment 2. One State agency asked what authority the IRS has to change their fee collection method.

Response. The revised IRS fee collection method corresponds with the cost recovery method the IRS employs with Federal agencies using the tax refund offset process to collect outstanding debts. This method is routinely applied between Federal and State governments and facilitates efficient settlement of accounts especially in the elimination of delinquent accounts. While alternative methods were considered in regard to the Child Support Enforcement Program, the IRS decided to have one method for collecting fees for all tax refund offset programs. There is no legal prohibition against this method in section 464 of the Act.

Comment 3. One State agency indicated it could find no statutory requirement that the State must credit the full amount of the offset against the obligor's payment record. They would prefer to deduct the IRS fee from the offset before crediting the obligor's account and credit the obligor's account only for the amount the State actually receives from the IRS.

Response. Federal statute and regulations require that the total amount offset must be distributed to or on behalf of the child. Section 464(a)(2)(A) of the Act specifically states that the "State agency shall * * * distribute such amount to or on behalf of the child to whom the support was owed." The term "such amount" directly refers to the amount offset by the IRS. Federal regulations at 45 CFR 303.72(h) specify that for AFDC and non-AFDC offset collections, the offset shall be distributed as past due support as required under §§ 302.51(b) (4) and (5). However, in States which choose to recover costs in non-AFDC cases, the IRS fee may be recovered pursuant to regulations at 45 CFR 302.33(d).

Executive Order 12291

Comment. One agency disagreed that this rule will not result in a major increase in costs or prices for State or local governments as defined by Executive Order 12291.

Response. This regulation will not result in a major increase in costs to State or local government agencies. States requesting OCSE to print and mail their pre-offset notices will be charged $.27 per notice for processing year 1989 and will receive 68 percent Federal funding for these expenditures. We estimate OCSE's total cost for printing and mailing pre-offset notices in processing year 1989 to be approximately $380,000, based on requests by 39 States and jurisdictions for this service in processing year 1988. Therefore, the cost to each requesting State for providing this service is not expected to be substantial. With respect to the IRS fee to cover the costs of offset, the methodology for recovering the fee, not the States' responsibility to pay the fee, is changing. States are, and have been since the outset, responsible for paying the IRS fee.

Paperwork Reduction Act

Section 303.72 of this final rule contains information collection requirements. These requirements have been approved by the Office of Management and Budget (OMB) control number as follows: § 303.72—OMB Control No. 0960–0253.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major rule. This regulation permits OCSE to charge the State for providing the advance notice of tax refund offset to the absent parent. In addition, this regulation revises OCSE regulations to conform to the revised cost recovery procedures established by the IRS for collecting offset fees. The cost for sending advance notice to an absent parent is allocated differently, but total expenditures remain the same. The method used by the IRS to recover costs of the offset program is revised, but the IRS fee is not affected by this regulation. Therefore, this rule will have little or no economic effect.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments, which are not considered small entities under the Act.

List of Subjects in 45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Date: August 17, 1988.

Robert C. Harris,

Associate Deputy Director, Office of Child Support Enforcement.

Approved: October 4, 1988.

Otis R. Bowen,

Secretary.

For the reasons set out in the preamble, Chapter III of Title 45 of the Code of Federal Regulations is amended as follows:

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 303.72 is amended by revising paragraphs (e)(1) introductory test and (i)(1) and adding a new paragraph (i)(3) to read as follows:

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

* * * * *

(e) *Notices of offset.*—(1) *Advance.* The State IV–D agency, or the Office, if the State requests and the Office agrees, shall send a written advance notice to inform an absent parent that the amount of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset. The notice must inform absent parents:

* * * * *

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the IRS appropriations which bore all or part of the costs involved in making the collection. The full amount offset must be credited against the obligor's payment record. The fee which the Secretary of the Treasury may impose with respect to non-AFDC submittals shall not exceed $25 per submittal.

* * * * *

(3) Any State which requests the Office to send the advance written notice under paragraph (e)(1) of this section will be charged a fee, in an amount established by the Office in instructions, for printing and mailing of pre-offset notices. This fee shall be credited to the Health and Human Services appropriations which bore all or part of the costs involved in making the collection.

* * * * *

[FR Doc. 88–27237 Filed 11–23–88; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PR Docket No. 87–265; FCC 88–318]

Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Report and Order*, the FCC is amending the GMRS to: (1) Provide for greater transient use of repeater stations in other GMRS systems by broadening station operator eligibility; (2) enhance channel selection by allowing each GMRS system licensed to an individual two primary channels or channel pairs along with a third channel for emergencies and traveler assistance; (3) create small base stations thereby permitting the use of commonly available mobile transceivers for base station operation; (4) prohibit simplex operation on repeater input channels within 5 years; and (5) create new interstitial channels to accommodate and promote spectrum-efficient non-repeater-assisted communications. The FCC is taking this action in order to increase user flexibility, reflect improvements in technology and enhance the GMRS for personal radio users.

EFFECTIVE DATE: January 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John B. Johnston, Chief, Personal Radio Branch, Private Radio Bureau, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 88–318, adopted October 13, 1988, and released November 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On July 16, 1987, we adopted a *Notice of Proposed Rule Making* (*Notice*), 2 FCC Rcd 4490 (1987), in the above-captioned proceeding. In the *Notice* we proposed to modify the General Mobile Radio Service (GMRS) Rules to increase the flexibility of the GMRS for personal communications. Our objective was to make the service more efficient and effective for personal users.

2. The keystone of our proposal was to limit eligibility for obtaining a new GMRS system license to an individual (one man or one woman) in order to encourage personal uses and discourage large commercial operations. We also proposed (1) to provide for greater transient use of mobile relay stations (repeaters) by broadening station operator eligibility; (2) to eliminate the need to re-license a GMRS system in order to change the transmitting channel; (3) to define and provide for the small base station, a new class of land station in GMRS systems; and (4) to authorize new interstitial channels. We received fifty-two comments and fourteen reply comments.

3. The GMRS is one of the three personal radio services contained in Part 95 of the Rules. The GMRS rules, however, permit both personal and business communications. This has resulted in a very broad mix of GMRS system licensees: Personal users, volunteer public service groups and small and large commercial organizations. The diverse operating patterns of these users often result in major incompatibilities, particularly between large commercial organizations and personal users. In areas of large population density use of the eight available GMRS channel pairs by high-traffic-volume commercial dispatch operations often effectively precludes personal use.

4. Further, as presently structured, the GMRS rules limit the flexibility of users to take advantage of new technology and equipment. For example, under the present rules GMRS users cannot use the repeaters of other GMRS systems without first obtaining a modification of their licensees.

5. Under current rules, GMRS station operators must confine their communications to the channel assigned to their home GMRS system and may only use simplex (non-repeated) transmissions. They can communicate with station operators in other GMRS systems that share their home GMRS system channel, including repeater transmissions, but they are prohibited from using repeaters in other GMRS systems to communicate with station operators from their own GMRS system unless they have obtained a modification of the licenses. These requirements are unwieldy and, for all practical purposes, preclude effective transient operation.

6. We have expressed a continuing concern that personal communications needs be adequately met. The Citizens Band (CB) Radio Service provides short-range communications capability, with low power and low antenna height. Because of its propagation characteristics, however, CB radio is not suited to many traditional communications options desirable for personal users, such as repeaters. We have sought alternatives for personal users who seek a more complete communications package. *See* General Docket No. 83–26; *see also* PR Docket No. 86–38. By this proceeding we seek to determine whether specific improvements to augment personal use in the GMRS would be desirable.

7. *License Eligibility.* In the *Notice* we proposed to limit the eligibility for new GMRS system licenses to individuals in order to focus the usage of the very limited number of GMRS channels (8 channel pairs) toward the needs of the personal user. Commercial organizations are eligible for systems in other private land mobile radio services having comparable communications performance capability (repeaters, FM quieting and capture, freedom from "skip," etc.). Personal users, on the other hand, generally are not eligible in the other private land mobile services. There are no comparable alternatives to the GMRS for the personal user.

8. We did not propose to terminate business communications in the GMRS. While the proposed licensing

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requirements would discourage large business users, small businesses with few employees could still find the GMRS attractive. Further, recognizing that roughly one-half of all GMRS system licensees are commercial organizations, we proposed to grandfather those commercial user GMRS systems that were licensed before July 31, 1987. These systems, however, would have to remain configured as currently licensed. No changes would be authorized to such grandfathered systems. We advanced this proposal to encourage the large commercial organizations to relocate their systems to the Business Radio Service.

9. As a personal radio service, the GMRS should not be compromised for the benefit of commercial users at the expense of personal users. Business communication needs, particular the needs of large-volume dispatch operations, should be satisfied through the use of communications alternatives other than GMRS. Licensing new GMRS systems to individuals will encourage personal and small business use while discouraging large commercial operations. We emphasize again that this change will not preclude or otherwise limit business communications from being transmitted by GMRS licensees.

10. We specifically reject a content regulation approach to enhancing personal use in the GMRS. Discontinuing business communications would unnecessarily disrupt the GMRS. It would not be in the public interest to prescribe in detail the types of communications that could be conducted by GMRS users. Indeed, some personal users may find that the GMRS suits their needs to accomplish infrequent communications for a small business. Those individuals eligible for a new GMRS system license may find the service entirely suitable for both their personal and small business communications. We do not want to discourage these uses.

11. Under the existing rules, individual licensees of GMRS systems could allow employees to be station operators without obtaining their own GMRS system licenses. This is consistent with a commercial dispatch regulatory approach, and grandfathered commercial GMRS systems may continue to permit employees to be station operators consistent with our former rules. Under the new rules that apply to GMRS systems licensed to individuals, however, such an approach would frustrate the new regulatory framework based upon responsibility for one's own communications as an individual GMRS system licensee. Therefore, employees may not be station operators of GMRS systems licensed to individuals unless they have their own GMRS system licenses.

12. Some commenters sought separate licensing eligibility for volunteer public service teams such as REACT (providing CB Channel 9 response) and neighborhood watch groups if we adopt general rules limiting GMRS systems to individuals. We recognize the additional communications assets these organizations bring to bear in times of emergency. There is no way to create an exemption for them, however, without serious risk of compromising the new eligibility requirements.

13. *Improved Transient Operation.* In line with our intention to make the GMRS more efficient and effective for personal users, we proposed to model repeater usage in the GMRS more closely after repeater usage in the amateur service. A salient characteristic of amateur service repeater operation is extensive transient use. We proposed, therefore, to permit use of a GMRS system repeater by station operators of GMRS systems licensed to individuals who have the permission of the GMRS system licensee whose repeater is being used. The persons eligible to be station operators in a GMRS system would include the members of the licensee's family for whom the licensee is willing to take responsibility. We also proposed to construe as open and available for transient use any GMRS system repeater that does not employ some technical means to limit user access to the repeater, such as tone operated squelch or digital access codes. We requested comment on the merits of this approach versus the need to require GMRS system licensee permission for transient use of repeaters.

14. *Discussion.* The flexibility of personal communications in the GMRS would be greatly improved through the proposed relaxation of station operator eligibility requirements. This relaxation of the rules would facilitate transient use of repeaters and greatly increase the convenience and usefulness of the GMRS to individuals. To that end we are adopting the rules we proposed.

15. We are adopting rules to liberalize station operator eligibility. The purpose of these rules is to increase the convenience and usefulness of GMRS systems licensed to individuals. Thus, the liberalized station operator standards will not apply to grandfathered GMRS systems licensed to commercial entities. Also, the old GMRS rules placed message content restrictions upon each station operator, depending upon the station operator's relationship to the licensee. As proposed, we are abolishing these message content regulations with respect to GMRS systems licensed to individuals. Any individual station operator (*i.e.*, GMRS licensee or family member) may engage in any communication.

16. We are also adopting rules to allow the station operators of GMRS systems licensed to individuals to use mobile relay stations in other GMRS systems with the permission of the licensees of the other systems. Of course, both systems must be authorized for the channel or channel pair used for such a communication. In the *Notice* we took the position that we would prospectively construe these rules to mean that any GMRS open repeater would be a repeater for which the GMRS system licensee had given tacit permission for such transient use. We are persuaded by the comments, however, that such a construction does not allow a GMRS system licensee sufficient latitude to restrict the users of that system to those operators the licensee desires. This then impinges on the licensee's ability to adequately discharge required control functions under the Rules. Therefore, we are adopting rules requiring system licensee permission before engaging in transient use of another system's mobile relay station; however, we decline to implement our proposed construction of these rules to allow transient use of any open GMRS repeater.

17. *All-Channel Operation.* We proposed rules to permit each GMRS system licensed to an individual to use the best channel available for its stations at any given time and place. Currently, each GMRS licensee normally receives authorization for one specific shared channel or channel pair at one specific location. A personal user is unable to communicate if the channel assigned to the GMRS system is busy, even if other channels are clear. When traveling, the personal user is confined to the channel of the home GMRS system. To use a different channel, the GMRS system licensee has to obtain a license modification. To do this, the GMRS system licensee must request another specific channel on the application form.

18. Upon further review of our proposal, we conclude that elimination of Commission assignment of channels and channel pairs to GMRS systems would be too drastic a step to take at this time. Instead, we are adopting a "two-channel plus 675" concept. All GMRS systems licensed to individuals may be assigned two requested channels or channel pairs, and an additional nationwide channel pair (462.675 MHz/467.675 MHz) will be made available for emergency and traveler assistance communications. This alternative provides much of the flexibility we sought in advancing the all-channel concept, but at the same time preserves the current nature of the GMRS primary channels and channel pairs in order to allow for a more gradual and user-acceptable application of existing and new technologies in the GMRS.

19. We are adopting rules that allow the mobile stations of any GMRS system that is not specifically assigned the 462.675 MHz/467.675 MHz channel pair to use this channel pair for emergency communications or traveler assistance. This would allow each GMRS licensee to communicate on the frequency most commonly used nationally in the GMRS by volunteer public service teams for emergency and traveler assistance communications.

20. We are also adopting rules to permit two channels or channel pairs to be assigned to a GMRS system licensed to an individual. Granting a second channel or channel pair upon request provides each GMRS system with additional flexibility without severely disrupting current rules or licensing policies.

21. We are also taking two additional steps to assure against the proliferation of unauthorized user-programmable equipment. First, we will not type accept a GMRS transmitter that can transmit in spectrum assigned to another service unless it is also type-accepted for use in that other service. Second, we will require that the mechanism for installing or programming the assigned channel frequencies into all transmitters type accepted for use in GMRS systems be internal to the transmitter and inaccessible to the station operators. Our intent is that the GMRS system licensee will make, or cause to have made, the necessary internal installation or programming of the assigned channels such that only the channels authorized to the GMRS system are available to the station operators for their selection.

22. *Small Base Stations.* Many GMRS personal users only acquire and operate one or more mobile units. The current rules place constraints upon a personal user who on occasion wants to operate a mobile transmitter from a fixed location, such as the home or office. We proposed to create a new type of base station called a small base station to accommodate this requirement. Licensing requirements for this type of base station would be considerably less detailed than those for a typical base station.

23. The concept of the small base station is largely based upon the existing small control station. Nonetheless, we proposed a different maximum power limitation for small base stations. Small base stations would be limited to a maximum effective radiated power (ERP) of 5 watts. Small control stations may employ up to 50 watts ERP unless they transmit north of Line A or east of Line C, in which case they are also limited to 5 watts ERP. We proposed to limit small base stations to a maximum of 5 watts ERP regardless of geographic location. This should be sufficient for the limited intended local use. Moreover, allowing small base stations to transmit with high power at the reduced frequency tolerance we proposed could greatly increase interference potential if they are authorized to transmit on interstitial frequencies.

24. A small base station would employ an antenna no more than 20 feet above the ground or above the building or tree on which it is mounted. To facilitate use of low-power "mobile" equipment as small base stations, we proposed to permit small base stations the frequency tolerance currently allowed for mobile stations (0.0005%), rather than the frequency tolerance currently required for base stations (0.00025%). We believed this was an acceptable tradeoff to achieve personal user flexibility. Small base stations would employ at a maximum no more than one tenth the power available to other land stations, and therefore would not require as tight of frequency tolerance.

25. Small base stations are unlikely to cause significant interference to other lawful uses and users. Allowing small base stations will encourage GMRS users to utilize short range equipment so that more users can be accommodated. Therefore, we are adopting rules to allow GMRS systems licensed to individual to use small base stations. A small base station may operate on the primary 462 MHz channel(s) assigned to the GMRS system for the small base station as requested. In addition, a small base station may operate on any of the new interstitial channels.

26. *Simplex Channels.* We inquired about the need to minimize harmful interference to repeater channels, and whether we should consider discouraging or prohibiting simplex operation on repeater mobile input channels. Upon reviewing the comments, we conclude that significant interference to GMRS repeater operation is virtually inevitable due to non-repeater operations conducted on 467 MHz frequencies. We are, therefore, adopting new § 95.29(a)(3) restricting 467 MHz channels to accessing and controlling mobile relay stations. We have chosen, however, to postpone the effective date of this particular action until December 31, 1993. This is to give GMRS licensees involved in two-frequency direct operation or mobile-to-mobile station operation on 467 MHz frequencies sufficient time to reconfigure their GMRS systems or otherwise reaccommodate their communications needs.

27. *Adding Interstitial Frequencies.* We proposed the addition of three interstitial (12.5 kHz offset) GMRS channels in the 462 MHz frequency band to facilitate personal communication. We proposed these channels to satisfy the need for short-range GMRS communications that do not require use of a repeater. We also propose that four interstitial channels be established in the 467 MHz frequency band. We proposed to restrict transmissions on these channels to low power one-way non-voice communications solely for repeater control.

28. Because we are adopting rules to prohibit simplex operation on the input frequencies of repeaters, effective in roughly five years, we have decided not to release any of the 467 MHz interstitial channels at this time. Premature release of the 467 MHz interstitial channels may compromise the evolution of repeater technology in the GMRS.

29. On the other hand, the Notice sought to provide for direct (non-repeater-assisted) communications that do not risk substantial interference from repeater operation by proposing release of several 462 MHz interstitial channels for low-power use by mobile stations and small base stations. The comments indicate that it is desirable to provide additional channels for personal communications exchanges that can be conducted without a repeater. Moreover, releasing all seven of the 462 MHz segment interstitial channels for the use of mobile stations and small base stations in GMRS systems licensed to individuals would provide any GMRS systems licensed to individuals that are displaced by the prospective 1993 changes at 467 MHz with a GMRS alternative for their communications needs. Accordingly, we are releasing all seven 462 MHz interstitial channels for use by mobile stations and small base stations in GMRS systems licensed to individuals.

30. *Grandfathered GMRS Systems.* On September 17, 1987, we released a Public Notice further explaining the policies for

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GMRS systems that would be grandfathered under the proposed rules. *Public Notice*, Interim Policies for GMRS, No. 4872, September 17, 1987. In the *Notice of Proposed Rule Making*, we proposed that GMRS systems licensed to non-individuals on or before July 30, 1987, would be grandfathered. The Public Notice clarified that pending adoption of the proposed rules, we would continue to grant GMRS systems to non-individuals. Should the proposed rules be adopted, however, GMRS system licensees granted to non-individuals on or after July 31, 1987, would become subject to the new rules at the expiration of the license terms and, hence, would not be renewed. We further stated that GMRS systems licensed to non-individuals that were substantially modified after July 31, 1987, would be considered newly licensed as of the date of grant of such modification by the Commission. The Public Notice indicated that any modification to increase the power of any transmitter, increase the number of mobile units, add any stations, increase any antenna heights, change any land station location, or change any area of operation would constitute a substantial modification. Any such modified GMRS system license granted to a non-individual on or after July 31, 1987, would not be grandfathered and would be subject to the new rules after the expiration of the license terms.

31. In proposed § 95.5(b) we had listed six substantial modifications that we would not allow grandfathered entities. The new rule we are adopting, § 95.71(e), adds one more: Changing or adding assigned frequencies. This is consistent with traditional concepts of substantial modification as well as with our decision to draw a distinction between GMRS systems licensed to individuals and to non-individuals with respect to channel availability.

32. We intend to strictly adhere to the provisions we are adopting with respect to grandfathering. Only GMRS systems licensed to non-individuals before July 31, 1987, will be grandfathered. The rules governing eligibility will be applied prospectively to all other existing GMRS systems upon expiration of their licenses. Any GMRS systems licensed to non-individuals that made the substantial modifications described in § 95.71(e) of the new rules between July 31, 1987, and December 31, 1988, will be considered newly licensed as of the date of grant of such modification(s) and will not be grandfathered. Their licenses, valid until the expiration of their terms, will become subject to the new rules governing eligibility. Similarly, new GMRS systems licensed to non-individuals on or after July 31, 1987, will not be grandfathered. Their licenses, valid until the expiration of their terms, will not be renewed.

33. In addition, we have decided to permit non-individuals to file applications for new or substantially modified GMRS system licenses through December 31, 1988. Applications for new or substantially modified GMRS system licenses by non-individuals will not be accepted for filing on or after January 1, 1989. All applications for new or modified GMRS system licenses by non-individuals filed on or before December 31, 1988, will be processed. New or substantially modified GMRS system licenses granted to these non-individuals, however, will not be grandfathered. Thus, their licenses, valid until the expiration of their terms, will not be renewed.

34. It is currently our policy to routinely grant an application to reinstate an expired GMRS system license filed within six months of the date of expiration of that license, provided that it is accompanied by a GMRS system renewal application. We intend to continue to follow this policy for both grandfathered and individually licensed GMRS systems. For this reason we are codifying this "grace period" at new § 95.89(e). Applications for reinstatement of a GMRS system license filed more than six months after the expiration of that license must include an extraordinary showing to be granted.

35. Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) we certified that these rules will not have a significant economic impact on a substantial number of small entities. Although these changes allow the personal radio community greater flexibility and convenience, they will not cause a significant economic impact on any small entities.

36. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection burden that the Commission imposes on the public. This proposed reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

37. For the reasons stated above, *it is ordered* that effective January 1, 1989, Subparts A and E of Part 95 of the Commission's Rules, 47 CFR Subparts A and E, *are amended* as set forth below. Authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

38. *It is further ordered* that a copy of this *Report and Order* shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

39. *It is further ordered* that this proceeding *is terminated*.

List of Subjects in 47 CFR Part 95

Communications equipment, General Mobile radio.

Subparts A and E of Part 95 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

Subpart A—General Mobile Radio Service (GMRS)

2. Paragraph (a) of § 95.1 is revised to read as follows:

§ 95.1 The General Mobile Radio Service (GMRS).

(a) The *GMRS* is a land mobile radio service available to persons for short-distance two-way communications to facilitate the activities of licensees and their immediate family members. Each licensee manages a system consisting of one or more stations.

* * * * *

3. Section 95.3 is revised to read as follows:

§ 95.3 License required.

Before any station transmits on any channel authorized in the GMRS from any *point* (a geographical location) within or over the territorial limits of any area where radio services are regulated by the FCC, the responsible party must obtain a *license* (a written authorization from the FCC for a GMRS system).

4. Section 95.5 is revised to read as follows:

§ 95.5 License eligibility.

An *individual* (one man or one woman) is eligible to obtain, renew and have modified a GMRS system license if that individual is 18 years or age or older and is not a representative of a foreign government. A *non-individual* (an entity other than an individual) is ineligible to obtain a new GMRS system license or to make a major modification to an existing GMRS system license (see § 95.71(e)). Certain non-individuals are eligible to renew existing GMRS system license (see § 95.89 (c) and (d)).

5. Paragraph (a) of § 95.7 is revised to read as follows:

§ 95.7 Channel sharing.

(a) Channels or channel pairs are available to GMRS systems only on a shared basis and will not be assigned for the exclusive use of any licensee. All station operators and GMRS system licensees must cooperate in the selection and use of channels to reduce interference and to make the most effective use of the facilities.

* * * * *

6. In § 95.25, paragraph (d)(2)(ii) is revised, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows ((d) and (d)(2) introductory texts are republished):

§ 95.25 Land station description.

* * * * *

(d) A *small control station* is any control station which * * *

(2) *Is:*

* * * * *

(ii) North of Line A or east of Line C, and the station transmits with no more than 5 watts *ERP* (effective radiated power).

(e) A *small base station* is any base station that:

(1) Has an antenna no more than 6.1 meters (20 feet) above the ground or above the building or tree or which it is mounted (see § 95.51); and

(2) Transmits with no more than 5 watts ERP.

7. Section 95.29 is revised to read as follows:

§ 95.29 Channels available.

(a) The licensee of the GMRS system must select the transmitting channel or channel pair for the stations in the GMRS system from the following lists:

(1) For a base station, mobile relay station, fixed station or mobile station, the following 462 *MHz* (megahertz) channels;

462.5500, 462.5750, 462.6000, 462.6250, 462.6500, 462.6750, 462.7000 and 462.7250.

(2) For a mobile station, control station or fixed station operated in the duplex mode, the following 467 MHz channels:

467.5500, 467.5750, 467.6000, 467.6250, 467.6500, 467.6750, 467.7000, and 467.7250.

(3) As of December 31, 1993, the 467 MHz channels may be used only to transmit communications through a mobile relay station and for remotely controlling a mobile relay station. As of December 31, 1993, no station in a GMRS system may transmit communications *directly* (not through a mobile relay station) on the 467 MHz channels.

(b) The FCC will normally assign only one channel or one *channel pair* (one 462 MHz channel and its counterpart 5 MHz spaced 467 MHz channel) to a GMRS system comprised of stations intended for operation in the simplex mode. A second channel or channel pair will be assigned at the request of the applicant.

(c) The FCC will normally assign only one channel pair to a GMRS system comprised of stations intended for operation in the duplex mode. A second channel pair will be assigned at the request of the applicant.

(d) No GMRS system may be assigned more than two channels or channel pairs. Stations in certain GMRS systems may, however, also transmit on additional frequencies listed in the following paragraphs, in accord with the conditions specified.

(e) Mobile stations in a GMRS system licensed to an individual that is not specifically authorized for the 462.675 MHz/467.675 MHz channel pair may transmit on that channel pair with the following limitations:

(1) The communications must be for the purpose of soliciting or rendering assistance to a traveler, or for comunicating in an emergency pertaining to the immediate safety of life or the immediate protection of property; and

(2) The frequency 467.675 MHz may be used only for the purposes of accessing and communicating through a mobile relay station transmitting on 462.675 MHz.

(f) Except for a GMRS system licensed to a non-individual, a mobile station or a small base station operating in the simplex mode may transmit on the following 462 MHz interstitial channels:

462.5625, 462.5875, 462.6125, 462,6375, 462.6625, 462.6875 and 462.7125.

These channels may be used only under the following conditions:

(1) Only voice type emissions may be transmitted;

(2) The station does not transmit one-way pages; and

(3) The station transmits with no more than 5 watts ERP.

(g) Fixed stations in GMRS systems authorized before March 18, 1968, located 160 kilometers (100 miles) or more from the geographic center of urbanized areas of 200,000 or more population as defined in the U.S. Census of Population, 1960, Vol. 1, Table 23, page 50 that were authorized to transmit on channels other than those listed in this section may continue to transmit on their originally assigned channels provided that they cause no interference to the operation of stations in any of the Part 90 private land mobile radio services.

8. Section 95.39 is revised to read as follows:

§ 95.39 Considerations near FCC monitoring facilities.

The FCC may impose additional restrictions on a land station in a GMRS system if it is at a point within 4.8 kilometers (3 miles) of an FCC monitoring facility and the station's transmissions degrade, obstruct, or repeatedly interrupt the operation of the equipment at the FCC monitoring facility. Before applying for license to put a land station at such a point, or before applying to change anything in a station already licensed for such a point, you should consult the FCC by writing to the Chief, Field Operations Bureau, Federal Communications Commission, Washington, DC 20554.

9. Paragraph (f) 95.51 is revised to read as follows:

§ 95.51 Antenna height.

* * * * *

(f) The antenna for a small base stations or for a small control station must not be more than 6.1 meters (20 feet) above the ground or above the building or tree on which it is mounted.

10. In § 9553, introductory paragraph (a), introductory paragraph (c), paragraph (d), introductory paragraph (f) and paragraph (f)(1) are revised, and a new paragraph (g) is added to read as follows:

§ 95.53 Mobile station communication points.

(a) A mobile station unit may transmit communications directly to:

* * * * *

(c) A mobile station unit authorized to transmit on a channel assigned to a mobile relay station in another GMRS system may transmit communications through that mobile relay station to:

* * * * *

(d) A mobile station unit in a GMRS system licensed to an individual authorized to transmit on a channel assigned to a mobile relay station in another GMRS systgem may transmit communications through that mobile relay station with the permission of the licensee of the other GMRS system to:

(1) Other mobile station units in the same GMRS system; and

(2) Mobile station units in another GMRS system having permission to

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transmit communications through the mobile relay station.

* * * * *

(f) A mobile station unit must not transmit communications through a mobile relay station in another GMRS system, for retransmission to:

(1) Other mobile station units in its own GMRS system, unless:

(i) The mobile station units are in a GMRS system licensed to an individual; and

(ii) The licensee of the other GMRS system has given permission to use the mobile relay station for this purpose.

* * * * *

(g) A mobile station unit may transmit communications as a radio control link (see § 95.127) to a remotely controlled station.

11. Section 95.57 is amended by revising introductory paragraph (b) and paragraph (b)(1) to read as follows:

§ 95.57 Mobile relay station communication points.

* * * * *

(b) A mobile relay station in a GMRS system must not automatically retransmit communications between:

(1) A mobile station unit in any other GMRS system *and* another unit of the same mobile station, unless:

(i) The other GMRS system is licensed to an individual; and

(ii) The licensee of the GMRS system with the mobile relay station has given permission to use the mobile relay station for this purpose;

* * * * *

12. Paragraph (a) of § 95.71 is revised, and new paragraphs (e) and (f) are added to read as follows:

§ 95.71 Applying for a new or modified license.

(a) An individual applies for a license for a new GMRS system by filling out an application form and attaching all additional information required. An individual applies to modify a license for an existing GMRS system using the same form and in the same manner as applying for a new GMRS system. Individuals should submit their applications, together with the filing fee, to the Federal Communications Commission, General Mobile Service, P.O. Box 360373M, Pittsburgh, PA 15251–6373.

* * * * *

(e) A non-individual may not obtain a new GMRS system license. A non-individual that held a GMRS system license issued before July 31, 1987, may not make the following major modifications:

(1) Change the area of operation of the GMRS system;

(2) Add any stations to the GMRS system;

(3) Increase the number of units of the mobile station;

(4) Change the location of any land station in the GMRS system;

(5) Add one or more channels or channel pairs and/or change the assigned channel(s) or channel pair(s);

(6) Increase the transmitter power of an station in the GMRS system; or

(7) Increase the height of a station antenna in the GMRS system.

(f) A GMRS system licensee may notify the FCC or a change of name or a change of mailing address by sending a letter to the Federal Communications Commission, Gettysburg, PA 17326. This does not, however, permit GMRS system license transferability (see § 95.109). Nor does this suffice for corporate transfer of control—the provisions of § 95.111 apply instead.

13. Paragraph (c) of § 95.73 is revised to read as follows:

§ 95.73 System licensing.

* * * * *

(c) One form must be used to apply for the following stations in a GMRS system:

(1) The mobile station;

(2) All small base stations (see § 95.25(e));

(3) All small control stations (see § 95.25(d)); and

(4) All other land stations (at no more than 6 locations).

* * * * *

14. Paragraph (g), introductory paragraph (h), introductory paragraph (i), and paragraphs (j) and (n) of § 95.75 are revised to read as follows:

§ 95.75 Basic information.

* * * * *

(g) Transmitter power as follows:

(1) Transmitter output power in watts for all stations.

(2) Station ERP in watts for all stations other than mobile stations, small base stations and small control stations.

(h) Each land station point (except small base stations and small control stations):

* * * * *

(i) Each control point for each remotely controlled land station (see § 95.127), including small base stations and small control stations:

* * * * *

(j) Antenna height (see § 95.51) and antenna ground elevation for each land station, except for small base stations and small control stations;

* * * * *

(n) *Emission designator.* In the GMRS, emission F3E will be considered to include use of a *selective calling tone, or a tone or digitally operated squelch* (a tone code used to address a particular station) in conjunction with voice communications;

* * * * *

15. Section 95.77 is amended by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 95.77 Additional information for GMRS systems with land stations at four or more locations.

(a) An application for a new or modified GMRS system having land stations (except for small control stations or small base stations) at 4 or more locations must include a *functional system diagram* (a drawing showing details of the GMRS system, including the points between which communications with other stations in the system will be exchanged.)

(b) [Reserved]

* * * * *

16. Paragraph (b) of § 95.83 is revised to read as follows:

§ 95.83 Additional information for stations with antennas higher than normally allowed.

* * * * *

(b) Each base station and each control station with an antenna height greater than 6.1 meters (20 feet) must be separately identified on Form 574 (see §§ 95.25 (d) and (e) and 95.51(f)).

17. Section 95.89 is revised to read as follows:

§ 95.89 Renewing a license.

(a) The licensee of a GMRS system may apply to the FCC to renew the license for another term (see § 95.105) by filling out FCC Form 574–R (or FCC Form 405–A when the licensee has not gotten FCC Form 574–R within 30 days of the expiration of the license) and sending it to: Federal Communications Commission, 574R Land Mobile Renewal, P.O. Box 360559M, Pittsburgh, PA 15251–6559 (unless the licensee is a governmental entity, in which case the renewal application should be sent to Federal Communications Commission, Gettysburg, PA 17326).

(b) If the renewal application is sent to the FCC before the existing license term expires, the renewal application is timely filed. Except for GMRS systems whose licenses may not be renewed (see § 95.89 (c)(3) and (d)), stations in a GMRS system whose application is timely filed may continue to transmit under the expired license until the FCC acts on the renewal application. A copy of the renewal application sent to the FCC must be kept in the GMRS system records (see § 95.113) until the renewed license, or notification of other FCC action, is received.

(c) A GMRS system licensed to a non-individual before July 31, 1987, is eligible to renew that license and all subsequent licenses based upon it if:

(1) The non-individual is:

(i) A partnership, and each partner is 18 years of age or older;

(ii) A corporation;

(iii) An association;

(iv) A state, territorial or local government unit; or

(v) Other legal entity;

(2) The non-individual is not:

(i) A foreign government;

(ii) A representative of a foreign government; or

(iii) A federal government agency; and

(3) The licensee has not been granted any of the modifications to its GMRS system license specified in § 95.71(e).

(d) A GMRS system licensed to a non-individual on or after July 31, 1987, may not be renewed.

(e) If a GMRS system license is allowed to expire, the former licensee may file an application to reinstate the expired license within six months after the expiration date. The application to reinstate must be accompanied by a renewal application. An expired GMRS system license for which a timely renewal application has not been filed is not valid. No station of such a GMRS system may transmit until the licensee has received a new GMRS system license based on the late-filed renewal application.

18. Paragraph (c)(2) of § 95.103 is revised to read as follows:

§ 95.103 Licensee duties.

* * * * *

(c) * * *

(2) If the status of a non-individual GMRS system licensee changes (for example, when a corporation is dissolved and a new corporation stands in its place, or a partnership becomes a corporation), the licensee must send the license to the FCC for cancellation (see § 95.117(b)).

* * * * *

§ 95.113 [Amended]

19. Paragraph (b)(2) of § 95.113 is removed and reserved.

§ 95.117 [Amended]

20. In § 95.117, the zip code in the introductory language of paragraph (b) is corrected to read 17326, paragraph (b)(2) is removed and reserved, and paragraph (c) is removed and reserved.

21. Section 95.121 is revised to read as follows:

§ 95.121 Transmitting channel.

Each station in a GMRS system must transmit only on the channel(s) or channel pair(s) (see §§ 95.7 and 95.29) printed on the license for that station, or authorized by these Rules for use by that station (see § 95.29 (e) and (f)).

22. Paragraph (b)(3) of § 97.129 is removed and reserved.

Also, paragraph (d) of § 95.129 is revised to read as follows:

§ 95.129 Station equipment.

* * * * *

(d) Every small base station and every small control station must use an antenna no more than 6.1 meters (20 feet) high (see § 95.25 (d) and (e)).

23. Paragraph (a) and the heading of § 95.131 are revised to read as follows:

§ 95.131 Servicing station transmitters.

(a) The GMRS system licensee shall be responsible for the proper operation of all stations in the GMRS system at all times and is expected to provide for observations, servicing and maintenance as often as may be necessary to ensure proper operation.

* * * * *

24. Paragraph (b)(2) of § 95.133 is revised to read as follows:

§ 95.133 Modification to station transmitters.

* * * * *

(b) * * *

(2) In accordance with the original manufacturer's instructions.

25. In § 95.135, the heading and paragraph (c) are revised, and a new paragraph (e) is added to read as follows:

§ 95.135 Maximum authorized transmitting power.

* * * * *

(c) A small control station at a point north of Line A or east of Line C must transmit with no more than 5 watts ERP.

* * * * *

(e) A small base station must transmit with no more than 5 watts ERP.

26. Section 95.137 is revised to read as follows:

§ 95.137 Moving a small base station or a small control station.

(a) A small base station (see § 95.25(e)) or a small control station (see § 95.25(d)) in a GMRS system may be moved from the point specified on the license to any other point where radio services are regulated by the FCC.

(b) The licensee must file an application to modify the GMRS system (see § 95.71) to show the new point within 30 days after the small base station or the small control station is moved.

27. Section 95.139 is revised to read as follows:

§ 95.139 Adding a small base station or a small control station.

(a) Except for a GMRS system licensed to a non-individual, one or more small base stations or a small control station may be added to a GMRS system at any point where radio services are regulated by the FCC.

(b) The licensee must file an application to modify the GMRS system (see § 95.71) within 30 days after each small base station or small control station is added.

(c) Non-individual licensees may not add any small base station or small control stations to their GMRS systems.

28. Section 95.141 is revised to read as follows:

§ 95.141 Interconnection prohibited.

No station in a GMRS system may be interconnected to the public switched telephone network except as and in accordance with the requirements and restrictions applied to a wireline control link (see § 95.127).

29. The heading and introductory language of § 95.175 are revised to read as follows:

§ 95.175 Cooperation in sharing channels.

The station operator must cooperate in *sharing* each channel with station operators of other stations by:

* * * * *

30. Paragraphs (b), (d), (e), and (f) of § 95.179 are revised to read as follows:

§ 95.175 Individuals who may be station operators.

* * * * *

(b) In a GMRS system licensed to a non-individual, eligible station operators are limited to the persons listed in paragraph (b)(1) of this section with the conditions listed in paragraph (b)(2) of this section as follows:

(1) Only the following persons may be permitted to operate under the authority of a GMRS system licensed to a non-individual:

If the GMRS system licensee is—	These persons may be station operators—
(i) A partnership	Licensee's partners and employees.

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If the GMRS system licensee is—	These persons may be station operators—
(ii) A corporation	Licensee's officers, directors, members and employees.
(iii) An association	Licensee's members and employees.
(iv) A governmental unit.	Licensee's employees.

(2) These persons may only communicate messages about the licensee's business activities. Employees of the licensee may communicate messages while acting within the scope of their employment, and only about the licensee's business activities.

* * * * *

(d) The station operator of a GMRS system licensed to an individual may be a station operator in any other GMRS system if he/she has permission from the licensee of the other GMRS system.

(e) The provisions of § 95.33 regarding cooperative use do not apply to or govern the authority of a GMRS licensee to designate station operators in accordance with the provisions of this section.

(f) Except for emergency communications (see § 95.143), only persons specified in paragraphs (a) through (d) may be GMRS station operators.

Subpart E—Technical Regulations

31. Section 95.621 is revised to read as follows:

§ 95.621 GMRS transmitter channel frequencies.

(a) The GMRS transmitter *channel frequencies* (reference frequencies from which the carrier frequency, suppressed or otherwise, may not deviate by more than the specified frequency tolerance) are 462.5500, 462.5625, 462.5750, 462.5875, 462.6000, 462.6125, 462.6250, 462.6375, 462.6500, 462.6625, 462.6750, 462.6875, 462.7000, 462.7125, 462.7250, 467.5500, 467.5750, 467.6000, 467.6250, 467.6500, 467.6750, 467.7000, and 467.7250.

Note.—Certain GMRS transmitter channel frequencies are authorized only for certain station classes and station locations. *See* Part 95, Subpart A.

(b) Each GMRS transmitter for mobile station, small base station and control station operation must be maintained within a frequency tolerance of 0.0005%. Each GMRS transmitter for base station (except small base), mobile relay station or fixed station operation must be maintained within a frequency tolerance of 0.00025%.

32. A new § 95.651 is added under Type Acceptance Requirements to read as follows:

§ 95.651 Frequency capability.

(a) No transmitter will be type accepted for use in the CB service if it is equipped with a frequency capability not listed in § 95.625, and no transmitter will be type accepted for use in the GMRS if it is equipped with a frequency capability not listed in § 95.621, unless such transmitter is also type accepted for use in another radio service for which the frequency is authorized and for which type acceptance is also required. (Transmitters with frequency capability for the Amateur Radio Services, Military Affiliate Radio System and Civil Air Patrol will not be type accepted.)

(b) All frequency determining circuitry (including crystals) and programming controls in each CB transmitter and in each GMRS transmitter must be internal to the transmitter and must not be accessible from the exterior of the transmitter operating panel or from the exterior of the transmitter enclosure.

(c) No add-on device, whether internal or external, the function of which is to extend the transmitting frequency capability of a CB transmitter beyond its original capability, shall be manufactured, sold or attached to any CB station transmitter.

§ 95.661 [Removed and Reserved]

33. Section 95.661 is removed and reserved.

Federal Communications Commission.

Donna R. Searcy,

Secretary

[FR Doc. 88-27111 Filed 11-23-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 81126-8226]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery for king mackerel from the Atlantic migratory group in the exclusive economic zone (EEZ). The Secretary has determined that the commercial allocation for king mackerel from the Atlantic migratory group will be reached on November 22, 1988. This closure is necessary to protect the Atlantic king mackerel resource.

EFFECTIVE DATE: Closure is effective at 12:01 a.m., local time, November 23, 1988, until 12:00 p.m. (midnight), local time, March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR Part 642. Regulations effective July 1, 1988, (53 FR 25611, July 8, 1988) implemented catch limits recommended by the Councils for the Atlantic migratory group of king mackerel for the current fishing year (April 1, 1988, through March 31, 1989). Those regulations set the commercial allocation for Atlantic migratory group king mackerel at 2.60 million pounds. By emergency interim rule (53 FR 45097, November 8, 1988), the Secretary increased the commercial allocation for Atlantic migratory group king mackerel to 2.866 million pounds. The emergency interim rule added to the commercial allocation the amount of recreationally caught king mackerel that had been sold and counted against the commercial allocation.

Under § 642.22(a), the Secretary is required to close any segment of the king mackerel commercial fishery when its allocation has been reached, or is projected to be reached, by publishing a notice in the **Federal Register**. The Secretary has determined that the commercial allocation, as amended, for the Atlantic migratory group of king mackerel will be reached on November 22, 1988. Hence, the commercial fishery for king mackerel from the Atlantic migratory group is closed effective 12:01 a.m., November 23, 1988, through March 31, 1989, the end of the fishing year.

Pursuant to § 642.29, for the remainder of the fishing year, the management area for the Atlantic migratory group of king mackerel extends from the Virginia/North Carolina border to a line extending directly east from the Volusia/Flagler County, Florida, boundary (29° 25'N. latitude).

During the closure, king mackerel from the Atlantic migratory group may not be harvested from or possessed in

the EEZ in the commercial fishery and such king mackerel taken in either the commercial or recreational fishery in the EEZ may not be purchased, bartered, traded, or sold. The latter prohibition does not apply to trade in Atlantic group king mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: November 21, 1988.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-27288 Filed 11-21-88; 4:57 pm]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 53, No. 227
Friday, November 25, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations found at 7 CFR Part 26 with respect to the procedure for selecting the northern Europe price quotations used to calculate the Northern Europe price and the Northern Europe coarse count price during the period in which both current and forward shipment prices are quoted. This action is initiated in accordance with the provisions of section 103A(a)(E)(i) through (iii) of the Agricultural Act of 1949, as amended, and will enhance the effectiveness of the upland cotton price suport program.

DATE: Comments must be received by December 27, 1988 in order to be assured of consideration.

ADDRESS: Mail comments to Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major" It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this proposed rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR Part 26 was originally added to the Code of Federal Regulations adequately covers these proposed amendments. Therefore, a new Regulatory Flexibility analysis has not been prepared.

It has been detemined by an environmental evaluation that this action will have no significant impact on the quality of the human environment.

Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart B, published at 48 FR 29115 (June 24, 1983).

Statutory Background

Section 103A(a)(5) (i) of the Agricultural Act of 1949, as amended (the "Act"), provides that the Secretary of Agriculture shall prescribe by regulation:

(i) A formula to define the prevailing world market price for cotton; and

(ii) A mechanism by which the Secretary shall announce periodically the prevailing world market price for cotton.

The Act also provides that the prevailing world market price for cotton shall be adjusted to United States quality and location (the "adjusted world price"). The regulations which set forth the formula used to determine the prevailing world market price for cotton, the mechanism for periodically announcing such prevailing world market price and the procedure for adjusting the prevailing world market price to United States quality and location are found at 7 CFR Part 26.

Northern Europe Price

7 CFR 26.2 provides that the prevailing world market price for upland cotton shall be determined by the Secretary of Agriculture based upon the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for Middling one and three-thirty-second inch (M 1 3/32 inch) cotton C.I.F. (cost, insurance and freight), northern Europe (hereinafter referred to as the "Northern Europe price"). If quotes are not available for one or more days in the five-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by the Secretary.

Only one daily price quotation for each growth has been available for purposes of calculating the Northern Europe price. Beginning with the 1988 marketing year, two daily price quotations will be available for each growth during a certain period. One price quotation will be for cotton for shipment no later than August/September of the current calendar year (hereinafter referred to as the "current shipment price") and the other price quotation will be for cotton for shipment no earlier than October/November of the current calendar year (hereinafter referred to as the "forward shipment price"). Forward shipment prices will be introduced during the early months of each calendar year. From the time of introduction through July 31 of that year, both current shipment prices and forward shipment prices will be quoted daily. From August 1 until early the following calendar year when forward shipment prices are again introduced, only one daily price quotation for each growth will be available.

Accordingly, it is proposed that, in determining the Northern Europe price in accordance with § 26.2 during the period when both current shipment prices and forward shipment prices are quoted, the following procedure be implemented which provides for a gradual transition over a six-week period from using all current shipment prices to using all forward shipment prices.

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and the Northern Europe forward price are available, the following method for calculating the Northern Europe price shall be in effect:

Weeks 1 and 2: Northern Europe price = (2 × Northern Europe current price + Northern Europe forward price)/3.

Weeks 3 and 4: Northern Europe price = (Northern Europe current price + Northern Europe forward price)/2.

Weeks 5 and 6: Northern Europe price = (Northern Europe current price + 2 × Northern Europe forward price)/3.

During the period covering Week 7 through July 31 of that year, the Northern Europe price shall equal the Northern Europe forward price.

The week covering the period Friday through Thursday which includes April 15 is proposed as the period to begin the transition from using current shipment prices to using forward shipment prices because generally, by April, most U.S. cotton sales for export consist of new-crop cotton. Due to the often sizable differences between new and old crop price quotes, a six-week transition period is proposed in order to avoid a dramatic change in the adjusted world price that might occur with no transition period.

Adjusting the Northern Europe Price to Average Designated U.S. Spot Market Location

7 CFR 26.3(b)(1) provides that the adjusted world price for upland cotton shall equal the Northern Europe price, as determined in accordance with § 26.2, adjusted to average U.S. quality and location as follows:

The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between: (i) The average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe; and (ii) the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

As with the determination of the Northern Europe price which is made under § 26.2, beginning with the 1988 marketing year, current shipment prices and forward shipment prices will be quoted during a certain period for U.S. Memphis territory and California/Arizona territory M 1 3/32 inch cotton C.I.F. northern Europe. Whenever both current shipment prices and forward shipment prices for U.S. Memphis territory and California/Arizona territory M 1 3/32 inch cotton C.I.F. northern Europe are available, it is proposed that current shipment prices be used to calculate the adjustment in the Northern Europe price to average designated U.S. spot market location. During the period when both current shipment prices and forward shipment prices are available, current shipment prices are more comparable to the U.S. spot market quotations.

Price quotations for June, July and August have not been taken into consideration in the calculation of the adjustment of the Northern Europe price to average designated U.S. spot market location because there were the months during which the northern Europe price quotations have historically been changed from old crop price quotations to new crop price quotations. The northern Europe price quotations for Memphis territory and California/Arizona territory have generally changed from old crop to new crop price quotations in the period immediately preceding August 1, the beginning of the new crop marketing year. U.S. designated spot market quotations are for current shipment of upland cotton. Thus, in order to ensure that the transition from old crop price quotations to new crop price quotations did not cause undue aberrations in the adjustment calculation, price data from weeks during which shipment periods may not have corresponded have been disregarded in calculating the adjustment in the Northern Europe price to average U.S. designated spot market location.

Use of current shipment prices in the calculation of the adjustment of the Northern Europe price to average designated U.S. spot market location during June and July should eliminate most of the transitional problems. However, there may be weeks at any time during the year when the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets may be substantially above or below actual transportation costs thereby resulting in a 52-week average that is not reflective of actual costs. Therefore, in determining the 52-week average it is proposed that any week in which the difference between the averages of the two prices is:

(1) More than 115 percent of the estimated actual costs of transporting U.S. cotton to northern Europe, then 115 percent of such estimated actual costs shall be substituted in lieu thereof for such week.

(2) Less then 85 percent of the estimated actual cost of transporting U.S. cotton to northern Europe, then 85 percent of such actual costs shall be substituted in lieu thereof for such week.

Northern Europe Coarse Count Price

7 CFR 26.3(e)(1) provides that the adjusted world price, as determined in accordance with paragraph (b) of § 26.3, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 1/32 inch or shorter, and to the following grades of upland cotton with a staple length of 1 1/16 inch or longer: *White Grades*—Strict Good Ordinary Plus, Strict Good Ordinary, Good Ordinary Plus and Good Ordinary; *Light Spotted Grades*—Low Middling and Strict Good Ordinary; *Spotted Grades*—Middling, Strict Low Middling, Low Middling and Strict Good Ordinary; *Tinged Grades*—Strict Middling, Middling, Strict Low Middling and Low Middling; *Yellow Stained Grades*—Strict Middling and Middling; *Light Gray Grades*—Strict Low Middling; *Gray Grades*—Middling and Strict Low Middling. Grade and staple length must be determined by an official classification issued by USDA's Agricultural Marketing Service (AMS). If no such official classification is presented, the adjustment shall not be made.

7 CFR 26.3(e)(2) provides that the adjustment for upland cotton under the provisions of paragraph (e)(1) shall be determined by deducting from the adjusted world price: (i) The difference between the Northern Europe price and the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of

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the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count price"), minus (ii) the difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1 3/32 inch (micronaire 3.5 through 4.9) cotton.

7 CFR 26.3(e)(3) provides that, with respect to the determination of the Northern Europe coarse count price in accordance with paragraph (e)(2)(i) of § 26.3: (1) If no quotes are available for one or more days of the five-day period, the available quotes will be used; (ii) if quotes for three growths are not available for any day in the five-day period, that day will not be taken into consideration; and (iii) if quotes for three growths are not available for at least three days in the five-day period, that week will not be taken into consideration, in which case the adjustment determined in accordance with subparagraph (e)(2) for the latest available week will continue to be applicable.

As with the determination of the Northern Europe price which is made under § 26.2, beginning with the 1988 marketing year, current shipment prices and forward shipment prices will be quoted during a certain period for "coarse count" cotton C.I.F. northern Europe.

Accordingly, it is proposed that, in determining the Northern Europe coarse count price during the period when both current shipment prices and forward shipment prices are quoted, the following procedure be implemented which provides for a gradual transition over a six-week period from using all current shipment prices to using all forward shipment prices.

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count forward price") are not available during that period, the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available, the following method for calculating the Northern Europe coarse count price shall be in effect:

Weeks 1 and 2: Northern Europe coarse count price=(2×Northern Europe coarse count current price+Northern Europe coarse count forward price)/3.

Weeks 3 and 4: Northern Europe coarse count price=(Northern Europe coarse count current price+Northern Europe coarse count forward price)/2.

Weeks 5 and 6: Northern Europe coarse count price=(Northern Europe coarse count current price+2×Northern Europe coarse count forward price)/3.

During the period covering Week 7 through July 31 of that year, the Northern Europe coarse count price shall equal the Northern Europe coarse count forward price.

The week covering the period Friday through Thursday which includes April 15 is proposed as the period to begin the transition from using current shipment prices to using forward shipment prices for the same reason as cited above for the determination of the Northern Europe price.

Interested persons are invited to submit written comments on the proposed rules changes. Comments must be received by December 27, 1988 in order to be assured of consideration.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

Proposed Rule

Accordingly, it is proposed to amend the regulations found at 7 CFR Part 26, Subpart A as follows:

1. The authority citation for Part 26, Subpart A continues to read as follows:

Authority: Sec. 103A(a)(5)(E), Pub. L. 81–439, 639 Stat. 1031, as amended (7 U.S.C. 1444–1(a)(5)(E)).

2. Section 26.2 is revised to read as follows:

§ 26.2 Determination of the prevailing world market price for upland cotton.

The prevailing world market price for upland cotton shall be determined by the Secretary of Agriculture as follows:

(a) During the period when ony one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 3/32 inch) cotton C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

(b) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (hereinafter referred to as the "current shipment price") and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (hereinafter referred to as the "forward shipment price") are available for the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following:

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and the Northern Europe forward price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

Weeks 1 and 2: Northern Europe price=(2×Northern Europe current price+Northern Europe forward price)/3.

Weeks 3 and 4: Northern Europe price=(Northern Europe current price+Northern Europe forward price)/2.

Weeks 5 and 6: Northern Europe price=(Northern Europe current price+2×Northern Europe forward price)/3.

Weeks 7 through July 31: Northern Europe price=Northern Europe forward price.

(c) The prevailing world market price for upland cotton as determined in accordance with § 26.2 (a) or (b) shall hereinafter be referred to as the "Northern Europe price."

(d) If quotes are not available for one or more days in the five-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by the Secretary.

3. Section 26.3(b)(1) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(b) * * *

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

* * * * *

4. Section 26.3(c) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(c) In determining the average difference in the 52-week period as provided in paragraph (b)(1) of this section:

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual cost shall be substituted in lieu thereof for such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual cost shall be substituted in lieu thereof for such week.

(2) If Thursday price quotations are not available for either the northern Europe or the spot market quotations for any week, that we will not be taken into consideration.

* * * * *

5. Section 26.3(e)(2) is revised to read as follows:

* * * * *

(e) * * *

(2) The adjustment for upland cotton provided for by paragraph (e)(1) of this section shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price, and

(A) During the period when only one daily price quotation for each growth quoted for "coarse count" cotton C.I.F. northern Europe is available, the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe.

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for "coarse count" cotton C.I.F. northern Europe, the result calculated by the following procedure:

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(1) *Weeks 1 and 2:* Northern Europe coarse count price=(2×Northern Europe coarse count current price+Northern Europe coarse count forward price)/3.

(2) *Weeks 3 and 4:* Northern Europe coarse count price=(Northern Europe coarse count current price+Northern Europe coarse count forward price)/2.

(3) *Weeks 5 and 6:* Northern Europe coarse count price=(Northern Europe coarse count current price+2×Northern Europe coarse count forward price)/3.

(4) *Week 7 through July 31:* The Northern Europe coarse count forward price, minus—

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1 3/32 inch (micronaire 3.5 through 4.9) cotton.

(iii) The result of the calculation as determined in accordance with § 26.3(e)(2) shall hereinafter be referred to as the "Northern Europe coarse count price."

* * * * *

Signed at Washington, D.C. on November 8, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88–27258 Filed 11–23–88; 8:45 am]

BILLING CODE 3410–05–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 354

Deposit Liabilities

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to create a new part in its regulations pursuant to section 3(*l*)(5) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*l*)(5), which allows the FDIC to find and prescribe by regulation that certain liabilities of a bank are deposit liabilities by general usage. The proposed regulation would find that a bank's liability on a promissory note, bond, acknowledgement of advance, or similar obligation that is issued or undertaken by the insured bank as a means of obtaining funds is a deposit liability. There would, however, be a number of enumerated exceptions to the general proviso.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6108 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6108 between 8:30 a.m. and 5:00 p.m. on business days.

DATES: Comments must be received by January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Katharine H. Haygood, Senior Attorney, Legal Division, (202) 898–3732, or Robert F. Storch, Chief, Securities and Accounting Section, Division of Bank

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Supervision, (202) 898–8906, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this Notice; and, consequently, no information has been submitted to the Office of Management and Budget for review.

Discussion

Over the last several years, the FDIC has become aware of the issuance by banks of instruments known generically as "deposit notes." Although the FDIC lacks complete information regarding these offerings, based on documentation reviewed and information received from the general public, when they first appeared they generally were treated as deposits by the issuing institutions. The instruments have usually had the following characteristics: A general creditor status with no default provisions, use of the term "deposit," a statement that the issuance is (or the issuer believes that it is) a deposit, payment of deposit insurance assessments, and inclusion of the liability as a deposit on the issuer's report of condition ("Call Report"). In such cases, the FDIC has taken the position that the issuances are deposits and, therefore, insured by the FDIC to the extent provided by law. In fact, such an issuance could be styled a certificate of deposit but has not been, apparently because of the desire to attract sources which normally buy "securities" and not "certificates of deposit." In addition to issuances considered to be deposits, there also have been instruments issued by banks (sometimes by the same issuer) that have not been considered by the issuer to be deposits (sometimes called "bank notes"). The basic provisions of both types of issuances appear to have been the same, except that the "non-deposit" type may or may not specifically use the term "deposit" and may have no statement regarding the issuance's status as a deposit. (Of course, in these latter cases, no deposit insurance assessments are paid, and the liability is shown as something other than a deposit on the bank's Call Report.) The "non-deposit" type of issuance recently appears to have gained prominence in the market.

There are a number of difficulties with this situation. First, there is a substantial danger of confusion. If the FDIC insures one liability which looks exactly like another uninsured liability except for its name and perhaps a simple statement as to whether the liability is a deposit, the consumer may be confused as to what type of liability he has purchased. We would note in that regard that many of these deposits may be broken down into small denominations; purchases are not necessarily in large denominations. Although there are, of course, arguments that purchasers of large instruments do not care about deposit insurance coverage, in the FDIC's experience such a lack of concern disappears when there is a bank failure. Moreover, in addition to deposit insurance, the status of the instruments is important to large and small depositors, and therefore to the FDIC, in states that provide a preference for depositors in the event a bank is closed and liquidated. Further, the FDIC believes that many of the liabilities are already within the definition of "deposit," and the FDIC would be required to insure them in the event of a bank failure. Yet these liabilities currently are not being assessed and, consequently, the issuers of such obligations are not paying their appropriate share into the deposit insurance fund.

Although the FDIC believes that many of the transactions in question fall within section 3(*l*)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*l*)(1), the FDIC has decided to use its power under section 3(*l*)(5) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*l*)(5), to determine that certain liabilities, including deposit notes, are deposits by general usage. As required, the FDIC has consulted the Comptroller of the Currency and the Board of Governors of the Federal Reserve System. Their comments and views concerning this proposed regulation have been considered in formulating the proposal.

As indicated above, this clarification of the definition of "deposit" has been occasioned by the issuance of instruments such as "deposit notes," but such issuances do not represent the only transactions which are now fulfilling the traditional function of deposits. Banking has changed substantially since the creation of the FDIC in 1933, and the FDIC is aware that banks are accepting liabilities other than traditional deposits for the purpose of obtaining funds to use in the banking business. This situation is largely a by-product of deregulation, with its increased competition, and of the many alternatives to depositing funds with banks which currently exist in the marketplace. The FDIC believes that the liabilities named in the proposed regulation, that is, notes, bonds, acknowledgements of advance, and similar liabilities which are undertaken as a means of obtaining funds, constitute deposits by general usage. As reported by the *Wall Street Journal*, "The market in these so-called deposit notes, which didn't exist before 1985, has mushroomed to almost $20 billion in less than two years and by year end could reach $30 billion, or 30% of all banking company bonds and notes expected to be issued this year * * *." Winkler, *Credit Gap Between Banks, Parent Firms Helps Create Big Market in Deposit Notes*, Wall St. J., Mar. 1, 1988, at 42, col. 4–6, 4. The current trend is likely to continue, and deposit notes are likely to become "an increasingly important bank funding source." Griep, *Deposit Note Issues Rise, Standard & Poor's Credit Week*, Oct. 5, 1987, at 14. As stated previously, there appears to be little distinction in the marketplace currently among the issuance calling themselves deposits and those not.

Although a deposit for reserve requirement purposes is not necessarily the same as a deposit for insurance and assessment purposes, most of the liabilities covered in the proposal are already deposits for reserve purposes (although they may be otherwise exempted from reserve requirements). *See, e.g.*, 12 CFR 204.2(f)(3), 204.9(a)(1). The FDIC has used the Federal Reserve's Regulation D, Reserve Requirements of Depository Institutions, 12 CFR Part 204, as a beginning point for the proposed regulation, largely because of the banking industry's familiarity with that regulation. The proposed regulation is not in any way intended to parallel Regulation D directly, however. The FDIC has, in addition, made accommodation for transactions which create deposits for insurance and assessment purposes but do not for reserve purposes; for instance, dealer reserves are deposits for the former but not the latter. In addition, we have allowed for items which are not classified as deposits under the Call Report instructions or in general practice; for instance, due bills are not currently deposits and do not become deposits under the proposal.

The structure of the proposal begins by determining that any liability of an insured bank on a promissory note, bond, acknowledgement of advance, or similar obligation issued or undertaken as a means of obtaining funds is a deposit. The regulation then specifies a series of exceptions to the broad pronouncement.

This regulatory definition of deposit is supplementary and complementary to that in the statute. Any transaction which is a deposit under the statutory provisions continues to be a deposit and is not excluded by any of the regulatory provisions. Likewise, no transaction explicitly exempted from the assessment base by the statute itself is intended to be covered. *See, e.g.*, 12 U.S.C. 1817(a)(4) (deposits accumulated to pay personal loans). The proposed regulation would state that a liability of a bank on a promissory note, bond, acknowledgement of advance, or similar liability undertaken as a means of obtaining funds is a deposit. If a liability falls within the stated class, it may not be a deposit under the regulation if it is within one of the enumerated exemptions. For example, a bank which issues a cashier's check to purchase business equipment must consider that cashier's check to be a deposit; the cashier's check is a deposit under 12 U.S.C. 1813(*l*) and is not exempted under proposed § 354.2(a)(9). Further, there are many transactions in which there is no note, bond, acknowledgement of advance, or similar obligation involved; such transactions do not constitute deposits under this proposed regulation. Such transactions may occur in the context of conditional or endorser's liabilities, dividends declared but not yet paid, accounts payable, and overdrawn "due from" accounts.

Several of the exemptions relate to "government" transactions and certain interbank transactions. The first three exemptions, at proposed § 354.2(a) (1), (2), and (3), relate, respectively, to transactions with a Federal Reserve Bank, a bank's borrowing of federal funds for one business day or under a continuing contract, and a borrowing by a bank from another depository institution of immediately available funds maturing in more than one business day. These funds have not traditionally been considered to the deposits and continue to be considered to be borrowings for purposes of deposit insurance and assessments. Proposed § 354.2(a)(4) specifies that the Treasury Tax and Loan Transaction in which the bank puts funds collected on behalf of the Department of Treasury into a note ("Note Option") does not constitute a deposit for insurance or assessment purposes. Proposed § 354.2(a)(5) similarly would exempt advances either from a Federal Home Loan Bank or from the Federal Savings and Loan Insurance Corporation.

Several traditional banking transactions would be exempted from the definition of deposit. The proposal would exempt repurchase agreements (§ 354.2(a)(6)), banker's acceptances (§ 354.2(a)(8)), short positions (§ 354.2(a)(12)), due bills (§ 354.2(a)(13)), and retentions of risk in assets or pools of assets sold to third parties (§ 354.2(a)(10)). It should be noted that the proposal does not purport to cover matters such as the advisability of issuing thee or other liabilities mentioned not proper disclosures when so doing. Banks issuing such obligations should consider the adoption of disclosure guidelines to ensure compliance with the anti-fraud provisions of the federal securities laws; this proposal does not preclude consideration of formal disclosure policy by the bank regulatory agencies. Any of the liabilities which are issued and represented by mortgage-backed bonds, collateralized mortgage obligations, or other similar obligations backed by mortgages or other assets also would be exempted (§ 354.2(a)(11)). Finally, the proposed regulation, at § 354.2(a)(14), would exempt any such liabilities which represent the liability of an insured branch of a foreign bank to any other office, branch, agency, or wholly-owned subsidiary of the same foreign bank. This provision would be included here simply because such liabilities are neither insurable nor assessable. *See* 12 CFR 330.1(d)(3), 346.22.

More generally, the proposed regulation would allow one of the covered liabilities to be exempted if the liability is subordinated to the claims of all creditors, including depositors as well as general creditors (§ 354.2(a)(7)). It would provide an exemption for one of the designated liabilities when it is issued as a part of a transaction solely for the purchase or lease of business premises, equipment, supplies, or business services for the bank (§ 354.2(a)(9)). Comment is specifically requested on whether such liabilities issued to third parties not directly involved in the transaction should be included in the exemption.

The FDIC is interested in any comments on the proposal. Particularly, the FDIC invites comments on whether or not any of the liabilities defined as deposits under this regulation should or should not be considered deposits, as well as whether liabilities not covered should be. In general, we are also interested in comments concerning the usage of any such instruments. The FDIC anticipates that any final regulation on this subject would be effective immediately and would be applicable to all offerings in existence on the publication of the regulation in the **Federal Register**. Comment is specifically invited, however, on whether the effective date should be delayed in its application to any specific transactions.[1]

Initial Regulatory Flexibility Analysis

This action is being taken because the FDIC believes that the liabilities concerned are in fact deposits by general usage and that they should be assessed. The deposit insurance scheme depends on the fact that assessments are paid on total deposits held by insured banks, not just on deposits of less than $100,000 or on deposits which will be paid in full. The FDIC believes that the great prevalence of the offerings, which are for all practical purposes identical but which in some cases are called deposits and in others not, is highly misleading and detrimental to the banking system in general. Further, the FDIC believes that if a bank issuing these instruments fails, there is a strong likelihood that the FDIC will be required, because a predominance of bank failures are handled by purchase and assumption transactions in which all general liabilities are assumed, to accord these instruments the benefit of insurance coverage whether or not they currently are defined as deposits.

This action is based primarily on 12 U.S.C. 1813(*l*)(5) which allows for the inclusion of deposit liabilities not specifically enumerated in 12 U.S.C. 1813(*l*) (1) through (4). In addition, 12 U.S.C. 1819 (Tenth) provides a basis for this action. Since all insured banks will be affected by this regulation, all insured banks, whether they be large or small, will have the same responsibilities under the regulation and will pay assessments at the same assessment rate, although banks with more deposits will of course pay greater assessements. It is the FDIC's belief, however, that currently most small banks are not issuing deposit notes, although they may be issuing others of the liabilities proposed to be covered by this regulation. The regulation has no specific reporting requirements, other than those reporting requirements which are required for every deposit.

[1] For instances, proposed § 354.2(a)(7) requires that a liability be subordinated to all creditors, not just depositors, in order to be excluded from the deposit base. The FDIC is interested in whether (and in what quantity) there are existing liabilities which are subordinated only to depositors. Further, since some notes subordinated to depositors may have been incldued in the computation of an institution's capital and the proposal would count such liabilities and others not subordinated to all creditors as deposits, the FDIC is interested in receiving comment on whether such practices present significant operational questions. Finally, comment is invited on whether a phase-in of the regulation's applicability to liabilities subordinated only to depositors is warranted.

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Specifically, the Call Report will be affected, but it will not include liabilities not already covered by existing portions of the report. No new skills or other activities will be required by the bank. Since the question of which liabilities constitute deposits for assessment purposes is uniform for insured banks, there is no possibility for a tiered approach, because payment is a fixed percentage of total deposits. Accordingly, because smaller banks have fewer total deposits, they pay less in deposit insurance assessments.

In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, and to the foregoing discussion, it has been determined that a cost-benefit analysis, including a small bank impact statement is not required.

List of Subjects in 12 CFR Part 354

Assessments, Banks, banking, Bank deposit insurance.

For the reasons stated in this notice, and pursuant to the FDIC's authority under section 3(*l*)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)(5), the FDIC proposes to add 12 CFR Pat 354 to read as follows:

PART 354—DEPOSIT LIABILITIES

Sec.
354.1 Purpose.
354.2 Deposits by general usage.

Authority: 12 U.S.C. 1813, 1819 (Tenth).

§ 354.1 Purpose.

Section 3(*l*) (1) through (4) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*l*) (1) through (4), defines certain transactions to be deposits. In addition, section 3(*l*)(5) of the Federal Deposit Insurance Act, 1813(*l*)(5), gives the FDIC the power, after consultation with the Board of Governors of the Federal Reserve System and the Comptroller of the Currency, to find and prescribe by regulation that other obligations are deposit liabilities by general usage. This part finds and prescribes certain liabilities, unless excepted, to be deposits. Such liabilities must be direct obligations of the insured bank itself; obligations of a subsidiary or other affiliated entity of the insured bank are not deposits. Any deposit liability under this part exists as a supplement or complement to the statutory definitions, and no exceptions to this part can override the fact that a liability is a deposit under the statutory definitions. In addition, liabilities which are not deposits or are excluded from the assessment base because of a specific statutory exclusion, such as international banking facility deposits (*see* 12 U.S.C. 1813(*l*)(5)(B)), are not covered by this part.

§ 354.2 Deposits by general usage.

The following direct obligations of an insured bank are deposits by general usage for purposes of 12 U.S.C. 1813(*l*)(5):

(a) Any liability of the insured bank on any promissory note, bond, acknowledgement of advance, or similar obligation that is issued or undertaken by the insured bank as a means of obtaining funds, except any obligation that:

(1) Is issued or undertaken and held for the account of a Federal Reserve Bank, which arises from a borrowing of proceeds from a Federal Reserve Bank or a transfer of deposit credit in a Federal Reserve Bank, or which represents other transactions by the insured bank with a Federal Reserve Bank;

(2) Involves the insured bank's borrowing (federal funds purchased) of immediately available funds for one business day or under a continuing contract (as those terms are used in the Instructions to the Report of Condition), regardless of the nature of the contract or collateral, if any;

(3) Represents a borrowing by the insured bank for another depository institution of immediately available funds which matures in more than one business day (as those terms are used in the Instructions to the Report of Condition);

(4) Arises from election of the Note Option by the insured bank acting as a Treasury tax and loan depository pursuant to regulations of the Department of the Treasury;

(5) Arises from an advance of funds to the insured bank from a Federal Home Loan Bank or from the Federal Savings and Loan Insurance Corporation;

(6) Arises from a transfer of direct obligations of another entity that the insured bank is obligated to repurchase;

(7) Is subordinated to the claims of creditors, including depositors and general creditors;

(8) Arises from the creation by the insured bank of its banker's acceptance;

(9) Is issued as part of a transaction solely for the purchase or lease of the bank's own business premises, equipment, supplies, or business services;

(10) Arises from the retention by the insured bank of the risk in an asset or pool of assets sold to third parties;

(11) Is represented by mortgage-backed bonds, collateralized mortgage obligations, and other similar obligations backed by mortgages or other assets which are issued or undertaken by the insured bank;

(12) Arises from an obligation to purchase assets sold by the insured bank which it does not own (commonly known as "short positions");

(13) Arises from obligations resulting when the insured bank undertakes to sell or deliver securities to, or purchase securities for the account of, any customer (including another depository institution) and involving either the receipt of funds by the bank, regardless of the use of the proceeds, or a debit to the account of the customer before the securities are delivered (commonly known as "due bills"); or

(14) Is a liability of a United States branch of a foreign bank, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act, to another office, branch, agency, or wholly owned subsidiary of the same foreign bank.

(b) [Reserved].

By Order of the Board of Directors. Dated at Washington, DC this 16th day of November, 1988.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 88–27014 Filed 11–23–88; 8:45 am]
BILLING CODE 6714–01–M

VETERANS ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

38 CFR Part 17

Contract Medical Care; Non-Federal Hospital Payment/Reimbursement Rates

AGENCY: Veterans Administration and Department of Health and Human Services.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration (VA) and the Department of Health and Human Services (HHS) are jointly proposing to amend VA's medical series of regulations to carry out provisions of Pub. L. 99–576, Veterans' Benefits Improvement and Health-Care Authorization Act of 1986. This measure requires the VA to publish regulations in conjunction with the Department of Health and Human Services (HHS), describing the admission practices, payment methodology and amounts for non-Federal public and private hospital care provided at VA expense. Payment methodology and amounts will be based on rates allowed by Medicare under the Prospective Payment System for similar services to Medicare beneficiaries.

Separately, HHS is also publishing regulations to implement section 233 of Pub. L. 99–576 to reflect the requirement that in order to participate in the Medicare program, hospitals must agree to provide needed hospital care to veterans and receive payment in accordance with the methodology established in these regulations.

DATES: Comments must be received on or before December 27, 1988. Comments will be available for public inspection until January 4, 1989. It is proposed to make these regulations, if promulgated, effective 30 days after final approval.

ADDRESSES: Interested persons are invited to submit comments, suggestions or objections regarding this proposed regulation to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2504.

SUPPLEMENTARY INFORMATION: The Administrator of Veterans Affairs and the Secretary of Health and Human Services jointly propose to amend applicable regulations in 38 CFR Part 17 to implement Section 233 of Pub. L. 99–576 which requires that any hospital that agrees to participate in the Medicare program and accept Medicare patients must also agree to provide needed hospital care to VA patients and accept payment from VA in an amount determined by the Federal Government. Many hospitals already accept VA patients, but the law will help assure that they will continue to do so. The public law also requires the VA to publish the methodology the VA will use to pay for non-Federal hospital care provided to veterans.

In certain circumstances, the VA authorizes eligible veterans to receive hospital care in non-VA facilities. Under 38 CFR 17.50d, the VA may authorize this non-VA hospital care either prior to the date the veteran is first admitted to the non-VA facility or, in an emergency, within the first 72 hours of the veteran's hospitalization.

In circumstances where the VA has not been notified within 72 hours of the emergency admission, 38 U.S.C. 628 authorizes VA to pay the provider or to reimburse the veteran for the cost of hospital care for any condition of a veteran rated permanently and totally disabled because of a service-connected disability, or of the emergency admission of a veteran for treatment of a service-connected disability or for certain other conditions in very limited circumstances. This proposed regulation establishes the methodology the VA will use to compute amounts paid or reimbursed in these situations.

The VA historically has paid for hospital care furnished by community hospitals in the amount the non-Federal hospital certifies is the usual and customary charge to the community for the same service. In practice, the result has been that the VA has paid all billed charges in full.

The proposed regulation would carry out the policy set in Pub. L. 99–576 and establish that community hospitals would be reimbursed in a manner similar to the Medicare program using a methodology based on payment rates established by the Health Care Financing Administration (HCFA), Department of Health and Human Services, under its Diagnosis-Related Groups (DRG-based) prospective payment system. Payment would be determined by the HCFA PRICER for each hospital discharge. Under this payment methodology VA would use the most current Medicare Grouper, geometric mean length of stay, outlier thresholds, and DRG relative weighting factors (within the meaning of those terms as used in Medicare regulations). Medicare pays hospitals the "net" DRG rate, i.e., the DRG rate less Medicare deductible and co-insurance amounts. The regulation will make it clear that veterans will not be required to pay deductible or co-insurance amounts applicable to Medicare beneficiaries. Therefore, the VA will pay non-Federal hospitals the full DRG rate without regard to any other copayments or deductibles not applicable to the VA required by any other Federal law. Payment by VA on behalf of a veteran for care authorized by VA shall constitute payment in full. Acceptance of such monies by any provider or agent thereof shall constitute acceptance of payment in full and agreement not to charge a veteran or his or her health care insurer for any authorized inpatient services for which payment is made by the VA.

Pursuant to and in furtherance of the provisions of section 233 of Pub. L. 99–576, the proposed regulation would require Medicare participating hospitals to agree to accept veterans for care authorized by the VA as a condition of participation in the Medicare program. The VA shall report any instances of a non-Federal hospital's failure to accept veterans for care authorized by the VA to the Secretary of Health and Human Services. Periodic reports are required to the Congress of any such episodes.

In the case of a hospital having an established agreement or contract with the VA for the mutual use or exchange of use of specialized medical resources under 38 U.S.C. 5053, all services and supplies provided under such agreement or contract will be paid at rates in accordance with the terms of the agreement or contract.

If a non-Federal hospital transfers a veteran, the proposed regulation provides that the VA will pay the transferring hospital a "per diem" rate (i.e., the prospective payment rate divided by the average length of stay for the specific DRG into which the case falls) for each day the veteran was hospitalized. The per diem rate would be determined by the HCFA PRICER. Total payment to the transferring hospital would not exceed the full DRG rate.

"Outliers" are cases involving patients who experience extremely long hospital stays or incur very high costs compared to other patients in the same DRG. Outliers can be "day" outliers or "cost" outliers. The day outlier is a case involving a patient whose length of stay falls outside the "DRG length-of-stay outlier threshold" for the specific DRG, and a cost outlier involves a patient whose cost of care exceeds a cost outlier threshold. HCFA has established a different DRG length of stay outlier threshold for each DRG. Under this proposed regulation, a per diem payment for day outliers would be made in addition to the full DRG rate for each day of care beyond the DRG outlier threshold. The per diem rate would be determined by the HCFA PRICER. The VA proposes to compute "cost outlier cases" by using the HCFA PRICER. Hospitals would be paid either the cost outlier or day outlier, but not both. The outlier resulting in the greater payment will be used. This outlier payment policy corresponds to the outlier payment policy in effect for the Medicare program as set forth in Subpart F of 42 CFR Part 412.

The VA will pay hospitals and distinct part hospital units excluded by Medicare from the DRG-based prospective payment system, as well as hospitals that do not participate in Medicare on the basis of reasonable cost, which will be calculated as a percentage of billed charges. HCFA has determined that the national ratio of Medicare inpatient operating cost to

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charges is 0.64. Hence, the VA will reimburse hospitals at rates that are 64 percent of billed charges where billed charges are reasonable, usual, customary and not in excess of rates charged the general public for similar services in the community (unless the VA has negotiated to pay a hospital at lower rates).

The DRG rate associated with each discharge and paid to hospitals serves as total payment for inpatient operating costs for all items and services furnished, other than physicians' services furnished to individual patients. These include operating costs for routine services, ancillary services, and intensive care type unit services. However, the Medicare DRG rate does not currently cover capital-related costs and the costs of direct medical education of health care professionals. Therefore, under the proposed regulation, the VA would pay hospitals, in addition to the full DRG rate, a fixed additional amount to cover capital-related and educational costs. A fixed percentage add-on will be applied in an effort to recognize the additional costs incurred by hospitals that are not included in the DRG rate and, at the same time, reduce to a minimum the administrative burden associated with the revised payment system. The amount for capital expense would be 9 percent of the DRG rate (including outlier payments) for each discharge. The 9 percent add-on reflects the best estimate of capital expenses expressed as a percentage of DRG and outlier payments.

The amount for direct medical education (i.e., graduate medical education, nursing education, and allied health education) will be based on the interns/residents ratio (IR) contained in the HCFA PRICER. For IR ratios above 0.25 the amount will be 12 percent of the DRG rate (including outlier payments) for each discharge. For IR ratios greater than 0 and less than or equal to .25, the amount will be 4 percent of the DRG rate (including outlier payments) for each discharge. These percentages are approximations of the costs incurred by hospitals with graduate medical education programs of various sizes. For providers with IR ratio of 0 but with a training program in nursing or an allied health profession, the amount will be 1 percent of the DRG rate (including outlier payments) for each discharge. The percentage adjustments for the costs of capital and medical education are based on data from Medicare cost reports for fiscal years beginning on or after October 1, 1985, and before September 30, 1986. These add-on rates will be reevaluated periodically based on data from later cost reporting periods. In the case of a transfer, the amount for each would be made according to the above methodology based on the per diem rate payment.

Care furnished by non-Federal hospitals in the Commonwealth of Puerto Rico and hospitals in New Jersey and Maryland would be paid by the VA using the same methodology contained in the HFCA PRICER.

This amendment to VA regulations is considered non-major under the criteria of Executive Order 12291, entitled Federal Regulation. It will not have an annual effect on the economy of $100 million or more; it will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The VA estimates that adoption of these proposed regulations will have an annual effect on the economy of approximately $4 million.

The Administrator of Veterans Affairs and the Secretary of Health and Human Services certify that this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is as follows: No new regulatory, paperwork, or administrative burdens are imposed. The VA, unlike Medicare, is not requiring health care facilities to have an agreement with Utilization and Quality Control Peer Review Organizations or to provide physician certification as to the continued need for hospitalization. Also, any monetary impact on small entities would be insignificant because of the minimal part of the overall operation and income which this activity represents to any one medical facility. The VA estimates that adoption of this amendment would affect payment and/or reimbursement made by the VA for only about 15,000 episodes of non-VA hospital care annually furnished nationwide to eligible veterans. When this number of admissions is spread across the nation's 7,000 hospitals, all of which are potential providers of such care, it is apparent that no single hospital will be significantly affected.

The Catalog of Federal Domestic Assistance Program numbers are 64.009, 64.010, 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: March 18, 1988.

Thomas K. Turnage,

Administrator.

October 24, 1988.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

Title 38 CFR Part 17, MEDICAL, is proposed to be amended to read as follows:

PART 17—[AMENDED]

1. The authority citation for § 17.50e is revised to read as follows:

§ 17.50e Use of hospitals under sharing agreements.

* * * * *

(Authority: 38 U.S.C. 5053).

2. Section 17.50f is revised to read as follows:

§ 17.50f Payment for authorized public or private hospital care.

Payment for public or private hospital care authorized under § 17.50b of this part shall be based on a prospective payment system similar to that used in the Medicare program for paying for similar inpatient hospital services in the community. Payment shall be made using the Health Care Financing Administration (HCFA) PRICER for each diagnosis-related group (DRG) applicable to the episode of care.

(a) Payment shall be made of the full prospective payment amount per discharge, as determined according to the methodology in Subpart D or G of 42 CFR Part 412, as appropriate.

(b)(1) In the case of a veteran who was transferred to another facility before completion of care, the VA shall pay an amount calculated by the HCFA PRICER for each patient day of care, not to exceed the full DRG rate as provided in paragraph (a) of this section. The hospital that ultimately discharges the patient will receive full DRG payment.

(2) In the case of a veteran who has transferred from a hospital and/or

distinct part unit excluded by Medicare from the DRG-based prospective payment system and hospitals that do not participate in Medicare, the hospital will receive a payment for each patient day of care not to exceed the amount provided in paragraph (i) of this section.

(c) The VA shall pay the providing facility the full DRG-based rate or reasonable cost without regard to any copayments or deductible required by any Federal law that is not applicable to the VA.

(d) If the cost or length of a veteran's care exceeds an applicable threshold amount, as determined by the HCFA PRICER program, the VA shall pay, in addition to the amount payable under paragraph (a) of this section, an outlier payment calculated by the HCFA PRICER program, in accordance with Subpart F of 42 CFR Part 412.

(e) In addition to the amount payable under paragraph (a) of this section, VA shall pay, for each discharge, an amount to cover the non-Federal hospital's capital costs and educational costs, calculated by:

(1) Taking 9 percent of amounts payable under paragraphs (a) and (d) of his section for capital costs and 12 percent of amounts payable under paragraphs (a) and (d) of this section for education costs, if the IR ratio is above 0.25, 4 percent if the hospital's IR ration contained in the HCFA PRICER is greater than 0 and less than or equal to 0.25; and 1 percent if the IR ratio is 0 and the hospital has a training program in nursing or an allied health profession.

(2) In the case of a veteran who was transferred to another facility before completion of care, by taking 9 percent of amounts payable under paragraphs (b) and (d) of this section for capital costs and 12 percent of the amounts payable under paragraphs (b) and (d) of this section for education costs if the IR ratio is above 0.25, 4 percent if the hospital's IR ratio contained in the HCFA PRICER is greater than 0 and less than or equal to 0.25; and 1 percent if the IR ratio is 0 and the hospital has a training program in nursing or an allied health profession.

(f) Payment shall be made only for those services authorized by the VA.

(g) Payments made in accordance with this section shall constitute payment in full and the provider or agent for the provider may not impose any additional charge on a veteran or his or her health care insurer for any inpatient services for which payment is made by the VA.

(h) Medical services not included in inpatient operating costs which the DRG covers (42 CFR Part 412) shall be paid only to the extent they are reasonable and not in excess of rates or fees the provider of services charges the general public for similar services in the community.

(i) Hospitals or distinct part hospital units excluded from the prospective payment system by Medicare and hospitals that do not participate in Medicare will be paid 64 percent of the billed charges that are reasonable, usual, customary, and not in excess of rates or fees the hospital charges the general public for similar services in the community.

(Authority: Sec. 233, Pub. L. 99–576)

3. Section 17.87 is revised to read as follows:

§ 17.87 Allowable rates and fees.

When it has been determined that a veteran has received public or private hospital care, the expenses of which may be paid or reimbursed under § 17.80 of this part, the payment of such expenses shall be based on a prospective payment system similar to that used in the Medicare program for paying for similar inpatient hospital services in the community. Payment shall be made by using the HCFA PRICER for each diagnosis-related group (DRG) applicable to the episode of care.

(a) Payment shall be made of the full prospective payment amount per discharge, as determined according to the methodology in Subpart D or G of 42 CFR Part 412, as appropriate.

(b)(1) In the case of a veteran who was transferred to another facility before completion of care, the VA shall pay an amount calculated by the HCFA PRICER for each patient day of care, not to exceed the full DRG rate as provided in paragraph (a) of this section. The hospital that ultimately discharges the patient will receive the full DRG payment.

(2) In the case of a veteran who has transferred from a hospital and/or distinct part unit excluded by Medicare from the DRG-based prospective payment system and hospitals that do not participate in Medicare, the hospital will receive a payment for each patient day of care not to exceed that provided in paragraph (i) of this section.

(c) The VA shall pay the providing facility the full DRG-based rate without regard to any copayments or deductible required by any Federal law that is not applicable to the VA.

(d) If the cost or length of a veteran's care exceeds an applicable threshold amount, as determined by the HCFA PRICER program, the VA shall pay, in addition to the amount payable under paragraph (a) of this section, an outlier payment calculated by the HCFA PRICER program, in accordance with Subpart F of 42 CFR Part 412.

(e) In addition to the amount payable under paragraph (a) of this section, VA shall pay, for each discharge, an amount to cover the non-Federal hospital's capital costs and education costs, calculated by:

(1) Taking 9 percent of amounts payable under paragraphs (a) and (d) of this section for capital costs and 12 percent of amounts payable under paragraphs (a) and (d) of this section for education costs if the IR ratio is above 0.25; 4 percent if hospital's IR ratio contained in the HCFA PRICER is greater than 0 and less than or equal to 0.25; and 1 percent if the IR ratio is 0 and the hospital has a training program in nursing or an allied health profession.

(2) In the case of a veteran who was transferred to another facility before completion of care, by taking 9 percent of amounts payable under paragraphs (b) and (d) of this section for capital costs and 12 percent of the amounts payable under paragraphs (b) and (d) of this section for education costs if the IR ratio is above 0.25; 4 percent if the hospital's IR ratio contained in the HCFA PRICER is greater than 0 and less than or equal to 0.25; and 1 percent if the IR ratio is 0 and the hospital has a training program in nursing or an allied health profession.

(f) Payment shall be made only for those services authorized by the VA.

(g) Payment by VA shall constitute payment in full and the provider or agent for the provider may not impose any additional charge on a veteran or his or her health care insurer for any inpatient services for which payment is made by the VA.

(h) Medical services not included in inpatient operating costs which the DRG covers (42 CFR Part 412) shall be paid or reimbursed only to the extent they are reasonable and not in excess of rates or fees the hospital or provider of services charges the general public for similar services in the community.

(i) Hospital or distinct part hospital units excluded from the prospective payment system by Medicare and hospitals that do not participate in Medicare will be paid 64 percent of the billed charges that are reasonable, usual, customary, and not in excess of the rates or fees the hospital charges the general public for similar services in the community.

(Authority: Sec. 233, Pub. L. 99–576)

[FR Doc. 88–27167 Filed 11–23–88; 8:45 am]

BILLING CODE 8320–01–M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3471-2]

Approval and Promulgation of State Implementation Plans; Colorado; Stack Height Demonstration Analysis

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve the stack height demonstration analysis for the State of Colorado. All states were required to review their State Implementation Plan (SIP) for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Colorado has satisfied its obligation under section 406 of the Clean Air Act (CAA) to review their SIPs with respect to EPA's revised stack height regulations. The stack height regulations were challenged by the Natural Resource Defense Council and resulted in the remand of three provisions of the regulation to EPA for reconsideration. Because none of the sources in the demonstration analysis receive credit under the provisions remanded to EPA, EPA is going forth with this action. (EPA proposed to approve Colorado's stack height regulations on February 3, 1988 (53 FR 3052).)

DATES: Comments must be received on or before December 27, 1988.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405.

Copies of the states' submittals are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405, (303) 293–1764, (FTS) 564–1764.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the CAA. These regulations were challenged in the U.S. Court of Appeals for the DC Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, and on July 18, 1984, the Court of Appeals mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and promulgated on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of the CAA, all states were required to (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of the EPA stack height regulations promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

Since the July 8, 1985, promulgation, however, the EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

State Submittal

A. Demonstration Analysis

The Colorado stack height review was submitted on October 23, 1985, with subsequent submittals dated June 20, 1986, December 4, 1986, February 3, 1987, March 3, 1988, and March 15, 1988. Colorado has found that no existing emissions limitations have been affected by stack height credits above GEP or any other dispersion technique prohibited by EPA regulations.

EPA has determined that the State's inventories above *de minimis* height and *de minimis* emission level are complete. EPA has carefully reviewed the State's findings that no emission limits have been affected by prohibited dispersion techniques. Summaries of the State's findings are presented in the chart below. EPA is acting on all of the sources identified in the chart below because it has found that none of the sources receive credit under the provisions remanded to EPA in *NRDC* v. *Thomas*. Detailed documentation of the State's findings and of EPA's review is contained in EPA's technical support document, its air compliance files, and state files, all of which are available for public inspection.

COLORADO

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[4] (t/yr)
City of Colo. Springs:					
Drake	7	76.3	2.5H [6]	107.5	7022
Nixon	1	140.3	2.5H [6]	154.8	10770
Public Service Co:					
Valmont	3	76.3	Grandfathered [1]	[1] (1964)	9461
	1	113.5	Grandfathered [1]	[1] (1924)	
	2	99	Grandfathered [1]	[1] (1937)	
Zuni	1	87	Grandfathered [1]	[1] (1949–50)	
	3	76.3	Grandfathered [1]	[1] (1948)	
Arapahoe	[5] 1	76.3	Grandfathered [1]	[1] (1950)	5886
	[5] 3	76.3	Grandfathered [1]	[1] (1951)	9513
Pawnee	1	167.8	2.5H [6]	196.8	28540
Commanche	1	152.5	2.5H [6]	180	16396
	2	152.5	2.5H [6]	180	16396
Cherokee	[5] 1	91.5	Grandfathered [1]	[1] (1957)	11984
	3	91.5	Grandfathered [1]	[1] (1962)	7674
	4	122.5	Grandfathered [1]	[1] (1968)	17670
Colorado State Hospital		71.7	Grandfathered [1]	[1] (1939)	
So. Colo. Power, Pueblo	1	77.8	Grandfathered [1]	[1] (1922)	
Platte River Power, Rawhide		152.5	H+1.5L [2]	161	
Ideal Basic (LaSalle Kilns)		75.6	H+1.5L [2]	98.8	
Colorado Ute:					
Craig	1	183	2.5H [6]	194.4	22043
	2	183	2.5H [6]	194.4	22043
	3	183	H+1.5L [2]	194.4	7534
Nucla	[5] 1	65.6	H+1.5L [2]	130.4	
Hayden	1	76.3	Grandfathered [1]	[1] (1965)	8898
	2	120.5	2.5H [6]	156.3	13644

Notes:
1. Documentation provided. Grandfathered means stack in existence in year indicated.
2. Documentation to show reliance provided.
3. Under construction.
4. Stacks with allowable emissions greater than 5000 t/yr.
5. Stack for boiler units 1 and 2.
6. Stack for boiler units 3 and 4.

B. Stack Height Regulation

EPA proposed to approve Colorado's stack height regulations on February 3, 1988 (53 FR 3052).

EPA Action

The stack height demonstration analysis submitted by Colorado has been determined to be acceptable. Therefore, EPA proposes to approve the stack height demonstration.

Under 5 U.S.C. 605(b), I certify that this SIP approval will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

James J. Scherer,
Regional Administrator.

Date: March 31, 1988.

Editorial Note.— This document was received at the Office of the Federal Register November 21, 1988.

[FR Doc. 88–27202 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW–FRL–3481–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion and Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Brush Wellman, Incorporated, Elmore, Ohio, to exclude certain solid wastes contained in an on-site surface impoundment from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. In addition, this notice proposes to deny exclusion for wastes contained in two other on-site surface impoundments which are also subjects of the petition. These actions respond to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decisions are based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned wastes, once they are disposed.

DATES: EPA is requesting public comments on today's proposed decisions and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until January 9, 1989. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on these proposed decisions and/or the model used in the petition evaluation by filing a request with Joseph S. Carra, whose address appears below, by December 12, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

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ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-BWPP-FFFFF".

Requests for a hearing should be addressed to Joseph S. Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Scott Maid, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4783.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the wastes, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned wastes and to determine the potential impact of the unregulated disposal of Brush Wellman's petitioned wastes on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst-case waste management scenario for the petitioned wastes, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking-water well, permeability of the aquifer, dispersivities, *etc.* If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Brush Wellman manages its petitioned wastes on site, ground-water monitoring data can be used to assess the effects (if any) of this waste on the underlying aquifer. Therefore, the Agency requested that Brush Wellman submit ground-water monitoring information in support of its petition.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

A. Brush Wellman, Incorporated, Elmore, Ohio

1. Petition for Exclusion

Brush Wellman, Incorporated (BW) produces beryllium, beryllium alloys, and beryllium products at its Elmore, Ohio facility for use in the defense and electronics industries. BW petitioned the Agency to exclude its wastewater treatment sludges, presently contained in three on-site surface impoundments. These sludges are listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalant chromium, nickel, and cyanide (complexed).

BW petitioned to exclude its wastes because it does not believe that these wastes meet the criteria for which they were listed. BW believes that listed metals of concern are not present at significant levels in the impounded sludges because its wastewater treatment plant and metal recovery system effectively remove most of the metals from its wastewater prior to the formation of sludges in the lagoon system. BW further believes that the wastes are not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the wastes to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2) through (4). Today's proposal to grant a portion of this petition and to deny a portion is the result of the Agency's evaluation of BW's petition.

2. Background

BW petitioned the Agency to exclude wastewater treatment sludges in three serial, on-site surface impoundments, referred to as the Triangular Lagoon, Lagoon #3, and Lagoon #6. In support of its petition, BW submitted (1) descriptions of the manufacturing and treatment processes in use at the facility, including schematic diagrams; (2) results of EP toxicity test analyses of the impoundment sludges for the EP toxic metals, beryllium, nickel, and cyanide; (3) total oil and grease test results; (4) lists of raw materials used in the processes at the facility that are influent to the waste stream; (5) results from total constituent analyses of wastewaters influent to the impoundments for the EP toxic metals, nickel, and cyanide; (6) results of BW's evaluation of the wastes for the hazardous waste characteristics; and (7) ground-water monitoring data collected from the monitoring wells established at this facility.

BW produces beryllium metal, beryllium oxide, and beryllium alloys (primarily beryllium copper). One product from this beryllium copper strip manufacturing operation is nickel-plated beryllium copper strip, which is used in the electrical and electronics industries. The beryllium copper strip is electrocleaned and rinsed, pickled in a sulfuric acid solution, rinsed, plated with nickel, rinsed again, dried with compressed air, and then oven baked to complete the process.

Cleaning rinse waters drain to a sump where they are neutralized with sodium hydroxide and discharged to the Triangular Lagoon. Plating rinse waters go to another sump and are pumped to a tank, where they are treated with sodium nitrite and sulfuric acid. Sodium hydroxide is then added to generate metal hydroxides, which are removed by pressure filtration and drummed for off-site landfill disposal as hazardous wastes. The filtered wastewater continues to a copper recovery system before discharge into the Triangular Lagoon. (The plating process wastewaters discharged to the impoundment system are considered to be themselves listed wastes because they are residues derived from the treatment of listed wastes, *i.e.*, the filtered F006 sludges, and contain the same hazardous constituents found in the F006 sludges. These wastewaters undergo additional treatment in the on-site lagoon system, and the treatment of these wastewaters leads to the deposition of additional F006 sludges in the lagoons. See 40 CFR § 261.3(c)(2)(i).) Spent caustic solutions at times are also discharged directly into the Triangular Lagoon. The nickel plating baths never enter the treatment system and are handled separately. Numerous other non-listed waste streams are routed to the Triangular Lagoon for treatment, including: Neutralized acid rinses from beryllium sheet and foil pickling, processing area floor rinses, scrubber discharges, water softener sludges, stormwater drainage, and beryllium alloy process rinse waters.

The Triangular Lagoon has a capacity of 450,000 gallons and is used for pH adjustment of influent wastewaters. Effluent moves from this impoundment to Lagoon #3, an impoundment of 3.4 million gallon capacity, where additional treatment promotes precipitation of metal hydroxides. Finally, wastewaters move to Lagoon #6, which has a capacity of 27 million gallons, for final polishing before the treated effluent is discharged to the Portage River via a National Pollution Discharge Elimination System (NPDES) permitted outfall. The sludges remaining in the three surface impoundments are the subject of this delisting petition.

For surface impoundments like BW's, petitioners are normally requested to divide the unit into four quadrants and randomly collect at least four full-depth core samples from each quadrant. The full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples (per impoundment). See "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

BW collected samples of sludge from each impoundment in 1984 in accordance with SW-846 guidance which provide for stratified random sampling. A grid was established using 30 ft. x 30 ft. sections. Complete depth core samples were taken of the sludges on July 18-19, 1984 at randomly selected

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locations within each grid and kept refrigerated. The Triangular Lagoon samples were composited from four samples in each quadrant. The 1984 core samples from Lagoons #3 and #6 were not composited, however, and were evaluated as grab samples. Additional samples were collected from Lagoon #6 in November 1987. The 1987 samples from Lagoon #6 were composited from dredge samples randomly drawn from the sampling gird. These 1987 samples were taken with an Ekman dredge so that the sludge samples would not be diluted with excessive amounts of clay from the underlying soils.

The samples were analyzed for EP leachable concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals, nickel, cyanide, and beryllium. BW also provided analyses on additional drinking water parameters such as chloride, iron, and aluminum, which were not solicited as part of the delisting evaluation. The samples for Lagoon #6 only were evaluated for total oil and grease content and total cyanide content. BW claims that the samples collected from these impoundments are representative of any variation in these sludges because the samples were collected according to previously published guidance, and that the samples reflected all of the manufacturing and treatment processes on-going at BW's facility over time.

Samples were also taken of the electroplating process waste-waters influent to the impoundment system. Four 24-hour composites were collected of both the electroclean/bright dip rinse waters and the nickel plating rinse waters in July 1984. These wastewaters were evaluated for total constituent content (*i.e.*, mass of a particular constituent per unit mass of waste) of the EP toxic metals, nickel, and cyanide, and total oil and grease. BW claims that these samples represent the full range of variation observed for these wastewaters because they were collected in such a way as to ensure detection of any process variability in BW's processes. The Agency accepts BW's claims that the samples collected in support of its petition accurately reflect process variability at BW's facility.

3. Agency Analysis

BW used SW–846 Method 1310 to determine the leachable concentrations of the EP toxic metals, nickel, beryllium, and cyanide in the impoundment sludges. Maximum EP leachate analyses for the inorganic constituents in the impoundment sludges (in either grade or composite samples) are reported in Table 1. Detection limits identified below represent the lowest concentrations quantifiable by BW when using the appropriate analytical methods to analyze the petitioned sludges. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits).

TABLE 1.—MAXIMUM EP LEACHATE CONCENTRATIONS (mg/l) IMPOUNDMENT SLUDGES

Constituents	Triangular lagoon	Lagoon No. #3	Lagoon No. #6
Arsenic	ND (0.01)	ND (0.01)	ND (0.2)
Barium	0.99	0.77	0.53
Cadmium	0.046	ND (0.01)	ND (0.05)
Chromium	0.05	ND (0.04)	ND (0.05)
Lead	4.73	3.43	ND (0.2)
Mercury	0.0044	0.0047	ND (0.0003)
Selenium	ND (0.01)	ND (0.01)	ND (0.2)
Silver	ND (0.01)	ND (0.03)	ND (0.05)
Beryllium	11.2	11.2	0.72
Nickel	0.59	1.38	0.12
Cyanide	4.86	4.55	ND (1.02)

ND: Not detected. Denotes concentrations below the detection limits shown in parentheses.

Using SW–846 Method 3540, BW determined that the maximum oil and grease content of the Lagoon #6 samples was generally low (<0.1 percent); therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which would not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching out of the metals from the sample). See SW–846 Method 1330.

Samples from the Triangular Lagoon and Lagoon #3 were not evaluated for total oil and grease content. However, the Agency did not request BW to analyze the Triangular Lagoon and Lagoon #3 sludges for oil and grease content because evaluation of these sludges indicated that the sludges would not be excluded based on existing data.

BW used SW–846 Methods 7060 through 7760, and 9010 to quantify the total constituent concentrations of the EP toxic metals, nickel, and cyanide in its electroplating process wastewaters. Maximum total constituent concentrations of the inorganic constituents in the wastewater are reported in Table 2. As in Table 1, the detection limits in Table 2 represent the lowest concentrations quantifiable by BW when using the appropriate analytical methods to analyze the waste.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (mg/l) PROCESS WASTEWATERS

Constituents	Total constituent analyses
Arsenic	ND (0.01)
Barium	0.13
Cadmium	ND (0.05)
Chromium	0.045
Lead	ND (0.05)
Mercury	ND (0.0002)
Selenium	0.02
Silver	ND (0.015)
Nickel	1.96
Cyanide	0.04

ND: Not Detected. Denotes concentrations below the detection limits shown in parentheses.

Total constituent analyses for the EP toxic metals were not requested for any of the impounded sludges since the Agency's preliminary determination was that the petition failed to support an overall exclusion due to other factors. The Agency subsequently decided to consider and evaluate the sludges in each of BW'w lagoons on an individual basis.

The maximum concentration of total cyanide in the Lagoon #6 sludges, as reported in the initial petition submittal, was 1.02 mg/kg. Consequently, the Agency believes that the level of reactive cyanide in Lagoon #6 will not exceed the 250 ppm delisting level. Test results for total cyanide or sulfide content of Triangular Lagoon and Lagoon #3 sludges were not submitted to the Agency in the initial petition, so a determination of potential reactivity of cyanides or sulfides in these sludges could not be made. The Agency did not subsequently request this data because the Agency's evaluation indicated that the petition for these sludges failed to support an exclusion due to other factors.

BW certified that none of the sludge samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

BW submitted a signed certification statement stating that the maximum amount of sludge in the Triangular Lagoon is 14 tons, and that Lagoon #3 and Lagoon #6 are estimated to contain 120 and 160 tons of sludges, respectively. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts BW's certified estimates for the sludge volumes of its three impoundments.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which today's proposed decisions are based. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select this facility in the future for spot-check sampling.

4. Agency Evaluation

The Agency is currently developing a fate and transport model to evaluate the potential behavior of wastes managed in surface impoundments. However, this model is not ready for evaluating delisting petitions. As a result, the Agency has evaluated the petitioned wastes using its vertical and horizontal spread (VHS) landfill model.[1] See 50 *FR* 7882 (February 26, 1985), 50 *FR* 48896 (November 27, 1985), and the RCRA public docket for a detailed description of the VHS model and its parameters. As explained below, the Agency feels that the VHS model, at this time, is adequate for this delisting petition. The Agency requests comments on the use of the VHS model as applied to the evaluation of BW's waste.

The primary difference expected between the VHS model (used for the petitioned waste) and a surface impoundment model is expected to be the consideration (in the impoundment model) of hydraulic head, sorption and retardation, and clogging. Hydraulic head is expected to cause higher compliance point concentrations.[2] Sorption and retardation and clogging, on the other hand, are expected to result in lower concentrations of the contaminants.[3] To some extent, the mechanisms of sorption, retardation, and clogging will counteract hydraulic head. Until the ongoing development of the surface impoundment model is completed, it is difficult to predict what impact, if any, these competing mechanisms will have on the calculation of compliance point concentrations. EPA feels that delay petition evaluations until such time as other analytical tools (such as the surface impoundment model discussed above) are developed would result in the curtailment of delisting petition processing. Delay is particularly unwarranted where, as here, it is not clear that the new analytical tool would predict different constituent concentrations and/or change EPA's conclusion. Furthermore, EPA belives that the VHS model is currently adequate to assess the reasonable worst-case disposal scenario of wastes at surface impoundments because the VHS model is conservative in all its assumptions. Specifically, the VHS landfill model does not account for the likely reduction in the total concentrations of hazardous constituents occurring through volatilization and degradation, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment scenario. Consequently, the Agency believes that the application of the VHS model, in this case, adequately protects human health.

Specifically, the Agency used the VHS model to evaluate the mobility of most of the hazardous inorganic constituents from BW's impounded sludges. The Agency's evaluation, using the estimated sludge volumes of 14, 120, and 160 tons in the Triangular Lagoon, Lagoon #3, Lagoon #6, respectively, and the maximum reported EP leachate concentrations of the inorganic constituents of each impounded sludge in the VHS model (from Table 1), generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, selenium, and silver) from BW's waste because they were not detected in the EP extract using the appropriate analytical methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (mg/l) IMPOUNDMENT SLUDGES

Constituents	Triangular lagoon	Lagoon No. 3	Lagoon No. 6	Regulatory Levels [1]
Barium	0.031	0.024	0.016	1.0
Cadmium	0.0014	ND	ND	0.01
Chromium	0.0015	ND	ND	0.05
Lead	0.15	0.11	ND	0.05
Mercury	0.00014	0.00015	ND	0.002
Beryllium	0.35	0.35	0.022	0.2
Nickel	0.016	0.043	0.0037	0.5
Cyanide	0.15	0.14	ND	0.7

ND: Not detected in the EP extract using appropriate analytical methods (see Table 1).

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The sludges from all three lagoons exhibited barium, cadmium, chromium, mercury, nickel, and cyanide levels at the compliance point below the health-based levels used in delisting decision-making. These constituents are, therefore, not of regulatory concern.

The evaluation of the Lagoon #6 sludge indicates that lead and beryllium concentrations at the compliance point are below their respective health-based levels. Because the maximum concentration of total cyanide in Lagoon #6 sludge does not exceed 1.02 mg/kg, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, International Agency Memorandum in the RCRA public docket. In the Triangular Lagoon and Lagoon #3 sludges, however, lead and beryllium levels at the compliance point exceed their respective health-based levels.

Ground-water monitoring data presented for this facility do not indicate the presence of any hazardous constituents in the ground water at levels exceeding their respective health-based levels. Data has been collected since 1981 from a ground-water monitoring system that is consistent with the applicable ground-water monitoring requirements of 40 CFR Part 265, Subpart F, as determined by EPA Region V.

[1] When the Agency believes that the surface impoundment model is sufficiently developed for delisting petition decision making, it intends to describe its parameters and assumptions and request comments on the model. Subsequent use of the model in the evaluation of specific delisting petitions would be proposed in the **Federal Register**. Also, the appropriateness of its use for each specific petition will be considered.

[2] Hydraulic head tends to force leachate into the aquifer, displacing ground water and resulting in potentially higher concentrations at the receptor well (*i.e.*, compliance point).

[3] Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentrations of the contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or when fine material settles on the bottom of the impoundment. A potential result of clogging is the lowering of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

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The Agency concluded, after reviewing BW's processes and raw materials list, that no other hazardous constituents are being used by BW, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of BW's waste. In addition, the Agency does not believe that BW's sludges exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

5. Conclusion

The Agency believes that BW has failed to demonstrate that the sludges contained in the Triangular Lagoon and Lagoon #3 are not hazardous, since these sludges have been shown to have the potential to leach amounts of lead and beryllium sufficient to cause contamination at levels of concern. The Agency, therefore, proposes to deny Brush Wellman's petition for its wastewater treatment sludges contained in the Triangular Lagoon and Lagoon #3 at its Elmore, Ohio facility. Because these wastes are hazardous, they should continue to be subject to regulation under 40 CFR Parts 260 through 268, and to the permitting standards of 40 CFR Part 270.

The Agency believes that BW has successfully demonstrated that the sludges in Lagoon #6 are non-hazardous. The Agency believes that both the core and dredge samples from Lagoon #6 were collected in a manner consistent with Agency guidance. These samples represent the full range of variability (spatial and temporal) inherent in the wastes, produced by the manufacturing and treatment processes at this facility. Furthermore, ground-water monitoring data indicate that constituents from the petitioned waste in Lagoon #6 have not contaminated the ground water. The Agency, therefore, proposes to grant an exclusion to Brush Wellman, Incorporated, located in Elmore, Ohio, for wastewater treatment sludges contained in Lagoon #6, described in the petition as EPA Hazardous Waste No. F006.

If made final, the exclusion will apply only to the processes and volume of waste covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition (*i.e.*, sludges contained in Lagoon #6) would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant a partial exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat that waste as non-hazardous.

This proposal to deny an exclusion to the other wastes will not increase overall costs and economic impact of EPA's hazardous waste regulations since the facility has been obligated to manage these wastes as hazardous before and during the Agency's evaluation. This rule will not change this. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: November 15, 1988.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 1 of Appendix IX, and the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Brush Wellman, Incorporated.	Elmore, Ohio	Wastewater treatment sludges generated from electroplating operations (EPA Hazardous Waste No. F006) and contained in Lagoon #6. This exclusion does not cover electroplating sludges contained in Brush Wellman's Triangular Lagoon and Lagoon #3.
•	•	•

[FR Doc. 88-27204 Filed 11-23-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 271 and 272

[FRL-3480-9]

Utah; Final Authorization of State Hazardous Waste Mangement Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking on application of Utah for program revisions and public comment period.

SUMMARY: Utah has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Utah's application and has made a decision, subject to public review and comment, that Utah's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Utah's hazardous waste program revisions. Utah's application for program revision is available for public review and comment.

DATES: Comments on Utah's program revision application must be received by the close of business on December 27, 1988.

ADDRESSES: Copies of Utah's program revision application are available during 8:30 a.m.–5:00 p.m. at the following addresses for inspection and copying: Utah Bureau of Solid and Hazardous Waste, P.O. Box 16690, 288 North 1460 West, Salt Lake City, UT 84116–0690; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382–5926; U.S. EPA Region VIII, Library, 999 18th Street, Denver, CO 80202–2405, Phone: 303/293–1444. Written comments should be sent to Charles Mooar at the address below.

FOR FURTHER INFORMATION CONTACT: Charles Mooar, Chief, RCRA Management Branch, 999 18th Street, Denver, CO 80202–2405, Phone 303/293–7540.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 124, 260 through 266 and 270.

B. Utah

Utah initially received final authorization on October 24, 1984. On October 29, 1986, Utah submitted a program revision application for additional program approvals. Utah is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4).

EPA has reviewed Utah's application, and has made a decision, subject to public review and comment, that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Utah final authorization for the additional program modifications. The public may submit written comments on EPA's decision up until (submit date at least 30 calendar days after publication in FR). Copies of Utah's application for program revisions are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Utah's program revisions shall become effective when the Administrator's final approval is published in the **Federal Register**. If adverse comment pertaining to Utah's program revisions discussed in this notice is received, EPA will publish either (1) a notice of disapproval or (2) a final rulemaking approving the modifications, which would include appropriate comment response.

Utah is today seeking authority to administer all provisions, both HSWA and non-HSWA, through the August 20, 1985, **Federal Register**. These provisions are listed below:

Non-HSWA Provisions—Federal and State:		
1. Listing of Warfarin and Zinc Phosphide	49 FR 19922	09/24/86
2. State Availability of Information	HSWA 3006(f)	07/01/88
3. Exclusion of household waste	49 FR 44960	09/24/88
4. Applicability-Interim Status Stds.	49 FR 46095	09/24/88
5. Corrections to Test Methods Manual	49 FR 47391	09/24/88
6. Satellite Accumulation	49 FR 49571	09/24/88
7. Redefinition of Solid Waste	50 FR 614	09/24/88
8. Int. status stds. for landfills and surface impoundments	50 FR 16044	09/24/88
HSWA Provisions—Federal and State:		
1. Dioxin Listing and Management Stds.	50 FR 1978	09/24/88
2. Paint Filter Test	50 FR 18370	09/24/88
3. Small Quantity Generators	50 FR 28702	09/24/88
4. Delisting	50 FR 28702	09/24/88
5. Household Waste	50 FR 28702	09/24/88
6. Waste Minimization	50 FR 28702	09/24/88
7. Location Standards	50 FR 28702	09/24/88

8. Liquids in landfills	50 FR 28702	09/24/88
9. Dust supression	50 FR 28702	09/24/88
10. Double liners; landfills, surface impoundments, waste piles	50 FR 28702	09/24/88
11. Groundwater monitoring, landfills, surface impds., waste piles	50 FR 28702	09/24/88
12. Cement kilns; hazardous waste burning prohibition	50 FR 28702	09/24/88
13. Fuel Labeling	50 FR 28702	09/24/88
14. Corrective Action	50 FR 28702	09/24/88
15. Pre-construction ban	50 FR 28702	09/24/88
16. Permit Life	50 FR 28702	09/24/88
17. Omnibus Permit Provision	50 FR 28072	09/24/88
18. Interim Status: Termination	50 FR 28072	09/24/88
19. Research and Development Permits	50 FR 28072	09/24/88
20. Hazardous waste exports	50 FR 28072	09/24/88
21. Exposure Information	50 FR 28072	09/24/88

Utah is also applying for authority to regulate the hazardous components of radioactive mixed waste.

Major Utah Statutory Citation Broader in Scope Than the Federal Program

The State statute defines "high level" nuclear waste to include spent reactor fuel assemblies, nuclear reactor components and both solid and liquid wastes from fuel reprocessing and defense-related wastes. High level nuclear waste does not include medical or institutional wastes or naturally occurring radioactive materials or mill tailings. It is prohibited to place these wastes anywhere in the State unless the County Commission and State Legislature approve such placement. "High level" nuclear waste is not specifically addressed under Subtitle C of RCRA.

According to the State statute, the State's Hazardous Waste Committee is required to develop a siting plan for hazardous waste treatment, storage, and disposal facilities, as well as to certify such sites as suitable for construction and operation. This action is not specifically required under the Federal program.

The State statute for the creation of the Hazardous Waste Facilities Authority, made up of ten members appointed by the Governor, with the task of managing the State's interests in the transport, storage and disposal of hazardous waste when private industry is not adequately doing the job. This Authority is not specifically required under the Federal program.

Pursuant to section 3006(g)(1), and in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA), EPA has the authority to issue or deny permits or those portions of permits to facilities in Utah for the requirements and prohibitions in or stemming from HSWA. The State will have this authority after it is authorized.

EPA and the State of Utah utilize a joint permitting process for issuing RCRA permits in the State of Utah. This joint permitting process is established in accordance with section 3006(c) of RCRA.

The State will administer all permits issued either by EPA or by the State, except that EPA will administer RCRA permits or portions of permits it has issued to facilities in the State to the extent that those permits or portions of permits contain prohibitions and requirements pursuant to HSWA that the State program is not authorized to administer. EPA will rely on the State to enforce those terms and conditions in jointly issued permits subject to the terms of the Utah/EPA Hazardous Waste Program Enforcement Agreement.

The State agrees to review all hazardous waste permits which were issued under State law prior to the effective date of this Agreement and to modify or revoke and reissue such permits as necessary to require compliance with the amended State Program, the Utah Solid and Hazardous Waste Act, 26–14–1 through 26–14–23 of the Utah Code Annotated, the Utah Hazardous Waste Management Regulations and the Utah Rulemaking Act, 63–46a–15 of the Utah Code Annotated. The State agrees to modify or revoke and reissue these State permits as RCRA permits, if necessary, within 1 year of the date of this Agreement.

Utah is not authorized by the Federal Government to operate the RCRA program on Indian lands and this authority will remain with EPA.

C. Codification in Part 272

EPA uses Part 272 for codification of the decision to authorize Utah's program and for incorporation by reference of those provisions of Utah's statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is today proposing to amend Part 272, TT.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Purusant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Utah's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entitites. This rule, therefore, doe not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Parts 271 and 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 30, 1988.

James J. Scherer,

Regional Administrator.

[FR Doc. 88–27203 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[Docket No. 88–527; FCC 88–354; RM–6274 and RM–6275]

Amateur Radio Service; Proposed Amendment of the Amateur Service Rules To Expand the 6 Meter Repeater Subband

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to expand the present 6 meter repeater subband from 52–54 MHz to 51–54 MHz. The rule proposal would determine the extent of the demand for such expansion. Further, the proposal seeks to elicit responses concerning the effect the expansion would have on the other users of the segment 51.0–52.0 MHz.

DATES: Interested persons may file comments on or before January 27, 1989, and reply comments on or before February 28, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted October 31, 1988, and released November 14, 1988. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendment, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendment, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The proposal to expand the 6 meter repeater subband to 51–54 MHz responds to petitions for rule making RM–6274 and RM–6275 filed by The Southern California Six Meter Club (SCSMC) and The Southern California Repeater and Remote Base Association (SCRRBA), respectively. Both organizations request the expansion of the 6 meter repeater subband in order to accommodate a growing number of amateur stations in repeater operation in the 6 meter band.

2. The requested expansion would provide additional flexibility in the use of the 6 meter band. It is noted, however, that the meter band utilization plan of The American Radio League, Inc. (ARRL) recommends that the segment 51.1–52.0 MHz be utilized for emission F3E simplex transmissions. In addition, the segment 51.0–51.1 MHz is designated as a "Pacific DX Window" for the 6 meter band where operators in I.T.U. Regions 2 and 3 can intercommunicate, depending upon radio frequency propagation conditions.

3. Existing users of the 51.0–52.0 MHz segment, in particular, are invited to comment on the need for expansion of the 6 meter repeater subband and to state the effect, if any, it would have on their current operations.

4. The proposed rule is set forth at the end of this document.

5. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for rules governing permissible *ex parte* contacts.

6. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small business entities because these entities may not use the amateur radio service for commercial radio communication. *See* 47 CFR 97.3(b). Furher, it is not expected that a new use of one megahertz of spectrum in a band already assigned to the amateur service would result in any significant increase in production of amateur equipment of manufacturers.

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

8. This Notice of Proposed Rule Making and the proposed rule amendment are issued under the authority of sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c) and (r).

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 27, 1989, and reply comments on or before February 28, 1989. The Commission will consider all relevant and timely comments before taking final action in this proceeding.

10. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Amateur radio, Frequencies, Repeaters.

Donna R. Searcy,

Secretary.

Proposed Rule

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 would continue to read, as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, Interpret or apply 48 Stat. 1064–1068, 1031–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.85(h) would be revised to read as follows:

§ 97.85 Repeater operation.

* * * * *

(h) All amateur frequency bands above 29.5 MHz are available for repeater operation, except 50.0–51.0 MHz, 144.0–144.5 MHz, 145.5–146.0 MHz, 220.0–220.5 MHz, 431.0–433.0 MHz, and 435.0–438.0 MHz. Both the input (receiving) and output (transmitting) frequency of a station in repeater operation shall be frequencies available for repeater operation.

[FR Doc. 88–27112 Filed 11–23–88; 8:45 am]

BILLING CODE 6712–01–M

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Notices

Federal Register
Vol. 53, No. 227
Friday, November 25, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Members of Performance Review Board

AGENCY: ACTION.

ACTION: Revision of list of performance review board positions.

SUMMARY: ACTION publishes the revised list of positions which comprise the performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Beaulieu, Director of Personnel, ACTION, 806 Connecticut Avenue NW., Washington, DC 20525, (202) 634–9263.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more performance review boards to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the appointing authority concerning the performance of the senior executive.

The positions listed below will serve as members on the ACTION Performance Review Board:

1. Assistant Director for VISTA/Student Community Service Program, Chairman.
2. Associate Director for Domestic and Anti-Poverty Operations.
3. Associate Director, Office of Management and Budget.
4. Executive Officer, Office of the Director.
5. Deputy General Counsel.
6. Assistant Director for Policy and Research.
7. Director, Special Program Operations.

Issued in Washington, DC, on November 21, 1988.

Sincerely,
Donna M. Alvarado,
Director, ACTION.

[FR Doc. 88–27192 Filed 11–23–88; 8:45 am]
BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1989—Crop Peanuts; National Poundage Quota

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determination.

SUMMARY: This notice sets forth a proposed determination of the national poundage quota for the 1989 crop of quota peanuts. This determination is necessary to satisfy statutory requirements contained in the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as "the 1938 Act").

DATE: To be assured of consideration, written comments with respect to the proposed determination must be received by December 7, 1988.

ADDRESS: Send comments to Mr. Bruce R. Weber, Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–3391. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3741–South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3734–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839. The preliminary regulatory impact analysis describing the impact of implementing this determination will be available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State, or local governments or geographical regions; or, (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program that this final rule applies to are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this determination.

The determination of the national poundage quota for the 1989 crop of peanuts is required to be made by the Secretary of Agriculture no later than December 15, 1988. In order to permit consideration of comments received and announcement of the final determination by that date, the comment period on the proposed determination will close on December 5, 1988.

Section 358(q)(1) of the 1938 Act requires that the national poundage quota for peanuts for each of the 1986 through 1990 marketing years be established by the Secretary at a level that is equal to the quantity of peanuts in tons that the Secretary estimates will be devoted in each such marketing year to domestic edible, seed, and related uses. Section 358(q)(1) further provides that the national poundage quota for any such marketing year shall not be less than 1,100,000 short tons. The marketing year for the 1989 crop of peanuts runs from August 1, 1989 through July 31, 1990.

Poundage quotas for the 1986–1990 crops of peanuts were approved by producers in a mail ballot held January 27–31, 1986.

It is proposed that the national poundage quota for the marketing year for the 1989 crop shall be 1,440,000 tons based on the following data:

U.S. PEANUTS: ESTIMATED DOMESTIC EDIBLE USE FOR THE 1989–90 MARKETING YEAR

[Assumes "most likely" U.S. weather]

Item	Short tons
Domestic edible:	
Domestic food	1,078,500
On farm and local sales	20,000
Subtotal	1,098,500
Seed	102,500
Related use:	
Crushing residual	168,000
Shrinkage	49,500
Seg. 2 and 3 transfers	20,000
Product exports	1,500
Subtotal	239,000
Total	1,440,000

The domestic food use estimate is based on the data series published in the *Oil Crops Situation and Outlook*, Economic Research Service (ERS). Peanuts used to produce exported peanut butter are included in the domestic food use data series published by ERS. However, the domestic food use estimate set forth in the preceding table excludes the peanut equivalent of estimated U.S. exports of peanut butter because such products are not consumed in the U.S. Because the domestic food data does not include farm use, local sales, or seed and related uses, estimates of these have been separately set out. The estimates for farm use and local sales were derived by comparing historical data showing the difference between total production and quantities of peanuts that were inspected. Those estimates were further reduced by estimating, based on historical data, actual on-farm seed use (since such seed use is included in the overall seed estimate which covers both off-farm and on-farm seed use). Seed use measures the quantity of peanuts expected to be needed to plant the succeeding (1990) crop.

The overall seed-use estimate (102,500 tons) was derived from survey data. The crushing residual is the inedible portion of farmer stock peanuts separated from the edible kernels during milling. Shrinkage is the weight loss occurring between harvest and production of the product. Both the shrinkage and crushing residual estimates were derived from inspection data. Net exports of peanut products to Canada and Mexico were included in the calculation as such products cannot, under 7 CFR Part 1446, be produced from additional peanuts. Accordingly, such products presumably are made from quota peanuts. Also, an estimate was added for the quantity of peanuts that would otherwise be eligible for use as quota peanuts but which will not qualify for such use due to quality problems. These peanuts are Segregation 2 and 3 peanuts.

Proposed Determination

Accordingly, it is proposed that the national poundage quota for 1989-crop peanuts shall be 1,440,000 short tons.

Authority: Sec. 358, 55 Stat. 88, as amended (7 U.S.C. 1358).

Signed at Washington, DC on November 18, 1988.

Milton Hertz,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–27175 Filed 11–21–88; 11:35 am]
BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24–86]

Foreign-Trade Zone 66, Wilmington, NC; Withdrawal of Application for Proposed Subzone for the American Hoist and Derrick Co;

Notice is hereby given of the withdrawal of the application submitted by the North Carolina State Department of Commerce, grantee of Foreign-Trade Zone 66, for a subzone at the crane manufacturing plant of American Hoist and Derrick Company (Amhoist) in Wilmington, North Carolina. The application was filed on July 14, 1986 (51 FR 26729, 7/25/86). It was opposed by the domestic steel industry.

The case has been withdrawn without prejudice and FTZ Board Docket 24–86 is closed.

Dated: November 18, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88–27244 Filed 11–23–1988; 8:45 am]
BILLING CODE 3510–DS–M

International Trade Administration

[A–570–801]

Postponement of Final Antidumping Duty Determination; Headwear From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On November 9, 1988, we received a request from counsel for the respondents China National Light Industrial Products Import and Export Corporation and China Arts & Crafts Import and Export Corporation and their former branches in the antidumping duty investigation of headwear from the People's Republic of China that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d (a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of headwear from the People's Republic of China have been made at less than fair value until not later than March 17, 1989.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Robin Gray or Anne D'Alauro, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1130 or 377–2923.

SUPPLEMENTARY INFORMATION: On June 21, 1988, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673 a(b)), an antidumping duty investigation to determine whether imports of headwear from the People's Republic of China are being, or are likely to be sold at less than fair value (50 FR 39743). We published our preliminary affirmative determination on November 8, 1988 (53 FR 45138). this notice stated that we would issue a final determination on or before January 16, 1989. On November 9, 1988, counsel for the respondents requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. These respondents account for a significant proportion of exports of the subject merchandise to the United States, and thus are qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than March 17, 1989.

In the preliminary determination we stated that a public hearing would be held December 30, 1988. The public hearing has now been moved to January 13, 1989 at 9:30 a.m. at the United States

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Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Assistant Secretary by January 6, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-27243 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-504]

Petroleum Wax Candles From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 23, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 32090) the preliminary results of its administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China (51 FR 30886, August 28, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of petroleum wax candles. Petroleum wax candles are currently classifiable under item 755.25 of the Tariff Schedules of the United States Annotated and under Harmonized Tariff System item number 3406.00.00.

The review covers one third-country reseller, P&C Enterprises (Hong Kong), of petroleum wax candles from the People's Republic of China and the period February 19, 1986 through July 31, 1987.

Final Results of Review

We invited interested parties to comment on the preliminary results. We received no comments. The final results are unchanged from those presented in the preliminary results and we determine that a margin of 54.21 percent exists for P&C Enterprises (Hong Kong) for the period February 19, 1986 through July 31, 1987.

The Department will issue appraisement instructions directly to the Customs Service. The Department will instruct the Customs Service to collect a cash deposit of estimated antidumping duties for P&C Enterprises (Hong Kong) based on the above margin, as provided in section 751(a)(1) of the Tariff Act. For any shipments from the remaining known producers and/or exporters not covered by this review the cash deposit will continue to be at the rate published in the antidumping duty order (51 FR 30687, August 28, 1986). For any shipments from a new producer and/or exporter not covered by this administrative review, whose first shipments of petroleum wax candles occurred after July 31, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 54.21 percent shall be required.

This deposit requirement is effective for all shipments of Chinese petroleum wax candles entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This adminstrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 352.53a of the Commerce Regulations (19 CFR 353.53a).

Date: November 16, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-27242 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Finding of Conformance.

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of finding of conformance.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Government of Panama has submitted information which demonstrates that Panama and the tuna purse seine fishing vessels under its control are in conformance with U.S. marine mammal regulations. As a result of this finding, yellowfin tuna from Panama may be imported into the United States.

DATES: This finding is effective November 23, 1988, and remains in effect until December 31, 1989.

ADDRESS: A copy of the administrative record for this determination may be obtained, at cost, by contacting the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NMFS at 213-514-6196.

SUPPLEMENTARY INFORMATION: On March 18, 1988 (53 FR 8910), the NMFS promulgated interim final rules concerning the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States, any nation which has purse seine vessels of 400 tons carrying capacity or greater operating in the ETP must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals (porpoise) in the tuna fishery and a resultant mortality rate of marine mammals which are comparable to that of the United States.

The Government of Panama has submitted its laws for the protection of marine mammals involved in the tuna purse seine fishery and the required information relating to the tuna vessels fishing under its laws and marine mammal mortality performance of those vessels. The Assistant Administrator finds, after consultation with the Department of State, that the laws and program for the protection of porpoise are comparable to those of the United States (50 CFR 216.24). Data relating to fleet performance during 1986, 1987 and part of 1988, were prepared by the Inter-American Tropical Tuna Commission (IATTC) based on reports from observers placed aboard fishing vessels by the IATTC. The Assistant Administrator accepts these data as accurate and meet the requirements of the interim rule.

The interim rule does not require that a nation's fleet porpoise mortality performance meet either the negative trend test or the comparability test for 1988. Therefore, the Government of Panama has met all of the current requirements for importing yellowfin tuna into the United States.

Dated: November 21, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88-27220 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-22-M

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Finding of Conformance

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of finding of conformance.

SUMMARY: The Assistant Administrator for fisheries, NMFS, announces that the Government of Venezuela has submitted information which demonstrates that Venezuela and the tuna purse seine fishing vessels under its control are in conformance with U.S. marine mammal regulations. As a result of this finding, yellowfin tuna from Venezuela may be imported into the United States.

DATES: This finding is effective November 23, 1988, and remains in effect until December 31, 1989.

ADDRESS: A copy of the administrative record for this determination may be obtained, at cost, by contacting the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NMFS at 213-514-6196.

SUPPLEMENTARY INFORMATION: On March 18, 1988 (53 FR 8910), the NMFS promulgated interim final rules concerning the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States, any nation which has purse seine vessels of 400 tons carrying capacity or greater operating in the ETP must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals (porpoise) in the tuna fishery and a resultant mortality rate of marine mammals which are capable to that of the United States.

The Government of Venezuela has submitted its laws for the protection of marine mammals involved in the tuna purse seine fishery and the required information relating to the tuna vessels fishing under its laws and marine mammal mortality performance of those vessels. The Assistant Administrator finds, after consultation with the Department of State, that the laws and program for the protection of porpoise are comparable to those of the United States (50 CFR 216.24). Data relating to fleet performance during 1986, 1987 and part of 1988, were prepared by the Inter-American Tropical Tuna Commission (IATTC) based on reports from observers placed aboard fishing vessels by the IATTC. The Assistant Administrator accepts these data as accurate and meet the requirements of the interim rule.

The interim rule does not require that a nation's fleet porpoise mortality performance meet either the negative trend test or the comparability test for 1988. Therefore, the Government of Venezuela has met all of the current requirements for importing yellowfin tuna into the United States.

Date: November 21, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88-27221 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic and Gulf of Mexico Fishery Management Councils; Meeting Notice Clarification

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

This notice clarifies the dates for the public meetings of the South Atlantic and Gulf of Mexico Fishery Management Councils as published previously in the **Federal Register** (53 FR 44512, November 4, 1988). The South Atlantic Fishery Management Council and its Committees will convene a joint public meeting with the Gulf of Mexico Fishery Management Council and its Committees on November 28, 1988, and will adjourn December 2, 1988, at the Omni Hotel at Charleston Place, 130 Market Street, Charleston, SC, to discuss king and Spanish mackerel, spiny lobster, and other issues of interest to the Councils.

All other information remains unchanged. For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: November 21, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-27270 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

November 18, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the quota Status Reports posed on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current aggregate limit, and certain limits within the aggregate are being increased, variously, for swing, carryforward and recrediting of carryforward applied but not used.

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A description of the textiles and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49466, published on December 31, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 18, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 21, 1988, the directive of December 28, 1987 is being amended to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

Category	Adjusted 12-month limit [1]
200–239, 300–369, 400–469, 600–670 and 800–899, as a group.	90,172,602 square yards equivalent.
Group I: 200–239, 300–369, 600–670 and 800–899 as a group.	87,075,756 square yards equivalent.
Sublevels in Group I: 333/334/335/833/834/835.	165,885 dozen of which not more than 90,047 dozen shall be in Cagegories 333/335/833/835
338	205,649 dozen.
339	887,637 dozen.
340	187,061 dozen.
341	120,572 dozen.
345	35,982 dozen.
347/348/847	496,270 dozen.
633/634/635	316,824 dozen.
640	73,557 dozen.
641/840	126,425 dozen.
642/842	60,255 dozen.
645/646	172,425 dozen.
647/748	347,836 dozen.
845/846	215,070 dozen.
Group II: 400–469, as a group.	1,751,170 square yards equivalent.
Sublevel in Group II: 445/446.	81,630 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–27210 Filed 11–23–88;845am]

BILLING CODE 3510-DR-M

Announcement of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Commonwealth of the Northern Mariana Islands (CNMI) From Imported Parts

November 18, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notification of establishment of a limit for the new agreement year.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 4, 1988, a directive was issued to the Commissioner of Customs establishing a limit for cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645, and 646 for the period November 1, 1988 through October 31, 1989. A copy of the directive and accompanying **Federal Register** notice are published below.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Announcement of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Commonwealth of the Northern Mariana Islands (CNMI) From Imported Parts

November 4, 1988.

Agency: Committee for the Implementation of Textile Agreements (CITA).

Action: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

Effective Date: November 14, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

For Further Information Contact: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

Supplementary Information: On November 2, 1987, a notice was published in the **Federal Register** (52 FR 42032) announcing that cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645, and 646, determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Mariana Islands (CNMI), and certified to have been assembled in the CNMI, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 100,000 dozen. This limited exception was to be effective for sweaters exported from the CNMI during the period November 1, 1987 through October 31, 1988. A subsequent notice dated April 8, 1988 announced a reduction to this limit (53 FR 11692).

The purpose of this notice is to advise the public that this exception is being continued for goods exported during the period November 1, 1988 through October 31, 1989 at a level of 87,540 dozen, with a wool sublimit of 13,131 dozen, in accordance with the terms of the administrative arrangement between the Governments of the United States and the Commonwealth of the Northern Mariana Islands. This arrangement requires that at least 40 percent of the sweater assembly employees are citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States, in accordance with the Title I, Article IV of the Compact of Free Association (48 U.S.C. section 1681 note).

If subsequent investigations determine that at least 40 percent of the employees are citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States, the limit may be increased to 100,000 dozen, with a wool sublimit of 15,000 dozen. However, if subsequent investigations determine that at least 50 percent of the employees are citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States, the limit may be increased to 120,000 dozen, with a wool sublimit of 18,000 dozen.

A certification will continue to be required and will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp was published in the **Federal Register** on August 12, 1988 (53 FR 30456).

For those sweaters properly certified, no export visa or license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645, and 646, which are not accompanied by a certification and those in excess of 87,540 dozen (13,131 dozen for the wool sublimit), will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 42032, published on November 2, 1987 and 52 FR 11692, published on April 8, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on November 14, 1988, you are directed to permit entry or withdrawal from warehouse for consumption in the United States in an amount not to exceed 87,540 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646, with a wook sublimit for Categories 445 and 446 not to exceed 13,131 dozen, the product of any foreign country or foreign territory, as determined under Customs Regulation Part 12, Section 12.130 and which have been certified as assembled in the Commonwealth of the Northern Mariana Islands (CNMI) and exported to the United States during the twelve-month period beginning on November 1, 1988 and extending through October 31, 1989. You are directed not to require any otherwise applicable export visa or license and not to charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp has been provided.

You are directed to require the appropriate visa or export license from the country of origin and charge any shipments of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646 to the country of origin if (a) the 87,540 dozen limit or the 13,131 dozen wool sublimit have been filled, or (b) the products are not accompanied by certification, or (c) the products are not assembled in the Commonwealth of the Northern Mariana Islands.

Imports charged to the category limit for the period November 1, 1987 through October 31, 1988 shall be charged against the level of restraint to the extent of any unfilled balances. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–27208 Filed 11–23–88; 8:45 am]

BILLING CODE 3510-DR-M

New Officials of the Government of the Socialist Republic of Romania Authorized to Issue Export Visas Using the New Visa Stamp

November 18, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: The Government of the Socialist Republic of Romania has notified the United States Government that only the officials listed below are authorized to issue export visas for textile and apparel products which are exported from Romania on and after November 1, 1988 under the terms of the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, as amended and extended, and the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984, as amended.

Ion Chioveanu
Petre Sin
Vladimir Ciobanasu
Petre Andrei
Dan Simion

A facsimile of the new visa stamp is available from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., Room 3110, Washington, DC 20230.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–27209 Filed 11–23–88; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange Proposed Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The New York Cotton Exchange ("NYCE") has applied for designation as contract markets in futures in the Thirty Day Federal Funds Index and in Two Year U.S. Treasury notes. The Director of the Division of Economic Analysis ("Division") of the Commission acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 27, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYCE Thirty Day Federal Funds Index futures contract or to the two Year U.S. Treasury Note futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9 Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to

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other materials submitted by the NYCE in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on November 21, 1988.

Paula A. Tosin,

Director, Division of Economic Analysis.

[FR Doc. 88-27174 Filed 11-23-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-60-000, et al.]

Union Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Union Electric Company

[Docket No. ER89-60-000]

Take notice that on November 9, 1988, Union Electric Company (Union) tendered for filing Second Amendment to the Interconnection Agreement dated February 18, 1972, between Central Illinois Public Service Company, Illinois Power Company and Union.

Said Amendment revises certain Service Schedules to provide for minor word changes allowing for capacity transactions of 12 months or longer.

Union requests that the filing be permitted to become effective December 1, 1988.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power & Light Company

[Docket No. ER89-59-000]

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on November 8, 1988, an executed Power Supply Agreement dated as of September 29, 1988, between PP&L and Allegheny Electric Cooperative, Inc. (Allegheny), which supersedes the Power Supply Agreement dated February 4, 1986, between PP&L and Allegheny. Under the February 4, 1986, Agreement, PP&L provided wholesale electric service to Allegheny for the benefit of Sullivan County Rural Electric Cooperative, Inc. (Sullivan County) at 12 kV. Under the September 29, 1988, Agreement, PP&L agrees to provide wholesale electric service to Allegheny for the benefit of Sullivan County at 69 kV in order to meet Sullivan County's current and future energy needs.

PP&L requests that the Agreement become effective on the date it is accepted for filing by the Commission, and therefore, requests waiver of the Commission's notice requirements of section 205 of the Federal Power Act, 16 U.S.C. 824d, and 35.3 of the Commission's regulations, 18 CFR 35.3.

Copies of this filing have been served upon Allegheny and the Pennsylvania Public Utility Commission.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Arkansas Power & Light Company

[Docket No. ER88-313-001]

Take notice that on November 7, 1988, Arkansas Power & Light Company (AP&L) tendered for filing, pursuant to the Commission's order dated October 21, 1988, its Compliance Report.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. The Empire District Electric Company

[Docket No. ER89-57-000]

Take notice that The Empire District Electric Company, (EDE) on November 7, 1988, tendered for filing proposed changes in its FERC Electric Tariff, 1st Revised Volume No. 1, Section 6, 10th Revised Sheet No. 22, INDEX OF PURCHASERS, and a service agreement with Kansas Electric Power Cooperative, Inc. (KEPCO) of Topeka, Kansas.

The service agreement filed between EDE and KEPCO will replace the service agreement between EDE and *The Twin Valley Electric Cooperative, Inc.* of Altamont, Kansas, filed with FERC August 23, 1978, in Docket No. ER78-591-000. No change is requested in rate schedules, terms of agreement or facilities.

Copies of the filing were served upon the Kansas State Corporation Commission and Kansas Electric Power Cooperative, Inc.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company of Indiana, Inc.

[Docket No. ER88-531-002]

Take notice that on October 31, 1988, Commonwealth Edison Company of Indiana, Inc. (Edison Indiana) tendered for filing, pursuant to the Commission's letter order dated September 30, 1988, its Compliance Refund Report.

Edison Indiana states that copies of its Report were served on Commonwealth Edison Company, Illinois Commerce Commission and Indiana Utility Regulatory Commission.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER88-83-003]

Take notice that on November 9, 1988, Southern California Edison Company (SCE) tendered for filing its refund Report in accordance with Settlement Agreement between SCE and the City of Vernon accepted by the Commission's Order of September 30, 1988.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Utah Power & Light Company

[Docket No. ER89-63-000]

Take notice that on November 14, 1988, Utah Power & Light Company (Utah) tendered for filing new Service Agreements providing for sales under Service Schedules UTAH-1B and UTAH-1C of Volume 2 of its FERC Electric Tariff under which Utah sells and delivers nonfirm energy to electric utilities. The new Service Agreements are with Utah Municipal Power Agency.

Utah requests that the Agreements under Service Schedule UTAH-1B and Service Schedule UTAH-1C with Utah Municipal Power Agency be made effective either on January 13, 1989 or the date service commences, whichever occurs first. Utah requests that the notice requirements of 18 CFR 35.3 be waived as provided by 18 CFR 35.11 in order to provide the service, if requested, prior to January 13, 1989.

Copies of this filing were served on Utah Municipal Power Agency and upon the Utah Pubalic Service Commission.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Utah Power & Light Company

[Docket No. ER89-58-000]

Take notice that on November 7, 1988, Utah Power & Light Company (Utah) tendered for filing new Service Agreements providing for sales under Service Schedules UTAH-1B and UTAH-1C of Volume 2 of its FERC Electric Tariff under which Utah sells and delivers nonfirm energy to electric utilities. The new Service Agreements are with Pacific Gas & Electric Company.

Utah requests that the Agreements under Service Schedule UTAH-1B and Service Schedule UTAH-1C with Pacific Gas & Electric Company be jade effective either on January 6, 1989 or the date service commences, whichever occurs first. No sales have been made under either of these Agreements to date, but in the event a transaction becomes possible prior to January 6, 1989, Utah requests that the notice requirements of 18 CFR 35.3 be waived as provided by 18 CFR 35.11 in order to provide the service.

Copies of this filing were served on Pacific Gas & Electric Company and upon the Utah Public Service Commission.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Arkansas Power & Light Company

[Docket No. EL87-32-002]

Take notice that on November 7, 1988, Arkansas Power & Light Company (AP&L) tendered for filing its compliance report pursuant to the Commission's September 23, 1988 order in the above referenced docket.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Delmarva Power & Light Co.

[Docket Nos. EL87-58-002 and ER87-556-000]

Take notice that on October 28, 1988, Delmarva Power & Light Company filed a Refund Compliance Report pursuant to the Commission's letter order of September 20, 1988 approving the Settlement Agreement in these dockets.

Delmarva states that on September 28, 1988 it refunded to the affected wholesale customers $750,000 in settlement of Docket No. EL87-58-000. Delmarva further states that the refunds was distributed to the affected Customers as prescribed in Attachment C of the Settlement Agreement which is attached to the Report. Delmarva states that a compliance report regarding the settlement in Docket No. ER87-556-000 will be filed by November 17, 1988.

Copies of the Report were served upon each affected wholesale Customers, the parties of record and the state regulatory agencies in Delaware, Maryland and Virginia.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27178 Filed 11-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-196-000, et al.]

Southern Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP89-196-000]

November 17, 1988.

Take notice that on November 14, 1988, Southern Natural Gas Company, (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-196-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Colony Natural Gas Corporation (Colony), a marketer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a transportation agreement dated August 31, 1988, under Southern's Rate Schedule IT, it proposes to transport up to 25,000 MMBtu per day equivalent of natural gas on an interruptible basis for Colony from points of receipt listed in Exhibit "A" of the agreement to delivery points listed in Exhibit "B", which transportation service involves interconnections between Southern and various transporters. Southern states that it would receive the gas at various existing points on its system offshore Louisiana, and in Louisiana, Mississippi, Texas and Alabama, and that it would transport and redeliver the gas to various delivery points in Georgia.

Southern advises that service under § 284.223(a) commenced September 27, 1988, as reported in Docket No. ST89-027. Southern further advises that it would transport 9.725 MMBtu on an average day and 3,549,744 MMBtu annually.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP89-152-000]

November 17, 1988.

Take notice that on November 9, 1988, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-152-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of OXY Gas Marketing, Inc. (OXY), under its blanket authorization issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams would perform the proposed interruptible transportation service for OXY, a marketer of natural gas, pursuant to an ITS transportation service agreement dated August 19, 1988 (Reference No. TR-C0040). The term of the transportation agreement is from the date of execution and shall continue in full force and effect until September 1, 1988, and will continue for subsequent one month periods unless either party gives the other party at least 30 days written notice of expiration. Williams proposes to transport on a peak day up to 10,000 MMBtu per day; on an average day up to 10,000 MMBtu; and on an annual basis 3,650,000 MMBtu of natural gas for OXY. It is stated that OXY would pay Williams for all service rendered under the transportation agreement in accordance with William's Rate Schedule ITS, and/or any other applicable or superseding rate schedule(s) as filed with the FERC. Williams would receive the volumes from various receipt points in Kansas for transportation to various delivery points on Williams' pipeline system located in Kansas and Oklahoma.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Williams commenced such self-implementing service on September 1, 1988, as reported in Docket No. ST89-40-000.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

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3. El Paso Natural Gas Company

[Docket No. CP89-177-000]

November 18, 1988.

Take notice that on November 14, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-177-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to revise conditions of delivery to permit an increase in sales volumes to Southwest Gas Corporation (Southwest) at an existing sales meter station in Pinal County, Arizona, under the blanket certificate issued in Docket No. CP82-435-000 (20 FERC ¶ 62,454 (1982)), pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that it has received a written request from Southwest for an increase in deliveries at an existing delivery point on El Paso's six-inch Superior Line in Pinal County, Arizona. It is estimated that the proposed quantities of natural gas during the third full year of operation would amount to 1,480 Mcf on a maximum peak day and 228,000 Mcf annually. It is stated that the additional volumes delivered would be utilized to serve additional natural gas requirements for residential space heating, small commercial space heating, irrigation and a prison complex in the Town of Florence, and environs, all located in Pinal County, Arizona. El Paso advises that the additional deliveries of natural gas are requested to begin by the end of the fourth quarter of 1988. It is stated that in accordance wtih the certificate authorization received by El Paso by Federal Power Commission order issued January 11, 1944, at Docket No. G-288, El Paso is presently providing natural gas service to Southwest in accordance with the terms and conditions of the currently effective service agreement between El Paso and Southwest, dated October 15, 1970. According to El Paso, said service agreement provides, *inter alia*, for the sale and delivery by El Paso and the purchase and receipt by Southwest of natural gas for resale and distribution to consumers thereof situated in the Town of Florence, and environs, in Pinal County, Arizona.

El Paso states that in order to accommodate Southwest's request, El Paso would continue to utilize the existing 2⅜ inch tap and value assembly and exiting two-inch O.D. orifice meter station hereafter referred to as the "Florence City Gate No. 1 Meter Station" presently providing the gas service to Southwest.[1] El Paso states that the additional volumes proposed to be sold to Southwest would require El Paso to adjust the regulator control valve associated with said meter station and increase the delivery pressure from 175 psig to 350 psig. It is stated that the minor regulator adjustments by El Paso to the Florence City Gate No. 1 Meter Station would not result in any extra costs to El Paso associated with providing the increased delivery pressure. It is further stated that El Paso is advised that no other facilities would be installed by Southwest as a part of the adjustments made by El Paso at the Florence City Gate No. 1 Meter Station.

It is stated that the additional quantities of natural gas to be delivered would be sold by El Paso to Southwest for resale in the Town of Florence, and environs, in order to accommodate Priority 1 and 2(a) requirements. El Paso states that the Priority 1 and 2(a) load growth that has precipitated Southwest's request for natural gas service herein would not alter Southwest's entitlements under El Paso's Permanent Allocation Plan, approved and certificated at Docket No. RP72-6, *et al.*, which was placed into operation on May 1, 1981. In addition, El Paso states that the sale of natural gas proposed herein for Priority 1 and 2(a) requirements is permitted by and consistent with the high-priority load growth provisions set forth in section 11.5(b), *Growth Provision*, of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. El Paso Natural Gas Company

[Docket No. CP89-178-000]

November 18, 1988.

Take notice that on November 15, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-178-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade the Dobson Road Meter Station to permit the delivery of additional sales volumes of natural gas to Southwest Gas Corporation (Southwest), which volumes would be within existing entitlements, for resale to consumers in the City of Chandler, and environs, in Maricopa County, Arizona, under the blanket certificate issued in Docket No. CP82-435-000 (20 FERC ¶ 62,454 (1982)), pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that it has received a written request from Southwest for an increase in deliveries at an existing delivery point on El Paso's six-inch Chandler Line in Maricopa County, Arizona. It is estimated that the proposed quantities of natural gas during the third full year of operation would amount to 3,479 Mcf on a maximum peak day and 485,292 Mcf annually. It is stated that the additional volumes delivered would be utilized to serve additional natural gas requirements for residential, commercial, and interruptible industrial consumers in the City of Chandler, and environs, in Maricopa County, Arizona. El Paso advises that the additional deliveries of natural gas are requested to begin by December 1988. It is stated that in accordance with the certificate authorization received by El Paso by Federal Power Commission order issued January 11, 1944, at Docket No. G-288, El Paso is presently providing natural gas service to Southwest in accordance with the terms and conditions of the currently effective service agreement between El Paso and Southwest, dated August 15, 1970. According to El Paso, said service agreement provides, *inter alia*, for the sale and delivery by El Paso and the purchase and receipt by Southwest of natural gas for resale and distribution to consumers in various communities and areas in the State of Arizona.

El Paso states that in order to accommodate Southwest's request, El Paso would replace the existing two-inch O.D. tap and valve assembly, and appurtenances, and the existing American 500B positive meter presently being utilized to provide service with a four-inch O.D. standard orifice-type meter and appurtenances at the existing meter location on El Paso's 6⅝ inch O.D. Chandler Line in Maricopa County, Arizona. It is estimated that the cost of constructing the proposed facilities would be $88,563. It is further stated that El Paso would deliver the gas at a pressure of not more than 200 psig.

It is stated that the additional quantities of natural gas to be delivered would be sold by El Paso to Southwest for resale in order to accommodate Priority 1, 2(c) and 3 requirements. In addition, El Paso states that the sale of natural gas proposed herein for Priority 1 and 2(c) requirements is permitted by and consistent with the high-priority load growth provisions set forth in section 11.5(b), *Growth Provision*, of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1. It is further stated that the projected Priority 3 load growth which has precipitated Southwest's request for additional natural gas service herein would not alter Southwest's entitlements under El Paso's Permanent Allocation Plan and would be accommodated within the existing Monthly Average Day End Use Profiles that currently limit the quantities available to Southwest from El Paso for service to Priority 3 requirements.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27180 Filed 11-23-88; 8:45 am]

BILLING CODE 6717-01-M

[1] The original meter station was installed by El Paso in 1941 when El Paso constructed its 6-inch O.D. Superior Line. El Paso's pipeline facility, with associated appurtenances, was authorized at Docket No. G-288.

[Docket Nos. CP89-159-000, et al.]

Williams Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89-159-000]

November 16, 1988.

Take notice that on November 9, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288 Tulsa, Oklahoma 74101, filed in Docket No. CP89-159-000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Gulf Energy Marketing Company (Gulf Energy) under Williams' blanket certificate issued May 10, 1988 in Docket No. CP86-631-001, all as more fully set forth in the request which is on file with Commission and open to public inspection.

Williams states that it will receive the gas from various points in Kansas, Missouri, Oklahoma, Texas and Wyoming, and transport the gas to various delivery points on Williams' system in Kansas, Oklahoma, Texas and Wyoming.

Williams proposes to transport up to 200,000 MMBtu of natural gas per average day or approximately 450,000 MMBtu of gas on a peak day and 164,250,000 MMBtu annually. Williams states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a)(1) of the Commission's Regulations on September 1, 1988, pursuant to a transportation agreement dated September 1, 1988. Williams notified the Commission of the commencement of transportation service in Docket No. ST88-5889-000 on September 30, 1988.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP89-150-000]

November 16, 1988.

Take notice that on November 8, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-150-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, for authorization to provide transportation on behalf of Tiffany Gas Company (Tiffany), under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 800 MMBtu of natural gas per day for Tiffany, a producer, from wells located in the San Juan Basin area of La Plata and Archuleta Counties, Colorado, to the Ignacio Plant delivery point in La Plata County, Colorado and the existing interconnections with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico and at Ignacio in La Plata County, Colorado. Northwest anticipates transporting an annual volume of 292,000 MMBtu.

Northwest states that the transportation of natural gas for Tiffany commenced September 9, 1988, as reported in Docket No. ST89-138-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP89-148-000]

November 17, 1988.

Take notice that on November 8, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-148-000, a prior notice request pursuant to §§ 157.205 and 204.223 of the Commission's Regulations for authorization to transport natural gas for Meridian Oil Production Inc., Sothland Royalty Company and El Paso Production Company (Shippers), all producers of natural gas, under the blanket certificate issued Northwest in Docket No. CP86-578-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, pursuant to a December 1, 1986 agreement, as amended, up to 150,000 MMBtu of natural gas per day for the Shippers under Northwest's Rate Schedule TI-1. Northwest proposes to receive the gas from existing wells located in the San Juan Basin Area, San Juan and Rio Arriba Counties, New Mexico and La Plata County, Colorado and redeliver the gas to a Ignacio plant delivery point located in La Plata County, Colorado and an existing interconnect with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico.

Northwest also states that no new facilities would be required to be built to provide this transportation service.

Northwest states that service commenced on August 19, 1988, as reported in Docket No. ST88-5773-000, purusant to § 284.223(a). Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 150,000 MMBtu, 33,000 MMBtu and 12,000,000 MMBtu, respectively.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

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4. Northwest Pipeline Corporation

[Docket No. CP89-149-0009]

November 17, 1988.

Take notice that on November 8, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-149-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act of authorization to provide a transportation service for Columbus Gas Services, Inc. (Columbus), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to an agreement dated April 1, 1988, as amended, February 1, 1988, May 13, 1988, June 15, 1988, June 24, 1988 and October 14, 1988, under Rate Schedule TI-1, it proposes to transport up to 8,000 MMBtu per day of natural gas for Columbus from existing wells located in the San Juan Basin area, Rio Arriba County, New Mexico to the Ignacio Plant delivery point located in La Plata County, Colorado and to the existing interconnects with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico and at Ignacio in La Plata County, Colorado.

Northwest also states that no construction of new facilities will be required to provide this service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 8,000 MMBtu, 2,500 MMBtu and 913,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced September 7, 1988, as reported in Docket No. ST89-467-000 (filed October 31, 1988). Northwest requests that the Commission expeditiously publish its notice since the term of the automatic authorization for this service expires January 4, 1989.

Northwest indicates that it is not aware of any agency relationship under which a local distribution company or an affiliate of Columbus is to receive natural gas on behalf of Columbus.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP89-141-000]

November 17, 1988.

Take notice that on November 7, 1988, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP89-141-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, for Cornerstone Production Corporation (Cornerstone), all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Cornerstone, a producer. Tennessee explains that service commenced October 2, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-265. Tennessee further explains that the peak day quantity would be 50,000 dekatherms, the average daily quantity would be 50,000 dekatherms, and the annual quantity would be 18,250,000 dekatherms. Tennessee explains that it would receive natural gas for Cornerstone's account at various points in the State of Louisiana and offshore Louisiana. Tennessee further explains that, it would redeliver natural gas for the account of Cornerstone to: (1) Commonwealth Gas Company at various points in Massachusetts, (2) Algonquin Gas Transmission Company in Bergen County, New Jersey and Worcester County, Massachusetts, (3) National Fuel Gas Supply Company in Mercer County, Pennsylvania, and (4) Columbia Gas Transmission Corporation in Kanawha County, Kentucky. Tennessee states that the ultimate delivery points of the gas are located in Massachusetts and Pennsylvania.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27179 Filed 11-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-168-000, et al.]

Williams Natural Gas Co., et al.; Natural Gas Certificate Filings

November 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89-166-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-166-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Ag Processing, Inc. (Ag Processing), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Ag Processing, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 29, 1988. Williams explains that service commenced September 13, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-157-000. Williams further explains that the peak day quantity would be 750 MMBtu, the average day quantity would be 400 MMBtu, and that the annual quantity would be 273,750 MMBtu. Williams explains that it would receive natural gas for Ag Processing's account at points located in Kansas, Texas, Missouri, and Oklahoma and would redeliver the gas for Ag Processing's account at points in Missouri.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP89-168-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-168-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Chevron, U.S.A. (Chevron), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Chevron, a producer, on an interruptible basis, pursuant to a transportation agreement dated August 26, 1988. Williams explains that service commenced September 22, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-253-000. Williams further explains that the peak day quantity would be 215,000 MMBtu, the average day quantity would be 100,000 MMBtu, and that the annual quantity would be 78,475,000 MMBtu. Williams explains that it would receive natural gas for Chevron's account at points located in Kansas, Texas, Wyoming, and Oklahoma and would redeliver the gas for Chevron's account at points in Kansas, Texas, and Wyoming.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP89-162-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-162-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Union Pacific Resources (Union), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Union, a producer, on an interruptible basis, pursuant to a transportation agreement dated August 31, 1988. Williams explains that service commenced September 12, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-198-000. Williams further explains that the peak day quantity would be 50,000 MMBtu, the average day quantity would be 20,000 MMBtu, and that the annual quantity would be 18,250,000 MMBtu. Williams explains that it would receive natural gas for Union's account at points located in Wyoming and Oklahoma and would redeliver the gas for Union's account at points in Kansas, Texas, and Wyoming.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP89-198-000]

Take notice that on November 15, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-198-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Carnation Company (Carnation), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Carnation, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 9, 1988. Williams explains that service commenced September 30, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-464-000. Williams further explains that the peak day quantity would be 650 MMBtu, the average day quantity would be 500 MMTtu, and that the annual quantity would be 237,250 MMBtu. Williams explains that it would receive natural gas for Carnation's account at points located in Kansas and Oklahoma and would redeliver the gas for Carnation's account at points in Missouri.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Company

[Docket No. CP89-212-000]

Take notice that on November 16, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251-1642 filed in Docket No. CP89-212-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act for Mobil Oil Exploration & Producing Southeast, Inc. (Mobil), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Mobil, a producer, pursuant to a transportation agreement dated March 8, 1988. Trunkline explains that service commenced September 15, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5837. Trunkline further explains that the peak day quantity would be 25,000 dekatherms, the average daily quantity would be 17,000 dekatherms, and that the annual quantity would be 6,205,000 dekatherms. Trunkline explains that it would receive natural gas for Mobil's account at 207 points of receipt in Illinois, Louisiana, Tennessee, Texas, and offshore Louisiana. Trunkline states that it would redeliver natural gas for Mobil's account at existing interconnections with (1) Consumers Power Company in Elkhart County, Illinois and (2) Panhandle Eastern Pipeline Company in Douglas County, Illinois. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by American National Can Company.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP89-213-000]

Take notice that on November 16, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251-1642 filed in Docket No. CP89-213-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act for Loutex Energy, Inc. (Loutex), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Loutex, a marketer, pursuant to a transportation agreement dated July 19, 1988. Trunkline explains that service commenced September 21, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-604. Trunkline further explains that the peak day quantity would be 50,000 dekatherms, the average daily quantity would be 20,000 dekatherms, and that the annual quantity would be 7,300,000 dekatherms. Trunkline explains that it would receive natural gas for Loutex's account at 245 points of receipt in Illinois, Tennessee, Louisiana, Texas and offshore Louisiana and Texas. Trunkline states that it would redeliver natural gas for Loutex's account at an existing interconnection with Panhandle Eastern Pipeline Company located in Douglas County, Illinois. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by 10 specified local distribution companies.

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Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP89-209-000]

Take notice that on November 16, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251-1642 filed in Docket No. CP89-209-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act for Exxon Corporation (Exxon), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Exxon, a shipper and marketer, pursuant to a transportation agreement dated September 16, 1988. Trunkline explains that service commenced September 20, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-320. Trunkline further explains that the peak day quantity would be 200,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. Trunkline explains that it would receive natural gas for Exxon's account at 245 points of receipt in Illinois, Tennessee, Louisiana, Texas and offshore Louisiana and Texas. Trunkline states that it would redeliver natural gas for Exxon's account at an existing interconnection with ANR Pipeline Company located at Patterson, St. Mary Parish, Louisiana. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by Battle Creek Gas Company, Semco Energy Services, and Southeastern Michigan Gas Company.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Williams Natural Gas Company

[Docket No. CP 89-169-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-169-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Conoco, Inc. (Conoco), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Conoco, a producer, on an interruptible basis, pursuant to a transportation agreement dated September 16, 1988. Williams explains that service commenced September 21, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-252-000. Williams further explains that the peak day quantity would be 50,000 MMBtu, the average day quantity would be 25,000 MMBtu, and that the annual quantity would be 18,250,000 MMBtu. Williams explains that it would receive natural gas for Conoco's account at points located in Texas and Oklahoma and would redeliver the gas for Conoco's account at points in Kansas, Texas, Oklahoma, and Missouri.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Northwest Pipeline Corporation

[Docket No. CP89-146-000]

Take notice that on November 8, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-146-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service for National Cooperative Refinery Association (National), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated February 25, 1988, as amended, it proposes to transport up to 1,000 MMBtu of natural gas per day for National. Northwest further states that it would provide the transportation service under Rate Schedule TI-1 and that it expects to transport 85 MMBtu on an average day (32,000 MMBtu annually) from existing wells located in the San Juan Basin, La Plata County, Colorado to the Ignacio Plant delivery point located in La Plata, County, Colorado and to the existing interconnects with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico and at Ignacio in La Plata County, Colorado. It is also stated that no construction of new facilities would be required to provide this transportation service. Finally, Northwest advises that the service commenced September 4, 1988, as reported in Docket No. ST89-468-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP89-223-000]

Take notice that on November 16, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-223-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Parker Gas Gathering Company, Inc., a gathering company, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service agreement #T1-21-1693/Ref. #3020, dated June 21, 1988, proposes to transport a maximum daily quantity of 2,060 MMBtu and an annual quantity of 751,900 MMBtu, using existing facilities to provide transportation service pursuant to that amended agreement. It is stated that the executed amended agreement contains the location for the receipt and delivery points in Exhibits A and B. United further states that service commenced September 6, 1988, as reported in Docket No. ST89-390 pursuant to § 284.223(a) of the Regulations.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket Nos. CP89-138-000,[1] CP89-139-000, and CP89-140-000]

Take notice that on November 7, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide interruptible transportation service for various shippers under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests which are on file with the Commission and open to public inspection.

Panhandle indicates that it would provide the service for each shipper as provided by an executed transportation agreement. In each case Panhandle indicates that no new facilities would be required to implement the service. In addition, Panhandle states that in each case it would charge rates and abide by the terms and conditions provided by its Rate Schedule PT.

Panhandle has provided other information applicable to each transaction, including the identity of the shipper, the proposed term, the peak day, average day, and annual volumes, and the respective docket numbers and termination dates related to the 120-day transactions initiated under § 284.223 of the Commission's Regulations, which is attached as an appendix.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

[1] These dockets are not consolidated.

Appendix to Panhandle Eastern Pipe Line Co. Filing

Docket No.	Proposed term	Shipper	Volumes (Dt) peak day average day annual	Related ST Docket No.	Expiration date 120-day transaction
CP89-138-000	Month to Month	National Steel Corporation.	69,000 52,000 18,980,000	88-5850	01-13-89
CP89-139-000	Month to Month	Mountain Iron and Supply Company.	100 30 10,950	88-5859	01-19-89
CP89-140-000	Month to Month	Loutex Energy, Incorporated.	80,000 25,000 9,125,000	88-5877	01-16-89

12. Williams Natural Gas Company

[Docket No. CP89-165-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP-165-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for The Quaker Oats Company (Quaker), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Quaker, and end user, on an interruptible basis, pursuant to a transportation agreement dated August 25, 1988. Williams explains that service commenced September 15, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-336-000. Williams further explains that the peak day quantity would be 1,000 MMBtu, the average day quantity would be 300 MMBtu, and that the annual quantity would be 365,000 MMBtu. Williams explains that it would receive natural gas for Quaker's account at points located in Wyoming, Colorado, Kansas, Texas and Oklahoma and would redeliver the gas for Quaker's account at points in Kansas.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27261 Filed 11-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-170-000, et al.]

Williams Natural Gas Co. et al.; Natural Gas Certificate Filings

November 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89-170-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-170-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Spectrum Natural Gas Company (Spectrum), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Spectrum, a marketer, on an interruptible basis, pursuant to a transportation agreement dated August 30, 1988. Williams explains that service commenced September 9, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-143-000. Williams further explains that the peak day quantity would be 3,333 MMBtu, the average day quantity would be 3,333 MMBtu, and that the annual quantity would be 1,216,545 MMBtu. Williams explains that it would receive natural gas for Spectrum's account at points located in Kansas and Oklahoma and would redeliver the gas for Spectrum's account at points in Oklahoma.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP89-167-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa,

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Oklahoma 74101, filed in Docket No. CP89–167–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Energy Dynamics, Inc. (Energy Dynamics), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Energy Dynamics, a marketer, on an interruptible basis, pursuant to a transportation agreement dated September 15, 1988. Williams explains that service commenced September 16, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–463–000. Williams further explains that the peak day quantity would be 45,000 MMBtu, the average day quantity would be 30,000 MMBtu, and that the annual quantity would be 16,425,000 MMBtu. Williams explains that it would receive natural gas for Energy Dynamics' account at points located in Kansas and Oklahoma and would redeliver the gas for Energy Dynamics' account at points in Kansas and Missouri.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP89–161–000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–161–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Archer Daniels Midland Company (ADM), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for ADM, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 25, 1988. Williams explains that service commenced September 12, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–156–000. Williams further explains that the peak day quantity would be 25,000 MMBtu, the average day quantity would be 1,500 MMBtu, and that the annual quantity would be 9,125,000 MMBtu. Williams explains that it would receive natural gas for ADM's account at points located in Oklahoma, Kansas, Missouri, Wyoming, and Texas and would redeliver the gas for ADM's account at points in Kansas and Missouri.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP89–163–000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P. O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–163–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for American Central Gas Marketing Company (American), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for American, a marketer, on an interruptible basis, pursuant to a transportation agreement dated August 29, 1988. Williams explains that service commenced September 16, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–158–000. Williams further explains that the peak day quantity would be 73,000 MMBtu, the average day quantity would be 73,000 MMBtu, and that the annual quantity would be 26,645,000 MMBtu. Williams explains that it would receive natural gas for American's account at points located in Wyoming, Colorado, Kansas, Missouri, Texas, and Oklahoma and would redeliver the gas for American's account at points in Kansas, Texas, and Wyoming.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP89–164–000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P. O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–164–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Williams Gas Marketing Company (WGM), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for WGM, a marketer, on an interruptible basis, pursuant to a transportation agreement dated September 14, 1988. Wiliam s explains that service commenced September 17, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–251–000. Williams further explains that the peak day quantity would be 21,900 MMBtu, the average day quantity would be 21,900 MMBtu, and that the annual quantity would be 7,993,500 MMBtu. Williams explains that it would receive natural gas for WGM's account at points located in Wyoming, Colorado, Kansas, Texas, and Oklahoma and would redeliver the gas for WGM's account at points in Kansas, Missouri, and Oklahoma.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP89–201–000]

Take notice that on November 15, 1988, Wiliams Natural Gas Company (Williams), P. O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–201–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Flexel, Inc. (Flexel), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Flexel, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 16, 1988. Williams explains that service commenced September 7, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–144–000. Williams further explains that the peak day quantity would be 4,300 MMBtu, the average day quantity would be 4,000 MMBtu, and that the annual quantity would be 1,569,500 MMBtu. Williams explains that it would receive natural gas for Flexel's account at points located in Kansas and Oklahoma and would redeliver the gas for Flexel's account at points in Kansas.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP89–202–000]

Take notice that on November 15, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–202–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Entrade Corporation (Entrade), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Entrade, a marketer, on an interruptible basis, pursuant to a transportation agreement dated August 26, 1988. Williams explains that service commenced September 10, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–465–000. Williams further explains that the peak day quantity would be 35,000 MMBtu, the average day quantity would be 4,400 MMBtu, and that the annual quantity would be 12,775,000 MMBtu. Williams explains that it would receive natural gas for Entrade's account at points located in Kansas, Texas, Wyoming, and Oklahoma and would redeliver the gas for Entrade's account at points in Kansas, Texas, and Missouri.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Williams Natural Gas Company

[Docket No. CP89–203–000]

Take notice that on November 15, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–203–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for The Quaker Oats Company (Quaker), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Entrade, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 25, 1988. Williams explains that service commenced September 15, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–337–000. Williams further explains that the peak day quantity would be 2,000 MMBtu, the average day quantity would be 1,000 MMBtu, and that the annual quantity would be 730,000 MMBtu. Williams explains that it would receive natural gas for Quaker's account at points located in Kansas, Texas, Wyoming, Colorado, and Oklahoma and would redeliver the gas for Quaker's account at points in Kansas.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP89–204–000]

Take notice that on November 15, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–204–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Enron Gas Marketing, Inc. (Enron), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Enron, a marketer, on an interruptible basis, pursuant to a transportation agreement dated September 1, 1988. Williams explains that service commenced September 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–466–000. Williams further explains that the peak day quantity would be 290,000 MMBtu, the average day quantity would be 105,850,000 MMBtu. Williams explains that it would receive natural gas for Enron's account at points located in Kansas, Missouri Texas, Wyoming, Colorado, and Oklahoma and would redeliver the gas for Enron's account at points in Kansas and Texas.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Williams Natural Gas Company

[Docket No. CP89–179–000]

Take notice that on November 15, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–179–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for NGL Production Company (NGL), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for NGL, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 30, 1988. Williams explains that service commenced September 30, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–465–000. Williams further explains that the peak day quantity would be 250,000 MMBtu, the average day quantity would be 100,000 MMBtu, and that the annual quantity would be 91,250,000 MMBtu. Williams explains that it would receive natural gas for NGL's account at points located in Kansas, Colorado, Texas, Wyoming, and Oklahoma and would redeliver the gas for NGL's account at points in Kansas, Texas, Wyoming, and Oklahoma.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27262 Filed 11–23–88; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of September 23 Through September 30, 1988

During the Week of September 23 through September 30, 1988, the apeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

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Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

November 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 23 through 30, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 20, 1988	ARCO/Desmond R. Jones Oil Co., Hardin, KY.	RR304-1	Request for modification/rescission. If Granted: The September 15, 1988 Decision and Order (Case No. RF304-1) would be modified and the firm's application in the Atlantic Richfield refund proceeding would be granted.
Sept. 26, 1988	FEDCO, Inc., Santa Fe Springs, CA	RR272-23	Request for modification/rescission. If Granted: The August 25, 1988 Decision and Order issued to FEDCO, Inc. would be rescinded and the firm would receive a refund in the crude oil refund proceeding.
Do	Stock Equipment Co., Chagrin Falls, OH.	KFA-0222	Appeal of an information request denial. If Granted: The September 12, 1988 Freedom of Information request denial issued by the DOE Albuquerque Operations Office would be rescinded and Stock Equipment Company would receive access to several documents relating to RI Solicitation No. PK 10199GM.
Sept. 27, 1988	Eastern Aviation Fuels, Inc., New Bern, NC.	RR272-13	Request for modification/rescission. If Granted: The August 12, 1988, Decision and Order issued to Eastern Aviation Fuels, Inc. (Case No. RF272-55990), would be rescinded and the firm's application in the crude oil refund proceeding would be granted.
Sept. 28, 1988	Texaco Inc., Washington, DC	KEF-0119	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the August 29, 1988 consent order which the DOE entered into with Texaco Inc.

REFUND APPLICATIONS RECEIVED

[Week of September 23 through 30, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Sept. 23, 1988, through Oct. 1, 1988.	Crude Oil refund applications received.	RF272-74922 thru RF272-74943
Do	Atlantic Richfield Co., applications received.	RF304-6150 thru RF304-6463
Do	Exxon Corp., applications received.	RF307-5690 thru RF307-5875
Do	Murphy Oil, applications received.	RF309-1 thru RF309-51
Do	Total Petroleum, applications received.	RF310-209 thru RF310-302
Sept. 26, 1988	Eighty-eight Oil Co..	RF312-2
Do	Reed William Smith, Jr..	RF300-10528
Do	....do	RF300-10529
Do	....do	RF300-10530
Do	....do	RF300-10531
Sept. 27, 1988	Floodwood Gas Company, Inc..	RF139-185

REFUND APPLICATIONS RECEIVED—Continued

[Week of September 23 through 30, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Do	Town of Westby Propane System.	RF139-186
Do	The Carpet Store Cleaning, Inc..	RF300-10532
Do	Murphy Oil Co.	RF300-10533
Do	McMillan Spur Station.	RF300-10534
Do	Stewart's Union 76.	RF300-10536
Do	Murphy Oil Co.	RF300-10536

[FR Doc. 88-27264 Filed 11-23-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of October 14 Through October 21, 1988

During the Week of October 14 through October 21, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from an earlier list have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

November 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 14 through 21, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 11, 1988	Amoco/South Dakota, Pierre, SD	RM251-134	Request for modification/rescission. If Granted: The November 24, 1987 Decision and Order issued to South Dakota regarding the State's plan for expenditures of Amoco refund monies would be modified.
Oct. 17, 1988	Boise Cascade Corp., Philadelphia, PA.	RR272-16	Request for modification/rescission. If Granted: The July 14, 1987 Decision and Order issued to the Boise Cascade Corporation (Case No. RF272-300) would be rescinded and the firm would be granted a refund in the crude oil refund proceeding.
Do	Burlington Industries, Inc., Philadelphia, PA.	RR272-17	Request for modification/rescission. If Granted: The November 2, 1987 Decision and Order issued to Burlington Industries, Inc. (Case No. RF272-2977) would be rescinded and the firm would be granted a refund in the crude oil refund proceeding.
Do	Tennessee River Pulp & Paper, Philadelphia, PA.	RR272-18	Request for modification/rescission. If Granted: The November 3, 1987 Decision and Order issued to Tennessee River Pulp & Paper would be rescinded and the firm would be granted a refund in the crude oil refund proceeding.
Oct. 20, 1988	Jeff Nesmith, Washington, DC	KFA-0225	Appeal of an information request denial. If Granted: The Jeff Nesmith of the Washington Bureau of Cox Newspapers would receive access to information relating to the Secretary of Energy, John Herrington.
Oct. 21, 1988	Kenneth P. Brooks, Clearwater, FL	KFA-0226	Appeal of an information request denial. If Granted: The September 29, 1988 Freedom of Information Request Denial issued by the Director of Personnel would be rescinded and Kenneth P. Brooks would receive access to all documentation and information that may pertain to Mr. Brooks' non-selection for a specific position.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
June 5, 1987	Taylor's Propane, Inc..	RF139-193
Oct. 17, 1988	John Rupp Oil Co., Inc.	RF310-310
Do	R.M. Mays Oil Co.	RF310-311
Do	Lawsons APCO	RF310-312
Do	Clare's Total	RF310-313
Do	Quality Oil Co.	RF310-314
Oct. 18, 1988	Don Loftis	RF139-192
Oct. 20, 1988	Vickers/Arizona	RQ1-483
Do	National Helium-Arizona.	RQ3-484
Oct. 14, 1988 thru Oct. 21, 1988.	Gulf oil refund, applications received.	RF300-10556 thru RF300-10566
Do	Crude oil refund, applications received.	RF272-74989 thru RF272-75006
Do	Atlantic Richfield Co., applications received.	RF304-6782 thru RF304-6953
Do	Exxon refund, applications received.	RF307-6131 thru RF307-6305
Do	Murphy refund, applications received.	RF309-348 thru RF309-438

[FR Doc. 88-27265 Filed 11-23-88; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period of October 17 Through November 4, 1988

During the period of October 17 through November 4, 1988, the notices of objection to the proposed remedial order listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

November 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Oasis Petroleum Corporation, Culver City, CA

[KRO-0700 Motor Gasoline]

On October 31, 1988, Lucky Stores, Inc., P.O. Box 11675, Tampa, Florida 33680 filed a Notice of Objection to the Proposed Remedial Order (PRO) which the DOE issued to Oasis Petroleum Corporation (Oasis), a Chapter 11 Debtor, on September 16, 1988. The Trustee for the Estate in Bankruptcy of Oasis Petroleum Corporation, P.O. Box 3216, Culver City, CA 90230, and Research Fuels, Inc., P.O. Box 8229, Horseshoe Bay, Texas, 78654 each filed a Notice of Objection to the PRO on November 1, 1988. In the PRO the DOE found that during the period March 1, 1979 to January 27, 1981, the firm violated six provisions of the DOE regulations. The DOE asserts that Oasis violated 10 CFR 205.202 by engaging in a course of conduct which resulted in the circumvention of the allocation regulations. Specifically, DOE found that Oasis sold motor gasoline to purchasers who did not have an allocation entitlement to that gasoline. These same sales triggered a violation of 10 CFR 211.9(a) according to the DOE. In addition, the DOE claims that Oasis violated 10 CFR 210.62(b) by selling gasoline to purchasers without allocation entitlements to that product while simultaneously depriving others with allocation entitlements to that gasoline of their product. The DOE further asserts that Oasis lost its allocation entitlements for certain of its retail gasoline stations by failing to maintain an ongoing business at these stations. This action, maintains DOE, violated 10 CFR 211.106(f) and 211.11(a). Finally, the DOE contends that Oasis violated 10 CFR 211.13(f) by failing to certify downward its allocation entitlements in certain instances.

To remedy these violations, the DOE directs Oasis to disgorge $10,139,702.17 in profits from its transactions, plus interest until January 22, 1986, the date Oasis filed its Bankruptcy Petition.

[FR Doc. 88-27266 Filed 11-23-88; 8:45 am]

BILLING CODE 6450-01-M

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ENVIRONMENTAL PROTECTION AGENCY

[FRL 3480-9]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that between May 1, 1988 and September 30, 1988, the United States Environmental Protection Agency (EPA), Region II Office, issued three final determinations, in New York State Department of Environmental Conservation (NYSDEC) issued seven final determinations and the New Jersey Department of Environmental Protection (NJDEP) issued two final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21. This notice also announces six final determinations that were made between May 27, 1987 and April 13, 1988 that were inadvertently omitted from Region II's previous Federal Register notices on PSD final actions.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTAL INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Riva, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 505, New York, New York, 10278, (212) 264-4711.

SUPPLEMENTAL INFORMATION: Pursuant to the PSD regulations, the EPA Region II, the NYSDEC and the NJDEP have made final determinations relative to the sources listed below:

Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Prime Energy Limited Partnership	Elmwood Park, New Jersey	Construction of a cogeneration facility consisting of a 650 MMBTU per hour heat input gas turbine and a 300,000 gallon Number 2 fuel oil storage tank.	NJDEP	PSD Permit Approval	5/26/87
General Mills, Inc.	Buffalo, New York	Construction of a cogeneration facility with a 77 MMBTU heat input.	NYSDEC	PSD Non-Applicability Determination	10/07/87
Dunlop Tire	Tonawanda, New York	Construction of an incinerator to control volatile organic compounds from an existing and a new source.	NYSDEC	PSD Non-Applicability Determination	12/23/87
American National Can	Perinston, New York	Addition of a catalytic afterburner to an existing inside spray drying oven.	NYSDEC	PSD Non-Applicability Determination	12/23/87
Warren Energy Resource Co., L.P.[1]	Oxford, New Jersey	Construction of a resource recovery facility consisting of two 200 tons per day municipal waste incinerators and a package boiler.	NJDEP	PSD Permit Approval	2/1/88
Combustion Engineering (Huntington Resource Recovery Systems, Inc.).	Huntington, New York	Construction of a 750 tons per day municipal solid waste mass buring resource recovery facility.	NYSDEC	PSD Applicability Determination	4/13/88
Commonwealth Oil Refining Co.	Penuelas, Puerto Rico	Reactivation of two petrochemical plants	EPA Region II	PSD Non-Applicability Determination	5/04/88
Kamine Carthage Cogeneration Co., Inc.	Carthage, New York	Construction of a cogeneration facility consisting of a natural gas-fired stationary gas tubrine.	NYSDEC	PSD Applicability Determination	5/04/88
Nassau District Energy Corp.	Uniondale, New York	Construction of a 57 NW cogeneration facility	NYSDEC	PSD Applicability Determination	5/04/88
Martin Marietta Aluminum Properties Inc.	St. Croix, U.S. Virgin Islands	Conversion of an alumina refinery to an industrial park.	EPA Region II	PSD Permit Revision Approval	5/10/88
Kamine South Glens Falls	South Glens Falls, New York	Construction of a 50 MW combine cycle gas turbine	NYSDEC	PSD Applicability Determination	5/25/88
Camden County Energy Recovery Associates.	Camden City, New Jersey	Construction of four 350 tons per day municipal solid waste incinerators, a 20,000 gallon fuel oil storage tank and a package boiler.	NJDEP	PSD Permit Approval	6/06/88
Norlite Corporation	Cohoes, New York	Construction of a new 8.37 MMBTU per hour steam atomization boiler.	NYSDEC	PSD Non-Applicability Determination	6/08/88
Harbert/Triga Company	Ogdensubrg, New York	Construction of a 350 tons per day nonhazardous solid waste mass burning resource recovery facility (known as the St. Lawrence County Resource Recovery Facility).	NYSDEC	PSD Applicability Determination	6/15/88
Eagle Point Cogeneration Partnership	West Deptford, New Jersey	Construction of a cogeneration facility	NJDEP	PSD Non-Applicability Determination	8/24/88
United Development Group-Niagara, Inc.	Niagara Falls, New York	Construction of a coalfired steam generating facility	NYSDEC	PSD Applicability Determination	8/24/88
Puerto Rican Cement Co., Inc.	Ponce, Puerto Rico	Conversion of kiln #6 from a wet cement manufacturing process to a dry process.	EPA Region II	PSD Applicability Determination	8/30/88
Nassau County Department of Public Works.	Cedar Creek, New York	Replacement of 5 multiple fuel reciprocating engines with 5 new larger engines.	NYSDEC	PSD Non-Applicability Determination	9/26/88

[1] On June 13, 1986, Warren Energy Co., L.P. was issued a PSD permit by the New Jersey Department of Environmental Protection for a resource recovery facility to be located at Oxford, New Jersey. This permit contained emissions limits for all PSD-affected pollutants except for sulfur dioxide (SO_2) because review of air quality-related information indicated non-attainment of the National Ambient Air Quality Standards for SO_2 at the proposed site. Therefore, PSD requirements that were applicable to attainment areas were not applicable to this project for SO_2. The PSD permit issued could not become effective until the area was redesignated from attainment to non-attainment for this pollutant. The NJDEP request for non-attainment redesignation was approved by EPA and became effective on February 1, 1988.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office, Office of Policy and Management, Permits Administration Branch—Room 505, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233-0001.

NJDEP Actions

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering & Technology, 401 East State Street, CN 027, Trenton, New Jersey 08625.

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: November 8, 1988.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 88-27205 Filed 11-23-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3481-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared November 7 Through 11, 1988

Availability of EPA comments prepared November 7, 1988 through November 11, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D-AFS-K65118-CA, Rating EO2, Grider Fire Recovery Project, 1987 August thru October Grider/Lake Fire Resource Management Plan, Klamath National Forest, Siskiyou County, CA.

Summary: EPA expressed environmental objections because the preferred alternative may result in increased erosion and sediment loading from large scale timber salvage activities. EPA noted that other alternatives were less environmentally damaging to important anadromous fisheries resources.

Note: The above summary should have appeared in the 11-10-88 FR Notice.

Final EISs

ERP No. F-BLM-L70009-AK, Central Arctic Management Area WSAs' Wilderness Recommendations, Designation or Nondesignation, Brook Range, North Slope Borough, AK.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. FS-FRC-K03018-00, Mojave, Kern River, El Dorado and Transwestern Natural Gas Pipeline Project, Construction, Operation and Maintenance, Licenses and 404 Permit, Alternative Modifications, AZ, CA, WY, NV, UT, TX, CO and NM.

Summary: EPA expressed its continuing environmental objections that the interstate alternatives may have significant impacts to water quality, wetland and riparian habitats, and endangered species. EPA strongly recommended that the Federal Energy Regulatory Commission not certify the interstate alternative(s) due to their significant, adverse environmental impacts and the lack of a demonstration of a change in natural gas service these alternatives will provide.

ERP No. FS-FRC-K03018-00, Mojave, Kern River, El Dorado and Transwestern Natural Gas Pipeline Project, Construction, Operation and Maintenance, Licenses and 404 Permit, Alternative Modifications, AZ, CA, WY, NV, UT, TX, CO and NM.

Summary: EPA expressed its continuing environmental objections that the interstate alternatives may have significant impacts to water quality, wetland and riparian habitats, and endangered species. EPA strongly recommended that the Federal Energy Regulatory Commission not certify the interstate alternative(s) due to their significant, adverse environmental impacts and the lack of a demonstration of a change in natural gas service these alternatives will provide.

ERP No. F-NPS-L61176-AK, Glacier Bay National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: EPA's concern on the draft EIS have been resolved based on additional information presented in this document.

Regulations

ERP No. R-MMS-A02226-00, 30 CFR Parts 256 and 281; Outer Continental Shelf (OCS) Minerals and Right-of-Way Management, General Leasing of Minerals Other Than Oil, Gas, and Sulphur in (OCS) (53 FR 31424).

Summary: EPA's concerns are (1) that MMS be able to require advoidance of biological resources if postlease studies indicate unavoidable conflicts between the resource and the mineral deposit; (2) adequate data should be available for lease sale EISs and postlease NEPA documents and (3) that leasing larger tract when there is little mineral and biological resource information does not appear to be an environmentally conservative approach.

ERP No. R-MMS-A67018-00, 30 CFR Part 282; Operations in the Outer Continental Shelf for Mineral other than Oil, Gas and Sulphur (53 FR 31442).

Summary: EPA's concerns are (1) strengthening the requirements of baseline data where none exist and (2) monitoring by itself does not preclude the possibility of irreparable harm occurring while the authorized activities are conducted.

Dated: November 21, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-27273 Filed 11-23-88; 8:45 am]

BILLING CODE 4310-70-M

[ER-FRL-3481-6]

Environmental Impact Statements: Availability of Environmental Impact Statements Filed November 14, Through November 18, 1988

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

EIS No. 880274, Final, COE, TX, Galveston, Bay Area Navigation Improvements, Houston Ship and Galveston Channels, Funding and Implementation, Galveston and Harris Counties, TX, Due: December 27, 1988, Contact: Charles R. Harbaugh (409) 766-3044

EIS No. 880381, FSuppl, COE, CA, Santa Ana River Mainstem and Santiago

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Creek Multipurpose Flood Control Project, Additional Alternatives and Updated Information, Riverside, Orange and San Bernardino Counties, CA, Due: December 27, 1988, Contact: Dee Gonzales (213) 894–7053

EIS No. 880382, Final, FRC, REG, Regulations Governing Independent Power Producers (RM88–4–000) and Regulations Governing Bidding Programs (RM88–5–000), Implementation, Due: December 27, 1988, Contract: Roland Wentworth (202) 357–5200

EIS No. 880383, DRevised, FAA, CA, Fremont General Aviation Reliever Airport Development Approval, Alameda and Fremont Counties, CA, Due: January 23, 1989, Contact: Howard S. Yoshioka (213) 297–1250

EIS No. 880384, Final, UAF, NC, Seymour Johnson AFB, F–4 to F–15E Aircraft Conversion Program, Site Selection and Implementation, Wayne County, NC, Alternative Sites are Cannon AFB, NM; Holloman AFB, NM; Mountain Home AFB, ID and Nellis AFB, NV, Due: January 9, 1989, Contact: Alton Chavis (804) 764–7844

EIS No. 880385, Final, COE, AL, Bayou La Batre Navigation Channel Improvements, Implementation, Mobile County, AL, Due: January 9, 1989, Contact: Susan Ivester Rees (205) 690–2724

EIS No. 880386, DSuppl, COE, OR, WA, McNary Lock and Dam Project, Juvenile Fish Loading and Holding Facility Expansion, Implementation, Umatilla County, OR and Benton County, WA, Due: January 9, 1989, Contact: Robert Palmer (509) 522–6927

EIS No. 880387, Final, AFS, CA, NV, Lake Tahoe Basin Management Unit National Forest, Land and Resource Management Plan, Implementation, El Dorado, Placer, and Alpine Counties, CA and Washoe and Douglas Counties, NV, Due: December 27, 1988, Contact: Robert Harris (916) 573–2600

EIS No. 880388, Draft, FHW, TN, Kirby Parkway Construction, Split Oak Drive to Stage Road and Sycamore View Road Extension, Mullins Station Road to Kiry Parkway, Funding City of Memphis, Shelby County, TN, Due: January 9, 1989, Contact: Dennis C. Cook (615) 736–5394

EIS No. 880389, DSuppl, BLM, WY, Whiskey Mountain amd Dubois Badlands WSAs, Wilderness Recommendations, Designation or Nondesignation, Lander Resource Area, Rawlins District, Fremont County, WY, Due: February 22, 1989, Contact: Renee McCray (202) 653–8824

Dated: November 21, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–27272 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51719; FRL–3481–9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Office of Pesticides and Toxic Substances Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of nineteen such PMNs and provides a summary of each.

DATES: *Close of Review Periods:*

P 89–69, 89–70, 89–71, 89–72, January 25, 1989.

P 89–73, 89–74, 89–75, 89–76, 89–77, 89–78, 89–79, 89–80, January 28, 1989.

P 89–81, 89–82, 89–83, January 29, 1989.

P 89–84, January 29, 1989.

P 89–85, January 30, 1989.

P 89–86, 89–87, January 31, 1989.

Written Comments by:

P 89–69, 89–70, 89–71, 89–72, December 26, 1988.

P 89–73, 89–74, 89–75, 89–76, 89–77, 89–78, 89–79, 89–80, December 29, 1988.

P 89–81, 89–82, 89–83, December 30, 1988.

P 89–84, December 29, 1988.

P 89–85, December 31, 1988.

P 89–86, 89–87, January 1, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS–51719]" and the specific PMN number should be sent to: Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room 201 East Tower, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89–69

Manufacturer. Confidential.
Chemical. (G) Acrylourethane.
Use/Production. (G) Coatings for open nondispersive use. Prod. range: Confidential.

P 89–70

Manufacturer. Confidential.
Chemical. (G) Acid neutralized amine modified epoxy resin.
Use/Production. (G) Open use industrial paint product. Prod. range: 200,000–3,000,000 kg/yr.

P 89–71

Manufacturer. Confidential.
Chemical. (G) Acid functionalized amine modified epoxy resin.
Use/Production. (G) Open use industrial paint product. Prod. range: 200,000–3,000,000 kg/yr.

P 89–72

Manufacturer. Confidential.
Chemical. (G) Acid neutralized amine modified epoxy resin.
Use/Production. (G) Open use industrial paint product. Prod. range: 200,000–3,000,000 kg/yr.

P 89–73

Importer. Confidential.
Chemical. (G) Urethane acrylate.
Use/Import. (G) Polymer component industrial coating.
Import range: Confidential.

P 89–74

Importer. Confidential.
Chemical. (G) Polyester acrylate.
Use/Import. (G) Polymer component for specialty industrial coatings. Import range: Confidential.

P 89–75

Importer. Confidential.
Chemical. (G) Urethane acrylate.
Use/Import. (G) Polymer component for specialty industrial coatings. Import range: Confidential.

P 89–76

Importer. Confidential.
Chemical. (G) Polyester acrylate.
Use/Import. (G) Polymer component for specialty industrial coatings. Import range: Confidential.

P 89–77

Importer. Confidential.
Chemical. (G) Polyester acrylate.
Use/Import. (G) Polymer component for specialty industrial coatings. Import range: Confidential.

P 89–78

Manufacturer. Confidential.
Chemical. (G) Triphenylmethane, triamino derivative, free base.
Use/Production. (G) Colorant for link. Prod. range: Confidential.

P 89–79

Manufacturer. Confidential.
Chemical. (G) Triphenylmethane, triamino derivative, oleate.
Use/Production. (G) Colorant for ink. Prod. range: Confidential.

P 89–80

Manufacturer. Minnesota Minning and Manufacturing Co. 3M
Chemical. (G) Cycloaliphatic polyether polyurethane.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–81

Importer. Confidential.
Chemical. (G) Copolymer of acrylonitrile and 3 kinds of acrylates.
Use/Import. (G) Coating solution for lithographic printing plates. Import range: Confidential.

P 89–82

Manufacturer. Hoechst Celanese Corp.
Chemical. (G) Trisubstitute naphthalene.
Use/Production. (S) Chemical intermediate. Prod. range: 1,000–5,000 kg/yr.

P 89–83

Manufacturer. Hoechst Celanese Corp.
Chemical. (G) Trisubstituted naphthalene.
Use/Production. (G) Chemical intermediate. Prod. range: 1,000–5,000 kg/yr.

P 89–84

Manufacturer. Confidential.
Chemical. (G) Aluminumoxide sulfate bland with aluminum sulfate.
Use/Production. (G) Coagulant for industrial waste water treatment. Prod. range: 250,000–2,500,000 kg/yr.

P 89–85

Importer. Basf Corporation Chemical Division.
Use/Import. (G) Polymer component for specialty industrial coatings. Import range: Confidential.

P 89–86

Manufacturer. The Chitin Company, Inc.
Chemical. (S) Chitosan (pre-polymer); (75–80% deacetylated); glycoxylic acid.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data: Acute oral toxicity: LD 50 g/kg species (RATS).

P 89–87

Manufacturer. The Chitin Company, Inc.
Chemical. (S) Chitochel (pre-polymer; epichlorohydrin.
Use/Production. (S) Metal chelation for use in water. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5 g/kg species (Rats).

Date: November 17, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–27296 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59857; FRL–3481–8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Office of Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 89–19, November 23, 1988.

Y 89–20, 89–21, 89–22, November 24, 1988.

Y 89–23, November 27, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89–19

Manufacturer. Confidential.
Chemical. (G) Polyether/polycarbonate.
Use/Production. (G) Urethane coating. Prod. range: Confidential.

Y 89–20

Importer. MTC America Inc.
Chemical. (G) Polyimide.
Use/Import. (G) Resins. Import range: Confidential.

Y 89 21

Importer. Mitsui Toatsy Chemicals America.
Chemical. (S) (2,2-bis(4-hydropropoxyl)propane, isophthalic acid neopentyl glycol trimethylol dimethyl terephthalenate isophorone diisocyanate.
Use/Import. (S) Toner binder. Import range: Confidential.
Toxicity Dota. Acute oral toxicity: LD50 5,000 mg/kg species(Rats).

Y 89–22

Importer. Mitsui Toatsu Chemicals America.
Chemical. (S) 2,2-Bis(4-[2-hydroxypropoxyl)phenyl)propane polymer with isophtalic acid neopentylglycol teimethyrol propane and isophorone diisocyanate.
Use/Import. (S) Toner binder. Import range: 500–5,000 kg/yr.

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Y 89-23

Manufacturer. Minnesota Mining and Manufacturing Co.

Chemical. (S) 2-propenoic acid; isooctyl-2-propenoate; octadecyl-2-methyl-2-propenoate; hexadecyl-2-methyl-2-propenoate; eisosyl methacrylate; benzoyl peroxide.

Use-Production. (G) Polymeric additive.

Prod. range: Confidential.

Date: November 17, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-27207 Filed 11-23-88; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Order Amending Order Appointing Receiver of the Federal Land Bank of Jackson, and Federal Land Bank Association; Jackson, MI

ACTION: Notice.

SUMMARY: On November 16, 1988, the Order Appointing Receiver of the Federal Land Bank of Jackson, Mississippi, and the Federal Land Bank Association of Jackson, Mississippi, dated May 20, 1988 (53 FR 18812, May 24, 1988), as amended August 4, 1988 (53 FR 30343, August 11, 1988) is hereby further amended, ratified, confirmed and adopted to include certain named officials of REW Enterprises, Inc., in addition to Larry G. Koch, as signatory agent for REW Enterprises, Inc., Receiver of the Federal Land Bank of Jackson, Mississippi, and the Federal Land Bank Association of Jackson, Mississippi. The amended Order authorizes Larry G. Koch, acting in his capacity as Chief Executive Officer of REW Enterprises, Inc., and W.E. Harvey, Billy R. Pendleton, Danny R. Love, George M. Ozan, Norman D. Hornbaker, Herbert W. Hawkins, Joseph F. Lollman and Earl Hall, acting in their capacities as officers and directors of REW Enterprises, Inc. to sign, individually, any and all documents on behalf of the Receiver, and only Larry G. Koch acting in such capacity may delegate his signatory authority, with appropriate administrative controls, to any employee of the institutions-in-Receivership, as he deems appropriate.

Dated: November 18, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-27211 Filed 11-23-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL HOME LOAN BANK BOARD

[FHLBB No. 4365; No. AC-752]

Capital Services Bank, F.S.B.; Final Action Approval of Conversion Application

Date: November 16, 1988.

Notice is hereby given that on November 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Capital Savings Bank, F.S.B., Baltimore, Maryland, for permission to convert to the stock form or organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. and at the Office of the Supervisory Agency at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-27240 Filed 11-23-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Bluestar Line, Limited, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000050-056

Title: Pacific Coast/Australia-New Zealand Tariff Bureau.

Parties:

Blue Star Line, Ltd.
Columbus Line
Associated Container Transportation (Australia) Ltd.
Australia-New Zealand Direct Line
Hyundai Australia Direct Line
Pacific Australia Direct Line

Synopsis: The proposed modification would delete ports and points of Papua, New Guinea and Tonga from the geographic scope of the Agreement. It would also delete Pacific Australia Direct Line as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 207-009973-013

Title: Johnson Scanstar Service Agreement.

Parties:

Blue Star Line Limited
The East Asiatic Company Ltd. A/S
Johnson Line Aktiebolag

Synopsis: The proposed modification would designate one of the parties to provide the central management for the agreement, and changes the shares in the joint service to reflect EAC's financial interest that Johnson Line formerly had.

Agreement No: 207-010137-013

Title: Barber Blue Sea Agreement.

Parties:

Ocean Transport and Trading Plc.
Rederiaktiebolaget Transatlantic
Wilh. Wilhelmsen Limited A/S
Scanbarber A/S

Synopsis: The proposed modification eliminates the restriction that the parties provide the FMC written notice of termination at least 30 days prior to the effective date of such termination. It also deletes the provision that the effectiveness be contingent upon the simultaneous resignation from every other agreement of which the joint service is a member or party.

Agreement No: 203-010459-004

Title: Feeder Vessel Cooperative Working Arrangement.

Parties:

American President Lines, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed modification would extend the term of the Agreement for 15 days, from December 31, 1988, through and including January 15, 1989. The parties have requested a shortened review period.

Agreement No: 207-010943-001

Title: ScanCarriers Agreement.

Parties:

East Asiatic Company Limited A/S
Rederiaktiebolaget Transocean
Wilh. Wilhelmsen Limited A/S
ScanBarber A/S

Synopsis: The proposed modification eliminates the provision that the effectiveness of termination be contingent upon the simultaneous resignation from every other agreement of which the joint service is a member or party.

Agreement No: 203-011193-001

Title: Conbulk Carriers Discussion Agreement.

Parties:

Gearbulk Ltd. d/b/a Gear Bulk Container Services
Star Shipping A/S
Westwood Shipping Lines, Inc.

Synopsis: The proposed modification would delete the Agreement's authority over Canada from the geographic scope of the Agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 21, 1988.

[FR Doc. 88-27185 Filed 11-23-88; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Ocean Quest International/Ocean Spirit Shipping Ltd.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Ocean Quest International/Ocean Spirit Shipping, Ltd., 512 South Peters Street, Suite 202, New Orleans, Louisiana 70130-1629.

Vessel: Ocean Spirit.

Date: November 21, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-27172 Filed 11-23-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Chesapeake Bank Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)() to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Chesapeake Bank Corporation*, Chesapeake, Virginia; to acquire South Norfolk Loan Corporation, Chesapeake, Virginia, and thereby engage in making and servicing loans by a consumer finance company pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27163 Filed 11-23-88; 8:45 am]

BILLING CODE 6210-01-M

Citicorp, New York, NY; Proposal to Underwrite and Deal in Equity Securities to a Limited Extent

Citicorp, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary Citicorp Securities Markets, Inc., New York, New York ("CSMI"), to underwrite and deal in, to a limited degree, all types of equity securities, including, but not limited to, (1) common stock, preferred stock and other ownership interests, issued by a domestic or foreign corporation or other entity, (2) American Depositary Receipts, and (3) options, warrants and other rights issued in connection with (a) any of the foregoing and (b) ineligible securities and bank-eligible securities as defined below, but not including ownership interests in open-end investment companies.

CSMI is currently authorized to underwrite and deal in, to a limited extent, 1-4 family mortgage-related securities, municipal revenue bonds, commercial paper and consumer-receivable-related securities ("ineligible securities"). *Citicorp, J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) ("*Citicorp/Morgan/Bankers Trust*"); *Citicorp*, 73 Federal Reserve Bulletin 619 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987). CSMI is also authorized to underwrite and deal in U.S. government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y ("bank-eligible securities"). 12 CFR 225.25(b)(16).

Citicorp has applied to underwrite and deal in equity securities within the framework of limitations established in the *Citicorp/Morgan/Bankers Trust* Order, including the 5 percent gross revenue limitation. Accordingly, under this application the amount of gross revenue CSMI would receive from the proposed new ineligible underwriting activity and the previously approved ineligible activity would not exceed in the aggregate 5 percent of the total gross revenues of CSMI

The Board has not previously determined that the proposed underwriting and dealing activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board

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approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be proper incident thereto."

Citicorp contends that the proposed activities are closely related to banking because banks have generally engaged in activities that are functionally and operationally similar to underwriting and dealing in equity securities. These services include arranging private placements of securities, overseas underwriting and dealing, underwriting and dealing in bank-eligible and ineligible securities, providing financial advice, investing in equity securities, commercial lending and purchasing and reselling longer term certificates of deposit.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Citicorp contends that approval of the proposal would result in greater convenience for customers, increased competition, lower costs of issuers of equity securities, increased liquidity of equity securities for investors, and would also produce a new source of income for bank holding companies as well as increase the liquidity of their balance sheets, thereby increasing their safety and soundness. Citicorp contends that the proposed activities would not result in adverse effects because Citicorp would conduct the proposed activities within the framework of limitations previously established by the Board in its *Citicorp/Morgan/Bankers Trust* Order. Moreover, Citicorp states that section 23B of the Federal Reserve Act (12 U.S.C. 371c–1), which was enacted after the *Citicorp/Morgan/Bankers Trust* Order was issued, will serve to provide additional protection in this area.

Citicorp contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Citibank, N.A., with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Citicorp states that it would not be "engaged principally" in underwriting and dealing in securities in light of the 5 percent limitation on these activities. *See, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S. Ct. 2830 (1988); and *Securities Industry Association* v. *Board of Governors/Chase*, 847 F.2d 890 (D.C. Cir. 1988).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedures (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 18, 1988.

Board of Governors of the Federal Reserve System, November 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26166 Filed 11–23–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Faye Cargile

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 1988.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Fay Cargile*, Glenwood, Arkansas; to acquire an additional 45.79 percent of the voting shares of Caddo Holding Company, Inc., Glenwood, Arkansas, and thereby indirectly acquire Caddo First National Bank, Glenwood, Arkansas.

Board of Governors of the Federal Reserve System, November 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–27162 Filed 11–23–88; 8:45 am]

BILLING CODE 6210–01–M

FSB of Victor, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 14, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FSB of Victor, Inc.*, Victor, Iowa; to become a bank holding company by acquiring 87.9 percent of the voting shares of Farmers Savings Bank, Victor, Iowa.

Board of Governors of the Federal Reserve System, November 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–27164 Filed 11–23–88; 8:45 am]

BILLING CODE 6210–01–M

SunTrust Banks, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to engage *de novo* through its subsidiary, SunTrust Insurance Company, Atlanta, Georgia, in underwriting and reinsurance of home mortgage redemption insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–27165 Filed 11–23–88; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0027, General Services Administration Acquisition Regulation: Part 546—*Quality Assurance*, GSA Form 1678 and DD Form 250. Information contained on these forms is used by various contract administration and other support offices for quality assurance, acceptance of supplies and services, shipments, and to justify payments.

AGENCY: GSA Acquisition Policy and Regulations (VP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, Genreal Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden

Firms responding, 9,142; responses, 127 per year; average hours per response, .083–.5; burden hours, 267,570.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, 202–566–1224.

Copy of Proposal

A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Building, Washington, DC 20405, or by telephoning 202–535–7691.

Dated: November 17, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88–27228 Filed 11–23–88; 8:45 am]

BILLING CODE 6820–61–M

Agency Information Collection Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0229, *General Services Administration Acquisition Regulation Progress Payment Provision*, Part 552.232–74. The progress payment provision is currently being used to determine whether a prospective contractor is eligible to receive a contract award.

AGENCY: GSA Acquisition Policy and Regulations (VP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden

Firms responding, 30; responses, 1 per year; average hours per response, 1; burden hours, 30.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, 202–523–4765.

Copy of Proposal

A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Builder, Washington, DC 20405, or by telephoning 202–535–7691.

Dated: November 17, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88–27229 Filed 11–23–88; 8:45 am]

BILLING CODE 6820–61–M

[Wildlife Order 169; 7–D–KS–481–E]

Federal Property Resources Service, Melvern Lake, KS; Transfer of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667b), notice is hereby given that

1. By deed from the General Services Administration dated June 20, 1988, the property, consisting of 98.44 acres unimproved, known as Melvern Lake, Kansas, was transferred to the State of Kansas.

2. The above described property was conveyed for the purpose of wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80–537 (16 U.S.C. 667b), as amended by Pub. L. 92–432.

Dated: November 16, 1988.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 88–27227 Filed 11–23–88; 8:45 am]

BILLING CODE 6820–96–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on November 4, 1988.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. National Survey of Family Growth, Cycle, IV, Telephone Reinterview Pretest—New—The National Survey of Family Growth (NSFG), Cycle IV provides longitudinal data on childbearing and reproductive health. This study will recontact respondents of the NSFG in an effort to update key program-relevant statistics, create a longitudinal record for evaluation and analytic studies and collect new data for collaborating agencies. The data will be disseminated through written reports and public use computer tapes. Respondents: Individuals or households; Number of Respondents: 150; Number of Responses Per Respondent 1; Average Burden Per Response: .33; Estimated Annual Burden: 50 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238)

1. Coverage of Oxygen for Use in a Patient's Home—BERC–024–FNC and the Manual Instructions—0938–0422—This information collection provides uniform criteria for determining the use of oxygen for home use as a covered Medicare benefit. The provisions in the regulations and the manual instructions require that the physician provide written documentation to the carrier through the Durable Medical Equipment (DME) supplier. Respondents: Small businesses or organizations; Number of Respondents: 600,000; Frequency of Response: 1; Average Burden Per Response: 15 min.; Estimated Annual Burden: 150,000 hours.

OMB Desk Officer: Allison Herron.

2. Medicaid Quality Control Review Worksheet—0938–0094—State agencies are required to perform quality control reviews for each of the three Federal assistance programs: Aid to Families with Dependent Children (AFDC), Food Stamp (FS), and Medicaid. The Integrated QC Review Worksheet is jointly designed and used by FSA, FNS, and HCFA. The form was designed to collect both case characteristics and quality control data for all quality control reviews in the AFDC, FS, and Medicaid programs.

1st Information Collection Reporting

Number of Respondents—55
Annual Frequency—737
Average Burden Per Response—6.96

2nd Information Collection Recordkeeping

Number of Respondents—55
Annual Frequency—
Average Burden Per Response—3,418.11

Total Burden Hours: 470,161

3. Provider Cost Report Reimbursement Questionnaire—0938–0301—The HCFA–339 must be completed by all providers to ensure proper medicare reimbursement to providers and to minimize subsequent contact between the provider and its intermediary. It is used to gather information necessary to support financial and statistical entries on the cost report. Respondents: Business or other for-profit, Small Businesses or organizations; Number of Respondents: 19,677; Frequency of Response: 1; Average Burden per Response: 20; Estimated Annual Burden: 393,540 hours.

OMB Desk Officer: Allison Herron.

Office of the Secretary

(Call Reports Clearance Officer on 202–245–6511 for copies of package)

1. Teenage Parent Demonstration: Child Care User and Provider Questionnaire—0990–0176—These surveys are part of the impact evaluation of the demonstration and will be administered to a sample of experimental and control group members and their named child care providers. These surveys will provide critical information regarding child care utilization and its relationship to other demonstration outcomes.

Child Care User Interview

Number of Respondents–600
Annual Frequency—1
Average Burden Per Response—.5667

Family Care Provider Interview

Number of Respondents—250
Annual Frequency—1
Average Burden Per Response—.3833
Total Annual Burden: 436.

OMB Desk Officer: Shannon Koss-McCallum.

Social Security Administration

(Call Reports Clearance Officer on 301–965–4149 for copies of package)

1. Certification of Responsibility for Welfare and Care of Child Not in Applicant's Custody—0960–0019—The information is needed to determine if the "In Care" entitlement factor is met. Respondents: Individuals or households; Number of Respondents: 14,000; Frequency of Response: 1; Average Burden Per Response: 10 min.; Estimated Annual Burden: 2,333 hours.

OMB Desk Officer: Justin Kopca.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
SSA: (301) 965–4149
OS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: November 18, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–27235 Filed 11–23–88; 8:45 am]

BILLING CODE 4150–04–M

Family Support Administration

Aid to Families With Dependent Children; State Plan Hearings; Massachusetts

AGENCY: Family Support Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: By designation of the Family Support Administration, a member of the Department Appeals Board will hold a hearing pursuant to 45 CFR Part 213 concerning the Family Support Administration's disapproval of a State plan amendment submitted by the Commonwealth of Massachusetts.

DATE: 9:00 a.m., January 10, 1989.

Place: Room 1211, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203.

Request to Participate: Requests to participate as a party or as amicus curiae must be submitted to the Departmental Appeals Board in the form specified at 45 CFR 213.15 by December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Neil H. Kaufman, Executive Secretary, Departmental Appeals Board, Department of Health and Human Services, Room 451–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Telephone Number (202) 475–0006.

SUPPLEMENTARY INFORMATION: Notice of hearing is hereby given as set forth in the following letter, which has been sent to Massachusetts Department of Public Welfare.

Washington, DC, November 18, 1988.

Eugene B. Benson, Deputy General Counsel, Department of Public Welfare, 180 Tremont Street, 14th Floor, Boston, Massachusetts 02111.

and

Nancy Nieman, Assistant Regional Counsel, Office of the General Counsel, Region I, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203.

Counsel

This letter is in response to the July 22, 1988 petition for hearing filed by the Massachusetts Department of Public Welfare (Commonwealth) requesting reconsideration of the Family Support Administration's (FSA) disapproval of the Massachusetts' state plan amendment (Transmittal No. 87–5B). In the proposed amendment the Commonwealth sought to allow grantee-relatives age 18 and younger to receive a $150 special clothing allowance payment under Title IV–A of the Social Security Act (AFDC).

Pursuant to 45 CFR 213.21, I have designated Norval D. (John) Settle, Chair of the Departmental Appeals Board, to preside a the hearing, which will be conducted under the procedures in 45 CFR Part 213. A hearing has been scheduled to be held on January 10, 1989, in Boston, Massachusetts. The hearing will began at 9:00 a.m. and will take place in Room 1211, John F. Kennedy Federal Building. A verbatim transcript will be taken.

This proceeding under 45 CFR Part 213 is not intended to preclude or limit negotiations between FSA and the Commonwealth; they may negotiate at any time in an effort to resolve the issues to be considered at the hearing.

The issues to be considered at the hearing include:

Whether it is reasonable and equitable to treat grantee-relatives age 18 and younger differently from other grantee relatives in determining need for the special clothing allowance, and whether this age distinction comports with applicable Federal requirements.

A copy of this letter will appear as a Notice in the **Federal Register**.

Wayne A. Stanton, Administrator, Family Support Administration.

Wayne A. Stanton,

Administrator, Family Support Administration.

November 18, 1988.

[FR Doc. 88–27238 Filed 11–23–88; 8:45 am]

BILLING CODE 4150–04–M

Aid to Families With Dependent Children; State Plan; Tennessee

AGENCY: Family Support Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: By designation of the Family Support Administration, a member of the Departmental Appeals Board will hold a hearing pursuant to 45 CFR Part 213 concerning the Family Support Administration's disapproval of a State plan amendment submitted by Tennessee.

DATE: 2:00 p.m., Wednesday, January 11, 1989.

Place: Room 905, 101 Marietta Tower, Marietta and Spring Streets, Atlanta, Georgia 30323.

Requests to Participate: Requests to participate as a party or as amicus curiae must be submitted to the Departmental Appeals Board in the form specified at 45 CFR 213.15 by December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas D. Horvath, Senior Attorney, Departmental Appeals Board, Department of Health and Human Services, Room 451–F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Telephone Number (202) 475–0013.

SUPPLEMENTARY INFORMATION: Notice of hearing is hereby given as set forth in the following letter, which has been sent to the Tennessee Department of Human Services.

Washington, DC, November 17, 1988.

Susan S. Garner, Assistant General Counsel, Tennessee Department of Human Services, Citizens Plaza, 400 Deaderick Street, Nashville, Tennesee 37219;

and

Edgar M. Swindell, Assistant Regional Counsel, Region IV, Department of Health and Human Services, Room 521, 101 Marietta Tower, Atlanta, Georgia 30323.

Counsel

This letter is in response to the August 8, 1988 request for reconsideration filed by the Tennessee Department of Human Services (State) in which it seeks reconsideration of the Family Support Administration's (FSA) disapproval of the State's proposed state plan amendment submitted as Transmittal No. ES–AP–88–2 (the proposed plan amendment). In the proposed amendment to the State's plan for implementing Title IV–A of the Social Security Act (Aid to Families with Dependent Children, or AFDC) the State adopted a new condition permitting the State to shorten the period of ineligibility caused by receipt of non-recurring lump sum income.

Pursuant to 45 CFR 213.21, I have designated Alexander G. Teitz, a Departmental Appeals Board Member, to preside at the hearing, which will be conducted under the procedures in 45 CFR Part 213. Pursuant to 45 CFR 201.4, a hearing has been scheduled to be held on Wednesday, January 11, 1989, at 2:00 p.m., Room 905, 101 Marietta Tower, corner of Marietta and Spring Streets, Atlanta, Georgia 30323. A verbatim transcript will be taken.

The provisions of section 402(a)(17) of the Social Security Act and 45 CFR 233.20(a)(3)(ii)(F) permit a state to shorten the period of ineligibility for receipt of assistance caused by receipt of non-recurring lump sum income for a reason beyond the control of the family. The issues to be considered at the hearing include:

1. Whether the State has complete and unfettered discretion to define what circumstances it will consider in its State plan as beyond the control of the family.

2. If the State does not have complete discretion to define what is a reason beyond the control of the family, must the circumstances be limited to those needs created by dire or natural disaster, loss or theft of income, or life threatening circumstances?

3. If the State is not limited to the reasons given in 2. above, must its discretion in defining what are reasons beyond the control of the family be reasonable?

4. If the State's discretion must be reasonable, and this discretion is subject to review by FSA, did FSA properly find that the State's definition of reasons beyond the control of the family to include using the lump sum to meet essential needs was not reasonable?

A copy of this letter will appear as a Notice in the **Federal Register** and any

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person wishing to request recognition as a party will be entitled to file a petition pursuant to 45 CFR 213.15(b) with the Departmental Appeals Board within 15 days after that notice has been published. A copy of the petition should be served on each party of record at that time. The petition must explain how the issues to be considered at the hearing have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal statute. 45 CFR 213.15(b)(1). In addition, the petition must concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses. 45 CFR 213.15(b)(2). Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted.

Any interested person or organization wishing to participate as amicus curiae may also file a petition with the Board, which shall conform to the requirements at 45 CFR 213.15(b)(2). This petition should be filed no later than December 31, 1988, to permit the presiding officer an adequate opportunity to consider and rule upon it.

Any further inquiries, submissions, or correspondence regarding this matter should be filed in an original and two copies with Mr. Teitz at the Departmental Appeals Board, Room 451–F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, where the record in this matter will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent.

For convenience please refer to Board Docket No. 88–184: Wayne A. Stanton, Administrator, Family Support Administration.

Wayne A. Stanton,

Administrator, Family Support Administration.

November 17, 1988.

[FR Doc. 88–27177 Filed 11–23–88; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Pierrel America, Inc.; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Pierrel America, Inc. The NADA provides for use of chlortetracycline hydrochloride soluble powder in the drinking water of chickens and turkeys.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: Pierrel America, Inc., 576 Fifth Ave., New York, NY 10036, is the sponsor of NADA 65–253 which provides for use of chlortetracycline hydrochloride soluble powder (Prochlor S) in the drinking water of chickens and turkeys. The NADA was originally filed by Houston Biochemical Industries, Inc., for its subsidiary Caribe Chemical Co., Inc., as an antibiotic form 6 application. Sponsorship of the application was transferred to Caribe Chemical Co., Inc., prior to the original approval (December 30, 1970), and subsequently to Pierrel America, Inc. (40 FR 37036; August 25, 1975). In the June 8, 1987, report filed pursuant to 21 CFR 510.300, FDA was informed that the product was never manufactured or marketed commercially.

The application is one of several which are the subject of a notice and proposed rule published in the **Federal Register** of April 27, 1979 (44 FR 24931 and 24866). That notice presented the effective indications for which chlortetracycline soluble powder for animal use may be marketed and proposed to withdraw approval of new animal drug applications (NADA's) for products labeled for conditions lacking substantial evidence of effectiveness. The notice also provided an opportunity for hearing on the indications that lack such evidence. Written response to the **Federal Register** notice was required by May 29, 1979, supporting data by June 26, 1979. Several products were specifically cited as subject to the notice and previously subject to the National Academy of Sciences/National Research Council (NAS/NRC) evaluation under the Drug Efficacy Study Implementation (DESI) program (35 FR 10162; June 20, 1970, DESI 2–0038NV) including Pierrel America's NADA 65–253 for Prochlor S. The sponsor failed to respond to that April 27, 1979, notice.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 65–253 and all supplements thereto is hereby withdrawn, effective December 5, 1988.

Dated: November 17, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–27168 Filed 11–23–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement on the Restoration of the Tidal Prism and Enhancement of Wetlands in the Tijuana Estuary, San Diego County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and meeting.

SUMMARY: This notice advises the public that the Fish and Wildlife Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the enhancement of the tidal prism to Tijuana Estuary, San Diego County, California. A public meeting regarding this proposal and preparation of the EIS will also be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by December 27, 1988. A public meeting will be conducted on December 1, 1988, by the City of Imperial Beach. See **ADDRESSES** below for location and time.

ADDRESSES: Comments should be addressed to:

Regional Director, U.S. Fish and Wildife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232, (ATTN: Bob Fields);

and

Assistant Refuge Manager, Tijuana Slough National Wildlife Refuge, P.O. Box 335, Imperial Beach, California 92032.

The public meeting on December 1, 1988, will be held from 3 p.m. to 7:30 p.m. at the City Hall Community Center, 825 Imperial Beach Boulevard, Imperial Beach, California 92032.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Weitzel, Assistant Refuge Manager, Tijuana Slough National Wildlife Refuge, P.O. Box 335, Imperial Beach, California 92032, (619) 575–1290 or Ms. Sharon Lockhart, Project Coordinator, Tijuana Estuary Tidal Restoration and Wetland Enhancement Project, Department of Biology, San Diego State University, San Diego, California 92818–0057, (619) 594–7433.

Persons attending the meeting should notify the individuals identified above.

SUPPLEMENTARY INFORMATION: Mr. Weitzel and Ms. Lockhart are the primary authors of this document.

The Tijuana River National Estuarine Research Reserve (Reserve) is located in San Diego County, California. Within this Reserve is the Tijuana Slough National Wildlife Refuge. The Fish and Wildlife Service is a member of the Management Authority for Reserve. A management plan approved by this Management Authority proposes to restore the wetlands of the Tijuana Estuary. The Fish and Wildlife Service, the State of California Department of Parks and Recreation, and the State of California Coastal Conservancy are to assume the responsibility to provide technical advice and funding assistance as available for restoration activities within the Reserve.

The Fish and Wildlife Service with the other interested Federal, State, and local agencies proposes to restore the tidal prism and circulation for the southern arm of the Tijuana Estuary. Without extensive restoration of the tidal prism and tidal circulation in the near future, the very saline habitats which led to the establishment of the Tijuana Slough National Wildlife Refuge and the Tijuana River National Estuarine Research Reserve could be lost.

In 1986, the State of California Coastal Conservancy prepared a detailed hydrologic analysis of the Tijuana Estuary and proposed a means to improve tidal flushing. The analysis will serve as one of the project alternatives. Under this alternative, the proposed project would be done in three (3) phases and include dredging the mouth and approximately 400 acres of mixed high saltmarsh and uplands to create tidal channels and low, middle and upper saltmarsh.

As currently planned, Phase I would involve the dredging of the Old River Slough channel and excavating a 20-acre experimental marsh at its inland terminus and improving tidal flushing in Oneonta Slough. Phase 2 would enlarge the restoration area by dredging approximately 270 acres of slough channel, salt marsh and uplands in Borderfield State Park; dredging a connecting channel to the estuary mouth and using the dredge spoils to create a river training berm to prevent floods from refilling the new channels with sediment. Phase 3 would include dredging 70 acres of slough channels and saltmarsh in the old sewage ponds and dredging approximately 290 acres of slough channels and saltmarsh adjacent to the experimental channel constructed during Phase I. The hydrologic plan considered only circulation, other alternatives will be proposed and evaluated during the scoping process and the preparation of the document.

The major short-term impacts associated with this project are the loss of high saltmarsh and transition zone habitats. The major long-term impact will be the permanent loss of uplands in the estuary. The document will address the impacts to water and wetland dependent species during construction, and during the short-term loss of habitat values. Long-term impacts to terrestrial species will also be discussed. Of particular concern will be any possible adverse impacts to listed, proposed, or candidate endangered species that may be found in the project area. Therefore, the document will contain discussions of these possible impacts as well as means to mitigate the loss of habitat values.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), NEPA Regulations (40 CFR 1500 through 1508), other appropriate Federal regulations and Service procedures for compliance with those regulations.

We estimate that the DEIS will be made available to the public by April 1989.

Date: November 18, 1988.

Wally Steucke,

Acting Regional Director.

[FR Doc. 88–27159 Filed 11–23–88; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[OR–943–09–4214–10; GP9–038; OR–41565 and OR–1566 (WASH)]

Transfer of Jurisdiction of Lands; Oregon and Washington; Correction

The land description in FR Doc. 88–6992, published on page 10443 in the issue of Thursday, March 31, 1988, is hereby corrected as follows:

In the second column on page 10443 under Surface Entry Only, in the ninth line under T. 1 N., R. 5 E., the "SE¼ NE¼" is corrected to read "SE¼SE¼".

Dated: November 16, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–27230 Filed 11–23–88; 8:45 am]

BILLING CODE 4310–84–M

[OR–090–6310–02–GP–039]

Eugene, OR; District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Thursday, December 15, 1988, beginning at 9 a.m., in the Wilder Room of the Eugene Hilton, 66 E. 6th Avenue, Eugene, Oregon.

The agenda of the meeting will include: (1) A review of the District's 1989 timber management program and its funding levels; (2) the lawsuit filed by environmental groups seeking to list the northern spotted owl as an endangered species; (3) and other issues that will be determined later.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl St., Eugene, OR 97401 by the end of business on Tuesday, December 13, 1988. A time limit per person may be imposed by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days of the meeting.

Ronald L. Kaufman,

District Manager.

[FR Doc. 88–27160 Filed 11–23–88; 8:45 am]

BILLING CODE 4310–33–M

BEST COPY AVAILABLE

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[NV-930-09-4214-10; N-43672, N-48331]

Termination of Withdrawal Applications; Nevada

November 10, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service and the Bureau of Land Management have cancelled their applications to withdraw lands pending a legislative exchange for privately owned lands in Florida. The exchange has been consummated pursuant to Pub. L. 100–275 of March 31, 1988.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520, 702–784–5481.

SUPPLEMENTARY INFORMATION: Notice of an application for withdrawal and reservation of 45,298 acres of public land in Clark County by the Fish and Wildlife Service was published as FR Doc. 86–8157 on page 12574 of the issue of April 11, 1986, and a correction notice was published on page 16595 of the issue of May 5, 1986. A subsequent amendment and a new application for an additional 8,910 acres in Mineral County by the Fish and Wildlife Service were published as FR Docs. 86–1880 and 86–18801 on page 29705 of the issue of August 20, 1986, and a correction notice was published on page 41894 of the issue of November 19, 1986. The Bureau of Land Management's application for 52,840 acres in Clark County was published as FR Doc. 88–7788 on page 11713 of the issue of April 8, 1988, and a correction notice was published on page 12641 of the issue of April 15, 1988. The purpose of the proposed withdrawals was to protect the lands pending a legislative exchange for privately oiwned lands in Florida. The lands were temporarily segregated from all forms of appropriation under the public land laws, including the United States mining laws.

The Fish and Wildlife Service and the Bureau of Land Management have cancelled the applications in their entireties. All the lands in the applications have been conveyed out of Federal ownership or have been leased and remain withdrawn from the operation of the public land laws and the mining laws pursuant to Pub. L. 100–275 of March 31, 1988.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88–27271 Filed 11–23–88; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Development Operations Coordination Document; Conoco, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1860, Block 66, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 14, 1988. Comments must be received by December 12, 1988, or 15 days after the Coastal Management Sections receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal management Section, Attention OCS PLans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: November 15, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–27231 Filed 11–23–88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Frederick Douglass National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision.

SUMMARY: Notice is hereby given that the boundary of the Frederick Douglass National Historic Site in Washington, DC is revised to include an additional parcel of land for preservation as a part of the historic site.

FOR FURTHER INFORMATION CONTACT: John Parson, Associate Regional Director, Land Use Coordination, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242. Telephone number (202) 426–6629.

SUPPLEMENTARY INFORMATION: The Act of September 5, 1962 (76 Stat. 435) authorized the Secretary of the Interior to designate the former home of Frederick Douglass for preservation as a part of the park system in the National Capital. Not to exceed 14 acres of land, specifically excluding land used as a housing development, could be designated the "Frederick Douglass Home" (now the "Frederick Douglass National Historic Site" pursuant to Secretarial Order dated February 12, 1988). Upon donation of the properties and publication of the metes and bounds descriptions of those properties in the **Federal Register**, the parcels would become part of the park system of the National Capital. On February 23, 1972, metes and bounds descriptions for two parcels of land totaling 8.08 acres, more or less, were published in the **Federal Register** (37 FR 3832, February 23, 1972).

This notice is to revise the metes and bounds descriptions of the Frederick Douglass National Historic Site to include an additional parcel of land that is being donated to the United States, through the National Park Service, by the Frederick Douglass Memorial and Historical Association. Therefore, the boundary of the Frederick Douglass National Historic Site is revised to include the following described land:

All that certain tract of land lying and being situated in the District of Columbia being part of a tract of land called Chichester, a part of Parcel 226/40 described as follows:

Beginning for the same on the Southeasterly line of 14th Street, at a point distant South 13° 13' West, 414.62 feet from the intersection of the line of 14th Street with the Southwesterly line of W Street; thence South 50° 14' 00" East, 268 feet to a point; thence South 10° 14' 40" East, 40.34 feet to the Northeasterly corner of Lot numbered Thirty (30) in Square Fifty-eight Hundred Thirteen (5813); thence with the Northerly line of Lot Thirty (30), North 76° 57' West, 128.88 feet to the line of Cedar Street; thence, with line of Cedar Street in a Northwesterly direction 143.73 feet to the line of 14th Street, thence, with line of 14th Street 89.36 feet to the place of beginning. Now Taxed as Lot Eight Hundred Six (806) in Square Fifty-eight Thirteen (5813).

Said Lot 806 containing 0.45 of an acre. more or less.

The Frederick Douglass National Historic Site now comprises 8.53 acres, more or less.

Date: November 16, 1988.

Ronald Wrye,

Acting Regional Director, National Capital Region.

[FR Doc. 88–27249 Filed 11–23–88; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area, California; Boundary Revision

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision, Golden Gate NRA.

This notice indicates a change in the boundary of Golden Gate National Recreation Area, as the result of the establishment of San Francisco Maritime National Historical Park on June 27, 1988, by Pub. L. 100–348. San Francisco Maritime National Historical Park was depicted by the map referenced in Pub. L. 100–348 and entitled "Boundary Map, San Francisco Maritime National Historical Park," numbered 641/80,053 and dated April 7, 1987.

San Francisco Maritime National Historical Park is entirely composed of land and water which was within the boundary of Golden Gate National Recreation Area. Therefore, the boundary of the recreation area is altered solely to the extent that the Historical Park has been removed. Among specific areas which were within the boundary of Golden Gate National Recreation Area which are now included in San Francisco Maritime National Historical Park are Aquatic Park, Hyde Street Pier, Sala Burton Maritime Museum, Sand Beach and Victoria Park.

A map showing the revised boundary of Golden Gate National Recreation Area with respect to the new San Francisco Maritime National Historical Park, entitled "Revised Boundary Map, Golden Gate National Recreation Area", numbered 641/80,003 Suffix L, and dated October 1988, is available for inspection at the Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88–27250 Filed 11–23–88; 8:45 am]

BILLING CODE 4310-70-M

Availability of Plan of Operations and Environmental Assessment Continued Operations, Existing Wells; Colorado Interstate Gas (CIG); Lake Meredith Recreation Area, Texas

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Colorado Interstate Gas (CIG) a Plan of Operations. The proposal involves the continued operations of already existing wells, Lake Meredith Recreation Area, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith Recreation Area, P.O. Box 1438, Fritch, Texas; and one copy will be available at the Southwest Regional Office, National Park Service, 1220 South Saint Francis Drive, Room 347, P.O. Box 728, Santa Fe, New Mexico 87504–0728.

Date: November 17, 1988.

R.B. Smith,

Acting Regional Director, Southwest Region.

[FR Doc. 88–27252 Filed 11–23–88; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:00 p.m., CST, on January 17, 1989, at the Jean Lafitte National Historical Park and Preserve, Barataria Unit Visitor Center, 7400 Highway 45, Marrero, Louisiana.

The Delta Region Preservation Commission was established pursuant to Section 907 of Pub. L. 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Update Environmental Education Center.
—Overnight accommodations for Environmental Education Center.
—Tunica Biloxi Indians—potential cooperative agreement.
—Update De la Ronde ruins.
—Old Business.
—New Business.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park, U.S. Customs House, 423 Canal Street, Room 210, New Orleans, Louisiana 70130–2341, telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

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Date: November 18, 1988.

R.B. Smith,

Acting Regional Director, Southwest Region.

[FR Doc. 88-27251 Filed 11-23-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations; Airpax Corp.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation, Koenig and Bauer/Egenolf Machines, Inc., 2916 Bluff Road, Indianapolis, IN 46225.

B. 2. Wholly owned subsidiaries which will participate in the operation: Egenolf Contracting and Rigging Inc., 2916 Bluff Road, Indianapolis, IN 46225.

a. Both Corporations incorporated under laws of state of Indiana.

1. The parent corporation is North American Philips Corporation ("NAPC"), a Delaware corporation, with its principal executive office located at 100 East 42nd Street, New York, New York 10017.

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation:

(i) Airpax Corporation, a Delaware Corporation, Cheshire Industrial Park, W. Johnson Avenue, P.O. Box 868, Cheshire, Connecticut 06410

(ii) American Color and Chemical Corporation, a Delaware Corporation, P.O. Box 32516, Charlotte, North Carolina 28232

(iii) Anchor Brush Company, Inc., a Delaware Corporation, 209 E. DeSoto Avenue, P.O. Box 36, Morristown, Tennessee 37814

(iv) Chicago Magnet Wire Corporation, an Illinois Corporation, 901 Chase Avenue, Elk Grove Village, Illinois 60007

(v) Conelectron, Inc., a Delaware Corporation, One Landmark Square, Stamford, Connecticut 06901

(vi) Consolidated Electronics Industries Corp., a Delaware Corporation, One Landmark Square, Stamford, Connecticut 06901

(vii) General Atronics Corporation, a Pennsylvania Corporation, 1313 Production Road, Ft. Wayne, Indiana 46808

(viii) Genie Manufacturing Inc., a Delaware Corporation, 3515 Massillon Road, Akron, Ohio 44312

(ix) Magnavox Advanced Products and Systems Company, a Delaware Corporation, 2829 Maricopa Street, Torrence, California 90503

(x) Magnavox CATV Systems Company, a Delaware Corporation, 133 West Seneca, Manlius, NY 13104

(xi) Magnavox Electronic Systems Company, a Delaware Corporation, 1313 Production Road, Fort Wayne, Indiana 46808

(xii) Magnavox Government and Industrial Electronics Company, a Delaware Corporation, 1313 Production Road, Fort Wayne, IN 46808

(xiii) New England Research Center, Inc., a Massachusets Corporation, 1313 Production Road, Ft. Wayne, Indiana 46808

(xiv) Philips Data Storage Corporation, a Delaware Corporation, 100 East 42nd Street, New York, New York 10017

(xv) Philips Industries of Puerto Rico, Inc., a Delaware Corporation, P.O. Box 636, Cayey, Puerto Rico

(xvi) Philips Interactive Media Corp., a Delaware Corporation, 100 East 42nd Street, New York, New York 10017

(xvii) Philips Marketing Services, Inc., a Florida Corporation, Straw Plains Pike & Interstate 40, Knoxville, Tennessee 37914

(xviii) Philips Optical Communications Corporation, a Delaware Corporation, 100 East 42nd Street, New York, New York 10017

(xix) Radiant Lamp Company, a Delaware Corporation, 100 East 42nd Street, New York, New York 10017

(xx) Signetics Asia Limited, a Delaware Corporation, 811 East Arques Avenue, Sunnyvale, California 94086

(xxi) The Selmer Company, a Delaware Corporation, 600 Industrial Parkway, P.O. Box 310, Elkhart, Indiana 46514

(xxii) Transview Corporation, a Delaware Corporation, 100 East 42nd Street, New York, New York 10017

(xxiii) U.S. Philips Corporation, a Delaware Corporation, 580 White Plains Road, Tarrytown, New York 10591

(xxiv) VL Service Lighting Corp., a Delaware Corporation, 100 East 42nd Street, New York, New York 10017.

Noreta R. McGee,

Secretary.

[FR Doc. 88-27186 Filed 11-23-88; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 431 (Sub-No. 1)]

Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for All Regulatory Costing Purposes

November 18, 1988.

Notice to the Parties

The Commission is considering the adoption of the Uniform Railroad Costing System (URCS) as the preferred general purpose costing system for all regulatory costing purposes. The computation of URCS unit costs requires the separation of total expenses by activity into their variable and fixed components. The methodology for computing the proportion of railroad expenses which are variable was studied by an independent consultant—Professor M. Daniel Westbrook. A preliminary report on the methodology was issued in July 1988. Comments on that preliminary report have been reviewed by Dr. Westbrook and have been incorporated in a revised report which was completed in October 1988. Copies of the contractor's report *Research Report on URCS Regression Equations* are available from Dynamic Concepts, Inc., Room 2229 ICC Building, Washington, DC 20423 (202) 289-4357 for a fee of $30.00.

A Notice of Proposed Rulemaking should be served within 45 days. For further information contact William T. Bono on (202) 275-7354 or Thomas A. Schmitz (202) 275-7549.

Noreta R. McGee,

Secretary.

[FR Doc. 88-27187 Filed 11-23-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31346 (Sub-1)]

Paducah and Louisville Railway Partnership; Acquisition and Operation Exemption, Rail Holdings, Inc.

Rail Holdings, Inc. (Rail), a noncarrier and a wholly-owned subsidiary of First Capital Corporation of Chicago (FCCC), which is a wholly-owned subsidiary of First Chicago Corporation, has filed a notice of exemption to acquire and operate Paducah Louisville Railway, Inc. (P&L) through a purchase of all outstanding stock of CG&T Corporation, the parent of P&L. Immediately after the purchase, Rail will transfer the assets of P&L to the Paducah & Louisville Partnership (P&L Partnership) (or another entity controlled by FCCC). During the time between Rail's purchase and subsequent transfer to P&L Partnership, Rail will operate P&L.

P&L consists of approximately 309 miles of rail line extending between Louisville and Paducah, KY, including a parallel line between Dawson Springs and Central City, KY, and branch lines to Kevil, Clayburn and Elizabethtown, KY. The transaction is expected to be consummated in November 1988. Any comments must be filed with the Commission and served on: Alfred Winchell Whittaker, Kirkland and Ellis, Suite 1200, 655 15th Street NW., Washington, DC 20005.

Rail must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901,* 4 I.C.C.2d 305 (1988).[1]

Because Rail and P&L Partnership will be Class II carriers, the notice was filed pursuant to our amended regulations at 49 CFR 1150.35. *See Class Exemption-Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C.2d 309 (1988). Accordingly, the exemption will become effective November 16, 1988, 21 days after the notice of exemption was filed. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 14, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-27074 Filed 11-23-88; 8:45 am]

BILLING CODE 7035-01-M

[1] Rail has provided the appropriate State Historic Preservation Officer with the identification of sites and structures: (a) Listed in the *National Register of Historic Places;* and (b) 50 years old and older that will be transferred as a result of the transactions.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Corporation for Open Systems International ("COS") has filed additional written notifications simultaneously with the Attorney General and the Federal Trade Commission on October 20, 1988, disclosing (1) the execution of written agreements between COS and the Standards Promotion and Application Group Services, SA (SPAG) and (2) changes in the membership of COS. The additional written notifications were filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, June 12, 1987, July 23, 1987, July 31, 1987, October 5, 1987, October 23, 1987, November 16, 1987, January 12, 1988, February 9, 1988 and May 2, 1988, COS filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on September 4, 1986 (51 FR 31735), October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), November 9, 1987 (52 FR 43138), December 4, 1987 (52 FR 46129), December 15, 1987 (52 FR 47642), December 18, 1987 (52 FR 48164), February 19, 1988 (53 FR 5060), March 8, 1988 (53 FR 4711), and June 30, 1988 (FR 24811), respectively.

On September 15, 1988, COS and SPAG entered into written agreements for the cross-distribution and licensing of each other's test products throughout Europe (by SPAG) and North and South America (by COS) and the cross-provision of third party testing with each other's respective tool sets. On October 7, 1988, the Air Force Communications-Computer Systems Integration Office became a member of COS. On October 11, 1988, Ungermann-Bass became a member of COS.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-27225 Filed 11-23-88; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Open Software Foundation, Inc. ("OSF") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on November 4, 1988, disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specific circumstances.

On August 8, 1988, OSF and the Open Software Foundation Research Institute, Inc. (the "Institute") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988, 53 FR 34594.

The identity of a new, voting member of OSF is: Hitachi Ltd., Hitachi Omori 2nd Bldg., 27-18, Minami Oi 6 Chome, Shinagawa-Ku, Tokyo 140, Japan.

In addition, the identities of the new, non-voting members of OSF are as follows:

Cornell University, 223 Day Hall, Ithaca, NY 14853
Norsk Data A.S., P.O. Box 25 Bogerud, Olaf Helsetsvei 5, Oslo 6, N-0621, Norway
RIAC NASA Ames Reseach Center, Moffett Field, CA 94035
Booz, Allen & Hamilton Inc., 4330 East West Highway, Bethesda, MD 20814-4455
Software AG, Darmstadt D-6100, Uhlandstrabe 12, Germany
Phoenix Technologies Ltd., 320 Norwood Park South, Norwood, MA 02062
Swedish Telecom Group, Farneboqatan 81-87, S-123 86 Farsta, Sweden
Intel Corporation, 2801 Northwestern Parkway, Santa Clara, CA 95051
Mentor Graphics Corporation, 85 SW Creekside Place, Beaverton, OR 970005
Silicon Graphics, 2011 N. Shoreline Blvd., Mountain View, CA 94043
Landmark Graphics, 333 Cypress Run, Suite 100, Houston, TX 77094
Computer Consoles, 950 Winter Street, Waltham, MA 02154
Interfirm Graphics Systems, 3940 Freedom Circle, Suite 101 Santa Clara, CA 95054
Wang, One Industrial Drive, Lowell, MA 01851
University of Texas, Taylor Hall, 2.124, Austin, TX 78712-1188
Stanford University, Sweet Hall 3090, Stanford, CA 94305-3090
Advanced Micro Devices, 901 Thompson Place MS-19, Sunnyvale, CA 94088
S.I.A., V.le Certosa, 216, 20156 Milano, Italy
Kendall Square Research Corp., One Kendall Square, Building 300/4th Floor, Cambridge, MA 02139
Tecsiel, S.p.A., a wholly owned subsidiary of Softsiel Corp., 4660 LaJolla Village Drive, #710, San Diego, CA 92122
Informix Software, Inc., 4100 Bohannon Drive, Menlo Park, CA 94025
Data General Corp., 4400 Computer Drive, Westborough, MA 01580

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-27226 Filed 11-23-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-75]

Daniel H. Stein, d/b/a Holme Drug Store; Revocation of Registration

On October 28, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Daniel H. Stein (Respondent), d/b/a Holme Drug Store, 8021 Frankford Avenue, Philadelphia, Pennsylvania proposing to revoke his DEA Certificate of Registration,

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AH2343438. The Order to Show Cause alleged that the Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of his registration pending the outcome of these proceedings. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing in a letter dated November 2, 1987. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Washington, DC on April 27, 1988. On September 27, 1988, the Administrative Law Judge issued his opinion and recommended ruling. On October 17, 1988, counsel for Respondent filed exceptions to the recommended ruling. On October 28, 1988, Judge Young transmitted the record of these proceedings, including the aforementioned exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is the principal pharmacist and owner of Holme Drug Store. While conducting a routine review of official DEA order forms, a DEA Investigator noticed that during February and March of 1987, Respondent had purchased 11,300 dosage units of Dilaudid 4 mg. tablets, as well as large quantities of Tuinal 200 mg., both Schedule II controlled substances. Based on these excessive purchases, DEA served an administrative inspection warrant at Respondent pharmacy on May 21, 1987. The Investigation reviewed the Schedule II prescription files and conducted an audit of Dilaudid 4 mg. tablets and Tuinal 200 mg. capsules for the period between May 1, 1985 through May 21, 1987. The audit revealed a shortage of 2,000 Dilaudid 4 mg. tablets and an overage of 7,363 Tuinal capsules. A review of the prescription files revealed that there were 841 prescriptions for Dilaudid 4 mg., written for 100 tablets each, and inscribed "David L. Rosen, M.D." In addition, out of approximately 1400–1500 Tuinal prescriptions during the audit period, there were 1,354 prescriptions for Tuinal 200 mg., written for 100 capsules each, inscribed "David L. Rosen, M.D."

DEA Investigators repeatedly attempted to contact Dr. David L. Rosen without success. There was no "David L. Rosen" licensed to practice medicine in the State of Pennsylvania at the address printed on the subject prescriptions. The DEA number which appeared on the Dr. Rosen prescriptions had never been issued to a "David L. Rosen," and when the Investigators attempted to locate the address printed on the subject prescriptions, they learned that there was no such address.

DEA Investigators informed Respondent that based on their investigation, David L. Rosen was non-existent. Respondent informed Investigators that about three years previously, he received a telephone call from a Dr. David Rosen requesting assistance in filling prescriptions for Dilaudid and Tuinal. Respondent told Dr. Rosen that he could fill them, and that he would be the only pharmacist at Respondent pharmacy who would fill Dr. Rosen's prescriptions. Respondent was the only person at the pharmacy who ordered drugs, signed Schedule II order forms and received Dilaudid and Tuinal.

The investigation also revealed that the Schedule II prescriptions filled at Respondent pharmacy had a computer generated sticker which included the initials of the filling pharmacist. A current employee found that his initials appeared on certain Dr. Rosen prescriptions, even though he had never filled any. A former pharmacist at the pharmacy also found his initials imprinted on some Dr. Rosen prescriptions. Again, this pharmacist had never filled any prescriptions for "Dr. Rosen".

Following the administrative inspection, and even after being told by DEA Investigators that Dr. Rosen did not exist, Investigators were notified that Respondent continued to purchase significant quantities of Dilaudid and Tuinal from wholesale distributors. Pursuant to this information, DEA Investigators served a Notice of Inspection at Respondent pharmacy on October 15, 1987. They reviewed the Schedule II prescription files and order forms. The examination confirmed that Respondent pharmacy had continued to order and fill prescriptions for Dilaudid and Tuinal. There were 47 prescriptions for either Dilaudid or Tuinal in the pharmacy's prescription files which bore the name Dr. Eugene B. Rex. On October 19, 1987, DEA Investigators interviewed Dr. Eugene B. Rex.

Dr. Rex advised that he had retired from medical practice as of July 1, 1986. He examined the prescriptions found at Respondent pharmacy which purportedly bore his name. He denied issuing any of them, and further stated that the names on prescriptions were not those of any of his former patients.

The Administrative Law Judge concluded that the preponderance of the evidence justified an inference that Respondent was falsifying the prescriptions purportedly written by Dr. Rex, and those purportedly written by Dr. Rosen as well, or alternatively, that he was filling them with knowledge that they were phony. The number of prescriptions filled at Respondent pharmacy between May 1985 and May 1987 average out to be about 33 Dilaudid prescriptions per month and about 54 Tuinal prescriptions per month. These are highly abuseable controlled substances. The Administrative Law Judge further stated that prescriptions for these drugs at the frequency found here should have alerted a conscientious pharmacist to make an inquiry of the prescribing physician to verify that they were genuine and were written for a legitimate medical purpose. See 21 CFR 1306.04(a). These prescriptions were all bogus and the slightest effort at verification by Respondent would have revealed this. The Administrative Law Judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration.

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AH2343438, previously issued to Daniel H. Stein, d/b/a Holme Drug Store, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

At the time the Order to Show Cause and Immediate Suspension of Registration was served on Respondent, all controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until the time for taking appeals has elapsed. Accordingly, these controlled substances shall remain under seal until December 27, 1988, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

This order is effective December 25, 1988.

John C. Lawn,
Administrator.

Dated: November 18, 1988.

[FR Doc. 88–27170 Filed 11–23–88; 8:45 am]
BILLING CODE 4410–09–M

Controlled Substances; Establishment of 1988 Aggregate Production Quota for Ibogaine

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of an established 1988 aggregate production quota.

SUMMARY: This notice establishes the 1988 aggregate production quota for ibogaine, a Schedule I controlled substance.

DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S. Code 826), requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On July 28, 1988, a notice proposing to establish a 1988 aggregate production quota for ibogaine was published in the **Federal Register** (53 FR 28459). All interested persons were invited to comment on or object to the proposal on or before August 29, 1988. No comments or objections were received.

Pursuant to sections (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, *et seq.* The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, Section 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1988 aggregate production quota for ibogaine, expressed in grams of anhydrous base, be established as follows:

Basic class	1988 aggregate production Quota (grams)
Schedule I:	
Ibogaine	575

John C. Lawn,
Administrator, Drug Enforcement Administration.

Dated: September 28, 1988.

[FR Doc. 88–27169 Filed 11–23–88; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–21,068]

Gulf Oil Corp. (Now Operating as Chevron Corp.); Westbelt Center, Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition which was received on September 26, 1988 and filed on behalf of workers at the Westbelt Center location of Gulf Oil Corporation, now operating as Chevron Corporation, Houston, Texas.

The Retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions. Workers of the Westbelt Centers provided services to affiliated facilities engaged in production operations.

All workers were separated from the Westbelt Center more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any workers whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 18th day of November 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–27278 Filed 11–23–88; 8:45 am]
BILLING CODE 4510–20–M

[TA–W–21,150]

Willis Drilling Co. Edinburg, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 26, 1988 in response to a worker petition which was filed on September 26, 1988 on behalf of workers at Willis Drilling Company, Edinburg, Texas.

An active certification covering the petitioning group of workers is currently in effect (TA–W–20,969). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 18th day of November 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–27279 Filed 11–23–88; 8:45 am]
BILLING CODE 4510–30–M

Federal-State Unemployment Compensation Program; Certification Relating to Reduced Credits Under the Federal Unemployment Tax Act for 1988

Section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA) provides for the repayment, through reduced credits, of outstanding balances of repayable advances made to States under Title XII of the Social Security Act. States that meet specific criteria under subsections (c), (f), or (g) of section 3302 may have the credit reduction limited or not applied. The certification to the Secretary of the Treasury of Sttes subject to the credit

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reduction for 1988 and States that qualify for credit reduction relief is published below.

Date: November 21, 1988.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

U.S. Department of Labor

Employment and Training Administration, 200 Constitution Avenue NW., Washington, DC 20210.

The Honorable Nicholas F. Brady,

Secretary of the Treasury, Washington, D.C. 20220.

November 10, 1988.

Dear Secretary Brady: This is to verify the States which have an outstanding balance of repayable advances under Title XII of the Social Security Act and to notify you of my determination as to the status of the States with regard to the reduction in credit provisions of Section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA).

Pursuant to delegation of authority to me, I have determined that employers in one State are subject to a reduction in FUTA offset credit for taxable year 1988: Michigan.

Under certain conditions, subsection (f) of Section 3302 of the FUTA limits or caps the FUTA tax credit reduction in a year to an amount which does not exceed the greater of 0.6 percent of wages subject to FUTA or the percentage reduction that was in effect for the preceding taxable year. To qualify for a cap in taxable year 1988, the Secretary of Labor (or her delegate) must determine that a State has taken no action in the 12 months ending on September 30, 1988, unless required under State law in effect before August 13, 1981, which has resulted or will result in:

(1) a reduction in the State's unemployment tax effort, or

(2) a net decrease in the solvency of the State unemployment compensation system and, further, that:

(3) the State unemployment tax rate for the calendar year equals or exceeds the average benefit cost ratio for calendar years in the five-calendar year period ending with calendar year 1987, and

(4) The outstanding balance of advances to the State on September 30 of calendar year 1988 was not greater than the outstanding balance for such State on September 30, 1985.

Pursuant to delegation of authority to me, I have determined that under these criteria Michigan qualifies for the cap, but is not subject to reduced FUTA credits for 1988 because it also qualifies for avoidance of the offset credit reduction under subsection (g) of Section 3302 as noted below.

Subsection (g) of Section 3302 gives a State the option of repaying on or before November 9 a portion of its outstanding loans each year through transfer of a specified amount from its account in the Unemployment Trust Fund (UTF) to the Federal Unemployment Account (FUA) in the UTF. The transfer to FUA would be in lieu of a reduced credit in the Federal tax paid by the employers in the State. The State must meet, as determined by the Secretary of Labor (or her delegate), the following criteria in order to avoid the offset credit reduction for 1988:

(1) Make repayments to FUA during the one-year period ending on November 9, 1988, of an amount not less than the sum of all loans made to the State in the one-year period ending on such November 9, plus the potential additional taxes due by reason of the reduced credit applicable to taxable year 1988;

(2) Have or will have sufficient funds remaining after such repayments to pay benefits for at least three months from November 1 of the same year without receiving another Title XII advance; and

(3) Have taken action by amendment of the State law, after the date of the first advance is taken into account, to increase the net solvency of its UI system, and such net increase equals or exceeds the potential additional taxes for such taxable year.

Pursuant to delegation of authority to me, I have determined that under these criteria Michigan qualifies and is thus not subject to reduced FUTA credits for 1988.

Finally, please note that the State of Minnesota was omitted from the October 31, 1988, certifications required by sections 3304(c) and 3303(b), FUTA, for the "normal" and "additional" tax credits. This is because section 3304(c) of the FUTA requires that the Secretary shall not certify a State if that State's law no longer contains the provisions specified in section 3304(a). An issue under section 3304(a) currently exists with Minnesota. As the Secretary has not yet issued a decision on this matter, the omission of the State of Minnesota does not yet constitute a withholding of the certifications. The Secretary will notify you directly if Minnesota is certified or if the certifications are actually withheld.

Sincerely,

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 88-27280 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-30-M

[Guidance Letter No. 2-88]

Appeal Rights for Federal Assistance Grantees

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of training and employment.

SUMMARY: Appeal rights to the Office of the Administrative Law Judges are now available to entities receiving Federal assistance grants from the Employment and Training Administration (ETA) whose appeal rights and procedures are not established elsewhere in statutes and regulations. The ETA's determination regarding these rights and procedures was provided in Training and Employment Guidance Letter No. 2-88 issued October 21, 1988, which is published below.

EFFECTIVE DATE: October 21, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Linda D. Kontnier, Chief, or James MacDonald, Division of Debt Management Office of Grants and Contracts Management, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N-4671, Washington, DC. Telephone (202) 535-0704 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The DOL's final administrative requirements for audit set forth procedures at 29 CFR Subpart 96 by which grantees may appeal final determinations by DOL officials, where such appeal rights are not established elsewhere in statutes and regulations. The grantor agency is to determine which of two appeal options the grantee may use to appeal the final determinations of the grant officer. The two options listed at 29 CFR 96.603 are: (a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted; (b) appeal to the DOL's Office of Administrative Law Judges. Accordingly, the ETA has made its determination with respect to the specific appeal procedure to be used by all entities receiving Federal assistance grants from the ETA and whose appeal rights and procedures are not established elsewhere in statutes and regulations. Such entities may appeal final audit determinations of the ETA grant officer to the DOL Office of Administrative Law Judges (OALJ). This includes final audit determinations relating to grants for the administration of Federal-State unemployment compensation programs and related Federal unemployment benefit and allowance programs, the Senior Community Employment Service Program, the Work Incentive Program and the Targeted Jobs Tax Credit Program. This notice summarizes the Training and Employment Guidance Letter No. 2-88 published below which sets forth ETA's determination on the appeal procedure.

Signed at Washington, DC, this 16th day of November 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

Training and Employment Guidance Letter No. 2-88

From: Robert T. Jones, Assistant Secretary of Labor.

Subject: Appeal Rights for Federal Assistance Grantees.

Date: October 21, 1988.

1. *Purpose:* To provide notice of the type of appeal available to entities receiving Federal assistance grants from the Employment and Training Administration (ETA) whose appeal rights and procedures are not established elsewhere in statutes and regulations. This action by ETA is part of a larger effort to establish standard procedures for all Department of Labor (DOL) agencies in areas of audit resolution and appeal.

2. *References:* 29 CFR Subpart 96.6 (53 FR 5966, February 26, 1988).

3. *Background:* On February 26, 1988, the Department of Labor's (DOL's) final administrative requirements for audit were published in the **Federal Register** at 53 FR 5966 (to be codified in 29 CFR Part 96). Section 96.603 of this part sets forth procedures by which grantees may appeal final determinations by DOL officials responsible for audit resolution as a result of audits, where such appeal rights are not established elsewhere in statutes and regulations administered by DOL or its sub-agencies.

The grantor agency is to determine which of two appeal options the grantee may use to appeal the final determinations of the grant officer. The two options listed in 29 CFR 96.603 are: (a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted; (b) appeal to the DOL's Office of Administrative Law Judges. All grants within the same grant program are to follow the same appeal procedure.

4. *Policy on Appeal Procedure:* In accordance with 29 CFR 96.603, the ETA has made its determination with respect to the specific appeal procedure to be used by all entities receiving Federal assistance grants from the ETA and whose appeal rights and procedures are not established elsewhere in statutes and regulations. Such entities may appeal final audit determinations of the ETA grant officer to the DOL Office of Administrative Law Judges (OALJ). This includes final audit determinations relating to grants for the administration of the Federal-State unemployment compensation program and related Federal unemployment benefit and allowance programs, the Senior Community Employment Service Program, the Work Incentive Program and the Targeted Jobs Tax Credit Program.

Procedures for this OALJ-type of appeal are set forth in 29 CFR 96.603(b), subsections (1) through (5), as follows:

(1) *Jurisdiction*—(i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the grantee may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, DC 20036, with a copy of the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR Part 18, shall govern the conduct of hearings under * * * (29 CFR 96.603(b)).

(3) *Decision of the administrative law judge.* The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary of Labor, specifically identifying the procedure or finding of fact, law, or policy with which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary of Labor, unless the Secretary of Labor, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Secretary of Labor.* Any case accepted for review by the Secretary of Labor shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary of Labor.

5. *Effective Date:* This Training and Employment Guidance Letter shall be effective as of the date of issuance.

6. *Promulgation:* This Guidance Letter will be published in the **Federal Register.**

7. *Inquiries:* Questions concerning this guidance letter should be directed to Linda Kontnier or James MacDonald on (202) 535-0704.

[FR Doc. 88-27274 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of

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Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Connecticut:
CT88-1 (Jan. 8, 1988) ..... p. 65.
Florida:
FL88-13 (Jan. 8, 1988) ..... pp. 132-133.
FL88-15 (Jan. 8, 1988) ..... pp. 138-140.
New Hampshire:
NH88-4 (Jan. 8, 1988)..... pp. 604-609.
New Jersey:
NJ88-2 (Jan. 8, 1988) ..... pp. 615, 619.
NJ88-3 (Jan. 8, 1988) ..... pp. 635, 639.
NJ88-4 (Jan. 8, 1988) ..... p. 659.
New York:
NY88-18 (Jan. 8, 1988)..... p. 830.

Volume II:

Iowa:
IA88-4 (Jan. 8, 1988) ..... p. 39.
IA88-5 (Jan. 8, 1988) ..... pp. 42, 46-49.
Illinois:
IL88-1 (Jan. 8, 1988) ..... p. 80.
IL88-16 (Jan. 8, 1988) ..... p. 203.
Indiana:
IN88-2 (Jan. 8, 1988) ..... p. 249.
IN88-3 (Jan. 8, 1988) ..... pp. 266, 269-270.
Kansas:
KS88-7 (Jan. 8, 1988)..... p. 352.
KS88-8 (Jan. 8, 1988)..... pp. 354, 356-359.
KS88-9 (Jan. 8, 1988)..... pp. 362-363.
Louisiana:
LA88-4 (Jan. 8, 1988) ..... p. 376.
Missouri:
MO88-1 (Jan. 8, 1988)..... pp. 582, 585.
MO88-2 (Jan. 8, 1988)..... pp. 604-605.
MO88-3 (Jan. 8, 1988)..... pp. 612-613.
MO88-8 (Jan. 8, 1988)..... p. 644.

Volume III:

Arizona:
AZ88-1 (Jan. 8, 1988)..... p. 10.
California:
CA88-1 (Jan. 8, 1988)..... p. 34.
CA88-2 (Jan. 8, 1988)..... pp. 47-48.
CA88-4 (Jan. 8, 1988)..... p. 73.
Utah:
UT88-1 (Jan. 8, 1988)..... p. 338.
Wyoming:
WY88-1 (Jan. 8, 1988)..... pp. 432-436.
WY88-2 (Jan. 8, 1988)..... pp. 438-442.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of November 1988.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 88-27046 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-204-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, P.O. Box 527, Emery, Utah 84522 has filed a petition to modify the application of 30 CFR 75.1403-5(g) (belt conveyors) to its Emery Mine (I.D. No. 42-00079) located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a clear travelway at least 24-inches wide should be provided on both sides of all belt conveyors. Where roof supports are installed within 24 inches of a belt conveyor, a clear travelway at least 24-inches wide should be provided on the side of such support farthest from the conveyor.

2. Petitioner states that due to mine conditions, proximity of mine rib to the belt converyor, or the location of existing roof and/or rib support, a clear travelway at least 24-inches wide cannot be provided at a limited number of locations.

3. As an alternate method, in lieu of a 24-inch travelway at these locations, petitioner proposes to:

(a) Provide a visual warning at the approach to all restricted travelways along belt conveyors;

(b) Provide suitable belt-crossing devices to permit access to an alternative travelway; and

(c) Provide a manual stop/start control switch at each location to permit safe servicing of the belt conveyor along such restricted areas.

4. For these reasons, petition requests a modificaiton of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that Office on or before December 27, 1988. Copies of the petition are available for inspection at that address.

Date: November 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-27275 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-203-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, 407 Brown Road, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops and permanent pumps) to its Hamilton No. 2 Mine (I.D. No. 15-02706) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground permanent pumps be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations are required to be coursed directly into the return.

2. As an alternate method, petitioner proposes to use a submersible pump to drain water from the sump beneath the intake air shaft at its Hamilton No. 2 Mine.

3. In support of this request, petitioner states that—

(a) The operating electrical parts of the submersible pump would be submerged in the water in the sump at all times. In the event the water level in the sump should drop more than 1" below the intake point on this pump, the pump would discontinue pumping water from the sump; and

(b) The electrical power supply to the submersible pump would enter the pump at a point which would be below the water level in the sump at all times.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 27, 1988. Copies of the petition are available for inspection at that address.

Date: November 17, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-27276 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-212-C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Pyro No. 9 Slope, William Station Mine (I.D. No. 15-13881) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that except where permissible power connection units are used, all power-connection points outby the last open crosscut be in intake air.

2. As an alternate method, petitioner proposes to use a non-permissible submersible pump in a borehole in Longwall Block Three under water.

3. In support of this request, petitioner states that—

(a) The pump would be an American Submersible Turbine Pump, Model 8L30 with a 150 HP, 3500 RPM, 3 phase, 60 cycle, 460 volt motor; and

(b) The pump would be operated with all of the motor and all of the motor connections at least 5 feet below water level at all times.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 27, 1988. Copies of the petition are available for inspection at that address.

Date: November 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-27277 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ECONOMIC COMMISSION

Commission Meetings

AGENCY: National Economic Commission.

ACTION: Notice of Commission meetings.

SUMMARY: The National Economic Commission ("the Commission") will hold meetings on December 7 and December 12, 1988. The Commission was established by Section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

Date, Time and Place: December 7, 1988, 10 a.m.-4 p.m., Room 406, Dirksen Senate Office Building, Washington, DC. December 12, 10:30 a.m.-5:30 p.m., 736 Jackson Place NW., Washington, DC.

Agenda: The open portion of the Decmeber 7, 1988 meeting will be devoted to a review of econometric models; the closed portion to a discussion of economic assumptions. The December 12 agenda will be a review of budget options.

Open Meeting: The December 7 meeting will be open to the public from 10:00 a.m. to 11:30 a.m. The December 7 meeting from 11:30 a.m. to 4:00 p.m. and the December 12 meeting will be closed in order to avoid the disclosure of information the premature disclosure of which would be likely to significantly frustrate the implementation of the Commission's mandate within the section 552b(C)(9) of Title 5, United States Code.

For Additional Information Contact: Jim Hildreth, 703-425-8986, or 202-789-1993, National Economic Commission, 734 Jackson Place NW, Washington, DC. 20503

SUPPLEMENTARY INFORMATION: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, Page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88-27267 Filed 11-23-88; 8:45 am]

BILLING CODE 6820-46-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before December 27, 1988.

ADDRESSES: Send comments to Ms. Ingrid Reyes, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Reyes, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the

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following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill our the form. None of these entries are subject to 44 U.S.C. 3504(h).

Title: General Programs: Humanities Projects in Libraries and Archives/ Guidelines and Application Instructions.

Frequency of Collection: Six times a year.

Respondents: Colleges and universities, libraries, archives, private, non-profit organizations, civic and professional groups, or branches of state or local government.

Use: Collection of information provides a basis for evaluation of applications in the competitive review process.

Estimated Number of Respondents: 83.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 40 per respondent.

Estimated Total Annual Reporting and Recording Burden: 3,320.

Susan H. Metts,

Assistant Chairman for Administration.

[FR Doc. 88-27193 Filed 11-23-88; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 118 to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Palisades Plant, located in Van Buren County, Michigan. The amendment is effective as of the date of issuance.

The amendment revised the provisions in the Technical Specifications to add limitations to plant operation with less than four reactor coolant pumps operating to conform to analyses for certain postulated accidents. It also modified the limiting conditions for operation, reactor protection system setpoints, surveillance requirements, radial peaking factors and the linear heat rate limit. The currently issued Safety Evaluation also approved the reactor protection system modification proposed in the licensee's March 25, 1988 application and used in the accident and transient analyses submitted in support of the revised Technical Specifications. That part of the March 25, 1988 application that proposed a change to the differential pressure limit for the steam generators has been superseded by an application dated October 7, 1988, which will be addressed in a future action.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notices of Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing in connection with this action were published in the **Federal Register** on July 6, 1988 (53 FR 25397) and September 27, 1988 (53 FR 37663). No request for hearing or petition to intervene was filed following these notices.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on November 10, 1988, at 53 FR 45633.

For further details with respect to this action, see (1) the application for amendment dated March 25, 1988, as supplemented June 17 and 27, 1988, and November 9, 1988, and application dated September 1, 1988, as supplemented September 19, 1988, (2) Amendment No. 118 to License No. DPR-20 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 15th day of November 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Project Manager.

Project Directorate III-I, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-27213 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Cooperative; La Crosse Boiling Water Reactor (LACBWR); Exemption

I

Dairyland Power Cooperative (the licensee) the holder of Provisional License No. DPR-45, which authorizes possession but not operation of the La Crosse Boiling Water Reactor (LACBWR). The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Vernon County, Wisconsin.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $180 million insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Dairyland Power Cooperative is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 18th day of November 1988.

[FR Doc. 88-27214 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-16]

Detroit Edison Co.; Enrico Fermi Atomic Power Plant Unit 1; Exemption

I

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. DPR-9, which authorizes possession but not operation of the Enrico Fermi Atomic Power Plant, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a sodium cooled reactor at the licensee's site located in Monroe County, Michigan.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensee to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security," Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * *. (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance for the reactor station site. This is substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the

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prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Detroit Edison Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 18th day of November 1988.

[FR Doc. 88-27215 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-316]

Indiana Michigan Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-74 issued to the Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Unit No. 2, located in Berrien County, Michigan.

In accordance with the licensee's application for amendment dated August 15, 1988, the amendment would revise Technical Specification section 3/4.1, "Reactivity Control Systems." The changes are necessary to accommodate the new steam line break analysis performed by Advanced Nuclear Fuels (ANF). This analysis, published as ANF report No. XN-NF-87-31(P), was transmitted to the Commission directly by ANF via their letter No. GNW:047:87, dated May 29, 1987. It was placed on the Cook Nuclear Plant Unit 2 docket via the licensee's letter No. AEP:NRC:09160D, dated June 15, 1987.

The changes fall into four categories, which are:

1. Increase in the required shutdown margin;
2. Additional time response testing requirements;
3. Reduction in the lower limit for the moderator temperature coefficient; and
4. Change to the description of the full steam flow function.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore Quay: (Petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 15, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Maude Preston Pakenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 18th day of November 1988.

For the Nuclear Regulatory Commission.

Theodore Quay,

Acting Director, Project Directorate III-1, Division of Reactor Projects III, IV, V and Special Projects.

[FR Doc. 88-27216 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-133]

Pacific Gas and Electric Co.; Humboldt Bay Power Plant Unit No. 3; Exemption

I

Pacific Gas and Electric Company (the licensee) is the holder of Facility License No. DPR-7, which authorizes possession but not operation of the Humboldt Bay Power Plant, Unit N. 3. the license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Humboldt County, California.

II

On August 5, 1987, the NRC published in the Federal Register a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $100 million insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Pacific Gas and Electric Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact.

This exemption is effective upon issuance.

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For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 18th day of November 1988.

[FR Doc. 88-27217 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-171]

Philadelphia Electric Co.; Peach Bottom Atomic Power Station Unit 1; Exemption

I

Philadelphia Electric Company (the licensee) is the holder of Provisional Operating License No. DPR-12, which authorizes possession but not operation of the Peach Bottom Atomic Power Station, Unit 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a high-termperature, gas-cooled demonstration power reactor at the licensee's site located in York County, Pennsylvania.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54 (w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provision of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $180 million insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Philadelphia Electric Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the license shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 18th day of November 1988.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-27218 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

Section III.D.(a) of Appendix J to 10 CFR Part 50 requires that a Type A Primary Containment Integrated Leak Rate Test (PCILRT) be performed at approximately equal intervals during each 10-year service period. Section III.A.6(a) of Appendix J to 10 CFR Part 50 requires that if any periodic Type A test fails to meet the applicable acceptance criteria, a review of the test schedule be performed and approved by the Commission. Section III.A.6(b) of Appendix J requires that if two consecutive periodic Type A tests fail to meet the applicable acceptance criteria, a Type A test shall be performed at each subsequent refueling outage or approximately every 18 months, whichever comes first, until two consecutive Type A tests meet the acceptance criteria given in Section III.A.5(b).

Section IV.A of Appendix J to 10 CFR Part 50 requires that a Type A, B or C leak test, as applicable, must be performed following any major modification or replacement of a component which is part of the primary containment boundary.

The licensee has determined that the Type A tests performed during the last three refueling outages (1982, 1985, and 1987) for the "as found" condition, failed to meet the acceptance criteria as a result of excessive leakage observed from the pathways of the Type B and C Local Leak Rate Tests (LLRT). The study showed that, historically, certain containment isolation valves (CIVs) have repeatedly failed their LLRT. As a result, the licensee concluded that the most effective approach to eliminate the excessive leakage was to develop a Corrective Action Plan (CAP) using the guidance given in the NRC Information Notice 85-71, dated August 22, 1985, in lieu of the increased test frequency required by Section III.A.6(b) of Appendix J to 10 CFR Part 50. Therefore, an exemption from this requirement is required.

The CAP developed by the licensee recommended replacement of 33 CIVs, 21 during the current outage and 12 during the 1990 outage. The valves are being replaced with valves that have better leakage characteristics, are easier to maintain, are expected to eliminate the previous failures and correct the bulk of the problem, and will be tested per the LLRT program when replaced. The 12 valves scheduled to be replaced during the 1990 outage have acceptable leakage rates based on the tests performed during the present refueling outage. The CAP has shown that they are likely to perform their intended function.

As part of the CAP, the licensee has purchased a main steam isolation valve seat maintenance tool from the valve manufacturer, plant mechanics have received training in conducting leak repairs from the valve vendors, and an apprenticeship program certified by INPO has been implemented.

Also, as part of the CAP, a manual valve in the High Pressure Coolant Injection (HPCI) System turbine exhaust to the suppression chamber was replaced. Because of the piping configuration and since a LLRT boundary cannot be created, the weld attaching the inboard side of the valve to the containment penetration cannot be pressure tested as required by Section IV.A of Appendix J to 10 CFR Part 50. Therefore, an exemption from this regulation is required.

The licensee has submitted an alternate testing program consisting of 100 percent radiography and dye penetrant or magnetic particle tests to ensure the leak tightness of the welds and the structural integrity and leak tightness of the piping.

Our Safety Evaluation supporting these Exemptions is dated November 16, 1988.

III

In this case, the licensee's CAP to eliminate the root cause of the successive Type A PCILRT test failures, and the improved valve maintenance program, will provide the equivalent level of protection as that provided by the Type A test. Therefore, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii).

Also, in this case, the licensee's non-destructive examination of welds for the HPCI turbine exhaust isolation valve will provide the equivalent level of protection as that provided by the Type B or C LLRT. Therefore, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii).

IV

As discussed above, the underlying purpose of the requirements of Section III.A.6(b) of Appendix J to 10 CFR Part 50 is to ensure the integrity of the primary containment and its penetrations. The underlying purpose is achieved and served by the replacement and testing program developed by the licensee. Also, the underlying purpose of the requirements of Section IV.A of Appendix J to 10 CFR Part 50 is to ensure that the primary containment integrity is not compromised when replacing components which form part of the boundary. In the case of the HPCI exhaust valve, this is achieved and served by the non-destructive tests which were performed.

V

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the exemptions, as described in Section III, are authorized by law and will not present an undue risk to the public health and safety and are consistent with common defense and security, and special circumstances are present for the exemptions, in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Section III.A.6(b) and Section IV.A of Appendix J to 10 CFR Part 50. Therefore, the Commission hereby grants the exemption from Section III.A.6(b) and Section IV.A to allow satisfactory implementation of the FitzPatrick Corrective Action Plan associated with containment isolation valves to fulfill the requirement of increased Type A tests and the satisfactory results from the non-destructive tests conducted on the welds for the HPCI turbine exhaust valve to fulfill the requirements of a Type B or C Test.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 46135).

This Exemption is effective upon issuance and is applicable for the operating cycle following startup from the 1988 refuel outage.

Dated at Rockville, Maryland, this 16th day of November, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects, I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-27219 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors; Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, December 7, 1988, at 10:00 a.m.

ADDRESS: The meeting will be held at the Postmaster General's Suite, Third Floor, Post Office Building, 1200 Pennsylvania Avenue NW., Washington, DC.

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SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Date: November 16, 1988.

M. J. Brodie,

Executive Director.

[FR Doc. 88-27233 Filed 11-23-88; 8:45 am]

BILLING CODE 7630-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16643; (811-3424)]

Bullock Aggressive Growth Shares, Inc.; Application

November 18, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bullock Aggressive Growth Shares, Inc.

Relevant 1940 Act Section: Application filed pursuant to section 8(f) and Rule 8f-1.

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application was filed on October 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 13, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3047, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a Maryland corporation and on March 22, 1982, filed a registration statement pursuant to section 8(b) of the 1940 Act to register as an open-end, diversified management investment company. Applicant also filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") with respect to a public offering of Applicant's common stock. Applicant's 1933 Act registration statement became effective on November 8, 1982, and its initial public offering commenced shortly thereafter.

2. On November 17, 1986, Applicant's Board of Directors approved (i) the sale of substantially all the assets of Applicant to Surveyor Fund, Inc. (File No. 811-1415) in exchange for shares of common stock of Surveyor Fund, Inc. to be distributed to Applicant's shareholders on the basis of their relative net asset values per share, and (ii) the subsequent dissolution of Applicant. The Agreement and Plan of Reorganization and Liquidation and the terms of the reorganization are set forth in the Form N-14 registration statement filed with the SEC on December 24, 1986 (File No. 33-11092). On January 29, 1987, a Prospectus/Proxy Statement forming a part of said registration statement was mailed to Applicant's shareholders of record. On February 27, 1987, at a meeting duly called and held, the shareholders of Applicant approved the reorganization and subsequent dissolution of Applicant. Pursuant to the Agreement and Plan of Reorganization and Liquidation, on March 16, 1987, Applicant transferred all its assets to Surveyor Fund, Inc. in exchange for shares of common stock of Surveyor Fund, Inc. All shares of Surveyor Fund, Inc. received by Applicant were thereafter distributed to Applicant's shareholders in liquidation.

3. Applicant states that it does not currently have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. Applicant filed Articles of Dissolution with the State of Maryland terminating its existence as a Maryland corporation. The Article of Dissolution became effective upon filing.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27254 Filed 11-23-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16644; (811-2985)]

Bullock High Income Shares, Inc.; Application

November 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bullock High Income Shares, Inc.

Relevant 1940 Act Section: Application filed pursuant to section 8(f) and Rule 8f-1.

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application was filed on October 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 13, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3047, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a Maryland corporation and on January 11, 1980, filed a registration statement pursuant to section 8(b) of the 1940 Act to register as an open-end, diversified management investment company. Applicant also filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") with respect to a public offering of Applicant's common stock. Applicant's 1933 Act registration statement became effective on May 20, 1980, and its initial public offering commenced shortly thereafter.

2. On November 17, 1986, Applicant's Board of Directors approved (i) the sale of substantially all the assets of Applicant to the High-Yield portfolio of Alliance Bond Fund (File No. 811-2383) in exchange for shares of beneficial interest of the High-Yield portfolio of Alliance Bond Fund to be distributed to Applicant's shareholders on the basis of their relative net asset values per share, and (ii) the subsequent dissolution of Applicant. The Agreement and Plan of Reorganization and Liquidation and the terms of the reorganization are set forth in the Form N-14 registration statement filed with the SEC on December 22, 1986 (File No. 33-10826). On January 29, 1987, a Prospectus/Proxy Statement forming a part of said registration statement was mailed to Applicant's shareholders of record. On February 27, 1987, at a meeting duly called and held, the shareholders of Applicant approved the reorganization and subsequent dissolution of Applicant. Pursuant to the Agreement and Plan of Reorganization and Liquidation, on March 16, 1987, Applicant transferred all its assets to the High-Yield portfolio of Alliance Bond Fund in exchange for shares of beneficial interest of the High-Yield portfolio of Alliance Bond Fund. All shares of the High-Yield portfolio of Alliance Bond Fund received by Applicant were thereafter distributed to Applicant's shareholders in liquidation.

3. Applicant states that it does not currently have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. On August 28, 1987, Applicant filed Articles of Dissolution with the State of Maryland terminating its existence as a Maryland corporation. The Articles of Dissolution became effective upon filing.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27255 Filed 11-23-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16645; (811-4223)]

Bullock U.S. Government Income Shares Inc., Application

November 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for De-Registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bullock U.S. Government Income Shares Inc.

Relevant 1940 Act Section: Application filed pursuant to section 8(f) and Rule 8f-1.

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application was filed on October 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 13, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3047, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a Maryland corporation and on February 7, 1985, filed a registration statement pursuant to section 8(b) of the 1940 Act to register as an open-end, diversified management investment company. Applicant also filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") with respect to a public offering of Applicant's common stock. Applicant's 1933 Act registration statement because effective on May 24, 1985, and its initial public offering commenced shortly thereafter.

2. On November 17, 1986, Applicant's Board of Directors approved (i) the sale of substantially all the assets of Applicant to the U.S. Government portfolio of Alliance Bond Fund (File No. 811-2383) in exchange for shares of beneficial interest of the U.S. Government portfolio of Alliance Bond Fund to be distributed to Applicant's shareholders on the basis of their relative net asset values per share, and (ii) the subsequent dissolution of Applicant. The Agreement and Plan of Reorganization and Liquidation and the terms of the reorganization are set forth in the Form N-14 registration statement filed with the SEC on December 22, 1986 (File No. 33-10827). On January 29, 1987, a Prospectus/Proxy Statement forming a part of said registration statement was mailed to Applicant's shareholders of record. On February 27, 1987, at a meeting duly called and held, the shareholders of Applicant approved the reorganization and subsequent dissolution of Applicant. Pursuant to the Agreement and Plan of Reorganization and Liquidation, on March 16, 1987, Applicant transferred all its assets to the U.S. Government portfolio of Alliance Bond Fund in exchange for shares of beneficial interest of the U.S. Government portfolio of Alliance Bond Fund. All shares of the U.S. Government portfolio of Alliance Bond Fund received by Applicant were thereafter distributed to Applicant's shareholders in liquidation.

3. Applicant states that it does not currently have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. On August 28, 1987, Applicant filed Articles of Dissolution with the State of Maryland terminating its existence as a Maryland corporation. The Articles of Dissolution became effective upon filing.

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27256 Filed 11-23-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 04/04-0247]

Sigma Capital Corp.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate a small business investment company under the provision of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Sigma Capital Corp.; (Applicant), 1515 North Federal Highway, Suite 210, Boca Raton, Florida 33432 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Position	Percentage of shares owned
Alvin Schwartz, 1501/03 Boca West Drive, Boca Raton, Florida 33431.	President and Chairman of the Board.	12.75
Henry Margolis, 7539 Sierra Drive East, Boca Raton, Florida 33433.	Vice President and Director.	12.75
M. James Spitzer, Jr., 15 St. Lukes Place, New York, New York 10014.	Secretary and Director.	.5
Leonard Lichter, 3 Spanish Cove Road, Larchmont, New York 10538.	Treasurer and Director.	12.75

No other person intends to own as much as 10 percent of the Applicant.

The Company is to be managed full-time by Mr. Alvin Schwartz.

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of Florida and southeastern part of the United States.

Matters involved in SBA's consideration of the application include in general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Boca Raton, Florida area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 18, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-27171 Filed 11-23-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S-839]

Lykes Bros. Steamship Co., Inc.; Application To Provide a TR 13/22 Dual Service

Lykes Bros. Steamship Co., Inc. (Lykes), by application dated November 3, 1988, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-451, to provide a Trade Route (TR) 13/22 (U.S. Gulf-South Atlantic/Mediterranean, Black Sea, and Far East) dual service.

In Lykes' current operating-differential subsidy (ODS) contract, there is a dual service privilege on Lines D (TR 22) (U.S. Gulf-Far East) and Line E (U.S. Gulf-South and East Africa) (TR 15-B). Lykes states that this has resulted in a better utilization of Lykes' vessels, which were often returning to the U.S. Gulf on Line E in ballast, for lack of inbound cargo. It has also permitted Lykes to serve the Line D berth with more frequent sailings.

According to Lykes, a similar situation exists in the Mediterranean on Lykes' Line C (TR 13) service. Rather than returning to the U.S. Gulf in ballast, some Line C voyages could continue through the Red Sea to the Far East for cargo discharge and/or loading operations. In this way the Far East berth could be more frequently served.

Because of this situation, Lykes has requested an amendment to its ODS Agreement MA/MSB-451 allowing a dual service privilege on its Line C and Line D services. Just as in its current dual service privilege on Lines D and E, Lykes has requested that such sailings count toward the minimum and maximum sailing requirement specified for both services.

Lykes believes that such a privilege would provide several advantages among them being that it provides Lykes with more operating flexibility and efficiency so that Lykes can compete more effectively with foreign carriers. Also it does not involve an increase in ships or geographical area or an increase in the number of sailings authorized under the ODSA, but rather amounts to a simple realignment of service, and consequently no budgetary increase in subsidy. Finally, Lykes feels that it is in keeping with the purposes and policies of the Merchant Marine Act, 1936, as amended, in that it helps Lykes maintain regular U.S.-flag berth service in the two service areas and possibly increase U.S.-flag participation.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in tripicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on December 12, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Subsidy Board.

Date: November 21, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-27263 Filed 11-23-88; 8:45 am]

BILLING CODE 4910-81-M

[Docket S-840]

Intent To Consider a Change in Subsidy Contracts Regarding the Non-Subsidized Carriage of Dry Bulk Preference Cargo by Subsidized Bulk Vessels

The Maritime Subsidy Board (Board) intends to consider a change in its operating-differential subsidy contracts regarding restrictions on the non-subsidized carriage of dry bulk preference cargoes by subsidized bulk vessels.

On February 28, 1986, the Board issued a Final Opinion and Order, Docket S-764, in the matter of requests by subsidized operators for amendments of their operating-differential subsidy agreements (ODSA's) to allow carriage of dry bulk preference cargo on a non-subsidized basis at fair and reasonable rates for U.S.-flag commercial vessels. In Docket S-764, the Board determined that to ensure efficient operation and utilization of the subsidized vessels, the larger vessels of 82,200-91,800 DWT should be required to carry parcels of not less than 55,000 tons and the other applicants' ships of 32,000-39,700 DWT should be required to carry parcels of not less than 25,000 tons. Since the Board issued its decision in Docket S-764, dry bulk vessels of 63,000 DWT have applied to carry preference cargo without subsidy. That application was noticed in the **Federal Register** for comment on May 6, 1988 (53 FR 16334), Docket S-828, and the time for comments on that application has passed.

The Board in considering this matter is concerned that this minimum tonnage requirement, in practice, may have resulted in an unintended increase in the cost to the Government for the carriage of certain preference cargoes and that it may also be an unnecessary and undesirable restraint on competition and vessel utilization by U.S.-flag bulk vessel operators.

As a result of these concerns, the Board intends to consider the elimination of the minimum parcel size requirement in existing operating-differential subsidy contracts for bulk operators when operating without subsidy in the preference trades. The Board invites written comments on this proposal. Specifically, the Board invites comments on four issues: (1) The competitive impact of the current minimum parcel size requirements, (2) the cost implications of those requirements to the Government for the carriage of preference cargoes, (3) the effects of total elimination of the minimum parcel size requirement, (4) the effects of maintenance of a minimum parcel size requirement while permitting the carriage of additional parcels of dry bulk preference cargoes of any size once the minimum requirement is met, and (5) alternatives to the maintenance of a minimum parcel size requirement.

Interested parties are invited to submit comments (original and ten copies) to the Secretary Maritime Subsidy Board, Maritime Administration, Room 7300 Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 by close of business on December 14, 1988.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Subsidy Board.

James E. Saari,

Secretary.

[FR Doc. 88-27154 Filed 11-23-88; 8:45 am]

BILLING CODE 4910-81-M

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Sunshine Act Meetings

Federal Register
Vol. 53, No. 227
Friday, November 25, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 29, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Condidates to Receive Presidential Primary Matching Funds.
Draft AO 1988-46: Terry A. Montagne, on behalf of Collins Foods International, Inc.
Draft AO 1987-31: Terry Claassen on behalf of the Chicago Board Options Exchange.
Revised Notice of Proposed Rulemaking on Debt Settlements (11 CFR Part 116).
Administrative Matters

DATE AND TIME: Thursday, December 1, 1988 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 88-27308 Filed 11-22-88; 8:45 am]
BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 53, No. 227
Friday, November 25, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction; Lake Ouachita, AR

Correction

In the issue of Wednesday, November 2, 1988, on page 44214 in the third column, a correction to FR Doc. 88-25405 appeared. The eighth item was inaccurately printed and should have appeared as follows:

* * * * *

8. On page 5612, in the second column, T1S, R23W, Section 30 should read: Pt. S½SW¼ above 610', Pt. SW¼SE¼ above 610', Pt. NE¼SW¼ above 610',.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-38-000, et al.]

New England Power Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 88-26198 beginning on page 45813 in the issue of Monday, November 14, 1988, make the following corrections:

1. On page 45813, in the third column, in filing No. 5, the Docket No. should read "ER89-39-000".

2. on page 45816, in the first column, in filing No. 19, the Docket No. should read "EF89-2061-000".

BILLING CODE 1505-01-D

VOL
53

ISS
227

NO
25

1988

UMI

federal register

Friday
November 25, 1988

Part II

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for August 1988

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53109; FRL-3466-7]

Premanufacture Notices Monthly Status Report for August 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for August 1988.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53109]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substance, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during August; (b) PMNs received previous and still under review at the end of August; (c) PMNs for which the notice review period has ended during August; (d) chemical substances for which EPA has received a notice of commencement to manufacture during August; and (e) PMNs for which the review period has been suspended. Therefore, the August 1988 PMN Status Report is being published.

Date: October 13, 1988.

Steven Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report—August 1988

I. 187 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.	
P 88-1744	P 88-1614
P 88-1745	P 88-1615
P 88-1746	P 88-1616
P 88-1747	P 88-1617
P 88-1748	P 88-1618
P 88-1749	P 88-1619
P 88-1750	P 88-1620
P 88-1751	P 88-1621
P 88-1752	P 88-1622
P 88-1753	P 88-1624
P 88-1754	P 88-1625
P 88-1755	P 88-1626
P 88-1756	P 88-1627
P 88-1757	P 88-1628
P 88-1758	P 88-1629
P 88-1759	P 88-1630
P 88-1760	P 88-1631
P 88-1761	P 88-1632
P 88-1762	P 88-1633
P 88-1763	P 88-1634
P 88-1764	P 88-1635
P 88-1765	P 88-1636
P 88-1766	P 88-1637
P 88-1767	P 88-1638
P 88-1768	P 88-1639
P 88-1769	P 88-1640
P 88-1770	P 88-1641
P 88-1771	P 88-1642
P 88-1772	P 88-1643
P 88-1773	P 88-1644
P 88-1774	P 88-1645
P 88-1775	P 88-1646
P 88-1776	P 88-1647
P 88-1778	P 88-1648
P 88-1779	P 88-1649
P 88-1780	P 88-1650
P 88-1781	P 88-1651
P 88-1782	P 88-1652
P 88-1783	P 88-1653
P 88-1784	P 88-1654
P 88-1785	P 88-1655
P 88-1786	P 88-1656
P 88-1787	P 88-1657
P 88-1788	P 88-1658
P 88-1789	P 88-1659
P 88-1790	P 88-1660
P 88-1791	P 88-1661
P 88-1792	P 88-1662
P 88-1793	P 88-1663
P 88-1794	P 88-1664
P 88-1795	P 88-1665
P 88-1796	P 88-1666
P 88-1797	P 88-1667
P 88-1798	P 88-1668
P 88-1799	P 88-1669
P 88-1800	P 88-1670
P 88-1801	P 88-1671
P 88-1802	P 88-1672
P 88-1803	P 88-1673
P 88-1804	P 88-1674
P 88-1805	P 88-1675
P 88-1806	P 88-1676
P 88-1807	P 88-1677
P 88-1808	P 88-1678
P 88-1809	P 88-1679
P 88-1810	P 88-1680
P 88-1811	P 88-1681
P 88-1812	P 88-1682
P 88-1813	P 88-1683
P 88-1884	P 88-1909
P 88-1885	P 88-1910
P 88-1886	P 88-1911
P 88-1887	P 88-1912
P 88-1888	P 88-1913
P 88-1889	P 88-1914
P 88-1890	Y 88-0235
P 88-1891	Y 88-0236
P 88-1892	Y 88-0237
P 88-1893	Y 88-0238
P 88-1894	Y 88-0239
P 88-1895	Y 88-0240
P 88-1896	Y 88-0241
P 88-1897	Y 88-0242
P 88-1898	Y 88-0243
P 88-1899	Y 88-0244
P 88-1900	Y 88-0245
P 88-1901	Y 88-0246
P 88-1902	Y 88-0247
P 88-1903	Y 88-0248
P 88-1904	Y 88-0249
P 88-1905	Y 88-0250
P 88-1906	Y 88-0251
P 88-1907	Y 88-0252
P 88-1908	

II. 256 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	
P 83-0669	P 87-1547
P 85-0216	P 87-1548
P 85-0535	P 87-1549
P 85-0536	P 87-1555
P 85-0619	P 87-1673
P 85-0718	P 87-1676
P 85-0941	P 87-1677
P 86-0065	P 87-1679
P 86-0066	P 87-1680
P 86-0067	P 87-1694
P 86-0092	P 87-1759
P 86-0294	P 87-1769
P 86-0295	P 87-1770
P 86-0592	P 87-1787
P 86-1078	P 87-1872
P 86-1109	P 87-1879
P 86-1235	P 87-1881
P 86-1602	P 87-1882
P 86-1603	P 88-0049
P 86-1604	P 88-0083
P 86-1607	P 88-0134
P 87-0057	P 88-0138
P 87-0058	P 88-0156
P 87-0059	P 88-0157
P 87-0068	P 88-0182
P 87-0105	P 88-0195
P 87-0197	P 88-0225
P 87-0198	P 88-0275
P 87-0199	P 88-0288
P 87-0200	P 88-0290
P 87-0201	P 88-0319
P 87-0323	P 88-0320
P 87-0326	P 88-0353
P 87-0770	P 88-0367
P 87-0794	P 88-0388
P 87-0930	P 88-0393
P 87-0931	P 88-0436
P 87-0963	P 88-0468
P 87-0973	P 88-0515
P 87-1028	P 88-0522
P 87-1066	P 88-0567
P 87-1104	P 88-0568
P 87-1192	P 88-0576
P 87-1226	P 88-0598
P 87-1227	P 88-0602
P 87-1273	P 88-0606
P 87-1337	P 88-0622
P 87-1379	P 88-0658
P 87-1417	P 88-0671
P 87-1436	P 88-0701
P 87-1437	P 88-0715
P 87-1542	P 88-0726
P 87-1546	P 88-0792

P 88-0831	P 88-1277	P 88-1694	P 88-1732	P 88-1381	P 88-1457
P 88-0836	P 88-1278	P 88-1697	P 88-1735	P 88-1382	P 88-1458
P 88-0837	P 88-1293	P 88-1698	P 88-1739	P 88-1383	P 88-1459
P 88-0854	P 88-1303	P 88-1700	P 88-1740	P 88-1384	P 88-1461
P 88-0862	P 88-1304	P 88-1713	P 88-1741	P 88-1385	P 88-1462
P 88-0864	P 88-1307	P 88-1716	P 88-1742	P 88-1386	P 88-1463
P 88-0875	P 88-1370	P 88-1730	P 88-1823	P 88-1387	P 88-1464
P 88-0884	P 88-1375			P 88-1388	P 88-1465
P 88-0888	P 88-1377	III. 237 Premanufacture Notices and Exemption Request for Which the Notice Review Period Has Ended During the Month (Expiration of the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory)		P 88-1389	P 88-1467
P 88-0889	P 88-1403			P 88-1390	P 88-1468
P 88-0890	P 88-1409			P 88-1391	P 88-1469
P 88-0894	P 88-1425			P 88-1392	P 88-1470
P 88-0898	P 88-1428			P 88-1393	P 88-1472
P 88-0900	P 88-1439			P 88-1394	P 88-1474
P 88-0918	P 88-1440			P 88-1395	P 88-1475
P 88-0972	P 88-1443			P 88-1396	P 88-1476
P 88-0981	P 88-1445			P 88-1397	P 88-1477
P 88-0985	P 88-1446	PMN No.		P 88-1398	P 88-1478
P 88-0997	P 88-1480			P 88-1399	P 88-1479
P 88-0998	P 88-1486	P 88-1440	P 88-1327	P 88-1400	P 88-1480
P 88-0999	P 88-1473	P 87-0641	P 88-1328	P 88-1401	P 88-1481
P 88-1005	P 88-1495	P 87-0642	P 88-1329	P 88-1402	P 88-1482
P 88-1020	P 88-1508	P 87-0723	P 88-1330	P 88-1404	P 88-1483
P 88-1021	P 88-1512	P 87-0971	P 88-1331	P 88-1405	P 88-1484
P 88-1035	P 88-1514	P 87-1272	P 88-1332	P 88-1406	P 88-1486
P 88-1037	P 88-1529	P 87-1318	P 88-1333	P 88-1407	P 88-1487
P 88-1063	P 88-1540	P 87-1319	P 88-1334	P 88-1408	P 88-1488
P 88-1069	P 88-1543	P 87-1813	P 88-1335	P 88-1410	P 88-1489
P 88-1070	P 88-1559	P 87-1814	P 88-1336	P 88-1411	P 88-1490
P 88-1071	P 88-1564	P 87-1830	P 88-1337	P 88-1412	P 88-1491
P 88-1109	P 88-1567	P 87-1865	P 88-1338	P 88-1413	P 88-1492
P 88-1115	P 88-1568	P 88-0179	P 88-1339	P 88-1414	P 88-1493
P 88-1116	P 88-1570	P 88-0183	P 88-1340	P 88-1415	P 88-1494
P 88-1117	P 88-1598	P 88-0212	P 88-1341	P 88-1416	P 88-1496
P 88-1118	P 88-1611	P 88-0245	P 88-1342	P 88-1417	P 88-1497
P 88-1120	P 88-1616	P 88-0262	P 88-1343	P 88-1418	P 88-1498
P 88-1136	P 88-1617	P 88-0283	P 88-1344	P 88-1419	P 88-1499
P 88-1154	P 88-1618	P 88-0809	P 88-1345	P 88-1420	P 88-1500
P 88-1163	P 88-1619	P 88-1088	P 88-1346	P 88-1421	P 88-1501
P 88-1168	P 88-1620	P 88-1151	P 88-1347	P 88-1422	P 88-1502
P 88-1169	P 88-1621	P 88-1197	P 88-1348	P 88-1423	P 88-1503
P 88-1170	P 88-1622	P 88-1217	P 88-1349	P 88-1424	P 88-1504
P 88-1189	P 88-1623	P 88-1218	P 88-1350	P 88-1427	P 88-1505
P 88-1197	P 88-1628	P 88-1220	P 88-1351	P 88-1428	P 88-1506
P 88-1205	P 88-1630	P 88-1229	P 88-1352	P 88-1429	P 88-1507
P 88-1209	P 88-1631	P 88-1231	P 88-1353	P 88-1430	P 88-1509
P 88-1211	P 88-1632	P 88-1250	P 88-1354	P 88-1431	P 88-1510
P 88-1212	P 88-1636	P 88-1287	P 88-1355	P 88-1432	P 88-1511
P 88-1219	P 88-1643	P 88-1292	P 88-1356	P 88-1433	P 88-1513
P 88-1220	P 88-1647	P 88-1301	P 88-1357	P 88-1434	Y 88-0222
P 88-1221	P 88-1646	P 88-1302	P 88-1358	P 88-1435	Y 88-0224
P 88-1223	P 88-1650	P 88-1305	P 88-1359	P 88-1436	Y 88-0225
P 88-1224	P 88-1653	P 88-1306	P 88-1360	P 88-1437	Y 88-0226
P 88-1235	P 88-1657	P 88-1307	P 88-1361	P 88-1438	Y 88-0227
P 88-1236	P 88-1658	P 88-1309	P 88-1362	P 88-1439	Y 88-0228
P 88-1240	P 88-1665	P 88-1310	P 88-1363	P 88-1440	Y 88-0229
P 88-1243	P 88-1667	P 88-1311	P 88-1364	P 88-1441	Y 88-0230
P 88-1244	P 88-1668	P 88-1312	P 88-1365	P 88-1442	Y 88-0231
P 88-1250	P 88-1669	P 88-1315	P 88-1366	P 88-1444	Y 88-0232
P 88-1251	P 88-1670	P 88-1316	P 88-1368	P 88-1447	Y 88-0233
P 88-1252	P 88-1672	P 88-1317	P 88-1369	P 88-1448	Y 88-0234
P 88-1267	P 88-1677	P 88-1318	P 88-1371	P 88-1449	Y 88-0235
P 88-1271	P 88-1682	P 88-1319	P 88-1372	P 88-1450	Y 88-0236
P 88-1273	P 88-1683	P 88-1320	P 88-1373	P 88-1451	Y 88-0237
P 88-1273	P 88-1686	P 88-1321	P 88-1374	P 88-1452	Y 88-0238
P 88-1274	P 88-1688	P 88-1322	P 88-1376	P 88-1453	Y 88-0239
P 88-1275	P 88-1690	P 88-1324	P 88-1378	P 88-1454	Y 88-0240
P 88-1276	P 88-1691	P 88-1325	P 88-1379	P 88-1455	Y 88-0241
		P 88-1326	P 88-1380	P 88-1456	

IV. 124 Chemical Substances for which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 82-0487	G Copolymer of an alkenoic acid derivative, substituted and unsubstituted vinly aromatic compounds and substituted alkane	July 1, 1988.
P 83-1004	Hexamethyleme-1,6-bisthiosulfate, disodium salt, dihydrate	July 5, 1988.
P 84-0154	Lithium aluminium hydroxy stearate	July 11, 1988.
P 86-0005	Polymer of: terephthalic acid; isophthalic acid; adipic acid; trimellitic anhydride; 2,2-dimethyl-1, 3-propanediol; ethylene glycol; and hexanediol.	July 21, 1988.
P 86-0158	G Alkylchloroellane	July 29, 1988.
P 86-0159	G Alkylchloroellane	July 16, 1988.
P 86-0562	Perfluoroalkyl epoxide	June 30, 1988.

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PMN No.	Identify/generic name	Date of commencement
P 86-0568	Methoxyacetyl chloride	July 7, 1988.
P 86-0648	G Polyurea urethane acrylate	July 28, 1988.
P 86-0701	G Acrylic resin	June 18, 1986.
P 86-0727	G Polymer of styrene, acrylonitrile, ethylene, propylene and difunctional monomer	May 16, 1988.
P 86-0967	G Ketoxime blocked aromatic isocyanate	July 25, 1988.
P 86-1696	G Anhydride copolymer-methacrylate half ester	July 21, 1988.
P 87-0034	G Substituted alkyl cyanoacetate	Feb. 4, 1988.
P 87-0075	G Mixed aldehyde novolacs	July 25, 1988.
P 87-0112	G Substituted tartaric acids, sodium salts	Aug. 2, 1987.
P 87-0113	G Substituted tartaric acids, calcium-sodium salts	Aug. 1, 1987.
P 87-0170	Carboxylic acid salt of a tertiary amine	Apr. 6, 1988.
P 87-0299	Nitrophenoxy substituted pentanamide	July 15, 1988.
P 87-0635	G Metal salt of amm ated chelating agent	Aug. 2, 1988.
P 87-0636	.....do	Do.
P 87-0637	.....do	Do.
P 87-0638	.....do	Do.
P 87-0686	G Dibasic acid/glycol ester	July 24, 1988.
P 87-0726	G Poly(perfluoroalkylpolyoxythylenemethacrylate & polyoxyethylenemethacrylate	July 27, 1988.
P 87-0826	G Carbamido-methyl-((chloro-((((sulfooxyethylsulfonyl)amino)-s-triazinyl)amino) substituted)azo)-hydroxy-ethyl-pyridinone, sodium salt.	July 27, 1988.
P 87-1086	Isopropoxyethyl salicylate	Dec. 6, 1987.
P 87-1146	G Amine functional epoxy	July 20, 1988.
P 87-1180	G cycloalkanoealkyl alcohol	Aug. 15, 1988.
P 87-1253	G Alicyclic ester	June 29, 1988.
P 87-1355	G Substituted nitrophenoxy substituted naphthoic acid derivative	July 13, 1988.
P 87-1416	G Substituted-terminated siloxanes and silicones	Aug. 10, 1988.
P 87-1568	G (alkyl-substituted bicycloalkenyl) substituted pyridine	July 13, 1988.
P 87-1704	G Saturated hydroxy acrylic resin	Aug. 3, 1988.
P 87-1760	4,4'-methylene-bis oxyethylene diphenol, referred to as mod	July 22, 1988.
P 87-1767	Polymer of: hexanedioic acid, polymer with 1,2-ethanediol (2,000MW); hexanediol acid, polymer with 1,2-ethanediol (3,000 MW); hexanedioic acid, polymer with 1,2-ethanediol (1,000 MW); naphthalene 1,5 dissocyanato-.	Aug 1, 1988.
P 87-1772	Polymer of; hexanedioic acid, polymer with 1,2,-ethanediol (2,000 MW); hexanedioic acid, polymer with 1,2,-ethanediol (3,000MW); hexanedioic acid, polymer with ethanediol (1,000 MW); benzene, 1,1'-methylene bis-(4-isocyanato).	Do.
P 87-1788	G Polyurethane polymer	July 16, 1988.
P 87-1797	Poly(oxy-1,4-butanedyl), a-(((3-isocyanatomethyl phenyl) amino)carboxyl)-omega-((((3-isocyanatomethyl phenyl)amino) carboxyl)oxy); stantan brown HCC-5513 hardwick standard.	Aug. 1, 1988.
P 87-1803	Polymer of hexanediol acid, polymer with 1,4-butanediol and 1,2-ethanediol; hexanedioc acid; naphthalene, 1,5-diisocyanato—; 1,4-butanediol; and 1,3-propanediol; 2-(hydroxymethyl)-2-methyl.	Do.
P 88-0109	G Organosiloxane	July 30, 1988.
P 88-0155	G Saturated polyester	June 30, 1988.
P 88-0172	Trimethy norbornyl-2-methyl cyclohexanol	July 5, 1988.
P 88-0185	G Carbamic acid ester	Mar. 9, 1988.
P 88-0191	G Nylon salt	Mar. 14, 1988.
P 88-0192	G Polyamide resin	Mar. 16, 1988.
P 88-0193	Dicyclopentadiene, dimerized fatty acids, fumeric acids, resin	Apr. 6, 1988.
P 88-0197	G Indophenol derivative	Feb. 19, 1988.
P 88-0200	G Aliphatic aromatic polyester	July 9, 1988.
P 88-0208	G Substituted aryl aliphatic amine	Feb. 24, 1988.
P 88-0209	G Diamine salt of a substituted aromatic diacid	July 12, 1988.
P 88-0224	G Unsaturated Polyester polymer	Feb. 10, 1988.
P 88-0228	G Hydrocarbon, steam-cracked aromatic C5-C12 cycloalkadiene fractions polymer with hetermonocyclic-substituted alkybenzenzene.	Mar. 6, 1988.
P 88-0229	G Alkaline metal carboxylate	Feb. 24, 1988.
P 88-0232	Adipic acid; terephthalic acid; 1,4-butane diol; neopentyl glycol; tetrabutyl titanate	Feb. 11, 1988.
P 88-0233	Adipic acid; polyethylene terephthalate; 1,4-butane diol; neopentyl glycol; tetrabutyl titanate	Do.
P 88-0240	G Modified aromatic isocyanate prepolymer	June 16, 1988.
P 88-0259	G Acrylated polyurethane	Mar. 12, 1988.
P 88-0260	G Metal alkanoates	July 27, 1988.
P 88-0273	Organic ester	May 9, 1988.
P 88-0274	G Polymeric ricinolic acid ester	Mar. 5, 1988.
P 88-0277	G Reaction product of aluminum isopropoxide, ethyl acetoacetate, and isobutyl alcohol	Feb. 22, 1988.
P 88-0291	G Unsaturated acidic polycarboxylic acid ester	May 4, 1988.
P 88-0293	G Polyether Polyol	Feb. 23, 1988.
P 88-0302	G Polyic resin	June 17, 1988.
P 88-0306	Dodecene sulfonic acid, sodium salts hydroxy dodecane sulfonic acid, sodium salts	Feb 26, 1988.
P 88-0308	G Polyterpene resin	Apr. 29, 1988.
P 88-0310	G Polyurea A polyisocyanate(aliphatic) and A polyamine(aliphatic) condensate	May 30, 1988
P 88-0324	G Arylarylsulfonate, metal salt	Mar. 21. 1988.
P 88-0325	G Polyamide resin	Apr. 5, 1988.
P 88-0331	G Cyrboxylic acid modified hydrocarbon resin	Mar. 25, 1988.
P 88-0335	1,2-Epoxyhexane	July 30, 1988.
P 88-0336	G Zeromethrine merocyanine dye	June 22, 1988.
P 88-0337	G Disubstituted cyclopentanone	July 19, 1988.
P 88-0341	G Copolymer	May 30, 1988.
P 88-0342	G Polyurea. A polyisocyanate (aliphatic) a d A polyamine (aliphatic) condenate	Do.
P 88-0344	G Terpene-styren resin	May 1, 1988.
P 88-0355	G Aliphatic polyester	May 19, 1988.
P 88-0374	G Metal resinate	May 18, 1988.
P 88-0378	G Ethylene oxide; epichlorohydrin	July 18, 1988.
P 88-0407	G. Silsesquioxane	Do.
P 88-0408	G Modified organosilicone	Do.

PMN No.	Identify/generic name	Date of commencement
P 88-0416	G Saturated polyester resin from dibasic acids and diols	July 22, 1988.
P 88-0417	.....do	Do.
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P 88-0468	G Phenyl ketone mixture	July 12, 1988.
P 88-0474	G Perfluoroalkyl disulfide	July 1, 1988.
P 88-0479	G Lactum, polymer, N-Methoxymethylated	July 19, 1988.
P 88-0480	G Benzene, ethenyl-, polymer with siloxane and silicones, dimethyl	Do.
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P 88-0764	G Trisubstituted dicarbomoncylic methane	June 28, 1988.
P 88-0803	G Saturated polyester resins	July 14, 1988.
P 88-0826	G Polyamic acid polymer e	May 24, 1988.
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P 88-1034	G Chain-extended polyisocyanate	Aug. 1, 1988.
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BILLING CODE 6560-50-M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S. 2215/Pub. L. 100-679
Office of Federal Procurement Policy Act Amendments of 1988. (Nov. 17, 1988; 102 Stat. 4055; 18 pages) Price: $1.00

S. 2470/Pub. L. 100-680
Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988. (Nov. 17, 1988; 102 Stat. 4073; 5 pages) Price: $1.00

S.J. Res. 327/Pub. L. 100-681
Commemorating January 28, 1989, as a "National Day of Excellence" in honor of the crew of the space shuttle Challenger. (Nov. 17, 1988; 102 Stat. 4078; 1 page) Price: $1.00

S.J. Res. 332/Pub. L. 100-682
To designate the period commencing December 11, 1988, and ending December 17, 1988, as "National Drunk and Drugged Driving Awareness Week." (Nov. 17, 1988; 102 Stat. 4079; 2 pages) Price: $1.00

S.J. Res. 352/Pub. L. 100-683
Designating September 24, 1989, as "United States Marshals Bicentennial Day." (Nov. 17, 1988; 102 Stat. 4081; 1 page) Price: $1.00

S.J. Res. 365/Pub. L. 100-684
To designate January 28, 1989, as "National Challenger Center Day" to honor the crew of the space shuttle Challenger. (Nov. 17, 1988; 102 Stat. 4082; 1 page) Price: $1.00

S. 2209/Pub. L. 100-685
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989. (Nov. 17, 1988; 102 Stat. 4083; 21 pages) Price: $1.00

H.J. Res. 650/Pub. L. 100-686
Designating April 1989 as "Actors' Fund of America Appreciation Month." (Nov. 18, 1988; 102 Stat. 4104; 1 page) Price: $1.00

S. 11/Pub. L. 100-687
To amend title 38, United States Code, to establish certain procedures for the adjudication of claims for benefits under laws administered by the Veterans' Administration; to apply the provisions of section 553 of title 5, United States Code, to rulemaking procedures of the Veterans' Administration; to establish a Court of Veterans' Appeals and to provide for judicial review of certain final decisions of the Board of Veterans' Appeals; to provide for the payment of reasonable fees to attorneys for rendering legal representation to individuals claiming benefits under laws administered by the Veterans' Administration; to increase the rates of compensation payable to veterans with service-connected disabilities; and to make various improvements in veterans' health, rehabilitation, and memorial affairs programs; and for other purposes. (Nov. 18, 1988; 102 Stat. 4105; 34 pages) Price: $1.25

S. 2030/Pub. L. 100-688
To amend the Marine Protection, Research, and Sanctuaries Act of 1972 to provide for termination of ocean dumping of sewage sludge and industrial waste, and for other purposes. (Nov. 18, 1988; 102 Stat. 4139; 22 pages) Price: $1.00

S. 2049/Pub. L. 100-689
Veterans' Benefits and Programs Improvement Act of 1988. (Nov. 18, 1988; 102 Stat. 4161; 20 pages) Price: $1.00

H.R. 5210/Pub. L. 100-690
Anti-Drug Abuse Act of 1988. (Nov. 18, 1988; 102 Stat. 4181; 365 pages) Price: $11.00

H.R. 1975/Pub. L. 100-691
Federal Cave Resources Protection Act of 1988. (Nov. 18, 1988; 102 Stat. 4546; 6 pages) Price: $1.00

H.R. 3957/Pub. L. 100-692
Delaware and Lehigh Navigation Canal National Heritage Corridor Act of 1988. (Nov. 18, 1988; 102 Stat. 4552; 7 pages) Price: $1.00

H.R. 4039/Pub. L. 100-693
To declare that certain lands in the State of California which form a part of the right-of-way granted by the United States to the Central Pacific Railway Company have been abandoned, and for other purposes. (Nov. 18, 1988; 102 Stat. 4559; 4 pages) Price: $1.00

H.R. 4612/Pub. L. 100-694
Federal Employees Liability Reform and Tort Compensation Act of 1988. (Nov. 18, 1988; 102 Stat. 4563; 5 pages) Price: $1.00

H.R. 4847/Pub. L. 100-695
To amend the Federal Hazardous Substances Act to require the labeling of chronically hazardous art materials, and for other purposes. (Nov. 18, 1988; 102 Stat. 4568; 3 pages) Price: $1.00

H.R. 2840/Pub. L. 100-696
Arizona-Idaho Conservation Act of 1988. (Nov. 18, 1988; 102 Stat. 4571; 42 pages) Price: $1.25

H.R. 3048/Pub. L. 100-697
National Superconductivity and Competitiveness Act of 1988. (Nov. 19, 1988; 102 Stat. 4613; 5 pages) Price: $1.00

H.R. 3313/Pub. L. 100-698
To establish in the Department of the Interior the Southwestern Pennsylvania Heritage Preservation Commission, and for other purpsoes. (Nov. 19, 1988; 102 Stat. 4618; 6 pages) Price: $1.00

H.R. 3680/Pub. L. 100-699
Omnibus Public Lands and National Forests Adjustments Act of 1988. (Nov. 19, 1988; 102 Stat. 4624; 7 pages) Price: $1.00

H.R. 3911/Pub. L. 100-700
Major Fraud Act of 1988. (Nov. 19, 1988; 102 Stat. 4631; 9 pages) Price: $1.00

H.R. 4212/Pub. L. 100-701
To amend the Joint resolution of April 27, 1962, to permit the Secretary of the Interior to establish the former home of Alexander Hamilton as a national memorial at its present location in New York, New York. (Nov. 19, 1988; 102 Stat. 4640; 2 pages) Price: $1.00

H.R. 4807/Pub. L. 100-702
Judicial Improvements and Access to Justice Act. (Nov. 19, 1988; 102 Stat. 4642; 32 pages) Price: $1.00

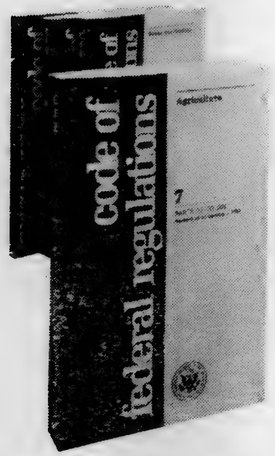
H.R. 4972/Pub. L. 100-703
To authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes. (Nov. 19, 1988; 102 Stat. 4674; 3 pages) Price: $1.00

H.R. 5133/Pub. L. 100-704
Insider Trading and Securities Fraud Enforcement Act of 1988. (Nov. 19, 1988; 102 Stat. 4677; 8 pages) Price: $1.00

H.R. 5287/Pub. L. 100-705
Panama Canal Commission Compensation Fund Act of 1988. (Nov. 19, 1988; 102 Stat. 4685; 3 pages) Price: $1.00

H.J. Res. 564/Pub. L. 100-706
Designating the first week of April 1989 as "National Earthquake Awareness Week." (Nov. 19, 1988; 102 Stat. 4688; 1 pages) Price: $1.00

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11-28-88
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Pages 47799-47926

federal register

Monday
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Rules and Regulations

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Monday, November 28, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-147]

7 CFR Part 354

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding commuted traveltime allowances in Delaware. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between these locations.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, Chapter III, and 9 CFR, Chapter I, Subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances between certain locations in Delaware. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowlege of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

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COMMUTED TRAVELTIME ALLOWANCES

(In hours)

Location covered	Served from—	Metropolitan area	
		Within	Outside
Add:			
* * * * *			
Delaware:			
* * * * *			
Wilmington (including marine terminal and airport)	Carlisle, PA		6
	Dallas, PA		6
	Gap, PA		4
* * * * *			

Done in Washington, DC, this 22nd day of November, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-27381 Filed 11-25-88; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 641]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 641 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 338,250 cartons during the period November 27 through December 3, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 641 (§ 910.941) is effective for the period November 27 through December 3, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The Committee met publicly on November 22, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 10-1 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.941 is added to read as follows:

(Note: This section will not appear in the Code of Federal Regulations.)

§ 910.941 Lemon Regulation 641.

The quantity of lemons grown in California and Arizona which may be handled during the period November 27, 1988, through December 3, 1988, is established at 338,250 cartons.

Dated: November 23, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-27479 Filed 11-25-88; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-80]

Staff Accounting Bulletin No. 80

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: The interpretations in this staff accounting bulletin express certain views of the staff regarding the application of Rules 3-05 and 1-02(v) of Regulation S-X in determining the financial statements of businesses acquired or to be acquired that are required to be included in registration statements for initial public offerings.

DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Teresa Iannaconi, Office of the Chief Accountant (202-272-2130), or Robert Bayless, Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal Securities laws.

Jonathan G. Katz,

Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 80 to the table found in Subpart B.

Staff Accounting Bulletin No. 80

The staff hereby adds Section J to Topic 1 of the staff accounting bulletin series. Topic 1-J sets forth the administrative policy of the Division of Corporation Finance and the Office of the Chief Accountant as to the method of application of Rules 3-05 and 1-02(v) of Regulation S-X to the requirements for financial statements of businesses acquired and to be acquired to registration statements for certain types of initial public offerings.

Topic 1: Financial Statements

* * * * *

J. *Application of Rule 3-05 in Initial Public Offerings Facts*: Rule 3-05 of Regulation S-X establishes the financial statement requirements for businesses acquired or to be acquired. If required, financial statements must be provided for one, two or three years depending upon the relative significance of the acquired entity as determined by the application of Rule 1-02(v) of Regulation S-X. The calculations required for these tests are applied by comparison of the financial data of the registrant and acquiree(s) for the fiscal years most recently completed prior to the acquisition. The staff has recognized that these tests literally applied in some initial public offerings may require financial statements for an acquired entity which may not be significant to investors because the registrant has had substantial growth in assets and earnings in recent years.[1]

Question: How should Rules 3-05 and 1-02(v) of Regulation S-X be applied in determining the periods for which financial statements of acquirees are required to be included in registration statements for initial public offerings?

Interpretive Response: It is the staff's view that initial public offerings involving businesses that have been built by the aggregation of discrete businesses that remain substantially intact after acquisition [2] were not contemplated during the drafting of Rule 3-05 and that the significance of an acquired entity in such situations may be better measured in relation to the size of the registrant at the time the registration statement is filed, rather than its size at the time the acquisition was made. Therefore, for a first time registrant, the staff has indicated that in applying the 10%, 20% and 40% tests in Rule 3-05, the three tests in Rule 1-02(v) generally can be measured against the combined entities, including those to be acquired, which comprise the registrant at the time the registration statement is filed. The staff's policy is intended to ensure that the registration statement will include not less than three, two and one year(s) of audited financial statements for not less than 60%, 80% and 90%, respectively, of the constituent businesses that will comprise the registrant on an ongoing basis. In all circumstances, the audited financial statements of the registrant are required for three years, or since its inception if less than three years. The requirement to provide the audited financial statements of a constituent business in the registration statement is satisfied for the post-acquisition period by including the entity's results in the audited consolidated financial statements of the registrant. If additional periods are required, the entity's separate audited financial statements for the immediate pre-acquisition period(s) should be presented.[3]

In order for the pre-acquisition audited financial statements of an acquiree to be omitted from the registration statement, the following conditions must be met:

a. The combined significance of businesses acquired or to be acquired for which audited financial statements cover a period of less than 9 months [4] may not exceed 10%;

b. The combined significance of businesses acquired or to be acquired for which audited financial statements cover a period of less than 21 months may not exceed 20%; and

c. The combined significance of businesses acquired or to be acquired for which audited financial statements cover a period of less than 33 months may not exceed 40%.

Combined significance is the total, for all included companies, of each individual company's highest level of significance computed under the three tests of significance. The significance tests should be applied to pro forma financial statements of the registrant, prepared in a manner consistent with Article 11 of Regulation S-X. The pro forma balance sheet should be as of the date of the registrant's latest balance sheet included in the registration statement, and should give effect to businesses acquired subsequent to the end of the latest year or to be acquired as if they had been acquired on that date. The pro forma statement of operations should be for the registrant's most recent fiscal year included in the registration statement and should give effect to all acquisitions consummated during and subsequent to the end of the year and probable acquisitions as if they had been consummated at the beginning of that fiscal year.

The three tests specified in Rule 1-02(v) should be made in comparison to the registrant's pro forma consolidated assets and pretax income from continuing operations. The assets and pretax income of the acquired businesses which are being evaluated for significance should reflect any new cost basis arising from purchase accounting.

Example: On February 20, 19X9 Registrant files Form S-1 containing its audited consolidated financial statements as of and for the three years ended December 31, 19X8. Acquisitions since inception have been:

[1] An acquisition which was relatively significant in the earliest year for which a registrant is required to file financial statements may be insignificant to its latest fiscal year due to internal growth and/or subsequent acquisitions. Literally applied, Rules 3-05 and 1-02(v) might still require separate financial statements for the now insignificant acquisition.

[2] For example, nursing homes, hospitals or cable TV systems. This interpretation would not apply to businesses for which the relative significance of one portion of the business to the total business may be altered by post acquisition decisions as to the allocation of incoming orders between plants or locations. This bulletin does not address all possible cases in which similar relief may be appropriate but, rather, attempts to describe a general framework within which administrative policy has been established. In other distinguishable situations, registrants may request relief as appropriate to their individual facts and circumstances.

[3] If audited pre-acquisition financial statements of a business are necessary pursuant to the alternative tests described here, the interim period following that entity's latest pre-acquisition fiscal year end but prior to its acquisition by the registrant generally would be required to be audited.

[4] As a matter of policy the staff accepts financial statements for periods of not less than 9, 21 and 33 consecutive months (not more than 12 months may be included in any period reported on) as substantial compliance with requirements for financial statements for 1, 2 and 3 years, respectively.

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Acquiree	Fiscal year end	Date of acquisition	Highest significance at acquisition (percent)
A	3/31	1/1/X7	60
B	7/31	4/1/X7	45
C	9/30	9/1/X7	40
D	12/31	2/1/X8	21
E	3/31	11/1/X8	11
F	12/31	To be acquired.	11

The following table reflects the application of the significance tests to the combined financial information at the time the registration statement is filed.

[In percent]

Component entity	Significance of			Highest level of significance
	Assets	Earnings	Investment	
A	12	23	12	23
B	10	21	10	21
C	21	3	4	21
D	10	5	13	13
E	4	9 loss	3	9
F	2	11	6	11

Year 1 (most recent fiscal year)—Entity E is the only acquiree for which pre-acquisition financial statements may be omitted for the latest year since significance for each other entity exceeds 10% under one or more test.

Year 2 (preceding fiscal year)—Financial statements for E and F may be omitted since their combined significance is 20% and no other combination can be formed with E which would not exceed 20%.

Year 3 (second preceding fiscal year)—Financial statements for D, E and F may be omitted since their combined significance of these entities is 33% [5] and no other combination can be formed with E and F which would not exceed 40%.

The financial statement requirements must be satisfied by filing separate pre-acquisition audited financial statements for each entity that was not included in the consolidated financial statements for the periods set forth above. The following table illustrates the requirements for this example.

[5] Combined significance is the sum of the significance of D's investment test (13%), E's earnings test (9%) and F's earnings test (11%).

Component entity	Date of acquisition	Minimum financial statement requirement	Period in consolidated F/S	Separate pre-acquisition audited F/S
			Months	
Registrant	N/A	33	36	
A	1/1/X7	33	24	9
B	4/1/X7	33	21	[6] 12
C	9/1/X7	33	16	17
D	2/1/X8	21	11	10
E	11/1/X8		2	
F	[7]	9		9
acquired				

[6] The audited preacquisition period need not correspond to the acquiree's pre-acquisition fiscal year. However, audited periods must not be for periods in excess of 12 months.
[7] To be acquired.

[FR Doc. 88-27365 Filed 11-25-88; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area, Thames River in Waterford/Groton, CT

AGENCY: U.S. Army Corps Of Engineers, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule invites comments on the Department of the Army's proposal to establish a naval restricted area in the waters of the Thames River in the vicinity of the New London Submarine Base for the increased safety and security of Government owned facilities and vessels. These regulations will normally have minimal impact on vessel movements within the designated restricted area but will prohibit vessels from entering the restricted area when notified by submarine base personnel that such use within the area will interfere with submarine maneuvering, operations or security.

DATES: Interim final rule effective November 28, 1988. Written comments must be submitted on or before December 28, 1988.

ADDRESSES: HQDA, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Lee at (617) 647-8156 or Mr. Ralph T. Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Naval Submarine Base, New London, Connecticut, has requested the Department of the Army establish the restricted area in the Thames River, the dividing line between the towns of Groton and Waterford. The restricted area covers the river area immediately adjacent to the submarine base and generally extends to the western limits of the dredged channel. The northernmost and southernmost portions of the restricted area extend beyond the dredged channel limits to the western shore. A detailed description of the restricted area boundaries is in the regulations ((a) The area).

On February 19, 1987, the New England Division Engineer issued a public notice to all known interested parties soliciting comments on this proposal and on March 30, 1987, the division engineer held a public hearing on the proposed restricted area. Due to the amount of opposition expressed in response to the public notice and at the hearing, the Navy scaled down its proposal. The revised restricted area is contained in this interim final regulation.

In view of the extensive public involvement at the local level and immediate needs of the Navy for improved security, we have found that notice of proposed rulemaking and public procedures thereto are unnecessary and impracticable and good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register**.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and provisions of E.O. 12291 do not apply. I hereby certify that this interim final regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above the Department of the Army is amending Part 334 of Title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.75 is added as follows:

§ 334.75 Thames River, Naval Submarine Base New London, Restricted Area.

(a) *The area:* The open waters of the Thames River approximately 5 nautical miles upriver from its mouth along the boundary between Groton and Waterford, Connecticut, within an area bounded as follows:

From a point on the eastern shore at latitude 41° 24' 14.4" N, longitude 72° 05' 36.0" W then northerly along the coast to latitude 41°24' 20.0" N, longitude 72° 05' 37.9" W then westerly across the river to a point on the western shore at latitude 41° 24' 20.0" N, longitude 72° 05' 55.5" W then southerly along the coast to a point on the western shore at latitude 41° 24' 5.0" N, longitude 72° 05' 55.7" W then easterly to the western edge of the dredged channel to a point located at latitude 41° 24' 04.1" N, longitude 72° 05' 51.2" W then southerly along the western edge of the dredged channel to a point at latitude 41° 24' 00" N, longitude 72° 05' 52.6" W then southerly along the western edge of the dredged channel to a point located at latitude 41° 23' 57.1" N, longitude 72° 05' 52.5" W then southerly to buoy "11" located at a point at latitude 41° 23' 45.0" N, longitude 72° 05' 53.7" W then southerly to buoy "B" on the northeastern shore of Mamacoke Hill to a point at latitude 41° 23' 33.8" N, longitude 72° 05' 53.7" W then southerly along the shore to buoy "A at latitude 41° 23' 25.0" N, longitude 72° 05' 45.4" W then southeasterly to buoy "9" at a point located at latitude 41° 23' 15.0" N, longitude 72° 05' 35.0" W then easterly to a point on the eastern shore at latitude 41° 23' 15.0" N, longitude 72° 05' 17.9" W then northerly along the shore to a point on the eastern shore at latitude 41° 23' 15.8" N, longitude 72° 05' 17.9" W then along the following points:

Latitude	Longitude
41°23' 15.8"N	72°05' 22.0"W
41°23' 25.9"N	72°05' 29.9"W
41°23' 33.8"N	72°05' 34.7"W
41°23' 37.0"N	72°05' 36.0"W
41°23' 41.0"N	72°05' 40.3"W
41°23' 47.2"N	72°05' 42.3"W
41°23' 53.8"N	72°05' 43.7"W
41°23' 59.8"N	72°05' 43.0"W
41°24' 12.4"N	72°05' 43.2"W

Then to the point of beginning on the eastern shore.

(b) *The regulations.* (1) Vessels and other watercraft within the designated navigation channel may proceed through the restricted area at normal operating speeds without stopping. Vessels and watercraft may also utilize the water area within the restricted area located between the western edge of the designated channel and the western shore for fishing, anchoring and other recreational uses. However, all vessels and watercraft, except U.S. military vessels must leave the restricted area when notified by personnel of the New London Submarine Base that such use will interfere with submarine maneuvering, operations or security.

(2) Commercial fishermen and shell fishermen may fish within the restricted area provided their vessels display registration numbers issued by the Naval Submarine Base, New London, Connecticut. The registration numbers may be obtained by contacting the Commanding Officer, Naval Submarine Base New London. All commercial fishermen and shell fishermen must also leave the restricted area when notified by personnel of the New London Submarine Base that such use will interfere with submarine maneuevering, operations or security.

(3) Vessels which are owned, operated or sponsored by local, state municipalities or academic institutions preparing for or participating in a water sport or water related recreational event sponsored by those local or state municipalities or academic institutions, or private or commercial vessels engaged in observing the conduct of the above event shall be exempt from the restrictions above, providing:

(i) The Commanding Officer, Naval Submarine Base New London, and the Coast Guard Captain of the Port are advised in writing at least 48 hours in advance of the event, or

(ii) The event was publicized in such a manner that the local public in general had a reasonable opportunity to learn of the event 48 hours in advance.

(iii) The regulations in this section shall be enforced by the Commander, U.S. Naval Submarine Base New London, Connecticut, and such agencies as he/she may designate.

Date: November 17, 1988.

Patrick J. Kelly,

Brigadier General, USA, Director of Civil Works.

[FR Doc. 88-27337 Filed 11-25-88; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 80106-8200]

Miscellaneous Changes in Patent Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending its regulations to (1) correct certain rules to conform to previous changes in other rules, (2), require all correspondence directed to the Patent and Trademark Office concerning a patent application to include the series code and serial number or serial number and filing date, (3) provide for the indication of copyright and mask work protection in patent applications, (4) require that any necessary corrections to drawings be made only by submission of new or replacement drawings, (5) provide in limited situations for the use of color drawings in utility patent applications, (6) prohibit the use of broken lines in design patent application drawings to show hidden planes and surfaces, and (7) provide for a refund of a portion of the preliminary examination fee where the Demand is withdrawn. The change pertaining to the drawings would remove any need for patent applicants or their representatives to borrow drawings filed in patent applications from the Office after the effective date of the rule change for purposes of making corrections.

EFFECTIVE DATE: January 1, 1989. The non-return of drawings provision of § 1.85(b) will apply to drawings in patent applications filed after January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Louis O. Maassel by telephone at (703) 557-3070 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Proposed rulemaking requesting comment was published on May 9, 1988 in the **Federal Register** at 53 FR 16522-16527 and on May 24, 1988 in the *Official Gazette* at 1090 O.G. 57-62.

An oral hearing was conducted on July 21, 1988 to receive comments.

Written comments were received from 5 patent law groups, 2 patent law firms and 6 individuals. One person also presented oral testimony.

No comments were received relating to the proposed amendment of §§ 1.4, 1.5(b), 1.53(d), 1.56, 1.81, 1.84 (j) and (l), 1.152, 1.378, 1.421 and 1.480.

The comments received relating to amendments to particular sections and replys thereto are listed below.

Comments Relating to Section 1.5(a)

Comment. Six comments indicated that they considered the punishment of returning papers with improper identification as too harsh a penalty, since such return could result in the necessity of paying extension of time fees or revival of an abandoned application.

Reply. The return of papers with improper identification is not intended to serve as punishment or a penalty, but as a solution to a major problem. In fact, most of the improperly identified papers are not ones for which a time period is running, e.g., priority papers, information disclosure statements, status inquiries, etc. The Patent and

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Trademark Office's (PTO) goal is to match papers with the appropriate application as quickly as possible. The practice of the PTO has been to attempt to match papers with the correct application by using the Patent Application Locating and Monitoring (PALM) System to conduct a search by applicant's name. Such a search is very slow and merely lists all application numbers under the name of the inventor. These application numbers must then be individually checked to attempt to match any other identifying information found on the paper. If this process is unsuccessful, attempts are made to reach the sender by telephone. Telephone calls usually require further followup since the paper cannot usually be identified immediately. Frequently, the serial number is not even available to the sender since application-related papers are being sent to the PTO before notification of serial number has been received. For papers not successfully matched after these attempts, the process of using PALM and making telephone calls is repeated days and weeks later. Despite the considerable effort and resources applied to matching papers, there are still thousands of unmatched papers. Undoubtedly, many were followed up by status inquiries or complaint letters from the senders, subsequent PTO searches for missing papers, and resubmissions by senders, some with petitions or extension of time fees. This waste of resources by both the PTO and the applicants is a major concern. Since the goal is to match papers as quickly and efficiently as possible, and not to institute a harsh penalty, the final rule was modified. Papers which are not properly identified will be returned, but if they are resubmitted to the PTO within two weeks of the date they are returned by the PTO, the original date of receipt will be retained without the need for paying fees for extension of time or revival of an abandoned application. Where no return address is available, the papers will be retained for a reasonable period of time to await any followup correspondence. If no followup correspondence is received within a reasonable period of time, the papers will be destroyed.

Comment. Three comments included the proposal that the filing date and serial number be accepted as meeting the requirements of § 1.5(a).

Reply. This proposal has been adopted in the final rule.

Comment. One comment proposed that implementation of the proposal be delayed for one year to provide sufficient time to allow applicants to adapt to the requirements.

Reply. The requirements are believed to be quite simple and are already met by almost all papers filed in the PTO. Therefore, an extended period of time to adapt is not seen to be necessary or appropriate.

Comment. Two comments suggested that a procedure be developed under which an applicant could resubmit a corrected returned paper with fee in a timely manner, and receive the benefit of the date of the original submission as its filing date.

Reply. The substance of this suggestion has been adopted in final § 1.5(a), but without the charge of a fee. The final rule provides resubmission of a returned paper with proper identification within two weeks of the PTO mailing date of the letter returning the paper to the sender to resubmit the paper and retain the benefit of the filing date of the original submission. If desired, the resubmission could be mailed under the certificate of mailing procedure of § 1.8 or the "Express Mail" procedure of § 1.10.

Comment. Three comments suggested that a form or notice be sent, with a time limit set for return of appropriate identification with minimal fee or surcharge.

Reply. The proposal would require the PTO to retain the unmatched papers in some kind of order, probably alphabetically by inventor name and/or by receipt date, so that responses could be matched. A double matching of all papers would be necessary. The responses with the appropriate identification would have to be matched to the original papers submitted, then these would have to be matched with the applications. If responses with appropriate identification did not reference the fact that a notice had been sent, they may not be associated with the original, again resulting in more unmatched papers. Accordingly, the proposal was not adopted.

Comment. One comment indicated that including the word "must" with respect to providing the serial number and series code is too severe a requirement.

Reply. The current rules in 37 CFR 1.5 state such identification "should" be on application-related papers. This term has apparently been too permissive and has contributed to the problem. The use of "must" is believed to be sufficiently strong to aid in resolving the problem.

Comment. One comment included the proposal that a wrong serial number be considered as a defective execution under 35 U.S.C. 26 which could be corrected without loss of filing date.

Reply. The legislative history of 35 U.S.C. 26 is quite clear that the intent of the section was to remedy problems only in the execution of oaths and declarations.

Comment. Two comments questioned the meaning of "series code."

Reply. The series code is the two digit number preceding the serial number on the application filing receipt. A new series code is assigned each time a new series of six digit serial numbers is begun. The current series code is "07". It appears before the serial number, for example 07/123,456. An illustrative example is also included in the final rule.

Comment. One comment included the proposal that a more appropriate name for the combination of series code and serial number would be "application number."

Reply. This proposal has been adopted in the final rule.

Comment. One comment raised the question as to whether correspondence relating to a patent application should contain both the heading "PATENT" as suggested in the helpful hints and "PATENT APPLICATION" as called for in 1.5(a).

Reply. Only "PATENT APPLICATION" should be used on patent application correspondence. This should be placed in an obvious location on the top page.

Comment. One comment noted that the return post card only contains the serial number and not the series code.

Reply. The PTO plans to begin identifying an eight-digit application number on return post cards. The series code will be the first two digits, followed by a slant "/" and the six digit serial number. Althought the series code has not been stamped along with the serial number on the return post card used by many applicants, the series code changes only once about every 7 or 8 years when a new set of serial numbers is begun with 000,001. Therefore, until the eight-digit application number is stamped on return post cards, the current series code "07" can be used along with the serial number currently stamped on the post card.

Comment. Three comments suggested that the rules provide that a paper without proper identification be returned only if the PTO found it impossible to match the paper to a particular application file.

Reply. Attempts to match improperly identified papers with a particular application file is very time consuming and experience has shown that the benefits of such time consuming effort are not worth the effort expended.

Comment. One comment questioned the meaning of "such information" in the second sentence of § 1.5(a).

Reply. "Such information" means the items referred to in the first sentence, namely, the series code and serial number, serial number and filing date, or international application number.

Comment. One comment indicated that the PTO may not return a paper in a timely manner.

Reply. Although no assurance can be given as to the prompt return of all improperly identified papers, such papers will be returned in most instances from the PTO Mail Room within one day of the opening of the envelopes containing the papers and discovery of incomplete identification. Also, the time for resubmission of a returned paper is calculated from the PTO mailing date so that no injury would result from a prompt resubmission.

Comment. One comment indicated that if the filing receipt is delayed or lost, it would preclude timely status inquiries or cause delays in preliminary matters such as a request for a foreign filing license.

Reply. A self-addressed return post card, with proper postage, can be used to obtain early notification of the application number.

Comments Relating to Section 1.53

Comment. One comment pointed out inconsistent wording between proposed § 1.53 and the explanatory comments in the notice of proposed rulemaking.

Reply. The apparent inconsistency has been corrected.

Comments Relating to Sections 1.71 and 1.84(o)

Comment. One comment raised a question whether the PTO should make a comment as to the legal sufficiency of a copyright notice mentioned in § 1.71 since the PTO does not administer the copyright law.

Reply. An indication of what is considered to be legally sufficient copyright notice was included to assist applicants who may not be familiar with the copyright law.

Comments Relating to Section 1.84(a)

Comment. Five comments were received objecting to the prohibition of photolithographs as drawings.

Reply. The final rule does not prohibit photolithographs as drawings.

Comments Relating to Section 1.84(b)

Comment. Three comments were received relating to drawing sheet sizes. One comment favored using only the A4 size and the other two comments favored using letter size (8½ by 11 inches).

Reply. Since applicants have three different size sheets which may be used as they choose, no need is currently seen to make a single size mandatory. The use of letter size drawing sheets requires further study and if acceptable, will be proposed for public comments in the future.

Comments Relating to Section 1.84(i)

Comment. One comment included the suggestion that clarifying language changes be made in § 1.84(i).

Reply. The comment relating to the wording of the last sentence of § 1.84(i) has been adopted.

Comments Relating to Section 1.84(n)

Comment. One comment supported the change to § 1.84(n).

Comments Relating to Section 1.84(p)

Comment. Two comments relating to color drawings in utility applications were received. One comment proposed that the applicant be permitted to file color drawings at his or her choice but that the patent be printed in black and white only with copies of the color drawings being available at extra cost. The other comment related to the patent examiner having the discretion to accept color drawings rather than requiring a petition to be filed.

Reply. In the past only a very few applications have shown a need to include drawings in color. Until more experience is gained, it is considered best to allow color drawings in limited situations and approval to remain in a central location by petition.

Comment. One comment stated that it is not proper to charge a higher fee where color drawings are required.

Reply. Color drawings are considered to be beyond the normal requirements set forth in the rules and therefore require a waiver of the rules for acceptance.

Comments Relating to Section 1.85(a)

Comment. One comment was received suggesting that "may" be changed to "shall" in § 1.85(a).

Reply. The PTO is currently very liberal in accepting informal drawings and no need is seen for making the proposed change.

Comments Relating to Section 1.85(b) and (c)

Comment. One comment proposed allowing drawings filed in the PTO to be withdrawn to make minor changes.

Reply. The problems relating to charging out drawings would remain if drawings are allowed to be removed from the PTO for any reason. A major purpose of the rule change is to remove the necessity to have a drawing charge-out system in the PTO in the future.

Comment. One comment asked whether § 1.85(b) would be construed to deny access to a PTO drawing for making a copy.

Reply. Applicants and their representatives will continue to have access to their files and obtain copies of drawings.

Comment. One comment proposed adding another sentence to § 1.85(c) to clarify that an extension of time is available under § 1.136 for filing of formal drawings but not for payment of the issue fee.

Reply. This proposal has been adopted with somewhat different wording.

Comment. One comment indicated that the three month period for submitting corrections should be measured from the "notice of allowability" rather than the "notice of allowance."

Reply. This proposal has been adopted in the final rule.

Discussion of Specific Rules

Section 1.4, as amended, corrects the listing of rules in paragraph (a)(2).

Section 1.5, as amended, provides that all correspondence related to a U.S. national patent application already filed with the Patent and Trademark Office must include the indentification of the application number which comprises both the series code and the serial number assigned to that application by the Patent and Trademark Office (e.g., 07/123,456), or the serial number and filing date. Any correspondence not containing such identification will be returned to the sender where a return address is available. The final rule has been revised to provide that if the correspondence is remailed to the PTO within two weeks of the mailing date of the PTO's cover letter returning the correspondence, the PTO will grant the benefit of the original date of receipt of the returned correspondence. The two-week period will not be extended under § 1.136. Applicants may use either § 1.8 or § 1.10 mailing procedures for resubmissions of returned correspondence. No correspondence

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relating to an application should be filed prior to when notification of the application number is received from the PTO. If for some reason returned correspondence is resubmitted later than two weeks after the return mailing by the PTO, the resubmitted correspondence will be accepted but given its date of receipt with proper identification. If the original date of receipt is desired, applicants may petition under § 1.183 for waiver of the rules. Given there are over 30,000 documents to be routed each day, this requirement greatly facilitates the matching of correspondence received with the relevant patent application file. Without proper number identification, documents are either significantly delayed during processing or are never matched with the relevant application file. The amendments to paragraph (b) draw attention to the different requirements for identification in correspondence relating to the payment of maintenance fees.

Section 1.53 (c) and (d), as amended, state that a copy of the "Notice of Incomplete Application" or "Notice to File Missing Part" form sent to the applicant by the Office should accompany any response submitted to the Office in order for the response to be accepted. This will prevent the inadvertent assignment of a new application number to correspondence sent in response to such notices or the misrouting of the correspondence.

Section 1.56(e), as amended, corrects the reference to the "Board of Appeals" to read "Board of Patent Appeals and Interferences."

Section 1.71, as amended, contains new paragraphs (d) and (e) relating to the inclusion of copyright and mask work notices in patent applications. The provisions proposed are similar to those set forth in the Official Gazette notice dated March 20, 1987 titled "Inclusion of Copyright or Mask Work Notice in Patents" appearing on April 21, 1987 at 1077 O.G. 22. Under current intellectual property laws, it is possible to obtain copyright protection or mask work protection as well as patent protection for certain designs and technologies. On occasion, an author or inventor considers it desirable to include a notice of copyright or mask work in a design or utility patent which discloses material on which copyright or mask work protection previously has been established.

The inclusion of a copyright or mask work notice in a patent that discloses material on which copyright or mask work protection previously has been established, will serve to publicize and thereby protect the various intellectual property rights of the author or inventor. Further, this publication would tend to protect the public by militating against an unintentional encroachment of the rights. The presence of an unrestricted copyright or mask work notice in a patent could have an inhibiting effect on public dissemination of the patent disclosure to the extent it discourages the facsimile reproduction of the patent. The possible effect would be contrary to the mission of the Patent and Trademark Office to disseminate knowledge and information publicly by way of patent issuance, publication, and distribution. To avoid this effect, it is considered necessary to include an appropriate authorization by the author or inventor for copying of the patent itself with any copyright or mask work notice appearing in the patent. Inclusion of a copyright or mask work notice after a Notice of Allowance has been mailed will be permitted only if the criteria of 37 CFR 1.312 have been fulfilled. If the authorization required by amended § 1.71(e) is not included, the notice will be objected to as improper by the examiner. If the examiner maintains the objection upon reconsideration, further review must be by way of a petition filed in accordance with 37 CFR 1.181.

Section 1.81, as amended, clarifies that high quality copies of drawings should be submitted in patent applications. Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for future correction, if necessary.

Section 1.84(a), as amended, eliminates reference to two-ply or three-ply bristol board. Amended paragraph (a) also adds a reference to § 1.84(p) relating to color drawings in utility patent applications.

Only one copy of the drawing is required or desired. The Office had attempted to encourage the submission of three copies, but compliance was very low. It was determined that it is more efficient for the Office to rely on consistency and only one copy. Accordingly, hereafter only one copy of the drawings should be submitted.

The Patent and Trademark Office will no longer release to applicants, bonded drafting companies, or others, drawings from patent applications filed after the effective date of these rule changes. See amended § 1.85(b). If corrections to the drawings are necessary, new corrected drawings must be prepared by the applicant and filed in the Patent and Trademark Office. Therefore, the applicant, attorney or agent should retain the original drawing so that a corrected original drawing or corrected copy may be later submitted if necessary.

The Office will continue to allow applicants to borrow drawings for correction which have been filed prior to the effective date of these rule changes.

Section 1.84(b), as amended, provides for applicants using drawing sheets which are 8½ by 13 inches in size.

Section 1.84(i), as amended, contains grammatical corrections in the text of the rules and clarifies Office drawing requirements as to exploded views, enlarged views and views which require several sheets.

Section 1.84(j), as amended, clarifies how views should be arranged when they are placed sideways on the drawing sheet.

Section 1.84(l), as amended, indicates that drawings may be identified by lightly writing identifying information in the top margin on the drawings. For identification by application number, the Office prefers that the information be placed on the front of the drawing. When the applicant forwards drawings separate from the original application papers, a cover letter identifying the application by application number should accompany the drawings. The application number should also be placed on drawings filed after the application number has been indicated in correspondence to the applicant, in accordance with § 1.84(l).

Section 1.84(n) is added and permits numbering of the drawing sheets. However, such numbering would not appear on the drawings of the printed patent.

Section 1.84(o) is added and provides for the indication of copyright or mask work protection notice on patent application drawings. This procedure is the same as that established by the Official Gazette notice dated March 20, 1987 published on April 21, 1987 at 1077 O.G. 22.

Section 1.84(p) is added and provides in the rules for the filing of color drawings in a very limited number of utility patent applications. An Official Gazette notice relating to this topic dated August 6, 1986, titled "Use of Color Drawings in Utility Patents" was published on September 15, 1987 at 1082 O.G. 25. In light of the substantial administrative and economic burden associated with printing a utility patent with color drawings, the letters patent and the patent copies which are printed at the issuance of the patent will be only in black and white. However, copies of the patent with the color drawings may be purchased separately from the Patent and Trademark Office upon special request and payment of the fee.

It is anticipated that color drawings will only be permitted when color drawings are the only practical method in a utility patent application in which to disclose the subject matter sought to be patented. In order to avoid issues of lack of description or enablement under 35 U.S.C. 112 or new matter under 35 U.S.C. 132, appicants are advised to file the desired color drawings as part of the original application papers. The petition should be directed to the attention of the Deputy Assistant Commissioner for Patents.

Section 1.85, as amended, indicates that drawings not complying with § 1.84 will be accepted in some instances for purposes of examination and that drawings which do comply with all the rules relating to drawings will be required later, and that no corrections will be permitted to drawings filed in the Patent and Trademark Office after the effective date of the rule change.

When corrected drawings are required to be submitted at the time of allowance, the applicant is required to submit *acceptable* drawings within three months from the mailing of the "Notice of Allowability." Within that three-month period, two weeks should be allowed for review of the drawings by the Drafting Branch. If the Office finds that further correction is necessary, the applicant must submit a new corrected drawing to the Office within the original three-month period to avoid the necessity of obtaining an extension of time and paying the extension fee. Therefore, the applicant should file corrected drawings as soon as possible following the receipt of the Notice of Allowability.

Section 85(b) provides that the Patent and Trademark Office will not release drawings filed in applications having a filing date after January 1, 1989 for purposes of correction. Also, in order to give sufficient notice to applicants, allow most patent applications currently on file to be processed, and set a time at which the PTO need no longer provide a system for borrowing of any drawings, § 1.85(b) provides that after January 1, 1991 no drawings may be borrowed from the PTO for the purpose of making drawing corrections.

Section 1.152, as amended, permits broken lines on drawings to show visible environmental structure but not hidden planes and surfaces in design patent application drawings.

Section 1.378, as amended, conforms with section 404 of Public Law 98–622 which states:

(a) Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97–247 (96 Stat. 317), the Commissioner of Patents and Trademarks may accept after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1982.

The amended rule wording includes reference to maintenance fees due on patents based on applications filed in the Patent and Trademark Office on or after December 12, 1980 and before August 27, 1982.

Section 1.421(f), as amended, deletes reference to a canceled PCT Rule and adds reference to the current PCT Rule provisions.

Section 1.480(d), as amended, provides for a refund of a portion of the international preliminary examination fee where the applicant withdraws the demand before the examiner has begun the international preliminary examination. An amount equal to the transmittal fee would be retained by the Patent and Trademark Office to cover the administrative cost involved.

Environmental, Energy, and Other Considerations

The rule change does not have a significant impact on the quality of the human environment or conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612, and the Paperwork Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) because the rule change corrects some rules so that they correspond to earlier changes, relate to identification of applications on correspondence, allow greater flexibility in patent drawing content and handling, and provide for a refund where a proper demand for international preliminary examination has been filed but withdrawn later.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The rule change involves collection of information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and are cleared under OMB Control No. 0651–0011.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Courts, Inventions and patents, Lawyers.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 41, the Patent and Trademark Office is amending Title 37 of the Code of Federal Regulations as set forth below.

37 CFR Part 1, is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.4 is amended by revising paragraph (a)(2) to read as follows:

§ 1.4 Nature of correspondence.

(a) * * *

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in Subpart B, §§ 1.31 to 1.378; of international applications in Subpart C, §§ 1.401 to 1.499; of reexamination of patents in Subpart D, §§ 1.501 to 1.570; of interferences in Subpart E; §§ 1.601 to 1.690; of extension of patent term in Subpart F, §§ 1.710 to 1.785; and of trademark applications §§ 2.11 to 2.189.

* * * * *

3. Section 1.5 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.5 Identification of application, patent or registration.

(a) No correspondence relating to an application should be filed prior to when notification of the application number is

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received from the Patent and Trademark Office. When a letter directed to the Patent and Trademark Office concerns a previously filed application for a patent, it must identify on the top page in a conspicuous location, the application number (consisting of the series code and the serial number, e.g., 07/123,456), or the serial number and filing date assigned to that application by the Patent and Trademark Office, or the international application number of the international application. Any correspondence not containing such identification will be returned to the sender where a return address is available. The returned correspondence will be accompanied with a cover letter which will indicate to the sender that if the returned correspondence is resubmitted to the Patent and Trademark Office within two weeks of the mail date on the cover letter, the original date of receipt of the correspondence will be considered by the Patent and Trademark Office as the date of receipt of the correspondence. Applicants may use either the certificate of mailing procedure under § 1.8 or the Express Mail procedure under § 1.10 for resubmissions of returned correspondence if they desire to have the benefit of the date of deposit in the United States Postal Service. If the returned correspondence is not resubmitted within the two-week period, the date of receipt of resubmission will be considered to be the date of receipt of the correspondence. The two-week period to resubmit the returned correspondence will not be extended. If for some reason returned correspondence is resubmitted with proper identification later than two weeks after the return mailing by the Patent and Trademark Office, the resubmitted correspondence will be accepted but given its date of receipt. In addition to the application number, all letters directed to the Patent and Trademark Office concerning applications for patent should also state "PATENT APPLICATION," the name of the applicant, the title of the invention, the date of filing the same, and if known, the group art unit or other unit within the Patent and Trademark Office responsible for considering the letter and the name of the examiner or other person to which it has been assigned.

(b) When the letter concerns a patent other than for purposes of paying a maintenance fee, it should state the number and date of issue of the patent, the name of the patentee, and the title of the invention. For letters concerning payment of a maintenance fee in a patent, see the provisions of § 1.366(c).

* * * * * *

4. Section 1.53 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.53 Serial number, filing date, and completion of application.

* * * * *

(c) If any application is filed without the specification or drawing required by paragraph (b) of this section, applicant will be so notified and given a time period within which to submit the omitted specification or drawing in order to obtain a filing date as of the date of filing of such submission. A copy of the "Notice of Incomplete Application" form notifying the applicant should accompany any response thereto submitted to the Office. If the omission is not corrected within the time period set, the application will be returned or otherwise disposed of; the fee, if submitted, will be refunded less a $15.00 handling fee.

(d) If an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include the appropriate filing fee or an oath or declaration by the applicant, applicant will be so notified, if a correspondence address has been provided and given a period of time within which to file the fee, oath, or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application. A copy of the "Notice to File Missing Parts" form mailed to applicant should accompany any response thereto submitted to the Office. If the required filing fee is not timely paid, or if the processing and rentention fee set forth in § 1.21(l) is not paid within one year of the date of mailing of the notification required by this paragraph, the application will be disposed of. No copies will be provided or certified by the Office of an application which has been disposed of or in which neither the required basic filing fee nor the processing and retention fee has been paid. The notification pursuant to this paragraph may be made simultaneously with any notification pursant to paragraph (c) of this section. If no correspondence address is included in the application, applicant has two months from the filing date to file the basic filing fee, oath or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application; or, if no basic filing fee has been paid, one year from the filing date to pay the processing and retention fee set forth in § 1.21(l) to prevent disposal of the application.

5. Section 1.56 is amended by revising paragraph (e) to read as follows:

§ 1.56 Duty of disclosure; fraud; striking or rejection of applications.

* * * * *

(e) The examination of an application for compliance with paragraph (d) of this section will normally be delayed until such time as:

(1) All other matters are resolved, or

(2) Appellant's reply brief pursuant to § 1.93(b) has been received and the application is otherwise prepared for consideration by the Board of Patent Appeals and Interferences, at which time the appeal will be suspended for examination pursuant to paragraph (d) of this section.

The prosecution of the application will be reopened to the extent necessary to conduct the examination pursuant to paragraph (d) of this section including any appeal pursuant to § 1.191. If an appeal has already been filed based on a rejection on other grounds, any further rejection under this section shall be treated in accordance with § 1.93(e).

* * * * *

6. Section 1.71 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 1.71 Detailed description and specification of the invention.

* * * * *

(d) A copyright or mask work notice may be placed in a design or utility patent application adjacent to copyright and mask work material contained therein. The notice may appear at any appropriate portion of the patent application disclosure. For notices in drawings, see § 1.84(o). The content of the notice must be limited to only those elements required by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "*M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in paragraph (e) of this section is included at the beginning (preferably as the first paragraph) of the specification.

(e) The authorization shall read as follows:

A portion of the disclosure of this patent document contains material which is subject to (copyright or mask work) protection. The (copyright or mask work) owner has no objection to the facsimile reproduction by anyone of the patent document or the patent disclosure, as it appears in the Patent and Trademark Office patent file or records, but otherwise reserves all (copyright or mask work) rights whatsoever.

7. Section 1.81 is amended by revising the title and paragraph (a) to read as follows:

§ 1.81 Drawings required in patent application.

(a) The applicant for a patent is required to furnish a drawing of his or her invention where necessary for the understanding of the subject matter sought to be patented; this drawing, or a high quality copy thereof, must be filed with the application. Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for any necessary future correction.

* * * * *

8. Section 1.84 is amended by revising paragraphs (a), (b) introductory text, (i), (j) and (l) redesignating and revising (b)(2) as (b)(3), and by adding new paragraphs (b)(2), (n), (o), and (p), to read as follows:

§ 1.84 Standards for drawings.

(a) *Paper and ink.* Drawings or high quality copies thereof which are submitted to the Office must be made upon paper which is flexible, strong, white, smooth, non-shiny and durable. India ink, or its equivalent in quality, is preferred for pen drawings to secure perfectly black solid lines. The use of white pigment to cover lines is not normally acceptable. See paragraph (p) of this section for use of color drawings in utility patent applications.

(b) *Size of sheet and margins.* The size of the sheets on which drawings are made may be exactly 8½ by 14 inches (21.6 by 35.8 cm.), exactly 8½ by 13 inches (21.6 by 33.1 cm.), or exactly 21.0 by 29.7 cm. (DIN size A4). All drawing sheets in a particular application must be the same size. One of the shorter sides of the sheet is regarded as its top.

* * * * *

(2) On 8½ by 13 inch drawing sheets, the drawing must include a top margin of 1 inch (2.5 cm.) and bottom and side margins of ¼ inch (6.4 mm.) from the edges, thereby leaving a "sight" precisely 8 by 11¾ inches (20.3 by 29.8 cm.). Margin border lines are not permitted. All work must be included within the "sight." The sheets may be provided with two ¼ inch (6.4 mm.) diameter holes having their centerlines spaced 11 1/16 inch (17.5 mm.) below the top edge and 2 ¾inches (7.0 cm.) apart, said holes being equally spaced from the respective side edges.

(3) On 21.0 by 29.7 cm. drawing sheets, the drawing must include a top margin of at least 2.5 cm., a left side margin of 2.5 cm., a right side margin of 1.5 cm., and a bottom margin of 1.0 cm. Margin border lines are not permitted. All work must be contained within a sight size not to exceed 17 by 26.2 cm.

* * * * *

(i) *Views.* The drawing must contain as many figures as may be necessary to show the invention; the figures should be consecutively numbered if possible in the order in which they appear. The figures may be plan, elevation, section, or perspective views, and detail views of portions or elements, on a larger scale if necessary, may also be used. Exploded view, with the separated parts of the same figure embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. When an exploded view is shown in a figure which is on the same sheet as another figure, the exploded view should be placed in brackets. When necessary, a view of a large machine or device in its entirety may be broken and extended over several sheets if there is no loss in facility of understanding the view. Where figures on two or more sheets form in effect a single complete figure, the figures on the several sheets should be so arranged that the complete figure can be understood by laying the drawing sheets adjacent to one another. The figures, even though on separate sheets, should be labeled as separate figures, for example as Fig. 1a, Fig. 1b, etc., so that it would be apparent that the views actually comprise one figure. The arrangement should be such that no part of any of the figures appearing on the various sheets is concealed and that the complete figure can be understood even though spaces will occur in the complete figure because of the margins on the drawing sheets. The plane upon which a sectional view is taken should be indicated on the general view by a broken line, the ends of which should be designated by numerals corresponding to the figure number of the sectional view and have arrows applied to indicate the direction in which the view is taken. A moved position may be shown by a broken line superimposed upon a suitable figure if this can be done without crowding, otherwise a separate figure must be used for this purpose. Modified forms of construction can only be shown in separate figures. Views should not be connected by projection lines nor should centerlines be used. When a portion of a figure is enlarged for magnification purposes, the figure and the enlarged figure must be labeled as separate figures.

(j) *Arrangement of views.* All views on the same sheet should stand in the same direction and, if possible, stand so that they can be read with the sheet held in an upright position. If views longer than the width of the sheet are necessary for the clearest illustration of the invention, the sheet may be turned on its side so that the top of the sheet with the appropriate top margin to be used as the heading space is on the right-hand side. One figure must not be placed upon another or within the outline of another.

* * * * *

(l) *Identification of drawings.* Identifying indicia (such as the application number, group art unit, title of the invention, attorney's docket number, inventor's name, number of sheets, etc.) not to exceed 2¾ inches (7.0 cm.) in width may be placed in a centered location between the side edges within three-fourths inch (19.1 mm.) of the top edge. Either this marking technique on the front of the drawing or the placement, although not preferred, of this information and the title of the invention on the back of the drawings is acceptable. Authorized security markings may be placed on the drawings provided they are outside the illustrations and are removed when the material is declassified. Other extraneous matter will not be permitted upon the face of a drawing.

* * * * *

(n) *Numbering of drawing sheets.* The drawing sheets may be numbered in consecutive arabic numbers at the top of the sheets, in the middle, but not in the margin. Such numbering will be deleted for printing purposes since page numbers are added at the time of printing the patent by the Office.

(o) *Copyright of Mask Work Notice.* A copyright or mask work notice may appear in the drawing but must be placed within the "sight" of the drawing immediately below the figure representing the copyright or mask work material and be limited to letters having a print size of ⅛ to ¼ inches (3.2 to 6.4 mm.) high. The content of the notice must be limited to only those elements required by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "*M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in § 1.71(e) is included at the beginning (preferably as the first paragraph) of the specification.

(p) *Limited use of color drawings in utility patent applications.* Paragraph (a) of this section requires that drawings in utility patent applications must be in

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black on white paper. However, on rare occasion, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility patent application. The Patent and Trademark Office will accept color drawings in utility patent applications only after granting of a petition by the applicant under § 1.183 of this part which requests waiver of the requirements of paragraph (a) of this section. Any such petition should be directed to the Office of the Deputy Assistant Commissioner for Patents and must include the following:

(1) The appropriate fee set forth in § 1.17(h).

(2) Five (5) sets of color drawings on DIN size A4 (21.0 by 29.7 cm.) sheets.

(3) As proposed amendment to insert in the specification the following language as the first paragraph in the portion of the specification relating to the brief description of the drawing:

The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee.

9. Section 1.85 is revised to read as follows:

§ 1.85 Corrections to drawings.

(a) The requirements of § 1.84 relating to drawings will be strictly enforced. A drawing not executed in conformity thereto, if suitable for reproduction, may be admitted for examination but in such case a new drawing must be furnished.

(b) The Patent and Trademark Office will not release drawings in applications having a filing date after January 1, 1989, or any drawings from any applications after January 1, 1991, for purposes of correction. If corrections are necessary, new corrected drawings must be submitted within the time set by the Office.

(c) When corrected drawings are required to be submitted at the time of allowance, the applicant is required to submit acceptable drawings within three months from the mailing of the "Notice of Allowability." Within that three-month period, two weeks should be allowed for review of the drawings by the Drafting Branch. If the Office finds that correction is necessary, the applicant must submit a new corrected drawing to the Office within the original three-month period to avoid the necessity of obtaining an extension of time and paying the extension fee. Therefore, the applicant should file corrected drawings as soon as possible following the receipt of the Notice of Allowability. The provisions with respect to obtaining an extension of time relates only to the late filing of corrected drawings. The time limit for payment of the issue fee is a fixed three-month period which cannot be extended as set forth in 35 U.S.C. 151.

10. Section 1.152 is revised to read as follows:

§ 1.152 Drawing.

The design must be represented by a drawing made in conformity with the rules laid down for drawings of mechanical inventions and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article. Appropriate surface shading must be used to show the character or contour of the surfaces represented. Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces which cannot be seen through opaque materials.

11. Section 1.378 is amended by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

* * * * *

(b) * * *

(1) The required maintenance fee set forth in § 1.20 (e) through (j),

* * * * *

(c) * * *

(1) The required maintenance fee set forth in § 1.20 (e) through (j),

* * * * *

12. Section 1.421 is amended by revising paragraph (f) and adding a new paragraph (g) to read as follows:

§ 1.421 Applicant for international application.

* * * * *

(f) Changes in the person, name, or address of the applicant of an international application shall be made in accordance with PCT Rule 92bis.

(g) The wording of PCT Rule 92bis is as follows:

PCT Rule 92bis—Recording of Changes in Certain Indications in the Request or the Demand

92bis Recording of Changes by the International Bureau

(a) The International Bureau shall, on the request of the applicant or the receiving Office, record changes in the following indications appearing in the request or demand:

(i) person name, residence, nationality or address of the applicant,

(ii) person, name or address of the agent, the common representative or the inventor.

(b) The International Bureau shall not record the requested change if the request for recording is received by it after the expiration:

(i) Of the time limit referred to in Article 22(1), where Article 39(1) is not applicable with respect to any Contracting State;

(ii) Of the time limit referred to in Article 39(1)(a), where Article 39(1) is applicable with respect to at least one Contracting State.

13. Section 1.480 is amended by revising paragraph (d) to read as follows:

§ 1.480 Demand for international preliminary examination.

* * * * *

(d) Withdrawal of a proper Demand prior to the start of the international preliminary examination will entitle applicant to a refund of the preliminary examination fee minus the amount of the transmittal fee set forth in § 1.445(a)(1).

Date: November 21, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-27248 Filed 11-25-88; 8:45am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3670/R995; FRL-3482-4]

Menthol; Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the pesticide chemical menthol in or on beeswax and honey. This rule, which eliminates the need to establish a maximum permissible level for residues of menthol in or on the commodities, was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: November 28, 1988.

ADDRESS: Written objections, identified by the document control number [PP 8E3670/R995], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of October 25, 1988 (53 FR 42981), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 8E3670 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of California, Indiana, Mississippi, and New Jersey and the United States Department of Agriculture.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of exemptions from the requirement of a tolerance for menthol, 1-menthol or [5-methyl-2-(1-methylethyl)-cyclohexanol], in or on beeswax and honey when used in over-wintering bee hives.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the exemption from the requirement of a tolerance will protect the public health. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.1092 is added to Subpart D, to read as follows:

§ 180.1092 Menthol; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the pesticidal chemical menthol in or on beeswax and honey when used in accordance with good agricultural practice in over-wintering bee hives.

[FR Doc. 88-27322 Filed 11-25-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3625/R994; FRL-3482-8]

Pesticide Tolerances for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide permethrin and the sum total of its metabolites DCVA and 3-PBA in or on the raw agricultural commodity crop group cucurbit vegetables. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: November 28, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 8E3625/R994], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of October 5, 1988 (53 FR 39109), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 8E3625 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Arkansas, California, Florida, Hawaii, Oklahoma, and Puerto Rico and the United States Department of Agriculture.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the insecticide permethrin [(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and the sum of its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl) methanol (3-PBA) in or on the raw agricultural commodity crop group cucurbit vegetables, as defined in 40 CFR 180.34(f)(9)(ix)(A), at 3.0 parts per million (ppm).

Tolerances are currently established for residues of the insecticide in or on the following raw agricultural commodities in the crop group cucurbit vegetables: Cantaloupes at 3.0 ppm and pumpkins at 2.0 ppm. With the establishment of the crop group tolerance, tolerances are established at a uniform level for residues of the insecticide at 3.0 ppm in or on cantaloupes and pumpkins and, additionally, in or on the remaining commodities within the crop group including balsam pear, Chinese waxgourds, citron melon, cucumber, edible gourds, melons (including hybrids and casaba, crenshaw, honeydew melons, honey balls, mango melon, muskmelon, and Persian melon), summer squash, winter squash, and watermelon (including hybrids).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

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Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.378(b) is amended by deleting the entries for the commodities cantaloupes and pumpkins and adding and alphabetically inserting an entry for the raw agricultural commodity crop group cucurbit vegetables, to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Vegetables, cucurbit	3.0
* * * * *	

[FR Doc. 88-27323 Filed 11-25-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6942]

Federal Insurance Administration; Changes in Flood Elevation Determinations; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis or updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Louisiana: St. Mary Parish	Town of Berwick	Nov. 18, 1988 and Nov. 25, 1988, *The Daily Review.*	The Honorable Everett S. Berry, Mayor of the Town of Berwick, P.O. Box 486, Berwick, LA 70342.	Nov. 3, 1988	220194B
Louisiana: Unincorporated areas.	St. Mary Parish	Nov. 18, 1988 and Nov. 25, 1988, *The Franklin Banner-Tribune.*	The Honorable Prescott Foster, President of the St. Mary Parish Council, 5th Floor Courthouse, Franklin, LA 70538.	do	220192B

Issued: November 16, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-27305 Filed 11-25-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Federal Insurance Administration; Changes in Flood Elevation Determinations; New Jersey et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administration has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New Jersey: Atlantic (FEMA Docket No. 6928).	City of Brigantine	June 16, 1988 and June 23, 1988, *The Press.*	The Honorable George McDermott, City Administrator for the City of Brigantine, 1417 West Brigantine Avenue, Brigantine, NJ 08203.	June 1, 1988	345286
Texas: Montgomery (FEMA Docket No. 6931).	Unincorporated areas	June 29, 1988 and July 6, 1988, *The Courier.*	The Honorable Alvin Stahl, Montgomery County Judge, 326½ N. Main, Conroe, Texas 77301.	June 17, 1988	480483

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State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Vermont: Windsor (FEMA Docket No. 6931).	Town of Royalton	June 16, 1988 and June 23, 1988, *White River Valley Herald.*	The Honorable David I. Lyman, Chairman of the Town of Royalton Board of Selectmen, P.O. Box 680, South Royalton, VT 05068.	June 8, 1988	500153 B

Issued: November 18, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-27306 Filed 11-25-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Federal Insurance Administration; Final Flood Elevation Determinations; Arizona, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified.
Arizona	Cochise County (Unincorporated Areas) (FEMA Docket No. 6935).	San Pedro River in Vicinity of Palominas Miracle Valley.	Approximately 4,160 feet above confluence with Green Brush Wash Draw.	*4201
			At State Highway 92	*4220
			Approximately 16,800 feet above confluence with Green Brush Wash Draw.	*4232
		School House Wash	Approximately 680 feet above confluence with San Pedro River.	*4219
			At Palominas Road	*4245
			Approximately 8,080 feet above confluence with San Pedro River.	*4284
			Approximately 15,560 feet above confluence with San Pedro River.	*4365
		Stream J	At confluence with Stream K	*4462
			Approximately 3,520 feet above confluence with Stream K.	*4520
			At State Highway 92	*4586
			At confluence with Stream J Tributary	*4688
			At Fort Huachuca Military Reservation boundary Limit of Detailed Study.	*4741

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified.
		Stream J Tributary	At confluence with Stream J	*4688
			At Fort Huachuca Military Reservation	*4718
		North Fork of Unnamed Wash	At confluence with Unnamed Wash	*4496
			Approximately 1,050 feet above confluence with Unnamed Wash.	*4510
			Approximately 2,180 feet above confluence with Unnamed Wash.	*4526
Maps are available for review at the Cochise County Department of Public Works, Flood Control Division, Ledge Street, Bisbee, Arizona.				
California	Ventura County (Unincorporated Areas) (FEMA Docket No. 6929).	Arroyo Santa Rosa	At confluence of Conejo Creek	*229
			Approximately 1,450 feet upstream of Hill Canyon Road.	*231
			Approximately 100 feet downstream of confluence with Arroyo Santa Rosa Tributary.	*248
			At confluence with Arroyo Santa Rosa Tributary.	*254
			Approximately 100 feet downstream of Santa Rosa Road.	*284
			Approximately 100 feet upstream of Santa Rosa Road.	*292
			Approximately 450 feet downstream of East Las Posas Road.	*314
			Approximately 250 feet upstream of East Las Posas Road.	*333
			Approximately 700 feet upstream of East Las Posas Road.	*340
		Arroyo Santa Rosa Overflow	Confluence with Arroyo Santa Rosa Tributary	*296
			Approximately 200 feet upstream of Santa Rosa Road.	*326
			Approximately 500 feet upstream of Santa Rosa Road.	*328
			At East Las Posas Road	*332
		Arroyo Santa Rosa Tributary	Approximately 2,100 feet upstream of confluence with Arroyo Santa Rosa.	*277
			At confluence with Arroyo Santa Rosa Overflow.	*296
			Approximately 1,050 feet upstream of confluence with Arroyo Santa Rosa Overflow.	*306
			Approximately 1,700 feet upstream of confluence with Arroyo Santa Rosa Overflow.	*312
		San Antonio Creek	Approximately 1,600 feet downstream of Fraser Street.	*423
			Approximately 1,100 feet downstream of Fraser Street.	*431
			Approximately 900 feet downstream of Fraser Street.	*433
			Approximately 600 feet downstream of Fraser Street.	*435
Maps are available for review at the Ventura County Public Works Agency, 800 South Victoria Avenue, Ventura, California.				
Colorado	Colorado Springs (City), El Paso County (FEMA Docket No. 6929).	Pine Creek	At confluence with Pine Creek overflow	#1
			At Burns Road	#1
			At State Highway 83	#1
			Approximately 470 feet downstream of U.S. Air Force Academy boundary and corporate limits for the City of Colorado Springs.	*6440
Maps are available for review at Colorado Springs Planning Department, 30 South Nevada Street, Suite 301, Colorado Springs, Colorado.				
Colorado	El Paso County (Unincorporated Areas) (FEMA Docket No. 6929).	Pine Creek	At confluence with Pine Creek overflow	#1
			At Burns Road	#1
			At State Highway 83	#1
			Approximately 470 feet downstream of U.S. Air Force Academy boundary and corporate limits for the City of Colorado Springs.	*6440
Maps are available for review at Regional Office Building, 101 West Costilla, Colorado Springs, Colorado.				
Minnesota	Proctor (City), St. Louis County (FEMA Docket No. 6930).	Kingsbury Creek	Just upstream of Boundary Avenue	*1191
			Just upstream of Second Street	*1231
			Just downstream of Ugstad Road	*1244

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified.
Maps available for inspection at the City Hall, 200 Second Street, Proctor, Minnesota.				
Nevada	Carson City (City), (FEMA Docket No. 6929).	H-Tributary	Approximately 1,300 feet upstream of East 5th Street.	*4631
			Approximately 3,000 feet upstream of East 5th Street.	*4634
			Approximately 3,800 feet upstream of East 5th Street.	*4637
			Approximately 4,200 feet upstream of East 5th Street.	*4637
			At the intersection of Spartan and Cardinal Way.	*4639
		Saliman Road Tributary	Approximately 250 feet downstream of Railroad Drive.	*4639
			Approximately 200 feet upstream of Railroad Drive.	*4645
			At Crown Drive	*4651
			Approximately 100 feet upstream of Fairview Drive.	*4657
			Approximately 500 feet upstream of Fairview Drive.	*4660
			Approximately 850 feet upstream of Fairview Drive.	*4663
			Approximately 1,000 feet upstream of Fairview Drive.	*4664
			Approximately 200 feet upstream of Colorado and Saliman Road intersection.	*4668
			Approximately 300 feet downstream of Shady Oak and Saliman Road intersection.	*4673
			Approximately 280 feet upstream of Shady Oak and Saliman Road intersection.	*4676
			Approximately 300 feet downstream of Sonoma Street and Saliman Road intersection.	*4682
			Upstream of Stonewall Street	*4686
			Approximately 1,150 feet downstream of Koontz Lane and Saliman Road intersection.	*4694
			Approximately 150 feet downstream of Koontz Lane and Saliman Road.	*4699
			Downstream of Valley View Drive	*4703
			At the intersection of Clearview Drive and Hillview Drive.	*4707
			Approximately 700 feet upstream of intersection of Clearview Drive and Hillview Drive.	*4709
			Approximately 150 feet downstream of Appian Way and Bigelow Drive intersection.	*4711
			Approximately 200 feet downstream of Ronald Street and Center Drive intersection.	*4715
			Approximately 100 feet upstream of Center Drive and Ronald Street intersection.	*4716
			Approximately 250 feet downstream of Silver Sage Drive.	*4717
			Approximately 50 feet upstream of Silver Sage Drive.	*4721
			Approximately 50 feet downstream of California Street.	*4727
			Approximately 180 feet upstream of California Street.	*4732
			Approximately 380 feet upstream of California Street.	*4736
			Just downstream of Oak Street	*4740
			Approximately 500 feet upstream of Oak Street	*4742
Maps are available for inspection at the Carson City Public Works Department, 2621 Northgate Lane, Suite 59, Carson City, Nevada 98701.				
New York	Clay (Town), Onondaga County (FEMA Docket No. 6930).	Mud Creek	At upstream side of Verplank Road	*370
			At downstream side of downstream crossing of State Route 481.	*370
			At corporate limits	*375
Maps available for inspection at the Town Hall, 4483, Route 31, Clay, New York.				
North Carolina	Farmville (Town), Pitt County (FEMA Docket No. 6930).	Little Contentnea Creek	About 2,200 feet downstream of SR 1221	*58
			About 4,200 feet upstream of U.S. Route 258	*69

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified.
Maps available for inspection at the Town Planners Office, 121 North Main Street, Farmville, North Carolina.				
Oregon	Albany (City), Linn and Benton Counties (FEMA Docket No. 6930).	Cox Creek	Approximately 300 feet downstream of Southern Pacific Railroad.	*199
			Approximately 50 feet downstream of Salem Avenue.	*199
			Approximately 100 feet upstream of Salem Avenue.	*203
			Approximately 100 feet upstream of Pacific Boulevard.	*204
			Approximately 400 feet upstream of Pacific Boulevard.	*211
			Approximately 50 feet downstream of Bain Street.	*212
			Approximately 50 feet upstream of Bain Street	*214
			Just upstream of Highway 5	*216
Maps are available for review at City Hall, Planning Department, 127 Broadalbin, SW., Albany, Oregon.				
Oregon	North Plains (City), Washington County (FEMA Docket No. 6929).	Unnamed Tributary	At the confluence of McKay Creek	*169
			Just upstream of Glencoe Road	*171
			At Pacific Avenue	*172
			Approximately 200 feet downstream of Ninth Street.	*174
			Approximately 100 feet upstream of Commercial Avenue.	*176
			Approximately 80 feet downstream of City Corporate limit.	*180
Maps are available for inspection at the City Hall, 440 Commercial Avenue, North Plains, Oregon 97133.				
Pennsylvania	Upper St. Clair (Township), Allegheny County (FEMA Docket No. 6930).	Chartiers Creek	Approximately 5,200 feet upstream of corporate limits.	*837
			Approximately 6,400 feet upstream of corporate limits.	*838
Maps are available for inspection at the Municipal Building, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania.				
Texas	Cleburne (City), Johnson County (FEMA Docket No. 6929).	West Buffalo	Approximately 340 feet downstream of Country Club Road.	*740
			At Poindexter Avenue	*773
			Approximately 2.46 miles upstream of Poindexter Avenue.	*811
Maps available for inspection at the Department of Public Works, 302 West Henderson Street, Cleburne, Texas.				
Texas	Raymondville (City), Willacy County (FEMA Docket No. 6930).	Shallow Flooding	Missouri-Pacific Railroad east to corporate limits.	#1
Maps available for inspection at the City Hall, 142 South 7th Street, Raymondville, Texas.				
Virginia	Marion (Town), Smyth County (FEMA Docket No. 6930).	Staley Creek	Approximately 190 feet upstream from Matson Drive.	*2,172
			At corporate limits	*2,198
Maps available for inspection at the Municipal Building, 138 West Main Street, Marion, Virginia.				

Issued: November 18, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-27304 Filed 11-25-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 86-182; FCC 88-311]

Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission grants, in part, reconsideration of its decision establishing an automated system for collecting from local exchange carriers (LECs) the financial and operating data needed to administer its accounting, joint cost, jurisdictional separations, rate base disallowance, rate of return, and access charge rules. The Commission reconsidered its decision to require rate of return calculations for services and activities for which it does not prescribe a rate of return on FCC approved reports. The Commission decided that such data could be misleading and confusing and recommended that the Common Carrier Bureau change the Quarterly Report to

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display rates of return only in the total intrastate and the interstate access columns, and remove from the Joint Cost Report all rate of return data. The Commission also recommended that the Common Carrier Bureau revise the Access Report to include these data for the intrastate and interstate access columns. The Commission clarified and reconsidered the filing date for the Joint Cost Order forecast investment monitoring reports. The Forecast Usage Report should be filed with the Commission at the same time as the Tariff Review Plans are filed and the Actual Usage Report will be filed on April 1 of each year. The Commission also decided to delegate to the Chief, Common Carrier Bureau, the authority to resolve specific technical and editorial issues on a report by report basis.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Jane Frenette, Accounting and Audits Division, Common Carrier Bureau, at (202) 634–1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, CC Docket No. 86–182, FCC 88–311, adopted October 4, 1988, and released October 14, 1988.

The full text of the Commission's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Order on Reconsideration

1. On September 16, 1987, the Commission released a Report and Order (hereinafter ARMIS Order) establishing an automated system for collecting from local exchange carriers (LECs) the financial and operating data needed to administer its accounting, joint cost, jurisdictional separations, rate base disallowance, rate of return, and access charge rules.

2. The ARMIS Order adopted four new reports: (1) A Quarterly Report which includes Parts 32, 64, 36, and 69 financial data on a highly aggregated basis and a demand analysis table; (2) an annual USOA Report which contains the results of the carriers' total activities on an account by account basis; (3) an annual Joint Cost Report which shows the allocation to regulated and nonregulated activities for the subset of accounts that are involved in the ratemaking process; and, (4) an annual Access Report which shows the results of the jurisdictional separations and access charge rules, by Part 36 category and Part 69 element.

3. The Commission also directed the Common Carrier Bureau to develop the additional reports needed to monitor the Joint Cost Order requirement that carriers allocate investment in telecommunications network plant on the basis of forecasts of relative regulated and nonregulated use. On May 31, the Bureau adopted reports that fulfill these monitoring needs.

4. On reconsideration, the Commission modified its requirement that LECs display of rate of return calculations for services and activities for which it does not prescribe a rate of return on FCC approved reports because such data could be misleading and confusing. The Commission directed the Common Carrier Bureau to revise the Quarterly Report to display rates of return only in the total interstate and the interstate access columns, and remove from the Joint Cost Report all rate of return data. The Commission also directed the Bureau to include rate of return data for the interstate and interstate access columns of the Access Report.

5. The Commission also clarified and modified in part the filing dates for the Joint Cost Order forecast investment monitoring reports. The Commission found that: (1) There was a conflict between the filing date specified in Appendix E of the ARMIS Order and the date specified in the body of the Order; and, (2) its monitoring needs would be best served if the two reports were given individual filing dates that reflect the data they contain. The Forecast Usage Report will be filed at the same time as the Tariff Review Plans because this report provides the basis for the removals of investment related to nonregulated activities in the Tariff Review Plans. The Actual Usage Report will be filed at the same time as the USOA, Joint Cost and Access Reports.

6. The Commission affirmed that the filing dates for the remaining ARMIS reports are reasonable. These dates require only that the data are completed and suitable for filing three full months after the end of the reporting period. The Commission found that three full months are sufficient to tabulate, organize and file data submissions and, therefore, retained the April 1 filing date for the Annual Reports and the March 31, June 30, September 30, and December 31 filing dates for the Quarterly Reports.

7. The Commission affirmed that carriers should be required to provide data on non-FCC jurisdictional revenues because these data are necessary: (1) For monitoring the application of our Joint Cost Rules; (2) for analysis of the impact of diversification on the interstate cost of capital; and (3) for assessment of the effects of regulatory policies on the telecommunications system as a whole.

8. The Commission affirmed that amounts assigned to the intrastate jurisdiction should be required by ARMIS, finding that collection of these data is an important aspect of its role as administrator of the Jurisdictional Separations Manual and that such data may also prove useful to state regulators and other interested parties as well.

9. The Commission also affirmed that study area level reporting is essential to the development of a continuous data series, finding that if the LECs were to combine or divide study areas, it would become necessary for them to file restatements of previous years' data each time they made such a combined or divided filing. Such an alternative would be unnecessarily burdensome for the Commission and for the carriers.

10. Finally, the Commission delegated to Chief, Common Carrier Bureau, the authority to resolve a number of technical and editorial problems currently existing in the ARMIS reports.

Ordering Clause

11. *It is ordered,* That pursuant to sections 4(i), 4(j), 201–205, 219, 220 and 405 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 219, 220 and 405, that the Petitions for Reconsideration filed in this proceeding Are Granted in part and Denied in part as provided herein.

List of Subjects in 47 CFR Part 43

Communications common carriers reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 43 of Title 47 of the CFR is amended as follows:

PART 43—[AMENDED]

1. The authority citation in Part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 210, 48 Stat. 1073, as amended (47 U.S.C. 210).

2. Section 43.21 is amended by revising paragraph (e) to read as follows:

§ 43.21 Annual reports of carriers and affiliates.

* * * * *

(e) Each communications common carrier required by order to file a manual allocating its costs between regulated and nonregulated operations shall file, coincident with its Annual Access Tariff Review Plan, a forecast of regulated and nonregulated use of network plant for the following calendar year; and, a report of the actual use of network plant investment for the same reporting period on or before April 1 of the following year.

* * * * *

[FR Doc. 88–27110 Filed 11–25–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR–6, Notice No. 21]

Amendment to Alcohol/Drug Regulations; New Laboratory Address

AGENCY: Federal Railroad Administration (FRA) DOT.

ACTION: Final rule.

SUMMARY: FRA issues an amendment to its final rule on Control of Alcohol and Drug Use in Railroad Operations to update the address of its designated post-accident testing laboratory. The laboratory has recently relocated its facilities. The new address is as follows: Center for Human Toxicology, University of Utah, 417 Wakara Way, Room 290, Research Park, Salt Lake City, Utah 84108.

DATES: This final rule amendment will be effective November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Walter Rockey, Executive Assistant to the Associate Administrator for Safety (RRS–3), FRA, Washington, DC 20590 (Telephone: (202) 366–0897) or Grady Cothen, Special Counsel (RCC–4), FRA, Washington, DC 20590 (Telephone: (202) 366–9416).

SUPPLEMENTARY INFORMATION: This amendment merely updates the mailing address of FRA's designated post-accident testing laboratory, which has recently relocated its facilities. The new address must be used in shipping toxicology kits pursuant to Subpart C of Part 219, Title 49, Code of Federal Regulations, and may be employed in corresponding with the Center.

Regulatory Procedures

The Administrator finds that notice and opportunity for comment are not required because the subject amendment involves a rule of agency organization, procedure and practice. The Administrator further finds that there is good cause for making the rule effective in less than 30 days from the date of publication, since utilization of the current address is necessary to the efficient conduct of the post-accident testing program.

This amendment to the final rule has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule under Executive Order 12291 nor a "significant" rule as defined under DOT policies and procedures. The amendment does not have any paperwork, Federalism, or economic impact. Because the amendment does not have any economic impact, FRA has not prepared a regulatory evaluation. It is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 60 et seq.).

Therefore, in consideration of the foregoing, Part 219, Title 49, Code of Federal Regulations is amended as follows:

PART 219—[AMENDED]

1. The authority citation for Part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Part 219 is amended as follows:

The text of Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing is revised to read as follows:

Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing

The following laboratory is currently designated to conduct post-accident toxicological analysis under Subpart C of this part: Center for Human Toxicology, University of Utah, 417 Wakara Way, Room 290, Research Park, Salt Lake City, Utah 84108, Telephone No. (801) 581–5117.

John H. Riley,

Administrator.

[FR Doc. 88–27283 Filed 11–25–88; 8:45 am]

BILLING CODE 4910–06–M

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Proposed Rules

Federal Register
Vol. 53, No. 228
Monday, November 28, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1715

Criteria for Securing REA Approvals Required Under the Mortgage by Electric Borrowers Relating to Financial and Management Matters

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Part XVII, by adding a new Part 1715, Criteria for Securing REA Approvals Required Under the Mortgage by Electric Borrowers Relating to Financial and Management Matters and by adding Subpart B, §§ 1715.20–1715.28, Investments, Loans and Guarantees by Electric Borrowers. The proposed rule establishes REA policies for borrowers of electric loans made or guaranteed under the Rural Electrification Act of 1936, as amended (7 U.S.C. 901–950b) ("RE Act"). The rule also clarifies the effect of new section 312 of the RE Act concerning provisions in existing REA mortgages and bulletins which would otherwise conflict with this recent amendment. Generally, section 312 of the RE Act authorizes a borrower to make investments, loans and guarantees up to 15 percent of its total utility plant.

DATE: Comments must be received by REA January 27, 1989.

ADDRESS: Comments should be addressed to: Archie W. Cain, Director, Electric Staff Division, U.S. Department of Agriculture, Rural Electrification Administration, Room 1246–S, 14th & Independence Avenue, SW, Washington, DC 20250–1500.

FOR FURTHER INFORMATION CONTACT: Robert W. Ford, Chief, Loans and Management Branch, Electric Staff Division, U.S. Department of Agriuculture, Rural Electrification Administration, Room 1237–S, 14th & Independence Avenue, SW., Washington, DC 20250–1500; telephone: (202) 382–1932.

SUPPLEMENTARY INFORMATION: REA proposes to implement the provisions of section 312 of the RE Act which was enacted as section 1402 of the Omnibus Budget Reconciliation Act of 1987 (OBRA) (Pub. L. 100–203).

This action has been reviewed in conformity with Executive Order 12291, Federal Regulations. Since this rule only defines the requirements of OBRA, it does not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices to consumers, individual industries, Federal, state or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore, has been determined to be "not major."

REA has concluded that promulgation of this rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.*), and therefore, does not require an environmental impact statement or an environmental assessment. This proposed rule is a categorical exclusion under REA's 7 CFR Part 1794, Environmental Policies and Procedures (*i.e.*, 7 CFR 1794.31 (b)(17)).

This proposed rule amends information collection requirements subject to Office of Management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*). Amended information reporting and recordkeeping requirements have been submitted to OMB for review and approval (OMB clearance numbers 0572–0016 and 0572–0017).

Normal leanding practice requires obtaining a minimum amount of financial information on an investment before a loan application is processed. All REA borrowers report annually financial data including investment amounts. REA is requiring some additional information from borrowers regarding investments to assure that government funds or security interests are not at risk. However, this information is readily available from records kept by respondents in the normal course of business. REA has kept the increase for additional investment information to a minimum.

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for REA, Washington, DC 20503.

This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Under REA's present policy, electric borrowers generally are not permitted, without prior written approval of the Administrator, to invest (either directly or by loans or guarantees) more than 3 percent of their own funds for "non-Act" purposes, i.e. facilities or projects not required to provide electricity to rural consumers. For many years this policy has been reflected in typical mortgages given by electric borrowers to secure loans made, guaranteed or lien accommodated under the RE Act. This restriction, which was not explicitly imposed by the RE Act, was intended to enhance the likelihood that loans and guarantees under the RE Act would be repaid in accordance with their terms. Even with the long-standing 3 percent limitation, REA borrowers have played a critical role in the economic development of rural areas for over 50 years. In considering whether to add section 312 to the RE Act Congress, nevertheless, expressed concern that REA borrowers were restricted in their

ability to make needed investments in rural community infrastructure projects (such as water and waste systems, garbage collection services, etc.) and in job creation activities (such as providing technical, financial, managerial assistance) and other activities to promote business development in rural communities. Thus Congress directed REA to replace its traditional 3 percent policy with a 15 percent limit as a small incremental contribution to rebuilding a more diversified economy in rural communities. The legislative history surrounding the enactment of section 312 is clear, however, that Congress intended that the new policy should not in any way put government funds or security interests at risk.

While historically REA borrowers as a whole have not fully used their 3 percent authority under existing mortgages, the newly enacted section 312 gives those borrowers interested in rural development the opportunity to increase their participation and presumably will result in more financing for rural development initiatives. Such participation shall not result in any erosion of the borrower's financial ability to repay REA loans. The change does not affect existing limitations on the discretion of borrowers to make additions to their electric systems.

The proposed rule supersedes Section I. Paragraph C. of REA Bulletin 1–7 and the REA Administrator's memorandum of March 28, 1985, "General Funds Investment." In cases where a borrower has previously obtained approval under the REA mortgage for specific investments, loans or guarantees, for purposes of this Subpart such matters will be treated as if they had been authorized by § 1715.23 of this Subpart, i.e. ordinarily they will be taken into account in determining whether the 15 percent limit has been achieved.

The proposed rule does not supersede any agreement, whether now in existence or subsequently entered into, between a borrower and any party other than REA. Accordingly, restrictions which REA borrowers have agreed to with other lenders (including those contained in section 22 of Article II of the standard REA mortgage) will remain in effect until they are waived or amended by such lenders. No consent from REA for such waiver or relaxation will be necessary.

The proposed rule will become effective upon publication of the final rule in the **Federal Register**, and will be retroactive to December 22, 1987.

In view of the above, REA proposes to amend 7 CFR Part XVII by adding a new Part 1715 to read as follows:

PART 1715—CRITERIA FOR SECURING REA APPROVALS REQUIRED UNDER THE MORTGAGE BY ELECTRIC BORROWERS RELATING TO FINANCIAL AND MANAGEMENT MATTERS

Subpart A—[Reserved]

Sec.
1715.1—1715.19 [Reserved]

Subpart B—Investments, Loans, and Guarantees by Electric Borrowers

Sec.
1715.20 Purpose.
1715.21 Policy.
1715.22 Definitions.
1715.23 General.
1715.24 Exclusions.
1715.25 Records.
1715.26 Effect of this Subpart on REA loan contract and mortgage.
1715.27 Restrictions imposed by other lenders.
1715.28 Investments, loans, and guarantees in excess of 15 percent.
1715.29–1715.50 [Reserved]

Authority: 7 U.S.C. 901–950b; Title I, Subtitle D, section 1402, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—[Reserved]

§§ 1715.1–1715.19 [Reserved]

Subpart B—Investments, Loans, and Guarantees by Electric Borrowers

§ 1715.20 Purpose.

This Subpart contains the general regulations of the Rural Electrification Administration (REA) for implementing the provisions of section 312 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act), permitting, in certain circumstances, that borrowers of insured or guaranteed electric loans under the RE Act may, without restriction or prior approval of the Administrator of REA, invest their own funds and make loans or guarantees.

§ 1715.21 Policy.

REA electric borrowers are authorized to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not in any way put government funds or security interest at risk and does not conflict with the provisions of this Subpart. In considering whether to make loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve. REA assumes that borrowers will use the latitude afforded them by section 312 of the RE Act primarily to make needed investments in rural community infrastructure projects (such as water and waste systems, garbage collection services, etc.) and in job creation activities (such as providing technical, financial, managerial assistance) and other activities to promote business development and economic diversification in rural communities. Nonetheless, REA believes that borrowers should continue to give primary consideration to safety and liquidity in the management of their funds.

§ 1715.22 Definitions.

As used in this subpart:

"Borrower" means a corporation or other legal entity engaged, or intending to become engaged, in the generation, transmission or distribution of electricity, and whose outstanding obligatoins resulting from RE Act loans or guarantees are not in default.

"Cash-Construction Fund-Trustee Account" means the account described in the REA Uniform System of Accounts as one to which funds are deposited for financing the construction or purchase of electric facilities.

"Guarantee" means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation. Examples of such guarantees, include without limitation, the guaranteeing of a loan, or other debt instruments; performance bonds; completion bonds or guarantees; and the guarantee or cosigning of any lease, purchase agreement (such as of the repurchase or buy back of preferred stock); or other obligations of a subsidiary.

"Invest" means to commit money in order to earn a financial return on assets which are not expected to be used or useful in furnishing electric service.

"Make loans" means to lend out money for temporary use on condition of repayment with interest.

"Mortgaged Property" means any asset of the borrower which is pledged in the REA mortgage.

"Own Funds" means money belonging to the borrower other than: (i) Proceeds of loans made, guaranteed or lien accommodated by REA; (ii) funds necessary to make timely payments of principal and interest on loans made, guaranteed or lien accommodated by REA; (iii) insurance proceeds from mortgaged property; (iv) damage awards and sale proceeds resulting from eminent domain and similar proceedings involving mortgated property; (v) sale

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proceeds from mortgaged property sales requiring specific REA approval; and (vi) funds on deposit in the cash construction trustee account.

"REA Mortgage" means any and all instruments creating a lien on or security interest in the borrower's assets in connection with loans or guarantees under the RE Act.

"Sale Proceeds" means all consideration received from the sale of assets after deducting reasonable transaction expenses, if any, and after deducting, in the case of assets taken by power of eminent domain, the amount, if any, of the damage award paid to the borrower as compensation for lost future revenues.

"Subsidary" means a corporation the majority stock of which is owned or controlled by a borrower.

"Supplemental Lender" means a lender that has provided a supplemental source of financing that is secured by the REA mortgage.

"Total Utility Plant" means the sum of the borrower's "electric plant in service accounts" and "construction work in progress—electric accounts," as such terms are used in the REA Uniform System of Accounts.

§ 1715.23 General.

A borrower may, without prior written approval of the Administrator, invest its own funds or make loans or guarantees not in excess of 15 percent of its total utility plant without regard to any provision contained in any REA mortgage to the effect that the borrower must obtain prior approval from REA.

§ 1715.24 Exclusions.

In calculating the amount of investments, loans and guarantees permitted under § 1715.23, the following items are excluded from the computation:

(a) Securities or deposits issued, guaranteed or fully insured as to payment by the United States Government or any agency thereof;

(b) Capital term certificates, bank stock or other similar securities of the supplemental lender which have been purchased as a condition of membership in the supplemental lender, or as a condition of receiving financial assistance from such lender;

(c) Patronage capital allocated from a power supply cooperative of which the borrower is a member; and

(d) Loans, deposits, advances, investments, securities and obligations which the borrower has, prior to the date of its original mortgage to REA, committed itself to make, purchase or undertake, as the case may be, and as to which the records of the borrower show that it gave REA notice to that effect in writing prior to the date of such mortgage.

§ 1715.25 Records.

(a) Every borrower shall maintain accurate records concerning all investments, loans and guarantees made by it. Such records shall be kept in a manner that will enable REA to readily determine: (i) The nature and source of all income, expenses and losses generated from the borrower's loans, guarantees and investments; (ii) the location, identity and lien priority of any loan collateral resulting from activities permitted by this Subpart; and (iii) the effects, if any, which such activities may have on the feasibility of loans made, guaranteed or lien accommodated by REA.

(b) The records of borrowers and their subsidiaries shall be subject to the auditing procedures prescribed in Part 1789 of this Chapter. REA reserves the right to review the financial records of any subsidiaries of the borrower to ascertain if the debts, Guarantees (as defined herein), or other obligations of the subsidiaries, could adversely affect the ability of the borrower to repay its debts to the Government or to determine if the borrower is in compliance with the regulation.

(c) Every borrower shall report to REA, in the manner and on the form specified by the Administrator, the current status and principal amount of each outstanding loan and guarantee which it has made pursuant to § 1715.23 of this Subpart.

§ 1715.26 Effect of this Subpart on REA loan contract and mortgage.

(a) Nothing in this subpart shall affect any rights which supplemental lenders have under the REA mortgage to limit investments, loans and guarantees by their borrowers to levels below 15 percent of total utility plant.

(b) Nothing in this subpart shall relieve a borrower of its obligation under the REA mortgage to preserve the lien of the REA mortgage as a first lien on all of the borrower's assets, subject to such limited exceptions as may be provided for therein.

(c) Nothing in this subpart authorizes a borrower to make extensions or improvements to its electric system without prior approval of REA.

§ 1715.27 Restrictions imposed by other lenders.

Nothing in this subpart is intended to prevent a supplemental lender from imposing, enforcing, or modifying restrictions contained in its loan documentation that limit the rights of a borrower to make loans, guarantees or investments.

§ 1715.28 Investments, loans, and guarantees in excess of 15%.

(a) If a borrower wishes to exceed the aggregate amount of investments, loans, and guarantees permitted under § 1715.23 of this subpart, the borrower must comply with the provisions contained in the REA mortgage to the effect that it must obtain prior approval from REA. Requests of the type described immediately above should be made in writing for consideration by REA on a case by case basis.

§§ 1715.29–1715.59 [Reserved]

Dated: November 22, 1988.

Jack Van Mark,

Acting Administrator.

[FR Doc. 88-27363 Filed 11-25-88; 8:45 am]

BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Ensuring the Effectiveness of Maintenance Programs for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend its regulations to require commercial nuclear power plant licensees to strengthen their maintenance activities in order to reduce the likelihood of failures and events caused by the lack of effective maintenance. The Commission believes safety can and must be enhanced by defining an adequate maintenance program to ensure the effectiveness of such programs throughout the nuclear industry. The proposed rule requires plant maintenance programs to include specific activities, including the monitoring of the effectiveness of plant maintenance programs.

DATE: Comment period expires January 27, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11155 Rockville Pike, Rockville, MD between 7:30 am and 4:15 pm weekdays.

Copies of the paper on rulemaking options, transcript and proceedings of the Public workshop, draft NUREG report, draft regulatory analyis, environmental assessment and finding of no significant impact, the supporting statement submitted to OMB, and comments received may be examined at: the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–3720.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1988, the Commission published a final Policy Statement on Maintenance of Nuclear Power Plants. In the Policy Statement, the Commission stated that it expected to publish a Notice of Proposed Rulemaking in the near future and provided the general framework for the proposed rule.

The Commission has a program to continually evaluate the operational performance of nuclear power plants. Analysis of operational events has shown that, in some cases, nuclear power plant equipment is not being maintained at a level to ensure that the equipment will perform, with a high degree of reliability, its intended function with required. A limited NRC examination of nuclear power plant maintenance programs has found a wide variation in the effectiveness of these programs. At some plants, maintenance has been a significant contributor to plant reliability problems and hence, is of safety concern. The Commission believes safety can and must be enhanced by strengthening the effectiveness of maintenance programs throughout the nuclear industry and this is the objective of this proposed rule.

Description

It is the objective of the Commission that all components, systems and structures of nuclear power plants be effectively maintained so that plant equipment will perform its intended function when required. The scope of the proposed rule is intended to cover all systems, structures and components including those in the Balance of plant (BOP). To accomplish this objective, the proposed rule would require each commercial nuclear power plant to develop and implement a well-defined program to assure that maintenance activities are conducted to preserve or restore, with prompt repair, the availability, performance and reliability of plant structures, system, and components. The program should clearly define the components and activities included, as well as the management systems used to control those activities. Further, the program should include feedback of specific results to ensure corrective actions, provisions for overall program evaluation, and the identification of possible component or system design problems. Compliance with the rule would be verified by NRC audit and inspection.

The proposed rule does not require that licensees report Maintenance Performance Indicators (MPIs). However, each licensee would be required to have his own system for monitoring maintenance effectiveness which would be subject to NRC review. The Commission solicits comments on the application and usefulness of MPIs as part of the rule, and whether a set of MPIs exists which could indicate the effectiveness of plant maintenance programs. In addition, the Commission solicits feedback on whether to require reporting a specific set of MPIs to the NRC as part of the rule.

Public Workship

The Commission held a Public Workshop on July 11–13, 1988 in Washington, DC to solicit early input for the formulation of the rule from the public and regulated industry. Prior to the Workshop, a paper on rulemaking options was distributed to interested parties to facilitate Workshop discussions. The paper on rulemaking options,[1] and the transcript and proceedings (NUREG/CP–0099) [2] of the Workshops are available for inspection in the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC.

As a result of Workshop discussions, the Commission has come to the following conclusions:

1. Rulemaking should encourage industry initiatives directed toward improving maintenance, since such initiatives promote industry responsibility for problem identification and resolution;

2. Prescriptive rulemaking options may impede industry initiatives and responsibility to improve maintenance; and

3. Rulemaking should be directed toward specifying the NRC's expectations in maintenance and requiring licensee monitoring of the effectiveness of maintenance programs.

Therefore, the Commission proposes a maintenance rule which gives incentive for industry to develop a standard for a maintenance program, which NRC may endorse in a Regulatory Guide.

Expectations for Maintenance Standard

The Commission encourages industry to develop a Maintenance Standard which will provide guidance for complying with requirements of the proposed rule. The Commission believes that the development of a standard will guide current industry initiatives towards developing and implementing acceptable maintenance programs and that utility participation in preparation of a Maintenence Standard will provide additional incentive and responsibility for improving plant maintenence programs.

The Commission plans to develop a Regulatory Guide to provide guidance for complying with the rule if industry does not develop an adequate standard. However, the Commission prefers to endorse an industry-developed standard. To meet the Commission's plans for implementation of the rule the industry commitment to develop a Maintenance Standard should be made now and a final standard should be proposed no later than September 1, 1989. The Commission expects to publish a Regulatory Guide endorsing a Maintenance Standard or providing NRC guidance in November 1989. The comprehensive program requirements of the proposed rule would be required to be fully implemented within two years following publication of the final rule.

The proposed rule defines those attributes the Commission considers necessary for an acceptable Maintenance Program. To be acceptable, any standard developed to implement the rule should have the following characteristics:

- Should define the plant systems, structures and components included in the maintenance program (the scope of the rule covers all systems, structures and components including those in the BOP);
- Should require a systematic evaluation ("systems approach") of the

[1] Memorandum from Victor Stello, Jr., Executive Director for Operations, to the Commissioners, "Proposed Rulemaking for the Maintenance of Nuclear Power Plants," dated June 27, 1988.

[2] Copies of NUREG series reports may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC.

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functions and objectives of plant systems, components and structures to determine maintenance activities and requirements;

• Should provide clear and specific programmatic requirements that can be partically implemented to achieve high reliability;

• Should be comprehensive in addressing the activities and functions included in the proposed rule plus provisions for self assessment;

• Should reference standards or guidelines such as those developed by ANS, ASME, IEEE, ASTM, INPO, or EPRI where practical to provide (a) specific programmatic requirements or (b) guidance for maintenance of specific types of equipment;

• Should allow flexibility for adoption of new innovation technologies as they are validated; and

• Should provide for sufficient documentation so that program effectiveness and compliance with requirements of the standard can be evaluated.

The Commission has conducted studies to review effective maintenance approaches and practices in other countries and industries and has documented the findings in a draft NUREG series report.[3] The Commission seeks comments on the draft NUREG report which may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The draft NUREG report concludes that the following are practices in foreign countries and other U.S., industrial maintenance programs which have been found to contribute significantly to effective maintenance:

1. Focus on long term maintenance objectives; establish a proactive maintenance program as opposed to reactive maintenance;

2. Use of a reliability centered approach to maintenance, including consideration of the man-machine interface;

3. Collection and engineering evaluation of failure data (root cause analysis);

4. Use of an integrated information system for collecting data and monitoring the effectiveness of a maintenance program;

5. Use of maintenance technician training/certification programs;

6. Derive planning and scheduling from overall program objectives;

7. Enhance environment/motivation of maintenance technicians (e.g. thru cross-training, "Crew Chief" concept); and

8. Clearly define interfaces between maintenance and other activities (engineering support, operations QA, QC, corporate offices, safety review).

The Commission encourages in the development of any Maintenance Standard consideration of the findings in the above referenced draft NUREG report and any other pertiment studies on effective maintenance practices.

The Commission also encourages the industry to consider incorporating appropriate maintenance derived from plant aging studies in the Maintenance Standard.

The Commission views maintenance rulemaking as an opportunity to encourage (a) good maintenance practices, (b) the adoption of common maintenance standards, and (c) the development of valid quantitative measures of effectiveness which could become the bassis for regulation by outcomes rather than processes. The herein proposed rule addresses (a) and (b) but not (c). Follow-on rulemaking is envisioned which would build on the bases established in this rule and would define those validated measurable quantities or indicators that could credibly become the basis for regulatory attention or action in the future instead of the systems for maintenance under (a) and (b) of this proposed rule.

As noted above, an integral part of a good maintenance program is the monitoring and feedback of results. Programs should utilize quantitative measures to monitor and adjust the maintenance program activities. Measures that are based upon actual component reliability and failure history provide useful indication of maintenance effectiveness. Such measures need a well structured and component oriented system: (e.g., the Nuclear Plant Reliability Data System (NPRDS)) To capture and track equipment history data. The Commission notes and encourages the use of the industry-wide NPRDS for this purpose in view of the multiple uses for the data.

Certification of Plant Maintenance Programs

The Commission wishes to encourage industry initiatives and responsibility for problem identification and resolution. Therefore, as a further way of encouraging industry participation and responsibility, the Commission is willing to consider a process of utilizing a designated third party, similar to the ASME code system, to review and certify licensee maintenance programs for conformance with the Maintenance Standard. This process, if successful, could alleviate the need for detailed NRC inspection of all licensee maintenance programs. The Commission solicits proposals for conducting such a certification process.

Comments Requested

In addition to comments on the content of this Notice of Proposed Rulemaking, the Commission specifically solicits input on the following:

1. Is it appropriate for the nuclear power industry to develop a Maintenance Standard and, if so, would the industry develop such a Maintenance Standard?

2. What level of detail should be included in the Maintenance Standard?

3. Is two years a reasonable time to develop, and implement a standard?

4. Is it appropriate for a designated third party to certify plant maintenance programs to comply with the Maintenance Standard; and, if so, would an organization be willing to perform such certification?

5. The Commission plans to issue by November 1989, a Regulatory Guide establishing standards and criteria for determining what constitutes an effective maintenance program. This Regulatory Guide is being developed in parallel with the final rulemaking. The Commission encourages the industry to develop standards and acceptance criteria. If an acceptable industry standard is available in this time frame, the Commission will consider endorsing the industry standard in the Regulatory Guide. An industry commitment to develop a maintenance standard, consistent with the Commission's schedule to issue a final Regulatory Guide by November 1989, would be necessary during this public comment period.

6. The Commission believes that the proposed maintenance rule should be considered under 10 CFR 50.109(a)(4) of the backfit rule which would exempt the maintenance rule from backfit requirements based on the precepts that effective maintenance is necessary to assure adequate public protection and that the proposed rule codifies and standardizes previously existing Commission requirements, both explicit and implicit, in plant technical specifications, licensee safety analysis reports, and 10 CFR Part 50, Appendix B. The Commission requests public comment concerning the need for a backfit analysis for this rulemaking.

7. The Commission believes that the inclusion of balance of plant (BOP) equipment in the proposed maintenance rule is necessary and proper. However, the Commission also recognizes that some licensee maintenance programs, as presently configured, apply to structures, systems, and components that are, without question, irrelevant to protection of public health and safety from radiological hazards associated with the operation of the nuclear power plant. The Commission requests public comment concerning what limitation, if any, should be placed on the final maintenance rule to provide some licensee flexibility in this regard.

8. The Commission believes that individual worker accountability plays an important role in an effective maintenance program. The Commission is, therefore, soliciting comments on the means for incorporating this consideration into a licensee's maintenance program.

9. The Commission desires to establish criteria within the maintenance rule which would form the basis for determining when a maintenance program is fully effective and additional improvement is not warranted from a safety standpoint. Such criteria might be either quantitative or qualitative and could be based on specific measurable attributes, on overall plant performance, on program results, or on other attributes. The Commission requests public comment concerning the need for such criteria, the form of such criteria, and the criteria themselves.

10. Are performance indicators that are being used by industry, may be used in the future, or have been used in the past, appropriate candidates as quantitative measures of maintenance effectiveness? The Commission is particularly interested in experience or analysis concerning indicators or the use of indicators of component reliability as maintenance performance indicators.

11. Should an industry-wide component failure reporting system, e.g., NPRDS, be used by all plants in order to support the sharing of generic maintenance experience and facilitate monitoring of maintenance effectiveness?

12. Commissioner Roberts had the following views:

I cannot join the majority in supporting the propoosed rulemaking on maintenance. In order to have the benefit of the public's comments, it has been my custom to agree to publication of proposed rulemakings. I cannot do so in this instance. I have asked one fundamental question. What are we trying to accomplish with this rule that cannot more effectively and innovatively be accomplished without a regulation? I have not received a satisfactory answer. I do not believe the case has been made that licensees do not have established maintenance programs. Most importantly to me, there has been no demonstration that this rule would improve implementation of existing programs. Neither have I been provided with compelling documentation on what the problem is and how, specifically, this rule will fix it. On the contrary, the trends staff has provided show continued improvement in the maintenance area.

The proposed rule the Commission is now publishing fails to provide a basis for determining when a maintenance program is effective or when improvements are "appropriate." We are even delaying publication of the accompanying Regulatory Guide until the final rule. Without being afforded the opportunity to review this *implementation* document, the Commission is left in the position of approving a specious rule. It is no wonder that this rulemaking would elicit such widespread opposition. The public is being asked to comment on a rule of form but no substance. I believe it would be more productive to delay issuance of this proposed rule until the draft regulatory guide is available for comment. Only then can we receive meaningful comments on the rulemaking package.

I am concerned that this rule goes beyond our authority. I cannot agree with a rule that would have the NRC regulating maintenance on all systems, structures and components regardless of whether they have a nexus to radiological safety or not. I am troubled by the attitude demonstrated when we request public comments on what limitations, if any, should be placed on the final rule to address structures, systems and components that are "*without question irrelevant* (my emphasis) to the protection of public health and safety." This clearly abdicates our responsibility to show that a regulation is needed. We must ask ourselves: are we proceeding with this rulemaking for the sake of the rule itself? As attested to by the cases where the Commission cited licensees, the NRC already has the authority to enforce compliance in the maintenance area.

The arguments advanced by both the staff and the Commission in trying to comply with the requirements of the backfit rule have played a significant role in my decision not to support this proposed rulemaking. The staff argument for the rule's compliance with § 50.109 has been made on the basis of cost. The staff states that the backfit analysis shows that " * * * the rule will provide a substantial increase in the protection of the public health and safety without any additional cost." I am skeptical of the assumptions made in the backfit and regulatory analysis and request comments on both these documents. I also request comments on the views of the ACRS. They state that " * * * there are characteristics of regulations, and especially the way in which they are typically enforced, that lead us to believe that, under a rule, a move toward uniformity would occur, and this is likely to decrease the effectiveness of some of the better existing programs." I share their concern that the existence of this rule could make things worse and diminish rather than enhance the protection of the public.

Regarding "adequate protection," the Commission appears to be saying that since effective maintenance is necessary to maintain adequate protection, this rule should be excepted under § 50.109(a)(4). This exemption would prohibit staff from taking implementation costs into consideration. However, it would require that a documented evaluation be prepared for public comment. Therefore, my opposition to the exception is not to the exception itself but to the precedential nature of the use of the adequate protection argument. Let me state that I too strongly believe that effective maintenance is necessary to assure that nuclear power plants are safe and to provide adequate protection to the public. I also believe, just as strongly, that *this rule is not necessary to provide that protection*, and that as the ACRS noted it may well have the opposite effect. I believe that we cannot afford to be careless about the use of the "adequate protection" argument for exception to the backfit rule. The Commission is in litigation about this very issue. The Commission addressed this point in detail under the heading "Adequate Protection" in the *Response to Comments* on the final 10 CFR Part 50 *Revision of Backfit Process for Power Reactors*. Let us remember that there had been concerns that in dealing with the backfit rule, the Commission would use the phrase "adequate protection" arbitrarily. The Commission could unwittingly be giving credence to that view.

Additionally, it seems to me that the Commission position on adequate protection is internally inconsistent. The Commission needs to recognize that when it states that this rule is needed to maintain adequate protection, it is saying that the current operating plants now pose undue risk to the public which we are presently tolerating. If I believe that, I would suggest (as I'm sure would the rest of the Commission) that this rule become immediately effective. This is clearly not the case. As the Commission in the very same comment shows, " * * * the proposed rule codifies and standardizes *previously existing* (my emphasis) Commission requirements, both explicit and implicit, in plant technical specifications, licensee safety analysis reports, and 10 CFR Part 50, Appendix B." It seems to me that the Commission can't have it both ways.

I request comments on my views.

Impact

Although the Commission believes that this proposed rule is by virtue of 10 CFR 50.109(a)(4) not subject to the requirement for a backfit finding and analysis, it has nevertheless performed an analysis of cost and other backfit factors as an alternative ground for proceeding with the proposed rule and to facilitate public comment on the backfit issue.

The economic impact of the proposed requirement on licensees should be negligible. The accompanying draft

[3] A free single copy of draft NUREG–1333, "Maintenance Approaches and Practices in Selected Foreign Nuclear Power Programs and Other U.S. Industries: Review and Lessons Learned," to the extent of supply, may be obtained by writing to the Distribution Services Section, Document Control Branch, Division of Information and Support Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC.

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regulatory analysis shows that, although initial financial investments will be required by some licensees to establish a systematic and comprehensive maintenance program, the savings due to decreased corrective maintenance costs and increased plant availability should outweigh the investment costs. The Commission requests cooperation of informed sources in order to develop further details and verification of this analysis.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and; therefore, an environmental impact statement is not required.

The proposed action is directed to preserve and promptly restore operability, reliability, and availability of, or to prevent the failure of, plant structures, systems, and components whose failure could threaten the health and safety of the public. Since the proposed action is directed to improving the maintenance of plant systems, components and structures and does not require any modification of the plant, it will not affect the quality of the human environment.

The environmental assessment and finding of no signficiant impact on which this determination is based are available for inspection at the NRC Public Document Room 2120 L Street, Lower level, NW., Washington, DC.

Single copies of the environmental assessment and finding of no significant impact are available from Moni Dey, Office of Nuclear Regulatory Research, Telephone: (301) 492–3730, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Paperwork Reduction Act Statement

This proposed rule amends recordkeeping requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Public reporting burden for this recordkeeping of information is estimated to average 1000 hours per plant per year including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Records and Reports Management Branch, Division of Information Support Services/IRM, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L St., NW, Washington, DC 20005. Single copies of the draft analysis may be obtained from Moni Dey, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–3730.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Backfit Analysis

As noted above, the Commission has completed a backfit analysis for the proposed rule. The Commission has determined, based on this analysis, that backfitting to comply with the requirements of this proposed rule will provide a substantial increase in protection to public health and safety without any additional costs. The backfit analysis on which this determination is based is as follows:

Analysis and Documentation for the Proposition That the Proposed Rule Satisfies the "Adequate Protection" Exception in 10 CFR 50.109(a)(4); Analysis and Determination That the Rulemaking to Amend 10 CFR 50 Concerning Maintenance Complies With Backfit Rule 10 CFR 50.109 In Any Event

While the Commission's existing regulations contain several provisions which, either implicitly or explicitly, address the need for effective maintenance, they do not *explicitly* address the requirements of an effective maintenance program in any easily understood and comprehensive fashion. The Commission believes that safety can and must be enhanced by improving the effectiveness of maintenance programs throughout the nuclear industry. The proposed rule requires nuclear power plant maintenance programs to have a set of functions and activities which the Commission believes are essential for a comprehensive and effective program.

The findings and conclusions of the Commission's assessment of the effectiveness of plant maintenance programs can be found in NUREG–1212, "Status of Maintenance in the U.S. Nuclear Power Industry." The study showed weaknesses at plants in a number of areas of maintenance which the Commission believes is critical for an overall effective program. Further, analysis of operational events has shown that, in some cases, nuclear power plant equipment is not being maintained with a high degree of reliability that the equipment will perform its intended function when required. The Commission believes that effective maintenance is necessary for adequate protection. The objective of the proposed rule is to require improvements for those plants that are poorly maintained, and also to prevent the declining performance of plants that are well-maintained. The proposed rule, by addressing in an easily understood way the requirement that there be an effective maintenance program, would advance the goal of having a comprehensive set of regulations which define what is needed for adequate protection and; therefore, satisfies the "Adequate Protection" Exception in 10 CFR 50.109(a)(4).

In addition, the Commission has conducted an analysis and determined that the proposed maintenance rule complies with section (3) of the backfit rule, 10 CFR 50.109. The benefit of improvements in maintenance has been estimated to be in the order of 250,000 person-rem for the lifetime of all nuclear power plants. Common sense also suggests that a well-maintained plant poses less risk than one poorly maintained. The proposed rule will help ensure a satisfactory level of performance for maintenance programs by specifying those activities and practices which, through experience, have been shown to be key elements of effective maintenance programs, and should result in a substantial enhancement of public health and safety.

Improvements in maintenance serve to meet dual objectives: (1) Enhance safety; and also (2) increase plant availability and capacity factor. Therefore, it has been estimated that enhancement in safety as a result of improved maintenance may be accomplished without any additional

costs, due to cost savings from reduced plant downtime. Further, a proactive and well-planned maintenance program decreases costs of corrective and repeat maintenance.

The following discussion presents the summary of the backfit analysis. Further details may be found in the Regulatory Analysis for the proposed rule.

Analysis of § 50.109(c) Factors

1. Statement of the specific objectives that the backfit is designed to achieve.

The purpose of the maintenance rule is to improve maintenance effectiveness, and thereby enhance overall safety, by establishing basic requirements for plant maintenance programs. In establishing these requirements, the Commission intends to consider the industry-wide efforts that have already been initiated.

The objectives of the maintenance rule are as follows:

(1) To define NRC's expectations for plant maintenance; and

(2) To improve licensee maintenance programs by requiring the effective conduct of a set of functions and activities.

With implementation of the rule, it is expected that the current wide variation in maintenance performance will be reduced so that the performance of plants that lag behind the industry as a whole will be brought up to the level of performance of the majority of the industry. Second, the overall average level of industry's performance should also improve.

An important part of the structure of the rule is to achieve improved maintenance performance in a way that allows licensees the flexibility to determine the details of their individual maintenance program so that plant-specific factors can be taken into account. This flexible approach will enhance both safety and cost-effectiveness, compared to a rigid and prescriptive rulemaking approach.

2. General description of the activity required by the licensee or applicant in order to complete the backfit.

The licensees will be required to have a documented and effective maintenance program which shall include the following activities:

(1) Technology in the areas of:
(i) Corrective maintenance,
(ii) Preventive maintenance,
(iii) Predictive maintenance, and
(iv) Maintenance Surveillance;
(2) Engineering in support of maintenance;
(3) Quality assurance and quality control of maintenance activities;
(4) Incorporation of plant modifications into the maintenance program;
(5) Equipment history and trending;
(6) Maintenance record keeping;
(7) Management of parts, tools, and facilities;
(8) Maintenance procedures;
(9) Post-Maintenance testing and return-to-service activities;
(10) Measures of overall maintenance program effectiveness;
(11) Maintenance management and organization in the areas of:
(i) Planning,
(ii) Scheduling,
(iii) Staffing,
(iv) Shift coverage, and
(v) Resource allocation;
(12) Control of contracted maintenance services;
(13) Radiological exposure control (including ALARA) during maintenance activities;
(14) Maintenance personnel qualification and training;
(15) Internal communications between the maintenance organization and plant operations and support groups;
(16) Communications between plant and corporate management and the maintenance organization; and
(17) Consideration of maintenance recommendations or requirements of individual vendors.

Criteria for acceptability of the conduct of the above activities will be provided in the proposed Maintenance Standard or Regulatory Guide.

3. Potential change in the risk to the public from the accidental offsite release of radioactive material.

Implementation of the proposed maintenance rule will result in an estimated total risk reduction to the public ranging from 50,000 to 500,000 person-rem with a point estimate of about 250,000 person-rem.

4. Potential impact on radiological exposure of facility employees. A large fraction (two thirds to three fourths) of the occupational radiation exposure incurred at nuclear power plants is associated with maintenance, on the order of 300 person-rem per reactor-year in 1987. Improvements in maintenance programs can affect collective occupational exposures both positively and negatively. Increases in maintenance activity due to expanded preventive maintenance or more aggressive corrective maintenance (to reduce backlogs, for example) will tend to increase exposure, and productivity and reductions in the amount of rework will tend to reduce exposures. The net effect of these positive and negative trends is believed to be beneficial, but small compared to the other costs and benefits of improved maintenace.

5. Installation and continuing costs associated with backfit, including the cost of facility downtime or the cost of construction delay.

For 100 operating reactors, the total estimated cost associated with the proposed maintenance rule is −$198 million. The minus sign denotes a cost savings. This estimate breaks down as follows:

Industry cost element	Millions of 1988 dollars
Maintenance plan	4
Recordkeeping and reporting	12.3
Maintenance standard	2.8
Reg. guide workshops	0.4
Implement improvements (at some plants):	
Preventive maintenance	1,500
Maint. -Ops. coord.	2.1
Maint. info. system	150
Procedures	14
Increased staffing to reduce overtime	50
Reduced risks of onsite property damage	−33
Cost savings due to improved availability and reduced corrective maintenance	−1,900
Total net industry costs	−198

Notes: 1. Negative signs denote cost savings; 2. Values in table are rounded.

6. The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements.

The proposed rule would require certain elements in a plant maintenance program and should not add to plant or operational complexity. Improved maintenance should result in a decrease of challenges to safety systems and forced outages, and therefore, should decrease the complexity of operations.

The proposed maintenance rule is related to the following existing regulatory requirements:

(1) Surveillance requirements for safety system is required in the technical specifications: These requirements are not duplicated for the proposed maintenance rule.

(2) In-service inspection requirements are covered under 10 CFR 50.55a, Codes and Standards. These requirements of a preventive maintenance program are not duplicated under the proposed maintenance rule.

(3) Criterion 1, Appendix A, 10 CFR Part 50, concerning General Design Criteria (GDC), requires that a quality assurance (QA) program be established and implemented in order to provide

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adequate assurance that Nuclear Power Plant (NPP) structures, systems, and components will satisfactorily perform their safety functions. Appendix B of 10 CFR Part 50 establishes QA requirements for the design, construction, and operation of those structures, systems, and components that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. Regulatory Guide 1.33 has been promulgated to describe acceptable methods for complying with the provisions of these appendices of 10 CFR Part 50 for the operational phase of NPPs.

These requirements are directed towards maintaining a quality assurance program and do not explicitly address maintenance as defined in the proposed rule. The proposed Maintenance Standard and Regulatory Guide will directly address the maintenance activities in the proposed rule.

7. The estimated resource burden on the NRC associated with the backfit and the availability of such resources.

The estimated total cost for NRC review of industry submittals required by the proposed maintenance rule in $400,000 based on the need for developing a Regulatory Guide to provide the basis for review of an industry-developed Maintenance Standard or to provide guidance on implementation of the rule if a Maintenance Standard is not developed. Individual plant maintenance programs will be subject to the ongoing inspection process but would not be required to be submitted to the NRC for review and approval.

8. The potential impact of difference in facility type design, or age on the relevancy and practicality of the backfit.

The proposed maintenance rule establishes generic requirements applicable to all types of facilities and designs, regardless of their age.

9. Whether the backfit is interim or final and, if interim, the justification for imposing the backfit on an interim basis. The proposed maintenance rule would be a final requirement.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed regulation affects licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. These licensees do not fall within the definition of small business set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Nuclear power plants and reactors.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The Authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, Secs. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); Secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846.

Section 50.7 also issued under Pub. L.: 95–601, Sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.10 also issued under Secs. 101, 185, 68, Stat. 936, 955, as amended (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55 and 5056 also issued under Sec. 185, 68, Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under Sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 5054 also issued under Sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 5091, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under Sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under Sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.103 also issued under Sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2237).

For the purposes of Sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a) (b), and (c) 50.44, 50.46, 50.48 and 50.54 and 50.54(a) are issued under Sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under Sec. 161i, 68, Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under Sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 50.65 is added to read as follows:

§ 50.65 Requirements to ensure the effectiveness of maintenance programs for nuclear power plants.

(a) *Applicability.* The requirements of this section apply to all nuclear power reactors licensed under § 50.21 b or § 50.22.

(b) *Definitions.* For the purpose of this section, the Commission defines maintenance as the aggregate of those planned and systematic actions required to preserve and promptly restore operability, reliability, and availability of, or to prevent the failure of, plant structures, systems, and components. The Commission intends the scope of the rule to cover all systems, structures and components, including those in the Balance-of-Plant. Maintenance includes not only activities traditionally associated with identifying and correcting actual or potential degraded condition, i.e., repair, surveillance, diagnostic examinations, and preventive measures; but extends to all supporting functions for the conduct of these activities. Maintenance includes the following activities:

(1) Technology in the areas of:
(i) Corrective maintenance,
(ii) Preventive maintenance,
(iii) Predictive maintenance, and
(iv) Maintenance Surveillance;
(2) Engineering in support of maintenance;
(3) Quality assurance and quality control of maintenance activities;
(4) Incorporation of plant modification into the maintenance program;
(5) Equipment history and trending;
(6) Maintenance record keeping;
(7) Management of parts, tools, and facilities;
(8) Maintenance procedures;
(9) Post-Maintenance testing and return-to-service activities;
(10) Measures of overall maintenance program effectiveness;
(11) Maintenance management and organization in the areas of:
(i) Planning,
(ii) Scheduling,
(iii) Staffing,
(iv) Shift coverage, and
(v) Resource allocation;
(12) Control of contracted maintenance services;
(13) Radiological exposure control (including ALARA) during maintenance activities;
(14) Maintenance personnel qualification and training;
(15) Internal communications between the maintenance organization and plant operations and support groups;
(16) Communications between plant and corporate management and the maintenance organization; and
(17) Consideration of maintenance recommendations or requirements of individual vendors.

(c) *Requirements.* Each holder of an operating license subject to this section shall (1) establish, implement, and maintain an effective and documented maintenance program that addresses elements and activities in paragraph (b) of this section, and (2) regularly assess the effectiveness of this maintenance program and, based upon this assessment, make improvements, as appropriate.

(d) *Implementation.* By (insert a date 2 years after the effective date of the amendment) each licensee shall certify, by letter to the Director of the Office of Nuclear Reactor Regulation, that a comprehensive documented maintenance program is being maintained and implemented, which addresses all elements and activities in paragraph (b) of this section including measures to monitor the effectiveness of the maintenance program and to improve the program where appropriate. In addition, each licensee shall develop (insert a date 3 months after the effective date of the amendment) a timely and expeditious plan and schedule (including Key Milestones) for meeting the requirements of this section.

Dated at Rockville, Maryland, this 21st day of November, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 88–27331 Filed 11–25–88; 8:45 am]
BILLING CODE 7590–01–M

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

Proposed Premerger Notification Rules; Extension of Time for Filing Comments

AGENCY: Federal Trade Commission.

ACTION: Proposed rulemaking; extension of time.

SUMMARY: On September 22, 1988 the Federal Trade Commission published proposed changes to its premerger notification rules (53 FR 36831). The Federal Trade Commission requested comments on the proposed changes be submitted on or before November 21, 1988. The Federal Trade Commission believes an extended period for such comments might provide valuable additional information and is therefore extending the deadline for comments on the proposed changes by thirty two days, or until December 23, 1988.

DATE: Comments on the proposed rule changes must now be received on or before December 23, 1988.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 172, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Roberta S. Baruch, Acting Assistant Director, Bureau of Competition, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3300.

By direction of the Commission.

Donald S. Clark,
Secretary.
[FR Doc. 88–27335 Filed 11–25–88; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Office of Workers' Compensation Programs

20 CFR Part 10

Claims for Compensation Under the Federal Employees' Compensation Act

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Withdrawal of Proposed rule.

SUMMARY: On April 7, 1988 (53 FR 11596), the Employment Standards Administration issued for comment a proposed change to 20 CFR 10.125(b) and 10.321(a), which would have provided for recoupment of compensation forfeited under 5 U.S.C. 8106 at the rate of 100% of continuing compensation. The proposed rule is withdrawn. After a review of the comments received, which all opposed this rule on the ground that there was no basis for singling out recoupment of forefeited compensation from any other overpayment situation, the Department has decided that the existing rules are most consistent with the Federal Employees' Compensation Act. 5 U.S.C. 8101, *et seq.*

The proposed rule was a republication of a final rule published April 1, 1987. In republishing the rule as a proposal, the Department also reinstated (as an interim final rule) the provisions dealing with recoupment of forfeited compensation which existed before April 1, 1987 (53 FR 11594; April 7, 1988). By withdrawing the proposed rule, therefore, that interim final rule remains in effect.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Markey, Associate Director, Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3229, Francis Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523–7552.

Signed at Washington, DC, this 21st day of November 1988.

Fred W. Alvarez,
Assistant Secretary for Employment Standards.
[FR Doc. 88–27281 Filed 11–25–88; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Allowances for Extraordinary Costs, Transportation and Gas Processing

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of request for comments.

SUMMARY: On Janurary 15, 1988, the Minerals Management Service (MMS) published in the **Federal Register** final rules revising oil and gas royalty valuation regulations (53 FR 1184, Oil: 53 FR 1230, Gas). The gas royalty valuation regulations at 30 CFR 206.158(d)(2)(i) state that an allowance for extraordinary costs of processing may be granted if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional. The MMS intends to further develop the criteria for assessing when a project qualifies for an extraordinary cost allowance. The MMS is not only interested in comments on gas regulations but also comments concerning whether extraordinary cost allowance provisions should be developed for its oil, coal, and geothermal product value regulations. In addition, MMS is soliciting comments on its thresholds for transportation and processing allowances of 50 percent and 66⅔ percent, respectively.

DATE: Comments must be received by January 27, 1989.

ADDRESS: Written suggestions may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION:

Background

The preamble to the gas valuation regulations published on January 15,

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1988, at 53 FR 1267, pertaining to comments received on § 206.158(d) referred to industry commenters expressing their view that certain extraordinary costs should be deductible from royalty. One industry trade group stated that the costs related to the manufacture and sale of separately marketable products are extraordinary and should be allowed. Another industry commenter stated that other off-lease costs and certain "extraordinary" on-lease costs should be deductible. The MMS responded to these comments by stating that costs for the services of gathering, separation, measurement, dehydration, compression, and sweetening are considered to be a requirement to place the lease production into marketable condition, at no cost to the lessor, and cannot, therefore, be included in a processing allowance. The MMS did, however, include in the final regulations a new § 206.158(d)(2) which states:

> If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs which shall be in addition to any other processing allowance to which the lessee is entitled pursuant to this section. Such an allowance may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

This provision was intended to apply to advanced processing technologies or unusual conditions that are outside of normal industry operational standards. To process applications for allowances, under this provision of the regulations, MMS must define the standard industry conditions and practices, and by reference to the standard, develop rationale and criteria for classifying a project and related costs as extraordinary, unusual, or unconventional. These criteria can then be uniformly applied to all extraordinary costs allowance requests. To fully develop the criteria, MMS is soliciting comments from all interested parties. Following the comment process, MMS will evaluate all suggetions received and will develop draft criteria which, in turn, will be submitted to the Royalty Management Advisory Committee for its review and recommendations.

During the oil and gas product valuation rulemaking process, MMS received many comments concerning the allowances for transportation and gas processing. Most of the comments centered upon whether the provisions limiting the allowances should be eliminated, retained, or changed. Some comments from industry and trade group representatives stated that MMS "* * * should abolish the 50 percent limitation for one or more of the following reasons: * * * *" (They then listed five reasons which ranged from [it was arbitrary and unjust] to [it could impose a serious economic deterrent to the development of frontier areas.].) State and Indian comments varied from one State representative saying that the limitation "* * * keep(s) costs under control while allowing some relief for legitimate hardship conditions," to three Indians and one Congressman recommending that the standard for determining whether the allowance should exceed the threshold is whether or not it "* * * is in the best interest of the lessor."

Comments Requested

(a) *Extraordinary Cost—Gas Processing.* The MMS is seeking comments on what factors should comprise the criteria which must be met before any extraordinary cost allowance would be approved. The MMS is receptive to all suggestions but is specifically requesting comments on the following: (1) What conditions, i.e., processes utilized, range of feed gas steam compositions, range of processing costs ($/mcf throughput), and range of capital costs ($/mcf per day), are standard for the gas processing industry? (2) What should be the standard for classifying a processing technology and the cost of that technology is extraordinary? (3) Should the extraordinary cost allowance apply only to the costs of processing which exceed normal industry standards or should it apply to all costs of processing? (4) should the extraordinary cost allowance apply only to new projects, or should it apply to existing projects?

(b) *Extraordinary Cost—Other than Gas Processing.* Except for gas processing, MMS's current product value regulations for other minerals, such as oil, coal, and geothermal, do not contain any provision for extraordinary cost allowances. The MMS would like comments as to whether provisions should be available for these or any other minerals where advance technology is used or where other than normal production conditions are encountered. Some examples of these situations might be clean coal technology, tertiary oil recovery, offshore arctic production and offshore deepwater (over 400 meter) production. Comments concerning these products and situations should address the same general questions cited above, i.e., what conditions are standard in the industry; what conditions or criteria should qualify as extraordinary; what allowances, if any, should be provided; and should the age of the project be a factor?

(c) *Transportaton and Processing Allowances—Oil and Gas.* The MMS currently has allowance provisions in its oil and gas product value regulations for transportation and processing costs (30 CFR 206.104, 206.157, 206.158, and 206.159). Allowances are limited to "reasonable, actual costs" with an MMS approval threshold. Allowances for transportation costs may not exceed 50 percent and allowances for processing costs may not exceed 66⅔ percent without MMS approval. These thresholds were established with the intent of keeping a balance between the burden of processing paperwork-administrative oversight, with the risks of claiming excessive allowances without administrative review and intervention.

During its recent rulemaking process, MMS received many comments on these thresholds. With almost 8 months of actual experience using these thresholds, MMS would like to reexamine them to see whether they are appropriate or whether they should be raised, lowered, or abandoned. The MMS is interested in your comments, on this subject, and please provide the rationale or data to support your recommendations.

Date: November 21, 1988.

James E. Cason,

Deputy Assistant Secretary—Land and Minerals Management.

[FR Doc. 88-27356 Filed 11-25-88; 8:45 am]

BILLING CODE 4310-MR-M

POSTAL SERVICE

39 CFR Part 111

Use of International Air Mail Envelopes, Cards, and Postal Stationery for Domestic Mail Service

AGENCY: Postal Service.

ACTION: Withdrawal of proposed rule.

SUMMARY: On the basis of comments received, which are summarized in the Supplementary Information, and for other reasons, the Postal Service is withdrawing the proposed rule that would prohibit international airmail envelopes, cards, and postal stationery (those having a red-and-blue border), from being used for domestic mail services.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268-5199.

SUPPLEMENTARY INFORMATION: On October 20, 1987, the Postal Service published for comment a proposed rule that would amend Domestic Mail Manual section 129.4 to prohibit international airmail envelopes, cards, and postal stationery (those having a red-and-blue border), from being used for domestic mail services. (52 FR 38949-50).

Six comments were received in response to the proposed rule. One commenter supported the proposal as a means of deterring use of such a "high priority" signifier on bulk mailings. A majority of the commenters, however, opposed the proposed rule on the general ground, among others, that red-and-blue markings attract the attention of mail recipients because those markings are still generally associated in the public mind with the importance of domestic air mail. Another commenter argued that the proposed requirement that domestic red-and-blue bordered stationery found in the mail be returned to the sender could be read as making such mail nonmailable, and that changes in mailability generally call for a change in the Domestic Mail Classification Schedule.

In view of these comments, as well as the perceived marginal mail processing benefits that would be recoverable if the regulation were adopted, the Postal Service has determined that it will take no further action to implement the proposal at this time and hereby withdraws the proposal.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88-27341 Filed 11-25-88; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6943]

Federal Insurance Administration; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 400-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Fayetteville, City, Washington County.	Hamestring Creek	At confluence of North Fork Hamestring Creek	None	*1,209
			Approximately 0.3 mile upstream of Wedington Drive.	None	*1,255
		South Fork Hamestring Creek	At confluence with Hamestring Creek	None	*1,235
			At downstream side of Giles Road	None	*1,251

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Inspection Office, 113 West Mountain, Fayetteville, Arkansas. Send comments to The Honorable Marilyn Johnson, Mayor of the City of Fayetteville, Washington County, 113 West Mountain, Fayetteville, Arkansas 72701.					
California	City of Clearlake, Lake County.	Burns Valley Creek	Just downstream of State Highway 53	*1,401	*1,401
			Just upstream of State Highway 53	*1,406	*1,403
			Approximately 2,040 feet upstream of State Highway 53.	None	*1,410
			Approximately 100 feet downstream of the City Corporate limits.	None	*1,422
		Burns Valley Creek Overflow	Approximately 600 feet downstream of Redwood Street.	*1,348	*1,348
			Just upstream of Redwood Street	*1,349	#1
			Just upstream of Olympia Drive	*1,353	#1
			Approximately 100 feet upstream of Burns Valley Road.	*1,358	*1,358
Maps are available for review at City Hall, 14360 Lakeshore Drive, Clearlake, California. Send comments to the Honorable Edward Robey, Jr., Mayor, City of Clearlake, P.O. Box 2440, Clearlake, California, 95422.					
California	Santa Clara County (unincorporated areas).	Upper Penitencia Creek Overflow.	Approximately 300 feet west of intersection of Western Pacific Railroad and Cornish Lane.	None	*81
			Approximately 200 feet east of intersection of Cornish Lane and Western Pacific Railroad.	*82	#1
			Approximately 700 feet east of intersection of Cornish Lane and Western Pacific Railroad.	None	#1
			Approximately 250 feet north of Upper Penitencia Creek at Jackson Avenue crossing.	None	#1
			Approximately 4,200 feet west of intersection of Mabury Road and Sinclair Freeway.	None	#1
			Approximately 200 feet northeast of intersection of Berryessa Road and Flickinger Avenue.	None	#2
			Approximately 1,150 feet south of intersection of Hostetter Road and Capitol Avenue.	None	#2
			Approximately 1,000 feet west of intersection of Sierra Road and Capitol Avenue.	*121	#2
			Intersection Old Post Way and Capitol Road	None	*121
			Intersection of Berryessa Road and Capital Road.	*143	#1
			Area between Capitol Road and Sinclair Freeway from 700 feet north of Upper Penitencia Creek to 100 feet north of Upper Penitencia Creek.	*143	#2
			Approximately 2,700 feet north of intersection of McKee Road and Wood Road.	#1	#2
			Approximately 1,300 feet south of intersection of Baton Rouge Drive and Capitol Avenue.	None	#2
			Approximately 800 feet south of intersection of Baton Rouge Drive and Capitol Drive.	None	#1
			Approximately 200 feet west of intersection of Capitol Road and Baton Rouge Drive.	None	#1
			Approximately 400 feet north of intersection of Sinclair Freeway and Mabury Road.	*139	#2
			Approximately 400 feet west of intersection of Mabury Road and Capitol Avenue.	None	#2
			Approximately 200 feet west of Penitencia Creek at Sinclair Freeway crossing.	None	#2
			At Confluence of Guadalupe Slough and Coyote Creek.	*7	*8
			At crossing of Southern Pacific Railroad and Alvisio Slough.	*7	*9
			Approximately 800 feet northwest of San Tomas Aquino Creek from Coffin Road crossing.	None	*9
Maps are available for review at the Santa Clara County Department of Land Use and Development, Central Permit Office, 70 West Hedding Street, San Jose, California. Send comments to The Honorable Sally Reed, Santa Clara County Executive, 70 West Hedding Street, San Jose, California 95110.					
California	City of San Jose, Santa Clara County.	Upper Penitencia Creek Overflow.	Intersection of Cornish Lane and Berryessa Road.	None	*79
			Approximately 400 feet south of intersection of Berryessa Road and Western Pacific Railroad.	*79	*81
			Approximately 900 feet west of confluence of Upper Penitencia Creek with Coyote Creek.	None	*81

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
			Intersection of Cornish Lane and Berryessa Road.	None	*79
			Approximately 800 feet west of the King Road crossing of Upper Penitencia Creek.	*82	#1
			Area bounded by King Road, Mabury Road and Penitencia Creek.	None	#1
			Approximately 200 feet north of westernmost crossing of Mabury Road and Upper Penitencia Creek.	*86	#2
			Approximately 250 feet west of easternmost crossing of Mabury Road and Upper Penitencia Creek.	None	#2
			Approximately 350 feet west of intersection of Mossdale Way and Jackson Avenue.	None	#1
			Approximately 400 feet south of intersection of Berryessa Road and Park Way.	None	#1
			Approximately 500 feet south of intersection of Jackson Avenue and Bluejacket Way.	None	#2
			Approximately 1,450 feet north of intersection of Lava Drive and Jackson Avenue.	None	#1
			Heatherfield Lane extended 150 feet south from intersection with Penitencia Creek Road.	None	#1
		Upper Penitencia Creek Overflow North of Creek Penitencia	Approximately 1,000 feet west of intersection of Trimble Road and Ringwood Avenue.	*35	#1
			Intersection of Lundy Avenue and Trimble Road.	None	#1
			Area north Ramstree Drive to Four Oaks Road	None	#1
			Intersection of Old Stone Way and Olive-Stone Way.	#2	#1
			Intersection of Old Post Way and Old Park Place.	#2	*121
			Intersection of Old Gate Place and Battaglia Circle.	*127	*129
			Intersection of Old Manor Place and Battaglia Circle.	#1	#2
			Approximately 200 feet west of intersection of Capitol Avenue and Moorbrook Drive.	None	#1
			Approximately 700 feet south of intersection of Capitol Avenue and Moorbrook Drive.	*143	#1
			Approximatley 400 feet south of intersection of Capitol Avenue and Moor Brook Drive.	None	#2
			Approximatley 1,200 feet south of intersection of Berryessa Road and Capitol Avenue.	*143	#2
			Intersection of Penitencia Creek Road and Capitol Avenue.	#1	#2
		Upper Penitencia Creek Overflow South of Penitencia Creek	Area along Sinclair Freeway from approximately 700 feet south of Alum Rock Avenue north to McKee Road.	*101	*100
			Approximately 1,600 feet north of junction of McKee Road and Sinclair Freeway.	None	#1
			Approximately 1,600 feet south of intersection of Mabury Road and Capitol Avenue.	#1	#2
			Approximately 1,200 feet south of intersection of Mabury Road and Capitol Avenue.	None	#2
			Intersection of Capitol Avenue and Baton Rouge Drive.	None	#1
			Intersection of Williford Road and Gilchrist Drive.	*139	#2
			Area bounded by Gilchrist Drive, Capitol Avenue and Williford Drive.	None	#2
			Approximately 800 feet northwest of intersection of Capitol Avenue and Mabury Road along Capitol Avenue.	#1	#2
			Approximately 200 feet west of intersection of Gilchrist and Capitol Avenue.	None	#2
			Approximately 1,400 feet south of intersection of Penitencia Creek Road and Capitol Avenue.	None	#2
		San Francisco bay	At confluence of Guadalupe Slough and Coyote Creek.	*7	8
			At crossing of Southern Pacific Railroad and Alvisio Slough.	*7	9

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
Maps are available for review at the City of San Jose Engineering Department, 810 North First Street, San Jose, California. Send comments to the Honorable Thomas McEnery, Mayor, City of San Jose, 81 First Street, San Jose, California 95110.					
California	City of Williams, Colusa County.	Salt Creek	Intersection of A Street and 10th Street	None	#1
			Intersection of North Street and 10th Street	None	#2
			Intersection of 5th Street and B Street	None	78
			Intersection of 6th Street and C Street	None	79
Maps are available for review at City Hall, 810 E Street, Williams, California. Send comments to The Honorable Gerald English, Mayor, City of Williams, P.O. Box 922, Williams, California 95987.					
Colorado	Town of Parker, Douglas County.	Sulphur Gulch	Approximately 3,800 feet upstream of confluence with Cherry Creek.	*5,844	*5,844
			Approximately 20 feet downstream of State Highway 83.	*5,848	*5,850
			Approximately 100 feet upstream of State Highway 83.	*5,852	*5,853
			Approximately 100 feet upstream of Pikes Peak Drive.	*5,857	*5,857
Maps are available for review at the Town Hall, 20120 East Main Street, Parker, Colorado. Send comments to The Honorable Ann Waterman, Mayor, Town of Parker, P.O. Box 667, Parker, Colorado 80134.					
Florida	Unincorporated Areas of Hillsborough County.	Cypress Creek	At mouth	*30	*30
			Just downstream of State Route 581	*35	*34
			About 7.4 miles upstream of State Route 581	*52	*51
		Trout Creek	At mouth	*39	*39
			Just upstream of State Route 581	*39	*45
			About 2.6 miles upstream of State Route 581	None	*51
		Delaney Creek	Just upstream of 36th Avenue	*11	*11
			About 660 feet downstream of 70th Street	*15	*18
			Just upstream of Pauls Drive	None	*31
Maps available for inspection at the Department of Development Coordination, Tampa, Florida. Send comments to The Honorable Larry J. Brown, Hillsborough County Administrator, P.O. Box 1110, Tampa, Florida 33601.					
Georgia	City of Kennesaw, Cobb County.	Butler Creek	About 3,350 feet downstream of Pine Mountain Road.	None	*971
			About 170 feet upstream of Woodland Place	None	*1,015
			Just upstream of Summitwood Drive	None	*1,035
Maps available for inspection at the City Hall, Kennesaw, Georgia. Send comments to The Honorable J.O. Stephenson, Mayor, City of Kennesaw, 2529 J.O. Stephenson Avenue, Kennesaw, Georiga 30144.					
Iowa	City of Dubuque, Dubuque County.	Middle Fork Catfish Creek	At mouth	None	*620
			Just downstream of Illinois Central Gulf railroad—about 1.2 miles upstream of mouth.	None	*641
			Just upstream of Illinois Central Gulf railroad—about 1.2 miles upstream of mouth.	None	*646
			Just downstream of Illinois Central Gulf railroad—about 5.3 miles upstream of mouth.	None	*740
			Just upstream of Illinois Central Gulf railroad—about 5.3 miles upstream of mouth.	None	*745
			Just downstream of Illinois Central Gulf railroad—about 6.9 miles upstream of mouth.	None	*767
			Just upstream of Illinois Central Gulf railroad—about 6.9 miles upstream of mouth.	None	*772
			About 1,450 feet upstream of Radford Road	None	*791
		North Fork Catfish Creek	At mouth	None	*686
			Just downstream of Coates Street	None	*696
			Just upstream of Coates Street	None	*701
			Just downstream of U.S. Highway 20	None	*719
			Just upstream of U.S. Highway 20	None	*726
		North Fork Catfish Creek	Just downstream of University Avenue	None	*730
			Just upstream of University Avenue	None	*744
			About 3,600 feet upstream of University Avenue.	None	*761
		Catfish Creek	About 2,000 feet downstream of Kerrigan Road	None	*613
			About 1 mile upstream of confluence of South Fork Catfish Creek.	None	*637
		South Fork Catfish Creek	At mouth	None	*626
			About .9 miles upstream of North Cascade Road.	None	*678
		Mississippi River	At mile 578.5	*613	*611
			At mile 585.3	*616	*614

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the City Hall, Development Zoning Service Administration, 13th and Central, Dubuque, Iowa. Send comments to The Honorable W. Kenneth Gearhart, Mayor, City of Dubuque, City Hall, 13th and Central, Dubuque, Iowa 52001.					
Minnesota	City of Breckenridge, Wilkin County.	Red River of the North	Just downstream of State Highway 210 APAt confluence of Bois de Sioux River.	None *960	*959 AP*961
		Bois de Sioux River	At confluence with Red River of the North	*960	*961
			About 1.8 miles upstream of Burlington Northern railroad.	*961	*962
		Ottertail River	At confluence with River River of the North	*960	*961
			About 2,000 feet upstream of C.S.A.H. No. 16	*962	*961
Maps available for inspection at the City Hall, 420 Nebraska Avenue, Breckenridge, Minnesota. Send comments to The Honorable Marvin Anderson, Mayor, City of Breckenridge, City Hall, 420 Nebraska Avenue, Breckenridge, Minnesota 56520.					
New York	Fredonia, Village, Chautauqua County.	Canadaway Creek	Approximately 1,670 feet downstream of Risley Street bridge.	*668	*669
			Approximately 310 feet downstream of Liberty Street bridge.	*746	*745
Maps available for inspection at the Building Inspector's Office, Village Hall, Fredonia, New York. Send comments to The Honorable Louis Mancuso, Mayor of the Village of Fredonia, Chautauqua County, P.O. Box 31, New York 14063.					
Oklahoma	Tulsa, City, Tulsa, Osage, & Rogers Counties.	Arkansas River	Approximately 2,100 feet upstream of 71st Street bridge.	*621	*622
			Approximately 3,450 feet downstream of 51st Street bridge.	*623	*624
			Approximately 800 feet downstream of Texas and Pacific Railroad bridge.	*629	*630
			Approximately 1,950 feet upstream of St. Louis-San Francisco Railway bridge.	*635	*636
		Little Haikey Creek	Centerline of Mingo Road	*665	*664
			1,000 feet upstream of 91st Street	*671	*672
Maps available for inspection at 200 Civic Center, Suite 642, Tulsa, Oklahoma. Send comments to The Honorable Rodger Randle, Mayor of the City of Tulsa, 200 Civic Center, Room 115, Tulsa, Oklahoma 74103.					
Oklahoma	Tulsa County, Unincorporated Areas.	Haikey Creek	Approximately 300 feet upstream of 129th East Avenue (Olive Avenue).	*598	*597
			Upstream side of Garnett Road	*604	*603
Maps available for inspection at the Tulsa County Administration Building, 500 South Denver, Tulsa, Oklahoma. Send comments to The Honorable Lewis Harris, Chairman of the Board of County Commissioners, Tulsa County Administration Building, 500 South Denver, Tulsa, Oklahoma 74103.					
Oregon	City of Oakridge, Lane County.	Salmon Creek	Approximately 170 feet upstream of State Highway 58.	*1,166	*1,165
			Approximately 1,500 feet upstream of State Highway 58.	*1,177	*1,178
			Approximately 2,700 feet upstream of State Highway 58.	*1,191	*1,190
			At the intersection of Eastern corporate limit and Southern Pacific Railroad.	*1,198	#1
Maps are available for review at City Hall, 48318 East First Street, Oakridge, Oregon. Send comments to the Honorable Richard Culbertson, Mayor, City of Oakridge, P.O. Box 385, Oakridge, Oregon 97463.					
Pennsylvania	West Whiteland, Township, Chester County.	Colebrook Run	Upstream of CONRAIL bridge	*281	*279
			Approximately 0.42 mile upstream of CONRAIL bridge.	*281	*281
Maps aviable for inspection at the Township Building, 222 N. Pottstown Pike, Exton, Pennsylvania. Send comments to the Honorable Stephen Ross, West Whiteland Township Manager, Chester County, 222 N. Pottstown Pike, P.O. Box 210, Exton, Pennsylvania 19341.					
Tennessee	City of Tullahoma, Coffee and Franklin Counties.	Blue Creek	About 860 feet downstream of Westside Drive	None	*1,004
			At confluence of North Fork Blue Creek	None	*1,017
		North Fork Blue Creek	At mouth	None	*1,017
			About 1,360 feet upstream of Cumberland Springs Road.	None	*1,051
		North Fork Rock Creek	Just upstream of Old Airport Road	*1,052	*1,052
			Approximately 580 feet upstream of Cedar Lane.	*1,059	**105
			Just downstream of Ledford Mill Road	*1,067	*1,067

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, Building Department, Tullahoma, Tennessee.					
Send comments to the Honorable Joseph Ervin, Mayor, City of Tullahoma, City Hall, P.O. Box 807, Tullahoma, Tennessee 37380					
**Indicates: Elevation along relocated channel					
Texas	Carrollton, City, Dallas, Denton, and Collin Counties.	Elm Fork of Trinity River	At confluence of Cooks Branch	*436	*438
			At upstream corporate limits	None	*454
		Cooks Branch	At confluence with Elm Fork of Trinity River	*436	*438
		Stream 6D1	Approximately 45 feet upstream of Jackson Road.	*498	*496
		Stream 6D3	At upstream side of 2nd crossing of St. Louis-San Francisco Railway.	*516	*517
			Approximately 360 feet downstream of Marsh Lane.	*608	*607
		Furneaux Creek	At confluence with Elm Fork of Trinity River	*447	*448
		Dudley Branch	50 feet upstream of confluence with Elm Fork of Trinity River.	*451	*452
			At confluence of Stream 6F1	*482	*478
			Approximately 75 feet upstream of Rosemeade Parkway.	*488	*484
			At upstream side of Hebron Parkway	None	*556
		Stream 6F1	At confluence with Dudley Branch	*482	*478
		Indian Creek	At confluence with Elm Fork of Trinity River	*452	*453
			Approximately .77 mile downstream of Denton Road.	*465	*461
			Approximately 100 feet upstream of Denton Road.	*476	*474
Maps available for inspection at the Engineering Department, City Hall, 1945 Jackson Road, Carrollton, Texas.					
Send comments to The Honorable Milburn Gravely, Mayor of the City of Carrollton, Dallas, Denton, and Collin Counties, P.O. Box 110535, Carrollton, Texas 75011-0535.					
Texas	San Antonio, City, Bexar County.	Zarzamora Creek	Downstream side of Callaghan Road	*798	*799
			At corporate limits	*800	*801
		Tributary D Salado Creek	Upstream face of Ira Lee Road	*706	*709
			Approximately 100 feet downstream of Harry Wurz Bach Road.	*719	*718
Maps available for inspection at the Department of Public Works, Drainage Engineering, 14 West Commerce Street, 7th Floor, San Antonio, Texas.					
Send comments to The Honorable Henry Cisneros, Mayor of the City of San Antonio, Bexar County, P.O. Box 9066, San Antonio, Texas 78285.					
Utah	Salt Lake County (unincorporated areas).	Little Cottonwood Creek	Approximately 4,360 feet above Little Creek Road.	*4,763	*4,763
			Approximately 4,780 feet above Little Cottonwood Creek Road.	*4,766	*4,769
			Approximately 5,760 feet above Little Cottonwood Creek Road.	*4,796	*4,794
			Approximately 6,740 feet above Little Cottonwood Creek Road.	*4,823	*4,820
			Approximately 7,700 feet above Little Cottonwood Creek Road.	*4,858	*4,854
			Approximately 9,060 feet above Little Cottonwood Creek Road.	*4,902	*4,902
Maps available for inspection at the Flood Control and Highway Division, 2001 South State Street, #N3300, Salt Lake City, Utah 84190-4600.					
Send comments to The Honorable Bart Barker, Chairman, Salt Lake City Board of Commissioners, City and County Building, Salt Lake City, Utah 84111.					

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: November 18, 1988.

[FR Doc. 88-27307 Filed 11-25-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Dockets Nos. 78-72, 80-286; FCC 88-364]

Access Charges; Universal Service Fund and Lifeline Assistance Programs

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to modify the Commission's rules to eliminate the requirement that interexchange carriers (IXCs) with five percent of presubscribed lines in a study area (minimum 1000 lines) be assessed the charges for the Commission's Universal Service Fund (USF) and lifeline assistance (lifeline) programs. It also proposes that the nationwide presubscribed lines threshold be lowered so that only IXCs with .05 percent of these lines would be assessed the USF and lifeline charges, instead of IXCs with more than one percent of presubscribed lines nationwide.

These charges would modify the current rule which would otherwise result in some very small IXCs being billed for USF and lifeline, while other medium-sized IXCs would not be billed.

DATES: Comment due not later than December 14, 1988 and reply comments due not later than December 29, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Diane Cornell, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (FCC 88-364), adopted November 7, 1988, and released November 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC, 20037.

Summary of Notice of Proposed Rulemaking

1. On November 7, 1988, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in CC Docket Nos. 78-72 and 80-286 (released November 9, 1988, FCC 88-364). In this NPRM, the Commission seeks comment on proposed changes in the presubscribed lines formula used to calculate assessment of charges that fund the Commission's Universal Service Fund (USF) and lifeline assistance (lifeline) programs. The USF and lifeline programs are part of the non-traffic-sensitive cost recovery plan proposed by the Federal/State Joint Board in CC Dockets 78-72 and 80-286, and adopted by the Commission. Under the Commission's rules, these programs are funded by a charge assessed on interexchange carriers (ISCs) in proportion to their number of presubscribed lines.

2. The Commission's current rules provide for a per-line charge to be assessed on all IXCs that have at least one percent of all presubscribed lines on a nationwide basis, or at least five percent of the presubscribed lines in any one study area, and a minimum of 1000 presubscribed lines in that study area. Based on preliminary presubscribed lines data submitted to the Commission by the National Exchange Carrier Association (NECA), the current rule would result in some very small IXCs being billed for USF and lifeline, while other medium-sized IXCs would not be billed. The NPRM notes that this unanticipated result is not consistent with the expectations of the Joint Board and the Commission in formulating these rules.

3. The Commission's proposed rule changes would eliminate the requirement that IXCs with five percent of lines in a study area (minimum 1000 lines) be assessed the charges for the USF and lifeline programs. Based on NECA's data, the Commission tentatively concludes that elimination of the "five percent" rule is appropriate because this rule would produce results that are inequitable and discriminatory. The NPRM also proposes to change the nationwide percentage threshold from one percent to .05 percent of all presubscribed lines. The Commission believes that its proposal represents the best balance between its desire to share the burden of funding the USF and lifeline programs among a reasonable number of IXCs, and the necessity of ensuring that the administrative costs of applying these charges do not become infeasible.

4. All interested persons may file comments on the proposals discussed in the Notice of Proposed Rulemaking not later than December 14, 1988, and that reply comments may be filed not later than December 29, 1988. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, an original and five copies of all statements, briefs, comments, or replies shall be filed with the Federal Communications Commission, Washington, DC, 20554, and all such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, DC office.

5. This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1206(a) of the Commission's rules, 47 CFR 1.1206(a) for rules governing permissible *ex parte* contacts.

6. Pursuant to section 605(a) of the Regulatory Flexibility Act, the Commission certifies that the proposals made in the NPRM will not have a significant economic impact on a substantial number of small entities, and accordingly sections 603 and 604 of the Act do not apply to the rules proposed in the NPRM.

List of Subjects in 47 CFR Part 69

Common carrier—access changes, Common carrier—resale, Wide Area Telephone Service (WATS).

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.5 is amended by revising paragraph (d) to read as follows:

§ 69.5 Persons to be assessed.

* * * * * *

(d) Beginning on April 1, 1989, Universal Service Fund and Lifeline Assistance charges shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least .05 percent of the total common lines presubscribed to interexchange carriers in all study areas.

3. Section 69.116 is amended by revising paragraph (a) to read as follows:

§ 69.116 Universal service fund.

(a) A charge that is expressed in dollar and cents per line per month shall be assessed beginning on April 1, 1989, upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least .05 percent of the total common lines presubscribed to interexchange carriers in all study areas.

* * * * * *

4. Section 69.117 is amended by revising paragraph (a) to read as follows:

§ 69.177 Lifeline assistance.

(a) A charge that is expressed in dollars and cents per line per month shall be assessed beginning on April 1, 1989, upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least .05 percent of the total common lines presubscribed to interexchange carriers in all study areas.

* * * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-26983 Filed 11-25-88; 8:45 am]

BILLING CODE 6712-01-M

VOL 53 ISS 228 NO 28 1988 UMI

Notices

Federal Register
Vol. 53, No. 228
Monday, November 28, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Financial Services; Public Meeting

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Special Committee on Financial Services of the Administrative Conference of the United States. The Committee has scheduled this meeting to develop proposed recommendations dealing with Bank Failures, Risk Monitoring, and the Market for Corporate Control, based upon a report by Professors Jonathan R. Macey of Cornell University Law School and Geoffrey Miller of the University of Chicago Law School. Copies of the Committee's report and draft recommendation may be obtained from the contact person named in this notice.

Date: Thursday, December 8, 1988, at 10:00 a.m.

Location: Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

For Further Information Contact: Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC. 20037. Telephone: (202) 254–7020.

November 23, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88–27465 Filed 11–25–88; 8:45 am]

BILLING CODE 6110–01–M

Plenary Session; Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), that the membership of the Administrative Conference of the United States will meet in Plenary Session on Thursday, December 8, 1988, at 1:15 p.m., and Friday, December 9, 1988, at 9:15 a.m., in the Amphitheatre of the Federal Home Loan Bank Board, Second Floor, 1700 G Street NW., Washington, DC. The Conference makes recommendations to administrative agencies, the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs.

The Conference expects to consider, not necessarily in the order stated, proposed recommendations on the following subjects:

1. Presidential Management of Agency Rulemaking.
2. Electronic Acquisition and Release of Federal Agency Information.
3. Encouraging Settlements by Protecting Mediator Confidentiality.
4. Administrative Law Issues Involving the Medicare Peer Review Organization Program.
5. Which Agency Interpretations Should Bind the Courts?

Plenary Sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street NW., Suite 500, Washington, DC 20037, telephone (202) 254–7020.

Jeffrey S. Lubbers,

Research Director.

November 23, 1988.

[FR Doc. 88–27466 Filed 11–25–88; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations Regarding Support Prices for Pulled Wool and Mohair for the 1989 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: This notice sets forth certain proposed determinations concerning the price support levels for pulled wool and mohair for the 1989 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

EFFECTIVE DATE: Comments must be received on or before January 27, 1989, in order to be assured of consideration.

ADDRESS: Mail comments to Bruce R. Weber, Director, Commodity Analysis Division, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3760, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 475–4645. A Preliminary Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these proposed determinations will result in an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Section 703(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments, or other operations. The Secretary of Agriculture has determined that the prices of wool and mohair will be supported for the 1986 to 1990 marketing years by means of payments to producers (51 FR 28852, August 12, 1986).

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1987 and marketing year 1990 shall be 77.5 percent and, for marketing years 1988 and 1989, 76.4 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Based on current reported parity indices, the calculation for the 1989 shorn wool support price (grease basis) is as follows:

(1) Average parity index, calendar years 1985–1987: 1985—1120; 1986—1096; 1987—1115; total 3331 divided by 3 equals 1110.3
(2) Average parity index, calendar years 1958–1960—297.3
(3) Ratio of 1110.3 to 297.3—3.7346
(4) 3.7346×62 cents per pound (1965 support price)—$2.3155
(5) 76.4%×$2.3155—$1.7690
(6) $1.7690 rounded to nearest full cent—$1.77

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

The Wool Act provides that the Secretary shall established and announce, to the extent practicable, support price levels for wool and mohair sufficiently in advance of each marketing year, as will permit producers to plan their production for such marketing year. Accordingly, the following methods for calculation the support prices for pulled wool and mohair for the 1989 marketing year are being proposed.

Proposed Determinations

A. Support Price—Pulled Wools

The support price for pulled wool for the 1989 marketing year cannot be determined until the 1989 average market price for shorn wool is calculated, which would occur by April 1990. It is proposed that the method for calculating the support price for pulled wool shall be as follows: Once the average market price for shorn wool is determined, the support price for pulled wool will be determined by taking 80 percent of the difference between the 1989 support price for shorn wool and the 1989 average market price for shorn wool, multiplied by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb). Historically, this formula has provided equitable support for pulled wool relative to shorn wool and has helped to maintain normal marketing practices for pulled wool.

B. Support Price—Mohair

It is proposed that the support price for mohair for the 1989 marketing year shall be determined based on the October 1988 parity prices for mohair and shorn wool. The following percentages asre being considered in the final computation of the mohair support price:

(1) 85 percent of the percent of parity at which shorn wool is supported.
(2) A percentage equal to the percent of parity at which shorn wool is supported.
(3) 115 percent of the percent of parity at which shorn wool is supported.

Interested persons are encouraged to comment on the proposed method of calculation for payments on pulled wool and the proposed levels of price support for mohair. Consideration will be given to any data, views and recommendations which are submitted with respect to the above items.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the program support levels announced in this notice may be recalculated to comply with this Act.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed at Washington, DC on November 18, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corportion.

[FR Doc. 88–27316 Filed 11–25–88; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Quarterly Summary of Federal, State, and Local Tax Revenue.
Form Number: F–71, F–72, F–73.
Agency Approval Number: 0607–0112.
Type of Request: Extension.
Burden: 5,255 burden hours.
Number of Respondents: 5,204.
Avg Hours Per Response: 15–30 minutes (varies by form).
Needs and Uses: The Census Bureau uses these data to publish benchmark statistics on public sector taxes, to provide data to the Bureau of Economic Analysis for GNP calculations and other economic indicators, and to provide data for economic research and comparative studies of governmental finances.
Affected Public: State or local governments.
Frequency: Quarterly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622,

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14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC. 20503.

Dated: November 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-2735 Filed 11-25-88 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Shipper's Export Declaration and Continuation Sheet.

Form Number: 7525-V-Alternate (intermodal).

Agency Approval Number: 0607-0152.

Type of Request: Revision.

Burden: 346,728 hours.

Number of Respondents: Unknown (number of exporting firms).

AVG Hours Per Response: 10 minutes (aproximately).

Needs and Uses: Exporters file this form for shipments of merchandise from the U.S. Customs territory to foreign countries. The data is used to compile the official U.S. export statistics.

Affected Public: Exporters of merchandise.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-27359 Filed 11-25-88; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Shipper's Export Declaration.

Form Number: 7525-M.

Agency Approval Number: 0607-0150.

Type of Request: Revision.

Burden: 4,690 hours.

Number of Respondents: 67.

Avg Hours Per Response: 2 hours.

Needs and Uses: This form is used by exporters making numerous shipments of essentially the same commodities when such use would reduce substantially the number of individual Shipper's Export Declarations (SEDs) filed. These SEDs provide data from which the Bureau of the Census compiles the official U.S. export statistics.

Affected Public: Exporters of merchandise.

Frequency: Monthly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-27360 Filed 11-25-88; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Shipper's Export Declaration and Continuation Sheet.

Form Number: 7525-V.

Agency Approval Number: 0607-0018.

Type of Request: Revision.

Burden: 873,507 hours.

Number of Respondents: Unknown (number of exporting firms).

Avg Hours Per Response: 10 minutes (approximately).

Needs and Uses: Exporters file this form for shipments of merchandise exported from the U.S. Customs territory to foreign countries. This form provides data from which the Bureau of the Census compiles the official U.S. export statistics.

Affected Public: Exporters of merchandise.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-27361 Filed 11-25-88; 8:45 am]

BILLING CODE 3510-07-M

Bureau of the Census

Announcement of Change in Monthly Merchandise Trade Press Release

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice.

SUMMARY: On August 23, 1988, the President signed the "Omnibus Trade and Competitiveness Act of 1988." Section 1931 of this Act amends subsection (e) of section 301 of Title 13, United States Code by rescinding earlier legislation requiring that data on imports valued on a CIF basis (price paid for merchandise plus insurance and freight charges incurred in delivering the merchandise to the United States) be released at least 48 hours prior to release of the same data on a Customs value basis (price paid for merchandise only). Accordingly, on September 14, 1988 the U.S. Department of Commerce, Bureau of the Census, announced that beginning with the September 1988 press release (July 1988 data) and continuing through the February 1989 release

(December 1988 data), the Census Bureau will provide a single monthly merchandise trade press release containing import data on both a CIF and a Customs value basis. Effective with the March 1989 release (January 1989 data) the monthly merchandise trade press release will reflect imports on a Customs value basis only. This change will provide a more accurate picture of merchandise trade (insurance and freight charges are considered a service) and will be consistent with the Bureau of Economic Analysis treatment of merchandise trade in the balance of payments and income and product accounts. Monthly CIF import data will continue to be available through the Census Bureau's normal subscription channels.

Public comment on this change should be submitted to Don L. Adams, Chief, Foreign Trade Division, Washington, DC 20233, within 60 days of the date of publication in the **Federal Register.**

Date: November 21, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88-27295 Filed 11-25-88; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Foreign Availability Assessment; Initiation of an Assessment on Solvents Containing 95% or More Trichlorotrifluoroethane

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of Initiation of an Assessment.

SUMMARY: Under sections 5 (f) and (h) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) assesses claims of foreign availability. Part 391 of the Export Administration Regulations establishes the procedures and criteria for initiating and reviewing claims of foreign availability on items controlled for national security purposes.

Pursuant to sections 5(f) (3) and (9) of the EAA, as amended by the Omnibus Trade and Competitiveness Act of 1988, OFA is publishing this notice:

On September 26, 1988, OFA accepted for filing a complete foreign availability submission claiming foreign availability for solvents containing 95% or more trichlorotrifluoroethane. These items are controlled for national security reasons under Export Control Commodity Number (ECCN) 5799C: Solvents, compounds, cutting fluids, or mixtures containing 95% or more of trichlorotrifluoroethane.

OFA accepted the submission and initiated an assessment of the foreign availability of solvents containing 95% or more trichlorotrifluoroethane. Consistent with the requirements of the EAA, the Department intends to publish the results of the assessment by February 27, 1989.

To assist the Department in assessing the claim, the Department will receive any information regarding the foreign availability of solvents containing 95% or more trichlorotrifluoroethane. A person wishing to submit relevant information relating to this claim may submit it to the Office of Foreign Availability of the Department of Commerce. Such relevant information may include, but is not limited to, foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts. The Office Foreign Availability will carefully and fully consider all information received. The Office will use information received to supplement other information developed to evaluate the claim of foreign availability. Individuals submitting information and requesting confidential treatment of it are required to submit the information separately as described below.

DATES: The period for submission of information will close December 28, 1988.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Dr. Irwin M. Pikus, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, Room SB701, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Jo-Anne A. Jackson, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-5953.

SUPPLEMENTARY INFORMATION:

The Office of Foreign Availability will receive any information relating to this allegation of foreign availability. The Office of Foreign Availability will carefully and fully consider any information submitted during its analysis of the claim of foreign availability.

The Department will accept comments accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". The Bureau of Export Administration will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close December 28, 1988. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the fullest consideration of their information by the Department.

All public information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record of information received on the allegation of foreign availability will be maintained in the Bureau of Export Administration's

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Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administation, Freedom of Information Officer, at the above address or by calling (202) 377–2593.

Dated: November 17, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–27294 Filed 11–25–88; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 399]

Approval for Expansion of Foreign-Trade Zone No. 9 Honolulu, HI

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the State of Hawaii (Department of Business and Economic Development), Grantee of Foreign-Trade Zone No. 9, has applied to the Board for authority to expand its general-purpose zone in Honolulu, Hawaii, to include a site at the Hawaii Technology Park, Mililani, Oahu, Hawaii, within the Honolulu Customs port of entry;

Whereas, the application was accepted for filing on September 4, 1987, and notice inviting public comment was given in the **Federal Register** on September 17, 1987 (Docket 16–87, 52 FR 35122);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Honolulu area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed September 4, 1987. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 16th day of November, 1988.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 88–27364 Filed 11–25–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-602–801]

Preliminary Determination of Sales at Less Than Fair value; Calcined Bauxite Proppants From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that calcined bauxite proppants from Australia are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of the subject merchandise from Australia. We have notified the International Trade Commission of our determination and have directed the Customs Service to suspend liquidation of all entries of the subject merchandise from Australia as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by February 6, 1989.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Contact Alain Letort or Richard Capwell, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377–3818 (Letort) or 202/377–8668 (Capwell).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that calcined bauxite proppants from Australia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin of sales at less than fair value is 75.00 percent ad valorem, as shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our Notice of Initiation (53 FR 26299—July 12, 1988) the following events have occurred. On July 29, 1988, the International Trade Commission (ITC) determined there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of calcined bauxite proppants (USITC Publication 2100—July 1988).

On August 12, 1988, we presented a questionnaire to Comalco Aluminium Limited (Comalco), which accounted for virtually all the exports to the United States from Australia during the period of investigation. We requested that Comalco answer the questionnaire by September 12, 1988. On August 23, 1988, Comalco informed us that it did not intend to respond to the questionnaire. We have received no response from Comalco since that date.

On October 21, 1988, we initialed a suspension agreement proposed by Comalco pusuant to section 734(b)(1) of the Act on the basis of cessation of exports, with the caveat that the Department would re-examine its position with respect to the administrative convenience of entering into such a suspension agreement prior to the preliminary determination. We have concluded that the suspension of this investigation would not be in the public interest, nor would effective monitoring of the proposed suspension agreement be practicable, within the meaning of section 734(d) of the Act.

Scope of Investigation

The products covered by this investigation are calcined bauxite proppants, which are currently provided for under item number 521.1720 of the *Tariff Schedules of the United States, Annotated* and are currently classifiable under item number 2806.00.0060 of the *Harmonized Tariff Schedule.*

Period of Investigation

The period of investigation for calcined bauxite proppants from Australia extends from January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether the sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available, as required by section 776(c) of the Act, because Comalco failed to submit an appropriate response.

United States Price

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States, we used the price information provided in the petition as the best information available, pursuant to section 776(c) of the Act. We used the packed United States price estimated by petitioner minus deductions for foreign inland freight, ocean freight, marine isurance, and brokerage and handling charges.

Foreign Market Value

Since we did not have specific data with respect to the quantitites and prices of the subject merchandise sold in Australia or third countries, we used the constructed value of the subject merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act. The constructed value calculated in the petition was based on the petitioner's manufacturing costs plus petitioner's general expenses, which were higher than the statutorily required minimum of 10 percent. To this cost of production we made the statutorily mandated addition of 8 percent for profit.

Verification

If timely and complete submissions are provided in accordance with section 776(b) of the Act, we will verify this information for use in our final determination in this investigation.

Critical Circumstances

The petitioner alleges that "critical circumstances" exist with respect to imports of cacined bauxite proppants from Australia. Under section 733(e)(1) of the Act, critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value: and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Based on our analysis of Bureau of the Census import data, we find that imports of calcined bauxite proppants from Australia have not been massive over a relatively short period of time. Therefore, we need not address the issues of whether importers knew, or should have known, that the exporters were selling the subject merchandise at less than its fair value, or whether there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation.

In light of the above, we preliminarily determine that critical circumstances, within the meaning of section 733(e)(1) of the Act, do not exist with respect to imports of calcined bauxite proppants from Australia.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of calcined bauxite proppants from Australia, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 75.00 percent ad valorem. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, an industry in the United States.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 11, 1989, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by January 4, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

November 21, 1988.

[FR Doc. 88–27363 Filed 11–25–88; 8:45 am]

BILLING CODE 3510-DS-M

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[A-588-803]

Final Determination of Sales at Less Than Fair Value; Digital Readout Systems and Subassemblies Thereof From Japan

ACTION: Notice.

SUMMARY: We have determined that digital readout (DRO) systems from Japan are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Contact Raymond Busen or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-3464 or 377-1769.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that DRO systems from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)] (the Act). the estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On September 2, 1988, we made an affirmative preliminary determination (53 FR 35222, September 12, 1988). The following events have occurred since the publication of that notice.

The questionnaire responses from Mitutoyo Manufacturing Co. Ltd. (Mitutoyo) were verified in Japan between September 12 and September 21, and in the United States from September 21 to September 23, 1988.

The questionnaire responses from Sony Magnescale, Inc. (Magnescale) were verified in Japan from September 12 to September 20, 1988.

On October 17, 1988 the Department held a public hearing. Interested parties also submitted comments for the record in their pre-hearing briefs of October 7 and 11, 1988, and in their post-hearing briefs of October 24 and 25, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedule of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the import specialist at their local customs office to consult the schedule.

The products are currently provided for in item 710.8060 of the TSUSA and are classifiable under subheading 9031.80.0060 of the HTS.

The products covered by this investigation are digital readout (DRO) systems, whether assembled or unassembled. An unassembled DRO system is a console and a transducer (glass scale, magnetic, rotary encoder, but not laser), and parts thereof, that can be used in DRO systems, which are imported into the United States either together or separately.

Computerized numeric control (CNC) systems and consoles and transducers specifically designed for use in CNC systems are not included in the scope of this investigation.

Fair Value Comparisons

To determine whether sales of DRO systems from Japan in the United States were made at less than fair value, we compared the United States price with the foreign market value. In accordance with section 776(c) of the Act, for those sales by Mitutoyo that involve further manufacturing in the United States, we used the best information available because Mitutoyo failed to respond to section D of our questionnaire (cost of production information). In such cases it is our policy to assign to the non-replying company the higher of (1) the highest margin indicated in the petition; or, (2) the highest weighted-average margin found for any company that did respond to the questionnaire. Following this policy, for this final determination, we have assigned Mitutoyo the highest margin indicated in the petition for sales that involve further manufacture in the United States.

Virtually all of the respondents' sales to the United States were used for such or similar comparisons.

The period of investigation for DRO systems and subassemblies from Japan was September 21, 1987 through March 20, 1988 for Mitutoyo and October 1, 1987 through March 31, 1988 for Magnescale.

United States Price

Except as noted above for sales that involve further manufacture in the United States, we based United States price for Mitutoyo on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the first sale to an unrelated customer was made after importation. We calculated ESP based on packed, ex-warehouse or delivered prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and insurance, foreign brokerage and handling charges, ocean freight, marine insurance, U.S. duty, U.S. brokerage and handling charges, U.S. inland freight, discounts, credit, technical, warranty, and advertising expenses, and other U.S. selling expenses pursuant to section 772(e)(2) of the Act.

For all sales by Magnescale, we based United States price on purchase price because the merchandise was sold to an unrelated U.S. purchaser prior to its importation. We calculated purchase price based on CIF, packed prices. We made deductions for foreign inland freight and insurance, foreign brokerage and handling, ocean or air freight, and insurance.

Foreign Market Value

Except as noted above for sales that involve further manufacture in the United States, we calculated foreign market value for Mitutoyo based on packed, delivered prices to unrelated purchasers in Japan. We made deductions, where appropriate, for inland freight and insurance, installation charges, discounts and rebates, and credit, technical, warranty and advertising expenses. We deducted indirect selling expenses incurred on home market sales up to the amount of

indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.15(c) of our regulations. In accordance with § 353.16 of our regulations, where there was no identical product in the home market with which to compare a product in the United States, we made adjustments to the foreign market value of similar merchandise to account for differences in the physical characteristics of the merchandise.

For sales by Magnescale, we calculated foreign market value based on packed, delivered prices to unrelated purchasers in Japan. We made deductions, where appropriate, for foreign inland freight and insurance, discounts, and rebates. In accordance with § 353.15 of our regulations, we made adjustments for differences in circumstances of sale for credit, warranty, and advertising expenses. In accordance with § 353.16 of our regulations, where there was no identical product in the home market with which to compare a product in the United States, we made adjustments to the foreign market value of similar merchandise to account for differences in the physical characteristics of the merchandise.

For both respondents, in order to adjust for differences in packing between the two markets, we deducted home market packing costs from foreign market value and added U.S. packing costs.

Currency Conversion

For comparisons involving purchase price transactions, we used the official exchange rates in effect on the dates of sale, in accordance with § 353.56(a)(1) of the Commerce Regulations. For comparisons involving exporter's sales price transactions, we used the official exchange rates in effect on the dates of the sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondents.

Interested Party Comments

General Comments

Comment 1

Anilam argues that it has standing to file a petition that includes transducers because: (1) It is a wholesaler of U.S.-made rotary encoders used in some types of transducers; (2) it produces and sells parts for rack and pinion transducers; (3) it is a wholesaler of U.S. and foreign-made transducers; (4) it assembled transducers in the United States either exclusively from U.S. components or from foreign components that have been designed by Anilam; and (5) it holds patents on linear tape transducers.

Mitutoyo argues that Anilam lacks standing regarding transducers because it has not shown sufficient evidence that it produces transducers or that it is a wholesaler of U.S.-made transducers.

Mitutoyo notes that although Anilam may sell U.S.-made rotary encoders, these encoders are merely components of transducers; they are not a like product. Even if rotary encoders were a like product, they are not used in the types of transducers covered by this investigation.

Mitutoyo also argues that Anilam's assertion that it has standing because it is a wholesaler of transducers is without merit. Mitutoyo claims that Anilam has shown no evidence that it is a wholesaler of U.S.-made transducers. Rather it sells imported transducers, and the antidumping law is not designed to protect one importer from injury by another importer.

Concerning those transducers that Anilam claims it assembled, Mitutoyo argues that Anilam has provided no evidence on the record concerning the quantities assembled and sold. Anilam might be assembling only one or two transducers per year. Nor has Anilam shown it does anything more than "snap together" foreign components with little U.S. value added. Finally, Mitutoyo argues that holding patents or proprietary rights on certain products only shows that Anilam has designed and engineered a product; it does not show that it is a manufacturer or wholesaler of the product.

DOC Position

Although Anilam imports a significant proportion of the transducers it sells, it also operates as a wholesaler of some U.S.-made transducers. Section 771(9)(C) of the Act includes wholesalers of a like product in the definition of an interested party.

Other than Mitutoyo, which produces a small number of transducers in the United States, no manufacturer or wholesaler of U.S.-made transducers has questioned Anilam's standing to file this petition on behalf of the U.S. industry. In fact, one U.S. producer submitted a letter in support of the petition.

Based on these factors, we conclude Anilam has standing to file an antidumping duty petition on DRO systems, including transducers and consoles that can be used in DRO systems.

Comment 2

Anilam argues that the scope of the investigation as it was described in the Department's preliminary determination properly defines what products are covered by this investigation. It points out that the products facing unfair competition from the Japanese are DRO systems. Focusing on only the sales of the separate components in DRO systems ignores the reality of the DRO market. Respondents' claims that they do not sell DRO systems are simply false. Anilam argues that the respondents clearly import transducers and consoles, and these two products almost always end up as DRO systems in the hands of the final purchaser. To claim that these components do not make up DRO systems simply because they are imported or invoiced as separate components is disingenuous. The ITC has already preliminarily determined that imports of DRO systems are injuring a U.S. industry, so there must be sales of DRO systems. In addition, Anilam notes that almost all systems consist of components made by the same company. It is difficult and expensive to use one company's transducers with another company's consoles. Because it is difficult to mix components from various companies, it makes sense to consider these components together as a DRO system.

Anilam contends that its DRO systems compete with imported DRO systems. Therefore, unless an importer can demonstrate that the components it imports do not end up in a DRO system, they must be covered by this investigation. Otherwise the Department's determination will do little to offset the unfair competition Anilam faces. Anilam argues that even the respondents agree all consoles end up in DRO systems. With regard to transducers, despite the claims of the respondents, almost all transducers end up in DRO systems. If a transducer is used for some other purpose, the importers can certify this to Customs. Anilam argues that Customs could easily implement a program that would

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exempt from dumping duties those transducers that importers certify are not destined for use in DRO systems.

Magnescale argues that its transducers can be used for CNC systems and other applications as well as for DRO systems. Therefore, it has no way of knowing whether they are destined for use in a DRO system. It certainly does not import them as DRO systems. They are imported and sold, at least initially, as separate components. In addition, Magnescale does not produce mounting brackets, which are an essential part of DRO systems. Finally, although its advertisements may mention DRO systems, they in fact describe components that are sold separately, even though they may eventually be used in a DRO system. Based on this information, Magnescale argues it is clear that its transducers are not "destined for use in a DRO system and imported into the U.S. for assembly and sale as a DRO system." Therefore, they are clearly not covered by the scope of this investigation.

Mitutoyo also argues that it does not import or sell DRO systems. In addition, it argues that this investigation did not look at systems, in part because it did not investigate brackets, an integral part of DRO systems. Further, Mitutoyo argues that it competes with Anilam at a level of trade where components, rather than systems, are sold.

Futaba Corporation Inc. (Futaba) argues that since there are transducers that may be used for purposes other than in DRO systems, the scope should be limited specifically to those transducers assembled into a DRO system. Futaba argues that the Department should make this explicit in its scope description. In particular, it argues that the scope should specifically state that CNC systems and CNC transducers are not covered by this investigation.

DOC Position

Although some transducers may be used in both CNC systems and DRO systems, CNC transducers are almost always specialized instruments that would not be used in DRO systems. With the exception of transducers used in CNC systems, the respondents have not shown any other significant use for the transducers or consoles covered by this investigation except in DRO systems. Therefore, whether or not the importer of transducers or consoles knows with absolute certainty that these components will end up in DRO systems, in fact, they almost certainly will.

We are including all transducers or consoles that can be used in DRO systems in the scope of this investigation. Only transducers designed specifically for use in CNC systems are excluded.

Magnescale Comment 1

Magnescale argues that the Department ignored differences in level of trade by including in its calculation of foreign market value Magnescale's home market sales to all levels of trade, including retailers and end-users. Magnescale states that its U.S. sales are all to a pre-wholesaler and should only be compared to home market sales to machine tool builders and possibly to its sales to wholesalers.

DOC Position

Further analysis of Magnescale's home market sales practices indicates that price distinctions exist between the various home market purchasers. The vast majority of sales to retailers and end-users were at a higher price than were sales to machine tool builders and wholesalers. Therefore, in accordance with § 353.19 of Commerce's regulations, we have included in our calculation of foreign market value only those sales to machine tool builders and wholesalers.

Magnescale Comment 2

Magnescale argues that the Department erred in its calculation of U.S. credit expenses when it used, as best information available, Mitutoyo's U.S. borrowing rate to calculate Magnescale's post-shipment credit expenses. Magnescale states that it did not provide financing information for U.S. sales because it did not borrow in the United States during the period of investigation. The proper rate for imputed credit expenses to account for the time between shipment date and payment date should be computed using Magnescale's home market borrowing rate because financing charges on sales to the United States were incurred in Japan.

DOC Position

We have recalculated U.S. credit costs using Magnescale's verified home market borrowing rate during the period of investigation.

Magnescale Comment 3

Magnescale argues that the Department should not have included replacement parts sales in its analysis because parts for repair or replacement purposes are not subject to this investigation. Magnescale states that it has no reason to import parts other than for replacement purposes because it does not manufacture DRO consoles in the United States.

DOC Position

The Scope of this investigation has, from the beginning, specifically included parts of DRO systems and their subassemblies. No exception has been made for replacement parts. Therefore, we have used sales of replacement parts in calculating dumping margins.

Magnescale Comment 4

Magnescale argues that the Department erred when it disallowed certain variable home market selling expenses such as salesmen's traveling, meeting and entertainment expenses which were related to post-sale servicing activities. Magnescale argues that an adjustment should be allowed for variable selling and post-sale servicing expenses which have a direct correlation or bear a direct relationship to, and fluctuate with, the level of selling activity and/or volume of sales.

DOC Position

Respondent has claimed that the expenses fluctuated with sales activity, but has not actually established this in its submissions. Mere fluctuations of certain expenses do not indicate conclusively that such expenses were incurred for a certain amount of increase in sales volume. We cannot regard as a direct selling expense an increase in certain expenses that may not bear a direct relationship to the sales in question. Magnescale has submitted no information showing such direct relationship.

Mitutoyo Comment 1

Mitutoyo objects to the Department's inclusion of costs incurred by Mitutoyo's Japanese export division for exporting merchandise to the United States on the grounds that there is no statutory basis for deducting these expenses when calculating Mitutoyo's exporter's sales price. If Commerce decides that it has the authority to make the deduction, Mitutoyo argues that the Department should disregard the deduction because of its insignificant size.

DOC Position

The costs Mitutoyo describes are clearly related to its sales to the United States. As such, the Department has authority to deduct these costs from the exporter's sales price under section 772(d)(2)(A) of the Act.

Although the Department may disregard insignificant adjustments, in this case, where these costs were already included in the computer data which were submitted by Mitutoyo which were used to calculate dumping margins, the Department has included these deductions in its calculations.

Mitutoyo Comment 2

Mitutoyo objects to the deduction of imputed inventory carrying costs for U.S. sales on the basis that such costs are imputed, or hypothetical, rather than actual costs. Mitutoyo argues that section 772(e)(2) of the Act explicitly requires the deductible expenses to be one which is "incurred." Therefore, the Department has no authority to deduct imputed inventory carrying costs in its exporter's sales price calculation. Mitutoyo further argues that if the Department continues to treat imputed carrying costs as an expense, it should be treated as an indirect expense in the exporter's sales price calculation and included in the exporter's sales price offset adjustment cap as prescribed by Commerce regulation 353.15(c).

DOC Position

In accordance with section 353.15(c) of Commerce's regulations, we consider inventory carrying costs to be an indirect selling expense and included it in the exporter's sales price offset adjustment cap. This practice has been approved by the Court of International Trade. *See Silver Reed et al. v. United States et al.*, Slip Op. 88–5 (January 12, 1988).

Mitutoyo Comment 3

Mitutoyo argues that the parts it imports to be assembled into transducers at its Plymouth, Michigan plant should not be included in the scope of the investigation. It contends that Anilam does not manufacture parts and, therefore, does not have standing to file a petition on parts. Secondly, the Department has only included parts in the scope of an investigation where parts are so far advanced in production that they really constitute an unfinished version of the finished product. This is not the case here, where there is very significant value added by Mitutoyo to the imported parts in the process of making a finished transducer.

DOC Position

Mitutoyo did not respond to our questionnaire concerning transducer parts it imports into the United States. Without this information, we have no way of knowing the nature or value of these parts and, thus, cannot determine whether they are simply unassembled transducers needing little further processing or are instead relatively minor parts in what is essentially a U.S.-manufactured product. Until we can resolve this issue in an administrative review, we intend to cover all transducer parts imported by Mitutoyo in the scope of this investigation.

Mitutoyo Comment 4

Mitutoyo objects to the Department accepting new information submitted in Anilam's post-hearing brief. Mitutoyo claims that accepting this information at this late date violates the Department's practice and deprives Mitutoyo of the opportunity to refute the information contained therein.

DOC Position

We did not consider the new information submitted in the petitioner's post-hearing brief in making this final determination.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of DRO systems from Japan that are entered or withdrawn from warehouse, for consumption, on or after September 12, 1988, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Mitutoyo Manufacturing Co., Ltd.	55.50
Sony Magnescale, Inc	38.53
All Others	51.03

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. However, if the ITC determines that such an injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on DRO systems from Japan as defined in the "Scope of Investigation" section of this notice, entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

November 18, 1988.

[FR Doc. 88–27362 Filed 11–25–88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Mayaquez, Puerto Rico

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $31,516 in non-Federal contributions for the budget period May 1, 1989 to April 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Mayaquez, Puerto Rico SMSA geographic service area. .

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and education institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50

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points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees of 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is December 30, 1988. Applications must be postmarked on or before December 30, 1988.

ADDRESS: New York Regional office, Minority Business Development Agency Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office. (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Gina A. Sanchez,

Regional Director, New York Regional Office.

Date: November 21, 1988.

[FR Doc. 88–27291 Filed 11–25–88; 8:45 am]

BILLING CODE 3510–21–M

The National Technical Information Service

Intent To Grant Exclusive Patent License; Eli Lilly & Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Eli Lilly and Company, having a place of business in Indianapolis IN, an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7–165,173. "New Water Soluble Antineoplastic Derivatives of Taxol". The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–27370 Filed 11–25–88; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment of Import Limits for Certain Cotton and Man-Made Fiber, Textile Products Produced or Manufactured in Pakistan

November 22, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and increasing limits.

EFFECTIVE DATE: November 30, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The Governments of the United States and Pakistan agreed to convert the current minimum consultation level for Category 229 to a designated consultation level. CITA is establishing a limit at the designated level. In addition, the limit for Category 350 is being increased for the 1988 agreement year only.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 51, published on January 4, 1988.

The letter of the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

November 22, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 30, 1988, the directive of December 30, 1987 is being amended further to establish a limit of 675,676 pounds for Category 229 in Group III. The current limit for Category 350 in Group II is being increased to 30,000 dozen.

Textile products in Category 229 which have been exported to the United States prior to January 1, 1988 shall not be subject to this directive.

Textile products in Category 229 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

You are directed to charge 377,429 pounds to the limit established in this directive for Category 229. These charges are for goods imported during the period January 1, 1988 through September 18, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–27318 Filed 11–25–88; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

November 22, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 30, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The curent limits for Groups I, II and III, and certain sublevels within the groups, are being increased, variously, for carryover and swing.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 62, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

November 22, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC, 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 30, 1988, the directive of December 30, 1987 is being amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral agreement of November 18, 1982, as amended and extended:

Category	Adjusted 12-month limit [1]
Group I: 200–227, 229, 300–317, 326, 360–369, 400, 410, 414, 464–469, 600–629 and 665–670, as a group.	661,470,547 square yards equivalent.
Sublevels in Group I:	
200	1,258,320 pounds.
219	20,466,573 square yards.
229–F [2]	1,137,463 pounds.
301	484,998 pounds.
313	71,940,768 square yards.
315	25,947,673 square yards.
360	858,800 numbers.
361	1,157,255 numbers.
363	12,857,802 numbers.
369–L [3]	2,571,485 pounds.
604	505,000 pounds.
619/620	10,997,289 square yards.
625/626/627/628/629	16,085,099 square yards.
669–P [4]	571,362 pounds.
669–T [5]	1,857,045 pounds.
670–H [6]	34,024,250 pounds.
670–F [7]	4,034,384 pounds.
Group II: 239, 330–354, 359, 431–448, 459, 630–654 and 659, as a group.	971,840,385 square yards equivalent.
Sublevels in Group II:	
239	5,435,565 pounds.
336	89,681 dozen.
337	149,796 dozen.
350	102,974 dozen.
351	355,895 dozen.
352	985,220 dozen.
353/354/653/654	238,728 dozen.
359–H [8]	4,350,639 pounds.
433	13,614 dozen.
434	9,578 dozen.
435	21,841 dozen.
436	4,526 dozen.
438	36,642 dozen.
440	10,406 dozen.
442	40,517 dozen.
443	50,918 numbers.
444	191,881 numbers.
445/446	130,771 dozen.
447/448	17,858 dozen.
631	4,399,020 dozen pairs.
632	4,768,473 dozen pairs.
633/634/635	1,582,349 dozen of which not more than 1,056,576 dozen shall be in Categories 633/634 and not more than 763,126 dozen shall be in Category 635.
636	360,467 dozen.
637	376,576 dozen.
640	3,436,902 dozen of which not more than 1,751,493 dozen shall be in Category 640–Y [9].
641	763,420 dozen of which not more than 267,198 dozen shall be in Category 641–Y [10].
643	581,881 numbers.
644	2,211,639 numbers.
645/646	4,106,025 dozen.
649	699,365 dozen.
650	51,276 dozen.
651	446,319 dozen.
652	1,544,796 dozen.
659–B [11]	1,614,575 pounds.
659–C [12]	1,189,927 pounds.
659–H [13]	5,361,150 pounds.
659–S [14]	4,559,141 pounds.
Group III: 831–844 and 846–859, as a group.	9,339,104 square yards equivalent.
Levels not in a group:	
845	854,425 dozen.
870	5,415,896 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 229–F, only TSUSA numbers 355.3500, 355.4520 and 355.4530.

[3] In Category 369–L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

[4] In Category 669–P, only TSUSA numbers 385.5300.

[5] In Category 669–T, only TSUSA numbers 386.1105 and 389.6210.

[6] In Category 670–H, only TSUSA numbers 706.3405 and 706.4125.

[7] In Category 670–F, only TSUSA numbers 706.3425 and 706.3900.

[8] In Category 359–H, only TSUSA numbers 702.0600 and 702.1200.

[9] In Category 640–Y, only TSUSA numbers 381.3132, 381.3142, 381.3152, 381.9535, 381.9547, 381.9550 and 384.2306.

[10] In Category 641–Y, only TSUSA numbers 384.2302, 384.2304, 384.2307, 384.9110 and 384.9120.

[11] In Category 659–B, only TSUSA numbers 384.1815 and 384.8022.

[12] In Category 659–C, only TSUSA numbers 381.3325, 381.9605, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[13] In Category 659–H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[14] In Category 659–S, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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Sincerely,
James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 88-27319 Filed 11-25-88; 8:45 am]
BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.
ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.
EFFECTIVE DATE: December 26, 1988.
ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.
SUPPLEMENTARY INFORMATION: On August 19, September 2 and September 16, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 31735, 34140 and 36091) of proposed additions to Procurement List 1989, November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Frame, Picture

7105-01-282-0630	7105-01-282-0631
7105-01-282-0632	7105-01-282-0633

Slacks, Women's

8410-01-029-6690	8410-00-591-1165
8410-00-591-1181	8410-00-591-1182
8410-00-591-1185	8410-00-591-1186
8410-00-591-1188	8410-00-591-1189
8410-00-591-1191	8410-00-591-1196
8410-00-591-1197	8410-00-591-1201
8410-00-591-1202	8410-00-591-1203
8410-00-591-1204	8410-00-591-1205
8410-00-591-1206	8410-00-591-1215
8410-00-591-1217	8410-00-591-1228
8410-00-591-1232	8410-00-591-1233
8410-00-591-1234	8410-00-591-1235
8410-00-591-1236	8410-00-591-1237
8410-00-591-1238	8410-00-591-1239
8410-00-591-1248	8410-00-591-1251
8410-00-591-1261	8410-00-591-1263
8410-00-591-1290	8410-00-591-1292
8410-00-591-1293	8410-00-591-1300
8410-00-591-1311	8410-00-591-1320
8410-00-591-1337	8410-00-591-1352
8410-00-591-1357	8410-00-591-1358

Services

File Maintenance, U.S. Department of the Treasury, Bureau of Public Debt, Parkersburg, West Virginia
Janitorial/Custodial, U.S. Courthouse, 300 Ala Moana Bulevard, Honolulu, Hawaii
Janitorial/Custodial, Lexington Blue Grass Army Depot at the following locations: Lexington Activity, Avon, Kentucky, Blue Grass Activity, Richmond, Kentucky

Beverly L. Milkman,
Executive Director.
[FR Doc. 88-27314 Filed 11-25-88; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.
ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.
DATE: Comments must be received on or before December 27, 1988.
ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.
SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, November 15, 1988 (53 FR 46018).

Commodities

Inking Pad

7510-00-224-7676	7510-00-526-1741
7510-00-526-1742	

Services

Grounds Maintenance, Air Route Traffic Control Center, Auburn, Washington
Grounds Maintenance and Sprinkler System Maintenance, Building 6459, Edwards Air Force Base, California
Janitorial/Custodial, Commissary Store, Naval Air Station, Pensacola, Florida
Janitorial/Custodial, Social Security Administration, Operations Building, Third and Fourth Floors, 6401 Security Boulevard, Baltimore, Maryland
Janitorial/Custodial, Naval Amphibious Base, Little Creek, Except Building 3504, Norfork, Virginia

Beverly L. Milkman,
Executive Director.
[FR Doc. 88-27315 Filed 11-25-88; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1989; Establishment; Correction

In FR Doc. 88-26212 beginning at page 46018 in the issue for Tuesday, November 15, 1988, make the following corrections:

1. On page 46018, second column, under CLASS 1005, Firing Attachment, Bland should read Firing Attachment, Blank.

2. On page 46018, second column, under CLASS 1005, Sling, Adjustable, Small Arms, the first four-digit number reading "1003" should read "1005".

3. On page 46018, third column, under CLASS 1680, Wire Bundle Assembles should read Wire Bundle Assemblies.

4. On page 46019, third column, under CLASS 5350, Cloth, Abrasive, in the twenty-fifth and twenty-sixth lines the three-digit number reading "-299" should read "-229".

5. On page 46020, second column, under CLASS 6515, Surgical Pack, Disposable (IBA) should read Surgical Pack, Disposable (IB).

6. On page 46020, third column, under CLASS 6530, the second entry for Strap, Webbing Patient Securing should read Strap, Webbing, Litter Securing.

7. On page 46021, first column, under CLASS 6532, FGown, Hospital, Patient's Bedshirt should read Gown, Hospital, Patient's Bedshirt.

8. On page 46021, second column, under CLASS 6532, Trousers, Operating, Surgical, in the third and fourth lines the three-digit number reading "-229" should read "-299".

9. On page 46022, third column, under CLASS 7210, Mattress Foam should read Mattress, Foam.

10. On page 46024, first column, under CLASS 7510, Paperweight, Shortfilled should read Paperweight, Shotfilled.

11. On page 46024, second column, under CLASS 7520, Ballpoint, Pen, with Imprinting should read Ballpoint Pen, with Imprinting.

12. On page 46025, third column, under CLASS 7530, Paper, Teletypewriter Roll, in the sixth line the two-digit number reading "-00" should read "-01".

13. On page 46027, first column, under CLASS 7930, Detergent, General Purpose, in the fourth line the two-digit number reading "-00" should read "-01".

14. On page 46027, first column, under CLASS 7930, Detergent, General Purpose, after the fifth line, insert the following:

7930-00-985-6945
7930-00-985-6946
7930-00-530-8067
7930-00-527-1207
7930-00-527-1237
7930-01-055-6121
7930-00-282-9700
7930-00-282-9699
7930-00-985-6911

Detergent, General-Purpose (IB)

7930-00-531-9715
7930-00-531-9715

Detergent, Laundry (IB)

7930-01-045-3515
7930-01-045-3517

Dishwashing Compound, Hand (IB)

7930-00-880-4454
7930-01-055-6136
7930-00-899-9534

Glass Cleaner (IB)

7930-00-664-8910

Rinse Additive, Dishwashing (IB)

7930-00-619-9573
7930-00-619-9575

Class 8010

Aerosol Paint, Lacquer (IB)

8010-00-721-9742
8010-00-079-2754
8010-00-141-2952
8010-00-721-9743
8010-00-584-3148
8010-00-721-9479
8010-00-141-2950

15. On page 46027, second column, under CLASS 8010, Enamel, in the nineteenth line the two-digit number reading "-00" should read "-01".

16. On page 46033, first column, under Commissary Warehousing Service, the third line should read Mountain Home Air Force Base, Idaho.

17. On page 46034, first column, under Janitorial/Custodial, the last line should read Pittsburgh, Pennsylvania (SH).

18. On page 46034, second column, under Department of Army, the sixth line reading Fort Gillem, Georgia should appear after the eleventh line under that heading.

19. On page 46034, second column, under Department of Army, the forty-third and forty-fourth lines should read U.S. Army Reserve Facility, Salem, Oregon.

20. On page 46034, third column, Department of Energy, in the tenth line, the number reading "5840" should read "5804".

21. On page 46034, third column, under Department of Health and Human Services, in the second line Administrataion should read Administration.

22. On page 46035, third column, under General Services Administration, in the fifty-first line "Popular" should read "Poplar".

23. On page 46036, first column, under General Services Administration, the thirty-first line should read 203-209 Centre Street, New York, New York (SH).

24. On page 46036, third column, the first and second lines should appear after the third and fourth line.

Beverly L. Milkman,
Executive Director.
[FR Doc. 88-27313 Filed 11-25-88; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Strategic Force Modernization Program; Changed Meeting

ACTION: Change in Date and Location of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Strategic Force Modernization Program scheduled for January 18-19, 1989 at Science Applications International Corporation, Falls Church, Virginia as published in the **Federal Register** (Vol. 53, No. 213, Page 44512-44513, Thursday, November 3, 1988, FR Doc. 88-25483) will be held on January 24-25, 1989 at Science Applications International Corporation, LaJolla, California.

November 22, 1988.
Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 88-27378 Filed 11-25-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on February 8-9, May 10-11, and October 18-19, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Defense Science Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

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November 22, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-27377 Filed 11-25-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Environmental Research and Development, Inc.; Intent To Grant Exclusive Patent License

Pursuant to the provisions of Part 101-4 of Title 41, Code of Federal Regulations, which implements Pub. L. 96-517, the Department of the Air Force announces its intention to grant to Environmental Research and Development, Inc., Coben Plaza, 255 "B" Street, Idaho Falls, Idaho, a corporation of Idaho, an exclusive royalty-bearing license under United States Patent Application Serial 07/263,161 filed October 26, 1988 in the names of Dan F. Suciu, Penny M. Wikoff, John M. Beller and Charles J. Carpenter for "Process For Sodium Sulfide/Ferrous Sulfate Treatment of Hexavalent Chromium and Other Heavy Metals".

The license will be granted unless any objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the publication of this notice. Copies of the patent application may be obtained from the same addressee.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324-1000, Telephone No. (202) 475-1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-27385 Filed 11-25-88; 8:45 am]

BILLING CODE 3810-10-M

Corps of Engineers, Department of the Army

Intention to Prepare a Draft Environmental Impact Statement (DEIS) for the American River Watershed Investigation, California

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a DEIS.

SUMMARY: The action being taken is a feasibility study for flood control measures in the Sacramento metropolitan area. The reason for the action is to reduce potential flood damages caused by high flows during major storm events. The study will formulate and recommend for construction appropriate works to reduce flood damages along the lower American River and in the Natomas area. Because of the significant threat of major flooding to large areas of metropolitan Sacramento the study will concentrate on alternatives to provide high levels of flood protection (i.e., greater than about 200 years). Accordingly, although all potential applicable methods of flood protection will be reviewed and reported, emphasis will be placed on certain solutions capable of providing the high levels of protection. Along the mainstem of the American River, the study will consider: (1) A flood control only dam at or near the existing Auburn Dam site, (2) a flood control only dam with provisions not to preclude future expansion into a larger multipurpose reservoir (flood control, water supply, hydropower, and recreation), and (3) a flood control only dam with a minimum pool reservoir to provide non-firm water supplies to adjacent counties. For the Natomas area, the study will primarily examine measures of enlarging levees and the possible construction of Natomas cross levees. The feasibility study was authorized in 1988.

FOR FURTHER INFORMATION CONTACT: Suggestions on the scope of coverage for environmental impact evaluations and related information should be provided in writing to the Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, California, 95814-4794. Questions concerning the DEIS should be addressed to Mr. Richard Meredith at (916) 551-1855.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps of Engineers completed a reconnaissance study entitled, "American River Watershed Investigation, California", in January 1988. It was accomplished under the authority of the Flood Control Act of 1962 (PL 87-874) and amended by a 1987 Appropriations Act. The study was accomplished primarily in response to the near disastrous flooding in the Sacramento area during the severe storms in February 1986. The study reported that the area had significantly less flood protection than previously believed (only 63-year versus 120-year level of protection). The reconnaissance study concluded that there is a serious flood threat in Sacramento (approximately 350,000 people and over $15 billion of damageable property exist within the revised 200-year flood plain) and detailed feasibility scope studies are warranted. The flexibility study was initiated in July 1988. The study will examine alternative flood control measures with emphasis on those that can provide the affected area with high levels (200-year or greater) of flood protection. The State of California Reclamation Board and the Department of Water Resources are sharing equally with the Federal Government in the cost of the study.

2. Alternatives

A. *American River*—Alternatives will be examined during the feasibility study to address potential flooding along the lower American River. In addition, various alternatives previously assessed along the lower river capable of providing relatively low levels of protection will be presented. The three primary alternatives include the following:

i. *Flood Control Only Dam.* This alternative is a flood control only dam to be constructed on the North Fork of the American River below its confluence with the Middle Fork of the American River and above Folsom Reservoir at or near the existing uncompleted Auburn Dam site. The facility would be designed to act in conjunction with seasonal flood control storage in Folsom Reservoir to maintain the current maximum objective release of 115,000 cfs from Folsom Reservoir into the lower American River during large flood events. The dam would have an ungated outlet allowing the river to flow unimpeded into Folsom Reservoir most of the time. During high flows, however, the dam would temporarily (1 to 12 days) store between 600,000 and 700,000 acre-feet to permit optimum operation of the downstream flood control works.

ii. *Expandable Dam.* The second alternative is a flood control only dam as described above, but designed not to preclude future expansion into a larger multipurpose reservoir for flood control, water supply, hydropower, and recreation. Such a facility may include additional foundation work, construction of facilities to more easily allow future outlet work modifications, alternative siting, purchase of lands which may be required in the future, etc.

iii. *Minimum Pool.* The third alternative is a flood control dam with a minimum pool. The facility would be designed to store and divert a yet-to-be-determined, non-firm water supply to the local area. Unlike the first two alternative, this alternative would require a gated outlet structure and permanent inundation.

iv. *Others.* Other alternatives that will be considered are non-dam options which are capable of providing levels of flood protection significantly less than 200-year. One such option includes enlargement of the levees along the lower American River and below Folsom Reservoir to accommodate increased objective discharges from Folsom Dam. A maximum increased release of approximately 180,000 cfs would be considered. This option would provide protection against approximately a 100-year flood event.

B. *Natomas Area.* Alternatives designed to protect the Natomas area of Sacramento will be examined during the feasibility study. Each of the alternatives will likely require some modification to levees in areas adjacent to Natomas to avert adverse hydraulic impacts in those areas. These areas may include Dry and Arcade Creeks, the Sacramento River, and the Yolo Bypass.

i. *Full Natomas Protection.* This alternative would protect the entire 53,000 acre Natomas area through the use of pump stations, flood gates, and levee enlargement. Modifications of the Fremont Weir to lessen the need for a gate/pump station will also be examined.

ii. *Partial Natomas Protection.* Two alternatives will be examined, including various cross levee alignments designed to protect various proportions of the total Natomas area. In addition to the construction of a cross levee, existing levees along the Sacramento and American Rivers, the Natomas East Main Drainage Canal, and the Natomas Cross Canal would be enlarged.

3. Scoping Process

a. Close coordination is being maintained with Federal, state and local agencies; environmental organizations; and concerned individuals and groups. This is being accomplished through study management team meetings and other inter-agency coordination, which have already been initiated. Through this Notice of Intent all segments of the affected public and agencies are invited to participate in the planning process. DEIS scoping meeting notices will be distributed.

b. Significant issues that will be discussed in the DEIS include impacts on fish and wildlife resources, recreation, endangered species, vegetation (riparian and upland), esthetics, wild and scenic rivers, cumulative impacts, and other investigation requirements.

c. The U.S. Fish and Wildlife Service will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS.

d. A 45-day review period will be allowed for all interested agencies and individuals to review and comment on the DEIS. All interested persons are encouraged to respond to this notice and provide a current address if you wish to be contacted about the DEIS.

4. Meeting Schedule

Public meetings, workshops, and scoping sessions will be scheduled in the future.

5. Availability

The DEIS is scheduled to be available for public review and comment in early 1990.

Date: November 4, 1988.

Jack A. Le Cuyer,

Colonel, Corps of Engineers District Engineers.

[FR Doc. 88-27338 Filed 11-25-88; 8:45 am]

BILLING CODE 3710-GH-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 28, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 22, 1988.

George Sotos,

Acting Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Revision
Title: Integrated Postsecondary Education Data Systems (IPEDS)
Frequency: Annually
Affected Public: State or Local Governments, Businesses or other for-profit, Non-profit institutions
Reporting Burden:
Responses: 37,000
Burden Hours: 65,200
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: The information collected for the IPEDS is used to report statistics on the condition of postsecondary education. IPEDS provides data on a broad range of topics including postsecondary students, faculty and staff, programs, institutions and finances.

Office of Planning, Budget and Evaluation

Type of Review: NEW
Title: Survey of Personnel Shortages and Training Needs in Vocational Rehabilitation
Frequency: Biennially
Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations

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Reporting Burden:
Responses: 533
Burden Hours: 422
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: The purpose of this survey is to evaluate the personnel shortages and training needs of organizations providing vocational rehabilitation services. Directors of all State agencies and a sample of private facilities will provide the information. The results will be used by the Department in establishing training priorities in rehabilitation.

[FR Doc. 88-27376 Filed 11-25-88; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No. 84.170]

Jacob K. Javits Fellows Program; Applications for New Awards for Fiscal Year 1989

Purpose: Provide grants to eligible postsecondary students for graduate fellowships in the arts, humanities, and social sciences.

Deadline for Transmittal of Applications: February 3, 1989

Applications Available: December 20, 1988

Available Funds: $7,904,000, of which approximately $1,200,000 may be available for new fellowships in FY 1989 after funds for continuing fellowships have been allocated.

Estimated Range of Awards: Stipends are determined by the fellow's financial need and can range from zero to $10,000 per academic year. Additionally, the institution attended by a fellow will receive a $6,000 cost of instruction payment, in lieu of tuition and fees.

Estimated Average Size of Awards: $15,000, including the cost of instruction payment.

Estimated Number of New Awards: 80

Note: The Department is not bound by any estimates in this notice.

Project Period: 1 academic year (with possibility of continuation for a total of 48 months of support)

Applicable Regulations: Regulations governing the Jacob K. Javits Fellows Program in 34 CFR Part 650. Amendments to these regulations were published in the **Federal Register** on August 6, 1987 (52 FR 29356).

Priorities: The Fellowship Board has determined that eligible applicants for this competition will be limited to individuals with 20 or fewer graduate credit hours. Individuals completing their undergraduate degrees *are* eligible to apply.

For Applications or Information Contact: Dr. Allen Cissell, Director, Jacob K. Javits Fellows Program, U.S. Department of Education, 400 Maryland Avenue, SW, ROB-3, Room 3022, Washington, DC 20202-5251. Telephone: (202) 732-4415.

Program Authority: 20 U.S.C. 1134h-k.

Dated: November 21, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-27379 Filed 11-25-88; 8:45 am]
BILLING CODE 4000-01-M

National Advisory Committee on Accreditation and Institutional Eligibility; Public Meeting

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend.

DATES: December 12, 8:00 a.m. until 5:30 p.m.

December 13, 8:30 a.m. until 12:00 noon.

Location: The Savoy Hotel, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Chief, Accrediting Agency Evaluation, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-5245, (202) 732-3417.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is authorized under section 1205 of the Higher Education Act as amended by Pub. L. 98-374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy concerning recognition of accrediting and State approval bodies, and concerning institutional eligibility for participation in Federal funding programs.

The Committee meeting on December 12 and 13 will be open to the public.

Agenda

The agenda will include (1) Oath of office ceremonies for new and reappointed members; (2) coverage of the code of ethics for Federal employees; (3) review of petitions and interim reports by accrediting and State approval bodies relative to initial or continued recognition by the Secretary of Education; and (4) review of request from the United States Military Academy. The Committee also will hear presentations by representatives of these petitioning agencies and any interested third parties. The following petitions, interim reports, and requests will be reviewed.

Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations

A. Petitions for Initial Recognition

National Association for Industrial Technology
Transnational Association of Christian Schools

B. Petitions for Renewal of Recognition

American Council on Pharmaceutical Education
Council on Naturopathic Medical Education
Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities

C. Interim Reports

Accreditation Board for Engineering and Technology, Inc.
Accrediting Council on Education in Journalism and Mass Communications
American Association of Bible Colleges
American Association of Nurse Anesthetists
American Medical Association, Committee on Allied Health Education and Accreditation in cooperation with review committee for—Diagnostic Medical Sonography
American Osteopathic Association
Association for Clinical Pastoral Education
Association of Advanced Rabbinical and Talmudic Schools
Association of Independent Colleges and Schools
Council on Chiropractic Education
Council on Social Work Education
National Accreditation Council for Agencies Serving the Blind and Visually Handicapped
National Accrediting Commission of Cosmetology Arts and Sciences
National Architectural Accrediting Board

North Central Association of Colleges and Schools, Commission for Schools

Petitions for Recognition as State Agencies for the Approval of Public Postsecondary Vocational Education

A. Petitions for Renewal Recognition

Oklahoma Board of Vocational and Technical Education
Oklahoma State Regents for Higher Education

B. Interim Reports

Kansas State Board of Education
Minnesota State Board of Vocational—Technical Education

Request for Program Review

A. Request for a recommendation from the U.S. Department of Education by the United States Military Academy, West Point, New York to award the Masters Degree in Leader Development.

Third Parties

The Department urges third parties interested in commenting on any of the scheduled agencies and associations to submit their comments in writing by December 5, 1988, to Steven G. Pappas, Chief, Accrediting Agency Evaluation (address above). While the Committee will receive any written materials up through the date of its meeting, submission of written comments by December 5 will facilitate the work of the Committee by providing for its advance review and analysis of third party positions. All petitions, interim reports and third party comments received in advance of the meeting will be available for public inspection in the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3036, ROB-3) Washington, DC between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Requests for oral presentations before the advisory Committee should be submitted in writing to Mr. Pappas (address above), by December 5, 1988. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested. Time constraints may limit oral presentations.

The acceptance of written and oral third party comments is limited to issues relevant to an accrediting or State agency's compliance with the Secretary's recognition regulations (Criteria for Recognition).

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3036, ROB-3) Washington, DC from the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

Signed in Washington, DC on November 21, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-27285 Filed 11-25-88; 8:45 am]
BILLING CODE 4000-01-M

Privacy Act of 1974, System of Records

AGENCY: Department of Education.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Education publishes this notice of a new system of records known as the Debarment and Suspension Proceedings Under Executive Order 12549. The new system will be used to provide to the General Services Administration, Federal agencies, and participants in nonprocurement programs, information on persons debarred or suspended under Executive Order (E.O.) 12549. The Department seeks comments on the proposed routine uses contained in this notice.

DATES: The Department filed a report on the new system of records with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office of Management and Budget (OMB) on November 22, 1988. The Department has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress. In no event will this system of records become effective before the minimum period for comment on the proposed routine uses expires on December 28, 1988. The Department will publish any changes to the routine uses that are required as a result of the comments.

ADDRESSES: Comments on the proposed routine uses should be addressed to the Privacy Act Officer, Office of Planning, Budget, and Evaluation, Public Affairs Service, U.S. Department of Education, 400 Maryland Avenue, SW (Room 2089, Federal Office Building No. 6) Washington, D.C. 20202-4135. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 2089 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mary Jane Kane, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3122, GSA Regional Office Building No. 3), Washington, DC 20202-4700. Telephone: (202) 732-7400.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records. The Department's regulations implementing the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) at 34 CFR Part 5b.

E.O. 12549, Debarment and Suspension, dated February 18, 1986, and 34 CFR Part 85, published in the **Federal Register** on May 26, 1988 (53 FR 19204) require Federal agencies, including the Department, to establish procedures for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits.

To carryout debarment and suspension procedures, the Secretary's designated debarring/suspending officials will need to maintain and use case files. Each case file will include written referrals, communications between ED and the respondent, intra-agency and interagency communications, and a record of and findings from the debarment or suspension proceedings.

While most cases will be against businesses, organizations, institutions, or natural persons acting in an entrepreneurial capacity, some cases may be against natural persons acting in their individual capacity. In those rare instances, such as a student who engages in fraud to obtain a scholarship, suspension or debarment action may be taken against persons acting in their individual capacity. OMB guidance to agencies indicates that natural persons who act in an entrepreneurial capacity are not covered by the Privacy Act of 1974 but that natural persons who act in an individual capacity are "individuals" protected by the Act. Although this notice only covers individuals, in the interest of economy, case files on businesses, organizations, institutions, and natural persons acting in their entrepreneurial capacity will not be kept separate from case files on individuals. Because the information in each case will be indexed by the name of the organization or individual against whom the action is taken, the case files against individuals are considered a system of records under the Privacy Act of 1974.

Information on individuals debarred or suspended will be provided to the

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General Services Administration for inclusion on the governmentwide list required by E.O. 12549 and the regulations. The list must be checked by Federal agencies prior to entering into covered nonprocurement transactions to determine whether a participant is debarred, suspended, ineligible or voluntarily excluded. A participant is any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. A covered transaction is described in the Department's regulations at 34 CFR 85.110(a)(1). Participants may use the list to meet the regulatory requirement to determine if any person who may act as a principal for the participant is debarred, suspended, ineligible, or voluntarily excluded.

Dated: November 22, 1988.

Patrick Pizzella,

Acting Deputy Under Secretary for Management.

The Secretary publishes notice of a new system of records to read as follows:

18-11-0026

SYSTEM NAME:

Debarment or Suspension Proceedings Under Executive Order 12549. OM/OC/GCS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Grants Division, Grants and Contracts Service, U.S. Department of Education, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principals undergoing debarment or suspension proceedings and principals that have been debarred or suspended. Principals are officers, directors, owners, partners, key employees, or other persons with primary management or supervisory responsibilities, or persons who have a critical influence on or substantive control over a covered transaction, whether or not employed by a participant. A participant is any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. A covered transaction is described in the Department's regulations at 34 CFR 85.110(a)(1).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains documents including written referrals, communications between ED and the respondent, intraagency and interagency communications regarding proposed or completed debarments or suspensions, and a record of and findings from debarment or suspension proceedings against individuals under E.O. 12549.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12549, Debarment and Suspension.

PURPOSES:

Information contained in this system of records is used to protect the Federal Government from the actions prohibited under the Department's debarment and suspension regulations, make decisions regarding debarments and suspension, and ensure that other Federal agencies give effect to debarment or suspension decisions rendered by this Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose a record for the following purposes:

(1) *Disclosure as part of a Debarment or Suspension Action.* The Secretary's designated debarring/suspending official may disclose information concerning an individual who has been suspended or proposed for debarment to other persons involved in or affected by the suspension or debarment action, including participants, principals, affiliates, witnesses, or any other person or individual who has information, documents, or knowledge relevant to the suspension or proposed debarment action.

(2) *Disclosure to the General Services Administration.* The Secretary's designated debarring/suspending official makes information contained in this system of records available to the General Services Administration for inclusion in the *Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.*

(3) *Enforcement Disclosure.* In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, particular program statute, or executive order, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(4) *Subpoena Disclosure.* Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

(5) *Litigation Disclosure.*

(a) *Disclosure to the Department of Justice.* If the Department determines that disclosure of certain records to the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the Department of Justice. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation:

(i) The Department, or any component of the Department;

(ii) Any employee of the Department in his or her official capacity;

(iii) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent the employee; or

(iv) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to a Court or Adjudicative Body.* If the Department determines that disclosure of certain records to a court of adjudicative body before which this Department is authorized to appear is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the court or adjudicative body. Such disclosure may be made in the event that one of the parties listed below is a party to litigation, or has an interest in such litigation:

(i) The Department or any component thereof; or

(ii) Any employee of the Department in his or her official capacity; or

(iii) Any employee of the Department in his or her individual capacity where the agency has agreed to represent the employee; or

(iv) The United States, where the Department determines that litigation is likely to affect the Department or any of its components.

(6) *FOIA Advice Disclosure.* In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(7) *FOIA Disclosure.* Where the appropriate official of the Department, pursuant to the Department's Freedom of Information Regulations, determines that it is in the public interest to disclose a record which is otherwise exempt from mandatory disclosure, disclosure may be made from this system of records if the disclosure is also consistent with the purpose for which the record was collected.

(8) *Contract Disclosure.* When the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(9) *Research Disclosure.* Where the appropriate official of the Department determines that an individual or organization is qualified to carry out specific research, that official may disclose information from this system of records to that researcher solely for the purpose of carrying out that research. The researcher shall be required to maintain Privacy Act safeguards with respect to such records.

(10) *Congressional Member Disclosure.* Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each record is kept in a separate file folder and stored in file cabinets in a locked room.

RETRIEVABILITY:

The records are indexed by the names of the individuals.

SAFEGUARDS:

Immediate access to these records is only by authorized staff.

RETENTION AND DISPOSAL:

Records are disposed in accordance with the requirements of the Federal Records Disposal Act and the Department's record retention schedule. Pending disposal, the records are retained either at the system location or at the Federal Records Center where files are sent on a regular, predetermined schedule.

SYSTEM MANAGER AND ADDRESS:

Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3124, ROB-3) Washington, DC 20202-4571.

NOTIFICATION PROCEDURE:

Contact system manager. Requests for notification about whether the system of records contains information about an individual must meet the requirements in the Department's Privacy Act regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Contact system manager. Requests by an individual for access to a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Contact system manager. Requests to amend a record must meet the requirements of 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Department employees involved in the management of grants and other organizations or persons that may have relevant information regarding participants and their principals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-27360 Filed 11-25-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-63-NG]

Vector Energy (U.S.A.) Inc.; Application to Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 5, 1988, of an application filed by Vector Energy (U.S.A.) Inc. (Vector) for authorization to import up to 15 Bcf per year of Canadian natural gas over a term beginning December 1, 1989, through November 30, 2000. In addition, on October 17, 1988, Vector filed a supplemental clarification with ERA indicating that no new facilities are required to accommodate the imported volumes.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than December 28, 1988.

FOR FURTHER INFORMATION:

Robert Groner, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1657.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Vector, a Delaware corporation, is a wholly-owned subsidiary of Vector Energy, Inc. with its principal place of business in Calgary, Alberta. The principal business of Vector is that of an oil and gas producer and marketer with markets in the U.S. and Canada. The applicant requests authority to import Canadian gas for seven Alberta producers for sale on both a firm and an interruptible basis under long-term gas purchase contracts negotiated with Altresco Pittsfield Incorporated (Altresco) on June 24, and June 29, 1988. Altresco, a Colorado corporation located in Denver, will own and operate a cogeneration facility located on the General Electric plant located in Pittsfield, Massachusetts. This is a 162 megawatt gas cogeneration facility and is designed to provide electrical power to the New England Power Company. Under the terms of a June 24, 1988, gas sales agreement between six Alberta producers (Westmin Resources Limited, Total Petroleum Canada Ltd., Ulster Petroleums Ltd., Canadian Pioneer Energy Inc., Trans-Canada Resources Ltd., and Opinac Exploration Limited) and Altresco and Vector Energy, Vector Energy is designated as the sellers' agent for the six Alberta producers in their agreement with Altresco. An unsigned agency agreement form reconfirms this agency and includes the seventh Alberta producer (Wainoco Oil Corporation) which as a separate gas sales agreement with Altresco.

Vector states in its request that long-term deliveries to Altresco are scheduled to commence on December 1, 1989, for a term of 20 years. The contracts call for maximum daily quantities of firm gas deliveries of up to 31,500 MMBtu based on a 75 percent

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load factor over the life of the agreement. In addition to these firm supplies, the contracts call for additional interruptible Canadian gas volumes of up to 4,500 MMBtu per day over the same 20 year contract period. In lieu of a minimum purchase obligation, the contracts contain provisions which allow the sellers to reduce the daily contract quantities (DCQ) by up to 20 percent if during the preceding two years the buyer did not buy at least 75 percent on average of the DCQ then in effect during such period. The buyer then can either accept the reduction of the DCQ or maintain the existing DCQ and pay a prospective reservation fee.

Both firm and interruptible gas supplies would be sold to Altresco in accordance with a two-part, commodity and transportation costs rate structure. The initial base price of the gas would be $1.12 (U.S.) per MMBtu and the transportation costs would be the cost to transport gas from either its point of first delivery into the natural gas pipeline system of Nova Corporation of Alberta, or any other pipeline system as may be mutually agreed between Altresco and Vector, to the delivery point. The price for the gas volumes sold to Altresco would vary from month to month depending on the competitiveness of alternate supply sources.

The contracts accompanying Vector's application indicate that Altresco's base price can be renegotiated upon 180 days notice by either party of dissatisfaction with the gas price then in effect. The price will be reviewed so as to achieve a gas price that, including cost of transportation, is competitive with and comparable to the prices paid for long-term, firm baseload supplies of gas delivered at the city-gate to local distribution companies in Connecticut, Massachusetts, and Rhode Island. Alternatively, the review will achieve a gas price that will allow Altresco to run as a baseload fossil fuel electric generating plant operating at a 75 percent capacity factor. In the event that these two methods of review are in conflict, the latter method shall prevail.

In addition to copies of the gas purchase agreements with Altresco, Vector's application includes a form of agency agreement, producer list, reserves summary, and project summary. Vector's application supplement of October 14, 1988, further indicates that the pipeline facilities needed to transport the gas from the U.S./Canadian border are currently in place. Tennessee Gas Pipeline Company and Berkshire Gas Company will transport the gas in the U.S.

In support of its application, Vector states that approval of its long-term import request is in the public interest because of the market sensitive pricing of the import. Thus, the import is competitive. Vector avers that, because competitively priced term gas is not available from U.S. producers, there is a need for this imported gas. Last, Vector has submitted a list of producers and reserves summary indicating a total gross gas-in-place of 925.51 Bcf as a demonstration of security and source of supply.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In accordance with the National Environmental Policy Act of 1969, no final decision will be issued in this proceeding until DOE has considered the environmental effects of any such decision. The need for the gas and security of the long-term supply are further criteria for reviewing a proposed import. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the natural gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive, needed, and secure. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the ERA approves this requested long-term import, it may condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of its natural gas import and export program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F-056, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., December 28, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vector's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 10, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-27389 Filed 11-25-88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 89-02; Certification Notice—27]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V, 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Watsonville Cogeneration Partnership, San Mateo, CA	11-10-88	Combined cycle	27.8	Watsonville, CA.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on November 18, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-27391 Filed 11-25-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-66-000 et al.]

Canal Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Canal Electric Company

[Docket No. ER89-66-000]

Take notice that on November 15, 1988, Canal Electric Company ("Canal") filed a Power Contract which implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Capacity Acquisition Commitment for Seabrook Station (Supplement No. 1 to Canal's Rate Schedule FERC No. 21). Such Power Contract provides the terms and conditions pursuant to which Canal will sell and its customers Cambridge Electric Light Company and Commonwealth Electric Company will purchase and pay for 100% of Canal's share of the output of Seabrook Unit No. 1 plus the transmission costs associated therewith.

Pursuant to the proposed Power Contract, Canal will sell to Cambridge and Commonwealth and test power produced by Seabrook Unit No. 1 during precommercial operation and the capacity and energy associated with Canal's ownership in the Unit during its commercial lifespan. By its instant filing, Canal also proposes to begin recovering from Cambridge and Commonwealth certain costs and expenses associated with the construction work in progress. The rate impact associated with test power produced by Seabrook Unit No. 1 is expected to be extremely small. The rate impact associated with CWIP during period I is projected to be 4.1%. The rate impact associated with full commercial operation of Seabrook Unit No. 1 is projected to be 11.4%.

Canal proposes an effective date of the earlier of January 16, 1988 or the date on which test power is first generated and requests that its filing be suspended for no more than one day.

Comment date: December 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Energy Corporation

[Docket No. ER89-65-000]

Take notice that Citizens Energy Corporation (Citizens) on November 15, 1988, tendered for filing pursuant to § 35.12 of the Commission's rules under the Federal Power Act, a Power Sales Agreement (Agreement) with the City of Pasadena (Pasadena) as a rate schedule. The Agreement provides that Citizens shall sell energy to Pasadena on an interruptible basis. Service under the Agreement commenced on October 1, 1988 and will terminate on March 31, 1989 unless the period of delivery is extended or abbreviated by mutual agreement.

Pasadena has been served with a copy of this filing.

Citizens requests that the 60-day notice requirements of 18 CFR 35.3 be waived and that October 1, 1988 be allowed as the effective date of the filing.

Comment date: December 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. New York State Electric & Gas Corporation

[Docket No. ER89-64-000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on November 15, 1988, tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with New England Power Company (NEP). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to NEP. Service under this agreement will commence on November 1, 1988 and shall terminate on April 30, 1989 unless extended in writing by mutual agreement.

NYSEG has filed a copy of this filing with New England Power Company and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that November 1, 1988 be allowed as the effective date of the filing.

Comment date: December 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

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4. Delmarva Power & Light Company

[Docket No. ER89-20-000]

Take notice that Delmarva Power & Light Company ("Delmarva") on October 24, 1988, tendered for filing proposed Supplement No. 7 to its FERC Rate Schedule No. 63. Under the Supplement, Delmarva would provide partial requirements service at 69 kV instead of 25 kV when the Town of Berlin, Maryland ("Berlin"), completes its new 69 kV substation. Completion of the 69 kV substation is expected to take place on or about December 1, 1988. Copies of the filing were served upon Berlin and the Maryland Public Service Commission.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Otter Tail Power Company

[Docket No. EC89-3-000]

Take notice that on November 15, 1988, Otter Tail Power Company ("Otter Tail") tendered for filing an application for an Order authorizing the sale of approximately 10.96 miles of 230 KV transmission line to the Western Minnesota Municipal Power Agency ("Western Minnesota").

Otter Tail states that the proposed sale is that of a portion of the Fergus Falls-Henning transmission line located in Minnesota. The line is intended to become part of Western Minnesota's contribution to the Integrated Transmission System operated pursuant to the Integrated Transmission Agreement among Otter Tail, Western Minnesota and Missouri Basin Municipal Power Agency ("Missouri Basin"), to enable Western Minnesota to provide transmission service to its member municipalities through Missouri Basin. This portion of the Fergus Falls-Henning transmission line is to enable Western Minnesota to service the City of Breckenridge, Minnesota.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Company

[Docket No. ES89-6-000]

Take notice that on November 10, 1988, Boston Edison Company (Applicant) of Boston Massachusetts, filed an application pursuant to section 204 of the Federal Power Act seeking an order authorizing the Company to issue short-term debt securities not exceeding in the aggregate $350,000,000, from time to time on or before December 31, 1990, with a maturity date no later than December 31, 1991.

Comment date: December 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27344 Filed 11-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-157-000 et al.]

Williams Natural Gas Co. et al.; Natural Gas Certificate Filings

November 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89-157-000]

Take notice that on November 9, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-157-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Clinton Gas Transmission, Inc. (Clinton) under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the total volumes of natural gas to be transported for Clinton, on an interruptible basis, on a peak day would be 20,000 MMBtu from various receipt points in Kansas, Oklahoma and Wyoming to various delivery points on WNG's pipeline system in Kansas and Missouri. WNG further states that it anticipates transporting 20,000 MMBtu on an average day and 7,300,000 MMBtu on an annual basis.

WNG indicates that it commenced the transportation of natural gas for Clinton on September 1, 1988, at Docket No. ST89-38-000, for a 120-day period pursuant to § 284.223(a)(1) of the Regulations (18 CFR 284.223(a)(1)).

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP89-133-000]

Take notice that on November 4, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-133-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for ANR Gathering Company (ANR Gathering), a marketing affiliate of ANR, under the blanket certificate issued in Docket No. CP88-532-000 on July 25, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that it proposes to transport up to 5,000 dt per day on an interruptible basis, on behalf of ANR Gathering pursuant to a transportation agreement dated August 11, 1988 between ANR Gathering (Transportation Agreement). ANR also states that it would receive the gas at existing points of receipt in onshore and offshore Louisiana and redeliver the gas for the account of ANR Gathering at an existing interconnection located offshore Louisiana.

ANR further states that it commenced this service September 1, 1988, as reported in Docket No. ST89-49.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27345 Filed 11-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 7589-001 et al.]

American Hydro Power Company et al.; Surrender of Preliminary Permits and Exemptions

November 21, 1988.

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. American Hydro Power Company

[Project No. 7589-001]

Take notice that American Hydro Power Company, permittee for the proposed Lyalhanna Dam Water Power Project No. 7586, has requested that its preliminary permit be terminated. The permit was issued on April 17, 1987, and would have expired March 31, 1990. The project would have been located on Loyalhanna Creek in Westmoreland County, Pennsylvania. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed its request on May 16, 1988.

2. Mac Hyro Power Company, Inc.

[Project No. 4739-004; California]

Take notice that Mac Hydro Power Company, Inc., exemptee for the East Fork of Stuart Fork Creek Hydroelectric Project No. 4739, has requested that its exemption be terminated. The exemption was issued on September 27, 1985, and the project would have been located on the East Fork of Stuart Fork Creek, within the Shasta-Trinity National Forest in Trinity County, California. No construction of the hydroelectric project works has been initiated.

The exemptee filed the request on August 4, 1988.

Standard Paragraphs

I: The preliminary permit/exemption shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27343 Filed 11-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-45-009]

Arkla Energy Resources; Proposed Changes in FERC Gas Tariff

November 21, 1988.

Take notice that on November 14, 1988, Arkla Energy Resources (AER) tendered for filing the following sheets to its FERC Gas Tariff:

First Revised Volume No. 1

First Revised Sheet No. 4C

Original Volume No. 1-A

First Revised Sheet Nos. 9 through 9E

Original Volume No. 3

First Revised Sheet No. 188B

AER submits that the above listed sheets are filed in compliance with the Commission's order of October 28, 1988 in this docket. Ordering paragraph A of that order required AER to file certain sheets to delete references to the amortization period for refunds associated with excess deferred income taxes and the properly reference a footnote.

AER states that copies of the filing were mailed to all of AER's jurisdictional customers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before November 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27346 Filed 11-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-34-001]

Midwestern Gas Transmission Co.; Compliance Filing Pursuant to Tariff Rate Adjustment Provisions

November 22, 1988

Take notice that on November 14, 1988, Midwestern Gas Transmission Company (Midwestern) filed Forty-Third Revised Sheet No. 5 to Original Volume No. 1 of its FERC Gas Tariff, to be effective November 3, 1988.

Midwestern states that the purpose of the filing is to reflect modifications to the rate for sales under the I-1 Rate Schedule required by the Commission's Order of November 3, 1988 in the referenced docket. Pursuant to this order, the I-1 Rate has been computed as 100% load factor rate derived from the DC-1 Rate, including purchased gas demand costs.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27347 Filed 11-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-25-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

November 22, 1988.

Take notice that on November 15, 1988, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108-0899, tendered for filing in Docket No. RP89-25-000 Twenty-Third Revised

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Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2.

Northwest Alaskan states that it is submitting Twenty-Third Revised Sheet No. 5 reflecting an increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. and resold to Northwest Alaskan's four U.S. purchasers, Northern Natural Gas Company ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle"), United Gas Pipe Line Company ("United") and Pacific Interstate Transmission Company ("PIT"), under Rate Schedules X–1, X–2, X–3 and X–4, respectively. The increase in total demand charges for Northwest Alaskan's customers results primarily from foreign exchange rate fluctuations and the collection of FERC Annual Charges paid in August 1988 by Northwest Alaskan.

Northwest Alaskan states that it is submitting Twenty-Third Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, United and PIT, and pursuant to Rate Schedules X–1, X–2, X–3, and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1989 through June 30, 1989) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Twenty-Third Revised Sheet No. 5 become effective January 1, 1989.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before Dec. 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27348 Filed 11–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–259–003]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

November 22, 1988

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on November 14, 1988, tendered for filing revised changes in its F.E.R.C. Gas Tariff in compliance with the Commission's Order dated October 26, 1988 in this proceeding. Northern states that the filing reflects a further decrease in rates of $3.8 million per year below the reduced rates originally filed by Northern in this proceeding. Northern has requested that the proposed tariff changes be made effective October 27, 1988.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its F.E.R.C. Gas Tariff and to interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before November 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27349 Filed 11–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–41–002]

Paiute Pipeline Co.; Filing

November 21, 1988.

Take notice that on November 10, 1988, Paiute Pipeline Company (Paiute) filed Second Substitute Third Revised Sheet No. 10 to its FERC Gas Tariff, Volume No. 1, to be effective November 1, 1988.

Paiute states that this tariff sheet is filed in compliance with the Commission's order of October 31, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before November 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27342 Filed 11–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–17–018]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 22, 1988.

Take notice that on November 15, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective November 1, 1988:

Third Revised Sheet No. 300
Third Revised Sheet No. 30GG
Second Revised Sheet No. 30II
Third Revised Sheet No. 45R.13
Original Sheet No. 45R.13a

Southern states that on October 31, 1988, the Commission issued its Order Accepting Compliance Filing Subject to Condition (Order) in which the Commission accepted revised tariff sheets to Southern's Tariff coordinating the curtailment of transportation and sales services and setting forth curtailment priorities for interruptible services in accordance with the discussion in the Commission's May 27, 1988, and July 27, 1988, orders issued in this proceeding. The October 31st Order also directed Southern to file revised tariff sheets within 15 days of the October 31st Order to include scheduling procedures in accordance with the Commission's discussions in the May 27th and July 27th orders. Southern has submitted the aforementioned revised tariff sheets to be effective November 1, 1988, to clarify its scheduling procedures accordingly.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before November 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27350 Filed 11–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–221–002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 22, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 15, 1988, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Second Revised Sheet No. 104
Second Revised Sheet No. 112
Second Revised Sheet No. 119
Second Revised Sheet No. 126
Second Revised Sheet No. 130
Fourth Revised Sheet No. 133
Second Revised Sheet No. 138
Fifth Revised Sheet No. 469
First Revised Sheet No. 469A

The purpose of this filing is to file tariff sheets providing for an authorized overrun rate as required by Ordering Paragraph (B) of the Commission's October 31, 1988 Order in Docket Nos. RP88–221–001, RP88–67–009 and RP88–81–004.

On August 31, 1988, the Commission issued an order in Docket Nos. RP88–221–000, RP88–67–000 and RP88–81–000 which accepted, subject to refund, tariff sheets filed by Texas Eastern on July 22, 1988 to establish an annual unauthorized overrun provision under its sales rate schedules DCQ, GS, SGS, ACQ and WS for unauthorized takes in excess of a customer's D–2 nominations. The order set for hearing the proposed penalties and consolidated this proceeding into Texas Eastern's general rate case proceeding in Docket Nos. RP88–67–000 and RP88–81–000. Subsequently, the Municipal Defense Group and Consolidated Edison Company of New York, Inc. (ConEd) requested rehearing of the August 31, 1988 Order. On October 31, 1988 the Commission issued an order denying rehearing of its August 31, 1988 order and directed Texas Eastern to file revised tariff sheets, within 15 days of the issuance of its order, to establish an authorized D–2 overrun service. In purported compliance with the October 31 Order, Texas Eastern has included an authorized D–2 overrun provision in its sales Rate Schedules DCQ, GS, CD–1, CD–2, SGS, ACQ and WS as reflected in the tariff sheets listed above.

The proposed effective date of the tariff sheets listed above is December 1, 1988.

Texas Eastern is also filing tariff sheets to correct supersession problems. Third Revised Sheet Nos. 133 and 137 are being filed to replace Revised First Revised Sheet Nos. 133 and 137 which were approved to be effective September 1, 1988 by the Commission on August 31, 1988 in Docket Nos. RP88–221–000 *et al.* Third Revised Sheet Nos. 133 and 137 supersede Second Revised Sheet Nos. 133 and 137 which were approved to be effective July 1, 1988 by the Commission on August 29, 1988 in Docket Nos. PR85–177–055 *et al.*, and are proposed to be effective September 1, 1988.

Texas Eastern has before the Commission for approval, tariff sheets filed October 26, 1988 in Docket Nos. RP85–177–056, RP88–67–011, and CP88–136–001. In the event the tariff sheets filed October 26, 1988 are not approved or are altered in any way by the Commission's decision, Texas Eastern will refile the above listed tariff sheets to reflect the Commission's decision.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27351 Filed 11–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–139–003]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 22, 1988

Take notice that Williams Natural Gas Company (WNG) on November 14, 1988, tendered for filing Substitute Second Revised First Revised Sheet No. 75 and Substitute Second Revised Second Revised Sheet No. 78 to its FERC Gas Tariff, Original Volume No. 1.

These tariff sheets are being filed as an amendment to WNG's compliance filing in Docket No. RP88–139–001 filed July 27, 1988. WNG was advised by Commission Staff that it should delete references to account numbers in these tariff sheets and include account names instead. The effective date of these tariff sheets is June 1, 1988.

WNG states that copies of its filings were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211, 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27352 Filed 11–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–26–000]

Williston Basin Interstate Pipeline Co.; Petition for Tariff Waiver

November 22, 1988.

Take notice that on November 16, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200,

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304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. RP89-26-000 a Petition for Waiver of Tariff Provisions pursuant to Rule 207 of the Federal Regulatory Commission (Commission) Regulations.

Williston Basin seeks waiver of §§ 27.6 and 24.6 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, First Revised Volume No. 1 and Original Volume Nos. 1-A and 1-B, respectively. As set forth more fully in the petition, grant of the petition will allow Williston Basin to waive the requirement that filings to change the Gas Research Institute (GRI) Funding Unit Adjustment be made at least 30 days prior to the proposed effective date. Williston Basin states this waiver is necessary due to the timing of the Commission's action in Docket No. RP88-182-000 where the Commission has stated that it intends to establish the level of GRI funding on or before November 30, 1988.

Copies of this filing have been served on all of Williston Basin's jurisdictional sales customers and interstate state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27355 Filed 11-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-263-001 and RP88-92-005]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 22, 1988.

Take notice that United Gas Pipe Line Company (United) on November 14, 1988, tendered for filing the following tariff sheets as part of its FERC 1st Revised Volume No. 1 Gas Tariff:

To Be Effective October 1, 1988

First Revised Sheet No. 39-A
First Revised Sheet No. 39-B
First Revised Sheet No. 39-C
Substitute Original Sheet No. 74-X1

To Be Effective November 1, 1988

Twentieth Revised Sheet No. 99-A
First Revised Sheet No. 99-B.6

United states that this filing is being made pursuant to Ordering Paragraph (B) of the Commission October 28, 1988 Order issued in Docket No. RP88-263 requiring United to refile tariff sheets to include rates or penalties for authorized overruns in excess of annual D2's. The order also directed United to include rates for both authorized and unauthorized overruns between 100 percent and 102 percent of annual D-2 nominations at rates at least as high as 100 percent load factor. Accordingly, United states the rates reflected in this filing have been designed to reflect such rates.

United states that no rate change is necessary in the AOS Rate Schedule. However, it states, tariff sheets 39-A, B and C are being submitted for expansion of the application of the AOS Rate Schedule consistent with the October 28, 1988 Order. United submits Substitute Original Sheet No. 74-X1 to clarify the UOS rates/penalties of (i) a rate/penalty per Mcf of the 100% load factor non-gas rate up to 102% of D2, (ii) a rate/penalty per Mcf of the applicable D2, rate plus $5.00 per Mcf above 102% of D2 up to and including 104% of D2, and (iii) the applicable D2 rate plus $10.00 per Mcf above 104% of D2. In addition, United states there will be a "CEQ Waiver" of the UOS Rate/Penalty if the annual CEQ exceeds 102% of D2.

United states that Tariff sheets 99-A and 99-B.6 have been submitted to be effective November 1, 1988 to reflect the changes to the Maximum Daily Quantities (MDQ) and new D2 nominations for Mississippi River Transmission Corporation (MRT). These new sheets reflect an increased D2 nomination and the current MDQ provided for in the new sales service agreement between United and MRT. United and MRT abandoned service as necessary to reduce the service obligation under Order No. 490, *et al.* United states that it has requested a waiver of all necessary Commission rules and regulations to permit these tariff sheets to become effective on November 1, 1988.

United states that copies of this filing were served on United's Docket No. RP88-92 serve list with which Docket No. RP88-263 was consolidated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before December 1, 1988, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motion will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Any person desiring to become a party must petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27353 Filed 11-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA87-63-001]

Virginia Electric and Power Co.; Filing

November 22, 1988

Take notice that on November 3, 1988, Virginia Electric and Power Company (VEPCO) tendered for filing its compliance refund report in accordance with the Commission's Order issued April 20, 1988. The report reflects a calculation of the interim storage components of the fuel factor, plus interest, for the period April 1984 through the date of refund.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 385.214). All such motions or protests should be filed on or before December 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27354 Filed 11-25-88; 8:45 am]

BILLING CODE 6717-01-M

Southeastern Power Administration

Proposed Rate Adjustment, Public Forum, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of proposed rate adjustment for Georgia-Alabama System of Projects, notice of public forums and opportunity for review and comment.

SUMMARY: Southeastern proposes to revise existing schedules of rates and charges applicable to the sale of power from the Georgia-Alabama System of Projects effective for a sixteen month period, June 1, 1989, through September 30, 1990. In order to accomplish the rate adjustment an amendment to the contracts applicable to preference customers is necessary

Opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before March 3, 1989. A public information and comment forum will be held in East Point, Georgia, on January 5, 1989. Also, a public information and comment forum will be held in Columbia, South Carolina, on January 10, 1989. Persons desiring to speak at either forum should notify Southeastern at least 3 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public information and comment forums for the Georgia-Alabama System of Projects will begin at 10 a.m. on January 5, 1989, in the Lotus Room at the Holiday Inn, Atlanta Airport, North 1380 Virginia Avenue, East Point, Georgia 30344, and at 10 a.m. on January 10, 1989, in Room 871 of the Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283-9911.

SUPPLEMENTARY INFORMATION:

The Federal Energy Regulatory Commission (FERC) by order issued July 22, 1986, in Docket No. EF86-3011, confirmed and approved Wholesale Power Rate Schedules GA-1-A, GA-2-A, GU-1-A, GAMF-2-E, ALA-1-E, ALA-3-A, MISS-1-E, MISS-2-A, SC-1-E, SC-2-E, CAR-1-F and SCE-1-A applicable to Georgia-Alabama System of Projects' power for a period ending September 30, 1990. Since the rate filing there has been a period of extreme drought conditions of more than three years causing the purchase of replacement energy, reduction of revenues, and increased interest costs. Therefore, Southeastern has experienced unpaid annual expenses for fiscal years 1986, 1987, and 1988. Current drought conditions have not improved.

Southeastern is proposing to establish short-term rates which will partially recoup these unpaid annual expenses.

Discussion

Existing rate schedules are predicated upon a July 1985 repayment study and other supporting data all of which are contained in FERC Docket No. EF86-3011. The current repayment study prepared in November of 1988 shows that existing rates are not adequate to recover all costs required by present repayment criteria.

A revised repayment study with revenue increases of $12,757,000 in FY 1990 and future years over the current repayment study demonstrates that all costs are paid within their repayment life. Therefore, Southeastern is proposing to revise existing rates so as to recover these additional revenues for the sixteen month evaluation period. The increase is primarily due to continuing droughts. Southeastern is proposing to recover the additional revenues by increasing the current energy charge of 4.88 mills per kwh to 8.50 mills per kwh (an increase of 3.62 mills per kwh). It is proposed that revised rate schedules applicable to Customers purchasing power from the Georgia-Alabama System of Projects contain the following unit rates:

Proposed Unit Rates

Capacity charge per kilowatt per month—no change
Energy charge mills/kwh—8.50
Integration change per kilowatt per month—no change

The referenced November 1988 current repayment study along with a revised repayment study dated November 1988 and previous system repayment studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635. Proposed Rate Schedules GA-1-B, GA-2-B, ALA-3-B, MISS-2-B, GU-1-B, ALA-1-F, MISS-1-F, SC-1-F, SC-2-F, CAR-1-G, and SCE-1-B are also available.

Issued at Elberton, Georgia, November 15, 1988.

Harry C. Geisinger,

Administrator.

[FR Doc. 88-27390 Filed 11-25-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36166; FRL-3462-7]

Pesticide Registration Standards; Schedule and Availability of Docket Indices; Pesticide Special Reviews; Availability of Docket Indices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists pesticide Registration Standards which are scheduled to be issued or under development during FY 89 and early FY 90. The Agency requests the submission of comments and information on the pesticides scheduled for Registration Standard development in FY 89. This notice also announces the availability of docket indices for pesticide Registration Standards under development and pesticide Special Reviews, and provides information on how interested persons may request inclusion on an Agency mailing list to receive such indices.

DATE: Written comments on scheduled pesticides should be submitted on or before January 27, 1989. Persons may request to be included on the mailing list for docket indices at any time.

ADDRESSES: Comments on scheduled Registration Standard pesticides should be identified with the docket number listed with each pesticide chemical and should be submitted to the address below. Persons wishing to be included on a mailing list to receive docket indices should also direct their requests to this address.

Public Information Branch, Field Operations Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 244, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of a comment that does not contain

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CBI must be submitted for inclusion in the public docket. Information not designated "confidential" may be disclosed publicly by EPA without prior notice to the submitter. The public docket will be available for public inspection and copying in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information on Reregistration Standard schedules, contact, by mail: Jean Frane, Special Review and Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1114, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557–0944.

For information on public dockets, their availability, and docket indices, contact Elizabeth Blevins (703–557–2805) of the Public Information Branch, in Rm. 244 at the above address.

SUPPLEMENTARY INFORMATION: The Registration Standards program is EPA's approach to the reassessment and reregistration of pesticides as mandated by Congress in section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pesticide products currently registered by EPA contain more than 600 distinct active ingredients. Under this program the scientific data base underlying each active ingredient is thoroughly reviewed, and essential but missing scientific studies are identified.

The reassessment may result in requirements for submission of data needed to evaluate fully the safety of the compound according to contemporary scientific standards. The results of the review are reflected in a Registration Standard, which states the Agency's regulatory positions regarding the products containing an active ingredient and the rationale for each position, as well as requirements for submission of additional data needed to complete the assessment, and label warnings or other regulatory restrictions needed to protect health and the environment. After the data required under the initial Registration Standard have been submitted, the Agency reassesses the pesticide and issues a revised Registration Standard (termed a Second Round Review).

On October 25, 1988, the President signed a new law, the FIFRA Amendments of 1988, which, among other things, makes significant changes in the way EPA will carry out its responsibility to reregister currently registered pesticides. Within the next 60 days, EPA will publish a notice in the **Federal Register** explaining its plans for implementing the new legislation. In the meantime, however, this notice lists the Registration Standards that the Agency plans to issue during the current fiscal year. The Agency currently intends to continue to issue updated Registration Standards (Second Round Reviews) during the implementation period of the new FIFRA amendments.

Specifically, the purpose of this notice is to inform the pubic of Registration Standards currently under development. It also serves to provide the public with an opportunity to submit additional data pertinent to these reviews. EPA encourages the public to provide information relevant to the review of individual active ingredients for which Registration Standards are scheduled in FY 89. The Agency is particularly interested in receiving the following types of information: human toxicology, residue chemistry, product chemistry, environmental fate, human exposure, or ecological effects. The first 17 Registration Standards listed in this notice either have been issued, or will have been issued by the close of the comment period for this notice. EPA will consider any comments submitted concerning those chemicals when it reexamines them at a future point in the reregistration process.

Registration Standards for the pesticides listed below will be under development in FY 89. An asterisk after the name indicates that the Agency has previously issued an initial Registration Standard and is reassessing the chemical for issuance of a Second Round Review Registration Standard.

Name of pesticide	Docket number (CAS #)	Approximate date of issuance
Tetrachlorvinphos	961–11–5	[1] 10/88
Rotenone	83–79–4	[1] 10/88
Metiram	9006–42–2	[1] 10/88
Maneb	12427–38–2	[1] 10/88
4-(2,4-Dichlorophenoxy) butyric acid (2,4-DB).	94–82–6	[1] 10/88
2-(2,4-Dichlorophenoxy) propionic acid (2,4-DP).	120–36–5	[1] 10/88
Picloram*	1918–02–1	[1] 10/88
Difenzoquat	43222–48–6	11/88
Phorate*	298–02–2	11/88
Oxytetracycline	2058–46–0	12/88
Diazinon	333–41–5	12/88
Propazine	139–40–2	12/88
Resmethrin	10453–86–8	12/88
Mecoprop	7085–19–0	12/88
Warfarin*	81–81–2	12/88
Methoxychlor	72–43–5	12/88
Metaldehyde	108–62–3	12/88
2-Methyl-4-chlorophenoxyacetic acid (MCPA)*.	94–74–6	1/89
Butylate*	2008–41–5	3/89
Chlorpyrifos*	2921–88–2	3/89
Atrazine*	1912–24–9	3/89
Carbaryl*	63–25–2	3/89
Chlorobenzilate*	510–15–6	4/89
Chloroneb*	2675–77–6	6/89
Ethion*	563–12–2	6/89
Simazine*	122–34–9	6/89
Terbacil*	5902–51–2	7/89
Coumaphos*	56–72–4	7/89
Norflurazon*	27314–13–2	8/89
Terrazole*	2593–15–9	9/89
Formetanate HCl*	23422–53–9	9/89
Dimethoate*	60–51–5	9/89
Chloramben*	133–90–4	9/89
Bifenox*	42576–02–3	10/89
Dicamba*	1918–00–9	11/89
Ammonium sulfamate*	7773–06–0	11/89
Eptam*	759–94–4	12/89
Bromacil*	314–40–9	12/89

[1] Issued.

Current regulations on Registration Standards and Special Review provide for the establishment of a public docket for Registration Standards under development and Special Review actions, the maintenance of docket indices, and the establishment of a mailing list of persons wishing to receive the docket indices on a regular basis. Special Review and Registration Standard dockets contain, among other things, materials submitted to the Agency by parties outside of government, Agency documents made available to persons outside of government, and memoranda of meetings with persons outside of government concerning pending Special Reviews and Registration Standards under development.

In accordance with § 155.32(d)(2) of the Registration Standard regulations and § 154.15(f)(3) of the Special Review regulations, the Agency has established a mailing list for docket indices. Persons on the mailing list will receive automatically the docket indices (or updates to previous indices) for Registration Standards and Special Reviews. These will be distributed on a monthly or quarterly basis, as required by the regulations. Persons on the mailing list will receive docket indices for all open dockets. Persons will be required to renew their requests for inclusion on the mailing list annually.

Any person wishing to be included on the mailing list should submit his or her name, affiliation (if any), and mailing address to the address given earlier in this notice. Organizations, groups and companies are requested not to submit multiple requests under different names, but to designate a primary recipient within the organization. This will reduce mailing costs and Agency time in administering the mailing list.

Persons currently on the Agency mailing list for Registration Standard and Special Review indices must resubmit requests for continued inclusion on the mailing list at this time.

Dated: November 15, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88–27326 Filed 11–25–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44519; FRL–3483–2

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on hydroquinone (CAS No. 123–31–9) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submission

Test data for hydroquinone was submitted by the Chemical Manufacturers Association Hydroquinone Program Panel pursuant to a test rule at 40 CFR 799.2200. It was received by EPA on November 8, 1988. The submission describes a subchronic oral toxicity study of hydroquinone in rats utilizing a functional observational battery and neuropathology to detect neurotoxicity. Health effects testing is required by this test rule.

Hydroquinone is produced in a photographic grade for use as a developing agent and in a technical grade which is primarily used as a chemical intermediate in the production of rubber chemicals.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to its completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44519). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: November 15, 1988.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88–27327 Filed 11–25–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140108; FRL–3482–9]

Access to Confidential Business Information by Booz-Allen & Hamilton

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Booz-Allen & Hamilton (BAH), of Bethesda, MD, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In accordance with 40 CFR 2.306(j), EPA has determined that, under contract No. 68–01–7282, BAH will require access to CBI submitted to EPA under TSCA to perform successfully the duties specified under the contract. BAH personnel will be given access to information submitted under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

Under contract no. 68–01–7282, contractor BAH, 4330 East West Highway, Bethesda, MD, will assist the Office of Toxic Substances' Information Management Division in providing analysis of the information access and management trends of the scientific staff reviewers for the TSCA section 5 notice review process, which in turn may lead to the implementation of an optical disk information management system.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide BAH access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under this contract is scheduled to expire on June 30, 1989.

BAH personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: November 19, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–27328 Filed 11–25–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59266; FRL–3483–1]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

Written comments by:

T 89–3, 89–4—November 30, 1988.

T 89–5—December 3, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS–59266]" and the specific TME number should be sent to: Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room 201 East Tower, 401 M Street SW., Washington, DC 20460, (202) 382–3532.

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FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89–3

Close of Review Period. December 14, 1988.

Manufacturer. Confidential.

Chemical: (G) Trialkylalkeny-hexerocyclazolium derivative of copper-heterocyclamine *mixed salt.*

Use/Production. (S) Fiber dye. Prod. range: Confidential.

T 89–4

Close of Review Period. December 14, 1988.

Importer. Confidential.

Chemical. (G) Alkylalkylene-heterocyclozolium derivative of copper-heterocyclamine mixed salt.

Use/Import. (S) Paper dye. Import range: Confidential.

T 89–5

Close of Review Period. December 17, 1988.

Manufacturer. Confidential.

Chemical. (G) Salt of a modified rosin acid. Copper-heterocyclamine mixed salt.

Use/Production. (S) Sizing agent in paper and paperboard. Prod. Range: Confidential.

Date: November 21, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–27329 Filed 11–25–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of policy.

SUMMARY: The FDIC is adopting a Statement of Policy which is intended to provide more explicit guidance to banks on the position of the Federal Deposit Insurance Corporation regarding independent external auditing programs of state nonmember banks. The statement of policy strongly encourages each state nonmember bank to have an annual external auditing program performed by an independent auditor, and states that, although not required, a bank with an annual audit of its financial statements by an independent public accountant would generally be considered to have a satisfactory external auditing program. Alternatives for an acceptable annual external auditing program are also explained. Newly insured banks will usually be expected to commit to obtain an audit of their financial statements by an independent public accountant annually for at least the first three years after deposit insurance is granted. In troubled bank situations, the administrative orders issued by the FDIC may require that an audit of the financial statements or specified auditing work be performed where certain conditions exist. In addition, banks are requested to submit copies of the external auditor's reports to the appropriate FDIC regional office as soon as possible upon their receipt by the bank.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, telephone (202) 898–8914.

SUPPLEMENTARY INFORMATION: On April 13, 1988, the Board of Directors of the FDIC approved the issuance of a proposed statement of policy regarding Independent External Audits of State Nonmember Banks for a sixty-day comment period. (53 FR 12817, April 19, 1988). The proposed statement of policy encouraged each state nonmember bank to have an annual external audit of its financial statements by an independent certified public accounting firm. Newly insured banks would generally be expected to commit to obtain such an audit by an independent public accountant annually for at least the first three years after deposit insurance is granted. In troubled bank situations, the administrative orders issued by the FDIC might require that an audit of the bank's financial statements be performed where certain conditions exist. Banks were also requested to submit copies of the auditor's reports to the appropriate FDIC regional office as soon as possible upon their receipt by the bank. The proposed statement of policy was similar in many respects to the present policy of the Office of the Comptroller of the Currency for national banks (Banking Circular-190, March 18, 1985).

In proposing a statement of policy on external auditing, the FDIC stated that it sought to improve bankers' awareness of the importance of an independent external auditing program for the financial soundness of banks. In the FDIC's view, a strong internal auditing function combined with an annual external auditing program performed by an independent auditor substantially lessens the risk that a bank will not detect potentially serious problems. The large number of financial institutions experiencing financial difficulties as a result of fraud, insider abuse and mismanagement in recent years has made an external auditing program even more important.

The FDIC's examination staff has been criticizing banks that lack an adequate internal auditing function for many years, and has long encouraged independent external auditing programs. Many banks now supplement their internal auditing programs by engaging independent public accountants to perform external audits of their financial statements. In addition, many banks whose financial statements are not audited have established other types of external auditing programs either on their own or to comply with the requirements of their state chartering authority.

Comments

The FDIC's received 109 comment letters on its proposed statement of policy. Nine were from national banks, seven were from banking/thrift or accounting/auditing trade groups, one was from a state banking department, five were from bank holding companies, nine were from firms that perform auditing work, and one was from an attorney with a banking practice. The remaining 77 written comments primarily came from smaller state-chartered banks, and 64 of these were from banks in Wisconsin, Nebraska, and Florida. Since the letters from these three states were quite similar, it appears that a nonaccounting firm that performs auditing work in each state may have encouraged its client banks to comment to the FDIC.

Of the 109 comments received, 17 were supportive of the statement of policy largely as proposed, and 15 could be characterized as generally opposed. In addition, 33 objected to what they perceived to be a strong and exclusive emphasis on audits of financial statements by independent certified public accountants (CPAs), but they seemed to be generally supportive of a policy where external auditing programs conducted by independent auditors would be acceptable. The remaining 44 commented on specific points of the proposal without indicating a view on the statement of policy as a whole.

Giving due consideration to the comments received, the FDIC has decided to proceed with the implementation of the statement of policy after making certain revisions to the policy as it was originally proposed.

Changes From the Proposal

Many of the commenters appeared to misunderstand the intent of the statement of policy and expressed concern that the FDIC was in reality requiring all state nonmember banks to obtain annual external audits of their financial statements by independent certified public accountants. To alleviate this misunderstanding and the resulting apprehension, the FDIC has adjusted the title and rearranged the text of the statement of policy to more clearly reflect its objective of having all state nonmember banks establish annual external auditing programs whether it be by CPAs or other qualified independent parties. Nevertheless, since auditing work performed by nonaccounting firms does not have to satisfy any nationally recognized auditing standards nor is there any universally recognized method of enforcing ethical conduct by nonaccounting firms, the FDIC continues to encourage an audit of a bank's financial statements by a public accountant to provide a recognized product which the bank and the FDIC may generally assume meets minimum professional standards. External auditing work performed by nonaccounting firms may provide excellent reviews for a bank, but when using these firms, a bank must be very cognizant of the auditing work it is getting, the cost, and whether the work fully meets the bank's needs.

Some commenters appear to have had difficulty with the format and clarity of the proposed statement of policy. For that reasons, captions have been added throughout the policy to assist in finding the provisions of particular interest and several paragraphs have been reworded for improved reader understanding. As requested by numerous commenters, we have added Appendix A consisting of definitions of the terms used in the statement of policy.

Several commenters expressed the view that banks with strong internal auditing procedures should be relieved of the responsibility of maintaining an external auditing program. However, the FDIC believes that both an internal auditing function and an external auditing program complement one another and both should be maintained to assist a bank in operating in a safe and sound manner. Paragraph 2 of the statement has been revised to indicate that regardless of the strength of a bank's internal auditing procedures, the FDIC considers an external auditing program to be an important and necessary addition to a bank's control environment.

Several comments were made that an audit by an independent public accountant primarily focuses on the fairness of the financial statement presentation. Respondents suggested that an audit of a bank's financial statements should not relieve the bank's audit committee or board of directors of the responsibility of reviewing whether the audit provided sufficient coverage of the bank's risk areas. Accordingly, paragraph 3 has been revised to encourage the committee or board to review their bank's particular needs annually to determine if auditing procedures beyond those included in the scope of the planned external auditing program for the year are necessary for that specific year or several years to cover especially high-risk areas of the bank. In addition, since several letters mentioned the role of the audit committee, paragraph 3 also encourages all state nonmember banks to establish an audit committee consisting, if possible, entirely of outside directors. This recommendation was also made for all public companies in the October 1987 Report of the National Commission on Fraudulent Financial Reporting ("Treadway Commission"), and Appendix A provides a description of the duties and responsibilities of this committee.

Many respondents expressed their concern that FDIC field examiners would enforce this policy as though it were a regulation. For this reason, we have specifically added a new paragraph 5 stating that examiners will not automatically comment negatively on a bank that does not have an annual audit of its financial statements by an independent public accountant. Nonetheless, examiners will review a bank's external auditing program as part of their regular examination of the bank and, using their judgment and discretion, determine whether it adequately covers the risk areas of that particular bank.

One commenter discussed the similarities between "licensed public accountants" and "certified public accountants," and suggested that work by both be equally acceptable. Approximately 39 jurisdictions recognize and license "public accountants" to examine financial statements on the same basis as CPAs, and these jurisdictions hold them to identical standards of technical competence and independence as CPAs. Thus, the policy has been revised to encourage each bank to adopt an annual audit of its financial statements by an independent public accountant without specifying that the accountant must be "certified."

As a result of the revision of the statement of policy to emphasize external auditing programs, paragraph 6 has been revised to include a statement that a bank with an annual audit of its financial statements by an independent public accountant would generally be considered to have a satisfactory external auditing program.

Several commenters indicated that the preparation of a bank's Reports of Condition and Income (Call Reports) by a public accountant would not generally be performed as part of an audit of its financial statements and to do so would involve additional auditing costs. For that reason, paragraph 7 has been revised to explain that the bank may, but does not have to, make use of the audited financial statements in its preparation of those reports.

The alternatives to an audit of a bank's financial statements by a public accountant were not sufficiently outlined in the proposal according to many respondents. For that reason, a separate section on acceptable alternatives to an audit of a bank's financial statements is included beginning with paragraph 8.

Many bankers mentioned that the "directors' examination" and the so-called "engagement audit" or "operational audit" performed by nonaccounting firms provided good external auditing coverage for their bank, and suggested that the FDIC should permit these external auditing programs under the proposed statement of policy. As previously mentioned, it was not the FDIC's intention to preclude banks from making use of such audits. Hence, paragraph 9 clarifies the FDIC's position that external auditing programs may be carried out by nonaccounting firms as well as independent public accountants. In addition, paragraph 8 of the statement of policy describing alternatives to an audit of a bank's financial statement by a public accountant has been revised to include the directors' examination. An "engagement audit" or an "operational

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audit" may also be acceptable under the definition of "directors' examination" in Appendix A. Nevertheless, there are so widely accepted national standards for the specific procedures that must be performed in a director's examination or in the "audits" mentioned. The audit committee or board of directors of any bank that uses one of these alternative programs must carefully review the procedures that will be performed to assure that the bank's high risk areas have been adequately tested.

Due to another commenter's suggestion, the report on the balance sheet has also been added as an alternative in paragraph 8. The procedures involved, while limited, are performed under generally accepted auditing standards and are generally less costly than an audit of financial statements.

Paragraph 14 has been substantially revised as a result of several comments to clarify that the scope of a subsidiary bank's external auditing program may be explained in terms of its relationship to the consolidated group. Where the group has an audit of its consolidated financial statements by an independent public accountant (i.e., the financial statements of the subsidiary banks are consolidated with the financial statements of the parent company), the subsidiary banks would not be expected to have individual audits of their financial statements as well under this statement of policy.

In response to a comment letter, paragraph 15 on troubled banks has been expanded to indicate that an FDIC administrative order may require a bank to notify the regional office of the time and date of any meeting between management and the auditor at which auditing findings are to be presented so that a representative of the FDIC may be present if the regional office so desires.

Other Comments

In addition to comments on the policy statement that resulted in changes, the FDIC received and considered other comments on the April proposal.

The vast majority of the respondents discussed the cost burden of an audit of a bank's financial statements by a public accountant as the primary reason for their opposition to the statement of policy. The comments seemed to mistakenly assume that the statement of policy was requiring all banks to have audits of their financial statements and that these audits must be performed by a large national CPA firm, which is not correct. The FDIC realizes that an external auditing program represents a cost to a bank, but auditors with banking experience that may have a local or regional business are available, and the benefits derived from their suggestions may ultimately exceed the cost of the auditing services performed. Each bank is urged to consider proposals from more than one auditor and to select the one that will provide the services desired at the most reasonable cost.

Many respondents indicated that they did not believe that the audit committee or board of directors should be required to generate a list of the reasons why they chose not to engage an independent auditor, and one commenter stated that the committee or board should not be expected to record in its minutes an item on which no action was taken. This latter argument has no basis since the minutes should reflect all items considered by the committee or board, whether or not specific action was authorized. The FDIC does not expect each bank to record a list of all possible benefits from an audit of its financial statements in its minutes. On the other hand, the FDIC does not expect a bank to make a perfunctory statement annually that the cost of an audit of the bank's financial statements is prohibitive without investigating and weighing the possible benefits to that particular bank in view of its circumstances that year. When the issue being considered by the audit committee or board is the scope of the external auditing program, some action should always be recorded. After evaluating the costs and benefits of the alternatives, the bank should decide what form of external auditing program is most suitable for adoption and note this decision in its minutes.

Some commenters pointed out that audits of financial statements do not prevent bank failures, and that some troubled banks have had a history of annual audits. Statistics from the June 1988 Report of Condition reveal that the 1987 financial statements of approximately 65 percent of all banks had been subject to an audit; however, a review of failed bank records shows that little more than one-third of failed banks had audits of their financial statements within two years prior to failure. Auditors are not responsible for predicting future conditions or events, but they should evaluate whether there is substantial doubt about a bank's ability to continue as a going concern for a reasonable period of time. In addition, the audit should be designed to provide reasonable assurance of detecting material errors and irregularities even though the characteristics of irregularities often make them difficult to detect.

Some respondents complained that accounting firms sometimes send largely inexperienced personnel to audit bank clients. As with any other product or service that a bank buys, it should select the best available auditing services at the best cost. The policy does not suggest that only large national firms should be engaged. Regional or local firms should be considered because they may provide a better service at a lower cost for the bank.

Several comment letters stated that an audit requirement would create another bank regulator, the Financial Accounting Standards Board (FASB), and that banks should not be controlled by this private rule-making body. Although FASB has no authority over the setting of auditing standards, these commenters fail to realize that banks are already subject to FASB pronouncements whether or not the FDIC adopts a statement of policy regarding external auditing programs. All banks must submit quarterly Call Reports to the federal banking agencies and generally accepted accounting principles as established by FASB (and its predecessors) form the foundation for the Call Report instructions.

The suggestion was made by several commenters that this policy should have some threshold by size or examination rating in order to exempt very small banks or those with good ratings. Since most of the banks that have already established external auditing programs are larger institutions, an exemption based on size would defeat the purpose of the statement of policy. As for banks with good ratings, an adequate external auditing program helps to ensure that such banks remain fundamentally sound.

The fear that submitting external auditors' reports to the FDIC will be a disincentive to the regular examination of banks was suggested by certain respondents. The FDIC has no plans to change its current policy on examination frequency as a result of information obtained from external auditing programs, but plans to use the information obtained from the reports by bank external auditors to assist in the maintenance of the safety and soundness of banks.

Other comments that were evaluated and not adopted include: FDIC examiners should review all audit workpapers to see if the external auditing work was adequate; the policy statement should require (rather than request) that all reports by external auditors be submitted to the FDIC; and external auditors' reports should remain at the bank for review during the next examination rather than being sent to the FDIC for immediate review. Other comments were made but were not within the scope of this statement of policy.

The text of the statement of policy follows:

1. In view of its interest in the financial soundness of banks and the banking system, the FDIC believes that a strong internal auditing function combined with a well-planned *external auditing program* [1] substantially lessens the risk that a bank will not detect potentially serious problems. An external auditing program is a set of procedures designed to test and evaluate high *risk areas* of a bank's business which are performed by an *independent* auditor who may or may not be a *public accountant*. The failure to detect and correct potentially serious problems increases the risk a bank poses to the FDIC's insurance fund. A strong internal auditing function establishes the proper control environment and promotes accuracy and efficiency in a bank's operations. An external auditing program complements this function by providing an objective outside the view of the bank's operations.

2. Regardless of the strength of a bank's internal auditing procedures, the FDIC believes that an external auditing program should be considered by a bank's board of directors as part of the cost of operating a bank in a safe and sound manner. An external auditing program assists the bank's board of directors in safeguarding assets and identifying risks inherent in its operation. In addition, an external auditing program may tend to assist directors in the event of litigation on whether an institution's board has exercised reasonable care in protecting the assets of the bank. Thus, the FDIC urges all state nonmember banks to establish and maintain a sound external auditing program.

3. The FDIC strongly encourages the board of directors of each state nonmember bank to establish an *audit committee* consisting, if possible, entirely of *outside directors*. The audit committee or board of directors of each state nonmember bank generally should analyze the extent of the external auditing coverage needed by the bank annually. They should determine whether the bank's needs will best be met by an *audit* of its *financial statements* or by an acceptable alternative (described in paragraphs 8 and 9 below). When selecting the scope of the planned external auditing program for the year, the committee or board should ensure that the program will provide sufficient substantive external coverage of the bank's risk areas and any other areas of potential concern, such as compliance with applicable laws and regulations.

If not, additional external auditing procedures conducted by an independent auditor may be appropriate for a specific year or several years to cover particularly high risk areas of the bank. The decisions resulting from these deliberations should be recorded in the committee's or board's minutes.

4. If the audit committee or board of directors of a bank, after due consideration, determines not to engage an independent public accountant to conduct an annual audit of the bank's financial statements (or whose parent holding company's consolidated financial statements are not audited), the reasons for the committee's or board's conclusion to use one of the acceptable alternatives or to have no external auditing program should be documented in its minutes. In the evaluation, the committee or board generally should consider not only the cost of an annual audit of the bank's financial statements, but also the potential benefits.

5. A review of both a bank's internal and external auditing programs has been and will continue to be a part of the FDIC's examination procedures. FDIC examiners will review the nature of each bank's external auditing program in conjunction with the risk areas perceived in that particular bank's business and operations, and they will exercise their judgment and discretion in evaluating the adequacy of a bank's external auditing program. Examiners will not automatically comment negatively to the board of directors of a bank with an otherwise satisfactory external auditing program merely because it does not engage an independent public accountant to perform an audit of its financial statements.

Audit by an Independent Public Accountant

6. The FDIC strongly encourages each state nonmember bank to adopt an external auditing program that includes an annual audit of its financial statements by an independent public accountant. A bank that does so would generally be considered to have a satisfactory external auditing program. An external audit of a bank's financial statements benefits management by asssisting in the establishment of the accounting and operating policies, internal controls, internal auditing programs, and management information systems necessary to ensure the fair presentation of these statements. An audit also assists boards of directors in fulfilling their fiduciary responsibilities and provides them greater assurance that financial reports are accurate and provide adequate disclosure.

7. An audit of a bank's financial statements performed by the independent public accountant as of a quarter-end date when the Reports of Condition and Income are prepared is preferable and would permit the bank to use the audited financial statements in the preparation and/or subsubsequent review of those reports. A bank may also find it more cost effective to be audited during accounting firms' less busy periods. The independent public accountant chosen should be experienced in auditing banks and knowledgeable about banking regulations in order to provide the bank with the most effective service.

Alternatives to an Audit by a Public Accountant

8. The FDIC recognizes that a bank's audit committee or board of directors may determine that the external auditing program that will best meet its individual needs for that particular year will be other than an audit of its financial statements by an independent public accountant. The committee or board, after a full review of alternative and/or supplemental approaches for an adequate independent external auditing program, may decide on a well-planned *directors' examination*, an independent analysis of internal controls or other areas, a *report on the balance sheet*, or specified auditing procedures by an independent auditor. If the bank has an outside auditing firm that is simply obtaining confirmations of deposits and loans, for example, the committee or board should normally expand the scope of the auditing work performed to include additional procedures to test the bank's high risk areas.

9. Nonaccounting firms with bank auditing experience and expertise that are independent of the bank are available in some geographic locations. They may provide acceptable directors' examinations, analyses, or specified auditing work at a reasonable cost. In some instances, these firms' services include nonauditing work which enables them to provide suggestions on compliance issues and operational efficiencies. Depending upon the expertise of the firm and the scope of the engagement, these nonaccounting firms may be an appropriate choice for an external auditing program.

[1] Terms defined in Appendix A are italicized the first time they appear in this statement of policy.

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Newly Insured Banks

10. The FDIC believes that an adequate external auditing program performed by an independent auditor should be an integral part of the safe and sound management of a bank. Thus, applicants for deposit insurance coverage after the effective date of this statement of policy will generally be expected to commit their bank to obtain an audit of their financial statements by an independent public accountant annually for at least the first three years after deposit insurance coverage is granted.[2] The FDIC may determine on a case-by-case basis that an independent audit of financial statements is unnecessary where an applicant can demonstrate that the benefits derived from such an external audit will be substantially provided by other outside sources, or where the applicant is owned by another company and will undergo an audit performed by an independent public accounting firm as part of an audit of the consolidated financial statements of its parent company.

Notification and Submission of Reports

11. Whether currently or newly insured, the FDIC requests each state nonmember bank that undergoes any external auditing work, regardless of the scope of the work, to furnish a copy of any reports by the public accountant or other external auditor, including any management letters, to the appropriate FDIC regional office as soon as possible after their receipt by the bank.

12. In addition, the FDIC requests each bank to promptly notify the appropriate FDIC regional office when any public accountant or other external auditor is initially engaged to perform external auditing procedures and when a change in its accountant or auditor occurs.

Holding Company Subsidiaries

13. When the audit committee or board of directors of any state nonmember bank owned by another company (such as a bank holding company) considers its external auditing program, it may find it appropriate to express the scope of its program in terms of the bank's relationship to the consolidated group. No section of this statement of policy is intended to imply that any state nonmember bank owned by another company is expected to obtain a separate audit of the financial statements of the individual bank. Where the state nonmember bank is directly or indirectly included in the audit of the consolidated financial statements of its parent company performed by an independent public accounting firm, the state nonmember bank may send one copy of the comparable reports by the public acountant or notification of the change in the accountants for the consolidated company to the appropriate regional director. If several banks supervised by the same FDIC regional office are owned by one parent company, a single copy of each report applicable to the consolidated company may be submitted to the regional office on behalf of all of the affiliated banks.

Troubled Banks

14. An annual independent external auditing program complements both the FDIC's supervisory process and bank internal auditing programs by further identifying or clarifying issues of potential concern or exposure. It can also greatly aid management in taking corrective action, particularly when weaknesses are detected in internal control or management information systems. For these reasons, an annual audit of bank financial statements performed by an independent public accounting firm or, if more appropriate, specified auditing procedures will be a condition of future enforcement actions, when deemed necessary, or if it appears that any of the following conditions may exist:

(a) Internal controls and internal auditing procedures are inadequate;

(b) The directorate is generally uniformed in the area of internal controls;

(c) There is evidence of insider abuse;

(d) There are known or suspected defalcations;

(e) There is known or suspected criminal activity;

(f) It is probable that director liability for losses exists;

(g) Direct verification is warranted; and/or

(h) Questionable transactions with affiliates have occurred.

15. Such an enforcement action may also require that (a) the bank provide to the appropriate FDIC regional office a copy of the auditor's report and any management letter received from the auditor promptly after the completion of any auditing work and that (b) the bank notify the regional office in advance of the time and date of any meeting between management and the auditor at which any auditing findings are to be presented so that a representative of the FDIC may be present if the FDIC so chooses.

By order of the Board of Directors. Dated at Washington, DC this 16th day of November, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

Appendix A—Definitions

Audit. An examination of the financial statements, accounting records, and other supporting evidence of a bank performed by an independent certified or licensed public accountant in accordance with generally accepted auditing standards and of sufficient scope to enable the auditor to express an opinion on the bank's financial statements as to their presentation in accordance with generally accepted accounting principles (GAAP).

Audit Committee. A committee of the board of directors, consisting, if possible, entirely of outside directors. To the extent possible, members of the committee should be knowledgeable about accounting and auditing. They should be responsible for reviewing and approving the bank's internal and external auditing programs or recommending adoption of these programs to the full board. Both the internal auditor and the external auditor should have unrestricted access to the audit committee without the need for any prior management knowledge or approval. Other duties of the audit committee should include reviewing the independence of the external auditor annualy, being consulted by management when it seeks a second opinion on an accounting issue, overseeing the quarterly regulatory reporting process, and reporting its findings periodically to the full board of directors.

Directors' Examination. A review by an independent third party that has been authorized by the bank's board of directors and is performed in accordance with the board's analysis of potential risk areas. Certain procedures may also be required as a result of state law. A directors' examination consisting solely of such procedures as cash counts and confirmations of loans and deposits would not normally be considered a well-planned director's examination. (Sometimes directors' examinations are similar to so-called "engagement audits" or "operational audits." Nevertheless, no widely accepted national standards exist for the specific procedures that must be performed in directors' examinations or these "audits.")

External Auditing Program. The performance of procedures to test and evaluate high risk areas of a bank's business by an independent auditor, who may or may not be a public accountant, sufficient for the auditor to be able to express an opinion on the financial statements or to report on the results of the procedures performed.

Financial statements. The statements of financial position, income, cash flows (changes in financial position), and changes in shareholders equity together with related notes.

Independent. No certified public accountant, public accountant, or other auditor will be recognized as independent who is not in fact independent. (Reference is made to § 335.604 of the FDI Rules and Regulations for the complete definition of the term "independent.")

Outside Directors. Members of a bank's board of directors who are not officers, employees, or principal stockholders of the bank, its subsidiaries, or its affiliates, and do not have any material business dealings, with the bank, its subsidiaries, or its affiliates.

Public Accountant. A certified public accountant or licensed public accountant who is duly registered and in good standing as such under the laws of the place of his/her residence or principal office, who is licensed by the accounting regulatory authority of his/her state, and who possesses a permit to practice public accountancy.

Report on the Balance Sheet. An examination of the balance sheet, accounting records, and other supporting evidence performed by an independent certified or licensed public accountant in accordance with generally accepted auditing standards.

Risk Areas. The risk areas are those particular activities of a specific bank that expose the bank to potential losses if problems were to exist and go undetected. The highest risk areas in banks generally include, but are not necessarily limited to, the valuation of collectibility of loans (including the reasonableness of the allowance for loan losses), investments, and repossessed and foreclosed collateral; internal controls; and insider transactions.

[FR Doc. 88-27357 Filed 11-25-88; 8:45 am]

BILLING CODE 6714-01-M

[2] Operating non-FDIC insured institutions should also note that the FDIC expects, unless waived in writing by the FDIC, any applicant for insurance with more than $50 million in assets to have an audit of its financial statements prior to submitting an application, and requests that a copy of the auditor's report be included as part of the application. The FDIC may require such an audit, on a case-by-case basis, for applicants with assets of $50 million or less. Refer to the June 9, 1987 Statement of Policy Regarding Applications for Federal Deposit Insurance by Operating Non-FDIC Insured Institutions, as amended June 24, 1987.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003914-003

Title: Port of Oakland Terminal Agreement

Parties: Port of Oakland Sea-Land Service, Inc.

Synopsis: The agreement adjusts the rental for the land and improvements on Parcel "A" of the premises leased under the basic agreement.

Agreement No.: 224-200179

Title: City of Los Angeles Terminal Agreement

Parties: City of Los Angeles California Cartage Company, Inc. (Tenant)

Synopsis: The agreement establishes the terms and conditions under which Tenant will use certain designated premises at the Los Angeles Harbor for the operation and maintenance of public warehouses, container freight stations, and Customs bonded warehouses, cargo, merchandise and pipe storage and purposes incidental thereto.

Agreement No.: 224-200178

Title: New York and New Jersey Terminal Agreement

Parties: The Port Authority of NY/NJ (Port Authority) Carco, Inc. (Carco)

Synopsis: The proposed agreement provides for Carco's lease of Port Authority property in the Cities of Jersey City and Bayonne, including a New Jersey marine terminal and the following areas; two open area sites located on the Port Jersey Site; three (3) open area sites located on the Greenville Site; a wharf area and water area adjacent thereto together with buildings, structures, fixtures, improvements located, or to be constructed, and other property of the Port Authority on the Port Jersey Site; four (4) areas containing land and buildings, structures, fixtures, improvements and other property on the Port Jersey Site; and several berthing areas on the Port Jersey Site.

By Order of the Federal Maritime Commission.

Dated: November 22, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-27339 Filed 11-25-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-80-N]

Medicare Program; Meeting of the Supplemental Health Insurance Panel

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Supplemental Health Insurance Panel for the purpose of reviewing State Medicare supplemental health insurance programs. The Panel will determine whether such programs meet the minimum standards contained in Section 1882 of the Social Security Act, as amended by the Omnibus Budget Reconcilation Act of 1987 and the Medicare Catastrophic Coverage Act of 1988. The meeting will be open to the public. Due to room size, however, seating is limited. Attendees will be seated on a first come, first served basis.

DATE: The meeting will be held on December 13, 1988 from 1:00 to 5:00 p.m. c.s.t.

ADDRESS: The meeting will be held at the New Orleans Hilton, New Orleans, Louisiana. Room location will be posted at the hotel.

FOR FURTHER INFORMATION CONTACT: Theresa DeGrange, (301) 966-7449.

SUPPLEMENTARY INFORMATION:

I. Purpose

The Supplemental Health Insurance Panel (Panel) was established in 1980 by section 507 of the Social Security Disability Amendments of 1980, Pub. L. 96-265, which added section 1882 to Title XVIII of the Social Security Act (the Act). This law established minimum standards for Medicare supplemental health insurance or "Medigap" policies in order to protect Medicare beneficiaries from abuses found to be prevalent in the marketing of such policies. The Panel is comprised of four State Insurance Commissioners and a chairperson. The chairperson is the Director, Bureau of Program Operations, HCFA (by delegation of authority from the Secretary of the Department of Health and Human Services). Panel meetings are open to the public. Initially, under section 1882(b)(2(A) of the Act, State Commissioners were appointed to the Panel by the President. However, section 221(f) of the Medicare Catastrophic Coverage Act of 1988 (MCCA), Pub. L. 100-360, authorizes the Secretary to make these appointments.

The primary responsibility of the Panel is to review the States' legislative and regulatory requirements for Medicare supplemental health insurance policies to determine whether the individual State standards are equal to or more stringent than certain Federal requirements described in section 1882(b)(1) of the Act. States with Panel-approved programs are not subject to the Federal Voluntary Certification Program (VCP) for Medigap policies. There are at present 49 jurisdictions, including 46 States, that are not subject to VCP for Medigap policies. Also as

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specified in section 1882 of the Act, the VCP allows individual insurers in States with programs not approved by the Panel to submit Medicare supplemental policies to the Secretary for review. Those policies found to meet or exceed the Federal minimum standards can be certified as such and bear a Federal emblem when marketed in a nonapproved State.

The initial identification of complying and noncomplying State programs was completed in 1982. Since that time the Panel's principal legal responsibility has been to assure that approved States continue to maintain programs meeting Federal standards and to review changes made by States.

Section 1882 of the Act requires the Panel to review all State Medicare supplemental health insurance regulatory programs to determine whether they meet the minimum standards contained in section 1882 of the Act as amended. The States have been asked to submit to the Panel: a description of the State's plan to incorporate the revised minimum standards under section 1882 of the Act, including timetables for both OBRA 87 and MCCA provisions; a copy of the State statute(s) to regulate health insurance policies designed to supplement Medicare; a copy of any State regulations that implement the statute(s); a copy of any material that interprets the State's statute(s) and regulations governing such policies; a copy of any pending legislation that affects such policies; and a copy of any draft State regulations that would affect this area together with an indication of the expected date of final publication of such regulation. The Panel will compare the States' submitted materials with the Federal law and the National Association of Insurance Commissioners (NAIC) Model Regulation for Medicare Supplements, formally adopted on September 20, 1988.

At this meeting, the Panel will begin making its determinations as to the status of individual State programs. Section 1882(1)(6) of the Act also requires that the Secretary report to Congress in March 1989, on actions the States have taken to adopt standards equal to or more stringent than the NAIC Model Regulation.

II. Agenda

Agenda items for the meeting are discussion of HCFA implementation plans for OBRA 1987 and MCCA provisions and a review of State programs. Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13.774; Medicare-Supplementary Medicare Insurance)

Dated: November 14, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-27497 Filed 11-25-88; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

[Program Announcement 13655.891]

Grants to Indian Tribes for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), Office of Human Development Services, HHS.

ACTION: Amendment to notice of September 21, 1988.

Subject: Extension of deadlines for filing properly postmarked Notice of Intent to apply, and applications for Fiscal Year 1989 grants, under the Older Americans Act, Title VI, Grants for Native Americans, Part A, Indian Program.

SUMMARY: The Administration on Aging will extend from October 21, 1988, to ten days after this announcement, the deadline for sending properly postmarked Notices of Intent to apply for Fiscal Year 1989 Title VI grants, and will extend from January 13, 1989 to February 1, 1989 the deadline for filing applications.

FOR FURTHER INFORMATION CONTACT: Dr. M. Yvonne Jackson, Special Advisor for Native American Elders, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, Room 4748, 330 Independence Avenue, SW., Washington, DC 20201, (202) 245-2957.

DATE: Notices of Intent must be postmarked by ten days after this announcement; applications must be postmarked by February 1, 1989.

Background

On September 21, 1988, we published an announcement of the availability of funds under Title VI, Part A of the Older Americans Act (53 FR 36642). That announcement required Indian Tribes interested in receiving such funds to submit a Notice of Intent within 30 days, and thereafter an application for assistance. The Notices of Intent from current and new applicants were to be sent to the Administrator on Aging, and postmarked by 30 days after the date of that announcement (that is, by October 21, 1988). The Notices were required to have a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. The announcement said: "Private metered postmarks are not acceptable as proof of timely mailing." We received some Notices of Intent dated only by private postage meters, and not by the U.S. Postal Service or commercial carriers.

Since the Notice of Intent process and the postmarking requirements were new, and the Administration on Aging does not wish to penalize ongoing programs and new applicants who may have been confused, we are extending the filing deadline for filing the Notice of Intent to ten days after publication of this Notice.

We note that sometimes the U.S. Postal Service adds its own postmark on a private metered letter before delivering it, but sometimes it does not. It is the responsibility of the Tribe to assure that the U.S. Postal Service postmark is on the envelope containing the Notice.

New Procedure for Notices of Intent

The deadline for Notices of Intent is being extended, so that the Tribes which missed the filing deadline, as well as additional Tribes desiring to file a Notice for the first time, may do so. The Administration on Aging will notify the Tribes whose Notices must be resubmitted. If a Tribe is not notified by the Administration on Aging that it needs to resubmit its Notice, it may assume that its Notice was received or properly postmarked by October 21, 1988.

New Procedure for Applications

As noted in the September 21, 1988 Program Announcement, the Administration on Aging will send to all Tribes which file a timely properly postmarked Notice of Intent, application materials which will include a budget amount for the Tribe. Tribes should then send in full completed applications, postmarked no later than *February 1, 1989.* However, the earlier the Tribe submits its application, the more likely it is that the Administration on Aging can issue the Notice of Financial Assistance Awarded for the new grant by April 1, 1989. The application must also have a U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier.

The Program Announcement of September 21, 1988 had said that the application was to be submitted to the Department of Health and Human Services, Grants and Contracts Management Division, Hubert H. Humphrey Building-Room 345-F, 200 Independence Avenue, SW., Washington, DC 20201, Attn.: William J. McCarron.

However, due to the urgency of receiving the applications, we are changing those instructions and requiring that the applications be mailed directly to the Offices of Fiscal Operations, Office of Human Development Services, in the Regional Offices of the Department of Health and Human Services. The addresses will be enclosed with the application materials.

Other Provisions

All other provisions of the Program Announcement of September 21, 1988 still apply.

Dated: November 10, 1988.

Carol Fraser Fisk,

Commissioner on Aging.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

[FR Doc. 88-27282 Filed 11-25-88; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Draft Environmental Impact Statement on Reelfoot Lake Water Level Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that a Draft Environmental Impact Statement (DEIS) will be available for public review by November 30, 1988. The document addresses proposed changes in management of water levels on Reelfoot Lake, Obion and Lake Counties, Tennessee, and Fulton County, Kentucky.

The DEIS considers the environmental and socio-economic effects of implementing different lake level management strategies designed to improve long-term water quality and fishery resources while maintaining the integrity of wetlands and terrestrial habitats vital to migratory birds and other wildlife. It evaluates impacts of various alternative actions and determines the degree to which each would contribute to the improvement of the Reelfoot Lake ecosystem, as well as the positive and negative environmental and economic impacts.

The six alternatives being considered by the Fish and Wildlife Service (FWS) are:

Alternative 1—No Action

No change in water management would be made. Surface elevations of Reelfoot Lake would be maintained as close as possible to 282.2 mean sea level (m.s.l.).

Alternative 2—Dynamic Water Fluctuation

Surface elevations of the lake would be managed for a dynamic and more natural variation of at least 2-foot seasonal fluctuations between elevations 284.0 m.s.l. and 280.0 m.s.l.

Alternative 3—Major Drawdown

Reelfoot Lake water levels would be lowered during the summer by 4 feet (with the present water control structure) or 8 feet (with a new water control structure), at intervals of 5 to 10 years. Exposed lake bottoms would be allowed to dry for 120 days before refilling begins. When refilled, the lake level would be maintained 1 foot higher than spillway level until the following June 1st.

Alternative 4—State Law

Reelfoot Lake water levels would be managed as specified in Public Chapter No. 670 of the State of Tennessee Public Acts of 1986. Water control gates would remain closed until the lake's surface elevation has risen at least 1.2 feet higher than the spillway level, at which time the water control structure would be opened to prevent a further rise in lake levels.

Alternative 5—Raise Permanent Pool 1 Foot

This alternative would require a new water control structure with a spillway level set 1 foot higher than the present structure, and with adequate spillway capacity to control flooding above that elevation.

Alternative 6—Combined Dynamic Water Fluctuation and Periodic Major Drawdown

This preferred alternative is a combination of Alternatives 2 and 3.

Public meetings will be held at 7 p.m. on December 13, 1988, at the Reelfoot Lake State Park Museum, Tiptonville, Tennessee, and at 7 p.m. on December 14, 1988, at the National Guard Armory in Hickman, Kentucky, to provide information, answer questions, and receive formal, oral, and written statements pertaining to the DEIS.

Written comments on the DEIS from persons who do not attend the public meetings must be received no later than December 30, 1988, to be considered in the final environmental impact statement.

ADDRESS: Comments should be addressed to: Regional Director (ARW), U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT:

Mr. John C. Oberheu, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1240, Atlanta, Georgia 30303, Telephone: FTS 242-3538, Comm. 404/331-3538

or

Refuge Manager, Reelfoot National Wildlife Refuge, U.S. Fish and Wildlife Service, Route 2, Highway 157, Union City, Tennessee 38261, Telephone: Comm. 901/538-2481.

November 15, 1988.

Alan C. Bonsack,

Acting Regional Director.

[FR Doc. 88-27234 Filed 11-25-88; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[OR-090-09-6310-12; GP9-036]

Emergency Closure of Public Lands and Access Roads; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Lane County, OR.

SUMMARY: Notice is hereby given that certain public lands and access roads in Lane County, Oregon are temporarily closed to all public use, including vehicle operation, camping, shooting, hiking and sightseeing, from November 28, 1988 through April 4, 1989. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as Clear Cut Unit No. 3 of Timber Sale Contract No. OR090-TS85-65 and are located as follows:

Willamette Meridian, Oregon.

T. 15 S., R. 1 W.
Sec. 33: Metes and Bounds within the SE¼-NE¼
Sec. 34: Metes and Bounds within the S½-NW¼
Containing approximately 31 acres.

All roads on the public lands listed above are closed as specified above, as are BLM Road No. 16-1-5.3 from its beginning in Section 5, T. 16 S., R. 1 W., W.M. to its junction with BLM Road No. 16-1-3 in Section 3, T. 16 S., R. 1W., W.M., BLM Road No. 16-1-3 from its beginning to its junction with BLM Road No. 15-1-34.2 in Section 34, T. 15 S., R. 1 W., W.M., BLM Road No. 15-1-34.3 in its

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entirety located in Section 34, T. 15 S., R. 1 W., W.M., and BLM Road No. 15–1–34.2 in its entirety located in Section 34, T. 15 S., R. 1 W., W.M. Road Nos. 16–1–3, 15–1–34.2 and 15–1–34.3 are entirely located on public land, while Road No. 16–1–5.3 is located partially on public land and partially on private land.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchaser of BLM timber within the closure area and their subcontractors. In addition, the owners of the non-federal lands crossed by BLM Road No. 16–1–5.3 and those residing full time on such lands are exempt from the closure to the extent necessary to access and manage their lands. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands and roads temporarily closed to public use under this order will be posted with signs at points of public access. In addition, the boundaries of the closed Clear Cut Unit are blazed, painted and posted.

The purpose of this emergency temporary closure is to protect valuable public timber resources from unauthorized damage, to facilitate authorized timber harvest operations, and to protect persons from potential harm from logging operations.

EFFECTIVE DATES: November 28, 1988 through April 4, 1989.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and roads are available from the Eugene District Office, P. O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Lee Lauritzen, McKenzie Area Manager, Eugene District Office, at (503) 683–6888.

Date: November 16, 1988.

Lee Lauritzen,

Area Manager.

[FR Doc. 88–27299 Filed 11–25–88; 8:45 am]

BILLING CODE 4310–33–M

[AZ 020–41–5410–10–ZAFB; A–23553]

Mineral Interest Applications; Arizona

ACTION: Notice of receipt of Conveyance of Mineral Interest application A–23553.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Cahava Ranch Properties Partnership has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6N., R. 3 E.
Sec. 13, N½, SW¼, E½–SE¼.
T. 6 N., R. 4 E.
Sec. 18, Lots 1 to 4, E¾–W½, W½–SE¼.
Containing 969.76 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this Notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, September 29, 1988, whichever occurs first.

Date: November 10, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–27387 Filed 11–25–88; 8:45 am]

BILLING CODE 4310–32–M

[NM 940–09–4111–13, NM NM 14206]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2–3, Bassett-Birney Oil Corporation, petitioned for reinstatement of oil and gas lease NM 14206 covering the following described lands located in Eddy County, New Mexico:

T. 19 S., R. 26 E., NMPM
Sec. 1: E½–SW¼
Sec. 12: E½–NW¼
T. 19 S., R. 27 E., NMPM
Sec. 6: SE¼–SE¼
Containing 200.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and adminstrative cost of $500.00 has been paid. Future rentals shall be at the rate of $7.00 per acre per year and royalties shall be at the rate of 16⅔ percent, computed on a sliding scale of 4 percentage points greater than the competitive royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, November 1, 1986.

Date: November 18, 1988.

Dolores L. Vigil,

Acting Chief, Adjudication Section.

[FR Doc. 88–27394 Filed 11–25–88; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–920–09–4212–13; A–22880]

Exchange of Public and Private Lands in Mohave and Yavapai Counties; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice corrects two errors in the legal description of land conveyed to the United States published in notice of land exchange, A–22880.

FOR FURTHER INFORMATION CONTACT: John Gaudio, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 88–24908 on page 43774 in the issue of Friday, October 28, 1988, the eleventh line from the bottom of the third column should read "R. 16 N., R. 13 W.," and on page 43775, the third line from the top of the first column should read "NE¼SW¼, W½SE¼."

John T. Mezes,

Chief, Branch of Lands and Minerals Operations

[FR Doc. 88–27296 Filed 11–25–88; 8:45 am]

BILLING CODE 4310–32–M

[OR–020–09–4212–13; GP9–026; OR–32978]

Realty Action; Exchange of Lands in Harney County, OR

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 28 S., R. 33 E.,
Sec. 20, W½SW¼ and SE¼SW¼;
Sec. 29, W½ and S½SE¼;
Sec. 30, E½E½ and SW¼SE¼;
Sec. 31, lot 4, NE¼ and NE¼SE¼;
Sec. 32;
Sec. 33.
T. 29 S., R. 32 E.,
Sec. 1, E½ and E½NW¼;
Sec. 11, E½E½;
Sec. 12.
T.29 S., R. 33 E.,
Sec. 3, W½SW¼;
Sec. 4, lots 2, 3, and 4, SW¼NE¼, †S½NW¼ and S½;
Sec. 5;
Sec. 6;
Sec. 7;
Sec. 8;
Sec. 9;
Sec. 10, SW¼SW¼.

The area described aggregates 7,309.94 acres, more or less, in Harney County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from Delmer and Jo McLean:

Willamette Meridian

T. 30 S., R. 32 E.,
Sec. 4, lots 2 and 3, SE¼NW¼, SW¼NE¼, W½SE¼ and E½SW¼.
T. 30 S., R. 34 E.,
Sec. 1, lot 3, SW¼, SE¼NW¼, and †SW¼SE¼;
Sec. 12, W½, W½E½, and NE¼NE¼;
Sec. 13, E½W½, W½E½, and E½NE¼;
Sec. 24, NE¼.
T. 30 S., R. 35 E.,
Sec. 5, S½SW¼;
Sec. 6, lot 7 and SE¼SE¼;
Sec. 7, lot 1, E½NW¼, NE¼, NE¼SW¼, and NW¼SE¼;
Sec. 8, N½NW¼, and SW¼NW¼.

The area described aggregates 2,320.78 acres, more or less, in Harney County, Oregon.

The purpose of this exchange will be to acquire several miles of riparian and aquatic habitat in the Coyote and Riddle Creek Drainages. The private lands being acquired also have value for recreation, diverse wildlife habitat, and grazing management opportunities. The public interest will be well served by making this exchange.

The value of the lands to be exchanged is approximately equal. Final equalization will be made by acreage adjustments and/or cash equalization. Any monetary adjustments made will be for no more than 25 percent of the appraised value of the public lands involved.

These lands would not be exchanged until completion of the Andrews Drewsey Land Tenure Management Framework Plan Amendment or planning conformity is otherwise achieved.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation to the United States of a right-of-way for a segment of the Desert Trail, as described in BLM case OR–44412.

3. Valid, existing rights including, but not limited to, any right-of-way, easement or lease of record and to any existing easements for public roads and highways, not shown of record.

The publication of this Notice in the **Federal Register** will segregate all of the above described public lands to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not from exchange under section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange is available for review at the Burns District Office, HC 74–12533, Highway 20 West, Hines, Oregon 97738. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the Burns District Manager at the above address.

Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: November 14, 1988.

Joshua L. Warburton,

District Manager.

[FR Doc. 88–27386 Filed 11–25–88; 8:45 am]

BILLING CODE 4310–33–M

[WY–940–09–4520–12]

Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Managment, Cheyenne, Wyoming, effective 10:00 a.m., November 10, 1988.

Sixth Principal Meridian

T. 32 N., R. 91 W.

The plat, in two sheets, representing the dependent resurvey of a portion of the Eighth Standard Parallel North, through R. 91 W., the south, east and west boundaries and the subdivisional lines, T. 32 N., R. 91 W., Sixth Principal Meridian, Wyoming, Group No. 458, was accepted November 8, 1988.

T. 51 N., R. 97 W.

The plat, in six sheets, representing the dependent resurvey of portions of certain tracts, Twelfth Guide Meridian West, through T. 51 N., between Rs. 96 and 97 W., west boundary and subdivisional lines, and the subdivision of certain sections, T. 51 N., R. 97 W., Sixth Principal Meridian, Wyoming, Group No. 403, was accepted November 8, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

T. 39 N., R. 115 W.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the subdivision of section 18, T. 39 N., R. 115 W., Sixth Principal Meridian, Wyoming, Group No. 490, was accepted November 8, 1988.

T. 39 N., R. 116 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines and Homestead Entry Survey Nos. 149, 188 and 248, T. 39 N., R. 116 W., Sixth Principal Meridian, Wyoming, Group No. 490, was accepted November 8, 1988.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: November 10, 1988.

Dennis D. Bland,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 88–27371 Filed 11–25–88; 8:45 am]

BILLING CODE 4310–22–M

Minerals Management Service

Development Operations Coordination Document; Pennzoil Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

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SUMMARY: Notice is hereby given that Pennzoil Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2882, Block 125, South Marsh Island Area, ofshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 17, 1988. Comments must be received December 13, 1988 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/ Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: November 18, 1988.

J. Rogers Pearcy

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–27297 Filed 11–25–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Draft Colorado River Management Plan and Environmental Assessment; Grand Canyon National Park, Arizona

SUMMARY: Notice of Availability of the Draft Colorado River Management Plan and Environmental Assessment, Grand Canyon National Park, AZ.

Notice is hereby in accordance with § 1506.6(b)(2) of Title 40 Part 1506, of the Code of Federal Regulations, of availability of a draft revision of the Colorado River Management Plan and Environmental Assessment, Grand Canyon National Park, AZ.

SUPPLEMENTARY INFORMATION: Alternatives evaluated by the Environmental Assessment include: (1) No action, continue action under the 1981 plan guidelines, and (2) initiate management under the revised plan.

DATE: The revised plan and Environmental Assessment are available for public review and comment for a period not to exceed December 9th.

ADDRESSES: Single Copies of the draft revision may be obtained from the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

Date: November 21, 1988.

W. Lowen White

Acting Regional Director Western, Region.

[FR Doc. 88–27303 Filed 11–25–88; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 95 [1]; Amendment No. 4]

United Tariff Bureau, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: United Tariff Bureau, Inc. (UTB) has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of UTB's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from UTB's representative: Alvin Altman, Brodsky, Linett, Altman, Schechter and Reicher, 888 Seventh Avenue, New York, NY 10106.

DATES: Comments from interested persons are due December 28, 1988. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to section 5a Application No. 95 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Jasneth Metz, (202) 275–7974,
or
Richard B. Felder, (202) 275–7691.
(TDD for hearing impaired (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (D.C. Metropolitan area) (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

United Tariff Bureau, Inc. (UTB) has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(e) of the Motor Carrier Act of 1980, Pub. L. 96–296 (1980) (MCA). Since filing its application, UTB has been obliged to observe the requirements of the MCA and the standards in *Motor Carrier Rate Bureaus—Imp. Pub. L. 96–296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*). We have provisionally approved UTB's agreement as consistent with 49 U.S.C. 10706(bj) and *Rate Bureau, supra*, subject to certain conditions and modifications in the following subject areas: identification and description of member carriers; right of independent action; rate bureau protests; employee docketing; open meetings; proxy voting; final disposition of cases; single-line rates; general rate increases and decreases; changes in tariff structure; and zone of rate freedom and released rates. We have also offered comments and imposed requirements concerning the agreement generally. UTB has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and the *Rate Bureau* case *supra*, we request applicant and other interested persons to comment on our interpretation of the controlling authority and administrative criteria, and their application to UTB's agreement.

A copy of any comments filed with the Commission must also be served on UTB, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that UTB must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: November 17, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27312 Filed 11–25–88; 8:45 am]

BILLING CODE 7035–01–M

[1] Section 5 was recodified as 49 U.S.C. 10706.

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

November 22, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies. Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395–7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible. The Department of Justice's Clearance Officer is Mr. Larry E. Miesse who can be reached on (202) 633–4312.

Existing Collection in use Without an OMB Control Number

(Expedited OMB review requested. copy of form included in this notice.)

(1) Civil Liberties Act of 1988—Voluntary Information Form

(2) CRT–55, Civil Rights Division

(3) One time use.

(4) Individuals or households. Under the provisions of 50 USC App. 1989b, this voluntary form may be used to locate persons of Japanese ancestry who were confined, held in custody, relocated, or otherwise deprived of liberty during World War II.

(5) 60,000 respondents at .5 hours each.

(6) 30,000 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance officer, Department of Justice.

BILLING CODE 4410–01–M

VOL 53 ISS 228 NO 28 1988 UMI

U.S. Department of Justice
Civil Rights Division
Office of Redress Administration

DRAFT

Civil Liberties Act of 1988 Voluntary Information Form

OMB Approval #1190-__
Expires _____

Your support is needed to locate persons of Japanese ancestry who were confined, held in custody, relocated, or otherwise deprived of liberty or property during World War II. The submission of information is entirely voluntary. However, any of the information below will be of assistance in locating those individuals who may be eligible to receive compensation under the Civil Liberties Act of 1988. If you cannot fully answer all of the questions, partial information is also helpful. Failure to use this form will in no way impact any claim under this program. Form use is merely to standarize data.

IMPORTANT: You may complete this form if you believe yourself to be eligible for payment under the Act or you may complete this form to help locate another individual who may be eligible to receive payment.

SECTION A - CURRENT DATA ON POTENTIALLY ELIGIBLE INDIVIDUAL

1. Full name (last, first, middle)	2. Maiden name	3. Other names used		
4. Street address	City	State	Zip Code	Country
5. Home telephone ( )		6. Office telephone ( )		
7. Date of birth	8. Place of birth	9. Sex	10. Social Security No.	
11. Of Japanese ancestry? Yes___ Other:				
12. Citizenship Natural born U.S. citizen ___ Naturalized U.S. citizen ___ Date of naturalization: Other:				
13. Alien Registration Number, if any:				

SECTION B - HISTORICAL INFORMATION REGARDING INTERNMENT, RELOCATION, OR DETENTION OF POTENTIALLY ELIGIBLE INDIVIDUAL. Complete as much as you remember. Partial information is helpful.

1. Last permanent address prior to evacuation:				
Street address	City	State	Zip Code	Country
2. Names of assembly centers, relocation centers, camps, or other places of relocation or detention:				
3. Family number	4. Name of head of family group	5. Relationship to head of family group		
6. Names of parents Mother	Now living? Yes __ No __	Date/place of death		
Father	Now living? Yes __ No __	Date/place of death		
8. If individual was a voluntary evacuee, approximate date of evacuation and place of resettlement:				

DRAFT

Form CRT-55
Oct. 88

SECTION C - INFORMATION REGARDING SURVIVOR BENEFITS

If an eligible individual dies after the enactment of the Civil Liberties Act (August 10, 1988), but before receiving payment, a surviving spouse, children, or parents may be eligible to receive payment. To ensure that accurate survivor information is on file, please provide the following:

1. Current spouse Name	Date of Marriage	Address

2. Living children (include all natural children, adopted children, and step children who lived with you in a parent-child relationship)

Name	Address

3. Living parents (include parents by adoption)

Name	Address

SECTION D - To be completed by person filing this form (Complete this section only if you are providing information on someone else. If you are completing this form on your own behalf, please go on to Section E)

1. Your full name (last, first, middle)				
2. Your relationship to potentially eligible individual identified above (i.e. self, spouse, friend, son, daughter, etc.):				
3. Street address	City	State	Zip Code	Country
4. Home telephone ( )		Office telephone ( )		

SECTION E

Signature	Date

Because the Department of Justice may make use of this information, as detailed below, a Privacy Act Statement has been included.

The authority for this information is contained in 50 U.S.C.App. 1989b. The information that you provide will be used principally for locating and identifying persons eligible for payment under the restitution provisions of the Civil Liberties Act. Additional disclosures of the information may be: to a Federal, State, or local agency to confirm a person's date of birth, date of death, or address; to Members of congress or staff to enable the Congressman to provide service to his or her constituency; to volunteer student-workers so that they may perform their duties; to the news media when release is made consistent with the Freedom of Information Act and 28 C.F.R. 50.2; and to the National Archives and Records Administration and General Services Administration to perform records management inspection functions in accordance with their statutory responsibilities.

Reporting Burden

Public reporting burden for this collection of information is estimated to average 30 minutes per response, inlcuding the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: U.S. Department of Justice, Civil Rights Division, Office of Redress Administration, Room 7603, Washington, D.C. 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Public Use Report Project 1190-xxxx, Washington, D. C. 20503.

SEND TO: OFFICE OF REDRESS ADMINISTRATION
P.O. BOX 66260, WASHINGTON, D.C. 20035-6260

DRAFT

[FR Doc. 88-27317 Filed 11-25-88; 8:45 am]
BILLING CODE 4410-01-C

VOL 53 ISS 228 NO 28 1988 UMI

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-20,727]

London Fog, Powell, TN; Negative Determination Regarding Application for Reconsideration

By an application dated October 7, 1988 the Amalgamated Clothing Workers Union (ACTWU) AFL-CIO, requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on August 25, 1988 and published in the **Federal Register** on September 7, 1988 (53 FR 34597).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Workers at Powell produced men's golf jackets and warmers (liners) for raincoats and golf jackets. The Powell plant closed in June, 1988.

The union questions the accuracy of the responses of London Fog's customers in the Department's survey. The union also claims that imports of men's golf jackets increased during the relevant time period. Also, the union submitted an import agreement which shows that employment will be reduced at Powell because of rainwear imports and the transfer of raincoat warmer production to other company plants.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. The Department's survey of the subject firm's customers shows that most of the respondents reported no import purchases of men's golf jackets during the period applicable to the petition. Some customers, however, did report import purchases of men's golf jackets. However, the importing customers either had increased purchases from the subject firm or their import purchases accounted for a negligible portion of the subject firm's sales decline. The responses were from specific buyers of men's golf jackets and the survey forms were signed by them. The Department has no reason not to believe in the results of its survey.

Investigation findings show that the company did not import warmers, as such, but imported raincoats which include the warmers. Company officials indicated that after the transfer of warmer production to other corporate domestic plants, there was not enough work to justify the subject plant remaining open. Also, the transfer of component production to other domestic plants would not form a basis for certification.

The component issue was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d (D.C. Circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Increased imports of raincoats cannot be considered in determining import injury to workers producing raincoat warmers. Imports of finished articles (raincoats) incorporating components (warmers) are not like or directly competitive with the articles produced at the workers' firm.

Lastly, the Department did not deny certification to workers at the subject plant because rainwear workers were never certified. This statement in the Department's denial addresses the integration of production principle which should have been clarified. In order to certify workers producing components, the component production must be integrated with production at other company plants whose workers are already under a certification. However, this is not the case with London Fog, since none of their workers at the other plants are currently under a certification. Accordingly, the component workers (workers producing warmers) at Powell cannot be certified eligible to apply for adjustment assistance under the integration of production principle.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th Day of November, 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-27373 Filed 11-25-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,831]

Indiana Gas and Chemical Corp.; Terre Haute, IN; Negative Determination Regarding Application for Reconsideration

By an application dated October 26, 1988, Local #12009-30 of the United Steelworkers of America (USW) AFL-CIO, requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on September 20, 1988 and published in the **Federal Register** on October 6, 1988 (53 FR 39366).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Indiana Gas and Chemical in Terre Haute produced foundry coke. Production at the plant ceased in July 1988.

The union claims that imported steel adversely affected Indiana Gas and Chemical. Its alleged that since foreign steel has taken up some of the domestic market, less foundry coke is required by domestic steelmakers to produce steel.

In order for a worker group to become certified eligible to apply for adjustment assistance it must meet all three of the Group Eligibility Requirements of the Trade Act of 1974. The three group eligibility requirements are: (1) A significant decrease in employment, (2) an absolute decrease in production and/or sales and (3) an increase in imports of articles like or directly competitive with those articles produced by the workers' firm which "contributed importantly" to their layoffs and declines in sales or production. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. The Department's survey of the subject firm's customers which accounted for a substantial portion of the firm's 1988 sales shows that none of the respondents reported import purchases of coke in the first six months of 1988 compared to the same period in 1987. Also, sales and production of foundry coke increased in 1987 compared to 1986.

The Department addressed the union's claim of imported steel adversely affecting the workers at Indiana Gas and Chemical in its original denial. The Department recognizes that in an economic sense employees of firms producing coke can be adversely affected by imports of products manufactured further downstream in the economy. Under the Trade Act of 1974, however, only increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision can be considered. Steel and farm equipment imports are not like or directly competitive with coke. This issue was addressed in *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d 174 (D.C. Circ. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, steel and farm equipment which are further removed from the finished article cannot be considered like or directly competitive with coke.

Conclusion

After review of the application and investigation findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of November 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-27372 Filed 11-25-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,035, et al.]

Phillips Petroleum Co.; Exploration and Production Group, et al.; Revised Determinations on Remand

Pursuant to the U.S. Court of International Trade remand, dated September 27, 1988, in *Former Employees of Phillips Petroleum Company*, v. *Secretary of Labor* (USCIT 87-09-00793), the Department is issuing a revised notice of determinations. The Court's remand requires that the Department consider the applicability of the 1988 amendments of the Trade Act of 1974 to the subject worker petitions.

Investigation findings show that Phillips Petroleum is a fully integrated producer of crude oil, natural gas, natural gas liquids and refined petroleum products and as such the 1988 amendments to the Trade Act would not apply. The Omnibus Trade and Competitiveness Act of 1988 extended eligibility for trade adjustment assistance (TAA) to workers with independent firms engaged in the exploration or drilling of oil and natural gas.

Workers in the Eastern and Western Divisions of Phillips Petroleum's Exploration and Production Group (TA-W-19,035 and TA-W-19,314) were subsequently certified eligible to apply for adjustment assistance under TA-W-20,862 and TA-W-20,875, respectively. Workers covered under TA-W-20,862 and TA-W-20,875 have impact dates of July 19, 1987 and August 2, 1987, respectively. Both certifications are based on an increased reliance on imports of crude oil used as feedstock for company refineries in 1987 compared to 1986.

Investigation findings on remand show increased company imports of crude oil by Phillips Petroleum in 1986 compared to 1985 and in 1987 compared to 1986. This finding together with the decreased production and employment findings in the Eastern and Western Divisions provide sufficient justification to certify workers in the subject divisions with impact dates back to January 7, 1986 for workers in the Western Division and February 19, 1986 for workers in the Eastern Division.

It is recommended that workers in Corporate Engineering at Borger, Texas (TA-W-19,134) and in the Refinery and Natural Gas Liquids Processing Center also at Borger, Texas (TA-W-17,135) be denied eligibility to apply for adjustment assistance. Engineering activities at Borger did not account for a significant amount of time on crude oil. Workers at the Borger Refinery produced refined products. U.S. imports of gasoline, the leading refined petroleum product made by Phillips, and dry natural gas declined absolutely and relative to domestic shipments in 1986 compared to 1985. Phillips does not import refined petroleum products.

Conclusion

After careful review of the additional facts obtained on remand, it is concluded that increased imports of crude oil like or directly competitive with the crude oil produced in the Western and Eastern Divisions of Phillips Petroleum's Exploration and Production Group contributed importantly to worker separations and to declines in production and employment in the Western Division, Denver, Colorado and in the Eastern Division, Houston (Bellaire), Texas. In accordance with the provisions of the Trade Act of 1974, I make the following revised determinations:

All workers of Phillips Petroleum Company's Exploration and Production Group in the Western Division, Denver, Colorado who were laid off on or after January 7, 1986 and before August 2, 1987 and all workers in the Eastern Division, Houston, (Bellaire) Texas who were laid off on or after February 19, 1986 and before July 19, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

It is further determined that the Department's initial negative determination for all workers of Phillips Petroleum Company's Corporate Engineering at Borger, Texas and all other workers at the Refinery and Natural Gas Liquids Processing Center, Border, Texas be affirmed.

Signed at Washington, DC, this 9th day of November, 1988.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 88-27374 Filed 11-25-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,039]

Ultramar Oil & Gas Limited, Denver, CO; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 19, 1988 in response to a worker petition which was filed on behalf of workers and former workers at Ultramar Oil and Gas Limited, Denver Branch Office, Denver, Colorado.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) do not apply to workers who were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

No layoffs occurred at the Denver facility since September 6, 1987, one year prior to the date of the petition, which was September 6, 1988, and the earliest possible impact date. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-27375 Filed 11-25-88; 8:45 am]

BILLING CODE 4510-30-M

VOL
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ISS
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Occupational Safety and Health Administration

[V-88-3]

Union Carbide Corp.; Variance Application

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for temporary variance and interim order; Grant of interim order; Denial of the request for permanent variance.

SUMMARY: This notice announces the application of Union Carbide Corporation for a temporary variance and an interim order from the standard prescribed in 29 CFR 1926.550(g)(3)(ii)(C) concerning the installation of anti-two-blocking devices on cranes used to hoist personnel platforms. This notice also announces the granting of an interim order until a decision is rendered on the application and the denial of a request for a permanent variance.

DATES: The interim order became effective on October 28, 1988, the date of the letter granting the interim order.

The interim order shall remain in effect until December 31, 1988 or until a decision is rendered on the application for variance, whichever occurs first. The last date for interested persons to submit comments on the temporary variance application is December 28, 1988. The last date for affected employers and employees to request a hearing is December 28, 1988.

ADDRESS: Send comments or request for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:
James J. Concannon, Director, Office of Variance Determination, at the above address, Telephone: (202) 523-7193.

Or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 525 Griffin Square, Room 602, Dallas, Texas 75202.

U.S. Department of Labor—OSHA, Government Plaza—Room 300, 400 Main Street, Corpus Christi, Texas 78401.

Notice of Application

Notice is hereby given that Union Carbide Corporation (the applicant), 39 Old Ridgebury Road, Danbury, Connecticut 06817-0001 has made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 655) and 29 CFR 1905.10 for a temporary variance and interim relief or, in the alternative, a permanent variance and interim relief under section 6(d) of the Act from the standard prescribed in 29 CFR 1926.550(g)(3)(ii)(C) which requires that cranes and derricks used to hoist personnel platforms be equipped with an anti-two-blocking device.

The place of employment affected by the temporary variance application is the Union Carbide Corporation Seadrift Plant, Polyolefins Division, P.O. Box 186 Port Lavaca, Texas 77979. The plant is located 25 miles south of Victoria, Texas. Union Carbide has certified that a copy of the application has been posted at the places where notices to employees are normally posted in order to inform employees of the application. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant has submitted evidence that, despite its best efforts both prior to and subsequent to the effective date of the pertinent standard, it has been unable to obtain anti-two-blocking devices, because the devices which the applicant has ordered from the Manitowoc Engineering Co. and the American Crane Corporation, the manufacturers of the cranes used by the applicant, are not yet available. In addition, the applicant has found that the erection of scaffolding and other alternative means of access to certain elevated work stations to perform necessary maintenance and repair are less safe than hoisting personnel platforms with cranes not yet equipped with the anti-two-blocking devices. Union Carbide believes, on the basis of representations from Manitowoc, American Crane and crane parts suppliers, that the devices will be delivered and installed by December 31, 1988. The application for a temporary variance and an interim order is supported by affidavits and other evidence, including letters from the crane manufacturers.

The applicant states that there is a risk of shutting down some chemical units if the inability to hoist personnel platforms by cranes prevents maintenance employees from obtaining safe access to important equipment. Moreover, the applicant planned a shut-down at the Seadrift Plant in early November to perform necessary maintenance on a number of key chemical units. The applicant believes that some use of personnel platforms is necessary because some of the jobs planned are beyond the safe reach of other access means.

The applicant has requested an interim order because, pending the delivery and installation of the required anti-two-blocking devices, the applicant believes that the Seadrift Plant urgently needs permission to hoist personnel using the best available alternative to anti-two-blocking devices. According to the applicant, certain repair and maintenance operations should not be performed using scaffolding and other "conventional" means of access, because hoisting is safer. Thus, the applicant requested relief from 29 CFR 1926.550(g)(3)(ii)(C) until December 31, 1988, so that it could hoist personnel using alternative safety precautions which are in accordance with section 5-3.2.2(a)(4), (a)(7) and (a)(8) of ANSI B30.5-1982, Mobile and Locomotive Cranes, until the anti-two-blocking devices are delivered, installed and tested. These precautions include stationing a monitor equipped with an FM radio both in the personnel platform and at ground level to ensure, through the monitors' vigilance and through contact with the crane operator, that the load block of the personnel platform does not contact the boom, and training and crane operator to ensure that vertical line speed does not exceed 75 feet per minute. According to the applicant, the Seadrift Plant has approximately 11 years of experience in using these safety precautions.

OSHA is denying the application for a permanent variance for a limited period and interim relief, because the ANSI-specified safety precautions which the applicant proposes to use in lieu of positive-acting anti-two-blocking devices would not provide employment and places of employment which are as safe and healthful as those which would apply if the applicant complied with 29 CFR 1926.550(g)(3)(ii)(C). Indeed, OSHA made an explicit determination in the rulemaking for crane and derrick hoisted personnel platforms that "* * * because the Agency believes that only two-blocking preventive devices will provide the necessary employee protection, OSHA has not followed the pertinent ANSI standard" (53 FR 29125, August 2, 1988).

Grant of Interim Order

It appears from the Union Carbide Corporation application and supporting materials that the applicant was, apparently, unable to comply with 29 CFR 1926.550(g)(3)(ii)(C) by the October 3, 1988 effective date because the pertinent equipment was not yet available. It further appears that the applicant is taking and will take all necessary steps to obtain the required anti-two-blocking devices and, in the interim, will take all available steps to safeguard employees and to comply with § 1926.550(g). Thus, based on the evidence, OSHA has decided that the Union Carbide Seadrift Plant, located near Victoria, Texas, warrants relief from the requirements of 29 CFR 1926.550(g)(3)(ii)(C) in the form of an interim order as authorized under 29 CFR 1905.10(c) of the temporary variance procedures.

Therefore, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, 29 CFR 1905.10(c), and the Secretary of Labor's Order No. 9-83 (48 FR 35736) OSHA has ordered that the Union Carbide Seadrift Plant be granted an interim order (effective on October 28, 1988, the date of the letter) with which the applicant will comply instead of complying with the requirements in 29 CFR 1926.550(g)(3)(ii)(C).

The conditions and terms of the interim order are enumerated below:

1. One employee in the personnel platform and one employee at ground level shall be equipped with portable FM radios tuned to the FM frequency in the crane cab. These employees shall monitor the hoist to determine if the personnel platform is getting too close to the boom and take necessary action, such as warning the operator, to ensure that the personnel platform does not contact the boom.

2. When communication stops, is interrupted or fails, the hoisting operation shall be terminated until communication is restored and safe movement is ensured.

3. The employee on the personnel platform and at the ground level monitoring the crane-hoisted personnel platform shall be competent persons as defined in 29 CFR 1926.32(f).

4. The crane operator shall maintain visual contact with the personnel platform whenever possible. Where it is not possible to see the personnel platform itself, the operator shall ensure that the crane is positioned so that the operator can see enough of the hoist line to ensure that the minimum distance between the boom and the platform is being maintained.

5. The applicant shall prescribe a minimum distance that the operator shall maintain between the two blocks to prevent two-blocking. This distance will incorporate a safety margin and will also be sufficient to ensure, taking into account the dimensions of the personnel platform and the angle of the boom, that the personnel platform does not contact the boom.

6. The applicant shall ensure that vertical line speeds do not exceed 75 feet per minute during the hoisting of the personnel platform.

7. The applicant shall train its crane operators to determine accurately that the line speed is no greater than 75 feet per minute and to determine how much line must remain between the boom and the personnel platform to ensure that two-blocking will not occur.

8. The applicant shall comply with all provisions of this order and with all applicable requirements of 29 CFR Part 1910 and 29 CFR Part 1926 except to the extent that it has been expressly granted relief from those requirements.

9. The applicant shall permit OSHA to inspect its personnel platform hoisting operations during normal business hours or upon appropriate notice at any time in connection with any aspect of this order.

10. The applicant shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for temporary variance and interim order.

The Assistant Secretary may revoke this order at any time, without prior notice whenever the applicant does not comply with any requirements of the order or relevant standards, or if other information indicates that revocation of the interim order is warranted. Unless revoked, the interim order will remain in effect until December 31, 1988.

Signed at Washington, DC this 21st day of November 1988.

John A. Pendergrass,
Assistant Secretary of Labor.

[FR Doc. 88-27284 Filed 11-25-88; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-98]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

Agency: National Aeronautics and Space Administration.

Action: Notice of meeting.

Summary: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

Date and Time: December 13, 1988, 8:30 a.m. to 5 p.m. and December 14, 1988, 8:30 a.m. to 3 p.m.

Address: Capital Gallery Building, 600 Maryland Avenue SW., Suite 204, Washington, DC 20024.

For Further Information Contact: Dr. W.P. Raney, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

Supplementary Information: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is charied by Mr. Laurence J. Adams and is composed of 20 members including individuals who also serve on other NASA advisory committees. This meeting will be open to the public up to the seating capacity of the room, (which is approximately 50 persons including team members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

December 13, 1988

8:30 a.m.—Chairman's Remarks.
9 a.m.—Overview and Update.
10 a.m.—Program Office (SSPO) Report
Requirements Review.
11:30 a.m.—Special Topics.
1 p.m.—Associate Contractor
Arrangement (ACA).
Headquarters.
Centers.
Contractors.
3:45 p.m.—Safety, Realiability, and Quality Assurance.
4:15 p.m.—Joint Studies.
5 p.m.—Adjourn.

December 14, 1988

8:30 a.m.—Polar Platforms.
Design.
Use.
10 a.m.—Panel Reports and Plans.
1 p.m.—Committee Discussion.
3 p.m.—Adjourn.

November 21, 1988.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-27311 Filed 11-25-88; 8:45 am]

BILLING CODE 7510-01-M

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by December 28, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 728 Jackson Place, NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION:

The Endowment requests a review of the revision of a currently approved collection. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Opera-Musical Theater Program Application Guidelines for FY 1990.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guidelines instructions and applications elicit relevant information from individual artists, non-profit organizations and state and local arts agencies that apply for funding under specific program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 339.

Average Burden Hours per Response: 51.

Total Estimated Burden: 17,168.

Anne E. Cowperthwaite,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88–27382 Filed 11–25–88; 8:45 am.]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Mechanical Components; Meeting

The ACRS Subcommittee on Mechanical Components will hold a meeting on December 12, 1988, Room P–114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Monday, December 12, 1988—2:30 p.m. until the conclusion of business

The Subcommittee will continue its review of the NRC staff's generic letter to extend testing and surveillance to all safety-related MOVs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allocated therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 21, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–27336 Filed 11–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–275]

Pacific Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–80, issued to the Pacific Gas and Electric Company (PG&E or the licensee) for operation of the Diablo Canyon Nuclear Power Plant (DCPP) Unit 1 located in San Luis Obispo County, California.

The amendment would revise the technical specifications (TS) relating to the required frequency interval identified in TS 4.3.1.1, Table 4.3–1 for performance of the operational test for the Unit 1 seismic trip actuation device. The present surveillance requirement provides for the seismic trip actuation device operational test to be conducted semiannually. The proposed change would allow the test to be performed no later than the next refueling outage (currently targeted for October 1989).

The proposed amendment was requested by the licensee's letter of November 10, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the hazard considerations involved with the proposed amendment, focusing on the three standards set forth in 10 CFR 50.92(c) as quoted below:

1. Does the change involve a significant increase in the probability or consequence of an accident previously evaluated?

Operated of the seismic trip is not required or assumed to mitigate the consequences of any accident in the FSAR Update safety analyses. Further, increasing the surveillance interval of the trip actuating device operational test will not affect the integrity of the reactor protection system. The seismic trip equipment history demonstrates that equipment failures would have resulted in the seismic trip system performing its intended function. Because the current design does not permit reliable on-line testing at power, two challenges to the reactor protection system have occurred during testing. Therefore, the proposed exemption change to increase the surveillance interval of the seismic reactor trip actuating device operational test until the next refueling outage does not increase the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There is no physical alteration to any plant system, nor is there a change in the method by which any safety related system performs its function. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in the margin of safety?

The proposed change would potentially reduce the number of reactor trips due to surveillance testing and, therefore, would result in an increase in plant safety. Since the seismic reactor trip is not assumed to function for any of the Chapter 15 FSAR Update accident analyses, there is no effect on the margin of safety as defined in these analyses. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The staff has considered the proposed change and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has determined that the requested amendment meets the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 28, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing or petition for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed before the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an apppropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves no significant hazards consideration, any hearing held would take place before the issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is

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that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication data and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 10, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Dated at Rockville, Maryland this 21st day of November 1988.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR. Doc. 88–27332 Filed 11–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–446]

Texas Utilities Electric Co., et al., Comanche Peak Steam Electric Station, Unit No. 2; Order Extending Latest Construction Completion Date

The Texas Utilities Electric Company, Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (Applicants) are holders of Construction Permit No. CPPR–127 issued by the Atomic Energy Commission [1] on December 19, 1974 for construction of the Comanche Peak Steam Electric Station, Unit No. 2, a nuclear facility utilizing a Westinghouse Electric Corporation nuclear steam supply system, at the Applicants's site in Somervell County, Texas.

By letter dated April 29, 1987, as supplemented on July 22, September 9, and December 3, 1987, and amended and supplemented on June 6, 1988, the Applicants filed a request for extension of the latest construction completion date specified in Construction Permit No. CPPR–127 to August 1, 1992. The Applicants state that an intensive program of review and reinspection was initiated in the fall of 1984 to provide evidence of the safe design and construction of Comanche Peak Units No. 1 and No. 2. The temporary direction of resources since mid–1985 to activities under that remedial program to Unit No. 1 rather than to Unit No. 2, as well as the temporary suspension of Unit No. 2 construction for about one year beginning in April 1988 (which will allow the Applicants time to make a more complete determination of any modifications that may be required for Unit No. 2 based upon the knowledge they gain from the reinspection and corrective action program applied to Unit No. 1), have caused delays which have contributed to the need for the extension of the latest construction completion date for Unit No. 2.

The remedial program was undertaken by the Applicants to respond to issues raised by the NRC staff, the Atomic Safety and Licensing Board (ASLB), and other sources in the operating license proceeding.[2] Although the Applicants temporarily suspended construction of Unit No. 2, they must maintain the construction permit in effect since they have not announced termination of the facility. The Applicants anticipate that remedial program activities related to Unit No. 2 and its preparation for operation will not be complete before August 1, 1992.

As discussed more fully in the staff's related Evaluation of Request dated November 18, 1988, we have concluded that good cause has been shown for the delay and that the requested extension is for a reasonable period. We have further concluded that the requested extension involves no significant hazards consideration, and therefore, no prior public notice is required.

The NRC staff has prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on October 25, 1988 (53 FR 43055). The NRC staff has concluded that this action will not have a significant impact on the quality of the human environment, and therefore, no environmental impact statement need be prepared.

The Applicants' letter dated April 29, 1987, as supplemented on July 22, September 9, and December 3, 1987, and amended and supplemented on June 6, 1988, and the staff's letter and evaluation issued in support of this Order are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the local public document room at Somervell County Public Library, Glen Rose, Texas 76043.

It is hereby ordered that the latest construction completion date for CPPR–127 be extended to August 1, 1992.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 18th day of November 1988.

James G. Partlow,

Director, Office of Special Projects.

[FR Doc. 88–27333 Filed 11–25–88; 8:45 am]

BILLING CODE 7590–01–M

[1] Effective January 20, 1975, the Atomic Energy Commission was abolished and its regulatory authority transferred to the Nuclear Regulatory Commission.

[2] The CPSES operating license proceeding was dismissed on July 13, 1988 by ASLB Memorandum and Order (Dismissing Proceedings).

[Docket No. 50–445]

Texas Utilities Electric Co., et al., Comanche Peak Steam Electric Station, Unit No. 1; Order Extending Latest Construction Completion Date

The Texas Utilities Electric Company, Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (Applicants) are holders of Construction Permit No. CPPR–126 issued by the Atomic Energy Commission [1] on December 19, 1974 for construction of the Comanche Peak Steam Electric Station, Unit No. 1, a nuclear facility utilizing a Westinghouse Electric Corporation nuclear steam supply system, at the Applicants' site in Somervell County, Texas.

By letter dated June 6, 1988, the Applicants filed a request for extension of the latest construction completion date specified in Construction Permit No. CPPR–126 to August 1, 1991. The Applicants state that an intensive program of review and reinspection was initiated in the fall of 1984 to provide evidence of the safe design and construction of Comanche Peak Units No. 1 and No. 2. The remedial program was undertaken by the Applicants to respond to issues raised by the NRC staff, the Atomic Safety and Licensing Board (ASLB), and other sources in the operating license proceeding. [2] The Applicants anticipate that remedial program activities related to Unit No. 1 and its preparation for operation will not be complete before August 1, 1991.

As discussed more fully in the Staff's related Evaluation of Request dated November 18, 1988, we have concluded that good cause has been shown for the delay and that the requested extension is for a reasonable period. We have further concluded that the requested extension involves no significant hazards consideration, and therefore, no prior public notice is required.

The NRC staff has prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on October 25, 1988 (53 FR 43053). The NRC staff has concluded that this action will not have a significant impact on the quality of the human environment, and therefore, no environmental impact statement need be prepared.

The Applicants' letter dated June 6, 1988, and the staff's letter and evaluation issued in support of this Order are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the local public document room at Somervell County Public Library, Glen Rose, Texas 76043.

It is Hereby Ordered that the latest construction completion date for CPPR–126 be extended to August 1, 1991.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 18th day of November 1988.

James G. Partlow,

Director, Office of Special Projects.

[FR Doc. 88–27334 Filed 11–25–88; 8:45 am]

BILLING CODE 7590–01–M

[1] Effective January 20, 1975, the Atomic Energy Commission was abolished and its regulatory authority transferred to the Nuclear Regulatory Commission.

[2] The CPSES operating license proceeding was dismissed on July 13, 1988 by ASLB Memorandum and Order (Dismissing Proceedings).

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Schedules A, B and C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on October 25, 1988 (53 FR 206). Individual authorities established or revoked under Schedule A, B, or C between October 1, 1988, and October 31, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A authorities were established or revoked during October.

Schedule B

No Schedule B authorities were established or revoked during October.

Schedule C

Department of Commerce

One Confidential Assistant to the Director for the Office of Commercial Space Programs. Effective October 7, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective October 7, 1988.

One Special Assistant to the Director for Executive Programs. Effective October 7, 1988.

Department of Education

One Executive Assistant to the Deputy Under Secretary for Planning and Budget. Effective October 21, 1988.

Department of Energy

One Special Assistant to the Assistant Secretary for Environment, Safety and Health. Effective October 14, 1988.

One Associate Director for the Office of Policy, Planning and Analysis. Effective October 19, 1988.

One Staff Assistant to the Under Secretary. Effective October 5, 1988.

Department of Housing and Urban Development

One Special Assistant to the General Deputy Assistant Secretary for Public and Indian Housing. Effective October 25, 1988.

Department of Interior

One Confidential Assistant to the Director of Security and Drug Enforcement. Effective October 28, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Policy and Analysis. Effective October 28, 1988.

One Special Assistant to the Assistant Secretary for Policy Budget and Administration. Effective October 28, 1988.

One Confidential Assistant to the Assistant to the Secretary and Director for the Office of Congressional and Legislative Affairs. Effective October 28, 1988.

Department of Justice

One Executive Assistant to the Deputy Commissioner for Immigration and Naturalization Service. Effective October 7, 1988.

One Special Assistant to the Assistant Attorney General for Offices, Boards and Divisions. Effective October 12, 1988.

One Confidential Assistant to the Assistant Attorney General for Offices, Boards and Divisions. Effective October 21, 1988.

One Confidential Assistant to the Associate Deputy Attorney General for

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Offices, Boards and Divisions. Effective October 25, 1988.

One Assistant Director to the Director for the Office of Legal Policy. Effective October 25, 1988.

One Special Assistant to the Assistant Attorney General for Offices, Boards and Divisions. Effective October 26, 1988.

Two Confidential Assistants to the Attorney General for Offices, Boards and Divisions. Effective October 28, 1988.

One Assistant to the Attorney General for Offices, Boards and Divisions. Effective October 28, 1988.

Department of Labor

Two Senior Liaison Officers to the Assistant Secretary for Congressional Affairs. Effective October 7, 1988.

One Staff Assistant to the Assistant Secretary for Congressional Affairs. Effective October 7, 1988.

One Special Assistant to the Director for the Women's Bureau. Effective October 7, 1988.

One Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective October 11, 1988.

Department of Transportation

One Staff Assistant to the Chief of Staff for the Office of the Secretary. Effective October 7, 1988.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective October 21, 1988.

One Confidential Assistant to the Chief of Staff for the Office of the Secretary. Effective October 21, 1988.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective October 21, 1988.

One Staff Assistant to the Chief of Staff for the Office of the Secretary. Effective October 21, 1988.

Department of the Treasury

One Legislation Assistant to the Assistant Secretary for Legislative Affairs. Effective October 28, 1988.

One Deputy Assistant Secretary for Policy Review and Analysis to the Assistant Secretary for Policy Development. Effective October 28, 1988.

Environmental Protection Agency.

One Staff Assistant to the Director for the Office of Community and Intergovernmental Relations. Effective October 28, 1988.

Export-Import Bank of the United States

One Secretary (Stenography) to the Senior Vice President for International Lending. Effective October 7, 1988.

One Administrative Assistant to the Director for the Board of Directors. Effective October 11, 1988.

Federal Labor Relations Authority

One Special Assistant to the General Counsel. Effective October 28, 1988.

General Services Administration

One Director to the Associate Administrator for the Office of Business and Industry Affairs. Effective October 5, 1988.

One Confidential Assistant to the Director for the Office of the Executive Secretariat. Effective October 28, 1988.

Interstate Commerce Commission

One Confidential Assistant to the Commissioner. Effective October 11, 1988.

Office of Management and Budget

One Confidential Assistant to the Director. Effective October 21, 1988.

U.S. Office of Personnel Management

Constance Horner,

Director.

Authority: 5 U.S.C. 3301, 3302; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

[FR Doc. 88–27393 Filed 11–25–88; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

Complaint of Third Class Mail Association; Notice and Order Setting Deadline for Intervention and Responses to Motion to Dismiss

Issued November 21, 1988.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc, III.

[Docket No. C89–1]

On October 17, 1988, the Third Class Mail Association (TCMA) filed a complaint with the Commission under 39 U.S.C. 3662. That complaint requests that the Commission investigate and report its findings as to whether the continued application of the Private Express Statutes (39 U.S.C. 601 *et seq.*) to advertising mail is consistent with the policies of the Postal Reorganization Act. The Commission issued Order No. 804 the following day, setting a date for the Postal Service's answer to the complaint. That Order also solicited intervention notices from interested parties applicable to any proceeding that might result from the complaint, but did not set a deadline for intervention.

The Postal Service filed an answer to the TCMA complaint on November 16, 1988, denying its allegations. On that date it also filed a motion to dismiss the complaint on the grounds that the Commission has no jurisdiction over the administration of the Private Express Statutes.

The Postal Service's motion to dismiss relies, in part, on Commission Order No. 133, from Docket No. RM76–4. The Commission instituted that rulemaking to provide a more appropriate context for evaluating our jurisdiction over the Private Express Statutes than did pending classification and complaint proceedings in which that issue arose. Order No. 133 states our general policy not to assert jurisdiction over questions concerning the application of the Private Express Statutes unless such jurisdiction is ancillary to our express statutory duties.

Responses to the Postal Service's motion to dismiss the TCMA complaint will be due on or before December 5, 1988. Parties who have not previously filed a notice of intervention in this docket that satisfied Rule 20 of our Rules of Practice (39 CFR 3001.20) must do so on or before December 5, 1988, if they wish to respond to the Postal Service's motion.

It is Ordered

1. Responses to the Motion to Dismiss, filed by the Postal Service in this docket on November 16, 1988, are due on or before December 5, 1988.

2. Parties who wish to respond to the Postal Service's Motion to Dismiss, who have not previously filed a notice of intervention in this docket, must do so on or before December 5, 1988.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 88–27286 Filed 11–25–88; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26298; File No. SR-NYSE–88–21]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

On July 28, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule

[1] 15 U.S.C. 78s(b)(1).

19b–4 thereunder,[2] copies of a proposed rule change to adopt Rule 750A governing option specialist performance evaluation and reallocation procedures. The new rule would be implemented as a pilot to run concurrently with the existing pilot program for revised NYSE Rule 103A.[3]

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 26001, August 16, 1988) and by publication in the **Federal Register** (53 FR 31948). No comments were received in connection with the proposal.

Currently, NYSE option specialist activity is, for the most part, governed by Exchange rules designed for equity specialist activity but made applicable to option specialists by NYSE Rule 750. The rule incorporates by reference a variety of Exchange rules that regulate equity specialist conduct and tailors the rules specifically to the options market. Pursuant to NYSE Rule 750, the Exchange has proposed to adopt Rule 750A, which would incorporate by reference recently approved revisions to NYSE Rule 103A.[4] The proposed rule contains performance improvement action procedures, reallocation procedures and procedural safeguards largely identical to those contained in revised Rule 103A. As noted above, however, revised Rule 103A governs equity specialist performance evaluation and reallocation proceedings, while proposed rule 750A would establish procedures for the evaluation of option specialist performance and for the reallocation of option classes or products for substandard option specialist performance.

Under the new rule, the NYSE Market Performance Committee ("MPC") would oversee the program and would be authorized to commence a performance improvement action in the event an option specialist's performance falls below minimum performance standards. In this connection, the proposed rule provides that an option specialist would be subject to a performance improvement action if the specialist unit receives an overall score of 4.00 for one semi-annual review period on the specialist general information questionnaire ("Options SPEQ") or a grade below 4.00 in any of the five categories on the Options SPEQ for two successive semi-annual review periods.[5]

Rule 750A further provides that the MPC would initiate a performance improvement action in the event an option specialist unit regularly fails to comply with Exchange rules and standards governing option specialist activity.[6]

As is the case under NYSE Rule 103A, the performance improvement action would conclude within the time frame established by the MPC, unless it has been terminated earlier as a result of the monitoring team's recommendation. The monitoring team would be required to render a final report to the MPC, at which time the MPC, following a review of the team's report, would determine whether the specialist unit has met the specific performance improvement goals contained in the specialist unit's improvement plan. Further, as provided by the proposed rule, all units would be judged on the basis of improvement as demonstrated by their success, or lack thereof, in attaining the performance improvement goals. A MPC determination that a specialist unit failed to meet the established goals would trigger reallocation proceedings, except in those cases in which the MPC believes that, given additional time (not to exceed one quarter) the unit can be reasonably expected to achieve its performance improvement goals.

Reallocation proceedings under Rule 750A generally would be similar to reallocation proceedings under revised Rule 103A. Under Rule 750A, the MPC would be required to provide written notice to the specialist unit of the reallocation proceedings as well as an opportunity to defend its performance.[7] A determination that the specialist unit failed to meet its goals would lead to the reallocation of its registered option classes or one or more option products. In identifying which class or product to reallocate, the MPC would consider performance areas in which the unit remains weak and would select the option classes or option products most associated with the weak performance areas. In the event the MPC is unable to identify particular option classes or one or more particular option products, the MPC would be allowed to use its discretion in determining which classes or products it believes should be reallocated.

Following the MPC's determination, the specialist unit would be provided an opportunity to persuade the MPC to reallocate other option classes or products and to request the MPC to consider revoking its registration in other option classes or products. The MPC would then make a final determination as to which specialist unit's option classes or option products would be referred to the Allocation Committee for reallocation.[8]

Finally, all option specialist units would be entitled to appeal a MPC reallocation decision to the Exchange's Board of Directors pursuant to Article IV, Section 14 of the NYSE Constitution. The rule would also bar member organizations associated directly or indirectly with either a member of the MPC or any monitoring team from applying to the Allocation Committee for an option class or product approved for reallocation.

After careful consideration, the Commission believes that the NYSE proposal to adopt Rule 750A to run concurrently with the Rule 103A pilot is reasonable and therefore has determined to approved the proposed rule change. In particular, the Commission believes that the Rule 750A pilot will enable the Exchange to monitor the effectiveness of the performance standards and other procedures contained in the rule. The Commission further believes that Rule 750A will provide structure to NYSE option specialist performance evaluations and reallocations. In this regard, we note that the new rule establishes specific, numerical standards of acceptable performance for option specialists as well as a more general requirement of compliance with applicable Exchange rules. Taken together, the Commission believes that these performance requirements should provide option specialists with tangible

[2] 17 CFR 240.19b–4.

[3] *See*, Securities Exchange Act Rel. No. 25681 (May 9, 1988) 53 FR 17287.

[4] *See*, n. 3, *supra*.

[5] In the event the specialist unit's poor performance is attributable to highly unusual factors or extenuating circumstance involving factors beyond the control of the unit, however, the MPC would not be required to initiate a performance improvement action. A determination of highly unusual factors or extenuating circumstances would be made by a majority vote of the MPC.

[6] The Rule provides for monitoring teams to assist option specialist units in developing performance improvement plans, which identify measures that the units can undertake to improve their performance as well as meet performance improvement goals established by the MPC. Further, each monitoring team would be allowed to submit an interim report to the MPC at any time during the performance improvement action that recommends (1) termination of the performance improvement action due to improvement in the unit's performance; (2) modification of the unit's performance improvement plan; or (3) an allocation freeze. *See*, Proposed Rule 750A(b) (6).

[7] A written record of the proceedings would be maintained.

[8] The rule also provides for the initiation of reallocation proceedings in any instance where a specialist unit's performance in a particular instance was so egregiously inadequate as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market. *See*, proposed Rule 750A(f).

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measures by which the units can constantly assess their performance.

Further, the new rule establishes guidelines for, among other things, performance improvement actions. Option specialist units whose performance is found to be substandard will be provided with specific improvement goals developed by the Exchange in view of the unit's performance needs as well as other broader considerations such as overall market quality and order flow. Further, each unit will be permitted to participate in the preliminary stages of the performance improvement action by developing their own plan for performance improvement. The Commission believes that these procedures should enable the Exchange to oversee option specialists performance improvement efforts to the greatest extent practical, and should allow for joint Exchange and member efforts to remedy substandard specialist unit performance.

Finally, the Commission believes that the procedural protections contained in Rule 750A should ensure that specialist units whose performance fall below minimum acceptable standards or units whose option classes or products are subject to reallocation proceedings will be made aware of pending performance improvement or other remedial action and ensure that they are provided an opportunity to defend their performance.

While the Commission believes that proposed Rule 750A is reasonable, however, the Commission nonetheless believes that the Exchange should develop and incorporate into the rule objective performance criteria in a manner similar to its Rule 103A pilot. In the Commission's view, the combination of objective and subjective performance measures will improve the Exchange's ability to assess option specialist performance. For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rule and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the above mentioned proposed rule change be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Date: November 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27366 Filed 11-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26297; File No. SR-PSE-88-25]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to a Proposed Rule Change Relating to Increased Flexibility in Determining Position and Exercise Limits

On October 31, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder, a proposed rule change to amend PSE Rule VI, Section 5 to provide greater flexibility in the establishment of position and exercise limits for stock options.

Currently, position limits for individual stock options are determined in accordance with a three-tiered system established in April 1985.[3] Pursuant to this system, an underlying stock which meets specific standards governing trading volume and/or number of outstanding shares will qualify the overlying option for either an 8,000, 5,500, or 3,000 contract position limit. Under current practices, the Exchange reviews the volume and outstanding share information of all underlying stocks every six months (in January and July) to determine which contract limit shall apply for the following six months. If an underlying stock meets the requirements of a higher position limit, the higher limit is effective the first business day following the January or July review period.

The proposed rule change will revise the current review procedures such that the Exchange, in its discretion, may increase an option's position limit before the next six-month review date, if, subsequent to one six-month review but prior to the next review, an increase in the option's trading volume and/or outstanding shares would make a stock eligible for a higher position limit at the next review period. Nothing in the proposed rule change, however, shall change the current six-month review process that occurs in January and July. In this regard, even if an option becomes eligible for a higher position limit between review periods, all subsequent calculations of that option's trading volume and/or outstanding shares for position limit purposes will continue to be based upon the six-month period immediately preceding the January or July review period, whichever is appropriate. The proposed rule change also does not alter the existing position limit criteria relating to outstanding shares and/or trading volume.[4]

The Exchange states that the proposed rule change is designed to provide liquidity to certain options without increasing the potential for market manipulation. The Exchange notes that frequently an underlying stock meets or surpasses the eligibility requirements for a higher position limit prior to the next six-month review. The Exchange notes further that, under current rules, an option that qualifies for a higher position limit before the next review period remains at the lower limit until the next semi-annual review is conducted. The Exchange suggests that limiting an option which is qualified for a higher position limit to the lower limit can discourage market participation by institutions and other market participants with substantial hedging needs.

The Commission finds that the proposed rule change is consistent with the Act and in particular the requirements of Section 6 and the Rules and Regulations thereunder. More specifically, the Commission believes that the proposed rule change will help provide additional liquidity to certain options by increasing institutional and individual investor participation in the trading of those options without altering the existing position limit criteria. In addition, because options can be used to hedge existing stock portfolios, the Commission believes that acceleration of the date upon which a qualified option's increased position limit takes effect will provide investors with a useful tool to hedge more effectively underlying stock positions.

The Commission believes further that any increase in an option's position limit before a semi-annual review period will not result in investor confusion. The Exchange specifically has indicated that it will provide its member firms with adequate notice of any increase so as to ensure the investment community is aware in advance of the changed position limit.[5]

Finally, the Commission believes that the proposed rule change, along with the recently approved two-year pilot program permitting a position limit exemption for up to twice the existing position limit where equity option positions are hedged on a one-for-one basis with underlying stock,[6] will assist specialists and market makers in adequately meeting their obligations to maintain a fair and orderly market.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register** because the Commission recently approved substantially identical proposals to provide greater flexibility in determining position limits for stock options submitted by the American Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Chicago Board Options Exchange, Inc.[7] In addition, because the current position limit criteria for equity options have not changed, the Commission does not believe that the proposed rule change raises any additional market disruption or manipulation concerns.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of the exchange's filing also will be available for inspection and copying at the principal office of the exchange. All submissions should refer to the file number in the caption above and should be submitted by December 20, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz.

Secretary.

[FR Doc. 88-27367 Filed 11-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16646; (811-5442)]

The Guardian Generation Series Trust; Notice of Application

November 21, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for De-Registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Guardian Generation Series Trust.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant requests an order under section 8(f) declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on October 21, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 13, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 201 Park Avenue South, New York, NY 10003.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney, (202) 272-2190, or Brion R. Thompson, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered under the 1940 Act as an open-end, diversified, management investment company on December 31, 1987. Applicant did not register any securities under the Securities Act of 1933 and never commenced a public offering of any of its shares.

2. Applicant is in the process of terminating its existence as a Massachusetts Business Trust.

3. Applicant has not distributed or transferred any assets in connection with the winding-up of its affairs, and does not have any outstanding debts or other liabilities.

4. Applicant is not a party to any current or pending litigation or administrative proceedings, and does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27302 Filed 11-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16647; 812-7119]

Application for Exemption; Chemical Mortgage Acceptance Corporation

November 21, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Chemical Mortgage Acceptance Corporation.

Relevant 1940 Act Section: Exemption requested under Section 6(c) fom all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order exempting it from all

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[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1988).

[3] *See* Securities Exchange Act Release No. 21907 (March 29, 1985), 50 FR 13440.

[4] For example, under current PSE rules, if during the first two months after a six-month review a stock with an options position limit of 5,500 contracts trades 40,000,000 shares, the position limit would remain at 5,500 contracts even though the option would qualify for an 8,000 contract limit at the next six-month review. The Exchange's proposed rule change would allow the Exchange, at its discretion, to raise the limit to 8,000 contracts after the stock had reached the requirements for an 8,000 contract limit.

[5] In this regard, the Commission expects that the Exchange will exercise judgment in determining whether to raise an option's limit so that six-month review will remain as the review period for the overwhelming majority of options. For example, it would be more consistent with the Exchange's discretion under the proposed rule for it to raise the limit for an option with a 5,500 limit if the underlying stock reaches the 40,000,000 share trading threshold two months before a six-month review than if it reached it one week before a six-month review.

[6] *See* Securities Exchange Act Release No. 25736 (May 24, 1988), 53 FR 20201.

[7] *See* Securities Exchange Act Release Nos. 26092 (September 19, 1988), 53 FR 37073; 26228 (October 31, 1988).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1988).

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provisions of the 1940 Act in connection with its proposed issuance and sale of collateralized mortgage obligations and residual interest certificates.

Filing Date: The application was filed on September 13, 1988, and amendments to the application were filed on November 4, 10 and 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 14, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Chemical Mortgage Acceptance Corporation, 277 Park Avenue, New York, New York 10172.

FOR FURTHER INFORMATION CONTACT: H. R. Hallock, Jr., Special Counsel, at (202) 272–3030, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copies who can be contacted at (800) 258–4300).

Applicant's Representations

1. The Applicant, a Delaware corporation, is a wholly-owned, limited-purpose subsidiary of Chemical Acceptance Corporation, and an indirect wholly-owned subsidiary of Chemical Banking Corporation. The Applicant was organized to facilitate the financing of mortgage loans through the issuance of one or more series (each, a "Series") of bonds ("Bonds"), secured primarily by Mortgage Certificates (as defined in paragraph 4 below), and will perform certain related activities. The only Bonds which are the subject of the application are Bonds issued by the Applicant.

2. The Applicant seeks exemptive relief to permit it to issue one or more Series of Bonds and invest in certain Mortgage Certificates which will be used to collateralize such Bonds, and to permit it to sell its right to receive funds released by the Trustee from the lien of the Indenture (each as defined in paragraph 3 below) in the form of residual interest certificates ("Residual Interest Certificates").

3. The Applicant will issue one or more Series of Bonds under the terms of an indenture (the "Indenture") between the Applicant and the trustee (the "Trustee"), as supplemented by one or more series supplements. The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

4. The Applicant will issue and sell Bonds in Series secured primarily by Mortgage Certificates. The "Mortgage Certificates" collateralizing the Bonds will be limited to fully modified pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), Guaranteed Mortgage Pass-Through Securities issued by the Federal National Mortgage Association ("FNMA Certificates") and Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"). All or a portion of the Mortgage Certificates securing a Series of Bonds may be "Partial Pool" Mortgage Certificates. Each Series of Bonds may also be secured by certain funds and accounts including collateral proceeds accounts, reserve funds, reinvestment agreements and by other funds and accounts described in the series supplement (any or all of the foregoing, together with the Mortgage Certificates, the "Collateral").

5. Each Series of Bonds will consist of one or more classes, which may include one or more classes of current interest Bonds, compound Bonds, zero coupon Bonds, planned amortization Bonds or floating interest rate Bonds on which the rate of interest is adjusted periodically according to a fixed index set forth in the prospectus supplement or series supplement.

6. The Mortgage Certificates securing each Series of Bonds, together with any reinvestment income theron and any applicable funds, will be sufficient to pay all interest due on the Bonds and to retire each class of Bonds by its stated maturity. The outstanding "collateral value" (calculated in accordance with the Indenture) at the time of issuance of the Bonds and following each payment date will be equal to or be greater than the outstanding principal balance of the Bonds. The Mortgage Certificates will be assigned to the Trustee and will be subject to the lien of the related Indenture.

7. In addition to the issuance and sale of the Bonds, the Applicant may sell some or all of the Residual Interest Certificates to certain institutional and non-institutional investors, as described more fully under Condition C.(2) below.

8. There will not be a conflict of interest between the holders of the Bonds (the "Bondholders") and the owners of the Residual Interest Certificates because: (a) The Mortgage Certificates will not be speculative in nature; (b) the Bonds will be issued only if an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; and (c) the Trustee will retain a first priority perfected security interest on behalf of the Bondholders in the Collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such Collateral, subject only, in the event of a default under the Indenture, to the Trustee's own limited prior lien, if any, to the extent of its unpaid fees and expenses.

9. Neither the Applicant, the holders of the Residual Interest Certificates, nor the Trustee will be able to impair the security afforded by the Mortgage Certificates because, without the consent of each affected Bondholder, neither the Applicant, the holders of the Residual Interest Certificates, nor the Trustee will be able to: (a) Change the stated maturity on any Bond; (b) reduce the principal or rate of interest (or the manner of determining the rate of interest on floating interest rate bonds) on any Bond; (c) change the priority of repayment on any class of any Series of Bonds; (d) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (e) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

10. The sale of the Residual Interest Certificates will not alter the payment of cash flows under an Indenture, including the amounts to be deposited in the collateral proceeds account or any reserve fund. The aggregate interest in the Collateral which is available to the holders of the Residual Interest Certificates will be far less than payments to Bondholders.

11. An election by the Applicant to treat the arrangement by which the Collateral secures a Series of Bonds as a "real estate mortgage investment conduit" ("REMIC") under the Internal Revenue Code of 1986, as amended, will have no significant effect on the level of expenses that would be incurred by such REMIC. *See* Condition D. below.

Applicant's Legal Conclusions

The relief requested is necessary and appropriate in the public interest because the Applicant is not the type of entity to which the provisions of the 1940 Act were intended to be applied, the safeguards afforded to Bondholders fully protect investors, the owners of Residual Interest Certificates will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number, and the proposed activities will promote the public interest by facilitating the financing of housing by supplying capital for reinvestment in the real estate and mortgage markets.

Conditions to Order

The Application agrees that the requested order may be expressly conditioned upon the following:

A. Conditions Relating to the Collateral

(1) The Bonds of each Series will be registered under the Securities Act of 1933 ("1933 Act"), unless offered in a transaction exempt from registration either under section 4(2) of the 1933 Act or because such Series of Bonds will come to rest outside the United States, provided that the Bonds are offered and sold outside the United States or to non-United States persons in reliance upon an opinion of United States counsel that registration is not required. No single offering of Bonds both within and outside the United States will be made without registration of all such Bonds under the 1933 Act without first obtaining a no-action letter under the 1933 Act permitting such offering or otherwise complying with the applicable standards then governing such offerings. In all such cases, the Applicant will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to United States investors in United States offerings.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. The primary collateral directly securing the Bonds will be limited to GNMA, FNMA and FHLMC Certificates.

(3) If new Mortgage Certificates are substituted, the substitute mortgage certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flows to the Mortgage Certificates replaced; (iii) be insured or guaranteed at least to the same extent as the Mortgage Certificates replaced; and (iv) meet the criteria set forth in Conditions A. (2) and (4). New Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) All of the Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds will be held by the Trustee or on behalf of the Trustee by an independent custodian. The Trustee or the custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant or any owner of a Residual Interest Certificate. The Trustee will retain a first priority perfected security or lien interest in and to all collateral securing such Bonds.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant or any owner of a Residual Interest Certificate. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) No less often than annually, an independent public accountant will audit the books and records of the Applicant and will report on whether the anticipated payments of principal and interest on the collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

B. Conditions Relating to Floating Interest Rate Bonds

(1) Each class of floating interest rate Bonds will have a set maximum interest rate (an interest rate cap) or a minimum interest rate (with respect to adjustable rate Bonds which vary inversely with an index).

(2) At the time of the assignment and pledge of the Mortgage Certificates to the Trustee, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on the Mortgage Certificates plus any reinvestment income thereon, and funds, if any, pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds then outstanding. The Mortgage Certificates will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but subject to the Applicant's limited right to substitute collateral as set forth in Condition A.(3) above, will not be released from the lien of the Indenture prior to the payment of the Bonds.

C. Conditions Relating to the Sale of the Residual Interest Certificates

(1) Notwithstanding the sale of Residual Interest Certificates, all of the outstanding capital stock of the Applicant will continue to be owned by Chemical Acceptance Corporation or an affiliate thereof. The Applicant will not issue any other capital stock, except to Chemical Acceptance Corporation or an affiliate thereof.

(2) A Residual Interest Certificate will be offered and sold only to (i) institutions or (ii) not more than 15 non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional purchasers of Residual Interest Certificates will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts, master limited partnerships or other similar institutional investors. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interest Certificates and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at least $200,000 of such Residual Interest Certificates and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing a Residual Interest Certificate and will have direct personal and significant experience in making investments in mortgage-related securities.

(3) Each sale of Residual Interest Certificates will qualify as a transaction not involving any public offering within the meaning of the 1933 Act.

(4) The Indenture will prohibit the transfer of any such Residual Interest Certificates if there would be more than 100 holders of Residual Interest Certificates in a Series of Bonds as a result of such transfer.

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(5) In connection with each sale of Residual Interest Certificates each purchaser thereof will be required to represent that it is purchasing for investment and not for distribution and that it will hold such Residual Interest Certificates in its own name and not as nominee for undisclosed investors.

(6) In connection with each sale of Residual Interest Certificates, each purchaser thereof will be required to represent that it is not affiliated with the Trustee.

(7) If the sale of Residual Interest Certificates results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of any REMIC where Applicant has elected to treat the arrangement by which the Bonds are issued as a REMIC, the exemptive relief afforded by an order granted on the application would not apply to subsequent Bond offerings by such REMIC.

D. Condition Relating to REMICs

The election by the Applicant to treat the arrangement by which the collateral secures a Series of Bonds as a REMIC will have no significant effect on the level of the expenses that would be incurred by the REMIC. In the event of such a REMIC election, the Applicant will provide for the payments of administrative fees and expenses as set forth in the application in a manner satisfactory to the agency or agencies rating the Bonds. The Applicant will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of which method or methods described in the application to provide for the payment of such fees and expenses is selected.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27368 Filed 11-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16649; 812-7170]

Application for Exemption; MBL Growth Fund, Inc., and MAP-Goverment Fund, Inc.

November 21, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

Applicants: MBL Growth Fund, Inc. and MAP-Government Fund, Inc. ("Funds" or "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 32(a)(1).

Summary of Application: Applicants seek an order to permit them to file financial statements signed or certified by an independent public accountant selected at a board of directors meeting held within sixty days after the beginning of each Applicant's respective fiscal year.

Filing Date: The application was filed on November 8, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on December 16, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o The Mutual Benefit Life Insurance Company, 520 Broad Street, Newark, New Jersey 07102-3184, Attention: Judith C. Keilp, Esq., with copies to Freedman, Levy, Kroll & Simonds, Washington Square, Suite 825, 1050 Connecticut Avenue NW., Washington, DC 20036-5366, Attention: Gary O. Cohen, Esq.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or Stephanie M. Monaco, Special Counsel, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Funds are diversified, open-end management investment companies registered under the Act and incorporated under the laws of the State of Maryland.

2. The Funds typically hold sequential quarterly meetings of their boards of directors on the same day. The respective board of directors of each Fund selects independent public accountants at its first quarterly meeting.

3. The corporate laws of Maryland do not require the holding of an annual shareholder meeting, except as required under the Act. Therefore, unless shareholder action is required for one of the specified exceptions, the Funds do not intend to hold annual meetings of shareholders. Accordingly, under the provisions of section 32(a)(1), the Funds would be required to select their independent public accountants within thirty days before or after the beginning of each Fund's respective fiscal year.

4. Each Fund's selection of independent public accountants is based on the recommendation of an audit committee composed of disinterested directors serving on the board of directors of each Fund.

5. Presently, the same independent public accountant serves both of the Funds. It is anticipated that the practice of the Funds using the same independent public accountant will be continued.

6. The extension of the thirty-day period under section 32(a)(1) to sixty days would provide each Fund's audit committee with the necessay time to review the accountants' reports, and would provide each Fund's board of directors with the necessary time to review the audit committee's recommendations and make an informed decision regarding the selection of independent public accountants to be used by the Fund for the current fiscal year.

7. Continuation of the current schedule of boards of directors meetings and the selection of independent public accountants during the first quarterly meetings would be consistent with the past practices of the Funds, and would be more cost effective than requiring special meetings or continuing to hold regular shareholder meetings. The cost savings will benefit the shareholders. Therefore, the Funds are seeking an order to permit them to file financial statements signed or certified by independent public accountants which have been selected at meetings held within sixty days after the beginning of their respective fiscal years. The requested expansion is consistent with the underlying policies of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27369 Filed 11-25-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-5/1242]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet on December 8, 1988, at 9:00 a.m. in Room 1105 of the Department of State.

The Advisory Committee advises the Bureau of Public Affairs, and in particular the Office of the Historian, concerning problems connected with preparation of the documentary series entitled "Foreign Relations of the United States" and other responsibilities of that Office.

In accordance with section 10(d) of the Advisory Committee Act (Pub. L. 92-463) it has been determined that certain discussions during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. 552 b (c)(1), and that the public interest requires that such activities be withheld from disclosure. The meeting will therefore be closed when such discussions take place from 2 p.m. to 5 p.m. on Thursday, December 8, and all day Friday, December 9.

Persons wishing to attend the open portion of the meeting should come before 9:00 a.m. on December 8 to the Diplomatic Entrance of the Department of State at 22nd and C Streets NW., Washington, DC. They will be escorted to Room 1105 and at the conclusion of the open portion of the meeting back to the Diplomatic Entrance.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520; telephone (202) 663-1122.

William Z. Slany,

Executive Secretary.

[FR Doc. 88-27288 Filed 11-25-88; 8:45 am]

BILLING CODE 4710-10-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Canadian Duty Remission Programs for Automotive Components; Decision Not To Initiate Investigation

AGENCY: Office of the United States Trade Representative.

ACTION: Decision not to initiate an investigation.

The United States Trade Representative (USTR) has determined not to initiate an investigation at this time under section 302 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2411), with respect to a petition filed on October 4, 1988 concerning Canada's duty remission programs for automotive components. The petitioner in this case, the Governor of the State of Michigan, lacks standing to file a petition pursuant to section 302(a)(1) (19 U.S.C. 2412(a)(1)) and USTR regulations (15 CFR 2006.0(b)); he is not a private party seeking government action under section 301.

Even were standing not at issue in this matter, the Trade Representative still would have determined not to initiate an investigation at this time. Under section 207 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, the USTR will be required to initiate a study to determine whether any of Canada's production-based duty remission programs for automotive products is either: (a) Inconsistent with the provisions of, or otherwise denies benefits to the United States under, the General Agreement on Tariffs and Trade; or (b) being implemented inconsistently with the obligations under article 1002 of the Free-Trade Agreement not to expand the extent or the application, or to extend the duration, of such programs. Section 207, which will take effect upon entry into force of the Free-Trade Agreement, will also require USTR to determine whether to initiate a section 301 investigation with respect to these programs. The Trade Representative believes the appropriate course is to follow the procedures set forth in section 207 rather than preempt that process by initiating an investigation under section 302(a) at this time.

FOR FURTHER INFORMATION CONTACT: Charles Roh (202) 395-3432, or William Merkin (202) 395-5663, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

EFFECTIVE DATE: November 15, 1988.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 88-27310 Filed 11-25-88; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-69]

Initiation of Section 302 Investigation; Japanese Barriers to the Provision of Architectural, Engineering, and Construction Services, and Related Consulting Services

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended.

SUMMARY: As required by section 1305 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, the United State Trade Representative is initiating an investigation under section 302 of the Trade Act of 1974, as amended, regarding those acts, policies and practices of the Government of Japan, and of entities owned, financed, or otherwise controlled by the Government of Japan, that are barriers in Japan to the offering or performance in Japan by United States persons of architectural, engineering, and construction services, and related consulting services.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Bonnie Richardson, Special Assistant for Services, (202) 395-7271, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC, 20506.

SUPPLEMENTARY INFORMATION: The Office of the United States Trade Representative (USTR) intends to request consultations with the Government of Japan regarding the issues involved in this investigation, as required by section 303(a) of trade Act of 1974, as amended. In preparation for such consultations, USTR will seek information from appropriate private sector advisory committees, pursuant to section 304(b) of that Act.

Any interested person wishing to express a view with respect to the issues raised in this investigation should file a comment by no later than 5:00 p.m. on December 20, 1988, in accordance with the regulations set out at 15 CFR 2006.8. Comments must be in English and provided in twenty copies to: A. Jane Bradley, Chairman, Section 301 Committee, Room 223, USTR, 600 17th Street NW., Washington, DC, 20506.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 88-27309 Filed 11-25-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 21, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980.

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Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0052
Form Number: ATF F 5130.9
Type of Review: Extension
Title: Brewer's Monthly Report of Operations
Description: ATF F 5130.9 is a periodic report detailing specific operations and activities to account for taxable commodities used in operating. For this reason, ATF F 5130.9 is a method of safeguard tax revenue. ATF F 5130.9 shows taxable and nontaxable removals, overages, shortages and losses at breweries. ATF is able to pinpoint difficulties at individual breweries and take appropriate steps on a timely basis to protect revenue.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 147
Estimated burden Hours Per Response: 1 hour
Frequency of Response: Monthly
Estimated Total Reporting Burden: 1,764 hours
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 88–27292 Filed 11–25–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 21, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0075
Form Number: 7512–C, 7512–D
Type of Review: Revision
Title: Transportation Entry and Manifest of Goods
Description: Customs Forms 7512–C and D are control forms used by importers, customhouse brokers, and carriers to show proof of delivery of merchandise entering the United States and being transported in-bond to another port of destination in the United States.
Respondents: Businesses of other for-profit, Small businesses or organizations
Estimated Number of Respondents: 10,000
Estimated Burden Hours Per Response: 20 seconds
Frequency of Response: On occasion
Estimated Total Reporting Burden: 11,120 hours
Clearance Officer: B. J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 88–27293 Filed 11–25–88; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88–75]

Revocation of Corporate Broker License No. 9836; Jose A. Montemayor e Hijos, Inc.

November 15, 1988.

AGENCY: U.S. Customs Service, Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on October 26, 1988, pursuant to section 641(b)(5), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(5)), the corporate license (No. 9836) for Jose A Montemayor e Hijos, Inc., to conduct Customs business was revoked by action of law.

Dated: November 15, 1988.

Victor G. Weeren,
Director, Office of Trade Operations.
[FR Doc. 88–27340 Filed 11–25–88; 8:45 am]
BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Radio Engineering Advisory Committee; Meeting

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Washington, DC, on Wednesday, December 7, 1988, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the Voice of America, 330 Independence Avenue SW., Washington, DC 20547. The meeting will begin at 10 a.m. on December 7 and will continue through 4 p.m. Point of contact for the meeting is Helen Giles, telephone (202) 485–8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the procurement and testing of high frequency broadcasting antennas, the status of negotiations with other governments and major construction projects, and other technical and regulatory issues relating to VOA modernization.

This meeting will be closed to the public because issues relating to negotiations with other governments will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is: (A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and (B) in fact, is properly classified pursuant to such Exective Order (5 U.S.C. 552b(c)(1)).

Date: November 18, 1988.

Charles Z. Wick,
Director.
[FR Doc. 88–27289 Filed 11–25–88; 8:45 am]
BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 228
Monday, November 28, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, November 29, 1988, 2:30 p.m.
LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.
STATUS: Closed to the Public.
MATTERS TO BE CONSIDERED:

1. *Compliance Status Report*
The staff will brief the Commission on the status of varius compliance matters.
2. *Enforcement Matter OS #3038*
The staff will brief the Commission on issues related to enforcement matter OS #3038.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5703.
CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

November 11, 1988.

Sheldon D. Butts,
Deputy Secretary.
[FR Doc. 88–27505 Filed 11–23–88; 3:34 pm]
BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:11 a.m. on Tuesday, November 22, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A) (ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: November 23, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 88–27516 Filed 11–23–88; 4:32 pm]
BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—November 30, 1988.
PLACE: Hearing Room One—1100 L Street NW., Washington, DC 20573–0001.
STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.
MATTERS TO BE CONSIDERED:

Portion Open to the Public

1. Docket No. 86–16—*Service Contracts*—Correction of Clerical or Administrative Errors—Consideration of Comments.
2. Proposed Rulemaking to Amend Agreement Filing Regulations—Definitions of "Conference Agreement" and "Joint Service/Consortium Agreement".

Portion Closed to the Public

1. Matson Navigation Company, Inc.—Application for section 35 Exemption From Tariff Filing Requirements
2. Agreement No. 232–011217: A Space Chartering Agreement Between P&O Containers (TFL) Limited, Nedlloyd Lijnen B.V., Sea-Land Service, Inc. (Agreement No. 232–011171); and Compania Trasatlantica Espanola, S.A. ("CTE"); filed October 24, 1988.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.
[FR Doc. 88–27399 Filed 11–23–88; 10:03 am
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 30, 1988.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Proposals regarding a contingency data processing center within the Federal Reserve System.
2. Proposals regarding a Federal Reserve Bank's building requirements. (This item was originally announced for a closed meeting on November 28, 1988.)
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 22, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–27396 Filed 11–23–88; 9:15 am]
BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, No. 220/Tuesday, November 15, 1988/46013.
PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, November 22, 1988.
CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Itme one (Aircraft Accident Report-Ryan Air Service, Inc. Flight 103 Beech Aircraft Corporation 1900C, N401RA, Homer, Alaska, November 23, 1987) has been removed from the agenda to be scheduled at a later date.
FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,
Federal Register Liaison Officer.
November 21, 1988.
[FR Doc. 88–27416 Filed 11–23–88; 11:23 a.m.]
BILLING CODE 7533–01–M

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SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 28, 1988.

An open meeting will be held on Tuesday, November 29, 1988, at 2:00 p.m., followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, November 29, 1988, at 2:00 p.m., will be:

1. Consideration of whether to issue a Notice of and Order for Hearing on applications filed by Noverco Inc., of Montreal, Canada, (1) to acquire the common stock of Northern New England Gas Corporation, a Vermont corporation and an exempt holding company, and (2) for an exemption pursuant to section 3(a)(5) of the Public Utility Holding Company Act of 1935. For further information, please contact Robert F. McCulloch at (202) 272–7699.

2. Consideration of whether to publish for comment a release proposing revisions to its rules regarding the filing of ownership reports by corporate officers, directors, and principal shareholders, and exemption of certain transactions by those persons from the short-swing profit recovery provisions of the Securities Exchange Act of 1934. For further information, please contact Brian J. Lane or Mark W. Green at (202) 272–2589.

The subject matter of the closed meeting scheduled for Tuesday, November 29, 1988, following the 2:00 p.m. open meeting, will be:

Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Max Berueffy at (202) 272–2400.

Jonathan G. Katz,

Secretary.

November 23, 1988.

[FR Doc. 88–27451 Filed 11–23–88; 1:07 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 53, No. 228
Monday, November 28, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-260052; -FRL-3388-3]

Regulation of Pesticides in Food: Addressing the Delaney Paradox Policy Statement

Correction

In notice document 88-24126 beginning on page 41104 in the issue of Wednesday, October 19, 1988, make the following corrections:

1. On page 41112, in the second column, in the third complete paragraph, in the first line, "is" should read "in".

2. On the same page, in the third column, in the second complete paragraph, in the ninth line, "know" should read "known"; and in the 13th line "secondly" should read "secondary".

3. On page 41116, in the first column, in the first complete paragraph, in the 13th line, "date" should read "data".

4. On page 41117, in the second column, in the fourth complete paragraph, in the 14th line, "or" should read "of".

5. On the same page, in the third column, in the second complete paragraph, in the second line, "he" should read "the".

6. On page 41118, in the second column, in the first complete paragraph, in the 11th line, "not" should read "no".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-09-4214-10; CACA 17620]

Proposed Withdrawal and Opportunity for Public Meeting; California

Correction

In notice document 88-24857 appearing on page 43479 in the issue of Thursday, October 27, 1988 make the following corrections:

1. In the second column, under **DATE:**, the third line should read "January 25, 1989".

2. In the same column, under **San Bernardino Meridian**, in the entry for "Sec 23.", the first line should read "Sec. 23. SW¼SW¼NW¼NW¼, W½".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-09-4214-10; WYW 112132]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

Correction

In notice document 88-24816 beginning on page 43479 in the issue of Thursday, October 27, 1988, make the following correction:

In the third column, under **DATE:**, in the third line "January 25, 1988" should read "January 25, 1989".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Interest Rates

Correction

In rule document 88-26340 beginning on page 45904 in the issue of Tuesday, November 15, 1988, make the following correction:

On page 45905, in the second and third columns, the third and fourth paragraphs under **SUPPLEMENTARY INFORMATION** are incorrect and should read as follows:

"The PBGC is amending Appendix B to add the required interest rate for premium payment years beginning in November 1988. Appendix B to the interim regulation does not prescribe the required interest rates for valuing vested benefits. These rates are prescribed by section 4006(a)(3)(E)(iii)(II) of ERISA and § 2610.23(b)(1) of the regulation. The purpose of Appendix B is merely to collect and to republish these rates in a convenient place. Thus, the interest rates in Appendix B are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. See 5 U.S.C. 553(b). For these same reasons, the PBGC also finds that good cause exists for making these amendments effective immediately. See 5 U.S.C. 553(d)(3).

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets."

BILLING CODE 1505-01-D

VOL
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ISS
228

NO
28

1988

UMI

federal register

Monday
November 28, 1988

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3190

Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; Proposed Rulemaking

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3190

[AA-650-08-4121-2410]

Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would establish administrative procedures for States and Indian tribes to inspect Federally supervised oil and gas leases within the limits of their jurisdictions. These procedures are necessary to implement section 202 of the Federal Oil and Gas Royalty Management Act of 1982.

DATE: Comments should be submitted by December 28, 1988. Comments received or postmarked after the above date may not be considered in the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Susan Pepperney, (202) 653-2127.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would establish a new Subpart 3192 in Part 3190, Group 3100 which would implement the authority contained in section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) (30 U.S.C. 1732) relating to the inspection of Federally supervised oil and gas leases by a State or Indian tribe under a cooperative agreement between BLM and the State or tribe. This is the second of a series of 3 rulemakings implementing the authority in FOGRMA that provides for inspection of Federally supervised oil and gas leases by other than Federal employees. The first, published in the **Federal Register** on July 17, 1987 (52 FR 27180), set forth general provisions pertaining to delegations of authority, cooperative agreements, and contracts, and the particular regulations governing delegations of authority. It has been the policy of the Department of the Interior to implement section 205 of the Federal Oil and Gas Royalty Management Act first and then to follow with the implementation of sections 202 and 301. This proposed rulemaking would provide procedures for cooperative agreements under section 202 of the Act. It therefore covers cooperative agreements between the Bureau of Land Management and States and Indian tribes.

The purpose of the inspection program is to determine whether there is compliance on oil and gas leases with the requirements of the mineral leasing laws and the Federal Oil and Gas Royalty Management Act.

Section 202 of the Federal Oil and Gas Royalty Management Act authorizes the Secretary of the Interior to enter into cooperative agreements with States and Indian tribes for the purpose of sharing oil and gas royalty management information, and carrying out inspection, investigation, and certain enforcement activities, including those activities authorized by section 108 of the Act. The Secretary may not enter into cooperative agreements with a State involving Indian lands without permission of the affected Indian tribe.

In considering this proposed rulemaking, States and tribes should be aware that the continuation of any cooperative agreement made under any regulations promulgated as a result of this rulemaking process will be conditioned upon the availability of the funds for compensation to an entity participating in the program.

The proposed rulemaking would also add a new § 3190.4 providing that the Bureau of Land Management will make available information needed by States or Indian tribes to carry out activities authorized by cooperative agreements, contracts, or delegations of authority provided for in this part.

The principal author of this proposed rulemaking is Susan Pepperney of the Division of Fluid Mineral Lease and Reservoir Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirements contained in Subpart 3192 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 and assigned clearance number 0348-0006.

List of Subjects in 43 CFR Part 3190

Administrative practice and procedure, Government contracts, Indian lands—mineral resources, Intergovernmental relations, Mineral royalties, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, it is proposed to amend Part 3190, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3190—DELEGATION OF AUTHORITY, COOPERATIVE AGREEMENTS AND CONTRACTS FOR OIL AND GAS INSPECTION

1. The authority citation for Part 3190 continues to read as follows:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q), the Act of February 18, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919, as amended (25 U.S.C. 399) and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General

2. Section 3190.4 is added to read as follows:

§ 3190.4 Availability of information.

Information in the possession of the Bureau of Land Management that is necessary to carry out activities authorized by delegations of authority, cooperative agreements, or contracts entered into under this part will be provided by the BLM to the States and Indian tribes party to such agreements. Release of proprietary data shall be subject to the provisions of section 3190.1 of this part.

3. Subpart 3192 is added to read as follows:

Subpart 3192—Cooperative Agreements with States and Tribes

Sec.

3192.1 Establishment of cooperative agreements with States and tribes.
3192.1-1 Eligibility.
3192.1-2 Request for cooperative agreement.
3192.1-3 Action on request for cooperative agreement.
3192.1-4 Terms of agreements.
3192.1-5 Contents of agreements.
3192.1-6 Allowable costs.
3192.1-7 Performance standards.
3192.1-8 Withdrawal of Indian lands from State cooperative agreements.
3192.2 Activities authorized under cooperative agreements.
3192.2-1 Inspections.
3192.2-2 Enforcement.
3192.2-3 Investigations.
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3192.3 Activities not authorized under cooperative agreements.
3192.3-1 Assessments and penalties.
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3192.4-1 Selection of inspectors.
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3192.5 Termination and reinstatement of agreements.
3192.5-1 Termination.
3192.5-2 Reinstatement.

Subpart 3192—Cooperative Agreements with States and Tribes

§ 3192.1 Establishment of cooperative agreements with States and tribes.

§ 3192.1-1 Eligibility.

(a) Only those States with Federally supervised producing oil and gas leases within their boundaries may enter into cooperative agreements with BLM for the purposes of conducting oil and gas inspections.

(b) Only those tribes with producing oil or gas leases on Indian lands under their jurisdiction may enter into cooperative agreements with BLM for the purpose of conducting oil and gas inspections.

§ 3192.1-2 Request for cooperative agreement.

(a) Any eligible State or Indian tribe may propose to enter into a cooperative agreement with BLM for oil and gas inspection activities, as covered in this part.

(b) The Governor, tribal chairman or other appropriate official shall make a written proposal to the appropriate BLM State Director.

(c) States or tribes may request a preproposal meeting with the BLM for the purpose of obtaining information required for the preparation of a proposal.

(d) Proposals for cooperative agreements shall include the following:

(1) A completed Standard Form 424, Application for Federal Assistance.

(2) A description of the type and extent of oil and gas inspection activities proposed under the agreement and the period of time the proposed agreement will be in effect;

(3) The estimated total cost to the State or tribe for activities carried out under the proposed agreement, separated into salary, overhead, equipment, and other costs;

(4) The name, address and telephone number of a contact for the State or tribe.

(e) States requesting cooperative agreements on Indian lands located within the boundaries of their State must include a signed statement from the appropriate tribal official(s) indicating agreement with the State proposal. The statement must include a description of the type and extent of activities to be carried out by the State on Indian lands and should indicate the period of time the proposed agreement between the State and the tribe will be in effect.

§ 3192.1-3 Action on request for cooperative agreement.

(a) Upon receipt of a proposal for a cooperative agreement from a State or tribe the BLM will review the proposal to determine if it is in keeping with the intent of FOGRMA.

(b) Within 30 days the BLM shall notify the State or tribe whether or not the proposal is complete. If the proposal is complete BLM will also indicate when the State or tribe can expect to begin negotiating the provisions of the agreement. If the proposal is not complete the BLM will state the reasons why the proposal is unacceptable.

§ 3192.1-4 Terms of agreements.

(a) All agreements entered into under this part shall be in accordance with the purposes of FOGRMA and the Grants and Cooperative Agreements Act of 1977.

(b) All cooperative agreements shall be valid for a period of 1 to 3 years from the effective date of the agreement.

(c) Federal assistance received for cooperative agreements shall be used only for costs directly required to carry out the agreed upon activities.

(d) There shall be no subcontracting of agreed upon activities, except for financial audits of program funds, without approval of the authorized officer.

§ 3192.1-5 Contents of agreements.

Cooperative agreements shall contain as a minimum the following:

(a) A statement of purpose, objective and authority;

(b) Definitions as appropriate;

(c) Roles and responsibilities of the BLM and the State or tribe;

(d) A detailed description of activities to be carried out under the agreement;

(e) Those performance standards required by § 3192.1-7 for activities to be carried out by a State or tribe under an agreement;

(f) Provisions for confidentiality of proprietary information; conflict of interest; shared civil penalities; and termination of the agreement;

(g) Specific contacts for BLM and the State or tribe;

(h) Plans for scheduling inspection activities and for training State or Indian inspectors;

(i) A specific limit on the amount of Federal funding as established by BLM;

(j) Procedures for State or tribe to request reimbursement, as established by 43 CFR Part 12, Subpart A;

(k) A statement identifying those expenditures that are covered as allowable costs and therefore subject to 50 percent reimbursement under § 3190.2-2 of this title;

(l) A schedule for periodic reviews and meetings;

(m) Plans for BLM oversight of State or tribe activities.

§ 3192.1-6 Allowable costs.

Allowable costs shall be as specified in 43 CFR Part 12, Subpart A.

§ 3192.1-7 Performance standards.

The BLM shall establish minimum performance standards for carrying out activities, which shall be incorporated into each agreement and shall be used as the basis for evaluating State or tribal performance.

§ 3192.1-8 Withdrawal of Indian lands from State cooperative agreements.

(a) When an Indian tribe withdraws permission for a State to conduct inspection and related activities on its lands, the Indian tribe shall provide written notice of its withdrawal of permission to the State, and provide a copy of the notice to the authorized officer.

(b) Upon withdrawal of Indian lands from a State cooperative agreement, the authorized officer shall immediately provide for the inspection and enforcement activities on the affected Indian lands.

(c) No later than 120 days after receipt of a notice of withdrawal of permission from an Indian tribe, that portion of the cooperative agreement applying to the lands covered by the notice shall terminate.

(d) Upon termination that portion of a State cooperative agreement covering Indian lands, appropriate changes in funding shall be made by the authorized officer.

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§ 3192.2 Activities authorized under cooperative agreements.

§ 3912.2–1 Inspections.

(a) Inspections of oil and gas operations covered by this part shall be carried out by State and Indian inspectors only as specified in the agreement.

(b) State and Indian inspectors conducting inspections as authorized representatives of the Secretary shall inspect for compliance with the regulations of the Bureau of Land Management and the Federal mineral leasing laws.

(c) State and Indian inspectors may conduct independent inspections, as specified in the agreement, after they are certified to do so as provided in §3192.4–4 of this title.

(d) BLM shall select leases to be inspected, taking into account the interests of the affected State or tribe.

(e) Inspections shall be scheduled in a manner to avoid duplication of effort between the BLM and the State or tribe.

(f) State and Indian inspectors shall use BLM inspection forms when conducting inspections. Completed forms are to be returned to BLM within the time frame specified in the agreement.

(g) Entering into an agreement does not preclude BLM or other authorized representatives of the Secretary from entering lease sites covered by the agreement to conduct inspections, investigations, or enforcement or other activities necessary to supervise lease operations.

§ 3192.2–2 Enforcement.

Qualified State and Indian inspectors may, subject to the agreement, be authorized to issue Notices of Incidents of Noncompliance, BLM Form 3160–9, in accordance with the policies of the appropriate BLM State, District or Resources Area Office.

§ 3192.2–3 Investigations

(a) Criminal investigations on Federally-supervised oil and gas leases on public lands shall be the responsibility of the BLM. Participation of State inspectors in such investigations shall be as specified in the agreement or at the discretion of the authorized officer.

(b) Criminal investigations on Federally-supervised oil and gas leases on Indian lands shall be the responsibility of BIA and/or the tribe. Participation of State or tribal inspectors in such investigations shall be as specified in the agreement.

(c) Avoidable/unavoidable loss determinations shall be the responsibility of the BLM. Participation of State or Indian inspectors in the determinations shall be as specified in the agreement at the discretion of the authorized officer.

§ 3192.2–4 Oil transporter inspection.

Inspection of oil transporters for documentation required in 43 CFR 3162.7 shall be carried out by State and Indian inspectors only as specified in the agreement.

§ 3192.3 Activities not authorized under cooperative agreements.

§ 3192.3–1 Assessments and penalties.

Imposition of assessments and penalties provided for in 43 CFR 3163.1 and 43 CFR 3163.2 and 3163.3, respectively, shall be the responsibility of the BLM.

§ 3192.3–2 Collections.

Collections of assessments and penalties, and collection of any other payments required in this part, shall be the responsibility of the BLM.

§ 3192.4 State and Indian inspectors.

§ 3192.4–1 Selection of inspectors.

(a) States and tribes shall select the inspector candidates to participate in the cooperative agreement program from a list of nominees submitted to and screened by the authorized officer.

(b) Continued inspector participation in the program is contingent upon satisfactory completion of required training, certification, and satisfactory performance of activities carried out under the agreement.

§ 3192.4 Training.

(a) BLM shall schedule appropriate classroom and on-the-job training for State and Indian inspectors.

(b) BLM shall be required to train only those inspectors participating in a cooperative agreement.

(c) States and tribes shall ensure that State and Indian inspectors participating in the inspection program attend the appropriate training as required.

(d) Nomination of State and Indian inspectors for training shall be coordinated through th appropriate BLM State or District Office.

§ 3192.4–3 Inspector identification cards.

(a) Inspector identification cards shall be issued by BLM to those State and Indian inspectors who are qualified and are participating in inspection activities under a cooperative agreement. These cards shall identify State and Indian inspectors as representatives of the Secretary of the Interior.

(b) Identification cards remain the property of the Federal Government and shall be surrendered upon request of the authorized officer of BLM.

§ 3193.4–4 Certification.

(a) BLM shall establish standards for certifications of State and Indian inspectors.

(b) State and Indian inspectors shall be certified by BLM before conducting independent inspections under this part.

(c) Certification of inspectors shall be contingent upon satisfactory completion of appropriate classroom and on-the-job training.

§ 3192.4–5 Conflict of interest.

(a) State and Indian inspectors shall not inspect the operations of those companies in which they or a member of their immediate family have a direct financial interest.

(b) State and Indian inspectors shall not inspect the operations of those companies in which their immediate supervisors have a direct financial interest.

(c) Information acquired by a State or Indian inspector as a result of his/her participation in a cooperative agreement may not be used for private gain for him/herself or another person by indirect or direct action on his/her part or by counsel, recommendation or suggestion to another person.

§ 3192.5 Termination and reinstatement of agreements.

§ 3192.5–1 Termination.

(a) A cooperative agreement may be terminated at any time by mutual agreement.

(b) A cooperative agreement may be terminated unilaterally by the BLM if it has been determined that the State or tribe has failed to carry out the terms of the agreement, or upon a finding that the agreement is no longer needed.

(c) If BLM intends to terminate an agreement under § 3192.5–1(b) because of a failure on the part of the State or tribe to carry out the terms of the agreement, the reason(s) shall be specified in detail in a notice of intent to the State or tribe. The State or tribe may provide a plan for correction. If the corrections proposed by the State or tribe will remedy the failure, the BLM may agree to withdraw the notice of intent. If the State or tribe does not implement corrective action within 30 days of BLM approval of the plan, BLM may provide a subsequent notice of termination. Failure to respond within 30 days to a notice of intent to terminate shall result in termination of the agreement.

§ 3192.5–2 Reinstatement.

(a) If a cooperative agreement has been terminated by mutual consent under § 3192.25–1(a) of this title, the State or Indian tribe may request that the appropriate State Director reinstate the cooperative agreement. The State Director, on receipt of the request, shall determine whether the cooperative agreement should be reinstated, and if so, what modifications, if any, should be made to the agreement.

(b) For cooperative agreements terminated under § 3192.5–1(b) due to deficiencies by the State or tribe in carrying out the provisions of the agreement, the State or tribe shall provide evidence that it has remedied all defects for which the cooperative agreement was terminated and that it is fully capable of resuming the activities to be carried out under the cooperative agreement. The State Director shall determine whether the cooperative agreement should be reinstated, and if so, what modifications, if any, should be made to the agreement.

October 6, 1988.

James E. Cason,

Assistant Secretary of the Interior.

[FR Doc. 88–27184 Filed 11–25–88; 8:45 am]

BILLING CODE 4310–84–M

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Part III

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for September 1988

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53110; FRL-3473-6]

Premanufacture Notices; Monthly Status Report for September 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for September 1988.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53110)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during September; (b) PMNs received previous and still under review at the end of September; (c) PMNs for which the notice review period has ended during September; (d) chemical substances for which EPA has received a notice of commencement to manufacture during September; and (e) PMNs for which the review period has been suspended. Therefore, the September 1988 PMN Status Report is being published.

Date: October 26, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report September 1988

I. 824 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH

PMN No.

P 88-1915	P 88-1979	P 88-2043	P 88-2122		
P 88-1916	P 88-1980	P 88-2044	P 88-2123		
P 88-1917	P 88-1981	P 88-2045	P 88-2124		
P 88-1918	P 88-1982	P 88-2046	P 88-2125		
P 88-1919	P 88-1983	P 88-2047	P 88-2126		
P 88-1920	P 88-1984	P 88-2048	P 88-2127		
P 88-1921	P 88-1985	P 88-2049	P 88-2128		
P 88-1922	P 88-1986	P 88-2050	P 88-2129		
P 88-1923	P 88-1987	P 88-2051	P 88-2130		
P 88-1924	P 88-1988	P 88-2052	P 88-2131		
P 88-1925	P 88-1989	P 88-2053	P 88-2132		
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P 88-1927	P 88-1991	P 88-2055	P 88-2134		
P 88-1928	P 88-1992	P 88-2056	P 88-2135		
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P 88-1930	P 88-1994	P 88-2058	P 88-2137		
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P 88-1932	P 88-1996	P 88-2060	P 88-2139		
P 88-1933	P 88-1997	P 88-2061	P 88-2140		
P 88-1934	P 88-1998	P 88-2062	P 88-2141		
P 88-1935	P 88-1999	P 88-2063	P 88-2142		
P 88-1936	P 88-2000	P 88-2064	P 88-2143		
P 88-1937	P 88-2001	P 88-2065	P 88-2144		
P 88-1938	P 88-2002	P 88-2066	P 88-2145		
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P 88-1940	P 88-2004	P 88-2068	P 88-2147		
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P 88-1943	P 88-2007	P 88-2071	P 88-2150		
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P 88-1945	P 88-2009	P 88-2073	P 88-2152		
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P 88-1947	P 88-2011	P 88-2075	P 88-2154		
P 88-1948	P 88-2012	P 88-2076	P 88-2155		
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P 88-1973	P 88-2037	P 88-2101	P 88-2180		
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P 88-1975	P 88-2039	P 88-2103	P 88-2182		
P 88-1976	P 88-2040	P 88-2104	P 88-2183		
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P 88-2212	P 88-2292	P 88-2372	P 88-2453	P 88-2536	P 88-2619
P 88-2213	P 88-2293	P 88-2373	P 88-2454	P 88-2537	P 88-2620
P 88-2214	P 88-2294	P 88-2374	P 88-2455	P 88-2538	P 88-2621
P 88-2215	P 88-2295	P 88-2375	P 88-2456	P 88-2539	P 88-2622
P 88-2216	P 88-2296	P 88-2376	P 88-2457	P 88-2540	P 88-2623
P 88-2217	P 88-2297	P 88-2377	P 88-2458	P 88-2541	P 88-2624
P 88-2218	P 88-2298	P 88-2378	P 88-2459	P 88-2542	P 88-2625
P 88-2219	P 88-2299	P 88-2379	P 88-2460	P 88-2543	P 88-2626
P 88-2220	P 88-2300	P 88-2380	P 88-2461	P 88-2544	P 88-2627
P 88-2221	P 88-2301	P 88-2381	P 88-2462	P 88-2545	P 88-2628
P 88-2222	P 88-2302	P 88-2382	P 88-2463	P 88-2546	P 88-2629
P 88-2223	P 88-2303	P 88-2383	P 88-2464	P 88-2547	P 88-2630
P 88-2224	P 88-2304	P 88-2384	P 88-2465	P 88-2548	P 88-2631
P 88-2225	P 88-2305	P 88-2385	P 88-2466	P 88-2549	P 88-2632
P 88-2226	P 88-2306	P 88-2386	P 88-2467	P 88-2550	P 88-2633
P 88-2227	P 88-2307	P 88-2387	P 88-2468	P 88-2551	P 88-2636
P 88-2228	P 88-2308	P 88-2388	P 88-2469	P 88-2552	P 88-2642
P 88-2229	P 88-2309	P 88-2389	P 88-2470	P 88-2553	P 88-2643
P 88-2230	P 88-2310	P 88-2390	P 88-2471	P 88-2554	P 88-2644
P 88-2231	P 88-2311	P 88-2391	P 88-2472	P 88-2555	P 88-2645
P 88-2232	P 88-2312	P 88-2392	P 88-2473	P 88-2556	Y 88-0253
P 88-2233	P 88-2313	P 88-2393	P 88-2474	P 88-2557	Y 88-0254
P 88-2234	P 88-2314	P 88-2394	P 88-2475	P 88-2558	Y 88-0255
P 88-2235	P 88-2315	P 88-2395	P 88-2476	P 88-2559	Y 88-0256
P 88-2236	P 88-2316	P 88-2396	P 88-2477	P 88-2560	Y 88-0257
P 88-2237	P 88-2317	P 88-2397	P 88-2478	P 88-2561	Y 88-0258
P 88-2238	P 88-2318	P 88-2398	P 88-2479	P 88-2563	Y 88-0259
P 88-2239	P 88-2319	P 88-2399	P 88-2480	P 88-2564	Y 88-0260
P 88-2240	P 88-2320	P 88-2400	P 88-2481	P 88-2565	Y 88-0261
P 88-2241	P 88-2321	P 88-2401	P 88-2482	P 88-2566	Y 88-0262
P 88-2242	P 88-2322	P 88-2402	P 88-2483	P 88-2567	Y 88-0263
P 88-2243	P 88-2323	P 88-2403	P 88-2484	P 88-2568	Y 88-0264
P 88-2244	P 88-2324	P 88-2404	P 88-2488	P 88-2569	Y 88-0265
P 88-2245	P 88-2325	P 88-2405	P 88-2489	P 88-2570	Y 88-0266
P 88-2246	P 88-2326	P 88-2406	P 88-2490	P 88-2571	Y 88-0267
P 88-2247	P 88-2327	P 88-2407	P 88-2491	P 88-2572	Y 88-0268
P 88-2248	P 88-2328	P 88-2408	P 88-2492	P 88-2573	Y 88-0269
P 88-2249	P 88-2329	P 88-2409	P 88-2493	P 88-2574	Y 88-0270
P 88-2250	P 88-2330	P 88-2410	P 88-2494	P 88-2575	Y 88-0271
P 88-2251	P 88-2331	P 88-2411	P 88-2495	P 88-2576	Y 88-0272
P 88-2252	P 88-2332	P 88-2412	P 88-2496	P 88-2577	Y 88-0273
P 88-2253	P 88-2333	P 88-2413	P 88-2497	P 88-2578	Y 88-0274
P 88-2254	P 88-2334	P 88-2414	P 88-2498	P 88-2579	Y 88-0275
P 88-2255	P 88-2335	P 88-2415	P 88-2499	P 88-2580	Y 88-0276
P 88-2256	P 88-2336	P 88-2416	P 88-2500	P 88-2582	Y 88-0277
P 88-2257	P 88-2337	P 88-2417	P 88-2501	P 88-2583	Y 88-0278
P 88-2258	P 88-2338	P 88-2418	P 88-2502	P 88-2584	Y 88-0279
P 88-2259	P 88-2339	P 88-2419	P 88-2503	P 88-2585	Y 88-0280
P 88-2260	P 88-2340	P 88-2420	P 88-2504	P 88-2586	Y 88-0281
P 88-2261	P 88-2341	P 88-2421	P 88-2505	P 88-2587	Y 88-0282
P 88-2262	P 88-2342	P 88-2422	P 88-2506	P 88-2588	Y 88-0283
P 88-2263	P 88-2343	P 88-2423	P 88-2507	P 88-2589	Y 88-0284
P 88-2264	P 88-2344	P 88-2424	P 88-2508	P 88-2590	Y 88-0285
P 88-2265	P 88-2345	P 88-2425	P 88-2509	P 88-2591	Y 88-0286
P 88-2266	P 88-2346	P 88-2426	P 88-2510	P 88-2592	Y 88-0287
P 88-2267	P 88-2347	P 88-2427	P 88-2511	P 88-2593	Y 88-0288
P 88-2268	P 88-2348	P 88-2428	P 88-2512	P 88-2594	Y 88-0289
P 88-2269	P 88-2349	P 88-2429	P 88-2513	P 88-2595	Y 88-0290
P 88-2270	P 88-2350	P 88-2430	P 88-2514	P 88-2596	Y 88-0291
P 88-2271	P 88-2351	P 88-2431	P 88-2515	P 88-2597	Y 88-0292
P 88-2272	P 88-2352	P 88-2432	P 88-2516	P 88-2598	Y 88-0293
P 88-2273	P 88-2353	P 88-2433	P 88-2517	P 88-2599	Y 88-0294
P 88-2274	P 88-2354	P 88-2434	P 88-2518	P 88-2600	Y 88-0295
P 88-2275	P 88-2355	P 88-2435	P 88-2519	P 88-2601	Y 88-0296
P 88-2276	P 88-2356	P 88-2436	P 88-2520	P 88-2602	Y 88-0297
P 88-2277	P 88-2357	P 88-2437	P 88-2521	P 88-2603	Y 88-0298
P 88-2278	P 88-2358	P 88-2438	P 88-2522	P 88-2604	Y 88-0299
P 88-2279	P 88-2359	P 88-2439	P 88-2523	P 88-2605	Y 88-0300
P 88-2280	P 88-2360	P 88-2440	P 88-2524		
		P 88-2441			

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Y 88-0308	Y 88-0338
Y 88-0309	Y 88-0339
Y 88-0310	Y 88-0340
Y 88-0311	Y 88-0341
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Y 88-0320	Y 88-0350
Y 88-0321	Y 88-0351
Y 88-0322	Y 88-0352
Y 88-0323	Y 88-0353
Y 88-0324	Y 88-0354
Y 88-0325	Y 88-0355
Y 88-0326	Y 88-0356
Y 88-0327	Y 88-0357
Y 88-0328	Y 88-0358
Y 88-0329	Y 88-0359
Y 88-0330	Y 88-0360

II. 297 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	
P 83-0668	P 87-1028
P 85-0216	P 87-1066
P 85-0535	P 87-1104
P 85-0536	P 87-1192
P 85-0619	P 87-1226
P 85-0716	P 87-1227
P 85-0941	P 87-1273
P 86-0065	P 87-1337
P 86-0066	P 87-1379
P 86-0067	P 87-1417
P 86-0092	P 87-1430
P 86-0294	P 87-1437
P 86-0295	P 87-1542
P 86-0592	P 87-1546
P 86-1078	P 87-1547
P 86-1189	P 87-1548
P 86-1235	P 87-1549
P 86-1602	P 87-1555
P 86-1603	P 87-1673
P 86-1604	P 87-1676
P 86-1607	P 87-1677
P 87-0057	P 87-1679
P 87-0058	P 87-1680
P 87-0059	P 87-1694
P 87-0068	P 87-1759
P 87-0105	P 87-1769
P 87-0197	P 87-1770
P 87-0198	P 87-1787
P 87-0199	P 87-1872
P 87-0200	P 87-1879
P 87-0201	P 87-1881
P 87-0323	P 87-1882
P 87-0326	P 88-0049
P 87-0770	P 88-0083
P 87-0794	P 88-0134
P 87-0930	P 88-0138
P 87-0931	P 88-0156
P 87-0963	P 88-0157
P 87-0973	P 88-0182
P 88-0195	P 88-1221
P 88-0225	P 88-1223
P 88-0275	P 88-1224
P 88-0288	P 88-1235
P 88-0290	P 88-1236
P 88-0319	P 88-1240
P 88-0320	P 88-1243
P 88-0353	P 88-1244
P 88-0387	P 88-1250
P 88-0388	P 88-1251
P 88-0393	P 88-1252
P 88-0436	P 88-1267
P 88-0466	P 88-1271
P 88-0515	P 88-1272
P 88-0522	P 88-1273
P 88-0567	P 88-1274
P 88-0568	P 88-1275
P 88-0579	P 88-1276
P 88-0598	P 88-1277
P 88-0602	P 88-1278
P 88-0606	P 88-1293
P 88-0622	P 88-1303
P 88-0658	P 88-1304
P 88-0671	P 88-1367
P 88-0701	P 88-1370
P 88-0715	P 88-1375
P 88-0726	P 88-1377
P 88-0792	P 88-1403
P 88-0831	P 88-1409
P 88-0836	P 88-1425
P 88-0837	P 88-1426
P 88-0854	P 88-1439
P 88-0862	P 88-1440
P 88-0864	P 88-1443
P 88-0875	P 88-1445
P 88-0884	P 88-1446
P 88-0888	P 88-1460
P 88-0889	P 88-1466
P 88-0890	P 88-1473
P 88-0894	P 88-1495
P 88-0898	P 88-1508
P 88-0900	P 88-1512
P 88-0918	P 88-1514
P 88-0972	P 88-1529
P 88-0981	P 88-1540
P 88-0985	P 88-1543
P 88-0997	P 88-1559
P 88-0998	P 88-1564
P 88-0999	P 88-1567
P 88-1005	P 88-1568
P 88-1020	P 88-1570
P 88-1021	P 88-1598
P 88-1035	P 88-1611
P 88-1037	P 88-1616
P 88-1063	P 88-1617
P 88-1069	P 88-1618
P 88-1070	P 88-1619
P 88-1071	P 88-1620
P 88-1109	P 88-1621
P 88-1115	P 88-1622
P 88-1116	P 88-1623
P 88-1117	P 88-1628
P 88-1118	P 88-1630
P 88-1120	P 88-1631
P 88-1136	P 88-1632
P 88-1154	P 88-1636
P 88-1163	P 88-1643
P 88-1168	P 88-1647
P 88-1169	P 88-1648
P 88-1170	P 88-1650
P 88-1189	P 88-1653
P 88-1197	P 88-1657
P 88-1205	P 88-1658
P 88-1206	P 88-1665
P 88-1211	P 88-1667
P 88-1212	P 88-1668
P 88-1219	P 88-1669
P 88-1220	
P 88-1670	P 88-1786
P 88-1677	P 88-1800
P 88-1682	P 88-1801
P 88-1683	P 88-1802
P 88-1686	P 88-1805
P 88-1690	P 88-1806
P 88-1691	P 88-1807
P 88-1694	P 88-1809
P 88-1697	P 88-1811
P 88-1698	P 88-1813
P 88-1700	P 88-1816
P 88-1713	P 88-1821
P 88-1718	P 88-1823
P 88-1727	P 88-1831
P 88-1730	P 88-1832
P 88-1732	P 88-1839
P 88-1735	P 88-1841
P 88-1739	P 88-1844
P 88-1740	P 88-1850
P 88-1742	P 88-1856
P 88-1745	P 88-1857
P 88-1748	P 88-1860
P 88-1750	P 88-1863
P 88-1753	P 88-1869
P 88-1761	P 88-1870
P 88-1763	P 88-1871
P 88-1764	P 88-1872
P 88-1771	P 88-1885
P 88-1773	P 88-1889
P 88-1774	P 88-1896
P 88-1778	P 88-1898
P 88-1783	P 88-1914

III. 138 Premanufacture Notices and Exemption Request for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory)

PMN No.	
P 84-1182	P 88-1532
P 84-1183	P 88-1533
P 87-1041	P 88-1534
P 87-1471	P 88-1535
P 88-0759	P 88-1536
P 88-0770	P 88-1537
P 88-0886	P 88-1538
P 88-0914	P 88-1539
P 88-1186	P 88-1541
P 88-1200	P 88-1542
P 88-1246	P 88-1544
P 88-1251	P 88-1545
P 88-1323	P 88-1546
P 88-1471	P 88-1547
P 88-1485	P 88-1548
P 88-1495	P 88-1549
P 88-1515	P 88-1550
P 88-1516	P 88-1551
P 88-1517	P 88-1552
P 88-1518	P 88-1553
P 88-1519	P 88-1554
P 88-1521	P 88-1555
P 88-1522	P 88-1556
P 88-1523	P 88-1557
P 88-1524	P 88-1558
P 88-1525	P 88-1560
P 88-1526	P 88-1561
P 88-1527	P 88-1562
P 88-1528	P 88-1563
P 88-1530	P 88-1565
P 88-1531	P 88-1566

P 88-1569	P 88-1582	P 88-1595	P 88-1609	P 88-1635	Y 88-0247
P 88-1570	P 88-1583	P 88-1596	P 88-1610	P 88-1636	Y 88-0248
P 88-1571	P 88-1584	P 88-1597	P 88-1612	P 88-1637	Y 88-0249
P 88-1572	P 88-1585	P 88-1598	P 88-1613	P 88-1638	Y 88-0250
P 88-1573	P 88-1586	P 88-1599	P 88-1614	P 88-1639	Y 88-0251
P 88-1574	P 88-1587	P 88-1600	P 88-1615	P 88-1640	Y 88-0252
P 88-1575	P 88-1588	P 88-1601	P 88-1624	P 88-1641	Y 88-0253
P 88-1576	P 88-1589	P 88-1602	P 88-1625	Y 88-0242	Y 88-0254
P 88-1577	P 88-1590	P 88-1603	P 88-1626	Y 88-0243	Y 88-0255
P 88-1578	P 88-1591	P 88-1604	P 88-1627	Y 88-0244	Y 88-0256
P 88-1579	P 88-1592	P 88-1605	P 88-1629	Y 88-0245	Y 88-0257
P 88-1580	P 88-1593	P 88-1606	P 88-1633	Y 88-0246	Y 88-0264
P 88-1581	P 88-1594	P 88-1607	P 88-1634		

IV. 63 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 84-0127	G Polyurethane prepolymer resin	Aug. 29, 1988.
P 86-0368	G Acrylourethane	Sept. 6, 1988.
P 86-0840	Water dispensible phenolic modified alkyd resin	Sept. 13, 1988.
P 86-0913	G High solids oxirane/hydride polyester resin	Sept. 29, 1988.
P 86-0958	G Polyperfluoroalkyl acrylate	Feb. 25, 1988.
P 86-1196	G Copolyester	July 25, 1988.
P 86-1255	G Amine neutralized alkyl phosphate	Jan. 19, 1987.
P 86-1263	G Phosphoric acid, 1,2-ethanediyl-tetrakis (2-chloro-1-methylethyl) ester	Dec. 16, 1986.
P 86-1489	G Poly(oxy-1,2-ethanediyl alpha-(nonylphenyl)-omega-((2-amino-2-methylethoxy) poly(oxy(methyl-1,2-ethanediyl)))	Aug. 23, 1988.
P 87-0077	G Blocked polyurethane prepolymer	Sept. 6, 1988.
P 87-0550	G Substituted spiro-benzoxanthraceneisobenz-furane	Sept. 13, 1988.
P 87-0711	High solids oxirane/anhydride polyester resin	Sept. 30, 1988.
P 87-0780	G Phthalocyanine colorant	Aug. 31, 1988.
P 87-0848	G Substituted thioxotetrazole salt	Aug. 15, 1988.
P 87-0949	G Ethyl dimethyl propylamine	Aug. 24, 1988.
P 87-0980	G Substituted thioxotetrazole	Aug. 15, 1988.
P 87-1023	G Epoxy modified chlorinated hydrocarbon	July 30, 1988.
P 87-1281	G 3-acetyl-5-butyl-dihydro-2(3H)-furanone	Aug. 1, 1988.
P 87-1356	G Substituted nitrophenoxy substituted naphthoic acid derivative	Aug. 17, 1988.
P 87-1358	G Hydroxyalkylnitrophenoxy substituted naphthoic acid derivative	Aug. 8, 1988.
P 87-1487	G Crosslinked halogenated rubber	Aug. 25, 1988.
P 87-1611	G Hydrophobically-modified hydroxyethylcellulose	Sept. 1, 1988.
P 87-1642	G Vinylidene chloride/butadiene polymer with alkane dioic acid	June 10, 1988.
P 87-1766	G Trisubstituted dialkyl cycloalkane metal	Sept. 13, 1988.
P 87-1782	G Siloxane dimer	Aug. 23, 1988.
P 87-1836	G Epichlorohydrin	Aug. 19, 1988.
P 87-1851	G Siloxane-caprolactone copolymer	Aug. 23, 1988.
P 88-0063	G Substituted thiozino salt	Sept. 10, 1988.
P 88-0190	G Aqueous polymeric dispersion	Sept. 14, 1988.
P 88-0312	G Saturated polyester resin	Aug. 31, 1988.
P 88-0313	G Saturated polyester resin	Aug. 31, 1988.
P 88-0314	G Saturated polyester resin	Aug. 31, 1988.
P 88-0412	G Substituted alkylamino aryl disulfide	Aug. 9, 1988.
P 88-0462	G Fatty acids, trimethylol ethane, benzoic acid, chlorendic anhydride resin	Aug. 4, 1988.
P 88-0645	1,1,3,3-Tetramethyl-1,3-di-(5-hexenyl)disiloxane	Aug. 23, 1988.
P 88-0646	Methyl-(5-hexenyl)-dichlorosilane	Aug. 29, 1988.
P 88-0807	G Copolyether ester	Sept. 7, 1988.
P 88-0863	G Phosphine-substituted transition metal compound	Aug. 12, 1988.
P 88-0892	G Aryiheteroarylalkylamine	Sept. 12, 1988.
P 88-0947	Methyl benzenesulfonic acid, mono- and di-1C20-24, alkyl derivatives, sodium salt	Aug. 19, 1988.
P 88-0948	G Blocked isocyanated prepolymer	Aug. 31, 1988.
P 88-0949	G Epoxymethacrylate ester copolymer	Aug. 24, 1988.
P 88-0958	G Ethylene polymerized halogenated magnesium oxotitanium alkoxide	Sept. 1, 1988.
P 88-0960	G Halogenated magnesium oxotitanium alkoxides; halogenated magnesium oxotitanate, halogenated magnesium titanium alkoxides.	Aug. 28, 1988.
P 88-1039	G Substituted p-cresidine sulfonic acid salt	July 13, 1988.
P 88-1040	G Modified polyisocyanate	July 31, 1988.
P 88-1057	Fluorinated substituted, substituted-substituted sulfonamide, butyl ester	Aug. 5, 1988.
P 88-1107	G Vinyl polymer	Aug. 10, 1988.
P 88-1131	G Bisphenol A diglycidyl ether resin, reaction products with an aliphatic amine and an accelerator	June 30, 1988.
P 88-1155	G Mono-,di-, and tri-alkyl glyceride	Aug. 31, 1988.
P 88-1241	G Polyurethane dispersion	Sept. 2, 1988.
P 88-1262	G Aliphatic polyester glycol	Aug. 17, 1988.
P 88-1300	G Modified polyester resin	Aug. 31, 1988.
P 88-1444	G Blocked isocyanate powder coating curing agent	Aug. 22, 1988.
P 88-1449	G Styrene acrylate acrylamide copolymer	Aug. 29, 1988.
Y 88-0106	Polymer from alkane diols, alkanedioic acid carbomonocyclic acids	Aug. 9, 1988.
Y 88-0106	Polymer of: 2-Methylpentamethylenediamin; isophthalic acid; high molecular weight aliphatic primary alcohol (UNILIVIN 550)	June 1, 1988.
Y 88-0111	G Alkyd resin	Aug. 22, 1988.
Y 88-0175	G Dibasic acid polyol polyester	Aug. 19, 1988.
Y 88-0197	G Sunflower oil alkyd	Aug. 23, 1988.
Y 88-0207	G Vinyl acetate/olefins tetrapolymer	Aug. 22, 1988.
Y 88-0212	G Polyvinyl alcohol poly(alkyleneoxy)acrylate copolymer	Aug. 22, 1988.

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IV. 63 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
Y 88-0248	G Aliphatic polyester urethane	Sept. 9, 1988.

V. 36 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.

P 87-1694
P 88-0854
P 88-0875
P 88-1005
P 88-1223
P 88-1224
P 88-1466
P 88-1514
P 88-1540
P 88-1543
P 88-1564
P 88-1606
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P 88-1632
P 88-1650
P 88-1657
P 88-1662
P 88-1668
P 88-1690
P 88-1727
P 88-1730
P 88-1861
P 88-1896
P 88-2003
P 88-0256
P 88-0261

[FR Doc. 88-25937 Filed 11-25-88; 8:45 am]

BILLING CODE 6560-50

federal register

Monday
November 28, 1988

Part IV

Department of Commerce

International Trade Administration

19 CFR Parts 353, 354, and 355

Procedures For Imposing Sanctions For Violation of an Antidumping or Countervailing Duty Protective Order; Final Rule

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353, 354, and 355

[Docket No. 70503-8177]

Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The International Trade Administration (ITA) hereby establishes procedures for imposing sanctions against an individual, firm, or other entity for violating an administrative protective order issued by the International Trade Administration as a condition for the release of proprietary business information during an antidumping or countervailing duty proceeding.

The Secretary of Commerce is authorized to release proprietary business information under an administrative protective order in the course of an antidumping duty or countervailing duty investigation or administrative review. 19 U.S.C. 1677f(c). The Secretary is further authorized to impose sanctions for the violation of a protective order. *Id.* Current antidumping duty and countervailing duty regulations provide that a person against whom sanctions are proposed "shall be afforded a reasonable opportunity to be heard before the determination is made." 19 CFR 353.30(e)(3), 355.20(e)(2).

On July 6, 1987, the Department proposed rules to govern the imposition of sanctions for violation of an administrative protective order (52 FR 25246). The Department considered all of the comments received in response to the proposed rule and request for comments. These comments, and the Department's response to them, are summarized below.

EFFECTIVE DATE: These regulations are effective December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, (202) 377-1411.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291. The ITA has determined that these procedures for imposing sanctions for violations of an antidumping duty or countervailing duty administrative protective order in 19 Code of Federal Regulations ("CFR") Parts 353, 354, and 355 are not a major rule as defined in section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981) because they will not: (1) Have a major monetary effect on the economy; (2) result in a major increase in costs or prices; or (3) have a significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

Executive Order 12612. These regulations do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 (52 FR 41685, October 30, 1987).

Paperwork Reduction Act. These regulations will not impose a collection of information requirement for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small business entities because, to the extent it changes existing practices, the rule simply improves the administration of the antidumping duty and countervailing duty provisions of the Tariff Act of 1930, as amended. As a result, a Regulatory Flexibility Analysis was not prepared.

Changes Required by Departmental Reorganization. In the proposed rule, the Assistant Secretary for Trade Administration was made responsible for deciding whether to initiate proceedings and for taking other actions following a report of investigation. As we explained in the preamble, "Persons who make day-to-day decisions under the antidumping and countervailing duty laws * * * would not be involved."

On October 1, 1987, the position of Assistant Secretary for Trade Administration was abolished. Consistent with the view expressed in the preamble to the proposed rule, the authority to make decisions during the initial stages of a proceeding under these regulations has been delegated to the Deputy Under Secretary for International Trade. This rule has been revised accordingly.

Time Limits Imposed on the Investigation and Initiation of Charging Proceeding

Comment: Three parties suggest that the Department impose a time limit under § 354.5 with respect to allegations that the terms of an administrative protective order have been violated. A reasonable and adequate time frame would maintain the integrity of the protective order process, ensure adequate protection for business proprietary information, and protect the rights of the accused party. Requiring prompt notification of an apparent disclosure of protective order material would allow some remedial measures to be taken in order to minimize actual harm to the party whose information allegedly has been wrongfully disclosed.

One party believes that an allegation of impermissible behavior should not be permitted more than three months after the action takes place, unless the violation could not have been discovered through the exercise of reasonable care. A second party believes that a one-year limitation should be imposed both on the investigation concerning the alleged violation and on the possible initiation of a proceeding under § 354.6.

Department's Position: We agree that time limits are appropriate and have revised the proposed regulations as follows: First, we modified § 354.5(b) to provide that the Department will not investigate an allegation unless it is received within 30 days after the violation has occurred or could have been discovered through the exercise of reasonable and ordinary care. If necessary, the Director will make a determination whether this condition is met before deciding whether to commence an investigation. In addition to the reasons given in the comments, our experience has been that stale allegations not only make impossible the taking of prompt remedial action, if appropriate, but also seriously hamper an investigation because of the fading memories and unavailability of witnesses. No investigation the Department has to date conducted would have been precluded by application of this 30-day reporting requirement.

We also modified § 354.5(b) to state that the Director will conduct an investigation and submit a report no later than 180 days after receiving information concerning a violation. Upon the Director's request, and if extraordinary circumstances exist, the Deputy Under Secretary for International Trade may grant the Director up to an additional 180 days to conduct the investigation and submit the report.

Finally, we changed § 354.6 to provide that the Deputy Under Secretary must decide whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

The regulations as originally proposed set forth time limits for the remainder of the sanction procedures, except for the scheduling of a hearing by a presiding official. Under § 354.12, the presiding official will schedule a hearing at a

reasonable time, date, and place. We have not revised the proposal in this respect. This statement thus grants the presiding officer sufficient discretion to take account both of the presiding officer's other obligations and of discussions that may be taking place between the parties to narrow the issues. For its part, however, the Department would not intend to continue such discussions for more than 90 days after issuance of the charging letter.

Guidelines for Treatment of Protective Order Material

Comment: Two parties suggest that guidelines defining appropriate or inappropriate behavior in treatment of protective order material be incorporated into these rules. Failure to establish guidelines will result in serious differences of opinion as to what constitutes a violation and needless allegations against attorneys trying to comply with the terms of an administrative protective order as they understand them.

One party suggests the following guidelines be included in these procedures as new paragraph (d) to § 354.5:

(d) In making his investigation and preparing his report, the Director shall be guided as follows:

(1) Following is a non-exhaustive list of behaviors that constitute violations of a protective order:

(a) The wilful disclosure of protective order information to any client or any other third party not allowed access under the protective order;

(b) Counsel's taking protective order material out of the United States to a foreign country;

(c) The use of protective order information in questioning third parties even when those parties would not be in the position to pass any information to an interested party to the proceeding;

(d) Intentional disposal of APO documents not returned to the agency other than through shredding or tearing (in at least 8 parts).

(2) Following is a non-exhaustive list of behavior that does not constitute actionable violations of a protective order:

(a) Inadvertent disclosure of protected information, including inadvertent failure to shred or tear documents not returned to the agency; however, if the Director finds that the individual or firm that has made the inadvertent disclosure has made similar disclosures in the recent past (preceding 12 months), he shall indicate this history in his investigation report;

(b) Collection of documents from counsel prior to their further dissemination will not be deemed to be a "disclosure" at all;

(c) In the instance where administrative reviews of the same order for different time periods are proceeding simultaneously, the use of protective order material received as the result of one review in the other;

(d) The disclosure of such issues (claim for an adjustment for after-sale rebates, sales below cost of production, etc.) when such issues are not evident from public information but only from the APO information;

(e) The disclosure of ranges of aggregate values within plus or minus 10 percent of the actual values or of sample calculations when the actual values appear only in protective order information.

Another party supports a distinction between willful and inadvertent disclosures of proprietary information. The party recommends that when the failure to delete proprietary information from the public version of a brief or other correspondence is found to be inadvertent, the person submitting the information should be required to demonstrate that the release caused substantial harm to its competitive position. If it is determined that no, or minimal, harm has resulted from the disclosure, the party believes the Department can reasonably conclude that the proprietary designation was improperly granted and that no violation of the protective order occurred. A person should not be penalized for the inadvertent disclosure of information where that disclosure did not cause substantial harm to the competitive position of the submitter.

Department's Position: The Department agrees that guidelines defining inappropriate behavior in the treatment of protective order material should be incorporated into the procedures for imposing sanctions. Thus, we have added guidelines under § 354.5, new paragraph (d), to assist persons subject to an administrative protective order. The guidelines are based upon the violations described in our September 11, 1987, notice of the Status of Investigations into Charges of Violations of Administrative Protective Orders in Antidumping and Countervailing Duty Proceedings (52 FR 34399), the comments we received with respect to that notice (which are summarized and answered here), and the comments we received with respect to these proposed regulations.

The Department chose not to define guidelines for permissible behavior under a protective order. We believe that persons subject to an administrative protective order may place themselves in greater danger of committing a violation by attempting to interpret guidelines of permissible behavior rather than by attempting to avoid impermissible behavior. We urge persons subject to protective orders to contact the Department attorney assigned to the case if they are unable to determine from the guidelines, or from the terms of the protective order, whether a contemplated act constitutes a violation. (See, "Designation of APO Legal Officer," *infra.*)

The Department also did not include as a violation the suggested example of "[c]ounsel's taking protective order material out of the United States to a foreign country." We fail to see how the risk of disclosure is increased by counsel's removal of proprietary material from the United States such that the simple act of doing so should be proclaimed, *ipso facto*, a violation. Counsel is subject to the requirements to safeguard proprietary information at any location, and if the risk of disclosure increases from one place to the next, counsel is expected to increase the steps taken to safeguard this material.

In addition, the Department did not include a guideline on the method by which the disposal of protective order material must take place. As explained in response to the next comment, this suggestion is directed more to procedures for administering protective orders than to sanctions for violations of those orders.

We disagree with the suggestion that we should authorize limited use of proprietary material obtained during one administrative review of an order in a later administrative review of the same order. (See, "Use of Protective Order Material in Other Proceedings," *infra.*) While isolated examples can be given of the potential utility of such exceptions, the increased risk of disclosure and the drain of the Department's limited resources away from the real work of a review far outweigh that potential benefit. In order to implement the comment, protective orders would have to extend in time from the initial investigation through all administrative reviews, which means keeping such orders active for ten years or more in some cases. The chance that proprietary material can adequately be managed under those circumstances is slim, and the risk, therefore, of inadvertent disclosure is greatly increased.

Moreover, parties could find it necessary to raise again issues resolved as to the particular facts in prior reviews, thus ensuring that no topic is ever put to rest and distracting Departmental personnel from resolving the issues that pertain to the facts in the current review. These dangers are not warranted by the potential benefits identified in the comment. The Department, of course, will have access to proprietary data in prior reviews as part of its investigatory mandate, and will transfer proprietary information

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into the record of the current review from that of a prior review when it is appropriate to do so.

The recommendation that use of proprietary information when questioning third parties should be considered a violation is included in the first guideline, that is, such use would be considered disclosure of protective order information to someone not listed in the guideline.

Finally, the Department did not distinguish in its guidelines between willful and inadvertent disclosures of protected information for purposes of deciding whether a violation has, in fact, occurred. Disclosure of proprietary information, inadvertent or otherwise, will continue to constitute a violation of the administrative protective order. We recognize, however, that a willful or inadvertent violation of an administrative protective order and the degree of harm caused by a violation should be considered in determining whether sanctions are appropriate and, if so, what sanctions to impose. This is why the test for deciding whether to initiate a charging proceeding has two parts. Before a charging letter is issued, the Deputy Under Secretary must find under § 354.6 not only that reasonable cause to believe a person violated a protective order exists, but also that imposition of a sanction for that violation is appropriate. If a sanction is not appropriate for the violation, the Deputy Under Secretary will not initiate a proceeding. If a sanction is appropriate, the gradient of sanctions listed in § 354.3 provides the Deputy Under Secretary, the presiding official, or the APO Sanctions Board sufficient discretion to impose the sanction appropriate to the particular violation. As noted in § 354.6, "In determining whether sanctions are appropriate and, if so, what sanctions to impose, the Deputy Under Secretary will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case." A similar statement is made in § 354.14(b).

Handling of Protective Order Material Following a Final Determination

Comment: One party suggests that the Department establish a guideline as to what documents containing proprietary information must be returned to the Department or the submitting party and what documents may be destroyed. The party believes that the current policy requires only that the original documents furnished must be returned, while copies of the original documents and all notes, memoranda, and official submissions containing protected information may be destroyed. If the Department permits destruction of such information, it should clearly indicate how that destruction should take place, specifically as regards an electronic memory or a computer program.

Department's Position: The subject matter of this comment is directed more to procedures for administering protective orders than to sanctions for violations of those orders, which is the subject of this rulemaking. We have, however, deleted "destruction" of proprietary information from the guideline in new paragraph (d), even though it was included in the proposed rule, because the Department permits destruction, and certification of such destruction, in accordance with instructions contained in the model application and protective order.

Use of Protective Order Material When a Petition Is Refiled

Comment: One party recommends that the Department should presume that protective order material has not been misused when an antidumping duty or a countervailing duty case is refiled, provided that the petitioner can demonstrate an independent basis for believing circumstances changed sufficiently to warrant the refiling. Counsel risks a claim that he used protective order information submitted in a prior proceeding when refiling a petition following the termination of the earlier proceeding. A guideline on this subject would significantly reduce any chilling effect upon the party's right to petition the government for redress.

Department's Position: The Department agrees with the presumption enunciated by the party; that is, the Department presumes that protective order material has not been misused when an antidumping duty or a countervailing duty petition is refiled. We did not, however, include this presumption as a guideline under these regulations because we decided, in response to an earlier comment, not to establish guidelines for permissible behavior under a protective order. Again, the Department is always willing to consult with any person who requests guidance as to the use of proprietary information.

Standard for Allegations

Comment: One party suggests that counsel who allege a violation of an administrative protective order be held to the same standard as that imposed under Rule 11 of the Federal Rules of Civil Procedure. This standard would limit frivolous allegations of wrongdoing by other counsel.

Department's Position: The Department condemns frivolous allegations of wrongdoing under these regulations, but does not consider it necessary at this time to impose a standard by which to judge the propriety of an individual's allegation. Civil remedies allow an accused party an adequate response to the more serious charges of frivolity. Our experience also demonstrates that the persons who allege a violation impose upon themselves a rigorous standard by which they scrutinize their decision. If these regulations generate frivolous allegations, we will consider imposing a standard for allegations of violations of administrative protective orders in future rulemaking, together with appropriate sanctions for failure to meet that standard.

Repeated Inadvertent Disclosures of Protective Order Material

Comment: One party recommends that the text of § 354.6 include the following statement:

> If the Director has found a repeated history of inadvertent disclosures, the Assistant Secretary will notify appropriate ITA [Department] personnel and request that they provide assistance to the offending party in the form of review of the party's APO procedures and the provision of appropriate advice so that the party may reduce or eliminate his or her inadvertent disclosures. Failure to adopt the recommendations of the Commerce Department personnel, where such recommendations are reasonable and do not involve substantial additional costs, can be considered by the agency in determining whether future APO release should be permitted.

Department's Position: The Department does not consider it necessary to add the party's recommended paragraph to our regulations. We have always placed a high priority on educating parties as to the proper use and control of proprietary information and will continue to provide guidance whenever a misunderstanding develops. Also, the failure of a person to adopt the Department's recommendations is, more appropriately, a consideration of intent to violate a protective order and thus will be reflected in the Deputy Under Secretary's recommendation for sanction. We note that any disclosure, albeit inadvertent, constitutes a violation and the Department may investigate and take action accordingly.

Designation of an APO Legal Officer

Comment: One party suggests that the Department designate an "APO legal officer." This individual would have the power under the regulations to issue formal advisory opinions as to the confidentiality of information derived from protective order materials. The difficult decisions as to maintenance of a document's confidentiality during an indirect discussion of protective order data, or whether a document's confidentiality has been waived by the submitter, should not be left solely to the judgment of opposing counsel.

Department's Position: The Department does not consider it necessary to designate a particular legal officer to answer questions concerning protective order material. A person may contact the attorney assigned from the Office of Chief Counsel for Import Administration to seek clarification as to whether a proposed act constitutes a violation of an administrative protective order. We will continue, however, to evaluate whether it is necessary to appoint an APO legal officer.

Closing Public Hearings

Comment: Two parties recommend that the Department close the administrative hearings in antidumping and countervailing duty proceedings when necessary to permit disclosure of proprietary information. One of these parties suggests that a portion of the hearing be closed only where all parties to the investigation consent. The other party suggests that the Department withhold copies of the transcript from the public for 48 hours to permit counsel to delete proprietary information from it. The spontaneous nature of testimony at a hearing increases the risk of an inadvertent disclosure of proprietary information. Closed hearings would reduce this risk.

Department's Position: The subject matter of this comment is more appropriate for consideration in the context of our current revision of the regulations for countervailing duty and antidumping duty proceedings than in the context of this rulemaking. Therefore, this comment will be considered in our revision of those regulations.

Blanket Administrative Protective Orders

Comment: One party suggests that all counsel to a proceeding be covered by a single, blanket administrative protective order. This approach would limit the concern of respondents' counsel where multiple source information is used and reduce the risk of inadvertent disclosure when attempting to make many versions of the same brief.

Department's Position: The subject matter of this comment is more appropriate for consideration in the context of our current revision of the regulations for countervailing duty and antidumping duty proceedings than in the context of this rulemaking. Therefore, this comment will be considered in our revision of those regulations.

Use of Protective Order Material in Other Proceedings

Comment: One party believes that the Department should not artificially limit its own factfinding abilities by preventing interested parties and itself from taking cognizance of protective order information in the context of any ongoing proceeding in which the information is relevant. The statutory limitation on the use of protective order information is designed to encourage submission of such information by giving assurances that the data will not be used in additional legal proceedings brought by parties given access. This limitation should not bar the use of this material over the course of a single proceeding as that term is defined in the Department's regulations. This limitation should also not bar the use of this material against another party where that party is involved in the same or a separate investigation of the same product. Finally, this limitation should not bar use of this information in a simultaneous investigation of the same party under another unfair trade statute.

Department's Position: The Department has consistently held that the acts described above violate administrative protective orders. Therefore, to clarify our holding, we established under § 354.5, new paragraph (d), guidelines to address the use of protective order information for purposes other than the proceeding for which it was obtained. (See, "Guidelines for Treatment of Protective Order Material," *supra.* See also the Department's discussion of this issue in the current revision of the regulations for antidumping and countervailing duty proceedings.)

Limit Sanctions to Appearances Before the ITA

Comment: One party suggests that the sanctions barring a person from appearing before the Department or any constituent agency or other sub-unit of the Department under paragraphs (a)(1) and (b)(1) of § 354.3 and paragraphs (c)(2) and (c)(3) of § 354.8 be limited just to appearances before the ITA. The party believes that a person found to have violated a protective order before the ITA should not be barred from appearing before other agencies of the Department, such as the Patent and Trademark Office or the National Oceanic and Atmospheric Administration, which perform services different from those of the ITA.

Department's Position: The Department agrees that sanctions to bar a person from appearing before the Department should be limited just to appearances before the ITA. That is, our proceedings do not consider factors relevant to the appearance of a person before another agency of the Department. Thus, a violation of an administrative protective order forms no basis for us to decide whether a person should be prohibited from practicing before another agency.

Sections 354.3(a), 354.3(b), and 354.8(c) have been amended to be consistent with this position. The Department notes, however, that it still retains the authority under § 354.15(e) to provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations whenever the Deputy Under Secretary subjects a charge or affected party to a sanction under § 354.3(a)(1) and to any Federal agency likely to have an interest in the matter and will cooperate in any disciplinary actions by any association or agency. We would also note that disbarment from practice before ITA could trigger disciplinary proceedings by other agencies.

No Time Limit Imposed on Sanctions

Comment: One party recommends that the seven-year limit placed on sanctions barring a person from appearing before the Department under § 354.3(a)(1) and § 354.3(b)(1) or denying a person access to proprietary information under § 354.3(a)(2) be lifted. The Department should have the ability to impose sanctions upon a person found to have violated a protective order for a period longer than seven years.

Department's Position: The Department agrees that it should not limit its ability to impose sanctions upon a person found to have violated a protective order for a period not to exceed seven years. Paragraphs (a)(1), (a)(2), and (b)(1) of § 354.3 have thus been amended to be consistent with this position.

Longer Time Limit for the Presiding Official's Initial Decision

Comment: One party suggests that the presiding official be allowed more than 10 days to file an initial decision after the conclusion of a hearing under § 354.14(a). The party notes that it normally takes more than one day for a hearing transcript to become available and that to require a transcript in one day significantly increases the costs of the proceeding.

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Department's Position: The Department agrees that it should increase the period in which the presiding official will ordinarily issue a decision following the conclusion of a hearing. Paragraph (a) of § 354.14 has thus been amended to allow the presiding official 20 days to file a decision under these circumstances.

Note.—The Department added the phrase, "whenever the Deputy Under Secretary subjects a charged or affected party to a sanction under paragraph (a)(1) of § 354.3," to the last sentence of § 354.15(e) in order to indicate when the Department will refer a violation under this part to the disciplinary body of the appropriate professional association. The last sentence of § 354.14(e) now reads as follows:

The Deputy Under Secretary will also provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations *whenever the Deputy Under Secretary subjects a charged or affected party to a sanction under paragraph (a)(1) of § 354.3* and to any Federal agency likely to have an interest in the matter and will cooperate in any disciplinary actions by *any* [the] association[s] or agency[ies].

Many bar associations, including that of the District of Columbia, operate under procedural rules which would require a formal investigation of such a notice, regardless of its nature. The unintended effect could be the initiation of an investigation by a bar association for a violation which did not warrant further remedial action. We thus decided to limit such referrals to the most grievous violations; that is, those that result in debarment from practice before the ITA.

List of Subjects in 19 CFR Parts 353, 354, and 355

Business and industry, Foreign trade, Imports, Trade practices.

Dated: November 21, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

For the reasons stated, we amend Parts 353 and 355 of 19 CFR Chapter III and add a Part 354 as shown below.

PART 353—[AMENDED]

1. The authority citation for Part 353 is revised to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts II, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150; sec. 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 93–573, 98 Stat. 2948; and Title XVIII, Subtitle B, Chapter 3 of the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085.

2. 19 CFR 353.30(e)(2) is revised to read as follows:

§ 353.30 Limited disclosure of certain confidential information under an administrative protective order.

* * * * *

(e) * * *

(2) The imposition of such sanctions shall be in accordance with the procedures set forth in 19 CFR Part 354.

3. 19 CFR Part 354 is added as follows:

PART 354—PROCEDURES FOR IMPOSING SANCTIONS FOR VIOLATION OF AN ANTIDUMPING OR COUNTERVAILING DUTY PROTECTIVE ORDER

Secs.

354.1 Scope.
354.2 Definitions.
354.3 Sanctions.
354.4 Suspension of rules.
354.5 Report of violation and investigation.
354.6 Initiation of proceedings.
354.7 Charging letter.
354.8 Interim sanctions.
354.9 Request for a hearing.
354.10 Discovery.
354.11 Prehearing conference.
354.12 Hearing.
354.13 Proceeding without a hearing.
354.14 Initial decision.
354.15 Final decision.
354.16 Reconsideration.
354.17 Confidentiality.

Authority: 5 U.S.C. 301, and sec. 777 of the Tariff Act of 1930, as amended by sec. 619 of The Trade and Tariff Act of 1984, Pub. L. 93–573, 98 Stat. 2948, 3038, and sec. 1886(a)(13) of the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085.

§ 354.1 Scope.

This Part sets forth the procedures for imposing sanctions for violation of an administrative protective order issued under 19 CFR § 353.30 or § 355.20, or successor regulations, as authorized by 19 U.S.C. § 1677f(c).

§ 354.2 Definitions.

For purposes of this part:

(a) "Affected party" means a party against whom sanctions have been proposed but who is not a charged party;

(b) "APO Sanctions Board" means the Administrative Protective Order Sanctions Board;

(c) "Charged party" means a person who is charged by the Deputy Under Secretary with violating a protective order;

(d) "Chief Counsel" means Chief Counsel for Import Administration, or designee;

(e) "Date of service" means the day a document is deposited in the mail or delivered in person;

(f) "Days" means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

(g) "Department" means Department of Commerce;

(h) "Deputy Under Secretary" means Deputy Under Secretary for International Trade, or designee;

(i) "Director" means an Office Director under the Deputy Assistant Secretary for Investigations, International Trade Administration, or designee, who shall be responsible for conducting an investigation of an alleged violation of an administrative protective order if the incident is discovered during an administrative review, or an Office Director under the Deputy Assistant Secretary for Compliance, International Trade Administration, or designee, if the incident is discovered during any other time;

(j) "Lesser included sanction" means a sanction of the same type but of more limited scope than the proposed sanction; thus a one-year bar on representations before the International Trade Administration is a lesser included sanction of a proposed seven-year bar;

(k) "Parties" means the Department and the charged party or affected party in an action under this Part;

(l) "Person" means an individual, partnership, corporation, association, organization, or other entity;

(m) "Presiding official" means the person authorized to conduct hearings in administrative proceedings or to rule on any motion or make any determination under this part, who may be an Administrative Law Judge, a Hearing Commissioner, or such other person who is not under the supervision or control of the Assistant Secretary for Import Administration, the Deputy Under Secretary for International Trade, the Chief Counsel for Import Administration, or a member of the APO Sanctions Board;

(n) "Proprietary information" means information the disclosure of which the Secretary has decided is limited under 19 CFR 353.29 or 355.19, including business or trade secrets; production costs; distribution costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the gross net subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

(o) "Protective order" means an administrative protective order issued by the Secretary under 19 CFR 353.30 or 355.20; and

(p) "Under Secretary" means Under Secretary for International Trade, or designee.

§ 354.3 Sanctions.

(a) A person determined under this part to have violated a protective order may be subjected to any or all of the following sanctions:

(1) Barring such person from appearing before the International Trade Administration to represent another for a designated time period from the date of publication in the **Federal Register** of a notice that a violation has been determined to exist;

(2) Denying the person access to proprietary information for a designated time period from the date of publication in the **Federal Register** of a notice that a violation has been determined to exist;

(3) Other appropriate administrative sanctions, including striking from the record any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect; and

(4) Requiring the person to return material previously provided by the Department and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under an administrative protective order.

(b) (1) The firm of which a person determined to have violated a protective order is a partner, associate or employee; any partner, associate, employer, or employee of such person; and any person represented by such person may be barred from appearing before the International Trade Administration for a designated time period from the date of publication in the **Federal Register** of notice that a violation has been determined to exist or may be subjected to the sanctions set forth in paragraph (a) of this section, as appropriate.

(2) Each person against whom sanctions are proposed under paragraph (b)(1) of this section is entitled to all the administrative rights set forth in this Part separately and apart from rights provided to a person subject to sanctions under paragraph (a) of this section, including the right to a charging letter, right to representation, and right to a hearing, but subject to joinder or consolidation by a presiding official under § 354.12(b).

§ 354.4 Suspension of rules.

Upon request by the Deputy Under Secretary, a charged or affected party, or the APO Sanctions Board, a presiding official may modify or waive any rule in the part upon determining that no party will be unduly prejudiced and the ends of justice will thereby be served and upon notice to all parties.

§ 354.5 Report of violation and investigation.

(a) An employee of the Department of Commerce who has information indicating that the terms of an administrative protective order have been violated will provide the information to the appropriate Director or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have violated the terms of an administrative protective order, from an employee of the Department of Commerce or any other person, the appropriate Director will conduct an investigation concerning whether there was a violation of a protective order, and who was responsible for the violation, if any. For purposes of this part, the Director will be supervised by the Deputy Under Secretary for International Trade with guidance from the Chief Counsel. The Director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the Director, could have been discovered through the exercise of reasonable and ordinary care.

(c) The appropriate Director will provide a report of the investigation to the Deputy Under Secretary, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the appropriate Director's request, and if extraordinary circumstances exist, the Deputy Under Secretary may grant the appropriate Director up to an additional 180 days to conduct the investigation and submit the report.

(d) The following examples of actions that constitute violations of an administrative protective order shall serve as guidelines to each person subject to a protective order. These examples do not represent an exhaustive list. Evidence that one of the acts described in the guidelines has been committed, however, shall be considered by the Deputy Under Secretary as reasonable cause to believe a person has violated a protective order, within the meaning of § 354.6.

(1) Disclosure of proprietary information to any person not granted access to that information by protective order, including an employee of the Department not directly concerned with carrying out the investigation in connection with which the information is submitted, an employee of any other United States Government agency, or a member of Congress.

(2) Failure to follow the detailed procedures outlined in the protective order for safeguarding proprietary information, including maintaining a log showing when each proprietary document is used, and by whom, and requiring all employees who obtain access to proprietary information (under the terms of a protective order granted their employer) to sign and date a copy of that protective order.

(3) Loss of proprietary information.

(4) Failure to return or destroy all copies of the original documents and all notes, memoranda, and submissions containing proprietary information at the close of the proceeding for which the data were obtained by burning or shredding of the documents or by erasing electronic memory, computer disk, or tape memory, as set forth in the administrative protective order.

(5) Failure to delete proprietary information from the public version of a brief or other correspondence filed with the Department.

(6) Disclosure of proprietary information during a public hearing.

(7) Use of proprietary information submitted for one investigation or administrative review during a different investigation or administrative review.

(8) Use of proprietary information submitted in one investigation or administrative review in a separate investigation or administrative review of a product from the same or different country.

(9) Use of proprietary information submitted for a countervailing duty investigation or administrative review during an antidumping duty investigation or administrative review, or vice versa.

§ 354.6 Initiation of proceedings.

If the Deputy Under Secretary concludes, after an investigation and report by the appropriate Director under § 354.5(c) and consultation with the Chief Counsel, that there is reasonable cause to believe that a person has violated a protective order and that sanctions are appropriate for the violation, the Deputy Under Secretary will initiate a proceeding under this part by issuing a charging letter as set forth in § 354.7. In determining whether sanctions are appropriate and, if so, what sanctions to impose, the Deputy Under Secretary will consider the nature of the violation, the resulting harm, and

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other relevant circumstances of the case. The Deputy Under Secretary will decide whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

§ 354.7 Charging letter.

(a) *Contents of Letter.* The Deputy Under Secretary will initiate proceedings by issuing a charging letter to each charged party and affected party which includes:

(1) A statement of the allegation that a protective order has been violated and the basis thereof;

(2) A statement of the proposed sanctions;

(3) A statement that the charged or affected party is entitled to review the documents or other physical evidence upon which the charge is based and the method for requesting access to, or copies of, such documents;

(4) A statement that the charged or affected party is entitled to a hearing before a presiding official if requested within 30 days of the date of service of the charging letter and the procedure for requesting a hearing, including the name, address, and telephone number of the person to contact if there are further questions;

(5) A statement that the charged or affected party has a right, if a hearing is not requested, to submit documentary evidence to the Deputy Under Secretary and an explanation of the method for submitting evidence and the date by which it must be received; and

(6) A statement that the charged or affected party has a right to retain counsel at the party's own expense for purposes of representation.

(b) *Settlement and amending the charging letter.* The Deputy Under Secretary may amend, supplement, or withdraw the charging letter at any time with the approval of a presiding official if the interests of justice would thereby be served. If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint a presiding official to make this determination. If a charging letter is withdrawn after a request for a hearing, the presiding official will determine whether the withdrawal will bar the Deputy Under Secretary from seeking sanctions at a later date for the same alleged violation. If there has been no request for a hearing, or if supporting information has not been submitted under § 354.13, the withdrawal will not bar future actions on the same alleged violation. The Deputy Under Secretary and a charged or affected party may settle a charge brought under this part by mutual agreement at any time after service of the charging letter; approval of the presiding official or the APO Sanctions Board is not necessary.

(c) *Service of charging letter on a resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c) (ii) or (iii) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left.

(d) *Service of charging letter on a non-resident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that satisfies the due process requirements under United States law with respect to notice in administrative proceedings.

§ 354.8 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 354.7 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department or others, including the protection of proprietary information, the Deputy Under Secretary may petition a presiding official to impose such sanctions.

(b) The presiding official may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of a protective order and the Department is likely to prevail in obtaining sanctions under this Part,

(2) The Department or others are likely to suffer irreparable harm if the interim sanctions are not imposed, and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department or others, including, but not limited to:

(1) Denying a person further access to proprietary information.

(2) Barring a person from representing another person before the International Trade Administration.

(3) Barring a person from appearing before the International Trade Administration, and

(4) Requiring the person to return material previously provided by the Department and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under an administrative protective order.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the presiding official to support the request. The notice will include a reference to the procedures of this section.

(e) A person against whom interim sanctions are proposed has a right to oppose the request through submission of material to the presiding official. The presiding official has discretion to permit oral presentations and to allow further submissions.

(f) The presiding official will notify the parties of the decision on interim sanctions and the basis therefor within five days of the conclusion of oral presentations or the date of final written submissions.

(g) If interim sanctions have been imposed, the investigation and any proceedings under this part will be conducted on an expedited basis.

(h) An order imposing interim sanctions may be revoked at any time by the presiding official and expires automatically upon the issuance of a final order.

(i) The presiding official may reconsider imposition of interim sanctions on the basis of new and material evidence or other good cause shown. The Deputy Under Secretary or a person against whom interim sanctions have been imposed may appeal a decision on interim sanctions to the APO Sanctions Board, if such an appeal is certified by the presiding official as necessary to prevent undue harm to the Department, a person against whom interim sanctions have been imposed or others, or is otherwise in the interests of justice. Interim sanctions which have been imposed remain in effect while an appeal is pending, unless the presiding official determines otherwise.

(j) The Deputy Under Secretary may request a presiding official to impose emergency interim sanctions to preserve the status quo. Emergency interim sanctions may last no longer than 48 hours, excluding weekends and holidays. The person against whom such emergency interim sanctions are proposed need not be given prior notice or an opportunity to oppose the request for sanctions. The presiding official may impose emergency interim sanctions upon determining that the Department is, or others are, likely to suffer irreparable harm if such sanctions are not imposed and that the interests of justice would thereby be served. The presiding official will promptly notify a person against whom emergency sanctions have been imposed of the sanctions and their duration.

(k) If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint a presiding official for making determinations under this section.

§ 354.9 Request for a hearing.

(a) Any party may request a hearing by submitted a written request to the Under Secretary within 30 days after the date of service of the charging letter. However, the Deputy Under Secretary may request a hearing only if the interests of justice would thereby be served.

(b) Upon timely receipt of a request for a hearing, the Under Secretary will appoint a presiding official to conduct the hearing and render an initial decision.

§ 354.10 Discovery.

(a) *Voluntary discovery.* All parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding.

(b) *Interrogatories and requests for admissions or production of documents.* A party may serve on any other party interrogatories, requests for admissions, or requests for production of documents for inspection and copying, and a party concerned may then apply to the presiding official for such enforcement or protective order as that party deems warranted concerning such discovery. The party will serve a discovery request at least 20 days before the scheduled date of a hearing, if a hearing has been requested and scheduled, unless the presiding official specifies a shorter time period. Copies of interrogatories, requests for admissions, and requests for production of documents and responses thereto will be served on all parties. Matters of fact or law of which admission is requested will be deemed admitted unless, within a period designated in the request (at least 10 days after the date of service of the request, or within such further time as the presiding official may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either admitting or denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the presiding official may order the taking of the testimony of any person who is a party, or under the control or authority of a party, by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The presiding official may order a party to answer designated questions, to produce specified documents or items, or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the presiding official may make any determination or enter any order in the proceedings as he or she deems reasonable and appropriate. The presiding official may strike related charges or defenses in whole or in part, or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In issuing a discovery order, the presiding official will consider the necessity to protect proprietary information and will not order the release of information in circumstances where it is reasonable to conclude that such release will lead to unauthorized dissemination of such information.

(e) *Role of the Under Secretary.* If a hearing has not been requested, the party seeking enforcement will ask the Under Secretary to appoint a presiding official to rule on motions under this section.

§ 354.11 Prehearing conference.

(a)(1) If an administrative hearing has been requested, the presiding official will direct the parties to attend a prehearing conference to consider:

(i) Simplification of issues;

(ii) Obtaining stipulations of fact and of documents to avoid unnecessary proof;

(iii) Settlement of the matter;

(iv) Discovery; and

(v) Such other matters as may expedite the disposition of the proceedings.

(2) Any relevant and significant stipulations or admissions will be incorporated into the initial decision.

(b) If a prehearing conference is impractical, the presiding official will direct the parties to correspond with each other or to confer by telephone or otherwise to achieve the purposes of such a conference.

§ 354.12 Hearing.

(a) *Scheduling of hearing.* The presiding official will schedule the hearing at a reasonable time, date, and place, which will be in Washington, DC, unless the presiding official determines otherwise based upon good cause shown that another location would better serve the interests of justice. In setting the date, the presiding official will give due regard to the need for the parties adequately to prepare for the hearing and the importance of expeditiously resolving the matter.

(b) *Joinder or consolidation.* The presiding official may order joinder or consolidation if sanctions are proposed against more than one party or if violations of more than one protective order are alleged if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

(c) *Hearing procedures.* Hearings will be conducted in a fair and impartial manner by the presiding official, who may limit attendance at any hearing or portion thereof if necessary or advisable in order to protect proprietary information from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material the presiding official determines to be relevant and material to the proceeding and not unduly repetitious may be received into evidence and given appropriate weight. The presiding official may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters as are necessary or appropriate to ensure orderliness in the proceedings. The presiding official will ensure that a record of the hearing be taken by reporter or by electronic recording, and will order such part of the record to be sealed as is necessary to protect proprietary information.

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(d) *Rights of parties.* At a hearing each party shall have the right to:

(1) Introduce and examine witnesses and submit physical evidence,

(2) Confront and cross-examine adverse witnesses,

(3) Present oral argument, and

(4) Receive a transcript or recording of the proceedings, upon request, subject to the presiding official's orders regarding sealing the record.

(e) *Representation.* Each charged or affected party has a right to represent himself or herself or to retain private counsel for that purpose. The Chief Counsel will represent the Department, unless the General Counsel determines otherwise. The presiding official may disallow a representative if such representation constitutes a conflict of interest or is otherwise not in the interests of justice and may debar a representative for contumacious conduct relating to the proceedings.

(f) *Ex parte communications.* The parties and their representatives may not make any *ex parte* communications to the presiding official concerning the merits of the allegations or any matters at issue, except as provided in § 354.8 regarding emergency interim sanctions.

§ 354.13 Proceeding without a hearing.

If no party has requested a hearing, the Deputy Under Secretary, within 40 days after the date of service of a charging letter, will submit for inclusion into the record and provide each charged or affected party information supporting the allegations in the charging letter. Each charged or affected party has the right to file a written response to the information and supporting documentation within 30 days after the date of service of the information provided by the Deputy Under Secretary unless the Deputy Under Secretary alters the time period for good cause. The Deputy Under Secretary may allow the parties to submit further information and argument.

§ 354.14 Initial decision.

(a) *Initial decision.* The presiding official, if a hearing was requested, or the Deputy Under Secretary will submit an initial decision to the APO Sanctions Board, providing copies to the parties. The presiding official or Deputy Under Secretary will ordinarily issue the decision within 20 days of the conclusion of the hearing, if one was held, or within 15 days of the date of service of final written submissions. The initial decision will be based solely on evidence received into the record, and the pleadings of the parties.

(b) *Findings and conclusions.* The initial decision will state findings and conclusions as to whether a person has violated a protective order; the basis for those findings and conclusions; and whether the sanctions proposed in the charging letter, or lesser included sanctions, should be imposed against the charged or affected party. The presiding official or Deputy Under Secretary may impose sanctions only upon determining that the preponderance of the evidence supports a finding of violation of a protective order and that the sanctions are warranted against the charged or affected party. In determining whether sanctions are appropriate and, if so, what sanctions to impose, the presiding official or the Deputy Under Secretary will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case.

(c) *Finality of decision.* If the APO Sanctions Board has not issued a decision on the matter within 60 days after issuance of the initial decision, the initial decision becomes the final decision of the Department.

§ 354.15 Final decision.

(a) *APO Sanctions Board.* Upon request of a party, the initial decision will be reviewed by the members of the APO Sanctions Board. The Board consists of the Under Secretary for International Trade, who shall serve as Chairperson, the Under Secretary for Economic Affairs, and the General Counsel.

(b) *Comments on initial decision.* Within 30 days after issuance of the initial decision, a party may submit written comments to the APO Sanctions Board on the initial decision, which the Board will consider when reviewing the initial decision. The parties have no right to an oral presentation, although the Board may allow oral argument in its discretion.

(c) *Final decision by the APO Sanctions Board.* Within 60 days but not sooner than 30 days after issuance of an initial decision, the APO Sanctions Board may issue a final decision which adopts the initial decision in its entirety; differs in whole or in part from the initial decision, including the imposition of lesser included sanctions; or remands the matter to the presiding official or Deputy Under Secretary for further consideration. The only sanctions that the Board can impose are those sanctions proposed in the charging letter or lesser included sanctions.

(d) *Contents of final decision.* If the final decision of the APO Sanctions Board does not remand the matter and differs from the initial decision, it will state findings and conclusions which differ from the initial decision, if any, the basis for those findings and conclusions, and the sanctions which are to be imposed, to the extent they differ from the sanctions in the initial decision.

(e) *Public notice of sanctions.* If the final decision is that there has been a violation of a protective order and that sanctions are to be imposed, notice of the Department's decision will be published in the **Federal Register.** Such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has been denied, if such a motion was filed. The Deputy Under Secretary will also provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations whenever the Deputy Under Secretary subjects a charged or affected party to a sanction under paragraph (a)(1) of § 354.3 and to any Federal agency likely to have an interest in the matter and will cooperate in any disciplinary actions by any association or agency.

§ 354.16 Reconsideration.

Any party may file a motion for reconsideration with the APO Sanctions Board. The party must state with particularity the grounds for the motion, including any facts or points of law which the party claims the APO Sanctions Board has overlooked or misapplied. The party may file the motion within 30 days of the issuance of the final decision or the adoption of the initial decision as the final decision, except that if the motion is based on the discovery of new and material evidence which was not known, and could not reasonably have been discovered through due diligence prior to the close of the record, the party shall file the motion within 15 days of the discovery of the new and material evidence. The party shall provide a copy of the motion to all other parties. Opposing parties may file a response within 30 days of the date of service of the motion. The response shall be considered as part of the record. The parties have no right to an oral presentation on a motion for reconsideration, but the Board may permit oral argument at its discretion. If the motion to reconsider is granted, the Board will review the record and affirm, modify, or reverse the original decision or remand the matter for further consideration to a presiding official or the Deputy Under Secretary, as warranted.

§ 354.17 Confidentiality.

(a) All proceedings involving allegations of a violation of a protective order shall be kept confidential until such time as the Department makes a final decision under these regulations, no longer subject to reconsideration, imposing a sanction.

(b) The charged party or counsel for the charged party will be granted access to proprietary information in these proceedings, as necessary, under administrative protective order, consistent with the provisions of 19 CFR 353.30 and § 355.20, or their successor regulations.

PART 355—[AMENDED]

4. The authority citation for Part 355 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1303; 19 U.S.C. 2501 note; subtitle IV, parts I, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150; sec. 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 2948; and Title XVIII, Subtitle B, Chapter 3 of the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085.

5. 19 CFR 355.20(e)(2) is revised to read as follows:

§ 355.20 Limited disclosure of certain confidential information under an administrative protective order.

* * * * *

(e) * * *

(2) The imposition of such sanctions shall be in accordance with the procedures set forth in 19 CFR Part 354.

[FR Doc. 88–27253 Filed 11–25–88; 8:45 am]
BILLING CODE 3510–DS–M

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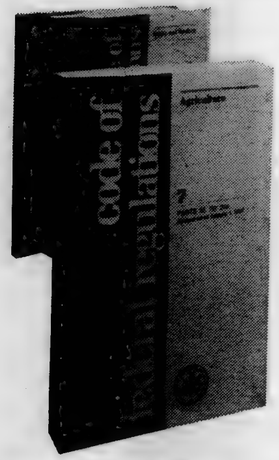
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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: To reflect the move of the New York Regional Office (NYRO), the Merit Systems Protection Board is amending its rules of practices and procedures by changing NYRO's address as listed in 5 CFR Part 1201, Appendix II.

EFFECTIVE DATE: April 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mark Kelleher, Deputy Executive Director for Regional Operations, (202) 653–7980.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1201

Administrative practice and procedures, Civil rights, Government employees.

Accordingly, the Board amends Part 1201 as follows:

PART 1201—[AMENDED]

1. Authority for Title 5 CFR Part 1201 continues to read:

Authority: 5 U.S.C. 1205 and 7701(j).

2. Appendix II to Part 1201 is amended by revising item number 6 in the second paragraph to read as follows:

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

* * * * *

6. New York Regional Office, 26 Federal Plaza, Suite 3137–A, New York, New York 10278–0022 (New Jersey) [Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union and Warren Counties], New York, Puerto Rico, Virgin Islands).

* * * * *

Date: November 23, 1988.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 88–27401 Filed 11–28–88; 8:45 am]
BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 88–006F]

Restoration of Mexico to the List of Countries Eligible To Import Meat Products Into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service is amending the Federal meat inspection regulations by restoring Mexico to the list of countries from which cattle, sheep, swine, and goat products are eligible to be imported into the United States. Reviews of Mexico's laws, regulations and other materials, and on-site reviews of its inspection system indicated that the system is acceptable pursuant to the Federal Meat Inspection Act and regulations thereunder. Thirty-six comments were received in response to the proposal. After careful consideration of the comments received, FSIS is adopting the proposal as published. This action will enable meat products from certified establishments in Mexico to be imported into the United States.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule will restore Mexico as a country from which meat products are eligible to be imported into the United States. However, it is estimated that only approximately 2.5 million pounds of meat products will be imported annually. This amount represents only about .03 percent of domestic production, based on fiscal year 1987 data.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354, because the amount of product estimated to be imported represents only .03 percent of domestic production, based on fiscal year 1987 data. The demand for boneless beef for domestic use exceeds the domestic supply; thus, no affect on those domestic producers of boneless beef is anticipated.

Background

Pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Secretary has delegated to the Administrator of the Food Safety and Inspection Service (FSIS) the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported meat products appear in Part 327 of the Federal meat inspection regulations (9 CFR Part 327). In these regulations, the Administrator has established procedures by which foreign countries desiring to import meat products into the United States may become eligible to do so.

The Agriculture and Food Act of 1981 (Farm Bill) amended section 20 of the FMIA (21 U.S.C. 620) to clarify that

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imported meat products must meet the same inspection, sanitation, quality, species verification, and residue standards applied to domestically prepared product. It directs the Secretary to enforce the Farm Bill through random inspections of imported product at ports of entry for residues and species verification and requires exporting countries to conduct random sampling and testing of internal organs and fat of carcasses for residues at points of slaughter in accordance with methods approved by the Secretary. Regulations implementing the Farm Bill requirements were published in the **Federal Register** on February 10, 1983 (48 FR 6091). All countries eligible to import product into the United States were notified of these regulations.

Residue testing information is collected from exporting countries on an annual basis by the Department. Using this and additional information collected during regular reviews of the meat inspection systems of exporting countries, notice was given in July 1983 as to specific deficiencies in residue and species verification programs in each exporting country, informing them that all corrections must be made by January 1, 1984. A review of laboratory facilities, equipment, and methodology was made during December 1983 to determine the compliance of exporting countries with the residue and species verification requirements.

For a country's inspection system to be considered "at least equal to" that of the United States, that country had to have provided for testing of appropriate tissues (fat, kidney, muscle and/or liver) for chlorinated hydrocarbons, organophosphates, polychlorinated biphenyls (PCB's), trace metals, antibiotics, and hormones, if applicable, using a method approved by the Secretary. In addition, countries had to conduct an approved species verification program. Since that time, additional testing requirements have been added for sulfa drugs and chloramphenicol.

The Administrator has authority to withdraw the eligibility of a foreign country to import meat products into the United States, under § 327.2(a)(4) (9 CFR 327.2(a)(4)), whenever the Administrator determines that the system of meat inspection maintained by such foreign country does not assure compliance with requirements "at least equal to" all the inspection, building construction standards, and other requirements of the FMIA and the regulations as applied to official establishments in the United States.

Amendments to § 327.2 (b) and (c) of the Federal meat inspection regulations (9 CFR 327.2 (b) and (c)) were published in the **Federal Register** on February 15, 1984, withdrawing the eligibility of Mexico to export meat products to the United States. Mexico lost its eligibility because no testing was being performed for chlorinated hydrocarbons, organophosphates, PCB's, trace metals, hormones and antibiotics; and no approved species verification program was being conducted. At that time, it was stated that when the Administrator of FSIS is satisfied that the meat inspection officials of Mexico have corrected the deficiencies in their residue testing and species verification programs, and that the inspection system meets all of the provisions of the FMIA and the regulations promulgated thereunder, Mexico may again be added to the list of countries eligible for importation of cattle, sheep, swine, and goat products into the United States.

Because a considerable amount of time transpired before Mexico corrected the deficiencies in its residue testing and species verification programs, it was necessary for Mexico to provide current information that its inspection system meets all of the provisions of the FMIA and, therefore, could be considered as eligible to import meat products into the United States.

Before eligibility is granted, a complete evaluation of the country's inspection system is made by FSIS personnel. This evaluation consists of two processes—a document review and on-site reviews of the inspection system operations. The eligibility process begins when the foreign country provides FSIS with complete information about its inspection system.

FSIS assists the country in organizing this material by providing questionnaries in five risk areas: contamination, disease, processing, residues, and compliance/economic fraud. FSIS then evaluates the information to assure that the critical points in each of the risk areas are being addressed satisfactorily with respect to standards, activities, resources and enforcement. This process usually involves several exchanges of information. In many cases, the country seeking recognition must revise its regulations, or publish special directives to achieve equivalency with U.S. requirements.

If the document review proves to be satisfactory, on-site reviews are scheduled using a multidisciplinary team to evaluate all aspects of the country's program. When all requirements of the FMIA are satisfied, the country is considered eligible to import meat products into the United States.

Document Review

As part of the document review process, a country's laws are evaluated to assure, among other things, that they provide for inspection and certification of the wholesomeness of product intended for export to the United States; that there are adequate controls over ineligible product to prevent its export; and that the country has adequate controls to prevent persons convicted of wrongdoing (i.e., (1) more than one conviction of any law, other than a felony, based upon the acquiring, handling or distributing of unwholesome, mislabeled or deceptively packaged food or upon fraud in connection with transactions in food, or (2) any felony) from being connected with a firm exporting product to the United States.

A country's legal authority and the regulations thereunder must impose requirements "at least equal to" those of the United States with respect to, among other things, the following areas: (1) Ante-mortem inspection of animals and post-mortem inspection of animal carcasses; (2) official control by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities and product preparation by competent, qualified inspection personnel employed, supervised and paid by the country's central government; (4) separation of operations in certified plants from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified plants; (6) official controls over condemned product; (7) reinspection of boneless meat; and (8) control over chemical and drug residues in meat and/or poultry products prepared for export to the United States.

On-site Reviews

The second process in assessing a country's equal to status, performed after the document review has proved to be satisfactory, is on-site reviews of aspects of the system including laboratories and individual plants within the country. On-site reviews are designed to further explore areas determined to require more detailed evaluation and are also undertaken to allow the FSIS review team to observe the system in its daily operations.

Mexico—Review Results

At the request of Mexico, FSIS personnel recently completed a review of Mexico's meat inspection system. Through the interchange of questions, answers and documentation over a period of several months, FSIS personnel have determined that the laws and regulations concerning the meat inspection system of Mexico can be judged to be at least equal to those of the United States. The document review phase revealed that the following areas needed more detailed evaluation and would be scrutinized during the on-site reviews. These areas included methods for compliance and prevention of economic fraud, and the adequacy of programs designed to test for residues.

During May 1987, an FSIS review team visited five meat plants and Mexico's residue-testing laboratory. After observing the facilities and holding discussions with various plant, laboratory and inspection personnel, the FSIS review team concluded that the Mexican meat inspection program meets the basic minimum requirements for an "at least equal to" determination. However, the team did note two areas where improvements were needed. These areas were (1) control programs comprising the compliance/economic fraud risk area, and (2) some aspects of the residue control programs. FSIS has since received confirmation and documentation from the Mexican Ministry of Agriculture that the necessary improvements in these areas have been made.

After reviewing all of the documents submitted by Mexico and evaluating the findings of the on-site reviews and the subsequent written assurances of government officials, FSIS has determined that the meat inspection system of Mexico is adequate to assure, with respect to establishments within Mexico preparing product for export to the United States, compliance with requirements the same as those applicable to official establishments within the United States which prepare meat products, and that reliance can be placed upon certificates required under the FMIA from authorities of Mexico.

Accordingly, FSIS is amending § 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) to restore Mexico to the list of countries from which meat products may be eligible for importation into the United States.

Although a foreign country may be listed as approved for importation of meat products, the meat products of such foreign country must also comply with other Federal laws including restrictions under Title 9 of the Code of Federal Regulations, Part 94, the Animal and Plant Health Inspection Services' regulations (9 CFR Part 94), relating to the importation of meat products from foreign countries into the United States.

Comments on the Proposed Rule

FSIS received 36 comments in response to the proposal (53 FR 27866): 17 from industry members, 11 from Mexican government agencies, five from trade associations, two from U.S. state commissioners and one from a research foundation. The commenters offered unanimous support for the proposed rule, citing the new jobs which would be created, the increase of trade in other areas, and the overall improved relationship between the two countries.

The Proposal

List of Subjects in 9 CFR Part 327

Imported products, Meat inspection.

PART 327—[AMENDED]

1. The authority citation for Part 327 would continue to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 436; 21 U.S.C. 71 *et seq.*

§ 327.2 [Amended]

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) would be amended by adding alphabetically "Mexico" to the list of countries eligible to import cattle, sheep, swine and goat products into the United States.

Done at Washington, DC on November 23, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-27425 Filed 11-28-88; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 336

Employee Responsibilities and Conduct

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final Rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") hereby adopts as a final rule a revision of Part 336 to its rules and regulations, 12 CFR Part 336, which governs the standards of ethical and other conduct of FDIC employees. Significant changes include identifying certain employees subject to reporting requirements and credit restrictions by position description series codes; clarifying the permissible conditions of acceptance of food, refreshments, and entertainment; modifying existing credit restrictions with regard to credit cards; permitting renegotiation of existing debt on the same terms and conditions as are offered to the general public, conditioned upon disqualification from participation in matters affecting the creditor; shortening the term of some credit prohibitions; clarifying the prohibitions on purchase of liquidation assets, FDIC property, and property of insured banks; reporting of family member employment by firms which do business with the FDIC; decentralizing of reporting to the regional or consolidated office level; eliminating semiannual reports of indebtedness; and adding a new subpart to address post-employment representational restrictions.

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Ethics Program Manager, at (202) 898-7272 or Donald L. Rosholt, Deputy Ethics Counselor, at (202) 898-7271.

SUPPLEMENTARY INFORMATION: On July 12, 1988, the FDIC issued for public comment a proposed revision to Part 336 of its rules and regulations, 12 CFR Part 336, which part governs standards of ethical and other conduct of FDIC employees (53 FR 26262). Further, comment was directly solicited from the union representing FDIC employees, and each employee was mailed a copy of the proposed rule. In addition, the Office of Government Ethics ("OGE") and the Department of Justice reviewed the regulation for consistency with applicable law and regulation.

In addition to written comments from the OGE, four written comments were received, all from FDIC employees. One comment stressed the importance of the proposed revisions regarding extensions of credit to examiners and the elimination of the Confidential Report of Indebtedness as a separate, semiannual filing for most employees. Another commenter, suggesting that the proposed regulation was inequitable to employees, requested that examiners be allowed to obtain credit cards from state nonmember banks located within their region of assignment and then be disqualified from working on matters affecting such banks. One commenter suggested that the proposed regulation be revised to call employees' attention to prohibitions against sexual harassment. Another proposed that a Division of Liquidation employee not be disqualified from matters pertaining to his or her creditor if the extension of credit had become prohibited as a result of the original creditor institution's failure or receipt of financial assistance from the FDIC.

After considering all comments, the Board of Directors has determined to

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adopt the regulation substantially in the form proposed, with the following changes:

1. The definition of "appear personally" has been deleted because the term is not used in the text of the regulation. Instead, at the recommendation of the OGE, a new definition of "appearance" has been added, which tracks the language of the OGE's model regulation at 5 CFR 737.5(b)(3).

2. The proposed provision specifically allowing an employee's acceptance of commemorative items of nominal value has been deleted due to the OGE's requirements. Employees may only accept unsolicited advertising or promotional material of nominal value pursuant to § 336.8(b)(2).

3. As the OGE required, and in conformance with its advisory opinions, the prohibition on receiving compensation for a speech in § 336.11(c) has been changed to pertain only to a speech, the subject matter of which relates *specifically* to matters involving the FDIC.

4. The addition of a prohibition against sexual harassment is beyond the scope of this regulation. The prohibition against gambling on FDIC property (§ 336.14(b)) has been broadened to cover all government property, as was required by the OGE.

5. Division of Liquidation employees will not be able to borrow from wholly owned subsidiaries of the bank resulting from a failed bank within the employee's region. The language changes in § 336.16(b)(3) have been made to cover loan production offices opened by banks that are not bank branches and to clarify that an assuming entity and its branches located *outside* of an employee's region are not prohibited creditors. In addition, the disqualification for an employee to act on matters pertaining to his or her creditor institution under § 336.16(d) is retained to ensure that employees avoid conflicts of interest and the appearance thereof.

6. Division of Bank Supervision employees referenced in § 336.16(a) will not be permitted to obtain credit cards from state nonmember banks located in their region. Although one commenter suggested that the affected employees could be disqualified from working on matters affecting such institutions, such a procedure would have a potentially severe impact on the FDIC's ability to examine banks. By curtailing the number of available staff in a region, possibly to very few, implementing the procedure could impede the Division of Bank Supervision's accomplishment of its mission.

7. In accordance with requirements of the OGE, the language of § 336.26 has been changed to require covered employees to report their resignation and prospective employment as soon as possible but in no event less than two weeks before resignation. As the OGE commented, "If prospective employment is reported as soon as possible, any necessary recusals can be more promptly implemented."

8. In accordance with requirements from the OGE, the provisions of § 336.29(a–e) on post-employment activities have been revised to track the language of the model regulation at 5 CFR 737.5(a), 737.7(a), 737.5(c), 737.9(a), and 737.11(a), which sections are now cross-referenced. The new language clarifies that the prohibition extends to representation before any U.S. or District of Columbia agency or court (rather than merely representation before the FDIC), as title 18 of the U.S. Code requires.

9. Other grammatical and clarification changes were made to the regulation. Two examples are: (a) The FDIC's Office of Research and Strategic Planning will soon be renamed the Office of Research and Statistics, which is reflected in the final rule, and (b) the shorthand summary of credit prohibitions in the Appendix now includes the fact that the exception for the assumption of a mortgage is for an employee's personal residence only.

Employees are encouraged to consult at any time with the Ethics Counselor, Ethics Program Manager, or Deputy Ethics Counselors regarding any questions they may have on this part.

Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the FDIC's Board of Directors hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The FDIC's Board of Directors bases its conclusion on the fact that the rule applies to all programs and activities conducted by the FDIC but does not reach the activities of the banks regulated and/or insured by the FDIC.

Paperwork Reduction Act Statement

The Paperwork Reduction Act (44 U.S.C. 501 *et seq.*) is inapplicable to the final rule as it applies only to U.S. government employees in the course of their normal employment.

List of Subjects in 12 CFR Part 336

Conflicts of interest, Credit, Disclosure requirements, Former government employees, Government employees.

Accordingly, Part 336 is revised to read as follows:

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

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336.1 Purpose and scope.
336.2 Definitions.
336.3 Employee responsibility, counseling, and distribution of regulation.
336.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.
336.5 Sanctions and remedial actions.
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336.17 Bank securities.
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Subpart D—Reports of Interest in Bank Securities, Interest in FDIC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

336.24 Report of interest in bank securities.
336.25 Report of interest in FDIC decision.
336.26 Report of employment upon resignation.
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336.28 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees

336.29 Limitations on representation.
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Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

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336.36 Miscellaneous statutory provisions.
336.37 Statements of employment and financial interests.

Appendix to Part 336—Matrix of Credit Prohibitions.

Authority: E.O. 11222, 3 CFR 1964–1965 Comp.; 5 CFR 735.104; 5 CFR 737.1(a); E.O. 12565.

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

§ 336.1 Purpose and scope.

In order to assure the proper performance of FDIC business and to maintain public confidence in government, FDIC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. This part establishes the policies and procedures of the FDIC with regard to the ethical and other standards of conduct and responsibilities for employees and special government employees. Permissible financial interests, obligations, and outside employment are set forth. This part further sets out the policies and procedures for employee reporting of financial interests and obligations.

§ 336.2 Definitions.

For the purposes of this part:

(a) "Affiliate" means any holding company of which a bank is a subsidiary and any other subsidiary of such holding compnay. Any other entity which would be defined as an affiliate of an insured state nonmember bank under 12 U.S.C. 221a, if such bank were a member bank, shall be deemed to be an affiliate of such insured state nonmember bank.

(b) "Appearance" means an individual's physical presence before the United States in any formal or informal setting or conveyance of material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes, for example, correspondence or telephone calls.

(c) "Appropriate director" means the director of the Washington division or office or the regional director or regional counsel for the division to which an employee is assigned.

(d) "Assessment auditor" means any individual employed as an auditor of insured banks for deposit insurance assessment purposes, whether assigned to a field office or the Washington office, and includes Washington office personnel having oversight and review responsibility for the collection of assessments.

(e) "Assisted entity" means (a) any bank which has received financial assistance from the FDIC to prevent its failure, (2) any bank resulting from a merger or consolidation with any bank described in paragraph (e)(1) of this section, or (3) any parent bank holding company of a bank described in paragraph (e)(1) or (2) of this section; *Provided*, That an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such bank or bank holding company and the FDIC.

(f) "Assuming entity" means any bank or bank holding company which has entered into a transaction with the FDIC to purchase some or all of the assets and assume some or all of the liabilities of a failed bank for a period of one year following the closing of such failed bank.

(g) "Attorney" means any individual employed by the FDIC as an attorney, whether or not assigned to the Legal Division. The term does not include outside attorneys engaged in the private practice of law and retained by the FDIC.

(h) "Chairman" means the Chairman of the Board of Directors of the FDIC.

(i) "Covered employee" means any employee required to file a statement of employment and financial interests or a Financial Disclosure Report pursuant to §§ 336.27(a) or 336.28.

(j) "Dependent child" means a son, daughter, stepson, or stepdaughter who either (1) is unmarried, under 21, and living in the employee's household, or (2) has received over half of his or her support from the employee in the preceding calendar year.

(k) "Employee" means any individual member of the Board of Directors, officer or employee, including a liquidation graded employee, of the FDIC, but does not include a special government employee, the Comptroller of the Currency, or any person employed by the Office of the Comptroller of the Currency.

(l) "Examiner" means any commissioned bank examiner and any employee assigned to the Division of Bank Supervision in a position of the 570 series.

(m) "Honorarium" means a payment, usually for services on which custom or propriety forbids a price to be set.

(n) "Insured bank subject to audit for deposit insurance assessment purposes" means any one of the 500 largest insured banks with demand deposits in excess of $100 million, which are routinely audited by the FDIC for assessment purposes.

(o) "Member of the employee's immediate household" means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(p) "Official responsibility" means the direct administrative, supervisory, or decisional authority, whether intermediate or final, exercisable alone or with others, personally or through subordinates, to approve, disapprove, decide, or recommend official action or to express staff opinions in dealings with the public.

(q) "Person" means an individual, bank, corporation, company, association, partnership, firm, society, or any other organization or institution.

(r) "Reviewing official" means the Deputy Ethics Counselor delegated the authority to receive, review, and retain statements of employment and financial interests filed by covered employees assigned to his or her division, office, or consolidated office.

(s) "Security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(t) "Senior employee" means any individual member of the Board of Directors of the FDIC and any employee named or designated by the Director of the U.S. Office of Government Ethics pursuant to 18 U.S.C. 207(d)(1).

(u) "Special government employee" means any employee serving the FDIC with or without compensation for up to 130 days during any 365-day period on a full-time or intermittent basis.

(v) "Subsidiary" means a company the voting stock of which is 50 percent or more owned or controlled by another company.

§ 336.3 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The Ethics Counselor and Deputy Ethics Counselors shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The Ethics Counselor shall provide a copy of this part to each new

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employee and special government employee within 30 days of commencement of employment, and each such employee or special government employee shall complete and file the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation in accordance with its instructions. The Ethics Counselor shall annually distribute a reminder of the basic provisions of this part to each employee and each special government employee.

(c) An employee who believes that his or her assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her appropriate director.

§ 336.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.

(a) The FDIC's ethics program shall be coordinated and managed by the Ethics Counselor. The Executive Secretary of the FDIC shall act as the FDIC's Ethics Counselor.

(b) The Ethics Program Manager, Office of the Executive Secretary, shall act as the FDIC's Alternate Ethics Counselor and shall act as Ethics Counselor in the absence of the Ethics Counselor.

(c) The Ethics Counselor shall appoint one or more Deputy Ethics Counselors, to whom the Ethics Counselor may delegate duties and responsibilities under this part. Duties and responsibilities so delegated may not be redelegated.

§ 336.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee or special government employee may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, or removal from office, which action shall be taken in accordance with applicable law, executive order, and regulation.

(c) Remedial action, when appropriate, may include, but is not limited to, divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless an employee or special government employee requests review, pursuant to § 336.6, of an order of remedial action, such order of remedial action, other than disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 336.6 shall take effect immediately upon receipt of notice of the determination of the Chairman or his or her designee.

§ 336.6 Review of remedial actions.

When remedial action is ordered pursuant to § 336.5, the affected employee or special government employee may request the Chairman to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The Chairman, or his or her designee, will promptly review the matter and will provide written notice of his or her determination to the employee, which determination shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 336.7 General rules.

FDIC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding the FDIC's efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making an FDIC decision outside official channels; or

(f) Adversely affecting the public's confidence in the integrity of the FDIC.

§ 336.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

(1) Has or seeks contractual or other business or financial relationships with th FDIC;

(2) Is or may be regulated or examined by the FDIC; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the circumstances that personal or family relationships rather than the business of the persons concerned are the motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

(3) Except as otherwise provided in § 336.16, to the acceptance of loans from banks or other financial institutions on the customary terms and conditions offered to the general public;

(4) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering of mutual interest to the government and the private sector, such as receptions and informational programs sponsored or hosted by universities, educational associations, the financial services industry, technical and professional associations (including those that have as members firms doing business with the FDIC), international organizations, or government entities where it has been determined that attendance is in the interest of the FDIC and is related to its mission, in accordance with written guidelines issued by the Ethics Counselor, consistent with guidelines established by the U.S. Office of Government Ethics.

(c) No examiner shall accept any gratuity from any insured state nonmember bank, from any insured bank examined by the examiner, or from any person connected therewith. (See 18 U.S.C. 213)

(d) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) or (c) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) or (c) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the Ethics Counselor within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the Ethics Counselor. The cost of returning such gift or item shall be borne by the FDIC. (See 18 U.S.C. 209)

(e) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement. (See 5 U.S.C. 7351)

(f) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law. (See 5 U.S.C. 7342)

§ 336.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the FDIC (in accordance with the FDIC's General Travel Regulations), and an employee shall not accept payment or reimbursement for such expenses from any private source.

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to the appropriate director and the Ethics Counselor within 30 days of such acceptance. When appropriate, the FDIC will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 336.8(b)(4) and (b)(5).

(d) Notwithstanding the provisions of 5 U.S.C. 4111, the FDIC may, and an employee may not (without the approval of the appropriate director, who shall have consulted with the Ethics Counselor), accept travel, lodging, or subsistence when the donor is an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), and acceptance does not result in, or create the appearance of, a conflict of interest. (See 5 CFR 410.702)

(e) When an employee is not on official duty and there is no payment or reimbursement by the FDIC for expenses of travel, lodging or subsistence, the employee may accept payment or reimbursement from a private source where acceptance is compatible with the purposes of this part and does not present a conflict of interest or the appearance thereof.

(f) The provisions of this section do not prohibit, or require a report of, the acceptance of travel, lodging, or subsistence provided by family members or personal friends.

§ 336.10 Use of official information.

(a) Except as permitted in § 336.11, an employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her FDIC employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use personal information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a, or Part 310 of the FDIC's regulations.

(c) An examiner may not disclose information from a bank examination report except as authorized by law. (See 18 U.S.C. 1906)

(d) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905)

§ 336.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before banking or public organizations on matters involving the FDIC unless the employee receives prior approval, and prior clearance of material to be published, by the appropriate director.

(b) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her FDIC employment unless the information is available to the general public or the appropriate director gives authorization for such use, upon the determination that the use of the information is in the public interest.

(c) Except as provided in § 336.8(b)(2), no employee may receive any compensation or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates specifically to matters involving the FDIC or contains information that is not otherwise available to the general public.

(d) No employee may accept an honorarium of more than $2,000 for any appearance, speech, or article in connection with non-FDIC related activities. No employee may accept an honorarium in connection with any appearance, speech, or article in connection with FDIC-related matters. (See 2 U.S.C. 441i)

§ 336.12 Employment by FDIC of relatives.

(a) For the purpose of this section:

(1) A "relative" is any person related to an FDIC official as parent, step-parent, child, step-child, brother, sister, step-brother, step-sister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An "official" is any employee who has authority to appoint, employ, promote, or advance employees or to recommend anyone for appointment, employment, promotion, or advancement at the FDIC.

(3) A "supervisor" is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) An FDIC official may not—

(1) Appoint, employ, promote, or advance any relative to a position at the FDIC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the FDIC; or

(3) Appoint, employ, promote, or advance a relative of another FDIC official if the official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever an employee becomes a supervisor of a relative, the employee shall report in writing that fact to the appropriate director. The appropriate director, in consultation with the Director of the FDIC's Office of Personnel Management and the Ethics Counselor, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the division, and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate director, the Director of the FDIC's Office of Personnel Management, and the Ethics Counselor shall determine whether the relative may be assigned to another position at the FDIC which is outside the scope of the supervisor's authority.

§ 336.13 Use of FDIC property.

An employee shall not, directly or indirectly, use or allow the use of any kind of FDIC property, including, but not limited to, property which the FDIC

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holds in its corporate capacity, leased property, or property which the FDIC holds in its capacity as receiver, liquidator, or liquidating agent of the assets of a bank, for other than officially approved activities. An employee has a positive duty to protect and conserve FDIC property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 336.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as federal, state, or local taxes. An employee who has difficulty in meeting his or her financial obligations may seek counseling with the FDIC's Office of Personnel Management. This does not require the FDIC to determine the validity or amount of any debt which is the subject of dispute between the employee and an alleged creditor.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the FDIC or the government or while on duty for the FDIC.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal, dishonest, or other conduct prejudicial to the FDIC.

(d) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) The "Code of Ethics for Government Service," which prescribes general standards of conduct (Pub. L. No. 96–303, 94 Stat. 855–856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201–209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibition against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibitions against embezzlement of government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285);

(13) Prohibitions against political activities in 5 U.S.C. 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607;

(14) Prohibition against an employee's acting as the agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (18 U.S.C. 219);

(15) Prohibition against the use of manipulatives or deceptive devices in connection with the purchase or sale of any security (17 CFR 240.10b–5).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 336.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's FDIC duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her FDIC duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208)

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit). (See 18 U.S.C. 208)

(d) No partner of an employee or a special government employee may act as agent or attorney for any person other than the United States before the FDIC in a matter in which the employee participates or has participated, personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207)

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying the appropriate director and the Ethics Counselor in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee, other than the Chairman or the Director (Appointive),[1] receives the prior written determination of the Ethics Counselor, who shall consult with the appropriate director, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the FDIC. (See 18 U.S.C. 208)

§ 336.16 Extensions of credit.

(a) An examiner, and any other covered employee of the Division of Bank Supervision at or above the grade 11 level (except those employees covered under paragraph (b)(1) of this section), may not, directly or indirectly, accept or become obligated on any extension of credit, including credit extended through the use of a credit card, from an insured state nonmember bank, except, in the case of an obligation or extension of credit evidenced by a credit card, credit may be obtained from an insured state nonmember bank located outside the employee's region of official assignment.[2] Any such credit card must be issued under the same terms and conditions as are offered to the general public, the total line of credit from any one institution must not exceed $10,000, and the employee must file with the appropriate director a Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

[1] The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply to the Chairman if he or she receives the prior written determination of the President (or the Director (Appointive) if he or she receives the prior written determination of the Chairman) that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the FDIC. (See 18 U.S.C. 208)

[2] An examiner and any other covered employee of the Division of Bank Supervision at or above the grade 11 level assigned to the Washington office may obtain credit extended through the use of a credit card from any insured state nonmember bank, subject to the restrictions of paragraph (a) of this section.

(b) Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed $10,000—

(1) An individual member of the Board of Directors (except the Comptroller of the Currency), any assistant or deputy to the Board of Directors or to an individual Board member (except the Comptroller of the Currency), any assistant thereto, any director of a division or office, the holder of any position immediately subordinate thereto, and any covered employee of the Office of Consumer Affairs may not, directly or indirectly, accept or become obligated on any extension of credit from an insured state nonmember bank.

(2) A regional counsel or attorney (Bank Supervision) assigned to a regional office may not, directly or indirectly, accept or become obligated on any extension of credit from an insured state nonmember bank headquartered in the employee's region of official assignment.

(3) A regional director, deputy regional director, and any other covered employee of the Division of Liquidation assigned to a regional or consolidated office; a supervisory accountant or supervisory field accountant of the Division of Accounting and Corporate Services assigned to a regional or consolidated office; and a regional counsel or attorney (Bank Liquidation) assisgned to a regional or consolidated office may not, directly or indirectly, accept or become obligated on any extension of credit from an assisted or assuming entity, for so long as such entity remains an assisted or assuming entity, located in the employee's region of offical assignment which, for the purposes of this paragraph, shall be deemed to include—

(i) The bank resulting from a failed bank and any of its wholly owned subsidiaries within the employee's region of official assignment if the assuming entity is a bank holding company;

(ii) The assuming entity, all of its branches, and all of the wholly owned subsidiaries of the failed bank within the employee's region of official assignment if the assuming entity is a bank located in the employee's region of official assignment; and

(iii) The wholly owned subsidiaries of the failed bank, which subsidiaries are located in the employee's region of official assignment if the assuming entity is a bank located outside the employee's region of official assignment.

(4) An assessment auditor may not, directly or indirectly, accept or become obligated on any extension of credit from an insured bank subject to audit for deposit insurance assessment purposes except that, with the prior written permission of the appropriate director, an assessment auditor may accept or become obligated on an extension of credit from one such bank and shall be disqualified from participating in any audit of or otherwise talking any action on behalf of the FDIC with regard to such bank.

(5) An individual member of the Board of Directors (except the Comptroller of the Currency), and any other covered employee assigned to the Washington office, who has participated personally and substantially on behalf of the FDIC in any matter involving an assisted or assuming entity, or a covered employee of the Division of Liquidation assigned to the Washington office whose official duties bring him or her into contact with any matter involving an assisted or assuming entity, may not, directly or indirectly, accept or become obligated on any extension of credit from such entity for so long as it remains an assisted or assuming entity.

(c) The Director of the Division of Bank Supervision, the holder of any position immediately subordinate thereto, an examiner, or any other covered employee of the Division of Bank Supervision is disqualified from participating in any examination, audit visitation, or investigation of, or from otherwise taking any action on behalf of the FDIC with regard to, any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee. An assessment auditor is disqualified from participating in any audit of, or from otherwise taking any action on behalf of the FDIC with regard to, any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from such bank, financial institution, or other person does not exceed $10,000. Every other covered employee is disqualified from taking any action on behalf of the FDIC with regard to any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee in an amount in excess of $10,000. The appropriate director, in consultation with the Ethics Counselor, any also extend such disqualification to affiliates of such creditors.

(d) If the adoption of this regulation, change in marital status, commencement of employment, reassignment to another division or location or action affecting the status of the creditor[3] results in an extension of credit prohibited by paragraphs (a) and (b) of this section, such extension of credit may be retained by the employee if it is liquidated under its original terms, without renegotiation. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor and report his or her retention in writing to the appropriate director and Ethics Counselor.

(1) An employee, other than an employee described in paragraph (b)(1) of this section, otherwise required to liquidate a nonconforming extension of credit under its original terms may requests permission to renegotiate the loan. An employee described in paragraph (b)(1) of this section otherwise required to liquidate a nonconforming extension of credit under its original terms may request review and concurrence by the Ethics Counselor to renegotiate such a loan. Any such request shall be made, in writing, to the appropriate director and Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, to the Ethics Counselor, stating—

(i) The purpose of the renegotiation;

(ii) The terms and conditions of the original loan;

(iii) The terms and conditions now available to the general public;

(iv) The terms and conditions now offered the employee;

(v) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and

(vi) The financial hardship, if any, denial of the request will cause.

(2) No employee may renegotiate a loan from a prohibited creditor without the prior written approval of the appropriate director and the Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, without the prior review and concurrence by the Ethics Counselor.

(e) Notwithstanding the restrictions of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances—

[3] Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

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(1) The loan is for the employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate director, who shall have consulted with the Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, he or she receives the prior concurrence of the Ethics Counselor; and

(5) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the creditor.

(f)(1) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee unless—

(i) The loan is made to the spouse or dependent child entirely upon his or her own credit and without the employee's being a party to the credit instrument as co-maker, endorser, or guarantor;

(ii) The loan is supported by the spouse's or dependent child's own income or means so that neither the creditor nor the spouse nor dependent child will look to the employee, to his or her income, or to his or her property for the payment thereof; and

(iii) The spouse or dependent child has, or in the case of student loans will have, the income, and ability, and the means to meet the loan obligation at maturity.

(2) Even though an extension of credit to a spouse or dependent child is, by virtue of paragraph (f)(1) of this section, not deemed to be an extension of credit to an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor to the same extent as if the employee were obligated on the extension of credit.

§ 336.17 Bank securities.

(a) While employed by the FDIC an employee may not purchase, own, or control, directly or indirectly, any securities of an insured bank or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee (other than a member of the Board of Directors) may own or control securities of an insured bank or affiliate thereof whenever—

(i) Ownership or control was acquired prior to commencement of FDIC employment, through a change in material status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure, on the prescribed form to the Ethics Counselor, pursuant to § 336.24, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the bank or affiliate; *Provided,* that the Ethics Counselor, in consultation with the appropriate director, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the FDIC.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of preemptive rights arising out of the ownership of such securities.

(2) The Ethics Counselor may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might result in a substantial impairment of the employee's ability to perform his or her FDIC duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured bank or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds, or investment trusts but only if (1) the assets of the holding company, mutual fund, or investment trust consist primarily of securities of nonbank entities and (2) the employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust. Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the FDIC.

(d)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless—

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets, or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (d)(1) of this section, not deemed to be an interest of an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on that interest to the same extent as if the interest were that of the employee.

§ 336.18 Purchase of liquidation assets.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its capacity as receiver, liquidator, or liquidating agent of the assets of a bank, regardless of how the property is sold.

(b) An employee who is involved in the disposition of liquidation assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such liquidation assets. The employee shall advise his or her immediate supervisor and the Ethics Counselor in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the FDIC confidential information regarding the sale or disposition of liquidation assets except as mandated by the employee's official responsibility to liquidate such assets and only as prescribed in Division of Liquidation guidelines applicable to such sale or disposition.

§ 336.19 Purchase of FDIC property.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its corporate capacity unless—

(1) The property has been declared excess property by, and is sold in accordance with standards and procedures prescribed by, the Director of the Division of Accounting and Corporate Services; and

(2) The property is sold by means, determined by the Director of the Division of Accounting and Corporate Services, which assure that the selling price is the property's fair market value.

(b) In no case shall an employee, the employee's spouse or dependent child, or members of the employee's immediate household directly or indirectly purchase any property from the FDIC if—

(1) The employee is employed in the Facilities Management and Operations Section of the Division of Accounting and Corporate Services or is directly involved in the disposition of excess property;

(2) The property was last under the control or supervisory responsibility of the employee (except in the case of property sold by sealed bid or at public auction);

(3) He or she relied upon information regarding the property obtained by the employee in the course of his or her employment with the FDIC (other than knowledge of the proposed sale of the property), which is not available to the general public; or

(4) The employee is the head of the last known office using the property (except in the case of property sold by sealed bid or at public auction).

§ 336.20 Purchase of assets of insured banks.

An employee, the employee's spouse or dependent child, or a member of the employee's immediate household shall not, directly or indirectly, purchase an asset (for example, real property, automobiles, trucks, mobile homes, or repossessed goods) of an insured bank unless such asset is sold at public auction, is offered to the general public at the same price, or is sold by other means that assure that the selling price is the asset's fair market value. In no event shall an employee, an employee's spouse or dependent child, or a member of the employee's immediate household purchase an asset from any bank in reliance on information obtained in the course of the employee's performance of his or her official duties or from any other source not available to the general public. Employees have a responsibility to consult with the Ethics Counselor as to the propriety of the proposed purchase.

§ 336.21 Providing goods or services to the FDIC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the FDIC either in its corporate capacity or in its capacity as receiver, liquidator, or liquidating agent of the assets of a bank unless the Director of the Division of Accounting and Corporate Services or the Director of the Division of Liquidation determines, in accordance with the provisions of § 336.22(d) and (e) and standards and procedures approved by the Board of Directors, that it is in the best interest of the FDIC to acquire goods or services from such a person. For the purpose of this section, the term "services" does not include services as required by the employee's position with the FDIC.

§ 336.22 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her FDIC employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the FDIC. Employment or activity which is not compatible with the employee's duties and responsibilities to the FDIC includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the FDIC. Such employment or activity may involve—

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any financial institution, including a bank, a savings and loan association, or a credit union, except the FDIC Employees' Federal Credit Union; or

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services.

Any employee who engages in, or intends to engage in, outside employment or activity has the responsibility to consult with the Ethics Counselor as to whether such employment or activity is compatible with the employee's FDIC duties and responsibilities.

(b) An examiner shall not perform any service for compensation for any bank, for any officer, director, or employee thereof, or for any person connected therewith. (See 18 U.S.C. 1909)

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the FDIC. (See 18 U.S.C. 209)

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an agency of the Federal or District of Columbia Government on matters in which the United States has an interest. (See 18 U.S.C. 203.)

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205.)

(f) An employee must obtain the prior written approval of the Ethics Counselor in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205.)

(g) This section does not preclude an employee from participating in the activities of (1) charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 336.16 or 18 U.S.C. 203 or 205 or (2) if not prohibited by law, national or state political parties.

§ 336.23 Employment of family members by persons other than the FDIC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the appropriate director the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household by—

(1) An insured bank or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the FDIC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the FDIC;

within 30 days of the commencement of employment of the family member.

(b) Generally, a covered employee will not be assigned to any examination, investigation, application, or to other matters involving the family member's employer unless the appropriate director, in consultation with the Ethics Counselor, makes the prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the FDIC will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making

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character would not require disqualification.

Subpart D—Reports of Interest in Bank Securities, Interest in FDIC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

§ 336.24 Report of interest in bank securities.

All employees must report, on the prescribed form, direct or indirect ownership of securities of insured banks within 30 days of commencement of employment, within 30 days of acquiring the interest if acquired subsequent to employment in accordance with § 336.17, or, if the interest was previously acquired, within 30 days of the entity's becoming an insured bank.

§ 336.25 Report of interest in FDIC decision.

Except for interests reported in accordance with §§ 336.17 and 336.24, an employee with a financial interest (other than a deposit or indebtedness) in a bank or other entity that may be affected by his or her participation in an FDIC decision must report that interest to the Ethics Counselor on a prescribed form. Reports are to be made within 30 days of commencement of employment, within 30 days of acquiring the interest, if acquired subsequent to employment, or, if the interest was previously acquired, within 30 days of the bank's or other entity's becoming subject to an FDIC decision. Reports filed under this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the Chairman may determine for good cause shown.

§ 336.26 Report of employment upon resignation.

Each covered employee shall report to the Ethics Counselor on a prescribed form his or her resignation to accept employment in the private sector. Such report shall include pertinent information regarding the prospective employment and shall be made as soon as possible but in no event less than two weeks prior to the effective date of resignation.

§ 336.27 Statement of employment and financial interests.

(a) *Employees required to file.* Unless they file statements pursuant to § 336.28, the following employees shall be deemed covered employees for the purpose of filing statements of employment and financial interests pursuant to this section:

(1) Assistants to assistants or deputies to the Board of Directors or to individual Board members (except persons employed by the Office of the Comptroller of the Currency);

(2) Holder(s) of the position(s) immediately subordinate to the director of a division or office;

(3) Branch or comparable office heads;

(4) Division of Bank Supervision employees at or above the grade 5 level in job series 570, 1160, 301 and 341;

(5) Division of Liquidation employees at or above the grade 5 level in job series 1160, 301 and 341;

(6) Office of Research and Statistics employees serving as financial economists in job series 110.

(7) Assessment auditors at or above the grade 5 level;

(8) Employees of the Division of Accounting and Corporate Services at or above the grade 9 level who evaluate, recommend, purchase or contract for equipment, materials, and services;

(9) Persons employed by the FDIC as attorneys;

(10) Corporate auditors at or above the grade 5 level;

(11) Consumer Affairs Specialists at or above the grade 11 level;

(12) Voting members and designees appointed to any FDIC standing committee;

(13) The Alternate Ethics Counselor and Deputy Ethics Counselors; and

(14) The holders of any other positions determined by the Ethics Counselor to require the incumbents to report employment and financial interests in order to carry out the purposes of law, executive order, this part, or other FDIC regulation; *Provided*, that reporting by holders of such positions below the grade 13 level will be subject to the prior concurrence of the U.S. Office of Government Ethics. Such positions may include, but are not limited to, those the incumbents of which are responsible for making decisions or taking actions with respect to contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing a private or non-federal enterprise, or other activities where the decision or action has an economic impact on any bank or other enterprise.

(b) *Submission of statements.* (1) Covered employees shall annually file statements of employment and financial interests with information as of December 31. Covered employees who have commenced employment within 90 days of December 31 need not submit another statement for such reporting period.

(2) The Ethics Counselor shall notify covered employees of the obligation to file annual statements and provide a copy of the prescribed reporting form no later than January 30 of each year, with instructions that statements are to be submitted in accordance with paragraph (b)(5) of this section not later than February 28.

(3) Covered employees commencing employment in or reassigned or promoted to positions, the incumbents of which must file statements in accordance with this section, shall file statements within 30 days after commencement of employment, reassignment, or promotion.

(4) Notwithstanding any other provision of this section, the filing of a statement may be required prior to employment in, or reassignment or promotion to, executive level positions and certain other senior positions.

(5) Statements required under this section shall be submitted to the appropriate reviewing official as follows—

(i) Assistants to assistants or deputies to the Board of Directors or to individual Board members, holder (s) of the position(s) immediately subordinate to a director of a division or office, voting members and designees appointed to any FDIC standing committee, and branch or comparable office heads, to the Alternate Ethics Counselor, Office of the Executive Secretary;

(ii) Division of Bank Supervision covered employees assigned to a regional office, to the designated Deputy Ethics Counselor for the region to which assigned;

(iii) Division of Bank Supervision covered employees assigned to the Washington Office or detailed to another division, to the designated Deputy Ethics Counselor for the Division of Bank Supervision;

(iv) Division of Liquidation covered employees assigned to regional or consolidated offices, to the designated Deputy Ethics Counselor for the region or consolidated office to which assigned;

(v) Division of Liquidation covered employees assigned to the Washington Office of detailed to another division, to the designated Deputy Ethics Counselor for the Division of Liquidation;

(vi) Division of Accounting and Corporate Services covered employees assigned to the Washington Office, a regional office, or consolidated office, to the designated Deputy Ethics Counselor for the branch to which assigned;

(vii) Legal Division covered employees assigned to a regional or consolidated office, to the appropriate regional counsel (Supervision or Liquidation) or, if applicable, to the designated Deputy Ethics Counselor for the consolidated office to which assigned;

(viii) Legal Division covered employees assigned to the Washington Office, to the appropriate Deputy Ethics Counselor;

(ix) Deputy Ethics Counselors and Alternate Ethics Counselor, to the Ethics Counselor, Office of the Executive Secretary; and

(x) All covered employees of the Office of Research and Statistics, the Office of Consumer Affairs, the Office of Corporate Audits and Internal Investigations, and all other covered employees required to file, to the Alternate Ethics Counselor, Office of the Executive Secretary.

(c) *Financial interests of spouse and dependent child.* For the purpose of this section, a financial interest of the covered employee's spouse or dependent child is considered an interest of the covered employee unless—

(1) The interest is solely the financial interest and responsibility of the spouse or the dependent child, and the covered employee has no knowledge of it;

(2) The interest is not in any way, past or present, derived from the income, assets, or activities of the covered employee; and

(3) The covered employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

(d) *Information not know by covered employee.* If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to a covered employee but is known to another person, the covered employee shall request that other person to submit information on his or her behalf.

(e) *Excepted information.* This section does not require a covered employee to submit on a statement of employment and financial interests any information relating to the covered employee's connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the government are deemed business enterprises and are required to be included in a covered employee's statement of employment and financial interests.

(f) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the reviewing official, who shall be responsible for maintaining the statements in confidence. The secretary of the reviewing official shall have such access as necessary and then only to carry out the purposes of the review. The Ethics Counselor shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information in a statement will not otherwise be disclosed except as the Chairman or the Director of the U.S. Office of Government Ethics may determine for good cause shown.

(g) *Review of statements.* (1) Annual statements submitted under this section will be reviewed by the appropriate reviewing official no later than two months following the filing of the statements.

(2) Whenever a statement or other information indicates a possible conflict between the interest of a covered employee and the performance of his or her service to the FDIC—

(i) The reviewing official shall investigate the matter and allow the covered employee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of a conflict exists; and

(ii) The Ethics Counselor shall attempt to resolve the matter. If the matter cannot be resolved within 30 days, the information concerning the conflict or the appearance of a conflict shall be reported to the Chairman for resolution.

(h) *Effect on other reporting requirements.* The statements of employment and financial interests required of covered employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law or regulation.

§ 336.28 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Individual Board members (except the Comptroller of the Currency), employees at or above the FDIC's Executive Level I, and employees whose positions are excepted from competitive service by reason of being of a confidential or policy-making character (unless otherwise excluded by the U.S. Office of Government Ethics) must file—

(a) Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR Part 734; and

(b) Confidential Reports of Indebtedness reporting all indebtedness to insured banks and any affiliates thereof, not otherwise reportable in accordance with the requirements of the Ethics in Government Act of 1978. Such statements shall be filed with the Ethics Counselor on or before May 15 for the preceding calendar year ended December 31.

Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees [4]

§ 336.29 Limitations on representation.

(a) No former employee or special government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, or an agency thereof (1) to the United States, (2) in connection with any particular government matter involving a specific party, and (3) in which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise. (See 18 U.S.C. 207(a) and 5 CFR 737.5(a))

(b) No former employee or special government employee, within two years after termination of employment with the FDIC, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, or an agency thereof (1) to the United States, (2) in connection with any particular government matter involving a specific party, (3) if such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility. (See 18 U.S.C. 207(b)(i) and 5 CFR 737.7(a))

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters

[4] While the FDIC has not adopted rules with regard to the disclosure of unpublished information by former FDIC employees, it advises such persons not to disclose unpublished information of the FDIC obtained in the course of their work. Questions in this regard may be addressed to the FDIC's Ethics Counselor.

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of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives but shall apply to rulemaking having a specialized effect on a certain party or group of parties. (See 5 CFR 737.5(c)).

(d) No former senior employee, within two years after termination of employment with the FDIC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance, (1) before the United States, (2) in connection with any particular government matter involving a specific party, (3) in which matter he or she participated personally and substantially while an employee. (See 18 U.S.C. 207(b)(ii) and 5 CFR 737.9(a))

(e) For a period of one year after termination of employment with the FDIC, no former senior employee (other than a special government employee who serves for fewer than sixty (60) days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to (1) the FDIC or any of its officers or employees, (2) in connection with any particular government matter, whether or not involving a specific party, which is pending before the FDIC, or in which the FDIC has a direct and substantial interest. (See 18 U.S.C. 207(c) and 5 CFR 737.11(a))

§ 336.30 Consultation as to propriety of appearance before the FDIC.

Any former employee who wishes to appear before the FDIC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment with the FDIC, may consult the Ethics Counselor as to the propriety of such appearance.

§ 336.31 Suspension of appearance privilege.

Subject to the provisions of 18 U.S.C. 207(j), if any former employee or special government employee knowingly fails to comply with the provisions of this subpart, the Chairman may prohibit such person from making an appearance before or an oral or written communication with the FDIC for such period of time as he or she determines, not to exceed five years, or may impose such other sanctions as he or she deems just and proper.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 336.32 Use of FDIC employment.

A special government employee shall not use his or her FDIC employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 336.33 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her FDIC employement for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under FDIC authority which has not become part of the body of public information.

(b) The provisions of § 336.11 (a) through (d) with regard to employees shall be applicable to special government employees.

§ 336.34 Coercion.

A special government employee shall not use his or her FDIC employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 336.35 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, a special government employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the FDIC anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

(b) The exemptions of § 336.8(b) with regard to employees shall be applicable to special government employees.

§ 336.36 Miscellaneous statutory provisions.

Each special government employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as a special government employee of the FDIC and of the Government. In addition to the statutes cited in the body of the regulations in this part, the attention of each special government employee is directed to the statutory provisions listed in § 336.14(d).

§ 336.37 Statements of employment and financial interests.

(a) Except as provided in paragraphs (b) and (c) of this section, each special government employee shall submit a statement of employment and financial interests to the Ethics Counselor which reports—

(1) All other employment; and

(2) The financial interests of the special government employee which the FDIC determines are relevant in the light of the duties he or she is to perform.

(b) The Ethics Counselor may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special government employee who is not a consultant or an expert when the Ethics Counselor finds that the duties of the position held by that special government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the FDIC. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or medical specialist whose services are procured to provide care and service to patients. Special government employees who are relieved of the requirement of filing a statement include, but are not limited to: summer personnel, student interns, and individuals paid out of "Imprest Funds" to assist in bank liquidations.

(c) Special government employees at or above Executive Level I shall file Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR Part 734.

(d) A statement of employment and financial interests required to be filed under this section shall be filed not later than the time of employment of the special government employee. Each special government employee shall keep his or her statement current throughout his or her employment with the FDIC by the submission of amended or annual statements as required.

(e) The provisions of § 336.27 (c) through (h) shall apply to statements filed under this section.

Appendix to Part 336—Matrix of Credit Prohibitions

Covered employees	Credit prohibitions	Exceptions to credit prohibitions
Members of the Board of Directors (except the Comptroller of the Currency), an assistant or deputy to the Board of Directors or to an individual Board member (except the Comptroller of the Currency), and any assistant thereto, directors of divisions or offices, holder(s) of position(s) immediately subordinate thereto, except as provided below..	Insured state nonmember banks	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000. (2) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior review and concurrence by the Ethics Counselor is obtained.
The Director of the Division of Bank Supervision, holder(s) of position(s) immediately subordinate thereto, examiners, or any other covered employee of DBS at or above grade 11 assigned to the Washington Office or any region..	Insured state nonmember banks	(1) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior written approval is obtained. (2) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000, the issuing bank is located outside the employee's official region of assignment, and notice is given on a prescribed form.
Division of Liquidation employees in job series 301, 1160, or 341 at or above grade 5 assigned to a regional or consolidated office; Closed bank attorneys assigned to a regional or consolidated office; and Supervisory accountants and suprvisory field accountants assigned to a regional or consolidated office..	New extensions of credit from an assisted or assuming entity for so long as it remains an assisted or assuming entity. Prohibition extends to all branches within employee's region of assignment..	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000. (2) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior written approval is obtained.
Open bank attorneys assigned to a regional office	Insured state nonmember banks headquartered in region of assignment..	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000. (2) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior written approval is obtained.
Assessment auditors	Insured banks subject to audit for deposit insurance assessment purposes..	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000. (2) Credit extended by one particular insured bank subject to audit when prior written approval is received. (3) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior written approval is obtained.
Consumer Affairs Specialists at or above grade 11	Insured state nonmember banks	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000. (2) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior written approval is obtained.

General: All covered employees are disqualified from matters affecting any provider of credit unless amount of credit extended to employee is $10,000 or less. Covered employees of the Division of Bank Supervision are disqualified regardless of the amount of credit extended.

All covered employees who participated personally and substantially in any matter involving an assisted or assuming entity may not accept any extension of credit from that institution.

Note.—See section 336.16(b)(5) and (d) for prohibitions applicable to all covered employees generally.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of November, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-27423 Filed 11-28-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 574

Acquisition of Control of Insured Institutions Technical Amendments

Date: October 26, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") is adopting technical amendments to the provisions of the Acquisition of Control Regulations, 12 CFR Part 574, regarding the criteria applicable for determining whether a holding company application is eligible to be processed under delegated authority. The amendment deletes provisions from the delegations of authority subsection of the regulation which have the effect of preventing action at a delegated level on holding company applications where the acquiring company is not willing to agree to a specified type of regulatory capital maintenance undertaking with respect to the subsidiary insured institution. The revised delegation standard is intended to conform to the Statement of Policy recently issued by the Board on the regulatory capital maintenance obligations of acquirors of insured institutions.

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT: John Robinson, Director, Policy Analysis, Office of Regulatory Activities, (202) 778-2509, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20552; Stuart Feldstein, Attorney, (202) 377-6476, Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377-6459, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board's regulations governing acquisitions of control of insured institutions, 12 CFR Part 574, presently provide that holding company applications are not eligible to be acted upon pursuant to delegated authority by the Principal Supervisory Agents ("PSAs") at the Federal Home Loan

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Banks or by the Board's Washington, DC staff ("Washington staff") where the applicant company is unwilling to agree in writing that:

"It will ensure that its subsidiary insured institution shall have, at the end of each calendar quarter, regulatory capital at least equal to the amount that may be required pursuant to § 563.13 of this chapter, and that where necessary, the company will infuse additional equity capital in a form satisfactory to the Supervisory Agent and sufficient to effect compliance with such undertaking: *Provided*, that where a company proposes to acquire less than 50 percent of the voting stock of an insured institution, such company agrees to the foregoing regulatory capital maintenance undertaking on a *pro rata* basis according to its percentage ownership of the insured institution's voting stock."

12 CFR 574.8(a)(iii)(A).

The Board has recently issued a "Policy Statement on Regulatory Capital Maintenance Obligations of Insured Institution Acquirors," ("Statement of Policy"), 53 FR 31761 (August 19, 1988) setting forth the Board's views on the extent to which savings and loan holding companies and other controlling persons should be required to contribute financial assistance to their subsidiary insured institutions. As a result, the delegation standard described above, which requires a holding company applicant to agree to a specified type of open-ended net worth maintanence obligation, is no longer reflective of the Board's policies in this area. Accordingly, the current delegation standard pertaining to the regulatory capital maintenance obligations of holding companies is being deleted so that the delegation provisions of Part 574 will not be inconsistent with the policies outlined in the Statement of Policy. Holding company applications and change in control notices presenting approaches inconsistent with the Board's policy as set forth in the Statement of Policy, or presenting significant issues of law or policy as identified in guidelines to be issued by the Office of Regulatory Activities, will be considered to present a significant issue of law or policy and thus will not be eligible for action by the PSAs or the Washington staff.

List of subjects in 12 CFR Part 574

Administrative practice and procedure, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 574, Subchapter D, Chapter V Title 12 *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

1. The authority citation for Part 574 continues to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730), and sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a).

2. Amend § 574.8(a)(1)(iii) to remove paragraph (A) and designate paragraph (B) as paragraph (A).

3. Amend § 574.8 by revising paragraph (b)(1)(ii) to read as follows:

§ 574.8 Delegations of authority.

* * * * *

(b) * * *

(1) * * *

(ii) Which does not involve dividend conditions that fail to conform to paragraph (a)(1)(iii) of this section.

* * * * *

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-27330 Filed 11-28-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-162-AD; Amdt. 39-6083]

Airworthiness Directives: McDonnell Douglas Model DC-9-81, -82, -83, and -87 Series Airplanes Not Equipped With Autobrakes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas DC-9-81, -82, -83, and -87 series airplanes not equipped with autobrakes, which requires inspection and replacement, if necessary, of the spoiler control circuit breaker to assure that the correct circuit breaker is installed. This amendment is prompted by reports of incorrect circuit breakers found on in-service airplanes. This condition, if not corrected, could result in loss of inboard ground spoilers and decreased braking performance, which could cause the airplane to depart the runway on landing or rejected takeoff.

DATES: Effective December 16, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: Three instances of an "open" spoiler control circuit breaker have been reported by operators of McDonnell Douglas Model DC-9-80 series airplanes. Investigation has revealed that these airplanes had a 2-amp circuit breaker installed, which is inadequate for system current load. A 5-amp circuit breaker is required. An "open" circuit breaker will prevent hydraulic pressure from being applied to the inboard ground spoilers, which will prevent the ground spoilers from deploying. Further, with an "open" circuit breaker, there is no indication to the flight crew that the inboard ground spoilers are inoperative. This condition, if not corrected could result in inoperative inboard ground spoilers and decreased braking performance, which could cause the airplane to depart the runway on landing or rejected takeoff.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-298, dated October 5, 1988, which described procedures for inspection and replacement, if necessary, of the spoiler control circuit breaker.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the spoiler control circuit breaker to assure that the required 5-amp circuit breaker is installed, and replacement, if necessary, in accordance with the service bulletin previously mentioned. Operators are required to submit a report of their inspection findings to the FAA.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions

of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or anlaysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, -83, and -87 series airplanes not equipped with autobrakes, as listed in McDonnell Douglas Alert Service Bulletin A27-298, dated October 5, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of inboard ground spoilers and the resulting decreased braking performance during landing or rejected takeoff, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect the spoiler control circuit breaker located on the lower electrical power center circuit breaker panel, Row P30 or P33, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27-298, dated October 5, 1988.

1. If a 2-amp circuit breaker is installed, prior to further flight, replace it with a 5-amp circuit breaker in accordance with the above McDonnell Douglas Alert Service Bulletin.

2. If a 5-amp circuit breaker is installed, no further action is required.

B. Within 15 days after the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Los Angeles Aircraft Certification Office, Attention: ANM-181L, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with inspection requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This Amendment becomes effective December 16, 1988.

Issued in Seattle, Washington, on November 17, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service

[FR Doc. 88-27443 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-129-AD; Amdt. 39-6084]

Airworthiness Directives: Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 series airplanes, which requires a modification of the emergency lighting system. This amendment is prompted by reports that certain elements of the emergency lighting system may not illuminate automatically if normal airplane power is lost. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation.

EFFECTIVE DATE: January 9, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include an airworthiness directive, applicable to certain Fokker Model F-28 series airplanes, which requires modification of the emergency lighting system, was published in the **Federal Register** on August 25, 1988 (53 FR 32403).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America, commenting on behalf of its member operators, requested that the FAA contact the manufacturer to determine whether the proposed rule is needed. The FAA does not concur. As stated in the preamble to the original Notice, Supplemental Notice, and this action, the FAA has determined that an unsafe condition exists and AD action must be taken to address it. The commenter has submitted no information to warrant a reconsideration of that determination.

ATA also requested that the compliance period be extended from 12 months to 18 months to allow sufficient time for release of service instructions, delivery of parts, and retrofit of the affected airplanes. The FAA does not concur. In developing this proposal, the compliance time was established after careful consideration of the nature of

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the problem, maintenance schedules, and availability of necessary parts. The commenter submitted no information that would indicate that if could not comply with the required actions within the 12-month period.

The FAA has determined that the final rule must be revised to limit the applicability to the Fokker F–28 Model Mark 1000, 2000, 3000, and 4000 series airplanes, since these are the only airplanes affected. This change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change noted above.

It is estimated that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 90 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $183,600.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($3,600). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F–28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category. Compliance is required within 12 months after the effective date of this AD, unless previously accomplished:

To ensure the proper operation of the emergency lighting system when required during an emergency situation, accomplish the following:

A. Verify that a three position emergency lighting switch (i.e., OFF, ON, and ARMED) is installed in the cockpit. If such a switch is not installed in the cockpit, install one in a manner approved by the Manager, Standardization Branch ANM–113, FAA, Northwest Mountain Region.

Note: Operators may wish to refer to Fokker Service Bulletin F28/33–26, dated October 12, 1983, in determining the means to be used to install a three position switch.

B. Verify that the emergency lighting system illuminates upon loss of normal electrical power when the three position cockpit mounted switch is placed in the armed position.

Note: (1) Normal electrical power is considered to be the F–28 AC generator power.

(2) For the purpose of this requirement, the emergency lighting system is considered to consist of both the emergency lights and the evacuation lights; however, all affected operators should be aware that for operations under FAR Part 121, an airplane's emergency lighting system also includes the floor emergency escape path lighting. Any modification to the emergency lighting system should ensure the proper operation of the floor emergency escape path lighting.

C. Accomplish one of the following:

1. Modify the emergency lighting system, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region, so that upon loss of normal electrical power, the emergency lighting system is powered by its own dedicated battery packs; or

2. Measure the minimum airplane battery voltage necessary to provide the required emergency lighting illumination levels. Modify the emergency lighting control circuit, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region, to switch from the airplane batteries to the emergency lighting system battery packs prior to dropping below the above determined minimum airplane battery voltage.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 9, 1989.

Issued in Seattle, Washington, on November 17, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–27442 Filed 11–28–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–ASW–34; Amdt. 39–6079]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, and 205A–1 Helicopters; California Department of Forestry Model UH–1F Helicopters; Garlick Helicopters, Hawkins and Powers Aviation, Inc., International Helicopters, Inc., Pilot Personnel International, Inc., and Southern Aero Corporation Model UH–1B Helicopters; Smith Helicopter and West Coast Fabrications Model UH–1E Helicopters; and Hercules and Oregon Helicopters Model UH–1L, TH–1L, and UH–1E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which reduces the retirement life of the tail rotor (T/R) grip assembly from 500 to 300 hours' time in service on BHTI Model 204B, 205A, and 205A–1 helicopters, and certain BHTI manufactured Model UH–1B, UH–1E, UH–1F, UH–1L, and TH–1L helicopters. The AD is needed to preclude possible failure of the tail rotor hub assembly which could result in loss of the helicopter.

DATES: *Effective date:* December 13, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESS: The applicable service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support.

A copy of the service bulletin is contained in the Rules Docket located in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. T. K. Henry, Helicopter Certification Branch, Southwest Region, Federal Aviation Administration, Fort Worth, Texas 76193–0170; telephone number (817) 624–5168.

SUPPLEMENTARY INFORMATION: The FAA was informed by U.S. Army Aviation System Command Message 012030Z, May 85, that the Army had ordered the reduction in service life of certain T/R grip assemblies on Military UH–1 series helicopters from 500 to 300 hours. The BHTI Part Number (P/N) 204–011–728 grip assemblies have experienced corrosion pitting in the thread areas as a result of moisture in the grip cavities leading to eventual cracking and ultimate failure of the grip assemblies. Cracking has occurred in eight grip assemblies on UH–1 series helicopters with four grip assemblies having less than 400 hours' time in service. The P/N 204–011–728–1, –13, and –19 grip assemblies are also used on civilian Model 204B, 205A, and 205A–1 series helicopters.

After further review, the manufacturer issued Bell Alert Service Bulletin No. 204–88–17, dated January 29, 1988, which reduces the retirement life of the Model 204B T/R grip assembly from 500 to 300 hours' time in service. The FAA has determined that this reduction in retirement life of the Model 204B T/R grip assembly is necessary to assure the continued airworthiness of this aircraft. Failure of the T/R grip assembly would result in loss of the tail rotor blade and subsequent loss of the helicopter.

Since this condition is likely to develop on other helicopters of the same type design, an airworthiness directive is being issued which reduces the retirement life of the T/R grip assembly Part Number (P/N) 204–011–728 (all dash numbers) from 500 to 300 hours' time in service on Bell Helicopter Textron, Inc., Model 204B, 205A, and 205A–1 helicopters; Garlick Helicopters, Hawkins and Powers Aviation, Inc., International Helicopters, Inc., Pilot Personnel International, Inc., and Southern Aero Corporation Model UH–1B helicopters; Smith Helicopters and West Coast Fabrications Model UH–1E helicopters; and Hercules and Oregon Helicopters Model UH–1L, TH–1L, and UH–1E helicopters. The retirement life of the T/R grip assembly P/N 204–011–728–19 is reduced from 600 to 300 hours' time in service on California Department of Forestry Model UH–1F helicopters.

A new replacement T/R grip assembly (P/N 205–011–711–101) having a 2,500 hour service life is available.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilites among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Federal Aviation Administration amends § 39.13 or Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI); California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Pilot Personnel International, Inc.; Smith Helicopters; Southern Aero Corporation; Oregon Helicopters; West Coast Fabrications; and Hercules: Applies to Model 204B, 205A, and 205A–1 helicopters certificated in any category and Model UH–1B, UH–1E, UH–1F, UH–1L, and TH–1L helicopters certificated in the restricted category that have tail rotor grip assembly P/N 204–011–728–1, –13, or –19 installed.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the tail rotor (T/R) grip assembly, accomplish the following:

(a) Within the next 50 hours' time in service after the effective date of this AD, remove the T/R grip assembly, P/N 204–011–728–1, –13, or –19 with 250 or more hours' time in service and replace with a serviceable part.

(b) For those T/R grip assemblies, P/N 204–011–728–1, –13, or –19, with less than 250 hours' time in service on the effective date of this AD, a retirement life of 300 hours is established.

(c) Any alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas 76193–0170.

This amendment becomes effective December 13, 1988.

Issued in Fort Worth, Texas, on November 15, 1988.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 88–27441 Filed 11–28–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 95

[Docket No. 25734; Amdt. No. 347]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR

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altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC, on November 10, 1988.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910–13–M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 347 EFFECTIVE DATE, DECEMBER 15, 1988

FROM	TO	MEA
§95.6007 VOR FEDERAL AIRWAY 7 IS AMENDED TO READ IN PART		
BOILER, IN VORTAC	CHICAGO HEIGHTS, IL VORTAC	2700
§95.6009 VOR FEDERAL AIRWAY 9 IS AMENDED TO READ IN PART		
GREEN BAY, WI VORTAC	IRON MOUNTAIN, MI VORTAC	3300
IRON MOUNTAIN, MI VORTAC	HERMY, MI FIX	6000
HERMY, MI FIX	HOUGHTON, MI VORTAC	3800
§95.6045 VOR FEDERAL AIRWAY 45 IS AMENDED TO READ IN PART		
GREENSBORO, NC VORTAC	PROVE, NC FIX	3000
§95.6051 VOR FEDERAL AIRWAY 51 IS AMENDED TO READ IN PART		
BOILER, IN VORTAC	CHICAGO HEIGHTS, IL VORTAC	2700
§95.6054 VOR FEDERAL AIRWAY 54 IS AMENDED TO READ IN PART		
SPARTANBURG, SC VORTAC	CHARLOTTE, NC VOR/DME	*3200
*2700 - MOCA		
§95.6056 VOR FEDERAL AIRWAY 56 IS AMENDED TO READ IN PART		
WALLO, NC FIX	KROVE, NC FIX	*3000
*2400 - MOCA		
KROVE, NC FIX	NEW BERN, NC VOR/DME	2400
§95.6064 VOR FEDERAL AIRWAY 64 IS AMENDED TO READ IN PART		
IDEAL, CA FIX	BALDI, CA FIX	10500
BALDI, CA FIX	CORLA, CA FIX	
	W BND	9700
	E BND	8000
CORLA, CA FIX	*THERMAL, CA VORTAC	
	W BND	8400
	E BND	6000
*7700 - MCA THERMAL VORTAC, W BND		
§95.6068 VOR FEDERAL AIRWAY 68 IS AMENDED BY ADDING		
MONTROSE, CO VOR/DME	*PLACR, CO FIX	12000
*14500 - MRA		
PLACR, CO FIX	DOVE CREEK, CO VORTAC	14500
DOVE CREEK, CO VORTAC	CORTEZ, CO VOR/DME	9800
CORTEZ, CO VOR/DME	PLATA, NM FIX	10600
PLATA, NM FIX	FARMINGTON, NM VORTAC	10000
§95.6074 VOR FEDERAL AIRWAY 74 IS AMENDED TO READ IN PART		
DODGE CITY, KS VORTAC	*SAFER, KS FIX	4300
*4000 - MRA		
TULSA, OK VORTAC	OWETA, OK FIX	3000
OWETA, OK FIX	MALTS, OK FIX	*2800
*1900 - MOCA		
FORT SMITH, AR VORTAC	CHARR, AR FIX	*2500
*1800 - MOCA		
CHARR, AR FIX	*MAGGA, AR FIX	**3000
*3600 - MCA MAGGA FIX, E BND		
**2200 - MOCA		
MAUME, AR FIX	LITTLE ROCK, AR VORTAC	3500
LITTLE ROCK, AR VORTAC	PINE BLUFF, AR VORTAC	*2500
*1800 - MOCA		
§95.6078 VOR FEDERAL AIRWAY 78 IS AMENDED TO READ IN PART		
RHINELANDER, WI VORTAC	IRON MOUNTAIN, MI VORTAC	6000
IRON MOUNTAIN, MI VORTAC	GERLA, MI FIX	6000
GERLA, MI FIX	ESCANABA, MI VORTAC	3000
§95.6097 VOR FEDERAL AIRWAY 97 IS AMENDED TO READ IN PART		
BOILER, IN VORTAC	CHICAGO HEIGHTS, IL VORTAC	2700
§95.6136 VOR FEDERAL AIRWAY 136 IS AMENDED TO READ IN PART		
FAYETTEVILLE, NC VOR/DME	GRAND STRAND, SC VORTAC	*3000
*2100 - MOCA		
§95.6213 VOR FEDERAL AIRWAY 213 IS AMENDED TO READ IN PART		
WALLO, NC FIX	ESTER, NC FIX	*5000
*1600 - MOCA		

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FROM	TO	MEA
§95.6246 VOR FEDERAL AIRWAY 246 IS AMENDED TO READ IN PART		
WAUKON, IA VORTAC	NODINE, MN VORTAC	3000
§95.6310 VOR FEDERAL AIRWAY 310 IS AMENDED TO READ IN PART		
BURCH, NC FIX *2400 - MOCA	GREENSBORO, NC VORTAC	*3300
§95.6341 VOR FEDERAL AIRWAY 341 IS AMENDED TO READ IN PART		
IRON MOUNTAIN, MI VORTAC	MARQUETTE, MI VOR/DME	6000
§95.6392 VOR FEDERAL AIRWAY 392 IS AMENDED TO READ IN PART		
ROZZY, CA FIX	HAGAN, CA FIX	4000
HAGAN, CA FIX *9000 - MCA AUDIO FIX, NE BND **4500 - MOCA	*AUDIO, CA FIX	**6000
AUDIO, CA FIX	CONYO, CA FIX N BND S BND	10000 8000
CONYO, CA FIX	SIGNA, CA FIX	11000
§95.6430 VOR FEDERAL AIRWAY 430 IS AMENDED TO READ IN PART		
IRONWOOD, MI VORTAC	DINER, MI FIX	3700
DINER, MI FIX	IRON MOUNTAIN, MI VORTAC	6000
IRON MOUNTAIN, MI VORTAC	GERLA, MI FIX	6000
GERLA, MI FIX	ESCANABA, MI VORTAC	3000

FROM	TO	MEA
§95.6441 VOR FEDERAL AIRWAY 441 IS AMENDED BY ADDING		
OCALA, FL VORTAC	GAINESVILLE, FL VORTAC	2000
GAINESVILLE, FL VORTAC *2000 - MOCA	MONIA, FL FIX	*4000 MAA-11000
MONIA, FL FIX *1500 - MOCA	BRUNSWICK, GA VORTAC	*3000 MAA-11000
BRUNSWICK, GA VORTAC *5000 - MRA **1500 - MOCA	*STARY, GA FIX	**3000
STARY, GA FIX *5000 - MRA **1100 - MOCA	*CATHY, GA FIX	**3000
CATHY, GA FIX *5500 - MRA **1500 - MOCA	*KELER, GA FIX	**3000
KELER, GA FIX *1500 - MOCA	SAVANNAH, GA VORTAC	*3000
§95.6494 VOR FEDERAL AIRWAY 494 IS AMENDED TO READ IN PART		
ROZZY, CA FIX	HAGAN, CA FIX	4000
HAGAN, CA FIX *9000 - MCA AUDIO FIX, NE BND **4500 - MOCA	*AUDIO, CA FIX	**6000
§95.6591 VOR FEDERAL AIRWAY 591 IS ADDED TO READ		
GRAND JUNCTION, CO VORTAC	TRACI, CO FIX E BND W BND	11000 9000
TRACI, CO FIX *10100 - MOCA	PACES, CO FIX	*11000
PACES, CO FIX	GLENO, CO FIX	13000
GLENO, CO FIX	SNOW, CO VOR/DME	14000
SNOW, CO VOR/DME	KREMMLING, CO VORTAC	14500

FROM	TO	MEA	MAA
§95.7217 JET ROUTE NO. 217 IS AMENDED TO DELETE			
GRACE, PA FIX	CLARION, PA VORTAC	18000	38000
CLARION, PA VORTAC	KEATING, PA VORTAC	18000	45000

[FR Doc. 88-27439 Filed 11-28-88; 8:45 am]
BILLING CODE 4910-13-C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule, removal of obsolete regulation.

SUMMARY: NASA is amending 14 CFR Part 1214 by removing Subpart 1214.16, "Nonscientific Payloads," since it has served its purpose and is no longer in keeping with current policy.

EFFECTIVE DATE: November 29, 1988.

ADDRESS: Associate Administrator for External Relations, Code X, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: H. Hollister Cantus, 202 453-8310.

List of Subjects in 14 CFR Subpart 1214.16

Nonscientific payloads.

PART 1214—[AMENDED]

Subpart 1214.16—[Removed and Reserved]

14 CFR Part 1214, Subpart 1214.16 (consisting of §§ 1214.1600 through 1214.1606) is hereby removed and reserved.

James C. Fletcher,
Administrator.

[FR Doc. 88-27419 Filed 11-28-88; 8:45 am]
BILLING CODE 7510-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM88-27-001; Order No. 504-A]

Procedure for Filing Petitions for Review With the Federal Energy Regulatory Commission; Order Denying Rehearing

Issued November 21, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying rehearing of Order No. 504 (53 FR 37545 (Sept. 27, 1988)) a final rule providing that persons instituting proceedings in a United States Court of Appeals for review of a Commission order, decision or rulemaking must file a copy of the petition for review with the Secretary. The Commission issued Order No. 504 in response to a congressional mandate in Pub. L. No. 100-236 (Act). The Act provides that, when petitions for judicial review of a federal agency order have been filed in more than one circuit court within ten days of the issuance of the order, a special panel will determine the circuit court initially responsible for the petitions. The Act requires each federal agency to designate the officer who will receive the petitions for review.

The Commission amended its regulations to require persons filing petitions for review of any Commission order, decision or rulemaking in a United States Court of Appeals to file a copy of the petition (stamped by the court with the date of filing) with the Commission's Secretary.[3] Order No. 504 provides that if, within ten days after issuance of the Commission order, the Office of the Secretary has physically received court-stamped copies of petitions for review of the same order filed in two or more U.S. Courts of Appeals, the Commission will forward those petitions to the Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. 2112(a).

On October 21, 1988, Affiliated Gas Producers (AGP) filed a request for rehearing of Order No. 504. AGP argues that the Commission's filing requirement is unduly burdensome. AGP argues that the Commission's filing requirement could, in effect, operate to shorten the 10-day period allowed by the Act for parties to qualify for the venue selection lottery, if those parties choose to exercise their right to file in a court other than the DC Circuit. According to AGP, in order to assure inclusion in the lottery, parties filing for review in circuits distant from Washington, DC would have to file their petitions no later than the 9th day of the 10-day period.

The Act specifically requires that "[i]f *within ten days after the issuance of the order the agency,* board, commission, or officer concerned *receives* from the persons instituting the proceedings, *the petition for review* with respect to proceedings in at least two courts of appeals * * * the agency, board, commission or officer shall promptly after the expiration of the ten-day period * * * so notify the judicial panel on multidistrict litigation * * * in such form as that panel shall prescribe." (emphasis

Order Denying Rehearing

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 504, a final rule providing that persons instituting proceedings in a United States Court of Appeals for review of a Commission order, decision or rulemaking must file a copy of the petition for review with the Secretary.

The Commission issued Order No. 504 [1] on September 21, 1988, in response to a congressional mandate in Pub. L. No. 100-236 (Act).[2] The Act provides that, when petitions for judicial review of a federal agency order have been filed in more than one circuit court within ten days of the issuance of the order, a special panel will determine the circuit court initially responsible for the petitions. The Act requires each federal agency to designate the officer who will receive the petitions for review.

The Commission issued Order No. 504 in response to a congressional mandate in Pub. L. No. 100-236. The order denying rehearing notes that the Commission's regulations comply with this act and, therefore, denies the petition for rehearing filed in this docket.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this order in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

[1] 53 FR 37,545 (Sept. 27, 1988); III FERC Stats. & Regs. ¶30,832 (1988).

[2] Act of Jan. 8, 1988, Pub. L. No. 100-236, 101 Stat. 1731 (1988) (codified at 28 U.S.C. 2112).

[3] *See* 18 CFR 385.2012 (1988).

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added) The Act provides further that "a copy of the petition or other pleading which institutes proceedings in a court of appeals and which is stamped by the Court with the date of filing shall constitute the petition for review." The Commission's regulations comply with the Act. The Act does not provide any latitude or discretion with respect to the 10-day period specified therein. The Commission, therefore, denies rehearing of AGP's petition.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27431 Filed 11-28-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Program; Approval of Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of proposed amendments to the Indiana Abandoned Mine Land Reclamation (AMLR) plan. The amendments consist of minor changes in Indiana policies and procedures regarding project selection, reclamation coordination, land acquisition, rights of entry, lien consideration, public participation, procurement, accounting systems, endangered and threatened species listing, and revises the administrative and management structure of the plan. The amendment revises the AMLR plan to be consistent with the corresponding Federal regulations. After opportunity for public comment and review of the amendment, the Deputy Director of OSMRE has determined that the Indiana amendment meets the requirements of the Surface Mining Control and Reclamation Act (SMCRA) and the Secretary's regulations at 30 CFR Part 884.

EFFECTIVE DATE: The rule is effective December 29, 1988.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Indiana Department of Natural Resources, Division of Reclamation, 309 West Washington Street, Suite 201, Indianapolis, Indiana 46204.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Richard D. Rieke, Director, Indianapolis Field Office, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 269-2609.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Indiana AMLR plan effective June 29, 1982. Information pertinent to the general background revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the June 26, 1982, **Federal Register** (47 FR 32110).

The Secretary has adopted regulations that specify the content requirements of a State Reclamation Plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision. Subsequent actions taken with regard to the Indiana AMLR plan can be found in 30 CFR 914.20 and 914.25.

II. Discussion of Amendments

By letter dated January 22, 1988 (Administrative Record No. IND-0554), Indiana submitted an AMLR plan amendment consisting of revised narratives to replace eleven sections of the approved plan. Specifically, the following areas of the AMLR plan are being revised.

1. Ranking and identification of projects to be funded (30 CFR Part 874): Indiana revised its procedures relating to data acquisition by adding a provision requiring a review of State and Federal law compliance by State legal staff as a part of project eligibility determination. Indiana also modified Table I, the site evaluation matrix, to improve its usefulness. The matrix in the approved plan only considered AML problems in terms of acres and miles of stream affected, and the population density, proximity to it, and proximity to human use areas. Impact scores were included but not weighting factors. The revised evaluation matrix expands the ranking considerations to include site parameters, namely, human health and safety, environmental, property, and socio-economic impacts; and action parameters, namely, land utilization factors, demonstration of enhanced reclamation technology, cost effectiveness, adverse social and environmental impacts during and after reclamation, and uncorrected conditions which may continue after reclamation. Impact scores and weighting factors are also included in the revised matrix.

2. Coordination with other programs (30 CFR Part 884): Indiana revised its procedures for coordinating the State Reclamation Program with the Rural Abandoned Mine Program (RAMP) by deleting the provision which required a State RAMP committee to identify RAMP projects. Indiana is adding a provision requiring the Division of Reclamation and Soil Conservation Service to develop annual plans to identify RAMP projects. Indiana also removed from this section of the Plan provisions addressing coordination with environmental agencies.

3. Land acquisition (30 CFR Part 879): Indiana revised the land acquisition procedures by adding a requirement that if Indiana obtains land under the AMLR program, prior approval by OSMRE will be obtained and other requirements will be met, pursuant to 30 CFR 879.11(a), (b), (d), and (e).

4. Reclamation on private lands (30 CFR Part 882): Indiana revised the lien waiver procedures and added a provision which allows for prepayment in lieu of lien.

5. Rights of entry (30 CFR Part 877): Indiana submitted revisions relating to nonconsentual entry which add the provision that 30 days notice be given prior to entry; that the mailing of the notice be made return receipt requested, and shall contain a copy of the findings; and that the posted notice be readily visible.

6. Public participation (30 CFR Part 884): Indiana amended the public participation section by adding a description of the procedures it follows to address public awareness on a continuing basis, to the description of procedures for public participation at the time of each annual submission of grant projects. Procedures for public involvement in planning of new grant projects were revised by adding a description of intergovernmental review procedures, realty personnel interactions with landowners, provisions for providing reclamation site and construction activity details to State and Federal agencies having regulatory concerns for compliance purposes, and the format of public meetings.

7. Organization of designated agency (30 CFR Part 884): Indiana updated the administrative and management organization to reflect changes that have occurred in the State agency structure and functions.

8. Personnel staffing (30 CFR Part 884): Indiana revised its provisions on nondiscrimination policy by adding age and condition of handicap to the list of grounds on which no discrimination is to be made.

9. Procurement (30 CFR Part 886): Indiana made revisions relating to procurement procedures by changing the dollar amount above which competitive bidding is required from $2,500 to $5,000. The provision that quotations are required for purchases between $100 and $2,500, was changed to provide that quotations are required for purchases between $100 for equipment and $250 for supply items up to $5,000.

10. Accounting system (30 CFR Part 886): Indiana proposed revisions which are intended to furnish additional information on State drawdown procedures and the responsibilities of the designated agency's AML engineering section, the Public Works Division of the Department of Administration, and the State Auditor with respect to AML construction and design projects.

11. Endangered and threatened species (30 CFR Part 884): Indiana proposed to revise the part of the plan addressing endangered and threatened species by incorporating by reference the current State listing rather than including the listing within the text of the plan and thereby relieve the State of having to update the plan each time the endangered and threatened species list changes. OSMRE published a notice of proposed rulemaking on the Indiana amendment and requested public comment in the March 15, 1988, **Federal Register** (53 FR 8469). The notice addressed the details of the proposed amendment, opened the public comment period, and provided opportunity for a public hearing on their substantive adequacy. Since no public hearings were requested by the public, none were held.

Indiana made minor revisions to the proposed AMLR plan amendment and on June 30, 1988, and August 10, 1988, resubmitted revised narratives of sections of the plan. OSMRE has determined that these revisions are insignificant in nature and require no further public comment.

III. Deputy Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR Part 884, are the Deputy Director's findings concerning the proposed amendments to the Indiana AMLR Plan.

(1) *Ranking and identification of projects to be funded (30 CFR 884.13(c)(2)).*

Indiana proposed to revise its AMLR Plan by requiring that data acquired relative to the selection of AMLR projects include a project eligibility determination that includes a review of compliance with the State and Federal laws by the State legal staff. The proposed review procedure should result in the strengthening of the State's AMLR plan since the identification and ranking of projects to be funded is predicated on prior eligibility determination. This review is particularly relevant to ascertaining continuing reclamation responsibility.

Indiana also revised its AMLR site evaluation matrix. The modifications are improvements that should allow the matrix to be more useful in meeting the requirements for ranking and selection of projects consistent with the objectives of section 403 of SMCRA.

The Deputy Director finds that the proposed changes are in accordance with the requirements of SMCRA and no less effective than the Federal regulations and can be approved.

(2) *Coordination with other programs (30 CFR Part 884).*

Indiana proposes to require the Division of Reclamation and the Soil Conservation Service to cooperatively develop annual work plans to identify RAMP projects rather than to identify RAMP projects through a State RAMP committee as is currently required. This approach is reasonable and should be an effective method of identifying RAMP projects. The Deputy Director finds that the amendment is consistent with 30 CFR 884.13(c)(3) and can be approved.

(3) *Land acquisition (30 CFR Part 879).*

Indiana proposes to revise the land acquisition provisions to require that Indiana obtain OSMRE approval prior to the acquisition of land, and to require that the provisions of 30 CFR 879.11 (a), (b), (d), and (e) be met. The Deputy Director finds that the Indiana provisions are in compliance with 30 CFR 884.13(c)(4) and can be approved.

(4) *Reclamation on private lands (30 CFR Part 882).*

Indiana proposes to revise the lien waiver provisions and add a provision which allows for prepayment in lieu of a lien.

The Deputy Director finds that these provisions are consistent with the Federal provisions at 30 CFR 882.13 (3) and (4), and 882.14 and can be approved.

(5) *Rights of entry (30 CFR Part 877).*

Indiana proposes to add a provision which states that 30 days prior notice must be given to landowners in the event of nonconsentual entry and that such notice be mailed return receipt requested and include a copy of pertinent findings. The State further proposes that the plan contain a requirement that the posted notice be readily visible as is required by Federal regulations.

The Deputy Director finds that the amended provisions are similar to and therefore no less effective than the Federal provisions at 30 CFR Part 877.13(c) and can be approved.

(6) *Public participation (30 CFR Part 884).*

Indiana proposes to add to the public participaton section the procedures it follows to inform the public on an ongoing basis of the state's AMLR activities. Indiana has also added a description of its intergovernmental review process, the role of realty personnel, the procedures for obtaining review and concurrence from State and Federal agencies with regulatory concerns, and the format of public meetings. The proposed revisions are reasonable and should enhance the AMLR plan by providing a better description of the policies and procedures followed by the designated agency with respect to public participation and involvement in the reclamation program.

The Deputy Director finds that the proposed revisions are consistent with the Federal regulations and can be approved.

(7) *Organization of designated agency (30 CFR Part 884).*

Indiana proposes to update its AMLR Plan to reflect changes that have occurred in agency structure.

The Deputy Director finds that the proposed amendments are consistent with the requirements of 30 CFR 884.13(d)(1) and can be approved.

(8) *Personnel staffing (30 CFR Part 884).*

Indiana proposes to revise its personnel staffing section by adding age and condition of handicap to the list of grounds on which no discrimination against people shall be made.

The Deputy Director finds that the revisions are consistent with 30 CFR 884.13(d)(2) and can be approved.

(9) *Procurement (30 CFR Part 886).*

Indiana proposes to revise its procurement section by changing the threshold dollar amounts above which competitive bidding is required and changes the provisions which specify when quotations are required for equipment and supply purchases. The proposed changes update the information in the AMLR plan to more

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accurately describe that aspect of the designated agency's management system.

The Deputy Director finds that the changes are reasonable and are consistent with 30 CFR 884.13(d)(3) and can be approved.

(10) *Accounting system (30 CFR Part 886).*

Indiana proposes revisions which provide additional information about the designated agency's accounting system regarding drawdown procedures and various State agency responsibilities and roles relating to it. The proposed revisions provide additional information which enhances the AMLR Plan and more fully describes the State's accounting system.

The Deputy Director finds that the proposed changes are consistent with 30 CFR 884.13(d)(4) and can be approved.

(11) *Endangered and threatened species (30 CFR Part 884).*

Indiana proposes to incorporate the endangered and threatened species list into the AMLR plan by reference rather than by including the actual listing within the text as is currently the case. With the incorporation of this change it will not be necessary to amend this section each time a species is added to or deleted from the list.

The Deputy Director finds that this approach is reasonable and is consistent with 30 CFR 884.13(f)(3) and can be approved.

(12) *Additional Findings.*

The State has the legal authority, polices, and administrative structure necessary to implement the amendment.

The proposed plan amendment meets all requirements of the OSMRE AMLR Program provisions.

The State has an approve Surface Mining Regulatory Program.

The proposed plan amendment is in compliance with all applicable State and Federal laws and regulations.

IV. Agency and Public Comment

As discussed in the section of this notice entitled "Discussion of Amendments," the Deputy Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No comments were received from the public during or after the comment period which closed on April 14, 1988. Since no one requested an opportunity to testify, the public hearing scheduled for April 11, 1988, was cancelled.

Pursuant to 30 CFR 884.14(2), comments were also solicited from various Federal agencies with an actual or potential interest in the Indiana plan. A summary of the comments received and their disposition appears below.

The U.S. Fish and Wildlife Service suggested that the State Plan (1) provide, directly or by reference, for coordination with the Service in accordance with the Fish and Wildlife Coordination Act and the Endangered Species Act; and (2) provide assurance that the Service be notified of any AML project impact on property having received Federal aid from the Service. The OSMRE has considered this comment and finds these suggestions are addressed in the plan by reference to the role of the Indiana Department of Natural Resources, Division of Fish and Wildlife, and by the fact that the suggested coordination is already provided for under Federal Fish and Wildlife legislation.

V. Deputy Director's Decision

Based on the Findings enumerated above, the Deputy Director is approving the amendment package. The Deputy Director is also amending 30 CFR Part 914 to codify his approval of the Indiana amendment submitted on January 22, 1988, and amended on June 30, 1988, and August 10, 1988. A copy of the approved amendment can be obtained by contacting the offices listed under "ADDRESSES."

VI. Procedural Matters

1. *National Environmental Policy Act:* The Office of Surface Mining Reclamation and Enforcement has determined that the approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(31).

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On November 23, 1987, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State/Tribe reclamation plans or amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No burden will be imposed upon entities operating in compliance with the Act.

3. *Federal Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: November 21, 1988.

Robert E. Boldt,

Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. A new § 914.25 is added to read as follows:

§ 914.25 Amendments to approved Indiana abandoned mine land reclamation plan.

The following amendments to the Indiana AMLR plan, as submitted on January 22, 1988, and modified on June 30, 1988, and August 10, 1988, are approved effective December 29, 1988: Revisions to the Indian AMLR plan which concern policies and procedures regarding project selection reclamation coordination, land acquisition, rights of entry, lien consideration, public participation, procurement, accounting systems, endangered and threatened species listing, and a revised administrative and management structure of the plan.

[FR Doc. 88-27436 Filed 11-28-88; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zones in Albemarle Sound, Pamlico Sound, and Adjacent Waters, NC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending the regulations which establish danger zones in Albemarle Sound, Pamlico Sound, and adjacent waters to delete the danger zone which is located along the north shore of Albemarle Sound. The area is no longer used and the Navy has requested it be opened to public use. A change is also being made in the designation of the Agency responsible for enforcing the regulations which reflects a change in Navy organization.

DATE: Effective date: December 29, 1988.

ADDRESS: USACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hollis at (919) 343-4629 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Commander, Fighter Medium Attack Airborne Early Warning Wings, Atlantic, has requested (1) that the Corps of Engineers amend the regulations in 33 CFR 334.410 to reflect a change in the command responsible for enforcing the regulations. The Commander, Fighter Medium Attack Airborne Early Warning Wings, Atlantic shall be responsible for enforcing these regulations in lieu of the Commander Fleet Air Norfolk, and (2) that the danger zone in subsection (b)(1) *Along north shore of Albemarle Sound,* be deleted. The area is no longer used by the Navy.

The Corps of Engineers has determined that notice of proposed rulemaking and public procedures thereto are unnecessary because the amendment will relieve a restriction on the general public by allowing access to a water area previously closed to the public. In addition, the disestablishment of a Naval Command and the naming of another command to assume enforcement responsibilities for the restricted area will have no discernible impact on the public and is generally a matter involving Agency organization. The Wilmington District Engineer will issue a public notice to all known interested parties concurrent with the publication of these **Federal Register** documents.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. I certify that this amendment to the regulations in 33 CFR 334.410 will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers is amending Part 334 of Title 33 as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. In § 334.410 the heading for (b) is removed and paragraph (b)(1) is removed, the designation and heading of paragraph (b)(2)(i) are removed, (b)(2) is redesignated as (b) and the heading is revised, and paragraphs (d) (2) and (4) are revised to read as follows:

§ 334.410 Albemarle Sound, Pamlico Sound, and adjacent waters, NC; danger zones for naval aircraft operations.

* * * * *

(b) Target and bombing area along south shore of Albemarle Sound. * * *

* * * * *

(d) The regulations. * * *

* * * * *

(2) *Target and bombing area.* The area described in paragraph (b) of this section will be used as a target and bombing area for both day and night operations. Dummy ammunition, waterfilled or smoke bombs and inert rockets will be used, except during wartime when live ammunition, bombs and rockets may be used. The area will be open to navigation except for periods when ordnance exercises are being conducted by naval aircraft. In area B described in paragraph (b) of the section the placing of nets, traps, buoys, pots, fishponds, stakes, or other equipment which may interfere with target vessels operating in the area shall not be permitted. The area will be patrolled and vessels shall clear the area under patrol upon being warned by the surface patrol craft or when "buzzed" by patrolling aircraft. As a further means of warning vessels of naval aircraft operations in the area described in paragraph (b) of this section, a cluster of flashing red lights at night and a large red flag by day will be displayed from the range observation tower located in the approximate center of the shore side of this area.

* * * * *

(4) *Enforcing agency.* The regulations in this section shall be enforced by the Commander, Fighter Medium Attack Airborne Early Warning Wings, Atlantic, and such agencies as he/she may designate.

Date: November 7, 1988.

Patrick J. Kelly,

Brigadier General, USA, Director of Civil Works.

[FR Doc. 88-26903 Filed 11-28-88; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

34 CFR Part 790

Territorial Teacher Training Assistance

AGENCY: Department of Education.

ACTION: Final regulation.

SUMMARY: The Secretary amends the regulations governing the Territorial Teacher Training Assistance Program. The purpose of the amendments is to remove unnecessary and duplicative material from the regulations. The Secretary takes this action to clarify and improve the regulations.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Haroldie K. Spriggs, Project Officer, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 500-J, Washington, DC 20208. (202) 357-6116.

SUPPLEMENTARY INFORMATION:

The Territorial Teacher Training Assistance Program provides Federal assistance for the training of teachers in schools in Gaum, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and, on a transitional basis, the entities of the former Trust Territory of the Pacific Islands.

On December 10, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for the Territorial Teacher Training Assistance Program in the **Federal Register** (52 FR 46785).

These regulations delete duplicative material in §§ 790.3, 790.20, 790.40, and 790.42. References to specific applicable portions of the Education Department General Administrative Regulations (EDGAR) are deleted since the applicability of the relevant parts is made clear in § 790.3 of the regulations.

Public Comment

In the NPRM the Secretary invited comments on the proposed regulations. The Secretary did not receive any comments. However, technical changes have been made to the reference concerning the Trust Territory of the Pacific Islands due to the enactment of the Compact of Free Association.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order

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12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernment Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 790. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 790

American Samoa colleges and universities, Education, Federal States of Micronesia grant programs—education, Guam, Northern Mariana Islands, Republic of the Marshall Islands, Republic of Palau, Teachers, Virgin Islands.

(Catalog of Federal Domestic Assistance Number 84.124: Territorial Teacher Training Assistance)

Dated: November 18, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Part 790 of Title 34 of the Code of Federal Regulations as follows:

PART 790—TERRITORIAL TEACHER TRAINING ASSISTANCE

1. The authority citation for Part 790 is revised to read as follows:

Authority: 20 U.S.C. 3142, unless otherwise noted.

2. Section 790.1 is revised to read as follows:

§ 790.1 Description of the Territorial Teacher Training Assistance Program.

The Territorial Teacher Training Assistance Program provides Federal assistance for the training of teachers in schools in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Virgin Islands, and, on a transitional basis, the entities of the former Trust Territory of the Pacific Islands.

(Authority: 20 U.S.C. 3142; 48 U.S.C. 1681)

3. Section 790.2 is revised to read as follows:

§ 790.2 Eligible parties.

(a) Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau, provided it remains a trust territory, are each eligible to receive a grant. The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.

(b) The Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands are each eligible to receive a grant in fiscal year 1989. Each grant is limited to an amount determined under the declining funding cap provision at section 105(i)(2) of the Compact of Free Association.

(c) If a jurisdiction desires a grant, its SEA—either alone or in conjunction with an IHE—shall submit an application. If an SEA submits an application in conjunction with an IHE, the SEA remains fully responsible for the administration of the project.

(Authority: 20 U.S.C. 3142; 48 U.S.C. 1681)

(Approved by the Office of Management and Budget under Control Number 1850–0619)

4. Section 790.3 is revised to read as follows:

§ 790.3 Regulations that apply to the Territorial Teacher Training Assistance Program.

The following regulations apply to grants under the Territorial Teacher Training Assistance Program:

(a) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), Part 79 (Intergovernmental Review of Department of Education Programs and Activities) and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(b) The regulations in this Part 790.

(Authority: 20 U.S.C. 3142)

5. Section 790.20 is revised to read as follows:

§ 790.20 How to apply for funds.

The Secretary makes a grant only if the applicant submits an application meeting the following requirements:

(a) For the first year of the program an application must contain—

(1) A needs assessment defining teacher training needs of both public and private schools in the jurisidiction covered by the application;

(2) A four-year plan explaining the methods to be employed and activities to be conducted to meet the teacher training needs identified in paragraph (a)(1) of this section;

(3) A detailed explanation of the goals, objectives, and activities to be carried out in the first year of the program;

(4) A detailed proposed budget for the accomplishment of the activities described in paragraph (a)(3) of this section for the fiscal year for which the application is submitted; and

(5) The estimated funding needs for each subsequent year of the four-year plan.

(b) For grantees eligible to receive grants in subsequent years under § 790.2 (a) and (b), for each subsequent year of the program, an application must contain—

(1) Any revisions to the needs assessment statement or amendments to the four-year plan statement submitted under paragraphs (a) (1) and (2) of this section;

(2) A statement describing the extent to which the previous year's project met the goals and objectives set forth in that year's application;

(3) A detailed explanation of the activities to be carried out for the current project year;

(4) A detailed proposed budget for the current project year; and

(5) An updated estimate of funding needs for the subsequent years of the project.

(Authority: 20 U.S.C. 3142)

(Approved by the Office of Management and Budget under Control Number 1850–0619)

6. Section 790.40 is amended by revising paragraph (a) to read as follows:

§ 790.40 Allowable costs.

(a) Funds under this part may be used to cover all or part of the cost of establishing and implementing a teacher training assistance project.

* * * * *

§ 790.42 [Amended]

7. Section 790.42 is amended by removing paragraph (b) and the paragraph designation "(a)".

[FR Doc. 88–27512 Filed 11–28–88; 8:45 am]
BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–3480–7]

Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects minor errors in the preamble and final rule on standards of performance for new stationary sources for the magnetic tape manufacturing industry that appeared in the **Federal Register** on October 3, 1988 (53 FR 38892). It also clarifies certain language of the preamble and final rule.

FOR FURTHER INFORMATION CONTACT: Mr. Sims L. Roy, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone number (919) 541–5263).

List of Subjects in 40 CFR Part 60

Air pollution control, Magnetic tape manufacturing (SIC Code 3695 (1987 Edition)), Reporting and recordkeeping requirements.

Date: November 17, 1988.

Eileen Claussen,

Acting Assistant Administrator for Air and Radiation.

The following corrections are made to the preamble and final rule on standards of performance for new stationary sources for the magnetic tape manufacturing industry that appeared in the **Federal Register** on October 3, 1988 (53 FR 38892).

1. On page 38893, in the first column, in the 12th and 13th lines, the words "in accordance with" should be removed.

2. On page 38895, in the third column, in the 14th line from the bottom, "requires" should read "require".

3. On page 38899, in the first column, in the first full paragraph, in the 12th line, "on" should read "in".

4. On page 38903, in the second column, the third full sentence, which reads "If, however, an owner or operator submits specific information to the Administrator that justifies the need for retained solvent in the product, the revised standards now allow the fraction of retained solvent to be included in the material balance calculation as VOC recovered rather than as a fugitive emission.", should be revised to read as follows:

"If, however, an owner or operator submits specific information to the Administrator that documents the quantity of solvent retained in the product, for purposes of a liquid-liquid material balance, the final standards allow that quantity of solvent to be subtracted from the quantity of VOC applied at the coating applicator."

5. In the same column, in the 13th line from the bottom, "(IV–F–1)" should read "(see docket item IV–F–1)".

6. On page 38904, the first column, in the fourth line of the first full paragraph, a comma should be inserted after the word "commenter".

7. On page 38906, in the second column, in the fourth line from the bottom, "on" should read "in".

8. On page 38914, in the first column, in the paragraph under the heading "List of Subjects in 40 CFR Part 60," "(SIC Codes 3679, 3573)" should read "(SIC Code 3695 (1987 Edition))".

PART 60—[AMENDED]

§ 60.711 [Amended]

9. In § 60.711(b)(26), on page 38916, in the second column, in the first line, "on" should read "in".

§ 60.712 [Amended]

10. On the same page, Table 1a, in the second column, in the fourth line under § 60.712(b)(1)(ii), the word "device" should be inserted after the word "control".

§ 60.713 [Amended]

11. On page 38918, in § 60.713(a)(3)(i), in the third column, in the third line, "paragraph" should read "paragraphs".

12. In the second column on that page, in the first line of § 60.713(a), "§§" should read "§".

13. On page 38920, in the second column, in § 60.713(b)(5)(i)(D), the second sentence, which reads "If FV is less than or equal to 9,000 meters per hour, the continuous inward airflow shall be verified by continuous observation using smoke tubes, streamers, tracer gases, or other means approved by the Administrator while the procedures specified above in paragraph (b)(5)(i)(C) of this section are carried out.", should be revised to read as follows:

"If FV is less than or equal to 9,000 meters per hour, the continuous inward flow of air shall be verified by continuous observation using smoke tubes, streamers, tracer gases, or other means approved by the Administrator over the period that the volumetric flow rate tests required to determine FV are carried out."

§ 60.717 [Amended]

14. In § 60.717(d)(2), on page 38923, in the first line of the first column, "average solvent content of any coating" should read "weighted average solvent content (G) of the coatings".

15. On the same page, in the second column, in § 60.717(d)(4)(ii)(C), the sixth and seventh lines, which read "reconstruction or 0.95 (95 percent), whichever is lower.", should read "reconstruction.".

16. In the same column, in § 60.717(d)(7), the final word should be changed from "or" to "and".

17. On the same page, in the third column, in the second line of § 60.717(h), "(b) through (g)" should read "(b) through (e)".

§ 60.718 [Amended]

18. On page 38924, in § 60.718(b), the second listed section, which reads "§ 60.713(a)(4)", should be removed.

[FR Doc. 88–27067 Filed 11–28–88; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6689

[MT–930–09–4214–10; SDM 019680]

Withdrawal of National Forest System Land for Addition to Steamboat Rock Picnic Ground, SD

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 50 acres of National Forest System land from mining for 20 years to protect recreation values. The land has been and will remain open to appropriate forms of surface entry and to mineral leasing.

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6090.

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By vitrue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714; it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the mining laws (30 U.S.C. Ch. 2) as an addition to the Steamboat Rock Picnic Ground withdrawal established by Public Land Order No. 1343:

Black Hills Meridian

Steamboat Rock Picnic Ground

T. 2 N., R. 5 E.,
Sec. 1, S½NW¼SW¼, N½SW¼SW¼, and NW¼SE¼SW¼.

The area described contains 50 acres in Lawrence County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

November 18, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-27414 Filed 11-28-88; 8:45 am]

BILLING CODE 4310-ON-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1831

Changes to NASA FAR Supplement on Travel Costs

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of interim rule.

SUMMARY: This notice withdraws the interim rule on travel costs published in the **Federal Register** on Friday, April 24, 1987 (52 FR 13685).

EFFECTIVE DATE: November 17, 1988.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

The interim rule was issued in compliance with Pub. L. 99-234, Title II, Section 201. The withdrawal action is taken in compliance with Pub. L. 100-679, effective November 17, 1988, which, *inter alia*, limits the application of Pub. L. 99-234.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls within the exemption. This deletion will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) This rule imposes no burden within the ambit of the Paperwork Reduction Act of 1980.

List of Subjects in 48 CFR Part 1831

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Part 1831 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.3—[Removed]

Subpart 1831.7—[Removed]

2. Part 1831 is amended by removing subparts 1831.3 and 1831.7.

[FR Doc. 88-27415 Filed 11-28-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 80459-8179]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule as an addition to the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The rule makes it a Federal requirement that all landings of groundfish be reported to the appropriate State in compliance with State laws. The intended effect of this action is to improve the ability of the NMFS and the States of California, Oregon, and Washington to accurately monitor landings receipts for individual fishing trips and account for all landings of groundfish, without imposing any new data collection requirements.

Furthermore, it would enhance enforcement, and could provide more reliable and timely information to improve fishery management, particularly in-season actions.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Rodney R. McInnis, Fisheries Management Division, Southwest Region, Terminal Island, California (213-514-6202), or William Robinson, Fisheries Management Division, Northwest Region, Seattle, Washington (206-526-6142).

SUPPLEMENTARY INFORMATION: No Federal reports are currently required of domestic fishermen, processors, or dealers under regulations implementing the FMP as long as the data collection systems of the States provide the Secretary of Commerce with statistical information adequate for management. State requirements are found in the Washington Administrative Code 220-69, Oregon Administrative Rules 635-06, and California Fish and Game Code Articles 6 and 7. The proposed rule published on June 15, 1988 (53 FR 22366), explains that State data collection systems still are adequate for management, but the timeliness and accuracy of submitted data could be improved if there was a Federal requirement for fishermen to report each landing to their respective States as required by State laws. State and Federal enforcement officers could then cooperate to ensure that all landings are properly reported. This action implements that requirement and enhances the ability of NMFS enforcement agents to monitor landings.

There are no environmental or economic effects from implementing the regulatory change, because it will not affect the amount of groundfish harvested, the species harvested, or the time and location of fishing activity. This is an administrative action, which will have no effect on marine resources, ocean and coastal habitats, or public health and safety. No new Federal reporting requirements are being implemented.

Public Comments

No comments were received during the public comment period.

Classification

The final rule is published under authority of section 305(g) of the Magnuson Act and was prepared at the request of the Pacific Fishery Management Council. The Assistant Administrator For Fisheries, NOAA, (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries of the Pacific coast and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has determined that the final rule falls within a categorical exclusion from the requirements of the National Environmental Policy Act, 42, U.S.C. 4321 *et seq.*, by NOAA Directive 02-10, because it would not result in any significant change from the status quo and because the reporting of landing data is a routine administrative action with limited potential for effect on the human environment.

The Under Secretary for Oceans and Atmosphere (Under Secretary) also had determined that it is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The rule will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S. based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.*, because it does not create any new burdens. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain new collection of information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Under Secretary has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of California, Oregon, and Washington. This determination was submitted for review to the responsible state agencies under section 307 of the Coastal Zone Management Act. The States failed to comment within the statutory time period; therefore, the States' agreements are presumed.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Dated: November 19, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 663 is amended as follows:

PART 663—[AMENDED]

1. The authority citation for Part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.4 the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 663.4 Reports.

* * * * *

(b) Any person who is required to do so by the applicable State law must make and/or file any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable State law.

3. In § 663.7, the period following paragraph (q) is changed to a semicolon and a new paragraph (r) is added to read as follows:

§ 663.7 Prohibitions.

* * * * *

(r) To falsify or fail to make and/or file, any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 663.4, provided that person is required to do so by the applicable State law.

[FR Doc. 88-27269 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-22-M

VOL 53 ISS 229 NO 29 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 229
Tuesday, November 29, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA-88-124]

Dairy Promotion Program; Invitation to Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes an amendment to the Dairy Promotion and Research Order and provides for comment on the amendment. The proposal would modify the composition of the National Dairy Promotion and Research Board by adding one Board seat to Region 2 (California) and removing one Board seat from Region 5 (Minnesota, North Dakota, and South Dakota). The proposal was submitted by the National Dairy Promotion and Research Board that administers the order. The initial Board of 36 dairy farmers was established in 1984 with each Board member representing an equal proportion of total United States milk production in 13 geographic regions on the basis of 1983 milk production. The Board has proposed that the composition of the Board be modified to reflect changes in milk production that have occurred since the initial Board was established. The proposed modification of the number of Board seats for the two regions is based on a review of 1987 milk production for 48 States published by the Department of Agriculture.

DATE: Comments must be postmarked not later than December 29, 1988.

ADDRESS: Comments should be sent to: Director, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Marcia Gibney, Chief, Promotion and Research Staff, USDA/AMS/Dairy Division, Room 2934, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6961.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. The proposed change in the composition of the National Dairy Promotion and Research Board will result in no economic effect on any entity engaged in the dairy industry. Also, this proposed rule has been reviewed under Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Statement of Consideration

The Dairy Promotion and Research Order specifies that the National Dairy Promotion and Research Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or a modification of members from regions to best reflect the geographic distribution of milk production. The order also specified the formula to be used to determine the number of Board seats to represent each of the 13 geographic regions of the country. Under the formula, total milk production for the 48 States for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region.

The initial Board established in 1984 was based on 1983 milk production. Each Board member represented about 3,875 million pounds of the 139,509 million pounds of milk produced in the 48 States during 1983. During 1987, total milk production increased to 142,271 million pounds, which indicates that each of the 36 Board members would represent 3,952 million pounds of milk.

Based on a review of the 1987 geographic distribution of milk production, the Board has concluded that the number of Board members for two of the 13 geographic regions should be changed. Milk production in Region 2 (California) increased to 17,934 million pounds in 1987 from 14,743 million pounds in 1983, indicating 4.54 Board members based on 1987 production (17,934 divided by 3,952=4.54) compared to 3.8 Board members based on 1983 production (14,743 divided by 3,875=3.80). Also, milk production in Region 5 (Minnesota, North Dakota and South Dakota) decreased to 13,298 million pounds in 1987 from 13,832 million pounds in 1983, indicating 3.36 Board members based on 1987 production (13,298 divided by 3,952=3.36) compared to 3.57 Board members based on 1983 production (13,832 divided by 3,875=3.57). Thus, the Board has proposed that the number of Board members for Region 2 be increased from four to five and that the number of Board members for Region 5 be decreased from four to three so that the Board will best reflect the geographic distribution of milk production volume throughout the United States.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion, Research.

PART 1150—[AMENDED]

The authority citation for 7 CFR Part 1150 continues to read as follows:

Authority: Pub. L. 98-180, 97 Stat. 1128.

The proposed amendment, as set forth below, has not received the approval of the Secretary of Agriculture.

Proposed by the National Dairy Promotion and Research Board

Revise § 1150.131 (a)(2) and (5) to read as follows

§ 1150.131 Establishment and membership.

(a) * * *

(2) Five members from region number two comprised of the following State: California.

* * * * *

(5) Three members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

* * * * *

Signed at Washington, DC, on: November 23, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-27434 Filed 11-28-88; 8:45 am]
BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1770

Revision and Codification of REA's Accounting System Requirements for Telephone Borrowers of the Rural Electrification Administration

AGENCY: Rural Electrification Administration (REA); USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration proposes to amend 7 CFR Chapter XVII, REA Regulations, by adding a new part, Part 1770, Accounting, consisting of Subpart A, Accounting System Requirements. Current REA policy on this subject is set forth in REA Bulletin 461-1, Accounting System Requirements for Telephone Borrowers of the Rural Electrification Administration. As part of REA's continuing effort to codify its policies and procedures, this new part and subpart are being proposed. In addition to codifying its policies and procedures, revisions are being proposed to the existing system that will coincide with the revision of the Federal Communications Commission Uniform System of Accounts for Telecommunications Companies as set forth in Part 32 of the Commission's Rules and Regulations. Once the proposed rule is published final, REA Bulletin 461-1 will be rescinded.

DATE: Public comments must be received by REA no later than January 30, 1989.

ADDRESS: Submit written comments to Mr. William E. Davis, Director, Borrower Accounting Division, Rural Electrification Administration, Room 2231, South Building, U.S. Department of Agriculture, Washington, DC, 20250. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Davis, Director, Borrower Accounting Division, at the above address, telephone number (202) 382-9450. The Draft Impact analysis describing the options considered in developing and implementing the proposal is available upon request from the above office.

SUPPLEMENTARY INFORMATION: REA proposes to amend 7 CFR Chapter XVII, REA Regulations, by adding a new part, Part 1770, Accounting, consisting of Subpart A, Accounting System Requirements. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in major increases in costs or prices for consumers, individual industries, Federal State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 et seq. 1978) and, therefore, does not require an environmental impact statement or an environmental assessment. This regulation contains no information or record keeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C 3507 et seq.). The program listed in the Catalog of Federal Domestic Assistance that is impacted is 10.851—Rural Telephone Loans and Loan Guarantees. For reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, (50 FR 47035, November 14, 1985) this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

In order to facilitate the effective and economically operation of a business enterprise, adequate and reliable financial records must be maintained. Accounting records must provide a clear and accurate picture of the enterprise's current economic condition from which management can make informed decisions in charting the company's future. A telecommunications carrier, because of the rate regulated environment in which it operates, possesses an even greater need for financial information that is accurate, complete, and comparable with that generated by other carriers. For this reason, the Federal Communications Commission (FCC) prescribes a Uniform System of Accounts for the telecommunications industry.

REA, in representing the federal government as mortgagee and in furthering the objectives of the Rural Electrification Act, has a special concern that adequate records are maintained. Due to the cooperative organization of many of our borrowers and the provisions included in REA's mortgage agreements and lien accommodations, REA has augmented the FCC Uniform System of Accounts with supplementary accounts that will provide the financial information necessary to operate a rural telecommunications enterprise.

The current system prescribed in Parts 31 and 33 of the FCC Rules and Regulations were developed at a time when a rigid institutionalized regulatory environment was expected to continue indefinitely. With the introduction of competition and a variety of new products and services in the last decade, the existing systems of accounts became inadequate to handle the needs of the telecommunications carrier. As a result, the FCC has adopted a revised Uniform System of Accounts as set forth in Part 32 of their Rules and Regulations. Effective January 1, 1988, Part 32 shall be implemented in its entirety and the current systems rescinded.

This evolution has also necessitated a change in the accounting requirements and supplemental accounts prescribed by REA. The provisions and requirements detailed in Part 1770, Subpart A, coincide with Part 32 and, if adopted, are to become effective with its implementation on January 1, 1988.

List of Subjects in 7 CFR Part 1770

Accounting.

In view of the above, REA hereby proposes to add a new part, Part 1770, Accounting, consisting of Subpart A, Accounting System Requirements, to 7 CFR Chapter XVII to read as follows:

PART 1770—ACCOUNTING

Subpart A—Accounting System Requirements

Sec.

1770.10 General.
1770.11 Accounting system requirements.
1770.12 Supplementary accounts.
1770.13 Accounting requirements.
1770.14 Continuing property records.
1770.15 Supplementary accounts required of all borrowers.
1770.16 Supplementary accounts required of nonprofit organizations.

Authority: 7 U.S.C. 901 et seq.

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Subpart A—Accounting System Requirements

§ 1770.10 General.

This subpart implements provisions of the standard REA loan documents with respect to the accounting system to be maintained by telecommunications borrowers of the Rural Electrification Administration.

§ 1770.11 Accounting System Requirements.

(a) Each REA borrower subject to the jurisdiction of the Federal Communications Commission (FCC) or a State regulatory body shall maintain its accounts and records in accordance with the rules and regulations prescribed by that regulatory body.

(b) Each REA borrower not subject to regulatory control as specified in § 1770.11 (a) shall maintain its accounts and records in accordance with the FCC Uniform System of Accounts as set forth in Part 32 of the Commission's Rules and Regulations.

(1) REA borrowers having annual revenues derived from regulated telecommunications operations of $100,000,000 or more shall maintain the accounts prescribed in Part 32 for Class A companies.

(2) REA borrowers having annual revenues derived from regulated telecommunications operations of less than $100,000,000 shall maintain the accounts prescribed in Part 32 for Class B companies.

(3) REA borrowers maintaining the accounts prescribed for Class B companies may adopt the Class A accounts if they desire more detailed and sophisticated accounting records.

§ 1770.12 Supplementary Accounts.

(a) All borrowers shall maintain the supplementary accounts set forth in § 1770.15. These accounts conform in number and title with accounts prescribed in the FCC Uniform System of Accounts. In those instances where a State regulatory body having jurisdiction over an REA borrower has prescribed a system of accounts differing from that of the FCC, the account titles prescribed by REA in § 1770.15 shall remain unchanged. The supplementary account numbers shall be changed to conform with the State's accounting system.

(b) Cooperative or other nonprofit borrowers shall maintain the supplementary accounts set forth in § 1770.16.

§ 1770.13 Accounting Requirements.

(a) Each borrower shall maintain its books of accounts on the accrual basis of accounting. All transactions shall be recorded in the period incurred and reconciled monthly. The books of accounts shall be closed at the end of each fiscal year and financial statements shall be prepared for the period.

(b) All books of accounts, records, and memoranda shall be maintained in such a manner as to fully support the journal entries to which they relate. The books and records referred to herein shall also include accounting records of a nontechnical nature such as minute books, stock, and membership records, reports, correspondence, and memoranda.

(c) Interpretations of Federal or State requirements shall be referred to the applicable commission having jurisdiction over the borrower.

(d) Interpretations of REA accounting requirements shall be referred to the appropriate Telephone Area office of REA.

§ 1770.14 Continuing Property Records.

Each borrower shall maintain continuing property records which detail the date of placement, location, description of property, and the original cost of the property record units. The continuing property record and other underlying records of construction costs shall be maintained so that upon retirement of one or more retirement units or of minor items without replacement when not included in the costs of retirement units, the actual cost of the plant retired can be determined.

§ 1770.15 Supplementary Accounts Required of all Borrowers.

Accounts prescribed in the Stockholders' Equity and Patronage Capital section shall be maintained by stock companies and cooperative as necessary.

Class of Company (Account Number)		Account Title
A	B	
		Current Assets
1130.1	1120.11	Cash—General Fund.
1130.2	1120.12	Cash—Construction Fund Trustee.
1130.3	1120.13	Cash—Transfer of Funds.
	1120.21	Special Cash Deposits.
1150.1	1120.31	Petty Cash Fund.
1150.2	1120.32	Change Fund.
		Supplies
1220.1	1220.1	Materials and Supplies.
1220.2	1220.2	Property Held for Sale or Lease.
1220.3	1220.3	Exempt Materials—Clearing.
		Prepayments
	1280.1	Prepaid Rents.
	1280.2	Prepaid Taxes.
	1280.3	Prepaid Insurance.
	1280.4	Prepaid Directory Expenses.
	1280.5	Other Prepayments.
		Investments
1402.1	1402.1	Investments in Nonaffiliated Companies—Class B RTB Stock.
1402.11	1402.11	Investments in Nonaffiliated Companies—Class B RTB Stock—Cr.
1402.2	1402.2	Investments in Nonaffiliated Companies—Class C RTB Stock.
1402.3	1402.3	Other Investments in Nonaffiliated Companies.
		Property, Plant, and Equipment
2001.1	2001.1	Telecommunications Plant in Service—Classified.
2002.2	2001.2	Telecommunications Plant in Service—Unclassified.
2003.1	2003.1	Telecommunications Plant Under Construction—Short Term—Contract.
2003.2	2003.2	Telecommunications Plant Under Construction—Short Term—Force Account.
2003.3	2003.3	Telecommunications Plant Under Construction—Short Term—Work Orders.
2004.1	2004.1	Telecommunications Plant Under Construction—Long Term—Contract.
2004.2	2004.2	Telecommunications Plant Under Construction—Long Term—Force Account.
2004.3	2004.3	Telecommunications Plant Under Construction—Long Term—Work Orders.

Class of Company (Account Number)		Account Title
A	B	
		Telecommunications Plant in Service
	2210.11	Central Office Switching—Analog.
	2210.21	Central Office Switching—Digital.
	2210.31	Central Office Switching—Electro-Mechanical—Step-by-Step.
	2210.32	Central Office Switching—Electro-Mechanical—Crossbar.
	2210.33	Central Office Switching—Electro-Mechanical—Other.
	2230.11	Central Office Transmission—Radio Systems—Satellite and Earth Station Facilities.
	2230.12	Central Office Transmission—Radio Systems—Other.
	2230.21	Central Office Transmission—Circuit Equipment.
		Depreciation and Amortization
3100x	3100x	Retirement Work in Progress
		Current Liabilities
4010.11	4010.11	Accounts Payable to Affiliated Companies.
4010.21	4010.21	Accounts Payable to Nonaffiliated Companies.
4010.22	4010.22	Accounts Payable—Employees' Income Tax Withheld.
4010.23	4010.23	Accounts Payable—FICA Taxes Withheld.
4010.24	4010.24	Accounts Payable—Federal Excise Taxes.
4010.25	4010.25	Accounts Payable—Payroll.
4070.1	4070.1	Income Taxes Accrued—Federal.
4070.2	4070.2	Income Taxes Accrued—State and Local.
4080.1	4080.1	Other Taxes Accrued—Property.
4080.2	4080.2	Other Taxes Accrued—Employer's Portion—FICA.
4080.3	4080.3	Other Taxes Accrued—Federal Unemployment.
4080.4	4080.4	Other Taxes Accrued—State Unemployment.
4080.5	4080.5	Other Taxes Accrued—Miscellaneous.
4120.1	4120.1	Unmatured Interest Accrued—REA Notes.
4120.2	4120.2	Unmatured Interest Accrued—Telephone Bank Notes.
4120.3	4120.3	Other Accrued Liabilities.
		Long-Term Debt
4210.11	4210.11	Funded Debt—Other.
4210.12	4210.12	REA Notes.
4210.13	4210.13	Telephone Bank Notes.
4210.14	4210.14	Federal Financing Bank Notes.
4210.15	4210.15	Bank for Cooperatives Notes.
4210.16	4210.16	Rural Telephone Finance Cooperative Notes.
4210.17	4210.17	REA Notes—Deferred Interest.
4210.18	4210.18	REA Notes—Advance Payments, Dr.
4210.19	4210.19	Funded Debt—Other—Unadvanced, Dr.
4210.20	4210.20	REA Notes—Unadvanced, Dr.
4210.21	4210.21	Telephone Bank Notes—Unadvanced, Dr.
4210.22	4210.22	Federal Financing Bank Notes—Unadvanced, Dr.
4210.23	4210.23	Bank for Cooperatives Notes—Unadvanced, Dr.
4210.24	4210.24	Rural Telephone Finance Cooperative Notes—Unadvanced, Dr.
		Stockholder's Equity and Patronage Capital
4540.11	4540.11	Capital Stock Subscribed.
4540.12	4540.12	Memberships Subscribed but Unissued.
4540.13	4540.13	Members' Equity Certificates Subscribed but Unissued.
4540.21	4540.21	Memberships Issued.
4540.22	4540.22	Members' Equity Certificates Issued.
4540.23	4540.23	Members' Equity—Other.
4540.31	4540.31	Installments Paid on Capital Stock.
4540.32	4540.32	Installments Paid on Memberships Subscribed.
4540.33	4540.33	Installments Paid on Equity Certificates Subscribed.
4540.41	4540.41	Other Capital.
4550.1	4550.1	Operating Margins.
4550.2	4550.2	Nonoperating Margins.
4550.3	4550.3	Other Margins.
4550.4	4550.4	Patronage Capital Assignable.
4550.5	4550.5	Patron's Capital Credits Assigned.
4550.6	4550.6	Gain on the Retirement of Capital Credits.
		Plant Specific Operations Expense
	6210.11	Analog Electronic Expense.
	6210.21	Digital Electronic Expense.
	6210.31	Electro-Mechanical Expense.
	6230.11	Radio Systems Expense.
	6230.21	Circuit Equipment Expense.
		Plant Nonspecific Operations Expense
	6560.1	Depreciation Expense.
	6560.2	Amortization Expense.
		Operating Taxes
	7200.1	Operating Investment Tax Credits—Net.
	7200.2	Operating Federal Income Taxes.
	7200.3	Operating State and Local Income Taxes.
7240.1	7200.41	Operating Taxes—Property.
7240.2	7200.42	Operating Taxes—Miscellaneous.
	7200.5	Provision for Deferred Operating Income Taxes—Net.
		Nonoperating Income and Expense
	7300.2	Interest Income.
	7300.4	Allowance for Funds Used During Construction.
	7300.6	Other Nonoperating Income and Expense

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Class of Company (Account Number)		Account Title
A	B	
		Nonoperating Taxes
	7400.1	Nonoperating Investment Tax Credits—Net.
	7400.2	Nonoperating Federal Income Taxes.
	7400.3	Nonoperating State and Local Income Taxes.
	7400.4	Nonoperating Other Taxes.
	7400.5	Provision for Deferred Nonoperating Income Taxes—Net.
		Extraordinary Items
	7600.1	Extraordinary Income Credits.
	7600.2	Extraordinary Income Charges.
	7600.3	Current Income Tax Effect of Extraordinary Items—Net.
	7600.4	Provision for Deferred Income Tax Effect of Extraordinary Items—Net.
1130.1	1120.11	*Cash—General Fund:* This account shall include all unrestricted funds derived from revenues and other sources which are on deposit in banks or other financial institutions and available on demand. It shall also include funds in transit to the depository for which customers and agents have received credit on their accounts. Separate subaccounts should be maintained for each bank account in which general fund cash is deposited.
1130.2	1120.12	*Cash—Construction Fund Trustee:* This account shall include all loan funds received from REA, the Rural Telephone Bank, the Federal Financing Bank, and all non-loan funds supplied by the borrower under the terms of the loan contract or otherwise required by REA. The offsetting credit for funds received from REA shall be to Account 4210.20, REA Notes—Unadvanced, Dr.; funds received from the Rural Telephone Bank, to Account 4210.21, Telephone Bank Notes—Unadvanced, Dr.; funds received from the Federal Financing Bank, to Account 4210.22, Federal Financing Bank Notes—Unadvanced, Dr.; funds received from the Bank for Cooperative, to Account 4210.23, Bank for Cooperatives Notes—Unadvanced, Dr.; and funds received from the Rural Telephone Finance Cooperative, to Account 4210.24, Rural Telephone Finance Cooperative Notes—Unadvanced, Dr.
1130.3	1120.13	*Cash—Transfer of Funds:* This account shall include all transfers of funds from one bank account to another. This account shall be charged with the amount of a check drawn for the transfer, and credited when the amount transferred is entered into the Cash Receipts Book.
	1120.21	*Special Cash Deposits:* This account shall include all cash on special deposit, other than in sinking and other special funds provided for elsewhere, to pay dividends, interest, and other debts, when such payments are due one year or less from the date of deposit; the amount of cash deposited to insure the performance of contracts to be performed within one year from the date of the deposit; and other cash deposits of a special nature not provided for elsewhere. This account shall include the amount of cash deposited with trustees to be held until mortgaged property sold, destroyed, or otherwise disposed of is replaced, and also cash realized from the sale of the company's securities and deposited with trustees to be held until invested in physical property of the company or for disbursement when the purposes for which the securities were sold are accomplished.
1150.1	1120.31	*Petty Cash Fund:* This account shall include funds in the custody of employees or agents for making minor disbursements. The fund shall be operated on an inprest basis. Expenditures shall be supported by receipts, and reimbursements to the fund shall be for the exact amount of such expenditures and shall be charged to the various accounts to which the expenditures are allocable. At all times, the total of the cash on hand and the unreimbursed expenditures shall equal the amount of the fund.
1150.2	1120.32	*Change Fund:* This account shall include funds in the custody of employees or agents for making change. Records shall be kept of the amount held by each person. Disbursements shall not be made from the fund.
1220.1	1220.1	*Materials and Supplies*:* This account shall include the cost of materials and supplies held in stock including plant supplies, motor vehicles supplies, tools, fuel, other supplies and material and articles of the company in process of manufacture for supply stock. Transportation charges and sales and use taxes, as far as practicable, shall be included as a part of the cost of the particular material to which they relate. Transportation and sales and use taxes which are not included as part of the cost of particular material shall be equitably apportioned among the accounts to which material is charged. As far as practicable, cash and other discounts on material shall be deducted in determining cost of the particular material to which they relate or credited to the account to which the material is charged. When such deduction is not practicable, discounts shall be equitably apportioned among the accounts to which material is charged. Material recovered in connection with construction, maintenance or retirement of property shall be charged to this account as follows: Reusable items that, when installed or in service, were retirement units shall be included in this account at the original cost. Reusable minor items that, when installed or in service, were not retirement units shall be included in this account at current prices new. The cost of repairing reusable material shall be charged to the appropriate Plant Specific Operations Expense accounts. Scrap and nonusable material included in this account shall be carried at the estimated amount which will be received therefor. The difference between the amounts realized for scrap and nonusable material sold, and the amounts at which it is carried in this account shall be adjusted in the accounts credited when the material was taken up in this account. Interest paid on material bills, the payments of which are delayed, shall be charged to Account 7540. Other Interest Deductions. Inventories of materials and supplies shall be taken during each calendar year and the adjustments to this account shall be charged or credited to Account 6512, Provisioning Expense.
1220.2	1220.2	*Property Held for Sale or Lease*:* This account shall include the cost of all items purchased for resale or lease. The cost shall include applicable transportation charges, sales and use taxes, and cash and other purchase discounts. Inventory shortages and overages shall be charged and credited, respectively to Account 7991. Other Nonregulated Revenues.
1220.3	1220.3	*Exempt Materials-Clearing:* This account shall include the cost of materials and supplies designated as exempt material on the carrier's "Exempt Material List". Charges to this account shall be cleared monthly to the primary plant and maintenance accounts in accordance with percentages developed by the individual carriers. When there is a substantial amount of exempt material on hand at the end of the year, substantial enough to distort net income or margins, a physcial inventory may be taken. The cost of the inventory on hand shall be debited to this account and credited to the appropriate primary plant and maintenance accounts on a pro-rata basis related to the original charges to these accounts. This entry shall be reversed at the first of the year.
	1280.1	*Prepaid Rents:* This account shall include the amount of rents paid in advance of the period in which it is chareable to income, expect amounts chargeable to the telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the rents are paid, this account shall be credited monthly and the appropriate account charged.

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Class of Company (Account Number)		Account Title
A	B	
	1280.2	*Prepaid Taxes:* This account shall include the balance of all taxes paid in advance of the period in which they are chargeable to income, except amounts chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the taxes are paid, this account shall be credited monthly and the appropriate account charged.
	1280.3	*Prepaid Insurance:* This account shall include the amount of insurance premiums paid in advance of the period in which they are chargeable to income, except premiums chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the premiums are paid, this account shall be credited monthly and the appropriated account charged.
	1280.4	*Prepaid Directory Expenses:* This account shall include the cost of preparing, printing, binding, and delivering directories and the costs of soliciting advertisements for directories, except minor amounts which may be charged directly to Account 6622, Number Services. Amounts in this account shall be cleared to Account 6622 by monthly charges representing that portion of the expenses applicable to each month.
	1280.5	*Other Prepayments:* This account shall include prepayments, other than those includable in Accounts 1280.1 through 1280.4 except minor amounts which may be charged directly to the final accounts. As the term expires for which the payments apply, this account shall be credited monthly and the appropriate account charged.
1402.1	1402.1	*Investments in Nonaffiliated Companies—Class B RTB Stock:* This account shall include the par value of the required purchase of Class B Rural Telephone Bank Stock and the par value of the Class B Rural Telephone Bank stock received as a patronage refund. This account shall be debited at the time the refund is received and Account 1402.11, Investments in Nonaffiliated Companies—Class B RTB Stock—Cr., credited. This account shall be credited an Account 1402.11 debited when the patronage refund is redeemed.
1402.11	1402.11	*Investment in Nonaffiliated Companies—Class B RTB Stock—Cr:* This account shall include the par value of Class B Rural Telephone Bank stock received as a patronage refund. This account shall be debited at the time the refund is received and Account 1402.11, Investments in Nonaffiliated Companies—Class B RTB Stock—Cr., credited. This account shall be debited and Account 1402.1 credited when the patronage refund is redeemed.
1402.11	1402.11	*Investments in Nonaffiliated Companies—Class B RTB Stock B RTB Stock—Cr:* This account shall include the par value of the Class B Rural Telephone Bank stock received as a patronage refund. This account shall be credited at the time the refund is received and Account 1402.1, Investments in Nonaffiliated Companies—Class B RTB Stock, debited. This account shall be debited and Account 1402.1 credited when the patronage refund is redeemed.
1402.2	1402.2	*Investments in Nonaffiliated Companies—Class C RTB Stock:* This account shall include the par value of the company's investment in Class C Rural Telephone Bank Stock. Cash dividends on Class C stock shall be recorded in Account 7310, Dividend Income, when declared.
1402.3	1402.3	*Other Investments in Nonaffiliated Companies:* This account shall include the acquisition cost of the company's investment in securities issued by non-affiliated companies, other than securities held in special funds which shall be charged to Account 1408, Sinking Funds, and also its investment advances to such parties and special deposits of cash for more than one year from the date of deposit. Declines in value of investments shall be charged to Account 4540.41, Other Capital, if temporary and as a current period loss if permanent. Detail records shall be maintained to reflect unrealized losses for each investment.
2001.1	2001.1	*Telecommunications Plant in Service—Classified:* This account shall include the original cost of the property capitalized in Accounts 2110 through 2690.
2001.2	2001.2	*Telecommunications Plant in Service—Unclassified:* This account shall include the original cost of telecommunications property which has been completed and placed in service but which has not been classified pending completion of final inventories of construction, final cost summaries, etc. The balance in this account is subject to depreciation charges.
2003.1	2003.1	*Telecommunications Plant Under Construction—Short Term—Contract:* This account shall include all costs incurred in the construction of telecommunications plant performed under contract and designed to be completed in one year or less. Included among these costs are contractor payments, and charges of engineering, supervision, taxes, insuance, transportation, and other costs incurred in contract construction. This account shall be maintained such that the various items of cost are readily identified.
2003.2	2003.2	*Telecommunications Plant Under Construction—Short Term—Force Account:* This account shall include all costs incurred in the construction of telecommunications plant performed by the borrowers' own employees and designed to be completed in one year or less. Included among these costs are charges for material, labor, engineering, supervision, taxes, insurance, transportation, supply expense, and other costs incurred in the construction. This account shall be maintained so that the various items of cost are readily identified. Specific subaccounts should be maintained to distinguish individual projects.
2003.3	2003.3	*Telecommunications Plant Under Construction—Short Term—Work Orders:* This account shall include all costs incurred in the construction of telecommunications plant performed under a work order system or a line extension contract and designed to be completed in one year or lees. This type of construction generally includes service installations, subscriber extensions, and minor plant improvements after the completion of the initial system. Included among these costs are charges for labor, materials and supplies, transportation, payroll taxes, insurance, supervision and other costs incurred in the construction. Subsidiary records shall be maintained to reflect the cost of individual jobs. These records shall be reconciled periodicity with the general ledger control account. Specific subaccounts should be maintained to accumulate costs incurred under line extension contracts.
2004.1	2004.1	*Telecommunications Plant Under Construction—Long Term—Contract:* This account shall include all costs incurred in the construction of telecommunications plant performed under contract and designed to be completed in more than one year. Included among these costs are contractor payments, and charges for engineering, supervision, taxes, insurance, transportation, interest during construction, and other costs incurred in contract construction. This account shall be maintained such that the various items of cost are readily identified.
2004.2	2004.2	*Telecommunications Plant Under Construction—Long Term—Force Account:* This account shall include all costs incurred in the construction of telecommunications plant performed by the borrowers' own employees and designed to be completed in more than one year. Included among these costs are charges for material, labor, engineering, supervision, taxes, insurance, transportation, supply expenses, interest during construction, and other costs incurred in the construction. This account shall be maintained such that the various items of cost are readily identified. Specific subaccounts should be maintained to distinguish individual projects.

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2004.3	2004.3	*Telecommunications Plant Under Construction—Long Term—Work Orders:* This account shall include all costs incurred in the construction of telecommunications plant performed under a work order system or a line extension contract and designed to be completed in more than one year. Included among these costs are charges for labor, materials and supplies, transportation, payroll taxes, insurance, supervision, interest during construction, and other costs incurred in the construction. Subsidiary records shall be maintained to reflect the cost of individual jobs. These records shall be reconciled periodically with the general ledger control account. Specific subaccounts should be maintained to accumulate costs incurred under line extension contracts.
	22*0.11	*Central Office Switching—Analog:* This account shall include the orignal cost of stored program control analog circuit-switching and associated equipment. This account shall also include the cost of remote analog electronic circuit switches.
	2210.21	*Central Office Switiching—Digital:* [1] This account shall include the original cost of stored program control digital switches and their associated equipment. Included in this account are digital switches which utilize either dedicated or non-dedicated circuits. This account shall also include the cost of remote digital electronic switeches.
	2210.31	*Central Office Switching—Electro-Mechanical—Step-by-Step:* [1] This account shall include the original costs of step-by-step and associated circuit-switching equipment.
	2210.32	*Central Office Switching—Electro-Mechanical—Crossbar:* [1] This account shall include the original cost of crossbar and associated circuit switching equipment. Also included in this account is the cost of electronic translator system equipment used in switching.
	2210.33	*Central Office Switching—Electro-Mechanical—Other:* [1] This account shall include the original cost of all other types of non-electronic circuit-switching equipment such as panel systems and their associated circuit-switching equipment.
	2230.11	*Central Office Transmission—Radio Systems—Satellite and Earth Station Facilities:* This account shall include the original cost of an ownership interest in satellites (including land-side spares), other spare parts, materials, and supplies. It shall include launch insurance and other satellite launch costs. This account shall also include the original cost of earth stations and spare parts, materials, and supplies therefor.
	2230.12	*Central Office Transmission—Radio Systems—Other:* This account shall include the original cost of radio equipment used to provide radio communication channels. Radio equipment is that equipment which is used for the generation, amplification, propagation, reception, modulation, and demodulation of radio waves in free space over which communications channels can be provided. This account shall also include the associated carrier and auxilliary equipment.
	2230.21	*Central Office Transmission—Circuit Equipment:* This account shall include the original cost of equipment which is used to reduce the number of physical pairs otherwise required to serve a given number of subscribers by utilizing carrier systems, concentration stages or combinations of both. It shall include equipment that provides for simultaneous use of a number of interoffice channels on single transmission path. This account shall also include equipment which is used for the amplification, modulation, regeneration, circuit patching, balancing or control or signals transmitted over interoffice communications transmission channels. This account shall include equipment which utilizes the message path to carry signaling information or which utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels. This account shall also include the original cost of associated material used in the construction of such plant. Circuit equipment may be located in central offices, in manholes, on poles, in cabinets or huts or at other locations. This account excludes carrier and auxiliary equipment and patch bay which are recorded in Account 2230.12, Central Office Transmission—Radio Systems—Other.
3100x	3100x	*Retirement Work in Progress:* This account shall be charged with the original cost of property retired from the telecommunications plant accounts. It shall also be charged with all of the costs incurred in removing the retired plant from service. This account shall be credited with the salvage value of materials recovered in the retirement of the telecommunications plant. At such time as the retirement work order is complete, the net income/loss resulting therefrom shall be transferred from this account to the appropriate primary plant depreciation reserve account.
4010.11	4010.11	*Accounts Payable to Affiliated Companies:* This account shall include all amounts currently due to affiliated companies for recurring trade obligations, and not provided for in other accounts, such as those for traffic settlements, material and supplies, repairs to telecommunications plant, matured rents, and interest payable under monthly settlements on short-term loans, advances, and open accounts.
4010.21	4010.21	*Accounts Payable to Nonaffiliated Companies:* This account shall include all amounts currently due to nonaffiliated companies for recurring trade obligations, and not provided for in other accounts, such as those for traffic settlements, materials and supplies, repairs to telecommunications plant, matured rents, and interest payable under monthly settlements on short-term loans, advances, and open accounts.
4010.22	4010.22	*Accounts Payable—Employees' Income Tax Withheld:* This account shall include income taxes payable that have been withheld from employees' salaries.
4010.23	4010.23	*Accounts Payable—FICA Taxes Withheld:* This account shall include FICA taxes payable that have been withheld from employees' salaries.
4010.24	4010.24	*Accounts Payable—Federal Excise Taxes:* This account shall include excise taxes payable.
4010.25	4010.25	*Accounts Payable—Payroll:* This account shall include amounts payable to the company's employees in the form of salaries or wages.
4070.1	4070.1	*Income Taxes Accrued—Federal:* For Class A companies, this account shall be credited and Accounts 7220, 7420, and 7630, as appropriate, shall be debited for the amount of federal income taxes accrued during the current operating period. For Class B companies, this account shall be credited and Accounts 7200.2, 7400.2, and 7600.3, as appropriate, shall be debited for the amount of federal income taxes accrued during the current operating period.
	4070.2	Income Taxes Accrued—State and Local: For Class A companies, this account shall be credited and Accounts 7230, 7430, and 7630, as appropriate, shall be debited for the amount of state and local income taxes accrued during the current operating period. For Class B companies, this account shall be credited and Accounts 7200.3, 7400.3. and 7600.3, as appropriate, shall be debited for the amount of state and local income taxes accrued during the current operating period.
4080.1	4080.1	*Other Taxes Accrued—Property:* This account shall be credited and Account 7240.1/7200.41, Operating Taxes—Property, shall be debited for the amount of property taxes accrued during the current operating period.
4080.2	4080.2	*Other Taxes Accrued—Employer's Portion—FICA:* This account shall be credited and the appropriate construction, depreciation, or expense account shall be debited for the employer's portion of FICA taxes accrued during the current operating period.
4080.3	4080.3	*Other Taxes Accrued—Federal Unemployment:* This account shall be credited and the appropriate construction, removal, or expense account shall be debited for the amount of federal unemployment taxes accrued during the current operating period.
4080.4	4080.4	*Other Taxes Accrued—State Unemployment:* This account shall be credited and the appropriate construction, removal, or expense account shall be debited for the amount of state unemployment taxes accrued during the current operating period.

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4080.5	4080.5	*Other Taxes Accrued—Miscellaneous:* This account shall be credited and Account 7240.2/7200.42, Operating Taxes—Miscellaneous, shall be debited for the amount of all other taxes accrued during the current operating period and not provided for elsewhere such as a gross receipts tax, franchise taxes, and capital stock taxes.
4120.1	4120.1	*Unmatured Interest Accrued—REA Notes:* This account shall include the interest accrued as of the balance sheet date but not payable until after that date on REA mortgage notes. Interest expense incurred during the period of construction of telecommunications plant shall be charged to Account 2004, Telecommunications Plant Under Construction—Long Term, and credited to Account 7340/7300.4, Allowance for Funds Used During Construction.
4120.2	4120.2	*Unmatured Interest Accrued—Telephone Bank Notes:* This account shall include the interest accrued as of the balance sheet date but not payable until after that date on Rural Telephone Bank mortgage notes. Interest expense incurred during the period of construction of telecommunications plant shall be charged to Account 2004, Telecommunications Plant Under Construction-Long Term, and credited to Account 7340/7300.4, Allowance for Funds Used During Construction.
4120.3	4120.3	*Other Accrued Liabilities:* This account shall include the amount of wages, compensated absences, interest on indebtedness of the company, dividends on capital stock, and rents accrued as of the balance sheet date but not payable until after that date. This account shall not include interest accured on REA or Rural Telephone Bank debt.
4210.11	4210.11	*Funded Debt—Other:* This account shall include the total face amount of unmatured debt, maturing more than one year from the date of issue, issued by the company and not retired, and the total face amount of similar unmatured debt of other companies, the payment of which has been assumed by the company, including funded debt the maturity of which has been extended by specific agreement. This account shall not include unmatured REA, Rural Telephone Bank, Federal Financing Bank, Bank for Cooperatives, or Rural Telephone Finance Cooperative debt.
4210.12	4210.12	*REA Notes:* This account shall include the total face amount of unmatured REA mortgage notes. Account 4210.20, REA Notes-Unadvanced, Dr., shall be charged and this account credited upon execution of the notes. If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities-Long-Term Debt.
4210.13	4210.13	*Telephone Bank Notes:* This account shall include the total face amount of unmatured Rural Telephone Bank mortgage notes. Account 4210.21, Telephone Bank Notes-Unadvanced, Dr., shall be charged and this account credited upon execution of the notes. If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities-Long-Term Debt.
4210.14	4210.14	*Federal Financing Bank Notes:* This account shall include the total face amount of unmatured Federal Financing Bank mortgage notes. Account 4210.22, Federal Financing Bank Notes-Unadvanced, Dr., shall be charged and this account credited upon execution of the notes. If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities-Long-Term Debt.
4210.15	4210.15	*Bank for Cooperatives Notes:* This account shall include the total face amount of unmatured Bank for Cooperatives mortgage notes. Account 4210.23, Bank for Cooperatives Notes-Unadvanced, Dr., shall be charged and this account credited upon execution of the notes. If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities-Long-Term Debt.
4210.16	4210.16	*Rural Telephone Finance Cooperative Notes:* This account shall include the total face amount of unmatured Rural Telephone Finiance Cooperative mortgage notes. Account 4210.24, Rural Telephone Finance Cooperative Notes-Unadvanced, Dr. shall be charged and this account credited upon execution of the notes. If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities-Long-Term Debt.
4210.17	4210.17	*REA Notes—Deferred Interest:* This account shall include interest accrued on REA mortgage notes, the payment of which has been deferred in accordance with the terms of the notes or extension agreements. The offsetting charge shall be to Account 7510, Interest on Funded Debt, for Class A companies and Account 7500, Interest and Related Items, for Class B companies. If interest payments are not made at the due date, this account shall be debited and Account 4010.21, Accounts Payable to Nonaffilitated Companies, credited with the Amount of the matured interest.
4210.18	4210.18	*REA Notes—Advance Payments, Dr.:* This account shall include all payments on REA mortgage notes made in advance of the due date and not applied to a specific quarterly payment. As these payments are applied to specific notes, this account shall be credited and the long-term debt and interest liability accounts debited.
4210.19	4210.19	*Funded Debt—Other—Unadvanced, Dr.:* This account shall include the total face amount of notes executed to others, for which funds have not been received. This account shall be credited and Account 1130.1/1120.11, Cash-General Funds, debited when funds are received from the lender.
4210.20	4210.20	*REA Notes—Unadvanced, Dr.:* This account shall include the total face amount of REA mortgage notes for which funds have not been received. This account shall be credited and Account 1130.2/1120.12, Cash-Construction Fund Trustee, debited when funds are received from REA.
4210.21	4210.21	*Telephone Bank Notes—Unadvanced, Dr.:* This account shall include the total face amount of Rural Telephone mortgage notes for which funds have not been received. This account shall be credited and Account 1130.2/ 1120.12. Cash—Construction Fund Trustee, debited when funds are received from the Rural Telephone Bank.
4210.22	4210.22	*Federal Financing Bank Notes—Unadvanced, Dr.:* This account shall include the total face amount of Federal Financing Bank mortgage notes for which funds have not been received. This account shall be credited and Account 11.30.2/1120.12, Cash—Construction Fund Trustee, debited when funds are received.
4210.23	4210.23	*Bank for Cooperatives Notes—Unadvanced, Dr.:* This account shall include the total face amount of Bank for Cooperatives mortgage notes for which funds have not been received. This account shall be credited and Account 1130.2/1120.12, Cash-Construction Fund Trustee, debited when funds are received.
4210.24	4210.24	*Rural Telephone Finance Cooperative Notes—Unadvanced, Dr.:* This account shall include the total face amount of Rural Telephone Finance Cooperative mortgage notes for which funds have not been received. This account shall be credited and Account 1130.2/1120.12, Cash—Construction Fund Trustee, debited when funds are received.

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4540.11	4540.11	*Capital Stock Subscribed:* This account shall include the par value of capital stock for which legally enforceable subscriptions have been received but for which, at the date of the balance sheet, stock certificates have not been issued. This account shall be debited and Account 4510, Capital Stock, credited when a subscriber has paid the subscription in full and stock certificates are issued.
4540.12	4540.12	*Memberships Subscribed but Unissued:* This account shall include the face amount of memberships subscribed but not issued. This account shall be credited at the time the subscription is received and Account 1350.2, Subscriptions to Memberships, debited. This account shall be debited and Account 4540.21, Memberships Issued, credited when a subscriber has paid the subscription in full and the membership certificates are issued.
4540.13	4540.13	*Members' Equity Certificates Subscribed but Unissued:* This account shall include the face amount of members' equity certificates subscribed but not issued. This account shall be credited at the time the subscription is received and Account 1350.3, Subscriptions to Members' Equity Certificates, debited. This account shall be debited and Account 4540.22, Members' Equity Certificates Issued, credited when a subscriber has paid the subscription in full and the certificates are issued.
4540.21	4540.21	*Memberships Issued:* This account shall include the face amount of membership certificates outstanding. A subsidiary membership record shall be maintained to reflect the detail of the balance in this account.
4540.22	4540.22	*Members' Equity Certificates Issued:* This account shall include the face amount of members' equity certificates outstanding. A subsidiary members' equity certificate record shall be maintained to reflect the detail of the balance in this account.
4540.23	4540.23	*Members' Equity—Other:* This account shall include credit amounts arising from donations, forfeitures of membership fees, forgiveness of debts of the cooperative, and member's equities not otherwise provided for.
4540.31	4540.31	*Installments Paid on Capital Stock:* This account shall include the amount of installments paid on capital stock on a partial or installment payment plan by subscribers against whom there is no legally enforceable subscription contract, and who are entitled to be reimbursed the principal amount of their payments, with or without interest, in the event they fail to complete payment for the stock and receive certificates therefore. This account shall be debited and Account 4510, Capital Stock, credited with the par value of capital stock when the total subscription is received and the stock certificates are issued. Any difference between the purchase price of the subscription and the par value of the stock shall be credited to Account 4520, Additional Paid-In Capital. A subsidiary ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger.
4540.32	4540.32	*Installments Paid on Membership Subscribed:* This account shall include the amount of installments paid by prospective members on membership subscriptions against whom there is no legally enforceable subscription contract, and who are entitled to be reimbursed for the principal amount of their payments, with or without interest, in the event they fail to complete payment for the membership and receive certificates therefor. This account shall be debited and Account 4540.21, Memberships, Issued, credited with the face amount of the membership when the total subscription is received and the membership certificates are issued. A subsidiary ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger.
4540.33	4540.33	*Installments Paid on Equity Certificates Subscribed:* This account shall include the amount of installments paid by prospective members on equity certificate subscription against whom there is no legally enforceable subscription contract, and who are entitled to be reimbursed for the principal amount of their payments, with or without interest, in the event they fail to complete payment for the membership and receive equity certificates therefor. This account shall be debited and Account 4540.22, Members' Equity Certificates Issued, credited with the face amount of the memberships when the total subscription is received and the equity certificates are issued. A subsidiary ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled montly with the subscription ledger.
4540.41	4540.41	*Other Capital:* This account shall include amounts which are credits arising from capital recorded upon the reorganization or recapitalization of the company and temporary declines in the value of marketable securities held for investment purposes.
4550.1	4550.1	*Operating Margins:* This account shall include amounts received or receivable from the furnishing of telecommunications service in excess of costs incurred in the furnishing of such service. If costs exceed revenues, the excess cost of furnishing telecommunications service shall be recorded as a debit to this account.
4550.2	4550.2	*Nonoperating Margins:* This account shall include margins arising from transactions or activities not related to the furnishing of telecommunications service. Included in this account are receipts from investments, income from investments, income from nonoperating plant, and revenues derived from services performed for others incident to the companys regulated telecommunications operations.
4550.3	4550.3	*Other Margins:* This account shall include patronage capital credits assigned to the cooperative by other nonprofit organizations prior to January 1, 1970, which were not credited directly to an operating expense account as a reduction in the cost of furnishing telecommunications service.
	id	No entries shall be made to this account unless it is to distribute or eliminate prior balances in conformance with the bylaws of the cooperative.
4550.4	4550.4	*Patronage Capital Assignable:* This account shall include all amounts transferred from operating margins, nonoperating margins, and other margin accounts which are assignable to individual patrons.
4550.5	4550.5	*Patrons' Capital Credits Assigned:* This account shall include the amounts of patronage capital which have been credited to individual patrons. A subsidiary patronage capital ledger shall be maintained so as to reflect the amount of capital furnished by each patron and the amount of such capital returned to the patron.
4550.6	4550.6	*Gain on the Retirement of Capital Credits:* This account shall include credits resulting from the retirement of patronage capital through settlement of individual patrons' accounts at less than 100 percent of the capital assigned to the patron. The portion of patronage capital not returned to patrons under such settlements shall be debited to Account 4550.5, Patrons' Capital Credits Assigned, and credited to this account. This account shall also include amounts representing patronage capital authorized to be retired to patrons who cannot be located. Returned checks issued for retirements of patronage capital, after an appropriate waiting period, shall be credited to this account and a record shall be maintained adequate to enable the cooperative to make payment to the patron if and when a claim has been established by the patron.
	6210.11	*Analog Electronic Expense:* This account shall include expenses associated with analog electronic switching.
	6210.21	*Digital Electronic Expense:* This account shall include expenses associated with digital electronic switching.
	6210.31	*Electro-Mechanical Expense:* This account shall include expenses associated with electro-mechanical switching.
	6230.11	*Radio Systems Expense:* This account shall include expenses associated with radio systems.
	6230.21	*Circuit Equipment Expense:* This account shall include expenses associated with circuit equipment.

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	6560.1	*Depreciation Expense:* This account shall include the depreciation expense associated with telecommunications plant in service (Account 2112 through 2441) and property held for future telecommunications use.
	6560.2	*Amortization Expense:* This account shall include the amortization expense associated with capital leases and leasehold improvements (Accounts 2681 and 2682), intangibles (Account 2690), and telecommunciations plant adjustments (Account 2005).
	7200.1	*Operating Investment Tax Credits—Net:* This account shall be charged and Account 4320, Unamortized Operating Investment Tax Credits—Net, shall be credited with investment tax credits generated from qualified expenditures related to regulated operations which the company defers rather than recognizes currently in income. This account shall be credited and Account 4320 shall be charged ratably with the amortization of each year's investment tax credits included in Account 4320 for investment services for ratemaking purposes. Such amortization shall be determined in relation to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.
	7200.2	*Operating Federal Income Taxes:* This account shall be charged and Account 4070.1, Income Taxes Accrued—Federal, shall be credited for the amount of federal income tax expense incdrred in the current operating period. . This account shall also reflect subsequent adjustments to amounts previously charged. Taxes should be accrued each month on an estimated basis and adjustments made as later data becomes available.
	7200.3	*Operating State and Local Income Taxes:* This account shall be charged and Account 4070.2, Income Taxes Accrued—State and Local, credited for the amount of state and local income tax expense incurred in the current operating period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes should be accrued each month on an estimated basis and adjustments made as later data becomes available.
7240.1	7200.41	*Operating Taxes—Property:* This account shall be charged and Account 4080.1, Other Taxes Accrued—Property, shall be credited for the amount of property tax expense incurred in the current operating period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes should be accrued each month on an estimated basis and adjustments made as later data becomes available.
7240.2	7200.42	*Operating Taxes—Miscellaneous:* This account shall be charged and Account 4080.5, Other Taxes Accrued—Miscellaneous, shall be credited for the amount of all other taxes accrued during the current operating period and not provided for elsewhere such as gross receipts, franchise, and capital stock tax expense incurred in the current operating period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes should be accrued each month on an estimated basis and adjustments made as later data becomes available.
	7200.5	*Provision for Deferred Operating Income Taxes—Net:* This account shall be charged or credited, as appropriate, with contra entries recorded in either Account 4100, Net Current Deferred Operating Income Taxes, or Account 4340, Net Noncurrent Deferred Operating Income Taxes, as appropriate, for income tax expense that has been deferred. Subsidiary record categories shall be maintained to distinguish between property and nonproperty related deferrals and so that the company may separately report the amounts contained herein that relate to Federal, state, and local income taxes.
	7300.2	*Interest Income:* This account shall include interest on securities, including notes and other evidences of indebtedness, which are the property of the company, whether such securities are owned by the company and held in its treasury, or deposited in trust (except in sinking or other funds) or otherwise controlled. It shall also include interest on bank balances, certificates of deposits, open accounts, and other analogous items. There shall be included in this account for each month, the applicable amount requisite to extinguish, during the interval between the date of acquisition and the date of maturity, the difference between the purchase price and the par value of securities owned, the income from which is includable in this account. Amounts thus credited or charged shall be concurrently included in the accounts in which the securities are carried. Any such difference remaining unextinguished at the sale or upon the maturity and satisfaction of such securities shall be cleared to Account 7300.3 Other Nonoperating Income and Expense.
7300.4		*Allowance for Funds Used During Construction:* This account shall be credited with such amounts as are charged to the telecommunications plant accounts for the purpose or recording an allowance for funds used for construction purposes.
7300.6		*Other Nonoperating Income and Expense:* This account shall include all other items of income and gains or losses from activities not specifically provided for elsewhere such as dividend income; income from sinking funds; gains or losses from the disposition of land or artworks, plant with traffic, temporary cash investments or marketable equity securities, and nonoperating telecommunications plant not previously used in the provision of telecommunications services; fees collected in connection with the exchange of coupon bonds for registered bonds; uncollectible amounts previously credited to this account; gains or losses from the extinguishment of debt made to satisfy sinking fund requirements; gains or losses arising from the exchange or translation of foreign currency; net unrealized losses on investments in current marketable equity securities; write-downs or write-offs of the book costs of investments in equity securities due to permanent impairment; amortization of goodwill; the company's share of earnings or losses of affiliated companies accounted for on the equity method; and the net balance of the revenue from and the expenses of property, plant, and equipment, the cost of which is includable in Account 2006, Nonoperating Plant.
7400.1		*Nonoperating Investment Tax Credits—Net:* This account shall be charged and Account 4330, Unamortized Nonoperating Investment Tax Credits—Net, shall be credited with investment tax credits generated from qualified expenditures related to other operations which the company has elected to defer rather than recognize currently in income. This account shall be credited and Account 4330 shall be charged with the amortization of each year's investment tax credits included in such accounts relating to amortization of previously deferred investment tax credits of other property or regulated property, the amortization of which does not serve to reduce costs of service (but the unamortized balance does reduce rate base) for ratemaking purposes. Such amortization shall be determined with reference to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.
7400.2		*Nonoperating Federal Income Taxes:* This account shall be charged and Account 4070, Income Taxes—Accrued, shall be credited for the amount of nonoperating Federal income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes shall be accrued each month on an estimated basis and adjustments made as later data becomes available. Companies that adopt the flowthrough method of accounting for investment tax credits shall reduce the calculated provision in this account by the entire amount of the credit realized during the year. Tax credits, if normalized, shall be recorded consistent with the accounting for investment tax credits. No entries shall be made to this account to reflect interperiod tax allocation.
7400.3		*Nonoperating State and Local Income Taxes:* This account shall be charged and Account 4070, Income Taxes—Accrued, shall be credited for the amount of state and local income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes shall be accrued each month on an estimated basis and adjustments made as later data becomes available. No entries shall be made to this account to reflect interperiod tax allocation.

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Class of Company (Account Number)		Account Title
A	B	
	7400.4	*Nonoperating Other Taxes:* This account shall be charged and Account 4080, Other Taxes—Accrued, shall be credited for all nonoperating taxes, other than Federal, state, and local income taxes, and payroll related taxes for the current period. Among the items includable in this account are property, gross receipts, franchise and capital stock taxes. This account shall also reflect subsequent adjustments to amounts previously charged.
	7400.5	*Provision for Deferred Nonoperating Income Taxes—Net:* This account shall be charged or credited, as appropriate, with contra entries recorded in either Account 4110, Net Current Deferred Nonoperating Income Taxes, or Account 4350, Net Noncurrent Deferred Nonoperating Income Taxes, as appropriate, for nonoperating tax expenses that have been deferred. Subsidiary record categories shall be maintained to distinguish between property and nonproperty related deferrals and so that the company may separately report the amounts contained herein that relate to Federal, state, and local income taxes.
	7600.1	*Extraordinary Income Credit:* This account shall be credited with nontypical, noncustomary, and infrequently recurring gains which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account shall be recorded in Account 7630/7600.3, Current Income Tax Effect for Extraordinary Items—Net and Account 7640/7600.4, Provision for Deferred Income Tax Effect of Extraordinary Items—Net.
	7600.2	*Extraordinary Income Charges:* This account shall be debited with nontypical, non-customary, and infrequently recurring losses which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account shall be recorded in Account 7630/7600.3, Current Income Tax Effect for Extraordinary Items—Net, and Account 7640/7600.4, Provision for Deferred Income Tax Effect of Extraordinary Items—Net.
	7600.3	*Current Income Tax Effect of Extraordinary Items—Net:* This account shall be charged or credited and Account 4070, Income Taxes—Accrued, shall be credited or charged for all current income tax effect (Federal, state, and local) of items included in Account 7610/7600.1, Extraordinary Income Credits, and Account 7620/7600.2, Extraordinary Income Charges.
	7600.4	*Provision for Deferred Income Tax Effect of Extraordinary Items—Net:* This account shall be charged or credited as appropriate, with a contra amount recorded in Account 4350, Net Noncurrent Deferred Nonoperating Income Taxes, for the income tax effects (Federal, state, and local) of items included in Account 7610/7600.1, Extraordinary Income Credits, and Account 7620/7600.2, Extraordinary Income Charges, that have been deferred.

* These accounts shall not include items which are related to a nonregulated activity unless that activity involves joint or common use of assets and resources in the provision of regulated and nonregulated products and services;

[1] Switching plants excludes switchboards which perform operator assistance functions and equipment which is an integral part thereof. It does not exclude equipment used solely for the recording of calling telephone numbers in connection with customer dialed charged traffic, dial tandem switchboards, and special service switchboards used in conjunction with private line service; such equipment shall be classified to the particular switch that it serves.

§ 1770.16 Supplementary Accounts Required of Nonprofit Organizations.

Class of Company (Account Number)		Account Title
A	B	
		CURRENT ASSETS
1350.1	1350.1	Subscriptions to Capital Stock.
1350.2	1350.2	Subscriptions to Memberships.
1350.3	1350.3	Subscriptions to Members' Equity Certificates.
1350.4	1350.4	Other Current Assets.
		CURRENT LIABILITIES
4130.1	41350.1	Patronage Capital Payable.
4130.2	41350.2	Other Current Liabilities.
		oi0LONG-TERM DEBT
4270.1	4270.1	Members' Redeemable Equity Certificates Subscribed but Unissued.
4270.2	4270.2	Members' Redeemable Equity Certificates Issued.
4270.3	4270.3	Other Long-Term Debt.
1350.1	1350.1	*Subscriptions to Capital Stock:* This account shall include the balance due from subscribers upon legally enforceable subscriptions to capital stock. The purchase price of subscriptions shall be charged to this account at the time the subscription is received. The par value of the stock subscribed shall be credited to Account 4540.11, Capital Stock Subscribed, and the difference between the purchase price and the par value shall be credited to Account 4520, Additional Paid-In Capital.
1350.2	1350.2	*Subscriptions to Membership:* This account shall include the balance due on memberships subscribed. The face amount of memberships subscribed shall be charged to this account at the time the subscription is received. The offsetting credit shall be to Account 4540.12, Memberships Subscribed but Unissued. A subscription ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger.
1350.3	1350.3	*Subscriptions to Members' Equity Certificates:* This account shall include the balance due on member's equity certificates subscribed. The face amount of certificates subscribed shall be charged to this account at the time the subscription is received. The offsetting credit shall be to Account 4540.13, Member's Equity Certificates Subscribed but Unissued, or to Account 4270.1, members' Redeemable Equity Certificates Subscribed but Unissued. A subscription ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger. The subscription ledger shall be maintained in such a manner as to separately identify redeemable and nonredeemable certificates.
1350.4	1350.4	*Other Current Assets:* This account shall include the amount of all current assets which are not includable in Accounts 1120 through 1350.3.
4130.1	4130.1	*Patronage Capital Payable:* This account shall include the amount of patronage capital which has been authorized to be returned to patrons.
4130.2	4130.2	*Other Current Liabilities:* This account shall include liabilities of current character which are not includable in Accounts 4010 through 4130.1.

Class of Company (Account Number)		Account Title
A	B	
4270.1	4270.1	*Members' Redeemable Equity Certificates Subscribed but Unissued:* This account shall include the face amount of members' equity certificates which are redeemable at some specified future date for which subscriptions have been received but for which certificates have not been issued. This account shall be credited at the time the subscription is received and Account 1350.3, Subscriptions to Members' Equity Certificates, debited. This account shall be debited and Account 4270.2, Members' Redeemable Equity Certificates Issued, credited when a subscriber has paid the subscription in full and the equity certificates are issued.
4270.2	4270.2	*Members' Redeemable Equity Certificates Issued:* This account shall include the face amount of outstanding members' equity certificates which are redeemable at some specified future date. A subsidiary members' redeemable equity certificate record shall be maintained to reflect the detail of the balance in this account.
4270.3	4270.3	*Other Long-Term Debt:* This account shall include long-term debt not provided for elsewhere.

Dated: June 28, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 88-27382 Filed 11-28-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-164-AD]

Airworthiness Directives: CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, which would require modification of the bellcrank-to-control rod joints in the wing flap control system. This proposal is prompted by reports that failed bolts, lacking positive retention, may separate from the flap linkage. This condition, if not corrected, could lead to failure of the flap control system and asymmetric flap retraction.

DATES: Comments must be received no later than January 23, 1989.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-164-AD 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Contrucciones Aeronauticas S.A. Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-164-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Général de Aviacion Civil (DGAC), which is the airworthiness authority of Spain, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist in the wing flap control system on CASA C-212 series airplanes. The manufacturer has reported that failed bolts, lacking positive retention may separate from the flap linkage. The manufacturer has determined that additional safety clips need to be installed to prevent loss of attaching bolts in the bellcrank-to-control rod joints in the wing flap control system. This condition, if not corrected, could lead to failure of the flap control system and asymmetric flap retraction.

CASA has issued Service Bulletin 212-27-22, Revision 3, dated May 20, 1988, which describes procedures for modification of the bellcrank-to-control rod joints in the wing flap control system with the installation of additional safety clips and clamps. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in Spain and Indonesia and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the bellcrank-to-control rod joints in the wing flap control system in accordance with the service bulletin previously mentioned.

It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 41 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for parts is $2,200 per airplane. Based on these figures, the

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total cost impact of this AD to U.S. operators is estimated to be $168,960.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, CASA Model C-212 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Casa: Applies to all CASA Model C-212 series airplanes, certificated in any category. Compliance required as indicated below, unless previously accomplished.

To prevent failure of the wing flap control system, accomplish the following:

A. Within 180 days after the effective date of this AD, modify the bellcrank-to-control rod joints in the wing flap control system in accordance with CASA Service Bulletin 212-27-22, Revision 3, dated May 20, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

NOTE: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 17, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 88-27444 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-36]

Proposed Removal of Transition Area; Gruver Municipal Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), airspace Docket No. 88-ASW-36, which was published in the **Federal Register** on October 6, 1988. The NPRM proposed to remove the transition area located at Gruver Municipal airport, TX, due to the decommissioning of the Gruver Nondirectional Radio Beacon (NDB) and the subsequent cancellation of the associated NDB standards instrument approach procedure (SIAP). However, the Gruver Municipal Airport will continue to be served by a VOR/DME-A SIAP, utilizing the Borger Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), thus requiring the existing transition area to remain unchanged.

DATE: This withdrawal is effective November 29, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth TX 76193-0530; telephone: (817) 624-5561.

The Proposed Rule

On October 6, 1988, a Notice of Proposed Rulemaking was published in the **Federal Register** to remove the transition area located at Gruver Municipal Airport, TX (53 FR 39313). The proposed removal of the transition area was due to the decommissioning of the Gruver NDB and the subsequent cancellation of the associated NDB SIAP. However, the Gruver Municipal Airport will continue to be served by a VOR/DME-A SIAP utilizing the Borger VORTAC, thus requiring the existing transition area to remain unchanged.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 88-ASW-36, as published in the **Federal Register** on October 6, 1988 (53 FR 39311), is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Fort Worth, TX, on November 17, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-27440 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

Bureau of Personnel

22 CFR Part 192

[SD-221]

Victims of Terrorism Compensation

AGENCY: Bureau of Personnel, Department of State.

ACTION: Proposed rule.

SUMMARY: The Bureau of Personnel proposes implementing regulations for Title VIII of Pub. L. 99-399 which describe benefits for victims of terrorism activity. The proposed regulations outline the eligibility for monetary, educational, medical, and death and disability benefits provided under the governing statute, and describe application procedures for eligible employees and family members.

DATES: Comments must be submitted on or before December 29, 1988.

ADDRESSES: For mailing public comments: Bureau of Personnel, Department of State (PER/ER), Washington, DC 20520. For hand delivery of public comments: Bureau of Personnel (PER/ER), Room 1822, Department of State, 2401 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: S. Donald Youso, Office of Employee Relations, Bureau of Personnel, (202) 647-2781.

SUPPLEMENTARY INFORMATION: 22 CFR Part 192 implements Executive Order 12598 and Title VIII of Pub. L. 99-399, the Omnibus Diplomatic Security and Antiterrorism Act of 1986, which provides benefits to an individual in the civil service, or a citizen, national, or resident alien of the United States who is rendering personal service to the United States, and who is taken captive as a result of the individual's relationship with the U.S. Government commencing after January 21, 1981. This title also provides benefits to a captive's family, during and after the period of captivity.

Benefits for captives and their families include: the establishment of a special savings account, the provision of medical and health care to the extent that the care is incident to captivity and is not covered by Government or other health insurance, certain educational benefits, a cash payment to captives (whose captivity commences after November 4, 1979), and certain civil relief provisions of the Soldiers and Sailors Civil Relief Act of 1940.

Finally, these regulations provide for compensation in cases of disability and death for employees, family members of employees, and foreign national employees, where the disability or death was cause by hostile action and was a result of the individual's relationship with the U.S. Government and occurred after January 21, 1981.

Compensation for such disability or death includes a death benefit and payments for partial or total disability as well as payments for medical or health expenses related to the disability or death.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

These rules will not have a significant impact on a substantial number of small entities because they will affect only Federal employees and agencies.

Paperwork Reduction Act

These regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 192

Education, Foreign Service, Government employees, Grant programs—education, Grant programs—health, Health care, Captives.

For the reasons set out in the preamble, it is proposed that 22 CFR 192, be added to Title 22, Chapter I, Subchapter T of the Code of Federal Regulations, as follows:

SUBCHAPTER T—HOSTAGE RELIEF

PART 192—VICTIMS OF TERRORISM COMPENSATION

Subpart A—General

Sec.

192.1 Declarations of hostile action.
192.2 Application for determination of eligibility.
192.3 Definitions.
192.4 Notification of eligible persons.
192.5 Relationships among agencies.

Subpart B—Payment of Salary and Other Benefits for Captive Situations

192.10 Eligibility for benefits.
192.11 Applicable benefits.
192.12 Administration of benefits.

Subpart C—Application of Soldiers' and Sailors' Civil Relief Act to Captive Situations

192.20 Eligibility for benefits.
192.21 Applicable benefits.
192.22 Description of benefits.
192.23 Administration of benefits.

Subpart D—Medical Benefits for Captive Situations

192.30 Eligibility for benefits.
192.31 Applicable benefits.
192.32 Administration of benefits.
192.33 Disputes.

Subpart E—Educational Benefits for Captive Situations

192.40 Eligibility for benefits.
192.41 Applicable family benefits.
192.42 Applicable benefits for captives.
192.43 Administration of benefits.
192.44 Maximum limitation on benefits.

Subpart F—Compensation for Disability or Death

192.50 Eligibility for benefits.
192.51 Death benefit.
192.52 Disability benefits.

Authority: 5 U.S.C. 5569 and 5570 and E.O. 12598 (52 FR 23421)

Subpart A—General

§ 192.1 Declarations of hostile action.

(a)(1) The Secretary of State shall declare when and where individuals in the Civil Service of the United States, including members of the Foreign Service and foreign service nationals, or a citizen, national or resident alien of the United States rendering personal services to the United States similar to the service of an individual in the Civil Service, have been placed in captive status commencing on or after November 4, 1979 for purposes of § 192.11(b) or January 21, 1981, for all other purposes under this part, which arises because of hostile action abroad and is a result of the individual's relationship with the U.S. Government as provided in the Victims of Terrorism Act, codified in 5 U.S.C. 5569 and 5570 and Executive Order 12598.

(2) The Secretary of State, in consultation with the Secretary of Labor, shall also declare when and where individuals in the Civil Service of the United States including members of the Foreign Service and foreign service nationals, individuals rendering personal services to the United States similar to the service of an individual in the Civil Service, and family members of these individuals are eligible to receive compensation for disability or death occurring after January 21, 1981. Such determinations shall be based on the decision by the Secretary of State that the disability or death was caused by hostile action abroad and was a result of the individual's relationship with the Government.

(3) Declarations of hostile action in domestic situations shall be made by the Secretary of State in consultation with the Attorney General of the United States and the head of the employing agency or agencies.

(b) The Secretary of State for actions abroad, or Agency Head for domestic actions, upon his or her own initiative, or upon application under § 192.2 shall determine which individuals in captive or missing status as so declared shall be considered captives eligible for benefits under the Act. The Secretary or Agency Head shall also determine who is eligible under the Act for benefits as a member of a family or household of a captive. The determination of the Secretary or Agency Head shall be final and not subject to judicial review, but any interested person may request reconsideration on the basis of information not considered at the time of original determination. The criteria for determination are set forth in sections 5569 and 5570 of Title 5 of U.S.C., and in these regulations.

§ 192.2 Application for determination of eligibility.

(a) Any person who believes that that person or other persons known to that person are either captives as defined in 5 U.S.C. 5569(a)(1), individuals who have suffered disability or death caused by hostile action which was a result of the individual's relationship with the U.S. Government, members of the family or

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household of such individuals as defined in § 192.3(a)(1), or a child eligible for benefits under Subchapter D, may apply for benefits under this subchapter for that person, or on behalf of others entitled thereto.

(b) The application in connection with hostile action abroad shall be in writing, shall contain all identifying and other pertinent data available to the person applying about the person or persons claimed to be eligible, and shall be addressed to the Director General of the Foreign Service, Department of State, Washington, DC 20520. Applications may be filed at any time after a declaration under § 192.1(a), or within 60 days of the hostile action or after release from captivity. Later filing may be considered when in the opinion of the Secretary of State there is good cause for the late filing. Applications in connection with hostile action in domestic situations shall conform to these same requirements and be filed with the Agency Head.

§ 192.3 Definitions.

When used in this subchapter, unless otherwise specified, the terms—

(a) "Secretary of State" includes any person to whom the Secretary of State has delegated the responsibilities of carrying out this subpart.

(b) "Family Member" means:

(1) A spouse,

(2) An unmarried dependent child including a step-child or adopted child under 21 years of age,

(3) A person designated in official records or determined by the agency head or designee thereof to be dependent, and

(4) Other persons such as parents, non-dependent children, parents-in-law, persons who stand in the place of a spouse or parents, or other members of the family or household of a captive or employee, as determined by the Agency head concerned.

(c) "Agency Head" means the head of an Executive Agency of the U.S. Federal Government employing an individual affected by hostile action as covered by these regulations. The Secretary of State is the agency head with respect to any such individual not employed by an agency.

(d) "Captive" means any individual in a captive status commencing while such individual is in the Civil Service or a citizen, national or resident alien of the United States rendering personal service to the United States similar to the service of an individual in the Civil Ser. ice (other than as a member of the uniformed services.)

(e) "Captive Status" means a missing status which, as determined under § 192.1, arises because of a hostile action and is a result of the individual's relationship with the Government.

(f) "Principal" means the person whose captivity, death or disability forms the basis for benefits for that individual or for a family member under this subchapter.

(g) "Individual rendering personal services to the United States similar to the service of an individual in the Civil Service" includes contract employees and other individuals fitting that description.

(h) "Pay and Allowances" has the meaning set forth in 5 U.S.C. 5561(6) including:

(1) Basic pay;

(2) Special pay;

(3) Incentive pay;

(4) Basic allowances for quarters;

(5) Basic allowance for subsistence; and

(6) Station per diem allowances for not more than 90 days.

(i) "Child" means a dependent as defined in paragraph (b)(2) of this section.

§ 192.4 Notification of eligible persons.

The Director General of the Foreign Service for the Department of State, or other Agency Head in domestic situations, shall be responsible for notifying each individual determined to be eligible for benefits under the Act, or if that person is not available, a representative or family member of the eligible individual.

§ 192.5 Relationships among agencies.

(a) To assist in ensuring that eligible persons receive compensation, each Agency Head shall notify the Director General of the Foreign Service of the Department of State of any incident abroad which he or she believes may be appropriately declared a hostile action under § 192.1.

(b) The Director General of the Foreign Service for the Department of State shall promptly inform the head of any agency whenever an employee of that agency, or Family Member of such employee, is determined to be eligible for benefits under this subchapter in connection with hostile action abroad. Notification in connection with domestic situations shall be made by the Agency Head.

(c) In accordance with inter-agency agreements between the Department of State and relevant agencies—

(1) The Veterans Administration will periodically bill the Department of State for expenses it pays for each eligible person under Subpart E of this subchapter plus the administrative costs of carrying out its responsibilities under this part.

(2) The Department of State will, on a periodic basis, determine the cost for services and benefits it provides to all eligible persons under this subchapter, and bill each agency for the medical service costs (in connection with hostile action abroad) and educational benefits attributable to Principals and Family Members, plus a proportionate share of related administrative expenses.

Subpart B—Payment of Salary and Other Benefits for Captive Situations

§ 192.10 Eligibility for benefits.

A person designated as a captive under Subpart A of this subchapter shall be eligible for benefits under this subpart.

§ 192.11 Applicable benefits.

(a) Captives are entitled to receive or have credited to their account, for the period in captive status, the same pay and allowances to which they were entitled at the beginning of that period or to which they may have become entitled thereafter.

(b) A person designated as a captive (or a family member of a Civil Service employee held in captive status) under subpart A of this subchapter whose captivity commenced on or after November 4, 1979, is also entitled to receive a cash payment from the captive's employing agency, for each day held captive, in an amount equal to but not less than one-half of the amount of the world-wide average per diem rate established under 5 U.S.C. 5702.

§ 192.12 Administration of benefits.

(a) The amount deducted from the pay and allowances of captives must be recorded in the individual accounts of the agency concerned. A Treasury designated account, set up on the books of the agency concerned, may be utilized by the head of an agency to report the net amount of pay, allowances and interest credited to captives pursuant to 5 U.S.C. 5569(b). Interest payments under this section shall be paid out of funds available for salaries and expenses of the agency. Interest shall be computed at a rate for any calendar quarter equal to the average rate paid on United States Treasury bills with 3-month maturities issued during the preceding calendar quarter, with quarterly compounding.

(b) Cash payments to captives for each day of captivity shall be made by the head of an agency before the end of the one-year period beginning on the date on which the captive status terminates. In the event the captive dies in captivity or prior to payment of these benefits, payment shall be made to the eligible survivors under § 192.51(c) or the estate. A payment under this subchapter may be deferred or denied by the head of an agency pending determination of an offense committed by the captive under the provisions of 5 U.S.C. 8312.

Subpart C—Application of Soldiers' and Sailors' Civil Relief Act to Captive Situations

§ 192.20 Eligibility for benefits.

A person designated as a captive under Subpart A of this subchapter, shall be eligible for benefits under this part.

§ 192.21 Applicable benefits.

(a) Eligible persons are entitled to the benefits provided by the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501, et seq.), including the benefits provided by section 701 (50 U.S.C App 591) notwithstanding paragraph (c) thereof, but excluding the benefits provided by sections 104, 105, 106, 400 through 408, 501 through 512, and 514 (50 U.S.C. App 514, 515, 516, 540 through 548, 561 through 572, and 574).

(b) In applying such Act for purposes of this section—

(1) the term "person in the military service" is deemed to include any such captive;

(2) The term "period of military service" is deemed to include the period during which such captive is in a captive status;

(3) References therein to the Secretary of the Army, the Secretary of the Navy, the Adjutant General of the Army, the Chief of Naval Personnel, and the Commandant, United States Marine Corps, or other officials of government are deemed, in the case of any captive, to be references to the Secretary of State; and

(4) the term "dependents" shall, to the extent permissible by law, be construed to include "Family Members' as defined in section 192.3 of these regulations.

§ 192.22 Description of benefits.

The following material is included to assist persons affected, by providing a brief description of some of the provisions of the Civil Relief Act. Note that not all of the sections applicable to captives have been included here. References to sections herein are references to the Civil Relief Act of 1940, as amended, followed by references in parentheses to the same section in the United States Code.

(a) *Guarantors, endorsers.* Section 103 (50 U.S.C. App 513) provides that whenever a captive is granted relief from the enforcement of an obligation, a court, in its discretion, may grant the same relief to guarantors and endorsers of the obligation. Amendments extend relief to accommodation makers and others primarily or secondarily liable on an obligation, and to sureties on a criminal bail bond. They provide, on certain conditions, that the benefits of the section with reference to persons primarily or secondarily liable on an obligation may be waived in writing.

(b) *Written Agreements.* Section 107 (50 U.S.C App. 517) provides that nothing contained in the Act shall prevent captives from making certain arrangements with respect to their contracts and obligations, but requires that such arrangements be in writing.

(c) *Protection in Court.* Section 200 (50 U.S.C. App. 517) provides that if a captive is made a defendant in a court action and is unable to appear in court, the court shall appoint an attorney to represent the captive and protect the captive's interests. Further, if a judgment is rendered against the captive, an opportunity to reopen the case and present a defense, if meritorious, may be permitted within 90–days after release.

(d) *Court Postponement.* Section 201 (50 U.S.C. App. 521) authorizes a court to postpone any court proceedings if a captive is a party thereto and is unable to participate by reason of being a captive.

(e) *Relief Against Penalties.* Section 202 (50 U.S.C. App. 522) provides for relief against fines or penalties when a court proceeding involving a captive is postponed, or when the fine or penalties are incurred for failure to perform any obligation. In the latter case, relief depends upon whether the captive's ability to pay or perform is materially affected by being held captive.

(f) *Postponement of Action.* Section 203 (50 U.S.C. App. 523) authorizes a court to postpone or vacate the execution of any judgment, attachment or garnishment.

(g) *Period of Postponement.* Section 204 (50 U.S.C. App. 524) authorizes a court to postpone proceedings for the period of captivity and for 3 months thereafter, or any part thereof.

(h) *Extended Time Limits.* Section 205 (50) U.S.C. App. 525) excludes the period of captivity from computing time under existing or future statutes of limitation. Amendments extend relief to include actions before administrative agencies, and provide that the period of captivity shall not be included in the period for redemption of real property sold to enforce any obligation, tax, or assessment. Section 207 excludes application of section 205 to any period of limitation prescribed by or under the internal revenue laws of the United States.

(i) *Interest Rates.* Section 206 (50 U.S.C. App. 526) provides that interest on the obligations of captives shall not exceed a specified per centum per annum, unless the court determines that ability to pay greater interest is not affected by being held captive.

(j) *Misuse of Benefits.* Section 600 (50 U.S.C. App 580) provides against transfers made with intent to delay the just enforcement of a civil right by taking advantage of the Act.

(k) *Further Relief.* Section 700 (50 U.S.C. App. 590) provides that a person, during a period of captivity or 6 months thereafter, may apply to a court for relief with respect to obligation incurred prior to captivity, or any tax or assessment whether falling due prior to or during the period of captivity. The court may, on certain conditions, stay the enforcement of such obligations.

(l) *Stay of Eviction.* Section 300 (50 U.S.C. App 530) provides that a captive's dependents shall not be evicted from their dwelling if the rental is minimal, except upon leave of a court. If it is proved that inability to pay rent is a result of being in captivity, the court is authorized to stay eviction proceedings for not longer than 3 months. An amendment extends relief to owners of the premises with respect to payment on mortgage and taxes.

(m) *Contract and Mortgage Obligations.* As provided by sections 301 and 302 of the Act (50 U.S.C. App. 531 and 532), as amended, contracts for the purchase of real and personal property, which originated prior to the period of captivity, may not be rescinded, terminated, or foreclosed, or the property repossessed, except as provided in section 107 (50 U.S.C. App 517), unless by an order of a court. The mentioned sections give the court wide discretionary powers to make such disposition of the particular case as may be equitable in order to conserve the interests of both the captive and the creditor. The cited sections further provide that the court may stay the proceedings for the period of captivity and 3 months thereafter, if in its opinion the ability of the captive to perform the obligation is materially affected by reason of captivity. Section 303 (50 U.S.C. App 533) provides that the court may appoint appraisers and, based upon their report, order such sum as may be just, if any, paid to captives or their dependents, as a condition to foreclosing a mortgage, resuming possession of property, and rescinding or terminating a contract.

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(n) *Termination of a Lease.* Section 304 (50 U.S.C. App. 534) provides, in general, that a lease covering premises occupied for dwelling, business, or agricultural purpose, executed by persons who subsequently become captives, may be terminated by a notice in writing given to the lessor, subject to such action as may be taken by a court on application of the lessor. Termination of a lease providing for monthly payment of rent shall not be effective until 30 days after the first date on which the next rental payment is due, and, in the case of other leases, on the last day of the month following the month when the notice is served.

(o) *Assignment of Life Insurance Policy.* Section 305 (50 U.S.C. App 535) provides that the assignee of a life insurance policy assigned as security, other than the insurer in connection with a policy loan, except upon certain conditions, shall not exercise any right with respect to the assignment during period of captivity of the insured and one year thereafter, unless upon order of a court.

(p) *Storage Lien.* Section 305 (50 U.S.C. App. 535) provides that a lien for storage of personal property may not be foreclosed except upon court order. The court may stay proceedings or make other just disposition.

(q) *Extension of Benefits to Dependents.* Section 306 (50 U.S.C. App. 536) extends the benefits to sections 300 through 305 to dependents of a captive.

(r) *Real and Personal Property Taxes.* Section 500 (50 U.S.C. App. 560) forbids sale of property, except upon court leave, to enforce collection of taxes or assessments (other than taxes on income) on personal property or real property owned and occupied by the captive or dependents thereof at the commencement of captivity and still occupied by the captive's dependents or employees. The court may stay proceedings for a period not more than 6 months after termination of captivity. When by law such property may be sold to enforce collection, the captive will have the right to redeem it within 6 months after termination of captivity. Unpaid taxes or assessments bear interest at 6 percent.

(s) *Income Taxes.* Section 513 provides for deferment of payment of income taxes.

(t) *Certification of Captive.* Section 601 provides that a certificate signed by the agency head shall be prima facie evidence that the person named has been a captive during the period specified in the certification.

(u) *Interlocutory Orders.* Section 602 (50 U.S.C. App. 582) provides that a court may revoke an interlocutory order it has issued pursuant to any provision of the Soldiers' and Sailors' Civil Relief Act of 1940.

(v) *Power of Attorney.* Section 701 (50 U.S.C. App. 591) provides that certain powers of attorney executed by a captive which expire by their terms after the person was captured shall be automatically extended for the period of captivity. Exceptions are made with respect to powers of attorney which by their terms clearly indicate they are to expire on the date specified irrespective of captive status. (Section 701 applies to American captives notwithstanding paragraph (c) thereof which states that it applies only to powers of attorney issued during the "Vietnam era").

§ 192.23 Administration of benefits.

(a) The Director General of the Department of State or Agency Head will issue certifications or other documents when required for purposes of the Civil Relief Act.

(b) The Director General of the Department of State or Agency Head shall whenever possible promptly inform the chief legal officer of each U.S. State in which captives maintain residence of all persons determined to be captives eligible for assistance under this subpart.

Subpart D—Medical Benefits for Captive Situations

§ 192.30 Eligibility for benefits.

A person designated as a captive or family member of a captive under Subpart A of this subchapter, shall be eligible for benefits under this subpart.

§ 192.31 Applicable benefits.

A person eligible for benefits under this part shall be eligible for authorized physical and mental health care at U.S. Government expense (through either advancement or reimbursement), and for payment of other authorized expenses related to such care or for obtaining such care for any illness or injury, to the extent, as determined by the Secretary of State or Agency Head, that such care is incident to an individual being held captive and is not covered by—

(a) Any other Government health or medical program, including, but not limited to, the program administered by the Secretary of Defense, the Secretary of Labor and the Administrator of Veteran Affairs; or

(b) Reimbursement by any private or Government health insurance or comparable plan. In the case of coverage by a private or Government health insurance plan, that carrier will be designated as the primary carrier, and benefits under this subpart will serve only to supplement expenses not paid by the primary carrier.

§ 192.32 Administration of benefits.

(a) (1) A person eligible due to hostile action abroad, who desires medical or health care under this subpart or any person acting on behalf thereof, shall submit an application to the Office of Medical Services, Department of State, Washington, DC 20520 (hereafter referred to as the "Office"). That office will handle and process medical applications and claims using the criteria in this subpart. Persons eligible in connection with domestic situations shall make application with the Agency Head, and the Agency Head shall apply the following procedures in administering medical benefits in the respective agency.

(2) The applicant shall supply all relevant information, including insurance information, requested by the Director of the Office. An eligible person may also submit claims to the Office for payment for emergency care when there is not time to obtain prior authorization as prescribed by this paragraph.

(b) The Office shall evaluate all requests for care and claims for reimbursement and determine, on behalf of the Secretary of State, whether the care in question is authorized under § 192.31 of this subpart. The Office will authorize care or payment of care, when it determines the criteria of section 192.31 are met. Authorization shall include a determination as to the necessity and reasonableness of medical or health care.

(c) The Office will refer applicants eligible for benefits under other Government health programs to the Government agency administering those programs. Any portion of authorized care not provided or paid for under another Government program or private insurance will be reimbursed under this subpart, subject to a determination of the reasonableness of charges. Such determination shall be made by applying the fee schedule established by the Office of Workers' Compensation Programs (OWCP), Department of Labor, which is used in paying medical benefits for work-related injuries to employees who are fully covered by OWCP.

(d) Eligible persons may obtain authorized care from any licensed facility or health care provider of their choice approved by the Office. To the extent possible, the Office will attempt to arrange for authorized care to be provided in a Government facility at no cost to the patient.

(e) Authorized care provided by a private facility or health care provider will be paid or reimbursed under this subpart to the extent that the Office determines that costs do not exceed reasonable and customary charges for similar care in the locality.

(f) All bills for authorized medical or health care covered by insurance shall be submitted to the patient's insurance carrier for payment prior to submission to the Office for payment of the balance authorized by this part. The Office will request the health care providers to bill the insurance carrier and the Department of State for authorized care, rather than the patient.

(g) Eligible persons will be reimbursed by the Office for authorized travel to obtain an evaluation of their claim under paragraph (b) of this section and for other authorized travel to obtain medical or health care authorized by this subpart.

§ 192.33 Disputes.

Any dispute between the Office and eligible persons concerning whether medical or health care is required in a given case, whether required care is incident to the captivity, or whether the cost for any authorized care is reasonable and customary, shall be referred to the Medical Director, Department of State for a determination. If the person bringing the claim is not satisfied with the decision of the Medical Director, the dispute shall be referred to a medical board composed of three physicians, one appointed by the Medical Director, one by the eligible person and the third by the first two members. A majority decision by the board shall be binding on all parties.

Subpart E—Educational Benefits for Captive Situations

§ 192.40 Eligibility for benefits.

(a) A spouse or unmarried dependent child (including an unmarried dependent stepchild or adopted child) under 21 years of age of a captive as determined under Subpart A of the subchapter shall be eligible for benefits under 192.41 of this subpart. (Certain limitations apply, however, to persons eligible for direct assistance through other programs of the Veterans Administration under Chapter 35 of Title 38, United States Code).

(b) A Principal designated as a captive under Subpart A of this subchapter, who intends to change jobs or careers because of the captive experience and who desires additional training for this purpose, shall be eligible for benefits under 192.42 of this part unless such person is eligible for comparable benefits under Title 38 of the United States Code as determined by the Administrator of the Veterans Administration.

§ 192.41 Applicable family benefits.

(a) An eligible spouse or child shall be paid (by advancement or reimbursement) for expenses incurred for subsistence, tuition, fees, supplies, books and equipment, and other educational expenses while attending an educational or training institution approved in accordance with procedures established by the Veterans Administration, which shall be comparable to procedures established pursuant to Chapters 35 and 36 of Title 38 U.S.C.

(b) Except as provided in paragraph (c) or (d) of this section, payments shall be available under this subsection for an eligible spouse or child for educational training which occurs—

(1) 90 days after the Principal is placed in a captive status, and

(i) Through the end of any semester or quarter which begins before the date on which the Principal ceases to be in a captive status, or

(ii) If the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the sixteen-week period following that date.

(c) In special circumstances and within the limitation of § 192.44, the Secretary of State, under the criteria and procedures set forth in § 192.43, may approve payments for education or training under this subsection which occurs after the date determined under paragraph (b) of this section.

(d) In the event a Principal dies and the death is determined by the Agency Head to be incident to that individual being a captive, payments shall be available under this subsection for education or training of a spouse or child of the Principal which occurs after the date of death, up to the maximum that may be authorized under § 192.44.

(e) Family benefits under this subsection shall not be available for any spouse or child who is eligible for assistance under Chapter 35 of Title 38 U.S.C., or similar assistance under any other law.

§ 192.42 Applicable benefits for captives.

(a) When authorized by the Agency Head, a Principal, following release from captivity, may be paid (by advancement or reimbursement) for expenses incurred for subsistence, tuition, fees, supplies, books and equipment, and other educational expenses while attending an educational or training institution approved in accordance with procedures established pursuant to Chapter 35 and 36 of Title 38 U.S.C. Payments shall be available under this subsection for education or training which occurs on or before—

(1) The end of any semester or quarter (as appropriate which begins before the date which is 10 years after the day on which the Principal ceases to be in a captive status, or

(2) If the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the sixteen-week period following that date.

(b) A person eligible for benefits under this subsection shall not be required to separate from Government service in order to undertake the training or education. However, no educational assistance allowance shall be paid to any eligible person who is attending a course of education or training paid for under the Government Employees' Training Act and who full salary is being paid to such person while so training.

§ 192.42 Administration of benefits.

(a) Any person desiring benefits under this part, shall apply in writing to the Director General of the Foreign Service, Department of State, Washington, DC 20520. The application shall specify the benefits desired and the basis of eligibility for those benefits. The Director General of the Foreign Service, on behalf of the Secretary of State, shall make determinations of eligibility for benefits under this part, and shall forward certified applications to the Veterans Administration and advise the applicant of the name and address of the Office in the Veterans Administration that will counsel the eligible persons on how to obtain the benefits that have been approved. Persons whose applications are disapproved shall be advised in writing of the reason for the disapproval. Applications for foreign service nationals and their dependents shall be made with the Office of Foreign Service National Personnel, Department of State. That office will handle the administrative details and benefits using the criteria specified in this subchapter.

(b) The Veterans Administration shall provide the same level and kind of assistance, including payments (by advancement or reimbursement) for authorized expenses up to the same maximum amounts, to spouses and children of captives, and to Principals following their release from captivity as it does to eligible spouses and children of veterans and to eligible veterans, respectively, under Chapters 35 and 36 of Title 38 U.S.C. The Veterans Administration shall, under procedures

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it has established to administer section 1724 of Title 38, U.S.C., discontinue assistance for any individual whose conduct or progress is unsatisfactory under standards consistent with those established pursuant to such section 1724.

(c) An Advisory Board shall be established to advise on eligibility for benefits under paragraphs (c) and (d) of §§ 192.41 and 192.42. The Board shall be composed of the Under Secretary of State for Management as Chair, the Director of the Office of Medical Services of the Department of State, the Executive Director of the regional bureau of the Department of State in whose region the relevant hostile action occurred, the Director of Personnel or other designee of the applicable employing agency, and a representative of the Veterans Administration designated by the Administrator.

(d) If an application is received from a spouse or child for extended training under § 192.41(c), the Director General of the Foreign Service of the Department of State shall determine with the advice of the Advisory Board whether the Principal, following release from capitivity, is incapacitated by the captive experience—

(1) To the extent that he or she has not returned to full-time active duty and is unlikely to be able to resume the normal duties of his or her position or career, or

(2) In the event of a separation from Government service, that the Principal is unable to assume a comparable position or career, for at least six months from the date of release from captivity.

If the Secretary makes such a determination, he or she may approve, within the limits of § 192.44, an application under § 192.41(c) for up to one year of education or training. If the Principal remains incapacitated, the Secretary may approve additional training or education up to the maximum authorized under § 192.44.

§ 192.44 Maximum limitation on benefits.

(a) In no event may assistance be provided under this subpart for any individual for a period in excess of 45 months, or the equivalent thereof in part-time education or training.

(b) The eligibility of a spouse for benefits under paragraph (c) or (d) of § 192.41 shall expire on a date which is 10 years after the date of the release of the captive or the death of the captive while in captivity, respectively. The eligibility of a dependent child for benefits under § 192.41 (c) and (d) shall expire on the 21st birthday of such child or on such later date as determined by the Administrator of the Veterans Administration or Agency Head, as if section 1712 to Title 38, U.S.C., were applicable.

Subpart F—Compensation for Disability or Death

§ 192.50 Eligibility for benefits.

(a)(1) The Federal Employees' Compensation Act (5 U.S.C. 8010 et seq.) provides for medical coverage and the payment of compensation for wage loss and for permanent impairment of specified members and functions of the body incurred by employees as a result of an injury sustained while in the performance of their duties to the United States. The Office of Workers' Compensation Programs (OWCP), Department of Labor, administers the program. All individuals employed by the U.S. Government are eligible to apply for wage-loss and medical benefits under the FECA. Family members of such employees may apply for death benefits. An application must be made with OWCP by such individual or on behalf of such individuals, prior to the determination of eligibility or payment of any benefits under this subpart.

(2) In the case of foreign service national employees covered for work related injury or death under the local compensation plan established pursuant to 22 U.S.C. 3968, such applications should be filed with the organizational authority in the country of employment which provides such coverage. Benefit levels payable to foreign service national employees under this subpart shall be no less than comparable benefits payable to U.S. citizen employees under FECA. Eligibility determination and payment of supplemental benefits, if any, is the responsibility of the Director General of the Foreign Service for the State Department.

(b) Any death or disability benefit payment made under this section shall be reduced by the amount of any other death or disability benefits funded in whole or in part by the United States, except that the amount shall not be reduced below zero. The cash payment under 192.11(b) of Subpart B is excluded from the offset requirement.

(c) Compensation under this section may include payment (whether advancement or reimbursement) for any medical or health expenses relating to the death or disability involved to the extent that such expenses are not covered under subpart D of these regulations. Procedures of subpart D of these regulations shall apply in making such determinations.

§ 192.51 Death benefit.

(a) The Secretary of State or Agency Head may provide for payment, by the employing agency, of a death benefit to the surviving dependents of any eligible individual under 192.1(a) who dies as a result of injuries caused by hostile action or as the result of captivity.

(b) The death benefit payment for an employee shall be equal to one year's salary at the time of death. Such death benefit is subject to the offset provisions under 192.50(b) including the Federal Employees' Compensation Act. The death benefit for an employee's spouse and other eligible individuals under 192.1(b) of Subpart A shall be equal to one year's salary of the principal at the time of death.

(c) A death benefit payment for an adult under this section shall be made as follows:

(1) First, to the widow or widower.

(2) Second, to the dependent child, or children in equal shares, if there is no widow or widower.

(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

(4) Fourth, to adult, non-dependent children in equal shares.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) A death benefit payment for a child under this section shall be made as follows:

To the surviving parents or legal guardian. If there are no surviving parents or legal guardian, no payment shall be made.

(e) As used in this section—each of the terms "widow", "widower", and "parent" shall have the same meaning given such term by section 8101 of Title 5, U.S.C.; "child" has the meaning given in § 192.3(b)(2).

§ 192.52 Disability benefits.

(a) Principals who qualify for benefits under 192.1 and are employees of the U.S. Government are considered for disability payments under programs administered by the Office of Workers' Compensation Programs (OWCP), Department of Labor, or in the case of foreign service national employees, the programs may be administered by either OWCP or the organizational authority in the country of employment which provides similar coverage under the local compensation plan established pursuant to 22 U.S.C. 3968. Normal filing procedures as specified by either OWCP or the local organizational authority which provides such coverage should be followed in determining eligibility. Duplicate benefits may not be received

from both OWCP and the local organizational authority for the same claim. Additional benefits to persons qualifying for full FECA or similar benefits would not normally be payable under this subpart, except to foreign service national employees whose benefit levels are below comparable benefits payable to U.S. citizen employees under FECA. Foreign service national employees whose benefit levels are below comparable benefits payable to U.S. citizens under FECA may receive benefits under this subpart so that total benefits received are comparable to the benefits payable to U.S. citizen employees under FECA.

(b) Family members who do not qualify for either OWCP benefits or benefits from the organizational authority in the country of employment which provides similar coverage, and anyone eligible under § 192.1(a) who does not qualify for full benefits from OWCP, must file an application for disability benefits with the Office of Medical Services, Department of State, for a determination of eligibility under this subpart, if connected with hostile action abroad. Applications made in connection with hostile action in domestic situations will be directed to the Agency Head. Such applications for disability payments will be considered using the same criteria for determination as established by OWCP.

(c) Family members who are determined to be disabled by the Office of Medical Services, or Agency Head using the OWCP criteria, are eligible to receive a lump-sum payment based on the following guidelines:

(1) Permanent total disability rate. A lump-sum payment equal to two year's salary of the Principal at the time of the qualifying incident.

(2) Temporary total disability rate. A lump-sum payment computed at 66⅔ percent of the monthly pay rate of the Principal for each month of temporary total disability, not to exceed one year's salary of the Principal.

(3) Partial disability rate. A lump-sum payment authorized in accordance with 5 U.S.C. 8106, equal to 66⅔ percent of the difference between the monthly pay at the time of the qualifying incident and the monthly wage-earning capacity of the family member after the beginning of the partial disability, not to exceed one year's salary of the Principal. For family members with no wage-earning history, a lump-sum payment equal to 66⅔ percent of the difference between the estimated monthly wage-earning capacity of the family member at the time of the qualifying incident and the monthly wage-earning capacity after the beginning of the partial disability, not to exceed one year's salary of the Principal may be authorized, using the criteria established by OWCP for such determination.

(4) Special loss schedule. In addition to the temporary disability benefits payable in accordance with this subsection, if there is permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement, a lump-sum payment may be authorized at the rate of 25 percent of the payment authorized in accordance with the schedule and procedures in 5 U.S.C. 8107 and 20 CFR 10.304. The Director General of the Foreign Service of State or the Agency Head, may at their discretion, authorize payments under this subpart in addition to payments for those organs and members of the body specified in 5 U.S.C. 8107 and in 20 CFR 10.304. The provisions of 20 CFR Part 10, Subpart D, which prevent the payment of disability compensation and scheduled compensation simultaneously, shall not apply to these regulations.

Cash payments under this subpart are the responsibility of the employing agency.

George S. Vest,

Director General of the Foreign Service and Director of Personnel.

October 6, 1988

[FR Doc. 88-27298 Filed 11-28-88; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF EDUCATION

34 CFR Part 237

Christa McAuliffe Fellowship Program; Correction

AGENCY: Department of Education.

ACTION: Correction; notice of proposed rulemaking.

SUMMARY: This action corrects a notice of proposed rulemaking published on November 15, 1988 (53 FR 46072). On page 46072, in the first column, change the first line of the **SUMMARY** to read: "The Secretary proposes to amend * * *". Remove the paragraph following **EFFECTIVE DATE:** and add, in its place, "Comments must be received on or before December 30, 1988". Add the following section after the paragraph on **EFFECTIVE DATE.**

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Richard La Pointe, Deputy Assistant Secretary, Regulations, Innovation and Development, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 732-4659.

Program Authority: 20 U.S.C. 113-1113e, unless otherwise noted.

Dated: November 22, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 88-27513 Filed 11-28-88; 8:45 am]

BILLING CODE 4000-01-M

POSTAL SERVICE

39 CFR Part 265

Release of Information; Modification of Fees for Record Retrieval by Computer

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to modify the fees charged for furnishing Postal Service records retrieved by computer to members of the public. The proposed modified fees implement existing policy to recover the actual cost incurred by the Postal Service for the retrieval and represent no change in policy concepts.

DATE: Comments on the modified fees must be received on or before December 29, 1988.

ADDRESS: Comments may be mailed to the Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-5010 or delivered to Room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith (202) 268-2931.

SUPPLEMENTARY INFORMATION: The proposed fee modifications do not alter the basic concepts or thrust of Postal Service policy in the area of records retrieval fees that may be charged in connection with the release of information to the public. Computer retrieval fees were last published on April 24, 1987 (52 FR 13667). The fees are subject to periodic revision. The proposal modifications to Part 265—*Release of Information*—revise the fees for retrieving data by computer to reflect current labor and administrative costs.

List of Subjects in 39 CFR Part 265

Freedom of information, Postal Service.

For the reasons stated herein, the Postal Service proposes to amend 39 CFR Part 265 as follows:

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PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

§ 265.8 [Amended]

2. Section 265.8(b)(1)(ii) is amended by removing the parenthetical sentence at the end thereof and adding, in its place, the following sentence: "(See Appendix A.)"

3. Appendix A to Part 265 is revised to read as follows:

Appendix A—Information Services Price List

When information is requested that must be retrieved by computer, the requester is charged for the resources required to furnish the information. Estimates are provided to the requester in advance and are based on the following price list.

Description of services	Price	Unit
A. System Utilization Services: Central Processor Unit (CPU) Based upon IBM 3090–200 Performance Standard		
Batch Processing	$3,000.00	Hour.
Time Sharing Option (TSO).	3,400.00	Hour.
Customer Information Control System (CICS).	3,400.00	Hour.
Integrated Data Base Management System (IDMS).	3,400.00	Hour.
Direct Access Storage Device (DASD) Channel Utilization (EXCPs—execution of channel programs).	.45	1,000 lines.
Tape Channel Utilization (EXCPs).	.80	1,000 lines.
Local Printing	.95	1,000 lines.
B. Personnel Charges:		
Manual Unit Personnel.	30.00	Hour.
Systems and Programming Personnel.	42.00	Hour.

J. Fred Eggleston

Assistant General Counsel, Legislative Division.

[FR Doc. 88–27493 Filed 11–28–88; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3483–3; TN–063]

Approval and Promulgation of Implementation Plans; Tennessee; Disapproval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today, EPA proposes to disapprove a variance, Tennessee Air Pollution Control Board Order 21–87, which allows the North American Rayon Corporation (NARC) to operate Boilers 1 and 2 at the NARC Plant in Elizabethtown, Carter County, Tennessee during emergencies. Disapproval is proposed because the technical support document submitted by the Tennessee Division of Air Pollution Control does not include adequate air quality modelling information.

DATES: To be considered, comments must reach us on or before December 29, 1988.

ADDRESSES: Written comments should be addressed to Rosalyn D. Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Division of Air Pollution Control, Tennessee Department of Health and Environment, 4th Floor Customs House, 701 Broadway, Nashville, Tennessee 37219.

Environmental Protection Agency, Air Programs Branch—Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes, EPA Region IV Air Programs Branch, at the address listed above, and phone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On January 6, 1988, The Tennessee Division of Air Pollution Control (Division) submitted several Board Orders as State Implementation Plan (SIP) revisions. Each Board Order addressed approvals of variances from or revisions to Division rules for various companies operating in Tennessee. SIP revision requests for companies other than NARC will be addressed in other notices.

Operation of NARC Boilers 1 and 2 during emergencies was approved in Board Order 21–67, which allows variances from Division rules 1200–3–6–.02, 1200–3–5–.01 and 1200–3–9–.02. NARC operates nine boilers (Nos. 1, 2, 4, 5, 6, 7, 8, 9 and 10). Boilers 4–10 are used during normal operation and have adequate emission control equipment; however, Boilers 1 and 2, which are operated in emergency situations, have no emission control equipment.

In order to approve any SIP revision, EPA must have adequate assurance that the revision will not jeopardize either the National Ambient Air Quality standards (NAAQS) or the prevention of significance deterioration (PSD) increments (see 40 CFR 51.160(a), 51.165(a) (1) and (2) and 51.166(a) (1) and (2)). In the case of a relaxation of a particulate emission limit, such assurance must consist of air quality dispersion modelling.

In the technical support document submitted by Tennessee, an adequate modelling analysis was not submitted. The agency submitted a screening analysis which did consider the worst-case scenario but did not consider the effects of downwash. Tennessee did not give any justification for the omission of downwash.

On February 5, 1988, EPA requested from the Division additional information concerning the air quality modelling that was submitted. This information has not been received.

Proposed Action

EPA has reviewed the submitted material and found that it does not contain adequate information necessary to evaluate the requested SIP revision. Therefore, EPA is proposing to disapprove Board Order 21–87, which allows a variance from Division rules in order for the North American Rayon Cooperation to operate Boilers 1 and 2 during emergencies. Interested persons are invited to submit comments on this proposed disapproval. EPA will consider all comments received within thirty days of the publication of this notice.

Regulatory Process

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA must assess the impact of proposed rules on small entities. If EPA takes final action as proposed today, the operation of North American Rayon Corporation would be affected, but we do not have sufficient information to determine exactly what impact such a decision would have. However, if information can be submitted to show the effects of the variance on air quality are minimal, EPA will withdraw the proposed disapproval and propose approval.

Under Executive Order 12291, todays, action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate mater.

Authority: 42 U.S.C. 7401–7642.

Dated: July 13, 1988.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88–27457 Filed 11–28–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 228

[FRL–3483–5]

Ocean Dumping; Proposed De-Designation of a Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposed to de-designate an ocean disposal site formerly used to dispose of industrial waste, known as the Deepwater Industrial Waste Disposal Site. At the time of the Final Designation of this site, May, 1984, the Final Environmental Impact Statement (FEIS) concluded that designation of the site was appropriate since all the provisions of the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*, as amended), as well as EPA's Ocean Dumping Regulations and Criteria (40 CFR Parts 220 through 225, 227 through 229; 42 FR 2462 as amended) were satisfied. This is no longer the case. Therefore, the Agency proposes to de-designate the Deepwater Industrial Disposal Site in accordance with the provisions of § 228.11(a), which specifies that modifications in disposal site use which involve the withdrawal of designated disposal sites from use will be based upon environmental impacts and/or changed circumstances concerning use of the site, and § 228.11(d), which specifies that the determination of the Administrator as to whether to terminate use of a disposal site will be based on the impact of disposal at the site itself and on the Criteria. "Criteria" as defined at § 220.2(g) refers to the criteria set forth in Part 227 of Subchapter H, which includes determination of need for designation of a disposal site. There are no current permittees utilizing the Deepwater Industrial Waste Disposal Site. The most recent permits expired in 1987, and subsequent re-applications from the two permittees were withdrawn because of the feasibility of land-based alternatives. Therefore, the need for the Deepwater Industrial Waste Disposal Site has effectively been eliminated, so the site no longer complies with the above mentioned criteria.

DATE: Comments must be received on or before January 13, 1989.

ADDRESS: Send comments to: Mario P. Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA, Region II, 26 Federal Plaza, New York, New York, 10278–0090.

FOR FURTHER INFORMATION CONTACT: Mario P. Del Vicario, (212) 264–5170.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.*, ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. Management authority for all sites is delegated to the EPA organizational entity under which each site is located. This site de-designation is being proposed pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). The Deepwater Industrial Waste Site was added by 49 FR 19012, May 4, 1984. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

The site was originally among the fourteen municipal and industrial waste disposal sites given interim designation status when the EPA Ocean Dumping regulations were published in 1972. Subsequent to enactment of the Marine Protection, Research and Sanctuaries Act (MPRSA) in 1972, over 100 permittees have dumped industrial wastes at various ocean dump sites, including the Deepwater Industrial Waste Disposal Site. Quantities of industrial wastes dumped at the interjm-designated site decreased from 329,000 wet tons in 1973 to 192,000 wet tons in 1982. After final designation of the Deepwater Industrial Waste Disposal Site, quantities of waste dumped decreased even further. In 1985, 99,000 wet tons of material were disposed of at the site; this quantity increased to 213,000 wet tons in 1986, but decreased to 28,000 wet tons in 1987. In 1988, there was no industrial waste disposal at this site.

B. EIS Development

EPA's Ocean Dumping Regulations and Criteria contain provisions for selecting and designating ocean disposal sites. When these regulations were published in 1972, fourteen municipal and industrial waste disposal sites were listed in the regulations and given interim designation.

In June 1979 a Draft Environmental Impact Statement (DEIS) was published recommending the permanent designation of the Deepwater Industrial Waste Disposal Site. Through this EIS, EPA conducted an in-depth study of the dump site to determine its acceptability with the criteria and regulations. A public hearings to solicit additional comments was held in August 1979. The Final EIS was published in February 1980 and the designation of a permanent industrial waste disposal site occurred in May 1984. At the time, the need for the site designation was demonstrated.

C. Location

The current Deepwater Industrial Waste Disposal Site is a portion of the former interim-designated 106-Mile Site. The Deepwater Industrial Waste Disposal Site is located approximately 90 nautical miles off the coast of Cape May, New Jersey. The site is circular with a radius of three nautical miles, and water depths at the site range from 2,250 to 2,750 meters. The center coordinates of the site to the de-designated are as follows:

Latitude: 38°45'00" N
Longitude: 72°20'00" W

D. Regulatory Requirements

EPA proposes to de-designate the Deepwater Industrial Waste Disposal Site in accordance with the provisions of EPA's Ocean Dumping Regulations and Criteria. Section 228.11(a), specifies that modifications in disposal site use which involve the withdrawal of designated disposal sites from use will be based upon environmental impacts and/or changed circumstances concerning use of the site. Section 228.11(d) specifies that the determination of the Administrator as to whether to terminate use of a disposal site will be based on the impact of disposal at the site itself and on the Criteria. "Criteria" as defined at § 220.2(g) refers to the criteria set forth in part 227 of Subchapter H, which includes determination of need for designation of a disposal site. There are

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no current permittees utilizing the Deepwater Industrial Waste Disposal Site. The most recent permits expired in 1987, and subsequent re-applications from the two permittees were withdrawan because of the feasibility of land-based alternatives. Therefore, the need for the Deepwater Industrial Waste Disposal Site has effectively been eliminated, so the site no longer complies with the above-mentioned criteria.

The last permits were issued by EPA in 1984 for ocean disposal of industrial wastes at the site. Both of these permits have expired and there are currently no authorized permits for disposal at this site. No ocean dumping has been conducted at the site since March 1987.

The Criteria stipulate that an ocean dumping permit can be issued only if there are no alternatives to ocean disposal which are technically feasible, economically reasonable, and which would have less adverse impact on the overall environment than ocean disposal. All permits issued contain conditions requiring the permittee to evaluate and implement alternative disposal which do not involve discharge at the Deepwater Industrial Waste Disposal Site have been identified.

E. Proposed Action

In view of the fact that feasible alternatives to disposal at the Deepwater Industrial Waste Disposal Site have been identified, and there is no current or reasonably foreseeable need for the site, EPA hereby proposes to de-designate the Deepwater Industrial Waste Disposal Site, in accordance with EPA Ocean Dumping Regulations.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. Since there are no current permittees, EPA has determined that this action will not have a significant impact on small entities. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects that would result in its classification as a major rule under the Executive Order. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*).

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: November 10, 1988.

William Muszynski,

Acting Regional Administrator, Region II.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. secs. 1412 and 1418.

§ 228.12 [Amended.]

2. Section 228.12 is amended by removing paragraph (b)(17).

[FR Doc. 88-27455 Filed 11-28-88; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 300

[SW-FRL-3477-7]

National Oil and Hazardous Substances Contingency Plan; the National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces its intent to delete the Parramore Surplus Company site from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This action is being taken by EPA, because it has been determined that all appropriate Fund-financed responses under CERCLA have been implemented and completed and EPA, in consultation with the State has determined that no further cleanup by responsible parties is necessary. This notice is intended to solicit public comment on the intent of EPA to delete the Parramore Surplus Company site.

DATES: Comments concerning this site may be submitted on or before December 24, 1988.

ADDRESSES: Comments may be mailed to Patrick M. Tobin, Director, Waste Management Division, c/o Jeanne Dove, Site Project Manager, 345 Courtland Street NE., Atlanta, Georgia. The comprehensive information on this site is available through the EPA Regional Docket clerks. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is: Gayle Alston, Region IV, USEPA Library, Room G-8, 345 Courtland Street NE., Atlanta, Georgia 30365, 404/347-4216.

FOR FURTHER INFORMATION CONTACT: Patrick M. Tobin, Director, Waste Management Division, c/o Jeanne Dove, Site Project Manager, 345 Courtland Street NE., Atlanta Georgia 30365.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region IV announces its intent to delete Parramore Surplus site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register**. Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the **Federal Register** on November 20, 1985 (50 FR 47912), § 300.66(c)(7) of the NCP provides that sites:

* * * may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate at the time of the deletion.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this site, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site. The Agency is considering using similar procedures in the future with the exception that the notice and the comment period is being conducted at the local level concurrent with this notice through the **Federal Register**.

The procedures used are:

1. EPA Regional Office recommended deletion and prepared relevant documents.

2. EPA Regional Office is providing a 30-day public comment period on the deletion package. The notification is being provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories.

3. The comments received during the notice and comment period will be evaluated before the tentative decision to delete is made.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register**, and the NPL will reflect any deletions in the next final update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Offices.

IV. Basis for Intended Site Deletions

The following summary provides the Agency's rationale for intending to delete this site from the NPL.

Parramore Surplus Company Site, Mt. Pleasant, Florida

The Parramore Surplus site is a 25 acre site located in northwestern Gadsden County, Florida in the town of Mt. Pleasant. The site is privately owned and has operated as a facility which stores and resells surplus government products since 1972. The products were purchased from various naval and air force bases in Florida and Alabama. Some of these products were drummed paint residues, waste oil, alcohols, and degreasers.

The Florida Department of Environmental Regulation (FDER) conducted a site inspection in March 1982 and found an estimated 400 to 600 drums being stored. Many of the drums were leaking and killing the surrounding vegetation. At the request of the FDER, EPA conducted a site inspection and collected soil and waste samples in May 1982. Laboratory analyses performed on those samples revealed the presence of PCB-1254 at a concentration of 72 mg/kg. Consequently, on August 16, 1982, the site was added to the National Priorities List (NPL).

A meetng with the EPA, FDER and the site owner resulted in an agreement that the Parramore Surplus Company would voluntarily clean up the PCB contaminated soil. The clean-up was accomplished over the next few months. Both the FDER and the EPA inspected the Parramore site and noted on July 28, 1983 that the conditions of the clean-up agreement had been met. During the investigation, three additional contaminated areas were observed. At the request of the FDER, the owner cleaned up these areas as well.

Following an unannounced visit to the site, the FDER formally requested on August 25, 1983, that the site be removed from the NPL.

There are no major water bodies in the Parramore Surplus Company site. Possible sources of ground water contamination have been removed. A Public Health Evaluation (PHE) was conducted to determine the need for Soil Remediation to protect human health. Under all plausible exposure scenarios, it has been determined that the daily intakes of contaminants are below the reference doses, even when exposure to all contaminants are summed. The PHE has determined that no adverse human health threats are posed by the soil contamination. The remedy selected for this site provided for no further remedial actions to be taken on the soils and groundwater at the site. However, to assure that no groundwater contamination has occurred from past releases of hazardous materials, a groundwater quality assessment consisting of two sampling events has been conducted. Post-ROD sampling events revealed that the site poses no threat to the human health or to the environment.

EPA, with the concurrence of the State of Florida, has determined that the Parramore Surplus site poses no significant threat to public health or the environment and therefore, no soil remediation and no further groundwater studies are necessary.

Date: November 9, 1988.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 88-26589 Filed 11-28-88; 8:45 am]
BILLING CODE 6560-50-M

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-08; Notice 2]

RIN 2127-AB91

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new requirement for manufacturers to install lap/shoulder belts in all forward-facing rear outboard seating positions in passenger cars, light trucks, multipurpose passenger vehicles (e.g., passenger vans and utility vehicles), and small buses. Rear seat lap/shoulder belts are estimated to be more effective than rear seat lap belts in reducing fatalities and moderate-to-serve injuries. The benefits of this rulemaking would be augmented by the fact that the adoption of safety belt use laws in 32 States and the District of Columbia and the growing public awareness of the benefits of safety belts have brought a general nationwide increase in safety belt usage. Further, six of the States require safety belt use in the rear seats, as well as in the front seats. As safety belt use in the rear seat increases, the greater effectiveness of rear seat lap/shoulder belts should yield progressively larger benefits in terms of reduced fatalities and moderate-to-severe injuries. This proposed requirement would encourage increased rear seat belt use, by providing rear seat occupants with maximum safety protection when they buckle up.

This notice also proposes to establish a requirement for lap/shoulder belts at the driver's seat and any front outboard passenger seat in small buses. Passenger cars and light trucks and light multipurpose passenger vehicles have long been required to provide lap/shoulder belts at front outboard seating positions. Additionally, the front seat is generally a more hostile crash environment than the rear seats. NHTSA has tentatively determined that front seat occupants of small buses should experience the same benefits from lap/shoulder belts that are currently experienced by front seat occupants of light trucks and light multipurpose passenger vehicles. The agency has also tentatively determined that the enhanced effectiveness of lap/shoulder belts should maximize the likelihood that a driver of a small bus will be able to assist the passengers in getting out of the bus in the event of a crash.

DATES:

Comment Closing Date: Comments on this notice must be received by NHTSA not later than January 30, 1989.

Proposed Effective Dates: If adopted as a final rule, these requirements would apply to passenger cars other than convertibles manufactured on or after September 1, 1989, and to convertible passenger cars, light trucks, multipurpose passenger vehicles and light buses manufactured on or after September 1, 1991.

ADDRESS: Comments should refer to Docket No. 87-08; Notice 2 and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, Room 5320, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background

On January 1, 1968, the initial Federal Motor Vehicle Safety Standards took effect. One of those standards was Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), which required the installation of safety belts in passenger cars. Standard No. 208 required the installation of lap/shoulder belts at the driver's and right front passenger's seating positions, and either lap or lap/shoulder belts at every other designated seating position. Another of the initial safety standards that took effect on January 1, 1968 was Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210), which specified location and strength requirements for the anchorages used to hold the safety belts to the passenger car during a crash. Standard No. 210 required passenger car manufacturers to provide anchorages for lap/shoulder belts for each forward-facing front *and* rear outboard seating position. NHTSA subsequently amended both of these standards to extend their applicability to trucks, multipurpose passenger vehicles (MPV's), and buses. However, when Standard No. 210 was extended to these additional vehicle types, NHTSA did not require manufacturers to provide upper torso (i.e., shoulder belt) anchorages for rear outboard seating positions in those other vehicle types.

All comprehensive and reliable studies of occupant protection in the rear seat from 1968 forward showed that the lap belts installed in the rear seating positions were effective in reducing deaths and injuries. Notwithstanding this evidence, Kathleen Weber and John Melvin, then both associated with the University of Michigan Transportation Research Institute, sought additional protection through submitting a petition for rulemaking with the agency in December 1982. That petition (hereinafter called "the Weber/Melvin petition") asked the agency to require the installation of lap/shoulder belts in the rear outboard seating positions of passenger cars. The petitioners explained that the primary reason for their request was enhancing child safety, by facilitating the use of booster seats in the rear seat. (A booster seat is a platform used to elevate and restrain a child in a vehicle. It may or may not have a frame or any other structural support behind the child's back or head, and generally is designed to be used by children who have outgrown their child seat, but are not old enough to use just the vehicle's belt system. By elevating the child up to four additional inches, some booster seats are designed to ensure that a vehicle's lap belt is properly positioned over the child's pelvis and the vehicle's shoulder belt, if one is available, is properly positioned over the child's chest, instead of the face or neck. Those booster seats that are designed with some type of shield in front of the child are usually designed so that the shoulder belt can be routed in front of the shield on the booster seat, to provide additional upper torso restraint for the child.) As additional support for the requested action, the Weber/Melvin petition asserted that rear seat lap/shoulder belts would provide additional safety protection for adult occupants, as well.

NHTSA denied this petition in 1984 (49 FR 15241). This denial focused primarily on the child safety issues raised by the petitioners. At the time of this denial, the agency was considering a proposal to require the vehicles to include tether anchorage to secure a then-popular type of child restraint. The agency believed this approach would offer greater protection to children than one requring rear seat lap/shoulder belts. In response to the petitioners' assertion that lap/shoulder belts in rear outboard seating positions could provide some additional safety protection to adults seated there, NHTSA stated that it agreed. However, the agency noted that existing crash data showed that rear seat lap belts already provided

effective protection to rear seat occupants. In addition, NHTSA then estimated that lap/shoulder belts with retractors would cost $20 more than the lap belts provided at those seating positions in most passenger cars. NHTSA concluded at that time that the additional cost could not be justified based on increased belt usage or belt effectiveness.

In August 1986, another petition was filed with the agency asking that NHTSA require the installation of lap/shoulder belts in rear seats. This petition, filed by the Los Angeles Area Child Passenger Safety Association, again focused on the protection afforded to children riding in motor vehicles. The agency decided to grant the petition and reexamine this issue, because of two new factors. First, many States had adopted safety belt use laws, which led to an increase in belt use in the rear seat. Second, child restraint production had shifted away from those that were designed to have a tether anchored to the vehicle. Accordingly, on June 16, 1987, NHTSA published an advance notice of proposed rulemaking (ANPRM), requesting comments on the need for rulemaking to require lap/shoulder belts in rear seating positions of vehicles (52 FR 22818).

In connection with the ANPRM, NHTSA prepared a preliminary regulatory impact analysis (PRIA) to examine in detail the costs and safety benefits of rear seat lap/shoulder belts. The PRIA showed that rear seat lap belts have been effective in reducing deaths and serious injuries. The agency estimated that the benefits of requiring rear seat lap/shoulder belts would be a reduction of approximately 10 fatalities and 400 serious injuries each year, at 1985 belt usage rates of approximately 10 percent for rear seat occupants. The PRIA estimated that a requirement for lap/shoulder belts at rear outboard seating positions would be $139 million for passenger cars, $21 million for light trucks and multipurpose passenger vehicles, and $100,000 for small buses. The ANPRM noted: "The agency is concerned that such costs are extremely disproportionate to the safety benefits." 52 FR 22819.

The ANPRM asked for comments on these estimates. It also asked for comments on the vehicle manufacturer's plans for installing lap/shoulder belts in rear seating positions, whether any proposed rule should include dynamic testing requirements for rear seat lap/shoulder belts, and whether any proposed rule should make the existing comfort and convenience requirements for front seat belts applicable to rear seat lap/shoulder belts. Thirty-four commenters responded to the ANPRM, and all of those comments were considered in developing this proposal. The most significant comments are discussed below.

The Need for Additional Requirements

The agency has carefully considered both the comments received in response to the ANPRM, information on the manufacturer's plans to voluntarily install lap/shoulder belts in the rear seats of their vehicles, and the continuing trend of States to enact safety belt use laws. After considering all this information, NHTSA has decided to propose a new requirement that most vehicles be equipped with lap/shoulder belts at each rear outboard seating position.

The agency's estimate of the costs involved with such a requirement has changed substantially since the ANPRM was issued, because of the significant increase in the number of vehicles that will be voluntarily equipped with rear seat lap/shoulder belts. However, NHTSA also believes that the benefits associated with this requirement may be greater than it had previously estimated, for the following reasons. As of this date, 32 States and the District of Columbia have safety belt use laws, an increase of seven in the number of States with belt use laws since the ANPRM was published. As a result of these State laws, the number of people wearing safety belts has increased substantially. For example, when the Secretary of Transportation issued the final decision on the automatic occupant crash protection requirements in July 1984, the safety belt use rate for front seat occupants was 12.5 percent. The ANPRM referred to the 1985 safety belt use rate of 22 percent for front seat occupants. The most recent agency data on safety belt use by front seat occupants shows a 42 percent use rate, for the period of June through August 1987 (NHTSA Docket No. 74-14-GR-710). Hence, belt use by front seat occupants has increased by 30 percentage points, more than tripling the use rate in 1984, over this three year period.

The most recent agency data also show the postive effects that State belt use laws have on belt use. Front seat occupants in States with belt use laws had a 20 percentage point higher belt use rate than did front seat occupants in States without a belt use law (roughly 52 percent vs. 32 percent). As the number of States with belt use laws continues to grow, together with the public awareness of the benefits of wearing safety belts, there is every reason to believe that the rate of belt use by front seat occupants will continue to increase.

Historically, belt use in the rear seats has been lower than belt use in the front seats. The ANPRM noted that belt use in the rear seats was approximatley 2 percent in 1981-1982, and had risen to 10 percent in 1985. The most recent data are from 1987 and show that belt use in the rear seats has risen to 16 percent. Thus, the ANPRM's discussion of the benefits that would be associated with a requirement for rear seat lap/shoulder belts focused primarily on the 10 percent use rate for rear seat belts. However, the agency now believes that belt use in rear seats will increase to levels substantially greater than 10 percent, bringing correspondingly higher benefits for lap/shoulder belts in rear seats.

Although most of the State safety belt use laws that have been enacted require the use of safety belts in front seats only, five of the State laws require both front and rear seat occupants to buckle up. The five States that require rear seat occupants to use their belts are California, Montana, Nevada, Washington, and Wisconsin. Experience with belt use laws applicable to front seat occupants suggests that far more than 10 percent of the rear seat occupants in these States will buckle up. Even in those States that have safety belt use laws, but do not require rear seat occupants to buckle up, it seems likely that people who have gotten into the habit of wearing a safety belt in the front seat will be more likely to wear a safety belt in the rear seat when they are riding there. This suggests that safety belt use in the rear seat should rise above the current 16 percent level. Further, the greater visibility of belt use with lap/shoulder belts, as opposed to lap belts alone, would make it easier for States to enforce safety belt use laws that require belt use in the rear seats.

Further, the agency believes that the State safety belt use laws and the greater public awareness of the benefits of safety belts have resulted in a larger share of the public being familiar with lap/shoulder belts in front seats and getting into the habit of wearing lap/shoulder belts. Both the sense of familiarity and the habit of wearing have been developed with respect to the lap/shoulder belts in the front seat, not the lap belts in the rear seats. These factors may partially explain why belt use is so much lower in rear seats. If people who are familiar with and in the habit of wearing lap/shoulder belts in the front seat find lap/shoulder belts in the rear seat, it stands to reason that they would be more likely to wear those belts when riding in the rear seat. Thus,

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the presence of lap/shoulder belts in the rear seat should result in an increase in rear seat belt use. The synergy between increased belt use and increased benefits means that the benefits associated with this rule will be substantially greater because of the anticipated increased use of lap/shoulder belts in the rear seat.

Finally, lap/shoulder belts in the rear seat would provide better protection for children restrained in booster seats. Standard No. 213, *Child Restraint Systems* (49 CFR 571.213) requires that all child restraint systems be certified as complying with the injury protection criterial when held in place by a lap belt *only*. Accordingly, most booster seats have had to rely on a shield to provide upper torso restraint for the child during Standard No. 213 compliance testing and when used in the seating positions equipped with lap belts. The presence of lap/shoulder belts in rear seating positions would help booster seats installed in rear seats to provide even more effective protection for child occupants, by allowing booster seats to use the shoulder belt to provide additional upper torso restraint.

The agency re-emphasizes that a number of studies, evaluating thousands of cases, show that lap belts in the rear seat *are* effective in preventing deaths and reducing injuries. NHTSA knows of no comprehensive studies by any person or organization that suggests that rear seat lap belts are anything less than effective. This proposal is *not* suggesting or implying that rear seat lap belts are not effective. Instead, this proposal is based on the agency's tentative conclusion that safety belt use in the rear seats of vehicles will increase and that, as a result of this increase, the benefits of rear seat lap/shoulder belts will be reasonably related to the costs of rear seat lap/shoulder belts.

Many of the vehicle manufacturers that responded to the ANPRM agreed with the ANPRM's statement that the voluntary installation of rear seat lap/shoulder belts by the manufacturers could mitigate the need for a Federal requirement in this area. As a policy matter, the agency has generally concluded that there is no compelling safety need for it to act when vehicle manufacturers are voluntarily taking the desired steps absent any Federal requirement to do so. In these circumstances, rulemaking imposes a burden on the agency by requiring it to develop appropriate requirements, conduct a rulemaking proceeding, and use some of its enforcement budget to monitor compliance. The rule also imposes additional paperwork burdens on the manufacturers, even though they would take the desired action in any case. All of these burdens are imposed without a commensurate safety benefit for the public, and are therefore unnecessary burdens.

Although most manufacturers either already equip their passenger cars with rear seat lap/shoulder belts or are planning to do so in the very near future, some manufacturers do not have similarly broad plans for their fleets of minivans and light trucks. Further, some manufacturers do not plan to provide this equipment, even in passenger cars. Moreover, the agency has no reliable information that known new entrants to the U.S. motor vehicle market will follow the lead of their competitors in supplying rear seat lap/shoulder belts. Finally, a requirement for rear seat lap/shoulder belts will ensure substantial uniformity of safety performance and comfort and convenience for ease of use. For example, a regulatory requirement will ensure that all such systems have an integrated lap/shoulder belt and retractors. For these reasons, NHTSA has tentatively concluded that it should require rear seat lap/shoulder belts and establish some performance requirements for those belt systems.

Specific Details of this Proposal

1. Seating Positions Covered by Proposal

The ANPRM estimated the costs and benefits by requiring lap/shoulder belts at all rear seating positions in the covered vehicles, at rear outboard seating positions only, and at rear outboard seating positions of the second seat only, for vehicles with more than one rear seat. The agency asked for comments on these estimates and each of these potential installation proposals.

With respect to the request for comments on requiring lap/shoulder belts at rear outboard seating positions, the commenters generally did not believe there would be any technical problems associated with such a requirement. Indeed, the fact that several manufacturers install lap/shoulder belts at rear outboard seating positions in their passenger cars suggests that there are no serious technical problems with such installations. The PRIA for the ANPRM estimated that, for passenger cars, about 90 percent of the benefits estimated for lap/shoulder belts in all rear seating positions would accrue to rear *outboard* seat occupants. For other vehicle types, about 70 percent of the benefits would accrue to rear *outboard* seat occupants.

Some commenters did express concerns about a proposed requirement to install lap/shoulder belts in rear seating positions that were not outboard seating positions. Several manufacturers noted in their comments that the PRIA estimated that it would cost more to install lap/shoulder belts in the rear center seating position of passenger cars than to install lap/shoulder belts at both rear outboard seating positions in cars. Because the PRIA also estimated that the benefits of lap/shoulder belts in rear center seating positions would be substantially lower than at outboard seating positions, these commenters stated that it would be inappropriate to require lap/shoulder belts for rear seating positions that were not outboard seating positions.

Toyota noted in its comments that rear seating positions that are not outboard seating positions are not presently required to even have anchorages for shoulder belts. Hence, according to this comment, structural changes to vehicles would be required. Both Toyota and Volkswagen noted that the rear center seating position is the least-used seating position in cars, according to the 19 city survey sponsored by NHTSA. The American Seat Belt Council stated in its comments that lap/shoulder belts in rear center seating positions had low cost-effectiveness and little field testing. The Automobile Importers of America and several manufacturers alleged that there would be difficulties in locating the anchorage for a rear center seat shoulder belt in vehicles other than passenger car sedans. According to these comments, hatchback or station wagon models of passenger cars and the other vehicle types mentioned in the ANPRM would have to locate anchorages for rear center seat shoulder belts either in the loadspace floor or on the vehicle roof. According to these commenters, these locations would result in disruptions of the vehicle's cargo carrying area or impede the driver's rearward vision.

The agency has tentatively concluded that it should limit the proposed requirement for lap/shoulder belts in rear seats to outboard seating positions *only*. The agency agrees with those commenters that asserted that there would be more technical difficulties associated with a requirement to install lap/shoulder belts at all rear seating positions, than with a requirement to install lap/shoulder belts only at rear outboard seating positions. Whether or not those difficulties could be overcome, there would be small safety benefits and substantially greater costs if rear seating positions that are not outboard seating positions were required to have lap/shoulder belts. Therefore, this proposal addresses only rear outboard seating positions.

The term "outboard designated seating positions" is defined at 49 CFR 571.3 as meaning "a designated seating position where a longitudinal vertical plane tangent to the outboard side of the seat cushion is less than 12 inches from the innermost point on the inside surface of the vehicle at a height between the seating reference point and the shoulder reference point (as shown in Figure 1 of the Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front and rear edges of the seat cushion." Thus, the seating positions next to the aisle on the right hand side of many passenger vans and small buses may *not* be outboard seating positions, because they may be more than 12 inches from the inside of the vehicle. Accordingly, some aisle seating positions in those vehicles may not be covered by this proposed requirement for rear seat lap/shoulder belts.

2. Types of Rear Seats Covered by This Proposal

This proposal is limited to *forward-facing* rear outboard seats. The agency considered proposing requirements for all rear outboard seats, but tentatively determined that such a requirement might be overbroad. NHTSA is unaware of any data showing that occupants of center-facing or rear-facing seats would be significantly better protected by lap/shoulder belts than by lap belts. Further, such seats are usually designed to fold away for cargo carrying purposes, which would make shoulder belt anchorage and application especially cumbersome and technically difficult.

Since this proposal is limited to forward-facing rear outboard seats, there might be some uncertainty as to whether the proposed requirements would apply to swivel seats in rear outboard positions. Swivel seats can rotate 360°, and so could be adjusted to face front, center, or rear. NHTSA answered this question for front outboard swivel seats in an April 6, 1988 letter to Mr. Ohdaira of Isuzu Motors. In that letter, the agency explained that S7.1.1 of Standard No. 208 requires safety belts to adjust to fit occupants "with the seat in any position." Because of this language in the standard, the agency noted, "Thus, we believe that a front outboard swivel seat must have lap and upper torso restraints that fit the occupant of the seat while the seat is in *any* position in which it can be occupied while the vehicle is in motion." (Emphasis in original). This notice proposes that rear outboard seating positions be subject to S7.1.1 of Standard No. 208. Since this is the same regulatory requirement that was the basis of the agency's conclusion for swivel seats at front outboard seating positions, the agency would reach the same conclusion for rear outboard swivel seats, if this proposal were adopted as a final rule. This notice proposes to add express language to S7.1.1 to clarify this point.

3. Vehicle Types Covered by This Proposal

a. Passenger Cars

This proposal, if adopted as a final rule, would apply to *all* passenger cars. More people travel in these vehicles than in any other vehicle type. Accordingly, most of the safety benefits anticipated from a requirement for rear lap/shoulder belts would accrue to rear seat occupants in passenger cars. NHTSA anticipates no technical problems will be associated with this proposed requirement, since passenger cars have long been required to have anchorages installed for rear outboard shoulder belts.

Mazda suggested that NHTSA should consider treating convertibles differently from other passenger cars, for the purposes of this proposed requirement. In its comments to the ANPRM, Mazda alleged that, "Interference between the shoulder anchorage and the convertible roof will undoubtedly occur and will be very difficult to adequate reconcile. Accordingly, the only viable option available to convertible manufacturers must be the elimination of rear seating positions."

NHTSA is not persuaded by this comment. In spite of the difficulties perceived by Mazda, the rear outboard seating positions in convertibles are equipped with lap/shoulder belts in 1988 convertible models made by BMW, Mercedes-Benz, and Saab. NHTSA concurs with Mazda's assertion that it will be more difficult to install rear seat lap/shoulder belts in convertibles than in other passenger cars. The greater degree of difficulty for convertibles is a good reason for proposing to allow manufacturers a longer leadtime to install rear seat lap/shoulder belts in convertibles. Accordingly, this notice proposes to allow manufacturers two additional years after other passenger cars are required to be equipped with rear seat lap/shoulder belts before imposing the same requirement for convertibles.

However, the greater degree of difficulty for convertibles is not sufficient to justify proposing to exempt convertibles from any requirements. The voluntary actions by other convertible manufacturers show that the difficulties in installing rear seat lap/shoulder belts in convertibles can be overcome. The agency does not believe that rear seat occupants of convertibles should be denied the greater safety protection of lap/shoulder belts, simply because greater engineering efforts are required to install those belts in convertibles, compared with sedans or station wagons. Therefore, this proposal treats convertibles just like all other passenger cars, and requires *all* passenger cars to be equipped with lap/shoulder belts at rear outboard seating positions.

NHTSA acknowledges that convertibles are not required to have lap/shoulder belts installed at front outboard seating positions prior to September 1, 1989. However, as of September 1, 1989, all convertibles must comply with the automatic crash protection requirements of S4.1.2.1 of Standard No. 208. NHTSA gave convertibles a longer leadtime to comply with the front seat occupant protection requirements, by permitting manufacturers to exclude convertibles from their production totals during the phase-in of the automatic crash protection requirements. With the additional leadtime, however, NHTSA determined that there was no reason to treat convertibles any differently than other passenger cars for front seat occupant protection. The agency is proposing to follow the same course in the case of rear seat occupant protection. That is, convertibles will be given more leadtime to comply with the rear seat occupant protection requirements but after that time will be subject to the same rear seat occupant protection standards as all other passenger cars.

b. Multipurpose Passenger Vehicles With a Gross Vehicle Weight Rating of 10,000 Pounds or Less

This vehicle type consists primarily of passenger vans with a seating capacity of 10 persons or less, and utility vehicles and other off-road vehicles. These vehicles are designed to transport passengers and perform some other specialized function. This type of vehicle represents a growing share of the market, so that the estimated safety benefits to rear seat occupants from lap/shoulder belts was greater than any other vehicle type, except passenger cars. Further, these vehicles are frequently purchased *because of* their greater passenger-carrying capacity. Thus, it is reasonable for the agency to infer that these vehicles will have a

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greater-than-average occupancy rate in the rear seats, with accompanying greater-than-average benefits from this proposed requirement. Accordingly, this notice proposes to require lap/shoulder belts in these vehicles.

Several of the commenters to the ANPRM expressed opinions about extending any requirement for lap-shoulder belts at rear outboard seating positions to multipurpose passenger vehicles (MPVs). Chrysler noted its plans to install such belts in MPVs, and supported a requirement for such. The Insurance Institute for Highway Safety (IIHS) recommended that the proposed regulation should initially apply only to passenger cars and MPVs, since rear seat occupants of these two vehicle types would experience almost all of the total benefits estimated from rear seat lap/shoulder belts. Land Rover, a British manufacturer of MPVs, stated that all of its vehicles sold in the United States are already equipped with lap/shoulder belts at the rear outboard seating positions.

On the other hand, Mr. Robert Schlegel, a private citizen, recommended that NHTSA defer any actions on rear seat lap/shoulder belts in MPVs until it can evaluate the effectiveness of those belts in passenger cars. The American Seat Belt Council similarly recommended that the question of rear seat lap/shoulder belts in MPVs not be addressed in this proposal, arguing that the low belt use in the rear seats of these vehicles would result in low cost-effectiveness for such a proposal. Several vehicle manufacturers noted that structural modifications would be needed to allow MPVs to accommodate rear seat shoulder belts. As previously noted, Standard No. 210 does not currently require MPVs to have anchorages installed for rear seat shoulder belts. Finally, Ford stated that it plans to install rear seat lap/shoulder belts in its MPVs, but that it was uncertain whether it could develop a practicable rear seat should belt for its Bronco line of MPVs.

The suggestions that the agency should concentrate initially on only passenger cars, the vehicle type with the highest benefits, and later extend the requirement for rear seat lap/shoulder belts to MPVs if those belts were effective in passenger cars, were carefully considered by the agency. For the following reasons, NHTSA has decided to include MPVs in this proposal. As noted above, MPVs, especially passenger vans, frequently have rear seat occupants. In fact, passenger vans, especially the newer "mini-vans," are frequently purchased to accommodate, and used for, the same family transportation purposes for which station wagons were used exclusively in the past. Accordingly, only passenger cars have higher estimated benefits from rear seat lap/shoulder belts.

NHTSA concurs with the ANPRM commenters that noted that structural changes will be necessary to permit MPVs to be equipped with rear seat shoulder belts. However, these structural changes do not generally pose major technical difficulties, as evidenced by the rear lap/shoulder belts installed in 1988 vans manufactured by General Motors, Toyota, and Volkswagen, and 1988 off-road vehicles manufactured by Isuzu, Range Rover, and Toyota. The agency does not question that there may be some difficulties with installing rear lap/shoulder belts in some particular models, such as the Ford Bronco, but NHTSA has no reason to believe that these difficulties cannot be overcome. Since rear seat lap/shoulder belts in MPVs would offer greater safety benefits than any other vehicle type except passenger cars, and there are no extraordinary technical problems associated with the installation of such belts in MPVs, NHTSA has decided to propose to require the installation of those belts in MPVs. As was the case for convertibles, this notice proposes to allow manufacturers a longer period of time before requiring rear seat lap/shoulder belts in MPVs than it would allow passenger cars other than convertibles. The leadtime issue is discussed more fully later in this preamble.

c. Light Trucks and Small Buses

The light truck category consists primarily of extended cab pickup trucks with a rear seat in the cab and cargo vans with some limited rear seat positions. Light trucks are designed primarily to transport property, as evidence, for example, by having more cargo room than passenger-carrying space (cargo vans), or by having an open bed for hauling cargo (pickups), or transport special purpose equipment.

The small bus category consists primarily of vehicles that are passenger vans with more than 10 seating positions. In most other respects, small buses are very similar to passenger vans. The vehicles are designed to transport passengers in greater numbers than other passenger-carrying vehicles.

NHTSA acknowledges that the estimated benefits that would accrue to rear seat passengers in both light trucks and small buses from lap/shoulder belts at outboard seating positions are much less than for passenger cars and MPVs. However, NHTSA has tentatively determined that these lesser benefits may reflect the low production volume of these vehicles, rather than an inherently lower risk to rear seat occupants. Since only about 4,000 small buses are produced annually, and since most light trucks do not have rear seating positions, the injuries and fatalities to rear seat occupants of small buses and light trucks predictably will be far less in absolute numbers than the injuries and fatalities to rear seat occupants of passenger cars and MPVs. Thus, the agency acknowledges that its accident data for rear seat occupants reflect relatively small numbers of fatalities and injuries to rear seat occupants of small buses and light trucks compared to passenger cars and MPVs.

On a per rear outboard seat occupant basis, however, the agency believes that the benefits for rear seat occupants of small buses and light trucks are probably comparable to the benefits for rear seat occupants of standard passenger vans. Indeed, common sense and knowledge in this area suggest that a person riding in a rear seating position in a cargo van (classified as a light truck) or a passenger van with more than 10 seating positions (classified as a small bus) should be afforded the same level of protection as would be afforded when riding in a rear seating position in a passenger van with 10 or fewer seating positions (classified as an MPV). With respect to pickup trucks that have rear seating positions, the agency has no reason to believe that occupants of those seats experience any lesser benefits from lap/shoulder belts than would be experienced by rear seat occupants in comparably sized passenger vans. Since the benefits on a per vehicle basis would be similar to those for MPVs, this notice proposes to establish a requirement that light trucks and small buses be equipped with lap/shoulder belts at all rear outboard seating positions. Manufacturers would be allowed the same leadtime for installations in these vehicles as is proposed for MPVs.

Blue Bird Body Company (Blue bird), a school bus manufacturer, commented that a requirement for rear seat lap/shoulder belts on small school buses would create a conflict between applicable standards for small school buses. This conflict would arise, according to the commenter, because the only anchorage location for shoulder belts for center and aisle seats would be the seat back itself. Blue Bird asserted that the seat strength necessary to comply with Standard No. 210's anchorage strength requirements would force the seat back to no longer comply with Standard No. 222's limits on seat strength. This comment is now moot since this proposal requires rear seat lap-shoulder belts only at outboard seating positions. Outboard anchorages can be located on the vehicle side structure, if desired, instead of the seat back, thereby eliminating any alleged potential conflicts for school bus manufacturers.

NHTSA acknowledges that there is currently no requirement for small buses to be equipped with lap/shoulder belts at *front* outboard seating positions. The agency notes that the front seats generally present a more hostile crash environment that the rear seats, because front seat occupants have the steering wheel, dash panel, windshield, and the like in front of them, instead of seat backs. Hence, these occupants would seem likely to experience even greater benefits from the increased effectiveness of lap/shoulder belts than rear seat occupants. A lap/shoulder belt for the driver would assist the driver in maintaining control of the vehicle during crash avoidance maneuvers. The greater effectiveness of lap/shoulder belts should also maximize the chances of the driver being able to assist the bus passengers out of the bus in the event of a crash. As noted above, the small bus category consists primarily of passenger vans that have more than 10 seating positions and that small buses are in most other respects similar to passenger vans. There is no obvious reason to require passenger vans with 10 or fewer seating positions to have lap/shoulder belts at front outboard designated seating positions, and not require passenger vans with 11 or more seating positions to comply with the same requirement. On a per front seat occupant basis, the benefits for front seat occupants should be comparable.

For these reasons, this notice proposes that small buses also be required to have lap/shoulder belts at all front outboard seating positions. The agency believes that most small buses are already so equipped, so minimal costs should be associated with this proposal. Structural modifications will be necessary for those small buses that are not already equipped with front outboard lap/shoulder belts, however. To accommodate the legitimate leadtime needs of these small buses, this proposed requirement would apply to small buses manufactured on or after September 1, 1991. Comments are invited on the agency's tentative determination that there is a safety need for this requirement, the number of small buses that are *not* currently equipped with lap/shoulder belts at front outboard seating positions, and whether the proposed leadtime is sufficient to make any necessary structural changes to small buses.

4. Vehicle Types NOT Covered by This Proposal

a. Vehicles with a Gross Vehicle Weight Rating of More Than 10,000 Pounds

NHTSA has traditionally used gross vehicle weight ratings as dividing lines for the purposes of applying occupant crash protection standards. These groupings reflect the differences in the vehicles' functions and crash responses and exposure. This proposal would also use such a dividing line, by addressing only vehicles with a gross vehicle weight rating of 10,000 pounds or less.

b. Motor Homes

Some of the commenters to the ANPRM suggested that motor homes should be exempted from the rear seat lap/shoulder belt requirements. The Recreational Vehicle Industry Association (RVIA) commented that recreational vehicles have many diverse seating configurations, such as side-facing sofas, dinettes, and barrel chairs that lock in a side-facing position. RVIA argued that it would be very complex and expensive to install lap/shoulder belts for these rear seating positions. Additionally, RVIA argued that the resulting "clutter" of lap/shoulder belts would impede movement throughout a recreational vehicle and otherwise interfere with its "residential functions." Fleetwood Enterprises, a manufacturer of motor homes, commented that lap/shoulder belts in the rear of its products "may create usability and human factor concerns which are not now in the product."

This agency has long said that rear seating positions in motor homes, including side facing sofas and barrel chairs and dinette chairs, are designated seating positions. Accordingly, section S4.2.2 of Standard No. 208 requires those seating positions to be equipped with lap belts, if the vehicle has a gross vehicle weight rating of 10,000 pounds or less. Thus with respect to the need for occupant protection, the agency has heretofore treated sofas, dinette chairs, etc., just like standard bench seats in the rear of MPVs.

However, the agency believes there is some merit to the comments that lap/shoulder belts at these seating positions might interfere with the seating positions' ability to perform residential functions when the vehicle is not in motion. This effect could be mitigated by installing lap/shoulder belts that are integrated into the seats. Nevertheless, the agency has tentatively concluded that shoulder belts at rear seating positions in motor homes might interfere with the residential purposes of those seating positions, especially for low back and/or sofa-type seats. Such possible interference might be necessary, if NHTSA had evidence indicating that significant benefits would result from lap/shoulder belts at these positions. However, NHTSA has no accident or other data that would allow it to project any significant benefits from real seat lap/shoulder belts in motor homes. Therefore, this notice excludes motor homes from its proposed requirements.

For the purposes of this rulemaking, the agency is proposing a definition of "motor home" to permit it and the public to distinguish objectively between motor homes and van conversions that do not qualify as motor homes. A "motor home" would be defined as "a motor vehicle with motive power that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: Cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and sink; and a separate 110–125 volt electrical power supply and/or an LP gas supply." This proposed definition has been derived from the definition of "motor home" specified in the 1987 version of the Uniform Traffic Code. Vehicles that do not include at least four of the listed facilities woud *not* be considered motor homes. The public is specifically invited to comment on whether this proposed definition is broad enough to include all vehicles commonly called "motor homes," yet narrow enough to exclude van conversions that would not ordinarily be termed "motor homes."

5. Retractor Types Required for Rear Seat Lap/Shoulder Belts

NHTSA's decision to proceed with a proposal to require rear seat lap/shoulder belts is based on the agency's tentative conclusion that these types of belts will increase belt use in the rear seats. NHTSA has already established performance requirements for the comfort and convenience of lap/shoulder belts installed at front outboard seating positions in vehicles with a gross vehicle weight rating of 10,000 pounds or less: 50 FR 46056, November 6, 1985. The reasons for establishing these requirements were to

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enhance belt use by vehicle occupants. In the notice establishing these requirements, NHTSA said:

> Automatic locking retractors are inconvenient to use since they must be extended in a single continuous movement to a length sufficient to allow buckling or they will lock. They also tend to tighten excessively under normal driving conditions, sometimes making it necessary to unbuckle and refasten the lap belt to relieve pressure on the pelvis and abdomen. Neither of these problems exists with the emergency locking retractor, which allows occupant movement without tightening and locks only upon rapid occupant movement, vehicle deceleration, or impact. 50 FR 46057.

For these reasons, section S7.1.1.3 of Standard No. 208 requires that only emergency locking retractors (ELR) be used on lap/shoulder safety belts installed at front outboard seating positions of vehicles manufactured on or after September 1, 1986.

The agency has tentatively determined that these same considerations apply with equal force to the lap/shoulder belts proposed to be required by this notice. If these lap/shoulder belts do not increase rear seat belt use, the anticipated benefits from those belts would be significantly reduced. Hence, this notice proposes to apply the requirements for ELR's set forth in S7.1.1.3 to the lap/shoulder belts to be required by this proposal. The agency specifically invites comments on the costs of converting to ELR's at rear outboard seating positions. Manufacturers are requested to submit an estimate of the number of vehicles by vehicle type (passenger car, MPV, light truck, and small bus) that will have to be changed from ALR's to ELR's. The public is also invited to submit their own estimates of the net costs of making this change and the net weight increase (if any) that would result from this change.

Two of the commenters to the ANPRM raised questions about the compatibility of ELR's and child restraint systems. Cosco, a child restraint manufacturer, asserted in its comments that ELR lap/shoulder belt systems are not compatible with child car seats. Cosco also expressed its opinion that a lap/shoulder belt with an ELR for the shoulder belt and an automatic locking retractor (ALR) for the lap belt would be compatible with child car seats, as would ELR lap belts that convert to ALR when fully extended, and suggested that a proposal require either of these for rear seat lap/shoulder belts. Cosco commented that this rule should consider the compatibility between child restraints and vehicle safety belts thoroughly in this rulemaking. The Physicians for Automotive Safety also raised the same points in its comments, and recommended that any ELR lap belts convert to ALR when fully extended, as installed on some current models of General Motors' vehicles.

NHTSA considered this question in detail in the 1985 rule requiring ELR's for front outboard seating positions. The alleged problem of incompatibility between child car seats and ELR's is based on the fact that the ELR locks only upon rapid occupant movement, vehicle deceleration, or impact. ALR's lock into position upon adjustment. The agency said:

> Child restraint manufacturers stated that some restraint devices, when positioned by safety belt systems which are adjusted by ELR's, become unstable when occupied by very active children. Agency testing of child restraint devices under conditions of low-speed braking and vehicle manuevers indicates that, although improvements in belt systems could improve the stability of these devices, there are no data to show that low-speed movement of child safety seats is affecting the safety performance of child restraint devices in motor vehicle accidents. (Docket No. 80-18-GR-004).
>
> Because the agency's research did not show that low-speed movement of the seats is actually reducing the effectiveness of child restraints in accidents, and because after-market locking devices are available which achieve the same goal, it has decided not to adopt a manual locking requirement for ELR's at this time. The agency will continue to monitor the potential problems associated with the restraint of child restraint devices by ELR safety belt systems and consider whether to address these problems in future rulemaking actions. 50 FR 46056, at 46057; November 6, 1985.

The aftermarket locking devices to which that notice referred are called "locking clips." Locking clips can prevent movement of belts equipped with ELR's. Cosco stated in its comments that,

> While locking clips make this type of belt (i.e., one with an ELR for the lap belt) compatible with child car seats, locking clips are frequently not used.

NHTSA has thoroughly considered this issue again in connection with this proposal. NHTSA believes that rear selt belts can and should provide comfort and convenience for adult users *and* provide effective protection for children. While the agency welcomes public comments setting forth new information developed since the 1985 rule, the agency has tentatively determined that effective protection for both children and adults can be achieved without proposing any additional requirements for lap belt retractors.

Additionally, the agency has heard reports that some current combinations of child restraints and rear safety belt systems may be incompatible. For example, some have said that a rear set lap/shoulder belt may be too short to fit around a child safety seat. NHTSA is also aware that a task force of the Society of Automotive Engineers (SAE) has developed a draft test procedure involving a test fixture, to assist both vehicle manufacturers and child seat manufacturers to prevent any future incompatibilities. The agency specifically solicits comments on the current magnitude of the incompatibility problem, whether a requirement for integrated lap/shoulder belts might exacerbate this problem, and whether NHTSA should include in any final rule on this proposal a minimum length requirement for rear seat belts, or some other performance requirements that will ensure that child restraints can be used in all passenger-carrying vehicles.

After a child has outgrown a car seat, the child can be protected by placing him or her in a type of child restraint called a "booster seat." Booster seats are often designed to use vehicle shoulder belts to provide additional upper torso restraint. Thus, children protected by those types of booster seats should experience some incremental safety benefits from this proposal to require lap/shoulder belts in rear outboard seating positions.

However, NHTSA acknowledges that many parents do not use booster seats to protect their children after the children have outgrown car seats, although booster seats provide better protection, by using the shoulder belt to offer upper torso support, than lap belts alone. Many of these children are not yet big enough to use the shoulder belt in the rear seat, even when they slide as far inboard as possible, since it could pass over their neck or face. When a shoulder belt passes over a child's face or neck, the agency recommends that a booster seat be used for the child. If a booster seat is not used, the shoulder belt should be routed behind the child, and the child should be protected only by the lap belt. Once the child is large enough for the shoulder belt to fit properly, the child should wear the shoulder belt for maximum safety protection.

Accordingly, the agency believes that this proposal for rear seat lap/shoulder belts would offer benefits for children riding in some types of booster seats, would have no positive or negative effects on children riding in most designs of car seats and children that are too small to use shoulder belts, and would offer older children the same incremental safety protection that would be afforded adult rear seat occupants. The agency specifically requests comments as to whether its tentative assessment of the impacts of this proposed rule on child rear seat occupants is correct.

6. The Requirements With Which Rear Seat Lap/Shoulder Belts Must Comply

The ANPRM asked commenters to provide data on testing in which test dummies were restrained by lap/shoulder belts in the rear seat. This request for comments reflected NHTSA's belief in the desirability of crash testing to determine compliance with occupant protection requirements. Crash testing is the most representative surrogate measure of the protection afforded vehicle occupants during an actual crash. Accordingly, Standard No. 208 was recently amended to provide that manual lap/shoulder belts installed in the front outboard seating positions of most light trucks and MPVs must meet the occupant protection requirements applicable to automatic restraint systems in cars, beginning September 1, 1991. The standard also provides that, if the automatic restraint requirement is rescinded, all passenger cars with manual lap/shoulder belts installed in the front outboard seating position must meet dynamic testing requirements, beginning September 1, 1989. Additionally, passenger cars with air bags at the driver's position are permitted to have manual lap/shoulder belts at the right front passenger's position until September 1, 1993, but those manual belts must meet the automatic restraint occupant protection requirements, beginning September 1, 1989.

Several commenters to the ANPRM alleged that there were a number of technical issues that must be resolved before any requirement for crash testing of rear seat belts could be implemented. For example, Ford argued that the 50th percentile adult male dummy (the specified size for the test dummy) would not be representative of the typical rear seat occupant, more than half of whom are teenagers and younger children. Ford also argued that the 50th percentile adult male dummy may not readily fit in many rear seats with the front seat in the mid-range adjustment position. Even if that dummy would fit in the rear seats of the vehicle being tested, Ford noted that there is currently no procedure for positioning a test dummy in any rear seating positions. Ford asserted that past experience with positioning test dummies in front seating positions suggests that considerable time and effort will be needed to develop a rear seat positioning procedure that accurately and repeatedly positions dummies in rear seats.

General Motors (GM) stated its belief that the current occupant injury limits specified in Standard No. 208 can be met in a 30 mile per hour barrier crash test by lap/shoulder belt restrained dummies in rear outboard seats. GM submitted some confidential testing results to support this belief. Notwithstanding this belief, GM argued that any crash testing requirement for rear seat occupant protection would not be practicable, because the cost of certification would be approximately doubled, if rear seats were tested separately. If rear seats were required to be tested simultaneously with front seat automatic restraints, GM suggested that it might have to retest all vehicles it had previously certified as complying with the front seat requirements, to ensure that the presence of instrumented dummies in the rear seat did not affect the measured crash responses of the dummies in the front seat.

A number of other manufacturers commented that a requirement for crash testing would move the United States farther away from harmonization with the European requirements. These commenters urged the agency to adopt a requirement for rear seat belts that was harmonized with ECE 14, which does not require vehicle dynamic testing.

NHTSA agrees with Ford and GM that neither dummy positioning procedures nor testing procedures for rear seat occupants have yet been developed. In addition, when NHTSA conducts its Standard No. 208 compliance testing for front seat automatic restraints, it generally removes the rear seats to allow it to achieve more easily the specified weight distribution and to more readily accommodate additional instrumentation. Additionally, the need for crash test verification of a vehicle's occupant protection in rear seating positions may be less than in front seating positions. The rear seating positions offer a relatively more benign crash environment, bacause only seat backs are in front of the occupant, not a steering wheel, instrument panel, and so forth encountered by front seat occupants. Therefore, this notice does not propose that safety belts for rear seat occupants be subject to any additional testing requirements. Instead, those safety belts would continue to be required to comply with the requirements of Standard No. 209, in the case of the belt assemblies, and Standard No. 210 in the case of the anchorages.

The decision not to propose any crash testing requirements leads NHTSA to also propose that rear lap/shoulder belts must be integral, i.e., the lap belt must not be detachable from the shoulder belt. Standard No. 208 permits manufacturers to install manual belt systems in front outboard seating positions of some percentage of their passenger cars until September 1, 1989. Section S4.1.2.3.1 specifies that manual belts installed at front outboard seating positions must be either (a) integral lap/shoulder belts or (b) crash-tested lap belts such that the car complies with the occupant protection requirements when test dummies are restrained only by the lap belts. In practice, all vehicles have complied with this option by installing integral lap/shoulder belts. NHTSA believes it is appropriate to extend the requirement for integral lap/shoulder belts to those that would be required in rear outboard seats under this proposal.

Only one commenter to the ANPRM addressed the issue of whether lap/shoulder belts in the rear should be required to be integral. Ford stated that rear seat lap/shoulder belts should be nonintegral for several reasons. First, Ford commented that a large percentage of rear seat occupants are subteen children for whom shoulder belt use may not be appropriate because of their size. Second, Ford commented that most of its van-type MPV's are equipped with readily removable seats. Ford stated that the lap belts for these seats are mounted on the seat frame so that the belts are removed along with the seats. However, Ford believes that the seat frames cannot be designed to provide the anchorage for both lap and shoulder belts. Hence, Ford suggested that nonintegral lap/shoulder belts be permitted, so that it could continue to anchor lap belts on the readily removable seats in MPV's.

The agency does not believe that either of these points is sufficiently persuasive to permit nonintegral lap/shoulder belts to be installed under this proposed rule. Nonintegral shoulder belts require the occupant to separately buckle a lap belt and a shoulder belt. The agency long ago determined that nonintegral shoulder belts result in a lower use rate for shoulder belts. This lower use rate means that nonintegral shoulder belts offer safety benefits significantly below the level estimated for integral shoulder belts. Thus, Standard No. 208 has required lap/shoulder belts installed at front outboard seating positions to be integral for all cars manufactured on or after September 1, 1973 (37 FR 3911; February 24, 1972).

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NHTSA does not disagree with Ford's contention that, for children that are too small to wear a shoulder belt, it would probably be more convenient to just detach the shoulder belt from the lap belt instead of routing the integral shoulder belt behind them. However, the convenience of detachability would also result in lower use of the shoulder belt in general. Lower use of shoulder belts than estimated would yield correspondingly lesser benefits than estimated.

Ford's example of the convenience of nonintegral shoulder belts for the readily removable seats in MPV's is another particular situation in which a nonintegral shoulder belt would be more convenient for an occupant. Again, however, the detachability would lead to lower shoulder belt use and lower safety benefits. The agency also believes that manufacturers are capable of designing an integral lap/shoulder belt system that would be nearly as convenient as a nonintegral shoulder belt in MPV's with readily removable seats. For instance, a shoulder belt that is readily detachable at the anchorage could be used for the outboard seating positions.

7. Comfort and Convenience

The ANPRM noted that in November 1985, the agency had amended Standard No. 208 to establish a new set of performance requirements aimed at making safety belts easier to put on and more comfortable to wear. Several of those performance requirements, such as the requirements in S7.4.6 that are designed to prevent safety belts from slipping between the seat cushions, apply to both the front and rear seats. Thus, those requirements would apply to rear seat lap/shoulder belts without any additional amendments in this proposal.

However, the ANPRM also noted that some of the performance requirements apply only to automatic or manual lap/shoulder belts installed in the front seat of vehicles. For example, S7.4.3 limits the pressure that can be exerted on an occupant by a shoulder belt, but applies only to front seats. The ANPRM asked for comments on whether the safety belt comfort and convenience requirements that apply to front seat manual lap/shoulder belts should be extended to apply to rear seat lap/shoulder belts.

The American Seat Belt Council commented that, "Considerations for comfort and convenience of seat belts should apply equally in front or rear seat applications. The actual requirements will not necessarily be identical but will rather be appropriate analogous requirements." On the other hand, many of the manufacturers commented that the comfort and convenience requirements in S7.4 of Standard No. 208 depend on the use of a properly positioned test dummy in the seating position, and that no dummy positioning procedures had been proposed for rear seating positions. The manufacturers commented that several different factors would have to be considered in developing dummy positioning procedures for rear seating positions, because the dummies are not as flexible as human occupants.

The purpose of the comfort and convenience requirements in Standard No. 208 is to promote increased safety belt use by eliminating objectionable or bothersome characteristics associated with some safety belt system designs. NHTSA believes that this purpose is equally applicable and appropriate for rear seating positions. However, the commenters were correct in noting that compliance with S7.4.2 through S7.4.5 is determined with reference to a test dummy. The agency believes that a properly positioned dummy is the best surrogate measurement of a belt system's comfort and convenience for actual occupants. Other surrogate measurements could be used, such as requirements for performance at a specified percentage of a belt's full extension or by reference to a zone around a seating position. However, NHTSA has not yet developed any alternative surrogate measurements for comfort and convenience in rear seating positions. As is the case with crash testing requirements discussed above, the agency does not believe it would be appropriate to delay this rulemaking to allow the agency to develop a full set of comfort and convenience requirements.

The performance requirements in S7.4.6, *Seat belt guides and hardware*, currently apply to all manual seat belt assemblies, whether installed in front or rear seats. This notice does not propose to exempt rear seat lap/shoulder belts from these requirements. Hence, they will also apply to manual lap/shoulder belts installed in compliance with this proposed rule.

One remaining issue in this area relates to tension-relieving devices on rear seat lap/shoulder belts. The agency has repeatedly stated that the added potential to improve belt fit and the added comfort of shoulder belts equipped with tension-relieving devices is desirable in certain circumstances, because those features could serve to enhance proper belt use. *See, e.g.*, 50 FR 46056; November 6, 1985. However, the agency has also expressed its concern that *excessive* slack could compromise belt effectiveness. On balance, the agency concluded that tension-relieving devices should continue to be permitted on belt assemblies, but that certain special conditions (i.e., those specified in S7.4.2 of Standard No. 208) should apply to vehicles that had belt assemblies at front outboard seating positions that were equipped with tension-relieving devices, so as to reduce the likelihood of misuse.

NHTSA believes that the same considerations should apply to rear outboard seating positions that have belt assemblies equipped with tension-relieving devices. The requirements of S7.4.2 for front outboard seating positions that have belt assemblies equipped with tension relieving devices are:

1. The vehicle owner's manual must include an explanation of how the tension-relieving device works and recommend a maximum amount of slack that should be introduced into the belt under normal circumstances (S7.4.2(b));

2. The vehicle must comply with the injury criteria specified in S5.1 of Standard No. 208 during a barrier crash test with the shoulder belt webbing adjusted to introduce the maximum amount of slack recommended by the manufacturer (S7.4.2(a)); and

3. The vehicle must have an automatic means to cancel any shoulder belt slack introduced into the belt system by a tension-relieving device (S7.4.2(c)).

The second requirement listed above cannot be applied to rear seat lap-shoulder belts equipped with tension-relieving devices at this time, because the agency is not yet in a position to propose rear seat dummy positioning procedures. However, this notice proposes to apply the other two requirements listed above to rear seat lap/shoulder belts equipped with tension-relieving devices. As explained above, the agency believes that the need for crash testing of rear seating positions may be less compelling than for front seating positions, because the rear seat is generally a more benign crash environment. Even absent a crash testing provision, the agency has tentatively concluded that requirements that information on proper use of rear seat tension-relieving devices be provided in the owner's manual and that any slack be automatically cancelled under certain conditions will adequately serve to minimize the likelihood of misuse of tension-relieving devices on rear seat belt assemblies. Given the importance of increasing rear sat belt use, this notice proposes to permit tension-relieving devices on rear seat lap/shoulder belts subject to these two requirements, and requests comments on this issue. NHTSA is particularly

interested in learning commenters' views as to whether the absence of a dynamic testing requirement for tension-relieving devices in the rear seat might permit a net degradation of safety because of occupant misuse of the devices.

8. Relationship of This Proposal to Standard No. 210

Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210), establishes requirements for belt assembly anchorages, to ensure that belt assemblies will provide effective occupant protection. Section S4.1.1 of Standard No. 210 provides that seat belt anchorages for a Type 2 seat belt assembly shall be installed for each forward-facing outboard designated seating position in passenger cars other than convertibles, and for each designated seating position for which a Type 2 seat belt assembly is required by § 571.208 in vehicles other than passenger cars.

The Type 2 seat belt assembly to which the Standard refers is a lap/shoulder belt. Hence, all passenger cars other than convertibles are already required to provide anchorages for a lap/shoulder belt at forward-facing rear outboard seating positions. Hence, passenger cars other than convertibles would only be required to have seat belt assemblies installed on existing anchorages to comply with this proposed rule.

Convertibles are currently exempted from this requirement in Standard No. 210. As explained above, NHTSA is proposing to require that convertibles comply with this proposed requirement for rear seat lap/shoulder belts. This requirement would not achieve the anticipated benefits if those lap/shoulder belts are not effectively anchored to the convertible. Hence, this notice proposes to amend Standard No. 210 to delete the existing exemption for convertibles from rear seat lap/shoulder belt anchorages.

S4.1.1 of Standard No. 210 would automatically require anchorages for rear seat lap/shoulder belts in all other vehicle types covered by this proposal, since it requires such anchorages when Standard No. 208 requires lap/shoulder belts. This notice proposes to amend Standard No. 208, so there is no need to propose to amend Standard No. 210 as it applies to these vehicle types.

9. Proposed Timing for Applying These Requirements to Vehicle Types

As explained above, it would be a relatively simply matter for manufacturers of passenger cars other than convertibles to comply with this proposed requirement for rear seat lap/shoulder belts, since those vehicles are already required to be equipped with anchorages for such belts. The only additional steps that would be needed for these cars would be the installation of the lap/shoulder belt assemblies. While some time may be needed to change the production process to accomplish such installations, that time should not be very long. This is particularly true because so many manufacturers are already planning to have rear lap/shoulder belts in their 1990 model year cars. Accordingly, this notice proposes that the requirements for rear seat lap/shoulder belts in passenger cars other than convertibles apply to cars manufactured on or after September 1, 1989.

In the case of convertibles and the other vehicle types covered by this proposal, it would not be so relatively simply to comply with these proposed requirements. Since these vehicles are not currently required to have anchorages for rear seat lap/shoulder belts, those anchorages would have to be installed. In many cases, such installations would require structural changes to the vehicles. NHTSA recognizes that it would be necessary to give the manufacturers sufficient time to make the engineering and design changes necessary to install rear lap/shoulder belts. Some of the commenters to the ANPRM pointed out difficulties that would be presented for existing designs of vehicle models in complying with a requirement for rear seat lap/shoulder belts. To accommodate these legitimate needs, while ensuring that rear seat lap/shoulder belts would be available as soon as practicable, this notice proposes that a final rule apply to convertible passenger cars and the other vehicle types discussed in this notice manufactured on or after September 1, 1991.

Economic and Other Impacts Associated With This Proposal

NHTSA has analyzed this proposal and determined that it is not "major" within the meaning of Executive Order 12291. The information currently available to the agency about the manufacturers' plans to voluntarily install rear seat lap/shoulder belts is that 99.4 percent of all cars will have those belts installed by the dates proposed in this rule, that 94.4 percent of utility vehicles will have rear seat lap/shoulder belts voluntarily installed by the proposed dates, 98.0 percent of compact vans will have rear seat lap/shoulder belts installed by the proposed dates, and 100 percent of light trucks, standard vans, and small buses will have rear seat lap/shoulder belts installed by the proposed dates. The manufacturers of these vehicles have chosen to install rear seat lap/shoulder belts absent any regulatory requirement to do so, so the costs of those rear seat lap/shoulder belts are not treated as a cost attributable to this rule. The costs to manufacturers to install rear seat lap/shoulder belts in those vehicles that would not have these belts if this rule is not made final are estimated to be $1.5 million. This is well below the $100 million costs that are needed to classify a rule as "major" for the purposes of Executive Order 12291.

This proposal is, however, "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because of the public interest in this proposal. In accordance with the requirements of the Department's regulatory policies and procedures, a Preliminary Regulatory Evaluation (PRE) has been prepared for this proposal, and a copy of the PRE has been placed in the public docket for this rulemaking action. A copy of the PRE may be obtained by writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590.

Additionally, the agency has analyzed the effects of this proposal on small entities, in accordance with the Regulatory Flexibility Act. Based on this analysis, I hereby certify that this proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities. Few, if any, of the vehicle manufacturers qualify as small entities. To the extent that any vehicle manufacturers qualify as small entities, their number would not be substantial. The proposed requirements would not affect the manufacturing process of any safety belt manufacturers that are small entities, nor will it significantly affect the retail price of vehicles purchased by any small organizations or small governmental units.

The agency has also analyzed this proposal under the National Environmental Policy Act and determined that it would not have a significant effect on the human environment, if it were adopted as a final rule.

This proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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The Office of Management and Budget (OMB) has already approved NHTSA's requirement that instructions appear in a vehicle owner's manual concerning the proper use of any tension-relieving devices installed at front outboard seating positions in cars (OMB #2127-0541). However, this proposal would expand the scope of that requirement to apply to rear outboard seating positions of cars and other vehicle types. This expansion is considered to be an information collection requirement, as that term is defined by OMB in 5 CFR Part 1320. Accordingly, this proposed requirement will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on this proposed information collection requirement should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR §§ 571.208 and 571.210 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S4.1.4 of Standard No. 208 would be revised to read as follows:

S4.1.4 *Passenger cars manufactured on or after September 1, 1989.*

S4.1.4.1 Except as provided in S4.1.5 and S4.1.4.2, each passenger car manufactured on or after September 1, 1989 shall comply with the requirements of S4.1.2.1. Until September 1, 1993, each car whose driver's designated seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose right front designated seating position is equipped with a manual Type 2 seat belt that meets the requirements of S5.1, with the Type 2 seat belt assembly adjusted in accordance with S7.4.2, shall be counted as a vehicle complying with S4.1.2.1. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.1.4.2 Each passenger car manufactured on or after September 1, 1989 shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

* * * * *

3. S4.1.5.1 of Standard No. 208 would be revised to read as follows:

S4.1.5.1 If the Secretary of Transportation determines, by not later than April 1, 1989, that State mandatory safety belt usage laws have been enacted that meet the criteria specified in S4.1.5.2 and that are applicable to not less than two-thirds of the total population of the 50 States and the District of Columbia (based on the most recent Estimates of the Resident Population of States, by Age, Current Population Reports, Series P-25, Bureau of the Census), each passenger car manufactured under S4.1.3 or S4.1.4 on or after the date of that determination shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3. If such a determination is made, each passenger car manufactured on or after September 1, 1989 shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR § 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

* * * * *

4. A new S4.2.4 would be added to Standard No. 208, to read as follows:

S4.2.4 *Trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with a GVWR of 10,000 pounds or less.* Each truck and each multipurpose passenger vehicle, except a motor home, manufactured on or after September 1, 1991 that has a gross vehicle weight rating of 10,000 pounds or less shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR § 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

* * * * *

5. S4.4 of Standard No. 208 would be amended by adding a new S4.4.3 to read as follows:

S4.4 *Buses.*

* * * * *

S4.4.3 *Buses manufactured on or after September 1, 1991.*

S4.4.3.1 Each bus with a gross vehicle weight rating of more than 10,000 pounds shall comply with the requirements of S4.4.2.1 or S4.4.2.2.

S4.4.3.2 Each bus with a gross vehicle weight rating of 10,000 pounds or less shall be equipped with an integral Type 2 seat belt assembly at the driver's designated seating position and at every forward-facing outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. The lap belt portion of a Type 2 seat belt assembly installed at the driver's seating position shall include an automatic locking retractor, which retractor shall not retract webbing to the next locking position until at least ¾ inch of webbing has moved into the retractor. In determining whether an automatic locking retractor complies with this requirement, the webbing is extended to 75 percent of its length and the retractor is locked after the initial adjustment. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

* * * * *

6. S7.1.1 of Standard No. 208 would be revised to read as follows:

S7.1 *Adjustment.*

S.7.1.1 Except as specified in S7.1.1.1 and S7.1.1.2, the lap belt of any seat belt assembly furnished in accordance with S4.1.1 and S4.1.2 shall adjust by means of an automatic locking retractor that complies with § 571.209 to fit persons whose dimensions range from those of a 50th percentile 6-year-old child to those of a 95th percentile adult male and the upper torso restraint shall adjust by means of an emergency locking retractor or a manual adjusting device that complies with § 571.209 to fit persons whose dimensions range from those of a 5th percentile adult female to those of a 95th percentile adult male, with the seat in any position and the seat back in the manufacturer's nominal design riding position. However, an upper torso restraint furnished in accordance with S4.1.2.3.1(a) shall adjust by means of an emergency-locking retractor that complies with § 571.209. In the case of a swivel seat, the seat shall comply with the above requirements with the seat in any position in which it can be occupied while the vehicle is in motion and with the seat back in the manufacturer's nominal design riding position.

§ 571.210 [Amended]

7. S4.1.1 of Standard No. 210 would be revised to read as follows:

S4.1.1 Seat belt anchorages for a Type 2 belt assembly shall be installed for each forward-facing outboard designated seating position in passenger cars other than convertibles and for each designating seating position for which a Type 2 seat belt assembly is required by Standard No. 208 (49 CFR § 571.208) in vehicles other than passenger cars. Seat belt anchorages for a Type 2 seat belt assembly shall be installed for each rear forward-facing outboard designated seating position in convertible passenger cars manufactured on or after September 1, 1991.

* * * * *

Issued on November 23, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-27509 Filed 11-25-88; 9:55 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 81132-8232]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1989 initial specifications of groundfish, prohibited species catch limits, and apportionment of reserves; request for comments.

SUMMARY: NOAA proposes 1989 initial total allowable catches (TACs) and apportionments for each category of groundfish, establishment of prohibited species catch (PSC) limits for sablefish, rockfish, and Pacific halibut, and apportionment of reserves in the Gulf of Alaska. This action is necessary to provide the public with the Secretary of Commerce's (Secretary) preliminary determinations about the initial TACs, apportionments, PSC limits, and reserve apportionments, and to obtain public comment on those determinations. The intended effect of this notice is to provide the Secretary with the best available information on which to base final 1989 initial specifications of TAC and apportionments and to provide opportunity for public participation in this decision-making process.

DATE: Comments are invited until December 23, 1988.

ADDRESS: Comments should be sent to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

This notice invites comments on three management proposals related to groundfish management in the Gulf of Alaska for the 1989 fishing year. They are: (A) Specifications of TAC and apportionments, (B) PSC limits for fully utilized groundfish species and for Pacific halibut, and (C) apportionments of groundfish reserves. Each of these proposals is discussed below.

(A) Total Allowable Catches

Specifications of TACs of groundfish species in the Gulf of Alaska are authorized by the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This FMP was developed

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under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.92 and Part 672. The sum of the TACs for all species must fall within the combined optimum yield (OY) range of 116,000–800,000 metric tons (mt), which is established for these species.

TACs are apportioned initially among domestic annual processing (DAP), joint venture processing (JVP), reserves, and total allowable level of foreign fishing (TALFF) for each species under § 611.92 and § 672.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen deliver their catches to foreign processing vessels authorized to receive U.S.-harvested groundfish. TALFF amounts are intended for harvest by foreign fishermen. The reserves for the Gulf of Alaska are 20 percent of the TAC for each species category. These reserve amounts are set aside for possible reapportionment to DAP or to JVP if the initial apportionments prove inadequate. Reserves which are not reapportioned to DAP or JVP may be reapportioned to TALFF.

Under § 611.92 and § 672.20(a)(2), the Secretary, after consultation with the North Pacific Fishery Management Council (Council), shall specify the TAC for each calendar year for each target species and the "other species" category, and shall apportion the TACs among DAP, JVP, reserves, and TALFF. The sum of the TACs must be within the OY range.

Under § 672.20(c)(1), the preliminary specifications of DAP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to U.S. processors, assuming sufficient TAC. The preliminary specifications of JVP will be amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to foreign processors, subject to reductions to accommodate increasing DAP and availability of TAC. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and the extent to which U.S. processing and harvesting will occur during the coming year. These projections will be based on the latest reliable information that is available, including industry surveys, market data, and stated intentions by representatives for the U.S fishing industry.

The Council met during September 28 through October 1, 1988, to review information on the status of groundfish stocks. New information, which is still being assembled by the NMFS Northwest and Alaska Fishery Center, will not be available to the Council until its December 1988 meeting. Nevertheless, the Council considered recommendations made by its Advisory Panel (AP), its Scientific and Statistical Committee (SSC), and the Plan Team for Gulf of Alaska. The AP recommended that the Council adopt the Plan Team's estimates of preliminary acceptable biological catches (ABCs) for each of the target species and for the "other species" category. The SSC recommended that the Council adopt different ABCs for pollock, flounder, sablefish, slope rockfish, and pelagic shelf rockfish, but did agree with the Plan Team that little information exists to establish an ABC for demersal shelf rockfish. The SSC recommended that the Council adopt the Plan Team's recommendation for Pacific cod and thornyhead rockfish. The Council also considered public testimony.

For pollock, the Council recommended a 0–50,000 mt ABC range and then set TAC equal to ABC and DAP equal to 80 percent of the TAC. The balance of 20 percent of TAC is established as a reserve as required by § 672.20(a)(2)(i). The Council then adopted the SSC's recommended ABCs for Pacific cod, sablefish, and thornyhead rockfish. Because the SSC's recommended ABCs for flounders, "other rockfish", and pelagic rockfish differed from those recommended by the Plan Team, the Council adopted ABC ranges that accommodated both the SSC and Plan Team recommendations. Because survey information is not yet available from the fishing industry to determine the needs of the DAP or JVP components of the domestic annual harvest, the Council set preliminary TACs equal to those implemented in 1988. It then set preliminary DAPs equal to each of the TACs after subtracting 20 percent from each of the Pacific cod and flounder TACs to establish the species specific reserve.

The Plan Team's resource assessment document (RAD) that formed the basis for the Council's deliberations is summarized for each of the target species and "other species" categories as follows:

Pollock

The biomass of pollock has been declining since 1983, after reaching a peak in 1981 and 1982. Depending on the various recruitment scenarios and catch levels used to forecast pollock abundance, the biomass was projected to rebuild to between 866,600 metric tons (mt) and 1,051,500 mt in 1988. Biomass estimates, however, have been based on hydroacoustic surveys conducted in Shelikof Strait, which lies between Kodiak Island and the Alaska Peninsula. These surveys have been focused on pollock while they are in spawning condition during March and April. Since few pollock were believed to be present outside Shelikof Strait during this time, the information obtained was thought to represent most of the pollock biomass occurring in the Western and Central Regulatory Areas. In addition to the hydroacoustic survey, other information on pollock abundance has been obtained from bottom trawl surveys that are conducted every three years in other parts of the Gulf of Alaska. The last such survey was conducted in 1987.

The 1988 hydroacoustic survey produced a biomass estimate of only 330,000 mt, which is the lowest on record. The low biomass is attributed to poor recruitment of the 1984 year class, which would otherwise have recruited into the fishery in 1987 as 3-year-old fish. In 1988, they should been available as 4-year-old fish. Other information obtained from the 1987 triennial bottom trawl survey also shows a decline. The decline appears to have occurred between 1984 and 1987. Biomass estimated from the 1987 bottom trawl survey was about 593,000 mt, and although the 1987 bottom trawl survey showed a decline in the status of pollock, the decline was not as large as the hydroacoustic survey suggests. Because the 1987 bottom trawl survey showed pollock to be in greater abundance than did the 1988 hydroacoustic survey, it is questionable whether the hydroacoustic survey provides the best estimates of pollock abundance for the entire Western and Central Regulatory Areas. An estimate can be made of total biomass if the hydroacoustic survey is considered to assess only a fraction of total biomass. Using information from the 1986 hydroacoustic survey, the 1987 bottom trawl survey, and the 1988 hydroacoustic survey, the range of total biomass is between 330,000 mt and 593,000 mt.

At any catch levels during 1989 of 0–50,000 mt, no significant differences are noted in biomass projections. On this basis, the Council adopted a preliminary ABC range equal to 0–50,000 mt and set TAC equal to ABC. No information is available to change the 3,375 mt ABC for pollock in the Eastern Regulatory Area.

Pacific Cod

Pacific cod stocks are currently healthy, although stock size appears to be decreasing. The best estimate of exploitable biomass is 449,300 mt. The Plan Team recommended an ABC range of between 93,900 mt and 175,000 mt, based on calculating fishing mortality which maximizes yield. The Council adopted preliminary ABC of 99,000, which is equal to the 1988 ABC, but set the preliminary TAC equal to 80,000 mt to reduce bycatches of Pacific halibut. TAC is apportioned to the management areas as follows: 19,000 mt in the Western Regulatory Area; 60,800 mt in the Central Regulatory Area; and 200 mt in the Eastern Regulatory Area.

Flounders

Stocks of flounder are in good condition. Total biomass is about 2,110,000 mt, of which one species—arrowtooth flounder—contributes about 54 percent, or 1,144,000 mt. Biomass estimates from the 1984 and 1987 triennial bottom trawl surveys indicate that exploitable biomass for all flounders combined has increased about 3 percent, to 767,700 mt. The Plan Team recommended ABC be set equal to the exploitable biomass, but recognized that this figure may be too large because the natural mortality rates used to calculate it may be unrealistically high. Using the 0.12 and 0.2 natural mortality rates observed for yellowfin sole and the other flounders species, respectively, in the Bering Sea, the SSC recommended an ABC for all flounders, combined, of 345,000 mt. The Council adopted a range for ABC of 345,000–767,000 mt, but recommended that the preliminary TAC for flounders be set equal to 23,000 mt to reduce bycatches of Pacific halibut. TAC is apportioned to the management areas as follows: Western Regulatory Area—1,600 mt; Central Regulatory Area—21,300 mt; and Eastern Regulatory Area—100 mt.

The Secretary notes the statement in the RAD that the Council may wish to separate arrowtooth flounder from the flounder group to prevent adverse impacts on individual flounder species, which might otherwise be overharvested if fishing were directed at them while harvesting the entire TAC. The RAD shows the ABC for arrowtooth flounder to be about 303,800 mt, which is about 40 percent of the ABC for the flounder group. Since arrowtooth flounder is presently not commercially valuable, the Secretary recognizes that NMFS surveys of the Industry's intent to harvest and process flounder would be more accurate if arrowtooth flounder were separated from the flounder group. The Secretary requests comment on the appropriateness of making this separation.

Sablefish

The sablefish biomass peaked in 1985 and appears to have declined slightly as determined by the 1987 Japan-U.S. cooperative longline survey. Results of the 1988 survey will be available before the December 1988 Council meeting. The Plan Team recommended an ABC range of between 30,000 and 40,000 mt, although the equilibrium level is 30,000 mt. The SSC recommended that the ABC should be equal to a midpoint of this range, or 35,000 mt. The Council adopted this recommendation for ABC. The Council set a total TAC of 28,000 with preliminary TACs apportioned among the regulatory areas and districts: Western—4,060 mt; Central—12,540 mt; West Yakutat—4,900 mt; and Southeast Outside/East Yakutat—6,500 mt.

Rockfish Assemblages

The same three categories of rockfish in the genus *Sebastes* are proposed to be managed in 1989 as in 1988. These categories are "other rockfish", pelagic shelf rockfish, and demersal shelf rockfish. They are described as follows:

"Other rockfish"—In the Western and Central Regulatory Areas and the Eastern Regulatory Areas west of 137° W. longitude, "other rockfish" means the 18 species of slope rockfish and the ten species of demersal shelf rockfish listed in the footnote to Table 1 of this notice. TACs will be established for these combined assemblages in these management areas. In the Southeast District, "other rockfish" means the 18 species of slope rockfish only. TACs will be established for this assemblage of 18 species in the Southeast Outside District.

Pelagic shelf rockfish—In the Western, Central, and Eastern Regulatory Areas, pelagic shelf rockfish means the five rockfish species listed in the footnote to Table 1 of this notice. TACs will be established for this assemblage in each of these regulatory areas.

Demersal shelf rockfish—In the Southeast Outside District, demersal shelf rockfish means the ten rockfish species listed in the footnote to Table 1 of this notice. A TAC will be established in the Southeast Outside District.

The condition of, and Council action for, each of the rockfish assemblages that make up the three categories are as follows:

The condition of slope rockfish is good and believed to be increasing in abundance. Exploitable biomass is estimated to be about 702,000 mt. About 14 percent of this amount, or 99,700 mt, is composed of a subcategory called "deep slope" rockfish. The balance is composed of a subcategory called "shallow slope" rockfish. The Plan Team recommended a Gulf of Alaska-wide ABC of 14,050 mt, based on a calculated of the F_{MSY} factor of 0.02 times exploitable biomass. The SSC recommended an ABC of 28,200 mt, using an F_{MSY} factor of 0.04. The Council adopted a preliminary ABC equal to a range of 14,040–28,200 mt and set a preliminary TAC equal to 16,800 mt, apportioned among the regulatory areas as follows: 4,850 mt in the Western Regulatory Area; 7,100 mt in the Central Regulatory Area; and 4,850 mt in the Eastern Regulatory Area.

The condition of pelagic shelf rockfish is stable. The current exploitable biomass was estimated at 164,000 mt. The Plan Team recommended a Gulf of Alaska-wide ABC of 3,300 mt. The SSC recommended that the same procedure used to establish an ABC for slope rockfish be used for this category. Therefore, using an F_{MSY} factor of 0.04, the SSC calculated an ABC equal to 6,000 mt, and believes it to be conservative, because the bottom trawl surveys used to estimate biomass do not sample this category well. The Council adopted a primiminary ABC equal to a range of 3,300–6,600 mt and set a preliminary TAC equal to 3,300 mt, apportioned among the management areas as follows: 550 mt in the Western Regulatory Area; 2,350 mt in the Central Regulatory Area; and 400 mt in the Eastern Regulatory Area.

No biomass or yield estimates are available for demersal shelf rockfish. This rockfish assemblage is the target of a hook-and-line fishery in the Southeast Outside District. Information from the Alaska Department of Fish and Game on this rockfish assemblage suggests that the population is declining. The Plan Team considers that the ABC is likely an amount below the 1988 harvest, which is about 600 mt. At this time, the Council has recommended that the preliminary TAC should be set equal to the 1988 TAC of 660 mt.

Thornyhead Rockfish

The Plan Team recommended that the ABC should be set equal to the 1988 amount of 3,750 mt. The SSC agreed with the Plan Team's recommendation, noting that the 1988 catch is the highest on record. The Council also adopted an ABC of 3,750 mt and set a preliminary Gulf of Alaska-wide TAC equal to ABC.

"Other species"

No recommendations were made by the Plan Team for this group. Under the FMP, the TAC for this species category is to be set at 5 percent of the sum of the TACs established for the other groundfish categories.

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The Council requested that the Secretary propose the above TACs under § 672.20(c)(1). The Council also recommended initial reserves for pollock, Pacific cod, and flounders under this paragraph but did not recommend reserves for the other groundfish species. The Council also recommended that DAP for each species be set equal to TAC, or to 80 percent of TAC for those species for which a reserve has been established.

The Secretary has reviewed the Council's recommendations for ABCs and the current specifications of TAC, DAP, JVP, reserves, and TALFF. He proposes the TACs as recommended by the Council, with the understanding that each is subject to change following that December 1988 Council meeting. The final determinations of the extent to which U.S. processing and harvesting will occur during the coming year will be made based upon the public comments on this notice and a domestic processor survey made by the Regional Director in November 1988.

(B) Fully Utilized Species and Pacific Cod

Section 672.20(b)(1) specifies that if the Secretary determines, after consultation with the Council, that the TAC for any species or species group will be fully harvested in the DAP fishery, he may specify for each calendar year the PSC limit applicable to the JVP and TALFF fisheries for that species or species group. Any PSC limit specified shall be for bycatch only and cannot be retained. During 1988, the Secretary had specified PSC limits for sablefish and "other rockfish" that were applicable to JVP. These respective amounts were: Sablefish—188 mt; and "other rockfish"—432 mt. Comments are invited on these PSCs, but the public is cautioned that these amounts are likely to change at the December 1988 Council meeting, depending on amounts of groundfish that might be allocated to JVP. Other PSC limits may be established as well, depending upon specifications of DAP amounts.

Section 672.20(f)(2)(i) specifies a framework procedure for setting PSC limits for Pacific halibut. The Secretary, after consultation with the Council, will publish a notice in the **Federal Register** as soon as practicable after October 1 of each year, specifying the proposed Pacific halibut PSC limits in the regulary areas for JVP and DAP fisheries. If the Regional Director determines that the catch of Pacific halibut by U.S. vessels fishing in DAP or JVP operations will reach a PSC limit, he will publish a notice in the **Federal Register** prohibiting fishing with trawl gear other than off-bottom trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies. He may allow some of the those vessels to continue to fish for groundfish using bottom trawl gear under specified conditions.

At its September 1988 meeting, the Council did not recommend PSC limits for 1989, because not enough information is yet available to determine the balance between DAP and JVP specifications by target species and the "other species" category. The Secretary, therefore, is publishing the PSC limits for halibut that were in effect during 1988 and proposes them for 1989. They are 240 mt of catch in the JVP fisheries and 4,240 mt of catch in the DAP fisheries and, given the expected halibut mortality resulting from a mix of gear types, are consistent with the Council's goal to not exceed 2,000 mt of halibut that might be killed in the groundfish fishery.

The PSC limits for halibut are derived from historical bycatch rates experienced by vessels while targeting on groundfish. These rates, expressed as percentages in the following tabulation, are proposed for use in calculating the 1989 halibut PSC limits that will apply to DAP and JVP fisheries while trawling for groundfish with bottom trawls and mid-water trawls and while fishing for Pacific cod and sablefish with hook-and-line gear.

	Bottom Trawl		Mid-water trawl		Hook-and-line			
					Pacific cod		Sablefish	
	W	C	W	C	W	C	W	C
DAP	2.53	2.53	0.06	0.06	5.23	9.15	1.2	1.2
JVP	2.53	2.53	0.06	0.06	5.23	9.15		

W=Western Regulatory Area. C=Central Regulatory Area.

The resulting apportionment of PSC limits for halibut between DAP and JVP is preliminary at this time and will be reviewed at the December 1988 Council meeting when the Council makes its final recommendations. Public comment on the appropriateness of these rates relative to the health of halibut stocks, fishery-experienced rates in 1988, and the goals and objectives of the FMP are particularly requested. Public comments are also requested on the appropriateness of the estimate of halibut mortality rates after release assumed for the various fisheries as shown in the following tabulation:

	Assumed mortality (percent)
Bottom trawl:	
DAP	50
JVP	100
Off-bottom trawl:	
DAP	0
JVP	0
Hook-and-line:	
DAP	25
JVP	25

(C) Apportionment of Groundfish Reserves

At this time, the Secretary is proposing that reserves for each appropriate species category be apportioned to DAP under § 672.20(d)(1), subject to change after the December 1988 Council meeting. TALFF is set at zero. The Council did not recommend any amounts for JVP. However, § 672.20(c)(1) requires that JVP be set at least equal to amounts harvested in 1988, subject to reductions to accommodate any increases in DAP. Because JVP fishermen harvested 1,500 mt of Pacific cod and 1,900 mt of flounders in the Central Regulatory Area in directed fisheries in 1988, and because the Secretary has not determined that those amounts will be harvested in DAP fisheries during 1989, the Secretary is proposing at this time that JVP be set equal to 1,500 mt and 1,900 mt, respectively, for these two species as required by regulations. TALFF is set equal to zero, because the Secretary expects all species will be fully utilized by U.S. fishermen in 1989, either in DAR or JVP fisheries.

TABLE 1.—PRELIMINARY ABCs, TACs, DAPs, JVPs, RESERVES, AND TALFFs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE/EAST YAKUTAT (SEO/EYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA

Species	Area [1]	ABC	TAC	Reserve	DAP	JVP	TALFF
Pollock	W/C	0–50,000	0–50,000	0	0–50,000	0	0
	E	3,375	3,375	0	3,375	0	0
Total		0–53,375	0–53,375	0	0–53,375	0	0
Pacific cod	W	19,000	19,000	0	19,000	0	0
	C	73,000	60,800	0	59,300	1,500	0
	E	7,000	200	0	200	0	0
Total		99,000	80,000	0	78,500	1,500	0
Flounders	W	69,000–142,650	1,600	0	1,600	0	0
	C	239,000–538,280	21,300	0	19,400	1,900	0
	E	37,000–86,770	100	0	100	0	0
Total		345,000–767,700	23,000	0	21,100	1,900	0
Sablefish	W	5,075	4,060	0	4,060	0	0
	C	15,680	12,540	0	12,540	0	0
	WYK	6,125	4,900	0	0	0	0
	SEO/EYK	8,120	6,500	0	6,500	0	0
Total		35,000	28,000	0	28,000	0	0
Other [2] and [3] Rockfish	W	3,400–6,800	4,850	0	4,850	0	0
	C	6,100–12,200	7,100	0	7,100	0	0
	E	4,550–9,200	4,850	0	4,850	0	0
Total		14,050–28,200	16,800	0	16,800	0	0
Pelagic [4] Shelf Rockfish	W	550–1,100	550	0	550	0	0
	C	2,350–4,700	2,350	0	2,350	0	0
	E	400–800	400	0	400	0	0
Total		3,300–6,600	3,300	0	3,300	0	0
Demersal [5] shelf rockfish	SEO	Unknown	660	0	660	0	0
Thornyhead rockfish	GW	3,750	3,750	0	3,750	0	0
Other species [6]	GW	N/A	7,800–10,400	0	7,800–10,400	0	0
Total		500,100–993,625	163,310–219,285	0	159,910–215,885	3,400	0

[1] See Figure 1 of § 672.20 for description of regulatory areas/districts.
[2] The category "other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat and East Yakutat Districts includes Slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southest Outside District includes Slope rockfish.
[3] The category slope rockfish includes *Sebastes polyspinis* (northern rockfish), *S. alutus* (Pacific ocean perch), *S. Aleutianus* (rougheye), *S. zacentrus* (sharpchin), *S. Borealis* (shortraker), *S. aurora* (aurora), *S. melanostomus* (blackgill), *S. goodei* (chilipepper), *S. crameri* (darkblotched), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* pygmy), *S. babcocki* (redbanded), *S. jordani* (shortbelly), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth)
[4] The category pelagic shelf rockfish includes *Sebastes melanops* (black) *S. mystinus*, (blue) *S. ciliatus* (dusky) *S. entomelas* (widow), and *S. flavidus* (yellowtail)
[5] The category demersal shelf rockfish includes *Sebastes paucispinis* (bocaccio), *S. nebulosus* (China), *S. caurinus* (copper), *S. Maliger* (quillback), *S. pronger* (redstripe), *S. helvomaculatus* (rosethorn), *S. brevispinis* (silvergray), *S. nigrocinctus* (tiger), S. *rubermmus* (yelloweye), *S. pinninger* (canary).
[6] The category "other species" includes Atka mackerel, sculpins, sharks, skates, eulachon, smelts, and octopus. The TAC is equal to 5% of the TACs of the target species.

The results of the industry survey, which NMFS will conduct prior to the Council's December 1988 meeting, may show that U.S. fishermen intend to harvest certain species in excess of the initial specifications of DAP and up to the amount equal to TAC. Because reapportioning the entire reserve to DAP would result in no amount being available to JVP or TALFF, comments are also invited on appropriate bycatch amounts that might be required as bycatch in JVP or TALFF fisheries for other groundfish species.

Any additional information on the actual plans of U.S. fishermen and processors for harvesting and processing groundfish will be considered by the Secretary when making his final decision on the Council recommendations for 1989 initial apportionments of TACs in the Gulf of Alaska.

Public comments on the above groundfish apportionments, PSC limits, and reserve reapportionments will be accepted by the Secretary for 30 days after this notice is filed for public inspection with the Office of the Federal Register. The Secretary will consider timely comments and, after consultation with the Council, specify the final PSC limits and annual TAC for each target species and the "other species" category and apportionments thereof among DAP, JVP, TALFF, and reserves. These final amounts will be published as a notice in the **Federal Register** on or about January 1, 1989. These amounts will replace the corresponding amounts that were in place during 1988.

Other Matters

This action is taken under 50 CFR 611.92 and 672.20. It complies with Executive Order 12291 and is covered by the Regulatory Felxibility Analysis

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prepared for the implementing regulations.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: November 23, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-27502 Filed 11-23-88; 4:15 pm]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 675

[Docket No. 81131-8231]

Groundfish of the Bering Sea and Aleutian Islands; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary 1989 initial specifications of groundfish; request for comments.

SUMMARY: NOAA proposes 1989 initial specifications of total allowable catches (TACs) and initial apportionments for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area. This action is necessary to solicit public comments on preliminary determinations of the initial specifications of TAC and apportionments of groundfish that may be harvested in the BSAI area in 1989. The intended effect of this notice is to provide the Secretary of Commerce (Secretary) with the best available information on which to base final 1989 initial specifications of TAC and apportionments and to provide opportunity for public participation in this decision-making process.

DATE: Comments are invited until December 23, 1988.

ADDRESS: Comments should be sent to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, MNFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI area are governed by Federal regulations (at 50 CFR 611.93 and Part 675) which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) and approved by the Secretary under the Magnuson Fishery Conservation and Management Act.

The FMP and implementing regulations require the Secretary, after consultation with the Council, to specify each calendar year the TAC for each target species and the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). The regulations further require the Secretary to annually publish preliminary TACs and the apportionments of each TAC and receive public comment on these amounts for a period of 30 days (§ 675.20(a)(6)). Table 1 satisfies this requirement. After considering all timely comments and after consultation with the Council, the Secretary will publish the final annual TACs for 1989 and initial apportionments as soon as practicable after December 15, 1988.

The specified TACs for each species are based on the most recent biological and socioeconomic information. The Council, its Advisory Panel, and Scientific and Statistical Committee (SSC), at their September 1988 meetings, reviewed preliminary biological information about the condition of groundfish stocks in the BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the draft Resource Assessment Document (RAD) dated September 16, 1988. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The RAD contains a review of the latest scientific analyses and estimates of each species' biomass, maximum sustainable yield (MSY), acceptable biological catch (ABC), and other biological parameters.

Procedures for Estimating ABC

Calculation of ABC varies among species, depending on the quality of available data and prior knowledge of a species' stock status. The Plan Team has adopted three steps for estimating ABCs. First, age-structured models are used to estimate exploitable biomass of a stock and, when possible, to project the population dynamics of the stock in the near future, and to assess potential impacts of different catch levels.

Second, the ABC for a stock is calculated by multiplying an exploitation rate times the estimated exploitable biomass. Various exploitation rates or fishing mortality (F) rates may be used in this calculation. For example, the exploitation rate that would produce MSY (F_{MSY}) is used when the stock is known to be in good condition, high in abundance, and not in danger of drastic declines. However, when particular conservation or caution is indicated, the more conservative $F_{0.1}$ harvest strategy is used to determine an exploitation rate. This strategy determines a level of F at which the marginal increase in yield per recruit due to an increase in F is 10 percent of the marginal yield per recruit in a lightly exploited fishery. Recruitment refers to the growth of juvenile fish into the adult or exploitable population. Generally, the $F_{0.1}$ harvest strategy produces a more conservative exploitation rate than F_{MSY}. Another alternative is to use historical exploitation rates when historical fishery data indicate that a stock is not adversely affected by such rates.

Finally, an empirical estimation of ABC based on historical catch levels may be used when information is insufficient to estimate the biomass of a stock. Details of this and other calculation procedures are discussed in the 1988 draft RAD which is available on request from the Council.

A summary of ABCs for each species for 1989 and other biological data from the 1988 draft RAD is provided below. The Plan Team will revise the draft RAD at its November 1988 meeting and produce a final RAD with ABC recommendations prior to the Council's December 1988 meeting. At that time, the Council will develop TAC recommendations to the Secretary which are derived from the ABCs and adjusted for other biological and socioeconomic considerations. The TACs may be further adjusted so that their sum does not exceed the maximum optimum yield allowed by the FMP.

Apportionment of TAC

The amount of groundfish in each species TAC initially is reduced by 15 percent. The sum of these 15 percent amounts is the reserve. The reserve is not designated by species or species group and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing (§ 675.20(a)(3)).

This initial TAC (ITAC) for each target species and the "other species" category at the beginning of the year, which is equal to 85 percent of TAC, is then apportioned between the domestic annual harvest (DAH) category and the total allowable level of foreign fishing (TALFF). Each DAH amount is further apportioned between two categories of U.S. fishing vessels. he domestic annual processing (DAP) category includes U.S. vessels that process their catch on board or deliver it to U.S. fish processors. The joint venture processing (JVP) category includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive catches in the U.S. exclusive economic zone. In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). The initial DAP and JVP amounts for each target species and the "other species" category equal the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming year, subject to available TAC and accommodation of DAP. This projection is based on the latest reliable information that is available, including industry surveys, market data and the stated intentions of U.S. fishing industry representatives (§ 675.20(a)(4)).

The preliminary TACs, ITACs, reserve, and initial apportionments of groundfish in the BSAI area for 1989 are given in Table 1 of this notice. For purposes of this notice, the TACs and ITACs in Table 1 are the same as those for 1988, except for species for which the 1989 ABCs are less than their 1988 TACs. With few exceptions, the DAP, JVP, DAH, and TALFF amounts in Table 1 also represent the initial apportionments of the 1988 ITACs because of the current absence of information on domestic processing intentions in 1989. The exceptions include Bering Sea (BS) subarea pollock and Atka mackerel for which increased demand is anticipated, yellowfin sole and BS subarea sablefish which are affected by reduced ABCs, and rock sole and "other flatfish" which may be separate categories in 1989, pending Secretarial approval of Amendment 12 to the FMP. These amounts are subject to change as a result of public comment, additional analysis of the biological condition of the groundfish stocks, results of a November survey of domestic processing intentions in 1989, and consulation with the Council at its meeting scheduled for December 5-9, 1989.

Prohibited Species Catch (PSC) Limits

The Secretary received Amendment 12 to the FMP from the Council on August 7, 1988. Part of that amendment, if approved by the Secretary, would provide for annual specification of PSC limits for groundfish species or species groups for which the TAC can be completely harvested by domestic (i.e. DAH) fisheries. These PSC limits would apply to JVP and foreign fisheries in a manner described in the notice of proposed rulemaking published September 6, 1988 (53 FR 34322; see also correction notice at 53 FR 36696). Groundfish PSC limits are proposed for the 1989 fishing year in the following table. Calculation of these PSC limits is discussed in the RAD. The PSC limit for sablefish in the BS subarea is greater than the calculated amount of 1.45 mt to provide for a fair margin of incidental catch without exceeding the ABC. This PSC limit is the difference between the ABC and TAC of Bs-subarea sablefish.

Species	Initial PSC limits in metric tons	
	JVP	TALFF
Greenland turbot	60	0
Sablefish:		
Bering Sea	38	0
Aleutian Islands	47	0
Pacific Ocean perch:		
Bering Sea	28	0
Aleutian Islands	1,126	0
Other rockfishes:		
Bering Sea	31	0
Aleutian Islands	583	0

Summary of Biological Condition and ABCs

Pollock

The estimated abundance of pollock in the eastern Bering Sea (EBS, continental shelf area of the BS subarea to depths of 100 fathoms) has decreased. Based on a cohort analysis, the projected exploitable biomass (pollock aged 3-9 years) in 1989 will be about 5,300,000 mt, down from the 1988 estimate of 6,500,000 mt. However, historical exploitation of this stock has been low relative to exploitation rates for Asiatic stocks and model projections. The plan Team recommended an exploitation rate for the EBS stock of 25.3 percent based on the $F_{0.1}$ harvest strategy. At this rate, the calculated ABC for pollock in the EBS is 1,340,000 mt. For comparison, the ABC of this stock for 1988 was 1,500,000 mt, which was derived using an exploitation rate of 23 percent., The BS subarea incorporates some deep water areas of the Bering Sea in addition to the EBS continental shelf. The Plan Team has found that pollock in these deep water areas substantially differ in age structure from the EBS shelf and slope pollock. The Plan Team recommended a separate biomass estimate of 1,000,000 mt and an ABC of 230,000 mt for pollock in the off-shelf part of the BS subarea. The Council, however, declined to accept this recommendation.

The size and dynamics of the pollock population in the Aleutian Islands (AI) subarea are not well understood. The latest survey of the exploitable biomass in this subarea was in 1986 and produced an estimate of 890,000 mt. Based on an assumption that the rate of decline in the pollock biomass in the AI subarea was the same as in the BS subarea, the Plan Team estimated the AI exploitable biomass in 1989 to be 690,000 mt. The Plan Team calculated an ABC of pollock for the AI subarea to be 160,000 mt using an exploitation rate of 23 percent derived from the $F_{0.1}$ harvest strategy. These amounts are unchanged from those developed last year for 1988.

Pacific Ocean Perch (POP)

This is a species category which includes five species of rockfish in the genus *Sebastes* which inhabit outer continental shelf and upper slope areas. Generally, POP stocks continue to remain low in abundance relative to biomass levels during the early 1960s. In the BS subarea, the estimated exploitable biomass for 1989 of 101,100 mt is based on the mean of estimates from 1979-1985 trawl surveys of the EBS shelf. In the AI subarea, the 1989 estimated exploitable biomass of 276,500 mt is based on the mean of estimates from trawl surveys in 1980, 1983 and 1986. These biomass estimates are the same as those made last year for 1988 becuase there are no new data on which to base a change. For the same reason, the Plan Team recommended using the same 6 percent exploitation rate used last year for both subareas to calculate ABCs of 6,000 mt and 16,600 mt, respectively, for the BS and AI subareas. Both of these exploitation rates were derived using the $F_{0.1}$ harvest strategy which is intended to provide for some rebuilding of the POP species complex.

Other Rockfishes

This species category includes all species of *Sebastes* and *Sebastolobus* other than those in the POP complex. The estimated exploitable biomass for 1989, based on the same survey data and methods used for POP, is 7,100 mt in the BS subarea and 18,500 mt in the AI subarea. These estimates for 1989 are unchanged from 1988 estimates for the same reason POP biomass estimates were unchanged. Likewise, the Plan Team recommended no change in the exploitation rate of 6 percent, derived from the $F_{0.1}$ harvest strategy, for both subareas, which produces ABCs of 400 mt and 1,100 mt, respectively, for the BS and AI subareas.

Sablefish

The relative abundances of sablefish in the EBS and AI subareas have been estimated from U.S.-Japan cooperative

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longline surveys annually since 1982 and 1980, respectively. The 1987 survey data were the most recent data available to the Plan Team when the draft RAD was developed. Those data indicated a significant decrease in relative numbers and weight of sablefish in the EBS from 1986 to 1987. As a result, the projected exploitable biomass of sablefish in 1989 for the BS subarea is estimated to be 16,900 mt. This represents a 70 percent decrease from the estimated 1988 exploitable biomass. Preliminary assessment of the 1988 survey data, however, may moderate this decrease in biomass. The relative abundance of sablefish in the AI subarea showed no change from 1986 to 1987 and, therefore, the estimated exploitable biomass for 1989 in this area also remains unchanged at 96,300 mt. Due to uncertainty of stock abundance in the BS subarea, the Plan Team used an exploitation rate determined to maintain the sablefish biomass in equilibrium over the next five years. However, the Council followed the SSC's recommendation to use a fishing mortality rate equivalent to the natural mortality rate. This results in an exploitation rate of 9.1 percent for the BS subarea. Although this rate is higher than the 6 percent used to calculate the 1988 ABC, the 1989 ABC calculated using the lower biomass estimate is 1,538 mt, which is substantially (66 percent) less than the 1988 ABC. The exploitation rate for the AI subarea is unchanged from the 6 percent used to calculate the 1988 ABC and, therefore, the 1989 ABC for this subarea also is unchanged at 5,800 mt.

Atka Mackerel

Biological surveys in the AI subarea that cover the range of this species occur only once every three years. Data from the latest survey in 1986 indicate that biomass decreased 74 percent from 1983. Absolute abundance cannot be accurately estimated, however, which obviated the calculation of ABC by multiplying an F value by biomass. Instead, the $F_{0.1}$ harvesting strategy was used in a catch-at-age analysis. Based on indications of relatively weak recruitment during the years 1982–86, a conservative estimate from this analysis suggests an ABC of 21,000 mt. This analysis was performed originally for the 1988 fishing year. No new biological or catch data suggest a change in stock size or character. Therefore, the same ABC is recommended again for 1989.

Pacific Cod

The projected exploitable biomass in the BSAI area in 1989 is estimated to be 1,190,000 mt. Although this is about 20 percent lower than that estimated last year for 1988, the abundance of Pacific cod is considered high and stable. Exploitation at the F_{MSY} level recommended by the Plan Team would provide an exploitation rate of 31 percent. This is an increase over the 26 percent exploitation rate used to calculate the 1988 ABC but it is based on the same F_{MSY} harvesting strategy. The new exploitation rate calculates an ABC for 1989 of 370,600 mt, which is slightly less than the 385,300 mt ABC calculated for 1988.

Yellowfin Sole

This is the most abundant flatfish species in the EBS and second in abundance to pollock among all groundfish species mandaed under the FMP. The primary reason for its relatively high abundance is the strong recruitment of year classes spawned in the late 1960s and mid-1970s. Exploitable biomass is projected to increase from 1,400,000 mt in 1988 to 1,530,000 mt in 1989. The same $F_{0.1}$ exploitation strategy used in 1988 is used again in 1989. The resulting exploitation rate for 1989 of 16 percent, however, is less than the 18 percent used to calculate the 1988 ABC due to differences in an age-structured model. The calculated ABC for 1989 of 241,000 mt therefore also is less than the 1988 ABC of 254,000 mt.

Greenland Turbot

The Greenland turbot resource continues to decline in abundance and is probably below its long term average abundance. The declining trend, observed since 1980, is due to poor recruitment and is expected to continue into the early 1990s. The projected exploitable biomass for 1989 is estimated to be 370,700 mt. Forecasts for all conservative harvesting strategies, including no fishing, project continued declines in biomass. However, an exploitation rate of 3.4 percent, based on the conservative $F_{0.1}$ harvesting strategy, would provide an ABC in 1989 of 12,600 mt. This is the same exploitation rate used last year to calculate an ABC for 1988 of 14,100 mt.

Arrowtooth Flounder

The abundance of arrowtooth flounder has increased substantially in recent years due to progressively stronger recruitment since 1975. This trend appears to be continuing based on the 1988 summer trawl survey. The exploitable biomass of this species in 1989 is projected to be 552,600 mt. This is a 46 percent increase from the exploitable biomass estimated last year for 1988. An exploitation rate of 31 percent was derived from the F_{MSY} harvest strategy. The 1989 ABC using this rate is calculated to be 171,300 mt. This exploitation rate differs slightly from the 29 percent rate used to calculate the 1988 ABC of 109,500 mt. The small difference results from updating some biological parameters used in the population model. The ABC for 1989, however, represents an increase of 56 percent over that for 1988 due to the increased estimated biomass.

Rock Sole

If there is Secretarial approval of Amendment 12 to the FMP, fishing for rock sole will be managed separately from the "other flatfish" category for the first time in 1989. Trawl survey data indicate that the biomass of rock sole is high and appears to be increasing. The exploitable biomass in 1989 is projected to be 1,103,000 mt. An F_{MSY} harvest strategy was used to determine the exploitation rate of 13 percent because the biomass appears to be above the level that produces MSY. Using this exploitation rate, the ABC for 1989 was calculated to be 143,400 mt.

Other Flatfishes

The removal of rock sole from this category would leave it composed of flathead sole, Alaska plaice, and miscellaneous flatfishes. All species in this group appear to be in relatively high abundance; above the level necessary to produce MSY. The exploitable biomass of these fishes as a group in 1989 is projected to be 1,188,700 mt. The decrease in this estimate from the 2,140,000 mt estimate made last year for 1988 reflects the removal of rock sole from this category. The rock sole and "other flatfish" categories added together indicate a 7 percent increase in biomass over 1988. The F_{MSY} harvest strategy was used for all species in this category due to their population strength. This resulted in exploitation rates of 13 percent for flathead sole and Alaska plaice, and 15.5 percent for the miscellaneous flatfishes, approximately the same rates used last year to calculate the 1988 ABC. The resulting ABC for 1989 is calculated to be 184,300 mt, which is about 10 percent more than the 1988 ABC for "other flatfish" without rock sole.

Squid

Information on the distribution, abundance, and biology of squid stocks is insufficient for standard analysis of biomass and MSY. Based on historical catch data, primarily from foreign fisheries, harvests of 10,000 mt annually are believed to be sustainable. The 1989 ABC is therefore specified at 10,000 mt, as it was for 1988.

Other Species

This category includes species of sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. This group of groundfish is currently of minor economic value; fishing effort generally is not targeted on any of these species. However, they have potential economic value and are important ecosystem components. The estimated exploitable biomass of "other species" has remained relatively high and in 1989 is projected to be 673,600 mt. This represents an increase over the estimated 1988 exploitable biomass of 540,000 mt mostly due to an adjustment in the calculations from the trawl survey data. No significant change has been seen in this stock size since 1986. Harvesting this stock at near the historical exploitation rate of 8.8 percent appears appropriate given that recent catches of this group have been well below this level. Hence, the ABC of "other species" in 1989 is calculated to be 59,000 mt which is a 5,000 mt increase over the 1988 ABC for this species category.

Other Matters

This action is authorized under 50 CFR 611.93(b) and 675.20, complies with Executive Order 12291, and is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 23, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

TABLE 1.—PRELIMINARY 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	1989 TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
BS	1,300,000	1,105,000	900,000	205,000	1,105,000	0
AI	45,000	38,250	4,160	34,090	38,250	0
Pacific Ocean Perch:						
BS	5,000	4,250	4,250	0	4,250	0
AI	6,000	5,100	5,100	0	5,100	0
Other Rockfishes:						
BS	400	340	340	0	340	0
AI	1,100	935	935	0	935	0
Sablefish:						
BS	1,500	1,275	1,275	0	1,275	0
AI	5,000	4,250	4,250	0	4,250	0
Atka Mackerel:						
BSAI	21,000	17,850	3,000	14,850	17,850	0
Pacific Cod:						
BSAI	200,000	170,000	87,416	82,584	170,000	0
Yellowfin Sole:						
BSAI	241,000	204,850	60,000	144,850	204,850	0
Greenland Turbot:						
BSAI	11,200	9,520	9,520	0	9,520	0
Arrowtooth Flounder:						
BSAI	5,531	4,701	3,808	893	4,701	0
Rock Sole:						
BSAI	70,000	59,500	50,000	9,500	59,500	0
Other Flatfishes:						
BSAI	76,269	64,829	50,000	14,829	64,829	0
Squid:						
BSAI	1,000	850	850	0	850	0
Other Species:						
BSAI	10,000	8,500	2,000	6,500	8,500	0
Total	2,000,000	1,700,000	1,186,904	513,096	1,700,000	0

[1] Amounts are in metric tons.
[2] Initial TAC (ITAC)=0.85 of TAC; initial reserve=TAC—ITAC=300,000.
[3] DAP—Domestic annual processing.
[4] JVP—joint venture processing.
[5] DAH—DAP + JVP.
[6] TALFF—total allowable level of foreign fishing.

[FR Doc. 88-27501 Filed 11-23-88; 4:20 pm]
BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 81133-8233]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1989 fishing quotas and request for comments.

SUMMARY: NOAA issues a notice of proposed quotas for the surf clam and ocean quahog fisheries for 1989. These quotas were selected from a range defined as optimum yield (OY) for each fishery, as adjusted to reflect fishing activity at the end of 1988. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1989.

DATE: Comments will be accepted until December 23, 1988.

ADDRESS: Send comments on the proposed 1989 fishing quotas to Richard B. Roe, Regional Director, NMFS, 14 Elm Street, Gloucester, MA 01930-3799. Please mark the outside of the envelope "Surf Clam Quota Comments". Information used to justify the quota is available for public inspection during business hours at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst), 508-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as OY for each fishery.

In specifying the quota values in this section, the Secretary considered the latest available stock assessments prepared by NMFS, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopended to fishing as presented in a written report prepared by the Council and adopted by the Regional Director, Northeast Region, NMFS (Regional Director). The Secretary has also received and taken into account specific recommendations from the Council.

Surf clam quotas are divided into quarterly quotas as specified in § 652.21 (a), (b)(2), and (c)(2). Amounts underharvested or overharvested from quarterly quotas are applied to quotas of succeeding quarters or calendar years as specified in § 652.21 paragraphs (a)(3), (b)(3), (c)(3) and (d). Ocean quahog quotas may be divided into quarterly quotas if the Regional Director determines that it is necessary to distribute the quota throughout the year to prevent the annual quota from being exceeded.

As of September 30, 1988, surf clam landings from the Mid-Atlantic Area were 1,944,000 bushels out of an adjusted annual quota of 2,695,000 bushels. Landings of surf clams from the Georges Bank Area were 81,000 bushels out of an adjusted annual quota of 485,000 bushels. Nantucket Shoals Area surf clam landings were 159,000 bushels out of an adjusted annual quota of 205,000. Ocean quahog landings were 3,462,000 bushels out of a quota of 6,000,000 bushels. The adjusted surf clam quotas were taken from base quaotas of 2,650,000 bushels for the Mid-Atlantic Area, 300,000 bushels for the Georges Bank Area, and 200,000 bushels for the Nantucket Shoals Area.

The proposed quotas for the surf clam and ocean quahog fisheries for 1989 are:

1989 PROPOSED SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery areas	1989 proposed quotas (in bushels)
Mid-Atlantic surf clam	2,650,000
Georges Bank surf clam	300,000
Nantucket Shoals surf clam	200,000
Ocean quahog	5,200,000

The proposed surf clam quotas are the same as those which have been in place for the past 3 years. The proposed ocean quahog quota has been reduced, as recommended by the Council, in response to industry concerns of declining catch rates. This is evident in logbook returns from specific areas, although the overall catch rate appears to be stable. The proposed ocean quahog quota is equal to the highest historical catch (1985) of ocean quahogs.

The proposed quarterly surf clam quotas, by area, are:

1989 PROPOSAL SURF CLAM/OCEAN QUAHOG QUARTERLY QUOTAS

[in bushels]

Fishery areas	Qtr 1	Qtr 2	Qtr 3	Qtr 4
Mid-Atlantic surf clam	662,500	662,500	662,500	662,500
Georges Bank surf clam	75,000	75,000	75,000	75,000
Nantucket Shoals surf clam	40,000	60,000	60,000	40,000

If adopted, the proposed surf clam quotas and associated quarterly quotas will be adjusted based upon the final 1988 harvest data and notice will be published in the **Federal Register**. The amount of adjustment will be determined from the difference between the base 1988 quotas and the amount actually harvested. The regulations implementing the FMP do not provide for an adjustment of the ocean quahog quota, unless quarterly quotas have been established. To date, the Regional Director has not made a determination that quarterly quotas are necessary in this fishery.

Comments on the proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary, who will determine appropriate final annual quotas for each fishery and publish those quotas by notice in the **Federal Register**.

Other Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with E.O. 12291. The action is covered by the certification for Amendment 3 to the FMP, and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 22, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88-27398 Filed 11-23-88; 10:34 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 229

Tuesday, November 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

New Jersey Advisory Committee; Agenda of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 6:00 p.m. on Thursday, December 15, 1988, in the Sheraton Motor Inn, 195 Route 18 South, New Jersey Turnpike Exit 9, East Brunswick, NJ 08816. The Committee will discuss prospective programs and decide on a project activity. Dr. Barbara Anderson, director, office of equal educational opportunity, New Jersey Department of Education, and Ms. Reno O. Smith, president, NAACP Morris County, NJ chapter, will present background information on recent complaints of discrimination against minorities in special education programs in Morris County, NJ.

Persons desiring additional information, or planning a presentation to the Committee, should contract Committee Chairperson Stephen H. Balch on John I. Binkley, Director, Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 21, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88-27459 Filed 11-28-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 396]

Resolution and Order Approving the Application of the Greater Baton Rouge Port Commission for a Foreign-Trade Zone in the Baton Rouge, LA, Area

Proceedings of the Foreign-Trade Zone Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Baton Rouge Port Commission, filed with the Foreign-Trade Zones Board (the Board) on October 13, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites in East Baton Rouge, West Baton Rouge, and Iberville Parishes, Louisiana, within the Baton Rouge Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

FOREIGN-TRADE ZONES BOARD

Grant of Authority to Establish, Operate, and Maintain a Foreign-Trade Zone in the Baton Rouge, Louisiana, Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a through 81u) (the Act), the foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, The Greater Baton Rouge Port Commission (the Grantee) has made application (filed October 13, 1987, FTZ Docket 21-87, 52 FR 39673) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in East Baton Rouge, West Baton Rouge, and Iberville Parishes, Louisiana, within the Baton Rouge Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 154, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of

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any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, The Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Office at Washington, DC, this 2nd day of November, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-27500 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than December 31, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping duty proceeding:	
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings (A-351-602)	12/01/87—11/30/88
Canada: Elemental Sulphur (A-122-047)	12/01/87—11/30/88
Hong Kong: Photo Albums and Filler Pages (A-582-501)	12/01/87—11/30/88
Italy: Clear Sheet Glass (A-475-025)	12/01/87—11/30/88
Japan: Cellular Mobile Telephones and Subassemblies (A-588-405)	12/01/87—11/30/88
Japan: Certain Electric Motors of 150-500 HP (A-588-091)	12/01/87—11/30/88
Japan: Polychloroprene Rubber (A-588-046)	12/01/87—11/30/88
Japan: Steel Wire Strand for Prestressed Concrete (A-588-068)	12/01/87—11/30/88
Japan: Tuners (of the type used in consumer electronic products) (A-588-014)	12/01/87—11/30/88
Mexico: Porcelain-On-Steel Cooking Ware (A-201-504)	12/01/87—11/30/88
Netherlands: Animal Glue and Inedible Gelatin (A-421-060)	12/01/87—11/30/88
New Zealand: Low-Fuming Brazing Copper Rod and Wire (A-614-502)	12/01/87—11/30/88
The People's Republic of China: Porcelain-On-Steel Cookware (A-570-506)	12/01/87—11/30/88
The Republic of Korea: Photo Albums and Filler Pages (A-580-501)	12/01/87—11/30/88
Sweden: Certain Carton-Closing Staples and Staple Machines (A-401-004)	05/22/87—11/30/88
Sweden: Seamless Stainless Steel Hollow Products (A-401-603)	12/01/87—11/30/88
Sweden: Animal Glue and Inedible Gelatin (A-401-061)	12/01/87—11/30/88
Taiwan: Certain Carbon Steel Butt-Weld Pipe Fittings (A-583-605)	12/01/87—11/30/88
Taiwan: Porcelain-On-Steel Cooking Ware (A-583-508)	12/01/87—11/30/88
West Germany: Animal Glue and Inedible Gelatin (A-428-062)	12/01/87—11/30/88
Yugoslavia: Animal Glue and Inedible Gelatin (A-479-063)	12/01/87—11/30/88
Suspended investigation:	
Costa Rica: Cement (C-223-401)	10/01/87—09/30/88
Mexico: Polypropylene Film (C-201-006)	01/01/87—12/31/88
Mexico: Pectin (C-201-007)	01/01/87—12/31/87
Countervailing duty proceeding:	
Mexico: Litharge, Red Lead and Lead Stabilizers (C-201-005)	01/01/87—12/31/87
Mexico: Porcelain-On-Steel Cooking Ware (C-201-505)	01/01/88—12/31/88
Mexico: Toy Balloons and Playballs (C-201-004)	01/01/87—12/31/87

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by December 31, 1988.

If the Department does not receive by December 31, 1988 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on these entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Date: November 22, 1988.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 88-27499 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Pacific Northwest Fish Export Association, Inc.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commece to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to public a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85-2A0017."

OETCA has received the following application for a second amendment to Export Trade Certificate of Review #85-00017, which was issued on April 24, 1986 (51 FR 16089, April 30, 1986) and first amended on June 20, 1988 (53 FR 23781, June 24, 1988).

Applicant: Pacific Northwest Fish Export Association, Inc., ("PNFEA"), c/o DWJ Corp., 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington, 98101, Contact: James P. Walsh, legal counsel, Telephone: 202/822-9775.

Application #: 85-2A0017

Date Deemed Submitted: November 16, 1988.

Summary of the Application

PNFEA seeks to amend its certificate to:

Add the following company as a new "Member" of the certificate: Ward Cove Packing Company of Seattle, Washington.

Date: November 22, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-27469 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Reviews on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of requests for short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with requests to certain rotogravure doctor blade steel strip, and certain T-4 feeler gauge steel.

DATE: Comments must be submitted on or before December 9, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S.

• • • determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products• • •

We have received short-supply requests for the following products:

1. Certain Rotogravure Doctor Blade Steel Strip: 1% carbon, cold-rolled, hardened, tempered, polished, coiled, in thicknesses ranging from 0.00315 to 0.010 inch and in widths ranging from two to seven inches.

2. Certain Swedish T-4 Feeler Gauge Steel: general specification AISI 1095, hardened, tempered, bright polished, round polished edges in thicknesses ranging from 0.001 to 0.065 inch, and in widths of 0.250 inch and 0.505 inch.

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than December 9, 1988. Comment should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain each request and all comments on each request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file.

The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

November 22, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-27498 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Richmond, VA

November 21, 1988.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of April 1, 1989 to March 31, 1990. The MBDC will

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operate in the Richmond, Virginia, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165.000 in Federal funds and a minimum of $29.118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is January 3, 1989. Applications must be postmarked on or before January 3, 1989.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washington, DC 20230, 202/377–8275.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Date: November 18, 1988.

Willie J. Williams,

Regional Director, Washington Regional Office.

[FR Doc. 88–27490 Filed 11–28–88; 8:45 am]

BILLING CODE 3510–21–M

National Ocean and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910; or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422.

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331.

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–4366.

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753–4926.

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Building, Tampa, FL 33609, 813/228–2815.

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 SW. First Avenue, Portland, OR 97201, 503/221–6352.

Clearance Pautzske, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274–4563.

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368.

FOR FURTHER INFORMATION CONTACT: John D. Kelly or Robert Dickinson (Office of Fisheries, Conservation and Management 301–427–2339).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1989 have been received from the Governments shown below.

Dated: November 22, 1988.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code and fishery	Regional fishery management councils
ABS—Atlantic Billfish and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA—Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA—Gulf of Alaska Groundfish.	North Pacific.
NWA—Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA—Snail (Bering Sea).	North Pacific.
WOC—Pacific Coast Groundfish (Washington, Oregon and California).	Pacific.
PBS—Pacific Billfishes, Oceanic Sharks, Wahoo, and Mahimahi.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) supporting U.S. vessels (Joint Venture).
**	Cargo transport vessels with fish finding equipment on board receive an activity code 2 to enable them to perform both scouting as well as support activities.
***	Number to be assigned at a later date.

Joint Venture

East Coast Mackerel

The Governments of East Germany, Poland, the Soviet Union, the Netherlands and the United Kingdom applied for permits to engage in directed and joint venture activities for Atlantic mackerel in the NWA fishery.

The respective amounts requested by each government for joint venture and directed fishing are listed below. These are followed by the list of vessels for which permit applications have been received for the fisheries and activities noted.

Country	J/V mackerel (mt)	Directed mackerel (mt)	American partner
USSR	5,000	51,000	*Scan Ocean, Inc.*
Poland	3,500	10,500	*Scan Ocean, Inc.*
Netherlands	3,000	45,000	*Scan Ocean, Inc.*
East Germany	8,000	22,000	*Mayflower Inter. Inc*
United Kingdom, Northern Ireland	3,100	9,300	*Scan Ocean, Inc.*
United Kingdom	925	5,025	*Scan Ocean, Inc.*

Nation—Vessel name, vessel type	Application No.	Fishery	Activity
Government of the Kingdom of the Netherlands:			
Alida, large stern trawler	NL–89–0006	NWA	*1
Prins Bernard, large stern trawler	NL–89–0007	NWA	*1
Cornelis Vrolijk tzn, medium stern trawler	NL–89–0009	NWA	*1
Zeeland, large stern trawler	NL–89–0022	NWA	*1
Holland, large stern trawler	NL–89–0023	NWA	*1
Hendrika Johanna, small stern trawler	NL–89–0025	NWA	*1
Dirk Dirk, large stern trawler	NL–89–0026	NWA	*1
Annie Hillina, small stern trawler	NL–89–0027	NWA	*1
Astrid, large stern trawler	NL–89–0028	NWA	*1
Friesland, small stern trawler	NL–89–0031	NWA	*1
Geertruid Marreta, large stern trawler	NL–89–0032	NWA	*1
Tetman Hette, large stern trawler	***	NWA	*1
Franziska, large stern trawler	***	NWA	*1
German Democratic Republic:			
Bodo Uhse, large stern trawler	GC–89–0040	NWA	*1
Ehm Welk, large stern trawler	GC–89–0041	NWA	*1
Ludwig Renn, large stern trawler	GC–89–0054	NWA	*1
Lichtenhagen, cargo/transport	GC–89–0055	NWA	3
Reutershagen, cargo/transport	GC–89–0056	NWA	3
Eduard claudius, large stern trawler	GC–89–0059	NWA	*1
Government of the Polish People's Republic:			
Halniak, cargo/transport	PL–89–0029	NWA	3
Lewanter, cargo/transport	PL–89–0030	NWA	3
Buran, cargo/transport	PL–89–0033	NWA	3
Terral, cargo/transport	PL–89–0086	NWA	3
Zonda, cargo/transport	PL–89–0102	NWA	3
Solano, cargo/transport	PL–89–0112	NWA	3
Tornado, cargo/transport	PL–89–0113	NWA	3
Kublin, large stern trawler	PL–89–0117	NWA	*1
Kunata, large stern trawler	PL–89–0021	NWA	*1
Laskara, large stern trawler	PL–89–0024	NWA	*1
Her Majesty's Government of the United Kingdom:			
Westella, medium stern trawler	***	NWA	*1
Her Majesty's Government of the United Kingdom: (Northern Ireland)			
Genesis,	***	NWA	*1
The Government of Denmark:			
Icsberg, cargo/transport	DA–89–0001	NWA	3
Ice Flower, cargo/transport	DA–89–0003	NWA	3
Icsport, cargo/transport	DA–89–0004	NWA	3
Ice Pearl, cargo/transport	DA–89–0009	NWA	3
Government of Japan:			
Takatoyo Maru No. 18, longliner	JA–89–1331	ABS	1
Ryuo Maru No. 28, longliner	JA–89–1373	ABS	1
Tomi Maru No. 21, longliner	JA–89–1476	ABS	1
Sumi Maru No. 8, longliner	JA–89–1546	ABS	1
Rokunoshima Maru No. 18, longliner	JA–89–1553	ABS	1
Shinei Maru No. 81, longliner	JA–89–1554	ABS	1
Shinei Maru No. 16, longliner	JA–89–1555	ABS	1

[FR Doc. 88–27503 Filed 11–28–88; 8:45 am]

BILLING CODE 3510–22–M

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced and Manufactured in Burma

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral agreement between the Governments of the United States and the Socialist Republic of the Union of Burma is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 25, 1987 and September 11, 1987, between the Governments of the United States and the Socialist Republic of the Union of Burma; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in Categories 340/341/640/641/840, produced or manufactured in Burma and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following restraint limit:

Category	Twelve-Month Limit
340/341/640/641/840	280,900 dozen of which not more than 224,720 dozen shall be in Categories 340/640/840.

Imports charged to the category limit for the period January 1, 1989 through December 31, 1988 shall be charged against the level of restraint to the extent of any unfilled balances. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit is subject to adjustment in the future pursuant to the provisions of the bilateral textile agreement between the Governments of the United States and the Socialist Republic of the Union of Burma.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–27471 Filed 11–28–88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in El Salvador

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and El Salvador is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton Textile Agreement, effected by exchange of notes dated March 2, 1987 and April 30, 1987, between the Governments of the United States and El Salvador; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 300/301, produced or manufactured in El Salvador and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of 3,655,535 kilograms.

Imports charged to the category limits for the period January 1, 1988 through December 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The level set forth above is subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Republic of El Salvador.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–27472 Filed 11–28–88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the United Mexican States agreed to increase the current consultation levels for Categories 359–O and 650.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the *correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 7961, published on March 11, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on March 7, 1988, as amended, concerning imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 1, 1988, the directive of March 7, 1988 is further amended to increase the limits for cotton and man-made fiber textile products in the following categories:

Category	Amended Limit [1]
359–O [2] (pounds)	350,000
650 (dozen)	31,000

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 359–O, all TSUSA numbers except 381.0822, 381.8510, 384.0928 and 384.5222.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–27473 Filed 11–28–88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Thailand

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6581. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority. E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Bilateral Textile Agreement of July 27, 1983 and August 8, 1983.

Inasmuch as consultations held with the Government of Thailand have not resulted in a mutually satisfactory limit for Category 363, the United States Government has decided to establish a prorated limit for the period August 31, 1988 through December 31, 1988.

The United States remains committed to finding a solution concerning Category 363. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 37023, published on September 23, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on September 19, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of cotton textile products in Category 363, produced or manufactured in Thailand and exported during the ninety-day period which began on August 31, 1988 and extends through November 28, 1988.

Effective on November 29, 1988, the directive of September 19, 1988 is amended to extend the import restraint period for Cateogory 363 to the period August 31, 1988

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through December 31, 1988 at an increased level of 5,325,229 numbers.[1]

Import charges made to the ninety-day restraint period are to be retained. Charges against that ninety-day limit for the period August 31, 1988 through September 25, 1988 and 72,192 numbers.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements had determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27474 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 89-C0002]

Mapco Alaska Petroleum Inc., a Corporation; Provisional Acceptance; Settlement Agreement and Order; Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Mapco Alaska Petroleum Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this arrangement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 14, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC, 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

Date: November 22, 1988.

Sheldon D. Butts,

Deputy Secretary.

Consumer Product Safety Commission

Settlement Agreement and Order

In the matter of Mapco Alaska Petroleum Inc. a corporation, CPSC DOCKET NO. 89-C0002.

1. This Settlement Agreement and Order, entered into between Mapco Alaska Petroleum Inc., a corporation (hereinafter, "MAPI"), and the staff of the Consumer Product Safety Commission, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. Parties

2. MAPI is a corporation organized and existing under the laws of the State of Alaska with its principal corporate offices located at 1800 South Baltimore Avenue, Tulsa, Oklahoma 74101-0645.

3. The staff is the staff of the Consumer Product Safety Commission, an independent regulatory agency established by Congress pursuant to section 5 of the CPSA, 15 U.S.C. 2053.

II. Jurisdiction

4. MAPI, through its North Pole (Alaska) Refinery, manufactured and "distributed in commerce" No. 2 fuel oil for use as furnace fuel in homes in the state of Alaska, within the meaning of the term "distributed in commerce" in section 3(a)(11) of the CPSA, 15 U.S.C. 2052(a)(11). That No. 2 fuel oil is a "consumer product" and MAPI is a "manufacturer" within the meaning of sections (3)(1)(1) and 3(a)(4) of the Consumer Product Safety Act (hereinafter, the "CPSA"), 15 U.S.C. 2052(a)(1) and 2052(a)(4).

III. Product

5. No. 2 fuel oil as Used as heating fuel for homes, in addition to its other uses. The "low pour" No. 2 fuel oil manufactured by MAPI contains approximately 40% kerosene. The kerosene lowers the pour-point of No. 2 fuel oil, thereby assisting the flow of the fuel to the furnace during cold weather.

IV. Alleged Defect

6. Between December 1982, and October 1983, MAPI lowered the kerosene content of the No. 2 fuel oil, and added a pour-point depressant, a recognized additive to No. 2 fuel oil. Pour-point depressant assists the flow of the No. 2 fuel oil during the cold weather in Alaska, and therefore was a substitute for the kerosene MPAI blended into its No. 2 fuel oil. In August-September 1983, when the kerosene content of the No. 2 fuel oil was reduced to little or none, some furnaces experienced sooting and smoking problems, which furnaces, prior to September 1983, had operated satisfactorily with the MAPI's original No. 2 fuel oil formulation in the Fairbanks, Alaska area. In excess of 2100 incidents of soot and smoke damage, and at least three house fires, were allegedly associated with the reformulated No. 2 fuel oil. The Commission has no knowledge of any incidents of death or injuries associated with the reformulated No. 2 fuel oil. The CPSC staff alleges that consumers could suffer burn injuries or death as a result of fire resulting from these kinds of incidents.

V. Alleged Failure to Comply With the Reporting Requirements

7. The staff alleges that MAPI knew or should have known that the reformulated No. 2 fuel oil contained a defect which could create a substantial product hazard, but MAPI did not report to the Commission the problems associated with the No. 2 fuel oil as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

VI. Allegations of MAPI

8. MAPI denies the staff's allegations that there is a defect in the No. 2 fuel oil. MAPI further denies that the No. 2 fuel oil contains a defect which creates or which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.A. 2064(a). MAPI also denies the existence of any obligation to report any information regarding the No. 2 fuel oil to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

VII. Agreement of the Parties

9. MAPI and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

10. MAPI agrees to pay the Commission a civil penalty in the amount of *one hundred and seventy-five thousand dollars* ($175.000), payable within thirty (30) days after service of the Final Order of the Commission accepting this Settlement Agreement.

11. MAPI makes no admission of, and expressly denies, any fault or liability regarding the No. 2 fuel oil. The Commission does not make any determination that the No. 2 fuel oil contains a defect which could create a substantial product hazard or that violation of the CPSA has occurred.

12. Upon final acceptance of this Settlement Agreement by the Commission, MAPI knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's action, (3) to a determination by the Commission as to whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of laws.

13. MAPI agrees to the issuance and distribution by the Consumer Product Safety Commission of the Settlement Agreement and Order. Final Order, and press release (appended hereto as "Exhibit A") involving this matter.

14. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the *one hundred and seventy-five thousand dollars* ($175,000) settlement amount by MAPI, the Commission agrees to waive its right to pursue against MAPI any penalty proceeding or any other action under the laws administered by the Commission regarding the reformulated No. 2 fuel oil which is the subject of this settlement agreement.

15. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in the 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accoraance with 16 CFR 1118.20(f).

16. The parties further agree that the Order attached hereto as "Exhibit B" and incorporated herein by reference, shall be issued under the CPSA, 15 U.S.C. 2501 *et seq.*, and that a violation of the Order (i.e., nonpayment of the $175,000) shall subject MAPI to appropriate legal action.

17. No agreement, understanding, respresentation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or contradict its terms.

MAPCO Alaska Petroleum Inc.

Dated: September 9, 1988.

Randolph L. Jones, Jr.,

Secretary and Generol Counsel, MAPCO Alaska PETROLEUM Inc.

Commisson Staff:

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation.

Dated: September 19, 1988.

Earl A. Gershenow

Trial Attorney, Division of Administrative Litigation, Counsel for the Commission staff.

Exhibit A—Alleged Reporting Violation Settled by Alaskan Oil Firm

Washington, DC—The U.S. Consumer Product Safety Commission today announced that MAPCO Alaska Petroleum Inc. (MAPI) of Tulsa, Oklahoma has agreed to pay the Commission $175,000 to resolve Commission staff allegations that the company failed to report a defect in its No. 2 fuel oil in the fall of 1983 as required by the Consumer Product Safety Act (CPSA). MAPI denies the existence of a substantial product hazard or that it violated the reporting requirements of the CPSA.

The staff has alleged that a change in the formulation of MAPI's No. 2 fuel oil resulted in more than 2,100 incidents of smoke and soot damage, and was associated with at least three house fires. MAPI never reported these incidents to the Commission. The Commission has no knowledge of any injuries or deaths associated with the use of the No. 2 fuel oil.

The No. 2 fuel oil was sold to distributors who delivered the fuel to households in the Alaska Interior. Following complaints in September and October of 1983 of furnace problems associated with its No. 2 fuel oil, MAPI promptly and voluntarily investigated and remedied consumer complaints concerning the No. 2 fuel oil and resumed production of its original No. 2 fuel oil formulation.

For additional information, consumers can call the CPSC toll free hotline number, 800-638-2772. A teletypewriter number for the hearing impaired is 800-638-8270; the teletypewriter number for Maryland is 1-800-492-8104.

Exhibit B—Consumer Product Safety Commission

In the matter of Mapco Alaska Petroleum Inc. a corporation

Order

The Commission has considered the allegations of the staff charging Respondent with violating the reporting requirment of section 15(b) of the Consumer Product Safety Act, 15 U.S.C. 2051, 2064(b); and, the Respondent and counsel for the Commission have executed an agreement containing a provision for the payment of a civil penalty in settlement of the staff allegations, an admission for settlement purposes only by the Respondent of all jurisdictional facts, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law been violated. All other requirements for consent order agreements set forth in 16 CFR 1115.20(b) (Substantial Product Hazard Reports) and 16 CFR 1118.20 Investigations, Inspections and Inquiries under the Consumer Product Safety Act) have been satisfied. The Commission, makes the following jurisdictional findings, and enters the following order:

1. Respondent *MAPCO Alaska Petroleum Inc.* (hereinafter, "MAPI") is a corporation organized and existing under the laws of the state Alaska with its principal corporate offices located at 1800 South Baltimore Avenue, Tulsa, Oklahoma 74101-0645.

2. The Consumer Product Safety Commission has jurisdiction of the subject matter of this proceeding and of the Respondent.

3. It appearing that the Settlement Agreement is in the public interest and is othewise proper and appropriate, it is hereby:

Ordered, that *MAPCO Alaska Petroleum Inc.* shall pay to the Order of the United States Treasurer, the sum of *one hundred and seventy-five thousand and 00/100* ($175,000.00), in full settlement of any and all claims whatsoever by the Consumer Product Safety Commission arising out of the allegations of the Commission staff set forth in the Settlement Agreement. The aforesaid civil penalty shall be due within thirty (30) days after service on MAPI of the Final Order, with payment to be delivered to David Schmeltzer, Associated Executive Director for Compliance and Administrative Litigation, Consumer Product Safety Commission, 5401 Westbard Avenue, Room 240, Bethesda, Maryland 20207.

Provisionally accepted on the 22nd day of November, 1988.

By Order of the Commission.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 88-27405 Filed 11-28-88; 8:45 am]

BILLING CODE 6355-01-M

[1] The restraint limit has not been adjusted to account for any imports exported after August 30, 1988.

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DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Officer Characteristics Survey; No Form; and No OMB Control Number.

Type of Request: Expedited Submission—approval date requested: December 1, 1988.

Average Burden Hours/Minutes Per Response: 26 minutes.

Frequency of Response: One-time.

Number of Respondents: 1,500.

Annual Burden Hours: 650.

Annual Responses: 1,500.

Needs and Uses: The Air Force needs the information asked for in the survey to see if there is any correlation between precommissioning characteristics, background and retention. The results will be used to provide additional information for use by commissioning sources in determining the best candidates for officer training.

Affected Public: Individuals or households.

Respondents Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 22, 1988.

BILLING CODE 3810-01-M

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR TRAINING COMMAND (ATC)
RANDOLPH AIR FORCE BASE TX 78150-5001

REPLY TO ATTN OF: CC

8 NOV 1988

SUBJECT: Officer Background Characteristics

TO: Current or Former Air Force Officer

1. We need your help. Please give us 26 minutes of your time.

2. You have been selected to participate in an extensive investigation of Air Force officer characteristics. Your input will be used in a study of Air Force officer precommissioning attributes. No matter where you are in your Air Force career or where it ended, we request your input. The purpose of our study is to examine a wide variety of characteristics to see if they influence a person's length of military service. The results will be used in reevaluating Air Force commissioning policies.

3. You can help by completing the attached survey. We need you to return the answer sheet and any comments as soon as possible, preferably within five working days. If you have any questions or comments, please contact our study group: HQ ATC/CSY, (512) 652-3100.

ROBERT C. OAKS
Lieutenant General, USAF
Commander

3 Atch
1. Officer Characteristics Survey
2. Answer Sheet
3. Return Envelope

UNITED STATES AIR FORCE
SEPTEMBER 18, 1947

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OFFICER CHARACTERISTICS SURVEY

OMB Approval No.
Expires 1 Mar 89
USAF SCN 88-102

Survey Approved
OMB No. 0701-xxxx
Expires

IMPORTANT -- PLEASE READ !!!

Your help in completing this survey is extremely important to us -- you know better than anyone else the details of your background and influences on your career. Most of this information is not contained on any "data file" -- you are the only source we have for it. By responding honestly to these questions, you will help us improve our understanding of the types of people who join the Air Force and enhance recruitment and selection procedures. A comments section is provided at the end of the survey since there may be issues we have overlooked.

To shorten the length of this survey, we eliminated those questions for which data is already maintained. We ask that you provide your social security account number (SSAN) on your answer sheet so we can match that data with your survey responses. However, your responses will be kept strictly confidential, and will be used only in combination with the responses of others. Your individual responses will not be shared with your supervisor or anyone else, nor will they be used for personnel actions of any type. Your responses will be used for study purposes only and will not go into Air Force or any other personnel files. Of course, you are not required to answer any question which is unclear or to which you object.

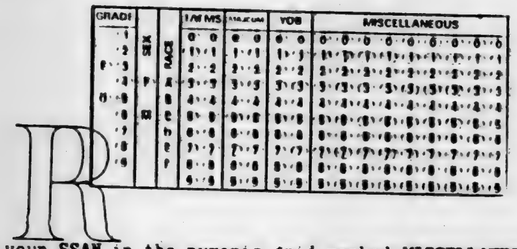
PRIVACY ACT STATEMENT: In accordance with AFR 12-35, paragraph 8, the following information is provided as required by the Privacy Act of 1974.
Authority: AFR 30-23, Air Force Personnel Survey Program; 10 U.S.C. 8012, Secretary of the Air Force; powers and duties; delegation by; Executive Order 9397, 22 November 1943.
Purpose: To obtain information from current and former Air Force members regarding the attributes of Air Force officers.
Routine Use: To analyze information about the attributes of Air Force officers. The survey data collected from individuals will be merged by grade-groups and in no case will data be analyzed by individual responses.
Participation: Participation in this survey, and furnishing of the Social Security Account Number (SSAN), is VOLUNTARY. No adverse action will be taken against any member who elects not to participate in any or all of this survey or to supply the SSAN.

OMB NOTICE: Public reporting burden for this collection of information is estimated to average 26 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia, 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0701-xxxx), Washington, DC 20503.

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INSTRUCTIONS

LOCATE THE BOX BELOW IN THE TOP LEFT CORNER OF YOUR ANSWER SHEET



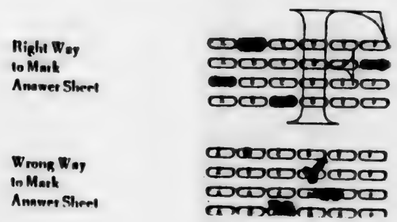
Please mark your SSAN in the numeric grid marked MISCELLANEOUS. All other blocks in the box may be left blank.

Select only one answer to each question except where instructions indicate otherwise. Make any additional comments on the comment sheet at the end of this survey. (Please be sure to detach and return the comments sheet if you made any comments.)

Mark your answers on the answer sheet provided. Please use a No. 2 pencil.

Be sure to mark your answers carefully so that you enter them opposite the same answer sheet number as survey question number.

Be sure that your answer marks are heavy and that you blacken the oval shaped space. Erase all changes completely and carefully so as not to tear the answer sheet.



Do not staple or otherwise damage the answer sheet as the electronic scanner will not read the form, and your input will be rejected.

GEOGRAPHICAL BACKGROUND: Questions 1 -3 ask about where you lived while growing up. Please answer all questions to the best of your knowledge/recollection.

1. How many times did your family move, from the time you were 8 until you were 17 years old?

A) Never
B) Once
C) Twice
D) 3 - 4 times
E) 5 or more times

2. What was the size of the community in which you were living when you graduated from high school? (to the best of your knowledge/recollection)

A) Less than 500
B) 500 - 5,000
C) 5,001 - 25,000
D) 25,001 - 50,000
E) 50,001 - 250,000
F) 250,001 - 500,000
G) Over 500,000

3. In which of the following geographical locations were you living when you graduated from high school?

A) New England (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
B) Upper Mid-Atlantic (New Jersey, New York)
C) Lower Mid-Atlantic (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)
D) Southeast (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)
E) Midwest (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
F) North Central (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
G) Central (Iowa, Kansas, Missouri, Nebraska)
H) South Central (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
I) Northwest (Idaho, Oregon, Washington)
J) West (Arizona, California, Nevada)
K) Alaska/Hawaii
L) Other Non-CONUS locations (Puerto Rico, Virgin Islands, American Samoa, Guam, other American territories, foreign countries)

FAMILY BACKGROUND: Questions 4 - 13 ask about your family while you were growing up.

4. By whom were you primarily raised during your childhood (8 - 17 years old)?

A) Both parents/guardians, in the same household
B) Father (or male guardian) alone, due to divorce/separation
C) Mother (or female guardian) alone, due to divorce/separation
D) Father (or male guardian) alone, due to death of mother
E) Mother (or female guardian) alone, due to death of father
F) Father (or male guardian), after remarriage
G) Mother (or female guardian), after remarriage
H) Other

5. While growing up, how many brothers and/or sisters did you have that were older than you?

A) 0
B) 1
C) 2
D) 3
E) 4 or more

6. While growing up, how many brothers and/or sisters did you have that were younger than you?

A) 0
B) 1
C) 2
D) 3
E) 4 or more

7. While growing up, how many brothers (either older or younger) did you have?

A) 0
B) 1
C) 2
D) 3
E) 4 or more

8. What was the principal wage-earner's primary occupation in your family, during the time you were 8-17 years old?

A) Military
B) Professional, Technical and Related (teacher, registered nurse, social worker, writer, artist, etc.)
C) Managerial/Administrative (accountant, labor relations specialist, school principal, office manager,etc.)
D) Sales/Technical (health technologist, computer programmer, licensed practical nurse, sales supervisor, cashier, etc.)
E) Clerical (secretary, bookkeeper, telephone operator, etc.)
F) Crafts (plumber, carpenter, precision textile machine worker, etc.)
G) Operative, except Transport (assembler, sewing machine operator, hand work, etc.)
H) Transport Equipment Operator (bus driver, crane operator, etc.)
I) Laborer, except Farm (hand packager, production helper, etc.)
J) Service, including Private Household (food preparation and service worker, building cleaner/other service worker, private household worker, etc.)
K) Farm Laborer
L) Self-Employed (including small business, farmer, etc.)

9. At the time you graduated from high school, in what category was your family's combined income?

A) Upper
B) Upper-Middle
C) Lower-Middle
D) Lower

10. At the time you graduated from high school, what was the highest education level your mother/female guardian had attained? (If you had more than one female guardian, refer to the one who primarily raised you)

A) N/A, no mother or female guardian
B) Completed grade school or less
C) Some high school
D) Completed high school/equivalent (e.g. GED)
E) Attended/completed technical/trade school
F) Some college
G) Completed college
H) Some graduate or professional school after college
I) Completed graduate or professional school after college

11. At the time you graduated from high school, what was the highest education level your father/male guardian had attained? (If you had more than one male guardian, refer to the one who primarily raised you)

A) N/A, no father or male guardian
B) Completed grade school or less
C) Some high school
D) Completed high school/equivalent (e.g. GED)
E) Attended/completed technical/trade school
F) Some college
G) Completed college
H) Some graduate or professional school after college
I) Completed graduate or professional school after college

12. Which statement best describes your mother/female guardian in terms of discipline?

A) Did not live with mother/female guardian
B) Very lenient
C) Pretty lenient
D) In between
E) Pretty strict
F) Very strict

13. Which statement best describes your father/male guardian in terms of discipline?

A) Did not live with father/male guardian
B) Very lenient
C) Pretty lenient
D) In between
E) Pretty strict
F) Very strict

MILITARY EXPOSURE: Questions 14 - 23 ask about your awareness/exposure to the military prior to entry.

14. At what age did you first become interested in joining the military?

A) 11 or younger
B) 12 - 14
C) 15 - 17
D) 18 - 22
E) 23 or older

15. During your childhood, how many times did you visit a military installation?

A) Never
B) 1 - 2
C) 3 - 5
D) 6 - 10
E) 11 or more
F) Was a military dependent for all or part of the time

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16. During your childhood, how close to any military installation did you ever live?

A) Lived on a military installation for at least part of my childhood
B) Within 10 miles
C) 11 - 25 miles
D) 26 - 50 miles
E) 51 - 100 miles
F) Over 100 miles
G) Don't know

17. Was either parent/guardian ever a military member (active duty, guard or reserve)?

A) No, neither parent was ever a military member (Skip to question 23)
B) Yes, and he/she separated/was discharged before retirement
C) Yes, and he/she retired from the military
D) Yes, and he/she is still serving

18. In what branch of the service was your father/mother/guardian? (Mark all that apply)

A) Air Force
B) Navy
C) Army
D) Marines
E) Coast Guard

19. In what service component did your father/mother/guardian serve? (Mark all that apply)

A) Active Duty
B) Guard
C) Reserve

20. At the time you graduated from high school, how many years had it been since either parent/guardian separated/retired from the military?

A) 18 years or more - they separated/retired before I was born
B) 13 - 17 years
C) 9 - 12 years
D) 5 - 8 years
E) 1 - 4 years
F) 0 years - they were in the military when I graduated

21. What was the highest rank your parent/guardian attained while in military service? (Give highest rank if both parents were military members)

A) E-1 through E-3
B) E-4 through E-6
C) E-7 through E-9
D) W-1 through W-4
E) O-1 through O-3
F) O-4 through O-5
G) O-6 or above

22. Was either parent/guardian a military aircrew member?

A) No - not an aircrew member
B) Yes - pilot
C) Yes - navigator
D) Yes - other aircrew member

23. Which of the following individuals were military members during your childhood (age 8 to 17)? (Mark all that apply)

A) Father/male guardian
B) Mother/female guardian
C) Brother
D) Sister
E) Aunt/uncle
F) Cousin
G) Grandfather/grandmother
H) Close childhood/high school friend
I) Friend of the family
J) Individual(s) in my neighborhood
K) ROTC instructor in my high school
L) Member of my religious church
M) None of the above

INITIAL DECISION FACTORS: Questions 24 - 36 ask about your decision to join the military.

For questions 24 - 33 use the rating scale below to indicate how important each of the following factors was in your decision to enter the Air Force.

A) Not at all important
B) Slightly important
C) Moderately important
D) Very important
E) Extremely important

24. Opportunity to serve my country
25. Eligibility for the draft
26. Opportunity to make the world a better place
27. Steady work/job security
28. Good pay
29. Continuing a family tradition of military service
30. Better job/promotion opportunities than in civilian life
31. Opportunity for training /education
32. Good benefits
33. Opportunity to fly

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34. What was the reaction of your immediate family to your decision to join the military/become an Air Force officer?

A) Very unsupportive
B) Unsupportive
C) Neutral
D) Supportive
E) Very supportive
F) Do not know

35. What was the reaction of most of your friends to your decision to join the military/become an Air Force officer?

A) Very unsupportive
B) Unsupportive
C) Neutral
D) Supportive
E) Very supportive
F) Do not know

36. Which of the following influences <u>first</u> made you think about entering the military?

A) Family member (in the military)
B) Family member (not in the military)
C) Friend (in the military)
D) Friend (not in the military)
E) Teacher/Counselor
F) TV/Movie
G) Visit to a military base/post
H) Opportunity to attend a service academy
I) Scholarship opportunity

<u>INITIAL EXPECTATIONS AND EXPERIENCES:</u> Questions 37 - 42 ask about your expectations regarding the Air Force and experiences on active duty.

37. Think back to <u>when you were first commissioned</u>. What was your intent with regard to making the Air Force a career?

A) Definitely would make the Air Force a career
B) Probably would make the Air Force a career
C) Leaned toward making the Air Force a career
D) Undecided
E) Leaned toward not making the Air Force a career
F) Probably would not make the Air Force a career
G) Definitely would not make the Air Force a career

38. Upon commissioning, what was the highest grade you realistically expected to achieve before you separated or retired from the Air Force?

A) General Officer
B) Colonel
C) Lieutenant Colonel
D) Major
E) Captain
F) Lieutenant

BEST COPY AVAILABLE

39. How well did your first Air Force assignment make use of your undergraduate education?

A) Extremely well
B) Very well
C) Moderately
D) Not very well
E) Not at all

40. What are your <u>current</u> intentions toward remaining in the Air Force for at least 20 years?

A) N/A, have already separated before retirement
B) N/A, already completed 20 or more years or retired
C) Definitely will remain
D) Probably will remain
E) Lean toward remaining
F) Undecided
G) Lean toward not remaining
H) Probably will not remain
I) Definitely will not remain (have not yet established a date of separation)
J) I have an established date of separation

41. In terms of influencing your career decision, what is the most <u>positive</u> aspect of the Air Force?

A) Opportunity for training and education
B) My Air Force job (challenge, satisfaction, etc)
C) Pay and allowances
D) Aviation Career Incentive Pay (ACIP)
E) Promotion system and opportunity
F) Quality of leadership and supervision at the unit level
G) Quality of leadership and supervision above the unit level
H) Institutional benefits (hospital, BX, etc)
I) Travel and new experiences
J) Have "say" in future assignments
K) Security of Air Force life
L) Opportunity to make changes in job/ organizations
M) Retirement benefits
N) Opportunity to serve my country
O) The people
P) More attractive than civilian jobs

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42. In terms of influencing your career decision, what is the most negative aspect of the Air Force?

A) Family separation
B) Lack of opportunity for training and education
C) My Air Force job (not challenging, limited satisfaction, etc)
D) Pay and allowances
E) Aviation Career Incentive Pay (ACIP)
F) Promotion system and opportunity
G) Quality of leadership and supervision at the unit level
H) Quality of leadership and supervision above the unit level
I) Institutional benefits (hospital, BX, etc)
J) Frequent PCS moves
K) Little 'say' in future assignments
L) Working conditions (long hours, environment, etc)
M) Lack of opportunity to make changes in job/organizations
N) Possible erosion of retirement benefits
O) The people
P) Less attractive than civilian jobs
Q) Incompatibility with spouse's career

PREVIOUS EMPLOYMENT: Questions 43 - 47 ask about your employment prior to entering active duty in the military.

43. What was the longest period of time you ever held the same full- or part-time paying job of any kind prior to entering active duty in the military

A) Never had a job prior to entering the military
B) Less than 2 months
C) 2 - 6 months
D) 7 - 11 months
E) 1 - 2 years
F) More than 2 years

44. How many years during grades 9 - 12 did you work an average of 10 or more paid hours per week? (excluding summer employment)

A) 0
B) 1
C) 2
D) 3
E) 4 or more

45. How many years during college (prior to entering active duty in the military) did you work an average of 10 or more paid hours per week? (excluding summer employment)

A) 0
B) 1
C) 2
D) 3
E) 4 or more

46. How many years during grades 9 - 12 did you work an average of 5 or more volunteer hours per week?

A) 0
B) 1
C) 2
D) 3
E) 4 or more

47. How many years during college (prior to entering active duty in the military) did you work an average of 5 or more volunteer hours per week?

A) 0
B) 1
C) 2
D) 3
E) 4 or more

HIGH SCHOOL ACTIVITIES: Questions 48 - 55 ask about your high school and any extracurricular activity involvement.

48. What was the size of your high school graduating class?

A) Less than 50
B) 50 - 100
C) 101 - 500
D) 501 - 1000
E) Over 1000
F) N/A - GED

49. What was your relative class standing upon graduation from high school?

A) Valedictorian
B) Salutatorian
C) Upper 5%
D) Upper 10%
E) Upper 25%
F) Upper 50%
G) Lower 50%
H) N/A - GED

50. From what kind of high school did you receive your diploma?

A) Public
B) Religious
C) Military
D) On-base/military dependents' school
E) Other
F) N/A - GED

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51. During high school, did you participate in any of the following organizations or activities? (Mark all that apply) (Leave blank if none apply) (Continued in next question)

A) Boys'/Girls' State/Nation
B) National Honor Society/Beta Club
C) Academic/Prep Bowl Team
D) Chorus/Choir
E) Band/Orchestra
F) Drill Team
G) Debate Team/Squad
H) Drama
I) Cheerleading
J) Junior ROTC
K) Camp Counselor
L) 4H/FFA
M) Big Brother/Big Sister
N) Key Club, Interact, or Similar Service Orgs
O) Boys/Girls Club/YMCA/YWCA
P) Junior Achievement
Q) Religious Group (e.g. Youth Fellowship)

52. During high school, did you participate in any of the following organizations or activities? (Mark all that apply) (Leave blank if none apply)

A) Foreign Exchange Club/Student
B) Civil Air Patrol
C) Boy Scouts/Girl Scouts/Campfire/etc.
D) Honors/Accelerated/Advanced Placement Courses
E) Science/Math Club
F) Foreign Language Club
G) Literary/Fine Arts Club
H) Science Fair
I) Youth Sports League
J) Journalism
K) Varsity Sports Manager
L) Student Government

53. During high school, were you an officer, director, or student leader of any of the following organizations or activities? (Mark all that apply) (Leave blank if none apply)

A) Boys'/Girls' State/Nation
B) National Honor Society/Beta Club
C) Chorus/Choir
D) Band/Orchestra
E) Drill Team
F) Debate Team/Squad
G) Drama Club
H) Junior ROTC
I) 4H/FFA
J) Key Club, Interact, or Similar Service Org
K) Boys/Girls Club/YMCA/YWCA
L) Junior Achievement
M) Religious Group
N) Foreign Exchange Club
O) Civil Air Patrol
P) Boy Scouts/Girl Scouts/Campfire, etc.
Q) Science/Math Club
R) Foreign Language Club
S) Literary/Fine Arts Club
T) Student Government
U) Journalism

54. During high school, did you win school-wide, area, regional, state, or national awards/honors in any of the following organizations or activities? (Mark all that apply) (Leave blank if none apply) (Continued in next question)

A) Chorus/Choir
B) Band/Orchestra
C) Daughters of the American Revolution
D) Drill Team
E) Debate Team/Squad
F) Drama
G) Junior ROTC
H) 4H/FFA
I) Junior Achievement
J) Civil Air Patrol
K) Boy Scouts/Girl Scouts/Campfire, etc.
L) Science Fair
M) National Merit Semi-Finalist/Finalist/Scholar

55. During high school, did you win school-wide, area, regional, state, or national awards/honors in any of the following organizations or activities? (Mark all that apply) (Leave blank if none apply)

A) Mathematics
B) Science
C) Social Studies
D) English
E) Foreign Language
F) General Academics
G) American Legion/Citizenship Award
H) Journalism
I) Creative Writing
J) Art

ATHLETIC PARTICIPATION: Questions 56 - 62 ask about your participation in both high school and college athletic teams. Please use the following list of sports to answer these questions. (Leave blank if none apply)

A) Baseball/Softball
B) Basketball
C) Bowling
D) Boxing
E) Crew
F) Diving/Swimming
G) Football
H) Golf
I) Gymnastics
J) Ice/Field Hockey
K) Lacrosse
L) Rugby
M) Skiing
N) Soccer
O) Squash/Handball/Racquetball
P) Tennis
Q) Track/Cross Country
R) Volleyball
S) Water Polo
T) Wrestling
U) Other

56. Please mark all the varsity sports in which you participated for at least one season in high school.

57. Please mark all the varsity sports in which you lettered in high school.

58. Please mark all the varsity sports in which you were a team captain in high school.

59. Please mark all the intercollegiate sports in which you participated for at least one season in college (before you were commissioned).

60. Please mark all the intramural/club/community league sports in which you participated for at least one season in college (before you were commissioned).

61. Please mark all the intercollegiate sports in which you lettered in college (before you were commissioned).

62. Please mark all the intercollegiate sports in which you were a team captain in college (before you were commissioned).

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COLLEGE ACTIVITIES: Questions 63 - 70 ask about your college experience and activity participation.

63. Whether you accepted them or not, what college scholarship offers did you receive as a high school senior? (Mark all that apply)

A) No scholarship offers
B) Service Academy appointment
C) ROTC
D) Academic
E) Athletic
F) Civic/business organization sponsorship
G) Other

Questions 64 - 66 ask about your college activities. Please use the following list to answer these questions.

A) Social Fraternity/Sorority
B) Intramural/Club Sports
C) Student Government
D) Professional Organization/Society
E) National Honor/Recognition Society (Professionally-Oriented) (Alpha Epsilon Delta, Psi Chi, etc.)
F) National Honor Organization (Academically-Oriented) (Phi Beta Kappa, etc.)
G) Academic Recognition (Graduation with honors, cum laude, etc.)
H) Religious Organizations
I) Student Organization Control Board
J) Service Organization
K) Debate Team/Squad
L) Sports League Coach/Sports manager
M) Scouting/Scouting Leader
N) Drill Team
O) Band/Orchestra, Chorus
P) Drama/Art
Q) Journalism (Campus Paper, Annual, etc.)
R) Campus Radio Station
S) Civil Air Patrol
T) Big Brother/Big Sister
U) Political Group or Campaign

64. Did you participate in any of these organizations or activities in college? (Mark all that apply) (Leave blank if none apply)

65. Were you an officer, director, or student leader of any of these organizations or activities in college? (Mark all that apply) (Leave blank if none apply)

66. Did you win school-wide, area, regional, state, or national awards/honors in any of the following organizations/activities in college? (Mark all that apply) (Leave blank if none apply)

67. What was your intended college major when you started college?

A) Did not know/undecided
B) Business Administration or Management
C) Social Sciences (e.g., Psychology, Geography, Political Science, History)
D) Humanities (e.g., English, Foreign Languages, Philosophy)
E) Engineering
F) Physical Science (e.g., Chemistry, Biology, Physics)
G) Mathematics
H) Computer Science
I) Pre-Medical/Pre-Law
J) Other

68. How many times did you change your undergraduate academic major?

A) Never
B) Once
C) Twice
D) Three or more times

69. On a 4-point grading scale, what was your overall college grade point average?

A) 3.76 - 4.0
B) 3.51 - 3.75
C) 3.26 - 3.50
D) 3.01 - 3.25
E) 2.76 - 3.00
F) 2.51 - 2.75
G) 2.26 - 2.50
H) 2.00 - 2.25
I) Below 2.00

70. What was the highest cadet/OT position you held in your commissioning program?

A) Element/Squad leader
B) Flight commander
C) Squadron staff
D) Squadron commander/branch chief
E) Group/wing staff/division chief
F) Group/wing deputy commander
G) Group/wing commander

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LIFE EVENTS: Questions 71 - 87 ask about certain events and activities that may have occurred in your life.

For questions 71 - 84, please use the following scale to indicate when these events first occurred.

A) Never did this
B) Age 14 or younger
C) Age 15-17
D) Age 18-22
E) Age 23 or older
F) Don't recall age

71. Held a paying job outside the home
72. Went out on a date
73. Ran away from home for more than one day
74. Smoked cigarettes
75. Tuned up a car
76. Received a private pilot's license
77. Received a traffic ticket (moving violation)
78. Convicted of a non-driving offense (shoplifting, vandalism, etc.)
79. Got drunk
80. Bought your own car
81. Spent a week or more away from your family
82. Rode in a small airplane
83. Skipped a class in school
84. Went to the principal's/vice principal's office for disciplinary reasons

85. Which of the following best describes your religious membership and attendance during most of your childhood (8 - 17 years)? (Mark only one)

A) Not a religious group member, no regular attendance
B) Not a religious group member, attended anyway
C) Religious group member, no regular attendance
D) Religious group member, attended regularly

86. Were you married before you entered your commissioning program?

A) No
B) No, but I married part way through the program
C) Yes, I was married prior to entering my commissioning program
D) Yes, I was married at one time but divorced prior to entering the program

87. Which of the following types of motorized equipment had you operated prior to commissioning? (Mark all that apply)

A) Auto - Automatic transmission
B) Auto - Manual transmission
C) Motorboat
D) Airplane
E) Motorcycle
F) Dune buggy
G) Farming equipment
H) Snowmobile
I) Power saw
J) Grinder/Lathe
K) Chain saw
L) Heavy Equipment (construction)
M) Forklift

FLYING INTEREST AND EXPERIENCE: Questions 88 - 93 ask about your interests and experiences concerning flying and pilot training. Please answer all questions if you were ever interested in flying/becoming an Air Force pilot.

88. At what age did you first become interested in being a pilot?

A) N/A - I was never interested in being a pilot (Skip to comment sheet)
B) 11 or younger
C) 12 - 14
D) 15 - 17
E) 18 - 22
F) 23 or older

89. Did you receive a pilot rating before you received your commission?

A) No
B) Yes, I received a private pilot's license only
C) Yes, I received another rating in addition to a private pilot's license (commercial, instrument, etc.)

90. How many flying hours did you have before you received your commission?

A) None
B) 1 - 10
C) 11 - 40
D) 41 - 100
E) 101 - 200
F) 201 or more

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91. Which of the following best describes your participation in Undergraduate Pilot Training (UPT or UPT-H)?

A) Did not apply
B) Applied, but not physically qualified
C) Applied and physically qualified, but not selected
D) Selected but declined to attend
E) Entered UPT/UPT-H but eliminated voluntarily
F) Entered UPT/UPT-H, but eliminated involuntarily
G) Completed UPT/UPT-H

92. When you entered pilot training, what type of aircraft did you want to fly after graduation from UPT/UPT-H?

A) Did not go to UPT/UPT-H
B) Undecided--not knowledgeable of options
C) Undecided--no preference
D) Tanker
E) Transport
F) Fighter
G) Bomber
H) Trainer
I) Helicopter

93. When you graduated from pilot training, what type of aircraft did you want to fly? (Regardless of actual assignment)

A) N/A - Did not graduate from UPT/UPT-H
B) Undecided--not knowledgeable of options
C) Undecided--no preference
D) Tanker
E) Transport
F) Fighter
G) Bomber
H) Trainer
I) Helicopter

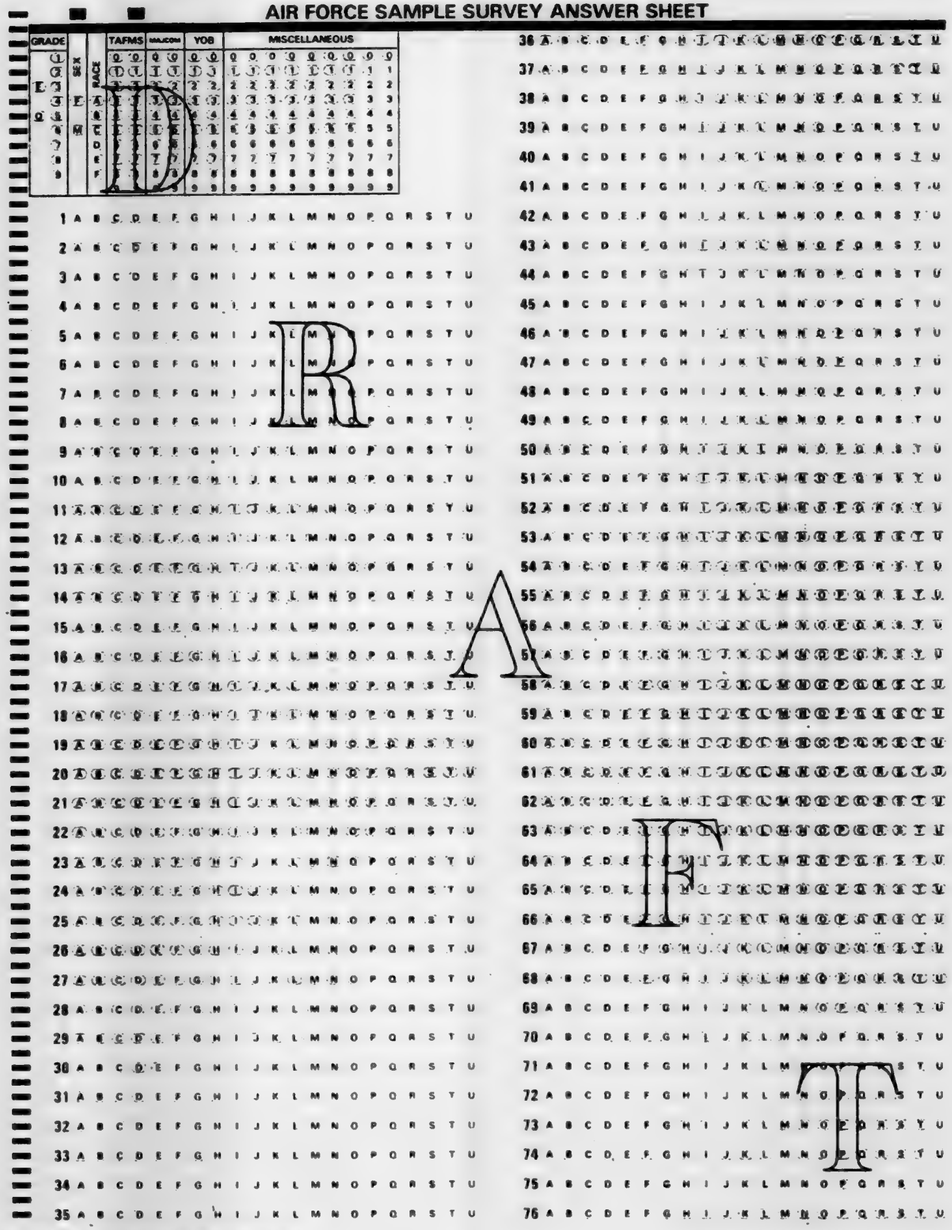
PLEASE FEEL FREE TO ADD ANY ADDITIONAL COMMENTS YOU MAY HAVE ON THIS SURVEY:
(If you have comments, please detach this sheet and return it with your answer sheet.)

IMPORTANT: PLEASE READ

Check to make sure you correctly encoded your SSAN in the numeric grid marked **MISCELLANEOUS** and completely blackened each circle for the responses you chose (items 1 - 93). Place the answer sheet and this sheet (if you added comments) in the return envelope provided and mail to HQ ATC/CSY, Randolph AFB, TX 78150-5001. If you have any questions or comments, please call HQ ATC/CSY at AV 487-3100 or commercial (512) 652-3100.

THANK YOU FOR TAKING THE TIME TO PARTICIPATE IN THIS SURVEY

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[FR Doc. 88-27395 Filed 11-28-88; 8:45 am]

BILLING CODE 3810-01-C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisons of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning Affidavit of Individual Surety.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523-3847.

SUPPLEMENTARY INFORMATION:

a. Purpose

The FAR currently permits an offeror to furnish individual sureties in support of a contract requirement for a bid guarantee, performance, or payment bond. Bonds are required to protect the Government and suppliers under Government contracts. The current regulations do not adequately protect either party. A contract clause is established requiring offerors to obtain from each person acting as an individual surety on a bid, performance on payment bond, a pledge of assets and a SF 28. If this information were not collected, the Government would be unprotected. This is currently the case since presently no assets are pledged to the Government. As a result, the following problems repeatedly have developed:

(a) The value of assets claimed on the SF 28 are virtually unsubstantiated.

(b) No controls exist to ensure that the same assets are not repeatedly pledged unbeknown to the respective contracting officer.

(c) The value of assets may be vastly overstated, while the value of liabilities may not be fully disclosed.

(c) The assets may be disposed of without Government knowledge.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, *500*; responses per respondent, *8*; total annual responses, *4,000*; hours per response, *.30*; and total response burden hours, *2,000*.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0001, Affidavit of Individual Surety.

Dated: November 16, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-27460 Filed 11-28-88; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection concerning Bid, performance, and payment bonds.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523-3847.

SUPPLEMENTARY INFORMATION:

a. Purpose

The Miller Act (40 U.S.C. 270a through 270e) requires performance and payment bonds for any construction contract exceeding $25,000; unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. Bonds may be required for other contracts when it is deemed appropriate. When it is appropriate and performance and payment bonds are required, the Government may require a bid guarantee.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, *19,075*; responses per respondent, *4.87*; total annual responses, *92,895*; hours per response, *.42*; and total response burden hours, *39,016*.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0045, Bid, Performance, and Payment Bonds.

Dated: November 16, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-27461 Filed 11-28-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before December 29, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

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opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) Recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 23, 1988.

George P. Sotos,

Acting Director for Office of Information Resources Management.

Office of Vocational and Adult Education

Type of Review: New.
Title: Financial Status and Performance Report for the Adult Education for the Homeless Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
2Responses: 52.
Burden Hours: 468.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State educational agencies that have participated in the Adult Education for the Homeless Program are to submit these reports to the Department. The Department uses the information to monitor expenditure of funds and to provide reports to Congress.

Office of Educational Research and Improvement

Type of Review: New.
Title: Survey on the Use of Research and Development Resources—Fast Response Survey System.
Affected Public: State or local governments.
Frequency: One time only.
Reporting Burden:
Responses: 1,000.
Burden Hours: 500.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This survey will obtain information from school districts concerning their use of research and development resources funded by the Department. The survey will provide information that will assist the Department's decisionmaking about the structure and types of services to be offered through the regional educational laboratory program in the future.

Type of Review: Revision.
Title: Teacher Followup Survey (of the Schools and Staffing).
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 6192.
Burden Hours: 2550.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The Teacher Followup Survey is the fifth portion of the Schools and Staffing Survey, to be conducted one year after the base year data collection. The Department uses the information to followup on the teachers who left their teaching professions and a subsample of those who remained in their teaching professions.

Office of Postsecondary Education

Type of Review: New.
Title: Institutional Quality Control Pilot Project—Annual Evaluation.
Frequency: One-time.
Affected Public: Non-profit institutions; Small businesses or organizations.
Reporting Burden:
Responses: 42.
Burden Hours: 126.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Aid administrators that have participated in the Institutional Quality Control Pilot Project are to submit the report to the Department. The department uses the information to assess the accomplishments of goals and objectives for this pilot project.

Office of Special Education and Rehabilitation Services

Type of Review: Extension.
Title: Annual Report on State Agency Independent Living Rehabilitation Services.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 79.
Burden Hours: 632.
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This information will be used to analyze and evaluate the Independent Living Rehabilitation (ILR) services provided by State ILR agencies funded under Title VII, Part A of the Rehabilitation Act, as amended.

Type of Review: Reinstatement.
Title: Annual Vocational Rehabilitation Program/Cost Report.
Affected Public: State or local governments.
Frequency: Annually.
Reporting Burden:
Responses: 84.
Burden Hours: 420.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State Vocational Rehabilitation agencies submit this report to the Department. The Department uses the information to analyze expenditures, to evaluate program accomplishments, and to examine data for indicators of problem areas.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Certification: Indian Student Enrollment.
Frequency: Annually.
Affected Public: Individuals or Households; State or Local Governments.
Reporting Burden:
Responses: 25,000.
Burden Hours: 6,250.
Recordkeeping:
Recordkeepers: 1,115.
Burden Hours: 558.
Abstract: A completed student certification form for each Indian Student must be on file in the office of the applicant in order to qualify for a formula grant under the Indian Education Act, as amended. The Department uses the information to make grant awards.

[FR Doc. 88-27511 Filed 11-28-88; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of a subgroup of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 16, 1988.

ADDRESS: U.S. Department of Education, Office of Educational Research and Improvement, Room 600B, 555 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eunice E. Henderson, Designated Federal Official, Office of Assistant Secretary for Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 602C, Washington, DC 20208, Telephone: (202) 357-6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title 2III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100-297); 20 USC 1221e-1).

The Board is established to advise the Commissioner of the National center for Education statistics on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

A subgroup of the National Assessment Governing Board will meet in Washington, DC on December 16, 1988 from 9:00 a.m. to 4:00 p.m. The proposed agenda includes consideration of the Board's organizational and staffing requirements.

Records are kept of all Board proceedings, and until a permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Room 600, Washington, DC from 8:30 a.m. to 5:00 p.m.

Dated: November 23, 1988.

Patricia Hines,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88-27426 Filed 11-28-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA89-1-53-001]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

November 23, 1988.

Take notice that K N Energy, Inc. ("K N") on November 17, 1988, tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers for purchased gas costs. Compared with rates stated in K N's annual PGA filing (TA89-1-53-000) made September 30, 1988, the proposed changes would increase the commodity rate under each of K N Energy's jurisdictional rate schedules, exclusive for IOR-1 and IOR-2, by 6.07¢ per Mcf which represents an increase in the Current Adjustment. Rates under Rate Schedules IOR-1 and IOR-2 are proposed to increase by 6.67¢ per Mcf and 6.70¢ per Mcf, respectively. K N states that the filing reflects revision to its previously filed annual PGA to reflect correction of two errors made in that filing. The proposed effective date for the rate changes is December 1, 1988.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before December 14, 1988, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27430 Filed 11-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-23-000]

Northern Natural Gas Co., Division of Enron Corp.; Filing

November 22, 1988.

Take Notice that on November 15, 1988, Northern Natural Gas Company Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1,

Second Revised Sheet No. 52c
Second Revised Sheet No. 52c.2a
Third Revised Sheet No. 52c.3
First Revised Sheet No. 52c.4
Third Revised Sheet No. 52c.5
Second Revised Sheet No. 52c.6
First Revised Sheet No. 52c.8
Second Revised Sheet No. 52c.9
First Revised Sheet No. 52f
Second Revised Sheet No. 52f.3
Third Revised Sheet No. 52f.4
Second Revised Sheet No. 52f.5
Second Revised Sheet No. 52f.7
First Revised Sheet No. 52f.10
Second Revised Sheet No. 52f.12
First Revised Sheet No. 52f.15

Northern proposes tariff revisions to its Transportation Rate Schedules FT-1 and IT-1 in response to the Commission's mandate under Order No. 497 that pipelines strictly enforce tariff provisions that contain no discretionary language. Operational situations occur from time to time which may have an undeterminable effect on the pipeline and may prevent the pipeline from strictly enforcing its tariff provisions. Because such situations are innumerable, tariff provisions to address them cannot be prepared in advance. Northern states that a pipeline must have sufficiently flexible tariff provisions to allow it to react reasonably to problematic situations in a not unduly discriminatory manner. The revisions proposed by Northern provide such flexibility. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice &

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Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27428 Filed 11-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-35-000 and TA89-1-35-001]

West Texas Gas, Inc.; Filing

November 23, 1988.

Take notice that on November 14, 1988, West Texas Gas, Inc. (WTG) filed Twelfth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective October 1, 1988. On November 17, 1988, WTG filed a Substitute Twelfth Revised Sheet No. 3a to correct an error in the November 14 filing. Substitute Twelfth Sheet No. 3a and the accompanying explanatory tariff sheets were filed by WTG in accordance with the transmittal rules under the Commission's recently revised purchased gas adjustments regulations.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accorance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1987)). All such motions or protests should be filed on or before December 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27429 Filed 11-28-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 16, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-76513. Persons wishing to comment on this information collection should contract Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0050.

Title: Application for Ship Radio Inspection or Survey.

Form Number: FCC Form 801.

Action: Reinstatement of a previously approved collection for which approval has expired.

Repondents: Business or other for-profit (including small businesses).

Frequency of Response: Annually.

Estimated Annual Burden: 3,800 Responses; 319 Hours.

Needs and Uses: The FCC Form 801 is submitted by licensees to request an inspection of their shipboard radio service and to provide the inspecting office with the necessary data to perform the inspection. This assists FCC field personnel to determine if radio stations on-board ships meet the required specifications to guarantee public safety, so that a safey certificate may be issued.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-27406 Filed 11-28-88; 8:45 am]

BILLING CODE 6712-01-M

Closed Circuit Test, Emergency Broadcast System; Week of December 12, 1988

November 21, 1988.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of December 12, 1988. Only ABC, AP Radio, CBS, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notifed of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a closed circuit test and will not be broadcast over the air.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-27407 Filed 11-28-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Amendment to Existing System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of adoption of revision to system of records: "Employee Financial Disclosure Statements."

SUMMARY: The FDIC is adopting in final form a revision to its system of records entitled "Employee Financial Disclosure Statements". The revision will serve to conform the system to the changes being made to Part 336 of the FDIC's regulations regarding Employee Responsibility and Conduct and to clarify and update the system.

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Ethics Program Manager, at (202) 898-7272, or Donald L. Rosholt, Deputy Ethics Counselor, at (202) 898-7271.

SUPPLEMENTARY INFORMATION: On July 12, 1988, the FDIC published in the **Federal Register** a Notice of proposed changes to its system of records entitled "Employee Financial Disclosure Statements" (53 FR 26309). The public was provided an opportunity to comment during a 60-day period. No comments were received, however.

In summary, the changes will accomplish the following: (1) The addition of the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation to the system; (2) the addition of the Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification; (3) the deletion of Financial Disclosure Reports submitted pursuant to title II of the Ethics in Government Act of 1978 from the FDIC system because they are already included in Office of Personnel Management government-wide system OPM/Govt-4; (4) a change in system location from one location in Washington, DC, to designated divisional, regional, and consolidated offices of the FDIC; and (5) general clarification and update of the system.

The revision is being finalized concurrently with the adoption of amendments to Part 336 of the FDIC's regulations (12 CFR Part 336) entitled "Employee Responsibilities and Conduct" in order to conform the system to the regulation.

In view of the fact that no comments were received, the Board of Driectors hereby revises the Employee Financial Disclosure Statements system to read as follows:

FDIC 30-64-0006

SYSTEM NAME:

Employee Financial Disclosure Statement System.

SYSTEM LOCATION:

Confidential Statements of Employment and Financial Interests, Reports of Interest in Bank Securities and Interest in FDIC Decision, Confidential Reports of Employment Upon Resignation, Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation, Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification, and related records are located in designated divisional, regional, or consolidated offices to which individuals covered by the system are assigned. Duplicate copies of the above records are maintained in the Office of the Executive Secretary, FDIC, 550-17th Street, NW., Washington, DC 20429, for the purpose of certification of review and resolution of conflicts of interest disclosed therein. Confidential Reports of Indebtedness and related records are located in the Office of the Executive Secretary. A list of the FDIC's divisional and regional offices is available from the Office of Corporate Communications, FDIC, 550-17th Street, NW., Washington, DC 20429, (202) 898-6996. A list of the FDIC's consolidated offices is available from the Operations Branch, Division of Liquidation, FDIC, 550-17th Street, NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and Former FDIC officers, employees, and special government employees required to file any of the following forms: (1) Confidential Statement of Employment and Financial Interests; (2) Confidential Report of Indebtedness; (3) Report of Interest in Bank Securities and Interest in FDIC Decision; (4) Confidential Report of Employment Upon Resignation; (5) Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation; (6) Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes data directly furnished by the individual on the following six forms or related records that may be generated in the course of the FDIC's administration of Executive Orders 11222 and 12565 and/or 12 CFR Part 336:

(1) Confidential Statement of Employment and Financial Interests—Contains statements of personal and family holdings, interests in business enterprises and real property, creditors, and outside employment.

(2) Confidential Report of Indebtedness—Contains information on extensions of credit (loans and credit cards) by FDIC-insured banks and affiliates of FDIC-insured banks and non-insured banks; may also contain memoranda and correspondence relating to requests for approval of certain loans extended by insured banks or affiliates thereof.

(3) Report of Interest in Bank Securities and Interest in FDIC Decision—Contains information on whether or not an employee owns or controls, directly or indirectly, any securities of insured banks or affiliates thereof, and if so, lists specific securities, the nature and extent of such interests and the manner of acquisition, contains information on other outside interests which may have an impact on an employee' s official duties, and may contain memordanda and correspondence relating to requests for approval or retention of bank securities by employees.

(4) Confidential Report of Employment Upon Resignation—Contains information as to the employee's prospective employer, the nature of the business or organizational activities of the prospective employer, the position the employee will occupy, dates of negotiation for such employment, and the employee's official involvement, in any, with the prospective employer.

(5) Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation—Contains employee's certification and acknowledgement that he or she has received a copy of the standards of conduct, has viewed the FDIC Orientation Ethics Video, and has a positive responsibility to comply with the standards of conduct.

(6) Statement of Credit Card Obligations in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification—Contains a Division of Bank Supervision employee's disclosure of credit extended through the use of a credit card by a bank headquartered outside of the employee's region of assignment and acknowledgement of disqualification from participating in any matter affecting the creditor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of E.O. 11222, 3 CFR 306 (1964-1965), as amended by E.O. 12565, 3 CFR 229 (1987); section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed, where the Director of the U.S. Office of Government Ethics or the Chairman of the FDIC's Board of Directors determines that good cause has been shown for such use:

(1) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order when the information indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by regulation, rule, or order issued pursuant thereto.

(2) To a congressional office in response to an inquiry made at the request of the individual.

(3) To any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination.

(4) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation or settlement negotiations, or in connection with the criminal proceedings.

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file orders.

RETRIEVABILITY:

Indexed by name, and, in the Office of the Executive Secretary, on an automated system also indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets in lockable offices and, in the Office of the Executive Secretary, on a password-protected automated index system.

RETENTION AND DISPOSAL:

Retained for six years and then destroyed by shredding except that documents needed in an ongoing investigation will be retained until no longer needed in the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Ethics Counselor, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The request must contain the name and office of the individual covered by the system.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained or a person designated by him or her and from the FDIC's Ethics Counselor and support personnel. Information may also be obtained from the other parties to whom the FDIC has supplied information in connection with evaluating the records maintained in the Employee Financial Disclosure Statements system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of November, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-27422 Filed 11-28-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

[Notice No. 6]

Federal Savings and Loan Advisory Council Meeting

November 22, 1988.

AGENCY: Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the Federal Savings and Loan Advisory Council. Notice of the meeting is required under the Federal Advisory Committee Act.

DATE(S): December 7, 1988, 8:30 a.m.–4:00 p.m.; December 8, 1988, 9:00 a.m.–11:30 a.m.

ADDRESS: Hotel Washington, 15th and Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: John M. Buckley, Jr. (202) 377–6577, Debra J. Ahearn (202) 377–6824.

SUPPLEMENTARY INFORMATION:

Proposed Agenda

1. Thrift Industry concerns.
2. Major Legal Issues.
3. Emerging Issues for the Thrift Industry.
4. Investment Banking and Thrift Institutions.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 88-27489 Filed 11-28-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American Transport Lines, Inc., et al

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010382–014

Title: Argentina/U.S. Gulf Ports Agreement.

Parties:

A Bottacchi S.A. De Navegacion C.F.I.I.
CIA. De Navegacao Lloyd Brasileiro
Companhia Maritime Nacional
Empresa Lineas Maritimas Argentinas S.A.
Reefer Express Lines PTY., Ltd.
Transportacion Maritime Mexicana S.A.
American Transport Lines, Inc.

Synopsis: The proposed modification would authorize space chartering among member lines, extend provisions governing the accounting for U.S. Gulf cargoes under alternate coast service to May 31, 1989, and modify certain other pool accounting provisions.

Agreement No.: 212–010386–013

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties:

A Bottacchi S.A. De Navegacion C.F.I.I.
CIA. De Navegacao Lloyd Brasileiro
Empresa Lineas Maritimas Argentinas S.A.
American Transport Lines, Inc.
Reefer Express Lines PTY., Ltd.
Van Nievelt, Goudriaan and Co.
A/S Ivarans Rederi

Synopsis: The proposed modification would authorize space chartering among member lines, extend provisions governing the accounting for U.S. Gulf cargoes under alternate coast service to May 31, 1989, provide for principals' meetings on 90 days notice, and modify certain other pool accounting provisions.

Agreement No.: 212–010388–010

Title: U.S. Atlantic Coast/Argentina Agreement.

Parties:

A Bottacchi S.A. De Navegacion C.F.I.I.
Empresa Lineas Maritimas Argentinas S.A.
American Transport Lines, Inc.

Synopsis: The proposed modification would authorize space chartering among member lines, extend provisions governing the accounting for U.S. Gulf cargoes under alternate coast service to May 31, 1989, and modify certain other pool accounting provisions.

Agreement No.: 212–010389–010

Title: U.S. Gulf Ports/Argentina Agreement.

Parties:

A Bottacchi S.A. De Navegacion C.F.I.I.
Empresa Lineas Maritimas Argentinas S.A.
American Transport Lines, Inc.

Synopsis: The proposed modification would authorize space chartering among member lines, extend provisions governing the accounting for U.S. Gulf cargoes under alternate coast service to May 31, 1989, provide for principals' meetings on 90 days notice, and modify certain other pool accounting provisions.

Agreement No.: 203–011220

Title: Bermuda Discussion Agreement.

Parties:

Bermuda Container Line Ltd.
Lloyd (Bermuda) Line Ltd.

Synopsis: The proposed agreement would authorize the parties to meet, exchange information, discuss, and agree upon rates, charges, service contracts, and conditions of service in the trade between United States ports, and interior and coastal points in North American via such ports; and ports and points in Bermuda. Adherence to any agreements reached by the parties would be voluntary.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 23, 1988.

[FR Doc. 88-27404 Filed 11-28-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; American Transport Lines, Inc., et al

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–009735–025

Title: Steamship Operators Intermodal Committee Agreement.

Parties:

Yang Ming Line Marine Transport Corp.,
Zim Israel Navigation Co. Ltd.,
American President Lines, Ltd.,
Mitsui O.S.K. Lines, Ltd.,
Showa Line, Ltd.,
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed modification would delete Yamashita-Shinnihon Steamship Co., Ltd. as a party to the Agreement.

Agreement No.: 212–009848–021

Title: U.S. Gulf Ports/Brazil Agreement.

Parties:

Companhia De Navegacao Lloyd Brasileiro,
Companhia Maritima Nacional
American Transport Lines, Inc.

Synopsis: The proposed modification would extend the provisions governing the accounting for cargoes under alternate coast service to December 31, 1989.

Agreement No.: 217–011221

Title: Wilhelmsen/ACL/GCL Space Charter Agreement.

Parties:

Atlantic Container Line BV ("ACL"),
Gulf Container Line (GCL), BV ("GCL"),
Wilhelmsen Lines A/S ("Wilhelmsen").

Synopsis: The proposed Agreement would authorize ACL and GCL to charter space of Wilhelmsen vessels and coordinate sailings in the trade between and via North American Atlantic ports and European ports. The parties have requested a shortened review period.

By Order ot the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 23, 1988.

[FR Doc. 88-27424 Filed 11-28-88; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed; Ryan Walsh, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200180

Title: Jackson County Port Authority Terminal Agreement.

Parties:

Jackson County Port Authority,
Board of Supervisors of Jackson County, Mississippi, and
Ryan Walsh, Inc.

Synopsis: The agreement provides for the lease of marine terminal facilities and property at the Port of Pascagoula

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to be used for the receiving, handling, processing, storage, warehousing and delivery of waterborne general cargo.

By Order of the Federal Maritime Commission.

Dated: November 23, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-27495 Filed 11-28-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

FISCORP, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 16, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *FISCORP, Inc.*, dba First Institutional Service Corporation, Salt Lake City, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, November 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27403 Filed 11-28-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Thomas D. Ross, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 12, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Thomas D. Ross*, Ron Bowden, Randy Lanning, Randy Lamprecht and Mark Buckley; to each acquire 14.29 percent of the voting shares of Robuck, Inc., South Sioux City, Nebraska, and thereby indirectly acquire the State Savings Bank, Onawa, Iowa.

2. *E.V. Silveri*, to acquire 0.4 percent of the voting shares of First Midwest Corporation of Delaware, Elmwood Park, Illinois, and thereby indirectly acquire Illinois State Bank of Chicago, Chicago, Illinois; Midwest Bank and Trust Company, Elmwood Park, Illinois; and State Bank of Union, Union, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Donald A. Gloan*, Richardson, Texas; to acquire 28.12 percent of the voting shares of Rawlins Bancshares, Inc., Atwood, Kansas, and thereby indirectly acquire Farmers Bank and Trust, Atwood, Kansas.

2. *Melvin Winger*, Johnson, Kansas, and John Lewis, Syracuse, Kansas; to each acquire an additional 7.39 percent of the voting shares of Syracuse Financial Company, Syracuse, Kansas, and thereby indirectly acquire First National Bank of Syracuse, Syracuse, Kansas.

Board of Governors of the Federal Reserve System, November 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27402 Filed 11-28-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Office of the Assistant Secretary for Health, HHS..

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATE: December 7, 1988, 2:00 p.m. to 5:00 p.m.

ADDRESS: For location of meeting call (202) 272-3421.

FOR FURTHER INFORMATION CONTACT: Ash Hayes, Ed.D., Executive Director, President's Council on Physical Fitness and Sports, 450 Fifth Street, NW., Suite 7103, Washington, DC 20001, Telephone: (202) 272-3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, and subsequent orders. The Functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress; (2) advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports activities (3) advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the Council members of the national program of physical fitness and sports, to report on on-going Council programs, and to plan for future directions.

Date: November 23, 1988.

Ash Hayes,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 88-27486 Filed 11-28-88; 8:45 am]

BILLING CODE 4160-17-M

National Institutes of Health

Meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Acquired Immunodeficiency Syndrome (AIDS) Program Advisory Committee on December 5-6, 1988, at the National Institutes of Health, Bethesda, MD. The meeting will take place from 8:30 a.m. to 5:00 p.m. on December 5, and from 9:00 a.m. to 12:15 p.m. on December 6, in Building 31, C Wing, Conference Room 10. The meeting will be open to the public.

The purpose of the meeting is to discuss the development and evaluation of therapeutics for AIDS.

Anthony S. Fauci, Associate Director for AIDS Research, National Institutes of Health, Shannon Building, Room 201, Bethesda, MD 20892, (301) 496-0357, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: November 22, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-27481 Filed 11-28-88; 8:45 am]

BILLING CODE 4140-01-M

Meeting of the Program Advisory Committee on the Human Genome

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Program Advisory Committee on the Human Genome on January 3 and 4, 1989, at the National Institutes of Health, Bethesda, Maryland. The meeting will take place from 8:30 a.m. to 5:30 p.m. on January 3 and 4, in Building 31, Conference Room 6, C Wing. The meeting will be open to the public.

This will be the initial meeting of the Program Advisory Committee on the Human Genome. The purpose of the meeting is to discuss the planning, organization, and progress of the human genome project at the National Institutes of Health.

Dr. Elke Jordan, Director of the Office of Human Genome Research, National Institutes of Health, Shannon Building, Room 332, Bethesda, Maryland 20892, (301) 496-0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: November 22, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-27482 Filed 11-28-88; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Federal Allotments to States for Social Services Expenditures Pursuant to the Title XX, Social Services Block Grant Act; Promulgation for Fiscal Year 1990

AGENCY: Office of Human Development Service, HHS.

ACTION: Notification of allocation of Title XX—Social Services Block Grant Allotment for fiscal year 1990.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal year 1990, pursuant to Title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: HDS Regional Administrators.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act authorizes $2.7 billion for Fiscal Year 1990 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.7 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.7 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1990, the allotments are based upon the Bureau of Census population statistics contained in its publications "Current Population Reports" (Series P-25, No. 1017 issued October 1988) and "Estimates of the Population of Puerto Rico and the

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Outlying Areas: 1980 to 1987" (Series P–25, No. 1030 issued August 1988), which is the most recent satisfactory data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1989.

Fiscal Year 1990 Federal Allotments to States for Social Services—Title XX Block Grants

Total	$2,700,000,000
Alabama	45,041,206
Alaska	8,057,982
American Samoa	176,117
Arizona	38,731,719
Arkansas	26,243,966
California	306,988,787
Colorado	36,632,202
Connecticut	35,374,679
Delaware	7,096,806
District of Columbia	6,746,886
Florida	133,942,640
Georgia	69,808,949
Guam	465,517
Hawaii	12,039,419
Idaho	11,033,401
Illinois	126,670,874
Indiana	60,481,406
Iowa	30,650,765
Kansas	27,085,960
Kentucky	40,874,976
Louisiana	49,283,980
Maine	13,045,438
Maryland	50,289,999
Massachusetts	63,958,731
Michigan	100,940,853
Minnesota	46,703,324
Mississippi	29,097,997
Missouri	56,118,347
Montana	8,868,273
Nebraska	17,419,432
Nevada	11,164,620
New Hampshire	11,897,264
New Jersey	84,811,749
New Mexico	17,025,773
New York	194,150,671
North Carolina	71,208,627
North Dakota	7,315,505
North Mariana Island	93,103
Ohio	117,868,211
Oklahoma	35,954,233
Oregon	29,885,316
Pennsylvania	129,688,930
Puerto Rico	13,965,517
Rhode Island	10,814,701
South Carolina	37,878,790
South Dakota	7,731,035
Tennessee	53,483,015
Texas	187,994,274
Utah	18,830,045
Vermont	6,036,112
Virgin Islands	465,517
Virginia	65,358,409
Washington	49,907,275
West Virginia	20,623,383
Wisconsin	52,455,126
Wyoming	5,522,168

Date: November 22, 1988.

G. Barry Nielsen,

Director, Office of Policy, Planning, and Legislation.

Approve: November 23, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88–27496 Filed 11–28–88; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–340–08–4333–02]

Information Collection Proposal Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Officer of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Recreation Visitor Survey, 43 CFR 1601.5–3.

OMB Approval Number: 1004–0147.

Abstract: Respondents supply information on their use of recreation opportunities on public lands. This information is used during subsequent land use planning process to help the Bureau make decisions concerning future management of the surveyed area.

Bureau Form Number: 8310–6.

Frequency: Collected on a one-time basis to solve specific planning and management problems.

Description of Respondents: Recreation visitors to public lands.

Estimated Completion Time: 12 Minutes.

Annual Responses: 1800.

Annual Burden Hours: 360.

Bureau Clearance Officer: Rick Iovaine (202) 653–8853.

Date: September 9, 1988.

Dean Stepanek,

Assistant Director, Land and Renewable Resources.

[FR Doc. 88–2713 Filed 11–28–88; 8:45 am]

BILLING CODE 4310–84–M

Availability of the Arkansas River Recreation Management Plan and Environmental Analysis/Plan Amendment; Royal Gorge Resource Area, Canon City District, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: The Arkansas River Recreation Management Plan and Environmental Analysis/Plan Amendment to the Royal Gorge Management Framework Plan for the Royal Gorge Resource Area, Canon City District, Colorado.

SUMMARY: In accordance with 43 CFR Part 1600, the Bureau of Land Management (BLM) Canon City District, Colorado has completed an amendment to the Royal Gorge Resource Area Management Framework Plan. This amendment addresses river related recreation management along the Arkansas River between Leadville and Pueblo, Colorado. The Preferred Alternative is derived from the Proposed Action and alternatives that went through a 45-day public comment period which ended September 30, 1988. This amendment reflects through consideration of public comments. A 30-day protest period is provided.

DATE: The protest period ends January 3, 1989.

ADDRESS: Protests should be sent to the Director (760), Bureau of Land Management, Room 909, Premier Building, 1725 I Street, NW. Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: L. Mac Berta. Area Manager, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 311, Canon City, Colorado 81212, (719) 275–0631.

SUPPLEMENTARY INFORMATION: A copy of the plan may be reviewed or obtained in person or by mail from the Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 311, Canon City, Colorado 81212 or the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, (303) 236–1721.

Persons who have participated in this planning process and have interests that may be adversely affected may protest approval of the plan in accordance with the planning regulations, 43 CFR1610.5–

2. Protests should be made in writing to the BLM Director (760) in Washington. The protest should include the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts being protested.

4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.

5. A concise statement explaining why the proposed decision is believed to be wrong.

At the end of the 30-day protest period (January 3, 1989) and after the Governor's consistency review, the Final Plan, excluding and portions under protest, shall be implemented.

Date: November 21, 1988.

Neil F. Morck,

State Director.

[FR Doc. 88–27462 Filed 11–28–88; 8:45 am]

BILLING CODE 4310–JB–M

[AZ–020–8–4212–13; A–23306]

Realty Action; Exchange of Public Lands, Maricopa County, AZ

The following described Federal lands have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 5 S., R. 1 E.,
Sec. 2, lots 1–4, S½N½, S½.
T. 7 S., R. 1 E.,
Sec. 2, lots 1–4, S½N½, S½;
Sec. 3, lots 1–3, S½NE¼, SE¼NW¼, SE¼.
Comprising 1,680.86 acres, more or less.

In exchange for the above-described public lands, the United States will acquire all or part of the below described private lands from Pleasant Partners of Arizona, an Arizona General Partnership:

Gila and Salt River Meridian, Arizona

T. 8 N., R. 2 W.,
Sec. 19, lots 1 and 2, E½NW¼, NE¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 20, NE¼, N½SE¼, SE¼SE¼, N½SW¼SE¼, N½SW¼SE¼;
Sec. 21, all.
T. 8 N., R. 3 W.,
Sec. 9, MS 1477;
Sec. 15, MS 1477;
Sec. 16, MS 1477.
Comprising 1,644.90 acres of land owned by Pleasant Partners of Arizona.

The exchange proposal involves all of the exchange proponent's interest in the private lands and the surface and mineral estate in the sections of public lands where the United States holds both estates. The exchange is consistent with the Bureau's land use planning objectives.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Right-of-way PHX–083253 to El Paso Natural Gas Company for transportation of natural gas.

3. Right-of-way PHX–086067 to El Paso Natural Gas Company for transportation of natural gas.

4. Right-of-way A–1177 to El Paso Natural Gas Company for transportation of natural gas.

5. Right-of-way A–11243 to El Paso Natural Gas Company for a Cathodic Protection Station and anode bed.

6. Right-of-way A–21968 to All-American Pipeline Company for transportation of crude oil.

7. Right-of-way PHX–086803 to Arizona Department of Transportation for state highway purposes.

8. Right-of-way AR–016861 to Arizona Department of Transportation for state highway purposes.

9. Right-of-way A–9698 to Arizona Department of Transportation for state highway purposes.

10. Right-of-way A–14642 to Arizona Public Service Company for electric transmission line purposes.

11. Right-of-way A–15888 to U.S. West Communication Right-of-Way Department for telephone line purposes.

The lands to be acquired by the United States from Pleasant Partners shall be subject to certain encumbrances as detailed in Schedule B of the Title Insurance Policy.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, and from any subsequent land exchange proposals.

The segregation of the described selected lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years, whichever occurs first.

Upon completion of the official appraisal, acreage adjustments will be made to equalize the values of the offered and selected lands.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: November 22, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–27432 Filed 11–28–88; 8:45 am]

BILLING CODE 4310–32–M

Minerals Management Service

[DES 88–54]

Alaska Region; Availability of the Draft Environmental Impact Statement and Location and Date of Public Hearing on the Proposed Mining Program Lease Sale in Norton Sound

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1989 Outer Continental Shelf Mining Program Lease Sale in Norton Sound. The proposed sale will offer for lease approximately 178,282 acres.

Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261–4435.

Copies of the draft EIS will also be available for inspection in the following public libraries: Alaska Historical Library, Juneau, Alaska; Alaska Pacific University Library, 1531 Cresent Avenue, Anchorage, Alaska; Alaska State Library, Juneau, Alaska; Hooper Bay Public Library, Hooper Bay, Alaska; Gambell Community Library and Learning Center, Gambell, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Golovin Community Library, Golovin, Alaska; Kegoyah Kozga Public Library, Nome Alaska; Kingikme Public Library, Wales, Alaska; Koyuk City Library, Koyuk, Alaska; Kuskokwim Consortium Library, Bethel, Alaska; McQueen School Library,

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Kivalina, Alaska; North Slope Borough School Library, Barrow, Alaska; Northern Alaska Environmental Center Library, 218 Driveway Street, Fairbanks, Alaska; Palmer Public Library, 655 S. Valley Way, Palmer, Alaska; Savoonga Public Library, Savoonga, Alaska; Shaktoolik School Library, Shaktoolik, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Tikigaq Library, Point Hope, Alaska; University of Alaska, Elmer E. Rasmuson Library, Fairbanks, Alaska; University of Alaska, Government Documents Library, 3211 Providence Drive, Anchorage, Alaska; Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska;

In accordance with 30 CFR 256.26, the Minerals Management Service will hold a public hearing in order to receive comments and suggestions relating to the EIS. The hearing will be held on January 5, 1989, at 7:00 p.m., at the Mini Convention Center, Nome, Alaska.

The hearing will provide the Secretary of the Interior with information from Government Agencies and the public which will help in the evaluation of the potential effects of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearing are asked to contact the Regional Director at the above address or by telephone with Ray Emerson, (907) 261–4652, or Tim Holder, (907) 261–4597, by Tuesday, January 3, 1989.

Time limitation may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until January 17, 1989. This will allow those unable to testify at the public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until January 17, 1989, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302.

Date: November 23, 1988.

Carolita Kallaur,

Associate Director for Offshore Minerals Management.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88–27307 Filed 11–28–88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Wild and Scenic River Study; Massachusetts and Connecticut Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 sser. 10), that the second meeting of the Farmington River Study Committee will be held Thursday, December 15, 1988. The meeting follows a field trip held on Saturday, December 3.

The Committee was established pursuant to Pub. L. 99–590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the Wild and Scenic River Study of two segments of the Farmington River.

The meeting will convene at 7:30 p.m. in the auditorium of the Barkhamsted School, Route 181, Pleasant Valley, Connecticut, for the following reasons:

1. Approval of Minutes of First Meeting on 11/14/88;
2. Confirmation of ByLaws;
3. Election of Committee Leadership;
4. Establishment of Subcommittees;
5. Review of Wild Cat Brook Study;
6. Opportunity for Public Comment;
7. Other Business;

It is anticipated that about one hundred people will be able to attend the session in addition to the Committee members.

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State St., Boston, MA 02109 (617) 565–8887.

John Gutherie,

Acting Regional Director.

Date: November 21, 1988.

[FR Doc. 88–27475 Filed 11–28–88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations; Connecticut et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 19, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 14, 1988.

Beth L. Savage,

Acting Chief of Registration, National Register.

CONNECTICUT

New Haven County

Stony Creek—Thimble Islands Historic District, Roughly Thimble Islands Rd. between Rt. 146 and Long Island Sound and the Thimble Islands, Branford, 88002844.

KANSAS

Jefferson County

Buck Creek School, Off US 24, 2 mi. E of Williamstown, Perry vicinity, 88002830

Johnson County

Parker, Martin Van Buren, House, 631 W. Park, Olathe, 88002829

KENTUCKY

Shelby County

Allen, J.B., House (Shelby County MRA), KY 53, .5 mi. N of Chestnut Grove, Chestnut Grove vicinity, 88002867

Ballard, William H., House (Shelby County MRA), KY 53, .5 mi. E of McMakin Rd., Shelbyville vicinity, 88002936

Bank of Simpsonville (Shelby County MRA), Third and Railroad Sts., Simpsonville, 88002878

Basket Farm (Shelby County MRA), KY 395, 1 mi. S of KY 1779, Clay Village vicinity, 88002848

Bethel Church (Shelby County MRA), US 60, 1 mi. W of Clay Village, Clay Village vicinity, 88002907

Bird Octagonal Mule Barn (Shelby County MRA), KY 43, 3 mi. S of Cropper, Cropper vicinity, 88002858

Bird's Nest (Shelby County MRA), KY 43, 3 mi. S of Cropper, Cropper vicinity, 88002859

Bird, Philomen, House (Shelby County MRA), KY1005/Vigo Rd., E of Beards, Rd., Bagdad vicinity, 88002917

Blades, William, House (Shelby County MRA), KY 1005, .5 mi. W of KY 395, Bagdad vicinity, 88002924

Bland Farm (Shelby County MRA), Vigo Rd., 1 mi. W of Rt. 1005, Bagdad vicinity, 88002882

Blaydes House (Shelby County MRA), Blaydes Ln., 1 mi. N of KY 1779, Bagdad vicinity, 88002852

Booker, Samuel, House (Shelby County MRA), Clore—Jackson Rd., 1.5 mi. W of KY 55, Chestnut Grove vicinity, 88002866

Booker—Giltner House (Shelby County MRA), KY 322, 1.5 mi. S of Henry County line, Chestnut Grove vicinity, 88002870

Brown, Cameron, Farm (Shelby County MRA), KY 55 at Clear Creek, Shelbyville vicinity, 88002914

Brown, John C., House (Shelby County MRA), KY 43, .5 mi. N of KY 12, Mulberry vicinity, 8802856

Bryan House (Shelby County MRA), US 60, .5 mi. W of Simpsonville, Simpsonville vicinity, 88002880

Building at Jct. of KY 395 and Benson Pike (Shelby County MRA), KY 395 and Benson Pike, Bagdad vicinity, 88002885

Burton House (Shelby County MRA), Burks Branch Rd., 1 mi. S of Fox Run Rd., Chestnut Grove vicinity, 88002896

Burton, David, House (Shelby County MRA), Burks Branch Rd., 3 mi. N of Shelbyville, Shelbyville vicinity, 88002866

Caldwell House (Shelby County MRA), US 60 at KY 53, Shelbyville vicinity, 88002939

Calloway House (Shelby County MRA), Clear Creek Rd., 2 mi. S of Henry County line, Eminence vicinity, 88002886

Carpenter House (Shelby County MRA), KY 148, 1 mi. S of Clark Station, Clark Station vicinity, 88002928

Carriss's Feed Store (Shelby County MRA), KY 55 and KY 44, Southville, 88002897

Carriss's Store (Shelby County MRA), KY 714 and KY 53, Southville, 88002898

Chiles—Bailey House (Shelby County MRA), KY 395, .5 mi. N of Benson Pike, Bagdad vicinity, 88002923

Clay, Henry School (Shelby County MRA), US 60, Clay Village, 88002944

Coca-Cola Plant (Shelby County MRA), US 60 at Clear Creek, Shelbyville vicinity, 88002925

Collins House (Shelby County MRA), KY 362, .5 mi. W of Webb Rd., Todds Point vicinity, 88002876

Courtney House (Shelby County MRA), S end of Popes Corner Rd., Finchville vicinity, 88002933

Crockett, John Edward, House (Shelby County MRA), Logan Rd., .5 mi. S of KY 12, Mulberry vicinity, 88002851

Dale, John, House (Shelby County MRA), Webb Rd., 1.5 mi. N. of US 60, Simpsonville, vicinity, 88002877

Davis, E. M., Farm (Shelby County MRA), KY 43/Christiansburg Pike, .75 mi. E of KY 55, Shelbyville vicinity, 88002919

Doctor Nash House (Shelby County MRA), U.S. 60, Clay Village, 88002903

Duvall, Marene, House (Shelby County MRA), Simpsonville—Buck Creek Rd. at Bullskin Creek, Finchville vicinity, 88002905

Ellis, Samuel, House (Shelby County MRA), KY 53, 2 mi. W. of KY 322, Chestnut Grove vicinity, 88002872

Figg, Bushrod, House (Shelby County MRA), Zaring Mill Rd., .7 mi. NW of KY 148, Olive Branch vicinity, 88002915

Fry, Froman, Farm (Shelby County MRA), KY 714, 1.5 mi. E of Southville, Southville vicinity, 88002952

Fry, L. C., Farm (Shelby County MRA), KY 53, N of Harrington Mill Rd., Shelbyville vicinity, 88002884

Frye, C. E., Farm (Shelby County MRA), KY 714 and Rockbridge Rd., Southville vicinity, 88002883

Fullenwider House (Shelby County MRA), Anderson Ln., 1 mi. W of Hebron Rd., Todds Point vicinity, 88002874

Gibbs, Lester, House (Shelby County MRA), KY 55, .5 m. N of KY 43, Shelbyville vicinity, 88002889

Glass, S. D. House (Shelby County MRA), KY 55, .5 mi. N of Fox Run Rd., Shelbyville vicinity, 88002887

Goodman, J. W., House (Shelby County MRA), KY 55, 1 mi. N of KY 43, Shelbyville vicinity, 88002864

Graham House (Shelby County MRA), KY 1779, 1.5 mi. W of KY 395, Clay Village vicinity, 88002849

Gray House (Shelby County MRA), Zaring Mill Rd., .3 mi. S of Locust Grove Rd., Shelbyville vicinity, 88002913

Grove Hill Cemetery Chapel (Shelby County MRA), S of Shelbyville at Clear Creek, Shelbyville vicinity, 88002922

Hansbrough, John G. and William, House (Shelby County MRA), Burks Branch Rd., 1.5 r. N of Shelbyville, Shelbyville vicinity, 88002865

Harbison House (Shelby County MRA), Harrington Mill Pke, 1.5 mi. W of KY 53, Scotts Station vicinity, 88002875

Harbison House (Shelby County MRA), Zaring Mill Rd., .25 mi. S of I–64, Shelbyville vicinity, 88002931

Hedden House (Shelby County MRA), KY 637 and Ditto Rd., Harrisonville vicinity, 88002846

Hornsby Bridge (Shelby County MRA), Clore—Jackson Rd. over Fox Run, .5 mi. W of KY 55, Eminence vicinity, 88002906

Hornsby, John A., House (Shelby County MRA), Clore—Jackson Rd., .5 mi. W of KY 55, Eminence vicinity, 88002869

Huss, M. W., House (Shelby County MRA), US 60, .5 mi. E of Clay Village, Clay Village vicinity, 88002946

Jackson, Eli, House (Shelby County MRA), KY 55 near jct., with Clore—Jackson Rd., Eminence vicinity, 88002891

Johnston House (Shelby County MRA), KY 714 and KY 1790, Clay Village vicinity, 88002890

King, M. J., House (Shelby County MRA), Bellview—Clear Creek Rd., .3 mi. W of Bellview Rd., Shelbyville vicinity, 88002916

Lincoln Institute Complex (Shelby County MRA), US 60 W of Simpsonville, vicinity, 88002926

Logan House (Shelby County MRA), Brunerstown Rd. at Bullskin Creek, Finchville vicinity, 88002929

Long, D.T., House (Shelby County MRA), US 60 and Joyes Station Rd., Scotts Station vicinity, 88002902

Martin House (Shelby County MRA), KY 53, 1 mi. S of Rockbridge Rd., Shelbyville vicinity, 88002937

McMicken House (Shelby County MRA), KY 53, 2.5 mi. W of KY 322, Chestnut Grove vicinity, 88002871

Middleton, Henri, House (Shelby County MRA), Old US 60, .75 mi. E. of Peytona, Peytona vicinity, 88002847

Moesser Farm (Shelby County MRA), Old Mount Eden Rd., .5 S of Grove Hill Cemetery, Shelbyville vicinity, 88002900

Money Farm (Shelby County MRA), Finchville Rd., .6 mi. S of Brunnerstown Rd., Finchville vicinity, 88002910

Montgomery House (Shelby County MRA), Buzzard Roost Rd., 1.5 mi. S of US 60, Clay Village vicinity, 88002948

Morris, Dr. William, Office and House (Shelby County MRA), KY 53, Southville, 88002909

Moxley Farm (Shelby County MRA), Zaring Mill Rd. S of I–64, Shelbyville vicinity, 88002932

Muir House (Shelby County MRA), Montana St. at Clear Creek, Shelbyville vicinity, 88002899

Neal-Hamblen House (Shelby County MRA), Hinkle Ln., 2 mi. W of KY 53, Chestnut Grove vicinity, 88002873

Newton House (Shelby County MRA), US 60, Clay Village, 88002943

Olive Branch Methodist Episcopal Church (Shelby County MRA), Zaring Mill Rd. and KY 148, Finchville vicinity, 88002895

Owen, Brackett, House (Shelby County MRA), Hooper Station Rd., 25 mi. E of KY 53, Shelbyville vicinity, 88002940

Payen House (Shelby County MRA), KY 44/53, 1.5 mi. N of Mount Eden, Mount Eden vicinity, 88002954

Pemberton Farm (Shelby County MRA), Finchville—Clark Station Rd., .5 mi. E of KY 148, Clark vicinity, 88002908

Pickett, James A., House (Shelby County MRA), KY 55, .75 mi. S of KY 148, Finchville vicinity, 88002930

Pugh House (Shelby County MRA), KY 44, 1 mi. Wof KY 53, Southville vicinity, 88002935

Radcliffe—Duvall Farm (Shelby County MRA), Finchville—Buck Creek Rd., .5 mi., S of Brunnerstown Rd., Finchville vicinity, 88002920

Ramsey House (Shelby County MRA), KY 148, 1.5 mi. W of KY 44, Southville vicinity, 88002934

Redmon House (Shelby County MRA), KY 395, 2 mi. N of Bagdan, Bagdad vicinity, 88002853

Rice House (Shelby County MRA), US 60, .5 mi. N of Clay village, Clay Village vicinity, 88002945

Robertson House (Shelby County MRA), Buzzard Roost Rd., 1.5 mi. E of Hemp Ridge, Hemp Ridge vicinity, 88002949

Rockbridge Church (Shelby County MRA), KY 714 and Rockbridge Rd., Hemp Ridge vicinity, 88002951

Rodgers House (Shelby County MRA), Zaring Mill Rd., 1.5 mi. S of Popes Corner Rd., Shelbyville vicinity, 88002918

Roayalty—Smith Farm (Shelby County MRA), Burks Branch Rd. N of Clear Creek, Shelbyville vicinity, 88002901

Salem Baptist Church (Shelby County MRA), KY 44/53, .5 mi. S of Southville, Southville vicinity, 88002953

Shady Rest (Shelby County MRA), US 60, .5 mi. E of Clay Village, Clay Village vicinity, vicinity, 88002947

Shropshire Farm (Shelby County MRA), KY 714/Hemp Ridge Rd., 1 mi. S of I–64, Hemp Ridge vicinity, 88002911

Simpsonville Christian Church (Shelby County MRA), US 60, Simpsonville, 88002881

Simpsonville Methodist Chruch (Shelby County MRA), First St., Simpsonville, 88002879

Sleadd, William, Farm (Shelby County MRA), KY 1790, .5 mi. E of Hooper, Hooper vicinity, 88002941

Snook House (Shelby County MRA), KY 12 and KY 43, Mulberry vicinity, 88002855

Snook, Van B., House (Shelby County MRA), Mulberry—Eminence Pike, 1 mi. N of Stoney Point Rd., Cropper vicinity, 88002863

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Stapleton Farm (Shelby County MRA), KY 100/Vigo Rd., .5 mi. E of Logan Rd., Bagdad vicinity, 88002912
Stewart, G. H. House (Shelby County MRA), KY 55, Shelbyville vicinity, 88002868
Swindler House (Shelby County MRA), Mulberry—Eminence Pike, .5 mi. N of Stoney Point Rd., Cropper vicinity, 88002862
Thomas House (Shelby County MRA), KY 43, .25 mi. E of Mulberry—Eminence Pike, Mulberry vicinity, 88002857
Thomas, William J., House (Shelby County MRA), Off KY 12, near jct. with Ky 43, Mulberry vicinity, 88002860
Tindall House (Shelby County MRA), US 60, Clay Village, 88002904
Vanatta House (Shelby County MRA), US 60, Clay Village, 88002942
Venable—Chase House (Shelby County MRA), KY 43, 2.5 mi. NE of Shlebyville, Shelbyville vicinity, 88002861
Waddy Historic District (Shelby County MRA), Roughly KY 395/Main St. S of the Southern Railroad tracks, Waddy, 88002921
Ware, Charles, House (Shelby County MRA), Pea Ridge Rd., .5 mi. W of KY 395, Harrisonville vicinity, 88002845
Ware, Shelby D., House (Shelby County MRA), KY 714, .5 mi. S of Hemp Ridge, Hemp Ridge vicinity, 88002950
Weakley, Thomas, House (Shelby County MRA), KY 1779 and Beard Rd., Clay Village vicinity, 88002850
Weissinger Mule Barn (Shelby County MRA), KY 53, .25 mi. S of I–64, Shelbyville vicinity, 88002938
White House (Shelby County MRA), Cropper Rd., 75 mi. S of Christianburg, Christianburg vicinity, 88002854
Wise House (Shelby County MRA), KY 44/54, .5 mi. N of Mount Eden, Mount Eden vicinity, 88002955
Wright House (Shelby County MRA), KY 1848, 1.5 mi. S of Simpsonville, Simpsonville vicinity, 88002927

MINNESOTA

Becker County

Northern Pacific Passenger Depot, Off US 10, Detroit 88002833

Faribault County

Memorial Library, Sixth St. and Ramsey Ave., Blue Earth, 88002835

Otter Tail County

River Inn, 133 Mill St., South, Fergus Falls, 88002831

Sibley County

Henderson Commercial Historic District, Roughly Main St. between Fifth and Sixth Sts., Henderson, 88002834

NEBRASKA

Douglas County

South Omaha Main Street Historic District, Roughly S. 24th St. Between M and O Sts., Omaha, 88002828

NORTH CAROLINA

Davidson County

Grimes School, Hege Dr., Lexington, 88002832

Guilford County

Guilford County Office and Court Building, 258 S. Main St., High Point, 88002843

SOUTH DAKOTA

Brown County

Augustana Swedish Lutheran Church, 4.5 mi. S of Claremont, Claremont vicinity, 88002842
Rapid City Historical Museum, 515 West Blvd., Rapid City, 88002837

Clark County

Garden City Opera House, First and Railroad Sts., Garden City, 88002839

Clay County

Junker, Jens N. and Anna, Farmstead, Norway Twnshp, Section 6, Meckling vicinity, 88002841

Douglas County

Stevens Opera Block, Main St., Delmont, 88002838

Hamlin County

Old St. Mary's Catholic Parish House, 5th Ave. and Underwood St., Bryant, 88002840

Hughes County

Horner—Hyde House, 100 W. Capitol Ave., Pierre, 88002836

WEST VIRGINIA

Summers County

Gwinn, Samuel, Plantation, County Rt. 15, Lowell vicinity, 88002956

[FR Doc. 88–27290 Filed 11–28–88; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act in United States v. Metropolitan Dade County, FL

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(i) of the Comprehensive Envionmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9622(i), notice is hereby given that on September 29, 1988, a proposed Consent Decree in *United States* v. *Metropolitan Dade County Florida*, was lodged with the United States District Court for the Southern District of Florida. The Complaint in this case sought injunctive relief and cost recovery pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Complaint was filed on September 29, 1988, against Metropolitan Dade County, the past and present owner/operator of the site in question.

The site involved in the case is the Northwest 58th Street Municipal Landfill, which was operated by Metropolitan Dade County from 1952 to 1982. The proposed Consent Decree provides that metropolitan Dade County will implement a work plan within 60 (sixty) days of the entry of the Consent Decree and reimburse the United States $80,042.61 in past response costs, out of a total of $186,121.82 incurred by the Environmental Protection Agency in connection with the NW 58th Street Municipal Landfill site. The work plan to be implemented by Metropolitan Dade County calls for "closure" of the landfill in accordance with the requirments of a Record of Decision ("ROD") signed on September 21, 1987. Under the terms of the ROD, Metropolitan Dade County is required to provide leachate control through a combination of grading, drainage control, and capping. Upon completion of the work plan, Metropolitan Dade County will become responsible for designing and funding Operation and Maintenance activities at the site in a manner consistent with section 121 of CERCLA, 42 U.S.C. 9621. The estimated cost to Metropolitan Dade County of implementing the Consent Decree is approximately $5 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. The Department of Justice will consider any comments in determining whether or not to consent to the proposed settlement and may withdraw its consent to the proposed settlement if such comments disclosure facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper or inadequate. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Metropolitan Dade County*, DOJ Ref. No. 90–11–2–358.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Florida, 155 South Miami Avenue, Suite 600, Miami, Florida 33130 and the Office of the Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, Department of Justice, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy, please enclose a check, in the amount of $7.50 payable to the Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 88–27507 Filed 11–28–88; 8:45 am]
BILLING CODE 4410–10–M

MONITORED RETRIEVABLE STORAGE REVIEW COMMISSION

Public Document Room Established

SUMMARY: Pursuant to its authority under Subtitle A of Pub. L. 100–203, the Nuclear Waste Policy Amendments Act of 1987, notice is hereby given that the Monitored Retrievable Storage Review Commission has established a Public Document Room (PDR) where it will make documents collected during its deliberations available for inspection by members of the public. The PDR is located in Suite 318, 1825 K Street, NW., Washington, DC 20006.

DATES: The PDR will be open on Mondays and Thursdays from 8:30 a.m. to 5:30 p.m. Because our facilities are limited, anyone interested in using the PDR is asked to write or call Sauci Churchill to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Sauci S. Churchill, Director, Reference Services, MRS Commission, 1825 K Street, NW., Suite 318, Washington, DC 20006. Telephone (202) 653–5790 on Mondays or Thursdays.

James C. Malaro,
Acting Executive Director.
November 23, 1988.
[FR Doc. 88–27483 Filed 11–28–88; 8:45 am]
BILLING CODE 6820–BE–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88–100]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATE: Comments are requested by December 29, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Philip D. Waller, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0025), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: DoD Property Record (NASA Use).
OMB Number: 2700–0025
Frequency of Report: On occasion.
Type of Respondent: Businesses of other for-profit, non-profit institutions, small businesses or organizations.
Number of Respondents: 1,000.
Annual Responses: 3,000.
Annual Burden Hours: 1,476.
Abstract-Need/Uses: For NASA contractors to use Government-owned equipment they must report the status of that equipment. Rather than creating another form, NASA contractors prepare Section I of DD Form 1342 which is already used by DoD contractors for this purpose.

November 22, 1988.
Philip D. Waller,
Director, General Management Division.
[FR Doc. 88–27417 Filed 11–28–88; 8:45 am]
BILLING CODE 7510–01–M

[Notice 88–99]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATE: Comments are requested by December 29, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Philip D. Waller, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0021), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: DoD Industrial Plant Equipment Requisition (NASA Use).
OMB Number: 2700–0021.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: Businesses or other for-profit, non-profit institutions, small businesses or organizations.
Annual Responses: 400.
Annual Burden Hours: 44.
Abstract-Need/Uses: Before NASA contractors acquire new equipment under NASA contracts, they must check for availability of the equipment within NASA. DoD has an existing Form 1419 for this purpose. Rather than creating a new form, NASA uses a portion of DoD's form which serves NASA's use adequately.

November 22, 1988.
Philip D. Waller,
Director, General Management Division.
[FR Doc. 88–27418 Filed 11–28–88; 8:45 am]
BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

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ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR 5065—Ensuring the Effectiveness of Maintenance Programs for Nuclear Power Plants.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Records of the plant maintenance program should be available at the site for NRC audit and inspection.

5. Who will be required or asked to report: Holders of licenses to operate commercial nuclear power plants.

6. An estimate of the number of responses: Currently, there are about 100 applicants or holders of licenses to operate a nuclear power plant.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 1,333 hours annually per plant. The total industry burden will be about 133,333 hours per year.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: The proposed amendment to 10 CFR Part 50 requries a documented maintenance program to include a set of attributes that are considered to be essential for an effective program. The records for the maintenance program would be subject to NRC audit and inspection to verify that nuclear power equipment is being maintained at a level to ensure that equipment will perform, with a high degree of reliability, its intended function for the protection of public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 17th day of November 1988.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–27486 Filed 11–28–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactor Designs; Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on December 13, 1988, Room P–114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 13, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the draft safety revaluation report (SER) for the Sodium Advanced Fast Reactor (SAFR) design.

Oral statements may presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, a long with any if its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been concelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted therefor can be obained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat E1-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Perons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occured.

Dated: November 22, 1988

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–27485 Filed 11–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–281]

Virginia Electric and Power Co., Surry Power Station, Unit 2; Exemption

I

The Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Operating License No. DPR–37, which authorizes operation of Surry Power Station Unit 2. The operating license provides, among other things, that the Surry Power Station Unit 2 is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site in Surry, Virginia.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Section III.A.6(b) of Appendix J to 10 CFR Part 50 states for following:

If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria in III.A.5(b), notwithstanding the periodic retest schedule of III.D., a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria in III.A.5(b), after which time the retest schedule specified in III.D. may be resumed.

From 1983 through 1986, the licensee conducted three Type A tests at Surry Unit 2. All of these tests were considered to be failures due to leakage penalty additions from Type C (local leakage rate testing of containment isolation valves) testing. In each case the leakage was associated with penetrations/valves in systems that are normally filled with water and operating, under post-accident conditions, and/or the containment sump isolation valves. The licensee indicated that the containment sump isolation valves have been replaced and they are no longer a continuing source of containment leakage, and that the last three Type A tests have demonstrated that containment integrity has not significantly degraded over the operating cycle. Therefore, the licensee requested a one-time exemption from the schedular requirements of paragraph III.A.6(b) so that the normal retest schedule can be resumed in accordance with Section III.D.

III

By letter dated August 12, 1988, as supplemented August 15 and August 31, 1988, the licensee requested a one-time exemption from 10 CFR Part 50, Appendix J, section III.A.6(b) so that the normal retest schedule of Appendix J, section III.D. can be resumed. Surry Unit 2 failed the "as found" Type A tests that were conducted in 1983, 1985, and 1986, due to leakage rate additions from Type C testing. In each case the leakage was associated with the normal containment sump isolation valves (TV-DA-100/200 A&B) and/or valves in systems that are normally filled with water and operating under post-accident conditions. If these leakage additions had not been necessary, the plant would not have required an accelerated test schedule delineated in Section III.A.6(b). In order to avoid addition of a leakage penalty and an accelerated test schedule, the licensee elected to demonstrated to the staff's satisfaction that:

The corrective actions taken for the normal containment sump isolation valves for Unit 2 have eliminated the chronic leakage problem, and

2. For the Surry Units 1 and 2, the design of the "water-filled" penetrations is such that it precludes leakage of containment atmosphere through the penetrations during an accident, thus making it unnecessary to add the associated Type C leakage rates to Type A leakage rates.

The licensee stated that accomplishing these two objectives would justify the requested exemption.

The licensee addressed the first issue in its letter dated August 12, 1988. The second issue was addressed in submittals dated February 29, 1988, and August 15, 1988. Section 6.2.2.2 of the Surry Updated Final Safety Analysis Report also contains pertinent information. The staff reviewed these submittals and concluded that the subject "water-filled" containment penetrations are sealed with water to the extent that they need not be vented or drained during Type A tests, and the associated Type C leakage rates need not be added to Type A leakage rate. The staff further concluded that the original leakage path of concern that caused the recent Type A "as found" failures (the normal containment sump isolation valves) has been corrected since these valves no longer exhibit excessive leakage. The staff's detailed evaluation is provided in a Safety Evaluation dated November 21, 1988.

Therefore, on the basis of the licensee's corrective actions to reduce the "as found" containment leakage, the staff concludes that a return to the normal Type A test schedule of Section III.D. of Appendix J to 10 CFR Part 50 is justified.

By letter dated August 12, 1988, the licensee also submitted information to identify the special circumstances for granting this exemption for Surry Unit 2 pursuant to 10 CFR 50.12. The licensee stated that the purpose of Type A testing is to measure and ensure that the leakage through the primary reactor containment does not exceed the maximum allowable leakage. It also provides assurance that periodic surveillance, maintenance and repairs are made to systems or components penetrating the containment. The licensee has replaced the valves which were a continuing source of containment leakage. The licensee also stated that it has met the intent of the regulations in establishing containment integrity, and maintaining that integrity over the operating cycle. Therefore, the licensee believes that this exemption should be granted pursuant to 10 CFR 50.12(a)(2)(ii) and (v), in that application of the regulation in this particular instance is not necessary to achieve the underlying purpose of the rule, which is to measure and ensure that leakage through the primary containment does not exceed the allowable leakage rate at any time during the operating cycle; and, that the exemption would provide only temporary relief from the applicable requirement and the license has made a good faith effort to comply with the regulation. This one-time exemption will enable Surry Unit 2 to resume the retest schedule specified in Section III.D. of 10 CFR Part 50, Appendix J and therefore, prevent unnecessary pressurization of the containment to design basis pressure. The staff agrees that the source of leakage which caused the prior failures has been corrected and an additional Type A test at this time is not required to achieve the underlying purpose of the rule.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii) are present, justifying the exemption; namely that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule and the exemption is for a one-time relief only. Accordingly, the Commission hereby grants an exemption to section III.A.6(b) of Appendix J to 10 CFR Part 10 to allow the licensee to resume the Type A retest schedule of Section III.D. of Appendix J for Surry Unit 2. This exemption does not apply if the next test is deemed a failure by the NRC acceptance criteria. Such a failure would constitute two consecutive failures and Section III.A.6(b) would again apply.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (53 FR 46724).

A copy of the licensee's request for exemption dated August 12, 1988, as supplemented August 15 and August 31, 1988, and previous information submitted by letter dated February 29, 1988, are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of November, 1988.

Steven A. Varga, *Director,*

Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–27487 Filed 11–28–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of OPM Form 1530 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces a request to extend an information collection from the public. OPM Form 1530, Report of Medical Examination of Persons Electing Survivor Benefit Under the Civil Service

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Retirement System, is completed by employees who wish to provide a survivor benefit for a person who has an insurable interest in the applicant. This form is designed to collect information from both the applicant and the applicant's physician regarding the applicant's health. Annual use by these individuals is estimated at 2,000 forms. The estimated average burden per respondent is one hour and 30 minutes for a total annual burden of 3,000 hours. For copies of this proposal, call Lawrence F. Dambrose on (202) 632–0199.

DATES: Comments on this proposal should be received by December 13, 1988.

ADDRESSES: Send or deliver comments to—C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415 and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88–27449 Filed 11–28–88; 8:45 am]

BILLING CODE 6325–01–M

Request for Approval of OPM Form 1536 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code. Chapter 35), this notice announces a request to extend an information collection from the public. OPM Form 1536, Former Spouse's Application for Survivor Annuity under the Civil Service Retirement System, is completed by former spouses of a Federal Government employee who has died. The former spouse will be paid survivor benefits if eligible. Annual use by these individuals is estimated at 5,000 forms. The estimated average burden per respondent is 30 minutes for a total annual burden of 2500 hours. For copies of this proposal, call Lawrence F. Dambrose on (202) 632–0199.

DATE: Comments on this proposal should be received by December 13, 1988.

ADDRESSES: Send or deliver comments to—C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415 and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

Constance Horne,

Director.

[FR Doc. 88–27450 Filed 11–28–88; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Request for Medicare Payment.

(2) *Form(s) submitted:* G–740B, G–740S, HCFA–1500.

(3) *OMB Number:* 3220–0131.

(4) *Expiration date of current OMB clearance:*

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, Businesses or other for-profit.

(8) *Estimated annual number of respondents:* 800,000.

(9) *Total annual response:* 10,515,090.

(10) *Average time per response:* .0000001 minutes.

(11) *Total annual reporting hours:* 1.

(12) *Collection description:* The Board administers the Medicare program for persons covered by the railroad retirement system. The collection will obtain the information needed by the Travelers Insurance Company, the Board's carrier, to pay claims for services and supplies covered under Part B of the program.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–27508 Filed 11–28–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

File No.	Rule/Form
270–269	Rule 6c–7.
270–267	Rule 11a–2.
270–294	Rule 17g–1(g).
270–214	Rule 0–2 and Forms 4–R, 5–R, 6–R and 7–R.
270–40	Form ADV–W, Rule 203–2.
270–42	Rule 204–3.
270–217	Rule 206(4)–2.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980, the Securities and Exchange Commission has submitted the following matters under the Investment Company Act of 1940 for extension of OMB approval:

Rule 6c–7 provides an exemption from certain provisions of sections 22(e) and 27 of the Investment Company Act of 1940 for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program. There are approximately 20 registrants governed by Rule 6c–7, with an estimated compliance time of 30 minutes per registrant.

Rule 11a–2 sets forth conditions for offers of exchange by certain Commission approval. There are approximately 50 registrants governed by Rule 11a–2, with an estimated compliance time of 15 minutes per registrant.

Rule 17g–1(g) requires that a registered management investment company file with the Commission a copy of the bond covering its officers and employees and information about any claim or other action taken with respect to the bond. There are approximately 2,800 registrants governed by Rule 17g–1(g), with an estimated compliance time of one hour per registrant.

Notice is also hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted the following matters under the Investment Advisers Act of 1940 for extension of OMB approval:

Rule 0–2 is titled Consent to Service of Process to be furnished by Non-resident Investment Advisers and by Non-resident General Partners or Managing Agents of Investment Advisers; and Forms 4–R, 5–R, 6–R, and 7–R, are titled Irrevocable Appointments of Agent for Services of Process, Pleadings and Other Papers, by Individual Non-resident Investment Advisers, and Non-resident General Partners of Investment Advisers, respectively. There are approximately 3 registrants governed by rule 0–2, with an estimated compliance time of one hour per registrant.

Rule 203–2 governs withdrawal from registration under the Advisers Act and Form ADV–W is the form for withdrawing registration under the Advisers Act. Approximately 555 registrants file Form ADV–W annually, with an estimated compliance time of 1 hour per registrant.

Rule 204–3 requires certain written disclosure statements. There are approximately 14,400 investment advisers governed by Rule 204–3, with an estimated compliance time of one half hour per registrant per client.

Rule 206(4)–2 governs the custody or possession of funds or securities by registered investment advisers. There are approximately 720 registrants governed by rule 206(4)–2, with an estimated compliance time of 106 hours per registrant.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gray Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Paperwork Reduction Project (3235–0276) Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

November 17, 1988.

Johathan G. Katz,

Secretary.

[FR Doc. 88–27452 Filed 11–28–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council Meeting; Public Meeting; Florida

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Miami, will hold a public meeting at 2:00 p.m. on Thursday, December 15, 1988, at the Comfort Inn at the Fort Lauderdale/Hollywood International Airport, 2520 Stirling Road, Hollywood, Florida 33020, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call John L. Carey, District Director, U.S. Small Business Administration, 1320 South Dixie Highway, Suite 501, Coral Gables, Florida 33146–2911, 308/350–5533.

November 22, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88–27411 Filed 11–28–88; 8:45 am]

BILLING CODE 8025–01–M

Region VII Advisory Council; Public Meeting; Kansas

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographica area of Wichita, will hold a public meeting, at 11:30 a.m. Wednesday, December 14, 1988, at the Executive Dining Room, on the third floor of the First National Bank located at 105 North Main Street In Wichita, Kansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Clayton Hunter, District Director, U.S. Small Business Administration, Wichita District Office, 110 East Waterman, Wichita, Kansas, 316/269–6599.

November 22, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88–27409 Filed 11–28–88; 8:45 am]

BILLING CODE 8025–01–M

Region VII St. Louis District Advisory Council Meeting; Public Meeting; Missouri

The U.S. Small Business Administration Region VII St. Louis District Advisory Council, located in the geographical area of St. Louis and Eastern Missouri, will hold a public meeting at 8:30 a.m. on Tuesday, December 13, 1988, at Peat Marwick Main and Co., 1010 Market Street, 19th Floor Conference Room, St. Louis, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive Street, Room 242, St. Louis, Missouri, 63101—(314) 539–6600.

November 22, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88–27410 Filed 11–28–88; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting; Public Meeting; Oklahoma

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting at 10:00 a.m. to 3:00 p.m. on Wednesday, December 14, 1988, at Metro Tech, 201 NE. 48th, Oklahoma City, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Truman Branscum, District Director, U.S. Small Business Administration, 200 NW. 5th Street, Suite 670, Oklahoma City, Oklahoma 73102—Tel: (405) 231–5237.

November 22, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88–27412 Filed 11–28–88; 8:45 am]

BILLING CODE 8025–01–M

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DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending November 18, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*) The due date for answers, conforming application, or motion to modity scope are set forth below for each application. Following the answer DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45942

Date Filed: November 15, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 13, 1988.
Description: Applications of Louisiana-Pacific Corporation, pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests authority to engage in interestate and overseas charter air transportation of persons and property between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket No. 45943

Date filed: November 15, 1988.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 13, 1988.
Description: Application of Louisiana-Pacific Corporation, pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests authority to engage in foreign charter air transportation of persons and property between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any points thereof.

Docket No.: 45944

Date filed: November 16, 1988.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 14, 1988.
Description: Application of Mid Pacific Corporation pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations authority to engage in interstate and overseas scheduled air transportation of persons, property and mail.

Docket No.: 45945

Date filed: November 16, 1988.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 14, 1988.
Description: Application of Mid Pacific Air Corporation pursuant to section 430(d)(3) of the Act and Subpart Q of the Regulations, requests authority to engage in foreign charter air transportation of persons, property and mail.

Docket No.: 45483

Date Filed: November 15, 1988.
Due Date for answers, Conforming Applications, or Motions to Modify Scope: December 13, 1988.
Description: Amendment No. 1 to the Applications of Aero-Chago, S.A., requests amendment of its existing permit to authorize scheduled foreign air transportation of property and mail over the following routes: Between a point or points in the Dominican Republic and the terminal point Miami, Florida. Between a point or points in the Dominican Republic and the terminal points in Borinquen, Ponce, Mayaguez and San Juan Puerto Rico.

Docket No.: 45922

Date filed: November 17, 1988.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 15, 1988.
Amendment No. 1 the Application of Aviacion Del Noroeste, S.A. de C.V. supplements its application for a foreign air carrier by requesting that Hermosillo-Tucson and Guaymas-Tucson (Route A.5.) authority be added to the scheduled authority ANSA is seeking.

Docket No.: 45948

Date Filed: November 18, 1988.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 16, 1988.
Description: Application of Northwest Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide nonstop service between Los Angeles, California, and Sydney, New South Wales, Australia.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 88-27463 Filed 11-28-88; 8:45 am]
BILLING CODE 4910-62-M

[Order 88-11-37; Docket 45959]

Order Instituting; United States-Mexico All-Cargo Service Proceeding

AGENCY: Department of Transportation.

ACTION: Institution of the United States-Mexico All-Cargo Service Proceeding to consider certificate applications by seven U.S. carriers to provide all-cargo scheduled service between the United States and Mexico, Order 88-11-37, Docket 45959.

SUMMARY: Under the terms of a U.S.-Mexico Memorandum of Understanding, the United States can designate no more than three U.S. carriers for all-cargo service over the following route: Oakland, Indianapolis, Columbus, Dayton, Louisville, Harlingen, McAllen, Memphis, Newburgh, Miami, Houston-Chihuahua, Guadalajara, Monterrey, Merida, Toluca.

This route may be divided into separate city-pair markets on the condition that only one U.S. carrier may serve each city-pair market.

The Department has decided to institute an oral evidentiary proceeding before an Administrative Law Judge to select three U.S. carriers for all-cargo Mexico service and also, to select the city-pair markets that these carriers may serve. The proceeding will also consider whether the existing dormant certificate authority of Airlift International for Mexico all-cargo service should be denied.

The Department will consolidate into this proceeding the certificate applications for all-cargo Mexico authority filed by Federal Express Corporation, Amerijet International, The Flying Tiger Line, Aerial Transit Company, United Parcel Service, and Evergreen International Airlines. All of these carriers, except Evergreen, also filed corresponding exemption applications. The Department is dismissing all of these exemption applications.

DATES: Applications, motions to consolidate and petitions for reconsideration are due not later than December 7, 1988. Answers are due not later than December 12, 1988.

ADDRESS: Applications, motions to consolidate and petitions for reconsideration should be filed in Docket 45959 addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 45959, the Department's Office of Administrative Law Judges and Mr. Robert Goldner, P-7, at the same address.

Dated: November 22, 1988.

Gregory S. Dole,
Acting Assistant Secretary for Policy and International Affairs.
[FR Doc. 88-27464 Filed 11-28-88; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

[Revision No. 2]

Approval of Noise Compatibility Program; Hartsfield Atlanta International Airport, GA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on Revision No. 2 of the noise compatibility program submitted by the City of Atlanta under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On October 16, 1984, the FAA determined that the noise exposure maps submitted by the City of Atlanta under Part 150 were in compliance with applicable requirements. On April 10, 1985, the Administrator approved the Hartsfield Atlanta International Airport noise compatibility program, and on June 25, 1987, the Administrator approved the first revision to the noise compatibility program. The second revision to the noise compatibility program was approved by the Administrator on October 24, 1988. All of the recommendations of the program revision were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator in the original or revised noise compatibility program.

EFFECTIVE DATE: The effective date of the FAA's approval of the Hartsfield Atlanta International Airport noise compatibility program Revision No. 2 is October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Charles V. Prouty, Program Manager, Hartsfield Airports District Office, Suite 310, 3420 Norman Berry Drive, Hapeville, Georgia 30354, telephone (404) 763-7631. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to Revision No. 2 of the noise compatibility program for Hartsfield Atlanta International Airport, effective October 24, 1988.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program, including revisions, was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discrimininate against types or classes of aeronautical uses, violate the terms of airport grant agreements; or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program, including revisions, are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Atlanta, Georgia.

The City of Atlanta submitted to the FAA on June 19, 1984, the noise exposure maps, descriptions, and under other documentation produced during the noise compatibility planning study conducted from 1982 through 1984. The Hartsfield Atlanta International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on October 16, 1984. Notice of this determination was published in the **Federal Register** on October 29, 1984.

The revised Hartsfield Atlanta International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1992 and beyond. It was requested that the FAA evaluate and approve the material as a noise compatibility program revision as described in section 104(b) of the Act. The FAA began its review of the program revision on July 25, 1988, and was required by a provision of the Act to approve or disapprove the program revision within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program revision within the 180-day period shall be deemed to be an approval of such revision.

The submitted program contained five proposed actions for noise mitigation, one of which was changed by the proposed program Revision No. 2. The FAA completed its review and determined that the procedural and substitute requirements of the Act and FAR Part 150 have been satisfied. The overall program revision, therefore, was approved by the Administrator effective October 24, 1988.

Outright approval was granted for the revision to the specific program element.

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These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 24, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Commissioner of Aviation, Hartsfield Atlanta International Airport.

Issued in Atlanta, Georgia, November 8, 1988.

Samuel F. Austin,

Manager, Atlanta Airport District Office.

[FR Doc. 88-27445 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map; Sky Harbor International Airport, Phoenix, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Phoenix, Arizona under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 4, 1988.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP-611, Federal Aviation Administration, Western Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1250.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Sky Harbor International Airport, are in compliance with applicable requirements of FAR Part 150, effective November 4, 1988.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA, noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Phoenix on December 30, 1987. The FAA has determined that the noise exposure maps for Sky Harbor International Airport are in compliance with applicable requirements. This determination is effective on November 4, 1988. FAA's determination on an airport operator's noise exposure is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, nor is it a commitment to approve a noise compatibility program or to fund the implementation of the program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Room 6E25, Hawthorne, California 90261.

Mr. Neilson a. Bertholf, Jr., Phoenix Aviation Department, 3400 Sky Harbor Boulevard, Phoenix, Arizona 85034-4420.

Issued in Hawthorne, California, on November 4, 1988.

Herman C. Bliss,

Manager, Airport Division, Western-Pacific Region.

[FR Doc. 88-27438 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice, Santa Maria Public Airport, Santa Maria, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Santa Maria for Santa Maria Public Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 4, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Conley, Environmental Protection Specialist, AWP-611.3, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1621.

SUPPLEMENTARY INFORMATION: Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Santa Maria. The specific maps under consideration are in the submission. The FAA has determined that these maps for Santa Maria Public Airport are in compliance with applicable requirements. This determination is effective on November 4, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airport Division, 15000 S. Aviation Boulevard, Room 6E26, Hawthorne, California 90261

Dan J. Hoback, General Manager, Santa Maria Public Airport District, 3217 Skyway Drive Santa Maria, California 93455.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne on November 4, 1988.

Herman C. Bliss,

Manager, Airport Division, Western-Pacific Region.

[FR Doc. 88-27446 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map; Las Vegas, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Clark County, Nevada under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 3, 1988.

FOR FURTHER INFORMATION CONTACT: David Cross, Airport Planner, Federal Aviation Administration, Airport District Office, 831 Mitten Road, Burlingame, California 94010, (415) 876-2779.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for McCarran International Airport, Las Vegas, Nevada are in compliance with applicable requirements of FAR Part 150, effective November 3, 1988.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA, noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Clark County on March 1, 1988. The FAA has determined that the noise exposure maps for McCarran International Airport are in compliance with applicable requirements. This determination is effective on November 3, 1988. FAA's determination on an airport operator's noise exposure is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, nor is it a commitment to approve a noise compatibility program or to fund the implementation of the program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it would be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 203 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps

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are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airport District Office, 831 Mitten Road, Burlingame, California 94010.

Mr. Robert Broadbent, Director of Aviation, McCarran International Airport, Las Vegas, Nevada 89111–1005.

Issued in Hawthorne, California, on November 3, 1988.

Herman C. Bliss,

Manager, Airport Division, Western-Pacific Region.

[FR Doc. 88–27437 Filed 11–28–88; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map; Nashville, International Airport, Nashville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Metropolitan Nashville Airport Authority for Nashville International Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Otis T. Welch, Principal Planner/Programmer; Airport District Office; 3973 Knight Arnold Road, Suite 105; Memphis, Tennessee 38118–3004; telephone number 901/521–3495.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Nashsville International Airport are in compliance with applicable requirements of Part 150, effective November 14, 1988.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Metropolitan Nashville Airport Authority. The Specific maps under consideration are the "FY 1988 Noise Exposure Map" and "FY 1993 Baseline Noise Exposure Map" in the submission. The FAA has determined that these maps for Nashville International Airport are in compliance with applicable requirements. This determination is effective on November 14, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Airports District Office, 3973 Knight Arnold Rd., Suite 105, Memphis, TN 38118–3004.

Metropolitan Nashville Airport Authority, Communication Division, 4th Floor One Terminal Drive, Suite 501, Nashville, TN 37214, 615–275–1610.

Questions may be directed to the individual named above under the heading "**FOR FURTHER INFORMATION CONTACT**".

Issued in Memphis, Tennessee, November 14, 1988.

John M. Dempsey,

Manager, Memphis Airports District Office.

[FR Doc. 88–27447 Filed 11–28–88; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review, McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Metropolitan Knoxville Airport Authority for the McGhee Tyson Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the McGhee Tyson Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 8, 1989.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 9, 1988. The public comment period ends January 8, 1989.

FOR FURTHER INFORMATION CONTACT: Otis T. Welch, Civil Engineer; Airports District Office; 3973 Knight Arnold Road, Suite 105; Memphis, Tennessee 38118–30004; telephone number 901/521–3495.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the McGhee Tyson Airport are in compliance with applicable requirements of Part 150, effective November 9, 1988. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 8, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Metropolitan Knoxville Airport Authority submitted to the FAA on January 5, 1988, noise exposure maps, descriptions and other documentation which were produced during an airport noise compatibility planning study from January 1986 to December 1987. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and the surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Metropolitan Knoxville Airport Authority. The specific maps under consideration are "Noise Exposure Map: 1986 Operations" and "Noise Exposure Map—1991 Operations" in the submission. The FAA has determined that these maps for the McGhee Tyson Airport are in compliance with applicable requirements. This determination is effective on November 9, 1988. FAA's determination on an airport operator's noise exposurse maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibiliities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification of the airport operator, under §150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the McGhee Tyson Airport, also effective on November 9, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 8, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, §150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Airports District Office, 3973 Knight Arnold Rd., Suite 105, Memphis, TN 38118–3004.

Mr. Terry Igoe, Executive Director, Metropolitan Knoxville Airport Authority, McGhee Tyson Airport, Alcoa, Tennessee 37701.

Questions may be directed to the individual named above under the heading, "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Memphis, Tennessee, November 8, 1988.

Wayne R. Miles,

Assistant Manager, Memphis Airports District Office.

[FR Doc. 88–27448 Filed 11–28–88; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–838]

International Shipholding Corp.; Amendment to Application for Permission Under Merchant Marine Act, to Acquire Waterman Marine Corp. and Waterman Industries Corp.

International Shipholding Corporation and its subsidiaries (ISC) by letter dated November 16, 1988, has requested an amendment to the **Federal Register** Notice dated November 16, 1988 (53 FR 46178) in order that the sentence beginning in paragraph seven, line six, should read: "ISC also owns a 14 percent interest in one management firm and a 50 percent interest in two management firms offering ship services in Norway, the Netherlands, and Singapore."

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS) and 20.800 Construction-Differential Subsidies (CDS))

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By Order of the Maritime Administrator.
James E. Saari,
Secretary.
[FR Doc. 88-27510 Filed 11-28-88; 8:45 am]
BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Series Cir.; Public Debt No. 31-88]

Treasury Notes of November 30, 1990, Series AH-1990

Washington, November 17, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of November 30, 1990, Series AH-1990 (CUSIP No. 912827 WX 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated November 30, 1988, and will accrue interest from that date, payable on a semiannual basis on May 31, 1989, and each subsequent 6 months on November 30 and May 31 through the date that the principal becomes payable. They will mature November 30, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public moneys. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Standard time, Tuesday, November 22, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 21, 1988, and received no later than Wednesday, November 30, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, November 30, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, November 28, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, November 30, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to recieve tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 88-27575 Filed 11-28-88; 3:13 pm]
BILLING CODE 4810-40-M

[Dept. Cir.; Public Debt Series No. 32-88]

Treasury Notes of February 15, 1994 Series H-1994.

Washington, November 17, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,500,000,000 of United States securities, designated Treasury Notes of February 15, 1994, Series H-1994 (CUSIP No. 912827 WY 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amount of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 1, 1988, and will accrue interest from that date, payable on a seminannual basis on August 15, 1989, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 23, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 22, 1988, and received no later than Thursday, December 1, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The

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minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are definded as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentatlities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Thursday, December 1, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, November 29, 1988. In addition, Treasury Tax and Loan Note Option Depositories may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, December 1, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secreatry of Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-27576 Filed 11-25-88; 3:13 pm]

BILLING CODE 4810-40-M

Fiscal Service

[Dept. Circ. 570, 1988 Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; Fidelity and Guaranty Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1988 Revision, on page 25061 to reflect this addition:

Fidelity and Guaranty Insurance Company

Business Address: 100 Light Street, P.O. Box 1138, Baltimore, MD 21203.
Underwriting Limitation [b]: *$1,148,000.*
Surety Licenses [c]: All except AS, HI, GU, PR, WY, VI.
Incorporated in: Iowa.

Certificates of Authority expire on June 30th each year unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (32 CFR Part 223). A list of qualified companies is published annually as of July 1st in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

Dated: November 10, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88-27454 Filed 11-28-88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1988 Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds; Nordia Insurance Co.

The Western Fire Insurance Company, a Kansas corporation, has formally changed its name to Nordia Insurance Company, effective June 7, 1988. The Company was last listed as an acceptable surety on Federal bonds as The Western Fire Insurance Company at 53 FR 25079, July 1, 1988.

Notice is also given that the Company's business address has been changed to P.O. Box 886, Shelton, CT 06484-0886.

Although the Company wishes to retain its Certificate of Authority, it has informed the department of Treasury that it will temporarily stop writing Federal Surety bonds. Therefore, until further notice, Federal bond-approving officers should not accept bonds written by Nordia Insurance Company. In accordance with this notice, Federal Bond-approving officers should annotate their reference copies of Treasury Circular 570, 1988 Revisio appropriately.

Questions concerning this notice may be directed to the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, or by calling (202) 287-3921.

Dated: November 10, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88-27453 Filed 11-28-88; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; Grant Program; Summer English Teaching Institute for South African Educators

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) plans to sponsor a Summer English Teaching Institute for twenty-five South African secondary school teachers and teacher trainers. Participants will be individuals involved with English teaching in black education and will be drawn from schools, teacher training institutions, and the non-formal sector. Minimum qualification will be a two-year teacher training diploma beyond secondary school. USIA is asking for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of teaching English-as-a-Foreign Language (EFL)/English-as-a-Second Language (ESL) and special expertise in handling cross-cultural programs.

The general objective of the Institute is to support and encourage the upgrading of secondary education for blacks in the field of English. The program should be designed for secondary level classroom teachers with responsibilities in curriculum planning and course material development, and teacher trainers with responsibilities in supervision and staff training.

Time Frame and General Description

The Institute should be programmed to last five weeks beginning on or about Friday, July 7, 1989 and ending on or about Sunday, August 13, 1989. The participants will arrive directly at the campus site from their home country. It is expected that the university program staff will make arrangements to have participants met upon arrival at the airport nearest the university campus. Few if any participants will have visited the United States previously. In view of this, an initial orientation to the university community and a brief introduction to U.S. society should be considered an integral part of the Institute and should be held on the first two to three days of the program.

The applicant is asking to design a program with emphasis on methodology, supervision, and teaching techniques in EFL/ESL which will meet the special needs of secondary school trainers and teacher trainers from South Africa. The program should maintain a relative balance among discussion sessions, lectures, workshops, and practicums. Lengthy lectures should not be the usual format.

The academic program should be complemented by ample time for interaction with American students, faculty, and administrators, and the local community to improve the participants' understanding of the United States. In this regard, the Institute should incorporate cultural features such as community and cultural activities, field trips to places of local interest, home stays with families in the area (other secondary educators if possible), and events which will bring the participants into contact with Americans from a variety of backgrounds.

Following the program at the university participants will have a short professional/cultural tour of the U.S. which will be handled by a separate contract agency.

Program Objectives

Some specific areas to address in the Institute are:

1. English-as-a-Second Language/English-as-a-Foreign Language methodology in theory and practice; policy issues in the use of English as a medium of instruction for non-native English speakers; transition from mother tongue instruction to English.

2. Language enhancement in communication, pronunciation, syntax, writing, and reading.

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3. Enhancement of pedagogical skills, curriculum development, development of teacher-made materials; development of curriculum materials during the Institute which can be used in home country.

4. Development of supervisory skills in observation and evaluation of classroom teachers, training teachers to handle individual and small group needs in classes with fifty or more students.

5. For teacher trainers: Enhancement of teacher training skills; development of in-service training programs for teachers; designing and conducting workshops to train EFL/ESL teachers.

6. Visits to on-going EFL/ESL classes in local educational or community centers, providing participants withn opportunities to practice EFL/ESL skills.

7. Involving participants in American culture through community/cultural activities. This should include interaction with Americans from a variety of backgrounds.

8. Evaluation of various components of the Institute as well as the entire Institute.

9. To the extent possible, Institute materials should be chosen and/or designed to be useful upon returning to South Africa.

A short professional/cultural tour of selected sites in the United States will follow the Institute. A separate contract agency will be responsible for the post-institute tour and will handle all programming and logistics, management, and expenses of the tour. USIA will inform the Institute grantee of these arrangements at the time of the grant award. the university hosting the Institute will be expected to provide consultation and advice to the organization responsible for programming the post-institute tour.

Requirements

All Institute programming and administrative logistics, management of the academic program, local travel, and on-site university arrangements will be the responsibility of the university including enrolling participants in Teachers of English to Speakers of Other Languages (TESOL). USIA will be responsible for all communications to and from the U.S. Information Service posts in South Africa, and will provide the university with participants biodata and itineraries and offer any advice or guidance the university might find useful. USIA will also handle travel arrangements from South Africa to the Institute.

If your university decides to submit a proposal, it should provide a detailed plan in response to the needs and priorities outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities or organizations. The proposal must clearly demonstrate quality on-site management capabilities for the academic and cross-cultural components of the Institute. The overall quality and effectiveness of the Institute hinges upon good administrative and organizational capabilities to manage interactions between foreign educators and Americans.

All submited proposals should include the following:

1. A detailed plan in response to the needs and objectives outlined above. The detailed narrative should outline the structure and organization of the Institute including a day-by-day agenda. It should also include a proposed list of appropriate books, reading or prepratory materials which would be sent to participants before their departure for the U.S. providing them with the topics to be discussed, as well as practical suggestions for preparing for their stay at the University.

2. Current *curricula vitae* of proposed faculty and consultants.

3. A specific and detailed line item budget for both administrative and program costs. Included in the budget worksheet should be budget explanations detailing how costs were computed, i.e. salaries should include position title, annual salary, and per cent of effort used for this program. The budget should include and elaborate on each of the following:

a. Tuition, salaries and benefits, or services (including support staff) for the Institute program and other direct costs.

b. Housing and board at the university; for example, faculty residences, graduate dormitories, home stays, or other if necessary.

c. Transportation costs for all travel during the course of the Institute. (International travel arrangements will be made by USIA and other domestic travel will be handled by the agency programming the post-institute tour).

d. Miscellaneous costs such as daily maintenance ($10.00 per participant), honoraria, film rentals, certificates, cultural activities, support materials, supplemental book allowance ($150 per participant) and TESOL membership fees.

e. University contributions or cost sharing and/or private sector contributions.

f. Indirect costs which should be held to a minimum.

For your guidance, our experience with similar institutes would indicate that the cost to USIA for this Institute should probably not exceed $90,000. Based on the final number of participants some modifications may be necessary following the grant award.

Evaluation Criteria

A panel of senior USIA officers experienced in TEFL, the exchange of international educators, and African affairs will use the following criteria when evaluating proposals:

(1) Quality and creative design of the Institute;

(2) Quality, rigor, and appropraiteness of proposed syllabus to goals of the Institute;

(3) Clear evidence of the ability to deliver a substantive academic and pedagogical EFL/ESL program;

(4) Demonstrated high quality EFL/ESL programs—experience with South Africa is desirable;

(5) A quality evaluation at the conclusion of the situation;

(6) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

(7) The experience of professionals and staff assigned to the Institute;

(8) The availability of local and state resources for the orientation and Institute;

(9) Access to EFL/ESL professionals and programs from various universities and organizations;

(10) Cost-effectiveness.

Applicants should submit *10 copies each* of a 500 word summary, a proposal not to exceed 20 typed, double-spaced pages, the detailed budget, and a completed and signed application cover sheet (enclosed). Final proposals must be received in the Agency by close of business January 27, 1989. The proposal should be submitted to: U.S. Information Agency, Office of Academic Programs, Africa Branch, E/AEA Attn: Dr. Ellen Berelson, Room 232, 301 4th Street, SW., Washington, DC 20547, Phone (202) 485-7355.

Date: November 16, 1988.

Guy Story Brown,

Director, Office of Academic Programs.

[FR Doc. 88-27520 Filed 11-28-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 229

Tuesday, November 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

November 23, 1988

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5. U.S.C. 552B:

TIME AND PLACE: 10:00 a.m., November 30, 1988.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agency; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 887th Meeting—November 30, 1988, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 10418-003, City of Harrisburg, Pennsylvania

CAP-2.
Project No. 2842-013, City of Idaho Falls, Idaho

CAP-3.
Project No. 6765-005, BME Enterprises, Inc.

CAP-4.
Project No. 2512-011, Elkem Metals Company

CAP-5.
Project No. 9419-002, JDJ Energy Company

CAP-6.
Project No. 2716-013, Virginia Electric and Power Company

CAP-7.
Project No. 516-050, South Carolina Electric & Gas Company

CAP-8.
Project No. 2785-008, Wolverine Power Corporation

CAP-9.
Docket No. UL88-12-001, Central Vermont Public Service Corporation

CAP-10.
Docket No. UL88-16-001, Central Vermont Public Service Corporation

CAP-11.
Docket No. UL88-17-001, Central Vermont Public Service Corporation

CAP-12.
Docket No. QF87-345-001, City of Burlington, Vermont, Electric Department and Winooski One Partnership

CAP-13.
Project No. 10405-004, Craig W. Scott

CAP-14.
Omitted

CAP-15.
Docket Nos. UL87-16-001 and UL87-17-001, Niagara Mohawk Power Corporation

CAP-16.
Project No. 2920-006, Truckee Donner Public Utility District

CAP-17.
Project No. 2114-013, Public Utility District No. 2 of Grant County, Washington
Project Nos. 943-002 and 2145-000, Public Utility District No. 1 of Chelan County, Washington
Project No. 2149-002, Public Utility District No. 1 of Douglas County, Washington
Docket No. E-0569-001 (Vernita Bar Phase), State of Washington Department of Fisheries v. Public Utility District No. 2 of Grant County, Washington

CAP-18.
Docket No. EL88-37-000, Kentucky Utilities Company

CAP-19.
Docket No. QF88-507-000, U.S. Army Corps of Engineers

CAP-20.
Docket No. EC88-23-001, Tucson Electric Power Company, San Diego Gas and Electric Company, SD Acquisition Corp. (California), and San Diego Acquisition Corp.

CAP-21.
Docket No. ER84-348-009, American Electric Power Service Corporation

CAP-22.
Docket No. EL87-30-005, Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company and Holyoke Power and Electric Company

CAP-23.
Docket No. ER83-657-004, Houston Lighting and Power Company

CAP-24.
Docket No. EL88-20-000, Kentucky Utilities Company
Docket No. EL88-32-000, Nevada Power Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. GP87-60-001, Transcontinental Gas Pipe Line Corporation v. Enstar Petroleum Company

CAM-2.
Docket No. GP88-2-001, Forest Oil Corporation

CAM-3.
Docket No. IN83-1-059 (Phase II), Amoco Production Company, *et al.*

CAM-4.
Docket No. SA88-5-001, Red River Gas Pipeline Corporation

CAM-5.
Docket No. RM87-17-002, Natural Gas Data Collection System

Consent Gas Agenda

CAG-1.
Docket Nos. RP89-14-000 and 001, Inter-City Minnesota Pipelines Ltd.

CAG-2.
Docket No. RP89-16-000, Transwestern Pipeline Company

CAG-3.
Docket Nos. RP85-58-022, TA85-1-33-011, RP85-58-023 and TA85-1-33-012, El Paso Natural Gas Company

CAG-4.
Docket Nos. RP88-92-004, TQ89-1-11-001, TM89-1-11-000 and RP88-124-003, United Gas Pipe Line Company

CAG-5.
Docket Nos. RP82-55-038 and RP87-7-007, Transcontinental Gas Pipe Line Corporation

CAG-6.
Docket No. RP88-180-004, Trunkline Gas Company

CAG-7.
Docket No. RP86-94-010, Natural Gas Pipeline Company of America

CAG-8.
Docket Nos. TQ89-1-22-000, TQ89-1-22-001, RP89-15-000 and RP89-15-001, CNG Transmission Corporation

CAG-9.
Docket No. TQ89-1-28-000, Panhandle Eastern Pipe Line Company

CAG-10.
Docket No. TQ89-1-25-000, Mississippi River Transmission Corporation

CAG-11.
Docket No. TQ89-1-63-000, Carnegie Natural Gas Company

CAG-12.
Docket No. TQ89-1-15-000, Mid Louisiana Gas Company

CAG-13.
Docket No. RP88-240-002, Panhandle Eastern Pipe Line Company

CAG-14.
Docket No. RP88-239-001, Trunkline Gas Company

CAG-15.
Docket Nos. RP88-177-003 and RP88-230-002, Texas Gas Transmission Corporation

CAG-16.
Docket No. RP88-241-002, Panhandle Eastern Pipe Line Company

CAG-17.
Docket No. TQ89-1-55-000, Questar Pipeline Company

CAG-18.
Omitted

CAG-19.
Docket Nos. RP82-121-001 and RP82-125-024, Tennessee Gas Pipeline Company

CAG-20.
Docket No. RP88-96-007, Southern Natural Gas Company

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CAG–21.
Docket No. RP85–125–023, Tennessee Gas Pipeline Company
CAG–22.
Docket No. RP88–243–001, Transcontinental Gas Pipe Line Corporation
CAG–23.
Docket No. RP88–246–002, ANR Pipeline Company
CAG–24.
Docket Nos. RP85–58–024 and TA85–1–33–013, El Paso Natural Gas Company
CAG–25.
Docket Nos. RP88–249–001 and RP88–228–004, Tennessee Gas Pipeline Company
CAG–26.
Docket No. RP85–141–010, Texas Gas Transmission Corporation
CAG–27.
Docket No. RP88–251–003, Texas Eastern Transmission Corporation
CAG–28.
Docket Nos. TQ89–1–33–001, TM89–1–33–001, TA88–1–33–000 and TA88–3–33–002, El Paso Natural Gas Company
CAG–29.
Docket No. RP88–239–003, Trunkline Gas Company
CAG–30.
Docket No. RP88–240–001, Panhandle Eastern Pipe Line Company
CAG–31.
Docket No. RP88–241–001, Panhandle Eastern Pipe Line Company
CAG–32.
Docket Nos. RP83–35–038 and 041, Texas Eastern Transmission Corporation
CAG–33.
Docket Nos. RP88–181–004 and RP86–94–011, Sea Robin Pipeline Company
CAG–34.
Docket No. RP87–47–001, Phillips Gas Pipeline Company
CAG–35.
Docket No. RP88–230–001, Texas Gas Transmission Corporation
CAG–36.
Docket No. RP86–119–007, TA84–2–9–009 and TA85–1–9–006, Tennessee Gas Pipeline Company
CAG–37.
Docket Nos. TA87–2–28–002, Panhandle Eastern Pipe Line Company
CAG–38.
Docket No. ST85–1397–001, The Kansas Power and Light Company
CAG–39.
Omitted.
CAG–40.
Docket No. RP83–93–018, Trunkline Gas Company
CAG–41.
Docket No. RP89–17–000, Northwest Pipeline Corporation
CAG–42.
Omitted.
CAG–43.
Omitted.
CAG–44.
Docket No. RP85–206–003, Northern Natural Gas Company, Division of Enron Corp.
CAG–45.
Docket No. CI87–223–002, OXY USA Inc.
CAG–46.
Docket No. CI88–263–002, Amoco Production Company
Docket No. CI88–312–001, Mobil Oil Exploration and Producing Southeast, Inc.
CAG–47.
Docket No. CI87–860–000, Bob Hurt
CAG–48.
Docket No. CP87–410–002, Great Lakes Gas Transmission Company
CAG–49.
Docket Nos. CP87–407–004 and RP88–136–006, National Fuel Supply Corporation
CAG–50.
Docket Nos. CP87–131–002, CP87–132–000, 001 and 002, Tennessee Gas Pipeline Company
CAG–51.
Docket No. CP88–212–001, West Texas Gathering Company
CAG–52.
Docket No. CP88–656–002, MexUS Interstate Pipeline Company, Inc.
CAG–53.
Docket No. CP85–608–012, National Fuel Gas Supply Corporation
CAG–54.
Docket Nos. CP89–24–000 and CP89–26–000, Panhandle Eastern Pipe Line Company
CAG–55.
Docket No. CP89–69–000, Trunkline Gas Company
CAG–56.
Docket No. CP88–756–000, East Tennessee Natural Gas Company
CAG–57.
Docket Nos. CP82–322–006, 007 and CP82–362–007, Northwest Pipeline Corporation
Docket Nos. CP82–323–007, CP82–370–006, CP82–556–005 and CP84–319–000, El Paso Natural Gas Company
Docket No. CP83–32–001, Pacific Gas Transmission Company
Docket No. CP83–35–002, Pacific Gas and Electric Company
Docket No. CP84–303–000, Gas Company of New Mexico
CAG–58.
Docket No. CP87–506–000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–59.
Docket No. CP87–395–000, Consumers Power Company
CAG–60.
Docket Nos. CP86–636–004, CP86–735–002, CP87–10–002, CP87–66–002, CP87–84–002 and CP87–21–003, Pacific Gas Transmission Company
Docket No. CP87–19–001, Pacific Gas Transmission Company
Docket No. CP88–276–001 (Not Consolidated), Pacific Gas Transmission Company
CAG–61.
Docket No. CP88–356–009, El Paso Natural Gas Company
Docket No. G–7670–003, Sunterra Gas Gathering Company
CAG–62.
Docket No. CP88–545–000, Southern Natural Gas Company
CAG–63.
Docket Nos. CP87–224–000 and 001, Northwest Gas Pipeline Corporation
CAG–64.
Docket No. CP88–783–000, Lodi Processing Corp. and Jala Pipe Line Corp.
CAG–65.
Docket No. TQ89–1–28–000, Natural Gas Pipeline Company of America

I. Licensed Project Matters

P–1.
Project No. 1250–001, City of Pasadena Water and Power Department. Application for a new license for Azusa project on Forest Service lands.

II. Electric Rate Matters

ER–1.
Docket Nos. ER88–630–000 and ER88–631–000, New England Power Company. Order concerning marginal cost rate filing.
ER–2.
Docket No. EF87–2011–007, United States Department of Energy—Bonneville Power Administration. Order on modified SL–87 rates.
ER–3.
Docket No. EL89–1–000, San Diego Gas and Electric Company, Complainant v. Southern California Edison Company, SCECorp and James S. Pignatelli, Respondents. Order on complaint.

Miscellaneous Agenda

M–1.
Docket No. FA84–15–003, Minnesota Power and Light Company. Order on court remand concerning fuel adjustment clause.
M–2.
[Reserved]
M–3.
Docket No. RM88–14–001, Interpretation of Section 5 of the Outer Continental Shelf Lands Act
Docket No. RM88–15–000, Regulations under Section 5 of the Outer Continental Shelf Lands Act (OSCLA) Governing Transportation of Natural Gas by Interstate Pipelines on the Outer Continental Shelf. Final rule and rehearing of interpretative rule.

I. Pipeline Rate Matters

RP–1.
Docket No. RP88–182–000, Gas Research Institute. Concerning 1989 funding unit.

II. Producer Matters

CI–1.
[Reserved]

III. Pipeline Certificate Matters

CP–1.
[Reserved]

Lois D. Cashell,
Secretary.
[FR Doc. 88–27525 Filed 11–25–88; 11:18 am]
BILLING CODE 6717–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Personnel Committee Meeting

TIME AND DATE: 1:30 p.m.—Wednesday, November 30, 1988 (*Rescheduled*).

PLACE: National Credit Union Administration, 1776 G Street, NW., 6th Floor, Washington, DC 20456.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Nance Frazier, Director of Communications, 376–3224.

Agenda

1. Approval of FY 1989 Officer Salaries.
2. Merit Award.

Carol J. McCabe,
Secretary.
[FR Doc. 88–27519 Filed 11–23–88; 4:42 pm]
BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 28, December 5, 12, and 19, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of November 28

Thursday, December 1

10:00 a.m.
Meeting with State of Nevada on High Level Waste Program (*Public Meeting*).
11:30 a.m.
Affirmation/Discussion and Vote (*Public Meeting*).
a. Order on Shoreham (Tentative) (*postponed* from November 23).

Week of December 5—Tentative

Friday, December 9

11:30 a.m.
Affirmation/Discussion and Vote (*Public Meeting*) (if needed).
2:00 p.m.
Meeting with Public Officials Having Responsibility for Emergency Planning for Pilgrim Nuclear Power Plant (*Public Meeting*).

Week of December 12—Tentative

Thursday, December 15

3:30 p.m.
Affirmation/Discussion and Vote (*Public Meeting*) (if needed).

Week of September 19—Tentative

Monday, December 19

10:00 a.m.
Briefing on Status of NUREG–1150 (*Public Meeting*).

Tuesday, December 20

10:00 a.m.
Briefing on Current Status of Possible Use of Substandard Components in Nuclear Power Plants (*Public Meeting*).
2:00 p.m.
Briefing by DOE on High Level Waste Program (*Public Meeting*).

Wednesday, December 21

11:30 a.m.
Affirmation/Discussion and Vote (*Public Meeting*) (if needed).
2:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (*Public Meeting*).

Additional Information

By a vote of 5–0 on November 23, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Final Rule—10 CFR Part 62, 'Criteria and Procedures for Granting Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities' " scheduled for November 23, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Jack Guttmann,
Office of the Secretary.
November 23, 1988.
[FR Doc. 88–27568 Filed 11–25–88; 2:28 pm]
BILLING CODE 7590–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., December 9, 1988
9:00 a.m. to 3:00 p.m., December 10, 1988

PLACE: The Desert Inn Hotel, 3145 Las Vegas Boulevard South, Las Vegas, Nevada.

STATUS: The meeting will be open to the public, except for a brief period on the afternoon of December 9, 1988.

Matters To Be Considered

Portions Open To The Public

Discussion of FY 1989 Proposed Guideline and consideration of revised applications submitted for Institute funding.

Portions Closed To the Public

Discussion of Internal personnel practices and procedures.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22312, (703) 684–6100.

David I. Tevelin,
Executive Director.
[FR Doc. 88–27549 Filed 11–25–88; 11:19 am]
BILLING CODE 6820–SC–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1411]

TIME AND DATE: 10 a.m. (EST), November 30, 1988.

PLACE: DALTON COLLEGE, MEMORIAL AUDITORIUM, 213 NORTH COLLEGE DRIVE, DALTON, GEORGIA.

STATUS: Open.

Agenda

Approval of minutes of meeting held on November 9, 1988.

Action Items

New Business

B—Purchase Awards

B1. Indefinite Quantity Term Agreement BA–41313A with Lehigh Structural Steel Company for Galvanized Structural Steel for Transmission Line Towers, Laced and Low Profile Substation Steel, and Components.

C—Power Items

C1. Arrangements to Assist the Tennessee Department of Human Services and Other Human Service Agencies in Valley States in Providing Certain Weatherization Assistance Programs Primarily for Low-Income and Elderly Persons.

E—Real Property Transactions

E1. Grant of Permanent Easement to Tennessee Department of Transportation for a Highway Right-of-Way Affecting 0.9 Acre of Kentucky Reservoir Property in Henry and Stewart Counties, Tennessee.

E2. Abandonment of Flood Rights Affecting 7.8 Acres of Norris Reservoir Land in Campbell County, Tennessee.

E3. Filing of Condemnation Cases.

E4. Sale of Permanent Easement to the State of Tennessee Department of Transportation Affecting 0.18 Acre of TVA's Jasper Substation in Marion County, Tennessee.

E5. Sale of Permanent and Temporary

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Easements to the State of Tennessee Department of Transportation Affecting 0.38 Acre and 0.04 Acre, Respectively, of TVA's Jug Substation at Johnson City, Tennessee.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: November 23, 1988.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 88-27562 Filed 11-25-88; 12:09 pm]

BILLING CODE 8120-01-M

federal register

Tuesday
November 29, 1988

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1915

Shipyard Employment Safety Standards; Proposed Rules

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S-050]

Explosive and Other Dangerous Atmospheres in Vessels and Vessel Sections

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing explosive and other dangerous atmospheres. The standards proposed for revision regulate safe entry and work carried on in confined spaces on board vessels in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the standards must be supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for shipbuilding, ship repairing, and shipbreaking operations, and as necessary to provide complete coverage for employees performing work not specifically addressed by the shipyard employment standards, or who are performing work in areas of shipyards not specifically addressed by the shipyard employment standards.

This proposed action would update the shipyard employment standards covering work in explosive and other dangerous atmospheres in vessels and vessel sections and would reference applicable general industry standards, such as Subpart S—Electrical, resulting in a single, comprehensive Part 1915, Subpart B, that would apply to all vessels and vessel sections in shipyards (except construction activities covered by Part 1926).

In addition, the proposed provisions are intended to correct problems found in the existing standards which regulate in detail the specific methods and materials to be used to reduce employee exposure to the hazards of entering confined spaces on vessels. The proposed revisions would continue to address the hazards to which employees are exposed, but would do so by deleting many existing specification-type provisions which currently limit employer innovation, and by using performance-oriented provisions as appropriate.

The proposed revision provides conditions for safe entry into confined spaces on vessels; stipulates the safety requirements for performing both cold and hot work in these spaces; regulates the maintenance of safe conditions during occupancy and work; mandates the use of NFPA certified Marine Chemists and Shipyard Competent Persons (SCP) to determine when confined spaces are safe for personnel and work; and requires labeling of unsafe spaces and logging of all test results.

This revised document would raise OSHA standards to the level of existing maritime industry consensus standards, thus precipitating several changes in existing federal regulations. The oxygen content required for unprotected confined space entry would be increased from 16.5 percent by volume to 19.5 percent by volume. The sequence of testing would be rearranged to reflect actual practice so that oxygen, flammability and toxicity are tested in that order. Skilled personnel would be required to test the ships' compartments prior to human occupancy and starting work. The conditions for safely performing hot work in confined spaces would also be delineated. Duplicative paperwork requirements would be eliminated. A non-mandatory appendix has been added to provide additional educational information not suitable for regulation, but useful for employers and employees in understanding the hazards associated with work in confined spaces.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Officer, Docket No. S-050, U.S. Department of Labor, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523-7894.

Written comments and hearing requests received will be available for inspection and copying in Room N-2634, at the above address, from 8:15 a.m. to 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: The principal author of this Notice of Proposed Rulemaking is Susan Troiano Herbert, Office of Maritime Safety Standards, Occupational Safety and Health Administration.

I. Background

In May 1971, the Occupational Safety and Health Administration, under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (84 Stat. 1590, 29 U.S.C. 655(a)), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (44 Stat. 1444, as amended; 33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, other Federal standards and national consensus standards were similarly adopted as general industry standards (29 CFR Part 1910) and were made applicable to all aspects of shipyard operations not specifically covered by Parts 1915, 1916, 1917, and the construction safety and health standards (Part 1926). On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29 Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment." This consolidation eliminated duplicate and overlapping provisions within the former three parts but did not alter any substantive requirements. The consolidation had no effect on the applicability of the general industry standards, 29 CFR Part 1910, to hazards or conditions in shipyard employments not specifically addressed in the consolidated standard (see 29 CFR 1910.5(c)).

In 1982, the shipyard industry, represented by the Shipbuilders Council of America (SCA) and the American Waterways Shipyard Conference, requested that OSHA identify and consolidate the specific applicable provisions of the general industry standards into one composite set of shipyard employment standards.

This second consolidation project would help shipyard employers by providing them with a single set of shipyard standards and would eliminate subjective interpretations as to the applicability of Part 1910 provisions. By eliminating the possibility that individuals within the shipyard industry would interpret Part 1910 applicability in different ways, fair and equal notice would be given to all shipyard employers and employees of the rules for shipyard employment safety.

This second consolidation effort will incorporate into the existing internal organization of Part 1915 applicable Part

1910 provisions relating to work in shipyards. This formatting approach utilizes an organizational format which is already familiar to present users of the shipyard standards, and which provides for a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when applicable Part 1910 provisions have no counterpart in the existing Part 1915 structure, then new subparts and subpart headings would be created. This new formatting would not, in and of itself, create nor delete any obligations or duties.

II. Summary and Explanation of the Proposal

The subject of work in explosive and other dangerous atmospheres in vessels and vessel sections is currently covered by 29 CFR Part 1915, Subpart B—Explosive and Other Dangerous Atmospheres; by 29 CFR Part 1910, Subpart S—Electrical and by parts of 29 CFR Part 1910, Subpart Z—Toxic and Hazardous Substances.

The standards proposed in this document are intended to reference the applicable Part 1910 provisions into Part 1915, Subpart B; to remove or revise unnecessary provisions; to clarify existing language; and to update the standards to reflect current industry practice and relevant consensus standards. In addition, specification requirements are changed to performance requirements where it is recognized that there is more than one way to comply with a provision. Finally, the competent person definition in Subpart A, covering Subparts B, C, D, and H, has been revised.

This standard covers vessels and vessel sections only. Existing Part 1910 regulations that apply to entry into other enclosed spaces in shipyards have not been incorporated into Subpart B. Instead, they will be incorporated into Part 1915 at a later date in a separate rulemaking for the reasons more fully elaborated below in the discussion of proposed § 1915.11.

A general discussion of all the proposed provisions follows: A reiteration of specific issues upon which OSHA solicits comment is located at the end of this section.

Section 1915.7 Competent person.

OSHA proposes to amend the requirements for, and the duties and skills of, competent persons in shipyard employment. Currently, § 1915.7 of Subpart A defines a competent person for purposes of Subparts B, C, D, and H. As described more fully below, OSHA's proposed amendments would eliminate the paperwork burden involved in designating competent persons, would clarify the skills required by such persons, and would simplify the requirements regarding logging of inspections and tests.

Section 1915.7, *Competent person,* describes the duties and skills of "competent persons," as applied to Subparts B, C, D, and H.

Paragraph (a)(1) requires that at least one competent person be designated by the employer, unless an NFPA certified Marine Chemist Coast Guard authorized person is always used. This requirement is unchanged from the existing requirement found in § 1915.7(a)(1).

Paragraph (a)(2) would require a certification record containing the minimum information necessary to ensure that employers have designated a competent person or always use a Marine Chemist. This requirement is different from the existing one found in § 1915.7(a)(2). The existing requirement mandates that employers record this information on a government form OSHA 73 and send it to OSHA. The OSHA Form 73 contains information that OSHA now considers irrelevant. By minimizing the amount of information requested and eliminating the transmittal requirement, OSHA proposes to reduce the unnecessary paperwork burden on employers. Public comment is requested in Issue 14.

Paragraph (b) covers the criteria employers must use when selecting those persons to do competent person tasks.

Paragraph (b)(1) requires that the competent person understand the certificate issued by the Marine Chemist or the Coast Guard authorized person. This is unchanged from the existing requirement contained in § 1915.7(b)(1).

Paragraph (b)(2) requires that the competent person have the ability to carry out written instructions left by the Marine Chemist, Coast Guard authorized person or Certified Industrial Hygienists. The existing requirement, § 1915.7(b)(1), requires him or her to carry out all written and oral instructions. All instructions must be clearly written down to reduce the possibility of not following instructions. Serious accidents could result if instructions are not followed or are misunderstood.

Paragraph (b)(3) requires that competent persons know how to calibrate correctly, and how to use and interpret testing equipment used to conduct the tests required in Subparts B, C, D and H of this part such as flammability tests, oxygen deficiency tests, carbon monoxide tests and follow up toxicity testing. The existing rule, § 1915.7(b)(2), requires that competent persons know how to use a combustible gas indicator, oxygen indicator, carbon monoxide and carbon dioxide indicators. OSHA believes that the proposed performance language is better suited for regulating the wide variety of test equipment that might be used by competent persons. The proposed standard recognizes there may be one or several appropriate pieces of test equipment needed to test atmospheres, but does not specify nor limit which ones must be used. The proposed standard recognizes that some of the test equipment that will be needed will be toxicity test equipment used to determine if conditions are being maintained as they were originally found. In such a situation, the competent person will have to conduct follow up toxicity testing using instructions left by a Marine Chemist, Coast Guard authorized person, or industrial hygienist. In addition, the proposed standard requires that the competent person know how to calibrate the test instrument. The existing standard does not require this; it assumes that the competent person will know how to calibrate correctly, since calibration is an essential part of correct meter usage. This requirement has been included to stress its importance.

Paragraph (b)(4) requires an understanding and familiarity with Subparts B, C, D and H of this part. Again, this requirement remains unchanged from the existing requirement, § 1915.7(b)(3).

Paragraph (b)(5) requires familiarity with the structure and knowledge of the location and designation of spaces on vessels. It is unchanged from the existing requirement, § 1915.7(b)(4).

Paragraph (b)(6) requires that the competent person be capable of performing the tests and inspections required by Subparts B, C, D and H of this part. This requirement is unchanged from the existing requirement, § 1915.7(b)(5).

Paragraph (b)(7) requires that competent persons have the ability to enter the appropriate information, for example, test results from meter readings, in the required log (OSHA 74). This requirement is the same as the existing requirement, § 1915.7(b)(5).

Paragraph (c) covers logging of inspections and tests and contains the requirements to log all inspections and tests that are required by Subparts B, C, D and H of this part.

Paragraph (1) requires that all competent persons, certified industrial hygienist or Coast Guard authorized

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person tests required by Subparts B, C, D and H of this part, be recorded on the OSHA Form 74, "Log of Inspections and Tests by Competent Persons." This requirement is the same as the existing one, § 1915.7(c)(1).

Paragraph (2) requires that employers require Marine Chemists to record their test results and instructions. This requirement is the same as that in existing § 1915.7(c)(3). This proposed revision also eliminates the existing requirement found in § 1915.12(b)(4), that Marine Chemists complete an OSHA 74 in addition to a Marine Chemists certificate. OSHA believes that this requirement is an unnecessary duplicatio of paperwork. Therefore the requirement has been deleted that the Chemist or employer complete the OSHA 74 in addition to a certificate. Marine Chemists will complete their own Marine Chemist certificate as required by NFPA 306.

Paragraph (3) requires that a separate log be maintained for each vessel and vessel section where tests are done. This is the same as the existing requirement, § 1915.7(c)(1).

Paragraph (4) requires that OSHA 74 logs or Marine Chemist's or Coast Guard authorized person's certificates be available in the immediate vicinity of the work while the operations are progressing. This requirement is found in the existing regulation, § 1915.7(c)(2).

Paragraph (5) requires that the OSHA 74 log and the Marine Chemist certificate required in § 1915.7(c) (1) and (2) be kept for three months from the date of completion of the job. This requirement is unchanged from existing § 1915.7 (c)(2) and (c)(3).

Paragraph (d) provides some exceptional circumstances under which employers are permitted to designate a competent person who does not meet all the criteria of paragraph (b). Employers are permitted to select the competent person based on those criteria in proposed § 1915.7(b) which are applicable to the duties carried out. This section remains unchanged from the existing standard, § 1915.7(d).

Title. OSHA proposes to amend the title of Subpart B to indicate clearly that the subpart applies to vessels and vessel sections only. This is the scope of the present subpart. The title change ensures that the provisions will not mistakenly be applied to other areas of the shipyard that might involve explosive or other dangerous atmospheres.

Section 1915.11 Scope, application and definitions applicable to this subpart.

Paragraph (a) outlines the scope and application of Subpart B. The proposal would apply to all vessels and vessel sections found in shipyards, and would apply to shipbuilding, shipbreaking and ship repair. Section 1915.11 of the existing standard specifies that §§ 1915.12 through 1915.15 apply only to ship repair and shipbreaking, while § 1915.16 applies only to ship repair. The following chart shows the requirements and coverage of each section as they currently appear in Subpart B.

SCOPE AND COVERAGE OF CURRENT SUBPART B

Section	Requirements	Activity covered
1915.12	Provides requirements for safe entry. Space to be entered/Test needed Cargo spaces/for flammable/combustible atmosphere. Cargo spaces, fumigated spaces/for toxics, corrosives, and irritants. Sealed compartments, spaces coated and closed up/for oxygen deficiency.	Shipbreaking, ship repairing.
1915.13	Provisions for safely cleaning spaces and doing other cold work; ventilation and ignition source requirements.	Shipbreaking, ship repairing.
1915.14	Indicates spaces and locations that must be tested for flammable atmospheres prior to doing hot work.	Shipbreaking, ship repairing.
1915.15	Requirements for maintaining atmospheric conditions in tanks and spaces once work has started.	Shipbreaking, ship repairing.
1915.16	Warning signs telling workers which tanks are not safe to enter and which tanks are not safe for hot work.	Ship repairing.

The scope and applicability of the proposed standard differ from the existing standard in two ways: (1) The proposed standard extends coverage to employees in shipbuilding who are currently not protected by §§ 1915.12–1915.16; (2) the proposed standard extends coverage to employees in shipbreaking who are not protected by § 1915.16. There are several reasons for making these changes.

(1) OSHA standards will be in agreement with the National Fire Protection Association's (NFPA) current standard concerning safe entry and work on marine vessels during shipbuilding, shipbreaking and ship repair, *NFPA 308 Control of Gas Hazards on Vessels* (1938). NFPA 306 (1988) is the national consensus standard that is recognized as the self-regulatory document by the maritime industry. This consensus standard requires that the atmosphere in compartments on marine vessels be tested for oxygen deficiency, flammability, and toxicity prior to entry; that cold work be done safely; that the atmosphere in compartments on marine vessels be tested for flammability prior to hot work; and that conditions be maintained unchanged in the space where work is being done. These requirements apply regardless of whether shipbuilding, shipbreaking or ship repairing is being done.

NFPA 306 is an industry-wide consensus standard used to provide self-regulation for work in explosive, toxic and oxygen deficient atmospheres. OSHA's proposal to expand coverage of Subpart B to shipbuilding, shipbreaking and ship repairing would be in agreement with the existing national consensus standard.

(2) Applying §§ 1915.12–1915.16 to shipbuilding, breaking and repairing is current industry practice.

Approximately 30 groups representing employers, unions, associations and government agencies responded to OSHA's request for comments on the first draft rewrite of Subpart B. None objected to expanding coverage to shipbuilding, shipbreaking and ship repairing. OSHA believes that the primary reason none objected is that this change reflects current industry practice. Therefore, this proposed standard expands the scope to cover all building, breaking and repairing on vessels and vessel sections.

As noted previously, the proposed Subpart B, like the current Subpart, applies to entry and work in vessel and vessel sections and not to enclosed or confined spaces found in other shipyard structures and buildings. The proposed standard incorporates references to sections of Part 1910 which are applicable to entry and work in vessel and vessel sections (such as Subpart S—Electrical).

However, this standard does not incorporate or reference those sections of 29 CFR Part 1910 which address entry into and work in enclosed or confined space atmospheres found in other shipyard structures and buildings. Although there are only a few regulations in 29 CFR Part 1910 that are applicable to confined spaces elsewhere in the shipyard (such as Subpart G—Occupational Health and Environmental Control, and in Subpart H—Hazardous Materials), these regulations will be incorporated in 29 CFR Part 1915 when those subparts in which they are now included are incorporated. These Part 1910 standards covering yards were not incorporated in the revision of Part 1915, Subpart B, because the existing treatment of confined spaces on vessels is more stringent than it is for the yards themselves. To combine these standards would have resulted in confusion and an unnecessary increased burden for yard owners.

The following chart outlines the major differences in the treatment of confined spaces between existing Part 1915 and 1910:

Subject	Part 1915	Part 1910 Subparts G, H & O
Who conducts tests of atmospheres?	Marine chemist or shipyard competent person.	Not specified. References to this subject are found in §§ 1910.49(d)(11)(ii); 1910.94(d)(11)(iv); 1910.106(e)(6).
What is the maximum concentration of flammables permitted in the atmosphere?	10 percent of the lower flammable limit (LEL).	Not specified. References to this subject are found in §§ 1910.252(d)(2)(v)(c); 1910.94(d)(11)(iv).
Where does the standard currently apply?	Vessels and vessel sections.	Shipyards only

Because of these substantive differences in requirements, 29 CFR Part 1915, Subpart B, will continue to cover only vessels and vessel sections. It will not cover those confined spaces located elsewhere in yards, which will continue to be covered by General Industry requirements for now. Future subpart revisions in the Part 1915 consolidation project will deal with specific shipyard standards in this area.

Paragraph (b) lists and defines the major words used in the proposed standard. Many of the definitions are the same ones found in existing Part 1915, but not specifically in Subpart B. Those which have been added to Subpart B have been taken from Subpart A or from consensus standards and have been added for the sake of clarity. The words defined in proposed Subpart B follow. Unless different definitions are listed in proposed Subpart B, the definitions found in Subpart A are still applicable.

"Adjacent compartments or spaces." This term is used to describe those compartments or spaces which border on the space where the work is to be done; this term is also used to describe those spaces which are located on the diagonal from the space where the work is to be done. The existing rule provides no definition, but uses the term to describe those spaces or compartments which must be tested and cleaned prior to entry and hot work. The proposed definition, adopted from NFPA 306, paragraphs 3–3.1.4 and 3–3.3.3, reflects the meaning of the term as it is used in the maritime industry. The definition is added for clarity.

"Bulk." This term is used to describe materials that are transferred on or off the vessel via piping systems. The existing rule offers no definition, but uses the term to provide descriptive information regarding the compartments and tanks which must be tested (e.g., those that have carried flammable or combustible liquids or gases in bulk). The proposed definition is adopted from Coast Guard regulations (49 CFR 1.46(t)), and reflects the meaning of the term as used in the maritime industry. The definition is added for clarity.

"Certified Industrial Hygienist." This term is used to mean an individual who is certified by the American Board of Industrial Hygiene.

"Coast Guard authorized person." This term is used in the proposal to refer to that person who meets the requirements of 46 CFR 35.01–1(c)(1) for tank vessels; 46 CFR 71.60–1(c)(1) for passenger vessels; and 46 CFR 91.50–1(c)(1) for cargo and miscellaneous vessels. The Coast Guard authorized person is one who, through the authority of the Officer in Charge of Marine Inspection, can be designated to perform Marine Chemist functions when a Marine Chemist is not reasonably available.

"Competent Person." This term is used to refer to a shipyard competent person who meets the criteria set forth in § 1915.7 of this part.

"Hot work." This term is used to define the different types of hot work, such as welding, riveting, burning, use of powder-actuated tools or similar fire producing operations, and to spell out those circumstances where such work is not classified as hot work for purposes of this subpart. The existing definition is located in two different sections of the standard, §§ 1915.4(r) and 1915.14(a). Those definitions are not in agreement with NFPA 306 because they do not recognize circumstances under which hot work should not be classified as such. The proposed definition combines the existing language from §§ 1915.4(r) and 1915.14(a) and the exceptions permitted under NFPA 306–1988, ¶ 1.5, to provide a comprehensive definition that recognizes industry practices. Additionally, examples are provided of both hot work and circumstances under which hot work should not be classified as such. Those examples are located in Appendix A, which provides supplemental information to employers and employees to help them comply with this standard.

"Immediately dangerous to life and health." This term is used to describe an atmosphere that poses an immediate hazard to life or produces immediate debilitating effects on health which is likely to result in death or irreversible injury.

"Inert or inerted atmosphere." This term is used to describe an atmosphere or environment that will not support combustion. The existing standard uses the term in § 1915.14(d)(2) and provides a definition that informs employers what materials to use in inerting, i.e., nonflammable gas or water. Equally important, however, is the need to specify the amount of oxygen that must be removed or the water level necessary to work safely in the space. This information is included in NFPA 306 ¶ 1–6.6, which reflects standard industry practices. OSHA proposes to incorporate the oxygen and water levels identified as necessary by NFPA, for the OSHA definition.

Public comment is solicited on the above subject in Issue Number 1.

"Lower explosive limit." This term describes the minimum concentration of vapor in air below which propagation of a flame does not occur.

"Marine Chemist." This term describes a person who is certified by the National Fire Protection Association (NFPA) in accordance with their "Rules for Certification of Marine Chemists," establishing him or her as a person qualified to determine whether ship construction, alteration, repair or demolition can be safely undertaken.

Public comment is solicited on the above subject in Issue Number 2.

"Not Safe for Hot Work." This term is used to describe those compartments which do not meet the minimum safety criteria necessary to permit the use of ignition sources. This phrase was not defined in the existing regulation, although, in a slightly modified fashion, it was used in § 1915.16(a), i.e., "Not Safe for Fire." The source of the proposed definition is NFPA 306. By including a definition for this term, OSHA insures that the phrase as used is clearly understood.

"Not Safe for Workers." This term is used to describe those atmospheres which are not safe for unrestricted

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entry. The term can be used to describe either of two situations which occur. In the first, the space is not safe for workers to enter unless personal protective equipment is worn or the length of time of employee exposure is restricted. In the second, the space is not safe for entry *under any circumstances*, regardless of whether personal protective equipment is worn. An example of such a situation is OSHA's prohibition regarding employee entry into toxic atmospheres above the IDLH level. There is no existing definition of this phrase provided, although it is used in existing § 1915.16(a) (e.g. "Not Safe for Men"). The proposed definition has been adopted from NFPA 306; it will more clearly explain those conditions which comprise unsafe entry.

Public comment is requested in Issue Number 3 as to whether or not the definition of "Not Safe for Workers" should be revised to create a second category of "Safe with Restrictions." Public comment is requested in Issue Number 16 as to use of OSHA PEl's.

"Oxygen-deficient atmosphere." This term is used to describe that volume of oxygen below which respiratory protection must be provided. This requirement has been changed from 16.5 percent oxygen by volume in § 1915.12(c)(1) to 19.5 percent oxygen by volume in this proposal. This change brings the maritime standard into agreement with OSHA's General Industry standards (§ 1910.94(d)(11)(iii)) and NFPA 306, and reflects current industry practice.

"Oxygen-enriched atmosphere." This term is used to describe that volume of oxygen above which it is unsafe to perform hot work. There is no definition provided in the existing standard. The figure of 22.0 percent by volume has been selected since it is high enough to take meter error into consideration, but not so high that it is at a dangerous level. This is more fully discussed in § 1915.12(a)(2).

"Safe for Hot Work." This term is used to describe those conditions that must occur in order for hot work to be done safely. The existing standard uses the term with minor modification (i.e., the existing standard uses "Safe for Fire"), but provides no definition. The source of the proposed definition is NFPA 306. Including this term in OSHA's definitions provides a clear understanding of the conditions that constitute a safe environment for hot work.

"Safe for Workers." This term is used to describe those conditions required for unrestricted, unprotected entry into a space. The existing OSHA standard used the term but did not clearly define it. OSHA proposes that "Safe for Workers" will mean that all of these conditions have been met: The flammable atmosphere is less than 10 percent LEL; The toxic atmosphere is below the permissible exposure limits (PEL's) in 29 CFR Part 1910, Subpart Z; The residues are not capable of producing toxic concentrations above the permissible exposure limits; And there is at least 19.5 percent oxygen by volume in the space.

The only differences between the existing usage and the proposed definition is that the oxygen level required for safe entry has been raised from 16.5 percent oxygen by volume to 19.5 percent oxygen by volume and the reference to the 1970 American Conference of Governmental Industrial Hygienists threshold limit values has been changed to OSHA PEL's. This action brings the maritime standards into line with OSHA's General Industry standards, NFPA 306, and current industry practice.

"Upper explosive limit." This term is used to describe the maximum concentration of flammable vapor in air above which propagation of a flame does not occur.

"Vessel section." This term is used to describe all sub-assemblies, modules, and other components of a vessel, including those that are not directly attached to the vessel because of construction, repair, or breaking.

"Weather deck." This term is used to refer to the uppermost continuous deck that is exposed to the weather. The term is not defined in the existing standard; it is proposed for inclusion in the revised standard to indicate clearly that portion of the vessel to which reference is made.

Section 1915.12 Precautions before entering compartments or spaces.

This section describes those spaces and types of atmospheres which must be tested prior to entry. In addition, this section provides numerical limits for atmospheric exposures, below or above which employees may not enter or may enter only with personal protective equipment. An employer should refer to § 1915.13 for information on doing cleaning and cold work safely, and to § 1915.14 for information on hot work.

OSHA proposes to rearrange the current organization of § 1915.12. In the existing format, paragraph (a) covers testing of flammable atmospheres, paragraph (b) covers testing for toxic atmospheres, and paragraph (c) covers testing for oxygen deficiency.

Both Newport News and Harbor Testing Laboratory have commented that the existing sequence implies that the tests be conducted in that order. In actual practice, however, the first test conducted usually is for oxygen. This is because most combustible gas indicators in use today require sufficient oxygen for combustion in order to register an accurate combustible gas indicator reading. In other words, the tester cannot be assured of an accurate LEL reading without first determining the oxygen level. The proposed standard, therefore, covers oxygen deficiency testing first, flammability testing next, and toxicity testing last.

It must be emphasized, however, that neither the existing or proposed standard *requires* testing in any particular sequence. The list of tests to be conducted has been rearranged because it supports a logical testing sequence.

Paragraph (a)(1) describes those compartments and spaces on vessels and vessel sections that must be checked for oxygen deficiency before employees enter them. The specific descriptions are provided in §§ 1915.12(a) (1)(i)–(viii). The existing rule, § 1915.12(c)(1), provides the same requirements for ship repair and ship breaking, but not for new construction. New construction has been added because the same hazards may exist as in repair. This is especially true when paintings and coatings have been applied to tanks during construction. In addition, it is current industry practice to test the atmospheres in such cases.

Paragraph (a)(2) provides that a shipyard competent person must conduct the test required for oxygen deficiency. This requirement is unchanged from the existing rule, § 1915.12(c)(1).

Paragraph (a)(3) requires that the oxygen deficiency test be conducted prior to employees' initial entry into the space. This proposed requirement remains unchanged from the existing requirement, § 1915.12(c)(1).

Public comment is requested in Issue Number 4 regarding the appropriate interpretation of the words "initial entry."

Paragraph (a)(4) proposes to require that employees wear appropriate respiratory protection when there is a risk of being overcome by an oxygen deficient atmosphere in accordance with Subpart I.

The existing rule, § 1915.12(c)(1), requires that a space contain 16.5 percent oxygen by volume before entry is allowed. A second existing rule, § 1915.12(c)(2), requires that any space with less than 16.5 percent oxygen by volume must be ventilated to bring the oxygen level up to 16.5 percent by volume.

There are two differences between the proposed rule and the two existing rules:

(1) The proposed rule raises the oxygen level to 19.5 percent by volume for unprotected entry into a space.

(2) The proposed rule permits entry into spaces containing less than 19.5 percent oxygen by volume provided respiratory protection is worn.

The oxygen level has been increased from 16.5 percent oxygen by volume to 19.5 percent oxygen by volume to be consistent with OSHA's General Industry standard (specifically § 1910.94(d)(11)(iii)), the NFPA 306 standard, ANSI Z88.2–1980, and widespread industry practice.

The existing rule, § 1915.12(c)(2), requiring that spaces be ventilated if below 16.5 percent oxygen by volume, has been eliminated and entry is now permitted with adequate respiratory protection into spaces below 19.5 percent oxygen by volume. The existing rule, § 1915.12(c)(2), required that spaces with oxygen below 16.5 percent must be ventilated to bring the oxygen level up to 16.5 percent or greater for unprotected entry. The purpose of this rule was to ensure that routine work would occur in an atmosphere containing at least 16.5 percent oxygen by volume, *and* that routine work would *not* be done in an atmosphere containing less than 16.5 percent oxygen. However, there are times when work must occur in atmospheres with less than 16.5 percent oxygen, such as in emergencies and other work of brief duration (see § 1915.12(d)).

In addition, there are times when a space must be inerted to do hot work. When inerted, the space would typically contain between 5 percent and 8 percent oxygen by volume. Using the existing rule, § 1915.12(c)(2), the employer would be required to ventilate to bring the oxygen level up to 16.5 percent by volume, even though doing so would negate the purpose of inerting and create a flammable atmosphere. In other words, following the letter of the law of the existing rule could create a dangerous situation. Therefore, OSHA has changed this rule by dropping the requirement to ventilate a space that is below 16.5 percent oxygen in order to bring the oxygen level up to at least 16.5 percent. This action permits employees to enter spaces which have been inerted by reducing the oxygen content. At such times, employees must wear respiratory protection as required in proposed § 1915.12(a)(4). These changes provide more protection than the existing standard and provide the employer flexibility in achieving safe working conditions. Employees will be provided adequate protection from oxygen deficient atmospheres through the proper use of respirators.

Public comment is requested in Issue Number 16, regarding the appropriate control measures in oxygen deficient atmospheres.

Paragraph (a)(5) is a new rule which requires employers to label those spaces without at least 19.5 percent oxygen by volume as "Not Safe for Workers." This information is provided so that employers will know how to label spaces after the oxygen testing has been completed.

Paragraph (b) covers "flammable atmospheres" during entry.

Paragraph (b)(1) sets forth the spaces where atmospheres must be tested for flammable vapors and gases prior to employee entry. Only those spaces which are listed in this paragraph *and* are to be entered must be tested. There is no change from the existing requirements covered in §§ 1915.12(a)(1), (a)(1) (i) and (ii).

Paragraph (b)(2) requires that a competent person conduct the flammability test. This requirement is unchanged from the existing requirement, § 1915.12(a)(1).

Paragraph (b)(3) requires that the flammability test be conducted prior to employees' initial entry into the space. This requirement is unchanged from the existing provision, § 1915.12(a)(1). Public comment is requested in Issue Number 4 regarding the appropriate interpretation of "initial entry."

Paragraph (b)(4) prohibits employees from entering a space if the concentration of flammable vapors or gases is at or above 10 percent of the lower explosive limit. The existing rule contains the same restrictions, but uses a lower explosive limit of greater than 10 percent. The difference is that the proposed rule uses "at or above" 10 percent and the existing rule uses "greater than" 10 percent.

In the existing regulations, there are several places in Subpart B where LEL limits are given, but they are not in agreement with each other. This change, using the cutoff of "at or above" 10 percent of the LEL, is made to provide consistency within the Subpart, and to clarify the cutoff point. NFPA 306 uses "at or above" 10 percent of the LEL as the cutoff.

Paragraph (b)(5) is a new rule requiring that spaces be labeled "Not Safe For Workers" when the concentration of vapor or gas is at or above 10 percent of the lower explosive limit.

Paragraph (b)(6) provides that when flammable substances are also listed in the PEL's, then the testing requirements and other provisions of § 1915.12(c), "Toxic atmospheres and residues," will apply. The existing provision, § 1915.12(a)(3), requires that employees receive respiratory protection if exposed to a toxic flammable gas which is above the PEL but below the level immediately dangerous to life and health. If the substance is both flammable and toxic, the proposed provision specifies that the requirements governing employee entry into spaces that contain, or have contained, toxics will apply in addition to the provisions protecting against fire and explosion.

Paragraph (c)(1) sets forth provisions which describe those compartments and spaces which must be tested or inspected for toxic chemicals prior to entry. The existing rule and the proposed rule cover the same spaces.

Paragraphs (c)(1)(i) and (ii) describe the tests and inspections that must be conducted on the spaces designated in § 1915.12(c)(1). This requirement is unchanged from the existing regulation, § 1915.12(b)(1).

Paragraph (c)(2) requires that the atmospheric test for toxicity and the visual inspection for toxic and corrosive residues be conducted by an NFPA certified Marine Chemist, an Industrial Hygienist certified by the American Board of Industrial Hygiene (ABIH), or a Coast Guard Authorized Person. The existing regulation, § 1915.12(b)(1), states that the required tests and inspections shall be conducted by an NFPA Marine Chemist, an industrial hygienist or other person qualified to make these tests. This proposal still requires that Marine Chemists be NFPA certified, but adds the requirements that industrial hygienists be certified by ABIH and that "other qualified persons" can only be Coast Guard authorized persons.

OSHA had previously responded to a written request to define these three terms—Marine Chemist, industrial hygienist, and other person qualified—by supplying the definitions used in the proposed language of this standard.

Public comment is requested on Issue Number 5 regarding OSHA's proposed definitions of "certified industrial hygienist" and "other qualified person."

Paragraph (c)(3) requiring that all tests and inspections be conducted prior to employees' initial entry remains unchanged from the existing requirement located in § 1915.12(b)(1).

Public comment is requested in Issue Number 4 regarding the interpretation of "initial entry."

Paragraph (c)(4) prohibits employees from entering spaces which have toxic atmospheres above the immediately dangerous to life or health (IDLH) level.

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and requires that such spaces be ventilated below the IDLH level if they are to be entered at all. The proposed language also advises the reader of the exception to this requirement permitted by § 1915.12(d), regarding work of brief duration. There is no substantive difference between the proposed standard and the existing requirements in § 1915.12(b)(2).

Paragraph (c)(5) proposes that employees be provided with respiratory protection when toxic contaminants are above the permissible exposure limit but below the IDLH levels. The existing standard, § 1915.12(b)(3) provides the same protection (see § 1915.5). It should be noted that §§ 1910.1001–1910.1500 will continue to apply to vessels and vessel sections.

Paragraph (c)(6) proposes a new rule which indicates clearly that when toxic concentrations are above the permissible exposure limits, the space must be labeled "Not Safe for Workers."

Paragraph (d) proposes to permit work for brief periods of time or in emergencies in atmospheres which are above the upper explosive limit or are otherwise considered immediately dangerous to life or health. In addition, the standard prohibits all ignition sources in such atmospheres, requires that atmospheres that are above the UEL be maintained above the UEL, and requires constant atmospheric monitoring when working in an atmosphere above the upper explosive limit. The existing standard, § 1915.12(d), is the same as the proposed revision except that the prohibition against ignition sources and the requirement for atmospheric monitoring are not currently included but are proposed for addition. Those two caveats have been added to the existing standard because that standard as written might permit unsafe work practices. The three restrictions will provide an added measure of safety. Dilution of an atmosphere in the upper flammable range could bring it into the flammable range. This could occur by simply opening a tank and allowing fresh air to mix with the tank's atmosphere. Prohibiting all ignition sources will minimize the possibility of a fire should the tank's atmosphere become flammable. Constant atmospheric monitoring will forewarn both the employer and the employees if, and when, the tank enters the flammable range.

Public comment is requested in Issue Number 6 regarding work in atmospheres above the upper flammable limit and atmospheres immediately dangerous to life and health.

The "Note" following § 1915.12(d) advises employers that Subpart I of 29 CFR Part 1915 carries additional requirements related to § 1915.12(d). Employees entering atmospheric conditions such as those described in this paragraph must also wear personal protective equipment in accordance with Subpart I of Part 1915. It should be noted that OSHA has also proposed amending Subpart I in a separate rulemaking as part of the overall consolidation project. Any changes to those regulations adopted by OSHA would be applicable to the work and activities covered by this section. Regarding work in UEL and IDLH atmospheres, proposed Subpart I would continue to require that employees be protected from IDLH atmospheres by means of positive pressure, self-contained breathing apparatus or positive pressure airline respirators with an auxiliary self-contained supply of air for escape purposes. (Atmospheres above the UEL may also be IDLH). Subpart I would also continue to require that employees wear protective clothing and gloves designed to protect them from hazards of exposures to chemicals. In addition, Subpart I would continue to require that eye and face protection be provided to employees exposed to liquid chemicals, chemical gases and vapors.

The second part of the "Note" following § 1915.12(d) reminds employers that emergency rescue provisions are required for work in IDLH atmospheres, and that these provisions are also in Subpart I. Newly proposed Subpart I would continue to require written procedures for safe respirator use in IDLH atmospheres; require that a fully equipped stand-by person must be provided and remain in communication when a worker is in an IDLH atmosphere; require that rescue equipment must be located nearby when work is being done in an IDLH atmosphere, and require that employees must wear safety harnesses and lifelines when they use airline respirators in IDLH atmospheres.

Section 1915.13 Cleaning and other cold work.

This section describes those locations where cold work is permitted when certain conditions have been met.

Paragraph (a) provides a description of those spaces to which this section applies. The proposed description is the same as the existing description.

Paragraph (b)(1) provides that liquid residues in the tanks shall be removed as much as possible before manual cleaning starts. The existing rule contains this same provision.

Paragraph (b)(2) requires that a test to determine the concentration of flammable vapors must be done in the space prior to starting cold work. This test needs only be done when a flammable or combustible material was contained or last contained in the space. This provision is unchanged from the existing provision, § 1915.13(a)(3).

Paragraph (b)(3) requires that the flammability test be conducted by a competent person. This requirement is unchanged from the existing provision, § 1915.13(a)(3).

Paragraph (b)(4) requires that flammability tests be conducted frequently during cold work. This requirement is unchanged from the existing provision, § 1915.13(a)(3). However, OSHA has received many requests to define the term "frequently" by specifying in the regulation how often tanks should be checked. Since conditions may vary greatly from one situation to the next, OSHA does not believe that a requirement to recheck a tank at specified intervals would necessarily raise the level of safety. Instead, OSHA believes that the standard should be flexible enough to enable employers and employees to take into consideration all those factors which may influence the need to recheck tank conditions including:

1. Temperature—Higher temperatures will cause liquids to vaporize faster than lower temperatures; the result would be that on hotter days tank residues may produce more vapors with resultant concentrations in excess of 10 percent of the LEL.

2. Work in the tank—Oxygen from a leaking welding hose could cause an oxygen enriched atmosphere; inert gas leaks from welding operations could produce an oxygen deficient atmosphere. Tank cleaning can stir up residues and result in changes in atmospheric conditions.

3. Time elapsed—If a period of time has elapsed since the tank was last checked, it should be rechecked.

4. Unattended tanks—Tanks declared safe and left unattended should be retested prior to entry.

5. Work breaks—When workers take a break or leave at the end of the shift, equipment is sometimes left in the tank. If welding equipment is left, the hoses may leak oxygen or inert gas, producing an oxygen enriched atmosphere in the first case or an oxygen deficient atmosphere in the latter.

6. Ballasting or trimming—Changing the position of the ballast or moving the vessel so as to expose previously trapped cargo, can produce a change in tank atmosphere.

In Issue Number 7, OSHA requests public comment as to whether the frequency of retesting and the factors dictating retesting should be defined in this standard. If a more specific provision is believed appropriate, please provide a proposed definition and your rationale.

Paragraph (b)(5) permits only cold work in the spaces described in § 1915.13(a). Hot work is only permitted as delineated in § 1915.14. This is unchanged from the existing requirement, § 1915.13(a)(4).

Paragraph (b)(6) requires that the work area be kept cleaned up as work progresses. This is unchanged from the existing provision, § 1915.13(a)(1).

Paragraph (b)(7) requires that the concentration of flammable vapors shall be kept below 10 percent of the LEL. This paragraph also references provisions that permit exceptions to this ventilation requirement. This proposal is unchanged from the existing rule, § 1915.13(a)(2).

Paragraph (b)(8) requires that when highly volatile residues are present and their presence prevents the maintenance of 10 percent of the LEL, then 10 percent of the LEL need only be maintained in the major portions of the compartment. This proposed requirement is the same as the existing requirement, § 1915.13(a)(2).

Paragraph (b)(9) requires that the competent person test to determine if exhaust vapors from the spaces being ventilated are accumulating in or around the vessel. This requirement is unchanged from the existing requirement, § 1915.13(a)(5).

Paragraph (b)(10) requires that ignition sources be prohibited in areas where flammable vapors are accumulating. This requirement is unchanged from the existing provision, § 1915.13(a)(5).

Paragraph (b)(11) proposes that any lamps used in areas that have contained flammable or combustible materials shall comply with 29 CFR 1910.307. Section 1910.307 contains the requirements for electrical equipment used in hazardous locations which are classified in § 1910.399. Section 1910.307(b) requires that the equipment, wiring methods and installations of equipment in these hazardous (classified) locations shall be either intrinsically safe, approved for the hazardous location, or safe for the hazardous (classified) location. Under the existing regulations at §§ 1910.307 and 1910.399, the hazardous (classified) locations having contained flammable or combustible materials would be classified as Class I, Division 1, and the Group would be determined by the specific chemical present. The existing rule, § 1915.13(b), requires that approved, explosion-proof, battery-fed, portable lamps shall be used in any areas that have carried flammables or combustibles. In addition, the existing rule requires that equipment be approved by Underwriters Laboratories, MSHA or the U.S. Coast Guard.

OSHA believes that both the proposed and existing requirements offer the same level of protection. The proposed regulation, however, eliminates specification requirements and permits compliance with an existing general industry standard, § 1910.307, which is equivalent to the level of protection required in the existing standard.

Paragraph (b)(12) requires that smoking and open flames be prohibited on the open deck during cold work on cargo spaces or fuel tanks that have carried flammable or combustible liquids or gases, on spaces or tanks that are adjacent to compartments that have carried flammable or combustible liquids or gases, or on equipment connected to such spaces or tanks. This requirement is unchanged from the existing provision, § 1915.13(c).

Paragraph (b)(13) requires that metallic parts of air moving devices and duct work be bonded. This requirement is unchanged from the existing requirement, § 1915.13(d).

Paragraph (b)(14) prohibits the use of fan blades that can create sparks. The existing standard requires that nonferrous materials be used. The intent of the exising standard was to require the use of non-sparking materials. However, there are some types of stainless steel which are non-ferrous, but depending on content of carbon steel in proportion to nickel, can create sparks. The change to "non-sparking" would clarify the intent of the exising standard.

Paragraph (b)(15) requires that portable air ducts be of non-sparking materials; the existing standard requires non-ferrous materials Again, the intent of the existing regulation is to prohibit duct material that can cause sparks. The proposed requirement that portable air ducts be of "non-sparking" material better accomplishes the purposes of the regulation.

Paragraph (b)(16) requires that all motors and control equipment meet the same requirements as required by 29 CFR 1910.307 for such equipment in hazardous locations classified in accordance with § 1910.399. The existing standard, § 1915.13(e), requires that such equipment be explosion-proof. The proposed standard clarifies that electrical equipment that is used in a hazardous location must be intrinsically safe or safe for the particular hazardous location as already required in § 1910.307 (b)(2) (i), (ii), (b)(3), (c) and (d).

Paragraph (b)(17) requires that all motors and control equipment be properly maintained and grounded. This requirement is unchanged from the existing requirement, § 1915.13(e).

The "Note" following § 1915.13(b)(17) serves as a reminder to employers and employees that prior to starting cold work spaces are to be checked for toxic contaminants and appropriate precautions (i.e., ventilation, personal protective equipment or respirators) taken or used when necessary, and in accordance with § 1915.12(c).

Section 1915.14 Hot work.

Section 1915.14 Hot work, addresses the safety precautions that must be taken prior to starting hot work on cargo or fuel tanks, related piping and accessories. This section retains the provision that National Fire Protection Association (NFPA) certified Marine Chemist or Coast Guard authorized persons must certify that certain spaces meet the requirements of "Safe for Hot Work." This section also identifies those locations on vessels where the shipyard competent person is allowed to approve hot work.

Section 1915.14 begins by referring users to Appendix A. Appendix A reminds users that there are other important sections of the Part 1915 regulations relevant to hot work. Those sections, especially Subpart D, Welding, should be reviewed carefully prior to starting hot work.

Paragraph (a) requires that a Marine Chemist or a U.S. Coast Guard authorized person certify certain spaces as "Safe for Hot Work." The Marine Chemist must be an NFPA certified Marine Chemist. The Coast Guard authorized person is that person authorized by 46 CFR 35.01–1(c)(1) (tank vessels and barges), 46 CFR 71.60–1(c)(1) (passenger vessels) and 46 CFR 91.50–1(c)(1) (cargo and miscellaneous vessels) to inspect and test these vessel spaces prior to hot work. There is no difference between the existing requirement and the proposed requirement. The proposed language is easier to understand because the Coast Guard authorized person referred to has been defined in the definitions section and the cited CFR provisions have been reprinted in Appendix B for the convenience of the user.

Paragraph (a)(1)(i) lists those areas on tank vessels requiring Marine Chemist or Coast Guard certification prior to hot

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work: Cargo tanks which contain or have contained flammable or combustible liquids or gases in bulk; adjacent spaces; fuel tanks; and pipelines, pumps or any other accessories connected to cargo or fuel tanks. This requirement is unchanged from the existing requirements, § 1915.14(a)(1)(i)–(iii).

Paragraph (a)(1)(ii) lists those areas on dry cargo, miscellaneous and passenger vessels that must be tested by a Marine Chemist or Coast Guard authorized person and certified "Safe for Hot Work" prior to starting any hot work: Cargo spaces that have carried flammable or combustible liquids in bulk; spaces adjacent to cargo tanks that have carried flammable gases, or liquids with a flash point below 150°F., except when there is more than 25 feet between the work and the cargo tank; fuel tanks that have contained fuel; and pipelines, pumps or any other accessories connected to the fuel or cargo tanks. This paragraph is unchanged from the existing provisions, § 1915.14(a)(2) (i) through (iv).

Paragraph (a)(2) provides the criteria used to determine if a space is "Safe for Hot Work." The four criteria are based upon the existing criteria in NFPA 306, and one proposed change to NFPA 306. Paragraph (a)(2)(i) requires that the oxygen level in the space be 22.0 percent or less by volume. This level of oxygen or lower provides a safe, non-oxygen enriched atmosphere. Atmospheres containing more than 22.0 percent oxygen by volume distort the UEL by greatly expanding the normal flammable range and promoting very rapid burning. This level, 22.0 percent oxygen by volume, was selected in order to be in agreement with proposed NFPA 306 standards defining oxygen-enriched atmospheres. This is based on a recommendation by the Technical Committee on Gas Hazards of NFPA 306 to the full committee on gas hazards that an upper oxygen limit is needed to address the hazards of hot work in oxygen enriched atmospheres. The Technical committee has recommended an upper oxygen level of 22 percent oxygen by volume. OSHA has elected to adopt this oxygen level of 22.0 percent by volume because instrument error in measurement can result in a variation of ± 1 percent. That is, when the oxygen level in a tank is 21 percent (normal oxygen content of air at sea level), the instrument reading could actually vary from 20 percent to 22 percent. By selecting 22.0 percent oxygen, OSHA insures that a hazardous, oxygen-enriched atmosphere will not exist, taking into account normal instrument error.

The second criteria is covered in paragraph (a)(2)(ii). This proposed revision requires that the flammable vapors and gases are below 10 percent of the flammable limit prior to hot work. This requirement has been adopted from NFPA 306.

Paragraph (a)(2)(iii) addresses the third criteria which requires that the Marine Chemist or the Coast Guard authorized person ensure that any residues found in the space will not produce an atmosphere at, or above, 10 percent of the lower flammable limit. This provision is also based on existing NFPA 306.

Paragraph (a)(2)(iv) specifies the last requirement before a space may be designated "Safe for Hot Work." This provision would require that adjacent spaces must be cleaned sufficiently to prevent the spread of fire or inerted. This criteria is based on NFPA 306–1988, paragraph 1–6.3(d)3–3.1.4 and is also current industry practice.

Although § 1915.14(a)(2) and its subdivisions are newly included in Subpart B, they do not present new information or requirements. The existing Subpart B, § 1915.14(a), Hot Work, requires NFPA certified Marine Chemists or U.S. Coast Guard authorized persons to ensure that a space is suitable for hot work, indicating that the NFPA definition of "Safe for Fire" (now "Safe for Hot Work") is to be applied. The proposed Subpart B, for clarity and convenience, has incorporated these definitions that were previously only referenced.

Paragraph (a)(3) provides that the term "Not Safe for Hot Work" must be used when any of the four conditions that constitute "Safe for Hot Work" do not exist. This is a new paragraph that supplements the use of the term "Safe for Hot Work" by providing for those times when the four criteria for "Safe for Hot Work" have not been met.

Paragraph (b) covers those areas of the vessel where a competent person can give permission for hot work to proceed following a flammability test. The substantive requirements of this paragraph remain unchanged from the existing requirements.

Paragraph (b)(1) requires that hot work shall not be allowed on the following until a test for flammability has been conducted:

(1) Dry cargo spaces for which a Marine Chemist's or Coast Guard authorized person's certificate is not required;

(2) The bilges;

(3) The engine or boiler room where a Marine Chemist's or a Coast Guard's authorized person certificate is not required;

The existing rules, covered in § 1915.14(b) and (c), contain the same requirements found in proposed § 1915.14(b)(1) (i), (ii) and (iii).

Paragraph (b)(2) requires that the spaces discussed in (b)(1) be tested for flammability. This requirement is unchanged from existing § 1915.14(b) and (c).

Paragraph (b)(3) requires that a competent person conduct the flammability test. This requirement is unchanged from that found in existing § 1915.14(b) and (c).

Paragraph (b)(4) prohibits hot work in or on the spaces listed in (b)(1) when the concentration of flammable vapors has been found to be at or greater than 10 percent of the lower flammable limit. This provision is unchanged from the existing standard, § 1915.14(b) and (c).

Paragraph (b)(5) is a new rule which requires employers to label spaces as "Not Safe for Hot Work" if those spaces or adjacent spaces contain atmospheres at or above 10 percent of the lower explosive limit.

Section 1915.15 Maintaining conditions.

Section 1915.15, Maintaining conditions, discusses the steps which must be taken when conditions in tanks are altered after the initial approvals to enter and start work.

Paragraph (a) requires that pipelines be disconnected or blanked off to prevent hazardous substances from entering spaces that have been determined to be "Safe for Workers" or "Safe for Hot Work." This proposed paragraph applies to shipbuilding, shipbreaking and ship repair; the existing paragraph covered only ship repair. Since this situation could occur on any vessel that has carried or contained a flammable or combustible material in bulk, a toxic substance or an asphyxiant, regardless of whether that vessel is being built, repaired or broken, the requirements have been rewritten to cover these conditions.

Paragraph (b) requires that when valves are manipulated or manholes opened, resulting in altered conditions, the spaces must be retested to determine that they continue to meet the requirements in §§ 1915.12, 1915.13 and 1915.14 as applicable. This paragraph covers all shipbuilding, breaking and repairing.

Paragraph (c) requires that before hot work is begun on the weather deck over spaces which do not have to be safe for hot work, all valves, closures and vents to the weatherdeck shall be closed, except for vented up masts. This requirement is unchanged from the existing requirement, § 1915.14(a)(2), but has been expanded to cover shipbreaking and new construction. This coverage expansion is proposed because vessels and vessel sections, which have contained flammables or combustibles as part of the work process, would present the same hazard during construction and breaking as those under repair if valves were opened to tanks containing an atmosphere having 10% or more of the lower explosive limit and during hot work on the weather deck.

Paragraph (d) requires that a competent person conduct frequent tests of the spaces previously tested by the Marine Chemist or by the Coast Guard authorized person to determine if atmospheric conditions have changed. There are several factors which may influence the frequency with which spaces need to be retested, such as temperature, volatility of the residues, type of work being done in the tank, or trimming in the vessel. The existing rule provides this same requirement in § 1915.15(a)(4), (b)(1) and (b)(2) but limits it to ship repair and shipbreaking. By expanding this requirement to shipbuilding, this rule would require rechecking of any space or tank initially checked by a Marine Chemist or a Coast Guard authorized person. If the tank initially required checking by a competent person, then § 1915.15(f) would apply. Public comment is requested in Issue 10 regarding follow up inspections.

Paragraph (e) directs employers to stop work and get a new Marine Chemist or Coast Guard authorized person certificate if atmospheric conditions on which the initial certificate was based have changed so that they no longer meet OSHA requirements. This rule is unchanged from existing requirements, § 1915.15(a)(4), (b)(1) and (b)(2), except that the proposed paragraph would be expanded to cover shipbuilding. It specifically applies only to those spaces that have required Chemist's or Coast Guard authorized person certificates.

Paragraph (f) directs the competent person to frequently retest the atmospheric conditions that he or she initially determined to be safe for entry, hot or cold work. This requirement to maintain safe atmospheric conditions is unchanged from existing requirements found in § 1915.15(a)(4), (b)(1) and (b)(2). However, it does add new construction to its coverage, but only those spaces that would require competent person inspection; that is, it would require the competent person to recheck some spaces periodically for oxygen deficient or flammable atmospheres.

In Issue Number 7, public comment is requested regarding a useful definition of the term "frequent."

Paragraph (g) requires the competent person to insure that the atmosphere in the spaces previously tested by that person stays within the acceptable limits of the standard; that is, not above 10 percent LEL and not below 19.5 percent oxygen without respiratory protection. If conditions do not meet these levels, work must be stopped and conditions restored to these levels. This paragraph is the same as found in the existing standards, § 1915.15(a)(4), (b)(1) and (b)(2).

Section 1915.16 Warning signs.

Section 1915.16, Warning signs, discusses warning signs for all vessels during ship building, breaking and repair. The reason for this uniform coverage is that hazardous atmospheres may occur in spaces during any of these activities if flammable or combustible products have been introduced into the cargo containment system or the fuel system.

Paragraph (a) requires that only those spaces which are unsafe be labeled as such. This rule is the same as the existing rules, § 1915.16(a) and (b). Further, Appendix A suggests alternative, equivalent measures, i.e., that employers label the gangways and other means of access to vessels, instead of the individual tanks and spaces, if the entire vessel is in the same condition. This limited alternative method of compliance is the same as existing § 1915.16(c).

Public comment is requested in Issue Number 11 as to whether or not all conditions, safe and unsafe, should be marked on tanks.

Paragraph (b) requires that employers be responsible for employee' working and obeying all signs and limitations on tank entry. This provision is unchanged from existing § 1915.15(a)(3).

Appendix A to Subpart B—Explosive and Other Dangerous Atmospheres

This Appendix is a non-mandatory set of guidelines provided to assist employers in complying with the requirements of this subpart. This Appendix neither creates additional obligations nor eliminates obligations otherwise contained in the standard. It is intended to provide explanatory information and educational material to employers and employees to foster understanding of, and compliance with, the standard.

Appendix B to Subpart B—Explosive and Other Dangerous Atmospheres

This Appendix provides a complete reprint of U.S. Coast Guard regulations referenced in Subpart B for purposes of determining who is a Coast Guard authorized person.

Specific Issues

In addition to any other comments the public wishes to make on this standard, comments are requested on the following specific issues:

1. A definition for inert or inerted atmosphere has been added to the proposed standards in § 1915.11(b). In the first part of the definition, employers are allowed to inert by reducing the oxygen content of the atmosphere to 8.0 percent oxygen or below by volume, or 50 percent the amount required to support combustion, whichever is less.

Comment is requested as to the appropriate oxygen levels for inerting. Comment is also requested as to whether the minimum oxygen for combustion (MOC) figures are readily available to employers, or whether they should be published along with the standard. The maximum permissible oxygen percentage to prevent ignition of flammable gases and vapors using nitrogen and carbon dioxide for inerting can be found in the 14th edition of the Fire Protection Handbook, published by NFPA, as well as in other sources.

2. Section 1915.11(b) requires that the Marine Chemist must carry a valid certificate issued by the National Fire Protection Association (NFPA). At least one commenter has argued that this requirement is too restrictive, and that there are other individuals who are equally capable of performing the tasks assigned the Marine Chemist. Comment is requested regarding OSHA's requirement that all Marine Chemists be NFPA certified. Are there other groups, other than NFPA, who are qualified to assess the qualifications and abilities of a Marine Chemist? Are there additional groups, other than the NFPA, who could provide the training and testing necessary to produce Marine Chemists with a skill level equal to those produced currently by NFPA?

Are there geographical areas of the country that have difficulty getting Marine Chemists? Is work delayed as a result? How often does this situation occur? For how long is the work delayed? Do work backlogs occur because of the unavailability of Marine Chemists? If work is backlogged, for how long is this the case?

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Does OSHA's requirement to use an NFPA certified Marine Chemist inhibit, encourage or have no impact on innovation in safe tank entry and work? Please provide supporting documentation for your position.

3. Section 1915.11(b) provides a definition for the phrase "Not Safe for Workers." This phrase is adopted from NFPA 306. The term is used to mean two different things: (1) That a space is not safety to enter under any circumstances; or (2) that employee entry is permitted, but is restricted by the length of time the employee may be exposed, or restricted by the need for respiratory protection or personal protective equipment.

Therefore, a space might be posted "Not Safe for Workers" when in fact it could be safe but with certain restrictions. Comment is requested as to whether or not an additional category of "Safe with Restrictions" should be added and used when entry is permitted but additional protection or constraints are required. This concept is being used by NFPA 306.

4. Sections 1915.12(a)(3), (b)(3) and (c)(3) all require atmospheric testing prior to initial entry into spaces.

OSHA recognizes that confusion exists regarding the use of the term "initial entry." The Coast Guard has interpreted OSHA's use of the term "initial entry" to mean that when more than 24 hours have elapsed since a tank has been determined safe for entry and/or hot work, it must be rechecked to determine if it is still safe for hot work and/or safe for entry.

OSHA has no formal interpretation, explanation or policy statement explaining what constitutes an "initial entry" into a space. Comments are requested regarding the definition of the term "initial entry." Should OSHA set a time limit on "initial entry"? Commenters are urged to review a related issue, frequency of inspection, when drafting responses to this issue.

5. Section 1915.12(c)(2) requires that the toxicity test required prior to entry be conducted by an NFPA certified Marine Chemist, an ABIH industrial hygienist, or a Coast Guard authorized person. In official Agency correspondence, OSHA has said that these persons are what is meant by an NFPA certified Marine Chemist, an industrial hygienist, or an other qualified person. According to official Agency correspondence, this last person is one who can be appointed by the Coast Guard as authorized under 46 CFR 35.01–1(c)(1), 71.60–1(c)(1) or 91.50–1(c)(1), to inspect when a Marine Chemist is not reasonably available. Comment is requested as to who are the appropriate persons to conduct initial toxicity testing and prescribe any protective equipment or respiratory protection that may be needed. Comments on this matter should provide suitable documentation.

6. Section 1915.12(d) permits emergency work and work of brief duration to be performed in UEL or IDLH atmospheres provided no ignition sources are present and provided the UEL atmosphere is monitored continuously. Comments and additional information are requested on several sections of this paragraph. Should emergency work be defined? If so, what definition should be used? (See, for example, 29 CFR 1915.152(b)(3).) Should a time limit be used to define the term "brief duration"? If so, what should that time limit be and why? Is work ever conducted in UEL atmospheres? How often is this done? What is the nature of the work and what are the restrictions placed upon that activity? Are yards equipped with the meters necessary to determine that they are operating in a UEL atmosphere? How far above the UEL do yards allow work? What are the restrictions placed upon ignition sources in and near UEL atmospheres? How do yards prevent the atmosphere from being diluted and thus entering the flammable range? Should work in UEL atmospheres be prohibited? Why?

7. Proposed §§ 1915.13(b)(4) and 1915.15 address the requirement to conduct atmospheric tests frequently. Section 1915.13(b)(4) would require that factors which could influence the frequency of rechecking, such as air temperature and residue volatility, shall be considered when determining how often to recheck. Paragraphs (d) and (f) of § 1915.15 discuss the need for frequent atmospheric tests in order to maintain the initial working conditions in the tank. OSHA's proposed standards, however, do not specify how frequently a tank should be rechecked. Public comment is solicited as to whether OSHA should specify the frequency of testing in the standard. If so, what should that frequency be and why? Should the factors which influence the need to check tanks frequently be addressed directly in the standard? What factors, in addition to those covered in the Appendix, should be addressed under this subject? Should OSHA change the term "frequently" to "as often as necessary?" If so, why?

8. Should OSHA regulations require that the employer ascertain the last three cargoes carried in tanks covered by this standard? NFPA 306 currently contains such a requirement for Marine Chemists who are testing tanks. Is there a need for OSHA to adopt this requirement?

9. Should OSHA prohibit hot work on bulkheads where insulation has not been stripped away? If so, how much of the insulation shall be removed? Have there been situations where toxic vapors have evolved as a result of heating insulation? Have there been situations where insulation has been heated during hot work and fires have broken out during the hot work or after the hot work had been completed? Please document these occurrences, providing a description of the accidents, the number of times as well as the period of time over which they have occurred. Are there means of performing hot work on insulation which will not create hazards? Please provide supporting data.

10. In § 1915.15(d), should the shipyard competent person be required to conduct a physical examination of the tank and pipelines when making a follow up inspection?

11. Section 1915.16(a) addresses warning signs to be placed on tanks. Should all conditions, safe or unsafe, be marked on tanks? If you support that position please provide both costs and injury data associated with placing signs on safe and unsafe tanks. Should only unsafe conditions be marked? Please provide a rationale for your position.

12. Section 1915.18 addresses the shipyard competent person. Currently OSHA does not require any specific training or certification to assure that individuals designated as a "Competent Person" by their employers are indeed knowledgeable and competent. Yet the responsibilities of these designated individuals impact heavily on safety and health in the shipyard employment workplace.

There have been many suggestions that OSHA establish (or approve) a training program(s) for would-be Shipyard Competent Persons, and after successful completion of that training program, certify (or have certified by some responsible organization or agency) that such individuals are indeed "Shipyard Competent Persons."

OSHA seeks comment on the following specific issues:

A. Should OSHA require certification of Shipyard Competent Persons? If so, what organization(s) should be responsible for certification? If so, what skill level or knowledge requirements should such persons meet? Should they meet additional criteria, above and beyond that required in § 1915.7(b)? What should be the additional criteria? Why?

B. Since it would likely take a period of time before all current Competent Persons could be trained, should OSHA make this requirement effective some period of time after this revised Subpart B becomes effective? How long should this period be?

C. Should there be periodic recertification to assure that the Certified Shipyard Competent Person has retained his or her skills and knowledge? If not, why not? If so, how often should such recertification be required?

D. How many people would need this certification/recertification? Locally? Regionally? For what geographic area are you providing these numbers?

E. Should such training be mandatory or voluntary? If not, should there be incentives to encourage enrollment? What incentives would be most attractive? Why? If this training were mandatory how much would you estimate it would cost? What would be the benefits associated with such training? Please quantify the benefits associated with such training.

13. Should OSHA require that the atmosphere in tanks or compartments adjacent to ones under inert purge be tested for oxygen deficiency prior to entry?

Should OSHA require that prior to purging, the entire length of the purging line be checked for proper construction, attachment and installation to prevent leaks into compartments not being purged?

Should OSHA require alarms or portable detectors where the integrity of an inert gas purging system cannot be assured?

Have there been accidents as a result of inert gas system leaks? Please provide accident data covering the number of accidents, the period of time over which they occurred and a description of the accidents.

14. OSHA has proposed to eliminate the current recordkeeping requirements that employers designate a competent person on an OSHA Form 73 and then send that form to the closest area office. In its place, OSHA is proposing a requirement that employers shall prepare a certification record consisting of an employer record identifying the competent person(s) or a statement that Marine Chemists are always used, the employer's name, and date of certification. This action reduces the paperwork burden on employers. OSHA proposes to apply this provision to all competent person requirements in Subparts B, C, D and H. Should OSHA take these actions? If so, why?

15. OSHA's existing rule requires that routine work of substantial length (other than inerting) cannot occur in atmospheres less than 16.5 percent oxygen by volume. In such cases, ventilation is required to bring the oxygen level up to 16.5 percent. With the proposed change, OSHA will now allow routine entry and work in atmospheres with less than 16.5 percent oxygen *provided* appropriate respiratory protection is worn.

In addition, respiratory protection will now be required for any atmosphere containing oxygen levels between 16.5 percent and 19.5 percent. The existing rule allows unprotected entry between 16.5 percent and 19.5 percent.

OSHA believes that the proposed rule provides the appropriate level of protection to workers while permitting employers the flexibility of choosing the most suitable and economical control measures for each vessel and vessel section being serviced.

OSHA solicits comments on the appropriate control measures to be required in this proposal.

16. In this proposed standard OSHA is recommending that the requirement for the 1970 American Conference of Governmental Industrial Hygienists threshold limit values, which are in the current regulations (§ 1915.5), be replaced with the OSHA permissible exposure limits (PEL's) found in 29 CFR Part 1910, Subpart Z. OSHA acknowledges the current proposal to revise the PEL's for general industry, 53 FR 20960 (June 7, 1988). OSHA plans to carefully study the need to bring the shipyard air containments requirements in line with those proposed for general industry. That action will not be a part of this proposal, but will be considered in the future. Your input is solicited on this matter.

III. References

1. American National Standards Institute/National Fire Protection Association, *NFPA 306 Control of Gas Hazards on Vessels* (1988).

2. Manning, George C., M.S., B.S., *Manual of Ship Construction*, D. Van Nostrand Company, Inc., New York (1942).

3. National Fire Protection Association, *Hazardous Materials*, 6th Edition, 325M–5 (1975).

4. Regulations of the United States Department of Transportation, 46 CFR 35.01–1(c)(1); 71.60–1(c)(1); 91.50–1(c)(1) (1987).

5. Regulations of the United States Department of Transportation, 49 CFR 1.46(t) (1987).

IV. Regulatory Assessment

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in Executive Order 12291, OSHA has determined that the promulgation of this proposed standard would not be a "major" action because all of its requirements are consistent with current industry practices and are part of existing consensus or OSHA standards. The proposed standard would impose no costs of compliance upon shipyards.

Background

Under Executive Order 12291, OSHA is required, in general, to submit any Notice of Proposed Rulemaking (NPRM) for "all rules other than major rules" to the Director of the Office of Management and Budget (OMB) at least 10 days prior to publication in the **Federal Register.**

The economic impact estimates presented in this preamble are estimates based upon the data currently available to OSHA. These estimates will be refined as OSHA receives additional information. Consequently, OSHA solicits further comments on these estimates, and any comments will be addressed and incorporated into the Regulatory Impact Assessment (RIA) for the final rule.

Data Sources

The primary source for this section is the April 1986, Draft Final Report by CONSAD Research Corporation entitled, "Data to Support Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing: Subpart B." In addition, OSHA also used an October 1984 report by Main Hurdman/KMG entitled, "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and shipbreaking industries would be affected by the proposed revision of the provisons found in the existing Part 1915 Subpart B that govern work in explosive and other dangerous atmospheres in shipyards. In recent years, shipyards have not prospered as an industry. In 1985, there were about 400 shipyards operating, 200 fewer than the active number of shipyards in 1980. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but only for 10 merchant vessels (140,915 tons) by 1984. Although this loss of business has been partially offset by the increase in the U.S. Navy's demand for ships, the decline in the demand for commercial ships will likely generate a further decline in the number of active shipyards.

Population at Risk

OSHA has estimated that every shipyard employee who works on

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vessels and vessel sections will be affected by the provisions in this proposed standard. The actual number of these employees will depend upon the level of shipyard work. For example, shipyards employed 177,300 workers in 1980 and about 145,000 in 1984. Consequently, because there is the potential for large changes in the demand for ships, OSHA has estimated that the population at risk would be between 145,000 and 180,000 employees.

Risk of Fatality or Injury

OSHA has been unable to estimate the annual number of shipyard fatalities and injuries resulting from accidents associated with explosive or toxic atmospheres because there are no available fatality and injury data. However, OSHA has anecdotal information derived from accident investigations and research concerning fatalities that have occurred in these atmospheres. (Exhibit numbers 1 and 2.)

- The deceased had been one of seven workers from a temporary help service who were removing mud and water (in a "mucking" operation) from the hull of a floating dry dock. Mud and silt were removed from the bottom of the 300-ton U-shaped vessel used to lift ships from the water for repairs. The hull contained several compartments. There was an odor of a flammable substance similar to gas or oil present in the compartment. At some point, an explosion occurred fatally injuring the man and hospitalizing four others. The employer was cited for failure to test the atmosphere for flammable levels and for oxygen deficiency.
- The two deceased men had been employed by a painting and tank cleaning contractor to clean and paint a salt water ballast tank in the bow of a vessel. The tank had been cleaned the day before and the two men had proceeded with the spray painting using methyl ethyl ketone (MEK) as a paint thinner. They completed the first coat. The second day they returned to complete the second coat. Prior to entering the tank no test was performed to determine the lower explosive limit. No mechanical ventilation of any kind was provided to dispel the vapors. After painting for approximately an hour, there was an explosion that killed both men. The source of ignition was believed to be from one of the two hand-held portable lamps.
- One worker was asphyxiated and a second worker was hospitalized when they entered a cargo space that had contained flammable or combustible materials. That space's atmosphere had not been tested by a competent person prior to their entry. In addition, no competent person had been designated or indicated on an OSHA 73 form, and there was no log of such tests available at the job site.
- In another incident, five employees were hospitalized after they inhaled petroleum product vapors in a confined space on a vessel. The atmosphere in the cargo space had not been tested by a competent person prior to the entry of the employees. In addition, no atmospheric testing was done by a competent person while the men were working in this space.
- In another similar but unrelated incident, five employees were injured when insufficient respiratory protection was provided against the hazards of inhalation of chemical liquids and vapors. These employees had been assigned to do cold work in a tank that had carried a flammable or combustible liquid or gas. The shipyard had neither designated a competent person to test for the presence of flammable vapors, nor provided natural or mechanical ventilation while the employees were in the tank. Furthermore, no rechecking of the tank's atmosphere was performed while the men were in the tank.
- An oxygen-enriched atmosphere was formed when a welding torch gas manifold malfunctioned. This malfunction prevented the flow of gas, but not the flow of oxygen, into a torch being used in a confined space. When the malfunction was rectified and the employee lit his torch, a flash fire occurred due to the oxygen-enriched atmosphere. The employee died in the fire. Had the atmosphere been tested prior to initiating hot work, the accident could have been avoided.

As a result of these and other similar incidents, the known hazardous nature of operations in these types of atmospheres has led OSHA, the National Fire Protection Association (NFPA), and shipyards to establish the specific work practices embodied in the proposed OSHA standard. Further, many shipyards have required their employees to follow these work practices. Where these safe work practices have been adopted, there have been relatively few related injuries and fatalities.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would require the use of existing and readily available technology, equipment, and current work practices.

One source of potential benefits is from the rewriting of the provisions of this subpart to make them clearer and easier to understand. This action will eliminate some ambiguity concerning the specific provisions with which a shipyard employer must comply.

Another source of potential benefits is that the provisions in the proposed subpart have been designed to be consistent with the requirements of the consensus standards, where appropriate. Many shipyards already comply with the consensus standards such as NFPA 306, because such compliance has been proven to reduce shipyard hazards and resultant fatalities and injuries. It also may be required by insurance companies for property damage insurance. Thus, to the extent that the proposed subpart is more consistent with NFPA standards than the existing OSHA standards, the proposed subpart could reduce the costs of compliance to shipyards while not reducing the level of employee safety.

The basis of the estimated costs of compliance with the proposed standard is the CONSAD report. In order to obtain this information, CONSAD conducted a series of eight focus group meetings, which were attended by individual shipyards, labor groups, safety professionals, and marine chemists. CONSAD circulated copies of the proposed standard and then elicited information concerning any potential economic impacts. The information received by CONSAD was used to develop its estimated costs of compliance. OSHA has adopted that estimate as the best available estimate.

With respect to this proposed standard, CONSAD received no information indicating that shipyards were not in compliance with the proposed provisions. Thus, OSHA has determined that there would be no cost of compliance associated with the proposed standard. Nevertheless, as previously mentioned, this is a Preliminary Regulatory Impact Assessment (PRIA), and OSHA invites public comment concerning this determination. Any comment received will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), the Assistant Secretary has preliminarily certified that the proposed standard would not have a significant impact upon a substantial number of small entities because there would be no costs of compliance. OSHA invites public comment concerning this certification.

The regulatory assessment is available for inspection and copying at the OSHA Technical Data Center, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in this Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council of Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions to 29 CFR 1915.11–16, Subpart B—Explosive and Other Dangerous Atmospheres, focus on the reduction of accidents or injuries by means of work practices and procedures, as well as on changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. As such, these revisions are therefore, categorized as excluded actions according to 29 CFR 11.10 of the DOL NEPA regulations.

VI. Recordkeeping Requirements

This subpart substantially reduces the recordkeeping burden on employers by removing duplicative recordkeeping requirements and replacing a recordkeeping requirement with a certification. Only a requirement for maintaining the OSHA 74, the Log of Inspections and Tests by Competent Persons, has been retained.

The existing Subpart B regulations mandate that a Marine Chemist, when performing atmospheric tests in lieu of a shipyard competent person, must complete two reports on test results: the Marine Chemist's certificate *and* OSHA's Log of Inspections and Tests (OSHA 74). These two reports contain the same information. The proposed rule eliminates the requirement for completing both forms and instead requires either an OSHA 74 or a Marine Chemists' form.

The requirement that employers complete an OSHA 73, Designation of Competent Persons, and send it into the nearest OSHA area office, has been replaced with a certification requirement. Under this new certification requirement, an employer must be able to provide evidence substantiating the fact that he has met his legal obligation to designate shipyard competent persons. This certification requirement eliminates the employer's paperwork burden.

Only the paperwork requirement for completing the OSHA 74 has been retained. The OSHA 74, Log of Tests and Inspection by Competent Persons, provides a record of atmospheric tests by location. This information warns employers about hazardous atmospheres and allows employees to determine if atmospheric conditions are changing—an important indicator of developing hazardous conditions. In cases where a Marine Chemist performs this task, he is permitted to substitute his own form which contains the same information as the OSHA 74. By making these changes, OSHA has reduced the paperwork burden on employers while continuing to provide protection for employees.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and the regulations issued pursuant thereto (5 CFR Part 1320) (See 48 FR 13666, March 31, 1983), OSHA certifies that it has submitted the information collection requirements contained in this proposed revision to its current standards to the Office of Management and Budget (OMB) for review under section 3504(h) of that Act. Comments on these information collection requirements may be submitted by interested parties to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, 726 Jackson Place NW., Washington, DC 20503. OSHA requests that copies of such comments also be submitted to the OSHA Docket Office, as part of the record for this rulemaking.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Officer, Docket No. S–050, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 657) and 29 CFR 1911.11, interested parties may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked by February 27, 1989.
3. The objections must specify with particularity the provisions of the proposed rule to which each objection is taken and must state the grounds therefore;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

Those of the 25 States with their own OSHA-approved occupational safety and health plans whose plans cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. Currently four States (Minnesota, Oregon, Vermont and Washington) with their own State plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA States and in the following State plan States: Alaska, Arizona, California,[1]

[1] Plan covers only State and local government employes.

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Connecticut,[1] Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York,[1] North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All States with State plans must also extend coverage to State and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Cold work, Confined space entry on marine vessels, Flammable atmospheres, Hot work certification, Marine chemist, Marine safety, Marine vessels, Occupational safety and health, Oxygen deficient atmospheres, Safety, Shipyard competent person, Shipyard employment, Toxic atmosphere.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to section 41 of the Longshore and Harbor Worker's Compensation Act, as amended (72 Stat. 835; 33 U.S.C. 941), sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1598; 29 U.S.C. 653, 655, 657), 29 CFR Part 1911 and Secretary of Labor's Order No. 9–83 (48 FR 35736), it is proposed to amend 29 CFR Part 1915 as set forth below.

Signed at Washington, DC, this 17th day of November 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

For the reasons set forth in the preamble, Title 29, Part 1915 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citation for Part 1915 would be revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

2. Section 1915.7 would be revised to read as follows:

§ 1915.7 Competent person.

(a) *Designation.* (1) For the purposes of Subparts B, C, D and H of this part, except for §§ 1915.35(b)(8) and 1915.36(a)(5), one or more competent persons shall be designated by the employer in accordance with the applicable requirements of this section, unless the requirements of Subpart B, C, D and H are always carried out by a Marine Chemist or a Coast Guard authorized person.

(2) The employer shall prepare a certification record which includes the employer's name, the identification of the competent person or a statement that a Marine Chemist or a Coast Guard authorized person is being used, and provide the date this record was prepared. The most recent certification record shall be maintained on file.

(b) *Criteria.* Employers must ensure that employees designated as competent persons have the following abilities and attributes:

(1) Ability to understand certificates issued by Marine Chemists or by U.S. Coast Guard authorized persons.

(2) Ability to carry out any written instructions left by Marine Chemists, Certified Industrial Hygienists or by the U.S. Coast Guard authorized persons.

(3) Ability to calibrate, use, and correctly interpret the testing equipment used.

(4) Familiarity with and understanding of Subparts B, C, D and H.

(5) Familiarity with the structure and knowledge of the location and designation of spaces on the types of vessels where work is done.

(6) Capability to perform the tests and inspections required by Subparts B, C, D and H.

(7) Ability to enter the appropriate information in the required logs.

(c) *Logging of inspections and tests.* (1) When tests and inspections required by any provisions of B, C, D and H of this part, except those referred to in §§ 1915.35(b)(8) and 1915.36(a)(5), are performed by a competent person, Certified Industrial Hygienist, or U.S. Coast Guard authorized person, a record of the locations, operations performed and date, time and results of the test and any instructions resulting therefrom shall be recorded on U.S. Department of Labor Form OSHA 74 "Log of Inspections and Tests by Competent Persons."

(2) Employers shall require Marine Chemists to record test locations and results including time, date and location of vessels inspected, operations performed, as well as any instructions.

(3) A separate OSHA 74 or Marine Chemist's or Coast Guard authorized person's certificate shall be maintained for each vessel and vessel section on which tests and inspections are made.

(4) The OSHA 74 and the records required in paragraph (b) of this section shall be available for inspection in the immediate vicinity of the affected operations while they are in progress.

(5) The OSHA 74 and the records required in paragraphs (c) (1) and (2) of this section shall be kept on file for a period of at least three months from the date of the completion of the job.

(d) *Application.* The provisions of this section are intended to apply in their entirety to employers engaged in general ship repair, shipbuilding and shipbreaking. They do not apply in their entirety to employers whose work involves only certain portions of Subparts B, C, and D of this part such as:

(1) Repair work on small craft in boat yards where only combustible gas indicator tests are necessary for fuel tank leaks or when using flammable paints below decks;

(2) The building of wooden vessels where only knowledge of the precautions to be taken when using flammable paints is necessary; and

(3) The breaking of vessels with no exposure to fuel oil or other flammable hazards.

In such cases, employers are allowed to select their competent person(s) on the basis of the applicable portions of the criteria set forth in paragraph (b) of this section.

3. Subpart B of Part 1915 would be revised to read as follows:

Subpart B—Explosive and Other Dangerous Atmospheres in Vessels and Vessel Sections

Sec.

1915.11 Scope, application, and definitions applicable to this subpart.
1915.12 Precautions before entering compartments or spaces.
1915.13 Cleaning and other cold work.
1915.14 Hot work.
1915.15 Maintaining conditions.
1915.16 Warning signs.
Appendix A to Subpart B
Appendix B to Subpart B

Subpart B—Explosive and Other Dangerous Atmospheres in Vessels and Vessel Sections

§ 1915.11 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* This subpart sets forth requirements to protect employees during work in explosive and other dangerous atmospheres in, and on, vessels and vessel sections during shipbuilding, ship repairing, and shipbreaking operations.

(b) *Definitions applicable to this subpart.* "Adjacent compartments or spaces" means those compartments or spaces which border upon the space where the work is to be done, and those which are located on the diagonal from the space where the work is to be done.

"Bulk" means materials that are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel carrier without mark or count.

"Certified Industrial Hygienist (CIH)" means an industrial hygienist who is certified by the American Board of Industrial Hygiene.

"Coast Guard authorized person" means an individual who meets the requirement of 46 CFR 35.01–1(c)(1) for tank vessels; 46 CFR 71.60–1(c)(1) for passenger vessels; and 46 CFR 91.50–1(c)(1) for cargo and miscellaneous vessels. For tank vessels, passenger vessels, and cargo and miscellaneous vessels in ports or places in the United States or its territories and possessions, the authorized person shall be a Marine Chemist certificated by the National Fire Protection Association; however, if the services of such certified Marine Chemist are not reasonably available, the U.S. Coast Guard, Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection. (See Appendix B for a copy of 46 CFR 35.01–1(c)(1); 46 CFR 71.60–1(c)(1); and 46 CFR 91.50–1(c)(1).)

"Competent person" means an individual satisfying the criteria set forth in § 1915.7.

"Hot work" means riveting, welding, burning, the use of powder-actuated tools or similar fire-producing operations. Grinding, drilling, sand or shot blasting, or similar spark-producing operations shall be considered hot work except when they are physically isolated from an environment which is greater than 10% of the lower explosive limit. (See Appendix A.)

"Immediately dangerous to life or health (IDLH)" means any atmosphere that poses an immediate threat to life, or which is likely to result in acute or immediate severe health effects.

"Inert or inerted atmosphere" means that (1) the oxygen content of the atmosphere in the space is at or below 8.0 percent by volume or the oxygen content is at or below 50 percent of the amount required to support combustion, whichever is less; or, (2) that the space has been flooded with water; that any hot work is performed at least three feet below the water level; and that the gas content of the atmosphere above the water does not exceed 10 percent of the lower explosive limit.

"Lower explosive limit (LEL)" means the minimum concentration of vapor in air below which propagation of a flame does not occur in the presence of an ignition source. (See Appendix A.)

"Marine Chemist" means the holder of a valid Marine Chemist certificate issued by the National Fire Protection Association.

"Not Safe for Hot Work" means that no hot work may be performed in compartments or spaces so designated.

"Not Safe for Workers" means that the compartment or space so designated contains less than 19.5 percent oxygen by volume; or that toxic contaminants in the atmosphere are above permissible exposure limits (PEL's) found in Part 1910, Subpart Z of this title for the period of time workers will be exposed; or that residues are capable of producing toxic concentrations above the PEL's under existing atmospheric conditions; or that the concentration of flammable vapors or gases is at or above 10 percent of the lower explosive limit (LEL).

"Oxygen-deficient atmosphere" means an atmosphere having an oxygen concentration of less than 19.5 percent by volume.

"Oxygen-enriched atmosphere" means an atmosphere which contains more than 22.0 percent oxygen by volume.

"Safe for Hot Work" means that the compartment or space so designated has an oxygen content that does not exceed 22.0 percent by volume; and that the concentration of flammable materials in the atmosphere is below 10 percent of the lower explosive limit; and that the residues are not capable of producing a higher concentration of flammable vapors than permitted under existing atmospheric conditions in the presence of hot work and while maintained as directed; and that all adjacent spaces have been cleaned sufficiently to prevent the spread of fire, or are satisfactorily inerted.

"Safe for Workers" means that the compartment or space so designated has an atmosphere containing at least 19.5 percent oxygen by volume; toxic contaminants in the atmospheres are below the PEL's; the residues in the space are not capable of producing toxic concentrations above the PEL's under existing atmospheric conditions; and the concentration of flammable vapors or gases is below 10 percent of the lower explosive limit (LEL) except as provided by 29 CFR 1915.13(b)(8) for cold work operations.

"Upper explosive limit" (UEL) means the maximum concentration of flammable vapor in air above which propagation of flame does not occur on contact with a source of ignition. (See Appendix A.)

"Vessel section" means a sub-assembly, module, or other component of a vessel being built, repaired or broken.

"Weather deck" means the uppermost continuous deck, exclusive of the forecastle, bridge, or poop, that is exposed to the weather.

§ 1915.12 Precautions before entering compartments or spaces.

(a) *Oxygen deficient atmospheres.* (1) On vessels and sections of vessels, the atmosphere in the following spaces shall be tested prior to initial entry to determine the oxygen content within the compartment or space:

(i) Compartments which have been sealed, such as, but not limited to, spaces which have been coated and closed up, and non-ventilated compartments which have been freshly painted.

(ii) Cargo spaces or other spaces that contain or have contained combustible or flammable liquids and gases in bulk.

(iii) Spaces adjacent to cargo spaces or other spaces that contain or have contained combustible or flammable liquids and gases in bulk.

(iv) Cargo spaces or other spaces containing or having last contained bulk liquids, gases, or solids that are toxic, corrosive, or irritant.

(v) Spaces adjacent to cargo spaces or other spaces containing or having last contained bulk liquids, gases, or solids that are toxic, corrosive, or irritant.

(vi) Spaces which have been fumigated.

(vii) Spaces adjacent to spaces which have been fumigated.

(viii) Cargo spaces containing cargoes or residues of cargoes which absorb oxygen, such as scrap iron, fresh fruit, molasses, or various vegetable drying oils in bulk.

(2) The test required by paragraph (a)(1) of this section shall be conducted by a competent person.

(3) The test required by paragraph (a)(1) of this section shall be conducted prior to employees' initial entry into the space.

(4) Employees entering a space where the oxygen content is below 19.5 percent by volume shall wear a respirator in accordance with Subpart I of this part. (See Appendix A for information on safe oxygen levels.)

(5) If the space to be entered contains an atmosphere with less than 19.5 percent oxygen by volume, the space shall be labeled "Not Safe for Workers."

(b) *Flammable atmospheres.* (1) On vessels and vessel sections, the atmosphere within cargo spaces or other spaces that contain or have contained

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combustible or flammable liquids or cases in bulk, and spaces adjacent to those cargo spaces or other spaces, shall be tested prior to entry to determine the concentration of flammable vapors and gases within the compartment.

(2) The test required by paragraph (b)(1) of this section shall be conducted by a competent person.

(3) The test required by paragraph (b)(1) of this section shall be conducted prior to employees' initial entry into the spaces.

(4) Employees shall not enter spaces where the concentration of flammable vapors or gases is at or above 10 percent of the lower explosive limit (LEL), except as provided in §§ 1915.12(d) and 1915.13(b)(8). (See Appendix A for precautions that should be taken when flammable vapors or gases are below 10 percent of the LEL.)

(5) If the concentration of flammable vapors or gases in the space to be entered is at or above 10 percent of the LEL, the space shall be labeled "Not Safe for Workers," unless the provisions § 1915.12(d) or § 1915.13(b)(8) apply.

(6) When the atmosphere in the space to be entered is found to contain a flammable substance which also has a permissible exposure limit as found in Part 1910 of Subpart Z, the requirements of § 1915.12(c) shall also apply.

(c) *Toxic atmospheres and residues.* (1) On vessels and vessel sections, the atmosphere and space within cargo spaces or other spaces containing or having last contained bulk liquids, gases, or solids that are toxic, corrosive or irritant; spaces which have been fumigated; and spaces adjacent to the above-named spaces shall be:

(i) Tested prior to entry to determine the concentration of toxic atmospheric contaminants within the compartment.

(ii) Visually inspected prior to entry for the presence of toxic, or corrosive residues.

(2) The tests and the visual inspections required by paragraph (c)(1) of this section shall be conducted by a Marine Chemist, a Certified Industrial Hygienist, or a Coast Guard authorized person.

(3) The tests and visual inspection required by paragraph (c)(1) of this section shall be conducted prior to employees' inital entry into the space.

(4) When the tests and/or the visual inspections indicate that the atmosphere or the residues in the space to be entered contain a concentration of contaminants above the level which is immediately dangerous to life or health, the space shall be ventilated before entering to reduce the concentration below the level immediately dangerous to life and health, except as provided in paragraph (d) of this section.

(5) When the atmosphere or the residues in the space to be entered are found to contain a concentration of toxic contaminants below the level immediately dangerous to life or health but above the permissible exposure limit of Part 1910, Subpart Z, employees shall be protected in accordance with the requirements of 29 CFR Part 1915, Subpart I of this part.

(6) When the atmosphere or the residues in the space to be entered are found to contain or produce a concentration above the permissible exposure limits, the space shall be labeled "Not Safe for Workers."

(d) *Work of brief duration.* In emergencies and in cases of work of brief duration necessary to accomplish the ventilation required or to start operations, work may be performed on vessels or vessel sections in atmospheres containing flammable contaminants which are above the upper explosive limit or otherwise immediately dangerous to life or health provided:

(1) No ignition sources are present; and

(2) The atmosphere in the space is maintained above the upper explosive limit; and

(3) The atmosphere in the space is monitored continuously.

Note: Respiratory protection and other appropriate personal protective equipment and clothing must be provided in accordance with Subpart I of this part. Other provisions for work in IDLH atmospheres are also located in Subpart I of this part.

§ 1915.13 Cleaning and other cold work.

(a) *Locations covered by this section.* Employees shall not perform manual cleaning and other cold work on vessels and vessel sections in the following locations unless the conditions of paragraph (b) of this section have been met: (1) Spaces containing or having last contained combustible or flammable liquids or gases in bulk;

(2) Spaces containing or having last contained bulk liquids, gases or solids that are toxic, corrosive or irritating;

(3) Spaces which have been fumigated; and

(4) Spaces adjacent to the above named spaces.

(b) *Conditions for cold work.* (1) Liquid residues of flammable, combustible, and toxic materials shall be removed from the spaces as thoroughly as practicable before employees start cold work in these spaces.

(2) If a flammable or combustible material was contained in the space, a test to determine the concentration of flammable vapors shall be made prior to starting cold work.

(3) The test to determine the concentration of flammable vapors in the atmosphere shall be done by a competent person.

(4) Tests to determine the concentration of flammable vapors shall be conducted frequently during cold work in accordance with temperature, volatility of the residues and other existing conditions in and about the spaces. (See Appendix A for additional information on frequency of testing.)

(5) Hot work shall only be permitted as in § 1915.14.

(6) Spills of flammable, combustible and toxic materials shall be cleaned up as the work progresses.

(7) The concentration of flammable vapors shall be kept lower than 10 percent of the lower explosive limit except as provided in § 1915.12(d) of this part and paragraph (b)(8) of this section.

(8) When highly volatile residues are such that a uniform concentration lower than 10 percent of the lower explosive limit cannot be maintained, then sufficient ventilation shall be provided to keep the concentration of flammable vapors below 10 percent of the lower explosive limit in the major portions of the compartment.

(9) The competent person shall test to determine if exhaust vapors from compartments being ventilated are accumulating in or around the vessel.

(10) When tests required in paragraph (b)(9) of this section indicate that flammable exhaust vapors are accumulating, sources of ignition shall be prohibited in the area of accumulation.

(11) Only lamps which meet the requirements of § 1910.307 of this title shall be used in spaces, on pipelines, on heating coils, on pumps, on fittings or on other accessories that have contained flammable or combustible liquids or gases.

(12) Signs prohibiting smoking and the use of open flames shall be posted on the open deck adjacent to those spaces which have been used to carry flammable or combustible liquids or gases in bulk, adjacent spaces, and pipelines, heating coils, pumps, fittings, or other accessories connected to such tanks.

(13) The metallic parts of air moving devices, including fans, blowers, jet air movers, and all duct work shall be electrically bonded to the vessel's structure.

(14) Fans shall have non-sparking blades.

(15) Portable air ducts shall be of non-sparking materials.

(16) All motors and control equipment shall meet the requirements of § 1910.307 of this title.

(17) All motors and associated control equipment shall be properly maintained and grounded.

Note: Employees shall be protected from exposure to toxic and hazardous substances during cold work in accordance with § 1915.12(c) of this part.

§ 1915.14 Hot work.

(See Appendix A for additional information relevant to performing hot work safely.)

(a) *Marine chemist's inspection required.* (1) Hot work shall not be permitted in or on the following spaces, boundaries or pipelines until tested and certified as "Safe for Hot Work" by a Marine Chemist or a U.S. Coast Guard authorized person.

(i) On tank vessels:

(A) Within or on the boundaries of cargo tanks which contain or have contained combustibles or flammable liquids and gases in bulk, or within spaces adjacent to such cargo tanks;

(B) Within or on the boundaries of fuel tanks which contain or have last contained fuel; and

(C) On pipelines, heating coils, pump fittings or other accessories connected to such cargo or fuel tanks.

(ii) On dry cargo, miscellaneous and passenger vessels:

(A) Within or on the boundaries of cargo tanks which contain or have contained combustible or flammable liquids and gases in bulk;

(B) Within spaces adjacent to cargo tanks which contain or have contained flammable gases, or liquids with a flash point below 150° F., except where the distance between such cargo tanks and the work to be performed is greater than 25 feet;

(C) Within or on the boundaries of fuel tanks which contain or have last contained fuel; and

(D) On pipelines, heating coils, pumps, fittings or other accessories connected to such cargo or fuel tanks.

(2) Hot work within or on the vessel spaces listed in paragraphs (a)(1)(i) and (a)(1)(ii) of this section shall not be permitted unless:

(i) The oxygen content of the atmosphere is less than 22.0 percent by volume. (See Appendix A for more information about oxygen enriched atmospheres.);

(ii) The concentration of flammable materials in the atmosphere is below 10 percent of the lower explosive limit;

(iii) The residues are not capable of producing a concentration of airborne flammable vapors at, or above, 10 percent of the lower explosive limit under existing atmospheric conditions in the presence of hot work, and while maintained as directed by the Marine Chemist's or the Coast Guard authorized person; and

(iv) All adjacent spaces have been cleaned sufficiently to prevent the spread of fire, or have been inerted.

(3) If any of the conditions in paragraph (a)(2) of this section do not exist, then the space shall be labeled "Not Safe for Hot Work."

(b) *Competent person inspection required.* (1) Hot work shall not be permitted on vessels or vessel sections in or on the following spaces or adjacent spaces until the requirements of paragraphs (b)(2), (b)(3) and (b)(4) of this section have been met:

(i) Dry cargo holds for which a Marine Chemist's or Coast Guard authorized person's certificate is not required.

(ii) The bilges.

(iii) The engine room and boiler spaces where a Marine Chemist's or a Coast Guard authorized person certificate is not required.

(2) A test to determine the concentration of flammable vapors shall be conducted on the spaces listed in paragraph (b)(1) of this section.

(3) The test required by paragraph (b)(2) of this section shall be conducted by a competent person.

(4) Hot work shall not be permitted in or on the spaces in paragraph (b)(1) of this section when the concentration of flammable vapors is equal to or greater than, 10 percent of the lower explosive limit.

(5) If the concentration of flammable vapors or gases is equal to or above 10 percent of the LEL in the space where the hot work is to be done or in the adjacent spaces, the space shall be labeled "Not Safe for Hot Work."

§ 1915.15 Maintaining conditions.

(a) *Prevent hazardous substances from entering spaces.* Pipelines which may convey hazardous substances into the spaces which are "Safe for Workers" or "Safe for Hot Work" shall be disconnected, blanked off, or other positive means shall be used to prevent hazardous substances from entering the space.

(b) *Altering existing conditions.* When hatches, manholes or closures are opened, or any manipulation of valves takes place which alters existing conditions so that they no longer comply with §§ 1915.12, 1915.13 and 1915.14 of this part as applicable, work in the affected spaces or areas shall stop and not resume until the affected areas have been retested and made safe in accordance with §§ 1915.12, 1915.13 and 1915.14 of this part as applicable.

(c) *Weather deck hot work.* Before hot work is begun on the weather deck over spaces which are not required under § 1915.14 of this part to meet the conditions of "Safe for Hot Work," all valves, closures and vents to the weather deck connecting with tanks or compartments below that contain 10% or more of the lower explosive limit shall be closed, except for those which are vented up masts.

(d) *Frequent tests to maintain Marine Chemist's or Coast Guard authorized person's certificates.* After a Marine Chemist's or Coast Guard authorized person's certificate has been issued, a competent person shall make frequent tests to insure that atmospheric conditions in the spaces for which the certificate has been issued are maintained. (See Appendix A for further information on frequency.)

(e) *Conditions on Marine Chemist's or Coast Guard authorized person's certificate altered.* After a Marine Chemist's or a Coast Guard authorized person's certificate has been issued, and the competent person subsequently finds that atmospheric conditions fail to meet the requirements of §§ 1915.12, 1915.13 and 1915.14 of this part as applicable, work shall be stopped and a new Marine Chemist's or Coast Guard authorized person's certificate in accordance with § 1915.14(a) shall be obtained before work is resumed.

(f) *Frequent tests to maintain competent person's findings.* After a competent person has conducted the tests required in §§ 1915.12, 1915.13, and 1915.14 of this part, the competent person shall make frequent tests to insure that atmospheric conditions are maintained in the spaces initially determined to be safe for entry, hot work or cold work. (See Appendix A for further information.)

(g) *Competent person's findings altered.* After the competent person has initially determined spaces are safe for entry, hot or cold work, and the competent person subsequently finds that atmospheric conditions fail to meet the requirements of §§ 1915.12, 1915.13 and 1915.14 of this part as applicable, work shall be stopped until the conditions in the space comply with §§ 1915.12, 1915.13 and 1915.14 as applicable.

§ 1915.16 Warning signs.

(a) *Label spaces tested.* All tanks, compartments, and other spaces in which the atmosphere has been tested as required by this Subpart but fails to meet the requirements of §§ 1915.12,

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1915.13, or 1915.14 as applicable, shall be clearly marked, as set forth in those sections. (See Appendix A.)

(b) *Obey warnings.* The employer is responsible for ensuring that all employees understand and obey all warning signs and limitations stated on the Marine Chemist's certification and on the OSHA Form 74, "Log of Inspections and Tests by Competent Person."

Appendix A to Subpart B—Explosive and Other Dangerous Atmospheres

The following Appendix to Subpart B provides supplementary information to employers and employees to assist them in understanding and complying with the requirements of Subpart B. The Appendix is non-mandatory.

Sections 1915.11–1915.18. These standards are minimum safety standards for entering and working safely in vessel tanks and compartments.

Section 1915.11(b) "Hot work." There are several instances in which circumstances do not necessitate that grinding, drilling, and sand or shot blasting be regarded as hot work. Some examples are:

1. Abrasive blasting of the hull for paint preparation does not necessitate pumping and cleaning the tanks of a tanker vessel.

2. Prior to hot work on many hollow structures, the void space is drilled into to allow a test for an explosive atmosphere. A coolant can be used on the drill bit during drilling.

Section 1915.11(b) "Lower explosive limit." The terms lower flammable limit (LFL) and lower explosive limit (LEL) are used interchangeably in fire science literature.

Section 1915.11(b) "Upper explosive limit." The terms upper flammable limit (UFL) and upper explosive limit (UEL) are used interchangeably in fire science literature.

Section 1915.12(a)(4). After a tank has been properly washed and ventilated, the tank ought to contain 20.8 percent oxygen by volume. This is the same amount found in our normal atmosphere at sea level. However, it is possible that the oxygen content will be lower. When this is the case, the reasons for this deficiency should be determined and corrective action taken.

An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level less than 20.8 percent and greater than 19.5 percent level should also alert the competent person to look for the causes of the oxygen deficiency and to correct them prior to entry.

Section 1915.12(b)(4) Flammable atmospheres. Atmospheres with a concentration of flammable vapors at or above 10 percent of the lower explosive limit (LEL) are considered hazardous when located in confined spaces. However, atmospheres with flammable vapors below 10 percent of the LEL are not necessarily safe.

Such atmospheres are too lean to burn. Nevertheless, when a space contains or produces measurable flammable vapors below the 10 percent LEL, it might indicate that flammable vapors are being released or introduced into the space and could present a hazard in time. Therefore, the cause of the vapors should be investigated and, if possible, eliminated prior to entry.

Some situations that have produced measurable concentrations of flammable vapors that could exceed 10 percent of the LEL in time are:

1. Pipelines that should have been blanked or disconnected have opened, allowing product into the space.

2. The vessel may have shifted, allowing product not previously cleaned and removed during washing to move into other areas of the vessel.

3. Residues may be producing the atmosphere by releasing flammable vapor.

Section 1915.12(b)(6) Flammable atmospheres which are toxic. In addition, an atmosphere with a measurable concentration of a flammable substance below 10 percent of the LEL may be above the permissible exposure limit for that substance. Refer to § 1915.12(c) (4) and (5) if that is the case.

Section 1915.13(b)(4), § 1915.15(d) and § 1915.15(f). The frequency with which a tank is monitored to determine if atmospheric conditions are being maintained should be a function of several factors that are discussed below:

1. *Temperature.* Higher temperatures will cause a combustible or flammable liquid to vaporize at a faster rate than lower temperatures. This is important since hotter days may cause tank residues to produce more vapors and that may result in the vapors exceeding 10 percent of the LEL or an overexposure to toxic contaminants.

2. *Work in the tank.* Any activity in the tank could change the atmospheric conditions in that tank. Oxygen from a leaking oxyfuel hose or torch could result in an oxygen enriched atmosphere that would more easily propagate a flame. Some welding operations use inert gas, and leaks can result in an oxygen deficient atmosphere. Manual tank cleaning with high pressure spray devices can stir up residues and result in exposures to toxic contaminants. Simple cleaning or mucking out, where employees walk through and shovel residues and sludge, can create a change in atmospheric conditions.

3. *Period of time elapsed.* If a period of time has elapsed since a Marine Chemist or Coast Guard authorized person has certified a tank as safe, the atmospheric condition should be rechecked by the competent person prior to entry and starting work.

4. *Unattended tanks.* When a tank has been tested and declared safe, then subsequently left unattended for a period of time, it should be retested prior to entry and starting work. For example, when barges are left unattended at night, unidentified products from another barge are sometimes dumped into their empty tanks. Since this would result in a changed atmosphere, the tanks should be retested prior to entry and starting work.

5. *Work break.* When workers take a break or leave at the end of the shift, equipment sometimes is inadvertently left in the tanks. At lunch or work breaks and at the end of the shift are the times when it is most likely someone will leave a burning or cutting torch in the tank, perhaps turned on and leaking oxygen or an inert gas. Since the former can produce an oxygen enriched atmosphere, and the latter an oxygen deficient atmosphere. tanks should be checked for equipment left behind, and atmospheres monitored if necessary prior to entering and starting work. In an oxygen enriched atmosphere, the flammable range is severely broadened. This means that an oxygen enriched atmosphere can promote very rapid burning.

6. *Ballasting or trimming.* Changing the position of the ballast, or trimming, or in any way moving the vessel so as to expose cargo that had been previously trapped, can produce a change in the atmosphere of the tank. The atmosphere should be retested after any such move and prior to entry or work.

Section 1915.14 (a) and (b) Hot work. This is a reminder that other sections of the OSHA shipyard safety and health standards in Part 1915 should be reviewed prior to starting any hot work. Most notably, Subpart D, Welding, Cutting and Heating, places additional restrictions on hot work: The requirements of §§ 1915.51 and 1915.53 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of § 1915.54 must be met before welding, cutting or heating is begun on any structural voids.

Section 1915.14(a)(2)(i). During hot work, more than 20.8 percent oxygen by volume can be unsafe since it expands the normal flammable range. The standard permits the oxygen level to reach 22 percent by volume in order to account for instrument error. However, the cause of excess oxygen should be investigated and the source removed.

Section 1915.16(a). If the entire vessel has been found to be in the same condition, then employers shall be considered to be in compliance with this requirement when signs using appropriate warning language in accordance with § 1915.16(a) are posted at the gangway and at all other means of access to the vessel.

Appendix B to Subpart B—Explosive and Other Dangerous Atmospheres in Vessels and Vessel Sections

Appendix B provides a reprint of the Code of Federal Regulations' paragraphs referenced in Subpart B.

(1) 46 CFR 35.01–1(c)(1) covering tank vessels reads as follows:

In ports or places in the United States or its territories and possessions, the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection. If the inspection indicates that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started. Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified, throughout the operation and shall include such additional tests and certifications as considered required. Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(2) 46 CFR 71.60–1(c)(1) covering passenger vessels reads as follows:

In ports or places in the United States or its territories and possessions the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection. If the inspection indicated that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started. Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified throughout the operation and shall include such additional tests and certifications as considered required. Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(3) 46 CFR 91.50–1(c)(1) covering cargo and miscellaneous vessels as follows:

In ports or places in the United States or its territories and possessions the inspection shall be made by a Marine Chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection. If the inspection indicated that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started. Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified throughout the operation and shall include such additional tests and certifications as considered required. Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

[FR Doc. 88–27004 Filed 11–28–88; 8:45 am]
BILLING CODE 4510–26–M

[Docket No. S–043]

29 CFR Part 1915

Welding, Cutting, and Heating in Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing welding, cutting, and heating. The standards proposed for revision regulate the design, availability, and use of welding, cutting, and heating equipment as well as safe work practices to be employed when such equipment is utilized in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the present standards in Part 1915 are not comprehensive in their coverage of shipyard hazards, and are supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for all the hazards encountered in shipyards. This document is one of a series of proposals which are intended to revise Part 1915 to provide comprehensive coverage of shipyard employment solely within that part.

This action will consolidate and update the shipyard welding, cutting, and heating standards and the appropriate general industry welding, cutting, and heating standards into a single, comprehensive subpart of Part 1915 that would apply to all activities and areas in shipyards (except construction activities covered by Part 1926). The proposed provisions will delete many existing specification provisions which currently limit employer innovation, and where appropriate, use performance-oriented provisions to address the hazards of welding, cutting, and heating operations as a part of vessel construction, as well as general maintenance around the shipyard facility.

The specific topic of welding, cutting, and heating is currently addressed in Subpart D of the current Shipyard Employment Standards. This proposal would reorganize the rules into a more logical grouping of topics, reduce the number of sections from seven to five, and continue to locate the welding, cutting, and heating sections in Subpart D.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Office, Docket No. S–043, U.S. Department of Labor, Room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210. Materials in the rulemaking record are available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: The principal author of this notice of proposed rulemaking is Michael B. Moore, Office of Fire Protection Engineering and Systems Safety Standards, Occupational Safety and Health Administration.

I. Background

In May 1971, the Occupational Safety and Health Administration (OSHA) under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (84 Stat. 1590, 29 U.S.C. 655), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, OSHA adopted other Federal standards and national consensus standards as general industry standards (29 CFR Part 1910) and construction industry standards (29 CFR Part 1926) which were made applicable to hazards and working conditions not specifically covered in Part 1915, 1916, or 1917. On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29, Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment" (47 FR 16984). The consolidation eliminated duplicate and overlapping provisions, but did not alter substantive requirements. The consolidation did not affect the applicability of the general industry standards in 29 CFR Part 1910 to hazards or conditions in shipyard employment which were not specifically addressed in the consolidated Part 1915 (See 29 CFR 1910.5(c)).

In 1982, the Shipbuilders Council of America and the American Waterways

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Shipyard Conference requested OSHA to identify the specific applicable provisions of the general industry standards which apply to shipyards, and consolidate them with the existing Part 1915 provisions into a single set of shipyard employment standards. OSHA has determined that such consolidation is appropriate. This and other proposed rulemakings will eventually incorporate all applicable Part 1910 provisions into the existing organization of Part 1915. The present Part 1915 organizational format, which is already familiar to present users of the shipyard standards, provides a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when applicable Part 1910 provisions have no counterpart in the existing Part 1915 structure, the proposals would create new subparts or subpart headings in Part 1915.

In addition to consolidating the provisions of Part 1910 and Part 1915, OSHA will propose to revise the consolidated provisions as appropriate. OSHA has not substantively revised many of the current provisions in these Parts since they were promulgated in 1971. OSHA believes some provisions need to be revised to reflect technological advances. Other provisions need to be revised because they are based on national consensus standards issued prior to 1971, and do not reflect the revisions made since that time. As the provisions are consolidated, all such revised consensus standards will be reviewed, and OSHA's provisions revised as necessary to effectuate the purposes of the standard and the OSH Act. Where practical, all current incorporations by reference of national consensus standards and other materials will be deleted by the proposed standards, and the text of all such requirements will be proposed for inclusion in the body of the proposed standards, or their appendices. This approach is intended to assist employers in determining what duties and obligations are imposed by a provision by minimizing the need to refer to documents outside Part 1915. OSHA will also use the consolidation project to replace specification requirements with performance-oriented requirements, where it is known that there is more than one way to provide safety equivalent to that provided by the present specification requirements. Specification requirements would be used only where necessary to set appropriate limits and to clarify duties and obligations.

The revisions of the shipyard employment standards will be coordinated with efforts to revise parallel provisions in the construction and general industry standards, so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

II. Summary and Explanation

In accordance with paragraph 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), the agency has reviewed the various national consensus standards that cover working conditions addressed in this proposal. Where appropriate, OSHA has incorporated provisions from those national consensus standards as part of the proposal. OSHA believes that the proposed standard will better effectuate the purposes of the Occupational Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive and provides greater flexibility in its requirements for safety.

The following discussion provides a more detailed explanation of the proposed provisions related to welding, cutting, and heating in shipyards. Briefly, OSHA would revise the authority citation of Part 1915 to reflect the current authority for this proposed rulemaking, and OSHA proposes to revise the existing Subpart D of Part 1915 in its entirety as set forth below.

OSHA wishes to raise an issue involving the cost of several new proposals in this document that are based upon ANSI Z49.1–1983. OSHA believes that these new proposals recognize current industry practice and that the proposals would have little economic impact on the overall cost of compliance. Comments supporting or rejecting this position are requested. If the commenter believes that the adoption of the ANSI provisions would impose a significant cost of compliance then supporting data and information should be included with the comment.

Section 1915.51 Scope, application, and definitions applicable to this subpart.

Paragraph (a)—Scope and application. In paragraph (a) of this proposal, OSHA sets forth the scope and application of Subpart D of Part 1915. Paragraph (a)(1) of the proposal would set forth the scope of Subpart D to include all welding, cutting and heating operations (hot work) and equipment in shipyard workplaces and operations including shipbuilding, ship repairing, and shipbreaking, except for construction work regulated by 29 CFR Part 1926.

Paragraph (a)(2) of the proposal would revise the existing language in § 1915.2(a) to reflect the incorporation of relevant provisions from Subpart Q of Part 1910, and to indicate that the general industry welding, cutting, and heating regulations in that Subpart Q would no longer apply to shipyard workplaces and operations.

Paragraph (a)(3) is a new paragraph that specifically addresses the scope of § 1915.53. It is proposed that § 1915.53 would not cover the design and construction or installation of bulk gas supply or piping distribution systems with a storage capacity greater than 20,000 cubic feet. Currently, the OSHA general industry welding standards require bulk oxygen systems with a storage capacity of 13,000 cubic feet of oxygen connected or ready for service, or more than 25,000 cubic feet including unconnected reserves on hand at the site, be in compliance with the 1965 NFPA Standard for Bulk Oxygen Systems at Consumer Sites, No. 566–1965. Because experience and research has not revealed any bulk oxygen systems in use by shipyards, OSHA believes it is unnecessary to retain in the shipyard standards the requirement that such systems comply with the NFPA standards. OSHA requests information whether such systems exist in or are currently planned for, shipyards and whether a requirement to comply with the latest NFPA bulk oxygen system consensus standard (NFPA 50–1985) should be included in the shipyard rules.

Paragraph (b)—Definitions. In paragraph (b), OSHA is proposing to define two terms used in the proposed standards. New definitions are proposed for "Immediately dangerous to life or health (IDLH)," and "Immediate severe health effects." These terms are new to Subpart D and are taken from definitions being developed in other OSHA standards in order to assure consistency. Other definitions applicable to this Subpart are still in § 1915.4 of Subpart A.

Section 1915.52 General requirements.

Paragraph (a)—Equipment. In paragraph (a)(1) through (a)(3), OSHA would address the use of welding, cutting, and heating equipment. Paragraph (a)(1) would require that equipment be used for the purpose for which it is designed and that it be kept in good working condition. The proposed language is derived from the existing language of § 1910.252 (a)(1)(i) through (a)(1)(iii), and is written in more performance-oriented language. OSHA intends that all equipment be acceptable for its intended use and that it be kept in good working condition. Such language, clearly indicating OSHA's intent, would eliminate the need for specifically addressing each individual piece of equipment as is done in existing § 1910.252(a).

In paragraph (a)(2), OSHA proposes that all equipment be inspected at the beginning of each shift and periodically thereafter to assure that it is in good working condition. The proposed language utilizes the existing language of § 1915.55 (f)(3), (g)(2), and (h), and § 1915.56(d)(4), and is intended to cover all welding equipment in the shipyard. The proposed language would help eliminate injuries related to the use of improperly installed or faulty equipment.

In paragraph (a)(3), OSHA proposes a new provision that would mandate the tagging and removal of defective equipment from the workplace. Although, existing shipyard welding regulations require the removal of defective equipment, or prohibit its use (see, e.g., § 1915.55 (c)(3) [cylinders], (f)(3) [hoses], (g)(1) [torches]; § 1915.56 (b)(4) [cables]), the current rules do not address the tagging of such equipment. OSHA would require the removal of all defective equipment in order to prevent the use of such equipment, and would propose, in addition, that such equipment be tagged in accordance with the general industry accident prevention tags standard, 29 CFR 1910.145(f), in order to identify the defective equipment to anyone who may be unaware of the equipment's condition. The proposal would require the tag to signal "DANGER" and to impart a message of the specific hazard or of instructions to be followed, such as, the words "DO NOT USE." This proposal would address the hazardous situation when, for example, a defective air wrench is returned to the equipment room without a tag and placed on the shelf only to be reissued to another employee who is unaware of the defect. The proposed tag requirement would require the equipment be identified as defective and would eliminate the possibility of reissue and subsequent injury.

OSHA invites comments on whether defective equipment that has been removed from the work area and placed in an area so that the equipment may be discarded or disposed of should be tagged.

Paragraph (b)—Engineering controls, work practices, and personal protective equipment (PPE). In paragraph (b) it is proposed that anyone performing hot work be protected against potential chemical or physical hazards. Physical hazards can include those associated with the generated sparks and heat and with electrical shock. The chemical hazards posed by welding fumes and gases are dependent upon a number of factors including: The metal being worked; the process and consumables being used; coatings on the work such as paint, galvanizing, or plating; and contaminants in the atmosphere such as halogenated hydrocarbon vapors from cleaning and degreasing activities. In addition, the composition of the fumes is usually different from the composition of the electrode or consumables. Reasonable expected fume products of normal operation include those originating from volatilization, reaction, or oxidation of consumables, base metals and coating, and the atmospheric contaminants noted. Reasonably expected gaseous products include carbon monoxide, carbon dioxide, fluorides, nitrogen oxides, and ozone. See ANSI/ASC Z49.1–1983, *Safety in Welding and Cutting.*

Paragraph (b)(1) would provide that toxic and hazardous substances regulated by OSHA in 29 CFR Part 1910, Subpart Z are to be controlled in accordance with those provisions, unless otherwise specified in paragraph (h) of the proposed rules addressing work in confined spaces.

OSHA is also inviting comment on whether the agency should consider adopting for shipyard welding operations the permissible exposure limits proposed on June 7, 1988 (53 FR 20960), for general industry (including welding operations in general industry). OSHA is not proposing new limits at this time but is considering such action in the near future.

In paragraph (b)(2), OSHA would require that contaminated air be exhausted clear of all sources of intake air. The proposed language is a restatement of existing § 1915.51(b)(1)(iv).

In paragraph (b)(3), OSHA proposes a general performance-oriented provision requiring that appropriate personal protective equipment be provided and used in accordance with Subpart I of the shipyard standards. Where necessary and appropriate, careful selection of personal protective equipment must protect employees from the various health and physical hazards associated with hot work, including those to the respiratory system, skin, eyes, face, hands, feet, head, body and hearing. The proposed provision does not list specific protective equipment as do the existing standards in § 1915.51 (e)(1), (f)(2); §§ 1915.56(e) and 1910.252 (e)(2) and (e)(3).

In paragraph (b)(4), OSHA is proposing a provision to protect employees who are welding, cutting or heating, or assisting in such work from thermal or radiation burns by requiring the employer to provide appropriate protective clothing or equipment such as shields or curtains.

In paragraph (b)(5), OSHA would require that no gas or mixture of gases, other than air, be used for ventilation, comfort cooling, blowing dust or dirt from clothing, or for cleaning the work area. The proposed language would specifically prohibit the use of oxygen. Oxygen is especially hazardous when used for such purposes. Although oxygen itself is not flammable, oxygen's presence will drastically accelerate the speed with which burning takes place. In addition, oil or grease may ignite spontaneously in the presence of pure oxygen. The paragraph would also limit the discharge pressure of air used for cleaning the workplace to 30 psi [207 kPa). High pressure air jets can penetrate an employee's skin and introduce air into the blood stream. The proposed language is a combined restatement of §§ 1910.242(b) and 1915.51(b)(1)(vi).

Paragraph (c)—Fire protection. In paragraph (c), OSHA would address work practices that reduce ignition sources and, correspondingly, the potential for fire and explosion during hot work operations. The proposed language is derived for the most part from §§ 1915.52 (a) and (b), 1915.53(e), and 1910.252(d).

The National Fire Protection Association (NFPA) provides some insight on the fire hazards during welding and cutting in their standard NFPA 51B–1984, *Standard for Fire Prevention in Use of Cutting and Welding Processes* (Ref. 2). Part of that explanation follows:

1–1 *Introduction.*

1–1.2 * * * many fires * * * have been caused by cutting and welding, primarily with portable equipment in areas not specifically designed or approved for such work. Cutting and certain arc welding operations produce literally thousands of ignition sources in the form of sparks and hot slag. The electric arc or the oxyfuel gas flame and the hot work pieces are also inherent ignition sources.

1–1.3 A majority of fires in which cutting and welding is a factor have been caused by sparks. These globules of molten metal have scattered horizontally as far as 35 feet (11 m), setting fire to all kinds of combustible materials. They have also fallen through cracks, pipe holes or other small openings in floors and partitions starting fires which have reached serious proportions before being noticed.

1–1.4 Electric arcs or oxyfuel gas flames, in themselves, have rarely caused fire except where they have overheated combustibles in the vicinity of the work or where they have

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been used on containers that have held combustibles and that have not been cleaned and purged. In the latter case, an explosion generally resulted.

1–1.5 The heat of the metal being welded or cut has caused fires where the hot pieces were permitted to rest or fall upon combustible materials. Fires and explosions have also been caused where this heat was transmitted, as in the case of a container, through the metal to a flammable atmosphere or to combustibles within the container.

1–1.6 Anything which is combustible or flammable is susceptible to ignition by the cutting and welding. The most common materials likely to become involved in fire are combustible building construction such as floors, partitions, and roofs; combustible contents such as wood, paper, textiles, plastics, chemicals, and flammable liquids and gases; and combustible ground cover such as grass and brush.

1–1.7 Preventing cutting and welding fires can best be achieved by separating the combustibles from ignition sources or by shielding the combustibles. [Chapter 1, NFPA 51B–1984]

In paragraph (c)(1), OSHA proposes to require that objects to be welded, cut, or heated be moved to a designated safe location whenever practicable. The proposed language is a restatement of requirements in existing §§ 1915.52(a)(1) and 1910.252(d)(2)(xv).

In paragraph (c)(2), OSHA proposes to require that all movable fire hazards be removed from work areas where the object to be worked upon cannot be moved. This is a restatement of requirements in paragraphs §§ 1915.52(a)(1) and 1910.252 (d)(1) and (d)(2).

In paragraph (c)(3), OSHA proposes to require the use of positive means to protect immovable fire hazards, and nearby employees performing other tasks, from heat, sparks, and slag. This is a restatement of paragraph § 1915.52(a)(2).

In paragraph (c)(4), OSHA proposes to require equivalent fire precautions to be taken in compartments adjacent to compartments where hot-work is being performed. This is a restatement of existing paragraph § 1915.52(a)(3) with some editorial amendments to provide performance language.

In paragraph (c)(5), OSHA proposes to require that openings in floors, decks, walls and bulkheads be covered or closed to prevent the passage of hot slag. This is a restatement of existing paragraph § 1910.252(d)(2)(i) with editorial revision.

In paragraph (c)(6), OSHA would require that fire extinguishing equipment meeting the requirements of 29 CFR Part 1910, Subpart L, be provided and kept readily available in the work area. It would also prohibit the use of vaporizing liquid type extinguishers in confined spaces. This is a restatement of paragraph § 1915.52 (b)(2) and (b)(4).

In paragraph (c)(7), OSHA would require a fire safety inspection and authorization to begin hot work to be completed by a competent person as applicable, prior to beginning hot work in locations not designed for such purposes. This is a combined restatement of paragraph § 1910.252 (d)(2)(xiii)(b) and (d)(2)(vi). These standards require that employers designate an individual responsible for authorizing cutting and welding operations in areas not specifically designed for such processes and that these individuals inspect such areas before welding and cutting is permitted. The proposed provision maintains these requirements but reflects the fact that competent persons are the "individuals responsible" for performing such duties in shipyards. Inspections prior to beginning hot work on vessels and vessel sections are covered by Subpart B of the Shipyard Standards.

In paragraph (c)(8), OSHA would require the use of trained fire watches under certain workplace conditions. The language is a rewrite of the existing language in paragraphs §§ 1910.252(d)(2)(iii) and 1915.52(b)(3). Although the OSHA general industry welding standard, ANSI Z49.1–1983 (paragraph 6.4.3), and NFPA 51B–1984 (paragraphs 3–3.4 and 2–3.8), require fire watches to last at least one half hour after completion of hot work, the current shipyard welding standard, as well as the proposal, do not specify a minimum length of time. Public comment is requested whether OSHA should specify a minimum length of time the fire watch should last after completion of the hot work.

In paragraphs (c)(9), OSHA would prohibit hot work in flammable or explosive atmospheres except as permitted in paragraph (h) of this section. This is a combined rewrite of paragraphs §§ 1915.52(b)(1) and 1910.252(d)(2)(vi)(c).

Paragraph (d)—Work with preservative coatings. Paragraph (d) would address safe work practices in areas where hot work is done on surfaces protected by preservative coatings. The proposed language is taken from paragraph § 1915.53 (b), (c), (d), (e), and (f).

In paragraph (d)(1), OSHA proposes to require that a competent person test a coating's flammability before a coated surface is subjected to welding, cutting, or heating. OSHA would also require the stripping of preservative coatings from such surfaces when such tests cannot be conducted. The first sentence of the proposal is a restatement of § 1915.53(b). The second sentence is proposed to permit work to continue safely, with some limitations, when tests are impractical or cannot be conducted due to time constraints. Public comment is requested on whether OSHA should designate a minimum distance that the flammable coating needs to be stripped from the point of heat application.

In paragraph (d)(2), OSHA would require that coatings be stripped prior to hot work when tests indicate they are highly flammable. Preservative coatings are considered highly flammable when scrapings burn with extreme rapidity. This is a partial restatement of paragraph § 1915.53(c).

In paragraph (d)(3), OSHA proposes to address the hazards posed by performing hot work on toxic preservative coatings in enclosed spaces. In such areas, an employer must either strip the toxic coating far enough away from the area of heat application to prevent employee exposure to toxic vapor or protect employees with acceptable respiratory equipment. This is a partial restatement of the requirement in § 1915.53(d) (1) and (2). OSHA also invites public comment on whether OSHA should designate a minimum distance that the flammable coating needs to be stripped from the point of heat application.

Paragraph (d)(4) addresses the hazards posed by doing hot work on metals covered by soft and greasy preservative coatings.

In paragraph (d)(4)(i), OSHA would require that a competent person test the space's atmosphere prior to beginning hot work to ensure that an explosive environment does not exist. If the atmosphere is explosive, no hot work shall begin until the environment is made safe. This is a restatement of the requirements in paragraph § 1915.53(e)(1).

In paragraph (d)(4)(ii), OSHA proposes to require that soft and greasy preservative coatings be removed a sufficient distance from the area to be heated to ensure that the temperature of the unstripped metal will not be appreciably raised. This is a restatement of the mandatory language in paragraph § 1915.53(e)(2). OSHA further proposes to prevent the use of flame or heat to remove soft and greasy preservative coatings. This is a restatement of paragraph § 1915.34(b)(2).

In paragraph (d)(4)(iii), OSHA proposes to require tests for flammable vapors by competent persons immediately after hot work begins, and at frequent intervals thereafter to ensure that no such vapors exist. This is a restatement of the existing requirements in § 1915.53(f). If such vapors are found, OSHA would continue to require that all work stop immediately and remain stopped until the environment has been made safe and shall not be resumed until such additional precautions have been taken as are necessary to ensure that the operation can be resumed safely.

Paragraph (e)—Work in and on hollow metal spaces, containers and structures not covered by § 1915.12. In paragraph (e), OSHA proposes to address hot work in hollow metal containers, structures, and similar enclosed spaces not covered in § 1915.12. The proposed language is taken for the most part from paragraph § 1915.54 (a), (b), (c), (d), and (e).

In paragraph (e)(1), OSHA proposes to require that hollow or jacketed structures that have contained flammable substances be either filled with water or thoroughly cleaned of the flammable substance and then tested for residues that may produce flammable vapors before hot work is authorized. This is a restatement of paragraph § 1915.54(a). OSHA also proposes to require that if water is used to inert the hollow or jacketed structure the water levels must be maintained at the full level during the work process to assure that no air space can occur that could result in an explosion due to flammable vapor accumulation. Any pipe lines or connection to these hollow structures would have to be disconnected or blanked. This is a current requirement contained in paragraph § 1910.252(d)(3)(i).

In paragraph (e)(2), OSHA proposes to require inspections and, if necessary, testing of structural voids by a competent person to determine the presence of flammable liquids or vapors. If flammable liquids or vapors are present, the void would have to be made safe prior to hot work. The proposed language is a restatement of paragraph § 1915.54(c).

In paragraph (e)(3), OSHA would require that hollow or jacketed structures be vented or opened to permit the release of pressure that may build up during hot operations. This is a combined restatement of existing paragraph § 1915.54 (b), (d), and (e). The language is also similar to paragraph § 1910.252(d)(3)(ii).

Paragraph (f)—Work with fissionable materials. In paragraph (f), OSHA proposes to regulate hot work activities involving the use of, or exposure to, sources of ionizing radiation and activities involving the use of radioactive materials. The proposed language in paragraphs (f)(1) and (f)(2) is a restatement of the existing language in paragraph § 1915.57 (a) and (b).

Paragraph (g)—Work with metals of toxic significance. In paragraph (g), OSHA would address hot work operations on metals that are normally used during such operations and that can produce toxic vapors or fumes upon the application of heat. These metals are zinc, lead, cadmium, chromium, mercury, and beryllium. OSHA believes that particular attention must be paid the hazards associated with these metals during work with such metals.

In paragraph (g)(1), OSHA would require meeting the proposed requirements of paragraph (b) of this section when hot work is performed on any metal that may generate a toxic substance exposure to employees upon the application of heat. The proposed language is a revision of paragraph §§ 1915.51(d)(1) and 1910.252(f)(2) so that it is consistent with OSHA's current policy on the use of feasible engineering controls and administrative practices to achieve compliance with permissible exposure limits and to use respirators if such controls are not feasible to achieve full compliance.

In paragraph (g)(2), OSHA proposes to require the removal of residues or cargoes of metallic ores of toxic significance from areas where hot work is to take place. This language is a restatement of paragraph § 1915.51(g)(1).

Paragraph (h)—Work in confined spaces. In paragraph (h), OSHA proposes to address the hazards of hot work operations in confined spaces. Hot work in confined spaces requires special precautions because the poor ventilation and restricted access in such spaces often lead to hazards associated with the accumulation of toxic or flammable gases and vapors, or unsafe levels of oxygen.

In paragraph (h)(1), OSHA proposes to require the protection of all employees, not just the welder, in the confined space from the hazards associated with inadequate ventilation such as, but not limited to, heat stress and exposure to toxic substances. The proposed language is a rewrite of the existing language in § 1910.252(f)(4)(i). This duty is also similar to that generally required in § 1915.51(c)(1).

In paragraph (h)(2), OSHA is proposing that in confined spaces with atmospheres immediately dangerous to life or health (IDLH) only positive pressure, self-contained breathing apparatus or airline respirators approved by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) shall be used. The proposed language updates the current language in § 1910.252(f)(4)(iii) to reflect the transfer of respirator approval functions from the U.S. Bureau of Mines to MSHA and NIOSH. The proposed language is similar to the existing language of § 1915.152(a).

In paragraph (h)(3), OSHA would require that all cylinders, except small portable hand-held types, and all welding power sources be located outside of confined spaces. The proposed language is a restatement of paragraph § 1910.252(e)(4)(iii), except for the exemption pertaining to small portable hand-held types of cylinders. The exception is proposed to permit the use of the hand-held units because the smaller units are typically used for short-term soldering work or similar operations, rather than for the long-term structural work. The quantity of gas present, normally bottled propane, is significantly less than that found in the larger oxygen or fuel-gas cylinders and poses far less of a threat to employees than the larger cylinders.

In paragraph (h)(4), OSHA proposes to require that employees be made aware of any respiratory hazards that may exist in any confined space adjacent to spaces where hot work is being performed. Hot work operations on surfaces common to two adjacent spaces may create respiratory hazards in either space. The purpose of this standard is to assure employee safety during entry into confined spaces adjacent to compartments where hot work is being performed. The proposed language is new and was taken from paragraph 7.3 of ANSI Z49.1–1983.

In paragraph (h)(5), OSHA proposes to require frequent checks of employees working alone in confined spaces to ensure their safety. This is a new requirement and it is intended to provide coverage of a gap in protection afforded by existing standards. In addition, OSHA invites comment on the appropriateness of using the term "frequent." Basically, how frequent is "frequent"?

In paragraph (h)(6), OSHA would require an outside helper for confined space work there breathing apparatus is provided to the employee working in the confined space. This is a restatement of § 1910.252(f)(4)(iv).

In paragraph (h)(7), OSHA would require that approved respirators be available and ready for use by attendants stationed outside of confined spaces with atmospheres that are immediately dangerous to life or health. The proposed language is a combined restatement of paragraph § 1910.252(f)(4)

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(i), (ii), and (iii) combined with paragraph 7.5.1 of ANSI Z49.1–1983.

In paragraph (h)(6), OSHA would require that fuel gas and oxygen supplies to torches left in confined spaces be shut off when the torch is not used by the welder or cutter for a period of time, such as during work breaks and lunch hours. It also would require the removal of torches and hoses from the confined space when the equipment will not be used for a substantial period of time, such as overnight or when the welder or cutter is temporarily assigned another job and leaves the work area; or the equipment is to be left behind for other workers during a change of shift. The proposed language is a restatement of paragraph § 1910.252(e)(4)(vi) and is similar to the requirement in paragraph § 1915.52(a)(4).

Section 1915.53 Oxyfuel gas welding and cutting.

This section would cover safe practices during welding, cutting, and heating operations using a mixture of oxygen and fuel-gas to generate heat. Various fuel gases, such as acetylene, propane and natural gas may be used depending upon the employer's need or preference. Under this proposal, employers and employees would also have to comply with § 1915.52—*General requirements.*

Paragraph (a)—Oxygen use. In paragraph (a)(1), OSHA proposes to require that certain components of oxyfuel gas equipment be kept free of oil and greasy substances. In the presence of oxygen, oil or grease may ignite spontaneously and burn violently. The proposed language is a restatement of paragraph § 1910.252 (a)(2)(iv)(a) and (a)(2)(v)(a).

In paragraph (a)(2), OSHA would prohibit the application of jets of oxygen on oily surfaces, greasy clothing or into fuel oil or other similar storage tanks. Such applications could cause a spontaneous fire or explosion. The proposed language is a restatement of paragraph § 1910.252(a)(2)(v)(a).

In paragraph (a)(3), OSHA proposes to prohibit the interchanging of oxygen equipment and apparatus with equipment used for other gases. The proposed language is a restatement of paragraph §1915.55(e)(3).

Paragraph (b)—Attachments for gas mixing. In paragraph (b), OSHA proposes to limit the types of devices permitted for mixing gases prior to consumption at burners or torches. The proposed regulation is a restatement of paragraph § 1910.252(a)(1)(i) and is similar to the requirements of § 1915.55(c)(2).

Paragraph (c)—Torches. In paragraph (c)(1), OSHA proposes to require that connections in fuel and oxygen lines and components be checked and assured to be gas tight prior to igniting the torch. The proposed language is a restatement of paragraph § 1915.55(g)(2). In addition, a specific prohibition against using a flame to check for gas leaks has been proposed. Paragraph 10.5.2.1 of ANSI Z49.1–1983 also prohibits testing for leaks with flame.

In paragraph (c)(2), OSHA would require that torch heads be kept clean and free from obstruction. The proposed language is a restatement of paragraph § 1915.55(g)(1).

In paragraph (c)(3), OSHA would require that hoses be purged prior to lighting them the first time each day. This is a new requirement intended to assure that gas or solid contamination is not present in the hose lines. The proposed language has been taken from paragraph 10.5.2.2 of ANSI Z49.1–1983.

In paragraph (c)(4), OSHA proposes to prohibit the purging of hose lines inside of confined spaces or near ignition sources. This would be a new requirement, and is based upon paragraph 10.5.2.2 of ANSI Z49.1–1983. The proposal is made to assure that flammable vapor-air mixtures are not introduced into the confined spaces or near ignition sources.

In paragraph (c)(5), OSHA proposes to prohibit the use of sources of ignition such as matches, cigarette lighters, or hot work to ignite torches. The proposal is a restatement of paragraph § 1915.55(g)(3).

Paragraph (d)—Hose and hose connections. In paragraph (d)(1), OSHA would require that hoses be easily distinguishable from each other in order to prevent their intermixing. The proposal is a restatement, in part, of paragraph § 1915.55(f)(1). As with the current standard, no specific manner of distinguishing the hoses would be required.

In paragraph (d)(2), OSHA would prohibit the interchange of oxygen and fuel gas hoses. This is a restatement, in part, of paragraph § 1915.55(f)(1).

In paragraph (d)(3), OSHA proposes to prohibit the use of single hose for transport of more than one type of gas unless the hose has passageways for each type of gas separated by a wall that will not fail and allow the gases to mix. This proposal is also a restatement, in part, of paragraph § 1915.55(f)(1).

In paragraph (d)(4), OSHA would prohibit the taping of parallel sections of oxygen and fuel gas hoses together for the purpose of convenience in such a way as to obscure tears, cuts, abrasions and other such physical defects that may cause the hose to fail. This proposal is a restatement of paragraph § 1915.55(f)(2) but deletes the specific criteria in favor of performance language.

In paragraph (d)(5), OSHA proposes to require that all hose carrying any gas or substances that may ignite be inspected for leaks prior to the beginning of each shift. The proposed language is a restatement of paragraph § 1915.55(f)(3).

In paragraph (d)(6), OSHA would propose that hose that has been subjected to flashback, or that shows evidence of severe wear or damage, not be used until it has been tested without failure to twice its normal operating pressure, but is no case less than 200 psi (1380 kPa). The proposed language is a restatement of paragraph § 1915.55(f)(4).

In paragraph (d)(7), OSHA would propose to require that oil-free air or oil-free inert gas be used to test hose and hose connections. This is a partial restatement of paragraph § 1910.252(a)(5)(v)(e).

In paragraph (d)(8), OSHA would require that hose couplings be of the type that cannot be unlocked or disconnected by means of a straight pull without rotary motion. This is a restatement of paragraph § 1915.55(f)(5).

In paragraph (d)(9), OSHA is proposing to require that containers used for stowage of gas hose be ventilated to prevent the buildup of hazardous concentrations of gas. This is a restatement of paragraph § 1915.55(f)(6).

Paragraph (e)—Gauges and pressure reducing regulators. In paragraph (e)(1), OSHA would require that pressure reducing regulators be marked or labeled for use with specific gases or pressures and limit their use to those gases and pressures for which they are intended and identified. This is a new requirement intended to prevent the intermixing of gases within system components. The proposed language is taken from paragraph 10.7.2 of ANSI Z49.1–1983.

In paragraph (e)(2), OSHA is proposing to require that regulators be drained of oxygen before they are attached to a cylinder or manifold, or before a cylinder is opened. This would be a new requirement designed to reduce the possibility of flammable or explosive vapor-air mixtures in regulators that could ignite and injure employees. The language has been taken from paragraph 10.7.5 of ANSI Z49.1–1983.

In paragraph (e)(3), OSHA is proposing to require that gauges used for oxygen service be marked "USE NO OIL." Mixing of oil with oxygen creates a hazard to employees. The proposed language is a restatement of paragraph § 1910.252(a)(5)(vi)(c).

Paragraph (f)—Cylinders. In paragraph (f)(1), OSHA would prohibit filling of a cylinder by anyone except the owner of a cylinder or a person authorized by the owner of a cylinder. This is a restatement of §§ 1915.55(c)(2) and 1910.252(a)(2)(v)(b)(13).

In paragraph (f)(2), OSHA would prohibit anyone other than the gas supplier from mixing gases in a cylinder; tranferring gases in a cylinder; or transfilling gases from one cylinder to another. This is a restatement of §§ 1915.55(c)(2) and 1910.252(a)(2)(v)(b)(13).

In paragraph (f)(3), OSHA proposes in paragraphs (f)(3) (i), (ii), and (iii) requirements for the marking and identification of cylinders. The proposed language is a restatement of paragraph §§ 1915.55(c)(2) and 1910.252(a)(2)(i)(b).

In paragraph (f)(4), OSHA proposes that compressed gas cylinders be equipped with inlet and outlet connections designed for, and compatible with, equipment that will be attached to them. This is a restatement of paragraph § 1910.252(a)(2)(i)(c).

In paragraph (f)(5), OSHA would require that cylinders with water weight capacity over 30 pounds (13.6 kg), either be equipped with a collar or recess that protects the valve, or have valve protection caps attached. This is a restatement of § 1910.252(a)(2)(i)(1).

In paragraph (f)(6), OSHA would require that cylinders be stored where they would not be exposed to physical damage. This is a restatement of § 1910.252(a)(2)(ii)(b).

In paragraph (f)(7), OSHA would require that cylinders be stored in assigned spaces where they will not be knocked over by passing employees or falling objects. This is a partial restatement of paragraph § 1910.252(a)(2)(ii)(b).

In paragraph (f)(8), OSHA would propose that cylinders be secured to prevent their falling. Cylinders could be secured in place with metal bands, chains, or wire. This is a combined rewrite of paragraph §§ 1915.55(a)(9), 1910.252(a)(2)(ii)(b), and paragraph 10.8.2.1 of ANSI Z49.1–1983.

In paragraph (f)(9), OSHA would propose that cylinders be separated from hazardous materials, from flammable and combustible liquids and from easily ignitable materials by either at least 20 feet (6.1 m), or non-combustible barriers having a fire-resistance rating of at least one-half hour. This provision incorporates paragraph § 1910.252(a)(2)(ii)(b), (a)(2)(iv) (a) and (c), and paragraphs 10.8.2.2 and 10.8.2.3 of ANSI Z49.1–1983.

In paragraph (f)(10), OSHA proposes that oxygen cylinders stored in outside acetylene generator houses be separated from the generator or carbide storage rooms by a non-combustible gas-tight partition having a fire resistance of at least one hour. This is a restatement of § 1910.252(a)(2)(iv)(b).

In paragraph (f)(11), OSHA would prohibit oxygen from being stored inside acetylene generator rooms. This is a new requirement based upon paragraph 10.8.2.4 of ANSI Z49.1–1983. It is also similar to language in § 1910.252(a)(2)(iv)(a).

In paragraph (f)(12), OSHA would require that fuel and oxygen cylinders be placed valve end up. This is a restatement of § 1910.252(a)(2)(iii)(b).

In paragraph (f)(13), OSHA would prohibit the rough handling of cylinders. This is a restatement of paragraph § 1910.252(a)(2)(v)(b)(ii).

In paragraph (f)(14), OSHA would prohibit placing crow bars or other levers under valves or valve protection caps to pry cylinders loose when they are frozen. This is a partial restatement of paragraph § 1910.252(a)(2)(v)(b)(3).

In paragraph (f)(15), OSHA would prohibit the use of cylinders as rollers or supports. This is a restatement of paragraph § 1910.252(a)(2)(v)(b)(11).

In paragraph (f)(16), OSHA would prohibit tampering with cylinder safety devices. This is a restatement of paragraph § 1910.252(a)(2)(v)(c)(8).

In paragraph (f)(17), OSHA proposes to require that cylinder valves be closed before cylinders are moved. This is a combined rewrite of paragraphs §§ 1915.55(a)(8) and 1910.252(a)(2)(v)(b)(6).

In paragraph (f)(18), OSHA is proposing that cylinders capable of having valve protection caps have them in place and hand-tightened at all times unless the cylinder is in use or connected for use. This is a restatement of paragraphs §§ 1915.55(a)(1) and 1910.252(a)(2)(v)(b)(1).

In paragraph (f)(19), OSHA proposes to prohibit the use of valve protection caps for lifting or hoisting cylinders. This is a restatement of paragraphs §§ 1915.55(a)(5) and 1910.252(a)(2)(v)(b)(3).

In paragraph (f)(20), OSHA would require the use of suitable platforms or cradles to transport cylinders by crane or derrick. It would prohibit the use of slings or electromagnets for this purpose. This is a restatement of §§ 1915.55(a)(2) and 1910.252(a)(2)(v)(b)(1).

In paragraph (f)(21), OSHA proposes to require that cylinders be secured in the upright position when they are transported by motor vehicle. This is a restatement of paragraphs §§ 1915.55(a)(4) and 1910.252(a)(2)(v)(b)(4).

In paragraph (f)(22), OSHA would require that cylinders with regulators attached to them must be secured in position and closed prior to moving the cylinder, unless the cylinders are secured on special trucks. This is a restatement of paragraphs §§ 1915.55(a)(6) and 1910.252(a)(2)(v)(b)(4).

In paragraph (f)(23), OSHA proposes to prohibit the dispensing of compressed gas from cylinders without the use of a pressure reducing regulator, unless the equipment to which the cylinder is connected is designed to withstand the full cylinder pressure. This is a restatement of paragraph § 1915.55(d)(3) and is similar to § 1910.252(a)(2)(v)(b)(16).

In paragraph (f)(24), OSHA would limit the use of acetylene to pressures of 15 psig (103 kPa gauge pressure) or less than 30 psia (206 kPa absolute pressure). This is a new requirement and uses the language of paragraph 10.8.4.2 of ANSI Z49.1–1983. It is also similar to § 1910.252(a)(6)(ii)(b).

In paragraph (f)(25), OSHA proposes certain requirements for cleaning valve openings prior to connecting a regulator to a cylinder valve. The valve outlet must be wiped clean and then opened momentarily and closed immediately. This procedure is called "cracking," and will clear the valve of dust and dirt that otherwise might have entered the regulator. In paragraph (f)(26) (i), (ii), and (iii), OSHA would require cracking of a valve, and would contain methods for safe ways to crack a valve. The proposed language is taken from paragraph § 1915.55(d)(1), and is similar to § 1910.252(a)(2)(v)(b)(16).

In paragraph (f)(26), OSHA would require a new procedure to be followed when a regulator is attached to an oxygen cylinder. The new proposed procedure would assure that oxygen regulators are properly adjusted to prevent accidental rupture or ignition of the equipment and injury to employees. The new proposed requirement is taken from paragraph 10.8.4.4 of ANSI Z49.1–1983.

In paragraph (f)(27), OSHA proposes to prohibit the use of hammers or wrenches to open cylinder valves fitted with hand wheels. This is a restatement of paragraph § 1910.252(a)(2)(v)(b)(12).

In paragraph (f)(28), OSHA would require that keys, handles, or nonadjustable wrenches be used and kept in place on valve stems of cylinders

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not having fixed hand wheels. This requirement would enable employees to turn the gas off quickly in case of an emergency. This is a combined restatement of paragraphs §§ 1915.55(d)(2) and 1910.252(a)(2)(v)(b)(5).

In paragraph (f)(29), OSHA proposes to require that valves on high-pressure non-liquefied gas cylinders be kept fully open in order to prevent leakage around the valve stem. This is a new requirement and is based upon the language in paragraph 10.8.4.7 of ANSI Z49.1–1983.

In paragraph (f)(30), OSHA would prohibit the opening of acetylene cylinder valves more than one and one-half turns, and would recommend no more than three-fourths of a turn. Acetylene cylinder valves should not be opened to the extent where the valve could not be closed quickly in an emergency. This language is a restatement of paragraph § 1910.252(a)(2)(v)(c)(11) and is similar to § 1915.55 (e)(3) and (d)(1).

In paragraph (f)(31), OSHA would prohibit the placing of anything on the top of a cylinder that may damage the safety device or interfere with the quick closing of the valve. This language is a restatement of § 1910.252(a)(2)(v)(c)(5).

In paragraph (f)(32), OSHA proposes to require that cylinder valves be closed when work is finished. This is a restatement of paragraphs §§ 1915.55(a)(8) and 1910.252(a)(2)(v)(b)(7).

In paragraph (f)(33), OSHA proposes to require that cylinder valves be closed and gas released from regulators before they are removed from a cylinder. This is a restatement of paragraphs §§ 1915.55(d)(4) and 1910.252(c)(4).

In paragraph (f)(34), OSHA would require that a suitable cylinder truck, chain, or other steadying device be used to keep cylinders from being knocked over. This is a restatement of paragraph § 1915.55(a)(7).

In paragraph (f)(35), OSHA would require the use of fire resistant shields to protect cylinders from exposure to heat sources such as hot slag, sparks, or flame, when the cylinders cannot be moved to a safe position. This is a restatement of paragraph § 1910.252(a)(2)(v)(b)(9).

In paragraph (f)(36), OSHA would prohibit certain practices that may subject a cylinder to contact with electrical current. Paragraphs (f)(37) (i), (ii), (iii), and (iv), are restatements of §§ 1910.252(a)(2)(v)(b)(10) and 1915.55(b)(2).

In paragraph (f)(37), OSHA proposes to prohibit the placement of cylinders in a location where they would be subject to sources of artificial heat. This is a restatement of paragraph § 1915.55(b)(3).

In paragraph (f)(38), OSHA would prohibit cylinders from exceeding 130 °F (54 °C). Higher temperatures pose an explosion hazard. The proposed language has been taken from paragraph 10.8.1.8 of ANSI Z49.1–1983.

Paragraph (g)—Cylinder emergencies. In paragraph (g), OSHA would propose to require the removal of leaking cylinders to a safe location outdoors, away from sources of ignition; the tagging of the cylinder; and the notification of the gas suppliers. The proposed language is a restatement of paragraphs §§ 1915.55(d) (3) and (6) and 1910.252(a)(2)(v)(c) (6) and (7). The proposal explicitly requires compliance with the general industry tage standard, 29 CFR 1910.145(f), to signal "DANGER" and to warn or instruct workers of the hazard with a message such as "KEEP FLAME AWAY."

Paragraph (h)—Fuel gas manifolds. In paragraph (h)(1)(i), OSHA would limit the number of fuel gas cylinders that may be connected to fuel gas manifolds located inside buildings. The proposed language is a restatement, in part, of §1910.252(a)(3)(i)(b), and is also found in paragraph 10.9.3.1 of ANSI Z49.1–1983.

In paragraph (h)(1)(ii), OSHA proposes to require a minimum separation distance (at least 50 feet (15 m)) or a noncombustible barrier rated at least one-half hour when more than one manifold is located in the same room. Again the proposed language is derived from paragraph §1910.252(a)(3)(i)(b), and is also found in paragraph 10.9.3.1 of ANSI Z49.1–1983.

In paragraph (h)(2), OSHA would require that fuel gas manifolds exceeding 3,000 cubic feet be located outside, or in a separate building or room constructed in accordance with ANSI/NFPA 51–1983, *Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes.* This is a restatement of paragraph 10.9.3.2 of ANSI Z49.1–1983, and is similar to § 1910.252(a)(3)(i)(c).

Paragraph (i)—Oxygen manifold capacity and locations. In paragraph (i)(1) (i) and (ii), OSHA would require certain criteria for the location of oxygen manifolds in relation to fuel gas cylinders and other combustible materials. This is a restatement of paragraph § 1910.252(a)(3)(ii)(b).

In paragraph (i)(2) (i) and (ii), OSHA proposes to limit the number and location of high pressure oxygen cylinders. This is a restatement of paragraph §1910.252(a)(3)(ii)(c), with the exception of a change to the separation distance. The existing OSHA standard requires a 50-foot separation distance. OSHA believes that a 20-foot separation distance would be sufficient to ensure safety. Paragraph 10.9.4.2.1 of ANSI Z49.1–1983 also recommends a 20-foot distance.

In paragraph (i)(3), OSHA proposes certain limitations on the location of high pressure oxygen manifolds connected to cylinders with an aggregage capacity of more than 6,000 cubic feet (168 cubic meters) of oxygen. The proposed language is a restatement of paragraph 10.9.4.2.2 of ANSI Z49.1–1983, and is similar to §1910.252(a)(3)(ii)(d).

Paragraph (j)—Low pressure oxygen manifolds. In paragraph (j)(1) OSHA proposes a new requirement limiting the total capacity of low-pressure oxygen manifolds to 12,000 cubic feet (336 cubic meters). The new requirement is proposed to provide protection where a gap exists in the present standards. The new language is taken from paragraph 10.9.4.3.1 of ANSI Z49.1–1983.

In paragraph (j)(2) (i) and (ii) OSHA would address the capacities and locations of low pressure oxygen manifolds. The new proposed language is a restatement of paragraph 10.9.4.3.2 of ANSI Z49.1–1983. The new language is proposed to provide the same coverage for low-pressure manifolds that is provided for high-pressure manifolds.

Paragraph (k)—Manifold requirements. In paragraph (k)(1), OSHA would require pressure regulators on high pressure manifolds. The proposed language is a restatement of requirements in § 1910.252(a)(3)(ii)(f). The proposed language has been taken from paragraph 9.5.1.1 of ANSI Z49.1–1983.

In paragraph (k)(2), OSHA would require that low pressure manifolds be constructed for use at a pressure of 250 psig (1700 kPa gage); that they have a minimum bursting pressure of 1000 psig (6.9 MPa gage); and that they be protected by a safety relief device that will relieve at a maximum pressure of 500 psig (3440 kPa gage). The proposed language is a restatement of § 1910.252(a)(3)(iii)(a).

In paragraph (k)(3), OSHA proposes to require that manifold hose have a minimum bursting pressure of 1000 psig (6.9 MPa gauge). This is a restatement of paragraph § 1910.252(a)(3)(iii)(b).

In paragraph (k)(4), OSHA would require that assembled low pressure manifolds, including leads, be tested and proven gas tight at a pressure of 300 psig (2.07 MPa gauge). The use of flames for testing would be prohibited. This is a restatement of paragraph § 1910.252(a)(3)(iii)(c).

In paragraph (k)(5), OSHA would require a caution sign identifying low pressure manifolds and prohibiting the connection of cylinders with a pressure above 250 psig (1700 kPa). This is a restatement of paragraph § 1910.252(a)(3)(iii)(e).

In paragraph (k)(6), OSHA would require that each fuel gas cylinder lead be provided with a back-flow check valve. This proposed language has been taken from paragraph 10.9.5.3 of ANSI Z49.1–1983, and is similar to § 1910.252(a)(3)(iv)(e).

In paragraph (k)(7), OSHA would require acceptable flash arresters to be installed between each cylinder and the coupler block. The proposed language would also permit the use of one flash arrester where there are not more than three cylinders, and the cylinders are installed outdoors. This provision is a restatement of § 1910.252(a)(3)(v)(d).

In paragraph (k)(8), OSHA proposes certain criteria for portable outlet headers, which are often used on shipyard piers and drydocks where the service piping cannot be located close enough to the work to provide a direct supply. In paragraph (k)(8)(i), OSHA proposes to prohibit the use of portable outlet headers indoors or onboard vessels except where they are necessitated by condition precluding the direct supply of gases from outlets on a service piping system. This is a restatement of paragraph § 1910.252(a)(3)(iv)(a).

In paragraph (k)(8)(ii), OSHA proposes to require a shut-off valve on each outlet on the service piping that supplies oxygen of fuel-gas to a portable outlet header. This is a restatement of paragraph § 1910.252(a)(3)(iv)(b).

In paragraph (k)(8)(iii), OSHA would require detachable caps on service outlets of portable outlet headers. This is a restatement of paragraph § 1910.252(a)(3)(iv)(f).

In paragraph (k)(8)(iv), OSHA proposes to require master shut-off valves on both oxygen and fuel gas lines at the entry end of the portable outlet header. This is a restatement of § 1910.252(a)(2)(iv)(d).

In paragraph (k)(8)(v), OSHA would require that back pressure prevention devices be installed on portable outlet headers for fuel gas service. This is a restatement of paragraph § 1910.252(a)(3)(iv)(e).

In paragraph (k)(8)(vi), OSHA would require that portable outlet headers be supported securely by frames. A frame must keep the portable outlet header in the correct operating position and protect it from damage during handling and operation. This is a restatement of paragraph § 1910.252(a)(3)(iv)(h).

In paragraph (k)(9), OSHA would require that manifolds be installed under the supervision of someone familiar with proper manifold set-up and operation procedures. This is a restatement of paragraph § 1910.252(a)(3)(v)(a).

Section 1915.54 Arc welding, cutting and heating.

According to the National Fire Protection Association's (NFPA) *Fire Protection Handbook* (Ref. 3), the term arc welding,

> • • • applies to a number of processes that use an electric arc as the heat source for melting and joining metals. The arc is a useful tool because its heat can be concentrated and controlled quite effectively. Frequently, but not always, a filler metal must be used to obtain a good joint. The arc is struck between the metals to be welded and an electrode, which is maneuvered along the joint or which may remain stationary while the work is moved beneath it. The electrode may be consumable or nonconsumable. If the latter, a separate rod or wire may be used as the filler metal. Consumable electrodes supply their own filler metal by melting and, by decomposition of either a coveriny or a core, may shield the weld zone from unwanted atmospheric effects. [Section 9/Chapter 11, *Fire Protection Handbook*, 15th Edition]

Arc welding processes include shielded metal arc welding, gas metal arc welding, gas tungsten arc welding, plasma arc welding, and submerged arc welding.

Paragraph (a)—Electrical shock hazards. In paragraph (a)(1), OSHA proposes to protect employees from possible contact with electrical current from alternating current (a.c.) or single-phase transformer-rectifier arc welding machines while working under wet conditions, or warm surroundings where perspiration is a factor, or while working in locations where there is a high risk of accidental contact with live electrical parts. Under such working conditions, employees are required to wear dry personal protective clothing. Wet or damp clothing may reduce contact resistance and increase current to a value high enough to cause such violent muscular contraction that the welder cannot release contact with the live part. This is a new standard and the proposed language is taken from paragraph 11.2.2 of ANSI Z49.1–1983.

In paragraph (a)(2), OSHA proposes to require that employee contact with live electrical parts of arc welding equipment be prevented by insulating conductive parts near the employee. This is a restatement of § 1910.252(b)(2)(iv)(d) using performance-oriented language.

In paragraph (a)(3), OSHA would limit the voltage output of welding machines. The limits are a restatement of § 1910.252(b)(2)(iii).

In paragraph (a)(4), OSHA proposes to require the enclosure of all control apparatus except operating wheels, levers, and handles.This is a restatement of § 1910.252(b)(2)(iv)(b).

In paragraph (a)(5), OSHA proposes to require that input power terminals, tap change devices, and live metal parts connected to input circuits be completely enclosed and accessible only by means of tools. This is a restatement of § 1910.252(b)(2)(iv)(c).

In paragraph (a)(6), OSHA would limit the size of welding leads connected to a power source, based upon the size of the grounding connector. OSHA would also require that terminals be marked to indicate when they were grounded. This is a restatement of § 1910.252(b)(2)(iv)(d).

In paragraph (a)(7), OSHA would require welding lead terminals be protected from accidental electrical contact by employees, or from metal objects that may transfer the current to employees. The language is a restatement of paragraph (b)(2)(iv)(d). Several methods of achieving protection are listed in the proposal (i.e., dead-front receptacles, recessed openings, hinged covers, heavy insulating sleeves), however, alternative means may be instituted if they are equivalent.

In paragraph (a)(8), OSHA would place limits on the voltage of portable control equipment used by employees. In paragraph (a)(8)(i), OSHA proposes to limit voltage to portable control devices carried by employees to 120 volts.

In paragraph (a)(8)(ii), OSHA proposes to require the grounding of exposed metal parts of portable control devices operating above 50 volts through a grounding conductor in the control cable. The proposed language in paragraphs (a)(8) (i) and (ii) is a restatement of § 1910.252(b)(2)(iv)(e).

In paragraph (a)(9), OSHA would prohibit the use of autotransformers or a.c. reactors to draw welding current directly from any primary a.c. power source having a voltage exceeding 80 volts. This is a restatement of paragraph § 1910.252(b)(2)(iv)(f).

Paragraph (b)—Equipment. In paragraph (b)(1)(i), OSHA would propose to limit the types of electrode holding devices used on arc welding equipment. This is a restatement of § 1915.56(a)(1).

In paragraph (b)(1)(ii), OSHA proposes to require that current carrying parts of electrode holders be insulated against the maximum voltage

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encountered to ground. This is a restatement of § 1915.56(a)(2).

In paragraph (b)(1)(iii), OSHA would require the removal from service of defective electrode holders. This is similar to § 1915.56(d)(4) and 1910.252(b)(4)(ii)(a), which require all defective arc welding equipment to be removed from service.

In paragraph (b)(2)(i), OSHA would require that all welding cable be insulated, flexible, and capable of handling the maximum current requirements of work in progress. This is a restatement of paragraph § 1915.56(b)(1).

In paragraph (b)(2)(ii), OSHA proposes to limit the type of cable used for arc welding to be either free of repair or splices for a minimum ten feet (3 m) from the end of the cable to which the electrode holder is connected, or the splice connector must have an insulating quality equal to or greater than the original cable. This is a restatement of paragraph § 1915.56(b)(2).

In paragraph (b)(2)(iii), OSHA proposes to require that connections or splices between two or more cables be insulated to a capacity at least equal to that of the cable being used. This is a restatement of paragraph § 1915.56(b)(3).

In paragraph (b)(2)(iv), OSHA would require the proper connection and insulation of cable lugs when they are used to fasten cable together. This is a restatement of paragraph § 1915.56(b)(3).

In paragraph (b)(3)(i), OSHA would require that the workpiece or the metal upon which a welder works be grounded. This is a new requirement to assure that employees are protected from electrical shock, and is based upon the language in paragraph 11.3.2 of ANSI Z49.1–1983.

In paragraph (b)(3)(ii), OSHA would require that ground return cables be capable of carrying a current capacity equal to or exceeding the maximum output capacity of all of the arc welding or cutting units it serves. This is a restatement of paragraph § 1915.56(c)(1).

In paragraph (b)(3)(iii), OSHA proposes to permit building frames, conduits, pipe lines, or other metal structures to be used as part of a ground return circuit. To be used as such, these structures must (1) ensure continuity to ground; (2) be capable of carrying current at least equal to the maximum output of all the arc welding units they serve; and (3) be free of gases, flammable liquids, or other electrical circuits. This is a restatement of paragraph § 1915.56(c)(2).

In paragraph (b)(3)(iv), OSHA would require that when a pipeline or other metal structure is used as part of a ground return circuit, electrical contact exists in all joints of the structure or pipeline. OSHA would require rejection of a pipeline or other structure as part of the ground return circuit if an arc, sparks or heat are generated at any point along the circuit line. This is a restatement of paragraph § 1915.56(c)(3).

In paragraph (b)(3)(v), OSHA proposes to require that all joints on pipelines or other metal structures continuously used as a ground return circuit be bonded. Periodic inspections of the structure's joints must be conducted to ensure that electrolysis has not occurred or fire hazards exist because of such continuous use. This is a restatement of paragraph § 1915.56(c)(4).

In paragraph (b)(3)(vi), OSHA would require that the frames on all arc welding and cutting machines be grounded. This must be done either through a third wire in the cable containing the circuit conductor, or through a separate wire which is grounded at the source of the current. This is a restatement, in part, of paragraph §1915.56(c)(5).

In paragraph (b)(3)(vii), OSHA would require that grounding circuits, other than those employing a vessel's metal structure, be checked to ensure that the circuit between the ground and the grounded conductor has resistance low enough to permit sufficient current to flow that would cause the fuse or circuit breaker to interrupt the current. This is a restatement, in part, of paragraph §1915.56(c)(5).

In paragraph (b)(3)(viii), OSHA proposes to require that ground connections are inspected to ensure that they are mechanically strong and capable of safely carrying current equal to or exceeding the total maximum output capacity of all the arc welding units it services. This is a restatement of paragraph § 1915.56(c)(6).

Paragraph (c)—Operating instructions. In paragraph (c)(1), OSHA proposes to prohibit the use of welding machines that leak cooling water, shielding gases, or engine fuel. Such leaks could expose employees to possible fire and explosion hazards. This is a restatement of paragraph §1910.252(b)(4)(iv).

In paragraph (c)(2), OSHA would require that electrode holders be either de-energized by turning the welding machine off, or disconnected from the welding lead, whenever an employee must leave a work area or stop for an appreciable amount of time, such as to eat lunch. This is a restatement of paragraph §1915.56(c)(3).

In paragraph (c)(3), OSHA proposes to require welding machines to be unplugged prior to their being moved. This is a new requirement from paragraph 11.4.7 of ANSI Z49.1–1983, and is intended to prevent electrical shock during moving because the machine is live. The proposed language is similar to paragraph § 1915.56(a)(3), which requires that the equipment be "turned off" rather than unplugged.

In paragraph (c)(4), OSHA would require that electrodes be removed from holders when they are not in use to eliminate the danger of accidental electrical shock. This is a restatement of paragraph §1915.56(d)(1).

In paragraph (c)(5), OSHA proposes to require that when electrode holders are not being used they must be placed in a location where they can not make electrical contact with employees, conducting objects, flammable or combustible liquid containers, or compressed gas cylinders. This is a restatement of paragraph §1915.56(d)(1).

In paragraph (c)(6), OSHA proposes that when guns of semi-automatic welding machines are not being used they must be placed so that the gun switch cannot be operated accidentally. This is a restatement of paragraph §1915.56(d)(1).

In paragraph (c)(7), OSHA would require that employees be instructed on how to avoid electrical shock when operating welding equipment. Voltages used with arc welding equipment can cause severe injuries or even death. Even mild shocks could cause involuntary muscle spasms which can lead to injurious falls and other accidents. This is a restatement of paragraph §1910.252(b)(4)(i).

In paragraph (c)(8), OSHA would prohibit the cooling of electrode holders by immersion in water. Such action might subject the welder or cutter to electric shock. This requirement already exists in § 1915.56(d)(2), but the proposed language has been taken from 11.4.9.5 of ANSI Z49.1–1983.

In paragraph (c)(9), OSHA would require that water-cooled holders or guns not be used if any water leak or condensation exists. Again, the existence of water can subject employees to a greater danger of electrical shock. This is a new requirement and it has been taken from paragrpah 11.4.9.6 of ANSI Z49.1–1983.

In paragraph (c)(10), OSHA would require that arc welding machines shall always have their output electrically de-energized when tungsten electrodes are changed in gas tungsten arc electrode holders. This is a new requirement intended to prevent employee shock and has been taken from paragraph 11.4.9.7 of ANSI Z49.1–1983.

In paragraph (c)(11), OSHA proposes to require protection from exposure to direct rays of welding arcs for employees who may pass through the vicinity of arc welding operations. Various methods can be used to comply, including enclosing the welding in a booth painted with a finish with low reflectivity; using non-combustible screens or shields similarly painted; or by requiring appropriately tinted goggles. Any effective means may be used to comply. This is a restatement of paragraph §§ 1915.56(e) and 1910.252(e)(2)(iii).

Paragraph (d)—Maintenance. In paragraph (d)(1), OSHA proposes that commutators in welding machines be kept clean to prevent excessive flashing. This is a new provision intended to reduce possible flammable vapor ignition sources. The proposed language has been taken from paragraph 11.5.2 of ANSI Z49.1–1983.

In paragraph (d)(2), OSHA would require that arc welding machines used outdoors be protected from rain and other inclement weather. Water, of course, could present electrical shock hazards. This provision is taken from paragraph 11.5.2.2 of ANSI Z49.1–1983, but also reflects the intent behind § 1910.252(b)(4)(ix)(b).

In paragraph (d)(3), OSHA would requre that any arc welding machine that has become wet must be dried and properly tested for safe operation prior to being placed into service. This is a restatement of § 1910.252(b)(4)(ix)(b).

Section 1915.55 Resistance welding.

The *Fire Protection Handbook*, 15th Edition (Ref. 3) describes resistance welding as follows:

> Welding heat for this process is created by resistance to flow of current through the parts being joined. Resistance welding is generally used to join two overlapping metal sheets that may have different thicknesses. Electrodes conduct current through the sheets, which are clamped or rigidly held to provide good contact and pressure for holding molten metal at the joint. [Section 9/ Chapter 11, *Fire Protection Handbook*, 15th Edition]

Paragraph (a)—Guarding. In paragraph (a)(1), OSHA proposes that all control initiating devices on resistance welding equipment be arranged or guarded to prevent accidental activation. Although the proposed language is taken from paragraph 12.3.1 of ANSI Z49.1–1983, it reflects OSHA's intent expressed by § 1910.252 (c)(1)(iv), (c)(2)(iv) and (c)(3)(iv).

In paragraph (a)(2), OSHA would require that all chains, gears, operating linkages, and belts associated with resistance welding equipment be arranged or guarded to prevent employee contract. This is a restatement of paragraph § 1910.252(c)(2)(iv).

In paragraph (a)(3), OSHA proposes that point-of-operation guards be provided and used where employee's hands or fingers may become caught in the machinery. This is a restatement of paragraph § 1910.252(c)(2)(iv).

In paragraph (a)(4), OSHA would require that all suspended portable welding gun equipment, with the exception of the gun assembly, be equipped with a support system capable of supporting the total impact load in the event of failure of any component of the supporting system. The provision is performance-oriented; any combination of chains, cables, clamps or other devices may be used. This is a restatement of paragraph § 1910.252(c)(3)(ii).

In paragraph (a)(5), OSHA would require that moving holder mechanisms entering a gun frame be designed to prevent the shearing of fingers placed on the operating movable holder. If the holder mechanism cannot be designed to prevent shearing, guards shall be used to eliminate such possibility. This is a restatement of paragraph § 1910.252(c)(3)(v).

Paragraph (b)—Electrical. In paragraph (b)(1), OSHA proposes to require that all external weld-initiating control circuits operate at 120 volts root mean square (rms) or less for stationary equipment, and 36 volts or less for portable equipment. The stationary equipment voltage limit is a restatement of § 1910.252(c)(2)(i). The portable equipment voltage limit is similar to § 1910.252(c)(3)(iv), except that 36 volts or less is allowed by the proposal instead of the 24 volt limit expressed in the current standard. OSHA believes the 36 volts limit is sufficiently protective of workers using portable equipment. ANSI Z49.1–1983, paragraph 12.4.1, also used the 36 volt limit.

In paragraph (b)(2)(i), OSHA would require that resistance welding equipment and control panels containing capacitors used for stored energy resistance welding involving voltages over 550 volts rms be insulated and protected by complete enclosure. This is a restatement of paragraph § 1910.252(c)(2)(ii).

In paragraph (b)(2)(ii), OSHA proposes to require that all doors of the enclosures proposed in paragraph (b)(2)(i) above be provided with interlocks or contacts wired into the control circuits that are designed to interrupt power and short circuit all capacitors when the door panel is opened. This is a restatement of paragraph § 1910.252(c)(2)(ii).

In paragraph (b)(2)(iii), OSHA would require that a manually operated switch or other suitable positive device be installed on equipment containing capacitors described above to assure that those capacitors are completely discharged. This is a restatement of paragraph § 1910.252(c)(2)(ii).

Paragraph (c)—Locks and interlocks. In paragraph (c)(1), OSHA would require that all doors and access panels to resistance welding machines and control panels accessible at the production floor be kept locked and interlocked to prevent access by unauthorized employees. A door or panel will be considered locked if a key, wrench or other instrument is required to open it. This is a restatement of paragraph § 1910.252(c)(2)(iii).

In paragraph (c)(2), OSHA proposes that control panels remotely located on overhead platforms or in separate rooms shall be locked, interlocked or guarded by a physical barrier and warning signs, and that the control panels be kept closed when the equipment is not being serviced. This is a new paragraph. The present standard at § 1910.252(c)(2)(iii) makes no exception from the locking and interlocking requirements for control panels located away from the production floor. The new provision is intended to allow other methods of isolating control panels from workers when the panels are already remote from the production floor or difficult to reach. The proposed language is taken from paragraph 12.4.3.2 of ANSI Z49.1–1983.

Paragraph (d)—Spark shields. In paragraph (d), OSHA would require the installation of fire-resistant spark shields or guards, or the use of personal protective equipment to prevent injury to employees in, or passing through, the work area due to flying sparks or molten metal. The proposed language is a restatement of paragraph § 1910.252(c)(2)(v).

Paragraph (e)—Stop buttons. In paragraph (e), OSHA would propose to require one or more safety emergency stop buttons on all welding machines that: (1) Require three seconds or more to complete a sequence; (2) have mechanical movements that can be hazardous to employees if guards are removed; and (3) have no buttons that would not themselves create a hazard to employees. This is a restatement of paragraph § 1910.252(c)(2)(vii), with the exception that the existing standard requires two or more emergency buttons. OSHA is reducing the number of buttons required because it is

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believed that one button is often sufficient to activate emergency stops by the machine operator. Further, if two or more buttons are necessary, they can be installed without violating the standard. This proposed provision is in accord with paragraph 12.4.5 of ANSI Z49.1–1983.

Paragraph (f)—Grounding. In paragraph (f), OSHA proposes three methods by which welding transformer secondaries must be grounded. The proposed language in paragraphs (f) (1), (2), and (3) has been taken from paragraph 12.4.6 of ANSI Z49.1–1983, and is similar to § 1910.252(c)(2)(ix).

Paragraph (g)—Static safety devices. In paragraph (g), OSHA proposes that static safety devices, such as pins, blocks and latches, be used with large resistance welding machines. The proposed language has been adopted from paragraph 12.5 of ANSI Z49.1–1983. OSHA believes the ANSI standard addresses and describes the requirement more fully than the current standard at § 1910.252(c)(2)(viii), although the current standard does reflect the same intent.

In paragraph (g)(1), OSHA would require that electrically interlocked safety devices be provided on large welding machines incorporating a movable platen or welding head.

In paragraph (g)(2), OSHA proposes to require that the safety devices required in proposed paragraph (g)(1) must prevent the movement of the platen or welding head under static load.

In paragraph (g)(3), OSHA proposes to require that even though more than one safety device may be required, each device alone shall be capable of sustaining the full static load that the platen or welding head may impose on the devices.

III. References

1. ANSI/ASC Z49.1–1983, *Safety in Welding and Cutting*, American Welding Society, 550 N.W. LeJeune Road, Miami, FL 33126, 1983.
2. NFPA 51B–1984, *Standard for Fire Prevention in Use of Cutting and Welding Processes*, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1984.
3. *Fire Protection Handbook, 15th Edition*, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1981.
4. ANSI/NFPA 51–1983, *Design and Installation of Oxygen-Fuel Systems for Welding, Cutting, and Allied Processes*, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed revision would not be a "major" action.

Data Sources

The primary source for this section is the November 1985 Draft Final Report by CONSAD Research Corporation entitled, "Data to Support a Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing." In addition, OSHA also used an October 1984 report by Main Hurdman/KMG entitled, "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and ship breaking industries would be affected by the proposed consolidation of the welding, cutting and heating sections of the existing Part 1915 Subpart D and the existing Part 1910 Subpart Q because those operations are performed in all shipyards. In recent years, shipyards have not prospered as an industry. By way of illustration, there were about 305 shipyards operating in 1986 which is fewer than half of the 678 shipyards active in 1982. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but no new orders for merchant vessels since 1985. Although this loss of business has been partially offset by the increase in the U.S. Navy's demands for ships, the decline in the demand for commercial ships will likely generate a further decline in the number of active shipyards.

Population-at-Risk

Welders are the group facing the most risk during welding, cutting, and heating operations. OSHA has estimated that approximately 15 percent of the shipyard employees are welders. The actual number of welders will depend upon the level of shipyard work. For example, shipyards employed 177,300 workers in 1980 and about 136,300 workers in 1986. Thus, the number of workers at risk from injuries associated with welding would have been about 26,600 in 1980 and about 20,450 in 1986. Thus, OSHA has estimated that the population-at-risk would be between 20,450 and 26,600 employees.

Risk of Fatality or Injury

OSHA has estimated that the annual number of injuries in shipyards due to welding accidents was between 395 and 640 between 1981 to 1986. Of these injuries, 50 to 80 were lost workday injuries. As the average number of lost workdays for lost workday injuries due to this type of accident was 10.3 days, OSHA has estimated that the annual number of lost workdays in shipyards due to welding accidents would be between 515 days and 825 days.

In addition, OSHA has determined that there would be between one and two annual fatalities in shipyards associated with welding accidents.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would permit the use of existing and readily available technology and equipment.

There are two potential sources of benefits from this proposed standard. The first source is the benefits that would accrue to those workers who are at risk from current practices involving welding, cutting, and heating in shipyards. OSHA believes that the proposed consolidation of Parts 1910 and 1915 would likely lead to an increase in future compliance levels because consolidating two sets of welding, cutting and heating standards into one set would clarify the rules. In addition, the proposal substitutes performance language for much of the existing specification language. Highly technical provisions have been replaced with clearer simpler language. Thus, the proposed consolidation may lead to a better understanding of the regulations and an increase in compliance. This, in turn, may lead to an increase in employee safety while the employee is welding, cutting or heating.

The second source is the benefits that should accrue to those employers who would be allowed to use certain welding practices and equipment that are not allowed by the existing requirements but that would present no danger to welders. The use of these advanced practices and equipment would allow employers to maintain the necessary level of safety while increasing productivity over that possible under the existing standards.

OSHA does not have any quantitative estimates of these potential benefits and is requesting information and comments on this issue. As this is a Preliminary Regulatory Impact Assessment (PRIA), all comments will be carefully analyzed by OSHA for incorporation into the RIA for the final rule.

The basis for the estimated costs of compliance with the proposed standard is the CONSAD report. In order to obtain this information, CONSAD circulated copies of the draft proposed standards to the two major industry trade associations and to individual shipbuilders. CONSAD then employed telephone questionnaires and site visits to elicit information concerning the potential economic impact of the provisions contained in the draft proposed consolidated standard. That information was used by CONSAD to develop its estimates of the costs of compliance.

The proposed standard requires that personal exposures to airborne hazardous substances during welding, cutting and heating operations be below the established limits for the substances in the 29 CFR 1910.1000 Z Tables, and in the Part 1910 hazardous substance-specific standards. In addition, the proposal requires flammability testing of surfaces covered by a preservative coating. Although, there are currently no provisions in 29 CFR 1910.1000 requiring monitoring of employees exposure, and flammability testing is already required under the existing Part 1915, CONSAD assumed that some additional monitoring activities would take place. If this additional monitoring were conducted, OSHA estimates that the annual cost would be $1.8 million dollars.

OSHA invites public comment concerning this preliminary RIA. Any comment received will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant Secretary preliminarily certifies that the proposed standard would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this certification.

An important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standard would impose significant cost upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entity's financial viability. In particular, the proposed standard's effect upon small entities relative to that upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposal would have a relatively greater negative effect on small entities than on large entities, thereby putting small entities at a competitive disadvantage.

OSHA has identified only minor costs associated with Subpart D. Thus, OSHA has concluded that this proposed standard would not have a significant adverse impact upon a substantial number of small entities.

The assessment is available for inspection and copying at the OSHA Technical Data Center, Room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in both the Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council of Environmental Quality (CEQ) (40 CFR Parts 1500–1517), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions focus on the reduction of accidents or injuries by means of work practices and procedures, and proper use and handling of equipment. The proposal also contains language, definition, and format changes. These revisions do not affect air, water, or soil quality, plant or animal life, the use of the land, or other aspects of the environment. As such these revisions are therefore categorized as excluded actions according to Subpart B, § 11.10, of the DOL NEPA regulations.

VI. Recordkeeping

This proposed standard contains no "collection of information" (recordkeeping) requirements.

VII. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Office, Docket No. S–043, Room N–2634, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11 interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the address above and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;
2. The objections and hearing requests must be postmarked by February 27, 1989.
3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which objections is taken or about which the hearing request is made, and must state the grounds therefor;
4. Each objection and hearing requests must be separately stated and numbered; and
5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

The 25 States and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standards within six months of the publication date of a final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. Currently four states (Minnesota, Oregon, Vermont, and Washington) with their own State plans cover private sector on-shore

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maritime activities. Federal OSHA enforces maritime standards offshore in all States and provides onshore coverage of maritime activities in Federal OSHA States and in the following State plan States and territories: Alaska, Arizona, California, Connecticut,[1] Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York,[1] North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All States with State plans must also extend coverage to State and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Competent person, Confined space, Occupational safety and health, Protective equipment, Respiratory protection, Ship breaking, Shipbuilding, Ship repair, Vessels, Welding.

X. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act, as amended (33 U.S.C. 941), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to revise 29 CFR Part 1915, Subpart D as set forth below.

Signed at Washington, DC, this 17th day of November, 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citaton of 29 CFR Part 1915 would continue to read as follows:

Authority: Sec. 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), sections 4, 6, and 8, of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. It is proposed to revise Subpart D of Part 1915 to read as follows:

[1] Plan covers only State and local government employees.

Subpart D—Welding, Cutting, and Heating for Shipyard Employment

Sec.

1915.51 Scope, application, and definitions applicable to this subpart.
1915.52 General requirements.
1915.53 Oxyfuel gas welding and cutting.
1915.54 Arc welding and cutting.
1915.55 Resistance welding.

Subpart D—Welding, Cutting, and Heating for Shipyard Employment

§ 1915.51 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* (1) This subpart applies to all welding, cutting, and heating operations and equipment in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking) as set forth below, except construction work regulated by 29 CFR Part 1926.

(2) Subpart Q of 29 CFR Part 1910 does not apply to shipyard workplaces and operations.

(3) Section 1915.53 covers additional safe practices for the use of oxyfuel gas welding, cutting, soldering, brazing, and related equipment. It does not cover specifications for the design and construction or installation of bulk gas supply or piping distribution systems with a storage capacity of greater than 20,000 cubic feet (566 cubic meters).

(b) *Definitions.*

"Immediate severe health effect" means that an acute clinical sign of a serious, exposure-related reaction is manifested within 72 hours after exposure.

"Immediately dangerous to life or health (IDLH)" means any atmosphere that poses an immediate threat to life, or which is likely to result in acute or immediate severe health effects.

§ 1915.52 General requirements.

(a) *Equipment.* (1) Welding, cutting, and heating equipment shall only be used for the purpose for which it is designed and kept in good working condition.

(2) Equipment shall be inspected at the beginning of each shift and periodically thereafter to be sure that it is in good working condition.

(3) Defective equipment shall be tagged and removed from service until repaired. The tag shall include the signal word "DANGER" and a warning or instructional message, such as, "DO NOT USE," in accordance with § 1910.145(f) of this title.

(b) *Engineering controls, work practices, and personal protective equipment (PPE).* (1) Unless otherwise specified in paragraph (h) of this section, employee exposure to toxic and hazardous substances shall be controlled in accordance with Part 1910, Subpart Z, of this title.

(2) Where ventilation is used as the means to control employee exposure to or below the permissible exposure limits of Part 1910, Subpart Z, of this title, contaminated air exhausted from a working space shall be discharged clear of all sources of intake air.

(3) Appropriate personal protective equipment shall be provided and used in accordance with Subpart I of this part.

(4) Employees welding, cutting or heating, or assisting in such work shall be protected by appropriate protective clothing or equipment, such as shields or curtains, to prevent thermal or radiation burns.

(5) Only air shall be used for ventilation, comfort cooling, blowing dust or dirt from clothing, or for cleaning the work area. Oxygen, or any other gases or mixtures of gases, shall not be used for such purposes. Where air is used for cleaning purposes, the discharge pressure shall not exceed 30 pounds per square inch (207 kPa).

(c) *Fire protection.* (1) Objects to be welded, cut, or heated shall be moved to a designated safe location whenever practicable.

(2) If an object cannot be moved to a safe location, all movable fire hazards in the work area shall be taken to a safe place.

(3) Where both the object and fire hazards in the work area are not movable, positive means shall be used to protect the immovable fire hazards and nearby employees performing other tasks from heat, sparks, and slag.

(4) When welding, cutting, or heating may introduce a fire hazard in adjacent compartments, the same fire precautions shall be taken in those adjacent compartments as those required in the work compartment.

(5) Where combustible materials are present in adjacent compartments that may be ignited by hot slag, all openings in floors, decks, walls, and bulkheads shall be covered or closed to prevent the passage of hot slag.

(6) Fire extinguishing equipment meeting the requirements of 29 CFR Part 1910, Subpart L, shall be provided and readily available. Vaporizing liquid-type fire extinguishers shall not be used in confined spaces.

(7) Before welding, cutting, or heating is begun in a location not designed for such purposes, an inspection for fire safety shall be performed and authorization to begin work given by a competent person.

(8) When the welding, cutting, or heating operation is such that normal fire prevention precautions are not sufficient, fire watches shall be provided during hot work and maintained for as long as necessary after completion of hot work to assure that no possibility of fire exists in the work area. Employees serving on fire watches shall be trained to perform their expected duties, including, but not limited to, how to use fire fighting equipment and how to sound fire alarms.

(9) No welding, cutting, or heating shall be done in flammable or explosive atmospheres except as provided in paragraph (h) of this section.

(d) *Work with preservative coatings.* (1) Before welding, cutting, or heating is begun on any surface covered by a preservative coating whose flammability is not known, a test shall be made by a competent person to determine the coating's flammability. If a preservative coating's flammability cannot be determined before the work process begins, coated surfaces shall be considered highly flammable and stripped far enough away from the area to be heated to prevent their ignition.

(2) When preservative coatings have been determined to be highly flammable they shall be stripped far enough away from the area to be heated to prevent ignition.

Note.—Preservative coatings are considered highly flammable when scrapings burn with extreme rapidity.

(3) All surfaces in enclosed spaces that are covered with toxic preservatives shall be stripped of all toxic coating far enough away from the point of heat application to prevent employee exposure to toxic vapor, or the employees shall be protected by acceptable respiratory equipment.

(4) The following precautions shall be taken, before welding, cutting, or heating is begun on metals covered by soft and greasy preservative coatings:

(i) The atmosphere in the space shall be tested by a competent person to ensure that it does not contain explosive vapors. If such vapors are present, no hot work shall be authorized until precautions have been taken to ensure that the welding, cutting or heating can be performed safely.

(ii) Soft and greasy preservative coatings shall be removed a sufficient distance from the area to be heated to ensure that the temperature of the unstripped metal will not be appreciably raised. Flame or heat shall not be used to remove soft and greasy preservative coatings.

(iii) Immediately after welding, cutting, or heating has begun on surfaces covered by soft and greasy preservatives, and at frequent intervals after that, a competent person shall test to ensure that no flammable vapors are present. If flammable vapors are determined to be present, work shall be stopped immediately and shall not be resumed until such additional precautions have been taken as are necessary to ensure that the operation can be resumed safely.

(e) *Work in and on hollow metal spaces, containers and structures not covered by § 1915.12.* (1) Drums, containers, or similar hollow or jacketed structures that have contained flammable substances shall either be filled with water or thoroughly cleaned of flammable substances and tested for residues that may produce flammable vapors before welding, cutting, or heating is authorized. In case of water loss from the container, drum, or similar hollow or jacketed structures during the work process, water shall be added as necessary to ensure that the container remains full. Any pipe lines or connections to these hollow structures must be disconnected or blanked.

(2) Before welding, cutting, heating, or brazing is begun on structural voids such as skegs, bilge keels, fair waters, masts, booms, support stanchions, pipe stanchions, or railings, a competent person shall inspect the void and, if necessary, test the void for the presence of flammable liquids and vapors. If flammable liquids or vapors are present, the void shall be made safe before hot work is begun.

(3) Before welding, cutting, or heating is authorized on drums, containers, or other hollow or jacketed structures, they shall be vented or opened to permit the escape of air or gases and to prevent pressure build-up inside the workpiece during the application of heat.

(f) *Work with fissionable materials.* (1) In activities involving the use of and exposure to sources of ionizing radiation, not only on conventionally powered but also on nuclear powered vessels, the applicable provisions of the Nuclear Regulatory Commission's Standards for Protection Against Radiation (10 CFR Part 20) relating to protection against occupational radiation exposure shall apply.

(2) Any activity which involves the use of radioactive material, whether or not under license from the Nuclear Regulatory Commission, shall be performed by competent persons trained in the proper and safe operation of such equipment. In the case of materials used under Commission license, only persons actually licensed or under the direction and supervision of the licensee, shall perform such work.

(g) *Work with metals of toxic significance.* (1) Welding, cutting, or heating involving any metals that may generate a toxic substance exposure to employees upon the application of heat shall be controlled in accordance with paragraph (b) of this section. Examples of such metals currently include:

(i) Zinc-bearing base or filler metals or metals coated with zinc-bearing materials.

(ii) Lead base metals or metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.

(iii) Cadmium-bearing filler materials, cadmium-bearing or cadmium-coated base metals.

(iv) Chromium-bearing metals or metals coated with chromium-bearing materials.

(v) Metals coated with mercury-bearing materials.

(vi) Beryllium-containing base or filler metals.

(2) Residues and cargoes of metallic ores of toxic significance shall be removed from the area or protected from the heat before work is begun which involves welding, cutting, or heating.

(h) *Work in confined spaces.* (1) Welders and cutters, their assistants and helpers, and all other employees present in a confined space shall be protected from hazards associated with inadequate ventilation such as, but not limited to, heat stress and exposure to toxic substances.

(2) When welding, cutting, or heating must be performed in areas immediately dangerous to life or health (IDLH), only positive pressure, self-contained breathing apparatus or airline respirators approved by the Mine Safety and Health Administration (MSHA) or the National Institute for Occupational Safety and Health (NIOSH) shall be used.

(3) When welding, cutting, or heating in confined spaces, all cylinders (except the small portable hand-held type) and welding power sources shall be located outside of the confined spaces.

(4) when welding, cutting, or heating is done over or adjacent to any confined space, employees shall be made aware of the respiratory hazards in the adjacent space and shall not enter those spaces without taking the necessary precautions of paragraph (h)(1) of this section.

(5) When any work is performed in a confined space or when an employee is working alone in an isloated location, frequent checks shall be made to ensure the safety of the employees.

(6) Where welding operations are carried on in confined spaces and where welders and helpers are provided with hose masks, hose masks with blowers or self-contained breathing apparatus

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approved by MSHA or NIOSH, an employee shall be stationed on the outside of such confined spaces to ensure the safety of those employees within the confined space.

(7) When work is performed in confined spaces with atmospheres that are immediately dangerous to life or health, an attendant stationed outside the confined space shall have an approved positive pressure, self-contained breathing apparatus, or airline respirator with emergency escape provisions, immediately available for rescue operations.

(8) Torch valves shall be closed and the supply of fuel gas and oxygen to the torch shall be shut off at a point outside the confined space whenever the torch is not to be used by the welder or cutter for a short period of time (such as during extended breaks or lunch hours). The torch and hose shall be removed from the confined space whenever the torch is not to be used for a substantial period of time (such as overnight, or when the welder or cutter temporarily changes job assignment and leaves the work area), or when the equipment is to be left behind for other workers during a change of shift.

§ 1915.53 Oxyfuel gas welding and cutting.

(a) *Oxygen use.* (1) Oxygen cylinders, cylinder valves, couplings, regulators, hose, and apparatus shall be kept free from oil and greasy substances.

(2) Jets of oxygen shall not be permitted to strike oily surfaces, greasy clothing, or to enter fuel oil or other storage tanks.

(3) Oxygen cylinders, equipment, pipelines, or apparatus shall not be used interchangeably with any other gas.

(b) *Attachments for gas mixing.* No device or attachment facilitating or permitting mixtures of air or oxygen with flammable gases prior to consumption shall be permitted except at burners or torches, unless such a device is specifically for this purpose.

(c) *Torches.* (1) Connections shall be checked and assured to be gas tight after assembly and before lighting the torch. A flame shall not be used for checking for gas leaks.

(2) Torch heads shall be kept clean and free from obstruction.

(3) Hoses shall be purged individually before lighting the torch for the first time each day.

(4) Hoses shall not be purged in confined spaces or near ignition sources.

(5) Matches, cigarette lighters, or hot-work shall not be used to light torches.

(d) *Hose and hose connections.* (1) Hoses for fuel gas, oxygen, inert-gas, and air shall be easily distinguishable from each other.

(2) Oxygen and fuel gas hoses shall not be interchangeable.

(3) Single hose having more than one gas passage and which separates the gas passages by a wall whose failure would permit the flow of one gas into the other gas passage shall not be used.

(4) When parallel sections of oxygen and fuel gas hose are taped together for convenience and to prevent tangling, the hose shall not be taped in such a way as to obscure tears, cuts, abrasions, and other such physical defects that may cause the hose to fail.

(5) All hose carrying any gas or substance which can ignite or enter into combustion shall be inspected for leaks at the beginning of each shift.

(6) Hose which has been subjected to flashback or which shows evidence of severe wear or damage shall not be used until tested without failure to twice the normal operating pressure, but in no case less than 200 psi (1380 kPa).

(7) Oil-free air or oil-free inert gas shall be used for testing hose and hose connections.

(8) Hose couplings shall be of the type that cannot be unlocked or disconnected by means of a straight pull without rotary motion.

(9) Containers used for stowage of gas hose shall be ventilated to prevent the buildup of hazardous concentrations of gas.

(e) *Gauges and pressure reducing regulators.* (1) Pressure reducing regulators shall be marked or labeled for use with specific gases and pressures and shall be used only for the gas and pressures for which they are identified.

(2) Regulators shall be drained of oxygen before they are attached to a cylinder or manifold, or before the cylinder valve is opened.

(3) Gauges used for oxygen service shall be marked: "USE NO OIL."

(f) *Cylinders.* (1) No one shall refill a cylinder except the owner of the cylinder, or a person authorized by the owner of the cylinder.

(2) No person other than the gas supplier shall mix gases in a cylinder, transfer gases into a cylinder, or transfill gases from one cylinder to another.

(3)(i) The contents of compressed gas cylinders shall be legibly marked on the cylinder.

(ii) Markings shall be applied so that they can not be easily removed.

(iii) If a cylinder is not marked, or if markings have been removed or obliterated, the cylinder shall not be used and shall be immediately removed from service.

(4) Compressed gas cylinders shall be equipped with inlet or outlet connections that are designed for, and compatible with, the equipment to be attached to them.

(5) All cylinders with a water weight capacity over 30 pounds (13.6 kg) shall either be equipped with a collar or recess to protect the valve or have a valve protection cap attached.

(6) Cylinders shall be stored where they will not be exposed to physical damage.

(7) Cylinders shall be stored in assigned places where they will not be knocked over by passing employees or moving objects.

(8) Cylinders shall be secured in storage to prevent their falling.

(9) Cylinders in storage shall be separated from hazardous materials, flammable and combustible liquids, and from easily ignited materials, such as wood, paper, packaging material, oil, and grease, by at least 20 feet (6.1 m), or by a noncombustible barrier at least five feet (1.6 m) high having a fire resistance of at least one-half hour.

(10) Oxygen cylinders stored in outside acetylene generator houses shall be separated from the generator or carbide storage rooms by a noncombustible gas-tight partition, without openings, having a fire resistance of at least one hour.

(11) Oxygen shall not be stored inside acetylene generator rooms.

(12) Fuel and oxygen cylinders shall be placed valve end up.

(13) Cylinders shall not be dropped, struck, or permitted to strike objects in a manner which may damage the cylinder, valve, or safety devices.

(14) Crow bars and other levers shall not be used under valves or valve protection caps to pry cylinders loose when frozen to the ground, other cylinders or other objects.

Note.—The use of warm (not boiling) water is recommended for unfreezing.

(15) Cylinders shall not be used as rollers or supports.

(16) Employees shall not disturb or tamper with cylinder safety devices.

(17) Cylinder valves shall be closed before moving cylinders.

(18) If cylinders are capable of having valve protection caps attached, valve protection caps shall always be in place and hand-tight, except when cylinders are in use or connected for use.

(19) Valve protection caps shall not be used for lifting or hoisting cylinders.

(20) A cradle or suitable platform shall be used when transporting cylinders by a crane or derrick. Slings or electromagnets shall not be used for this purpose.

(21) Cylinders shall be secured in an upright position, valve end up, when they are transported by motor vehicle.

(22) The cylinder valve shall be closed when cylinders are to be moved with regulators attached and the cylinders shall be secured in position if they are moved on a special carrier.

(23) Compressed gas shall not be used from cylinders without reducing the pressure through a suitable regulator attached to the cylinder valve or manifold, unless the equipment to which the cylinder is connected is designed to withstand full cylinder pressure.

(24) Acetylene shall not be utilized for welding, cutting, or heating at a pressure in excess of 15 psig (103 kPa gauge pressure) or 30 psia (206 kPa absolute pressure).

Note.—This requirement does not apply to storage of acetylene dissolved in a suitable solvent in cylinders manufactured and maintained according to Department of Transportation requirements, or to acetylene for chemical use.

(25)(i) Before connecting a regulatory to a cylinder valve, the valve outlet shall be wiped clean and the valve shall be opened momentarily and closed immediately ("cracked").

(ii) The valve shall be cracked while the employee is standing to one side of the outlet.

(iii) A fuel-gas cylinder valve shall not be cracked near other welding work or near sparks, flame, or other possible sources of ignition.

(26) The following procedure shall be followed after a regulator is attached to an oxygen cylinder:

(i) Engage the adjusting screw and open the downstream line to drain the regulator of gas, then

(ii) Disengage the adjusting screw and open the cylinder valve slightly so that the regulator cylinder pressure gauge pointer moves up slowly before opening the valve all the way.

(iii) Employees shall stand to one side of the regulator and not in front of the gauge faces when opening the cylinder valve.

(27) A hammer or wrench shall not be used to open cylinder valves that are fitted with hand wheels.

(28) Cylinders not having fixed hand wheels to operate the valve shall have keys, handles, or non-adjustable wrenches in place on the valve stems while these cylinders are in service.

(29) When a high-pressure (non-liquefied) gas cylinder is in use, the valve shall be opened fully in order to prevent leakage around the valve stem.

(30) An acetylene cylinder valve shall not be opened more than one and one-half turns, and preferably no more than three-fourths of a turn.

(31) Nothing shall be placed on top of a cylinder when it is in use which could damage the safety device or interfere with the quick closing of the valve.

(32) Cylinder valves shall be closed when work is finished.

(33) Before a regulator is removed from a cylinder, the cylinder valve shall be closed and the gas released from the regulator.

(34) A suitable cylinder truck, chain, or other steadying device shall keep cylinders from being knocked over while they are in use.

(35) If cylinders cannot be kept far enough away from welding or cutting operations such that sparks, hot slag, and flame will not reach them, fire resistant shields shall be used to prevent contact between the cylinder and heat source.

(36)(i) Cylinders shall not be placed where they might become part of an electrical circuit.

(ii) Cylinders shall be kept away from equipment or structures that might be used for grounding electric circuits for arc welding machines.

(iii) The tapping of electrodes against a cylinder is prohibited.

(iv) Striking an arc on cylinders is prohibited

(37) Cylinders shall not be placed in a location where they would be subject to open flame, hot metal, or other sources of high heat.

(38) The temperature of the cylinder contents shall not be allowed to exceed 130 °F (54 °C).

(g) *Cylinder emergencies.* If a leaky valve, fuse plug, safety device, or other leak is found around the valve stem of a fuel gas cylinder, the cylinder shall be moved to a safe location outdoors, away from any source of ignition, tagged in accordance with 29 CFR 1910.145(f) with the signal word "DANGER," and a warning or instruction message, such as, "KEEP FLAME AWAY." The gas supplier shall also be advised of the defect.

(h) *Fuel gas manifolds*—(1) *Indoors, less than 3,000 cubic feet capacity.* (i) Except as provided in paragraph (i)(2) of this section, fuel gas cylinders connected to one manifold inside a building shall be limited to a total gas capacity of 3,000 cubic feet (84 cubic meters) of acetylene or non-liquefied gas, or a total water capacity of 735 pounds (334 kg) for liquefied petroleum (LP) gas or stabilized methylacetylene propadiene.

Note.—A water capacity of 735 lb (334 kg) is equivalent to about 309 lb (140 kg) of propane, 368 lb (167 kg) of methylacetylene propadiene, stabilized, or 375 lb (170 kg) of butane.

(ii) When more than one such manifold with connected cylinders is located in the same room, the manifolds shall be at least 50 feet (15 m) apart or separated by a barrier of noncombustible material at least five feet (1.5 m) high having a fire resistance rating of at least one-half hour.

(2) *Exceeding 3,000 cubic feet.* Fuel gas cylinders connected to one manifold having a total gas capacity exceeding 3,000 cubic feet (84 cubic meters) of acetylene or non-liquefied gas, or a total water capacity of 735 pounds (334 kg) for LP gas or methylacetylene propadiene, stabilized, shall be located outdoors, or in a separate building or room constructed in accordance with ANSI/NFPA 51–1983, *Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes,* which is incorporated by reference.

(i) *High pressure oxygen manifolds capacity limits and locations.* (1)(i) Oxygen manifolds shall not be located in an acetylene generator room.

(ii) Oxygen manifolds shall be separated from fuel gas cylinders or combustible materials in the same room by a minimum distance of 20 feet (six meters), or by a barrier of noncombustible material at least five feet (1.5 meters) high having a fire resistance rating of at least one-half hour.

(2)(i) Except as provided in paragraph (i)(3) of this section, high pressure oxygen cylinders connected to one manifold shall be limited to a total gas capacity of 6000 cubic feet (168 cubic meters).

(ii) If more than one such manifold with connected cylinders is located in the same room the manifolds shall be at least 20 feet (six meters) apart.

(3) A high pressure oxygen manifold to which cylinders having an aggregate capacity of more than 6000 cubic feet (168 cubic meters) of oxygen are connected shall be located:

(i) Outdoors, or

(ii) In a separate building constructed of noncombustible or limited combustible materials, or

(iii) In a separate room constructed of noncombustible or limited combustible materials having a fire resistance rating of at least one-half hour, or in an area having no combustible materials within 20 feet (six meters) of the manifold, as long as the building it is located in is not associated with the production of acetylene, the storage of calcium carbide, or the storage and manifolding of fuel gases used in welding and cutting.

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(j) *Low pressure oxygen manifolds.* (1) Except as provided in paragraph (j)(2) of this section, low pressure oxygen cylinders connected to one manifold shall be limited to a total gas capacity of 12,000 cubic feet (336 cubic meters).

(2)(i) If more than one such manifold with connected cylinders is located in the same room, the manifolds shall be at least 50 feet (15 meters) apart.

(ii) An oxygen manifold to which low pressure cylinders having an aggregate capacity of more than 12,000 cubic feet (336 cubic meters) of oxygen are connected shall be located:

(A) Outdoors, or

(B) In a separate building constructed of noncombustible or limited combustible, or

(C) In a separate room constructed of noncombustible or limited combustible materials having a fire resistance rating of at least one-half hour, or in an area having no combustible materials within 20 feet (six meters) of the manifold, as long as the building it is located in is not associated with the production of acetylene or the storage and manifolding of gases used in welding and cutting.

(k) *Manifold requirements.* (1) High pressure manifolds, for use with cylinders having DOT service pressures exceeding 250 psig (1700 kPa gage), shall be provided with acceptable pressure-regulating devices.

(2) Low pressure manifolds, those for use with cylinders having DOT service pressure not exceeding 250 psig (1700 kPa gage), shall be constructed for use at a pressure of 250 psig shall have a minimum bursting pressure of 1000 psig (6900 kPa gage); and shall be protected by a safety relief device which will relieve at a maximum pressure of 500 psig (3440 kPa gage).

(3) Hose and hose connections shall have a minimum bursting pressure of 1000 psig (6900 kPa gage).

(4) The assembled low pressure manifold, including leads, shall be tested and proved gas-tight at a pressure of 300 psig (2070 kPa gage). The fluid used for testing oxygen manifolds shall be oil-free and not combustible. Flames shall not be used to test for leaks.

(5) A caution sign that warns employees of a low-pressure manifold shall be conspicuously posted at each low pressure manifold and shall direct that cylinders with a pressure above 250 psig (1700 kPa gage) shall not be connected to the manifold.

(6) Each fuel-gas cylinder lead shall be provided with a back-flow check valve.

(7) When acetylene cylinders are coupled, acceptable flash arresters shall be installed between each cylinder and the coupler block. However, when used outdoors, and where no more than three cylinders are coupled, one flash arrester installed between the coupler block and regulator is acceptable.

(8)(i) Portable outlet headers shall not be used indoors or on board a vessel except for temporary service where the conditions preclude a direct supply from outlets located on the service piping system.

(ii) Each outlet on the service piping from which oxygen or fuel-gas is withdrawn to supply a portable outlet header shall be equipped with a readily accessible shutoff valve.

(iii) Each service outlet on portable outlet headers shall be provided with a valve assembly that includes a detachable outlet seal cap, chained or otherwise attached to the body of the valve.

(iv) Master shutoff valves for both oxygen and fuel gas shall be provided at the entry end of the portable outlet headers.

(v) Portable outlet headers for fuel gas service shall be provided with a hydraulic back-pressure valve appropriate for the system and installed at the inlet and preceding the service outlets, unless an appropriate pressure-reducing regulator, back-flow check valve or hydraulic back-pressure valve is installed at each outlet. Outlets provided on headers for oxygen service may be fitted for use with pressure-reducing regulators or for direct hose connection.

(vi) Portable outlet headers shall be provided with frames which will support the equipment securely in the correct operating position and protect them from damage during handling and operation.

(9) Cylinder manifolds shall be installed under the supervision of a competent person familiar with the proper practices to be followed during construction, installation, and use of this equipment.

§ 1915.54 Arc welding and cutting.

(a) *Electric shock hazards.* (1) Employees shall be protected from electrical shock by wearing dry protective clothing when welding or cutting with covered electrodes using alternating current or single-phase transformer-rectifier arc welding machines under electrically hazardous conditions due to wet surroundings, or warm surroundings where perspiration is a factor, or because the work is in a location that is cramped or restricts movement such that there is a high risk of contact with live electrical parts.

(2) Contact with live electrical parts shall be prevented by insulating conductive parts near employees.

(3) The following limits shall not be exceeded:

(i) *Alternating-current machines.* (A) Manual arc welding and cutting—80 volts.

(B) Automatic (machine or mechanized) arc welding and cutting—100 volts.

(ii) *Direct-current machines.* (A) Manual arc welding and cutting—100 volts.

(B) Automatic (machine or mechanized) arc welding and cutting—100 volts.

(4) Control apparatus on all types of arc welding machines shall be enclosed except for the operating wheels, levers, or handles.

(5) Input power terminals, tap change devices and live metal parts connected to input circuits shall be completely enclosed and accessible only by means of tools.

(6) Welding lead terminals intended to be used exclusively for connection to work and connected to the grounded power source enclosure, shall be smaller in diameter (at least two AWG sizes higher) than the grounding conductor, and the terminal shall be marked to indicate that it is grounded.

(7) Terminals for welding leads shall be protected from accidental electrical contact by employees or by employee-operated equipment that could conduct electricity, such as vehicles and crane hooks, lines, or booms, by the use of dead-front receptacles for plug connections; by locating terminals in recessed openings or under a hinged cover; by using heavy insulating sleeves: or by other equivalent means.

(8)(i) No connections for portable control devices, such as push buttons to be carried by the employee, shall be connected to an a.c. circuit of higher than 120 volts.

(ii) Exposed metal parts of portable control devices operating on circuits above 50 volts shall be grounded by a grounding conductor in the control cable.

(9) Autotransformers or a.c. reactors shall not be used to draw welding current directly from any primary a.c. power source having a voltage exceeding 80 volts.

(b) *Equipment.* (1) *Manual electrode holders.* (i) Only manual electrode holders that are specifically designed for arc welding and cutting and that are of a capacity capable of safely handling the maximum rated current required by the electrodes shall be used.

(ii) Any current-carrying parts passing through the portion of the holder which the employee grips and the outer surfaces of the jaws of the holder shall be fully insulated against the maximum voltage encountered to ground.

(iii) Defective electrode holders shall be removed from service.

(2) *Welding cables and connectors.* (i) All arc welding and cutting cables shall be completely insulated, flexible, and capable of handling the maximum current requirements of the work in progress, taking into account the electrical duty cycle under which the employee is working.

(ii) Only cable free from repair or splices for a minimum distance of ten feet (3 m) from the cable end to which the electrode holder is connected shall be used, unless the cable has standard insulated connectors or splices with insulating quality at least equal to that of the cable.

(iii) When it becomes necessary to connect or splice lengths of cable one to another, substantial insulated connectors of a capacity at least equal to that of the cable shall be used.

(iv) If connections are made by means of cable lugs, the lugs shall be securely fastened together to give good electrical contact and the exposed metal parts of the lugs shall be completely insulated.

(3) *Ground returns and machine grounding.* (i) The workpiece or metal upon which the employee welds shall be grounded.

(ii) A ground return cable shall have a safe current carrying capacity equal to or exceeding the specified maximum output capacity of the arc welding or cutting unit which it services. When a single ground return cable services more than one unit, its safe current carrying capacity shall equal or exceed the total specified maximum output capacities of all the units which it services.

(iii) Building frames, conduits, pipelines or other metal structures may be used as part of the ground return circuit, provided that continuity to ground is ensured, the safe current carrying capacity is at least equal to that required in paragraph (b)(3)(ii) of this section, and the pipe or structure does not contain gases other than air, flammable liquids, or electrical circuits.

(iv) When a pipeline or other metal structure is used as a ground return circuit, it shall be determined that electrical contact exists at all joints. The generation of an arc, sparks or heat at any point in the pipeline or structure shall cause rejection of the structure as a ground circuit.

(v) When a structure or pipeline is continuously employed as a ground return circuit, all joints shall be bonded, and periodic inspections of the joints shall be conducted to ensure that no condition of electrolysis or fire hazard exists because of such use.

(vi) The frames of all arc welding and cutting machines shall be grounded either through a third wire in the cable containing the circuit conductor or through a separate wire which is grounded at the source of the current.

(vii) Grounding circuits, other than those incorporating a vessel's metal frame or structure, shall be checked to ensure that the circuit between the ground and the grounded power conductor has a low enough resistance to permit the flow of sufficient current to cause the fuse or circuit breaker to interrupt the current.

(viii) All ground connections shall be inspected to ensure that they are mechanically strong and capable of safely carrying current at least equal to that required in paragraph (b)(3)(ii) of this section.

(c) *Operating instructions.* (1) Welding machines shall not be used if they leak cooling water, shielding gas, or engine fuel.

(2) When an employee has occasion to leave a work area or stop work for any appreciable time, the electrode holder shall be de-energized by turning off the machine or the holders shall be disconnected from the welding lead.

(3) When the machine is moved, the input power supply to the equipment shall be unplugged.

(4) Electrodes shall be removed from holders when not in use to eliminate the danger of electrical contact with persons or conducting objects.

(5) Electrode holders not in use shall be placed so that they cannot make electrical contact with employees, conducting objects, flammable or combustible liquid containers, or compressed gas cylinders.

(6) Guns of semi-automatic welding machines not in use shall be placed so that the gun switch cannot be operated accidentally.

(7) Employees who operate arc welding or cutting equipment shall be instructed how to avoid electrical shock while operating such equipment.

(8) Hot electrode holders shall not be cooled by immersion in water.

(9) Water-cooled holders and guns shall not be used if any water leak or condensation occurs.

(10) Arc welding machines shall be electrically deenergized whenever the tungsten electrodes in gas tungsten arc electrode holders are changed.

(11) Other employees working in, or passing through, the vicinity of arc welding operations shall be protected from exposure to direct rays of the arc by means of booths, shields, goggles, or other equivalent protection.

(d) *Maintenance.* (1) Commutators shall be kept clean to prevent excessive flashing.

(2) Arc welding machines used outdoors shall be protected from rain, snow or other inclement weather.

(3) Arc welding machines which have become wet shall be thoroughly dried and properly tested before being used again in order to prevent employee shock.

§ 1915.55 Resistance welding.

(a) *Guarding.* (1) Control initiating devices on resistance welding equipment, such as push buttons, foot switches, retraction devices, and dual schedule switches on portable guns, shall be arranged or guarded to prevent an employee from activating them inadvertently.

(2) All chains, gears, operating linkages, and belts associated with welding equipment shall be arranged or guarded to prevent employee contact.

(3) Point-of-operation guards shall be provided and used where an employee's hands or fingers can enter the machine's operation zone.

(4) All suspended portable welding gun equipment, with the exception of the gun assembly, shall be equipped with a support system capable of supporting the total impact load in the event of failure of any component of the supporting system.

(5) Moving holder mechanisms entering the gun frame shall have sufficient clearance to prevent the shearing of the operator's fingers placed on the operating movable holder, or be provided with adequate guards.

(b) *Electrical.* (1) All external weld-initiating control circuits shall operate at 120 volts root mean square (rms) or less for stationary equipment, and 36 volts or less for portable equipment.

(2)(i) Resistance welding equipment, and control panels containing capacitors used for stored energy resistance welding involving voltages over 550 rms volts, shall be insulated and protected by complete enclosures.

(ii) All doors of these enclosures shall be provided with interlocks or contacts wired into the control circuits that are designed to interrupt power and short circuit all capacitors when the door panel is open.

(iii) A manually operated switch or other equivalent device shall be installed in addition to the mechanical interlocks or contacts required in paragraph (b)(2)(ii) of this section, as an added safety measure to assure absolute discharge of all capacitors.

(c) *Locks and interlocks.* (1) All doors and access panels on resistance welding

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machines and control panels that are accessible at production floor level, shall be kept locked or interlocked to prevent access by unauthorized employees to live portions of the equipment.

(2) Control panels located on overhead platforms or in separate rooms shall be locked, interlocked, or guarded by a physical barrier and warning signs, and the panels shall be kept closed when the equipment is not being serviced.

(d) *Spark shields.* Welding equipment operators and other employees working in, or passing through, the work area shall be protected from flying sparks by the installation of guards, shields or curtains of suitable fire-resistant material, or by the use of appropriate personal protective equipment. For flash welding equipment, flash guards of fire-resistant material shall be provided to control flying sparks and molten metal.

(e) *Stop buttons.* One or more safety emergency stop buttons shall be provided on all welding machines that require three seconds or more to complete a sequence and come to a stop, or have mechanical movements that can be hazardous to employees if guards are removed, and when the installation and use of these emergency stop buttons will not in themselves create additional hazards to employees.

(f) *Grounding.* The welding transformer secondary circuit shall be grounded by one of the methods below:

(1) Permanent grounding of the welding secondary circuit, or

(2) Connecting a grounding reactor across the secondary circuit winding with reactor tap(s) to ground, or

(3) On non-portable machines, arranging for an isolation contactor to open both sides of the line to the primary circuit of the welding transformer.

(g) *Static safety devices.* (1) Electrically interlocked safety devices such as, but not limited to, pins, blocks, or latches, shall be installed on large welding machines incorporating a movable platen or welding head.

(2) The device(s) shall prevent movement of the platen or head under static load.

(3) Regardless of the number of devices varying with machine size or accessibility, each device alone shall be capable of sustaining the full static load involved.

[FR Doc. 88-26999 Filed 11-28-88; 8:45 am]
BILLING CODE 4510-26-M

29 CFR Part 1915

[Docket No. S-044]

Access and Egress Requirements for Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing access and egress (including stairways and ladders). The standards proposed for revision regulate the design, construction, and use of means of access and egress to vessels, buildings, and other structures in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the present standards in Part 1915 are not comprehensive in their coverage of shipyard hazards, and are supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for all the hazards encountered in shipyards. This document is one of a series of proposals which are intended to revise Part 1915 to provide comprehensive coverage of shipyard employment solely within that part.

This action will consolidate and update the shipyard employment access and egress standards and the appropriate general industry access and egress standards into a single, comprehensive Part 1915 that would apply to all activities and areas in shipyards (except construction activities covered by Part 1926). The proposed provisions will delete many existing specification provisions which currently limit employer innovation, and where appropriate, use performance-oriented provisions to address the hazards of access and egress.

The specific topic of access and egress is currently addressed in Subpart E of the current Shipyard Employment Standards, along with the topics of scaffolds, ladders, and other walking/working surface considerations. To format the rules into a more logical grouping of topics, this and related actions would retain coverage of stairways, ladders and other access and egress concerns in Subpart E, and would relocate fall protection and scaffolds from the current Subpart E to a new Subpart M—Fall Protection, and a new Subpart N—Scaffolds.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Office, Docket No. S-044, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. Materials in the rulemaking record are available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-4647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: The principal author of this Notice of Proposed Rulemaking is Roy F. Gurnham, Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background and Approach

In May 1971, the Occupational Safety and Health Administration under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, OSHA adopted other Federal standards and national consensus standards as general industry standards (29 CFR Part 1910) and construction industry standards (29 CFR Part 1926) which were made applicable to hazards and working conditions not specifically covered by Parts 1915, 1916, or 1917. On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29, Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment" (47 FR 16984). The consolidation eliminated duplicate provisions and overlapping provisions, but did not alter substantive requirements. The consolidation did not affect the applicability of general industry standards in 29 CFR Part 1910 to hazards or conditions in shipyard

employments not specifically addressed in the consolidated Part 1915 (see 29 CFR 1910.5(c)(2)).

In 1982, the Shipbuilders Council of America and the American Waterways Shipyard Conference requested OSHA to indentify the specific applicable provisions of the general industry standards which apply to shipyards, and consolidate them with the existing Part 1915 provisions into a single set of shipyard employment standards. OSHA has determined that such consolidation is appropriate. This and other proposed rulemakings will eventually incorporate all applicable Part 1910 provisions into the existing organization of Part 1915. The present Part 1915 organizational format, which is already familiar to present users of the shipyard standards, provides a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when applicable Part 1910 provisions have no counterpart in the existing Part 1915 structure, the proposals would create new subparts or subpart headings in Part 1915.

In addition to consolidating the provisions of Part 1910 and Part 1915, OSHA proposes to revise the consolidated provisions as appropriate. OSHA has not substantively revised many of the current provisions in these parts since they were promulgated in 1971. OSHA believes some provisions need to be revised to reflect technological advances. Other provisions need to be revised because they are based on national consensus standards issued prior to 1971, and do not reflect the revisions made since that time. As the provisions are consolidated, all such revised consensus standards will be reviewed, and OSHA's provisions revised as necessary to effectuate the purposes of the standard and the OSH Act. Where practical, all current incorporations by reference of national consensus standards and other materials will be deleted by the proposed standards, and the text of all such requirements will be proposed for inclusion in the body of the proposed standards, or their appendices. This approach is intended to assist employers in determining what duties and obligations are imposed by a provision by minimizing the need to refer to documents outside Part 1915. OSHA will also use the consolidation project to replace specification requirements with performance-oriented requirements where it is known that there is more than one way to provide safety equivalent to that provided by the present specification requirements. In these situations, OSHA sets forth the requirement in performance-oriented language, and relocates the specification language requirements to an appendix. The appendices are discussed in more detail below. Specification requirements would be used in the main text only where necessary to set appropriate limits and to clarify duties and obligations.

The revision of the shipyard employment standards will be coordinated with efforts to revise parallel provisions in the construction and general industry standards, so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

II. Summary and Explanation of the Proposal

The topic "access and egress" is currently covered by 29 CFR Part 1915, Subpart E—Scaffolds, Ladders, and Other Working Surfaces; 29 CFR Part 1910, Subpart D—Walking-Working Surfaces; and 29 CFR Part 1910, Subpart E—Means of Egress. Consolidating these three subparts into one subpart would result in a large, cumbersome subpart because of the wide range of topics covered. Therefore, OSHA is proposing to divide the consolidated Part 1915 standards into three subparts. The proposed subparts would be Subpart E—Access and Egress; Subpart M—Fall Protection; and Subpart N—Scaffolds. This reformatting, in and of itself, would not create nor delete any requirements.

In accordance with paragraph 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), the agency has reviewed the various national consensus standards that cover working conditions dealt with in this proposal. Where appropriate, OSHA has incorporated provisions from those national consensus standards as part of this proposal. OSHA believes that the proposed standard will better effectuate the purposes of the Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive and provides greater flexibility in its requirements for safety.

The following discussion provides a more detailed explanation of the proposed provisions related to access and egress.

Section 1915.71 Scope, application, and definitions applicable to this subpart.

Section 1915.71(a)—Scope and application. This paragraph would outline the scope and application of the entire Subpart E. The proposal would apply to all workplaces and operations found in shipyards, including those aboard vessels and subassemblies of vessels, except as follows: Access/egress requirements for employees involved in the construction, alteration, repair (including painting and decorating) and demolition of shore facilities would continue to be addressed by 29 CFR Part 1926—Construction Industry Standards, which are not affected by this proposal; and access/egress requirements for employees on scaffolds would be as provided in proposed Subpart N—Scaffolds. This proposal would incorporate all applicable provisions of 29 CFR Part 1910, Subparts D and E, related to access and egress, and those subparts would no longer apply to access and egress considerations in shipyard workplaces and operations.

Certain of the proposed standards contain "grandfather" provisions. These provisions would allow employers to continue using facilities and equipment which do not meet the proposed requirements, but which do meet the regulations presently in effect. Thus, specified facilities which are currently meeting OSHA criteria would not have to be replaced or altered to meet the new criteria. However, all new facilities and equipment built or installed after the effective date of this subpart would have to meet the proposed criteria. For example, proposed paragraph § 1915.85(c)(3) would require stairrails to be at least 36 inches high, whereas the existing rule requires such rails to be at least 30 inches high. Under the proposed rules, employers would not have to re-install stairrails in existing stairways. However, all stairways created or installed after the effective date of this standard would have to have stairrails located at the new height.

In the proposed rules, all "grandfathering" provisions are indicated in brackets ([ ]) immediately following the new criteria. If a requirement does not contain a bracketed provision, then no "grandfathering" exception is made. In the Specific Issues section of this preamble, OSHA requests comments as to whether the provisions proposed for "grandfathering" should indeed be "grandfathered," and whether or not other provisions should be "grandfathered."

Section 1915.71(b)—Definitions applicable to this subpart. This paragraph lists and defines all major words used in the proposed standard. Many of the definitions are the same as those in the existing standards, however, some have been reworded for

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uniformity or clarity. The following words have been added or have been changed substantively from the existing definitions:

"Cleat." In addition to the § 1910.21 definition that this is a ladder crosspiece used for stepping, this term also is used to describe transverse strips of material such as wood or metal used on inclined surfaces to provide footing.

"Double cleat ladder." This term describes three rail ladders which are used to provide simultaneous two-way access for employees.

"Equivalent." This term is used in the proposal to allow alternative means of complying with the standards. The definition makes clear that the employer must demonstrate that all alternative means of compliance will provide an equal or greater degree of safety than that attained by using the method or item specified in the standard.

"Failure." This word is used in performance-oriented paragraphs such as § 1915.85(c)(5) which addresses stairrail strength. The definition makes it clear that, along with breakage and separation of component parts, load refusal (the point where the ultimate strength of a component is exceeded) is also considered to be failure. This is the point where structural members lose their ability to carry loads.

"Fixed ladder." This term is used to describe shoreside permanently installed side-step and through-type ladders used in buildings and structures. Such ladders do not include any ladder permanently installed aboard a vessel or vessel section.

"Handrail." The proposed definition explains that handrails are used to provide employees with a handhold for support. The proposed definition deletes the existing language which limits handrails to bars or pipes "supported on brackets from a wall or partition * * * (to provide) a handhold in case of tripping." The new definition recognizes that handrails are not limited in form to wall- or partition-mounted bars or pipes. For example, the toprail of a stairrail system may serve as a handrail when installed according to paragraph § 1915.85(c)(7).

"High hazard contents" and "ordinary hazard contents." These terms are used to describe conditions where fire or other emergency procedures are necessary. They are the same definitions as existing § 1910.35(f) and (g), except the existing phrase "to be feared" would be replaced by the word "likely."

"In dry dock." This term is used to describe a vessel's location when it is in a graving dock, basin, dry dock (including floating dry docks), or on a marine railway.

"Jacob's ladder." This term is used to describe a unique type of ladder with flexible siderails commonly found in shipyards.

"Ladder safety device." This term defines such devices as systems, other than cages or wells, used in conjunction with a ladder, which will limit an employee's fall from a ladder without that person having continually to manipulate the device or any part thereof. This is a change from the existing definition in § 1910.21(e)(13), which describes such devices as those which eliminate or reduce the possibility of falls on ladders. The proposal recognizes that such devices do not function by eliminating or reducing the possibility of falls; they do, however, minimize or reduce the actual fall distance traveled.

"Lower levels." This term is used to describe the areas to which an employee could fall. The definition does not apply to the surface on which the employee is performing work duties.

"Maximum intended load." This is a new term used in paragraphs §§ 1915.86(a)(1) and 1915.87(b)(2) to clarify the types of loads which must be considered when building a ladder or a ramp, and is used in paragraph § 1915.86(b)(3) to limit the amount of load which may be placed on a ladder.

"Means of access." This term is used in lieu of the following list of access facilities: Ladders, stairways, ramps, runways, gangways, walkways, catwalks, dockboards, and personnel hoists.

"Portable ladder." This term is used to distinguish ladders that can be readily moved or carried, from fixed ladders (those which are an integral part of a building or structure).

"Riser height." This term replaces the term "rise." There is no change to the definition. for the purposes of this standard, the term "tread" used in the definition includes landings.

"Single cleat ladder." This term is used to describe two rail ladders.

"Stairrail system." This term replaces the existing term "stair railing," which is often used to describe only the top member of a railing system. Stairrail systems protect employees from falling off the side of a stairway, and may consist of a rail system (toprail, midrail, posts, balusters, or similar components) or may be a wall. Handrails are the components used to provide grab holds while climbing or descending stairs. Handrails are normally mounted on the side of stairrail systems, but when installed according to the height criteria of paragraph § 1915.85(c)(7), may be the same component as the topmost piece of a stairrail system (i.e., they may be the toprail in a rail system, or the top edge of a wall section).

"Unprotected sides and edges." This is a new term and defines such areas as those where there is no wall or guardrail system 39 inches or more in height, or where there is no stairrail system 36 inches or more in height. This definition is consistent with the term as used in the proposed Subpart M—Fall Protection, § 1915.201.

"Vessel section." This term is used to clarify the areas where certain rules apply. It means all sub-assemblies, modules, and other components of a vessel which are not directly attached to the vessel because of the state of construction, repair, or breaking.

Section 1915.72 General requirements for means of access.

This section specifies where stairways, ladders, ramps, runways, gangways, walkways, catwalks, or personnel hoists are to be provided in order for employees to have safe means of access between levels.

Section 1915.72(a)—Where required. This paragraph would require stairways, ladders, ramps, runways, gangways, walkways, catwalks, or personnel hoists to be provided at all personnel points of access between working levels which are 19 inches or more apart in elevation, and where operations require regular travel between the working levels (including access to operating platforms on all equipment which require attention routinely during operations.) This is essentially the same provision as existing rule § 1910.24(b) except the proposed rule applies to vessel access as well as shoreside access. The 19-inch criterion is added to clarify the amount of elevation difference which must be present before the rule would apply. This amount is equivalent to twice the maximum stairway step spacing presently allowed by § 1910.24(e). Spiral stairways would be allowed only where they provide the only practical means of access. This is essentially the same limitation as in § 1910.24(b).

Section 1915.72(b)—When required. This paragraph would require all systems and duties required by the proposal to be provided and installed, and performed, respectively, before employees begin work from the work surface where protection is required. This requirement is implied by the existing provisions of Subpart D of Part 1910 and Subpart E of Part 1915, but is not explicitly set forth. The proposal would clarify that these provisions are to be met before work begins in an area.

Section 1915.73 Access to vessels.

This section sets forth the requirements for access to vessels, and is based on the provisions currently contained in § 1915.74.

Section 1915.73(a)—Access to vessels afloat. This paragraph would apply to all vessels (except floating drydocks) afloat, which are not lying abreast of another vessel, and which are not in drydock. The following table lists the proposed provisions of paragraph § 1915.73(a), which would not be substantively changed from the corresponding requirements in the existing paragraphs listed; except as noted:

Proposed provision	Existing provision
§ 1915.73(a)(1)	§ 1915.74(a)(1)
§ 1915.73(a)(2)	§ 1915.74(a)(4)
§ 1915.73(a)(3)	§ 1915.74(a)(5)
§ 1915.73(a)(4)	§ 1915.74(a)(6)
§ 1915.73(a)(5)	§ 1915.74(a)(7)
§ 1915.73(a)(6)	§ 1915.74(a)(8)
§ 1915.73(a)(7)	§ 1915.74(a)(9)
§ 1915.73(a)(9)	§ 1915.74(a)(11)
§ 1915.73(a)(10)	§ 1915.74(a)(12)

The gangway, ladder, Jacob's ladder, and stair criteria presently contained in paragraphs § 1915.74(a)(1) and (a)(9) are not repeated in proposed paragraphs § 1915.73(a)(1) and (a)(7). Instead, these requirements would be moved to proposed paragraphs § 1915.85 *Stairways*, § 1915.86 *Ladders*, and § 1915.87 *Gangways, ramps, walkways, and catwalks.*

The existing § 1915.73(a)(2) and (a)(3) requirements relating to guardrail systems on gangways and turntables would be addressed in proposed Subpart M—Fall Protection.

Paragraph (a)(8) of § 1915.73 would provide that obstructions not be laid on or across means of access. This is the same requirement as § 1915.74(a)(10) except the term "means of access" replaces the existing term "gangway." OSHA believes that no obstructions should be placed on or across any means of access.

Section 1915.73(b)—Access to vessels in drydock, and between vessels. This paragraph would apply to all vessels which are drydocked, and to all vessels lying abreast of each other whether afloat or drydocked.

The following table lists the proposed provisions of paragraph § 1915.73(b) which would not be substantively changed from the corresponding requirements in the existing paragraphs listed, except as noted:

Proposed provision	Existing provision
§ 1915.73(b)(1)	§ 1915.74(b)
§ 1915.73(b)(2)	§ 1915.74(b)
§ 1915.73(b)(3)	§ 1915.74(b)
§ 1915.73(b)(4)	§ 1915.74(b)

The gangway, ladder, Jacob's ladder, and stair criteria presently required by paragraph § 1915.74(b) are not repeated in proposed paragraph § 1915.73(b). Instead, these requirements would be moved to proposed standards § 1915.85 *Stairways*, § 1915.86 *Ladders*, and § 1915.87 *Gangways, walkways, ramps, and catwalks and dockboards (bridge plates).*

Paragraph (b)(3) of § 1915.73 would provide that obstructions not be laid on or across means of access. This is the same provision as required by § 1915.74(b) except the term "means of access" replaces the existing term "gangway." As noted above, OSHA believes that no obstruction should be placed on or across any means of access.

Section 1915.73(c)—Access to barges and river towboats. This paragraph would set forth the requirements for access to barges and river towboats. The following table lists the proposed provisions of paragraph § 1915.73(c) which would not be substantially changed from the corresponding requirements in the existing paragraphs listed, except as noted:

Proposed provision	Existing provision
§ 1915.73(c)(2)	§ 1915.74(c)(2)
§ 1915.73(c)(3)	§ 1915.74(c)(3)
§ 1915.73(c)(4)	§ 1915.74(c)(3)
§ 1915.73(c)(5)	§ 1915.74(c)(3)

Paragraph (c)(1) of § 1915.73 would require gangways, ramps, or walkways to be used when employees cannot step safely to or from the wharf, float, barge, or river towboat alongside the vessel. When gangways, ramps, or walkways are impracticable, then ladders shall be used. This is the same requirement as § 1915.74(c)(2) except the existing provision inadvertently omitted references to ramps and walkways.

The ramp and stair criteria presently required by § 1915.74(c)(1) and (c)(3) are not repeated in proposed paragraph § 1915.73(c). Instead, these requirements would be moved to proposed § 1915.87 *Gangways, walkways, ramps, catwalks, and dockboards (bridge plates), and* § 1915.85, *Stairways*, respectively.

Section 1915.74 Access to drydocks and drydock wingwalls

This section would set forth the requirements for access to drydocks and drydock wingwalls, and is based on the provisions currently contained in § 1915.75. The following table lists the proposed provisions of paragraph § 1915.74 which would not be substantively changed from the corresponding requirements in the existing paragraphs listed, except as noted:

Proposed provision	Existing provision
§ 1915.74(a)	§ 1915.75(a)
§ 1915.74(b)	§ 1915.75(f)

Existing provisions § 1915.75(b) through (e), which cover guardrail systems, would be relocated to proposed Subpart M—Fall Protection.

The gangway, ramp, stairway, and ladder criteria presently required by paragraph § 1915.75(a) and (f) would be moved to proposed § 1915.85 *Stairways*, § 1915.86 *Ladders*, and § 1915.87 *Gangways, ramps, walkways, and catwalks.*

Section 1915.75 Access to cargo spaces and confined spaces aboard vessels

This section would set forth the requirements for access to cargo spaces and confined spaces aboard vessels, and is based on the provisions in § 1915.76.

Section 1915.75(a)—Cargo spaces. This paragraph would set forth the access requirements for cargo spaces. Paragraph (a)(1) of § 1915.75 would require at least one safe and accessible ladder in a cargo space into which employees must enter or in which employees are working. This is essentially the same requirement as § 1915.76(a), except the proposed provision clarifies the point that ladders may not be removed as long as someone is in the space.

The following table lists the proposed provisions of paragraph § 1915.75(a) which would not be substantively changed from the corresponding requirements in the existing paragraphs listed below:

Proposed provision	Existing provision
§ 1915.75(a)(2)	§ 1915.76(a)(4)
§ 1915.75(a)(3)	§ 1915.76(a)(2)
§ 1915.75(a)(4)	§ 1915.76(a)(3)
§ 1915.75(a)(5)	§ 1915.76(a)(5)
§ 1915.75(a)(6)	§ 1915.76(a)(5)

Section 1915.75(b)—Confined spaces. This pargraph would set forth the access requirements for confined spaces.

Paragraph (b)(1) of § 1915.75 would require more than one access opening to be provided to a shipboard confined

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space in which employees are working, and in which a hazardous or explosive atmosphere can be generated by the work being performed, except where the structure or arrangement of the vessel makes this provision impractical. This is the same provision as § 1915.76(b)(1) except the term "explosive atmosphere" is added to clarify the nature of the hazards which pose a danger to employees.

In addition, the requirements of this paragraph would not apply to vessels designed in accordance with the rules of the various worldwide classification societies, or with United States Coast Guard (USCG) standards which require only one access opening, as the cutting of a second opening may violate such rules or standards.

Paragraph (b)(2) of § 1915.75 would require that when ventilation ducts must pass through an access opening to a confined space, the ducts be of a type and arrangement as to permit free passage of employees through at least one of the access openings (two openings if there are two or more access openings to the confined space). This is the same requirement as § 1915.76(b)(2), except the requirement is changed to recognize that some confined spaces only have one opening.

Sections 1915.76 through 1915.79

These sections would be reserved for future use.

Section 1915.80 and Section 1915.81 General and specific requirements for means of egress from buildings and structures

These sections would set forth the general and specific requirements for means of egress from buildings and structures. The provisions are essential to providing a safe means of egress from fire and other emergencies which occur in buildings and structures. (The provisions of these sections would not apply to vessels, vessel sections, vehicles, or other mobile equipment, however, public comment is requested on this point in the Specific Issues section of this preamble).

The proposed provisions are substantively the same provisions as existing §§ 1910.36 and 1910.37. However, as indicated in the table below, some of the provisions would be combined to reduce redundancy, and other provisions have been reworded for clarity. In addition, the proposal would delete from the main text of the subpart requirements addressing exit capacity, size, and marking, and replace them with performance-oriented requirements. The deleted provisions would be relocated to Appendix A. That appendix would be a non-mandatory set of guidelines provided to assist employers in complying with proposed §§ 1915.80(c)(2) and 1915.81(i)(2). The guidelines of Appendix A would be based on § 1910.36(b)(1) and (2), and § 1910.37(c), (d), (f)(6), (i), and (g)(8). If an employer uses these guidelines, OSHA will treat the resulting exit as meeting the performance-oriented requirements of §§ 1915.80(c)(2) and 1915.81(i)(2). However, by making these specification provisions non-mandatory, OSHA is allowing other alternative methods to be developed that are just as satisfactory as the presently mandated methods.

The following table lists the proposed provisions and the corresponding requirements of the existing paragraphs:

Proposed provision	Existing provision
§ 1915.80(a)(1)	§ 1910.36(b)(1), § 1910.36(c)(3)
§ 1915.80(a)(2)	§ 1910.36(b)(4), § 1910.37(f)(1)
§ 1915.80(a)(3)	§ 1910.36(b)(4), § 1910.37(k)(3)
§ 1915.80(a)(4)	§ 1910.36(b)(5), § 1910.37(q)(1)
§ 1915.80(a)(5)	§ 1910.36(b)(5), § 1910.37(f)(4), § 1910.37(q)(2)
§ 1915.80(b)	§ 1910.36(b)(6)
§ 1915.80(c)	§ 1910.36(b)(7)
§ 1915.80(d)	§ 1910.36(b)(8)
§ 1915.80(e)(1)	§ 1910.36(c)(1)
§ 1915.80(g)(2)	§ 1910.36(c)(2)
§ 1915.80(g)(3)	§ 1910.36(c)(3)
§ 1915.80(f)(1)	§ 1910.36(d)(1)
§ 1915.80(f)(2)	§ 1910.36(d)(2), § 1910.37(m)
§ 1915.81(a)	§ 1910.37(a)
§ 1915.81(b)(1)	§ 1910.37(b)(1)
§ 1915.81(b)(2)	§ 1910.37(b)(2)
§ 1915.81(b)(3)	§ 1910.37(b)(3)
§ 1915.81(b)(4)	§ 1910.37(b)(4)
§ 1915.81(c)	§ 1910.37(e)
§ 1915.81(d)(1)	§ 1910.37(f)(1)
§ 1915.81(d)(2)	§ 1910.37(f)(2)
§ 1915.81(d)(3)	§ 1910.37(f)(3)
§ 1915.81(d)(4)	§ 1910.37(f)(5)
§ 1915.81(e)(1)	§ 1910.37(g)(2)
§ 1915.81(e)(2)	§ 1910.37(g)(3)
§ 1915.81(e)(3)	§ 1910.37(g)(4), § 1910.37(k)(2)
§ 1915.81(e)(4)	§ 1910.37(g)(5)
§ 1915.81(f)(1)	§ 1910.37(h)(1)
§ 1915.81(f)(2)	§ 1910.37(h)(1)
§ 1915.81(f)(3)	§ 1910.37(h)(2)
§ 1915.81(f)(4)	§ 1910.37(h)(2)
§ 1915.81(g)	§ 1910.37(j)
§ 1915.81(h)(1)	§ 1910.37(l)(1), § 1910.37(l)(4)
§ 1915.81(h)(2)	§ 1910.37(f)(4)
§ 1915.81(h)(3)	§ 1910.37(1)(2)
§ 1915.81(h)(4)	§ 1910.37(q)(3)
§ 1915.81(i)(1)	§ 1910.37(q)(1)
§ 1915.81(i)(2)	§ 1910.37(q)(3)
§ 1915.81(i)(3)	§ 1910.37(q)(4)
§ 1915.81(i)(4)	§ 1910.37(q)(5)
§ 1915.81(i)(5)	§ 1910.37(q)(6)
§ 1915.81(i)(6)	§ 1910.37(q)(7)
§ 1915.81(j)	§ 1910.37(o)
Appendix	§ 1910.36(b)(1), § 1910.36(b)(2), § 1910.37(c), § 1910.37(d), § 1910.37(f)(6), § 1910.37(i), § 1910.37(g)(8)

Section 1915.82 Aisles and passageways in buildings and structures

This section would set forth the requirements to keep aisles and passageways in buildings and structures clear when mechanical handling equipment is being used.

The following table lists the proposed provisions of this section which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed provision	Existing provision
§ 1915.82(a)(1)	§ 1910.22(b)(1)
§ 1915.82(a)(2)	§ 1910.30(b)(1)
§ 1915.82(a)(3)	§ 1910.30(b)(1)
§ 1915.82(a)(4)	§ 1910.30(b)(1)
§ 1915.82(b)(1)	§ 1910.22(b)(1)
§ 1915.82(b)(2)	§ 1910.30(b)(2)
§ 1915.82(c)	§ 1910.22(b)(2)

Sections 1915.83 through 1915.84

These sections would be reserved for future use.

Section 1915.85 Stairways

This section would set forth the criteria for stairway construction. Whereas §§1915.72 through 1915.74 specify where stairways are to be provided, this section specifies how stairways are to be built. Paragraph § 1915.85(a) would specify criteria for all stairways including those used aboard vessels at points of vessel access which are currently covered by the stairway provisions of §§ 1915.74 and 1915.75. The provisions do not apply to stairways which are a part of a vessel. These provisions are based on §§ 1910.23 and 1910.24.

The following table lists the proposed provisions of this section which would not be substantively changed (except as noted below) from the corresponding requirements in the existing paragraphs listed:

Proposed provision	Existing provision
§ 1915.85(a)(1)	§ 1910.24(g)
§ 1915.85(a)(2)	§ 1910.24(e)
§ 1915.85(a)(3)	§ 1910.24(f)
§ 1915.85(a)(4)	§ 1910.23(a)(10)
§ 1915.85(a)(5)	§ 1910.24(i)
§ 1915.85(a)(7)	§ 1910.24(d)

Proposed provision	Existing provision
§ 1915.85(a)(8)	§ 1910.24(f)
§ 1915.85(a)(9)	§ 1910.24(f)
§ 1915.85(a)(11)	§ 1910.24(b)
§ 1915.85(a)(12)	§ 1915.74(a)(9)

Paragraph (a)(6) of § 1915.85 would require stairways to be capable of supporting, without failure, their own weight and at least five times the maximum intended load applied to the stairway, or their own weight and a concentrated moving live load of 1,000 pounds, whichever is greater. This is essentially the same requirement as § 1910.24(c), except the proposal clarifies that the total load a stairway must carry includes its own weight plus the specified live loads. In addition, the proposal would require the stairway to carry these loads without failure, that is, without breaking, separating, or exceeding the ultimate strength of component parts. Although this is implicit in the existing provisions, the proposal would clarify the point.

Paragraph (a)(10) of § 1915.85 would require all parts of stairways to be free of hazardous projections such as nails protruding from walls. This is a new rule as there is no similar existing Part 1910 or Part 1915 provision. However, OSHA does make this requirement for the construction industry in § 1926.501(c), and proposes to include it in this subpart because of the obvious danger such hazards can pose.

Section 1915.85(b)—Stairrails and handrails. This paragraph would set forth the requirements for all stairrails and handrails (except those which are part of a vessel or vessel section), and would apply regardless of the stair height above lower levels. In the following discussion, it is important to recognize the difference between the terms "stairrail" and "handrail." As briefly discussed in the definitions section above, a stairrail is a vertical barrier erected along unprotected sides and edges of a stairway to prevent employees from falling to a lower level. A handrail is a rail used to provide employees a handhold for support while climbing, descending, or resting on a stairway. On many stairways, the top of the stairrail system doubles as the required handrail.

Paragraph (b)(1) of § 1915.85 would require stairways having four or more risers to be equipped with at least one handrail, and one stairrail system along each unprotected side or edge. This is essentially the same provision as in § 1910.23(d)(1) and § 1910.24(h), except the proposed requirements do not depend upon the width of the stairway. OSHA believes the existing width criteria are unnecessarily specific and do not significantly affect worker safety. Consequently, the width criteria of § 1910.23(d)(1) are proposed to be deleted.

Paragraph (b)(2) of § 1915.85 would require winding and spiral stairways to be equipped with a handrail offset to prevent employees from walking on those portions of the stairways where the treads are less than six inches wide. This is the same requirement as § 1910.23(d)(2), except the proposal expands the rule to include spiral stairways. Spiral stairways would be included because the problem of too narrow a tread is common to both types of stairways.

Paragraph (b)(3) of § 1915.85 would require the height of new stairrails to be not less than 36 inches (30 inches for existing systems) as measured from the upper surface of the stairrail system down to a point on the upper surface of the tread in line with the face of the riser at the forward edge of the tread. Existing § 1910.23(e)(2) presently specifies a minimum height of 30 inches and a maximum height of 34 inches, measured the same way as required by the proposed rule. The limits specified in the existing rule were developed so they would be compatible with existing handrail limits which were also 30 and 34 inches, and so allowed one rail to serve two functions. However, a study by the University of Michigan (Ref. 1:56) shows that the minimum height for railings providing fall protection should be 42 inches. That study suggests that even 42 inches may be too low because "the height of the stair railing several steps below the point where the fall originates is considerably lower than the stair railing height at the point where the fall originates, thus, it appears that a fall during descent may be more likely to project the subject in the direction of this 'lower' railing, and possibly over the railing" (Ref. 1:57). Nevertheless, in order to recognize the limits already established by many existing building codes, and to allow shipyards to continue the common practice of combining stairrails and handrails into one railing system, OSHA is proposing that the minimum height of stairrails be 36 inches. In addition, because it would not be feasible to require retrofitting of all existing railings in shipyards, OSHA is proposing that existing systems be "grandfathered."

Paragraph (b)(4) of § 1915.85 would require midrails, screens, mesh, intermediate vertical members (such as balusters), or equivalent structural members to be placed between the stairways steps and the top of the stairrail system. This is essentially the same as existing rule § 1910.23(e)(2) which requires stairrails to be similar in construction to guardrails, except specified alternatives to midrails would be allowed. Paragraph (b)(4)(i) would require midrails, when used, to be located midway in height on a stairrail system. This is the same requirement as contained in § 1910.23(e)(1). Paragraph (b)(4)(ii) would require screens or mesh, when used, to fill the entire opening between toprail and stairway steps, and paragraph (b)(4)(iii) would require baluster type members to be no more than 19 inches apart. Paragraph (b)(4)(iv) would allow other arrangements of structural members provided all openings in the system are not more than 19 inches wide. These rules would technically be new provisions as the existing rule only addresses the use of midrails. However, these new rules are not expected to increase costs of compliance because they are alternative choices to the use of midrails, and would allow greater flexibility for the employer providing fall protection.

Paragraph (b)(5) of § 1915.85 would require handrails and the toprails of stairrail systems to be capable of withstanding, without failure, a force of at least 200 pounds applied within two inches of the top surface, in any downward or outward direction, and at any point along the top edge. This is essentially the same requirement as contained in § 1910.23(e)(3).

Paragraphs (b)(6) and (b)(7) of § 1915.85 specify the maximum and minimum height for handrails, and stairrails which are to serve as handrails. Although existing rules §§ 1910.23(e)(2) and 1910.23(e)(5)(ii) specify 30 and 34 inches as appropriate limits, a study by the University of Michigan (Ref. 1:43) has determined that 33 inches is the optimum height, and that a variance from this height of plus or minus three inches is appropriate. This new limit, coupled with the requirements of paragraph (b)(3), would allow any 36-inch high stairrail system to double as a handrail. However, the upper limit for handrails is proposed to be 37 inches to allow some flexibility in providing a system that can meet the hight criterion for both stairrail systems and handrail systems.

Paragraph (b)(8) of § 1915.85 would require stairrail systems and handrails to be so surfaced as to prevent injury to employees from punctures or lacerations, and to prevent the snagging of clothes (which in turn could cause an employee to trip). This is the same

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requirement as § 1910.23(e)(3)(v)(*a*) which covers stairrails, except the proposal would also include handrails because they can pose the same hazards. This provision would not preclude rails from being surfaced to provide grip enhancement.

Paragraph (b)(9) of § 1915.85 would require handrails to provide an adequate handhold for anyone using them. This is the same requirement as in § 1910.23(e)(5)(i).

Paragraph (b)(10) of § 1915.85 would require that the ends of stairrail systems and handrails be constructed such that they do not constitute projection hazards. This is the same requirement as in § 1910.23(e)(1) and § 1910.23(e)(5)(i).

Paragraph (b)(11) of § 1915.85 would require handrails to be spaced a minimun of one and one-half inches away from walls, stairrail systems, and other objects. This is a change from § 1910.23(e)(6), which requires a minimum clearance of three inches. The proposed change would bring OSHA standards into conformance with the current requirements of many local building codes, as well as to ANSI standard A12.1–1973, "Safety Requirements for Floor and Wall Openings, Railings, and Toeboards," paragraph 7.6 (Ref. 2).

Section 1915.86 Ladders

This section specifies the requirements for all ladders used by shipyard employees, except those which are a permanent part of a vessel or vessel section.

Section 1915.86(a)—General. Paragraph (a) of § 1915.85 would set forth the general requirements for the construction of ladders.

Paragraph (a)(1) of § 1915.86 would specify minimum strength requirement for all ladders. Specifically, paragraph (a)(1)(i) would require each portable ladder and each job-built ladder to be capable of supporting, without failure, at least four times the maximum intended load applied or transmitted to that ladder when the ladder is placed at an angle of 75½ degrees from horizontal. This minimum strength requirements for portable ladders is essentially the same requirement as contained in existing paragraphs (a)(4) and (a)(6) of § 1915.72, which reference the A14.2–1972 ANSI standard (paragraph 6.1.3) for portable metal ladders (Ref. 4) and the A14.1–1975 ANSI standard (paragraph 6.1.3) for portable wood ladders (Ref. 3), respectively. However, breakage, separation of component parts, or load refusal would be used as the failure criteria instead of "deformation," as some rung deformation will normally result when such loads are applied, and a deformed rung does not necessarily indicate a ladder which is unsafe for use. Job-built ladders do not have minimum strength criteria either in the existing OSHA rules or in the ANSI standard for job-built ladders, A14.4–1979 (Ref. 5). However, their potential use is the same as that of manufactured portable ladders, and, therefore, the proposed standards would impose the same strength requirements.

Paragraph (a)(1)(ii) of § 1915.86 would require fixed ladders to be capable of supporting, without failure, at least two loads of 250 pounds each, concentrated between any two consecutive points of attachment, plus other anticipated loads such as those caused by wind and ice buildup. The paragraph would also require that each step and rung be capable of supporting a minimum concentrated load of 250 pounds, applied in the middle of its span. This requirement is based on § 1910.27(a)(1), however, the specific requirements have been changed to reflect the more recent requirements of ANSI A14.3–1984 (Ref. 6), paragraph 3.2.1.1. The ANSI criteria are based on loads of 250 pounds, and are consistent with OSHA's current use of 250 pounds as the average design weight of an employee and tools.

OSHA believes it may not be practicable for an employer to test every ladder before purchase to see if it meets the performance criteria of paragraph (a)(1) of § 1915.86. However, many ladders are manufactured to meet ANSI ladder standards, and paragraph (a)(1) would recognize such ladders as meeting the requirements of paragraph (a)(1). Appendix B references the current ANSI standards that apply to portable wood ladders, portable metal ladders, portable reinforced ladders, fixed ladders, and job-made ladders.

Ladders built in conformance with Appendix B would be deemed by OSHA to meet the strength requirements of paragraph (a)(1). This includes extra heavy duty type 1A ladders built in accordance with the 1982 ANSI standards for portable metal ladders (Ref. 4). The standard would also apply to portable reinforced plastic ladders (Ref. 9). ANSI requires these types of ladders to have a safety factor of only 3.3. However, OSHA believes that the extensive testing procedures also required by ANSI are sufficient to insure adequate ladder strength.

The use of Appendix B would allow design flexibility for employers who desire to engineer their own ladders, and would provide an acceptable design for employers who do not desire to or cannot engineer the ladders they use. The important consideration is that the ladder be capable of safely supporting the loads imposed.

Paragraph (a)(2) of § 1915.86 would require ladder rungs, cleats, and steps to be parallel, level, and uniformly spaced when the ladder is in position for use. This requirement is based on § 1910.25(c)(2)(1)(*b*) which applies to portable wood ladders, and § 1910.27(b)(1)(ii) which applies to fixed ladders. However, OSHA believes that proper footing is necessary on all ladders and this provision would apply to all types of ladders.

Paragraph (a)(3) of § 1915.86 would require that rungs, cleats, and steps be spaced not less than six inches apart, nor more than 12 inches apart, as measured along the siderails of fixed and portable ladders, and that the limits be six and 16-½ inches for individual step or rung ladders. The 12-inch limit is the same as §§ 1910.25(c)(2)(i)(*b*) and 1910.26(a)(1)(iii). The other proposed limits are based on the general limits used in ANSI's current standards for the most commonly used types of ladders (Refs. 5–9). Public comment is requested on these limits in the Specific Issues section of this preamble.

Paragraph (a)(4) of § 1915.86 would specify minimum rung, cleat, and step length for various ladders. These limits are based on current § 1910.25(c)(2)(i)(*c*), § 1910.26(a)(2)(i), § 1910.27(b)(1)(iii), and § 1915.72(b)(5). The minimum limit of 12 inches for plastic reinforced ladders is based on the requirements set forth for such ladders in ANSI A14.5–1972 (Ref. 9).

Paragraph (a)(5) of § 1915.86 would require individual rung ladders to be shaped such that employees' feet cannot slide off rung ends. This is the same requirement as § 1910.27(b)(1)(v).

Paragraph (a)(6) of § 1915.86 would require rungs and steps of metal ladders to be corrugated, knurled, dimpled, coated with skid resistant material, or be otherwise treated to minimize slipping. This is the same requirement as the portable metal ladder requirement in § 1910.26(a)(1)(v), except it would apply to all ladders as slipping hazards can be present on all types of ladders.

Paragraph (a)(7) of § 1915.86 would require Jacob's ladders to be of the double rung or flat tread type. This is the same requirement as in § 1915.74(d)(1).

Paragraph (a)(8) of § 1915.86 would prohibit the tying together of ladder sections to make a longer ladder, unless the sections are designed for such use. This provision is essentially the same as § 1910.25(d)(2)(ix) and § 1910.26(c)(3)(vi).

Paragraph (a)(9) of § 1915.86 would require that a spliced siderail be equivalent in strength to a siderail of the same length made of one piece of the same material. This is the same requirement as the construction industry provision, § 1926.450(a)(7). OSHA believes this rule should apply to all ladders, not just job-made ladders used in construction, as proper splices are important on all ladders in order to maintain proper ladder strength along its full length.

Paragraph (a)(10) of § 1915.86 would require stepladders to be provided with a metal spreader or other locking device to keep the ladder in an open position when being used. This is the same provision as §§ 1910.25(c)(i)(*f*), and 1910.26(a)(3)(viii).

Paragraph (a)(11) of § 1915.86 would require ladder surfaces to be free of puncture and laceration hazards. This provision is essentially the same requirement as in § 1910.25(b)(1), § 1910.26(a)(1), § 1910.27(b)(1)(iv), and § 1915.72(b)(2).

Paragraph (a)(12) of § 1915.86 would prohibit wood ladders from being coated with any opaque covering except as necessary for identification or warning labels. This provision is intended to prohibit covering or painting over any splits or cracks in any wood ladder component which would cause the defect to be unnoticeable to a ladder user. This requirement is based on the § 1915.72(a)(6) reference to ANSI A14.1–1975 (Ref. 3), which addresses this in paragraph 7.1.9. However, the specific wording of the proposal is based on the revised ANSI A14.1–1982 (Ref. 7), paragraph 8.4.6.3.

Paragraph (a)(13) of § 1915.86 would require that when two or more separate ladders are used to reach an elevated work area, the ladders be offset and a platform be used between ladders. This would be a new provision, and is based on the need for proper footing at all times, especially when moving from one ladder to another. The platform also serves to protect employees who are descending a ladder which does not extend to the next lower level from inadvertently stepping off the bottom of a ladder and falling.

Paragraph (a)(14) of § 1915.86 would require a minimum perpendicular clearance of seven inches between fixed ladder rungs, cleats, and steps, and any obstruction behind the fixed ladder. This is essentially the same requirement as contained in § 1910.27(c)(4). However, the proposal does not provide for "unavoidable" obstructions as in the existing rule. This change is made in line with the language of the more recent ANSI standard A14.3–1984 (Ref. 6), paragraph 5.4.2.1, and reflects the need for proper toe clearance at all times.

Paragraph (a)(15) of § 1915.86 would require a minimum clearance of 30 inches between fixed ladders and any obstruction on the climbing side of the ladder. This is the same provision as in § 1910.27(c)(1). In keeping with ANSI A14.3–1984 (Ref. 6), paragraph 5.4.1.1, the other clearance limits presently in § 1910.27(c)(1) would be deleted as unnecessary, because when unavoidable obstructions are present, paragraph (a)(16) of § 1915.86 would allow the minimum clearance to be as low as 24 inches, provided a device is installed to guide employees around the obstruction. This provision is based on ANSI A14.3–1984, paragraph 5.4.1.3.

Paragraph (a)(17) of § 1915.86 would specify minimum and maximum step-across distances at landings for fixed ladders of seven inches and 12 inches, respectively. This is the same requirement as in § 1910.27(c)(6), except the existing two and one-half inch minimum limit is changed to seven inches to be consistent with the minimum clearance limit of proposed rule § 1915.86(a)(14).

Paragraph (a)(18) of § 1915.86 would require a minimum of 15 inches side clearance (from the ladder centerline) for all fixed ladders that do not have cages or wells. This is the same provision as in § 1910.27(c)(2).

Paragraphs (a)(19) and (a)(20) of § 1915.86 would require fixed ladders to be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet, but the top of the ladder is more than 24 feet above lower levels; and for all fixed ladders where the length of climb equals or exceeds 24 feet. This requirement is based on § 1910.27(d)(1)(ii) and (d)(5), which require protection on ladders longer than 20 feet. However, the proposed requirement reflects the updated and clarified language of ANSI A14.3–1984 (Ex. 6), paragraph 4.1., and the proposal would allow the use of the self-retracting lifelines as alternative fall protection to wells, cages, and ladder safety devices.

Paragraphs (a)(21) and (a)(22) of § 1915.86 would set forth the requirements for fixed ladder cage and well construction and are essentially the same as § 1910.27(d). However, the proposal reflects the updated and clarified language of ANSI A14.3–1984 (Ref. 6), paragraphs 6.1 and 6.2. Significant changes are as follows: Maximum cage size is increased from 28 inches to 30 inches to allow easier employee movement; wells would not be required to encircle the ladder completely and be free of projections; and the bottom access opening for wells would be required to be not less than seven feet nor more than eight feet high in order to provide proper access to the ladder (the existing standard does not clearly address this point).

Paragraph (a)(23) and (a)(24) of § 1915.86 would set forth the requirements for ladder safety devices and are based on § 1910.27(d)(5). However, the proposal would provide necessary design and performance criteria which are not clearly set forth in the existing rule.

Paragraphs (a)(23)(i) of § 1915.86 would require ladder safety devices and their support systems (such as the ladder to which they are attached) to be capable of withstanding, without failure, a drop test consisting of an 18-inch (.41 m) drop of a 500 pound (226 kg) weight. This provision is based on the ANSI A14.4–1984 (Ex. 6), paragraph 7.1.3. Paragraph .86(a)(23)(ii) would require the devices to be of a design which permits employees using the system to ascend or descend without continually having to manipulate any part of the system. The requirement is essentially the same as paragraph 7.3.1 of ANSI A14.3–1984. Paragraph § 1915.86(a)(23)(iii) would require ladder safety devices to limit the descending velocity of an employee to seven feet per second (2.1 m/sec) or less within two feet (.61 m) after a fall occurs. A National Bureau of Standards' report (Ex. 10) suggests a maximum descent rate of 15 feet per second for uninjured employees, and 10 feet per second (3.1 m/sec) for injured employees using descent devices. OSHA is proposing a more conservative rate of seven feet per second (2.1 m/sec) for this type of fall protection system, as a descending employee is exposed to additional risk of injury from contact with the ladder during descent. OSHA believes that in addition to providing protection from the force of the fall, a seven foot per second rate would enable an employee to regain control on the ladder, or to allow for emergency egress at a reasonable and safe speed. It respresents the speed attained after free falling approximately one foot (30.5 cm).

Paragraph (a)(23)(iv) of § 1915.86 would require that the maximum length of the connection between the carrier or lifeline and the point of attachment to the body belt not exceed nine inches (23 cm). This requirement is based on a recommendation contained in Drs. Chaffin and Stobbe's report, "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard, 29 CFR Part 1910, Subpart D" (Ref. 11), which indicates that this

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distance is needed to ascend and decend a ladder in a position that is not awkward.

Paragraph (a)(24) of § 1915.86 would set forth the mounting requirements for ladder safety devices. Paragraph (a)(24)(i) of § 1915.86 would require mountings for rigid carriers to be attached at each end of the carrier, with intermediate mountings spaced along the entire length of the carrier. This is based on ANSI A.14.3–1984, paragraph 7.3.4. Paragraph (a)(24)(ii) of § 1915.86 would require mountings for flexible carriers to be attached at each end of the carrier, and that when the system is exposed to wind, cable guides be installed at a minimum spacing of 25 feet (7.6 m) and a maximum spacing of 40 feet (12.2 m) along the entire length of the carrier to prevent wind damage to the system. These are the same requirements as in ANSI A.14.3–1984, paragraph 7.3.5. Paragraph (a)(24)(iii) of § 1915.86 would require that the design and installation of mountings and cable guides not reduce the design strength of the ladder. This is based on ANSI A14.3–1984, paragraph 7.1.4.

Paragraph (a)(25) of § 1915.86 would require the siderails of fixed ladders to extend 42 inches above the top of the access level or landing platform served by the ladder. This is essentially the same provision as in § 1910.27(d)(3). However, the proposal also provides that for a parapet ladder, if the parapet is cut to permit passage through the parapet, the access level shall be the level of the roof. If the parapet is continuous (i.e., uncut) then the access level is the top of the parapet. This part of the provision is based on ANSI A14.3–1984, paragraph 5.3.2.1.

Paragraph (a)(26) of § 1915.86 would require ladder extensions on through-type fixed ladders, which are not equipped with ladder safety devices, to have the steps or rungs omitted from the extension. In addition, the extension shall be flared not less than 24 inches (18 inches for existing ladders) and not more than 30 inches. The existing 18-inch minimum limit of § 1910.27(d)(3) would be "grandfathered." The change of limit is based on the updated requirements of ANSI A14.3–1984, paragraph 5.3.2.2., which require more distance between rails to facilitate employee passage. The proposal would allow a maximum spacing of 36 inches for ladders equipped with ladder safety devices. This rule is also based on ANSI A14.3–1984, paragraph 5.3.2.2.

Paragraph (a)(27) of § 1915.86 would require the siderails and the steps or rungs of side-step ladders to be continuous in the extension. It is the same requirement as in § 1910.27(d)(3), although the wording is changed to reflect ANSI A14.3–1984, paragraph 5.3.2.3.

Paragraph (a)(28) of § 1915.86 would require specified individual rung ladders to extend 42 inches above the landing platform, either by providing additional rungs to serve as grab bars, or by providing vertical grab bars. This is a clarification of how § 1910.27(d)(3) applies to such ladders, and is based on ANSI A14.3–1984, paragraph 5.3.3.1.

Section 1915.86(b)—Use. Paragraph (b) of § 1915.86 would set forth the requirements for safe ladder use by shipyard employees.

Paragraph (b)(1) of § 1915.86 would require ladder siderails to extend at least three feet above the upper level or surface to which the ladder is used to gain access. This is essentially the same requirement as § 1910.25(d)(2)(xy) and § 1915.72(a)(3). The proposal would provide that when such extensions are not possible because of the ladder's length, then the ladder shall be secured at its top and employees be provided with a grasping device such as a grabrail. This is essentially the same provision as in § 1915.72(a)(3), except that the proposal would require the securing of the ladder and would not limit alternative solutions to grabrails.

Paragraph (b)(2) of § 1915.86 would require ladders to be free of slipping hazards. This requirement is based on the § 1910.25(a)(1)(xi) requirement that ladder rungs be "kept free of grease and oil"; and the § 1910.26(c)(2)(vi) (*d*) requirement to keep oil, grease, and slippery materials off ladders.

Paragraph (b)(3) of § 1915.86 would require that ladders not be loaded beyond their maximum intended load-carrying capacity, nor beyond their rated capacity. This rule would clarify the intent of the existing and proposed rules which set forth design criteria for ladders. This provision would prevent the overstressing of ladders which can lead to their failure.

Paragraph (b)(4) of § 1915.86 would require that ladders be used only for the purpose for which they were designed. This provision is based on the § 1910.25(d)(2)(xi) requirement that ladders not be used as guys, braces, skids, or for other than their intended purpose. This provision is also based on the § 1910.26(c)(3)(vii) requirement that ladders not be used as braces, skids, guys, gin poles, gangways, or for other purposes than that for which they were intended, unless specifically recommended for such use by the ladder manufacturer.

Paragraph (b)(5) of § 1915.86 would require non-self-supporting ladders to be used such that the angle of inclination is approximately one to four, horizontal distance to working ladder length distance. This is the same provision as §§ 1910.25(d)(2)(i) and 1910.26(c)(3)(1). The proposed rule would also include the language of ANSI A14.4–1979 (Ref. 5), "Safety Requirements for Job-Made Ladders," paragraph 4.4.1, which increases the required minimum angle to a ratio of one to eight for job-made ladders made with spliced siderails. This steeper angle minimizes the stresses placed on the spliced siderails when the ladder is in use.

Paragraph (b)(5) of § 1915.86 would require fixed ladders to be used at a pitch no greater than 90 degrees from the horizontal as measured to the backside of the ladder. This rule is based on § 1910.27(e)(4).

Paragraph (b)(6) of § 1915.86 would require ladders to be used only on stable and level surfaces unless secured to prevent accidental displacement. This requirement is based on the §§ 1910.25(d)(2)(iii) and 1910.26(c)(3)(iii) requirements that portable ladders have a "secure footing." The term "stable" is used in lieu of the term "secure" as the latter term is used in paragraph (b)(8) of § 1915.86 to mean physically attaching the ladder to some anchorage. Examples of unstable surfaces are boxes and barrels, the same as in § 1910.25(d)(2)(v). The additional requirement that the surface must be level or the ladders be secured is based on ANSI A14.1–1982 (Ref. 7), paragraph 8.3.4, and is included because surfaces which are not level do not provide suitable support for unsecured ladders.

Paragraph (b)(7) of § 1915.86 would prohibit the use of ladders on slippery surfaces unless they are secured or provided with slip-resistant feet. This is essentially the same provision as in §§ 1910.25(d)(2)(i) and 1910.25(d)(2)(xix).

Paragraph (b)(8) of § 1915.86 would require ladders placed in passageways, doorways, or any location where they can be displaced by other activities or traffic, to be secured in place, or a barricade system used to keep activities and traffic away from the ladder. This is esentially the same provision as § 1915.72(a)(3), which requires portable ladders to be lashed, blocked, or otherwise secured to prevent their being displaced. However, the proposal would allow the alternative of barricading the area around the ladder. The proposed rule is also based on § 1910.25(d)(2)(iv) which prohibits ladders from being placed in front of a door unless the door is blocked, locked, or guarded.

Paragraph (b)(10) of § 1915.86 would require the tops of non-self-supporting ladders to be placed such that the two siderails are equally supported, or provided with a single support attachment. This requirement would insure proper ladder stability and is essentially the same provision as §§ 1910.25(d)(2)(iv) and 1910.26(e)(3)(iv).

Paragraph (b)(11) of § 1915.86 would provide that ladders not be moved, shifted, or extended while occupied, and is based on § 1910.25(d)(2)(xvi), which prohibits adjustment of ladders while an employee is on the ladder. The proposal would clarify the term "adjustment," and would apply to all types of ladders.

Paragraph (b)(12) of § 1915.86 would require ladders to have non-conductive siderails when used where the ladder could contact energized equipment, or when used by employees performing electric arc welding operations. This is essentially the same rule as § 1915.72(a)(5), and clarifies the requirements of § 1910.26(c)(3)(viii).

Paragraph (b)(13) of § 1915.86 would prohibit using the top of a stepladder as a step. This is esentially the same provision as § 1910.25(d)(2)(xii), except it would apply to all stepladders and not just "ordinary" stepladders, as the hazard is the same.

Paragraph (b)(14) of § 1915.86 would prohibit using the cross-bracing on stepladders as a step. This is essentially the same provision as § 1910.25(d)(2)(xx).

Paragraph (b)(15) of § 1915.86 would require ladders to be inspected for visible defects periodically, preferably before each use, and after any occurrence which could affect their use. This is essentially the same requirement as is contained in § 1910.25(d)(1)(x), § 1910.26(c)(2) (iv) and (vi), and § 1915.72(a)(1). Public comment is requested on the frequency of inspection in the Specific Issues section of this preamble.

Paragraph (b)(16) of § 1915.86 would provide that ladders with structural defects be immediately tagged and withdrawn from service until repaired. This is essentially the same rule as contained in §§ 1910.25(d)(1)(x), 1910.26(c)(2)(viii), and 1915.72(a)(1).

Paragraph (b)(17) of § 1915.86 would require ladder repairs to restore the ladder to a condition meeting the design criteria of the ladder. This clarifies the term "repaired" as used in proposed paragraph § 1915.86(b)(16). It means that if, for example, a Type 1A extra-heavy-duty-rated ladder has a broken rung, the replacement rung also must be capable of supporting at least a 300 pound load.

Paragraph (b)(18) of § 1915.86 would prohibit the use of single rail ladders except for emergency or rescue operations. This is essentially the same rule as § 1910.25(d)(2)(x), except emergency and rescue use of such ladders would be specifically allowed.

Paragraph (b)(19) of § 1915.86 would require Jacob's ladders to be either hung without slack from their lashings, or be pulled up entirely. This is the same rule as § 1915.74(d)(2).

Paragraph (b)(20) of § 1915.86 would restrict the use of blasting hoods, welding helmets, and burning goggles by employees on ladders, and is the same rule as contained in § 1915.77(c).

Paragraph (b)(21) of § 1915.86 would require employees who are ascending or descending a ladder to face the ladder. This is the same rule as § 1910.26(c)(3)(v) and clarifies the intent of § 1910.25(d)(2)(vii) which uses the non-mandatory term "should" in its requirement.

Section 1915.87 Gangways, walkways, ramps, catwalks, and dockboards (bridge plates).

This section would set forth the general requirements for the construction of gangways, walkways, ramps, catwalks, and dockboards. However, the requirements for fall protection (i.e., guardrails and personal fall protection equipment) would be contained in proposed Subpart M—Fall Protection.

Section 1915.87(a)—Gangways and walkways. Paragraph (a) of § 1915.87 would set forth the requirements for the construction of gangways and walkways. This is essentially the same provision as existing § 1915.74(a)(1), but it would clarify that both gangways and walkways are covered. The provision would recognize that gangways on vessels inspected and certified by the U.S. Coast Guard are deemed to be satisfactory for use by employees, except in cases where the vessel's regular gangway is not used. This is the same provision as existing § 1915.74(a)(3).

Section 1915.87(b)—Ramps. Paragraph (b) of § 1915.87 would set forth the requirements for the construction of ramps. Paragraph (b)(1) of § 1915.87 would require ramps for employee access to meet the same criteria as set forth for gangways and walkways. Paragraph (b)(2) of § 1915.87 would require vehicle access ramps to be capable of supporting the maximum intended load, without failure and is based on § 1915.74(c)(1).

However, the proposed requirement would replace the existing requirement that such ramps "be of adequate strength." The change, coupled with the proposed definitions for "maximum intended load" and "failure," clarifies the requirement by setting forth the performance criteria to be met.

Section 1915.87(c)—Catwalks. Paragraph (c) of § 1915.87 would set forth the requirements for the construction of catwalks used on marine railways. It is based on both existing § 1915.75(g) and the proposed provisions for gangways and walkways discussed above.

Section 1915.87(d)—Dockboards (Bridge plates). Paragraph (d) of § 1915.87 would set forth the requirements for the construction of use of dockboards. It is the same as § 1910.30(a) which covers the same topic. However, public comment is requested in the Specific Issues section of this preamble as to whether or not the existing reference to Commercial Standard CS 202–56 (1961) should be updated.

Sections 1915.88 through 1915.90 are reserved for future use.

Specific Issues

In addition to any other comments made on this subpart, the public is requested to comment on the following specific issues:

1. The proposed definitions for "low hazard contents," "high hazard contents," and "ordinary hazard contents" are the same as the existing § 1910.35 definitions for those terms. The § 1910.35 definitions are essentially the same as the definitions used by the National Fire Protection Association (NFPA). However, when informed that these provisions might be revised, the following comments were made in 1984 by the International Brotherhood of Painters and Allied Trades in respect to these definition:

"High hazard contents," "low hazard contents," and "ordinary hazard contents" are defined in such a fashion as to be internally inconsistent, vague, non-exclusive, insufficient, and inappropriate in the context of the ordinary meaning of the term "hazardous" as it is used in other OSHA standards and in standard industrial hygiene practice. "High hazard contents," for example, should include materials that are "highly reactive, oxidizing or combustible" as well as those "capable of generating toxic fumes, dusts, mists or vapors," and the definition should certainly include the "fear" of "any uncontrolled release of such materials" not just those which generate fumes. Similarly, "low hazard . . . requiring the use of emergency exits • • • " should not be limited only to "combustibility." Finally, "ordinary hazards," leaves unclassified materials "which burn with moderate rapidity," but do not give off "considerable smoke" (they cannot be "low hazard" because they burn with "moderate rapidity" and they cannot be "high hazard" as neither "poisonous fumes nor explosions are to be feared.")

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In light of the above comments, public comment is requested on whether the proposed definitions should be modified and, if so, how should they be changed.

2. Existing provisions contained in §§ 1910.35, 1910.36, and 1910.37 and proposed provisions of §§ 1915.80 and 1910.81 set forth minimum requirements for providing employees a safe means of escape from buildings and structures on shore during fires and other emergencies. Public comment is requested on what similar provisions, if any, should apply to vessels, vessel sections, vehicles, and other mobile equipment. Comments should include appropriate injury and cost data.

3. Paragraph § 1910.38, *Employee emergency plans and fire prevention plans,* "applies to all emergency action plans required by a particular standard" (§ 1910.38(a)(1)). Presently, the only OSHA standard that requires such plans is Subpart L of Part 1910, Fire Protection. However, Subpart L specifically omits maritime activities from its application. Such omission was made because at the time Subpart L and § 1910.38 were developed, shipyard application was not evaluated. Public comment is now requested on areas of shipyard employment in which emergency action plans as described in § 1910.38(a) are appropriate. Comments should address which parts of § 1910.38(a) should or should not be applied and under what conditions, and should include appropriate injury and cost data. Comments should also address whether or not the provisions should apply to vessels and vessel sections, or only to shoreside facilities.

4. Proposed paragraph (b)(15) of § 1915.86 would require ladders to be inspected for visible defects periodically, preferably before each use, and after any occurrence which could affect their use. This requirement for inspection is based on §§ 1910.25(d)(1)(x), 1910.26(c)(2) (iv), (vi), and 1915.72(a)(1). Generally, the existing rules do not specify a definite frequency rate for inspections. The proposed frequency, however, is similar to that set out in paragraphs 6.4.1 of ANSI 14.1–1982 (Ex. 7), and A14.2–1982 (Ex. 8), and to the requirement in § 1910.26(c)(2)(vi). Public comment is requested on the specified frequency of inspection.

5. Proposed paragraph (a)(1)(i) of § 1915.86 would require ladders to have a four to one strength capacity (ladders meeting ANSI specifications (Refs. 3–9) are deemed to meet this requirement). However, once a ladder has been designed and is in use, it is difficult to assess its strength capacity as loading the ladder to four times its rated capacity could permanently damage the ladder and render it useless. As an alternative, setting a maximum allowable deflection for a ladder while is use might be an appropriate method of evaluating a ladder's capacity. Public comment is requested on whether or not OSHA should specify a maximum allowable deflection for ladders, and if so, how much should be allowed, and how should it be measured (for example, horizontally with end points supported and the working load applied in midspan)?

6. Proposed paragraph (a)(3) of § 1915.86 specifies minimum vertical spacing between ladder rungs, steps, and cleats. These limits are based on the general limits set forth in the ANSI standards for ladders (Refs. 5–9). However, the proposed limits reflect OSHA's attempt to consolidate the wide range of ANSI's limits, and consequently, do not mirror the existing ANSI provisions exactly. Therefore, public comment is requested on the following points:

(a) Are the proposed limits appropriate, or should the more specific ANSI limits be adopted?

(b) If the proposed limits are appropriate, should they be consolidated further so that there is only one set of rules for vertical spacing, such as six to 12 inches, and one minimum width limit, such as 11½ inches?

As it is OSHA's intention to simplify the existing rules and use less specification type language, proponents for using the more specific ANSI limits should state why the various limits are required for each type of ladder. Comments should include appropriate injury and cost data.

7. Public comment is requested on whether or not the following rule should be added to Subpart E: "Workers shall not be permitted to climb a ladder with their hands full. A handline shall be used for raising and lowering tools and materials." Comments should include appropriate injury and cost data.

8. The proposed provisions on the minimum height of stairrail systems § 1915.85(c)(3) and § 1915.85(c)(7)), and the minimum amount of siderail fare on through-type fixed ladders (§ 1915.86(a)(28)) are intended to bring the shipyard employment standards into conformance with similar provisions being developed for the construction industry safety standards and the general industry safety standards. Public comment is requested on whether or not existing guardrail systems and fixed ladder siderails in shipyard employment should be "grandfathered," and whether or not other facilities or equipment should also be "grandfathered," and why such "grandfathering" is appropriate. Comments should include a discussion of related cost, injury, and feasibility data.

9. Proposed paragraph (d)(3) of § 1915.87 is based on existing § 1910.30(a)(3) and would require powered dockboards to be designed and constructed in accordance with Commmercial Standard CS 202–56 (1961) "Industrial Lifts and Hinged Loading Ramps" published by the U.S. Department of Commerce. Public comment is requested on whether or not the referenced requirements should be modified. If so, comments are requested on what changes should be made and why they should be made. Relevant cost, injury, and feasibility data are also requested.

10. In some of the existing provisions and in some of the proposed provisions, OSHA uses specific numerical limits to define and clarify the duties set forth. For example, see Issue Number 6 above addressing ladder rung spacing, and see existing § 1910.24(e) and proposed § 1915.85(a)(2) which address stairway slope. These and other limits are based on existing laws and consensus standards, and are used in lieu of more performance-oriented language such as "provide adequate rung spacing," or "install stairways at such angles that tripping is minimized," or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA believes that although such performance-oriented language would be less restrictive on employers, and thus give them more options when abating a hazard, it does not always tell the employer exactly what is required (i.e., how to do something "right"). On the other hand, requiring specific numerical limits in the rule and allowing the employer to use other limits which the employer can show will provide "equivalent" protection may respond to both these concerns. OSHA believes that the use of specific limits in certain provisions (such as those listed above, and those for stairrail, handrail heights, and similar requirements) provides the required notice to employers as to how they can comply with a provision compared to how OSHA intends to enforce the provision. OSHA believes that such notice serves to inform employees and employers about the proper way to do things; promotes consistency in hazard abatement at all worksites; and also minimizes legal disputes over the intent of a requirement. On the other hand, specification language can increase costs without increasing safety, discourage technical innovation, prevent the use of safe alternatives, and fail to anticipate the varying needs and situations in the numerous workplaces covered by the standard.

Public comment is requested on whether or not OSHA's use of specification language is appropriate, or if it should be moved to a non-mandatory appendix which could provide guidance to employers. If not, should the provisions be written to provide the desired flexibility and the required fair notice? If the continued use of such limits is appropriate, are the proposed limits sufficient to abate the hazards? Comments should include appropriate cost and injury data.

III. *References*

1. Chaffin et al., *As Ergonomic Basis for Recommendations Pertaining to Specific Sections of OSHA Standard, 29 CFR Part 1910, Subpart D—Walking and Working Surfaces,* University of Michigan, Department of Industrial and Operations Engineering, College of Engineering, Ann Arbor, Michigan, 1978.

2. American National Standards Institute, *A12.1–1973—Safety Requirements for Floor and Wall Openings, Railings, and Toeboards,* New York, New York.

3. American National Standards Institute, *A14.1–1975—Safety Requirements for Portable Wood Ladders,* New York, New York.

4. American National Standards Institute, *A14.2–1972—Safety Requirements for Portable Metal Ladders,* New York, New York.

5. American National Standards Institute, *A14.4–1979—Safety Requirements for Job-Made Ladders,* New York, New York.

6. American National Standards Institute, *A14.3–1984—American National Standard for Ladders—Fixed—Safety Requirements,* New York, New York.

7. American National Standards Institute, *A14.1–1982—American National Standard for Ladders—Portable Wood—Safety Requirements,* New York, New York.

8. American National Standards Institute, *A14.2–1982—American National Standard for Ladders—Portable Metal—Safety Requirements,* New York, New York.

9. American National Standards Institute, *A14.5–1982—American National Standard for Ladders—Portable Reinforced Plastic—Safety Requirements,* New York, New York.

10. National Bureau of Standards (NBS), NBSIR 76–1146, *A Study of Personal Fall-Safety Equipment.* Washington, D.C.: NBS, June 1977.

11. Chaffin, Don B. and Terrence J. Stobb, *Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard 29 CFR 1910, Subpart D.* The University of Michigan, Ann Arbor, Michigan, September 1973.

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193 February 17, 1981) OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed revision would not be a "major" action.

Background

Under Executive Order 12291, OSHA is required, in general, to submit any Notice of Proposed Rulemaking (NPRM) for "all rules other than major rules" to the Director of the Office of Management and Budget (OMB) at least 10 days prior to publication in the **Federal Register**.

In light of the data currently available to OSHA, the economic impact estimates presented in this preamble are rough estimates which are likely to be refined as OSHA receives additional information.

OSHA solicits further comments on the estimates presented in this preamble and those comments will be addressed and incorporated into the Regulatory Impact Assessment (RIA) for the final rule.

Data Sources

The primary source for this section is the November 1985, Draft Final Report by CONSAD Research Corporation entitled, "Data to Support Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing." In addition, OSHA also used an October 1984, report by Main Hurdman/KMG entitled "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and shipbreaking industries would be affected by the proposed consolidation of the provisions found in the existing Part 1915, Subpart E, and the existing Part 1910, Subpart D, which govern ladders, stairways, and access and egress in shipyards. In recent years, shipyards have not prospered as an industry. By way of illustration, there were about 305 shipyards operating in 1986 which is fewer than half of the 687 shipyards active in 1982. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but no new orders for merchant vessels since 1985. Although this lost business has been partially offset by the increase in the U.S. Navy's demands for ships, the decline in the demand for commercial ships will likely generate a further decline in the number of active shipyards.

Population-at-Risk

OSHA has estimated that every shipyard employee will be affected by the provisions in this proposed consolidation. The actual number of these employees will depend upon the level of shipyard work. For example, shipyards employed 177,300 workers in 1980 and about 136,300 in 1986. Consequently, given the potential for large changes in the demand for this industry's product, OSHA has estimated that the population-at-risk would be between 136,300 and 180,000 employees.

Risk of Fatality or Injury

OSHA has estimated that the number of annual injuries in shipyards due to accidents associated with access and egress (e.g., falls from ladders, falls down stairways, etc.) was between 1,165 and 1,875 between 1981 and 1986. Of these injuries, 595 to 1,060 were lost workday injuries. As the average number of lost workdays per lost shipyard workday injury was between 20.4 and 26, OSHA has estimated that the number of lost workdays in shipyards due to these accidents would be between 11,480 days and 21,615 days.

In addition, OSHA has determined that there would be about one annual fatality in shipyards associated with access and egress accidents.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would permit the use of existing and readily available technology and equipment.

There are two potential sources of benefits from this proposed standard. The first source is the benefits that would accrue to those workers who are at risk from current practices involving access and egress in shipyards. OSHA believes that the proposed consolidation of Parts 1910 and 1915 would likely lead to an increase in future compliance levels because consolidating two sets of access and egress requirements into one set would clarify the rules. In addition, the proposal substitutes performance language for much of the existing specification language. Consequently, it could make compliance less costly while maintaining employee safety. Thus, the consolidated proposal may lead to an increase in compliance which, in turn, may lead to an increase in employee

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safety while using means of access and egress.

The second source is the benefits and decreased costs that should accrue to those employers who would be allowed to use certain safety systems and equipment and follow certain work practices that are not allowed by the existing specification requirements but would provide the same level of employee safety as that generated by the specifications. The use of these equipment and practices would allow employers to maintain the necessary level of safety for their employees at less cost than is possible for compliance under the existing standards.

OSHA does not have any quantitative estimates of these potential benefits and is requesting information and comments on this issue. As this is a Preliminary Regulatory Impact Assessment (PRIA), all comments will be carefully analyzed by OSHA for incorporation into the RIA for the final rule.

The basis of the estimated costs of compliance with the proposed standard is the CONSAD report. In order to obtain this information, CONSAD circulated copies of the draft proposed standards to the two major industry trade associations and to individual shipbuilders. CONSAD then employed telephone questionnaires and site visits to elicit information concerning the potential economic impact of the provisions contained in the draft proposed consolidated standard. The information was used by CONSAD to develop its estimates of the costs of compliance and those costs have been adopted by OSHA as the expected costs of compliance with the proposed standards.

With respect to this proposed consolidation, CONSAD received no information indicating that shipyards were not in substantial compliance with the existing standards governing ladders, stairways, access, egress, etc. Thus, OSHA has determined that there would be no costs of compliance with the proposed consolidation because there have been no provisions which have been changed substantively. Nevertheless, as previously mentioned, this is a preliminary RIA and OSHA invites public comment concerning this determination. Any comment received will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant Secretary has preliminarily certified that the proposed standard would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this certification.

The assessment is available for inspection and copying at the OSHA Docket Office, Room N–3670, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in both the Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Parts 1500 through 1517), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions focus on the reduction of accidents or injuries by means of work practices and procedures, and proper use and handling of equipment, and training, as well as on changes in language, definition, and format of the standard. These revisions do not affect air, water, or soil quality, plant or animal life, the use of the land, or other aspects of the environment. As such, these revisions are therefore categorized as excluded actions according to Subpart B, § 11.10, of the DOL NEPA regulations.

VI. Recordkeeping

This proposal contains no recordkeeping requirements.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Office, Docket No. S–044, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2634, 200 Constitution Avenue NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 657) and 29 CFR 1911.11, interested parties may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the address above and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by February 27, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken or about which the hearing request is made, and must state the grounds therefore;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

The 25 States and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. Currently five States (California, Minnesota, Oregon, Vermont, and Washington) with their own State plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all States and provides onshore coverage of maritime activities in Federal OSHA States and in the following State plan States and territories: Alaska, Arizona, Connecticut[1], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York[1], North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All States with State plans must also extend coverage to State and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Guardrail systems, Marine safety, Occupational safety and health, Personal fall protection equipment, Personal flotation devices, Safety, Ship repair, Shipyard employment, Vessels.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Worker's Compensation Act, as amended (33 U.S.C. 941), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1915 as set forth below.

Signed at Washington, DC, this 17th day of November 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1915—[AMENDED]

1. The authority citation for Part 1915 would continue to read as follows:

Authority: Sec. 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); sections 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. Subpart E of Part 1915 would be revised to read as follows:

Subpart E—Access and Egress

Sec.

1915.71 Scope, application, and definitions applicable to this subpart.
1915.72 General requirements for means of access.
1915.73 Access to vessels.
1915.74 Access to drydocks and drydock wingwalls.
1915.75 Access to cargo spaces and confined spaces aboard vessels and vessel sections.
1915.76—1915.79 [Reserved].
1915.80 General requirements for means of egress from buildings and structures.
1915.81 Specific requirements for means of egress from buildings and structures.
1915.82 Aisles and passageways in buildings and structures.
1915.83—1915.84 [Reserved].
1915.85 Stairways.
1915.86 Ladders.
1915.87 Gangways, walkways, ramps, catwalks, and dockboards (bridge plates).
1915.88—1915.90 [Reserved].
Appendix A to Subpart E—Exit Capacity, Size and Marking
Appendix B to Subpart E—Ladders

Subpart E—Access and Egress

§ 1915.71 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* (1) This subpart applies to all means of access and egress used in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking), but does not apply to construction operations in shipyards covered under 29 CFR Part 1926. Access requirements for scaffolds are contained in Subpart N of this Part.

(2) The provisions of 29 CFR 1910.21, 1910.22(b), 1910.22(c), and 1910.23 through 1910.40 do not apply to shipyard workplaces and operations.

(3) Facilities or equipment installed or used prior to (Insert date 30 days after date of publication of the final rule in the **Federal Register**) may comply with the requirements in brackets ([ ]) in this subpart in lieu of the corresponding unbracketed requirements.

(b) *Definitions applicable to this subpart.*

"Approved components" means equipment listed or approved by a nationally recognized testing laboratory.

"Barge" means an unpowered, flat bottomed, shallow draft vessel—including scows, carfloats and lighters. For purposes of this subpart, the term does not include ship shaped or deep draft barges.

"Cleat" means a ladder crosspiece of rectangular cross section placed on edge upon which a person may step while ascending or descending a ladder. "Cleat" also means a transverse strip of material such as wood or metal placed on duckboards, ramps, gangways, and similar surfaces to provide footing.

"Double cleat ladder" means a ladder similar in construction to a single cleat ladder, but with a center rail to allow simultaneous two-way traffic for employees ascending or descending.

"Emergency escape route" means the route that employees are directed to follow in the event they must evacuate the workplace or seek a designated refuge area.

"Equivalent" means alternative designs, materials, or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Exit" means that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment as required in this subpart to provide a protected way of travel to the exit discharge.

"Exit access" means that portion of a means of egress which leads to an exit.

"Exit discharge" means that portion of a means of egress between the termination of an exit and an area away from the workplace.

"Failure" means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

"Fixed ladder" means a ladder which cannot be readily moved or carried because it is an integral part of a building or structure. A "side-step fixed ladder" is a fixed ladder that requires a person getting off at the top to step to the side of the ladder siderails in order to reach the landing. A "through-fixed ladder" is a fixed ladder that requires a person getting off at the top to step between the siderails of the ladder in order to reach the landing.

"Handrail" means a rail to provide employees a handhold for support.

"High hazard contents" means those materials which are liable to burn with extreme rapidity, or from which poisonous fumes or explosions are likely in the event of fire.

"In dry dock" means the situation where a vessel is placed in a graving dock, basin, dry dock, or on a marine railway.

"Jacob's ladder" means a ladder consisting of rope or chain sides with rungs made of rigid materials.

"Ladder safety device" means a system other than a cage or well, designed to help prevent falls from ladders, or to limit the length of such falls. A ladder safety device usually consists of a carrier, safety sleeve, and body belt or harness.

"Low hazard contents" means those materials of such low combustibility that no self-propagating fire therein can occur, and that the only probable danger requiring the use of emergency exits will be from panic, fumes, smoke, or fire from some external source.

[1] Plan covers only State and local government employees.

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"Lower levels" means those areas to which an employee can fall. Such areas include ground levels, decks, flats, docks, floors, roofs, ramps, gangways, grates, piers, wharves, runways, excavations, pits, tanks, materials, water, equipment, and other surfaces.

"Maximum intended load" means the total load of all employees, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied at any one time to a ladder or ramp component.

"Means of access" means ladders, stairways, ramps, runways, gangways, walkways, catwalks, dockboards, and personnel hoists.

"Means of egress" means a continuous and unobstructed way of exit travel from any point in a building or structure to an area away from hazards, and consists of three separate and distinct parts: The exit access; the exit; and the exit discharge. A means of egress comprises the vertical and horizontal ways of travel, and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairways, enclosures, lobbies, escalators, horizontal exits, courts, and yards.

"Nosing" means that portion of a stairway tread projecting beyond the face of the riser immediately below.

"Ordinary hazard contents" means those materials which are liable to burn with moderate rapidity and give off a considerable volume of smoke, but from which neither poisonous fumes nor explosions are likely in case of fire.

"Portable ladder" means a ladder that can be readily moved or carried.

"Riser height" means the vertical distance from the top of a tread to the top of the next higher or lower tread.

"River tow boat" means a shallow draft, low free board, self-propelled vessel designed to tow river barges by pushing ahead. For purposes of this section, the term does not include other towing vessels.

"Single cleat ladder" means a ladder consisting of a pair of siderails, connected together by cleats, rungs, or steps.

"Stairrail system" means a vertical barrier erected along the unprotected sides and edges of a stairway to prevent employees from falling to lower levels. The top surface of a stairrail system may also be a "handrail."

"Tread width" means the horizontal distance from front to back of a tread (including nosing, if any).

"Unprotected sides and edges" means any side or edge (except at entrances to points of access) of a stairway where there is no stairrail system or wall 36 inches (.9 m) [Grandfather provisions: 30 inches (76 cm); see § 1915.71(a)(3)] or more in height, and any side or edge (except at entrances to points of access) of a stairway landing, or ladder platform, where there is no wall or guardrail system at least 39 inches (1 m) [36 inches (91.5 cm)] high.

"Vessel section" means a sub-assembly, module, or other component of a vessel being built, repaired, or broken.

§ 1915.72 General requirements for means of access.

(a) *Where required.* A stairway, ladder, ramp, runway, gangway, walkway, catwalk, dockboard, or personnel hoist shall be provided at all personnel points of access with breaks of 19 inches (48.3 cm) or more in elevation where operations necessitate regular travel between levels (including access to operating platforms on all equipment which requires attention routinely during operations). Spiral stairways shall not be used to satisfy this requirement except where they provide the only practical means of access.

(b) *When required.* All means of access required by this subpart shall be provided and installed, and installation duties performed, before employees begin work from the work surface where protection is required.

§ 1915.73 Access to vessels.

(a) *Access to vessels afloat.* The employer shall not permit employees to board or leave any vessel, except a barge or river towboat, until the following requirements have been met:

(1) A gangway shall be used whenever practicable. If a gangway is not practicable, a portable ladder shall be used. When conditions are such that neither a gangway nor a portable ladder can be used, a Jacob's ladder shall be used.

(2) The gangway shall be kept properly trimmed at all times.

(3) When a fixed tread accommodations ladder is used, and the angle is so low as to require employees to walk on the edge of the treads, cleated duckboards shall be laid over and secured to the ladder.

(4) When the lower end of a gangway overhangs the water between the ship and the dock such that there is danger of employees falling between the ship and the dock, a net or other equivalent protection shall be rigged at the foot of the gangway to prevent employees from falling into the water.

(5) If the foot of the gangway is more than one foot away from the edge of the apron, the space between them shall be bridged by a walkway.

(6) Supporting bridges shall be kept clear so as to permit unobstructed passage for employees using the gangway.

(7) When the upper end of the means of access rests on or is flush with the top of the bulwark, a stairway secured to prevent displacement shall be provided between the top of the bulwark and the deck.

(8) Obstructions shall not be laid on or across means of access.

(9) The means of access shall be adequately illuminated for its full length.

(10) Unless the construction of the vessel makes it impossible, all means of access shall be so located that drafts of cargo do not pass over them. In any event, loads shall not be passed over the means of access while employees are on the means of access.

(b) *Access to vessels in drydock, and between vessels.* The following requirements apply to access from wingwall to vessel and, when two or more vessels are lying abreast (other than barges or river towboats), from one vessel to another.

(1) Gangways, ramps, or access towers shall be used for access whenever practicable. When such means are not practicable, a portable ladder shall be used. When conditions are such that portable ladders cannot be used, a Jacob's ladder shall be used.

(2) When the upper end of the means of access rests on or is flush with the top of the bulwark, a stairway secured to prevent displacement shall be provided between the top of the bulwark and the deck.

(3) Obstructions shall not be laid on or across means of access.

(4) The means of access shall be adequately illuminated for its full length.

(c) *Access to barges and river towboats.* The following requirements apply to all employee and vehicle access to barges and river towboats:

(1) When employees cannot step safely to or from the wharf, float, barge, or river towboat, a gangway, ramp, or walkway shall be used. If a gangway, ramp, or walkway is not practicable, a portable ladder shall be used. When conditions are such that a gangway, ramp, walkway, or portable ladder cannot be used, then a Jacob's ladder shall be used.

(2) If the foot of the gangway is more than one foot away from the edge of the apron, the space between them shall be bridged by a walkway.

(3) When the upper end of the means of access rests on or is flush with the top of the bulwark, a stairway secured to

prevent displacement shall be provided between the top of the bulwark and the deck.

(4) Obstructions shall not be laid on or across means of access.

(5) The means of access shall be adequately illuminated for its full length.

§ 1915.74 Access to drydocks and drydock wingwalls.

(a) *Access to drydocks.* A gangway, ramp, or stairway shall be provided between a floating drydock and the pier or bulkhead.

(b) *Access to drydock wingwalls.* A ramp, stairway, or ladder shall be provided between wing walls and drydock floors.

§ 1915.75 Access to cargo spaces and confined spaces aboard vessels and vessel sections.

(a) *Cargo spaces.* (1) There shall be at least one safe and accessible ladder in all cargo spaces into which employees must enter or in which employees are working.

(2) The ladder shall not be used when cargo, dunnage, or other materials are stowed within four inches of the back of ladder rungs.

(3) When any shipboard fixed ladder is visibly unsafe, the employer shall prohibit its use by employees.

(4) Portable ladders shall be provided when shipboard fixed ladders in cargo spaces do not meet the requirements of paragraphs (a)(1), (2), or (3) of this section. When a portable ladder cannot be used, a Jacob's ladder shall be used.

(5) Shipboard fixed ladders and portable ladders provided for access to cargo spaces shall not be used at the same time that cargo drafts, equipment, materials, scrap or other loads are entering or leaving the hold.

(6) During the handling of materials, employees shall be required to inform the winchman or crane signalman of their intentions before using a ladder to enter or leave the cargo space.

(b) *Confined spaces.* (1) More than one access opening shall be provided to a shipboard confined space in which employees are working, and in which the work could generate a hazardous or explosive atmosphere in the space. However, this provision does not apply where the structure or arrangement of the vessel or vessel section makes this provision impractical, or where the vessel design is based on the rules of nationally and internationally recognized classification societies, or USCG specifications which require only one means of access to be provided to the confined space in question.

(2) When a confined space has only one access opening, and when one or more ventilation ducts must pass through the access opening, the ducts shall be of such a type and so arranged as to permit free passage of employees through the access opening. When a confined space has two or more access openings, and when one or more ventilation ducts must pass through the access openings, the ducts shall be of such a type and so arranged as to permit free passage of employees through at least two of the access openings.

§ 1915.76—1915.79 [Reserved].

§ 1915.80 General requirements for means of egress from buildings and structures.

The following provisions do not apply to vessels or vessel sections.

(a) *Exits.* (1) Every building or structure, new or old, designed for human occupancy shall be provided with exits sufficient in kind, location, and capacity to permit the prompt escape of occupants in case of fire or other emergency. Exits which meet the guidelines in Appendix A will be deemed to meet the capacity requirement of this provision.

(2) In every building or structure, exits shall be so arranged and maintained as to provide employees with free and unobstructed egress from all parts of the building or structure at all times.

(3) Exits may not be locked or fastened in a manner which will prevent free escape from the inside of any building or structure. Any device or alarm installed to restrict the improper use of an exit shall be so designed and installed that it cannot, even in cases of failure, impede or prevent emergency use of such exit.

(4) Every exit shall be clearly visible, or the route to reach it shall be conspicuously indicated in such a manner that every physically and mentally capable occupant of every building or structure will readily know the direction of escape from any point.

(5) Any doorway or passageway not constituting an exit or way to reach an exit, but which might otherwise be mistaken for an exit, shall be marked "No Exit", or similar designation, or shall be identified by a sign indicating the actual character such as "To Basement," "Storeroom," "Closet," or the like.

(b) *Exit illumination.* In every building or structure equipped for artificial illumination, adequate and reliable illumination shall be provided for all exit facilities.

(c) *Alarms.* In every building or structure of such size, arrangement, or occupancy that a fire may not itself provide adequate warning to occupants, fire alarm facilities shall be provided where necessary to warn occupants of the existence of fire so that they may escape, and to facilitate the orderly conduct of fire exit drills.

(d) *Multiple exits required.* Every building or structure, section, or area thereof of such size, occupancy, and arrangement that the safety of employees may be endangered by the blocking of any single means of egress due to fire or smoke, shall have at least two means of egress remote from each other, so arranged as to minimize any possibility that both may be blocked by any one fire or other emergency conditions.

(e) *Protection of employees during construction, repair or alteration.* (1) No building or structure under construction shall be occupied in whole or in part until all exit facilities required for the part occupied are completed and ready for use.

(2) No existing building or structure shall be occupied during repairs or alterations unless all existing exits and any existing fire protection are continuously maintained, or unless other measures are taken which the employer can demonstrate will provide equivalent safety.

(3) No flammable or explosive substances or equipment for repairs or alterations shall be introduced in a building of low or ordinary hazard classification while the building is occupied, unless the condition of use and the safeguards provided are such as not to create any additional danger or handicap to egress.

(f) *Maintenance.* (1) Every required exit, way of approach thereto, and way of travel from the exit into the street or open space, shall be continuously maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency.

(2) Every automatic sprinkler system, fire detection and alarm system, exit lighting, fire door, and other item of equipment, where provided, shall be continuously in proper operating condition. Periodic inspections and tests shall be made as are necessary to assure proper maintenance.

§ 1915.81 Specific requirements for means of egress from buildings and structures.

(a) *Permissible exit components.* An exit shall consist only of approved components. Exit components shall be constructed as an integral part of the building or shall be permanently affixed thereto.

(b) *Protective enclosure of exits.* When an exit is protected by walls, partitions, barriers, or other construction which separates the exit from other

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parts of the building, the separating construction shall meet the following requirements:

(1) The separation shall have at least a one-hour fire resistance rating when the exit connects three stories or less. This applies whether the stories connected are above or below the story at which exit discharge begins.

(2) The separation shall have at least a two-hour fire resistance rating when the exit connects four or more stories, whether above or below the floor of discharge. It shall be constructed of noncombustible materials, and shall be supported by construction having at least a two-hour fire resistance rating.

(3) Any opening therein shall be protected by an approved self-closing fire door.

(4) Openings in exit enclosures shall be confined to those necessary for access to the enclosure from normally occupied spaces and for egress from the enclosure.

(c) *Arrangement of exits.* When more than one exit is required from a building, structure, or section or area of a building or structure, at least two of the exits from any multi-exit area shall be remote from each other and so arranged as to minimize any possibility that both may be blocked by any one fire or other emergency condition.

(d) *Access to exits.* (1) Where exits are not immediately accessible from an open floor area, safe and continuous passageways, aisles, or corridors leading directly to every exit shall be maintained, and so arranged as to provide convenient access for each occupant to at least two exits by separate ways of travel, except as a single exit or limited dead ends are permitted by other provisions of this subpart.

(2) A door from a room to an exit or to a way of exit access shall be of the side-hinged, swinging type. The door shall swing with exit travel when the room is occupied by more than 50 persons or used for a high hazard occupancy.

(3) In no case shall access to an exit be through a bathroom, or other room subject to locking, except where the exit is required to serve only the room subject to locking.

(4) Exit access shall be so arranged that it will not be necessary to travel toward any area of high hazard occupancy in order to reach the nearest exit, unless the path of travel is effectively shielded from the high hazard location by suitable partitions or other physical barriers.

(e) *Exterior routes of exit access.* (1) Exterior routes of exit access shall have smooth, solid, and level floors.

(2) Snow and ice shall be removed from all exposed routes of exit access.

(3) A permanent, unobstructed straight path of travel shall be maintained free of all obstructions, including railings, barriers, gates, and impediments over the required exterior way of exit access. Furniture or other movable objects that result in obstruction to travel shall be fastened out of the way or railings or other permanent barriers shall be installed to protect the path of travel against encroachment.

(4) An exterior way of exit access shall be so arranged that it does not contain any dead end sections in excess of 20 feet (6.1 m). Any unenclosed exit served by an exterior way of exit access shall be so located that no part of the exit extends past a vertical plane 20 feet (6.1 m) and one half the required width of the exit from the end of and at right angles to the way of exit access.

(f) *Discharge from exits.* (1) All exits shall discharge directly to the street, or to a yard, court, or other open space that gives access away from the hazard.

(2) Yards, courts, or streets, or other open spaces to which exists discharge shall be of a size that allows all persons leaving the building to get away from the hazard.

(3) Stairs and other exits shall be so arranged as to make clear the direction of egress to the street.

(4) Exit stairs that continue beyond the floor of discharge shall be interrupted at the floor of discharge by partitions, doors, or other effective means.

(g) *Changes in elevation.* Stairs or ramps shall be installed at all means of egress which are not level.

(h) *Furnishings and decorations.* (1) No furnishings, decorations, or other objects shall be so placed as to conceal, obscure, or obstruct access to, or egress from, exits.

(2) Mirrors shall not be placed on exit doors nor placed in or adjacent to any exit.

(3) No furnishings or decorations of an explosive or highly flammable character shall be used in any occupancy.

(4) Decorations, furnishings, and equipment shall not impair the visibility of exit signs, nor shall any brightly illuminated sign (for other than exit purposes), display, or object in or near the line of vision to the required exit sign be of such a character as to so detract attention from the exit sign such that it may not be noticed.

(i) *Exit marking.* (1) A sign reading "Exit", or similar designation, shall mark every exit.

(2) Every required sign designating an exit or way of exit access shall be so located and of such size, color, and design as to be readily visible.

(3) Every exit sign shall be distinctive in color and shall provide contrast with decorations, interior finish, or other signs.

(4) A sign reading "Exit," or similar designation, with an arrow indicating the direction, shall be placed in every location where the direction of travel to reach the nearest exit is not immediately apparent.

(5) Every exit sign shall be illuminated by a light source giving a value of not less than five foot-candles on the illuminated surface. Artificial lights giving external illumination to exit signs shall have screens, discs, or lenses of not less than 25 square inches area made of translucent material to show red or other specified designating color on the side of the approach.

(6) Internally illuminated exit signs shall be used in all occupied buildings where reduction of normal illumination is permitted.

(j) *Fire retardant paints.* Fire retardant paints or solutions shall be renewed at such intervals as necessary to maintain the necessary flame retardant properties.

§ 1915.82 Aisles and passageways in buildings and structures.

(a) *Clearances.* (1) Where mechanical handling equipment is used, safe clearances shall be allowed for aisles, at loading docks, through doorways and wherever turns or passage must be made.

(2) Forging machines shall be so located as to give clearance between machines so that the movement of one operator will not interfere with the work of another.

(3) Forging machines shall be so located as to give room for cleaning machines and handling the work, including material and scrap.

(4) Forging machines shall be so located that operators do not have to stand in aisles in order to operate the machine.

(b) *Obstructions.* (1) Where mechanical handling equipment is used, aisles and passageways shall be maintained free of all obstructions and impediments that could create a hazard.

(2) Aisles shall be of a size that allows the free movement of employees bringing and removing material. This aisle space is to be independent of working and storage space.

(c) *Markings.* Permanent aisles and passageways shall be marked to indicate their status as aisles and passageways.

§§ 1915.83—1915.84 [Reserved]

§ 1915.85 Stairways.

(a) *General.* The following requirements apply to all stairways including those used at points of vessel access between the tops of bulwarks and decks, and between floating drydocks and piers or bulkheads:

(1) Stairway landings shall extend not less than 30 inches (76 cm) in the direction of travel.

(2) Stairs shall be installed between 30° and 50° from horizontal.

(3) Riser height and tread width shall be uniform within each flight of stairs, including any foundation structure used as one or more treads of the stairs.

(4) Where doors or gates open directly on a stairway, a platform shall be provided, and the swing of the door shall not reduce the effective width of the platform to less than 20 inches (51 cm).

(5) Vertical clearance above any stair tread to an overhead obstruction shall be at least seven feet (2.1 m) measured from the leading edge of the tread.

(6) Stairways shall be capable of supporting, without failure, their own weight and at least five times the maximum intended load applied to the stairway, or their own weight and a concentrated moving live load of 1,000 pounds (456 kg), whichever is greater.

(7) Stairways shall be at least 22 inches (56 cm) [Grandfather provisions: 20 inches (51 cm); see § 1915.71(a)(3)] wide.

(8) Welded bar grating treads without nosings shall have leading edges which can be readily seen by personnel descending the stairway.

(9) Welded bar grating treads shall be serrated or of nonslip design.

(10) All parts of stairways shall be free of hazardous projections, such as protruding nails.

(11) Winding stairways shall have a minimum inside diameter of five feet (1.5 m).

(12) Stairways used at vessel points of access shall be secured to prevent displacement.

(b) *Stairrails and handrails.* The following requirements apply to all stairways (except those which are part of a vessel) regardless of their height above lower levels:

(1) Stairways having four or more risers shall be equipped with:

(i) At least one handrail; and

(ii) one stairrail system along each unprotected side or edge. Stairrail systems may also serve as handrails when installed in conformance with paragraph (c)(7) of this section.

(2) Winding and spiral stairways shall be equipped with a handrail offset such that it prevents walking on those portions of the stairways where the tread width is less than six inches (15 cm).

(3) The height of stairrails shall be not less than 36 inches (91.5 cm) [Grandfather provisions: 30 inches (76 cm); see § 1915.71(a)(3)] from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at forward edge of the tread, and not less than 39 inches (1.0 m) [Grandfather provisions: 36 inches (91.5 cm); see § 1915.71(a)(3)] nor more than 45 inches (1.1 m) from the upper surface of the stairrail system to the surface of stairway landings.

(4) Midrails, screen, mesh, intermediate vertical members, or equivalent structural members, shall be provided between the top rail of the stairrail system and the stairway steps.

(i) Midrails, when used, shall be located at a height midway between the top edge of the stairrail system and the stairway steps.

(ii) Screens or mesh, when used, shall extend from the top rail to the stairway step, and along the entire opening between top rail supports.

(iii) When intermediate vertical members, such as balusters, are used between posts, they shall be not more than 19 inches (48 cm) apart.

(iv) Other structural members shall be installed such that there are no openings in the stairrail system that are more than 19 inches (48 cm) wide in their least dimension.

(5) Handrails and the top rails of stairrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds (890 n) applied within two inches (5 cm) of the top edge, in any downward or outward direction, at any point along the top edge.

(6) The height of handrails shall be not more than 37 inches (94 cm) nor less than 30 inches (76 cm) from the upper surface of the handrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(7) When the top edge of a stairrail system also serves as a handrail, the height of the top edge shall be not more than 37 inches (94 cm) nor less than 36 inches (91.5 cm) [Grandfather provisions: 30 inches (76 cm) see § 1915.71(a)(3)] from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(8) Stairrail systems and handrails shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.

(9) Handrails shall be shaped to permit a grip by employees grasping them to avoid falling.

(10) The ends of stairrail systems and handrails shall be constructed so as not to constitute a projection hazard.

(11) Handrails shall have a minimum clearance of one and one-half inches (4 cm) between the handrail and walls, stairrail system, and other objects.

§ 1915.86 Ladders.

(a) *General.* The following requirements do not apply to ladders which are a permanent part of a vessel or vessel section; however, they do apply to all other ladders as indicated, including portable ladders used on vessels and vessel sections, and those used for access to scaffolds and to support scaffold platforms.

(1) Ladders shall be capable of supporting the following loads without failure:

(i) Each portable ladder and job-made ladder: At least four times the maximum intended load applied or transmitted to the ladder in a downward vertical direction when the ladder is placed at an angle of 75½ degrees from the horizontal Ladders built in conformance with the guidelines in Appendix B will be deemed to meet this requirement;

(ii) Each fixed ladder: At least two loads of 250 pounds (114 kg) each, concentrated between any two consecutive attachments (the number and position of additional concentrated loads of 250 pounds (114 kg) each, determined from anticipated usage of the ladder, shall also be included), plus anticipated loads caused by ice buildup, winds, rigging, and impact loads resulting from the use of ladder safety devices. Each step or rung shall be capable of supporting a single concentrated load of at least 250 pounds (114 kg) applied in the middle of the step or rung. Ladders built in conformance with the guidelines in Appendix B will be deemed to meet these requirements.

(2) Ladder rungs, cleats, and steps shall be parallel, level, and uniformly spaced when the ladder is in position for use.

(3)(i) Rungs, cleats, and steps of portable and fixed ladders shall be spaced not less than six inches (15 cm) apart, nor more than 12 inches (31 cm) apart, as measured along the ladder siderails.

(ii) Rungs, cleats, and steps of individual step or rung ladders shall be not less than six inches (15 cm) apart, nor more than 16½ inches (42 cm) apart, as measured between the centerlines of the rungs, cleats, and steps.

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(4) Rungs, cleats, and steps shall have a minimum clear length of 16 inches (41 cm) for individual-rung and fixed ladders, 12 inches (30 cm) for portable metal ladders and reinforced plastic ladders, and 11½ inches (29 cm) for portable wood ladders.

(5) The rungs of individual-rung ladders shall be shaped such that an employee's feet cannot slide off the ends of the rungs.

(6) The rungs and steps of metal ladders shall be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping.

(7) Jacob's ladders shall be of the double rung or flat tread type.

(8) Ladders shall not be tied or fastened together to provide longer sections, unless they are specifically designed for such use.

(9) When splicing is required to obtain a given length of siderail, the resulting siderail must be at least equivalent in strength to a one-piece siderail made of the same material.

(10) A metal spreader or locking device shall be provided on each stepladder to hold the front and back sections in an open position when the ladder is being used.

(11) Ladder components shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.

(12) Wood ladders shall not be coated with any opaque covering, except for identification or warning labels which may be placed on one face only of a siderail.

(13) When two or more separate ladders are used to reach an elevated work area, the ladders shall be offset with a platform or landing installed between the ladders, equipped with guardrails and toeboards.

(14) The minimum perpendicular clearance between fixed ladder rungs, cleats, and steps, and any obstruction behind the ladder shall be seven inches (18 cm).

(15) The minimum perpendicular clearance between the center line of fixed ladder rungs, cleats, and steps, and any obstruction on the climbing side of the ladder shall be 30 inches (76 cm), except as provided in paragraph (a)(16) of this section.

(16) When unavoidable obstructions are encountered, the minimum perpendicular clearance between the center line of fixed ladder rungs, cleats, and steps, and the obstruction on the climbing side of the ladder may be reduced to 24 inches (61 cm), provided that a deflection device is installed to guide employees around the obstruction.

(17) Through-fixed ladders at their point of access/egress shall have a step-across distance of not less than seven inches (18 cm) nor more than 12 inches (30 cm) as measured from the centerline of the steps or rungs to the nearest edge of the landing area. If the normal step-across distance exceeds 12 inches (30 cm), a landing platform shall be provided to reduce the distance to the specified limit.

(18) Fixed ladders without cages or wells shall have a clear width to the nearest permanent object of at least 15 inches (38 cm) on each side of the centerline of the ladder.

(19) Fixed ladders shall be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet (7.3 m), but the top of the ladder is at a distance greater than 24 feet (7.3 m) above lower levels.

(20) Where the total length of a climb equals or exceeds 24 feet (7.3 m), fixed ladders (except those used only for firefighting or emergency escape purposes) shall be equipped with one of the following:

(i) Ladder safety devices; or

(ii) Self-retracting lifelines and rest platforms at intervals not to exceed 150 feet (45.7 m); or

(iii) A cage or well, and multiple ladder sections, each ladder section not to exceed 50 feet (15.2 m) in length. Ladder sections shall be offset from adjacent sections, and landing platforms shall be provided at maximum intervals of 50 feet (15.2 m).

(21) Cages for fixed ladders shall conform to all of the following:

(i) Horizontal bands shall be fastened to the siderails of rail ladders, or, for individual rung ladders, directly to the structure, building, or equipment;

(ii) Vertical bars shall be on the inside of the horizontal bands and shall be fastened to them;

(iii) Cages shall extend not less than 27 inches (68 cm), nor more than 30 inches (76 cm) from the centerline of the step or rung (excluding the flare at the bottom of the cage), and shall not be less than 27 inches (68 cm) in width;

(iv) The inside of the cage shall be clear of projections;

(v) Horizontal bands shall be spaced not more than four feet (1.2 m) on center vertically;

(vi) Vertical bars shall be spaced at intervals not more than nine and one-half inches (24 cm) on center horizontally;

(vii) The bottom of the cage shall be at a level not less than seven feet (2.1 m) nor more than eight feet (2.4 m) above the point of access to the bottom of the ladder. The bottom of the cage shall be flared not less than four inches (10 cm) all around within the distance between the bottom horizontal band and the next higher band;

(viii) The top of the cage shall be a minimum of 42 inches (1.1 m) above the top of the platform, or the point of access at the top of the ladder, with provision for access to the platform or other point of access.

(22) Wells for fixed ladders shall conform to all of the following:

(i) They shall completely encircle the ladder;

(ii) They shall be free of projections;

(iii) Their inside face on the climbing side of the ladder shall extend not less than 27 inches (68 cm) nor more than 30 inches (76 cm) from the centerline of the step or rung;

(iv) The inside clear width shall be at least 30 inches (76 cm);

(v) The bottom of the wall on the access side shall start at a level not less than seven feet (2.1 m) nor more than eight feet (2.4 m) above the point of access to the bottom of the ladder.

(23) Ladder safety devices, and their support systems for fixed ladders, shall conform to all of the following:

(i) They shall be capable of withstanding, without failure, a drop test consisting of an 18 inch (41 cm) drop of a 500 pound (226 kg) weight;

(ii) They shall permit the employee using the device to ascend or descend without continually having to hold, push or pull any part of the device, leaving both hands free for climbing;

(iii) They shall be activated within two feet (.61 m) after a fall occurs, and limit the descending velocity of an employee to seven feet/sec (2.1 m/sec) or less;

(iv) The connection between the carrier or lifeline and the point of attachment to the body belt or harness shall not exceed nine inches (23 cm) in length.

(24) Ladder safety devices shall also conform to the following:

(i) Mountings for rigid carriers shall be attached at each end of the carrier, with intermediate mountings, as necessary, spaced along the entire length of the carrier, to provide the strength necessary to stop employees' falls.

(ii) Mountings for flexible carriers shall be attached at each end of the carrier. When the system is exposed to wind, cable guides utilized with a flexible carrier shall be installed at a minimum spacing of 25 feet (7.6 m) and a maximum spacing of 40 feet (12.2 m) along the entire length of the carrier, to prevent wind damage to the system.

(iii) The design and installation of mountings and cable guides shall not reduce the design strength of the ladder.

(25) The siderails of through or side step fixed ladders shall extend at least 42 inches (1.1 m) above the top of the access level or landing platform served by the ladder. For a parapet ladder, the access level shall be the roof if the parapet is cut to permit passage through the parapet; if the parapet is continuous, the access level shall be the top of the parapet.

(26) For through fixed ladder extensions on ladders not equipped with ladder safety devices, the steps or rungs shall be omitted from the extension, and the extension of the siderails shall be flared to provide not less than 24 inches (61 cm) [Grandfather provisions: 18 inches (46 cm); see § 1915.71(a)(3)]nor more than 30 inches (76 cm) clearance between siderails. Where ladder safety devices are provided, the maximum clearance between siderails of the extensions shall not exceed 36 inches (91 cm).

(27) For side step fixed ladders, the siderails and the steps or rungs shall be continuous in the extension.

(28) Individual rung ladders, except those used where their access openings are covered with a manhole covers or hatches, shall extend at least 42 inches (1.1 m) above access levels of landing platform, either by the continuation of the rung spacings as horizontal grab bars providing vertical grab bars that have the same lateral spacing as the vertical legs of the rungs.

(b) *Use.* The following requirements apply to the use of all ladders, as indicated.

(1) When portable ladders are used for access to an upper landing surface, the ladder siderails shall extend at least three feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at the top and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder.

(2) Ladders shall be maintained free of slipping hazards.

(3) Ladders shall not be loaded beyond their maximum intended load-carrying capacity, nor beyond their rated capacity.

(4) Ladders shall be used only for the purpose for which they were designed.

(5) Non-self-supporting ladders shall be used at an angle such that the horizontal distance from the top support to the foot of the ladder is approximately one-quarter of the working length of the ladder (the distance along the ladder between the foot and the top support). Wood job-made ladders with spliced siderails shall be used at an angle such that the ratio is one-eighth the working length of the ladder. Fixed ladders shall be used at a pitch no greater than 90 degrees from the horizontal, as measured to the backside of the ladder.

(6) Ladders shall be used only on stable and level surfaces unless secured to prevent accidental displacement. Examples of unstable surfaces include, but are not limited to, boxes and barrels.

(7) Ladders shall not be used on slippery surfaces unless secured or provided with slip-resistant feet to prevent accidental displacement. Slip-resistant feet are not intended as a substitute for care in placing, lashing, or holding a ladder that is used upon oily, metal, concrete, or slippery surfaces.

(8) Ladders placed in passageways, doorways, driveways, or any location where they can be displaced by other activities or traffic, shall be secured to prevent accidental displacement, or a barricade shall be used to keep the activities or traffic away from the ladder.

(9) The area around the top and bottom of ladders shall be kept clear.

(10) The top of a non-self-supporting ladder shall be placed with the two rails supported by the building or structure, unless the ladder is equipped with a single-support type attachment.

(11) Ladders shall not be moved, shifted, or extended while occupied.

(12) Ladders shall have non-conductive siderails when used where the ladder could contact energized electrical equipment, or when used by employees performing electric arc welding operations.

(13) The tops of stepladders shall not be used as steps.

(14) Crossbracing on stepladders shall not be used for climbing.

(15) Ladders shall be inspected for visible defects periodically, preferably before each use, and after any occurrence which could affect their safe use.

(16) Ladders with structural defects, such as broken or missing rungs, cleats, or steps; broken or split rails; excessively corroded or rusted components; frayed or badly worn rope; or other faulty or defective components shall be immediately tagged with "Do not use" or similar language, and withdrawn from service until repaired.

(17) Ladder repairs shall restore the ladder to a condition meeting its original design criteria.

(18) Single rail ladders shall not be used, except for emergency or rescue operations.

(19) Jacob's ladders shall either hang without slack from their lashings, or be pulled up entirely.

(20) Employees visually restricted by blasting hoods, welding helmets, and burning goggles shall not work from ladders, except where necessary for the initial and final welding or burning operation to start or complete a job—such as the erection and dismantling of scaffolding, or other similar, nonrepetitive jobs of brief duration.

(21) Employees ascending or descending ladders shall face the ladder.

§ 1915.87 Gangways, walkways, ramps, catwalks, and dockboards (bridge plates).

(a) *Gangways and walkways.* Gangways and walkways shall be not less than 20 inches (51 cm) wide, capable of supporting the maximum intended load without failure, maintained in safe repair, and secured to prevent displacement. Gangways on vessels inspected and certificated by the U.S. Coast Guard are deemed to meet the foregoing requirements, except in cases where the vessel's regular gangway is not being used.

(b) *Ramps.* (1) Ramps for employees shall be not less than 20 inches (51 cm) wide, capable of supporting the maximum intended load without failure, maintained in safe repair, and secured to prevent displacement.

(2) Ramps for access of vehicles to or between barges shall be capable of supporting the maximum intended load without failure, provided with sideboards, maintained in safe repair, and secured to prevent displacement.

(c) *Catwalks.* Catwalks on stiles of marine railways shall be not less than 20 inches (51 cm) wide, capable of supporting the maximum intended load without failure, maintained in safe repair, and secured to prevent displacement.

(d) *Dockboards (bridge plates).* (1) Portable and powered dockboards shall be strong enough to carry the load imposed on them.

(2) Portable dockboards shall be secured in position, either by being anchored or equipped with devices which will prevent their slipping.

(3) Powered dockboards shall be designed and constructed in accordance with Commercial Standard CS 202–56 (1961) "Industrial Lifts and Hinged Loading Ramps" published by the U.S. Department of Commerce.

(4) Handholds, or other effective means, shall be provided on portable dockboards to permit safe handling.

(5) Positive restraints shall be provided to prevent railroad cars from

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being moved while dockboards or bridge plates are in position. Fall protection requirements for gangways, walkways, ramps, catwalks, and dockboards are set forth in Subpart M of this part.

§§ 1915.88—1915.90 [Reserved]

Appendix A to Subpart E—Exit Capacity, Size and Marking

This appendix serves as a non-mandatory guideline to assist employers in complying with the capacity and size requirements of § 1915.80(c)(2), and the marking requirements of § 1910.81(i)(2). Exits and exit access which meet the criteria set forth in this Appendix are deemed to comply with the capacity provisions of § 1915.80(c)(2), and the marking requirements of § 1910.81(i)(2).

General. Every building or structure shall be so constructed, arranged, equipped, maintained, and operated as to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

The design of exits and other safeguards shall be such that reliance for safety to life in case of fire or other emergency will not depend solely on any single safeguard; additional safeguards shall be provided for life safety in case any single safeguard is ineffective due to some human or mechanical failure.

1. *Width and capacity of means of egress.* The capacities in number of persons per unit of exit width for approved components of means of egress are as follows:

(i) Level Egress Components (including Class A Ramps) 100 persons.

(ii) Inclined Egress Components (including Class B Ramps) 60 persons.

(iii) A ramp is designated as Class A or Class B in accordance with the following Table A–1:

TABLE A–1

	Class A	Class B
Width	44 inches and greater.	30 to 44 inches.
Slope	1 to 1⅜ inches in 12 inches.	1⅜ to 2 inches in 12 inches.
Minimum height between landings.	No limit	12 feet.

Means of egress are to be measured in units of exit width of 22 inches. Fractions of a unit are not to be counted, except that 12 inches added to one or more full units are to be counted as one-half a unit of exit width.

Units of exit width are to be measured in the clear at the narrowest point of the means of egress, except that a handrail may project inside the measured width on each side not more than five inches, and a stringer may project inside the measured width not more than one and one-half inches. An exit or exit access door swinging into an aisle or passageway may not restrict the effective width thereof at any point during its swing to less than the minimum widths specified below.

2. *Egress capacity and occupant load.* The capacity of means of egress for any floor, balcony, tier, or other occupied space must be sufficient for the maximum number of persons that may be in the space at any time.

Where exits serve more than one floor, only the occupant load of each floor considered individually need be used in computing the capacity of the exits at that floor, provided that exit capacity is not decreased in the direction of exit travel.

The width of any way of exit access may not be less than 28 inches. Where a single way of exit access leads to an exit, its capacity in terms of width is to be at least equal to the required capacity of the exit to which it leads. Where more than one way of exit access leads to an exit, each is to have a width adequate for the number of persons it must accommodate.

3. *Headroom.* Means of egress shall be so designed and maintained as to provide adequate headroom, but in no case shall the ceiling height be less than 7 feet 6 inches nor any projection from the ceiling be less than 6 feet 8 inches from the floor.

4. *Exit markings.* Every exit sign shall have the word "Exit" in plainly legible letters not less than six inches high, with the principal strokes of the letters not less than three-fourths inch wide.

Appendix B to Subpart E—Ladders

This appendix serves as a non-mandatory guideline to assist employers in complying with the ladder loading and strength requirements of § 1915.86(a)(1). A ladder designed and built in accordance with the applicable national consensus standards, as set forth below, will be considered to meet the requirements of § 1915.86(a)(1).

1. Manufactured portable wood ladders: American National Standards Institute (ANSI) A14.1–1982—American National Standard for Ladders—Portable Wood—Safety Requirements.

2. Manufactured portable metal ladders: ANSI A14.2–1982—American National Standard for Ladders—Portable Metal—Safety Requirements.

3. Manufactured fixed ladders: ANSI A14.3–1984—American National Standard for Ladders—Fixed—Safety Requirements.

4. Job-made ladders: ANSI A14.4–1979—Safety Requirements for Job-Made Ladders.

5. Plastic ladders: ANSI A14.5–1982—American National Standard for Ladders—Portable Reinforced Plastic—Safety Requirements.

[FR Doc. 88–27000 Filed 11–28–88; 8:45 am]
BILLING CODE 4510–26–M

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29 CFR Part 1915

[Docket No. S–045]

Personal Protective Equipment for Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing personal protective equipment. The standards proposed for revision regulate the design, availability, and use of personal protective equipment in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the present standards in Part 1915 are not comprehensive in their coverage of shipyard hazards, and are supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for all the hazards encountered in shipyards. This document is one of a series of proposals which are intended to revise Part 1915 to provide comprehensive coverage of shipyard employment solely within that part.

This action would consolidate, reorganize, and update the shipyard personal protective equipment standards and the appropriate general industry personal protective equipment standards into a single, comprehensive Part 1915 that would apply to all activities and areas in shipyards (except construction activities covered by Part 1926). The proposal would, where appropriate, delete existing specification provisions which currently limit employer innovation and use performance-oriented provisions to address the hazards of falling or being struck by falling or flying objects. The proposal would also add criteria for personal fall protective equipment which are not currently set forth in either Part 1910 or Part 1915.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Office, Docket No. S–045, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210. Materials in the rulemaking record are available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION: The principal author of this notice of proposed rulemaking is Chappell D. Pierce, Office of Fire Protection Engineering and Systems Safety Standards, Occupational Safety and Health Administration.

I. Background and Approach

In May 1971, the Occupational Safety and Health Administration under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, OSHA adopted other Federal standards and national consensus standards as general industry standards (29 CFR Part 1910) and construction industry standards (29 CFR Part 1926) which were made applicable to hazards and working conditions not specifically covered by Parts 1915, 1916, or 1917. On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29, Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment" (47 FR 16984). The consolidation eliminated duplicate provisions and overlapping provisions, but did not alter substantive requirements. The consolidation did not affect the applicability of general industry standards in 29 CFR Part 1910 to hazards or conditions in shipyard employments not specifically addressed in the consolidated Part 1915 (See 29 CFR 1910.5(c)(2)).

In 1982, the Shipbuilders Council of America and the American Waterways Shipyard Conference requested OSHA to identify the specific applicable provisions of the general industry standards which apply to shipyards, and consolidate them with the existing Part 1915 provisions into a single set of shipyard employment standards. OSHA has determined that such consolidation is appropriate. This and other proposed rulemakings will eventually incorporate all applicable Part 1910 provisions into the existing organization of Part 1915. The present Part 1915 organizational format, which is already familiar to present users of the shipyard standards, provides a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when existing Part 1910 provisions have no counterpart in the existing Part 1915 structure, the proposals would create new subparts or subpart headings in Part 1915.

In addition to consolidating the provisions of Part 1910 and Part 1915, OSHA proposes to revise the consolidated provisions as appropriate. OSHA has not substantively revised many of the current provisions in these parts since they were promulgated in 1971. OSHA believes that some provisions need to be revised to reflect technological advances. Other provisions need to be revised because they are based on national consensus standards issued prior to 1971, and do not reflect the revisions made since that time. As the provisions are consolidated, all such revised consensus standards will be reviewed, and OSHA's provisions revised as necessary to effectuate the purposes of the standard and the OSH Act. Where practical, all current incorporations by reference of national consensus standards will be updated to reference the most current national consensus standards for the *design* of personal protective equipment (PPE). Requirements for the selection, care and use of, and training in, PPE will be proposed for inclusion in the body of the proposed standard. This approach is intended to assist employers in determining what duties and obligations are imposed by a provision by minimizing the need to refer to documents outside Part 1915, except for the design requirements for PPE, which are normally not used by employers or employees, but rather by manufacturers of PPE. OSHA will also use the consolidation project to replace specification requirements with performance-oriented requirements where it is known that there is more than one way to provide safety equivalent to that provided by the present specification requirements. Specification requirements would be used only where necessary to set appropriate limits and to clarify duties and obligations.

The revision of the shipyard employment standards will be coordinated with efforts to revise parallel provisions in the construction and general industry standards so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

II. Summary and Explanation of the Proposal

The current standards for shipyard personnel protective equipment, 29 CFR Part 1915, Subpart I, apply to personal protective equipment used in shipyard workplaces and operations, including shipbuilding, ship repairing and shipbreaking. Those standards, however, are not comprehensive. They must be supplemented by general industry standards in Part 1910, Subpart I, in areas, such as the design and use of personal protective equipment, which are not specifically addressed by the shipyard employment standards. OSHA believes that consolidating all personal protective equipment standards applicable to shipyard employment into a single, comprehensive set of standards in Part 1915 will facilitate understanding of the rules and, as a result, provide at least as effective, if not improved, protection of shipyard employees exposed to respiratory hazards, fall hazards and the hazards of being struck by falling or flying objects.

OSHA proposes to revise Subpart I of 29 CFR Part 1915 to incorporate those requirements of 29 CFR Part 1910, Subpart I, which OSHA has determined are applicable to shipyard employment.

The requirements of proposed Subpart I would apply to personal protective equipment (PPE) in shipyard workplaces and operations, including shipbuilding, ship repairing, and shipbreaking, except for construction work covered by 29 CFR Part 1926. The proposal would consolidate the current PPE provisions of Part 1915 with the applicable provisions of 29 CFR Part 1910, Subpart I, including all of § 1910.134, Respiratory protection.

At present, § 1910.134 supplements the limited coverage of respiratory protection which is found in § 1915.152 of the shipyard standards. The proposal would delete § 1915.152 and apply § 1910.134 in its entirety to shipyard employment. Deletion of § 1915.152 will not substantively change the current respirator coverage for shipyards, since the requirements currently in that section are also found in § 1910.134.

Although § 1910.134 would continue to apply to shipyards under the proposal, the substantive requirements for respiratory protection in shipyards are not open for revision as part of this rulemaking. As noted below, OSHA is aware that much of § 1910.134 needs to be reexamined in light of changes in technology and industrial hygiene practice which have occurred in recent years. Therefore, OSHA has prepared a separate draft revision to § 1910.134

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which involves a highly complex rulemaking effort that cuts across industry lines. Respiratory protection requirements need to be consistent to provide adequate protection whenever respirators are used. For the present, therefore, OSHA will continue to apply § 1910.134 to shipyards, pending the future rulemaking on that standard, which is expected to be proposed soon. When § 1910.134 is promulgated, these revisions will be applicable to the shipyard standards. The Agency's approach to shipyard respiratory protection is explained further in the discussion below of proposed § 1915.154.

OSHA also proposes to change the format of Part 1915, Subpart I, to accommodate the consolidated 1910 and 1915 provisions. New section numbers and section headings are proposed wherever it would facilitate understanding of the rules, and where otherwise necessary to accommodate applicable provisions of Part 1910 which have no counterpart in the existing structure of Subpart I, Part 1915. The revised format of Part 1915, Subpart I, would contain the following sections:

§ 1915.151—Scope, application, and definitions applicable to this subpart.
§ 1915.152—General requirements.
§ 1915.153—Eye and face protection.
§ 1915.154—Respiratory protection.
§ 1915.155—Head Protection.
§ 1915.156—Foot protection.
§ 1915.157—Hand and body protection.
§ 1915.158—Lifesaving equipment.
§ 1915.159—Personal fall protection equipment.

The provisions of the current Subpart I standards, §§ 1915.151 through 1915.154, are being revised, supplemented and reorganized as set forth in the table which appears below.

Current standard	Proposed standard
§ 1915.151(a)(1)	§ 1915.153(b)
§ 1915.151(a)(2)	§ 1915.152(c)
§ 1915.151(a)(3)	§ 1915.152(d)
§ 1915.151(a)(4)	§ 1915.153(a)(4)
§ 1915.151(b)(1)	§ 1915.153(a)(1)
§ 1915.151(c)(1)	§ 1915.153 (a)(1), (a)(5)
§ 1915.151(c)(2)	§ 1915.153(a)(5)
§ 1915.151(c)(3)	§ 1915.153(a)(5)
§ 1915.152	§ 1915.154
§ 1915.153(a)	§ 1915.155(a)(1)
§ 1915.153(b)	§ 1915.155 (a)(2), (b)
§ 1915.153(c)	§ 1915.152(d)
§ 1915.153(d)	§ 1915.152(a)
§ 1915.153(e)	§ 1915.157(a)(2)
§ 1915.153(f)	§ 1915.157(a)(1)
§ 1915.154(a)(1)	§ 1915.158(a)
§ 1915.154(a)(2)	§ 1915.158(c)
§ 1915.154 (b)(1)–(b)(3)	§ 1915.159
§ 1915.154 (c)(1)–(c)(4)	§ 1915.158 (b)(1)–(b)(5)

In addition to these sections, OSHA proposes to add a non-mandatory Appendix A, which provides guidelines for designing and testing personal fall protection equipment.

This format change will necessitate the change of references to specific sections of current Subpart I, contained in Subparts C and H of the shipyard standards, to the appropriate new sections of proposed Subpart I. These changes of references, which are contained in this proposal, do not substantially change the requirements for the use of PPE in those subparts.

Provisions of Parts 1910 and 1915 which OSHA believes unnecessarily restrict employer innovation and the application of technological advances would be revised into performance-oriented standards. These changes are discussed more fully below.

OSHA has used the Bureau of Labor Statistics Work Injury Reports (WIR) on eye, face, foot and head injuries as a basis for determining the type of PPE-related injuries that occur (References 24, 25, 26, 27). Although these reports do not specifically include shipyard injuries, OSHA believes that the WIR data are representative of the types of PPE-related incidents in shipyards as well (See injury tables below. These tables are based on BLS surveys of injured workers, and do not reflect the universe of non-injured workers). This finding is supported by visits made by OSHA personnel to several shipyards in order to observe the use of personal protective equipment. The Agency has used the information gained from these visits and reports to develop effective provisions for shipyards. In addition, many proposed sections adopt language from current ANSI personal protective equipment standards.

EYE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES

[July-August 1979]

Item	All workers (100%)		Workers wearing eye protection (41%)	
	Number	Percent	Number	Percent
Total	1,052	100	435	100
Flying or falling object struck you	727	69	355	82
Struck non-moving object	21	2	5	1
Liquid or chemical injured you	216	21	59	14
Occurred in another way	88	8	16	4

(Workers not wearing eye protection = 59 percent)

Note.—This table does not reflect workers whose eye protection prevented injuries.

FACE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES

[July-November 1979]

Item	Number of workers	Percent of workers
Total	774	100
Flying or falling objects struck you	344	44

FACE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES—Continued

[July-November 1979]

Item	Number of workers	Percent of workers
Struck non-moving object	48	6
Liquid or chemical injured you	35	5
Swinging object struck face	154	20
Object or tool was pulled into face	114	15
Powered tool kicked back into face	33	4

FACE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES—Continued

[July-November 1979]

Item	Number of workers	Percent of workers
Occurred in other way	46	6

Note.—This table does not reflect workers whose face protection prevented injuries.

FOOT INJURIES BY DESCRIPTION OF ACCIDENT, SELECTED STATES

[July–August 1979]

Item	All workers (100%)		Workers wearing safety shoes (23%)	
	Number	Percent	Number	Percent
Total	1,251	100	283	100
Stepped on sharp object	194	16	24	8
Struck by falling object	721	58	191	67
Object rolled onto or over foot	168	13	36	13
Squeezed between	59	5	13	5
Struck foot against object	28	2	3	1
Occurred in another way	81	6	16	6

Note.—This table does not reflect workers whose foot protection prevented injuries.

HEAD INJURIES BY DESCRIPTION OF ACCIDENT, SELECTED STATES

[July-September 1979]

Item	All workers (100%)		Workers wearing hard hats (16%)	
	Number	Percent	Number	Percent
Total	1,033	100	170	100
Head struck non-moving object	299	29	21	12
Swinging object struck	198	19	44	26
Falling object struck head	371	36	62	36
Flying object struck head	120	12	34	20
Occurred in another way	45	4	9	5

Note.—This table does not reflect workers whose head protection prevented injuries.

The current standards in Part 1915 also incorporate various national consensus standards by reference. OSHA proposes to update these incorporations by reference for the design requirements for PPE, and include the relevant requirements and other information that is directly applicable to employers in these documents within the text of the revised standards. The provisions affected by these deletions, current paragraphs §§ 1915.151(a)(1) and 1915.153(b), are discussed in more detail below. This approach would enable employers to determine what duties and obligations are imposed by part 1915 without referring to documents outside Part 1915, except for the design requirements for PPE, and in the case of respiratory protection.

In accordance with paragraph 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), the Agency has reviewed the various national consensus standards that cover working conditions addressed in this proposal. OSHA has incorporated appropriate provisions from those national consensus standards as part of this proposal. OSHA believes that the proposed standard will better effectuate the purposes of the Occupational Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive and provides greater flexibility in its requirements for safety.

The following discussion provides a more detailed explanation of the proposed provisions related to personal protective equipment.

Section 1915.151 Scope, application, and definitions applicable to this subpart.

Proposed paragraph (a) sets forth the scope and application of the proposal. This Subpart would apply to all personal protective equipment used in shipyard workplaces and operations, except that used in construction work covered by Part 1926. The personal protective equipment provisions of Subpart I of Part 1910 would no longer apply unless specifically referenced.

Proposed paragraph (b) defines key terms used in the proposed standard. While the proposed definitions are self-explanatory, several are discussed below to facilitate understanding of the fall protection provisions of this proposal.

"Deceleration device" is defined as a personal fall arrest system with components which dissipate a substantial amount of energy during a fall arrest by means other than the simple stretching of a rope or line. It includes such devices as rope grabs, rip stitch lanyards, special woven lanyards, and automatic-self retracting lifelines, and excludes rope, wire, chain or webbing lanyards.

"Personal fall arrest system" is defined as the system and components that are used to arrest the fall of employees who have fallen from work surfaces. This type of system differs from a positioning device system in that the primary purpose of the personal fall arrest system is to *arrest* safely an employee who has fallen, while positioning device systems are used primarily to *prevent* a fall.

"Positioning device system" is defined as a system which is used to support or aid an employee in working with both hands free at a given work level.

"Restraint (tether) line" is defined as a device which is attached between the employee and an anchorage to prevent the employee from walking or falling off a work surface. It has been treated as a "positioning device system" in the proposed standard, although its function is somewhat different. It does not support an employee at a work level, but, rather, prevents the employee from

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leaving the work level or work position. The forces encountered with a restraint line system are much less than those experienced with a fall arrest system, and are similar to those encountered with a positioning device system.

"Strength factor" is defined as the ratio of the strength of a personal fall arrest system to the arresting force which would be experienced by a human during a fall arrest. This term is used in proposed requirement § 1915.159(a)(4)(iv), discussed further below, which mandates that the personal fall arrest system be strong enough to withstand twice the design arresting force safely. For example, using a worker design weight of 250 pounds (113 kg), if a system were capable of limiting the arrest force to six times the worker's weight (arrest force of 1,500 pounds (6.67 kN) (250×6=1,500)), the system strength would have to be at least 3,000 pounds (13.3 kN) in order to meet the strength factor requirement of two. (The test methods contained in Appendix B of this proposal could be used to demonstrate a strength factor of at least two.)

Section 1915.152 General requirements.

In paragraph (a), OSHA proposes that employers make available to their employees personal protective equipment for eyes, face, head, and extremities; protective clothing; protective shields and barriers; personal fall protection equipment; and life saving equipment whenever such equipment is necessary for employee protection. The employer shall ensure that the equipment is used. Personal protective equipment would include such items as hard hats, safety glasses, safety shoes, and work gloves. This paragraph is based on current §§ 1915.153(d) and 1910.132(a), which require the employer to make personal protective equipment available. Sections 1915.153-1915.158(b) of this proposal incorporate the duty to use the various types of equipment, as set out in current paragraph (a) of § 1910.132. In addition, the proposal provides criteria for selection and proper use of personal flotation devices (PFD) (§ 1915.158(a)) and personal fall protection equipment (§ 1915.159), but does not include requirements for where and when such equipment must be used. Such requirements will be included in another OSHA shipyard proposal on fall protection, Subpart M of Part 1915 (Docket No. S–046). For example, the Subpart M proposal would require PFD's for employees working on floating vessels where other protection, such as guardrails, is not provided. Subpart M would also mandate the use of personal fall protection equipment for employees working on elevated work surfaces when other fall protection is not provided.

In paragraph (b), OSHA proposes that personal protective equipment be selected to protect employees from the particular hazards to which they are exposed. This language, while based on § 1910.133(a)(1), has been expanded so that it covers the selection of all personal protective equipment.

In paragraph (c), OSHA would bar the use of defective or damaged personal protective equipment. This paragraph is derived from existing §§ 1915.154(a)(2), 1915.154(b)(2), and 1910.132(a).

In paragraph (d), OSHA proposes that any and all personal protective equipment which has been used be cleaned and disinfected as necessary before it is reissued to another employee. This requirement is based on existing § 1915.151(a)(3).

In paragraph (e), OSHA proposes that employees be trained in the proper use of personal protective equipment. This paragraph is based on existing § 1915.152(a)(4).

Section 1915.153 Eye and face protection.

In paragraph (a)(1), OSHA proposes to require that eye and face protective equipment be used by employees when they are exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, chemical gases or vapors, or injurious light radiation. This is based on the requirements contained in existing § 1915.151 (b)(1) and (c)(1).

In paragraph (a)(2), OSHA proposes that eye and face protective equipment fit employees properly. This requirement is based on existing § 1910.133(a)(2) (ii) and (iii), and is proposed to assure good vision and proper protection.

In paragraph (a)(3), OSHA proposes, as a new requirement, that workers who pass from well-lit to dimly-lit areas not wear protectors with tinted or variable tinted lenses. This paragraph would prevent workers from being exposed to situations in which extreme lighting changes might temporarily impair their vision due to the darkened effect of the tinted lenses, such as when a forklift operator drives a forklift from outdoors into a poorly lit warehouse. OSHA solicits comments regarding the need for and suitability of this proposed requirement, with emphasis on whether or not wearing of tinted lenses in these situations actually does add to the existing vision problem caused by dim lighting.

In paragraph (a)(4), OSHA proposes that employees who wear prescription lenses be protected by eye protection that incorporates the prescription in its design, or by eye protection that can be worn over prescription lenses without interfering with the prescription lenses such that vision becomes impaired, or when protection is not fully provided because of interference. This requirement is essentially the same as existing § 1915.151(a)(4).

In paragraph (a)(5), OSHA proposes that employees use equipment with filter lenses for protection from injurious light radiation with a shade number appropriate for the work being performed. In addition, Table I–1, *Filter Lenses for Protection Against Radiant Energy*, is provided to list the proper shade numbers for various operations. These provisions are essentially the same as existing § 1915.151(c)(2) and Table I–1 in § 1915.118 of the current standard. OSHA proposes to move both sections to §1915.153.

In paragraph (b), OSHA proposes that the design of eye and face protection comply with the requirements of American National Standard Practice for Occupational and Educational Eye and Face Protection (ANSI Z87.1–1979) as stated in proposed paragraph (b)(1), or alternatively, in the case of plano (non-prescription) spectacles, that these protectors meet the requirements, of proposed paragraph (b)(2). Paragraph (b)(2) would cover impact protection, optical requirements, flammability resistance, and radiant energy protection. It presents essentially the same protective requirements for spectacles found in the current OSHA standards, the current American National Standard Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1–1979 (Reference 5), and the August 1986 and August 1987 drafts of ANSI Z87.1–198x,, (References 23 and 29) (which have been developed by the ANSI Z87 Standards Committee, but have not yet been adopted as national consensus standards). However, proposed paragraph (b)(2) does not contain many of the design restrictive provisions, such as a single minimum lens thickness (3 mm) for all spectacle lens materials, which apply in the current OSHA standards, because they have been superseded by technological advances. In the case of the lens thickness requirement, stronger materials are being used for protective lenses which provide sufficient protection at reduced lens thicknesses (down to 2 mm thickness). In addition, frame designs have been developed which provide improved employee protection, but do not conform with the design restrictions

in the current OSHA standards. The current standards, §§ 1915.151(a)(1) and 1910.133(a)(6), reference ANSI Z2.1–1959 (a very early version of ANSI Z87.1) and ANSI Z87.1–1968. OSHA has determined that those consensus standards are outdated. The proposed criteria in paragraph (b)(2), which are based on the most recent ANSI Standard and on the August 1986 and 1987 draft revisions, are much more performance-oriented than those in the current OSHA standard, and can be met by eye and face protection that is currently in use. In addition, OSHA has determined that the majority of the eye and face protection currently in use in shipyard employment meets either ANSI Z87.1–1979 or the proposed criteria in paragraph (b)(2), and that the level of protection afforded by these provisions is essentially the same. OSHA requests comments on this performance-oriented approach, and on whether or not proposed paragraph (b)(2) contains the provisions necessary to provide proper plano spectacle eye protective equipment for employees.

Section 1915.154 Respiratory protection.

OSHA proposes to substitute the requirements of § 1910.134, Respiratory protection, for the requirements of the current § 1915.152 because the Agency has determined that the Part 1910 respiratory protection provisions are more comprehensive and provide better employee protection from respiratory hazards than the Part 1915 provisions. Indeed, the Agency has determined that all of the requirements of existing § 1915.152 are already effectively covered in § 1910.134. Therefore, OSHA believes that the deletion of current § 1915.152 will not reduce the protection of employee safety or health. As noted above, OSHA has proposed to reorganize and retitle Subpart I of Part 1915, so that proposed § 1915.152 presents general PPE requirements and proposed § 1915.154 references the respiratory protection provisions. The lifesaving equipment provisions of the current Part 1915, presently found in § 1915.154, would be relocated to new § 1915.158.

OSHA has long applied § 1910.134 to shipyard employment. Between 1976 and 1984, violations of § 1910.134 respirator provisions accounted for over 85% of all shipyard personal protective equipment citations issued by OSHA. On November 4, 1985, OSHA issued a field instruction, OSHA Instruction, STD .2, which affirmed that § 1910.134 applies to shipyard employment.

The Agency is currently reviewing § 1910.134 in order to determine which provisions need revision, and is developing a proposed rule which incorporates the necessary changes for all industry sectors in which it applies. The revision of § 1910.134 will involve a complex rulemaking effort. Therefore OSHA has determined that the incorporation of § 1910.134, without change, into 29 CFR Part 1915 would at this time best protect the safety and health of shipyard employees. This proposal would delete the current shipyard provisions on respiratory protection in § 1915.152, and would place a reference to § 1910.134 in new § 1915.154 to indicate the continued coverage of that section. Although the requirements of § 1910.134 are not proposed for revision in this rulemaking, OSHA does request comments on whether the current provisions of § 1915.152 should be deleted as proposed, or whether any of them should be retained in addition to § 1910.134.

Section 1915.155 Head Protection.

In paragraph (a)(1), OSHA proposes that employers require their employees to wear protective helmets when they are working in areas where there is a potential for injury to the head from falling or moving objects. These requirements are essentially the same as current §§ 1915.153(a) and 1910.132(a).

In paragraph (a)(2), OSHA proposes that employers ensure that employees wear protective helmets designed to reduce electrical shock hazard, whenever they are near exposed energized conductors which could be contacted by the protective helmet. This is essentially the same requirement as current §§ 1915.153(b), 1910.132(a), and 1910.135.

In paragraph (b), OSHA proposes that the design of protective helmets comply with the provisions of American National Standard Requirements for Protective Headwear for Industrial Workers (ANSI Z89.1–1986) (Reference 4) or be of a design that provides equivalent protection. The provisions in ANSI Z89.1–1986 would cover impact resistance, penetration protection, flammability, water absorption resistance, electrical insulation and maximum weight. The current OSHA standards for head protection, §§ 1915.153(b) and 1910.135, reference earlier editions of ANSI Z89.1, ANSI Z2.1–1959 (Reference 15) and ANSI Z89.1–1969 (Reference 17). These earlier editions, except insofar as they address electrical insulation for Class B helmets, specify essentially the same requirements which are in proposed paragraph (b). One significant difference between the helmet provisions in proposed paragraph (b) (which references the latest ANSI standard for head protection (ANSI Z89.1–1986)), and the present OSHA requirements, involves the relevant testing for helmets used for protection against live electrical conductors. The testing requirements in the 1986 ANSI standard are somewhat more stringent for "Class B" helmets than those contained in the current OSHA standards. However, OSHA believes that helmets currently used for protection against electrical contact in shipyards meet the electrical insulation requirements in ANSI Z89.1–1986. This involves a relatively small number of employees, primarily linemen, who generally wear helmets which are classified under the ANSI standard as "Class B" helmets. The Agency solicits comments and information on helmets presently used for electrical protection in shipyards, and whether such helmets would comply with the proposed OSHA standards.

Section 1915.156 Foot protection.

In paragraph (a), OSHA proposes that employers require their employees to wear protective footwear when they are working in areas where falling and rolling objects create risk of foot injuries. In substance, the same requirement is contained in § 1910.132(a). This proposed language would, however, make a change from § 1915.153(d) of the current shipyard standards which merely requires that employers make safety shoes *available* and *encourage* their use. OSHA believes that requiring employees to wear protective shoes, in certain circumstances, is a necessary precaution to protect workers' feet. In order to gain a fuller understanding of the issue, OSHA requests comments regarding the extent to which shipyard employees already wear safety shoes when they are exposed to foot hazards, and solicits data and comments on the need for the proposed requirement.

In paragraph (b), OSHA proposes that the design of protective footwear comply with the provisions of American National Standard Personal Protection-Protective Footwear (ANSI Z41–1983) (Reference 3) or be of a design that provides equivalent protection. The provisions in ANSI Z41–1983 would cover compression resistance and impact resistance. Section 1910.136 currently references ANSI Z41–1967, which contains the same compression and impact requirements as ANSI Z41–1983. However, the 1967 ANSI standard applies only to men's protective footwear. ANSI Z41–1983 covers both men's and women's protective footwear

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thus filling a serious gap in the current OSHA standards for foot protection. Protective footwear which complies with the ANSI Z41–1967 standard would also comply with the proposed requirements in paragraph (b).

As stated above, the requirement that employers ensure that employees use the necessary protective footwear would be added through this rulemaking. Therefore, OSHA has determined that delaying the effective date of this new provision for 90 days would be appropriate so that employers would have time to ensure that their workers are using foot protection when they are exposed to foot hazards. The Agency invites comments, with supporting data, regarding the need for a delayed effective date for this provision.

Section 1915.157 Hand and body protection.

In paragraph (a)(1), OSHA proposes that employees wear gloves and other protective clothing when they are exposed to hazards of heat, chemical burns or sharp objects. This requirement is essentially the same as §§ 1915.153(f) and 1910.132(a) of the current standards, and covers the safety hazards of cuts and chemical burns. The health hazards of toxic chemicals and the required protective clothing are covered in Part 1910, Subpart Z, which applies to shipyards.

In paragraph (a)(2), OSHA proposes that employees not wear greasy clothing when performing hot work. This provision is similar to current § 1915.153(e). It is intended to minimize the risk that the grease will catch fire and burn rapidly, especially where the workplace atmosphere is oxygen enriched.

In paragraph (a)(3), OSHA proposes that electrical insulating gloves and sleeves be available to and used by employees who are exposed to electrical shock hazards while performing electrical work. This requirement is based on current § 1910.132(a).

Section 1915.158 Lifesaving equipment.

This section contains the requirements for lifesaving equipment, such as life jackets, life rings, ladders and rescue lines. These requirements are essentially the same as those found in current § 1915.154, which specify that the U.S. Coast Guard requirements for this equipment be followed.

Section 1915.159 Personal fall protection equipment.

This section presents the proposed requirements for personal fall protection equipment. The proposal covers personal fall arrest systems such as lifelines, lanyards, body belts and body harnesses, and positioning device systems such as window cleaner's belts and straps. OSHA has proposed these criteria because it intends to recognize the use of personal fall protection equipment as an acceptable alternative to the use of guardrails, when the use of guardrails is not feasible. The provisions for personal fall protection equipment in proposed § 1915.159 are, for the most part, based on a National Bureau of Standards report, "A Study of Personal Fall-Safety Equipment" (NBSIR 76–1146) (Reference 10) and the American National Standard Requirements for Safety Belts, Harnesses, Lanyards, Lifelines and Drop Lines for Construction and Industrial Use, ANSI A10.14–1975 (Reference 1).

OSHA is currently developing a proposed rule to establish strength and other criteria for personal fall protection equipment in Subpart I of the General Industry Standards, (Part 1910). In addition, on January 22, 1985 and November 25, 1986, OSHA issued Notices of Proposed Rulemaking, respectively, for Powered Platforms in General Industry [50 FR 2890] (Reference 22), and Fall Protection in the Construction Industry [51 FR 42718] (Reference 28), which both contained proposed criteria for personal fall arrest systems. The proposed criteria for Part 1915 parallel those in the powered platform and construction fall protection proposals. In that regard, OSHA notes that numerous comments and much of the hearing testimony in the powered platform rulemaking (Docket No. S–700A) involved suggested changes in the proposed provisions for personal fall arrest systems (References 18, 20, 21, and 22). OSHA invites comments on whether any such changes made in the proposed provisions for powered platforms should also be made in the parallel provisions of proposed § 1915.159. Issues relating to personal fall arrest systems are raised at the end of this section of the preamble.

In paragraph (a), OSHA proposes performance criteria and requirements for the use of personal fall arrest systems. This type of equipment is partially covered by current § 1915.154(b). However, the current standard does not provide performance criteria for the proper functioning of the systems.

In paragraph (a)(1), OSHA is proposing that personal fall arrest equipment be used only for employee protection. This would prevent the deterioration caused by improper uses and types of loads.

In paragraph (a)(2), OSHA proposes that personal fall arrest systems and their components which have been subjected to impact loading be removed from service, and that they not be used again until the equipment has been inspected and determined, by a capable person, as defined in § 1915.151(c), to be undamaged and suitable for reuse. Impact loading weakens the fall arrest system, greatly reducing its energy absorbing characteristics. Thus, if a system were used a second time, without inspection, higher forces could be transmitted to the employee and the system. This might result in injury to the employee. This requirement is based on paragraph 3.3.8 of ANSI A10.14–1975 (Reference 1).

In paragraph (a)(3), OSHA proposes that lifeline and lanyards be protected against being cut, abraded, burnt, or corroded by chemicals. This is essentially the same requirement as paragraph § 1915.154(b)(3) of the current standard.

In paragraph (a)(4)(i), OSHA would require that a fall arrest system be installed to minimize free fall distance so that an employee could neither free fall more than six feet (1.8 m) nor contact any lower level or obstruction. This provision is based on paragraph 5.3 of ANSI A10.14–1975 (Reference 1), and is included because the proposed system strength and deceleration criteria are based on this maximum free fall distance, and because a fall arrest system will not protect falling employees from injury if the system, as installed, allows them to hit a lower level.

In paragraphs (a)(4)(ii)–(iv), which are discussed in more detail below, OSHA proposes new performance requirements for personal fall protection equipment. The current shipyard standards do not provide any performance criteria for such equipment. In order to allow employers a reasonable amount of time to ensure that employees are using equipment which meets these new requirements, OSHA proposes to delay the effective date for these new requirements until 180 days after publication of the Final Rule in the Federal Register. OSHA solicits comments on the utility and need for this delayed effective date.

In paragraph (a)(4)(ii), OSHA proposes that a personal fall arrest system bring an employee to a complete stop within a deceleration distance of 42 inches (1.1 m), excluding lifeline elongation. This distance is in addition to the maximum six-foot (1.83 m) distance of free fall and is based on a requirement contained in the British and Canadian standards (References 6 and 7) for rope grab devices and self-retracting lifelines—two types of personal fall arrest systems not yet specifically covered by any ANSI or OSHA standards. OSHA requests comments as to the appropriateness of applying this 42-inch (1.1 m) distance limitation to all personal fall arrest systems used in the U.S., and the availability of systems which currently meet this proposed requirement.

In paragraph (a)(4)(iii), OSHA proposes that a personal fall arrest system, under fall conditions, not produce an arresting force of greater than 10 times the employee's weight, or 1,800 pounds (8 kN), whichever is lower. This requirement is based on paragraph 3.3.5 of ANSI A10.14–1975 (Reference 1), and a review by OSHA of pertinent literature on human tolerance when using various restraint systems (References 8, 9, 10, 11 and 12). (See also Issues 1 and 2 below.)

In paragraph (a)(4)(iv), OSHA proposes that the strength (or safety) factor for a personal fall arrest system be at least two. This means that the system would not fail even if subjected to twice the design shock load. This safety factor is derived from the strength criteria contained in the ANSI A10.14 standard, using the maximum permitted arrest force of 10 times gravity, and a design weight of 250 pounds (113 kg). In normal usage, personal fall arrest systems will experience arresting forces well below the design shock load because the free fall distance will usually be less than six feet (1.8 m), and because the lifeline generally used will absorb energy. Therefore, OSHA anticipates that the proposed margin of safety would be several times the actual arresting force. (See also Issues 2.d. and 5 below).

Appendix A contains examples of test methods for evaluating personal fall arrest systems. OSHA recognizes that test methods not listed in Appendix A would also, if properly implemented, enable employers to determine whether or not their equipment satisfies the criteria of proposed § 1915.159. These examples are provided solely to assist those employers who are not aware of proper test methods for their equipment. The procedures listed in Appendix A are essentially the same as those contained in the Notices of Proposed Rulemaking for Powered Platforms in General Industry (50 FR 2890), and Fall Protection in the Construction Industry (51 FR 42718).

In paragraph (a)(5), OSHA proposes criteria for attachment point locations on body belts and body harnesses. Three locations are specified, as follows: On or behind the hips; above the waist in the back; or above the head. These criteria reflect OSHA's awareness that the human body is more susceptible to injury when deceleration forces are applied to the front of the body belt or harness. Also, the proposed deceleration force limits of paragraph (a)(4) are based on forces being applied to one of the three locations specified in this paragraph. These three acceptable locations are discussed in NBSIR 76–1146 (Reference 10).

In paragraph (a)(6), OSHA proposes that body belts measure at least one and five-eighths inches (4.1 cm) in width, in order to distribute adequately the arresting force over the worker's body. The proposed requirement is based on paragraph 3.2.1 of ANSI A10.14–1975 (Reference 1), which calls for a belt which has a nominal width of one and three quarter inches (4.4 cm). OSHA believes that one-eighth-inch is a reasonable tolerance to apply to this requirement, since some tolerance is necessary in the manufacture of belt webbing.

In paragraphs (a)(7) and (a)(8), OSHA is proposing that hardware used in personal fall arrest systems be made of drop forged, pressed, formed steel, or materials of equivalent strength, and that it be protected from corrosion. In addition, the surfaces and edges of the hardware must be smooth. These requirements would ensure that the hardware retains the necessary strength characteristics for the life of the fall arrest system and under expected use conditions, and that its surfaces and edges do not cause damage to the attached belt or lanyard.

In paragraph (a)(9), OSHA proposes that each employee be provided with a separate lifeline whenever vertical lifelines are used. OSHA recognizes that using a single vertical lifeline to tie off two or more employees performing separate tasks is inherently unsafe. Movement by one employee could pull the lifeline to one side. This could, in turn, cause the other employee(s) to lose balance. In addition, if one employee did fall, movement of the lifeline during the arrest of the fall would very likely cause any other employee(s) connected to the lifeline to fall.

Paragraph (a)(10) would require personal fall arrest systems to be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall. This proposed provision is performance-oriented and addresses the actual forces that the activation of a specific fall arrest system would produce. For example, if a system produces an arresting force of 1,500 pounds (6.7 kN) during testing, the anchorage must support 3,000 pounds (13.4 kN). This allows employers flexibility in selecting and designing anchorage systems, while still requiring them to provide adequate strength. The proposed provision is based on information received in response to the Powered Platform proposal (50 FR 2890), mentioned earlier (Reference 18). OSHA invites suggestions regarding means by which OSHA compliance personnel can evaluate compliance with this paragraph.

Paragraphs (a)(11), (a)(12), (a)(13), and (a)(14) provide the strength criteria for lanyards, snap hooks, dee-rings and lifelines. Under those criteria, the components must be able to sustain a minimum load of 5,000 pounds (22.2 kN). This strength requirement is based on the force limit of 10 times gravity acting on a 250 pound (113.4 kg) employee, multiplied by a safety factor (strength factor) of two. Paragraph (a)(11) contains similar strength criteria for vertical lifelines, but requires that self-retracting lifelines and lanyards (which automatically limit free fall distance to two feet (0.61 m)) be able to sustain a minimum load of only 3,000 pounds (13.3 kN). The strength requirement for the cable or webbing used in self-retracting lifelines and lanyards is lower than that for other components, because the more restrictive limit on free fall distance limits the forces to which a falling employee would be exposed.

In paragraphs (a)(15) and (a)(16) OSHA proposes that snap-hooks not be connected to loops in webbing lanyards or to each other. This would prohibit two methods of attachment which are considered unsafe because snap-hooks could accidentally disengage during use. These provisions are based on paragraphs 3.2.5 and 3.2.3.2 of ANSI A10.14–1975 (Reference 1), respectively.

In paragraph (a)(17), OSHA proposes that no more than one snap-hook be connected to any single dee-ring. OSHA considers multiple connections to be unsafe because one snap-hook could cause another to become accidentally disengaged from the dee-ring during use.

Proposed paragraph (a)(18) contains the provisions which apply to the inspection of personal fall arrest systems. In this paragraph, OSHA proposes that the employer visually inspect the fall arrest system for defects or damage prior to each use, and that the employer remove defective or damaged equipment from service if the strength properties may have been weakened. This inspection need not involve testing or impact loading of the system.

In paragraph (a)(19), OSHA would require that employers train employees

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who use these systems so that they know the application limits of the system; the proper hook-up, anchoring, and tie-off techniques; methods of use; and proper methods for inspection and storage. OSHA believes that employees must be thoroughly trained in all aspects of the system, in order for it to provide the necessary protection.

In proposed paragraph § 1915.159(b), OSHA presents criteria for positioning device systems.

In paragraph (b)(1), OSHA would require that all hardware have a corrosion-resistant finish and that all surfaces and edges be smooth so that they do not cause damage to the attached belt or connecting assembly. This requirement is based on similar requirements in ANSI A10.14–1975 (Reference 1).

In paragraphs (b)(2) and (b)(3), OSHA proposes that connecting assemblies, such as snap-hooks and dee-rings, be able to sustain a load of at least 5,000 pounds (22.2 kN), and that positioning device anchorages be capable of supporting twice the potential impact load of an employee's fall. These requirements are based on paragraphs 3.1.4 and 3.2.7 of ANSI A10.14–1975 (Reference 1).

Paragraph (b)(4) contains the proposed strength requirement for restraint lines, specifying that they must have a minimum breaking strength of 3,000 pounds (13.3 kn). The NBS report mentioned above (NBSIR 76–1146) (Reference 10) recommends a breaking strength in excess of 2,000 pounds (8.9 kN) for new lines. OSHA believes that requiring a breaking strength of 3,000 pounds (13.3 kN) is necessary to ensure that employees are adequately protected from fall hazards and is reasonable in view of the strengths and sizes of rope which are commercially available and the wear and tear expected during use.

Proposed paragraph (b)(5) provides the system performance criteria for the different types of positioning device systems. These are new performance requirements that are not in the current shipyard standards. In order to allow employers a reasonable amount of time to ensure that employees are using equipment which meets the new requirements, OSHA proposes to delay the effective date for these new requirements (paragraphs (b)(5)(i) and (b)(5)(ii)) until 180 days after publication of the Final rule in the **Federal Register**. OSHA solicits comments on the utility and need for this delayed effective date.

In paragraph (b)(5)(i), OSHA would require that a window cleaner's positioning system be able to withstand, without failure, a drop test consisting of a six foot (1.8 m) drop of a 200 pound (113 kg) weight. In addition, the system would limit the initial arresting force to not more than 2,000 pounds (8.89 kN) for a duration not to exceed two milliseconds. Subsequent arresting forces produced due to "bouncing" during arrest of the fall are not to exceed 1,000 pounds (4.45 kN). A test method to evaluate this requirement is contained in appendix A. These criteria, which are essentially the same as those presented in American National Standard Safety Requirements for Window Cleaning, ANSI A39.1–1969 (Reference 2), are more stringent than the arresting force criteria for other positioning devices. This is because a window cleaner's system allows for free falls of up to six feet (1.8 m), whereas the other systems limit free fall to a lesser distance.

In paragraph (b)(5)(ii), OSHA proposes that all other positioning device systems be capable of withstanding, without failure, a drop test consisting of a four foot (1.2 m) drop of a 250 pound (113 kg) weight. This is essentially the same requirement for lineman's body belt systems as is contained in the OSHA General Industry telecommunications standards, § 1910.268(g)(iii)(G).

In addition, while OSHA does not require that employers themselves test positioning device or personal fall arrest systems, OSHA proposes that positioning device systems be considered to comply with the provisions of (b)(5)(i) and (ii), above, if they have been tested in accordance with the positioning device guidelines in appendix A. OSHA solicits suggestions regarding the means by which OSHA compliance personnel can determine compliance with this paragraph.

In paragraph (b)(6)(i), OSHA proposed that snap-hooks not be connected to each other. This would prohibit a method of attaching snap-hooks which OSHA considers to be unsafe because snap-hooks could accidentally disengage during use. This provision is based on paragraph 3.2.3.2 of ANSI A10.14–1975 (Reference 1).

In paragraph (b)(6)(ii), OSHA proposes that positioning device systems and their components which have been subjected to impact loading be removed from service. Employers would not be permitted to use the equipment again until the system had been inspected and determined by a capable person to be undamaged and suitable for reuse. Impact loading weakens the positioning device system, and greatly reduces the energy absorbing characteristics of the system—particularly in the case of window cleaner's systems. Thus, if the system were to be used a second time, without inspection, higher forces could be transmitted to the employee and the system. This might result in injury to the employee. This requirement is based on paragraph 3.3.8 of ANSI A10.14–1975 (Reference 1).

In paragraph (b)(6)(iii), OSHA would require that employers train employees who use these systems so that they know the application limits of the system; the proper hook-up anchoring, and tie-off techniques; methods of use; and proper methods for inspection and storage. OSHA believes that employees must be thoroughly trained in all aspects of the positioning device system in order for it to provide the necessary protection.

Proposed paragraph (b)(7) contains the provisions applicable to inspections of positioning device systems. In this paragraph, OSHA proposes that the positioning device system be visually inspected for defects or damage prior to each use, and that defective or damaged equipment be removed from service if its strength properties might have been weakened. This inspection need not involve testing nor impact loading of the system.

Appendix A

As discussed above, an appendix accompanies this proposal. This appendix (Appendix A) would be non-mandatory, containing test methods and other information to assist employers in complying with the criteria for personal fall arrest systems contained in this standard. OSHA requests comments on what other provisions should be added to or substituted for the provisions in proposed Appendix A, in order to ensure that employees receive the necessary protection and appropriate guidance relative to personal fall protection systems.

Issues Relating to Personal Fall Arrest Systems

OSHA solicits information and data on a number of issues pertinent to its coverage of personal fall arrest systems in § 1915.159(a).

1. *Body belts.* OSHA proposes to allow the use of body belts (safety belts) for up to a six-foot (1.8 m) free fall distance, and a force limit of 10 g_n or 1,800 pounds (8 kN). This is consistent with ANSI A10.14–1975 (Reference 1) and NBSIR 76–1146 (Reference 10). However, the view has also been expressed that the use of body belts in fall arrest systems should be further restricted or even prohibited. For example, the draft International Safety Organization (ISO) international standard for personal fall arresting systems limits the arresting force to 5 kN (1,125 pounds) when using a body belt. The draft ISO standard also prohibits the use of a system which would suspend a worker more than 50 degrees from a vertical position after a fall is arrested. OSHA believes that the ISO requirements would effectively eliminate the use of currently available body belts in fall arrest systems.

The report of a study conducted by Dr. Maurice Amphoux et al., *Safety Equipment in Construction and Public Works Transportation* (Reference 19), recommends that workers not use body belts for fall arrest because of injury potential. It should also be noted that the British Standard Institution's *Specification for Industrial Safety Belts, Harnesses and Safety Lanyards (1979)* (Reference 13) limits the use of body belts to a work situation where there is a maximum free fall of two feet (.6 m) and a maximum force of five g_n. In addition, a recent review by the U.S. Air Force Aerospace Medical Research Laboratory of pertinent literature on personal fall arrest systems, *Fall Arrest and Post-Fall Suspension: Literature Review and Directions for Further Research* (AFAMRL–TR–84–021) Reference 14), concludes that a body belt is not safe for prolonged suspension (especially motionless suspension).

In addition, comments and public hearing testimony received regarding the OSHA Powered Platform proposed rulemaking have asserted that employees wearing body belts have been injured by the belts during fall arrest. Accordingly, those commenters and witnesses have suggested that OSHA limit or ban the use of the body belt in personal fall arrest systems (Reference 20 and 21).

In view of this information, OSHA requests that interested parties provide information and views, together with supporting data, regarding the use of body belts in a fall arrest system. Specifically, OSHA solicits responses to the following questions:

a. To what extent should OSHA allow the use of body belts (safety belts) in personal fall arrest systems? If permitted, what limitations should be imposed?

b. Is the proposed six-foot (1.8 m) limit on free fall acceptable for employees who wear body belts? Should some other limitations, such as two feet (.6 m), be adopted for body belts instead? What data are available to support the adoption of an alternative limitation?

c. Is the proposed 10 g_n or 1,800 pound (8 kN) force limitation for body belts acceptable? Is it acceptable for body harnesses? What would be the advantages or disadvantages of implementing a 10 g_n force limitation? What force limitation would most effectively protect workers within the bounds of feasibility?

d. Is there additional information available which indicates that prolonged suspension in a body belt may cause injury to employees?

e. Is there injury data which indicates that employees have been injured by their body belts during fall arrest, or during suspension following fall arrest?

f. If body belts are not allowed in personal fall arrest systems, or if their use is limited so that body harnesses are more widely used, what cost impacts would be attributable to the increased use of body harnesses? What is the availability and worker acceptance of body harnesses in the shipyard industry?

2. *Arresting force limits.* OSHA requests comments concerning the best method for stating the maximum arrest limitation. By using only the force generated by a 10 g_n deceleration as the limitation, the permitted force value would vary with the weight of the worker. For instance, based on a 10 g_n limitation alone, a 275 pound (125 kg) worker would be permitted by the standard to experience 2,750 pounds (12.3 kN) of force during an arrest. In view of the human tolerance information discussed above, OSHA believes that this amount of force is unacceptable, and has proposed 1,800 pounds (8 kN) as the maximum force. OSHA requests comments on the following:

a. Does the proposal provide a reasonable means by which deceleration and force would be taken into account? Should the limitation be expressed solely as either maximum arrest force (pounds force), or the force generated by a maximum arrest deceleration (i.e., g_n)?

b. Would the proposed 1,800 pound (8 kN) limitation for body belts and body harnesses provide the necessary protection for employees? If not, what should the limit be? What information is available to support setting a different limitation for arresting force?

c. The suggested test procedures in Appendix A include a 130 pound (59 kg) test weight for lanyard systems. NBSIR 76–1146 (Reference 10) identified lighter test weights as being more useful than heavier test weights in determining compliance with the 10 g_n limitation for lanyards, because lighter test weights do not cause lanyards to be as elastic as do heavier weights and therefore stop more abruptly. Thus, it is more difficult to satisfy the 10 g_n limit with a 130 pound (59 kg) test weight than with a 220 pound (100 kg) test weight. However, if the standard were to impose *only* a force limitation on fall arrest systems, without a limitation on arrest force (in pounds), the use of a 130 pound (59 kg) test weight would not reflect the forces to which employees over 130 pounds (59 kg) would be exposed during a fall (see introductory discussion for this issue, above). OSHA requests data, views, and arguments on whether the 130 pound (59 kg) test weight for lanyard systems is appropriate, or whether the 220 pound (100 kg) test weight, which is used for all other systems, should also be used for lanyards during the force test.

d. Comments and public hearing testimony received regarding the personal fall arrest system provisions of the powered platform proposal asserted that the proposed test procedures were confusing and overly complicated. They recommended simplified test procedures (References 20 and 21). Are the proposed test procedures in Appendix A too complex? If the strengths of all personal fall arrest system components are specified, would a single qualification test to measure arresting force be sufficient? What should be the parameters of a single test (such as free fall distance, test weight, and arresting force limit)?

3. *Snap-hook design.* OSHA has received a number of conflicting views on snap-hook design. During meetings with the Fall Protection Group of the Industrial Safety Equipment Association (ISEA), several members of that group suggested that OSHA prohibit the use of single action snap-hooks and require, instead, the use of locking snap-hooks. Other group members asserted that properly designed and applied single action snap-hooks provide adequate protection, so OSHA should permit their continued use. In addition, comments and public hearing testimony received regarding the personal fall arrest system provisions of the powered platform proposal recommended the use of locking snap hooks (References 20 and 21). OSHA requests suggestions, with supporting information, regarding the type of snap-hook whose use should be permitted. In addition, OSHA requests information on:

a. The number of snap-hooks (distinguishing between single action and locking) currently in use;

b. The increased cost which would be imposed if OSHA required the use of locking snap-hooks and prohibited the use of single action snap-hooks; and

c. Incidents in which either single action or locking snap-hooks have failed in use.

d. The types of connections which locking snap-hooks may be used where such connections would be considered

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unadvisable using a single action snap-hook.

4. *Inspections.* OSHA requests comments regarding whether or not the Agency should provide more definitive inspection criteria for determining when personal fall protection systems are no longer suitable for use. Are there examples of such criteria which could be included in the standard or appendix? If there are, please submit these along with comments and supporting data.

5. *Testing.* OSHA requests comments regarding the testing of personal fall protection systems. Are manufacturers of this equipment presently testing and evaluating their products? If so, how do these tests compare with those proposed in this rulemaking? Are products currently labeled as having satisfied test criteria? What information do employers have regarding tests for existing personal fall protection equipment. Can the proposed test methods be simplified without compromising their value? If so, how? (See Issue 2. d.) Should employer testing of personal fall protection systems be mandatory? Are there any testing methods which can be used to determine whether or not system components can be interchanged with those from other systems?

6. *Issues raised by comments received in the powered platform rulemaking.* Appendix D of OSHA's proposed rulemaking for powered platforms (Reference 22) is essentially the same as proposed § 1915.159(a) and Appendix A of this proposal. OSHA has received comments on Appendix D of the powered platforms proposal which raise issues pertinent to this proposal (References 18, 20, 21 and 22). OSHA solicits comments from interested parties on these and other points of concern.

a. A commenter on powered platforms Appendix D (Reference 21) has criticized the test methods section as inadequate, and has suggested that equipment testing be required. The commenter further suggested that OSHA require employers to test components and subassemblies of systems, and not require that employers test complete systems. OSHA requests comments and suggestions regarding the need for clarified, mandatory test methods for components and subassemblies of personal fall arrest systems. OSHA would be particularly interested in any information about consensus standards for the design and testing of components and subassemblies.

b. The same commenter (Reference 21), has criticized the mandatory provisions for failing to spell out what equipment can be combined to form an acceptable system; how it can be connected; and the circumstances in which the components and subsystems of a personal fall arrest system would be interchangeable. It has, for example, been suggested the OSHA require that personal fall arrest equipment be labeled to indicate when and where employers could use it interchangeably. Would a labeling requirement addressing interchangeability be feasible? What information should be placed on the label and who should be responsible for labeling the equipment? If any employer or manufacturer is currently using such a labeling system, please submit this information and sample labels.

c. OSHA has presented definitions for key words in proposed paragraph (c) of § 1915.151. A commenter on powered platforms (Reference 21) has criticized the definitions as incomplete and imprecise. OSHA solicits comments and suggestions regarding the adequacy of the proposed definitions, with special attention directed to the terms discussed below.

(i) The term "body support" has been suggested to replace "body belt." It was further recommended that the term incorporate both body belts and "full body harnesses" (body harnesses), in order to describe more fully the equipment which would be appropriate for fall arrest or suspension. OSHA solicits comments and information regarding the appropriateness of the recommended change, given that body belts would be permitted by the standard (see Issue, 1, above).

(ii) OSHA has used the term "deceleration device" to describe certain fall arrest components. It has been suggested that "deceleration device" is not properly descriptive, and that OSHA should instead utilize the terms "fall arrester," "energy absorber" and "self-retracting lifeline/lanyard" (different types of deceleration devices) to cover the separate components and subsystems involved. OSHA solicits comments as to how adequately the term "deceleration device" encompasses the components and subsystems which are used to control deceleration. OSHA also requests comments regarding the suggestion that "deceleration device" be replaced by more specific terms. Supporting information should accompany comments, with emphasis on the feasibility and utility of proposed definitions and other changes.

(iii) OSHA has used the term "fixed anchorage" in Appendix D to powered platforms to describe an attachment point for personal fall arrest equipment. It has been suggested that OSHA revise the definition to specify that the "anchorage" is independent of the personal fall arrest system. It was further suggested that OSHA require anchorages to have a minimum strength of 3,600 pounds when the maximum arresting force is 1,800 pounds or less in order to provide adequate protection for workers in worst case situations. OSHA solicits comments and information regarding the need for and feasibility of the suggested revisions.

d. A commenter (Reference 21) on the powered platform proposal has suggested that OSHA quantify the corrosion resistance requirements, referring to the ASTM Salt Spray Testing Standard. OSHA solicits comments and suggestions regarding the utility and feasibility of such quantification. Suggestions should be accompanied by supporting information.

e. It has been suggested (Reference 21) that self-retracting lifelines and lanyards be required to meet the minimum loaned requirement (3,000 pounds) with the lanyard or lifeline fully extended. It was also suggested that OSHA specify the maximum arresting force to be transmitted by those devices, taking into account the kind of "body belt or harness" used. OSHA solicits comments, accompanied by supporting information, regarding the proposed requirements for self-retracting lifelines and lanyards.

f. It has been suggested (Reference 21) that OSHA require proof-testing of deerings and snap-hooks at 100 percent of rated load to ensure that defective equipment is not used. OSHA solicits comments regarding the need for such testing and suggestions for its implementation. OSHA would be particularly interested in information concerning the cost of testing, what testing is currently performed or feasible, and any accidents involving equipment defects.

g. It has been suggested (Reference 21) that OSHA require horizontal lifeline subsystems to be designed by "qualified persons" and that the requirements for horizontal lifelines be revised to include more detailed guidance. OSHA solicits comments regarding these recommendations. Please submit supporting information.

h. The same powered platform commenter (Reference 21) has suggested that employers inspect personal fall arrest systems and their components for both function and deterioration. OSHA solicits comments regarding the need for, recommended procedures, and feasibility of such inspections. Supporting information should accompany any recommendations. To what extent would inspection for function approximate testing? How frequently should such inspections take place? What would be the anticipated burden of complying with the suggested revision? OSHA would appreciate comment on the above issues.

Amendments to Other Subparts of the Shipyard Standards

As discussed earlier, this proposal contains proposed revisions to provisions in Subparts C and H of the shipyard standards to correlate references to the proper provisions in proposed Subpart I. This is necessary since, due to the proposed reformatting of Subpart I, the current references would no longer identify the correct paragraphs in proposed Subpart I. These proposed revisions are editorial in nature and would not substantially change the current requirements in these other subparts. These proposed revisions are included as items two through eight in the amendatory section of this proposal.

The references listed below, as well as other information which has been used to prepare and support this proposal, are available for public inspection and copying at the Docket Office at the address given earlier.

III. References

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16. American National Standards Institute (ANSI). *American National Standard for Occupational and Educational Eye and Face Protection.* (ANSI Z87.1–1968). New York, NY: ANSI, 1968.

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20. The United States Department of Labor, Occupational Safety and Health Administration, Public Hearing, Transcripts, Volumes I, II and III, February 19–20, 1986. Executive Court Reporters, Silver Spring, Maryland: 1986.

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22. U.S. Department of Labor, Occupational Safety and Health Administration, Powered Platforms for Exterior Building Maintenance. Proposed Rule, 29, CFR 1910.66 (50 FR 2890, January 22, 1985). **Federal Register,** Washington, DC: 1985.

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IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed revision would not be a "major" action. The expected annualized total costs of full compliance would be about $3.7 million.

Data Sources

The primary source for this assessment is the November 1985 Final Report by CONSAD Research Corporation entitled, "Data to Support A Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing." In addition, OSHA has also used an October 1984 report by Main Hurdman/KMG entitled "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and ship breaking industries would be affected by the proposed consolidation of the personal protective equipment sections of the existing Part 1915, Subpart I and Part 1910, Subpart I because personal protective equipment is used in all shipyards. In recent years, shipyards have not prospered as an industry. By way of illustration, there were about 400 shipyards operating in 1985, which is 200 fewer than the 600 shipyards active in 1980. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but orders for only 10 merchant vessels (140,915 tons) in 1984. Although this loss of business has been partially offset by the increase in the U.S. Navy's demands for ships, the decline in the demand for commercial ships will probably cause a

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further decline in the total number of active shipyards.

Population-at-Risk

OSHA has determined that every shipyard employee uses some of the equipment governed by this proposed consolidation. Hard hats and safety shoes are worn by nearly all production workers. Safety belts and harnesses are occasionally worn by all production workers who work at elevations where guardrails or other structural forms of fall protection are not feasible. It is of particular interest to OSHA that approximately nine percent of the shipyard employees use respirators and work in hazardous atmospheres. The actual number of exposed employees will depend on the overall level of shipyard employment. For example, shipyards employed 177,300 workers in 1980 and about 145,000 workers in 1984. Thus, OSHA has estimated that the number of workers affected by Subpart I will be between 145,000 and 180,000. With respect to respirator use and work in hazardous atmospheres, OSHA has estimated that the population-at-risk would be between 13,000 and 16,200 employees.

Risk of Fatality, Injury, or Illness

OSHA has estimated that the annual number of injuries and illnesses in shipyards due to a lack of respiratory protective equipment was between 390 and 595 between 1981 and 1985. Of these injuries and illnesses, between 190 and 335 were lost workday injuries. As the average number of lost workdays for lost workday injuries due to this type of accident was 7.7 days, OSHA has estimated that the annual number of lost workdays in shipyards due to lack of respiratory protective equipment would be between 1,465 days and 2,580 days.

OSHA has also determined that there would be between three and nine annual fatalities in shipyards associated with a lack of respiratory protective equipment. Finally, there is a potential for long-term chronic respiratory diseases that may lead to a premature death ocurring from failure to use respiratory protection. OSHA, however, has been unable to estimate these future risks.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would permit the use of existing and readily available technology and equipment.

There are two potential sources of benefits from this proposed standard. The first source is the benefits that would accrue to those workers who are at risk from current practices involving the use of personal protective equipment in shipyards. OSHA believes that the proposed consolidation of Parts 1910 and 1915 would likely lead to an increase in future compliance levels because consolidating two sets of personal protective equipment requirements into one set would clarify the rules. Thus, the proposed consolidation may lead to an increase in compliance which, in turn, may lead to an increase in employee safety while using personal protective equipment.

Based on the CONSAD report concerning the preventability of these fatalities and injuries, OSHA has estimated that full compliance with the proposed standard would prevent between two and seven out of the estimated three to nine annual fatalities and between 290 and 475 out of the estimated 390 to 595 annual injuries.

The second source is the benefits that should accrue to those workers who will be better protected from long-term chronic illnesses because of the clearer respiratory protection program. OSHA believes that better and more frequent use of respirators within the context of a substantive respiratory protection program can lead to increased long-term health improvements for these employees.

OSHA does not have any quantitative estimates of these potential benefits and is requesting information and comments on this issue. All comments will be carefully analyzed by OSHA for incorporation into the Regulatory Impact Analysis (RIA) for the final rule.

The basis of the estimated costs of compliance with the proposed standard is the CONSAD Report. In order to obtain this information, CONSAD circulated copies of the draft proposed standards to the two major industry trade associations and to shipbuilders. CONSAD then employed telephone questionnaires and site visits to elicit information concerning the potential economic impact of the provisions contained in the draft proposed consolidated standard. The information was used by CONSAD to develop its estimates of the costs of compliance and those costs have been adopted by OSHA as the expected costs of compliance with the proposed standards.

Based on the CONSAD report, OSHA has determined that there are two general sets of provisions that involve costs of compliance. The first general set of provisions involves the implementation of the § 1910.134 requirements for a comprehensive respiratory protection program. These provisions involve fit-testing, annual physical examinations, formal training, respirator cleaning and inspecting, and storage specifications. Although these provisions have long been applicable to shipyards, current industry practices do not comply with them all of the time. The second general set of provisions are those affecting procedures for work in hazardous atmospheres. In particular, firms do not always have adequate stand-by personnel, proper rescue equipment at hand, or a positive pressure SCBA on hand. Thus, using the baseline of existing industry practice, OSHA has estimated the annualized costs of compliance with the proposed consolidated standard to be about $3.7 million. OSHA invites public comment concerning this estimate. All comments will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant Secretary has preliminarily certified that the proposed standard would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this certification.

An important criterion that governs a regulatory flexibility analysis is whether the proposed standard would impose significant costs upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entity's financial viability. In particular, the proposed standard's effect upon small entities relative to that upon large entities must be specifically evaluated. That is, OSHA must determine whether the proposal would have a relative greater negative effect on small entities than on large entities, thereby putting small entities at a competitive disadvantage.

The proposed standard, however, has no changes that would require significant capital expenditures. Furthermore, as these proposed provisions are more performance-oriented, small entities can use cost-effective methods of employee protection best suited to their particular work situations. The costs of compliance with the proposed standard primarily depend upon the amount of respirator use which, typically, depends upon the size of the firm. Nevertheless, the percentage of small shipyards that would need to upgrade their respiratory protection programs is greater than that percentage of large shipyards that would need to upgrade their respiratory protection programs. Thus, the costs of compliance expressed as a percentage of total revenues would be larger for very small firms (fewer than 50 employees) than for very large firms (greater than 1,000 employees). These compliance costs, however, would be a small component of the overall cost of a shipyard's product.

Thus, OSHA has concluded that this proposed standard would not have a significant number of small entities.

The economic impact estimates presented in this preamble will be refined as OSHA receives additional information during this rulemaking.

OSHA solicits comments on the estimates and conclusions presented in both the Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification. Comments received will be addressed and incorporated into the Regulatory Impact Assessment (RIA) for the final rule.

OSHA's Preliminary Regulatory Impact Assessment and Regulatory Flexibility Assessment are available for inspection and copying at the OSHA Technical Data Center, Room N–3670, 200 Constitution Avenue NW., Washington, DC 20210.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (40 CFR Parts 1500 through 1517), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions and additions to 29 CFR Part 1915, Subpart I-Personal Protective Equipment, focus on the reduction of accidents or injuries by means of personal protective equipment, work practices and procedures, proper use and handling of equipment, and training. The proposal also contains language, definition, and format changes. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. Therefore, these revisions are categorized as excluded actions according to Subpart B, Section 11.10, of the DOL NEPA regulations.

VI. Recordkeeping

This proposal contains no recordkeeping requirements.

VII. Public Participation

Interested persons are requested to submit written data, views and arguments with respect to this proposal. These comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Office, Docket No. S–045, U.S. Department of Labor, Room N–2634, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11 interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by February 27, 1989;

3. The objections and hearing requests must specify with particularly the provisions of the proposed rule to which objection is taken or about which the hearing request is made, and must state the grounds therefore;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

The 25 states and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standards within six months of the publication date of a final standard or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective" as the revised Federal standard. Currently five states (California, Minnesota, Oregon, Vermont, and Washington) with their own state plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA states and in the following state plan states and territories: Alaska, Arizona, Connecticut,[1] Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York,[1] North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All states with state plans must also extend coverage to state and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Body belts, body harnesses, Safety belts, Fall protection systems, Eye protection, Safety glasses, Face protection, Foot protection, footwear, safety shoes, Head protection, hard hats, Incorporation by reference, Occupational safety and health, Marine safety, Protective equipment, Personal flotation devices, life jackets, Respirators, respiratory protection, Safety, ship repair, shipyards, Vessels.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act, as amended (33 U.S.C. 941), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1915, as set forth below.

[1] Plan covers only state and local government employees.

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Signed at Washington, DC, this 17th day of November, 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1915—[AMENDED]

1. The authority citation for Part 1915 would continue to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. Section 1915.32 would be amended by revising paragraph (a)(3) to read as follows:

§ 1915.32 Toxic cleaning solvents.

(a) * * *

(3) Employees shall be protected against toxic vapors by suitable respiratory protective equipment in accordance with the requirements of Subpart I of this part and, where necessary, against exposure of skin and eyes to contact with toxic solvents and their vapors by suitable clothing and equipment.

* * * * *

3. Section 1915.33 would be amended by revising paragraph (a) to read as follows:

§ 1915.33 Chemical paint and preservative removers.

(a) Employees shall be protected against skin contact during the handling and application of chemical paint and preservative removers and shall be protected against eye injury by goggles or face shields in accordance with the requirements of Subpart I of this part.

* * * * *

4. Section 1915.34 would be amended by revising paragraphs (a)(1), (a)(4), (b)(1), (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) to read as follows:

§ 1915.34 Mechanical paint removers.

(a) * * *

(1) Employees engaged in the removal of paints, preservatives, rusts or other coatings by means of power tools shall be protected against eye injury by goggles or face shields in accordance with the requirements of Subpart I of this part.

* * * * *

(4) In a confined space, mechanical exhaust ventilation sufficient to keep the dust concentration to a minimum shall be used, or employees shall be protected by respiratory protective equipment in accordance with the requirements of Subpart I.

(b) * * *

(1) Hardened preservative coatings shall not be removed by flame in enclosed spaces unless the employees exposed to fumes are protected by air line respirators in accordance with the requirements of Subpart I of this part. Employees performing such an operation in the open air, and those exposed to the resulting fumes, shall be protected by a fume filter type respirator in accordance with requirements of Subpart I of this part.

* * * * *

(c) * * *

(3) * * *

(i) Abrasive blasters working in enclosed spaces shall be protected by hoods and air fed respirators or by air helmets of a positive pressure type in accordance with the requirements of Subpart I of this part.

(ii) Abrasive blasters working in the open shall be protected as indicated in paragraph (c)(3)(i) of this section except that when synthetic abrasives containing less than one percent free silica are used jointly, filter type respirators approved jointly by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration for exposure to lead dusts, used in conjunction with proper eye, face and head protection, may be used in accordance with Subpart I of this part.

(iii) Employees, other than blasters, including machine tenders and abrasive recovery men, working in areas where unsafe concentrations of abrasive materials and dusts are present shall be protected by eye and respiratory protective equipment in accordance with the requirements of Subpart I of this part.

* * * * *

5. Section 1915.35 would be amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(2), (b)(13), and (b)(14) to read as follows:

§ 1915.35 Painting.

(a) * * *

(1) * * *

(i) In confined spaces, employees continuously exposed to such spraying shall be protected by air line respirators in accordance with the requirements of Subpart I of this part.

(ii) In tanks or compartments, employees continuously exposed to such spraying shall be protected by air line respirators in accordance with the requirements of Subpart I of this part. Where mechanical ventilation is provided, employees shall be protected by respirators in accordance with the requirements of Subpart I of this part.

(iii) In large and well ventilated areas, employees exposed to such spraying shall be protected by respirators in accordance with the requirements of Subpart I of this part.

(2) Where brush application of paints with toxic solvents is done in confined spaces, or other areas where lack of ventilation creates a hazard, employees shall be protected by filter respirators in accordance with the requirements of Subpart I of this part.

* * * * *

(b) * * *

(13) All employees continuously in a compartment in which such painting is being performed, shall be protected by air line respirators in accordance with the requirements of Subpart I of this part and by suitable protective clothing. Employees entering such compartments for a limited time shall be protected by filter cartridge type respirators in accordance with the requirements of Subpart I of this part.

(14) All employees doing exterior paint spraying with such paints shall be protected by suitable filter cartridge type respirators in accordance with the requirements of Subpart I of this part and by suitable protective clothing.

§ 1915.118 [Amended]

6. Part 1915 would be amended by removing Table I–1 from § 1915.118.

7. Section 1915.134 would be amended by revising paragraph (j) to read as follows:

§ 1915.134 Abrasive wheels.

* * * * *

(j) All employees using abrasive wheels shall be protected by eye protection equipment in accordance with the requirements of Subpart I of this part except when adequate eye protection is afforded by eye shields which are permanently attached to the bench or floor stand.

8. Section 1915.135 would be amended by revising paragraph (b)(9) to read as follows:

§ 1915.135 Powder actuated fastening tools.

* * * * *

(b) * * *

(9) Employees using powder actuated fastening tools shall be protected by eye protection equipment in accordance with the requirements of Subpart I of this part.

* * * * *

9. Subpart I of Part 1915 would be revised to read as follows:

Subpart I—Personal Protective Equipment

Sec.

1915.151 Scope, application, and definitions applicable to this subpart.
1915.152 General requirements.
1915.153 Eye and face protection.
1915.154 Respiratory protection.
1915.155 Head protection.
1915.156 Foot protection.
1915.157 Hand and body protection.
1915.158 Lifesaving equipment.
1915.159 Personal fall protection equipment.
Appendix A—Guidelines for the Design and Testing of Personal Fall Protection Equipment

Subpart I—Personal Protective Equipment

§ 1915.151 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* (1) This subpart sets forth requirements for personal protective equipment to be provided for and used by employees in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking), but does not apply to construction operations in shipyards covered by 29 CFR Part 1926.

Note: Appendix A to this Subpart contains non-mandatory guidelines for design and testing of fall protection equipment. Compliance with Appendix A is deemed to constitute compliance with the applicable fall protection provisions.

(2) The provisions of 29 CFR Part 1910, Subpart I—Personal Protective Equipment, do not apply to shipyard workplaces and operations, except for respiratory protection, § 1910.134.

(b) *Definitions applicable to this subpart.*

"Body belt" means a strap with means both for securing about the waist and for attaching to a lanyard, lifeline, or deceleration device.

"Body harness" means a design of straps which is secured about the employee in a manner to distribute the arresting force over at least the thighs, shoulders, and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration device.

"Capable person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

"Deceleration device" means any mechanism such as a rope grab, rip-stitch lanyard, specially woven lanyard or automatic-self retracting lifeline, which serves to dissipate more energy during a fall arrest than does a standard line or strap webbing lanyard.

"Hardware" means snaphooks, dee-rings, buckles or other similar fasteners which are used to connect the components of a personal fall protection system.

"Personal fall arrest system" means a system used to stop an employee in a fall from a working level. It consists of an anchorage, hardware, body belt or body harness, and a lanyard or deceleration device, and may include a lifeline.

"Positioning device system" means a system of equipment which, when used with a body belt or body harness, allows an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free.

"Restraint (tether) line" means a line from an anchorage or between anchorages, to which the employee is secured in such a way as to prevent the employee from walking or falling off an elevated work surface.

"Strength factor" means the ratio of the yield strength of a personal fall arrest system, to the arresting force which would be produced by a 250 pound (113.4kg) person free falling a given distance.

§ 1915.152 General requirements.

(a) *Availability.* The employer shall make available and ensure that employees use personal protective equipment for eyes, face, head, and extremities; protective clothing; protective shields and barriers, personal fall protection equipment; and life saving equipment, meeting the applicable provisions of this Subpart, wherever it is necessary to protect employees and as otherwise required by Part 1915.

(b) *Selection.* Based on an assessment of the workplace hazards relative to personal protective equipment (PPE), employers shall select the types of PPE which will protect employees from the particular occupational hazard(s) they are likely to encounter. Such selection decisions shall be communicated to, and followed by, employees if employees obtain their own equipment.

(c) *Defective and damaged equipment.* Defective or damaged personal protective equipment shall not be used.

(d) *Reissued equipment.* All personal protective equipment which is worn by workers and may have become unsanitary shall be cleaned and disinfected before it is reissued to another employee.

(e) *Training.* Employees shall be trained in the proper use of their personal protective equipment.

§ 1915.153 Eye and face protection.

(a) *General requirements.* (1) Employers shall ensure that employees use appropriate eye or face protection when they are exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, chemical gases or vapors, or potentially injurious light radiation.

(2) Eye and face protection shall properly fit employees.

(3) Protectors with tinted or variable tinted lenses shall not be worn when an employee must pass from a well lighted area, such as outdoors, into a dimly lighted area, such as a warehouse.

(4) Employees who wear prescription lenses while engaged in operations that involve eye hazards shall wear eye protection that incorporates the prescription in their design or shall be protected by eye protection that can be worn over prescription lenses, without disturbing the proper position of the prescription or protective lenses.

(5) Employees shall use equipment with filter lenses which have a shade number appropriate for the work being performed for protection from potentially injurious light radiation. (See Table I–1.)

Note: If filter lenses are used in goggles worn under a helmet which has a lens, the shade number of the lens in the helmet may be reduced so that the sum of the shade numbers of the two lenses will equal the value as shown in Table I–1, § 1915.153.

(b) *Acceptable designs.* The design of eye and face protection shall comply with either paragraph (b)(1) or (b)(2) of this section.

(1) The requirements of American National Standard, ANSI Z87.1–1979, Practice for Occupational and Educational Eye and Face Protection, or alternatively;

(2) Plano (non-prescription) spectacles shall meet the following requirements:

(i) The haze of plano spectacles shall not exceed three percent.

(ii) The prismatic power for plano spectacles shall not exceed one-half prism diopter in any direction; vertical prism imbalance shall not exceed one-fourth prism diopter; and horizontal prism imbalance shall not exceed one-fourth prism diopter "base in," or one-half prism diopter "baseout."

(iii) The refractive power, in any meridian, for plano spectacles shall not exceed plus or minus one-sixteenth diopter and the maximum astigmatism shall not exceed one-sixteenth diopter.

(iv) The definition of plano spectacles shall be such that NBS pattern 20 is clearly resolved.

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(v) The ratio of the transmittance of the lens in front of each eye shall be not less than 0.90 nor more than 1.10.

(vi) Clear lenses shall have a luminous transmittance of not less than 85 percent.

(vii) Lenses of plano spectacles shall be no less than .079 inches (2 mm) in thickness.

(viii) Plano spectacles and frames shall be capable of withstanding the impact of a one-fourth-inch (6.4 mm) diameter steel ball traveling at a velocity of 150 feet (46 m) per second without breaking, or movement of the protector (or lense) sufficient to contact the eye of a head form when tested on a head form.

(ix) Plano spectacles and frames shall be capable of withstanding, without breaking or movement of the protector (or lense) sufficient to contact the eye of a head form, the impact of a pointed projectile (30 degree vertical tip with a .039 inch (1 mm) radius) weighing 17.6 ounces (500 grams) dropped from a height of 51.2 inches (130 cm) with the eye protection mounted on a horizontally positioned head form.

(x) Plano spectacles shall not continue to burn after a 1.5 second exposure to a two inch (50 mm) flame from a .39 inch (10 mm) bunsen burner.

(xi) The lenses of plano spectacles shall be capable of withstanding, without penetration or fracturing, the impact of a weighted needle weighing 1.56 ounces (44 grams) dropped from a height of 50 inches (1.27 m).

TABLE I–1—FILTER LENSES FOR PROTECTION AGAINST RADIANT ENERGY

Operation	Shade No.
Soldering	2.
Light Cutting up to 1 inch	3 or 4.
Medium Cutting, 1 to 6 inches	4 or 5.
Heavy Cutting, over 6 inches	5 or 6.
Light Gas Welding, up to ½ inch	4 or 5.
Medium Gas Welding, over ½–½ inch	5 or 6.
Heavy Gas Welding, over ½ inch	6 or 8.
Shielded Metal-Arc Welding ⅛ to 5/32 inch electrodes.	10.
Inert-Gas Metal-Arc Welding (non-ferrous) 1/16 to 5/32 inch electrodes.	11.
Inert Gas Metal-Arc Welding (ferrous) 1/16 to 5/32 inch electrodes.	12.
Shielded Metal-Arc Welding:	
5/32 to ¼ inch electrodes	12.
5/16 to ⅜ inch electrodes	14.
Atomic Hydrogen Welding	10 to 14.
Carbon Arc Welding	14.

§1915.154 Respiratory protection.

Respiratory protection for shipyard employment is covered by 29 CFR 1910.134.

§1915.155 Head protection.

(a) *General requirements.* (1) Employers shall ensure that employees wear protective helmets when working in areas where there is a potential for injury to the head from falling or moving objects.

(2) Protective helmets designed to reduce electrical shock hazard shall be worn by employees where they are near exposed electrical conductors which could be contacted by the protective helmets.

(b) *Acceptable designs.* The design of protective helmets shall comply with the requirements of American National Standard, ANSI Z89.1–1986, Requirements for Protective Headwear for Industrial Workers, or shall be of a design which has been demonstrated to be equally effective.

§1915.156 Foot protection.

(a) *General requirements.* Employers shall ensure that employees wear protective footwear when working in areas where there is a danger of foot injuries due to falling or moving objects.

(b) *Acceptable designs.* Effective (90 days after publication of final rule), the design of protective footwear shall comply with the the requirements of American National Standard, ANSI Z41–1983, Personal Protection-Protective Footwear, or shall be of a design which has been demonstrated to be equally effective.

§1915.157 Hand and body protection.

(a) *General requirements.* (1) Employers shall ensure that employees wear appropriate gloves and other protective clothing when working in areas and operations in which there is a danger of hand and body injuries due to heat, chemicals, or sharp objects.

(2) Employees shall not wear greasy clothing when performing hot work operations.

(3) Protective electrical insulating gloves and sleeves shall be available and used by employees who may be exposed to electrical shock hazards while working on electrical equipment.

§1915.158 Lifesaving equipment.

(a) *Personal flotation devices.* Personal flotation devices for use by employees shall be of a type approved by the United Coast Guard as a Type I PFD, Type II PFD, Type III PFD or Type V PFD, or the equivalent.

(b) *Life rings and ladders.* (1) When work is being performed on a floating vessel 200 feet (61 m) or greater in length, at least three 30 inch (.78 m) Coast Guard approved life rings with lines attached shall be kept in easily visible and readily accessible places. Life rings shall be located one forward, one aft, and one on the gangway.

(2) On floating vessels under 200 feet (61 m) in length, at least one 30 inch (.78 m) Coast Guard approved life ring with line attached shall be located at the gangway.

(3) At least one 30 inch (.78 m) Coast Guard approved life ring with a line attached shall be located on each staging float alongside of floating vessel on which work is being performed.

(4) At least 90 feet (27 m) of line shall be attached to each life ring.

(5) There shall be at least one portable or permanent ladder in the vicinity of each floating vessel on which work is being performed of sufficient length to assist employees to reach safety in the event that they fall into the water.

§1915.159 Personal fall protection equipment.

(a) *Personal fall arrest systems.* Personal fall arrest systems (body belts, harnesses, lanyards and lifelines) and their use shall comply wiht the provisions set forth below.

Note: Requirements for employers to provide fall protection in shipyards are found in other subparts of this Part.

(1) Personal fall arrest systems and components shall be used only for employee protection.

(2) Personal fall arrest systems and their components subjected to impact loading shall be immediately removed from service and shall not be used again for employee protection until inspected and determined by a capable person to be undamaged and suitable for reuse.

(3) Lifelines and lanyards shall be protected against cuts, abrasion, burns from hot work operations, and deterioration by acids, solvents and other chemicals.

(4) System performance criteria. (i) Personal fall arrest systems shall be rigged to minimize free fall distance, with a maximum free fall distance of six feet (1.8 m) allowed, and so that the employee will not contact any lower level or obstruction.

(ii) Effective (*180 days after publication of final rule*), personal fall arrest systems shall decelerate and bring the employee to a complete stop within 42 inches (1.1 m), excluding lifeline elongation and free fall distances.

(iii) Effective (*180 days after publication of final rule*), personal fall arrest systems, when stopping a fall, shall not produce an arresting force on an employee of more than 10 times the employee's weight (10 gn), or 1,800 pounds (8 kN), whichever is lower.

(iv) Effective (*180 days after publication off final rule*), personal fall arrest systems shall contain a strength factor of not less than two to one based on a design weight of 250 pounds (113 kg) per employee.

Note: Personal fall arrest systems which comply with the provisions of Section 1 of Appendix A will be deemed to meet the requirements of this paragraph.

(5) Personal fall arrest systems shall be worn with the lanyard or deceleration device attachment point positioned as follows:

(i) When body belts are worn, on the belt anywhere between the sides of the wearer's body on the back portion of the belt;

(ii) When body harnesses are worn, above the waist in the back, or above the wearer's head.

(6) Body-belts shall be at least one and five-eighths inches (4.1 cm) wide.

(7) Hardware shall be made of drop forged, pressed or formed steel or materials equivalent in strength.

(8) Hardware shall have a corrosion-resistant finish and all surfaces and edges shall be smooth to prevent damage to the attached belt or lanyard.

(9) When vertical lifelines (droplines) are used, only one employee shall be attached to any one lifeline.

(10) Personal fall arrest systems shall be secured to an anchorage capable of supporting at least twice the potential impact load and an employee's fall.

(11) Vertical lifelines (droplines) shall have a minimum tensile strength of 5,000 pounds (33.2 kN), except that self-retracting lifelines and lanyards which automatically limit free fall distance to two feet (.61 m) or less shall have a minimum tensile strength of 3,000 pounds (13.3 kN).

(12) Horizontal lifelines (trolley lines) shall have a tensile strength sufficient to support a fall impact force of at least 5,000 pounds (22.2 kN) applied anywhere along the lifeline per employee using the lifeline.

(13) Lanyards shall have a minimum tensile strength of 5,000 pounds (22.2 kN).

(14) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kN).

(15) Snap hooks shall not be connected to loops made in webbing-type lanyards.

(16) Snap hooks shall not be connected to each other.

(17) Not more than one snap hook shall be connected to any one dee-ring.

(18) Personal fall arrest systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration, and defective components shall be removed from service if their function or strength may have been adversely affected.

(19) Before using the equipment, employees shall be trained in the application limits of the equipment, proper hook-up, anchoring and tie-off techniques, methods of use, and proper methods of equipment inspection and storage.

(b) *Positioning device systems.* Positioning device systems and their use shall conform to the following provisions:

(1) All hardware shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to the attached belt or connecting assembly.

(2) Connecting assemblies shall have a minimum tensile strength of 5,000 pounds (22.2 kN).

(3) The anchorages for positioning device systems shall be capable of supporting twice the potential impact load of an employee's fall.

(4) Restraint (tether) lines shall have a minimum breaking strength of 3,000 pounds (13.3 kN).

(5) System performance criteria. Effective *180 days after publication of final rule):*

(i) A window cleaner's positioning system shall be capable of withstanding without failure a drop test consisting of a six foot (1.83 m) drop of a 250 pound (113 kg) weight. In addition, the system shall limit the initial arresting force to not more than 2,000 pounds (8.89 kN), with a duration not to exceed two milliseconds. Subsequent arresting force peaks shall not exceed 1,000 pounds (4.45 kN);

(ii) All other positioning device systems shall be capable of withstanding without failure a drop test consisting of a four foot (1.2 m) drop of a 250 pound (113 kg) weight.

Note: Positioning device systems which comply with the provisions of Section 2 of Appendix A shall be deemed to meet the requirements of this paragraph.

(6) Care, use, maintenance and storage. (i) Snaphooks shall not be connected to each other.

(ii) Positioning device systems or components subjected to impact loading shall be immediately removed from service and shall not be used again for employee protection unless inspected and determined by a capable person to be undamaged and suitable for reuse.

(iii) Before using the equipment, employees shall be trained in the application limits, proper hook-up, anchoring and tie-off techniques, methods of use, inspection and storage of positioning device systems.

(7) Inspections. Positioning device systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration, and defective components shall be removed from service if their functions or strength may have been adversely affected.

Appendix A to Subpart I—Guidelines for the Design and Testing of Personal Fall Protection Equipment

This appendix sets forth test procedures which may be used to assist employers in complying with the personal fall protection requirements of Subpart I. Equipment which meets the following tests will be deemed to meet the applicable design requirements of § 1915.159 of Subpart I:

1. *Personal fall arrest systems*—(a) *General test conditions.* (1) Lifelines and lanyards shall be attached to a fixed anchorage and connected to the body-belt or body harness in the same manner as they would be when used to protect employees, except that lanyards shall be tested only when connected directly to the anchorage, and not when connected to a lifeline.

(2) The fixed anchorage shall be rigid, and shall not have a deflection greater than .04 inches (1 mm) when a force of 2,250 pounds (10 kN) is applied.

(3) The lanyards or lifeline used to create the free fall distance shall be the one supplied with the system, or in its absence, the worst case lanyard or lifeline intended to be used by the employee with the system.

(4) The test weight for each test shall be hoisted to the required level and shall be quickly and cleanly released without having any appreciable motion imparted to it.

(5) Both the strength test and the force test shall each consist of dropping of each of the specified weights once. A new system shall be used for each test.

(6) The maximum elongation shall be recorded during the strength test for lanyard systems, and during the force test for all other systems.

(b) *Strength test.* (1) During the testing of all systems, a test weight of 300 pounds plus or minus five pounds (135 kg plus or minus 2.5 kg) shall be used. The weight shall be a rigid, metal cylindrical object or torso-shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(2) For lanyard systems, the lanyard length shall be six feet plus or minus two inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt.

(3) For rope-grap-type deceleration systems, the length of the lifeline above the centerline of the grabbing mechanism to the lifeline's anchorage point shall not exceed two feet (0.61 m).

(4) For lanyard systems, for systems with deceleration devices which do not automatically limit free fall distance to two feet (0.61 m) or less, and for systems with deceleration devices which have a connection distance in excess of one foot (0.3 m) (measured between the centerline of the lifeline and the attachment point to the body belt or harness), the test weight shall fall free

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from a point that is 1.5 feet (46 cm) above the anchorage point, to its hanging location a total of 7.5 feet (2.3 m) free fall distance) without interference, obstruction, or hitting the floor or ground during the test.

(5) For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to two feet (0.61 m) or less, the test weight shall free fall a distance of four feet (1.22 m).

(6) The system's performance shall be evaluated taking into account the range of environmental conditions for which it is designed.

(7) Any breakage or slippage which permits the weight to fall free from the belt or harness shall constitute failure of the strength test.

(8) Following the test, the system need not be capable of further operation. However, the unusable condition of deceleration devices must be readily apparent.

(c) *Force test*—(1) *For lanyard systems.* (i) A test weight of 130 pounds plus or minus three pounds (59 kg plus or minus 1.6 kg) shall be used. The weight shall be a rigid, metal cylindrical object or torso shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(ii) Lanyard length shall be six feet plus or minus two inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt.

(iii) The test weight shall fall free from the anchorage level to its hanging location (a total of six feet (1.83 m) free fall distance) without interference, obstruction, or hitting the floor or ground during the test.

(2) *For all other systems.* (i) A test weight of 220 pounds plus or minus three pounds (100 kg plus or minus 1.6 kg) shall be used. The weight shall be a rigid, metal cylindrical object or torso-shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(ii) The fall distance to be used in the test shall be the maximum fall distance physically permitted by the system during normal use conditions, up to a maximum free fall distance for the test weight of six feet (1.83 m), except as follows:

(*a*) For deceleration systems which have a connection link or lanyard, the test weight shall free fall a distance equal to the connection distance (measured between the centerline of the lifeline and the attachment point to the body belt or harness).

(*b*) For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to two feet (0.61 m) or less, the test weight shall free fall a distance equal to that permitted by the system in normal use. (For example, to test a system with a self-retracting lifeline or lanyard, the test weight shall be supported and the system allowed to retract the lifeline or lanyard as it would in normal use. The test weight would then be released and the force and deceleration distance measured).

(3) The system's performance shall be evaluated taking into account the range of environmental conditions for which it is designed.

(4) A system fails the force test if the recorded maximum arresting force exceeds 1,800 pounds (8.0 kN), when using the 130 pound (59 kg) weight, or 2,500 pounds when using the 220 pound (100 kg) weight.

(5) Following this test, the system need not be capable of further operation. However, the unusable condition of deceleration devices must be readily apparent.

(d) *Deceleration device tests.* (1) A rope-grab-type deceleration device shall be moved on a lifeline 1,000 times over the same length of line a distance of not less than one foot (30.5 cm), and the mechanism must lock each time. Unless the device is permanently marked to indicate the type(s) of lifeline which must be used, several types (different diameters and different materials), of lifelines shall be used to evaluate the device. The device's performance under conditions such as rain, ice, grease, dirt, age, type of lifeline, etc., is to be evaluated or tested.

(2) Other self-activating-type deceleration devices designed for more than one arrest must operate 1,000 times as they would in normal service, without failure. The device shall be evaluated or tested under the environmental conditions for which the device is designed.

2. *Positioning device systems*—(a) *Test conditions.* (1) The fixed anchorage shall be rigid and shall not have a deflection greater than .04 inches (1 mm) when a force of 2,250 pounds (10 kN) is applied.

(2) For linemen's body belts and pole straps, the body belt shall be secured to a 250 pound (113 kg) bag of sand at a point which simulates the waist of an employee. One end of the pole strap shall be attached to the rigid anchorage and the other end to the body belt. The sand bag shall be allowed to free fall a distance of four feet (1.2 m). Failure of the pole strap and body belt shall be indicated by any breakage or slippage sufficient to permit the bag to fall free to the ground.

(3) For window cleaner's belts, the complete belt must withstand a drop test consisting of a 250 pound (113 kg) weight falling free for a distance of six feet (1.83 m). The weight shall be a rigid object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm). The weight shall be placed in the waistband with the belt buckle drawn firmly against the weight, as when the belt is worn by a window cleaner. One belt terminal shall be attached to a rigid anchor and the other terminal shall hang free. The terminals shall be adjusted to their maximum span. The weight fastened in the freely suspended belt shall then be lifted exactly six feet (1.83 m) above its "at rest" position and released so as to permit a free fall of six feet (1.83 m) vertically below the point of attachment of the terminal anchor. The belt system shall be equipped with devices and instrumentation capable of measuring the duration and magnitude of the arrest forces. Any breakage or slippage which permits the weight to fall free of the system shall constitute failure of the test. In addition, the initial and subsequent arresting force peaks shall be measured and must not exceed 2,000 pounds (8.5 kN) for more than two milliseconds for the initial impact, nor exceed 1,000 pounds (4.5 kN) for the remainder of the arrest time.

(4) All other positioning device systems (except for restraint line systems) shall withstand a drop test consisting of a 250 pound (113 kg) weight falling free for a distance of four feet (1.2 m). The weight shall be a rigid object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm). The body belt or harness shall be affixed to the test weight as it would be to an employee. The system shall be connected to the rigid anchor as it would be connected in normal use. The weight shall be lifted exactly four feet (1.2 m) above its "at rest" position and released so as to permit a vertical free fall of four feet (1.2 m). Any breakage or slippage which permits the weight to fall free to the ground shall constitute failure of the system.

[FR Doc. 88-27001 Filed 11-28-88; 8:45 am]
BILLING CODE 4510-29-M

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29 CFR Part 1915

[Docket No. S-046]

Fall Protection for Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing fall protection. The standards proposed for revision regulate the design, construction, and use of fall protection in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the present standards in Part 1915 are not comprehensive in their coverage of shipyard hazards, and are supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for all the hazards encountered in shipyards. This document is one of a series of proposals which are intended to revise Part 1915 to provide comprehensive coverage of shipyard employment solely within that part.

This action will consolidate and update the shipyard employment fall protection standards and the appropriate general industry fall protection standards into a single, comprehensive Part 1915 that would apply to all activities and areas in shipyards (except construction activities covered by Part 1926). The proposed provisions will delete many existing specification provisions which currently limit employer innovation, and where appropriate, use performance-oriented provisions to address the hazards of falling and of being struck by falling objects.

The specific topic of fall protection is currently addressed in Subpart E of the current Shipyard Employment Standards, along with the topics of scaffolds, laddders, and other walking/working surface considerations. To format the rules into a more logical grouping of topics, this and related actions would retain coverage of ladders and other access and egress concerns in Subpart E, and would relocate fall protection and scaffolds from the current Subpart E to a new Subpart M—Fall Protection, and a new Subpart N—Scaffolds.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Office, Docket No. S-046, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. Materials in the rulemaking record are available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: The principal author of this notice of proposed rulemaking is Roy F. Gurnham, Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background and Approach

In May 1971, the Occupational Safety and Health Administration under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, OSHA adopted other Federal standards and national consensus standards as general industry standards (29 CFR Part 1910) and construction industry standards (29 CFR Part 1926) which were made applicable to hazards and working conditions not specifically covered by Parts 1915, 1916, or 1917. On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29, Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment" (47 FR 16984). The consolidation eliminated duplicate provisions and overlapping provisions, but did not alter substantive requirements. The consolidation did not affect the applicability of general industry standards in 29 CFR Part 1910 to hazards or conditions in shipyard employments not specifically addressed in the consolidated Part 1915 [see 29 CFR 1910.5(c)(2)].

In 1982, the Shipbuilders Council of America and the American Waterways Shipyard Conference requested OSHA to identify the specific applicable provisions of the general industry standards which apply to shipyards, and consolidate them with the existing Part 1915 provisions into a single set of shipyard employment standards. OSHA has determined that such consolidation is appropriate. This and other proposed rulemakings will eventually incorporate all applicable Part 1910 provisions into the existing organization of Part 1915. The present Part 1915 organizational format, which is already familiar to present users of the shipyard standards, provides a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when applicable Part 1910 provisions have no counterpart in the existing Part 1915 structure, the proposal would create new subparts or subpart hearings in Part 1915.

In addition to consolidating the provisions of Part 1910 and Part 1915, OSHA proposes to revise the consolidated provisions as appropriate. OSHA has not substantively revised many of the current provisions in these parts since they were promulgated in 1971. OSHA believes some provisions need to be revised to reflect technological advances. Other provisions need to be revised because they are based on national consensus standards issued prior to 1971, and do not reflect the revisions made since that time. As the provisions are consolidated, all such revised consensus standards will be reviewed, and OSHA's provisions revised as necessary to effectuate the purposes of the standard and the OSH Act. Where practical, all current incorporations by reference of national consensus standards and other materials will be deleted by the proposed standards, and the text of all such requirements will be proposed for inclusion in the body of the proposed standards, or their appendices. This approach is intended to assist employers in determining what duties and obligations are imposed by a provision by minimizing the need to refer to documents outside Part 1915. OSHA will also use the consolidation project to replace specification requirements with performance-oriented requirements where it is known that there is more than one way to provide safety equivalent to that provided by the present specification requirements. Specification requirements would be used only where necessary to set appropriate limits and to clarify duties and obligations.

The revision of the shipyard employment standards will be coordinated with efforts to revise parallel provisions in the construction and general industry standards so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

II. Summary and Explanation of the Proposal

The need to have fall protection is currently covered primarily by 29 CFR Part 1915, Subpart E—Scaffolds, Ladders, and Other Working Surfaces, and 29 CFR Part 1910, Subpart D—Walking-Working Surfaces. Consolidation of these two sub-parts into one subpart would result in a large, cumbersome subpart, because of the wide range of topics covered. Therefore, OSHA is proposing to divide the consolidated Part 1915 standards into three subparts. The proposed subparts would be Subpart E—Access and Egress; Subpart M—Fall Protection; and Subpart N—Scaffolds. This reformatting, in and of itself, would neither create nor delete any requirements. These subparts would set forth the requirements to have fall protection, and would set forth the criteria for many of the systems to be used for fall protection. Other fall protection systems, such as body belts, body harnesses, and positioning devices would be covered by proposed Subpart I—Personal Protective Equipment for Shipyard Employment.

In accordance with paragraph 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), the agency has reviewed the various national consensus standards that cover working conditions dealt with in this proposal. Where appropriate, OSHA has incorporated provisions from those national consensus standards as part of this proposal. OSHA believes that the proposed standard will better effectuate

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the purposes of the Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive and provides greater flexibility in its requires for safety.

The following discussion provides a more detailed explanation of the proposed provisions related to fall protection.

Section 1915.201 Scope, application, and definitions applicable to this subpart.

Paragraph 1915.201(a)—Scope and application. This paragraph outlines the scope and application of the entire Subpart M. The proposal applies to all workplaces and operations found in shipyards, including those aboard vessels and sub-assemblies of vessels, except for the following areas: Fall protection for employees involved in the construction, alteration, repair (including painting and decorating) and demolition of shore facilities would continue to be addressed by 29 CFR Part 1926—Construction Industry Standards, which are not affected by this proposal; fall protection for employees on stairways and ladders would be as provided in proposed Subpart E—Access and Egress; and fall protection for employees on scaffolds would be as provided in proposed Subpart N—Scaffolds.

This proposal incorporates all applicable provisions of 29 CFR Part 1910, Subpart D, related to fall protection, and that subpart no longer applies to fall protection considerations in shipyard workplaces and operations.

Certain of the proposed provisions contain "grandfather" provisions. These provisions allow employers to continue using facilities and equipment which do not meet the proposed requirements, but which do meet the regulations presently in effect. Thus, facilities which are currently meeting the specified OSHA criteria would not have to be replaced or altered to meet the new criteria. However, all new facilities and equipment built or installed after the effective date of this subpart would have to meet the proposed criteria. For example, proposed paragraph § 1915.202(c)(5) requires guardrail systems to be installed at all wall openings which have a bottom edge less than 39 inches above the surface upon which the employee is working. The existing provision, § 1910.23(b)(3), requires guardrail systems only when the bottom edge is less than 36 inches high. Under the proposed rules, the employer would not have to install a guardrail system on wall openings which meet the existing 36 inch rule. However, all wall openings created or installed in a wall (such as by altering or constructing a building) after the effective date of this standard, would come under the 39 inch rule. In the proposed rules, all "grandfathering" provisions are indicated in brackets ([ ]) immediately following the new criteria. If a requirement does not contain a bracketed provision, then no "grandfathering" exception is made. In the specific issues section of this preamble, OSHA requests comments as to whether the provisions proposed for "grandfathering" should indeed be "grandfathered," and whether or not other provisions should be "grandfathered."

Paragraph 1915.201(b)—Definitions applicable to this subpart. This paragraph lists and defines all major words used in the proposed standard. Many of the definitions are the same as those in the existing standard, however some have been reworded for uniformity or clarity. The following words have been added or have been changed from the existing definitions:

"Dangerous equipment." This term is used to refer to equipment such as galvanizing tanks, machinery, electrical equipment and similar hazards, which are hazards because of their form or function.

"Equivalent." This term is used in the proposal to allow alternative means of complying with the standards. The definition makes clear that where the standard allows the use of "equivalent" means, the employer must demonstrate that all such alternative means of compliance will provide an equal or greater degree of safety than that attained by using the method or item specified in the standard.

"Failure." This word is used in performance-oriented paragraphs such as (a)(3), (a)(5), (b)(4), (c)(2), and (d)(2) of § 1915.203 which address guardrail, safety net, cover, and toeboard strength. The definition makes it clear that, along with breakage and separation of component parts, load refusal (the point where the ultimate strength of a component is exceeded) is also considered to be failure. This is the point where structural members lose their ability to carry loads.

"Guardrail system." This term, which defines guardrails as vertical barriers erected to prevent employees from falling, replaces the existing term, "standard railing" currently used in Subpart D.

"Lower levels." This term is used to describe the areas to which an employee could fall. The definition does not apply to the surface on which the employee is performing work duties.

"Personal fall arrest system." This term replaces the existing term "safety belt" to reflect current industry use of the new term, and to clarify that, in addition to belts, there are a variety of components that make up a complete fall protection system.

"Positioning device system." This new term identifies a piece of equipment which allows an employee to work with both hands free while the employee is leaning backwards.

"Qualified person." This term is used to describe the training and experience necessary for individuals responsible for performing certain specified tasks such as safety net inspection.

"Toeboard." This term is used to describe one type of falling object protection, and clarifies that such barriers are not installed to prevent an employee from stepping off an otherwise unprotected side or edge.

"U-guard." This is a term used to describe a type of guardrail system used aboard vessels to prevent employees from falling into manholes or other small deck openings. Currently, there is no consensus name for this system. They are known by various names including "hairpins," "fieldgoals," and "horseshoes."

"Unprotected sides and edges." This term replaces the term "unguarded edges" which is not defined in existing Subpart E of Part 1915, and replaces "open-sided floors, platforms, and runways" which is not defined in existing Subpart D of Part 1910.

"Vessel section." This term is used to clarify the areas where certain rules apply. It means all subassemblies, modules, and other components of a vessel which are not directly attached to the vessel because of the state of construction, repair, or breaking.

"Walking/working surface." This term is used as a generic term for all the types of surfaces on which employees must be in order to perform their job duties.

Section 1915.202 Requirements to have fall protection.

This section specifies the places and areas where fall protection systems would be required. The specifics of the fall protection systems are addressed in § 1915.203, fall protection systems criteria and practices. An employer would refer to § 1915.202 to see where fall protection is required, and would refer to § 1915.203 to see how to provide the required protection. This format allows consolidation of the various systems criteria, and eliminates

redundant criteria provisions such as the guardrail height limits currently specified in existing §§1915.74(a)(2), (a)(7), (a)(9), (b), and (c)(2).

Paragraph 1915.202(a)—General. Paragraph (a)(1) of §1915.202 requires all fall protection to be installed and in use before employees begin any other work activity in the area of the fall hazard. Although not specifically stated in the existing provisions, this requirement is not considered by OSHA to be a new requirement.

Paragraph (a)(2) of §1915.202 would limit the application of the subpart by identifying specific areas where fall protection systems would not be required due to the nature of the activity that takes place in those areas. Generally, these areas are loading or access areas where the provisions of existing Subpart D, literally interpreted, could apply, but where OSHA believes fall protection systems such as guardrails or body belts would unacceptably interfere with the work to be performed. Specifically, these areas are the top water-side edges of wharves, piers, and quays; the loading sides of loading docks, and ladders, vehicles, trailers, and assembly tables. Whether or not this list is too broad, and whether or not other areas or activities should be added to this list, are points raised in the Specific Issues section of this preamble.

Paragraph 1915.202(b)—Fall protection on vessels, vessel sections, and vessel means of access. This paragraph sets forth the requirements to have fall protection for employees aboard vessels, vessel sections, and vessel means of access. The following table lists the proposed provisions of paragraph (b) of §1915.202 which would not be substantively changed from their corresponding counterparts contained in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§1915.202(b) (2)	§1915.73(c)
§1915.202(b) (3)	§1915.73(d)
§1915.202(b) (5)	§1915.77(e)
§1915.202(b) (7)	§1915.73(g)
§1915.202(b) (8)	§1915.77(b)
§1915.202(b) (9)	§1915.75(d)
§1915.202(b) (11)	§1915.74(a) (2)

Paragraph (b)(1) of §1915.202 requires covers or guardrails to be used to protect employees working near small openings in the walking/working surfaces aboard vessels. This is the same requirement as §1915.73(b), except that U-guards would be recognized as an acceptable alternative system for fall protection. These systems, variously known as "hairpins," "fieldgoals," "horseshoes," and other colloquialisms, are currently used in many shipyards. However, a uniform set of criteria for U-guards (i.e., height limits, strength, etc.), has not yet been developed. The need for such criteria, along with some criteria which have been suggested to OSHA, is discussed in the Specific Issues section of this preamble. Another change is the deletion of the words "or the physical conditions" from the phrase which qualifies when guardrail systems must be used or installed. These words are not necessary as the "impossibility" of a requirement is always to be considered.

Paragraph (b)(4) of § 1915.202 requires personal flotation devices to be used to protect employees on vessels afloat working near unprotected sides and edges which are over water. This is the same requirement as §1915.73(e), except "platforms, flats, and similar surfaces above water on vessels afloat" has been added to make the provision compatible with proposed §1915.202(b)(3) which addresses fall protection above solid surfaces.

Paragraph (b)(6) of §1915.202 guardrails or planks to be used to protect against falling into bilges where floor plates or gratings have been removed. This is the same requirement as §1915.73(f), except the requirement for 10-inch planking is clarified by adding a thickness dimension of two inches. Two-inch planking is the standard size used on similar surfaces such as scaffold platforms (see §1915.71(i)(1)).

Paragraph (b)(10) of §1915.202 would require employees to be protected against falling into the water when they are on the deck of a floating drydock. This is essentially the same rule as existing §1915.75(e), except that the existing rule only requires employees to be provided with fall protection equipment, whereas the proposal requires that such equipment be both provided and used.

Paragraph 1915.202(c)—Fall protection ashore. The paragraph sets forth the requirements to have fall protection for employees ashore, and addresses all areas in a shipyard covered by the subpart which are not on a vessel, vessel section, or vessel means of access. Such areas include, but are not limited to, office buildings, shops, foundries, assembly buildings, storage tanks, warehouses, elevated walkways (catwalks), retaining walls, derricks, cranes and gantries. These areas are presently covered by the provisions of Part 1910, Subpart D—Walking/Working Surfaces, which require fall protection to be provided wherever a fall hazard of four feet or more exists. However, existing specific provisions §1915.71(j), §1915.71(k), §1915.73(d), and §1915.77(c) require fall protection only where the fall hazard is five feet or more. Some yards have concluded that the five foot limit applies to all areas in a shipyard. To eliminate this conflict and resulting confusion, paragraph (c) of §1915.202 clearly sets forth that the four foot rule of the existing general industry standards applies to all areas in shipyards, with certain specific exceptions made in the scope and some other areas which are discussed below. However, public comment is requested on this point in the Specific Issues section of this preamble.

Paragraph (c)(1) of § 1915.202 specifies that guardrail systems shall be used to provide fall protection for employees on floors, roofs, ramps, walkways, graving dock edges, and other walking/working surfaces. However, when this is impracticable, then personal fall arrest systems, positioning device systems, or safety nets shall be used. This is essentially the same requirements as in existing Part 1910 Subpart D, and Part 1915 Subpart E, except that the proposed rules would add safety nets as an acceptable alternative under certain conditions, and that guardrail systems are listed in the proposed rules as the preferred method of protection when their use is practicable. Guardrail systems are preferred because they serve to restrain employees from falling off a work level, whereas personal fall arrest systems and safety nets function only after a fall has taken place, and positioning device systems offer no protection when a worker changes locations. Whether or not it is practicable to install a guardrail system depend on the specifics of the area where protection is required. For example, guardrail systems are not practicable if their installation requires greater employee exposure to the fall hazard than would be experienced by employees working in the area without guardrail system protection. In order to further develop this point, public comment is requested on this issue in the Specific Issues section of this preamble.

Paragraph (c)(2) of § 1915.202 requires employees to be protected by personal fall arrest systems when they are in an area provided with guardrail systems, but in which the guardrails, or portions thereof, have been removed to allow passage of materials, tools, or equipment. This situation usually is most hazardous when the employees are leaning out through the opening while trying to guide the incoming materials,

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or when they are trying to signal someone on another level.

Paragraph (c)(3) of § 1915.202 requires employees to be protected by guardrail systems or equipment guards when the employees are less than four feet above dangerous equipment. This rule is essentially the same provision as in § 1910.23 (c)(3), and addresses the nature of the impact surface which could cause a serious injury. Personal fall arrest systems and nets would not be allowed for this kind of protection at heights less than four feet above the dangerous equipment, because such systems are usually not rigged in such a way as to prevent employee contact with the dangerous equipment.

Paragraph (c)(4) of § 1915.202 requires employees to be protected by guardrail systems, personal fall arrest systems, or safety net systems when the employees are four feet or more above dangerous equipment.

Whereas paragraph (c)(1) of § 1915.202 addresses perimeter or unprotected sides and edges of walking/working surfaces ashore, paragraph (c)(5) of § 1915.202 addresses holes in such surfaces (the term "opening" is used for spaces in walls). The provision requires that all holes into which employees can accidentally walk be protected by guardrail systems, covers, or an attendant. This is essentially the same requirement as contained in paragraphs (a)(3), (4), (5), (6), (7) and (8) of § 1910.23. However, whether or not an attendant is an appropriate method of protection, and, if so, what conditions or limitations should be imposed on its use, are points raised in the Specific Issues section of this preamble.

Paragraph (c)(6) of § 1915.202 requires tanks, vats, and similar enclosures to be provided with guardrail systems or covers. This is essentially the same provision as § 1910.22(c).

Paragraph (c)(7) of § 1915.202 requires certain specified wall openings to be provided with fall protection. This provision is based on the requirement, § 1910.23(b), except the minimum distance from the walking/working surface to the bottom edge of the wall opening is changed from 36 inches to 39 inches, consistent with the proposed minimum fall protection criteria proposed for all other locations. However, the existing 36-inch limit is "grandfathered" so that all facilities constructed prior to the effective date of this standard will not have to be changed.

Paragraph 1915.202(d)—Protection from falling objects. This paragraph sets forth when protection from falling objects must be provided and is essentially the same as § 1910.23(c)(1)(i), except screens, guardrail systems, or protective canopies may be used in lieu of toeboards. The proposal requires such protection only as necessary when employees are on or immediately adjacent to vessels or vessel sections.

Section 1915.203 Fall protection systems criteria and practices.

This section sets forth the requirements for each type of fall protection system and its use. Whereas § 1915.202 tells the employer where fall protection is required and the types of systems which are to be used to provide that protection, § 1915.203 states the proper manner to install and use each system. In other words, § 1915.202 is the "where, what and when" provision, and § 1915.203 is the "how" provision.

Paragraph 1915.203(a)—Guardrail systems. This paragraph sets forth the criteria for constructing and using guardrail systems (both fixed and portable) installed to meet the requirements of § 1915.202. Paragraph (a)(1) of § 1915.203 specifies the limits for the top edge heights of various guardrail systems.

Paragraph (a)(1) (i) and (ii) of § 1915.203 set forth the height criteria for specified guardrail systems aboard vessels, vessel sections, and vessel means of access. These are essentially the same provisions as contained in paragraphs § 1915.73 (c) and (d), except the words "vessel sections" have been added. In the Specific Issues section of this preamble, public comment is requested on whether or not these two provisions should be changed to conform to the general height requirement of 39 to 45 inches proposed for all other guardrail systems.

Paragraph (a)(1)(i) of § 1915.203 sets the height requirements for all guardrail systems used throughout shipyards, except those on vessels, vessel sections, and vessel means of access covered by paragraphs (a)(1)(ii) and (iii) of § 1915.203. This paragraph consolidates the following eight existing requirements:

Existing paragraph number	Existing provision
§ 1910.23(e)(1)	"42 inches nominal"
§ 1915.73(d)	"42 to 45 inches"
§ 1915.73(g)	"adequate"
§ 1915.75 (b), (c), (d)	"approximately 42 inches"
§ 1915.75(e)	"42 inch"
§ 1915.75(g)	"42 to 45 inches"

OSHA currently interprets the words "nominal," "adequate," and "approximately" to mean a range of 39 to 45 inches. The proposal formally adopts this range for guardrail systems in general. However, many shore facilities were constructed prior to OSHA's inception, and were built to comply with building codes and other guidelines which require[d] guardrails to be only 36 inches high. These existing systems would be "grandfathered" by the proposal. However, as existing systems are replaced they would have to meet the new minimum limit. Existing guardrails which are repaired need only meet the 36-inch limit. Public comment is requested on these points in the Specific Issues section of this preamble.

Paragraph (a)(2) of § 1915.203 requires midrails, screens, mesh, intermediate vertical members (i.e., balusters), or equivalent structural members to be installed between the top edge of the system and the walking/working surface where there is no wall or parapet wall at least 21 inches high (the same height as a typical midrail on a 42-inch high guardrail system). This is essentially the same requirement as §§ 1910.23(e)(3)(v)(c) and 1915.71(j)(1). Paragraph (a)(2)(i) specifies midrail height and is the same requirement as in §§ 1910.23(e)(1) and 1915.71(j)(1). Paragraphs (a)(2) (ii), (iii), and (iv) are new alternative provisions that allow for the use of screens, mesh, intermediate vertical members, and other structural members in lieu of midrails, and address their proper placement. Although these are new provisions, OSHA believes they lessen the existing burden of compliance by expanding the range of options available to the employer.

Paragraph (a)(3) of § 1915.203 requires guardrail systems to be capable of withstanding the application of a 200 pound force applied within two inches of the top edge in an outward or downward direction. This is the same requirement as § 1910.23(e)(3)(v)(b) and is equivalent to § 1915.71(j)(2) which specifies 2 × 4 inch lumber at eight foot distances between uprights.

Paragraph (a)(4) of § 1915.203 clarifies that paragraphs (a) (1) and (3) of § 1915.203 are interdependent provisions. When the load is applied to the toprail or edge, it must not deflect below the system height set forth in paragraph (a)(1) of § 1915.203. Deflection is specified for the top edge because that is the point an employee is most likely to fall against, and it must remain high enough, at all times, to prevent the employee from flipping over the top of the system.

Paragraph (a)(5) of § 1915.203 provides specifications for midrails, screens, mesh, intermediate vertical members, and equivalent structural members. Currently, there is no requirement that

sets forth a minimum strength capacity for midrail type protection. The proposed 150 pound capacity requirement is based on the existing construction safety standard for guardrails, which allows the use of 1 × 6-inch lumber as midrails. The breaking strength of such lumber is approximately 160 pounds, depending on type and grade of wood used. The 150 pound limit is also being evaluated for inclusion in the proposed standards being developed for the construction and general industry standards for guardrail systems. The proposal here will promote consistency between all three sets of guardrail system standards. No mimimum deflection is specified as midrails, screens, mesh, and intermediate vertical members are not the points where an employee is in danger of flipping over the protective barrier.

Paragraph (a)(6) of § 1915.203 requires that guardrail systems be smooth surfaced to prevent employee injury due to lacerations or tripping caused by snagged clothing, and is essentially the same requirement as § 1910.23(e)(1).

Paragraph (a)(7) of § 1915.203 requires that toprails and midrails not be so long as to constitute a projection hazard, and is the same requirement as § 1910.23(e)(1).

Paragraph (a)(8) of § 1915.203 is a new requirement and prohibits the use of steel banding and plastic banding as toprails or midrails. While such banding can often withstand a 200 pound load, it can tear easily if twisted. In addition, such banding often has sharp edges which can cut a hand when grabbed.

Paragraph (a)(9) of § 1915.203 requires all rails to be at least one-quarter inch in diameter or thickness. This is consistent with previous OSHA interpretations related to the use of wire cable as toprails and midrails. As guardrail strength is specified in paragraphs (a)(3), (4), and (5) of § 1915.203, the purpose of this requirement is to assure that rails made of high strength materials not be so thin that an employee grabbing a rail is injured because of the small size of the rail.

Paragraph (a)(10) of § 1915.203 prohibits the use of manila or synthetic fiber rope rails when hot work is being performed or corrosive chemicals are being used near the rails. This is essentially the same provision as the requirement contained in § 1915.71(j)(2). It is a new requirement for facilities ashore, but the hazard is the same as on vessels.

Paragraph (a)(11) of § 1915.203 requires chains, gates, or guardrail sections to be placed across material, tool, and equipment access openings when handling operations are not taking place. This provision clarifies that such openings in guardrail systems are to be treated as unprotected sides and edges except when the opening is in use. The rule is based on similar provisions in § 1910.23(c).

Paragraph (a)(12) of § 1915.203 provides that when guardrail systems are used at holes in walking/working surfaces, they be erected on all unprotected sides or edges of the holes. This is essentially the same requirement as in § 1910.23(a).

Paragraph (a)(13) of § 1915.203 provides that guardrail systems around holes used for material access not have more than two sides provided with removable guardrail sections. This is essentially the same provision as § 1910.23(a)(3)(ii).

Paragraph (a)(14) of § 1915.203 provides that guardrail systems around holes used as points of access (such as ladderways) shall be provided with gates or be so offset that a person cannot walk directly into the hole. This is essentially the same requirement as § 1910.23(a)(2).

Paragraph (a)(15) of § 1915.203 sets forth the requirements for guardrail systems on ramps and runways and is essentially the same provision as § 1910.23(c)(2).

The provisions in existing § 1910.23(e)(3) and § 1915.71(j)(2) provide detailed specifications for minimum sizes of guardrail system components. The proposal would relocate the specific provisions of these existing paragraphs to Appendix A, and would make them non-mandatory. The current *specifications by themselves do not assure that a guardrail* system meets the current performance criteria in § 1910.23(e)(3) as they give no guidance on joints, base connections, and other elements that need to be considered when providing an adequate system. However, by moving them to a non-mandatory appendix, they can serve as a starting point for designing guardrail systems. As the guidelines do not provide all the information necessary to build a complete system, the employer is still responsible for designing and assembling the components in such a way that the completed system will meet the requirements of § 1915.203(a)(3), (4), and (5). By placing the existing specification criteria into a non-mandatory appendix, design flexibility is allowed to employers who desire to engineer their own guardrail designs, while also providing a partial solution for employers who either do not desire to or cannot engineer the guardrails that are to be used. OSHA believes that the important consideration in guardrail system design and construction is that the system be capable of supporting safely the loads as specified in paragraphs (a) (3), (4) and (5) of § 1915.203, and not that a guardrail system have a particular sized component or post spacing.

The relocation of the current specifications to Appendix A does not reduce the level of safety presently achieved by the existing standard. The performance criteria in the proposal are essentially the same as those currently found in § 1910.23(e)(3)(v). The specifications being moved to Appendix A provide, at best, a partial solution to the design of an adequate system, and they do not allow the necessary flexibility for development of systems which meet the performance criteria in the standard. Accordingly, relocating the specifications to Appendix A reduces the number of redundant provisions in the standard and eliminates the possible misinterpretation that the specified components and constructions are the only ones acceptable for building guardrail systems.

Paragraph 1915.203(b)—Safety net systems. This paragraph sets forth the criteria for safety net systems installed to meet the requirements of § 1915.202. Currently, there are no similar provisions in either Subpart D of Part 1910 or Subpart E of Part 1915. The proposed provisions are, therefore, based on the existing and proposed provisions for safety nets contained in 29 CFR Part 1926, Occupational Safety and Health Standards for the construction industry. These provisions are presently in § 1926.105, and a modified version of these standards is contained in § 1926.502(c) of OSHA's proposed revision to the fall protection standards for construction (51 FR 42718) published on November 25, 1986. These provisions do not impose new burdens on the employer, but allow the use of safety nets as an option for meeting the general fall protection requirements of § 1915.202. This option is not given under the existing shipyard and general industry rules.

Paragraph (b)(1) of § 1915.203 requires nets to extend outward at least 15 feet from the outermost projection of the work surface. This is a change from the existing eight foot requirement of § 1926.105(c)(1). The National Bureau of Standards (NBS) has conducted tests to evaluate this requirement. Their findings indicate that at least 15 feet are required to fully contain a body falling 25 feet (Ref. 3:50).

Paragraph (b)(2) of § 1915.203 requires safety nets to be installed as close as practicable under the walking/working

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surface where employees need to be protected, but in no case more than 25 feet below such level.

Paragraph (b)(3) of § 1915.203 requires nets to be rigged with sufficient clearance under them to prevent contact with the lower level when the net is subjected to impact forces as specified in paragraph (b)(4) of § 1915.203.

Paragraph (b)(4) of § 1915.203 specifies the capacity requirements for safety nets and safety net installations. The paragraph requires employers to show that nets and net installation meet the capacity requirements by conducting drop tests meeting designated parameters, or by certification by a qualified person that the net and net installations meet all specified criteria when the employer can demonstrate that drop testing is not practicable. An example of where a drop test may not be practicable is where the net is strung over a public thoroughfare and the test could endanger people below. Another example is where the test weight cannot be readily retrieved from the net once it has been dropped.

For the purposes of paragraph (b)(4), OSHA considers two or more net panels joined together to be one net. Safety net installations which do not share the same net are considered to be separate systems. In addition, each time a safety net system is erected, it is considered to be a separate installation which must be tested or certified.

Paragraph (b)(4)(i) of § 1915.203 sets forth the proposed criteria for performing drop tests on net installations. In most respects, these criteria are the same as the paragraph 8 requirements of ANSI A10.11–1979 (Ref. 1). However, the proposal requires the test to be conducted from the highest level walking/working surface on which employees are to be protected, as opposed to the 25 foot height required by ANSI, so that the test more closely resembles the type of fall from which the worker is to be protected. OSHA believes the use of a 400 pound weight to test the system is sufficient to insure that a proper margin of safety is obtained.

Paragraph (b)(5) of § 1915.203 requires safety nets to be inspected weekly for mildew, wear, damage, or other deterioration. Defective components must be removed from service. Public comment is requested on the frequency of inspection in the Specific Issues section of this preamble.

Paragraph (b)(6) of § 1915.203 requires debris and tools to be removed as soon as possible from the net, but not later than the start of the next work shift. Such obstacles pose obvious safety hazards to anyone who falls into the net.

Paragraph (b)(7) of § 1915.203 specifies the maximum allowable mesh opening and provides for a maximum of six inches on any side of an opening. The proposal also limits the size of the opening to a maximum of 36 square inches. This limit is proposed because mesh openings can be manufactured with more than four six-inch sides. A limit of 36 square inches is necessary to keep the open mesh from being so large that an employee's head could go into it during a fall and possibly break the employee's neck. The provision is essentially the same as paragraph 5.1 of the 1979 ANSI requirements for safety nets.

Paragraph (b)(8) of § 1915.203 specifies a minimum breaking strength of 5,000 pounds for border ropes used for net webbing. This is the same requirement as in paragraph 5.2 of the 1979 ANSI requirements for safety nets.

Paragraph (b)(9) of § 1915.203 requires connections between net panels to be as strong as integral components, and to be spaced not more than six inches apart. This is essentially the same requirement as § 1926.105(f), except the six inch requirement is based on the 1979 ANSI requirement contained in paragraph 9.3.

Paragraph 1915.203(c)—Covers. This paragraph, which is based on § 1910.23(e)(7) and (8), sets the performance criteria for covers used to protect employees from falling into or through holes in floors, roofs, roadways, vehicular aisles, and other walking/working surfaces on shore. Public comment is requested in the Specific Issues section of this preamble as to whether or not these provisions should also apply to vessels, vessel sections, and vessel means of access.

Paragraph (c)(1) of § 1915.203 requires covers in roadways and vehicular aisles to be capable of supporting at least twice the maximum axle load of the largest vehicle expected to cross over the cover. This is a change from the § 1910.23(e)(7) requirement that covers be capable of supporting at least 20,000 pounds, and is intended to reflect more accurately actual workplace conditions. Existing covers in use would be "grandfathered." Public comment is requested on this point in the Specific Issues section of this preamble.

Paragraph (c)(2) of § 1915.203 specifies the minimum strength requirements for all other covers. Whereas the existing rule, § 1910.23(e)(7)(iii), requires all other covers to meet unstated "strength requirements," the proposed rule specifies that the covers be capable of withstanding the maximum total anticipated load, or 250 pounds, whichever is greater. This 250 pound minimum capacity is based on what OSHA considers to be the average maximum weight of an employee and the employee's tools.

Paragraph (c)(3) of § 1915.203 is a requirement for covers to be installed so as to prevent accidental displacement.

Paragraph (c)(4) of § 1915.203 requires that covers over steam pits not be made of plywood, and is a new provision. Plywood covers which become steam-saturated can easily delaminate and become incapable of supporting a load, although they appear to be as strong as when first installed.

Paragraph (d)—Protection from falling objects. This paragraph sets forth the performance criteria for providing protection from falling objects as required by § 1915.202. Paragraph (d)(1) of § 1915.203 requires toeboards, when used, to be erected along the edges of overhead walking/working surfaces for a distance sufficient to protect employees using the point of access below. This is essentially the same provision as contained in § 1910.23(c)(1)(i), and in § 1915.71(j)(5) as currently applied to shipyards.

Paragraph (d)(2) of § 1915.203 specifies the minimum strength of toeboards. This requirement is the equivalent performance requirement to existing requirements §§ 1910.23(e)(4) and 1915.71(j)(5).

Paragraph (d)(3) of § 1915.203 specifies how toeboards are to be installed, and is essentially the same as § 1910.23(e)(4).

Paragraph (d)(4) of § 1915.203 provides that additional protection must be used, where tools, equipment, or materials are higher than the top of a toeboard, such as paneling or screening erected from the working level or toeboard to the top of the toprail or midrail. This requirement is substantively the same as § 1910.23(e)(4).

Paragraph (d)(5) of § 1915.203 requires that when guardrail systems are used to prevent objects from falling, the openings in the system must be small enough to retain the potential falling objects. This is essentially the same requirement as § 1910.23(e)(4), except the specific limitations on hole size are deleted, and the provision applies to all such guards and not just toeboards.

Appendix A to Subpart M—Guardrail Systems

This appendix is a non-mandatory set of guidelines provided to assist employers in complying with the requirements of paragraphs (a)(3), (4), (5), and (d)(2) of § 1915.203. The guidelines are taken from the existing regulations as discussed above. An

employer may use these guidelines as a starting point for designing guardrail and toeboard systems. However, the guidelines do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling these components in such a way that the completed system will meet the requirements of paragraphs (a)(3), (4), (5), and (d)(2) of § 1915.203. Components for which no specific guidelines are given in the appendix (e.g. joints, base connections, components made with other materials, and components with other dimensions) must also be designed and constructed in such a way that the completed system will meet the capacity requirements of paragraphs (a)(3), (4), (5), and (d)(2) of § 1915.203. The appendix neither creates additional obligations nor eliminates obligations otherwise contained in the standard. It is intended to provide useful, explanatory material and information to employers and employees who wish to use it to aid in understanding and complying with the standard.

Specific Issues

In addition to any other comments on this subpart, the public is requested to comment on the following specific issues:

1. Paragraph (a)(2)(ii) of § 1915.201 lists several areas where fall protection would not be required. Public comment is requested on whether this list is too limited or too broad. Comments requesting that specific areas of activities be added to the list should demonstrate why fall protection is not necessary. Comments requesting that the list of exceptions be narrowed should describe the fall protection systems and procedures that are available and feasible for use in the specified area.

In addition, public comment is requested on whether or not there are areas or operations, in addition to those already identified in proposed § 1915.202(b) and § 1915.202(c), which have unique fall protection requirements not presently addressed by the proposed standards. Comments on this point should describe such areas and operations in detail, and should discuss the fall protection system or work practices which should be used.

2. Paragraph (b)(1) of § 1915.202 allows the use of U-guards as fall protection on manholes and other small openings aboard vessels. Comment is requested on whether or not such guards should be allowed. If such guards should be allowed, comment is requested on whether or not any or all of the provisions of § 1915.203(a) are appropriate criteria and should apply. Comment is also requested on whether or not there are any other relevant considerations that should be addressed pertaining to the proper use of such guards.

3. Paragraph (b)(4) of § 1915.202 requires employees to wear personal flotation devices when working near unprotected sides and edges of decks, platforms, flats, and similar surfaces above water on vessels afloat. Comment is requested on whether or not this requirement should apply aboard all vessels with unprotected sides and edges above water, and not just those afloat. An example of where this may be appropriate is a vessel on a marine railway which has been partially hauled out of the water for work, and which has a portion of its deck edges over water. Similarly, public comment is requested on whether or not this requirement should apply any time an employee is working near unprotected sides and edges of shore facilities which are above water (i.e., wharves, piers, docks, and buildings).

4. What are appropriate fall protection requirements for vessel sections in assembly areas adjacent to building ways or vessels that are being worked on? These sections are often placed on large tables which are four or more feet above ground levels and which, therefore, almost always create a fall potential of four feet or more. However, the work on such sections may be of a relatively short duration compared to the time and exposure necessary to install guardrail systems or anchorages for personal fall protection equipment. Other sections can be quite large with correspondingly greater exposure to fall hazards which outweigh the installation considerations.

5. Paragraph (c)(1) of § 1915.202 requires fall protection whenever employees are working ashore on walking/working surfaces with unprotected sides and edges which are four feet or more above lower levels. This is the same general rule as in Part 1910, which OSHA considers to be applicable to those areas of shipyards not presently covered by Part 1915. However, some existing rules developed specifically to reflect shipyard considerations (see §§ 1915.71 (j), (k), 1915.73(d), and 1915.77(c)) specify the limit to be five feet in certain specified areas. These rules have led some yards to consider the five-foot limit to be applicable in all shipyard areas (with certain exceptions for scaffolds covered by Part 1910) and have provided fall protection systems accordingly. Public comment is requested on whether the appropriate limit should be four feet or five feet. Comments should include appropriate cost and injury data, and, as appropriate, discuss the necessity to "grandfather" existing five foot installations.

6. Paragraph (a)(1) of § 1915.203 specifies three different minimum guardrail system heights, depending on where the system is installed. Comment is requested on whether all systems should be required to meet the 39 to 45 inch (42 inch nominal) requirement, and if not, what factors support the use of different guardrail heights.

7. Paragraph (b)(5) of § 1915.203 requires safety nets to be inspected weekly for deterioration. Comment is requested on whether or not this period of time is appropriate or if some lesser or greater period should be required, and the reason for the period selected.

8. Paragraph (c) of § 1915.202 requires all hole covers not on vessels, vessel sections, or vessel means of access to meet certain specified criteria. Comment is requested on what criteria should be used for covers used on vessels (other than those which are an integral part of a vessel), vessel sections, and vessel means of access, and the basis for establishing such criteria.

9. Should OSHA promulgate a rule requiring covers to be painted or otherwise clearly marked to indicate their function as a cover? Covers are often only pieces of plywood, and the purpose of this rule would be to help employees distinguish between a covered hole and debris.

10. Paragraphs (b)(1) through (3), (b)(6) and (b)(10) of § 1915.202 require the use of guardrails on vessels when such use is practicable. These provisions are based on existing provisions § 1915.73(b) through (d), (f), and § 1915.75(e). Public comment is requested on the actual conditions that must exist before these provisions become impracticable. In addition, public comment, is requested on the need to use other fall protection systems when guardrails are impractical; what these other systems should be; and the circumstances in which these other systems are appropriate for use.

11. Should OSHA promulgate rules requiring the inspection of work surfaces to determine their structural integrity prior to employees being required to work on such surfaces? Currently, there are no specific requirements that address this concern. The purpose of these inspections would be to insure that work surfaces have the requisite strength so as not to collapse under the weight of employees, tools, and materials. That such a rule may be

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needed is evidenced by a study conducted by OSHA (Ref. 2, page 77). That study shows that of eight fatalities of employees falling through ceilings, four of the accidents were caused by the work surface not being capable of supporting the employee's weight. The study also shows that of 55 fatalities resulting from falls from roof levels, approximately eight were caused by the employees working on surfaces with insufficient structural strength to support their weight. Comments should address the types of inspection criterial necessary, the methods to be used, and the qualifications of the inspectors.

12. Paragraph (d) of § 1915.202 allows protective canopies to be erected as an alternative form of falling object protection. Comments are requested on whether or not the folowing criteria, based on existing construction safety standards, would be appropriate for shipyard application: "Canopies shall be erected not more than nine feet above the work surface, and shall consist of two inch planking, or material of equivalent strength, laid tight, and extending the width and length of the impact area." If this criteria should not be used, what criteria should be specified in § 1915.203(d) to assure proper protection for employees?

13. Paragraph (d)(9) of § 1915.202 allows guardrail systems to be removed where necessary to permit line handling of floating dry docks. Comment is requested on whether or not personal flotation devices should be required on employees when guardrails are removed, and under what conditions such protection is necessary.

14. Many shipyards have the capability of floating a ship into a fixed area where the water can be removed and the ship drydocked. Such areas are variously termed graving docks, graving basins, basins, drydocks (as opposed to "floating drydocks, ship ways, and other terms. Comment is requested on whether or not there is one term which can be used to describe these areas. If not, comment is requested on what other terms are also used to describe these areas so that OSHA may combine them into one defintion.

15. Paragraphs (a) (11) through (15) of § 1915.203 specify requirements for the use of guardrail systems which are not on vessels, vessel sections, and vessel means of access. The requirements address materials handling access areas, holes, personnel access, and narrow ramps. Comment is requested on whether or not these rules should also apply to vessels, vessel sections, and vessel means of access.

16. Paragraph (c)(4)(ii) of § 1915.202 allows the use of an attendant to protect an opening in a walking/working surface when a cover is open or removed. This provision is based on existing provisions § 1910.23(a)(5) through (8). Public comment is requested on whether or not this is an appropriate method of fall protection, and whether any conditions should be placed on its use.

17. OSHA is proposing to revise its provisions covering the minimum height of guardrail systems (§ 1915.203(a)(1)(i)), the minimum height of wall openings before guardrail protection is required (§ 1915.202(c)(5)), and the minimum strength of covers (§ 1915.203(c)(1) and (2)). These changes would bring the shipyard employment standards into conformance with similar provisions being developed for the construction industry safety standards and the general industry safety standards. However, as noted in the Summary and explanation of the Proposal, OSHA proposes to "grandfather" certain existing situations with respect to these provisions. Public comment is requested on whether or not existing guardrail systems, wall openings, and covers should be "grandfathered," and whether or not other facilities should be "grandfathered." Comments should include a discussion of related cost, injury, and feasibility data.

18. Both the current § 1910.23(c) and the proposed § 1915.202(c) require fall protection systems to be erected or used at all unprotected sides and edges of floors (open-sided floors) and similar walking-working surfaces. As worded, the existing provision can be interpreted to mean that a guardrail is required around an open-sided floor even when employees on the floor are working near the middle of the floor and are removed from the perimeter fall hazard. The proposed language could also be interpreted to require the same degree of protection. The existing provision can also be interpreted to mean that a citation for lack of fall protection should be issued only when employees are working near the unprotected side or edge and are thus exposed to the fall hazard. Public comment is requested on whether or not a distance (or some other method of defining exposure) should be specified whereby fall protection would be required only when an employee is within that distance of a fall hazard. Proponents of such a limit should state what that distance should be, and why. Proponents of the existing language, as modified in the proposal, should state why a limit would not be appropriate. All comments should include appropriate cost and injury data.

19. In some of the exisiting provisions and in some of the proposed provisions, OSHA uses specific numerical limits to define and clarify the duties set forth. For example, existing § 1915.73(d) and proposed § 1915.203(a)(ii) require guardrail systems to be used around all open hatches not protected by coamings at least 24 inches high. These and other limits are based on existing laws and consensus standards, and are used in lieu of more performance-oriented language such as "guardrails shall be used around all hatches where there is a fall hazard," or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA believes that although such performance-oriented language would be less restrictive on employers, and thus give them more options when abating a hazard, it does not always tell the employer exactly what is required (i.e., how to do something "right"). On the other hand, requiring specific numerical limits in the rule and allowing the employer to use other limits which the employer can show will provide "equivalent" protection may respond to both these concerns. OSHA believes that the use of specific limits in certain provisions (such as those listed above) provides the required notice to employers as to how they can comply with a provision compared to how OSHA intends to enforce the provision. OSHA believes that such notice serves to inform employers and employees about the proper way to do things; promotes consistency in hazard abatement at all worksites; and also minimizes legal disputes over the intent of a requirement. On the other hand, specification language can increase costs without increasing safety, discourage technical innovation, prevent the use of safe alternatives, and fail to anticipate the varying needs and situations in the numerous workplaces covered by the standard.

Public comment is requested on whether or not OSHA's use of specification language is appropriate, or if it should be moved to a non-mandatory appendix which could provide guidance to employers. If not, how should the provisions be written to provide the desired flexibility and the required fair notice? If the continued use of such limits is appropriate, are the proposed limits sufficient to abate the hazards? Comments should include appropriate cost and injury data.

III. References

1. American National Standard ANSI A10.11–1979, *American National Standard for Safety Nets Used During Construction, Repair, and Demolition Operations,* American National Standards Institute, New York.

2. U.S. Department of Labor, Occupational Safety and Health Administration, *Occupational Fatalities Related to Roofs, Ceilings, and Floors as Found in Reports of OSHA Fatality/Catastrophe Investigations,* November 1979.

3. Yancy, Carino and Sansalone, *Perimeter Safety Net Projection Requirements,* Center for Building Technology, National Bureau of Standards, Washington, DC, May 1986 (NBSIR 85–3271).

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed revision would not be a "major" action. The expected annualized costs of full compliance would be about $305,000.

Background

Under Executive Order 12291, OSHA is required, in general, to submit any Notice of Proposed Rulemaking (NPRM) for "all rules other than major rules" to the Director of the Office of Management and Budget (OMB) at least 10 days prior to publication in the Federal Register.

In light of the data currently available to OSHA, the economic impact estimates presented in this preamble are rough estimates which are likely to be refined as OSHA receives additional information.

OSHA solicits further comments on the estimates presented in this preamble and those comments will be addressed and incorporated in the Regulatory Impact Assessment (RIA) for the final rule.

Data Sources

The primary source for this section is the November 1985, Draft Final Report by CONSAD Research Corporation entitled, "Data to Support a Regulatory Analysis of the Proposed Standard for shipbuilding and Repairing." In addition, OSHA also used an October 1984 report by Main Hurdman/KMG entitled, "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and shipbreaking industries would be affected by the proposed consolidation of the fall protection sections of the existing Part 1915, Subpart E, and the existing Part 1910, Subpart D. In recent years, shipyards have not prospered as an industry. By way of illustration, there were about 305 shipyards operating in 1986 which is fewer than half of the 687 shipyards active in 1982. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but no new orders for merchant vessels since 1985. Although this loss of business has been partially offset by the increase in the U.S. Navy's demands for ships, the decline in the demand for commercial ships will likely generate a further decline in the number of active shipyards.

Population-at-Risk

OSHA has estimated that every shipyard employee frequently works at an elevation that would require the worker to be protected from falling. The actual number of these employees will depend upon the level of shipyard work. For example, shipyards employed 177,300 workers in 1980 and about 136,300 workers in 1986. Consequently, given the potential for large changes in the demand for this industry's product, OSHA has estimated that the population-at-risk would be between 136,300 and 180,000 employees.

Risk of Fatality or Injury

OSHA has estimated that the annual number of injuries in shipyards due to falls from those elevations covered under this subpart was between 905 and 1,460 between 1981 and 1986. Of these injuries, 460 to 825 were lost workday injuries. As the average number of lost workdays per lost shipyard workday injury was between 20.4 and 26, OSHA has estimated that the annual number of lost workdays in shipyards due to falls from elevations would be between 10,330 days and 16,980 days.

In addition, OSHA has determined that there would be between one and two annual fatalities in shipyards associated with falls from elevations.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would permit the use of existing and readily available technology and equipment.

There are two potential sources of benefits from this proposed standard. The first source is the benefits that would accrue to those workers who are at risk from current practices involving working at elevations in shipyards. OSHA believes that the proposed consolidation of Parts 1910 and 1915 would likely lead to an increase in future compliance levels because consolidating two sets of these requirements into one set would clarify the rules. In addition, the proposal substitutes performance language for much of the existing specification language. Consequently, it could make compliance less costly while maintaining employee safety. Thus, the proposed consolidation may lead to an increase in compliance which, in turn, may lead to an increase in employee safety during work at elevations.

The second source is the benefits and decreased costs that should accrue to those employers who would be allowed to use certain safety systems and equipment that are not allowed by the existing specification requirements but would provide the same level of employee safety as that generated by the specifications. The use of these systems and equipment would allow employers to provide the necessary level of safety for their employees at less cost than is possible under the existing standards.

OSHA does not have any quantitative estimates of these potential benefits and is requesting information and comments on this issue. As this is a Preliminary Regulatory Impact Assessment (PRIA), all comments will be carefully analyzed by OSHA for incorporation into the RIA for the final rule.

The basis of the estimated costs of compliance with the proposed standard is the CONSAD Report. In order to obtain this information, CONSAD circulated copies of the draft proposed standards to the two major industry trade associations and to individual shipbuilders. CONSAD then employed telephone questionnaires and site visits to elicit information concerning the potential economic impact of the provisions contained in the draft proposed consolidated standard. The information was used by CONSAD to develop its estimates of the costs of compliance and those costs have been adopted by OSHA as the expected costs of compliance with the proposed standards.

Based on the CONSAD report, OSHA has determined that there is one provision that would involve costs of compliance. The proposed consolidation requires that all new guardrails and temporary guardrails have a minimum toprail height of 39 inches. Existing guardrail systems, however, are exempted from this provision.

Using the baseline of existing industry practice, OSHA has estimated the annualized costs of compliance with the proposed consolidation to be about $305,000. Nevertheless, as previously mentioned, this is a preliminary RIA and

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OSHA invites public comment concerning this estimate. Any comment received will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), the Assistant Secretary has preliminarily certified that the proposal would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this certification.

The important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standard would impose significant costs upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entity's financial viability. In particular, the proposed standard's effect upon small entities relative to that upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposal would have a relatively greater negative effect on small entities than on large entities, thereby putting small entities at a competitive disadvantage.

The proposed standard, however, has no changes that would require significant capital expenditures. Furthermore, as these proposed provisions are more performance-oriented than specification-oriented, small entities can use cost-effective methods of employee protection best suited to their particular work situations. The costs of compliance with the proposed standard primarily depend upon the amount of work at elevations and upon the number of employees, both of which typically depend upon the size of the firm. There are, however, some economies of scale in compliance and the costs of compliance expressed as a percentage of total revenues would be slightly larger for very small firms (fewer than 50 employees) than for very large firms (greater than 1,000 employees). Nevertheless, these compliance costs would be a minimal component of the overall cost of the shipyard production. As a result, this proposed standard would not put small entities at a competitive disadvantage relative to large entities.

Thus, OSHA has concluded that this proposed standard would not have a significant adverse impact upon a substantial number of small entities.

The assessment is available for inspection and copying at the OSHA Technical Data Center, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in both the Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council of Environmental Quality (CEQ) (40 CFR Parts1500 through 1517), and Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary of OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions focus on the reduction of accidents or injuries by means of work practices and procedures, and proper use and handling of equipment. The proposal also contains language, definition, and format changes. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. Therefore, these revisions are categorized as excluded actions according to Subpart B, § 11.10, of the DOL NEPA regulations.

VI. Recordkeeping

This proposal contains no recordkeeping requirements.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Office, Docket No. S-046, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 655) and 29 CFR 1911.11, interested parties may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the address above and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by February 27, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken or about which the hearing request is made, and must state the grounds therefore;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

The 25 States and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. Currently five States (California, Minnesota, Oregon, Vermont and Washington) with their own State plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA States and in the following State plan States and territories: Alaska, Arizona, Connecticut [1], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York, [1] North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All States with State plans must also extend coverage to State and local government employees engaged in maritime activities.)

[1] Plan covers only State and local government employees.

List of Subjects in 29 CFR Part 1915

Guardrail systems, Marine safety, Occupational safety and health, Personal flotation devices, Personal fall protection equipment, Safety, Safety nets, Ship repair, Shipyard employment, Vessels.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Worker's Compensation Act, as amended (33 U.S.C. 941), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1915 as set forth below.

Signed at Washington, DC, this 17th day of November, 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1915—[Amended]

1. The authority citation for Part 1915 would continue to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers, Compensation Act (33 U.S.C. 941); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. 29 CFR Part 1915 would be amended by adding a new Subpart M to read as follows:

Subpart M—Fall Protection

Sec.

1915.201 Scope, application, and definitions applicable to this subpart.
915.202 Requirements to have fall protection.
1915.203 Fall protection systems criteria and practices.
Appendix A to Subpart M—Guardrail Systems.

Subpart M—Fall Protection

§ 1915.201 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* (1) This subpart sets forth requirements for fall protection to be provided for and used by employees in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking), but does not apply to construction operations in shipyards covered under 29 CFR Part 1926.

(2) The provisions of 29 CFR 1910.21, 1910.22(b), 1910.22(c), and 1910.23 do not apply to shipyard workplaces and operations.

(3) Section 1915.202 sets forth those shipyard workplaces, conditions, operations, and circumstances for which fall protection shall be provided and used, except as follows:

(i) Provisions requiring fall protection for employees on stairways and ladders are provided in §§ 1915.71 through 1915.90 of this part (Subpart E).

(ii) Provisions requiring fall protection for employees on scaffolds are provided in §§ 1915.251 through 1915.253 of this part (Subpart N).

(4) Section 1915.203 sets forth the requirements for the installation, construction, and use of guardrail systems, safety net systems, covers, and falling object protection required by the part. Criteria for personal fall arrest systems, positioning device systems, and personal flotation devices are provided in §§ 1915.151 through 1915.160 of this part (Subpart I).

(5) Facilities or equipment installed prior to 30 days after date of publication of the final rule in the **Federal Register** may comply with the requirements in brackets ([ ]) in this subpart in lieu of the corresponding unbracketed requirements.

(b) *Definitions applicable to this subpart.*

"Dangerous equipment" means equipment such as machinery, electrical equipment, and other units which, as a result of form or function, may be hazardous to employees who fall onto or into such equipment.

"Equivalent" means alternative designs, materials, or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Failure" means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

"Guardrail system" means a vertical barrier, normally consisting of, but not limited to, an assembly of toprails, midrails, and posts, erected to prevent employees from falling to lower levels.

"Lower levels" means those areas to which an employee can fall. Such areas include ground levels, decks, flats, docks, floors, roofs, ramps, gangways, grates, piers, wharves, runways, excavations, pits, tanks, material, water, equipment, and other surfaces.

"Personal fall arrest system" means a combination of body belt or body harness, and lanyard, deceleration device, lifeline, and point of anchorage.

"Personal flotation device" means a life-jacket type vest used to provide flotation assistance.

"Positioning device system" means a body belt or body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall or ship's funnel, and to work with both hands free while leaning backwards.

"Qualified person" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve safety problems relating to the subject matter, the work, or the project.

"Toeboard" means a low protective barrier to prevent the fall of materials and equipment to lower levels.

"U-guard" means a barrier shaped like an inverted "U" which is used at manhole openings on vessels to provide fall protection. These guards are also known as "hairpins," "fieldgoals," and "horseshoes."

"Unprotected sides and edges" means any side or edge (except at entrances to points of access) of a deck, platform, flat (or similar surface on a vessel), floor, roof, ramp, catwalk, or runway where there is no wall or guardrail system at least 39 inches (1.0m) [Grandfather provisions: 36 inches (0.9m); see § 1915.201(a)(3)] high.

"Vessel section" means a sub-assembly, module, or other component of a vessel being built, repaired, or broken.

"Walking/working surface" means any surface on which employees must be located in order to perform their job duties.

§ 1915.202 Requirements to have fall protection.

(a) *General.* (1) All fall protection shall be installed before employees begin any other work on or from the surface or area where fall protection is required.

(2) The provisions of this section do not apply to unprotected sides and edges of the top, waterside, walking/

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working surface of wharves, piers, and quays, nor to the loading side of loading docks, nor to assembly tables, vehicles, or trailers.

(b) *Fall protection on vessels, vessel sections, and vessel means of access.* Employees on decks and other walking/working surfaces aboard vessels, vessel sections, and on vessel means of access shall be protected from fall hazards as follows:

(1) Employees working near flush manholes and other small openings of comparable size in the deck and other working surfaces shall be protected by the use of covers, guardrail systems, or U-guards, except where the use of such protection is made impracticable as a result of the nature of the work actually in progress.

(2) Employees working near open hatches not protected by coamings to a height of 24 inches (61 cm), and employees working near all other large openings shall be protected by the use of guardrail systems, except where the use of such guards is made impracticable as a result of the nature of the work actually in progress.

(3) Employees working near unprotected sides and edges of decks, platforms, flats, and similar flat surfaces more than five feet (1.5 m) above lower levels (except water) shall be protected by the use of guardrail systems, except where the use of such guards is made impracticable as result of the nature of the work actually in progress.

(4) Employees working near unprotected sides and edges of decks, platforms, flats, and similar surfaces above water on vessels afloat shall be protected by personal flotation devices.

(5) Employees boarding, leaving, or working from small boats or floats shall be protected by personal flotation devices.

(6) Sections of bilges from which floor plates or gratings have been removed shall be guarded by guardrails, except where the use of such guards is made impracticable as a result of the nature of the work actually in progress. If these open sections are in a walkway, at least two 2 inch by 10 inch planks placed side by side, or equivalent, shall be laid across the opening to provide a walking surface.

(7) Gratings, walkways, and catwalks from which sections or ladders have been removed shall be barricaded with guardrails.

(8) When firebox floors present tripping hazards of exposed tubing or of missing or removed refractory, planking shall be laid to afford safe footing while work is being carried on within the boiler.

(9) Employees working near the edges of floating dry dock wing walls shall be protected by guardrail systems. Sections of the railings may be temporarily removed where necessary to permit line handling while a vessel is entering or leaving the dock.

(10) Employees working on the deck of a floating dry dock where they are exposed to the hazard of falling into the water shall be protected by the use of a guardrail system installed along the ends of the dry dock. When such a railing would be impracticable, employees shall use personal fall arrest systems or positioning device systems rigged to prevent employees from falling into the water.

(11) Employees on gangways and turntables used for vessel access shall be protected by guardrail systems.

(c) *Fall protection ashore.* Employees not on vessels, vessel sections, or vessel means of access shall be protected from fall hazards as follows:

(1) Except as provided in paragraphs (c)(2) through (c)(5) of this section below, employees on floors, roofs, ramps, walkways, graving dock edges, and other walking/working surfaces with unprotected sides and edges four feet (1.2 m) or more above lower levels, shall be protected by the use of guardrail systems. When the use of guardrail systems is impracticable, employees shall be protected by the use of personal fall arrest systems, positioning device systems, or safety net systems.

(2) In areas where guardrail systems or portions of guardrail systems have been removed to allow the passage of materials, tools, or equipment, employees shall be protected by the use of personal fall protection equipment.

(3) Employees less than four feet (1.2 m) above dangerous equipment shall be protected by guardrail systems or equipment guards.

(4) Employees four feet (1.2 m) or more above dangerous equipment shall be protected by guardrail systems, personal fall arrest systems, or safety net systems.

(5) Employees on floors, roofs, roadways, vehicular aisles, and other walking/working surfaces with holes (including skylights and open pits) into which employees can accidentally walk shall be protected by covers or guardrail systems, or the hole shall be guarded by an attendant.

(i) Covers used for protection shall be closed when the hole is not in use.

(ii) When the cover is open or removed, employees shall be protected by guardrail systems, or the hole shall be guarded by an attendant.

(6) Employees exposed to the hazard of falling into tanks, vats, and similar enclosures shall be protected by guardrail systems or covers.

(7) Employees working on, at, or near wall openings (including openings with chutes attached) shall be protected from falling through or into the wall opening by the use of a guardrail system, whenever the outside bottom edge of the wall opening is more than four feet (1.2 m) above lower levels and the inside bottom edge of the wall opening is less than 39 inches (1.0 m) [Grandfather provisions: 36 inches (0.9 m); see § 1915.201(a)(3)] above the walking/working surface.

(d) *Protection from falling objects.* Except as provided for scaffolds in Subpart N, employees, in addition to wearing hardhats as required by § 1915.155 of this part, shall be protected by falling object protection as necessary when they are on or immediately adjacent to vessels or vessel sections. In addition, falling object protection shall be installed at all times at all other locations beneath which employees can pass, there is moving machinery, or there is equipment with which falling materials could create a hazard. Such protection shall consist of toeboards, screens, or guardrail systems erected to prevent objects from being displaced from higher levels; or by canopy structures erected to deflect the falling objects.

§ 1915.203 Fall protection systems criteria and practices.

(a) *Guardrail systems.* Guardrail systems installed and used to meet the requirements of this part shall comply with the following provisions:

(1) The top edge height of toprails or equivalent guardrail system members shall be as follows:

(i) Thirty inches (76 cm) to 45 inches (114 cm) for systems installed around flush manholes and other small openings of comparable size located in decks and other walking/working surfaces aboard vessels and vessel components, and for systems installed on gangways and turntables (with the height measured perpendicularly from the rail to the walking surface at the stanchion), and for systems installed on walkways and ramps used for vessel access.

(ii) Thirty-six inches (92 cm) to 45 inches (114 cm) for systems installed around open hatches not protected by coamings to a height of 24 inches (61 cm), and for systems installed around other large openings aboard vessels and vessel components.

(iii) Thirty-nine inches (99 cm) [Grandfather provisions: 36 inches (92 cm); see § 1915.201(a)(3)] to 45 inches (114 cm) for systems installed on drydocks, edges of graving docks, and around all other fall hazard areas.

(2) Midrails, screens, mesh, intermediate vertical members, or equivalent intermediate structural members shall be installed between the top edge of the guardrail system and the walking/working surface where there is no wall or parapet wall at least 21 inches (53 cm) high.

(i) Midrails, when used, shall be installed at a height midway between the top edge of the guardrail system and the top of the walking/working surface where there is no wall or parapet wall at least 21 inches (53 cm) high.

(ii) Screens and mesh, when used, shall extend from the toprail to the walking/working surface, and along the entire opening between toprail supports.

(iii) Intermediate vertical members (such as balusters), when used between posts, shall be not more than 19 inches (.48 cm) apart.

(iv) Other structural members shall be installed such that there are no openings in the guardrail system that are more than 19 inches (.48 m) wide.

(3) Guardrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds (890 N) applied within two inches (5.1 cm) of the top edge, in any outward or downward direction, at any point along the top edge.

(4) When the 200 pound (890 N) test load specified in paragraph (a)(3) is applied in a downward direction, the top edge of the guardrail system shall not deflect to a height less than the minimum heights specified in paragraph (a)(1) above.

(5) Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members shall be capable of withstanding, without failure, a force of at least 150 pounds (666 n) applied in any downward or outward direction at any point along the midrail or other member. Guardrail systems on gangways on vessels inspected and certified by the U.S. Coast Guard will be deemed to meet the requirements of paragraphs (a)(3) through (a)(5) of this section, except in cases where the vessel's regular gangway is not being used.

(6) Guardrail systems shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing which could cause an employee to fall.

(7) The ends of all toprails and midrails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard.

(8) Steel banding and plastic banding shall not be used as toprails or midrails.

(9) Toprails and midrails shall be at least one-quarter inch (0.8 cm) nominal diameter or thickness.

(10) When guardrail systems are exposed to hot work (i.e., welding, burning, or other heat producing operations) or corrosive chemicals, manila or synthetic fiber rope rails shall not be used.

(11) When guardrail systems are used at materials, tools, or equipment handling areas, a chain, gate or removable guardrail section shall be placed across all access openings between guardrail sections when handling operations are not taking place.

(12) When guardrail systems are used at holes or openings in walking/working surfaces, they shall be erected on all unprotected sides and edges of the hole or opening.

(13) When guardrail systems are used around holes or openings used for the passage of materials, the hole or opening may have not more than two sides provided with removable guardrail sections to allow the passage of materials.

(14) When guardrail systems are used around holes or openings which are used as personnel points of access (such as ladderways), they shall be provided with a gate or be so offset that a person cannot walk directly into the hole.

(15) Guardrail systems on ramps and runways shall be erected along each unprotected side or edge; however, when operating conditions preclude installation of a guardrail system along both sides, the guardrail system may be omitted along one side if the ramp or runway is at least 18 inches (.5 m) wide.

(b) *Safety net systems.* Safety net systems installed and used to meet the requirements of this Part shall comply with the following provisions:

(1) Safety nets shall extend outward at least 15 feet (4.6 m) from the outermost projection of the work surface.

(2) Safety nets shall be installed as close as practicable under the walking/working surface on which employees are working, but in no case more than 25 feet (7.7 m) below such level.

(3) Safety nets shall be installed with sufficient clearance under them to prevent contact with the surface or structure below when subjected to an impact force equal to the drop test specified in paragraph (b)(4) of this section.

(4) Safety nets and their installations shall be capable of absorbing without failure an impact force equal to that produced by the drop test specified in paragraph (b)(4)(i) of this section.

(i) Safety nets and safety net installations shall be drop-tested at the jobsite before being used as a fall protection system. The drop-test shall consist of a 400 pound (180 kg) bag of sand 30 ± 2 inches (76 ± 5 cm) in diameter dropped into the net from the highest walking/working surface on which employees are to be protected.

(ii) *EXCEPTION:* When the employer can demonstrate that a drop-test is not practicable, the net and net installation shall be certified by a qualified person to be in compliance with the provisions of paragraphs (b)(3) and (b)(4)(i) of this section.

(5) Safety nets shall be inspected weekly for mildew, wear, damage, and other deterioration, and defective components shall be removed from service.

(6) Materials, scrap pieces, and tools which have fallen into the safety net shall be removed as soon as possible from the net and at least before the next work shift.

(7) The maximum size of each safety net mesh opening shall not exceed 36 square inches (225 cm^2) nor be longer than six inches (15 cm) on any side measured center-to-center of mesh ropes or webbing. All mesh crossings shall be secured to prevent enlargement of the mesh opening.

(8) Each safety net (or section of it) shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds (22.2 kN).

(9) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than six inches (15 cm) apart.

(c) *Covers.* Covers for holes in floors, roofs (including skylights), roadways, vehicular aisles, and other walking/working surfaces which are not on vessels, vessel sections, or vessel means of access, shall comply with the following provisions:

(1) Covers located in roadways and vehicular aisles shall be capable of supporting, without failure, at least twice the maximum axle load of the largest vehicle expected to cross over the hole [Grandfather provisions: 20,000 pounds (9,120 kg); See § 1915.201(a)(3)].

(2) All other covers shall be capable of supporting, without failure, the maximum total anticipated load of employees, equipment, and materials to be applied to the cover at any one time, or 250 pounds (114 kg), whichever is greater [Grandfather provisions: 200 pounds (91 kg); See § 1915.201(a)(3)].

(3) All covers shall be installed so as to prevent accidental displacement.

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(4) Covers over steam pits shall not be made of plywood.

(d) *Protection from falling objects.* Falling object protection installed and used to meet the requirements of this Part shall comply with the following provisions:

(1) Toeboards, when used as falling object protection, shall be erected along the edge of the overhead walking/working surface for a distance sufficient to protect employees using the point of access below.

(2) Toeboards shall be capable of withstanding, without failure, a force of at least 50 pounds (222 N) applied in any downward or outward direction at any point along the toeboard.

(3) Toeboards shall be a minimum of three and one-half inches (8.9 cm) in height measured vertically from their top edge to the level of the walking/working surface. They shall have not more than one-half inch (1.3 cm) clearance above the walking/working surface. They shall be solid or have openings not over one inch (2.5 cm) in greatest dimension.

(4) Where tools, equipment, or materials are piled higher than the top edge of a toeboard, paneling or screening shall be erected from the walking/working surface or toeboard to the top of a guardrail system's toprail or midrail, for a distance sufficient to protect the employees using the point of access below.

(5) Guardrail systems, when used as falling object protection, shall have all openings small enough to reject passage of potential falling objects.

Appendix A to Subpart M—Guardrail Systems

The standard requires guardrail systems and components to be designed and built to meet certain requirements including § 1915.203 (a)(3), (a)(4), (a)(5), and (d)(2). This appendix serves as a non-mandatory guideline to assist employers in complying with these requirements. An employer may use these guidelines as a starting point for designing guardrail and toeboard systems. However, the guidelines do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling these components in such a way that the completed system will meet the capacity and strength requirements of the standard. Components for which no specific guidelines are given in this appendix (e.g., joints, base connections, components made with other materials, and components with other dimensions) must also be designed and constructed in such a way that the completed system meets the capacity and strength requirements of § 1915.203.

(1) For wood components: Wood components shall be minimum 1,500 lb-ft/in^2 fiber (stress grade) construction grade lumber; the posts shall be at least two-inch by four-inch lumber spaced not more than eight feet apart on centers; the toprail shall be at least two-inch by four-inch lumber, the intermediate rail shall be at least two-inch by four-inch lumber; the toeboard shall be at least one-inch by four-inch lumber. All lumber dimensions are nominal sizes as provided by the American Softwood Lumber Standards, dated January 1970.

(2) For pipe railings: posts, toprails, and intermediate railings shall be at least one and one-half inches nominal diameter with posts spaced not more than eight feet apart on centers.

(3) For structural steel railings: posts, toprails, and intermediate rails shall be at least two-inch by two-inch by three-eighths-inch angles, with posts spaced not more than eight feet apart on centers.

[FR Doc. 88-27002 Filed 11-28-88; 8:45 am]

BILLING CODE 4510-26-M

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29 CFR Part 1915

[Docket No. S-047]

Safety Standards for Scaffolds Used in Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing scaffolds. The standards proposed for revision regulate the design, construction, and use of scaffolds in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the present standards in Part 1915 are not comprehensive in their coverage of shipyard hazards, and are supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for all the hazards encountered in shipyards. This document is one of a series of proposals which are intended to revise Part 1915 to provide comprehensive coverage of shipyard employment solely within that part.

This action will consolidate and update the shipyard employment scaffold standards and the appropriate general industry scaffold standards into a single, comprehensive Part 1915 that would apply to all activities and areas in shipyards (except construction activities covered by Part 1926). The proposed provisions will delete many existing specification provisions which currently limit employer innovation, and where appropriate, use performance-oriented provisions to address scaffold hazards.

The specific topic of scaffolds is currently addressed in Subpart E of the current Shipyard Employment Standards, along with the topics of access and egress, ladders, and other walking/working surface considerations. To format the rules into a more logical grouping of topics, this and related actions would retain coverage of ladders and other access and egress concerns in Subpart E, and would relocate fall protection and scaffolds from the current Subpart E to a new Subpart M—Fall Protection, and a new Subpart N—Scaffolds.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Office, Docket No. S-047, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. Materials in the rulemaking record are available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: The principal author of this notice of proposed rulemaking is Roy F. Gurnham, Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background and Approach

In May 1971, the Occupational Safety and Health Administration under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, OSHA adopted other Federal standards and national consensus standards as general industry standards (29 CFR Part 1910) and construction industry standards (29 CFR Part 1926) which were made applicable

to hazards and working conditions not specifically covered by Parts 1915, 1916, or 1917. On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29, Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment" (47 FR 16984). The consolidation eliminated duplicate provisions and overlapping provisions, but did not alter any substantive requirements. The consolidation did not affect the applicability of general industry standards of 29 CFR Part 1910 to hazards or conditions in shipyard employments not specifically addressed in the consolidated Part 1915 (see 29 CFR 1910.5(c)(2)).

In 1982, the Shipbuilders Council of America and the American Waterways Shipyard Conference requested OSHA to identify the specific applicable provisions of the general industry standards which apply to shipyards, and consolidate them with the existing Part 1915 provisions into a single set of shipyard employment standards. OSHA has determined that such consolidation is appropriate. This and other proposed rulemakings will eventually incorporate all applicable Part 1910 provisions into the existing organization of Part 1915. The present Part 1915 organizational format, which is already familiar to present users of the shipyard standards, provides a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when applicable Part 1910 provisions have no counterpart in the existing Part 1915 structure, the proposals would create new subparts or subpart headings in Part 1915.

In addition to consolidating the provisions of Part 1910 and Part 1915, OSHA proposes to revise the consolidated provisions as appropriate. OSHA has not substantively revised many of the current provisions in these Parts since they were promulgated in 1971. OSHA believes some provisions need to be revised to reflect technological advances. Other provisions need to be revised because they are based on national consensus standards issued prior to 1971, and do not reflect the revisions made since that time. As the provisions are consolidated, all such revised consensus standards will be reviewed, and OSHA's provisions revised as necessary to effectuate the purposes of the standard and the OSH Act. Where practical, all current incorporations by reference of national consensus standards and other materials will be deleted by the proposed standards, and the text of all such requirements will be proposed for inclusion in the body of the proposed standards, or their appendices. This approach is intended to assist employers in determining what duties and obligations are imposed by a provision by minimizing the need to refer to documents outside Part 1915. OSHA will also use the consolidation project to replace specification requirements with performance-oriented requirements where it is known that there is more than one way to provide safety equivalent to that provided by the present specification requirements. Specification requirements would be used only where necessary to set appropriate limits and to clarify duties and obligations.

The revision of the shipyard employment standards will be coordinated with efforts to revise parallel provisions in the construction and general industry standards so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

II. Summary and Explanation of the Proposal

Scaffolds are currently covered by 29 CFR Part 1915, Subpart E—Scaffolds, Ladders, and Other Working Surfaces, and 29 CFR Part 1910, Subpart D—Walking-Working Surfaces. Consolidation of these two subparts into one subpart would result in a large, cumbersome subpart, because of the wide range of topics covered. Therefore, OSHA is proposing to divide the consolidated Part 1915 standards into three subparts. The proposed sub-parts would be Subpart E—Access and Egress; Subpart M—Fall Protection; and Subpart N—Scaffolds. This reformatting, in and of itself, would neither create nor delete any requirements.

In accordance with paragraph 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), the agency has reviewed the various national consensus standards that cover working conditions dealt with in this proposal. Where appropriate, OSHA has incorporated provisions from those national consensus standards as part of this proposal. OSHA believes that the proposed standard will better effectuate the purposes of the Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive and provides greater flexibility in its requirements for safety. The following discussion provides a more detailed explanation of the proposed provisions related to scaffolds.

Section 1915.251 Scope, application and definitions applicable to this subpart.

Proposed § 1915.251(a) outlines the scope and application of Subpart N. The proposal would apply to all scaffolds used in all workplaces and operations found in shipyards, including those aboard vessels and vessel sections (sub-assemblies of vessels), except that construction, alteration, repair (including painting and decorating), and demolition of shore facilities would continue to be addressed by 29 CFR Part 1926—Construction Industry Standards. This proposal incorporates all applicable provisions of 29 CFR 1910.28 and 1910.29 related to scaffolds, and those sections of Part 1910 would no longer apply to shipyard workplaces and operations.

The term "scaffold" is defined to mean any temporary elevated platform (supported or suspended) and its supporting structure used for supporting employees or materials, or both. Included under this definition are crane and derrick suspended personnel platforms. The intent is to cover the hazards associated with scaffold work regardless of the style, purpose, or name of the scaffold. For the purposes of this Subpart, scaffolds are divided into two categories: "supported scaffolds" and "suspension scaffolds." The standards in Subpart N are all intended to apply to both types of scaffolds, except where a provision is expressly limited to either suspension or supported scaffolds. Scaffolds which have a combination of supported and suspended components would be covered by both sets of provisions.

Proposed paragraph (b) of § 1915.251 lists and defines all major words used in Subpart N. Many of the definitions are the same as those in the existing standards, however some have been reworded for uniformity or clarity. One significant change made to all definitions defining the types of scaffolds is the inclusion of the words "supported scaffold" and "suspension scaffold," as appropriate. This change would clarify the application of the general rules contained in § 1915.252, some of which only apply to supported types of scaffolds and some of which only apply to suspension types of scaffolds. Another significant change involves language in the existing definitions which goes beyond defining the term in question, and imposes substantive limitations or obligations on equipment use. Such language is more

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appropriately located in the substantive parts of the standards and not in the definitions. The proposal would remove such provisions from the definitions and relocate them elsewhere in the standards. For example, the existing definition from Subpart D for "horse scaffolds" is "a scaffold for light or medium duty, composed of horses supporting a wo[illegible]platform." The words "for light or medium duty" are proposed to be deleted from the definition because they have a substantive limitation on the use of the scaffold, rather than serving to define the type of scaffold. Similarly, the existing definition from Subpart D for "coupler" is "a device for locking together the component parts of a tubular metal scafford. The material used for the coupler shall be of a structural type, such as a drop-forged steel, malleable iron, or structural grade aluminum. The use of gray cast iron is prohibited." Only the first sentence of that definition describes what is meant by a "coupler." By contrast, the second and third sentences impose substantive requirements on how a coupler must be constructed. Provisions such as these, which are substantive rather than definitional, are more appropriately located in the substantive provisions of the standard.

The following are the major terms which would be changed or added to the definitions in the proposed standard:

"Adjustable suspension scaffold." This is a new definition and is used in the proposal to clarify which types of suspension scaffolds are adjustable. As all types of suspended scaffolds can be erected at various heights, they might all be though of as "adjustable." However, the proposed definition explains that the term "adjustable suspension scaffold" applies only to those types of scaffolds with hoists which can be operated by employees on the scaffold. Hoists are defined as mechanical devices used to raise or lower a suspended scaffold.

"Body belt/harness system (personal fall arrest system). This term replaces the existing term "safety belt" to reflect current industry use of the new terms "body belt system" and "body harness system" (also known as "personal fall arrest systems").

"Capable person." This term is used to define the necessary competencies and to be possessed by individuals assigned to perform specified tasks required by the proposed subpart. (See also the definition for "qualified person.") Although not defined, Part 1910 presently uses the term "competent person" to qualify the type of individual responsible for performing certain specified duties. Part 1915 also uses the term "competent person" to describe certain individuals, and the term is defined in § 1915.4(o). The existing Part 1915 definition is for unique shipyard situations and is not a suitable definition to use for the Part 1910 term when Part 1910 provisions are combined with Part 1915 provisions. Therefore, where Part 1910 provisions are included in this proposal, the term "competent person" is replaced by the term "capable person". The proposed definition is based on the existing definition for "competent person" used in the construction safety standards (29 CFR 1926.32(f)).

"Catenary scaffold." This type of scaffold is not specifically addressed in the existing rules, however it is covered in proposed paragraph § 1915.253(n). The definition is essentially the same definition as is currently used by the American National Standards Institute in ANSI A 10.8–1977. (Ref. 1)

"Cleat." The existing definition in Subpart D applies only to ladders. The proposed definition defines this word as it applies to scaffolds, i.e., a structural member used to prevent plank slippage, and to provide footing on sloped surfaces such as crawling boards.

"Dropline." This a piece of equipment used for body belt/harness support in fall protection systems. It is not used to support scaffolds.

"Equivalent." This term is used in the proposal to allow alternative means of complying with the standards. The definitions makes clear that the employer must demonstrate that the alternative means of compliance will provide an equal or greater degree of safety than that attained by using the methods or item specified in the standard.

"Exposed power lines." This term is defined to mean electrical power lines which are accessible and not shielded, and is used in paragraph § 1915.252(d)(6), which limits the use of scaffolds near exposed power lines. The definition excludes extension cords and power tool cords from that rule.

"Fabricated decking and planking." The existing standard only addressess solid sawn wood planking in many of its provisions. Since the market presently offers laminated platforms, metal and non-metal decking, as well as solid sawn wood planking, the standard has been drafted to include these fabricated items, and to sanction their use officially. The definition makes clear that both fabricated and natural products are addressed.

"Fabricated frame scaffold." This is the proposed name for the type of scaffold presently identified as "tubular welded frame scaffold." The current term is too restrictive in that the word "tubular" means round, and "welded" implies that metal components are involved. The rules in paragraph § 1915.253(c) are not dependent on such limitations. They address fabricated frames and related scaffold components whether the component parts are square or round, and whether made of metal, plastic, wood, or some other material.

"Failure." This word is used in performance-oriented paragraphs such as § 1915.252(a)(1) and 1915.252(a)(3) which address the capacities of scaffolds and scaffold components. The definition makes it clear that, along with breakage and separation of component parts, load refusal (the load point where the ultimate strength of a component is exceeded) is also considered to be failure. This is the point where structural members lose their ability to carry loads.

"Guardrail system." This term defines guardrails as vertical barriers erected to prevent employees from falling, and replaces the existing term "guardrail." The definition is changed because the existing Part 1910 definition describes a toprail, a midrail, and a stairrail. However, this is not appropriate as each of these rails has different performance criteria. The new definition makes it clear that the entire system, including toprail, midrail (or screen) and posts, is covered when guardrails are addressed in paragraph (e) of § 1915.252. In addition, the definition distinguishes between Type I guardrails—those capable of providing adequate fall protection by themselves, and Type II guardrail systems—those which may be used on suspended platforms as edge delineators and to prevent misstepping, but which do not provide adequate fall protection by themselves. Body belt/harness systems must be worn when Type II guardrails are used on suspension scaffolds because of the reduced strength characteristics and lower toprail heights of Type II systems.

"Hoist." This definition clarifies that paragraphs relating to hoists, including paragraphs (b) (28), (29) and (30) of § 1915.252, apply only to mechanisms used to elevate or lower suspension scaffolds, and do not apply to other types of material hoists.

"Ladder stand." This is a term used in § 1915.252(c) and defines one kind of means-of-access which can be used with scaffolds.

"Lean-to-scaffolds." This is a type of scaffold which gains its support and stability by leaning into or against the object being worked on.

"Lower levels." This term is used to describe the areas to which an employee could fall. The definition does not apply to the surface from which the employee could fall.

"Mechanically-powered hoists." This is a new term and would define hoists which are powered by other than human energy.

"Mobile scaffold." This proposed term replaces the existing term "manually-propelled mobile scaffold" because there are power drive units available to propel scaffolds, and the proposed standard addresses both manual and power drive systems.

"Multi-level suspended scaffold." The existing standard does not specifically address suspended scaffolds with more than one platform level. This term in the proposed standard identifies such scaffold arrangements.

"Open sides and ends." This proposed definition clarifies the application of paragraph (e)(1) of § 1915.252, which requires fall protection, by defining the hazard for which guarding would be required. In brief, a side or end is considered to be "open" if it is more than 14 inches from a horizontal or vertical surface or a point of access. The 14-inch dimension in the definition is consistent with the provisions of proposed paragraphs (b)(4) and (c)(7) of § 1915.252.

"Outrigger." This term, "outrigger beam," and "outrigger scaffold" are new definitions provided to explain the difference between these three similar terms.

"Platform." This term is used to refer to the horizontal work surface of a scaffold, regardless of its completion. The existing standard uses terms such as "planking" and "planks," and consequently is ambiguous as to the use of other types of platforms such as decks or other fabricated materials or units.

"Platform unit." The existing standard uses the term "planks" in many of its provisions. This term commonly means "solid sawn wood." However, some manufacturers of fabricated planks use the term "planks" to describe their product. Furthermore, there are other types of structural members and materials which can be used to build platforms and walkways. Therefore, the term "platform unit" is needed to clarify that the standards apply to all types of platforms and walkways, not just those made of solid sawn wood.

"Qualified person." This term is used to describe the necessary competencies to be possessed by individuals assigned to perform specified tasks required by this proposal. (See also the definition for "capable person.") This term is not defined in Subpart D. The proposed definition is, therefore, based on the existing definition used in the construction safety standards (29 CFR 1926.32(1)).

"Self-contained adjustable scaffolds." This type of scaffold, not specifically addressed in the existing standard, is an adjustable suspension scaffold equipped with its own support frame and movable platform. It is, therefore, covered by the general rules for both supported scaffolds and suspended scaffolds.

"Step, platform, and trestle ladder scaffolds." This is the proposed name for the type of scaffold presently identified as "wood trestle, and extension trestle ladders." This change mirrors ANSI's use of the new term.

"Supported scaffold" and "Suspension scaffold." These terms are used to define the two basic types of scaffolds. As discussed above, these terms clarify the application of the general rules in § 1915.252.

"Unstable objects." This term is used to describe those items which shall not be used as scaffold base supports because they do not properly distribute the loads imposed on them. Such supports can break or become dislodged. Examples of such objects include barrels, boxes, bricks, blocks, and similar items. This list is essentially the same as the one set forth in § 1910.28(a)(2).

"Vertical pickup." This term defines the structural member addressed in § 1915.253(n)(1).

"Walkway." This term is used to describe platforms within a scaffold which are used for access and not as work platforms.

Section 1915.252 General requirements

This section applies to all scaffolds, and contains most of the new rules and changed provisions. To facilitate locating a particular rule, the rules in this section have been grouped into five major subsections: capacity, construction, access, use, and fall protection.

For purposes of clarification, those rules which apply only to certain types of scaffolds are so identified. For example, general rule (b)(14) of § 1915.252 would only apply to supported scaffolds, and the term "supported scaffold" is used to indicate this. Similarly, general rule (b)(27) of § 1915.252 would only apply to suspension scaffolds. If a rule makes no distinction, such as general rule (b)(1) of § 1915.252, then it would apply to all scaffolds.

Paragraph 1915.252(a)—Capacity. This proposed paragraph would set forth the minimum strength criteria for all scaffold components and connections. The proposed requirements are substantively the same as existing capacity provisions; however, the proposed language eliminates ambiguities and apparent inconsistencies.

Paragraph (a)(1) of § 1915.252 would require each scaffold component, except suspension ropes and guardrails, to be capable of supporting without failure its own weight and at least four times the maximum intended load applied or transmitted to that component. This is essentially the same requirement as § 1910.28(a)(4), which requires that scaffolds and scaffold components "Be capable of supporting without failure at least four times the maximum intended load," and § 1915.71(b)(1) which requires scaffolds and scaffolds components to "be capable of supporting the load they are designed to carry with a safety factor of four." However, as written, the existing requirements are inconsistent with § 1910.28(a)(22), which requires a safety factor of six for suspension ropes, and are ambiguous as to their application to §§ 1910.28(a)(3) and 1915.71(j), which govern guardrails. The proposed standard makes clear that the four to one safety factor does not apply to suspension ropes or guardrails.

The proposed paragraph also makes it clear that the four to one factor applies to the load which is actually applied or transmitted to a component, and not to the total load placed on the scaffold. This is the same requirement as § 1915.71(b)(1), but is a change from § 1910.28(a)(4). As currently worded, § 1910.28(a)(4) requires that each component, regardless of its location, configuration, or the number of other components supporting the same load, be designed to support four times the maximum intended load (MIL). Literally interpreted, this could be read to require that a crossbrace on a supported scaffold be capable of supporting the same load as a scaffold leg. That is, it must be sized to support four times the MIL regardless of where the load is placed on the scaffold, and regardless that the function of a brace is to prevent sway and not directly to support the MIL. The amount of MIL applied or transmitted to each component depends on its location on the scaffold, and the type and configuration of the scaffold system. On complicated systems, the services of an engineer may be required to determine the loads at a particular point. However, because some employers do not have an engineering staff, and because some employers prefer to have a quick reference table from which a scaffold can be readily

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built (even if over-designed), the non-mandatory tables and guidelines in Appendix A are provided and may be used as a starting point for designing scaffold systems. However, the guidelines do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling the components in such a way that the completed system will meet the requirements of § 1915.252(a)(1). The tables and guidelines are the same as are presently provided throughout existing Subparts D and E. However, whereas the existing standards require the use of these tables and guidelines, the proposed standard does not require them. What would be required is that the scaffold meet the performance criteria set forth in § 1915.252(a)(1). This allows design flexibility to employers who desire to engineer their scaffold set-up, while also providing a partial solution for employers who either do not desire to or cannot engineer the systems that are to be used.

The tables in existing Subpart D (Tables D–7 through D–19), and Subpart E (Tables E–1, E–3 and E–4) provide detailed specifications for components used in scaffold construction. However, OSHA believes that the important consideration in scaffold design and construction is that the scaffold support the MIL safely, with an adequate margin of safety, and not that the scaffold have a particular sized upright regardless of MIL size and placement pattern. Consequently, the proposal would relocate all scaffold related tables currently in §§ 1910.28 and 1915.118, including the table in § 1910.28(a)(9) governing maximum span distance, to Appendix A, and would not make the tables mandatory. Similarly, existing paragraphs such as § 1910.28(a)(8), which specifies minimum grade stress for lumber used; § 1910.28(c) (1), (2), (3) and (4), which specify tube size and maximum tube and coupler scaffold heights; and § 1915.71(f)(11)(iii)–(iv), which specify minimum component sizes for ladder type suspension scaffolds, also would be relocated to Appendix A. The relocation of existing tables and specification language does not reduce the level of safety presently provided by the existing requirements. OSHA believes the proposed capacity requirements of paragraph § 1915.252(a) provide the same level of safety as the existing standard. The existing specification tables and paragraphs are engineered partial ways of complying with the provision which requires a four to one factor of safety. Relocating these tables and paragraphs to Appendix A will retain these criteria as examples of acceptable partial solutions, and will eliminate the interpretation that these specified provisions are the only acceptable ways of building a particular type scaffold.

Paragraph (a)(2) of § 1915.252 would clarify that the factor of safety of four to one also applies to direct connections to floors, roofs, hulls, and decks, and to counterweight systems.

Paragraph (a)(3) of § 1915.252 would require that suspension ropes be capable of supporting six times the MIL, and is essentially the same as § 1910.28(a)(22). In addition, paragraph (a)(4)(i) would require rope to be sized so that sufficient rope surface area is available for the proper functioning of brake and hoist mechanisms used on suspension scaffolds. Paragraph (a)(4)(ii) would specify minimum rope strength for catenary scaffolds and is based on ANSI A10.8–1977, paragraph 22.2. Paragraph (a)(4)(iii), which specifies minimum rope strength for float and needle beam scaffolds, is the same as paragraphs (n)(2) and (u)(5) of § 1910.28.

Paragraph 1915.252(b)—Construction. Proposed paragraph (b)(1) of § 1915.252 would require all platforms, except walkways, to be fully decked or planked. Paragraph (b)(1) would clarify the provisions of § 1910.28(a)(3), which requires guardrails on all open sides and ends of scaffolds, and § 1915.71(j)(1), which is unclear as to where guardrails are required. OSHA has interpreted these existing provisions to mean that guardrails must be erected as close as possible to the edge of the platform planking. As guardrails normally can be conveniently attached only at the scaffold uprights, OSHA to date has required the platforms to be sized such that there is no gap between the outermost plank edge and the guardrail. However, most prefabricated end frames do not have a lateral spacing between uprights which can accommodate an integral number of standard-sized-commercially-available planks. Therefore, to comply with the existing rule, the last plank has to be cut to size, notched, or slanted. These modifications can lead to a significant reduction in plank strength, possibly cause tipping of the plank (sideways) when it is stepped on, or pose a tripping or stepping hazard. Therefore, to address this problem, the proposed rule would modify the existing requirement by requiring the span between uprights to be planked or decked as fully as possible, but would allow up to nine and one-half inches between the planking or decking and the guardrail supports. Nine and one-half inches would be the maximum allowable open space, as spaces larger than this can be filled with a standard sized platform unit (defined as individual wood planks, fabricated planks, fabricated decks, and fabricated platforms) without modification. The proposed rule also recognizes that some side warpage (as opposed to twist warpage) may occur to individual planks, and § 1915.252(b)(1)(i) would allow a maximum one-inch gap between platform units. When side brackets are used to extend the width of a platform, a gap would be permitted in the platform to accommodate the presence of the scaffold uprights.

Paragraph (b)(2) of § 1915.252 would specify a minimum width of 18 inches for all platforms, except platforms used on ladderjacks and boatswain's chairs. This would not require each platform unit to be at least 18 inches wide. Rather, it would require only that the entire platform, which is made up of one or more platform units, be at least 18 inches wide. OSHA believes 18 inches is the minimum safe width for scaffolds; however, the provision would allow ladderjack scaffold platforms to be as narrow as 12 inches wide. The smaller size for ladderjack scaffolds would be made because the difficulty of handling one 18-inch wide plank or two nine-inch planks on a ladder is considered by OSHA to be more hazardous than working on one 12-inch wide platform. However, because the narrowness of the 12-inch platform could cause an employee to misstep, the proposal would require body belt/harness systems to be used on ladderjacks, whereas the existing standard requires no fall protection. The existing requirement specifying a minimum size for boatswain's chair seats is proposed to be deleted as many chairs use slings or molded seats, and such a requirement is too restrictive.

Paragraph (b)(3) of § 1915.252 would prohibit the use of emergency descent devices as working platforms. These devices are not designed for repeated in-place use. However, this provision is not intended to preclude the use of scaffold systems which have as an additional feature the capacity to function as an emergency descent device.

Paragraph (b)(4) of § 1915.252 would limit to 14 inches the distance that a platform may be away from the face of the structure being worked on, unless Type I guardrails or body belt/harness systems are used. (An exception to the 14-inch limit is made for outrigger scaffolds, which are limited to a distance of three inches, the same as required by § 1910.28(e)(4)). The existing

rule, § 1910.28(a)(3), requires guardrails on all open sides and ends of a scaffold platform, but does not specify how far away a scaffold platform may be from a structure before the side facing the structure is considered to be an "open side." The existing rule has often been interpreted to mean that no open space is allowed. However, zero clearance is not always practicable. The proposed 14-inch limit is based on a study by Wang (Ref. 2), and is similar to provisions being developed for the construction and general industry standards. The distance from frame to wall may be any distance as long as the platform to wall space is no more than 14 inches. This can be done easily with the use of side brackets or extensions on supported scaffolds, and by angulated roping, static lines, or equivalent means on suspension scaffolds.

Paragraph (b)(5) of § 1915.252 would require platform units to extend a minimum of six inches beyond each end support so that they do not slip off their end supports when under load. This is the same as § 1910.28(a)(13) and § 1915.71(i)(3). However, cleats would be allowed in lieu of a six-inch overhang because of their ability to prevent platform units from slipping off the end supports.

Paragraph (b)(6) of § 1915.252 would change the maximum overhang allowed by § 1915.71(i)(3) from 12 inches to 18 inches, the same as allowed by § 1910.28(a)(13). This modification is made because many planks in use are 10 feet long and are used to span eight-foot distances. The existing rule requires these planks to be perfectly centered. This is an unnecessary requirement because the minimum overhang required is only six inches. In addition, because the proposed 18-inch limit, strictly interpreted, would require platform units to be cut if they extend more than 18 inches past their end supports, the rule provides that the overhang may exceed 18 inches if the extended portion is designed, capable, and installed to support employees without tipping, or is guarded to prevent employee access. This modification is consistent with the intent of § 1915.71(i)(3), which also allows additional platform overhang.

Paragraph (b)(7) of § 1915.252 would require proper support for abutting platform units. This provision is based on § 1910.28(b)(12), which applies only to wood pole scaffolds. However, OSHA believes that proper platform support is necessary for all scaffolds, and, therefore, the proposal would apply to all scaffolds. Abutted platform units do not rest one on another, but instead are end-to-end. Consequently, one unit does not support the other, and proper support can only be provided by separate bearers, butt plates, or equivalent supports specifically designed to support the ends of abutted units.

Paragraph (b)(8) of § 1915.252 would require overlapped platforms to be overlapped a minimum of 12 inches. This would be the same requirement as § 1910.28(a)(11), except the proposed rule also requires overlaps to occur over supports and not between supports.

Pargraph (b)(9) of § 1915.252 is taken from § 1910.28(b)(13) for wood pole scaffolds, and prescribes the proper placement of platform units for maximum safety at corners or other changes in scaffold direction. OSHA proposes that this is a valid consideration for all scaffolds, and not just wood pole scaffolds.

Paragraph (b)(10) of § 1915.252 is proposed to assure that structural defects in platform units are not covered from view by the use of an opaque coating or finish. Hairline cracks can significantly reduce the strength of a wood member and their early detection is important. Opaque finishes can cover such cracks and make them difficult to discover. Unit edges are excepted from this rule to allow identification marks, grading marks, or other similar type of marks to be placed on the unit edges, and special coatings to minimize contamination may be placed on platform units used in reactor plants.

Paragraph (b)(11) of § 1915.252, prohibiting random combinations of scaffold components, is proposed because of the many inferior scaffold systems which can result when the products of two different manufacturers are indiscriminately assembled together. Many such combinations result in scaffolds which are not in alignment or are not plumb, and which, therefore, do not properly carry or distribute the loads imposed on the scaffolds. However, some units can be intermixed with no problem and the proposed language, therefore, does not prohibit all such combinations. However, the parts must fit together without force, and if parts are modified in order to intermix them, a capable person must determine that the resulting scaffold is structurally sound (no makeshift connections to facilitate the mixing of mismatched pieces).

Paragraph (b)(12) of § 1915.252 would prohibit the use of scaffold components made of dissimilar metals unless a capable person has determined that the resulting galvanic action will not significantly reduce any component's strength. This is a new rule, and is based on a similar rule developed for the construction industry. Scaffolds which remain erected for long periods of time, such as during the construction or repair of a large vessel, are subject to corrosion caused by dissimilar metals used in various scaffold components. This condition can be aggravated in the sea air conditions of shipyards. The proposed rule would not prohibit all uses of dissimilar metals as there are many combinations which do not produce significant galvanic reactions.

Paragraph (b)(13) of § 1915.252 would require the stabilization of all supported scaffolds when their height to base width (including outriggers, if any) ratio exceeds four to one. This rule is taken from § 1910.29(a)(3) which applies only to manually-propelled mobile scaffolds. However, the danger of a scaffold toppling because its center-of-gravity is too high is a problem with all supported scaffolds. Therefore, OSHA believes that the four to one ratio should apply to all supported scaffolds. Paragraph (b)(13)(i) would require ties, guys, or bracing at heights not to exceed the first multiple in height of the four to one ratio, and at 20-foot maximum intervals thereafter above the first tie, guy or brace. The following are examples of how this rule would be applied: (a) If a scaffold is five feet wide and 18 feet high, no ties, guys, or braces would be required because the heightis less than four times the width; (b) if the scaffold is five feet wide and 60 feet high, ties, guys, or braces would be required at least at the 20-, 40- and 60-foot levels; and (c) if the scaffold is five feet wide, 60 feet high, and the contractor ties, guys, or braces the scaffold at the 10-foot level, then ties, guys or braces also would be required at least at the 30- and 50-foot levels, and no ties, guys, or braces would be required at the very top since the 60-foot level is only 10 feet above the last intermediate level tie, guy or brace (at 50 feet).

Paragraph (b)(13)(ii) of § 1915.252 which specifies the horizontal spacing for ties, guys, and braces, is based on §§ 1910.28 (b)(4), (c)(13), and (d)(9). The existing rules require pole scaffolds, tube and coupler scaffolds, and fabricated frame scaffolds to be tied and braced at 26 feet vertically (25 feet for wood pole scaffolds) and 30 feet horizontally (25 feet for wood pole scaffolds). These existing rules are often misinterpreted to mean that scaffolds less than 26 feet high (25 feet for wood pole scaffolds) do not need guys, ties, or braces. Proposed paragraph (b)(13)(ii) would replace the 26- and 25-foot limits with a requirement that all scaffolds required to have guys, ties, or braces, would have to have such connections

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installed at each end of the scaffold and at horizontal intervals not to exceed 30-feet (measured from one end only). The 30 foot limit is the same as the existing limit on horizontal spacing contained in § 1910.28 (c)(13) and (d)(9), and would replace the 25-foot limit of § 1910.28(b)(4). The following are examples of how this rule would be applied: (a) If a scaffold is five feet wide, 18 feet high and 50 feet long, no vertical or horizontal ties and braces would be required because the height is less than four times the width and the four to one rule does not require connections; (b) if the scaffold is five feet wide, 50 feet high, and 25 feet long, ties and braces would be required at least the 20- and 40-foot levels at both ends of the scaffold (four ties and braces in all); (c) if the scaffold is five-feet wide, 50-feet tall, and 70-feet long, ties and braces would be required at least at the 20- and 40-foot levels. These would be installed starting from either end, at least at the zero, 30-, 60-, and 70-foot horizontal distances (eight ties and braces in all).

Paragraph (b)(14) of § 1915.252 would consolidate rules §§ 1910.28 (a)(2), (b)(1), (c)(7), (d)(4), (e)(1), and (l)(7), all of which require that scaffolds rest upon a stable, firm, level footing. This is not a new requirement, although the language is changed for purposes of clarity and uniformity.

Paragraph (b)(15) of § 1915.252 would consolidate rules §§ 1910.28 (a)(14), (b)(1), (c)(7), 1910.29 (b)(2), (d)(3), and 1915.71 (c)(1) and (d)(3), all of which require that uprights be secure, plumb, and braced to prevent swaying and displacement of the scaffold. This is not a new requirement, although the language is changed for purposes of clarity and uniformity.

Paragraph (b)(16) of § 1915.252 is the first of the paragraph (b) rules which specifically address suspension scaffolds. This proposed rule requires suspension support devices to rest on surfaces capable of supporting the suspension scaffold. It is based on § 1910.28(f)(10), and addresses the problem of adequate support for the scaffold system. It is the suspension scaffold equivalent of proposed rule (b)(14), which requires firm footing for supported scaffolds. Although the existing rule applies only to mason's adjustable multiple-point suspension scaffolds, OSHA believes that proper outrigger support is a concern for all suspension scaffolds.

Paragraphs (b) (17), (18) and (19) of § 1915.252 would set forth conditions required for the use of outrigger beams, but would not require that such beams be used on suspension scaffolds. Paragraph (b)(17) would require beams to be made of structural metal and to be restrained to prevent movement. This is the same requirement as §§ 1910.28 (f)(4) and (i)(10), except OSHA proposes to apply the rule to all scaffolds supported by outrigger beams. Paragraph (b)(18) would require stabilizing the inboard ends of outrigger beams by direct connections to the floor, roof, or deck or by the use of counterweights. This rule clarifies § 1910.28(h)(5) which requires only that outriggers be securely fastened or anchored. Counterweights are not addressed in the existing standard, and the proposal corrects this oversight. Counterweights are often the only way to anchor a scaffold without damage to the supporting floor, deck, or other support.

Paragraph (b)(18)(i) of § 1915.252 would require that direct connections be evaluated by a capable person to insure that the roof or floor deck is capable of supporting the loads to be imposed. Paragraph (b)(18)(ii) would require that counterweights be made of solid material, and, in effect, prohibits the practice of using sandbags or water-filled buckets as counterweights. Such counterweights are easily displaced and may leak. Paragraph (b)(18)(iii) would require counterweights to be mechanically attached to the outrigger beam. This provision would help protect against accidental counterweight displacement. Paragraph (b)(18)(iv) would prohibit the removal of counterweights from a scaffold until the scaffold is disassembled. This new rule is also intended to prevent scaffolds from being improperly balanced. Paragraph (b)(18)(v) would require outrigger beams to be tied back as an additional means of anchorage. This new provision would provide a back-up system in case the counterweights become displaced. Although tiebacks alone may not keep a scaffold from tipping, they will keep the system from falling to the ground and from causing a progressive failure of nearby scaffolds and scaffold sections. Vents, standpipes, other piping systems, and electrical conduits are not acceptable points of anchorage for tie-backs because they are often made of materials that cannot support the loads that would be imposed on them if a counterweight system were to fail. Paragraphs (b)(18) (vi) and (vii) would specify how tiebacks are to be installed.

Paragraph (b)(19) of § 1915.252 would specify the construction requirements for outrigger beams. Paragraph (b)(19)(i) is based on § 1910.28 (f)(9) and (h)(5), and would require stop bolts or shackles at each end of the beam to prevent the beam, as well as anything supported from the beam, from coming off the beam or beam support. Paragraph (b)(19)(ii) would allow the use of channel beams in lieu of "I" beams, provided they are fastened together with their flanges turned out. Paragraph (b)(19)(iii) is a new rule and would require that outrigger beams be installed with all bearing supports installed perpendicular to the beam centerline. This would help prevent tipping of the beam due to any eccentric loading. Paragraph (b)(19)(iv) would require all outrigger beams to be used with their web in a vertical position. This provision is based on § 1910.28 (f)(8) and (h)(5). Paragraph (b)(19)(v) would specify the correct alignment for steel shackles, clevices, and the hoisting drum when single outriggers are used. This provision is the same as § 1910.28(f)(13).

Paragraph (b)(20) of § 1915.252 would address the types of supports, other than outrigger beams, used to suspend suspension scaffolds. Paragraph (b)(2o)(i) would require that support devices such as cornice hooks, roof hooks, roof irons, and parapet clamps, be made of mild steel or equivalent material, and is the same as §§ 1910.28(g)(4) and 1915.71(f)(1). Paragraph (b)(20)(ii) is a new rule and would require the use of bearing blocks to spread loads. Paragraph (b)(20)(iii) would require the use of tiebacks, the same as § 1910.28(g)(4). The proposal, however, would specify in paragraph (b)(20)(iv) that the tiebacks must be equivalent in strength to the hoisting ropes. The tiebacks must be as strong as the hoisting ropes as they may have to support the scaffold in the event of a scaffold hoist rope failure. Vents, standpipes, other piping systems, and electrical conduits are not acceptable points of anchorage because they are often made of materials that cannot support the loads that would be imposed on them if the support device were to fail.

Paragraph (b)(21) of § 1915.252 would specify the minimum length of suspension rope to be used at each installation. The proposal is based on rules § 1910.28 (f)(12) and (h)(7), with the clarification that either the rope shall be long enough to allow the scaffold to be lowered to the next level without the rope end passing through the hoist, or the rope shall be configured or provided with a means to prevent its end from passing through the hoist. OSHA believes this provision will prevent accidental runthrough of the suspension rope.

Paragraph (b)(22) of § 1915.252 would prohibit the use of repaired wire ropes as suspension ropes. This is a new requirement and is based on OSHA's view that there is no way to determine the strength capacity of a repaired wire rope without the danger of over-stressing the repair and thus rendering the rope unsafe for use on scaffolds. This provision does not prohibit joining together two or more pieces of wire rope as allowed by paragraph (b)(23) of § 1915.252.

Paragraph (b)(23) of § 1915.252 would allow suspension ropes to be joined together only by the use of eye splices with shackles, or coverplates and bolts. This would be a new requirement and is based on similar rules being developed by ANSI in the current review of the A10.8 scaffold standards. These are the only acceptable ways to connect wire ropes without affecting their strength capacities.

Paragraph (b)(24) of § 1915.252 would require the load ends of wire suspension ropes to be equipped with proper size thimbles, and to be secured by eye splicing or equivalent means. This requirement is based on § 1920.28 (f)(12) and (h)(9).

Paragraph (b)(25) of § 1915.252 would prohibit the use of defective or damaged ropes, and is based on § 1910.28(u)(5) which prohibits damaged ropes from being used on float or ship scaffolds. Like the other rules discussed in this section, this rule is proposed to apply to all suspended scaffolds. The danger of a broken line is a problem not confined to float or ship scaffolds.

Paragraph (b)(26) of § 1915.252 would require that swaged attachments or spliced eyes on wire suspension ropes be used only if they are made by the wire rope manufacturer or a qualified person. This would be a new requirement and is based on similar rules being developed by ANSI in the current review of the A10.8 scaffold standard.

Paragraph (b)(27) of § 1915.252 would require that wire rope clips be retightened after the initial loading and periodically thereafter. Such clips can work loose under cyclic loading and should not be assumed to be properly tightened without being checked on a regular basis.

Paragraph (b)(28) or § 1915.252 would require that scaffold hoists, both mechanically-powered and manually-powered, be of a type approved by a nationally recognized testing laboratory. This provision is a consolidation of existing provisions in § 1910.28 (f)(2), (g)(3), (h)(2), and (i)(1).

Paragraph (b)(29) of § 1915.252 would prohibit the use of gasoline-powered hoists on suspension scaffolds, and is based on OSHA's belief that gasoline hoists present fire hazards which are not acceptable given the confined area of a scaffold. Timely escape from a fire could be very difficult, and perhaps impossible, if the hoist is incapacitated.

Paragraph (b)(30) of § 1915.252 would require mechanically-powered operated gears and brakes to be enclosed, and is the same requirement as § 1910.28(i)(3).

Paragraph (b)(31) of § 1915.252 would require that an automatic braking device or locking pawl be provided, in addition to the normal operating brake, to slow hoist when its normal speed of descent (as recommended by the hoist manufacturer) is exceeded. This is the same requirement as § 1910.28(i)(4), except the proposed requirement would apply to manually-powered hoists as well as mechanically-powered hoists.

Paragraph (b)(32) of § 1915.252 would provide that where manually-powered hoists are used, the scaffold shall not be capable of being lowered without a positive crank force being applied to the hoist. This is a new requirement and is based on OSHA's view that it will eliminate the dangerous condition of "free-running" hoists during descents. OSHA requests comments and supporting information on the need for this requirement.

Paragraph 1915.252(c)—Access. Paragraphs (c) (1) through (6) of § 1915.252 set forth the requirements for safe access to scaffolds. They are intended to clarify the requirement of § 1910.28(a)(12), which requires "an access ladder or equivalent safe access shall be provided," and to consolidate this requirement with § 1915.71(k). However, these provisions would not apply to employees performing scaffold erection and dismantling operations because such rules are not feasible until a scaffold has been erected and properly braced.

Paragraph (c)(1) of § 1915.252 provides that access to and between scaffolds more than two feet above or below the point of access shall be by certain specified means. These means of access are the same as are presently recognized by ANSI and other consensus groups. The two-foot limit is a change from § 1915.71(k)(1), which has a five-foot limit. This change is made because if one of the specified methods of access listed in paragraph (c)(1) of § 1915.252 is not provided until scaffolds are more than five feet above their supporting surface, then the only way of access is by climbing the crossbraces, and, as noted below, this is not recognized as a proper means of access. In addition, the proposed provision allows the use of some types of access which are not presently recognized by existing standards, but which OSHA believes are safe means of access. These include integral prefabricated rungs, hook-on and attachable ladders designed for use with manufactured-types of scaffolds, and direct access from other scaffolds, structures, personnel hoists, or similar surface. However, the paragraph prohibits the use of crossbracing as a means of access. OSHA believes that crossbraces do not provide adequate footings or handholds as they are not designed nor intended to serve as a means of access.

Paragraph (c)(2) of § 1915.252 would set forth the conditions required for the use of portable, hook-on, and attachable ladders as means of access. Paragraph (c)(2)(i) would require portable, hook-on, and attachable ladders to be positioned so as not to tip the scaffold. This is based on existing mobile scaffold rule § 1910.29(a)(3)(viii). Paragraph (c)(2)(ii) would require ladders to be positioned such that it is not necessary for employees to step more than one foot from the ladder to any intermediate landing or platform. This is the same rule a § 1915.71(k)(3). Paragraph (c)(2)(iii) would require that the bottom rung of hook-on and attachable ladders be not more than 24 inches above the scaffold supporting level. This would allow scaffolds to be leveled and adjusted without constantly adjusting the ladder, up to a maximum of 24 inches. Paragraph (c)(2)(iv) would require landing platforms be provided at 20-foot maximum vertical intervals for hook-on and attachable ladders. The proposal does not require ladders to be offset every 20 feet, or that a landing be provided on the ladder itself. It would simply require that rest platforms be placed not more than 20 feet apart. Existing work platforms or walkways which are already part of the scaffold could be used to meet this requirement. OSHA requests comments and supporting information on the need for this requirement. Paragraph (c)(2)(v) would require hook-on and attachable ladders to be specifically designed for use with the manufactured types of scaffolds to be used to insure compatibility. Paragraphs (c)(2) (vi) and (vii) would specify minimum rung length and maximum rung spacing for hook-on and attachable ladders.

Paragraph (c)(3) of § 1915.252 would set forth the conditions required for the use of stairway-type ladders as means of access. Paragraphs (c)(3) (i) and (ii) are similar to paragraphs (c)(2)(ii) and (iii) above. Paragraph (c)(3)(iii) would require a minimum step length of 16 inches, and is based on § 1910.29(a)(3)(ii). Paragraph (c)(3)(iv) would require slip-resistant treads on all stairs and landings. This rule is based

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on general industry rule § 1910.29(a)(3)(iv) which requires the steps to be fabricated from slip-resistant treads; however, the proposal would allow the use of other means to obtain the required surface, such as slip-resistant coatings. Paragraph (c)(3)(v) would require stairway-type ladders to be equipped with stairrails and handrails.

Paragraph (c)(4) of § 1915.252 would require ramps and runways to be provided with guardrails which meet the criteria set forth in proposed Subpart M—Fall Protection for Shipyard Employment. Paragraph (c)(5) of § 1915.252 sets forth the conditions required for the use of integral prefabricated scaffold rungs as means of access. Paragraph (c)(5)(i) would require that such rungs be specifically designed and constructed for use as rungs. That is, they must be capable of supporting ladder-type loads. Paragraph (c)(5)(ii) would require rungs to be at least 11½ inches long to provide adequate footing, and paragraph (c)(5)(iii) would require that rungs be uniformly spaced. These are the same requirements as for other types of ladders (see Notice of Proposed Rulemaking for Subpart E—Access and Egress). Paragraph (c)(5)(iv) would require rest platforms at 20-foot maximum vertical intervals, the same as (c)(2)(iii) above. Paragraph (c)(5)(v) would require a maximum spacing between rungs of 16½ inches, and is consistent with the provisions of proposed Subpart E.

Paragraph (c)(6) of § 1915.252 would require all rungs and steps to line up vertically with each other between rest platforms. This is to assure that a continuous climbing surface is provided. Employees descending a scaffold can misstep if rungs and steps are offset. An example of this is the use of integral rungs on frame scaffolds. If the frames are not oriented in the same direction (i.e., ladder rungs all on the same side) a non-continuous ladder surface will result which can cause a misstep.

Paragraph (c)(7) of § 1915.252 sets forth the conditions required for direct access from another surface to a scaffold. Direct access may be made only when the two surfaces are not more than 14 inches apart horizontally, and 24 inches apart vertically. The 14-inch dimension is based on proposed rule § 1915.252(b)(4). The 24-inch dimension is based on proposed rule § 1915.252(b)(4). The 24-inch dimension is consistent with similar provisions in the other paragraphs in paragraph (c) discussed above.

Paragraph 1915.252(d)—Use. This paragraph addresses the use of scaffolds and the activities which take place on scaffolds.

Paragraph (d)(1) of § 1915.252 would prohibit the overloading of a scaffold. This requirement clarifies and consolidates §§ 1910.28 (a)(7), (f)(1), (g)(9), (h)(1), (q)(6), (r)(3), (u)(1), and § 1915.71(f)(8), and complements proposed rule of § 1915.252(a)(1) which requires that scaffolds be capable of supporting four times the maximum intended load without failure. This rule insures that the scaffold's capacity is not exceeded.

Paragraph (d)(2) of § 1915.252 would prohibit the use of shore or lean-to scaffolds, and is the same provision as § 1910.28(a)(24).

Paragraph (d)(3) of § 1915.252 would require supported scaffolds to be inspected for visible defects periodically, and after any occurrence which could affect the scaffold's structural integrity. Examples of such occurrences are impact loadings caused by vehicles, hoists, extremely high winds, or any other event which places large stresses on the system. This rule would also require the inspection of suspension scaffolds for visible defects immediately after installation prior to their first use; periodically thereafter (preferably before each use); and after any occurrence which could affect a scaffold's structural integrity. Inspection of suspension scaffolds is presently required by §§ 1910.28 (g)(8), (i)(6), and 1915.71(f)(3), which require inspections only of certain types of suspension scaffolds; however, OSHA believes all suspension scaffolds should be inspected. In the Specific Issues section of this preamble, OSHA requests public comment on the frequency of inspection and on the qualifications needed by the employee doing the inspecting.

Paragraph (d)(4) of § 1915.252 would require the bracing, or removal until repaired, of all scaffold components which have been damaged or weakened such that their strength has been reduced to less than that required by paragraph (a)(1) of § 1915.252. This requirement clarifies and consolidates existing requirements in §§ 1910.28 (a)(6), (m)(6), and § 1915.71(b)(5). Bracing would be allowed as the removal of a damaged component may not be possible without complete disassembly of the scaffold.

Paragraph (d)(5) of § 1915.252 would prohibit the movement of scaffolds while employees are on them, except that mobile scaffolds may be moved under certain specified conditions. This rule combines the provisions of existing rules § 1915.28(a)(5) and § 1910.29 with respect to moving scaffolds when they are occupied.

Paragraph (d)(6) of § 1915.252 would restrict the use of scaffolds near exposed and energized electric power lines. This is a new requirement for shipyard employment, and is based on similar provisions developed for the use of scaffolds in the construction industry. OSHA believes these rules are equally applicable to the shipyard environment. Paragraphs (d)(6) (i) and (ii) prohibit the use of scaffolds closer than 10 feet to all energized lines of 300 volts or more, even if the lines are insulated. Paragraph (d)(6)(iii) allows scaffolds to be used within two feet of energized lines less than 300 volts, provided the lines are insulated. Paragraph (d)(6)(iv) prohibits the use of scaffolds closer than 10 feet to all energized uninsulated lines, of any voltage, which are exposed (not covered or guarded from contact by employees). OSHA believes these clearances would allow work to be performed safely without the need for power lines to be deenergized.

Paragraph (d)(7) § 1915.252 would allow scaffolds to be erected, moved, dismantled, or altered only under the supervision of a capable person. It is the same requirement as § 1915.71(b)(7)..

Paragraph (d)(8) of § 1915.252 would clarify the provision of § 1910.28(a)(19) regarding work on slippery scaffold platforms. The proposal states that no work shall take place on slippery platforms except to remove the hazard.

Paragraph (d)(9) of § 1915.252 would require the use of tag lines or similar measures to stabilize swinging loads being hoisted onto scaffolds or near scaffolds where the load could damage or impact the scaffold. This is based on § 1910.28(a)(15) which requires tag lines when loads are being hoisted onto the scaffold. The proposal would extend the provision to cover other hoisting operations as the hazard being guarded against is the same, regardless of the destination of the load.

Paragraph (d)(10) of § 1915.252 would require that suspension ropes be shielded from harm caused by heat-producing processes, and shielded, treated, or otherwise protected when acids and other corrosive substances are used on a scaffold. This requirement is essentially the same as § 1910.28(a)(21) and (27) which require that only treated or protected fiber or synthetic ropes be used near corrosive substances and that "special precautions shall be taken" when heat-producing processes are used on scaffolds. This provision modifies § 1915.71(b)(8) which prohibits welding, burning, riveting or open flame work on scaffolds supported by fiber rope. The proposal recognizes that shields can be used to protect suspension ropes during such work. Public comment is requested, however, on what criteria, if any, should be set forth for such shields.

Paragraph (d)(11) of § 1915.252 would prohibit work on scaffolds during storms or when wind speeds exceed 40 mph, unless body belt/harness systems are worn or wind screens are erected. This requirement is based on § 1910.28(a)(18). The existing rule prohibits all work on scaffolds "during storms or high winds." Public comment is requested in the Specific Issues section of this preamble on whether the 40 mph limit is appropriate, and what other methods are available to protect employees from high winds.

Paragraph (d)(12) of § 1915.252 would prohibit accumulation of debris on scaffold platforms and is based on § 1910.28(a)(20).

Paragraph (d)(13) of § 1915.252 would prohibit the use of ladders or makeshift devices on scaffolds to raise the working level of employees. This would be a new provision and would assure that workers are provided with a secure work platform, and would eliminate the hazard of tipping caused by portable ladders exerting a sideways thrust on scaffold systems.

Paragraph (d)(14) of § 1915.252 would limit the degree to which platform units could deflect under load. This is to prevent platform units from becoming overstressed and to prevent their ends from being pulled off the end supports.

Paragraph 1915.252(e)—Fall protection. This paragraph would provide protection against the hazards of falling from or through a scaffold.

Paragraph (e)(1) of § 1915.252 clarifies and consolidates the following existing rules: §§ 1910.28 (a)(3), (b)(15), (c)(14), (d)(7), (f)(15), (g)(5), (h)(8), (i)(5), (j)(4), (m)(7), (n)(8), (r)(3), (u)(6), 1910.29(a)(3), and 1915.71 (c)(9), (d)(8), (e)(10), (f)(9), (g)(6), (h)(1), and (j). Whereas the existing rules are specific requirements to have guardrails only or safety belts only, the proposal would require that all employees on scaffolds be protected by a choice of guardrails or body belt/harness systems, with certain exceptions discussed below.

The proposal would require fall protection as follows: when the scaffold is any height above water, the same as § 1915.71(j)(1); when the scaffold is on a vessel or vessel section and more than five feet above lower levels, the same as § 1915.71(j)(1); when the scaffold is immediately adjacent to a vessel or vessel section and more than five feet above lower levels, the same as OSHA's current interpretation of § 1915.71(j)(1); and when the scaffold is in any other area and more than 10 feet above lower levels, the same as § 1910.28(a)(3).

Paragraph (e)(1)(i) of § 1915.252 recognizes the impracticability of using any fall protection system other than body belt/harness systems on certain types of scaffolds. This consolidates § 1910.28(j)(4)—boatswains' chairs; § 1910.28 (n)(8)—needle beam scaffolds; § 1910.28(u)(6)—float scaffolds, and is a new rule for ladder jack scaffolds.

Paragraph (e)(1)(ii) of § 1915.252 would require both body belt/harness systems and guardrail systems on all single-point adjustable suspension scaffolds (except boatswains' chairs) and on all two-point adjustable suspension scaffolds. The requirement to have both guardrails and body belt/harnesses on two-point scaffolds is the same as §1910.28 (g)(5) and (g)(9). Guardrail systems alone do not provide adequate fall protection when a suspension rope fails, causing a scaffold to tip or hang from only one end. Body belt/harness protection would also be required on single-point systems as the hazard related to rope failure is the same on both types of scaffold. However, as body belt/harnesses would be the primary means of fall protection on single-point and two point systems, Type II guardrail systems may be used in lieu of Type I systems. Type I and Type II guardrail systems are the same in all respects except Type II systems have lower minimum height and strength requirements than Type I systems (see proposed § 1915.252(e)(4) below).

Paragraph (e)(1)(iii) of § 1915.252 is essentially the same as § 1910.28(t)(2), which requires lifelines along "crawling boards," except that the proposal would allow the alternative use of body belt/harness systems or guardrail systems.

Paragraph (e)(1)(iv) of § 1915.252 would require that employees on self-contained scaffolds be protected by body belt/harness and guardrail systems when the platform is supported by ropes (as when the scaffold is being raised or lowered on some systems) and by guardrail systems when the platform is supported directly by the scaffold frame.

Paragraph (e)(1)(v) of § 1915.252 would require guardrails to be used along scaffold walkways and to be located within eight inches of at least one side of the walkway. The provision that guardrails need be provided only along one side applies only when the platform is used as a means of access to get from one point on the scaffold to another. If other work activities are performed on or from the walkway, then the platform is not considered to be a walkway (see definiton of "walkway") and the provisions of paragraphs .252(e)(1) (i) through (v) would apply.

Paragraph (e)(1)(vi) of § 1915.252 would allow portions of guardrail systems to be removed or omitted where the vessel, vessel section, building, or structure is configured in such a way as to preclude their use. However, when guardrails are not used, body belt/harness systems (and personal flotation devices when employees are over water) would be required. This is the same provision as § 1915.71(j)(3).

The provisions of § 1915.252(e)(1) would not apply to employees erecting or dismantling scaffolds. OSHA believes that there is no recognized feasible way of providing fall protection for such employees. However, public comment is requested on this point in the Specific Issues section of this preamble. In addition, the provisions would not apply if a scaffold is completely enclosed by the walls of a structure. To be completely enclosed, no perimeter face of the scaffold may be more than 14 inches from a wall. In other words, there may be no open sides or ends on the scaffold. However, fall protection would be required at openings such as hoistways, elevator shafts, stairwells, or similar openings in the scaffold platform, or in the walls of the structure surrounding the platform. This is the same requirement as contained in § 1910.28(e)(3)(i).

Paragraph (e)(2) of § 1915.252 would require guardrail systems along the front side (i.e. the side closest to the vessel being worked on) of all scaffolds suspended from vessels when the scaffolds are triced out of line, and on all scaffolds mounted on floats which are subject to surging. As an alternative to guardrail systems, employees may be protected by a body belt/harness system attached to a guardrail system installed on the side of the platform which is away from the vessel. These are the same requirements as in § 1915.71(j)(4).

Paragraph (e)(3) of § 1915.252 would provide that body belt/harnesses be secured by lanyard to a dropline, trolley line, or scaffold structural member. However, body belt/harnesses are effective only when there are no overhead scaffold components. When there are such overhead components, such as additional platforms on a multi-level suspended scaffold, or a falling object canopy, and when there is a failure of the scaffold support system, and employee could be seriously injured or killed when the dropline body belt/harness arrangement arrests the employee's fall, and the overhead

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component of the scaffold strikes the employee as the scaffold falls to the ground. Therefore, § 1915.252(e)(3) would provide that when a scaffold has overhead obstructions, then droplines shall not be used. Paragraph (e)(3)(i) would provide that when droplines are used, they not be connected to the scaffold. This is the same requirement as in § 1910.28(g)(9). Paragraph (e)(3)(ii) would provide that when trolley lines are used, they not be connected to the suspension lines. This would provide protection to the employee in the event of a suspension line failure. Paragraph (e)(3)(iii) would provide that when lanyards area connected to trolley lines or scaffold members on two-point adjustable scaffolds, the scaffold shall be equipped with additional independent support lines. In the event of a suspension rope failure, the additional lines would keep the scaffold from falling. Paragraph (e)(3)(iv) would prohibit droplines, independent support lines, and suspension ropes from being attached to each other or to the same point of anchorage.

Paragraph (e)(4) of § 1915.252 would require guardrail systems to conform to provisions essentially the same as those discussed in the preamble to proposed Subpart M—Fall Protection. However, because additional fall protection on single-point adjustable and two-point adjustable suspension scaffolds would be provided by body/belt harness systems, the guardrail requirements on these types of scaffolds are proposed to be less stringent than on other scaffolds where guardrails are the principal fall protection system. Guardrails on single-point adjustable and two-point adjustable suspension scaffolds are considered by OSHA primarily to be barriers that serve as scaffold edge delineators, restrain movement, provide handholds, and prevent misstepping. These functions do not require the same size and strength guardrail system as does fall protection. Therefore, the minimum requirements for guardrail systems, (referred to as Type II systems) used on single-point and two-point scaffolds would be less than those for other guardrail systems (referred to as Type I systems) used on other scaffolds. The specific differences are set forth in proposed paragraphs (e)(4) (ii), (vii), and (viii), discussed below.

Paragraph (e)(4)(i) of § 1915.252 would require that guardrail systems installed to meet the requirements of this section be installed along all open sides and ends of the platform. This is the same requirement as § 1910.28(a)(3) and 1915.71(j).

Paragraph (e)(4)(ii) of § 1915.252 would specify a minimum guardrail system height of 38 inches for Type I guardrail systems and 36 inches for Type II guardrail systems. The 38-inch lower limit for Type I systems is proposed in lieu of the existing 36-inch lower limit specified for shoreside scaffolds in § 1910.28(a)(3) because a study concerned with selected ergonomic considerations related to fall protection (Ref. 3:35) indicates that the existing 36–inch limit does not provide adequate employee safety. That study recommends a guardrail height of 42 inches, the same as the existing lower limit for Part 1915 type scaffolds. However, OSHA believes the proposed limit of 38 inches is appropriate for scaffolds, because it allows for guardrail height differentials caused by platform unit arrangements. For example, a frame constructed to hold a toprail 42 inches above a flush-mounted prefabricated deck would be only 40 inches above a platform made with two-inch solid sawn planks. Where the planks are overlapped to form a long platform, the toprail height drops to 38 inches. (It should be noted that the 36 inch limit proposed for Type II guardrails is acceptable because Type II systems are not used as the primary means of fall protection.) The maximum height limit would be 45 inches for all scaffold guardrail systems. These limits are consistent with limits being developed for the construction and general industry standards. However, public comment is requested on these points in the Specific Issues section of this preamble.

Paragraph (e)(4)(iii) of § 1915.252 would require midrails, screens, mesh, intermediate vertical members (such as balusters), solid panels, or equivalent structural members be installed between the top edge of the guardrail system and the scaffold platform. This is essentially the same provision as § 1910.28(a)(3), except it has been rewritten to clarify the requirement, and to allow additional types of protection as alternatives to midrails.

Paragraphs (e)(4) (iv) through (vi) of § 1915.252 specify the criteria for the installation of the midrails, screen, mesh, and baluster type protection required by paragraph (e)(4)(iii) of § 1915.252.

Paragraphs (e)(4) (vii) and (viii) of § 1915.252 would specify that Type I toprails (or equivalent) be capable of withstanding a force of at least 200 pounds applied in any downward or horizontal direction at any point along the toprail (Type II guardrail systems would have a 100 pound minimum requirement) and not deflect to a height lower than the specified limit set forth in paragraph (e)(4)(ii). The force requirement for midrails, screens, mesh, and other intermediate types of protection in paragraph (e)(4)(ix) would be at least 150 pounds for Type I systems, and 75 pounds for Type II systems. The 150 pound force requirement replaces the § 1910.28(a)(3)(ii) and the § 1915.71(j)(2) requirements to use specified sizes of lumber.

Paragraph (e)(4)(x) of § 1915.252 would recognize that a separate guardrail section is not required on the ends of suspension scaffolds when the scaffold's support system (stirrup) or hoist does not allow passage of employees.

Paragraph (e)(4)(xi) of § 1915.252 would require toprail and midrail surfaces to be free of puncture, laceration, and snagging hazards. This is essentially the same requirement as in § 1910.23(e)(1).

Paragraph (e)(4)(xii) of § 1915.252 would require that toprails and midrails not be so long as to constitute a hazard, and is the same requirement as § 1910.23(e)(1).

Paragraph (e)(4)(xiii) of § 1915.252 would be a new requirement and would prohibit the use of steel banding and plastic banding as toprails or midrails. While such banding can often withstand a 200 pound load, it can tear easily if twisted. In addition, such banding often has sharp edges which can cut a hand if seized.

Paragraph 1915.252(f)—Falling object protection. This paragraph would address the hazard of objects falling onto employees working on scaffolds. Protection against objects falling from scaffolds is provided by proposed Subpart M—Fall Protection.

Paragraph (f)(1) of § 1915.252 would require that, in addition to hardhat protection, overhead protection be provided as necessary for employees on scaffolds when they are exposed to the hazard of objects falling from overhead. This paragraph is based on existing rules §§ 1910.28 (a)(16) and (f)(16), and is consistent with § 1915.71(j)(5).

Paragraph (f)(2) of § 1915.252 would require canopies, when used as falling object protection, to be installed between the hazard and the employees. This is the same provision as § 1915.28(f)(16) except the specific nine foot height limit is deleted as unnecessarily specific.

Paragraph (f)(3) of § 1915.252 would require the use of additional independent support lines when canopies are used on suspension scaffolds. The lines would support the

scaffold in the event of suspension support rope failure. The reason for this requirement has been explained earlier in the discussion of § 1915.252(e)(4).

Paragraph (f)(4) of § 1915.252 would require that independent support lines and suspension ropes not be attached to the same point of anchorage. This new rule would prevent the loss of the backup safety systems in the event of suspension rope anchorage failure.

Paragraphs (f)(4) and (5) of § 1915.252 would require toeboards on scaffolds to protect employees who are below the scaffold from falling objects. These paragraphs are based on existing rules § 1915.71(j)(5) and § 1910.28(a)(3) respectively.

Section 1915.253 Additional requirements applicable to specific types of scaffolds

This section contains rules which would apply only to specific types of scaffolds as indicated. These rules would apply in addition to the general rules of § 1915.252. In keeping with 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, the existing Part 1910 provisions requiring scaffold drawings and specifications to be made available to the employer and for inspection purposes, are proposed to be deleted as to their application in shipyards. These provisions are contained in § 1910.28(b)(16), (c)(4), (c)(5), (d)(11), and (e)(3). However, the employer may want to maintain the records anyway to serve as a reference point for future evaluation of a scaffold's design and its load limits. Such records would be valuable in determining whether or not a scaffold is overloaded.

Paragraph 1915.253(a)—Pole scaffolds. This paragraph combines the "wood pole scaffolds" of § 1910.28(b) and the "independent pole wood scaffolds" of § 1915.71(c). The word "wood" would be deleted from the title as used in the existing supparts, as such scaffolds can be made of other materials. The paragraph addresses both independent pole (double pole) scaffolds and single pole scaffolds.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(a)(1)	§ 1910.28(b)(14), § 1915.71(c)(4).
§ 1915.253(a)(2)	§ 1910.28(b)(9), § 1915.71(c)(6).
§ 1915.253(a)(3)	§ 1910.28(b)(10), § 1915.71(c)(6).
§ 1915.253(a)(4)	§ 1910.28(b)(10), § 1915.71(c)(6).
§ 1915.253(a)(5)	§ 1910.28(b)(5), § 1915.71(c)(5).
§ 1915.253(a)(6)	§ 1910.28(b)(5), § 1915.71(c)(5).
§ 1915.253(a)(7)	§ 1910.28(b)(7), § 1915.71(c)(4).
§ 1915.253(a)(8)	§ 1910.28(b)(7), (10).
§ 1915.253(a)(9)	§ 1910.28(b)(2), § 1915.71(c)(2), (3).
§ 1915.253(a)(10)	§ 1910.28(b)(16).

Paragraph (a)(11) of § 1915.253 would require that wood pole scaffolds not be erected beyond the reach of firefighting equipment. This is the same provision as § 1910.28(b)(17) except the word "effective" would be deleted from the paragraph to clarify the requirement.

The remaining pole scaffold provisions of Subparts D and E would not be carried forward in this paragraph as specific provisions for pole scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(b)—Tube and coupler scaffolds. This paragraph combines the "tube and coupler scaffolds" of § 1910.28(c) and the "independent pole metal scaffolds" of § 1915.71(d). The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(b)(2)	§ 1910.28(c)(11), § 1915.71(d)(6).
§ 1915.253(b)(3)	§ 1910.28(c)(12), § 1915.71(d)(6).
§ 1915.253(b)(4)	§ 1910.28(c)(12).
§ 1915.253(b)(5)	§ 1915.71(d)(5).
§ 1915.253(b)(6)	§ 1910.28(c)(9).
§ 1915.253(b)(8)	§ 1910.28(c)(8).
§ 1915.253(b)(9)	§ 1910.28(c)(8).
§ 1915.253(b)(11)	§ 1910.28(c) (14), (5).

Paragraph (b)(1) of § 1915.253 is new for tube and coupler scaffolds and would require that platforms not be moved until the next location is properly prepared to support the platform being moved. This is the same requirement as § 1910.28(b)(14) for wood pole scaffolds. This rule is added to this section because it addresses the problem of platform stability during construction, a problem which exists for tube and coupler scaffolds as well as pole scaffolds.

Paragraph (b)(7) of § 1915.253 would require bearers to be long enough to provide full contact with the coupler. This is essentially the same as § 1910.28(c)(10), however, the specifications are deleted because component strength would be governed by proposed general rule § 1915.252(a)(1).

Paragraph (b)(10) of § 1915.253 would specify the types of materials from which couplers may be made. This substantive requirement is currently contained in existing definition § 1910.21(f)(6), "coupler," and is more appropriately incorporated into a substantive section of the proposed standard.

The remaining tube and coupler scaffold provisions of Subparts D and E would not be carried forward in this paragraph as specific provisions for tube and coupler scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(c)—Fabricated frame scaffolds. As discussed in the "definitions" section of this preamble, this type of scaffold is presently called a "tubular welded frame scaffold." The proposed name more appropriately describes the type of scaffold to be addressed.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1915.253(c)(2)	§ 1910.28(d)(3).
§ 1915.253(c)(3)	§ 1910.28(d)(5).
§ 1915.253(c)(6)	§ 1910.28(d)(11).

Paragraph (c)(1) of § 1915.253 is new for fabricated frame scaffolds and would require that platforms not be moved until the next location is properly prepared to support the platform being moved. This would be done for the same reasons discussed for paragraph (b)(1) of § 1915.253.

Paragraph (c)(4) of § 1915.253 would require the locking together of end frames and is essentially the same as § 1910.28(d)(6). The requirement would only apply where uplift forces may be strong enough to displace the end frames or panels, such as when a hoist is being used that could snag the scaffold during a hoist operation.

Paragraph (c)(5) of § 1915.253 would specify the proper placement of platform support brackets. Improper placement of such cantilever supports can significantly reduce their support capacity and thus endanger employees working on the platform.

The remaining existing tubular welded frame scaffold provisions would not be carried forward in this paragraph as specific provisions for fabricated frame

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scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(d)—Horse scaffolds. This paragraph combines the "horse scaffolds" of §§ 1910.28(m) and 1915.71(g). The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1915.253(d)(1)	§ 1910.28(m)(1).
§ 1915.253(d)(2)	§ 1910.28(m)(4).
§ 1915.253(d)(3)	§ 1910.28(m)(5).
§ 1915.253(d)(4)	§ 1910.28(m)(5).

The remaining existing horse scaffold provisions would not be carried forward in this paragraph as specific provisions for horse scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(e)—Bracket scaffolds. Bracket scaffolds are presently addressed by § 1910.28(k)—Carpenters' bracket scaffolds. The title is proposed to be changed to "Bracket scaffolds" to reflect the use of this scaffold by a variety of trades.

Paragraph (e)(1) of § 1915.253 would specify the types of attachment devices or systems used for supporting bracket type scaffolds. These are the same as presently required by § 1910.28(k)(2).

Paragraph (e)(2) of § 1915.253 would require folding-type metal brackets to be secured against folding when extended for use. This would be a new provision and is based on paragraph § 1926.451(x)(5)(i), which applies to similar scaffolds used in the construction industry.

The remaining existing bracket scaffold provisions would not be carried forward in this paragraph as specific provisions for bracket scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(f)—Outrigger scaffolds. The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1915.253(f)(1)	§ 1910.28(e)(1).
§ 1915.253(f)(2)	§ 1910.28(e)(1).
§ 1915.253(f)(3)	§ 1910.28(e)(1).
§ 1915.253(f)(4)	§ 1910.28(e)(1).
§ 1915.253(f)(5)	§ 1910.28(e)(2).
§ 1915.253(f)(6)	§ 1910.28(e)(2).
§ 1915.253(f)(7)	§ 1910.28(e)(4).
§ 1915.253(f)(8)	§ 1910.28(e)(3).

The remaining existing outrigger scaffold provisions would not be carried forward in this paragraph as specific provisions for outrigger scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(g)—Ladder jack scaffolds. The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(g)(1)	§ 1910.28(g)(1).
§ 1915.253(g)(3)	§ 1910.28(g)(3).
§ 1915.253(g)(4)	§ 1910.28(g)(4).

Paragraph (g)(2) of § 1915.253 would require that all ladders used to support ladder jack scaffolds conform to the provisions of § 1915.86 of proposed Subpart E—Access and Egress. However, the paragraph would prohibit the use of job-made ladders to support lader jacks because OSHA believes such ladders cannot be relied upon to have the capacity to support the heavy point loading caused by ladder jack brackets.

Paragraph (g)(5) of § 1915.253 would prohibit the bridging of one ladder jack scaffold to another. This would be a new requirement and would be made to assure the stability of the system and to prevent accidental overloading of the system. This provision would not prohibit passage from one scaffold to another.

The remaining existing ladder jack scaffold provisions would not be carried forward in this paragraph as specific provisions for ladder jack scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(h)—Window jack scaffolds. The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraph listed:

Proposed paragraph	Existing paragraph
§ 1915.253(h)(2)	§ 1910.28(r)(1).
§ 1915.253(h)(3)	§ 1910.28(r)(2).

Paragraph (h)(1) of § 1915.253 would require window jack scaffolds to be securely attached to the window opening. This new requirement would assure that the scaffold cannot be accidentally displaced.

The remaining existing window jack scaffold provisions would not be carried forward in this paragraph as specific provisions for window jack scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(i)—Crawling boards (chicken ladders). Paragraph (i)(1) of § 1915.253 would be the same requirement as is presently contained in the fourth sentence of § 1910.28(t)(1), which specifies crawling board length. The remaining specific requirements of § 1910.28(t)(1) would be relocated to Appendix A as they would be effectively replaced by the general scaffold capacity requirements of § 1915.252(a)(1). The requirement to clinch nails would be deleted as this procedure is often not feasible due to the inaccessibility of the nail points. Existing paragraph § 1910.28(t)(2) would be replaced by the fall protection requirements of § 1915.252(e)(1).

Paragraph 1915.253(j)—Step, platform, and trestle ladder scaffolds. These types of scaffolds differ from ladder jack scaffold in that the platform rests directly on the ladder step or rung, whereas ladder jack scaffolds platforms rest on brackets. The proposed specific requirements in this paragraph are based on similar provisions being developed by the American National Standards Institute, and on similar provisions being developed by OSHA for the construction industry and for general industry application. The specification provisions currently in § 1915.71(e) would be replaced by the capacity requirements of proposed general rule § 1915.252(a)(1) and by the ladder provisions of proposed Subpart E—Access and Egress.

Paragraph (j)(1) of § 1915.253 would limit the height of the scaffold platforms to the second highest rungs or steps of ladders supporting the platform, and would provide increased scaffold stability by lowering the center of gravity. Paragraphs (j) (2), and (3), and (4) of § 1915.253 are the same provisions as paragraphs (i) (2), (4), and (5) of § 1915.253 proposed for ladder jack scaffolds. Paragraph (j)(5) of § 1915.253 is the same requirement as current § 1915.71(e)(7).

Paragraph 1915.253(k)—Single-point adjustable suspension scaffolds. This paragraph would combine existing § 1910.28(i), single-point adjustable suspension scaffolds, and § 1910.28(j), boatswains' chairs, as boatswains' chairs are a form of single-point adjustable suspension scaffold.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(k)(1)	§ 1910.28(i)(7).
§ 1915.253(k)(3)	§ 1910.28(j)(5).
§ 1915.253(k)(5)	§ 1910.28(j)(2).
§ 1915.253(k)(6)	§ 1910.28(j)(3).

Paragraph (k)(2) of § 1915.253 would be essentially the same as § 1910.28(i)(8), and would require that all suspension ropes hang vertically. However, the proposal would provide an exception to this rule, allowing intermediate supports to change the rope direction from vertical, when the scaffold is to be used on the outside of a dome-type or slanted structure. OSHA is soliciting comments on this proposed rule in the Specific Issues section of this preamble.

Paragraph (k)(4) of § 1915.253 would be essentially the same as § 1910.28(j)(2), and would require boatswains' chairs to be rigged with crossed supporting slings. However, the proposal would add that the slings be rigged (usually with knots) to prevent slippage which could result in the platform being out-of-level. This would increase the stability of the seat.

Paragraph (k)(7) of § 1915.253 would require non-cross laminated wood chairs to be reinforced on their underside by cleats. Existing rule § 1910.28(j)(1) requires all chairs to be cleated. This proposed rule recognizes the inherent strength qualities of cross-laminated-type wood seats such as those made with plywood.

The remaining existing single-point provisions would not be carried forward in this paragraph as specific provisions for single-point adjustable suspension scaffolds as the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(l)—Two-point adjustable suspension scaffolds. This paragraph combines the "two-point suspension scaffolds" of § 1910.28(g) and the "painters' suspended scaffolds" of § 1915.71(f). The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(l)(2)	§ 1910.28(g)(1), § 1915.71(f)(4).
§ 1915.253(l)(3)	§ 1910.28(g)(7).
§ 1915.253(l)(5)	§ 1910.28(g)(11).

Paragraph (l)(1) of § 1915.253 would be essentially the same as paragraph § 1910.28(g)(1), which limits the width of platforms to 36 inches. However, the proposal would allow wider platforms if they are designed by a qualified person to prevent unstable conditions.

Paragraph (l)(4) of § 1915.253 would require that scaffolds be ladder-type, plank-type, or beam-type, the same as currently required by § 1910.28(g)(12). However, the specifications contained in existing paragraph § 1910.28(g)(12) (i) through (iii) would be replaced by the capacity requirements of § 1915.252(a)(1).

Paragraph (l)(6) of § 1915.253 would prohibit the bridging or connecting of two or more scaffolds during raising and lowering operations, unless they meet three criteria: first, the scaffolds must be specifically designed for use on multipoint systems; second, they must be articulated; and third, the hoists must be properly sized to support a bridged scaffold installation. This rule is based on § 1915.71(f)(7) and reflects OSHA's concern that a bridging device could cause significant overloading of the hoist which is nearest the bridging device during operation of the hoist, and could cause excessive platform tipping. Many hoists are only sized to support one end of a two-point system. If one of two bridged scaffolds were to be raised by a hoist, a bridge or connection between the scaffolds could cause the rising scaffold to pick up the second scaffold also. This would significantly increase the load on the hoist and could also result in the second scaffold tipping up at a dangerous angle. The proposed rule would address these two hazards by prohibiting an unsafe practice, but would also allow for properly engineered solutions as alternative means of compliance. This provision would not prohibit passage from one scaffold to another.

Paragraph (l)(7) of § 1915.253 would allow the passage of employees from one scaffold to another, provided the scaffolds are at the same height; are abutting closely; and walk-through stirrups are used.

The remaining existing two-point suspension and painters' suspended scaffold provisions would not be carried forward in this paragraph as specific provisions for two-point adjustable suspension scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(m)—Multi-point adjustable suspension scaffolds. This section would combine and clarify the provisions of § 1910.28(h), stonesetters' adjustable multi-point suspension scaffolds, and § 1910.28(f), masons' adjustable multi-point suspension scaffolds, and would clarify that the paragraph applies to other multi-point adjustable suspension scaffolds as well.

Paragraph (m)(1) of § 1915.253 would prohibit bridging between scaffolds unless they are specifically designed to be bridged. Paragraph (m)(2) would allow passage of employees between adjacent units only when the platforms are at the same height and abutting closely. The reasons for these paragraphs are the same as those for paragraphs (1) (6) and (7) of § 1915.253 above.

Paragraph (m)(3) of § 1915.253 would specify the criteria for the support system, and is the same as § 1910.28(h)(4).

The remaining existing stonesetters' and masons' adjustable multiple-point suspension scaffold provisions would not be carried forward in this paragraph as specific provisions for multi-point adjustable suspension scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(n)—Catenary scaffolds. Although this type of scaffold is not specifically addressed in either existing standard, catenary scaffolds are covered by the existing general provisions of §§ 1910.28(a) and 1915.71(h). The following are new provisions that address concerns not presently covered by either the existing general rules or the proposed general provisions. These new provisions would be essentially the same as existing ANSI A10.8–1977, paragraph 22, except the specifications contained in that standard would be replaced by the general capacity provisions in proposed paragraph (a)(1) of § 1915.252.

Paragraph (n)(1) of § 1915.253 would allow only one platform between vertical pickups and only two platforms would be allowed on the entire system. This is the same provision as ANSI A10.8–1977, paragraph 22.4 except the maximum load limit of 500 pounds is deleted as being too restrictive. The intent of this provision is to prevent catenary scaffolds from being overloaded by prohibiting the employer from placing too many platforms on the system at one time and the general capacity provision § 1915.252(a)(1) would apply. However, public comment is requested in the Specific Issues section of this preamble as to what other load criteria, if any, are necessary to address these concerns.

Paragraph (n)(2) of § 1915.253 would require the platforms to be equipped with hook-shaped stops on each end to prevent the platform from falling should one of the two horizontal support ropes break.

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Paragraph (n)(3) of § 1915.253 would prohibit the horizontal support ropes from being made so taut that use of the platform could cause them to break.

Paragraph (n)(4) of § 1915.253 would require each horizontal wire rope support to be continuous and unspliced.

Paragraph 1915.253(o)—Float (ship) scaffolds. Paragraph (o)(1) of § 1915.253 would require the scaffold to consist of at least two bearers with six inch projections, securely connected to the platform. Paragraph (o)(2) of § 1915.253 would require rope connections to be such that they will not slip nor cause the platform to tip or fall. Paragraph (o)(3) of § 1915.253 would provide that if two ropes are used, they shall be slung under the scaffold and up to the supports. These requirements are essentially the same as are required by §§ 1910.28(u) (3) and (5).

The remaining existing float scaffold provisions would not be carried forward in this paragraph as specific provisions for float scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(p)—Interior hung scaffolds. Paragraph (p)(1) of § 1915.253 would require that scaffolds be suspended only from the roof structure or other structural members such as a ship's overhead, or a building's ceiling beams. This is the same requirement as existing rule § 1910.28(p)(1).

Paragraph (p)(2) of § 1915.253 would require that the supporting members be inspected and checked for strength before the scaffold is erected. Such points of support cannot be assumed to be strong enough to support a scaffold as they may be already loaded to their capacity or they may have deteriorated over time. This is the same requirement as § 1910.28(p)(6).

Paragraph (p)(3) of § 1915.253 would delete the specific connection requirements of § 1910.28(p)(5), which OSHA believes are overly specific, and sets forth what OSHA considers to be current safe connection practices.

The remaining existing interior hung scaffold provisions would not be carried forward in this paragraph as specific provisions for interior hung scaffolds as the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(q)—Needle beam scaffolds. The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirement in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(q)(1)	§ 1910.28(n)(1).
§ 1915.253(q)(2)	§ 1910.28(n) (2) and (7).

Paragraph (q)(3) of § 1915.253 would require that support ropes be securely attached to the needle beams. This is a change from § 1910.28(n)(3), which requires all attachments to be either a scaffold hitch knot or eye splice. The existing rule is believed by OSHA to be too restrictive, as other knots and means of attachment, such as wire rope clips, can also adequately support the scaffold.

Paragraph (q)(4) of § 1915.253 would require support connections to be arranged such that the needle beams do not roll or otherwise become displaced. This provision is based on §1926.451(4), a construction industry provision which OSHA believes should apply to all needle beam scaffolds.

Paragraph (q)(5) of § 1915.253 would require platform units to be bolted to the needle beam, or equivalent means of attachment used such as nails, to prevent the displacement of the units. This is a clarification of § 1910.28(n)(5) which only requires that planks be secured against slipping. Under the existing rule, cleats and overhang could be used to secure the units. However, OSHA does not believe that cleats or overhang are adequate measures to secure platform units on needle beam scaffolds.

Paragraph 1915.253(r)—Multi-level suspended scaffolds. These scaffolds are suspended scaffolds with more than one working level. Although these types of scaffolds are not specifically addressed in the existing standards, they are covered by the existing general requirements. The following provisions address concerns not presently covered by either the existing standard or the proposed general provisions.

Paragraph (r)(1) of § 1915.253 would require independent support lines in addition to the regular support ropes. These additional lines would support the scaffold and prevent collapse in the event of primary support line failure. The reasons for requiring these lines are given in the discussion for § 1915.252(e) which covers fall protection.

Because the primary support lines could fail anywhere between the scaffold and their point of anchorage (the anchorage itself could fail), paragraph (r)(2) of § 1915.253 would prohibit attaching independent support lines and suspension ropes to the same anchorage point.

Paragraph (r)(3) of § 1915.253 would prohibit platforms from being supported by any other platform(s). This provision would protect against platform overloading by requiring each platform to be attached to the supporting stirrups or hangers.

Paragraph 1915.253(s)—Mobile scaffolds. This section would consolidate and clarify the provisions of § 1910.29 of the general industry standards. This paragraph would apply to all mobile scaffolds and not just to those which are manually propelled.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(s)(1)	§ 1910.29 (a)(3)(iii), (b)(2), (e)(3).
§ 1915.253(s)(2)	§ 1910.29(a)(4).

Paragraph (s)(3) of § 1915.253 is a new provision and is based on the construction industry provision § 1926.451(e)(6), which requires that propelling forces be applied as close to the base as possible for stability reasons. However, the proposal would limit the height at which the force could be applied to five feet to minimize the overturning forces generated when the propelling force is applied above the wheels. The five foot limit is high enough to allow the manual propelling of scaffolds.

Paragraph (s)(4) of § 1915.253 is a new provision and would eliminate the use of winches, forklifts, trucks, or other motor vehicles to move scaffolds which are not designed to be moved by such propulsion systems.

Paragraph (s)(5) of § 1915.253 is a new provision and would require scaffolds to be stabilized during movement. This provision is based on the construction industry provision, § 1926.451(e)(6).

Paragraphs (s)(6)(i)—(iii) of § 1915.253 are new provisions and are based on the construction industry provision § 1926.451(e)(7) which specifies minimum conditions for when employees may ride on moving scaffolds.

Paragraph (s)(6)(iv) of § 1915.253 is a new provision and would require the propelling force be applied directly to the wheels (not to the frame) when power systems are used to propel scaffolds, and would limit the speed of the scaffold to one and one-fourth miles per hour. This provision is intended to protect against a scaffold toppling over should it strike an object.

Paragraph (s)(6)(v) of § 1915.253 is a new provision and would prohibit

employees from riding on any part of a moving scaffold which extends outward beyond the wheels, casters, or other support.

Paragraph (s)(7) of § 1915.253 would require that scaffold platforms not to extend outward past the base supports of the scaffold. This provision would eliminate dangerous eccentric loading on the scaffold frame which could cause the scaffold to tip over. However, if stabilizing means such as outrigger supports are used, then the platform may extend outside the normal base points of support.

Paragraph (s)(8) of § 1915.253 would require that screw jacks or equivalent means be used to level mobile scaffolds when they are set up for stationary use. This provision is based on § 1910.29(a)(4)(iii).

Paragraph (s)(9) of § 1915.253 would be a new paragraph and would require caster and wheel stems to be secured to scaffold frames to prevent them from falling out at any time.

The remaining existing manually propelled mobile ladder stands and scaffolds (towers) provisions would not be carried forward in this paragraph as specific provisions for mobile scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(t)—Crane or derrick suspended personnel platforms. Paragraph (t)(1) of § 1915.253 would require lifting bridles to consist of four legs attached to the platform to assure stability. This is the same provision as § 1915.71(b)(9).

Paragraph (t)(2) of § 1915.253 would specify the means of attaching the platform lifting bridles to the crane or derrick, and is the same provision as § 1915.71(b)(10).

OSHA is currently developing rules to cover personnel platforms used in the construction industry. Public comment is requested in the Specific Issues section of this preamble as to whether or not similar rules should be developed for shipyard employment.

Appendix A to Subpart N—Scaffold Specifications

As explained in the discussion for proposed § 1915.252(a), Capacity, Appendix A is a non-mandatory set of guidelines and tables provided to assist employers in complying with the requirements of § 1915.252(a). The provisions are essentially the same as found throughout the existing standards. An employer may use these guidelines and tables as a starting point for designing scaffold systems. However, the guidelines and tables do not provide all the information necessary to build a complete system. For example, the tables for wood pole scaffolds do not specify the manner or type of joint construction. For all such components the employer is responsible for designing and assembling those components in such a way that the completed system will meet the requirements of § 1915.252(a). In addition, if the employer chooses to deviate from any provisions or guidelines in Appendix A, the scaffold must still comply with paragraph 1915.252(a).

Specific Issues

The public is specifically requested to comment on the following issues.

1. Proposed rule § 1915.252(e) specifies fall protection requirements for scaffolds. Those used on or near vessels must have fall protection whenever the fall distance is five feet or more, the same as § 1915.71(j)(1). Scaffolds used away from vessels must have fall protection whenever the fall distance is 10 feet or more, the same as § 1910.28(a)(3). A recent Bureau of Labor Statistics' study indicates that of all injuries which result from falls, a high percentage involves falling from elevations between five and 10 feet (Ref. 4:9). In addition, a high percentage of falls occurred while the employees were on scaffolds (Ref. 4:9). Public comment is requested on whether or not OSHA should extend the five foot rule to all scaffolds located and used in any part of a shipyard. Comments should include appropriate cost and injury data.

2. Is there a need for OSHA to regulate the use of electric welding equipment on suspended scaffolds? Should OSHA adopt any or all of the following draft rules which are presently being developed and evaluated by the ANSI A10.8 Scaffold Committee?

To reduce the possibility of the welding current arcing through the wire rope when welding from suspended scaffolds, the following precautions shall be taken:

(a) Use a suitable insulated thimble to attach each wire rope to its hanging support (such as a cornice hook or outrigger). Insulate extra rope from grounding.

(b) Cover the suspension wire rope with insulating material approximately four to five feet above the hoist, and below the hoist extending downward sufficiently to insulate the tail line from the unit. The portion of the tail line that hangs free below the unit must be guided and/or retained such that it does not become grounded.

Place non-conducting insulating material under wire rope so that it does not come in contact with ground.

(c) Cover each hoist with protective covers made from insulating material.

(d) Connect a grounding conductor from the unit to the structure. The size of this conductor must be equal to or greater than the size of the welding machine grounding lead and shall be a secondary conductor and must not be in series with the primary conductor between the welder and the work piece.

(e) If unit grounding lead is disconnected at any time, welding machine shall be turned off.

(f) At no time shall active welding rod or uninsulated welding lead be allowed to contact the stage or its supporting system.

3. Should the final rule prohibit the use of forklifts, front-end loaders, and similar pieces of equipment for the support of scaffold platforms? If so, what specific pieces of equipment should be prohibited and what other related requirements, if any, are necessary? Comments should include appropriate injury and cost data.

4. Proposed rule § 1915.253(s)(6)(ii) requires manually-propelled and motor-propelled mobile scaffolds to be not more than twice as high as they are wide when employees ride on them. Should OSHA raise the proposed 2 to 1 ratio to 3 to 1 or higher on those systems which are built with a low center-of-gravity? If this change is made, what limitations are appropriate?

5. Should OSHA require all platform units (planks, decks, etc.) to have their capacities or grades marked on them? Arguments in favor of this are that such marks could help prevent the use of inferior grades of plank in platforms, and that they would aid the user in determining the maximum load which can be placed safely on the plank or other unit. Arguments against this are that such marks can wear off, or that units can deteriorate making the marks no longer valid. Also, although such marks can be very useful in the construction of a safe scaffold, their presence or absence do not, in themselves, make a plank safe or unsafe.

6. Proposed rule § 1915.252(d)(11) would prohibit work on scaffolds during storms or when wind speeds exceed 40 mph, unless body belts are worn or wind screens erected. Comment is requested on the 40 mph limit, and on how to measure the windspeed. Recommendations on windspeed measurement range from monitoring hourly radio weather reports to placing anemometers on every scaffold. OSHA also solicits comments on other methods that might be used to provide employee safety in high winds.

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7. Existing rule § 1910.28(g)(11) and proposed rule § 1915.253(1)(5) require two-point adjustable suspension scaffolds to be secured to prevent swaying. Should OSHA extend this rule to cover all suspended scaffolds?

8. Should proposed rule § 1915.252(e)(1), which provides that fall protection is not required for employees performing scaffold erection and dismantling operations, apply only to supported scaffolds? Such scaffolds do not have a recognized feasible place to which body belt/harness systems can be attached. However, suspended scaffolds are often located such that droplines can be conveniently used and, therefore, employees could be tied off.

9. Existing rule § 1910.28(i)(8) requires the supporting rope for single-point adjustable suspension scaffolds to be vertical. The proposed rule § 1915.253(k)(2) would allow an exception when the scaffold is used on the outside of a dome-type or slanted structure. Should some specified deviation from vertical be allowed when suspending a scaffold under a curved surface? If yes, what should be the maximum angle permitted, and what other conditions, if any, should be specified?

10. For the reasons discussed in the Summary and Explanation section of this preamble, the proposed rule § 1915.252(e)(4) would set the range of acceptable guardrail height at 38 inches to 45 inches for supported scaffolds, and would allow 36-inch high guardrails only for certain types of suspended scaffolds.

The ANSI A10.8 subcommittee on scaffolds considers the 36-inch lower limit to address adequately the hazard of falling from all types of scaffolds. This position is strongly supported by the Scaffold Industry Association (SIA). Their conclusions are based on the argument that OSHA's existing and proposed rules are based on studies (Ref. 5 and 6) which evaluated proper guardrail height for permanent structures, large areas where crowd control is important, and areas where high body speeds and momentum commonly are generated. These conditions, it is argued, do not exist on scaffolds and, therefore, the OSHA regulations are too restrictive and not appropriate for scaffold work. The SIA's conclusion is that a lower limit of 36 inches on scaffolds is as effective as a lower limit of 39 inches for permanent and large area structures. In addition, industry representatives state that no accident statistics, nor other field studies, indicate any problem caused by the current industry practice of using 36-inch high guardrails. Comment is requested on the effectiveness and cost savings of a 36-inch lower limit for guardrail height.

11. Should OSHA accept crossbracing on the intermediate levels of built-up scaffolds as an alternative to the existing and proposed rules requiring guardrail systems on such levels? Are crossbraces as effective in providing fall protection as conventional guardrail systems? The existing and proposed OSHA rules do not recognize crossbracing as an effective guardrail-type system for preventing falls. However, industry representatives support the contention that, within limits, crossbracing can effectively perform as a guardrail-type system. Their position is that depending on the height of the cross point of the braces, crossbracing can effectively serve as a toprail, midrail, or in some situations, as both toprail and midrail. This position is supported to a degree by a study conducted by the University of Michigan (Ref. 6:37). However, an earlier study, also conducted by the University of Michigan (Ref. 7:143), does not support this concept.

The industry position that crossbracing can be as effective as guardrails is based on views similar to those discussed in Issue Number 10 above. Industry argues that the studies on which the requirements for guardrail systems are based do not properly reflect actual field conditions or accident statistics. For example, the Michigan study (Ref. 7:136) states there should be no opening in a guardrail or crossbrace system that would allow passage of a 19-inch sphere (19 inches is slightly less than the shoulder width of the 95th percentile U.S. adult male population). The industry position is that it is not a fair representation to equate a human body with a 19-inch sphere.

The specific provisions suggested by industry representatives for adoption by OSHA are as follows:

(a) Crossbracing on supported scaffolds may be used in lieu of a midrail provided the crossing point of the two braces is at or between 31 inches and 20 inches above the work surface.

(b) Crossbracing on supported scaffolds may be used in lieu of midrails and toprails provided the cross point of the two braces is at or between 48 inches and 30 inches above the work surface, and the end points at each upright are not more than 54 inches apart.

(c) Crossbracing may not be used in lieu of either a toprail or midrail on the top level of any supported scaffold.

The following have also been suggested as appropriate provisions:

(a) Crossbracing on supported scaffolds may be used in lieu of a toprail provided the crossing point of the two braces is at or between 39 inches and 49 inches above the work surface, and the end points at each upright are not more than 54 inches apart.

(b) Crossbracing on supported scaffolds may be used in lieu of midrails provided the crossing point of the two braces is at or between 30 inches and 20 inches above the work surface.

(c) Crossbracing may not be used in lieu of either a toprail or midrail on the top level of any supported scaffold.

(d) Crossbracing on supported scaffolds may not be used in lieu of both a toprail and midrail on the same scaffold level at the same time.

Comments and data reflecting engineering analysis and actual experience in the use of crossbracing are requested on the effectiveness of crossbracing when used in lieu of toprails, midrails, or both.

12. Should OSHA permit mobile scaffolds to be moved only along their longitudinal axis while employees are riding on them? This provision would be intended to maximize scaffold stability during movement, as tipping is most likely to occur when scaffolds are moved along their transverse axis.

13. Proposed rule § 1915.252(d)(3) would require supported scaffolds and scaffold components to be inspected for visible defects prior to each workshift and after any occurrence which could affect a scaffold's structural integrity. In addition, suspension scaffolds and scaffold components would need to be inspected for visible defects immediately after installation prior to their first use; periodically thereafter (preferably before each use); and after any occurrence which could affect a scaffold's structural integrity. Public comment is requested on whether or not the stated frequencies of inspection are appropriate or if some lesser or greater periods should be required. In addition, comment is requested on whether the inspector should be an engineer, a qualified person, or a capable person.

14. Should OSHA specify a minimum slippage capacity of 4,000 pounds and a minimum breakage capacity of 16,000 pounds for couplers used on tube and coupler type scaffolds? Industry proponents argue that such a rule is necessary to assure proper scaffold strength.

15. The proposed requirements do not limit the height at which single-point adjustable suspension scaffolds and two-point adjustable suspension scaffolds may be used. Should OSHA

set such a limit, and if so, what should this height be, and why?

16. Currently, OSHA does not regulate the use of stilts. Public comment is requested on whether or not such rules are necessary. Proponents for such rules should include accident data in their comments. If stilts should be regulated, comments are requested on appropriate rules, if any, regarding their construction, use, fall protection (i.e., guardrail height), floor conditions (i.e., level, no holes, no debris), and other necessary considerations.

17. Existing rules § 1910.28(a)(4) and § 1915.71(b)(1), and proposed rule § 1915.252(a)(1), require scaffolds to be capable of supporting, without failure, at least four times the maximum intended load. In evaluating whether a scaffold meets this criteria, both the Agency and the employer will need to have methods available to determine compliance. OSHA recognizes that field testing of scaffolds and scaffold components with loads four times greater than the maximum intended load could permanently damage and render useless the item being tested. Public comment is requested on appropriate field test procedures or means of certification for determining the capacity of scaffolds and scaffold components such as planks and ropes.

Comment is also requested concerning the qualifications that a person must have in order to make these kinds of tests or determinations.

18. Paragraph 1.(b) of Appendix A requires wood scaffold planks to be selected using the grading rules established by a recognized independent inspection agency for the species of wood used. Public comment is requested on whether or not a more specific requirement should be stated, and, if so, what should that requirement be?

19. Existing paragraphs (b)(16), (c)(4), (c)(5), (d)(11), and (e)(3) of § 1910.28 require specified types of scaffold to be designed by an engineer when the scaffolds to be built will exceed the limits set forth in existing Tables D–7 through D–16. Proposed rules § 1915.253 (a)(10), (b)(11), (c)(6), and (f)(8) also require specified components and scaffold types to be designed by an engineer when proposed Appendix A is not followed. However, there may be situations in which Appendix A could be safely modified by qualified persons. Public comment is requested on what scaffolds, if any, could be safely designed by a qualified person rather than an engineer? Are there situations in which only an engineer will be able to safely modify Appendix A? Also, while the existing tables and proposed Appendix A specify the minimum size for many components, neither standard sets forth guidelines for every component used on scaffolds such as, but not limited to, base plates, splice plates, joints, ties, and braces (the proposed rule, however, does specifically require all such components to meet the 4:1 capacity provision).

Public comment is requested on whether or not an engineer's services are needed to design all components not presently included in the tables and guidelines of Appendix A. OSHA also requests information on the additional criteria which should be added to Appendix A in order to provide complete tables and guidelines.

In addition, OSHA requests public comment on whether or not there are other types of scaffolds, or conditions (such as evaluating the support system for interior hung scaffolds), in addition to those already covered, where it would be appropriate to require the services of an engineer. If the services of an engineer are not necessary, what are the training and experience factors an individual must have before being allowed to design a scaffold system?

20. Paragraph (b)(8)(ii) of § 1915.252 requires that counterweights be made of non-flowable solid materials. Should OSHA also require that counterweights be designed for no other purpose than to counterweigh the system, thereby prohibiting the use of materials, such as concrete masonry units, boxes, etc., as counterweights? Comments should include accident and cost data.

21. Paragraph (b)(32) of § 1915.252 requires manually-powered hoists to be built such that they require a positive crank force to lower the scaffold. This would eliminate the dangerous condition of "free-running" hoists during descents. Public comment is requested on the need for this requirement.

22. Public comment is requested on whether landing platforms should be required at 30-foot maximum intervals as required by § 1910.29(a)(3)(viii), or at 20-foot maximum intervals as required by proposed rule § 1915.252(c)(2)(iii).

23. Paragraph (d)(13) of § 1915.252 prohibits the use of ladders or makeshift devices to raise the working level of employees. Public comment is requested on the need for this requirement.

24. Paragraph (n)(1) of § 1915.253 would limit the number of platforms which may be used on catenary scaffolds. This is the same rule as in ANSI A10.8–1977, paragraph 22.4. The intent is to prohibit the overloading of catenary support systems. However, whereas the ANSI provision also sets forth maximum load criteria, the proposed OSHA provision does not. This is to keep the proposed provisions performance-oriented, and is consistent with the approach used for all other types of scaffolds. However, public comment is requested as to what other criteria, if any, should be set forth.

25. Paragraph (d)(10) of § 1915.252 requires shields to be used when heat-producing processes are used on suspension scaffolds. Public comment is requested on what criteria, if any, should be set forth for such shields.

26. In some of the existing provisions and in some of the proposed provisions, OSHA uses specific numerical limits to define and clarify the duties set forth. For example, proposed § 1915.252(c)(7) restricts direct access to scaffolds to those situations where the open distance between scaffold and building is not more than 14 inches horizontally and 24 inches vertically; and proposed § 1915.252(c)(2)(iv) requires rest platforms at 20-foot maximum intervals. These and other limits are based on existing laws and consensus standards, and are used in lieu of more performance-oriented language such as "direct access shall be used only where the building and the scaffold are close enough to provide safe access;" or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA believes that although such performance-oriented language would be less restrictive on employers, and thus give them more options when abating a hazard, it does not always tell the employer exactly what is required (i.e., how to do something "right"). On the other hand, requiring specific numerical limits in the rule and allowing the employer to use other limits which the employer can show will provide "equivalent" protection may respond to both these concerns. OSHA believes that the use of specific limits in certain provisions (such as those listed above, and those for guardrail heights, minimum platform widths, and similar requirements) provides the required notice to employers as to how they can comply with a provision compared to how OSHA intends to enforce the provision. OSHA believes that such notice serves to inform employees and employers about the proper way to do things; promotes consistency in hazard abatement at all worksites; and also minimizes legal disputes over the intent of a requirement. On the other hand, specification language can increase costs without increasing safety, discourage technical innovation, prevent the use of safe alternatives, and fail to anticipate the varying needs and

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situations in the numerous workplaces covered by the standard.

Public comment is requested on whether or not OSHA's use of specification language is appropriate, or if it should be moved to a nonmandatory appendix which could provide guidance to employers. If not, how should the provisions be written to provide the desired flexibility and the required fair notice? If the continued use of such limits is appropriate, are the proposed limits sufficient to abate the hazards? Comments should include appropriate cost and injury data.

27. Specific provisions for crane and derrick suspended personnel platforms are presently set forth in § 1915.71(b) (9) and (10) and are reproposed at § 1915.253(t) (1) and (2). These provisions address the topics of platform stability and attachment to the hook. In light of the July 10, 1987 accident at San Diego, California, in which six lives were lost, OSHA requests public comment on the adequacy of these two provisions.

Specifically, OSHA requests comments, including feasibility, cost, and related injury data, on whether the existing regulations and the proposed rules listed later in the document should be replaced by the following:

Section 1915.251 Scope application and definitions applicable to this subpart.

"Hoist" (or "hoisting") means all crane or derrick functions such as lowering, lifting, swinging, booming in and out or up and down, or suspending a personnel platform.

"Runway" means a firm, level surface designed, prepared and designated as a path of travel for the weight and configuration of the crane being used to lift and travel with a crane suspended platform. An existing surface may be used as long as it meets these criteria.

Section 1915.252 General requirements.

The following requirements apply to all scaffolds (except crane or derrick suspended personnel platforms which are covered in § 1915.254) except as noted.

Section 1915.254 Crane or derrick suspended personnel platforms.

(a) *General requirements.* The personnel platform shall be conspicuously posted with a plate or other permanent marking which indicates the weight of the platform and its rated load capacity or maximum intended load.

(b) *Design.* (1) The personnel platform and suspension system shall be designed by a qualified engineer or a qualified person competent in structural design.

(2) The suspension system shall be designed to minimize tipping of the platform due to movement of employees occupying the platform.

(c) *Capacity.* (1) Load lines shall be capable of supporting, without failure, at least seven times the maximum intended load, except that where rotation resistant rope is used, the lines shall be capable of supporting without failure, at least ten times the maximum intended load.

(2) Wire rope, shackles, rings, master links, and other rigging hardware must be capable of supporting, without failure, at least five times the maximum intended load applied or transmitted to that component. Where rotation resistant rope is used, the slings shall be capable of supporting without failure at least ten times the maximum intended load.

(3) The personnel platform itself, except the guardrail system and body belt/harness anchorages, shall be capable of supporting, without failure, its own weight and at least five times the maximum intended load. Criteria for guardrail systems and body belt/harness anchorages are contained in other Subparts of this part.

(d) *Crane and derrick criteria.* In addition to the requirements for cranes and derricks set forth in other subparts, cranes and derricks used to support personnel platforms shall conform to the following provisions:

(1) Cranes and derricks with variable angle booms shall be equipped with a boom angle indicator, readily visable to the operator.

(2) Cranes with telescoping booms shall be equipped with a device to indicate clearly to the operator, at all times, the boom's extended length, or an accurate determination of the load radius to be used during the lift shall be made prior to hoisting personnel.

(3) A positive acting device shall be used which prevents contact between the load block or overhaul ball and the boom tip (anti-two-blocking device), or a system shall be used which deactivates the hoisting action before damage occurs in the event of a two-blocking situation (two block damage prevention feature).

(4) The load line hoist drum shall have a system or device on the power train, other than the load hoist brake, which regulates the lowering rate of speed of the hoist mechanism (controlled load lowering.)

(5) Hooks on overhaul ball assemblies, lower load blocks, or other attachment assemblies shall be of a type that can be closed and locked, eliminating the hook throat opening. Alternatively, an alloy anchor type shackle with a bolt, nut and retaining pin may be used.

(e) *Platform criteria.* (1) Each personnel platform shall be equipped with a Type I guardrail system that conforms to the criteria set forth in § 1915.252(e)(4). In addition, the platform shall be enclosed from the toebord to midrail with either solid construction or expanded metal having openings no greater than one-half inch (1.27 cm).

(2) A grab rail shall be installed inside the entire perimeter of the personnel platform.

(3) Access gates, if installed, shall not swing outward during hoisting.

(4) Access gates, including sliding or folding gates, shall be equipped with a restraining device to prevent accidental opening.

(5) Headroom shall be provided which allows employees to stand upright in the platform.

(6) In addition to the use of hard hats, employees shall be protected by overhead protection on the personnel platform when employees are exposed to falling objects.

(7) All rough edges exposed to contact by employees shall be surfaced or smoothed in order to prevent injury to employees from punctures or lacerations.

(8) All welding of the personnel platform and its components shall be performed by a qualified welder familiar with the weld grades, types and material specified in the platform design.

(9) When a wire rope bridle is used to connect the personnel platform to the load line, each bridle leg shall be connected to a master link or shackle in such a manner to ensure that the load is evenly divided among the bridle legs.

(10) All eyes in wire rope slings shall be fabricated with thimbles.

(f) *Trial lift, inspection, and proof testing.* (1) A trial lift with the unoccupied personnel platform loaded at least to the anticipated liftweight shall be made from ground level, or any other location where employees will enter the platform, to each location at which the personnel platform is to be positioned. This trial lift shall be performed immediately prior to placing personnel in the platform. The operator shall determine that all systems, controls, and safety devices are activated and functioning properly; that no interferences exist; and that all configurations necessary to reach those work locations will allow the operator to remain under the 50 percent limit of the hoist's rated capacity. Materials and tools to be used during the actual lift can

be loaded in the platform, as provided in paragraphs (h)(4) and (5) of this section for the trial lift. A single trial lift may be performed at one time for all locations that are to be reached from a single set up position.

(2) The trial lift shall be repeated prior to hoisting employees whenever the crane or derrick is moved and set up in a new location or returned to a previously used location. Additionally, the trial lift shall be repeated when the lift route is changed unless the operator determines that the route change is not significant (i.e., the route change would not affect the safety of hoisted employees.)

(3) After the trial lift and just prior to hoisting personnel, the platform shall be hoisted a few inches and inspected to ensure that it is secure and properly balanced.

(4) A visual inspection of the crane or derrick, rigging, personnel platform, and the crane or derrick base support or ground shall be conducted by a competent person immediately after the trial lift to determine whether the testing has exposed any defect or produced any adverse effect upon any component or structure.

(5) Any defects found during inspections which create a safety hazard shall be corrected before hoisting personnel.

(6) At each job site, prior to hoisting employees on the personnel platform, and after any repair or modification, the platform and rigging shall be proof tested to 125 percent of the platform's rated capacity by holding it in a suspended position for five minutes with the test load evenly distributed on the platform (this may be done concurrently with the trial lift). After proof testing, a capable person shall inspect the platform and rigging. Any deficiencies found shall be corrected and another proof test shall be conducted. Personnel hoisting shall not be conducted until the proof testing requirements are satisfied.

(g) *Pre-lift meeting.* (1) A meeting attended by the crane or derrick operator, signal person(s) (if necessary for the lift), employee(s) to be lifted, and the person responsible for the task to be performed shall be held to review the appropriate requirements of § 1915.254 and the procedures to be followed.

(2) This meeting shall be held prior to the trial lift at each new work location, and shall be repeated for any employees newly assigned to the operation.

(h) *Personnel platform loading.* (1) The personnel platform shall not be loaded in excess of its rated load capacity. When a personnel platform does not have a rated load capacity, then the personnel platform shall not be loaded in excess of its maximum intended load.

(2) The number of employees occupying the personnel platform shall not exceed the number required for the work being performed.

(3) Personnel platforms shall be used only for employees, their tools, and the materials necessary to do their work, and shall not be used to hoist only materials or tools when not hoisting personnel.

(4) Materials and tools for use during a personnel lift shall be secured to prevent displacement.

(5) Materials and tools for use during a personnel lift shall be evenly distributed within the confines of the platform while the platform is suspended.

(6) The total weight of the loaded personnel platform and related rigging shall not exceed 50 percent of the rated capacity for the radius and configuration of the crane or derrick.

(i) *Use and operational criteria.* (1) The use of machines having live booms (booms in which lowering is controlled by a brake without aid from other devices which slow the lowering speeds) is prohibited.

(2) Bridles and associated rigging for attaching the personnel platform to the hoist line shall be used only for the platform and the necessary employees, their tools and the materials necessary to do their work, and shall not be used for any other purpose when not hoisting personnel.

(3) The crane shall be uniformly level within one percent of level grade and located on firm footing. Cranes equipped with outriggers shall have them all fully deployed following manufacturer's specifications, insofar as applicable, when hoisting employees.

(4) Hoisting of the personnel platform shall be performed in a slow, controlled, cautious manner with no sudden movements of the crane or derrick, or the platform.

(5) Load and boom hoist drum brakes, swing brakes, and locking devices such as pawls or dogs shall be engaged when the occupied personnel platform is in a stationary working position.

(6) Free fall is prohibited.

(7) Employees shall not be hoisted unless the following conditions are determined to exist:

(i) Hoist ropes shall be free of kinks;

(ii) Multiple part lines shall not be twisted around each other;

(iii) The primary attachment shall be centered over the platform and

(iv) The hoisting system shall be inspected if the load rope is slack to ensure all ropes are properly seated on drums and in sheaves.

(8) Employees shall keep all parts of the body inside the platform during raising, lowering, and positioning. This provision does not apply to an occupant of the platform performing the duties of a signal person.

(9) Before employees exit or enter a hoisted personnel platform that is not landed, the platform shall be secured to the structure where the work is to be performed, unless securing to the structure creates an unsafe situation.

(10) Tag lines shall be used unless their use creates an unsafe condition.

(11) The crane or derrick operator shall remain at the controls at all times when the crane engine is running and the platform is occupied.

(12) Hoisting of employees shall be promptly discontinued upon indication of any dangerous weather conditions or other impending danger.

(13) Employees being hoisted shall remain in continuous sight of and in direct communication with the operator or signal person. In those situations where direct visual contact with the operator is not possible and the use of a signal person would create a greater hazard for that person, direct communication alone such as by radio may be used.

(14) Except over water, employees occupying the personnel platform shall use a body belt/harness system with lanyard appropriately attached to the lower load block or overhaul ball, or to a structural member within the personnel platform capable of supporting a fall impact for employees using the anchorage.

(15) No lifts shall be made on another of the crane's or derrick's loadlines while personnel are suspended on a platform.

(16) Hoisting of employees while the crane is traveling is prohibited, except for portal, tower and locomotive cranes, or where the employer demonstrates that there is no less hazardous way to perform the work.

(17) Under any circumstances where a crane would travel while hoisting personnel, the employer shall implement the following procedures to safeguard employees:

(i) Crane travel shall be restricted to a fixed track or runway.

(ii) Travel is limited to the load radius of the boom used during the lift.

(iii) The boom must be parallel to the direction of travel.

(iv) A complete trial run shall be performed to test the route of travel before employees are allowed to occupy the platform. This trial run can be performed at the same time as the trial

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lift required by paragraph (f)(1) of this section which tests the route of the lift.

(v) If trael is done with a rubber tired carrier, the condition and air pressure of the tires shall be checked. The chart capacity for lifts on rubber shall be used for application of the 50 percent reduction. Notwithstanding paragraph (i)(3) of this section, outriggers may be partially retracted as necessary for travel.

III. References

1. American National Standard ANSI A10.8–1977, "Safety Requirements for Scaffolding," American National Standards Institute, New York.

2. Wang Associates, Inc., "Study of Distance Between Structural Wall and Scaffold," June 13, 1979, Unpublished.

3. Chaffin and Stobbe, "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard 29 CFR Part 1910, Subpart D," University of Michigan, September 1979.

4. U.S. Department of Labor, Bureau of Labor Statistics, "Injuries Resulting From Falls From Elevations," Bulletin 2195, June 1984.

5. Fattal, Cattaneo, Turner, and Robinson, "Personnel Guardrails for the Prevention of Occupational Accidents," Center for Building Technology, Institute for Applied Technology, National Bureau of Standards, Washington, D.C., July 1976 (NBSIR 76–1132).

6. Fattal and Cattaneo, "Investigation of Guardrails for the Protection of Employees from Occupational Hazards," Center for Building Technology, Institute for Applied Technology, National Bureau of Standards, Washington, D.C., July 1976 (NBSIR 76–1139).

7. Chaffin, Miodonski, Stobbe, Boydstun, and Armstrong, "An Ergonomic Basis for Recommendations Pertaining to Specific Sections of OSHA Standard, 29 CFR Part 1910, Subpart D—Walking and Working Surface," Department of Industrial and Operations Engineering College of Engineering, the University of Michigan, March 1978.

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed revision would not be a "major" action. The expected annualized costs of full compliance would be about $48,000.

Background

Under Executive Order 12291, OSHA is required, in general, to submit any Notice of Proposed Rulemaking (NPRM) for "all rules other than major rules" to the Director of the Office of Management and Budget (OMB) at least 10 days prior to publication in the **Federal Register**.

In light of the data currently available to OSHA, the economic impact estimates presented in this preamble are rough estimates which are likely to be refined as OSHA receives additional information.

OSHA solicits further comments on the estimates presented in this preamble and those comments will be addressed and incorporated in the Regulatory Impact Assessment (RIA) for the final rule.

Data Sources

The primary source for this section is the November 1985, Draft Final Report by CONSAD Research Corporation entitled, "Data to Support a Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing." In addition, OSHA also used an October 1984 report by Main Hurdman/KMG entitled, "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and shipbreaking industries would be affected by the proposed consolidation of the scaffold sections of the existing Part 1915, Subpart E, and the existing Part 1910, Subpart D, because scaffolds are used extensively in all shipyards. In recent years, shipyards have not prospered as an industry. By way of illustration, there were about 305 shipyards operating in 1986 which is fewer than half of the 687 shipyards active in 1982. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but no new orders for merchant vessels since 1985. Although this loss of business has been partially offset by the increase in the U.S. Navy's demands for ships, the decline in the demand for commercial ships will likely generate a further decline in the number of active shipyards.

Population-at-Risk

OSHA has estimated that approximately 13 percent of shipyard employees frequently work on scaffolds. The actual number of these employees will depend upon the level of shipyard work. For example, shipyards employed 177,300 workers in 1980 and about 136,300 workers in 1986. Thus, the number of workers at risk from injuries associated with work on scaffolds would have been about 23,000 in 1980 and about 17,700 in 1986. Consequently, given the potential for large changes in the demand for this industry's product, OSHA has estimated that the population-at-risk would be between 17,700 and 23,000 employees.

Risk of Fatality or Injury

OSHA has estimated that the annual number of injuries in shipyards due to falls from scaffolds was between 240 and 385 between 1981 and 1986. Of these injuries, 120 to 220 were lost workday injuries. As the average number of lost workdays per lost workday injury was 31.8, OSHA has estimated that the annual number of lost workdays in shipyards due to falls from scaffolds would be between 3,815 days and 6,995 days.

In addition, OSHA has determined that there would be between one and two annual fatalities in shipyards associated with falls from scaffolds.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would permit the use of existing and readily available technology and equipment.

There are two potential sources of benefits from this proposed standard. The first source is the benefits that would accrue to those workers who are at risk from current practices involving scaffolds in shipyards. OSHA believes that the proposed consolidation of Parts 1910 and 1915 would likely lead to an increase in future compliance levels because consolidating two sets of scaffold requirements into one set would clarify the rules. In addition, the proposal substitutes performance language for much of the existing specification language. Consequently, it could make compliance less costly, while maintaining employee safety. Thus, the proposed consolidation may lead to an increase in compliance which, in turn, may lead to an increase in employee safety on scaffolds.

The second source is the benefits and decreased costs that should accrue to those employers who would be allowed to use certain safety systems and equipment that are not allowed by the existing specification requirements but would provide the same level of employee safety as that generated by the specifications. The use of these systems and equipment would allow employers to provide the necessary level of safety to their employees at less cost than is possible under the existing standards.

OSHA does not have any quantitative estimates of these potential benefits and is requesting information and comments on this issue. As this is a Preliminary

Regulatory Impact Assessment (PRIA), all comments will be carefully analyzed by OSHA for incorporation into the RIA for the final rule.

The basis of the estimated costs of compliance with the proposed standard is the CONSAD Report. In order to obtain this information, CONSAD circulated copies of the draft proposed standards to the two major industry trade associations and to individual shipbuilders. CONSAD then employed telephone questionnaires and site visits to elicit information concerning the potential economic impact of the provisions contained in the draft proposed consolidated standard. The information was used by CONSAD to develop its estimates of the costs of compliance and those costs have been adopted by OSHA as the expected costs of compliance with the proposed standards.

Based on the CONSAD report, OSHA has determined that there are three provisions that would generate costs of compliance. The first provision would require that the front edge of all scaffold platforms be no more than 14 inches from the face of the vessel or structure unless guardrails or body belt systems are used. This provision would require an increased use of body belts for employees working on hulls or other curved sections of structures. The second provision would prohibit the use of ladders on top of scaffolds. This provision would require that some additional scaffold be erected to reach a higher level rather than using a ladder to reach the desired height. The third provision would prohibit workers from riding on mobile scaffolds unless the surface on which the scaffold is moving is level and free of pits, holes, and obstructions. This provision would involve some productivity losses because the employee would have to descend from the mobile scaffold before it could be moved.

Using the baseline of existing industry practice, OSHA has estimated the annualized costs of compliance with the proposed consolidation to be about $48,000 for those three provisions. Nevertheless, as previously mentioned, this is a preliminary RIA and OSHA invites public comment concerning this estimate. Any comment received will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant Secretary has preliminarily certified that the proposal would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this certification.

The important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standard would impose significant costs upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entity's financial viability. In particular, the proposed standard's effect upon small entities relative to that upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposal would have a relatively greater negative effect on small entities than on large entities, thereby putting small entities at a competitive disadvantage.

The proposed standard, however, has no changes that would require significant capital expenditures. Furthermore, as these proposed provisions are more performance-oriented than specification-oriented, small entities can use cost-effective methods of employee protection best suited to their particular work situations. The costs of compliance with the proposed standard primarily depend upon the amount of scaffold footage and upon the number of employees, both of which typically depend upon the size of the firm. There are, however, some economies of scale in compliance and the costs of compliance expressed as a percentage of total revenues would be slightly larger for very small firms (fewer than 50 employees) than for very large firms (greater than 1,000 employees). Nevertheless, these compliance costs would be a minimal component of the overall cost of the shipyard production. As a result, this proposed standard would not put small entities at a competitive disadvantage relative to large entities.

Thus, OSHA has concluded that this proposed standard would not have a significant adverse impact upon a substantial number of small entities.

The assessment is available for inspection and copying at the OSHA Technical Data Center, Room N–3670, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in both the Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification.

V. Environment Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions focus on the reduction of accidents or injuries by means of work practices and procedures, proper use and handling of equipment. The proposal also contains language, definition, and format changes. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. Therefore, these revisions are categorized as excluded actions according to Subpart B, Section 11.10, of the DOL NEPA regulations.

VI. Recordkeeping

This proposal contains no recordkeeping requirements.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Office, Docket S–047, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSHA Act (29 U.S.C. 655) and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing request should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections and hearing requests must include the name, and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by February 27, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken or about which the hearing request is made, and must state the grounds therefor;

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4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person requests a public hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan States

The 25 States and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective as" the revised Federal standard. Currently, five States (California, Minnesota, Oregon, Vermont and Washington) with their own State plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA States and in the following State plan States and territories: Alaska, Arizona, Connecticut [1], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York,[1] North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All States with State plans must also extend coverage to State and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Guardrail systems, Marine safety, Occupational safety and health, Safety, Ship repair, Shipyard employment, Vessels.

[1] Plan covers only State and local government employees.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Worker's Compensation Act, as amended (33 U.S.C. 941), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1915 as set forth below.

Signed at Washington, DC, this 17th day of November, 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1915—[AMENDED]

1. The authority citation for Part 1915 would continue to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. 29 CFR Part 1915 would be amended by adding a new Subpart N to read as follows:

Subpart N—Scaffolds

Sec.

1915.251 Scope, application and definitions applicable to this subpart.
1915.252 General requirements.
1915.253 Additional requirements applicable to specific types of scaffolds.
Appendix A to Subpart N—Scaffold Specifications

Subpart N—Scaffolds

§ 1915.251 Scope, application and definitions applicable to this subpart

(a) *Scope and application.* (1) This subpart applies to all scaffolds used in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking), but does not apply to construction operations in shipyards covered under 29 CFR Part 1926.

(2) The provisions of 29 CFR 1910.28 and 1910.29 do not apply to shipyard workplaces and operations.

(b) *Definitions.* "Adjustable suspension scaffold" means a suspension scaffold equipped with hoists that can be operated by employees on the scaffold.

"Bearer" means a horizontal transverse scaffold member (which may be supported by ledgers or runners) upon which the scaffold platform rests and which joins scaffold uprights, posts, poles, and similar members.

"Boatswain's chair" means a single point adjustable suspension scaffold consisting of a seat or sling designed to accommodate one employee in a sitting position.

"Body belt (safety belt)" means a strap with means for securing about the waist or body and for attaching to a lanyard, lifeline, or deceleration device.

"Body belt/harness system (personal fall arrest system)" means a combination of body belt, or body harness, and lanyard, deceleration device, lifeline, and point of anchorage.

"Body harness" means a design of straps which is secured about the employee in a manner to distribute the arresting forces over at least the thighs, shoulders, and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration device.

"Brace" means a tie that holds one scaffold member in a fixed position with respect to another member. "Brace" also means a rigid type connection holding a scaffold to a vessel, vessel section, building, or structure.

"Bracket scaffold" means a supported scaffold consisting of a platform supported by brackets attached to a vessel, vessel section, building, or structural wall.

"Capable person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

"Catenary scaffold" means a suspension scaffold consisting of a platform fastened to two essentially horizontal and parallel ropes, which are secured to structural members.

"Cleat" means structural members used at the ends of platform units to prevent the units from slipping off their supports. Cleats are also used to provide footing on sloped surfaces such as crawling boards.

"Coupler" means a device for locking together the component tubes of a tube and coupler scaffold.

"Crawling board (chicken ladder)" means a supported scaffold consisting of a plank with cleats spaced and secured to provide footing, for use on sloped surfaces such as roofs.

"Deceleration device" means any mechanism, such as a rope grab, rip-stitch lanyard, specially-woven lanyard, and automatic self-retracting lifeline, which serves to dissipate more energy during a fall arrest than does a standard line or strap webbing lanyard.

"Double pole (independent pole) scaffold" means a supported scaffold consisting of platforms resting on cross beams supported by ledgers and a double row of uprights independent of support (except ties, guys, braces) from any structure.

"Dropline" means a suspended vertical line, independent of the work platform, for direct attachment to a worker's body belt, body harness, lanyard, or deceleration device.

"Equivalent" means alternative designs, materials, or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Exposed power lines" means electrical power lines which are accessible to employees and not shielded from contact. Such lines do not include extension cords or power tool cords.

"Fabricated decking and planking" means manufactured platform units made of wood (including laminated wood and solid sawn wood planks), metal or other materials.

"Fabricated frame scaffold (tubular welded frame scaffold)" means a supported or suspended scaffold consisting of a platform(s) supported on fabricated end frames with integral posts, horizontal bearers, and intermediate members.

"Failure" means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

"Float (ship) scaffold" means a suspension scaffold consisting of a braced platform resting upon two parallel bearers and hung from overhead supports by ropes of fixed length.

"Guardrail system" means a vertical barrier, normally consisting of, but not limited to, an assembly of toprails, midrails, and posts, erected to prevent employees from falling off a scaffold platform or walkway to a lower level. Type I guardrail systems are those systems capable of providing adequate fall protection without the use of body belts. Type II guardrail systems are those systems which serve as scaffold edge delineators, restrain movement, provide handholds, prevent misstepping, and which must be supplemented by body belt systems to provide adequate fall protection.

"Hoist" means a mechanical device to raise or lower a suspended scaffold. It can be either manually or mechanically power-operated.

"Horse scaffold" means a supported scaffold consisting of a platform supported by construction horses.

"Independent pole scaffold" (See "Double pole scaffold.")

"Interior hung scaffold" means a suspension scaffold consisting of a platform suspended from the ceiling, overhead, or roof structure by fixed length supports.

"Ladder jack scaffold" means a supported scaffold consisting of a platform supported by brackets attached to ladders.

"Ladder stand" means a mobile, fixed-size, self-supporting ladder consisting of a wide flat tread ladder in the form of stairs.

"Lean-to scaffold" means a supported scaffold which is kept erect by tilting it toward and resting it against a vessel, vessel section, building, or structure.

"Ledger" means a horizontal scaffold member upon which bearers rest. It is the longitudinal member which joins scaffold uprights, posts, poles, and similar members.

"Lower levels" means those areas to which an employee can fall. Such areas include ground levels, decks, flats, docks, floors, roofs, ramps, gangways grates, piers, wharves, runways, excavations, pits, tanks, materials, water, equipment, and other surfaces.

"Maximum intended load" means the total load of all employees, equipment, tools, materials, transmitted loads, wind loads, and other loads reasonably anticipated to be applied to a scaffold or scaffold component at any one time.

"Mechanically-powered hoist" means a hoist which is powered by other than human energy.

"Mobile scaffold" means a powered or unpowered, portable, caster or wheel-mounted supported scaffold. Such scaffolds do not include crane or derrick suspended personnel platforms.

"Multi-level suspended scaffold" means a two-point or multi-point adjustable suspension scaffold with a series of platforms at various levels supported by common stirrups.

"Multi-point adjustable suspension scaffold" means a suspension scaffold consisting of a platform or platforms suspended by more than two ropes from overhead supports and equipped with means to permit the raising and lowering of the platform to desired work levels.

"Needle beam scaffold" means a suspension scaffold consisting of a platform supported by needle beams.

"Open sides and ends" means the edges of a platform that are more than 14 inches (36 cm) away horizontally from a sturdy, continuous, vertical surface (such as a vessel's hull, bulkhead, or building wall) or a sturdy, continuous horizontal surface (such as a floor or deck), or a point of access.

"Outrigger" means the structural member of a supported scaffold used to increase the base width of a scaffold in order to provide greater stability for the scaffold.

"Outrigger beam" means the structural member of a suspension scaffold or outrigger scaffold which provides support for the scaffold by extending the scaffold point of attachment to a point out and away from the vessel, vessel section, building, or structure.

"Outrigger scaffold" means a supported scaffold consisting of a platform supported by outrigger beams (thrustouts) projecting beyond the wall or face of the vessel, vessel section, building, or structure, the inboard ends of which are secured inside the building or structure.

"Platform" means the horizontal working surface of a scaffold.

"Platform unit" means the individual wood planks, fabricated planks, fabricated decks, and fabricated platforms which comprise the platforms and walkways of a scaffold.

"Pole scaffold" (See definitions for "Single-pole scaffold" and "Double (independent) pole scaffold.")

"Qualified person" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve safety problems relating to the subject matter, the work, or the project.

"Runner" means the lengthwise horizontal bracing or bearing member which supports bearers on tube and coupler scaffolds.

"Scaffold" means any temporary elevated platform (supported or suspended), and its supporting structure, used for supporting employees or materials or both.

"Self-contained adjustable scaffold" means a combination supported and suspension scaffold consisting of an adjustable platform(s) mounted on an independent supporting frame(s) not a part of the object being worked on, and which is equipped with a means to permit the raising and lowering of the platform(s) to desired work levels. Such systems include rolling roof rigs and rolling outrigger systems.

"Shore scaffold" means a supported scaffold which is kept erect by placing it against a vessel, vessel section, building, or structure and holding it in place with props.

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"Single-point adjustable suspension scaffold" means a suspension scaffold consisting of a platform suspended by one rope from an overhead support and equipped with means to permit the movement of the platform to desired work levels. Such scaffolds do not include crane or derrick suspended personnel platforms.

"Single-pole scaffold" means a supported scaffold consisting of platforms resting on bearers, the outside ends of which are supported on ledgers secured to a single row of posts or uprights, and the inner ends of which are supported on or in a vessel, vessel section, building, or structure.

"Step, platform, and trestle ladder scaffold" means a supported scaffold consisting of a platform supported directly on the rungs of step ladders or trestle ladders.

"Supported scaffold" means one or more working platforms supported by outrigger beams, brackets, poles, legs, uprights, posts, frames, or similar rigid support.

"Suspension scaffold" means one or more working platforms suspended by ropes or other non-rigid means from an overhead structure(s).

"Trolley line" means means a horizontal line for direct attachment to a worker's body belt, lanyard, or deceleration device.

"Tube and coupler scaffold (independent pole metal scaffold)" means a supported or suspended scaffold consisting of platforms supported by individual pieces of tubing, erected with coupling devices connecting uprights, braces, bearers, and runners.

"Tubular welded frame scaffold" (See definition for "fabricated frame scaffold.")

"Two-point suspension scaffold (swing stage) (painters' suspended scaffolds)" means a suspension scaffold consisting of a platform supported by hangers (stirrups) suspended by two ropes from overhead supports and equipped with means to permit the raising and lowering of the platform to desired work levels.

"Unstable objects" means those items which do not properly distribute the loads imposed on them and which, therefore, do not constitute a proper base support for scaffolds, platform units, or employees. Examples of such objects include, but are not limited to, barrels, boxes, loose brick, and concrete blocks.

"Vertical pickup" means a rope used to support the horizontal rope in catenary scaffolds.

"Walkway" means a portion of a scaffold platform used only for access and not as a work level.

"Window jack scaffold" means a supported scaffold consisting of a platform supported by a bracket or jack which projects through a window opening.

"Worklevel" means an elevated platform used for supporting employees and their materials, where work activities are performed.

§ 1915.252 General requirements.

The following requirements apply to all scaffolds, except as indicated:

(a) *Capacity.* Scaffold components and connections shall have the following capacities:

(1) Each scaffold and scaffold component, except suspension ropes and guardrail systems, shall be capable of supporting, without failure, its own weight and a least four times the maximum intended load to be applied or transmitted to that component. The criteria for suspension ropes is set forth in paragraph (a)(4) of this section, and the criteria for guardrail systems is set forth in paragraph (e) of this section.

(2) Direct connections (to roofs, floors, hulls, and decks) and counterweights, used to resist the tipping forces on suspension scaffolds, shall be capable of providing a resisting force of at least four times the tipping force.

(3) Each suspension rope shall be capable of supporting, without failure, at least six times the maximum intended load applied or transmitted to that rope.

(4) Suspension ropes shall also meet the following requirements (criteria for ropes supporting boatswains' chairs are set forth in § 1915.253(k)):

(i) Ropes supporting adjustable suspension scaffolds shall be of a diameter large enough to provide sufficient surface area for the functioning of brake and hoist mechanisms;

(ii) Ropes supporting catenary scaffolds shall be equivalent in strength to at least one-half (½) inch (1.3 cm) diameter improved plow steel wire ropes;

(iii) Ropes supporting float (ship) scaffolds and needle beam scaffolds shall be equivalent in strength to at least one inch (2.5 cm) diameter first grade manila ropes.

(b) *Construction.* (1) Platforms, except those used as walkways, on all working levels on all scaffolds shall be fully planked or decked with platform units between the front uprights and the guardrail supports as follows.

(i) Platform units shall be placed as close as possible to adjacent units. Any space between adjacent units shall be no more than one inch (2.5 cm) wide except as necessary to fit around uprights when side brackets are used to extend the width of the platform.

(ii) Where full planking or decking cannot be obtained using standard width units, the platform shall be planked or decked as fully as possible; however, the remaining open space between the platform and guardrail supports shall not exceed nine and one-half inches (24.1 cm).

(2) All scaffold platforms and walkways shall be at least 18 inches (46 cm) wide except ladder jack scaffolds shall be a minimum of 12 inches (30 cm) wide, and boatswains' chairs may be any size.

(3) Emergency descent devices shall not be used as working platforms.

(4) The front edge of all platforms, except those on outrigger scaffolds, shall be positioned not more than 14 inches (36 cm) from the face of the vessel, vessel section, building, or structure being worked on, unless Type I guardrails are erected along the open edge or body belt/harness systems are used to protect employees from falling. The maximum distance for outrigger scaffolds shall be three inches (8 cm).

(5) Each end of a platform unit, unless cleated or otherwise restrained by hooks or equivalent means, shall extend over its support not less than six inches (15 cm).

(6) Each end of a platform unit shall not extend over its support more than 18 inches (46 cm), unless the unit is designed, capable, and installed to support employees without tipping or is guarded to prevent access of employees to the cantilevered end.

(7) On scaffolds where platform units are abutted to create a long platform, each abutted end shall rest on a separate support, butt plate, or equivalent means of support.

(8) On scaffolds where platform units are overlapped to create a long platform, the overlap shall occur only over supports, and shall not be less than 12 inches (30 cm) long unless the platform units are nailed together or otherwise restrained to prevent movement.

(9) At all points of a scaffold where the platform changes direction, such as turning a corner, any platform unit that rests on a bearer at an angle other than a right angle shall be laid first, and platform units which rest at right angles over the same bearer shall be laid second, on top of the first units.

(10) Wood platform units shall not be covered with opaque finishes, except that unit edges may be covered or marked for purposes of identification, and units used in reactor plants may be coated where necessary to prevent contamination. Platform units may be coated periodically with wood preservatives, fire-retardant finishes, and slip-resistant finishes; however, the coating may not obscure the top or bottom wood surfaces.

(11) Scaffold components manufactured by different manufacturers shall not be intermixed unless the component parts fit together without force. Scaffold components manufactured by different manufacturers shall not be modified in order to intermix them unless the resulting scaffold is determined by a capable person to be structurally sound.

(12) Scaffold components made of dissimilar metals shall not be used together unless a capable person has determined that galvanic action will not reduce the strength of any component to a level below that required by § 1915.252(a)(1).

(13) Supported scaffolds with a height to base width (including outrigger supports, if used) ratio of more than four to one shall be restrained from tipping by guying, tying, bracing, or equivalent means, as follows:

(i) Guys, braces, or ties shall be provided at heights not to exceed the first multiple in height of the four to one ratio and at intervals not to exceed 20 feet (6.1 m) thereafter.

(ii) Guys, ties and braces shall be installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (9.1 m) (measured from one end towards the other).

(14) Supported scaffold poles, legs, posts, frames, and uprights shall bear on base plates and mud sills or other adequate firm foundation.

(i) Such footings shall be level, sound, rigid, and capable of supporting the scaffold in a loaded condition without settling or displacement.

(ii) Unstable objects shall not be used to support scaffolds or platform units.

(iii) Unstable objects shall not be used as working platforms.

(15) Supported scaffold poles, legs, posts, frames, and uprights shall be plumb and braced to prevent swaying and displacement.

(16) All suspension scaffold support devices such as outrigger beams, cornice hooks, parapet clamps, and similar devices, shall rest on surfaces capable of supporting the reaction forces imposed by the scaffold hoist operating at its maximum rated load.

(17) Suspension scaffold outrigger beams, when used, shall be made of structural metal and shall be restrained to prevent movement.

(18) The inboard ends of suspension scaffold outrigger beams shall be stabilized by bolts or other direct connections to the floor, roof, or deck, or they shall have their inboard ends stabilized by counterweights.

(i) Before use, direct connections shall be evaluated by a capable person who shall certify, based on the evaluation, that the supporting surfaces are capable of supporting the loads to be imposed.

(ii) Counterweights shall be made of non-flowable solid material.

(iii) Counterweights shall be secured by mechanical means to the outrigger beams.

(iv) Counterweights shall be removed from a scaffold until the scaffold is disassembled.

(v) Outrigger beams shall be secured by tiebacks equivalent in strength to the suspension ropes.

(vi) Tiebacks shall be secured to a structurally sound portion of the vessel, vessel section, building, or structure.

(vii) Tiebacks shall be installed parallel to the centerline of the beam.

(19) Suspension scaffold outrigger beams shall be:

(i) Provided with stop bolts or shackles at both ends;

(ii) Securely fastened together with the flanges turned out when channel iron beams are used in place of I-beams;

(iii) Installed with all bearing supports perpendicular to the beam center line;

(iv) Set and maintained with the web in a vertical position; and

(v) Where a single outrigger beam is used, the steel shackles or clevices with which the wire ropes are attached to the outrigger beams, shall be placed directly over the hoisting machines.

(20) Suspension scafford support devices such as cornice hooks, roof hooks, roof irons, parapet clamps, or similar devices shall be:

(i) Made of mild steel, wrought iron, or materials of equivalent strength;

(ii) Supported by bearing blocks; and

(iii) Secured against movement by tiebacks installed at right angles to the face of the building, structure, vessel, or vessel section, whenever possible, and secured to a structurally sound portion of the building, structure, vessel, or vessel section.

(iv) Tiebacks shall be equivalent in strength to the hoisting rope.

(21) When winding drum hoists are used on a suspension scaffold, they shall contain not less than four wraps of the suspension rope at the lowest point of scaffold travel. When other types of hoists are used, the suspension ropes shall be of such length that the scaffold can be lowered to the level below without the rope end passing through the hoist, or the rope end shall be configured or provided with means to prevent the end from passing through the hoist.

(22) The use of repaired wire rope as suspension rope is prohibited.

(23) Wire suspension ropes shall not be joined together except by eyesplicing with shackles or coverplates and bolts.

(24) The load end of wire suspension ropes shall be equipped with proper size thimbles and secured by eyesplicing or equivalent means.

(25) Defective or damaged ropes shall not be used as suspension ropes or drop lines.

(26) Swaged attachments or spliced eyes on wire suspension ropes shall not be used unless they are made by the wire rope manufacturer or a qualified person.

(27) When wire rope clips are used on suspension scaffolds, they shall be retightened after initial loading and shall be inspected and retightened periodically thereafter.

(28) Suspension scaffold mechanically-powered hoists and manually-powered hoists shall be of a type tested and listed by a nationally recognized testing laboratory.

(29) Gasoline-powered hoists shall not be used on suspension scaffolds.

(30) Gears and brakes of mechanically-power-operated hoists used on suspension scaffolds shall be enclosed.

(31) In addition to the normal operating brake, suspension scaffold hoists shall have a braking device or locking pawl which engages automatically when the normal speed of descent of the hoist is exceeded.

(32) Manually-powered hoists shall not be capable of lowering scaffold platforms without a positive crank force.

(c) *Access.* This paragraph (c) does not apply to employees performing scaffold erection and dismantling operations.

(1) Access to and between scaffold platforms more than two feet (0.6 m) above or below the point of access shall be by portable ladders, hook-on ladders, attachable ladders, Jacob's ladders, stairway-type ladders (such as ladder stands), ramps, gangways, runways, integral prefabricated scafford rungs, or equivalent means, or by direct access from another scaffold, structure, personnel hoist, or similar surface. Crossbraces shall not be used as a means of access.

(2) Portable, hook-on, attachable ladders:

(Additional requirements for the proper construction and use of portable ladders are contained in 29 CFR Part 1915, Subpart E—Access and Egress.)

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(i) Portable, hook-on, and attachable ladders shall be positioned so as not to tip the scaffold;

(ii) Portable, hook-on, and attachable ladders shall be positioned such that employees do not have to step more than one foot (31 cm) from the ladder to any intermediate landing or platform.

(iii) Hook-on and attachable ladders shall be positioned such that their bottom rung is not more than 24 inches (61 cm) above the scaffold supporting level;

(iv) Hook-on and attachable ladders shall be provided with rest platforms at 20 foot (6.0 m) maximum vertical intervals;

(v) Hook-on and attachable ladders shall be specifically designed for use with the manufactured types of scaffolds to be used;

(vi) Hook-on and attachable ladders shall have a minimum rung length of 11½ inches (29 cm); and

(vii) Hook-on and attachable ladders shall have a maximum spacing between rungs of 12 inches (30 cm).

(3) Stairway-type ladders shall:

(i) Be positioned such that their bottom step is not more than 24 inches (61 cm) above the scaffold supporting level;

(ii) Be provided with rest platforms at 12 foot (3.7 m) maximum vertical intervals;

(iii) Have a minimum step length of 16 inches (41 cm);

(iv) Have slip-resistant treads on all steps and landings; and

(v) Have stairrails and handrails which meet the requirements of § 1915.85(c).

(4) Ramps, runways, and gangways shall have guardrails which meet the requirements of §1915.203.

(5) Integral prefabricated scaffold rungs shall:

(i) Be specifically designed and constructed for use as ladder rungs;

(ii) Have a minimum rung length of 11½ inches (29 cm);

(iii) Be uniformly spaced within each frame section;

(iv) Be provided with rest platforms at 20 foot (6.0 m) maximum vertical intervals; and

(v) Have a maximum spacing between rungs of 16½ inches (42 cm), however, non-uniform rung spacing caused by joining end frames together is allowed, provided the resulting spacing does not exceed 16½ inches (42 cm).

(6) All steps and rungs shall line up vertically with each other between rest platforms.

(7) Direct access to or from another surface shall be used only when the scaffold is not more than 14 inches (36 cm) horizontally and not more than 24 inches (61 cm) vertically from the other surface.

(d) *Use.* (1) Scaffolds and scaffold components shall not be loaded in excess of their maximum intended loads or rated capacities.

(2) The use of shore or lean-to scaffolds is prohibited.

(3) Supported scaffolds and scaffold components shall be inspected for visible defects periodically and after any occurrence which could affect a scaffold's structural integrity. Suspension scaffolds and scaffold components shall be inspected for visible defects immediately after installation prior to their first use; periodically thereafter (preferably before each use); and after any occurrence which could affect a scaffold's structural integrity.

(4) Any part of a scaffold damaged or weakened such that a capable person determines its strength is reduced to less than that required by § 1915.252(a)(1) shall be immediately braced to meet that provision, or be removed from service until repaired.

(5) Scaffolds shall not be moved while employees are on them, except that mobile scaffolds may be moved if the provisions of § 1915.253(s) are followed.

(6) Scaffolds shall not be erected, used, or moved closer to exposed and energized power lines than as follows:

(i) For all lines of more than 50 kv,. minimum clearance between the lines and all parts of the scaffold shall be 10 feet (3.1 m) plus 0.4 inch (1 cm) for each 1 kv over 50 kv, or twice the length of the line insulator, whichever is less, but never less than 10 feet (3.1 m);

(ii) For all insulated lines between 300 volts and 50 kv, the minimum clearance between the lines and all parts of the scaffold shall be 10 feet (3.1 m);

(iii) For all insulated lines of less than 300 volts, the minimum clearance between the lines and all parts of the scaffold shall be two feet (0.6 m);

(iv) For all lines of any voltage which are uninsulated, the minimum clearance between the lines and all parts of the scaffold shall be: 10 feet (3.1 m) for lines of 50 kv and less; and for lines more than 50 kv, 10 feet (3.1 m) plus 0.4 inch (1 cm) for each 1 kv over 50 kv, or twice the length of the line insulator, whichever is less, but never less than 10 feet (3.1 m).

(7) Scaffolds shall not be erected, moved, dismantled, or altered except under the supervision of a capable person.

(8) Employees shall be prohibited from working on scaffolds covered with snow, ice, or other slippery material except as necessary for removal of such material.

(9) Where swinging loads are being hoisted onto or near scaffolds such that loads could contact the scaffold, tag lines or equivalent measures to stabilize the loads shall be utilized.

(10) Suspension ropes shall be shielded when a heat-producing process is performed. When acids or other corrosive substances are used on a scaffold, the ropes shall be shielded, treated to protect against the corrosive substances, or shall be of a material which is not adversely affected by the substance being used.

(11) Work on or from scaffolds is prohibited during storms or when wind speeds at the level of work exceed 40 mph (64 km/hour), unless employees are protected by a body belt/harness system or wind screen. Wind screens shall not be used unless the scaffold is secured against the forces imposed.

(12) Debris shall not be allowed to accumulate on platforms.

(13) Ladders and makeshift devices shall not be used on top of scaffold platforms to increase the working level height of employees.

(14) Platform units shall not deflect more than 1/60 of the span when loaded.

(e) *Fall protection.* (1) Employees (except those erecting or dismantling scaffolds) shall be protected from falling to lower levels by the use of body belt/harness systems or Type I guardrail systems, in the following circumstances: when they are on scaffolds which are above water; when they are on scaffolds which are on vessels or vessel sections, and more than five feet (1.5 m) above lower levels; when they are on scaffolds which are located immediately adjacent to vessels, and more than five feet (1.5 m) above lower levels; and when they are on scaffolds which are located in any other area and more than 10 feet (3.1 m) above lower levels, except levels as follows:

(i) Employees on boatswains' chairs, catenary scaffolds, float scaffolds, needle beam scaffolds, and ladder jack scaffolds shall be protected by body belt/harness systems;

(ii) Employees on single-point adjustable suspension scaffolds and on two-point adjustable suspension scaffolds shall be protected by body belt/harness systems and Type I or Type II guardrail systems;

(iii) Employees on crawling boards (chicken ladders) shall be protected by body belt/harness systems, Type I guardrail systems, or by a three-fourth inch diameter grabline or equivalent handhold securely fastened beside each crawling board;

(iv) Employees on self-contained adjustable scaffolds shall be protected by Type I guardrail systems when the platform is supported by the frame structure, and by body belt/harness systems and Type I guardrail systems when the platform is supported by ropes;

(v) Employees on walkways located within a scaffold shall be protected by a Type I guardrail system installed within eight inches of and along at least one side of the walkway.

(vi) Guardrail systems required by the above provisions may have rails omitted where the vessel, vessel section, building, or structure prevents their use. However, when rails are omitted, employees working above lower levels, shall be protected by body belt/harness systems, and employees working over water shall be protected by body belt/harness systems and personal flotation devices.

(2) Employees on suspended scaffolds which are attached to a vessel and triced out of a vertical line below the scaffold supports, and employees on scaffolds which are on floats subject to surging, shall be protected against falling toward the vessel by a Type I guardrail system attached on the vessel side of the platform, or they shall be protected by a body belt/harness system attached to a Type I guardrail system installed along the side of the platform which is away from the vessel.

(3) Body belt/harnesses shall be attached by lanyard to a dropline, trolley line, or scaffold structural member. However, when overhead obstructions such as overhead protection or additional platform levels are part of a single-point or two-point adjustable suspension scaffold, then droplines shall not be used.

(i) Droplines, when used, shall be fastened to a fixed safe point of anchorage, shall be independent of the scaffold, and shall be protected from sharp edges and abrasion.

(ii) Trolley lines, when used, shall be secured to two or more structural members of the scaffold, and shall not be attached to the suspension ropes.

(iii) When lanyards are connected to trolley lines or structural members on a single-point or two-point adjustable suspension scaffold, the scaffold shall be equipped with additional independent support lines and automatic locking devices capable of stopping the fall of the scaffold in the event one or both of the suspension ropes fail. The independent support lines shall be equal in number and strength to the suspension ropes.

(iv) Droplines, independent support lines, and suspension ropes shall not be attached to each other, nor shall they be attached to or use the same point of anchorage. Safe points of anchorage include structural members of vessels, vessel sections, buildings, and structures, but do not include standpipes, vents, other piping systems, electrical conduit, outrigger beams, nor counterweights.

(4) Guardrail systems installed to meet the requirements of this section shall comply with the following provisions:

(i) Guardrail systems shall be installed along all open sides and ends of platforms. See paragraph (e)(2) of this section for protection along the vessel side of scaffolds.

(ii) The top edge height of toprails or equivalent member shall be installed between 38 inches (1.0 m) and 45 inches (1.2 m) above the platform surface for Type I guardrail systems, and between 36 inches (0.9 m) and 45 inches (1.2 m) above the platform surface for Type II guardrail systems.

(iii) Midrails, screens, mesh, intermediate vertical members, solid panels, or equivalent structural members shall be installed between the top edge of the guardrail system and the scaffold platform.

(iv) Midrails, when used, shall be installed at a height midway between the top edge of the guardrail system and the platform surface.

(v) Screens and mesh, when used, shall extend from the top edge of the guardrail system to the scaffold platform, and along the entire opening between the supports.

(vi) Intermediate vertical members (such as balusters), when used, shall be not more than 19 inches (48 cm) apart.

(vii) Toprails or equivalent members shall be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along their top edge of at least 200 pounds (890 n) for Type I guardrail systems, and at least 100 pounds (445 n) for Type II guardrail systems.

(viii) When the loads specified in paragraph (e)(4)(vii) of this section are applied in a downward direction, the top edge shall not deflect to a height less than 38 inches (1.0 m) above the platform surface for Type I guardrail systems, and 36 inches (0.9 m) for Type II guardrail systems.

(ix) Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members shall be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along the midrail, or other member, of at least 150 pounds (666 n) for Type I guardrail systems, and at least 75 pounds (333 n) for Type II guardrail systems.

(x) Suspension scaffold hoists and non-walk through stirrups are acceptable as end guardrails, provided that the space between the hoist or stirrup and the side guardrail or structure does not allow passage of employees to the end of the scaffold.

(xi) Toprails and midrails shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing which could cause an employee to fall.

(xii) The ends of all rails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard to employees.

(xiii) Steel or plastic banding shall not be used as a toprail or midrail.

(f) *Falling object protection.* (1) In addition to wearing hardhats, employees on scaffolds shall be protected as necessary from falling objects by toeboards, screens, or guardrail systems erected to prevent objects from falling from higher levels, or they shall be protected by a canopy structure erected to deflect falling objects. The criteria for falling object protection are set forth in § 1915.203(d).

(2) Canopies, when used, shall be installed between the falling object hazard and the employees.

(3) When canopies are used on suspension scaffolds, the scaffolds shall be equipped with additional independent support lines equal in number to the number of points supported, and equivalent in strengh to the suspension ropes.

(4) Independent support lines and suspension ropes used on scaffolds with overhead protection shall not be attached to the same points of anchorage.

(5) When necessary, to prevent tools and materials from falling on employees below, toeboards shall be installed on all scaffolds which are on or immediately adjacent to vessels or vessel sections. The criteria for toeboards is set forth in § 1915.203(d)

(6) Except as provided in paragraph (f)(5) of this section, toeboards shall be installed on all open sides and edges of scaffold platforms which are more than 10 feet above lower levels except those which are wholly within the interior of a building and covering the entire floor area of any room therein and not having any side exposed to a hoistway, elevator shaft, stairwell, or other floor opening. The criteria for toeboards is set forth in § 1915.203(d).

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§ 1915.253 Additional requirements applicable to specific types of scaffolds.

The following requirements apply to the specific types of scaffolds as indicated, in addition to the general requirements of § 1915.252.

(a) *Pole scaffolds.* (1) When platforms are being moved to the next level, the existing platform and ledgers shall be left undisturbed until the new bearers have been set in place and braced prior to receiving the new platform units.

(2) Crossbracing shall be installed between the inner and outer sets of poles on double pole scaffolds.

(3) Diagonal bracing in both directions shall be installed across the entire inside face of double pole scaffolds.

(4) Diagonal bracing in both directions shall be installed across the entire outside face of all double- and single-pole scaffolds.

(5) Ledgers and bearers shall be installed on edge.

(6) Bearers shall extend a minimum of three inches (7.6 cm) over the outside edges of ledgers.

(7) Ledgers shall extend over a minimum of two poles, and shall be supported by bearing blocks securely attached to the poles.

(8) Braces, bearers, and ledgers shall not be spliced between poles.

(9) Where wood poles are spliced, the ends shall be squared and the upper section shall rest squarely on the lower section. Wood splice plates shall be provided on at least two adjacent sides and shall be not less than four feet (1.2 m) in length, overlap and abutted ends equally, and have at least the same cross-sectional areas as the pole. Splice plates of other materials of equivalent strength may be used.

(10) Scaffolds and scaffold components shall either be built and loaded in accordance with Appendix A, or shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(11) Wood pole scaffolds shall not be erected beyond the reach of firefighting equipment.

(b) *Tube and coupler scaffolds.* (1) When platforms are being moved to the next level, the existing platform shall be left undisturbed until the new bearers have been set in place and braced prior to receiving the new platform units.

(2) Transverse bracing across the width of the scaffold shall be installed at the scaffold ends and at least at every third set of posts. Such bracing shall be installed for each section of six levels between the fourth and sixth levels, and shall extend diagonally from the inner or outer posts or runners at the bottom of the fourth level, upward to the inner or outer posts or runners at the bottom of the fifth level, and similarly to the sixth level.

(3) Longitudinal bracing across the inner and outer rows of posts shall be installed diagonally in both directions, and shall extend from the base of the end posts upward to the top of the scaffold at approximately a 45-degree angle. On scaffolds whose length is greater than their height, such bracing shall be repeated beginning at least at every fifth post. On scaffolds whose length is shorter than their height, such bracing shall be installed from the base of the end posts upward to the opposite end posts, and then in alternating directions until reaching the top of the scaffold.

(4) Where conditions preclude the attachment of bracing to posts, bracing shall be attached to the runners.

(5) Bearers shall be installed transversely between each set of posts, at each level, and at each intermediate level where platforms are installed.

(6) Bearers, when coupled to posts, shall have the inboard coupler bear directly on the runner coupler. When the bearers are coupled to runners, the couplers shall be as close to the post as possible.

(7) Bearers shall extend beyond the posts and runners, and shall provide full contact with the coupler.

(8) Runners shall be installed along the length of the scaffold, located on both the inside and outside posts at level heights (when tube and coupler guardrails and midrails are used on outside posts they may be used in lieu of outside runners).

(9) Runners shall be interlocked on straight runs to form continuous lengths and shall be coupled to each post. The bottom runners shall be located as close to the base as possible.

(10) Couplers shall be of a structural metal, such as a drop-forged steel, malleable iron, or structural grade aluminum. The use of gray cast iron is prohibited.

(11) Scaffolds and scaffold components shall either be built and loaded in accordance with Appendix A, or shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(c) *Fabricated frame scaffolds.* (1) When moving platforms to the next level, the existing platform shall be left undisturbed until the new frames have been set in place and braced prior to receiving the new platform units.

(2) Frames and panels shall be braced by cross, horizontal, or diagonal braces, or combination thereof, to secure vertical members together laterally. The cross braces shall be of such length as will automatically square and align vertical members so that the erected scaffold is always plumb, level, and square. All brace connections shall be made secure.

(3) Frames and panels shall be joined together vertically by coupling or stacking pins or equivalent means.

(4) Where uplift can occur which would displace scaffold end frames or panels, the frames or panels shall be locked together vertically by pins or equivalent means.

(5) Brackets used to support cantilevered loads shall be seated with side-brackets parallel to the frames, and end-brackets at 90 degrees to the frames. Brackets shall not be bent or twisted from these positions.

(6) Scaffolds over 125 feet (38.0 m) in height above their base plates shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(d) *Horse scaffolds.* (1) Scaffolds shall not be constructed or arranged more than two tiers or 10 feet (3.0 m) in height, whichever is less.

(2) When arranged in tiers, each horse shall be placed directly over the horse in the tier below.

(3) When arranged in tiers, the legs of each horse shall be nailed down or otherwise secured to prevent displacement.

(4) When arranged in tiers, each tier shall be crossbraced.

(e) *Bracket scaffolds.* (1) Each bracket shall be attached to the supporting vessel, vessel section, building, or structure by means of one or more of the following: nails; a metal stud attachment device; welding; hooking over a secured structural supporting member, or by a bolt extending through to the opposite side of the supporting wall.

(2) Folding type metal brackets, when extended for use, shall be either bolted or secured with a locking-type pin.

(f) *Outrigger scaffolds.* (1) The inboard end of outrigger beams, measured from the fulcrum point to the extreme point of anchorage, shall be not less than one and one-half times the outboard end in length.

(2) Outrigger beams shall rest on edge, the sides shall be plumb, and the edges shall be horizontal.

(3) The fulcrum point of outrigger beams shall rest on secure bearings at least six inches (15.2 cm) in each horizontal dimension.

(4) Outrigger beams shall be secured in place against movement and shall be securly braced at the fulcrum point against tipping.

(5) The inboard ends of outrigger beams shall be securely anchored either by means of braced struts bearing against sills in contact with the overhead or ceiling beams, or by means of tension members secured to the floor joists or deck underfoot, or by both.

(6) The entire supporting structure shall be securely braced to prevent any horizontal movement.

(7) To prevent displacement, platform units shall be nailed, bolted, or otherwise secured to outriggers.

(8) Scaffolds and scaffold components shall either be built and loaded in accordance with Appendix A, or shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(g) *Ladder jack scaffolds.* (1) Platforms shall not exceed a height of 20 feet (6.1 m).

(2) All ladders used to support ladder jack scaffolds shall meet the requirements of § 1915.86, except that job-made ladders shall not be used to support ladder jack scaffolds.

(3) The ladder jack shall be so designed and constructed that it will bear either on the side rails and ladder rungs or on the ladder rungs alone. If bearing on rungs only, the bearing area shall be at least 10 inches (25.4 cm) on each rung.

(4) Ladders used to support ladder jacks shall be placed, fastened, or equipped with devices to prevent slipping.

(5) Scaffold platforms shall not be bridged one to another.

(h) *Window jack scaffolds.* (1) Scaffolds shall be securely attached to the window opening.

(2) Scaffolds shall be used only for the purpose of working at the window opening through which the jack is placed.

(3) Window jacks shall not be used to support planks placed between one window jack and another, or for other elements of scaffolding.

(i) *Crawling boards (chicken ladders).* (1) Crawling boards shall extend from the roof peak to the eaves when used for maintenance.

(2) Crawling boards shall be secured to the roof by ridge hooks or equivalent means.

(j) *Step, platform, and trestle ladder scaffolds.* (1) Scaffold platforms shall not be placed any higher than the second highest rung or step of the ladder supporting the platform.

(2) All ladders used in conjunction with step, platform and trestle ladder scaffolds shall meet the requirements of § 1915.85, except that job-made ladders shall not be used to support such scaffolds.

(3) Ladders used to support step, platform, and trestle ladder scaffolds shall be placed, fastened, or equipped with devices to prevent slipping.

(4) Scaffolds shall not be bridged one to another.

(5) A spreader or locking device shall be used to hold the front and back sections in an open position, and to hold the extension section securely in the elevated position.

(k) *Single-point adjustable suspension scaffolds.* (1) When two single-point adjustable suspension scaffolds are combined to form a two-point adjustable suspension scaffold, the resulting scaffold shall meet the requirements for two-point adjustable suspension scaffolds.

(2) Except as provided herein, the supporting rope shall be vertical between the scaffold and the suspension device. The scaffold shall not be swayed nor the rope fixed to any intermediate point(s) to change the direction of the rope. When the scaffold is on the outside of a dome-type of slanted structure, intermediate supports may be used to change the direction of the rope from a verticle direction. Such supports shall be designed and installed to prevent chafing of the rope.

(3) Boatswains' chairs tackle shall be correct size ball bearing or bushed blocks, and properly "eye" spliced minimum five-eighth (⅝) inch (1.6 cm) diameter first grade manila rope, or equivalent.

(4) Boatswains' chairs seat slings shall be reeved through four corner holes in the seat; shall cross each other on the underside of the seat; and shall be rigged so as to prevent slippage which could cause an out-of-level condition.

(5) Boatswains' chairs seat slings shall be a minimum of five-eighth (⅝) inch (1.6 cm) diameter fiber or synthetic rope or equivalent, except as provided in paragraph (k)(6) below.

(6) When a heat-producing process such as gas or arc welding is being conducted, boatswains' chairs seat slings shall be a minimum of three-eighth (⅜) inch (1.0 cm) wire rope.

(7) Non-cross-laminated wood boatswains' chairs shall be reinforced on their underside by cleats securely fastened to prevent the board from splitting.

(l) *Two-point adjustable suspension scaffolds (swing stages).* (1) Platforms shall not be more than 36 inches (0.9 m) wide unless designed by a qualified person to prevent unstable conditions.

(2) The platform shall be securely fastened to hangers (stirrups) by U-bolts or equivalent means.

(3) The blocks for fiber or synthetic ropes shall consist of at least one double and one single block. The sheaves of all blocks shall fit the size of the rope used.

(4) Platforms shall be ladder-type, plank-type, or beam-type.

(5) Scaffolds shall be tied or otherwise secured to prevent them from swaying. Window cleaners' anchors shall not be used for this purpose.

(6) Two-point scaffolds designed for use as two-point scaffolds shall not be bridged or otherwise connected one to another during raising and lowering operations. Two-point scaffolds designed for use in multi-point scaffolds may be bridged one to another if the bridge connections are articulated, and the hoists properly sized.

(7) Passage may be made from one platform to another only when the platforms are at the same height, are abutting closely, and walk-through stirrups specifically designed for this purpose are used.

(m) *Multi-point adjustable suspension scaffolds.* (1) When two or more scaffolds are used they shall not be bridged one to another unless they are designed to be bridged, the bridge connections are articulated, and the hoists are properly sized.

(2) If bridges are not used, passage may be made from one platform to another only when the platforms are at the same height and are abutting closely.

(3) Scaffolds shall be suspended from metal outriggers, iron brackets, wire rope slings, iron hooks, or equivalent means.

(n) *Catenary scaffolds.* (1) No more than one platform shall be placed between consecutive veritical pickups, and no more than two platforms shall be used on a catenary scaffold.

(2) Platforms supported by wire ropes shall have hook-shaped stops on each end of the platforms to prevent them from slipping off the wire ropes. These hooks shall be so placed that they will prevent the platform from falling if one of the horizontal wire ropes breaks.

(3) Wire ropes shall not be tightened to the extent that the application of a scaffold load will overstress them.

(4) Wire ropes shall be continuous and without splices between anchors.

(o) *Float (ship) scaffolds.* (1) The platform shall be supported by a minimum of two bearers, each of which shall project a minimum of six inches (15.2 cm) beyond the platform on both sides. Each bearer shall be securely fastened to the platform.

(2) Rope connections shall be such that the platform cannot shift or slip.

(3) When only two ropes are used with each float:

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(i) They shall be arranged so as to provide four ends which are to be securely fastened to overhead supports.

(ii) Each supporting rope shall be hitched around one end of the bearer and pass under the platform to the other end of the bearer where it is hitched again, leaving sufficient rope at each end for the supporting ties.

(p) *Interior hung scaffolds.* (1) Scaffolds shall be suspended only from the roof structure, or other structural members such as a ship's overhead, or a building's ceiling beams.

(2) Overhead supporting members (overhead, roof structure, ceiling beams, or other structural members) shall be inspected and checked for strength before the scaffold is erected.

(3) Suspension ropes and cable shall be connected to the overhead supporting members by shackles, clips, thimbles, or equivalent means.

(q) *Needle beam scaffolds.* (1) Scaffold support beams shall be installed on edge.

(2) Ropes or hangers shall be used for supports, except that one end of a needle beam scaffold may be supported by a permanent structural member.

(3) The ropes shall be securely attached to the needle beams.

(4) The support connection shall be arranged so as to prevent the needle beam from rolling or otherwise becoming displaced.

(5) Platform units shall be securely attached to the needle beams by bolts or equivalent means. Cleats and overhang are not adequate means of attachment.

(r) *Multi-level suspended scaffolds.* (1) Scaffolds shall be equipped with additional independent support lines, equal in number to the number of points supported, and equivalent in strength to the strength of the suspension ropes, and rigged to support the scaffold in the event the suspension rope(s) fail.

(2) Independent support lines and suspension ropes shall not be attached to the same points of anchorage.

(3) Supports for platforms shall be attached directly to the support stirrup and not to any other platform.

(s) *Mobile scaffolds.* (1) Scaffolds shall be braced by cross, horizontal, or diagonal braces, or combination thereof, to prevent collapse of the scaffold and to secure vertical members together laterally so as to automatically square and align the vertical members. Scaffolds shall be plumb, level, and squared. All brace connections shall be secured.

(i) Scaffolds constructed of tube and coupler components shall also conform to the requirements of § 1915.253(b);

(ii) Scaffolds constructed of fabricated frame components shall also conform to the requirements of § 1915.253(c).

(2) Scaffold casters and wheels shall be locked with positive wheel and/or wheel and swivel locks, or equivalent means, to prevent movement of the scaffold while the scaffold is used in a stationary manner.

(3) The force used to move the scaffold shall be applied as close to the base as practicable, but not more than five feet (1.5 m) above the supporting surface.

(4) Power systems used to propel mobile scaffolds shall be designed for such use. Forklifts, trucks, or similar motor vehicles shall not be used to propel scaffolds unless the scaffold is designed for such propulsion systems.

(5) Scaffolds shall be stabilized to prevent tipping during movement.

(6) Employees shall not be allowed to ride on scaffolds unless the following conditions exist:

(i) The surface on which the scaffold is being moved shall be within three degrees of level, and free of pits, holes, and obstructions;

(ii) The maximum height to base width ratio of the scaffold during movement shall be two to one or less. Outrigger frames may be included as part of the base width dimension;

(iii) Outrigger frames, when used, shall be installed on both sides of the scaffold;

(iv) When power systems are used, the propelling force shall be applied directly to the wheels, and shall not produce a speed in excess of one and one-fourth mph (2.0 kph), and

(v) The employees are not on any part of the scaffold which extends outward beyond the wheels, casters, or other supports.

(7) Platforms shall not extend outward past the base supports of the scaffold unless outrigger frames or equivalent devices are used to ensure stability.

(8) Where leveling of the scaffold is necessary, screw jacks or equivalent means shall be used.

(9) Caster stems and wheel stems shall be pinned or otherwise secured in scaffold legs.

(t) *Crane or derrick suspended personnel platforms.* (1) Lifting bridles on platforms suspended from cranes or derricks shall consist of four legs so attached that the stability of the platform is assured.

(2) Unless the crane or derrick hook has a safety latch or is moused, the lifting bridles on platforms suspended from cranes or derricks shall be attached by shackles to the lower lifting block or other positive means shall be taken to prevent them from becoming accidentally disengaged from the hook.

Appendix A to Subpart N—Scaffold Specifications

This Appendix serves as a non-mandatory guideline to assist employers in complying with the requirements of Subpart N. An employer may use those guidelines and tables as a starting point for designing scaffold systems. However, the guidelines and tables do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling these components in such a way that the completed system will meet the requirements of paragraph § 1915.252(a). Scaffold components which are not designed and loaded in accordance with this Appendix, and components for which no specific guidelines or tables are given in the following Appendix (e.g., joints, ties, components for wood pole scaffolds more than 60 feet in height, components for heavy-duty horse scaffolds, components made with other materials, components with other dimensions, etc.), must be designed and constructed in accordance with the capacity requirements of paragraph § 1915.252(a), and loaded in accordance with paragraph § 1915.252(d)(1).

Index to Appendix A for Subpart N

1. *General Guidelines and Tables*

2. Specific Guidelines and Tables

(a) Pole scaffolds: Single pole woodfolds
(i) Crawling boards (chicken ladders)
(j) Step, platform, and trestle ladder scaffolds
(k) Single-point adjustable suspension scaffolds
(l) Two-point adjustable suspension scaffolds
(m) Multi-point adjustable suspension scaffolds
(n) Catenary scaffolds
(o) Float (ship) scaffolds
(p) Interior hung scaffolds
(q) Needle beam scaffolds

1. *General guidelines and tables.* (a) The following tables, and the tables in Part B—Specific guidelines and tables, are based on all load-carrying timber members of the scaffold being a minimum of 1,500 psi fiber stress in bending (stress grade) construction grade lumber. All dimensions are nominal sizes as provided in the American Softwood Lumber Standards, dated January 1970, except that where rough sizes are noted, only rough or undressed lumber of the size specified will satisfy minimum requirements.

(b) All wood planking shall be selected for scaffold plank use as recognized by grading rules established by a recognized independent inspection agency for the species of wood used. The maximum permissible spans for 2 x 10 inch (nominal) or 2 x 9 inch (rough) solid sawn wood planks shall be as shown in the following Table A–1:

TABLE A–1

Maximum intended load (lb/ft²)	Maximum permissible span using full thickness undressed lumber (ft)	Maximum permissible span using nominal thickness lumber (ft)
25	10	8
50	8	6
75	6	

The maximum permissible span for 1¼ x 9-inch or wider wood plank of full thickness with a maximum intended load of 50 lb/ft² shall be four feet.

(c) Fabricated planks and platforms may be used in lieu of solid sawn wood planks. Maximum spans for such units shall be as recommended by the manufacturer based on the maximum intended load being calculated as follows:

Rated load capacity	Intended load
Light-duty	• 25 pounds per square foot applied uniformly over the entire span area.
Medium-duty	• 50 pounds per square foot applied uniformly over the entire span area.
Heavy-duty	• 75 pounds per square foot applied uniformly over the entire span area.
One-person	• 250 pounds placed at the center of the span (total 250 pounds).
Two-person	• 250 pounds placed 18 inches to the left and right of the center of the span (total 500 pounds).
Three-person	• 250 pounds placed at the center of the span and 250 pounds placed 18 inches to the left and right of the center of the span (total 750 pounds).

Note.—Platform units used to make scaffold platforms intended for light-duty use shall be capable of supporting at least 25 pounds per square foot applied uniformly over the entire unit-span area, or a 250-pound point load placed on the unit at the center of the span, whichever load produces the greater shear force.

(d) Guardrails shall be as follows:

(i) Toprails shall be equivalent in strength to 2 inch by 4 inch lumber;
1¼ inch x ⅛ inch structural angle iron;
1 inch x .070 inch wall steel tubing; or
1.990 inch x .058 inch wall aluminum tubing.

(ii) Midrails shall be equivalent in strength to 1 inch by 6 inch lumber;
1¼ inch x 1¼ inch x ⅛ inch structural angle iron;
1 inch x. .070 inch wall steel tubing; or
1.990 inch x. .058 inch wall aluminum tubing.

(iii) Toeboards shall be equivalent in strength to 1 inch by 4 inch lumber;
1¼ inch x 1¼ inch structural angle iron;
1 inch x .070 inch wall steel tubing; or
1.990 inch x .058 inch wall aluminum tubing.

(iv) Posts shall be equivalent in strength to 2 inch by 4 inch lumber;
1-¼ inch x 1-¼ inch x ⅛ inch structural angle iron;
1 inch x .070 inch wall steel tubing; or
1.990 inch x .058 inch wall aluminum tubing.

(v) Distance between posts shall not exceed 8 feet.

(e) Overhead protection shall consist of 2 inch nominal planking laid tight, or ¾-inch plywood.

(f) Screen installed between toeboards and midrails or toprails shall consist of No. 18 gauge U.S. Standard wire one inch mesh.

2. *Specific guidelines and tables*—(a) *Pole scaffolds.*

TABLE A–2.—MINIMUM DIMENSIONS FOR SINGLE POLE WOOD POLE SCAFFOLDS

	Light duty up to 20 ft high	Light duty up to 60 ft high	Medium duty up to 60 ft high	Heavy duty up to 60 ft high
Maximum intended load	25 lbs/ft²	25 lbs/ft²	50 lbs/ft²	75 lbs/ft².
Poles or uprights	2 × 4 in	4 × 4 in	4 × 4 in	4 × 6 in.
Maximum pole spacing (longitudinal)	6 ft	10 ft	8 ft	6 ft.
Maximum pole spacing (transverse)	5 ft	5 ft	5 ft	5 ft.
Ledgers (transverse)	1 × 4 in	1¼ × 9 in	2 × 10 in	2 × 10 in.
Bearers and maximum spacing of bearers:				
3 ft	2 × 4 in	2 × 4 in	2 × 10 in or 3 × 4 in	2 × 10 in or 3 × 5 in.
5 ft	2 × 6 in or 3 × 4 in	2 × 6 in or 3 × 4 in (rough)	2 × 10 in or 3 × 4 in	2 × 10 in or 3 × 5 in.
6 ft			2 × 10 in or 3 × 4 in	2 × 10 in or 3 × 5 in.
8 ft			2 × 10 in or 3 × 4 in	
Planking	1¼ × 9 in.	2 × 10 in	2 × 10 in	2 × 10 n.
Maximum vertical spacing of horizontal members.	7 ft	9 ft	7 ft	6 ft 6 in.
Bracing-horizontal	1 × 4 in	1 × 4 in	1 × 6 in or 1¼ × 4 in	2 × 4 in.
Bracing-diagonal	1 × 4 in	1 × 4 in	1 × 4 in	2 × 4 in.
Tie-ins	1 × 4 in	1 × 4 in	1 × 4 in	1 × 4 in.

Note.—All members except planking are used on edge. All wood bearers shall be reinforced with 3/16 × 2 in steel strip, or the equivalent, secured to the lower edges for the entire length of the bearer.

TABLE A–3.—MINIMUM DIMENSIONS FOR INDEPENDENT WOOD POLE SCAFFOLDS

	Light duty up to 20 ft high	Light duty up ot 60 ft high	Medium duty up to 60 ft high	Heavy duty up to 60 ft high
Maximum intended load	25 lbs/ft²	25 lbs/ft²	50 lbs/ft²	75 lbs/ft².
Poles or uprights	2 x 4 in	4 x 4 in	4 x 4 in	4 x 4 in.
Maximum pole spacing (longitudinal)	6 ft	10 ft	8 ft	6 ft.
Maximum (transverse)	6 ft	10 ft	8 ft	6 ft.
Ledgers	1¼ x 4 in	1¼ x 9 in	2 x 10 in	2 x 10 in.
Bearers and maximum spacing of bearers:				
3 ft	2 x 4 in	2 x 4 in	2 x 10 in	2 x 10 in (rough).

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TABLE A–3.—MINIMUM DIMENSIONS FOR INDEPENDENT WOOD POLE SCAFFOLDS—Continued

	Light duty up to 20 ft high	Light duty up ot 60 ft high	Medium duty up to 60 ft high	Heavy duty up to 60 ft high
6 ft	2 x 6 in or 3 x 4 in	2 x 10 in (rough) or 3 x 8 in	2 x 10 in	2 x 10 in (rough).
8 ft	2 x 6 in or 3 x 4 in	2 x 10 in (rough) or 3 x 8 in	2 x 10 in	—
10 ft	2 x 6 in or 3 x 4 in	2 x 10 in (rough) 3 x 3 in	—	—
Planking	1¼ x 9 in	2 x 10 in	2 x 10 in	2 x 10 in.
Maximum vertical spacing of horizontal members.	7 ft	7 ft	6 ft	6 ft.
Bracing-horizontal	1 x 4 in	1 x 4 in	1 x 6 in or 1¼ x 4 in	2 x 4 in.
Bracing-diagonal	1 x 4 in	1 x 4 in	1 x 4 in	2 x 4 in.
Die-ins	1 x 4 in	1 x 4 in	1 x 4 in	1 x 4 in.

Note.—All members except planking are used on edge. All wood bearers shall be reinforced with 3/16 x 2 in steel strip, or the equivalent, secured to the lower edges for the entire length of the bearer.

(b) *Tube and coupler scaffolds.*

TABLE A–4.—MINIMUM DIMENSIONS FOR TUBE AND COUPLER SCAFFOLDS

	Light duty	Medium duty	Heavy duty
Maximum intended load	25 lbs/ft.	50 lbs/ft [2].	75 lbs/ft [2].
Posts, runners and braces	Nominal 2 in (1.90 in) OD steel tube or pipe.	Nominal 2 in (1.90 in) OD steel tube or pipe.	Nominal 2 in (1.90 in) OD steel tube or pipe.
Bearers	Nominal 2 in (1.90 in) OD steel tube or pipe and a maximum post spacing of 6 ft by 10 ft [1].	Nominal 2 in (1.90 in) OD steel tube or pipe and a maximum post spacing of 5 ft by 8 ft [1]. or Nominal 2½ in (2.375 in) OD steel tube or pipe and a maximum post spacing of 6 ft by 8 ft [1].	Nominal 2½ in (2.375 in) OD steel tube or pipe and a maximum post spacing of 6 ft by 6 ft.
Maximum runner spacing vertically	6 ft 6 in	6 ft 6 in	6 ft 6 in.

[1] Bearers shall be installed in the direction of the shorter dimension.

Note.—Longitudinal diagonal bracing shall be installed at an angle of 45° (± 5°).

TABLE A–5.—MAXIMUM NUMBER OF PLANKED LEVELS FOR TUBE AND COUPLER SCAFFOLDS

	Maximum number of additional planked levels			Maximum height of scaffold
	Light duty	Medium duty	Heavy duty	
Number of Working Levels:				
1	16	11	6	125 ft.
2	11	1	0	
3	6	0	0	
4	1	0	0	

(c) *Fabricated frame scaffolds.* Because of their prefabricated nature, no specific guidelines or tables are given.

(d) *Horse scaffolds.*

TABLE A–6.—MINIMUM DIMENSION FOR HORSE SCAFFOLDS

Maximum intended load (light duty).	25 lb/ft [2, 1]
Maximum intended load (medium duty).	50 lb/ft [2, 1]
Horizontal members or bearers:	
Light duty	2 x 4 in.
Medium duty	3 x 4 in.
Legs	2 x 4 in.
Longitudinal brace between legs	1 x 6 in.

TABLE A–6.—MINIMUM DIMENSION FOR HORSE SCAFFOLDS—Continued

Gusset brace at top of legs	1 x 8 in.
Half diagonal braces	2 x 4 in.

[1] Horses shall be spaced not more than eight feet apart for light duty loads, and not more than five feet apart for medium duty loads.

(e) *Bracket scaffolds.* (1) Brackets shall consist of a triangular-shaped frame made of wood with a cross-section not less than 2 inches by 3 inches, or of 1¼ inch x 1¼ inch x ⅛ inch structural angle iron.

(2) Bolts used to attach brackets shall not be less than five-eighth inch in diameter.

(3) Maximum bracket spacing shall be eight feet on centers.

(4) No more than two employers shall occupy any given eight feet of a bracket scaffold at any one time. Tools and materials shall not exceed 75 pounds in addition to the occupancy.

TABLE A–7.—MINIMUM DIMENSIONS FOR WOODEN FIGURE-FOUR SCAFFOLDS

Maximum intended load	25 pounds/square foot.
Uprights	2 x 4 in. or 2 x 6 in.

TABLE A–7.—MINIMUM DIMENSIONS FOR WOODEN FIGURE-FOUR SCAFFOLDS—Continued

Bearers (two)	1 x 6 in.
Braces	1 x 6 in.
Maximum length of bearers.	3 x 6 in. (unsupported)

Outrigger bearers for wooden figure-four scaffolds shall consist of two pieces of 1 x 6 inch lumber nailed on opposite sides of the vertical support.

Bearers for wooden figure-four scaffolds shall project not more than three feet six inches from the outside of the support, and shall be braced and secured to prevent tipping or turning. The knee or angle brace shall intersect the bearer at least three feet from the form at an angle of approximately 45 degrees, and the lower end shall be nailed to a vertical support.

TABLE A–8.—MINIMUM DIMENSIONS FOR METAL BRACKET SCAFFOLDS

Maximum intended load	25 pounds/square foot.
Uprights	2 x 4 in.
Bearers	As designed.

TABLE A–8.—MINIMUM DIMENSIONS FOR METAL BRACKET SCAFFOLDS—Continued

Braces	As designed.

TABLE A–9.—MINIMUM DIMENSIONS FOR WOOD BRACKLET SCAFFOLDS

Maximum intended load	25 pounds/square foot.
Uprights	2 x 4 in or 2 x 6 in.
Bearers	2 x 6 in.
Maximum scaffold width	1 x 6 in.
Braces	1 x 6 in.

(f) *Outrigger scaffolds (single level).* Outrigger beams shall extend not more than six feet beyond the face of the building.

TABLE A–10.—MINIMUM DIMENSIONS FOR OUTRIGGER SCAFFOLDS

	Light duty	Medium duty
Maximum intended load.	25 lb/ft [2]	50 lb/ft [2].
Outrigger size	2 x 10 in	3 x 10 in.
Maximum outrigger spacing.	10 ft	6 ft.

(g) *Ladder jack scaffolds.* Maximum intended load—25 lb/ft [2]. However, not more than two employees shall occupy any platform at any one time. Maximum span between supports shall be eight feet.

(h) *Window jack scaffolds.* Not more than one employee shall occupy a window jack scaffold at any one time.

(i) *Crawling boards (chicken ladders).* Crawling boards shall be not less than 10 inches wide and one inch thick, with cleats having a minimum 1 x 1½ inch cross-sectional area. The cleats shall be equal in length to the width of the board and spaced at equal intervals not to exceed 24 inches.

(j) *Step, platform, and trestle ladder scaffolds.* (1) The minimum dimensions of the side rails of the trestle ladder, or the base sections of the extension trestle ladder, shall be as follows:

(i) Ladders up to and including those 10 feet long shall have side rails of not less than 1⅝ x 2¾ inch lumber.

(ii) Ladders over 10 feet long and up to and including those 20 feet long shall have side rails of not less than 1⅝ x 3 inch lumber.

(2) The side rails of the extension section of the extension trestle ladder shall be parallel and shall have minimum dimensions as follows:

(i) Ladders up to and including 12 feet long shall have side rails of not less than 1⅝ x 2¼ inch lumber.

(ii) Ladders over 12 feet long and up to and including those 16 feet long shall have side rails of not less than 1⅝ x 2½ inch lumber.

(iii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than 1⅝ x 2¾ inch lumber.

(3) Trestle ladders and base sections of extension trestle ladders shall be so spread that when in an open position the spread of the trestle at the bottom, inside to inside, shall be not less than five and one-half inches per foot of the length of the ladder.

(k) *Single-point adjustable suspension scaffolds.* Maximum intended load—250 lbs.

Wood seats for boatswains' chairs shall be not less than one inch thick if made of non-laminated wood, or five-eighth inch thick if made of marine quality plywood.

(l) *Two-point adjustable suspension scaffolds.* (1) In addition to direct connections to vessels, vessel sections, buildings (except window cleaners' anchors), and structures, acceptable ways to prevent scaffold sway include angulated roping and static lines. Angulated roping is a system of platform suspension in which the upper wire rope sheaves or suspension points are closer to the vertical plane of the vessel or building than the corresponding attachment points on the platform, thus causing the platform to press against the side of the vessel or face of the building. Static lines are separate ropes secured at their top and bottom ends closer to the vertical plane of the vessel or building than the outermost edge of the platform. By drawing the static line taut, the platform is drawn against the side of the vessel or face of the building.

(2) On suspension scaffolds designed for a working load of 500 pounds, no more than two employees shall be permitted on the scaffold at one time. On suspension scaffolds with a working load of 750 pounds, no more than three employees shall be permitted on the scaffold at one time.

(3) Ladder-type platforms. The side stringer shall be of clear straight-grained spruce. The rungs shall be of straight-grained oak, ash, or hickory, at least one and one-eighth inches in diameter, with seven-eighth inch tenons mortised into the side stringers at least seven-eighth inch. The stringers shall be tied together with tie rods not less than one-fourth inch in diameter, passing through the stringers and riveted up tight against washers on both ends. The flooring strips shall be spaced not more than five-eighth inch apart, except at the side rails where the space may be one inch. Ladder-type platforms shall be constructed in accordance with the following table:

TABLE A–11.—MINIMUM DIMENSIONS FOR LADDER-TYPE PLATFORMS

Length of platform	12 ft	14 & 16 ft	18 & 20 ft.
Side stringers, minimum cross section finished sizes:			
At ends	1¾ x 2¾ in	1¾ x 2¾ in	1¾ x 3 in.
At middle	1¾ x 3¼ in	1¾ x 3¾ in	1¾ x 4 in.
Reinforcing strip (minimum)	A ⅛ x ⅞ inch steel reinforcing strip shall be attached to the side or underside, full length.		
Rungs	Rungs shall be 1⅛ inch minimum diameter with at least ⅞ inch in diameter tenons, and the maximum spacing shall be 12 inches to center.		
Tie rods:			
Number (minimum)	3	4	4.
Diameter (minimum)	¼ in	¼ in	¼ in.
Flooring, minimum finished size	⅛ in x 2¾ in	½ x 2¾ in	½ x 2¾.

TABLE A–12.—MINIMUM DIMENSIONS FOR LADDER-TYPE PLATFORMS

Length of platform	22 and 24 ft	28 and 30 ft.
Side stringers, minimum cross section (finished sizes):		
At ends	1¾ in x 3 in	1¾ x 3½.
At middle	1¾ x 4¼ in	1¾ x 5 in.
Reinforcing strip (minimum)	A ⅛ x ⅞-inch steel reinforcing strip shall be attached to the side or underside, full length.	
Rungs	Rungs shall be 1⅛-inch minimum diameter with at least ⅞ inch in diameter tenons, and the maximum spacing shall be 12 inches to center.	
Tie rods:		
Number (minimum)	5	6.
Diameter (minimum)	¼ in	¼ in.
Flooring, minimum finished size	⅛ x 2¾ in	⅛ x 2¾ in.

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(4) Plank-Type Platforms. Plank-type platforms shall be composed of not less than nominal 2 x 8 inch unspliced planks, connected together on the underside with cleats at intervals not exceeding four feet, starting six inches from each end. A bar or other effective means shall be securely fastened to the platform at each end to prevent the platform from slipping off the hanger. The span between hangers for plank-type platforms shall not exceed 10 feet.

(5) Beam-Type Platforms. Beam platforms shall have side stringers of lumber not less than 2 x 6 inches set on edge. The span between hangers shall not exceed 12 feet when beam platforms are used. The flooring shall be supported on 2 x 6 inch cross beams, laid flat and set into the upper edge of the stringers with a snug fit, at intervals of not more than four feet, securely nailed in place. The flooring shall be of 1 x 6 inch material nailed to the cross beams. Floor-boards shall not be spaced more than one-half inch apart.

(m) *Multi-point adjustable suspension scaffolds.* No specific guidelines or tables are given for these scaffolds.

(n) *Catenary scaffolds.* (1) Maximum intended load—500 lbs.

(2) Not more than two employees shall be permitted on the scaffold at one time.

(3) Maximum capacity of comealong shall be 2,000 lbs.

(4) Vertical pickups shall be spaced not more than 50 feet apart.

(o) *Float (ship) scaffolds.* (1) Maximum intended load—750 lbs.

(2) Platforms shall be made of three-fourth inch plywood, equivalent in rating to American Plywood Association Grade B–B, Group I, Exterior.

(3) Bearers shall be made from 2 x 4 inch, or 1 x 10 inch rough lumber. They shall be free of knots and other flaws.

(p) *Interior hung scaffolds.*

TABLE A–13—MINIMUM DIMENSIONS FOR INTERIOR HUNG SCAFFOLDS

Bearers (use on edge)	2 x 10 in.
Maximum intended load	Maximum span.
25 lb/ft²	10 ft.
50 lb/ft²	10 ft.
75 lb/ft²	7 ft.

[FR Doc. 88–27003 Filed 11–28–88; 8:45 am]
BILLING CODE 4510–29–M

federal register

Tuesday
November 29, 1988

Part III

Environmental Protection Agency

40 CFR Part 300

Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3355-5]

Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"), 40 CFR Part 300, by adding a new § 300.440. The proposed rule implements the requirements of section 121(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. 9601 *et seq.*, and includes certain additional requirements that EPA finds to be appropriate under that section. CERCLA section 121(d)(3) describes procedures that must be observed when a response action under CERCLA involves off-site management of CERCLA wastes resulting from CERCLA decision documents signed after the enactment of SARA (i.e., after October 17, 1986). This proposed rule also reinterprets and codifies the original May 1985 off-site policy (published in the **Federal Register** on November 5, 1985 at 50 FR 45933–45937), as it applies to off-site management of CERCLA wastes resulting from CERCLA decision documents signed before the enactment of SARA.

DATES: Comments must be submitted on or before January 13, 1989.

ADDRESS: Comments may be mailed to Susan Bromm, Acting Director, RCRA Enforcement Division, Office of Waste Programs Enforcement (WH–527), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Nancy Browne, RCRA Enforcement Division, Office of Waste Programs Enforcement (WH–527), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Phone (202) 475–9326, or the RCRA Hotline (800) 424–9346 (or 382–3000 in the Washington, DC, metropolitan area).

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I. Authority

Sections 104(c)(3), 104(d)(1), 105, and 121(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9604(c)(3), 9605, 9621(d)(3)); section 311(c)(2) of the Clean Water Act (33 U.S.C. 1321(c)(2); Executive Order 12580 (52 FR 2923, January 29, 1987); and Executive Order 11735 (38 FR 21243, August 1973).

II. Introduction

Today's proposed rule would amend the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, by adding a new § 300.440.

The purpose of this off-site regulation is to avoid having wastes from CERCLA-authorized or -funded response actions contribute to present or future environmental problems by directing these wastes to management units determined to be environmentally sound. Congress and EPA have always believed that a CERCLA cleanup should be more than a relocation of environmental problems, and have attempted to ensure the proper treatment and disposal of hazardous substances removed from a CERCLA site.

Today's proposed rule implements the requirements of section 121(d)(3) of CERCLA, which provides that in the case of any CERCLA response action involving the transfer of any hazardous substance, pollutant, or contaminant off-site, that waste may only be placed in a facility that is in compliance with RCRA (or other Federal law) and applicable State requirements. CERCLA requires that for "land disposal facilities," there may be no transfer of wastes to a unit with releases, and any releases at other units must be controlled. These statutory requirements apply only to CERCLA cleanup actions originating after the date of enactment of SARA.

These requirements are integral components of the "selection of remedial action" provision in CERCLA section 121, and their proper application is necessary to ensure that response actions selected are protective of human health and the environment (consistent with CERCLA section 121(b)(1), and more generally, with section 104(a)(1)).

Although CERCLA section 121(d)(3) applies compliance criteria to all facilities, it applies "release" criteria only to land disposal facilities. EPA believes, as a matter of policy, that some release criteria should also be applied to all facilities that receive wastes from CERCLA-authorized or -funded response actions, including RCRA treatment, storage, and permit-by-rule facilities, and any non-RCRA Subtitle C facilities (such as facilities permitted to receive wastes under the Toxic Substances Control Act (TSCA)). The Agency believes that such a step will further the protection of human health and the environment, and the development of a sound and consistent public policy; it would also serve to further the goals reflected in CERCLA section 121(d)(3).

Similarly, although section 121(d)(3) applies to wastes from post-SARA cleanup actions only, EPA believes that it is logical and appropriate to apply compliance and release criteria to wastes resulting from two additional categories of similar cleanup actions:

those authorized under CERCLA before the enactment of SARA, and those performed under the National Contingency Plan pursuant to section 311 of the Clean Water Act (for non-petroleum products). Accordingly, this proposed rule applies to a number of situations in addition to those expressly set out in section 121(d)(3) of CERCLA.

The revised off-site policy of November 13, 1987 (OSWER Directive #9834.11), will remain in effect during the pendency of this proposal, but it will be superseded by the off-site rule when finally issued.

Today's proposed rule establishes the criteria and procedures for determining whether facilities are acceptable for the off-site receipt of waste from CERCLA-authorized or -funded response actions and outlines the wastes and actions affected by the criteria. It establishes compliance criteria and release criteria and discusses the differences in applicability of these criteria to facilities receiving wastes from pre-SARA or post-SARA actions. The proposed rule also establishes a process for determining whether facilities are acceptable based on the compliance and release criteria.

The proposed rule establishes procedures for notification of unacceptability, appeals of unacceptability determinations, and re-evaluation of unacceptability determinations. Under the rule, the policy of applying off-site requirements to actions taken under section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*) (RCRA) would be stopped.

The off-site regulation should help prevent the aggravation of conditions at problem sites and reduce the Government's and the Superfund's potential liability by establishing criteria governing the off-site transfer of waste from CERCLA-authorized or -funded response actions. The rule should also help to ensure that off-site transfer decisions are made in an environmentally sensible manner, consistent with sound public policy and business practices.

III. Background

From the beginning of the CERCLA program, Congress has mandated that Superfund wastes be treated, stored, and disposed of in an environmentally sound manner. Section 104(c)(3) of the original Superfund legislation (CERCLA, December 1980) required States to ensure the availability of a hazardous waste disposal facility in compliance with RCRA Subtitle C for receipt of waste from Fund-financed remedial actions.

In January 1983, EPA issued "Guidance on the Requirements for Selecting an Off-Site Option in a Superfund Response Action". This first guidance on the off-site transfer of CERCLA wastes required that a facility be inspected and that all major violations at the facility be corrected in order for the facility to be acceptable for the receipt of CERCLA wastes from remedial or removal actions.

EPA's May 1985 "Procedures for Planning and Implementing Off-Site Response Actions" (50 FR 45933) ("off-site policy") detailed the criteria for evaluating the acceptability of facilities to receive Superfund wastes. These criteria required that the facility have a RCRA permit or RCRA interim status, as well as receive a compliance inspection not more than six months prior to receiving CERCLA waste. The policy also required significant violations or other environmental conditions to be addressed through appropriate enforcement actions. The off-site policy further required that land disposal units accepting CERCLA waste be in compliance with the minimum technology requirements of RCRA section 3004(o). The policy finally required that all RCRA manifest requirements and PCB disposal requirements must be followed when applicable. In addition to detailing these evaluation criteria, the off-site policy also extended coverage under the policy to include enforcement actions under CERCLA section 106 and RCRA section 7003 as well as Superfund removal actions.

The National Contingency Plan (NCP), revised in November 1985 (40 CFR Part 300), incorporated requirements for off-site receipt of CERCLA waste. The NCP, at 40 CFR 300.68(a)(3), required that facilities have permits, or other appropriate authorization to operate, in order to be acceptable for receiving off-site CERCLA waste.

The 1986 Superfund Amendments and Reauthorization Act (SARA) reaffirmed the rationale embodied in CERCLA section 104(c)(3) and the May 1985 off-site policy. Section 121(d)(3) of CERCLA, as added by SARA, explicitly provides that in the case of any CERCLA "removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant off-site," such transfer shall only be to a facility operating in compliance with the Solid Waste Disposal Act (as amended by RCRA and the Hazardous and Solid Waste Amendments (HSWA)), the Toxic Substances Control Act (TSCA), or other Federal law, and all applicable State requirements. The section also requires that receiving units at land disposal facilities have no releases of hazardous wastes or hazardous constituents and that any releases from other units at a land disposal facility be controlled by a RCRA corrective action program.

Finally, EPA issued revised procedures for implementing off-site response actions on November 13, 1987, as a memorandum from J. Winston Porter, Assistant Administrator for Solid Waste and Emergency Response, to the EPA Regional Administrators (OSWER Directive No. 9834.11) (the "revised off-site policy"). These procedures, which were effective immediately, implemented the SARA requirements, updated the 1985 off-site policy, and provided detailed procedures for issuing and reviewing unacceptability determinations.

The requirements set out in CERCLA section 121(d)(3) (and incorporated in the November 1987 revised off-site policy) prescribe a higher standard of care for the management of hazardous substances from CERCLA-funded or -authorized cleanups than for the management of waste from other sources. First, section 121(d)(3) directs EPA to send wastes from CERCLA cleanups only to those facilities operating "in compliance" with RCRA and other applicable laws, whereas private generators may send wastes to facilities that have some regulatory violations (unless the violations are so serious that the facility is stopped from operating). Second, by prohibiting disposal in units at a land disposal facility with releases (a release itself is generally not a violation of RCRA), SARA went beyond requirements applicable to commercial generators and beyond the May 1985 policy, which required compliance with RCRA and other applicable laws but allowed the Agency to continue to send CERCLA wastes to a facility with releases if the Agency judged that the releases did not constitute environmental conditions that affected the satisfactory operation of the facility.

Congressional intent to establish more stringent requirements for CERCLA wastes is seen in a 1985 report of the House Committee on Energy and Commerce on a predecessor bill to SARA:

> The transfer of wastes removed from Superfund sites to operating landfills which are also leaking toxics into the environment is a problem that continues to plague the Superfund program * * * In an effort to address this serious problem, the bill would prohibit the transfer of Superfund wastes to

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RCRA facilities which are not operating in compliance with the requirements of sections 3004 and 3005 of that Act.

Unfortunately, this relatively simple legal prohibition does not resolve the problem of transferring Superfund wastes to leaking landfills because the RCRA program involves a two-stage process for the regulation and permitting of operating hazardous waste disposal facilities. First, the owners and operators of such facilities were granted "interim status" under the law without demonstrating that they have effectively prevented any leakage, or contamination, of the environment. Only in the second stage of the program—which EPA does not intend to fully implement until the end of the decade—will the owners and operators of such facilities be given final permits that require them to guarantee that their facilities are not leaking toxic substances into groundwater, surface water, soil or air.

Because it is not a violation of RCRA Interim status requirements to operate with significant leakage problems, many facilities are experiencing such problems. The bill prohibits the transfer of Superfund wastes to facilities which are already releasing hazardous wastes into groundwater. [H. Rept. 253, 99th Cong., 1st sess. at 279 (1985).]

Today's proposed rule implements and codifies the requirements contained in CERCLA section 121(d)(3), as well as those in the revised off-site policy memorandum.

IV. Scope and Applicability

A. Wastes Affected

This proposed rule applies to the off-site treatment, storage or disposal of all waste from CERCLA-authorized or -funded response actions. Cercla wastes include RCRA hazardous wastes and all other CERCLA hazardous substances, pollutants and contaminants. RCRA hazardous wastes are either listed or defined by their characteristics at 40 CFR Part 261; CERCLA hazardous substances are defined in section 101(14) of CERCLA and at 40 CFR 300.6; and CERCLA pollutants and contaminants are defined in section 101(33) of CERCLA and at 40 CFR 300.6.

1. Waste Samples

The transfer of samples to an off-site laboratory for characterization is not subject to this rule. However, the subsequent transfer of the waste samples is subject to the requirements of this rule. EPA believes that this limited exemption is appropriate because: in general, the samples used for characterization are small; laboratories are intended for analysis, not for treatment, storage or disposal; rapid sample characterization is critical to prompt site evaluation and response; and the ultimate treatment, storage or disposal of the waste samples will occur at facilities determined to be acceptable under this rule.

B. Actions Affected

EPA interprets CERCLA section 121(d)(3) as expressing Congress' intent that wastes cleaned up pursuant to the response authorities of CERCLA (or with financing from CERCLA's "Superfund") should be sent only to the most environmentally sound facilities in order to guarantee that the response actions chosen are fully protective of human health and the environment and do not create new environmental problems. EPA believes these goals are also important for CERCLA response actions outside the scope of section 121(d)(3); thus the proposed rule would apply to all removal or remedial actions involving the off-site transfer of any hazardous substance, pollutant or contaminant that were financed in whole or in part by CERCLA's Superfund or were taken pursuant to CERCLA response authorities (whether initiated before or after the enactment of SARA), including those actions taken jointly under CERCLA and another authority. The rule does apply to cleanups at Federal facilities under section 120 of CERCLA. In addition, as a matter of policy, the proposed rule would apply to those removal or remedial actions involving the off-site transfer of CERCLA hazardous substances pursuant to section 311 of the Clean Water Act (33 U.S.C. 1321). The extension of this rule to CWA actions is consistent with the NCP (*see* 40 CFR 300.4) and with EPA's responsibility to ensure that its response actions (including the choice of an off-site treatment, storage or disposal facility) are protective of health and the environment (CERCLA section 104(a)(1)). CWA response actions are like any other removal or remedial action covered by this rule, and wastes from such actions (except oil) will be subject to the requirements of this rule in the same manner as any CERCLA waste, including the differing requirements for wastes from pre- and post-SARA decision documents.

The proposed rule would not apply to State-lead enforcement actions (even at National Priorities List (NPL) sites) if no CERCLA funds or authorities are involved. The proposed rule does apply to State-lead enforcement actions where EPA provides any site-specific funding through a Cooperative Agreement or Multi-Site Cooperative Agreement, even though the State may be using its own enforcement authorities to compel the cleanup. Similarly, non-NPL sites are covered by this proposed rule where there is an expenditure of CERCLA money or where the cleanup is undertaken under CERCLA authority.

In cases of removal actions under CERCLA, enforcement actions taken as removal actions, or response actions under section 311 of the Clean Water Act, where allowing the source of a release or threat of a release to remain in an area of public access will result in an immediate and significant threat, the On-Scene Coordinator (OSC) may determine that it is imperative to remove the substances immediately and that there is insufficient time to observe these procedures without endangering public health, welfare or the environment. In such cases, the OSC may consider temporary measures (e.g., interim storage) to allow time to locate an acceptable facility. Where these attempts fail, the OSC should choose the action that best protects human health and the environment. This exemption for emergency removal actions was expressly discussed in the Conference Report on SARA (H. Rept. 962, 99th Cong., 2d sess. at 248 (1986)).

C. Pre-SARA vs. Post-SARA Actions

Prior to the enactment of SARA, EPA considered a number of factors concerning the condition and operation of off-site facilities before sending wastes from CERCLA-funded or -authorized cleanups to such sites; these factors were set out in the May 1985 off-site policy. In passing SARA in 1986, Congress reaffirmed the rationale of this policy by establishing specific criteria (CERCLA section 121(d)(3)) for certain off-site transfers of CERCLA cleanup wastes. However, it specified in section 121(b)(1) of SARA that the new criteria would apply only to response actions initiated *after* the date of enactment of SARA, leaving in place the May 1985 criteria for wastes from pre-SARA actions. Although section 121(d)(3) does impose criteria on future cleanup actions that are stricter than those previously imposed, the failure to apply such criteria to pre-SARA actions indicates a judgement that the prior off-site criteria provided an adequate level of protection of health and the environment, and that applying a new set of acceptability criteria to facilities already receiving CERCLA cleanup wastes would disrupt and delay on-going cleanup activities. Thus the proposed rule covers two classes of actions: those based on "pre-SARA" decision documents and those based on "post-SARA" decision documents. As already mentioned, each class is subject to slightly different procedures for off-site transfer.

Post-SARA actions result from CERCLA decision documents signed or consent decrees lodged after October 17, 1986 (post-SARA decision documents), and are subject to the requirements of SARA as interpreted by this rule.[1] Facilities receiving wastes from post-SARA actions must meet the compliance criteria described in section V.A.1. as well as the release criteria outlined in V.A.2.b.

Pre-SARA actions result from CERCLA decision documents signed or consent decrees lodged prior to October 17, 1986 (pre-SARA decision documents). These actions were subject to the May 1985 and November 1987 policies which will be superseded by this rule. Facilities receiving wastes from pre-SARA actions must meet the compliance criteria described in section V.A.1. of this preamble, but are subject to different release criteria than facilities receiving post-SARA wastes as described in section V.A.2.c.

D. RCRA Section 7003 Actions

The May 1985 off-site policy applied to actions taken under RCRA section 7003 and the revised policy issued November 13, 1987, continued to apply the off-site requirements to section 7003 actions. However, CERCLA does not require extension of the rule to these actions. After reviewing the implications of continuing to apply the off-site requirements to section 7003 actions, EPA plans to drop the requirement that the off-site criteria apply to actions taken under section 7003 for the following reasons. The original policy included wastes from section 7003 actions because at that time most section 7003 actions were taken jointly with actions under a CERCLA authority (e.g., CERCLA 106/RCRA 7003 actions) and it was appropriate to extend the policy to section 7003 actions which were essentially CERCLA actions. Use of joint RCRA/CERCLA actions involving section 7003 are no longer a common practice. Rather, EPA plans to use the section 7003 authority to promote voluntary cleanup and corrective action at sites which do not qualify for the NPL, and at facilities with RCRA permits where a major permit modification would otherwise be required. The Agency is concerned that imposing the off-site requirements on actions taken under section 7003 may act as a disincentive to parties considering voluntary cleanups under this authority.

E. States' Role

EPA is proposing that determinations of acceptability to receive an off-site transfer of CERCLA cleanup wastes be made by EPA or by the relevant State, if that State has demonstrated to EPA the capacity to make such determinations.

CERCLA section 104(d)(1)(A) provides as follows:

> A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State * * * has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(a)(8) and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State * * * to carry out such actions.

This provision provides a mechanism by which States that demonstrate adequate capability may carry out response actions authorized under CERCLA section 104. Section 104 actions include "arrang[ing] for" removal or remedial action (*see* CERCLA section 104(a)(1)), which may include the off-site determination function. In addition, the Agency believes that the determination of whether sites are acceptable to receive wastes from CERCLA funded or authorized response actions is an integral component of the selection of remedy decision, and therefore, is an integral part of the response action.[2]

EPA believes that allowing qualifying States to make the off-site determinations makes sense as a matter of policy. States often have the most direct knowledge and responsibility over the potential receiving facilities within their respective jurisdictions, and thus may be in the best position to make the findings required under the off-site rule.

In addition, no CERCLA remedial actions may be provided by the President under section 104 if a State does not, pursuant to section 104(c)(3)(B), "assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of Subtitle C of the Solid Waste Disposal Act [RCRA] for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances." Thus, allowing States to make off-site acceptability determinations within their jurisdictions would directly support the State's site-specific response program. Further, in the context of providing the assurance required in section 104(c)(3)(B), States would tend to have already made many of the findings necessary to support off-site determinations.

1. Demonstration of State Capability

For the purposes of this rule, it is EPA's opinion that a State that has been authorized to carry out the base program under RCRA and to impose corrective action under section 3004(u) of RCRA (hereinafter an "authorized State"), has the capability to make off-site determinations at RCRA facilities within that State. (Determinations involving non-RCRA facilities would continue to be made by EPA.) Having the authority to initiate corrective action under section 3004(u) of RCRA is of special importance, because the decision of whether to send CERCLA cleanup waste to a RCRA facility is heavily dependent upon whether releases at the facility are being controlled by a RCRA corrective action program. (See, e.g., CERCLA section 121(d)(3)(B), relating to RCRA land disposal facilities.)

The Agency requests comment on whether EPA should also require States to be authorized for the implementation of the land disposal restrictions portion of RCRA (section 3004 (d), (e), (g), and (j)), or other parts of the Hazardous and Solid Waste Amendments of 1984 (HSWA) that amended RCRA, in order to demonstrate their capacity to make off-site acceptability determinations.

Under this proposal, a State may qualify to make off-site acceptability determinations only with respect to facilities within the State (to which the RCRA corrective action authorities apply). Those determinations would apply with equal force to wastes from out-of-State response actions. The acceptability determination made under the off-site rule is in no way affected by the State of origin of the waste. Similarly, off-site acceptability determinations made by qualifying States will have effect whether the specific response actions generating the waste was taken under the authority of sections 104, 106 or 120 of CERCLA, section 311 of CWA, or taken pursuant to some other authority financed in whole or in part by CERCLA's Superfund.

[1] In order not to delay ongoing actions or disrupt actions taken shortly after the enactment of SARA, Congress provided, in section 121(b)(2) of SARA, that actions resulting from decision documents signed or consent decrees lodged within the 30-day period following SARA enactment were merely required to comply with the post-SARA criteria in section 121(d)(3) of CERCLA "to the maximum extent practicable." This level of compliance must be certified in writing by the Administrator in the decision document or consent decree.

[2] CERCLA section 104(c)(4) specifically requires that section 104 remedial actions be carried out in accordance with section 121 of the Act.

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2. Cooperative Agreement Requirement

States need not adopt regulations that are equivalent to those in this proposed rule in order to qualify to make off-site determinations. However, they may make such determinations only pursuant to a cooperative agreement under section 104(d)(1)(A), in which the State commits (1) to follow the off-site rule's requirements in making determinations of acceptability, and (2) to consult with EPA in order to ensure that determinations are made in a consistent manner nationwide.

Off-site determination tasks will generally be included in Core Program Cooperative Agreements ("CPCAs"). CPCAs are specifically designed to provide States with the opportunity to participate fully in EPA's efforts to implement CERCLA, and to assist States in the effective implementation of their CERCLA programs. In the Conference Report on SARA, the discussion of amendments to section 104(d) reflects Congressional intent to increase the scope of Cooperative Agreements.

Included within the class of activities that may be the subject of Cooperative Agreements are those associated with the overall implementation, coordination, enforcement * * * and administration of remedial efforts as authorized by this Act. [H. Rept. 962, 99th Cong., 2d sess. at 195 (1986).]

States that have authorization for the RCRA base program only would not be able to make off-site determinations on their own. However, they could make findings as to the compliance status of RCRA facilities (the relevant EPA Region would make findings regarding any releases at the facilities). EPA would then make the final determination based on all available information, and would be the agency responsible for that determination. No cooperative agreement would be required under these circumstances.

The Agency also considered the approach of having the EPA Regional Offices make all off-site acceptability determinations. This approach would have the advantages of more easily assuring consistent application of the rule, and avoiding conflicts between the Region and the State regarding the acceptability status of a facility. The Agency decided against proposing this alternative because the States are often more familiar with facilities within their State than is the Region. (States generally maintain a strong oversight presence at their larger facilities through frequent inspections and site visits.) In addition, allowing States to make this decision is consistent with EPA's overall goal of having States implement the hazardous waste program.

The Agency specifically requests comment on whether qualifying States should make off-site acceptability determinations as proposed, or whether EPA should exercise that decision-making authority through its Regional Offices.

V. Determining Acceptability

A. Acceptability Criteria

The following criteria will be used to determine the acceptability of facilities to receive wastes from CERCLA-authorized or -funded response actions.

1. Compliance Criteria

a. *Receiving Unit.* The Agency is defining a receiving unit to be any unit that directly receives CERCLA off-site waste: (1) For treatment to standards specified in 40 CFR Part 268, Subpart D, including any pre-treatment or storage units used prior to treatment; (2) for treatment to reduce substantially its mobility, toxicity or persistence in the absence of a defined treatment standard, including any pre-treatment or storage units used prior to treatment; or (3) for storage or ultimate disposal of waste not subject to the previous criteria.

b. *Facility.* CERCLA section 121(d)[3) provides that CERCLA cleanup wastes should be transferred only to a "facility which is operated in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act [RCRA] (or, where applicable, in compliance with the Toxic Substances Control Act [TSCA] or other applicable Federal law) and all applicable State requirements." [5] The term "facility" as it is used in that context could refer to any one of a number of concepts. For example, Congress could have intended that in assessing compliance with any of the above statutes, EPA apply the definition of "facility" adopted by the applicable law. However, TSCA, for example, does not even employ the concept of "facility," and its implementing regulations do not expressly define the term. Similarly, State laws may not define "facility" at all, or if they do, the definitions may differ from law to law and state to state. If more than one law or requirement applies to a single area of land, there may be conflicting definitions of "facility." Accordingly, in light of the fact that one of the laws explicitly referenced by section 121(d)(3) does not define "facility" at all, and in light of the potential for conflict between the definitions of "facility" adopted by other laws, it seems unlikely that Congress intended EPA to look to each individual law or requirement in defining this term.

It is also possible that Congress intended the term "facility" in the first sentence of section 121(d)(3) to mean a facility as defined by RCRA.[4] Indeed, the term "facility" is used in section 121(d)(3)(B), and in the context of that subparagraph, it is clear that the term means a RCRA facility. It may be logical to assume that a term is meant to be defined consistently throughout a single provision, thus suggesting that "facility" in the first sentence of section 121(d)(3) also refers to a facility as defined by RCRA. However, it is not clear why the RCRA definition of facility would be thought appropriate for purposes of assessing compliance with the provisions of other laws, some of which, as noted above, may have very different concepts of the nature of a facility. Moreover, as discussed below, the language of the second sentence of section 121(d)(3) is distinct from that in the first. While the first sentence refers to a "facility," subparagraph (B) clearly refers to a "land disposal facility" and to the regulation of releases from such land disposal facilities under RCRA.

Alternatively, Congress could have intended the term "facility," as used in the first sentence of CERLA section 121(d)(3), to mean a facility as defined in the CERCLA statute itself. Section 101(9) of CERCLA states that a "facility" is any "building, structure, * * * landfill, storage container, * * * site or area where a hazardous substance has been deposited, stores, disposed of, or placed, or otherwise come to be located." Facilities under CERCLA are not defined by property boundaries or ownership, as they are under RCRA; rather, they are defined by the placement or location of the waste material or contamination itself. In the case of a transfer of CERCLA off-site wastes to a facility, the most straightforward application of the CERCLA definition would be to interpret the "facility" as the unit or units at which the CERCLA off-site wastes have been "deposited" or "placed" for treatment, storage or disposal.

EPA recognizes that the definition of CERCLA section 101(9) may also extend to any area where hazardous substances migrate or "come to be located," and thus it could arguably be said to cover subsequent units at facilities where

[5] Consistent with section 121(d)(2) of CERCLA, EPA interprets this requirement to refer to other applicable Federal and State environmental laws.

[4] A "facility" is broadly defined under RCRA to include "all contiguous land, and structures * * * used for treating, storing, or disposing of hazardous waste * * * (including all) operational units." 40 CFR 261.10.

hazardous substances may migrate. However, the "come to be located" language appears to be designed to help effectuate the board remedial purposes of CERCLA, giving EPA the authority to clean up contamination when it has spread from the original source. That part of the CERCLA section 101(9) definition does not apply in this context, where off-site wastes have been specifically "placed" or "deposited" at treatment, storage or disposal units or facilities. Indeed, if Congress intended a CERCLA "facility" to mean, in all cases, that area at which wastes have "come to be located," then it would not have included alternative terms, such as "deposited," "placed," or "stored" in the definition.

Thus, under the CERCLA definition, the off-site "facility" would be the receiving unit or units where the CERCLA wastes have been placed or deposited. Other units at the same site which are unrelated to the treatment, storage or disposal of the CERCLA cleanup wastes, or which receive residuals from disposal units, from treatment units using Best Demonstrated Available Technology ("BDAT"), or from treatment units that reduce substantially the mobility, toxicity or persistence of the waste, would not be included within the definition of "facility" for the purposes of assessing compliance under this proposed rule.[6]

The plain language of the statute confirms EPA's discretion to define the "facility" to which the compliance provision applies. Section 121(d)(3) applies to activities occurring in the context of a "removal or remedial action." In selecting a removal or remedial action, EPA has broad discretion under CERCLA to identify how cleanup wastes should be managed and in what type of unit or facility. Indeed, the scope of the response action, as identified in the Record of Decision (ROD) or CERCLA decision document, defines the units to be used, and thus the units to be covered by the off-site requirements. Accordingly, it is within EPA's statutory authority to interpret the first sentence of CERCLA section 121(d)(3) to require that it is the receiving units that must be in compliance with applicable Federal and State requirements.

EPA's interpretation of "facility" in the first sentence of CERCLA section 121(d)(3) is also consistent with the legislative purpose of that section.[6] The legislative history of section 121(d)(3) states that CERCLA off-site response actions "must be designed and carefully monitored to ensure that the proposed solutions to today's problems do not create new, perhaps more serious problems tomorrow" (H. Rept. 962, 99th Cong., 2d sess. at 248 (1986)). This purpose can be accomplished by ensuring that the unit(s) at which CERCLA wastes are received for treatment, storage or disposal are in compliance with applicable Federal and State requirements. It should be noted that violations affecting the entire waste management operation (such as failure to comply with financial requirements, inadequate closure plan, inadequate waste analysis plan, inadequate inspection plan, etc.) are considered to be relevant violations which affect the receiving unit.

EPA's interpretation would also further a second Congressional objective, expressed elsewhere in CERCLA section 121, which directs the Agency to select site remedies which utilize "permanent solutions and alternative treatment technologies to the maximum extent possible" (CERCLA section 121(d)(1)). Nationwide, there are only a small number of state-of-the art incinerators and alternative treatment technologies that are presently available to treat hazardous wastes and substances. Reading a broad definition of "facility" (such as the property-wide definition under RCRA) into CERCLA section 121(d)(3) would preclude the use of fully complying units—like incinerators—at sites with other violations, even if such violations pertained to units or processes not associated with the storage, treatment, or disposal of CERCLA wastes; this could threaten available incineration capacity, and therefore Congressional goals. Rather, today's interpretation results in a better balance of competing Congressional objectives: that CERCLA waste goes to receiving units that are in compliance and that this waste be disposed of using permanent remedies and alternative treatment technologies to the maximum extent possible. It also has the advantage of tying compliance requirements to those units that are logically related to the management of CERCLA waste, rather than extending it to other parts of a site not involved in or related to the management of CERCLA waste.

The foregoing approach to defining "facility is not inconsistent with the second sentence of CERCLA section 121(d)(3), which provides that when CERCLA cleanup wastes are transferred off-site to land disposal facilities (1) the unit to which the waste is transferred must not be releasing, and (2) all releases from other units must be controlled under a RCRA corrective action program. Unlike the first sentence of section 121(d)(3), which refers to "facility," the second sentence specifies "land disposal facility," which the statute makes clear is a reference to a RCRA facility. Specifically, the statute provides in the second sentence of section 121(d)(3), that releases from other units at a land disposal facility must be controlled by a corrective action program approved under RCRA; as a matter of law, RCRA corrective action applies only to RCRA facilities. In addition, section 121(d)(3) (A) and (B) make a clear distinction between a "unit" and a "facility," a distinction most commonly recognized in the context of RCRA.

In light of the above, EPA believes that it is appropriate to define "facility" as it is used in the first sentence of section 121(d)(3) as the receiving unit(s) which directly treats, stores or disposes of the CERCLA off-site waste. It is also appropriate, in the second sentence of section 121(d)(3), to define "land disposal facility" consistent with RCRA, to include both the receiving unit (for purposes of implementing the no release provision in section 121(d)(3)(A)) as well as other units (for purposes of section 121(d)(3)(B)). EPA believes that this is consistent with the principles of statutory construction and with legislative intent.

c. *Relevant Violations.* CERCLA section 121(d)(3) and the original and revised off-site policies require that hazardous substances, pollutants, or contaminants transferred off-site for treatment, storage, or disposal during a CERCLA response action be transferred to a facility operating in compliance with RCRA, TSCA, or other applicable Federal law and with State law. However, in evaluating "compliance," EPA has recognized that the comprehensive regulations governing waste management include requirements of differing importance. For example, in the RCRA Enforcement Response Policy (OSWER Directive #9900.0, December 21, 1984, and subsequent revisions), the Agency set out guidance for treating violations of certain requirements more seriously

[6] Note that subparagraph (B) of section 121(d)(3) does provide that all releases from non-receiving units at RCRA land disposal facilities must be controlled by a RCRA corrective action program before the facility can be used for the transfer of CERCLA off-site wastes.

[6] Where the language of a statute is unclear or ambiguous, it is appropriate to define the term in a manner that best effectuates what the Agency perceives to be the Congressional intent in enacting the provision. *See Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

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than others (Class I vs. Class II violations). Congress also acknowledged this distinction in the legislative history of this section: "In implementing this provision, the Agency should give appropriate consideration to the significance of the violations, including Class I violations as compared with minor paperwork violations," H. Rept. 962, 99th Cong., 2d sess. at 248 (1986). For these reasons, EPA believes that the assessment of compliance required by statute should focus on whether there are violations of the more important provisions. Therefore, any determination of noncompliance should be based on "relevant violations," which the Agency is defining in this regulation as those that are a significant deviation from regulations, compliance order provisions, or permit conditions, including those designed to: ensure that hazardous waste is destined for and delivered to authorized facilities; prevent releases of hazardous waste, hazardous constituents, or hazardous substances to the environment; ensure early detection of such releases; or compel corrective action for releases. Class I violations, as defined in the RCRA Enforcement Response Policy, are the type of violations that will generally be considered relevant violations.

CERCLA section 121(d)(3) also specifically requires off-site facilities to be in compliance with other applicable Federal and State requirements. EPA interprets "applicable State requirements" consistent with section 121(d)(2) of CERCLA in that they must be legally enforceable and generally applicable. Relevance of violations of other applicable Federal and State laws will be judged using criteria similar to those used for RCRA Subtitle C facilities, considering the significance of the requirement that is being violated; the extent of deviation from the requirement; and the potential or actual threat to human health or the environment. Criminal violations of any type will be considered relevant violations at the time an indictment is issued and may, in appropriate cases, be considered relevant before an indictment is issued.

d. *Minimum Technology Requirements.* In order to be acceptable to receive hazardous wastes from a CERCLA cleanup under this rule, a RCRA Subtitle C land disposal unit would also be required to demonstrate compliance with the minimum technology requirements of RCRA section 3004(o), unless the unit had been granted a waiver under the section.

Although under the RCRA program, only new RCRA land disposal units (and such units at expanded facilities) must meet the more rigorous minimum technology requirements, EPA believes that it is appropriate to apply them to units receiving hazardous wastes from CERCLA cleanups under the off-site rule. EPA believes that such an approach furthers the general purposes of CERCLA section 121(d)(1) to select a remedial action that utilizes permanent solutions to the maximum extent practicable, and to take into account, when selecting the remedy, "the long-term uncertainties associated with land disposal" and the potential for future remedial action costs if the chosen remedy in question were to fail. As the Conference Report on SARA stated:

> The response and remedial actions taken by EPA under this program must be designed and carefully monitored to ensure that the proposed solutions to today's problems do not create new, perhaps more serious problems tomorrow. *This is an especially important responsibility when the waste material is removed to a land disposal facility that, if improperly operated in violation of RCRA requirements, could contaminate ground water or surface water and thereby present threats to human health and the environment.* (H. Rept. 962, 99th Cong., 2d sess., at 248 (1986) (emphasis added).)

2. Release Criteria

a. *Definition of Release.* The term "release" is defined by section 101(22) of CERCLA and § 300.6 of the NCP. As such, a release is considered to be any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

EPA is interpreting the term "release" in CERCLA section 121(d)(3) to include "substantial threat of release," consistent with the definition in § 300.6 of the NCP.[7] The NCP definition is especially significant because that document provides the procedures for taking response actions at CERCLA sites, including the decision of which facility should receive wastes from CERCLA response actions (this proposed rule will be part of the NCP).

Moreover, the EPA believes that it is important to take into account information as to a substantial threat of release as well as an actual release in making off-site transfer decisions. If the Agency has information indicating that a release is threatened at a potential receiving unit, a decision to authorize the transfer of wastes to that site would be poor public policy, and not protective of human health and the environment.

The Agency has interpreted the concept of release as used in section 121(d)(3) of CERCLA not to include *de minimis* releases, consistent with the legislative history.[8] *De minimis* releases are those that do not adversely affect public health or the environment, such as releases to the air from temporary opening and closing of bungs, releases between landfill liners of 5 gallons/acre/day or less, or stack emissions from incinerators not otherwise subject to Clean Air Act permits. The Agency further believes that Federally-permitted releases, as defined in CERCLA section 101(10), are generally controlled or monitored under another Federal program and thus should not be routinely included within the concept of "release" for the purposes of section 121(d)(3). For example, the presence of a Federally-permitted water discharge point should not preclude EPA's ability to use a facility for the receipt of CERCLA wastes. This would also apply to releases authorized under Federal programs delegated to the State. However, if that release comes to constitute a threat to human health or the environment, the release can and should be considered under this rule.

Although CERCLA section 121(d)(3)(A) and (B) refer to "hazardous wastes" and "hazardous constituents" only, the provisions of the proposed rule would apply to releases of all CERCLA hazardous substances. The Agency believes that this is appropriate for two reasons: first, to allow the transfer of CERCLA wastes to units leaking hazardous substances such as radionuclides, asbestos, captan, diquat, or malathion (which are not regulated hazardous wastes or hazardous constituents under RCRA) would be clearly contrary to Congress' intent that CERCLA "not create more serious problems" (H. Rept. 962, 99th Cong., 2d sess. at 248 (1986)); second, common sense dictates that the Agency not put CERCLA wastes into a known releasing unit, regardless of the substances being released. Thus EPA believes it is both logical and appropriate to apply today's proposed rule more broadly to cover units that have uncontrolled releases of any CERCLA hazardous substance.

[7] The Agency's interpretation of the term "release" was discussed in the "Interpretation of Section 3008(h) of the Solid Waste Disposal Act" (J. Winston Porter, December 16, 1985).

[8] The SARA Conference Report provides as follows: "The addition of 'soil' to the requirements of (CERCLA section 121)(d)(3)(A) is intended to preclude the transfer or disposal of hazardous wastes or constituents thereof into unlined units and lined units with releases *other than de minimis releases* into the soil." H. Rept. 962, 99th Cong., 2d sess. at 248 (1986) (emphasis added).

EPA believes that in some cases it may not be necessary to have actual sampling data to determine whether there is a release or a substantial threat of a release. An inspector may find other evidence that a release has occurred, such as a broken dike or feed line at a surface impoundment. Less obvious indications of a release might also be adequate to make the determination. For example, EPA or a qualifying State ("the responsible Agency") could have sufficient information on the contents of a land disposal unit, the design and operating characteristics of the unit, and/or the hydrogeology of the area in which the unit is located to conclude that there has been a release to ground water, surface water, soils, land surface or air.

RCRA interim status facilities that trigger groundwater assessment monitoring requirements (40 CFR 265.93) and RCRA-permitted facilities that trigger compliance monitoring requirements (40 CFR 264.99) are not automatically presumed to have releases. The RCRA regulations provide for verification of the initial release determination through additional sampling to ascertain whether the statistically significant difference which triggered the enhanced monitoring was the result of problems such as laboratory error. Upon verification of the data, the facility must initiate assessment or compliance monitoring. The responsible Agency should evaluate the data which led to assessment or compliance monitoring and any other relevant information, including that gathered from applicable compliance inspections before making its determination under this rule. Of course, if the responsible Agency has data sufficient to make a determination of a release and unacceptability prior to (or during) a facility's participation in the assessment or compliance monitoring program, the responsible Agency may do so at that time.

b. *Release Criteria for Facilities Receiving Post-SARA Waste.* CERCLA section 121(d)(3)(A) requires that CERCLA wastes resulting from post-SARA decision documents must not be transferred to a unit at a RCRA Subtitle C land disposal facility that is releasing any hazardous waste or hazardous constituent into the ground water, surface water, or soil. The term "land disposal facility" means any RCRA facility at which a land disposal unit is located, regardless of whether the land disposal unit is the receiving unit (land disposal units include landfills, surface impoundments, land treatment units, and piles as defined in 40 CFR 260.10).[9]

Although CERCLA section 121(d)(3)(A) specifically refers to releases to "the ground water or surface water or soil" only, it is the opinion of EPA that as a matter of policy, the Agency should also refrain from sending CERCLA cleanup wastes to a site if the receiving unit is releasing hazardous substances into the air. Such an approach is consistent with the goals of the policy and with environmental protection.

Today's proposed rule would also apply this restriction to RCRA storage and treatment facilities whose units are intended to receive CERCLA wastes resulting from post-SARA decision documents. Although CERCLA sections 121(d)(3) (A) and (B) specifically mention RCRA "land disposal facilities" only, the Agency believes that the storage and treatment of RCRA hazardous wastes pose similar threats of releases that could harm human health or the environment even though the wastes are managed differently. EPA believes that it is appropriate to refrain from sending CERCLA cleanup wastes to leaking units at RCRA treatment or storage facilities, consistent with the requirement in CERCLA section 121(b)(1) to "select a remedial action that is protective of human health and the environment," and with the general environmental protection standard for response actions in CERCLA section 104(a)(1). Therefore, under the proposed rule, the Agency would not transfer CERCLA wastes to any RCRA Subtitle C treatment or storage facility, or to any facility that has a RCRA permit-by-rule under 40 CFR 270.60 (a), (b) or (c), if there are releases from the receiving unit (or, as discussed below, if there are environmentally significant releases from non-receiving units that are not controlled by corrective action).

CERCLA section 121(d)(3)(B) also specifically restricts the use of land disposal facilities that have releases at units other than those actually receiving CERCLA wastes. These "other units" are defined as all permitted or interim status units and other solid waste management units at a facility. Releases from other units at a land disposal facility must be addressed by a corrective action program approved by EPA or a State authorized for HSWA corrective action in an enforceable agreement under the applicable statute, in order for the facility to be considered acceptable. This applies equally to Underground Injection Control ("UIC") wells where surface units are land disposal units with RCRA status (*see* 52 FR 45791, Dec. 1, 1987) as well as to publicly owned treatment works (POTWs) with land disposal units.

The requirement for a corrective action program is in lieu of a "no release" requirement and is specifically provided for in CERCLA section 121(d)(3)(B) for other units at land disposal facilities. This provision recognizes that the corrective action process can be very lengthy. Requiring the corrective action process to be completed at other units could render the facility unacceptable for many years, potentially precluding an otherwise acceptable facility from receiving CERCLA waste.

For reasons discussed above, EPA is also proposing to set out requirements to control releases from non-receiving units at non-land disposal facilities that receive CERCLA cleanup wastes, including RCRA treatment, storage and permit-by-rule facilities. Under the proposed rule, the standard of "environmental significance"—developed under the May 1985 Off-site Policy—would be applied. Releases from non-receiving units at these facilities must be determined not to be environmentally significant, or must be addressed by a corrective action program in an enforceable agreement under the applicable statute, in order for the facility to be acceptable. EPA is applying the standard of environmental significance to these units in lieu of the more restrictive "any release" standard imposed on other units at Subtitle C land disposal facilities, because the Agency believes this standard is adequate to protect human health and the environment, and to meet the objectives of this rule.

Facilities other than RCRA Subtitle C facilities are not addressed in CERCLA section 121(d)(3) (A) or (B), and thus no release criteria are statutorily required. However, EPA believes that it is appropriate not to use such facilities for the receipt of wastes from CERCLA-authorized or -funded response actions if the Agency receives information, or discovers during the course of a compliance inspection, that there are environmentally significant releases of hazardous substances anywhere on the site. Of course, if such releases are addressed by a corrective action program, then the facility may be deemed acceptable.

POTWs that do not accept RCRA hazardous wastes (i.e., POTWs that do not have a RCRA permit-by-rule) are not

[9] See, e.g., the RCRA Codification Rule, 50 FR 2070 (July 15, 1985); the RCRA Land Disposal Regulations, 47 FR 32274 (July 26, 1982); and 49 FR 5854 (February 15, 1984).

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considered to be RCRA Subtitle C facilities. CERCLA wastes (other than RCRA hazardous wastes) that are transferred to a POTW must meet the appropriate pre-treatment standards.[10] CERCLA wastes that are RCRA hazardous wastes may only be transferred to a POTW that has a RCRA permit-by-rule.

c. *Release Criteria for Facilities Receiving Pre-SARA Waste.* The May 1985 policy, from which the acceptability criteria for facilities receiving CERCLA wastes resulting from pre-SARA decision documents are derived, does not refer specifically to releases. Rather, it directs that CERCLA waste not be sent to a facility if there are environmental conditions at the facility (other than relevant violations) that pose a significant threat to public health, welfare or the environment or affect the satisfactory operation of the facility ("relevant conditions"). Examples of environmental conditions that may be considered relevant conditions include: environmentally significant releases of hazardous wastes, hazardous constituents or hazardous substances to ground water, surface water, soil, ground surface or air; a high degree of hazard posed by the location of the facility; the facility's ability to manage safely the volume and/or toxicity of the waste.

The responsible Agency will evaluate releases and other environmental conditions at the facility to determine whether they constitute relevant conditions under this rule. Where such relevant conditions exist, a corrective action plan under the applicable statute is required before the facility may be considered acceptable to receive CERCLA cleanup wastes.

B. Basis for Determining Acceptability

To determine the acceptability of a facility to receive an off-site transfer of CERCLA waste, the responsible Agency will follow certain procedures to examine the facility's status with respect to both compliance and releases. States not qualifying to make the off-site determination may submit findings to EPA concerning a facility's compliance status.

1. Compliance Determination

To determine compliance status, the responsible Agency will direct the inspection of a facility no more than six months prior to its receiving CERCLA waste. This applies to facilities accepting CERCLA wastes resulting from either pre- or post-SARA decision documents.

2. Release Determination

Under the May 1985 off-site policy, the decisionmaker had the discretion to use a facility that had releases, unless the releases constituted environmental conditions that affected the satisfactory operation of the facility. This provision still applies to wastes from pre-SARA decisions, and the responsible Agency should use the compliance inspection noted above as the means of identifying any relevant conditions.

For post-SARA decisions, SARA now requires that "all releases from other units at a land disposal facility" be controlled under a corrective action program. This rule would similarly require that all "environmentally significant" releases at non-receiving units at RCRA Subtitle C facilities that are not land disposal facilities be controlled. To best effect these requirements, EPA believes it is important to assess whether any units at a site have releases, if that information is not already known, before transferring wastes to that site.

For all RCRA Subtitle C facilities, the responsible Agency should perform a RCRA Facility Assessment (RFA) or other facility-wide investigation (e.g., a CERCLA Preliminary Assessment/Site Investigation (PA/SI)) at the site to determine if a release has occurred or if there is a substantial threat of a release. If a release has been identified outside of the scope of an RFA or equivalent investigation, completion of such an investigation is not necessary prior to initiating a corrective action program. In such situations, the corrective action program should be designed to include a facility-wide investigation. All RCRA land disposal facilities must also have received a comprehensive ground-water monitoring evaluation (CME) or an operation and maintenance (O&M) inspection within the year prior to receipt of waste.

For non-Subtitle C facilities, the compliance inspection should also serve to identify any environmentally significant releases.

VI. Notification of Acceptability

A. Background

It is EPA's opinion that the decision to send wastes from a CERCLA response action to a particular off-site facility, or to send them off-site at all, is a legitimate business decision within the Agency's discretion. EPA recognizes that a valid RCRA Subtitle C permit creates the opportunity for a commercial facility to receive those wastes specified in the permit. However, the permit does not guarantee the use of the facility by the Government any more than it guarantees use of the facility by a private waste generator. EPA must remain free to decide whether and where to send wastes from CERCLA-funded or -authorized cleanups in order to protect its own interests (e.g., limiting the Government's potential liability for harm arising from the operation of the receiving facility and not contributing to existing environmental problems).

EPA recognizes that there will be instances where a facility will be deemed unacceptable to receive CERCLA wastes based on conditions that may not constitute a violation of RCRA (e.g., observed releases of hazardous substances). However, SARA specifically called upon the Agency to exercise a high level of care and not to use facilities experiencing uncontrolled releases, even if remediation of that release is not immediately required under RCRA regulations. The language of CERCLA section 121(d)(3) (A) and (B) provides a conservative standard: if EPA determines that there are releases at a RCRA land disposal facility that have not been addressed by a corrective action program, then EPA may not send wastes there.

Some companies have already expressed concern that decisions by EPA not to use a facility may have a secondary effect on public confidence with regard to that facility; however, EPA believes that any such secondary effects will be minor. Any stigma resulting from the Agency deciding not to use a facility to receive CERCLA wastes due to a compliance problem would arise even without that decision, due to the Notice of Violation and the enforcement action that would follow under RCRA (or other applicable statutes). An EPA decision not to use a facility is simply a response to, and recognition of, the finding of a violation. In the context of uncontrolled releases that technically are not RCRA violations, a decision not to use a facility indicates that EPA believes that there is a release or a significant threat of release at the facility warranting investigation, and based on the conservative standard set by Congress in CERCLA section 121(d)(3) (A) and (B), EPA is exercising its discretion not to use such facilities until the releases are addressed. When evaluated in context, then, the EPA decision is simply a conservative business decision not to use a facility with known or potential problems. It is also reasonable to

[10] Criteria for evaluating whether or not to send CERCLA cleanup wastes to a POTW have been discussed in an EPA memorandum dated April 15, 1986, entitled, "Discharge of Wastewater from CERCLA Sites into POTWs."

assume that Congress, by requiring EPA to make such conservative decisions, understood that facilities—including those that are in compliance with RCRA but have some uncontrolled releases—would be identified by EPA as unacceptable to receive CERCLA cleanup wastes.

B. Notice and Review Procedures

The only statutory requirement for notice and review associated with EPA's off-site transfer decisions appears in CERCLA section 121(d)(3): "The President shall notify the owner or operator of such a facility of determinations under this paragraph." However, EPA has established additional procedural protections for affected facilities that are intended to ensure that off-site policy determinations are made in a careful and consistent manner, based on knowledge of available facts. This is consistent with the approach recommended in the Conference Report on SARA, which provides the following:

> The President must notify owners or operators of facilities of any determination under this paragraph * * *
>
> The Managers further expect that the owner or operator of a facility will be provided with an opportunity to meet informally prior to a final determination of eligibility except with regard to emergency removal actions. The Administrator is expected to establish post-determination procedures for resolving disputes related to determinations made under subparagraphs (A) and (B) * * *. Until the conclusion of such rulemaking, the Administrator shall implement these provisions on the basis of the statutory terms. (H. Rept. 962, 99th Cong., 2d sess. at 248 (1986).)

In keeping with Congressional intent, upon determination that a relevant violation and/or release has occurred, the responsible Agency will notify the facility owner/operator in writing of the determination and of the effect of the determination under this rule.

In addition, the November 1987 revised off-site policy provides a 60-day review period during which the owner/operators of receiving facilities can meet with responsible EPA Regional Office officials (or, if appropriate, State officials) to discuss alleged violations or releases while retaining their acceptability under the Off-site Policy. If after receiving facts and comments, the responsible Agency still considers the facility to be unacceptable to receive CERCLA wastes, the facility has the opportunity to request that the EPA Regional Administrator (RA) (or appropriate State official) review the unacceptability determination. Under the November 1987 policy, the RA or appropriate State official may use discretion in deciding whether to review the determination.

Today's proposed rule largely adopts these procedures but modifies them by making review by the RA (or appropriate State official) available to all requesting parties. EPA is proposing this change in the interest of assuring accuracy and consistency of decisions. Giving facilities the opportunity to elevate disagreements to the highest official in the EPA Region (or authorized State Agency) provides access to a second objective decisionmaker, who brings a fresh perspective to the facts presented at the informal conference.

The specific review activities provided under the proposed rule are as follows. The notice of unacceptability should be issued as soon as possible after the findings of a relevant violation or release, and should clearly state whether it applies to pre-SARA wastes, post-SARA wastes, or both. It should also clearly state the units or units to which the notice applies. Within 10 calendar days from the time the responsible Agency issues a notice, the owner/operator has the opportunity to request an informal conference with the responsible Agency to discuss the basis of the underlying violation or release determination, and its relevance to the facility's acceptability to receive wastes from CERCLA-authorized or -funded response actions. Any such meeting should be scheduled to occur within 30 calendar days of issuance of the notice. The owner/operator also has the option of submitting written comments within 30 calendar days from the date of the notice, in lieu of requesting an informal conference. After the informal conference or the submittal of written comments, the responsible Agency will inform the owner/operator in writing whether the information provided is sufficient to support a determination of acceptability. If not, transfer of CERCLA waste to the facility will cease on the 60th calendar day after issuance of the original notice.

The owner/operator may also request, within 10 calendar days of hearing from the responsible Agency after the informal conference or submittal of written comments, that the RA or appropriate State official review the determination, if possible, within the 60-calendar-day period from the issuance of the notice of unacceptability. The RA or State official may conduct such a review based upon the record compiled to date or by means of a conference. Such a review does not automatically stay the determination but the responsible Agency may use its discretion to extend the 60-day period if it needs more time to review information presented. The Agency believes this discretionary authority may be necessary in situations where additional time is needed to confirm an unacceptability determination, such as waiting for laboratory results, or to review complex information presented during the conference or in written comments.

EPA believes that the time period provided for review and opportunity to rebut the Government's findings satisfy the three majors underlying the Agency's provision of the 60-day review period: Congressional intent, due process concerns, and considerations for the efficient management of CERCLA cleanup wastes.

First, the 60-day period with recourse to two separate levels of decisionmakers fully protects the rights of affected facilities' owner/operators to due process. It also responds to the intent in the legislative history for a significant review period. Although alternatives have been considered, the Agency believes that a longer or more complicated dispute resolution process could result in situations where wastes could continue to be sent to facilities with unaddressed violations or releases during periods up to or exceeding several months, clearly in opposition to Congressional intent and contrary to the need for relatively quick decisions as to what off-site locations to use for CERCLA waste disposal.

Further, the 60-day period was also selected based on the need for the efficient management of CERCLA cleanup wastes. EPA is concerned that if all off-site unacceptability determinations were immediately effective, then many CERCLA cleanups would be disrupted, with truckloads of wastes prevented from reaching the designated management point, and forced to return to the original CERCLA site. The establishment of a 60-day period before the determination takes effect provides the Agency with adequate time to identify alternate management options and to accomplish the closure of the original contract without unreasonable increases in costs.

However, there may be situations where the responsible Agency decides that a facility's unacceptability is immediately effective. This could occur in situations such as, but not limited to, emergencies at the facility (e.g., fires or explosions), egregious violations (e.g., criminal violations), or other situations that render the facility incapable of safely handling CERCLA waste. Egregious violations include criminal violations where a criminal indictment has been issued; repeated violations of

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statutory or regulatory requirements indicating that a facility is unable to safely manage wastes; refusal to comply with outstanding orders or decrees calling for compliance or corrective actions; and violations that result in an immediate threat to human health or the environment. A Class I violation of RCRA in and of itself generally will not trigger immediate unacceptability unless it meets one of the above criteria or otherwise renders the unit incapable of safely handling wastes.

In case of either an extension or immediate unacceptability, the facility should be notified as quickly as possible.

Implementation of this notice provision does not replace existing enforcement mechanisms under RCRA or CERCLA nor does it relieve the Regions or States of the duty to take appropriate enforcement action under RCRA or CERCLA. This notice provision shall be applied only in concert with section 300.440 of the NCP. It does not create additional rights to notice or review of violations in other contexts.

C. Administrative and Judicial Appeals

EPA has also been considering the issue of how the offsite policy should be applied in situations where a facility has been determined to be acceptable to receive off-site wastes based on its implementation of corrective action to control releases at a facility, but that action is interrupted by a lengthy administrative or judicial challenge concerning the underlying corrective action or the need to perform additional corrective action. EPA is concerned that a decision to stay the off-site rule during such administrative appeals (or court challenges) would act as an incentive to parties to file dilatory appeals and, equally troubling, would result in situations where EPA continued to send CERCLA wastes to facilities with releases but no ongoing corrective action program. Therefore, under the proposed rule, if the filing of an administrative or judicial challenge to a corrective action requirement interrupts a program to control releases at a facility, it may be appropriate to issue an off-site unacceptability determination.

Some parties have argued that at least in the administrative context, as long as a RCRA facility is subject to a permit that provides for some corrective action, any releases at the facility should be considered to be under a corrective action "program" and thus "controlled," even during those times when the facility is appealing modifications to the permit that would initiate or require subsequent phases of corrective action (see 40 CFR 270.41 and 124.5).[11] EPA disagrees with this expansive reading. First, as a purely factual matter, releases are not being "controlled" during the period of time required to resolve the appeal of such a permit modification, and the procedures inherent in such an appeal—including public comment, hearing, and an appeal to EPA's Chief Judicial Officer—lead to typical delays of 2–3 years. To broaden the interpretation of a corrective action program and of off-site acceptability to include long periods during which no corrective action is taking place would run counter to Congress' intent that EPA not send CERCLA wastes to facilities with uncontrolled releases, and would cause serious delays in corrective action at the site. It is important to note as well that the delays and procedures inherent in the permit modification process were established to protect the rights of permittees and citizens to challenge changes in the permit; they are wholly apart from the off-site policy determination. The business decision of where to send wastes under the off-site policy would turn not on whether the proposed permit modification is a proper one—as would be the debate in the RCRA permitting context—but on whether there is a corrective action program ongoing at the facility satisfying CERCLA section 121(d)(3) (A) and (B), such that EPA has confidence in sending CERCLA wastes to the facility under the strict and conservative standard Congress has established. This test would not be met during the period a permittee is challenging the need to take corrective action.

EPA acknowledges, however, that the application of the off-site policy while an appeal of a permit modification is pending may appear to place a burden on the permittee in certain cases. For example, the selection of a remedy under the RCRA permitting process is customarily accomplished by a permit modification under 40 CFR 270.41. Even if the facility agrees to implement the remedy proposed by EPA and not to appeal the permit modification that incorporates the selected remedy, a citizens' group may appeal that permit modification (e.g., on the grounds that the remedy is not stringent enough). In such a case, the facility is willing to take corrective action, but the program has been halted by actions outside of the facility's control.

In an effort to balance EPA's need for an effective and independent off-site policy with the legitimate concerns of parties to pursue, or not be adversely affected by the pursuit of, legitimate appeals of the Agency's corrective action decisions, EPA is proposing a procedure for interim periods when such administrative (or judicial) challenges are pending. Under this procedure, a facility could remain acceptable to receive CERCLA wastes from EPA cleanups if: (1) It satisfies EPA that adequate corrective action will continue at the facility (e.g., through interim corrective action measures, ground-water monitoring, and/or site stabilization steps), or (2) it demonstrates to EPA the absence of a need to take corrective action measures over the short-term, interim period of the appeal (e.g., in light of site conditions and the more permanent corrective action scheduled to take place upon the resolution of the appeal). Such issues would be considered during the 60-day review period in the context of the informal conference and the RA's (or appropriate State official's) review. In this way, facilities appealing their permit modifications would have the choice of taking some corrective action during the appeal period (or showing that none is needed immediately) and thus remaining acceptable to receive CERCLA wastes from EPA cleanups, or of not taking any interim measures and potentially triggering CERCLA section 121(d)(3) (A) and (B) unacceptability. This procedure also allows EPA to protect its interests by retaining its ability to decide not to send its wastes to sites where uncontrolled releases of hazardous wastes were occurring, thereby protecting its interests and respecting the mandates established by Congress.

EPA is proposing to follow these procedures in the event of a judicial challenge to corrective action as well as an administrative one; however, the Agency believes that the prudential considerations that led the Agency to suggest this review process during permit modification appeals are less compelling for judicial challenges.

Off-site policy implications may also arise when dispute resolution procedures are invoked in a permit, order or decree, interrupting corrective action activities. EPA believes that these procedures, which are generally provided to resolve minor disagreements, present a smaller risk of causing delays in corrective action. Very often, such procedures run their course within the 60-day review period provided for under the proposed off-site rule. Thus, EPA believes that it is unnecessary to routinely trigger the off-site acceptability procedures in such cases; however, the Agency reserves the right to do so where the dispute resolution procedures threaten to significantly delay corrective action beyond the 60-day period.

[11] Note that this issue arises in the context of an appeal of a permit modification, and not in the context of an appeal of the initial issuance of an operating permit under RCRA. In the latter case, the appeal would stay the effectiveness of the entire permit, meaning that no permit would be in effect (40 CFR 124.16); thus, no argument could be made that releases at the facility are being controlled under the "corrective action program" of the permit, and that the facility is therefore acceptable under the off-site rule. An appeal of a permit modification would not stay the effectiveness of the underlying permit and its corrective action requirements, if any.

VII. Re-evaluating Unacceptability

If a facility deemed unacceptable prevails on the merits in an administrative or judicial challenge to the finding of noncompliance or uncontrolled releases upon which the unacceptability determination was based, then the facility will be deemed to be acceptable under the proposed rule. EPA has limited this ground for returning to acceptability to prevailing "on the merits" in a challenge to Agency action. EPA believes that a judgment or decision based on procedural or technical grounds that does not contradict the finding of noncompliance or uncontrolled releases should not allow a facility to return to acceptability; to do otherwise would be inconsistent with the plain meaning of CERCLA section 121(d)(3) and the purposes of the off-site policy and proposed rule.

A. Compliance Criteria

Facilities with relevant violations may regain acceptability to receive pre- or post-SARA wastes by returning to physical compliance for violations cited in the notice. A facility that is determined to be unacceptable to receive CERCLA wastes under the off-site policy based on a "relevant violation" may not regain acceptability until it has returned to physical compliance.

In most cases, the facility can return to its previolation compliance condition by taking certain remedial actions, and the inquiry is relatively straightforward. For instance, in cases where the violation concerns the placement in a landfill cell of incompatible wastes that are deemed to pose an environmental hazard, the Agency will generally require the removal of the incompatible wastes from the cell in order to return to physical compliance.

Occasionally, however, there may be situations where it is not possible to physically "un-do" the results of a violation. For example, a facility that takes waste for which it is not permitted and treats it in a surface impoundment, incinerates it, or disposes of it in a landfill in such a way that its removal would cause greater danger than leaving it in place, will not be able to retrieve the waste. EPA believes that in such cases, it is appropriate to consider the units to have regained physical compliance and hence be acceptable under the off-site rule if the following conditions are met:

—The violation does not render the unit unsafe or incapable of properly managing waste,
—The violation does not pose a threat to human health or the environment, and
—The facility has completed all actions that the responsible Agency determines are necessary to rectify the violation and prevent it from recurring.

In most cases this will mean that: (1) All legal proceedings, punitive actions and other obligations related to that violation are resolved, and (2) the facility has implemented a system approved by the responsible Agency that will assure the violation does not recur.

EPA did consider the alternate approach of declaring that unpermitted wastes in a unit should be said to forever "taint" the cell (preventing a future finding of "physical" compliance for purposes of the off-site rule) if those wastes cannot be physically removed. Although this approach may have merit in situations where the unpermitted wastes pose a threat to health or the environment, the Agency believes that it would be contrary to the interests of effective operation of the off-site policy and effective operation of the CERCLA program, to prohibit any future use of such units by EPA in cases where no environmental or health threat has occurred.

The logic behind this interpretation is clear by example. In an incinerator were to accept and burn wastes not authorized by its permit, it will be deemed to be in violation. However, it may be infeasible to correct the consequences of that error, and indeed, there may be no environmental or health basis for attempting to expunge all physical traces of the violation. The appropriate remedy may be to issue a penalty and to require new procedures for reviewing waste types. However, it would not make good sense to state that the incinerator is forever unacceptable to receive CERCLA wastes, even after it has instituted proper management procedures and shown the Agency that it can safely handle wastes.

The fundamental purposes of the off-site rule are to ensure that the Agency uses environmentally sound facilities, and does not contribute to problem sites (thereby subjecting EPA to increased potential liability). Neither of these purposes would be frustrated by a policy that allowed wastes to be sent to a facility that EPA has determined to have returned to sound operation, and that is found to be equipped to handle additional wastes safely and properly. A contrary approach would make many environmentally sound waste disposal facilities unavailable to the Agency, thereby limiting the Agency's options for proper waste disposal.

The responsible Agency must verify the return to compliance through either a regularly scheduled inspection or, at its discretion, a special inspection, prior to determining acceptability. Facilities regaining acceptability should be notified in writing.

B. Release Criteria for Facilities Receiving Post-SARA Wastes

1. RCRA Subtitle C Facilities—Releases at Receiving Units

RCRA Subtitle C facilities receiving wastes resulting from post-SARA decision documents, with receiving units deemed unacceptable because of releases, may regain acceptability by eliminating those releases. In addition, they must control any contamination that occurred as a result of the release under a permit or correction action order approved under Subtitle C of RCRA.

2. RCRA Subtitle C Facilities—Releases at Non-Receiving Units

RCRA Subtitle C land disposal facilities deemed unacceptable because of releases occurring at *other* units, and RCRA Subtitle C treatment, storage, and permit-by-rule facilities deemed unacceptable because of environmentally significant releases at other units, may regain acceptability by entering into an enforceable agreement, with the responsible Agency, to investigate the problems.

3. Corrective Action Orders/Agreements

Acceptable agreements under Subtitle C of RCRA include a corrective action order under section 3008(h), section 7003 or section 3013; permit provisions under 40 CFR 264.100 or 264.101 (or appropriate authority in a State authorized for HSWA corrective action); and an order under an equivalent authority in a State authorized for HSWA corrective action.

Releases from any unit at a RCRA facility will be considered controlled by a corrective action program upon issuance of the order or permit containing the requirement to initiate and complete one or more of the

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following: A RCRA Facility Investigation (RFI), a Corrective Measures Study, or Corrective Measures Implementation. This is consistent with both the RCRA and Superfund corrective action programs, where site study and release characterization is the first step in a series of actions designed to control releases. The facility will remain acceptable as long as it is in compliance with the terms of the order or permit, and it enters into future agreements for further corrective action activities, when necessary, except during periods of administrative or judicial challenges when a facility must make the requisite showing under 40 CFR 300.440(e) in order to remain acceptable.

4. Non-Subtitle C Facilities—Releases

Environmentally significant releases of hazardous waste, hazardous constituents, or hazardous substances from any unit of a facility regulated under other Federal laws (e.g., the Toxic Substances Control Act or Subtitle D of RCRA) or State laws under a Federally-delegated program, must be subject to corrective action mechanisms under those laws in order for the facility to be acceptable under this proposed rule. Such releases must be evaulated by the responsible Agency and must be determined either not to be environmentally significant or must be controlled by a corrective action program under the applicable statute. In the event that a release is discovered that has not been addressed by corrective action, the responsible Agency may determine that the facility is unacceptable to receive CERCLA wastes under this section.

Releases from units at non-Subtitle C facilities will be considered controlled upon issuance of an order or permit under the appropriate statute containing applicable corrective action requirements, subject again to 40 CFR 330.440(e).

5. Opportunity to Notify Agency of Return to Acceptability

The Agency recognizes the need to provide an opportunity for facilities to notify the responsible Agency when they believe they have returned to acceptability. This is necessary because it is possible a facility may return to physical compliance or complete corrective action earlier than anticipated.

Facilities that believe they have returned to acceptability under 40 CFR 330.440 may notify the responsible Agency in writing, explaining the measures taken to achieve acceptability. The responsible Agency shall endeavor to review such requests for re-evaluation in a timely manner, and shall notify the facility in writing of its decision regarding the facility's acceptability.

C. Release Criteria for Facilities Receiving Pre-SARA Wastes

Under the May 1985 off-site policy, facilities with relevant conditions could regain acceptability to receive pre-SARA wastes by entering into an enforceable agreement under the applicable statute to correct the relevant conditions. The Agency believes this standard of action is consistent with the intent of the off-site policy and of Congress, and is continuing its application as the standard facilities with relevant conditions must meet to regain acceptability to receive pre-SARA wastes.

D. Opportunities for Review of Unacceptability Determinations in Place on November 13, 1987

Under the May 1985 policy, facilities determined to be unacceptable to receive CERCLA wastes were provided with written notice and were generally afforded informal opportunities to comment on the determination (the latter step was not required by the policy). Although the Agency believes that these steps represented adequate procedural safeguards for facilities seeking to receive CERCLA wastes, EPA decided in its November 1987 revised policy to provide an additional opportunity for review, in light of the revised procedures set out in that policy, for facilities with unacceptability determinations already in place on the policy's effective date (November 13, 1987). EPA is repeating that offer here.

Any such facility that wishes to meet with the responsible Agency to discuss the basis for a violation or release determination and its relevance to the facility's ability to receive CERCLA wastes, may request an informal conference with or submit written comments to the responsible Agency at any point up to the 60th day after publication of the proposed rule in the Federal Register (i.e., until January 30, 1989). Such a meeting should take place within 30 calendar days of the request. If the responsible Agency does not find the information presented to be sufficient to support a finding of acceptability to receive CERCLA wastes, then it will inform the facility in writing that the unacceptability determination will continue to be effective. The facility may, within 10 calendar days after hearing from the responsible Agency after the informal conference or the submittal of written comments, petition the EPA Regional Administrator or appropriate State official for reconsideration. The Regional Administrator or State official may use discretion in deciding whether to conduct such a review.

However, review of unacceptability determinations that were already in place on November 13, 1987, will not stay the effect of the unacceptability determinations during the period of review. A stay would potentially allow the transfer of CERCLA cleanup wastes to facilities where the Agency has made detailed findings of violations or releases; this would be contrary to the Agency's mission to protect human health and the environment.

VIII. Manifest Requirements

Any off-site transfer of CERCLA waste that is also RCRA hazardous waste must comply with the RCRA manifest requirements in 40 CFR Part 262. EPA, or the party undertaking the on-site activity, is considered to be the "generator" and must ensure the proper filing of the Uniform Hazardous Waste Manifest.

IX. Regulatory Analysis

A. Regulatory Impact Analysis

Proposed regulations must be classified as major or minor to satisfy the rulemaking protocol established by Executive Order 12291. According to Executive Order 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this proposed regulation is not a major rule under Executive Order 12291 because it will not result in any of the impacts identified above. Today's proposal codifies an Agency policy that has been in effect since May of 1985 and largely mirrors a revision of that policy that has been in effect since November of 1987. This proposal contains criteria that EPA will use to determine where it will send waste from Superfund cleanups. The proposal does not regulate or otherwise impose any new requirements on commercial waste handlers. It does require them to be in compliance with applicable regulations the Agency already enforces. As a result of this proposal some facilities may choose to initiate corrective action sooner than if they waited for the corrective action conditions in their final operating permit. However, regardless of the requirements of this rule, under the authority of section 3008(h) of RCRA, EPA already compels corrective action at RCRA interim status facilities with known or suspected releases. The proposal, then, should not result in increased long-term costs to the commercial waste handling industry.

The requirement to send CERCLA waste only to facilitate acceptable under this rule may, in some cases, increase the transportation costs at Superfund cleanups conducted by EPA, the States and responsible parties under enforcement orders. This cost increase could result from decisions to ship waste a greater distance in order to reach an acceptable facility. The Agency has considered the distribution of commercial facilities which have historically handled CERCLA waste and their current acceptability status and has identified a fairly even distribution of acceptable facilities across the country, with the exception of the Rocky Mountain and Northern Plain States. These areas, however, have a sparse distribution of commercial facilities regardless of status. As a result, EPA has concluded that the requirement to use only facilities acceptable under the proposal will not result in increases in transportation costs to EPA, States, or responsible parties conducting Superfund cleanups that exceed $100 million annually. In addition, EPA believes that the majority of the facilities suitable for storage, treatment or disposal of CERCLA waste are either currently acceptable or are scheduled for corrective action to address releases (which will make them acceptable) through a HSWA permit or order under RCRA section 3008(h) authority.

Similarly, codification of the existing policy through this rule should not cause major increases in costs or prices for consumers, individual industries or geographic regions. The increased cost to the Federal government of waste transportation at Superfund cleanups as discussed previously, is not believed to be major. State and local government expenditures in Superfund cleanups are fixed at a constant proportion of the total cost of cleanup and should not be increased significantly by the proposal.

Codification of the Agency's off-site policy through this rule should not result in less business to the commercial waste handling industry since EPA believes it will not generally affect the decision to store, treat or dispose of Superfund waste off-site. For this reason the Agency believes the proposal will cause no significant adverse effects on employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. The proposal should not create significant adverse effects on competition since CERCLA waste constitutes an insignificant portion of the tonnage handled by the U.S. commercial waste handling industry. In any event, the industry is characterized by a small number of large companies which operate most of the major facilities that historically have handled CERCLA waste. Information collected by the Agency on the number of acceptable and unacceptable facilities indicates a relatively equal distribution of acceptable facilities among the major operators.

On the benefits side, the Agency believes the existing off-site policy and its codification through this rule will provide significant environmental benefits through the incentive to the commercial waste management industry to remain in compliance with applicable regulations and to address environmental releases sooner than might normally be required by the Agency during the permit issuance process. Most importantly, EPA believes that responsible selection of commercial storage, treatment and disposal facilities now, may avoid the need for future Superfund cleanups of facilities being used to dispose of today's wastes.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., at the time an Agency publishes any proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Today's proposed rule describes procedures for determining the acceptability of a facility for off-site management of CERCLA wastes. It does not impose any additional requirements on or affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Date: November 19, 1988.

Lee M. Thomas,

Administrator.

Part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES CONTINGENCY PLAN

1. The authority citation for Part 300 is amended to read as follows:

Authority: Sections 104(c)(3), 104(d)(1), 105, and 121(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9604(c)(3), 9605, 9621(d)(3)), section 311(c)(2) of the Clean Water Act (33 U.S.C. 1321(c)(2)); Executive Order 12580 (52 FR 2933, January 29, 1987); and Executive Order 11735 (38 FR 21243, August 1973).

2. Section 300.440 is added to Part 300 to read as follows:

§ 300.440 Procedures for planning and implementing off-site response actions.

(a) *Applicability.* (1) This section applies to any remedial or removal action involving the off-site transfer of any hazardous substance, pollutant, or contaminant as defined under CERCLA section 101(14) and (33) ("CERCLA waste") that is conducted by EPA, States, private parties, or other Federal agencies, that is Fund-financed and/or is under any CERCLA authority, including cleanups at Federal facilities under section 120 of CERCLA, or under section 311 of the Clean Water Act (except for cleanup of petroleum products). Applicability extends to those actions taken jointly under CERCLA and another authority.

(2) In cases of removal actions under CERCLA, enforcement actions taken as removal actions under CERCLA, or response actions under section 311 of the Clean Water Act where the release poses an immediate and significant threat to human health and the environment, the On-Scene Coordinator (OSC) may determine that it is necessary to transfer CERCLA waste off-site without following the requirements of this section.

(3) This section applies to wastes from cleanup actions based on CERCLA decision documents signed or consent decrees lodged after October 17, 1986 ("post-SARA") as well as those based on CERCLA decision documents signed and consent decrees lodged prior to

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October 17, 1986 ("pre-SARA"). However, post-SARA actions are subject to the acceptability criteria in § 300.440(b)(1) and (2), whereas pre-SARA actions are subject to acceptability criteria in § 300.440(b)(1) and (3).

(4) The responsible Agency must determine that any facility selected for the treatment, storage, or disposal of CERCLA waste is acceptable under this section. The responsible Agency is EPA, unless the selected facility is located in a State which EPA has authorized under section 3006 of RCRA for a hazardous waste program equivalent to section 3004(u) of RCRA and has entered into a Core Program Cooperative Agreement under CERCLA section 104(a)(1)(A) with the EPA. In the latter case, the authorized State is the responsible Agency. However, EPA remains the responsible Agency when the CERCLA waste is not RCRA hazardous waste, but is PCB waste and its disposal is subject to EPA approval under the Toxic Substances Control Act. A facility is acceptable until the responsible Agency notifies the facility otherwise.

(5) The transfer of waste samples to an off-site laboratory for characterization is not subject to this rule. However, the subsequent transfer of the samples is subject to the requirements of this rule.

(b) *Acceptability criteria.*—(1) *Facility compliance.* (i) A facility will be deemed in compliance for the purpose of this rule if there are no relevant violations at or affecting the unit or units receiving CERCLA waste:

(A) For treatment to standards specified in 40 CFR Subpart D, including any pre-treatment or storage units used prior to treatment;

(B) For treatment to substantially reduce its mobility, toxicity or persistence in the absence of a defined treatment standard, including any pre-treatment or storage units prior to treatment; or

(C) For storage or ultimate disposal of CERCLA waste not treated to the previous criteria.

(ii) Relevant violations include significant deviations from regulations, compliance order provisions, or permit conditions designed to: ensure that hazardous waste is destined for and delivered to authorized facilities; prevent releases of hazardous waste, hazardous constituents, or hazardous substances to the environment; ensure early detection of such releases; or compel corrective action for releases. Criminal violations which result in indictment are also relevant violations. A determination of acceptability will be based on compliance (i.e., absence of relevant violations) with the following requirements:

(A) Applicable subsections of sections 3004 and 3005 of RCRA or, where applicable, other Federal laws (such as the Toxic Substances Control Act and Subtitle D of RCRA); and

(B) Applicable sections of State environmental laws.

(C) In addition, land disposal units at RCRA Subtitle C facilities receiving RCRA hazardous waste from response actions authorized or funded under CERCLA must be in compliance with applicable RCRA section 3004(o) minimum technology requirements. Exceptions may be made only if the unit has been granted a waiver from these requirements.

(2) *Releases.* (i) Release is defined in § 300.6 of this Part. Releases under this section do not include *de minimis* releases, or releases permitted under Federal programs or under Federal programs delegated to the States (Federally permitted releases are defined in § 300.6), except to the extent that such releases are found to pose a threat to human health and the environment.

(ii) Releases from units at a facility designated for off-site transfer of CERCLA waste resulting from post-SARA decision documents must be addressed as follows:

(A) *Receiving units at RCRA Subtitle C facilities.* CERCLA wastes resulting from post-SARA decision documents may be transferred to an off-site unit regulated under Subtitle C of RCRA, including a facility regulated under the permit-by-rule provisions of 40 CFR 270.60(a), (b) or (c), only if that unit is not releasing any hazardous waste, hazardous constituent, or hazardous substance into the ground water, surface water, soil or air.

(B) *Other units at RCRA Subtitle C land disposal facilities.* CERCLA wastes resulting from post-SARA decision documents may not be transferred to a RCRA Subtitle C land disposal facility where a non-receiving unit is releasing any hazardous waste, hazardous constituent, or hazardous substance into the ground water, surface water, soil, or air unless that release is addressed by an enforceable agreement for corrective action under Subtitle C of RCRA or other applicable Federal or State authority. For purposes of this section, a RCRA "land disposal facility" is any RCRA facility at which a land disposal unit is located, regardless of whether a land disposal unit is the receiving unit.

(C) *Other units at RCRA Subtitle C treatment, storage, and permit-by-rule facilities.* For RCRA Subtitle C treatment, storage and permit-by-rule facilities, releases of any hazardous waste, hazardous constituent, or hazardous substance from non-receiving units at facilities receiving CERCLA wastes resulting from post-SARA decision documents must be evaluated to determine if they pose a significant threat to public health or the environment. The facility should not be used if the responsible Agency determines that such a threat exists unless that release is addressed by an enforceable agreement for corrective action under Subtitle C of RCRA or other applicable Federal or State authority.

(D) *All other facilities.* CERCLA wastes resulting from a post-SARA decision document should not be transferred to any unit at a non-Subtitle C facility if the responsible Agency has information indicating that an environmentally significant release of hazardous substances has occurred at that facility. However, the facility may be used if the responsible Agency determines that the release is addressed by an enforceable agreement for corrective action under an applicable Federal or State authority.

(iii) Releases are not considered to be "controlled" or "addressed" for the purpose of this section during the pendency of administrative or judicial challenges to corrective action programs, unless the facility has made the requisite showing under § 300.440(e).

(3) *Relevant conditions.* CERCLA wastes resulting from pre-SARA decision documents shall not be transferred to an off-site facility if there are environmental conditions at the facility that pose a significant threat to public health, welfare, or the environment, or affect the satisfactory operation of the facility.

(c) *Basis for determining acceptability.* (1) In order to determine compliance status, a facility must have received an appropriate facility compliance inspection within six months prior to receiving the CERCLA waste. For non-Subtitle C facilities, and for all facilities receiving wastes from pre-SARA actions, this inspection should also serve to determine if there are any environmentally significant releases or relevant conditions.

(2) In order to assess the status of releases at facilities being considered to receive wastes resulting from post-SARA decision documents, RCRA Subtitle C facilities should have undergone a RCRA Facility Assessment (RFA) or an equivalent facility-wide investigation before receiving waste; where a determination of release has already been made, the facility must be under a corrective action program which includes a facility-wide investigation before it may receive CERCLA waste. In addition, RCRA Subtitle C land disposal facilities must have received a comprehensive ground-water monitoring evaluation (CME) or operation and maintenance (O&M) inspection within the year preceding the determination of acceptability.

(d) *Determination of unacceptability.* (1) Upon initial determination by the responsible Agency that a facility being considered for the off-site transfer of any CERCLA waste does not meet the criteria for acceptability stated in § 300.440(b), the responsible Agency shall notify the owner/operator of such facility of its unacceptability status. The notice will be sent by certified and first-class mail, return receipt requested. The certified notice, if not acknowledged by the return receipt card, should be considered to have been received by the addressee if properly sent by regular mail to the last address known to the responsible Agency.

(2) The notice shall: state that based on available information from an RFA, inspection, or other data sources, the facility has been found not to meet the requirements of § 300.440; cite the specific acts, omissions, or conditions which form the basis of these findings; and inform the owner/operator of the procedural recourse available under this regulation.

(3) The facility may continue to receive CERCLA waste for 60 calendar days after the date of issuance of the notice.

(4) If the owner or operator of the facility in question submits a written request for an informal conference with the responsible Agency within 10 calendar days from the issuance of the notice, the responsible Agency shall provide the opportunity for such conference no later than 30 calendar days after the date of the notice, if possible, to discuss the basis for the underlying violation or release determination, and its relevance to the facility's acceptability to receive CERCLA cleanup wastes. If unacceptability is based on an inspection or enforcement action taken by the State, in the case where EPA issues the notice, a representative of the State may be present at the meeting. If no State representative is present, EPA shall notify the State of the outcome of the conference. An owner/operator may submit written comments by the 30th day after issuance of the notice, in addition to or instead of requesting an informal conference.

(5) If the owner or operator neither requests an informal conference nor submits written comments, on the 60th day after the notice is issued, the facility immediately becomes unacceptable to receive CERCLA waste. The facility will remain unacceptable until such time as the responsible Agency notifies the owner or operator otherwise.

(6) If an informal conference is held or written comments are received, the responsible Agency will notify the owner/operator in writing whether or not the information provided is sufficient to support a determination of acceptability. Unless information provided by the owner/operator is sufficient to support a determination of acceptability, the facility becomes unacceptable on the 60th calendar day after issuance of the original notice of unacceptability.

(7) Within 10 days of hearing from the responsible Agency after the informal conference or the submittal of written comments, the owner/operator may request a reconsideration of the unacceptability determination by the EPA Regional Administrator or appropriate State official. Reconsideration may be by review of the record, by conference, or by other means deemed appropriate by the reviewing official; reconsideration does not automatically stay the determination beyond the 60-day period. The owner/operator will receive notice in writing of the decision of the RA or State official.

(8) The responsible Agency may decide to extend the 60-day period if it requires more time to review a submission. The responsible Agency shall notify the facility owner/operator in writing if it extends the 60 days.

(9) The responsible Agency may decide that a facility's unacceptability is immediately effective in extraordinary situations such as, but not limited to, emergencies at the facility or egregious violations. The responsible Agency shall notify the facility owner/operator of its immediate unacceptability.

(e) *Unacceptability during administrative and judicial challenges of corrective action decisions.* For a facility with releases that are subject to a corrective action permit, order, or decree, an administrative or judicial challenge to the corrective action (or to a permit modification calling for additional corrective action) shall not be considered to be part of a corrective action "program" controlling those releases and shall not act to stay a determination of unacceptability under this rule. However, such facility may remain acceptable to receive CERCLA waste during the pendency of the appeal or litigation if:

(1) It satisfies the responsible Agency that adequate interim corrective action measures will continue at the facility; or

(2) It demonstrates to the responsible Agency the absence of a need to take corrective action during the short-term, interim period.

Either demonstration may be made during the 60-day review period in the context of the informal conference and RA/State official reconsideration.

(f) *Re-evaluating unacceptability.* If, after notification of unacceptability and the opportunity to confer as described in § 300.440(d), the facility remains unacceptable, the facility can regain acceptability. A facility found to be unacceptable to receive CERCLA wastes based on relevant violations, releases, or relevant conditions may regain acceptability if the following conditions are met:

(1) *Judgment on the merits.* The facility has prevailed on the merits in an administrative or judicial challenge to the finding of noncompliance or uncontrolled releases upon which the unacceptability determination was based.

(2) *Relevant violations.* The facility has demonstrated to the responsible Agency its return to physical compliance for the relevant violations cited in the notice.

(3) *Releases.* (i) All releases from receiving units at RCRA Subtitle C facilities have been eliminated and prior contamination from such releases is controlled by a corrective action program approved under Subtitle C of RCRA.

(ii) All releases from other units at RCRA Subtitle C land disposal facilities are controlled by a corrective action program approved under Subtitle C of RCRA.

(iii) A RCRA Subtitle C corrective action program may be incorporated into a permit, order, or decree, including the following: a corrective action order under RCRA section 3008(h) or section 7003, a RCRA permit under 40 CFR 264.100 or 264.101, or a permit under an equivalent authority in a State authorized for corrective action under RCRA section 3004(u). Releases will be deemed controlled upon issuance of the order, permit, or decree which initiates and requires completion of one or more of the following: a RCRA Facility Investigation, a RCRA Corrective Measures Study, and/or Corrective Measures Implementation. The release remains controlled as long as the facility is in compliance with the order, permit, or decree, and enters into subsequent agreements for implementation of additional corrective action measures

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when necessary, except during periods of administrative or judicial challenges, when the facility must make a demonstration under § 300.440(e) in order to remain acceptable.

(iv) All releases from other units at RCRA Subtitle C treatment and storage facilities must either be deemed by the responsible Agency not to pose a significant threat, or be controlled by a corrective action program as described in § 300.440(f)(3)(iii).

(v) Facilities with releases regulated under other applicable Federal laws, or State laws under a Federally-delegated program may regain acceptability under this section if the releases are deemed by the responsible Agency not to pose a significant threat to human health or the environment, or if the facility enters into an enforceable agreement under those laws to conduct corrective action activities to control releases.

(4) *Relevant conditions.* Facilities with relevant conditions that are receiving CERCLA wastes resulting from pre-SARA decision documents may regain acceptability under this section by entering into an enforceable agreement to correct the conditions under the applicable statute.

(5) An unacceptable facility may be reconsidered for acceptability whenever the responsible Agency finds that the facility fulfills the criteria stated in § 300.440(b). Upon such a finding, the responsible Agency shall notify the facility in writing.

[FR Doc. 88-27324 Filed 11-28-88; 8:45 am]
BILLING CODE 6560-50-M

federal register

Tuesday
November 29, 1988

Part IV

The President

Proclamation 5914—National Book Week, 1988

Proclamation 5915—Vocational-Technical Education Week, 1988

Proclamation 5916—To Amend Proclamation 5908

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Presidential Documents

Title 3—

The President

Proclamation 5914 of November 23, 1988

National Book Week, 1988

By the President of the United States of America

A Proclamation

"Books," Thoreau once wrote, "are the treasured wealth of the world, the inheritance of generations and nations." In the love of books and the accumulated learning they represent lie the heritage and the hope of mankind. For us in America, that love by tradition and experience has been a decisive force in our existence and development as a free people. We proclaimed it so for all eternity in the First Amendment to our Constitution, and we proved it so at the dawn of the American Revolution when we chose as our foremost weapon the printing press.

During National Book Week, we pause to recall all that books have had to do not only with the founding and building of this land, but also with the transmission of those ideas and practical achievements that form the basis of our culture. Published maps, journals, and accounts of explorers, adventurers, and missionaries inspired the early pioneers to follow them across new horizons of discovery in the Americas. Likewise, the writings of political philosophers and scholars from ancient times onward imparted wisdom and knowledge to the lovers of liberty who declared our country's independence. Another book, the Bible, gave them enduring inspiration and deep confidence in the transcendent value of their struggle.

Anyone who doubts the power or permanence of books need only look today at countries around the world where the mere composition, printing, binding, and distribution of a book is a prosecutable act of defiance against the state. Even the rulers of these regimes must secretly acknowledge the futility of their aims. For the printed word is an implacable enemy of tyranny, whether that tyranny comes in the form of official censorship by government or fashionable neglect by academia. In every society, the goals of education must include such a wide experience of the best books that intellectual independence and critical thinking become the natural assets of each citizen.

Our free society, then, must prize its libraries just as it values its liberties. We can all resolve during National Book Week to take stock of our own reading practices and our attentiveness to sharing books with others, especially the young. Technological change and specialized publications—electronic books, braille and large-print media for the visually impaired, recorded books and other forms—have greatly increased the accessibility of all kinds of literature. Promoting even broader dissemination of book learning, including efforts to achieve 100 percent literacy in our Nation, is the proper concern of all Americans. Truly we owe it to future generations to understand, preserve, and pass on the wisdom of the ages found only in books.

The Congress, by Senate Joint Resolution 342, has designated the period of November 28 through December 5, 1988, as "National Book Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 28 through December 5, 1988, as National Book Week, and I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-27645
Filed 11-28-88; 11:51 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5915 of November 23, 1988

Vocational-Technical Education Week, 1988

By the President of the United States of America

A Proclamation

Over the years, our Nation has benefited greatly from persons who have developed their vocational and technical skills and used those skills in helping to build strong and vibrant communities. Today, America's industries and businesses are facing new challenges in a more competitive international environment, and to continue to prosper they must achieve a higher level of innovation and productivity than ever before. To assist in meeting this challenge, young people must have a firm foundation in the basic skills that will enable them to fill jobs that require advanced vocational and technical training.

Various studies have projected that the future job market will consist more and more of such technically intensive occupations. If our economy is to have a sufficient crop of candidates for these occupations, it must be able to rely upon a large and growing pool of trained vocational educators. Fortunately, there are dozens of State and national groups committed to quality education in vocational specialties, and these groups are attuned to economic trends and supportive of professional educators in the technical-vocational fields. General public awareness is important, too. During Vocational-Technical Education Week, all Americans can pause to consider the need for strong vocational education programs that enjoy the full support of our communities.

The Congress, by House Joint Resolution 572, has designated the period of November 28 through December 2, 1988, as "Vocational-Technical Education Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period of November 28 through December 2, 1988, as Vocational-Technical Education Week, and I call upon the people of the United States to observe this event with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-27646
Filed 11-28-88; 11:52 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5916 of November 28, 1988

To Amend Proclamation 5908

By the President of the United States of America

A Proclamation

In order to amend paragraph A of Proclamation 5908 of November 18, 1988, "To Amend the Quantitative Limitations on Imports of Certain Cheeses," I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States of America, including Section 701 of the Trade Agreements Act of 1979, Section 604 of the Trade Act of 1974, and Section 1204(b) of the Omnibus Trade and Competitiveness Act of 1988, do hereby proclaim that:

In paragraph A of Proclamation 5908, the tabular material which reads:

"Uruguay . . . . . 943,569 482,000"

is deleted, and the tabular material

"Uruguay . . . . . 943,569 428,000"

is inserted in lieu thereof.

This Proclamation shall be effective November 18, 1988.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-27647
Filed 11-28-88; 11:53 am]
Billing code 3195-01-M

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11-30-88
Vol. 53 No. 230

federal register

Wednesday
November 30, 1988

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VOL
53
ISS
230
NO
30
1988
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11-30-88
Vol. 53 No. 230
Pages 48243-48504

federal register

Wednesday
November 30, 1988

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VOL
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ISS
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1988
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Federal Register
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Wednesday, November 30, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Implementation of Severe Accident Policy for Future LWRs of Evolutionary Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: On August 8, 1985, the Commission issued a Severe Accident Policy Statement (50 FR 32138) that provided general guidance concerning the approach to be used for treating postulated severe accidents in both existing and future reactors. The staff has undertaken to develop more detailed guidance to implement the severe accident policy for those future Light Water Reactors (LWRs) of evolutionary design (Advanced Boiling Water Reactor, CE-System 80+, SP/90) and the Electric Power Research Institute's Advanced LWR Requirements' Document and intends to hold periodic public meetings to inform the public of this work and to solicit comments. On June 9, 1988, the first of these meetings was held. The second meeting is planned for Tuesday, December 13, 1988 from 8:30 a.m. to 5:30 p.m. at the Crowne Plaza Holiday Inn at 1750 Rockville Pike, Rockville, Maryland 20852, phone: (301) 468–1100. The Crown Plaza is located near the Twinbrook Metro Station. Future meetings will also be announced in the Federal Register. In this second meeting, the NRC staff will present an update on the status of the development of regulations and guidance for the implementation of the Commission's severe accident policy for the evolutionary LWR designs. A meeting agenda is listed below. Persons wishing to make presentations on any of these agenda items should notify the contact listed below at least one week prior to the meeting. Anyone who cannot attend the meeting should send their comments to the contact.

FOR FURTHER INFORMATION CONTACT: Brad Hardin, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3722.

MEETING TOPICS: The following topics will be discussed in the meeting:

1. Introduction and Background.
2. Plans, approach and schedule for implementation of severe accident requirements and guidance.
3. Coordination with review effort on evolutionary standard LWR designs.
4. Important Severe Accident issues and challenges being considered for evolutionary LWR designs.
5. Open discussion.
6. Summary.

Dated in Rockville, Maryland, this 23d day of November, 1988.

For the Nuclear Regulatory Commission.

Thomas L. King,
Chief, Advanced Reactors and Generic Issues Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 88–27569 Filed 11–28–88; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88–ASW–15]

Alteration of VOR Federal Airways; TX

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V–77 and V–568 located in the vicinity of Millsap, TX, by realigning V–77 between Abilene, TX, and Wichita Falls, TX, and by extending V–568 from Acton, TX, to Wichita Falls. This action permits additional flexibility for maneuvering traffic in the Dallas/Fort Worth Airport terminal area, thereby reducing controller coordination and workload.

EFFECTIVE DATE: 0901 UTC, February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History:

On May 16, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V–77 by realigning that airway between Abilene, TX and Wichita Falls, TX, and by extending V–568 from Acton, TX via Millsap, TX, to Wichita Falls, (53 FR 17225). The realignment extends the Dallas/Fort Worth (DFW) terminal airspace, as well as improves the traffic flow in the Sheppard Air Force Base terminal area. Also, the rapid growth of air traffic in and around the DFW Metroplex has outgrown the current assigned airspace. This action improves coordination procedures, reduces en route and terminal delays, and reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of Federal Airways V–77 and V–568 located in the vicinity of Millsap, TX, by realigning V–77 between Abilene, TX, and Wichita Falls, TX, and by extending V–568 from Acton, TX, via Millsap, TX to Wichita Falls. This action permits additional flexibility for maneuvering traffic in the Dallas/Fort Worth Airport terminal area, thereby reducing controller coordination and workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

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Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

1. § 71.123 is amended as follows:

V-77 [Amended]

By removing the words "via Abilene, TX; Wichita Falls, TX;" and substituting the words "Abilene, TX; INT Abilene 047° and Wichita Falls, TX, 204° radicals; Wichita Falls;"

V-568 [Amended]

By removing the words "to Acton" and substituting the words "Acton; Millsap, TX; to Wichita Falls, TX"

Issued in Washington, DC, on November 23, 1988.

Harold W. Becker,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-27522 Filed 11-29-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1312

Importation and Exportation of Controlled Substances; Nomenclature Changes

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This action changes certain office designations which are currently listed in Part 1312, Importation and exportation of controlled substances, of Title 21 of the Code of Federal Regulations in order to accurately reflect the internal organization of the Drug Enforcement Administration.

It contains no substantive changes in any regulations. Therefore, no comments have been solicited and the action is being issued as a final rule.

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, telephone: (202) 633-1216.

SUPPLEMENTARY INFORMATION: It has been determined that this is an internal management matter not requiring consultation with the Office of Management and Budget (OMB) and that no Federalism considerations are involved. The Deputy Assistant Administrator of DEA hereby certifies that these matters will have no significant negative impact upon small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871 (b) and delegated to the Administrator of the Drug Enforcement Administration, and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby orders that 21 CFR Part 1312 of Title 21 of the Code of Federal Regulations be amended as follows:

List of Subjects in 21 CFR Part 1312

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Exports, Imports, Narcotics, Reporting requirements.

PART 1312—[AMENDED]

1. The authority citation for Part 1312 continues to read as follows:

Authority: 21 U.S.C. 952, 953, 954, 957, 958.

§§ 1312.14, 1312.16, 1312.19, 1312.24, 1312.25, 1312.28, 1312.31 and 1312.32 [Amended]

2. 21 CFR 1312.14(a), 1312.16(b), 1312.19 (a) and (b), 1312.24(a), 1312.25, 1312.28(c), 1312.31(b) and 1312.32(a) are amended by removing the words "Diversion Operations Section" and replacing them with the words "Drug Control Section".

Date: November 10, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-27484 Filed 11-29-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-278; Ref: Notices No. 639, 650]

Wild Horse Valley Viticultural Area; California

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in the mountains between Napa and Solano Counties, California, to be known as Wild Horse Valley. The viticultural area is located just five miles east of the City of Napa. It contains vineyards in both Napa and Solano Counties. The petition was submitted by John Newmeyer of Napa and four other interested persons. This final rule is based on a notice of proposed rulemaking (Notice No. 639) published in the **Federal Register** on September 16, 1987, at 52 FR 179, and a notice of proposed rulemaking (Notice No. 650) reopening the comment period, published in the **Federal Register** on December 21, 1987, at 52 FR 48279. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they may purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin. Section 4.25(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguished by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2) outlines the procedure for proposing a viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF received a petition proposing a viticultural area encompassing a valley near Napa, California, approximately five and one-third miles long and one and two-thirds miles across at its widest point. The total area of the viticultural area is 3,300 acres of 5.16 square miles. Currently, there are 73 acres of wine grapes in the Wild Horse Valley viticultural area. According to the petitioner, recent studies of other sites in the area indicate the feasibility of more than tripling the number of acres planted to wine grapes, and additional plantings are being considered. There are currently no bonded wineries in the viticultural area, but two small wineries are planned. Because of its proximity to San Francisco Bay and its elevation, the viticultural conditions in Wild Horse Valley are different from grape-growing conditions in other valleys in the eastern coast ranges of Napa County, such as Wooden, Gordon, Pope, Foss, and Chiles Valleys, which tend to be more continental in climate. The Wild Horse Valley's predominant soils, climate, and elevations are also different from those predominating in the portion of the overlapping Green Valley in Solano County (known as the Solano County Green Valley viticultural area) and the adjacent Coombsville area of Napa Valley. The long growing season of the Wild Horse Valley, its rocky soil, and windy conditions produce grapes that are well-suited to winemaking, according to the petitioner.

Location in Relation to Established American Viticultural Areas

The Wild Horse Valley viticultural area is within the North Coast viticultural area. Wild Horse Valley partially overlaps the Napa Valley and Solano County Green Valley viticultural areas. The Suisin Valley viticultural area is approximately 2.5 miles east of the Wild Horse Valley. It is separated from the Wild Horse Valley only by the Solano County Green Valley viticultural area.

Evidence of Name

The name Wild Horse Valley is well documented. The petitioner provided references to books identifying the area as Wild Horse Valley as early as 1866. According to early accounts, wild horses roamed the area during that period, thus the name Wild Horse Valley was coined.

Today, the name Wild Horse Valley is found on U.S.G.S. maps and on Napa County road maps. One of the two roads leading to the valley is named "Wild Horse Valley Road," and a creek flowing from the southeast portion of the valley into Solano County Green Valley, is named "Wild Horse Creek." The large, locally known horse ranch and equestrian center, Wild Horse Valley Ranch, located at the north portion of the valley, has given the name ample publicity in recent years. The first vineyard used for wine production in Wild Horse Valley was that of Joseph Vorbe who in 1881 had 50 acres. The wine historian, William F. Heintz, published a report entitled, "Wild Horse Valley's Viticultural History." Part of the report describes the historical use of the name Wild Horse Valley, as well as its viticultural significance.

Evidence of Boundaries

The boundaries of the Wild Horse Valley are defined by the natural terrain of the area. This hilly upland valley is rimmed by higher peaks on all sides. In its center are two large constructed lakes which supply water to the City of Vallejo. To the west, south, and southeast, mountainous terrain soon gives way to alluvial plains. To the north and northeast the terrain is ruggedly mountainous.

For ease of definition, the petitioner drew the boundary of the viticultural area with straight lines for the most part, connecting prominent peaks surrounding the valley. This boundary delineates the area which has been historically known as Wild Horse Valley.

Geographical Evidence

Climate and Elevation

The valleys in the Coast Ranges east of the City of Napa generally tend to have a drier, more continental climate than the Napa Valley floor and vineyard sites in the mountains to the west. Many factors, including distance from sources of marine air, sunny exposure, and heat-absorbing rocky outcroppings, contribute to warmer summertime temperatures. Because of its location, Wild Horse Valley is an exception to this generalization. The area of southern Napa Valley and Wild Horse Valley have lower annual temperatures and smaller annual temperature ranges as compared with the northern Napa Valley and most of the eastern coast ranges of Napa County, which have higher annual temperatures and larger annual temperature ranges. Wild Horse Valley's southerly location near San Pablo and Suisin Bays exposes it to cool westerly winds blowing in from the ocean and the bay, especially in spring and summer. Its proximity to the Carquinez Straits and its unprotected position rising out of bay shore flatlands on two sides make Wild Horse Valley an unusually windy location. This air movement combines with the marine breezes to make Wild Horse Valley windier than the lower elevation of the Coombsville area of Napa Valley to the west, and the more inland coast range mountains and valleys to the north, and the more sheltered Solano County Green Valley viticultural area. The Wild Horse Valley viticultural area also enjoys longer hours of sunlight than Coombsville area and Green Valley. Summer fogs that blanket the lower elevations often stop below the altitude of Wild Horse Valley. In spite of the longer period of daylight, Wild Horse Valley's customary cool winds keep afternoon temperatures low. A thermograph study done in 1965 at the ranch of James Birkmyer in the north end of the valley indicated that this site has a Region I climate (less than 2,500 degree days) as classified by the University of California at Davis system of heat summation.

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The predominant climate of the Wild Horse Valley viticultural area and the predominant climate of the overlapping Solano County Green Valley are different. Available thermograph studies (1973–74) of Solano County Green Valley, places the climate of this viticultural area in mid-Region III. Solano County Green Valley is more sheltered and on the average, warmer than Wild Horse Valley. The 1,000 to 2,000 foot elevation of the Wild Horse Valley viticultural area is generally higher than the surrounding valleys. Many areas of Solano County Green Valley have much lower elevations than Wild Horse Valley, ranging from 400 to 800 feet above sea level. Because of the difference in elevation, fog is more prevalent in Solano County Green Valley than in Wild Horse Valley. The average annual rainfall in Solano County Green Valley is twenty to twenty-five inches per year. Over the last twenty years the rainfall in Wild Horse Valley has averaged thirty-two inches per year.

Soils

The soils in Wild Horse Valley also set it apart from neighboring areas. The soils in Wild Horse Valley are primarily shallow, well-drained, sloping stony loams of the Hambright-Toomes association found only in mountainous uplands. Specific Wild Horse Valley soil types include Hambright, Toomes, Gilroy, Coombs, Sobrante and Trimmer loams. The soil in the overlapping Solano County Green Valley is primarily Conejo clay loam, a nearly level, deep, fine-textured alluvial soil found only at low elevations. Soil in the nearby Coombsville area of Napa Valley immediately west of Wild Horse Valley consists of Coombs loam with areas of Kidd, Haire, Forward, and Sobrante soils. The soils found in other Napa County areas to the north and east are primarily Yolo loam, Pleasanton loam, Diablo clay and Millsholm loam in the Cappel Valley. In Foss Valley they consist of Maxwell clay, Bale clay loam and Aiken loam. In Gordon Valley they are mostly Bale clay loam, Cole silt loam, Yolo loam and Bressa-Dibble complex. In Wooden Valley they mostly are Bale clay loam, Sobrante loam, Cole silt loam, Hair clay loam, Diablo clay, Clear Lake clay and Bressa-Dibble complex. In Chiles Valley they are primarily Pleasanton loam, Perkins gravelly loam, Henneke gravelly loam, Tehma silt loam, Maxwell clay and Bressa-Dibble complex. In Pope Valley the soils consist primarily of Pleasanton loam, Perkins gravelly loam, Henneke gravelly loam, Tehema silt loam, Maxwell clay and Bressa-Dibble complex.

Notice of Proposed Rulemaking

On September 16, 1987, Notice No. 639 was published in the **Federal Register** with a 30-day comment period. In that Notice, ATF invited comments from all interested parties regarding the proposal to establish "Wild Horse Valley" as an American viticultural area. Three comments were received from the public during the 30-day comment period. Two of the three comments received during the comment period favored approval of the proposed viticultural area. The one opposing comment came from the Santa Lucia Winery, Inc. of Templeton, California. The Santa Lucia Winery is located in the Central Coast (Santa Maria Valley) region of California. Although the Santa Lucia Winery is not located within the boundaries of the viticultural area, it uses the name "Wild Horse," "Wild Horse Winery," "Wild Horse Cellars," and "Wild Horse Wines" on its labels and advertising of wines. They have been using the name "Wild Horse" on their wine labels since 1985 and they also hold the trademark rights to that name. On October 30, 1987 (2 days prior to the closing date of the comment period), the Santa Lucia Winery, Inc., requested a 30-day extension of the comment period to fully review the Wild Horse Valley proposal. The Santa Lucia Winery was concerned about the impact the Wild Horse Valley viticultural area name may have on use of their trademark "Wild Horse."

Reopening of Comment Period

In light of the request from the Santa Lucia Winery, the comment period for the Wild Horse Valley proposal was reopened. On December 21, 1987, Notice No. 650 was published in the **Federal Register** with a 30-day reopening of the comment period. During the reopening of the comment period 5 comments were received. One comment favored the proposal and 4 comments were opposed to it. The one comment favoring approval of the Wild Horse Valley viticultural area was signed by 3 petitioner-grape growers that own vineyards within the boundaries of the viticultural area. They said that they welcome the continued use of the name "Wild Horse" by the Santa Lucia Winery.

The Santa Lucia Winery submitted a comment opposing the approval of the Wild Horse Valley viticultural area because of the trademark issue. The Napa Valley Vintners Association (a professional association of Napa Valley vintners) also was opposed to the Wild Horse Valley proposal. The association raised two issues. They thought that a 3,300 acre viticultural area with only 73 acres of grapes raises serious policy issues. They were particularly troubled by the overlapping boundaries of the Wild Horse Valley, Solano County Green Valley and Napa Valley viticultural areas.

Another winery raised the same two issues. Another winery was opposed to the Wild Horse Valley proposal on the basis that approval would serve to confuse consumers and muddy all appellations in the nearby areas by the fact that it cuts across existing viticultural and political boundaries. ATF would like to respond to the two comments that addressed the amount of grape acreage planted in the viticultural area. ATF has not set any specific guidelines for density or quantity of grape acreage for viticultural areas. Viticultural areas must conform to the regulatory requirements of 27 CFR 4.25a(e)(1) and (e)(2). When all of the criteria are met, a delimited grape-growing region may be established as a viticultural area.

Trademark Issue

The Santa Lucia Winery registered the trademark "Wild Horse" under the Lanham Act, 15 U.S.C. Chapter 22, in 1985. Santa Lucia contends that use of the viticultural designation "Wild Horse Valley" by other parties will infringe upon their Federally registered trademark.

It is not the policy of ATF to become involved in purely private disputes involving proprietary rights, such as trademark infringement suits. However, in the event a direct conflict arises between some or all of the rights granted by a registered trademark under the Lanham Act and the right to use the name of a viticultural area established under the FAA Act, it is the position of ATF that the rights applicable to the viticultural area should control. ATF believes that the evidence submitted by the petitioner establishes that designation of the Wild Horse Valley viticultural area is in conformance with the law and regulations. Accordingly, ATF finds that Federal registration of the term "Wild Horse" does not limit the Bureau's authority to establish a viticultural area known as Wild Horse Valley.

Finally, the Santa Lucia Winery will not be precluded from using the designation "Wild Horse" and a brand name on wine labels following issuance of this regulation. Pursuant to 27 CFR 4.39(i), a brand name of geographical significance may be used if it previously appeared on labels approved prior to July 7, 1986, and if the wine is also labeled with an appellation of origin (or some other statement which the Director finds to be sufficient to dispel the brand name's geographic connotation). Since Santa Lucia has been using their trademark "Wild Horse" since 1985, they may continue to use this brand name as long as the requirements of § 4.39(i) are satisfied.

Overlapping Viticultural Areas

As was previously stated, the approved Wild Horse Valley viticultural area partially overlaps the Napa Valley and Solano County Green Valley viticultural areas. The entire boundary of the Wild Horse Valley completely overlaps both of those two viticultural areas. Consequently, overlapping boundaries are unavoidable if the Wild Horse Valley is to be established as a viticultural area, given the existing boundaries of those previously established viticultural areas.

ATF finds that the Wild Horse Valley viticultural area satisfies the criteria established in 27 CFR 4.25(e) for approval of viticultural areas. Moreover, approval of this viticultural area does not preclude approval of additional viticultural areas, when the individual viticultural areas satisfy the criteria of name, historic or current evidence concerning boundaries, and evidence relating to geographical features and climate.

Miscellaneous

ATF does not wish to give the impression by approving "Wild Horse Valley" as a viticultural area that it is approving or endorsing the quality of the wine derived from this area. ATF is approving this area as being distinct and not better than other areas. By approving this viticultural area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "Wild Horse Valley."

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

27 CFR Part 9—American Viticultural Areas is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of 9.124 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.124 Wild Horse Valley.

Par. 3. Subpart C is amended by adding § 9.124 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.124 Wild Horse Valley.

(a) *Name.* The name of the viticultural area described in this section is "Wild Horse Valley."

(b) *Approved Map.* The appropriate map for determining the boundaries of the "Wild Horse Valley" viticultural area is one U.S.G.S. Quadrangle (7.5 Minute Series) map. It is titled Mt. George, California (1951), photorevised 1968.

(c) *Boundaries.* The boundaries of the Wild Horse Valley viticultural area (in Napa and Solano Counties) are as follows:

(1) The beginning point is on the section line boundary between Section 33, Range 3 West, Township 6 North and Section 4, Range 3 West, Township 5 North, Mount Diablo Range and Meridian, marked with an elevation of 1,731 feet, which is a northwest corner of the boundary between Napa and Solano Counties.

(2) From the beginning point, the boundary runs in a north-northeasterly direction approximately .9 mile to the summit of an unnamed hill having a marked elevation of 1,804 feet;

(3) Then northeasterly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 1,824 feet;

(4) Then south-southeasterly approximately .6 mile to the summit of an unnamed hill having a marked elevation of 1,866 feet;

(5) Then south-southeasterly approximately .5 mile to the summit of an unnamed hill having a marked elevation of 2,062 feet;

(6) Then southerly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 2,137 feet;

(7) Then south-southeasterly approximately .4 mile to the summit of an unnamed hill having a marked elevation of 1,894 feet;

(8) Then southerly approximately 2.3 miles to the midpoint of the section line boundary between Sections 15 and 22, Township 5 North, Range 3 West, Mount Diablo Range and Meridian;

(9) Then southwesterly approximately 1.3 miles to the summit of an unnamed hill having a marked elevation of 1,593 feet;

(10) Then west-northwesterly approximately 1.2 miles to the summit of an unnamed hill, on the Napa/Solano County boundary, having a marked elevation of 1,666 feet;

(11) Then north-northeasterly approximately 1.5 miles to the summit of an unnamed hill having a marked elevation of 1,351 feet;

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(12) Then north-northeasterly approximately 1.2 miles to the summit of an unnamed hill having a marked elevation of 1,480 feet; and

(13) Then north-northwesterly approximately 1.0 miles to the point of beginning.

Signed: October 14, 1988.

W.T. Drake,

Acting Director.

Approved: November 4, 1988.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement.

[FR Doc. 88-27427 Filed 11-29-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

28 CFR Part 44

[Order No. 1305-88]

Unfair Immigration-Related Employment Practices

AGENCY: Department of Justice.

ACTION: Interim final rule adopted as final with changes.

SUMMARY: This rule amends 28 CFR 44.101(c), which defines who is a citizen or intending citizen protected from citizenship status discrimination under section 102 of the Immigration Reform and Control Act of 1986 (IRCA) (8 U.S.C. 1324b), by amending subsection (c)(2)(ii) to provide that aliens, whose applications for temporary residence status pursuant to 8 U.S.C. 1255a are approved, are deemed to have been temporary residents from the date shown on the receipt received when they paid their application fee.

In addition, it codifies the existing policy and procedure of the Special Counsel which provides that aliens may file a declaration of intention to become a citizen at any time prior to the filing of a charge of citizenship status discrimination under section 102.

EFFECTIVE DATE: November 30, 1988.

ADDRESS: Comments received concerning the interim final rule with request for comments will remain available for public inspection at the Office of Special Counsel for Immigration Related Unfair Employment Practices, Suite 800, 1100 Connecticut Avenue NW., Washington, DC 20036, from 9:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays, until January 2, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Siskind, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice; (202) 653-8121 (Voice) or (202) 653-5710 (TDD number for the hearing impaired); or Andrew M. Strojny, Senior Attorney, Office of Special Counsel, (202) 653-8246 (Voice) or (202) 653-5710 (TDD number). These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1988, the Department of Justice published in 53 FR 10338 an Interim Final Rule With Request for Comments (Interim Final Rule). This Interim Final Rule provides that aliens, whose applications for temporary residence status pursuant to 8 U.S.C. 1255a are approved, are deemed to have been temporary residents from the date shown on the application fee receipt issued by the Immigration and Naturalization Service (INS) Legalization Office. Its purpose is to clarify 28 CFR 44.101(c). This subsection defines the classes of aliens who are intending citizens under section 102 of the Immigration Reform and Control Act of 1986 (IRCA) (8 U.S.C. 1324b) and protected from employment discrimination on the basis of citizenship status.

Section 44.101(c) also states that members of the classes of aliens who may be intending citizens must evidence an intention to become a citizen of the United States through completing a declaration of intention to become a citizen. On March 24, 1988, the Special Counsel for Immigration Related Unfair Employment Practices (Special Counsel) as the statutorily named official responsible for the investigation of charges and the issuance of complaints under section 102 of IRCA (8 U.S.C. 1324b(c)), and as the Attorney General's delegate responsible for the enforcement of section 102 and the administration of the Office of Special Counsel for Immigration Related Unfair Employment Practices (Office of Special Counsel) (28 CFR 0.129), published in 53 FR 9715 a Notice concerning when a declaration of intention to become a citizen could be filed. The Notice stated that the filing requirement contained in section 102 of IRCA (8 U.S.C. 1324b(a)(3)(B)) is satisfied as long as the declaration is completed and filed before a charge of citizenship status discrimination is filed with the Office of Special Counsel. The March 24, 1988 Notice, which fully sets out the reasons for this policy, states in pertinent part:

> The filing of the Immigration and Naturalization Service (INS) Form I-772 Declaration of Intending Citizen has caused some concern among those who deal with the Office of Special Counsel for Immigration Related Unfair Employment Practices. Questions have been raised about the timing of the filing of the I-772 and its availability. This notice is to address those concerns and to dispel any confusion that may have arisen.

Under section 102 of the Immigration Reform and Control Act of 1986 (IRCA), protection from citizenship status discrimination is afforded to citizens, nationals, and intending citizens. Among other definitional requirements, an intending citizen is an alien who "evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen." (8 U.S.C. 1324b(a)(3)(B).) When IRCA was passed, the only form in existence suited to that requirement was INS Form N-315. That Form, however, had fallen into disuse and could be executed only by permanent residents. IRCA permits temporary residents under the new legalization program, refugees, and asylees, as well as permanent residents, to qualify for intending citizen status. A new form was needed. The Immigration and Naturalization Service created the I-772 to meet that need.

Confusion has arisen over the timing of the filing of the I-772. Neither the statute nor the regulations specifically address the question of when the Declaration of Intention must be filed. The preamble to the regulations published on October 6, 1987 (52 FR 37402) states that the declaration must be completed prior to the occurrence of the alleged discrimination, *Id.* at 37407. The instructions to the I-772 itself, however, state that filing the I-772 is a prerequisite only "to assert a claim," not to qualify for protection.

To dispel any confusion on this question, this notice announces that the Justice Department views the declaration of intention filing requirement as satisfied as long as the declaration is completed and filed before the charge of discrimination is filed with the Office of Special Counsel for Immigration Related Unfair Employment Practices. It is not necessary to complete and file the declaration before the occurrence of the alleged discrimination.

This rule not only makes final the Interim Final Rule but also codifies the policy and procedure set forth in the March 24, 1988 Notice concerning when the declaration of intention to become a citizen may be filed.

Response to Comments to the Interim Final Rule

The Department received 4 comments on the Interim Final Rule, 1 from a company, 1 from a municipality, and 2 on behalf of public interest organizations. All but one of the comments were in support of the rule.

The one comment opposing the rule stated that the Interim Final Rule was a substantial and unauthorized revision of the statutory language of 8 U.S.C. 1234b(a)(1)(B), which 28 CFR 44.101(c) implements. The statute states an intending citizen is an alien who:

> Is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) [8 U.S.C. 1255a(a)(1)] • • •

The commentator states that if Congress had intended to make temporary resident status effective upon application for that status, it would have said so.

The Department believes that its rule is consistent with the will of Congress. First, as was stated in the preamble to the Interim Final Rule, that rule comports with the language of section 102. Section 245A(a)(1) referenced in the portion of the statute cited by the commentator is entitled "Timely Application" and only concerns the preliminary step in applying for temporary resident status or legalization, as the program is popularly known. Thus, the words of the statute lend support to relating temporary resident status back to the time of application. Second, the legislative history shows plainly that Congress did intend to protect applicants for legalization during the processing period. H.R. Rep. No. 99-682, 99th Cong., 2d Sess., pt. 1 at 70. Finally, the INS, the agency which actually grants such status, had, prior to the Interim Final Rule, already promulgated a regulation relating temporary resident status back to the time it issued the application fee receipt (8 CFR 245a.2(s)). This rule merely makes it clear that temporary resident status begins at the same time for both antidiscrimination and legalization purposes.

Codification of Declaration of Intention Filing Policy

The Interim Final Rule has been changed to codify the policy and procedure set forth in the Special Counsel's March 24, 1988 Notice as to when a declaration of intention may be filed in order to bring a charge of citizenship status discrimination. While it is not necessary to incorporate in a regulation this policy and procedure, doing so has a number of advantages. It ensures that this procedural requirement is readily and continuously available to the general public. It places all major Special Counsel policies and procedures in one ready reference. And it is consistent with the Office of Special Counsel practice of codifying charge processing procedures.

Since this change to the Interim Final Rule introduces no new policy or procedure but only codifies existing policy, there is good cause to give it immediate effect. In fact it is impractical to do otherwise without needlessly confusing the public.

This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127). Moreover, a regulatory flexibility analysis has not been prepared under the Regulatory Flexibility Act (5 U.S.C. 601-612), because the rule is unlikely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 44

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Investigations, Law enforcement officers, Minority groups, Nationality, Naturalization, Nondiscrimination, Refugees.

For the reasons set forth in the preamble, Chapter I, Part 44 of Title 28 of the Code of Federal Regulations is amended as follows:

PART 44—[AMENDED]

1. The authority citation for Part 44 is revised to read as follows:

Authority: 8 U.S.C. 1324b, 8 U.S.C. 1103(a).

2. In § 44.101, paragraph (c)(2)(ii) is revised to read as follows:

§ 44.101 Definitions.

* * * * *

(c) * * *

(2) * * *

(ii) Evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen (INS Form N-135, "Declaration of Intention"; or INS Form I-772, "Declaration of Intending Citizen") before filing a charge of discrimination. The status of an alien whose application for temporary resident status under 8 U.S.C. 1255a is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at the Immigration and Naturalization Service Legalization Office. As used in this definition, the term citizen or intending citizen does not include an alien who—

* * * * *

Dick Thornburgh,

Attorney General.

November 23, 1988.

[FR Doc. 88-27521 Filed 11-29-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-023]

Virginia State Plan; Final Approval Determination

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Final State plan approval.

SUMMARY: This document amends Subpart EE of 29 CFR Part 1952 to reflect the Assistant Secretary's decision granting final approval to the Virginia State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Virginia plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over private sector maritime employment and worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government. Federal jurisdiction remains in effect with respect to Federal government employers and employees.

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and

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obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, initial approval is granted.

A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and 1902.4 if it includes satisfactory assurance by the State that it will take the necessary "developmental steps" to meet the criteria within a three-year period. 29 CFR 1902.(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f).

A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e). To enable OSHA to evaluate State performance in relation to the foregoing criteria, State participation in OSHA's computerized Integrated Management Information System is required.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety and health compliance officers established by OSHA for that State. This requirement stems from a 1976 Court Order by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

History of the Virginia Plan and Its Compliance Staffing Benchmarks

Virginia Plan

On December 18, 1972, Virginia submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on April 11, 1973, a notice was published in the **Federal Register** (38 FR 9194) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons 30 days in which to submit data, views and arguments in writing concerning the plan.

Comments addressing specific areas of the Virginia plan, including alleged deficiencies, were received from the Virginia State Association of Professional Fire Fighters; Mary A. Marshall, Member of the Virginia House of Delegates; Harold Gordon of Gordon and Healy; the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO); and the Virginia State AFL–CIO. Following review of the Virginia plan, the public comments, and the results of discussions with the State, several modifications and clarifications were received from the State.

Plan review and a subsequent determination as to effectiveness, required under section 18(c) of the Act and Subpart B of 29 CFR Part 1902, disclosed several reasons for determining that the Virginia plan as submitted, which relied primarily on criminal enforcement procedures, was not "at least as effective" as the Federal civil enforcement scheme. Consequently, the Assistant Secretary initiated formal proceedings in accordance with section 18(d) of the Act and 29 CFR 1902.19(a) to reject the plan. A Notice of the Proposed Rejection and Notice of Hearing was published in the **Federal Register** (39 FR 24844, August 1, 1974) which fully described the ramifications of the State's reliance on a criminal enforcement process and the Assistant Secretary's conclusions regarding the resulting lack of effectiveness of the proposed Virginia program in comparison to Federal enforcement procedures. Although an opportunity was given for a public hearing on the rejection proceeding, only representatives of the District of Columbia requested permission to appear, and that request was subsequently withdrawn.

In view of the complexity of the subject matter involved in the proposed rejection, Requests for Admissions, Interrogatories and Answers to Interrogatories were exchanged between the parties to the proceeding. Before the commencement of a formal hearing on the proposed rejection, the Virginia General Assembly, in its 1975 regular session, amended section 40.1–49.1 of the Code of Virginia (1950) which serves as the enforcement portion of the enabling legislation. On June 16, 1975, the U.S. Department of Labor filed a motion to dismiss the proposed rejection on the grounds that the amended legislation, which provided for civil rather than criminal court review of contested enforcement actions and the right of employees to participate as parties in those proceedings, was in the process of being reviewed for possible approval and had rendered moot the proceeding on which the rejection was based. To this end, pursuant to section 18(c) of the Act and 29 CFR 1902.12, the Assistant Secretary published for public comment in the **Federal Register** (40 FR 25741, June 18, 1975) a notice of Submission of Modifications to the Developmental Plan which recognized that the 1975 amendments appeared substantially to remove the basis for the proposed rejection.

Public comments in response to this notice were received from Area 4, United Paper Workers International Union, AFL–CIO. There were no requests for a public hearing.

Prior to the date scheduled for argument on whether the proposed rejection proceeding should be dismissed, the Assistant Secretary and the Virginia Commissioner of Labor and Industry agreed upon Consent Findings, confirmed by a subsequent Consent Order, notice of which was published in the October 30, 1975 **Federal Register** (40 FR 50584), to suspend the proposed rejection proceedings pending the outcome of OSHA's review of the amended Virginia plan.

Although the 1975 legislative amendments appeared to resolve many of the objections to Virginia's enforcement process, the Department of Labor's review tentatively determined that the Virginia plan still did not provide enforcement procedures "as effective as" their Federal counterparts. Discussions and meetings between State and Federal representatives, however, resulted in several administrative commitments and legislative proposals by Virginia in response to the concerns expressed by Federal reviewers. The 1976 session of the Virginia General Assembly enacted further amendments to the State's enabling legislation. On June 21, 1976, the State formally submitted its revised plan, including the amended enabling legislation, to the Assistant Secretary. As noted above, the plan included provisions for the review of contested cases by the Virginia civil court system whereas Federal OSHA utilizes an administrative review process.

On September 28, 1976, the Assistant Secretary published a **Federal Register** notice granting approval of the Virginia plan as a developmental plan under Section 18(b) of the Act (41 FR 42655). The plan provides for a program patterned in most respects (other than its procedures for contested cases) after that of the Federal Occupational Safety and Health Administration.

The Virginia plan covers all occupational safety and health issues except private sector maritime employment and employment at worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government. The Virginia Department of Labor and Industry is designated as having responsibility for administering the plan throughout the State. At the time of initial plan approval, the responsibility for health standards enforcement rested with the Bureau of Occupational Health in the Virginia Department of Health. Effective July 1, 1985, the Bureau of Occupational Health was transferred from the Department of Health to the Department of Labor and Industry.

The plan provides for the adoption by Virginia of standards which are "at least as effective" as the Federal occupational safety and health standards. In most cases the State standards are identical to the Federal. The plan requires employers to furnish employment and places of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the State agency. Employees are required to comply with all standards and regulations applicable to their conduct. The plan contains provisions similar to Federal procedures governing emergency temporary standards; imminent danger proceedings; coverage under the general duty clause; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. Appeals of citations and penalties are filed with the Commissioner of Labor and Industry and are heard by the General District Courts of Virginia, which are located in each Virginia county and in the independent cities. (Although the General District Courts are not courts of record, the 1979 session of the Virginia General Assembly enacted amendments to Title 40.1 of the Code of Virginia to require the Virginia courts to issue written orders based on findings of fact and conclusions of law in cases involving the contest of citations and penalties related to violations of occupational safety and health standards.) Decisions of the General District Courts may be appealed to the Virginia Circuit Courts. Decisions of the Circuit Courts may be appealed to the Virginia Supreme Court.

The notice of initial approval noted a few additional distinctions between the Federal and Virginia programs. The State does not cover private sector maritime employment or employment at worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government. As indicated above, unlike the Federal administrative process for the review of contested cases, in Virginia, General District Courts hear formal contests of penalties and/or citations for safety and health violations. Appeals of District Court determinations are heard de novo by the State Circuit Courts.

The Assistant Secretary's initial approval of the Virginia developmental plan, a general description of the plan, a schedule of required developmental steps, and a provision of discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart EE; 41 FR 42655, September 28, 1976). A minor correction to the approval notice was published on February 25, 1977 (42 FR 10989). As a result of the approval of the Virginia State plan, the Assistant Secretary published a notice announcing the Dismissal of Rejection Proceedings against the Virginia plan (41 FR 56412, December 28, 1976).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and documentation submitted for OSHA approval on or before September 23, 1979. These "developmental steps" included amendments to Title 40.1 of the Code of Virginia, promulgation of State occupational safety and health standards essentially identical to Federal standards and establishment of a public employee program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its program including, among other things, legislative amendments, a judicial system of review for contested cases, a merit staffing system, regulations for inspections, citations and proposed penalties, recordkeeping and reporting regulations, a voluntary compliance program, including on-site consultation services, and a safety and health poster for private and public employees.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Virginia subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.372).

On October 1, 1981 an operational status agreement was entered into between Federal OSHA and Virginia. A **Federal Register** notice announcing the operational status agreement was published on June 11, 1982 (47 FR 25323). Under the terms of the agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Virginia plan.

On August 15, 1984, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Virginia had satisfactorily completed all developmental steps (49 FR 33123, August 21, 1984). In certifying the plan, the Assistant Secretary found the structural features of the program—the statutes, standards, regulations, and written procedures for administering the

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Virginia plan—to be at least as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine in accordance with Section 18(e) of the Act whether the statutory or regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On June 13, 1978, OSHA published a notice in the **Federal Register** (43 FR 25491) requesting public comment on a petition received by the Agency requesting withdrawal of OSHA approval of the Virginia State plan. The petition was submitted by the Oil, Chemical, and Atomic Workers (OCAW) International Union. Three additional petitions requesting plan withdrawal were subsequently filed by the Fairfax County, Virginia, Board of Supervisors, the Virginia State AFL–CIO, and the Building and Construction Trades Department of the AFL–CIO. On October 3, 1980, a **Federal Register** notice was published (45 FR 65625) requesting public comments on the three petitions as well as providing an additional time period for public comments on the OCAW petition.

The OCAW petition alleged that Virginia's enforcement of safety and health standards was not as effective as that of Federal OSHA. The Virginia State AFL–CIO criticized Virginia's judicial review system and alleged that Virginia had failed to enforce safety and health standards as effectively as Federal OSHA. The Fairfax County Board of Supervisors and the Building and Construction Trades Department alleged that Virginia's enforcement in the construction industry was ineffective and insufficient.

Of the 101 written comments received in response to the two notices requesting public comment, 97 expressed support for the Virginia plan while four letters supported the petitions for withdrawal, two of those letters having been submitted by petitioners themselves. In a **Federal Register** notice dated July 14, 1981 (46 FR 36141) the Assistant Secretary announced that in light of recent Federal monitoring data, comparison with Federal performance, information provided in the public comments, and other relevant factors, a withdrawal proceeding against the Virginia State plan was not warranted and the petitions were therefore denied.

On December 12, 1986, OSHA published a **Federal Register** notice (51 FR 44784) announcing that effective October 1, 1986, concurrent Federal authority had been reinstituted in Virginia with respect to general schedule inspections resulting in denials of entry under the Virginia State plan. The resumption of concurrent enforcement authority was undertaken as a temporary measure to allow Virginia to complete its efforts to legislatively address difficulties it had encountered in the area of right of entry. The specific difficulty resulted from the 1985 Virginia Supreme Court decision in *Mosher Steel-Virginia* v. *Teig*, 327 S.E. 2d 87 (Va., 1985), that suggested, but did not expressly hold, that Virginia employers challenging general schedule inspection warrants would be entitled to discovery, including the release of confidential inspection scheduling information and "establishment lists" of workplaces likely to be inspected in the future. In a subsequent case (*Mosher Steel-Virginia* v. *Amato*, Chancery No. 86–04354) involving a challenge to a State inspection warrant, the Circuit Court for the City of Roanoke, relying on the 1985 Virginia Supreme Court decision, ordered State officials responsible for enforcing the plan to submit to discovery requested by the employer, including the submission of data underlying the Virginia inspection plan, deposition of officials responsible for developing and implementing the inspection scheduling plan, and the release to the employer of various confidential scheduling material, including establishment lists. In cases involving similar challenges to Federal OSHA inspection warrants, the Federal courts have held such discovery improper. It was the Assistant Secretary's determination that these State court decisions rendered Virginia's right of entry authority less effective than the Federal and necessitated the reinstitution of limited concurrent Federal enforcement authority to ensure worker protection.

The 1987 session of the Virginia General Assembly enacted legislative amendments to remedy the Virginia plan's right of entry difficulties. OSHA's review of those amendments determined that the amendments provided the Virginia plan with a basis to obtain search warrants on terms and conditions equivalent to those which are available Federally. Accordingly, the Assistant Secretary approved the legislative amendments in the September 17, 1987 **Federal Register** (52 FR 35089) and announced that the limited exercise of concurrent Federal jurisdiction in Virginia had been terminated when the amendments became effective on July 1, 1987.

Virginia Benchmarks

In 1978, the Assistant Secretary was directed by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, to calculate for each State plan State the number of enforcement personnel (compliance staffing benchmarks) needed to assure a "fully effective" enforcement program. In 1980, OSHA submitted a Report to the Court containing the benchmarks and requiring Virginia to allocate 51 safety compliance officers and 74 industrial hygienists to conduct inspections under the plan.

In September 1984 the Virginia State designee in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Virginia. Pursuant to an initiative begun in August 1983 by the State plan designees as a group with OSHA, and in accord with the formulas and general principles established by that group for individual State revision of the benchmarks, Virginia reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal to OSHA contained in comprehensive documents of revised staffing benchmarks of 38 safety and 21 health compliance officers. After the opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986 (51 FR 2481).

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On September 2, 1988, OSHA published notice (53 FR 34121) of the eligibility of the Virginia State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted. The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Integrated Management Information System, and staffing which meets the revised State staffing benchmarks.

The September 2 **Federal Register** notice set forth a general description of the Virginia plan and summarized the results of Federal OSHA monitoring of State operations during the period from January 1, 1987 through March 31, 1988. In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking

proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Virginia operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the January 1987–March 1988 Evaluation Report of the Virginia plan ("18(e) Evaluation Report"), which was extensively summarized in the September 2 proposal and provided the principal factual basis for the proposed 18(e) determination, was included in the record. Copies of all OSHA evaluation reports on the plan since its certification as having completed all developmental steps were made part of the record.

To assist and encourage public participation in the 18(e) determination, copies of the complete record were maintained in the OSHA Docket Office in Washington, DC., in the OSHA Regional Office in Philadelphia, Pennsylvania, and at the Virginia Department of Labor and Industry in Richmond. Summaries of the September 2 proposal, with an invitation for public comments, were published in Virginia on September 4, 1988, and on September 26, 1988.

The September 2 proposal invited interested persons to submit by October 7 written comments and views regarding the Virginia plan and whether final approval should be granted. An opportunity to request an informal public hearing also was provided. Twenty-one (21) comments were received in response to this notice, one of which requested an informal hearing.

Summary and Evaluation of Comments and Requests for an Informal Hearing Received

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information and views regarding operations under the Virginia plan to supplement the information already granted during OSHA monitoring and evaluation of plan administration.

In response to the September 2 notice, OSHA received comments from: Frank C. Bedell, President of the Virginia Petroleum Jobbers Association, Inc. [Ex. 3–1]; William C. Ashworth, Vice-President and General Manager of the Rock-Tenn Company, Paperboard Products Division [Ex. 3–2]; K.W. Callan, Plant Manager of the American Furniture Company, Inc. [Ex. 3–3]; E. J. Estep, Personnel Director of the Electro-Mechanical Corporation [Ex. 3–4]; Robert E. Wages, Vice-President of the Oil, Chemical and Atomic Workers International Union (OCAW) [Ex. 3–5]; Ken Decker, Personnel Manager of NI Industries, Inc. [Ex. 3–6]; Douglas Ashbrook, Project Manager of the R. L. Johnson Construction Company, Inc. [Ex. 3–7]; John N. Jordan, Vice President and Director of Human Resources of Armstrong World Industries, Inc. [Ex. 3–8]; Stuart H. Pouliot, Manager, Employee and Environment Protection, of Philip Morris, U.S.A. [Ex. 3–9]; Sandra Y. Williams, Executive Director of the Masonry Contractors Association of Virginia [Ex. 3–10]; Roderick Triplett, III, President of the Virginia Association of Plumbing-Heating-Cooling Contractors [Ex. 3–11]; Mark I. Singer, Executive Director of the Richmond Area Municipal Contractors Association [Ex. 3–12]; Mark I. Singer, Executive Director of the Virginia Electrical Contractors Association, Inc. [Ex. 3–13]; John D. Tickle, President and CEO of the Morrison Molded Fiber Glass Company [Ex. 3–14]; Z. C. Cameron, Jr., of the Virginia Manufacturers Association [Ex. 3–15]; H. Kim Anderson, Executive Director of the Virginia Petroleum Council [Ex. 3–16]; David H. Laws, President, and Bill Wilson, Director, Safety and Health, of the Virginia State AFL–CIO [Ex. 3–17]; A. T. Hamilton, Employee Relations Manager of the Aqualon Company [Ex. 3–18]; William C. Wilson, Director of Safety and Health of the United Food and Commercial Workers Union, Local 400 [Ex. 3–19]; James T. Hicks, Safety and Security Manager, and L. Mel Kent, Industrial Relations Manager, of the Brunswick Corporation, Defense Division [Ex. 3–20]; and Jon K. Parish, Director, Loss Control and Training, of the Lane Company [Ex. 3–21].

Twenty of the comments expressed support for final approval on the grounds of State competence, responsiveness, and specific knowledge of local conditions. Several of these comments indicated that the State has established and operates an effective safety and health program without adversarial relations with local industries and workers, and that the State has been effective in protecting employees in Virginia. Many of the comments commended the State for developing and adopting its own confined spaces standards for the telecommunications industry and for general industry and construction. The comments also praised the competency and professionalism of Virginia inspectors and officials.

The October 1 comment submitted by Robert Wages of OCAW [Ex. 3–5] urged that the Assistant Secretary deny final approval to the Virginia State plan and requested an informal hearing pursuant to 29 CFR 1902.39. Mr. Wages' objection to final approval for the Virginia program was specifically based on the results of a State investigation into a fatal accident in 1988 at an oil refinery in which the employer was cited and assessed a penalty for a serious violation. It was Mr. Wages' contention that since the employer had been informed of the hazardous condition two months earlier, a citation for a willful violation should have been issued.

OSHA's Philadelphia Regional Office conducted an investigation of the allegations contained in Mr. Wages' letter and found that although the condition resulting in the accident clearly constituted a serious violation, the evidence was inconclusive as to whether the circumstances surrounding the employer's action could be construed as purposeful or deliberate so as to support the issuance of a citation for a willful violation. It was the judgment of the Regional Office that the Virginia program's decision to cite the employer for a serious violation of the State's "general duty clause" (Title 40.1–51.1(a), Code of Virginia) was appropriate under the circumstances of the case. Furthermore, the Regional investigation noted that the Virginia program has a strong policy of citing willful violations when warranted and of supporting them at trial.

In light of the Regional Office's finding that the OCAW allegations against the Virginia program were unfounded and that the State's actions in the case were appropriate, the Agency has determined that an informal public hearing on the matter is not warranted.

Findings and Conclusions

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Virginia State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period of January 1, 1987 through March 31, 1988 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows.

(1) *Standards.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons

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(29 CFR 1902.4(b)(2)(iii); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and, where applicable to a product, must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved Virginia State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the September 2 notice, the Virginia plan provides for the adoption of standards and amendments thereto which are, in most cases, identical to Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding, include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State plan approval, a State program must be found to have adhered to its approval procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effectve standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

As noted in the "18(e) Evaluation Report" and summarized in the September 2, 1988, **Federal Register** notice, Virginia has generally adopted standards in a timely manner which are identical to Federal standards.

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Virginia has generally adopted standards interpretations which are at least as effective as the Federal. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to standards have occured in Virginia.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds the Virginia program in actual operation to provide for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal program.

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(iv)). The Virginia State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval, permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the September 2 notice, no permanent variances were granted during the reporting period. Action on these requests was in accordance with the State's procedures and the granted variances provided protection equivalent to that provided under the standard. No temporary variances were requested during the evaluation period.

Accordingly, OSHA finds that the Virginia program effectively grants variances from its occupational safety and health standards.

(3) *Enforcement.* Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The Virginia occupational safety and health statutes and implementing regulations, previously approved by OSHA, establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The "18(e) Evaluation Report" data show no lack of adherence to such procedures.

(a) *Inspections.* A plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(i)). As noted in the September 2, 1987 **Federal Register** notice, Virginia has procedures similar to those of Federal OSHA for processing and responding to complaints. Data contained in the 18(e) Evaluation Report indicate the State responded to 56.6% of safety complaints and 56.4% of health complaints with an inspection. (Evaluation Report, pages 13 and 14.)

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). Data contained in the 18(e) Evaluation Report indicate that 96.2% of the State's programmed safety and 100% of its programmed health inspections were conducted in high-hazard industries. (Evaluation Report, page 12.)

(b) *Employee Notice and Participation in Inspections.* In conducting inspections the State plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(ii)). The State's procedures require compliance officers to provide this opportunity. During the evaluation period, 97.6% of initial inspections included either employee representatives on the walkaround or interviews with employees. OSHA has concluded that employee representation is properly provided in State inspections. (Evaluation Report, page 16.)

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)), and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Virginia requires that a poster approved by OSHA (45 FR 77001) be displayed in all covered workplaces. Requirements for the posting of the poster and other

notices such as citations, contents, hearings and variance applications are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards, including the Access to Employee and Medical Records standard and the Hazard Communication standard, which are identical to those of Federal OSHA. Federal OSHA's evaluation concluded that the State's performance is satisfactory.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(v)). Title 40.1 of the Code of Virginia and State regulations provide for discrimination protection equivalent to that provided by Federal OSHA. The State investigated 25 discrimination complaints during the evaluation period. Of the investigated complaints, 4 were found to have merit. All of the meritorious cases were settled or litigated. This compared favorably with Federal experience. (Evaluation Report, pages 19–20.)

(d) *Restraint of Imminent Danger; Protection of Trade Secrets.* A State plan is required to provide for the prompt restraint of imminent danger situations, (29 CFR 1902.4(c)(2)(vii) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and field operations manual which are similar to the Federal. There were 6 imminent danger situations identified during the evaluation period. There were no Complaints About State Program Administration (CASPA's) filed concerning the protection of trade secrets during the reporting period.

(e) *Right of Entry; Advance Notice.* A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). In addition, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than the Federal program (29 CFR 1902.3(f)). Title 40.1 of the Code of Virginia authorizes the Commissioner to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. The Virginia law also allows the Commissioner to apply for a warrant from the State courts to permit entry into such establishments that have refused entry for the purpose of inspection or investigation. The Virginia law also prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (20 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. Virginia had 18 denials of entry during this evaluation period, and was successful in obtaining warrants for 14 of them. One case was referred to Federal OSHA during the 9-month period of concurrent Federal jurisdiction, and in 3 instances short-term construction jobs were completed before entry could be obtained. The 18(e) Evaluation Report indicates that 13 instances of advance notice procedures were used and in all cases the State's use of its procedures were proper. (Evaluation Report, pages 15–16.)

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspections, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The Virginia plan, through its law, regulations and field operations manual, which have all been previously approved by OSHA, has established a system similar to the Federal for prompt issuance of citations to employers delineating violations and establishing reasonable abatement period requiring posting of such citations for employee information and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure-to-abate notice and appropriate penalties (29 CFR 1902.37(b)(13)).

Procedures for the Virginia occupational safety and health compliance program are set out in the Virginia Field Operations Manual, which is patterned after the Federal manual, and thus the State follows inspection procedures, including documentation procedures, which are similar to the Federal. The evaluation report notes overall adherence by Virginia to these procedures. Virginia cites an average of 3.6 violations per programmed safety inspection with citations and 4.5 violations per programmed health inspection with citations; and 17.8% of safety and 8.6% of health violations were cited as serious by the State. The percentage of serious safety and health violations was lower than the comparable Federal statistics and was attributed to instances of incorrect hazard classification and identification by compliance officers. The State provided compliance officers with supplemental training to ensure the proper classification of violations of certain specific standards. Virginia's lapse time from last day of inspection to issuance of citation averaged 28.8 days for safety and 48.3 days for health. (Evaluation Report, pages 16–18.)

Virginia's procedures for calculation of penalties are similar to those of Federal OSHA, with the exception that the State has not adopted the Federal procedure for citing willful violations with instance-by-instance penalties. The evaluation report indicates that the average proposed penalties for serious violations were $325.50 for safety and $447 for health. (Evaluation Report, pages 18–19.)

Follow-up inspections accounted for .9% of Virginia's total safety inspections and 3.7% of its health inspections, with 17.2% of the safety follow-up inspections and 28.6% of the health follow-ups resulting in failure-to-abate notifications. Virginia's abatement periods for serious violations averaged 7.9 days for safety and 28.3 days for health. (Evaluation Report, page 18.)

(g) *Contested Cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Virginia's procedures for employer and employee contest of

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citations, penalties and abatement requirements and for ensuring employees' rights are contained in the law, regulations and field operations manual made a part of the record in this proceeding. As noted elsewhere in this notice, the Virginia plan provides for the review of contested cases by the Virginia civil court system whereas Federal OSHA utilizes an administrative review process. Appeals of citations and penalties are filed with the Commissioner of Labor and Industry and are heard by the General District Courts of Virginia. Decisions of the General District Courts may be appealed to the Virginia Circuit Courts. Decisions of the Circuit Courts may be appealed to the Virginia Supreme Court. During the evaluation period, 4.0% of safety inspections with citations and 1.2% of health inspections with citations resulted in contests. (Evaluation Report, pages 19 and 20.)

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). As noted elsewhere in this notice, a 1985 decision by the Virginia Supreme Court had created a situation whereby the State's ability to obtain search warrants when denied entry on general schedule inspections was severely compromised. The State plan officials recognized the difficulty and successfully sought corrective legislative amendments during the 1987 session of the Virginia General Assembly. Those amendments became effective on July 1, 1987. The Virginia (18)(e) Evlauation Report noted no other instances of adverse adjudications. (Evaluation Report, pages 4 and 19–20.)

Accordingly, OSHA finds that the Virginia plan effectively responds to adverse administrative and court decisions.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the Virginia plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) *Public Employee Program.* Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan. The Virginia plan provides a program in the public sector which is very similar to that in the private sector, except that no penalties are proposed.

During the evaluation period, Virginia conducted 129 public sector inspections, citing 367 violations, of which 28.3% were classified as serious. The proportion of inspections dedicated to the public sector (3.5% of total inspections during the evaluation period) was appropriate to the needs of public employees. (Evaluation Report, pages 10–11.)

Injury and illness rates for State and local government employment are higher than in the private sector (1986: all case rate—9.4: lost workday case rate—4.5). The State and local government lost workday case rate decreased slightly from 4.6 to 4.5 in 1986, while the private sector rate had a slight increase from 3.4 to 3.5.

Because Virginia's performance in the public sector is comparable to that in the private sector, OSHA concludes that the Virginia program meets the criteria in 29 CFR 1902.3(j).

(5) *Staffing and Resources.* Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

The Virginia plan provides for 38 safety compliance officers and 21 industrial hygienists as set forth in the Virginia FY 1988 grant. This staffing level meets the approved, revised fully effective benchmarks for Virginia for safety and health staffing, as discussed elsewhere in this notice.

The State provides a comprehensive training program for new compliance personnel and refresher and specialized training for experienced staff, which includes attendance at the OSHA Training Institute and in-house and field training exercises.

As noted in the **Federal Register** notice announcing certification of the completion of developmental steps for Virginia (49 FR 33123), all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S. Office of Personnel Management.

Because Virginia has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Court Order in *AFL–CIO* v. *Marshall, supra,* are being met by the Virginia plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Virginia plan was founded at $3,801,868 in FY 1988. (Fifty percent of the funds were provided by Federal OSHA and 50% were provided by the State.)

As noted in the 18(e) Evaluation Report, Virginia's funding is judged sufficient in absolute terms; moreover, the State allocates its resources to the various aspects of the program in a manner similar to OSHA. On this basis, OSHA finds that Virginia has provided sufficient funding for the various activities carried out under the plan.

(6) *Record and Reports.* State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.3(1)).

Virginia employer recordkeeping requirements are equivalent to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted elsewhere in this notice, the State participates and has assured its continuing participation with OSHA in the Integrated Management Information System as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Virginia has met the requirements of sections 18(c) (7) and (8) of the Act on employer and State reports to the Secretary.

(7) *Voluntary Compliance Program.* A State plan is required to undertake programs to encourage voluntary compliance by employers and employees (29 CFR 1902.4(c)(2)(xiii)).

Training programs for both the State's public and private sectors have been established and are ongoing. In the public sector, 199 employers and supervisors and 5,789 employees participated in 149 training sessions in 1987. In the private sector, 192 employers and supervisors and 3,864 employees participated in 280 training sessions. (Evaluation Report, page 10.)

In the private sector, Virginia provides on-site consultative services to employers under a cooperative agreement with OSHA made pursuant to Section 7(c)(1) of the Act and 29 CFR Part 1908. On-site consultation for the public sector is provided under the Virginia plan.

Accordingly, OSHA finds that Virginia has established and is administering an effective voluntary compliance program.

(8) *Injury and Illness Statistics.* As a factor in its 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those under the Federal program. See section 1902.37(b)(15). The 1985 and 1986 Bureau of Labor Statistics' injury and illness rates for Virginia (private sector all case rate for 1985 was 7.3 and for 1986 was 7.6; lost workday case rate for 1985 was 3.4 and for 1986 was 3.5) were comparable to rates in States where Federal OSHA provides enforcement coverage. In 1986 the all case incidence rates and the lost workday case rates for private sector, manufacturing and construction experienced a mix of increases and decreases in Virginia. The rates of increase were within the acceptable range established under OSHA's State Plan Activities Measures. In addition, only one of the five most hazardous industries in Virginia showed an increase from 1985 to 1986 in its lost workday case rate (SIC 42, Lumber and Wood Products, except Furniture), and that rate (8.9) was the same as the 1986 Federal rate for that particular industry.

OSHA finds that the trends in injury and illness statistics in Virginia were comparable with those in States with Federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that the Virginia State plan for occupational safety and health, which has been monitored for at least one year subsequent to certification, is in actual operation at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Therefore, the Virginia State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective November 30, 1988.

Under this 18(e) determination, Virginia will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State-initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Virginia must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the Virginia plan terminates OSHA authority for Federal enforcement of its standards in Virginia, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a)(2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e) (section 8); to conduct enforcement proceeding in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (section 17) is relinquished as of the effective date of this determination.

Federal authority under provisions of the Act not listed in section 18(e) is unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination would remain under Federal jurisdiction. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Virginia plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health in private sector maritime employment and employment at worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government. In addition Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons which OSHA determines are not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has subsequently failed to comply with any provision or assurance contained in the plan. Additionally, the

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Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47, *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes changes to Subpart EE of Part 1952 to reflect the final approval of the Virginia plan.

The table of contents for Part 1952, Subpart EE, has been revised to reflect the following changes:

Section 1952.374, Final approval determination granting final approval of the plan, which formerly was reserved, has been completed to reflect the determination granting final approval of the plan. The section contains a more accurate description of the current scope of the plan than the one contained in the initial approval decision.

Section 1952.375, Level of Federal enforcement, has been changed to reflect the State's 18(e) status. This replaces the former description of the relationship of State and Federal enforcement under an Operational Status Agreement, which was entered into on October 1, 1981. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Virginia and the Operational Status Agreement is no longer in effect. Section 1952.375 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

Section 1952.376, Where the plan may be inspected, has been changed to reflect a new room number N3700 for the Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in Virginia under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, (Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736))

Signed at Washington, DC, this 23rd day of November 1988.

John A. Pendergrass,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart EE of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read:

Authority: Secs. 8, 18, Occupational Safety and Health Act 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

2. The table of contents for Part 1952, Subpart EE is revised to read as follows:

Subpart EE—Virginia

Sec.

1952.370 Description of the plan as initially approved.
1952.371 Developmental schedule.
1952.372 Completion of developmental steps and certification.
1952.373 Compliance staffing benchmarks.
1952.374 Final approval determination.
1952.375 Level of Federal enforcement.
1952.376 Where the plan may be inspected.

3. Section 1952.374 is added, and §§ 1952.375 and 1952.376 are revised to read as follows:

§ 1952.374 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR Part 1902, and after determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL–CIO* v. *Marshall* (CA 74–406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Integrated Management Information System, the Assistant Secretary evaluated actual operations under the Virginia State plan for a period of at least one year following certification of completion of developmental steps (49 FR 33123). Based on the 18(e) Evaluation Report for the period of January 1, 1987 through March 31, 1988, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Virginia's occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Virginia plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective November 30, 1988.

(b) The plan which has received final approval covers all activities of employers and places of employment in Virginia except for private sector maritime and worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government.

(c) Virginia is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

§ 1952.375 Level of Federal Enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Virginia plan under section 18(e) of the Act, effective November 30, 1988, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Virginia plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under section 5(a) (2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Virginia plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments, and employment at worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government. Federal jurisdiction is also retained with respect to Federal government employers and employees.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons which OSHA determines are not related to the required performance or structure of the plan shall be deemed to be an issue not covered by plan which has received final approval, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In any of the aforementioned circumstances, Federal enforcement authority may be exercised after consultation with the State designated agency.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Virginia State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Fairlure by the State to comply with its obligations may result in the revocation of Federal enforcement, and/or proceedings for withdrawal of plan approval.

§ 1952.376 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3700, Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Gateway Building—Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104; and the Office of the Commissioner, Virginia Department of Labor and Industry, P.O. Box 12064, 205 North Fourth Street, Richmond, Virginia 23241–0064.

[FR Doc. 88-27480 Filed 11-29-88; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

Office of Pesticides and Toxic Substances

40 CFR Part 180

[PP 6E3440/R993; FRL-3482-2]

Pesticide Tolerances for Diazinon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide diazinon in or on the raw agricultural commodity Chinese radish (roots and tops). The Interregional Research Project No. 4 (IR–4) petitioned for this tolerance.

EFFECTIVE DATE: November 30, 1988.

ADDRESS: Written objections, identified by the document control number [PP 6E3440/R993], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of October 5, 1988 (53 FR 39107), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 6E3440 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of California and Florida.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the insecticide diazinon (*O,O*-diethyl *O*-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl]phosphorothioate) in or on the raw agricultural commodity Chinese radish (roots and tops) at 0.1 part per million (ppm). The petitioner proposed that use on this commodity be limited to California and Florida based on the geographical representation of the residue data submitted. Additional

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residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.153 is amended by designating the current paragraph and list of tolerances as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 180.153 Diazinon; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the insecticide diazinon (*O,O*-diethyl *O*-(6-methyl-2-(1-methylethyl)-4-pyrimidinyl]-phosphorothioate; CAS Reg. No. 33-41-5) in or on the following raw agricultural commodities:

Commodities	Parts per million
Radish, Chinese (roots)	0.1
Radish, Chinese (tops)	0.1

[FR Doc. 88-27320 Filed 11-29-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5E3174 and 8E3582/R992; FRL-3462-3]

Pesticide Tolerances for Diflubenzuron

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide diflubenzuron in or on the raw agricultural commodities range grass and walnuts. The Interregional Research Project No. 4 (IR-4) petitioned for these tolerances.

EFFECTIVE DATE: November 30, 1988.

ADDRESS: Written objections, identified by the document control number [PP 5E3147 and 8E3582/R992], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section [TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of October 5, 1988 (53 FR 39106), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the below-named Agricultural Experiment Stations, The petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the insecticide diflubenzuron [*N*-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide) in or on certain raw agricultural commodities.

1. *PP 5E3174.* Petition submitted on behalf of the New Mexico Agricultural Experiment Station for range grass at 3.0 part per million (ppm).

2. *PP 8E3582.* Petition submitted by the California Agricultural Experiment Station for walnuts at 0.1 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petitions and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.377 is amended in paragraph (a) by adding and alphabetically inserting the listing for the raw agricultural commodity walnuts and in paragraph (b) by adding and alphabetically inserting a tolerance for regional registration for range grass, to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Walnuts	0.1

(b) * * *

Commodities	Parts per million
* * * * *	
Grass, range	3.0

[FR Doc. 88-27321 Filed 11-29-88; 8:45 am]

BILLING CODE 6560-50-M

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Proposed Rules

Federal Register
Vol. 53, No. 230
Wednesday, November 30, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307 and 310

[Docket No. 83-008P]

Streamlined Inspection System-Cattle and Staffing Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to establish a new system of post-mortem inspection for cattle. This method would be known as the "Streamlined Inspection System-Cattle" (SIS-Cattle) when the system is operated without a slaughter partial quality control (PQC) program or as the "Streamlined Inspection System/Partial Quality Control-Cattle" (SIS/PQC-Cattle) when the system is operated in conjuncted with a slaughter PQC program. An approved slaughter PQC program would be required for establishments operating at slaughter rates greater than 275 head per hour. The PQC program would be optional for establishments that operate at slaughter rates of 275 head per hour or less. This SIS inspection system would be implemented in all establishments that slaughter cattle (steers and heifers only) and have an on-line staffing requirement of three inspectors or more.

SIS-Cattle would incorporate modifications of the present cattle post-mortem inspection procedure and combine viscera and carcass inspection stations so that that inspection is completed at the viscera table. The proposed rule would also establish Finished Product Standards (FPS) for carcasses, heads and tongues and standards for other edible byproducts. The FPS program uses the cumulative sum (CUSUM) which is a statistical concept used by the establishment and monitored by the inspector. Compliance is determined based on sample results collected over a period of time. These standards would be used to evaluate the wholesomeness and acceptability of products.

This proposed rule would also establish staffing standards for the inspection of steers and heifers based on work measurement data and facility requirements.

All establishments under the SIS system would be responsible for proper head, tongue, viscera, and carcass presentation. The operation of a PQC program for the presentation standards would be an option for SIS-Cattle establishments. Establishments operating under SIS/PQC-Cattle would include presentation standards in their PQC program.

The SIS-Cattle system would also require establishment employees to palpate and present the tongue, incise the cheek muscles, and open the heart for inspection personnel.

Additionally, the establishment would be responsible for the removal from carcasses of defects that are the result of the handling, slaughtering, or dressing operations and the removal of designated trimmable defects as listed in the beef carcass finished product standards program.

This system would provide an increase in slaughter method and personnel efficiency, as well as provide an increase in product yield, while still providing consumers with wholesome and otherwise unadulterated products. These gains have been demonstrated and documented in four pilot cattle establishments.

DATE: Comments must be received on or before: January 30, 1989.

ADDRESS: Written comments should be sent in duplicate to the Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3175, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (see also "Comments" under **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposal is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The principal effect of this proposed rule is to improve post-mortem inspection procedures for cattle which will result in maximum inspection efficiency and increased productivity. Certain new requirements should be placed upon the establishment; however, these requirements would be counterbalanced by the dollar gain resulting from the increased productivity.

It is estimated that the cost of complying with these new requirements would not exceed $40,000 per establishment. There are currently 55 operations which slaughter steers and heifers and require three or more inspectors. However, 24 of these operate in two shifts from a single facility. Therefore, the total number of facilities to be modified would be 43. As such, the estimated initial cost to industry for implementing the SIS-Cattle system would not exceed $2 million.

Net productivity gains would offset the one-time cost of facility changes. It is estimated that an approximate 40 percent gain in productivity would result because of an establishment's ability to increase its production rate without requiring additional inspectors or inspection space. Four pilot cattle establishments under this system have been able to show, by documented evidence, an increase in yield, an increase in control of production, and better supervisory control of employees. Under SIS/PQC-Cattle, establishments should also realize further gains due to decreased product contamination, decreased trimming, increased shelf life of products, and other considerations. Actual monetary gain would depend upon the management practices at each individual establishment.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. Pub. L. 96-354 (5 U.S.C. 601). SIS-Cattle is designed for slaughter establishments having three or more inspectors. Specifically, this proposal would affect the approximately 43 establishments which slaughter steers and heifers and require three or more inspectors. Those establishments are not small entities. Establishments having less than three inspectors would not be affected by this system.

Paperwork Requirements

This proposed rule would require establishments to perform finished product and edible byproduct testing. All establishments would be required to maintain certain records to verify that the finished product standards and the edible byproduct standards have been met. This proposed rule would also require establishments operating under SIS/PQC-Cattle to develop and submit to the Administrator for approval a PQC program designed to ensure that the dressed cattle carcasses are wholesome and properly prepared. Such establishments would be required to maintain certain records to fulfill their obligation under the approved PQC programs. These requirements will be submitted to the Office of Management and Budget (OMB) under control number 0583-0015 for approval (44 U.S.C. 3504(h)).

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent, in duplicate, to the Policy Office and should refer to the docket number appearing in the heading of this document. All comments submitted pursuant to this notice will be made available for public inspection in the Policy Office between 9:00 and 4:00 p.m., Monday through Friday.

Background

The United States has had mandatory meat inspection for products prepared for commerce since 1906. The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) requires, among other provisions, that the Secretary of Agriculture, through appointed inspectors, carry out a post-mortem examination of the carcasses and parts of certain domesticated food animals, including cattle, which are capable of use as human food when these animals are slaughtered in an official establishment that is subject to inspection under the Act. Post-mortem inspection involves an examination by one or more trained food inspectors, under veterinary supervision, of the head, viscera, and other parts of the carcass of each animal slaughtered, for the purpose of detecting disease or other conditions that could cause the carcass or any part to become unfit for human food or otherwise adulterated.

I. Traditional Inspection

Routine cattle post-mortem inspection has traditionally been performed at three points in the slaughter operation. Cervical (head) inspection is conducted at an early point in the dressing operation; viscera inspection is conducted after the carcass has been eviscerated; and carcass inspection is conducted towards the end of the dressing operation. At each point, an inspector observes and palpates the carcass and its parts. For head and viscera inspection, an inspector also incises certain muscles, lymph nodes, and organs. The inspector examines the carcasses and directs and verifies establishment employees' performance of trimming operations. These traditional procedures, which are outlined in the Meat and Poultry Inspection Manual,[1] have proven to be an effective method of inspection and have changed little since the inception of Federal meat inspection in 1906. Since that time, however, there have been many significant changes in the way cattle are raised and moved to slaughter, in the types and frequency of cattle diseases, and in the technology used to slaughter the animals and dress their carcasses.

The improved health of cattle today is largely the result of modern production methods. A large number of cattle are now bred and raised under controlled environments designed to promote growth and prevent disease. The controlled use of various chemicals, antibiotics, and vaccines has improved the health of cattle and decreased the number of these animals rejected as human food.

Competitive pressures have produced many industry changes. Slaughter operations are now located close to where the animals are grown, thus eliminating arduous and costly shipment to slaughter. Also, the packing industry continues to become more concentrated with less than 10 percent of the cattle abattoirs slaughtering more than 75 percent of the cattle. Furthermore, automation and technology have increased industry productivity and product uniformity.

The inspection procedures for cattle carcasses have not kept pace with changes in the livestock and meat industry. By "modernizing" cattle inspection procedures, FSIS would increase its inspection productivity while maintaining the assurance of wholesomeness of cattle carcasses entering the Nation's food supply.

In certain situations, the traditional cattle inspection procedures may limit the rate at which an establishment slaughters animals and dresses carcasses. A redesigned system of cattle inspection would improve inspection productivity and allow faster line speeds for cattle slaughterers, thus providing a means for increased efficiency.

In 1982, FSIS implemented new swine post-mortem inspection procedures and staffing standards which allowed higher production rates for swine operations (August 4, 1982, 47 FR 33673). The post-mortem inspection staffing standards for traditional cattle inspection were also revised at that time. During that rulemaking procedure, FSIS announced that a new method for cattle post-mortem inspection was being developed. FSIS has completed its development of the new method, called the Streamlined Inspection System-Cattle.

II. The Streamlined Inspection System-Cattle

As discussed earlier, under the traditional method of cattle inspection, inspectors are closely involved with the slaughter establishment's operations. In addition to examining each carcass for signs of disease, the inspectors identify and point out carcass dressing nonconformances and designated trimmable conditions to establishment workers, and direct them to ensure that the defects have been properly removed. Dressing nonconformances are those defects which occur on the carcass as a result of errors in the handling, slaughtering, or dressing operations performed by establishment employees. They include, but are not limited to, such things as bruises, hair, dirt, ingesta, organ remnants, and machine grease. Designated trimmable conditions are those abnormal conditions that are not caused by improper dressing procedures, that are readily identifiable, and that do not affect the disposition of the carcass. They include, but are not limited to, fractures, arthritis, localized abscesses, and pigmentation. The identification and directing for removal

[1] A copy of the Meat and Poultry Inspection Manual is on file in the office of the FSIS Hearing Clerk.

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of these conditions have become a significant part of the inspection job and require 70–90 percent of carcass inspectors' time. These carcass dressing nonconformances and designated trimmable conditions are obvious and easily identifiable by a skilled person. Agency officials have concluded that responsibility for controlling the dressing operation and removing obvious and readily identifiable carcass dressing nonconformances and designated trimmable conditions could be shifted to the establishment. This would allow inspectors to direct their efforts toward the detection of cattle disease conditions and enable the cattle industry to assume full responsibility for dressing operations.

Since the greatest increase in inspector efficiency can be realized at the higher slaughter rates, SIS-Cattle and SIS/PQC-Cattle would apply only to those establishments slaughtering steers and heifers with three or more on-line inspectors. SIS-Cattle consists of a routine post-mortem inspection procedure whereby the inspector would focus on disease conditions and whole carcass disposition, while the establishment employee would focus on control of the dressing operations. For the purpose of monitoring the establishment's removal of dressing nonconformances and designated trimmable conditions, finished product standards for carcasses including tongues and heads, and standards for other edible byproducts have been developed and included in this proposal.

Finished Products Standards (FPS) were tested and then validated by additional tests in a number of establishments before the initation of SIS-Cattle. These establishments were operating under traditional inspection, which is a carcass-by-carcass inspection. The standards are based on the average quality of product produced following good manufacturing practices that were monitored using traditional inspection procedures. Historically, this process has produced a product with a level of cleanliness that has been considered aesthetically acceptable within the requirements of the Federal Meat Inspection Act. Therefore, Agency officals have concluded that when good manufacturing practices are followed, a process that yields products meeting the FPS have an inherent level of cleanliness and are acceptable. Carcasses whose degrees of cleanliness are found to be within the action level, are not injurious to health or othewise unfit for human food, and are therefore considered by the Agency not to be adulterated.

The process of monitoring compliance with finished product standards will utilize the CUSUM statistical concept, which is defined as a statistical method for comparing the output of a process against finished product standards to determine compliance. The point at which product action is required is determined by an "action" number, "subgroup absolute limit," or "subgroup maximum limit." The action number for this process was determined by statistically weighing the test data results collected for NCIS.

Tolerance number, start number, subgroup absolute limit, subgroup maximum limit values and number of defects per sample were given values based on professional judgement of experienced veterinarians and other field personnel after analyzing the test data. In determining these values, defects are weighted on the basis of public health significance or by how obvious the defect was in terms of expected good manufacturing practice.

The standards for edible byproducts were developed in response to a need recognized by both industry and the Food Safety and Inspection Service (FSIS) for objective standards for such product. The Slaughter Inspection Standards and Procedures (SISP) Division of Technical Services collected data from randomly selected federally inspected establishments nationwide to determine the level of quality at which inspectors were accepting finished byproducts. The standards for edible byproducts were determined in the same manner as for carcasses.

A PQC program along with the SIS-Cattle system would be required in establishments that slaughter cattle at rates greater than 275 head per hour. The velocity of the conveyer at speeds in excess of 275 head per hour has multiple effects on the slaughter operation as well as on the inspection operations. Successful high speed operation require installation and maintenance of optimum facilities, close supervision of operators' techniques, and an aggressive, problem-solving attitude by management personnel in order to produce carcasses and parts which meet the FSIS finished product standards. A prevention-oriented process control program is essential for the successful maintenance of a high speed operation which routinely produces a wholesome product. Agency officials have determined that establishments with speeds in excess of 275 head per hour must operate under a quality control program to ensure the uniform production of a wholesome, unadulterated product. The selection of a speed of 275 head per hour was based upon the results of interviews with experienced field veterinarians and FSIS supervisors, and the results of work measurement studies. In their professional judgement, speeds above that rate required the additional assurance afforded by a partial quality control program. The application of the finished product standards and the PQCA program would be the responsibility of establishment employees and would be monitored by inspectors to ensure the production of wholesome product.

The provision for uniform presentation standards is a key element in the streamlined inspection system. The presentation standards would have to be met to ensure the effectiveness of inspection when the proposed staffing standards are used. Presentation standards would be applied by inspectors, when not included in a PQC program. A separate PQC program for presentation would be optional for establishments operating under the SIS-Cattle program at slaughter rates of 275 head per hour or less.

A. The SIS-Cattle Post-Mortem Inspection Procedure

A study comparing the effectiveness of the traditional procedure to that of the proposed procedure was conducted in four establishments slaughtering steers and heifers using the New Cattle Inspection System (NCIS), the forerunner of SIS. FSIS evaluated a total of 28,800 samples—7,200 from each establishment (3,600 inspected by the traditional procedure and 3,600 by NCIS). An analysis was made of the percentage of units that were free of errors. The results of the study showed that the inspection error rate with NCIS is equal to, or lower than, the inspection error rate with the traditional procedure.[2] FSIS officials, using data obtained during the effectiveness study, determined that the procedures eliminated under the SIS inspection system were not necessary to make an accurate disposition of cattle carcasses and parts.

In 1986 a feasibility study was performed using the NCIS with changed presentation requirements for the head and heart. This new system was called the Streamlined Inspection System (SIS) for Cattle. Since there was no change in the inspection procedure, no additional

[2] A report of this study is available upon request from the Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 Area Code (202) 447–3219.

testing was required. Now industry's presentation for inspection must meet a minimum presentation standard to ensure that there is adequate time to perform inspection.

1. Cervical (head) inspection. Under the traditional cervical inspection procedure, the inspector performs the following: (1) Observes the eyes and surfaces of the head; (2) incises the mandibular, parotid, lateral retropharyngeal (atlantal), and medial retropharyngeal (suprapharyngeal) lymph nodes; (3) incises the lateral and medial masticatory muscles (cheeks); and (4) observes and palpates the tongue.

The SIS cervical inspection procedure would differ from the traditional one in three principal ways. First, the new procedure would eliminate the requirement to incise the lateral retropharyngeal (atlantal) lymph nodes. Instead, the lateral retropharyngeal lymph nodes would be observed by inspectors for abnormalities. Second, the inspector would observe the masticatory muscles only after an establishment employee presents the incised muscles for inspection. Third, the inspector would observe the surfaces of each tongue and routine palpation would be eliminated. In the development of the New Cattle Inspection System, it was determined that abnormalities found in the tongue do not affect whole carcass disposition. This premise was tested and documented in four test establishments and found to be valid. Therefore, as part of the routine dressing operation, an establishment employee would palpate each tongue for abnormalities prior to the cervical inspection station and notify the cervical inspector of any abnormal findings. Thus, the palpation of tongues by establishment personnel is considered a sorting function only. The cervical inspector would then determine the significance of the findings and take appropriate action. These procedures are monitored by inspection personnel who are not working on the line, such as the inspector in charge or an offal inspector. In addition, prior to chilling, all tongues would be subject to finished product standards using a statistically based sampling program.

2. Viscera/carcass inspection. Carcass inspection would be performed together with viscera inspection at the viscera/carcass inspection station.

a. *Viscera inspection.* Under the traditional cattle inspection procedure, the inspector performing viscera inspection is required to: (1) observe the mesenteric lymph nodes, the abdominal viscera, the esophagus and spleen, and the ventral surfaces of the lungs; (2) observe and palpate the ruminoreticular junction, the dorsal (costal) surfaces of the lungs, and the surfaces of the liver; and (3) incise and observe the tracheobronchial (bronchial) and mediastinal lymph nodes, the heart, the hepatic (portal) nodes, and the bile duct.

Under the SIS-Cattle inspection procedure, the viscera inspector would not observe the ventral surfaces of the lungs, but would continue to observe and palpate the dorsal (costal) surfaces of the lungs. The SIS procedure would eliminate the requirements to incise and observe the right tracheobronchial (bronchial) lymph node, to incise the heart, to incise the hepatic (portal) lymph nodes, and to palpate the ruminoreticular junction. The heart would be inspected by observation only after an establishment employee presents the incised organ for inspection.

b. *Carcass inspection.* The traditional carcass inspection procedure includes palpation and observation of the superficial inguinal lymph nodes in the male or mammary (supramammary) lymph nodes in the female, medial (internal) iliac lymph nodes, diaphragm, and kidneys. Inspection also includes the observation of the lumbar region, pillars of the diaphragm, peritoneum, pleura, cut surfaces of muscles and bones, and the exterior surface of the carcass.

The SIS carcass inspection procedure would eliminate palpation of the diaphragm, superficial inguinal (mammary) lymph nodes, medial (internal) iliac lymph nodes, and kidneys. The procedure, however, would include the observation by the inspector of the diaphragm, lymph nodes, and kidneys. The inspector would not observe the split vertebral column and surrounding tissues.

Under the SIS procedure, the inspector would observe the dorsal surfaces of the carcass with the aid of a large mirror strategically placed behind the moving carcasses at the viscera station. The establishment would be required to furnish adequate lighting for the mirror examination.

In order to achieve maximum inspector efficiency at the lower speeds, the new procedure would require the kidneys to be exposed and removed from the carcass for presentation along with the viscera at the viscera/carcass station. An exception to the kidney removal requirement would be offered to establishments slaughtering at rates greater than 234 per hour. Based on work measurement studies, an additional inspector is required at a rate of 234 per hour. The work measurement study showed that kidney removal did not improve inspector efficiency if the additional inspector was dedicated to carcass and kidney inspection only.

By combining viscera inspection and carcass inspection into a single viscera/carcass inspection station, FSIS would be able to maximize inspector efficiency. Also, the elimination of the traditional carcass inspection station would facilitate the establishment's assumption of its responsibility for the identification and removal of dressing nonconformances. Since inspection would be completed at the viscera/carcass inspection station, there would be greater assurance that all carcass parts and organs are accurately identified with the corresponding carcass throughout the dressing operation. Under traditional inspection there is physical separation of the carcass and viscera after the viscera inspection station. An inspection decision at the carcass station which might affect carcass disposition creates a logistical possibility of loss of identity of the viscera. Under SIS-Cattle, inspection has complete visual control of the viscera and carcass until inspection is completed.

B. The Slaughter Partial Quality Control (PQC) Program

Recent field studies in selected pilot establishments have reinforced FSIS' long-standing view that Federal meat inspection is more efficient and effective in establishments where the concepts of production control are practiced, in contrast to establishments which do not maintain the facilities, personnel, or procedures necessary to ensure control of their production operations. Establishments without production operation control tend to rely on the inspection service as a substitute for proper management and control of their operations. This subsequently requires Federal meat inspectors to carry out quasi-supervisory functions that are inherently an establishment's responsibility. An establishment's PQC program would eliminate the need for the inspection service to act in a quasi-supervisory role and would greatly improve inspector efficiency.

Under SIS-Cattle, establishments that operate at slaughter rates greater than 275 head per hour would be responsible for designing their own slaughter PQC program. The PQC program would be optional for establishments that operate at slaughter rates of 275 head per hour or less. The PQC program, developed by the establishment, would consist of three major elements: (1) Identification of points (generally known as critical control points) in the slaughter and

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dressing operation which are critical to the production of carcasses in compliance with the finished product standards for dressed cattle carcasses; (2) development of certain standards at each control point; and (3) specification of a series of predetermined actions to be taken if critical control point standards are not met. The last critical point of each program would involve the examination of samples of finished carcasses, heads, tongues, and other edible byproducts to determine compliance with the finished product standards program. The PQC program would further define how often each critical point is checked by the establishment and would include a recordkeeping system.

The establishment's PQC program would be submitted to and approved by the Administrator under section 318.4 (9 CFR 318.4) of the Federal meat inspection regulations and the requirements outlined in this document. The establishment would conduct the program, and FSIS would monitor the operation to ensure that the provisions of the PQC program and regulations are met. FSIS' monitoring activities would consist principally of reviewing critical control point records and periodically sampling and examining products at the slaughter line critical control points to ensure the production of dressed carcasses which meet the finished product standards.

C. Presentation Program

The provision for uniform presentation standards is a key element in the streamlined inspection system. Presentation of the head, tongue, viscera, and carcass has traditionally been a responsibility of the establishment based on standards established by the inspector in charge. Uniform presentation is important in maintaining inspection efficiency and is critical at the higher rates of slaughter. When the carcass or its parts are not uniformly presented in a predetermined manner, time allotted for inspection must be used to correct or compensate for presentation errors. The adequacy of presentation, in turn, depends on such factors as disease conditions, establishment operating conditions, lighting, and facilities. FSIS has developed guidelines for the presentation of the head, tongue, viscera, and other parts of the carcass in official slaughter establishments.[3] These guidelines provide objective criteria for determining acceptable presentation and for reducing the line speeds when presentation is less than acceptable. These guidelines would be applied by FSIS as a part of SIS-Cattle. In the SIS/PQC-Cattle program, the guidelines would be included in the establishment's PQC program which is monitored by FSIS.

III. Operational Requirements for the Streamlined Inspection System-Cattle.

There would be three areas of responsibility for an establishment under SIS-Cattle: (A) Inspection of the carcass, viscera and head, (B) equipment, facilities, and inspection space, and (C) removal of carcass and edible byproduct nonconformances. These responsibilities are described below along with a discussion of how they may affect the cattle industry.

A. Presentation of the Carcass and Its Parts For Inspection

The primary difference between SIS-Cattle and SIS/PQC-Cattle is the party responsible for assuring proper presentation of the head, tongue, viscera, kidneys, and other parts of the carcass for inspection according to standards set by FSIS.

The presentation guidelines for establishments operating under SIS-Cattle would be applied by FSIS. Establishments may request a PQC program for presentation. If approved, the establishment would have the responsibility of applying the guidelines with inspectors monitoring its application. Establishments operating under SIS/PQC-Cattle must include the presentation program in their PQC program and would be responsible for applying it. If post-mortem inspection cannot be performed at the current line speed under SIS-Cattle or SIS/PQC-Cattle because of preparation of presentation deficiencies or because of disease incidence, the inspector in charge would have the authority to require the establishment to reduce speed and take other corrective actions necessary for proper presentation for inspection. The following presentation standards are applicable to both SIS-Cattle and SIS/PQC-Cattle:

1. Head and tongue presentation. Prior to the inspector's examination of the tongues, an establishment employee would palpate the tongues and notify the inspector if abnormalities were found. Notification to the inspector would be accomplished either directly or by means of a marking system developed by the establishment and acceptable to the inspector in charge, such as tags, rings, cuts, or other markings. The inspector would visually inspect and incise the lymph nodes of each tongue and palpate any tongue identified as abnormal by the inspector or by an establishment employee on examination. A finished products standards program, which is statistically based, would be applied to ensure that only wholesome tongues would pass. This procedure is as effective in detecting conditions relating to adulteration and wholesomeness as the current procedure. (See footnote 2 which refers to the study done to validate this point.)

Prior to the inspector's examination of the head, an establishment employee would incise both lateral and medial masticatory muscles (cheeks) for inspection. The establishment would be responsible for assuring that the cheek muscles were properly incised and presented for inspection.

2. Viscera. An establishment employee would open all chambers of the heart and incise the interventricular septum before it reaches the inspector. The inspector would observe all surfaces of the heart for abnormalities.

3. Carcass. The establishment would be required to spread the carcasses at the viscera/carcass station so that carcass inspection could be performed.

B. Equipment, Facilities and Inspection Space

The facilities required by SIS-Cattle for viscera/carcass inspection would include a mirror for viewing the dorsal surface of the carcass, additional lighting for the mirror, and lighting to adequately view the interior of the unsplit carcass at the combined viscera/carcass station. In addition, the space required to perform cervical (head) inspection would be based on three interrelated variables: (1) The velocity of the head chain; (2) the number of heads presented per hour, and (3) the spacing between heads. In some establishments, the cumulative effect of these variables would require additional workspace to perform cervical inspection. Table 1 in § 307.2(m) of this proposal supplies the maximum required workspace for cervical inspectors when heads are spaced 4 feet apart. Additional tables for head spacings of other than 4 feet will be available from the Agency. As discussed earlier, additional workspace may be needed in those establishments where kidneys must be removed prior to the viscera/carcass inspection station. Most establishments should gain workspace

[3] These guidelines are available for public inspection in the office of the FSIS Hearing Clerk. Copies may be obtained free upon request from the Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

as a result of the removal of the inspector from the traditional carcass inspection station.

1. Line speed indicator. A digital line speed indicator for both the head chain and the evisceration chain would be required at a location which is readily accessible to the inspector in charge. Knowledge of the line speeds is necessary to ensure that the inspection stations are properly staffed.

2. Mirror. For cattle slaughter lines with a moving top viscera table and requiring three or more inspectors as prescribed by the new staffing standard, a one-piece, distortion-free, glass or plastic mirror would be required. This mirror would be mounted and positioned, (i.e. angled or tilted) so the inspector may have a clear unobstructed view of the dorsal surface of the carcass.

3. Lighting. Shadow-free lighting with a minimum Color Rendering Index (CRI) of 85 [4] would be required at each inspection station. In addition, a diffuse light source (such as a double tube fluorescent light fixture) would be mounted at the top of the carcass mirror to provide adequate light at the carcass shoulder level. Directional lighting would also be required at the viscera/carcass inspection station so that adequate light would be provided inside the thoracic cavity of the carcass. This lighting would be carefully adjusted so that it would pass through the relatively narrow opening in the ventral surface of the carcass lighting the sides and back of the cavity in sequence.

4. Inspection space.

a. *Cervical inspection station.* Cervical inspection is currently required to be completed prior to viscera inspection (Meat and Poultry Inspection Manual, section 11.1(h)(1). See footnote[1]). In some instances, when establishments have added new equipment and/or remodeled their slaughter facilities, it has been necessary, when a moving chain is used, for them to increase the velocity of the head chain in order to meet this inspection requirement.

There would be new requirements for cattle cervical inspection when the heads are spaced evenly on the head chain at 4-foot intervals. The interrelationships between the speed of the head chain, the rate at which heads are presented for inspection, the number of inspectors needed, and the required workspace for inspectors to inspect them are defined in the proposed regulation.

If the head spacing is less than 4 feet, the head chain velocity must be proportionally decreased. Establishments which desire to space heads at distances greater than 4 feet would be handled on an individual basis as discussed earlier (Section III B). The velocity of the head chain would not be allowed to exceed the maximum limits.

b. *Tongue and head reinspection station.* For evaluating samples of finished tongues and heads, as required by the finished product standards program, a reinspection area would be required where the manufacturing process is determined to be completed. It would be required to be illuminated as defined in the facility requirements of this proposed rule. The area would include a reinspection table or stand with hooks. It is proposed that the reinspection area be located as close as possible to the head chain and/or area of head processing completion in order to minimize work and maximize the flow of product.

c. *Viscera/carcass inspection station.* The inspection space at the viscera/carcass inspection station for slaughter rates of 234 head per hour or less would remain unchanged at 8 feet. However, the space for the inside carcass inspector would increase to 9 feet and be arranged with 5 feet along the viscera table and 4 feet along the line of travel of the carcasses. When kidneys are presented in the carcass (slaughter rates greater than 234 head per hour), the kidneys and carcasses would be inspected from an adjustable platform, the height of which can be easily and rapidly adjusted from the platform. The platform would have to meet specific minimum width and length requirements. Under these specifications, establishments would be required to submit blueprints for approval to FSIS' Facilities, Equipment, and Sanitation Division. The complete specifications may be obtained from Facilities, Equipment, and Sanitation Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447-5627.

Slaughter rates greater than 400 head per hour would require additional facilities, developed by the establishment, to allow organs to remain at the inspection station until the inspector has completed routine inspection tasks. In addition these facilities will allow proper identification of the carcass and its parts throughout the inspection process.

d. *Carcass reinspection station.* For evaluating samples of finished carcasses, as required by the finished product standards program, a reinspection area would be required off the main conveyer chain, large enough to adequately hold six to nine carcasses for defect examination and illuminated as defined in the facility requirements of this proposed rule. The area would also include a stationary platform. The space is best located after the carcass wash and before entry into the cooler. However, it may alternatively be located before the carcass wash.

C. Carcass Dressing Requirements

Establishment employees would be responsible for independently removing dressing nonconformances and other designated trimmable conditions. This would include, but not be limited to, bruises, certain abscesses and adhesions, larvae of *Hypoderma bovis* and *Hypoderma lineata* (cattle grubs), hair, dirt, organ remnants, and grease and oil.

IV. Inspector Staffing Requirements

Preliminary inspector staffing requirements (known as inspector staffing standards) have been developed for establishments that slaughter steers and heifers at rates requiring three or more on-line inspectors. Proposed SIS staffing standards are under development for establishments which slaughter steers and heifers and require less than three inspectors, and for establishments slaughtering cows and bulls. It is anticipated that the inspection rates for cows and bulls would be less than those for steers and heifers. Cows and bulls are not subject to this proposed regulation.

V. Impact Of Implementation

SIS-Cattle would enable FSIS to inspect cattle more efficiently and effectively. The change in location of the kidney inspection operation would accomplish two desirable goals. First, kidneys may be inspected at the same time as other organs to allow correlation of all findings simultaneously by the inspectors. The traditional method of kidney inspection in the United States has been criticized by foreign inspection officials because findings cannot be correlated simultaneously with all visceral organs. Second, combining the carcass and viscera inspection stations would allow both industry and inspection personnel greater assurance that the correct viscera remains identified with the corresponding carcass until disposition of the carcass and all of its parts has been made.

Combining the carcass and viscera inspection stations in the slaughtering establishment should benefit both the industry and the government. SIS-Cattle

[4] This requirement may be met by using deluxe cool white or high intensity fluorescent type lighting.

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would be utilized in establishments using three or more on-line inspectors. These establishments may elect to use the SIS/PQC-Cattle. As discussed in the preamble summary and section II of this document, those establishments currently slaughtering at rates greater than 275 head per hour would be required to convert to SIS/PQC-Cattle in order to control their operation. Those establishments which do not develop and implement a PQC program to control their operation would be required to reduce their rate of production to 275 head per hour. Establishments slaughtering at rates of 275 head per hour or less can demonstrate sufficient process control without a formal QC program and QC personnel. Those establishments wanting to exceed 400 head per hour would be required to develop methodology, i.e., side tables to allow organs to remain accessible to the inspector until inspection is completed.

It is anticipated that the cattle slaughtering industry would experience a net gain if this new system of inspection were implemented, in spite of the initial costs of facility modifications which may be necessary in some establishments. Based on pilot testing, the industry as a whole should realize a savings because of increased productivity and reduced overtime. Also, the pilot tests indicated that by assuming a more active role over the control of its dressing operations, the industry should be better able to control its rate of production and its cost per unit produced.

List of Subjects

9 CFR Part 307

Facilities

9 CFR Part 310

Meat inspection

For reasons set out in the preamble, Title 9, Parts 307 and 310 of the Code of Federal Regulations would be amended as follows:

PART 307—FACILITIES FOR INSPECTION

1. The authority citation for Part 307 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334, 21 U.S.C. 695, 7 CFR 2.15(a), 2.92.

2. Section 307.2(m) introductory text, (1) and (2) would be revised and (m)(7) through (11) would be added to read as follows:

§ 307.2 Other facilities and conditions to be provided by establishment.

* * * * *

(m) In addition to any facilities required to accomplish sanitary dressing procedures, the following inspection station facilities for cattle and swine slaughter lines described in paragraphs 310.1(c) and (d) of this subchapter are required:

(1)(i) An inspection station consisting of 5 feet of unobstructed line space for each head or carcass inspector and, for viscera table kills, 8 feet for each viscera inspector on the inspector's side of the table, except as provided in paragraphs (1)(ii) of this section.

(ii) Streamlined Inspection System—Cattle. A cattle viscera/carcass inspection station consisting of 8 feet for each inspector on the inspector's side of the table for slaughter rates of 234 head per hour or less. The inside carcass inspector requires 5 feet of viscera table space and 4 feet of inspection space along the line of carcass travel at slaughter rates of 234 cattle per hour or less. At slaughter rates greater than 234 cattle per hour, an adjustable platform described in § 307.2(m)(10) shall be required. The cervical inspection station space requirements for steers and heifers are listed in Table 1 of this paragraph.

TABLE 1—CATTLE CERVICAL INSPECTION REQUIREMENTS UNDER STREAMLINED INSPECTION SYSTEM STEERS AND HEIFERS TONGUE-OUT PRESENTATION

(Preliminary Staffing Standards)

Inspection Rate (Heads/Hour)	Maximum[2] Head Chain Speed (Feet/Minute)	Number of Head Inspectors Required	Total Minimum Required Length of Workspace (In feet)
[2] 59–180	12.1	1	5
181–233	16.9	2	10
234–290	21.0	2	11
291–341	25.7	2	12
342–393	26.2	2	13
394–471	31.5	3	19

[1] Head chain speed is based on head spacings of 4 feet per head.
[2] 59 heads per hour is based on the current inspection standard in 9 CFR 310.1.

(2)(i) A minimum of 50 foot candles of shadow-free lighting at the inspection surfaces of the head, viscera, and carcass, except as provided in paragraph (2)(ii) of this section.

(ii) Streamlined Inspection System—Cattle. A minimum of 100 foot candles of shadow-free lighting with a color rendering index of 85 [1] or more at each inspection station. In addition, a light source is required to be mounted at the top edge of the carcass mirror to provide a minimum of 100 foot candles of shadow-free lighting at carcass shoulder level. To provide light inside the thoracic and abdominal cavity of the carcass for inspection, a directional shadow-free light of at least 50 foot candles, measured inside the thoracic cavity, is required.

* * * * *.

(7) Streamlined Inspection System—Cattle. A digital line speed indicator for both the head chain and the evisceration chain shall be provided at a location on the slaughter floor which is readily accessible to the inspector in charge.

(8) Streamlined Inspection System—Cattle. One glass or plastic distortion-free mirror, at least 40 inches by 90 inches, shall be so mounted that an inspector standing at the viscera/carcass inspection station may clearly view the dorsal surface of the carcass.

(9) Streamlined Inspection System—Cattle. The establishment shall provide space large enough to hold six to nine carcasses off the main conveyer immediately before or after the final carcass wash for the finished product examination of the sampled carcasses. This reinspection station shall be provided with 100 foot candles of shadow-free lighting with a minimum color rendering index of 85 [2] on all inside and outside carcass surfaces. The establishment shall also provide a stationary platform with steps which will allow inspection and establishment personnel access to all levels of the carcass and will accommodate two people on each level.

(10) Streamlined Inspection System—Cattle. Establishments slaughtering cattle under Streamlined Inspection System at rates greater than 234 head per hour shall provide a platform the height of which is easily and rapidly adjusted from the top of the platform. This platform shall meet the requirements specified in § 308.5 of this subchapter. The platform shall be a minimum of 2½ feet wide and 6 feet long with the lengthwise dimension running parallel to the moving chain. The vertical adjustment shall be 14 inches from the lowest position of the platform (9 or more inches off the floor). Unimpeded access to and from the platform shall be provided. The platform shall be designed with a 42-inch high rail in back, a 42-inch high shield on the carcass side, and half-inch foot bumpers on all sides, excluding access and exit points. The platform shall be equipped with handwashing facilities for persons working at the station. A 24-inch stationary, protective wall or shield shall be provided around the movable platform.

(11) Additional facilities, which will allow organs to remain at the inspection station until inspection is completed and ensure that the identity of the carcass and its parts is maintained, are required when slaughter rates exceed 400 cattle per hour.

[1] This requirement may be met by deluxe cool white or high intensity type of fluorescent lighting.

[2] This requirement may be met by deluxe cool white or high intensity type of fluorescent lighting.

PART 310—POST-MORTEM INSPECTION

3. The authority citation for Part 310 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254(b).

4. Section 310.1 would be amended by redesignating paragraph (b)(1) as (b) and revising the first sentence of new paragraph (b); by redesignating paragraph (b)(2) as (c)(1) and revising (c)(1) introductory text and the fourth sentence of new paragraph (c)(1)(i)(A) revising the sixth sentence of new paragraph (c)(1)(i)(B), and revising the charts for Heifers and Steers in new paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii); by adding a new paragraph (c)(2); and by redesignating paragraph (b)(3) as (d), to read as follows:

§ 310.1 Extent and time of post-mortem inspection; post-mortem inspection staffing standards.

* * * * *

(b) The staffing standards on the basis of the number of carcasses to be inspected per hour are outlined in paragraphs (c) and (d) of this section.

* * *

(c) *Cattle inspection.* (1) For all cattle staffing standards, an "a" in the "Number of Inspectors by Stations" column in the tables in this paragraph means that one inspector performs the entire inspection procedure and a "b" means that one inspector performs the head and lower carcass inspection and a second inspector performs the viscera and upper carcass inspection.[1]

[1] The "Maximum Slaughter Rates" figures listed in paragraph (c)(1)(i) of this section for one (a) and two (b) inspector slaughtering lines are overstated because the time required to walk from one inspection station to another is not included. To determine the proper adjusted maximum slaughter line speed, paragraph (c)(1)(i)(A) of this section for one inspector slaughtering lines or paragraph (c)(1)(i)(B) of this section for two inspector slaughtering lines must be used along with their accompanying rules.

(i) Inspection Using the Viscera Truck.

STEERS AND HEIFERS

Maximum slaughter rates (head per hour)	Number of inspectors by stations		
	Head	Viscera	Carcass
1 to 27	a	a	a
28 to 56	b	b	b
57 to 84	1	1	1
85 to 86	1	2	1
87 to 143	2	2	1

* * * * *

(A) * * * The adjusted maximum rate is the maximum rate in paragraph (c)(1)(i) of this section minus total of the deduction figures. * * *.

* * * * *

(B) * * * The adjusted maximum rate is the maximum rate in paragraph (c)(1)(i) of this section minus the number calculated above. * * *.

* * * * *

(ii) Inspection Using Viscera Table, Tongue-In Presentation of Heads.

STEERS AND HEIFERS

(Preliminary staffing standards)

Maximum inspection rates [1] (head/hour)	Number of inspectors (by stations)		Total number of inspectors
	Cervical station	Viscera/carcass station	
1 to 32	a	a	1
33 to 58	b	b	2
59 to 142 [2]	1	2	3
143 to 180	2	2	4
181 to 232	2	3	5
233 to 285	2	4	6
286 to 322	2	5	7
323 to 375	3	5	8
376 to 400	3	6	9

[1] A uniform presentation of the carcasses by the establishment that is acceptable to the inspector in charge is essential to maintain the specific inspection rate.
[2] The head per hour is based on the current inspection standard in § 310.1.

* * * * *

(iii) Inspection Using Viscera Table, Tongue-Out Presentation of Heads.

STEERS AND HEIFERS

(Preliminary staffing standards)

Maximum inspection rates (head/hour)	Number of inspectors (by stations)		Total number of inspectors
	Cervical station	Viscera/carcass station	
1 to 32	a	a	1
33 to 58	b	b	2
59 to 180	1	2	3
181 to 233	2	2	4
234 to 290 [1]	2	3	5
291 to 341 [1]	2	4	6
342 to 393 [1]	2	5	7

STEERS AND HEIFERS—Continued

[Preliminary staffing standards]

Maximum inspection rates (head/hour)	Number of inspectors (by stations)		Total number of inspectors
	Cervical station	Viscera/carcass station	
394 to 471 [1]	3	5	8

"a" denotes that one inspector performs entire inspection procedure.
"b" denotes that one inspector performs the head and lower carcass inspection and a second inspector performs the viscera and upper carcass inspection.
[1] denotes slaughter rates where kidneys are not removed from the carcass.

* * * * *

(2) Streamlined Inspection System—Cattle. The inspection procedures for Streamlined Inspection System—Cattle are described in § 310.22 of this subchapter and apply to establishments which slaughter steers and heifers and have a staffing requirement of three or more inspectors. Staffing standards are predicated upon the use of a mirror as described on paragraph 307.2(m)(8) at the viscera/carcass station and are based on inspectors rotating through all inspection stations during the shift to equalize the workload.

(d) * * * * *

5. A new § 310.22 would be added to read as follows:

§ 310.22 Streamlined Inspection System—Cattle procedures.

(a) Streamlined Inspection System (SIS)—Cattle procedures apply only to establishments which slaughter steers and heifers and which have a staffing requirement of three or more inspectors. Inspection under this system is conducted in two phases, postmortem inspection and reinspection.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) *Cumulative sum (CUSUM).* A statistical method for comparing the output of a process against finished product standards to determine compliance. The level of conformance with finished product standards is determined by calculating the CUSUM of nonconformances found in consecutive, randomly selected sample subgroups. The current CUSUM equals the sum of the total value of nonconformances for a subgroup plus the starting CUSUM (either the start number or the CUSUM for the previously tested subgroup), minus the tolerance number. CUSUM may not be less than zero or greater than the action number.

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(2) *Tolerance number.* The total value of nonconformances in each subgroup if product is being produced at a national average product quality level. See Table 2 of this section.

(3) *Action number.* A CUSUM value which indicates that product action is required. See Table 2 of this section.

(4) *Start number.* A value halfway between zero and the action number. The start number is used to determine the starting CUSUM for the first subgroup of a shift and to reset the CUSUM value if the CUSUM is equal to or greater than the action number. See Table 2 of this section.

(5) *Subgroup.* For carcasses, three half-carcass (three sides) sample units collected before product enters the cooler; for edible byproducts, except for tongues and heads, ten sample units of each byproduct; and for tongues and heads, five tongue and five head sample units collected prior to chilling.

(6) *Subgroup absolute limit.* The tolerance number plus 5. See Table 2 of this section.

(7) *Maximum number.* For edible byproducts the maximum number of nonconformances for each of the 12 categories that may be recorded for a single sample unit. The maximum number for each category is contained in Table 3 of this section.

(8) *Subgroup maximum limit.* For tongues and heads, when 3 or more sample units in a subgroup have nonconformances that equal or exceed the maximum number for any one nonconformance; for other edible byproducts the limit is 5 or more.

(9) *Rework.* Reprocessing the product to correct the condition or conditions causing the nonconformances listed in Tables 1 and 3 of this section. Removal of the condition causing nonconformance shall be performed as prescribed in § 310.18 of this subchapter.

(10) *Corrective action.* The source of the problem is identified, and the problem is corrected at one or more locations in the slaughter process. Any affected product will be made acceptable prior to the product's entering commerce.

(11) *Nonconformances.* Defects which occur on the carcass or edible byproducts as a result of errors in the handling, slaughtering, or dressing operation performed by establishment employees. These are categorized for carcasses in Table 1 and and for edible byproducts in Table 3.

(12) *Recondition.* Removing a carcass form the evisceration line for the removal of nonconformances.

(13) *Designated trimmable condition.* Designated trimmable conditions are those abnormal conditions that are not caused by improper dressing procedures, are readily identifiable and that do not affect the disposition of the carcass. See Tables 1 and 3 in this section.

(14) *Process in control.* The process is in control when it is producing product that meets the standard, and has done so over a period time measured by having two or more consecutive subgroup test results at or below the tolerance number. The process will be monitored by random sampling.

(15) *Process out of control.* The process is out of control when process verification test results are above the tolerance number. The establishment may stop identifying product for rework after a verification test result is below tolerance; however, the process is not in control until a second consecutive verification test result is below tolerance. Random sampling is suspended while the process is out of control.

(c) *General.* (1) The inspector in charge shall have the authority to require the establishment to reduce line speeds as stated in § 310.1(b) of this subchapter.

(2) Adulterated product shall be condemned and destroyed, except that carcasses, parts of carcasses, and edible byproducts which may be made wholesome by rework under the supervision of the inspector may be passed after the condition causing the nonconformance is removed as prescribed in § 310.18. Inspectors shall monitor the sampling of finished carcasses and parts of carcasses for compliance with finished product standards (See Table 1 of this section) and shall monitor edible byproducts for compliance with edible byproducts standards (See Table 3 of this section). If nonconformances are present at certain statistical levels, the establishment shall take corrective action. If the establishment does not take corrective action, the inspector shall initiate corrective action.

(3) The inspector shall determine which carcasses and edible byproducts shall be condemned, retained for veterinary disposition, or allowed to proceed as a passed carcass or edible byproduct subject to trim and reinspection. Carcasses with nonconformances listed in Table 1 of this section, which do not require condemnation of the entire carcass, shall be passed by the inspector, but shall be subject to reinspection to ensure the physical removal of the nonconformances. The inspector shall identify such carcasses for trim when the defects are not readily observable and shall identify carcasses for reconditioning. Trimming of carcasses passed subject to reinspection shall be performed by one or more establishment trimmers positioned after carcass splitting and prior reinspection.

(d) *Post-mortem inspection.* (1) *Facilities.* The establishment shall provide inspection stations in compliance with § 307.2(m) of this subchapter.

(2) *Presentation.* (i) *Head (cervical).* (A) Tongue: Prior to inpsection, an establishment employee shall palpate the tongue and notify the inspectors at the cervical station of any abnormalities. Notification to the inspectors shall be accomplished either directly or by means of a marking system, i.e., tags, rings, cuts, or other markings, developed by the establishment and acceptable to the inspector in charge. The inspector shall palpate any tongue identified as abnormal.

(B) *Masticatory Muscles:* Prior to inspection, an establishment employee shall incise the muscles of mastication. The inspector shall observe the incised muscle surfaces.

(ii) *Viscera/carcass.* (A) *Heart:* An establishment employee shall open all chambers of the heart and incise the interventricular septum to fully expose the interior of the heart.

(B) Kidney: An establishment employee shall open the kidney capsule, separate the kidneys from the carcass and present the kidneys for inspection with the viscera at viscera/carcass station. An exception to this kidney presentation requirement may be requested for slaughter rates greater than 234 per hour to permit the exposed kidneys to remain attached to the carcass. An inspector shall observe the kidneys for abnormalities.

(C) *Carcass.* The establishment will ensure the carcass is spread. An inspector shall observe the dorsal surface of the carcass for abnormalities with the aid of a mirror as described in § 307.2(m)(7) of this subchapter. Carcasses infested with the larvae of the oxwarble fly (*Hypoderma lineata* and *Hypoderma bovis*), external parasites, or carcasses with heavily bruised areas shall be promptly trimmed in a manner satisfactory to the inspector before the carcass is split.

(e) *Reinspection.* (1) *Disposition:* The establishment shall apply the finished product standards and edible byproduct standards. An inspector shall monitor the establishment's compliance with the standards and shall take corrective action if the establishment has failed to apply the standards.

(2) *Finished product standards (FPS):* Finished product standards are criteria applied to carcasses. These criteria consist of nonconformances (listed in Table 1 of this section), measured on randomly selected, consecutive subgroup samples collected on the slaughter line at a point after all trimming is completed. The total value of nonconformances for each subgroup is reduced to a CUSUM number and measured against the finished product standards (See Table 2 of the this section). Compliance with FPS is measured by determining the CUSUM on consecutive subgroup samples. Reinspection may be performed before the carcass washer or immediately after the carcass washer.

(3) *Edible byproducts standards:* (i) Edible byproduct standards apply to fully processed brains, cheeks, cheek trimmings, feet (front and hind), heads, hearts, small intestines, kidneys, lips, livers, mountain chain, pancreas, spleens, tails, thymus, tongues, tongue trimmings, tripe, and weasands.

(ii) Edible byproduct standards are criteria which consist of nonconformances (listed in Table 3 of this section), measured on consecutive subgroup samples collected after all cleaning and preparation is completed. The total value of nonconformances for each subgroup test is reduced to a CUSUM number and measured against the edible byproduct standards (See Table 4 of this section). Compliance with the standards in measured by determining the CUSUM on consecutive subgroup samples.

(iii) Except as provided elsewhere in Part 310, edible byproducts shall be examined using the criteria contained in Table 3 of this section.

(4) Finished product testing:

(i) Actions to be taken when the process is in control. If the CUSUM is less than the action number, and the subgroup absolute limit for cattle carcasses is not exceeded, the process is in control. If the CUSUM is less than the action number, and the subgroup maximum limit for heads, tongues and all other edible byproducts is not exceeded, the process is in control.

(A) Establishment Actions. The establishment shall:

(*1*) Randomly select and record a subgroup testing time for each product. The record of randomly selected times must be available for the inspector to monitor.

(*i*) Carcasses, head, and tongues are to be sampled once each production hour.

(*ii*) Sampling frequency for edible byproducts, except tongues and heads.

Each edible byproduct shall be sampled at a frequency of an average of once every two hours, except that the inspector in charge may allow an establishment which produces more than six types of edible byproducts, not including tongues and heads, to select by random method, a minimum of six types of edible byproducts for sampling, provided that each type of edible byproduct must be sampled at least once during the production shift. The process for selecting random sampling times for edible byproducts must given each hour of the production shift an equal chance of being selected.

(*A*) The inspector in charge may allow an edible byproduct to be sampled at a frequency on an average of once every 4 hours after the edible byproduct has completed 20 consecutive sample tests without any CUSUM scores reaching the action number or exceeding the subgroup maximum limit.

(*B*) If an edible byproduct, which has been sampled at a frequency of once every 4 hours, has completed 10 consecutive sample tests without any CUSUM scores reaching the action number or exceeding the subgroup maximum limit, the inspector in charge may allow the edible byproduct to be sampled at a frequency of an average of once every 8 hours, provided that the edible byproduct shall be sampled at least once during the production shift.

(*C*) If the CUSUM score for any edible byproduct that is sampled at a frequency of an average of less than once every two hours reaches either the action number or exceeds the subgroup maximum limit, the edible byproduct shall be sampled at a frequency of once every 2 hours. Each type of edible byproduct process must independently earn reduced frequency sampling.

(*2*) Conduct designated subgroup tests at the preselected times.

(*3*) Total the value of the subgroup nonconformances and calculate the current CUSUM. Immediately record the current CUSUM score and inform the production supervisor about any process trend.

(B) Inspector Actions. The insepctor shall:

(*1*) Conduct subgroup tests on carcasses, head, and tongues at random times twice during each shift. The randomly selected times shall be known only to the insepctor until the sample is selected.

(*2*) Monitor subgroup tests conducted by the establishment.

(*3*) Compare subgroup test results with establishment's subgroup test results. If results are not in agreement, the inspector will correlate results with the establishment.

(*4*) Instruct the establishment to take corrective action when a subgroup total exceeds the subgroup absolute limit for carcasses or exceeds the subgroup maximum limit for heads, tongues and other edible byproducts.

(ii) Actions to be taken when the subgroup absolute limit for carcasses is exceeded. If an individual subgroup total exceeds the subgroup absolute limit, but is less than the action number, the establishment shall determine if any of the five previous subgroups resulted in a CUSUM above the start number.

(A) If none of the five previous subgroups resulted in a CUSUM above the start number, the establishment shall immediately conduct another subgroup test. If this retest subgroup total equals the tolerance number or less, then random testing may continue. If the retest subgroup total exceeds the tolerance number, the establishment shall immediately begin the actions described in subparagraph (iv)(A) of this paragraph. In either case, the retest results shall be used to calculate CUSUM.

(B) If any of the five previous subgroups resulted in a CUSUM above the start number, the establishment shall begin actions described in subparagraph (iv)(A) of this paragraph.

(iii) Actions to be taken when a designated trimmable condition is found on a carcass. If any designated trimmable condition is found during a subgroup test, the establishment shall immediately:

(A) Notify the inspector in charge of the findings.

(B) Identify the carcass and all subsequently produced carcasses for possible rework.

(C) Conduct a verification subgroup test examining only for designated trimmable conditions.

(*1*) If any designated trimmable condition is found, all carcasses, beginning with the last previous sampled subgroup that was passed, shall be reworked by the establishment. The establishment shall not be required to identify and rework carcasses produced after a second verification subgroup test results in the finding of no designated trimmable conditions. The establishment shall conduct another verification subgroup test for designated trimmable conditions within 30 minutes.

(*i*) If no designated trimmable condition is found, the establishment may continue random sampling.

(*ii*) If any designated trimmable condition is found, the tested carcass and all subsequently produced carcasses shall be identified and reworked by the establishment. The establishment shall not be required to identify and rework carcasses produced

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after a subsequent subgroup test results in the finding of no designated trimmable conditions.

(2) If no designated trimmable condition is found, the establishment shall not be required to rework the identified carcasses. The establishment shall conduct a second verification subgroup test for designated trimmable conditions within 30 minutes.

(i) If no designated trimmable condition is found, the establishment may continue random sampling.

(ii) If any designated trimmable condition is found, the tested carcass and all subsequently produced carcasses shall be identified and reworked by the establishment. The establishment shall not be required to identify and rework carcasses produced after two consecutive, subsequent subgroup test results in the finding of no designated trimmable conditions.

(iv) Actions to be taken when the CUSUM reaches the action number for carcasses or for heads, tongues, and other edible byproducts or when the subgroup maximum limit for heads, tongues, and other edible byproducts is reached. When CUSUM reaches the action number for carcasses or heads, tongues, and other edible byproducts, the process may be out of control. When the subgroup maximum limit for heads, tongues, and edible byproducts is reached, the process may be out of control.

(A) Establishment Actions. The establishment shall immediately:

(1) Identify the product and subsequently produced product of the same type for possible rework. The initial test results which reach the action number indicate only the possibility that the process is out of control. The process is not out of control until a verification subgroup test exceeds the tolerance number. When the process is out of control, identify the product beginning with the last previous sampled subgroup that was passed. Product action (identification and rework) begins at that point in the process.

(2) Notify the inspector in charge and production supervisor that the CUSUM has reached the action number.

(3) Suspend random subgroup testing of the affected type of product.

(4) Examine establishment records with the responsible production supervisor to determine the cause of the problem.

(5) Conduct a verification subgroup test.

(i) If the subgroup total for the verification subgroup test exceeds the tolerance number for carcasses, all carcasses identified for possible rework shall be reworked by the establishment. The establishment shall not be required to identify and rework carcasses produced after a subsequent subgroup test results in a subgroup total equal to or less than the tolerance number.

(A) If the subgroup total for the verification subgroup test is less than or equal to the tolerance number, the establishment shall not be required to rework the identified carcasses. The establishment shall conduct a second verification subgroup test within 30 minutes.

(B) If the subgroup total for the second verification subgroup test exceeds the tolerance number, the tested carcass and all subsequently produced carcasses shall be identified and reworked by the establishment. The establishment shall not be required to identify and rework carcasses produced after a subsequent subgroup test results in a subgroup equal to or less than the tolerance number.

(ii) If the subgroup total exceeds the tolerance number or the subgroup maximum limit is reached for heads, tongues and other edible byproducts, all edible byproducts identified for possible rework shall be reworked by the establishment. The establishment shall not be required to identify and rework edible byproducts produced after a subsequent subgroup test results in a subgroup total equal to or less than the tolerance number and the subgroup maximum limit is not reached.

(A) If the subgroup total for the verification subgroup test is less than or equal to the tolerance number and the subgroup maximum limit is not reached, the establishment shall not be required to rework identified edible byproducts. The establishment shall conduct a second verification subgroup test within 30 minutes.

(B) If the subgroup total for the second verification subgroup test exceeds the tolerance number or the subgroup maximum limit is reached, the tested edible byproducts and all subsequently produced edible byproducts of the same type shall be identified and reworked by the establishment. The establishment shall not be required to identify and rework edible byproducts produced after a subsequent subgroup test results in a subgroup total equal equal to or less than the tolerance number of the subgroup maximum limit is not reached.

(6) The process is in control and random sampling may be resumed after two consecutive subgroup tests are equal to or less than the tolerance number for carcasses; or are equal to or less than the tolerance number for edible byproducts; or the subgroup maximum limit for edible byproducts is reached:

(i) Establishment continues random subgroup testing.

(ii) CUSUM may be reset. If the two consecutive subgroup totals do not cause CUSUM to fall to the start number or below, CUSUM is reset at the start number.

(B) Inspector Actions. The inspector shall:

(1) Monitor the establishment's corrective actions to ensure that the FPS requirements for actions are met.

(2) Suspend random monitoring when the establishment is conducting product action.

(3) Correlate nonconformance criteria with the establishment as needed.

(f) After the subgroup tests are completed, nonconformances on carcasses, parts of carcasses, and edible byproducts sampled should be removed before the carcasses, parts and byproducts are returned to the product flow, or if such nonconformances cannot be removed, the articles shall be handled under the provisions of Part 311 of this subchapter.

(g) Slaughter Line Partial Quality Control. Establishments slaughtering cattle at rates greater than 275 head per hour must develop a quality control program for carcass dressing defects. Establishments slaughtering cattle at 275 head or less per hour are not required to, but may participate in a slaughter line quality control program. Participating establishments must comply with the following provisions:

(1) A slaughter floor carcass reinspection station shall be located off the main conveyor and shall comply with the facility requirements prescribed in § 307.2(m)(9). Specific reinspection activities shall be based on the establishment's quality control system and its performance under that system as determined by the circuit supervisor and inspector in charge. Carcass reinspection shall be handled in accordance with the provisions and the finished product standards in this section.

(2) Application for slaughter line partial quality control. Any owner or operator of an official slaughter establishment who has a plan for controlling post-mortem activities through a quality control system may request the Administrator to evaluate it to determine if the system is adequate to result in product being in compliance with the requirements of the Act. Such a request shall include the following:

(i) A letter to the Administrator from the establishment owner or operator stating the company's basis and purpose for seeking an approved slaughter line partial quality control system and willingness to adhere to the requirements of the system as approved by the Department; that all the establishment's data, analyses, and information generated by its quality control system will be maintained for the period provided in § 320.3 in this subchapter to enable the Department to monitor compliance and to be available to Department personnel; that quality control personnel will have authority to halt production or shipping in cases where the quality control system requires it; and that the operator or owner (or his/her designee) will be available for consultation at any time the Department considers it necessary.

(ii) If an establishment has one or more full-time persons whose duties are related to quality control systems, an organizational chart shall be included showing that such person ultimately reports to an official whose quality control responsibilities are independent of production responsibilities. In cases of an establishment which does not have full-time quality control personnel, state the nature of the duties and responsibilities of the person who will be responsible for the slaughter line partial quality control system.

(iii) Detailed information concerning the manner in which the system will function must be included in the letter. Such information shall include, but not necessarily be limited to, carcass dressing control, the critical control points from animal unloading to the cooler, the nature and frequency of tests to be made, the nature of charts and other records which will be used in the system, the length of time such charts and other records will be maintained in custody of the official establishment, the nature of deficiencies the quality control system is designed to identify and control, the limitation or parameters used and the points at which corrective action will occur, and the nature of corrective action from least to most severe.

(iv) A list identifying those parts and sections of the Federal meat inspection regulations which are applicable to the operations of the establishment applying for approval of a slaughter line partial quality control system. This list shall also identify which part of the slaughter line partial quality control system will serve to maintain compliance with the applicable regulations.

(3) The Administrator shall evaluate the material presented in accordance with paragraph (f)(2) of this section. The Administrator shall approve the system if it is determined, on the basis of the evaluation, that the proposed slaughter line partial quality control program will result in carcasses being in full compliance with the requirements of the Act and regulations issued under the Act.

(4) If the Administrator determines that the proposed slaughter line partial quality control system is unacceptable, written notification of the basis for denial by the Administrator shall be sent to the applicant. The applicant shall be afforded an opportunity to modify the system in accordance with the notification. The applicant will also be provided an opportunity to submit to the Administrator within 30 days of the date of the notification, a statement challenging the merits or validity of the denial and to request an oral hearing with respect to the denial decision. An oral hearing shall be granted if there is any dispute in material fact joined in such responsive statement. The proceeding shall thereafter be conducted in accordance with the applicable rules of practice which shall be adopted for this proceeding. Any such denial shall be effective upon receipt by the applicant of the notification and shall continue in effect until final determination of the matter.

(5) The establishment owner or operator shall be responsible for the effective operation of the approved slaughter line partial quality control system to ensure compliance with the requirements of the Act and regulations issued under the Act. The Secretary shall continue to provide the Federal inspection necessary to carry out responsibilities under the Act.

(6) Termination of slaughter line partial quality control.

(i) The approval of the slaughter line partial quality control system may be terminated at any time by the owner or operator of the official establishment upon written notice to the Administrator. Upon termination the maximum slaughter rate shall not exceed 275 head per hour.

(ii) The approval of the slaughter line partial quality control system may be terminated upon the establishment's receipt of a written notice from the Administrator under the following conditions:

(A) If the establishment fails to comply with the approved slaughter line quality control system after being served with written notification from the Administrator, or his designee, of its failure to comply. Termination will be effective 30 days after service of the notification. During this 30 day period, opportunity shall be provided to the establishment owner or operator to present views to the Administrator. If there is a conflict of facts, a hearing under applicable rules of practice shall be provided to the establishment owner or operator to resolve the conflict. The Administrator's termination of an approved slaughter line quality control system shall remain in effect pending the final determination of the proceeding.

(B) If adulterated or misbranded meat food product is found by the Administrator to have been prepared for or distributed in commerce by the establishment or not prepared in compliance with the requirements of the Act. In such cases, opportunity shall be provided to the establishment owner or operator to present views to the Administrator within 30 days of the date of termination of the approval. If there is a conflict of facts, a hearing under applicable rules of practice shall be provided to the establishment owner or operator to resolve the conflict. The Administrator's termination of approval shall remain in effect pending the final determination of the proceeding.

(iii) If approval of the slaughter line partial quality control program has been terminated in accordance with the provisions of this section, an application and request for approval of the same or a modified partial quality control system will not be evaluated by the Administrator for a least two months from the termination date. Such application must include those additional actions the establishment will perform to correct the previous failure to comply with the approved slaughter line quality control program.

TABLE 1.—DEFINITION OF NONCONFORMANCES FOR BEEF CARCASSES

1. SPECKS:
   —Includes any speck or piece of extraneous material.
   EXAMPLES: Ingesta, feces, oil, grease, dust, rust, etc. When specks are so numerous that counting is impractical, or they are larger than .5 cm, they should be scored under dressing nonconformances.
   —Factor is one.
   —Count and total the number of specks per sample unit, (½ carcass).
   —Number of defects per sample unit is determined by dividing the total accumulated count per sample unit by 10 and rounding to nearest whole number such that: 0 to 4 specks=0 defects, 5 to 14 specks=1 defect, 15 to 24 specks=2 defects, 25 to 34 specks=3 defects; etc.
   NOTE: Do not count bone dust or fat.

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TABLE 1.—DEFINITION OF NONCONFORMANCES FOR BEEF CARCASSES—Continued

2. CONTAMINATION, SMEARS, AND STAINS:
—Includes areas of contamination, smears, and stains.
EXAMPLES: Areas of contamination, smears or stains resulting from contact with ingesta, hide, personnel, equipment, other carcasses, etc.
—Factor is three.
—Measure and total the accumulated measurements for each area of nonconformance per sample unit.
—Number of defects per sample unit is determined by dividing the total accumulated measurements per sample unit by 5 and rounding to nearest whole number such that: 0 to 2.4 cm=0 defects, 2.5 to 7.4 cm=1 defect, 7.5 to 12.4 cm=2 defects, 12.5 to 17.4 cm=3 defects, etc.
NOTE: An area of contamination less than .5 cm in its longest dimension should be counted as a speck.
3 HAIR STRANDS (Loose):
—Includes all hair not attached to hide.
—Factor is one.
—Count total number of hairs on sample unit.
—Number of defects is determined by dividing total accumulated number of hairs per sample unit by 10 and rounding to nearest whole number such that: 0 to 4 hairs=0 defects; 5 to 14 hairs=1 defect; 15 to 24 hairs=2 defects; 25 to 34 hairs=3 defects, etc.
4. HAIR CLUSTERS:
—A cluster of hair is a group or groups of hairs contained in a 12.5 cm by 12.5 cm area that is either (1) too numerous to count or (2) arranged in such a manner that individual hairs cannot be counted. The 12.5 cm by 12.5 cm area must be fixed to include the greatest number of hairs. Areas greater than this may be scored as more than one cluster, provided the definition continues to be met. When the definition is not met, the hairs outside the area will be scored as loose hair.
—Factor is three.
—Count each 12.5 cm square area such that: 0 to 12.5 cm=1 defect, 12.6 cm to 25 cm=2 defects, 26 to 37.5 cm=3 defects, etc.
5. HIDE:
—Only hide with hair is considered.
—Factor is four.
—Measure and total the accumulated measurements for each piece of hide per sample unit.
—Number of defects per sample unit is determined by dividing the total accumulated measurements per side by 5 and rounding to the nearest whole number such that: 0 to 2.4 cm=0 defects, 2.5 to 7.4 cm=1 defect, 7.5 to 12.4 cm=2 defects, 12.5 to 17.4 cm=3 defects, etc.
6. PARASITES:
—Factor is one.
—Include each area which is partially or not adequately trimmed for the presence or evidence of a grub.
—Count.
—Each area is a defect.
7. OIL, GREASE:
—Factor is one.

TABLE 1.—DEFINITION OF NONCONFORMANCES FOR BEEF CARCASSES—Continued

—Measure the total accumulation of oil or grease or their resulting stains round per sample unit.
—Number of defects is determined by dividing total accumulated measurements by 5 and rounding to nearest whole number such that: 0 to 2.4 cm=0 defects, 2.5 to 7.4 cm=1 defect, 7.5 to 12.4 cm=2 defects, 12.5 to 17.4 cm=3 defects, etc.
NOTE: Oil and grease spots less than .5 cm will be scored under specks.
8. IMPROPER TRIM:
—Factor is one.
—Includes non-meat tissue attached to the carcass.
EXAMPLES: Remnant of liver, lung, trachea, crura of the penis (pizzle eye), urinary bladder, larynx, udder (lactating), blood clots 2.5 cm or larger, uterus, ovaries, vagina, fallopian tubes, urethral muscle, bulbo-cavernosus muscle, etc.
—Measure and total the accumulated measurements of all remnants found per sample unit.
—Number of defects per sample unit is determined by dividing total accumulated measurement by 5 and rounding to nearest whole number such that: 0 to 2.4 cm=0 defects, 2.5 to 7.4 cm=1 defect, 7.5 to 12.4 cm=2 defects, 12.5 to 17.4 cm=3 defects, etc.
9. BRUISES:
—Factor is one.
—Each visible bruise measuring 5 cm or more in greatest dimension is a nonconformance.
—Count.
10. DESIGNATED TRIMMABLE CONDITIONS:
—This category includes those abnormal conditions of the carcass that are not caused by improper dressing procedures, that are readily observable, but that do not affect the disposition of the carcass.
—EXAMPLES: Localized abscesses, pigmentation, fractures, arthritis, etc., are some examples of designated trimmable conditions.
—Finding of a nonconformance in this category requires immediate notification of inspector in charge and a retest for that condition.
11. OTHERS:
—This category includes those abnormal conditions of the carcass that are readily observable, that do not affect the disposition of the carcass, and that are not included in 1 through 10 above.
—EXAMPLES: Glass, metal, plastic, etc.
—Record each incidence and immediately notify the inspector in charge or his designee.

TABLE 2.—SIS FINISHED PRODUCT LIMITS

Washed Beef Carcasses:	
Tolerance	35
Subgroup Absolute Limit (T+5)	40
Action	20
Start	10
Unwashed Beef Carcasses:	
Tolerance	80
Subgroup Absolute Limit (T+5)	85
Action	20
Start	10

TABLE 3.—DEFINITION OF NONCONFORMANCES—HEADS, TONGUES AND OTHER EDIBLE BYPRODUCTS

1. INGESTA PARTICLES:
—Single individual pieces of gastro-intestinal material of plant life origin, such as grain, straw, wood, etc.
—Factor is one.
—Count.
—0 to 4=0 defects; 5 to 14=1 defect; greater than 14=2 defects.
—A maximum of 2 defects may be scored per unit.
2. SMEARS:
—Group of single ingesta particles which are so arranged or so numerous that counting is impractical.
—Factor is one.
—Measure.
—0 to 2.9 cm=0 defects; 3 to 7.9 cm=1 defect; 8 to 12.9 cm=2 defects; greater than 12.9 cm+3 defects.
—A maximum of 3 defects may be scored per unit.
3. FOREIGN OBJECTS:
—Extraneous materials that are other than gastro-intestinal material of plant life origin. They include loose broken teeth, bone fragments, cartilage, toenails, claws, rust flakes, rosin, rings, tags, sand, dirt, etc. Also included are non-encapsulated (loose) parasites such as flukes, worms, etc. When foreign objects are so arranged or mixed with particles that are so numerous that counting is impractical score as smears (item no. 2).
—Factor is one.
—Count.
—Each incidence=1.
—No maximum on the number of defects per unit.
4. HAIR/WOOL STRANDS OR SCURF (loose):
—All hair/wool or scurf not attached to the skin or hide.
—Factor is one.
—Count.
—0 to 4=0 defects; 5 to 14=1 defect; greater than 14=2 defects.
—A maximum of 2 defects may be scored per unit.
5. HAIR/WOOL CLUSTERS (attached or loose) and SCURF (attached):
—A cluster is a collection of hair/wool that is so arranged that counting is impractical. Scurf is a piece of attached epidermal layer of the skin.
—Factor is one.
—Measure.
—0 to 2.9 cm=0 defects; 3 to 7.9 cm=1 defect; 8 to 12.9 cm=2 defects; greater than 12.9 cm=3 defects.
—A maximum of 3 defects may be scored per unit.
6. BLOOD CLOTS (loose):
—Must be greater than 2 cm to be scored. Blood clots must not be part of an inflamed lesion. Blood clots found clinging to the outside of sheep hearts are not to be scored.
—Factor is one.
—Measure.
—Each incidence greater than 2 cm=1 defect.

TABLE 3.—DEFINITION OF NONCONFORMANCES—HEADS, TONGUES AND OTHER EDIBLE BYPRODUCTS—Continued

—No maximum on the number of defects per unit.
7. MUCOSA (loose or attached):
—Must be greater than 2 cm to be scored. It is usually found loose or attached to scalded stomachs or scalded tongues.
—Factor is one.
—Measure.
—Each incidence greater than 2 cm=1.
—No maximum on the number of defects per unit.
8. STAINS:
—Discolorations on the product caused by such materials as bile, oil, grease, rust, etc.
—Factor is one.
—Measure.
—0 to 2.9 cm=0 defects; 3 to 7.9 cm=1 defect; 8 to 12.9 cm=2 defects; greater than 12.9 cm=3 defects.
—A maximum of 3 defects may be scored per unit.
9. SCAR TISSUE:
—Not associated with an active inflammatory process, such as liver spots caused by parasites, and other non-parasitic scar tissue such as healed ulcers, telangiectasis and sawdust lesions, etc.
—Factor is one.
—Count.
—0 to 2=0 defects; 3 to 7=1 defect; 8 to 12=2 defects; 13 to 17=3 defects; etc.
—No maximum on the number of defects per unit.
10. LACERATIONS/PUNCTURES, BRUISES AND HEMORRHAGES:
—Lacerations/punctures are breaks on the surface of the product with no inflammatory process (not included are knife cuts made during the dressing operations.) Bruises are nonseptic reddened areas caused by physical means. Hemorrhages are collections of blood outside the vascular system such as blood splash, hematomas, etc. Localized hemorrhagic areas (collection of pin point lesions or larger) must be greater than 2 cm to be scored. Do not score products with extensive or generalized hemorrhages which must be retained for the IIC's disposition.
—Factor is two.
—Count.
—Each incidence=1.
—No maximum on the number of defects per unit.
11. PARTS OF OTHER ORGANS:
—Improper trimming of remnants of adjacent organs such as intestines, ureter, spermatic cord, diaphragm, eyelids, lips, tonsils, gall bladder, hide, pancreas, thymus, etc. With chitterlings, lymph nodes and ileocecal valves are considered parts of other organs. Score aortas attached to hearts only when greater than 3 cm in length.
—Factor is one.
—Count.
—Each incidence=1.
—No maximum on the number of defects per unit.
12. OTHER CONDITIONS:
—This category includes abnormal conditions of edible byproducts that do not affect the disposition of the carcass or defects which are not included in 1 through 11 above.
—Examples: sclerotic bile duct, kidney cyst, hair sore, ulcer, abscess, etc.
Finding of a condemnable condition requires immediate notification of the inspector in charge.

TABLE 4.—FINISHED PRODUCT STANDARDS—EDIBLE BYPRODUCTS, BEEF

	Tolerance	Action No.	Start No.
Brains	3	7	4
Cheeks	10	14	7
Cheek Trimmings	5	10	5
Feet:			
Front	5	10	5
Hind	5	10	5
Heads	5	10	5
Hearts	10	14	7
Small Intestines	3	7	4
Kidneys	1	5	3
Lips	6	11	6
Livers	5	10	5
Mountain Chain	20	20	10
Pancreas	3	7	4
Spleens	2	6	3
Tails	7	12	6
Thymus	6	11	6
Tongues	3	7	4
Tongue Trimmings	16	18	9
Tripe	30	25	13
Weasands	1	5	3

Done at Washington, DC, on: September 9, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-27426 Filed 11-29-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASO-13]

Proposed Alteration of VOR Federal Airways; NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V-20, V-266, and V-409 located in the vicinity of Greensboro, NC. The proposed realignment would improve the flow of traffic in the Charlotte, NC, and Greensboro areas by providing bypass routes in those areas. This action would enhance safety and reduce controller workload.

DATES: Comments must be received on or before January 12, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 88-ASO-13, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASO-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or

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by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V–20, V–266, and V–409 located in the vicinity of Greensboro, NC. The proposed airway realignment would enhance safety by providing bypass routes in the Charlotte, NC, and Greensboro areas, thereby avoiding the mix of en route and terminal traffic. This action would improve traffic flow and reduce delays and controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–20 [Amended]

By removing the words "Electric City, SC; Spartanburg, SC; Greensboro, NC;" and by substituting the words "Electric City, SC; Sugarloaf Mountain, NC; Barretts Mountain, NC;"

V–266 [Revised]

From Electric City, SC, to Spartanburg, SC. From Greensboro, NC; South Boston, VA; Lawrenceville, VA; Franklin, VA; Elizabeth City, NC; to Wright Brothers, NC.

V–409 [Revised]

From Charlotte, NC, INT Charlotte 088°T(093°M) and Liberty, NC, 228°T(231°M) radials; Liberty; to Raleigh-Durham, NC.

Issued in Washington, DC, on November 21, 1988

Harold W. Becker,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–27523 Filed 11–29–88; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

Availability of Agency Records to Members of the Public

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: In accordance with Executive Order 12600, dated June 23, 1987, NASA is proposing to amend 14 CFR Part 1206 by adding two new definitions to § 1206.101 and by adding a new § 1206.610. NASA is establishing formal notice procedures to notify submitters of commercial information in the event NASA receives a request for such information pursuant to the Freedom of Information Act, 5 U.S.C. 552 *et seq.* This action will result in a regulatory procedure which is consistent with NASA's long-standing policy and practice.

DATE: Comments must be submitted on or before January 30, 1989.

ADDRESS: Freedom of Information Act Officer, Code LN, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Patricia M. Riep, (202) 453–2940 or Pamela J. von Soosten, (203) 453–2439.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration has determined that this regulation does not constitute a major rule for the purposes of Executive Order 12291 and it will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 1206

Freedom of Information, Information.

For reasons set out in the Preamble, 14 CFR Part 1206 is amended to read as follows:

PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC

1. The authority citation for Part 1206 continues to read as follows:

Authority: Sec. 203, National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473 and 5 U.S.C. 552 as amended by Pub. L. 93–504, 88 Stat. 1561, Pub. L. 99–507, unless otherwise noted; the Privacy Act of 1974, 5 U.S.C. 552a.

2. The table of contents for Subpart 6 is to be revised to read as follows:

Subpart 6—Procedures

Sec.
1206.600 Requests for records.
1206.601 Mail requests.
1206.602 Requests in person.
1206.603 Procedures and time limits for initial determinations.
1206.604 Request for records which exist elsewhere.
1206.605 Appeals.
1206.606 Requests for additional records.
1206.607 Actions on appeals.
1206.608 Time extensions in unusual circumstances.
1206.609 Litigation.
1206.610 Notice to submitters of commercial information.

3. Section 1206.101 is amended by adding paragraphs (p) and (q) to read as follows:

§ 1206.101 Definitions.

* * * * *

(p) The term "commercial information" means, for the purpose of applying the notice requirements of § 1206.610, information provided by a submitter and in the possession of the National Aeronautics and Space Administration, that may arguably be exempt from disclosure under the provisions of Exemption 4 to the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). The meaning ascribed to this term for the purpose of this notice requirement is separate and should not be confused with use of this or similar terms in determining whether information satisfies one of the elements of Exemption 4.

(q) The term "submitter" means a person or entity that is the source of commercial information in the possession of the National Aeronautics and Space Administration. The term "submitter" includes but is not limited to, corporations, state governments, and foreign governments. It does not include other federal government agencies or departments.

4. Section 1206.610 is added to read as follows:

§ 1206.610 Notice to submitters of commercial information.

(a) General Policy. Upon receipt of a request for commercial information pursuant to the Freedom of Information Act, the National Aeronautics and Space Administration shall provide the submitter with notice of the request in accordance with the requirements of this section.

(b) Notice to Submitters. Except as provided in paragraphs (g) or (h) of this section, the agency shall make a good faith effort to provide a submitter with prompt notice of a request appearing to encompass its commerical information whenever required under paragraph (c) of this section. Such notice shall identify the commerical information requested and shall inform the submitter of the opportunity to object to its disclosure in accordance with paragraph (d) of this section. If the submitter would not otherwise have access to the information, upon the request of the submitter, the agency shall provide access to, or copies of, the records or portions thereof containing the commercial information. This notice shall be provided in writting upon the request of the submitter. Whenever the agency provides notice pursuant to this section, the agency shall advise the requester that notice and opportunity to comment are being provided to the submitter.

(c) When Notice is Required. The agency shall provide a submitter with notice of a request whenever the information is subject to an understanding of confidentiality between the agency and the submitter, or the agency has reason to believe that the information constitutes a trade secret or commercial or financial information that is confidential or privileged.

(d) Opportunity to Object to Disclosure. Through the notice described in paragraph (b) of this section, the agency shall afford a submitter a reasonable period within which to provide the agency with a detailed statement of any objection to disclosure. This period shall not exceed 10 working days from the date after which the agency can reasonably assume receipt of notice by the submitter, unless the submitter provides a reasonable explanation justifying additional time to respond. If the agency does not receive a response from the submitter within this period, the agency shall proceed with its review of the information and initial determination. The submitter's response shall include all bases, factual or legal, for withholding any of the information pursuant to Exemption 4. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) Notice of Intent to Disclose. The agency shall carefully consider any objections of the submitter in the course of determining whether to disclose commercial information. Whenever the agency decides to disclose commercial information over the objection of a submitter, the agency shall forward to the submitter a written statement which shall include:

(1) A brief explanation as to why the agency did not agree with any objections;

(2) A description of the commercial information to be disclosed, sufficient to identify the information to the submitter; and

(3) A date after which disclosure is expected. Such notice of intent to disclose shall be forwarded a reasonable number of working days prior to the date specified in paragraph (e)(3) of this section. A copy of this statement shall be forwarded to the requester at the same time, unless the description required by paragraph (e)(2) of this section would constitute a premature release, in which case the description shall be appropriately redacted and the requester so advised.

(f) Notice of FOIA Lawsuit. Whenever a requester brings suit seeking to compel disclosure of commercial information covered by paragraph (c) of this section, the agency shall promptly notify the submitter. Whenever a submitter brings suit against the agency in order to prevent disclosure of commercial information, the agency shall promptly notify the requester.

(g) Exceptions to Notice Requirements. The notice requirements of this section shall not apply if:

(1) The information has been published or otherwise made available to the public;

(2) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(3) The submitter has received notice of a previous FOIA request which encompassed the information requested in the later request, and the agency intends to withhold information in the same manner as in the previous FOIA request;

(4) Upon submitting the information or within a reasonable period thereafter, (i) the submitter reviewed its information in anticipation of future requests pursuant to the FOIA, (ii) provided the agency a statement of its objections to disclosure consistent with that described in paragraph (d) of this section, and (iii) the agency intends to release information consistent with the submitter's objections; or

(5) Notice to the submitter may disclose information exempt from disclosure pursuant to 5 U.S.C. 552(b)(7).

(h) An additional limited exception to the notice requirements of this section, to be used only when all of the following exceptional circumstances are found to be present, authorizes the agency to withhold information which is the subject of a FOIA request, based on Exemption 4 (5 U.S.C. 552(b)(4)), without providing the submitter individual notice:

(1) The agency would be required to provide notice to over 10 submitters, in which case, notification may be accomplished by positing or publishing the notice in a place reasonably calculated to accomplish notification;

(2) Absent any response to the published notice, the agency determines that if it provided notice as is otherwise required by paragraph (c) of this section, it is reasonable to assume that the submitter would object to disclosure of the information based on Exemption 4; and,

(3) If the submitter expressed the anticipated objections, the agency would uphold those objections.

This exception shall be used only with the approval of the Chief Counsel of the Field Installation, the Attorney-Advisor to the Inspector General, or the Associate General Counsel responsible for responding to the request. This exception shall not be used for a class of documents or requests, but only as warranted by an individual FOIA request.

November 21, 1988.

Dale D. Myers,

Deputy Administrator.

[FR Doc. 88–27420 Filed 11–29–88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251 and 293

Land Uses; Wilderness

AGENCY: Forest Service, USDA.

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ACTION: Proposed rule; extension of comment period.

SUMMARY: On September 28, 1988, at 53 FR 37795, the Forest Service published a proposed rule to be codified at 36 CFR Part 251, Subpart D, governing access to non-Federal lands within the boundaries of units of the National Forest System. The proposed regulations set forth the procedures, terms, and conditions governing access for landowners whose properties lie within the boundaries of units of the National Forest System. The public comment period was to expire on November 28, 1988. Requests have been received from the National Forest Products Association, the Mountain States Legal Foundation, and other interested parties, for an extension of time to ensure that they have sufficient time to adequately review and comment on the proposed regulations. In response, the Forest Service is extending the public comment period until January 30, 1989.

DATE: Comments must be received in writing by January 30, 1989.

ADDRESS: Send written comments to F. Dale Robertson, Chief (2730), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Lands Staff, 703–235–2498 or James B. Snow, Attorney, USDA Office fo the General Counsel, 202–447–6055.

Dated: November 23, 1988.

Lawrence A. Amicarella,

Acting Chief.

[FR Doc. 88–27586 Filed 11–29–88; 8:45 am]

BILLING CODE 3410–11–M

Notices

Federal Register

Vol. 53, No. 230

Wednesday, November 30, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 25, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service

Beef Promotion and Research Program
LS 25, –26, –27
On occasion
Individuals or households; Farms; 4,096,549 responses; 168,551 hours; not applicable under 3504(h)
Robert Leverette (202) 447–2650.

New

- Rural Electrification Administration

7 CFR 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans
REA Form 606
On occasion
Small businesses or organizations; 120 responses; 3,200 hours; not applicable under 3504(h)
Laurence Bladen (202) 382–9558.

Reinstatement

- Forest Service, PNW Station

Forest Industry Survey of California and Oregon
None
Once; Non Recurring
Businesses or other for-profit; Small businesses or organizaitons; 500 responses; 300 hours; not applicable under 3504(h)
James O. Howard (503) 231–2030.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–27583 Filed 11–29–88; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Columbia River Gorge National Scenic Area; Proposed Minor Boundary Revision

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed boundary change.

SUMMARY: The Forest Service proposes a minor revision in the Special Management Area (SMA) boundary of the Columbia River Gorge National Scenic Area so that the SMA boundary will coincide with the boundary of the Rowena Rural Service Center. To comply with direction contained in Section 4 of the Columbia River Gorge National Scenic Area Act of November 17, 1986 (Pub. L. 99–663), which established the Scenic Area, notice of the proposed change is being published in the **Federal Register**. The revision will involve approximately 11.82 acres of land that was previously Special Management Area and is proposed to be reclassified as General Management Area (GMA) land.

DATE: Comments must be received by January 30, 1989.

ADDRESS: Send written comments to Arthur W. DuFault, Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Suite 200, Hood River, Oregon, 97031. The public may inspect comments received on this proposed action at the Columbia River Gorge National Scenic Area Office located at 902 Wasco Avenue, Suite 200, Hood River, Oregon between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jurgen Hess, Land Use Coordinator, Hood River, Oregon, (503) 386–2333.

SUPPLEMENTARY INFORMATION: This action is in accordance with the provision of the Columbia River Gorge National Scenic Area Act of November 17, 1986 (Pub. L. 99–663, 100 Stat. 4275) establishing the Columbia River Gorge National Scenic Area. The Forest Service proposes a minor revision of a Special Management Area boundary line in the Rowena area as it was originally depicted on the map entitled "Special Management Areas, Columbia River Gorge National Scenic Area," numbered SMA–002 sheet 14, dated September 1986. The revision, as proposed, will reclassify a portion of a Special Management Area to become General Management Area.

The subject parcels are located seven miles northwest of The Dalles, Oregon. The legal description of the property is the northern part of Tax Lots 100, 400, and 500 of Government Lots 3 and 4, and Donation Claim 37, in T. 2N., R. 12 E., W.M. Total acreage involved in the boundary line adjustment is 11.82 acres. County zoning for the Tax Lots in question is: Tax Lot 100 RMH–t, Tax Lot 400 RMH–t, and Tax Lot 500 RMH–2.

The proposal has been reviewed and approved by the Columbia River Gorge Commission. Wasco County has discussed the proposal with the owners of the property. Maps showing the proposed revision are available at the office of the Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Suite 200, Hood River, Oregon.

Date: November 18, 1988.

Arthur W. DuFault,

Manager.

[FR Doc. 88–27578 Filed 11–29–88; 8:45 am]

BILLING CODE 3410–11–M

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COMMISSION ON CIVIL RIGHTS

Idaho Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on December 15, 1988, at the Guadalupe Center, 630 Falls Avenue, Turn Falls, Idaho. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Gladys Esquibel, or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 21, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88–27610 Filed 11–29–88; 8:45 am]

BILLING CODE 6335–01–M

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission on November 17, 1988 has been cancelled and rescheduled for December 12–13, 1988 at the Toledo Hilton Hotel, 3100 Glendale Avenue, Toledo, Ohio. The meeting will convene on December 12, 1988 at 9:00 a.m. and adjourn that day at 4:25 p.m. The meeting will convene on December 13, 1988 at 9:00 a.m. and adjourn at 1:30 p.m. The purpose of the meeting is to hold a community forum to receive information on the nature and extent of issues and problems related to race relations in Toledo, Ohio.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald G. Prock, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 22, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88–27609 Filed 11–29–88; 8:45 am]

BILLING CODE 6335–01–M

Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on December 15, 1988, in the Thalhimer Lounge of the Jewish Community Center, 5403 Monument Ave., Richmond, VA 23226. The purpose of the meeting is to discuss the status of the Commission and the November 4–5, 1988 Regional SAC Chairs Conference in which the Virginia Committee was represented; to hear a report on the Virginia Council on Human Rights; and to plan a project for Fiscal Year 1989.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Benjamin Bostic, (703/450–5950) or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202/523–5264 or TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 21, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88–27611 Filed 11–29–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Service Annual Survey; Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, I have determined that 1988 data on receipts and revenues for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. Selected service industries include hotels and motels; personal, business, automotive, and repair services; motion pictures and amusement services; health, legal, and other professional services; real estate services; arrangement of passenger transportation; and selected social services. This survey will yield 1988 estimates of receipts/revenues for these service industries, in addition to sources of receipts/revenues for nursing and personal care facilities, outpatient care facilities, temporary help supply services, and arrangement of passenger transportation. Also, information on number of beds, discharges, and average length of stay per discharge from nursing and personal care facilities will be provided, along with annual payroll and operating expenses for arrangers of passenger transportation.

The Census Bureau will require a selected sample of service firms in the United States (with payroll size determining the probability of selection) to report in the 1988 Service Annual Survey. The sample will provide, with measurable reliability, statistics on the above items for these service industries.

We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: November 23, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88–27553 Filed 11–29–88; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket 37–88]

Foreign-Trade Zone 46; Cincinnati, OH; Application for Expansion of Subzone 46B Honda Auto Plant, Union County, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign-Trade Zone, Inc. (GCFTZ), grantee of FTZ 46, requesting authority to expand the automobile and motorcycle assembly plant of Honda of America Manufacturing, Inc. (Honda), in Union County, Ohio, to include additional facilities in Logan and Union Counties, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 14, 1988.

The Honda plant (6.500 employees), located on Highway 33 in Union County, Ohio, some 35 miles northwest of Columbus, was first authorized as a subzone in January 1979 for the manufacture of motorcycles (Board Order 141, 1/12/79). An expansion was approved in May 1982 to include an adjacent automobile manufacturing facility (Board Order 191, 5/14/82).

The proposed expansion calls for an additional manufacturing plant (1.2 mil. sq. ft.), located on a 7,500-acre tract adjacent to the present site. The new area includes an 8-mile test track, and research facility operated on the former site of the Transportation and Research Center of Ohio. The new facility will be used to produce some 150,000 additional subcompact automobiles per year (current capacity 360,000). The level of domestic sourcing of parts and material for the expanded operation is expected to exceed the current level of 50 percent. Exports are currently at 3 percent of production, but are expected to account for over 10 percent within 3 years.

In accordance with the Board's regulations, an examiners committee has been designated to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel Thomas E. Farewell, District Engineer, U.S. Army Engineer District Huntington, 502 8th Street, Huntington, West Virginia 25701–2070.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 15, 1989.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Port Columbus International Airport, 4600 17th Avenue, Room 221, Columbus, Ohio 43219.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 2835, Washington, DC 20230.

Dated: November 25, 1988.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 88–27581 Filed 11–29–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[C–549–803]

Preliminary Affirmative Countervailing Duty Determination; Malleable Cast Iron Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Thailand of malleable cast iron pipe fittings ("pipe fittings") as described in the "Scope of Investigation" section of this notice. The estimated net bounties or grants are specified in the "Suspension of Liquidation" section of this notice.

We are directing the U.S. Customs Service to suspend liquidation of all entries of pipe fittings from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond on entries of these products in an amount equal to the appropriate estimated net bounties or grants as specified in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by February 6, 1989.

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0192 or 377–3439.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that there is reason to believe or suspect that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Thailand of pipe fittings. For purposes of this investigation, the following programs are preliminarily found to confer bounties or grants:

- Short-Term Loans Provided under the Export Packing Credits Program.
- Tax Certificates for Exports.
- Electricity Discounts for Exporters.
- Tax and Duty Exemptions under the Investment Promotion Act.

The estimated net bounties or grants are specified in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the Notice of Initiation in the **Federal Register** (53 FR 37014, September 23, 1988), the following events have occurred. On September 29, 1988, we presented a questionnaire to the Government of Thailand in Washington, DC, concerning petitioner's allegations. On November 4, 1988, we received responses from the Government of Thailand, Siam Fittings Co., Ltd. (Siam), BIS Pipe Fittings Co., Ltd. (BIS), and Thai Malleable Iron & Steel Co., Ltd. (TM). On November 14, 1988, we issued a supplemental/deficiency questionnaire to the government and the respondent companies, and received responses on November 18, 1988. We received another supplemental response on November 23, 1988.

Scope of Investigation

The products covered by this investigation are malleable iron pipe fittings, advanced in condition by operations or processes subsequent to the casting process, other than with grooves, classified under TSUSA category 610.7400 and classified under HTS category 7307.19.90.

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1987.

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which corresponds to the fiscal year of all three respondent companies.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination. Based upon our analysis of the petition and the responses to our questionnaries, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Thailand of pipe fittings under the following programs:

A. Short-Term Loans Provided Under the Export Packing Credits Program

Export packing credits are short-term loans which are provided through Thai commercial banks. According to the responses, these loans are used for either pre-shipment or post-shipment financing and can be rediscounted at the Bank of Thailand through its export refinancing facility.

The Bank of Thailand charges an interest rate of five percent per annum to commercial banks on repurchased packing credits issued in connection with exports of goods specified in categories one and two of the "Notification of the Board of Investment No. 40/2521." The commercial banks are permitted to charge exporters no more than seven percent per annum for the purchase of such notes. Export packing credits are available for a maximum period of 180 days. If exporters do not pay principal and interest on the due date of the loan, they are charged an interest penalty retroactive to the date of issuance of the loan. However, if the company can prove it has shipped the goods within 60 days of the due date of the loan, the interest penalty is refunded.

On October 1, 1988, the Government of Thailand issued a new regulation raising the rate commercial banks are permitted to charge to no more than ten percent per annum and lowering to 50 percent the amount of the loan that can be rediscounted at the Bank of Thailand.

Because this program is available only to exporters, we preliminarily determine that it is countervailable to the extent that it is offered at preferential rates.

To determine whether financing under this program was made at preferential rates, we compared the interest rates charged to exporters during the review period to our short-term benchmark. For our benchmark, we are using the national average short-term interest rate on commercial debt in Thailand, as reported in the responses of the Government of Thailand. This is the rate that we applied in the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from Thailand*, (52 FR 36987, 36988, October 2, 1987) (*Nails from Thailand*), and *Preliminary Affirmative Countervailing Duty Determinations: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Thailand*, (53 FR 34333 September 6, 1988), (*Bearings from Thailand*), the last investigations in which this program was used. Based on this comparison, the rates on export packing credits are below the benchmark. Therefore, we preliminarily determine this program to be countervailable.

Respondents have argued that we should adjust the interest rate on these loans to account for the lost use of funds due to penalty payments incurred by respondents that were subsequently refunded. Petitioner argues that such an adjustment constitutes a secondary effect of the program, and, as such, is an offset not permissible under the law. Petitioner states that this adjustment should, therefore, not be taken into account. For purposes of our preliminary determination we are not adjusting the interest rate on these loans. At verification, we will examine the penalty payment mechanism.

To calculate the benefit arising from this program, we followed our short-term loan methodology which has been applied consistently in our past determinations and which is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984). We compared the amount of interest actually paid during the review period to the amount the companies would have paid at the benchmark rate. Both Siam and TM participated in this program during the review period. The responses did not tie individual discount transactions to exports of specfic products to specific markets. Therefore, we calculated the estimated net bounty or grant by dividing total benefits during the review period by all three companies' total export sales during this period. The estimated net bounty or grant under this program is 0.46 percent *ad valorem*.

B. Tax Certificates for Exports

The Government of Thailand issues to exporters tax certificates which are freely transferable and which constitute a rebate of indirect taxes and import duties on inputs used to produce exports. This rebate program is provided for in the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (Tax and Duty Act). The rebate rates under the Tax and Duty Act are computed on the basis of an input/output (I/O) study published in 1980, based on 1975 data, and updated in 1985 using 1980 data.

Using the I/O study, the Thai Ministry of Finance computes the value of total inputs (both imports and local purchases) at ex-factory prices. It also calculates the import duties and indirect taxes on each input. The Ministry then calculates two rebate rates. The "A" rate includes both import duties and indirect domestic taxes. The "B" rate includes only indirect domestic taxes. The "B" rate is claimed when firms participate in Thailand's customs duty drawback program or duty exemption program on imported raw materials, or when firms do not use imported materials in their production process. The "A" or "B" rate, as appropriate, is then applied to the FOB value of the export to determine the amount of rebate that will be provided.

Under the Tax and Duty Act, the rebates are paid to companies through tax certificates which can be used to pay other tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities.

New rebate rates, announced on February 5, 1986, were computed using the study published in 1985. Since 1986, the "A" rate has been 8.11 percent and the "B" rate has been 4.98 percent for exports of pipe fittings. According to the responses, all three respondents claimed and received tax certificates at the "A" rate during the review period, since they did not participate in any duty drawback program.

To determine whether an indirect tax rebate system confers a bounty or grant, we must apply the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the

rebate. This includes a review of the sample used in the study, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

When the study upon which the indirect tax and import duty rebate system is based meets these conditions, the Department will consider that the system does not confer a bounty or grant if the amount rebated for duties and indirect taxes on physically incorporated inputs does not exceed the fixed amount set forth in the rebate schedule for the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we find a bounty or grant exists to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs.

In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Apparel from Thailand* (50 FR 9818, 9820, March 12, 1985) (*Apparel from Thailand*), we examined Thailand's rebate sytem under the Tax and Duty Act. We found that the program was intended to rebate indirect taxes and import duties and that the rebate rates had been reasonably calculated. However, to the extent that the program rebates indirect taxes and import duties on non-physically incorporated inputs, we found that the remissions are excessive. Again, in *Nails from Thailand*, we applied our test and reiterated that these rebates are countervailable only to the extent that the remissions are excessive. In the present investigation, we will verify whether rebates under this program continue to reflect the incidence of indirect taxes and import duties on inputs.

For purposes of our preliminary determination, to determine whether, and the extent to which, the tax certificates confer an excessive remission of indirect taxes, we calculated the indirect tax and import duty incidence under the most recent I/O table on physically incorporated inputs at FOB prices. Under our methodology, this is the allowable rebate rate. We then compared the authorized rebate rate, which is based on both physically and non-physically incorporated inputs, to the allowable rebate rate and found that there is an excessive remission of indirect taxes to exporters of pipe fittings. The difference between the two rebate rates equals the net overrebate. On this basis, we calculate an estimated net bounty or grant of 1.37 percent *ad valorem*.

C. Electricity Discounts for Exporters

The Electricity Generating Authority of Thailand (EGAT), the Metropolitan Electricity Authority (MEA), and the Provincial Electricity Authority (PEA) provide discounts on electricity rates charged to producers of export products. According to the responses, this program provides discounts of 20 percent of the cost of electricity consumed to produce exports. The respondents received discounts from EGAT and PEA.

Any producer that consumes electricity in manufacturing products that are eligible to receive tax certificates for exports (*see* section I.B. of this notice) is eligible for the electricity discount. Once a producer has qualified for the electricity discount and has completed an export transaction involving eligible products, it may apply to the electricity authority from which it receives its electricity bill. The EGAT and the PEA then calculate the amount of the discount and credit a deduction on a subsequent electricity bill.

Because these discounts are available only to exporters, we preliminarily determine that they are countervailable. All three respondents participated in this program during the review period. To calculate the bounty or grant, we divided the total amount of electricity discounts received by all three respondents during the review period by their total export sales during the same period. The estimated net bounty or grant is 0.66 percent *ad valorem*.

D. Tax and Duty Exemptions Under the Investment Promotion Act (IPA)

The IPA (B.E. 2520) of 1977 provides incentives for investment to promote development of the Thai economy. Administered by the Board of Investment (BOI), the IPA authorizes, among other incentives, the exemption of import duties and certain taxes with respect to qualifying projects. Section 28 provides for exemption from payment of import duties and business taxes on machinery. Both Siam and BIS received exemptions under section 28 during the review period. According to the responses, the expansion certificates for the two companies specify that they export their production from the promoted factory.

Because benefits to the respondent companies under this program were contingent upon their export performance, we preliminarily determine that section 28 tax and duty exemptions on imported machinery confers bounties or grants on the respondent companies within the meaning of the countervailing duty law.

To obtain the amount of the benefit received under section 28, we divided the total amount of exemptions received by respondents during the review period by total export sales of the three companies during the review period. On this basis, we calculated an estimated net bounty or grant of 0.79 percent *ad valorem*.

II. Programs Preliminarily Determined not to be Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters in Thailand of pipe fittings during the review period:

A. Rediscount of Industrial Bills

The Bank of Thailand authorizes rediscounts for short-term promissory notes arising from industrial activity. The Bank of Thailand's "Regulations Governing the Rediscount of Promissory Notes Arising from Industrial Undertakings" permit commercial banks to rediscount short-term promissory notes for industrial purchases. Commercial banks may charge their industrial customers a maximum of 7 percent per annum, while the rate charged to commercial banks by the Bank of Thailand for these notes is 5 percent per annum. According to the responses, none of the respondent companies participated in this program during the review period.

B. International Trade Promotion Fund

This fund is used to finance export promotion activities such as marketing research and trade fairs. According to the responses, none of the respondent companies applied for or received benefits under this program during the review period.

C. Export Processing Zones

Under The Industrial Estates Authority of Thailand Act, firms located in designated export processing zones and industrial estates receive tax and import duty exemptions on: (1) Machinery used for factory construction

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and operation; (2) goods imported for use in the production of exports; (3) items produced for export; and (4) items imported for re-export. According to the responses, none of the respondent companies have facilities located in export processing zones.

D. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries

Section 6 of the "Royal Decree Issued Under the Revenue Code on Reduction and Exemption from Revenue Taxes" provides that business taxes imposed on the sale of goods that are used as inputs into finished goods may be reduced to 1.5 percent for finished goods sold in the domestic market and 0.1 percent for finished goods that are exported from Thailand. According to the responses, none of the respondent companies claimed or received benefits under this program during the review period.

E. Additional Incentives under the IPA

Petitioner alleged that the following incentives are available to manufacturers, producers and exporters of pipe fittings:

- *Section 31* of the IPA provides a three-to-eight year exemption for payment of corporate income tax on profits derived from promoted activities, as well as deductions from net profits for losses incurred during the tax exemption period.
- *Section 33* of the IPA provides a five-year tax exemption for goodwill and royalty payments.
- *Section 34* provides an additional deduction from taxable income for dividends paid on promoted activity.
- *Section 36* provides a number of import duty and business tax exemptions on imports of raw and essential materials in addition to income tax deductions based on export performance.

According to the responses, none of the respondent companies claimed benefits under any of these sections of the IPA during the review period.

The responses indicate that additional incentives are authorized under the IPA, such as allowing promoted companies to bring into the Kingdom foreign nationals who are skilled workers and permitting designated companies to take out or remit from abroad foreign currency. According to the responses, none of the respondent companies claimed benefits under any of these additional sections of the IPA during the review period.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation on all entries of pipe fittings from Thailand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise equal to 3.28 percent *ad valorem*. This suspension will remain in effect until further notice.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on January 12, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street an Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary seven days prior to the scheduled date of the public hearing. Oral presentations wil be limited to issues raised in the briefs. Written views should be submitted in accordance with 19 CFR 355.33(d) and 355.34, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

November 23, 1988.

[FR Doc. 88-27582 Filed 11-29-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Program, Coastal Energy Impact Program and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Virginia, Maryland, and Virgin Islands Coastal Management Programs and the Hawaii (Waimanu) and California (Elkhorn) National Estuarine Research Reserves. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. Section 315(f) of the CZMA requires a periodic review of the performance of each Reserve with respect to its operation and management. The states evaluated were found to be adhering to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing Coastal Management Programs were occurring with respect to the national coastal management objectives identified in section 303(2) (A)–(I) of the CZMA. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202/673-5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Date: November 17, 1988.

John J. Carey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88-27492 Filed 11-29-88; 8:45 am]

BILLING CODE 3510-08-M

Evaluation of Coastal Management Programs

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Hawaii Coastal Management Program (CMP); Virgin Islands CMP; Delaware CMP; and Maine CMP; and the Puerto Rico (Jobos) National Estuarine Research Reserve through March 1989. Evaluation of coastal management programs will be conducted pursuant to Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA), which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2) (A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. Evaluation of the National Estuarine Research Reserve will be conducted pursuant to section 315(f) of the CZMA, which requires the periodic review of the performance of each reserve with respect to its operation and management. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of these programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202/673-5104)

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Date: November 17, 1988.

John J. Carey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management

[FR Doc. 88-27491 Filed 11-29-88; 8:45 am]

BILLING CODE 3510-08-M

Western Pacific Precious Corals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of an application for an experimental fishing permit and request for comments.

SUMMARY: This notice acknowledges receipt of an experimental fishing permit application and announces a public comment period. The applicant proposes to harvest 50,000 kilograms (kg) of precious coral in the western Pacific by selective gear and requests a permit for a period of five years. According to section 680.10 of the regulations implementing Amendment 1 to the Fishery Management Plan for the Precious Corals Fishery of the Western Pacific Region, the Secretary of Commerce may issue an experimental permit to harvest coral under conditions which otherwise would be prohibited, following review by the Western Pacific Fishery Management Council (Council) and the public. Issuance of a permit of this type is expected to benefit the applicant and to increase the scientific information needed for effective resource management.

DATE: Comments must be received by December 30, 1988.

ADDRESSES: Copies of the experimental permit application are available from, and comments may be submitted to: E.C. Fullerton, Director, Southwest Region, Terminal Island, California 90731, or Doyle E. Gates, Pacific Island, Coordinator, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822.

FOR FURTHER INFORMATION CONTACT: Peter Milone, 808-955-8831 or Svein Fougner, 213-514-6660.

SUPPLEMENTARY INFORMATION: The applicant proposes to harvest 50,000 kg of precious coral over a period of five years. The coral would be harvested from any area in the western Pacific under the Council's area of authority, but initial exploration would begin in the Northwestern Hawaiian Islands. The goal of the experiment is to develop a domestic commercial fishery for precious coral, thereby creating a domestic source of coral for coral jewelry. Since the harvest will be completed with a video assisted unmanned submersible that permits the survey of each coral bed discovered, as well as the measurement of each colony harvested, there is the potential for obtaining a great deal of assessment information on coral resources within the exclusive economic zone. The applicant estimates that his first year cost will be $1,500,000; therefore a harvest of 50,000 kg over a period of five years is viewed as necessary for investors to risk the capital costs.

If approved, and when restrictions to the permit are known, an environmental assessment will be prepared. No dredges would be used for harvest.

The application will be reviewed by the Council at its 63rd regular meeting at the Ala Moana Hotel in Honolulu, Hawaii on November 28-30, 1988.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: November 25, 1988.

Donald J. Leedy,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-27572 Filed 11-25-88; 2:31 pm]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the People's Republic of China

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

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The current limit for wool textile products in Categories 445/446 is being increased by application of swing. Adjustments to donor categories will be made in a subsequent directive.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 55, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in China and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 23, 1988, the directive of December 30, 1987 is being amended further to increase to 283,500 dozen [1] the limit for wool textile products in Categories 445/446, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27539 Filed 11-29-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Mexico

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

At the request of the Government of the United Mexican States, the minimum consultation level is being increased for wool textile products in Category 459.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 7961, published on March 11, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on March 7, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 23, 1988, the directive of March 7, 1988 is amended further to increase to 54,500 pounds [1] the limit established for wool textile products in Category 459.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27540 Filed 11-29-88 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 15 December 1988.

Time of Meeting: 0800-1630 hours.

Place: Arlington, VA.

Agenda: The C31 Functional Subgroup of the Army Science Board will meet for discussions focused on current philosophy, mission, functions, budget and technology challenges facing DISC4. Additionally, DCSINT will brief on a budget/technology forecasting model and allow a hands-on demonstration of the model. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-27673 Filed 11-29-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Partially Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: 15-16 December 1988.

Times of Meeting:
0730-0815, 15 December 1988 (OPEN).
0815-1015, 15 December 1988 (CLOSED).
1015-2100, 15 December 1988 (OPEN).
0730-1200, 16 December 1988 (OPEN).

Place: Walter Reed Army Medical Center, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on Threat of AIDS on Operational Deployments of Army Forces to a Theater will hold a second meeting. This meeting will be hosted by the Offices of DCS/Operations and Plans and the Surgeon General, U.S. Army. It will consist of testimony and informal discussions with medical personnel and policy specialists. The open portions of the meeting are open to the public. Any person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-27674 Filed 11-29-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new revision, or extension; (6) Frequency of collection (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before December 30, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.).

FOR FURTHER INFORMATION CONTACT:

For Further Information and Copies of Relevant Materials Contact: Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC 566
3. 1902-0114
4. Annual Report of Utility's Twenty Largest Purchasers
5. Reinstatement
6. Annually
7. Mandatory
8. Businesses or other for profit, individuals and households
9. 175 respondents
10. 175 responses
11. 6 hours per response
12. 1050 hours (total)
13. The information is required by Federal Power Act section 305(c)(2)(D) as implemented by 18 CFR 46.3. It is used to monitor holding of interlocking directorate positions between public utilities and their twenty largest purchasers.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a).

Issued in Washington, DC, November 22, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-27597 Filed 11-29-88; 8:45 am]

BILLING CODE 6450-01-M

Inventory of Current DOE Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of inventory of current Department of Energy energy information collections, including reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents, and other interested parties, of an inventory of current energy information collections (including reporting and record-keeping requirements) which are approved by the Office of Management and Budget (OMB). Management and procurement collections are the responsibility of DOE's Office of Management and Administration and are not included in these notices.

The listing that follows this notice includes energy information collections that have OMB approval, as of October 1, 1988. Part I lists, for each information collection utilizing a structured form, the current DOE control or form number, the title of the requirement, the OMB control number, and the OMB approval expiration date. Part II lists those information collections (including reporting or record-keeping requirements) not utilizing structured forms and the appropriate Code of Federal Regulations citations.

FOR FURTHER INFORMATION CONTACT: Etta Harris (EI-73) Energy Information Administration, Mail Stop 1H-023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms can be obtained by contacting the National

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Energy Information Center, EI-231, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586-8800.

SUPPLEMENTARY INFORMATION: In an effort to keep respondents, users, and other interested parties informed concerning the status of these information collections, which are subject to clearance by the Office of Management and Budget under the Paperwork Reduction Act, the Energy Information Administration will publish a Notice of Change to the Inventory in the **Federal Register** on a quarterly basis throughout the current fiscal year.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, November 22, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

OCTOBER 1, 1988, INVENTORY

PART I.—DOE ACTIVE INFORMATION COLLECTIONS (UTILIZING STRUCTURED FORMS)

DOE No.	Title	IMB control No.	Expiration date
	Civilian Radioactive Waste Management		
NWPA-830R-G	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Quarterly Report—Standard Remittance Advice—Annex A.	19010260	12/31/89
RW-859	Nuclear Fuel Data	19010287	12/31/80
	Conservation and Renewable Energy		
CE-63A/B	Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module Manufacturers Survey	19010292	12/31/89
	Economic Regulatory Administration		
ERA-166	Public Utility Regulatory Policies Act (PURPA) Annual Report on Electric and Gas Utilities	19030060	04/30/91
ERA-424D	Tertiary Project Annual Prepaid Expenses Report Form	19030069	03/31/90
ERA-781R	Annual Report of International Electrical Export/Import Data	19030060	08/31/91
	Energy Information Administration		
EIA-1	Weekly Coal Monitoring Report—General Industries (Standby Form)	19050167	03/31/89
EIA-3	Quarterly Coal Consumption Report—Manufacturing Plants	19050167	03/31/89
EIA-4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	03/31/89
EIA-5	Coke Plant Report—Quarterly	19050167	03/31/89
EIA-6	Coal Distribution Report	19050167	03/31/89
EIA-7A	Coal Production Report	19050167	03/31/89
EIA-7A (Supp)	Coal Production Report (Supplement) (Standby Form)	19050174	09/30/90
EIA-14	Refiners' Monthly Cost Report	19050167	03/31/89
EIA-20	Weekly Coal Monitoring Report—Coal-Burning Electric Utilities (Stnadby Form)	19050057	12/31/88
EIA-23	Annual Survcey of Domestic Oil and Gas Reserves	19050057	12/31/88
EIA-23P	Oil and Gas Well Operator List Update Report	19050149	12/31/90
EIA-28	Financial Reporting System	19050057	12/31/88
EIA-64A	Annual Report of the Origin of Natural Gas Liquids Production	19050175	12/31/90
EIA-176	Annual Report of Natural and Supplemental Gas Supply and Disposition	19050174	09/30/90
EIA-182	Domestic Crude Oil First Purchase Report	19050175	12/31/90
EIA-191	Underground Natural Gas Storage Report	19050129	12/31/89
EIA-213	Typical Net Monthly Bills	19050160	06/30/91
EIA-254	Semiannual Report on Status of Reactor Construction	19050175	12/31/90
EIA-400	Survey of Surplus Natural Gas Supplies	19050129	12/31/89
EIA-412	Annual Report of Public Electric Utilities	19050092	05/31/90
EIA-457A	Residential Energy Consumption Survey—Housing Unit Record Sheet	19050092	05/31/90
EIA-457A/G	Residential Energy Consumption Survey	19050092	05/31/90
EIA-457B	Residential Energy Consumption Survey—Household Questionnaire	19050092	05/31/90
EIA-457C	Residential Energy Consumption Survey—Rental Agents	19050092	05/31/90
EIA-457D	Residential Energy Consumption Survey—Liquefied Petroleum Gas Suppliers	19050092	05/31/90
EIA-457E	Residential Energy Consumption Survey—Electric Utilities	19050092	05/31/90
EIA-457F	Residential Energy Consumption Survey—Natural Gas Suppliers	19050092	05/31/90
EIA-457G	Residential Energy Consumption Survey—Fuel Oil Suppliers	19050092	05/31/90
EIA-627	Annual Quantity and Value of Natural Gas Report	19050175	12/31/90
EIA-714	Annual Electric Power System Report	19050161	12/31/89
EIA-759	Monthly Power Plant Report	19050129	12/31/89
EIA-782A	Monthly Petroleum Product Sales Report	19050174	09/30/90
EIA-782B	Reseller/Retailer's Monthly Petroleum Product Sales Report	19050174	09/30/90
EIA-782C	Monthly Report of Petroleum Products Sold into States for Consumption	19050174	09/30/90
EIA-800	Weekly Refinery Report	19050165	01/31/89
EIA-801	Weekly Bulk Terminal Report	19050165	01/31/89
EIA-802	Weekly Product Pipeline Report	19050165	01/31/89
EIA-803	Weekly Crude Oil Stocks Report	19050165	01/31/89
EIA-804	Weekly Imports Report	19050165	01/31/89
EIA-806	Weekly Crude Watch Report	19050165	01/31/89
EIA-810	Monthly Refinery Report	19050165	01/31/89
EIA-811	Monthly Bulk Terminal Report	19050165	01/31/89
EIA-812	Monthly Product Pipeline Report	19050165	01/31/89
EIA-813	Monthly Crude Oil Report	19050165	01/31/89
EIA-814	Monthly Imports Report	19050165	01/31/89
EIA-816	Monthly Natural Gas Liquids Report	19050165	01/31/89

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DOE No.	Title	IMB control No.	Expiration date
EIA-817	Monthly Tanker and Barge Movement Report	19050165	01/31/89
EIA-818	International Energy Agency Imports/Stocks-at-Sea Report	19050165	01/31/89
EIA-820	Annual Refinery Report	19050165	01/31/89
EIA-821	Annual Fuel Oil and Kerosene Sales Report	19050174	09/30/90
EIA-825	Petroleum Facility Operator Identification Survey	19050165	01/31/89
EIA-826	Monthly Electric Utility Sales and Revenue Report with State Distributions	19050129	12/31/89
EIA-846(F)	Manufacturing Energy Consumption Survey (Consumption and Related)	19050169	03/31/89
EIA-846(S)	Manufacturing Energy Consumption Survey (Fuel Switching Capability)	19050169	03/31/89
EIA-851	Domestic Uranium Mining Production Report	19050160	06/30/91
EIA-856	Monthly Foreign Crude Oil Acquisition Report	19050174	09/30/90
EIA-857	DOE Monthly Report of Natural Gas Purchases and Deliveries to Consumers	19050175	12/31/90
EIA-858	Uranium Industry Annual Survey	19050160	06/30/91
EIA-860	Annual Electric Generator Report	19050129	12/31/89
EIA-861	Annual Electric Utility Report	19050129	12/31/89
EIA-863	Petroleum Product Sales Identification Survey	19050174	09/30/90
EIA-871A/F	Nonresidential Buildings Energy Consumption Survey	19050145	09/30/89
EIA-876A/C	Residential Transportation Energy Consumption Survey	19050068	09/30/90
	Environment, Safety and Health		
EIA-767(2)	Steam Electric Plant Operation and Design Report	19010267	12/31/89
	Federal Energy Regulatory Commission		
EIA-767(1)	Steam-Electric Plant Operation and Design Report	19020034	12/31/89
FERC-1	Annual Report of Major Electric Utilities, Licensees, and Others	19020021	09/30/90
FERC-1-F	Annual Report of Nonmajor Public Utilities and Licensees	19020029	09/30/90
FERC-2	Annual Report for Major Natural Gas Companies	19020028	09/30/90
FERC-2A	Annual Report of Nonmajor Natural Gas Companies	19020030	09/30/90
FERC-6	Annual Report of Oil Pipeline Companies	19020022	09/30/90
FERC-8	Underground Gas Storage Report	19020026	12/31/89
FERC-11	Natural Gas Pipeline Company Monthly Statement	19020032	06/30/90
FERC-15	Interstate Pipeline's Annual Report of Gas Supply	19020037	08/31/90
FERC-16	Report of Gas Supply and Requirements	19020025	03/31/89
FERC-73	Service Life Data	19020019	09/30/89
FERC-80	Licensed Hydropower Development Recreation Report	19020106	11/30/89
FERC-121	Application for Determination of the Maximum Lawful Price Under the Natural Gas Policy Act of 1978	19020038	01/31/90
FERC-423	Monthly Report of Cost and Quality of Fuels for Electric Plants	19020024	09/30/90
FERC-561	Annual Report of Interlocking Directorates	19020099	04/30/89
FERC-580	Fuel Purchase Practices	19020137	03/31/90
FPC-14	Annual Report for Importers and Exporters of Natural Gas	19020027	03/31/89
	Fossil Energy		
FE-748	Enhanced Oil Recovery Annual Report	19010291	03/31/89
	International Affairs and Energy Emergencies		
IE-411	Coordinated Regional Bulk Power Supply Program Report	19010286	07/31/90
IE-417R	Power System Emergency Report	19010288	05/31/89

PART II—DOE ACTIVE INFORMATION COLLECTIONS—OCTOBER 1, 1988 INVENTORY

(Not utilizing structured forms)

DOE number and title	OMB control No.	Expiration date	CFR citation
Civilian Radiocative Waste Management:			
NWPA-830R—Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Contract.	19010260	12/31/89	10 CFR Part 961.
NWPA-830R-A-F—Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Annual Report.	19010260	12/31/89	110 CFR Part 961
Economic Regulatory Administration:			
ERA-329R—Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, and 504.	19030075	01/31/89	10 CFR Parts 500, 501, 503, 504, 505, 508, 515.
ERA-746R—Imports and Exports of Natural Gas	19030081	01/31/90	10 CFR Parts 205, 590.
ERA-750R—Annual Compilation of Proposed and Final List of Utilities Covered by Public Utility Regulatory Policies Act and National Energy Conservation Policy Act.	19030070	04/30/91	10 CFR Part 463.
ERA-766R—Recordkeeping Requirements of DOE's General Allocation and Price Rules.	19030073	09/30/90	10 CFR Parts 210.1, 211.69, 213.6, 221.36.
Federal Energy Regulatory Commission:			
FERC-16A—Monitoring (Omnibus) Report	19020105	09/30/89	By FERC Order.
FERC-16AT—Interstate Pipeline Curtailment (Telephone) Survey	19020139	11/30/90	By FERC Order.
FERC-314A—Application For Small Producer Exemption	19020006	02/28/91	18 CFR 157.40(b)(4), 250.10.

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PART II—DOE ACTIVE INFORMATION COLLECTIONS—OCTOBER 1, 1988 INVENTORY—Continued

(Not utilizing structured forms)

DOE number and title	OMB control No.	Expiration date	CFR citation
FERC-500—Aplication For License for Hydropower Projects Greater Than 5MW.	19020058	07/31/91	18 CFR 4.30, 4.32, 4.33, 4.36, 4.40, 4.41, 4.50, 4.51, 4.200–4.202.
FERC-505—Application for License, Projects 5 Megawatts or less	19020115	07/31/91	18 CFR 4.
FERC-510—Application for Surrender of Electric License	19020068	11/30/88	18 CFR 6.1, 6.4.
FERC-511—Application for Transfer of Electric License	19020069	10/31/88	18 CFR 9.1, 9.2, 9.10.
FERC-512—Application for Preliminary Permit	19020073	07/31/91	18 CFR 4.31–4.33, 4.81–4.82.
FERC-515—Hydropower License—Declaration of Intention	19020079	07/31/91	18 CFR 24.1.
FERC-516—Electric Rate Schedule Filings	19020096	02/28/89	18 CFR 35 Subpart A, 35.12–35.16, 35.26, 35.30, 35.31, 292.301.
FERC-520—Application for Authority to Hold Interlocking Directorate Positions.	19020083	02/28/89	18 CFR Part 45.
FERC-521—Payments for Benefits from Headwater Improvements	19020087	06/30/89	18 CFR Part 11.
FERC-523—Application for Authorization of The Issuance of Securities.	19020043	10/31/89	18 CFR Part 34.
FERC-525—Financial Audit	19020092	03/31/89	18 CFR Parts 101, 201.
FERC-530—Gas Producer Certificate: Abandonment/Termination	19020051	09/30/90	18 CFR 2.64 157.30, 250.7.
FERC-531—Gas Producer Certificates: New Service/Amendments	19020052	03/31/89	18 CFR 2.75; 154.91; 111; 157.23–157.28, 157.40; 250.5, 250.10.
FERC-532—Gas Producer Rate: Filing	19020055	03/31/91	18 CFR 2.56(a); 154.91–154.110; 157.301; 250.8–250.9, 250.14, 2.56a.
FERC-534—Application for Production-Related Costs: Producer Rates.	19020057	03/31/89	18 CFR 270.203, 271.1103–271.1105
FERC-537—Gas Pipeline Certificates: Open Access/Non-discriminatory Transportation.	19020060	04/30/91	18 CFR 2.79; 157.5–157.21, 157.100, 157.201–157.218; 159.1;284.107, 284.127, 284.221.
FERC-538—Gas Pipeline Certificate: Initial Service	19020061	12/31/90	18 CFR 156.3–156.5.
FERC-541—Gas Pipeline Certificate: Curtailment Plan	19020066	03/31/91	18 CFR 2.78, 281.
FERC-542A—Tracking and Recovery of Alaska Natural Gas Transportation System.	19020129	07/31/89	18 CFR 154.201–154.213.
FERC-543—Gas Pipeline Rates: Purchased Gas Adjustment Tracking.	19020152	01/31/91	18 CFR 154.301–154.310; 18 CFR 154.38, 154.61–154.67, 154.111(c)(3), 157.103.
FERC-544—Gas Pipeline Rates: Rate Change (Formal)	19020153	02/28/91	18 CFR 154.63—154.67
FERC-545—Gas Pipeline Rates: Rate Change (Non-Formal)	19020154	02/28/91	18 CFR 154.62, 154.64–154.67
FERC-546—Gas Pipeline Rates: Certificated Rate Filings	19020155	02/28/91	18 CFR 154.63–154.67
FERC-547—Gas Pipeline Rates: Refund Obligations	19020084	03/31/91	18 CFR Parts 154, 270, 273
FERC-548—Staff Adjustment Under Natural Gas Policy Act Section 502(c).	19020085	11/30/88	18 CFR Part 270–277, 281, 282, 284, 385, Subpart K
FERC-549—Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions.	19020086	06/30/91	18 CFR 284 Sub. A/D/E/F/H; 284.7–284.11, 284.102, 284.106, 284.122, 284.125, etc.
FERC-555—Records Retention Requirements	19020098	10/31/89	18 CFR 125, 158, 160.1, 276.108, 277.210, 225, 356
FERC-556—Cogeneration and Small Power Production	19020075	11/30/88	18 CFR Part 292
FERC-557—PURPA Section 133: Cost of Retail Electric Service	19020042	09/30/89	18 CFR Part 290
FERC-558—Format of Contract Summary for Applications for Certificates of Public Convenience and Necessity.	19020109	07/31/90	18 CFR 250.5, 157.24(a)
FERC-559—Independent Producer Rate Change or Initial Billing Statement.	19020036	06/30/90	18 CFR 250.14, 154.92(a) & (b), 154.94 (f) & (h)
FERC-567—Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity.	19020005	09/30/90	18 CFR 260.8, and 284.12.
FERC-568—Well Category Determinations	19020112	10/31/89	18 CFR 271.703, 274, 275.
FERC-569—Refund Obligations (Producer)	19020111	10/31/90	18 CFR Part 273.
FERC-570—Recordkeeping Requirements for Certain Sales of Natural Gas.	19020124	10/31/91	18 CFR 271.503, 271.603, 271.903.
FERC-574—Gas Pipeline Certificate: Hinshaw Exemption	19020116	12/31/89	18 CFR Part 152.
FERC-577—Gas Pipeline Certificates: Environmental Impact Statement (re: Regulations Implementing the National Environmental Policy Act of 1969).	19020128	06/30/89	18 CFR 2.80, 2.82, 157.14.
FERC-581—Management and Produrement Reporting and Recordkeeping Requirements.	19020130	02/28/90	41 CFR Subtitle A, Chapter 9.
FERC-582—Oil, Gas, and Electric Fees and Annual Charges	19020132	08/31/90	18 CFR 385.106, 382.105, 385.102, 382.201(b)(4), 381.106.
FERC-583—Hydroelectric Fees and Annual Charges	19020136	06/30/90	18 CFR 11.20,–11.22, 11.24, 131.70, 11.01–11.04, 11.06.
FERC-585—Reporting of Electric Energy Shortages & Contingency Plans Under PURPA 206.	19020138	09/30/90	18 CFR Part 294.
FERC-588—Emergency Natural Gas Sale, Transportation and Exchange Transactions.	19020144	03/31/89	18 CFR Part 284, Subpart I.
FERC-590—Wellhead Pricing: Pricing Audit	19020147	07/31/89	Not applicable.
FERC-592—Marketing Affiliates of Interstate Pipelines	19020157	12/31/89	18 CFR 161.250.

[FR Doc. 88–27598 Filed 11–29–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP89–225–000, et al.]

Trunkline Gas Co., et al.; Natural Gas Certificate Filings

November 22, 1988.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP89–225–000]

Take notice that on November 17, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251–1642 filed in Docket No. CP89–225–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act for Exxon Corporation (Exxon), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Exxon, a producer, pursuant to a transportation agreement dated September 30, 1988. Trunkline explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–605. Trunkline further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. Trunkline explains that it would receive natural gas for Exxon's account at 245 points of receipt in Illinois, Tennessee, Louisiana, Texas and offshore Louisiana and Texas. Trunkline states that it would redeliver natural gas for Exxon's account at an existing interconnection with Tennessee Gas Pipeline Company located in St. Mary Parish, Louisiana. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by 12 specified local distribution companies and endusers.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP89–228–000]

Take notice that on November 17, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251–1642 filed in Docket No. CP89–228–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act for Western Gas Marketing U.S.A., Inc. (Western), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Western, a broker, pursuant to a transportation agreement dated August 29, 1988. Trunkline explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–474. Trunkline further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. Trunkline explains that it would receive natural gas for Western's account at 245 points of receipt in Illinois, Tennessee, Louisiana, Texas and offshore Louisiana and Texas. Trunkline states that it would redeliver natural gas for Western's account at an existing interconnection with Consumers Power Company located in Elkhart County, Indiana. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by 490 specified local distribution companies, endusers, and interstate pipelines.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP89–226–000]

Take notice that on November 17, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251–1642 filed in Docket No. CP89–226–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act for American Central Gas Marketing Company (American Central), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for American Central, a marketer, pursuant to a transportation agreement dated September 2, 1988. Trunkline explains that service commenced October 5, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–477. Trunkline further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 20,000 dekatherms, and that the annual quantity would be 7,300,000 dekatherms. Trunkline explains that it would receive natural gas for American Central's account at 245 points of receipt in Illinois, Tennessee, Louisiana, Texas and offshore Louisiana and Texas. Trunkline states that it would redeliver natural gas for American Central's account at an existing interconnection with Panhandle Eastern Pipeline Company located in Douglas County, Illinois. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by 8 specified local distribution companies.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Company

[Docket No. CP89–227–000]

Take notice that on November 17, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642 filed in Docket No. CP89–227–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act for Amgas, Inc. (Amgas), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Amgas, a marketer, pursuant to a transportation agreement dated September 30, 1988. Trunkline explains that service commenced October 6, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–603. Trunkline further explains that the peak day quantity would be 800 dekatherms, the average daily quantity would be 150 dekatherms, and that the annual quantity would be 54,750 dekatherms. Trunkline explains that it would receive natural gas for Amgas' account at 245 points of receipt in Illinois, Tennessee, Louisiana, Texas and offshore Louisiana and Texas. Trunkline states that it would redeliver natural gas for Amgas' account at an existing interconnection with Central Illinois Lighting Company located in Champaign County, Illinois. Trunkline indicates that the natural gas to be transported is for ultimate consumption by Frito Lay, Inc.

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Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Company

[Docket No. CP89–224–000]

Take notice that on November 17, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642 filed in Docket No. CP89–224–000 a request to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act for CSX NGL Corporation (CSX), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for CSX, an end-user, pursuant to a transportation agreement dated July 19, 1988. Trunkline explains that service commenced October 8, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–476. Trunkline further explains that the peak day quantity would be 10,000 dekatherms, the average daily quantity would be 6,000 dekatherms, and that the annual quantity would be 2,190.000 dekatherms. Trunkline explains that it would receive natural gas for CSX's account at 207 points of receipt in Illinois, Tennessee, Louisiana, Texas and offshore Louisiana. Trunkline states that it would redeliver natural gas for CXS's account at the Cow Island Plant in Vermilion Parish, Louisiana. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by CSX.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gas Transmission Corporation

[Docket No. CP89–145–000]

Take notice that on November 8, 1988, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP89–145–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization in Docket No. CP89–76–000 to construct and operate additional points of delivery for existing wholesale customers, all as more fully set forth in the requests which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate the facilities necessary to provide 21 additional points of delivery as follows:

Wholesale customer	Commercial	Residential	Industrial	Annual volume (Dth)
Columbia Gas of Kentucky, Inc	1	3		750
Columbia Gas of Maryland, Inc		1		600
Columbia Gas of Ohio, Inc	1	8	1	135,950
Columbia Gas of Pennsylvania, Inc		2		90,150
Mountaineer Gas Co		4		1,350

Columbia states that the quantities to be provided through the new delivery points would be within Columbia's authorized level of service and would be within existing peak day and annual seasonal entitlements of the customers. Columbia explains that the sales would be made under its currently effective service agreements with such customers under Rate Schedule CDS.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Company

[Docket Nos. CP89–232–000; CP89–233–000; CP89–234–000; CP89–236–000]

Take notice that on November 17, 1988, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket Nos. CP89–232–000, CP89–233–000, CP89–234–000, and CP89–236–000 [1], pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, requests to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for PSI, Inc. (PSI), Maxus Exploration Company (Maxus), Energy Marketing Exchange, Inc. (EME), Enogex Services Corporation (Enogex), respectively, all as more fully set forth in the requests on file with the Commission and open to public inspection.

Williams proposes to transport on an interruptible basis up to 6,588 MMBtu per day of natural gas for PSI, up to 10,000 MMBtu per day for Maxus, up to 86,450 MMBtu per day for EME, and up to 45,000 MMBtu per day for Enogex, from numerous receipt points to several delivery points in various states. Williams explains that services respective to the provisions stipulated under § 284.223(a) of the Commission's Regulations, are reported in Docket No. ST88–462–000 for Docket No. CP89–232–000, ST89–530–000 for Docket No. CP89–233–000, ST89–528–000 for Docket No. CP89–234–000, and ST89–614–000 for Docket No. CP89–236–000. Williams further explains that transportation service commenced September 7, 1988 for PSI, October 1, 1988 for Maxus and EME; and September 21, 1988 for Enogex. The peak day quantity, average daily quantity and annual quantity as noted by Williams are listed on the attached appendix.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

[1] These dockets are not consolidated.

Docket No. CP89–232–000 et. al.—Appendix

Docket No.	Shipper	Volumes (MMBtu)
CP89–232–000	PSI	6,586 peak day. 2,196 average. 2,404,620 annual.
CP89–233–000	Maxus	10,000 peak day. 8,000 average. 3,650,000 annual.
CP89–234–000	EME	86,450 peak day. 43,225 average. 31,554,250 annual.
CP89–236–000	Enogex	45,000 peak day. 45,000 average. 16,425,000 annual.

8. United Gas Pipe Line Company

[Docket No. CP88–171–000]

Take notice that on November 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–171–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Superior Natural Gas Corporation, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the

Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service agreement #T1–21–1870/Ref. #3576, dated October 1, 1988, proposes to transport a maximum daily quantity of 10,300 MMBtu and an annual quantity of 3,759,500 MMBtu, using existing facilities to provide transportation service pursuant to this agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 1, 1988, as reported in Docket No. ST89–383 pursuant to section 284.223(a) of the Regulations.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP89–154–000]

Take notice that on November 9, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–154–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation for The Kansas Power & Light Company (KPL) under WNG's blanket certificate issued in Docket No. CP88–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG requests authorization to transport, on a firm basis, up to a maximum of 18,081 MMBtu of natural gas per day for KPL from various receipt points in Kansas, Oklahoma and Texas to various delivery points on WNG's pipeline system located in Kansas, Missouri, Nebraska and Oklahoma. WNG anticipates transporting 18,081 MMBtu on an average day and 6,599,565 MMBtu on an annual basis.

WNG states that the transportation of natural gas for KPL commenced on September 1, 1988, as reported in Docket No. ST89–41–000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86–631–000. WNG proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP89–186–000]

Take notice that on November 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–186–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of E.I. Du Pont De Nemours and Company, an end user of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service agreement #T1–21–1801/Ref. #3317, dated August 11, 1988, proposes to transport a maximum daily quantity of 15,450 MMBtu and an annual quantity of 5,639,250 MMBtu, using existing facilities to provide transportation service pursuant to that agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 1, 1988, as reported in Docket No. ST89–380 pursuant to § 284.223(a) of the Regulations.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP89–215–000]

Take notice that on November 16, 1988, United Gas Pipe Line Company (United), P.O. Box 2478, Houston, Texas 77251–1478, filed in Docket No. CP89–215–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of MidCon Marketing Corp., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible as transportation service agreement #T1–21–1811/Ref. #3405, dated August 24, 1988, proposes to transport a maximum daily quantity of 10,300 MMBtu and an annual quantity of 3,759,500 MMBtu, using existing facilities to provide transportation service pursuant to this amended agreement. It is stated that the executed amended agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced on September 23, 1988, as reported in Docket No. ST89–423 pursuant to § 284.223(a) of the Regulations.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP89–176–000]

Take notice that on November 10, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–176–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Texas Gas Marketing, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service agreement #T1–21–1734/Ref. #3239, dated July 22, 1988, proposes to transport a maximum daily quantity of 103,000 MMBtu and an annual quantity of 37,595,000, using existing facilities to provide transportation service pursuant to this amended agreement. It is stated that the executed amended agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced on September 23, 1988, as reported in Docket No. ST89–274 pursuant to § 284.223(a) of the Regulations.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP89–184–000]

Take notice that on November 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–184–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Air Products and Chemicals, Inc., an end user of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set

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forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service agreement #T1-21-1835/Ref. #3479, dated October 1, 1988, proposes to transport a maximum daily quantity of 36,050 and an annual quantity of 13,158,250, using existing facilities to provide transportation service pursuant to this agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 1, 1988, as reported in Docket No. ST89-379 pursuant to section 284.223(a) of the Regulations.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. United Gas Pipe Line Company

[Docket No. CP89-194-000]

Take notice that on November 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-194-000 a request pursuant to §§ 257.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of EnTrade Corporation, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service agreement #T1-21-1844/Ref. #3547, dated October 1, 1988, proposes to transport a maximum daily quantity of 103,000 MMBtu and an annual quantity of 37,595,000 MMBtu, using existing facilities to provide transportation service pursuant to that agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 1, 1988, as reported in Docket No. ST89-384 pursuant to section 284.223(a) of the Regulations.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP89-200-000]

Take notice that on November 15, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-200-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of LaSER Marketing Company, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service agreement #T1-21-1841/Ref. 3535, dated October 1, 1988, proposes to transport a maximum daily quantity of 154,500 MMBtu and an annual quantity of 56,392,500, using existing facilities to provide transportation service pursuant to that agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 1, 1988, as reported in Docket No. ST89-395 pursuant to section 284.223(a) of the Regulations.

Comment date: January 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27526 Filed 11-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-157-000, et al.]

Williams Natural Gas Company, et al.; Natural Gas Certificate Filings

November 23, 1988.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89-157-000]

Take notice that on November 9, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-157-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Clinton Gas Transmission, Inc. (Clinton) under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the total volumes of natural gas to be transported for Clinton, on an interruptible basis, on a peak day would be 20,000 MMBtu from various receipt points in Kansas, Oklahoma and Wyoming to various delivery points on WNG's pipeline system in Kansas and Missouri. WNG further states that it anticipates transporting 20,000 MMBtu on an average day and 7,300,000 MMBtu on an annual basis.

WNG indicates that it commenced the transportation of natural gas for Clinton on September 1, 1988, at Docket No. ST89-38-000, for a 120-day period pursuant to Section 284.223(a)(1) of the Regulations (18 CFR 284.223(a)(1)).

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89-181-000]

Take notice that on November 14, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-181-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for CNG Trading Company (CNG), a marketer, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated August 11, 1988, it proposes to receive up to 100 billion Btu of natural gas per day from CNG at specified points located offshore Louisiana and redeliver the gas at delivery points in the states of Texas and Louisiana. Natural states that the peak day, average day and annual volumes would be 100 billion Btu, 30 billion Btu, and 10,950 billion Btu, respectively. It is stated that on September 27, 1988, Natural initiated a 120-day transportation for CNG under § 284.223(a) as reported in Docket No. ST89-670-000.

Natural further states that no facilities need be constructed to implement the service. Natural states that the primary term of the transportation service would expire August 31, 1990, but that the service would continue on a month-to-month basis unless cancelled by five day's notice by either party. Natural proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89-246-000]

Take notice that on November 18, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-246-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Conoco Inc. (Conoco), a producer and agent for Power Silicates, and end-user, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated September 26, 1988, it proposes to transport up to 500 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for Conoco from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Indiana Gas Company in Hancock County, Indiana.

Panhandle advises that service under § 284.223(a) commenced on October 1, 1988, as reported in Docket No. ST89-609. Panhandle further advises that it would transport 300 dt on an average day and 109,500 dt annually.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP89-248-000]

Take notice that on November 18, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-248-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Continental Natural Gas Company (Continental), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Continental, a marketer, on an interruptible basis, pursuant to a transportation agreement dated September 27, 1988. Williams explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-631-000. Williams further explains that the peak day quantity would be 16,700 MMBtu, the average day quantity would be 16,700 MMBtu, and that the annual quantity would be 6,095,500 MMBtu. Williams explains that it would receive natural gas for Continental's account at points located in Kansas, Missouri, Texas, Wyoming, and Oklahoma and would redeliver the gas for Continental's account at points in Kansas and Missouri.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89-175-000]

Take notice that on November 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-175-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Tejas Power Corporation, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service #T1-21-1568/Ref. #2606, dated April 18, 1988, proposes to transport a maximum daily quantity of 15,450 MMBtu and an annual quantity of 5,639,250 MMBtu, using existing facilities to provide transportation service pursuant to this agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 15, 1988, as reported in Docket No. ST89-480 pursuant to § 284.223(a) of the Regulations.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89-173-000]

Take notice that on November 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-173-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Seagull Marketing Services, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service #T1-21-1882/Ref. #3596, dated October 1, 1988, proposes to transport a maximum daily quantity of 10,300 MMBtu and an annual quantity of 3,759,500 MMBtu, using existing facilities to provide transportation service pursuant to that executed agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 1, 1988, as reported in Docket No. ST89-454 pursuant to § 284.223(a) of the Regulations.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP89-172-000]

Take notice that on November 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-172-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's

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Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Seagull Marketing Services, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service #T1–21–1852/Ref. #3519, dated October 1, 1988, proposes to transport a maximum daily quantity of 515,000 MMBtu and an annual quantity of 187,975,000 MMBtu, using existing facilities to provide transportation service pursuant to this agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 1, 1988, as reported in Docket No. ST89–396 pursuant to § 284.223(a) of the Regulations.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP89–174–000]

Take notice that on November 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–174–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service #T1–21–1883/Ref. #3447, dated September 2, 1988, proposes to transport a maximum daily quantity of 10,300 MMBtu and an annual quantity of 3,759,500, using existing facilities to provide transportation service pursuant to that amended agreement. It is stated that the executed amended agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 15, 1988, as reported in Docket No. ST89–479 pursuant to § 284.223(a) of the Regulations.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipe Line Company

[Docket No. CP89–242–000]

Take notice that on November 18, 1988, Tennessee Gas Pipe Line Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–242–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Union Pacific Resources Company (Union Pacific), a producer, under its blanket authorization issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Tennessee would perform the proposed interruptible transportation service for Union Pacific, pursuant to an interruptible transportation service agreement dated October 24, 1988. The term of the transportation agreement is from the date of the contract and shall continue for a primary term of ten years, and shall continue month to month thereafter unless cancelled by thirty days prior notice by either party. Tennessee proposes to transport on a peak day up to 150,000 dekatherms (dt) per day; on an average day up to 150,000 dt; and on an annual basis 1,825,000 dt of natural gas for Union Pacific. Tennessee proposes to receive the subject gas at various points located in the state of Texas. It is stated that the points of delivery are located in the states of Massachusetts, Rhode Island, New Jersey, Connecticut, Pennsylvania, and New York. It is further stated that the ultimate points of delivery are located in the states of Pennsylvania, Massachusetts, New York, Ohio, Rhode Island, New Jersey, Connecticut, and New Hampshire. Tennessee avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on October 28, 1988, as reported in Docket No. ST89–596–000.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–238–000]

Take notice that on November 11, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–238–000 a request pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Fina Oil and Chemical Company (Fina), under its blanket authorization issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Transco would perform the proposed interruptible transportation service for Fina, pursuant to an interruptible transportation service agreement dated September 30, 1988. The term of the transportation agreement is from the date of the contract and shall continue for a primary term ending October 30, 1988, and shall continue thereafter unless cancelled by thirty days prior notice by either party. Transco proposes to transport on a peak day up to 30,000 dt per day; on an average day up to 30,000 dt; and on an annual basis 1,095,000 dt of natural gas for Fina. Transco further states that consistent with its Rate Schedule IT, Transco may agree to accept for transportation additional quantities of gas. Transco proposes to receive the subject gas at High Island Block 546, Offshore Texas and deliver the gas at any existing point of interconnection between Transco and Natural Gas Pipeline Company of America at U-T Offshore System, Cameron Parish, Louisiana. Transco avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Transco commenced such self-implementing service on October 10, 1988, as reported in Docket No. ST89–356–000.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Northwest Pipeline Corporation

[Docket No. CP89–208–000]

Take notice that on November 15, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–208–000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Tekronix, Inc. (Tektronix), an end user of natural gas, under Northwest's blanket transportation certificate issued January 19, 1988, in Docket No. CP86–578–000, 43 FERC ¶ 61,342 (1988), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states it will transport the gas from existing receipt points on its system in the states of Utah, Colorado, Wyoming, New Mexico and Washington to existing delivery points with Northwest Natural Gas Company (Northwest Gas), a local distributor, for the account of Tektronix in Washington and Oregon. Northwest will transport the gas under its TI–1 Rate Schedule.

Northwest proposes to transport up to 1,667 MMBtu of gas on a peak day, approximately 580 MMBtu of gas per average day, or approximately 200,000 MMBtu annually. Northwest states the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on September 17, 1988, pursuant to a transportation agreement dated February 10, 1988, as amended July 15, 1988. Northwest notified the Commission of the commencement of the transportation service in Docket No. ST89–266–000 on October 20, 1988.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Pipeline Corporation

[Docket No. CP89–205–000]

Take notice that on November 15, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–205–000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Northwest Aluminum Company (Northwest Aluminum) under Northwest's blanket transportation certificate authorization which was issued by Commission order on January 19, 1988, in Docket No. CP86–578–000, 43 FERC ¶ 61,019 (1988), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states it will receive the gas at various existing points on its system in Utah, Colorado, Wyoming, New Mexico and Washington, and deliver the gas to Northwest Natural Gas Company (Northwest Gas), a local distribution company, for the account of Northwest Aluminum in Washington and Oregon. Gas delivered to these points will be transported under Northwest's Rate Schedule TI–1.

Northwest proposes to transport up to 1,500 MMBtu of gas on a peak day, approximately 450 MMBtu of gas per average day and approximately 165,000 MMBtu of gas annually. Northwest states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on September 23, 1988, pursuant to a transportation agreement dated February 10, 1988, as amended July 15, 1988. Northwest notified the Commission of the commencement of the transportation service in Docket No. ST89–338–000 on October 25, 1988.

Comment date: January 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Southern Natural Gas Company

[Docket No. CP89–197–000]

Take notice that on November 14, 1988, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed an application pursuant to section 7(c) of the Natural gas Act for a certificate of public convenience of necessity authorizing (1) the rendition of firm transportation service on behalf of East Tennessee Natural Gas Company (East Tennessee) and (2) the construction, installation and operation of additional facilities on Southern's pipeline system in order to implement the transportation of such gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to render firm, long term transportation service of up to 30,000 Mcf per day on behalf of East Tennessee. East Tennessee has indicated the 30,000 Mcf per day is required to meet the current need for an increase in contract demand service for certain of its customers named in East Tennessee's application for certificate filed in Docket No. CP88–683–000. Southern indicates that it would receive the gas at an existing interconnection between Southern and Tennessee Gas Pipeline Company (Tennessee) at the Rose Hill Exchange Station in Clark County, Mississippi, and at two proposed interconnections with Tennessee to be constructed by Southern near its Onward Compressor Station in East Carroll Parish, Louisiana, and near its Perryville Receiving Station in Morehouse Parish, Louisiana. Southern proposes to redeliver the gas to East Tennessee at an interconnection to be constructed between the facilities of East Tennessee and Southern in Hamilton County, Tennessee, or at a new point of delivery to Atlanta Gas Light Company in Catoosa County, Georgia. Southern states that it would provide the service pursuant to its Rate Schedule FT. In addition Southern requests flexible authority to add and delete receipt points.

Southern states that in order to effectuate the delivery of up to 30,000 Mcf per day, Southern proposes to construct and operate additional pipeline, measurement, and compression facilities on the mainline portion of its system. Southern states that the proposed facilities are estimated to cost approximately $5,775,350, which would be financed initially through short term loans and funds on hand, with payment financing to be arranged as part of Southern's overall long term financing program. Southern proposes to provide the firm transportation service on behalf of East Tennessee so that East Tennessee can serve its customers with increased contract demand on a more economical basis.

In addition Southern alleges that the installation of facilities and the firm service by Southern could present East Tennessee with long term benefits since they would give East Tennessee direct access to supply sources from another pipeline system, as well as providing an additional means of access to Tennessee for its traditional gas supplies. Southern also indicates that its customers would benefit because the proposal would produce an excess of revenues over costs.

Comment date: December 14, 1988, in accordance with Standard Paragraph F at the end of this notice.

14. Williston Basin Interstate Pipeline Company

[Docket No. CP89–160–000]

Take notice that on November 10, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP89–160–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain storage wells and metering facilities in the Baker Storage Reservoir, in Fallon County, Montana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon eight sets of facilities in the Baker

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Storage Reservoir as follows: (1) The metering facility for well #125, in order for this well to be group metered with well #46; (2) the meter station for well #81, in order for this will to be group metered with well #106; (3) meter run and orifice meter for well #74, in order for this well to be group metered with well #47; (4) well #62 due to a gas leak problem; (5) well #64 due to a gas leak problem; (6) meter facility for well #136, in order to group meter with the 97 group meter station; (7) meter facilities for wells #239 and #250, in order to group meter with the wells at the 82 group meter station; and (8) meter facilities for wells #39 and #383, in order to group meter with the wells at the 161 group meter station.

Williston Basin states that due to the volumes of gas injected into these wells, it is not cost efficient to operate these wells with individual metering and that group metering allows better monitoring to assure even injection into all wells within the group.

Comment date: December 14, 1988, in accordance with Standard Paragraph F at the end of this notice.

15. Texas Eastern Gas Transmission Corporation; Columbia Gas Transmission

[Docket No. CP88-128-000]

Take notice that on November 3, 1988, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252 and Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325 referred to jointly as Applicants (Applicants), filed a joint application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity seeking authorization to amend an existing exchange agreement, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicants state that pursuant to their September 29, 1988, exchange agreement, Texas Eastern delivers up to a contract quantity of 80,000 Dt of natural gas per day and to Columbia, and such additional quantities as are mutually agreeable at Measuring Station Nos. 521, 041, 013, 056, and 055 in Texas Eastern's Zone C. Applicants further state in exchange, Columbia delivers equivalent quantities of natural gas to Texas Eastern at Texas Eastern's Zone C Measuring Station Nos. 1616 and 012. The existing exchange agreement was an essential element to implement previous reductions in Texas Eastern's Rate Zone C sales service to Columbia authorized by the Commission's order approving the DCQ Contract Adjustment Program (Docket No. CP84-429-000, 32 FERC ¶ 61,227).

Applicants are requesting authorization to amend their certificate authority to permit an increase in exchange quantities from up to 80,000 Dt per day to a maximum of 155,000 Dt per day; to add additional exchange delivery points from Texas Eastern (Nos. 1 through 9); to revise Maximum Daily Delivery Obligation (MDDO) levels at existing exchange delivery points from Texas Eastern (Nos. 10 and 11); to add an additional exchange point from Columbia (No. 12); and to revise the MDDO level at an existing exchange delivery point from Columbia (No. 13) as follows:

	Maximum daily delivery obligation (Dt)
Texas Eastern Points of Exchange	
1. In Butler County, Ohio, and designated as Texas Eastern's Measuring Station 907	1,038
2. In Warren County, Ohio, and designated as Texas Eastern's Measuring Station 468	1,200
3. In Warren County, Ohio, and designated as Texas Eastern's Measuring Station 1353	5,190
4. In Clinton County, Ohio, and designated as Texas Eastern's Measuring Station 1026	1,038
5. In Fayette County, Ohio, and designated as Texas Eastern's Measuring Station 061	25,953
6. In Fayette County, Ohio, and designated as Texas Eastern's Measuring Station 984	772
7. In Greene County, Pennsylvania, and designated as Texas Eastern's Measuring Station 054	5,190
8. At Rosbys Rock, West Virginia, and designated as Texas Eastern's Measuring Station 005	35,620
9. In Butler County, Ohio, and designated as Texas Eastern's Measuring Station 1993	7,327
10. In Butler County, Ohio, and designated as Texas Eastern's Measuring Station 521	155,000
11. In Western County, Ohio, and designated as Texas Eastern's Measuring Station 041	155,000
Columbia Points of Exchange	
12. In Greene County, Pennsylvania, and designated as Texas Eastern's Measuring Station 013	125,000
13. In Fairfield County, Ohio, and designated as Texas Eastern's Measuring Station 1616	155,000

Applicants state the MDDO for existing exchange points not listed above would remain unchanged. It is stated that the requested points of exchange would utilize existing facilities.

Applicants allege that authorization of its proposal will provide Applicants with increased operational flexibility and corresponding increased reliability of service. Such operational flexibility will permit optimum utilization of Columbia's system supply from Texas Eastern in an area where its supply from Texas Eastern is being reduced. The increased exchange quantities and additional exchange points are required to provide Columbia with an alternate source of supply to meet existing obligations in various Ohio market areas. Furthermore, because the exchange is generally accomplished by backhaul on Texas Eastern's system, Texas Eastern will derive additional operational flexibility.

Comment date: December 14, 1988, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27527 Filed 11-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-20-001; TM89-3-20-000]

Algonquin Gas Transmission Co.

November 23, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on November 18, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective October 1, 1988

Revised Second Substitute Twenty-second Revised Sheet No. 204.

Proposed to be effective December 1, 1988

Thirtieth Revised Sheet No. 203.

Proposed to be effective January 1, 1989

Twenty-Third Revised Sheet No. 204.

Algonquin states that, on September 23, 1988, in Docket No. TM89-1-20-000, Algonquin *inter alia*, filed to track changes made by its pipeline supplier National Fuel Gas Supply Corporation, ("National") in the rates service underlying Rate Schedule F-3. In its filing Algonquin tracked the 63.48 cent per MMBtu increase made by National in the Commodity component and such tracking was accepted by Letter Order dated October 13, 1988. Algonquin, however, inadvertently omitted the tracking of National's 21.0 cent per MMBtu increase in the Demand component, therefore Algonquin is filing Revised Second Substitute Twenty-second Revised Sheet No. 204 to correct this omission.

Algonquin states that, pursuant to section 7 of Rate Schedules F-2 and F-3, Algonquin is filing Thirtieth Revised Sheet No. 203 and Twenty-third Revised Sheet No. 204, respectively, to track rate changes made by its pipeline suppliers. CNG Transmission Corporation ("CNGT") and National, respectively, in the underlying services. The changes in Rate Schedule F-2 represent decrease of 40.4 cents per MMBtu in the Demand component. The changes in Rate Schedule F-3 represent increases of 22.0 cents per MMBtu in the Damand component and 5.14 cents per MMBtu in the commodity component.

Algonquin notes that copies of the filing were served upon the affected parties and interested state commissions.

And person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27530 Filed 11-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-187-008]

Columbia Gas Transmission Corp. Proposed Changes in FERC Gas Tariff

November 23, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 16, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1988:

Seventeenth Revised Sheet No. 16B
Seventh Revised Sheet No. 16B1
Seventh Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets relate to Columbia's previous filings in Docket No. RP88-187 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to supplement its earlier filings to permit it to flow through additional take-or-pay and contract reformation costs to be billed to it by Texas Eastern Transmission Corporation in Docket No. RP88-251, relating to costs to be incurred by Texas Eastern from Texas Gas Transmission Corporation in Docket No. RP88-230.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88-187-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27531 Filed 11-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-80-002]

Jupiter Energy Corp.; Compliance Filing

November 23, 1988.

Take notice that Jupiter Energy Corporation ("Jupiter") on November 17, 1988 filed the following revised tariff sheets in compliance with the Commission's letter order issued November 3, 1988 approving a settlement that had been filed to resolve all issues in the proceeding:

Third Revised Sheet No. 4
Third Revised Sheet No. 5
Third Revised Sheet No. 6

all to Original Volume No. 1 of Jupiter's FERC Gas Tariff.

Jupiter states that the revised tariff streets provide for a base community rate of 3.0¢ per Mcf for Jupiter's transportation services and will have an effective date of November 23, 1986.

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Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27532 Filed 11-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-97-000]

PSI, Inc.; Petition for Declaratory Order Disclaiming Jurisdiction

November 22, 1988.

Take notice that on October 28, 1988, PSI, Inc. (PSI), Suite 400, 1044 North 155th Street, Omaha, Nebraska 68154, filed in Docket No. CP89-97-000 a petition for an order declaring that certain proposed natural gas pipeline facilities would be gathering facilities pursuant to section 1(b) of the Natural Gas Act and thereby, exempt from the jurisdiction of the Commission, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

PSI states that it is a marketer of natural gas which has recently purchased interests in certain production properties in the Federal domain offshore Texas, at High Island Blocks A-129, A-154, and A-155. PSI states that it intends to construct and operate 20 miles of 10-inch and smaller diameter pipeline commencing at High Island Block A-129 and terminating at a subsea interconnection with the High Island Offshore System (HIOS) at High Island Block A-270. It is stated that the first segment will originate in the northwest quarter of High Island Block A-129 and will gather gas from two or possibly three wells on the Block and will extend for 8 miles in a southerly direction to High Island Block A-154. It is stated that at such point, the system will gather gas from the Block 154 well through a 4½ inch lateral and extend 12 miles in a southeasterly direction to a terminus at the subsea interconnection with HIOS. PSI states that design capacity of the system will be 100,000 Mcf per day.

It is stated that separation and dehydration of the gas will be performed at each production platform only to the extent necessary to qualify the gas for delivery into HIOS. Any further treatment or processing of the gas, it is stated, will not occur prior to delivery onshore. It is also stated that all gas introduced into the system will be compressed at each platform only to the extent necessary to allow entry into the HIOS system.

PSI states that while title to the gas produced from the wells will be transferred at various points, depending on the marketing and transportation arrangements involved in each particular transaction, it is expected that transfer of title will predominately occur onshore.

PSI maintains that the proposed facilities should be declared as gathering because the system is consistent with a gathering function when considered under each of the five *Farmland* criteria, and it will be owned and operated by a company engaged in the business of producing and marketing gas rather than in the interstate transmission of gas. Any person desiring to be heard or to make any protest with reference to said petition should on or before December 7, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protest filed with the Commission will be considered by it is determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27528 Filed 11-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-205-000 and CP87-205-001]

Texas Gas Transmission Corp.; Staff Conference

November 22, 1988.

Take notice that on December 5, 1988, an informal technical conference will be convened in the above-captioned proceeding at 2:00 p.m. in the offices of the Federal Energy Regulatory Commission, in a room to be designated at 825 North Capitol Street NE., Washington, DC 20426. The conference will be convened by the Commission's staff to afford all parties an opportunity to identify and comment on alternatives to constructing the proposed facilities.

Issues to be addressed in the conference will include, but not be limited to, the following.

(1) Is delivery of the proposed volumes through Texas Gas' proposed facilities the best arrangement to effectuate the new sale to Citizens Gas?

(2) Are the ANR and/or Panhandle/Truckline alternatives of transporting the Texas Gas volumes to Citizens Gas feasible? Is there existing capacity and Panhandle's and Trunkline's systems to implement the transportation? Is there existing capacity, assuming construction of a lateral to interconnect with Citizens Gas, on ANR's system to implement the transportation? Would ANR and/or Panhandle/Trunkline have sufficient firm capacity to provide transportation service pursuant to their blanket certificates? Would ANR and/or Panhandle/Trunkline file applications to provide such a service?

(3) What would be the capital costs and delivered costs to Citizens Gas of the ANR and Panhandle/Truckline alternatives?

(4) Given the Panhandle is now an open access transporter, is spot gas a feasible option for providing supply diversity for Citizens Gas? Is Citizens Gas currently purchasing spot gas that is transported by Panhandle?

(5) Would the benefits to Texas Gas' customers increase if the ANR or Panhandle/Truckline alternative was utilized in lieu of the Texas Gas proposed facilities?

All parties to this proceeding and interested members of the public are invited to attend; however, mere attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

Further information concerning the conference can be obtained from Elizabeth W. Zerby ((202) 357-8839) or Randy P. Parker ((202) 357-8569) of the Commission's staff.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27529 Filed 11-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC88-11-001]

Mississippi River Transmission Corp.; Tariff Filing

November 23, 1988.

Take notice that on November 7, 1988, Mississippi River Transmission Corporation (Applicant) filed revised tariff sheets to become effective November 1, 1988, pursuant to Section 281.204(b) of the Commission's Regulations which requires interstate pipeline to update their respective Index of Entitlements annually to reflect changes in Essential Agricultural Use. The following sheets have been submitted:

Substitute Thirteenth Revised Sheet No. 78

Substitute Eleventh Revised Sheet No. 79.

The purpose of the instant filing is to correct the Index of High Priority (Step 11) Entitlements for the City of Augusta, Arkansas, Village of Dupo, Illinois, City of Red Bud, Illinois, and City of Waterloo, Illinois previously filed on September 15, 1988. The indices were incorrectly stated in Applicant's September 15, 1988, filing due to a miscalculation based on contract demand volumes which were in effect prior to increases authorized by the Commission in Docket No. CP87-429.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27533 Filed 11-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-25-000]

Mississippi River Transmission Corp. Rate Change Filing

November 23, 1988.

Take notice that on November 18, 1988, Mississippi River Transmission Corporation (MRT) Tendered for filing Twenty-Eighth Revised Sheet No. 4 and Twenty-Ninth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1. These Tariff sheets are proposed to become effective November 19, 1988, and December 1, 1988, respectively.

MRT states that these tariff sheets represent an out-of-cycle purchased gas cost adjustment (PGA) filing necessitated by unanticipated and unforseeable increases in the spot market prices of natural gas which MRT is currently experiencing. MRT states that because spot market purchases constitute over 73% of its overall purchase mix of system supply gas, its overall gas costs have risen significantly, and its presently effective rates no longer reflect the current costs of gas which MRT is now experiencing.

MRT states that Twenty-Eighth Revised Sheet No. 4, to be effective November 19, 1988, reflects a $.3034 per Mcf increase in its commodity cost of gas. MRT further states that Twenty-Ninth Revised Sheet No. 4, to be effective December 1, 1988, reflects no increase in the total rate proposed by MRT in its scheduled quarterly PGA filing at Docket No. TQ89-1-25-000, but merely revises the current adjustment included in that filing to reflect the prior effectiveness of the rates reflected on Twenty-Eighth Revised Sheet No. 4.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 395.214 of the Commission's Rule of Practice and Procedure (18 CFR 385.211, 395.214). All such motions or protests should be filed on or before December 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27534 Filed 11-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-28-000]

Northern Border Pipeline Co.; Proposed Changes in F.E.R.C. Gas Tariff

November 23, 1988.

Take notice that on Nov. 18, 1988, Northern Border Pipeline Company (Northern Border) tendered for filing to become a part of Northern Border Pipeline Company's F.E.R.C. Gas Tariff, Original Volume No. 1 the following tariff sheets:

Fifth Revised Sheet Number 157

Third Revised Sheet Number 158

Northern Border states these tariff sheets reflect a revised Maximum Rate and Minimum Revenue Credit under Rate Schedule IT-1. Northern Border proposes to lower the Maximum Rate under Rate Schedule IT-1 from 7.268 cents per 100 Dekatherm-Miles to 6.787 cents per 100 Dekatherm-Miles and the Minimum Revenue Credit from 3.874 cents per 100 Dekatherm-Miles to 3.942 cents per 100 Dekatherm-Miles. Northern Border has requested that these revised tariff sheets be effective on January 1, 1989. Copies of this filing have been sent to all of Northern Border's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 2, 1988. Protests will be considered but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 88-27535 Filed 11-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-37-001]

Northwest Pipeline Corp.; Change in Sales Rates

November 23, 1988.

Take notice that on November 17, 1988, Northwest Pipeline Corporation ("Northwest") submitted a proposed change in sales rates applicable to service rendered under rate schedules which are subject to Article 16, Purchased Gas Cost Adjustment Provision, of its FERC Gas Tariff, First Revised Volume No. 1. Northwest tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Forty-Sixth Revised Sheet No. 10

Fourth Revised Sheet No. 303

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Original Volume No. 1–A

Second Revised Sheet No. 602

Northwest states that the purpose of this filing is to correct an error in the D–2 billing determinants used in Northwest's October 3 filing in Docket No. TQ89–2–37–000. The instant filing reflects a decrease of 1.42¢ per MMBtu in Northwest's D–2 rate. The D–1 and commodity rates remain unchanged (except for the elimination of the PGA surcharge approved by Commission order dated November 4, 1988 in Docket No. RP89–1–000).

A copy of this filing has been served on Northwest's jurisdictional sales customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27536 Filed 11–29–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–27–000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 22, 1988.

Take notice that on November 18, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 18, 1988:

Third Revised Sheet No. 16M
Third Revised Sheet No. 16CC
First Revised Sheet No. 16CC.1
First Revised Sheet No. 23
Second Revised Sheet No. 24
Original Sheet No. 24a
First Revised Sheet No. 25
Original Sheet No. 34P.2

South Georgia states that it has filed certain revisions to its FERC Tariff which allow its system customers to elect to receive interruptible transportation on South Georgia's system and Southern Natural Gas Company's system during their respective curtailment days, as more particularly described in its filing available for public inspection. South Georgia has requested the Commission to make the revised tariff sheet effective December 18, 1988, as set forth above.

South Georgia states hat copies of the filing were mailed to all of South Georgia's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before November 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27537 Filed 11–29–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–30–000]

Tennessee Gas Pipeline Co.; Filing

November 23, 1988.

Take notice that on November 16, 1988, Tennessee Gas Pipeline Company (Tennessee) filed First Revised Sheet No. 245A to Second Revised Volume No. 1 of its FERC Gas Tariff.

Tennessee states that the purpose of the filing is to place Tennessee in the same position that the Commission has afforded other pipelines with respect to take-or-pay costs eligible for fixed charge recovery. Specifically in accord with Commission action in several recent pipeline take-or-pay recovery cases, Sheet No. 245A eliminates the "sunset date" of December 31, 1988 with respect to gas purchase contracts which are the subject of litigation on December 31, 1988. Tennessee will be permitted to recover fifty percent of its take-or-pay costs associated with these contracts through fixed charge recovery irrespective of the date payments were made.

The tariff sheets are proposed to be effective December 16, 1988.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27538 Filed 11–19–88; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $1,500,000 (plus accrued interest) obtained by the DOE under the terms of a Consent Order entered into with Carlson Companies, Inc. and Ferrell Companies, Inc., owners of Indian Wells Oil Company. The funds are being held in escrow following the settlement of claims and disputes arising from an Economic Regulatory Administration audit of Indian Wells' records.

DATE AND ADDRESS: Applications for refund from the Indian Wells consent order fund must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number KEF–0103 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director *or* Laurie Breslin, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2860 (Dugan), (202) 586–4921 (Breslin).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute to eligible claimants $1,500,000, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into with Carlson Companies, Inc. (Carlson) and Ferrell Companies, Inc. (Ferrell) on November 30, 1987. The funds were paid by Carlson and Ferrell to settle all claims and disputes between Carlson, Ferrell and the DOE regarding the manner in which Indian Wells Oil Company, a refiner and natural gas processor applied the federal price regulations with respect to its sales of natural gas liquids (NGLs) and natural gas liquid products (NGLPs) during the period September 1, 1973 through January 31, 1976 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Indian Wells consent order fund was issued on September 1, 1988. 53 FR 34831 (September 8, 1988).

The Decision sets forth procedures and standards which the DOE has formulated to distribute the contents of the escrow account funded by Indian Wells pursuant to the Consent Order. The DOE has determined that the consent order funds should be distributed to eligible firms that purchased Indian Wells' NGLs and NGLPs during the consent order period.

As the Decision and Order indicates, Applications for Refund may now be filed by firms that purchased NGLs and NGLPs which originated from Indian Wells during the consent order period. Applications will be accepted provided they are filed in duplicate and received no later than 90 days after publication of this notice in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: November 22, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Name of Firm: Indian Wells Oil Company

Date of Filing: February 12, 1988

Case Number: KEF–0103

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on February 12, 1988. In the Petition, the ERA requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order which the DOE entered into with Carlson Companies, Inc. (Carlson) and Ferrell Companies, Inc. (Ferrell), owners of Indian Wells Oil Company (Indian Wells).

I. Background

Indian Wells was a "refiner" (as defined in 6 CFR 150.352 and 10 CFR 212.31) and "natural gas processor" (as defined in 10 CFR 212.162) and its sales were subject to DOE price regulations. During the period covered by the Consent Order, Indian Wells engaged in the extraction, fractionation and sale of natural gas liquids (NGLs) and natural gas liquid products (NGLPs). An ERA Audit of Indian Wells' records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subparts E and K, in specified transactions during the period from September 1, 1973 through September 1, 1976 (the audit period).[1] Consequently, the ERA issued a Proposed Remedial Order (PRO) to Indian Wells on June 4, 1982, alleging pricing violations in the sale of NGLs and NGLPs (propane, butane, and natural gasoline) during the audit period. After considering and rejecting the firm's objection to PRO, the DOE issued a final Remedial Order on December 3, 1986. *Indian Wells Oil Co.*, 15 DOE ¶83,010 (1986). In order to settle all claims and disputes between Carlson, Ferrell, Indian Wells, and the DOE regarding the firm's compliance with the Mandatory Petroleum Price and Allocation Regulations during the period September 1, 1973 through January 31, 1976 (the consent order period)[2] Carlson and Ferrell and the DOE entered into a Consent Order on November 30, 1987. The Consent Order refers to the ERA's allegations of regulatory violations. It also refers to Carlson's and Ferrell's denials that any such violations occurred and that Carlson or Ferrell were responsible for the activities of IWOPCO and Kathol.

Under the terms of the Consent Order, Carlson and Ferrell were each required to deposit $750,000 into an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. The settlement amount ($1,500,000) was paid in full on December 30, 1987, and deposited into a subaccount in the name of Indian Wells Oil Company. As of October 30, 1988, the Indian Wells consent order fund had earned $84,606.67 in interest. This Decision concerns the distribution of the funds in the Indian Wells escrow account.

On September 1, 1988, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Indian Wells consent order fund. 53 FR 34831 (September 8, 1988). We stated in the PD&O that the basic purpose of special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claim procedure whereby Applications for Refund would be accepted from customers who can demonstrate that they were injured a result of Indian Wells' pricing practices during the September 1, 1973–January 31, 1976 consent order period. A copy of the PD&O was published in the **Federal Register** on September 8, 1988, and comments were solicited regarding the proposed refund procedures. On October 13, 1988, we received comments concerning our proposed procedures from Propane Industrial, Inc. (PII). These comments will be addressed below.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the office of Hearings and Appeals may formulate and implement a plan of distibution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the PDO, we have reviewed the record in the present case, and have

[1] These alleged violations were committed by Indian Wells Operating Company (IWOPCO) and Kathol Petroleum, Inc. (Kathol) (the former owner of IWOPCO), the predecessors-in-interest of Indian Wells.

[2] The consent order period is shorter than the audit period since the overcharges alleged by the ERA occurred during the September 1973 through January 1976 period only.

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determined that a Subpart V proceeding is an appropriate mechanism for distributing the Indian Wells consent order fund. The comments submitted by PII do not take issue with this determination. We will therefore grant the ERA's Petition and assume jurisdiction over this fund.

III. Final Refund Procedures

The distribution of refunds in this proceeding will take place in two stages. In the first stage we will provide refunds to purchasers of Indian Wells products who are injured by Indian Well's pricing practices.

A. Refund Claimants

Insofar as possible, the settlement amount of $1,500,000 plus accrued interest will be distributed to those Indian Wells customers who demonstrate that they were injured by Indian Wells' pricing practices during the period September 1, 1973 through January 31, 1976. A list of the firm's customers during the audit period, together with a schedule of the amounts they were allegedly overcharged, was attached to the June 4, 1982 PRO. The customers on that list, whose names are set forth in the Appendix to this Decision and Order, all purchased directly from Indian Wells during the consent order period and are potential refund claimants from whom we will accept refund applications.

In the PD&O, we proposed that one of the customers, PII, be ineligible to receive a refund from the Indian Wells consent order fund because it is a wholly-owned subsidiary of Ferrell, one of the current owners of Indian Wells and a party to the consent order. In support of that tentative decision, we cited several cases in which subsidiaries of consent order firms were not permitted to recover funds paid by their corporate parents. In its comments to the PD&O, PII asserts that OHA's reliance on the doctrine of "unclean hands" to deny refunds to subsidiaries of consent order firms in other cases does not apply to its particular case. According to PII, at the time the alleged overcharges were committed, its owner (Ferrell) was independent and separate from Kathol and IWOPCO, the predecessor firms of Indian Wells which committed the alleged violations. *See* October 13, 1988 letter from David Schlee, Counsel for PII, to Richard Dugan, OHA Associate Director. PII asserts that since Ferrell did not participate in the alleged overcharges and its subsidiary, PII, was injured in exactly the same way as any other identified Indian Wells purchaser, it should be permitted to file a refund application in this proceeding. The firm alternatively contends that if it is not deemed eligible for a refund from the monies paid to the DOE by Ferrell, it should nevertheless be eligible to assert a claim for a portion of the monies provided by the other owner, Carlson, a firm with which Ferrell was never affiliated.

PII has raised some serious considerations in the attempt to overcome the presumption of ineligibility which we tentatively established in the PD&O. We will not make a final determination on PII's eligibility at the present time. Instead, we will permit PII to submit an Application for Refund. In our evaluation of that application, we will take into consideration the comments the firm has already submitted and any new arguments it may raise in its application.[3] If PII is not precluded from receiving a refund due to its affiliation with Ferrell, the firm will be required to demonstrate injury as described below.

We will accept refund applications both from the firms listed in the Appendix and from any of their customers that made indirect purchases of Indian Wells NGLs or NGLPs during the consent order period.

1. *Showing of Injury.* As an initial matter, each claimant will be required to document its monthly purchases of Indian Wells' NGLs or NGLPs during the consent order period. We propose to require a reseller applicant (including retailers and refiners) to show that at the time it purchased Indian Wells' products, market conditions would not permit it to increase its prices to pass through to its customers the additional cost associated with the overcharges.[4] *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985); *Palo Pinto Oil & Gas/Gulf Oil Corp.*, 10 DOE ¶ 85,049 (1983). In order to demonstrate that it did not subsequently recover the increased costs associated with Indian Wells' alleged overcharges by raising its prices, a reseller will also have to show that it had a bank of unrecovered increased costs. In order to receive its full potential refund, the applicant's banks on January 31, 1976 must have been equal to or greater than the potential refund, and must have remained at or above the potential refund until the deregulation of the products involved (January 1, 1980 for natural gasoline and butane, January 28, 1981 for propane). We realize that some applicants may be unable to provide actual cost bank records. We therefore are willing to accept information establishing with reasonable likelihood that a claimant had banks. *See Bayou State Oil Corp.*, 12 DOE ¶ 85,197 at 88,622–623 (1985); *Gary Energy Corp./H.S. Sowards & Sons, Inc.*, 16 DOE ¶ 85,684 at 89,346 n.3 (1987), *reconsideration denied*, 17 DOE ¶ 85,290 (1988). The maintenance of a bank does not by itself, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

2. *Small Claims Presumption.* As we stated in the PDO, we recognize that making a detailed showing of injury may be too complicated and burdensome for some resellers who purchased relatively small amounts of NGLs or NGLPS from Indian Wells. For example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove either the existence of banks of unrecovered costs, or that they did not pass the alleged overcharges on to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In past proceedings we have adopted a small claims presumption to assure that the cost of filing and processing a refund application does not exceed the benefits. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We will adopt such a presumption in this case. Therefore, as in other Subpart V proceedings, any reseller applicant who wishes to limit its refund claim to $5,000 or less, need document only its purchase volumes rather than make a detailed showing of injury in order to be eligible to receive a refund.

[3] We have previously denied refund claims when the parent of an otherwise eligible applicant was purchased by the consent order firm subsequent to the consent order period but prior to the consent order, *see e.g., Marathon Petroleum Co./Ecol, Inc.*, 16 DOE ¶ 85,651 (1987). However, we are unaware of any case in which the parent of an otherwise eligible applicant purchased a consent order firm after the consent order period, but prior to the execution of the consent order, the case presented here. In our consideration of PII's application, we will determine whether the rationale for our decision in Marathon/Ecol, Inc. is equally applicable to PII's claim. This determination will depend in part on whether Ferrell obtained any of the benefits of the IWOPCO/Kathol overcharges when it purchased Indian Wells. Additionally, in evaluating PII's application, we will consider whether there is a basis for distinguishing between the funds paid to the DOE by Carlson and by Ferrell.

[4] In many cases including those cited, we have utilized a competitive disadvantage methodology in which the prices charged the applicant by the consent order firm are compared to average market prices in order to assess whether the applicant was able to pass through the increased costs associated with the alleged overcharges. In cases involving NGLs and NGLPs, this methodology is applied on a component by component/product by product basis.

3. *End-Users.* As in many other refund proceedings, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges covered by the Indian Wells settlement agreement. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit period, and were not requried to keep records which justified selling price increases by reference to cost increases. *See Marion*, 12 DOE at 88,030; *Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). Therefore, end-users of Indian Wells products need document only their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.[5]

4. *Indirect Purchasers.* Firms which made indirect purchases of Indian Wells NGLs and NGLPs during the consent order period from any of the firms listed in the Appendix may also apply for refunds. If an applicant did not purchase directly from Indian Wells but believes that products it purchased from one of the firms listed in the Appendix originated with Indian Wells, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Indian Wells' products passed through Indian Wells' alleged overcharges to its own customers.[6] *See Dorchester Gas Corp.* 14 DOE ¶ 85,240 at 88,451–52 (1986).

5. *Spot Purchasers.* We shall also adopt our proposed rebuttable presumption that a refiner, reseller, or retailer who made only spot purchases from Indian Wells did not suffer injury as a result of those purchases.[7] Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Indian Wells. In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that they did not subsequently recoup. *See Quaker State Oil Refining Corp./Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

6. *$15 Minimum.* We will also establish a minimum refund amount of $15 for refund claims. We ahve found through our experience in prior refund cases that the cost of processing claims of $15 or less outweighs the benefits of restitution in those situations. *See Uban Oil Co.*, 9 DOE ¶ at 85,225 (1982).

B. Calculation of Refund Amounts

As indicated above, the schedule of Indian Wells' customers attached to the June 4, 1982 PRO lists the volume of each firm's purchases during the audit period and the amount by which each was allegedly overcharged. We will use this information in order to calculate each identified customer's potential refund. Since the settlement amount differs from the total overcharge amount alleged in the PRO, we have multiplied each customer's percentage of the total alleged overcharge amount by the settlement amount. The potential refund amounts derived from these calculations are set forth in the Appendix to this Decision. In addition, successful applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

C. Application for REfund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Indian Wells consent order fund. Accordingly, we will now accept Applications for Refund from eligible customers who purchased NGLs and NGLPs from Indian Wells during the period September 1, 1973 through January 31, 1976. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationary. The following information should be included in all Applications for Refund:

1. The name of the consent order firm, Indian Wells Oil Company, the case number, KEF–0103, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. The manner in which the applicant used the Indian Wells products, i.e., whether it was a reseller, refiner, retailer, end-user, cooperative or public utility.

4. The volume of Indian Wells' NGLs and NGLPs that the applicant purchased in each month of the consent order period (September 1, 1973 through January 31, 1976) in which it claims that it was injured by the alleged overcharges. If the applicant is one of the firms listed in the Appendix to this Decision and is an end-user, it may instead submit a certification that it purchased NGLs or NGLPs from Indian Wells on a regular basis during the consent order period.

5. If the applicant is a reseller claiming a refund in excess of $5,000, it should also:

(a) State whether it maintained banks of unrecouped increased product costs and furnish the OHA with monthly bank calculations, and

(b) Submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may compare the prices it paid for each component of Indian Wells NGL stream or each NGLP with average prices in the firm's market area for each month for which it seeks a refund.

6. If the applicant is a cooperative, it must:

(a) Certify that it will pass through any refund received to its member-customers, and provide the OHA a full explanation of how it plans to accomplish this restitution, and

(b) Certify that it will notify its membership of the receipt of the refund.

7. A statement of whether the applicant was in any way affiliated with Indian Wells. If so, the applicant should explain the nature of the affiliation.[8]

[5] One of the identified firms, Farmland Industries, is a cooperative association whose profits are distributed to its member-customers by means of "patronage dividends." Thus, although Farmland Industries is a reseller, its Application will be treated as an end-user application with respect to sales to its members. In addition to submitting documentation of its purchase volumes and specifying what portion of those volumes was resold to its members, Farmland Industries must certify that it will pass through any refund received to its member-customers and provide us with a full explanation of how it plans to accomplish the restitution. The firm must also certify that it will notify its membership group of its receipt of the refund. With respect to sales to non-members, Farmland Industries will be treated in the same manner as other resellers. *See Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,514–515 (1986).

[6] An indirect purchaser will receive a pro rata share of the direct purchaser's potential refund amount after the deduction of any refund granted to the direct purchaser.

[7] As we have previously stated, spot purchasers tend to have considerable discretion as to the timing of purchases and the market in which to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Vickers*, 8 DOE at 85, 396–97.

[8] PII may incorporate by reference the comments concerning its affiliation that it submitted on October 13, 1988, and submit any additional material in its application.

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8. A statement of whether there has been any change in ownership of the entity that purchased the Indian Wells NGLs or NGLPs since the consent order period. If so, the name and address of the current (or former) owner should be provided, along with a brief description of the transaction by which ownership changed.

9. A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status.

The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. *See* 10 CFR 205.9(d).

10. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed *in duplicate* and must be filed within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of a copy of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

All Applications for Refund should be sent to: Indian Wells Oil Company Special Refund Proceeding, Case No. KEF–0103, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

D. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C.A. 4501–4507, reprinted *in Fed. Energy Guidelines* ¶¶ 11,702–11,709. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilties to the OHA, and any funds in the Indian Wells settlement escrow account that the OHA determines will not be needed to effect direct restitution to injured Indian Wells customers will be distributed in accordance with the provisions of PODRA.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by Carlson Companies, Inc. and Ferrell Companies, Inc., owners of Indian Wells Oil Company, pursuant to the Consent Order executed on November 30, 1987, may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

George B. Breznay,

Director, Office of Hearings and Appeals

Date: November 22, 1988.

APPENDIX

Identified purchasers	Potential refund
Bueing, Groebner Associates	$14,165
Farmland Industries, Inc	160,157
Gates Lear Jet	5,010
Permian Petroleum	63,922
Petroleum Products	24,181
T&T Gas Products	221,630
Union Texas Petroleum	63,595
Propane Industrial, Inc	947,340
Total	1,500,000

[FR Doc. 88–27599 Filed 11–29–88; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Parker-Davis Project; Proposed Power and Transmission Rate Extension

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Rate and Transmission Rate Extension-Parker-Davis Project

SUMMARY: The Western Area Power Administration (Western) is proposing to extend the current power and transmission rates for the Parker-Davis Project (P–DP). Power rates must, by law, be sufficient to recover the annual operation and maintenance expenses and interest expenses plus repay the power and certain nonpower investment costs of the P–DP within allowable time periods. The current power and transmission rates provide sufficient revenues for recovering the required costs in addition to providing certain funds to aid in the repayment of other Bureau of Reclamation (Reclamation) projects.

The firm power rate currently in effect, Schedule PD–F2, Schedule of Rates for Wholesale Firm Power Service, was designed to provide an average annual composite yield of 8.55 mills/kWh, utilizing a demand charge of $1.87/kW/month and an energy charge of 4.28 mills/kWh. The transmission rates currently in effect are: Schedule PD–FT2, Schedule of Rates for Firm Transmission Service, of $0.63/kW/month, which is equivalent to $7.56/kW/year; Schedule PD–NFT2, Schedule of Rates for Nonfirm Transmission Service, of 1.4 mills/kWh; and Schedule PD–FCT2, Schedule of Rates for Transmission Service of Colorado River Storage Project Power and Energy, which is $3.78/kW/season or $0.63/kW/month.

The Federal Energy Regulatory Commission (FERC) issued an order dated July 23, 1984, confirming and approving these rates for the period December 15, 1983, through December 31, 1988. (FERC Order, Docket No. EF84–5041–000, 28 FERC paragraph 62,086).

Discussion

Pursuant to the authority in 10 CFR 903.23, the extension of the wholesale power and the firm and nonfirm transmission rates will make the current rates effective for an additional 5-year period.

Power repayment studies (PRS) and other analyses indicate that the existing rates are sufficient to maintain the financial integrity of the P–DP, and will provide sufficient revenues to recover all operation, maintenance, and replacement costs for the P–DP through the cost evaluation period ending September 30, 1992. Further, revenues since the project was placed into commercial service have been sufficient to satisfy the repayment to the Treasury of the United States, with interest, of all Federal funds advanced to the P–DP for the construction of the P–DP's features, including the assumed obligations of other electrical facilities associated with the reclamation of lands and treaties of the United States with the Republic of Mexican States.

Operating revenues for fiscal year 1987 were approximately $24.2 million, while average estimated operating revenues for the first 5 future years (FY 1988–FY 1992) are approximately $20 million. Revenues are impacted by two factors: (1) The amount of sales (kWh) and (2) the rates for such sales. Sales for

fiscal years 1988 through 2008 (termination of current contracts) are based on firm power and transmission contractual commitments. The power and transmission rates now in effect are sufficient to recover the costs of producing and transmitting power and energy. Additionally, all federally funded construction of P–DP facilities has been recovered with appropriate interest.

Beginning in fiscal year 1983, revenues to the Boulder City Area resulting from the settlement of a joint intra-Western projects agreement (Salt Lake City Area and Boulder City Area) have been allocated to both the P–DP and Pacific Northwest-Pacific Southwest Intertie/Southern Division (Intertie). This has resulted in approximately 30 percent (30%), or $10,502,544, of the net revenues to the Boulder City Area being allocated to the Intertie and transferred in FY 1988. This allocation is predicated on the basis that both the P–DP's and the Intertie's transmission systems are utilized to effect economy energy transactions within the Boulder City Area.

The PRS utilizes congressionally approved budget data to project the first 5 future years of operation, maintenance, and replacement costs for both Reclamation and Western. The FY 1992 operation and maintenance (O&M) budget amount was reduced by the amount of "extraordinary O&M expenses" to determine the FY 1993–FY 2042 level of O&M costs. Budgeted replacement amounts were used in the PRS for the cost evaluation period ending September 30, 1992 (FY 1992). Beginning in FY 1993, no further replacements cost are forecasted through the end of the repayment analysis (FY 2042). Exclusion of future replacements costs beyond the cost evaluation period would prevent a presently unnecessary increase for this project that has been repaid.

Also, the PRS reflects, in FY 1993, a transfer of $5,464,601 to the Lower Colorado River Basin Development Fund (LCRBDF); from FY 1994 through FY 2004 an annual transfer of $2,727,936; and from FY 2005 through FY 2042 (end of study) an annual transfer of $1,649,936. These transfers represent the "surpluses" of revenues after all operation, maintenance, replacement costs, and completion of repayment requirements for P–DP have been satisfied, and are required by section 403 of the Colorado River Basin Project Act, as amended.

DATES: In accordance with 10 CFR 903.23, the Administrator of Western has determined, on the basis that this action does not affect the existing rates, that a consultation and comment period is not needed, nor is there any need for public information or comment forums. The extension of the existing rates is expected to be placed in effect on an interim basis on January 1, 1989, by the Deputy Secretary of the Department of Energy and will be forwarded to the FERC for approval on a final basis.

FOR FURTHER INFORMATION CONTACT:

Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477–3255

or

Mr. Conrad Miller, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1535.

SUPPLEMENTARY INFORMATION: Pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101–7352, (Supp. IV 1981), the power marketing functions, as vested in Reclamation under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.* (1976), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c) (1976), and the acts specifically applicable to the project, were transferred to the Department of Energy (DOE).

By Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated: (1) The authority on a nonexclusive basis to develop power and transmission rates to the Administrator of Western; (2) the authority on a nonexclusive basis to conform, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority on an exclusive basis to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates to the FERC.

On October 27, 1988, the Secretary of Energy issued a notice (DOE N 1110.29) which has the effect of amending Delegation Order No. 0204–108 by transferring the authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy.

Western is developing these rates in accordance with Reclamation law; DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2 (September 20, 1979)); and the procedures for public participation in rate adjustments found at 10 CFR Part 903 (1987), as amended.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612 (Supp. V 1982), an agency, when required by 5 U.S.C. to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Under 5 U.S.C. 601(2), the term "rule" does not include a rule of particular applicability relating to rates. Therefore, no flexibility analysis is required.

Environmental Evaluation

The presently existing P-DP rate was formulated under the Boulder City General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects. Western prepared an environmental assessment (DOE/EA–204) on the implementation of these criteria. The potential impact from the rate set for P-DP power was assessed in an Action Description Memorandum dated October 13, 1983. Following the identification of specific customers and allocations, an economic study supplementing the environmental assessment was prepared, entitled "Final Allocation Criteria and Allocations of Capacity and Associated Energy from the Parker-Davis Project, Economic Study," June 1987.

As Western proposes to extend the existing power rate, which has previously been evaluated pursuant to the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations, and DOE guidelines, no further environmental compliance work is anticipated with regard to this action.

Availability of Information

Documents relevant to development of the current rates are available for inspection and copying at the Boulder City Area Office.

Issued at Golden, Colorado, November 18, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88–27600 Filed 11–29–88; 8:45 am]

BILLING CODE 6450–01–M

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3483-7]

Science Advisory Board; Environmental Health Committee; Metals Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two day meeting of the Science Advisory Board's Metals Subcommittee of the Environmental Health Committee will be held on December 8-9, 1988 at the One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037. The meeting will begin at 9:00 a.m. on Thursday, December 8, 1988 and adjourn no later than 3:30 p.m. on Friday, December 9, 1988.

The Metals Subcommittee of the Environmental Health Committee will review the health criteria documents for cyanide, thallium, sulphate, and antimony.

An agenda for the meeting is available from Mary L. Winston, Staff Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382-2552. The health criteria documents are available from the Health Effects Branch, Office of Drinking Water, USEPA, Washington DC, 20460, (202) 382-7571.

The meeting will be open to the public. Any member of the public wishing to attend or obtain information must contact Mr. Samuel Rondberg, Executive Secretary, Environmental Health Committee by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), 401 M Street, SW., Washington, DC, 20460 no later than c.o.b. November 30, 1988.

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: November 18, 1988.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 88-27556 Filed 11-29-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3483-6]

Science Advisory Board; Clean Air Scientific Advisory Committee; Open Meeting

December 14, 1988.

Summary: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given of a public meeting of the Forest Research Subcommittee of the Clean Air Scientific Advisory Committee (CASAC) of the Environmental Protection Agency's Science Advisory Board. The meeting will be held from 8:30 a.m. to 11:00 a.m. on December 14, 1988 in the U.S. Environmental Protection Agency, Environmental Research Center, Classroom 2, Route 54 and Alexander Drive, Research Triangle Park, North Carolina.

Purpose: The purpose of the meeting is to allow the Subcommittee to review and provide its advice to the Agency on the draft document entitled "Effects of Tropospheric Ozone on Forest Types".

Written Comments: Written comments concerning the document may be submitted to Ms. Pam Johnson, U.S. EPA, Office of Air Quality Planning and Standards (MD-12), Research Triangle Park, NC 27711, (919) 541-5270, (FTS) 629-5270, from December 1, 1988 through February 15, 1989. Copies of the document may be obtained from Ms. Johnson at the above address.

For Further Information: The meeting is open to the public. Any member of the public wishing further information concerning the meeting should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, Washington, DC 20460, (202) 382-2552, (FTS) 382-2552. Seating at the meeting will be on a first come basis. Persons wishing to make a brief presentation at the meeting must contact Mr. Flaak no later than December 9, 1988, to reserve space on the agenda. It is requested that 12 copies of a written statement for the record be submitted to Mr. Flaak at the time of the meeting for distribution to the members of the Subcommittee. Oral presentations should supplement the written statement.

Date: November 21, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-27557 Filed 11-29-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3483-9]

Science Advisory Board; Clean Air Scientific Advisory Committee; Open Meeting

December 14, 1988.

Summary: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given of a public meeting of the Welfare Effects Subcommittee of the Clean Air Scientific Advisory Committee (CASAC) of the Environmental Protection Agency's Science Advisory Board. The meeting will be held from 1:30 p.m. to 6:00 p.m. on December 14, 1988 in the U.S. Environmental Protection Agency, Environmental Research Center, Classroom 2, Route 54 and Alexander Drive, Research Triangle Park, North Carolina.

Purpose: The purpose of the meeting is for the Subcommittee to consider information concerning the secondary national ambient air quality standard for ozone. The Subcommittee will review information contained in the draft documents: (1) "Summary of Selected New Information of Effects of Health and Vegetation—Draft Supplement to the Air Quality Criteria Document for Ozone and Other Photochemical Oxidants"; (2) "Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information—OAQPS Draft Staff Paper"; and (3) "Interrelation of Experimental Exposure of Ambient Air Quality Data for Comparison of Ozone Exposure Indices and Estimating Agricultural Losses". The Subcommittee will verbally present its findings to the full Clean Air Scientific Advisory Committee on December 15, 1988 (see **Federal Register** Notice in this issue).

Written Comments: Written comments concerning these three draft documents will be accepted from December 1, 1988 through February 15, 1989.

Document (1) (draft Supplemental Air Quality Criteria Document): Comments may be submitted to the Ozone Project Officer, U.S. EPA, Environmental Criteria and Assessment Office (MD-52), Research Triangle Park, NC 27711, (919) 541-4161, (FTS) 629-4161. Copies of this draft may be obtained by writing or calling the Office of Research and Development Publications Center, CERI-FRN, U.S. EPA, 26 Martin Luther King Drive, Cincinnati, Ohio 45268, (513) 569-7562. Please ask for the document by name ("draft Supplement to the Air Quality Criteria Document for Ozone and Other Photochemical Oxidants") and report number, EPA/600/8-88/105A.

Document (2) (draft OAQPS Staff Paper): Comments may be submitted to Dr. David McKee, U.S. EPA, Office of Air Quality Planning and Standards (MD-12), Research Triangle Park, NC 27711, (919) 541-5288, (FTS) 629-5288. Copies of this draft may be obtained from Dr. McKee at the above address.

Document (3) (Interrelation of Experimental Exposure of Ambient Air Quality Data for Comparison of Ozone Exposure Indices and Estimating Agricultural Losses): Comments may be submitted to Ms. Pam Johnson, U.S. EPA, Office of Air Quality Planning and Standards (MD-12), Research Triangle Park, NC 27711, (919) 541-5270, (FTS) 629-5270. Copies of this draft may be obtained from Ms. Johnson at the above address.

For Further Information: The meeting is open to the public. Any member of the public wishing further information concerning the meeting should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, Washington, DC 20460, (202) 382-2552, (FTS) 382-2552. Seating at the meeting will be on a first come basis. Persons wishing to make a brief presentation at the meeting must contact Mr. Flaak no later than December 9, 1988, to reserve space on the agenda. It is requested that 12 copies of a written statement for the record be submitted to Mr. Flaak at the time of the meeting for distribution to the members of the Subcommittee. Oral presentations should supplement the written statement.

Date: November 21, 1988.

Kathleen Conway,

Deputy Director, Science Advisory Board.

[FR Doc. 88-27558 Filed 11-29-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3484-1]

Science Advisory Board Clean Air Scientific Advisory Committee; Open Meeting

December 15, 1988.

Summary: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given of a public meeting of the Clean Air Scientific Advisory Committee (CASAC) of the Environmental Protection Agency's Science Advisory Board. The meeting will concern a review of the National Ambient Air Quality Standards (NAAQS) for Ozone. The meeting will be held from 8:30 a.m. to 5:00 p.m. on December 15, 1988 in the U.S. Environmental Protection Agency, Environmental Research Center, Main Auditorium, Route 54 and Alexander Drive, Research Triangle Park, North Carolina.

Purpose: The purpose of the meeting is for the Committee to review and provide advice to the Agency on the draft documents: (1) "Summary of Selected New Information of Effects of Health and Vegetation—Draft Supplement to the Air Quality Criteria Document for Ozone and Other Photochemical Oxidants"; and (2) "Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information—OAQPS Draft Staff Paper". The Committee will also be briefed by its Welfare Effects Subcommittee which reviewed issues concerning the secondary NAAQS for Ozone on December 14, 1988 (see accompanying **Federal Register** Notice).

Written Comments: Written comments concerning these two documents will be accepted from December 1, 1988 through February 15, 1989. The availability of these documents and the EPA project officer to whom comments should be addressed is given in the accompanying **Federal Register** Notice concerning the December 14, 1988 meeting of the CASASC Welfare Effects Subcommittee.

For Further Information: The meeting is open to the public. Any member of the public wishing further information concerning the meeting should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, Washington, DC 20460, (202) 382-2552, (FTS) 382-2552. Seating at the meeting will be on a first come basis. Persons wishing to make a brief presentation at the meeting must contact Mr. Flaak no later than December 9, 1988, to reserve space on the agenda. It is requested that 20 copies of a written statement for the record be submitted to Mr. Flaak at the time of the meeting for distribution to the members of the Subcommittee. Oral presentations should supplement the written statement.

Date: November 21, 1988.

Kathleen Conway,

Deputy Director, Science Advisory Board.

[FR Doc. 88-27559 Filed 11-29-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Amendment to Existing System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of amendment to a system of records—Administrative and Personnel Action System (formerly Administrative Action System).

SUMMARY: The FDIC is amending in final form its existing "Adminstrative Action System" and retitling it "Administrative and Personnel Action System." The amendment serves solely to update the language of the system and makes no changes of substance.

DATE: The amendment is effective November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Deputy Executive Secretary, FDIC, 550 17th Street NW., Washington, DC 20429, tel. (202) 898-3811.

SUPPLEMENTARY INFORMATION: The FDIC's Privacy Act system of records entitled "Administrative Action System" is being renamed "Administrative and Personnel Action System" and is being revised solely to update the language describing the system. No changes of substance are being made.

The system will continue to cover individuals who have been the subject of administrative actions or personnel actions by the FDIC Board of Directors or by standing committees of the FDIC and individuals who have been the subject of administrative actions by other officials under delegated authority. Records concerning such individuals will be contained in Board or committee minutes and orders of the Board, committees, or officials acting under delegated authority. The system notice will no longer needlessly indicate that intra-agency memoranda are part of the system. Such memoranda will be part of the system only to the extent that they are specifically incorporated by reference into the minutes, in which event they are simply part of the minutes. Entries into the minutes and orders are also annotated on either index cards or in the FDIC's automated index of official actions. Because the FDIC is not adding any new routine uses to the system, a public comment period is not required. Accordingly, the Board of Directors of the FDIC revises the Administrative Action System to read as follows:

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FDIC 30-64-0003

SYSTEM NAME: Administrative and Personnel Action System.

SYSTEM LOCATION: Office of the Executive Secretary, FDIC, 550 17th Street NW., Washington, DC 20429. A security copy of certain microfilmed portions of the records is located at 4801 Massachusetts Avenue NW., Washington, DC 20016.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: Individuals who have been the subject of administrative actions or personnel actions by the FDIC Board of Directors or by standing committees of the FDIC and individuals who have been the subject of administrative actions by other officials under delegated authority.

CATEGORIES OF RECORDS IN THE SYSTEM: Contains minutes of the meetings of the Board of Directors or standing committees and orders of the Board of Directors, standing committees, or other officials as well as annotations of entries into the minutes and orders.

AUTHORITY OF MAINTENANCE OF THE SYSTEM: Sections 8, 9, and 19 of the Federal Deposit Insurance Act (12 U.S.C. 1818, 1819, 1829).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: Information in the system may be disclosed to a congressional office in response to an inquiry made at the request of an individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE: Index cards, computer discs, minute ledgers, file folders, and microfilm.

RETRIEVABILITY: Indexed by name.

SAFEGUARDS: Index cards are stored in lockable metal file cabinets; computer discs are accessed only by authorized personnel; minute ledgers, file folders, and microfilm are stored in a vault.

RETENTION AND DISPOSAL: Permanent.

SYSTEM MANAGER(S) AND ADDRESS: Executive Secretary, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE: Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550 17th Street NW., Washington, DC 20429. Individuals requesting their own records must provide their name and address.

RECORD ACCESS PROCDURES: Same as "Notification" above.

CONTESTING RECORD PROCEDURES: Same as "Notification" above.

RECORD SOURCE CATEGORIES: Intra-agency records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT: None.

By direction of the Board of Directors.

Dated at Washington, DC, this 16th day of November 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-27517 Filed 11-29-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010984-004

Title: Mediterranean/Puerto Rican Conference

Parties: Compania Trasatlantica Espanola, S.A. Nordana Line AS Sea-Land Service, Inc.

Synopsis: The proposed Agreement provides that members may agree to permit any member to charter its vessels or space on its vessels for the transportation of cargo in the Agreement trade at terms other than those proscribed in the Conference tariff.

Agreement No.: 212-011213-002

Title: Spain-Italy/Puerto Rico Island Pool Agreement

Parties: Compania Trasatlantica Espanola, S.A. Nordana Line AS Sea-Land Service, Inc.

Synopsis: The proposed Agreement clarifies that actions taken by a member that are consistent with its rights under the Conference Agreement could not be deemed improper under this Agreement.

By Order of the Federal Maritime Commission.

Dated: November 25, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-27612 Filed 11-29-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Equimark Corp. and Equimanagement, Inc.; Proposed Acquisition of a Federal Savings Bank

Equimark Corporation ("Equimark"), and Equimanagement, Inc., a wholly-owned subsidiary of Equimark, both of Pittsburgh, Pennsylvania, have jointly applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire up to 40 percent of the voting shares of Rocky Mountain Financial Corporation, Cheyenne, Wyoming ("Rocky Mountain Financial"), a *de novo* savings and loan holding company, and thereby indirectly acquire Rocky Mountain Federal Savings Bank, Cheyenne, Wyoming ("Savings Bank"), a *de novo* savings bank. Rocky Mountain Financial will own 100 percent of Savings Bank. Savings Bank will be the successor to Rocky Mountain Federal Savings and Loan Association, Cheyenne, Wyoming ("RMF"), upon its conversion from a mutual savings and loan association to a stock savings bank. Savings Bank will then purchase the assets and assume the liabilities of United Savings Bank of Wyoming, F.S.B., Cheyenne, Wyoming ("USB"). Savings Bank will receive Federal Savings and Loan Insurance Corporation assistance.

In connection with this application, Equimark and Equimanagement also propose to acquire numerous service corporation subsidiaries of RMF and USB, which engage in real estate investment and development; real estate management; data processing; the issuance of collateralized mortgage obligations; insurance activities; loan origination services; real estate landing; and portfolio management and servicing for equipment leases. Equimark and Equimanagement have committed that, upon consummation of the proposal and for as long as they remain in control of Rocky Mountain Financial, any insurance activities will be limited to credit accident, health and life insurance with respect to loans originated by Savings Bank.

The Board previously has determined by order that the operation of a thrift institution is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the BHC Act. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). The Board, however, has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisitions can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

The Board has been requested to act expeditiously upon these applications in order to recapitalize and revitalize the successor thrift institution. Comments regarding these applications must be submitted in writing and must be received at the offices of the Board of Governors not later than 5:00 P.M. on December 20, 1988. The application is available for immediate inspection at the office of the Board of Governors.

Board of Governors of the Federal Reserve System, November 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27716 Filed 11-30-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0362]

Alcon Laboratories, Inc.; Premarket Approval of Models C118, C119, C138, and C139 Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Alcon Laboratories, Inc., Brentwood, TN, for premarket approval, under the Medical Device Amendments of 1976 (the amendments), of the Models C118, C119, C138, and C139 Posterior Chamber Intraocular Lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 5, 1988, of the approval of the application.

DATE: Petitions for administrative review by December 30, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8261.

SUPPLEMENTARY INFORMATION: On February 16, 1988, Alcon Laboratories, Inc., Brentwood, TN 37027, submitted to CDRH an application for premarket approval of the Models C118, C119, C138, and C139 Posterior Chamber Intraocular Lenses. Under the amendments, intraocular lenses are regulated as class III devices (premarket approval). The devices are intended for primary implantation in patients 60 years of age or older. They are designed for ciliary sulcus or capsular bag placement following the removal of a cataractous crystalline lens by extracapsular cataract extraction methods. The device is available in a range of powers from 10 diopters (D) through 27 D, in 0.5 D increments.

On June 20, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 5, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will published a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 30, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 22, 1988.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 88-27542 Filed 11-29-88; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 88M-0346]

Corometrics Medical Systems, Inc.; Premarket Approval of Corometrics® Model 146 Petal Acoustic Stimulator

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Corometrics Medical Systems, Inc., Wallingford, CT, for premarket approval, under the Medical Device Amendments of 1976, of the Corometrics ® Model 146 Fetal Acoustic Stimulator. After reviewing the recommendation of the Obstetrics and Gynecology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 31, 1988, of the approval of the application.

DATE: Petitions for administrative review by December 30, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: On January 21, 1988, Corometrics Medical Systems, Inc., Wallingfood, CT 06492-0333, submitted to CDRH an application for premarket approval of the Corometrics ® Model 146 Fetal Acoustic Stimulator. The Corometrics ® Model 146 Fetal Acoustic Stimulator is indicated for use as an adjunct to antepartum nonstress testing from 28 through 42+ weeks of gestation. The Model 146 directs a low frequency vibroacoustic stimulus towards the fetus to elicit a fetal heart rate response (acceleration) which is indicative of fetal well-being.

On May 25, 1988, The Obstetrics and Gynecology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 31, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Raju G. Kammula (HFZ-470), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 30, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 21, 1988.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 88-27541 Filed 11-29-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0353]

IOLAB ® Intraocular; Premarket Approval of UVBLOC ™ Plus Models U102D, U102E, U103B, U103G, U103N, U103Q, U106D, U106E, U106G, U106M, U106V, U107B, U107D, U107E, U107G, U107P, U107Q, U107W, U108B, U108D, U152D, U156E, U156H, U157E, U157G, U157R, U177B, U194D, U196D, U196E, U703G, U706C, U706D, U706F, U706G, U706J, U706M, U706S, U707D, U707E, U707G, U708G, U709G, U756B, U756E, U757B, U776Q, U777B, U796E, and U796N, Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses.

AGENCY: Food and Drug Administrations.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by IOLAB ® Intraocular, Claremont, CA, for premarket approval, under the Medical Device Amendments of 1976 (the amendments), of the UVBLOC™ Plus Models U102D, U102E, U103B, U103G, U103N, U103Q, U106D, U106E, U106G, U106J, U106M, U106V, U107B, U107D, U107E, U107G, U107P, U107Q, U107W, U108B, U108D, U152D, U156E, U156H, U157E, U157G, U157R, U177B, U194D, U196D, U196E, U703G, U706C, U706D, U706F, U706G, U706J, U706M, U706S, U707D, U707E, U707G, U708G, U709G, U756B, U756E, U757B, U776Q, U777B, U796E, and U796N Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1988, of the approval of the application.

DATE: Petitions for administrative review by December 30, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8261.

SUPPLEMENTARY INFORMATION: On July 14, 1987, IOLAB ® Intraocular, Claremont, CA 91711, submitted to CDRH an application for premarket approval of the UVBLOC ™ Plus Models U102D, U102E, U103B, U103G, U103N, U103Q, U106D, U106E, U106G, U106J, U106M, U106V, U107B, U107D, U107E, U107G, U107P, U107Q, U107W, U108B, U108D, U152D, U156E, U156H, U157E, U157G, U157R, U177B, U194D, U196D, U196E, U703G, U706C, U706D, U706F, U706G, U706J, U706M, U706S, U707D, U707E, U707G, U708G, U709G, U756B, U756E, U757B, U776Q, U777B, U796E, and U796N Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses. The devices are intended to be used for primary implantation for the visual correction of aphakia in persons 60 years of age and older where a cataractous lens has been removed by extracapsular extraction methods. The devices are available in a range of powers from 4 diopters (D) through 34 D in 0.5 D increments.

On October 22, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

Under the amendments, intraocular lenses are regulated as class III devices (premarket approval).

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) to FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review of requested (hearing of independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 30, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 22, 1988.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 88-27544 Filed 11-29-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0363]

Siemens Medical Systems, Inc.; Premarket Approval of the Siemens LITHOSTAR Lithotripter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Siemens Medical Systems, Inc., Iselin, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Siemens LITHOSTAR Lithotripter. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1988, of the approval of the application.

DATE: Petitions for administrative review by December 30, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Fank S. Casciani, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION: On June 3, 1987, Siemens Medical Systems, Inc., Iselin, NJ 08830, submitted to CDRH an application for premarket approval of the Siemens LITHOSTAR Lithotripter. The device is an extracorporeal shock wave lithotripter for use in the fragmentation of upper urinary tract stones, i.e., renal calyceal stones, renal pelvic stones, and upper ureteral stones.

On November 18, 1987, the Gastroenterology-Urology Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Frank S. Casciani (HFZ-420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing

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the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 30, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 21, 1988.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 88-27543 Filed 11-29-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Demonstration and Evaluation of the Medicare Insured Group (MIG) Model," HHS/HCFA/ORD No. 09-70-0044. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, HCFA invites comment on all portions of this notice. See Date Section for comment period.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 22, 1988. The new system for records will become effective January 30, 1989, unless HCFA receives comments which would necessitate alterations to the system.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G-M-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Robin Brocato, Division of Health Systems and Special Studies, Office of Research and Demonstrations, Room 2306 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (301) 966-6628.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 4015 of the Omnibus Budget Reconciliation Act of 1987. The purpose of this system of records is to provide data necessary to develop and evaluate the MIG demonstrations. The MIG concept involves the payment of a capitated rate to such entities as employers, unions, and insurers. This rate may be developed based on the historical costs of the entity's Medicare recipients. Issues that are central to these demonstrations include cost and utilization control, access to and quality of care, and appropriateness of the payment methodology. The MIG demonstrations will be conducted for 3 years and will involve three sites.

The system of records will include data collected from Medicare and employer group claims files, data from participating MIG sites, and beneficiary surveys. The sites that participate in the demonstration and evaluation are to be determined.

In order to fulfill the objective and complete tasks in this project, HCFA and the contractor must have individually-identified records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administering the Medicare program for which we are responsible. We anticipated that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: November 21, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0044

SYSTEM NAME:

Demonstration and Evaluation of the Medicare Insured Group (MIG) Model.

SECURITY CLASSIFICATION

None

SYSTEM LOCATION:

Contact system manager for location of contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries residing in three demonstration sites and three control sites who receive medical services as enrollees in Medicare MIGs, through HMOs/CMPs, or through the fee-for-service sector.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic characteristics (e.g., age, education, income), measures of health and functional status, cost and utilization of health services, and satisfaction with services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4015 of the Omnibus Budget Reconciliation Act of 1987.

PURPOSE OF THE SYSTEM:

To provide data necessary to develop and evaluate the impact of the MIG concept on the cost, utilization, and quality of medical services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To contractors for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system or for developing, modifing, and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

2. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an inteest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To an individual or organization for research, demonstration, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or the efficacy or efficiency of HCFA programs if HCFA:

a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained, including such limitations as may be imposed or provided under the Privacy Act;

b. Determines that the purpose for which the proposed use is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in a form that identifies individuals;

(2) Is of sufficient importance to warrant the effect on or risk to the privacy of the individual by such limited additional exposure that unauthorized disclosure of the record might bring; and

(3) There is reasonable probability that the objective of the use will be accomplished;

c. Requires the recipient of the information to:

(1) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that is justified based on research objectives for retaining such information; and

(3) Make no further use of the record except:

(a) For use in emergency circumstances affecting the health or safety of any individual following written authorization of HCFA;

(b) For disclosure to a person, identified in advance by HCFA, for the purpose of conducting an audit of the research project, provided information which would identify research subjects is destroyed by the person authorized to conduct the audit at the earliest opportunity, consistent with the purpose of the audit; or

(c) When further approved by HCFA.

d. Secures a written, legally binding statement by the recipient of the information attesting that the recipient understands the provisions of paragraph 4(c) and all terms and conditions of the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE.

Paper and magnetic tape.

RETRIEVABILITY.

Information will be retrieved by beneficiary's name and health insurance claim number.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant access only to authorized users. Data stored in computers are accessed through the use of passwords/keywords/numbers known only to the authorized personnel. These passwords/keywords are changed as needed.

Contractors who maintain records in this system are instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. Privacy Act requirements are specifically included in contracts related to this system. The project officer and contract officer oversee compliance with these requirements. The particular safeguards implemented are developed in accordance with the HHS *ADP Systems Manual*, Part 6, ADP Systems Security (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic tapes with identifiers will be retained in secure storage areas. The disposal technique of degaussing will be used to strip magnetic tape of all identifying names and numbers in December 1992. Hardcopy records will be destroyed at this time.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address indicated above, specify name, address, and health insurance number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Information contained in these records is to be obtained from surveys to be conducted of Medicare beneficiaries by HCFA's contractor, claims information in employers' supplemental files, and other existing HCFA systems of records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-27518 Filed 11-29-88; 8:45 am]

BILLING CODE 4120-03

Public Health Service

National Vaccine Advisory Committee; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, PHS; HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATE: December 13, 1988, at 10:00 a.m.; December 14, at 8:00 a.m.; Hubert Humphrey Building, Room 703A, 200 Independence Avenue SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should

BEST COPY AVAILABLE

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be sent to Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 12420 Parklawn Drive, Park Building, Room 1–24, Rockville, Maryland 20857, (301) 443–0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee. Those desiring to make such presentations should notify the contact person before December 2, 1988 and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion: Discussion at this meeting will be directed to the development of statements on a National Vaccine Policy and the mission of the National Vaccine Advisory Committee (NVAC), the development of NVAC positions on improving existing vaccines and resources, and funding for vaccine activities. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: November 21, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–27555 Filed 11–29–88; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–943–09–4212–24]

Modification of District Boundaries; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice.

SUMMARY: The purpose of this notice is to apprise the public of changes made in the location of administrative boundaries between the Idaho Falls and Burley Districts of the Bureau of Land Management. The change transfers administrative jurisdiction of approximately 167,913 acres from the Burley to the Idaho Falls District and transfers approximately 3,024 acres from the Idaho Falls to the Burley District to improve administrative efficiency.

EFFECTIVE DATE: October 18, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Wright, BLM, Burley District Office, Route 3, Box 1, Burley, Idaho 83318, 208–678–6623.

Pursuant to the authority vested in the Secretary of the Interior by the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) as amended and delegated to the Director, Bureau of Land Management by 235 DM 1.1., the boundaries of the Burley and Idaho Falls Districts are hereby modified as follows:

1. The boundary establishing administrative jurisdiction of lands managed by the Burley and Idaho Falls Districts, Bureau of Land Management is adjusted so as to transfer administrative responsibilities for all public land within the following described legal subdivisions from the Burley to the Idaho Falls District Offices.

All vacant, unappropriated public land in Power County:

Boise Meridian

T. 6 S., R. 34 E.
All.
T. 7 S., R. 34 E.
All.
T. 8 S., R. 34 E.
All.
T. 9 S., R. 34 E.
All.
T. 9 S., R. 35 E.
All.

2. The boundary establishing administrative jurisdiction of lands managed by the Idaho Falls and Burley Districts, Bureau of Land Management is adjusted so as to transfer administrative responsibilities for all public land within the following-described legal subdivisions from the Idaho Falls to the Burley District Offices:

All vacant, unappropriated public land in Bannock County:

Boise Meridian

T. 10 S., R. 35 E.
All land south of a line running southeast from the northeast corner of the NW¼ of sec. 3 southeast corner of sec. 12.
T. 11 S., R. 35 E.
Secs. 4 and 9.

3. Since the Idaho Falls District has within its administrative boundary a major portion of the Fort Hall Indian Reservation, the administrative boundary between the Burley and Idaho Falls Districts, Bureau of Land Management is further amended to include in the Idaho Falls District administrative boundary that part of the Fort Hall Indian Reservation within the area described below:

Boise Meridian

T. 5 S., R. 32 E.
All.
T. 5 S., R. 33 E.
All.
T. 6 S., R. 32 E.
All.
T. 6 S., R. 33 E.
All.
T. 7 S., R. 32 E.
All.
T. 7 S., R. 33 E.
All.
T. 8 S., R. 32 E.
All.
T. 8 S., R. 33 E.
All.
T. 9 S., R. 32 E.
All.
T. 9 S., R. 33 E.
All.
T. 10 S., R. 33 E.
Secs. 1 to 5 inclusive;
Sec. 6 NE¼, SE¼NW¼;
Sec. 8, NW¼NE¼, N½NW¼, SE¼NW¼, E½SW¼, SW¼SW¼, SE¼;
Secs. 9 to 12, inclusive.
T. 10 S., R. 34 E.
Secs. 6 and 7.

This transfer of jurisdiction, which became effective on October 18, 1988, will not affect the status or use of the public lands involved.

Pieter J. Van Zanden,

Associate State Director.

Dated: November 18, 1988.

[FR Doc. 88–27605 Filed 11–29–88; 8:45 am]

BILLING CODE 4310–GG–M

[UT–080–09–4830–12]

Utah Vernal District; Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Vernal District Advisory Council Business Meeting.

SUMMARY: Notice is hereby given that the Vernal District Advisory Council will hold a business meeting on Monday, November 14, 1988, commencing at 6:30 pm. The meeting will be held in the Vernal District Office Conference Room at 170 South 500 East, Vernal, Utah.

Meeting agenda will include the following items:

1. The Archer Phosphate Exploration Permits,
2. The Diamond Mountain Resource Management Planning Effort,
3. The Brown's Park Prescribed Burns,
4. Follow-up issues from the Book Cliffs summer tour, and
5. Items at large from the Advisory Council.

The meeting is open to the general public and a brief period will be allotted for the public to address the council should they desire to do so. Those who desire to comment must contact the District Manager, David E. Little, no later than Wednesday, November 9th. In the event that several folks should want to comment, it may be necessary to place a time limit on each presentation.

Persons with questions or desiring more information about this notice should contact: David E. Little, District Manager, Vernal District Office—BLM, 170 South 500 East, Vernal, UT 84078, (801) 789–1362.

A written copy of the proceedings of the business meeting will be maintained at the District Office and will be available for public review.

Sincerely,

David E. Little,

District Manager.

Date: November 3, 1988.

[FR Doc. 88–27608 Filed 11–29–88; 8:45 am]

BILLING CODE 4310–DQ–M

[OR 40438; OR–080–09–4212–14; GP9–047]

Proposed Direct Sale, Oregon

November 22, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 2 S., R. 6 E.,
Sec. 23, Lot 2

Containing 0.73 acres in Clackamas County, Oregon.

The above-described land has not yet been appraised. Anyone wishing to know the appraised value may inquire at the address shown below.

Upon publication of this notice in the **Federal Register**, the above-described land will be segregated from appropriation under the public land laws, including mining laws, except the mineral leasing laws. The segregative effect of this notice shall terminate upon issuance of the patent, upon publication in the **Federal Register** of a termination of the segregation or 270 from the date of publication, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. The parcel contains a residence, which overlooks the Sandy River, and is located in an area zoned "Rural Residential/Farm Forest/5-acre minimum lot size" by Clackamas County. The sale is consistent with the Eastside Management Framework Plan and the public interest will be served by offering this land for sale.

The parcel is being offered to Robert W. Messman using direct sale procedures authorized under 43 CFR 2711.3–3 because of his equity in the improvement. The land will be sold to Mr. Messman at fair market value without competitive bidding.

Terms and Conditions

The terms, conditions, and reservations applicable to the sale are as follows:

1. Mr. Messman will be required to submit proof that he is a U.S. citizen and is 18 years of age or more. He will also be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than 20 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with section 209 of the Federal Land Policy and Management Act. Mr. Messman must include with his bid deposit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

4. The patent will be issued subject to all valid existing rights and reservations of record.

5. Mr. Messman will be required to execute a perpetual scenic easement to the United States which constitutes a covenant running with the land, that bars the cutting or disturbance of the vegetation on that portion of the land forming the steep bank along the Sandy River.

Detailed information concerning the sale is available for review at the Salem District Office, address below.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments regarding the proposed sale to the Clackamas Area Manager, Salem District Office, 1717 Fabry Road SE., Salem, OR 97306. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Peter J. Schay,

Acting Clackamas Area Manager.

[FR Doc. 27606 Filed 11–29–88; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Land Management

[U–62285, U–62294, U–62295, U–62296, U–62297, U–62298 (UT–040–09–4212–14)]

Realty Action; Sale of Public Lands in Iron County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), public land described as follows is proposed for sale by competitive saled bidding at no less than the appraised fair market value:

Legal description	Acres	Appraised value	Parcel
T. 34 S., R. 17 W., SLM, Sec. 34, S½	320.00	$27,200.00	U–62285
T. 34 S., R. 16 W., SLM, Sec. 6, Lot 5	37.84	500.00	U–62294

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Legal description	Acres	Appraised value	Parcel
T. 34 S., R. 17 W., SLM, Sec. 35, NE¼	160.00	14,400.00	U-62295
T. 35 S., R. 17 W., SLM, Sec. 11, NW¼	160.00	14,400.00	U-62296
T. 35 S., R. 17 W., SLM, Sec. 14, NE¼	160.00	15,200.00	U-62297
T. 35 S., R. 17 W., SLM, Sec. 23, NW¼	160.00	14,400.00	U-62298
Total Acres	977.84		

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments must be submitted by February 17, 1989. The sale will be held on March 7, 1989 at 10:00 a.m.

ADDRESS: The Beaver River Resource Area Office at 444 South Main, Cedar City, Utah 84720, (801) 586–2458 is the location where detailed information concerning the sale, including bidding procedures, is available. This is also the address to which comments should be sent and the location where the sale will be held.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1980, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights.

4. If the public lands are not sold pursuant to this notice, they will remain available for sale on a continuing basis until sold or removed from the market. Sealed bids for subsequent sales may be submitted at any time; however, they must be submitted at the Beaver River Resource Area Office and will only be opened at 10:00 a.m. the first Tuesday of each month.

Any comments received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Date: November 17, 1988.

Gordon R. Staker,

District Manager.

[FR Doc. 88–27607 Filed 11–29–88; 8:45 am]

BILLING CODE 4310-DQ-M

[CO–920–89–4111–15; COC41777]

Colorado; Proposed Reinstatement of Oil and Gas Lease

November 21, 1988.

Notice is hereby given that a petition for reinstatement of oil and gas lease COC41777 for lands in Rio Blanco County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from July 1, 1988, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective July 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236–1772.

Evelyn W. Axelson,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 88–27550 Filed 11–29–88; 8:45 am]

BILLING CODE 4310-JB-M

[AZ–020–09–4212–13; A–23177]

Public Land Exchange in Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Exchange, Public Land, Mohave County Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 18 N., R. 21 W.,
Sec. 19, NE¼, E½SE¼.
Containing 240.00 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Joseph E. & Sarah Ann Hancock, Frank Hood Trane and Allen Farwell Trane, of Bullhead City, Arizona, or their assigns:

Gila and Salt River Meridian

T. 20 N., R. 20 W.,
Sec. 23, W½SW¼SE¼, SW¼, S½NW¼, NW¼NW¼.
T. 27 N., R. 16 W.,
Sec. 1, S½SE¼.
T. 28 N., R. 15 W.,
Sec. 17, S½, of the west 1340 feet of lot 1, lots 2,3, and 4, except the west 1340 feet thereof.
T. 28 N., R. 16 W.,
Sec. 27, All;
Sec. 34, NE¼NE¼NW¼;
Sec. 35, N½NE¼NW¼NW¼, N½NW¼N W¼NW¼, SW¼NW¼NW¼NW¼.
Containing 1,085.12 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a) Right-of-way for ditches and canals pursuant to the Act of August 30, 1890.

2. Subject to: (a) Restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county flood plain regulations estblished under Resolution No. 84–10 adopted on December 3, 1984, as amended; (b) right-of-way to Joseph E. Hancock for a drainage channel diversion dike (AZ–14645).

Private lands to be acquired by the United States will be subject to the following reservation:

1. All minerals to the Santa Fe Pacific Railroad Company together with the right to prospect for, mine, and remove same.

2. Easement for a road.

The purpose of the exchange is to consolidate federal land to facilitate resource management in range, wildlife and recreation and to dispose of land with speculative development potential.

Publication of this Notice will segregate the subject lands from operation of the public land laws and the mining and mineral leasing law, but not Title V of the Federal Land Policy and Management Act of 1976. This segregation will terminate upon the issuance of a deed or patent or two years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Detailed information concering this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publications of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoeniz, Arizona 85027. Any Adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: November 21, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–27551 Filed 11–29–88; 8:45 am]

BILLING CODE 4310-32-M

[OR–942–09–4730–12: GP9–031]

Filing of Plats of Survey; Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 23 S., R. 8 W., accepted September 30, 1988
T. 28 S., R. 9 W., accepted September 30, 1988

Washington

T. 10 N., R. 18 E., accepted October 14, 1988

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE. Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: November 16, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–27549 Filed 11–29–88; 8:45 am]

BILLING CODE 4310-33-M

[NM–940–09–4730–12]

Filing of Plat of Survey; New Mexico

November 15, 1988.

The plats of survey described below are on open file in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, pending official filing. Effective at 10:00 a.m. on January 16, 1989, they will be considered to be officially filed.

A survey representing: The dependent resurvey of a portion of the subdivisional lines and the subdivision of section 21, Township 12 North, Range 10 West, Indian Meridian, Oklahoma, executed under Group No. 52. Officially filed, effective on January 16, 1989.

The dependent resurvey of a portion of the Third Standard Parallel North, a portion of the subdivisional lines, a portion of the adjusted record meanders of the right bank of the North Fork of the Canadian River in section 2, and the reestablishment of a portion of the 1873 left bank, the survey of partition lines, and the survey of the 1873 medial line of the avulsed portion of the North Fork of the Canadian River in section 2, Township 12 North, Range 7 West, Indian Meridian, Oklahoma, executed under Group 52. Officially filed, effective on January 16, 1989.

The supplemental plat correcting lottings in section 22, Township 12 North, Range 10 West, Indian Meridian, Oklahoma.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

John P. Bennett,

Chief, Branch of Cadastral Survey.

[FR Doc. 88–27567 Filed 11–29–88; 8:45 am]

BILLING CODE 4310-FB-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–190]

Certain Softballs and Polyurethane Cores Therefor; Decision To Review Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review an initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation and to request briefs on the issues under review. Notice is also given that the commission has determined to defer consideration of Motions Nos.190–39–C and 190–41–C until its review of the ID.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S International Trade Commission, 500 E St., SW., Washington, DC 20436, telephone 202–252–1092. Hearing-impaired individuals may contact the Commission's TDD terminal at 202–252–1810.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rules 210.53–.56 (53 FR 33070–71, Aug. 29, 1988). On September 22, 1988, the presiding administrative law judge (ALJ) issued an ID in the investigation finding no violation of 19 U.S.C. 1337. Complainant Lannom Manufacturing Co., Inc., and the Commission investigative attorney (IA) have petitioned for review of that ID. A response to the IA's petition was filed by respondent Success Chemicals Co., Ltd.

Having examined the record in this investigation, including the ID, the petitions for review, and the response to the IA's petition, the Commission has concluded that review of the ID is warranted on the issues of patent infringement, industry, efficient and economic operation, and injury. The

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Commission is particularly interested in the following questions:

1. Whether the ID properly construed claim 3 of the patent in controversy, particularly as to the following issues:

a. The appropriate art or arts into which the claimed invention falls and the level of ordinary skill in that art or arts;

b. Whether the ID properly construed the term "flexible" as being a term of art rather than giving it its ordinary meaning; and

c. Whether the ID properly limited claim 3 to the two polyurethane formulations disclosed by name in the patent specification;

2. Whether the ID properly construed the terms in the phrase "appearance, physical characteristics and dimensions" in claim 3 and, if not, the proper construction of those terms;

3. Whether complainant or respondent has the burden of proof on the questions described in subparagraphs 1.a–1.c and 2, above;

4. Whether the ID properly found no infringement by the accused imported devices of Success and whether there is infringement by any of the other accused imported devices;

5. Whether the ID properly defined the relevant domestic industry; and

6. Whether the ID correctly found that the provisions of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) that eliminated the elements of (1) injury to the domestic industry and (2) efficient and economic operation of that industry are applicable to this investigation and whether, as a consequence, the ID's findings on efficient and economic operation and on effect or tendency to sustantially injure or destroy an industry in the United States should be vacated. In this regard, the Commission is particularly interested in the following questions:

a. Whether the provisions of the Omnibus Trade and Competitiveness Act of 1988 operate retroactively to deprive a respondent of a "right" to proof on injury to a domestic industry as a prerequisite to relief or as a defense in a section 337 investigation; and

b. Whether there is, in fact, such a right.

To the extent that parties to the investigation have already briefed these questions, their submissions in response to this notice may incorporate the relevant portions of the documents setting forth those arguments by reference.

Because the issues raised in Motions Nos. 190–39–C and 190–41–C are identical to the issues regarding the applicability of the OTCA, *supra*, the Commission has decided to defer consideration of those motions until it considers the issues in the context of the ID.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the firm of remedy, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject to the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions which address the aforementioned public interest factors in the context of this investigation.

If the Commission finds that a violation of section 337 has occurred and orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation and interested government agencies are encouraged to file written submissions on the issues under review and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Persons other than the parties and government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions must be filed by December 14, 1988. Reply submissions must be filed by December 23, 1988.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436, telephone 202–252–1000.

By order of the Commission.

Issued: November 23, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–27613 Filed 11–29–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–296 (Final)]

Certain Steel Wheels from Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–296 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of steel wheels,[1] provided for in item 692.32 of the Tariff Schedules of the United States (TSUS), that have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Brazil. Commerce also initiated an upstream subsidy investigation on steel wheels from Brazil. Commerce therefore has 165 days after its preliminary determination in which to issue its final determination and it is scheduled to make its final determination no later than April 7, 1989. The Commission will not establish a schedule for the conduct of this investigation until the Department of Commerce makes a preliminary determination in a currently ongoing antidumping investigation on steel wheels from Brazil. The date of that preliminary is scheduled to be January 5, 1989.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207 as amended, 53 FR 33034, August 29, 1988), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–252–1180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Brazil of certain steel wheels. The investigation was requested in a petition filed on July 29, 1988, by Kelsey Hayes Company, Romulus, MI. In response to that petition, the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 11351, April 6, 1988).

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3 as amended, 53, FR 33034, 33041), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to § 207.7 (a) of the Commission's rules (19 CFR 207.7(a), as amended 53 FR 33034, 33041), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been filed with all the parties that are authorized to receive such information under a protective order.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: November 23, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–27614 Filed 11–29–88; 8:45 am]

BILLING CODE 7020–02–M

[1] The products covered by this investigation are steel wheels currently provided for in item 692.3230 of the *Tariff Schedules of the United States Annotated (TSUSA)* and classifiable in *Harmonized Tariff Schedule (HTS)* subheading 8708.70.80. The merchandise includes steel wheels, assembled or unassembled, consisting of a disc and a rim, designed to be mounted with both tube type and tubeless pneumatic tires, in wheel diameter sizes ranging from 13.0 inches to 16.5 inches, inclusive, and generally for use on passenger automobiles, light trucks and other vehicles.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31358]

Central Michigan Railway Co. and Detroit & Mackinac Railway Co.; Joint Use of Track and Terminal Facilities Exemption

Central Michigan Railway Company (CMR) and Detroit & Mackinac Railway Company (D&M) have filed a notice of exemption for their joint use of track and terminal facilities in the Bay City, MI, area. Pursuant to the agreement between these railroads, CMR and D&M will jointly use CMR and D&M track between the Bay City, MI, area, and Kawkawlin, MI, that leads into their Bay City terminals, and these terminal facilities. Specifically, D&M and CMR will jointly use D&M's track and terminal facilities in the Bay City area from approximately Bangor Street to Wilder Street and from Wilder Street to the D&M/CMR junction near Marquette Street (and all D&M track connecting thereto). Additionally, D&M and CMR will jointly use the CMR track and terminal facilities from the CMR/D&M junction at Bay City to Derde Park and then to the CMR/D&M junction located near Boy Scout Street in Kawkawlin. Pursuant to this joint use arrangement, CMR and D&M will be able to route traffic more efficiently, and avoid the use of parallel, redundant tracks and terminal facilities. The transaction is expected to be consummated on or about November 19, 1988.

CMR and D&M are Class III railroads which are commonly controlled by the Straits Corporation, a holding company.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that will not result in adverse changes in service levels, significant operational changes, or a

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change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employees who may be affected by the transaction will be protected pursuant to *Norfolk & Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(3). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kimberly A. Madigan, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Ave., NW., Washington, DC 20005–4797.

Decided: November 9, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27188 Filed 11–29–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31351]

Fort Worth & Dallas Railroad Co.; Acquisition and Operation Exemption, Missouri Pacific Railroad Co.

Fort Worth & Dallas Railroad Company (FWDR) has filed a notice of exemption to acquire and operate approximately 1.29 miles of rail line of Missouri Pacific Railroad Company (MP) in Fort Worth, TX. The route consists of two non-contiguous segments. The first segment of 0.61 miles extends from milepost 736.30 at Northeast 21st Street, to a point near North Fort Worth Historical District; the second segment of 0.68 miles extends from the St. Louis Southwestern Railway Company junction near Northeast 23rd Street to a point near Northeast 28th Street.[1] FWDR will also acquire incidental trackage rights to operate over 1,646 feet of line between the two segments owned by St. Louis Southwestern Railway Company. The transaction was consummated November 4, 1988. Additionally, FWDR, which will be a Class III carrier, will issue securities, an exempt transaction under 49 CFR 1175.1.

Any comments must be filed with the Commission and served on Kevin M. Sheys, Weiner, McCaffrey, Brodsky, & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797, and Joseph D. Antlofer, Missouri Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

The Texas Historical Commission has determined that the involved transaction should have no effect on properties eligible for listing in the National Register of Historic Places. Therefore, no condition in this regard will be imposed.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 21, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27478 Filed 11–29–88; 8:45 am]

BILLING CODE 7035–01–M

[1] FWDR indicates that, except where indicated above, there are no milepost designations on either segment of this property.

[Finance Docket No. 31362]

Fort Worth & Dallas Railroad Co.; Trackage Rights—Fort Worth & Western Railroad Co.; Exemption

Fort Worth & Dallas Railroad Company (FWDR) has agreed to grant local and overhead trackage rights to Fort Worth & Western Railroad Company (FWWR) over two non-contiguous segments of FWDR's rail line located in Fort Worth, TX. The first segment extends from a point near Northeast 21st Street to a point near the North Fort Worth Stockyards Historical District. The second segment extends from the St. Louis Southwestern Railway Company's junction near Northeast 23rd Street to a point near Northeast 28th Street. The trackage rights became effective on or after November 12, 1988.

FWDR and FWWR are rail carriers commonly controlled by Tarantula Corporation.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

This notice is filed under 49 CFR 1180.2(d)(3) and (7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: November 21, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27477 Filed 11–29–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 304)]

Burlington Northern Railroad Co.; Abandonment Between Sutton and Clay Center in Clay County, NE; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 11.78-mile rail line between Sutton (milepost 106.46) and Clay Center (milepost 94.68) in Clay County, NE. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27504 Filed 11–29–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 268)]

CSX Transportation, Inc.; Abandonment; Between Abbeville and Grimes in Henry and Dale Counties, AL; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 26.73-mile rail line between Grimes (milepost ANF–789) and Abbeville (milepost ANF–816.0) in Henry and Dale Counties, Alabama. The abandonment certificate will become effective December 14, 1988 unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from the publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Decided: November 23, 1988.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27579 Filed 11–29–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 269)]

CSX Transportation, Inc.; Abandonment; Between Bremo and Dillwyn in Fluvanna and Buckingham Counties, Va; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 17.3-mile rail line between Bremo (milepost 0.0) and Dillwyn (milepost 17.3) in Fluvanna and Buckingham Counties, Virginia. The abandonment certificate will become effective December 14, 1988 unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from the publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Decided: November 23, 1988.

Noreta R. McGee,

Secretary.

[FR Doc. 88–27580 Filed 11–29–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *Hawaiian Electric Company, Inc. (HECO)*, Civil Action No. 88–00730 ACK, was lodged on October 3, 1988 in the United States District Court for the District of Hawaii. The Complaint in this action sought civil penalties and injunctive relief from HECO for operating a 141-megawatt, oil-fired, steam-electric generating unit near Kahe Point, Hawaii ("Kahe Unit No. 6") in violation of the Clean Air Act (the "Act"), 42 U.S.C. 7401, *et seq.* Specifically, HECO operated Kahe Unit No. 6 to emit particulate matter ("PM") and oxides of nitrogen ("NO_x") in excess of the emission levels set by the Environmental Protection Agency in a prevention of significant deterioration (PSD) permit issued to HECO on January 25, 1981. The proposed Consent Decree requires HECO to pay a civil penalty of $79,000. The Consent Decree also requires HECO to install low-NO_x burners which will satisfy the control technology requirements for NO_x for the PSD permit, and establish a process whereby HECO may apply for and receive revised permit limits for PM.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hawaiian Electric Company, Inc. (HECO)*, D.J. Ref. No. 90–5–2–1–1123.

The Consent Decree may be examined at the office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California, 94105, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Washington, DC 20530, Room 1541. Copies of the Consent Decree can be obtained in person or by mail from the Environmental Enforcement Section at the above address. There is a copying charge of $1.80 reflecting a rate of $.10 per page for the 18-page decree. Checks should be made payable to the Treasurer of the United States.

After the requisit **Federal Register** Notice is published, the time period for comments has run, and the comments, if any, have been evaluated, the court will be further advised as to any action which may be required by the Court at that time. During the pendency of the Register Notice comment period under 28 CFR 50.7, no action is required of the Court.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–27563 Filed 11–29–88; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 7, 1988 through November 18, 1988. The last biweekly notice was published on November 16, 1988 (53 FR 46136).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed

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amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 30, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit No. 1, Brunswick County, North Carolina

Date of application for amendment: July 11, 1988

Description of amendment request: The amendment would revise the Technical Specifications to change the operability and surveillance requirements related to the anticipated transient without scram (ATWS) recirculation pump trip (RPT) instrumentation. Specifically it would allow modification of the recirculation pump trip logic from one-out-of-two to two-out-of-two. In addition it would permit replacing the existing digital pressure instrumentation with analog instrumentation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists, as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided the following analysis to support the finding that the proposed changes do not involve a significant hazards consideration:

1. The revised action statements provided for Technical Specification 3.3.6.1 and minimum number of channels required to be operable listed in Table 3.3.6.1-1 reflect a design change which will enhance reliability of the RPT system and reduce the number of spurious recirculation pump trips caused by a single malfunctioning instrument. The revised action statements describe the actions to be taken if instruments, channels, or trip systems are inoperable. The change to the minimum number of channels required to be operable reflects a change in logic from one-out-of-two to two-out-of-two, which leads to fewer spurious pump trips and hence, fewer transients.

The action statements have been revised to accomplish essentially the same objective as the existing action statements for a new, more reliable, logic configuration. They continue to ensure that proper corrective measures are taken in a timely manner should any part of the instrumentation become inoperable. These actions are consistent with the guidance provided in the GE BWR-4 Standard Technical Specification.

The modified ATWS-RPT system will provide additional assurance that the recirculation pumps will trip when necessary. The modified system will also provide assurance that the pumps will not trip unnecessarily and thereby initiate a plant transient situation. Since plant transients may act as initiators to accidents, reducing the potential for a transient should reduce the possibility of an accident. Therefore, the proposed change does not cause an increase in the probability of an accident.

The ATWS-RPT system mitigates the consequences of an ATWS event. If the pumps do not trip in an ATWS event, the consequences of the event are worsened. Therefore, by increasing the reliability of the ATWS-RPT system and thereby increasing the likelihood that the recirculation pumps will trip when necessary, the consequences of an ATWS event will be reduced.

Replacing the existing digital reactor vessel pressure switches with an analog pressure transmitter/master trip unit configuration will result in increased system reliability. General Electric Licensing Topical Report NEDO-21617-A, dated December 1978, describes the analog transmitter/trip unit system for engineered safeguards sensor trip input. The analog pressure transmitters and master trip units are more accurate and do not exhibit the calibration drift characteristics inherent in the existing digital pressure switches. The proposed surveillance schedule for the analog instrumentation will ensure equipment operability and is consistent with the required test frequencies for other analog equipment. In addition, the analog configuration is functionally equivalent to the existing digital components. Therefore, the digital-to-analog instrumentation modification cannot cause an increase in the probability of any accident, nor can it cause a change in the consequences of an accident.

2. The ATWS-RPT system is a mitigative system; i.e., it causes the recirculation pumps to trip in response to a signal indicating an ATWS event is taking place as opposed to initiating some type of event. By increasing the reliability of the ATWS-RPT function, the potential for mitigation of an ATWS event is enhanced. No other accident situations are affected, and no new accidents could be initiated by the enhanced ATWS-RPT logic. The only accidents transients affected are the ATWS event, whose consequences are improved by the logic change, and the tripping of one or both the recirculation pumps, which are previously analyzed conditions. Thus, no new accident situations are created.

The proposed modification will enhance the ATWS-RPT system reliability and improve system performance. The digital-to-analog instrumentation change provides a more accurate and reliable sensing system. It does so in essentially the same manner as before; only with a new, more accurate instrument. Therefore, the proposed change does not create the possibility of a new or different type of accident.

3. The logic change will result in fewer spurious recirculation pump trips due to a single malfunctioning instrument and will enhance the reliability of the ATWS-RPT system. The instrumentation will ultimately provide at least the same amount of protection as the existing instrumentation; i.e., the recirculation pump will trip on signals from reactor vessel water level and/or reactor vessel pressure. Therefore, the margin of safety is not reduced.

The replacement of the existing digital instrumentation with analog equivalents provides a more reliable means of tripping both recirculation pumps under ATWS conditions. Operability of the ATWS-RPT system is assured through the surveillance requirements provided in Table 3.3.6.1-3. The surveillance requirements for the new instruments provide at least the same operability assurance as the existing requirements. Therefore, the margin of safety is not reduced.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's analysis and agrees with the determination. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit No. 1, Brunswick County, North Carolina

Date of application for amendment: August 1, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to support Cycle 7 operation, as detailed in the licensee's submittal dated August 1, 1988. Attached to the submittal is a comprehensive reload licensing report prepared by the General Electric Company, in support of the licensee's application for technical specification changes.

The proposed amendment would specifically change the TS to (1) revise the minimum critical power ratio (MCPR) safety limit, (2) modify operating limits (average power range monitor (APRM) setpoints, MCPR values, maximum average planar linear heat generation rate (MAPLHGR) values and linear heat generation rate (LHGR) requirements) for Cycle 7, (3) revise the values of mu and sigma found in Specification 3.2.3.2 to conform to the

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advanced GEMINI/ODYN analysis methods and add a reference to notch 36 for Specification 3.2.3.2, (4) redefine Critical Power Ratio and Physic Tests, and (5) change the bases statements accordingly to reflect the above described changes.

The value of the MCPR safety limit will be changed from 1.07 to 1.04. A new methodology is being used to justify the 1.04 value and the margin of safety is not being reduced. This new methodology has been approved elsewhere, including Brunswick, Unit 2.

Various changes will be made to MCPR limits, APRM setpoints, MAPLHGR limits, and LHGR limits for all fuel types that will be used in Cycle 7. Similar TS will be deleted for those fuel types no longer in residence in the core during Cycle 7.

The new reload fuel for Cycle 7 is the GE extended burnup barrier fuel. The new fuel has been generically approved for use by NRC and has also been approved for use in multiple plant specific applications, including Brunswick, Unit 2. The generic approval can be found in the NRC safety evaluation for NEDE-24011-P-A, General Electric Standard Application for Reactor Fuel (GESTAR II), Amendment 10.

The values for mu and sigma found in Specification 3.2.3.2 reflect the GESTAR II (NEDE-24011-P-A) requirement to conform with the advanced GEMINI/ODYN analysis methods for the Option B scram time insertion. Use of the GEMINI method has been previously reviewed and approved by the NRC for evaluation of operating limit MCPR values in the Safety Evaluation Report for Amendment 11 to GESTAR II (NEDE-24011-P-A). The revised mu and sigma values are appropriate for 20% scram insertion time requirements (defined as the time from de-energization of the scram pilot valve solenoid to pickup of the control rod notch position 36 reed switch). In addition, a reference to notch 36 has been added to the Specification 3.2.3.2 limiting condition for operation (LCO) for consistency. Notch 26 has already been established in this LCO as the control rod position corresponding to the 20% scram time position.

The current definition of CPR specifies that the CPR is calculated by application of the GEXL correlation. The NRC has approved several CPR correlations. The change would specify the use of NRC approved CPR correlations.

The current definition for Physics Tests references a description in Section 13 of the Final Safety Analysis Report (FSAR). The reference will now reflect Section 14 of the updated FSAR.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analyses to support a no significant hazards consideration determination for the change involving the MCPR safety limit.

1. The NRC accepted methodology used to derive the upgraded safety limit MCPR of 1.04 applies the same criteria as that used to derive the current safety limit MCPR of 1.07. The upgraded safety limit MCPR value of 1.04 assures that fuel cladding protection equivalent to that provided with the 1.07 safety limit is maintained. Thus, the consequences of accidents previously evaluated are not significantly increased. The safety limit MCPR does not affect any physical system or equipment which could change the probability of an accident. Therefore, the proposed change does not involve a significant increase in the probability of any accident previously evaluated.

2. Adoption of proposed MCPR safety limit value does not affect the function of any component or system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The accidents analyzed in Chapter 15 of the Updated FSAR are not affected by the change in the safety limit MCPR. The 1.04 safety limit MCPR is applicable to GE8 fuel designs and assures that fuel cladding protection equivalent to that provided with the 1.07 safety limit is maintained. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The licensee has provided the following analyses to support a no significant hazards consideration determination for the changes involving operating limits (MAPLHGR, LHGR, APRM, and MCPR).

MAPLHGR (GE8 Fuel Design):

1. The MAPLHGR fuel design limits do not act as initiators to any accident and thus have no affect on the probability of any accident. As a fuel design limit, the average planar exposure dependent MAPLHGR limits ensure that the peak cladding temperature does not exceed the PCT limit specified in 10CFR50, Appendix K for a design basis LOCA and the thermo-mechanical stress limits are met. This is exactly the same purpose as MAPLHGR limits for the previously approved fuel types. The purpose of these curves is and has been to allow the fuel to be operated as close to the acceptable limits as practical. The curves for the new fuel type continues to perform that function and as such will not significantly increase the consequences for any accident previously analyzed.

2. The proposed change adds MAPLHGR limits for the GE8 fuel type to be used in Cycle 7. This change does not affect the function of any component or system including those that mitigate the accident (LOCA) from which this limit is derived. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The MAPLHGR limits for the GE8 fuel design for use in Cycle 7, as well as those for other fuel types, have been developed to allow the fuel to be operated as close to the acceptable PCT and strain limits as is practical. The margin of safety is thus comparable to that of previous MAPLHGR limits. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

LHGR (GE8 Fuel Design):

1. The LHGR limit ensures that excessive cladding strain does not occur during normal operation due to thermo-mechanical stresses. Addition of the LHGR limit for the GE8 fuel design cannot affect the probability of any accident. The consequences of anticipated operational occurrences are not affected directly by LHGR limits since the MCPR fuel design limits are derived such that the consequences of these events meet established criteria. The consequences of the postulated design basis LOCA are not directly affected by LHGR limits since the MAPLHGR fuel design limits are derived such that the consequences of this event meet the established criteria. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change adds the applicable LHGR limit for GE8 fuel which has been derived from the same methodology and acceptance criteria used for fuel designs present in Cycle 6. Therefore, the proposed amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The LHGR limit for each fuel design is established using an NRC approved methodology to ensure that excessive cladding strain does not occur due to thermo-mechanical stresses. The same methodology and acceptance criteria used for fuel designs present in Cycle 6 have been applied to establishing the LHGR limit for the GE8 fuel design. This has resulted in a margin of safety for the GE8 fuel design that is comparable to the margin established for existing fuel designs. Based on this reasoning CP&L has determined that the proposed amendment does not involve a significant reduction in the margin of safety.

APRM Total Peaking Factor (TPF) (GE8 Fuel Design):

1. The design TPF values for the various fuel designs are used to determine appropriate flow biased setpoints which prevent LHGR limits from being exceeded. In addition, it provides comparable probability that the assumptions used in the plant transient analyses are not violated at any operating power level when operating with large peaking factors. The design TPF is calculated directly from the LHGR limit for each fuel design using the same method that is used to calculate the maximum TPF. Addition of the design TPF for the GE8 fuel design cannot affect the probability of any accident. Use of a design TPF appropriate to the GE8 fuel design ensures the applicability of the assumptions used to evaluate transient conditions. This results in consequences comparable to the use of other design TPF values in tandem with the applicable fuel design. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Specification of the design TPF for the new GE8 fuel design present in Cycle 7 ensures that adjustment of monitoring setpoints is consistent for all fuel designs. The proposed change does not affect the function of any system or component. Based on this reasoning, CP&L has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The design TPF for the GE8 fuel design is calculated in the same manner as the values for the fuel designs present in Cycle 6 and is based on the LHGR limit applicable to the GE8 fuel design. The GE8 LHGR limit was evaluated using the NRC approved methodology with comparable cladding strain acceptance criteria. This methodology assures that comparable cladding protection exists. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Operating Limit MCPR (GE8 Fuel Design):

1. The consequences of the accidents analyzed in Chapter 15 of the Updated FSAR have been evaluated for Cycle 7 core conditions and are summarized in the [Supplemental Reload Licensing Report] SRLR. These consequences have been used to derive the operating limit MCPR values. The operating limits for previous cycles were similarly derived to assure that the MCPR did not fall below the MCPR safety limits for any anticipated operational occurrence. This ensures that the consequences of an accident are comparable. Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed revision of operating limit MCPR values does not affect the function of any component or system. Therefore, CP&L has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. An NRC approved methodology is utilized to determine the applicable operating limit MCPR values based on cycle specific core conditions, fuel designs and the applicable safety limit MCPR value. The application of this NRC approved methodology to determine the operating limit MCPR values does not change the criteria used to establish the fuel design safety limit MCPR. This ensures a margin of safety comparable to previous cycles. Based on this reasoning, CP&L has determined that the proposed change does not involve a significant reduction in the margin of safety.

Transient Limit MCPR (GE8 Fuel Design):

1. The proposed change specifies limiting transient operating limit MCPR values which are not accident initiators and, therefore, cannot affect the probability of any accident. The proposed values are appropriate for Cycle 7 core conditions and are used as necessary to determine the applicable operating limit MCPR values as described in the NRC approved GEMINI/ODYN methods. These operating limit MCPR values are the fuel design limits during operation at nominal rated conditions which provide assurance that the MCPR does not fall below the safety limit MCPR for any anticipated operational occurrence. The operating limits for previous cycles were similarly derived to assure that the MCPR does not fall below the MCPR safety limit for any anticipated operational occurrence. This ensures that the consequences of an accident are comparable. Based on this reasoning CP&L has determined that the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The revised limiting transient operating limit MCPR values do not affect the function of any component or system. Therefore, this proposed change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change specifies values that may be required for the proper determination of the operating limit MCPR values used to meet Criterion 10 of 10 CFR Part 50, Appendix A. These revised values are applicable to Cycle 7 core conditions based on evaluations performed to evaluate the fuel performance during anticipated operational occurrences in Cycle 7. The evaluations establish the operating limit MCPR which ensures the MCPR does not fall below the safety limit MCPR values during any anticipated operational occurrence such that the margin of safety is comparable to previous cycles. Based on this reasoning CP&L has determined that the proposed amendment does not involve a significant reduction in the margin of safety.

The licensee has provided the following analyses to support a no significant hazards consideration determination for the values of mu, sigma, and reference to notch 36 position.

Mu and Sigma:

1. The proposed change revises the numerical values of the formula for determining the ODYN Option B scram time limit which is used to select the applicable operating limit MCPR value. These operating limit MCPR values are the fuel design limits during operation at nominal rated conditions which provide assurance that the MCPR does not fall below the safety limit MCPR for any anticipated operational occurrence. The operating limits for previous cycles were similarly derived to assure that the MCPR does not fall below the MCPR safety limit for any anticipated operational occurrence. This ensures that the consequences of an accident are comparable. Based on this reasoning, CP&L has determined that the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change reflects the use of General Electric derived values of mu and sigma. The use of these values will not affect the function of any component or system. The use of values for statistical weighting in the determination of the ODYN Option B scram time limit cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change revises values required for the proper determination of the operating limit MCPR values used to meet Criterion 10 of 10 CFR Part 50, Appendix A. These revised values are applicable to the NRC approved GEMIN/ODYN methods used to evaluate the fuel performance during anticipated operational occurrences in Cycle 7. These evaluations establish operating limit MCPR values that ensure the MCPR does not fall below the safety limit MCPR values during any anticipated operational occurrence such that the margin of safety is comparable to previous cycles. Based on this reasoning CP&L has determined that the proposed amendment does not involve a significant reduction in the margin of safety.

Notch 36 Position:

1. The proposed change provides clarification to Specification 3.2.3.2. The specification references a cycle average 20% scram time. This scram time has been established as the time from de-energization of the scram pilot valve solenoid to pickup of the control rod notch position 36 reed switch. The proposed change provides a reference to notch 36 to clarify the basis for the scram time. Based on this reasoning, CP&L has determined that the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The 20% scram time limit is based on the time from de-energization of the scram pilot valve solenoid to pickup of the control rod notch position 36 reed switch. The proposed change provides clarification of the specification without changing the basis for or intent of the Technical Specification. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Adding the reference to notch 36 clarifies the basis for the specification, thereby helping to prevent misinterpretation. The proposed revision does not change the method of determining the 20% control rod scram time limit. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The licensee has provided the following analyses to support a no

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significant hazards consideration determination for the definition of Critical Power Ratio and Physics Tests.

CPR Definition

1. The proposed change replaces the reference to a specific CPR correlation with a general reference and further specifies that the correlation must be approved by the NRC. The requirement that the CPR correlation be approved by the NRC assures that the performance of the correlation has been compared against applicable test data and found to provide acceptable results. The CPR correlation is used in both monitoring and establishing a fuel design limit for the core conditions. The CPR correlation is not an accident initiator and cannot affect the probability of an accident. The operating limit MCPR values are the fuel design limits during operation at nominal rated conditions which provide assurance that the MCPR does not fall below the safety limit MCPR for any anticipated operational occurrence. The operating limit MCPRs for previous cycles were similarly derived to assure that the MCPR does not fall below the MCPR safety limit for any anticipated operational occurrence. This ensures that the consequences of any accident are comparable. Based on this reasoning, CP&L has determined that the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not alter the requirement that a CPR fuel design limit be monitored and, therefore, this change does not affect the function of any component or system. Use of an NRC approved CPR correlation therefore cannot create the possibility of a new or different kind of accident from any accident previously identified.

3. As stated previously, CPR correlations approved by the NRC are compared against applicable test data and must provide acceptable results. Applicable operating limit MCPR and safety limit MCPR values are established in a manner consistent with the CPR correlation. This ensures that the MCPR does not fall below the safety limit MCPR values during any anticipated operational occurrence such that the margin of safety is comparable to previous cycles. Based on this reasoning CP&L has determined that the proposed amendment does not involve a significant reduction in the margin of safety.

Physics Tests Definition

1. The proposed change is an administrative change to the TS to revise the FSAR reference specified in the definition of Physics Tests. This type of change is necessary to maintain accurate reference within the TS and has no impact on the actual specification. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change is purely administrative and will not alter the technical content contained in the definition of Physics Tests. The change merely provides an updated reference. Based on this reasoning, CP&L has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change merely revises the FSAR reference in the definition of Physics Tests and will have no impact on the TS. Revision of the FSAR reference is purely administrative and therefore, does not involve a significant reduction in the margin of safety.

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determinations and agrees with the licensee's analyses. Accordingly, the Commission proposes to determined that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of amendment request: August 12, 1986, as supplemented December 14, 1987, March 1 and April 18, 1988

Description of amendment request: The proposed amendment would substitute the standard fire protection license condition, discussed in Generic Letter (GL) 86-10, for the existing license condition 2.C(8) of Catawba Unit 1 Facility Operating License, NPF-35. The amended license condition 2.C(8) would then read:

Duke Power Company shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report, as amended, for the facility and as approved in the SER through Supplement 6, subject to the following provision below.

The licensee may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

In GL 86-10, the NRC staff recommended that licensees incorporate the approved plant fire protection program into the Final Safety Analysis Report (FSAR) and to adopt the standard license condition.

In the April 18, 1988 letter, the licensee proposed to include by reference, in the FSAR, all the documents that had been submitted to the staff regarding the fire protection program. Therefore, the staff concludes that the licensee's proposed amendment conforms with GL 86-10 guidance. Furthermore, this amendment would make the fire protection program license conditions identical for both Catawba Units.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated because both license conditions are essentially identical. The current license condition requires that changes to the approved fire protection program made without prior Commission approval be reported annually to the Director of Nuclear Reactor Regulation. The standard license condition in GL 86-10 requires licensees to submit the same information annually along with FSAR revisions required by 10 CFR 50.71. The two reporting methods are essentially equivalent.

The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because the design and operation of Catawba Unit 1 will not be affected.

The proposed amendment would not involve a significant reduction in a margin of safety because both the current and the standard license conditions are essentially identical.

Based on the above considerations, the Commission proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 15, 1988

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Tables 3.8-1A and 3.8-1B to add one Containment Penetration Conductor Overcurrent Protective Device to Table 3.8-1A for Unit 1 and Table 3.8-1B for Unit 2. These two devices were recently installed at Catawba Units 1 and 2 to provide remote control from outside containment for the reactor coolant pump standpipe drain valves. Thus the corresponding tables must be revised to reflect these additions.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated because the addition of the two overcurrent protective devices would be required to be operable through TS 3.8.4 Limiting Condition for Operation.

The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated because the design of the facility would not be significantly affected. The devices installed are similar to most of the devices already in use at the plant and the modification was evaluated in accordance with 10 CFR 50.59.

The proposed amendments would not involve a significant reduction in a margin of safety because adding these devices would provide additional protection which otherwise may not be available.

Accordingly, the Commission has determined that the above changes involve no significant hazards considerations.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: December 31, 1984, as superseded April 25, 1988

Description of amendment request: The proposed amendment would remove Table 3.6-1, Containment Isolation Valves, from the Technical Specifications (TS), and relocate it to the Final Safety Analysis Report (FSAR) for Crystal River Unit 3 (CR-3). In addition, TS 4.6.1.1.a.1, 3.6.3.1, 4.6.3.1.1 and 4.6.3.1.2 would be revised to delete the references to Table 3.6-1. Finally, surveillance requirement 4.6.3.1.1 would be revised for clarification.

The operability of the containment isolation valves ensures that the containment atmosphere will be isolated from the outside environment in the event of a release of radioactive material to the containment atmosphere or pressurization of the containment. Although the proposed change involves the removal of Table 3.6-1, Containment Isolation Valves from the TS and its relocation to the FSAR, the requirement for containment isolation valve operability will still remain in the TS, as well as the action statements and surveillance requirements. The relocation of this table is an administrative matter which would allow future changes to be made without a license amendment, which would relieve both the NRC and Florida Power Corporation (FPC) of an administrative burden. Maintaining the table in the FSAR would also assure that the information is still available to the operators. Changes to the table will be controlled under the provisions of 10 CFR 50.59 as a change to the facility. In addition, due to the proposed relocation of Table 3.6-1 from the TS to the FSAR, references to the table would be deleted in TS 4.6.1.1.a.1, 3.6.3.1, 4.6.3.1.1, and 4.6.3.1.2.

Finally, the proposed change to surveillance requirement 4.6.3.1.1 would clarify that when work is done on a valve that would not affect the valve's performance, a valve stroke test is not required. Valve preventive maintenance or handwheel replacement which would not degrade valve performance would not need a stroke test. Work which could affect valve performance would still require the retest, thus no existing safety margins are affected.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed relocation of Table 3.6-1 from the TS to the FSAR against the standards provided above and has made the following determination:

Florida Power Corporation (FPC) proposes that this amendment does not involve a significant hazards consideration. The removal of the tabular listing of containment isolation valves from Technical Specifications has no impact on plant operation or safety. The Technical Specifications will continue to require containment isolation valves (CIV's) to be operable. Appropriate actions to be taken if the CIV's are inoperable will remain in Technical Specifications. The surveillance requirement in Technical Specifications will still require testing if work was performed on a valve which could affect the valve's performance.

Changes to the CIV table will be controlled under the provisions of 10 CFR 50.59 as a change to the facility.

Based on the above, FPC finds that the amendment will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated because the removal of the containment isolation valve listing does not impact the existing valve operability requirements.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require physical modification to the plant.

3. Involve a significant reduction in the margin of safety. Any reduction in the margin of safety will be insignificant since the provisions of 10 CFR 50.59 will be applicable, and as such, an application for a license amendment will be submitted in accordance with 10 CFR 50.90, [if the change were to result in a significant reduction in margin].

The staff has performed a preliminary review of the licensee's analysis of the proposed change and agrees that the standards of 10 CFR 50.92 are met. In addition, the Commission has provided

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guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7750). One of the examples of actions involving no significant hazards considerations is example (i), a purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed deletion of the references to Table 3.6-1, as well as the clarifying change to surveillance requirement 4.6.3.1.1, are consistent with the standard in example (i).

Therefore, the staff proposed to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: March 29, 1985

Description of amendment request: The proposed amendment would add operability and testing requirements to the Technical Specifications for the reactor trip breaker shunt trip attachment, in response to the NRC staff's request pursuant to Generic Letter 83-28, Item 4.3.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of the examples of actions involving no significant hazards considerations is example (ii), "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed change to the Crystal River Technical Specifications will add a footnote to the monthly and startup functional tests of the control rod drive trip breakers to require testing of the short and undervoltage trip circuits. Since this change will provide an additional surveillance requirement in the Technical Specifications, the change in this case falls within the scope of the example. Therefore, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: November 16, 1987, revised August 25, 1988

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 (CR-3) Technical Specifications (TS) to accurately reflect the design basis for the maximum seawater (ultimate heat sink) temperature. The current maximum seawater temperature contained in the TS is 105° F. However, the maximum seawater temperature referenced in the Crystal River Unit 3 Final Safety Analysis Report, Section 9.5.1, is 85° F, which was utilized for the design of the Nuclear Services and Decay Heat Seawater System. Since that time the licensee has performed an analysis of this system, and proposes to revise the TS to accurately reflect the analysis results for a maximum seawater temperature of 95° F.

The Nuclear Services and Decay Heat Seawater System removes heat from closed cycle cooling systems serving plant components essential to the safety of the plant. Elevated seawater temperatures will reduce the heat removal capability of this system and affect the ability to adequately cool the closed cycle cooling (SW & DC) systems and their associated components. This revision to the TS will provide more assurance that the heat removal capability of the Nuclear Services and Decay Heat Seawater System is maintained since it would accurately reflect the maximum value utilized in the current analysis.

The original design requirements of the SW system and DC system limited the maximum allowable temperature to 105° F following an accident, based on a seawater temperature of 85° F. To envelope the worst case seawater temperature ever recorded at CR-3 and to ensure that all required analyses would not have to be repeated in the future, a seawater temperature of 95° F was assumed for all SW and DC systems thermal analyses.

With the temperature of the Nuclear Services and Decay Heat Seawater System fixed, transient temperature profiles were developed for both the SW and DC systems as a function of time. These worst-case analyses established peak temperatures of 110° F and 120° F for the SW and DC systems, respectively. The licensee has received confirmation from all of its vendors who supplied equipment serviced by either the SW system or the DC system that their equipment meets all design requirements with the increased temperatures. Consequently, with a maximum ultimate heat sink temperature of 95° F, all equipment essential to the safety of plant served by either the SW or DC systems will remain operable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above that has made the following determination:

Florida Power Corporation (FPC) proposes the change to the maximum Ultimate Heat Sink temperature does not involve a significant hazards consideration. The change of the maximum Ultimate Heat Sink temperature is being made to reflect the maximum value utilized in the analysis to the Nuclear Services and Decay Heat Seawater System. This maximum temperature is adequate to assure that the required heat removal capability of the Nuclear Services and Decay Heat Seawater System is maintained.

Based on the above, FPC finds that this change will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated because the proposed Ultimate Heat Sink maximum temperature reflects the analysis performed for the

Nuclear Services and Decay Heat Seawater System.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require physical modification.

3. Involve a significant reduction in the margin of safety because the proposed maximum Ultimate Heat Sink temperature is more restrictive than the existing Technical Specification limit. This temperature has now been revised to reflect the Nuclear Services and Decay Heat Seawater System analysis.

The staff has made a preliminary review of the licensee's analysis of the proposed change and agrees with the licensee's conclusion that the proposed amendment does not involve significant hazards considerations. Therefore, the staff proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: May 4, 1988

Description of amendment request: This amendment would revise the listing of components subject to 10 CFR Part 50 appendix J leak testing to conform to recent piping modifications made on containment penetration No. 417.

Basis for proposed no significant hazards consideration determination: GPUN Nuclear Corporation has reviewed this proposed change in accordance with 10 CFR Part 50.92(c) and has determined that the proposed change does not constitute a significant hazards consideration based upon the following evaluation.

1. Operation of Three Mile Island Nuclear Station, Unit-1, in accordance with this change would not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed Technical Specification change does not modify or create any accident initiating condition. This change only provides an update of the list of components subject to 10 CFR 50 Appendix J Type "B" tests to add additional components to the list and deletes the Type "C" test requirements for two valves that will no longer serve the function of a containment isolation valve.

2. Operation of Three Mile Island Nuclear Station, Unit-1, in accordance with this change would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed Technical Specification change does not modify or create any accident initiating condition. The piping configuration that will result from the modification to penetration No. 417 meets Criterion 56 of the General Design Criteria, 10 CFR 50 Appendix A. The proposed specification 4.4.1.2.1 will result in technical specification requirements that match the requirements of 10 CFR 50 Appendix J.

3. Operation of Three Mile Island Nuclear Station, Unit-1, in accordance with this change would not involve a significant reduction in a margin of safety because all Updated Final Safety Analysis Report (USAR) assumptions remain unchanged. The proposed changes to the LLRT test requirements in Technical Specification 4.4.1.2.1 will result in technical specification requirements that match the requirements of 10 CFR 50 Appendix J. The modification to penetration No. 417 will improve the leakage protection capability of this penetration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: October 25, 1988

Description of amendment request: The proposed amendment adds three reference clarifications to Section 6 of the Technical Specifications (TS).

TS 6.4.1.6 provides a list of Plant Review Board responsibilities. This amendment adds an additional phrase to Item "e" that specifically identifies changes to Section 16.3 of the Final Safety Analysis Report (FSAR) as requiring Plant Review Board review.

TS 6.7.1 identifies activities for which written procedures must be established. Item "i" of Section 6.7.1 is the Technical Specifications Improvement Program. The proposed change provides a reference to Section 16.3 of the FSAR which describes the program.

The footnote on TS Table 6.2-1 states that the STA position may be filled by the Operations Supervisor or an SRO who meets qualifications for the STA as required by NRC. However, it doesn't specifically identify the NRC requirements. The addition to this footnote identifies the NRC requirements as those stated in the "Policy Statement on Engineering Expertise on Shift," dated October 28, 1985.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed changes will not significantly increase the probability or consequences of an accident previously evaluated. The changes are editorial in that they only provide improved references, and do not involve any physical changes to the plant, any changes to procedures, commitments or safety analyses. The changes do not affect operation, maintenance, or testing of the plant, therefore, the response of the plant to previously evaluated accidents will remain unchanged.

2. The proposed changes do not create the possibility of a new or different kind of accident than any previously evaluated. Since no change is being made to the design, operation, maintenance, or testing of the plant a new mode of failure is not created. A new or different kind of accident could therefore not result.

3. The proposed changes do not significantly reduce a margin of safety. The changes do not alter any of the requirements of the Technical Specifications. They do not represent any deviations from current requirements, practice or design, therefore margins of safety are not reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

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Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Altanta, Georgia 30043.

NRC Project Director: David B. Matthews

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 31, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications for containment penetration circuit breaker testing by clarifying the test requirements for integrated functional testing and by adding the surveillance requirements to Table 3.8-1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee proposes to clarify Table 3.8-1 by distinguishing those penetration protective devices that require integrated functional testing from those that require functional testing or channel calibration. The proposal is not intended to define components with reduced testing requirements and from this standpoint, the proposal does not result in any physical change. Surveillance requirements are incorporated into the table making it more prescriptive with less chance to misinterpret.

The licensee has provided an analysis as follows:

The probability of electrical penetration failure remains unchanged from the intended design. Improved surveillance testing assures the electrical penetration seals the containment as designed. Similarly, the consequences of the design basis accidents remain the same after implementing the new surveillance.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The surveillance applied to the primary 6900V breakers extends to the backup 4160V breakers which can trip via time-delay signals. The plant response remains unchanged. The plant's assurance that the backup 4160V breaker will respond to the time-delay trip increases. The design of the time-delay circuit and the backup 4160V breakers remain unaffected by this technical specification change; therefore, potential failure modes remain unchanged. The probability of a failure and accident remains the way the licensed design assumes because no equipment change results from this technical specification change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The reliability of the CEDM Cooling Units, Polar Crane and Pressurizer Heater conductor insulation seal against the penetration increases following the institution of this surveillance on backup 4160V breakers. The margin of safety in technical specification bases remains the same following this change. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

We have reviewed the licensee's determinations and agree. Based on the above, the staff proposed to determine that the amendment does not involve a no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of appplication for amendment: October 18, 1988

Description of amendment request: The proposed change would modify Technical Specification 4.2, "Equipment and Sampling Tests", which provides testing requirements for selected plant equipment. The proposed change modifies the specified surveillance interval for the Control Element Assembly (CEA) partial movement test in Table 4.2-2 from performance once every two weeks to monthly to agree with the Combustion Engineering standard technical specifications.

Basis for proposed no significant hazards consideration: The proposed change has been evaluated against the standards of 10 CFR 50.92 and has been determined not to involve a significant hazards consideration because operation of Maine Yankee per this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change has an insignificant impact on plant and public safety. After 15 years of operation, and more than 300 Control Element Assembly (CEA) partial movement tests, a CEA has never been found at Maine Yankee that would not have tripped on demand. Further, it is expected that any potential failure mechanism would develop slowly over time. Therefore, a change from a two week to a monthly test interval is expected to have little or no impact on the probability of finding a signficant number of mechanically stuck CEA's during a test. Also changing the frequency at which CEAs are tested has no impact on the consequences of a fail-to-scram accident. No safety systems or functions relied on to mitigate the consequences of such an event will be affected by this change. Therefore, that the proposed amendment to increase the Control Element Assembly partial movement test interval does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment changes the frequency at which CEA's are tested. Changing the frequency of CEA testing does not result in a change in the failure modes of the CEA's. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a singificant reduction in a margin of safety. The change, in the margin of safety is expected to be so small that it is insignificant. Relaxation of the existing CEA partial movement test interval can be obtained without increasing CEA failure to scram probabilities above those previously accepted by the NRC. The NRC has approved operation of other CE plants in accordance with CE standard Technical Specifications and this change is in accordance with CE standard Technical Specifications. Therefore, the proposed amendment does not involve a signficant reduction in a margin of safety.

Based upon the above considerations, the Commission has determined that this change does not involve a signficant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street P.O. Box 367, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritscher, Esq.,Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: R. Wessman

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: October 26, 1988

Description of amendment request: This amendment request would modify Administrative Control requirements under Technical Specification 5.2, Organization, to delete the offsite and facility organization charts, Figures 5.2-1 and 5.2-2, respectively, and replace this information with organizational requirements of a more general nature while retaining those organizational requirements that affect the safe operation of the plant. This approach and the proposed change are consistent with NRC's Generic Letter 88-06.

Basis for proposed no significant hazards consideration: The proposed changes to the Technical Specifications to replace the organizational charts with general organizational requirements have been evaluated against the standards of 10 CFR 50.92 and have been determined to not involve a significant hazards consideration. These proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

These proposed changes to remove the organizational charts, while retaining those aspects of the company organization important to safety, in Technical Specifications 5.2 are administrative in nature and have no effect on the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Since there are no changes in plant design or operation, inclusion of the proposed changes in the technical specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety. The aspects of organizational charts which are important to safety have been retained in Technical Specification 5.2, consistent with NRC guidance in Generic Letter 88-06. Charts depicting the offsite and facility organization are maintained and updated, as necessary, in Section 12.1 of the Maine Yankee FSAR. Therefore, adoption of the proposed change would not involve a significant reduction in safety margin for the plant. The Commission has concluded that the proposed changes to the Technical Specifications do not involve a significant hazards consideration as defined by 10 CFR 50.92.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: R. Wessman.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: November 1, 1988

Description of amendment request: The proposed change to the Cooper Nuclear Station Technical Specifications involves four separate miscellaneous revisions.

The first of the four changes affects Limiting Safety System Setting (LSSS) 2.1.A.5 on page 9 of the Cooper Nuclear Station (CNS) Technical Specifications. This change would delete the pressure permissive from the MSIV Closure Scram Trip Setting. The current Technical Specification LSSS requires a scram trip signal prior to 10% MSIV closure, when above 1000 psig reactor pressure, in 3-out-of 4 main steam lines. This change would delete "when above 1000 psig reactor pressure", and add ", and the reactor mode switch is in the "Run" position."

The second proposed change would revise Section 4.4.A.2.c on page 108 of the CNS Technical Specifications. This section requires the actuation of the explosive charge in one of the two loops of Standby Liquid Control once each operating cycle. The replacement explosive valve is currently required to come from the same manufacturer's batch as the valve just test fired. This proposed change would revise Specification 4.4.A.2.c to allow the replacement explosive valve to come from a previously tested manufacturer's batch.

The third proposed change revises Table 3.7.1 on page 168 of the CNS Technical Specifications. The Component Identification Code for one of the Drywell Floor Drain Isolation Valves is corrected from "RW-AC-83" to "RW-AO-83." Also, the current Technical Specifications show the Drywell Floor Drain Isolation Valves to be one inboard and one outboard valve. The configuration at CNS actually consists of two outboard valves and no inboard valves. The same configuration exists for the Drywell Equipment Drain Isolation Valves, RW-AO-94 and RW-AO-95 and the RHR Discharge to Radwaste Isolation Valves, RHR-MO-57 and RHR-MO-67. Therefore, a correction to Table 3.7.1 is required to show two outboard valves and no inboard valves for RW-AO-94 and 95 and RHR-MO-57 and 67.

The final proposed change revises Table 4.2.B on pages 70 and 75 of the CNS Technical Specifications. The purpose of this change is to delete the calibration requirements for relays 27X1/1F(1G), 27X2/1F(1G), 27X3/1A(1B), 10A-K79A(B) and 10A-K80A(B).

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

A. The proposed Technical Specification change is judged to involve no significant hazards based on the following:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation:

a. The first proposed change deletes the 1000 psig pressure permissive from the MSIV Closure Scram Trip Setting. The original design of the Cooper Nuclear Station (CNS) incorporated a scram trip setting to initiate a scram signal if the reactor pressure exceeded a setpoint (commonly 600 psig) with the MSIVs closed and the reactor mode switch in "Startup." The design feature was the result of experience at a BWR in Germany (KRB). At KRB, operators had difficulty controlling reactor power during startup above about 600 psig without pressure control.

In approximately 1974, BWRs in the U.S. recognized the advantages of being able to heat up to rated pressure with the MSIVs closed. This provides the capability to heat the vessel and internals without running the feedpumps and allows heatup in parallel with work on the turbine. General Electric conducted tests at Browns Ferry Unit 1 (document 22A2510) which demonstrated that heatup to rated pressure in a "bottled-up" condition, is within the capability of the plant. GE issued Design Issue Memo (DIM) No. 131, dated September 12, 1974, which documented the technical justification for removing the MSIV closure scram pressure permissive and identified the Brown Ferry test results as applicable to CNS. DIM No. 131 recommended either removing the pressure permissive hardware or increasing the pressure setpoint to the high pressure scram point.

The CNS Technical Specifications were changed accordingly from the original 600 psig setpoint to 1000 psig, which is near the 1045 psig high pressure scram setpoint. During the Low-Low Set modifications, these pressure switches were used and deleted from the logic for the MSIV Scram Closure Trip. However, the associated Technical

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Specification change to delete the 1000 psig pressure permissive was not made.

As documented in GE Design Information Memo (DIM) No. 131, the original purpose for the pressure setpoint in the MSIV Scram Closure logic no longer exists. The testing conducted at Browns Ferry and DIM No. 131 document that the pressure setpoint can be deleted. Also, the analyses conducted for the Low-Low Set Modification were submitted to the NRC and approved.

This change, therefore, only corrects the editorial error in the CNS Technical Specifications. No hardware changes are involved. Since the Change revises TS 2.1.A.5 to match the existing plant configuration, this change does not involve an increase in the probability or consequences of an accident previously evaluated.

b. The second proposed change revises the testing requirements for the Standby Liquid Control (SLC) System explosive valves. This proposed change does not affect the intent of Specification 4.4.A.2.c, which is to ensure that each explosive valve charge installed comes from a batch where at least one charge has been test fired. This can double the number of charges that must be test fired, without improving the reliability. Testing one charge from each batch is adequate to verify the batch. The Standard Technical Specifications already contain the provision which allows the new valve to come from a previously tested batch. This change does not affect the frequency of testing the firing circuit or the SLC system.

Since this change clarifies the Technical Specification, and agrees with the Standard Technical Specifications, but does not affect test frequency of the SLC System or the reliability of the charges from a manufacturer's batch, no increase in the probability or consequences of an accident is involved.

c. The third proposed change makes editorial corrections to Table 3.7.1, which contains a list of Containment Isolation Valves. The revisions include correcting a typographical error in the ID Number of a Drywell Floor Drain Isolation Valve, RW-AO-83, and correcting the configuration of the Drywell Floor Drain, Drywell Equipment Drain and RHR Discharge to Radwaste Isolation Valves from one inboard and one outboard valve to two outboard valves.

The change to correct the configuration of the three sets of isolation valves revises the Technical Specifications to match the actual configuration at CNS. The Drywell Floor Drain and Equipment Drain Isolation Valves are Class B isolation valves as defined in the USAR. The two outboard valve configuration is correct for Class B isolation valves in accordance with the Updated Safety Analysis Report (SAR). For the RHR Discharge to Radwaste isolation valves, the two outboard valve configuration is also appropriate, due to the physical location of the branch connection being isolated and the fact that these valves are the second set of isolation valves in series.

Based on the above, correcting the typographical error and correcting the valve configuration in Table 3.7.1 to match the actual plant configuration do not increase the probability or consequences of an accident.

d. The final proposed change would delete the calibration requirements for the reactor low water level relays, 10A-K79A(B) and 10A-80A(B), and undervoltage relays, 27X1/1F(1G), 27X2/1F(1G) and 27X3/1A(B). This change does not affect the current hardware or surveillance procedures. It is not possible to calibrate these relays since they are "on" or "off" type relays. There is no variable output. It is only possible to functionally test these relays to ensure that they pass on the signal when received from the transducer. These intermediate relays are already functionally tested in accordance with the current Technical Specifications. The functional test frequency is adequate and is not being changed as a part of this revision.

This change does not affect the reliability of the relays in question, and therefore, does not increase the probability or consequences of an accident.

2. Does the proposed license amendment create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation:

a. The modification which deleted the 1000 psig pressure permissive from the MSIV Scram Closure logic was completed in 1983. Since the current setpoint for the MSIV Closure Scram pressure permissive was 1000 psig and the high pressure scram setpoint is 1045 psig, it is clear that the high pressure scram will fulfill the function previously performed by the MSIV pressure setpoint. Further, tests and analyses documented by General Electric have shown that the original purpose of the pressure setpoint is no longer valid. The MSIV Closure Scram is only applicable in the "Run" mode.

The original design and licensing basis for the 1000 psig pressure setpoint (originally set at 600 psig) was to prevent heatup in a "bottled-up" condition. It has been shown through testing that the Cooper Nuclear Station design will accommodate a "bottled-up" heatup. The modification to use the 1000 psig pressure switches from the MSIV Scram Closure logic in the Low-Low Set modification was analyzed and submitted to the NRC for approval. This modification received prior Commission approval. This change revises the Limiting Safety System Setting to agree with the current plant configuration. Since the change to the Technical Specification revises LSSS 2.1.A.5 to agree with the actual plant configuration and the existing plant configuration has been shown by test to be safe, this change does not create any new or different kind of accident.

b. This change clarifies the wording to allow a charge from a previously tested batch to be installed instead of requiring a charge from the same batch just tested to be installed. The replacement charge will be from a tested batch and the test frequency has not been changed. No reduction in the reliability of the replacement charges will result as demonstrated by the fact that the Standard Technical Specifications already contain this provision.

Since the type of replacement change has not been changed and no changes have been made to the Standby Liquid Control System hardware or testing, there is no new or different kind of accident created.

c. The changes to Table 3.7.1 are editorial in nature. The changes include correcting an ID Number and correcting the configuration of three sets of isolation valves. These are not hardware changes and do not affect the operation of the valves in any way. The existing plant configuration for the Drywell Floor and Equipment Drain isolation valves is in accordance with the USAR. The RHR Discharge to Radwaste isolation valves are configured appropriately, given the physical location of the branch line being isolated and the fact that there are two other valves in series closer to the reactor vessel. All of the proposed changes are, therefore, editorial in nature and do not create any new or different kind of accident.

d. The final proposed change, to delete calibration requirements for "on" or "off" intermediate relays, also involves no hardware changes. The relays in question cannot be calibrated; they can only be functionally tested. The functional testing is already conducted in accordance with the Technical Specifications. Since this change only deletes a calibration, which has no meaning for these relays, no new or different kind of accident is created.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

a. The 1000 psig pressure setpoint that is currently included as a part of the MSIV Closure Scram was physically removed in 1983. The basis for eliminating the pressure permissive was testing conducted at Browns Ferry. This testing showed that the original instability problem during startup is not a problem in BWRs like Browns Ferry and Cooper. Further, the high pressure scram setpoint is already set at 1045 psig. Therefore, correcting the Technical Specifications to delete the 1000 psig pressure permissive does not reduce the margin of safety.

b. The change to Technical Specification 4.4.A.2.c clarifies the testing requirements for the explosive valves in the Standby Liquid Control (SLC) System. This change does not affect the intent of the surveillance requirement. The result of the proposed change is that replacement charges must be from a previously tested batch, instead of from the same batch as the charge just test fired.

This does not reduce the testing frequency of the SLC system or reduce the reliability of the explosive valves. If the charge installed in the system at the time of testing is the last charge in a batch, then two charges must be test fired and a third one installed as a replacement. This is clearly not the intent of the surveillance requirement. It is intended that the replacement charge come from a tested batch, which is the result of this proposed revision. Also, the Standard Technical Specifications have been approved with the provision that the new charge must come from a previously tested batch.

Based on the above, this change does not reduce any margin of safety.

c. The editorial changes to Table 3.7.1 correct an ID Number and correct the configuration of three sets of isolation valves. The ID Number is purely editorial. The isolation valves will be changed to match the actual configuration in the plant. The existing plant configuration for the Drywell Floor and Equipment Drain isolation valves agrees with the requirements for isolation valves in systems which communicate with the drywell atmosphere as stated in the Updated Safety Analysis Report. The configuration of the RHR Discharge to Radwaste isolation valves is appropriate for their function. Therefore, this proposed change does not reduce the margin of safety.

d. The final change deletes the calibration requirements for several "on" or "off" type relays. Calibration of these relays has no meaning. They are functionally tested which verifies the safety function, on an approved Technical Specification frequency. Deletion of this meaningless requirement, therefore, does not reduce the margin of safety.

B. Additional basis for proposed no significant hazards consideration determination:

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration include: "(i) A purely administrative change...and (iv) A relief granted upon demonstration of acceptable operation from an operating restriction..." Proposed change (a) fits under example (iv), since the original instability problem that was the reason for the 1000 psig pressure permissive, was subsequently shown by test not to be a concern at Cooper. Also, proposed change (a) fits under example (i), since this change revises the Technical Specifications to match hardware changes made in accordance with a previously NRC approved modification. Proposed changes (b), (c) and (d) are all considered to fit under example (i). Change (b) clarifies the testing requirements, without affecting the intended purpose of the test, to reduce needless test firing of explosive valve charges. Change (c) corrects an ID Number and valve configuration to match the actual, correct plant configuration. Change (d) deletes meaningless calibration requirements for "on" or "off" type relays. These are all purely administrative editorial corrections.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff, has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: November 5, 1986 and November 5, 1987

Description of amendment request: The proposed amendment revises the Technical Specification (TS) Trip Setpoint and Allowable Values for Table 3.3.3-2, Item 2d - Low Pressure Coolant Injection (LPCI) Injection Valve Differential Pressure - Low. The Trip Setpoint and Allowable Values are being revised as the result of the Licensee's proposed increase in the instrument loop range and corresponding increase in specified allocations for instrument loop accuracy and calibration accuracy.

The LPCI injection valve differential pressure instrument loops are provided to protect the low pressure Residual Heat Removal (RHR) piping from high reactor pressure by interlocking the LPCI injection valves so that they cannot be opened if the pressure on the reactor side of the injection valve is greater by a given amount than the pressure in the RHR pump discharge piping. The instrument loops are presently calibrated to monitor a range of 0 to 800 psid. The trip units are calibrated for a Trip Setpoint of greater than or equal to 78 psid (decreasing) and Allowable Values of greater than or equal to 68 psid and greater than or equal to 88 psid. The licensee has stated that during normal plant shutdown conditions, the differential pressure across the LPCI injection valve can decrease far enough below the present calibration range (0 to 800 psid) of the differential pressure instrument loop such that the instrument loop detects a signal gross failure and improperly activates a RHR loop out-of-service annunciator in the control room. The licensee proposes to increase the calibrated range (-200 to 800 psid) of the LPCI injection valve differential pressure loop to envelope the anticipated range of differential pressure across the injection valve during normal plant operational and shutdown conditions, thereby eliminating the false instrument loop signal gross failure alarm. As such, this amendment revises the corresponding Trip Setpoint to greater than or equal to 74 psid (decreasing) and Allowable Values to greater than or equal to 64 psid and greater than or equal to 84 psid consistent with the increase in calibration range of -200 to 800 psid.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new of different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. Our assessment of the proposed amendment is discussed below:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LPCI injection valve differential pressure interlock is designed to prevent opening the LPCI injection valves during all normal operational and accident event scenarios when the reactor pressure is above the maximum design pressure of the low pressure RHR piping. The licensee maintains that the maximum differential pressure analytical value (95 psid) would not be changed. Therefore, the existing level of overpressure protection provided for the low pressure RHR system piping is not reduced. The LPCI injection valves are required to open when the reactor pressure has dropped to below the maximum design pressure of the RHR low pressure piping to pass LPCI flow to the reactor in response to the LOCA pipe rupture events discussed in FSAR Sections 15.2.8, 15.6.4 and 15.6.5. The licensee maintains that assumptions used in the ECCS analysis remain unchanged. Further, the timing of initial ECCS flow into the reactor as analyzed in the licensing basis ECCS analysis remains unchanged. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The licensee maintains as in (1) above, that the changes to the Trip Setpoint and Allowable Values provide for existing level of overpressure protection and are conservative with the assumptions used in the ECCS analysis,

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maintaining the validity and results of the analysis. The timing of initial ECCS flow into the reactor as analyzed in the licensing basis ECCS analysis remains unchanged. Further, there are no hardware or logic changes and the differential pressure interlock continues to operate in the same manner while monitoring a larger range of plant conditions. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed amendment does not involve a significant reduction in a margin of safety.

The licensee states that the current ECCS analysis assumes the differential pressure interlock is cleared and the injection valves are signaled to open when reactor steam dome pressure drops to 300 psig. The proposed changes to the Trip Setpoint and Allowable Values would result in the interlock clearing at a steam dome pressure of 368.9 psig and would result in a total change in margin of only 5.3 psi (out of approximately 80 psi of total pressure margins) which is not significant. The licensee maintains that the margins in the ECCS codes and the margin between the previous and recalculated ECCS analysis results are unchanged. Therefore, this change does not result in a significant decrease in a margin of safety.

The staff has reviewed the licensee's submittal and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the subject amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: August 26, 1988 (TS 254)

Description of amendment request: The BFN Unit 2 Technical Specifications are being updated to reflect the limits for Cycle 6 operations. The Cycle 6 core loading has been changed because of the results of inspection and reconstitution of the fuel completed in July 1988.

The actual changes are a slight adjustment in the Minimum Critical Power Ratio (MCPR) and the addition of two Tables of Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) versus average planar exposure.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Operational transients analyzed in the Final Safety Analysis Report have been reevaluated in detail. The Reload Licensing Report for Browns Ferry Unit 2, Cycle 6, Revision 2, provides a summary of the limiting operating transient, stability, and selected accident analyses for the proposed core arrangement. The 8 x 8 fuel assemblies to be installed in the core are not significantly different from the 8 x 8 fuel assemblies they are replacing. The NRC staff has previously approved the design of the GE P8 x 8R assemblies as described in the GESTAR document (NEDO-24011-P-A-8). The NRC staff has previously evaluated and approved the use of four Westinghouse designed QUAD + demonstration assemblies in the low power region of the core. The NRC staff has also approved the analysis methods used by TVA.

2. The proposed amendment does not create the possibility of a new or different accident. This reload changes the initial conditions and/or final condition used in the existing analyses and does not create any new accident mode.

3. The proposed amendment does not involve a significant reduction in a margin of safety because the plant will be operated under the same safety limits with MCPR and MAPLHGR operating limits comparable to those currently established. The Reload Licensing Report provides a summary of the limiting operating transient, stability, and selected accident analyses for the proposed core arrangement. The MCPR and MAPLHGR limits have been revised to assure the margin of safety is maintained as demonstrated in the Reload Licensing Report for Browns Ferry Unit 2, Cycle 6, Revision 6.

Based on the above reasoning, TVA has determined that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: August 4, 1988 (TS 252)

Description of amendment requests: The proposed amendment would modify the Browns Ferry Nuclear Plant, Unit 1, 2 and 3 Technical Specifications (TS) by adding Section 3.2.L and Table 3.2.L to provide operability requirements for the Anticipated Transients Without Scram Recirculation Pump Trip (ATWS-RPT) System. Surveillance requirements (Section 4.2.L) are also being added to periodically verify system operability. The basis Section 3.2/4.2 and the index are also being revised to reflect this change. In addition, the instrument channels for the reactor low water level and reactor high pressure are being deleted in existing Tables 3.2.B and 4.2.B. These instruments will be tested in accordance with new Tables 3.2.L and 4.2.L.

These proposed changes are for equipment being installed as required by 10 CFR 50.62. This requires the reactor recirculation pumps to trip automatically under the condition of an Anticipated Transient Without Scram (ATWS).

The licensee also proposes to modify the Unit 3 TS by adding Footnotes 28 and 29 to "Notes for Table 4.2.A through 4.2.L except 4.2.D" in order to be consistent with the equivalent tables in the Unit 1 and 2 TS. These footnotes define functional testing and calibration of plant instrumentation. These footnotes were inadvertently omitted from the Unit 3 Technical Specifications. The staff had originally approved these footnotes on Unit 1 by letter dated December 16, 1982 and by letter dated Auguts 19, 1986 for Unit 2. Therefore, this is an administrative change.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards considerations exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed technical specification change adds operability and surveillance requirements for the ATWS-RPT modifications as required by 10 CFR 50.62(c)(5). The addition of this system does not adversely alter the function or method of operation of the Reactor Protection System (RPS) under which BFN was licensed. The installation of the ATWS-RPT System results in a faster recirculation pump coast down which decreases core power at a faster rate then the existing RPT-MG trip system. As required by the ATWS rule, the ATWS-RPT logic is independent of the RPS. The ATWS-RPT logic modification enhances the existing reactor protection features.

The ATWS-RPT logic modification replaces the existing RPT-motor generator (MG) one-out-of-two trip logic with a two-out-of-two ATWS-RPT trip logic to avoid spurious trips. The limiting conditions for operation and surveillance requirements have been added to ensure system operability.

The consequences of an accident are not increased because each ATWS-RPT channel will trip both recirculation pumps by means of the end-of-cycle (EOC) breakers which will provide a more rapid core flow reduction and subsequent insertion of negative reactivity due to increased voiding of the reactor core than is provided by the existing RPT-MG trip. The new action statements or surveillance requirements will not affect the consequences of any accident previously analyzed in the BFN Final Safety Analysis Report (FSAR) since the ATWS-RPT System is not used to mitigate the consequences of any accident previously analyzed.

The ATWS-RPT System modification does not affect the precursors for any accident analysis in the BFN FSAR. In addition, the proposed technical specifications change will support the present FSAR assumptions and limitations will be maintained.

2. The proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated. These changes do not alter the function or method of operation of any safe shutdown systems. The ATWS-RPT two-out-of-two logic modification reduces the potential for spurious trips from the existing RPT-MG trip which is a one-out-of-two logic. In the event the ATWS-RPT logic would trip, the resulting transient would be similar to and bounded by those previously evaluated, (i.e., dual recirculation pump trip at power). If the ATWS-RPT logic fails to actuate when required, the consequences are no greater than before this design change is installed.

3. The proposed change does not involve a significant reduction in the margin of safety. The ATWS-RPT logic modification will enhance the existing reactor protection features and therefore increase the margin of safety. Each ATWS-RPT channel will trip both recirculation pumps by means of the EOC breakers, which will provide a more rapid core flow reduction and subsequent insertion of negative reactivity due to increased voiding of the core.

The proposed ATWS-RPT allowable and trip setpoints for the reactor dome pressure and low reactor water level are enveloped by the current safety limits. The addition of these technical specifications will ensure that the ATWS-RPT System will perform in a reliable manner, or that the necessary compensating action requirements will be taken such that the margin of safety will be maintained.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis for the above changes. The addition of footnotes to the Unit 3 TS is a purely administrative change correcting an omission and, therefore, providing consistency throughout the Browns Ferrry TS. This change does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 15, 1988

Description of amendment request: The proposed amendment would delete requirements relating to Chlorine Detection Systems from the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs). Specifically, the proposed amendment would delete TS Section 3/4.3.3.7, Chlorine Detection Systems. In addition, the associated Basis Section 3/4.3.3.7 also would be deleted. The changes are proposed due to the replacement of the gaseous chlorination system with a liquid sodium hypochlorite system.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.59, this means that the operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed change against the above standards as required by 10 CFR 50.91(a). The Commission has concluded that:

A. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because there no longer is any source of chlorine on or near the Davis-Besse site that would pose a threat to control room habitability, and thus require automatic isolation of the Control Room ventilation system. The proposed change would not modify any accident conditions or assumptions.

B. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no source of chlorine that would require automatic isolation of the Control Room ventilation system, and it is not possible to generate and release the quantity of chlorine with the new sodium hypochlorite system that would require automatic isolation.

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C. The changes would not involve a significant reduction in a margin of safety because the Chlorine Detection System is no longer needed to isolate automatically the Control Room ventilation system. Furthermore, the proposed change would not affect any operating practices, limits or equipment important to safety.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of amendment request: September 30, 1988

Description of amendment request: The proposed change, in the form of a license condition for North Anna, Unit 1 (NA-1), would permit the use of two (2) Westinghouse fuel assemblies containing advanced cladding materials. The licensee is currently irradiating two demonstration fuel assemblies in NA-1 containing fuel rods clad with an advanced zirconium base alloy. This alloy cladding is expected to have superior corrosion resistance compared to conventional Zircaloy-4 cladding. Developing advanced cladding materials with improved corrosion resistance is important because corrosion is one of the most limiting parameters with regard to achieving extended burnups. Approval for the use of this advanced alloy cladding in the two demonstration fuel assemblies at NA-1 was given in a USNRC letter dated May 13, 1987.

To enhance the understanding of the effects of small variations in alloy composition on in-pile corrosion and creep performance and to obtain a more comprehensive data base, the licensee has proposed to irradiate fuel rods clad with additional advanced zirconium base alloys which differ slightly in composition from Zircaloy-4 and the advanced cladding currently being irradiated in the NA-1 demonstration fuel assemblies. The chemical compositions of these advanced alloys are similar to Zircaloy-4 and the advanced alloy currently being irradiated. The licensee has proposed that fuel rods clad with these advanced alloys be irradiated in the NA-Cycle 8 core which is scheduled for startup in the second quarter of 1989. These fuel rods would be inserted in the demonstration fuel assemblies in place of the presently NRC-approved advanced cladding rods which would be removed. The two fuel assemblies have removable top nozzles which allow access to all fuel rods for inspection. The fuel rods with the alloy cladding will contain nominally 95% dense UO_2 pellets and will have the same rod dimensions as other fuel rods presently in the core. The fuel rods will have Zircaloy-4 end plugs, and will be pressurized with helium.

The NA-1 Technical Specification 5.3.1 describes the reactor core as consisting of assemblies containing 264 fuel rods clad with Zircaloy-4. In order to allow for the insertion of fuel rods clad with the advanced zirconium base alloy in the two fuel assemblies, a license condition would specify NRC approval for the use of the two fuel assemblies containing fuel rods clad with the advanced cladding material (zirconium base alloy).

The use of two assemblies with fuel rods clad with an advanced zirconium base alloy will not result in any new accident since the two assemblies and their fuel rods will satisfy the same design bases used for other assemblies in the fuel region as specified in the NRC-approved Westinghouse report, "Reference Core Design Report - 17 x 17 Optimized Fuel Assembly," WCAP-9500-A, Volume 2, May 1982. For each reload core until discharge, the fuel assemblies will be specifically evaluated using NRC-approved standard methods specified in the VEPCO report, "Reload Nuclear Design Methodology," VEP-FRD-42, Revision 1-A, September 1986, and the Westinghouse-approved fuel rod design methods specified in "Extended Burnup Evaluation of Westinghouse Fuel," WCAP-10125-P-A, December 1985. Existing reload design and safety analysis limits as applicable to NA-1 will apply. This will include consideration in the core physics analysis of peaking factors and core average linear heat rate effects. The two fuel assemblies do not change the existing reload design and safety analysis limits and therefore, the current NA-1 Updated Final Safety Analysis Report (UFSAR) remains bounding. Finally, the irradiation data and design analysis provide sufficient evidence to support the determination that fuel rods with the additionally advanced zirconium base alloy cladding will perform, at the very least, as well as fuel rods with Zircaloy-4 cladding and the advanced cladding currently being irradiated in the NA-1 demonstration fuel assemblies. The two advanced cladding demonstration fuel assemblies currently in service in NA-1 are a slightly different advanced zirconium based alloy cladding and were approved for use in NA-1 by Amendment 94 issued May 13, 1987.

Although the new advanced zirconium based alloy is very similar in composition to "Zircaloy," it is not clear that it falls within the scope of 10 CFR 50.46 which applies to "Zircaloy" clad fuel. Resolution of this question will involve substantial effort. However, complete resolution of this issue is not necessary at this time to assure that operation with two (2) test assemblies will be adequately safe. For the use of this material in test assemblies, the composition of the zirconium based alloy is very similar to zircaloy in all significant respects; moreover, the test assemblies are not located in the portions of the core expected to experience highest burnup and highest power density. The performance of these assemblies in the event of a LOCA will be bounded by the performance previously calculated for the other zircaloy clad assemblies in the core which was based on accepted Emergency Core Cooling System (ECCS) evaluation models. In the absence of resolution of whether the zirconium based alloy material can be considered to be "Zircaloy," an exemption from the provision of 50.46 which limits its application to "Zircaloy" will be needed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Based on the above, the proposed change (license condition) does not:

(1) Involve a significant increase in the probability or consequences of any accident or malfunction of equipment important to safety previously evaluated in the safety analyses. The fuel assemblies with the advanced zirconium base alloy clad fuel rods meet the same fuel assembly and rod design bases as other fuel assemblies in the fuel region, and the use of these fuel assemblies will not result in a change to existing reload design and safety analysis limits. Although the use of the advanced zirconium based alloy will require an exemption as discussed above, for use in test assemblies the characteristics of this material are very similar to zircaloy in all significant respects. Consequently, the existing evaluations are fully applicable to the new material and the new material does not affect the probability or consequences of any previously evaluated accident or any malfunction of equipment.

(2) Create the possibility of a new or different type of accident than previously evaluated since the fuel assemblies satisfy the current design bases. In addition, use of the assemblies does not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the use of the new materials does not create the possiblity of a new or different type of accident.

(3) Involve a significant reduction in the margin of safety. The fuel assemblies do not change the existing reload design and safety analysis limits. The current UFSAR analyses remain bounding and there is no reduction in the margin of safety. Thus, the use of the new material does not involve a reduction in the margin of safety.

Therefore, the proposed change (license condition) meets the criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed change involves no significant hazards considerations, and that operation of the facility in accordance with the proposed change would not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: June 17, 1987

Description of amendment request: The proposed change would modify the Departure from Nucleate Boiling Ratio (DNBR) limit, pertinent Bases and several analysis parameters specified in the NA-1&2 Technical Specifications (TS). The limit change is justified by the licensee's NRC-approved Statistical DNBR Evaluation Methodology, under which uncertainties are treated more realistically while the DNBR design criterion continues to be met. As a new feature, a full core DNB probability criterion is included. The margin gain of the new methodology has been used to reanalyze the appropriate FSAR events with more conservative input assumptions, chief of which is a revised most negative moderator temperature coefficient. Several minor changes were included as a part of the transient reanalyses. Existing protection setpoints are shown to be bounding, and no violations of the DNBR limit occur in any of the reanalyzed transients.

Several NA-1&2 TS need to be changed to incorporate the revised DNBR limit and the results of the associated transient analyses. A change in the Limiting Condition for Operation (LCO 3.1.1.4) and the Surveillance Requirements (SR 4.1.1.4) for the moderator temperature coefficient (MTC) are intended to provide an end-of-cycle limit and associated trigger values which are appropriate for current NA-1&2 fuel cycles. The revised limit and trigger values are based on a revised safety analysis of the UFSAR Chapter 15 transients which are sensitive to the most negative MTC parameter. The DNB design limit is not violated in any of the analyzed transients.

A change to the NA-1&2 TS Table 3.3-2, which is referenced by LCO 3.3.1.1, would reflect a new requirement to have the pressurizer water level response time to be less than or equal to 2.0 seconds. A response time requirement would been added to protect against filling the pressurizer prior to the actuation of the overtemperature delta T reactor trip (OT delta T). It was found that for very slow reactivity insertion transients the DNB limit was never violated but in some situations the pressurizer filled before the plant OT delta T trip was actuated. When the same transients were analyzed assuming an active high pressurizer water level trip, the pressurizer did not fill.

A change in Bases Section 2.1.1 would add a new criterion in the establishment of the DNBR limit for the licensee's statistical DNB methodology. Previously, traditional analyses and ITDP analyses considered only peak pin DNB probability. Plant operation required that, for normal operation and Condition II operation, the peak pin avoid DNB with 95% probability at a 95% confidence level. The new methodology retains this criterion, and adds an additional criterion that the DNB probability of every rod, when summed over the whole core, shows that at least 99.9% of the core is expected to remain in the nucleate boiling regime.

Changes would be made to Bases Section 3/4.1 and are related to the new MTC limit and surveillance requirements. Additionally, the reference to the moderator density coefficient (MDC) is deleted because it is no longer related to the safety analyses performed by the licensee. The MDC parameter was used in the previous safety analyses performed by the licensee's vendor. Since the safety analyses performed by the licensee uses temperature instead of density to specify moderator reactivity feedback, it is preferable to use MTC in the NA-1&2 TS. An additional benefit of this approach is that the relationship between the NA-1&2 TS limit and the safety analysis limit can be more clearly defined. In fact, the two limits differ only by the measurement uncertainty and a correction for Bank D insertion. The revised Bases section makes the connection between the two limits clearer. The NA-1&2 TS B3/4.2.3 would be modified to reflect the revised DNBR limit as obtained with the new methodology. The new safety analysis DNBR limit is 1.26; the addition of 13.7% retained DNBR margin yields a design DNBR limit of 1.46. Separate values were not derived for the typical and thimble cell, since the single limit was shown to be bounding for both. The retained margin is used for such applications as compensation of the rod bow penalty. A discussion of the rod bow penalty is provided in the FSAR, and the sources of the appropriate numerical values are referenced. Accordingly, NA-1&2 B3/4.2.3 would be updated. Finally, a change to Bases section 3/4.2.5 would clarify the treatment of measurement uncertainties. The licensee has performed analyses to show that the measurement uncertainties on the DNB parameters can be offset by the retained DNB margin and need not be accounted for by the plant operations staff.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

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The licensee has evaluated the change request against the standards provided above and has determined that the proposed changes do not involve a significant hazards consideration for the following reasons:

1. The probability or consequences of any UFSAR Chapter 15 event [does] not increase. Accident probability is independent of the DNB evaluation B3/4.2.3 and B3/4.2.5 documented in this package. With regard to accident consequences, the DNB protection probability and confidence level requirements have been retained, each at a 95% level; thus the consequences of any accident can be more severe under the new Statistical DNBR Methodology with WRB-1 than they are under the present ITDP methodology with the WRB-1 correlation. In fact, the new methodology is even more restrictive in that a full-core DNB probability criterion has been added, further limiting the potential consequences of any DNB event as compared to the previous methodology.

The change to the most negative moderator temperature coefficient affects TS 3/4.1.1.4 and B3/4.1.1.4. The principal change is to expand the limit and associated trigger values. The transients affected by this change have been analyzed and shown to not violate any design limit. Specification B3/4.1.1.4 is reworded to remove the discussion of the moderator density coefficient since [the licensee] does not use this key input parameter in safety analysis. As discussed in the [licensee's] safety evaluation, the MTC limit is more clearly related to the safety analysis limit as a result of this change. Therefore the consequences of any UFSAR chapter 15 event are not increased. Furthermore, accident probability is not increased since the MTC limit change meets all the design limits.

Administrative changes were also made to TS 3/4.1.1.4 and B3/4.1.1.4. First, all references to change in reactivity are consistently specified in terms of delta k/k. Second, the [NA-2] TS B3/4.1.1.4, Action a.1, is changed to correct an administrative TS error so that it is consistent with the equivalent [NA-1] TS.

The high pressurizer water level reactor trip was assumed to be operative in the rod withdrawal at power analysis. This assumption was not required to maintain margin to the DNBR limit but to prevent the pressurizer from filling. Therefore Table 3.3-2 of TS 3/4.3.3.1 was changed to include a response time of [less than or equal to 2.0] seconds for this channel. This change represents an additional functional requirement of the reactor protection system so it does not increase the consequences of any accident nor increase the probability of any accident occurring.

2. No new or different accident type is generated as a result of the proposed changes to the DNB limit in TS B2.1.1, B3/4.2.3 and B3/4.2.5. Specifically, because no hardware changes accompany this new methodology, the range of accident initiators evaluated in the UFSAR remains valid for the new DNBR Methodology.

Similarly, the remaining proposed Technical Specification changes (i.e. TS 3/4.1.1.4, 3/4.3.3.1 and B3/4.1.1.4) are based on the use of the key safety parameters which are physical attributes of the fuel, and therefore do not create the possibility of an accident of a different type than evaluated previously. Thus, the proposed changes do not involve alterations to the physical plant which would introduce any new or unique operational modes or accident precursors.

3. The margin of safety is not reduced. The principal DNBR safety criterion has been, and continues to be, that DBN shall be avoided with 95% probability at a 95% confidence level. The margin of safety, which in this case is the margin between the DNBR limit and cladding failure, thus retains the same basis. In fact, the DNBR limit (i.e. TS B2.1.1, B3/4.2.3 and B3/4.2.5) is now also based upon the additional criterion that at least 99.9% of the core must avoid DNB, which previously had not been required.

The MTC limit change (i.e. TS 3/4.1.1.4, and B3/4.1.1.4) has been analyzed for each of the affected transients from Chapter 15 of the UFSAR confirming that margin remains to the DNB design limit. The pressurizer level response time requirement (i.e. TS 3/4.3.3.1) imposes an additional surveillance requirement on the reactor protection system and therefore does not reduce the margin of safety.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: October 24, 1988

Description of amendment request: By letter dated October 24, 1988 the licensee submitted an application to amend Technical Specification Section 3/4.3.7 "Radiation Monitoring Instrumentation," including Table 3.3.7.1-1, "Radiation Monitoring Instrumentation," by removing reference to "trips" actuated by the instrumentation. Specifically, in accordance with the requirements of this specification Main Control Room Ventilation Radiation Monitors now alarm in the control room on high radiation and also trip air system intake valves to cause air to be drawn from a different point. The amendment would allow continued operation without the automatic trip capability. The alarm functions would be retained and the air intakes would be realigned manually.

Action 70(a) in the table is to be revised to show that the licensee would manually isolate a remote air intake when a monitor associated with that intake is inoperable. This would achieve the same objective as the trip mechanism for the case of one inoperable monitor.

The associated bases would be changed to be consistent with the specifications.

The licensee stated that the change, which would delete the trip function, is necessary because under the existing specifications should a LOCA occur, then a single failure (for example a short closing an isolation valve) could result in both remote air intakes remaining closed. Such a sequence of events would force the control room ventilation system into the recirculation mode and cause higher control room in-leakage rates from the loss of control room pressure. This in turn could cause excessive radiation exposure to the control personnel.

To avoid this situation the licensee has already replaced the motor operators on the controlled intake valves with manual operators. As a result of the loss of the automatic trip function for these valves, the licensee is meanwhile operating the control room ventilation system in the pressurization mode in accordance with requirements in Action 70(b) in the Technical Specification.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.32. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Washington Public Power Supply System has evaluated the proposed amendment to the technical specifications per 10 CFR 50.92 and provides the following in support of a finding for no significant hazards consideration. The licensee states that the proposed changes do not:

(1) Involve a significant increase in the probability of an accident previously evaluated because the system has no accident preventive function; only accident mitigation. The consequences of an accident previously analyzed are not increased because the original accident isolation features are retained and analyses show adequate time exists for manual isolation of a remote intake if required. The remote air intake isolation valves normal operational position will be open and this preserves the post accident required position.

(2) Create the possibility of a new or different kind of accident from any previously evaluated because, as discussed above, the system has only accident mitigation capability.

(3) Involve a significant reduction in a margin of safety because the control room pressurization function has not been affected, nor has the time necessary for operator action to isolate an intake been affected.

The staff is in agreement with the licensee's evaluation. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensees: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: George W. Knighton

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 19, 1988

Description of amendment request: The proposed amendment would remove the operating corporation and onsite organization charts (Figure 6.2-1 and 6.2-2) from Section 6 of the WCGS Technical Specifications and would incorporate essential organization requirements, such as lines of authority, responsibility, and communication. The amendment would also make additional editorial changes to delete references to the removed organization charts.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The Wolf Creek Nuclear Operating Corporation reviewed the proposed change and determined that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed deletion of organization charts does not affect facility design or operations. Additional Technical Specification requirements assure that the essential aspects of organizational structure remain in place in lieu of the organization charts. Therefore, the administrative controls essential for safe plant operation remain in affect under the proposed amendment. Also, since the organization charts will exist in other appropriate documents, i.e., the WCGS Updated Safety Analysis Report, the proposed amendment is administrative in nature, because the changes do not affect the physical aspects of the plant or equipment used for preventing or mitigating postulated accidents.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes are administrative in nature; no physical alterations to the plant or equipment or plant operations are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety. The proposed Technical Specifications assure that the essential administrative controls remain in the Technical Specifications in place of the controls effected by the organization charts. Thus, no reduction in administrative controls commitments is involved.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

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Commonwealth Edison Company, Docket Nos. 50-237/249, Dresden Nuclear Power Station, Unit Nos. 2, and 3 Grundy County, Illinois

Date of application for amendments: March 18, 1988

Brief description of amendments: The amendments clarify the applicability of the containment oxygen concentration and drywell torus differential pressure Limiting Conditions of Operation (LCO) and Surveillance Requirements.

Date of issuance: November 8, 1988
Effective date: November 8, 1988
Amendment Nos.: 103, 99

Provisional Operating License No. DPR-19 and Facility Operating License No. DPR-25 The amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30127). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 8, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 9, 1988

Brief description of amendments: The amendments clarify the applicability of the containment concentration and drywell torus differential pressure Limiting Conditions of Operation (LCO) and Surveillance Requirements.

Date of issuance: November 8, 1988
Effective date: November 8, 1988
Amendment Nos.: 111, 107

Facility Operating License Nos. DPR-29 and DPR-30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26521). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 8, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of applications for amendment: August 19 and 24, 1988

Brief description of amendment: In response to the August 19 application, the amendment revises the Technical Specifications to reflect the changes in the pressurizer level instrumentation to provide two environmentally qualified, wide range channels to meet the criteria of Regulatory Guide 1.97, "Instrumentation to Follow the Course of an Accident." The surveillance requirement is also revised to specify comparison of channels of similar range of pressurizer level for the once per shift check.

In response to the August 24 application, the amendment changes the Technical Specifications related to the monthly surveillance test to be performed on Area Radiation Monitors. It allows alternate methods, both acceptable, for performing the surveillance depending on the design of the Area Radiation Monitor.

Date of issuance: November 14, 1988
Effective date: November 14, 1988
Amendment No.: 115

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 11, 1988 (53 FR 39668 and 39669). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 4, 1988, as supplemented October 4, 1988.

Brief description of amendment: This amendment changes the Technical Specifications related to the secondary system safety valve setpoint tolerances. The change raises these tolerances from 985 psig (±10 psig) and 1025 (±1%) to 985 psig (±30 psig) and 1025 psig (±3%).

Date of issuance: November 14, 1988
Effective date: November 14, 1988
Amendment No.: 116

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 11, 1988 (53 FR 39671). Supplemental information dated October 4, 1988, which was received after the date of initial noticing, did not change the initial determination of no significant hazards consideration. Therefore, it was unnecessary to renotice the amendment request. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Units 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: June 22, 1988.

Brief description of amendments: The amendments clarify the source range channel surveillance requirements of Table 4.3-1 for both the Unit 1 and 2 Technical Specifications.

Date of issuance: November 7, 1988
Effective date: November 7, 1988
Amendment Nos.: 132 for Unit 1, 8 for Unit 2

Facility Operating License Nos. DPR-66 and NPF-73. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30131). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 7, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 28, 1988

Brief description of amendment: The amendment allows removing the high pressure scram function when the reactor vessel head is removed or unbolted. This change is necessary to install new analog pressure sensors during the 12R refueling outage.

Date of Issuance: November 18, 1988
Effective date: November 18, 1988
Amendment No.: 130

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 17, 1988 (53 FR 40538). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 18, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 21, 1988 as supplemented October 31, 1988.

Brief description of amendment: The amendment (1) deletes the requirement for NRC approval of the asiatic clams control program prior to the introduction of river water to plant systems; and (2) deletes the requirement for monitoring to detect the presence of Corbicula in the Mississippi River and add the requirement for monitoring to detect Corbicula in the clarifier influent.

Date of issuance: November 16, 1988
Effective date: November 16, 1988
Amendment No.: 30

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 27, 1988 (53 FR 28290). The licensee's October 31, 1988 submittal provided clarification regarding the declorination chemical used in the cooling tower blowdown and did not change the finding of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 26, 1988

Brief description of amendment: The amendment revised the Technical Specifications by correcting the labels for percent level corresponding to Boric Acid Makeup Tank Volume on Technical Specification Figure 3.1-1, "Required Stored Boric Acid Volume as a Function of Concentration."

Date of issuance: November 9, 1988
Effective date: November 9, 1988
Amendment No.: 45

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39172). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 21, 1988

Brief description of amendment: The amendment changes the Technical Specifications by (1) deleting the requirement for daily functional tests of the low power setpoint and the high power setpoint in the rod pattern control system and (2) changing the applicable operational conditions for the high power setpoint from startup and power operation to power operation above the low power setpoint.

Date of issuance: November 14, 1988
Effective date: November 14, 1988
Amendment No.: 49

Facility Operating License No. NPF-29. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30137). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 25, 1988 as supplemented August 26, 1988

Brief description of amendment: The amendment changed the Technical Specifications to add Limiting Conditions for Operation and Surveillance Requirements for the recently installed Alternate Shutdown System. This amendment will be effective on December 31, 1988 to allow for orderly preparation and implementation of new procedures.

Date of issuance: November 7, 1988
Effective date: December 31, 1988
Amendment No.: 126

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 5, 1988 (53 FR 15913). The August 26, 1988 submittal provided additional clarifying information and did not change the finding of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1988.

No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: September 2, 1988

Brief description of amendment: The amendment revise Technical Specification Sections 4.2.3.1.6, 4.2.3.2.6 and the bases for Technical Specification 3/4.2.3 to require a 0.1 percent penalty to added to Reactor Coolant System (RCS) flow measurement uncertainty values if the feedwater flow venturis are not cleaned at least once every 18 months.

Date of issuance: November 7, 1988
Effective date: November 7, 1988
Amendment No.: 27

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39173). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 24, 1988 as revised June 10, 1988

Brief description of amendments: Removed organization charts from the Technical Specifications and changed nomenclature in Section 6.8.2.

Date of issuance: November 16, 1988
Effective date: November 16, 1988
Amendment Nos.: 85 and 52

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30141). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 16, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

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Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: July 19, 1988

Brief description of amendment: The amendment changed the Technical Specifications in accordance with the guidance provided in the NRC's Generic Letter 87-09 to address three specific problems that have been encountered with respect to applicability of Sections 3.0 and 4.0 of the Standard Technical Specifications.

Date of issuance: November 7, 1988
Effective date: November 7, 1988
Amendment No. 11
Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39176). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: August 24, 1988

Brief description of amendment: The amendment revises the Technical Specifications to allow a lower minimum injection flow rate and a lower sodium pentaborate solution concentration in the Standby Liquid Control System (SLCS), based on the smaller size reactor vessel and the use of enriched Boron-10 to satisfy the Anticipated Transient Without Scram (ATWS) rule requirements specified in 10 CFR Part 50.62.

Date of issuance: November 7, 1988
Effective date: November 7, 1988
Amendment No.: 116
Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39177). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1988. A related exemption from 10 CFR Part 50.62(c)(4) was issued on November 7, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 29, 1988

Brief description of amendment: The amendment would revise the Technical Specifications to support plant operation following refueling during the Reload 8/Cycle 9 outage.

Date of issuance: November 7, 1988
Effective date: November 7, 1988
Amendment No.: 117
Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34610). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of Application for amendment: May 27, 1988 and August 10, 1988

Brief description of amendment: Revises Technical Specification Table 3.7-1 to reflect certain modifications involving containment isolation valves performed during the Reload 8/Cycle 9 refueling outage.

Date of issuance: November 10, 1988
Effective date: November 10, 1988
Amendment No.: 118
Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** July 27, 1988 (53 FR 28293) and September 7, 1988 (53 FR 34610). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 27, 1988

Brief description of amendment: The amendment changes the reactor vessel water level setpoint reference point in various TS pages from the bottom of the steam separator skirt to the top of the active fuel and changes the RCIC turbine trip to a steam line isolation on high reactor water level.

Date of issuance: November 10, 1988
Effective date: November 10, 1988
Amendment No.: 119
Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26531). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: May 31, 1988 (TS 240)

Brief description of amendments: The amendments modify the Technical Specifications by changing definitions and adding notes to remove ambiguity from the definitions of Mode of Operation, Core Alteration, and Reactor Conditions.

Date of issuance: November 18, 1988
Effective date: November 18, 1988, and shall be implemented within 60 days
Amendments Nos.: 158, 154, 129
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30144). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 18, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 20, 1988, as supplemented October 6, 1988.

Brief description of amendments: The amendments modify the requirement of the NA-1&2 TS 4.6.1.2a to conduct a Type A test at 40 2710 month intervals during each 10-year inservice inspection and allow the third Type A test at the first 10-year service period to take place during the NA-1&2 1989 refueling/10-year inservice inspection outage.

Date of issuance: November 10, 1988
Effective date: November 10, 1988
Amendment Nos.: 106 and 92
Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 11, 1988 (53 FR 39697). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 10, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By December 30, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

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subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of Application for amendment: October 19, 1988 and supplement dated October 26, 1988.

Brief description of amendment: The amendment changed the Technical Specifications to allow use of reduced uncertainty value in determining total reactor coolant flow. This amendment was authorized by telephone on November 3, 1988 and confirmed by letter November 3, 1988.

Date of Issuance: November 17, 1988

Effective Date: November 3, 1988

Amendment No.: 64

Facility Operating License No. DPR-75: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State of New Jersey and final no significant hazards considerations determination are contained in a Safety Evaluation dated November 17, 1988.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, Washington, DC 20006

Local Public Document Room Location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

NRC Project Director: Walter R. Butler

Dated at Rockville, Maryland, this 23rd day of November, 1988.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 88-27467 Filed 11-29-88; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-416]

Mississippi Power & Light Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29 issued to Mississippi Power & Light Company, System Energy Resources, Inc., and South Mississippi Electric Power Association for operation of the Grand Gulf Nuclear Station (GGNS), Unit 1, located in Claiborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change the Operating License (OL) and the Technical Specifications (TS) to incorporate changes resulting from the May 26, 1987 revision to 10 CFR Part 55, "Operators' License."

The proposed action is in accordance with the licensee's application for amendment dated December 16, 1987, as revised August 3, 1988.

The Need for the Proposed Action

The proposed changes are needed to update the qualification requirements of training center instructors and unit operators personnel and make the OL and TS consistent with the May 26, 1987 revisions to 10 CFR Part 55.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed change to the OL and TS and has concluded that the proposed amendment would not adversely affect safe operation of the facility. Therefore, the proposed amendment does not significantly increase the probability or consequences of any accident. The Commission also concluded that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite and that there should be no significant increase in individual or cumulative occupational radiation exposure. Accordingly, the Commission concluded that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves requirements with respect to installation or use of a facility component located within the restricted area, as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Grand Gulf Nuclear Station, Units 1 and 2, " dated September 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 16, 1987, as revised August 3, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland this 23rd day of November, 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-27570 Filed 11-29-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-226]

Southern California Edison Co., San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assesment

Identification of Proposed Action

The proposed amendment is a request to allow spent reactor fuel to be transshipped from San Onofre Unit 1 (SONGS 1) to the San Onofre Units 2 and 3 (SONGS 2 and 3) spent fuel storage pools. The staff previously issued an Environmental Assessment (EA) of the proposed actions for the SONGS Unit 2 and 3 (Docket Nos. 50-361 and 50-362) which was published in the **Federal Register** on June 22, 1988 (53 FR 23468).

The Need for the Proposed Action

The proposed amendment is required to allow spent fuel to be transshipped from Unit No. 1 to Unit Nos. 2 and 3.

Environmental Impacts of the Proposed Action

The proposed amendment would not alter the type or amount of fuel that can be received, used and possessed at the site. Limitations on the amount of fuel that may be stored in the Units 2 and 3 spent fuel pools and the manner in which it may be stored and handled would also not be changed. Only the Unit 1 spent fuel that has aged for at least 120 days will be transferred to Units 2/3 spent fuel pools. A GE-IF-300, 70 ton, 7 element cask, registered with the NRC and for which a Certificate of Compliance has been issued by the NRC, will be used to transfer spent fuel between units, thus ensuring that the cask to be used meets the packaging and transportation requirements of 10 CFR Part 71.

The transfer process will begin with the spent fuel handling machine transferring fuel assemblies underwater from the Unit 1 spent fuel storage racks to the spent fuel shipping cask. The fuel assemblies will be placed in the cask while maintaining a prescribed minimum water level above the assemblies for personnel protection. After the assemblies have been loaded into the cask, the cask will be prepared for transport. A crane will then load the cask onto a transport vehicle for travel to Units 2/3, a distance of approximately one fourth of a mile, all of which will be on the plant site. The offloading and storage of the Unit 1 spent fuel at Units 2/3 will be accomplished in a manner similar to the above, but in reverse order. The process will be repeated for each group of seven spent fuel assemblies transferred. The licensee has conservatively estimated that no more than 216 Unit 1 spent fuel assemblies will be transferred between the units in any year.

As summarized in the following sections, the transshipment will be closely monitored. Controls will be in effect to reduce the possible spread of contamination. Station Security will accompany the casks during transporting between units. Health Physics personnel will monitor the operation to maintain occupational doses "as low as is reasonably achievable" (ALARA).

Occupational Radiation Exposure

The cumulative occupational radiation dose for the proposed transfer operation is estimated to be less than 0.1 person-rem per spent fuel assembly. This small radiation dose will not affect the licensee's ability to maintain individual occupational doses within the limits of 10 CFR Part 20 and as low as is reasonably achievable (ALARA).

Based on present and projected operations, the staff estimates that the proposed transfer of Unit 1 spent fuel to Units 2 and 3 should add only a small fraction to the total annual occupational radiation dose at the facility. The collective occupational doses for 1986 and 1987 were approximately 275 and 232 person-rems per year per unit, respectively. The projected total cumulative occupational dose for the movement of seven spent fuel assemblies in one cask would be less than .7 person-rem. The licensee has estimated that no more than 216 spent fuel assemblies in any year would be transferred for which an annual occupational dose of about 22 person-rems would result. This would increase the occupational collective dose for the station (3 Units) by about three percent in one year.

One potential source of radiation is radioactive corrosion products, called "crud". Crud may be released to the spent fuel pool water during fuel movement. This could temporarily increase radiation levels in the vicinity of the spent fuel pools. Radiation levels will be monitored continuously. The

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licensee's ALARA program should assure that crud on the spent fuel pool walls will not present a significant contribution to personnel exposures. Excess crud will be removed by scrubbing the walls. Further, the spent fuel pool cleanup system will remove deposits in the spent fuel pool water and thereby reduce crud levels.

The licensee has committed to minimize "hot particle" contamination by the use of an extensive operational radiological safety program. The exteriors of the shipping cask will be thoroughly decontaminated by steam cleaning each time it exits a spent fuel pool. Casks will be surveyed and wiped down to ensure proper decontamination, and covered with a nylon bag for transfer between the units. The staff concludes that the licensee has taken adequate measures to minimize hot particle contamination. The licensee will not move a known leaking spent fuel assembly, or any of the plutonium assemblies, in Unit 1.

During the spent fuel assembly transfer, occupational exposure will be limited by the ALARA procedures and guidelines. Therefore, the staff concludes that the radiation protection program is adequate for ensuring that occupational radiation exposure during the spent fuel transfer will be maintained in accordance with staff ALARA guidelines, including Regulatory Guides 8.8 and 8.10, and the requirements of 10 CFR Part 20, and is acceptable.

Public Radiation Exposure

10 CFR Part 71.43 provides that a package (shipping cask) must be designed, constructed, and prepared for shipment so that under specified tests for normal conditions of operation, there will be no loss or dispersal of radioactive contents, no significant increase in external radiation levels, and no substantial reduction in the effectiveness of the packaging. Moreover, 10 CFR Part 71.51 provides for additional requirements for design, construction and preparation to ensure that, under severe hypothetical accident conditions, any release of radioactive materials or increase in external radiation would be within prescribed, acceptable limits.

The licensee has documented a special procedure, S0123–X–9, "Transshipment of Spent Fuel Using the IF–300 Cask," for transporting the spent fuel from Unit 1 to Units 2 and 3. This report describes the helium leak test procedures and acceptance criteria usd on the GE–IF–300 cask to verify its compliance with 10 CFR Part 71 requirements.

10 CFR Part 71.47 provides that radiation levels external to the cask must not exceed 10 millirem/hr at any point two meters beyond the outermost sides of the transporting vehicles. For a cask meeting this requirement, the corresponding dose rate is approximately 0.0001 millirem/hr at the nearest site boundary (282 meters). This is less than one-tenth the natural external radiation background dose rate. The licensee states that the time to travel from the Unit 1 cask area to the Unit 2 or Unit 3 cask areas will be about a half hour. The transport speed of the cask will be less than five miles per hour, and the speed of other traffic in the area will be less than ten miles per hour.

Under the above conditions, and assuming a maximum of 216 transfers in any year, the staff estimates that the whole body dose commitment to a maximally exposed individual at the nearest site boundary due to the proposed transfer of spend fuel between the units will be about 0.01 millirem (realistically, this does will be lower because of the long decay time of most of the fuel to be moved). This estimated total dose commitment is well within the limitations of the plant Technical Specifications, which are based on the annual offsite dose requirements of 10 CFR Parts 20 and 50 (10 millirem), and 40 CFR Part 190 (25 millirem).

Likewise, the staff estimates that the annual population dose to the general public due to the proposed transfer be a very small fraction of the three person-rem population dose estimated in the Final Environmental Statements for Units 1, 2, and 3 for transportation of all fuel and waste. Thus, the estimated annual total population dose including the proposed transfer of spent fuel would be very small compared to the annual collective dose of about 61,000 percon-rems to this same population from natural background radiation.

Radiological consequence of Potential Accidental Releases

No onsite fuel handling accidents having significant offsite radiological consequences have ever occurred. Such accidents and their potential environmental consequences must be postulated. Potential environmental consequences of postulated accidents may be bounded realistically by extrapolation of results from conservative estimates. Offsite doses are estimated conservatively in NRC staff safety reviews for plant siting, design and operations evaluations. The combination of assumptions used for the latter dose estimates assure that doses for such design basis accidents are unrealistically high. This helps to assure safe plant siting, design and operations because the doses so calculated would exceed regulatory limits without the adoption of plant safety features and/or operational controls. The principal regulatory dose limits for safety reviews are embodied in the NRC regulations, 10 CFR Part 100. For safety reviews, the limiting dose is 300 rem to the thyroid, principally due to inhalation of I–131 postulated to be accidentally released to the atmosphere.

Several bounding acident analyses for this current assessment have been reported previously, and the potential consequences have been found acceptable by the NRC staff. The only pertinent credible accident that has not been analyzed for this assessment is the postulated dropping (and damaging) of a SONGS Unit 1 fuel bundle during fuel handling operations in Unit 1 with a release of radioactivity to the atmosphere. A postulated design basis accident has been analyzed previously in the safety review, and a thyroid dose of 99 rem for a person at the site boundary was estimated conservatively.

For purposes here, it is significant that this very conservative estimate was based on postulated damage to fuel which had decayed for only 148 hours (6.17 days). In the present case, however, fuel to be transshipped will have decayed a minimum of 120 days (shipping cask limitation). I–131 has a half-life of about eight days. During the additional 114 days, I–131 would decay by an additional factor of about 18,000. The postulated dose would decrease proportionately.

Thus, regardless of the accident probability, which operating experience has shown to be very low, the offsite thyroid dose due to this bounding postulated accident can be conservatively bounded as 99/18,00=0.006 rem, maximum. This dose would be well below the U.S. Environmental Protection Agency Protective Action Guide of 5 rem (thyroid), for which offsite protective action should be considered. Thus, based on this bounding analysis, the potential environmental consequences of possible accidents are acceptably low, as are the risks.

Based on the foregoing, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 24, 1988 (53 FR 23820). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 28, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 23rd day of November, 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–27571 Filed 11–29–88; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Proposed Long-Term Spill Amendments, Hearing and Opportunity to Comment

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed long-term spill amendments to the Columbia River Basin Fish and Wildlife Program, hearings and opportunity to comment.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power, Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then. Major revisions of the program were adopted in 1984 and 1987.

Under section 4(h)(6)(E)(i) of the Northwest Power Act, the Council must adopt measures to "provide for improved survival of [anadromous] fish at hydroelectric facilities located on the Columbia River system." This notice deals with the subject of fish spills at the federal dams on the mainstem Columbia and Snake Rivers, except Bonneville Dam, to provide improved survival for anadromous fish at the dams. Currently, the fish and wildlife program calls for the U.S. Army Corps of Engineers to develop and implement a fish passage plan that: (1) Reflects agreement with the fish agencies and tribes to the fullest extent practicable; (2) results in spill that achieves at least 90 percent smolt survival for 80 percent of spring and summer migrants at each project in critical water years: (3) incorporates a sliding scale formula for additional spills in better-than-critical water years. The fish agencies and tribes are to specify criteria to determine when spill should start and stop, and in-season spill decisions by the Corps are to be made in cooperation with the fish agencies and tribes. (1987 *Columbia River Basin Fish and Wildlife Program* section 403(b)(1)). Recognizing that there have been difficulties in implementing these provisions, the Council also committed in the 1987 fish and wildlife program to facilitate an agreement between the fish agencies and tribes and the Corps on "the terms and conditions, sliding scale formula, and spill criteria" of the annual fish passage plan. (Id., section 403(b)(1)(D)).

Since the fall of 1987 fish and wildlife program, the state and federal fish and wildlife agencies, Indian tribes, Bonneville, and the Pacific Northwest Utilities Conference Committee have been in the process of negotiating an agreement for spills at Lower Monumental, Ice Harbor, John Day, and The Dalles Dams, for the ten-year period beginning December 31, 1988. The negotiations have resulted in an agreement among the negotiators has not yet been signed by the parties ("the Agreement"). Because the 1989 spill season is imminent, on October 13 1988, the Council agreed to begin a process to consider amendments to the fish and wildlife program to incorporate the Agreement's spill provisions during the life of the agreement, pursuant to section 4(d)(1) of the Northwest Power Act. This notice explains how to obtain a full copy of possible amendments, and how to participate in the amendment process.

Public Comment: All written comments must be received in the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, by 5 p.m. Pacific time on December 28, 1988. Comments should be submitted to Dulcy Mahar, Director of Public Involvement, at this address. Comments should be clearly marked "Spill Comments."

After the close of written comment, the Council may hold consultations with interested parties to clarify points made in written comment. Consultations may be held up to the time of the Council's final action in this rulemaking.

Hearings: Public hearings will be held in Idaho, Montana, Oregon, and Washington, beginning on December 9, 1988. If you wish to obtain a schedule of the hearings, or more information about this process, contact the Council's Public Involvement Division, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis in the Public Involvement Division. Requests to reserve a time period for oral comments

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must be received no later than two work days before the hearing.

Final Action: The Council expects to take final action on the proposed amendments at its January, 1989 meeting. The actual date on which the Council will make its final decision will be announced in accordance with applicable law and the Council's practice of providing notice of its meeting agendas.

For a Full Copy of the Proposed Amendments, or the Parties' Tentative Agreement, or for Further Information: Contact Judi Hertz at 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, or at (503) 222–5161, toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 88–27524 Filed 11–29–88; 8:45 am]

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RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Railroad Service and Compensation Reports.

(2) *Form(s) submitted:* BA–3a, BA–4, BA–5.

(3) *OMB Number:* 3220–0008.

(4) *Expiration date of current OMB clearance:* 1–31–89.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* Monthly, Quarterly, Annually.

(7) *Respondents:* Businesses or other for-profit, Small businesses or organizations.

(8) *Estimated annual number of respondents:* 494.

(9) *Total annual responses:* 4,244.

(10) *Average time per response:* 10.2566 minutes.

(11) *Total annual reporting hours:* 43,529.

(12) *Collection description:* Under the Railroad Unemployment Insurance and Railroad Retirement Acts, employers are required to report service and compensation for each employee to update Board records for payment of benefits.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–27548 Filed 11–29–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26299; File No. SR–MBS–88–16]

Self-Regulatory Organizations; MBS Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 13, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of new fees to be charged for additional services provided by the Depository Division (the "Depository") of MBS Clearing Corporation ("MBSCC") on Participants who utilize those services.

The Depository's Schedule of Fees, marked to indicate the changes effected by the proposed rule change is as follows:

MBS CLEARING CORPORATION
DEPOSITORY DIVISION
[Schedule of fees]

Service	Fee
Account Maintenance	$5,000/month.
Book-Entry Delivery/Receipt (includes all DK's and FTX Transactions between Participants).	$7.75 each.
Fund Movement (End-of-Day)	$4.50 each.
Seg Movement ($.50 per side).	$1.00 each.
MVC (Bulk Seg) Movement	*$50.00 each (regardless of number of pools).*
Safekeeping	No charge.
P&I Disbursement	$2.50/pool/month.
Deposits	$7.75 each [1].
Withdrawals	$7.75 each [2].
CLF Movements	*$50.00 each/side.*
HIC Segregations	*$50.00 each.*
Interim Accounting Adjustments.	*$10.00 each/side.*

[1] Does not apply to bulk deposits.
[2] Plus GNMA transfer fee: $50.00 per certificate for same day availability, $25.00 per certificate for next day availability or $10.00 per certificate for two business day availability. These fees are payable to Chemical Bank, as agent for GNMA.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to set fees for new services provided by MBSCC to Depository Participants.

The proposed fees have been adopted pursuant to Article VI, Rule 2 of the Depository's Rules, which were approved by the Securities and Exchange Commission in its Order granting MBSCC temporary registration as a clearing agency under section 17A of the Securities Exchange Act of 1934 (Release No. 24–24046, SEC File No. 600–21, dated February 2, 1987, extended in Release No. 34–25957, SEC File No. 600–19, dated August 2, 1988).

The proposed penalties are consistent with section 17A of the Securities Exchange Act of 1934 in that they promote the prompt and accurate clearance and settlement of securities transactions among MBSCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective November 1, 1988 pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MBS–88–16 and should be submitted by December 21, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 21, 1988.

[FR Doc. 88–27586 Filed 11–29–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26306; File No. SR–MCC–88–12]

Self-Regulatory Organizations; Midwest Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Implementation of a Special Secondary Account

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1988, Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the bulletin detailing the implementation of a special secondary account type (O account).

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a new special secondary account and its related fees for the facilitation of trades processed through the clearing agency Regional Interface Organization. The new account will better enable MCC Participants to process trades executed on behalf of a non-MCC Participant which is a Participant in another registered clearing agency (e.g. a member of the National Securities Clearing Corporation or the Stock Clearing Corporation of Philadelphia).

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that it fosters cooperation among entities involved in the clearing process. In addition, the proposed fee is consistent with section 17A in that it is an equitable allocation of reasonable dues, fees and other charges for services offered.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Clearing Corporation does not believe any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagrah (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

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accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR-MCC-88-12 and should be submitted by December 21, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 23, 1988.

Shirley E. Hollis,

Assistant Secretary.

To: All MCC Participants
Attention: Head Cashier/Operations Manager
Subject: Maintenance Fee for Special Rio Account

In order to facilitate the Regional Interface Organization (RIO) processing of executions for non-MCC participants, the Midwest Clearing Corporation (MCC) has established a new special secondary account type (O account). The account will be opened for a member of the National Securities Clearing Corporation (NSCC) or the Stock Clearing Corporation of Philadelphia (SCCP) by an MCC participant. All trades will RIO to the other clearing corporation (NSCC or SCCP) after being recorded at MCC. The MCC participant will guarantee the O account and will be responsible for all associated fees and settlements. All reports detailing activity in the O account will be sent directly to the MCC participant.

Participants will be charged on account maintenance fee of $50.00 for each O account opened. A separate O account will be required for each non-participant. All other fees (e.g. trade recording) will be assessed as applicable.

Questions regarding this notice may be directed to Pamela Zielezinski, Product Manager at (312) 663-2588

John M. Lofgren,

Senior Vice President, MCC/MSTC.

[FR Doc. 88-27587 Filed 11-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26301; File No. SR-MSTC-88-7]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Midwest Securities Trust Company Relating to Securities Clearing Group

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1988, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A[1] is a copy of a proposed rule change of Midwest Securities Trust Company ("MSTC") regarding its agreement with several other clearing agencies to, among other things, (i) increase the coordination of clearing agency clearance and settlement, and (ii) facilitate the sharing of certain clearance and settlement information among clearing agencies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

During the past several months, representatives of various SEC-registered clearing corporations and depositories have met to review various issues regarding the (i) clearance and settlement of securities transactions, (ii) improved linkages of clearance and settlement facilities, and (iii) development of uniform standards and procedures for clearance and settlement.

As a result of developments surrounding the October, 1987 Market Break, a sub-group of the currently existing Monitoring Coordination Group, entitled the Securities Clearing Group ("SCG"), has been formed to further review the foregoing issues. The stated purposes of the SCG are to increase cooperation and coordination of persons involved in the clearance and settlement of securities transactions, remove impediments in and improve the National System, and promote the increased access to surveillance/information and member risk monitoring through the sharing of certain information regarding the clearance and settlement of securities transactions.

To accomplish these objectives, each SCG member has executed the attached formal agreement. Briefly summarized, the agreement authorizes SCG members to work together to develop procedures to identify financial and/or operational conditions of clearing agency participants, which create risks to clearing agencies and the National System, including the appropriate sharing of information regarding the clearance and settlement of securities transactions. The SCG will review these areas, including the identification and clear understanding of legal issues involved in several other specified areas (e.g., application of cross liens between two or more clearing agencies of excess Participants' fund deposits, application of settlement credits and excess margin balances of a Participant in two or more clearing agencies and the netting of settlement debit and credit obligations of a Participant in two or more clearing agencies).

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (the "Act"), in that it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not generally been solicited or received regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450, Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MSTC-88-7 and should be submitted by December 21, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-27584 Filed 11-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26300; File No. SR-MCC-88-10]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Midwest Clearing Corporation Relating to Securities Clearing Group

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1988, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is a copy of a proposed rule change of Midwest Clearing Corporation ("MCC") regarding its agreement with several other clearing agencies to, among other things, (i) increase the coordination of clearing agency clearance and settlement, and (ii) facilitate the sharing of certain clearance and settlement information among clearing agencies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

During the past several months, representatives of various SEC-registered clearing corporations and depositories have met to review various issues regarding the (i) clearance and settlement of securities transactions, (ii) improved linkages of clearance and settlement facilities, and (iii) development of uniform standards and procedures for clearance and settlement.

As a result of developments surrounding the October, 1987 Market Break, a sub-group of the currently existing Monitoring Coordination Group, entitled the Securities Clearing Group ("SCG"), has been formed to further review the foregoing issues. The stated purposes of the SCG are to increase cooperation and coordination of persons involved in the clearance and settlement of securities transactions, remove impediments in and improve the National System, and promote the increased access to surveillance/information and member risk monitoring through the sharing of certain information regarding the clearance and settlement of securities transactions.

To accomplish these objectives, each SCG member has executed the attached formal agreement. Briefly summarized, the agreement authorizes SCG members to work together to develop procedures to identify financial and/or operational conditions of clearing agency participants, which create risks to clearing agencies and the National System, including the appropriate sharing of information regarding the clearance and settlement of securities transactions. The SCG will review these areas, including the identification and clear understanding of legal issues involved in several other specified areas (e.g., application of cross liens between two or more clearing agencies of excess Participants' fund deposits, application of settlement credits and excess margin balances of a Participant in two or more clearing agencies and the netting of settlement debit and credit obligations of a Participant in two or more clearing agencies).

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934, as amended (the "Act"), in that it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities tranactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not generally been solicited or received regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] For text of Exhibit A see Release No. 34-26300 published elsewhere in this issue of the **Federal Register**.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-reference self-regulatory organization. All submissions should refer to File No. SR-MCC-88-10 and should be submitted by December 21, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1988.

Shirley E. Hollis,

Assistant Secretary.

Exhibit A—Agreement Among National Securities Clearing Corporation, The Depository Trust Company, Midwest Clearing Corporation, Midwest Securities Trust Company, Options Clearing Corporation, Philadelphia Depository Trust Company, Stock Clearing Corporation of Philadelphia.

Agreement made as of the _____ day of _____, 1988 among National Securities Clearing Corporation, The Depository Trust Company, Midwest Clearing Corporation, Midwest Securities Trust Company, Options Clearing Corporation, Philadelphia Depository Trust Company and Stock Clearing Corporation of Philadelphia, each of which is hereinafter sometimes referred to as a "clearing agency self-regulatory organization."

Whereas, each party to this Agreement is a self-regulatory organization (an "SRO") as defined in section 3(a)(26) of the Securities Exchange Act of 1934, as amended ("the Act") and a clearing agency, as defined in section 3(a) (23)(A) of the Act, registered with the Securities and Exchange Commission, and

Whereas, Congress has found that the prompt and accurate clearance and settlement of securities transactions, including the safeguarding of securities and funds-related thereto, is necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors, and

Whereas, Congress has further found that the linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors, and

Whereas, each of the clearing agency self-regulatory organizations is required by section 19(g)(1) of the Act, absent reasonable justification or excuse, to enforce compliance with its own rules by its participants, and

Whereas, section 17A(b)(3) of the Act requires that the rules of each of the clearing agency self-regulatory organizations be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency self-regulatory organization or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and

Whereas, in order to promote these objectives, each of the undersigned has agreed to cooperatively work together to develop procedures, in addition to those currently in place, to identify possible financial and/or operational conditions of participants in one clearing agency self-regulatory organization, which create risks for one or more of the other undersigned clearing agency self-regulatory organizations, and in furtherance of this purpose, each of the undersigned has formally agreed to share certain information relating to the clearance and settlement of transactions in securities thereon as provided in this Agreement, and

Whereas, the sharing of certain clearance and settlement information among clearing agency self-regulatory organizations is appropriate to the performance of the undersigneds' regulatory responsibilities.

Now, Therefore, in consideration of the premises and the mutual covenants herein stated, it is hereby agreed as follows:

Section 1. *Securities Clearing Group ("SCG").*

(A) There is hereby created a Securities Clearing Group ("SCG") from within the Securities and Exchange Commission's Monitoring-Coordination Group ("MCG") which shall have as its purpose to cooperatively work together to develop procedures, in addition to those currently in place, to identify possible financial and/or operational conditions of participants in one clearing agency self-regulatory organization, which create risks for one or more of the other undersigned clearing agency self-regulatoy organizations, including the sharing of certain information relating to the clearance and settlement or securities transactions, which is appropriate to the performance of the undersigneds' regulatory responsibilities. Each of the seven clearing agency self-regulatory organizations listed above, each of which is hereinafter referred to as a "SCG/SRO", will appoint from time to time one of its compliance/regulatory officers, attorneys, or other person with similar responsibilities, to serve as its Principal Representative on the SCG. The seven initial Principal Representatives so appointed are identified in Exhibit A attached hereto. Each Principal Representative at any time appointed by a SCG/SRO shall serve as a member of the SCG until such appointing SCG/SRO shall appoint a successor, such successor appointment to be evidenced by a written notice delivered by the appointing SCG/SRO to each of the other SCG/SROs.

(B) At the first meeting of the SCG after execution of this Agreement, the Principal Representatives of the SCG shall, by a majority vote of all Principal Representatives, select from among their number a Chairman, who shall serve as Chairman of the SCG, effective immediately upon such election, for a term of one year. At the end of such term, a successor Chairman shall be selected by the Principal Representatives in like manner. The Chairman shall call such meetings of the SCG as he sees fit, or at the request of a majority of the Principal Representatives, and shall select the site for such meetings, but it is anticipated that such meetings shall be held not less frequently than once each calendar quarter. Reasonable notice, which may be by voice communication or in writing, of the time and place of each meeting of the SCG, shall be given by the Chairman to each Principal Representative.

Whenever he considers it appropriate, the Chairman shall appoint a subgroup to study such issues affecting areas within the scope of the SCG as he may assign. The subgroup shall be selected by the Chairman from among those members of the staff of each SCG/SRO, if any, as may be made available by the Principal Representative of each such SCG/SROs. The subgroup so selected shall report its findings and recommendations to the SCG.

(C) Each Principal Representative shall from time to time select one member of the staff of the SCG/SRO which appointed such Principal Representative (and shall inform in writing each of the other SCG/SROs of each such selection) to serve as the Alternate for, and under the direction of, the Principal Representative who selected such Alternate. Each such Alternate shall be well versed in clearing agency operations and surveillance and compliance techniques employed. The several Alternates selected as above provided shall, on an ongoing basis, monitor the operation of this Agreement and of such other agreement(s) as from time to time may be adopted between the parties hereto. They shall maintain appropriate contact among the SCG/SROs and shall discuss matters of mutual interest relating to this Agreement, and surveillance and compliance matters generally. In the absence of any Principal Representative at any meeting of the SCG, such Principal Representative's Alternate may participate in, and vote on any matter which comes before such meeting.

(D) Each Principal Representative shall have one vote on each matter coming before the SCG. All action of the SCG shall be taken at a meeting of the SCG at which not less than 100% of all the Principal Representatives then acting are present (either personally or through their respective Alternates) and the affirmative vote of all of the Principal Representatives (or their respective Alternates) shall be required in order to authorize any action of the SCG, except as provided in the first paragraph of section 1(B). However, any action taken by a Principal Representative (or Alternate) of an SCG/SRO may be subsequently nullified by such SCG/SRO at any time. Nothing herein shall prevent any SCG/SRO from entering into agreements with any other SCG/SRO(s) separate from the SCG. This would be an available course of action if the SCG could not reach unanimity on a proposed agreement or a previous SCG agreement is subsequently nullified by one or more parties.

Section 2. *Confidentiality.*

Each SCG/SRO agrees that all clearance and settlement information, or financial or operational information concerning a participant in a SCG/SRO, it receives under this Agreement from another SCG/SRO which is not otherwise publicly available shall be used solely by such SCG/SRO and exclusively for the purpose of carrying out its responsibilities as a clearing agency self-regulatory organization in discharge of its responsibilities under the Act, and any SCG/SRO shall only deliver information on a participant [which shall include: an applicant for participation, a subsidiary or affiliate of a participant or a subsidiary or affiliate of an applicant for participation] to another SCG/SRO, if the participant is also a participant of the receiving SCG/SRO. In response to a reasonable request, the parties would intend only to deliver reasonably accessible information within their possession. Each such SCG/SRO agrees that no information received by it pursuant to this Agreement from any other SCG/SRO shall, without written consent of such other SCG/SRO, be provided or made available by the receiving SCG/SRO to any of its non-legal, non-regulatory, or non-compliance departments or divisions or to any other person, except for legal, regulatory or compliance purposes. Nothing contained herein shall preclude any SCG/SRO from furnishing clearance and settlement information or financial or operational information concerning a participant in a SCG/SRO:

(i) To the Securities and Exchange Commission, or

(ii) To the appropriate regulatory agency that has assumed primary regulatory responsibility for the SCG/SRO participant, or

(iii) By order of a court or other body of competent jurisdiction, or

(iv) As may be necessary for the SCG/SRO to conduct any investigation or disciplinary proceeding, or

(v) To another SRO, other than an SCG/SRO, provided the information is on a participant of the SRO and (a) the SRO requests the information for regulatory purposes and (b) the SRO agrees to abide by the provisions of this Section 2, or

(vi) To a subsidiary of an SCG/SRO whose application is then pending with the Securities and Exchange Commission, provided the information is on a participant of the subsidiary and (a) such subsidiary requests the information for regulatory purposes and (b) such subsidiary agrees to abide by the provisions of this Section 2.

Section 3. *Areas of Cooperation.*

Areas to be addressed by the SCG include:

(A) The identification of potential existing facilities and/or existing systems which could be utilized as a central data base for FOCUS and related information (such as changes to broker/dealer registrations) on participants of a SCG/SRO which would be accessible by any other SCG/SRO if the participant is also a member of such;

(B) The identification of potential additions to the FOCUS Report which could facilitate monitoring by SCG/SROs of the financial and/or operational condition of a participant in such SCG/SRO;

(C) The identification and clear understanding of any legal issues involved in:

—Application of cross-liens between two or more SCG/SROs of excess guarantee fund deposits of a participant in two or more SCG/SROs, if the participant is in default of its obligations at one or more SCG/SROs;

—Application of settlement credits of a participant in two or more SCG/SROs, if the participant is in default of its obligations at one or more SCG/SROs;

—Application of excess margin balances of a participant in two or more SCG/SROs, if the participant is in default of its obligations at one or more SCG/SROs;

—The netting of settlement debit and credit obligations of a participant in two or more SCG/SROs when the participant is not in default of its obligations;

—The sharing on a routine basis of net settlement debit and credit obligation information among SCG/SROs and clearing organizations affiliated with futures exchanges; and

—The exchange of securities of a participant in two or more SCG/SROs as collateral to secure a settlement obligation in the event of a temporary cash flow imbalance at the participant;

(D) The development of a standard notification form to be used by all SCG/SROs to notify:

—Other SCG/SROs in which a participant is also a member that the originating SCG/SRO has placed the participant on surveillance because there exists substantive questions as to the financial or operational ability of the participant to continue to perform as a member, and

—All SCG/SROs of the addition of a new member;

(E) Means by which current levels of cooperation between SCG/SROs and marketplace regulators and the Securities and Exchange Commission can be further increased; and

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(F) Such other areas as may be agreed upon from time to time by the SCG which shall be described in Exhibit B.

Nothing herein shall prevent or preclude a SCG/SRO from taking disciplinary action against one of its participants or such other actions as its rules permit to protect the SCG/SRO and/or its participants from risks and/or losses created or occasioned by a participant in such SCG/SRO.

Section 4. *Costs.*

The procedure for payment of any expenses incurred by the SCG/SRO for any of the undertakings set forth herein (or subsequently assumed) shall be set forth in a separate agreement(s). Such agreement(s) shall not be valid unless approved by an appropriate official or officials (other than the Principal Representative or Alternate) or governing body authorized by the SCG/SRO(s) to make such commitment. Any increase, modification or alteration of the costs or scope of the undertaking must be set forth in an amendment to such agreement and approved in the same manner as the original agreement.

Section 5. *Indemnificaiton.*

Each SCG/SRO agrees to indemnify and hold harmless each other SCG/SRO, it directors, officers, employees and agents, from and against any and all losses, claims, damages, liabilities and expenses (including costs of investigation or defending the same and reasonable counsel fees incurred in connection therewith) incurred by or threatened against the indemnified party and arising as a result of or in connection with any misuse by the indemnifying SCG/SRO of clearance and settlement information or financial or operational information provided to the indemnifying SCG/SRO pursuant to this Agreement. Any use of such clearance and settlement information or financial or operational information by a SCG/SRO which does not accord with the provisions of Section 2 of this Agreement shall be deemed to be a "misuse" of such information.

Section 6. *Limitation of Liability.*

Except as provided in Section 5 of this Agreement, neither any SCG/SRO nor any of its directors, officers, employees or agents shall be liable to any other SCG/SRO, its directors, officers, employees or agents in respect of the non-performance of any delay or interruption in the performance of any provision of this Agreement for any reason whatsoever.

Section 7. *Term and Termination.*

This Agreement shall continue as to any SCG/SRO until terminated by it on not less than six months' notice in writing to each of the other SCG/SROs which are parties to this Agreement at the time of the giving of such notice.

Section 8. *Assignment.*

Neither this Agreement nor any of the rights or obligations of any party hereto may be assigned, licensed or otherwise transferred by any party hereto without the prior written consent of each other party hereto.

Section 9. *Notices.*

The address of each party for the purpose of any notice provided for herein, or of any other written communication in connection herewith, shall be as set forth below:

National Securities Clearing Corporation, 55 Water Street, New York, New York, 10041, Attention: Robert J. Woldow

The Depository Trust Company, 7 Hanover Square, New York, New York 10004, Attention:

Midwest Clearing Corporation, 440 South LaSalle Street, Chicago, Illinois 60605, Attention:

Midwest Securities Trust Company, 440 South LaSalle Street, Chicago, Illinois 60605, Attention:

The Options Clearing Corporation, 440 South LaSalle Street, Chicago, Illinois 60605

Philadelphia Depository Trust Company, 1900 Market Street, Philadelphia, Pennsylvania 19103, Attention:

Stock Clearing Corporation of Philadelphia, 1900 Market Street, Philadelphia, Pennsylvania 19103, Attention:

Section 10. *Amendment.*

This Agreement may be amended, except with respect to section 1(D) and section 4, by the affirmative vote of all Principal Representatives (or their respective Alternates). Any amendment to Section 1(D) or Section 4 shall only be valid if it is subsequently unanimously approved in writing by an appropriate official or officials (other than the Principal Representative or Alternate) or governing body authorized by each SCG/SRO to make such amendment. Such amendments by the parties may be in any number of counterparts, no one of which need contain all signatures of all parties. As many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

Section 11. *Governing Law.* This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York.

In witness whereof, the parties hereto have executed this Agreement as of the date and the year first above written.

National Securities Clearing Corporation.

Midwest Clearing Corporation.

The Options Clearing Corporation.

Stock Clearing Corporation of Philadelphia.

The Depository Trust Company.

Midwest Securities Trust Company.

Philadelphia Depository Trust Company.

[FR Doc. 88-27585 Filed 11-29-88; 8:45 am]

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[Release No. 34-26302; File No. SR-NYSE-88-27]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to a Conflict of Interest Policy

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend its Rule 22 concerning the Exchange's conflict of interest policy. The proposed rule change consists of designating the existing paragraph of Rule 22 as "(a)", effecting a number of non-substantive modifications to paragraph (a), and adding paragraph "(b)", broadening the scope of the Exchange's conflict of interest policy.[1]

[1] Concurrent with publication of the Commission order granting accelerated approval of this proposed rule change, the Commission is also granting accelerated approval to a proposed NYSE rule change (SR-NYSE-87-9) that will reinsert a parallel conflict of interest provision into the Exchange's Constitution. The amendment to the NYSE Constitution will prohibit members of the Exchange's Board of Directors from participating in the adjudication of any matter in which they are personally interested. *See* Securities Exchange Act Release No. 26303, November 22, 1988.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Section (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The conflict of interest provision contained in the proposed addition to Rule 22 expands upon the existing written policy of the Exchange. The Exchange is of the opinion that it would be appropriate to articulate this expanded policy within the rules of the Exchange.

The statutory basis of the proposed rule change is section 6(b) of the Act, in general, and in particular, Paragraph (5) of section 6(b) in that it promotes just and equitable principles of trade and protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change from members, participants or others were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-27 and should be submitted by December 21, 1988.

IV. Commission's Findings and Order Granting Accelerated Approval

As stated above, in addition to several nonsubstantive modifications to paragraph (a) of Rule 22 (substituting the terms "Director" for "governor", "their" for "his", and "they" for "he"), the proposed rule change will add a broadened conflict of interest provision to the NYSE's rules. Proposed paragraph (b) of Rule 20 provides that "no person shall participate in the adjudication of any matter in which he is personally interested." This provision parallels the language of a proposed NYSE rule change that will reinsert a conflict of interest provision into the NYSE Constitution that applies to members of the Exchange's Boards of Directors.[2]

Currently, the Exchange operates under a conflict of interest provision that was contained in Article III, Section 2, of the previous NYSE Constitution. That provision states that "no person shall participate in the adjudication of any matter in which he is personally interested" the NYSE sought to eliminate that provision in connection with the proposed re-organized and redrafted NYSE Constitution that was submitted for Commission review in December of 1985.[3] The Commission approved the proposed new NYSE Constitution [4] but took no action on that portion of the proposal that would have eliminated the conflict of interest clause from the Constitution.[5]

The NYSE agreed with the Commission that a conflict of interest provision should be reinserted in the NYSES Constitution.[6] Subsequently, the Exchange submitted a proposed conflict of interest provision for the NYSES Constitution, applying to members of the Exchange's Board of Directors,[7] and then later the instant proposal that will adopt a conflict of interest rule paralleling the proposed constitutional amendment but applying to all persons involved in a NYSE adjudication.

The Commission has closely reviewed the proposed NYSE rule change and believes that it is consistent with the requirements of the Act and that, accordingly, it should be approved. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(7) of the Act which requires that the rules of an exchange provide a fair procedure for the disciplining of members and persons associated with members, in that the proposal will add a conflict of interest rule that will prohibit all persons from participating in the adjudication of any matter in which they have a personal interest. The Commission notes that its approval of this proposed rule change is concurrent with Commission approval of a proposed amendment to the NYSE Constitution that will add a conflict of interest provision prohibiting members of the Exchange's Board of Director's from participating in the adjudication of any matter in which they have a personal interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the adoption of a conflict of interest rule will occur at the same time as Commission approval of a proposed amendment to the NYSE Constitution that will apply the same conflict of interest standard to members of the Exchange's Board of Directors.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27588 Filed 11-29-88; 8:45 am]

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[2] *See* note 1, *supra.*

[3] *See* File No. SR-NYSE-85-47.

[4] Securities Exchange Act Release No. 22959, February 28, 1986, 51 FR 8060.

[5] Since the Commission did not approve its elimination, the conflict of interest provision from the previous NYSE Constitution remains in effect.

[6] Telephone conversation between Brandon Becker, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, and James E. Buck, Secretary, NYSE, on February 24, 1988.

[7] *See* note 1, *supra.*

[8] In its order approving the proposed redrafted and reorganized NYSE Constitution, the Commission states that section 6(b)(7) of the Act makes it essential that a conflict of interest provision be present in the NYSE Constitution. *See* note 4, *supra.*

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[Release No. 34-26303; File No. SR-NYSE-87-9]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to a Conflict of Interest Policy.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 24, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to reinstate into its Constitution its conflict of interest policy. The policy specifically prohibits directors from participating in the adjudication of a matter in which they have a personal interest.[1]

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Section (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange believes it important that its conflict of interest policy concerning directors who might have a personal interest in a matter be articulated in its Constitution. The inclusion of the conflict of interest provision in the Constitution is consistent with section 6(b)(5) of the Act in that promotes just an equitable principles of trade and protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Completion

The Exchange believes the proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-87-9 and should be submitted by December 21, 1988.

IV. Commission's Findings and Order Granting Accelerated Approval

As stated above, the proposed amendment of the NYSE Constitution is intended to reinsert a conflict of interest provision into the Exchange's Constitution. The Conflict of interest provision that the Exchange is currently operating under was contained in Article III, section 2, of the previous NYSE Constitution. That provision states that "no person shall participate in the adjudication of any matter in which he is personally interested." [2] The NYSE sought to eliminate that provision in connection with the proposed re-organized and redrafted NYSE Constitution that was submitted for Commission review in December of 1985.[3] The Commission approved the proposed new NYSE Constitution [4] but took no action on that portion of the proposal that would have eliminated the conflict of interest clause from the Constitution.[5]

The NYSE agreed with the Commission that a conflict of interest provisions should be reinserted in the NYSE Constitution.[6] Subsequently, the Exchange submitted the instant proposal as well as a proposed rule change that would adopt conflict of interest language applying to all persons involved in a NYSE adjudication.[7]

The Commission has closely reviewed the proposed amendment to the NYSE Constitution and believes that it is consistent with the requirements of the Act and that, accordingly, it should be approved. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(7) of the Act which requires that the rules of an exchange provide a fair procedure for the disciplining of members and persons associated with members, in that the proposal will add a conflict of interest provision to the NYSE Constitution that will prohibit members of the Exchange's Board Directors from participating in the adjudication of any matter in which they have a personal interest.[8] The Commission also notes that its approval of this proposed amendment to the NYSE Constitution is concurrent with Commission approval of a proposed rule change that will add to NYSE Rule 22 parallel conflict of interest language that will extend this prohibition to all other persons involved in an adjudication, including all members, officers, and employees of the Exchange.[9]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that a conflict of interest provision can be promptly reinserted into the revised NYSE Constitution. As noted previously, the Commission believes that it is essential that a conflict of interest provision helping to ensure fairness in NYSE adjudications be present in the NYSE Constitution. While the conflict of interest provision from the prior Constitution has remained in effect since adoption of the Exchange's revised Constitution, adoption of the proposed amendment will reinsert an appropriate conflict of interest provision into the revised NYSE Constitution. In addition, the adoption of this amendment adding a conflict of interest provision to the revised NYSE Constitution will occur at the same time as Commission approval of a proposed NYSE rule that will apply the same conflict of interest standard to all other members, officers, and employees of the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27589 Filed 11-29-88; 8:45 am]

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[1] Concurrent with publication of the Commission order granting accelerated approval of this proposed rule change, the Commission is also granting accelerated approval to a proposed NYSE rule change (SR-NYSE-88-27) that will add parallel conflict of interest language applying to all NYSE members, officers and employees. The amended rule will prohibit any person from participating in the adjudication of any matter in which they are personally interested. *See* Securities Exchange Act Release No. 26302, November 22, 1988.

[2] We note that the proposed provision would replace "no person" with "no Directors."

[3] *See* File No. SR-NYSE-85-47.

[4] Securities Exchange Act Release No. 22959, February 28, 1986, 51 FR 8060.

[5] Since the Commission did not approve its elimination, the conflict of interest provision from the previous NYSE Constitution remains in effect.

[6] Telephone conversation between Brandon Becker, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, and James E. Buck, Secretary, NYSE, on February 24, 1986.

[7] *See* note 1, *supra.*

[8] In its order approving the proposed redrafted and reorganized NYSE Constitution, the Commission states that section 6(b)(7) of the Act makes it essential that a conflict of interest provision be present in the NYSE Constitution. *See* note 4, *supra.*

[9] *See* note 1, *supra.*

[Release No. 34-26304; File No. SR-PSE-87-9]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Adoption of a New Membership Category

I. Introduction

On April 1, 1987, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, [1] a proposed rule change that would amend several provisions of the PSE Constitution.[2] These changes include an amendment to the definition of "member", to create a new membership category entited "inactive member" which will include natural persons who own or inherit a membership which they intend to keep for the sole purpose of leasing the seat. The proposed rule change would permit a member or inactive member to choose a natural person or a broker dealer to inherit their membership upon such member's death. The proposed rule would also amend the PSE Constitution to include inactive members in its treasury membership provisions which govern circumstances under which a PSE membership reverts to the ownership of the Exchange.

II. Description of Proposed Rule Change

The proposed rule change would amend Article V, Section 3, of the PSE Constitution by including under the definition of "member" a new membership category to be termed "inactive member." The proposal would define "inactive member" as a natural person who owns or inherits a membership which they intend to keep for the sole purpose of acting as a lessor.

The proposal would also amend Article VII, Section 8(c), of the Constitution to state that upon the death of a member or inactive member leaving no eligible transferee under the PSE Constitution, [3] or leaving no natural person or broker-dealer as heir, such membership would become a treasury membership of the Exchange.

Finally, Article VII, Section 9, of the Constitution would be amended to provide that upon the expulsion, surrender of membership, or death of a member or inactive member leaving no eligible transferee or natural person or broker-dealer as heir, such membership would become a treasury membership of the Exchange.

In connection with the proposed "inactive member" membership category, the Exchange has also submitted a proposed new membership application, the PSE Lessor Application, which may only be utilized by a natural person who does not engage in any activity for which broker-dealer registration is required. This form would be used by those natural persons that intend to enter a bid for the purchase of a PSE membership and who, if successful, intend to become a lessor pursuant to an authorized PSE lease agreement. The new form must also be used by a natural person who has inherited a PSE seat, who does not engage in any activity for which broker-dealer registration is required, and who seeks to obtain PSE approval for an agreement leasing that seat to a qualified PSE member.

Section 8(b) provides that upon the death of a member whose membership was not purchased by funds advanced by his member firm, such membership shall be transferred in accordance with any agreement between the deceased member and his member firm, provided that such agreement had been previously filed with the Exchange and no objection to the agreement has been filed.

Included in this form is a Declaration that must be completed by the applicant. The proposed Declaration requires that an inactive member (lessor) seeking PSE approval of a lease agreement commit to the following: (1) The lessor is not an associated person of the proposed lessee or of any member or member firm of the PSE; [4] (2) that upon purchase or inheritance of a membership in the PSE, the inactive member shall lease the membership to a registered and qualified member of the Exchange; (3) that any lease agreement between the; inactive member and a member of the PSE shall be pursuant to an authorized PSE lease agreement; and (4) that upon an inactive member's leasing of his membership, the lessor may not transact business on any trading floor of the Exchange, nor engage, either directly or indirectly, in any security activity for which broker-dealer registration is required.

III. Discussion

As discussed previously, the proposed rule change creates a new "inactive member" membership category on the PSE. This new category will permit natural persons who are not registered broker-dealers to purchase a PSE membership for the purpose of leasing that seat to a qualified PSE member. In addition, it will permit a PSE member or inactive member to choose a natural person or broker-dealer to inherit his or her membership upon the member's death.

The current PSE Constitution does not permit a natural person not registered as a broker or dealer or a non-member broker-dealer to inherit a PSE membership. Currently, in the event of

[1] 15 U.S.C. 78s(b) and 17 CFR 240.19b-4 (1987).

[2] The proposed rule change was noticed in Securities Exchange Act Release No. 24741, July 27, 1987, 52 FR 28886. Subsequently, the Exchange submitted amendments to SR-PSE-87-9 on December 11, 1987, and May 18, 1988. These amendments were not separately noticed by the Commission.

[3] Eligible transferees are described under Article VII, Section 8(a) and Section 8(b), of the PSE Constitution. Section 8(a) provides that upon the death of a member whose membership was purchased from funds advanced by his member firm, the membership may be transferred to a surviving allied member of such firm or to a qualified nominee provided the nominee is elected to membership.

[4] Under section 3(a)(18) of the Act, the terms "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaing of such term for purposes of section 15(b) of [the Act] (other than paragraph (6) [of that Section]).

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the death of PSE member who has not entered into a transfer arrangement with an eligible party under Article VII, Secton 8(a) or 8(b), of the PSE Constitution, [5] the membership will revert to the PSE as a treasury membership under the provisions of Article VII, Sections 8(c) and 9, of the Constitution.

Under section 6(c)(1)(A) and (B) of the Act, a national securities exchange must deny membership to any person, other than a natural person, which is not a registered broker or dealer or to any natural person who is not, or is not associated with, a registered broker or dealer. The term "member" of a national securities exchange is defined under section 3(a)(3)(A) of the Act to mean (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of (the Act), the rules and regulations there under, and its own rules.

The Commission has issued several "no action" letters that have construed the requirements of section 6(c)(1)(A) and (B) of the Act, in view of the definition of member under the Act, as allowing a national securities exchange to permit a natural person who is not registered as a broker-dealer to own an exchange membership under limited circumstances. These no action positions have been expressly limited to circumstances where a natural person has either inherited the membership or purchased it solely for the purpose of leasing the membership, where that person is not an associated person of the lessee, and where that person is not or has not been engaged in securities activities for which broker-dealer registration is required.[6]

The Commission has closely reviewed the proposed PSE rule change with particular attention to our previous "no action" positions and has concluded that it is consistent with the Act and, accordingly, should be approved. The Commission believes that approval of the proposed rule change and the requirements set forth in the PSE Lessor Application and its Declaration is consistent with our previous no action positions construing the requirements of section 6(c)(1)(A) and (B) of the Act and the definition of "member" under section 3(a)(3)(A) of the Act. We have interpreted those provisions to allow an exchange to permit a natural person to own an exchange membership, under circumstances like those required under the proposed PSE rule change, where that person has either inherited the membership or purchased it solely for the purpose of leasing that membership, where that person is not an associated person of the lessee, and where that person is not and has not been engaged in securities activities for which broker-dealer registration is required.

In addition, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will remove impediments to and perfect the mechanism of a free and open market by providing members with more alternatives in how they will structure their membership affiliations. Adoption of the proposed rule change will enable PSE members to will their membership to a natural person or broker-dealer who would not be eligible to inherit the membership under the current PSE Constitution. Moreover, it will permit a natural person who has inherited such a membership, or who purchased a membership for the sole purpose of leasing the seat to a qualified PSE member, to lease that membership where they meet the requirements of the PSE Lessor Agreement and its accompanying Declaration.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27590 Filed 11-29-88; 8:45 am]

BILLING CODE 8010-01-M

[5] *See* note 3, *supra.*

[6] *See* letters from Jeffrey L. Steel, Special Counsel, Division of Market Regulation, Securities and Exchange Commission to Theodore H. Focht, General Counsel, Securities Investor Protection Corporation, dated March 12, 1979, and to Arne R. Rode, Associate General Counsel, Chicago Board Options Exchange, dated January 2, 1980.

[Rel. No. IC-16650; (811-5442)]

The Guardian Generation Series Trust; Application

November 23, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for De-Registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Guardian Generation Series Trust.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant requests an order under Section 8(f) declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on October 21, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 19, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate.

Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 201 Park Avenue South, New York, NY 10003.

For Further Information Contact: James E. Banks, Staff Attorney (202) 272-2190, or Brion R. Thompson, Branch Chief (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered under the 1940 Act as an open-end, diversified, management investment company on December 31, 1987. Applicant did not register any securities under the Securities Act of 1933 and never commenced a public offering of any of its shares.

2. Applicant is in the process of terminating its existence as a Massachusetts Business Trust.

3. Applicant has not distributed or transferred any assets in connection with the winding-up of its affairs, and does not have any outstanding debts or other liabilities.

4. Applicant is not a party to any current or pending litigation or administrative proceedings, and does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-27591 Filed 11-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16653; (812-7049)]

Pacific Horizon California Tax-Exempt Bond Portfolio, Inc., et al.; Application

November 23, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Pacific Horizon California Tax-Exempt Bond Portfolio, Inc., Pacific Horizon Funds, Inc., Pacific Horizon Money Market Portfolio, Pacific Horizon High Yield Bond Portfolio, Pacific Horizon Aggressive Growth Portfolio, Pacific Horizon Tax-Exempt Money Market Portfolio, Inc., The Horizon Capital Funds ("Funds"), and Concord Financial Group, Inc. (the "Distributor") and on behalf of each future investment company for which the Distributor (or its subsidiaries or affiliates) serves as distributor.

Relevant 1940 Act Section: Section 11(a) of the 1940 Act.

Summary of Application: Applicants seek an order approving certain offers of exchange of shares of the Funds on a basis other than their relative net asset values per share at the time of the exchange.

Filing Dates: The application was filed on June 13, 1988, and amendments were filed on September 23 and November 21, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 16, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, c/o Drinker Biddle & Reath, 1100 Philadelphia National Bank Building, Broad & Chestnut Streets, Philadelphia, PA 19107. Attention: Jeffrey A. Dalke, Esq. or Keith A. Weller, Esq.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272-2190, or Brion R. Thompson, Branch Chief (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicants state that each Fund is an open-end management investment company registered under the 1940 Act. Each Fund offers shares under a currently effective registration statement under the Securities Act of 1933. Security Pacific National Bank serves as investment adviser to each Fund, and Concord Financial Group, Inc. serves as the distributor of each Fund's shares.

2. Shares of the No-Load Funds are sold at net asset value without a sales charge. Shares of the Load Funds are offered at net asset value plus a front-end sales load. None of the Funds currently charges a contingent deferred sales load or a redemption fee.

3. Applicants wish to allow shareholders of any No-Load Fund and any Load Fund to exchange all or any portion of their shares (including shares acquired through the reinvestment of dividends and capital gains distributions) for shares of other Funds. The applicable sales load will be deducted in full whenever shares of a No-Load Fund are exchanged for shares of a Load Fund with the following exceptions. If the shares of the Fund involved in the exchange were either (i) purchased with a sales load, (ii) acquired through a prior exchange of shares that were purchased with a sales load, or (iii) acquired through the reinvestment of dividends or distributions on shares described in clauses (i) or (ii) (collectively, the "Paid Shares"), then no sales load will be deducted in connection with the exchange, unless the sales load applicable to the shares of the Load Fund to be acquired in the exchange exceeds the maximum sales load previously paid in connection with the Paid Shares. In such case, only the difference between the sales loads will be deducted.

4. In calculating the sales load payable in connection with a share exchange: (a) Paid Shares acquired through dividend reinvestment or capital gains distribution will be deemed to have been sold with a sales load equal to the sales load previously paid on the shares on which the dividend was paid or distribution was made; (b) Paid Shares (in order of the highest load paid) will be considered the first shares exchanged; and (c) any rights of accumulation, rights under a letter of intent, and sales load waivers, as described in the prospectus of the Fund involved, will apply. No redemption fee will be imposed with respect to any exchanged security, and no administrative fee will be charged in connection with the share exchanges described in the application.

Applicants' Analysis

1. Applicants state that the purpose of their exchange privilege is to permit simultaneous, voluntary redemption and purchase transactions initiated solely at a shareholder's request. The Distributor has adopted compliance procedures, which are set forth in a handbook given to all employees, which would be applicable in the event that a registered representative of the Distributor were to misuse the Funds' exchange privilege for personal gain. The Distributor's compliance officer is responsible for policing the Distributor's compliance procedures and for monitoring complaints from the Funds' shareholders.

2. Applicants state that certain share exchange transactions may not comply with section 11(a) of the 1940 Act because they could be interpreted to be on a basis other than relative net asset value. Applicants are concerned, however, that if exchanges are always made at the relative net asset values of the shares involved in the exchanges without the imposition of any sales load, the distribution system of the Load Funds would be disrupted because an investor could easily avoid the sales load by acquiring No-Load Fund shares and immediately exchanging the shares for Load Fund shares.

3. Applicants assert that their exchange privilege will solve these concerns, be equitable to all shareholders and benefit exchanging shareholders by crediting them for sales loads previously paid. Applicants state further that the arrangements described in the Application are substantially

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identical to those that have been the subject of other applications granted by the SEC and are consistent with Revised Proposed Rule 11a–3 under the 1940 Act (*See* Investment Company Act Release No. IC–16504, July 29, 1988).

Applicant's Legal Conclusion

1. Applicants submit that the granting of their request for approval of the proposed exchange privilege is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

1. The Funds' exchange privilege will comply with the requirements of Revised Proposed Rule 11a–3 under the 1940 Act, and as finally adopted.

2. Shareholders will be notified of any administrative fee that may be imposed on an exchange transaction by means of each Fund's prospectus and in other communications, including sales literature or advertising that describes the exchange privilege.

3. Shareholders of each Fund will be notified of the Funds' exchange privilege by means of the particular Fund's prospectus and in other communications, including sales literature or advertising.

4. Shareholders of each Fund will be notified by means of the particular Fund's prospectus and in sales literature that discusses the exchange privilege of the fact that the Fund reserves the right to modify or terminate its exchange privilege.

5. Shareholders will be notified in writing at least 60 days prior to any modification or termination of a particular Fund's exchange privilege, except in the case of a reduction or elimination of any administrative fee or sales load in which case notice shall not be required; provided, however, that the temporary cessation of the sale of Fund shares under extraordinary circumstances such as when the Fund is unable to effectively invest amounts in accordance with applicable investment objectives, policies and restrictions, or the suspension of the redemption of Fund shares pursuant to section 22(e) of the 1940 Act and the rules and regulations thereunder shall not be considered a modification or termination of the particular Fund's exchange privilege;

6. Except as may otherwise be permitted by Revised Proposed Rule 11a–3, as adopted, Applicants undertake to obtain an amended order prior to any modification (*i.e.*, manner, frequency or basis) of the Funds' exchange privilege in a manner not described in the application; provided, however, that an amended order is not required in order to terminate the Funds' exchange privilege.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–27592 Filed 11–29–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35—24756]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 23, 1988.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the declaration for complete statements of the proposed transaction summarized below. The declaration and any amendment thereto is available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the declaration should submit their views in writing by December 19, 1988, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant declarant at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the declaration, as filed or as amended, may be permitted to become effective.

The Connecticut Light and Power Company, et al. (70–7586)

Notice of Proposal to Continue Authorization to Incur Unsecured Indebtedness; Order Authorizing Proxy Solicitation

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, public utility subsidiaries of Northeast Utilities, a registered holding company, have filed a declaration pursuant to sections 6(a), 7, and 12(e) of the Act and Rules 62 and 65 thereunder.

CL&P and WMECO seek authorization to continue to incur, for five-year periods, unsecured indebtedness having maturities of less than ten years in excess of the present 10% limitation as set forth in CL&P's certificate of incorporation and WMECO's by-laws and articles of incorporation, but no more than 20%.

In addition, CL&P and WMECO each propose to hold a special meeting of holders of its preferred stock on January 25, 1989, and to solicit proxies with respect to the continuation of authorization to incur excess unsecured debt. CL&P and WMECO have requested that the effectiveness of its declaration with respect to the solicitation of proxies for voting by its preferred stockholders on the proposal to continue authorization to incur excess unsecured debt be permitted to become effective as provided in Rule 62(d). They propose to mail a notice of meeting, proxy statement and proxy to its stockholders for the meeting on January 25, 1989.

It appearing to the Commission that the declaration of CL&P and WMECO regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–27593 Filed 11–29–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24758]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 23, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and any amendment(s) thereto is/are available for public inspection through

the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 19, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s) as filed or as amended, may be granted and/or permitted to become effective.

New England Energy Incorporated (70–7055)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, the fuel supply subsidiary of New England Electric System ("NEES"), a registered holding company, has filed a post-effective amendment to its application filed pursuant to sections 9(a) and 10 of the Act.

In 1974, the Commission authorized NEEI's participation in oil and gas exploration and development activities in order to provide a fuel supply for NEES system companies (HCAR No. 18635, October 30, 1974). NEEI has participated in these activities principally through its partnership ("Partnership") with Samedan Oil Corporation ("Samedan"), a subsidiary of Noble Affiliates, Inc., a nonaffiliate company. The Partnership agreement ("Agreement") provides for capital contributions by the partners to be used to pay the costs and expenses of the Partnership. The Agreement, as amended February 5, 1985, provides for two phases of operation, Phase I, which expired on December 31, 1986, and Phase II, which commenced on January 1, 1987. Under Phase II, NEEI elected not to participate in new oil and gas prospects initiated by Samedan after December 31, 1986, but remains obligated to pay its share of expenses for exploration, development and production of Phase I prospects acquired on or before December 31, 1986.

By order dated December 2, 1987 (HCAR No. 24512), NEEI was authorized to invest $20 million in the Partnership during 1988 (including $12 million which relates to pre-1984 prospects and $8 million which relates to post-1983 prospects) to meet its share of expenses for further exploration and development of oil and gas properties acquired through December 31, 1986. Jurisdiction was reserved over an additional contribution by NEEI to the Partnership of $10 million during 1988.

NEEI now seeks authorization, through December 31, 1989, to contribute up to $40 million to the NEEI-Samedan Partnership for exploration and development of oil and gas prospects initiated prior to December 31, 1986.

National Fuel Gas Company et al. (70–7438)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its subsidiaries, National Fuel Gas Supply Corporation, Penn-York Energy Corporation, Utility Constructors, Inc., National Fuel Gas Distribution Corporation ("Distribution"), Empire Exploration, Inc., and Highland Land & Minerals, Inc., each located at 10 Lafayette Square, Buffalo, New York 14203, and Seneca Resources Corporation, 333 Clay Street, Suite 4150, Houston, Texas 77002, (collectively, "Subsidiary Companies") have filed a post-effective amendment to the application-declaration filed with the Commission pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 42(b)(2), 43, 45 and 50(a)(5) thereunder.

By orders dated December 29, 1987 and January 7, 1988 (HCAR Nos. 24551 and 24551A, respectively), the Commission authorized National and its Subsidiary Companies, in relevant part, to establish external short-term lines of credit and, in the case of National, to issue and sell commercial paper to dealers and or short-term notes to banks through December 31, 1989. National and its Subsidiary Companies were also authorized to participate in the National system money pool ("Money Pool") through December 31, 1989. Jurisdiction was reserved over certain other matters.

It is now proposed that: (1) Distribution's authority to borrow from the Money Pool be increased from $200 million to $230 million; (2) National's authority to issue and sell commercial paper, pursuant to an exception from competitive bidding, be increased from $100 million to $120 million; and (3) National's available authority to issue and sell unsecured short-term notes under its bank lines of credit be increased from $100 million to $350 million. The aggregate principal amount of National's short-term notes and commercial paper outstanding at any one time shall not exceed $350 million. The proceeds of National's borrowings would be made available to the Subsidiary Companies through the Money Pool for the period January 1, 1989 through December 31, 1989.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–27594 Filed 11–29–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1240]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on December 13 and 14, 1988, at the Department of State, 2201 C Street, NW., Washington, DC. The meeting will begin in Room 1406 at 2:30 p.m. on December 13, and continue the following day in Room 1105 at 9:30 a.m. until approximately 12:00 noon.

The purpose of the United States Organization is to assist and advise the Department on matters concerning participation in the international CCIR activities. It is charged with promoting the best interests of the United States, providing advice on matters of policy and positions in preparation for Study Group meetings, and recommending the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration. The National Committee constitutes a steering body, and as such has purview of the work of the national study groups and other activities.

The main purposes of the meeting will be to:

1. Review national preparations for the ITU Plenipotentiary Conference, with respect to CCIR related matters;

2. Report on study group preparations for the CCIR Final Meetings to be held in the Fall of 1989; (the following items will likely be taken up on 12/14)

3. Identification and discussion of major CCIR issues;

4. Consideration of future activities;

5. Other business and next meeting.

Members of the general public may attend the meeting and join in discussions subject to instructions of the Chairman. Admittance of public

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members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Richard Shrum, Department of State, Washington, DC; telephone (202) 647–2592, telefax (202) 647–5957. All attendees must use the C Street entrance to the building.

Date: November 9, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88–27603 Filed 11–29–88; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1241]

Study Group 1 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on December 14, 1988 in Room 6029 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. The meeting will begin at 1:30 p.m.

Study Group 1 deals with efficient use of the radio frequency spectrum, and in particular, with problems of frequency sharing; principles for classifying emissions; and the measurement of emission characteristics and spectrum occupancy. The purpose of the meeting is to plan preparations for the Final Meeting of Study Group 2 in the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647–2592.

Date: November 9, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88–27604 Filed 11–29–88; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1085]

Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Notice.

SUMMARY: At its annual meeting in Hobart, Tasmania, 24 October–4 November 1988, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted the conservation measures listed below, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with Article IX, paragraph 6(A) of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, and define reporting requirements.

DATE: Persons wishing to comment on the measures or desiring more information should contact on or before December 30, 1988.

FOR FURTHER INFORMATION CONTACT: R. Tucker Scully, Director, Office of Marine Science and Polar Affairs (OES/OSP), Room 5801, Department of State, Washington, DC 20520, (202) 647–3262.

SUPPLEMENTARY INFORMATION:

CCAMLR Convention Measures

In accordance with Article IX 6(A) of the Convention for the Conservation of Antarctic Marine Living Resources members are hereby notified of the following conservation measures adopted at the seventh meeting of CCAMLR.

Conservation Measure 11/VII

Prohibition of Directed Fishery on Champsocephalus Gunnari in Subarea 48.3 from 4 November 1988 to 20 November 1989

The Commission in accordance with Conservation Measure 7/V, hereby adopts the following conservation measure in accordance with Article IX of the convention:

Directed fishing on Champsocephalus Gunnari shall be prohibited from 4 November 1988. This prohibition shall extend, through a closed season from 1 April to 1 October 1989, to 20 November 1989. During this protected period Champsocephalus Gunnari, Notothenia Rossii, Notothenia Gibberifrons, Chaenocephalus Aceratus and Pseudochaenichthys Georgianus shall not be taken in statistical Subarea 48.3 except for scientific research purposes.

Conservation Measure 12/VII

Catch Limitation on Patagonotothen Brevicauda Guntheri in Statistical Subarea 48.3 for the 1988/89 Season

The Commission in accordance with Conservation Measure 7/V, hereby adopts the following conservation measure in accordance with article IX of the convention:

The catch of Patagonotothen Brevicauda Guntheri in statistical Subarea 48.3 in the 1988/89 season shall be limited to 13,000 tonnes. For the purpose of implementing this conservation measure the catch reporting system set out in Conservation measure 9/VI shall apply.

At the seventh meeting the Commission agreed that Conservation Measure 12/VII applies immediately (retrospectively to 1 July 1988). Members shall report their aggregate catch to date to the Commission as soon as possible and not later than 1 December 1988.

Relevant Previously Adopted CCAMLR Measures

Conservation Measure 7/V (1986)

Regulation of Fishing Around South Georgia (Statistical Subarea 48.3)

The Commission hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Without prejudice to other Conservation Measures adopted by the Commission, for species upon which fisheries are permitted around South Georgia (Statistical Subarea 48.3), the Commission shall, at its 1987 Meeting, adopt limitations on catch, or equivalent measures, binding for the 1987/88 season. Such limitations of catch or equivalent measures shall be based upon the advice of the Scientific Committee, taking into account any data resulting from fishery surveys around South Georgia. For each fishing season after 1987/88, the Commission shall establish such limitations or other measures, as necessary, around South Georgia on a similar basis at the meeting of the Commission immediately preceding that season.

Conservation Measure 9/VI (1987)

Catch Reporting System for Champsocephalus Gunnari in Statistical Subarea 48.3

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Catch Reporting System for Champsocephalus Gunnari in Statistical Subarea 48.3

1. For the purposes of this catch reporting system the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20, and day 21 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B and C.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch for that period and shall, by cable or telex, transmit the aggregated catch for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period.

3. Such reports shall specify the month and reporting period (A, B or C) to which each report refers.

4. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties of the total catch taken during the reporting period, the total aggregate catch for the season to that date, together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. Each estimate shall be based on a projection forward of the average daily catch rate (calculated as the total catch by all contracting parties divided by the number of days in the period) for the most recent period based on the reports received for the period in question, to the point at which the total allowable catch will have been taken.

5. When the Executive Secretary has received reports which show that 90% of the total allowable catch has been taken, the Executive Secretary shall make a final estimate of the date upon which the total allowable catch will be reached. The fishery shall close at the end of the last day of the reporting period within which that date falls.

6. The catch reporting system shall continue in operation until revised or withdrawn as a consequence of review at the next meeting of CCAMLR.

November 17, 1988.

R. Tucker Scully,

Director, Office of Oceans and Polar Affairs.

[FR Doc. 88–27547 Filed 11–29–88; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 30–88]

Treasury Bonds of 2018

Washington, November 18, 1988.

The Secretary announced on November 17, 1988, that the interest rate on the bonds designated Bonds of 2018, described in Department Circular—Public Debt Series—No. 30–88 dated November 15, 1988, will be 9 percent. Interest on the bonds will be payable at the rate of 9 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–27577 Filed 11–29–88; 8:45 am]

BILLING CODE 4810–40–M

Fiscal Service

[Dept. Circ. 570, 1988 Rev., Supp. No. 4]

Surety Companies Acceptable on Federal Bonds; Suspension of Authority; Century Surety Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Century Surety Company under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is hereby suspended, effective this date. The suspension will remain in effect until further notice.

The company was last listed as an acceptable surety on Federal bonds at 53 FR 25058, July 1, 1988. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the suspension.

With respect to any bonds currently in force with Century Surety Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions related to this suspension should be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: November 22, 1988.

[FR Doc. 88–27565 Filed 11–29–88; 8:45 am]

BILLING CODE 4810–35–M

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Sunshine Act Meetings

Federal Register
Vol. 53, No. 230
Wednesday, November 30, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

November 25, 1988.

FCC Cancels Open Meeting Scheduled for December 2, 1988

The Federal Communications Commission has cancelled the Open Meeting scheduled to be held on December 2, 1988 at 1919 M Street NW., Washington, DC.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-27623 Filed 11-28-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Tuesday, November 29, 1988, 2:00 p.m.

PLACE: 1776 G Street NW., Board Room, Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Keith Earley, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759-8414.

MATTERS TO BE CONSIDERED:

Closed: Minutes of the October 19, 1988 Board of Director's Meeting
Closed: President's Report
Closed: Briefing on Portfolio Risk Management
Closed: Financial Report

Date sent to Federal Register: November 28, 1988.

[FR Doc. 88-27688 Filed 11-28-88; 2:41 pm]

BILLING CODE 6719-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 23, 1988

TIME AND DATE: 10:00 a.m., Thursday, December 1, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Jim Walter Resources*, Docket Nos. SE 86-105-R, etc. (Issues include consideration of whether Jim Walter violated 30 C.F.R. § 75.500(d)).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-27602 Filed 11-25-88; 4:26 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, December 5, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: November 25, 1988.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 88-27624 Filed 11-28-88; 10:59 am]

BILLING CODE 6210-01-M

UNITED STATES INSTITUTE OF PEACE

DATE: December 2, 1988.

TIME: 3:30 p.m. to 5:00 p.m.

PLACE: The United States Institute of Peace, 1550 M Street NW., seventh floor (conference room).

STATUS: Open session—portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525.

AGENDA: Meeting of the Education and Training Committee of the Board of Directors convened to consider possible future media projects.

CONTACT: Mr. Gregory McCarthy (202) 457-1700.

Dated: November 25, 1988.

Charles D. Smith,

General Counsel, The United States Institute of Peace.

[FR Doc. 88-27601 Filed 11-25-88; 4:18 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 53, No. 230
Wednesday, November 30, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CI89-27-000]

Exxon Corp. and Hunt Petroleum Corp.; Petition for Declaratory Order

Correction

In notice document 88-26931 appearing on page 47256 in the issue of Tuesday, November 22, 1988, the heading was incomplete and should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Advisory Committee for Injury Prevention and Control; Establishment

Correction

In notice document 88-26285 beginning on page 45983 in the issue of Tuesday, November 15, 1988, the heading was incorrect and should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0321]

International Drug Scheduling; Convention on Psychotropic Substances; Stimulant Substances, Certain Nonbarbiturate Sedatives, Certain Agonist/Antagonist Substances

Correction

In notice document 88-21663 beginning on page 36886 in the issue of Thursday, September 22, 1988, make the following corrections:

1. On page 36888, in the first column, under *4.2.1 Substance identification*, in the sixth line, "Temgestic" should read "Temgesic".

2. On the same page, in the third column, under *4.2.6 Recommendation*, in the third line, "actual" was misspelled.

3. On page 36890, in the first column, in the eighth line, after "then", insert a comma.

4. On the same page, in the same column, in the first complete paragraph, in the 11th line, "form" should read "from".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-88-887]

Organization, Functions, and Authority Delegations; Sacramento

Correction

In notice document 88-24196 beginning on page 40966 in the issue of Wednesday, October 19, 1988, make the following correction:

On page 40967, in the first column, after the second complete paragraph, the third line should read "3. Director, Housing Management".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4, 5, and 16

[CGD 86-067]

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel

Correction

In rule document 88-26614 beginning on page 47064 in the issue of Monday, November 21, 1988, make the following corrections:

1. On page 47077, in the first column, under **List of Subjects**, under *46 CFR Part 4*, in the third line, after "Marine safety" insert "National Transportation Safety Board".

§ 16.105 [Corrected]

2. On page 47080, in § 16.105, in the first column, under *"Marine employer"*, in the fourth line, after "than" insert "a".

§ 16.370 [Corrected]

3. On page 47182, in the second column, in § 16.370(a), in the fifth line, "or" should read "on".

4. On the same page, in the same column, in § 16.370(c), in the fourth line, "employer's" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 88-71]

Reporting Requirements for Small Vessels

Correction

In rule document 88-26365 beginning on page 46081 in the issue of Wednesday, November 16, 1988, make the following corrections:

1. On page 46082, in the second column, under **Analysis of Comments**, in the first line, "On" should read "One".

2. On the same page, in the 3rd column, in the 1st complete paragraph, in the 21st line, "units" was misspelled; and in the 29th line, "no-suspect" should read "non-suspect".

BILLING CODE 1505-01-D

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

[T.D. 88-72]

Customs Regulations Amendments Relating to Customs Bonds

Correction

In rule document 88-26364 beginning on page 45901 in the issue of Tuesday, November 15, 1988, make the following corrections:

1. On page 45902, in the first column, in the second paragraph, in the sixth line, "§ 133.66(a)(2)" should read "§ 113.66(a)(2)".

2. On the same page, in the same column, in the third paragraph, in the sixth line, "note" should read "not be".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

Correction

In notice document 88-26342 beginning on page 46010 in the issue of Tuesday, November 15, 1988, make the following correction:

On page 46011, in the first column, in the second line, "20277" should read "20227".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

Correction

In rule document 88-27089 beginning on page 47526 in the issue of Wednesday, November 23, 1988, make the following corrections:

1. On page 47526, in the 3rd column, under **SUMMARY**, in the 9th line, "telecommunications and" should be removed; and in the 11th line, "areas" should read "this area".

2. On the same page, under **FOR FURTHER INFORMATION CONTACT**, in the fourth line, "202/376-0236" should read "202/376-0392"

BILLING CODE 1505-01-D

federal register

Wednesday
November 30, 1988

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program: Reorganization and Minor Revisions; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program: Reorganization and Minor Revisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking is a complete reorganization of 7 CFR Part 225, the rules governing the Summer Food Service Program (SFSP). This revision is intended to resolve any ambiguities or inconsistencies in the regulations; eliminate unnecessary, duplicative, and obsolete provisions; and clarify the regulations' language, style, and organization so that Part 225 is more easily understood. In addition, this rulemaking includes one change mandated by the Hunger Prevention Act of 1988 (Pub. L. 100–435)—making public or private nonprofit colleges and universities participating in the National Youth Sports Program eligible to apply for Program sponsorship. Finally, this rulemaking also proposes several discretionary changes to the regulations which are discussed in detail in the following preamble. These changes are being proposed to clarify the intent of the Part 225 regulations and to improve program accountability and management.

DATES: To be assured of consideration, comments must be postmarked on or before December 30, 1988.

ADDRESS: Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.-5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie or Mr. James C. O'Donnell at the above address or by telephone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies; and will not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to this review, Ms. Anna Kondratas, the Administrator of the Food and Nutrition Service, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities.

No new reporting and recordkeeping requirements are included in this proposed rule, and Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (44 U.S.C. 3507) is therefore not required. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule-related notice published at 48 FR 29114, June 24, 1983).

Background

The SFSP is authorized by section 13 of the National School Lunch Act (42 U.S.C. 1761). Section 13(g) of that Act requires the Department to issue regulations for the program each fiscal year. Comprehensive program regulations were last issued on February 16, 1982 (47 FR 6790). Since that time, annual reissuances and other amendments to the SFSP regulations have incorporated certain provisions mandated by law and other discretionary changes intended to clarify program requirements or improve program management.

This year's reissuances of the SFSP regulations, which will govern program operations in 1989, includes a complete reorganization of 7 CFR Part 225. This reorganization is being undertaken in order to resolve any ambiguities or inconsistencies in the regulations; eliminate unnecessary, duplicative, and obsolete provisions; and clarify the regulations' language, style, and organization so that Part 225 is more easily understood. In addition, the Department is proposing to change the definition of "sponsor" to conform to the terms of Pub. L. 100–435, the Hunger Prevention Act of 1988. Finally, the Department is also proposing several discretionary changes involving food service management companies, weekend meal service, letter of credit procedures, overclaims against sponsors, administrative funding reviews, and other aspects of the regulations. These changes are intended to improve program accountability and management.

I. Reorganization of Part 225

The proposed reorganization will result in a reduction in the number of subparts in the Part 225 regulations from five to four, and a reduction in the number of sections from twenty-four to twenty. Subpart B of the current regulations ("Assistance to States") has been eliminated and the information contained therein now appears in the revised subpart on State agency provisions. Both Subparts B and C ("State Agency Provisions" and "Sponsor and Site Provisions") have been substantially re-organized with two primary goals in mind: (1) To organize the regulations in a roughly chronological order corresponding to the annual cycle of activities undertaken by the Department, State agencies, and sponsors in the SFSP; and (2) to present the information in the regulations in a more logical fashion, bringing together all information on the same topic in the same section of the regulations.

As an example of the first type of change, the section dealing with the State agency's management and administration plan (MAP) is now the first section in Subpart B. This change has been made because submission and approval of the MAP is the prerequisite to all other steps (e.g., establishment of a letter of credit from program payments, giving public notice of the Program's availability, etc.) which occur in each State agency's annual cycle of SFSP activities. As an example of the second type of change, revised § 225.6(a), which sets forth the general responsibilities of State agencies, now includes information which previously appeared in three different sections of the regulations.

It is, of course, impossible to describe in this preamble all of the organizational changes made in this proposed rulemaking. Therefore, a redesignation table has been included at the end of this preamble which lists both the current and revised location of each paragraph in Part 225. This table should provide readers with a convenient overview of the reorganization and enable them to more easily locate specific parts of the old and new regulations.

Accordingly, the Department proposes to revise and reorganize Part 225.

II. Mandatory Change to Part 225

Section 213 of the Hunger Prevention Act of 1988 (Pub. L. 100–435) mandated a change in the definition of those organizations eligible to apply for SFSP sponsorship. Since passage of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), private nonprofit organizations have not been allowed to sponsor the SFSP unless they were residential camps or school food authorities. Section 213 of the Hunger Prevention Act allows private nonprofit colleges and universities to participate in the SFSP *provided that* they are currently participating in the National Youth Sports Program (NYSP) and meet the other requirements for Program sponsorship.

Section 213 of Pub. L. 100–435 also mandated that the Department conduct a pilot project to assess the feasibility of again allowing other types of private nonprofit organizations to sponsor the SFSP. The Department is currently preparing to conduct the pilot project mandated by the Hunger Prevention Act.

Accordingly, the Department proposes to amend § 225.2 and current § 225.18(a) [redesignated § 225.14(b)] to allow private colleges and universities participating in the NYSP to be SFSP sponsors.

III. Substantive Changes to Part 225

A. Food Service Management Companies

During the past two years, the Department has received numerous requests for clarification of several aspects of the Part 225 regulations pertaining to food service management companies (FSMCs). The questions which have been raised involve: The differences between "vended" and "self-preparation" sponsors, especially in regard to the added administrative reimbursement earned by self-preparation sponsors; the definition of an FSMC; the practical application of the regulatory prohibition on contracting out for the management responsibilities of the program; whether colleges and universities with year-round FSMC contracts are required to conduct new procurements for their SFSP meal service; whether colleges and universities acting as FSMCs are exempt from registration requirements; and the form of the bid and performance bonds submitted by FSMCs. Although many of these questions overlap to some extent, the following explanation of regulatory intent attempts to address each topic separately.

1. Self-preparation sponsors and payment of the higher administrative reimbursement. It has recently come to the Department's attention that there is a lack of consistency among administering agencies in determining when a sponsor is considered to be "self-preparation" and, therefore, eligible to receive a higher rate of administrative reimbursement. The administrative differential was established as a result of section 13(b)(4) of the National School Lunch Act (NSLA). That section of the law required the Department to determine whether some SFSP sponsors incurred higher administrative costs. The Department determined that rural and self-preparation sponsors incur higher costs related to planning, organizing, and managing their SFSP food service and that these sponsors should receive a higher per meal rate of administrative reimbursement. In Fiscal Year 1988, the administrative rate differential amounted to 1.75 cents per breakfast, 2.75 cents per lunch or supper, and 1 cent per supplement served.

Inconsistencies in interpretation have arisen as a result of the wide range of food service options being employed by SFSP sponsors. While some sponsors prepare their meals "from scratch" on a daily basis and should clearly be considered "self-preparation" sponsors, other food service arrangements are more complex and difficult to categorize. Some sponsors, for example, purchase pre-made components of their SFSP meals (e.g., sandwiches) from a food vendor or from an FSMC registered in that State, therefore incurring far lower meal preparation costs than sponsors which prepare all of their meals "from scratch". Other sponsors utilize FSMC staff to run their food service operation (often these are schools contracting on a year-round basis for management of all the Child Nutrition Programs) while retaining their own staff to actually prepare SFSP meals. Other sponsors might contract for *all* the personnel necessary to prepare meals, but continue to have the meals prepared in the sponsor's kitchens. Finally, there are those sponsors which contract with a management company to run the program and have meals delivered to SFSP sites from the FSMC's own food preparation facilities. While the latter are clearly "vended sponsors", the other arrangements—purchasing a particular meal component, management services, or labor from a registered FSMC or from a food vendor—have proven far more difficult to define as clearly "self-preparation" or "vended".

The current definitions of "self-preparation" and "food service management company" have not served to adequately clarify the distinction between "self-preparation" and "vended" sponsors. Some State agencies believe that a sponsor should be considered "vended" as soon as it purchases any food from a company registered in the State as an FSMC. Proponents of this view base their conclusion on the current definition of "self-preparation", which states that the sponsor which contracts with an FSMC "for the preparation of all or a portion of the meals" is not a self-preparation sponsor. However, other State agencies believe that, as long as the sponsor has contracted for a component and not for the preparation of the total meal (i.e., for all of the components of the unitized meal, with or without milk), it has not contracted with a FSMC, regardless of whether the company is registered to serve as an FSMC to other sponsors in the State. These State agencies therefore believe that the sponsor contracting for meal components, but not the entire meal, may still be considered to be a self-preparation sponsor.

Much of the confusion surrounding this issue can be resolved by consulting the definitions of "operating costs" and "administrative costs" at § 225.2 of the regulations. The former definition states that operating costs include the "(i) cost of obtaining food, (ii) labor directly involved in the preparation and service of food, (iii) cost of nonfood supplies, (iv) rental and use allowances for equipment and space, and (v) costs for transporting children in rural areas to feeding sites in rural areas. * * * *" "Administrative costs", on the other hand, are "costs incurred by a sponsor related to planning, organizing, and managing a food service under the Program. * * * *" Given these definitions, it is clear that the regulations contemplate no difference in *administrative* costs between a sponsor preparing its meals from scratch and a sponsor purchasing a pre-made meal component (but not the entire meal, with or without milk) from a commercial food vendor. Although these two sponsors would likely incur different *operating* costs (due to the difference in the amount of labor each sponsor uses to prepare its meals), their administrative costs of "planning, organizing, and managing" the meal service could, in theory, be identical. Both sponsors would still be responsible for all of the administrative requirements of running the Program's food service operations, including setting up delivery routes, procuring meals, hiring and supervising labor, setting up the meal production line, adjusting meal orders, and monitoring site deliveries. Thus, both the sponsor which prepares its meals "from

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scratch" and the sponsor which purchases a pre-packaged or pre-made component from a company registered in the State as an FSMC or from another food vendor should be considered "self-preparation". Both are therefore eligible to receive the higher rate of administrative reimbursement.

However, both the sponsor which hires an FSMC to prepare some or all of its *unitized meals* (i.e., the total meal, with or without milk) and the sponsor which hires the FSMC to manage its food service operations have clearly lowered the cost of "planning, organizing, and managing" their food service operation. As soon as an FSMC begins to manage any portion of the sponsor's food service operation—regardless of whether this involves the management of some or all of the unitized meal preparation or the management of the sponsor's entire food service operations—it has lessened the sponsor's administrative responsibilities and has undercut the rationale for payment of the higher administrative rate. Therefore, sponsors which contract with a company registered in that State as an FSMC for a pre-made component (but not the total meal, with or without milk) may still be considered self-preparation, whereas sponsors which contract with an FSMC for management services or for the preparation of some or all of their unitized meals must always be considered "vended" sponsors.

Accordingly, in order to clarify this distinction in the regulations, the Department proposes to amend the definitions of "self-preparation sponsor" and "food service management company" and to add a definition of "vended sponsor" at § 225.2.

2. Prohibition on contracting out management responsibilities. The current definition of a food service management company at § 225.2 states that an FSMC is an entity which "contracts with a sponsor to manage any aspect of the food service program". At the same time, current § 225.16(b) [redesignated § 225.15(a)(3)] prohibits sponsors from "contract[ing] out for the management responsibilities of the Program such as monitoring, enforcing corrective action, or preparing Program applications." Some State agencies believe that defining an FSMC as an entity which may "manage any aspect of the food service program" conflicts with the regulatory prohibition on contracting out the management responsibilities of the Program.

The key words in the current definition of FSMC, however, are "food service". These words are intended to limit the FSMC's functions to purchasing food, assembling meals, delivering Program meals, or supervising these functions for the sponsor. The other "management responsibilities" of the Program intrinsically belong to the sponsor and cannot be delegated to a contractor or any other person. The Department believes that part of the confusion surrounding this distinction results from the use of the word "program" after "food service" in the definition of FSMC. Many people have confused the "food service program" with the Summer Food Service Program, which expands the potential management duties of the FSMC far beyond what was intended in the regulations. In addition, the enumeration of only three prohibited management functions at current § 225.16(b) has led some administering agencies to believe that any other management functions *may* be performed by the FSMC.

Accordingly, the Department proposes to change the word "program" to "Operations" in the definition of FSMC at § 225.2 and to describe more completely the management functions which FSMCs *may not* perform at redesignated § 225.15.

3. Food service management company procurements. Section 225.16(c) of the current regulations [redesignated § 225.6(g)(9)] exempts two types of FSMCs from the annual requirement to register with the State agency in order to participate in the Program: schools or school food authorities which act as an FSMC; and FSMCs which have "an exclusive contract with a school or school food authority for year-round service (and no contracts with other sponsors) * * * *" In addition, § 225.16(d) of the current regulations [redesignated § 225.15(g)(5)] states that school sponsors with year-round FSMC contracts are not required to comply with the bid procedures mandated in that paragraph. These two provisions of the regulations have generated some confusion regarding: the applicability of the competitive procurement requirements set forth at § 225.17 to year-round contracts between school sponsors and FSMCs; whether colleges or universities with year-round FSMC contracts are also exempt from the bid procedures specified at current § 225.16(d); and whether colleges and universities acting as FSMCs are considered to be "schools" and, therefore, exempt from the registration requirements set forth at current § 225.16(c).

The language of current § 225.16(d) is intended to allow school food authority sponsors with exclusive year-round FSMC contracts to utilize those contractual arrangements for the SFSP without having to conduct a separate procurement for SFSP meal service. The provision does not "exempt" them from following the competitive procurement requirements set forth in § 225.17 and 7 CFR Part 3015 (the Department's Uniform Federal Assistance Regulations). Rather, SFSP school sponsors with year-round contracts have already utilized competitive procurement procedures in obtaining the FSMC's services for the National School Lunch Program (NSLP).

SFSP sponsors which are colleges or universities often enter into exclusive year-round contracts with an FSMC, just as SFSP school sponsors do prior to the beginning of the fall semester. However, public universities currently participate in the SFSP as units of State government, and private nonprofit colleges or universities participating in the NYSP will be eligible to participate in the 1989 SFSP as an entirely new category of sponsor. Thus, neither type of sponsor participates in the SFSP as a school sponsor and neither is exempt from the bid procedures set forth at current § 225.16(d), since this exemption is limited to SFSP "sponsors which are schools or school food authorities [and] which have an exclusive contract with food service management companies for year-round service * * *."

It may, however, be unreasonable to require college and university sponsors to conduct a separate SFSP procurement as opposed to utilizing their year-round FSMC contractor to provide Program meals. The logic which underlies the exemption for school sponsors—that they have already followed the competitive procurement requirements in entering into their year-round FSMC contract—may also be valid for the public and private colleges and universities which are eligible to participate in the SFSP. As entities of State government, public universities and colleges are subject to their own State's procurement requirements, many of which are more stringent than the procurement requirements mandated in Program and Departmental regulations. Similarly, private colleges and universities participating in the NYSP are generally subject to State or Federal procurement requirements as well. Thus, the Department is confident that colleges and universities eligible to participate in the SFSP are already required to follow competitive procurement requirements in obtaining their year-round FSMC contracts, just as school sponsors are under the NSLP.

Accordingly, the Department proposes to amend the definition of "school food authority" in a way which will, given the

wording of current § 225.16(d) [redesignated § 225.15(g)(5)], allow colleges and universities to be exempt from conducting a separate FSMC procurement for the SFSP if they already have a competitive procured year-round contract with an FSMC. This change will also exempt colleges or universities acting as food service management companies from the registration requirements at current § 225.16(c) [redesignated § 225.6(g)(9)].

4. Performance and bid bonds. Over the past several years, the Department has received repeated questions regarding the permissibility of "alternatives" to the bid and performance bonds required of FSMCs at current § 225.16 (j) and (k) of the regulations. Proposed alternatives to obtaining a bond from a company listed in Treasury Circular 570 have included certified checks, cash, escrow accounts, or letters of credit in an amount equal to or greater than the amount which the company would spend to obtain the bid for performance bond.

None of these alternatives to obtaining bid or performance bonds is permissible under the SFSP regulations. Unlike other bonding situations, the Department does not require FSMCs to obtain bid or performance bonds solely to provide a cash recourse in the event of default. Rather, the Department's primary purpose in requiring FSMCs to secure bonds is to obtain a third-party review of the company's ability to provide the required number of meals for the life of the contract. It does the Department and the sponsor little good to hold cash in the amount of 10 percent of the contract's value if the FSMC decides not to fulfill its contract the day before Program meal service is to begin, or decides to stop performing half-way through the SFSP. It would likely be very difficult for the sponsor to find another contractor able and willing to provide the required number of meals on such short notice. Thus, if the FSMC's intention and ability to provide the required meal service is subject to a third-party review, it minimizes the likelihood of the type of default which would render it virtually impossible for the sponsor to provide meals to the children entitled to Program benefits.

Accordingly, the Department proposes to amend current § 225.16(1) [redesignated § 225.15(g)(8)] to clarify that there are no acceptable alternatives to the required submission of bid and performance bonds by an FSMC.

B. Weekend Meals

Currently, the Part 225 regulations do not specifically address the subject of whether sponsors may serve reimbursable Program meals on the weekend. While it is logical to expect that residential camp sponsors would have weekend meal service, it has recently come to the Department's attention that a small but increasing number of non-camp sponsors are serving Program meals on the weekends. Where this occurs, State agencies are often reluctant either to approve or disapprove such service because of the absence of explicit guidance on this issue in the regulations.

Section 13(a)(1) of the NSLA authorizes participation in the SFSP by sponsors which "develop special summer or school vacation programs providing food service similar to that made available to children during the school year under the school lunch * * * or the school breakfast program * * *." The primary purpose of the National School Lunch and School Breakfast Programs is to provide nutritious meals to children in schools. Schools normally operate on a Monday through Friday schedule. Although children in residential child care institutions which participate in the School Lunch or Breakfast Programs may receive reimbursable meals on the weekends, such weekend meal service is the rare exception in the School Programs. Consistent with this fact, it is not appropriate to provide reimbursement for weekend meals in the SFSP unless those meals are served in residential camp settings.

Accordingly, the Department proposes to amend current § 225.20(a) [redesignated § 225.16(c)] to clarify that Program reimbursement may not be claimed for meals served at non-camp sites on the weekend.

C. Overclaims for Inadequate Recordkeeping

Section 13(m) of the NSLA requires State agencies and sponsors participating in the Program to "keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations issued hereunder." The regulations at current §§ 225.10(a) and 225.19(f) [redesignated §§ 225.8(a) and 225.15(c)(1)] require State agencies and sponsors, respectively, to keep records which document the basis of the reimbursement they have claimed under the Program. Moreover, current § 225.8(b)(13) [redesignated § 225.6(e)(13)] requires the State-sponsor agreement to include a provision that sponsors agree to retain Program records for a period of three years and to make such records available to State and Federal reviewers and auditors as necessary. In addition, current § 225.13(c)(4)(ii) [redesignated § 225.11(c)(4)(ii)] underscores the importance of the Program recordkeeping requirements by defining failure to maintain adequate records at a significant proportion of its sites as grounds for terminating the sponsor's participation in the Program.

On numerous occasions, the Department and State agencies have used the authority implied in these regulatory provisions to recover funds paid to sponsors which did not have records sufficient to support all or a portion of their claims for reimbursement. Recently, however, this authority has been implicitly challenged in two separate court ruling's pertaining to the Department's Child Care Food Program (CCFP). In both cases, the assessment of overclaims against CCFP sponsors on the basis of missing or inadequate records was overturned on the grounds that the CCFP regulations do not specifically authorize overclaims for these reasons.

The Department firmly believes that proper and efficient administration of the Program depends on the integrity of the claims submitted by sponsors. This integrity cannot be fully ensured unless the Department and State agencies are capable of assessing overclaims when records are not available to document the accuracy of the claim. Such authority is vital if the Department is to meet its responsibility to deter Program fraud and abuse. Without proper records, it is impossible to determine whether children were fed meals in accordance with basic Program requirements and whether Program funds were expended in the manner envisioned by the law and the regulations.

Accordingly, the Department proposes to amend current §§ 225.11(c)(4), 225.14(a) and 225.19(f) [redesignated §§ 225.9(d)(4), 225.12(a) and 225.15(c)(1)] to clarify that failure to adhere to Program recordkeeping requirements constitutes sufficient cause to assess overclaims against a sponsor.

D. Letter of Credit for Program Payments

Based on a State agency's approved Management and Administration Plan (MAP), current § 225.4(a)(2) [redesignated § 225.5(d)(2)] requires the Department to ensure that the State agency has at least 65 percent of its estimated Program payment needs available in its letter of credit (LOC) by May 15. Current § 225.6(a) [redesignated § 225.4(a)] requires State agencies to submit their MAPs to FNS Regional Offices no later than February 15 of

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each year. Thus, FNS should have 90 days to review, ask for modification of, and approve the MAP between the time the MAP is submitted and the time by which the State agency must have 65 percent of its estimated Program payment needs in the LOC.

However, current § 225.6(b) [redesignated § 225.4(b)] allows State agencies to submit their MAPs after the February 15 deadline and does not specify a final deadline by which the State agency must submit the MAP. At the same time, no leeway is allowed in the date by which FNS must ensure that 65 percent of the State agency's Program payment needs, as estimated in its approved MAP, are in the LOC. Thus, regardless of when the State agency submits its MAP, it is guaranteed to have 65 percent of its estimated Program payment needs in the LOC by May 15 of each year.

The Department is concerned that the MAP submission and approval process will become a mere paperwork exercise if sufficient time is not allowed for FNS to review and approve the State agencies' MAPs. It is therefore necessary to provide FNS with adeqate time to review and approve the MAPs in those cases where the State agency submits its MAP after the February 15 deadline specified at current § 225.6(a) and section 13(n) of the NSLA.

Accordingly, the Department proposes to amend current § 225.4(a)(2) [redesignated § 225.5(d)(2)] to provide FNS with additional time for ensuring the 65 percent level of LOC funding when State agencies submit MAPs after the February 15 deadline.

E. MAP Requirements

The regulations at current § 225.6(d) [redesignated § 225.4(d)] specify twelve items or topics which must be addressed in each State agency's MAP. This list of MAP requirements is based on section 13(n) of the NSLA which establishes the minimum requirements for the content of the State agency's MAP. However, section 13(n) of the law also provides the Secretary of Agriculture with the authority to impose additional MAP requirements as necessary.

Over the past several years, it has come to the Department's attention that some State agencies are not performing a number of the special monitoring functions relating to sponsors' food service management company (FSMC) procurements which are required by current § 225.16 of the SFSP regulations. Specifically, some State agencies have failed to: have a representative present at all FSMC bid openings where the contract is expected to exceed $100,000 in value; review and approve prior to execution all proposed contracts which exceed $100,000 in value; and review and approve prior to execution all proposed contracts based on a bid other than the the lowest bid received. The failure to consistently perform these special monitoring functions has resulted in a number of procurements which have not met Program requirements that all procurements be conducted in a manner which ensures free and open competition.

The Department recognizes that these special FSMC monitoring responsibilities place high demands on the limited resources which many State agencies have available to perform SFSP monitoring functions. The Department strongly believes, however, that the performance of these special FSMC procurement monitoring responsibilities is critically important to ensuring the integrity of Program operations and the accountability of Program funds. To facilitate the efficient performance of these responsibilities, it is imperative that State agencies carefully plan and budget for attending bid openings and reviewing and approving funding for those proposed FSMC contracts specified at current § 225.16(d)(7) [redesignated § 225.15(g)(5)(xiii)].

Accordingly, the Department proposes to amend current § 225.6(d) [redesignated § 225.4(d)] by adding a requirement that the State agency's MAP include its plans for performing the special FSMC procurement monitoring functions specified at current §§ 225.16(d)(7) and (g) [redesignated §§ 225.15(g)(5)(xiii) and 225.6(h)(4), respectively].

F. Health Inspection Funds

The current SFSP regulations at § 225.4(k) [redesignated § 225.5(f)] require FNS to make available by LOC an amount equal to one percent of the previous year's Program expenditures in that State. This one percent fund is earmarked for the conduct of health inspections and meal quality tests required by the regulations. Many State agencies, however, are able to obtain health and meal quality inspections without cost, usually by entering into an interagency agreement with State or local health departments. In some cases, the money for health inspections is set aside in the LOC but is never used. It is than returned to FNS after the conclusion of Program operations.

The Department believes that it is wasteful and inefficient to set aside and return money from an LOC which State agencies have no intention of using. For those State agencies which have been receiving health and meal quality inspections without cost, it should be relatively simple to obtain a commitment which extends these arrangements early in the fiscal year. This would eliminate the need to establish a special LOC for the performance of these inspections in States capable of obtaining these services without cost to the Program. Thus, by the February 15 deadline for receipt of MAPs, all State agencies should have had ample time to determine whether or not they will need FNS funding for the conduct of health inspections and meal quality tests during the current fiscal year.

Accordingly, the Department is amending current §§ 225.4(k) and 225.6(d) [redesignated §§ 225.5(f) and 225.4(d)] to provide that FNS will not establish a one percent LOC for the performance of health and meal quality inspections unless the State agency's MAP demonstrates that these inspections cannot be performed without cost to the Program.

G. Administrative Funding Reviews

Current § 225.12(c) [redesignated § 225.5(c)] states in part that, "FNSRO shall collect data on the need for Program and State administrative funding within any State agency if the funding needs estimated in a State's management and administration plan are no longer accurate." Although the provision for these reviews has been located at § 225.12 ("Audit and management evaluation") of the regulations, the Department is proposing to move the provision since the administrative funding reviews directly affect the letters of credit discussed at current § 225.4 [redesignated § 225.5], "Payments to State agencies and use of Program funds".

In addition to relocating this paragraph, the Department also proposes to correct several errors pertaining to these reviews at current § 225.4. It is clear, for example, that administrative funding reviews are not required by the regulations *unless* a State's MAP is determined to be inaccurate. Nevertheless, current §§ 225.4(a)(3), 225.4(g)(3) and 225.4(k) [redesignated §§ 225.5(d)(3), (b)(3) and (f), respectively] either imply or state that such reviews are *required* under any circumstances. Thus, the revised regulations state that adjustments to the letters of credit for State administrative funds, Program payments, and health inspection funds *may* be based on this administrative funding assessment if one is conducted, but that such adjustments may also be based on other data or other reasons if an administrative funding assessment is not conducted.

Finally, the Department is proposing several substantive changes related to the date by which an administrative funding assessment is conducted and the timeframes for adjusting letters of credit based on the results of the assessment. Current § 225.12(c) states that these assessments are to be conducted "during the period of Program operations, but not later than August 20." However, current § 225.4 establishes other deadlines which conflict with this August 20 date. Current § 225.4(a)(3), for example, requires that FNS make an adjustment to the letter of credit for Program payments based on the administrative funding assessment *no later than July 1*. This deadline is impractical, given that the inadequacy of a State's MAP estimates might not be evident until well after July 1, triggering the conduct of an administrative funding assessment at this later date. Similarly, current § 225.4(g)(3) requires that an adjustment of the State administrative funds letter of credit be made "as soon as practicable" after the conduct of the funding assessment, but not later than September 1. Current § 225.12(c), however, requires that adjustments to State administrative funds based on the administrative funding assessment be made "immediately".

In order to remedy these inconsistencies, the Department proposes to allow the assessments to be conducted "during the period of Program operations"; to require that adjustments based on these assessments be made "as soon as possible" rather than "immediately"; and to provide that the adjustments made to the letters of credit for both program and administrative funds be made no later than September 1.

H. Definition of "Special Account"

The Department believes that the current definition of "special account" at § 225.2 of the regulations is in need of revision. That definition states in part that a special account is "an account between a sponsor and a food service management company with a State or federally insured bank * * *." The prepositional phrases "between a sponsor and a food service management company" and "with a State or federally insured bank" leave ambiguous the nature of such accounts. In addition, the definition at § 225.2 states that the accounts hold operating cost payments which may be "released only in accordance with the terms of the special account agreement." This, too, leaves unclear the exact method by which funds are authorized for release from the account.

Therefore, those wishing to understand how a special account is established and how funds are released from the account cannot do so by referring to the definition at § 225.2. They must refer, instead, to the description of such accounts at current § 225.8(e) [redesignated § 225.6(f)], which states that: "[T]he State agency may require any sponsor which contracts with a food service management company to enter into an agreement with the State agency to provide that the sponsor shall establish a special account with a State agency or Federally insured bank for operating costs payable to the sponsor by the State." Thus, the definition at § 225.2 would be clearer if it specified that special accounts are accounts which the State agency sometimes requires vended sponsors to establish with the State agency itself or with a Federally insured bank. In addition, current § 225.8(e) specifies that, "any disbursement of monies from the account must be authorized by both the sponsor and the food service management company." This information, too, should be included in the definition at § 225.2.

Accordingly, the Department proposes to revise § 225.2 to more clearly define the nature and operation of a special account in the SFSP.

I. Deletion of Statistical Monitoring for Site Reviews

Current § 225.9(e)(8) of the regulations permit State agencies to use "statistical monitoring procedures in lieu of the site monitoring requirements prescribed in paragraph (e)(2) of this section * * *." The intent of this provision was to reduce the regulatory burden imposed on State agencies for performing such site reviews. However, to the best of the Department's knowledge, no State agency is currently using "statistical monitoring techniques" to meet the site monitoring requirements set forth at § 225.9(e)(2) [redesignated § 225.7(d)(2)].

This may be due to concern that, if reviews based on these techniques are used to establish overclaims, their findings may not be upheld on appeal. In addition, current FNS guidance on statistical monitoring is badly out of date, and would need to be revised before any State agency used statistical monitoring techniques. Given the apparent lack of State agency interest in exploring such techniques, the Department does not believe that it would be appropriate to devote the resources necessary to make such revisions.

Accordingly, the statistical monitoring option for the performance of site reviews at current § 225.9(e)(8) of the regulations has been deleted from this proposed regulation.

J. Media Release for Camps and other Enrolled Sites

Current § 225.21(c) [redesignated § 225.15(e)] requires camps and other enrolled sites to issue media releases which announce the availability of free Program meals to all eligible children. In addition, current § 225.21 requires these releases to "include the Secretary's family-size and income standards for free and reduced-price meals" and to "state that meals are available without regard to race, color, national origin, sex, age, or handicap."

In contrast, the applications which camps and enrolled sites distribute to the parents and guardians of enrolled children must, in accordance with section 9(b)(2)(B) of the Act and current § 225.21(d) [redesignated § 225.15(f)] of the regulations, list only the family size and income levels for reduced price eligibility "with an explanation that households with incomes less than or equal to these values would be eligible for free SFSP meals." This restriction is due to the fact that there is no "reduced price" meal eligibility, *per se*, in the SFSP. Rather, reduced price eligibility standards are used to document eligibility for free SFSP meals. Thus, the Department believes that, like the application, the media release issued by camps and other enrolled sites should also list *only* the family size and income standards for reduced price meals. To list two sets of income standards (free and reduced price) in the media release only increases the potential confusion of Program applicants who might not understand that they would only need to meet the reduced price eligibility standards in order to receive free meals.

Accordingly, the Department proposes to amend current § 225.21(c) [redesignated § 225.15(e)] by requiring that the media release issued by camps and other enrolled sites list only the Secretary's guidelines for reduced price eligibility and that these guidelines be labelled "Summer Food Service Program Eligibility Standards". In addition, the Department also proposes to make a related amendment to the definition of "documentation" at § 225.2, removing the phrase "free and reduced price application" and substituting in its place the words "free meal application".

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K. Record Retention by Food Service Management Companies

Current regulations at §§ 225.8(b)(13), 225.10(a) and 225.16(e)(5) [redesignated §§ 225.6(e)(13), 225.8(a) and 225.6(h)(2)(vii), respectively] set forth the record retention requirements for sponsors, State agencies, and food service management companies. All entities are required to retain their Program records for three years. In addition, current §§ 225.8(b)(13) and 225.10(a) require sponsors and State agencies to retain Program records for longer than three years if there are unresolved audit or investigative findings at the end of the three-year period. However, current § 225.16(e)(5) inadvertently fails to mention that food service management companies are also required to retain their Program records for longer than three years if there are unresolved audit or investigative findings pertaining to the company or to a sponsor with which the management company contracted.

Accordingly, the Department proposes to amend § 225.16(e)(5) [redesignated § 225.6(h)(2)(vii)] to clarify that food service management companies are also required to retain their Program records for more than three years when there are unresolved audit or investigative findings pertaining to the company or to a sponsor with which the company contracted.

List of Subjects in 7 CFR Part 225

Food assistance programs, Grant programs—Health, Infants, and Children.

REDESIGNATION TABLE

Current part 225	Proposed revision of part 225
Subpart A	Subpart A
225.1	225.1
225.2	225.2
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225.3(c)	225.3(b)
225.3(d)	225.3(c)
Subpart B	Subpart B
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225.4(d)	225.5(d)(6)
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225.4(i)	225.5(a)(4)
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225.7(d)	225.6(b)(4)

REDESIGNATION TABLE—Continued

Current part 225	Proposed revision of part 225
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225.7(g)	225.6(b)(8)
225.7(h)	225.6(b)(5)
225.7(i)	225.6(d)(1)
225.7(j)	225.6(d)(2)
225.7(k)	225.6(b)(2)
225.7(l)	225.6(b)(6)
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225.7(n)	225.6(b)(10)
225.7(o)	225.6(b)(11)
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225.8(b)	225.6(e)
225.8(c)	225.6(e)(3)
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225.16(c)	225.6(g) and 225.15(g)(2)
225.16(d)	225.6(h) (5)–(6) and 225.15(g)(5)
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225.16(k)	225.15(g)(7)
225.16(l)	225.15(g)(8)
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225.18(b)	225.14(c)
225.18(c)	225.14(d)
225.18(d)	225.14(a)
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225.18(f)	225.16(b)
225.18(g)	225.16(b)(1)
225.18(h)	225.16(b)(3)
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REDESIGNATION TABLE—Continued

Current part 225	Proposed revision of part 225
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225.19(f)	225.15(c)(1)
225.19(g)	225.15(d)(2)
225.19(h)	225.15(d)(3)
225.19(i)	225.15(d)(1)
225.19(j)	225.15(a)(2)
225.20(a)	225.16(c)
225.20(b)	225.16(d)
225.20(c)	225.16(e)
225.20(d)	225.16(f)(2)
225.20(e)	225.16(f)(2)
225.20(f)	225.16(f)(8)
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225.20(h)	225.16(f)(7)
225.20(i)	225.16(f)(3)
225.20(j)	225.16(f)(4)
225.20(k)	225.16(f)(5)
225.20(l)	225.9(b)
225.20(m)	Deleted
225.20(n)	225.16(a)
225.20(o)	225.16(f)(1)
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Appendix B	Appendix B
Appendix C	Appendix C

Accordingly, the Department proposes to revise and reissue 7 CFR Part 225 as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

Subpart A—General

Sec.
225.1 General purpose and scope.
225.2 Definitions.
225.3 Administration.

Subpart B—State Agency Provisions

225.4 Program management and administration plan.
225.5 Payments to State agencies and use of Program funds.
225.6 State agency responsibilities.
225.7 Program monitoring and assistance.
225.8 Records and reports.
225.9 Program assistance to sponsors.
225.10 Audits and management evaluations.
225.11 Corrective action procedures.
225.12 Claims against sponsors.
225.13 Appeal procedures.

Subpart C—Sponsor and Site Provisions

225.14 Requirements for sponsor participation.
225.15 Management responsibilities of sponsors.
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Subpart D—General Administrative Provisions

225.17 Procurement standards.
225.18 Miscellaneous administrative provisions.
225.19 Regional office addresses.
225.20 Information collection/recordkeeping—OMB assigned control numbers.

Appendices

Appendix A—Alternate foods for meals
Appendix B—[Reserved]
Appendix C—Child Nutrition (CN) labeling program

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Subpart A—General

§ 225.1 General purpose and scope.

This Part establishes the regulations under which the Secretary will administer a Summer Food Service Program. Section 13 of the Act authorizes the Secretary to assist States through grants-in-aid to conduct nonprofit food service programs for children during the summer months and at other approved times. The primary purpose of the Program is to provide food service to children from needy areas during periods when area schools are closed for vacation.

§ 225.2 Definitions.

"*Act*" means the National School Lunch Act, as amended.

"*Administrative costs*" means costs incurred by a sponsor related to planning, organizing, and managing a food service under the Program, and excluding interest costs and operating costs.

"*Adult*" means, for the purposes of the collection of social security numbers as a condition of eligibility for Program meals, any individual 21 years of age or older.

"*Advance payments*" means financial assistance made available to a sponsor for its operating costs and/or administrative costs prior to the end of the month in which such costs will be incurred.

"*AFDC assistance unit*" means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income standards for free meals under the National School Lunch Program (7 CFR Part 245).

"*Areas in which poor economic conditions exist*" means:

(a) The local areas from which a site draws its attendance in which at least 50 percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined:

(1) By information provided from departments of welfare, education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations,

(2) By the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites, or

(3) From other appropriate sources, or

(b) An enrollment program in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals as determined by approval of applications in accordance with § 225.15(f) of this Part.

"*Camps*" means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.

"*Children*" means:

(a) Persons 18 years of age and under, and

(b) Persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or nonprofit private school program established for the mentally or physically handicapped.

"*Continuous school calendar*" means a situation in which all or part of the student body of a school is:

(a) On a vacation for periods of 15 continuous school days or more during the period October through April and

(b) In attendance at regularly scheduled classes during most of the period May through September.

"*Costs of obtaining food*" means costs related to obtaining food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

"*Department*" means the U.S. Department of Agriculture.

"*Documentation*" means:

(a) The completion of the following information on a free meal application:

(1) Names of all household members;

(2) Social security number of each adult household member or an indication that an adult household member does not possess one;

(3) Household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; and

(4) The signature of an adult member of the household; or,

(b) for a child who is a member of a food stamp household or an AFDC assistance unit, "documentation" means completion of only the following information on a free meal application:

(1) The name(s) and appropriate food stamp or AFDC case number(s) for the child(ren); and

(2) The signature of an adult member of the household.

"*Family*" means a group of related or nonrelated individuals who are not residents of an institution or boarding house but who are living as one economic unit.

"*Fiscal year*" means the period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"*FNS*" means the Food and Nutrition Service of the Department.

"FNSRO" means the appropriate FNS Regional Office.

"*Food service management company*" means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a sponsor's food service operation in accordance with the limitations set forth in § 225.15. Food service management companies may be:

(a) Public agencies or entities;

(b) Private, nonprofit organizations; or

(c) Private, for-profit companies.

"*Food stamp household*" means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

"*Household*" means "family", as defined in this section.

"*Income accruing to the program*" means all funds used by a sponsor in its food service program, including but not limited to all monies, other than program payments, received from Federal, State and local governments, from food sales to adults, and from any other source including cash donations or grants. Income accruing to the Program will be deducted from combined operating and administrative costs.

"*Income standards*" means the family-size and income standards prescribed annually by the Secretary for

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determining eligibility for free and reduced price meals under the National School Lunch Program and the School Breakfast Program.

"Meals" means food which is served to children at a food service site and which meets the nutritional requirements set out in this Part.

"Milk" means whole milk, lowfat milk, skim milk, and buttermilk. All milk must be fluid and pasteurized and must meet State and local standards for the appropriate type of milk. Milk served may be flavored or unflavored. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands of the United States, if a sufficient supply of such types of fluid milk cannot be obtained, reconstituted or recombined milk may be used. All milk should contain Vitamins A and D at the levels specified by the Food and Drug Administration and at levels consistent with State and local standards for such milk.

"Needy children" means children from families whose incomes are equal to or below the Secretary's Guidelines for Determining Eligibility for Reduced Price School Meals.

"OIG" means the Office of the Inspector General of the Department.

"Operating costs" means the cost of operating a food service under the Program,

(a) Including the:

(1) Cost of obtaining food,

(2) Labor directly involved in the preparation and service of food,

(3) Cost of nonfood supplies,

(4) Rental and use allowances for equipment and space, and

(5) Cost of transporting children in rural areas to feeding sites in rural areas, but

(b) Excluding:

(1) The cost of the purchase of land, acquisition or construction of buildings,

(2) Alteration of existing buildings,

(3) Interest costs,

(4) The value of in-kind donations, and

(5) Administrative costs.

"Private nonprofit" means tax exempt under the Internal Revenue Code of 1954, as amended.

"Program" means the Summer Food Service Program for Children authorized by section 13 of the Act.

"Program funds" means Federal financial assistance made available to State agencies for the purpose of making Program payments.

"Program payments" means financial assistance in the form of start-up payments, advance payments, or reimbursement paid to sponsors for operating and administrative costs.

"Rural" means:

(a) Any area in a county which is not a part of a Metropolitan Statistical Area or

(b) Any "pocket" within a Metropolitan Statistical Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

"School food authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools. In addition, for the purpose of determining the applicability of food service management company registration and bid procedure requirements, "school food authority" also means any public college or university which is under the governance of a State, as defined in this section, or any public or private nonprofit college or university which is currently participating in the National Youth Sports Program.

"Secretary" means the Secretary of Agriculture.

"Self-preparation sponsor" means a sponsor which prepares the meals that will be served at its site(s) and does not contract with a food service management company for unitized meals, with or without milk, or for management services.

"Session" means a specified period of time during which an enrolled group of children attend camp.

"Site" means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

"Special account" means an account which a State agency may require a vended sponsor to establish with the State agency or with a Federally insured bank. Operating costs payable to the sponsor by the State agency are deposited in the account and disbursement of monies from the account must be authorized by both the sponsor and the food service management company.

"Sponsor" means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, or a public or private nonprofit college or university currently participating in the National Youth Sports Program, which develops a special summer or other school vacation program providing food service which meets the same meal requirements as meals served to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. Sponsors are referred to in the Act as "service institutions".

"Start-up payments" means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food service, and to establish effective management procedures for such a service. These payments shall be deducted from subsequent administrative cost payments.

"State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

"State agency" means the State educational agency or an alternate agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and which has been approved by the Department to administer the Program within the State, or, in States where FNS administers the Program, FNSRO.

"Unit of local, municipal, county or State government" means an entity which is so recognized by the State constitution or State laws, such as the State administrative procedures act, tax laws, or other applicable State laws which delineate authority for government responsibility in the State.

"Vended sponsor" means a sponsor which contracts to buy some or all of its unitized meals, with or without milk, from a food service management company or purchases management services, subject to the limitations set forth in § 225.15, from a food service management company.

§ 225.3 Administration.

(a) FNS shall act on behalf of the Department in the administration of the Program.

(b) State administered programs. Within the State, responsibility for the administration of the Program shall be in the State agency. Each State agency shall notify the Department by November 1 of the fiscal year as to whether or not it intends to administer the Program. Each State agency desiring to take part in the Program shall enter into a written agreement with FNS for the administration of the Program in accordance with the provisions of this Part. The agreement shall cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement shall contain an assurance that the State agency will

comply with the Department's nondiscrimination regulations (7 CFR Part 15) issued under Title VI of the Civil Rights Act of 1964, and any Instructions issued by FNS pursuant to those regulations, Title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. However, if a State educational agency is not permitted by law to disburse funds to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as the disbursements to public schools within the State by the State educational agency.

(c) Regional office administered programs. The Secretary shall not administer the Program in the States, except that if a FNSRO has continuously administered the Program in any State since October 1, 1980, FNS shall continue to administer the Program in that State. In States in which FNSRO administers the Program, it shall have all of the responsibilities of a State agency and shall earn State administrative and Program funds as set forth in this part. A State in which FNS administers the Program may, upon request to FNS, assume administration of the Program.

Subpart B—State Agency Provisions

§ 225.4 Program management and administration plan.

(a) Not later than February 15 of each year, each State agency shall submit to FNSRO a Program management and administration plan for that fiscal year.

(b) Each plan shall be acted on or approved by March 15 or, if it is submitted late, within 30 calendar days of receipt of the plan. If the plan initially submitted is not approved, the State agency and FNS shall work together to ensure that changes to the plan, in the form of amendments, are submitted so that the plan can be approved within 60 calendar days following the initial submission of the plan. Upon approval of the plan, the State agency shall be notified of the level of State administrative funding which it is assured of receiving under § 225.5(a)(3).

(c) Approval of the Plan by FNS shall be a prerequisite to the withdrawal of Program funds by the State from the Letter of Credit and to the donation by the Department of any commodities for use in the State's Program.

(d) The Plan shall include, at a minimum, the following information:

(1) The State's administrative budget for the fiscal year, and the State's plan to comply with any standards prescribed by the Secretary for the use of these funds;

(2) The State's plans for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children, including the State's methods for assessing need, and its plans and schedule for informing sponsors of the availability of the Program;

(3) The State's best estimate of the number and character of sponsors and sites to be approved, the number of meals to be served, the number of children who will participate, and a description of the estimating methods used by the State;

(4) The State's schedule for application by sponsors;

(5) The actions to be taken to maximize the use of meals prepared by sponsors and to maximize the use of school food service facilities;

(6) The State's plans and schedule for providing technical assistance and training to eligible sponsors;

(7) The State's plans for monitoring and inspecting sponsors, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently;

(8) The State's plan and schedule for registering food service management companies;

(9) The State's plan for timely and effective action against Program violators;

(10) The State's plan for determining the amounts of Program payments to sponsors and for disbursing such payments;

(11) The State's plan for ensuring fiscal integrity by auditing sponsors not subject to auditing requirements prescribed by the Secretary;

(12) The State's procedure for granting a hearing and prompt determination to any sponsors wishing to appeal a State ruling, as specified in § 225.13;

(13) The State's plan for ensuring compliance with the food service management company procurement monitoring requirements set forth at § 225.6(h); and

(14) Documentation of the State's need, if any, for monies available to pay for the cost of conducting health inspections and meal quality tests.

§ 225.5 Payments to State agencies and use of Program funds.

(a) *State administrative funds*—(1) *Administrative funding formula.* For each fiscal year, FNS shall pay to each State agency for administrative expenses incurred in the Program an amount equal to:

(i) 20 percent of the first $50,000 in Program funds properly payable to the State in the preceding fiscal year;

(ii) 10 percent of the next $100,000 in Program funds properly payable to the State in the preceding fiscal year;

(iii) 5 percent of the next $250,000 in Program funds properly payable to the State in the preceding fiscal year; and

(iv) 2½ percent of any remaining Program funds properly payable to the State in the preceding fiscal year;

Provided, however, That FNS may make appropriate adjustments in the level of State administrative funds to reflect changes in Program size from the preceding fiscal year as evidenced by information submitted in the State Program management and administration plan and any other information available to FNS. If a State agency fails to submit timely and accurate reports under § 225.8(c) of this part, State administrative funds payable under this paragraph shall be subject to sanction. For such failure, FNS may recover, withhold, or cancel payment of up to one hundred percent of the funds payable to the State agency under this paragraph during the fiscal year.

(2) *Use of State administrative funds.* State administrative funds paid to any State shall be used by State agencies to employ personnel, including travel and related expenses, and to supervise and give technical assistance to sponsors in initiation, expansion, and conduct of any food service for which Program funds are made available. State agencies may also use administrative funds for such other administrative expenses as are set forth in their approved Program management and administration plan.

(3) *Funding assurance.* At the time FNS approves the State's management and administration plan, the State shall be assured of receiving State administrative funding equal to the lesser of the following amounts: 80 percent of the amount obtained by applying the formula set forth in paragraph (a)(1) of this section to the total amount of Program payments made within the State during the prior fiscal year; or, 80 percent of the amount obtained by applying the formula set forth in paragraph (a)(1) to the amount of Program funds estimated to be needed in the management and administration plan. The State agency shall be assured that it will receive no less than this level unless FNS determines that the State agency has failed or is failing to meet its responsibilities under this Part.

(4) *Limitation.* In no event may the total payment for State administrative

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costs in any fiscal year exceed the total amount of expenditures incurred by the State agency in administering the Program.

(b) *State administrative funds Letter of Credit.* (1) At the beginning of each fiscal year, FNS shall make available to each participating State agency by Letter of Credit an initial allocation of State administrative funds for use in that fiscal year. This allocation shall not exceed one-third of the administrative funds provided to the State in the preceding fiscal year. For State agencies which did not receive any Program funds during the preceding fiscal year, the amount to be made available shall be determined by FNS.

(2) Additional State administrative funds shall be made available upon the receipt and approval by FNS of the State's Program management and administration plan. The amount of such funds, plus the initial allocation, shall not exceed 80 percent of the State administrative funds determined by the formula set forth in paragraph (a)(1) of this section and based on the estimates set forth in the approved Program management and administration plan.

(3) Any remaining State administrative funds shall be paid to each State agency as soon as practicable after the conduct of the funding assessment described in paragraph (c) of this section. However, regardless of whether such assessment is made, the remaining administrative funds shall be paid no later than September 1. The remaining administrative payment shall be in an amount equal to that determined to be needed during the funding evaluation or, if such evaluation is not conducted, the amount owed the State in accordance with paragraph (a)(1) of this section, less the amounts paid under paragraphs (b)(1) and (2) of this section.

(c) *Administrative funding evaluation.* FNSRO shall collect data on the need for Program and State administrative funding within any State agency *if* the funding needs estimated in a State's management and administration plan are no longer accurate. Based on this data, FNS may make adjustments in the level of State administrative funding paid or payable to the State agency under paragraph (b) of this section to reflect changes in the size of the State's Program as compared to that estimated in its management and administration plan. The data shall be based on approved Program participation levels and shall be collected during the period of Program operations. As soon as possible following this data collection, payment of any additional administrative funds owed shall be made to the State agency. The payment may reflect adjustments made to the level of State administrative funding based on the information collected during the funding assessment. However, FNS shall not decrease the amount of a State's administrative funds as a result of this assessment unless the State failed to made reasonable efforts to administer the Program as proposed in its management and administration plan or the State incurred unnecessary expenses.

(d) *Letter of Credit for Program payments.* (1) Not later than April 15 of each fiscal year, FNS shall make available to each participating State in a Letter of Credit an amount equal to 65 percent of the preceding fiscal year's Program payments for operating costs plus 65 percent of the preceding fiscal year's Program payments for administrative costs in the State. This amount may be adjusted to reflect changes in reimbursement rates made pursuant to § 225.9(d)(8). However, the State shall not withdraw funds from this Letter of Credit until its Program management and administration plan is approved by FNS.

(2) Based on the State agency's approved management and administration plan, FNS shall, if necessary, adjust the State's Letter of Credit to ensure that 65 percent of estimated current year Program operating and administrative funding needs is available. Such adjustment shall be made no later than May 15, or within 90 days of FNS receipt of the State agency's management and administration plan, whichever date is later.

(3) Subsequent to the adjustment provided for in paragraph (d)(2) of this section, FNS will, if necessary, make one additional adjustment to ensure that the State agency's Letter of Credit contains at least 65 percent of the Program operating and administrative funds needed during the current fiscal year. Such adjustment may be based on the administrative funding assessment provided for in paragraph (c) of this section, if one is conducted, or on any additional information which demonstrates that the funds available in the Letter of Credit do not equal at least 65 percent of current year Program needs. In no case will such adjustments be made later than September 1. Funds made available in the Letter of Credit shall be used by the State agency to make Program payments to sponsors.

(4) The Letter of Credit shall include sufficient funds to enable the State agency to make advance payments to sponsors serving areas in which schools operate under a continuous school calendar. These funds shall be made available no later than the first day of the month prior to the month during which the food service will be conducted.

(5) FNS shall make available any remaining Program funds due within 45 days of the receipt of valid claims for reimbursement from sponsors by the State agency. However, no payment shall be made for claims submitted later than 60 days after the month covered by the claim unless an exception is granted by FNS.

(6) Each State agency shall release to FNS any Program funds which it determines are unobligated as of September 30 of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 calendar days following demand by FNS, and shall be accomplished by an adjustment in the State agency's Letter of Credit.

(e) *Adjustment to Letter of Credit.* Prior to May 15 of each fiscal year, FNS shall make any adjustments necessary in each State's Letter of Credit to reflect actual expenditures in the preceding fiscal year's Program.

(f) *Health inspection funds.* If the State agency's approved management and administration plan documents a need for health inspection funding, FNS shall make available by letter of credit an amount up to one percent of Program funds estimated to be needed in the management and administration plan. Such amount may be adjusted, based on the administrative funding assessment provided for in paragraph (c) of this section, if such assessment is conducted. Health inspection funds shall be used solely to enable State or local health departments or other governmental agencies charged with health inspection functions to carry out health inspections and meal quality tests, provided that if these agencies cannot perform such inspections or tests, the State agency may use the funds to contract with an independent agency to conduct the inspection or meal quality tests. Funds so provided but not expended or obligated shall be returned to the Department by September 30 of the same fiscal year.

§ 225.6 State agency responsibilities.

(a) *General responsibilities.* (1) The State agency shall provide sufficient qualified consultative, technical, and managerial personnel to administer the Program, monitor performance, and measure progress in achieving Program goals. The State agency shall assign Program responsibilities to personnel to ensure that all applicable requirements under this Part are met.

(2) By February 1 of each fiscal year, each State agency shall announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency shall compile a list of potential sponsor which have not previously participated in the Program and shall contact them. State agencies shall identify rural areas, Indian tribal territories, and areas with a concentration of migrant farm workers which qualify for the Program and shall actively seek eligible applicant sponsors to serve such areas. State agencies shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas. The State agency shall encourage potential sponsors to use, to the maximum extent feasible, their own facilities or the facilities of public or nonprofit private schools for the preparation, delivery, and service of meals under the Program.

(3) Each State agency shall require applicant sponsors submitting Program application site information sheets, Program agreements, or a request for advance payments, and sponsors submitting claims for reimbursement to certify that the information submitted on these forms is true and correct and that the sponsor is aware that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

(b) *Approval of sponsor applications.* (1) Each State agency shall inform all of the previous year's sponsors which meet current eligibility requirements and all other potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency shall require that all applicant sponsors submit written applications for Program participation to the State agency by June 15. However, the State agency may establish an earlier deadline date for Program application submission.

(2) Each State agency shall inform potential sponsors of the procedure for applying for advance operating and administrative costs payments as provided for in § 225.9(c). Where applicable, each State agency shall inform sponsors of the procedure for applying for start-up payments provided for in § 225.9(a).

(3) Within 30 days of receiving a complete and correct application, the State agency shall notify the applicant of its approval or disapproval. If an incomplete application is received, the State agency shall so notify the applicant within 15 days and shall provide technical assistance for the purpose of completing the application. Any disapproved applicant shall be notified of its right to appeal under § 225.13.

(4) The State agency shall determine the eligibility of applicant sponsors applying for participation in the Program in accordance with the applicant sponsor eligibility criteria outlined in Section 225.14. However, State agencies may approve the application of an otherwise eligible applicant which does not provide a year-round service to the community which it proposes to serve under the Program only if it meets one or more of the following criteria:

(i) It is a residential camp;

(ii) It proposes to provide a food service for the children of migrant workers;

(iii) A failure to do so would deny the Program to an area in which poor economic conditions exist; or

(iv) A significant number of needy children will not otherwise have reasonable access to the Program.

(5) The State agency shall use the following order of priority in approving applicants to operate sites which propose to serve the same area or the same enrolled children:

(i) Applicants which are public or nonprofit private school food authorities and other applicants which have demonstrated successful Program performance in a prior year;

(ii) Applicants which propose to prepare meals at their own facilities or which operate only one site;

(iii) Applicants which propose to utilize local school food service facilities for the preparation of meals;

(iv) Other applicants which have demonstrated ability for successful Program operations; and

(v) Applicants which plan to integrate the Program with Federal, State, or local employment or training programs.

(6) The State agency shall not approve any applicant sponsor to operate more than 200 sites or to serve an average daily attendance of more than 50,000 children unless the applicant can demonstrate to the satisfaction of the State agency that it has the capability of managing a program of that size.

(7) The State agency shall review each applicant's administrative budget as a part of the applicant approval process in order to assess the applicant's ability to operate in compliance with these regulations within its projected reimbursement. In approving the applicant's administrative budget, the State agency shall take into consideration the number of sites and children to be served, as well as any other relevant factors. A sponsor's administrative budget shall be subject to review for adjustments by the State agency if the sponsor's level of site participation or the number of meals served to children changes significantly.

(8) Applicants which qualify as camps shall be approved for reimbursement only for meals served free to enrolled children who meet the Program's eligibility standards.

(9) The State agency shall not approve the application of any applicant sponsor identifiable through its organization or principals as a sponsor which has been determined to be seriously deficient as described in Section 225.11(c). However, the State agency may approve the application of a sponsor which has been disapproved or terminated in prior years in accordance with this paragraph if the applicant demonstrates to the satisfaction of the State agency that it has taken appropriate corrective actions to prevent recurrence of the deficiencies.

(10) If the sponsor's application to participate is denied, the official making the determination of denial must notify the applicant sponsor in writing stating all of the grounds on which the State agency based the denial. Pending the outcome of a review of a denial, the State agency shall proceed to approve other applicants in accordance with its responsibilities under paragraph (b)(5) of this section, without regard to the application under review.

(11) The State agency shall not approve the application of any applicant sponsor which submits fraudulent information or documentation when applying for Program participation or which knowingly withholds information that may lead to the disapproval of its application. Complete information regarding such disapproval of an applicant shall be submitted by the State agency through FNSRO to OIG.

(c) *Content of sponsor application.* (1) The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. The State agency may use the application form developed by FNS or it may develop an application form for use in the Program. Application shall be made on a timely basis in accordance with the deadline date established under § 225.6(b)(1).

(2) At a minimum, the application shall include:

(i) A site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet shall demonstrate or describe the following:

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(A) An organized and supervised system for serving meals to attending children;

(B) The estimated number and types of meals to be served and the times of service;

(C) Arrangements, within standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and arrangements for storing and refrigerating any leftover meals until the next day;

(D) Arrangements for service during periods of inclement weather;

(E) Access to a means of communication for making necessary adjustments in the number of meals delivered in accordance with the number of children attending daily at each site;

(F) The geographic area to be served by the site;

(G) The percentage of children in the area to be served by the site who meet the Program's income standards; and

(H) Whether the site is rural, as defined in § 225.2, or non-rural, and whether the site's food service will be self-prepared or vended.

(ii) Along with its site information sheet for a site that is not a camp, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist.

(A) For these sites at which applicants will serve children of migrant workers, the documentation requirement may be met by providing the State agency with data from an organization determined by the State agency to be a migrant organization which supports the eligibility of those children as a group.

(B) When a sponsor proposes to serve a site which it served in the previous year, documentation from the previous year may be used to support the eligibility of the site. For such sites, applicants shall only be required to obtain new documentation every other year.

(iii) Along with its site information sheet for a site which is a camp, documentation showing the number of children enrolled in each session who meet the Program's income standards. If such documentation is not available at the time of application, it shall be submitted as soon as possible thereafter and in no case later than the filing of the camp's claim for reimbursement for each session.

(iv) Information in sufficient detail to enable the State agency to determine whether the applicant meets the criteria for participation in the Program as set forth in § 225.14; the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable; and a staffing and monitoring plan.

(v) A complete administrative and operating budget for State agency review and approval. The administrative budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs.

(vi) A plan for and a synopsis of its invitation to bid for food service, if an invitation to bid is required under § 225.15(g).

(vii) A free meal policy statement, as described in paragraph (c)(3) of this section.

(viii) For each applicant which seeks approval under § 225.14(b)(3) as a unit of local, municipal, county or State government, certification that it will directly operate the Program in accordance with § 225.14(d)(4).

(3) Each applicant shall submit a statement of its policy for serving free meals at all sites under its jurisdiction.

(i) The policy statement shall consist of an assurance to the State agency that all children are served the same meals at no separate charge and that there is no discrimination in the course of the food service.

(ii) In addition, the policy statement for camps that charge separately for meals and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist) shall include the following:

(A) A statement that the eligibility standards conform to the Secretary's family size and income standards for free and reduced price school meals;

(B) A description of the method or methods to be used in accepting applications from families for Program meals. Such methods shall ensure that households are permitted to apply on behalf of children who are members of food stamp households or AFDC assistance units using the categorical eligibility procedures described in § 225.15(f);

(C) A description of the method used by camps for collecting payments from children who pay the full price of the meal while preventing the overt identification of children receiving a free meal;

(D) An assurance that the camp will establish a hearing procedure for families wishing to appeal a denial of an application for free meals. Such hearing procedures shall meet the requirements set forth in paragraph (c)(4) of this section;

(E) An assurance that, if a family requests a hearing, the child shall continue to receive free meals until a decision is rendered, and

(F) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, sex, age, or handicap.

(4) Each applicant shall submit with its application a copy of its hearing procedures. At a minimum, these procedures shall provide:

(i) That a simple, publicly announced method will be used for a family to make an oral or written request for a hearing;

(ii) That the family will have the opportunity to be assisted or represented by an attorney or other person;

(iii) That the family will have an opportunity to examine the documents and records supporting the decision being appealed both before and during the hearing;

(iv) That the hearing will be reasonably prompt and convenient for the family;

(v) That adequate notice will be given to the family of the time and place of the hearing;

(vi) That the family will have an opportunity to present oral or documentary evidence and arguments supporting its position;

(vii) That the family will have an opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(viii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in the action being appealed;

(ix) That the decision shall be based on the oral and documentary evidence presented at the hearing and made a part of the record;

(x) That the family and any designated representative shall be notified in writing of the decision;

(xi) That a written record shall be prepared for each hearing which includes the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family; and

(xii) That the written record shall be maintained for a period of three years following the conclusion of the hearing, during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(d) *Approval of sites.* (1) When evaluating a proposed food service site, the State agency shall ensure that:

(i) If not a camp, the proposed site serves as an area in which poor economic conditions exist, as defined by § 225.2;

(ii) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal; and

(iii) The site is approved to serve no more than the number of children for which its facilities are adequate.

(2) When approving the application of a site which will serve meals prepared by a food service management company, the State agency shall establish for each meal service an approved level for the maximum number of children's meals which may be served under the Program. These approved levels shall be established in accordance with the following provisions:

(i) The initial maximum approved level shall be based upon the historical record of attendance at the site if such a record has been established in prior years and the State agency determines that it is accurate. The State agency shall develop a procedure for establishing initial maximum approved levels for sites when no accurate record from prior years is available.

(ii) The maximum approved level shall be adjusted, if warranted, based upon information collected during site reviews. If attendance at the site on the day of the review is significantly below the site's approved level, the State agency should consider making a downward adjustment in the approved level with the objective of providing only one meal per child.

(iii) The sponsor may seek an upward adjustment in the approved level for its sites by requesting a site review or by providing the State agency with evidence that attendance exceeds the sites' approved levels.

(iv) Whenever the State agency establishes or adjusts approved levels of meal service for a site, it shall document the action in its files, and it shall provide the sponsor with immediate written confirmation of the approved level.

(v) Upon approval of its application or any adjustment to its maximum approved levels, the sponsor shall inform the food service management company with which it contracts of the approved level for each meal service at each site served by the food service management company. This notification of any adjustments in approved levels shall take place within the time frames set forth in the contract for adjusting meal orders. Whenever the sponsor notifies the food service management company of the approved levels or any adjustments to these levels for any of its sites, the sponsor shall clearly inform the food service management company that an approved level of meal service represents the maximum number of meals which may be served at a site and is not a standing order for a specific number of meals at that site. When the number of children attending is below the site's approved level, the sponsor shall adjust meal order with the objective of serving only one meal per child as required under § 225.15(b)(3).

(e) *State-Sponsor Agreement.* Sponsors approved for participation in the Program shall enter into written agreements with the State agency. The agreements shall provide that the sponsor shall:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation or at other times for children under a continuous school calendar system;

(2) Serve meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor, and serve the same meals to all children;

(3) Serve meals without cost to all children, except that camps may charge for meals served to children who are not served meals under the Program;

(4) Issue a free meal policy statement in accordance with § 225.6(c);

(5) Meet the training requirement for its administrative and site personnel, as required under § 225.15(d)(1);

(6) Claim reimbursement only for the type of types of meals specified in the agreement and served without charge to children at approved sites during the approved meal service period, except that camps shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who meet the Program's income standards. The agreement shall specify the approved levels of meal service for the sponsor's sites if such levels are required under § 225.6(d)(2). No permanent changes may be made in the serving time of any meal unless the changes are approved by the State agency;

(7) Submit claims for reimbursement in accordance with procedures established by the State agency, and those stated in Section 225.9;

(8) In the storage, preparation and service of food, maintain proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(9) Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department;

(10) Have access to facilities necessary for storing, preparing, and serving food;

(11) Maintain a financial management system as prescribed by the State agency;

(12) Maintain on file documentation of site visits and reviews in accordance with § 225.15(d) (2) and (3);

(13) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. The records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved;

(14) Maintain children on site while meals are consumed; and

(15) Retain final financial and administrative responsibility for its program.

(f) *Special account.* In addition, the State agency may require any vended sponsor to enter into a special account agreement with the State agency. The special account agreement shall stipulate that the sponsor shall establish a special account with a State agency or Federally insured bank for operating costs payable to the sponsor by the State. The agreement shall also stipulate that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company. The special account agreement may contain such other terms, agreed to by both the sponsor and the food service management company, which are consistent with the terms of the contract between the sponsor and the food service management company. A copy of the special account agreement shall be submitted to the State agency and another copy maintained on file by the sponsor. Any charges made by the bank for the account described in this section shall be considered an allowable sponsor administrative cost.

(g) *Food service management company registration.* (1) With the exception of the exemptions described in paragraph (g)(9) of this section, each

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food service management company shall register with the State by March 15 of each fiscal year. A State agency shall consider a food service management company's application for registration submitted after March 15 of the current year only if the State agency determines and documents that failing to consider the company's application could potentially result in a significant number of needy children not having reasonable access to the Program.

(2) February 1, each State agency shall notify each food service management company which participated in the State's Program during the previous two years that it must register with the State agency. This notification shall include, at a minimum:

(i) A statement that registration with the State agency is a prerequisite to participation in the Program;

(ii) A list of the items which must be submitted with the application for registration as set forth in paragraph (g)(4) of this section;

(iii) A complete description of the criteria developed by the State agency for determining registrant eligibility; and

(iv) Any other information necessary to apply for registration.

In addition, each State agency shall by February 1 issue a public announcement of the registration requirement, including all the information necessary to apply for registration.

(3) Each State agency shall require food service management companies submitting applications for registration to certify that the information submitted is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(4) At a minimum registration shall require:

(i) Submission of the food service management company's name and mailing address and any other names under which the company has operated during the past two years;

(ii) A certification that the food service management company meets applicable State and local health, safety, and sanitation standards;

(iii) Disclosure of present company owners, directors, and officers, and their relationship in the past two years to any sponsor or food service management company which participated in the Program;

(iv) Records of contract terminations, disallowances, and health, safety, and sanitation code violations related to Program participation during the past two years;

(v) Records of any other contract terminations and health, safety, and sanitation code violations during the past two years;

(vi) The address or addresses of the company's food preparation and distribution facilities which will be used in the Program and the name of the local official responsible for the operation of these facilities;

(vii) The number of Program meals which can be prepared in each preparation facility during a twenty-four hour period;

(viii) A certification that the food service management company will operate in accordance with current Program regulations;

(ix) A statement that the food service management company understands that it will not be paid for meals which are delivered to non-approved sites, or for meals which are delivered to approved sites outside of the agreed upon delivery time, or for meals that do not meet the meal requirements and food specifications contained in the contract between the sponsor and the food service management company;

(x) Submission of a Certified Public Accountant's audit report if an audit was performed during the prior year; and

(xi) A statement as to whether the organization is a minority business enterprise. A minority business enterprise is a business in which:

(A) The management and daily operations of the business are controlled by a member or members of a minority group (minority groups are Blacks, Hispanics, American Indians, Alaskan Natives, Orientals and Aleuts); and

(B) At least 51 percent of which is owned by a member or members of a minority group. If the business is a corporation, at least 51 percent of all classes of voting stock of the corporation must be owned by members of a minority group; if the business is a partnership, at least 51 percent of the partnership must be owned by a member or members of a minority group.

(5) Prior to approving a food service management company's request for registration, the State agency shall provide for inspection of all food preparation facilities listed on the application for registration, except those located outside the State. The State agency shall promptly notify FNSRO of the name and location of any out-of-State facility, and FNSRO shall ensure that the facility is inspected prior to registration. The purpose of the inspection is to evalute each facility's suitability for preparation of Program meals. The State agency may waive this inspection requirement if a facility was registered during the previous summer and operated in accordance with Program requirements.

(6) No food service management company shall be registered if the State agency determines that the company lacks the administrative and financial capability to perform under the Program or if it is identifiable through its organization or principals as a food service management company which participated in the Program during any previous year and was seriously deficient in its Program operation. Serious deficiencies which are grounds for non-registration include, but are not limited to, any of the following:

(i) Noncompliance with the applicable bid procedures, contract requirements, or Program regulations;

(ii) Submission of false information to the State agency;

(iii) Failure to conform meal deliveries to meal orders;

(iv) Delivery of a significant number of meals which did not meet contract requirements;

(v) Failure to maintain adequate records;

(vi) Significant health code violations which were not corrected upon reinspection;

(vii) Failure to deliver meals; or

(viii) The conviction of any officer, owner, partner, or manager of the company for a crime in connection with a prior Program operation.

(7) The State agency shall notify in writing each food service management company which applied for registration of its determination within 30 calendar days of reciving the complete application. It the application for registration is denied, the official making the determination must notify the food service management company in writing, stating all the grounds on which the State agency based the denial.

(8) Each State agency shall submit information to FNS regarding registration of food service management companies, as required under § 225.8(d).

(9) The following types of food service management companies are exempt from the requirement for registration:

(i) A school or school food authority acting as a food service management company; and

(ii) A food service management company which has an exclusive contract with a school or school food authority for year-round service and has no contracts with other Program sponsors.

(h) *Monitoring of food service management company procurements.* (1) The State agency shall ensure that sponsors' food service management company procurements are carried out in accordance with §§ 225.15(g) and 225.17 of this part.

(2) Each State agency shall develop a standard form of contract for use by sponsors in contracting with food service management companies. Sponsors which are public entities, sponsors with exclusive year-round contracts with a food service management company, and sponsors whose food service management company contract(s) do not exceed $10,000 in aggregate value may use their existing or usual form of contract, provided that such form of contract has been submitted to and approved by the State agency. The standard contract developed by the State agency shall expressly and without exception provide that:

(i) All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the State agency has approved, pursuant to paragraph (h)(3) of this section, a request for exceptions to the unitizing requirement for certain components of a meal;

(ii) A food service management company entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal;

(iii) The sponsor shall provide to the food service management company a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site, established under § 225.6(d)(2), and shall notify the food service management company of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site. Such notification shall be provided within the time limits mutually agreed upon in the contract;

(iv) The food service management company shall maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this part, and shall submit all required reports to the sponsor promptly at the end of each month, unless more frequent reports are required by the sponsor;

(v) The food service management company shall have State or local health certification for the facility in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the food service management company shall provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being served. These levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other food service establishments in the locality. The results of the inspections shall be submitted promptly to the sponsor and to the State agency;

(vi) The meals served under the contract shall conform to the cycle menus and meal quality standards and food specifications approved by the State agency and upon which the bid was based;

(vii) The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, the Department and the U.S. General Accounting Office at any reasonable time and place for a period of 3 years from the date of receipt of final payment under the contract, except that, if audit or investigation findings have not been resolved, such records shall be retained until all issues raised by the audit or investigation have been resolved;

(viii) The sponsor and the food service management company shall operate in accordance with current Program regulations;

(ix) The food service management company shall be paid by the sponsor for all meals delivered in accordance with the contract and this part. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement;

(x) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(xi) Increases and decreases in the number of meals ordered shall be made by the sponsor, as needed, within a prior notice period mutually agreed upon;

(xii) All meals served under the Program shall meet the requirements of § 225.16;

(xiii) In cases of nonperformance or noncompliance on the part of the food service management company, the company shall pay the sponsor for any excess costs which the sponsor may incur by obtaining meals from another source;

(xiv) If the State agency requires the sponsor to establish a special account for the deposit of operating costs payments in accordance with the conditions set forth in § 225.6(f), the contract shall so specify;

(xv) The food service management company shall submit records of all costs incurred in the sponsor's food service operation in sufficient time to allow the sponsor to prepare and submit the claim for reimbursement to meet the 60-day submission deadline; and

(xvi) The food service management company shall comply with the appropriate bonding requirements, as set forth in § 225.15(g) (6) through (8).

(3) All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the sponsor submits to the State agency a request for exceptions to the unitizing requirement for certain components of a meal. These requests shall be sumitted to the State agency in writing in sufficient time for the State agency to respond prior to the sponsor's advertising for bids. The State agency shall notify the sponsor in writing of its determination in a timely manner.

(4) Each State agency shall have a representative present at all food service management company procurement bid openings when sponsors are expected to receive more than $100,000 in Program payments.

(5) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, shall be submitted to the State agency prior to the beginning of Program operations. Sponsors shall also submit to the State agency copies of all bids received and their reason for selecting the food service management company chosen.

(6) All bids in an amount which exceeds the lowest bid shall be submitted to the State agency for approval before acceptance. All bids totaling $100,000 or more shall be submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(7) Failure by a sponsor to comply with the provisions of this paragraph or § 225.15(m) shall be sufficient grounds for the State agency to terminate participation by the sponsor in accordance with § 225.18(b).

(i) *Meal pattern exceptions.* The State agency shall review and act upon requests for exceptions to the meal pattern in accordance with the guidelines and limitations set forth in § 225.16.

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§225.7 Program monitoring and assistance.

(a) *Training.* Prior to the beginning of Program operations, each State agency shall make available training in all necessary areas of Program administration to sponsor personnel, food service management company representatives, auditors, and health inspectors who will participate in the Program in that State. Prior to Program operations, the State agency shall ensure that the sponsor's supervisory personnel responsible for the food service receive training in all necessary areas of Program administration and operations. This training shall reflect the fact that individual sponsors or groups of sponsors require different levels and areas of Program training. State agencies are encouraged to utilize in such training, and in the training of site personnel, sponsor personnel who have previously participated in the Program. Training should be made available at convenient locations.

(b) *Program materials.* Each State agency shall develop and make available all necessary Program materials in sufficient time to enable applicant sponsors to prepare adequately for the Program.

(c) *Food specifications and meal quality standards.* With the assistance of the Department, each State agency shall develop and make available to all sponsors minimum food specifications and model meal quality standards which shall become part of all contracts between vended sponsors and food service management companies.

(d) *Program monitoring and assistance.* The State agency shall conduct Program monitoring and provide Program assistance according to the following provisions:

(1) *Pre-approval visits.* The State agency shall conduct pre-approval visits of sponsors and sites, as specified below, to assess the applicant sponsor's or site's potential for successful Program operations and to verify information provided in application. The State agency shall visit prior to approval:

(i) All applicant sponsors which did not participate in the program in the prior year. However, if a sponsor is a school food authority, has been reviewed by the State agency under the National School Lunch Program during the preceding 12 months, and had no significant deficiencies noted in that review, a pre-approval visit may be conducted at the discretion of the State agency;

(ii) All applicant sponsors which, as a result of operational problems noted in the prior year, the State agency has determined need a pre-approval visit; and

(iii) All proposed nonschool sites with an expected average daily attendance of 300 children or more which did not participate in the Program in the prior year.

(2) *Sponsor and site reviews.* The State agency shall review sponsors and sites to ensure compliance with Program regulations, the Department's nondiscrimination regulations (7 CFR Part 15) and any other applicable instructions issued by the Department. In determining which sponsors or sites to review under this paragraph, the State agency shall, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program performance, and the results of any previous review of the sponsor and sites. Reviews shall be conducted as follows:

(i) State agencies shall review an average of 15 percent of the following sponsors' sites during their first four weeks of operation:

(A) Sponsors which have 10 or more sites and which did not operate the Program in the prior year; and

(B) Other sponsors of 10 or more sites which are determined by the State agency to need early reviews.

(ii) In addition, the State agency shall conduct the following review at least once during the Program:

(A) For all remaining sponsors with 10 or more sites, an average of at least 15 percent of their sites; and

(B) For 70 percent of sponsors with fewer then 10 sites, an average of at least 10 percent of their sites.

(3) *Follow-up reviews.* The State agency shall conduct follow-up reviews of sponsors and sites as necessary.

(4) *Monitoring system.* Each State agency shall develop and implement a monitoring system to ensure that sponsors, including site personnel, and the sponsor's food service management company, if applicable, immediately receive a copy of any review reports which indicate Program violations and which could result in a Program disallowance.

(5) *Records.* Documentation of Program assistance and the results of such assistance shall be maintained on file by the State agency.

(6) *Food service management company facility visits.* As a part of the review of any vended sponsor which contracts for the preparation of meals, the State agency shall inspect the food service management company's facilities. Each State agency shall establish an order of priority for visiting facilities at which food is prepared for the Program. The State agency shall respond promptly to complaints concerning facilities. If a food service management company fails to correct violations noted by the State agency during a review, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. Funds provided for in § 225.5(f) may be used for conducting food service management company facility inspections.

(7) *Forms for reviews by sponsors.* Each State agency shall develop and provide monitor review forms to all approved sponsors. These forms shall be completed by sponsor monitors. The monitor review form shall include, but not be limited to, the time of the reviewer's arrival and departure, the site supervisor's signature, a certification statement to be signed by the monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, the corrective actions taken by the sponsor, and the date of such actions.

(ii) *Corrective actions.* Corrective actions which the State agency may take when Program violations are observed during the conduct of a review are discussed in § 225.11. The State agency shall conduct follow-up reviews as appropriate when corrective actions are required.

(e) *Other facility inspections and meal quality tests.* In addition to those inspections required by paragraph (d)(6) of this section, the State agency may also conduct, or arrange to have conducted: Inspections of self-preparation and vended sponsors' food preparation facilities; inspections of food service sites; and meal quality tests. The procedures for carrying out these inspections and tests shall be consistent with procedures used by local health authorities. For inspections of food service management companies' facilities not conducted by State agency personnel, copies of the results shall be provided to the State agency. The company and the sponsor shall also immediately receive a copy of the results of these inspections when corrective action is required. If a food service management company fails to correct violations noted by the State agency during a review, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. Funds

provided for in § 225.5(f) may be used for conducting these inspections and tests.

(f) *Financial management.* Each State agency shall establish a financial management system, in accordance with the Department's Uniform Financial Assistance Regulations (7 CFR Part 3015) and FNS guidance, to identify allowable Program costs and to establish standards for sponsor recordkeeping and reporting. The State agency shall provide guidance on these financial management standards to each sponsor.

(g) *Nondiscrimination.* (1) Each State agency shall comply with all requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR Parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, the Program.

(2) Complaints of discrimination filed by applicants or participants shall be referred to FNS or the Secretary of Agriculture, Washington, DC 20250. A State agency which has an established grievance or complaint handling procedure may resolve sex and handicap discrimination complaints before referring a report to FNS.

§ 225.8 Records and reports.

(a) Each State agency shall maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs. These records shall be retained for a period of three years after the date of the submission of the final Program Operations and Financial Status Report (SF–269), except that, if audit findings have not been resolved, the affected records shall be retained beyond the three year period until such time as any issues raised by the audit findings have been resolved. The State agency shall also retain a complete record of each review or appeal conducted, as required under § 225.13, for a period of three years following the date of the final determination on the review or appeal. Records may be kept in their original form or on microfilm.

(b) Each State agency shall submit to FNS a final report on the Summer Food Service Program Operations (FNS–418) for each month no more than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not postmarked and/or submitted within this time limit unless FNS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made without FNS authorization, regardless of when it is determined that such adjustments need to be made. Adjustments to a State's report shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. Action may be taken against the State agency, in accordance with § 225.5(a)(1), for failure to submit accurate and timely reports.

(c) The State agency must submit to FNS a final Financial Status Report no later than 120 days after the end of the fiscal year, on a form (SF–269) provided by FNS. Any requested increase in reimbursement levels for a fiscal year resulting from corrective action taken after submission of the final Program Operations and Financial Status Reports shall be submitted to FNS for approval. The request shall be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FNS approves such an increase, it will make payment, subject to availability of funds. Any reduction in reimbursement for that fiscal year resulting from corrective action taken after submission of the final fiscal year Program Operations and Financial Status Reports shall be handled in accordance with the provisions of § 225.12(d), except that amounts recovered may not be used to make Program payments.

(d) By October 15, each State agency shall submit to FNS, on a form provided by FNS, information concerning each food service management company which applied to the State agency for registration for that calendar year's Program. This information shall be made available to State agencies upon request in order to ensure that only qualified food service management companies contract for services in all States. FNS shall allow any food service management company to review the information concerning that company which was submitted to FNS in accordance with this paragraph.

§ 225.9 Program assistance to sponsors.

(a) *Start-up payments.* At their discretion, State agencies may make start-up payments to sponsors which have executed Program agreements. Start-up payments shall not be made more than two months before the sponsor is scheduled to begin food service operations and shall not exceed 20 percent of the sponsor's approved administrative budget. The amount of the start-up payment shall be deducted from the first advance payment for administrative costs or, if the sponsor does not receive advance payments, from the first administrative reimbursement.

(b) *Commodity assistance.* (1) Sponsors eligible to receive commodities under the Program include: Self-preparation sponsors; sponsors which have entered into an agreement with a school or school food authority for the preparation of meals; and sponsors which are school food authorities and have competitively procured Program meals from the same food service management company from which they competitively procured meals for the National School Lunch Program during the last period in which school was in session. The State agency shall make available to these sponsors information on available commodities. Sponsors shall use in the Program food donated by the Department and accepted by sponsors.

(2) Not later than June 1 of each year, State agencies shall prepare a list of the sponsors which are eligible to receive commodities and the average daily number of eligible meals to be served by each of these sponsors. If the State agency does not handle the distribution of commodities donated by the Department, this list shall be forwarded to the agency of the State responsible for the distribution of commodities. The State agency shall be responsible for promptly revising the list to reflect additions or terminations of sponsors and for adjusting the average daily participation data as it deems necessary.

(c) *Advance payments.* At the sponsor's request, State agencies shall make advance payments to assist sponsors in meeting operating costs and

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administrative expenses. For sponsor operating under a continuous school calendar, all advance payments shall be forwarded on the first day of each month of operation. Advance payments shall be made by the dates specified in paragraphs (c)(1) and (2) of this section for all other sponsors whose requests are received at least 30 days prior to those dates. Requests received less than 30 days prior to those dates shall be acted upon within 30 days of receipt. When making advance payments, State agencies shall observe the following criteria:

(1) *Operating costs.* (i) State agencies shall make advance payments for operating costs by June 1, July 15, and August 15. To be eligible for the second advance payment, the sponsor must have conducted training sessions covering Program duties and responsibilities for its own personnel and for site personnel. A sponsor shall not receive advance operating cost payments for any month in which it will participate in the Program for less than ten days.

(ii) To determine the amount of the advance payment to any sponsor, the State agency shall employ whichever of the following methods will result in the larger payment:

(A) The total operating costs paid to the sponsor for the same calendar month in the preceding year; or

(B) For vended sponsors, 50 percent of the amount determined by the State agency to be needed that month for meals, and, for self-preparation sponsors, 65 percent of the amount determined by the State agency to be needed that month for meals.

(2) *Administrative costs.* (i) State agencies shall make advance payments for administrative costs by June 1 and July 15. To be eligible for the second advance payment, the sponsor must certify that it is operating the number of sites for which the administrative budget was approved and that its projected administrative costs do not differ significantly from the approved budget. A sponsor shall not receive advance administrative costs payments for any month in which it will participate in the Program for less than 10 days. However, if a sponsor operates for less than 10 days in June but for at least 10 days in August, the second advance administrative costs payment shall be made by August 15.

(ii) Each payment shall equal one-third of the total amount which the State agency determines the sponsor will need to administer its program. For sponsors which will operate for 10 or more days in only one month and, therefore, will qualify for only one advance administrative costs payment, the payment shall be no less than one-half, and no more than two-thirds, of the total amount which the State agency determines the sponsor will need to administer its program.

(3) *Advance payment estimates.* When determining the amount of advance payments payable to the sponsor, the State agency shall make the best possible estimate based on the sponsor's request and any other available data. Under no circumstances may the amount of the advance payment for operating or administrative costs exceed the amount estimated by the State agency to be needed by the sponsor to meet operating or administrative costs, respectively.

(4) *Limit.* The sum of the advance operating and administrative costs payments to a sponsor for any one month shall not exceed $40,000 unless the State agency determines that a larger payment is necessary for the effective operation of the Program and the sponsor demonstrates sufficient administrative and managerial capability to justify a larger payment.

(5) *Deductions from advance payments.* The State agency shall deduct from either advance operating payments or advance administrative payments the amount of any previous payment which is under dispute or which is part of a demand for recovery under § 225.12.

(6) *Withholding of advance payments.* If the State agency has reason to believe that a sponsor will not be able to submit a valid claim for reimbursement covering the month for which advance payments have already been made, the subsequent month's advance payment shall be withheld until a valid claim is received.

(7) *Repayment of excess advance payments.* Upon demand of the State agency, sponsors shall repay any advance Program payments in excess of the amount cited on a valid claim for reimbursement.

(d) *Reimbursements.* Sponsors shall not be eligible for reimbursements for operating and administrative costs unless they have executed an agreement with the State agency. All reimbursements shall be in accordance with the terms of this agreement. Reimbursements shall not be paid for meals served at a site before the sponsor has received written notification that the site has been approved for participation in the Program. Income accruing to a sponsor's program shall be deducted from combined operating and administrative costs. The State agency may make full or partial reimbursement upon receipt of a claim for reimbursement, but shall first make any necessary adjustments in the amount to be paid. The following requirements shall be observed in submitting and paying claims:

(1) No reimbursement may be issued until the sponsor certifies that it operated all sites for which it is approved and that there has been no significant change in its projected administrative costs since its preceding claim and, for a sponsor receiving an advance payment for only one month, that there has been no significant change in its projected administrative cost since its initial advance administrative costs payment.

(2) Sponsors which operate less than 10 days in the final month of operations shall submit a combined claim for the final month and the immediate preceding month within 60 days of the last day of operation.

(3) The State agency shall forward reimbursements within 45 days of receiving valid claims. If a claim is incomplete or invalid, the State agency shall return the claim to the sponsor within 30 days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action shall be completed within 45 days of receipt.

(4) Claims for reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of Summer Food Service Program Operations required under § 225.8(b). In submitting a claim for reimbursement, each sponsor shall certify that the claim is correct and that records are available to support this claim. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. The cost of meals served to adults performing necessary food service labor may be included in the claim. Under no circumstances may a sponsor claim the cost of any disallowed meals as operating costs.

(5) A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days after the last day of the month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not filed within the 60 days deadline shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any

Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the month covered by the claim and are reflected in the final Program Operations Report (FNS–418). Upward adjustments in Program funds claimed which are not reflected in the final FNS–418 for the month covered by the claim cannot be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made without FNS authorization, regardless of when it is determined that such adjustments are necessary.

(6) Payments to a sponsor for operating costs shall equal the lesser of the following totals:

(i) The actual operating costs incurred by the sponsor; or .

(ii) The sum of the amounts derived by multiplying the number of means by type, actually served under the sponsor's program to eligible children by the current rates for each meal type, as adjusted in accordance with paragraph (d)(8) of this section.

(7) Payments to a sponsor for administrative costs shall equal the lowest of the following totals:

(i) The amount estimated in the sponsor's approved administrative budget (taking into account any amendments);

(ii) The actual administrative costs incurred by the sponsor; or

(iii) The sum of the amounts derived by multiplying the number of means, by type, actually served under the sponsor's program to eligible children by the current administrative rates for each meal type, as adjusted in accordance with paragraph (d)(8) of the section. Sponsors shall be eligible to receive additional administrative reimbursement for each meal served to participating children at rural or self-preparation sites, and the rates for such additional administrative reimbursement shall be adjusted in accordance with paragraph (d)(8) of this section.

(8) Each January 1, FNS shall publish a notice in the Federal Register announcing any adjustment to the reimbursement rates described in paragraphs (d)(6)(ii) and (d)(7)(iii) of this section. Adjustments shall be based upon changes in the series for food away from home of the Consumer Price Index for all Urban Consumers since the establishment of the rates.

(9) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for Program meals is documented.

(10) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's claims for reimbursement.

(e) The sponsor may claim reimbursement for any meals which are examined for meal quality by the State agency, auditors, or local health authorities and found to meet the pattern requirements.

(f) The sponsor shall not claim reimbursement for meals served to children at any site in excess of the site's approved level of meal service, if one has been established under § 225.6(d)(2). However, the total number of meals for which operating costs are claimed may exceed the approved level of meal service if the meals exceeding this level were served to adults performing necessary food service labor in accordance with paragraph (d)(4) of this section. In reviewing a sponsor's claim, the State agency shall ensure that reimbursements for second meals are limited to the percentage tolerance established in § 225.15(b)(4).

§ 225.10 Audits and management evaluations.

(a) *Audits.* State agencies shall arrange for audits of their own operations to be conducted in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015). Unless otherwise exempt, sponsors shall arrange for audits to be conducted in accordance with 7 CFR Part 3015. State agencies shall provide OIG with full opportunity to audit the State agency and sponsors. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon a reasonable request from OIG. While OIG shall rely to the fullest extent feasible upon State-sponsored audits of sponsors, it shall, when considered necessary,

(1) Make audits on a State-wide basis,

(2) Perform on-site test audits, and

(3) Review audit reports and related working papers of audits performed by or for State agencies.

(b) *Management evaluations.* (1) State agencies shall provide FNS with full opportunity to conduct management evaluations (including visits to sponsors) of all operations of the State agency. Each State agency shall make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by FNS.

(2) The State agency shall fully respond to any recommendations made by FNSRO pursuant to the management evaluation.

(3) FNSRO may require the State agency to submit on 20 days notice a corrective action plan regarding serious problems observed during any phase of the management evaluation.

(c) *Disregards.* In conducting management evaluations or audits for any fiscal year, the State agency, FNS or OIG may disregard overpayment which does not exceed $100 or, in the case of State agency administered programs, does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, when there are unpaid claims for the same fiscal year from which the overpayment can be deducted or when there is substantial evidence of violation of criminal law or civil fraud statutes.

§ 225.11 Corrective action procedures.

(a) *Purpose.* The provisions in this section shall be used by the State agency to improve Program performance.

(b) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. The State agency shall maintain on file all evidence relating to such investigations and actions. The State agency shall inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The Department may make investigations at the request of the State agency, or where the Department determines investigations are appropriate.

(c) *Denial of applications and termination of sponsors.* Except as specified below, the State agency shall not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program and was seriously deficient in its operation of any such program. The State agency shall terminate the Program agreement with any sponsor which it determines to be seriously deficient. However, the State agency shall afford a sponsor reasonable opportunity to correct problems before terminating the sponsor for being seriously deficient. The State

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agency may approve the application of a sponsor which has been disapproved or terminated in prior years in accordance with this paragraph if the sponsor demonstrates to the satisfaction of the State agency that the sponsor has taken appropriate corrective actions to prevent recurrence of the deficiencies. Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

(1) Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations;

(2) The submission of false information to the State agency;.

(3) Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with this Part, or failure to submit all claims for reimbursement in any prior year, provided that failure to return any advance payments for months for which claims for reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph.

(4) Program violations at a significant proportion of the sponsor's sites. Such violations include, but are not limited to, the following:

(i) Noncompliance with the meal service time restrictions set forth at § 225.16(c);

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) The simultaneous service of more than one meal to any child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) Service of a significant number of meals which did not include required quantities of all meal components;

(vii) Excessive instance of off-site meal consumption;

(viii) Continued use of food service management companies that are in violation of health codes.

(d) *Meal service restriction.* With the exception for residential camps set forth at § 225.16(b)(1)(ii), the State agency shall restrict to one meal service per day:

(1) Any food service site which is determined to be in violation of the time restrictions for meal service set forth at § 225.16(c) when corrective action is not taken within a reasonable time as determined by the State agency; and

(2) All sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions set forth at § 225.16(c). If this action results in children not receiving meals under the Program, the State agency shall make reasonable effort to locate another source of meal service for these children.

(e) *Meal disallowances.* (1) If the State agency determines that a sponsor has failed to plan, prepare, or order meals with the objective of providing only one meal per child at each meal service at a site, the State agency shall disallow the number of children's meals prepared or ordered in excess of the number of children served.

(2) If the State agency observes meal service violations during the conduct of a site review, the State agency shall disallow as meals served to children all of the meals observed to be in violation.

(3) The State agency shall also disallow children's meals which are in excess of a site's approved level established under § 225.6(d)(2).

(f) *Corrective action and termination of sites.* (1) Whenever the State agency observes violations during the course of a site review, it shall require the sponsor to take corrective action. If the State agency finds a high level of meal service violations, the State agency shall require a specific immediate corrective action plan to be followed by the sponsor and shall either conduct a follow-up visit or in some other manner verify that the specified corrective action has been taken.

(2) The State agency shall terminate the participation of a sponsor's site if the sponsor fails to take action to correct the Program violations noted in a State agency review report within the timeframes established by the corrective action plan.

(3) The State agency shall immediately terminate the participation of a sponsor's site if during a review it determines that the health or safety of the participating children is imminently threatened.

(4) If the site is vended, the State agency shall within 48 hours notify the food service management company providing meals to the site of the site's termination.

§ 225.12 Claims against sponsors.

(a) The State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable under this Part, except as provided for in § 225.10(c). State agencies may consider claims for reimbursement not properly payable if a sponsor does not comply with the recordkeeping requirements contained in this Part. However, the State agency shall notify the sponsor of the reasons for any disallowance or demand for repayment.

(b) Minimum State agency collection procedures for unearned payments shall include:

(1) Written demand to the sponsor for the return of improper payments;

(2) If after 30 calendar days the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments, sent by certified mail, return receipt requested;

(3) If after 60 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a third written demand for the return of improper payments, sent by certified mail, return receipt requested; and

(4) If after 90 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the sponsor to the appropriate State or Federal authorities for pursuit of legal remedies.

(c) If FNS does not concur with the State agency's action in paying a sponsor or in failing to collect an overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment unless FNS determines that the State agency has conformed with this Part in issuing the payment and has exerted reasonable efforts in accordance with paragraph (b) of this section to recover the improper payment.

(d) The amounts recovered by the State agency from sponsors may be utilized to make Program payments to sponsors for the period for which the funds were initially available and/or to repay the State for any of its own funds used to make payments on claims for reimbursement. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this Part.

§ 225.13 Appeal procedures.

(a) Each State agency shall establish a procedure to be followed by an applicant appealing: a denial of an application for participation; a denial of a sponsor's request for an advance payment; a denial of a sponsor's claim for reimbursement (except for late submission under § 225.9(d)(5)); a State agency's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim; a claim against a sponsor for remittance of a payment; the termination of the sponsor or a site; a denial of a sponsor's application for a site; a denial of a food service management company's application for registration; or the revocation of a food service management company's registration. Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under § 225.9(d)(5).

(b) At a minimum, appeal procedures shall provide that:

(1) The sponsor or food service management company be advised in writing of the grounds upon which the State agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also state that the sponsor or food service management company has the right to appeal the State's action;

(2) The sponsor or food service management company be advised in writing that the appeal must be made within a specified time and must meet the requirements of paragraph (b)(4) of this section. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date on which the notice of action is received;

(3) The appellant be afforded the opportunity to review any information upon which the action was based;

(4) The appellant be allowed to refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the appeal, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency;

(5) A hearing be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter appealing the action. The appellant may retain legal counsel or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;

(6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(7) The hearing be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs (b) (4) and (5) of this section;

(8) The review official be independent of the original decision-making process;

(9) The review official make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(11) The State agency's action remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) The State agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in paragraph (a) of this section, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with § 225.6(g).

(d) A record regarding each review shall be kept by the State agency, as required under § 225.8(a). The record shall document the State agency's compliance with these regulations and shall include the basis for its decision.

Subpart C—Sponsor and Site Provisions

§ 225.14 Requirements for sponsor participation.

(a) *Applications.* Sponsors shall make written application to the State agency to participate in the Program. Such application shall be made on a timely basis in accordance with the requirements of § 225.6(b)(1).

(b) *Sponsor eligibility.* Applicants eligible to sponsor the Program include:

(1) Public or nonprofit private school food authorities;

(2) Public or nonprofit private residential summer camps;

(3) Units of local, municipal, county, or State governments; and

(4) Public or private nonprofit colleges or universities which are currently participating in the National Youth Sports Program.

(c) *General requirements.* No applicant sponsor shall be eligible to participate in the Program unless it:

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service;

(2) Has not been seriously deficient in operating the Program;

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist, or qualifies as a camp;

(4) Has adequate supervisory and operational personnel for overall monitoring and management of each site, including adequate personnel to conduct the visits and reviews required in § 225.15(d) (2) and (3);

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program, except as provided for in § 225.6(b)(4);

(6) Certifies that all sites have been visited and have the capability and the facilities to provide the meal service planned for the number of children anticipated to be served;

(7) Enters into a written agreement with the State agency upon approval of its application, as required in § 225.6(e).

(d) *Requirements specific to sponsor types.* (1) If the sponsor is not a camp, it shall provide documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in § 225.2.

(2) If the sponsor is a camp, it shall certify that it will collect information on participants' eligibility to support its claim for reimbursement;

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(3) If the sponsor administers the program at sites at which summer school is in session, it shall ensure that such sites are open both to children enrolled in summer school and to all children residing in the area served by the site.

(4) Sponsors which are units of local, municipal, county or State government shall be approved to administer the program only at sites over which they have direct operational control. Such operational control means that the sponsor shall be responsible for:

(i) Managing site staff, including such areas as hiring, terminating and determining conditions of employment for site staff; and

(ii) Exercising management control over program operations at sites throughout the period of program participation by performing the functions specified in § 225.15.

§ 225.15 Management responsibilities of sponsors.

(a) *General.* (1) Sponsors shall operate the food service in accordance with: the provisions of this Part; any instructions and handbooks issued by FNS under this Part; and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this Part.

(2) Sponsors shall not claim reimbursement under Parts 210, 215, 220, or 226 of this chapter, or any other Federally-funded program, for Program meals; *provided, however,* that funds provided under the National Youth Sports Program may be used to supplement reimbursement for Program meals. Sponsors which are school food authorities may use facilities, equipment and personnel supported by funds provided under this Part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

(3) No sponsor may contract out for the management responsibilities of the Program described in this section.

(b) *Meal Ordering.* (1) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility, the applicable requirements of this Part shall be embodied in a written agreement between the sponsor and the school.

(2) Upon approval of its application or any adjustment in the approved levels of meal service for its sites established under § 225.6(d)(2), vended sponsors shall inform their food service management company of the approved level at each site for which the food service management company will provide meals.

(3) Sponsors shall plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. The sponsor shall make the adjustments necessary to achieve this objective using the results from its monitoring of sites. For sites for which approved levels of meal service have been established in accordance with § 225.6(d)(2), the sponsor shall adjust the number of meals ordered or prepared with the objective of providing only one meal per child whenever the number of children attending the site is below the approved level. The sponsor shall not order or prepare meals for children at any site in excess of the site's approved level, but may order or prepare meals above the approved level if the meals are to be served to adults performing necessary food service labor in accordance with § 225.9(d)(4). Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward meeting this objective.

(4) In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, sponsors may claim reimbursement for a number of second meals which does not exceed two percent of the number of first meals served to children for each meal type (i.e., breakfasts, lunches, supplements, or suppers) during the claiming period. The State agency shall disallow all claims for second meals if it determines that the sponsor failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal.

(c) *Records and claims.* (1) Sponsors shall maintain accurate records which justify all costs and meals claimed. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. The sponsor's records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and the State agency for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year.

(2) Sponsors shall submit claims for reimbursement in accordance with this Part. All final claims must be submitted to the State agency within 60 days following the last day of the month covered by the claim.

(d) *Training and monitoring.* (1) Each sponsor shall hold Program training sessions for its administrative and site personnel and shall allow no site to operate until personnel have attended at least one of these training sessions. Training of site personnel shall, at a minimum, include: The purpose of the Program; site eligibility; recordkeeping; site operations; meal pattern requirements; and the duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative personnel are thoroughly knowledgeable in all required areas of Program administration and operation and are provided with sufficient information to enable them to carry out their Program responsibilities. Each site shall have present at each meal service at least one person who has received this training.

(2) Sponsors shall visit each of their sites at least once during the first week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.

(3) Sponsors shall review food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a monitoring form developed by the State agency during the conduct of these reviews.

(e) *Media release.* Each sponsor shall annually announce in the media serving the area from which it draws its attendance the availability of free meals. Camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall annually announce to all participants the availability of free meals for eligible children. All media releases issued by camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall include: the Secretary's family-size and income standards for reduced price school meals labelled "SFSP Income Eligibility Standards"; a statement that children who are members of food stamp households or AFDC assistance units are automatically eligible to receive free meal benefits at eligible program sites; and a statement that meals are available without regard to race, color, national origin, sex, age, or handicap.

(f) *Application for free Program meals.* (1) For the purpose of determining eligibility for free Program meals, camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall distribute applications for meals to parents or guardians of children enrolled in the program. The application, and any other descriptive material distributed to such persons, shall contain only the family-size and income levels for reduced price school meal eligibility with an explanation that households with incomes less than or equal to these values are eligible for free Program meals. Such forms and descriptive material may not contain the income standards for free meals in the National School Lunch or School Breakfast Programs. In addition, such forms and materials shall state that, if a child is a member of a food stamp household or an AFDC assistance unit, the child is automatically eligible to receive free program meal benefits, subject to completion of the application as described in paragraph (f)(3) of this section.

(2) Except as provided in paragraph (f)(3) of this section, the application shall contain a request for the following information:

(i) The names of all children from whom application is made;

(ii) The names of all other household members;

(iii) The social security number of all adult household members or an indication that an adult household member does not possess one;

(iv) The total current household income and the income received by each household member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts, and other resources);

(v) A statement to the effect that, "In certain cases, foster children are eligible for free meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us.";

(vi) A statement which includes substantially the following information: "Section 9(d) of the National School Lunch Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free meals. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits and investigations and may include contacting employers to determine income; contacting a food stamp or welfare office to determine current certification for receipt of food stamp or AFDC benefits; contacting the State employment security office to determine the amount of benefits received; and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss of benefits, administrative claims, or legal action if incorrect information is reported." State agencies and sponsors shall ensure that the notice complies with section 7 or Pub. L. 93-579 (Privacy Act of 1974). If a State or local agency plans to use the social security numbers in a manner not described by this notice, the notice shall be altered to include a description of these uses; and

(vii) The signature of an adult member of the household immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(3) If they so desire, households applying on behalf of children who are members of food stamp households or AFDC assistance units may apply for free meal benefits using the procedures described in this paragraph rather than the procedures described in paragraph (f)(2) of this section. Households applying on behalf of children who are members of food stamp households or AFDC assistance units shall be required to provide:

(i) The name(s) and food stamp or AFDC case number(s) of the child(ren) for whom automatic free meal eligibility is claimed; and

(ii) The signature of an adult member of the household below the statement described in paragraph (f)(2)(vii) of this section.

In accordance with paragraph (f)(2)(vi) of this section, if a food stamp or AFDC case number is provided, it may be used to verify the current food stamp or AFDC certification for the child(ren) for whom free meal benefits are being claimed. Whenever households apply for benefits for children not receiving food stamp or AFDC benefits, they must apply for those children in accordance with the requirements set forth in paragraph (f)(2) of this section.

(g) *Food service management companies.* (1) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate that sponsor's participation in accordance with § 225.18.

(2) A sponsor may contract only with a food service management company which is registered with the State in which the sponsor will operate the Program, unless the food service management company is not required to register in accordance with § 225.6(g)(9).

(3) Any sponsor may contract with a food service management company to manage the sponsor's food service operations and/or for the preparation of unitized meals with or without milk or juice. Exceptions to the unitizing requirement may only be made in accordance with the provisions set forth at § 225.6(h)(3).

(4) Any vended sponsor shall be responsible for ensuring that its food service operation is in conformity with its agreement with the State agency and with all the applicable provisions of this Part.

(5) In addition to any applicable State or local laws governing bid procedures, and with the exceptions identified in this paragraph, each sponsor which contracts with a food service management company shall comply with the competitive bid procedures described in this paragraph. Sponsors which are schools or school food authorities and which have an exclusive contract with a food service management company for year-round service, and sponsors whose total contracts with food service management companies will not exceed $10,000, shall not be required to comply with these procedures. These exceptions do not relieve the sponsor of the responsibility to ensure that competitive procurement procedures are followed in contracting with any food service management company. Each sponsor whose proposed contract is subject to the specific bid procedures set forth in this paragraph shall ensure, at a minimum, that:

(i) All proposed contracts are publicly announced at least once, not less than

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14 calendar days prior to the opening of bids, and the announcement includes the time and place of the bid opening;

(ii) The bids are publicly opened;

(iii) The State agency is notified, at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening;

(iv) The invitation to bid does not specify a minimum price;

(v) The invitation to bid contains a cycle menu approved by the State agency upon which the bid is based;

(vi) The invitation to bid contains food specifications and meal quality standards approved by the State agency upon which the bid is based;

(vii) The invitation to bid does not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;

(viii) Neither the invitation to bid nor the contract provides for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;

(ix) Nonfood items are excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(x) A copy of the food service management company registration determination issued by the State agency is submitted by the food service management company with its bid;

(xi) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, are submitted to the State agency prior to the beginning of Program operations;

(xii) Copies of all bids received are submitted to the State agency, along with the sponsor's reason for choosing the successful bidder;

(xiii) All bids in an amount which exceeds the lowest bid and all bids totaling $100,000 or more are submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(6) Each food service management company which submits a bid over $100,000 shall obtain a bid bond in an amount not less than five (5) percent nor more than ten (10) percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(7) Each food service management company which enters into a food service contract for over $100,000 with a sponsor shall obtain a performance bond in an amount not less than ten (10) percent nor more than twenty-five (25) percent of the value of the contract, as determined by the State agency, of the value of the contract for which the bid is made. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds $100,000. Sponsors shall require the food service management company to furnish a copy of the performance bond within ten days of the awarding of the contract.

(8) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570. No sponsor or State agency shall allow food service management companies to post any "alternative" forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

(h) *Other responsibilities.* Sponsors shall comply with all of the meal service requirements set forth in § 225.16.

§ 225.16 Meal service requirements.

(a) *Sanitation.* Sponsors shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Sponsors shall ensure that adequate facilities are available to store food or hold meals. Within two weeks of receiving notification of their approval, but in any case prior to commencement of Program operation, sponsors shall submit to the State agency a copy of their letter advising the appropriate health department of their intention to provide a food service during a specific period at specific sites.

(b) *Meal services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplemental food. No sponsor shall be approved to provide more than two services of supplemental food per day. A sponsor shall only be reimbursed for meals served in accordance with this section.

(1) *Camps.* Sponsors of camps shall only be reimbursed for meals served in camps to children from families which meet the eligibility standards for this Program. The sponsor shall maintain a copy of the documentation establishing the eligibility of each child receiving meals under the Program. Meal service at camps shall be subject to the following provisions:

(i) A camp may serve up to four meals each day;

(ii) Residential camps are not subject to the time restrictions for meal service set forth at paragraphs (c)(1) and (2) of this section; and

(iii) A camp shall be approved to serve these meals only if it has the administrative capability to do so; if the service period of the different meals does not coincide or overlap; and, where applicable, if it has adequate food preparation and holding facilities.

(2) *Sites other than camps and those serving migrant children.* Food service sites other than camps shall serve children in areas where poor economic conditions exist, as defined in § 225.2. A sponsor which operates in accordance with this Part shall receive reimbursement for all meals served to children at these sites. Food service sites other than camps and those which primarily serve migrant children may serve either:

(i) One meal each day, a breakfast, a lunch, or a supplement; or

(ii) Two meals each day, if one is a lunch and the other is a breakfast or a supplement.

(3) *Sites which serve children of migrant families.* Food service sites which primarily serve children from migrant families may be approved to serve up to four meals each day. These sites shall serve children in areas where poor economic conditions exist as defined in § 225.2. A sponsor which operates in accordance with this Part shall receive reimbursement for all meals served to children at these sites. A site which primarily serves children from migrant families shall only be approved to serve more than one meal each day if it has the administrative capability to do so; if the service period of the different meals does not coincide or overlap; and, where applicaple, if it has adequate food preparation and holding facilities.

(c) *Time restrictions for meal service.* (1) With the exception of residential camps, sponsors shall not claim reimbursement for meals served on Saturdays or Sundays.

(2) Three hours shall elapse between the beginning of one meal service, including supplements, and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of supper shall begin no later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances. These waivers shall be granted only when the State agency and the sponsor ensure that special arrangements shall be made to monitor these sites. In no case may the service of supper extend beyond 8 p.m. The time restrictions in this

paragraph shall not apply to residential camps.

(3) The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals.

(4) Meals served outside of the period of approved meal service shall not be eligible for Program payments.

(5) Any permanent or planned changes in meal service periods must be approved by the State agency.

(6) Meals which are not prepared at the food service site shall be delivered no earlier than one hour prior to the beginning of the meal service (unless the site has adequate facilities for holding hot or cold meals within the temperatures required by State or local health regulations) and no later than the beginning of the meal service.

(7) The sponsor shall serve only the type(s) of meals for which it is approved under its agreement with the State agency.

(d) *Meal patterns.* The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the Program.

Breakfast

(1) Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section. The minimum amount of food components to be served as breakfast are as follows:

Food components	Minimum amount
Vegetables and fruits:	
Vegetable and/or fruit(s)	1/2 cup.
or	
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	1/2 cup (4 fl. oz.). [1]
Bread and Bread Alternates: [2]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.	1 serving. [3]
or	
Cold dry cereal	1/2 cup. [4]
or	
Cooked cereal or cereal grains.	1/2 cup.
or	
Cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate.	1/2 cup.
Milk: [5] Milk, fluid	1 cup (1/2 pint, 8 fl. oz).
Meat and Meat Alternates (Optional):	
Lean meat or poultry or fish.	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas.	1/2 cup.
or	
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	2 tbsp.

[1] For purposes of the requirement outlined in this table, a cup means a standard measuring cup.

[2] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or ennched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.

[3] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

[4] Either volume (cup) or weight (oz.), whichever is less.

[5] Milk shall be served as a beverage or on cereal, or used in part for each purpose.

Lunch or Supper

(2) The minimum amounts of food components to be served as lunch or supper are as follows:

Food components	Minimum amount
Meat and meat alternates:	
Lean meat or poultry or fish	2 oz.
or	
Cheese	2 oz.
or	
Eggs	1 large egg
or	
Cooked dry beans or peas	½ cup [1]
or	
Peanut butter or soynut butter or other nut or seed butters.	4 tbsp.
or	
Peanuts or soynuts or tree nuts or seeds [2].	1 oz.=50% [3]
or	
An equivalent quantity of any combination of the above meat/meat alternates.	
Vegetables and fruit: Vegetable(s) and/or fruit(s) [4].	¾ cup total
Bread and bread alternates [5]:	
Bread	1 slice
or	
Cornbread, biscuits, rolls, muffins, etc.	1 serving [6]
or	
Cooked pasta or noodle products.	½ cup
or	
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	½ cup
Milk: Milk, fluid, served as a beverage.	1 cup (½ pint, 8 fl. oz.)

[1] For purposes of the requirements outlined in the table, a cup means a standard measuring cup.

[2] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

[3] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, 1 oz. of nuts or seeds is equal to 1 oz. of cooked lean meat, poultry or fish.

[4] Serve 2 or more kinds of vegetable(s) and/or fruit(s) or a combination of both. Full strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

[5] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or ennched, cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour, cereal shall be whole-grain or enriched or fortified.

[6] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

Supplemental Food

(3) The minimum amounts of food components to be served as supplemental food are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Meat and meat alternates:	
Lean meat or poultry or fish	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg
or	
Cooked dry beans or peas	½ cup [1]
or	
Peanut butter or soynut butter or other nut or seed butters.	2 tbsp.
or	
Peanuts or soynuts or tree nuts or seeds [2].	1 oz.
or	
An equivalent quantity of any combination of the above meat/meat alternates.	
Vegetables and fruits:	
Vegetable(s) and/or fruit(s)	¾ cup
or	
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	¾ cup (6 fl. oz.)
Bread and bread alternates [3]:	
Bread	1 slice
or	
Cornbread, biscuits, rolls, muffins, etc.	1 serving [4]
or	
Cold dry cereal	¾ cup or 1 oz. [5]
or	
Cooked cereal	½ cup
or	
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	½ cup
Milk [6]: Milk, fluid	1 cup (½ pint, 8 fl. oz.)

[1] For purposes of the requirements outlined in this table, a cup means a standard measuring cup.

[2] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

[3] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain enriched; cornbread, biscuits, rolls, muffins, etc. shall be made with whole-grain or enriched meal or flour, cereal shall be whole-grain or enriched or fortified.

[4] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

[5] Either volume (cup) or weight (oz.), whichever is less.

[6] Milk should be served as a beverage or on cereal, or used in part for each purpose.

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(e) *Meat or meat alternate.* Meat or meat alternates served under the Program are subject to the following requirements and recommendations.

(1) The required quantity of meat or meat alternate shall be the quantity of the edible portion as served. These foods must be served in a main dish, or in a main dish and one other menu item.

(2) Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but they may not be used to meet both component requirements in a meal.

(3) Textured vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein may be used to meet part, but not all, of the meat/meat alternate requirement. The Department will provide guidance to State agencies on the part of the meat/meat alternate requirement which these foods may be used to meet. If enriched macaroni with fortified protein is served as a meat alternate it shall not be counted toward the bread requirement.

(4) If the sponsor believes that the recommended portion size of any meat or meat alternate is too large to be appealing to children, the sponsor may reduce the portion size of that meat or meat alternate and supplement it with another meat or meat alternate to meet the full requirement.

(5) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this section under paragraph (e)(3) and in this part under Appendix A: Alternate Foods for Meals. As noted in paragraph (d)(2) of this section, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement for lunch or supper. Therefore, nuts or seeds must be combined with another meat/meat alternate to fulfill the requirement. For the supplemental food pattern, nuts or seeds may be used to fulfill all of the meat/meat alternate requirement.

(f) *Exceptions to and variations from the meal pattern.*— (1) *Meals prepared in schools.* The State agency may allow sponsors which serve meals prepared in schools participating in the National School Lunch or School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those programs (7 CFR Part 210 and 7 CFR Part 220, respectively) for the meal pattern requirements contained in this section.

(2) *Children under 6.* The State agency may authorize the sponsor to serve food in smaller quantities than are indicated in paragraph (d) of this section to children under six years of age if the sponsor has the capability to ensure that variations in portion size are in accordance with the age levels of the children served. In such cases, the sponsor shall follow the age-appropriate meal pattern requirements contained in the Child Care Food Program regulations (7 CFR Part 226).

(3) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, the following variations from the meal requirements are authorized: a serving of a starchy vegetable—such as ufi, tanniers, yams, plantains, or sweet potatoes—may be substituted for the bread requirements.

(4) *Individual substitutions.* Substitutions may be made by sponsors in food listed in paragraph (d) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods. Such statement shall be kept on file by the sponsor.

(5) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(6) *Temporary unavailability of milk.* If emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches or suppers without milk during the emergency period.

(7) *Continuing unavailability of milk.* The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the milk components set forth in paragraph (d) of this section. In addition, the State agency may approve the use of nonfat dry milk in meals served to children participating in activities which make the service of fluid milk impracticable, and in locations which are unable to obtain fluid milk. Such authorization shall stipulate that nonfat dry milk be reconstituted at normal dilution and under sanitary conditions consistent with State and local health regulations.

(8) *Additional foods.* To improve the nutrition of participating children, additional foods may be served with each meal.

Subpart D—General Administrative Provisions

§ 225.17 Procurement standards.

(a) State agencies and sponsors shall comply with the standards prescribed in the Department's Uniform Federal Assistance Regulations at 7 CFR Part 3015, Subpart S, in the procurement of food, supplies, goods, and other services with Program payments.

(b) The State agency shall make available to sponsors information on 7 CFR Part 3015.

(c) Sponsors may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds conform with provisions of this section, as well as with procurement requirements which may be established by the State agency, with approval of FNS, to prevent fraud, waste, and Program abuse.

(d) The State agency shall ensure that all sponsors are aware of the following practices specified in 7 CFR Part 3015, with respect to minority business enterprises:

(1) Including qualified minority business enterprises on solicitation lists,

(2) Soliciting minority business enterprises whenever they are potential sources,

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by minority business enterprises,

(4) Establishing delivery schedules which will assist minority business enterprises to meet deadlines, and

(5) Using the services and assistance of the Small Business Administration, and the Office of Minority Business Enterprise of the Department of Commerce as required.

§ 225.18 Miscellaneous administrative provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with the Department's Uniform Federal

Assistance Regulations (7 CFR Part 3015), Subpart N.

(b) *Termination for cause.* (1) FNS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. FNS shall promptly notify the State agency in writing of the termination and reason for the termination, together with the effective date, and shall allow the State 30 calendar days to respond. In instances where the State does respond, FNS shall inform the State of its final determination no later than 30 calendar days after the State responds.

(2) A State agency shall terminate a sponsor's participation in the Program by written notice whenever it is determined by the State agency that the sponsor has failed to comply with the conditions of the Program.

(3) When participation in the Program has been terminated for cause, any funds paid to the State agency or a sponsor or any recoveries by FNS from the State agency or by the State agency from a sponsor shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS and the State agency may agree to terminate the State agency's participation in the Program in whole, or in part, when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated. The State agency shall not incure new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to termination. A State agency may terminate a sponsor's participation in the manner provided for in this paragraph.

(d) *Maintenance of effort.* Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act and a certification to this effect shall become part of the agreement provided for in § 225.3(c).

(e) *Program benefits.* The value of benefits and assistance available under the Program shall not be considered as income or resources of recipients and their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

(f) *State requirements.* Nothing contained in this Part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part, provided that such additional requirements shall not deny the Program to an area in which poor economic conditions exist, and shall not result in a significant number of needy children not having access to the Program. Prior to imposing any additional requirements, the State agency must receive approval from FNSRO.

(g) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Part, whether received directly or indirectly from the Department, or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowning such funds, assets, or property have been embezzled, willfully misapplied, stolen or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $100,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(h) *Claims adjustment authority.* The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim of any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

§ 225.19 Regional office addresses.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Boston, MA 02222–1065.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Corporate Boulevard CN–02150, Trenton, NJ 08650.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, GA 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, IL 60602.

(e) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, TX 75242.

(f) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, CO 80204.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the North Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearney Street, Room 400, San Francisco, CA 94108.

§ 225.20 Information collection/recordkeeping—OMB assigned control numbers.

Section where requirements are described		Current OMB control number
1988 regulations	Proposed	
225.3(h)	225.3(h)	0584–0057
225.5(n)	225.9(b)(2)	0584–0057
225.6(a)	225.4(a)	0584–0057
225.7(k)	225.6(b)(2)	0584–0057
225.8(a)	225.6(c)(1)	0584–0017
225.8(b)	225.6(e)	0584–0057
225.9 (a), (d), (f), (g).	225.6(a)(2), 225.7 (c), (d), (f).	0584–0057
225.9(e)	225.7(d)	0584–0023
225.10(a)	225.8(a)	0584–0280
225.10(b)	225.8(d)	0584–0057
225.11(a)	225.9(d)	0584–0041
225.12(a)	225.10(a)	0584–0057
225.14(a)	225.12(a)	0584–0057
225.15(a)	225.13(a)	0584–0057
225.16 (a), (c), (e), (i).	225.6(g), 225.6(h), (2), (3), (5).	0584–0057
225.16(c)(5)	225.6(g)(3)	0584–0061
225.17	225.17	0584–0057
225.18(f)	225.16(b)	0584–0280
225.19(f)	225.15(c)(1)	0584–0280
225.21(a)(b)	225.6(c)	0584–0057
225.21(b)(4)	225.6(c)	0584–0280
225.22(b)(2)	225.18(b)(2)	0584–0057

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Appendix A—Alternate Foods For Meals

Vegetable Protein Products

1. Schools, institutions, and service institutions may use a vegetable protein product, defined in paragraph 2, as a food component meeting the meal requirements specified in §§ 210.10, 225.16 or 226.20 under the following terms and conditions:

(a) The vegetable protein product must be prepared in combination with raw or cooked meat, poultry or seafood and shall resemble, as well as substitute in part for, one of these major protein foods. "Substitute" refers to a vegetable protein product whose presence in another food results in the presence of a smaller amount of meat, poultry or seafood than is customarily expected or than appears to be present in that food. Examples of items in which a vegetable protein product may be used include, but are not limited to, beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

(b) Vegetable protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form in combination with meat, poultry or seafood. The moisture content of the fully hydrated vegetable protein product shall be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

(c) The quantity, by weight, of the fully hydrated vegetable protein product must not exceed 30 parts to 70 parts meat, poultry or seafood on an uncooked basis. The quantity by weight of the dry or partially hydrated vegetable protein product must not exceed a level equivalent to the amount (dry weight) used in the fully hydrated product at the 30 percent level of substitution. The dry or partially hydrated product's replacement of meat, poultry or seafood will be based on the level of substitution it would provide if it were fully hydrated.

(d) A vegetable protein product may be used to satisfy the meat/meat alternate requirement when combined with meat, poultry or seafood and when it meets the other requirements of this section. The combination of the vegetable protein product and meat, poultry or seafood may meet all or part of the meat/meat alternate requirement specified in §§ 210.10, 225.16 or 226.20.

(e) The contribution vegetable protein products make toward the meat/meat alternate requirement specified in §§ 210.10, 225.16, and 226.20 shall be determined on the basis of the preparation yield of the meat, poultry or seafood with which it is combined. When computing the preparation yield of a product containing meat, poultry or seafood and vegetable protein product, the vegetable protein product shall be evaluated as having the same preparation yield that is applied to the meat, poultry or seafood it replaces.

(f) When vegetable protein products are served in a meal with other alternate food authorized in Appendix A, each individual alternate food shall be used as specifically directed.

2. A vegetable protein product to be used to resemble, and substitute in part for, meat, poultry or seafood, as specified in paragraph 1, must meet the following criteria:

(a) The vegetable protein product (substitute food) shall contain one or more vegetable protein products which are defined as follows:

(1) Vegetable (plant) protein products are foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to, soybeans, peanuts, wheat, and corn.

(b) The types of vegetable protein products described in paragraph 2(a)(1) of this appendix shall include flour, concentrate, and isolate as defined below:

(1) When a product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances it is a "____ flour", the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(2) When a product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, it is a "____ protein concentrate", the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(3) When a product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors or other added substances, it is a "____ protein isolate" or "____ isolated protein", the blank to be filled in with the name of the source of the protein, e.g., "soy" or "peanut".

(c) Compliance with the moisture and protein provisions of paragraph 2(b) (1), (2) and (3) of this appendix shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(d) Vegetable protein products which are used to resemble, and substitute in part for, meat, poultry or seafood shall be labeled in conformance with the following:

(1) The common or usual names for a vegetable protein product used to resemble, and substitute in part for, meat, poultry or seafood shall include the term "vegetable protein product" and may include the term "textured" or "texturized" and/or a term such as "granules" when such term is appropriate. The term "plant" may be used in the name in lieu of the term "vegetable"; and

(2) The vegetable protein products used as ingredients in the substitute food shall be listed by source (e.g., soy or peanut) and product type (e.g., flour, concentrate, isolate) in the ingredient state of the label. Product type(s) listed shall comply with the appropriate definition(s) set forth in paragraph 2(b) (1), (2) and (3), and may include a term which accurately describes the physical form of the product (e.g., "granules") when such term is appropriate.

(e) Vegetable protein products which are used to resemble, and substitute in part for, meat, poultry or seafood shall meet the following nutritional specifications:

(1) The biological quality of the protein in the vegetable protein product shall be at least 80 percent that of casein, such percentage to be determined by performing a Protein Efficiency Ratio (PER) assay unless FNS grants an exception to the PER by approving an alternate test;

(2) The vegetable protein product shall contain at least 18 percent protein by weight when hydrated or formulated to be used in combination with meat, poultry or seafood. ("When hydrated or formulated" refers to a dry vegetable protein product and the amount of water, fat or oil, colors, flavors or any other substances which have been added in order to make the resultant mixture resemble that meat, poultry or seafood);

(3) The vegetable protein product must contain the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	13
Thiamine (milligrams)	0.02
Riboflavin (milligrams)	.01
Niacin (milligrams)	.3
Pantothenic acid (milligrams)	.04
Vitamin B6 (milligrams)	.02
Vitamin B12 (micrograms)	.1
Iron (milligrams)	.15
Magnesium (milligrams)	1.15
Zinc (milligrams)	.5
Copper (micrograms)	24
Potassium (milligrams)	17

(4) Compliance with the nutrient provisions set forth in paragraph 2(e) (1), (2) and (3) of this appendix shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(f) Vegetable protein products to be used in the child nutrition programs to resemble, and substitute in part for, meat, poultry or seafood that comply with the labeling and nutritional specifications set forth in paragraph 2(d) (1) and (2) and paragraph 2(e) (1), (2) and (3) shall bear a label containing the following statement: "This product meets USDA–FNS requirements for use in meeting a portion of the meat/meat alternate requirement of the child nutrition programs." This statement shall appear on the principal display panel area of the package.

(g) It is recommended that, for vegetable protein products to be used to resemble, and substitute in part for, meat, poultry or seafood and labeled as specified in paragraph 2(f) of this appendix, manufacturers provide information on the percent protein contained in the dry vegetable protein product (on an as is basis.).

(h) It is recommended that for a vegetable protein product mix, manufacturers provide information on (1) the amount by weight of dry vegetable protein product in the package, (2) hydration instructions, and (3) instructions on how to combine the mix with meat, poultry or seafood. A vegetable protein product mix is defined as a dry product containing vegetable protein products that comply with the labeling and nutritional specifications set forth in paragraphs 2(d)(1) and (2) and paragraph 2(e)(1), (2) and (3) along with substantial levels (more than 5 percent) of seasonings, bread crumbs, flavorings, etc.

3. Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with vegetable protein products to meet all or part of the meat/meat alternate requirement specified in §§ 210.10, 225.16 or 226.20 if the product bears a label containing the statement: "This item contains vegetable protein product(s) which is authorized as an alternate food in the child nutrition programs" (outlined in paragraph 2 of this appendix). This would designate that the vegetable protein product used in the formulation of the meat, poultry or seafood item complies with the naming and nutritional specifications set forth in paragraph 2 of this appendix. The presence of this label does not ensure the proper level of hydration, ratio of substitution nor the contribution that the product makes toward meal pattern requirements for the child nutrition programs.

Appendix B—[Reserved]

Appendix C—Child Nutrition (CN) Labeling Program

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS) and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

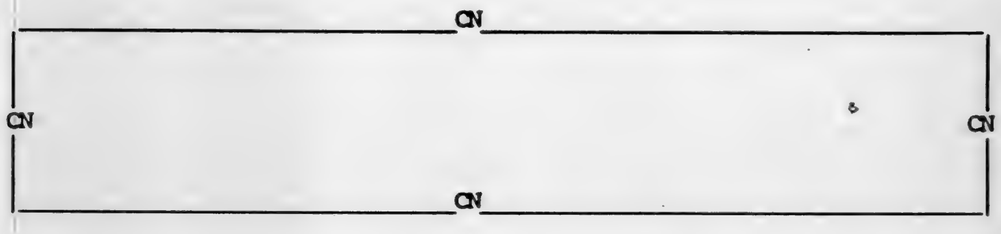
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.16, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) "CN label" is a food product label that contains a CN label statement and CN logo as defined in paragraph 3(b) and (c) below.

(b) The "CN logo" (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in paragraph 3(c).



(c) The "CN label statement" includes the following:

(1) The product identification number (assigned by FNS);

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.16, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks

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and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements.

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and

(4) The approval date.

For example:

```
                    CN
                                                    00000
      This 3.00 oz serving of raw beef pattie provides when cooked
CN    2.00 oz equivalent meat for Child Nutrition Meal Pattern        CN
      Requirements.  (Use of this logo and statement authorized
      by the Food and Nutrition Service, USDA 05-84.)
                    CN
```

(d) "Federal inspection" means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by the Food and Nutrition Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate and the manufacturer's or distributor's name and address.

(1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

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INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS
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(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the Food Buying Guide for Child Nutrition Programs (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchase a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.16, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FNS. FNS will prepare a report on the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Service of the USDC, Food and Drug Administration, or the Department of Justice for action against the company. Any or all of the following courses of action may be taken:

(a) The company's CN label may be revoked for a specific period of time;

(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;

(c) The company's name will be circulated to regional FNS offices; and

(d) FNS will require the food service program involved to notify the State agency of the labeling violation.

7. FNS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program. To apply for a CN label and to obtain additional information on CN label application procedures, write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

Date: November 21, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88-27388 Filed 11-23-88; 2:42 pm]

BILLING CODE 3410-30-M

federal register

Wednesday
November 30, 1988

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2

Revision of Patent and Trademark Fees; Notice of Proposed Rulemaking

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 81024–8224]

Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend the rules of practice in patent and trademark cases, Parts 1 and 2 of Title 37, Code of Federal Regulations, to adjust patent fee amounts and to reduce certain trademark fee amounts. The Office also proposes to amend the rules of practice in patent cases to clarify requirements in the filing of applications and to provide for procedures for applicants to cure certain defects in the filing of applications.

Establishment and adjustment of patent fees is provided for by section 6 and section 41 of the Title 35, United States Code, and section 103(b) of Pub. L. 100–703. Establishment and adjustment of trademark fees is provided for by section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) and section 103(c) of Pub. L. 100–703.

DATES: Written comments must be submitted on or before January 4, 1989; a public hearing will be held on January 4, 1989, at 9:00 a.m. Requests to present oral testimony should be received on or before January 3, 1989.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Frances Michalkewicz, Suite 904, Crystal Park 2. The hearing will be held in Suite 912 on the 9th floor of Building 2, Crystal Park, locaed at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Suite 904 of Building 2, Crystal Park at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557–1610 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Patent fees were set on October 1, 1982, in accordance with the provisions of Title 35, United States Code (Pub. L. 97–247). Patent fees were adjusted effective October 5, 1985, in accordance with the provisions of Title 35, United States Code. Trademark fees were set on October 1, 1982, in accordance with the provisions of section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) and adjusted on October 1, 1986, in accordance with the provisions of that Act and Title 35. On November 6, 1986, legislation modifying the way fee adjustments could be made was enacted as Pub. L. 99–607. The fee adjustment provisions of Pub. L. 99–607, Section 3(a) and section 3(b) expired on September 30, 1988. On November 19, 1988, legislation extending section 3(a) and section 3(b) of Pub. L. 99–607 was enacted as Pub. L. 100–703. Therefore, patent and trademark fee adjustments will be guided by the provisions of Title 35, United States Code, and by Pub. L. 100–703, and the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), and by Pub. L. 100–703.

The Patent and Trademark Office is proposing to amend 37 CFR 2.6 to reduce the fee for filing an application for trademark registration from $200 to $175 per class. The Office further proposes to reduce the fee for recording trademark assignments and agreements or other papers relating to the property in a registration or application from $100 to $8 for each mark in the same document.

Effective October 1, 1982, trademark operations within the Office became 100 percent user-fee funded. Experience to date has demonstrated that the fees first established in October 1982, and as later adjusted in October 1986, are more than adequate to meet total trademark function costs. At the end of fiscal year 1988, total trademark function fees exceeded total trademark function costs by approximately $10 million. Left undisturbed, it is projected that the current trademark fee structure will result in an additional $12.7 million in excess fees over the course of the next three-year fee cycle. Thus, by the end of fiscal year 1991, total trademark fees are projected to exceed total trademark costs by almost $23 million if the current fee structure remains in place.

In this light, the Office is proposing to reduce both the trademark application and assignment fees. A reduction of the application fee to $175 would be consistent with the legislative history surrounding passage of Pub. L. 97–247. In its report (H. Rep. No. 97–542, May 17, 1982), the House Committee on the Judiciary stated that, "It is expected that the Commissioner will set the [trademark] fees in a way that the filing fee will be kept as low as possible to foster use of the Federal registration system." The application filing fee from October 1982 to October 1986 was $175. The filing fee was increased in 1986 to $200 in an effort to recover a greater percentage of the actual costs incurred in the processing of trademark applications. While the proposed reduction will increase the discrepancy between the application filing fee and our projected unit cost, the size of the current "surplus," as well as the objective of encouraging filings, supports the proposed action.

A reduction of the fee for recording trademark assignments to $8 for each mark would make such fees consistent with those proposed for the recording of patent assignments.

While the proposed fee reductions still will leave a healthy "surplus," prudence suggests that further reductions be held in abeyance pending implementation of "The Trademark Law Revision Act of 1988" (Pub. L. 100–667). The Act, among other things, would permit applicants to file applications for Federal trademark registrations based upon a bona fide "intent-to-use" the mark in commerce. Implementation of "intent-to-use" legislation will require the Office to incur additional expenditures, such as increased personnel costs and improved computer capabilities. The Office will review its trademark fee structure approximately 18 months from implementation and propose further fee adjustments if warranted.

Even absent "intent-to-use" the Office will probably be required to upgrade its computer capabilities within the near future. Moreover, implementation of an automated trademark assignment system, now scheduled for fiscal year 1990, and other improvements in automated searching, will result in increased demands on trademark resources.

Background

Provisions of Title 35 and Title 15, United States Code, and Pub. L. 100–703 Which Affect This Notice of Proposed Rulemaking

Patent and Trademark Office fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. Section 41(a) of Title 35, United States Code, establishes a number of statutory fees. Among the more significant of these are fees for filing a patent application and issuing a patent. Certain other fees, such as appeal fees, the fee for filing a disclaimer, fees for filing petitions seeking to revive an abandoned application and for extensions of time also are set in 35 U.S.C. 41(a). Section 41(b) of Title 35, United States Code, sets forth the statutory fees for maintaining a patent in force if the application was filed on or after August 27, 1982.

The provisions of Pub. L. 96–517 also establish maintenance fees for patents other than design and plant patents issued on applications other than design and plant patents issued on applications filed on or after December 12, 1980 and before August 27, 1982. These maintenance fees are to recover 25 percent of the estimated cost to the Office of processing patent applications.

Section 1 of Pub. L. 97–247 authorized the reduction by 50 percent in the fees paid under 35 U.S.C. 41(a) and 41(b) by independent inventors, small business concerns, and nonprofit organizations, who meet the definitions established. Section 1(a)(2) of Pub. L. 99–607 makes this provision permanent in 35 U.S.C. 41(h).

Section 41(f) of Title 35, United States Code, provides that fees established in 35 U.S.C. 41(a) and 35 U.S.C. 41(b), "may be adjusted by the Commissioner on October 1, 1985, and every third year thereafer, to reflect any fluctuations occurring during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor." Section 41(f) also provides that changes of less than one percent may be ignored. Pub. L. 100–703 makes no modifications to 35 U.S.C. 41(f).

Section 41(d) of Title 35, United States Code, provides that the "Commissioner will establish fees for all other processing, services, or materials related to patents" which are not covered in 35 U.S.C. 41(a) and 35 U.S.C. 41(b), "to recover the estimated average cost of the Office of such processing, services or materials."

Section 103(b) of Pub. L. 100–703 changes the way fees established under 35 U.S.C. 41(d) can be adjusted. For fiscal years 1989, 1990, and 1991, except for the purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumer Price Index.

Section 103(b) of Pub. L. 100–703 provides that the Commissioner cannot establish additional fees under 35 U.S.C. 41(d) during fiscal years 1989, 1990, and 1991.

Section 376 of Title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty. The fees under the Patent Cooperation Treaty are keyed to full cost recovery of the processing costs under the Treaty. Pub. L. 100–703 makes no modifications to 35 U.S.C. 376.

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials relating to trademarks and other marks. No fee for the filing or processing of an application for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark will be adjusted more than once every three years. The House Committee on the Judiciary, in a report that accompanied H.R. 6260, which ultimately was enacted as Pub. L. 97–247, recommended a trademark fee schedule to the Commissioner which was established by rule published in the **Federal Register** on July 30, 1982 at 47 FR 33066, effective October 1, 1982.

A final rule to increase the trademark application filing fee per class and the fee for copies of trademarks was published in the **Federal Register** on August 4, 1986 at 51 FR 28052. The increased fees became effective on October 1, 1986.

Section 103(a) of Pub. L. 100–703 changes the way fees established under the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) can be adjusted. For fiscal years 1989, 1990 and 1991, the Commissioner cannot increase fees established under the Act except for the purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumer Price Index.

Section 103(a) of Pub. L. 100–703 provides that the Commissioner cannot establish additional fees under the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) during fiscal years 1989, 1990, and 1991.

However, as described above under Supplementary Information, the Office is proposing only to reduce the fee for filing an application, per class, and the fee for recording trademark assignments and agreements or other papers relating to the property in a registration or application.

Proposed Rule Changes

General Procedures

Cost Calculations: The Office calculated unit costs for all fees based on OMB Circular A–25, "User Fees," and OMB Circular A–130, "Management of Federal Information Resources." Costs were determined from the best available records (for example, the 1987 end of fiscal year financial statements for the Office) and included direct and indirect costs to the Office of carrying out the activity, as directed by OMB Circular A–25. To estimate costs for the three-year fee cycle April 1989–March 1992, the 1987 actual costs were then adjusted by a mid-cycle inflation rate of 12.644 percent derived from the Administration's inflation projection.

Workload Projections

Determination of future year workloads varies by fee code. Principal workload projection techniques are as follows:

Patent and trademark application workloads were projected from statistical regression models using recent application trends. Associated application workloads, for example, patent claims and extensions of time, grow relative to patent applications. Patent issues are projected from an in-house patent productivity model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 80 percent, 50 percent and 25 percent, respectively. Trademark affidavits and renewals are based on prior year registrations and renewal trends. Service fee workloads follow linear trends from prior year activities. All workload estimates are approved by the manager responsible for the fee program.

Policy for applying the Consumer Price Index: The Office of Management and Budget has determined that the Patent and Trademark Office should use Consumer Price Index-U (CPI) to adjust patent fees. The Department of Labor's Consumer Price Index is made public approximately twenty-one days after the end of the month being calculated. The time lag between the initiation and the completion of the rulemaking process dictates that the August 1998 through March 1989 inflation rate be projected. The Administration's projected cumulative CPI for the three-year period April 1986–March 1989 is 10.303 percent. This estimate is included in the cumulative three-year CPI applied to patent fees. Before the final fee schedule is published, the estimate will be recalculated using the additional actual data that will have become available in the interim.

Rounding Procedures: After application of the 10.303 percent projected fluctuation in the CPI to fees, amounts were rounded by applying standard arithmetical rules so that the amounts rounded would be de minimis and convenient to the user. Fees of $100 or more were rounded to the nearest $10. Fees between $10 and $99 were rounded to the nearest even number so that the comparable small entity fee

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would be a whole number. Fees under $2 were rounded for convenience.

Since the amounts of the patent fees that went into effect on October 5, 1985 were rounded after application of the Consumer Price Index, a first step in calculating proposed new fee amounts was to eliminate any effects of rounding prior years' fee adjustments. For example, 35 U.S.C. 41(a), sets the patent application filing fee at $300.00. Applying the 11.8 percent CPI for the period 1983–1985 resulted in an allowable increase to $335.40. This amount was rounded to $340.00. For purposes of this fee adjustment process, the base used to adjust fees for the next fee cycle was the "unrounded" fee amount; i.e., the $335.40 for patent application filing fees. Similarly, the cost for certifying Office records was $2.70. This amount was rounded to $3.00. For purposes of this fee adjustment process, the base was the unrounded amount of $2.70.

It should be noted that following routine rounding off practices can result in some fee items being adjusted by more or less than CPI. This divergence from the CPI ceiling will only exist in the short term because of the policy of applying the CPI adjustment factor to the unrounded amount from the previous fee cycle.

Proposed Rule Changes Under Title 35 and Title 15, United States Code and Pub. L. 100–703

Statutory patent fees established under 35 U.S.C. 41(a) and 35 U.S.C. 41(b) will be adjusted in accordance with 35 U.S.C. 41(f) to reflect any fluctuations occurring during the previous three years in the CPI.

Non-statutory patent fees established under 35 U.S.C. 41(d) will be adjusted in accordance with 103(b) of Pub. L. 100–703 to reflect, in the aggregate, any fluctuations occurring during the previous three years (April 1986–March 1989) in the Consumer Price Index, as determined by the Secretary of Labor. fees established under 35 U.S.C. 376 will be adjusted to recover the full cost of processing under the Patent Cooperation Treaty. International patent fees under 37 CFR 1.492 are related to patent fees established under 35 U.S.C. 41(a) and will be adjusted to reflect fluctuations in the CPI.

For fees established under section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), the Office is proposing only to reduce the fee for filing an application, per class, and the fee for recording trademark assignments and agreements or other papers relating to the property in a registration or application as fully described above under Supplementary Information.

Fee Adjustment Methodology

1. Projected Actual Costs

The projected actual costs for all fee items were calculated by applying the principles of OMB Circulars A–25 and A–130.

a. Statutory patent fees were derived by: (1) Identifying those operational units of the Office involved in, or contributing to, the processing of a patent application through all phases of examination; (2) identifying and certifying actual fiscal year 1987 obligations incurred by the operational units in processing an application; (3) projecting those obligations to the period of April 1989 through March 1992 in accordance with approved budgets and future year budget targets; and (4) increasing the obligations projected for the period of April 1989 through March 1992 by the Administration's estimates for federal pay raise adjustments and projected inflation. Projected actual costs for April 1989–March 1992, $729,810,051 less projected budget authority of $265,834,000, are $463,976,051.

b. For non-statutory patent fees, projected costs for each fee item were established by (1) identifying actual costs for 1987, and (2) projecting actual costs for fiscal years 1988 through March 1992 by applying the Administration's inflation projection of 12.644 percent.

This projected actual cost was then multiplied by the projected workload for each fee item. The sum of the projected costs for all fee items is the projected actual cost of operation during the three-year fee cycle. Projected actual costs for April 1989–March 1992 are $64,661,341.

c. The same methodologies as described in paragraphs (a) and (b) above were applied to Patent Cooperation Treaty fees. Projected actual costs for April 1989–March 1992 are $16,531,990.

d. The same methodology as described in paragraph (b) above was applied to Trademark fees. Projected actual costs for April 1989–March 1992 are calculated to be $74,329,783.

2. Income Projections

a. The maximum amount of statutory fee income that the Office is authorized to recover under 35 U.S.C. 41(f) was calculated as follows.

For each statutory patent fee, the unrounded base (i.e., the 1986 adjusted fee before rounding) was multiplied by the projected CPI fluctuation of 10.303 percent for the three-year period April 1986–March 1989. This amount was then multiplied by the projected workload for April 1989–March 1992 to project the income from that fee item during the April 1989–March 1992 fee cycle. The sum of the projected incomes from all statutory patent fees is the maximum amount that the Office is authorized by 35 U.S.C. 41(f) to recover during the fee cycle and is equal to $464,676,178.

b. The maximum amount of non-statutory fee income that the Office is authorized to recover under section 103(b) of Pub. L. 100–703 was calculated as follows.

For each non-statutory patent fee, the unrounded base (i.e., the 1986 adjusted fee before rounding) was multiplied by the projected CPI fluctuation of 10.303 percent for the three-year period April 1986–March 1989. This amount was then multiplied by the projected workload for April 1989–March 1992 to project the income from that fee item during the April 1989–March 1992 fee cycle. The sum of the projected incomes from all non-statutory patent fees is the maximum amount that the Office is authorized by section 103(b) of Pub. L. 100–703 to recover during the fee cycle and is equal to $62,101,874.

c. For Patent Cooperation Treaty fees, the Office is authorized by 35 U.S.C. 376 to recover the full cost of processing under the Treaty. Thus, the projected costs identified in paragraph 1(c) for Patent Cooperation Treaty fees of $16,531,990 would be the maximum level of recovery.

d. The maximum amount of trademark fee income that the Office is authorized to recover under section 103(a) of Pub. L. 100–703 was calculated as follows.

For each trademark fee, the unrounded base (i.e., the 1986 adjusted fee before rounding) was multiplied by the projected CPI fluctuation of 10.303 percent for the three-year period April 1986–March 1989. This amount was then multiplied by the projected workload for April 1989–March 1992 to project the income from that fee item during the April 1989–March 1992 fee cycle. The sum of the projected incomes from all trademark fees is the maximum amount that the Office is authorized by section 103(a) of Pub. L. 100–703 to recover during the fee cycle and is equal to $107,704,135.

e. Each statutory patent fee amount identified in paragraph 2(a), and each PCT amount identified in paragraph 2(c) above rounded according to the de minimis rounding rule described above.

Sections 103(a) and 103(b) of Pub. L. 100–703 allow the Office to set fees "in the aggregate." The fee amounts proposed for non-statutory patent fees and trademark fees would recover the maximum amount of income determined in paragraphs (b) and (d) above.

Each of these fee amounts was multiplied by the projected workload during the cycle to project the income from that fee item. The sum of the projected income from all patent fees is $542,281,082, which is the sum of the projected incomes from statutory patent fees, $463,626,421, non-statutory patent fees, $62,047,763, and Patent Cooperation Treaty fees, $16,606,898.

f. The Office reduced two trademark fees, as described above under Supplementary Information. Each trademark fee amount was multiplied by the projected workload during the fee cycle to project the income from that fee item. The sum of the projected income from all trademark fees is projected to be $72,972,690.

Summary:

Fee category	Projected cost, April 1989 to March 1992	Maximum allowable recovery	Projected income, April 1989 to March 1992
Statutory patent	$463,976,051	$464,676,178	$463,626,421
Nonstatutory patent	64,661,341	62,101,874	62,047,763
PCT	16,531,990	16,531,990	16,606,898
Total, patent	545,169,382	543,310,042	542,281,082
Total, trademark	74,329,783	107,704,135	72,972,690
Total, all fees	619,499,165	651,014,177	615,253,772

The unit costs by fee item are summarized in Appendix A. The Office has detailed cost calculation worksheets for each fee item, which are available for public inspection in Suite 904 of Building 2, Crystal Park at 2121 Crystal Drive, Arlington, Virginia.

It is intended that the amount of any fee due and payable on or after April 1, 1989 is the amount set in this rulemaking. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the Office. A "Certificate of Mailing under Section 1.8" is not "proper" for items which are specifically excluded from the provisions of § 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing is not "proper." Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. The provisions of 37 CFR 1.10, relating to filing of papers and fees by "Express Mail" with certificate, however, do apply to any paper or fee (including patent and trademark applications) to be filed in the Office. If an application or fee is filed by "Express Mail" with a certificate of express mailing dated on and after the effective date of the rules, the amount of the fee to be paid is the fee established herein if a change is being made in the fee. In order to ensure clarity in the implementation of the fee proposals, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.12 Assignment records open to public inspection.

Section 1.12, paragraph (a), if amended as proposed, would refer to the renumbered § 1.19(b)(4). Paragraph (c), if amended as proposed, would refer to the renumbered § 1.17(i)(1).

37 CFR 1.14 Patent applications preserved in secrecy.

Section 1.14, paragraph (e), if amended as proposed, would refer to the renumbered § 1.17(i)(1).

37 CFR 1.16 National application filing fee.

Section 1.16, if amended as proposed, would adjust patent application filing fees established in 35 U.S.C. 41(a) and set forth in 37 CFR 1.16(a)-(b), (d) and (f)-(i) to reflect fluctuations in the CPI.

Section 1.16, paragraph (e), if amended as proposed, would adjust the patent application surcharge fee authorized by 35 U.S.C. 111 to reflect fluctuations in the CPI.

37 CFR 1.17 Patent application processing fees.

Section 1.17, if amended as proposed, would adjust patent application processing fees established in 35 U.S.C. 41(a) and set forth in 37 CFR 1.17(a)-(g) and (l)-(m) to reflect fluctuations in the CPI.

Section 1.17, if amended as proposed, would adjust the patent application processing fees authorized by 35 U.S.C. 41(d) and set forth in 37 CFR 1.17(h)-(k) to reflect fluctuations in the CPI.

Section 1.17, if amended as proposed, would establish one fee amount for filing a petition to the Commissioner under 37 CFR §§ 1.12, 1.14, 1.47, 1.48, 1.55, 1.103, 1.177, 1.182, 1.183, 1.295, 1.312, 1.313, 1.314, 1.334, 1.377, 1.378(e), 1.644(e), 1.644(f), 1.666(b), 1.666(c), 5.12, 5.13, 5.14, 5.15, and 5.25. The proposed fee would recover the estimated average cost to the Office of processing all petitions to the Commissioner mentioned above. In addition, the single fee for all petitions is expected to facilitate pre-processing of petition requests.

Section 1.17(i)(1), if further amended as proposed, would establish the fees identified in 37 CFR 1.53, 1.60 and 1.62 to accord a filing date.

Section 1.17, if amended as proposed, would provide in new paragraph (i)(2) an $80 fee for filing a petition to the Commissioner under 37 CFR 1.102 to make an application special.

37 CFR 1.18 Patent issue fees.

Section 1.18, if amended as proposed, would adjust patent issue fees established in 35 U.S.C. 41(a) and set forth in 37 CFR 1.18(a)-(c) to reflect fluctuations in the CPI.

37 CFR 1.19 Document supply fees.

Section 1.19, if revised as proposed, would adjust the fees authorized by 35 U.S.C. 41(d) for services and materials as set forth in 37 CFR 1.19 to reflect fluctuations in the CPI.

Section 1.19(a)(2), if revised as proposed, would adjust the fees for copies of plant patents and statutory invention registrations to reflect fluctuations in the CPI.

Section 1.19, if revised as proposed, would renumber paragraph (a)(5) as (a)(3) and provide for a flat fee for a certified copy of an Office document, for each 30 pages or fraction thereof.

Section 1.19, if revised as proposed, would revise paragraphs (a)(4)-(a)(6) and (b)(4) to set the fees for the

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purchase of color copies of color drawings identified in utility patents and for expedited service for fulfillment of orders for patent copies and orders for copies of patent applications as filed. The provision for color drawings in utility patent applications is in § 1.84(p). Although color drawings may be permitted in a utility patent application by petition, copies of printed patents will only be provided in black and white. If a copy of the printed patent with copies of the drawings in color is desired, it must be separately ordered and accompanied by the fee proposed in paragraph (a)(4). The fees proposed in paragraphs (a)(5), (a)(6) and (b)(4) are for expedited processing of copy orders.

The Public Service Window (PSW) in the Patent Public Search Room referred to in proposed new paragraph 37 CFR 1.19(a)(5) is located on the lobby level of Crystal Plaza Building 3. The Office rents numbered lock boxes (delivery boxes) to members of the public for copy order delivery purposes. Members of the public may place coupon orders at the PSW and request that the copies be delivered to their boxes at the PSW. PSW staff members receive and process the coupon orders and forward them to the copy fulfillment contractor. Upon receipt of the copies, PSW staff members place them in the appropriate delivery box for pickup by the box holder.

Section 1.19, paragraph (a), if revised as proposed, would remove the charge for a microfiche copy of a microfiche.

Section 1.19, if revised as proposed, would renumber paragraph (a)(3) as (b)(1) and provide for one fee for a certified copy of a patent application as filed.

Section 1.19, if revised as proposed, would renumber paragraph (a)(4) as (b)(2) and provide for a flat fee for a certified copy of a patent file wrapper, with no limitation on the number of pages.

Section 1.19, if revised as proposed, would renumber paragraph (a)(7) as (b)(3) and provide for one fee for a certified copy of a patent assignment record.

Section 1.19, if revised as proposed, would renumber paragraph (b)(1) as (b)(5).

Section 1.19, if revised as proposed, would renumber paragraph (b)(2) as (b)(6) and adjust the fee for a search of assignment records, abstract of title and certification, per patent to reflect fluctuations in CPI.

Section 1.19, if revised as proposed, would remove paragraph (c) as the requirement for a special fee for providing subscription services has been eliminated. The Office will provide subscription services at no cost to the subscriber.

Section 1.19, if revised as proposed, would renumber paragraph (d) as paragraph (c).

Section 1.19, if revised as proposed, would renumber paragraph (e) to paragraph (d) and provide for a list of all United States patents and statutory invention registrations in a subclass, with no limit to the number at the proposed flat fee.

Section 1.19, if revised as proposed, would remove paragraph (f).

Section 1.19, if revised as proposed, would renumber paragraphs (g)-(j) as paragraphs (e)-(h) and adjust the fees to reflect fluctuations in the CPI.

37 CFR 1.20 Post-issuance fees.

Section 1.20, paragraphs (a)-(c), if amended as proposed, would adjust patent post-issuance fees authorized by 35 U.S.C. 41(d) to reflect fluctuations in the CPI.

Section 1.20, if amended as proposed, would clarify the language in paragraph (a) that the fee charged is for a correction of an applicant's mistake.

Section 1.20, paragraphs (d) and (h)-(j), if amended as proposed, would adjust patent post-issuance fees established in 35 U.S.C. 41(a) and 35 U.S.C. 41(b) to reflect fluctuations in the CPI.

Section 1.20, paragraphs (e)-(g), if amended as proposed, would adjust post-issuance fees authorized by section 2 of Pub. L. 96-517, as modified by section 404 of Pub. L. 98-622. These fees must be set at a level to eventually recover 25 percent of the estimated cost to the Office of processing patent applications. In order to achieve this level of recovery, these maintenance fees are proposed to be adjusted to reflect fluctuations in the CPI.

Section 1.20, paragraph (k), if amended as proposed, would adjust the patent application surcharge fee authorized by section 2 of Pub. L. 96-517.

Section 1.20, paragraph (l), if amended as proposed, would adjust the post-issuance fee authorized by 35 U.S.C. 41(b).

Section 1.20, paragraph (m), if amended as proposed, would adjust the post-issuance fee authorized by 35 U.S.C. 41(c)(1).

Section 1.20, paragraph (n), if amended as proposed, would adjust the post-issuance fee authorized by Pub. L. 98-417 and 35 U.S.C. 156.

37 CFR 1.21 Miscellaneous fees and charges.

Section 1.21, if amended as proposed, would adjust the miscellaneous fees and charges authorized by 35 U.S.C. 41(d) and set forth in 37 CFR 1.21 (a)-(b), (d)-(j) and (l)-(m) to reflect fluctuations in the CPI.

Section 1.21(f), if further amended as proposed, would establish a flat fee for conducting an inventor search of Office records for a ten-year period.

The CopiShare Card referred to in 37 CFR 1.21(g) relates to the photocopiers and reader/printers for use by members of the public in the Office's search facilities. Each photocopier and reader/printer is connected to an access device which affords access to the equipment through the use of a magnetic card which has been encoded with an amount pre-paid by the customer. The access devices, encoding equipment, and magnetic cards comprise an equipment access system called the CopiShare system. The magnetic CopiShare Cards are purchased by the public and encoded with an amount of funds paid to the Office. The customer places the encoded card in the device connected to the photocopier or reader/printer, and a pre-set amount is deducted for each copy produced.

The Office is proposing to authorize the public to use credit cards for the purchase of CopiShare Cards. This will be a pilot program for accepting credit cards for fees, and if feasible, may be extended to other operations of the Office.

Section 1.21(h), if further amended as proposed, would establish one fee for recording each property in an assignment, agreement or other paper relating to the property in a patent or application. The fee reflects increased costs to enhance the processing of assignments.

Section 1.21, if amended as proposed, would add a new paragraph (n) for handling incomplete or improper applications under §§ 1.53(c), 1.60 or 1.62.

37 CFR 1.26 Refunds.

Section 1.26, if amended as proposed, would change paragraph (c) to provide for a refund of $1,500 if the Commissioner decides not to institute reexamination proceedings. The $1,500 refund would apply to those instances where the proposed reexamination fee of $1,980 under 37 CFR 1.20(c) was paid. The current $1,300 refund will be made in those cases where the current $1,770 reexamination fee was paid.

37 CFR 1.53 Serial number, filing date, and completion of application.

Section 1.53, if amended as proposed, would establish a procedure whereby the failure to name all the inventors on filing an application, which results in a filing date not being accorded to the application, could be excused upon the filing of a petition satisfactorily explaining the delay. If the petition is granted, the application would be accorded a filing date as of the date the original papers were deposited. No specific provision allowing this relief is now in the rules. Paragraph (c), if amended as proposed, would set forth the procedure which the Office uses to notify an applicant that the names of the inventors have been omitted and would refer to the handling fee set in § 1.21, rather than including the fee amount in the rule so as to be consistent with the other rules which refer to fees.

37 CFR 1.55 Claim for foreign priority.

Section 1.55, paragraph (a), if amended as proposed, would refer to the renumbered § 1.17(i)(1).

37 CFR 1.60 Continuation or divisional application for invention disclosed in a prior application.

Section 1.60, if amended as proposed, would require that an applicant, who desires an application under the rule, indicate that the application is being filed pursuant to the rule. Applications which are not specifically designated as being filed under § 1.60 or § 1.62 are considered as having been filed under § 1.53, which does not require an originally executed declaration before a filing date is given. The proposed amendment would also establish a procedure whereby the failure to file a true copy of the prior application or the statement that the papers are a true copy, which results in a filing date not being accorded the application, could be excused upon the filing of a petition satisfactorily explaining the delay in filing these items. If the petition is granted, the application would be accorded a filing date as of the date of deposit of the request for a § 1.60 application. No specific provision allowing this relief is now in the rules. Paragraph (c), if added as proposed, would set forth the procedure which the Office uses to notify an applicant that an application filed under paragraph (b) is incomplete and the handling fee which is deducted from the amount refunded if an application is not completed after notice to do so has been given.

37 CFR 1.62File wrapper continuing procedure.

Section 1.62, if amended as proposed, would specifically state that changes to the prior application must be made by an amendment to the prior application filed in the application under § 1.62. An application which includes a copy of the prior application or a new specification is improper under the rule and is not accorded a filing date. This specific statement would hopefully eliminate errors by applicants. The paragraph would also establish a procedure whereby such an error could be excused upon the filing of a petition with instructions to cancel the copy or specification. If the petition is granted, the application would be accorded a filing date as of the date of deposit of the request for a § 1.62 application. Paragraph (j), if added as proposed, would set forth the procedure which the Office uses to notify the applicant that an application filed under the section is improper and the handling fee which is deducted from the amount refunded if an application is not corrected after notice to do so has been given.

37 CFR 1.96 Submission of computer program listings.

Section 1.96, if amended as proposed, would include a copy of the microfiche appendix as part of the file wrapper and contents.

37 CFR 1.102 Advancement of examination.

Section 1.102, paragraph (d), if amended as proposed, would refer to the petition fee set forth in proposed new paragraph 1.17(i)(2).

37 CFR 1.103 Suspension of action.

Section 1.103, paragraph (a), if amended as proposed, would refer to the renumbered § 1.17(i)(1).

37 CFR 1.171 Application for reissue.

Section 1.171, if amended as proposed, would refer to the renumbered § 1.17(i)(1).

37 CFR 1.177 Reissue in divisions.

Section 1.177, if amended as proposed, would refer to the renumbered § 1.17(i)(1).

37 CFR 1.296 Withdrawal of request for publication of statutory invention registration.

Section 1.296, if amended as proposed, would adjust the handling fee for withdrawal of a statutory invention registration to reflect fluctuations in the CPI.

37 CFR 1.313 Withdrawal from issue.

Section 1.313, paragraph (a), if amended as proposed, would refer to the renumbered § 1.17(i)(1).

37 CFR 1.314 Issuance of patent.

Section 1.314, if amended as proposed, would refer to the renumbered § 1.17(i)(1).

37 CFR 1.334 Issue of patent to assignee.

Section 1.334, paragraph (c), if amended as proposed, would refer to the renumbered § 1.17(i)(1).

37 CFR 1.445 International application filing and processing fees.

Section 1.445, if amended as proposed, would adjust the fees authorized by 35 U.S.C. 376 for international application processing as set forth in 37 CFR 1.445 (a)(2) and (a)(3) to recover the cost to the Office of such processing, as determined by fluctuations in CPI.

37 CFR 1.451 The priority claim and priority document in an international application.

Section 1.451, paragraph (b), if amended as proposed, would refer to the renumbered § 1.19(b)(1) and § 1.19(b)(6).

37 CFR 1.482 International preliminary examination fees.

Section 1.482, if amended as proposed, would adjust the fees authorized by 35 U.S.C. 376 for international application processing as set forth in 37 CFR 1.482(a) to recover the estimated average cost to the Office of such processing.

37 CFR 1.492 National stage fees.

Section 1.492, if amended as proposed, would adjust the fees authorized by 35 U.S.C. 376 for international application processing as set forth in 37 CFR 1.492 (a)-(b) and (d)-(f) to recover the estimated average cost to the Office of such processing as determined by fluctuations in the CPI.

37 CFR 1.666 Filing of interference settlement agreements.

Section 1.666, paragraph (b), if amended as proposed, would refer to the renumbered § 1.17(i)(1).

37 CFR 2.6 Trademark fees.

Section 2.6, if amended as proposed, would adjust the trademark fees established pursuant to the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), as set forth in paragraphs (a) and (q).

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* There are no information collection requirements relating to patent fee rules.

The Office has determined that this notice has no Federalism implications

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affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The principal impact of the major patent fees has already been taken into account in Pub. L. 99–607, which provided small entities with a 50 percent reduction in the major patent fees. The proposed rule change will adjust fees to reflect the change in the CPI and cost of processing services as provided by statute (35 U.S.C. 41(d) and 41(f)).

The Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, because most major fees are being adjusted to reflect changes in the CPI over the past three years. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 37 CFR Parts 1 and 2

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interests, Courts, Inventions and patents, Lawyers, Trademarks.

For the reasons set forth in the preamble, the Office is proposing to amend Title 37 of the Code of Federal Regulations, Chapter I, as set forth below. All proposed additions are printed between arrows (► ◄) and all deletions are shown between brackets ([ ]).

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.12 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 1.12 Assignment records open to public inspection.

(a) The assignment records, relating to original or reissue patents, including digests and indexes, and assignment records relating to pending or abandoned trademark applications and to trademark registrations, are open to public inspection ►, ◄ and copies of any instrument recorded may be obtained upon request[s] and payment of the fee set forth in [§ 1.19(a)(5)] ►§ 1.19(a)(3)◄.

* * * * *

(c) Any request by a member of the public seeking copies of any assignment records of any pending or abandoned patent application preserved in secrecy under § 1.14, or any information with respect thereto, must (1) be in the form of a petition accompanied by the petition fee set forth in [§ 1.17(i)] ►§ 1.17(i)(1),◄ or (2) include written authority granting access to the member of the public to the particular assignment records from the applicant or applicant's assignee or attorney or agent of record.

* * * * *

3. Section 1.14 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(e) Any request by a member of the public seeking access to, or copies of, any pending or abandoned application preserved in secrecy pursuant to paragraphs (a) and (b) of this section, or any papers relating thereto, must (1) be in the form of a petition and be accompanied by the petition fee set forth in [§ 1.17(i)] ►§ 1.17(i)(1),◄ or [2] include written authority granting access to the member of the public in that particular application from the applicant or the applicant's assignee or attorney or agent of record. See § 1.612(a) for access by an interference party to a pending or abandoned application.

4. Section 1.16 is proposed to be amended by revising paragraphs (a)–(b), (d)–(i) and the note at the end of the section to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:

By a small entity (§ 1.9(f))	[$170.00]	►$185.00◄
By other than a small entity	[340.00]	►370.00◄
(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:		
By a small entity (§ 1.9(f))	[17.00]	►18.00◄
By other than a small entity	[34.00]	►36.00◄
* * * * * * *		
(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s) per application:		
By a small entity (§ 1.9(f))	[55.00]	►60.00◄
By other than a small entity	[110.00]	►120.00◄
[If the additional fees required by paragraphs (b), (c) ►,◄ and (d) are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.]		
(e) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application:		
By a small entity (§ 1.9(f))	[55.00]	►60.00◄
By other than a small entity	[110.00]	120.00◄
(f) For filing each design application:		
By a small entity (§ 1.9(f))	[70.00]	►75.00◄
By other than a small entity	[140.00]	►150.00◄
(g) Basic fee for filing each plant application:		
By a small entity (§ 1.9(f))	[110.00]	►125.00◄
By other than a small entity	[220.00]	►250.00◄

(h) Basic fee for filing each reissue application:		
By a small entity (§ 1.9(f))	[170.00]	►185.00◄
By other than a small entity	[340.00]	►370.00◄
(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is excess of the number of independent claims in the original patent:		
By a small entity (§ 1.9(f))	[17.00]	►18.00◄
By other than a small entity	[34.00]	►36.00◄
* * * * * * *		

(Note, see § 1.445 for international application filing and processing fees[).] ►.)◄

5. Section 1.17 is proposed to be amended by revising paragraphs (a)–(h) and (j)–(m), by designating existing paragraph (i) as (i)(1) and revising it and by adding a new paragraph (i)(2) to read as follows:

§ 1.17 Patent application processing fees.

(a) Extension fee for response within first month pursuant to § 1.136(a):		
By a small entity (§ 1.9(f))	[$28.00]	►$31.00◄
By other than a small entity	[56.00]	►62.00◄
(b) Extension fee for response within second month pursuant to § 1.136(a):		
By a small entity (§ 1.9(f))	[85.00]	►90.00◄
By other than a small entity	[170.00]	►180.00◄
(c) Extension fee for response within third month pursuant to § 1.136(a):		
By a small entity (§ 1.9(f))	[195.00]	►215.00◄
By other than a small entity	[390.00]	►430.00◄
(d) Extension fee for response within fourth month pursuant to § 1.136(a):		
By a small entity (§ 1.9(f))	[305.00]	►340.00◄
By other than a small entity	[610.00]	►680.00◄
(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:		
By a small entity(§ 1.9(f))	[65.00]	►70.00◄
By other than a small entity	[130.00]	►140.00◄
(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:		
By a small entity (§ 1.9(f))	[65.00]	►70.00◄
By other than a small entity	[130.00]	►140.00◄
(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in appeal under 35 U.S.C. 134:		
By a small entity (§ 1.9(f))	[55.00]	►60.00◄
By other than a small entity	[110.00]	►120.00◄
(h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph	[140.00]	►120.00◄
§ 1.47—for filing by other than all the inventors or a person not the inventor.		
§ 1.48—for correction of inventorship.		
§ 1.182—for decision on questions not specifically provided for.		
§ 1.183—to suspend the rules.		
§ 1.295—for review of refusal to publish a statutory invention registration.		
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.		
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent.		
§ 1.644(e)—for petition in an interference.		
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.		
§ 1.666(c)—for late filing of interference settlement agreement.		
§§ 5.12, 5.13, and 5.14—for expedited handling of foreign filing license.		
§ 5.15—for changing the scope of a license.		
§ 5.25—for retroactive license.		
(i)►(1)◄ For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph	[72.00]	►120.00◄
§ 1.12—for access to an assignment record.		
§ 1.14—for access to an application.		
►§ 1.53—to accord a filing date.◄		
§ 1.55—for entry of late priority papers.		
►§ 1.60—to accord a filing date.◄		
►§ 1.62—to accord a filing date.◄		
[§ 1.102—to make application special.]		
§ 1.103—to suspend action in application.		
§ 1.177—for divisional reissues to issue separately.		
§ 1.312—for amendment after payment of issue fee.		
§ 1.313—to withdraw an application from issue.		
§ 1.314—to defer issuance of a patent.		
§ 1.334—for patent to issue to assignee, assignment recorded late.		
§ 1.666(b)—for access to interference settlement agreement.		
►(2) For filing a petition to the Commissioner under § 1.102 of this part to make application special		80.00◄
(j) For filing a petition to institute public use proceeding under § 1.292	[660.00]	►1,200.00◄

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(k) For processing an application filed with a specification in a non-English language (§ 1.52(d))	[28.00]	►30.00◄
(l) For filing a petition (1) for the revival of an abandoned application under 35 U.S.C. 133, or § 371 or (2) for delayed payment of the issue fee under 35 U.S.C. 151:		
By a small entity (§ 1.9(f))	[28.00]	►31.00◄
By other than a small entity	[56.00]	►62.00◄
(m) For filing a petition (1) for revival of an unintentional abandoned application ►,◄ or (2) for the unintentionally delayed payment of the fee for issuing a patent:		
By a small entity (§ 1.9(f))	[280.00]	►310.00◄
By other than a small entity	[560.00]	►620.00◄

6. Section 1.18 is proposed to be revised to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:		
By a small entity (§ 1.9(f))	[$280.00]	►$310.00◄
By other than a small entity	[$560.00]	►620.00◄
(b) Issue fee for issuing a design patent:		
By a small entity (§ 1.9(f))	[$100.00]	►110.00◄
By other than a small entity	[$200.00]	►220.00◄
(c) Issue fee for issuing a plant patent:		
By a small entity (§ 1.9(f))	[$140.00]	►155.00◄
By other than a small entity	[$280.00]	►310.00◄

7. Section 1.19 is proposed to be revised to read as follows:

§ 1.19 Document supply fees.

The Patent and Trademark Office will supply copies of the following documents upon payment of the fees indicated:

(a) Uncertified copies of Office documents:		
(1) Printed copy of a patent, including a design patent, statutory invention registration, or defensive publication document, except color plant patent or color statutory invention registration	$1.50	
(2) Printed copy of a plant patent or statutory invention registration in color	[$6.00]	►$10.00◄
[(3) Copy of patent application as filed	$9.50	
(4) Copy of patent file wrapper and contents, per 200 pages or a fraction thereof	$75.00]	
[(5)]►(3)◄ Copy of Office [records]►documents◄, except as otherwise provided in this section, [per page]►for each 30 pages or a fraction thereof◄	[$.50]	►10.00◄
[(6) Microfiche copy of microfiche, per microfiche	$.50	
(7) Copy of patent assignment record	$1.50]	
►(4) Copy of a utility patent with drawings in color (see § 1.84(p))	$20.00	
(5) Expedited local service for copy of a patent as in paragraph (a)(1) of this section, fulfilled within one work day for orders delivered to the Public Service Window in the Patent Public Search Room	$3.00	
(6) Expedited service for copy of a patent as in paragraph (a)(1) of this section, ordered by electronic ordering service and delivered to the customer within two work days	$25.00◄	
(b) Certified copies of Office documents:		
►(1) Certified copy of patent application as filed	$10.00	
(2) Certified copy of patent file wrapper	$170.00	
(3) Certified copy of patent assignment record	$5.00	
(4) Expedited service for certified copy of patent application as filed in paragraph (a)(3) of this section, fulfilled within 5 work days, excluding mailing time	$20.00◄	
[(1)]►(5)◄ For certifying Office records, per certificate	$3.00	
[(2)]►(6)◄ For a search of assignment records, abstract of title and certification, per patent	[$12.00]	►15.00◄
[(c) Subscription services:		
(1) Subscription orders for printed copies of patents as issued, annual service charge for entry of order and ten subclasses	$7.00	
(2) For annual subscription to each additional subclass in addition to the ten covered by the fee under paragraph (c)(1) of this section, per subclass	$2.00]	
[(d)]►(c)◄ Library service (35 U.S.C. 13): For providing to libraries copies of all patents issued annually, per annum	$50.00	
[(e) List of patents in a subclass:		
(1)] ►(d)◄ For list of all United States patents and statutory invention registrations in a subclass [, per 100 numbers or fraction thereof	$1.00	
(2) For list of United States patents and statutory invention registrations in a subclass limited by date or number, per 50 numbers or fraction thereof	$1.00]	►2.00◄
[(f) Microfiche copy of patent file record	$6.00]	
[(g)] ►(e)◄ Uncertified statement as to status of the payment of maintenance fees due on a patent or expiration of a patent	[$3.00]	►5.00◄
[(h)] ►(f)◄ Uncertified copy of a non-United States patent document, per document	$10.00	
[(i)] ►(g)◄ To compare and certify copies made from Patent and Trademark Office records but not prepared by the Patent and Trademark Office, per copy of document	[$5.00]	►10.00◄

[(j)] ►(h)◄ Additional filing receipts[:		
(1) Duplicate	$14.00	
(2) Corrected due to applicant error	$14.00]	
►duplicate or corrected due to applicant error		15.00◄

8. Section 1.20 is proposed to be amended by revising paragraphs (a)–(n) to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction [of] ►for applicant's◄ mistake (§ 1.323)	[$29.00]	►$80.00◄
(b) Petition for correction of inventorship in patent (§ 1.324)	[$140.00]	►120.00◄
(c) For filing a request for reexamination (§ 1.510(a))	[$1,770.00]	►2,000.00◄
(d) For filing each statutory disclaimer (§ 1.321):		
By a small entity (§ 1.9(f))	[$28.00]	►31.00◄
By other than a small entity	[$56.00]	►62.00◄
(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980 and before August 27, 1982, in force beyond [4] ►four◄ years; the fee is due by three years and six months after the original grant	[$225.00]	►245.00◄
(f) For maintaining an original or reissue patent, a design or plant patent, based on an application filed on or after December 12, 1980 and before August 27, 1982, in force beyond [8] ►eight◄ years; the fee is due by seven years and six months after the original grant	[$445.00]	►495.00◄
(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980 and before August 27, 1982, in force beyond 12 years; the fee is due by eleven years and six months after the original grant	[$670.00]	►740.00◄
(h) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond [4] ►four◄ years; the fee is due by three years and six months after the original grant:		
By a small entity (§ 1.9(f))	[$225.00]	►245.00◄
By other than a small entity	[$450.00]	►490.00◄
(i) For maintaining an original or reissue patent, except a design or plant patent, based on an application, filed on or after August 27, 1982, in force beyond [8] ►eight◄ years; the fee is due by seven years and six months after the original grant:		
By a small entity (§ 1.9(f))	[$445.00]	►495.00◄
By other than a small entity	[$890.00]	►990.00◄
(j) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond 12 years; the fee is due by eleven years and six months after the original grant:		
By a small entity (§ 1.9(f))	[$670.00]	►740.00◄
By other than a small entity	[$1,340.00]	►1,480.00◄
(k) Surcharge for paying a maintenance fee during the [6] ►six◄ -month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980 and before August 27, 1982	[$110.00]	►120.00◄
(l) Surcharge for paying a maintenance fee during the [6] ►six◄ -month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after August 27, 1982:		
By a small entity (§ 1.9(f))	[$55.00]	►60.00◄
By other than a small entity	[$110.00]	►120.00◄
(m) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable	[$500.00]	►550.00◄
(n) For filing an application for extension of the term of a patent (§ 1.740)	[$550.00]	►600.00◄

9. Section 1.21 is proposed to be amended by revising paragraphs (a), (b)(1), (d)–(j), and (l)–(m), by adding paragraph (n), and by republishing the introductory texts of the section and paragraph (b) to read as follows:

§ 1.21 Miscellaneous fees and charges.

The Patent and Trademark Office has established the following fees for the services indicated:

(a) Registration of attorneys and agents:		
(1) For admission to examination for registration to practice, fee payable upon application	[$250.00]	►$270.00◄
(2) On registration to practice	[$81.00]	►90.00◄
(3) For reinstatement to practice	[$9.00]	►10.00◄
(4) For certificate of good standing as an attorney or agent	$10.00	
Suitable for framing	[$88.00]	►100.00◄
(5) For review of a decision of the Director of Enrollment and Discipline under § 10.2(c)	[$92.00]	►100.00◄
(6) For requesting regrading of an examination under § 10.7(c)	[$92.00]	►100.00◄
(b) Deposit accounts:		
(1) For establishing or reinstating a deposit account	[$8.00]	►10.00◄
(d) Delivery box: Local delivery box rental, per annum	[$43.00]	►50.00◄

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(e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a national patent application	[$28.00]	►30.00◄
(f) Search of Office records: For [searching Patent and Trademark] ►conducting an inventor search of◄ Office records for [purposes not otherwise specified, per one half-hour or fraction thereof] ►a ten-year period◄	[$14.00]	►10.00◄
(g) CopiShare card: Cost per copy	[$0.20]	►0.15◄
(h) [Recording of documents:		
[(1) For recording each assignment, agreement or other paper relating to the property in a patent or application ►per property◄	[$7.00]	►8.00◄
](2) Where a document to be recorded under paragraph (h)(1) of this section refers to more than one patent or application, for each additional patent or application	$2.00]	
(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale, each application or patent	[$7.00]	►20.00◄
(j) For a duplicate or replacement of a permanent Office user pass (There is no charge for the first permanent user pass)	[$5.00]	►10.00◄
• • • • • •		
(l) For processing and retaining any application abandoned pursuant to section 1.53(d) unless the required basic filing fee has been paid	[$100.00]	►120.00◄
(m) For processing each check returned "unpaid" by a bank	[$20.00]	►50.00◄
►(n) For handling incomplete or improper application under § 1.53(c), § 1.60 or § 1.62		$20.00◄

10. Section 1.26 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.26 Refunds.

* * * * *

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of [$1,300] ►$1,500◄ will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

11. Section 1.53 is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

§ 1.53 Serial number, filing date, and completion of application.

* * * * *

(b) The filing date of an application for patent is the date on which:

(1) a specification containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75, and

(2) any drawing required by § 1.81(a)[,] are filed in the Patent and Trademark Office in the name of the actual inventor or inventors as required by § 1.41.

No new matter may be introduced into an application after its filing date (§ 1.118).► If all the names of the actual inventor or inventors are not supplied when the specification and any required drawing are filed, the application will not be given a filing date earlier than the date upon which the names are supplied unless a petition with the fee set forth in § 1.17(i)(1) is filed which satisfactorily explains the delay in supplying the names.◄

(c) If any application is filed without the specification ►,◄ [or] drawing ► or name, or names of the actual inventor or inventors◄ required by paragraph (b) of this section, applicant will be so notified and given a time period within which to submit the omitted specification ►,◄ [or] drawing ►, name, or names, of the actual inventor, or inventors, ◄ in order to obtain a filing date as of the date of filing to such submission. If the omission is not corrected within the time period set, the application will be returned or otherwise disposed of; the fee, if submitted; will be refunded less [a $15.00] ► the ◄ handing fee ◄ set forth in § 1.21 (n)◄.

* * * * *

12. Section 1.55 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant may claim the benefit of the filing date of a prior foreign application under the conditions specified in 35 U.S.C. 119 and § 172. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required by § 1.63. The claim for priority and the certified copy of the foreign application specified in the second paragraph of 35 U.S.C. 119 must be filed in the case of ►an◄ interference (§ 1.630); when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner; and in all other cases they must be filed not later than the date the issue fee is paid. If the papers filed are not in the English language, a translation need not be filed except in the three particular instances specified in the preceding sentence, in which event a sworn translation or a translation certified as accurate by a sworn or official translator must be filed. If the priority papers are submitted after the date the issue fee is paid, they must be accompanied by a petition requesting their entry and the fee set forth in [§1.17(i)] ►§ 1.17(i)(1)◄.

* * * * *

13. Section 1.60 is proposed to be amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 1.60 Continuation or divisional application for invention disclosed in a prior application.

* * * * *

(b) An applicant may omit signing of the oath or declaration in a continuation or divisional application if (1) The prior application was a complete application as set forth in § 1.51(a), (2) applicant► indicates that the application is being filed pursuant to this section and◄ files a true copy of the prior complete application as filed including the specification (including claims), drawings, oath or declaration showing the signature or an indication it was signed, and any amendments referred to in the oath or declaration filed to complete the prior application, and (3) the inventors named in the continuation or divisional application are the same or less than all the inventors named in the prior application. The copy of the prior application must be accompanied by a statement that the application papers filed are a true copy of the prior application and that no amendments referred to in the oath or declaration filed to complete the prior application introduced new matter therein. Such statements must be by the applicant or applicant's attorney or agent and must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. Only amendments reducing the number of claims or adding a reference to the prior application (§ 1.78(a)) will be entered before calculating the filing fee and granting the filing date. If the

continuation or divisional application is filed by less than all the inventors named in the prior application ►,◄ a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation or divisional application.► If a true copy of the prior application as filed is not filed with the application of if the statement that the application papers are a true copy is omitted, the application will not be given a filing date earlier than the date upon which the copy and statement are filed, unless a petition with the fee set forth in § 1.17(i)(1) is filed which satisfactorily explains the delay in filing these items.◄

►(c) If an application filed pursuant to paragraph (b) of this section is incomplete, applicant will be given a time period within which to complete the application in order to obtain a filing date as of the date of filing the omitted item provided the omitted item is filed before the patenting or abandonment of or termination of proceedings on the prior application. If the omission is not corrected within the time period set, the application will be returned or otherwise disposed of; the fee, if submitted, will be refunded less the handling fee set forth in § 1.21(n).◄

14. Section 1.62 is proposed to be amended by revising paragraph (e) and by adding a new paragraph (j) to read as follows:

§ 1.62 File wrapper continuing procedure.

* * * * *

(e) An application filed under this section will utilize the file wrapper and contents of the prior application to constitute the new continuation, continuation-in-part, or divisional application but will be assigned a new application serial number. ► Changes to the prior application must be made in the form of an amendment to the prior application as it exists at the time of filing the prior application under this section. No copy of the prior application or new specification is required and the filing of such a copy or specification will be considered improper, and a filing date will not be granted to the application unless a petition with the fee set forth in § 1.17(i)(1) is filed with instructions to cancel the copy or specification.◄

* * * * *

►(j) If any application filed under this section is found to be improper, the applicant will be notified and given a time period within which to correct the filing error in order to obtain a filing date as of the date the filing error is corrected provided the correction is made before the payment of the issue fee, abandonment of, or termination of proceedings on the prior application. If the filing error is not corrected within the time period set, the application will be returned or otherwise disposed of; the fee, if submitted, will be refunded less the handling fee set forth in § 1.21(n).◄

* * * * *

15. Section 1.96 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 1.96 Submission of computer program listings.

* * * * *

(b) * * *

(1) Availability of appendix. Such computer program listings on microfiche will be available to the public for inspection, and [paper or] microfiche copies thereof will be [separately] available for purchase ►with the file wrapper and contents◄, after a patent based on such [an] application is granted or the application is otherwise made publicly available.

* * * * *

16. Section 1.102 is proposed to be amended by revising paragraph (d) to read as follows:

§ 1.102 Advancement of examination.

* * * * *

(d) A petition to make an application special on grounds other than those referred to in paragraph (c) of this section must be accompanied by the petition fee set forth in § 1.17(i)►(2)◄.

17. Section 1.103 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.103 Suspension of action.

(a) Suspension of action by the Office will be granted for good and sufficient cause and for a reasonable time specified upon petition by the applicant and, if such cause is not the fault of the Office, the payment of the fee set forth in [§ 1.17(i)] ►§ 1.17(i)(1)◄. Action will not be suspended when a response by the applicant to an Office action is required.

* * * * *

18. Section 1.171 is proposed to be revised to read as follows:

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and ►,◄ in addition, must comply with the requirements of the rules relating to reissue applications. The application must be accompanied by a certified copy of an abstract of title or an order for a title report accompanied by the fee set further in [§ 1.19(b)(2)] ►§ 1.19(b)(6)◄, to be placed in the file, and by an offer to surrender the original patent (§ 1.178).

19. Section 1.177 is proposed to be revised to read as follows:

§ 1.177 Reissue in divisions.

The Commissioner may, in his or her discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts, subject to the provisions of §§ 1.83 and 1.84. On filing divisional reissue applications, they shall be referred to the Commissioner. Unless otherwise ordered by the Commissioner upon petition and payment of the fee set forth in [§ 1.17(i)] ►§ 1.17(i)(1)◄, all the divisions of a reissue will issue simultaneously; if there be any controversy as to one division, the others will be withheld from issue until the controversey is ended, unless the Commissioner shall otherwise order.

20. Section 1.296 is proposed to be revised to read as follows:

§ 1.296 Withdrawal of request for publication of statutory invention registration.

A request for a statutory invention registration, which has been filed, may be withdrawn prior to the date of the notice of the intent to publish a statutory invention registration issued pursuant to § 1.294(c) by filing a request to withdraw the request for publication of a statutory invention registration. The request to withdraw may also include a request for a refund of any amount paid in excess of the application filing fee and a handling fee of [$100] ►$120.00◄ which will be retained. Any request to withdraw the request for publication of a statutory invention registration filed on or after the date of the notice of intent to publish issued pursuant to § 1.294(c) must be in the form of a petition pursuant to § 1.183 accompanied by the fee set forth in § 1.17(h).

21. Section 1.313 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.313 Withdrawal from issue.

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition

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by the applicant. Any such petition by the applicant must include a showing of good and sufficient reasons why withdrawal of the application is necessary and, if the reason for the withdrawal is not the fault of the Office, must be accompanied by the fee set further in [§ 1.17(i)] ►§ 1.17(i)(1)◄. If the application is withdrawn from issue, a new notice of allowance will be sent if the application is again allowed. Any amendment accompanying a petition to withdraw an application from issue must comply with the requirements of § 1.312.

* * * * *

22. Section 1.314 is proposed to be revised to read as follows:

§ 1.314 Issuance of patent.

If payment of the issue fee is timely made, the patent will issue in regular course unless (a) the application is withdrawn from issue (§ 1.313) ►,◄ or (b) issuance of the patent is deferred. Any petition by the applicant requesting deferral of the issuance of a patent must be accompanied by the fee set forth in [§ 1.17(i)] ►§ 1.17(i)(1)◄ and must include a showing of good and sufficient reasons why it is necessary to defer issuance of the patent.

23. Section 1.334 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.334 Issue of patent to assignee.

* * * * *

(c) If the assignment is recorded after the date of payment of the issue fee, the assignee may petition that the patent issue to the assignee as recorded. Any such petition must be accompanied by the fee set forth in [§ 1.17(i)] ►§ 1.17(i)(1)◄.

24. Section 1.445 is proposed to be amended by revising paragraphs (a)(2) and (3) and by republishing the introductory text of paragraph (a) to read as follows:

§ 1.445 International application filing and processing fees.

(a) The following fees and charges are established by the Commissioner under the authority of 35 U.S.C. 376:

* * * * *

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:		
(i) No corresponding prior United States national application with basic filing fee has been filed	[$520.00]	►380.00◄
(ii) A corresponding prior United States national application with basic filing fee has been filed	[$350.00]	►380.00◄
(3) A supplemental search fee when required per additional invention	[$140.00]	►150.00◄

* * * * *

25. Section 1.451 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.451 The priority claim and priority document in an international application.

* * * * *

(b) Whenever the priority of an earlier United States national application is claimed in an international application, the applicant may request in a letter of transmittal accompanying the international application upon filing with the United States Receiving Office or in a separate letter filed in the Receiving Office not later than 16 months after the priority date, that the Patent and Trademark Office prepare a certified copy of the national application for transmittal to the International Bureau (PCT Article 8 and PCT Rule 17). The fee for preparing a certified copy is stated in [§ 1.19(a)(3) and (b)(1)] ►§ 1.19(b)(1) and (b)(5)◄.

* * * * *

26. Section 1.482 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A preliminary examination fee is due on filing the Demand:		
(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of	[$370.00]	►400.00◄
(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of	[$570.00]	►600.00◄
(2) An additional preliminary examination fee when required, per additional invention:		
(i) Where a supplemental search fee as set forth in § 1.445(a)(3) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority	[$125.00]	►130.000◄
(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office	[$190.00]	►200.00◄

* * * * *

27. Section 1.492 is proposed to be amended by revising paragraphs (a)(1)-(3), (b), and (d)-(f) and by republishing the introductory texts of the section and paragraph (a) to read as follows:

§ 1.492 National stage fees.

The following fees and charges for international applications entering the national stage under 35 U.S.C. 371 are established by the Commissioner under 35 U.S.C. 376:

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:		
By a small entity (§ 1.9(f))	[$150.00]	►165.00◄
By other than a small entity	[$300.00]	►330.00◄
(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:		
By a small entity (§ 1.9(f))	[$170.00]	►185.00◄
By other than a small entity	[$340.00]	►370.00◄
(3) Where no international preliminary examination fee set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:		
By a small entity (§ 1.9(f))	[$225.00]	►250.00◄
By other than a small entity	[$450.00]	►500.00◄

* * * * *

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:		
By a small entity (§ 1.9(f))	[$17.00]	►18.00◄
By other than a small entity	[34.00]	►38.00◄

* * * * *

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:		
By a small entity (§ 1.9(f))	[$55.00]	►60.00◄
By other than a small entity	[$110.00]	►120.00◄
(If the additional fees required by paragraphs (b), (c) ►,◄ and (d) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)		
(e) Surcharge for filing the basic national fee or oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c):		
By a small entity(§ 1.9(f))	[$55.00]	►60.00◄
By other than a small entity	[$110.00]	►120.00◄
(f) For filing an English translation of an international application later than 20 months after the priority date (§ 1.494(c)) or filing an English translation of the international application or of any annexes to the international preliminary examination report later than 30 months after the priority date (§ 1.495(c) and (e)):	[$26.00]	►30.00◄

28. Section 1.666 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.666 Filing of interference settlement agreements.

* * * * *

(b) If any party filing the agreement or understanding under paragraph (a) of this section so requests, the copy will be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person upon petition accompanied by the fee set forth in [§ 1.17(i)] ►1.17(i)(1)◄ and on a showing of good cause.

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be amended by revising paragraphs (a) and (q) and by republishing the introductory text of the section to read as follows:

§ 2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

* * * * *

(a) For filing an application, per class	[$200.00]	►$175.00◄
(q) For recording trademark assignments and agreements or other papers relating to the property in a registration or application, per [document] ►mark◄	[100.00]	►8.00◄
[For each mark in addition to one assigned in the same document	20.00]	

* * * * *

Date: November 21, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

Editorial Note: This appendix will not appear in the Code of Federal Regulations.

BILLING CODE 3510-16-M

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STATUTORY PATENT FEES - LARGE ENTITY

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I. *	PROPOSED FEE
1.16(a)	101	BASIC FILING FEE	340.00	**	369.96	370.00
1.16(b)	102	INDEPENDENT CLAIMS	34.00	**	37.00	36.00
1.16(c)	103	CLAIMS IN EXCESS OF 20	12.00	**	12.33	12.00
1.16(d)	104	MULTIPLE DEPENDENT CLAIMS	110.00	**	123.32	120.00
1.16(f)	106	DESIGN FILING FEE	140.00	**	154.15	150.00
1.16(g)	107	PLANT FILING FEE	220.00	**	246.64	250.00
1.16(h)	108	REISSUE FILING FEE	340.00	**	369.96	370.00
1.16(i)	109	REISSUE INDEPENDENT CLAIMS	34.00	**	37.00	36.00
1.16(j)	110	REISSUE CLAIMS IN EXCESS OF 20	12.00	**	12.33	12.00
1.17(a)	115	EXTENSION - FIRST MONTH	56.00	**	61.66	62.00
1.17(b)	116	EXTENSION - SECOND MONTH	170.00	**	184.98	180.00
1.17(c)	117	EXTENSION - THIRD MONTH	390.00	**	431.62	430.00
1.17(d)	118	EXTENSION - FOURTH MONTH	610.00	**	678.25	680.00
1.17(e)	119	NOTICE OF APPEAL	130.00	**	141.82	140.00
1.17(f)	120	FILING A BRIEF	130.00	**	141.82	140.00
1.17(g)	121	REQUEST FOR ORAL HEARING	110.00	**	123.32	120.00
1.17(l)	140	PETITION-REVIVE ABANDONED APPL	56.00	**	61.66	62.00
1.17(m)	141	PETITION-REVIVE UNINTEN ABAND APP	560.00	**	616.59	620.00
1.18(a)	142	ISSUE FEE	560.00	**	616.59	620.00
1.18(b)	143	DESIGN ISSUE FEE	200.00	**	215.81	220.00
1.18(c)	144	PLANT ISSUE FEE	280.00	**	308.30	310.00
1.20(d)	148	STATUTORY DISCLAIMER	56.00	**	61.66	62.00
1.20(h)	173	MAINTENANCE FEE - 3.5 - 97-247	450.00	**	493.28	490.00
1.20(i)	174	MAINTENANCE FEE - 7.5 - 97-247	890.00	**	986.55	990.00
1.20(j)	175	MAINTENANCE FEE - 11.5 - 97-247	1,340.00	**	1,479.83	1,480.00

* The 1986 unrounded base fee increased by projected C.P.I.
- see explanation under Background, Fee Adjustment Methodology, paragraph 2(a).

** See Background, Fee Adjustment Methodology, paragraph 1(a)
for an explanation of cost calculations for statutory patent fees.

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STATUTORY PATENT FEES - SMALL ENTITY

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I. *	PROPOSED FEE
1.16(a)	201	BASIC FILING FEE	170.00	**	186.08	185.00
1.16(b)	202	INDEPENDENT CLAIMS	17.00	**	18.50	18.00
1.16(c)	203	CLAIMS IN EXCESS OF 20	6.00	**	6.17	6.00
1.16(d)	204	MULTIPLE DEPENDENT CLAIMS	55.00	**	61.66	60.00
1.16(f)	206	DESIGN FILING FEE	70.00	**	77.08	75.00
1.16(g)	207	PLANT FILING FEE	110.00	**	123.32	125.00
1.16(h)	208	REISSUE FILING FEE	170.00	**	184.98	185.00
1.16(i)	209	REISSUE INDEPENDENT CLAIMS	17.00	**	18.50	18.00
1.16(j)	210	REISSUE CLAIMS IN EXCESS OF 20	6.00	**	6.17	6.00
1.17(a)	215	EXTENSION - FIRST MONTH	28.00	**	30.83	31.00
1.17(b)	216	EXTENSION - SECOND MONTH	85.00	**	92.49	90.00
1.17(c)	217	EXTENSION - THIRD MONTH	195.00	**	215.81	215.00
1.17(d)	218	EXTENSION - FOURTH MONTH	305.00	**	339.13	340.00
1.17(e)	219	NOTICE OF APPEAL	65.00	**	70.91	70.00
1.17(f)	220	FILING A BRIEF	65.00	**	70.91	70.00
1.17(g)	221	REQUEST FOR ORAL HEARING	55.00	**	61.66	60.00
1.17(l)	240	PETITION-REVIVE ABANDONED APPL	28.00	**	30.93	31.00
1.17(m)	241	PETITION-REVIVE UNINTEN ABAND APP	280.00	**	308.30	310.00
1.18(a)	242	ISSUE FEE	280.00	**	308.30	310.00
1.18(b)	243	DESIGN ISSUE FEE	100.00	**	107.91	110.00
1.18(c)	244	PLANT ISSUE FEE	140.00	**	154.15	155.00
1.20(d)	248	STATUTORY DISCLAIMER	28.00	**	30.83	31.00
1.20(h)	273	MAINTENANCE FEE - 3.5 - 97-247	225.00	**	246.64	245.00
1.20(i)	274	MAINTENANCE FEE - 3.5 - 97-247	445.00	**	493.28	495.00
1.20(j)	275	MAINTENANCE FEE - 11.5 - 97-247	670.00	**	739.91	740.00

* The 1986 unrounded base fee increased by projected C.P.I.
- see explanation under Background, Fee Adjustment Methodology, paragraph 2(a).

** See Background, Fee Adjustment Methodology, paragraph 1(a)
for an explanation of cost calculations for statutory patent fees.

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NON-STATUTORY PATENT FEES

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I.	PROPOSED FEE
1.16(e)	105	SURCHARGE - LATE FILING FEE	110.00	120.00	121.33	120.00
1.16(e)	205	SURCHARGE - LATE FILING FEE	55.00	60.00	60.67	60.00
1.17(h)	122	PETITION - NOT ALL INVENTORS	140.00	119.11	151.08	120.00
1.17(h)	123	PETITION - CORRECTION OF INVENTORSHIP	140.00	119.11	151.08	120.00
1.17(h)	124	PETITION - DECISION ON QUESTIONS	140.00	119.11	151.08	120.00
1.17(h)	125	PETITION - SUSPEND RULES	140.00	119.11	151.08	120.00
1.17(h)	160	PETITION - EXPEDITED LICENSE	140.00	119.11	151.08	120.00
1.17(h)	161	PETITION - SCOPE OF LICENSE	140.00	119.11	151.08	120.00
1.17(h)	162	PETITION - RETROACTIVE LICENSE	140.00	119.11	151.08	120.00
1.17(h)	163	PETITION - REFUSING MAINT. FEE	140.00	119.11	151.08	120.00
1.17(h)	164	PETITION - REFUSING MAINT. FEE - EXPIRED PATENT	140.00	119.11	151.08	120.00
1.17(h)	165	PETITION - INTERFERENCE	140.00	119.11	151.08	120.00
1.17(h)	166	PETITION - RECONSIDER INTERFERENCE	140.00	119.11	151.08	120.00
1.17(h)	167	PETITION - LATE FILING OF INTERF.	140.00	119.11	151.08	120.00
1.17(h)	168	PETITION - REFUSAL TO PUB SIR	140.00	119.11	151.08	120.00
1.17(i)	127	PETITION - FOR ASSIGNMENT RECORD	72.00	119.11	78.91	120.00
1.17(i)	128	PETITION - FOR APPLICATION	72.00	119.11	78.91	120.00
1.17(i)	129	PETITION - LATE PRIORITY PAPERS	72.00	119.11	78.91	120.00
1.17(i)	130	PETITION - MAKE APPL SPECIAL	72.00	78.72	78.91	80.00
1.17(i)	131	PETITION - SUSPEND ACTION	72.00	119.11	78.91	120.00
1.17(i)	132	PETITION - DIVISIONAL REISSUES	72.00	119.11	78.91	120.00
1.17(i)	133	PETITION - FOR INTERFERENCE AGREE	72.00	119.11	78.91	120.00
1.17(i)	134	PETITION - AMENDMENT AFTER ISSUE	72.00	119.11	78.91	120.00
1.17(i)	135	PETITION - WITHDRAWAL FROM ISSUE	72.00	119.11	78.91	120.00
1.17(i)	136	PETITION - DEFER ISSUE	72.00	119.11	78.91	120.00
1.17(i)	137	PETITION - ISSUE TO ASSIGNEE	72.00	119.11	78.91	120.00
1.17(j)	138	PETITION - PUBLIC USE PROCEEDING	860.00	1,224.44	941.91	1,200.00
1.17(k)	139	NON-ENGLISH SPECIFICATION	26.00	28.16	28.45	30.00
1.17(n)	112	SIR - PRIOR TO EXAMINER'S ACTION *	400.00	400.00	448.23	400.00
1.17(n)	113	SIR - AFTER EXAMINER'S ACTION *	800.00	800.00	931.89	800.00
1.20(a)	145	CERTIFICATE OF CORRECTION	29.00	61.42	31.78	60.00
1.20(b)	146	PETITION - CORRECTION OF INVENTORSHIP	140.00	119.11	151.08	120.00
1.20(c)	147	REEXAMINATION	1,770.00	1,967.73	1,950.01	2,000.00
1.20(e)	170	MAINTENANCE FEE - 3.5 - 96-517	225.00	245.00	248.18	245.00
1.20(f)	171	MAINTENANCE FEE - 7.5 - 96-517	445.00	495.00	490.85	495.00
1.20(g)	172	MAINTENANCE FEE - 11.5 - 96-517	670.00	740.00	739.03	740.00
1.20(k)	176	SURCHARGE - 6 MONTHS - 96-517	110.00	120.00	121.33	120.00
1.20(l)	177	SURCHARGE - 6 MONTHS - 97-247	110.00	120.00	121.33	120.00
1.20(l)	277	SURCHARGE - 6 MONTHS - 97-247	55.00	60.00	60.67	60.00
1.20(m)	178	SURCHARGE AFTER EXPIRATION	500.00	550.00	551.52	550.00
1.20(n)	111	EXTENSION OF TERM OF PATENT	550.00	610.33	606.67	600.00

* *Reduced by filing fee.*

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NON-STATUTORY PATENT FEES - SERVICES

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I.	PROPOSED FEE
1.19(a-1)	501	COPY OF PATENT	1.50	2.03	1.53	1.50
1.19(a-2)	503	COPY OF PLANT PATENT	6.00	11.17	6.21	10.00
1.19(a-3)	506	COPY OF OFFICE REC'S, (30 PGS/DOC)	0.50	0.30	8.82	10.00
1.19(a-4)	NFC*	COPY OF UTILITY PATENT IN COLOR	0.00	20.00	20.00	20.00
1.19(a-5)	NFC	PATENT COPY - EXPEDITED SERVICE	0.00	3.00	3.00	3.00
1.19(a-6)	NFC	PATENT COPY EXPEDITED SERVICE VIA EOS	0.00	25.00	25.00	25.00
1.19(b-1)	504	COPY OF APPLICATION AS FILED, CERT.	9.00	9.71	9.75	10.00
1.19(b-2)	505	COPY OF FILE WRAPPER, CERT.	75.00	174.17	94.89	170.00
1.19(b-3)	533	COPY OF PATENT ASSIGNMENT, CERT	1.50	4.56	1.52	5.00
1.19(b-4)	NFC	CERT. COPY OF PATENT APPL. EXPIDITED	0.00	20.00	20.00	20.00
1.19(b-5)	508	CERTIFYING OFFICE RECORDS	3.00	2.61	2.98	3.00
1.19(b-6)	509	SEARCH OF RECORDS	12.00	12.99	13.50	15.00
1.19(c)	513	LIBRARY SERVICE	50.00	4,470.00	55.15	50.00
1.19(d)	514	LIST OF PATENTS IN SUBCLASS	1.00	2.13	1.47	2.00
1.19(e)	528	UNCERTIFIED STATEMENT	3.00	3.67	3.47	5.00
1.19(f)	532	COPY OF NON-US DOCUMENT	10.00	5.64	11.48	10.00
1.19(g)	510	COMPARING COPIES PER DOC	5.00	6.96	5.96	10.00
1.19(n)	534	DUPLICATE OR CORRECTED FILING RECEIPT	14.00	12.95	15.98	15.00
1.21(a-1)	609	ADMISSION TO EXAMINATION	250.00	273.23	273.89	270.00
1.21(a-2)	610	REGISTRATION TO PRACTICE	81.00	89.32	89.04	90.00
1.21(a-3)	611	REINSTATEMENT TO PRACTICE	9.00	9.97	9.92	10.00
1.21(a-4)	612	COPY OF CERTIFICATE OF GOOD STANDING	10.00	9.98	10.90	10.00
1.21(a-4)	613	CERTIFICATE OF GOOD STAND - FRAMING	88.00	99.69	96.65	100.00
1.21(a-5)	615	REVIEW OF DECISION OF DIRECTOR, OED	92.00	99.80	101.53	100.00
1.21(a-6)	616	REGRADING OF EXAMINATION	92.00	99.32	101.53	100.00
1.21(b-1)	607	ESTABLISH DEPOSIT ACCOUNT	8.00	9.00	8.98	10.00
1.21(b-2/3)	608	SERVICE CHARGE FOR BELOW MIN. BALANCE	20.00	22.00	22.06	20.00
1.21(c)	516	FILING A DISCLOSURE DOC	6.00	6.00	6.99	6.00
1.21(e)	526	INTERNATIONAL TYPE SEARCH REPORT	28.00	13.89	30.88	30.00
1.21(f)	517	SEARCHING, 10 YEARS	14.00	10.03	15.82	10.00
1.21(g)	524	COPISHARE CARD PER PAGE	0.20	0.11	0.17	0.15
1.21(h)	518	RECORDING PATENT PROPERTY	7.00	7.51	7.50	8.00
1.21(i)	520	PUBLICATION IN OG	7.00	16.51	7.67	20.00
1.21(j)	521	DUPLICATE USER PASS	5.00	9.02	5.53	10.00
1.21(k)	522	BOX RENTAL	43.00	49.44	47.07	50.00
1.21(k)	523	LOCKER RENTALS	0.25	0.25	0.28	0.25
1.21(l)	529	RETAINING ABANDONED APPL.	100.00	112.64	110.30	120.00
1.21(m)	617	PROCESSING RETURNED CHECKS	20.00	22.00	22.06	50.00
1.21(n)	530	HANDLING FEE	15.00	16.90	16.80	20.00
1.296	531	HANDLING FEE FOR WITHDRAWAL	100.00	112.64	110.30	120.00

* *NFC - New fee code to be established.*

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PATENT COOPERATION TREATY FEES

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I.	PROPOSED FEE
1.445(a-1)	150	TRANSMITTAL FEE	170.00	168.36	*	170.00
1.445(a-2)	151	PCT SEARCH FEE - NO U.S. APPL.	520.00	554.33	*	550.00
1.445(a-2)	153	PCT SEARCH - PRIOR U.S. APPL.	350.00	379.04	*	380.00
1.445(a-3)	152	SUPPLEMENTAL SEARCH	140.00	149.85	*	150.00
1.482(a-1)	190	PRELIMINARY EXAM FEE	370.00	400.85	*	400.00
1.482(a-1)	191	PRELIMINARY EXAM FEE	570.00	600.80	*	600.00
1.482(a-2)	192	ADD'L INVENTION	125.00	129.81	*	130.00
1.482(a-2)	193	ADD'L INVENTION	190.00	199.75	*	200.00
1.492(a-1)	956	IPEA	300.00	* *	330.99	330.00
1.492(a-1)	957	IPEA	150.00	* *	165.50	165.00
1.492(a-2)	958	SEARCHING AUTHORITY	340.00	* *	370.05	370.00
1.492(a-2)	959	SEARCHING AUTHORITY	170.00	* *	185.02	185.00
1.492(a-3)	960	PTO NOT SA OR IPEA	450.00	* *	496.49	500.00
1.492(a-3)	961	PTO NOT SA OR IPEA	225.00	* *	248.24	250.00
1.492(a-4)	962	CLAIMS - IPEA	50.00	* *	55.17	50.00
1.492(a-4)	963	CLAIMS - IPEA	25.00	* *	27.58	25.00
1.492(b)	964	CLAIMS - EXTRA INDIVIDUAL (OVER 3)	34.00	* *	37.00	36.00
1.492(b)	965	CLAIMS - EXTRA INDIVIDUAL (OVER 3)	17.00	* *	18.50	18.00
1.492(c)	966	CLAIMS - EXTRA TOTAL (OVER 20)	12.00	* *	12.33	12.00
1.492(c)	967	CLAIMS - EXTRA TOTAL (OVER 20)	6.00	* *	6.17	6.00
1.492(d)	968	CLAIMS - MULTIPLE DEPENDENTS	110.00	* *	123.35	120.00
1.492(d)	969	CLAIMS - MULTIPLE DEPENDENTS	55.00	* *	61.67	60.00
1.492(e)	154	SURCHARGE	110.00	120.00	121.36	120.00
1.492(e)	254	SURCHARGE	55.00	60.00	60.00	60.00
1.492(f)	156	ENGLISH TRANSLATION - AFTER 20 MOS.	26.00	28.08	28.08	30.00

* *Adjustment by C.P.I. is not applicable to these fees.*

** *These fees are set to recover the cost of processing under the Treaty. The cost calculation methodology for statutory patent fees, under Background, Fee Adjustment Methodology, paragraph 1(a), applies to these fees.*

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TRADEMARK FEES

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I.	PROPOSED FEE
TRADEMARK PROCESS FEES						
2.6(a)	301	APPLICATION FOR REGISTRATION	200.00	242.87	220.66	175.00
2.6(b)	302	APPLICATION FOR RENEWAL	300.00	42.34	330.99	300.00
2.6(s)	303	SURCHARGE FOR LATE RENEWAL	100.00	100.00	110.33	100.00
2.6(c)	304	PUBLICATION OF MARK UNDER SEC 12c	100.00	131.93	110.33	100.00
2.6(d)	305	ISSUING NEW CERTIFICATE OF REGISTRATION	100.00	61.32	110.33	100.00
2.6(e)	306	CERT OF CORRECTION OF APPLICANT ERROR	100.00	106.21	110.33	100.00
2.6(f)	307	FILING DISCLAIMER TO REGISTRATION	100.00	133.39	110.33	100.00
2.6(g)	308	FILING AMENDMENT TO REGISTRATION	100.00	67.64	110.33	100.00
2.6(h)	309	FILING AFFIDAVIT UNDER SECTION 8	100.00	19.70	110.33	100.00
2.6(i)	310	FILING AFFIDAVIT UNDER SECTION 15	100.00	19.77	110.33	100.00
2.6(j)	311	FILING AFFIDAVIT UNDER SECTION 8 & 15	200.00	19.77	220.66	200.00
2.6(k)	312	PETITIONS TO THE COMMISSIONER	100.00	114.06	110.33	100.00
2.6(l)	313	PETITION TO CANCEL	200.00	393.96	220.66	200.00
2.6(l)	314	NOTICE OF OPPOSITION	200.00	498.49	220.66	200.00
2.6(m)	315	EX PARTE APPEAL TO THE TTAB	100.00	478.62	110.33	100.00
TRADEMARK SERVICE FEES						
2.6(n)	401	PRINTED COPY OF EACH REGISTERED MARK	1.50	1.84	1.65	1.50
2.6(o)	403	CERTIFY TM RECORDS, PER CERTIFICATE	3.50	4.06	3.86	3.50
2.6(p)	404	PHOTOCOPIES OF TM RECORDS, PER PAGE	0.30	0.39	0.33	0.30
2.6(q)	405	RECORDING TM ASSIGNMENT DOCUMENTS	100.00	7.51	110.33	8.00
2.6(r)	407	ABSTRACTS OF TITLE, PER REGISTRATION	12.00	8.19	13.24	12.00
2.6(n)	408	COPY OF REG MARK WITH TITLE OR STATUS	6.50	5.97	7.17	6.50
2.6(o)	410	MAKE CERTIFICATION SPECIAL	25.00	5.00	27.58	25.00
1.21(g)	424	FARECARDS FOR COPY MACHINES	0.20	0.11	0.22	0.15

[FR Doc. 88-27433 Filed 11-29-88; 8:45 am]
BILLING CODE 3510-16-C

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federal register

Wednesday
November 30, 1988

Part IV

Environmental Protection Agency

Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under the Asbestos Hazard Emergency Response Act; Notice

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ENVIRONMENTAL PROTECTION AGENCY

Office of Pesticides and Toxic Substances

[OPTS-62070; FRL-3482-6]

Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In section 206(c)(3) of Title II, the Administrator, in consultation with affected organizations, was directed to publish (and revise as necessary) a list of asbestos courses and tests in effect before the date of enactment of this title which qualify for equivalency treatment for interim accreditation purposes, and a list of asbestos courses and tests which the Administrator determines are consistent with the Model Plan and which will qualify a contractor for accreditation. In addition, under the amendment to TSCA Title II, section 206(f) was added which requires the Administrator to publish quarterly, beginning August 31, 1988, a list of EPA-approved asbestos training courses. The Administrator is also required to publish on a quarterly basis beginning August 31, 1988, list of laboratories which have received accreditation from EPA. This **Federal Register** notice includes the cumulative fifth list of course approvals and a list that includes State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. Additionally, this notice includes the most current list of accredited laboratories as of November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-3790, TDD: (204) 554-0551.

SUPPLEMENTARY INFORMATION: Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop a Model Contractor Accreditation Plan by April 20, 1987. The plan was issued on April 20, and was published in the **Federal Register** of April 30, 1987 (52 FR 15875), as Appendix C to Subpart E, 40 CFR Part 763.

To conduct asbestos-related work in schools, persons must receive accreditation in order to inspect school buildings for asbestos, develop management plans, and design or conduct response actions. Such persons can be accredited by States, which are required to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Contractor Accreditation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

In the **Federal Register** of October 30, 1987 (52 FR 41826), EPA promulgated a final "Asbestos-Containing Materials In Schools" rule (40 CFR Part 763, Subpart E) which required all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially-trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. The new rule took effect on December 14, 1987.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR Part 763, Subpart E, Appendix C.I.1.A through E.

In section 206(c)(3) of Title II, and as amended by section 206(f), the Administrator, in consultation with affected organizations, is directed to publish quarterly a list of asbestos courses and tests in effect before the date of enactment of this title which qualified for equivalency treatment for interim accreditation purposes, and a list of asbestos courses and tests which the Administrator determined were consistent with the Model Plan and which qualify a contractor for accreditation. In addition, the Agency has included in this notice the most current list of laboratories which have received interim accreditation from EPA for the analysis of bulk materials for asbestos polarized light microscopy.

The **Federal Register** notice of October 30, 1987, included the initial list of course approvals. In addition, the list included State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. The second **Federal Register** notice of February 10, 1988 (53 FR 3982), the third **Federal Register** notice of June 1, 1988 (53 FR 20066), and the fourth **Federal Register** of August 31, 1988 (53 FR 33574), were cumulative listings of EPA course approvals and EPA approved State accreditation programs.

This **Federal Register** notice is divided into five units. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses EPA approval of training courses for interim accreditation. Unit IV provides the list of State accreditation programs and training courses approved by EPA as of October 1988. Unit V contains a listing of all laboratories, under the EPA Interim Accreditation Program for laboratories that are conducting analysis of bulk samples of ACM. Subsequent **Federal Register** notices will add other State programs and training courses as well as accredited laboratories to this fifth cumulative list.

I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA is able to approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval. EPA can also approve State training programs that do not fully meet the Model Plan's requirements but do meet the requirements for interim accreditation.

As listed in Unit IV, Arkansas, Iowa, Kansas, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, and South Dakota have received EPA full approval for two accreditation disciplines,

abatement workers as well as contractors and supervisors, that are at least as stringent as the Model Plan. In addition, the States of Massachusetts, Iowa, and South Dakota have received full approval for their inspector/management planner and project designer disciplines. Any training courses in those disciplines approved by the aforementioned States are EPA-approved courses for purposes of accreditation. These training courses are EPA-approved courses for purposes of TSCA Title II in these States and in all States without an EPA-approved accreditation program for that discipline. Current lists of training courses approved by Arkansas, Massachusetts, New Jersey, Oregon, Rhode Island, and South Dakota are listed under Unit IV. Iowa and Kansas have no separate provider listings because none of the States have independently approved any additional courses.

Each State accreditation program may have different requirements for State accreditation. For example, New Jersey requires participants of their courses to take the State exam. Therefore, those New Jersey approved course sponsors who are contemplating presenting the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination as required by the Model Plan to the Regional Asbestos Coordinator in their region for EPA approval.

EPA has also approved a number of State programs for purposes of providing interim accreditation for persons who have met the training and examination requirements of these State programs. Persons meeting such requirements in these States have completed a training course and examination similar to the Model Plan's requirements before December 14, 1987. However, these individuals must become fully accredited within the time period specified in the Model Plan.

States that have approval for interim accreditation purposes for abatement contractors, supervisors, and workers include Alaska, Arkansas, Kansas, and Washington. Michigan and Illinois have approval for interim accreditation purposes for abatement workers only. Persons with interim accreditation in these States are eligible to conduct work during the time period specified in the Model Plan. However, these persons must eventually become fully accredited. All State programs nationwide that do not fully meet the Model Plan's requirements must be upgraded within the time period specified in TSCA Title II to be at least as stringent as the Model Plan.

II. EPA Approval of Training Courses

A cumulative list of training courses approved by EPA are listed under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: Full, contingent, and approved for interim accreditation. Courses approved for interim accreditation will be discussed in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipline.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the material to be acceptable (i.e., the written course materials meet the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not affect the accreditation of persons who took previously offered training courses, including the course audited by EPA.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby. Training courses are listed in the Region where the training course is headquartered. Although several sponsors offer their courses in various locations throughout the United States, a larger number of course sponsors provide most of their training within their own Region.

EPA-approved State accreditation programs have the authority to have more stringent accreditation requirements than the Model Plan. As a result, some EPA-approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who have received accreditation or are seeking accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered by several universities before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being fully approved. It should be noted that persons who have successfully completed these courses are fully accredited; they are not limited only to being accredited on an interim basis.

III. EPA Approval of Training Courses for Interim Accreditation

TSCA Title II enables EPA to permit persons to be accredited on an interim basis if they have attended previous EPA-approved asbestos training and have passed (or passed) an asbestos examination. As a result, the Agency has approved training courses offered previously for purposes of accrediting persons on an interim basis. Only those persons who have taken training courses since January 1, 1985, will be considered under these interim accreditation provisions. In addition, EPA will not grant interim accreditation to any person who takes an equivalent training course after the date on which the asbestos-in-schools rule took effect (i.e., December 14, 1987). This accreditation is interim since the person shall be considered accredited for only 1 year after the date on which the State where the person is employed establishes an accreditation program at least as stringent as the EPA Model Plan. If the State does not adopt an accreditation program within the time period required by Title II, persons with interim accreditation must become fully accreditated within 1 year after the date the State was required to have established a program.

For purposes of the Model Plan, an equivalent training course is one that is essentially similar in length and content to the curriculum found in the Model Plan. In addition, an equivalent examination must be essentially similar to the examination requirements found in the Model Plan.

Persons who have taken equivalent courses in their discipline for purposes of interim accreditation, and can produce evidence that they have successfully completed the course by passing an examination, are accredited on an interim basis under TSCA Title II. Evidence of successful completion of a course would include a certificate or photo identification card that showed the person completed the training course

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on a certain date and passed the examination.

For persons who took one of the EPA-approved courses for interim accreditation listed under Unit IV, but did not take the course's examination, these persons may become accredited on an interim basis by passing an examination at an EPA-funded training center. These EPA-funded training centers are listed under Unit IV. Before taking the examination, persons must provide evidence to the EPA-funded center that they previously had taken one of the training courses listed under Unit IV that is approved by EPA for interim accreditation.

The New York City Department of Environmental Protection, Bureau of the Air Resources has a training program for asbestos abatement workers and contractors/supervisors that does meet the requirements for EPA approval of training courses for interim accreditation (See Unit IV, Region II). As a result, persons who have met the training and examination requirements of the New York City Abatement Worker (i.e., "handler") or Contractor/Supervisor program between April 1, 1987 and December 14, 1987, are accredited as listed under Unit IV on an interim basis.

Courses approved by EPA as of July 1988 for interim accreditation are listed under Unit IV. Examinations offered by these courses also are approved for purposes of interim accreditation.

IV. List of EPA-Approved State Accreditation Programs and Training Courses

The fifth cumulative listing of EPA-approved State accreditation programs and training courses are listed in Unit IV. As discussed above, quarterly notifications of EPA approval of State accreditation programs and EPA approval of training courses will be published in subsequent **Federal Register** notices. The closing date for the acceptance of submissions to EPA for inclusion in this fifth notice was October 31, 1988. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses listed by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e., full, contingent, or for interim purposes). Unless otherwise specified by an alternative date, interim approvals are issued from January 1, 1985.

As of October 31, 1988, a total of 290 training providers are offering 573 EPA-approved training courses for accreditation under TSCA Title II. There are 215 asbestos abatement worker courses, 151 contractor/supervisor courses, 114 inspector/management planner courses, 9 inspector only courses, and 10 project designer courses. Thirteen States have either interimly or fully approved State accreditation programs.

The EPA-funded model course for inspectors and management planners is available in final form. In addition, a previous EPA developed course for asbestos abatement contractors and supervisors has been revised and will be available for interested parties that plan to offer training courses in December 1988. Interested parties should contact the following firm to receive copies of the training courses: ATLIS Federal Services, Inc., EPA AHERA Program, 6011 Executive Blvd., Rockville, MD 20852, Phone number: (301) 468–1916. A fee for each course will be charged to cover the reproduction costs for the written and visual aid materials. The model inspector/management planner course curriculum is final. All who have paid for the draft student manual will automatically receive the instructor manual and the accompanying slides.

The following is the cumulative list of EPA-approved State accreditation programs and training courses:

Approved State Accreditation Programs

(1)(a) *Staie:* Alaska
State Agency: Department of Labor, Address: P.O. Box 1149, Juneau, AK 99802, Contact: Richard Arab, Phone: (907) 465–4856

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (interim from 10/1/85).
Contractor/Supervisor (interim from 10/1/85).

(2)(a) *State:* Arkansas
State Agency: Arkansas Dept. of Pollution Control and Ecology, Address: 8001 National Dr., P.O. Box 9583, Little Rock, AR 72209, Contact: Wilson Tolefree, Phone: (501) 562–7444.

(b) *Approved Accreditation Program Disciplines*:
Abatement Worker (interim from 11/22/85).
Abatement Worker (full from 1/22/88).
Contractor/Supervisor (interim from 11/22/85).
Contractor/Supervisor (full from 1/22/88).

Arkansas Department of Pollution Control and Ecology, EPA-Approved Courses for Abatement Workers and Contractor Supervisors

(i)(a) *Training Provider:* Arkansas Laborers Training Fund.
Address: 4501 West 61st St., Little Rock, AR 72209, Contact: W. Rudy Osborne, Phone: (501) 562–5953.

(b) *Approved Course:*
Abatement Worker.

(c) *Date of Certification:* 5/2/88.
(ii)(a) *Training Provider:* Asbestos Training & Employment, Inc.
Address: 809 East 11th St., Michigan City, IN 46360, Contact: Bruce H. Connell, Phone: (219) 874–7348.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/18/88.
(iii)(a) *Training Provider:* Critical Environmental Training, Inc.
Address: 5815 Gulf Fwy., Houston, TX 77023, Contact: Charles M. Flanders, Phone: (713) 921–8921.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 9/12/88.
(iv)(a) *Training Provider:* Environmental Institute.
Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425–2000.

(b) *Approved Course:*
Contractor/Supervisor.

(c) *Date of Certification:* 10/7/88.
(v)(a) *Training Provider:* Environmental Technologies.
Address: P.O. Box 21243, Little Rock, AR 72221, Contact: Phyllis Moore, Phone: (501) 569–3248.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 3/16/88.
(vi)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: P.O. Box 307, Lawrence, KS 66044, Contact: Patrick Shrepf, Phone: (913) 749–2381.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 6/8/88.
(vii)(a) *Training Provider:* Professional Asbestos Training Service.
Address: P.O. Box 45233, Little Rock AR 72214, Contact: Harold Lewis, Phone: (501) 223–3230.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 4/18/88.
(viii)(a) *Training Provider:* University of Arkansas.
Address: 521 South Razorback Rd., Fayettville, AR 72701, Contact: Greg Weeks, Phone: (501) 575–6175.

(b) *Approved Course:*
Abatement Worker.

(c) *Date of Certification:* 10/7/88.
(3)(a) *State:* Illinois
State Agency: Illinois Dept. of Public Health, Address: 525 West Jefferson St., 3rd Floor, Springfield, IL 62702, Contact: Don Anderson, Phone: (217) 782–5830.

(b) *Approved Accreditation Program Discipline:*
Abatment Worker (interim from 11/29/85).

(4)(a) *State:* Iowa
State Agency: Iowa Department of Education, Administrative Finance School Plant Facilities, Address: Grimes State Office Bldg., Des Moines, IA 50319–0146, Contact: C. Milt Wilson, Phone: (515) 281–4743.

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 11/30/87).
Contractor/Supervisor (full from 11/30/87).
Inspector (full from 11/30/87).
Inspector/Management Planner (full from 11/30/87).
Project Designer (full from 11/30/87).

(5)(a) *State:* Kansas
State Agency: Kansas Dept. of Health and Environment, Environmental Toxicology Section, Address: Forbes Field Building 321, Topeka, KS 66620–7430, Contact: John C. Irwin, Phone: (913) 296–1500.

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (interim from 11/6/86).*
Abatement Worker (interim from 12/16/87).*
Contractor/Supervisor (interim from 11/6/86).
Contractor/Supervisor (full from 12/16/87).

(6)(a) *State:* Massachusetts
State Agency: Massachusetts Department of Labor & Industries; Division of Occupational Hygiene, Address: 1001 Watertown St., West Newton, MA 02165, Contact: Dick Levine, Phone: (617) 727–3567.

*Applies only to workers who have taken the Kansas Contractor/Supervisor course and passed the State's worker exam.

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 11/30/87).
Contractor/Supervisor (full from 10/30/87).
Inspector (full from 10/30/87).
Inspector/Management Planner (full from 10/30/87).
Project Designer (full from 10/30/87).

Massachusetts Department of Health, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspector/Management Planners, and Project Designers

(i)(a) *Training Provider:* Abatement Technical Corp. c/o ECO Systems Inc.
Address: 5 North Meadow Rd., Medfield, MA 02052, Contact: Joseph C. Mohen, Phone: (609) 795–7834.

(b) *Approved Course:*
Contractor/Supervisor.

(c) *Date of Certification:* 4/28/88.
(ii)(a) *Training Provider:* Asbestos Workers Union Local #6.
Address: 1725 Revere Beach Pwy., Everett, MA 02149, Contact: James P. McCourt, Phone: (617) 387–2679.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 4/25/88.
(iii)(a) *Training Provider:* Astoria Industries.
Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: Gary Dipaolo, Phone: (718) 387–0011.
(b) Approved Course:
Abatement Worker.

(c) *Date of Certification:* 4/8/88.
(iv)(a) *Training Provider:* BCM Engineering.
Address: 1 Plymouth Meeting, Plymouth Meeting, PA 19462, Contact: Peter R. Charrington, Phone: (215) 825–3800.

(b) *Approved Courses:*
Inspector/Management Planner.
Project Designer.

(c) *Date of Certification:* 4/28/88.
(v)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525–1198.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
Inspector/Management Planner.

(c) *Date of Certification:* 2/25/88.
(vi)(a) *Training Provider:* Dennison Environmental, Inc.
Address: 35 Industrial Hwy., Woburn, MA 01880, Contact: Joan Ryan, Phone: (617) 932–9400.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 4/8/88.
(vii)(a) *Training Provider:* Environmental Training Services.
Address: 12 Wallnut Hill Park, Woburn, MA 01801, Contact: Kenneth P. Martin, Jr., Phone: (617) 389–0348.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 4/8/88.
(viii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4340 West 15th St., Lawrence, KS 66046, Contact: Alice Hart, Phone: (800) 346–2860.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
Inspector/Management Planner.
Project Designer.

(c) *Date of Certification:* 4/25/88.
(ix)(a) *Training Provider:* Howard School of Public Health.
Address: 677 Huntington Ave., Boston, MA 02115, Contact: William A. Burgass, Phone: (617) 732–1171.

(b) *Approved Courses:*
Contractor/Supervisor.
Inspector/Management Planner.

(c) *Date of Certification:* 2/25/88.
(x)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Cummings Park, Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935–0664.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
Inspector/Management Planner.

(c) *Date of Certification:* 4/28/88.
(xi)(a) *Training Provider:* JF Walton & Company.
Address: 201 Marginal St., Chelsea, MA 02150, Contact: Richard King, Phone: (617) 884–0350.

(b) *Approved Course:*
Abatement Worker.

(c) *Date of Certification:* 3/28/88.
(xii)(a) *Training Provider:* Kaselaan & D'Angelo Associates.
Address: 515 Grove St., Haddon Heights, NJ 08035, Contact: Paul Heffernan, Phone: (212) 213–1188.

(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 2/25/88.
(xiii)(a) *Training Provider:* N.A.A.C.O.

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Address: 757 A Turnpike St., North Andover, MA 01845, Contact: Jerome W. Vitta, Phone (617) 681–8711.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 3/18/88.

(xiv)(a) *Training Provider:* National Training Fund of Sheetmetal & Air Conditioning Industry/Workers, Institute for Safety & Health.

Address: 1126 16th St., NW., Washington, DC 20036, Contact: Matthew Gillen, Phone: (202) 887–1980.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 4/28/88.

(xv)(a) *Training Provider:* New England Laborer Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748–2699, Contact: James Merloni, Jr., Phone: (617) 435–6316.

(b) *Approved Course:*

Abatement Worker.

(c) *Date of Certification:* 2/25/88.

(xvi)(a) *Training Provider:* Tufts University Asbestos Information Center.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381–3531.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.
Inspector/Management Planner.

(c) *Date of Certification:* 3/16/88.

(7)(a) *State:* Michigan.

State Agency: State of Michigan Dept. of Public Health, Address: 3500 North Logan, P.O. Box 30035, Lansing, MI 48909, Contact: Bill DeLiefde, Phone: (517) 335–8186.

(b) *Approved Accreditation Program Discipline:*

Abatement Worker (interim from 7/2/86).

(8)(a) *State:* New Jersey.

State Agency: State of New Jersey Dept. of Health, Address: CN 360, Trenton, NJ 08625–0360, Contact: James Brownlee, Phone: (609) 984–2193.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 6/18/85).
Contractor/Supervisor (full from 6/18/85).

New Jersey Department of Health, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

Note: New Jersey approved course providers who present the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination, as required by the Model Plan, to the Regional Asbestos Coordinator in their Region for EPA approval.

(i)(a) *Training Provider:* A&S Insulation Co., Inc.

Address: 2213 North Delsea Dr., Vineland, NJ 08360, Contact: William Clark, Phone: (609) 692–0883.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/20/85.

(ii)(a) *Training Provider:* Alternative Ways.

Address: 100 Essex Ave., Ballmawr, NJ 08031, Contact: John Smith, Phone: (609) 933–3300.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 4/25/85.

(iii)(a) *Training Provider:* Asbestos Training Academy.

Address: 218 Central Hwy., Pennsauken, NJ 08109, Contact: Marianne Brady, Phone: (609) 488–9200.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/1/88.

(iv)(a) *Training Provider:* Asbestos Training Institute-HRF, Inc.

Address: 247 Hayler St., South Hackensack, NJ 07606, Contact: Robert Tetzlaff, Phone: (201) 489–3200.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 3/4/87.

(v)(a) *Training Provider:* Asbestos Worker Local No. 32.

Address: 870 Broadway, Newark, NJ 07104, Contact: Paule Ielmini, Phone: (201) 485–3626.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/8/87.

(vi)(a) *Training Provider:* Association of Wall and Ceiling Industries.

Address: 25 K St., NE., Washington, DC 20002, Contact: Carol Paquin, Phone: (202) 783–2924.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 6/17/87.

(vii)(a) *Training Provider:* BCM Eastern, Inc.

Address: One Plymouth Meeting Mall, Plymouth Meeting, PA 19462, Contact: Robert Ferguson, Phone: (215) 825–3800.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 6/7/87.

(viii)(a) *Training Provider:* Building Laborers of N.J.—Training Center.

Address: P.O. Box 163 Jamesburg, NJ 08831, Contact: Emmanuel Riggi, Phone: (201) 521–0200.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 7/19/85.

(ix)(a) *Training Provider:* Certified Abatement Technologies, Inc.

Address: 47 Midland Ave., Elmwood Park, NJ 07407, Contact: Daniel Curtin, Phone: (201) 796–9589.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 6/3/87.

(x)(a) *Training Provider:* E.I. Dupont deNemours and Co.

Address: Chamber Works, Deepwater, NJ 08023, Contact: Charles Battle, Phone: (609) 540–2434.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/1/87.

(xi)(a) *Training Provider:* Hunter College of Health Sciences.

Address: 425 East 25th St., New York, NY 10010, Contact: Jack Caravanos, Phone: (212) 481–4352.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/23/85.

(xii)(a) *Training Provider:* IT Corporation.

Address: 336 West Anaheim St., Wilmington, CA 90744, Contact: Ron Freeman, Phone: (213) 830–1720.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 8/29/85.

(xiii)(a) *Training Provider:* International Association of Heat and Frost Insulators and Asbestos Workers Local No. 14.

Address: 6513 Bustleton Ave., Philadelphia, PA 19149, Contact: James Aikens, Phone: (215) 533–0395.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 8/9/85.

(xiv)(a) *Training Provider:* International Association of Heat and Frost Insulators and Asbestos Workers Local No. 42.

Address: 1188 River Rd., New Castle, DE 19720, Contact: Robert Holden, Phone: (302) 328–4203.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 10/30/85.

(xv)(a) *Training Provider:* International Association of Heat and Frost Insulators and Asbestos Workers Local No. 89.

Address: 2733 Nottingham Way, Trenton, NJ 08619, Contact: Charles DaBronzo, Phone: (609) 587–0092.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/13/86.

(xvi)(a) *Training Provider:* Kaselaan and D'Angelo Associates.

Address: 215 White Horse Pike, Hadden Heights, NJ 08035, Contact: Elizabeth Vanek, Phone: (609) 547–6500.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/8/85.

(xvii)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ.

Address: 675 Hoes Ln., Piscataway, NJ 08854, Contact: Lee Laustsen, Phone: (201) 463–4500.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 7/1/86.

(xviii)(a) *Training Provider:* National Asbestos Council.

Address: 2786 North Decatur Rd., Decatur, GA 30033, Contact: Tom Laubenthal, Phone: (404) 292–0629.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 1/13/87.

(xix)(a) *Training Provider:* National Asbestos Training Institute.

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris Adler, Phone: (201) 918–0610.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/3/85.

(xx)(a) *Training Provider:* New York/New Jersey White Lung Assoc.

Address: 12 Warren St., New York, NY 10007, Contact: Beth Garner, Phone: (212) 619–2270.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/21/85.

(xxi)(a) *Training Provider:* Northeastern Analytical.

Address: 234 Route 70, Medford, NJ 08055, Contact: Skip Harris, Phone: (609) 654–1441.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/20/85.

(xxii)(a) *Training Provider:* Princeton Testing Laboratory.

Address: Rt. 1, Princeton Service Ctr., Princeton, NJ 08540, Contact: Anne Coogan, Phone: (609) 452–9050.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 5/8/85.

(9)(a) *State:* Oregon.

State Agency: State of Oregon Dept. of Environmental Quality, Address: 811 Southwest Sixth Ave., Portland, OR 97204, Contact: Wendy Simms, Phone: (503) 229–6414.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 9/23/88).
Contractor/Supervisor (full from 9/23/88).

Oregon Department of Environmental Quality, EPA-Approved Courses for Abatement Workers and Contractor/Supervisors

(i)(a) *Training Provider:* Hazcon, Inc.

Address: 16325 Southwest Boones Ferry Rd., Lake Oswego, OR 97035, Contact: Richard Krause, Phone: (503) 636–7371.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 9/23/88.

(ii)(a) *Training Provider:* Laborers'/AGC Apprenticeship & Training Program.

Address: Route 5, box 325A, Corvallis, OR 97330, Contact: Bill Duke, Phone: (503) 745–5513.

(b) *Approved Course:*

Abatement Worker.

(c) *Date of Certification:* 9/23/88.

(iii)(a) *Training Provider:* National Training Center, Inc.

Address: 123 Northwest 2nd Ave., Suite 309, Portland, OR 97209, Contact: Paul Franklin, Phone: (503) 224–8834.

(b) *Approved Course:*

Abatement Worker.

(c) *Date of Certification:* 9/23/88.

(10)(a) *State:* Rhode Island.

State Agency: State of Rhode Island & Providence Plantations, Department of Health, Address: 206 Cannon Bldg., 75 Davis St., Providence, RI 02908, Contact: James C. Hickey, Phone: (401) 277–3601.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 2/4/86).
Contractor/Supervisor (full from 2/4/86).

Rhode Island Department of Health, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* Analytical Testing Services.

Address: 180 Weeden St., Pawtucket, RI 02860, Contact: Robert Weisberg/Marie Stoeckel, Phone: (401) 723–7973.

(b) *Approved Course:*

Contractor/Supervisor.

(c) *Date of Certification:* 12/10/86.

(ii)(a) *Training Provider:* Community College of Rhode Island.

Address: 1762 Louisquisset Park, Lincoln, RI 02865, Contact: Americo Ottavino, Phone: (401) 333–7060.

(b) *Approved Course:*

Abatement Worker.

(c) *Date of Certification:* 11/13/87.

(iii)(a) *Training Provider:* Con-Test, Inc.

Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525–1198.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 3/1/86.

(iv)(a) *Training Provider:* Covino Environmental Consultants, Inc.

Address: 12 Walnut Hill Park, Woburn, MA 01801, Contact: Sam Covino, Phone: (617) 933–2555.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 1/15/87.

(v)(a) *Training Provider:* Georgia Tech Research Institute Environmental Health & Safety Division.

Address: Room 129 O'Keefe Building, Atlanta, GA 30332, Contact: Mark Demyanek, Phone: (404) 894–3806.

(b) *Approved Courses:*

Abatement Worker.
Contractor/Supervisor.

(c) *Date of Certification:* 7/22/88.

(vi)(a) *Training Provider:* Heat Frost and Asbestos Union Local #6.

Address: 1725 Revere Beach Pwy., Everett, MA 02149, Contact: Bud McCort, Phone: (617) 387–0809.

(b) *Approved Courses:*

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Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 7/8/86.
(vii)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Cummings Park, Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935–0664.
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 9/9/87.
(viii)(a) *Training Provider:* NAACO, Inc.
Address: 757 A Turnpike St., North Andover, MA 01845, Contact: Martin Levitt, Phone: (617) 681–8711.
(b) *Approved Course:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 4/28/88.
(ix)(a) *Training Provider:* National Asbestos Council.
Address: 2786 North Decatur Rd., Decatur, GA 30033, Contact: Tom Laubenthal, Phone: (404) 292–0629.
(b) *Approved Course:*
Abatement Worker.
(c) *Date of Certification:* 9/5/86.
(x)(a) *Training Provider:* National Surface Cleaning, Inc.
Address: 49 Danton Dr., Methuen, MA 01844, Contact: Anthony Mesiti, Phone: (617) 686–6417.
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 10/3/86.
(xi)(a) *Training Provider:* National Training Fund of Sheetmetal & Air Conditioning Industry/Workers' Institute for Safety & Health.
Address: 1126 16th St. NW., Washington, DC 20036, Contact: Matthew Gillan, Phone: (202) 887–1980.
(b) *Approved Course:*
Abatement Worker.
(c) *Date of Certification:* 2/2/88.
(xii)(a) *Training Provider:* New England Laborers' Training Trust Fund.
Address: 37 East St. Hopkinton, MA 01748, Contact: James Merloni, Phone: (617) 435–6316.
(b) *Approved Courses:*
Abatement Worker.
(c) *Date of Certification:* 7/1/86.
(xiii)(a) *Training Provider:* Quality Control Service, Inc.
Address: 1 Andrew Cir., North Andover, MA 01845, Contact: Ajay Pathak, Phone: (508) 475–0623.
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 4/27/88.
(xiv)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155. Contact: Brenda Cole, Phone: (617) 381–3531.
(b) *Approved Courses:*
Abatement Worker.
Contractor/Supervisor.
(c) *Date of Certification:* 7/1/86
(11)(a) *State:* South Dakota.
State Agency: Dept. of Water & Natural Resources, Division of Air Quality & Solid Waste. Address: Joe Foss Building, 523 East Capitol St., Pierre, SD 57501, Contact: Terry Jorgenson, Phone: (605) 773–3153.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 9/15/88).
Contractor/Supervisor (full from 9/15/88).
Inspector/Management Planner (full from 9/15/88).
Project Designer (full from 9/15/88).

South Dakota Department of Water & Natural Resources, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspector/Management Planners, and Project Designers

(i)(a) *Training Provider:* Black Hills Special Services Cooperative.
Address: P.O. Box 218, Sturgis, SD 57785, Contact: Jim Doolittle, Phone: (605) 347–4467.
(b) *Approved Courses:*
Contractor/Supervisor.
Inspector/Management Planner.
(c) *Date of Certification:* 9/14/88.
(ii)(a) *Training Provider:* South Dakota State University College of Engineering.
Address: P.O. Box 2218, Brookings, SD 57007–0597, Contact: James Ceglian, Phone: (605) 688–4101.
(b) *Approved Courses:*
Contractor/Supervisor.
Inspector/Management Planner.
(c) *Date of Certification:* 9/14/88.
(12)(a) *State:* Washington.
State Agency: State of Washington Dept. of Labor and Industries, Division of Industrial Safety and Health.
Address: 805 Plum SE, Olympia, WA 98504, Contact: Steve Cant, Phone: (206) 753–6497.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (interim from 11/21/85).
Contractor/Supervisor (interim from 11/21/85).

EPA-Approved Training Courses

Region I—Boston, MA

Regional Asbestos Coordinator: Don Mackie, EPA, Region I, Air and Management Division (APT–2311), JFK Federal Building, Boston, MA 02203. (617) 565–3273 (FTS) 835–3273.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region I training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Technology Corporation
Address: 1 Boston Pl, Suite 1025, Boston, MA 02108, Contact: Scott Keyes, Phone: (617) 723–3100.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/5/87).
(2)(a) *Training Provider:* Con-Test.
Address: P.O. Box 591, East Longmeadow, MA 01028. Contact: Brenda Bolduc, Phone: (413) 525–1198.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/2/87).
Abatement Worker Refresher Course (contingent from 10/2/87).
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (contingent from 10/2/87).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/2/87).
(3)(a) *Training Provider:* Environed Services, Inc.
Address: 25 Science Park, New Haven, CT 06515, Contact: Michael Carey, Phone: (203) 786–5580.
(b) *Approved Course:*
Abatement Worker (contingent from 7/8/88).
(4)(a) *Training Provider:* Environmental Training Services.
Address: 12 Walnut Hill Pk., Woburn, MA 01801, Contact: Kenneth P. Martin, Phone: (617) 398–0348.
(b) *Approved Course:*
Abatement Worker (contingent from 4/22/88).
(5)(a) *Training Provider:* Hygientics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: John W. Cowdery, Phone: (617) 723–4664.
(b) *Approved course:*
Inspector (contingent from 10/2/87).
(6)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Cummings Park, Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935–0664.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/28/88).
Abatement Worker Refresher Course (contingent from 6/23/88).
Contractor/Supervisor (full from 9/16/87).
Contractor/Supervisor Refresher Course (contingent from 6/23/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
(7)(a) *Training Provider:* International Association of Heat & Frost Insulators Asbestos Workers Union Local #33.
Address: 15 South Elm St., Wallingford, CT 06492, Contact: Joseph V. Soli, Phone: (203) 235–3547.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 7/27/88).
(8)(a) *Training Provider:* Maine Labor Group on Health, Inc.
Address: P.O. Box V, Augusta, ME 04330, Contact: Diana White, Phone: (207) 622–7823.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/2/87).
Abatement Worker Refresher Course (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (full from 3/26/88).
(9)(a) *Training Provider:* New England Laborers' Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748, Contact: Jim Merloni, Jr., Phone: (617) 435–6316.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/87).
Abatement Worker Refresher Course (contingent from 5/20/88).
(10)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381–3531.
(b) *Approved Courses:*
Contractor/Supervisor (interim from 9/1/85 to 5/31/87).
Contractor/Supervisor (full from 6/1/87).
Inspector/Management Planner (full from 11/16/87).

Region II—Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 10, (ES–PTS), Edison, NJ 08837. (201) 321–6668. (FTS) 340–6671.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* ATC Environmental, Inc.
Address: 104 East 25th St., New York, NY 10010, Contact: Anne Coogan, Phone: (212) 353–8280.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/88).
Contractor/Supervisor (contingent from 9/28/88).
Inspector/Management Planner (contingent from 6/5/88).
(2)(a) *Training Provider:* Abatement Safety Training Institute (ASTI).
Address: 323 West 39th St., New York, NY 10018, Contact: Jay Sall, Phone: (212) 629–8400.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/25/88).
Contractor/Supervisor (contingent from 10/25/88).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 3/21/88).
(3)(a) *Training provider:* Allwash of Syracuse, Inc.
Address: P.O. Box 605, Syracuse, NY 13201, Contact: Ronald D. Roy, Phone: (315) 454–4476.
(b) *Approved Course:*
Abatement Worker (contingent from 9/15/88).
(4)(a) *Training Provider:* Alternative Ways, Inc.
Address: 100 Essex Ave., Bellmawr, NJ 08031, Contact: Robert C. Hasiuk, Phone: (609) 933–3300.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/22/88).
Inspector/Management Planner (full from 5/26/88).
(5)(a) (b) *Training Provider:* Applied Respiratory Technology.
Address: P.O. Box 1132, Peekskill, NY 10566, Contact: Paul M. Madigan, Phone: (914) 431–6421.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker Refresher Course (contingent from 10/19/88).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).
(6)(a) *Training Provider:* Asbestos Environmental Institute.
Address: 18 East 41st St., Room 605, New York, NY 10017, Contact: David V. Chambers, Phone: (212) 679–8755.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/88).
Contractor/Supervisor (contingent from 10/18/88).
(7)(a) *Training Provider:* Asbestos Training Academy, Inc.
Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: Maryann Brady, Phone: (609) 486–9200.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Contractor/Supervisor (contingent from 9/15/88).
(8)(a) *Training Provider:* Asteco, Inc.
Address: P.O. Box 2204, Niagara University, Niagara, NY 14109, Contact: John Larson, Phone: (716) 297–5992.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Abatement Worker (full from 4/13/88).
(9)(a) *Training Provider:* Astoria Industries, Inc.
Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: John Gajeski, Phone: (718) 387–0011.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/18/88).
(10)(a) *Training Provider:* Buffalo Laborers' Training Fund.
Address: 481 Franklin St., Buffalo, NY 14202, Contact: Victor J. Sansanese, Phone: (716) 884–7157.
(b) *Approved Course:*
Abatement Worker (contingent from 6/30/88).
(11)(a) *Training Provider:* Building Laborers' Local Union #17

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Address: P.O. Box 252, Vails Gate, NY 12584, Contact: Victor P. Mandia, Phone: (914) 562–1121.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(12)(a) *Training Provider:* Calibrations, Inc.

Address: P.O. Box 11266, Albany, NY 12211, Contact: James Percent, Phone: (518) 318–1893.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/28/88).

Contractor/Supervisor (contingent from 9/28/88).

Inspector/Management Planner (contingent from 9/28/88).

Project Designer (full from 5/23/88).

(13)(a) *Training Provider:* Cayuga-Onondaga BOCES.

Address: 234 South Street Rd., Auburn, NY 13021, Contact: Peter Pirnie, Phone: (315) 253–0361.

(b) *Approved Course:*

Abatement Worker (contingent from 6/17/88).

(14)(a) *Training Provider:* Education & Training Fund Laborers' Local No. 91.

Address: 2556 Seneca Ave., Niagara Falls, NY 14305, Contact: Joel Cicero, Phone: (716) 297–6001.

(b) *Approved Courses:*

Abatement Worker (full from 7/27/87).

Abatment Worker Refresher Course (contingent from 10/20/88).

Abatement Worker Refresher Course (full from 10/22/88).

(15)(a) *Training Provider:* Environmental Training, Inc.

Address: 661 Fulton St., Brooklyn, NY 11217, Contact: Nelson Helu, Phone: (718) 625–4300.

(b) *Approved Course:*

Abatement Worker (contingent from 10/14/88).

(16)(a) *Training Provider:* Hunter College Asbestos Training Center.

Address: 425 East 25th St., New York, NY 10010, Contact: Jack Caravanos, Phone: (212) 481–7569.

(b) *Approved Courses:*

Abatement Worker (full from 7/17/88).

Contractor/Supervisor (full from 7/17/88).

(17)(a) *Training Provider:* Hygeia of New York, Inc.

Address: P.O. Box 206, 100 Oriskany Blvd., Whitesboro, NY 13492, Contact: Richard A. Gigliotti, Phone: (315) 736–8980.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).

Abatement Worker (full from 4/13/88).

(18)(a) *Training Provider:* Institute of Asbestos Awareness, Inc.

Address: 2 Heitz Pl. Hicksville, NY 11801, Contact: Henry R. Clegg, Phone: (516) 937–1600.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 9/28/88).

Inspector/Management Planner (contingent from 9/28/88).

(19)(a) *Training Provider:* Institute of Asbestor Technology Corp.

Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Doreen E. Bianchi, Phone: (315) 437–1307.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/88).

Abatement Worker (full from 6/27/88).

(20)(a) *Training Provider:* Kaselaan and D'Angelo Associates, Inc.

Address: 515 Grove St., Grove Plaza, Haddon Heights, NJ 08035, Contact: Lance Fredericks, Phone: (212) 213–1188.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 2/12/88).

Inspector/Management Planner (full from 3/7/88).

(21)(a) *Training Provider:* Laborers' Local Union No. 214 of Oswego, New York & Vicinity.

Address: 23 Mitchell St., Oswego, NY 13126, Contact: John T. Shannon, Phone: (315) 343–8553.

(b) *Approved Course:*

Abatement Worker (contingent from 9/1/88).

(b) *Approved Course:*

Abatement Worker (contingent from 9/1/88).

(22)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ Robert Wood Johnson Medical School.

Address: 675 Hoes Lane, Piscataway, NJ 08854–5635, Contact: Lee Laustsen, Phone: (201) 463–4500.

(b) *Approved Courses:*

Abatement Worker (full from 7/28/86).

Contractor/Supervisor (full from 7/28/86).

Inspector/Management Planner (full from 11/16/87).

(23)(a) *Training Provider:* Monroe Community College of Rochester, New York.

Address: P.O. Box 9720, Rochester, NY 14623–0720, Contact: Dusty Swanger, Phone: (716) 272–9839.

(b) *Approved Course:*

Abatement Worker (contingent from 10/7/88).

(24)(a) *Training Provider:* National Asbestos Training Institute (NATI).

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris L. Adler, Phone: (201) 918–0610.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 6/13/88).

(25)(a) *Training Provider:* National Institution Abatement Science & Technology (NIAST).

Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607–1780, Contact: Glenn W. Phillips, Phone: (800) 422–2836.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/8/88).

(26)(a) *Training Provider:* Niagara County Community College.

Address: 3111 Saunders Settlement Rd., Sanborn, NY 14132, Contact: Eugene Zinni, Phone: (716) 731–3271.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/88).

Abatement Worker (full from 1/25/88).

Contractor/Supervisor (contingent from 1/5/88).

Contractor/Supervisor (full from 2/19/88).

Inspector/Management Planner (contingent from 5/18/88).

(27)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: Box 4873, 1304 Buckley Rd., Syracuse, NY 13221, Contact: Edwin C. Tifft, Jr., Phone: (315) 451–4700.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 9/28/88).

(b) *Approved Course:*

Inspector/Management Planner (contingent from 9/28/88).

(28)(a) *Training Provider:* Princeton Testing Laboratory, Inc.

Address: 3490 US Route 1, Princeton Service Center, Princeton, NJ 08543, Contact: Anne Coogan, Phone: (609) 452–9050.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/21/88).

(29)(a) *Training Provider:* Safe Air Environmental Group, Inc.

Address: P.O. Box 457, Depew, NY 14043, Contact: Reza Farrokh, Phone: (800) 634–7234.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/88).

Abatement Worker (full from 4/4/88).

Contractor/Supervisor (contingent from 3/8/88).

Contractor/Supervisor (full from 4/4/88).

(30)(a) *Training Provider:* Testwell Craig Laboratories of Albany, Inc.

Address: 518 Clinton Ave., Albany, NY 12206, Contact: George W. Stowell, Phone: (518) 436–4114.

(b) *Approved Course:*

Abatement Worker (contingent from 10/21/88).

(31)(a) *Training Provider:* The Hazardous Waste Management Training Center of Buffalo, New York.

Address: 4454 Genesee St., Buffalo, NY 14225–5301, Contact: Denise Erb, Phone: (716) 634–3000.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

Contractor/Supervisor (contingent from 10/31/88).

(32)(a) *Training Provider:* Tri-Cities Laborers Training Program.

Address: 5 Lombard St., Schenectady, NY 12304, Contact: Joseph A. Zappone, Phone: (518) 370–3463.

(b) *Approved Courses:*

Abatement Worker (full from 3/21/88).

Abatement Worker Refresher Course (contingent from 10/26/88).

(33)(a) *Training Provider:* Union Occupational Health Center.

Address: 450 Grider St., Buffalo, NY 14215, Contact: Garath L. Tubbs, Phone: (716) 894–9366.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(34)(a) *Training Provider:* Utilicom Corporation.

Address: 7 Tobey Village Office Park, Pittsford, NY 14534, Contact: Dennis J. Money, Phone: (716) 381–8710.

(b) *Approved Course:*

Abatement Worker (contingent from 10/21/88).

(35)(a) *Training Provider:* Warren Mae Associates.

Address: RD 3 Box 390, Endicott, NY 13760, Contact: Janine C. Rogelstad, Phone: (607) 754–8386.

(b) *Approved Course:*

Abatement Worker (contingent from 8/11/88).

(36)(a) *Training Provider:* Western New York Council on Occupational Safety & Health (WNYCOSH).

Address: 450 Grider St., Buffalo, NY 14215, Contact: Jeanne Reilly, Phone: (716) 897–2110.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/28/87).

Abatement Worker (full from 1/24/88).

Region III—Philadelphia, PA

Regional Asbestos Coordinator: Carol Dougherty, EPA, Region III (3HW–40), 841 Chestnut Bldg., Philadelphia, PA 19107. (215) 597–9859, (FTS) 597–3160.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Aerosol Monitoring & Analysis, Inc.

Address: P.O. Box 687, Hunt Valley, MD 21030, Contact: D.R. Twilley, Phone: (301) 785–5615.

(b) *Approved Courses:*

Abatement Worker (full from 11/27/87).

Contractor/Supervisor (full from 11/27/87).

Inspector/Management Planner (contingent from 3/1/88).

Inspector/Management Planner (full from 3/31/88).

(2)(a) *Training Provider:* Alice Hamilton Center for Occupational Health, Committees on Occupational Safety & Health.

Address: 410 7th St., SE.—2nd Floor, Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543–0005.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/12/87).

Abatement Worker (full from 1/16/88).

Contractor/Supervisor (full from 1/16/88).

Inspector/Management Planner (contingent from 3/9/88).

Inspector/Management Planner (full from 6/20/88).

(3)(a) *Training Provider:* Asbestos Abatement Council of the Association of Wall & Ceiling Industries.

Address: 25 K St., NE., Suite 300, Washington, DC 20002, Contact: Carol Paquin, Phone: (202) 783–2924.

(b) *Approved Courses:*

Abatement Worker (full from 5/19/87).

Contractor/Supervisor (full from 5/19/87).

(4)(a) *Training Provider:* Asbestos Analytical Assoc., Inc.

Address: 3208–B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol A. Holden, Phone: (804) 397–0695.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).

Contractor/Supervisor (contingent from 10/7/88).

(5)(a) *Training Provider:* Asbestos Worker's Local #24.

Address: 6713 Ammendale Road, Beltsville, MD 20705, Contact: Thomas Haun, Phone: (301) 937–7636.

(b) *Approved Course:*

Abatement Worker (contingent from 9/15/88).

(6)(a) *Training Provider:* Asbestos Worker's Local #2.

Address: 146 East Mall Plaza, Carnegie, PA 15106, Contact: Terry Larkin, Phone: (412) 276–3711.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/28/88).

Abatement Worker Refresher Course (contingent from 9/28/88).

Contractor/Supervisor (contingent from 9/28/88).

(7)(a) *Training Provider:* Biospherics, Inc.

Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Norma D. Stanford, Phone: (301) 369–3900.

(b) *Approved Courses:*

Abatement Worker (full from 10/1/87).

Abatement Worker Refresher Course (contingent from 8/12/88).

Contractor/Supervisor (full from 10/1/87).

Contractor/Supervisor Refresher Course (contingent from 8/12/88).

Inspector/ Management Planner (contingent from 5/20/88).

Inspector/Management Planner (full from 8/15/88).

(8)(a) *Training Provider:* Brujos Scientific, Inc.

Address: 505 Drury Lane, Baltimore, MD 21229, Contact: Robert Olcrest, Phone: (301) 566–0859.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 9/29/88).

(9)(a) *Training Provider:* Center for Environmental & Occupational Training, Inc.

Address: 9 Orchard St., Pittsburgh, PA 15221, Contact: Mark Grumet, Phone: (412) 271–7335.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).

Contractor/Supervisor (contingent from 9/15/88).

(10)(a) *Training Provider:* Commonwealth of Pennsylvania Department of Public Welfare.

Address: P.O. Box 2675, Contact: Douglas R. Monn, Harrisburg, PA 17105–2675, Phone: (717) 783–9305.

(b) *Approved Course:*

Abatement Worker (contingent from 8/3/88).

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(11)(a) *Training Provider:* Delaware Technical & Community College.
Address: P.O. Box 897, Dover, DE 19903, Contact: David Stanley Phone: (302) 736–4621.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/20/88).
Contractor/Supervisor (contingent from 4/20/88).
(12)(a) *Training Provider:* Drexel University, Office of Continuing Professional Education.
Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert Ross, Phone: (215) 895–2156.
(b) *Approved Courses:*
Abatement Worker (full from 6/9/86).
Contractor/Supervisor (full from 6/9/86).
Inspector/Management Planner (contingent from 3/8/88).
(13)(a) *Training Provider:* Dynamac Corporation.
Address: 11140 Rockville Pike, Rockville, MD 20852, Contact: Richard A. De Blasio Phone: (301) 468–2500.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 9/1/88).
(14)(a) *Training Provider:* Eastern Environmental Services of the Northeast, Inc.
Address: RD #1, Route 309 North, P.O. Box B, Drums, PA 18222, Contact: Kenneth Skuba Phone: (717) 788–4155.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Contractor/Supervisor (contingent from 8/11/88).
(15)(a) *Training Provider:* Facilities Management Consultants, Inc.
Address: P.O. Box 309, Cecil, PA 15321, Contact: Edward Monaco, Phone: (412) 745–1770.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 6/13/88).
(16)(a) *Training Provider:* Galson Technical Services, Inc.
Address: 5170 Campus Dr. Suite 200, Plymouth Meeting, PA 19462, Contact: Janet Oppenheim-McMullen, Phone: (215) 834–7288.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 6/17/88).
(17)(a) *Training Provider:* Hazard Abatement Training Center.
Address: 101 East Lancaster Ave., Wayne, PA 19087; Contact: Robert Mautner, Phone: (215) 971–0830.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 4/12/88).
(18)(a) *Training Provider:* Ind. Tra. Co., Ltd.
Address: 18 South 22nd St., Richmond, VA 23223–7024, Contact: Vera Barley, Phone: (804) 648–7836.
(b) *Approved Courses:*
Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Contractor/Supervisor (full from 9/15/87).
Inspector/Management Planner (contingent from 9/16/88).
(19)(a) *Training Provider:* Jenkins Professionals, Inc.
Address: 5022 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529–3553.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/10/88).
Contractor/Supervisor (contingent from 2/10/88).
(20)(a) *Training Provider:* Laborer's District Council of Eastern Pennsylvania.
Address: 2163 Berryhill St., Harrisburg, PA 17104, Contact: Gerald D. Temarantz, Phone: (717) 564–2707.
(b) *Approved Course:*
Abatement Worker (contingent from 6/17/88).
(21)(a) *Training Provider:* Laborer's District Council of Western Pennsylvania.
Address: 1101 Fifth Ave., Pittsburgh, PA 15219, Contact: Paul Quarantillo, Phone: (412) 391–1712.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).
Contractor/Supervisor (contingent from 6/17/88).
(22)(a) *Training Provider:* Laborer's District Council, Education Training Fund of Philadelphia & Vicinity.
Address: 500 Lancaster Ave., Exton, PA 19341, Contact: Jerry Roseman, Phone: (215) 836–1175.
(b) *Approved Courses:*
Abatement Worker (interim from 11/1/87 to 12/14/87).
Abatement Worker (contingent from 2/18/88).
(23)(a) *Training Provider:* Medical College of Virginia Virginia Commonwealth University Dept. of Preventive Medicine.
Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786–9785.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor (full from 11/2/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Inspector/Management Planner (full from 2/29/88).
(24)(a) *Training Provider:* NOVATEC, Inc.
Address: 505 Drury Lane, Baltimore, MD 21229, Contact: Robert Olcerst, Phone: (301) 566–0859.
(b) *Approved Course:*
Abatement Worker (contingent from 2/2/88).
(25)(a) *Training Provider:* National Training Fund of Sheet Metal & Air Conditioning Industry/Workers' Institute for Safety & Health (WISH).
Address: 1126 Sixteenth St., NW., Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887–1980.
(b) *Approved Courses:*
Abatement Worker (interim from 11/1/86 to 8/1/87).
Abatement Worker (contingent from 9/18/87).
Abatement Worker (full from 9/18/87).
Contractor/Supervisor (interim from 11/1/86) to 8/1/87).
Contractor/Supervisor (contingent from 9/18/87).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor (contingent from 1/5/88).
Inspector (contingent from 3/14/88).
(29)(a) *Training Provider:* Paskal Environmental Services.
Address: 1400 South Joyce St., Suite C 1701, Arlington, VA 22202, Contact: Steven Paskal, Phone: (703) 920–6653.
(b) *Approved Course:*
Abatement Worker (contingent from 4/28/88).
(30)(a) *Training Provider:* Phoenix Safety Associates, Ltd.
Address: P.O. Box 545, Phoenixville, PA 19460, Contact: Janet Sharkey, Phone: (215) 935–1770.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 9/1/88).
(31)(a) *Training Provider:* Quality Specialities, Inc.
Address: P.O. Box 46, 109 South 15th Ave., Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 458–5855.
(b) *Approved Course:*
Abatement Worker (contingent from 8/8/88).
(32)(a) *Training Provider:* S.G. Brown, Inc.
Address: 2701 Sonic Dr., Virginia Beach, VA 23456, Contact: Sandra A. Akers, Phone: (804) 468–0027.
(b) *Approved Course:*
Abatement Worker (contingent from 7/12/88).
(33)(a) *Training Provider:* STI, Inc.
Address: P.O. Box 1029, Aberdeen, MD 21001, Contact: Terry F. Carraway, Jr., Phone: (301) 575–7844.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/88).
Contractor/Supervisor (contingent from 7/19/88).
(34)(a) *Training Provider:* Safety Management Institute.
Address: P.O. Box 2267, Altoona, PA 16603, Contact: Christopher Tate, Phone: (814) 946–8778.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/6/88).
Contractor/Supervisor (contingent from 1/6/88).
Inspector/Management Planner (contingent from 2/4/88).
Inspector/Management Planner (full from 2/8/88).
(35)(a) *Training Provider:* Temple University College of Engineering.
Address: 12th & Norris Sts., Philadelphia, PA 19122, Contact: Lester Levin, Phone: (215) 787–6479.
(b) *Approved Courses:*
Abatement Worker (full from 10/21/87).
Contractor/Supervisor (contingent from 9/28/87).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (full from 10/13/87).
(36)(a) *Training Provider:* United Environmental Systems, Inc.
Address: 14 Stella Dr., Churchville, PA 18966, Contact: Michael Yaron, Phone: (215) 829–9454.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/3/88).
Contractor/Supervisor (contingent from 6/30/88).
Inspector/Management Planner (contingent from 7/8/88).
(37)(a) *Training Provider:* University of Pittsburgh Graduate School of Public Health.
Address: Department of Industrial Environmental Health Sciences, Pittsburgh, PA 15261, Contact: Dietrich A. Weyel, Phone: (412) 624–3850.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/88).
Abatement Worker (full from 6/6/88).
Contractor/Supervisor (contingent from 3/6/88).
Contractor/Supervisor (full from 6/6/88).
(38)(a) *Training Provider:* Volz Environmental Services, Inc.
Address: 91 Pennsylvania Ave., Oakmont, PA 15139, Contact: George Bender, Phone: (412) 828–6666.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/3/88).
Contractor/Supervisor (contingent from 10/3/88).
Inspector/Management Planner (contingent from 10/3/88).
(39)(a) *Training Provider:* West Virginia Laborers' Training Trust Fund.
Address: One Manongalia St., Charleston, WV 25302, Contact: Wetzel Harvey, Phone: (304) 346–0581.
(b) *Approved Course:*
Abatement Worker (contingent from 8/29/88).
(40)(a) *Training Provider:* West Virginia University Extension Service.
Address: 812 Knapp Hall, Morgantown, WV 26506, Contact: Rudy Filek, Phone: (304) 293–5691.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 5/9/88).
(41)(a) *Training Provider:* White Lung Association.
Address: 1114 Cathedral St., Baltimore, MD 21201, Contact: James Fite, Phone: (301) 727–6029.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 6/6/88).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 6/6/88).
Inspector/Management Planner (contingent from 1/4/88).
Inspector/Management Planner (full from 2/15/88).
(42)(a) *Training Provider:* William L. James Enterprises, Inc.
Address: 710 Capouse Ave., Scranton, PA 18509, Contact: William L. James, Phone: (717) 346–2637.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/20/88).
Contractor/Supervisor (contingent from 4/20/88).

Region IV—Atlanta, GA

Regional Asbestos Coordinator: Jim Littell, EPA Region IV, 345 Courtland St., NE., (P&TSB), Atlanta, GA 30365. (404) 347–5053, (FTS) 257–5053.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* AHP Research, Inc.
Address: 1501 Johnsons Ferry Rd., Suite 230, P.O. Box 71926, Marietta, GA 30007, Contact: Dwight Brown, Phone: (404) 565–0061.
(b) *Approved Courses:*
Inspector/Management Planner (interim from 5/28/86 to 12/13/87).
Inspector/Management Planner (full from 12/14/87).
(2)(a) *Training Provider:* ATC, Inc.
Address: 1635 Pumphrey Ave, Auburn, AL 36830, Contact: David L. Elam, Jr., Phone: (205) 826–6100.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Inspector/Management Planner (contingent from 5/13/88.
Project Designer (contingent from 8/23/88).

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(3)(a) *Training Provider:* ATI Environmental Services.
Address: P.O. Box 3044, Louisville, KY 40201, Contact: Tim Ellis, Phone: (502) 589–5308.
(b) *Approved Courses:*
Abatement Worker (full from 1/12/88).
Contractor/Supervisor (full from 1/12/88).
(4)(a) *Training Provider:* Asbestos Consultants, Inc.
Address: P.O. Box 9054, Greensboro, NC 27408, Contact: Thomas Petty, Phone: (919) 275–3907.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 3/9/88).
(5)(a) *Training Provider:* Asbestos Consulting & Training.
Address: 903 Northwest 6th Ave., Fort Lauderdale, FL 33311, Contact: Jim Stump, Phone: (305) 524–7208.
(b) *Approved Course:*
Abatement Worker (full from 5/8/88).
(6)(a) *Training Provider:* Asbestos Workers Local Union #48 Joint Apprenticeship Training Program.
Address: 374 Maynard Terrace, SE., Suite 232, Atlanta, GA 30316, Contact: Timothy Fuller, Phone: (404) 373–8866.
(b) *Approved Courses:*
Abatement Worker (full from 5/4/88).
Contractor/Supervisor (full from 6/27/88).
Inspector (contingent from 9/26/88).
Inspector (full from 9/28/88).
(7)(a) *Training Provider:* Atlantic Environmental Consulting, Inc.
Address: 12200 Southwest 132 Ct., Miami, FL 33186, Contact: Stephan R. Schanamann, Phone: (305) 232–6364.
(b) *Approved Course:*
Abatement Worker (contingent from 8/11/88).
(8)(a) *Training Provider:* BCM Engineers, Inc.
Address: 108 St. Anthony St., P.O. Box 1784, Mobile, AL 36633, Contact: Gail Conner, Phone: (205) 433–3981.
(b) *Approved Courses:*
Inspector/Management Planner (full from 11/11/87).
Project Designer (full from 12/8/87).
(9)(a) *Training Provider:* DPC General Contractors, Inc.
Address: 250 Arizona Ave., NE., Bldg. A, Atlanta, GA 30307, Contact: Glen Kahler, Phone: (404) 373–0561.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/5/88).
Abatement Worker (full from 5/9/88).
(10)(a) *Training Provider:* ELB & Associates, Inc.
Address: 605 Eastowne Dr., Chapel Hill, NC 27514, Contact: Michael L. Cannon, Phone: (919) 493–4471.
(b) *Approved Course:*
Abatement Worker (contingent from 6/30/88).
(11)(a) *Training Provider:* Enviro Science, Inc.
Address: 3509 Hayworth Dr., Raleigh, NC 26709, Contact: Reginald C. Jordan, Phone: (919) 782–6527.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 9/15/88).
(12)(a) *Training Provider:* Georgia Tech. Research Institute Environmental Health & Safety Division.
Address: O'Keefe Building, Room 029, Atlanta, GA 30332, Contact: Robert D. Schmitter, Phone: (404) 894–3806.
(b) *Approved Courses:*
Contractor/Supervisor (interim from 6/1/85 to 5/10/87).
Contractor/Supervisor (full from 5/11/87).
Contractor/Supervisor Refresher Course (contingent from 9/23/87).
Contractor/Supervisor Refresher Course (full from 7/7/88).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (contingent from 10/24/88).
Project Designer (contingent from 6/1/88).
Project Designer (full from 6/7/88).
(13)(a) *Training Provider:* Great Barrier Insulation Co.
Address: Meador Warehouse, Western Dr., Mobile, AL 36607, Contact: Thomas Knotts, Phone: (205) 476–0350.
(b) *Approved Course:*
Abatement Worker (contingent from 5/13/88).
(14)(a) *Training Provider:* Harrison Contracting, Inc.
Address: 3845 Viscount #12, Memphis, TN 38118, Contact: Lee C. Thompson, Phone: (901) 795–0432.
(b) *Approved Course:*
Abatement Worker (contingent from 8/11/88).
(15)(a) *Training Provider:* Howard I. Henson Training Institute.
Address: 3592 Flat Shoals Rd., Decatur, GA 30034, Contact: Stephen Henson, Phone: (404) 243–5107.
(b) *Approved Course:*
Abatement Worker (full from 2/16/88).
(16)(a) *Training Provider:* International Association of Heat & Frost Insulator & Asbestos Workers Local Union #67.
Address: 7930 U.S. Hwy. 301 North, Tampa, FL 33637, Contact: Don Tucker, Phone: (813) 985–3067.
(b) *Approved Course:*
Abatement Worker (full from 8/23/88).
(17)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local #46.
Address: 7111 Wright Rd., Knoxville, TN 37931, Contact: John Wade, Phone: (615) 938–1274.
(b) *Approved Course:*
Abatement Worker (full from 10/11/88).
(18)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union #72.
Address: 2513 Adams St., Wilmington, NC 28401, Contact: Mike Harrell, Phone: (919) 343–1730.
(b) *Approved Course:*
Abatement Worker (full from 8/10/88).
(19)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union #96.
Address: 811 East 66th St., Savannah, GA 31405, Contact: Robert G. Greene, Phone: (912) 352–0014.
(b) *Approved Courses:*
Abatement Worker (full from 7/26/88).
Contractor/Supervisor (full from 9/13/88).
(20)(a) *Training Provider:* LCI Training Institute.
Address: 1432 Jocasta Dr., Lexington, KY 40502–5320, Contact: John F. Summersett, Phone: (606) 273–8881.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/9/88).
Contractor/Supervisor (contingent from 6/9/88).
(21)(a) *Training Provider:* Laborers' District Council of Southeast Florida.
Address: 799 Northwest 62nd St., Miami, FL 33510, Contact: Albert Houston, Phone: (305) 754–2659.
(b) *Approved Course:*
Abatement Worker (full from 3/15/88).
(22)(a) *Training Provider:* Mississippi State University.
Address: P.O. Drawer 5247, Mississippi State, MS 39762–5247, Contact: Margaret V. Naugle, Phone: (601) 325–2677.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 7/19/88).
Inspector/Management Planner (full from 6/20/88).

(23)(a) *Training Provider:* National Asbestos Council (NAC) Training Dept.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Zachary S. Cowan, III, Phone: (404) 292–0629.
(b) *Approved Courses:*
Abatement Worker (interim from 7/1/86 to 6/1/87).
Abatement Worker (full from 7/1/87).
(24)(a) *Training Provider:* Occupational Safety & Heath Educational Resource Center University of North Carolina at Chapel Hill.
Address: The Professional Village 346A, 109 Conner Dr., Suite 1101, Chapel Hill, NC 27514, Contact: Ted Williams, Phone: (919) 962–2101.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor (full from 6/6/88).
Inspector/Management Planner (full from 11/9/87).
(25)(a) *Training Provider:* PDR Engineers, Inc.
Address: 2000 Lindell Ave., Nashville, TN 37203, Contact: Ayaja K. Upaphyaya, Phone: (615) 298–2065.
(b) *Approved Course:*
Inspector (contingent from 9/15/88).
(26)(a) *Training Provider:* Practical Environmental Training Institute.
Address: 2711 Burch Dr., Charlotte, NC 28221, Contact: Dianne Christenbery, Phone: (704) 598–9588.
(b) *Approved Course:*
Abatement Worker (contingent from 10/14/88).
(27)(a) *Training Provider:* South Carolina Research and Training Center.
Address: 300 Gervais St., Annex III, Columbia, SC 29201, Contact: Jan Temple, Phone: (803) 737–2060.
(b) *Approved Courses:*
Contractor/Supervisor (full from 3/8/88).
Inspector/Management Planner (full from 3/1/88).
(28)(a) *Training Provider:* The Environmental Institute.
Address: COBB Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425–2000.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/10/87).
Abatement Worker (full from 5/2/88).
Contractor/Supervisor (contingent from 12/10/87).
Contractor/Supervisor (full form 2/1/88).
Contractor/Supervisor Refresher Course (full from 5/19/88).
Inspector/Management Planner (contingent from 12/10/87).
Inspector/Management Planner (full from 1/25/88).
Project Designer (contingent from 2/5/88).
Project Designer (full from 2/9/88).
(29)(a) *Training Provider:* University of Alabama, College of Continuing Studies, Division of Environmental & Industrial Programs.
Address: P.O. Box 2967, Tuscaloosa, AL 35486–2967, Contact: William Weems, Phone: (205) 348–3033.
(b) *Approved Courses:*
Contractor/Supervisor (full from 12/14/87).
Inspector/Management Planner (full from 5/16/88).
(30)(a) *Training Provider:* University of Alabama-Birmingham Deep South Center.
Address: Birmingham, AL 35294, Contact: Elizabeth Lynch, Phone: (205) 934–7032.
(b) *Approved Course:*
Inspector/Management Planner (full from 3/21/88).
(31)(a) *Training Provider:* University of Florida, TREEO Center.
Address: 3900 South West 63rd Blvd., Gainesville, FL 32608, Contact: Sandra Scaggs, Phone: (904) 392–9570.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (interim from 2/9/87 to 4/30/87).
Contractor/Supervisor (full from 5/1/87).
Inspector/Management Planner (interim from 1/27/87 to 12/14/87).
Inspector/Management Planner (contingent from 2/5/88).
Inspector/Management Planner (full from 2/15/88).
(32)(a) *Training Provider:* University of Kentucky, College of Engineering Continuing Education.
Address: 305 Slone Bldg., Lexington, KY 40506–0053, Contact: A.B. Broderson, Phone (606) 257–4300.
(b) *Approved Course:*
Inspector/Management Planner (full from 2/15/88.
(33)(a) *Training Provider:* Williams and Associates, Inc., Environmental Training Center.
Address: 460 Tennessee St., Memphis, TN 38103, Contact: Ruth Williams, Phone: (901) 521–9030.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 4/18/88).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 4/18/88).

Region V—Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA Region V, 230 S. Dearborn St., (T–SPTB–7), Chicago, IL 60604. (312) 886–6003, (FTS) 886–6003.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* Abatement Training Institute, Inc.
Address: P.O. Box 26835, Columbus, OH 43226–0835, Contact: Steven Ritchie, Phone: (614) 267–0908.
(b) *Approved Course:*
Abatement Worker (contingent from 3/1/88).
(2)(a) *Training Provider:* Advanced Environmental, Inc.
Address: 1216 Selby Ave., St. Paul, MN 55104, Contact: James D. Risimini, Phone: (612) 641–1101.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88
Contractor/Supervisor (contingent from 7/27/88).
Inspector/Management Planner (contingent from 7/27/88).
(3)(a) *Training Provider:* Affiliated Environmental Services, Inc.
Address: 3606 Venice Rd., Sandusky, OH 44870, Contact: Jack Dauch, Phone: (419) 627–1976.
(b) *Approved Course:*
Abatement Worker (contingent from 7/15/88).
(4)(a) *Training Provider:* Alderink & Associates, Inc.
Address: 3221 Three Mile Rd., NW., Grand Rapids, MI 49504, Contact: Deborah C. Alderink, Phone: (616) 791–0730.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/15/88).
Abatement Worker (full from 9/6/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 9/6/88).

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Contractor/Supervisor (contingent from 7/15/88).
Contractor/Supervisor (full from 9/19/88).

(5)(a) *Training Provider:* American Environmental Institute.
Address: Main Campus, Plaza West, Cleveland, OH 44116, Contact: Richard H. Moran, Phone: (216) 333–6225.

(b) *Approved Course:*
Contractor/Supervisor (contingent from 9/1/88).

(6)(a) *Training Provider:* Applied Environmental Sciences, Inc.
Address: Minneapolis Business & Technology Center, 511 11th Ave. So., Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 339–5559.

(b) *Approved Course:*
Abatement Worker (contingent from 6/30/88).

(7)(a) *Training Provider:* Aries Environmental Services, Ltd.
Address: 1550 Hubbard, Batavia, IL 60510, Contact: Dennis Cesarotti, Phone: (312) 879–3006.

(b) *Approved Course:*
Abatement Worker (contingent from 6/13/88).

(8)(a) *Training Provider:* Asbestos Abatement, Inc.
Address: 2420 N. Grand River, Lansing, MI 48906, Contact: Shawn O'Callaghan, Phone: (517) 323–0053.

(b) *Approved Course:*
Abatement Worker (contingent from 7/6/88).

(9)(a) *Training Provider:* Asbestos Cousulting Group, Inc.
Address: P.O. Box 3157, La Crosse, WI 54602–3157, Contact: Larry Lienau, Phone: (608) 782–1670.

(b) *Approved Courses:*
Contract/Supervisor (contingent from 7/12/88).
Inspector/Management Planner (contingent from 10/14/88).

(10)(a) *Training Provider:* Asbestos Management, Inc. (AMI)
Address: 36700 South Huron, Suite 104, New Boston, MI 48164, Contact: Kary S. Amin, Phone: (313) 961–6135.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88.
Contractor/Supervisor (contingent from 1/5/88).
Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/1/88).

(11)(a) *Training Provider:* Asbestos Services, Inc.
Address: P.O. Box 141, Baroda, MI 49101, Contact: Dennis W. Calkins, Phone: (616) 422–2174.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(12)(a) *Training Provider:* Asbestos Training & Employment, Inc. (ATEI)
Address: 809 East 11th St., Michigan City, IN 46360, Contact: Bruce H. Connell, Phone: (212) 874–7348.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/15/88).
Abatement Worker (full from 5/18/88).
Abatement Worker Refresher Course (contingent from 12/11/88).
Contractor/Supervisor (contingent from 1/19/88).
Contractor/Supervisor (full from 6/20/88).
Contractor/Supervisor Refresher Course (contingent from 12/11/88).
Inspector/Management Planner (contingent from 5/13/88).
Inspector/Management Planner Refresher Course (contingent from 12/11/88).

(13)(a) *Training Provider:* Asbestos Worker Council.
Address: 1216 East McMillian St., Room 107, Cincinnati, OH 45206, Contact: Richard Black, Phone: (513) 221–5969.

(b) *Approved Course:*
Abatement Worker (contingent from 10/31/88).

(14)(a) *Training Provider:* Astesco Laboratory Inc.
Address: RR 1 Box 328, Reelsville, IN 46171, Contact: Donald Allen, Phone: (317) 672–8400.

(b) *Approved Course:*
Abatement Worker (contingent from 7/6/88).

(15)(a) *Training Provider:* BDN Industrial Hygiene Consultants.
Address: 8105 Valleywood Lane, Portage, MI 49002, Contact: Keith Nichols, Phone: (616) 329–1237.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Contractor/Supervisor (contingent from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 1/15/88).
Inspector/Management Planner (full from 2/15/88).

(16)(a) *Training Provider:* Carnow, Conibear & Associates, Ltd.
Address: 333 West Wacker Dr., Suite 1400, Chicago, IL 60606, Contact: Victoria Musselman, Phone: (312) 782–4486.

(b) *Approved Courses:*
Abatement Worker (full from 2/29/88).

(17)(a) *Training Provider:* Clayton Environmental Consultants, Inc.
Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Michael Coffman, Phone: (313) 344–1770.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/16/88).

(18)(a) *Training Provider:* Columbus Paraprofessional Institute Battelle Columbus Division.
Address: 505 King Ave., Columbus, OH 43201–2693, Contact: John Simpkins, Phone: (614) 424–6424.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/4/88).
Inspector/Management Planner (full from 4/11/88).

(19)(a) *Training Provider:* Daniel J. Hartwig Associates, Inc.
Address: P.O. Box 31, Oregon, WI 53575–0031, Contact: Alice J. Seeliger, Phone: (608) 835–5781.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Inspector/Management Planner (contingent from 2/9/88).
Inspector/Management Planner (full from 4/18/88).

(20)(a) *Training Provider:* Danto Environmental Engineering Education Corporation.
Address: 7471–H Tyler Blvd., Mentor, OH 44060, Contact: Harold N. Danto, Phone: (216) 942–4800.

(b) *Approved Course:*
Abatement Worker (contingent from 10/7/88).

(21)(a) *Training Provider:* Darla Environmental, Inc.
Address: 1220 Richards St., Suite H, Joliet, IL 60433–2758, Contact: Salvador Garcia, Phone: (815) 722–5561.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(22)(a) *Training Provider:* DeLisle Consulting & Laboratories, Inc.

Address: 6946 East North Ave., Kalamazoo, MI 49001, Contact: Mark DeLisle, Phone: (616) 343–9098.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Contractor/Supervisor (contingent from 10/5/87).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 9/1/88).
Inspector/Management Planner (contingent from 12/22/87).
Inspector/Management Planner (full from 1/27/88).

(23)(a) *Training Provider:* Dore & Associates Contracting, Inc.
Address: 900 Harry S. Truman Parkway, P.O. Box 146, Bay City, MI 48707, Contact: Joseph Goldring, Phone: (517) 684–8358.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/6/88).
Abatement Worker (full from 7/25/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/31/88).

(24)(a) *Training Provider:* Environmental Abatement Systems, Inc.
Address: 6416 Ellsworth, Detroit, MI, 48238 Contact: Farrell Davis, Phone: (313) 345–3154.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(25)(a) *Training Provider:* Environmental Professionals, Inc.
Address: 1405 Newton St., Tallmadge, OH 44278, Contact: Timothy E. Walsh, Phone: (216) 633–4435

(b) *Approved Course:*
Contractor/Supervisor (contingent from 2/2/88).

(26)(a) *Training Provider:* Escor, Inc.
Address: 540 Frontage Rd., Suite 211, Northfield, IL, 60093 Contact: R. Eric Zimmerman, Phone: (312) 501–2190

(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88)
Inspector/Management Planner (contingent from 8/12/88).
Inspector/Management Planner Refresher Course (contingent from 9/1/88).

(27)(a) *Training Provider:* Foley Occupational Health Consulting
Address: 4060 Echo Cove, Manitou Beach, MI 49253, Contact: E.D. Foley, Jr., Phone: (517) 547–7399.

(b) *Approved Course:*
Contractor/Supervisor (contingent from 2/4/88).

(28)(a) *Training Provider:* G & H Contracting Associates, Ltd.
Address: 300 Acorn St., P.O. Box 49080, Plainwell, MI 49080, Contact: Jeffrey C. Gren, Phone: (616) 685–1606.

(b) *Approved Course:*
Abatement Worker (contingent from 10/7/88).

(29)(a) *Training Provider:* Gandee & Associates, Inc.
Address: 4488 Mobile Dr., Columbus, OH 43211, Contact: Kurt Varga, Phone: (614) 459–8338.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor (full from 8/29/88).

(30)(a) *Training Provider:* Hazardous Materials Institute, Inc.
Address: 540 Frontage Rd., Suite 211, Northfield, IL 60093, Contact: Jim Viskocil, Phone: (312) 501–2194.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/3/88).
Inspector/Management Planner Refresher Course (contingent from 9/15/88).
Project Designer (contingent from 10/14/88).

(31)(a) *Training Provider:* Heat and Frost Insulators Local #17 Apprentice Training Center.
Address: 3850 South Racine Ave., Chicago, IL 60609, Contact: John P. Shine, Phone: (312) 247–1007.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 11/8/87).
Abatement Worker Refresher Course (contingent from 10/14/88).
Contractor/Supervisor (contingent from 3/21/88).
Contractor/Supervisor (full from 3/22/88).

(32)(a) *Training Provider:* I.P.C. Chicago.
Address: 4309 West Henderson, Chicago, IL 60641, Contact: Robert G. Cooley, Phone: (312) 975–3495.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 7/5/88).

(33)(a) *Training Provider:* Illinois Laborers' & Contractors' Training Program, Training Trust Fund.
Address: Rural Route 3, Mount Sterling, IL 62353, Contact: Tony Romolo, Phone: (217) 773–2741.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/6/88).
Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Contractor/Supervisor (contingent from 2/9/88).
Contractor/Supervisor (full from 3/14/88).

(34)(a) *Training Provider:* Indiana Laborers' Training Trust Fund
Address: P.O. Box 758, Bedford, IN 47421, Contact: Richard Fassino, Phone: (812) 279–9751.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/87).
Abatement Worker (full from 2/22/88).
Abatement Worker (contingent from 12/11/87).
Abatement Worker (full from 2/22/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Contractor/Supervisor (contingent from 6/2/88).
Contractor/Supervisor (full from 8/15/88).

(35)(a) *Training Provider:* Indianapolis Center For Advanced Research, Inc.
Address: 611 North Capitol Ave., Indianapolis, IN 46204,
Contact: William Berdnek, Jr.,
Phone: (317) 262–5027.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/13/88).
Contractor/Supervisor (contingent from 9/15/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 6/6/88).

(36)(a) *Training Provider:* Industrial Environmental Consultants.
Address: 2875 Northwind, Suite 113, East Lansing, MI 48823, Contact: James C. Fox, Phone: (517) 332–7026.

(b) *Approved Courses:*
Abatement Worker (contingent from 5/9/88).

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Contractor/Supervisor (contingent from 8/3/88).
Inspector/Management Planner (contingent from 3/1/88).

(37)(a) *Training Provider:* Institute for Environmental Assessment.
Address: 2829 Verndale Ave., Anoka, MN 55303, Contact: William Sloan, Phone: (612) 427–5310.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(34)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local #34.
Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee A. Houske, Phone: (612) 332–3216.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/8/88).
Contractor/Supervisor (contingent from 9/1/88).

(39)(a) *Training Provider:* Kemron Environmental Services.
Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018, Contact: Thomas J. Martin, Phone: (313) 626–2426.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/13/88).
Inspector/Management Planner (contingent from 3/25/88).

(40)(a) *Training Provider:* Laborers' Training & Education Center.
Address: 400 East Ogden Ave., Westmont, IL 60559, Contact: Anthony Solano, Phone: (312) 323–8999.
(b) *Approved Course:*
Abatement Worker (contingent from 9/16/88).

(41)(a) *Training Provider:* Lepi Enterprises, Inc.
Address: 917 Main St., Dresden, OH 43821, Contact: James R. Lepi, Phone: (614) 754–1162.
(b) *Approved Course:*
Abatement Worker (contingent from 7/6/88).

(42)(a) *Training Provider:* Lyle Laboratories.
Address: 1327 King Ave., Columbus, OH 43212, Contact: Terri L. Williams, Phone: (614) 488–1022.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/21/88).
Inspector/Management Planner (contingent from 6/30/88).

(43)(a) *Training Provider:* Mark A. Kriesemint, Ltd.
Address: P.O. Box 06198, Chicago, IL 60606–01–98, Contact: Mark Kriesemint, Phone: (312) 463–0206.
(b) *Approved Course:*
Abatement Worker (contingent from 10/31/88).

(44)(a) *Training Provider:* Metropolitian Detroit AFL–CIO Training Center.
Address: 14333 Prairie, Detroit, MI 48238, Contact: Richard M. King, Phone: (313) 863–1000.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(45)(a) *Training Provider:* Michigan Laborers Training Institute.
Address: 11155 South Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625–4919.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/9/88).
Abatement Worker (full from 5/2/88).
Contractor/Supervisor (contingent from 4/6/88).
Contractor/Supervisor (full from 5/6/88).

(46) (a) *Training Provider:* Midwest Center for Occupational Health & Safety.
Address: 640 Jackson St., St. Paul, MN 55101, Contact: Ruth K. McIntyre, Phone: (612) 211–3992.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/16/88).
Contractor/Supervisor (contingent from 9/16/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 5/23/88).

(47)(a) *Training Provider:* Midwest Health Training.
Address: 3920 Central, Western Springs, IL 60558, Contact: H.C. Brown, Phone: (312) 246–9527.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/25/88).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 9/15/88).

(48)(a) *Training Provider:* Moraine Valley Community College.
Address: 10900 South 88th Ave., Palos Hills, IL 60465 Contact: Richard Kukac, Phone: (312) 974–4300.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 8/12/88).
Inspector/Management Planner (full from 2/9/88).

(49)(a) *Training Provider:* National Institute for Abatement Education.
Address: 5501 Williamsburg Way #305, Madison, WI 53719, Contact: Dean Leischow, Phone: (608) 271–7281.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/15/88).
Contractor/Supervisor (contingent from 7/15/88).

(50)(a) *Training Provider:* Northern Safety Consultants, Inc.
Address: 1406 Lincoln Ave., Marquette, MI 49855, Contact: Christopher M. Baker, Phone: (906) 228–5161.
(b) *Approved Courses:*
Abatement Worker (full from 5/31/88).
Contractor/Supervisor (full from 5/31/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).

(51)(a) *Training Provider:* Nova Environmental Services.
Address: Suite 420 Hazeltine Gates, 1107 Hazeltine Blvd. Chaska, MN 55318, Contact: Deborah S. Green, Phone (612) 448–9393.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/24/87).
Contractor/Supervisor (contingent from 9/1/88).

(52)(a) *Training Provider:* Nova Environmental, Inc.
Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105, Contact: Kary S. Amin, Phone: (313) 930–0995.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/13/88).
Contractor/Supervisor (contingent from 10/7/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Inspector Management Planner (contingent from 10/7/88).

(53)(a) *Training Provider:* Ohio Asbestos Workers Council.
Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Larry Briley, Phone: (513) 221–5969.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/17/88).
Contractor/Supervisor (full from 5/12/88).

(54)(a) *Training Provider:* Ohio Laborer's Training & Upgrading Trust Fund.
Address: 25721 Coshocton Rd., P.O. Box 218, Howard, OH 43028, Contact: John L. Railing, Phone (614) 599–7915.

(b) *Approved Courses:*
Abatement Worker (full from 4/11/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Contractor/Supervisor (contingent from 7/27/88).

(55)(a) *Training Provider:* Professional Asbestos Labor Services, Inc.
Address. 1501 Martin Luther King Dr., Gary, IN 46407, Contact: George Bradley, Phone: (219) 883–8541.
(b) *Approved Course:*
Abatement Worker (contingent from 5/18/88).

(56)(a) *Training Provider:* Professional Service Industries, Inc.
Address: 510 East 22nd St., Lombard, IL 60148, Contact: W.K. Swartzendruber, Phone: (312) 691–1490.
(b) *Approved Courses:*
Inspector (contingent from 3/15/88).
Inspector (full from 5/3/88).

(57) (a) *Training Provider:* S.Z. Mansdorf & Assoc., Inc.
Address: 2000 Chestnut Blvd., Cuyahoga Falls, OH 44223–1323, Contact: A.L. Lott, Phone: (216) 928–5434.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 1/15/88).
Contractor/Supervisor (full from 1/26/88).
Inspector/Management Planner (contingent from 6/24/88).

(58) (a) *Training Provider:* Safety Training of Illinois.
Address: 1515 South Park, Springfield, IL 62704, Contact: S. David Farris, Phone: (217) 787–9091.
(b) *Approved Course:*
Abatement Worker (full from 12/18/87).

(59) (a) *Training Provider:* South East Michigan Committee on Occupational Safety and Health (SEMCOSH).
Address: 1550 Howard St., Detroit, MI 48216, Contact: Barbara Boylan, Phone (313) 961–3345.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/87).
Abatement Worker (full from 4/25/88).

(60) (a) *Training Provider:* Testing Engineers & Consultants, Inc.
Address: 1333 Rochester Rd. P.O. Box 249, Troy, MI 48099, Contact: Karl D. Agee, Phone: (313) 588–6200).
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 8/22/88).

(61) (a) *Training Provider:* The Safer Foundation.
Address: 571 W. Jackson Blvd., Chicago, IL 60606, Contact: Carol Bentley/Phil Bergmann, Phone: (312) 922–2200.
(b) *Approved Course:*
Abatement Worker (contingent from 9/15/88).

(62) (a) *Training Provider:* Trust Thermal Systems.
Address: 10445 Wright Rd., Eagle, MI 48822, Contact: Thomas Lowe, Phone: (517) 626–6791.

(63) (a) *Training Provider:* University of Cincinnati Medical Center Institute of Environmental Health Kettering Laboratory.
Address: 3223 Eden Ave., ML 056, Cincinnati, OH 45267–0056, Contact: Susan L. Millman, Phone: (513) 558–1720.
(b) *Approved Courses:*
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Inspector/Management Planner (full from 11/16/87).

(64) (a) *Training Provider:* University of Illinois at Chicago M.A.I.C. School of Public Health (m/c 922).
Address: 2121 West Taylor St. #416, Chicago, IL 60612, Contact: John J. Gammuto, Phone: (312) 996–8494.
(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 4/5/88).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner (full from 10/21/87).

(65) (a) *Training Provider:* University of Wisconsin-Extension.
Address: 422 Lowell Hall, 610 Langdon St., Madison, WI 53703, Contact: Neil DeClercq, Phone: (608) 262–2111.
(b) *Approved Courses:*
Abatement Worker (full from 12/7/87).
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor (full from 9/1/88).
Inspector/Management Planner (contingent from 2/2/88).
Inspector/Management Planner (full from 2/22/88).
Project Designer (contingent from 9/15/88).

(66) (a) *Training Provider:* William E. Fink & Associates.
Address: 3695 Indian Run, Suite #5, Canfield, OH 44406, Contact: William E. Fink, Phone: (216) 533–6299.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker Refresher Course (contingent from 8/11/88).

Region VI—Dallas, TX

Regional Asbestos Coordinator: John West, 6t–Pt, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. (214) 655–7244, (FTS) 255–7244.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* American Specialty Contractors, Inc.
Address: P.O. Box 66375, Baton Rouge, LA 70896, Contact: Kurt Jones, Phone: (504) 926–9624.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/26/88).
Contractor/Supervisor (contingent from 8/26/88).

(2)(a) *Training Provider:* Asbestos Surveys and Training, Inc.
Address: Three Riverway, Suite 760, Houston, TX 77056, Contact: Jesse Ashley, Phone: (713) 623–0025.
(b) *Approved Course:*
Abatement Worker (full from 10/22/87).

(3)(a) *Training Provider:* CERL, Inc.
Address: 1611 Calle Lorca, Suite B, Santa Fe, NM 87501, Contact: Michael Curtis, Phone: (505) 988–4143.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 4/22/88).
Inspector/Management Planner (contingent from 4/22/88).

(4)(a) *Training Provider:* Carpenters Apprenticeship Training School
Address: 8505 Glen Vista, Houston, TX 77061, Contact: S.C. Strunk, Jr., Phone: (713) 641–1011.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/8/88).
Abatement Worker Refresher Course (contingent from 7/8/88).

(5)(a) *Training Provider:* Certified Asbestos Training Institute, Inc.
Address: 4202 Argentina Cir., Pasadena, TX 77504, Contact: Maurice Hoffpowier, Phone: (713) 487–3155.
(b) *Approved Course:*

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Abatement Worker (contingent from 4/20/88).

(6)(a) *Training Provider:* Critical Environmental Training Center, Inc.

Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Charles M. Flanders, Phone: (713) 921–8921.

(b) *Approved Courses:*

Abatement Worker (full from 4/14/88).
Abatement Worker Refresher Course (full from 10/27/88).
Contractor/Supervisor (full from 3/7/88).
Contractor/Supervisor Refresher Course (full from 10/27/88).
Inspector/Management Planner (contingent from 4/15/88).
Inspector/Management Planner (full from 10/27/88).

(7)(a) *Training Provider:* Environmental Institute

Address: P.O. Box 270278, Dallas, TX 75227, Contact: R. Michael Wheeler, Phone: (214) 324–0774.

(b) *Approved Courses:*

Contractor/Supervisor (full from 1/11/88).
Inspector/Management Planner (full from 1/25/88).

(8)(a) *Training Provider:* Environmental Monitoring Service, Inc. (EMS)

Address: 13008 Amarillo Ave., Austin, TX 78729, Contact: Rick Pruett, Phone: (512) 335–9116.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 7/27/88).

(9)(a) *Training Provider:* Fort Worth Independent School District.

Address: 3210 West Lancaster, Fort Worth, TX 76107, Contact: H.D. Duncan, Phone: (817) 336–8311.

(b) *Aproved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

(10)(a) *Training Provider:* GEBCO Associates, Inc.

Address: 1501 Norwood, Suite 142, Hurst, TX 76054–3638, Contact: Ed Kirch, Phone: (817) 268–4006.

(b) *Approved Courses:*

Abatement Worker (interim from 4/15/87 to 8/19/87).
Abatement Worker (full from 8/20/87).
Abatement Worker Refresher Course (contingent from 5/16/88).
Contractor/Supervisor (contingent from 3/15/88).
Contractor/Supervisor Refresher Course (contingent from 7/27/88).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/88).

(11)(a) *Training Provider:* International Association of Heat & Frost Insulators, Asbestos Workers Union Local #22.

Address: 3219 Pasadena Blvd., Pasadena, TX 77503, Contact: Owen Tilley, Phone: (713) 473–0888.

(b) *Approved Courses:*

Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 3/22/87).
Abatement Worker Refresher Course (contingent from 10/5/87).
Contractor/Supervisor (contingent from 4/22/88).

(12)(a) *Training Provider:* Lafayette Parish School Board Asbestos Training Program.

Address: P.O. Drawer 2158, Lafayette, LA 70502, Contact: Salvador E. Longo, Phone: (504) 887–3740.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 7/21/88).

(13)(a) *Training Provider:* Lamar University, Hazardous Materials Program.

Address: P.O. Box 10008, Beaumont, TX 77710, Contact: Marion Foster, Phone: (409) 880–2369.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/19/88).
Contractor/Supervisor (contingent from 5/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/24/88).

(14)(a) *Training Provider:* Little-Tex Insulation Co., Inc.

Address: 911 North Frio St., San Antonio, TX 78207, Contact: Dan Juepe, Phone: (512) 222–8094.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/1/88).
Contractor/Supervisor (contingent from 8/1/88).

(15)(a) *Training Provider:* Louisiana Laborers Union-AGC Training Fund.

Address: P.O. Box 376, Livonia, LA 70755–0376, Contact: Jamie Peers, Phone: (504) 637–2311.

(b) *Approved Course:*

Abatement Worker (contingent from 7/15/88).

(16)(a) *Training Provider:* Louisiana State University Agricultural and Mechanical College.

Address: 361 Pleasant Hall, Baton Rouge, LA 70803–1520, Contact: George Smith, Phone: (504) 388–6621.

(b) *Approved Courses:*

Abatement Worker (full from 1/1/88).
Contractor/Supervisor (contingent from 10/6/87).
Contractor/Supervisor (full from 4/7/88).
Inspector/Management Planner (full from 1/18/88).

(17)(a) *Training Provider:* Meador-Wright & Associates, Inc.

Address: 5520 LBJ Freeway, Suite 204, Dallas, TX 75240, Contact: Paul Teel, Phone: (214) 788–1804.

(b) *Approved Course:*

Inspector (contingent from 7/27/88).

(18)(a) *Training Provider:* Moore-Norman Area Vocational Training School.

Address: 4701 12th Ave., NW., Norman, OK 73069, Contact: Frank Coulter, Phone: (405) 364–5763.

(b) *Approved Courses:*

Abatement Worker (full from 3/3/86).
Contractor/Supervisor (full from 3/3/86).
Inspector/Management Planner (contingent from 1/25/88).
Inspector/Management Planner (full from 4/4/88).

(19)(a) *Training Provider:* Nelson/Imel, Inc.

Address: 3900 Morrison Cir., Norman, OK 73072, Contact: Deborah Nelson, Phone: (405) 364–3278.

(b) *Approved Course:*

Abatement Worker (contingent from 7/27/88).

(20)(a) *Training Provider:* Occonor-McMahon, Inc.

Address: 1210 Riverbend Dr., Suite 202, Dallas, TX 75247, Contact: James M. Walley, Phone: (214) 638–7322.

(b) *Approved Course:*

Abatement Worker (contingent from 7/27/88).

(21)(a) *Training Provider:* Occupational Safety Training Institute.

Address: 9000 West Bellfort, Suite 440, Houston, TX 77031, Contact: Eva Bonilla, Phone: (713) 270–6882.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 7/27/88).
Inspector/Management Planner (contingent from 9/15/88).

(22)(a) *Training Provider:* Region 6 Environmental Training.

Address: 13900 I.H. 35 North, Suite 2–1, Austin, TX 78728, Contact: Andrew Ramvel, Phone: (512) 251–3637.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 7/27/88).

(23)(a) *Training Provider:* SETCO Safety, ET.

Address: 1308 Upland, Houston, TX 77043, Contact: James Hoffpauir, Phone: (713) 468–4393.

(b) *Approved Course:*

Abatement Worker (contingent from 7/27/88).

(24)(a) *Training Provider:* Safety & Health Research Institute.

Address: 500 One Gallery Tower, 13355 Noel Rd., P.O. Box 612245, Dallas, TX 75261, Contact: Ted Davis, Phone: (214) 3536.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/12/88).
Contractor/Supervisor (contingent from 9/12/88).
Inspector/Management Planner (contingent from 9/12/88).

(25)(a) *Training Provider:* Southwest Environmental Institute.

Address: P.O. Box 295, Abilene, TX 79604, Contact: Tom Dye, Phone: (915) 691–0189.

(b) *Approved Course:*

Abatement Worker (contingent from 7/27/88).

(26)(a) *Training Provider:* Texas Engineering Extension Service Building Codes Inspection Training Div.

Address: Texas A & M University System, College Station, TX 77843–8000, Contact: Richard Thompson, Phone: (409) 845–6682.

(b) *Approved Courses:*

Abatement Worker (full from 9/28/87).
Contractor/Supervisor (interim from 5/26/86 to 9/13/87).
Contractor/Supervisor (full from 9/14/87).
Inspector/Management Planner (full from 10/19/87).

(27)(a) *Training Provider:* Tulane University, School of Public Health and Tropical Medicine, Dept. of Environmental Health Sciences.

Address: 1430 Tulane Ave., New Orleans, LA 70112, Contact: Shau-Wong-Chang, Phone: (504) 588–5374.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 3/17/87 to 9/14/87).
Contractor/Supervisor (full from 9/15/87).
Inspector/Management Planner (contingent from 5/20/88).

(28)(a) *Training Provider:* University of Arkansas at Little Rock Biology Department.

Address: 33rd & University, Little Rock, AR 72204, Contact: Phyllis Moore, Phone: (501) 569–3270.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 4/20/88).)

(29)(a) *Training Provider:* University of Texas at Arlington Bureau of Engineering Research.

Address: P.O. Box 19020, Arlington, TX 76019, Contact: Vic Argento, Phone: (817) 273–3694.

(b) *Approved Courses:*

Contractor/Supervisor (full from 7/14/86).
Contractor/Supervisor Refresher Course (full from 9/26/88).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refreseher Course (full from 9/26/88).

(30)(a) *Training Provider:* Veltmann Engineering.

Address: 2403 Emerson Ct., Midland, TX 79705, Contact: Clyde Veltmann, Phone: (915) 682–6072.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 7/27/88).

(31)(a) *Training Provider:* Young Insulation Group of Amarillo, Inc.

Address: P.O. Box 5098, Amarillo, TX 79117, Contact: Dennis C. Clayton, Phone: (806) 372–4329.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

Region VII—Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236–2834, (FTS) 757–2834.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AGC—Eastern Missouri Laborers' Joint Training Fund.

Address: Rt. 1 Box 79H, High Hill, MO 63350, Contact: Jerald Pelker, Phone: (314) 585–2391.

(b) *Approved Course:*

Abatement Worker (full from 1/19/88).

(2)(a) *Training Provider:* Aerostat Asbestos Engineering Consulting, Inc.

Address: P.O. Box 12037, Kansas City, KS 66112, Contact: Damir Joseph Stimac, Phone: (913) 788–3307.

(b) *Approved Courses:*

Abatement Worker (full from 5/9/88).
Contractor/Supervisor (full from 5/9/88).
Inspector/Management Planner (contingent from 3/14/88).

(3)(a) *Training Provider:* American Asbestos Training Center, Ltd.

Address: 529 West First, Monticello, IA 52310, Contact: Thomas Haas, Phone: (319) 465–5555.

(b) *Approved Courses:*

Abatement Worker (full from 6/27/88).
Contractor/Supervisor (full from 6/27/88).
Inspector/Management Planner (contingent from 10/26/88).

(4)(a) *Training Provider:* Asbestos Consulting Testing (ACT).

Address: 14953 West 101st Ter., Lenexa, KS 66215, Contact: Jim Pickel, Phone: (913) 492–1337.

(b) *Approved Courses:*

Abatement Worker (full from 1/25/88).
Contractor/Supervisor (full from 1/25/88).

(5)(a) *Training Provider:* Chart Services, Inc.

Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322, Contact: Mary A. Finn, Phone: (515) 276–3642.

(b) *Approved Courses:*

Abatement Worker (full from 11/17/87).
Abatement Worker Refresher Course (full from 10/17/88).
Contractor/Supervisor (full from 11/17/87).
Contractor/Supervisor Refresher Course (full from 10/17/88).
Inspector/Management Planner (full from 2/22/88).

(6)(a) *Training Provider:* Construction Laborers Building Corporation.

Address: Box 34549, Omaha, NE 68134, Contact: Jack Budd, Phone: (402) 572–0826.

(b) *Approved Course:*

Abatement Worker (full from 6/14/88).

(9)(a) *Training Provider:* Enviro-Impact Inspections.

Address: 1515 North Wason, Suite 213, St. Louis, MO 63132, Contact: Denis Boles, Phone: (314) 426–0087.

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(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88).
Contractor/Supervisor (contingent from 3/8/88).

(8)(a) *Training Provider:* Environmental Technology, Inc.
Address: 4315 Merriam Dr., Overland Park, KS 66203, Contact: Mike Franano, Phone: (913) 236–5040.
(b) *Approved Course:*
Abatement Worker (full from 2/29/88).

(9)(a) *Training Provider:* Flint Hills Area Vocational-Technical School.
Address: 3301 West 18th Ave., Emporia, KS 66801, Contact: Jim Krueger, Phone: (316) 342–6404.
(b) *Approved Course:*
Abatement Worker (full from 3/7/88).

(10)(a) *Training Provider:* General Services Administration (GSA).
Address: 1500 East Bannister Rd., Kansas City, MO 64131–3088, Contact: David Treece—Sharon Kersey, Phone: (816) 926–5318.
(b) *Approved Course:*
Inspector/Management Planner (full from 5/16/88).

(11)(a) *Training Provider:* Greater Kansas City Laborers Training Fund.
Address: 8944 Kaw Dr., Kansas City, KS 66111, Contact: James D. Barnett, Phone: (913) 441–6100.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/15/88).
Abatement Worker (full from 5/2/88).
Contractor/Supervisor (full from 5/2/88).

(12)(a) *Training Provider:* Hall-Kimbrell Training Center.
Address: 2449 Iowa St., Suite #1, Lawrence, KS 66044, Contact: Alice Hart, Phone: (913) 749–2381.
(b) *Approved Courses:*
Abatement Worker (full from 8/17/87).
Abatement Worker Refresher Course (contingent from 9/19/88).
Abatement Worker Refresher Course (full from 10/20/88).
Contractor/Supervisor (full from 8/17/87).
Contractor/Supervisor Refresher Course (contingent from 9/19/88).
Contractor/Supervisor Refresher Course (full from 10/20/88).
Inspector/Management Planner (full from 8/17/87).
Inspector/Management Planner Refresher Course (contingent from 9/19/88).
Project Designer (full from 8/17/87).
Project Designer Refresher Course (contingent from 9/19/88).

(13)(a) *Training Provider:* Hazard Control Training Enterprises, Inc.
Address: P.O. Box 20594, Wichita, KS 67208, Contact: Ms. Karen Alexander, Phone: (316) 778–1153.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/14/88).
Contractor/Supervisor (contingent from 10/14/88).

(14)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.
Address: Rural Route #2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443–4810.
(b) *Approved Courses:*
Abatement Worker (full from 6/28/88).
Contractor/Supervisor (full from 6/28/88).

(15)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union #1.
Address: 3325 Hollenberg Dr., St. Louis, MO 63044, Contact: James Hagen, Phone: (314) 291–7399.
(b) *Approved Courses:*
Abatement Worker (full from 6/6/88).
Contractor/Supervisor (full from 4/16/88).

(16)(a) *Training Provider:* Iowa Laborer's District Council Training Fund.
Address: 5806 Meredith Dr., Des Moines, IA 50322, Contact: Jack G. Jones, Phone: (515) 272–6965.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/20/88).
Abatement Worker (full from 6/14/88).
Contractor/Supervisor (contingent from 10/14/88).

(17)(a) *Training Provider:* Kansas Construction Laborers' Training Trust Fund.
Address: 2430 Marlatt Ave., Manhattan, KS 66502, Contact: Fred Tipton, Phone: (913) 539–7902.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/15/88).
Abatement Worker (full from 5/2/88).
Contractor/Supervisor (full from 5/2/88).

(18)(a) *Training Provider:* Living Word College.
Address: 2750 McKelvey Rd., St Louis, MO 63043, Contact: Donald C. Femmer, Phone: (314) 291–2749.
(b) *Approved Course:*
Inspector/Management Planner (full from 4/18/88 to 5/2/88).

(19)(a) *Training Provider:* MITON, Inc.
Address: P.O. Box 1582, Branson, MO 65616, Contact: Tony Williams, Phone: (417) 335–6743.
(b) *Approved Course:*
Inspector/Management Planner (full from 3/14/88).

(20)(a) *Training Provider:* Maple Woods Community College.
Address: 10771 Ambassador Dr., Kansas City, MO 64133, Contact: James C. Lauer, Phone: (816) 436–6500.
(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Contractor/Supervisor (full from 3/28/88).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).

(21)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc., (META).
Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Brad Mayhew, Phone: (913) 842–6382.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/87).
Abatement Worker (contingent from 10/20/87).
Contractor/Supervisor (contingent from 10/5/87).
Contractor/Supervisor (full from 10/20/87).
Inspector/Management Planner (contingent from 8/8/88).
Inspector/Management Planner (full from 8/8/88).

(22)(a) *Training Provider:* Midwest Environmental Testing & Training.
Address: 3500 Northeast Independence Ave., Lee's Summit, MO 64064, Contact: Steve Minshall, Phone: (816) 525–6681.
(b) *Approved Courses:*
Abatement Worker (full from 5/9/88).
Contractor/Supervisor (full from 5/9/88).

(23)(a) *Training Provider:* Professional Safety & Health Consultants.
Address: 1810 Craig Rd., Suite 207, St. Louis, MO 63146, Contact: James D. Hoag, Phone: (314) 275–7733.
(b) *Approved Course:*
Inspector/Management Planner (full from 6/23/88).

(24)(a) *Training Provider:* Ryckman's Emergency Action Consulting Team (REACT).
Address: 2208 Welsch Industrial Ct., St. Louis, MO 63146, Contact: D. W. Ryckman, Phone: (314) 569–0991.
(b) *Approved Courses:*

Abatement Worker (full from 7/26/88).
Contractor/Supervisor (full from 7/26/88).

(25)(a) *Training Provider:* University of Kansas Division of Continuing Education.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491–0181.
(b) *Approved Courses:*
Abatement Worker (full from 7/27/87).
Contractor/Supervisor (interim from 6/1/85 to 7/26/87).
Contractor/Supervisor (contingent from 10/5/87).
Contractor/Supervisor (full from 7/27/88).
Inspector/Management Planner (full from 6/15/88).

Region VIII—Denver, CO

Regional Asbestos Coordinator: David Combs, [8AT–TS], EPA, Region VIII, 1 Denver Place, 999–18th St., R. 1300, Denver, CO 80202–2413. (303) 293–1744, (FTS) 564–1744.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Colorado State University Dept. of Industrial Sciences, Office of Research, Development & Training.
Address: Fort Collins, CO 80523, Contact: Birgit Wolff, Phone: (303) 491–1551.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/23/88).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 5/23/88).

(2)(a) *Training Provider:* Colorado Training Institute.
Address: 1210 East Colfax, Suite 306, Denver, CO 80218, Contact: Peter Amory, Phone: (303) 860–0574.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/31/88).

(3)(a) *Training Provider:* Energy Insulation, Inc. (EII).
Address: P.O. Box 1996, Casper, WY 82602, Contact: David K. Fox, Phone: (307) 473–1247.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/88).
Abatement Worker (full from 6/22/88).

(4)(a) *Training Provider:* Envir-o-tech.
Address: 300 Moore Ln., Billings, MT 59102, Contact: Les Nelson, Phone: (800) 225–4899.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).

(5)(a) *Training Provider:* Hager Laboratories, Inc.
Address: 11234 East Caley Ave., Unit A, Englewood, CO 80111, Contact: Steve Herron, Phone: (303) 790–2727.
(b) *Approved Courses:*
Abatement Worker (full from 3/28/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 10/7/88).

(6)(a) *Training Provider:* Industrial Health, Inc.
Address: 640 East Wilmington Ave., Salt Lake City, UT 84106, Contact: Donald E. Marano, Phone: (801) 466–2223.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 4/22/88).

(7)(a) *Training Provider:* Major Safety, Inc.
Address: 6390 Joyce Dr., #201, Golden, CO 80403, Contact: Tom Major, Phone: (303) 424–7874.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/28/88).
Contractor/Supervisor (contingent from 1/28/88).
Inspector/Management Planner (contingent from 1/2/88).
Project Designer (contingent from 1/22/88).

(8)(a) *Training Provider:* Midwest Asbestos Consultants, Inc. (MAC).
Address: Box 1708, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280–2286.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).

(9)(a) *Training Provider:* Misers Inspection & Training, Inc.
Address: 1600 South Cherokee St., Denver, CO 80223, Contact: Michael DiRito, Phone: (303) 761–8860
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 7/5/88).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 7/5/88).

(10)(a) *Training Provider:* NATEC International.
Address: 2761 West Oxford Ave., #7, Englewood, CO 80110, Contact: James Maxwell, Phone: (303) 825–6513.
(b) *Approved Course:*
Abatement worker (contingent fron 4/15/88).

(11)(a) *Training Provider:* Northern Engineering & Testing, Inc.
Address: 600 South 25th St., P.O. Box 30615, Billings, MT 59107, Contact: Kathleen A. Smit, Phone: (406) 248–9161.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/1/87).
Abatement Worker (full from 12/8/87).
Contractor/Supervisor (contingent from 10/31/88).

(12)(a) *Training Provider:* Power Masters, Inc.
Address: 13205 South State St., Draper, UT 84020, Contact: Debora Bastian, Phone: (801) 571–9321.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).

(13)(a) *Training Provider:* Precision Safety & Services, Inc.
Address: 1245 Windemaker Ln., Colorado Springs, CO 80907, Contact: James R. Maples, Jr., Phone: (719) 593–8596.
(b) *Approved Course:*
Abatement Worker (contingent from 8/11/88).

(14)(a) *Training Provider:* R.S. Christiansen Asbestos Consultant.
Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: R.S. Christiansen, Phone: (801) 277–2323.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/29/88).

(15)(a) *Training Provider:* Rocky Mountain Center for Occupational and Environmental Health, University of Utah.
Address: Building 512, Salt Lake City, UT 84112 Contact: Jeffery Lee, Phone: (801) 581–5710.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 10/1/87).

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Contractor/Supervisor (full from 11/16/87).
Contractor/Supervisor Refresher Course (contingent from 7/6/88).
Inspector/Management Planner (contingent from 12/23/87).
Inspector/Management Planner (full from 2/8/88).

(16)(a) *Training Provider:* South Dakota State University College of Engineering.
Address: Box 2218, Brookings, SD 57007–0597, Contact: James Ceglian, Phone: (605) 688–4101.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/18/88).
Inspector/Management Planner (contingent from 5/18/88).

Region IX—San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (T–52), EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974–7290, (FTS) 454–7290.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IX training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Center for Accelerated Learning.
Address: 400 Buck Ave., Suite G, Vacaville, CA 95688, Contact: David Esparza, Phone: (707) 446–7996.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 6/30/88).

(2)(a) *Training Provider:* Dan Napier & Associates.
Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260–6440, Contact: Dan Napier, Phone: (213) 644–1924.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/15/88).

(3)(a) *Training Provider:* Diagnostic Engineering, Inc.
Address: 50 East Foothill Blvd., Arcadia, CA 91006, Contact: Jane P. Rowcliffe, Phone: (818) 447–5216.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/27/88).
Contractor/Supervisor (contingent from 6/27/88).
Inspector/Management Planner (contingent from 6/27/88).

(4)(a) *Training Provider:* Environmental Sciences.
Address: 375 South Meyer, Tucson, AZ 85701, Contact: Paula Keyes, Phone: (602) 792–0097.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 9/29/87).
Inspector/Management Planner (full from 10/5/87).

(5)(a) *Training Provider:* Excel Environmental, Inc.
Address: 739 Allston Way, Berkeley, CA 94710, Contact: Otis Wong, Phone: (415) 548–4300.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/28/87).
Contractor/Supervisor (contingent from 5/26/88).

(6)(a) *Training Provider:* Hawaii Laborers' Training School.
Address: P.O. Box 457, Aiea, HI 96701, Contact: Norman Jimeno, Phone: (808) 488–6161.
(b) *Approved Course:*
Abatement Worker (contingent from 5/27/88).

(7)(a) *Training Provider:* Hess & Hess Construction, Inc.
Address: 8627 East Center St., P.O. Box 228, Mokelumne Hill, CA 95245, Contact: Lee Hess, Phone: (209) 286–1472.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/31/88).

(8)(a) *Training Provider:* Insulators and Asbestos Industry of Northern California.
Address: 2829 Fillmore St., Alameda, CA 94501, Contact: Michael R. Mellin, Phone: (415) 522–7048.
(b) *Approved Course:*
Abatement Worker (contingent from 5/27/88).

(9)(a) *Training Provider:* International Technology Corporation.
Address: 336 West Anaheim St., Wilmington, CA 90744, Contact: Keith Soebe, Phone: (213) 830–1781.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/24/87).
Contractor/Supervisor (contingent from 4/15/88).

(10)(a) *Training Provider:* KELLCO Training Institute.
Address: 44814 Osgood Rd., Fremont, CA 94539, Contact: Charles W. Kellogg, Phone: (415) 651–7401.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Contractor/Supervisor (contingent from 7/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).

(11)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Northern California.
Address: 21321 San Ramon Valley Blvd., San Ramon, CA 94583, Contact: Marvin D. Johnson, Phone: (415) 828–2513.
(b) *Approved Course:*
Abatement Worker (contingent from 6/13/88).

(12)(a) *Training Provider:* Laborers Training & Trust Fund for Southern California.
Address: P.O. Box 76, Anza, CA 92306–0076, Contact: Mary Lacy, Phone: (714) 763–4341.
(b) *Approved Course:* Abatement Worker (contingent from 6/30/88).

(13)(a) *Training Provider:* Lehr Training Institute.
Address: 1431 Warner Ave., Tustin, CA 92680, Contact: Susan Patnode, Phone: (714) 259–1575.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/16/88).
Contractor/Supervisor (contingent from 2/16/88).
Inspector/Management Planner (contingent from 10/31/88).

(14)(a) *Training Provider:* MED–TOX Associates, Inc.
Address: 1431 Warner Ave., Suite A, P.O. Box 2054, Tustin, CA 92681, Contact: Linda Cassidy, Phone: (714) 259–0620.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/16/88).
Contractor/Supervisor (contingent from 2/16/88).
Inspector (contingent from 6/1/88).

(15)(a) *Training Provider:* National Abatement Technology Employment Center (NATEC).
Address: 13692 Newhope Ave., Garden Grove, CA 92643, Contact: Ronald Sandlin, Phone: (714) 530–0407.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/30/87).
Contractor/Supervisor (contingent from 12/30/87).

(16)(a) *Training Provider:* National Institute for Asbestos & Hazardous Waste Training.
Address: 1019 West Manchester Blvd., Inglewood, CA 90301, Contact: Jim McFarland, Phone: (213) 645–4516.
(b) *Approved Courses:*
Abatement Worker (full from 12/7/87).

Abatement Worker Refresher Course (contingent from 10/19/88).
Contractor/Supervisor (full from 12/7/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (contingent from 6/30/88).

(17)(a) *Training Provider:* Pacific Asbestos Information Center U.C. Extension.
Address: 2223 Fulton St., Berkeley, CA 94720, Contact: Debra Dobbin, Phone: (415) 643–7143.
(b) *Approved Courses:*
Contractor/Supervisor (full from 2/2/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 10/19/88).

(18)(a) *Training Provider:* San Diego County District Council of Carpenters.
Address: 4665 Mercury St., San Diego, CA 92111, Contact: Otis Kunz, Phone: (619) 571–8977.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/31/88).

(19)(a) *Training Provider:* The Asbestos Institute.
Address: 2701 East Camelback #381, Phoenix, AZ 85016, Contact: William T. Cavness, Phone: (602) 381–0896.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 6/13/88).
Inspector/Management Planner (contingent from 6/17/88).

(20)(a) *Training Provider:* University of Southern California Institute of Safety & Systems Management.
Address: University Gardens, 3500 South Figueroa #202, Los Angeles, CA 90007, Contact: James O. Pierce, Phone: (213) 743–6523.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 7/27/88).

Region X—Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave. (AT–083), Seattle, WA 98101. (206) 442–4762, (FTS) 399–2870.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each are as follows:

(1)(a) *Training Provider:* Asbestos Services International.
Address: 12360 Southwest Butner Rd., Portland, OR 97225–5818, Contact: Robert E. Hasting, Phone: (503) 644–0246.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 8/23/88).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Project Designer (contingent from 10/31/88).

(2)(a) *Training Provider:* Certified Industrial Hygiene Services, Inc.
Address: 911 Western Ave., Suite 206, Seattle, WA 98104, Contact: Eileen Kirkpatrick, Phone: (206) 783–9506.
(b) *Approved Course:*
Inspector (contingent from 3/25/88).

(3)(a) *Training Provider:* Engineering Continuing Education, University of Washington.
Address: GG–13, Seattle, WA 98195, Contact: Creighton Depew, Phone: (206) 543–5339.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/8/88).

(4)(a) *Training Provider:* Environmental Health Sciences, Lake Washington Vo-Tech.
Address: 11605 132nd Ave., NE., Kirkland, WA 98304, Contact: Dave Rodewald, Phone: (206) 828–5643.
(b) *Approved Course:*
Inspector/Management Planner (full from 4/11/88).

(5)(a) *Training Provider:* Environmental Management, Inc.
Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth Johnson, Phone: (907) 272–8056.
(b) *Approved Course:*
Inspector/Management Planner (full from 4/18/88).

(6)(a) *Training Provider:* Hazcon, Inc., Health Hazard Control Services.
Address: 5950 6th Ave., S., Suite 216, Seattle, WA 98108, Contact: Mike Krause, Phone: (206) 763–7364.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 4/4/88).

(7)(a) *Training Provider:* Heavey Engineers, Inc.
Address: 113 Russell St., P.O. Box 832, Stevenson, WA 98648, Contact: Robert T. Taylor, Phone: (509) 427–8936.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 6/2/88).
Inspector/Management Planner (full from 6/24/88).

(8)(a) *Training Provider:* Heavey Engineers, Inc.
Address: 113 Russell St., Stevenson, WA 98648–0832, Contact: Robert Taylor, Phone: (509) 427–8936.
(b) *Approved Course:*
Inspector/Management Planner (full from 6/6/88).

(9)(a) *Training Provider:* Northwest Envirocon, Inc.
Address: 181 A St., Washougal, WA 98671, Contact: Randy Hall, Phone: (206) 835–8576.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).

(10)(a) *Training Provider:* PBS Environmental Building Consultant, Inc.
Address: 1220 South West Morrison, Portland, OR 97205, Contact: John Perkins, Phone: (503) 248–1939.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 2/4/88).
Inspector/Management Planner (full from 3/14/88).

(11)(a) *Training Provider:* University of Alaska, Mining and Petroleum Training Services.
Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis D. Steffy, Phone: (907) 262–2788.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 2/16/88).
Inspector/Management Planner (full from 4/11/88).

V. List of EPA-Accredited Polarized Light Microscopy (PLM) Laboratories

A. Background

Section 206(d) of Title II states that EPA must provide for the development of an accreditation program through the National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards (NBS) for laboratories conducting analysis of bulk samples of asbestos-containing

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materials. NIST began initial evaluations of enrolled laboratories in October 1988 and will accredit PLM laboratories in the spring of 1989. To provide LEAs with a listing of accredited laboratories until NIST completes its laboratory evaluations, EPA established the "Interim Asbestos Bulk Sample Analysis Quality Assurance Program." EPA announced the program in the **Federal Register** of September 30, 1987 (52 FR 33470).

The following listing includes commercial and noncommercial laboratories which have successfully participated in the April 1988 round of the EPA Interim Asbestos Bulk Sample Analysis Quality Assurance Program. Laboratories labeled as "noncommercial" neither solicit nor accept for analysis bulk samples from the general public. These laboratories are typically associated with private corporations, universities, and State and local health agencies and have requested to be included in this listing.

B. Expiration of EPA Interim Accreditation

Expiration of a laboratory's EPA interim accreditation may occur in one or two ways. First, if the laboratory did not complete the final application procedure for the NIST NVLAP by September 30, 1988, the laboratory's interim EPA accreditation will expire on January 12, 1989. Second, if a laboratory did complete the final application procedure for the NIST NVLAP by September 30, 1988, the laboratory will maintain its EPA interim accreditation until NIST either accredits the laboratory in the spring of 1989 or determines the laboratory is deficient in some aspect of the evaulation. (The deficiency could occur prior to January 12, 1989). It is important for LEAs to note that a deficiency may be found by NIST at any point in the evaluation. If a major deficiency is found, NIST will notify EPA, and EPA will remove the laboratory's interim accreditation. Removal of a laboratory's accreditation by EPA will be performed immediately upon notification by NIST. Laboratories which did not meet the September 30, 1988, deadline will also be removed from the listing of accredited laboratories when their accreditation expires on January 12, 1989.

Up-to-date listings of laboratories will be issued to the EPA Regions and AHERA State Designees as EPA accredited laboratories are deleted due to deficiencies or new labs are added following NIST accreditation. LEAs may also phone (202) 554–1404 for copies of current listings. In determining whether a laboratory is accredited, an LEA should contact the laboratory to confirm the laboratory's current standing in the NIST evaluation process and the local EPA Regional Asbestos Coordinator (RAC) or AHERA State Designee. The current listing of laboratories may be consulted for a source of local laboratories; however, since NIST has begun it evaluations, the list will change prior to the next published listing of accredited laboratories. LEAs must consult EPA Regions or State AHERA Designees and the laboratory to determine the most accurate status of the laboratory's accreditation.

EPA Accredited Commercial PLM Laboratories

Region I—Boston, MA

Regional Asbestos Coordinator: Don Mackie, EPA, Region I, Air and Management Division (APT–2311), JFK Federal Building, Boston, MA 02203. (617) 565–3273 (FTS) 835–3273.

(1) *Laboratory:* ACMAT.

Address: 116 Stoner Dr., West Hartford, CT 06107, Contact: Arthur C. Cosmas, Phone: (203) 289–6493.

(2) *Laboratory:* AXIOM Laboratories.

Address: 97 Ocean Dr., E., Stamford, CT 06902, Contact: Sally E. Reffner, Phone: (203) 356–8977.

(3) *Laboratory:* Aetna Life & Casualty, Engineering Department W101.

Address: 151 Farmington Ave., Hartford, CT 06156, Contact: Edward B. Engel, Phone: (203) 683–3665.

(4) *Laboratory:* Air Quality Consultants.

Address: 406 Libbey Parkway, Weymouth, MA 02189, Contact: John E. O'Malley, Phone: (617) 337–7320.

(5) *Laboratory:* Alliance Technologies Corp., Air Quality Assessments.

Address: 213 Burlington Rd., Medford, MA 01730, Contact: David R. Cogley, Phone: (617) 275–5444.

(6) *Laboratory:* Analytical Testing Services.

Address: 180 Weeden St., Pawtucket, RI 02860–1804, Contact: Robert F. Weisberg, Phone: (401) 723–7978.

(7) *Laboratory:* Applied Occupational Health Systems.

Address: 29 River Rd., Suite 18, Concord, NH 03301, Contact: Richard R. Kretovich, Phone: (603) 228–3610.

(8) *Laboratory:* Axiom Laboratories.

Address: 97 Ocean Dr., E., Stamford, CT 06904, Contact: John A. Reffner, Phone: (203) 348–8098.

(9) *Laboratory:* Balsam Environmental Consultants, Inc.

Address: 59 Stiles Rd., Salem, NH 03079, Contact: Tara E. Smith, Phone: (603) 893–0616.

(10) *Laboratory:* Barnes and Jarvis, Inc.

Address: 216 Tremont St., Boston, MA 02116, Contact: Linda Goudreau, Phone: (617) 542–6521.

(11) *Laboratory:* Baron Consulting Co., Analytical Services.

Address: P.O. Box 663, Orange, CT 06477, Contact: Harry Agahigian, Phone: (203) 874–5678.

(12) *Laboratory:* Briggs Associates, Inc.

Address: 400 Hingham St., Rockland, MA 02370, Contact: James Litrides, Phone: (617) 871–6040.

(13) *Laboratory:* Brooks Laboratories, Inc.

Address: 44 Codfish Lane, Weston, CT 06883, Contact: Margaret Y. Brooks, Phone: (203) 226–6970.

(14) *Laboratory:* CON-TEST, Inc.

Address: 126 Shaker Rd., East Longmeadow, MA 01028, Contact: Thomas E. Veratti, Phone: (413) 525–1198.

(15) *Laboratory:* CT State Dept. of Health Lab.

Address: P.O. Box 1689, Hartford, CT 06101, Contact: Janet B. Kapish, Phone: (203) 566–5626.

(16) *Laboratory:* Certified Engineering & Testing Co., Inc.

Address: 25 Mathewson Dr., Weymouth, MA 02189, Contact: Glenn Sylvester, Phone: (617) 337–7887.

(17) *Laboratory:* Certified Engineering & Testing Co., Inc

Address: 400 Smith St., Providence, RI 02908, Contact: Deborah A. Pereira, Phone: (401) 831–9090.

(18) *Laboratory:* Chem Scope Inc.

Address: P.O. Box 389, Fair Haven Station, New Haven, CT 06513, Contact: Ronald D. Arena, Phone: (203) 468–0055.

(19) *Laboratory:* Covino Environmental Consultants, Inc.

Address: 12 Walnut Hill Park, Woburn, MA 01801, Contact: Samuel J. Covino, Jr., Phone: (617) 933–2555.

(20) *Laboratory:* Dennison Environmental, Inc.

Address: 35H Industrial Pkwy., Woburn, MA 01801, Contact: James E. Dennison, Phone: (617) 932–9400.

(21) *Laboratory:* EHL Division of Cigna Corp.

Address: 94 Murphy Rd., Hartford, CT 06114, Contact: Jim Kenny, Phone: (203) 522–3814.

(22) *Laboratory:* ESA Laboratories.

Address: 43 Wiggins Ave., Bedford, MA 01730, Contact: Reg Griffin, Phone: (617) 275–0100.

(23) *Laboratory:* Eastern Analytical Laboratories, Inc.

Address: 149 Rangeway Rd., North Billerica, MA 01862, Contact: Drew Killius, Phone: (617) 272–5212.

(24) *Laboratory:* Enviro-Lab, Inc.

Address: 154 Grove St., Chicopee, MA 01020, Contact: Peter R. Tuttle, Phone: (413) 592–0030.

(25) *Laboratory:* Enviromed Services, Inc.

Address: 25 Science Park, New Haven, CT 06511, Contact: William G. Oldman, Phone: (203) 786–5580.

(26) *Laboratory:* Environmental Associates, Inc.

Address: 1222 Fairfield Ave., Bridgeport, CT 06605, Contact: Ralph B. Wiech, Phone: (203) 368–6064.

(27) *Laboratory:* Environmental Field Services, Inc.

Address: 63 Elm St., Topsham, ME 04086, Contact: Joanna L. Eaton, Phone: (207) 725–4112.

(28) *Laboratory:* Envirosciences, Inc.

Address: 220 Tollgate Rd., Warwick, RI 02886, Contact: Theodore Lemek, Phone: (401) 737–0633.

(29) *Laboratory:* Hitchcock Gas Engine Co.

Address: 50 Cross St., Bridgeport, CT 06610, Contact: John F. Sieckhaus, Phone: (203) 334–4812.

(30) *Laboratory:* Hub Testing Laboratory.

Address: 95 Beaver St., Waltham, MA 02154, Contact: Fred Boyle, Phone: (617) 893–8330.

(31) *Laboratory:* Hunter Environmental Sciences, Inc.

Address: P.O. Box 284, Lincoln, MA 01773, Contact: W. Bruce Hunter, Phone: (617) 259–0800.

(32) *Laboratory:* Hygeia, Inc.

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: John R. Pilling, Phone: (617) 647–9475.

(33) *Laboratory:* Hygenix, Inc.

Address: 40 Hoyt St., Stamford, CT 06905, Contact: Robert C. Brown, Phone: (203) 324–2222.

(34) *Laboratory:* Hygienetics Analytical Services, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: Jack Yee, Sr., Phone: (617) 723–4664.

(35) *Laboratory:* Industrial Hygiene/ New England

Address: P.O. Box 947, Kennebunk, ME 04043, Contact: Thomas F. Hatch, Phone: (207) 985–6110.

(36) *Laboratory:* Kaselaan & D'Angelo Asso., Inc.

Address: 500 Victory Rd., Marina Bay N., Quincy, MA 02171, Contact: Louis P. Solebello, Jr., Phone: (617) 523–2211.

(37) *Laboratory:* Liberty Mutual Insurance Co., Analytical Laboratory

Address: 71 Frankland Rd., Hopkinton, MA 01748, Contact: Kenneth J. Muzal, Phone: (617) 435–9061.

(38) *Laboratory:* MICROTHERM

Address: P.O. Box 7, Walthan MA 02254, Contact: Arthur M. Coates, Phone: (617) 891–1113.

(39) *Laboratory:* MMR, Inc.

Address: P.O. Box 810, 241 West Boylston St., West Boylston, MA 01583, Contact: Donald Pellegrino, Phone: (617) 835–6262.

(40) *Laboratory:* Massachusetts Institute of Technology, Industrial Hygiene Office

Address: 77 Massachusetts Ave., Rm. 20C–404, Cambridge, MA 02139, Contact: Bonnie L. Weeks, Phone: (617) 253–2596.

(41) *Laboratory:* Mystic Air Quality Consultants, Inc.

Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher J. Eident, Phone: (203) 449–8903.

(42) *Laboratory:* New England Testing Lab., Inc.

Address: 1254 Douglas Ave., North Providence, RI 02904–5392, Contact: Robert T. Legere Phone: (401) 353–3420.

(43) *Laboratory:* Northeast Environmental Testing Lab., Inc.

Address: 51 Sockanossett Crossroads, Cranston, RI 02910, Contact: Carmine J. Spinella, Phone: (401) 785–1720.

(44) *Laboratory:* Northeast Research Institute, Inc.

Address: 309 Farmington Ave., Suite A–100, Farmington, CT 06032, Contact: Linda Hemsen, Phone: (203) 677–9666.

(45) *Laboratory:* Northeast Test Consultants

Address: 587 Spring St., Westbrook, ME 04092, Contact: Stephen Broadhead, Phone: (207) 854–3939.

(46) *Laboratory:* R. I. Analytical Laboratories, Inc.

Address: 231 Elm St., Warwick, RI 02888, Contact: Anthony E. Perrotti, Phone: (401) 467–2452.

(47) *Laboratory:* Shelburne Laboratories, Inc.

Address: P.O. Box 458, Shelburne, VT 05482, Contact: Robert J. Emerson, Phone: (802) 985–3379.

(48) *Laboratory:* TRC Environmental Consultants, Inc.

Address: 800 Connecticut Blvd., East Hartford, CT 06108, Contact: Paul Hunt, Phone: (203) 289–8631.

(49) *Laboratory:* The Hartford Insurance Group, Environmental Sciences Lab

Address: Hartford Plaza, Hartford, CT 06115, Contact: Stephan W. Campbell, Phone: (203) 547–4557.

(50) *Laboratory:* The Hartford Steam Boiler I & I Co. Environmental Services Laboratory

Address: One State St., Hartford, CT 06102, Contact: Floyd B. Parsons, Jr., Phone: (203) 722–5476.

(51) *Laboratory:* The Water Works Laboratories

Address: 60 Elmhill Ave., Leominster, MA 01453, Contact: Eric J. Koslowski, Phone: (617) 534–1444.

(52) *Laboratory:* Travelers Insurance-Engr. Lab.

Address: 248 Constitution Plaza, Hartford, CT 06183, Contact: Amita Sanghvi, Phone: (203) 277–7533.

Region II—Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 10, (ES–PTS), Edison, NJ 08837. (201) 321–6668. (FTS) 340–6671.

(1) *Laboratory:* AMA of New York/ New Jersey, Inc.

Address: Suite 307, 1090 King George's Post Rd., Edison, NJ 08837–3728, Contact: Robert M. Powell, Phone: (201) 417–0660.

(2) *Laboratory:* ASTECO, Inc.

Address: P.O. Box 2204, Niagara University, NY 14109, Contact: Fred Smith, Phone: (716) 297–5992.

(3) *Laboratory:* ATC Environmental, Inc.

Address: 104 East 25th St., New York, NY 10010, Contact: Robert Adamson, Phone: (212) 353–8280.

(4) *Laboratory:* Adelaide Environmental Health Associates.

Address: 61 Front St., Binghamton, NY 13905–4705, Contact: Brian Donnelly/ Steve Karpinski, Phone: (607) 722–6839.

(5) *Laboratory:* Adelaide Environmental Health Associates.

Address: 117 East Pond Rd., Suite 200, White Plains, NY 10601, Contact: Ernest Coon, Phone: (914) 949–3109.

(6) *Laboratory:* Alpha Environmental, Inc.

Address: 27 Gerritsen Ave., Bayport, NY 11705, Contact: Scott B. Mosher, Phone: (516) 472–3499.

(6) *Laboratory:* Alternative Ways, Inc.

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Address: P.O. Box 1147, 100 Essex Rd., Bellmawr, NJ 08031, Contact: John Luxford, Phone: (609) 933–3300.

(8) *Laboratory:* Ambient Labs, Inc.

Address: 85 Chambers St., New York, NY 10007, Contact: William A. Esposito, Phone: (212) 962–4242.

(9) *Laboratory:* Analytical Electron Microscopy, Inc.

Address: P.O. Box 1147, 100 Essex Rd., Bellmawr, NJ 08031, Contact: Perry Cohn, Phone: (609) 933–1663.

(10) *Laboratory:* Applied Environmental Technology, Inc.

Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: Willard Kingsley, Phone: (609) 488–9200.

(11) *Laboratory:* Applied Geo Services, Inc.

Address: 300 Park Ave., S., 15th Fl., New York, NY 10010, Contact: Jeffrey A. Forgang, Phone: (201) 750–4514.

(12) *Laboratory:* Applied Respiratory Technology.

Address: P.O. Box 1132, Peekskill, NY 10566, Contact: Paul M. Madigan, Phone: (914) 431–6421.

(13) *Laboratory:* Asbesto-Tech.

Address: 140–30 Elgar Pl., Suite 30–B, Bronx, NY 10475, Contact: Solomon Mate, Phone: (212) 671–5266.

(14) *Laboratory:* Asbestos Analysis of Central New York.

Address: 211 Dorothy St., Syracuse, NY 13203, Contact: Mark Franey, Phone: (315) 479–8793.

(15) *Laboratory:* Asbestos Consultancy Service, Inc., Holiday Bldg.

Address: 121 State Highway 36, West Long Branch, NJ 07764, Contact: George Forrest, Phone: (201) 571–1400.

(16) *Laboratory:* Assessment Technologies, Inc.

Address: 323 West 39th Street, New York, NY 10018, Contact: Richard W. Holmes, Phone: (201) 391–1495.

(17) *Laboratory:* Astech, Inc.

Address: 317 West Milton Ave., Rahway, NJ 07065, Contact: Michael Matarazzo, Phone: (201) 396–4455.

(18) *Laboratory:* Atlantic Environmental, Inc.

Address: 2 East Blackwell St., Suite 24, Dover, NJ 07801, Contact: Robert Sheriff, Phone: (201) 366–4660.

(19) *Laboratory:* Barnes and Jarnis/Hygeia Joint Office

Address: 116 East 27th St., 5th Fl., New York, NY 10016, Contact: Carllett Grey-Golding, Phone: (212) 532–6433.

(20) *Laboratory:* Brad Associates

Address: 1 Rosanne Ct., Lake Ronkonkoma, NY 11779, Contact: Benito P. San Pedro, Phone: (516) 467–4539.

(21) *Laboratory:* Buck Engineering & Environmental Laboratory

Address: 100 Tompkins St., Courtland, NY 13045, Contact: John H. Buck, Phone: (607) 753–3403.

(22) *Laboratory:* Buffalo Testing Labs., Inc.

Address: 902 Kenmore Ave., Buffalo, NY 14216, Contact: Edweard J. Kris, Phone: (716) 873–2302.

(23) *Laboratory:* Bulava Environmental, Inc.

Address: 13 Hunt Club Rd., Belle Mead, NJ 08502, Contact: Edward J. Bulava, Phone: (201) 874–6207.

(24) *Laboratory:* C & F Underwriters Group, Occupational Health Services

Address: 211 Mt. Airy Rd., Basking Ridge, NJ 07920, Contact: W. P. Osen, Phone: (201) 953–3000.

(25) *Laboratory:* CS Environmental Laboratory, Inc.

Address: 5854 Butternut Dr., East Syracuse, NY 13057, Contact: Ida J. Bennett, Phone: (315) 446–8795.

(26) *Laboratory:* Calibrations.

Address: P.O. Box 11266, Albany, NY 12211, Contact: Sascha Percent, Phone: (518) 786–1865.

(27) *Laboratory:* Call the Experts.

Address: 820 Coney Island Ave., Brooklyn, NY 11218, Contact: Robert Traktman, Phone: (718) 941–7600.

(28) *Laboratory:* Carmel Industrial Health, Inc.

Address: 12 Hoffman St., Maplewood, NJ 07040, Contact: Matthew Carmel, Phone: (201) 378–8011.

(29) *Laboratory:* Certified Engineering & Testing Company of Upstate New York, Inc.

Address: 284 Genesee St., Utica, NY 13502, Contact: Mark S. Evans, Phone: (315) 732–3826.

(30) *Laboratory:* Charles M. Shapiro and Sons, P.C., Consulting Engineers.

Address: 6315 Mill Ln., Brooklyn, NY 11234, Contact: Elliot J. Shapiro, Phone: (718) 531–8400.

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(90) *Laboratory:* Washington Analytical Laboratory, Inc.
Address: 14214 Coda Pl., Chantilly, VA 22021, Contact: R. Hugh Granger, Phone: (703) 631–6868.
(91) *Laboratory:* Wright Lab Services, Inc.
Address: 34 Dogwood Ln., Middletown, PA 17057, Contact: Francine Walker, Phone: (717) 944–5541.
(92) *Laboratory:* Zeelander, Inc.
Address: P.O. Box 30382, Philadelphia, PA 19130, Contact: Dirk K. Shelmire.

Region IV—Atlanta, GA

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(1) *Laboratory:* ATEC Associates, Inc.
Address: 4845 Rosselle St., Jacksonville, FL 32205, Contact: Benton E. Laughlin, Phone: (904) 387–6404.
(2) *Laboratory:* ATEC Associates, Inc.
Address: 2990 Northwest 40 St., Miami, FL 33142, Contact: Michael H. Straube, Phone: (305) 633–2700.
(3) *Laboratory:* ATEC Associates, Inc., Environmental Service Division.
Address: 1300 Williams Dr., Marietta, GA 30066–6299, Contact: Dwayne Cheatom, Phone: (404) 427–9456.
(4) *Laboratory:* ATEC Environmental Consultants.
Address: 100 Eyster Blvd., Rockledge, FL 32955, Contact: Harry L. Capadano, Jr., Phone: (407) 639–9069.
(5) *Laboratory:* Advanced Industrial Hygiene Services, Inc.
Address: 2131 Southwest 2nd Ave., Miami, FL 33129, Contact: Bruce Marchette, Phone: (305) 854–7554.
(6) *Laboratory:* American Microscopy Laboratory.
Address: 29 Heritage Hills, Tuscaloosa, AL 35406, Contact: M.A. Beg, Phone: (205) 345–2555.
(7) *Laboratory:* Analytical Management, Inc.
Address: P.O. Box 11279, Lexington, KY 40574, Contact: David H. McRae, Phone: (606) 231–6511.
(8) *Laboratory:* Applied Environmental Technology, Inc.
Address: P.O. Box 421, Marietta, GA 30061, Contact: James B. Glass, Phone: (404) 425–1115.
(9) *Laboratory:* Applied Environmental Testing Lab, Inc.
Address: 680 Thoronton Way, Suite 202, Lithia Springs, GA 30057, Contact: Ali A. Hassani Pak, Phone: (404) 948–4919.
(10) *Laboratory:* Applied Technical Services.
Address: 1190 Atlanta Industrial Dr., Marietta, GA 30066, Contact: Laurel V. Waters, Phone: (404) 423–1400.

(11) *Laboratory:* Asbestos Analysis and Information Service.
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(12) *Laboratory:* Azimuth, Inc.
Address: P.O. Box 71904, Charleston, SC 29415–1904, Contact: Charles B. Stoyle, Phone: (803) 553–9456.
(13) *Laboratory:* BCM Converse, Inc.
Address: 108 St. Anthony St., P.O. Box 1784, Mobile, AL 36633, Contact: Michael Findley, Phone: (205) 433–3981.
(14) *Laboratory:* Bonner Analytical Testing Co.
Address: Rt. 13, Box 85, Hattiesburg, MS 39401, Contact: Michael Bonner, Phone: (601) 264–2854.
(15) *Laboratory:* Buetow Laboratories.
Address: 6921 Waldorf Ct., Charlotte, NC 28211, Contact: David H. Buetow, Phone: (704) 365–2146.
(16) *Laboratory:* CRU, Inc.
Address: P.O. Box 24467, Louisville, KY 40224, Contact: Donna M. Ringo, Phone: (502) 426–8860.
(17) *Laboratory:* Carolina Environmental.
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(18) *Laboratory:* Cavin Analytical Consultants.
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(19) *Laboratory:* Certified Engineering and Testing Co., Inc.
Address: 2600 Poplar Ave., Memphis, TN 38112, Contact: Amy Ginsberg, Phone: (901) 458–6860.
(20) *Laboratory:* Chem-Ray.
Address: P.O. Box 821, Florence, AL 35631, Contact: James D. Ray, Phone: (205) 776–4345.
(21) *Laboratory:* Chemalytics.
Address: 300 Doctors Bldg., 33 East Seventh St., Covington, KY 41011, Contact: Kenneth P. Reed, Phone: (606) 431–6224.
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Environmental Health Laboratory
Address: 1021 Georgia Ave., 3rd Fl., Macon, GA 31201–6709, Contact: Harriotte A. Hurley, Phone: (912) 745–4702.
(23) *Laboratory:* Clarke.
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(25) *Laboratory:* Davis & Floyd, Inc.
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(26) *Laboratory:* Dunn Laboratories.
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(27) *Laboratory:* EEC, Inc.
Address: P.O. Box 11847, Columbia, SC 29211, Contact: Daniel A. Smith, Phone: (803) 256–7846.
(28) *Laboratory:* EEC, Inc.
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(29) *Laboratory:* EMSL, Inc.
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(31) *Laboratory:* Ecosafe, Inc.
Address: 1820 Chapel Hill Rd., Durham, NC 27707, Contact: Steven L. Goode, Phone: (919) 493–2612.
(32) *Laboratory:* Electro-Analytical, Inc.
Address: 516½ 84th St., NW., Bradenton, FL 34209, Contact: Mark H. Schiering, Phone: (813) 795–2785.
(33) *Laboratory:* EnviroSciences, Inc.
Address: Montgomery Bldg., Suite 705, P.O. Box 5804, Spartanburg, SC 29304, Contact: Andrew G. Schauder, Phone: (803) 585–4900.
(34) *Laboratory:* Environmental Analytical Labs.
Address: Cobb Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Jeremy A. Armstrong, Phone: (404) 425–9901.
(35) *Laboratory:* Environmental Materials Consultants.
Address: P.O. Box 100161, 2217 10th Ct. S., Suite 200, Birmingham, AL 35210, Contact: William E. Hogg, Phone: (205) 933–0400.
(36) *Laboratory:* Environmental Protection Systems.
Address: 2525 Perimeter Place Dr., Suite 125, Nashville, TN 37214, Contact: Ronald L. Allums, Phone: (615) 885–9400.
(37) *Laboratory:* Environmental Protection Systems, Inc.
Address: P.O. Box 20382, Jackson, MS 39209, Contact: Corbin McGriff, Phone: (601) 922–8242.
(38) *Laboratory:* Environmental Protection Systems, Inc.
Address: 7215 Pine Forest Rd., Pensacola, FL 32506, Contact: James R. Burkhalter, Phone: (904) 944–0301.
(39) *Laboratory:* Environmental Science and Engineering, Inc.
Address: P.O. Box 1703, Gainesville, FL 32602–1703, Contact: John J. Mousa, Phone: (904) 332–3318.
(40) *Laboratory:* Environmental Testing, Inc.
Address: 1700 University Commercial Pl., Charlotte, NC 28213, Contact: Rodney H. Lang, Phone: (704) 597–8454.
(41) *Laboratory:* Enviropact.
Address: 4790 Northwest 157th St. Hialeah, Miami, FL 33142, Contact: Greta Mackenzie, Phone: (305) 620–1700.
(42) *Laboratory:* Enviropact Services, Inc.
Address: 5180 113th Ave., N., Clearwater, FL 34620–4835, Contact: Michael T. Osinski, Phone: (813) 577–9663.
(43) *Laboratory:* Envirosciences, Inc.
Address: 3509 Haworth Dr., Suite 310, Raleigh, NC 27609–7223, Contact: R.C. Jordan, Phone: (919) 782–6527.
(44) *Laboratory:* Evans Environmental & Geological Science and Management, Inc.
Address: P.O. Box 452900, Miami, FL 33245–2900, Contact: Charles C. Evans, Phone: (305) 856–7458.
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(46) *Laboratory:* Flowers Chemicals Laboratories
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(47) *Laboratory:* Fox Run Laboratories.
Address: 1440 Petros Rd., Woodburn, KY 42170, Contact: Douglas A. Price, Phone: (502) 529–5101.
(48) *Laboratory:* GSC Environmental Laboratories, Inc.
Address: 1824 Bi Wylds Rd., Augusta, GA 30909, Contact: William J. Horning, Phone: (404) 737–0185.
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(51) *Laboratory:* Health & Hygiene, Inc.
Address: 4605–E Dundas Dr., Greensboro, NC 27407, Contact: Sharon P. Lonon, Phone: (919) 854–2303.

(52) *Laboratory:* JSG (John S. George) Consultants.
Address: Keene's Way, Box 119, Keene, KY 40339–0119, Contact: John S. George, Phone: (606) 885–5130.

(53) *Laboratory:* KNL Laboratory Services.
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(54) *Laboratory:* Kenvirons, Inc.
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(57) *Laboratory:* Laseter and Associates, Inc.
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(58) *Laboratory:* Law Associates, Inc.
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(59) *Laboratory:* Law Engineering.
Address: 4919 West Laurel St., P.O. Box 24183, Tampa, FL 33623, Contact: Susan K. Gossett, Phone: (813) 879–0750.

(60) *Laboratory:* Law Engineering Testing Co.
Address: 501 Minuet Ln., P.O. Box 11297, Charlotte, NC 28220, Contact: R. Glenn Craig, Phone: (704) 523–2022.

(61) *Laboratory:* Law Engineering, Inc.
Address: 3608 7th Ct., S., P.O. Box 10244, Birmingham, AL 35202, Contact: R. Michael Hamilton, Phone: (205) 252–9901.

(62) *Laboratory:* Loss Control Inc.
Address: 1432 Jocasta Dr., Lexington, KY 40502–5320, Contact: John F. Summersett, Phone: (606) 273–8881.

(63) *Laboratory:* MDN&T, Inc.
Address: 1911 Brownridge, Suite 1000, Atlanta, GA 30062, Contact: Marc Halpern, Phone: (404) 977–7889.

(64) *Laboratory:* McCrone Environmental Services, Inc.
Address: 1412 Oakbrook Dr., Suite 100, Norcross, GA 30093, Contact: Harriotte A. Hurley, Phone: (404) 381–0855.

(65) *Laboratory:* Metro Services Laboratory, Asbestos Control Division.
Address: 6309 Fern Valley Pass, Louisville, KY 40228, Contact: J Daniel Cooper, Phone: (502) 964–0865.

(66) *Laboratory:* Micro-Methods.
Address: 5106 Telephone Rd., Pascagoula, MS 39567, Contact: Thomas J. Wilson, Phone: (601) 769–7774.

(67) *Laboratory:* Montgomery Testing Co.
Address: P.O. Box 304, Montgomery, AL 36102, Contact: Ollen Gray, Phone: (205) 262–2878.

(68) *Laboratory:* Northrop Services, Inc.
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(69) *Laboratory:* Office of Safety & Environmental Health.
Address: Room 300, Nuclear Science Center, Auburn University, AL 36849–3501, Contact: Charles H. Ray, Jr., Phone: (205) 826–4870.

(70) *Laboratory:* Pace Laboratories, Inc.
Address: 5460 Beaumont Center Blvd., Tampa, FL 33634, Contact: Timothy M. Odell, Phone: (813) 884–8268.

(71) *Laboratory:* Pacific Environmental Services, Inc.
Address: 1905 Chapel Hill Rd., Durham, NC 27707, Contact: Gray Tencer, Phone: (919) 493–3536.

(72) *Laboratory:* Pensacola P.O.C., Inc.
Address: 406 Greve Road, Pensacola, FL 32507, Contact: Barbara Sviglin, Phone: (904) 456–4406.

(73) *Laboratory:* Phoenix Environmental Labs, Division of P.D.R. Engineers, Inc.
Address: 2000 Lindell Ave., Nashville, TN 37203, Contact: A.K. Upadhyaya, Phone: (615) 298–2065.

(74) *Laboratory:* Pioneer Laboratory, Inc.
Address: 11 East Olive Rd., Pensacola, FL 32514, Contact: Peggy Gaskill, Phone: (904) 474–1001.

(75) *Laboratory:* Professional Contract Services, Inc.
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(76) *Laboratory:* Professional Service Ind., Inc.
Address: 1450 North Lane Ave., Jacksonville, FL 32205, Contact: Thomas J. Bolka, Phone: (904) 783–4300.

(77) *Laboratory:* Professional Service Ind., Inc., PTL/Arribas Division.
Address: 3901 Northwest 29th Ave., Miami, FL 33142, Contact: Mary E. Hamel, Phone: (305) 633–7555.

(78) *Laboratory:* Professional Service Ind., Inc., Pittsburgh Testing Laboratory Div.
Address: 525 Webb Industrial Dr., NE, Marietta, GA 30062, Contact: Patrick J. Schweiger, Phone: (404) 424–6200.

(79) *Laboratory:* Quality Analytical Services.
Address: 4701 Joseph Michael Ct., Raleigh, NC 27606, Contact: John Sheats, Phone: (919) 851–2891.

(80) *Laboratory:* R3 Enterprises
Address: 630 Edgewater Club Rd., Wilmington, NC 28405, Contact: Richard Spivey, Phone: (919) 686–0242.

(81) *Laboratory:* Resolution, Inc.
Address: 244 British Woods Dr., Nashville, TN 37217, Contact: Ron Francis, Phone: (615) 360–8931.

(82) *Laboratory:* Roberts Environmental Services, MAKO Office Complex.
Address: Highway 24 East, Swansboro, NC 28584, Contact: H. Dan Roberts, Phone: (919) 393–6167.

(83) *Laboratory:* S&ME Industrial Tech., Inc.
Address: 5909 Breckenridge Pkwy., Suite B, Tampa, FL 33610, Contact: John J. Henderson, Phone: (813) 623–2438.

(84) *Laboratory:* S&ME Industrial Technologies, Inc.
Address: 840 Low Country Blvd., Mt. Pleasant, SC 29464, Contact: Nina G. Marshtein, Phone: (803) 884–0005.

(85) *Laboratory:* S&ME Industrial Technologies, Inc.
Address: 3300 Marjan Dr., Atlanta, GA 30340, Contact: Charles H. Zollner, Phone: (404) 451–5772.

(86) *Laboratory:* Safety Underwriters Lab., Inc.
Address: P.O. Box 20094, Birmingham, AL 35216, Contact: Rebecca J. Hicks, Phone: (205) 822–3727.

(87) *Laboratory:* Schweiger and Associates.
Address: 1150 Terrell Mill Rd., 4M, Marietta, GA 30067, Contact: Patrick J. Schweiger, Phone: (404) 984–2692.

(88) *Laboratory:* Southeastern Marine Chemists, Inc., Southeastern Chemists' Laboratories.

Address: P.O. Box 6917, Jacksonville, FL 32239, Contact: Joseph W. Newton, Phone: (904) 725–2040.

(89) *Laboratory:* Southern Earth Sciences, Inc.
Address: 762 Downtowner Loop W., Mobile, AL 36609, Contact: Charles Smilie, Phone: (205) 344–7711.

(90) *Laboratory:* Southern Research Institute.
Address: P.O. Box 55305, Birmingham, AL 35255–5305, Contact: Ruby H. James, Phone: (205) 323–6592.

(91) *Laboratory:* Specialized Assays.
Address: 210 12th Ave., S., P.O. Box 25110, Nashville, TN 37202, Contact: Kay Williams-Smith, Phone: (615) 255–5786.

(92) *Laboratory:* St. Elizabeth Medical Center.
Address: One Medical Village Dr., Edgewood, KY 41017, Contact: Margaret Blau, Phone: (606) 334–2080.

(93) *Laboratory:* TEI Environmental, Inc.
Address: 308A Pomona Dr., Greensboro, NC 27407, Contact: James Buchanan, Phone: (919) 852–0318.

(94) *Laboratory:* TTL, Inc.
Address: 3516 Greensboro Ave., P.O. Box 1094, Tuscaloosa, AL 35403, Contact: Jack E. Davis, Phone: (205) 345–0816.

(95) *Laboratory:* Tennessee Valley Authority.
Address: T105, NFDC, Muscle Shoals, AL 35660, Contact: Robin M. Scheib, Phone: (205) 386–2544.

(96) *Laboratory:* Testwell Craig Laboratories of Florida, Inc.
Address: 7104 Northwest 51st St., Miami, FL 33166, Contact: Robert Schuler, Phone: (305) 593–0561.

(97) *Laboratory:* Testwell Craig Laboratories of Tampa, Inc.
Address: 11553 U.S. Hwy. 41, S., Gibsonton, FL 33534–9720 Contact: Michael Williamson, Phone: (813) 677–0242.

(98) *Laboratory:* Thompson Engineering Testing.
Address: 3707 Cottage Hill Rd., P.O. Drawer 9637, Mobile Al 36691, Contact: Emery E. Baya, Phone: (205) 666–2443.

(99) *Laboratory:* Thornton Laboratories, Inc.
Address: 1145 East Cass St., Tampa, FL 33602, Contact: Laure Taylor, Phone: (813) 223–9702.

(100) *Laboratory:* University of Alabama Toxic Substances Control Lab.
Address: P.O. Box 2967, Tuscaloosa, AL 35486, Contact: W. Paul Harrison, Phone: (205) 348–4666.

(101) *Laboratory:* Weston/ATC, Inc. Analytical Services.
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(102) *Laboratory:* Wilson Analytical, Inc.
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(3) *Laboratory:* ATEC Associates, Inc.
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(4) *Laboratory:* ATEC Associates, Inc.
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(5) *Laboratory:* Affiliated Environmental Services, Inc.
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(6) *Laboratory:* Air Quality Testing.
Address: 236 South Washington St., Naperville, IL 60540, Contact: J.D. Stubblefield, Phone: (312) 369–8987.

(7) *Laboratory:* AirTech Associates, Inc.
Address: 4100 Madison, Lower Level, Suite 4, Hillside, IL 60162, Contact: Mark Watka or Anne Czechorski, Phone: (312) 547–8117.

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(9) *Laboratory:* Albert L. Caskey.
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(17) *Laboratory:* Asbestos Compliance Technology, Inc.
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(19) *Laboratory:* Asbestos Management, Inc.
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(20) *Laboratory:* BCA Laboratory.
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(21) *Laboratory:* BDN Industrial Hygiene Consultants.
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(22) *Laboratory:* Badger Labs. & Eng. Co., Inc.
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(24) *Laboratory:* Best Lab IH Associates.
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(25) *Laboratory:* Bowser-Morner Testing Laboratories, Inc.
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(26) *Laboratory:* Braun Environmental Laboratories.
Address: 6800 South Country Rd. 18, P.O. Box 35108, Minneapolis, MN 55435–0108, Contact: Lisa A. Fournelle-Smestad, Phone: (612) 941–5600.
(27) *Laboratory:* Brookfield Academy, Dept. of Math & Science.
Address: 3460 North Brookfield Rd., Brookfield, WI 53005, Contact: H.S. MacDonald, Phone: (414) 781–6410.
(28) *Laboratory:* Bruce Menkel & Associates, Inc.
Address: 235 Industrial Dr., P.O. Box 159, Franklin, OH 45005, Contact: Bruce Menkel, Phone: (513) 746–9300.
(29) *Laboratory:* C.G. Technologies, Inc.
Address: 921 Mohican Pass, Madison, WI 53711, Contact: Carol Gannon, Phone: (608) 271–2292.
(30) *Laboratory:* CAE Asbestos.
Address: 207 North Woodwork Ln., Palatine, IL 60067, Contact: Paul A. Evansky, Jr., Phone: (312) 991–3300.
(31) *Laboratory:* CENCON.
Address: 333 South Wabash Ave.–3W, Chicago, IL 60604, Contact: Mary E. O'Rourke, Phone: (312) 822–5570.
(32) *Laboratory:* Carnow, Conibear and Associates, Ltd.
Address: 333 West Wacker Dr., 14th Fl., Chicago, IL 60606, Contact: Steve Wolf, Phone: (312) 782–4486.
(33) *Laboratory:* Chem-Bio Corporation.
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(34) *Laboratory:* Clayton Environmental Consultants, Inc.
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(35) *Laboratory:* Cole Associates, Inc.
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(36) *Laboratory:* Daily Analytical Laboratories.
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(37) *Laboratory:* Daniel J. Hartwig Associates, Inc., Director, Industrial Hygiene Services.
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(38) *Laboratory:* DataChem.
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(39) *Laboratory:* DeLisle Consulting & Laboratories, Inc.
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(40) *Laboratory:* DeYor Laboratories, Inc.
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(41) *Laboratory:* EIS Environmental Engineers, Inc.
Address: 1701 North Ironwood Dr., South Bend, IN 46635, Contact: H. Stephen Nye, Phone: (219) 277–5715.
(42) *Laboratory:* ERT Testing Services, Inc.
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(43) *Laboratory:* Electro Analytical, Inc.
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(44) *Laboratory:* Electro-Analytical, Inc.
Address: 220 South Main St., Suite 307, Lombard, IL 60148, Contact: Alicia M. Good, Phone: (312) 495–7767.
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(80) *Laboratory:* Standard Testing & Eng. Co.

Address: 600 Distributors Row, Harahan, LA 70123, Contact: Robert E. Jones, Phone: (504) 734–8378.

(81) *Laboratory:* Standard Testing and Engineering Co.

Address: 3400 North Lincoln Blvd., Oklahoma City, OK 73105, Contact: Cheri Marcham, Phone: (405) 528–0541.

(82) *Laboratory:* Stanley Engineering Inc. & Alpha Analytical Labs, Inc.

Address: 2700 Northwest 39th St., Oklahoma City, OK 73112, Contact: Keith L. Stanley, Phone: (405) 948–6505.

(83) *Laboratory:* Sunbelt Associates, Inc.

Address: 6961 Mayo Rd., New Orleans, LA 70126, Contact: Gary C. Allen, Phone: (504) 242–5026.

(84) *Laboratory:* Texas Department of Health Asbestos Abatement Branch

Address: 1100 West 49th St., Austin, TX 78756–3199, Contact: Joel H. Smith, Phone: (512) 458–7255.

(85) *Laboratory:* Texas Research Institute Environmental Division

Address: 9063 Bee Cave Rd., Austin, TX 78733, Contact: Gary Rolls, Phone: (512) 263–2101.

(86) *Laboratory:* The Hartford Steam Boiler Inspection & Insurance Co.

Address: 15415 Katy Fwy., Suite 300, Houston, TX 77094, Contact: Diana Spence, Phone: (713) 578–7300.

(87) *Laboratory:* Tulane University Medical Center Department of Environmental Health Sciences

Address: 1430 Tulane Ave., New Orleans, LA 70012, Contact: Shau Nong Chang, Phone: (504) 588–5374.

(88) *Laboratory:* U.S. Analytical, Inc.

Address: P.O. Box 801, Abilene, TX 79604, Contact: L. Keith Davis, Phone: (915) 698–3293.

(89) *Laboratory:* U.S. Analytical, Inc.

Address: P.O. Box 81311, Midland, TX 79709, Contact: Donald Anderson, Phone: (915) 561–4045.

(90) *Laboratory:* W. C. Runnels Consultants

Address: Route 9, P.O. Box 1459, Beaumont, TX 77706, Contact: W. C. Runnels, Phone: (409) 866–3109.

(91) *Laboratory:* Waldemar S. Nelso & Co., Inc.

Address: 1200 St. Charles Ave., New Orleans, LA 70130, Contact: Laura E. Yager, Phone: (504) 523–5281.

(92) *Laboratory:* Weckerling Scientific Laboratories, Inc.

Address: 2602 Electronic Ln., Suite 606, Dallas, TX 75220, Contact: Alan B. Weckerling, Phone: (214) 353–9494.

(93) *Laboratory:* Weintritt Testing Laboratories, Inc.

Address: 305 Andrew Guidry Rd., P.O. Box 30162, Lafayette, LA 70593, Contact: Richard G. Tietz, Phone: (318) 981–1560.

(94) *Laboratory:* West-Paine Laboratories, Inc.

Address: 7979 G. S. R. I. Ave., Baton Rouge, LA 70820 Contact: Jonny H. Vickers, Phone: (504) 769–4900.

(95) *Laboratory:* Western Atlas International.

Address: 1733 North Padre Island Dr., Corpus Christi, TX 78408–2329, Contact: Craig Hawkins, Phone: (512) 289–2673.

Region VII—Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA Region VII, 726 Minnesota Ave., Kansas City, KS 66101, (913) 236–2834, (FTS) 757–2834.

(1) *Laboratory:* A.T. Laboratory

Address: 2449–A Iowa St., Suite 208, Lawrence, KS 66046, Contact: Terron E. Jones, Phone: (913) 749–2794.

(2) *Laboratory:* ACM Labs, Inc.

Address: 304 North Main, P.O. Box 2073, Fairfield, IA 52556, Contact: David Fleshman, Phone: (515) 472–7402.

(3) *Laboratory:* ALERT Analytical Laboratories

Address: 1900 West 47th Pl., #302, Westwood, KS 66205, Contact: Kevin Santee, Phone: (913) 831–4795.

(4) *Laboratory:* Abshier & Associates, Ltd.

Address: 524 Northeast Malibu Dr., Lee's Summit, MO 64063, Contact: Shirley A. Abshier, Phone: (816) 524–9203.

(5) *Laboratory:* Ames Environmental

Address: 3910 Lincoln Way, Ames, IA 50010, Contact: David Fairchild, Phone: (515) 292–3400.

(6) *Laboratory:* Asbestos Consulting & Testing

Address: 15001 West 101st Ter., Lenexa, KS 66215, Contact: Jim A. Pickel, Phone: (913) 492–1337.

(7) *Laboratory:* Baird Scientific

Address: P.O. Box 842, Carthage, MO 64836, Contact: Gary Baird, Phone: (417) 358–5567.

(8) *Laboratory:* Certified Environmental Management, Inc.

Address: P.O. Box 504, Salina, KS 67402–0504, Contact: Brenda A. Tolson, Phone: (913) 536–8315.

(9) *Laboratory:* Chart Services, Ltd.

Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322, Contact: Mary A. Finn, Phone: (515) 276–3642.

(10) *Laboratory:* ERG Consultants, Inc.

Address: 402 C Bannister Rd., Kansas City, MO 64131, Contact: Andrew F. Oberta, Phone: (816) 444–5804.

(11) *Laboratory:* Environmental Analysis South

Address: 1209 Broadway, Cape Girardeau, MO 63702, Contact: David Warren, Phone: (314) 334–8717.

(12) *Laboratory:* Environmetrics, Inc.

Address: 10679 Midwest Industrial Blvd., St. Louis, MO 63132, Contact: Mario Vaenberg, Phone: (314) 427–0550.

(13) *Laboratory:* Groundwater Technologies Environmental Laboratories Midwest Region

Address: 902 West 2nd St., Wichita, KS 67203, Contact: Robert K. Kennedy, Phone: (316) 264–4480.

(14) *Laboratory:* Hall-Kimbrell Environmental Services, Inc.

Address: 4840 West 15th St., Lawrence, KS 66046, Contact: W. David Kimbrell, Phone: (913) 749–2381.

(15) *Laboratory:* Health & Architectural Assoc., Inc.

Address: 503 Main St., Belton, MO 64012, Contact: George S. McDowell, Phone: (816) 331–0002.

(16) *Laboratory:* Industrial Testing Laboratories, Inc.

Address: 2350 Seventh Blvd., St. Louis, MO 63104, Contact: William J. Lowry, Phone: (314) 771–7111.

(17) *Laboratory:* Iowa State University of Science & Technology Department of Environmental Health & Safety.

Address: 251 Nuclear Engineering Lab, Ames, IA 50011–2230, Contact: Louis J. Mitchell, Phone: (515) 294–5359.

(18) *Laboratory:* Kansas City Testing Laboratory Chemical Division.

Address: 1669 Jefferson, Kansas City, MO 64108, Contact: Jeffery L. Jenkins, Phone: (816) 842–7350.

(19) *Laboratory:* King Environmental Services, Inc.

Address: 1287 Parkway Dr., St. Clair, MO 63077, Contact: Bonnie King, Phone: (314) 629–1546.

(20) *Laboratory:* Langston Laboratories, Inc.

Address: 2005 West 103rd Ter. (B), Leawood, KS 66206, Contact: Alan Kerschen, Phone: (913) 341–7800.

(21) *Laboratory:* Larron Laboratory.

Address: 529 Broadway, Cape Girardeau, MO 63701, Contact: David J. Roth, Phone: (314) 334–8910.

(22) *Laboratory:* MD Chemical & Testing Co., Inc.

Address: 5205 Southwest Dr., Suite B&C, P.O. Box 67094, Topeka, KS 66667, Contact: Michael A. Dalrymple, Phone: (913) 862–1503.

(23) *Laboratory:* Mayhew Environmental Training Associates.

Address: 901 Kentucky, Suite 305A, Lawrence, KS 66044, Contact: Robert G. Williams, Phone: (913) 842–6382.

(24) *Laboratory:* MetaTrace, Inc.

Address: 13715 Rider Trail North, Earth City, MO 63045, Contact: Marleah M. Martin, Phone: (314) 398–8566.

(25) *Laboratory:* Microscopic Analysis, Inc.

Address: 989 Gardenview Office Pky., St. Louis, MO 63141, Contact: Douglas N. Nimmo, Phone: (314) 993–2212.

(26) *Laboratory:* Midwest Environmental Testing & Training, Inc.

Address: 3500 Northeast Independence Ave., Lee's Summit, MO 64064, Contact: Steve Minshall, Phone: (816) 525–6681.

(27) *Laboratory:* Midwest Research Institute

Address: 425 Volker Blvd., Kansas City, MO 64110, Contact: Gaylord Atkinson, Phone: (816) 753–7600.

(28) *Laboratory:* Midwestern Testing Labs, Inc.

Address: P.O. Box 1657 Fairfield, IA 52556, Contact: Dennis Greenley, Phone: (515) 472–1881.

(29) *Laboratory:* Nebraska Testing Laboratories, Inc.

Address: 4123 South 67th St., Omaha, NE 68117–1086, Contact: Lynn A. Knudtson, Phone: (402) 331–4453.

(30) *Laboratory:* Net Midwest Inc., Cedar Falls Division

Address: 1922 Main St., P.O. Box 625, Cedar Falls, IA 50613, Contact: Michael McGee, Phone: (319) 277–2401.

(31) *Laboratory:* Professional Service Ind., Inc., PTL Division

Address: 5445 Highland Park Dr., St. Louis, MO 63110, Contact: W. H. Beckerman, Phone: (314) 652–4420.

(32) *Laboratory:* St Louis Testing Laboratories, Inc.

Address: 2810 Clark Ave., St. Louis, MO 63103–2574, Contact: Rudolph B. Spanholtz, Phone (314) 531–8080.

(33) *Laboratory:* The University of Iowa University Hygienic Laboratory

Address: Iowa City, IA 52242, Contact: I. A. Schwabbauer, Phone: (319) 353–5990.

(34) *Laboratory:* Wilson Laboratories

Address: 525 North 8th St., P.O. Box 1820, Salina, KS 67402–1820, Contact: Gregory J. Groene, Phone: (913) 825–7186.

Region VIII—Denver, CO

Regional Asbestos Coordinator: David Combs, [8AT–TS], EPA, Region VIII, 1

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Denver Place, 999–18th St., R. 1300, Denver, CO 80202–2413. (303) 293–1744, (FTS) 564–1744.

(1) *Laboratory:* ATC Environmental, Inc.

Address: 1515 East Tenth St., Sioux Falls, SD 57103, Contact: Donald Beck, Phone: (605) 338–0555.

(2) *Laboratory:* Analytica, Inc.

Address: 5930 McIntyre St., Golden, CO 80403, Contact: Daniel M. Benecke, Phone: (303) 279–2583.

(3) *Laboratory:* Associated Laboratories, Inc.

Address: 1275 Ithaca Dr., Boulder, CO 80303, Contact: Robert M. Stieha, Phone: (303) 691–2335.

(4) *Laboratory:* Bison Engineering/ Research

Address: P.O. Box 1703, Helena, MT 59624, Contact: Patricia E. Groll, Phone: (406) 442–5768.

(5) *Laboratory:* Colorado State University Department of Environmental Health

Address: B120 Microbiology Building, Fort Collins, CO 80523, Contact: Roy C. Warbington, Phone: (303) 491–7038.

(6) *Laboratory:* DCM Science Laboratory

Address: 12975 West 24th Pl., Golden, CO 80401, Contact: Donna C. Mefford, Phone: (303) 237–0110.

(7) *Laboratory:* Datachem, Inc.

Address: 960 West LeVoy Dr., Salt Lake City, UT 84123, Contact: Lance Eggenberger, Phone: (801) 266–7700.

(8) *Laboratory:* Davis Consulting

Address: 4022 Helen Court, Rapid City, SD 57702, Contact: Briant L. Davis, Phone: (605) 342–4320.

(9) *Laboratory:* Dixon Information, Inc.

Address: 4806 Quail Point Roads, Salt Lake City, UT 84124, Contact: Willard C. Dixon, Phone: (801) 278–7233.

(10) *Laboratory:* Environmental Safety Systems, Inc.

Address: 11435 West 48th Ave., Wheat Ridge, CO 80033–2101, Contact: Douglas J. Fitzgerald, Phone: (303) 232–0707.

(11) *Laboratory:* Grand Junction Laboratories

Address: 435 North Ave., Grand Junction, CO 81501, Contact: Brian S. Bauer, Phone: (303) 242–7618.

(12) *Laboratory:* HTI Laboratories & Industrial Consultants

Address: 1806 Main Ave., Fargo, ND 58103, Contact: Constance S. Hodny, Phone: (701) 232–1399.

(13) *Laboratory:* HTI Laboratories & Industrial Consultants, Inc.

Address: 7727 West 6th Ave., Bay E, Lakewood, CO 80215, Contact: Constance S. Hodny, Phone: (303) 773–9616.

(14) *Laboratory:* HTI Laboratories & Industrial Consultants, Inc. (Mobile Lab)

Address: Box 8192, Fargo, ND 58109, Contact: Constance S. Hodny, Phone: (701) 237–9750.

(15) *Laboratory:* Hager Laboratories, Inc.

Address: 11234 E. Caley Ave., Englewood, CO 80111, Contact: Patricia Manning, Phone: (303) 790–2727.

(16) *Laboratory:* J&M Analytical Services, Inc.

Address: 1221 West 3200 South, Utah Branch, Nibley, UT 84321, Contact: William R. McManus, Phone: (801) 752–7516.

(17) *Laboratory:* Northern Engineering & Testing, Inc.

Address: 600 South 25th St., Billings, MT 59107, Contact: Kathleen Smit, Phone: (406) 248–9161.

(18) *Laboratory:* Occupational Health Technologies, Inc.

Address: 171 University Circle, Pueblo, CO 81005, Contact: Thomas F. Antonson, Phone: (719) 566–0422.

(19) *Laboratory:* Professional Service Ind., Inc. Pittsburgh Testing Lab. Div.

Address: 2955 South West Temple St., Salt Lake City, UT 84115, Contact: Herb Ritzman, Phone: (801) 484–8827.

(20) *Laboratory:* Sathe Analytical Lab., Inc.

Address: P.O. Box 1527, Williston, ND 58801, Contact: Neal Falk, Phone: (701) 572–3632.

(21) *Laboratory:* South Dakota School of Mines & Tech Engineering & Mining Exp. Station

Address: Rapid City, SD 57701, Contact: Charles K. Shearer, Phone: (605) 394–2291.

(22) *Laboratory:* Survey, Management, and Design

Address: P.O. Box 8021, Fargo, ND 58109, Contact: Peter L. Mehl, Phone: (701) 234–9556.

(23) *Laboratory:* Technology Management, Inc.

Address: 685 West Gunnison, Suite #108, Grand Junction, CO 81505–7249, Contact: Carlon C. Chambers, Phone: (303) 242–6154.

(24) *Laboratory:* University of North Dakota Energy Research Center

Address: Box 8213, University Station, Grand Forks, ND 58202, Contact: Gale G. Mayer, Phone: (701) 777–5108.

Region IX—San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, [T–52], EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974–7290, (FTS) 454–7290.

(1) *Laboratory:* ASBESTECH

Address: 6801 Fair Oaks Blvd., Suite H, Carmichael, CA 95608, Contact: Tommy G. Conlon, Phone: (916) 481–8902.

(2) *Laboratory:* Analytical Research Laboratories, Inc.

Address: 160 Taylor St., P.O. Box 2360, Monrovia, CA 91016, Contact: D.W. Kohlenberger, Phone: (818) 357–3247.

(3) *Laboratory:* Applied Petrography, Inc.

Address: 8520 Sorenson Ave., Suite E, Santa Fe Springs, CA 90670, Contact: Joanna Deane, Phone: (213) 945–3468.

(4) *Laboratory:* Asbestos Management Services, Inc.

Address: 14829 Proctor Ave., Industry, CA 91746, Contact: Joseph Johnson, Phone: (818) 961–4303.

(5) *Laboratory:* Associated Safety Consultants

Address: 13363 Saticoy St., #204, North Hollywood, CA 91605, Contact: Dan Flaherty, Phone: (818) 503–0471.

(6) *Laboratory:* BSE Labs, Inc.

Address: 50 East Foothill Blvd., Arcadia, CA 91006, Contact: Charles Redinger, Phone: (818) 355–0818.

(7) *Laboratory:* Brown and Caldwell Analytical Lab.

Address: 1255 Powell St., Emeryville, CA 94608, Contact: Pat Sheppard, Phone: (415) 428–2300.

(8) *Laboratory:* California Water Labs

Address: 1430 Carpenter Ln., Modesto, CA 95352, Contact: Gloria Poling, Phone: (209) 527–4050.

(9) *Laboratory:* Cam Lab

Address: 3435 Artesia Blvd., Suite 41, Torrance, CA 90504, Contact: Michael R. Tiffany, Phone: (213) 327–8879.

(10) *Laboratory:* Casalina Associates, Inc.

Address: 47–345 Mahakea Rd., Kaneohe, HI 96744, Contact: Sam L. Casalina, Phone: (808) 239–6514.

(11) *Laboratory:* Certified Testing Laboratories, Inc.

Address: 2905 East Century Blvd., South Gate, CA 90280, Contact: Stuart E. Salot, Phone: (213) 564–2641.

(12) *Laboratory:* Clark Geological Services

Address: 3479 Edison Way, Fremont, CA 94538, Contact: Joyce Lucas-Clark, Phone: (415) 659–1784.

(13) *Laboratory:* Clayton Environmental Consultants, Inc.

Address: 1252 Quarry Ln., Pleasanton, CA 94566, Contact: Warren C. Steele, Phone: (415) 426–2600.

(14) *Laboratory:* Consulting Health Services

Address: P.O. Box 1625, El Cajon, CA 92022, Contact: Kenneth S. Cohen, Phone: (619) 579–6233.

(15) *Laboratory:* Conteck

Address: P.O. Box 3065, Newport Beach, CA 92663, Contact: Emily Collier, Phone: (714) 645–0482.

(16) *Laboratory:* Dan Napier & Associates

Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260–6440, Contact: Dan Napier, Phone: (213) 644–1924.

(17) *Laboratory:* Donald Johnson

Address: 7737 Fair Oaks Blvd., Suite #452, Carmichael, CA 95603, Contact: Donald Johnson.

(18) *Laboratory:* Dyer Laboratories, Inc.

Address: West 237th St., Torrance, CA 90505, Contact: D.L. Dyer, Phone: (213) 530–3322.

(19) *Laboratory:* E & A Env'l Service, Inc.

Address: 8132 Firestone Blvd., Suite 142, Downey, CA 90241, Contact: Ebbiteanga Abili.

(20) *Laboratory:* EMS Laboratories

Address: 211 Pasadena Ave., South Pasadena, CA 91030–2919, Contact: Bernadine M. Kolk, Phone: (213) 257–2002.

(21) *Laboratory:* EPI Center

Address: 2610 Santa Monica Blvd., Santa Monica, CA 90404, Contact: Wm. Don McDougall, Phone: (213) 828–0996.

(22) *Laboratory:* Env'l Safety Systems, Inc.

Address: 9041–17 Dice Rd. Santa Fe Springs, CA 90670, Contact: Al Fahrenbruch, Phone: (213) 944–2520.

(23) *Laboratory:* Enviromed, Inc.

Address: 2200 East River Rd., Suite 122, P.O. Box 30854, Tucson, AZ 85718, Contact: Steven Pike, Phone: (602) 577–0818.

(24) *Laboratory:* Environmental In Ovations

Address: 7700 Edgewater Dr., Suite 665, Oakland, CA 94621, Contact: Kip Fout, Phone: (415) 632–0104.

(25) *Laboratory:* Eureka Laboratories, Inc.

Address: 3401 La Grande Blvd., Sacramento, CA 95823, Contact: Steven K. Leung, Phone: (916) 428–1193.

(26) *Laboratory:* Fiberquant, Inc.

Address: 4824–B South 35th St., Phoenix, AZ 85040, Contact: Larry Pierce, Phone: (602) 276–6138.

(27) *Laboratory:* Firemans Fund Environmental Laboratory

Address: 3700 Lakeville Highway, Petaluma, CA 94952, Contact: Jerry Tuma, Phone: (707) 778–4160.

(28) *Laboratory:* Forensic Analytical Specialities, Inc.

Address: 3777 Depot Rd., Suite 408, Hayward, CA 94545 Contact: Stephen A. Shaffer, Phone: (415) 887–8828.

(29) *Laboratory:* GT Environmental Laboratories Western Region

Address: 4080–C Pike Ln., Concord, CA 94520, Contact: Safy Khalifa, Phone: (415) 685–7852.

(30) *Laboratory:* Galson Technical Services, Inc.

Address: 2116 Berkeley Way, Berkeley, CA 94704, Contact: Chuck Siu, Phone: (415) 848–0389.

(31) *Laboratory:* Gemeni Petrographic Investigations

Address: P.O. Box 2127, Novato, CA 94948, Contact: Peter A. Almendinger, Phone: (415) 892–9016.

(32) *Laboratory:* General Analytical Laboratories Building and Home Inspection Engineers

Address: 15708 Pomerado Rd., Suite 202, Poway, CA 92064, Contact: William J. DeBerry, Phone: (619) 451–0713.

(33) *Laboratory:* Hall-Kimbrell Environmental Services

Address: 2615 South King St., Suite 2A, Honolulu, HI 96826, Contact: S. Gil Cobb, Phone: (913) 749–2381.

(34) *Laboratory:* Hall-Kimbrell Environmental Services

Address: 646 South Brea Canyon Rd., Walnut, CA 91789, Contact: Joel K. Davidson, Phone: (714) 594–3232.

(35) *Laboratory:* Health Sciences Associates

Address: 10771 Noel St., Los Alamitos, CA 90720, Contact: Kathy S. Jones, Phone: (714) 220–3922.

(36) *Laboratory:* IT Corporation—Cerritos

Address: 17605 Fabrica Way, Cerritos, CA 90701, Contact: Mary Hammons, Phone: (213) 921–9831.

(37) *Laboratory:* Industrial Analytical Lab, Inc.

Address: 3615 Harding Ave., Honolulu, HI 96816, Contact: Mark R. Hagadone, Phone: (808) 735–0422.

(38) *Laboratory:* J.M. Cohen, Inc.

Address: 155 Bovet Rd., Suite 300, San Mateo, CA 94402, Contact: Joel Cohen, Phone: (415) 349–9737.

(39) *Laboratory:* Kellco Asbestos Analytical Services

Address: P.O. Box 1339, Freemont, CA 94538, Contact: Bonnie Lee Kellogg, Phone: (415) 659–9751.

(40) *Laboratory:* McClara Laboratory Asbestos Control Division

Address: 1231 Gary Way, Carmichael, CA 95608, Contact: Michael McClara, Phone: (916) 489–9202.

(41) *Laboratory:* McCrone Environmental Services, Inc.

Address: 120 Newport Center Dr., Suite 240, Newport Beach, CA 92660, Contact: William Millar, Phone: (714) 759–6619.

(42) *Laboratory:* Med-Tox Associates, Inc.

Address: 1229 Morena Blvd., San Diego, CA 92110, Contact: Thomas Vernon Dagenhart, Phone: (619) 276–8843.

(43) *Laboratory:* Meixa Tech

Address: P.O. Box 844, Cardiff, CA 92007, Contact: Bryan R. Burnett, Phone: (619) 436–7714.

(44) *Laboratory:* Micro-Chem Laboratories

Address: 1550 Dell Ave., Suite E, Campbell, CA 95008, Contact: Robert O'Neill, Phone: (408) 374–3360.

(45) *Laboratory:* Microanalytical Services, Inc.

Address: 201 South Lake Ave., Suite 402, Pasadena, CA 91101, Contact: Nancy Carraway, Phone: (818) 356–7400.

(46) *Laboratory:* Microprobe

Address: 5104 East Burns, Tucson, AZ 85711, Contact: James R. Kessler, Phone: (602) 745–1189.

(47) *Laboratory:* Montgomery Laboratories

Address: 555 East Walnut St., P.O. Box 7009, Pasadena, CA 91109–7009, Contact: Joan A. Oppenheimer, Phone: (818) 796–9141.

(48) *Laboratory:* National Asbestos Labs, Inc.

Address: 2235 Polvorosa Ave., Suite 220, San Leandro, CA 94577, Contact: Kevin Smith, Phone: (415) 357–9555.

(49) *Laboratory:* OKist

Address: 300 Page St., San Francisco, CA 94102, Contact: Olga Kist, Phone: (415) 552–4595.

(50) *Laboratory:* One in a Million

Address: 2678 O'Harte Rd., San Pablo, CA 94806, Contact: Sandra J. Millien, Phone: (415) 724–0193.

(51) *Laboratory:* Particle Diagnostics, Inc.

Address: 1274 Morena Blvd., San Diego, CA 92109, Contact: Dan Baxter, Phone: (619) 276–2200.

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(52) *Laboratory:* Precision Micro-Analysis
Address: 5665 Power Inn Rd., Suite 102, Sacramento, CA 95824, Contact: J. Benjamin Smith, Phone: (916) 381–0694.

(53) *Laboratory:* Quartech
Address: P.O. Box 426, Del Mar, CA 92014, Contact: Sarjant Singh, Phone: (619) 755–6270.

(54) *Laboratory:* R.J. Lee Group, Inc.
Address: 2424 6th St., Berkeley, CA 94710, Contact: Jesse E. Fisher, Phone: (415) 486–8319.

(55) *Laboratory:* Radiation Detection Co.
Address: 162 Wolfe Rd., P.O. Box 1414, Sunnyvale, CA 94088, Contact: Susan Gagner, Phone: (408) 735–8700.

(56) *Laboratory:* San Diego Gas & Electric Co. Environmental Analysis Section
Address: P.O. Box 1831, San Diego, CA 92112, Contact: Thomas Reel, Phone: (619) 696–2545.

(57) *Laboratory:* Santa Rita Analytical
Address: 5055 East Broadway, Suite D–208, Tucson, AZ 85711, Contact: James C. Faas, Phone: (602) 790–4491.

(58) *Laboratory:* Schwein/Christensen Eng. Ltd.
Address: 3397 Mt. Diablo Blvd., Suite E, Lafayette, CA 94549, Contact: Conrad Christensen, Phone: (415) 284–3311.

(59) *Laboratory:* Science Applications International Corp.
Address: 4224 Campus Point Ct., San Diego, CA 92121, Contact: Linda Krokenberger, Phone: (619) 535–7521.

(60) *Laboratory:* Scientific Environmental Laboratories
Address: 924 Industrial Ave., Palo Alto, CA 94303, Contact: Shui Fong, Phone: (415) 856–6011.

(61) *Laboratory:* Smith-Emery Co. Environmental/Chemical Dept.
Address: 781 East Washington Blvd., Los Angeles, CA 90021, Contact: Jack C. Carmody, Phone: (213) 749–3411.

(62) *Laboratory:* Soil & Water Laboratory
Address: 14072 West Park Ave., Boulder Creek, CA 95006, Contact: R.A. Lemon, Phone: (408) 338–3053.

(63) *Laboratory:* Southwest Hazard Control, Inc.
Address: 10941 North Coyote Ln., Tucson, AZ 85741, Contact: Gerald J. Karches, Phone: (602) 744–1060.

(64)*Laboratory:* Sunshine Environmental Laboratory
Address: 2681 Lincoln Rd., Las Vegas, NV 89115, Contact: Nathan M. Lencioni, Phone: (702) 452–3952.

(65) *Laboratory:* TMA/NORCAL Corporation
Address: 2030 Wright Ave., Richmond, CA 94804, Contact: Rosemary Sliney, Phone: (415) 235–2633

(66) *Laboratory:* Tabershaw & Associates, Inc.
Address: 3938 East Grant Rd., #433, Tucson, AZ 85712, Contact: Irving R. Tabershaw, Phone: (602) 299–3302.

(67) *Laboratory:* Tennant & Terstegen Consultants
Address: P.O. Box 16356, Fresno, CA 93755, Contact: David R. Terstegen, Phone: (209) 227–4870.

(68) *Laboratory:* Toxscan Control Lab
Address: 1234 Highway I, Watsonville, CA 95076, Contact: Frank Shields, Phone: (408) 724–4427.

(69) *Laboratory:* Truesdale Laboratories, Inc.
Address: 14201 Franklin Ave., Tustin, CA 92680, Contact: Karl Schiller, Phone: (714) 730–6239.

(70) *Laboratory:* United States Testing, Inc. EST–West
Address: 3491 Kurtz St., P.O. Box 80985, San Diego, CA 92110, Contact: Craig Sobotka, Phone: (619) 222–0544.

(71) *Laboratory:* Unitek Environmental Consultants, Inc.
Address: 2889 Mokumoa St., Honolulu, HI 96819, Contact: Irene Enoki, Phone: (808) 834–1444.

(72) *Laboratory:* University Associates, Ltd.
Address: 3791 North Camino De Oeste, Tucson, AZ 85745, Contact: John D. Repko, Phone: (602) 743–7918.

(73) *Laboratory:* Van Houten Consultants, Inc.
Address: P.O. Box 2659, Novato, CA 94948, Contact: Gregory P. Arnold, Phone: (415) 897–6805.

(74) *Laboratory:* W.H. Cunningham & Assoc., Inc.
Address: 11 Embarcadero West, #210, Oakland, CA 94607, Contact: W.H. Cunningham, Phone: (415) 543–3934.

(75) *Laboratory:* Weck Laboratories, Inc.
Address: 14859 East Clark Ave., Industry, CA 91745–1396, Contact: F.J. Weck, Phone: (818) 336–2139.

(76) *Laboratory:* Wesco Laboratories
Address: 14 Galli Dr., Suite A, Novato, CA 94947, Contact: John Hembrow-Beach, Phone: (415) 883–6425.

(77) *Laboratory:* Western Technologies, Inc.
Address: 3737 East Broadway Rd., P.O. Box 21387, Phoenix, AZ 85036, Contact: Denice Miller, Phone: (602) 437–3737.

Region X—Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave. (AT–083), Seattle, WA 98101. (206) 442–4762, (FTS) 399–2870.

(1) *Laboratory:* AM TEST, Inc.
Address: 14603 Northeast 87th St., Redmond, WA 98052, Contact: John T. Dailey, Phone: (206) 885–1664.

(2) *Laboratory:* ASBES–LAB
Address: Box 2742 CS, Pullman, WA 99165–0936, Contact: Monnie Choong, Phone: (509) 332–8894.

(3) *Laboratory:* Analab Microscopy
Address: 19101 Southwest Red Wing Ct., Lake Oswego, OR 97035, Contact: John C. Ruby, Phone: (503) 639–9006.

(4) *Laboratory:* Asbesto-Test
Address: P.O. Box 51, 11995 Apple Cove Ln., Kingston, WA 98346, Contact: ArLynn H. Patterson, Phone: (206) 297–4315.

(5) *Laboratory:* Asbestos Microscopy, Inc.
Address: 10463 Northeast Fourth Plain Rd., Vancouver, WA 98662, Contact: Paul Carlson, Phone: (206) 256–6455.

(6) *Laboratory:* Bennett Laboratories, Inc.
Address: 901 South 9th St., P.O. Box 5816, Tacoma, WA 98405, Contact: M.E. Lough, Phone: (206) 272–4507.

(7) *Laboratory:* CHASC Consultants
Address: 5720 Southwest 52nd Ave., Portland, OR 97221, Contact: David D. Coward, Phone: (503) 245–8381.

(8) *Laboratory:* Cascade Analytical Service
Address: 3640 South Cedar St., Suite O, Tacoma, WA 98409,
Contact: Juin B. J. TeVrucht, Phone: (206) 472–6909.

(9) *Laboratory:* Coffey Laboratories, Inc.
Address: 4914 Northeast 122nd Ave., Portland, OR 97230, Contact: Fredrick C. Colley, Phone: (503) 254–1794.

(10) *Laboratory:* Columbia Analytical Svcs., Inc.
Address: 1152 3rd Ave., Longview, WA 98632, Contact: Terry Hopkins, Phone: (206) 577–7222.

(11) *Laboratory:* Eastwood Testing Laboratory, Inc.
Address: 7325 Southeast 133rd Pl., Portland, OR 97236, Contact: Misko Maynard, Phone: (503) 761–0922.

(12) *Laboratory:* Environmental Consulting Services, Inc.
Address: 8844 32nd SW., Seattle, Wa 98126, Contact: Sheila Monroe, Phone: (206) 935–5758.

(13) *Laboratory:* Environmental Consulting Svcs., Inc.
Address: 1259 Willamette St., Eugene, OR 97401, Contact: Richard W. Carlin, Phone: (503) 345–6790.

(14) *Laboratory:* Environmental Consulting Svcs., Inc.
Address: 3601 Northwest Yeon, Suite 134, Portland, OR 97210, Contact: Sheila Monroe, Phone: (503) 227–7210.

(15) *Laboratory:* Environmental Safety Systems, Inc.
Address: 12822 Gateway Dr., Seattle, WA 98168, Contact: Richard C. Thompson, Phone: (206) 243–6573.

(16) *Laboratory:* Environmental Science & Eng. Inc.
Address: 1205 E. Int. Airport Rd., Suite 100, Anchorage, AK 99518, Contact: Doug Jones, Phone: (907) 561–3055.

(17) *Laboratory:* Frandon Enterprises, Inc.
Address: 511-North 48th, Seattle, WA 98103, Contact: Donald M. Wallace, Phone: (206) 633–2341.

(18) *Laboratory:* HAZCON, Inc.
Address: 5950 6th Ave. S., Seattle, WA 98108, Contact: Maria K. Majar, Phone: (206) 763–7364.

(19) *Laboratory:* Hanford Env. Health FND/NHS Inc.
Address: 805 Goethals Dr., Richland, WA 99352, Contact: Maureen Hamilton, Phone: (509) 376–6980.

(20) *Laboratory:* Hazcon, Inc.
Address: 16325 Southwest Boones Ferry Rd., #107, Lake Oswego, OR 97035, Contact: Gerald Liddell, Phone: (503) 636–7371.

(21) *Laboratory:* James M. Montgomery Consulting Engineers, Inc.
Address: 712 West 12th St., Juneau, AK 99801, Contact: Thomas C. Carson, Phone: (907) 586–4447.

(22) *Laboratory:* James River Corp., Corp. Environmental Services—W
Address: 904 Northwest Drake St., Camas, WA 98607–1999, Contact: Thomas A. Linn Jr., Phone: (206) 834–8323.

(23) *Laboratory:* M & M Environmental, Inc.
Address: 3340 East 11th St., Tacoma, WA 98421, Contact: Mike Reid, Phone: (206) 572–2772.

(24) *Laboratory:* MEI–Charlton, Inc.
Address: 2233 Southwest Canyon Rd., Portland, OR 97201–2499, Contact: Andrew M. Held, Phone: (503) 228–9663.

(25) *Laboratory:* Marine & Environmental Testing
Address: P.O. Box 1142, Beaverton, OR 97075–1142, Contact: Martin H. Finkel, Phone: (503) 286–2950.

(26) *Laboratory:* Microlab Northwest
Address: 7609 140th Pl., NE., Redmond, WA 98052, Contact: Russel Crutcher, Phone: (206) 885–9419.

(27) *Laboratory:* Northern Testing Laboratories, Inc.
Address: 2505 Fairbanks St., Anchorage, AK 99503–2821, Contact: Carol J. Garrison, Phone: (907) 277–8378.

(28) *Laboratory:* Northern Testing Laboratories, Inc.
Address: 600 University Plaza W., Suite A, Fairbanks, AK 99709, Contact: Linda J. Hendershot, Phone: (907) 479–3115.

(29) *Laboratory:* Northwest Asbestos Consultants
Address: 524 Northwest State, Bend, OR 97701, Contact: Dale A. Schmidt, Phone: (503) 382–7553.

(30) *Laboratory:* Northwest Environmental Services
Address: Maritime Bldg., Suite 336, 911 Western Ave., Seattle, WA 98104, Contact: Mia D. Sazon, Phone: (206) 662–8353.

(31) *Laboratory:* Northwest Laboratories of Seattle Inc.
Address: 1530 First Ave. S., Seattle, WA 98134, Contact: Samual O. LeBarron, Phone: (206) 622–0680.

(32) *Laboratory:* Northwest Testing Laboratories
Address: 5405 North Lagoon Ave., Portland, OR 97217, Contact: Gerald Pires, Phone: (503) 289–1778.

(33) *Laboratory:* Oregon Analytical Laboratory
Address: 14655 Southwest Old Schools Ferry Rd., Beaverton, OR 97007, Contact: Howard Boorse, Phone: (503) 644–5300.

(34) *Laboratory:* Orion Laboratories
Address: 5007 Pacific Hwy., E., Suite C–6, Fife, WA 98424, Contact: Mike Martin, Phone: (206) 922–9008.

(35) *Laboratory:* Pacific Testing Laboratories
Address: 3220–17th Ave., W., Seattle, WA 98119–1790, Contact: George R. Knight, Phone: (206) 282–0666.

(36) *Laboratory:* Polytechnic, Inc. Environmental & Occupational Hlth. Cnslts.
Address: 3538 International Way, Fairbanks, AK 99701, Contact: C.M. Summey, Phone: (907) 451–8434.

(37) *Laboratory:* Portland Chemical Microscopy
Address: 1675 North Jantzen St., Portland, OR 97217, Contact: David Plath, Phone: (503) 289–1564.

(38) *Laboratory:* Precision Analytics, Inc.
Address: P.O. Box 162, 110 Bridge St., Palouse, WA 99161, Contact: V. Velpari, Phone: (509) 878–1785.

(39) *Laboratory:* Prezant Associates, Inc.
Address: 6832 20th Ave., NE., Seattle, WA 98115, Contact: Bradley Prezant, Phone: (206) 587–0139.

(40) *Laboratory:* Professional Service Ind., Inc.
Address: 700 West 58th St., Anchorage, AK 99518–1632, Contact: John Buzdor, Phone: (907) 561–2400.

(41) *Laboratory:* Professional Service Ind., Inc.
Address: 545 Conger St., Eugene, OR 97402, Contact: Jerry L. Johnson, Phone: (503) 484–9212.

(42) *Laboratory:* Professional Service Ind., Inc.
Address: 611 Southeast Harrison St., Portland, OR 97214, Contact: Judy Grant, Phone: (503) 232–2183.

(43) *Laboratory:* Professional Service Ind., Inc.
Address: 7400 3rd Ave. S., Seattle, WA 98108, Contact: Rona V. Lin, Phone: (206) 762–4664.

(44) *Laboratory:* Professional Testing Labs, Inc. Laboratory Division
Address: 130 North Stone St., Spokane, WA 99202, Contact: Eric E. Dickson, Phone: (509) 535–3571.

(45) *Laboratory:* Professional Service Ind., Inc.
Address: 433 Park Street, Grants Pass, OR 97526, Contact: Paul A. Reeves, Phone: (503) 479–2222.

(46) *Laboratory:* Quest Environmental Inc.
Address: 709 West Int'l Airport Rd., Suite 100, Anchorage, AK 99518, Contact: John Johnston, Phone: (907) 563–0050.

(47) *Laboratory:* Rees Environmental Chemistry Consultants
Address: 1011 West Lee St., Seattle, WA 98119, Contact: Janine A. Rees, Phone: (206) 282–7122.

(48) *Laboratory:* Robert L. Gay, Ph.D. Consultants
Address: 2505 Northwest 83rd Pl., Portland, OR 97229, Contact: Robert L. Gay, Phone: (503) 297–3727.

(49) *Laboratory:* Silver Valley Laboratories
Address: P.O. Box 929, One Government Gulch, Kellogg, ID 83837, Contact: Wayne R. Sorensen, Phone: (208) 784–1258.

(50) *Laboratory:* Snake River Asbestos, Inc.

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Address: 1310 Vista, Suite 1A, Boise, ID 83705, Contact: Robin Schmidt, Phone: (208) 336–4993.

(51) *Laboratory:* Taylor Laboratories, Inc.

Address: 724A Siginaka Way, Sitka, AK 99835, Contact: Lawrence Taylor, Jr., Phone: (907) 747–6364.

(52) *Laboratory:* Teledyne Wah Chang Analytical Services Laboratory

Address: P.O. Box 460, Albany, OR 97321, Contact: Gary L. Beck, Phone: (503) 926–4211.

(53) *Laboratory:* Terra Test Analytical Labs, Inc.

Address: 1003 Main St., Suite 2, Summer, WA 98390, Contact: Pedro G. Armenta, Phone: (206) 863–5404.

(54) *Laboratory:* WELD Enterprises

Address: 4432 East 4th Ave., Anchorage, AK 99508–2215, Contact: William E. Patterson, Phone: (907) 338–2817.

(55) *Laboratory:* Water Management Association, Inc.

Address: 6001 McKinley Ave., Tacoma, WA 98404, Contact: George P. Schonhard, Phone: (206) 474–0628.

(56) *Laboratory:* Weyerhaeuser Co. Safety & Health Service Laboratory

Address: 32901 32nd Dr., S., Federal Way, WA 98003, Contact: Christopher Kirk, Phone: (206) 924–6639.

Non-Domestic PLM Laboratories

(1) *Laboratory:* Chatfield Technical Consulting, Ltd.

Address: 2071 Dickson Rd., Mississauga, Ontario, Canada L5B 1YB, Contact: Eric Chatfield, Phone: (416) 896–7611.

(2) *Laboratory:* Chemex Labs Alberta (1984) Ltd.

Address: 2021–41 Ave. NE., Calgary, Alberta, Canada T2E 6P2, Contact: Kathy Puznicki, Phone: (403) 291–3077.

(3) *Laboratory:* Clayton Envir'l Consultants, Ltd.

Address: 949 McDougall Ave., Windsor, Ontario, Canada, N9A 1L9, Contact: Alex L. Ramos, Phone: (519) 255–9797.

(4) *Laboratory:* Enviro-Test Laboratories

Address: 9936 67th Ave., Edmonton, Alberta, Canada T6E 0P5, Contact: Larry Serbin, Phone: (403) 434–9509.

(5) *Laboratory:* McMaster Laboratory Occupational Health Laboratory

Address: 1200 Main St. West, Hamilton, Ontario, Canada L8N 3Z5, Contact: Dave K. Verma, Phone: (416) 525–9140.

(6) *Laboratory:* Norwest Labs.

Address: 9938–67 Ave., Edmonton, Alberta, Canada T6E 0P5, Contact: Erv Callin, Phone: (403) 438–5522.

(7) *Laboratory:* Ontario Research Foundation Sheridan Park Research Comm.

Address: Mississauga, Ontario, Canada L5K 1B3, Contact: Irina Sherman, Phone: (416) 822–4111.

(8) *Laboratory:* WES–HAR, Analysis & Consultation.

Address: P.O. Box 94179, Richmond, British Columbia, Canada, 6Y–2A3, Contact: Glenn A. C. Nawrocki, Phone: (604) 584–9193.

(9) *Laboratory:* Expert-Organize Co., Ltd.

Address: 1103 Cannaught Rd., Central Hong Kong, Contact: Eva Luk, Phone: (005) 815–1810.

(10) *Laboratory:* Okinawa Eng. Analysis Ctr. Co., Ltd.

Address: 777 Ojana, Ginowan, Okinawa, Japan 901–22, Contact: Fuminori Nishime, Phone: (098) 897–0910.

EPA Accredited Non-Commercial PLM Laboratories

Region I—Boston, MA

Regional Asbestos Coordinator: Don Mackie, EPA, Region I, Air and Management Division (APT–2311), JFK Federal Building, Boston, MA 02203. (617) 565–3273 (FTS) 835–3273.

(1) *Laboratory:* Bath Iron Works Corp.

Address: 700 Washington St., Bath, ME 04530, Contact: Richard Stubbs, Phone: (207) 443–3311.

(2) *Laboratory:* Division of Occupational Hygiene Asbestos Commission.

Address: 1001 Watertown St., West Newton, MA 02165, Contact: Frank Kramarz, Phone: (617) 727–3983.

(3) *Laboratory:* Environmental Health and Safety Harvard University.

Address: 46 Oxford St., Cambridge, MA 02138, Contact: Quality Control Manager, Phone: (617) 495–2090.

(4) *Laboratory:* Harvard School of Public Health.

Address: 665 Huntington Ave., Room G14C, Boston, MA 02115, Contact: Robert A. Weker, Phone: (617) 732–0902.

(5) *Laboratory:* Northeast Utilities Service Company.

Address: P.O. Box 270, Hartford, CT 06141–0270, Contact: Lawrence J. Cannon, Phone: (203) 721–2307.

(6) *Laboratory:* Olin Corp. Environmental Hygiene Laboratory.

Address: 91 Shelton Ave., P.O. Box 30–9643, New Haven, CT 06511, Contact: James P. Dawson, Phone: (203) 789–5613.

(7) *Laboratory:* Rhode Island Health Labs.

Address: 50 Orms St., Providence, RI 02904, Contact: Ronald W. Bush, Phone: (401) 274–1011.

(8) *Laboratory:* State of Maine, Department of Human Services Public Health Laboratory.

Address: 221 State St., Augusta, ME 04333, Contact: Thomas Dwyer, Phone: (207) 289–2727.

(9) *Laboratory:* University of New Hampshire EM Facility.

Address: Kendall Hall, Room 3, Durham, NH 03824, Contact: Nancy A. Cherim, Phone: (603) 862–2790.

(10) *Laboratory:* Vermont State Public Health Laboratory.

Address: 115 Colchester Ave., Burlington, VT 05401, Contact: Harold Stowe, Phone: (802) 863–7335.

(11) *Laboratory:* Vermont Yankee Nuclear Power Corp.

Address: P.O. Box 157, Governor Hunt Rd., Vernon, VT 05354, Contact: Dean S. Tolin, Phone: (802) 257–7111.

Region II—Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 10, (ES–PTS), Edison, NJ 08837. (201) 321–6668, (FTS) 340–6671.

(1) *Laboratory:* Hess Oil Virgin Islands Corp.

Address: P.O. Box 127, Kingshill, St. Croix, VI, Contact: John L. Edgley.

Region III—Philadelphia, PA

Regional Asbestos Coordinator: Carol Dougherty, EPA, Region III (3HW–40), 841 Chestnut Bldg., Philadelphia, PA 19107. (215) 597–9859, (FTS) 597–3160.

(1) *Laboratory:* Aluminum Company of America, Environmental Health Laboratory

Address: ALCOA Technical Center, ALCOA Center, PA 15069, Contact: Richard A. Milito, Phone: (412) 339–6651.

(2) *Laboratory:* City of Philadelphia, Air Management Services Laboratory

Address: 1501 East Lycoming St., Philadelphia, PA 19124, Contact: B. Levin, Phone: (215) 288–5177.

(3) *Laboratory:* DHMH, Laboratories Adm.—OHL

Address: 201 West Preston St., P.O. Box 2355, Room 6E3, Baltimore, MD 21203, Contact: Bruce Solnick, Phone: (301) 225–6100.

(4) *Laboratory:* DNREC, Division of Air & Waste Management

Address: 715 Grantham Ln., New Castle, DE 19720, Contact: Michael R. McDowell, Phone: (302) 323–4583.

(5) *Laboratory:* Department of General Services, Division of Consolidated Laboratory Services

Address: One North 14th St., Room 251, Richmond, VA 23219, Contact: Lester Seiden, Phone: (804) 786–7747.

(6) *Laboratory:* Diversified Environmental Corp.

Address: 30 Great Valley Parkway, Malvern, PA 19355, Contact: B.W. Langer, Phone: (215) 296–2254.

(7) *Laboratory:* Gillette Medical Evaluation Laboratory

Address: 401 Professional Dr., Gaithersburg, MD 20879, Contact: Robert Spiker, Phone: (301) 590–9781.

(8) *Laboratory:* Maryland Dept. of Health, Laboratories Adm.—AQL

Address: 201 West Preston St., Room 6D1, Baltimore, MD 21203, Contact: Delores E. Willis, Phone: (301) 225–6100.

(9) *Laboratory:* National Institute of Health, Safety Support Section

Address: Building 13, Room 3K04, Bethesda, MD 20205, Contact: Randolph K. Larsen, Phone: (301) 496–3457.

(10) *Laboratory:* Norshipco

Address: P.O. Box 2100, Norfolk, VA 23501–2100, Contact: Thomas L. Beacham, Phone: (804) 420–8407.

(11) *Laboratory:* Pennsylvania Department of Environmental Resources, Bureau of Laboratories

Address: P.O. Box 1467, 3rd & Reily St., Harrisburg, PA 17120, Contact: Paul E. Baker, Phone: (717) 787–4669.

(12) *Laboratory:* Scott Paper Company, Industrial Hygiene Laboratory

Address: Scott Plaza, Philadelphia, PA 19113, Contact: Carl Mayer, Phone: (215) 522–5000.

(13) *Laboratory:* U.S. Army Environmental Hygiene Agency, RICD MAB

Address: Bldg. E2100, Aberdeen Proving Ground, Edgewood, MD 21010–5422, Contact: John W. Courts, Phone: (301) 671–2619.

(14) *Laboratory:* USX Corporation, USS Industrial Hygiene Lab

Address: 4000 Tech Center Dr., Monroeville, PA 15146, Contact: Barbara A. Smith, Phone: (412) 825–2809.

Region IV—Atlanta, GA

Regional Asbestos Coordinator: Jim Littell, EPA Region IV, 345 Courtland St., NE, (P&TSB), Atlanta, GA 30365. (404) 347–5053, (FTS) 257–5053.

(1) *Laboratory:* Alabama Department of Forensic Sciences

Address: P.O. Box 7925, Critchton Station, Mobile, AL 36607, Contact: James L. Small Phone: (205) 471–7026.

(2) *Laboratory:* Alabama Department of Public Health

Address: State Office Building, Montgomery, AL 36130, Contact: Gary W. Jones.

(3) *Laboratory:* Alabama Power Company

Address: P.O. Box 2641, Birmingham, AL 35291, Contact: W. Steve Hill, Phone: (205) 664–6081.

(4) *Laboratory:* Big Rivers Electric Corporation

Address: 201 Third St., Henderson, KY 42420, Contact: Thomas L. Shaw, Phone: (502) 827–2561.

(5) *Laboratory:* Commonwealth of Kentucky, Cabinet for Human Resources

Address: Department of Health Services, Chemistry Branch, Frankfort, KY 40621, Contact: Cecil H. Webb, Jr., Phone: (502) 564–4446.

(6) *Laboratory:* Department of the Air Force, Environmental & Industrial Safety Branch

Address: WR–ALC/MAQV, Robins AFB, GA 31098–5149, Contact: Ronald S. Sharpe, Phone: (912) 926–0682.

(7) *Laboratory:* Department of the Army, S. Atlantic Div. Lab., Corps of Eng.

Address: 611 South Cobb Dr., GA Hwy. 280, Marietta, GA 30060–3112, Contact: Robert L. Stephenson, Phone: (404) 429–5296.

(8) *Laboratory:* Duke Power Company, Applied Science Center

Address: Box 531, Rt. 4, Huntersville, NC 28078, Contact: Jay C. Perkins, Phone: (704) 875–1971.

(9) *Laboratory:* EG&G Florida, Occupational Medicine & Environmental Health Services

Address: P.O. Box 21296, Kennedy Space Center, FL 32815, Contact: Patricia L. Colomore.

(10) *Laboratory:* Georgia Tech Research Institute

Address: GTRI/EDL/EHSD Emerson All2, Atlanta, GA 30322, Contact: Marilyn S. Black, Phone: (404) 894–3825.

(11) *Laboratory:* Great Southern Paper

Address: P.O. Box 44, Cedar Springs, GA 31732, Contact: Donald J. Miller, Phone: (912) 372–5102.

(12) *Laboratory:* Savannah Electric & Power Co.

Address: P.O. Box 968, Savannah, GA 31402, Contact: Joseph B. Adams, Phone: (912) 966–3528.

(13) *Laboratory:* Tennessee Valley Authority

Address: 347 Multipurpose Building, Muscle Shoals, AL 35660, Contact: Donald G. Saint, Phone: (205) 386–2311.

(14) *Laboratory:* The University of Alabama, Office of Health & Safety

Address: 12 Thomas Circle, P.O. Box 6095, University, AL 35486, Contact: Hal Barrett, Phone: (205) 348–5905.

(15) *Laboratory:* The University of Alabama in Huntsville, Kenneth E. Johnson Research Center

Address: Environmental Laboratory, Huntsville, AL 35899, Contact: William E. Dendy, Phone: (205) 895–6361.

(16) *Laboratory:* Western Kentucky University Electron Microscopy Facility

Address: Department of Biology, Bowling Green, KY 42101, Contact: J. Rodney McCurry.

Region V—Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA Region V, 230 S. Dearborn St., (T–SPTB–7), Chicago, IL 60604. (312) 886–6003, (FTS) 886–6003.

(1) *Laboratory:* Argonne National Laboratory, Industrial Hygiene Division.

Address: 9700 South Cass Ave., Argonne, IL 60439, Contact: Robert C. Utesch.

(2) *Laboratory:* Bristol-Myers, U.S. Pharmaceutical & Nutritional Group.

Address: Evansville, IN 47721–0001, Contact: Brent A. Bradford, Phone: (812) 429–5000.

(3) *Laboratory:* Chicago Board of Education.

Address: 8600 South Komensky, Chicago, IL 60652, Contact: Henry G. Gooday, Jr.

(4) *Laboratory:* Commonwealth Edison/SMAD

Address: 1319 South First Ave., Maywood, IL 60153, Contact: Richard R. Dlesk, Phone: (312) 450–5435.

(5) *Laboratory:* Dow Chemical Co.

Address: South Madison St., Ludington, MI 49431, Contact: Thomas Shanks, Phone: (616) 845–4411.

(6) *Laboratory:* Dow Chemicals, Michigan Division.

Address: Ind. Hygiene Service, 258 Bldg., Midland, MI 48667, Contact: Bruce A. Houtman, Phone: (517) 636–5342.

(7) *Laboratory:* General Motors, GM Technical Center.

Address: Res. Adm. Bldg. 3–229, Warren, MI 48090, Contact: Donald J. Hart, Phone: (313) 986–1056.

(8) *Laboratory:* Illinois Department of Public Health Lab.

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Address: Box 2797, Carbondale, IL 62902–2797, Contact: Patrick A. Yohe, Phone: (618) 549–8121.

(9) *Laboratory*: Illinois Department of Public Health Springfield Laboratory.

Address: 134 North Ninth St., Springfield, IL 62701, Contact: James B. Hundley, Phone: (217) 782–6562.

(10) *Laboratory*: Illinois State University, Department of Geography-Geology.

Address: Normal, IL 61761, Contact: James G. Kirchner, Phone: (309) 438–8922.

(11) *Laboratory*: Indiana Department of Environment Management.

Address: 150 West Bradbury Ave., Indianapolis, IN 46241, Contact: Larry Fedor, Phone: (317) 243–5019.

(12) *Laboratory*: Indiana State Board of Health Industrial Hygiene Laboratory.

Address: 1330 West Michigan St., Indianapolis, IN 46206, Contact: John Ruyack, Phone: (317) 633–0692.

(13) *Laboratory*: Industrial Toxicology Laboratory.

Address: 8901 West Lincoln Ave., West Allis, WI 53227, Contact: Leon A. Saryan, Phone: (414) 546–6313.

(14) *Laboratory*: Johnson Controls, Inc., Materials Testing Laboratory.

Address: P.O. Box 591, 5757 North Green Bay Ave., Milwaukee, WI 53201, Contact: Glenn M. Trischan, Phone: (414) 228–1200.

(15) *Laboratory*: Michigan Department of Public Health, Division of Occupational Health.

Address: P.O. Box 30035, 3500 North Logan St., Lansing, MI 48909, Contact: John H. Peck, Phone: (517) 335–8241.

(16) *Laboratory*: Milwaukee Health Department Bureau of Labs.

Address: 841 North Broadway, Municipal Building, Room 308, Milwaukee, WI 53202, Contact: William N. Jensen, Phone: (414) 278–3526.

(17) *Laboratory*: National Steel Corporation, Granite City Steel Division.

Address: 20th & State St., Granite City, IL 62040, Contact: Douglas A. Stracke, Phone: (618) 451–3461.

(18) *Laboratory*: Nekoosa Papers, Inc., Analytical Development Group.

Address: Port Edwards, WI 54469, Contact: George C. King, Phone: (715) 887–5111.

(19) *Laboratory*: State of Illinois Department of Public Health, Toxicology Laboratory.

Address: 2121 West Taylor St., Chicago, IL 60612–4285, Contact: Dietmar Grohlich, Phone: (312) 693–4766.

(20) *Laboratory*: Vigo County Air Pollution Control.

Address: 201 Cherry St., Terre Haute, IN 47807, Contact: Darell E. Pine, Phone: (812) 238–8433.

(21) *Laboratory*: Wisconsin Electric Power Co.

Address: P.O. Box 2046, 231 West Michigan, Milwaukee, WI 53201, Contact: J.P. Frye, Phone: (414) 221–2345.

Region VI—Dallas, TX

Regional Asbestos Coordinator: John West, 6t-Pt, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. (214) 655–7244, (FTS) 255–7244.

(1) *Laboratory*: Texaco Chemical Co., Neches Plant

Address: P.O. Box 847, Port Neches, TX 77651, Contact: Janet E. Wiiki, Phone: (409) 722–8361.

(2) *Laboratory*: The Lubrizol Corp., Houston Plant

Address: P.O. Box 158, Deer Park, TX 77536–0158, Contact: Thomas M. Samson, Phone: (713) 479–2851.

(3) *Laboratory*: The University of Texas at Austin, University Safety Office

Address: P.O. Box 49079, Austin, TX 78765, Contact: Jimmie Ann Bolton, Phone: (512) 471–3511.

(4) *Laboratory*: U.S. Air Force.

Address: OEHL/SA, Brooks AFB, TX 78235, Contact: Jerry F. Thomas, Phone: (512) 536–2158.

(5) *Laboratory*: Union Carbide, Health, Safety & Environmental Affairs.

Address: P.O. Box 471, Texas City, TX 77590, Contact: Dick La Cour, Phone: (409) 948–5818.

(6) *Laboratory*: Univ. of Texas Health Center at Tyler, Department of Cell Biology & Environmental Science.

Address: P.O. Box 2003, Tyler, TX 75710, Contact: Ronald F. Dodson, Phone: (214) 877–3541.

Region VIII—Denver, CO

Regional Asbestos Coordinator: David Combs, [8AT–TS], EPA, Region VIII, 1 Denver Place, 999–18th St., R. 1300, Denver, CO 80202–2413. (303) 293–1744, (FTS) 564–1744.

(1) *Laboratory*: AMOCO Oil Co., Mandan Refinery.

Address: Mandan Ave., P.O. Box 5000, Mandan, ND 58554, Contact: Donald K. Litchfield, Phone: (701) 667–2463.

(2) *Laboratory*: Colorado State Health.

Address: 4210 East 11th Ave., Denver, CO 80220, Contact: Ann Wolfgang, Phone: (303) 320–8333.

(3) *Laboratory*: Davis County Health Department, Environmental Health & Laboratory Division.

Address: County Courthouse, Room 24, P.O. Box 618, Farmington, UT 84025, Contact: Bryce J. Taggart.

(4) *Laboratory*: Department of the Air Force.

Address: 00–ALC/MAQCC, Bldg. 100E, Hill AFB, UT 84056–5149, Contact: G. Eugene Larkin.

(5) *Laboratory*: EPA–NEIC.

Address: P.O. Box 25227, Bldg. 53, DFC, Denver, CO 80225, Contact: Douglas Kendall, Phone: (303) 236–5132.

(6) *Laboratory*: Federal Occupational Health, DHHS, HRSA Region 8 USPHS.

Address: P.O. Box 25145, Denver, CO 80225–0145, Contact: Douglas Pickup, Phone: (303) 236–0076.

(7) *Laboratory*: North Dakota State Department of Health.

Address: 1200 Missouri Ave., P.O. Box 1618, Bismarck, ND 58502–1618, Contact: Rod Reetz, Phone: (701) 224–4618.

(8) *Laboratory*: Public Service Co. of Colorado.

Address: Hampden Park West, Bldg. 5H, 1500 West Hampden, Englewood, CO 80110, Contact: Richard K. Price, Phone: (303) 797–4226.

(9) *Laboratory*: Salt Lake City-County Health Department.

Address: 610 South 2nd East, Salt Lake City, UT 84111, Contact: Elwood L. Loveridge, Phone: (801) 530–7564.

(10) *Laboratory*: UNC Geotech, Petrology Laboratory.

Address: P.O. Box 14000, Grand Junction, CO 81502–5504, Contact: Larry M. Fukui, Phone: (303) 242–8621.

(11) *Laboratory*: Utah State Health Laboratory, Inorganic Hazardous Waste.

Address: 44 Medical Dr., Salt Lake City, UT 84113, Contact: Jack Oman, Phone: (801) 533–6131.

Region IX—San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, [T–52], EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974–7290, (FTS) 454–7290.

(1) *Laboratory*: Clark County School District, Safety & Health Specialist.

Address: 4260 Eucalyptus Annex, Las Vegas, NV 89121, Contact: Nathan M. Lencioni, Phone: (702) 796–5011.

(2) *Laboratory*: Naval Medical Clinic — Pearl Harbor, Industrial Hygiene Branch.

Address: Bldg. 285, P.O. Box 121, Pearl Harbor, HI 96860–5080, Contact: Roy M. Ishikawa, Phone: (808) 471–3137

(3) *Laboratory*: Office of Environmental Health and Safety Business/Administration.

Address: 2223 Fulton St., 4th Floor, Berkeley, CA 94720, Contact: Rick Kelley, Phone: (415) 642–6000.

(4) *Laboratory*: Pacific Gas & Electric Co., Department of Engineering Research.

Address: 3400 Crow Canyon Rd., San Ramon, CA 94583, Contact: Lansing W. Wong, Phone: (415) 820–2000.

(5) *Laboratory*: Pacific Missile Test Center, Command Safety Office.

Address: Naval Air Station Code 0041, Point Mugu, CA 93042–5000, Contact: George Wadley, Phone: (805) 989–7867.

(6) *Laboratory*: Riverside County Health Department Laboratory.

Address: 5888 Mission Blvd., Rubidoux, CA 92509, Contact: Andrew Morita, Phone: (714) 784–1860.

(7) *Laboratory*: SCAQMD Laboratory.

Address: 9150 Flair Dr., El Monte, CA 91731, Contact: Joan Niertit, Phone: (818) 572–6200.

(8) *Laboratory*: Texaco USA.

Address: P.O. Box 1476, Bakersville, CA 93302, Contact: W. Kirk Shelton.

(9) *Laboratory*: U.S. Army Corps of Engineers, South Pacific Division.

Address: P.O. Box 37, Sausalito, CA 94966–0037, Contact: Zack Bedford.

(10) *Laboratory*: USAEDFE.

Address: POFED–L, Asbestos Coordinator, APO San Francisco, CA 96301–0426, Contact: Commander.

Non-Domestic PLM Laboratories

(1) *Laboratory*: W.M. Ward Technical Services Laboratory

Address: 745 Logan Ave., Winnipeg, Manitoba, Canada R3E 3L5, Contact: Larry Prokapanko, Phone: (204) 944–2273.

(2) *Laboratory*: Workers' Compensation Board Laboratory Services.

Address: 6951 Westinster Highway, Richmond, BC, Canada V7C 1C6, Contact: Bob Stewart, Phone: (604) 276–3116.

Dated: November 21, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–27325 Filed 11–29–88; 8:45 am]

BILLING CODE 6560–50–M

VOL
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ISS
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UMI

federal register

Wednesday
November 30, 1988

Part V

Department of Labor

Employment and Training Administration

20 CFR Part 617

Trade Adjustment Assistance for Workers; Proposed Rule

VOL
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ISS
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NO
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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 617

Trade Adjustment Assistance for Workers: Amendment of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to amend the regulations on the trade adjustment assistance program for workers (TAA program) provided under Chapter 2 of Title II of the Trade Act of 1974 to implement the amendments to the Trade Act of 1974 enacted in 1988 as contained in the Omnibus Trade and Competitiveness Act (OTCA). The 1988 Amendments: (1) Expand eligibility for TAA to workers in the oil and natural gas industry engaged in exploration and drilling; (2) require a written notice to every displaced worker believed to be covered by a trade certification issued by the Department and publication of a notice of the certification in a newspaper of general circulation; (3) require a worker to participate in training as a condition for receiving trade readjustment allowances; (4) authorize the waiver of this requirement for a worker when training is not feasible or appropriate; (5) authorize the payment of TRA to a worker during breaks in training that do not exceed 14 days; (6) base the eligibility period for TRA benefits on the worker's most recent separation rather than the first separation as was previously required; (7) extend the expiration date of the TAA program to September 30, 1993, and (8) emphasize coordination with programs and services to dislocated workers provided under Title III of the Job Training Partnership Act and notification provisions under the Worker Adjustment and Retraining Notification Act (WARN), and make other changes.

DATE: Written comments on these proposed amendments to the regulations must be received in the Department of Labor on or before December 30, 1988.

ADDRESS: Comments on this proposed rule may be mailed or delivered to the Office of Trade Adjustment Assistance, Employment and Training Administration, 601 "D" Street NW., Room 6434, Washington, DC 20213.

All comments received will be available for public inspection during normal business hours in Room 6434 at the above address.

FOR FURTHER INFORMATION CONTACT: Glenn M. Zech, Deputy Director, Office of Trade Adjustment Assistance, 601 "D" Street NW., Washington, DC 20213; Telephone: (202) 376–2646 (this is not a toll free number).

SUPPLEMENTAL INFORMATION: These Amendments to the Trade Act of 1974 represent major changes to the TAA program for workers displaced from employment because of increased imports of articles like or directly competitive with those produced by the workers' firm. The following Principles, as set out in the **Federal Register** on September 8, 1988 (53 FR 34844, at 34848) will guide the implementation of the 1988 changes to the TAA program:

(1) *Continuation of TAA as a separate program.* The Department intends to keep TAA as a separate identifiable program. However, in its implementation of the 1988 amendments the Department is encouraging productive linkages with the new worker adjustment program under JTPA and a coordinated delivery system at the State and local levels to enhance services to trade impacted and other dislocated workers.

(2) *Public notice.* Prompt public notice will be given of all TAA certifications issued by the Department to workers and other interested parties.

(3) *Oil and gas workers.* Prompt public notice will be given of the one-time opportunity for oil and natural gas workers engaged in exploration or drilling, who were separated after September 30, 1985, to file petitions with the Department by November 18, 1988 under new eligibility rules.

(4) *Emphasis on training.* Training will be encouraged early in the worker's UI eligibility period, if training is required to return to suitable employment.

(5) *Conditions for receipt of income support.* Active participation in training will be required to receive income maintenance (TRA payments) except when a waiver is granted when certain specified conditions are met.

(6) *Early identification of displaced workers.* Early identification of trade related worker displacements as well as early assessment of affected individuals' adjustment and reemployment service needs will be encouraged.

(7) *Shared resources.* In order to maximize resources, program deliverers will be encouraged to utilize the provisions in the Act that allow costs of training trade impacted workers to be shared with funds from other Federal program sources and from State and private sources.

(8) *Coordination.* Provisions and guidance governing training enrollment and participation will be as similar as possible with respect to program elements common to TAA and the new JTPA worker adjustment program.

On August 23, 1988, the President signed into law the "Omnibus Trade and Competitiveness Act of 1988" (Pub. L. 100–418). Part 3—*Trade Adjustment Assistance,* of Subtitle D of Title I of the Act concerns trade adjustment assistance for workers and firms. This proposed rule addresses the provisions in Part 3 affecting workers.

While most of the provisions of Part 3 affecting the program of trade adjustment assistance for workers are in the form of amendments to Chapter 2 of Title II of the Trade Act of 1974; some provisions of Part 3 affecting workers do not amend existing law. Examples are the provision which permits workers in the oil and natural gas industry engaged in exploration or drilling, separated after September 30, 1985, to file petitions under new eligibility rules, and the provision concerning the eligibility of workers totally separated from adversely affected employment during the period beginning August 13, 1981, and ending April 7, 1986 for trade readjustment allowances.

By law, most of the provisions of Part 3 took effect on the date of enactment, August 23, 1988. A few others take effect 30 and 90 days after enactment in order to provide sufficient time to do the preparation necessary so that the provisions can be implemented on their effective dates. On September 12, 1988, States received guidance through a directive issued by the Employment and Training Administration and published in the **Federal Register** on September 16, 1988 (53 FR 36181) on how to implement those provisions effective on enactment and how to prepare to implement those provisions effective 30 and 90 days after enactment.

The procedures and interpretations included in that document are set forth hereafter. Throughout this document references to the "Act" are to the Trade Act of 1974, Title II, Chapter 2, references to the 1988 Amendments are to Part 3 of Subtitle D of Title I of the "Omnibus Trade and Competitiveness Act of 1988" (hereafter the "OTCA"):

1. The authority citation for Part 617 is readopted without change.

2. The Table of Contents for Part 617 is amended to reflect the addition of two new sections on waivers of parrticipation in training and transition guidelines, changes to the headings of two other sections, the addition of a new Appendix A to Part 617 on the Secretary's (STANDARD FOR CLAIM FILING, CLAIMANT REPORTING, JOB FINDING, AND EMPLOYMENT SERVICES), together with one textual change in § 617.10(c), and redesignation of present Appendix A as Appendix B and present Appendix B as Appendix C.

3. (a) The definition of "Certification," in paragraph (j) of § 617.3 is revised to reflect more precisely the language in section 222 of the Act on group eligibility requirements. A definition for "Certification period" has also been added. These are technical changes.

(b) The definition of "Eligibility period" in paragraph (m) of § 617.3 is revised to reflect the 1988 Amendments. The beginning of the 104-week period for receiving basic TRA is changed to the first week following the week in which a qualifying total separation occurred. For additional weeks of TRA, the 26-week eligibility period begins with the first week of the training or, if later, the week following the week of actual exhaustion of basic TRA. If the training begins before it was approved under section 236, then the 26-week eligibility period for additional TRA begins with the week in which the determination of approval is issued, if basic TRA has been exhausted previously. This rule on the later commencement of the 26-week eligibility period reflects an interpretation given to section 233(a)(3) of the Act prior to the 1988 Amendments.

(c) The definition for "First separation." in paragraph (t) of § 617.3 is expanded to define a qualifying separation for TRA eligibility that ocurs prior to August 23, 1988, and one that occurs on or after August 23, 1988. One that occurs on or after August 23, 1988 means the total separation of a worker from adversely affected employment within the certification period of the certification applicable to the worker. A qualifying separation occurs prior to August 23, 1988, continues to include partial separations from adversely affected employment. Section 1425(a) of the OTCA; section 233(a)(2) of the Act.

(d) The definition for "Secretary" in paragraph (ff) of § 617.3 is expanded to include a definition for "Department of Labor". This is a technical change.

(e) The definition for "Federal supplemental compensation" is amended so as to include any future supplemental program as well as the Federal Supplemental Compensation Act of 1982. This is a technical change.

4. (a) Section 617.4, *Benefit information to workers,* is revised by adding requirements that: (1) A written notice, by mail, be given to each worker there is reason to believe is covered by a certification of eligibility to apply for adjustment assistance issued by the Department, and (2) that a notice of such certification be published in one or more newspapers of general circulation in areas in which workers covered by the certification reside. Such notices are required to inform workers of the TAA program benefits available to them. These new requirements are effective on September 22, 1988. Section 1422 of the OTCA; new subsection (b) of section 225 of the Act.

(b) Section 617.4 is also amended by adding a new paragraph (e) which requires that State agencies: (1) Advise each adversely affected worker, at the time worker files for unemployment insurance, of the program benefits available under the Act and the procedures and deadlines for applying for such benefits; (2) facilitate the early filing of petitions under section 221 of the Act; (3) advise each adversely affected worker to apply for training before, or at the same time a TAA worker applies for TRA; and (4) promptly after certification of eligibility for benefits is issued, interview each adversely affected worker and review suitable training opportunities available to the worker. These new requirements are effective on August 23, 1988. Section 1424(d)(2) of the OTCA; section 239(f) of the Act.

5. Section 617.10, *Applications for TRA,* is amended by adding a new paragraph (d) to require that State agencies advise each worker of the qualifying requirements for entitlement to TRA and other TAA benefits at the time the worker files an initial claim for State UI, and advise each adversely affected worker to apply for training under Subpart C of this Part 617 before, or at the same time, the worker applies for TRA, as required by § 617.4(e)(1) and (3). This requirement is effective on August 23, 1988. Section 1424(d)(2) of the OTCA; section 239(f)(3) of the Act.

6. Section 617.11, *Qualifying requirements for TRA,* has been substantially revised. Paragraph (a) of this section sets out the basic qualifying requirements for basic TRA prior to November 21, 1988 in paragraph (a)(1); the requirements effective on or after November 21, 1988 in paragraph (a)(2); special rules for workers separated in the 1981 to 1988 period in paragraph (a)(3); and special rules for retroactive benefits for oil and gas workers—in paragraph (a)(4). Paragraph (b) of § 617.11 is amended to identify the first week of potential eligibility for basic TRA as a result of the amendments in the OTCA. Section 1421(a)(1)(B) and 1423 (a) and (b) of the OTCA; sections 231 to 233 of the Act.

Effective on November 21, 1988, enrollment in, participation in, or completion of TAA approved training is a condition for receiving TRA unless a waiver of such participation has been granted. Section 617.11(a)(2)(vii). States should encourage workers potentially eligible for TRA benefits to enroll in approved training as early as possible in their UI eligibility period. After November 21, 1988 the training requirements applies to an individual's claim for TRA for weeks of unemployment which begin with the first week following the week in which a certification covering the individual is issued. Until November 21, 1988, job search program participation continues to be a condition for receiving TRA unless a waiver has been granted. Section 617.11(a)(1)(vii).

"Enrolled in training" is defined for purposes of § 617.11(a)(2)(vii) to be the point at which a worker's application for training is approved by the State agency and the involved training institution has furnished the State agency with written notice that the worker has been accepted to an approved training program that will begin within 30 calendar days. A worker shall be considered to have "completed training" if the training program is approved under section 236(a) of the Act, the training occurred subsequent to the individual's total or partial separation from adversely affected employment within the certification period of a certification issued under the Act, and the training provider has certified to the SESA that all the conditions for satisfactory completion of the training program have been satisfied.

"Special rules" are set out in § 617.11(a)(3) these apply to workers separated from adversely affected employment in the period beginning on August 13, 1981 and ending on April 7, 1986. The time limit on the eligibility period for basic TRA in section 233(a)(2) of the Act and the 210-day time limit in section 233(b) of the Act for filing a bona fide application for training in order to qualify for additional TRA, are set aside and shall be disregarded for certain workers separated in this special window period. However, other conditions must be met to qualify for TRA. There must be a "total separation" as defined in § 617.3(11) and only the last such total separation within the period described above shall be taken into account; it must be a TRA qualifying separation; and the individual must be enrolled in or participating in training. The individual also must not be subject to a disqualification for failure to begin participation in training or for ceasing to participate or to make satisfactory progress in such training. These requirements regarding failure to

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begin or ceasing to participate in training are interpreted in the same manner as the amendments in the same language to section 231(b) of the Act. Finally, the individual must have been continuously unemployed since the individual's total separation as defined in § 617.3(11), not taking into account for purposes of this determination any work in which the individual was employed in seasonal employment, odd jobs, or part-time, temporary employment. States are to apply State law in giving meaning to these terms.

Payments are to be made prospectively only under § 617.11(a)(3), commencing with weeks of unemployment beginning after August 23, 1988. An individual's first qualifying separation is to be used to determine weekly and maximum amounts of TRA payable under this provision, the same as for any other worker separated in the 1981 to 1988 period. To be eligible for such benefits, a worker must also have a balance of TRA payable.

"Special rules for oil and gas workers—retroactive" are specified in § 617.11(a)(4), and are applicable to workers employed by independent firms engaged in exploration or drilling for oil and natural gas who were totally or partially separated from adversely affected employment after September 30, 1985. Workers may be entitled, retroactively, to TAA program benefits. Specific exceptions are made and special conditions must be met for such workers to be eligible for TAA program benefits retroactively. Workers covered by this paragraph do not include such workers covered under a prior certification issued under section 223 of the Act or workers who could have been certified as eligible under the Act prior to the 1988 amendments. To apply for certification a valid petition must be filed by or on behalf of such a group of workers in the Office of Trade Adjustment Assistance after August 23, 1988 and on or before the close of the business day on Friday, November 18, 1988. A certification issued pursuant to this special rule will not be subject to the one-year limitation on the impact date; however, the impact date may not be a date earlier than October 1, 1985. Such workers covered by a certification issued pursuant to this special rule will be eligible to apply for TAA program benefits in accordance with the specific and general requirements of the Act and the provisions of the OTCA. Basic and additional TRA, retroactively and prospectively, are subject to the basic eligibility requirements stated in § 617.11(a)(4). To qualify for TAA reemployment services, prospectively, such workers are subject to all the conditions stated in Subparts C, D, and E of Part 617, respectively, for Reemployment Services, Job Search Allowances, and Relocation Allowances.

The term "First week of entitlement" is revised for purposes of § 617.11(b)(2) to provide that, with respect to an individual's first total qualifying separation occurring after August 23, 1988, the first possible week of entitlement is the first week beginning after such separation, following exhaustion of all UI. Exhaustion of all UI remains a pre-condition for receiving TRA payments. Section 1425(a) of the OTCA; section 233(a) of the Act.

Section 617.11(a)(1)(vii) *Job search program participation,* is revised to reflect the deletion of the requirement that workers participate in a job search program after November 21, 1988, as a condition for receiving TRA. However, because of the demonstrated value of job search workshops and job finding clubs in helping dislocated workers return to suitable employment, the Department is encouraging State agencies to continue to refer all trade impacted workers, particularly those who are not currently participating in an approved training program, or who have already completed a training program, to such activities.

7. Section 617.14(a)(2) is amended by changing the designation of § 617.11(a)(4) to the new designation at § 617.11(a)(1)(iv) or, as appropriate, § 617.11(a)(2)(iv). This is a conforming change because of changes in § 617.11(a).

8. Section 617.15, *Duration of TRA,* is amended to conform this section to the new eligibility period for basic TRA, and to add a new paragraph (d) to provide that workers participating in approved training will continue receiving TRA during scheduled breaks in training that do not exceed 14 days, provided the worker was participating in the training before the beginning of the break, resumes participation in the training after the break ends, and the break is provided for in the published schedule of the training program. This is a significant change in the law since, prior to the 1988 Amendments, a worker had to actually be "engaged in" training in a week to be entitled to a payment of additional TRA for the week. Another significant change is that this provision applies to basic as well as additional TRA. New paragraph (d) also specifies how to count the days of a break, excluding Saturday and Sunday on which training would not normally be scheduled, and the effect of a break on a worker's eligibility period for basic and additional TRA. This provision was effective on August 23, 1988, and applies to all breaks in training which begin on or after such date regardless of when the training was approved under Part 617. Section 1423(c) of the OTCA; sections 233(a) (2) and (3) and 233(f) of the Act.

9. Section 617.17, *Availability and active search for work,* Section 617.17 is reorganized and clarified and new provisions added to reflect the application of the extended benefits (EB) work test, as required by § 617.11(a) prior to November 21, 1988, and on and after November 21, 1988, when a worker is required to be enrolled in or participating in a training program as a condition for receiving TRA. The EB work test requires an individual to: (1) Accept any offer of suitable work, as defined in § 617.3(ee), and actually apply for any suitable work the individual is referred to by the State agency; (2) actually engage in seeking work and furnish the State agency with evidence of such efforts; and (3) register for work and be referred by the State agency to suitable work in accordance with provisions of applicable State law which apply to EB claimants. Before November 21, 1988, the EB work test may not be applied to an individual in State or TAA approved training. On and after November 21, 1988, the individual must be enrolled in or participating in TAA approved training in order to avoid having to satisfy the EB work test.

10. Paragraph (b) of § 617.18, *Disqualifications,* is amended to reflect the requirement that an individual be enrolled in or participating in training as a condition for receiving TRA. An individual who, without justifiable cause, failed to begin participation, ceased to participate, or failed to make satisfactory progress in a training program, or for whom a waiver of participation in training is revoked under § 617.19, is disqualified from receiving TRA until the individual begins or resumes participation in approved training.

Definitions for "Failed to begin participation" and "Ceased to participate" are incorporated into paragraph (b). The definition for "Justifiable cause" used in the application of the job search program participation requirement as a condition for receiving TRA under § 617.49, is also incorporated into paragraph (b) for the purposes of the new training requirement.

11. A new section 617.19 *Requirement for participation in training,* has been added on a point which is also

addressed in § 617.11. On and after November 21, 1988, individuals must either be enrolled in a training program or have completed a training program approved under § 617.22(a) in order to be eligible to receive TRA payments. The participation in training requirement may be waived in writing if the State agency determines that training is not feasible or appropriate. Section 1423(a)(3) of the OTCA; section 231(c) of the Act.

This new section provides specific guidelines for determining whether training is feasible or appropriate, and what shall be in the waiver notice furnished to the individual. The term "feasible" means there is training available at that time which meets all the criteria of § 617.22(a), the worker is so situated as to be able to take full advantage of the training opportunity and complete the training, and funding is available to pay the full costs of the training, which may include funds from other Federal, State or private sources. The term "appropriate" means being suitable or compatible, fitting, or proper. Suitability of training is encompassed within the several criteria in § 617.22(a).

A worker who is granted a waiver from participation in training is subject to the able, available, and actively searching for work provisions of § 617.17. State agencies must have a procedure for regularly reviewing all waivers granted (every 30 days or less) to ascertain whether the conditions upon which the waivers were granted are still appropriate. Waivers must be revoked in writing. Determinations concerning waivers and revocations shall be subject to the provisions of §§ 617.50 and 617.51. State agencies must establish procedures for the recordkeeping of waivers and revocations of waivers, so that reports may be made to the Department of Labor as requested.

12. Section 617.20 is amended to reflect new requirements in the 1988 Amendments that adversely affected workers be advised of the trade adjustment assistance program and the benefits and services available to workers certified as eligible to apply for such benefits and services. Paragraphs (a) and (b) of § 617.20 are reorganized to better reflect the responsibilities of State agencies to inform workers to apply for training while the workers are receiving UI payments, interviewing adversely affected workers regarding suitable training opportunities, reviewing such training opportunities with such workers, and informing such workers of the requirement for participation in training as a condition for receiving TRA.

13. (a) Paragraph (a) of § 617.22 is amended by revising criterion (4) to require that training be "reasonably available", by adding a new criterion (6) that "such training is suitable for the worker and available at a reasonable cost", and by adding the meanings given to each of the six criteria. To assist State agencies in applying the reasonable cost provision in criterion (6), guidelines are specified in paragraph (a). Section 1424(a)(1) of the OTCA; section 236(a)(1) of the Act.

(b) Paragraph (b) of § 617.22 is amended to require States to establish annual ceilings on allowable training costs.

(c) Paragraph (c) is amended to restate that training approved under State law does not constitute approval under Part 617, and if such training is approved under Part 617, such approval shall not be retroactive for any of the purposes of Part 617.

(d) Paragraph (f)(3) of § 617.22 is revised by deleting the word "course" and adding the words "training program" to set forth the concept that training programs may be approved under § 617.22(a) which ordinarily involve more than a single course as the term is used by most education and training institutions. This is a technical change.

14. Section 617.24 is revised to present the types of training set out in section 236(a)(5) of the Act that may be approved, including remedial education which is added by the 1988 Amendments. Section 1424(a)(10) of the OTCA; section 236(a)(5) of the Act.

15. Section 617.25 is amended to delete the concept of purchased training and the matters repetitive of § 617.24, and substitute new subject matter under the heading *Limitations on training under Subpart C.* The significant new matter in this amended section is necessitated by a number of amendments to section 236 of the Act. The second sentence of section 236(a)(1), relating to entitlement to payment of training costs, was amended by inserting the parenthetical phrase "subject to the limitations imposed by this section" in such second sentence. In addition to the fiscal year monetary limitation added in paragraph (2) of section 236(a), and the prohibition on duplicate payments in the retained but redesignated paragraph (4) of section 236(a), the OTCA amendments also added new restrictions in new paragraphs (6) and (7) while at the same time adding in new paragraphs (5)(E), (6), and (7) authority to share costs of training between TAA funds and funds available under other Federal or State laws and funds available from private sources. This new authority also endorses approval of training under Part 617 if the training costs are funded from another source. Section 1424 of the OTCA; section 236 of the Act.

16. Section 617.49 is revised by adding a new paragraph (e), which explains that participation in a job search program as a condition for receiving TRA will not be applied for any week which begins after November 20, 1988. Section 1423(a)(1) of the OTCA; section 231(a) of the Act.

17. Section 617.50(a) is amended by striking the reference to "§ 617.26(d)" and inserting in place thereof "§ 617.26(b)". This is a technical change.

18. Section 617.59 is amended by adding new paragraphs (h), *Program coordination,* and (i), *Administration absent State Agreement.* Paragraph (i) was previously § 617.60.

19. A new § 617.60, *Administrative requirements,* is added which sets forth the application of regulations at 29 CFR Parts 96, 97 and 98, and OMB Circular A–87, to the TAA program and the exceptions to such requirements.

20. Section 617.67, *Transition procedures for the 1988 Amendments,* is added to reflect the amendments to the TAA provisions of the Trade Act of 1974, and other special provisions in section 1421 through 1430 in Part 3—*Trade Adjustment Assistance,* of Subtitle D of Title I of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) that are effective on date of enactment, and in 30 and 90 days of date of enactment. The significant provisions of the 1988 Amendments are explained in sufficient detail to furnish explicit guidance on implementing the amendments to the Trade Act of 1974 and the retroactive provisions concerning oil and natural gas workers and workers separated in the period August 13, 1981 through April 7, 1986.

Drafting Information

This document was prepared under the direction and control of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street NW., Washington, DC 20213: telephone: (202) 376–2646 (this is not a toll-free number).

Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the

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economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enteprises in domestic or export markets.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35, approval of the recordkeeping requirement contained at § 617.57 has been obtained from Office of Budget and Management (control number 1205–0016, which is for the reporting form ETA 563). OMB control number 1205–0222 applies to §§ 617.52(c) and 617.54. OMB approval is being requested for the recordkeeping and reporting now required under § 617.19(d)

Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule "will not * * * have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The definition of the term "small entity" under 5 U.S.C. 601(6) does not include States. Since these regulations involve an entitlement program administered by the States, and are directed to the States, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17.245, "Trade Adjustment Assistance—Workers."

List of Subjects in 20 CFR Part 617

Job search assistance, Labor, Reemployment services, Relocation assistance, Trade readjustment allowances, Unemployment compensation, Vocational education.

Words of Issuance

For the reasons set out in the preamble, Part 617 of Title 20, Code of Federal Regulations, is proposed to be amended as set forth below.

Signed at Washington, DC, on November 22, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

1. The authority for Part 617 continues to read as follows:

Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 31117.

2. Part 617 is amended—

(a) By amending the table of contents—

(1) By adding after 617.18 in Subpart B the following new section:

617.19 Waiver of participation in training.,

(2) By amending the heading for 617.25 to read:

617.25 Limitations on training under Subpart C.,

(3) By amending the heading for 617.60 to read:

617.60 Administrative requirements.. and

(4) By adding after 617.66 the following new section:

617.67 Transition guidelines for the 1988 Amendments.;

(b) By amending the Appendices at the end of the table of contents—

(1) By redesignating Appendix A as Appendix B and Appendix B as Appendix C, respectively, and

(2) By inserting before redesignated Appendix B the following—

Appendix A—Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services;

Appendices A and B [Redesignated]

(c) By amending the Appendices at the end of Part 617 by redesignating Appendix A as Appendix B and redesignating Appendix B as Appendix C;

§ 617.50 [Amended]

(d) By amending § 617.50(g) by striking "(Appendix A of this part)" and inserting in place thereof "(Appendix B of this part)";

§ 617.55 [Amended]

(e) By amending § 617.55(g) by striking "(Appendix B of this part)" and inserting in place thereof "(Appendix C of this part)"; and

§ 617.10 [Amended]

(f) By amending § 617.10(c) by striking all words after "section 5000 *et seq.*" and inserting in place thereof "(Appendix A of this Part)".

3. Paragraphs (j), (m), (t), (ff), and (oo)(4) of § 617.3 are revised to read as follows:

§ 617.3 Definitions.

* * * * *

(j)(1) "Certification" means a certification of eligibility to apply for TAA issued under section 223 of the Act with respect to a specified group of workers of a firm or appropriate subdivision of a firm.

(2) "Certification period" means the period of time during which total and partial separations from adversely affected employment with a firm or appropriate subdivision of a firm are covered by the certification, as specified in section 231(a)(1) of the Act and § 617.11.

* * * * *

(m) "Eligibility period" means the period during which basic or additional TRA is payable to an otherwise eligible individual, and for an individual such eligibility period is—

(1) *Basic weeks.* (i) With respect to a total or partial first qualifying separation that occurs on a day that precedes August 23, 1988, the 104-week period beginning with the first week following the week with respect to which the individual first exhausts all rights to regular compensation (as defined in paragraph (oo)(1) of this section) in such individual's first benefit period (as defined in § 617.11(a)(1)(iv)); and

(ii) With respect to a total qualifying separation that occurs on or after August 23, 1988, the 104-week period beginning with the first week following the week in which such qualifying total separation occurred; and

(2) *Additional weeks.* The 26-week period that—

(i) Follows the last week of entitlement to basic TRA otherwise payable to the individual under this Part 617, or

(ii) Begins with the first week of approved training, if such training begins after the last week described in paragraph (m)(2)(i) of this section, or

(iii) Begins with the first week with respect to which such training is approved, if such training is approved after the training commences, but approval of training after the training has commenced shall not include approval with respect to any week or other period retroactively for the purposes of payment of any TRA or payment of any expenses of training incurred prior to such approval.

* * * * *

(t)(1) "First separation" means an individual's first total or partial separation from adversely affected employment that occurs within the certification period which is applicable to the individual;

(2) "Qualifying separation" means, for the purposes of qualifying for basic TRA—

(i) Prior to August 23, 1988, the total or partial separation of an individual from adversely affected employment, or

(ii) On and after August 23, 1988, the total separation of an individual from adversely affected employment, if such separation of the individual occurs within the certification period of the certification which is applicable to the individual, and if with respect to such separation the individual meets the qualifying employment and wage requirements of section 231(a)(2) of the Act and § 617.11(a)(1)(iii) or § 617.11(a)(2)(iii) (whichever is applicable.); and

(3) "First qualifying separation" means for the purposes of determining an individual's eligibility period for, and weekly and maximum amounts of, basic TRA—

(i) Prior to August 23, 1988, the first total or partial separation of the individual from adversely affected employment which is a qualifying separation as defined in paragraph (t)(2) of this section, or

(ii) On and after August 23, 1988, the first total separation of the individual from adversely affected employment which is a qualifying separation as defined in paragraph (t)(2) of this section.

* * * * *

(ff)(1) "Secretary" means the Secretary of Labor of the United States of America.

(2) "Department of Labor" or "Department" means the United States Department of Labor or the Employment and Training Administration within the Department.

* * * * *

(oo) * * *(4) "Federal supplemental compensation", means the supplemental unemployment compensation payable to individuals who have exhausted their rights to regular and extended compensation, and which is payable under the Federal Supplemental Compensation Act of 1982 or any similar Federal law enacted after the 1982 Act.

* * * * *

4. Section 617.4 is amended by revising the heading of paragraph (c) and adding thereto new paragraphs (d) and (e) to read as follows:

§ 617.4 Benefit information to workers.

* * * * *

(c) *Providing information to State vocational education agencies and others.* * * *

(d) *Written and newspaper notices—*(1) *Written notices to workers.* (i) Upon receipt of a certification issued by the Department of Labor, State agencies shall provide a written notice through the mail of the benefits available under Subparts B through E of this Part 617 to each worker covered by a certification issued under section 223 of the Act when the worker is partially or totally separated or as soon as possible after the certification is issued if such workers are already partially or totally separated from adversely affected employment.

(ii) The State agency will satisfy this requirement by obtaining from the firm, or other reliable source, the names and addresses of all workers who were partially or totally separated from adversely affected employment before the certification, and workers who are thereafter partially or totally separated within the certification period. The State agency shall mail a written notice to each such worker of the benefits available under the TAA Program. The notice must include the following information:

(A) Article(s) produced and worker groups covered by the certification.

(B) Name and the address or location of workers' firm.

(C) Impact, certification, and expiration dates in the certification document.

(D) Benefits and reemployment services available to eligible workers.

(E) Explanation of how workers apply for TAA benefits and services.

(F) Whom to call to get additional information on the certification.

(G) When and where the worker should come to apply for benefits and services.

(2) *Newspaper notices.* (i) Upon receipt of a certification issued by the Department, State agencies shall publish a notice of each certification issued under section 223 of the Act in a newspaper of general circulation in areas in which such workers reside. The notice shall include the benefits available under Subparts B through E of this Part 617.

(ii) The published notice must include the following kinds of information:

(A) Article(s) produced and worker groups covered by the certification.

(B) Name and the address or location of workers' firm.

(C) Impact, certification, and expiration dates in the certification document.

(D) Benefits and reemployment services available to eligible workers.

(E) Explanation of how and where workers should apply for TAA benefits and services.

(e) *Advice and assistance to workers.* In addition to the information and assistance to workers as required under paragraphs (a) and (b) of this section, State agencies shall—

(1) Advise each worker who applies for unemployment insurance under the State law of the benefits available under Subparts B through E of this Part 617 and the procedures and deadlines for applying for such benefits.

(2) Facilitate the early filing of petitions under section 221 of the Act and § 617.4(b) for any workers that the agency considers are likely to be eligible for benefits.

(3) Advise each adversely affected worker to apply for training under § 617.22(a) before, or at the same time, the worker applies for trade readjustment allowances under Subpart B of this Part 617.

(4) Interview each adversely affected worker, as soon as practicable, regarding suitable training opportunities available to the worker under § 617.22(a) and review such opportunities with the worker.

Moreover, State agencies shall utilize information received by the State's dislocated worker unit under the WARN to facilitate the early filing of petitions under section 221 of the Act by workers potentially adversely affected by imports.

5. Section 617.10 is amended by adding at the end thereof a new paragraph (d) to read as follows:

§ 617.10 Applications for TRA.

* * * * *

(d) *Advising workers to apply for training.* State agencies shall advise each worker of the qualifying requirements for entitlement to TRA and other TAA benefits at the time the worker files an initial claim for State UI, and shall advise each adversely affected worker to apply for training under Subpart C of this Part 617 before, or at the same time, the worker applies for TRA, as required by § 617.4(e)(1) and (3).

6. Section 617.11 is revised to read as follows:

§ 617.11 Qualifying requirements for TRA.

(a) *Basic qualifying requirements for entitlement—*(1) *Prior to November 21, 1988.* To qualify for TRA for any week of unemployment that begins prior to November 21, 1988, an individual must meet each of the following requirements of clauses (i) through (vii) of this paragraph (a)(1):

(i) *Certification.* The individual must be an adversely affected worker covered under a certification.

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(ii) *Separation.* The individual's first qualifying separation (as defined in paragraph (t)(3) of § 617.3) before application for TRA must occur:

(A) On or after the impact date of such certification;

(B) Before the expiration of the two-year period beginning on the date of such certification; and

(C) Before the termination date, if any, of such certification.

(iii) *Wages and employment.* (A) In the 52-week period (i.e., 52 consecutive weeks), ending with the week of the individual's first qualifying separation, the individual must have had at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as provided in § 617.12. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(B)(*1*) For the purposes of this paragraph (a)(1)(iii), any week in which such individual—

(*i*) Is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(*ii*) Does not work in such adversely affected employment because of a disability compensable under a workers' compensation law or plan of a State or the United States, or

(*iii*) Had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision, shall be treated as a week of employment at wages of $30 or more;

(*2*) *Provided,* that—

(*i*) Not more than 7 weeks in the case of weeks described in paragraph (a)(1)(iii)(B)(*1*)(*i*) or paragraph (a)(1)(iii)(B)(*1*)(*iii*) of this section, or both, and

(*ii*) Not more than 26 weeks described in paragraph (a)(1)(iii)(B)(*1*)(*ii*) of this section, may be treated as weeks of employment for purposes of this paragraph (a)(1)(iii).

(C) Wages and employment creditable under this paragraph (a)(1)(iii) shall not include employment or wages earned or paid for employment which is contrary to or prohibited by any Federal law.

(iv) *Entitlement to UI.* The individual must have been entitled to (or would be entitled to if the individual applied therefor) UI for a week within the benefit period—

(A) In which the individual's first qualifying separation occurred, or

(B) Which began (or would have begun) by reason of the filing of a claim for UI by the individual after such first qualifying separation.

(v) *Exhaustion of UI.* The individual must:

(A) Have exhausted all rights to any UI to which the individual was entitled (or would be entitled if the individual applied therefor); and

(B) Not have an unexpired waiting period applicable to the indivdual for any such UI.

(vi) *Extended benefit work test.* (A) The individual must:

(*1*) Accept any offer of suitable work, as defined in § 617.3(kk), and actually apply for any suitable work the individual is referred to by the State agency; and

(*2*) Actively engage in seeking work and furnish the State agency tangible evidence of such efforts each week; and

(*3*) Register for work and be referred by the State agency to suitable work in accordance with the provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970 and Part 615 of this Title.

(B) The EB work test shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the EB work test requirement of this paragraph (a)(1)(vi) and § 617.17. Prior to such notification and advice, the individual shall not be subject to the EB work test requirement set out in § 617.17, nor to any State timely filing requirement, but shall be required to be unemployed and able to work and available for work with respect to any such week except as provided for workers in approved training in § 617.17.

(vii) *Job search program participation.* (A) The individual is enrolled in, participating in, or has successfully completed a job search program which meets the requirements of § 617.49(a); or the State agency has determined that no acceptable job search program is reasonably available under the criteria set forth in § 617.49(c).

(B) The job search program requirement shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the job search program requirement of this paragraph (a)(1)(vii) and § 617.49.

(C) The job search program requirement shall not apply to an individual, as a qualifying requirement for TRA, after November 20, 1988, but cooperating State agencies are encouraged to continue to utilize job search programs after November 20, 1988, as an effective tool to assist adversely affected workers in finding suitable employment, particularly unemployed workers who have completed training or for whom the training requirement has been waived under § 617.19.

(2) On and after November 21, 1988. To qualify for TRA for any week of unemployment that begins on or after November 21, 1988, an individual must meet each of the following requirements of clauses (i) through (vii) of this paragraph (a)(2):

(i) *Certification.* The individual must be an adversely affected worker covered under a certification.

(ii) *Separation.* The individual's first qualifying separation (as defined in paragraph (t) (3) of § 617.3) before application for TRA must occur:

(A) On or after the impact date of such certification;

(B) Before the expiration of the two-year period beginning on the date of such certification; and

(C) Before the termination date, if any, of such certification.

(iii) *Wages and employment.* (A) In the 52–week period (i.e., 52 consecutive weeks) ending with the week of the individual's first qualifying separation, the individual must have had at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as provided in § 617.12. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(B)(*1*) For the purposes of this paragraph (a)(2)(iii), any week in which such individual—

(*i*) Is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training.

(*ii*) Does not work in such adversely affected employment because of a disability compensable under a workers' compensation law or plan of a State or the United States, or

(*iii*) Had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision, shall be treated as a week of employment at wages of $30 or more;

(*2*) *Provided,* That—

(*i*) Not more than 7 weeks in the case of weeks described in paragraph (a)(2)(iii)(B)(*1*)(*1*) or paragraph (a)(2)iii(B)(*1*)(*iii*) of this section, or both, and

(*ii*) Not more than 26 weeks described in paragraph (a)(2)(iii)(B)(*1*)(*ii*) of this section, may be treated as weeks of employment for purposes of paragraph (a)(2)(iii) of this section.

(C) Wages and employment creditable under this paragraph (a)(2)(iii) shall not include employment or wages earned or paid for employment which is contrary to or prohibited by any Federal law.

(D) For the purposes of determining the weekly and maximum amounts of TRA for any individual under §§ 617.13 and 617.14, respectively, only the first qualifying separation shall be used as provided in this paragraph (a)(2)(iii). For the purpose of determining the eligibility period for basic TRA for any individual under § 617.15, the individual's first qualifying separation shall be used initially; if the individual has a subsequent, total qualifying separation on or after August 23, 1988, within the certification period of the same certification, the individual's eligibility period for basic TRA shall be redetermined based upon the most recent total qualifying separation, pursuant to this paragraph (a)(2)(iii) and § 617.15.

(iv) *Entitlement to UI.* The individual must have been entitled to (or would be entitled to if the individual applied therefor) UI for a week within the benefit period:

(A) In which the individual's first qualifying separation occurred; or

(B) Which began (or would have begun) by reason of the filing of a claim for UI by the individual after such first qualifying separation.

(v) *Exhaustion of UI.* The individual must:

(A) Have exhausted all rights to any UI to which the individual was entitled (or would be entitled if the individual applied therefor); and

(B) Not have an unexpired waiting period applicable to the individual for any such UI.

(vi) *EB work test.* (A) The individual must:

(*1*) Accept any offer of suitable work, as defined in § 617.3(kk), and actually apply for any suitable work the individual is referred to by the State agency; and

(*2*) Actively engage in seeking work and furnish the State agency tangible evidence of such efforts each week; and

(*3*) Register for work and be referred by the State agency to suitable work in accordance with the provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970 and Part 615 of this Title.

(B) The EB work test shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the EB work test requirement of this paragraph (a)(2)(vi) and § 617.17. Prior to such notification and advice, the individual shall not be subject to the EB work test requirement set out in § 617.17, not to any State timely filing requirement, but shall be required to be unemployed and able to work and available for work with respect to any such week except as provided in § 617.17 for workers enrolled in, or participating in, a training program approved under § 617.22(a).

(vii) *Participation in training.* (A) The individual must—

(*1*) Be enrolled in or participating in a training program approved pursuant to § 617.22(a), or

(*2*) Have successfully completed a training program pursuant to § 617.22(a), after a total or partial separation from adversely affected employment within the certification period of a certification issued under the Act, or

(*3*) Have received from the State agency a written statement under § 617.19 waiving the participation in training requirement for the individual.

(B) The participation in training requirement of paragraph (a)(2)(vii) of this section shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the participation in training requirement of this paragraph (a)(2)(vii) and § 617.19.

(C) The participation in training requirement of this paragraph (a)(2)(vii) shall apply, as a qualifying requirement for TRA, to an individual with respect to claims for TRA for weeks of unemployment commencing on or after November 21, 1988, which begin with the first week following the week in which a certification covering the individual is issued under the Act, unless the State agency has issued a written statement to the individual under § 617.19 waiving the participation in training requirement for the individual.

(D) For purposes of this paragraph (a)(2)(vii), the following definitions shall apply:

(*1*) *Enrolled in Training.* A worker shall be considered to be enrolled in training when the worker's application for training is approved by the State agency and the training institution has furnished written notice to the State agency that the worker has been accepted in the approved training program beginning within 30 calendar days. (A waiver under § 617.19 is not required for an individual who is enrolled in training as defined herein.)

(*2*) *Completed Training.* A worker shall be considered to have completed a training program if the training program was approved, or was approvable and is approved under section 236(a) of the Act and § 617.22, the training occurred subsequent to the individual's total or partial separation from adversely affected employment within the certification period of a certification issued under the Act, and the training provider has certified that all the conditions for satisfactory completion of the training program have been satisfied.

(3) *Special rules for workers separated in 1981 to 1986 period*—(i) *Basic conditions.* Under section 1425(b) of the *Omnibus Trade and Competitiveness Act of 1988* (the "OTCA") (Pub. L. 100–418) the time limit on the eligibility period for basic TRA in section 233(a)(2) of the Act (before and after the amendment by Pub. L. 100–418), and the 210-day time limit in section 233(b) of the Act on the filing of a bona fide application for training in order to qualify for additional TRA, are set aside and shall be disregarded for any individual separated from adversely affected employment in the period which began on August 13, 1981, and ended on April 7, 1986: *Provided,* That any such individual must meet all of the following requirements of paragraphs (A) through (E) of this paragraph (a)(3)(i) to qualify for TRA for any week:

(A) *Period of separation.* The separation of the individual must have occurred on a date within the period which began on August 13, 1981 and ended on April 7, 1986.

(B) *Total separation required.* Such separation must be a "total separation" as defined in § 617.3(11), and for the purposes of paragraph (a)(3)(i)(E) of this section only the last such total separation within the period prescribed

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in paragraph (a)(3)(i)A of this section shall be taken into account.

(C) *Other standard requirements* The individual must, with respect to such total separation, meet all the requirements of clauses (i) through (v) of paragraph (a)(1) of this section.

(D) *Participation in training.* The individual must meet the requirements of clause (vii) of paragraph (a)(2) of this section, and not be subject to disqualification under § 617.18 for failure to begin participation in such training or for ceasing to participate or to make satisfactory progress in such training.

(E) *Continuously unemployed.* The individual must have been continuously unemployed since the date of the individual's total separation referred to in paragraph (a)(3)(i)(B) of this section, not taking into account for the purposes of this determination any work in which the individual was employed in seasonal employment, odd jobs, or part-time, temporary employment.

(ii) *TRA payments prospective only.* The provisions of this paragraph (a)(3) apply to payments of TRA only for weeks which begin after August 23, 1988, and with respect to training in which the individual becomes enrolled and begins participation before or after such date, and which is approved under § 617.22(a) before or after such date, but any such training must be approved under § 617.22(a) before payments of TRA may be authorized under this Part 617.

(iii) *Work not taken into account.* For the purposes of paragraph (E) of paragraph (a)(3)(i) of this section, cooperating State agencies shall take into account local labor market characteristics in giving effect to the terms seasonal employment and part-time, temporary work.

(iv) *Other special rules.* Although the last total qualifying separation of an individual will be used for the purposes of the determination under subparagraph (B) of paragraph (a)(3)(i) of this section, the individual's first qualifying separation (as defined in paragraph (t)(3)(i) of § 617.3) must be used to determine the weekly and maximum amounts payable to the individual in accordance with §§ 617.13 and 617.14. No individual shall be determined to be eligible for TRA under this paragraph (a)(3) if the individual has previously received all of the basic and additional TRA to which the individual was entitled. The 26-week eligibility period for additional TRA is applicable under this paragraph (a)(3), as such term is defined in paragraph (m)(2) of § 617.3.

(4) *Special rules for oil and gas workers—retroactive*—(1) *Basic conditions.* Under section 1421(a)(1)(B) of the OTCA (Pub. L. 100–418), individuals employed by independent firms engaged in exploration or drilling for oil and natural gas who were separated after September 30, 1985, may be entitled, retroactively, to TAA program benefits: *Provided,* That the exceptions and conditions in the following provisions of this paragraph (a)(4) shall apply in regard to the entitlement of such individuals to TAA program benefits.

(ii) *Prior certification.* Individuals covered by this paragraph (a)(4) do not include any individual covered under a certification (made with respect to the same firm or subdivision of a firm) that was issued under section 223 of the Act without regard to the amendments to section 222 of the Act (relating to oil and gas workers) made by section 1421(a)(1)(A) of the OTCA.

(iii) *Petition.* (A) To apply for a certification under section 223 covering workers referred to in section 1421(a)(1)(B) of the OTCA, a petition must be filed in the Office of Trade Adjustment Assistance after August 23, 1988 and on or before November 18, 1988, by or on behalf of a group of workers of such a firm or subdivision of a firm.

(B) A petition, to be valid, may not be signed by or on behalf of an individual referred to in paragraph (a)(4)(ii) of this section.

(iv) *Certification.* (A) As provided in section 1421(a)(1)(B) of the OTCA, a certification issued pursuant to section 223 of the Act will not be subject to the one-year limitation on the impact date which is specified in section 223(b) of the Act, but the impact date of any such certification may not be a date earlier than October 1, 1985.

(B) A certification shall not be issued under the authority of section 1421(a)(1)(B) of the OTCA if a certification could have been issued under section 223 of the Act before or after the amendment made by section 1421(a)(1)(A) of the OTCA.

(v) *Coverage of certification.* Individuals covered by a certification issued under the authority of section 1421(a)(1)(B) of the OTCA will be eligible to apply for TAA program benefits as follows:

(A) Basic and additional TRA, retroactively and prospectively, subject to the conditions stated in this paragraph (a)(4);

(B) Training, prospectively, subject to the conditions stated in Subpart C of this Part 617;

(C) Job search allowances, prospectively, subject to the conditions stated in Subpart D of this Part 617;

(D) Relocation allowances, prospectively, subject to the conditions stated in Subpart E of this Part 617.

(vi) *TRA entitlement.* To qualify for TRA for any week an individual must meet all of the following requirements of subparagraphs (A) through (D) of this paragraph (a)(4)(vi):

(A) *Certification.* The individual must be an adversely affected worker covered under a certification issued pursuant to section 223 of the Act and under the authority of section 1421(a)(1)(B) of the OTCA.

(B) *Date of separation.* The date of the individual's total or partial separation (as defined in § 617.3) must be a date after September 30, 1985, and within the certification period of the certification under which the worker is covered: *Provided,* That a separation occurring within the certification period of a certification and on or after August 23, 1988, must be a total qualifying separation to qualify for an extension of the individual's eligibility period for basic TRA. Separations occurring prior to October 1, 1985, shall be disregarded for the purposes of determining whether an individual experienced a total or partial separation after September 30, 1985.

(C) *Other standard requirements.* (*1*) With respect to weeks of unemployment that begin prior to November 21, 1988, the individual must, with respect to the separation referred to in subparagraph (B) of this paragraph (a)(4)(vi) meet all of the requirements of clauses (i) through (vii) of paragraph (a)(1) of this section, and

(*2*) With respect to weeks of unemployment that begin on or after November 21, 1988, the individual must meet all of the requirements of clauses (i) through (vi) of paragraph (a)(2) of this section.

(D) *Other special rules.* (*1*) Although an individual's most recent total or partial separation after September 30, 1985, must be used for the purposes of subparagraph (B) of this paragraph (a)(4)(vi), the individual's first qualifying separation (as defined in paragraph (t)(3)(i) of § 617.3) must be used to determine the weekly and maximum amounts payable to the individual in accordance with §§ 617.13 and 617.14.

(*2*) The 60-day preclusion rule in section 231(a) of the Act and in paragraph (b)(1) of this section shall not be applicable to an individual covered by a certification referred to in subparagraph (A) of this paragraph (a)(4)(vi), and who is eligible for TRA under the provisions of this paragraph (a)(4).

(*3*) The 26-week eligibility period for additional TRA is applicable under this paragraph (a)(4), as such term is defined in paragraph (m)(2) of § 617.3.

(b) *First week of entitlement.* The first week any individual may be entitled to a payment of basic TRA shall be the later of:

(1) The first week beginning more than 60 days after the date of the filing of the petition which resulted in the certification under which the individual is covered; or

(2)(i) With respect to a first qualifying separation that occurs prior to August 23, 1988, the first week beginning after the individual's first exhaustion of all rights to regular UI following the individual's first qualifying separation (as determined under §§ 617.15 and 617.67 for the purposes of paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section); or

(ii) With respect to a first total qualifying separation that occurs on or after August 23, 1988, the first week after the individual's first total qualifying separation (as determined under §§ 617.15 and 617.67 for the purposes of paragraphs (a)(1) and (a)(2) of this section).

§ 617.14 [Amended]

7. (a) Section 617.14(a)(2) is amended by striking the reference to "§ 617.11(a)(4)" and inserting in place thereof "§ 617.11(a)(1)(iv) or, as appropriate, § 617.11(a)(2)(iv)."

8. Section 617.15 is revised to read as follows:

§ 617.15 Duration of TRA.

(a) *Basic weeks.* An individual shall not be paid basic TRA for any week beginning after the close of the 104-week eligibility period (as defined in § 617.3(m)(1)) which is applicable to the individual, as determined under § 617.3(m)(1) and § 617.67(e).

(b) *Additional weeks.* (1) To assist an individual to complete training approved under Subpart C of this Part 617, payments may be made as TRA for up to 26 additional weeks in the 26-week eligibility period (as defined in § 617.3(m)(2)) which is applicable to the individual, as determined under § 617.3(m)(2) and § 617.67(f).

(2) To be eligible for TRA for additional weeks, an individual must make a bona fide application for such training—

(i) Within 210 days after the date of first certification under which the individual is covered; or

(ii) If later, within 210 days after the date of the individual's first qualifying separation.

(3) Except as provided in paragraph (d) of this section, payment of TRA for additional weeks may be made only for those weeks in the 26-week period during which the individual is participating in training approved under § 617.22(a), and has not been determined under § 617.18(b)(2) of this Part to be failing to make satisfactory progress in training.

(c) *Limit.* The maximum TRA payable to any individual on the basis of a single certification is limited to the maximum amount of basic TRA as determined under § 617.14 plus additional TRA for up to 26 weeks as provided in paragraph (b) of this section.

(d) *Scheduled breaks in training.* (1) An individual will continue to receive basic and additional weeks of TRA during scheduled breaks in training, but only if a scheduled break is not longer than 14 days, and the following additional conditions are met:

(i) The individual was participating in the training approved under § 617.22(a) immediately before the beginning of the break, and resumes participation in the training immediately after the break ends; and

(ii) The break is provided for in the published schedule of the training program.

(2) No basic or additional TRA will be paid to an individual for any week during which the individual does not participate in scheduled training, if such week is within a scheduled break that is 15 days or more.

(3) The days within a break in a training program that shall be counted in determining the number of days of the break for the purposes of this paragraph (d) shall include all calendar days beginning with the first day of the break and ending with the last day of the break, as provided for in the published schedule of the training program, except that any Saturday or Sunday occurring during the scheduled break in training, on which training would not normally be scheduled in the training program if there were no break in training, shall not be counted in determining the number of days of the break for the purposes of this paragraph (d).

(4) When the worker is drawing basic TRA, the maximum amount of TRA payable is not affected by the weeks the worker does not receive TRA while in a break period, but the weeks will count against the 104-week eligibility period.

(5) When the worker is drawing additional weeks of TRA to complete training, any weeks for which TRA is not paid will count against the continuous 26-week period and the number of weeks payable.

9. Section 617.17 is revised to read as follows:

§ 617.17 Availability and active search for work.

(a) *EB work test applicable.* Except as provided in paragraph (b) of this section, an individual shall, as a basic condition of entitlement to basic TRA for a week of unemployment—

(1) Be unemployed, as defined in the applicable State law for UI claimants, and

(2) Be able to work and available for work, and not decline or refuse a bona fide offer of, or referral to, suitable work, as defined in the applicable State law for UI claimants, and

(3) Be actively engaged in searching for work, applying for and accepting work, and accepting and acting upon referrals to work, all as required of EB claimants under those provisions of the applicable State law which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970 and Part 615 of this Title.

(b) *Exceptions*—(1) *Prior to November 21, 1988.* The conditions stated in paragraphs (a)(2) and (a)(3) of this section shall not be applicable to an individual actually undergoing training approved under the applicable State law or under § 617.22(a), or during a scheduled break in the training program if the individual participated in the training immediately before the break and resumes participation in the training when the break ends, unless the individual is determined to be ineligible under the applicable State law of § 617.18(b)(2).

(2) *On and after November 21, 1988.* The condition stated in paragraphs (a)(2) and (a)(3) shall not be applicable to an individual who is enrolled in or participating in a training program approved under § 617.22(a), or during a scheduled break in the training program if the individual participated in the training immediately before the break and resumes participation in the training when the break ends, unless the individual is determined to be ineligible under § 617.18(b)(2).

10. Paragraph (b) of § 617.18 is revised to read as follows:

§ 617.18 Disqualifications.

* * * * * *

(b) *Disqualification of trainees*—(1) *State law inapplicable.* A State law shall not be applied to disqualify an individual from receiving either UI or TRA because the individual:

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(i) Is enrolled in or is participating in a training program approved under § 617.22(a); or

(ii) Refuses work to which the individual has been referred by the State agency, if such work would require the individual to discontinue training, or if added to hours of training would occupy the individual more than 8 hours a day or 40 hours a week, except that this paragraph (b)(1)(ii) shall not apply to an individual who has been given notice of a determination of ineligibility under paragraph (b)(2) of this section unless and until the individual enters or resumes and makes satisfactory progress in such training; or

(iii) Quits work, if the individual was employed in work which was not suitable (as defined in § 617.22(a)(1)), and it was reasonable and necessary for the individual to quit work to begin or continue training, except that this paragraph (b)(1)(iii) shall not apply to an individual who has been given notice of a determination of ineligibility under paragraph (b)(2) of this section unless and until the individual enters or resumes and makes satisfactory progress in training approved for the individual under § 617.22(a).

(2) *Trainees ineligible.* (i) An individual who, without justifiable cause, fails to begin participation in a training program which is approved under § 617.22(a), or ceases to participate in such training, or fails to make satisfactory progress in such training, or for whom a waiver is revoked pursuant to § 617.19(c), shall not be eligible for basic or additional TRA, or any other payment under this Part 617, for the week in which such failure, cessation, or revocation occurred, or any succeeding week thereafter until the week in which the individual begins or resumes participation in a training program that is approved under § 617.22(a) and is making satisfactory progress in such training.

(ii) For purposes of this section and Part 617, the following definitions shall be used:

(A) *Failed to begin participation.* A worker shall be determined to have failed to begin participation in a training program when the worker fails to attend all scheduled training classes and other training activities in the first week of the training program, without justifiable cause.

(B) *Ceased participation.* A worker shall be determined to have ceased participation in a training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training institution in any week of the training program, without justifiable cause.

(C) *Justifiable cause.* The term "justifiable cause" means such reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to participate in or complete an approved training program.

11. A new § 617.19 is added to read as follows:

§ 617.19 Requirement for participation in training.

(a) *In general*—(1) *Basic requirement.* All individuals in TRA eligibility status on and after November 21, 1988, must either be enrolled in a training program or have completed a training program approved under § 617.22(a), in order to continue to be eligible for basic and additional TRA payments. The participation in training requirement may be waived in writing on an individual basis, if the State agency determines that training is not feasible or appropriate.

(2) *Waiver of participation requirement.* When a State agency determines that it is not feasible or appropriate (as defined in paragraph (b) of this section) to approve a suitable training program for an individual, then the State agency must issue a formal written waiver to the individual, together with an explanation of the reason for the waiver and a statement of its finding why it is not feasible or appropriate in the case of such individual. At a minimum, the written statement furnished to the individual shall contain the following information:

(i) Name and social security number of the individual;

(ii) Petition number under which the worker was certified;

(iii) Statement that the agency has determined that it is not feasible or appropriate to approve training for the individual at that time, and the reasons for the finding;

(iv) Statement that the waiver will be revoked at any time suitable training becomes available;

(v) Any other advice or information the State agency deems appropriate in informing the individual;

(vi) Signature block for the appropriate State official; and

(vii) Signature block for the worker's acknowledgement of receipt.

(b) *Reasons for issuing a waiver.* (1) For the purposes of paragraph (a)(2) of this section, a waiver of the participation in training requirement shall be issued to an individual only upon a finding that approval of a § 617.22(a) training program for that individual is not feasible or appropriate at that time.

(i) *Feasible and appropriate.* For the purposes of this section:

(A) *Feasible.* The term "feasible" means there is any training available at that time which meets all the criteria of § 617.22(a), the worker is so situated as to be able to take full advantage of the training opportunity and complete the training, and funding is available to pay the full costs of the training and any transportation and subsistence expenses which are compensable. For this purpose, funding includes not only TAA Program funds but also all other funds available under any of the provisions of the Job Training Partnership Act (including Title III) or any other Federal, State or private source that may be utilized for training approvable under § 617.22(a).

(B) *Appropriate.* The term "appropriate" means being suitable or compatible, fitting, or proper. Appropriate, therefore, refers to suitability of the training for the worker (including whether there is a reasonable prospect which is reasonably foreseeable that the individual will be reemployed by the firm from which separated) and compatibility of the training for the purposes of the TAA Program. In these respects, suitability of training for the individual is encompassed within the several criteria in § 617.22(a), and compatibility with the program is settled by the various provisions of Subpart C which describe the types of training approvable under § 617.22(a) and the limitations thereon.

(ii) *Basis for application.* Whether training is feasible or appropriate at any given time is determined by finding whether, at that time, training suitable for the worker is available, the training is approvable under Subpart C including the criteria in § 671.22(a), the worker is so situated as to be able to take full advantage of the training and complete the training, full funding for the training is available from one or more sources in accordance with §§ 617.24 and 617.25, and the training will commence within 30 days of approval.

(2) *Particular applications.* The reasons explaining why training is not feasible or appropriate shall be in accordance with the following:

(i) *Not feasible* because—

(A) The beginning date of approved training is beyond 30 days, as required in definition for "Enrolled in training" in § 617.11(a)(2)(vii)(D),

(B) Training is not reasonably available to the individual,

(C) Training is not available at a reasonable cost,

(D) Funds are not available to pay the total costs of training, or

(E) Other (explain).

(ii) *Not appropriate* because—

(A) The firm from which the individual was separated plans to recall the individual within the reasonably foreseeable future (State agencies must verify planned recalls with the employer),

(B) The duration of training suitable for the individual exceeds the individual's maximum entitlement to basic and additional TRA payments, or

(C) The individual possesses skills for "suitable employment" and there is reasonable expectation of employment in the foreseeable future.

(D) Other (explain).

(3) *Waivers and able and available.* An individual who has been given a written waiver under this section shall be subject to all of the requirements of paragraph (a) of § 617.17, which shall continue until the individual is enrolled in a training program as required by paragraph (a) of § 617.11.

(c) *Waiver review and revocations.* (1) State agencies must have a procedure for reviewing regularly (i.e., every 30 days or less) all waivers issued under this section to individuals, to ascertain that the conditions upon which the waiver were granted continue to exist. In those cases in which the conditions have changed—i.e., training has become feasible and appropriate—then the waivers must be revoked, and written statements must be issued to the individuals involved.

(2) A revocation statement shall be issued to the individual concurrent with the approval of the training in which the individual has become enrolled, and shall not be issued prior to such approval.

(3) State agencies may incorporate a revocation section in the waiver form or on a separate revocation form. Similar information as listed above for the issuance of a waiver shall be provided to the individual when revoking the waiver.

(4) Determinations concerning waivers and the revocation thereof shall be determinations to which §§ 617.50 and 617.51 apply.

(d) *Recordkeeping and reporting.* (1) State agencies must develop procedures for compiling and reporting on the number of waivers issued and revoked, by reason, as specified in paragraphs (b) and (c) of this section, and report such data to the Department of Labor as requested by the Department.

(2) State agencies are not required to forward copies of individual waivers and revocations to the Department of Labor. However, State agencies shall retain a copy of every individual waiver and revocation issued to individuals for inspection by the Department of Labor, for such period of time as the Department requires.

12. Section 617.20 is revised to read as follows:

§ 617.20 Responsibilities for the delivery of reemployment services.

(a) *State agency referral.* Cooperating State agencies shall be responsible for:

(1) Advising each adversely affected worker to apply for training with the State agency responsible for reemployment services, while the worker is receiving UI payments, and at the time the individual files an initial claim for TRA; and

(2) Referring each adversely affected worker to the State agency responsible for training and other reemployment services in a timely manner.

(b) *State agency responsibilities.* The responsibilities of cooperating State agencies under this Subpart C include, but are not limited to:

(1) Interviewing each adversely affected worker regarding suitable training opportunities reasonably available to each individual under section 236 of the Act and in Subpart C of this Part 617, reviewing such opportunities with each individual, informing each individual of the requirement for participation in training as a condition for receiving TRA, and accepting each individual's application for training. Such training may be approved for any adversely affected worker at any time after a certification is issued and the worker is determined to be covered thereby, without regard to whether the worker has exhausted all rights to unemployment insurance;

(2) Registering adversely affected workers for work;

(3) Informing adversely affected workers of the reemployment services and allowances available under the Act and this Part 617, the application procedures, the filing date requirements for such reemployment services and the training requirements for receiving TRA, as specified in § 617.11(a);

(4) Determining whether suitable employment, as defined in § 617.22(a)(1), is available;

(5) Providing counseling, testing, placement, and supportive services;

(6) Providing or procuring self-directed job search training; when necessary;

(7) Providing training, job search and relocation assistance;

(8) Developing a training plan with the individual;

(9) Determining which training institutions offer training programs at a reasonable cost with a reasonable expectation of employment following the completion if such training, and procuring such training;

(10) Documenting the standards and procedures used to select occupations and training institutions in which training is approved; and

(11) Making referrals and approving training programs;

(12) Monitoring the progress of workers in approved training programs;

(13) Developing, reviewing and updating (on a monthly basis) waiver and reemployment plans for adversely affected workers;

(14) Coordinating the administration and delivery of employment services, benefits, training, and supplemental assistance for adversely affected workers with programs under the Act and under Title III of the Job Training Partnership Act.

13. Paragraphs (a), (b), (c), and (f)(3) of § 617.22 are revised to read as follows:

§ 617.22 Approval of training.

(a) *Conditions for approval.* Training shall be approved for an adversely affected worker if the State agency determines that:

(1)(i) *There is no suitable employment (which may include technical and professional employment) available for an adversely affected worker.*

(ii) This means that for the worker for whom approval of training is being considered under this section, there is at that time no suitable employment available for that worker, either in the commuting area, as defined in § 617.3(k), or outside the commuting area in an area in which the worker desires to relocate with the assistance of a relocation allowance under Subpart E, and there is no reasonable prospect of such suitable employment becoming available for the worker in the foreseeable future. For the purposes of this paragraph, the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage in such adversely affected employment.

(2)(i) *The worker would benefit from appropriate training.*

(ii) This means that there is a direct relationship between the needs of the worker for skills training or remedial education and what would be provided

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by the training program under consideration for the worker, and that the worker has the mental and physical capabilities to undertake, make satisfactory progress in, and complete the training. This includes the further criterion that the individual will be job ready on completion of the training program.

(3)(i) *There is a reasonable expectation of employment following completion of such training.*

(ii) This means that, for that worker, given the job market conditions expected to exist at the time of the completion of the training program, there is, fairly and objectively considered, a reasonable expectation that the worker will find a job, using the skills and education acquired while in training, after completion of the training. Any determination under this criterion must take into account that "a reasonable expectation of employment" does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training. This emphasizes, rather than negates, the point that there must be a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(4)(i) *Training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers).*

(ii) This means that training is reasonably accessible to the worker within the worker's commuting area at any governmental or private institution or facility, particularly including on-the-job training with an employer, and it means training that is suitable for the worker and meets the other criteria in this paragraph (a). It also means that emphasis must be given to finding accessible training for the worker, although not precluding training outside the commuting area if none is available at the time within the worker's commuting area. If the training is outside the commuting area then the training must be available at a reasonable cost as prescribed in paragraph (a)(6) of this section.

(iii) In determining whether or not training is reasonably available, first consideration shall be given to training opportunities available within the worker's normal commuting area. Training at facilities outside the worker's normal commuting area should be approved only if such training is not available in the area or the training to be provided outside the normal commuting area is provided at a more reasonable cost.

(5)(i) *The worker is qualified to undertake and complete such training.*

(ii) This emphasizes the worker's personal qualifications; that is, the worker's own physical and mental capabilities and background and experience. In relation to these personal characteristics, the worker must be evaluated as qualified to undertake the specific training program being considered and to complete the training successfully.

(6)(i) *Such training is suitable for the worker and available at a reasonable cost.*

(ii) Such training means the training being considered for the worker. Suitable for the worker means that paragraph (a)(5) of this section is met and that the training is appropriate for the worker given the worker's capabilities, background and experience.

(iii) Available at a reasonable cost means that training is not approved at one institution when, all costs being considered, training substantially similar in quality, content and results can be obtained at another institution at a lower total cost within a similar time frame. It also means that training is not approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other institutions or facilities. This criterion also requires taking into consideration the funding of training costs from sources other than TAA funds, and the least cost to TAA funding of providing suitable training opportunities to workers. Greater emphasis will need to be given to these elements in determining the reasonable costs of training, particularly in view of the requirements in § 617.11(a) that TRA claimants be enrolled in and participate in training.

(iv) For the purpose of determining reasonable costs of training, the State agency shall consider the following:

(A) Costs of training program shall include tuition and related expenses (books, tools, and fees), travel or transportation expenses, and subsistence expenses.

(B) In determining whether the costs of a particular training program are reasonable, first consideration must be given to the lowest cost training which is available within the commuting area. When training, substantially similar in quality, content and results, for suitable employment is offered at more than one training facility, the lowest cost training shall be approved.

(C) Training outside the worker's normal commuting area should be approved only in situations where appropriate training is not otherwise available. Training that involves transportation or subsistence costs which add substantially to the total costs provide a basis for disapproving the training, if other appropriate training is available.

(b) *Allowable amounts for training.* States shall establish, annually, a maximum amount allowable for the total costs of training for each worker as set forth in § 617.22(a)(6)(iv)(A), taking into consideration the types of occupational training, the usual and customary costs of such training in the State, and the duration of the training.

(c) *Previous approval of training under State law.* Training previously approved for a worker under State law or other authority is not training approved under paragraph (a) of this section. Any such training may be approved under paragraph (a) of this section if all of the conditions for such approval are met, but such approval shall not be retroactive for any of the purposes of this Part 617, including payment of the costs of the training and payment of TRA to the worker participating in the training. However, in the case of a redetermination or decision reversing a determination denying approval of training under paragraph (a) of this section, for the purposes of this Part 617 such redetermination or decision shall be given effect retroactive to the issuance of the determination that was reversed by such redetermination or decision.

* * * * *

(f) *Length of training and hours of attendance.* * * *

(3) The hours and days in a week of attendance shall be in accordance with established hours and days commensurate with the training program as determined by the State agency in collaboration with the training facility.

* * * * *

14. Section 617.24 is revised to read as follows:

§ 617.24 Preferred training.

Training programs that may be approved under § 617.22 (a) include, but are not limited to—

(a) On-the-job training;

(b) Any training program provided by a State pursuant to section 303 of the Job Training Partnership Act;

(c) Any training program approved by a private industry council established under section 102 of such Act;

(d) Any program of remedial education;

(e) Any training program (other than a training program described in paragraph (c) of § 617.25 for which all, or any portion, of the cost of training the worker are paid—

(1) Under any other Federal or State program other than this Subpart C, or

(2) From any other source other than this section; and (f) any other training program approved by the Department.

15. Section 617.25 is revised to read as follows:

§ 617.25 Limitations on training under Subpart C.

The second sentence of amended section 236(a)(1) of the Act provides that an adversely affected worker shall be entitled to have payment of the costs of training approved under the Act (and this Subpart C) paid on the worker's behalf, subject, however, "to the limitations imposed by" section 236. The limitations in section 236 which are addressed in this section concern the restrictions on approval of training which are related directly or indirectly to the conditions on training which is approvable or on the funding of training costs.

(a) *On-the-job training.* The costs of on-the-job training approved under the Act and this Subpart C for a worker, which are paid from TAA funds, shall be paid in equal monthly installments. Such costs may be paid from TAA funds, and such training may be approved under the Act and this Subpart C, however, only if the State agency determines that:

(1) No currently employed individual is displaced by such eligible worker, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits;

(2) Such training does not impair existing contracts for services or collective bargaining agreements;

(3) In the case of training which would be inconsistent with the terms of a collective bargaining agreement, written concurrence has been obtained from the concerned labor organization;

(4) No other individual is on layoff from the same or any substantially equivalent job for which such eligible worker is being trained;

(5) The employer has not terminated the employment of any regular employee or otherwise reduced the workforce with the intention of filling the vacancy so created by hiring the eligible worker;

(6) The job for which the eligible worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals;

(7) Such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222 of the Act;

(8) The employer certifies to the State agency that the employer will continue to employ the eligible worker for at least 26 weeks after completing the training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment;

(9) The employer has not received payment under the Act and this Subpart C for any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (a)(1) through (6) of this section; and

(10) The employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (a)(8) of this section made by the employer with respect to any other on-the-job training provided by the employer for which the employer has received a payment under the Act and this Supart C (or the prior provisions of this Subpart C).

(b) *Other authority and restrictions on funding*—(1) *In general.* Section 236(a) contains several provisions which allow the costs of a training program approved under the Act (and this Subpart C) to be paid—

(i) Solely from TAA funds,

(ii) Solely from other public or private funds, or

(iii) Partly from TAA funds and partly from other public or private funds.

but also precludes the use of TAA funds or funds under another Federal law in order to avoid duplication of payment of training costs. Those authorities and restrictions are spelled out in this paragraph (b).

(2) *Section 236(a)(5)(E)*—(i) *In general.* Paragraph (5)(E) of section 236(a) of the Act specifies one of the types of training programs approvable under the Act (and this Subpart C), as including a program (other than a training program described in section 236(a)(7) (paragraph (c) of this section)) for which all, or any portion, of the costs of the training program are paid—

(A) Under any Federal or State program other than the Act, or

(B) From any source other than TAA funds.

(ii) *Application.* Subparagraph (E) thus authorizes prearrangements between cooperating State agencies administering the TAA program and the authorities administering any other Federal, State, or private funding source, to agree upon any mix of TAA funds and other funds for paying the costs of a training program approved under the Act and this Subpart C. Any such prearrangement must contain specific commitments from the other authorities to pay the costs they agree to assume.

(3) *Section 236(a)(6)*—(i) *In general.* Paragraph (6) of section 236(a) of the Act is related to section 236(a)(5)(E) in providing that the costs of a training program approved under the Act (and this Subpart C) are not required to be paid from TAA funds to the extent that such costs are paid under any Federal or State program other than the Act (and this Subpart C) or from any source other than the Act (and this Subpart C).

(ii) *Application.* (A) Although paragraph (6) is expressed in terms of the costs not being *required* to be paid from TAA funds, it authorizes the mixing of TAA funds and funds from any other Federal, State or private source. Therefore, sharing the costs of training already partly paid from another Federal, State or private source is authorized, but this does not authorize reimbursement from TAA funds of the costs of training incurred and paid prior to the approval of the training program under the Act and this Subpart C. In utilizing the authority under this paragraph (b)(3) for sharing training costs, prearrangements shall be entered into as required under paragraph (b)(2) of this section before any TAA funds are obligated.

(B) Paragraph (6) of section 236(a) contains a special restriction on the authority derived thereunder to use TAA funds in sharing training costs. Therefore, before approving any training program under the Act and this Subpart C, which may involve sharing of the training costs under the authority of this paragraph (b)(3), the cooperating State agencies for the TAA Program shall require the worker to enter into a written agreement with the State under which TAA funds will not be applied for or used to pay any portion of the costs of the training the worker has reason to believe will be paid by any other governmental or private source.

(4) *Section 236(a)(4)*—(i) *In general.* (A) Paragraph (4) of section 236(a) of the Act (paragraph (3) before August 23, 1988) continues to provide, as it did before the addition of paragraphs (5)(E), (6), and (7) to section 236(a), that:

(*1*) When the direct payment of the costs of training is made from TAA funds, no other payment for such direct costs of training may be made under any other Federal law; and

(*2*) When the direct payment of the costs of training has been made under any other Federal law, or the costs are reimbursable under any other Federal

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law and a portion of the direct costs has already been paid under such other Federal law, payment of such training costs may not be made from TAA funds.

(B) Paragraph (4) of section 236(a) also requires that: The provisions of subparagraphs (A) (*1*) and (*2*) of this paragraph (b)(4)(i) shall apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the identical costs incurred in training the adversely affected worker under the TAA Program, even if such other use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(C) Therefore, paragraph (4) of section 236(a), and this paragraph (b)(4), continues to prohibit duplicate payment of training costs, which is consistent with the general prohibition expressed in the Act and in this Subpart C against any use of TAA funds to duplicate payment of training costs in any circumstances. Paragraph (4), and this paragraph (b)(4), also continues to prohibit taking into account, in determining whether training costs are payable from TAA funds, any payments to the worker under any other Federal law which may have the effect of indirectly paying all or a portion of the training costs. Such indirect payments include Veterans Educational Assistance, Pell Grants, and Supplemental Educational Opportunity Grants. However, such indirect payments are deductible from TRA under § 617.13(c)(2).

(ii) *Application.* (A) Although the prohibition on duplicate payments in the first part of section 236(a)(4) remains fully in effect, the second part of section 236(a)(4) on the sharing of costs from TAA funds and other Federal fund sources is modified by the explicit provisions of paragraphs (5)(E) and (6) of section 236(a), as set forth in paragraphs (b)(2) and (b)(3) of this section.

(B) When the direct costs of a training program approvable under the Act and this Subpart C are payable from TAA funds and are also wholly or partially payable under another Federal law, or under any State law or from private, nongovernmental sources, the TAA Program agencies shall establish procedures which ensure that TAA funds shall not be utilized to duplicate funds available from another source, but this preclusion of duplication does not prohibit and shall not discourage sharing of costs under prearrangements authorized under paragraphs (b)(2) and (b)(3) of this section.

(c) *Section 236(a)(7)*—(1) *In general.* Paragraph (7) of section 236(a) of the Act provides that a training program shall not be approved under the Act (and this Subpart C) if—

(i) All or a portion of the costs of such training program are paid under any nongovernmental plan or program,

(ii) The adversely affected worker has a right to obtain training or funds for training under such plan or program, and

(iii) Such plan or program requires the worker to reimburse the plan or program from funds provided under the Act and this Subpart C, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

(2) *Application.* Paragraph (7) of section 236(a), which is incorporated in this paragraph (c), reinforces the prohibition in § 617.22(h) against approval of a training program under this Subpart C if the worker is required to pay a fee or tuition. The provisions of this paragraph (c) and § 617.22(h) shall be given effect as prohibiting the approval under the Act and this Subpart C of any training program if the worker would be requested or required, at any time or under any circumstances, to pay any of the costs of a training program, however small, from any TAA funds given to the worker or from any other funds belonging to the worker from any source whatever. Aside from this limitation, however, paragraph (7) implicitly authorizes training approved under the Act and this Subpart C to be wholly or partly funded from nongovernmental (i.e., employer or other private) sources.

16. Section 617.49 is amended by adding at the end thereof a new paragraph (e):

§ 617.49 Job search program.

* * * * *

(e) *Termination of requirement.* The job search program requirement set out in this section shall not be a condition of entitlement to TRA for any week which begins after November 20, 1988.

§ 617.50 [Amended]

17. Section 617.50(a) is amended by striking the reference to "§ 617.26(d)" and inserting in place thereof "§ 617.26(b)".

18. Section 617.59 *Agreement with State agencies,* is amended by adding new paragraphs (h) and (i) to read as follows:

§ 617.59 Agreement with State agencies.

* * * * *

(h) *Program coordination.* State agencies providing employment services, training and supplemental assistance under sections 235 and 236 of the Act and this Part 617 shall, in accordance with their agreements under this section, coordinate such services and payments with programs and services provided by State and substate grantees under Title III of the Job Training Partnership Act and with the State agency administering the State law.

(i) *Administration absent State Agreement.* In any State in which no Agreement under this section is in force, the Secretary shall administer the Act and this Part 617 and pay TAA hereunder through appropriate arrangements made by the Department, and for this purpose the Secretary or the Department shall be substituted for the State or cooperating State agency wherever appropriate in this Part 617. Such arrangements shall include the requirement that TAA be administered in accordance with the Act and this Part 617, and the provisions of the appropriate State law except to the extent that such State law is inconsistent with any provision of the Act or this Part 617 or section 303 of the Social Security Act (42 U.S.C. 503) or section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)), and shall also include provision for a fair hearing for any individual whose application for TAA is denied. A final determination under this section as to entitlement to TAA shall be subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

19. Section 617.60 is revised to read as follows:

§ 617.60 Administrative requirements.

A State or cooperating State agency shall administer the TAA program in accordance with the Department's regulations at 29 CFR Parts 96, 97, and 98, and with OMB Circular A–87, except as provided otherwise in paragraphs (c) through (j) of this section.

(a) *Notification of obligation.* The Department will use a Notification of Obligation (NOO) to notify a State of all Department actions awarding funds to or withdrawing funds from the State.

(b) *Recapture of funds.* (1) The Department may withdraw all or any part of the unobligated balance of TAA funds provided to a State to the extent it determines that the State will not be able to use such amount within a reasonable period of time. The Department will assess the amount to be withdrawn on the basis of the unobligated balance of TAA funds provided the State and projected obligations.

(2) Prior to withdrawing any funds from a State, the Department will notify the State of the proposed action and the reasons therefor, and provide an opportunity for comment.

(c) *Availability of funds. The following requirements apply in place of 29 CFR 97.23:*

(1) TRA funds are only available for benefit payments chargeable to the Federal fiscal year for which they were awarded.

(2) All other TAA funds are available for obligation and expenditure by the State during the Federal fiscal year of the award plus the two succeeding Federal fiscal years: *Provided,* That in the case of funds awarded prior to October 1, 1988, the funding period shall end on September 30, 1990. All obligations must be liquidated within 90 days after the end of the funding period.

(d) *Requests for funds and financial reporting.* States shall request funding for all TAA activities in accordance with instructions issued by the Department. The instructions will contain financial reporting requirements, including the accounting basis to be used and the frequency of reports to be submitted. However, financial reports shall be submitted to Department not less frequently than quarterly and a final financial report shall be submitted to the Department within 90 days after the end of the funding period.

(e) *Charges.* Written Department approval must be obtained before any amount separately stated in the NOO issued by the Department may be used for any other purpose.

(f) *Prior approval of capital expenditures.* Authority for approving all purchases of equipment (as defined in 29 CFR 97.3) and other capital expenditures, as required by OMB Circular A–87, Attachment, B, paragraphs C1. and C3., is delegated to the States.

(g) *Allowable fringe benefit costs.* To the extent TAA activities are performed by State employment security agency (SESA) emplyees who are members of SESA fringe benefit plans which do not meet the requirements of OMB Circular A–87, Attachment B, paragraphs B10. and B13., the cost of employer contributions and expenses incurred for SESA fringe benefit plans are allowable: *Provided,* That:

(1) For retirement plans, all covered employees joined the plan before October 1, 1983, the plan is authorized by State law and previously approved by the Secretary; the plan is insured by a private insurance carrier which is licensed to operate this type of plan; and any dividends or similar credits due to participation in the plan are credited against the next premium falling due under the contract;

(2) For SESA fringe benefit plans other than retirement plans, if the Secretary granted a time extension after October 1, 1983, to the existing approval of such a plan, the plan may continue in effect until such time as it is comparable in cost to fringe benefit plans available to other similarly employed employees of the State of the condition that there are no benefit improvements. At such time as the cost of this fringe benefit plan is equivalent to the cost of plans available to other similarly employed State employees, the time extension will cease and the cited requirements of OMB Circular A–87 will apply; and

(3) Time extensions granted relative to paragraph (f)(2) of this section require a signed statement by the State agency Administrator that there have been no benefit improvements under the extension and that the plan(s) is (are) not consistent with those available to other similarly employed State employees, for each year of the extension. Documentation supporting the affidavit shall be maintained for audit purposes.

(h) *Program income.* As provided in 29 CFR 97.25(c), costs incurred in generating program income may be deducted from gross income to determine program income. As provided in 29 CFR 97.25(g)(2), program income may be added to Federal funds and used for purposes authorized by the terms of the award.

(i) *Equipment.* The requirements of 29 CFR 97.32, which pertains to equipment, applies to equipment acquired with TAA funds under both the present agreement and under previous agreements between the State and the Secretary pursuant to § 617.59 of this part.

(j) *Monitoring and reporting program performance.* The Department shall issue instructions setting out the content and frequency of program performance reports required from the States in lieu of those required by 29 CFR 97.40(b)(1).

20. Section 617.67 is added to read as follows:

§ 617.67 Transition procedures for the 1988 Amendments.

The provisions of Part 3 of Subtitle D of Title I of the Omnibus Trade and Competitiveness Act of 1988 (the "OCTA"), Pub. L. 100–418, approved on August 23, 1988, made material changes in the TAA Program for workers that are reflected in the amended regulations published with this new section on transition guidelines for the 1988 Amendments. States and cooperating State agencies shall be guided by the following paragraphs of this section in the transition to the TAA Program as modified by the 1988 Amendments and reflected in the preceding provisions issued by the Department.

(a) *Oil and gas workers—prospective.* Workers of firms or appropriate subdivisions of firms engaged in exploration or drilling for oil or natural gas are newly covered under the TAA Program by an amendment to section 222 of the Trade Act of 1974. This is a permanent change in the Act having prospective effect, and became effective on August 23, 1988. Oil and gas workers covered by a certification issued pursuant to section 223 of the Act and the regulations at 29 CFR Part 90 shall be entitled to basic and additional TRA and other TAA Program benefits on precisely the same terms and conditions as apply to other workers covered by other certifications and which are specifically set forth in this amended Part 617 and in operating instructions issued by the Department.

(b) *Oil and gas workers—retroactive.* Oil and gas workers referred to in paragraph (a) of this section, who were separated from adversely affected employment after September 30, 1985, are covered retroactively under section 1421(a)(1)(B) of the OTCA, if they are covered by a certification issued pursuant to section 223 of the Act which is in response to a petition filed in the Office of Trade Adjustment Assistance on or before November 18, 1988. Administration of TAA Program benefits to those workers shall be on precisely the same terms and conditions as apply to other workers covered by other certifications, except that the limitations of the impact date provisions of section 223(b) and the 60-day preclusions in section 231(a) may not be applied to these workers.

(c) *Benefit information to workers.* (1) An amendment to section 225 of the Act requires individualized and published notices to workers covered by certifications issued pursuant to section 223 of the Act. This amendment became effective as a requirement on September 22, 1988, and is applicable to all certifications issued on and after that date. Individualized notices and published notices shall contain the information specifically set forth in this amended Part 617 and in operating instructions issued by the Department.

(2) Amended sections 239(f) of the Act requires cooperating State agencies to furnish four discrete items of information and advice to individuals about TAA Program benefits, commencing with such advice and

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information to every individual who applies for unemployment insurance under the State's unemployment compensation law. See § 617.4(e). This amendment became effective on August 23, 1988. Information and advice required by amended section 239(f) shall be provided in accordance with this amended Part 617 and operating instructions issued by the Department.

(d) *Training and eligibility requirements for TRA.* Effective on November 21, 1988, in general, enrollment and participation in, or satisfactory completion of, a training program approved under section 236(a)(1) of the Act is required as a condition of entitlement to basic TRA. Amendments to sections 231(a)(5), 231(b), and 231(c) of the Act incorporate this new requirement, replacing the job search program requirement which remains in effect through November 20, 1988. Continuation of the job search program requirement through November 20, 1988, and institution of the training program requirement on and after November 21, 1988, is required of all applicants for basic TRA.

(e) *Eligibility period for basic TRA.* (1) Effective on August 23, 1988, with respect to total qualifying separations which occur on or after that date, the eligibility period for basic TRA is changed from the prior law. Prior to the OTCA amendments, section 233(a)(2) provided that the eligibility period for an individual was the 104-week period that immediately followed the week with respect to which the individual first exhausted all rights to regular benefits after the individual's first qualifying separation, and this prescription of the eligibility period continues to apply to all qualifying separations that occurred prior to August 23, 1988, even though the determination on an initial application for TRA is made after August 23, 1988. The new eligibility period is the 104-week period that immediately follows the week in which a total qualifying separation occurs, and applies to all qualifying separations that occur on and after August 23, 1988, although an eligibility period may be established for an individual only if the qualifying separation is a total separation as defined in § 617.3(11), and in operating instructions issued by the Department.

(2) The major significance of the change in section 233(a)(2) is that, on and after August 23, 1988, it applies to the "most recent" total qualifying separation. This means that, after the first qualifying separation (first *total* qualifying separation on and after August 23, 1988), with each subsequent total qualifying separation of an individual under the same certification the individual's eligibility period must be redetermined as the 104-week period that immediately follows the week in which such subsequent separation occurred. With this provision, there will be a lengthy transition period, lasting until the last certification expires that has an impact date that precedes August 23, 1988.

(3) Section 1430(g) of the OTCA requires, in effect, that the new eligibility period not be applied with respect to a total qualifying separation occurring on or after August 23, 1988, if as a result of applying the new eligibility period the individual would have a shorter period of eligibility than the eligibility period established under the prior law on the basis of a first qualifying separation which occurred before August 23, 1988. Therefore, for every individual who has a total qualifying separation on or after August 23, 1988, and is determined to be covered by a certification with an impact date that precedes August 23, 1988, it must be found and determined whether the individual had a first qualifying separation before August 23, 1988, which is covered by the same certification. If the individual had a first qualifying separation before August 23, 1988, it must be determined what the individual's eligibility period is based upon the prior law, and what the individual's eligibility period is based on the amended law and the total qualifying separation occurring on or after August 23, 1988. Only if the new eligibility period ends on a date later than the old eligibility period may the new eligibility period be applied to the individual, and in that event it must be applied.

(4) Computation of the weekly and maximum amounts of basic TRA do not change under the 1988 Amendments in the OTCA. They must continue to be based upon the first benefit period which is related to the first qualifying separation or, on and after August 23, 1988, the first total qualifying separation. Therefore, upon the occurrence of a second or subsequent total qualifying separation on or after August 23, 1988, the individual's eligibility period will move to 104 weeks after the week of such second or subsequent total qualifying separation (unless precluded by section 1430(g) of the OTCA), but no change will be made in the weekly or maximum amounts of basic TRA as computed in relation to the first qualifying separation or, on and after August 23, 1988, the first total qualifying separation. Consequently, for every individual who files an initial claim for basic TRA on or after August 23, 1988, it must be determined whether the individual's most recent separation within the certification period of the certification under which the individual is determined to be covered is a qualifying separation which occurred prior to August 23, 1988, or is a total qualifying separation which occurred on or after August 23, 1988, and it must be found and determined whether the individual had an earlier separation within the certification period of the same certification which was a first qualifying separation before August 23, 1988, or was a first total qualifying separation on or after August 23, 1988. For the purpose of computing the weekly and maximum amounts of basic TRA for an individual, it is not material whether such first qualifying separation occurred before, on, or after August 23, 1988.

(f) *Eligibility period for additional TRA.* One technical and one conforming change are made by the OTCA in section 233 (a)(3) of the Act, but have no effect on the 26-week eligibility period for additional TRA as the statute has been interpreted and applied in the past. Therefore, the 26-week eligibility period begins with the first week of training if the training begins after exhaustion of basic TRA. Further, if the training begins before approval is obtained under section 236(a)(1) and this Part 617, the 26-week eligibility period begins with the week in which the determination of approval is issued, if there is any scheduled training session in that week after the date of the determination.

(g) *Eligibility for TRA during breaks in training.* (1) A new subsection (f) of the section 233, added by the OTCA, provides for payment of TRA during scheduled breaks in a training program, provided three conditions are met as expressed in subsection (f) and this amended Part 617 and in operating instructions issued by the Department. By making this provision applicable to basic TRA as well as additional TRA, subsection (f) changes the prior law for both. Previously, basic TRA was payable during training breaks, but additional TRA was payable solely with respect to weeks of training. However, now, as under the prior law, weeks when TRA is not payable because of this break provision will still count against the eligibility periods for both basic and additional TRA.

(2) New subsection (f) took effect on August 23, 1988, and applies to all breaks in training which begin on or after that date. Although the training to which this break provision applies must have been approved under section 232(a)(1), it is not material whether the training was approved before or after the OTCA amendments to section 236, or whether the training was approved or is approvable under amended section 236.

(h) *Retroactive eligibility for TRA.* Effective on August 23, 1988, section 1425(b) of the OTCA provides for an open-ended waiver of the time limit in section 233(a)(2) on the eligibility period for basic TRA, and the 210-day time limit in section 233(b) on filing a bona fide application for training in order to qualify for additional TRA. This waiver provision applies solely to workers who experienced a total qualifying separation in the period which began on August 13, 1981 and ended on April 7, 1986. Other conditions must be met that are specified in section 1425(b) and in this amended Part 617 and in operating instructions issued by the Department. Altogether, nine conditions must be met for workers to obtain TRA payments under this special provision. Further, this special provision applies solely to weeks which begin after August 23, 1988; no retroactive payments may be made under this special provision. Finally, only the two, specific time limitations are waived, and all other requirements of the prior and amended law apply, including the first qualifying separation rule applicable to separations occurring before August 23, 1988 (relating to computation of the weekly and maximum amounts of basic TRA payable) and the 26-week eligibility period for additional TRA and the break provision of new section 233(f).

(i) *Training for adversely affected workers.* Extensive amendments to section 236 are made in the OTCA which, except for some technical and conforming changes that take effect on November 21, 1988, all became effective on August 23, 1988. These changes must be effectuated according to their terms and in accordance with this amended Part 617 and operating instructions issued by the Department.

(j) *Agreements with States.* Section 239 also was amended by the OTCA, to require new terms and conditions in the section 239 agreements. This requires new agreements to be executed between the States and the Secretary of Labor, and gives new emphasis to the contractual nature of the obligations entered into by the States to administer the TAA Program in strict accordance with the Act and the regulations and operating instructions issued by the Department.

(k) *Other.* Other matters covered by the OTCA amendments, as well as the matters discussed in the preceding paragraphs of this section, shall, to the extent that the States may be involved in their implementation, be effectuated in strict accordance with the Act and the regulations and operating instructions issued by the Department.

Appendix A to Part 617—Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services

Employment Security Manual (Part V, Sections 5000–5004)

5000–5099 Claims Filing

*5000–5004 *Claim Filing, Claimant Reporting, Job Finding and Employment Services*

5000 *Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services*

A. *Federal law requirements.* Section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act require that a State law provide for:

"Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary may approve."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law provide for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *."

Section 303(a)(1) of the Social Security Act requires that the State law provide for:

"Such methods of administration * * * as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

B. *Secretary's interpretation of federal law requirements.*

1. The Secretary interprets section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act to require that a State law provide for payment of unemployment compensation solely through public employment offices or claims offices administered by the State employment security agency if such agency provides for such coordination in the operations of its public employment offices and claims offices as will insure (a) the payment of benefits only to individuals who are unemployed and who are able to work and available for work, and (b) that individuals claiming unemployment compensation (claimants) are afforded such placement and other employment services as are necessary and appropriate to return them to suitable work as soon as possible.

2. The Secretary interprets all the above sections to require that a State law provide for:

a. Such contact by claimants with public employment offices or claims offices or both, (1) as will reasonably insure the payment of unemployment compensation only to individuals who are unemployed and who are able to work and available for work, and (2) that claimants are afforded such placement and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible; and

b. Methods of administration which do not unreasonably limit the opportunity of individuals to establish their right to unemployment compensation due under such State law.

5001 *Claim Filing and Claimant Reporting Requirements Designed to Satisfy Secretary's Interpretation*

A. *Claim filing—total or part-total unemployment.*

1. Individuals claiming unemployment compensation for total or part-total unemployment are required to file a claim weekly or biweekly, in person or by mail, at a public employment office or a claims office (these terms include offices at itinerant points) as set forth below.

2. Except as provided in paragraph 3, a claimant is required to file in person:

a. His new claim with respect to a benefit year, or his continued claim for a waiting week or for his first compensable week of unemployment in such year; and

b. Any other claim, when requested to do so by the claims personnel at the office at which he files his claim(s) because questions about his right to benefits are raised by circumstances such as the following:

(1) The conditions or circumstances of his separation from employment;

(2) The claimant's answers to questions on mail claim(s) indicate that he may be unable to work or that there may be undue restrictions on his availability for work or that his search for work may be inadequate or that he may be disqualified;

(3) The claimant's answers to questions on mail claims create uncertainty about his credibility or indicate a lack of understanding of the applicable requirements; or

(4) The claimant's record shows that he has previously filed a fraudulent claim.

In such circumstances, the claimant is required to continue to file claims in person each week (or biweekly) until the State agency determines that filing claims in person is no longer required for the resolution of such questions.

3. A claimant must be permitted to file a claim by mail in any of the following circumstances:

a. He is located in an area requiring the expenditure of an unreasonable amount of time or money in traveling to the nearest facility established by the State agency for filing claims in person;

b. Conditions make it impracticable for the agency to take claims in person;

c. He has returned to full-time work on or before the scheduled date for his filing a claim, unless the agency makes provision for in-person filing at a time and place that does not interfere with his employment;

d. The agency finds that he has good cause for failing to file a claim in person.

4. A claimant who has been receiving benefits for partial unemployment may continue to file claims as if he were a partially unemployed worker for the first four consecutive weeks of total or part-total unemployment immediatley following his period of partial unemployment so long as he remains attached to his regular employer.

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B. *Claim filing—partial unemployment.* Each individual claiming unemployment compensation for a week (or other claim period) during which, because of lack of work, he is working less than his normal customary full-time hours for his regular employer and is earning less than the earnings limit provided in the State law, shall not be required to file a claim for such week or other claim period earlier than 2 weeks from the date that wages are paid for such claim period or, if a low earnings report is required by the State law, from the date the employer furnished such report to the individual. State agencies may permit claims for partial unemployment to be filed either in person or by mail, except that in the circumstances set forth in section A3, filing by mail must be permitted, and in the circumstances set forth in section A2b, filing in person may be required.

5002 *Requirement for Job Finding, Placement, and Other Employment Services Designed to Satisfy Secretary's Interpretation*

A. Claims personnel are required to assure that each claimant is doing what a reasonable individual in his circumstances would do to obtain suitable work.

B. In the discretion of the State agency:

1. The claims personnel are required to give each claimant such necessary and appropriate assistance as they reasonably can in finding suitable work and at their discretion determine when more complete placement and employment services are necessary and appropriate for a claimant; and if they determine more complete services are necessary and appropriate, the claims personnel are to refer him to employment service personnel in the public employment office in which he has been filing claim(s), or, if he has been filing in a claims office, in the public employment office most accessible to him; *or*

2. All placement and employment services are required to be afforded to each claimant by employment service personnel in the public employment office most accessible to him, in which case the claims personnel in the office in which the claimant files his claim are to refer him to the employment service personnel when placement or other employment services are necessary and appropriate for him.

C. The personnel to whom the State agency assigns the responsibilities outlined in paragraph B above are required to give claimants such job-finding assistance, placement, and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible.

In some circumstances, no such services or only limited services may be required. For example, if a claimant is on a short-term temporary layoff with a fixed return date, the only service necessary and appropriate to be given to him during the period of the layoff is a referral to suitable temporary work if such work is being performed in the labor market area.

Similarly, claimants whose unemployment is caused by a labor dispute presumably will return to work with their employer as soon as the labor dispute is settled. They generally do not need services, nor do individuals in occupations where placement customarily is made by other nonfee charging placement facilities such as unions and professional associations.

Claimants who fall within the classes which ordinarily would require limited services or no services shall, if they request placement and employment services, be afforded such services as are necessary and appropriate for them to obtain suitable work or to achieve their reasonable employment goals.

On the other hand, a claimant who is permanently separated from his job is likely to require some services. He may need only some direction in how to get a job; he may need placement services if he is in an occupation for which there is some demand in the labor market area; if his occupation is outdated, he may require counseling and referral to a suitable training course. The extent and character of the services to be given any particular claimant may change with the length of his unemployment and depend not only on his own circumstances and conditions, but also on the condition of the labor market in the area.

D. Claimants are required to report to employment service personnel, as directed, but such personnel and the claims personnel are required to so arrange and coordinate the contacts required of a claimant as not to place an unreasonable burden on him or unreasonably limit his opportunity to establish his rights to compensation. As a general rule, a claimant is not required to contact in person claims personnel or employment service personnel more frequently than once a week, unless he is directed to report more frequently for a specific service such as referral to a job or a training course or counseling which cannot be completed in one visit.

E. Employment service personnel are required to report promptly to claims personnel in the office in which the claimant files his claim(s): (1) His failure to apply for or accept work to which he was referred by such personnel or when known, by any other nonfee-charging placement facility such as a union or a professional association; and (2) any information which becomes available to it that may have a bearing on the claimant's ability to work or availability for work, or on the suitability of work to which he was referred or which was offered to him.

5004 *Evaluation of Alternative State Provisions.*

If the State law provisions do not conform to the "suggested State law requirements" set forth in sections 5001 and 5002, but the State law contains alternative provisions, the Manpower Administrator, in collaboration with the State agency, will study the actual or anticipated effect of the alternative provisions. If the Manpower Administrator concludes that the alternative provisions satisfy the requirements of the Federal law as construed by the Secretary (see section 5000 B) he will so notify the State agency. If he does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy such requirements, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy such requirements, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.3.

[FR Doc. 88-27400 Filed 11-29-88; 8:45 am]
BILLING CODE 4510-30-M

federal register

Wednesday
November 30, 1988

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 53
Federal Acquisition Regulation (FAR); Standard Forms 294 and 295; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

Federal Acquisition Regulation (FAR); Standard Forms 294 and 295

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Standard Forms 294 and 295.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 30, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–60 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The requirement for agencies to collect subcontracting data from prime contractors originated in October 1978 with the enactment of Pub. L. 95–507. This public law requires that all contractors, with the exception of small businesses, who receive a Federal prime contract or subcontract over $500,000 ($1 million for construction) that has subcontracting opportunities, include a plan for subcontracting with small and small disadvantaged businesses. Following the enactment of Pub. L. 95–507, Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, were developed to serve as the standard Governmentwide data collection forms to monitor a prime contractor's subcontracting program.

Major changes to the forms delete the breakout of indirect subcontract awards, which are funded by indirect cost pools, on the SF 294 for civilian agencies. The DoD still requires data on these awards. The SF 295 need only be submitted annually for civilian agencies as opposed to present quarterly submission. However, the DoD still requires quarterly submissions of this data.

The changes proposed by the DoD are to collect data on awards to Historically Black Colleges and Universities (HBCU's)/Minority Institutions (MI's) both in subcontract dollars and all noncontractual monetary and nonmonetary support given by prime contractors. Noncontractual support can be equipment, real property, scholarships, etc. The DoD also proposes that the distribution of the report be revised to require separate reports for each DoD component from prime contractors for construction and related maintenance and repair services. The original report is to be submitted to each DoD component as opposed to the previous requirement to submit it to the Office of the Deputy Secretary of Defense, Attn: Director of Small and Disadvantaged Business Utilization, The Pentagon, Washington, DC 20301–3061.

Copies of the proposed revised standard forms may be obtained from the FAR Secretariat.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply because the requirement for submission of the SFs 294 and 295 does not apply to small businesses.

C. Paperwork Reduction Act

This proposed rule contains information collection requirements. Accordingly, revised burden estimates for OMB Clearance Numbers 9000–0006 and 9000–0007 are being submitted to the Office of Management and Budget for approval under 44 U.S.C. 3501, et seq. Public comments concerning the two requests will be invited through subsequent **Federal Register** notices.

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: November 22, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 53 be amended as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR Part 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

53.219 [Amended]

2. Section 53.219 is amended in paragraphs (a) and (b) by removing the words "(REV. 10/83)" and inserting in their place the words "(REV. 11/88)".

[FR Doc. 88–27552 Filed 11–29–88; 8:45 am]

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Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; Airbus Industries and McDonnell Douglas; Proposed Rules

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-142-AD]

Airworthiness Directives; Airbus Industries Models A300 and A310; Boeing Models 707, 720, 727, 737, 747, 757, and 767; British Aerospace Models BAe 146 and BAC 1-11; Fokker Model F28; Lockheed Model L-1011; and McDonnell Douglas Models DC-8, DC-9 (Includes Models DC-9-80 Series and MD-88), and DC-10/KC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain transport category airplanes, which would require the installation of a visual annunciation of the loss of electrical power to the takeoff warning system installed on the airplane which would not require action by the flight crew to display the annunciation. This proposal is prompted by an accident where electrical power was lost to the takeoff warning system and the flight crew was not aware of it. This condition, if not corrected, could result in takeoff of an airplane in an unsafe takeoff configuration.

DATES: Comments must be received no later than February 21, 1989.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-142-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5342.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-142-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: Investigation of an accident that occurred shortly after taking off, involving a McDonnell Douglas DC-9-82 series airplane, revealed that the airplane was not configured properly for takeoff. The takeoff warning system on the airplane, which is designed to alert the flight crew that the airplane is not configured properly for takeoff, failed to provide a warning of improper takeoff configuration.

The reason for this failure was determined to be loss of electrical power to the takeoff warning system portion of the Central Aural Warning System (CAWS). It was further determined that this loss of electrical power was caused by a failed, tripped, or intentionally opened circuit breaker. This condition, if not corrected, could result in takeoff of an airplane while in an unsafe configuration for takeoff.

As a result of its investigation of this accident, the National Transportation Safety Board (NTSB) recommended that the FAA require a modification of Model DC-9-80 series airplanes that would illuminate the existing CAWS "fail light" in the event of a CAWS input circuit electrical power loss.

In response to the preliminary findings as to the cause of the accident, the FAA established a special team to conduct a general review of takeoff warning systems. The team concentrated its review on large turbofan/turbojet transport airplanes manufactured by Airbus, Boeing, Lockheed, and McDonnell Douglas, since it considered the takeoff warning systems on these airplanes to be representative of the systems installed in the majority of transport category airplanes. The review noted that an unannounced electrical power loss to the takeoff warning system was not unique to the Model DC-9-82 airplane, and most other airplanes reviewed by the team were equally susceptible to such failures. Accordingly, the FAA has determined that it is necessary to expand the NTSB's recommendation to include certain additional large turbofan/turbojet transport airplanes certificated under Part 25 of the Federal Aviation Regulations (FAR).

Since this condition is likely to exist on other airplanes of these same type designs, an AD is proposed which would require the installation of a visual warning which will signal the loss of primary electrical power to the takeoff warning system, visible to the flight crew without requiring flight crew action to display it. The FAA proposes that this visual warning be installed within 12 months from the effective date of the final rule. This will provide manufacturers with sufficient time to design an installation and provide service information, and will provide operators sufficient time to install the visual warning. Operators may develop their own takeoff warning system electrical power loss visual warning installation, if they so desire.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 3,699 airplanes of U.S. registry would be affected by this AD. Some of these airplanes are currently equipped with a means of providing a visual annunciation of electrical power loss to the takeoff warning system and may not require modification to comply with this proposed AD. The design alternative selected by an operator will determine the cost of complying with the requirements of this proposed AD. The highest cost option is expected to be the installation of a voltage sensing device and a warning light. For this option, it is estimated that it would take approximately 20 manhours per airplane to accomplish the required action, that material cost would be approximately $250 per airplane, and that the average labor cost would be $40 per manhour. It is estimated that this modification could be incorporated during normal aircraft maintenance with no additional aircraft down time required. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,883,950, if all operators were to install a voltage sensing device/warning light modification.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordanced with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, of the affected model airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Airbus Industries, Boeing, British Aerospace, Fokker, Lockheed, and McDonnell Douglas: Applies to Airbus Industries Models A300 and A310; Boeing Models 707, 720, 727, 737, 747, 757, and 767; British Aerospace Models BAe 146 and BAC 1-11; Fokker Model F28; Lockheed Model L-1011; and McDonnell Douglas Models DC-8, DC-9 (includes Model DC-9-80 series and Model MD-88), and DC-10/KC-10 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent an unannounced electrical power loss to the takeoff warning system and a subsequent takeoff attempt with the airplane in an unsafe takeoff configuration, accomplish the following:

A. for airplanes without a visual annunciation of electrical power loss to the takeoff warning system: Within 12 months after the effective date of this AD install a visual annunciation of electrical power loss to the takeoff warning system which is visible to the flight crew and which does not require flight crew action to display it, in a manner approved by:

a. Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, for Boeing series airplanes; or

b. Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, for McDonnell Douglas and Lockheed airplanes; or

c. Manager, Standardization Branch, ANM-113, FAA Northwest Mountain Region, for Airbus, British Aerospace, and Fokker series airplanes.

B. For airplanes currently equipped with a means of providing visual annunciation of electrical power loss to the takeoff warning system: Within 60 days after the effective date of this AD, submit a description of this means to the appropriate office specified in paragraph A., above, for a determination of compliance with the requirements of this AD.

1. If the FAA determines that the airplane's current means of providing visual annunciation of electrical power loss to the takeoff warning system is in compliance with the requirements of this AD, no further action is necessary.

2. If the FAA determines that the airplane's current means of providing visual annunciation of electrical power loss to the takeoff warning system is not in compliance with the requirements of this AD, within 12 months after the date of the FAA's finding, modify the means of providing visual annunciation of electrical power loss to the takeoff warning system to meet the requirements of this AD, in a manner approved by the appropriate office specified in paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (for Boeing series airplanes); Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas or Lockheed series airplanes); or Manager Standardization Branch, ANM-113, FAA, Northwest Mountain Region (for Airbus, British Aerospace, or Fokker series airplanes); as appropriate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager of the appropriate office indicated above.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on November 22, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-27671 Filed 11-28-88; 2:29 pm]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-145-AD]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas DC-8 series airplanes, which would require the incorporation of horizontal stabilizer position into the existing takeoff configuration warning system. This proposal is prompted by an FAA review of large turbofan/turbojet transport airplanes' takeoff configuration warning systems, which revealed that the horizontal stabilizer position was not monitored by the Model DC-8 takeoff warning system. This condition, if not corrected, could lead to an airplane taking off in the wrong takeoff configuration.

DATES: Comments must be received no later than January 23, 1989.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-145-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806; telephone (213) 988-5342.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to

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the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-145-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: Investigation of an accident that occurred shortly after takeoff, involving a jet transport airplane, revealed that the airplane was not configured properly for takeoff. This prompted the FAA to establish a special FAA team to conduct a general review of takeoff configuration warning systems installed in large turbofan/turbojet transport airplanes. All of the systems reviewed, except that of the McDonnell Douglas Model DC-8 series airplanes, were equipped to monitor all of the inputs necessary to establish a correct takeoff configuration for the airplane. The Model DC-8 series airplanes were not equipped to monitor the horizontal stabilizer position in the takeoff warning system. This condition, if not corrected, could allow a takeoff attempt with the airplane's horizontal stabilizer in the wrong position, and no warning to the flight crew. Further, an incorrect stabilizer position could lead to difficulties in rotational control: early, unexpected self-rotation, heavy rotational forces, or inability to rotate.

The team also reviewed accidents in the worldwide jet fleet which have involved incorrect takeoff configuration. This review indicated that Model DC-8 airplanes were involved in 3 of the 12 accidents of this type which occurred between 1958 and 1987. The cause of all three accidents was determined to be due to improper horizontal stabilizer position. Because of the disproportionate number of takeoff accidents that have occurred involving Model DC-8 airplanes as a result of a horizontal stabilizer out-of-trim condition, the team recommended, and the FAA has determined, that the Model DC-8 takeoff warning system must be modified to incorporate horizontal stabilizer position.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require modification of the Model DC-8 takeoff warning system to incorporate horizontal stabilizer position into the existing design. The FAA proposes that the modification be incorporated within 12 months from the effective date of the final rule.

There are approximately 349 Model DC-8 series airplanes in the worldwide fleet. It is estimated that 141 airplanes of U.S. registry would be affected by this AD, that it would take approximately 250 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The material cost is estimated to be approximately $70,000 per airplane (this figure was supplied to FAA by the airplane manufacturer and is based on approximate costs associated with a recommended design that includes extensive modification of the mechanical stabilizer and installation of a computer). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,280,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would have have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC-8 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent takeoff with the airplane horizontal stabilizer in the wrong position and no warning from the takeoff warning system, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), incorporate into the takeoff warning system installed on the airplane a horizontal stabilizer position input which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on November 22, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-27672 Filed 11-28-88; 2:29 pm]

BILLING CODE 4910-13-M

federal register

Wednesday
November 30, 1988

Part VIII

The President

Proclamation 5917—National Sir Winston Churchill Recognition Week, 1988

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Presidential Documents

Title 3—

The President

Proclamation 5917 of November 28, 1988

National Sir Winston Churchill Recognition Week, 1988

By the President of the United States of America

A Proclamation

Soldier, author, orator, and statesman, Sir Winston Churchill was one of the towering figures of our century. A man of powerful intellect and deep personal courage, his fierce dedication to freedom changed the course of modern history and left his countrymen, and people everywhere, with an immortal example of the invincibility of the human spirit.

Sir Winston's unflagging pursuit of his vision of a world freed from the threat of tyranny rallied his countrymen to their "finest hour." In the darkest days of World War II, his eloquent speeches and his tenacious character spurred the citizens and fighting men on both sides of the Atlantic to continue their struggle until victory was finally won.

The qualities that stood England in good stead during the War had been formed many years earlier, during Churchill's military service in Cuba, India, Egypt, and South Africa, where he wrote the brilliant dispatches and accounts that first brought him to the attention of the domestic populace. These writings, plus additional biographical and autobiographical works, were the precursors of his celebrated multi-volume history of World War II and the four-volume *A History of the English-Speaking Peoples.* Both his actions and his writings bear witness to the seriousness with which he took Santayana's observation that those who cannot remember the past are condemned to repeat it. For his achievements in the world of letters, he was awarded the Nobel Prize in literature in 1953.

The close ties that Churchill forever championed between the people of the United States and Great Britain are evident in the details of his personal biography. He was the son of Randolph Churchill, a British citizen, and Jennie Churchill, an American. In his correspondence and books, in his speeches and his travels, he was a consistent and forceful advocate of transatlantic cooperation and unity. He saw our nations as joined by historic destiny in the struggle to prevent the drawing down of the curtain of tyranny over all mankind. On April 9, 1963, 2 years before his death, the United States recognized the extraordinary contributions of Sir Winston Churchill and granted him honorary American citizenship. It is wholly fitting that our Nation pause again to honor a great friend of liberty for whom no final word of praise and thanks may ever be written.

In honor of Sir Winston Churchill, the Congress, by Senate Joint Resolution 340, has designated November 27 through December 3, 1988, as "National Sir Winston Churchill Recognition Week" and authorized and requested the President to issue a proclamation in observance of that week.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 27 through December 3, 1988, as National Sir Winston Churchill Recognition Week and call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-27736
Filed 11-29-88; 10:07 am]
Billing code 3195-01-M

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LIST OF PUBLIC LAWS

Note: This completes the listing of public laws enacted during the second session of the 100th Congress.

Last List November 25, 1988

The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convenes on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2707/Pub. L. 100-707

To amend the Disaster Relief Act of 1974 to provide for more effective assistance in response to major disasters and emergencies, and for other purposes. (Nov. 23, 1988; 102 Stat. 4689; 28 pages) Price: $1.00

H.R. 2639/Pub. L. 100-708

To correct historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes. (Nov. 23, 1988; 102 Stat. 4717; 8 pages) Price: $1.00

H.R. 3011/Pub. L. 100-709

Home Equity Loan Consumer Protection Act of 1988. (Nov. 23, 1988; 102 Stat. 4725; 10 pages) Price: $1.00

H.R. 3105/Pub. L. 100-710

To revise, consolidate, and enact certain laws related to shipping definitions and maritime commercial instruments and liens as subtitle III of title 46, United States Code, "Shipping", and for other purposes. (Nov. 23, 1988; 102 Stat. 4735; 20 pages) Price: $1.00

H.R. 4189/Pub. L. 100-711

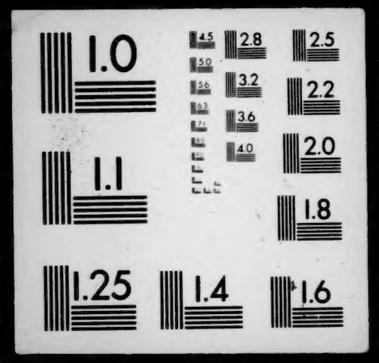
Marine Mammal Protection Act Amendments of 1988. (Nov. 23, 1988; 102 Stat. 4755; 18 pages) Price: $1.00

H.R. 5232/Pub. L. 100-712

Southwestern Low-Level Radioactive Waste Disposal Compact Consent Act. (Nov. 23, 1988; 102 Stat. 4773; 11 pages) Price: $1.00

H.R. 5261/Pub. L. 100-713

Indian Health Care Amendments of 1988. (Nov. 23, 1988; 102 Stat. 4784; 56 pages) Price: $1.50


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